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SUPPLEMENT

TO THE

AMERICAN AND ENGLISH

ENCYCLOPÆDIA OF LAW

(SECOND EDITION)

EDITED BY
DAVID S. GARLAND AND CHARLES PORTERFIELD
UNDER THE SUPERVISION OF
JAMES COCKCROFT

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HOW TO USE THE SUPPLEMENT.

THE titles of the articles and defined words and phrases are repeated in the order in which they are to be found in the AMERICAN AND ENGLISH ENCYCLOPÆDIA OF LAW, Second Edition. At the top of each page are given the name of the subject and the pages thereof which are supplemented by reference to and statement of the late cases. Thus:

961-968 *AGENCY.* Vol. I.

at the top of a page signifies that pages 956 to 961 of the article "Agency" in the first volume of the Second Edition are supplemented.

The large heavy-faced figures refer to the pages of the volume of the Second Edition. The small figure following the page number in the notes refers to the original note numbered by that same figure on that page. Thus, a note numbered **955.** 2., with cases cited, indicates that those cases support the proposition to which the cases in note 2 on page 955 were cited.

The omission of a title that appeared in the Second Edition implies that no new cases on that subject have been found.

Mr. Henry H Van Dyck is entitled to special mention for his labors in the preparation of this volume.

SUPPLEMENT

TO THE

American and English Encyclopædia of Law

(SECOND EDITION)

ABANDON.

2. 1. Wood *v.* Etiwanda Water Co., 147 Cal. 228, 81 Pac. 512; Norman *v.* Corbley, 32 Mont. 195, 79 Pac. 1059; Promontory Ranch Co. *v.* Argile, 28 Utah 407, 79 Pac. 47, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1.

Abandonment of Children. — Brown *v.* State, 122 Ga. 568, 50 S. E. 378.

ABANDONMENT AND TOTAL LOSS (in Marine Insurance).

6. 2. See Cotton *v.* Almy, (C. C. A.) 141 Fed. 358.

12. 2. See Progresso Steamship Co. *v.* St. Paul F. & M. Ins. Co., 146 Cal. 279, 79 Pac. 967; Searles *v.* Western Assur. Co., 88 Miss. 260, 40 So. 866.

13. 1. Standard Marine Ins. Co. *v.* Nome Beach Lighterage, etc., Co., (C. C. A.) 133 Fed. 636, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 13.

17. 1. Searles *v.* Western Assur. Co., 88 Miss. 260, 40 So. 866, holding that a constructive total loss, under the special terms of the policy, was such a loss as that the repairs made necessary thereby, exclusive of raising or rescuing the vessel and taking her to the dock, would be equivalent to seventy-five per cent. of her value.

21. 2. Standard Marine Ins. Co. *v.* Nome Beach Lighterage, etc., Co., (C. C. A.) 133 Fed. 636.

23. 1. Searles *v.* Western Assur. Co., 88 Miss. 260, 40 So. 466.

27. 1. Progresso Steamship Co. *v.* St. Paul F. & M. Ins. Co., 146 Cal. 279, 79 Pac. 967.

2. A Sale by Salvors to Satisfy Their Lien, where the damage was not shown to be fifty per cent. of the sound value of the cargo, under the terms of the policy making the insurer liable only in the event of damage in such amount, has been held not to justify abandonment. Standard Marine Ins. Co. *v.* Nome Beach Lighterage, etc., Co., (C. C. A.) 133 Fed. 636.

29. 5. See New York, etc., Mail Steamship Co. *v.* Royal Exch. Assur., 145 Fed. 713.

35. 1. **Consequences of Acceptance.** — Hume *v.* Frenz, (C. C. A.) 150 Fed. 502, *reversing* 141 Fed. 481.

2. Repairing. — Hume *v.* Frenz, (C. C. A.) 150 Fed. 502, *reversing* 141 Fed. 481.

38. 2. **Insurers' Liabilities** — *Wages.* — Hume *v.* Frenz, (C. C. A.) 150 Fed. 502, *reversing* 141 Fed. 481.

39. 2. Hume *v.* Frenz, (C. C. A.) 150 Fed. 502, *reversing* 141 Fed. 481.

ABATEMENT OF LEGACIES.

43. 1. **Priority of Annuities.** — Under Civ. Code Cal., § 1308, an annuity must abate ratably with residuary devisees to make up the share of a pretermitted child, there being nothing to the contrary in the will. Matter of Smith, 145 Cal. 118, 78 Pac. 369.

45. 3. **Illustrations.** — Where a testatrix, in addition to specific bequests, made provision for certain legacies, part of which were to be paid out of a designated trust fund, and added a codicil giving other pecuniary benefits which rendered the trust fund inadequate to pay the legacies dependent on it, it was held, in view of a provision in the codicil for the *pro rata* payment "of the sums given and bequeathed * * * if there should not be sufficient money left from the salable portions of my estate to pay the full amounts of the sums," that all the legacies, except the specific bequests, as well those to be paid out of the trust fund as those not, must abate *pro rata* upon a deficiency of the estate. Emmons *v.* Dow, 191 Mass. 170, 77 N. E. 310.

46. 1. **Where Bequest Mere Bounty.** — Matthews *v.* Targavona, 104 Md. 442, 65 Atl. 60, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50 *et seq.* for instances in which legacies purporting to be on considerations have been held not to be entitled to preference.

A gift of £3,000 to trustees of testator's daughter's marriage settlement in satisfaction of his covenant to pay them £1,000, held to abate, being a mere bounty. *In re* Wedmore, (1907) 2 Ch. 277.

4. The Forgiveness of the Debts of Testator's Sons to himself held to amount to specific lega-

cies which were not liable to abatement. *In re* Wedmore, (1907) 2 Ch. 277.

48. 6. To Creditor in Satisfaction of Debt. — Matthews *v.* Targavona, 104 Md. 442, 65 Atl. 60, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 48, but holding that consideration was not sufficiently established in the case at bar.

7. Matthews *v.* Targavona, 104 Md. 442, 65 Atl. 60 (*obiter*); Plum *v.* Smith, 70 N. J. Eq. 602, 62 Atl. 763.

Where the Widow Elects. — Lewis *v.* Sedgwick, 223 Ill. 213, 79 N. E. 14; McGuire *v.* Luckey, 129 Iowa 559, 105 N. W. 1004.

Express Direction. — A provision in lieu of dower, "to be left secured on my real estate," is a charge on the testator's lands. Plum *v.* Smith, 70 N. J. Eq. 602, 62 Atl. 763.

50. 1. *Compare* Matthews *v.* Targavona, 104 Md. 442, 65 Atl. 60, declaring that when "the consideration for a legacy has not been established as a subsisting, valid debt, for anything like the amount of the legacy, there can be no reason or principle of law, particularly in a court of equity, requiring the court to give it a priority over other legacies."

51½. 2. Legacies Given under a Sense of Moral Obligation. — Matthews *v.* Targavona, 104 Md. 442, 65 Atl. 60 (similar to Duncan *v.* Franklin Tp., 43 N. J. Eq. 145, stated in the original note).

6. Emmons *v.* Dow, 191 Mass. 170, 77 N. E. 310.

52. 1. Burden of Proof upon Party Seeking Preference. — Matthews *v.* Targavona, 104 Md. 442, 65 Atl. 60.

54. 3. Abatement in Favor of Pretermitted Child. — See Matter of Smith, 145 Cal. 118, 78 Pac. 369, stated *supra*, **43.** 1.

56. 3. General Legacies Abate Before Specific. — Lewis *v.* Sedgwick, 223 Ill. 213, 79 N. E. 14; Robinson *v.* Cogswell, 192 Mass. 79, 78 N. E. 389; Cooney *v.* Whitaker, 192 Mass. 596, 78 N. E. 751.

57. 1. Bashaw *v.* Temple, 115 Tenn. 596, 91 S. W. 202, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 55, 56.

In *Mississippi* specific bequests abate *pro rata*, even to extinction, before specific devises. Gordon *v.* James, 86 Miss. 719, 39 So. 18.

58. 1. O'Day *v.* O'Day, 193 Mo. 62, 91 S. W. 921, (Mo. 1906) 91 S. W. 929, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 56 *et seq.*

59. 1. Matthews *v.* Targavona, 104 Md. 442, 65 Atl. 60.

62. 1. Statutory Provisions — *California* — *"Obvious Intention" Controlling.* — Matter of Smith, 145 Cal. 118, 78 Pac. 369.

Under the Iowa Statute providing that the amount of any interests which "it becomes necessary to satisfy in disregard of or in opposition to the provisions of the will, must be taken ratably from the interests of heirs, devisees, and legatees," it was held that, where a widow elected to take her dower in opposition to testamentary provisions in lieu thereof and thereby reduced the portions of two devisees, the latter would have their obligations to pay certain charges to others named ratably reduced. McGuire *v.* Luckey, 129 Iowa 559, 105 N. W. 1004.

ABATEMENT OF NUISANCES.

64. 5. Equitable Relief — *United States.* — U. S. *v.* Luce, 141 Fed. 385.

Alabama. — Birmingham R., etc., Co. *v.* Moran, (Ala. 1907) 44 So. 152; Weiss *v.* Taylor, 144 Ala. 440, 39 So. 519; Tedeschi *v.* Berger, (Ala. 1907) 43 So. 960.

California. — McCarthy *v.* Gaston Ridge Mill, etc., Co., 144 Cal. 542, 78 Pac. 7; Meek *v.* De Latour, 2 Cal. App. 261, 83 Pac. 300.

Georgia. — Walker *v.* McNelly, 121 Ga. 114, 48 S. E. 718; Augusta *v.* Reynolds, 122 Ga. 754, 50 S. E. 998; Dispensary Com'rs *v.* Hooper, 128 Ga. 99, 56 S. E. 997.

Illinois. — Chicago, etc., R. Co. *v.* People, 120 Ill. App. 306.

Iowa. — State *v.* Dominisse, (Iowa 1904) 99 N. W. 561; Donnelly *v.* Smith, 128 Iowa 257, 103 N. W. 776; Payne *v.* Wayland, 131 Iowa 659, 109 N. W. 203; Peak *v.* Bidinger, 133 Iowa 127, 110 N. W. 292; Drummond *v.* Richland City Drug Co., 133 Iowa 266, 110 N. W. 471.

Kansas. — Cowdrey *v.* State, 71 Kan. 450, 80 Pac. 953; State *v.* Missouri Pac. R. Co., 71 Kan. 613, 81 Pac. 212.

Maine. — Houlton *v.* Titcomb, 102 Me. 272, 66 Atl. 733.

New Jersey. — Seastream *v.* New Jersey Exhibition Co., 67 N. J. Eq. 178, 58 Atl. 532.

New York. — McCarthy *v.* Natural Carbonic Gas Co., 189 N. Y. 40, 81 N. E. 549, *modifying* 114 N. Y. App. Div. 908, 100 N. Y. Supp. 1127; Uggla *v.* Brokaw, 117 N. Y. App. Div. 586, 102 N. Y. Supp. 857; Close *v.* Witbeck, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 224, 102 N. Y. Supp. 904.

North Carolina. — Reyburn *v.* Sawyer, 135 N. Car. 328, 47 S. E. 761.

Pennsylvania. — Clifton Heights *v.* Thomas Kent Mfg. Co., 212 Pa. St. 117, 61 Atl. 817. See also Knisely *v.* Dively, 15 Pa. Dist. 883, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 64.

Vermont. — Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888.

Virginia. — Jeremy Imp. Co. *v.* Com., 106 Va. 482, 56 S. E. 224; Hering *v.* Wilton, 106 Va. 171, 55 S. E. 546.

Washington. — Ingersoll *v.* Rousseau, 35 Wash. 92, 76 Pac. 513; Wilcox *v.* Henry, 35 Wash. 591, 77 Pac. 1055.

West Virginia. — Cohen *v.* King Knob Club, 55 W. Va. 108, 46 S. E. 799.

Wisconsin. — Milwaukee Boiler Co. *v.* Wodhams Oil, etc., Co., 126 Wis. 32, 105 N. W. 312.

Pool-room May Be Enjoined. — Cella *v.* People, 112 Ill. App. 376.

Erection of Pest-house. — Youngstown Tp. *v.* Youngstown, 25 Ohio Cir. Ct. 518.

65. 1. Smith *v.* Giddy, (1904) 2 K. B. 448; Rushmer *v.* Polsue, (1906) 1 Ch. 234, *affirmed* (1907) A. C. 121; Wright *v.* Ulrich, (Colo. 1907) 91 Pac. 43; Palestine Bldg. Assoc. *v.* Minor, 86 S. W. 695, 27 Ky. L. Rep. 781; Desberger *v.* University Heights Realty, etc., Co., (Mo. App. 1907) 102 S. W. 1060; Warren *v.* Parkhurst, (Supm. Ct. Tr. T.) 45 Misc. (N. Y.) 466, 92 N. Y. Supp. 725, *affirmed* 105 N. Y. App. Div. 239, 93 N. Y. Supp. 1009;

Sullivan *v.* Jones, etc., Steel Co., 208 Pa. St. 540, 57 Atl. 1065; Stockdale *v.* Rio Grande Western R. Co., 28 Utah 201, 77 Pac. 849.

Printing House held an abatable nuisance even though in a locality devoted to noisy trades, where it subjects the occupier of an adjoining residence to such an increase of noise as to interfere substantially with his comfort. Rushmer *v.* Polsue, (1906) 1 Ch. 234, *affirmed* (1907) A. C. 121.

68. 1. Must Be Substantial Injury. — Lindèberg *v.* Doverspike, 2 Alaska 177.

United States. — U. S. *v.* Luce, 141 Fed. 385.

Alabama. — Nixon *v.* Bolling, 145 Ala. 277, 40 So. 210.

Iowa. — Perry *v.* Howe Co-operative Creamery Co., 125 Iowa 415, 101 N. W. 150.

Maine. — Whitmore *v.* Brown, 102 Me. 47, 65 Atl. 516.

Maryland. — Gallagher *v.* Flury, 99 Md. 181, 57 Atl. 672; Davis *v.* Baltimore, etc., R. Co., 102 Md. 371, 62 Atl. 572.

Nebraska. — George *v.* Peckham, 73 Neb. 794, 103 N. W. 664; Bischof *v.* Merchants Nat. Bank, (Neb. 1906) 106 N. W. 996.

North Carolina. — Reyburn *v.* Sawyer, 135 N. Car. 328, 47 S. E. 761; Redd *v.* Edna Cotton Mills, 136 N. Car. 342, 48 S. E. 761; Hickory *v.* Southern R. Co., 143 N. Car. 451, 55 S. E. 840.

Oklahoma. — West *v.* Ponca City Milling Co., 14 Okla. 646, 79 Pac. 100.

Pennsylvania. — Sullivan *v.* Jones, etc., Steel Co., 208 Pa. St. 540, 57 Atl. 1066.

Texas. — Rainey *v.* Red River, etc., R. Co., (Tex. Civ. App. 1904) 80 S. W. 95.

Vermont. — Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888.

Washington. — Ingersoll *v.* Rousseau, 35 Wash. 92, 76 Pac. 513; Grantham *v.* Gibson, 41 Wash. 125, 83 Pac. 14; Woodard *v.* West Side Mill Co., 43 Wash. 308, 86 Pac. 579.

Wyoming. — Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364.

Canada. — McKenzie *v.* Kayler, 15 Manitoba 660.

69. 2. George *v.* Peckham, 73 Neb. 794, 103 N. W. 664.

Damages will sometimes be awarded by a court of equity where it appears that the nuisance has already been abated. Miller *v.* Edison Electric Illuminating Co., 184 N. Y. 17, 76 N. E. 734.

70. 1. *United States.* — U. S. *v.* Luce, 141 Fed. 385.

Alabama. — Nixon *v.* Bolling, 145 Ala. 277, 40 So. 210.

Iowa. — Perry *v.* Howe Co-operative Creamery Co., 125 Iowa 415, 101 N. W. 150.

Maryland. — Davis *v.* Baltimore, etc., R. Co., 102 Md. 371, 62 Atl. 572.

Missouri. — Scheurich *v.* Southwest Missouri Light Co., 109 Mo. App. 406, 84 S. W. 1003; Desberger *v.* University Heights Realty, etc., Co., (Mo. App. 1907) 102 S. W. 1060.

Nebraska. — Bischof *v.* Merchants Nat. Bank, (Neb. 1906) 106 N. W. 996.

New York. — Friedman *v.* Columbia Mach. Works, etc., Co., 99 N. Y. App. Div. 504, 91 N. Y. Supp. 129.

Pennsylvania. — Sullivan *v.* Jones, etc., Steel Co., 208 Pa. St. 540, 57 Atl. 1065.

Texas. — Galveston, etc., R. Co. *v.* Miller, (Tex. Civ. App. 1906), 93 S. W. 177.

Vermont. — Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888.

2. Quantum of Damage. — George *v.* Peckham, 73 Neb. 794, 103 N. W. 664; Close *v.* Witbeck, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 224, 102 N. Y. Supp. 904; Bentley *v.* Empire Portland Cement Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 457, 96 N. Y. Supp. 831.

3. Balancing Conveniences. — Mountain Copper Co. *v.* U. S., (C. C. A.) 142 Fed. 625; Bentley *v.* Empire Portland Cement Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 457, 96 N. Y. Supp. 831; Sullivan *v.* Jones, etc., Steel Co., 208 Pa. St. 540; 57 Atl. 1065; Rainey *v.* Red River, etc., R. Co., (Tex. Civ. App. 1904) 80 S. W. 95.

71. 1. Redd *v.* Edna Cotton Mills, 136 N. Car. 342, 48 S. E. 761.

2. Meek *v.* De Latour, 2 Cal. App. 261, 83 Pac. 300; Viebahn *v.* Crow Wing County, 96 Minn. 276, 104 N. W. 1089; Letherman *v.* Hauser, (Neb. 1906) 110 N. W. 745.

3. Smith *v.* Giddy, (1904) 2 K. B. 448; Meek *v.* De Latour, 2 Cal. App. 261, 83 Pac. 300; Wright *v.* Ulrich, (Colo. 1907) 91 Pac. 43; Anable *v.* Montgomery County, 34 Ind. App. 72, 71 N. E. 272; Stockdale *v.* Rio Grande Western R. Co., 28 Utah 201, 77 Pac. 849.

4. *England.* — Rushmer *v.* Polsue, (1906) 1 Ch. 234, *affirmed* (1907) A. C. 121.

Alabama. — Montgomery First Nat. Bank *v.* Tyson, 144 Ala. 457, 39 So. 560; Tedescki *v.* Berger, (Ala. 1907) 43 So. 960; Birmingham R., etc., Co. *v.* Moran, (Ala. 1907) 44 So. 152.

Arkansas. — Martin *v.* Hornor, 83 Ark. 330, 103 S. W. 1134.

California. — Harniss *v.* Bulpitt, 1 Cal. App. 140, 81 Pac. 1022.

Kentucky. — Palestine Bldg. Assoc. *v.* Minor, 86 S. W. 695, 27 Ky. L. Rep. 781.

Louisiana. — Kuhl *v.* St. Bernard Rendering, etc., Co., 117 La. 86, 41 So. 361; Froelicher *v.* Southern Marine Works, 118 La. 1077, 43 So. 882; Perrin *v.* Crescent City Stockyard, etc., Co., 119 La. 83, 43 So. 938.

Maine. — Whitmore *v.* Brown, 102 Me. 47, 65 Atl. 516.

Maryland. — Davis *v.* Baltimore, etc., R. Co., 102 Md. 371, 62 Atl. 572.

Massachusetts. — Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730.

Michigan. — McCormick *v.* Weaver, 144 Mich. 6, 107 N. W. 314.

Minnesota. — Viebahn *v.* Crow Wing County, 96 Minn. 276, 104 N. W. 1089.

Missouri. — Scheurich *v.* Southwest Missouri Light Co., 109 Mo. App. 406, 84 S. W. 1003.

Nebraska. — Bangs *v.* Dworak, (Neb. 1906) 106 N. W. 780; Bischof *v.* Merchants Nat. Bank, (Neb. 1906) 106 N. W. 996.

New Jersey. — Seastream *v.* New Jersey Exhibition Co., 67 N. J. Eq. 178, 58 Atl. 532; Roessler, etc., Chemical Co. *v.* Doyle, 73 N. J. L. 521, 64 Atl. 156; Cape May First M. E. Church *v.* Cape May Grain, etc., Co., (N. J. 1907) 67 Atl. 613.

New York. — Buskirk *v.* O. J. Gude Co., 115

N. Y. App. Div. 330, 100 N. Y. Supp. 777; McCarty *v.* Natural Carbonic Gas Co., 189 N. Y. 40, 81 N. E. 549, *modifying* 114 N. Y. App. Div. 908, 100 N. Y. Supp. 1127; Wolf *v.* Manhattan R. Co., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 426, 101 N. Y. Supp. 493; Close *v.* Witbeck, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 224, 102 N. Y. Supp. 904.

North Carolina. — Reyburn *v.* Sawyer, 135 N. Car. 328, 47 S. E. 761.

Oklahoma. — West *v.* Ponca City Milling Co., 14 Okla. 646, 79 Pac. 100.

Texas. — Galveston, etc., R. Co. *v.* Miller, (Tex. Civ. App. 1906) 93 S. W. 177.

Washington. — Ingersoll *v.* Rousseau, 35 Wash. 92, 76 Pac. 513; Wilcox *v.* Henry, 35 Wash. 591, 77 Pac. 1055; Grantham *v.* Gibson, 41 Wash. 125, 83 Pac. 14.

West Virginia. — Cohen *v.* King Knob Club, 55 W. Va. 108, 46 S. E. 799.

Wisconsin. — Milwaukee Boiler Co. *v.* Wadhams Oil, etc., Co., 126 Wis. 32, 105 N. W. 312.

Wyoming. — Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364.

The Legislature May Authorize "Any Citizen" to maintain a bill for the abatement of a public nuisance. *Ex p.* Allison, (Tex. 1906) 90 S. W. 870; Devanney *v.* Hanson, 60 W. Va. 3, 53 S. E. 603.

The United States Must Show Special Damage like any individual. Mountain Copper Co. *v.* U. S., (C. C. A.) 142 Fed. 625.

A Tenant from Month to Month is entitled to an injunction to restrain the carrying on of a livery stable in proximity to his dwelling, but the landlord is not, in the absence of proof of injury to the reversion or loss of tenants. McKenzie *v.* Kayler, 15 Manitoba 660.

73. 1. Nuisances Purely Public. — Walker *v.* McNelly, 121 Ga. 114, 48 S. E. 718; Dispensary Com'rs *v.* Hooper, 128 Ga. 99, 56 S. E. 997; State *v.* Coler, 75 Kan. 424, 89 Pac. 693; Labry *v.* Gilmour, (Ky. 1905) 89 S. W. 231; Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289; Gallagher *v.* Flury, 99 Md. 181, 57 Atl. 672; Hagerty *v.* McGovern, 187 Mass. 479, 73 N. E. 536; State *v.* Vandalia, 119 Mo. App. 406; 94 S. W. 1009; George *v.* Peckham, 73 Neb. 794, 103 N. W. 664; Pedrick *v.* Raleigh, etc., R. Co., 143 N. Car. 485, 55 S. E. 877.

Suit Brought by Municipal Corporation. — Houlton *v.* Tetcomb, 102 Me. 272, 66 Atl. 733; Kirkland *v.* Ferry, (Wash. 1907) 88 Pac. 1123.

It was held in Belleville Tp. *v.* Orange, 70 N. J. Eq. 244, 62 Atl. 331, that a township could not in the absence of legislative authority, when there was no special injury to its property rights, maintain a bill to abate a nuisance.

74. 1. Delay — How Far a Bar. — McCracken *v.* Miller, 129 Iowa 633, 106 N. W. 4; Whitmore *v.* Brown, 102 Me. 47, 65 Atl. 516; Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888.

75. 1. U. S. *v.* Luce, 141 Fed. 385; Weiss *v.* Taylor, 144 Ala. 440, 39 So. 519; Scheurich *v.* Southwest Missouri Light Co., 109 Mo. App. 406, 84 S. W. 1003.

2. Delay Accompanied with Acquiescence. — Washington Lodge No. 54 *v.* Frelinghuysen, 138 Mich. 350, 101 N. W. 569; Scheurich *v.* Southwest Missouri Light Co., 109 Mo. App. 406, 84 S. W. 1003; Desberger *v.* University Heights Realty, etc., Co., (Mo. App. 1907) 102 S. W. 1060; Laird *v.* Atlantic Coast Sanitary Co., (N. J. 1907) 67 Atl. 387; Victoria *v.* Victoria County, (Tex. Civ. App. 1906) 94 S. W. 368; Woodard *v.* West Side Mill Co., 43 Wash. 308, 86 Pac. 579.

3. Expensive Erections. — Scheurich *v.* Southwest Missouri Light Co., 109 Mo. App. 406, 84 S. W. 1003.

76. 1. Assent — How Far a Bar. — State *v.* Thomas, 74 Kan. 360, 86 Pac. 499.

2. Decree — And Action Thereunder. — State *v.* Schaefer, (Wash. 1906) 87 Pac. 949.

The court will sometimes permit a reservation of enforcement of the decree, retaining jurisdiction subject to the improvement of conditions by the defendant, and compelling absolute discontinuance only in case the defendant is unable, by deodorizers and neutralizing processes, to suppress the nuisance without actual discontinuance. U. S. *v.* Luce, 141 Fed. 385.

3. Judgment — What May Embrace — *Kentucky.* — Enright *v.* Com., (Ky. 1907) 102 S. W. 799; Respass *v.* Com., (Ky. 1907) 102 S. W. 331; Huber *v.* Com., (Ky. 1907) 102 S. W. 291; Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

Louisiana. — Froelicher *v.* Southern Marine Works, 118 La. 1077, 43 So. 882; Perrin *v.* Crescent City Stockyard, etc., Co., 119 La. 83, 43 So. 938.

New Jersey. — Laird *v.* Atlantic Coast Sanitary Co., (N. J. 1907) 67 Atl. 387.

New York. — McCarty *v.* National Carbonic Gas Co., 189 N. Y. 40, 81 N. E. 549, *modifying* 114 N. Y. App. Div. 908, 100 N. Y. Supp. 1127.

North Carolina. — Reyburn *v.* Sawyer, 135 N. Car. 328, 47 S. E. 761.

North Dakota. — State *v.* Nelson, 13 N. Dak. 122, 99 N. W. 1077.

Texas. — *Ex p.* Allison, (Tex. 1906) 90 S. W. 870.

Virginia. — Jeremy Imp. Co. *v.* Com., 106 Va. 482, 56 S. E. 224.

Washington. — State *v.* Schaefer, (Wash. 1906) 87 Pac. 949.

West Virginia. — Woods *v.* Cottrell, 55 W. Va. 476, 47 S. E. 275.

77. 2. Abatement — When Ordered. — State *v.* Wisnewski, 13 N. Dak. 649, 102 N. W. 883.

78. 3. Woods *v.* Cottrell, 55 W. Va. 476, 47 S. E. 275, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 78.

5. Nature of Order. — Enright *v.* Com., (Ky. 1907) 102 S. W. 799.

6. Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

8. Requiring Officer to Execute Order. — Enright *v.* Com., (Ky. 1907) 102 S. W. 799.

79. 4. State *v.* Patton, (Kan. 1907) 92 Pac. 588, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 79-86; Maryland Telephone, etc., Co. *v.* Ruth, (Md. 1907) 68 Atl. 358, *citing* 1 AM AND ENG. ENCYC. OF LAW (2d ed.) 79 *et seq.*

80. 1. Public Nuisance from which One Sustains Special Injury. — Hickory *v.* Southern R. Co., 141 N. Car. 716, 53 S. E. 955.

81. 1. Cases Supporting Doctrine that Any One May Abate Public Nuisance. — Bangs *v.* Dworak, (Neb. 1906) 106 N. W. 780; Hickory *v.* Southern R. Co., 141 N. Car. 716, 53 S. E. 955.

84. 1. Winsor *v.* Hanson, 40 Wash. 423, 82 Pac. 710, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 82–84.

86. 4. Reasonable Notice — When Required. — State *v.* Lehigh, etc., R. Co., 73 N. J. L. 347, 63 Atl. 857.

87. 1. Source of Municipal Power Over Nuisances. — Sand Point *v.* Doyle, 11 Idaho 642, 83 Pac. 598; Houlton *v.* Titcomb, 102 Me. 272, 66 Atl. 733; Brown *v.* Carrollton, 122 Mo. App. 276, 99 S. W. 37; Kirkland *v.* Ferry, (Wash. 1907) 88 Pac. 1123.

3. When Implied. — Victoria *v.* Victoria County, (Tex. Civ. App. 1906) 94 S. W. 368; Kirkland *v.* Ferry, (Wash. 1907) 88 Pac. 1123.

The United States Military Governor in Cuba has no authority to abolish the franchise of a foreign inhabitant; the action of abatement of the nuisance must be brought by the municipality. O'Reilly de Camara *v.* Brooke, 142 Fed. 858.

88. 1. Extent of Municipal Control. — Anable *v.* Montgomery County, 34 Ind. App. 72, 71 N. E. 272; State *v.* Boehm, 92 Minn. 374, 100 N. W. 95; Shannon *v.* Omaha, 72 Neb. 281, 100 N. W. 298.

89. 1. O'Reilly de Camara *v.* Brooke, 142 Fed. 858.

94. 2. Notice. — Shannon *v.* Omaha, 72 Neb. 281, 100 N. W. 298; State *v.* Lehigh, etc., R. Co., 73 N. J. L. 347, 63 Atl. 857.

95. 1. Order for Removal. — State *v.* Boehm, 92 Minn. 374, 100 N. W. 95; Shannon *v.* Omaha, 72 Neb. 281, 100 N. W. 298.

3. See Shannon *v.* Omaha, 72 Neb. 281, 100 N. W. 298.

ABBREVIATIONS.

97. 2. Washington Timber, etc., Co. *v.* Smith, 34 Wash. 625, 76 Pac. 267, holding sufficient a judgment in which amounts of money were stated in figures without dollar marks, the meaning being clear. See further the title JUDGMENTS. 11 ENCYC. OF PL. AND PR. 935 *et seq.*, and the Supplements thereto.

98. 3. Ditto Marks Judicially Noticed. — State *v.* Bunnell, 131 Wis. 198, 110 N. W. 177, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 97–102.

"O. K." — See Humphries *v.* Sorenson, 33 Wash. 563, 74 Pac. 690.

99. 3. Admissibility of Parol Evidence. — Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964 ("per 100"); Bagley *v.* Rose Hill Sugar Co., 111 La. 249, 35 So. 539 ("etc.").

Well-known Mercantile Abbreviations. — Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13 ("Pt." for "President"); Kneisley Lumber Co. *v.* Edward B. Stoddard Co., 113 Mo. App. 306, 88 S. W. 774.

Wills. — Flynn *v.* Holman, 119 Iowa 731, 94 N. W. 447 (similar to Chambers *v.* Watson, 60 Iowa 339, 14 N. W. 336, stated in the original note).

100. 2. Soper *v.* Tyler, 77 Conn. 104, 58 Atl. 699.

Contracts. — Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964, admitting parol evidence of customary use of "bayo" to denote a variety of beans known as "bayous."

Where the Meaning Is Obvious, as in the expression "f. o. b." for "free on board," evidence of custom is not admissible. Vogt *v.* Schienebeck, 122 Wis. 491, 100 N. W. 820. *Compare* Hunter Bros. Milling Co. *v.* Kramer, 71 Kan. 468, 80 Pac. 963.

3. Sufficient Descriptions. — "Tr." for "Tract." Baird *v.* Monroe, 150 Cal. 560, 89 Pac. 352.

"S. L. City" for "Storm Lake City." Watkins *v.* Couch, (Iowa 1907) 111 N. W. 315.

"The S E, S W in section 18 range 22 forty acres & one fourth of the N E N W in Section 19 ten acres," for "the southeast quarter of the southwest quarter of section 18 and the north one-fourth of the northeast quarter of the northwest quarter of section 19, in township 72, range 22, in Lucas county, Iowa," in a will. Flynn *v.* Holman, 119 Iowa 731, 94 N. W. 447.

"S E 4, section 25," followed by township and range in a tax deed. Kennedy *v.* Scott, 72 Kan. 359, 83 Pac. 971, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 101, note, but refusing to follow the authorities to the contrary there collected.

"Newell's E. & C. Plat" for "Newell's Enlarged and Corrected Map." Auditor Gen. *v.* Fleming, 142 Mich. 12, 105 N. W. 71.

"Exc. R. R. and Sts." for "except the railroad right of way and the public streets." National Bond, etc., Co. *v.* Hennepin County, 91 Minn. 63, 97 N. W. 413.

"N E¼ of S W¼ Sec. 4 Twp. 30 Range 6" and "N E ¼ S W ¼ Sec. 4 T 30 R 6." Washington Timber, etc., Co. *v.* Smith, 34 Wash. 625, 76 Pac. 267.

Insufficient Descriptions. — "Tract No. 1, West End Add. Und. 1-2 in lots 73, 74, and 75," in a petition in a tax case. O'Day *v.* McDaniel, 181 Mo. 529, 80 S. W. 895.

ABDUCTION.

163. 1. Definition. — Baumgartner *v.* Eigenbrot, 100 Md. 508, 60 Atl. 601, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163. See also King *v.* Hanson, 13 N. Dak. 85, 99 N. W. 1085, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163.

169. 1. No Abduction When Neither Force, Fraud, Violence nor Persuasion Used. — Baumgartner *v.* Eigenbrot, 100 Md. 508, 60 Atl. 601.

173. 1. Punishment. — Four years in the penitentiary has been held not to be excessive punishment for the abduction of a white child by a negro. State *v.* Neasby, 188 Mo. 467, 87 S. W. 468.

And six years in the penitentiary has been held not to be an excessive punishment for the abduction of a girl of fifteen years by her spiritual adviser. Gould *v.* State, 71 Neb. 651, 99 N. W. 541.

3. The Illinois Statute makes it a crime for the keeper of a house of prostitution to har-

bor a female under the age of eighteen years, and it is immaterial whether such female practices prostitution or whether the keeper knows her age. Maguire *v.* People, *219* Ill. 16, 76 N. E. 67.

Kentucky. — Taking physical hold of the woman is unnecessary, and very slight detention for the purpose of carnal knowledge is sufficient. Jones *v.* Com., (Ky. 1905), 89 S. W. 1; ;.

Gravamen Detention Against Woman's Will. — Robb *v.* Com., (Ky. 1907) 101 S. W. 918.

Louisiana. — "Unlawful sexual intercourse" under the Louisiana statute denouncing an abduction for that purpose, is any sexual intercourse out of wedlock, not merely intercourse constituting an offense, as rape, incest, etc. State *v.* Savant, 115 La. *226*, 38 So. 974.

New York — *"Receiving" for Prohibited Purpose Sufficient Without "Taking."* — People *v.* Smith, 114 N. Y. App. Div. 513, 100 N. Y. Supp. *259*.

174. 1. Persuasion, Enticement, or Device Sufficient; Force Unnecessary. — People *v.* Smith, 114 N. Y. App. Div. 513, 100 N. Y. Supp. 259; State *v.* Burnett, 142 N. Car. 577, 55 S. E. *72*.

"Entice" under the *Nebraska* statute is to be understood in its ordinary meaning. Solicitation, etc., influencing a girl to leave her father constitutes enticing and the intent of the girl is immaterial where the intent of the defendant was either to conceal the girl or to detain her from her father. Enticement and forcible abduction are separate offenses. Gould *v.* State, 71 Neb. 651, 99 N. W. 541.

Taking by Solicitation, etc., Sufficient. — State *v.* Jones, 191 Mo. 653, 90 S. W. 465.

Putting in Fear Sufficient Force. — Barker *v.* State, 1 Ga. App. *286*, 57 S. E. 989.

2. Must Be Some Active Step. — Rex *v.* Jarvis, *20* Cox C. C. 249.

175. 1. Gist of Offense Consists in Intent or Purpose of Taking. — State *v.* Tucker, *72* Kan. 481, 84 Pac. 126.

Abduction for Purpose of Marriage — Gist of Offense Is Taking, Not Marrying. — State *v.* Sager, 99 Minn. 54, 108 N. W. 812.

176. 2. When Offense Complete — Gravamen of Offense. — State *v.* Tucker, *72* Kan. 481, 84 Pac. 126; State *v.* Beverly, *201* Mo. 550, 100 S. W. 463; State *v.* Knost, (Mo. 1907), 105 S. W. 616.

When the Taking Is Shown to Be for the Purpose of Concubinage, the offense is complete. State *v.* Neasby, 188 Mo. 467, 87 S. W. 468.

177. 1. Living Separate and Apart from Parent, but with Latter's Consent. — State *v.* Jones, 191 Mo. 653, 90 S. W. 465.

2. Concubinage. — "Concubinage" under the *Kansas* statute is to be understood in its ordinary sense and means living in the relation of husband and wife. State *v.* Tucker, *72* Kan. 481, 84 Pac. 126.

When the Charge Is Abduction for the Purpose of Marriage a conviction may be had on proof either that the defendant intended to marry the girl or that he intended to procure her marriage to another person. State *v.* Sager, 99 Minn. 54, 108 N. W. 812.

178. 6. Consent of Female. — State *v.* Sager, 99 Minn. 54, 108 N. W. 812, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 178; State *v.* Jones, 191 Mo. 653, 90 S. W. 465; State *v.* Burnett, 142 N. Car. 577, 55 S. E. *72*. See also State *v.* Neasby, 188 Mo. 467, 87 S. W. 468, where the girl was shown to have gone willingly and the fact that she soon returned to her father was held to be no palliation of the offense. *Compare* Barker *v.* State, 1 Ga. App. 286, 57 S. E. 989, wherein the court intimated that consent would be a defense, but affirmed a conviction when the evidence of consent was weak.

180. 6. A Paper on Which the Birth of a Child Was Recorded by a neighbor at the solicitation of the father, he being unable to write, is admissible in the issue of the age of the child. State *v.* Neasby, 188 Mo. 467, 87 S. W. 468.

181. 1. Burden of Proving Consent Is on Defendant. — State *v.* Burnett, 142 N. Car. 577, 55 S. E. *72*.

4. See State *v.* Connor, 142 N. Car. 700, 55 S. E. 787, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 181.

Evidence of the Girl's Good Moral Character is admissible in rebuttal of evidence to the contrary previously admitted. State *v.* Jones, 191 Mo. 653, 90 S. W. 465.

7. State *v.* Beverly, *201* Mo. 550, 100 S. W. 463.

Previous Conduct of the Defendant, tending to establish intent, may be shown. People *v.* Spriggs, 119 N. Y. App. Div. *236*, 104 N. Y. Supp. 539.

Intent Provable by Circumstantial Evidence. — State *v.* Tucker, *72* Kan. 481, 84 Pac. 126.

Evidence of Intoxication Admissible as Bearing on Intent. — Robb *v.* Com., (Ky. 1907) 101 S. W. 918. See generally the title Intoxication.

406. 3. *et seq.*

Under the Louisiana Statute, when the indictment alleges that the defendant abducted a woman for the purpose of having unlawful intercourse with her at a certain house and "at the houses of various other persons," evidence that the woman was taken to houses other than that specified is admissible for the purpose of showing intent. State *v.* Savant, 115 La. *226*, 38 So. 974.

182. 1. Oral Evidence of the Contents of Letters written by the defendant to the prosecutrix may be given when the letters themselves have been destroyed. Gould *v.* State, 71 Neb. 651, 99 N. W. 541.

2. Evidence of a Former Marriage of the Defendant is inadmissible on a prosecution for abduction for the purpose of marriage. People *v.* Cerami, 101 N. Y. App. Div. 366, 91 N. Y. Supp. 1027.

3. People *v.* Smith, 114 N. Y. App. Div. 513, 100 N. Y. Supp. 259.

ABORTION.

187. 1. Abortion with Mother's Consent and Before Quickening. — Sullivan *v.* State, 121 Ga. 183, 48 S. E. 949; Barrow *v.* State, 121 Ga. 187, 48 S. E. 950.

188. 3. Stage of Pregnancy Immaterial. — Barrow *v.* State, 121 Ga. 187, 48 S. E. 950;

Edwards *v.* State, (Neb. 1907) 112 N. W. 611.

5. Intent Gravamen of Offense. — See People *v.* Balkwell, 143 Cal. 259, 76 Pac. 1017, wherein the evidence was held to be sufficient to prove the intent.

There can be no conviction in the absence of evidence that the defendant knew, or believed, that the woman was pregnant, and that he believed the instrument was to be used for effecting an abortion. Com. *v.* Nailor, 29 Pa. Super. Ct. 271.

7. Evidence of Illicit Relations Between Parties Admissible. — Barrow *v.* State, 121 Ga. 187, 48 S. E. 950.

189. 2. Administering — Actual Manual Delivery Unnecessary. — Burris *v.* State, 73 Ark. 453, 84 S. W. 723.

190. 4. Under Statute. — People *v.* Balkwell, 143 Cal. 259, 76 Pac. 1017; State *v.* Fleetwood, (Del. 1906) 65 Atl. 772.

Under the *California* and *Colorado* statutes if death is caused by procuring abortion it is murder and not manslaughter. Huntington *v.* Superior Ct., (Cal. App. 1907) 90 Pac. 141; Johnson *v.* People, 33 Colo. 224, 80 Pac. 133.

191. 5. Edwards *v.* State, (Neb. 1907) 112 N. W. 611, wherein it was held that the defendant would be guilty of homicide even if death resulted from an operation to procure abortion performed on a woman by herself at the suggestion of the defendant.

192. 1. Woman Not Accomplice. — Smartt *v.* State, 112 Tenn. 539, 80 S. W. 586, *citing* and *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191 [192].

2. Corroboration Not Necessary. — Smartt *v.* State, 112 Tenn. 539, 80 S. W. 586.

3. Weight of Testimony Question for Jury. — Smartt *v.* State, 112 Tenn. 539, 80 S. W. 586, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 192.

4. Third Persons as Accomplices and Accessories. — Com. *v.* Sinclair, 195 Mass. 100, 80 N. E. 799.

Encouragement. — Under the *Delaware* statute it is not an offense to "counsel" the woman herself to procure an abortion. State *v.* Parm, 5 Penn. (Del.) 556, 60 Atl. 977.

Accompanying Woman to Place of Performance. — People *v.* Balkwell, 143 Cal. 259, 76 Pac. 1017.

5. Knowledge of Object in View Necessary. — Smartt *v.* State, 112 Tenn. 539, 80 S. W. 586.

6. The Offense Is Complete when an advertisement is handed to one inquiring as to aid for a proposed patient, even though the advertisement is procured through false representations. Com. *v.* Hartford, 193 Mass. 464, 79 N. E. 784.

New York Statute — Insufficiency of Article to Produce Abortion No Defense. — People *v.* Spier, 120 N. Y. App. Div. 786, 105 N. Y. Supp. 741.

193. 4. Dying Declarations Received as Evidence. — Rex *v.* Cowle, 71 J. P. 152; State *v.* Fleetwood, (Del. 1906) 65 Atl. 772; Edwards *v.* State, (Neb. 1907) 112 N. W. 611.

6. Res Gestæ. — Johnson *v.* People, 33 Colo. 224, 80 Pac. 133; State *v.* Bly, 99 Minn. 74, 108 N. W. 833.

Declarations to Physician. — A mere statement made by a woman to her physicians that she was operated on to produce miscarriage is not admissible as evidence against the defendant. Com. *v.* Sinclair, 195 Mass. 100, 80 N. E. 799.

194. 4. Medical Experts May Testify as to the kind of instrument and the mode of using it which would produce the condition they found. Com. *v.* Sinclair, 195 Mass. 100, 80 N. E. 799.

6. Instruments. — State *v.* Barnes, (N. J. 1907) 68 Atl. 145.

Not Necessary to Prove Character of Instruments. — State *v.* Bly, 99 Minn. 74, 108 N. W. 833.

Evidence of Use of Similar Instruments on Other Women Admissible to Show Intent. — Rex *v.* Bond, (1906) 2 K. B. 389.

195. 1. Clark *v.* People, 224 Ill. 554, 79 N. E. 941, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 195.

Evidence Descriptive of the Defendant's Place of Business, envelopes addressed to physicians, etc., is admissible as indicating guilty knowledge. Com. *v.* Hartford, 193 Mass. 464, 79 N. E. 785.

Evidence that the Defendant Wished to Borrow Money for the purpose of going away has been held admissible. Com. *v.* Sinclair, 195 Mass. 100, 80 N. E. 799.

Evidence of Other Abortions Held Admissible. — Rex *v.* Bond, (1906) 2 K. B. 389.

The Venue of the Offense may be sufficiently proved by collateral circumstances. State *v.* Hogan, 123 Mo. App. 319, 100 S. W. 528.

2. Necessity of Abortion — Proof Of. — People *v.* Balkwell, 143 Cal. 259, 76 Pac. 1017.

196. 2. Consent of Woman No Defense. — Barrow *v.* State, 121 Ga. 187, 48 S. E. 950.

ABOUT.

196. 3. "Testimony that a particular article is worth ***about*** a particular amount stated is not to be regarded as positive and unequivocal proof that the article has a value of that exact amount in the market (Equitable Mortg. Co. *v.* Watson, 116 Ga. 683, 43 S. E. 49), but merely as an expression of an opinion which is not altogether precise and definite." Atlantic, etc., R. Co. *v.* Howard Supply Co., 125 Ga. 478, 54 S. E. 530.

Charter Party. — ***About*** 3,400 gross tons construed to mean a small margin above that amount and filled by a shipment of 3,258 tons. Sewall *v.* Wood, 135 Fed. 12, 67 C. C. A. 580, *affirming* Wood *v.* Sewall, 128 Fed. 141.

A charter party for ***about*** six months with privilege of renewal for ***about*** six months more held after renewal a charter party for ***about*** twelve months from beginning. The Rygja, 149 Fed. 896.

ABOVE.

200. 1. Above or Near in a charter authorizing the construction of a railroad bridge ***above*** or near a town held to warrant the location of the bridge below the town. Pedrick *v.* Raleigh, etc., R. Co., 143 N. Car. 485, 55 S. E. 877.

ABROAD.

201. 2. **A Passenger on a Railroad** in one of its cars is not ***abroad*** within the meaning of the *Massachusetts* statute authorizing an examination by officers of the watch of "all persons ***abroad*** whom they have reason to suspect of an unlawful design." Creeden *v.* Boston, etc., R. Co., 193 Mass. 280, 79 N. E. 344.

ABSOLUTELY.

208. 1. Shanley *v.* Herold, 141 Fed. 428, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 208; Pritchett *v.* Corder, (Ky. 1907) 105 S. W. 910.

Absolutely Forfeit. — See State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

ABSTRACT OF TITLE.

212. 4. *In re* Wallis, etc., Contract, (1906) 2 Ch. 206, *distinguishing* and *disapproving* Bolton *v.* London School Board, 7 Ch. D. 766.

213. 1. **Abstract Not Implied in Every Case.**— Smith *v.* Flatonia First Nat. Bank, (Tex. Civ. App. 1906) 95 S. W. 1111.

3. Provision in Contract Calling for Abstract Cannot Be Ignored. — Consolidated Coal Co. *v.* Findley, 128 Iowa 696, 105 N. W. 206, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 213.

214. 1. **Where No Time Appointed Vendor Should Furnish Abstract Within Reasonable Time.** — Martin *v.* Roberts, 127 Iowa 218, 102 N. W. 1126.

2. Furnishing of Abstract Condition Precedent to Payment of Purchase Money by Vendee.— Spooner *v.* Cross, 127 Iowa 259, 102 N. W. 1118.

3. Waiver of Delay. — Kentucky Distilleries, etc., Co. *v.* Blanton, (C. C. A.) 149 Fed. 31, *affirming* 120 Fed. 318.

4. Where a contract for the sale of land provided that the vendor was to deliver an abstract without delay, and the complaint did not allege a refusal to deliver, but only nondelivery, the court will not infer from the facts that the contract was dated eight days before the complaint was verified, and twelve days before personal service, that a reasonable time for the delivery of the abstract had expired. Cummings *v.* Wilson, 99 Minn. 502, 110 N. W. 4.

7. "Clear Title" Means Title in Fee Simple. — Day *v.* Mountin, (C. C. A.) 137 Fed. 756.

Vendee Entitled to Abstract Showing Good Title. — Brown *v.* Widen, (Iowa 1905) 103 N. W. 158.

Abstract Shows Good Title Notwithstanding Disclosure of Canceled Judgment. — Russell *v.* Wales, 119 N. Y. App. Div. 536, 104 N. Y. Supp. 143, *reversing* (Supm. Ct.) 100 N. Y. Supp. 785.

Breach by Vendor of Covenant to Furnish Abstract Renders Him Liable in Damages.— Hampton Stave Co. *v.* Gardner, (C. C. A.) 154 Fed. 805.

215. 1. **Under Contract for Complete Abstract Vendee Entitled to One Certified to Date.** — Davis *v.* Fant, (Tex. Civ. App. 1906) 93 S. W. 193.

216. 2. **Right of Access to Public Records.**— In Davis *v.* Abstract Constr. Co., 121 Ill. App. 121, it was held that where a county, in pursuance of statutory authority, engaged in the business of furnishing abstracts, the recorder might deny access to such records as tract indices and abstract books not required by law to be kept. See generally on this subject the title RECORDS, vol. 24, p. 182 *et seq.*

3. Duty of Officials under Statutes. — Dirks *v.* Collin, 37 Wash. 620, 79 Pac. 1112.

219. 7. **Before Abstracts Admitted as Evidence Original Deeds Must Be Accounted For.**— Glos *v.* Holberg, 220 Ill. 167, 77 N. E. 80.

220. 3. **Degree of Care and Skill Required.**— Equitable Bldg., etc., Assoc. *v.* Bank of Commerce, etc., Co., 118 Tenn. 678, 102 S. W. 901. See also Bodine *v.* Wayne Title, etc., Co., 33 Pa. Super. Ct. 68.

4. Failure to Disclose Unsatisfied Judgment Renders Abstractor Liable in Damages. — Western Loan, etc., Co. *v.* Silver Bow Abstract Co., 31 Mont. 448, 78 Pac. 774.

221. 2. **Measure of Damages Actual Loss Sustained.** — Equitable Bldg., etc., Assoc. *v.* Bank of Commerce, etc., Co., 118 Tenn. 678, 102 S. W. 901, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221.

6. Kenyon *v.* Charlevoix Imp. Co., 135 Mich. 103, 97 N. W. 407, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221; Equitable Bldg., etc., Assoc. *v.* Bank of Commerce, etc., Co., 118 Tenn. 678, 102 S. W. 901, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221.

7. Abstractor Not Liable to Third Person in Absence of Republication of Abstract. — Equitable Bldg., etc., Assoc. *v.* Bank of Commerce, etc., Co., 118 Tenn. 678, 102 S. W. 901, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221.

ABUTTING OWNERS.

225. 1. Damkoehler *v.* Milwaukee, 124 Wis. 144, 101 N. W. 706, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224.

3. Right of Access Absolute — *California.* — Harniss *v.* Bulpitt, 1 Cal. App. 140, 81 Pac. 1022; Coats *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640; McLean *v.* Llewellyn Iron Works, 2 Cal. App. 346, 83 Pac. 1082; Brown *v.* Rea, 150 Cal. 171, 88 Pac. 713.

Connecticut. — Street *v.* Leete, 79 Conn. 352, 65 Atl. 373.

Indiana. — Indianapolis *v.* Miller, 168 Ind. 285, 80 N. E. 626.

Iowa. — Borghart *v.* Cedar Rapids, 126 Iowa 313, 101 N. W. 1120.

Kansas. — Highbarger *v.* Milford, 71 Kan. 331, 80 Pac. 633; Ruthstrom *v.* Peterson, 72 Kan. 679, 83 Pac. 825.

Massachusetts. — Atty.-Gen. *v.* Boston, 186 Mass. 209, 71 N. E. 574.

Mississippi. — Laurel *v.* Rowell, 84 Miss. 435, 36 So. 543, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 225, 226.

New York. — Peace *v.* McAdoo, (Supm. Ct Spec. T.) 46 Misc. (N. Y.) 295, 92 N. Y. Supp. 368; Leffmann *v.* Long Island R. Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 169, 93 N. Y. Supp. 647.

North Carolina. — Hester *v.* Durham Traction Co., 138 N. Car. 288, 50 S. E. 711.

Oklahoma. — Scrutchfield *v.* Choctaw, etc., R. Co., 18 Okla. 308, 88 Pac. 1048.

Tennessee. — Pepper *v.* Union R. Co., 113 Tenn. 53, 85 S. W. 864; Coyne *v.* Memphis, 118 Tenn. 651, 102 S. W. 355.

Wisconsin. — Tilly *v.* Mitchell, etc., Co., 121 Wis. 1, 98 N. W. 969.

The right of ingress and egress does not include the right to string electric wires under the street. Butler *v.* Cincinnati, 25 Ohio Cir. Ct. 772.

4. Question of Ownership of Fee. — Williams *v.* Los Angeles R. Co., 150 Cal. 592, 89 Pac. 330; Coyne *v.* Memphis, 118 Tenn. 651, 102 S. W. 355.

226. 2. Injunction to Enforce Right — *Alabama.* — Sloss-Sheffield Steel, etc., Co. *v.* Johnson, 147 Ala. 384, 41 So. 907.

Arkansas. — Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21.

California. — Williams *v.* Los Angeles R. Co., 150 Cal. 592, 89 Pac. 330.

Georgia. — Athens Terminal Co. *v.* Athens Foundry, etc., Works, (Ga. 1907) 58 S. E. 891.

Illinois. — Nichols *v.* Sadorus, 120 Ill. App. 70.

Kansas. — Hayden *v.* Stewart, 71 Kan. 11, 80 Pac. 43.

New York. — Hatfield *v.* Straus, 117 N. Y. App. Div. 671, 102 N. Y. Supp. 934.

Pennsylvania. — Edwards *v.* Pittsburg Junction R. Co., 215 Pa. St. 597, 64 Atl. 798.

Tennessee. — Pepper *v.* Union R. Co., 113 Tenn. 53, 85 S. W. 864.

West Virginia. — Flaherty *v.* Fleming, 58 W. Va. 669, 52 S. E. 857; Bent *v.* Trimboli, (W. Va. 1907) 56 S. E. 881.

Wisconsin. — Milwaukee Boiler Co. *v.* Wadhams Oil, etc., Co., 126 Wis. 32, 105 N. W. 312

7. Bridges and Viaducts Constructed by Public Authority. — Foley *v.* Cedar Rapids, 133 Iowa 64, 110 N. W. 158; Camden Interstate R. Co. *v.* Smiley, (Ky. 1905) 84 S. W. 523; Wallach *v.* New York, etc., R. Co., 111 N. Y. App. Div. 273, 97 N. Y. Supp. 717; Tilly *v.* Mitchell, etc., Co., 121 Wis. 1, 98 N. W. 969.

227. 2. Damages Allowed for Obstruction by Steam Railroad. — Little Rock, etc., R. Co. *v.* Greer, 77 Ark. 387, 96 S. W. 129; Smith *v.* Southern Pac. R. Co., 146 Cal. 164, 79 Pac. 868; Coats *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640; Atlantic, etc., R. Co. *v.* McKnight, 125 Ga. 328, 54 S. E. 148; Athens Terminal Co. *v.* Athens Foundry, etc., Works, (Ga. 1907) 58 S. E. 891; Cincinnati, etc., R. Co. *v.* Miller, 36 Ind. App. 26, 72 N. E. 827; Harrington *v.* Iowa Cent. R. Co., 126 Iowa 288, 102 N. W. 139; Mitchell *v.* St. Louis, etc., R. Co., 116 Mo. App. 81, 92 S. W. 111; Bork *v.* United New Jersey R., etc., Co., 70 N. J. L. 268, 57 Atl. 412; Grossman *v.* Houston, etc., R. Co., (Tex. 1906) 92 S. W. 836; Houston, etc., R. Co. *v.* Davis, (Tex. Civ. App. 1907) 100 S. W. 1013.

3. Electrical Railways. — Morris *v.* Montgomery Traction Co., 143 Ala. 246, 38 So. 834; Milbridge, etc., Electric R. Co., Appellants, 96 Me. 110, 51 Atl. 818; Parsons *v.* Waterville, etc., St. R. Co., 101 Me. 173, 63 Atl. 728; Rosenbaum *v.* Meridian Light, etc., Co., (Miss. 1905) 38 So. 321; Montclair Military Academy *v.* North Jersey St. R. Co., 70 N. J. L. 229, 57 Atl. 1050; Budd *v.* Camden Horse R. Co., 70 N. J. L. 782, 59 Atl. 229; Hester *v.* Durham Traction Co., 138 N. Car. 288, 50 S. E. 711; Cleveland, etc., R. Co. *v.* Urbana, etc., R. Co., 26 Ohio Cir. Ct. 180; Abbott *v.* Milwaukee Light, etc., Co., 126 Wis. 634, 106 N. W. 523.

Laying Switch Held Additional Burden. — Chambers *v.* Cleveland, etc., Traction Co., 27 Ohio Cir. Ct. 193.

228. 1. Horse Railways. — Morris *v.* Montgomery Traction Co., 143 Ala. 246, 38 So. 834.

4. Telegraph and Telephone Companies. — California City *v.* Bunceton Telephone Co., 112 Mo. App. 722, 87 S. W. 604; Lancaster *v.* Briggs, 118 Mo. App. 570, 96 S. W. 314; Brown *v.* Asheville Electric Light Co., 138 N. Car. 533, 51 S. E. 62; Cosgriff *v.* Tri-State Telephone, etc., Co., (N. Dak. 1906) 107 N. W. 525.

5. Cumberland Telephone, etc., Co. *v.* Avritt, 120 Ky. 34, 85 S. W. 204; Frazier *v.* East Tennessee Telephone Co., 115 Tenn. 416, 90 S. W. 620.

6. Pipe Lines in Urban Streets. — Bennett *v.* Mt. Vernon, 124 Iowa 537, 100 N. W. 349; Van Duyne *v.* Knox Hat Mfg. Co., (N. J. 1906) 64 Atl. 149; Jayne *v.* Cortland Water Works Co., 107 N. Y. App. Div. 517, 95 N. Y. Supp. 227.

A common council has no authority, as against an abutter, to grant to a private individual the right to lay water pipes through and along a street for his private purposes. Van Duyne *v.* Knox Hat Mfg. Co., (N. J. 1906) 64 Atl. 149.

8. Light and Air — Montgomery First Nat. Bank *v.* Tyson, 144 Ala. 457, 39 So. 560; Williams *v.* Los Angeles R. Co., 150 Cal. 592, 89 Pac. 330; Leffmann *v.* Long Island R. Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 169, 93 N. Y. Supp. 647; Tilly *v.* Mitchell, etc., Co., 121 Wis. 1, 98 N. W. 969. See also Bischof *v.* Merchants Nat. Bank, (Neb. 1906) 106 N. W. 996.

229. 1. Elevated Railroad Cases. — Leffmann *v.* Long Island R. Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 169, 93 N. Y. Supp. 647; Rose *v.* New York, etc., R. Co., 108 N. Y. App. Div. 206, 95 N. Y. Supp. 711; Matter of Brooklyn Union El. R. Co., 113 N. Y. App. Div. 817, 99 N. Y. Supp. 222.

4. Lateral Support of Land. — Chosen Freeholders *v.* Woodcliffe Land Imp. Co., (N. J. 1907) 65 Atl. 844; Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 229.

231. 3. No Common-law Right to Compensation. — Coats *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640; Leffmann *v.* Long Island R. Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 169, 93 N. Y. Supp. 647; Burton Lumber Corp. *v.* Houston, (Tex. Civ. App. 1907) 101 S. W. 822; Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821. But see Louisville *v.* Caron, (Ky. 1906) 90 S. W. 604.

233. 1. Injuries from Work Negligently Done. — Frick *v.* Kansas City, 117 Mo. App. 488, 93 S. W. 351.

2. Damages Allowed by Constitution or Statute. — Councilmen *v.* Edelen, (Ky. 1904), 82 S. W. 279; Yazoo, etc., R. Co. *v.* Lefoldt, 87

Miss. 317, 39 So. 459; Coyne *v.* Memphis, 118 Tenn. 651, 102 S. W. 355; Novich *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 476.

234. 1. An abutting owner cannot grant by lease the right to occupy exclusively any part of the street. Pagames *v.* Chicago, 111 Ill. App. 590.

2. Right of Abutter to Deposit Building Materials. — Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141; Friedman *v.* Snare, etc., Co., 71 N. J. L. 605, 61 Atl. 401; Malkan *v.* Carlin, (Supm. Ct. App. T.) 93 N. Y. Supp. 378; Culbertson *v.* Alexander, 17 Okla. 370, 87 Pac. 863; Compty *v.* C. H. Starke Dredge, etc., Co., 129 Wis. 622, 109 N. W. 650.

235. 1. **Merchants Loading and Unloading Goods.** — Garibaldi *v.* O'Connor, 210 Ill. 284, 71 N. E. 379; Brauer *v.* Baltimore Refrigerating, etc., Co., 99 Md. 367, 58 Atl. 21.

2. Use Must Be Temporary Only. — Brooks *v.* Atlanta, 1 Ga. App. 678, 57 S. E. 1081; Garibaldi *v.* O'Connor, 210 Ill. 284, 71 N. E. 379; Elzig *v.* Bales, (Iowa 1907) 112 N. W. 540; Brauer *v.* Baltimore Refrigerating, etc., Co., 99 Md. 367, 58 Atl. 21; McCormick *v.* Boston El. R. Co., 188 Mass. 342, 74 N. E. 599; Ray *v.* Jones, etc., Co., 92 Minn. 101, 99 N. W. 782; Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141; Friedman *v.* Snare, etc., Co., 71 N. J. L. 605, 61 Atl. 401; Culbertson *v.* Alexander, 17 Okla. 370, 87 Pac. 863; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700. See also Smith *v.* Davis, 22 App. Cas. (D. C.) 298; Brauer *v.* Baltimore Refrigerating, etc., Co., 99 Md. 367, 58 Atl. 21.

3. Question of Reasonableness for Jury. — Culbertson *v.* Alexander, 17 Okla. 370, 87 Pac. 863.

5. Bay Windows. — Forbes *v.* Detroit, 139 Mich. 280, 102 N. W. 740.

6. Passageway. — Shippers' Compress, etc., Co. *v.* Davidson, 35 Tex. Civ. App. 558, 80 S. W. 1032.

8. Steps. — New York *v.* Knickerbocker Trust Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 222, 102 N. Y. Supp. 900. See also Perry *v.* Castner, 130 Iowa 703, 107 N. W. 940.

236. 4. Potter *v.* Interborough Rapid Transit Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 423, 105 N. Y. Supp. 1071.

11. Rural Highways Distinguished from Urban. — See Hardman *v.* Cabot, 60 W. Va. 664, 55 S. E. 756.

237. 2. **Rural Abutter as Proprietor.** — Western Union Tel. Co. *v.* Krueger, 36 Ind. App. 348, 74 N. E. 25; Baltimore County Water, etc., Co. *v.* Dubreuil, (Md. 1907), 66 Atl. 439; Betz *v.* Kansas City Home Telephone Co., 121 Mo. App. 473, 97 S. W. 207; Friedman *v.* Snare, etc., Co., 71 N. J. L. 605, 61 Atl. 401; Van Duyne *v.* Knox Hat Mfg. Co., (N. J. 1906) 64 Atl. 149; Houston *v.* Finnigan, (Tex. Civ. App. 1905) 85 S. W. 470; Johnston *v.* Lonstorf, 128 Wis. 17, 107 N. W. 459.

238. 2. **Public Right Restricted to Easement of Passage.** — Wright *v.* Austin, 143 Cal. 236, 76 Pac. 1023; Bennett *v.* Mt. Vernon, 124 Iowa 537, 100 N. W. 349; Brauer *v.* Baltimore Refrigerating, etc., Co., 99 Md. 367, 58 Atl. 21; Baltimore County Water, etc., Co. *v.* Dubreuil, (Md. 1907) 66 Atl. 439; Dempster *v.* United Traction Co., 205 Pa. St. 70, 54 Atl. 501; Van Roy *v.* Watermolen, 125 Wis. 333, 104 N. W. 97.

Under the *California* statute the easement of passage does not draw to it the right to bore or dig wells along the highways "for the purpose of obtaining water * * * to sprinkle and keep in repair said public road." Wright *v.* Austin, 143 Cal. 236, 76 Pac. 1023.

3. No Right to Use Highway for Purpose of Hunting. — L. Realty Co. *v.* Johnson, 92 Minn. 363, 100 N. W. 94.

239. 4. **Pipe Lines in Rural Highways.** — Baltimore County Water, etc., Co. *v.* Dubreuil, (Md. 1907) 66 Atl. 439. But see Hardman *v.* Cabot, 60 W. Va. 664, 55 S. E. 756.

240. 2. **Poles in Highway — Prevailing Doctrine.** — Cosgriff *v.* Tri-State Telephone, etc., Co., (N. Dak. 1906) 107 N. W. 525.

241. 1. **Doctrine that Poles Are Not an Additional Burden.** — Brown *v.* Radnor Tp. Electric Light Co., 208 Pa. St. 453, 57 Atl. 904; Lowther *v.* Bridgeman, 57 W. Va. 306, 50 S. E. 410.

242. 1. **Private Railroad.** — Swift *v.* Delaware, etc., R. Co., 66 N. J. Eq. 34, 57 Atl. 456; Paige *v.* Schenectady R. Co., 178 N. Y. 102, 70 N. E. 213.

3. Right of Rural Abutter to Soil of Highway, Mines, Pasturage, etc. — Wright *v.* Austin, 143 Cal. 236, 76 Pac. 1023; Glencoe *v.* Reed, 93 Minn. 518, 101 N. W. 956; Clarendon *v.* Medina Quarry Co., 102 N. Y. App. Div. 217, 92 N. Y. Supp. 530.

4. Trees Growing in Highway. — Wright *v.* Austin, 143 Cal. 236, 76 Pac. 1023; Betz *v.* Kansas City Home Telephone Co., 121 Mo. App. 473, 97 S. W. 207.

243. 3. French *v.* Robb, 67 N. J. L. 260, 51 Atl. 509; Bork *v.* United New Jersey R., etc., Co., 70 N. J. L. 268, 57 Atl. 412; Budd *v.* Camden Horse R. Co., 70 N. J. L. 782, 59 Atl. 229; Little *v.* American Telephone, etc., Co., 96 N. Y. App. Div. 559, 89 N. Y. Supp. 136.

244. 2. **Abutters' Liabilities for Defects in Highway Caused by Them.** — Dunn *v.* Gunn, (Ala. 1906) 42 So. 686; O'Dwyer *v.* Northern Market Co., 24 App. Cas. (D. C.) 81; Elzig *v.* Bales, (Iowa 1907) 112 N. W. 540; Sweet *v.* Perkins, 115 N. Y. App. Div. 784, 101 N. Y. Supp. 163.

ACCESSION.

251. 2. One having notice of facts rendering his title inferior to another's, who, by mistake of law, regards his title good, cannot claim for permanent improvements. Yock *v.* Mann, 57 W. Va. 187, 49 S. E. 1019.

254. 3. **Increase of Live Stock** belongs to the owner of the parent stock. Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561.

255. 1. **Tenant in Possession under Unenforceable Contract Has Resisting Equity for Improvements.** — Poole *v.* Johnson, (Ky. 1907) 101 S. W. 955.

2. **The Rule Is Not Applicable Where the Accession Is Made by Consent of the Owner of the Realty,** or where such owner subsequently assents to the accession being treated as personal

property. Collins *v.* Taylor, 101 Me. 542, 64 Atl. 946.

Grantee under Void Deed Entitled to Recover Value of Improvements. — Bell *v.* Bair, (Ky. 1905) 89 S. W. 732.

A Lien for the Value of Improvements to Realty exists where the possession was lawfully obtained and the improvements were made in reliance upon an understanding that the owner of the land was to give a deed. Burks *v.* Lane Lumber Co., (Ky. 1905) 89 S. W. 686.

Under the *Massachusetts* statute compensation for improvements made to realty must be paid in certain prescribed cases. Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

ACCESSORY.

257. 1. Reed *v.* Com., (Ky. 1907) 100 S. W. 856.

258. 1. Begley *v.* Com., (Ky. 1904) 82 S. W. 285; Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348; Holmes *v.* State, (Tex. Crim. 1906) 91 S. W. 588.

4. Reed *v.* Com., (Ky. 1907) 100 S. W. 856.

5. See Burnett *v.* State, 80 Ark. 225, 96 S. W. 1007; Lowe *v.* State, 125 Ga. 55, 53 S. E. 1038; Landrum *v.* Com., (Ky. 1906) 96 S. W. 587; Smith *v.* State, (Tex. Crim. 1907) 105 S. W. 182.

6. People *v.* Moss, 113 N. Y. App. Div. 329, 99 N. Y. Supp. 138; Holmes *v.* State, (Tex. Crim. 1906) 91 S. W. 588; Fruger *v.* State, (Tex. Crim. 1907) 99 S. W. 1014.

259. 1. Lowe *v.* State, 125 Ga. 55, 53 S. E. 1038; Dean *v.* State, 85 Miss. 40, 37 So. 501.

261. 1. Du Cros *v.* Lambourne, (1907) 1 K. B. 40, 23 Times L. Rep. 3; Rex *v.* Bubb, 70 J. P. 143; Com. *v.* Sherman, 191 Mass. 439, 78 N. E. 98; Swinger *v.* State, (Tex. Crim. 1907) 102 S. W. 114.

Illustrations — *Selling of Liquor Without License.* — Kittrell *v.* State, 89 Miss. 666, 42 So. 609.

263. 3. Brown *v.* U. S., (C. C. A.) 142 Fed. 1; Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1, *affirmed* 201 U. S. 638, 26 U. S. Sup. Ct. 560.

5. Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348; Reed *v.* Com., (Ky. 1907) 100 S. W. 856.

6. Morris *v.* State, 146 Ala. 66, 41 So. 274; People *v.* Nolan, 144 Cal. 75, 77 Pac. 774; State *v.* Adams, (Del. 1906) 65 Atl. 510.

264. 2. **Intent Essential.** — Hall *v.* Com., (Ky. 1906) 93 S. W. 904; Com. *v.* Asherowski, (Mass. 1907) 82 N. E. 13; People *v.* Moss, 113 N. Y. App. Div. 329, 99 N. Y. Supp. 138, *quoting* the preceding paragraph in 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 264; Abbata *v.* State, (Tex. Crim. 1907) 102 S. W. 1125.

Must Have Same Criminal Intent as Principal. — Smith *v.* State, (Tex. Crim. 1907) 105 S. W. 182.

Implied Malice Is Sufficient. — The mind of the accessory need not have been "sedate and cool" when he entered into the conspiracy. Chaney *v.* State, (Tex. Crim. 1906) 98 S. W. 847.

265. 2. Martin *v.* State, (Tex. Crim. 1904) 83 S. W. 390.

4. **Guilt Consists in Inciting to Crime.** — People *v.* Moss, 113 N. Y. App. Div. 329, 99 N. Y. Supp. 138, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 265.

An Offer to Pay the Fine of the Principal, or a bare desire or inclination to pay the fine, will not constitute a person an accessory. Johnson *v.* State, (Tex. Crim. 1905) 88 S. W. 223.

266. 3. Wilson *v.* U. S., 5 Indian Ter. 610, 82 S. W. 924.

Effect of Withdrawal of Advice. — A person cannot, after having brought the principal actors into a deadly contest, flee from the struggle and relieve himself from the results of such fatal difficulty. State *v.* Forsha, 190 Mo. 296, 88 S. W. 746.

267. 1. *Ex p.* Goldman, (Cal. App. 1906) 88 Pac. 819; State *v.* Miller, 182 Mo. 370, 81 S. W. 867.

2. Chenault *v.* State, 46 Tex. Crim. 351, 81 S. W. 971.

3. *Ex p.* Goldman, (Cal. App. 1906) 88 Pac. 819.

Aid Rendered for Other Purposes. — See State *v.* Jett, 69 Kan. 788, 77 Pac. 546, wherein the specific acts charged against the defendant were held to have been done to save the reputation of the complainant in a rape case.

268. 1. *Ex p.* Goldman, (Cal. App. 1906) 88 Pac. 819, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 268.

269. 2. *Ex p.* Goldman, (Cal. App. 1906) 88 Pac. 819. But see State *v.* Pratt, (S. Dak. 1907) 112 N. W. 152, wherein a statute making a principal offender of an accessory before the fact was held not to be applicable to the crime of perjury, on account of another statute defining subornation of perjury.

3. Brown *v.* U. S., (C. C. A.) 142 Fed. 1; Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1, *affirmed* 201 U. S. 638, 26 U. S. Sup. Ct. 560; Begley *v.* Com., (Ky. 1904) 82 S. W. 285; Com. *v.* Asherowski, (Mass. 1907) 82 N. E. 13.

Plea of Guilty — Confessions, Admissions. — Evidence that officers first obtained from an accomplice information as to the participation of an accessory through fear has been held to be permissible on the latter's trial to go to the jury, along with the former's testimony, its weight to be determined by the jury. Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1, *affirmed* 201 U. S. 638, 26 U. S. Sup. Ct. 560.

Confessions or Admissions of Principal Admissible. — State *v.* Brown, 130 Iowa 57, 106 N. W. 379. But see Coffman *v.* State, (Tex. Crim. 1907) 103 S. W. 1128, where the principal's testimony was excluded as against the accessory.

270. 1. Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1, *affirmed* 201 U. S. 638, 26 U. S. Sup. Ct. 560.

2. Bradley *v.* State, 2 Ga. App. 622, 58 S. E. 1064.

Receiving Stolen Property. — Neither one who steals property nor one who afterwards receives it knowing it to have been stolen is an accomplice of the other so that his testimony needs corroboration. State *v.* Scott, (Iowa 1907) 113 N. W. 758.

4. See Begley *v.* Com., (Ky. 1904) 82 S. W. 285.

ACCIDENT.

272. 1. **The Equitable Definition of the Term "Accident."** — Massucco *v.* Tomassi, 78 Vt. 197, 62 Atl. 57, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 272.

ACCIDENT (IN EQUITY).

279. 6. Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499.

283. 2. Standard Constr. Co. *v.* Brantley Granite Co., (Miss. 1907) 43 So. 300.

ACCIDENT INSURANCE.

286. 1. **Contra in Kentucky by Statute.**— Continental Casualty Co. *v.* Harrod, (Ky. 1907) 100 S. W. 262; Continental Casualty Co. *v.* Jasper, (Ky. 1905) 88 S. W. 1078.

2. Central Acc. Ins. Co. *v.* Spence, 126 Ill. App. 32; Gaines *v.* Fidelity, etc., Co., 188 N. Y. 411, 81 N. E. 169; Heintz *v.* Continental Casualty Co., 121 N. Y. App. Div. 75, 105 N. Y. Supp. 519. See also Binder *v.* National Masonic Acc. Assoc., 127 Iowa 25, 102 N. W. 190.

By Statute in North Carolina all warranties are construed as representations. Fishblate *v.* Fidelity, etc., Co., 140 N. Car. 589, 53 S. E. 354.

3. Gaines *v.* Fidelity, etc., Co., 188 N. Y. 411, 81 N. E. 169, *affirming* 111 N. Y. App. Div. 386, 97 N. Y. Supp. 836. *Compare* North American Acc. Ins. Co. *v.* Trenton, (Tex. Civ. App. 1907) 99 S. W. 740.

Question of Materiality Held to Be for Jury. — Dulany *v.* Fidelity, etc., Co., (Md. 1907) 66 Atl. 614.

4. Anything, the knowledge of which would naturally influence the insurer, is material. Fishblate *v.* Fidelity, etc., Co., 140 N. Car. 589, 53 S. E. 354.

6. **Acceptance of Policy Differing from Application Binds Insured.** — Blunt *v.* Fidelity, etc., Co., 145 Cal. 268, 78 Pac. 729.

7. North American Acc. Ins. Co. *v.* Trenton, (Tex. Civ. App. 1907) 99 S. W. 740.

Statement as to Other Insurance Not Material. — North American Acc. Ins. Co. *v.* Rehacek, 123 Ill. App. 219.

Statement as to Marriage — Material.— Gaines *v.* Fidelity, etc., Co., 93 N. Y. App. Div. 524, 87 N. Y. Supp. 821.

Statements as to Age — Always Material.— Central Acc. Ins. Co. *v.* Spence, 126 Ill. App. 32.

An Ambiguous Question is to be construed in favor of the assured. Mackinnon *v.* Fidelity, etc., Co., 72 N. J. L. 29, 60 Atl. 180.

288. 1. Ætna L. Ins. Co. *v.* Ricks, 79 Ark. 38, 94 S. W. 923.

Successive Periods. — Roberts *v.* Ætna L. Ins. Co., 212 Ill. 382, 72 N. E. 363; North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

2. **"Receipt and Acceptance" of Application.**— Bowman *v.* Northern Acc. Co., 124 Mo. App. 477, 101 S. W. 691.

Policy Takes Effect from Its Date. — Rayburn *v.* Pennsylvania Casualty Co., 138 N. Car. 379, 50 S. E. 762.

289. 1. **Payment of Premium by Order on Employer — No Wages Earned.** — Where the insured has not earned or paid the amount of the premium and the policy provides that the insurance depends on the payment out of his earnings, notice of nonpayment is not necessary. Hagins *v.* Ætna L. Ins. Co., 72 S. Car. 216, 51 S. E. 683.

Change of Employer Without Leaving Funds.— Ætna L. Ins. Co. *v.* Ricks, 79 Ark. 38, 94 S. W. 923.

Employer as Agent of the Insurer to Reserve the Premium. — Johnson *v.* Standard L., etc., Ins. Co., (Tex. Civ. App. 1906) 97 S. W. 831.

Compare, as limiting the agency of the employer to remitting the premiums paid, Continental Casualty Co. *v.* Jasper, (Ky. 1905) 88 S. W. 1078.

2. Pritchett *v.* Continental Casualty Co., 117 Ky. 923, 80 S. W. 181.

4. **Waiver by General Agent.**— North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

Waiver by Agent as Alter Ego. — Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016.

Waiver by Soliciting and Collecting Agent. — Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93.

Subagent — Lack of Power. — Pennsylvania Casualty Co. *v.* Bacon, (C. C. A.) 133 Fed. 907.

290. 2. **Acknowledgment in Policy — Estoppel.** — See Rayburn *v.* Pennsylvania Casualty Co., 138 N. Car. 379, 50 S. E. 762.

Nonpayment Must Be Pleaded. — Continental Casualty Co. *v.* Wade, (Tex. Civ. App. 1907) 99 S. W. 877.

3. **Waiver of Forfeiture** — *By Receipt of Overdue Premium.* — Continental Casualty Co. *v.* Jennings, (Tex. Civ. App. 1907) 99 S. W. 423.

By Extension of Time. — North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

An agreement to receive the premium within a reasonable time after it becomes due may be inferred from the dealings of the parties. Cornell *v.* Travelers' Ins. Co., 120 N. Y. App. Div. 459, 104 N. Y. Supp. 999.

291. 4. **Amount of Premium — When May Be Shown by Parol.** — See Continental Casualty Co. *v.* Jasper, (Ky. 1905) 88 S. W. 1078.

5. **The Policy — Doubtful Clauses Construed Favorably to the Insured** — *Colorado.* — Preferred Acc. Ins. Co. *v.* Fielding, 35 Colo. 19, 83 Pac. 1013.

Connecticut. — Fricke *v.* U. S. Indemnity Soc., 78 Conn. 188, 61 Atl. 431.

District of Columbia. — Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46.

Illinois. — Travelers' Ins. Co. *v.* Ayers, 217 Ill. 390, 75 N. E. 506. See also Switchmen's Union *v.* Colehouse, 227 Ill. 561, 81 N. E. 696.

Indiana. — Pacific Mut. L. Ins. Co. *v.* Branham, 34 Ind. App. 243, 70 N. E. 174.

Kentucky. — Pritchett *v.* Continental Casualty Co., 117 Ky. 923, 80 S. W. 181.

Massachusetts. — Lewis *v.* Brotherhood Acc. Co., 194 Mass. 1, 79 N. E. 802.

Nebraska. — Simmons *v.* Western Travelers' Acc. Assoc., (Neb. 1907) 112 N. W. 365.

New Jersey. — Mackinnon *v.* Fidelity, etc., Co., 72 N. J. L. 29, 60 Atl. 180.

North Carolina. — Rayburn *v.* Pennsylvania Casualty Co., 138 N. Car. 379, 50 S. E. 762.

Texas. — Continental Casualty Co. *v.* Wade, (Tex. Civ. App. 1907) 99 S. W. 877.

Wisconsin. — Weidner *v.* Standard L., etc., Ins. Co., 130 Wis. 10, 110 N. W. 246.

Court Will Not Change Plain Contract.— Blunt *v.* Fidelity, etc., Co., 145 Cal. 268, 78 Pac. 729; Peterson *v.* Modern Brotherhood of America, 125 Iowa 562, 101 N. W. 289; Dunning *v.* Massachusetts Mut. Acc. Assoc., 99 Me. 390, 59 Atl. 535; Bader *v.* New Amsterdam Casualty Co., 102 Minn. 186, 112 N. W. 1065; Porter *v.* Preferred Acc. Ins. Co., 109 N. Y. App. Div. 103, 95 N. Y. Supp. 682, *affirmed* 186 N. Y. 599, 79 N. E. 1114.

Insurance Term. — The plaintiff must allege and prove that the cause of action arose within the time covered by the policy. Ætna L. Ins. Co. *v.* Milward, 118 Ky. 716, 82 S. W. 364; Matthews *v.* Continental Casualty Co., 78 Ark. 81, 93 S. W. 55.

Age Limit. — It has been held that where the limit of age in a one-year policy was sixty-five years, the insured must be under that age at the time of the accident. Wheeler *v.* U. S. Casualty Co., 71 N. J. L. 396, 59 Atl. 347. But in Moest *v.* Continental Casualty Co., (Supm. Ct. Eq. T.) 55 Misc. (N. Y.) 128, 104 N. Y. Supp. 553, the court was of opinion in a similar case that it was sufficient if the insured was under the limited age at the time of making the contract. And *compare,* as to a waiver of a similar requirement, Crawford *v.* Travelers' Ins. Co., (Ky. 1907) 99 S. W. 963.

6. Accident Defined. — Fidelity, etc., Co. *v.* Stacey, (C. C. A.) 143 Fed. 271; Fidelity, etc., Co. *v.* Morrison, 129 Ill. App. 360, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 291; Young *v.* Railway Mail Assoc., (Mo. App. 1907) 103 S. W. 557. See also Travelers' Protective Assoc. *v.* Weil, (Tex. Civ. App. 1905) 91 S. W. 886.

292. 2. Niskern *v.* United Brotherhood of Carpenters, etc., 93 N. Y. App. Div. 364, 87 N. Y. Supp. 640.

"Sunstroke," when named as a cause of liability, includes heat stroke from a furnace. Continental Casualty Co. *v.* Johnson, 74 Kan. 129, 85 Pac. 545.

293. 1. "There is a well-defined distinction between a death resulting from an accident and one resulting from accidental means." Fidelity, etc., Co. *v.* Stacey, (C. C. A.) 143 Fed. 271.

Disease Caused by Accident. — Periostitis of the hand caused by lying upon it while asleep. Ætna L. Ins. Co. *v.* Fitzgerald, 165 Ind. 317, 75 N. E. 262.

Hemorrhage of the lungs from lifting. Young *v.* Railway Mail Assoc., (Mo. App. 1907) 103 S. W. 557.

294. 1. Fidelity, etc., Co. *v.* Morrison, 129 Ill. App. 360, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 294.

3. Pervangher *v.* Union Casualty, etc., Co., 85 Miss. 31, 37 So. 461, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 294; Young *v.* Railway Mail Assoc., (Mo. App. 1907) 103 S. W. 557.

Suicide While Insane. — See Tuttle *v.* Iowa State Traveling Men's Assoc., 132 Iowa 652, 104 N. W. 1131.

295. 1. Violent, Accidental, External, and Visible Means.— Where the heart of the insured was in a weak and unhealthy condition, and his efforts in trying to eject a drunken man brought on heart difficulty which resulted in his death a month later, it was held that the injury was not accidental. Scarr *v.* General Acc. Assur. Corp., (1905) 1 K. B. 387.

In Fidelity, etc., Co. *v.* Stacey, (C. C. A.) 143 Fed. 271, it appeared that the insured died from blood poisoning resulting from a wound in the hand received while striking a man in the teeth, and it was held that the injury was not due to an accident.

Heart Disease. — Where the proximate cause of death is heart disease, the insurer is not liable. Shanberg *v.* Fidelity, etc., Co., 143 Fed. 651.

2. "Where it is plain that an accident has occurred and severe injuries have resulted and it is a fair deduction from the circumstances that death ensued as the direct consequence of such accident, the policy should be construed to hold the defendant liable even though no contusions or marks appear upon the body," and although the policy states that the body itself in case of death is not to be deemed such mark. Root *v.* London Guarantee, etc., Co., 92 N. Y. App. Div. 578, 86 N. Y. Supp. 1055, *affirmed* 180 N. Y. 527, 72 N. E. 1150.

What Constitutes Visible Sign. — In U. S. Casualty Co. *v.* Hanson, 2 Colo. App. 393, 79 Pac. 176, a shrinkage of the leg muscles, lameness, and breaking down of the bones at the joint, perceptible to digital examination, was held to be a visible mark.

296. 1. Root *v.* London Guarantee, etc., Co., 92 N. Y. App. Div. 578, 86 N. Y. Supp. 1055, *affirmed* 180 N. Y. 527, 72 N. E. 1150.

3. Wall *v.* Continental Casualty Co., 111 Mo. App. 504, 86 S. W. 491.

"Immediate" Disability — What Constitutes.— Vess *v.* United Benev. Soc., 120 Ga. 411, 47 S. E. 942; Pacific Mut. L. Ins. Co. *v.* Branham, 34 Ind. App. 243, 70 N. E. 174; United Commercial Travelers *v.* Barnes, 72 Kan. 293, 80 Pac. 1020; Letherer *v.* U. S. Health, etc., Ins. Co., 145 Mich. 310, 108 N. W. 491; Wall *v.* Continental Casualty Co., 111 Mo. App. 504, 86 S. W. 491; Driskell *v.* U. S. Health, etc., Ins. Co., 117 Mo. App. 362, 93 S. W. 880; Baumister *v.* Continental Casualty Co., 124 Mo. App. 38, 101 S. W. 152; Continental Casualty Co. *v.* Wade, (Tex. Civ. App. 1907) 99 S. W. 877.

4. Instances — *Railroad Clerk Wrenching Knee.* — Pacific Mut. L. Ins. Co. *v.* Branham, 34 Ind. App. 243, 70 N. E. 174.

Switchman — Losing an Eye. — Switchmen's Union *v.* Colehouse, 227 Ill. 561, 81 N. E. 696.

298. 3. Section Foreman.— See Rayburn *v.* Pennsylvania Casualty Co., 141 N. Car. 425, 54 S. E. 283; Vess *v.* United Benev. Soc., 120 Ga. 411, 47 S. E. 942.

299. 1. Merchant.— James *v.* U. S. Casualty Co., 113 Mo. App. 622, 88 S. W. 125.

See also United Commercial Travelers *v.*

Barnes, 72 Kan. 293, 80 Pac. 1020, *modified on rehearing* 72 Kan. 306, 82 Pac. 1099.

300. 1. **Measure of Disability.**— See Wall *v.* Continental Casualty Co., 111 Mo. App. 504, 86 S. W. 491.

Progressive Lameness of Supervising Builder. — U. S. Casualty Co. *v.* Hanson, 20 Colo. App. 393, 79 Pac. 176.

3. Pacific Mut. L. Ins. Co. *v.* Branham, 34 Ind. App. 243, 70 N. E. 174.

301. 1. **"Loss" Not Confined to Cases of Severance.** — Theorell *v.* Supreme Ct. of Honor, 115 Ill. App. 313.

"Pott's Fracture." — Where the policy defined the breaking of the lower leg as "the breaking of the shafts of both bones between the knee and ankle joints," it was held that a "Pott's fracture" was not within the definition. Peterson *v.* Modern Brotherhood of America, 125 Iowa 562, 101 N. W. 289.

2. **By "Physical Separation."** — Beber *v.* Brotherhood of Railroad Trainmen, (Neb. 1905) 106 N. W. 168, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 301.

Loss by Amputation.— Under a policy insuring against loss by amputation, it has been held that amputation was necessary to a recovery. The Chevaliers *v.* Shearer, 27 Ohio Cir. Ct. 509.

302. 2. **Physician Infected — "Operation."** — Where a policy insured a physician against the results of septicæmia consequent on "performing any operation pertaining to the business of the insured," it was held that the insurer was liable where the infection was consequent on a wound sustained in opening a bottle for a patient. Central Acc. Ins. Co. *v.* Rembe, 220 Ill. 151, 77 N. E. 123.

Dentist. — Where septic matter was introduced into a dentist's system through the eye without any abrasion, it was held that there was no "wound" within the terms of a policy covering blood poisoning from "septic matter introduced into the system through wounds." Fidelity, etc., Co. *v.* Thompson, (C. C. A.) 154 Fed. 484.

303. 2. Simmons *v.* Western Travelers' Acc. Assoc., (Neb. 1907) 112 N. W. 365.

"Occupation." — "The term 'occupation,' as employed in the policy, implies simply that which at the time of the accident giving the cause of action constituted the assured's principal business or pursuit; that which engaged his attention and time, as distinguished from that which is incidentally connected with the life of men in any or all occupations." Ætna L. Ins. Co. *v.* Dunn, (C. C. A.) 138 Fed. 629.

3. Simmons *v.* Western Travelers' Acc. Assoc., (Neb. 1907) 112 N. W. 365.

See also Wilder *v.* Continental Casualty Co., (C. C. A.) 150 Fed. 92.

When Question for Court. — Ætna L. Ins. Co. *v.* Dunn, (C. C. A.) 138 Fed. 629.

304. 2. **Acceptance of Premiums with Knowledge** of a change of the insured's occupation to one more hazardous is not a waiver of the exception. Abell *v.* Modern Woodmen of America, 96 Minn. 494, 105 N. W. 65.

4. **Change in Classification.** — Where the insured changed his occupation to another of equal hazard under the insurer's rules, and thereafter by a change in those rules the new occupation was placed in a more hazardous class, it was held that inasmuch as the policy was not in terms made subject to future alterations in the rules, the insured could not be affected thereby. Morse *v.* Fraternal Acc. Assoc., 190 Mass. 417, 77 N. E. 491. But where a benevolent society, by a change in its rules, placed the occupation of the insured in a more hazardous class, it was held that the new rule was a reasonable one, and that therefore the agreement of the insured to abide by the society's rules present or future was binding. Gilmore *v.* Knights of Columbus, 77 Conn. 58, 58 Atl. 223.

305. 2. **Contra.**— Anable *v.* Fidelity, etc., Co., 73 N. J. L. 320, 63 Atl. 92, *affirmed* (N. J. 1907) 65 Atl. 1117.

306. 4. Starr *v.* Ætna L. Ins. Co., 41 Wash. 199, 83 Pac. 113.

But Where the Language Is Plain it must control. Sweeney *v.* National Relief Assur. Assoc., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 144, 101 N. Y. Supp. 797.

6. **Form of Clause.** — See Rebman *v.* General Acc. Ins. Co., 217 Pa. St. 518, 66 Atl. 859.

307. 1. **Burden on Defendant.**— Continental Casualty Co. *v.* Todd, 82 Ark. 214, 101 S. W. 168; North American Acc. Ins. Co. *v.* Gulick, 25 Ohio Cir. Ct. 395.

Overexertion as Increasing Liability to Heatstroke. — Continental Casualty Co. *v.* Johnson, 74 Kan. 129, 85 Pac. 545.

5. Garcelon *v.* Commercial Travelers' Eastern Acc. Assoc., (Mass. 1907) 81 N. E. 201; Hunt *v.* U. S. Accident Assoc., 146 Mich. 521, 109 N W. 1042; Bateman *v.* Travelers Ins. Co., 110 Mo. App. 443, 85 S. W. 128; North American Acc. Ins. Co. *v.* Gulick, 25 Ohio Cir. Ct. 395.

6. Bateman *v.* Travelers Ins. Co., 110 Mo. App. 443, 85 S. W. 128; Rebman *v.* General Acc. Ins. Co., 217 Pa. St. 518, 66 Atl. 859.

308. 2. Hunt *v.* U. S. Accident Assoc., 146 Mich. 521, 109 N. W. 1042; Bateman *v.* Travelers Ins. Co., 110 Mo. App. 443, 85 S. W. 128; North American Acc. Ins. Co. *v.* Gulick, 25 Ohio Cir. Ct. 395.

See also cases *cited* and *distinguished* in Garcelon *v.* Commercial Travelers' Eastern Acc. Assoc., (Mass. 1907) 81 N. E. 201.

When Negligence Decisive. — See Price *v.* Standard L., etc., Ins. Co., 92 Minn. 238, 99 N. W. 887, where the form of the exception was "unnecessary exposure to obvious risk of injury or obvious danger," and it was held that there could be no recovery unless the insured exercised ordinary care.

3. Continental Casualty Co. *v.* Hagarty, (Ky. 1906) 90 S. W. 561; Noyes *v.* Commercial Travellers' Eastern Acc. Assoc., 190 Mass. 171, 76 N. E. 665; Hunt *v.* U. S. Accident Assoc., 146 Mich. 521, 109 N. W. 1042; Bateman *v.* Travelers Ins. Co., 110 Mo. App. 443, 85 S. W. 128; Continental Casualty Co. *v.* Jennings, (Tex. Civ. App. 1907) 99 S. W. 423.

See also Continental Casualty Co. *v.* Johnson, 110 Ill. App. 03.

4. **Crossing over Moving Cars.** — Alter *v.* Union Casualty, etc., Co., 108 Mo. App. 169, 83 S. W. 276.

Riding on Top of Freight Cars on a Rainy Night. — Continental Casualty Co. *v.* Brittner, 81 Ark. 568, 99 S. W. 1100.

Trying to Board Moving Railway Train. — Rebman *v.* General Acc. Ins. Co., 217 Pa. St. 518, 66 Atl. 859.

Railway Fireman Sitting on Track. — Continental Casualty Co. *v.* Hagarty, (Ky. 1906) 90 S. W. 561.

Foot Giving Way While Walking Near Moving Train.—Noyes *v.* Commercial Travellers' Eastern Acc. Assoc., 190 Mass. 171, 76 N. E. 665.

Indoor Baseball — Running into Gymnasium Wall.— Hunt *v.* U. S. Accident Assoc., 146 Mich. 521, 109 N. W. 1042.

Climbing Tree to Knock Down Pecan Nuts. — Continental Casualty Co. *v.* Jennings, (Tex. Civ. App. 1907) 99 S. W. 423.

309. 1. Railway Fireman Sent to Flag Train — Run Over on Track.— Bateman *v.* Travelers Ins. Co., 110 Mo. App. 443, 85 S. W. 128.

310. 2. Drummer Boarding Moving Train. — The fact that commercial travelers are accustomed to board moving trains is not one contemplated by the insurer. Garcelon *v.* Commercial Travelers' Eastern Acc. Assoc., (Mass. 1907) 81 N. E. 201.

311. 4. See Starr *v.* Ætna L. Ins. Co., 41 Wash. 199, 83 Pac. 113.

312. 4. A Space Between Railroad Tracks of the width of ten feet is a part of the roadbed. McClure *v.* Great Western Acc. Assoc., 133 Iowa 224, 110 N. W. 466.

"Right of Way" Construed as "Track." — Starr *v.* Ætna L. Ins. Co., 41 Wash. 199, 83 Pac. 113.

313. 6. Missouri Statute. — Whitfield *v.* Ætna L. Ins. Co., 205 U. S. 489, 27 U. S. Sup. Ct. 578.

314. 2. Injuries Received While Insane. — An exception in the policy, of injuries "intentionally inflicted upon himself by the assured; or inflicted upon himself or received by him while insane," relieves the insurer from liability for accidental injuries received while the insured was insane. Blunt *v.* Fidelity, etc., Co., 145 Cal. 268, 78 Pac. 729.

315. 3. Porter *v.* Preferred Acc. Ins. Co., 109 N. Y. App. Div. 103, 95 N. Y. Supp. 682.

4. Travelers' Ins. Co. *v.* Ayers, 217 Ill. 390, 75 N. E. 506.

5. See White *v.* Standard L., etc., Ins. Co., 95 Minn. 77, 103 N. W. 735, *modified* 95 Minn. 84, 103 N. W. 884.

Illustrations — Straining Liver. — Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46.

Cerebral Hemorrhage or Traumatic Pneumonia Following Fall.—Johnson *v.* Continental Casualty Co., 122 Mo. App. 369, 99 S. W. 473.

Appendicitis Following Fall.— New Amsterdam Casualty Co. *v.* Shields, (C. C. A.) 155 Fed. 54.

Septicæmia Following a Wound is not within an exception of "infection," as it is not the proximate cause of the injury. Cary *v.* Preferred Acc. Ins. Co., 127 Wis. 67, 106 N. W. 1055.

The Accidental Causes must be proximate and not remote. Continental Casualty Co. *v.* Lloyd, 165 Ind. 52, 73 N. E. 824.

6. Death the Reasonable and Natural Consequence of Accident.—Driskell *v.* U. S. Health, etc., Ins. Co., 117 Mo. App. 362, 93 S. W. 880; Cary *v.* Preferred Acc. Ins. Co., 127 Wis. 67, 106 N. W. 1055.

See also Continental Casualty Co. *v.* Hunt, (Ky. 1906) 90 S. W. 1056.

316. 1. Appendicitis Following Fall. — See New Amsterdam Casualty Co. *v.* Shields, (C. C. A.) 155 Fed. 54.

Straining Liver.—Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46.

2. Blood Poisoning Consequent on Wound. — Central Acc. Ins. Co. *v.* Rembe, 220 Ill. 151, 77 N. E. 123.

See also Cary *v.* Preferred Acc. Ins. Co., 127 Wis. 67, 106 N. W. 1055, where the court declined to disturb a finding of the jury that death from septicæmia following an accidental wound resulted proximately and solely from accidental causes.

Proximate Cause Question for Jury. — Jiroch *v.* Travelers' Ins. Co., 145 Mich. 375, 108 N. W. 728; Morrow *v.* National Masonic Acc. Assoc., 125 Iowa 633, 101 N. W. 468; Continental Casualty Co. *v.* Lloyd, 165 Ind. 52, 73 N. E. 824.

See also White *v.* Standard L., etc., Ins. Co., 95 Minn. 77, 103 N. W. 735, as *modified* 95 Minn. 84, 103 N. W. 884.

317. 2. Lung Congestion Following Degeneration of Brain Covering. — Thomas *v.* Fidelity, etc., Co., (Md. 1907) 67 Atl. 259.

Fall Breaking Diseased Artery. — Binder *v.* National Masonic Acc. Assoc., 127 Iowa 25, 102 N. W. 190.

Death from Typhoid Fever After Accident. — Continental Casualty Co. *v.* Peltier, 104 Va. 222, 51 S. E. 209.

Death from Heart Failure Brought on by Physical Exertion Not Accidental. — Scarr *v.* General Acc. Assur. Corp., (1905) 1 K. B. 387.

318. 4 Septicæmia Following Operation. — Herdic *v.* Maryland Casualty Co., 146 Fed. 396.

5. See Cilley *v.* Preferred Acc. Ins. Co., 109 N. Y. App. Div. 394, 96 N. Y. Supp. 282, *affirmed* 187 N. Y. 517, 79 N. E. 1102.

319. 7. Other Exceptions — "Shooting." — See, as construing an exception of "shooting" to include a shot by a burglar as well as the sport of shooting, Bader *v.* New Amsterdam Casualty Co., 102 Minn. 186, 112 N. W. 1065.

322. 2. Washington *v.* Union Casualty, etc., Co., 115 Mo. App. 627, 91 S. W. 988.

"Fatal" Injury Included. — Continental Casualty Co. *v.* Morris, (Tex. Civ. App. 1907) 102 S. W. 773.

Killed While under Arrest. — Where the insured was murdered while under arrest, the failure of his guards to protect him will not affect the exception in the policy. Jarnagin *v.* Travelers' Protective Assoc., (C. C. A.) 133 Fed. 892.

General Purpose to Injure Insured Sufficient. — Travelers' Protective Assoc. *v.* Weil, (Tex. Civ. App. 1905) 91 S. W. 886.

Question for Jury. — Where the policy excepted injuries "intentionally inflicted upon the insured by any other person (except assaults committed for the sole purposes of burglary

or robbery)," it was held that the question whether the assault was committed for the sole purpose of robbery was for the jury. Weidner *v.* Standard L., etc., Ins. Co., 130 Wis. 10, 110 N. W. 246.

As an illustration of the facts sustaining a finding of assault, see Gaines *v.* Fidelity, etc., Co., 111 N. Y. App. Div. 386, 97 N. Y. Supp. 836.

As illustrating the general rule that *prima facie* proof by the plaintiff is sufficient, see Preferred Acc. Ins. Co. *v.* Fielding, 35 Colo. 19, 83 Pac. 1013.

323. 1. Other Exceptions — "Wild or Uncivilized Country." — Injuries sustained at a sawmill camp in Ontario, thirty-five miles from a railroad, are not within the exception of injuries "sustained in a wild or uncivilized country." U. S. Casualty Co. *v.* Hanson, 20 Colo. App. 393, 79 Pac. 176.

2. Travelers' Ins. Co. *v.* Nax, (C. C. A.) 142 Fed. 653; Noyes *v.* Commercial Travellers' Eastern Acc. Assoc., 190 Mass. 171, 76 N. E. 665; Johnson *v.* Maryland Casualty Co., 73 N. H. 259, 60 Atl. 1009.

See also Dunshee *v.* Travelers Ins. Co., 25 Pa. Super. Ct. 559.

No Forfeiture unless Expressly so Provided. — James *v.* U. S. Casualty Co., 113 Mo. App. 622, 88 S. W. 125.

Notice — Liberal Construction in Favor of Assured.—Cornell *v.* Travelers' Ins. Co., 120 N. Y. App. Div. 459, 104 N. Y. Supp. 999.

Actual Notice Equivalent to Formal. — Western Travelers' Acc. Assoc. *v.* Tomson, 72 Neb. 661, 103 N. W. 695.

Preliminary Proofs — Prima Facie Case Sufficient. — Ætna L. Ins. Co. *v.* Milward, 118 Ky. 716, 82 S. W. 364.

Full Particulars — Reasonably Construed.— Root *v.* London Guarantee, etc., Co., 92 N. Y. App. Div. 578, 86 N. Y. Supp. 1055, *affirmed* 180 N. Y. 527, 72 N. E. 1150.

Condition Precedent as Distinguished from Forfeiture. — Continental Casualty Co. *v.* Waters, (Ky. 1906) 97 S. W. 1103.

3. Reasonable Compliance Sufficient. — Simmons *v.* Western Travelers Acc. Assoc., (Neb. 1907) 112 N. W. 365.

Where Cause of Injury Not at Once Known. — In cases where the injury is not at once known to be due to the accident, notice within the prescribed period after such knowledge is sufficient. U. S. Casualty Co. *v.* Hanson, 20 Colo. App. 393, 79 Pac. 176. And where the insurance was against loss of time and that did not occur until more than fifteen days after the accident, it was held not to be necessary to give notice of the accident within fifteen days thereof although the policy so provided. Baumister *v.* Continental Casualty Co., 124 Mo. App. 38, 101 S. W. 152.

6. "Immediate" Notice Means Reasonable Notice. — Pacific Mut. L. Ins. Co. *v.* Branham, 34 Ind. App. 243, 70 N. E. 174, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 323; Young *v.* Railway Mail Assoc., (Mo. App. 1907) 103 S. W. 557; Woolverton *v.* Fidelity, etc., Co., 96 N. Y. App. Div. 275, 89 N. Y. Supp. 292; Dunshee *v.* Travelers Ins. Co., 25 Pa. Super. Ct. 559.

The same rule is provided in the *Indiana* statutes concerning foreign insurance companies. Burns' Ann. St. Ind. (1901), § 4923. Ætna L. Ins. Co. *v.* Fitzgerald, 165 Ind. 317, 75 N. E. 262.

324. 1. When Question for Jury. — Ætna L. Ins. Co. *v.* Fitzgerald, 165 Ind. 317, 75 N. E. 262.

When for Court.— Travelers' Ins. Co. *v.* Nax, (C. C. A.) 142 Fed. 653.

2. Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46; Root *v.* London Guarantee, etc., Co., 92 N. Y. App. Div. 578, 86 N. Y. Supp. 1055.

325. 3. Myers *v.* Maryland Casualty Co., 123 Mo. App. 682, 101 S. W. 124.

See also Pacific Mut. L. Ins. Co. *v.* Branham, 34 Ind. App. 243, 70 N. E. 174.

Refusing to Pay Policy on Other Grounds. — Continental Casualty Co. *v.* Buchtel, (Neb. 1905) 105 N. W. 707; Moore *v.* National Acc. Soc., 38 Wash. 31, 80 Pac. 171.

But there must be evidence of an intent to waive. Ætna L. Ins. Co. *v.* Fitzgerald, 165 Ind. 317, 75 N. E. 262.

Waiver — Slight Circumstances Sufficient. — National Masonic Acc. Assoc. *v.* McBride, 162 Ind. 379, 70 N. E. 483.

4. Denial of Liability by the Company is a waiver of notice and proof. Western Travelers' Acc. Assoc. *v.* Tomson, 72 Neb. 661, 103 N. W. 695; Cornell *v.* Travelers' Ins. Co., 120 N. Y. App. Div. 459, 104 N. Y. Supp. 999; Woodall *v.* Pacific Mut. L. Ins. Co., (Tex. Civ. App. 1904) 79 S. W. 1090.

See also Binder *v.* National Masonic Acc. Assoc., 127 Iowa 25, 102 N. W. 190.

5. Acquiescence.— Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016.

Failure to Furnish Blanks. — Continental Casualty Co. *v.* Buchtel, (Neb. 1905) 105 N. W. 707.

6. Sending Adjusting Agent. — Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016.

7. Limitation Proper.— Tolmie *v.* Fidelity, etc., Co., 95 N. Y. App. Div. 352, 88 N. Y. Supp. 717.

See also Dolan *v.* Royal Neighbors of America, 123 Mo. App. 147, 100 S. W. 498, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 325.

But see Continental Casualty Co. *v.* Harrod, (Ky. 1907) 100 S. W. 262.

Indiana Statute.— See Phœnix Acc., etc., Assoc. *v.* Lathrop, (Ind. App. 1907) 81 N. E. 227, *construing* Burns' Ann. St. Ind. (1901) § 4923, which limits the power to make contracts as to time of suit.

Denial of Liability Authorizes Immediate Action. — U. S. Casualty Co. *v.* Hanson, 20 Colo. App. 393, 79 Pac. 176; Dulany *v.* Fidelity, etc., Co., (Md. 1907) 66 Atl. 614.

Where the Insurer Refuses the Preliminary Proofs which are offered and insists on others to which it is not entitled, it waives the right to insist on the expiration of time after proofs, before a suit is brought. Preferred Acc. Ins. Co. *v.* Fielding, 35 Colo. 19, 83 Pac. 1013.

A Failure to Furnish Proofs cannot shorten the time which must elapse before suit. Davis *v.*

U. S. Health, etc., Ins. Co., 73 N. H. 425, 62 Atl. 728.

Estoppel – Misleading Insured as to Settlement. — North American Acc. Ins. Co. *v.* Williamson, 118 Ill. App. 670.

326. 3. Mutual Insurance — When Cause of Action Complete. — Where the rules required actions to be brought within six months from the time of rejection of the claim, it was held that notice of rejection must be given before the time would begin to run against the insured. Switchmen's Union *v.* Colehouse, *227* Ill. 561, 81 N. E. 696.

4. Death of Insured — Time in Which Beneficiary Must Bring Suit. — Where a policy provided that actions for any benefit other than a weekly indemnity must be brought within nine months from the date of the accidental injury, it was held that the beneficiary could not maintain an action after nine months from the time of the death of the insured. Moest *v.* Continental Casualty Co., (Supm. Ct. Eq. T.) 55 Misc. (N. Y.) 128, 104 N. Y. Supp. 553.

327. 2. Court Not to Be Ousted of Jurisdiction. — Where an agreement to arbitrate is an attempt to oust the court of jurisdiction, it is invalid. Lewis *v.* Brotherhood Acc. Co., 194 Mass. 1, 79 N. E. 802.

4. Shanberg *v.* Fidelity, etc., Co., 143 Fed. 651; Continental Casualty Co. *v.* Hunt, (Ky. 1906) 90 S. W. 1056; Driskell *v.* U. S. Health, etc., Ins. Co., 117 Mo. App. 362, 93 S. W. 880; Johnson *v.* Continental Casualty Co., *122* Mo. App. 369, 99 S. W. 473.

See also Continental Casualty Co. *v.* Wade, (Tex. Civ. App. 1907) 99 S. W. 877; Continental Casualty Co. *v.* Peltier, 104 Va. *222*, 51 S. E. 209.

Proximate Cause Usually Question for Jury. — Preferred Acc. Ins. Co. *v.* Fielding, 35 Colo. 19, 83 Pac. 1013; Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46. See also *supra*, **318.** 2.

328. 2. Agent's Misstatements in Application. — White *v.* Standard L., etc., Ins. Co., 95 Minn. 77, 103 N. W. 735; North American Acc. Ins. Co. *v.* Trenton, (Tex. Civ. App. 1907) 99 S. W. 740.

Knowledge by Agent of False Statement of Applicant. — Fishblate *v.* Fidelity, etc., Co., 140 N. Car. 589, 53 S. E. 354.

3. See Wilder *v.* Continental Casualty Co., (C. C. A.) 150 Fed. 92.

4. Crawford *v.* Travelers' Ins. Co., (Ky. 1907) 99 S. W. 963.

See also National Masonic Acc. Assoc. *v.* McBride, 162 Ind. 379, 70 N. E. 483.

329. 1. Dulany *v.* Fidelity, etc., Co., (Md. 1907) 66 Atl. 614.

There Will Be No Estoppel when the language of the policy is plain and known to the insured. Kelsey *v.* Continental Casualty Co., 131 Iowa 207, 108 N. W. 221.

2. Proviso in Policy Limiting Agent's Authority. — In Dulany *v.* Fidelity, etc., Co., (Md. 1907) 66 Atl. 614, the court said: "The policy before us contains the usual provision that no agent has power to change it or waive any of its terms, but this court has several times decided that such a clause must be construed to relate to the provisions of the contract itself after it has gone into effect, and not to apply to the conditions which relate to the inception of the contract when it appears that the agent has delivered the policy and received the premiums with full knowledge of the actual situation."

Method of Waiver Provided in Policy. — See Wheeler *v.* U. S. Casualty Co., 71 N. J. L. 396, 59 Atl. 347.

3. Knowledge of Agent Estopping Insurer — *In Case of Incorrect Statement of No Other Insurance.* — North American Acc. Ins. Co. *v.* Rehacek, 123 Ill. App. 219.

That Insured Was Beyond the Policy's Limit of Age. — Crawford *v.* Travelers' Ins. Co., (Ky. 1907) 99 S. W. 963.

But *compare*, as indicating that the defendant's own knowledge would be no estoppel in such case, Wheeler *v.* U. S. Casualty Co., 71 N. J. L. 396, 59 Atl. 347.

330. 1. Preferred Acc. Ins. Co. *v.* Fielding, 35 Colo. 19, 83 Pac. 1013.

Verdict for Plaintiff on Sufficient Evidence Not Disturbed. — New Amsterdam Casualty Co. *v.* Shields, (C. C. A.) 155 Fed. 54; Continental Casualty Co. *v.* Hunt, (Ky. 1906) 90 S. W. 1056; Price *v.* Standard L., etc., Ins. Co., 92 Minn. 238, 99 N. W. 887; Bowman *v.* Northern Acc. Co., 124 Mo. App. 477, 101 S. W. 691; Taylor *v.* General Acc. Assur. Corp., 208 Pa. St. 439, 57 Atl. 830; Hill *v.* Central Acc. Ins. Co., 209 Pa. St. 632, 59 Atl. 262.

Burden of Proof in General on the Plaintiff. — Central Acc. Ins. Co. *v.* Spence, 126 Ill. App. 32; Continental Casualty Co. *v.* Lloyd, 165 Ind. 52, 73 N. E. 824; Ætna L. Ins. Co. *v.* Milward, 118 Ky. 716, 82 S. W. 364; Cilley *v.* Preferred Acc. Ins. Co., 109 N. Y. App. Div. 394, 96 N. Y. Supp. 282, *affirmed* 187 N. Y. 517, 79 N. E. 1102; Continental Casualty Co. *v.* Peltier, 104 Va. 222, 51 S. E. 209.

"Alone." — Where the policy insured against death resulting "alone" from injuries "through external, violent, and accidental means," it was held that the burden was upon the plaintiff of establishing an accidental injury and that it alone caused the death. Railway Postal Clerks Nat. Assoc. *v.* Scott, (C. C. A.) 155 Fed. 92.

When for Jury. — Driskell *v.* U. S. Health, etc., Ins. Co., 117 Mo. App. 362, 93 S. W. 880; Johnson *v.* Continental Casualty Co., 122 Mo. App. 369, 99 S. W. 473.

Pleading. — An averment that the insured was killed by being run over by a locomotive sufficiently alleges death by external, violent, and accidental means and that there were visible marks on the body by reason of the injury. Phœnix Acc., etc., Assoc. *v.* Lathrop, (Ind. App. 1907) 81 N. E. 227. So an allegation that the insured "fell from the cars," "and received injuries from which he afterward died," was held sufficient. Richards *v.* Travelers' Ins. Co., 18 S. Dak. 287, 100 N. W. 428.

2. Lewis *v.* Brotherhood Acc. Co., 194 Mass. 1, 79 N. E. 802.

331. 1. Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46; Starr *v.* Ætna L. Ins. Co., 41 Wash. 199, 83 Pac. 113.

2. Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46.

4. United Commercial Travelers *v.* Barnes, 72 Kan. 306, 82 Pac. 1099.

5. Harvey *v.* Ocean Acc., etc., Corp., (1905) 2 Ir. R. 1; Ætna L. Ins. Co. *v.* Milward, 118 Ky. 716, 82 S. W. 364. See also Preferred Acc. Ins. Co. *v.* Fielding, 35 Colo. 19, 83 Pac. 1013; Thaxton *v.* Metropolitan L. Ins. Co., 143 N. Car. 33, 55 S. E. 419, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 331.

Drowning. — Cornell *v.* Travelers' Ins. Co., 120 N. Y. App. Div. 459, 104 N. Y. Supp. 999.

332. 1. Ætna L. Ins. Co. *v.* Milward, 118 Ky. 716, 82 S. W. 364. See also Preferred Acc. Ins. Co. *v.* Fielding, 35 Colo. 19, 83 Pac. 1013.

Presumption that Insured Used Ordinary Care.— Starr *v.* Ætna L. Ins. Co., 41 Wash. 199, 83 Pac. 113.

2. U. S. Casualty Co. *v.* Hanson, 20 Colo. App. 393, 79 Pac. 176; Continental Casualty Co. *v.* Hunt, (Ky. 1906) 90 S. W. 1056; Garcelon *v.* Commercial Travelers' Eastern Acc. Assoc., (Mass. 1907) 81 N. E. 201; Noyes *v.* Commercial Travellers' Eastern Acc. Assoc., 190 Mass. 171, 76 N. E. 665; Continental Casualty Co. *v.* Jennings, (Tex. Civ. App. 1907) 99 S. W. 423; Starr *v.* Ætna L. Ins. Co., 41 Wash. 199, 83 Pac. 113.

Test of Waiver of Defense. — "The test to be applied is whether the acts and conduct of the insurer are inconsistent with the intention to insist on" the defense. Tuttle *v.* Iowa State Traveling Men's Assoc., 132 Iowa 652, 104 N. W. 1131.

Exercise of Due Care. — See Price *v.* Standard L., etc., Ins. Co., 92 Minn. 238, 99 N. W. 887 (*supra,* note 2, page 308).

Records of Coroners' Inquests Are Inadmissible as evidence of the cause of death. Craiger *v.* Modern Woodmen of America, (Ind. App. 1907) 80 N. E. 429; Ætna L. Ins. Co. *v.* Milward, 118 Ky. 716, 82 S. W. 364.

3. Amount of Recovery. — Where two clauses are repugnant the first will stand. Employers' Liability Assur. Corp. *v.* Morrow, (C. C. A.) 143 Fed. 750.

Election. — In Fricke *v.* U. S. Indemnity Soc., 78 Conn. 188, 61 Atl. 431, it was held that under the peculiar provisions of the policy in question the insured might elect to receive weekly benefits rather than a gross sum.

5. Weekly Indemnity as Excluding Death Claim. — See Shaw *v.* Equitable Mut. Acc. Assoc., (Neb. 1904) 99 N. W. 672.

Release by Insured — Rights of Beneficiary.— In Graham *v.* Union Casualty, etc., Co., 120 Mo. App. 671, 97 S. W. 614, it was held that a release of the company by the insured on receipt of a week's indemnity was no bar to the claim of the beneficiary in case of the death of the insured.

333. 3. Recovery Only to Date of Writ.— Rayburn *v.* Pennsylvania Casualty Co., 141 N. Car. 425, 54 S. E. 283.

ACCOMMODATION PAPER.

335. 1. Naef *v.* Potter, 226 Ill. 628, 80 N. E. 1084; Cellers *v.* Meachem, (Oregon 1907) 89 Pac. 426.

340. 3. Harnett *v.* Holdredge, (Neb. 1903) 97 N. W. 443, *affirmed* on rehearing 73 Neb. 370, 103 N. W. 277.

343. 1. National Bank *v.* H. P. Snyder Mfg. Co., 107 N. Y. App. Div. 95, 94 N. Y. Supp. 982.

Parol Evidence Is Admissible to show the real relation between the parties to a note, but not to defeat a recovery thereon. Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017.

2. Windhorst *v.* Bergendahl, (S. Dak. 1907) 111 N. W. 544.

348. 1. Union Nat. Bank *v.* Neill, (C. C. A.) 149 Fed. 711, *affirming* 143 Fed. 553; Boylston Nat. Bank *v.* Kilburn, (N. H. 1907) 68 Atl. 335, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 348.

2. National Bank *v.* H. P. Snyder Mfg. Co., 107 N. Y. App. Div. 95, 94 N. Y. Supp. 982; Cook *v.* American Tubing, etc., Co., (R. I. 1905) 65 Atl. 641.

National Bank.— Barnwell Bank *v.* Sixth Nat. Bank, 28 Pa. Super. Ct. 413.

4. J. G. Brill Co. *v.* Norton, etc., St. R. Co., 189 Mass. 431, 75 N. E. 1090.

349. 1. A Corporation Is Estopped to deny its authority to execute accommodation papers. Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167.

2. J. G. Brill Co. *v.* Norton, etc., St. R. Co., 189 Mass. 431, 75 N. E. 1090.

351. 4. Foster *v.* Balch, 79 Conn. 449, 65 Atl. 574.

354. 1. Where the payee (deceased) on indorsing a promissory note for the accommodation of the maker promises without consideration to pay it, and the holder compels payment by the payee's estate, an action for the recovery of the amount lies by the estate against the maker. Johnston *v.* Hazen, 3 N. Bruns. Eq. Rep. 341.

360. 5. Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017.

6. Smith *v.* Hightower, (Ga. App. 1907) 59 S. E. 593; Breyfogle *v.* Addison, 120 Ill. App. 520; Packard *v.* Windholz, 88 N. Y. App. Div. 365, 84 N. Y. Supp. 666, *affirmed* 180 N. Y. 549, 73 N. E. 1129; Westheimer *v.* Helmbold, 109 N. Y. App. Div. 854, 96 N. Y. Supp. 830; Smith *v.* State Bank, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 550, 104 N. Y. Supp. 750; English *v.* Schlesinger, (N. Y. City Ct. Tr. T.) 55 Misc. (N. Y.) 584, 105 N. Y. Supp. 989; White *v.* Savage, 48 Oregon 604, 87 Pac. 1040; Diffenbacher's Estate, 31 Pa. Super. Ct. 35; Charleston Sav. Inst. *v.* Farmers', etc., Bank, 73 S. Car. 545, 54 S. E. 216.

365. 3. *In re* Hopper-Morgan Co., 154 Fed. 249.

371. 3. Spartanburg Bank *v.* Mahon, (S. Car. 1907) 59 S. E. 31.

376. 6. An Extension of a Note on maturity, without the consent of the indorser, releases him from liability. Westbay *v.* Stone, 112 Mo. App. 411, 87 S. W. 34.

377. 1. An Accommodation Maker Is Not Discharged by an extension of time of payment without his consent. Cellers *v.* Meachem, (Oregon 1907) 89 Pac. 426.

383. 1. Naef *v.* Potter, 226 Ill. 628, 80 N. E. 1084, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 383; English *v.* Schlesinger, (N. Y. City Ct. Tr. T.) 55 Misc. (N. Y.) 584, 105 N. Y. Supp. 989.

384. 2. Naef *v.* Potter, 226 Ill. 628, 80 N. E. 1084, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 384.

385. 1. Westbay *v.* Stone, 112 Mo. App. 411, 87 S. W. 34; Solomon *v.* Cohen, (Supm. Ct. App. T.) 94 N. Y. Supp. 502; Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445; Deahy *v.* Choquet, (R. I. 1907) 67 Atl. 421.

ACCOMPLICES.

389. 1. **Includes All Participants in Crime.**— McCue *v.* State, (Tex. Crim. 1907) 103 S. W. 883.

Other Definitions. — Hargrove *v.* State, 125 Ga. 270, 54 S. E. 164 (to the same effect as People *v.* Smith, 28 Hun (N. Y.) 626, cited in the original note).

In Best *v.* Com., (Ky. 1906) 92 S. W. 555, an accomplice is said to be "one of several equally concerned in the commission of a crime, either as principal or one who aids or abets in the commission of the crime."

In People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364, an accomplice is said to be "an associate in the commission of a crime; a participator in an offense, whether as principal or accessory."

390. 2. **Fact that Witness Is Jointly Indicted.** — Hargrove *v.* State, 125 Ga. 270, 54 S. E. 164.

Seduction. — Howe *v.* State, (Tex. Crim. 1907) 102 S. W. 409 (to the same effect as Polk *v.* State, 40 Ark. 484, cited in the original note).

Incest. — Pate *v.* State, (Tex. Crim. 1906) 93 S. W. 556; Gillespie *v.* State, (Tex. Crim. 1906) 93 S. W. 556.

In Straub *v.* State, 27 Ohio Cir. Ct. 50, it was held that a girl of fourteen years, who committed incest with her father without understanding the enormity of her offense, did not require corroboration.

Crime Against Nature — Boy of Seven Cannot Be Accomplice. — Means *v.* State, 125 Wis. 650, 104 N. W. 815.

Inmate of Disorderly House Not Accomplice with Keeper. — Stone *v.* State, (Tex. Crim. 1905) 85 S. W. 808.

Complicity of Accomplice or Guilty Acting Must Be Shown. — Mahaney *v.* State, (Tex. Crim. 1905) 88 S. W. 223.

4. Marmer *v.* State, (Tex. Crim. 1904) 84 S. W. 830.

391. 3. **One Who Has No Guilty Connection with Crime Not an Accomplice.** — Martin *v.* State, (Tex. Crim. 1904) 83 S. W. 390.

4. Hargrove *v.* State, 125 Ga. 270, 54 S. E. 164.

Mere Knowledge that Crime Is to Be Committed. — Butt *v.* State, 81 Ark. 173, 98 S. W. 723; Best *v.* Com., (Ky. 1906) 92 S. W. 555; Alexander *v.* State, (Tex. Crim. 1905) 90 S. W. 1112; Jackson *v.* State, (Tex. Crim. 1905) 90 S. W. 34; Martin *v.* State, (Tex. Crim. 1904) 83 S. W. 390.

Knowledge that Crime Is to Be Committed and Attempt to Conceal Stolen Property does not make one an accomplice. Bradley *v.* State, 2 Ga. App. 622, 58 S. E. 1064.

Justice Knowingly Taking False Affidavits Not an Accomplice. — Wilson *v.* State, (Tex. Crim. 1906) 93 S. W. 547.

5. **Child of Seven Years Cannot Be Accomplice.** — Means *v.* State, 125 Wis. 650, 104 N. W. 815.

392. 1. People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364.

Detective Who Participates in Crime Without Felonious Intent Not Accomplice. — Sanchez *v.* State, (Tex. Crim. 1905) 90 S. W. 641.

One Who Promises Not to Prosecute Not an Accomplice. — Holley *v.* State, (Tex. Crim. 1906) 92 S. W. 422.

393. 2. People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364; Hargrove *v.* State, 125 Ga. 270, 54 S. E. 164; Best *v.* Com., (Ky. 1906) 92 S. W. 555.

4. U. S. *v.* Giuliani, 147 Fed. 594; U. S. *v.* Richards, 149 Fed. 443; Barbe *v.* Territory, 16 Okla. 562, 86 Pac. 61, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 393; State *v.* Wigger 196 Mo. 90, 93 S. W. 390; Powell *v.* State, (Tex. Crim. 1907) 99 S. W. 1005.

395. 1. **How Witnesses Rendered Admissible for State.** — By entering *nolle prosequi.* Lewis *v.* State, 85 Miss. 35, 37 So. 497.

Defendant Who Has Pleaded Guilty Admissible for the State. — State *v.* Knudtson, 11 Idaho 524, 83 Pac. 226.

Accomplice Separately Indicted and Tried Competent Witness for Defendant or State. — Barbe *v.* Territory, 16 Okla. 562, 86 Pac. 61.

Jointly Indicted Accomplices Competent Witnesses Although Indictment Not Dismissed. — — Simpson *v.* Com., (Ky. 1907) 103 S. W. 332.

398. 2. U. S. *v.* Giuliani, 147 Fed. 594; U. S. *v.* Richards, 149 Fed. 443; State *v.* Stewart, (Del. 1907) 67 Atl. 786; Caldwell *v.* State, 50 Fla. 4, 39 So. 188; State *v.* Wigger, 196 Mo. 90, 93 S. W. 390.

3. State *v.* Stewart, (Del. 1907) 67 Atl. 786; U. S. *v.* Giuliani, 147 Fed. 594; U. S. *v.* Richards, 149 Fed. 443.

399. 3. **Right of One Accomplice to Cross-examine Other.** — See Hackston *v.* Millar, Sc. Ct. of Just. 8 F. 52.

4. U. S. *v.* Richards, 149 Fed. 443; State *v.* Stewart, (Del. 1907) 67 Atl. 786; Caldwell *v.* State, 50 Fla. 4, 39 So. 188; Juretich *v.* People, 223 Ill. 484, 79 N. E. 181; Straub *v.* State, 27 Ohio Cir. Ct. 50; State *v.* Wigger, 196 Mo. 90, 93 S. W. 390; Means *v.* State, 125 Wis. 650, 104 N. W. 815.

400. 1. U. S. *v.* Giuliani, 147 Fed. 594; State *v.* Stewart, (Del. 1907) 67 Atl. 786.

401. 2. **Accomplice Cannot Corroborate Himself.** — Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041.

3. *Alabama.* — Rhodes *v.* State, 141 Ala. 66, 37 So. 365.

California. — People *v.* Sciaroni, 4 Cal. App. 698, 89 Pac. 133; People *v.* Sullivan, 144 Cal. 471, 77 Pac. 1000.

Georgia. — Hargrove *v.* State, 125 Ga. 270, 54 S. E. 164; Harrell *v.* State, 121 Ga. 607, 49 S. E. 703.

Idaho. — State *v.* Bond, 12 Idaho 424, 86 Pac. 43; State *v.* Knudtson, 11 Idaho 524, 83 Pac. 226; State *v.* Rooke, 10 Idaho 388, 79 Pac. 82.

Kentucky. — Best *v.* Com., (Ky. 1906) 92 S. W. 555; Simpson *v.* Com., (Ky. 1907) 103 S. W. 332.

New York. — People *v.* Hummel, 119 N. Y. App. Div. 153, 104 N. Y. Supp. 308; People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843, reargument denied 183 N. Y. 52, 75 N. E. 963.

Oklahoma. — Barbe *v.* Territory, 16 Okla. 562, 86 Pac. 61; Hill *v.* Territory, 15 Okla. 212, 79 Pac. 757; People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364.

Oregon. — State *v.* Kelliher, (Oregon 1907) 88 Pac. 867.

Texas. — Buck *v.* State, (Tex. Crim. 1904) 83 S. W. 390; Conant *v.* State, (Tex. Crim. 1907) 103 S. W. 897; Gillespie *v.* State, (Tex. Crim. 1906) 93 S. W. 556; Howe *v.* State, (Tex. Crim. 1907) 102 S. W. 409; Jackson *v.* State, (Tex. Crim. 1907) 101 S. W. 807; Martin *v.* State, (Tex. Crim. 1904) 83 S. W. 390; McDaniel *v.* State, (Tex. Crim. 1905) 87 S. W. 1044.

402. 2. U. S. *v.* Giuliani, 147 Fed. 594; Hargrove *v.* State, 125 Ga. 270, 54 S. E. 164; Harrell *v.* State, 121 Ga. 607, 49 S. E. 703; State *v.* Bond, 12 Idaho 424, 86 Pac. 43; Hill *v.* Territory, 10 Okla. 212, 79 Pac. 757; People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364.

3. State *v.* Stewart, (Del. 1907) 67 Atl. 786; Harrell *v.* State, 121 Ga. 607, 49 S. E. 703; State *v.* Rooke, 10 Idaho 388, 79 Pac. 82; Moree *v.* State, (Tex. Crim. 1904) 83 S. W. 1117.

Slight Extraneous Evidence Identifying Accused as Participator Sufficient Corroboration. — Hargrove *v.* State, 125 Ga. 270, 54 S. E. 164.

403. 1. U. S. *v.* Giuliani, 147 Fed. 594; State *v.* Bond, 12 Idaho 424, 86 Pac. 43; State *v.* Knudtson, 11 Idaho 524, 83 Pac. 226; People *v.* Colmey, 116 N. Y. App. Div. 516, 101 N. Y. Supp. 1016, *affirmed* 188 N. Y. 591, 81 N. E. 1171; People *v.* Hummel, 119 N. Y. App. Div. 153, 104 N. Y. Supp. 308; People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843, reargument denied 183 N. Y. 52, 75 N. E. 963; Jackson *v.* State, (Tex. Crim. 1907) 101 S. W. 807; Richard *v.* State, (Tex. Crim. 1905) 90 S. W. 1017; Wright *v.* State, (Tex. Crim. 1904) 84 S. W. 593.

2. *Alabama.* — Rhodes *v.* State, 141 Ala. 66, 37 So. 365.

Arkansas. — Cook *v.* State, 75 Ark. 540, 87 S. W. 1176.

California. — People *v.* Sciaroni, 4 Cal. App. 698, 89 Pac. 133.

Georgia. — Hargrove *v.* State, 125 Ga. 270, 54 S. E. 164; Harrell *v.* State, 121 Ga. 607, 49 S. E. 703.

Idaho. — State *v.* Bond, 12 Idaho 424, 86 Pac. 43; State *v.* Knudtson, 11 Idaho 524, 83 Pac. 226.

Kentucky. — Best *v.* Com., (Ky. 1906) 92 S. W. 555; Simpson *v.* Com., (Ky. 1907) 103 S. W. 332.

New York. — People *v.* Hummel, 119 N. Y. App. Div. 153, 104 N. Y. Supp. 308; People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843, reargument denied 183 N. Y. 52, 75 N. E. 963.

Oklahoma. — Barbe *v.* Territory, 16 Okla. 562, 86 Pac. 61; Barbe *v.* Territory, (Okla. 1907) 91 Pac. 783; Cooper *v.* Territory, (Okla. 1907) 91 Pac. 1032; Hill *v.* Territory, 15 Okla. 212, 79 Pac. 757; People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364.

Oregon. — State *v.* Kelliher, (Oregon 1907) 88 Pac. 867.

Texas. — Adams *v.* State, (Tex. Crim. 1907) 102 S. W. 1129; Buck *v.* State, (Tex. Crim. 1904) 83 S. W. 387; Gillespie *v.* State, (Tex. Crim. 1906) 93 S. W. 556; Green *v.* State, (Tex. Crim. 1906) 90 S. W. 1115; Howe *v.* State, (Tex. Crim. 1907) 102 S. W. 409; Jackson *v.* State, (Tex. Crim. 1907) 101 S. W. 807; Martin *v.* State, (Tex. Crim. 1904) 83 S. W. 390; McCue *v.* State, (Tex. Crim. 1907) 103 S. W. 883; Wright *v.* State, (Tex. Crim. 1904) 84 S. W. 593.

Possession of Stolen Property and Proof of Prior Attempt to Burglarize Sufficiently Corroborative. — Cook *v.* State, 80 Ark. 495, 97 S. W. 683.

Prisoner Identified as One Who Aided in Loading Stolen Property on Train Sufficient. — Byrd *v.* State, (Tex. Crim. 1906) 93 S. W. 114.

405. 1. **Sufficiency of Corroborative Evidence Question for Jury.** — Hargrove *v.* State, 125 Ga. 270, 54 S. E. 164; State *v.* Lovelace, (Nev. 1906) 83 Pac. 330; People *v.* Hummel, 119 N. Y. App. Div. 153, 104 N. Y. Supp. 308; Coope *v.* Territory, (Okla. 1907) 91 Pac. 1032; U. S. *v.* Giuliani, 147 Fed. 594.

2. Jackson *v.* State, (Tex. Crim. 1905) 90 S. W. 34; People *v.* Hummel, 119 N. Y. App. Div. 153, 104 N. Y. Supp. 308; People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364, *rehearing denied* 2 Cal. App. 210, 84 Pac. 370; Eddens *v.* State, (Tex. Crim. 1905) 84 S. W. 828; McCue *v.* State, (Tex. Crim. 1907) 103 S. W. 883; Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041.

ACCORD AND SATISFACTION.

408. 1. **Other Definitions.** — An accord and satisfaction is an actual agreement about a matter in dispute and a settlement pursuant to the agreement. Beattie Mfg. Co. *v.* Heinz, 120 Mo. App. 465, 97 S. W. 188.

409. 1. After an accord and satisfaction a party thereto is estopped to reopen the transaction. Hurrle Glass Co. *v.* H. M. Hooker Co., 120 Ill. App. 433.

410. 3. When it was shown that a settlement had been had between the parties subsequent to the injury complained of, and the claim was not then advanced, it was held to constitute an accord and satisfaction. Melt... *v.* Rittenhouse, 111 Ill. App. 30.

412. 3. Hookham *v.* Mayle, 22 Times L. Rep. 241; Lake Superior Produce, etc., Co. *v.* Concordia F. Ins. Co., 95 Minn. 492, 104 N. W. 560.

Burden on Defendant to Establish Consideration. — Weinberg *v.* Novick, (Supm. Ct. App. T.) 88 N. Y. Supp. 168.

4. **Adequacy of Consideration.** — Dreyfus *v.* Roberts, 75 Ark. 354, 87 S. W. 641.

413. 1. *United States.* — *In re* Freeman, 117 Fed. 680.

Alabama. — Roach *v.* Warren, (Ala. 1907) 44 So. 103.

Arkansas. — Dreyfus *v.* Roberts, 75 Ark. 354, 87 S. W. 641, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 413.

Colorado. — Schlessinger *v.* Schlessinger, (Colo. 1907) 88 Pac. 970, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 413.

Georgia. — Robinson *v.* Leatherbee Tie, etc., Co., 120 Ga. 901, 48 S. E. 380.

Illinois. — Farmers, etc., L. Assoc. *v.* Caine, 224 Ill. 599, 79 N. E. 956.

Kentucky. — Flener *v.* Flener, (Ky. 1907) 99 S. W. 258.

Maryland. — Frank *v.* Gump, 104 Va. 306, 51 S. E. 358 (declaring the rule of Maryland); Singer Sewing Mach. Co. *v.* Lee, (Md. 1907) 66 Atl. 628.

Massachusetts. — Atty.-Gen. *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 966.

Michigan. — Ginn *v.* W. C. Clark Coal Co., 143 Mich. 84, 106 N. W. 867; Detlaff *v.* Ideal Mfg. Co., 144 Mich. 342, 108 N. W. 76.

Minnesota. — Hoidale *v.* Wood, 93 Minn. 190, 100 N. W. 1100.

Missouri. — Chamberlain *v.* Smith, 110 Mo. App. 657, 85 S. W. 645; Taussig *v.* Southern Mill, etc., Co., 124 Mo. App. 209, 101 S. W. 602.

New York. — Bandman *v.* Finn, 185 N. Y. 508, 78 N. E. 175; Meeker *v.* Requa, 94 N. Y. App. Div. 300, 87 N. Y. Supp. 959; Weinberg *v.* Novick, (Supm. Ct. App. T.) 88 N. Y. Supp. 168; Harby *v.* Henes, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 366, 90 N. Y. Supp. 461; McCormick *v.* Shea, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 613, 94 N Y. Supp. 485, holding further that the question whether the claim in dispute was *bona fide* is for the jury; Bowery Bay Bldg., etc., Co. *v.* Rossiter, 113 N. Y. App. Div. 652, 99 N. Y. Supp. 922; Stratton *v.* Hunt Sullivan Co., (County Ct.) 100 N. Y. Supp. 846; Shaver *v.* Armstrong, (County Ct.) 52 Misc. (N. Y.) 626, 103 N. Y. Supp. 926.

Texas. — Rotan Grocery Co. *v.* Noble, 36 Tex. Civ. App. 226, 81 S. W. 586.

Wisconsin. — Weidner *v.* Standard L., etc., Ins. Co., 130 Wis. 10, 110 N. W. 246.

Receipt under Protest. — Mitterwallner *v.* Supreme Lodge, etc., 109 N. Y. App. Div. 70, 95 N. Y. Supp. 1090.

Maine Rule. — Knowlton *v.* Black, 102 Me. 503, 67 Atl. 563.

The Payment of an Undisputed Part of a Claim does not extinguish the portion in dispute which is a fixed and definite amount and which was not included in the payment of the undisputed part. Schermerhorn *v.* Gardenier, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 280, 94 N. Y. Supp. 253.

Rule Abolished in New Hampshire. — Frye *v.* Hubbell, (N. H. 1907) 68 Atl. 325, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 414, 415.

Whether Principle Controlling in Porto Rico, Quære. — San Juan *v.* St. John's Gas Co., 195 U. S. 510, 25 U. S. Sup. Ct. 108.

415. 2. Payment in Different Money Medium. — A payment in United States currency to extinguish a larger sum due in Porto Rican currency has been held to amount to a good accord and satisfaction where there was a dispute between the parties as to the agreed medium of payment. San Juan *v.* St. John's Gas Co., 195 U. S. 510, 25 U. S. Sup. Ct. 108.

3. Dreyfus *v.* Roberts, 75 Ark. 354, 87 S. W. 641, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 415; Uvalde Asphalt Paving Co. *v.* New York, 99 N. Y. App. Div. 327, 91 N. Y. Supp. 131.

4. Prudential Ins. Co. *v.* Cottingham, 103 Md. 319, 63 Atl. 359; Marshall-Wells Hardware Co. *v.* Moody, 92 Minn. 66, 99 N. W. 356. *Contra*, Dreyfus *v.* Roberts, 75 Ark. 354, 87 S. W. 641.

5. San Juan *v.* St. John's Gas Co., 195 U. S. 510, 25 U. S. Sup. Ct. 108; Dreyfus *v.* Roberts, 75 Ark. 354, 87 S. W. 641, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 414–419; Hayes *v.* Atlanta, etc., Air Line R. Co., 143 N. Car. 125, 55 S. E. 437; Meeker *v.* Requa, 94 N. Y. App. Div. 300, 87 N. Y. Supp. 959; Ward *v.* Young, (Tex. Civ. App. 1905) 89 S. W. 456.

Where Defendant Pays Part and Also Surrenders Claims. — McGiverin *v.* Keefe, 130 Iowa 97, 106 N. W. 369, supporting the principle of the original note.

Additional Security. — Bandman *v.* Finn, 185 N. Y. 508, 78 N. E. 175.

Where the Defendant Pays Part and Agrees Not to Go into Bankruptcy. — Melroy *v.* Kemmerer, 218 Pa. St. 381, 67 Atl. 699 (citing and in effect closely similar to Hinckley *v.* Arey, 27 Me. 362, stated in the original note).

An Unquestioned Judgment may be satisfied by a payment of less than its amount in the settlement of a disputed matter collateral to the judgment. Mann *v.* Haley, 79 Vt. 66, 64 Atl. 449.

416. 1. Flener *v.* Flener, (Ky. 1907) 99 S. W. 258; Singer Sewing Mach. Co. *v.* Lee, (Md. 1907) 66 Atl. 628.

3. Payment by Check or Note. — Where a check is received by a party "to check in full," he is bound either to reject the check, or, by accepting it, to accede to the defendant's terms. Laroe *v.* Sugar Loaf Dairy Co., 180 N. Y. 367, 73 N. E. 61.

417. 2. The Burden Is upon the Debtor to prove not only the agreement to accept the property in satisfaction of the debt, but an execution of the agreement. Grimmett *v.* Ousley, 78 Ark. 304, 94 S. W. 694.

419. 2. *United States.* — *In re* McBride, 132 Fed. 285; U. S. Bobbin, etc., Co. *v.* Thissell, (C. C. A.) 137 Fed. 1.

Alabama. — Hand Lumber Co. *v.* Hall, 147 Ala. 561, 41 So. 78.

Illinois. — Canton Union Coal Co. *v.* Parlin, etc., Co., 215 Ill. 244, 74 N. E. 143, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 419; Snow *v.* Griesheimer, 220 Ill. 106, 77 N. E. 110, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 419; Farmers, etc., L. Assoc. *v.* Caine, 224 Ill. 599, 79 N. E. 956; Miller *v.* Mutual Reserve Fund L. Assoc., 113 Ill. App. 481; Canton Union Coal Co. *v.* Parlin, etc., Co., 117 Ill. App. 622; George W. Linn Co. *v.* Harris, 118 Ill. App. 5.

Iowa. — Beaver *v.* Porter, 129 Iowa 41, 105 N. W. 346.

Kansas. — Fredonia Gas Co. *v.* Elwood Supply Co., 71 Kan. 464, 80 Pac. 969, holding further that the question whether the retention of a check for a considerable time amounted to an acceptance of a disputed claim was for the jury.

Minnesota. — Weber *v.* Ramsey County, 93 Minn. 320, 101 N. W. 296.

Missouri. — Chamberlain *v.* Smith, 110 Mo. App. 657, 85 S. W. 645; Cornelius *v.* Rosen, 111 Mo. App. 619, 86 S. W. 500; Lightfoot *v.* Hurd, 113 Mo. App. 612, 88 S. W. 128; Beattie Mfg. Co. *v.* Heinz, 120 Mo. App. 465, 97 S. W. 188.

New York. — Laroe *v.* Sugar Loaf Dairy Co., 180 N. Y. 367, 73 N. E. 61, holding further that there must be a *bona fide* dispute as to the debtor's liability or as to the amount due from him; Bandman *v.* Finn, 185 N. Y. 508, 78 N. E. 175; Le Page *v.* Lalance, etc., Mfg. Co., 98 N. Y. App. Div. 179, 90 N. Y. Supp. 676; Kelly *v.* Bullock, (Supm. Ct. App. T.) 94 N. Y. Supp. 517; St. Regis Paper Co. *v.* Tonawanda Board, etc., Co., 107 N. Y. App. Div. 90, 94 N. Y. Supp. 946; Stratton *v.* Hunt Sullivan Co., (County Ct.) 100 N. Y. Supp. 846; Williams *v.* Bienenzucht, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 209, 104 N. Y. Supp. 438; Matter of Seybel, 120 N. Y. App. Div. 291, 105 N. Y. Supp. 145, holding further that it is immaterial that there is no solid foundation for the dispute.

Texas. — Powers *v.* Harris, (Tex. Civ. App. 1906) 94 S. W. 136.

Vermont. — Mann *v.* Haley, 79 Vt. 66, 64 Atl. 449.

The Detachment of a Voucher Accompanying a Check given in payment, reciting that payment is in full, will not avoid the effect of acceptance of the check. Hand Lumber Co. *v.* Hall, 147 Ala. 561, 41 So. 78.

A Consideration Exists where there is a meritorious controversy between the parties as to the amount due, in consequence of a set-off or counterclaim arising out of the same transaction and claimed by the defendant. Missouri, etc., Coal Co. *v.* Consolidated Coal Co., (Mo. App. 1907) 105 S. W. 682.

Payment Not Accompanied by Any Condition. — That its retention shall be deemed full payment does not amount to an accord and satisfaction. West Side Laundry Co. *v.* Calumet Hotel Co., (Supm. Ct. App. T.) 103 N. Y. Supp. 820.

When Part of a Claim Is Admitted to Be Due and Part Is in Dispute the defense of accord and satisfaction is good only as to the part in dispute. Levi Cotton Mills Co. *v.* Fried, (Supm. Ct. App. T.) 102 N. Y. Supp. 802.

A Settlement Between Husband and Wife Pending Divorce has been held to preclude an action for the maintenance of children not mentioned in the settlement. Dixon *v.* Dixon, 107 Mo. App. 682, 82 S. W. 547.

420. 1. Laughead *v.* H. C. Frick Coke Co., 209 Pa. St. 368, 58 Atl. 685, holding further that settlement partly in cash and partly by a conditional promise of employment amounted to an accord and satisfaction.

2. Mayo *v.* Leighton, 101 Me. 63, 63 Atl. 298; Henderson *v.* McRae, 148 Mich. 324, 111 N. W. 1057, holding further that part execution of the accord does not extinguish the original demand. Manley *v.* Vermont Mut. F. Ins. Co., 78 Vt. 331, 62 Atl. 1020.

Creditor's Offer to Accept Less than Amount Due Insufficient. — Eckert *v.* Wallace, (N. J. 1907) 67 Atl. 76.

Accord and Satisfaction Cannot Be Inferred from payment, but must be proved. Spokane *v.* Costello, 42 Wash. 182, 84 Pac. 652.

Burden of Proving Execution Is on Debtor. — Kinney *v.* Brotherhood of American Yeomen, (N. Dak. 1905) 106 N. W. 44; National Cash Register Co. *v.* Petsas, 43 Wash. 376, 86 Pac. 662.

421. 2. **Acceptance Essential.** — Smith *v.* Miller, (Ala. 1907) 44 So. 399; Rustler Realty Co. *v.* Swecker, (Iowa 1907) 112 N. W. 169; Mayo *v.* Leighton, 101 Me. 63, 63 Atl. 298.

Receipt. — The acceptance of a check purporting to pay in full for "coal received" was held not to show an accord and satisfaction. Olson *v.* Wabash Coal Co., 126 Ill. App. 253. See also Nathan *v.* Ogdens, 93 L. T. N. S. 553, *affirmed* 22 Times L. Rep. 57.

Conditional Acceptance. — Canton Union Coal Co. *v.* Parlin, etc., Co., 215 Ill. 244, 74 N. E. 143; Bernstein *v.* Hirsch, 33 Pa. Super. Ct. 87.

In Order to Make Such Acceptance Binding. — Federal Printing Co. *v.* Garrick Press, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 56, 99 N. Y. Supp. 809; Stratton *v.* Hunt Sullivan Co., (County Ct.) 100 N. Y. Supp. 846; West Point Cotton Mills *v.* Blythe, 29 Pa. Super. Ct. 642.

Words of Assent Unnecessary. — Richardson *v.* Taylor, 100 Me. 175, 60 Atl. 796.

"The Accord Is Sufficiently Executed when all is done which the party agrees to accept in satisfaction of the pre-existing obligation." Laughead *v.* H. C. Frick Coke Co., 209 Pa. St. 368, 58 Atl. 685.

Retention of a Check Tendered as Full Payment has been held not to constitute an accord and satisfaction where notice was immediately given that suit would be brought for the balance due. Harby *v.* Henes, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 366, 90 N. Y. Supp. 461.

A Mere Division of Partnership Property without more does not amount to an accord and satisfaction as against a claim in the course of settlement of partnership affairs after dissolution. Huger *v.* Cunningham, 126 Ga. 684, 56 S. E. 64.

422. 1. Kinney *v.* Brotherhood of American Yeomen, (N. Dak. 1905) 106 N. W. 44; Bandman *v.* Finn, 185 N. Y. 508, 78 N. E. 175; Manley *v.* Vermont Mut. F. Ins. Co., 78 Vt. 331, 62 Atl. 1020.

Failure to Carry Out Agreement of Accord No Satisfaction. — Howard *v.* Norton-Morgan Commercial Co., (Ariz. 1907) 89 Pac. 541.

423. 1. *In re* Freeman, 117 Fed. 680; Bandman *v.* Finn, 185 N. Y. 508, 78 N. E. 175.

2. *In re* Freeman, 117 Fed. 680; Grimmett *v.* Ousley, 78 Ark. 304, 94 S. W. 694; Burr's Damascus Tool Works *v.* Peninsular Tool Mfg. Co., 142 Mich. 417, 105 N. W. 858; Henderson *v.* McRae, 148 Mich. 324, 111 N. W. 1057; Hayes *v.* Atlanta, etc., Air Line R. Co., 143 N. Car. 125, 55 S. E. 437; Manley *v.* Vermont Mut. F. Ins. Co., 78 Vt. 331, 62 Atl. 1020.

When New Promise Is Executory and Not Binding. — Bowen *v.* Waxelbaum, 2 Ga. App. 521, 58 S. E. 784.

424. 1. Henderson *v.* McRae, 148 Mich. 324, 111 N. W. 1057.

425. 1. Bandman *v.* Finn, 185 N. Y. 508, 78 N. E. 175.

426. 3. Chicago, etc., R. Co. *v.* Brown, 70 Neb. 696, 97 N. W. 1038, holding further that a plea of accord and satisfaction is of itself a ratification of the settlement with the third person.

Capacity of Parties — *Married Woman May Execute.* — Brundige *v.* Nashville, etc., R. Co., 112 Tenn. 526, 81 S. W. 1248.

Minor Cannot Execute. — Hensler *v.* Stix, 113 Mo. App. 162, 88 S. W. 108.

428. 2. Jones *v.* Chism, 73 Ark. 14, 83 S. W. 315; Robertson *v.* Trammell, 98 Tex. 364, 83 S. W. 1098.

4. Whitehead *v.* Trussed Concrete Steel Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 664, 101 N. Y. Supp. 250; Brundige *v.* Nashville, etc., R. Co., 112 Tenn. 526, 81 S. W. 1248.

ACCOUNTS.

434. 2. Madison County *v.* Collier, 87 Miss. 204, 30 So. 610, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 434; Kneisley Lumber Co. *v.* Edward B. Stoddard Co., 113 Mo. App. 306, 88 S. W. 774, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 434.

435. 3. Wroten Grain, etc., Co. *v.* Mineola Box Mfg. Co., (Tex. Civ. App. 1906) 95 S. W. 744.

437. 1. Ivy Coal, etc., Co. *v.* Long, 139 Ala. 535, 36 So. 722; Charlesworth *v.* Whitlow, 74 Ark. 277, 85 S. W. 423; Martin *v.* Heinze, 31 Mont. 68, 77 Pac. 427; Hall *v.* New York Brick, etc., Co., 95 N. Y. App. Div. 371, 88 N. Y. Supp. 582; Leinbach *v.* Wolle, 211 Pa. St. 629, 61 Atl. 248; Brown *v.* Rogers, 76 S. Car. 180, 56 S. E. 680, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437; Wroten Grain, etc., Co. *v.* Mineola Box Mfg. Co., (Tex. Civ. App. 1906) 95 S. W. 744; Oberndorfer *v.* Moyer, 30 Utah 325, 84 Pac. 1102, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437; Sandusky *v.* West Fork Oil, etc., Co., (W. Va. 1907) 59 S. E. 1082, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437. See also Fisse *v.* Blanke, (Mo. App. 1907) 105 S. W. 689, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437.

"An account stated is something arising in the ordinary course of business between men having continuous business transactions." *Per* Nott, C. J., in Cherokee Nation *v.* U. S., 40 Ct. Cl. 252.

2. Patillo *v.* Allen-West Commission Co., (C. C. A.) 131 Fed. 680; Ivy Coal, etc., Co. *v.* Long, 139 Ala. 535, 36 So. 722; Allen-West Commission Co. *v.* Hudgins, 74 Ark. 468, 86 S. W. 289, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437; Mattingly *v.* Shortell, 120 Ky. 52, 85 S. W. 215; Noyes *v.* Young, 32 Mont. 226, 79 Pac. 1063; Hall *v.* New York Brick, etc., Co., 95 N. Y. App. Div. 371, 88 N. Y. Supp. 582; Delabarre *v.* McAlpin, 101 N. Y. App. Div. 468, 92 N. Y. Supp. 129; Leinbach *v.* Wolle, 211 Pa. St. 629, 61 Atl. 248; Brown *v.* Rogers, 76 S. Car. 180, 56 S. E. 680, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437.

3. Treffinger *v.* Davis Real Estate Co., 110 Mo. App. 453, 85 S. W. 139; Brush, etc., Co. *v.* Ross, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 44, 99 N. Y. Supp. 796.

439. 5. See Leinbach *v.* Wolle, 211 Pa. St. 629, 61 Atl. 248.

440. 1. Ivy Coal, etc., Co. *v.* Long, 139 Ala. 535, 36 So. 722; Chase *v.* Chase, 191 Mass. 556, 78 N. E. 115; Allen *v.* Somerset Hotel Co., (Supm. Ct. App. T.) 88 N. Y. Supp. 944; Cooper *v.* Upton, 60 W. Va. 648, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 440.

442. 1. **Illegal or Immoral Consideration.** — Peeples *v.* Yates, 88 Miss. 289, 40 So. 996, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 442.

4. Love *v.* Ramsey, 139 Mich. 47, 102 N. W. 279, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 442; Wood *v.* O'Callaghan, 140 Mich. 598, 104 N. W. 36; Martin *v.* Heinze, 31 Mont. 68, 77 Pac. 427; Hall *v.* New York Brick, etc., Co., 95 N. Y. App. Div. 371, 88 N. Y. Supp. 582; New York Board of Fire Underwriters *v.* Boughan, (Supm. Ct. App. T.) 97 N. Y. Supp. 402; *In re* Klein, (Supm. Ct. Spec. T.) 101 N. Y. Supp. 663; Gorman *v.* McGowan, 44 Oregon 597, 76 Pac. 769.

443. 1. **Must Be Understood as Final Adjustment.** — Egner *v.* Strong, (Supm. Ct. App. T.) 98 N. Y. Supp. 753.

2. **Agreement as to Balance Struck.** — Chase *v.* Chase, 191 Mass. 556, 78 N. E. 115; Wood *v.* O'Callaghan, 140 Mich. 598, 104 N. W. 36; Snyder *v.* Patton, etc., Co., 143 Mich. 350, 106 N. W. 1106; New York Board of Fire Underwriters *v.* Boughan, (Supm. Ct. App. T.) 97 N. Y. Supp. 402; Egner *v.* Strong, (Supm. Ct. App. T.) 98 N. Y. Supp. 753; Bartholomew *v.* Shepperd, (Tex. Civ. App. 1906) 93 S. W. 218.

444. 1. **Must Be Examination or Circumstances Supporting Admission as to Correctness.** — Charlesworth *v.* Whitlow, 74 Ark. 277, 85 S. W. 423.

445. 1. Atlas R. Supply Co. *v.* Forster, 123 Ill. App. 558, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 445; Bartholomew *v.* Shepperd, (Tex. Civ. App. 1906) 93 S. W. 218. See also Fisse *v.* Blanke, (Mo. App. 1907) 105 S. W. 689, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 445.

The assent must come from the debtor, not from the creditor. Cherokee Nation *v.* U. S., 40 Ct. Cl. 252.

Promise to Pay Another's Debt. — Allen *v.* Somerset Hotel Co., (Supm. Ct. App. T.) 88 N. Y. Supp. 944; Brush, etc., Co. *v.* Ross, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 44, 99 N. Y. Supp. 796.

446. 2. **Admissions Must Be Direct and Unconditional.** — A promise to pay a stated account when able is an unconditional admission. Mattingly *v.* Shortell, 120 Ky. 52, 85 S. W. 215.

448. 3. Morse Dry Dock, etc., Co. *v.* Munson Steamship Line, 155 Fed. 150; Allen-West Commission Co. *v.* Hudgins, 74 Ark. 468, 86 S. W. 289, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 448; Hamilton-Brown Shoe Co. *v.* Choctaw Mercantile Co., 80 Ark. 438, 97 S. W. 284, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 448, 449; Cusick *v.* Boyne, 1 Cal. App. 643, 82 Pac. 985; Shively *v.* Eureka Tellurium Gold Min. Co., (Cal. App. 1907) 89 Pac. 1073; Visher *v.* Wilbur, (Cal. App. 1907) 90 Pac. 1065; Little, etc., Invest. Co. *v.* Pigg, (Ky.

1906) 96 S. W. 455; Copland *v.* American De Forest Wireless Tel. Co., 136 N. Car. 11, 48 S. E. 501; Gorman *v.* McGowan, 44 Oregon 597, 76 Pac. 769.

Bank and Depositor. — Farry *v.* Farmers, etc., Bank, (N. J. 1904) 58 Atl. 305.

450. 4. Hamilton-Brown Shoe Co. *v.* Choctaw Mercantile Co., 80 Ark. 438, 97 S. W. 284, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 449, 450.

451. 5. No General Test as to Reasonable Time for Retaining Account. — In Cusick *v.* Boyne, 1 Cal. App. 643, 82 Pac. 985, an instruction that retention for three months without objection constituted an account stated was affirmed.

453. 1. Presumption of Acquiescence Not Conclusive — Upon What Its Force Depends. — Columbia River Packing Co. *v.* Tallant, 133 Fed. 990; Allen *v.* Uplinger, 98 Minn. 242, 107 N. W. 1131; Allen *v.* Somerset Hotel Co., (Supm. Ct. App. T.) 88 N. Y. Supp. 944; Benedict *v.* Jennings, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 134, 93 N. Y. Supp. 464.

2. Retention — How Explainable. — Jacobs *v.* Cohn, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 115, 91 N. Y. Supp. 339.

454. 3. When Facts Undisputed, Question for Court — When Conflicting, for Jury. — Patillo *v.* Allen-West Commission Co., (C. C. A.) 131 Fed. 680; Cusick *v.* Boyne, 1 Cal. App. 643, 82 Pac. 985; Little, etc., Invest. Co. *v.* Pigg, (Ky. 1906) 96 S. W. 455; Snyder *v.* Patton, etc., Co., 143 Mich. 350, 106 N. W. 1106; Treffinger *v.* Davis Real Estate Co., 110 Mo. App. 453, 85 S. W. 139; McMullin *v.* Reid, 213 Pa. St. 338, 62 Atl. 924.

455. 2. Promise to Pay Balance Need Not Be Express. — Patillo *v.* Allen-West Commission Co., (C. C. A.) 131 Fed. 680; Ivy Coal, etc., Co. *v.* Long, 139 Ala. 535, 36 So. 722; Mattingly *v.* Shortell, 120 Ky. 52, 85 S. W. 215; Noyes *v.* Young, 32 Mont. 226, 79 Pac. 1063; Martin *v.* Heinze, 31 Mont. 68, 77 Pac. 427; Hall *v.* New York Brick, etc., Co., 95 N. Y. App. Div. 371, 88 N. Y. Supp. 582; Delabarre *v.* McAlpin, 101 N. Y. App. Div. 468, 92 N. Y. Supp. 129; Leinbach *v.* Wolle, 211 Pa. St. 629, 61 Atl. 248.

5. Martin *v.* Heinze, 31 Mont. 68, 77 Pac. 427; Delabarre *v.* McAlpin, 101 N. Y. App. Div. 468, 92 N. Y. Supp. 129.

456. 2. Visher *v.* Wilbur, (Cal. App. 1907) 90 Pac. 1065; Martin *v.* Heinze, 31 Mont. 68, 77 Pac. 427; Noyes *v.* Young, 32 Mont. 226, 79 Pac. 1063; Hall *v.* New York Brick, etc., Co., 95 N. Y. App. Div. 371, 88 N. Y. Supp. 582; Delabarre *v.* McAlpin, 101 N. Y. App. Div. 468, 92 N. Y. Supp. 129; Columbia River Packing Co. *v.* Tallant, 133 Fed. 990.

4. No Inquiry May Be Had as to Original Items. — Patillo *v.* Allen-West Commission Co., (C. C. A.) 131 Fed. 680; Nunn *v.* McKnight, 79 Ark. 393, 96 S. W. 193; Martin *v.* Heinze, 31 Mont. 68, 77 Pac. 427; Noyes *v.* Young, 32 Mont. 226, 79 Pac. 1063; Hall *v.* New York Brick, etc., Co., 95 N. Y. App. Div. 371, 88 N. Y. Supp. 582.

457. 2. Interest on Balance. — De la Cuesta *v.* Montgomery, 144 Cal. 115, 77 Pac. 887.

458. 2. Account Stated in General Not Conclusive. — Patillo *v.* Allen-West Commission Co., (C. C. A.) 131 Fed. 680; Allen-West Commission Co. *v.* Hudgins, 74 Ark. 468, 86 S. W. 289; Gutshall *v.* Cooper, 37 Colo. 212, 86 Pac. 125; Peeples *v.* Yates, 88 Miss. 289, 40 So. 996, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 458; Union Electric Light, etc., Co. *v.* Surgical Supply Co., 122 Mo. App. 631, 99 S. W. 804; Noyes *v.* Young, 32 Mont. 226, 79 Pac. 1063; Farry *v.* Farmers, etc., Bank, (N. J. 1904) 58 Atl. 305; Smith *v.* Allmon, 74 S. Car. 502, 54 S. E. 1014; Harman *v.* Maddy, 57 W. Va. 66, 49 S. E. 1009; Chapman *v.* Liverpool Salt, etc., Co., 57 W. Va. 395, 50 S. E. 601.

459. 1. Strength of Presumption as to Correctness Dependent upon Circumstances. — Peeples *v.* Yates, 88 Miss. 289, 40 So. 996, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 458; Chapman *v.* Liverpool Salt, etc., Co., 57 W. Va. 395, 50 S. E. 601.

3. Claiming Partial Failure of Consideration in Absence of Fraud or Mistake. — Gross *v.* Jones, 89 Miss. 44, 42 So. 802.

4. Burden to Show Fraud or Mistake. — Gross *v.* Jones, 89 Miss. 44, 42 So. 802; Kneeland *v.* Rennell, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 94, 96 N. Y. Supp. 403.

460. 1. Gutshall *v.* Cooper, 37 Colo. 212, 86 Pac. 125; Lull, etc., Co. *v.* Kemmerer Vehicle Co., (Iowa 1907) 114 N. W. 22, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 462 [460]; Martin *v.* Heinze, 31 Mont. 68, 77 Pac. 427; Farry *v.* Farmers, etc., Bank, (N. J. 1904) 58 Atl. 305; Brown, etc., Co. *v.* Guise, (N. Mex. 1907) 91 Pac. 716; Delabarre *v.* McAlpin, 101 N. Y. App. Div. 468, 92 N. Y. Supp. 129; Uhlhorn *v.* Hovey, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 638, 97 N. Y. Supp. 1040; Seiber *v.* Johnson Mercantile Co., (Tex. Civ. App. 1905) 90 S. W. 516; Batson *v.* Findley, 52 W. Va. 343, 43 S. E. 142; Harman *v.* Maddy, 57 W. Va. 66, 49 S. E. 1009; Chapman *v.* Liverpool Salt, etc., Co., 57 W. Va. 395, 50 S. E. 601; Aultman *v.* Connors, 122 Wis. 311, 99 N. W. 904.

461. 1. Burden on Party Seeking to Impeach. — Farry *v.* Farmers, etc., Bank, (N. J. 1904) 58 Atl. 305; Harman *v.* Maddy, 57 W. Va. 66, 49 S. E. 1009; Chapman *v.* Liverpool Salt, etc., Co., 57 W. Va. 395, 50 S. E. 601.

464. 4. Nunn *v.* McKnight, 79 Ark. 393, 96 S. W. 193.

Not Opened After Six Years. — Farry *v.* Farmers., etc., Bank, (N. J. 1904) 58 Atl. 305.

If the balances of accounts stated are included in a subsequent statement of open account, accepted by the debtor, the statute will not bar the balances because of the new promise. Brown, etc., Co. *v.* Guise, (N. Mex. 1907) 91 Pac. 716.

Where the statute of limitations has run against some of the items of the account, evidence of the fact may be admitted though the date of the account stated is within the statutory period. Delabarre *v.* McAlpin, 101 N. Y. App. Div. 468, 92 N. Y. Supp. 129.

ACCRETION.

168. 2. **Bed of Navigable River Belongs to State Subject to Use of Public.**—State *v.* Muncie Pulp Co., (Tenn. 1907) 104 S. W. 437.

Terms "Bed" and "Channel" as Applied to River, Ordinarily Synonymous.—State *v.* Muncie Pulp Co., (Tenn. 1907) 104 S. W. 437.

Abandoned Channel of Navigable Fresh Water Stream Property of Riparian Owner.—Kinkead *v.* Turgeon, (Neb. 1906) 109 N. W. 744, *reversing* 104 N. W. 1061.

Islands.—In *Missouri,* islands formed in navigable streams belong to the respective counties within which they appear and not to the riparian owners. Frank *v.* Goddin, 193 Mo. 390, 91 S. W. 1057.

169. 1. Nix *v.* Pfeifer, 73 Ark. 199, 83 S. W. 951; Fowler *v.* Wood, 73 Kan. 511, 85 Pac. 763.

3. Elliot *v.* Atlantic City, 149 Fed. 849, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 469; Western Pac. R. Co. *v.* Southern Pac. R. Co., (C. C. A.) 151 Fed. 376, *reversing* 144 Fed. 160; Dowdle *v.* Wheeler, 76 Ark. 529, 89 S. W. 1002; Mallory *v.* Brademyer, 76 Ark. 538, 89 S. W. 551; Nix *v.* Pfeifer, 73 Ark. 199, 83 S. W. 951; Thomas *v.* Dowdle, 76 Ark. 615, 89 S. W. 1004; Berry *v.* Hoogendoorn, 133 Iowa 437, 108 N. W. 923; Wright *v.* Council Bluffs, 130 Iowa 274, 104 N. W. 492; McBride *v.* Steinweden, 72 Kan. 508, 83 Pac. 822; Fowler *v.* Wood, 73 Kan. 511, 85 Pac. 763; Frank *v.* Goddin, 193 Mo. 390, 91 S. W. 1057; Houseman *v.* International Nav. Co., 214 Pa. St. 562, 64 Atl. 379; Thakurain Ritraj Koer *v.* Thakurain Sarfaraz Koer, 21 Times L. Rep. 637.

3. **Sudden Formation — Avulsion.** — Where a non-tidal river separating two estates belonging to different owners suddenly changes its course, the property in the soil does not change. Thakurain Ritraj Koer *v.* Thakurain Sarfaraz Koer, 21 Times L. Rep. 637.

171. 1. Elliot *v.* Atlantic City, 149 Fed. 849, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 469; Houseman *v.* International Nav. Co., 214 Pa. St. 552, 64 Atl. 379.

Accreted or Reclaimed Land Goes with Fee. — Sioux City *v.* Chicago, etc., R. Co., 129 Iowa 694, 106 N. W. 183.

The Subsequent Existence of an Intermediate Stream Between the Accretion and Mainland does not exclude ownership created by the accretion. Dowdle *v.* Wheeler, 76 Ark. 529, 89 S. W. 1002; Thomas *v.* Dowdle, 76 Ark. 615, 89 S. W. 1004.

172. 1. Elliot *v.* Atlantic City, 149 Fed. 849, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 469.

173. 4. Boglino *v.* Giorgetta, 20 Colo. App. 338, 78 Pac. 612.

Claimant Must Show Reliction. — Wright *v.* Council Bluffs, 130 Iowa 274, 104 N. W. 492.

175. 1. Elliot *v.* Atlantic City, 149 Fed. 849, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 474; State *v.* Muncie Pulp Co., (Tenn. 1907) 104 S. W. 437. See also Fowler *v.* Wood, 73 Kan. 511, 85 Pac. 763.

Change in Course of Non-tidal Stream Works No Change in Title to Soil. — Thakurain Ritraj Koer *v.* Thakurain Sarfaraz Koer, 21 Times L. Rep. 637.

2. Fowler *v.* Wood, 73 Kan. 511, 85 Pac. 763; Hilleary *v.* Wilson, (Ky. 1907) 100 S. W. 1190; State *v.* Muncie Pulp Co., (Tenn. 1907) 104 S. W. 437.

In *Missouri,* islands formed in navigable streams belong to the respective counties within which they appear. Frank *v.* Goddin, 193 Mo. 390, 91 S. W. 1057.

In determining whether a formation in a river is an island or a part of the shore land, account should be taken of the size and stability of the formation, its physical features, and the relative size and permanence of the channels around it. McBride *v.* Steinweden, 72 Kan. 508, 83 Pac. 822.

Where the Formation Begins with a Detached Bar or Island, and by gradual filling in by deposit, or by gradual recession of the water, the space between the bar or island and the mainland is joined together, it is not an accretion to the mainland in a legal sense. Nix *v.* Pfeifer, 73 Ark. 199, 83 S. W. 951.

177. 2. **Principles of Division — Rules Given.** — Berry *v.* Hoogendoorn, 133 Iowa 437, 108 N. W. 923, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 477.

ACCRUE — ACCRUED — ACCRUING.

179. 1. The current and accepted meaning of the word ***accruing*** would be "resulting, arising, or augmenting." Ercanbrack *v.* Faris, 10 Idaho 590, 79 Pac. 817, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 479.

ACCUSED.

181. 3. **Threat to Accuse.**—A threat of any public ***accusation*** is as much within the reason of a statute against blackmailing as a threat of a formal complaint. State *v.* Louanis, 79 Vt. 467, 65 Atl. 532.

ACKNOWLEDGMENTS.

184. 2. **Acknowledgment Essential to Admit Deed to Record.** — Williams *v.* Butterfield, 182 Mo. 181, 81 S. W. 615; Lance *v.* Tainter, 137 N. Car. 249, 49 S. E. 211; Allen *v.* Burch, 142 N. Car. 524, 55 S. E. 354; Kee *v.* Ewing, 17 Okla. 410, 87 Pac. 297; Simmons *v.* Hewitt, (Tex. Civ. App. 1905) 87 S. W. 188; Hughes *v.* Wright, (Tex. Civ. App. 1906) 97 S. W. 525; Punchard *v.* Masterson, (Tex. 1907) 101 S. W. 204; State *v.* Harman, 57 W. Va. 447, 50 S. E. 828; Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484. See also the title RECORDING ACTS, 191.

A Deed with a Defective Certificate of Acknowledgment is improper evidence to show an essential link in the chain of title. Allen *v.* Burch, 142 N. Car. 524, 55 S. E. 354.

Acknowledgment Not Necessary for Recording When Execution Is Otherwise Proved. — State *v.* Harman, 57 W. Va. 447, 50 S. E. 828.

Duly Acknowledged Deed Admissible in Evidence Without Further Proof of Execution. — Punchard *v.* Masterson, (Tex. 1907) 101 S. W. 204.

Acknowledgment Does Not Cure Defects in Execution. — But see Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062, where it appeared that a married woman's deed was duly acknowledged and that she authorized another to sign her name to it, and it was held not material whether she signed the deed in person.

487. 1. Com. *v.* Johnson, (Ky. 1906) 96 S. W. 801; Barnard *v.* Schuler, 100 Minn. 289, 110 N. W. 966, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485 [487].

See also Sackett *v.* McCaffrey, (C. C. A.) 131 Fed. 219.

2. Chattanooga Nat. Bldg., etc., Assoc. *v.* Vaught, 143 Ala. 389, 39 So. 215; Cason *v.* Cason, 116 Tenn. 173, 93 S. W. 89.

In taking the acknowledgment of a married woman separate and apart from her husband, and ascertaining whether she acknowledges fully and voluntarily, the officer acts judicially. Sackett *v.* McCaffrey, (C. C. A.) 131 Fed. 219.

488. 4. Marsh *v.* Bennett, 49 Fla. 186, 38 So. 237; Robsion *v.* Gray, (Ky. 1906) 97 S. W. 347; Martin *v.* Martin, (Neb. 1906) 107 N. W. 580; Kitchen *v.* Schuster, (N. Mex. 1907) 89 Pac. 261, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 448; Lynch *v.* Cade, 41 Wash. 216, 83 Pac. 118.

Essential to Validity When Made So by Statute. — Where the law requires a sheriff's deed of a tax sale to be acknowledged the acknowledgment is essential to the validity of the deed. Graton *v.* Holliday-Klotz Land, etc., Co., 189 Mo. 322, 87 S. W. 37.

490. 1. Ohio Nat. Bank *v.* Berlin, 26 App. Cas. (D. C.) 218; Williams *v.* Butterfield, 182 Mo. 181, 81 S. W. 615; Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062; Lynch *v.* Cade, 41 Wash. 216, 83 Pac. 118.

Actual Notice is equivalent to valid registration. Gross *v.* Watts, (Mo. 1907) 104 S. W. 30. See also the title RECORDING ACTS, **131.** 3. *et seq.*

492. 1. **Acknowledgment Held Essential to Pass Title.** — Simpson *v.* Belcher, (W. Va. 1906) 56 S. E. 211.

In *West Virginia,* where acknowledgment to a deed is essential to pass title to a married woman's property, proof of the execution by two witnesses as prescribed in Code 1906, § 3075, does not dispense with a formal acknowledgment. Simpson *v.* Belcher, (W. Va. 1906) 56 S. E. 211.

493. 1. **An Officer Who Is Grantee or Mortgagee** in a conveyance or mortgage is disqualified to take the acknowledgment of the instrument. Gray Lumber Co. *v.* Harris, 127 Ga. 693, 56 S. E. 252; Smith *v.* Ayden Lumber Co., 144 N. Car. 47, 56 S. E. 555; Kee *v.* Ewing, 17 Okla. 410, 87 Pac. 297; Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

An Officer Who Is Trustee in a Deed of Trust may not take the acknowledgment of the deed. Lance *v.* Tainter, 137 N. Car. 249, 49 S. E. 211; Simmons *v.* Hewitt, (Tex. Civ. App. 1905) 87 S. W. 188.

Agent or Attorney of Party May Take. — National Cash Register Co. *v.* Lesko, 77 Conn. 276, 58 Atl. 967; Austin *v.* Southern Home Bldg., etc., Assoc., 122 Ga. 439, 50 S. E. 382; Smith *v.* Ayden Lumber Co., 144 N. Car. 47, 56 S. E. 555; Roane *v.* Murphy, (Tex. Civ. App. 1906) 96 S. W. 782; Scott *v.* Thomas, 104 Va. 330, 51 S. E. 829. But see Cason *v.* Cason, 116 Tenn. 173, 93 S. W. 89.

Stockholder Disqualified to Take Acknowledgment of Corporation. — Maddox *v.* Wood, (Ala. 1907) 43 So. 968.

A Signer of a Certificate of Incorporation is disqualified to take the acknowledgments of the other signers. People *v.* Railroad Com'rs, 105 N. Y. App. Div. 273, 93 N. Y. Supp. 584, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 493.

495. 2. **Acknowledgment Before Officer After Expiration of Term.** — In Sandlin *v.* Dowdell, 143 Ala. 518, 39 So. 279, an acknowledgment was held void where taken by a notary seven months after his term expired.

496. 1. See Herrin *v.* Franklin, 1 Tenn. Ch. App. 95.

498. 1. **Extraterritorial Acknowledgments Held Valid.** — Under the *Michigan* statute a notary public of one county may take acknowledgments in another. Lamb *v.* Lamb, 140 Mich. 85, 102 N. W. 645.

Such Acknowledgments Held Invalid. — Gray Lumber Co. *v.* Harris, 127 Ga. 693, 56 S. E. 252; Birge *v.* Centralia, 218 Ill. 503, 75 N. E. 1035.

501. 2. Austin *v.* Southern Home Bldg., etc., Assoc., 122 Ga. 439, 50 S. E. 382; Werner *v.* Marx, 113 La. 1002, 37 So. 905.

507. 2. Gaskins *v.* Allen, 137 N. Car. 426, 49 S. E. 919.

510. 2. **In South Dakota** by statute acknowledgment must be made by the president or secretary of the corporation and the certificate must show that the person taking the acknowledgment personally knew the officer to be such president or secretary. Erickson *v.* Conniff, 19 S. Dak. 41, 101 N. W. 1104.

4. **South Dakota — Sufficient Corporate Acknowledgment.** — State *v.* Coughran, 19 S. Dak. 271, 103 N. W. 31.

511. 1. Gessner *v.* Minneapolis, etc., R. Co., (N. Dak. 1906) 108 N. W. 786.

512. 2. Shook *v.* Southern Bldg., etc., Assoc., 140 Ala. 575, 37 So. 409; Chattanooga Nat. Bldg., etc., Assoc. *v.* Vaught, 143 Ala. 389, 39 So. 215; Davis *v.* Miller Brent Lumber Co., (Ala. 1907) 44 So. 639.

Where a married woman after coming of age attempted to ratify a deed executed by her while a minor and it appeared that the second deed was not properly acknowledged, it was held that there was no ratification. Gaskins *v.* Allen, 137 N. Car. 426, 49 S. E. 919.

Unacknowledged Deed May Accomplish Partition. — Cowan *v.* Brett, (Tex. Civ. App. 1906) 97 S. W. 330.

514. 1. **Conveyance of Homestead.** — An acknowledgment by both husband and wife is essential to the validity of a conveyance of a homestead. Patnode *v.* Deschenes, (N. Dak. 1905) 106 N. W. 573. See also the title HOMESTEAD, **681.** 6.

4. Davis *v.* Miller Brent Lumber Co., (Ala. 1907) 44 So. 639; Poland *v.* Porter, (Tex. Civ. App. 1906) 98 S. W. 214.

Contract to Convey Land Void Unless Duly Ac-

knowledged. — The rule stated in the original note has been changed by Act Pa. April 4, 1901 (P. L. 67). Jenkins *v.* Pittsburg, etc., R. Co., 210 Pa. St. 134, 59 Atl. 823.

517. 2. Hall *v.* Hall, 118 Ky. 656, 82 S. W. 269; Godsey *v.* Virginia Iron, etc., Co., (Ky. 1904) 82 S. W. 386; Cook *v.* Pitman, 141 N. Car. 530, 57 S. E. 219.

Substantial Compliance Sufficient. — Timber *v.* Desparois, 18 S. Dak. 587, 101 N. W. 879.

518. 1. Hall *v.* Hall, 118 Ky. 656, 82 S. W. 269; Kopke *v.* Votaw, (Tex. Civ. App. 1906) 95 S. W. 15; Downs *v.* Peterson, (Tex. Civ. App. 1907) 99 S. W. 751.

520. 1. Patnode *v.* Deschenes, (N. Dak. 1905) 106 N. W. 573.

3. Tiemann *v.* Cobb, 35 Tex. Civ. App. 289, 80 S. W. 250.

4. Where the certificate of a married woman's acknowledgment declared that she consented that the same be recorded it was held equivalent to a statement that she did not wish to retract it. Masterson *v.* Harris, (Tex. Civ. App. 1904) 83 S. W. 428.

521. 3. **Certificate Sufficiently Showing Personal Acknowledgment.** — Sandlin *v.* Dowdell, 143 Ala. 518, 39 So. 279.

522. 3. See concurring opinions of Clark, C. J., in Ball *v.* Paquin, 140 N. Car. 83, 98, 52 S. E. 410, and State *v.* Robinson, 143 N. Car. 620, 629, 56 S. E. 918, both *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 522.

Montana. — Sackett *v.* McCaffrey, (C. C. A.) 131 Fed. 219.

North Dakota. — A married woman stands in the same position as a *feme sole*. Patnode *v.* Deschenes, (N. Dak. 1905) 106 N. W. 573.

Pennsylvania. — Married women may acknowledge as if single. Jenkins *v.* Pittsburg, etc., R. Co., 210 Pa. St. 134, 59 Atl. 823.

526. 1. See Murray Co. *v.* Continental Gin Co., (C. C. A.) 149 Fed. 989, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 524–526.

528. 5. Sullivan *v.* Gum, 106 Va. 245, 55 S. E. 535, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 528.

529. 5. **Where the Certificate and Deed Bear the Same Date,** it sufficiently shows in the case of a married woman's acknowledgment that her examination occurred on that date. Sandlin *v.* Dowdell, 143 Ala. 518, 39 So. 279.

6. Under the *Nebraska* statute a notary must show the date of the expiration of his commission. Sheridan County *v.* McKinney, (Neb. 1907) 112 N. W. 329.

530. 4. Maddox *v.* Wood, (Ala. 1907) 43 So. 968.

6. Sheridan County *v.* McKinney, (Neb. 1907) 112 N. W. 329.

Under Civ. Code Cal., § 1193, requiring the officer to affix his signature, followed by the name of his office, a signature followed by the words "Notary Public" was a sufficient designation of his office where the certificate stated the venue as "State of California, Monterey County — ss" and the body of the certificate recited that "before me, J. R., notary public in and for said Monterey County," etc. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

Where the official character appears in the first part of the certificate it is unnecessary to repeat it after the signature. Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937.

531. 3. **Initials and Abbreviations.** — Leech *v.* Karthaus, 141 Ala. 509, 37 So. 696; McCreary *v.* Coggeshall, 74 S. Car. 42, 53 S. E. 978; Williams *v.* Cessna, (Tex. Civ. App. 1906) 95 S. W. 1106; Williams *v.* Lobban, (Mo. 1907) 104 S. W. 58.

532. 2. Wilson *v.* Beaden, 56 W. Va. 372, 49 S. E. 409.

3. Burt, etc., Lumber Co. *v.* Wilson, (Ky. 1906) 93 S. W. 906; Hughes *v.* Wright, (Tex. Civ. App. 1906) 97 S. W. 525.

Want of Seal Vitiates Certificate. — Norris *v.* Billingsley, 48 Fla. 102, 37 So. 564.

533. 1. **That Seal Placed on Paper at One Place Rather than Another Unimportant.** — Bernheim *v.* Heyman, (Ky. 1907) 104 S. W. 388.

534. 5. Laughlin *v.* Kieper, 125 Wis. 161, 103 N. W. 264.

535. 1. **The Wisconsin Statutes** do not require such additional certificate when the acknowledgment is taken before a notary who attaches his seal. Washburn Land Co. *v.* Swanly, 131 Wis. 1, 110 N. W. 806.

538. 2. Leech *v.* Karthaus, 141 Ala. 509, 37 So. 696; Middlebrooks *v.* Stephens, (Ala. 1906) 41 So. 735; Costello *v.* Graham, (Ariz. 1905) 80 Pac. 336; Larson *v.* Elsner, 93 Minn. 303, 101 N. W. 307; Gross *v.* Watts, (Mo. 1907) 104 S. W. 30; Gessner *v.* Minneapolis, etc., R. Co., (N. Dak. 1906) 108 N. W. 786; Timber *v.* Desparois, 18 S. Dak. 587, 101 N. W. 879; State *v.* Coughran, 19 S. Dak. 271, 103 N. W. 31; Schultz *v.* Tonty Lumber Co., 36 Tex. Civ. App. 448, 82 S. W. 353; Hughes *v.* Wright, (Tex. 1907) 101 S. W. 789; Sullivan *v.* Gum, 106 Va. 245, 55 S. E. 535, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 538; Laughlin *v.* Kieper, 125 Wis. 161, 103 N. W. 264.

541. 1. Barnard *v.* Schuler, 100 Minn. 289, 110 N. W. 966; Cook *v.* Pitman, 144 N. Car. 530, 57 S. E. 219; Punchard *v.* Masterson, (Tex. 1907) 101 S. W. 204.

542. 5. Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062.

6. **Place for Name of Grantor Left Blank.** — The acknowledgment is not fatally defective if the omission is supplied elsewhere in the instrument. Larson *v.* Elsner, 93 Minn. 303, 101 N. W. 307.

543. 1. **Variances in Name Held Not Fatal.** — Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937.

Fatal Variance in Name. — A certificate stating that A & B appeared before the notary "and acknowledged that he executed the instrument," etc., was fatally defective. Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937.

544. 1. Ohio Nat. Bank *v.* Berlin, 26 App. Cas. (D. C.) 218; Barnard *v.* Schuler, 100 Minn. 289, 110 N. W. 966; Sims *v.* McLaren, 117 Mo. App. 67, 94 S. W. 792; Carolan *v.* Yoran, 104 N. Y. App. Div. 488, 93 N. Y. Supp. 935, *affirmed* 186 N. Y. 575, 79 N. E. 1102.

Where a certificate of acknowledgment cer-

tified that A and B "known to me to be the person * * * acknowledged to me that he," etc., it was held that the court would supply the word "each" before "acknowledged" and thus make the acknowledgment sufficiently designate that both parties acknowledged before the officer. Hughes *v.* Wright, (Tex. Civ. App. 1906) 97 S. W. 525.

Exceptions to the General Rule Requiring Recital of Personal Acquaintance.— Where the officer of a corporation is a trustee in whom is vested the legal title, the certificate need not show that the person taking the acknowledgment knew him to be an officer of the corporation. Thomas *v.* Wilcox, 18 S. Dak. 625, 101 N. W. 1072.

546. 5. Policy of Law to Uphold Certificate.— Reed *v.* Ukiah Bank, 148 Cal. 96, 82 Pac. 845.

547. 2. Omissions Not Fatal. — The omission of the word "who" before acknowledged, as "—— acknowledged," etc., was held not fatal. Reed *v.* Ukiah Bank, 148 Cal. 96, 82 Pac. 845.

The omission of the name of the party acknowledging, from the acknowledgment of a chattel mortgage was held not fatal. Tennis *v.* Gifford, 133 Iowa 372, 110 N. W. 586.

"Examined" before "separate" in a married woman's acknowledgment. Milby *v.* Hester, (Tex. Civ. App. 1906) 94 S. W. 178.

Where there were two grantors the omission of the word "each" before the word "acknowledged," in "known to me to be the person * * * acknowledged to me that he executed," etc. Hughes *v.* Wright, (Tex. Civ. App. 1906) 97 S. W. 525.

Fatal Omissions.— An acknowledgment which failed to state that the grantor executed or delivered the instrument, merely stating that he signed it, was held fatally bad. Elmslie *v.* Thurman, 87 Miss. 537, 40 So. 67.

Omission of "freely" from a married woman's acknowledgment. Tiemann *v.* Cobb, 35 Tex. Civ. App. 289, 80 S. W. 250.

A failure to certify that the party executed the instrument was held a fatal omission. Punchard *v.* Masterson, (Tex. 1907) 101 S. W. 204.

550. 1. Reed *v.* Ukiah Bank, 148 Cal. 96, 82 Pac. 845; Laughlin *v.* Kieper, 125 Wis. 161, 103 N. W. 264.

Equivalent Expressions. — The word "separate" was held equivalent to "private" under a statute requiring a private examination in the case of a married woman's conveyance. Timber *v.* Desparois, 18 S. Dak. 587, 101 N. W. 879.

"Acknowledges that the same was executed," etc., for "acknowledged the execution thereof by him," etc. Laughlin *v.* Kieper, 125 Wis. 161, 103 N. W. 264.

Expressions Not Equivalent. — Where, under a statute providing that an officer of a corporation executing an instrument must acknowledge that the corporation executed the instrument, words to the effect that the officer executed the instrument were held not equivalent to "that such corporation executed the same." Gessner *v.* Minneapolis, etc., R. Co., (N. Dak. 1906) 108 N. W. 786.

551. 1. Cason *v.* Cason, 116 Tenn. 173, 93 S. W. 89; Hughes *v.* Wright, (Tex. Civ. App. 1906) 97 S. W. 525.

552. 3. No Power of Correction After the Officer's Term Has Expired. — Cook *v.* Pitman, 144 N. Car. 530, 57 S. E. 219, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 552.

554. 4. Texas.— Under Rev. St. Tex. 1895, arts. 4662, 4663, where a married woman has in fact made the proper acknowledgment but the certificate is defective, the grantee may maintain an action to correct the certificate. Downs *v.* Peterson, (Tex. Civ. App. 1907) 99 S. W. 751. See also Hughes *v.* Wright, (Tex. Civ. App. 1906) 97 S. W. 525.

555. 1. Samuels *v.* Brand, 119 Ky. 13, 82 S. W. 977; Com. *v.* Johnson, (Ky. 1906) 96 S. W. 801; Barnard *v.* Schuler, 100 Minn. 289, 110 N. W. 966.

Officer's Negligence Must Be Proximate Cause of Damage.—Mahoney *v.* Dixon, 31 Mont. 107, 77 Pac. 519.

2. Loyd *v.* Oates, 143 Ala. 231, 38 So. 1022; Ford *v.* Ford, 27 App. Cas. (D. C.) 401; Uvalde Asphalt Paving Co. *v.* New York, 99 N. Y. App. Div. 327, 91 N. Y. Supp. 131.

556. 2. Patnode *v.* Deschenes, (N. Dak. 1905) 106 N. W. 573.

557. 1. Ford *v.* Ford, 27 App. Cas. (D. C.) 401; *In re* Adriaans, 28 App. Cas. (D. C.) 515; Hall *v.* Hall, 118 Ky. 656, 82 S. W. 269; Long *v.* Branham, (Ky. 1907) 99 S. W. 271; Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062; Marsh *v.* Griffin, 136 N. Car. 333, 48 S. E. 735; Larson *v.* Elsner, 93 Minn. 303, 101 N. W. 307; Wilkins *v.* Baker, (S. Car. 1907) 57 S. E. 851; Cason *v.* Cason, 116 Tenn. 173, 93 S. W. 89.

559. 1. Chattanooga Nat. Bldg., etc., Assoc. *v.* Vaught, 143 Ala. 389, 39 So. 215.

Estoppel — Married Women. — Where the acknowledgment of a married woman recites the fact of her separate examination, she is estopped from afterward claiming that she was not separately examined, and that title did not pass. Wilkins *v.* Baker, (S. Car. 1907) 57 S. E. 851.

560. 2. Bennett *v.* Edgar, (County Ct.) 46 Misc. (N. Y.) 231, 93 N. Y. Supp. 203; Patnode *v.* Deschenes, (N. Dak. 1905) 106 N. W. 573; Swiger *v.* Swiger, 58 W. Va. 119, 52 S. E. 23.

561. 1. See Gaskins *v.* Allen, 137 N. Car. 426, 49 S. E. 919.

3. Ford *v.* Ford, 27 App. Cas. (D. C.) 401.

5. Loyd *v.* Oates, 143 Ala. 231, 38 So. 1022; Patnode *v.* Deschenes, (N. Dak. 1905) 106 N. W. 573; Swiger *v.* Swiger, 58 W. Va. 119, 52 S. E. 23.

562. 2. See Winn *v.* Itzel, 125 Wis. 19, 103 N. W. 220, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 562.

564. 2. Kobbe *v.* Harriman Land Co., 117 Tenn. 315, 98 S. W. 175; Kopke *v.* Votaw, (Tex. Civ. App. 1906) 95 S. W. 15; Punchard *v.* Masterson, (Tex. 1907) 101 S. W. 204; Lins *v.* Seefeld, 126 Wis. 610, 105 N. W. 917.

567. 2. Hornet *v.* Dumbeck, 39 Ind. App. 482, 78 N. E. 691.

568. 1. Steger *v.* Traveling Men's Bldg., etc., Assoc., 208 Ill. 236, 70 N. E. 236.

ACQUIESCENCE.

570. 2. Konta *v.* St. Louis Stock Exch., 189 Mo. 40, 87 S. W. 969, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 570.

ACTION.

579. 1. **Action Not Applicable to Suit in Admiralty Court.** [illegible] P. 137, 76 L. J. P. 41, 96 L. T. N. S. 684, 5 Local Gov. Rep. 676, 71 J. P. 193, 23 Times L. Rep. 323.

ACT OF GOD.

584. 3. **Definition Similar to Lord Mansfield's.** — "A casualty not due to human agency, not only not due to it, but one which is in no way contributed to by human agency." Ohlen *v.* Atlanta, etc., R. Co., 2 Ga. App. 323, 58 S. E. 511.

The Wrongful Act, Neglect, or Default of the Employees of a Carrier can in no instance be treated as *vis major*. Western Maryland R. Co. *v.* Shivers, 101 Md. 391, 61 Atl. 618.

"Injury and loss can never be attributed to the act of God if, in any fair view of the evidence, it can be held to be due to the act of man." Georgia Southern, etc., R. Co. *v.* Barfield, 1 Ga. App. 203, 58 S. E. 236.

Deterioration by Decay Not Act of God. — Fockens *v.* U. S. Express Co., 99 Minn. 404, 109 N. W. 834.

Unprecedented Flood. — See Siegfried *v.* South Bethlehem, 27 Pa. Super. Ct. 456; Taylor *v.* Canton Tp., 30 Pa. Super. Ct. 305.

585. 1. **To the Same Effect** as the definition in the original text is Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252.

587. 3. MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Cincinnati, etc., R. Co. *v.* Bravard, 38 Ind. App. [illegible], 76 N. E. 899.

588. 2. **No Defense in Case of Express Contract.** — Allen *v.* Confederate Pub. Co., 121 Ga. 773, 49 S. E. 782; Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 588.

Freezing of Ground No Excuse for Failure to Excavate.—Harlev *v.* Sanitary Dist., 226 Ill. 213, 80 N. E. 771.

590. 5. **Contract Dependent upon Continued Existence of Subject-matter.** — Lehmann *v.* Webster, 209 Ill. 264, 70 N. E. 600; Krause *v.* School Town, 162 Ind. 278, 70 N. E. 264; Campbell *v.* Faxon, 73 Kan. 675, 85 Pac. 760.

The Rule Does Not Apply "where the thing destroyed is the thing which one of the parties has expressly contracted to produce and deliver." Logan *v.* Consolidated Gas Co., 107 N. Y. App. Div. 384, 95 N. Y. Supp. 163.

Contracts for Personal Services. — Condon *v.* Barnum, (Iowa 1906) 106 N. W. 514; Clifton *v.* Clark, 83 Miss. 446, 36 So. 251; Corson *v.* Lewis, (Neb. 1906) 109 N. W. 735; Casto *v.* Murray, 47 Oregon 57, 81 Pac. 883.

593. 1. **Carrier Exonerated When Loss Results from Act of God.** — Empire State Cattle Co. *v.* Atchison, etc., R. Co., 135 Fed. 135; Alabama G. S. R. Co. *v.* Quarles, 145 Ala. 436, 40 So. 120; Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252; Georgia Southern, etc., R. Co. *v.* Barfield, 1 Ga. App. 203, 58 S. E. 236; J. H. Cownie Glove Co. *v.* Merchants' Dispatch Transp. Co., 130 Iowa 327, 106 N. W. 749; Western Maryland R. Co. *v.* Shivers, 101 Md. 391, 61 Atl. 618; Wolf *v.* Grand Rapids, etc., R. Co., 149 Mich. 75, 112 N. W. 732; Strobeck *v.* Bren, 93 Minn. 428, 101 N. W. 795; Hoch *v.* Schlattan, (Neb. 1906) 107 N. W. 759; Hart *v.* North German Lloyd Steamship Co., 108 N. Y. App. Div. 279, 95 N. Y. Supp. 733, *affirming* (Supm. Ct. App. T.) 46 Misc. (N. Y.) 426, 92 N. Y. Supp. 338; Gulf, etc., R. Co. *v.* Roberts, (Tex. Civ. App. 1905) 85 S. W. 479; Fentiman *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 939.

Under the Louisiana Statute, although common carriers are not considered insurers against loss or damage by fire, they are, nevertheless, liable "unless they can prove that such loss or damage has been occasioned by accidental and uncontrollable events." Lehman *v.* Morgan's Louisiana, etc., R., etc., Co., 115 La. 1, 38 So. 873.

592. 1. **Carrier Exonerated Only When Loss Is Due Directly to Act of God.** — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Moffatt Commission Co. *v.* Union Pac. R. Co., 113 Mo. App. 544, 88 S. W. 117; Elam *v.* St. Louis, etc., R. Co., (Mo. App. 1906) 93 S. W. 851; General Fire Extinguisher Co. *v.* Carolina, etc., R. Co., 137 N. Car. 278, 49 S. E. 208; Gulf, etc., R. Co. *v.* Boyce, (Tex. Civ. App. 1905) 87 S. W. 395.

Illustrations. — Where goods in possession of a carrier are destroyed by a flood, the negligence of the carrier not contributing thereto, the act of God is the proximate cause unless the carrier could, by the exercise of ordinary care, have reasonably anticipated the occurrence and removed the goods to safety. Fentiman *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 939.

595. 3. Godfrey *v.* Illinois Cent. R. Co., 117 La. 1094, 42 So. 571.

4. Georgia Southern R. Co. *v.* Barfield, 1 Ga. App. 203, 58 S. E. 236; Bleakley *v.* New York, 139 Fed. 807.

See also Byron Telephone Co. *v.* Sheets, 122 Ill. App. 6; Quincy Gas, etc., Co. *v.* Schmitt, 123 Ill. App. 647.

596. 1 Southern R. Co. *v.* Smith, (Ky. 1907) 102 S. W. 232; Bibb Broom Corn Co. *v.* Atchison, etc., R. Co., 94 Minn. 269, 102 N. W. 709, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 596; Grier *v.* St. Louis Merchants Bridge Terminal R. Co., 108 Mo. App. 565, 84 S. W. 158; Gratiot St. Warehouse Co. *v.* Missouri, etc., R. Co., 124 Mo. App. 545, 102 S. W. 11; Gulf, etc., R. Co. *v.* Belton Oil Co., (Tex. Civ. App. 1907) 99 S. W. 430.

"The act of God must be the sole cause of the loss or injury, and, whenever the negligence of the carrier mingles with the act of God, as a co-operative cause, he is liable, provided the resulting loss is within the probable consequences of the negligent act; otherwise it will be too remote and disconnected to be considered the proximate cause." Ellison, J., in Moffatt Commission Co. *v.* Union Pac. R. Co., 113 Mo. App. 544, 88 S. W. 117.

Delay as Co-operative Negligence — *Carrier Not Liable.* — Empire State Cattle Co. *v.* Atchison, etc., R. Co., 135 Fed. 135; Rodgers *v.* Missouri Pac. R. Co., 75 Kan. 222, 88 Pac. 885; Moffatt Commission Co. *v.* Union Pac. R. Co., 113 Mo. App. 544, 88 S. W. 117; Elam *v.* St. Louis, etc., R. Co., (Mo. App. 1906) 93 S. W. 851; Hunt *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1903) 74 S. W. 69.

Carrier Liable. — Alabama G. S. R. Co. *v.* Elliott, (Ala. 1907) 43 So. 738; Alabama G. S. R. Co. *v.* Quarles, 145 Ala. 436, 40 So. 120; Green-Wheeler Shoe Co. *v.* Chicago, etc., R. Co., 130 Iowa 123, 106 N. W. 498; Bibb Broom Corn Co. *v.* Atchison, etc., R. Co., 94 Minn. 269, 102 N. W. 709; Wabash R. Co. *v.* Sharpe, (Neb. 1906) 107 N. W. 758.

597. **1. Loss Wholly Independent of Carrier's Fault.** — General Fire Extinguisher Co. *v.* Carolina, etc., R. Co., 137 N. Car. 278, 49 S. E. 208.

2. Burden upon Carrier to Show that Loss Was Due to Act of God. — Alabama G. S. R. Co. *v.* Quarles, 145 Ala. 436, 40 So. 120; J. H. Cownie Glove Co. *v.* Merchants' Dispatch Transp. Co., 130 Iowa 327, 106 N. W. 749; Kalina *v.* Union Pac. R. Co., 69 Kan. 172, 76 Pac. 438; Lehman *v.* Morgan's Louisiana, etc., R., etc., Co., 115 La. 1, 38 So. 873; Brennisen *v.* Pennsylvania R. Co., 100 Minn. 102, 110 N. W. 362; Elam *v.* St. Louis, etc., R. Co., (Mo. App. 1906) 93 S. W. 851; Grier *v.* St. Louis Merchants Bridge Terminal R. Co., 108 Mo. App. 565, 84 S. W. 158; Wabash R. Co. *v.* Sharpe, (Neb. 1906) 107 N. W. 758; McCord *v.* Atlantic Coast Line R. Co., 76 S. Car. 469, 57 S. E. 477; Nashville, etc., R. Co. *v.* Stone, 112 Tenn. 348, 79 S. W. 1031; Gulf, etc., R. Co. *v.* Roberts, (Tex. Civ. App. 1905) 85 S. W. 479; Fentiman *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 939; Gulf, etc., R. Co. *v.* Belton Oil Co., (Tex. Civ. App. 1907) 99 S. W. 430.

3. Carr *v.* Texas, etc., R. Co., (C. C. A.) 113 Fed. 91; Elam *v.* St. Louis, etc., R. Co., (Mo. App. 1906) 93 S. W. 851; Michaels *v.* Adams Express Co., 71 N. J. L. 41, 59 Atl. 142; Thyll *v.* New York, etc., R. Co., 92 N. Y. App. Div. 513, 87 N. Y. Supp. 345, *modifying* (Supm. Ct. App. T.) 84 N. Y. Supp. 175; Jean *v.* Flagg, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 421, 90 N. Y. Supp. 289; Gerardy *v.* Louisville, etc., R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 466, 102 N. Y. Supp. 548; Nashville, etc., R. Co. *v.* Stone, 112 Tenn. 348, 79 S. W. 1031.

598. **1. Question of Discharge of Burden Is for Jury.** — Fentiman *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 939; Alabama G. S. R. Co. *v.* Quarles, 145 Ala. 436, 40 So. 120; Georgia Southern, etc., R. Co. *v.* Barfield, 1 Ga. App. 203, 58 S. E. 236; Beede *v.* Wisconsin Cent. R. Co., 90 Minn. 36, 95 N. W. 454; Smith *v.* Great Northern R. Co., 92 Minn. 11, 99 N. W. 47; Gulf, etc., R. Co. *v.* Roberts, (Tex. Civ. App. 1905) 85 S. W. 479.

2. Law Implies Undertaking to Deliver Within Reasonable Time. — The Gordon Campbell, 141 Fed. 435; Alabama G. S. R. Co. *v.* Quarles, 145 Ala. 436, 40 So. 120; St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760; Chesapeake, etc., R. Co. *v.* Saulsbury, (Ky. 1907) 103 S. W. 254; Baltimore, etc., R. Co. *v.* Whitehill, 104 Md. 295, 64 Atl. 1033; Bibb Broom Corn Co. *v.* Atchison, etc., R. Co., 94 Minn. 269, 102 N. W. 709; Yazoo, etc., R. Co. *v.* Blum Co., 88 Miss. 180, 40 So. 748; Frey *v.* New York Cent., etc., R. Co., 114 N. Y. App. Div. 747, 100 N. Y. Supp. 225; Meredith *v.* Seaboard Air Line R. Co., 137 N. Car. 478, 50 S. E. 1; Chicago, etc., R. Co. *v.* Gillett, (Tex. Civ. App. 1907) 99 S. W. 712; St. Louis Southwestern R. Co. *v.* Thompson, (Tex. Civ. App. 1907) 103 S. W. 684.

599. **1.** See Yazoo, etc., R. Co. *v.* Blum Co., 88 Miss. 180, 40 So. 748.

ACTUAL — ACTUALLY.

601. **2. Actual Capital.** — See Person, etc., Co. *v.* Lipps, (Pa. 1907) 67 Atl. 1081.

Actual Cash Value — Insurance. — Newton *v.* Theresa Village Mut. F. Ins. Co., 125 Wis. 289, 104 N. W. 107.

Actual Seizin is corporal possession with legal title. Paine *v.* Sackett, 27 R. I. 300, 61 Atl. 753.

ADEMPTION OF LEGACIES.

612. **3.** Jacobs *v.* Button, 79 Conn. 360, 65 Atl. 150.

613. **2.** Miller *v.* Payne, 28 App. Cas. (D. C.) 396; Callicutt *v.* Callicutt, (Miss. 1907) 43 So. 616.

An Advance Payment of a Legacy constitutes an ademption thereof. Gallagher *v.* Martin, 102 Md. 115, 62 Atl. 247.

617. **1. Only Specific Legacies Adeemable.** — Nusly *v.* Curtis, 36 Colo. 464, 85 Pac. 846; Matter of Howard, (Surrogate Ct.) 46 Misc. (N. Y.) 204, 94 N. Y. Supp. 86.

2. See *In re* Heather, (1906) 2 Ch. 230.

622. **11.** Jacobs *v.* Button, 79 Conn. 360, 65 Atl. 150.

624. **2. Stock in One Company Converted into Stock in Another.** — *In re* Slater, (1906) 2 Ch. 480.

626. **6.** Matter of Miller, 128 Iowa 612, 105 N. W. 105; Hoffman *v.* Steubing, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 157, 98 N. Y. Supp. 706.

628. **1.** Nusly *v.* Curtis, 36 Colo. 464, 85 Pac. 846.

5. Conversion After Testator's Death Does Not Adeem Legacy. — Matter of Pullen, (Surrogate Ct.) 52 Misc. (N. Y.) 75, 102 N. Y. Supp. 435.

929. **3. In New York** a bequest of money in bank is adeemed *pro tanto* by a withdrawal of a part of the sum before the testator's death. Matter of Howard, (Surrogate Ct.) 46 Misc. (N. Y.) 204, 94 N. Y. Supp. 86.

ADJACENT.

633. **4.** Allentown *v.* Wagner, 27 Pa. Super. Ct. 485.

ADJOINING.

635. **1.** Rehill *v.* East Newark, 73 N. J. L. 225, 63 Atl. 81, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635.

Adjoining Municipality. — Rehill *v.* East Newark, 73 N. J. L. 225, 63 Atl. 81.

ADJUST -- ADJUSTMENT.

641. 2. **Adjustable Screens — Jim Crow Cars.** — See Southern Light, etc., Co. *v.* Comp ton, 86 Miss. 269, 38 So. 629.

ADMIRALTY JURISDICTION.

646. 4. **The Exchequer Court of Canada** has as large a jurisdiction as the High Court of Admiralty in England. Cope *v.* Raven, 11 British Columbia 486; Union Steamship Co. *v.* Mc Lachlan, 10 Can. Exch. 348. *Compare* The Ship D. C. Whitney *v.* St. Clair Nav. Co., 38 Can. Sup. Ct. 303, *reversing* 10 Can. Exch. 1.

647. 1. **Cannot Be Enlarged by State Statutes** — The James T. Furber, 129 Fed. 808.

2. The San Rafael, 141 Fed. 270, 72 C. C. A. 388.

3. The Joseph B. Thomas, (C. C. A.) 148 Fed. 762.

648. 4. See North American Transp., etc., Co. *v.* Gill, 203 U. S. 579, 27 U. S. Sup. Ct. 778, *affirming* 37 Wash. 694, 79 Pac. 778, which held that the state courts of Washington have jurisdiction in maritime contracts to be performed on the high seas.

A state can sell the right of a shipowner only subject to maritime liens. *In re* Red River Line, 115 La. 867, 40 So. 250.

5. The fact that the state of New Jersey has granted exclusive jurisdiction over Sandy Hook, a military station, does not oust the state court of jurisdiction over a death claim for injuries received in the littoral waters. Hamburg-American Steamship Co. *v.* Grube, 196 U. S. 407, 25 U. S. Sup. Ct. 352.

8. **Action in State Court.** — An action on a mortgage in a state court will not oust a District Court having jurisdiction over the claim as incident to the enforcement of a maritime lien. The Conveyor, 147 Fed. 586.

651. 2. The Robert W. Parsons, 191 U. S. 17, 24 U. S. Sup. Ct. 8.

652. 2. The Robert W. Parsons, 191 U. S. 17, 24 U. S. Sup. Ct. 8; Florence Cotton Oil Co. *v.* Alabama Towboat Co., 128 Fed. 915, 63 C. C. A. 641.

3. The August Belmont, 153 Fed. 639.

The Exchequer Court of Canada has no jurisdiction in an action of collision brought by a foreign corporation against a foreign ship, where the collision occurred in foreign waters. The Ship D. C. Whitney *v.* St. Clair Nav. Co., 38 Can. Sup. Ct. 303, *reversing* 10 Can. Exch. 1.

4. The Bound Brook, 146 Fed. 160. See The Ship D. C. Whitney *v.* St. Clair Nav. Co., 38 Can. Sup. Ct. 303, *reversing* 10 Can. Exch. 1.

653. 1. **Treaties.** — The fact that advance wages were paid to seamen in violation of section 24, chapter 28, Act Congress Dec. 21, 1898, will not lead the court to take jurisdiction of an action given by treaty to the consul. The Bound Brook, 146 Fed. 160.

3. The Wyandotte, (C. C. A.) 145 Fed. 321.

654. 2. The August Belmont, 153 Fed. 639; The Bound Brook, 146 Fed. 160.

8. **Vessel Employed in the Public Service of a Foreign State.** — The Jassy, (1906) P. 270.

655. 2. **Dredge.** — The court has jurisdiction over a dredge though partly engaged in land transactions. Bowers Hydraulic Dredging Co. *v.* Federal Contracting Co., 148 Fed. 290.

8. The Robert W. Parsons, 191 U. S. 17, 24 U. S. Sup. Ct. 8.

656. 1. **Assaults upon or Injuries by Seamen.** — The remedy of an assaulted seaman is by an action *in personam*. The Sallie Ion, 153 Fed. 659.

Where a seaman was entirely neglected after an accidental injury, he was allowed to sue *in rem* for want of care. The Troop, (C. C. A.) 128 Fed. 856.

657. 2. The Normandy, (1904) P. 187.

Allegation in Libel as to Pier. — *Compare* The Curtin, 152 Fed. 588, declaring that if testimony were introduced as to damage to a pier the question would be decided against libelant.

658. 2. **Negligence in Care of Seamen.** — The Troop, (C. C. A.) 128 Fed. 856.

6. The Lotta, 150 Fed. 219.

659. 2. In La Bourgogne, (C. C. A.) 144 Fed. 781, it was held error to exclude, in a proceeding to limit liability, claims for death occurring on the high seas, where the laws of the country to which the ship belonged allowed death claims, since the laws of a country have effect on a vessel wherever she may be.

3. Where a suit *in rem* was commenced by the injured party, upon his death his administrator may continue it in the same form. The City of Belfast, 135 Fed. 208.

660. 3. Pacific Surety Co. *v.* Leatham, etc., Towing, etc., Co., (C. C. A.) 151 Fed. 440; The Oceano, 148 Fed. 131; The Conveyor, 147 Fed. 586; U. S. Shipping Co. *v.* U. S., 146 Fed. 914; Evans *v.* New York, etc., Steamship Co., 145 Fed. 841; The James T. Furber, 129 Fed. 808.

Nautical School. — A charter party engaging a ship for a school organized for the "purpose of conducting a school for boys on shipboard" is not maritime. The Pennsylvania, (C. C. A.) 154 Fed. 9.

Executory Contract. — The court has jurisdiction over a maritime contract though wholly executory. The Conveyor, 147 Fed. 586.

661. 1. The Mary F. Chisholm, 129 Fed. 814.

2. The Pennsylvania, (C. C. A.) 154 Fed. 9; Pacific Surety Co. *v.* Leatham, etc., Towing, etc., Co., (C. C. A.) 151 Fed. 440; Graham *v.* Oregon R., etc., Co., 134 Fed. 454, 135 Fed. 608.

6. Graham *v.* Oregon R., etc., Co., 134 Fed. 454, 135 Fed. 608.

A contract for storage as an incident to the transportation of goods is maritime. Evans *v.* New York, etc., Steamship Co., 145 Fed. 841.

8. But an incidental accounting will be granted. The Emma B., 140 Fed. 771.

But under Canadian Statute the Court of Exchequer has jurisdiction of an action *in rem* for an account between co-owners, and the ship may be arrested. Cope *v.* Raven, 11 British Columbia 486, 9 Can. Exch. 404.

9. The Emma B., 140 Fed. 771.

10. The Wyandotte, (C. C. A.) 145 Fed. 321.

A suit may be maintained against a deposit of the proceeds of freight previously pledged orally to secure money loaned to pay charter

hire. Bank of British North America *v.* Freights, etc., 127 Fed. 859.

11. U. S. Shipping Co. *v.* U. S., 146 Fed. 914; Florence Cotton Oil Co. *v.* Alabama Towboat Co., 128 Fed. 915, 63 C. C. A. 641; The Skookum, 1 Alaska 394.

The fact that the damages arise indirectly is immaterial. The Oceano, 148 Fed. 131.

662. 2. Charter Party.— Where libelant was forced to pay damages resulting from the breach of a charter party executed in his own name, but as agent for the respondent, an action for indemnity from the latter is one based on the charter party. Adler *v.* Galbraith, 156 Fed. 259.

3. Maritime Insurance. — An agreement by which the insurance money was to be applied to the raising and repair of the insured vessel and the payment of liens for labor and supplies was held to be maritime in nature. The Conveyor, 147 Fed. 586.

4. See The Cheapside, (1904) P. 339.

9. See The Ville de St. Nazaire, 126 Fed. 448, holding that under a master's contract to answer for damage to a ship, there could be no recovery *in rem.*

664. 5. The Robert W. Parsons, 191 U. S. 17, 24 U. S. Sup. Ct. 8; The Wyandotte, (C. C. A.) 145 Fed. 321; The Sue, 137 Fed. 133.

6. *Compare* The Robert W. Parsons, 191 U. S. 17, 24 U. S. Sup. Ct. 8, declaring that a contract to repair a canal boat in a dry dock was within its jurisdiction.

8. The Clifton, (C. C. A.) 143 Fed. 460.

665. 2. The Conveyor, 147 Fed. 586.

ADMISSIONS.

670. 1. Another Definition Is "a statement, oral or written, suggesting any inference as to any fact in issue, or relevant fact unfavorable to the conclusion contended for by the person by whom or on whose behalf the statement is made." Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 113 N. W. 524.

671. 2. Incidental Admissions. — For instances see Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957.

Payment of Money into Court. — Wells *v.* Missouri-Edison Electric Co., 108 Mo. App. 607, 84 S. W. 204.

The Acceptance of a Quitclaim Deed of the easterly half of a certain parcel of land does not amount to an admission that the grantor is the owner of the westerly half thereof. Dougan *v.* Greenwich, 77 Conn. 444, 59 Atl. 505.

4. Sizer *v.* Melton, (Ga. 1907) 58 S. E. 1055; Page *v.* Hazelton, (N. H. 1907) 66 Atl. 1049; Neece *v.* Neece, 104 Va. 343, 51 S. E. 739.

672. 1. Parulo *v.* Philadelphia, etc., R. Co., 145 Fed. 664; Huggins *v.* Southern R. Co., (Ala. 1906) 41 So. 856; Hight *v.* Klingensmith, 75 Ark. 218, 87 S. W. 138; Mitchem *v.* Allen, 128 Ga. 407, 57 S. E. 721; Tripp *v.* Macomber, 187 Mass. 109, 72 N. E. 361; Eagle Min., etc., Co. *v.* Hamilton, (N. Mex. 1907) 91 Pac. 718; Routledge *v.* Rambler Automobile Co., (Tex. Civ. App. 1906) 95 S. W. 749; Roquemore *v.* State, (Tex. Crim. 1907) 99 S. W. 547; Auer *v.* Hoffman, (Wis. 1907) 112 N. W. 1090.

Declarations of Party Not in Interest. — State *v.* Rosa, 72 N. J. L. 462, 62 Atl. 695; McKay *v.* Elder, (Tex. Civ. App. 1906) 92 S. W. 268. See the title DECLARATIONS (IN EVIDENCE), vol. 9, p. 6.

The rule does not apply when a statement is made by a witness in the course of a judicial hearing in which the party implicated or interested could not interfere. To interrupt such proceeding to deny a statement made under such circumstances would be to charge the witness with perjury, and alike inconsistent with decorum and the rules of law. Hauser *v.* Goodstein, (N. H. 1907) 66 Atl. 932.

Unanswered Letters.— Jacobs *v.* Cohn, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 115, 91 N. Y. Supp. 339; Mitchell *v.* Cleveland, 76 S. Car. 432, 57 S. E. 33. But see Harmon *v.* Leberman, (Tex. Civ. App. 1905) 87 S. W. 203.

673. 1. Parulo *v.* Philadelphia, etc., R. Co., 145 Fed. 664; Eaton *v.* Com., (Ky. 1906) 90 S. W. 972; Leggett *v.* Schwab, 111 N. Y. App. Div. 341, 97 N. Y. Supp. 805; Roquemore *v.* State, (Tex. Crim. 1907) 99 S. W. 547; McCord *v.* Seattle Electric Co., (Wash. 1907) 89 Pac. 491.

674. 2. Parulo *v.* Philadelphia, etc., R. Co., 145 Fed. 664; Foster *v.* Hobson, 131 Iowa 58, 107 N. W. 1101; Eaton *v.* Com., (Ky. 1906) 90 S. W. 972; Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703; Roquemore *v.* State, (Tex. Crim. 1907) 99 S. W. 547.

Statement Made in Course of Judicial Hearing.— Leggett *v.* Schwab, 111 N. Y. App. Div. 341, 97 N. Y. Supp. 805.

Books and Records of a Private Corporation are not evidence against third persons, in the absence of proof of their knowledge and assent to them, to establish their relation of stockholders to the corporation or to prove other contracts between them and it. Harrison *v.* Remington Paper Co., 140 Fed. 385, 72 C. C. A. 405.

Question for the Court.— "Whether the circumstances are such as to call for a reply is a preliminary question for the court." Parulo *v.* Philadelphia, etc., R. Co., 145 Fed. 664.

675. 1. Morse Dry Dock, etc., Co. *v.* Munson Steamship Line, 155 Fed. 150, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 675; Vincent *v.* Soper Lumber Co., 113 Ill. App. 463.

When a Party Voluntarily Reads a Letter to Another such statement assumes the form of an admission by the party reading the same, and testimony of such admission becomes primary evidence. Purinton *v.* Purinton, 101 Me. 250, 63 Atl. 925.

3. Admissions against Interest—*United States.* — Harrison *v.* Remington Paper Co., 140 Fed. 385, 72 C. C. A. 405.

California. — Story *v.* Nidiffer, 146 Cal. 540, 80 Pac. 692; Matter of Arnold, 147 Cal. 583, 82 Pac. 252; Daneri *v.* Gazzola, 2 Cal. App. 351, 83 Pac. 455; Spotswood *v.* Spotswood, 4 Cal. App. 711, 89 Pac. 362; Manuel *v.* Flynn, (Cal. App. 1907) 90 Pac. 463.

Connecticut. — Nichols *v.* New Britain, 77 Conn. 695, 60 Atl. 655.

Delaware. — Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778.

Florida. — McRae *v.* Preston, (Fla. 1907) 44 So. 946.

Georgia. — Ham *v.* Brown, 2 Ga. App. 71, 58 S. E. 316.

Idaho. — Whitney *v.* Cleveland, (Idaho 1907) 91 Pac. 176.

Illinois. — Chicago City R. Co. *v.* Henry, 218 Ill. 92, 75 N. E. 758; Bird *v.* Bird, 218 Ill. 158, 75 N. E. 760; Fitzgerald *v.* Coleman, 114 Ill. App. 25.

Kansas. — White *v.* White, (Kan. 1907) 90 Pac. 1087.

Kentucky. — Peyton *v.* Old Woolen Mills Co., (Ky. 1906) 91 S. W. 719; Tingle *v.* Kelly, (Ky. 1906) 92 S. W. 303; Sullivan *v.* Sullivan, (Ky. 1906) 92 S. W. 966.

Maine. — Purinton *v.* Purinton, 101 Me. 250, 63 Atl. 925.

Maryland. — Gossage *v.* Philadelphia, etc., R. Co., 101 Md. 698, 61 Atl. 692; Symons *v.* Allegany County, (Md. 1907) 65 Atl. 1067.

Massachusetts. — Sibley *v.* Mason, (Mass. 1907) 81 N. E. 887.

Missouri. — State *v.* Wertz, 191 Mo. 569, 90 S. W. 838; Houston *v.* Chicago, etc., R. Co., (Mo. App. 1906) 94 S. W. 560; Southern Bank *v.* Nichols, 202 Mo. 309, 100 S. W. 613.

Nebraska. — Young *v.* Kinney, (Neb. 1907) 112 N. W. 558.

New Hampshire. — Page *v.* Hazelton, (N. H. 1907) 66 Atl. 1049.

New York. — Maher *v.* Empire L. Ins. Co., 110 N. Y. App. Div. 723, 96 N. Y. Supp. 496; Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423, *affirmed* (N. Y. 1907) 81 N. E. 1173; Gould *v.* John Hancock Mut. L. Ins. Co., 114 N. Y. App. Div. 312, 99 N. Y. Supp. 833; Theophine *v.* Vlachos, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 612, 103 N. Y. Supp. 776.

Pennsylvania. — Kaufman *v.* Pittsburg, etc., R. Co., 210 Pa. St. 440, 60 Atl. 2.

Texas. — Missouri, etc., R. Co. *v.* Russell, (Tex. Civ. App. 1905) 88 S. W. 379; McKay *v.* Elder, (Tex. Civ. App. 1906) 92 S. W. 268; Western Union Tel. Co. *v.* Stubbs, (Tex. Civ. App. 1906) 94 S. W. 1083; Grand Lodge, etc., *v.* Mackey, (Tex. Civ. App. 1907) 104 S. W. 907; Sterling *v.* De Laune, (Tex. Civ. App. 1907) 105 S. W. 1169.

Vermont. — Phelps *v.* Root, 78 Vt. 493, 63 Atl. 941; Mower *v.* McCarthy, 79 Vt. 142, 64 Atl. 578.

West Virginia. — Peters *v.* Nolan Coal Co., (W. Va. 1907) 56 S. E. 735.

Wisconsin. — Phillips *v.* Eggert, (Wis. 1907) 113 N. W. 686; Scheer *v.* Ulrich, (Wis. 1907) 113 N. W. 661.

Canada. — Lloyd *v.* Adams, 37 N. Bruns. 590.

Self-serving Declarations: Res Gestæ. — Geneva Mineral Springs Co. *v.* Steele, 111 N. Y. App. Div. 706, 97 N. Y. Supp. 996. See the title DECLARATIONS (IN EVIDENCE), vol. 9, p. 5.

Strangers. — Irwin Bank *v.* American Express Co., 127 Iowa 1, 102 N. W. 107; Fensterheim *v.* Abeles, (Supm. Ct. App. T.) 105 N. Y. Supp. 280.

The Admissions of a Trustee do not bind the estate and are not admissible against it. Thompson *v.* Mecosta, 141 Mich. 175, 104 N. W. 694.

To Prove or Disprove Marriage. — Where the title to land depends upon a common-law marriage between a deceased person and one of the claimants, declarations to prove or disprove such marriage, made by the deceased, though not in the presence of such claimant, are admissible. Topper *v.* Perry, 197 Mo. 531, 95 S. W. 203.

Divorce. — Admissions made by the wife to the husband of incontinency and fraud may be given in evidence by him, but they should be cautiously received and carefully weighed, and ordinarily they will be deemed insufficient of themselves to establish a ground of divorce. May *v.* May, 71 Kan. 317, 80 Pac. 567.

677. 1. Swing *v.* Walker, 27 Pa. Super. Ct. 366.

678. 1. Anderson *v.* Halverson, 126 Iowa 125, 101 N. W. 781; Hunter *v.* Porter, 133 Iowa 391, 109 N. W. 283; Illinois Cent. R. Co. *v.* Houchins, 89 S. W. 530, 28 Ky. L. Rep. 499.

3. "The Admissions of a Guardian which mean the sacrifice and giving away of the ward's property are never held to be binding." Kidwell *v.* Ketler, 146 Cal. 12, 79 Pac. 514.

679. 1. Conway *v.* Murphy, (Iowa 1907) 112 N. W. 764.

680. 3. Fall *v.* Fall, 100 Me. 98, 60 Atl. 718; Munsey *v.* Hanly, 102 Me. 423, 67 Atl. 217; Stewart *v.* Doak, 58 W. Va. 172, 52 S. E. 95; Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

Boundaries. — There must be an offer to show that the declarations were made on the land in question. Goyette *v.* Keenan, (Mass. 1907) 82 N. E. 427.

4. *Georgia.* — Collinsville Granite Co. *v.* Phillips, 123 Ga. 830, 51 S. E. 666; Rountree *v.* Gaulden, 128 Ga. 737, 58 S. E. 346.

Illinois. — Campbell *v.* Fichorst, 122 Ill. App. 609.

Kansas. — Hubbard *v.* Cheney, (Kan. 1907) 91 Pac. 793.

Kentucky. — See Jones *v.* Tennis Coal Co., (Ky. 1906) 94 S. W. 6.

Maine. — Fall *v.* Fall, 100 Me. 98, 60 Atl. 718; Collins *v.* Taylor, 101 Me. 542, 64 Atl. 946; Munsey *v.* Hanly, 102 Me. 423, 67 Atl. 217.

Massachusetts. — Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778; Luce *v.* Parsons, 192 Mass. 8, 77 N. E. 1032.

New York. — New York Water Co. *v.* Crow, 110 N. Y. App. Div. 32, 96 N. Y. Supp. 899, *affirmed* 187 N. Y. 516, 79 N. E. 1112.

North Carolina. — Norcum *v.* Savage, 140 N. Car. 472, 53 S. E. 289; Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275; Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784.

South Dakota. — Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

Texas. — Matador Land, etc., Co. *v.* Cooper, (Tex. Civ. App. 1905) 87 S. W. 235; San Antonio Brewing Assoc. *v.* Magoffin, (Tex. Civ. App. 1906) 99 S. W. 187.

Admissions of Ancestor Admissible Against Heir. — Cross *v.* Iler, 103 Md. 592, 64 Atl. 33; Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778; Benson *v.* Raymond, 142 Mich. 357, 105 N. W. 870, 12 Detroit Leg. N. 769.

Judgment Debtor. — Rountree *v.* Gaulden, 128

Ga. 737, 58 S. E. 346; **Smiley** *v.* Tadgett, 123 Ga. 39, 50 S. E. 927.

Boundaries. — Driver *v.* King, 145 Ala. 585, 40 So. 315; Dibble *v.* Cole, 102 N. Y. App. Div. 229, 92 N. Y. Supp. 938; Collins *v.* McKay, (Mont. 1907) 92 Pac. 295; Hill *v.* Dalton, 140 N. Car. 9, 52 S. E. 273; Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898; Bollinger *v.* McMinn, (Tex. Civ. App. 1907) 104 S. W. 1079; Douglas Land Co. *v.* T. W. Thayer Co., (Va. 1907) 58 S. E. 1101.

Declarations Must Be Against Interest. — Davies *v.* Epstein, 77 Ark. 221, 92 S. W. 19; Farmers' Bank *v.* Barbee, 198 Mo. 465, 95 S. W. 225; Spellman *v.* Rhode, 33 Mont. 21, 81 Pac. 395; Wilson *v.* Terry, (N. J. 1907) 65 Atl. 983, *affirming* 70 N. J. Eq. 231, 62 Atl. 310; Matador Land, etc., Co. *v.* Cooper, (Tex. Civ. App. 1905) 87 S. W. 235.

Admissible to Show Character of Claim Asserted. — Henry *v.* Brown, 143 Ala. 446, 39 So. 325; Roberts *v.* Ringemann, 145 Ala. 678, 40 So. 81; Seawell *v.* Young, 77 Ark. 309, 91 S. W. 544, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 680; Emmet *v.* Perry, 100 Me. 139, 60 Atl. 872; Farmers' Bank *v.* Barbee, 198 Mo. 465, 94 S. W. 225; Chan *v.* Slater, (Mont. 1905) 82 Pac. 657; Cole *v.* Lester, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 13, 96 N. Y. Supp. 67; Griswold *v.* Nichols, 126 Wis. 401, 105 N. W. 815. See also Drefahl *v.* Security Sav. Bank, 132 Iowa 563, 107 N. W. 179.

Admissions as to Value of Property. — *Compare* Kaufman *v.* Pittsburg, etc., R. Co., 210 Pa. St. 440, 60 Atl. 2.

Admissions of a Tenant in derogation of his landlord's title are not admissible. Interstate Coal, etc., Co. *v.* Clintwood Coal, etc., Co., 105 Va. 574, 54 S. E. 593.

The Mere Relation of Mortgagor and Mortgagee, in the absence of evidence of collusion between them to defraud creditors, does not create such a privity as to entitle the former's trustee in bankruptcy suing to recover property taken under the mortgage to use the declarations of the mortgagor against the mortgagee. Mower *v.* McCarthy, 79 Vt. 142, 64 Atl. 578.

Admissions in Disparagement of Title Are Limited to those cases where the subject-matter is capable of parol proof. Munsey *v.* Hanly, 102 Md. 423, 67 Atl. 217.

684. 1. Bona Fide Purchasers. — Conkling *v.* Weatherwax, 90 N. Y. App. Div. 585, 86 N. Y. Supp. 139, *affirmed* 181 N. Y. 258, 73 N. E. 1028.

686. 1. Admissions Before Title Was Acquired. — Benson *v.* Raymond, 142 Mich. 364, 108 N. W. 660.

Admissions After Title Has Been Transferred — *United States.* — West *v.* Houston Oil Co., 136 Fed. 343, 69 C. C. A. 169; Kennedy *v.* Bates, 142 Fed. 51, 73 C. C. A. 237.

Alabama. — Anniston City Land Co. *v.* Edmondson, 145 Ala. 557, 40 So. 505; Bain *v.* Bain, (Ala. 1907) 43 So. 562.

Arkansas. — Foster *v.* Beidler, 79 Ark. 418, 96 S. W. 175.

California. — Bell *v.* Pleasant, 145 Cal. 410, 78 Pac. 957.

Georgia. — Rountree *v.* Gaulden, 128 Ga. 737, 58 S. E. 346.

Indiana. — Jonas *v.* Hirshburg, (Ind. 1907) 79 N. E. 1058.

Kansas. — Pentico *v.* Hays, 75 Kan. 76, 88 Pac. 738.

Kentucky. — Hill *v.* Hill, (Ky. 1906) 92 S. W. 924; Jones *v.* Tennis Coal Co., (Ky. 1906) 94 S. W. 6.

Michigan. — Rix *v.* Smith, 145 Mich. 203, 108 N. W. 691.

Montana. — Chan *v.* Slater, (Mont. 1907) 82 Pac. 657.

New York. — Wadleigh *v.* Wadleigh, 111 N. Y. App. Div. 367, 97 N. Y. Supp. 1063.

North Carolina. — Daugherty *v.* Taylor, 140 N. Car. 446, 53 S. E. 296.

North Dakota. — Leonard *v.* Fleming, 13 N. Dak. 629, 102 N. W. 308.

Oklahoma. — Enid First Nat. Bank *v.* Yoeman, 17 Okla. 613, 90 Pac. 412.

South Dakota. — Aldous *v.* Olverson, 17 S. Dak. 196, 95 N. W. 917, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 686.

Texas. — Bruce *v.* Bruce, (Tex. Civ. App. 1905) 89 S. W. 435; Crawford *v.* Hord, (Tex. Civ. App. 1905) 89 S. W. Rep. 1097; Beall *v.* Chatham, (Tex. 1907) 99 S. W. 1116.

Virginia. — Interstate Coal, etc., Co. *v.* Clintwood Coal, etc., Co., 105 Va. 574, 54 S. E. 593.

The self-serving declarations of the grantor, made after he has conveyed the land, are incompetent as against his grantee, or the vendees of the latter. Skidmore *v.* Smith, (Ky. 1905) 84 S. W. 1163.

"Declarations made by the grantor after an alleged fraudulent conveyance, when the grantee is not present, are not admissible for the purpose of impeaching the title of the latter." Hart *v.* Brierley, 189 Mass. 598, 76 N. E. 286.

Admissions of Payee of Note After Parting with His Interest. — Maslon *v.* Sprickerhoff, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 644, 98 N. Y. Supp. 618.

Insurance Policy — Admissions of Assured After Issuance. — See Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 111 N. W. 797.

689. 2. Design to Defraud Creditors. — Leonard *v.* Fleming, 13 N. Dak. 629, 102 N. W. 308; Shelley *v.* Nolen, (Tex. Civ. App. 1905) 88 S. W. 524.

But Such Admissions Will Not Be Received when there is no other evidence of fraud. Hargus *v.* Hayes, 83 Ark. 186, 103 S. W. 163.

Where Vendor Remained in Possession. See Chan *v.* Slater, (Mont. 1905) 82 Pac. 657; Piedmont Sav. Bank *v.* Levy, 138 N. Car. 274, 50 S. E. 657.

Must Be Made in Grantee's Presence. — Hargus *v.* Hayes, 83 Ark. 186, 103 S. W. 163.

690. 1. *Alabama.* — Smiley *v.* Hooper, 147 Ala. 646, 41 So. 660; Gambill *v.* Fuqua, (Ala. 1906) 42 So. 735.

California. — Pease *v.* Fink, 3 Cal. App. 371, 85 Pac. 657.

Florida. — McRae *v.* Preston, (Fla. 1907) 44 So. 946.

Georgia. — Brooke *v.* Lowe, 122 Ga. 358, 50 S. E. 146; Hood *v.* Hendrickson, 122 Ga. 705, 50 S. E. 994; Ham *v.* Brown, 2 Ga. App. 71, 58 S. E. 316.

Indiana. — Blair-Baker Horse Co. *v.* Colum-

bus First Nat. Bank, 164 Ind. 77, 72 N. E. 1027, citing 1 Am. and Eng. Encyc. of Law (2d ed.) 690.

Iowa. — John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741.

Kansas. — Hutchinson Wholesale Grocery Co. *v.* McDonald, 71 Kan. 861, 80 Pac. 950; Goodyear *v.* Williams, 73 Kan. 192, 85 Pac. 300.

Kentucky. — Peyton *v.* Old Woolen Mills Co., (Ky. 1906) 91 S. W. 719; Edmiston *v.* Hurley, (Ky. 1907) 99 S. W. 259.

Louisiana. — Interstate Bank, etc., Co. *v.* Welsh, 118 La. 676, 43 So. 274.

Maryland. — Fifer *v.* Clearfield, etc., Coke Co., 103 Md. 1, 62 Atl. 1122.

Massachusetts. — Garfield *v.* Peerless Motor Car Co., 189 Mass. 395, 75 N. E. 695.

Nebraska. — Fitzgerald *v.* Kimball Bros. Co., (Neb. 1906) 107 N. W. 227.

New Jersey. — Brounfield *v.* Denton, 72 N. J. L. 235, 61 Atl. 378.

New York. — Sanford *v.* Fountain, (County Ct.) 49 Misc. (N. Y.) 301, 99 N. Y. Supp. 234; Shesler *v.* Patton, 114 N. Y. App. Div. 846, 100 N. Y. Supp. 286.

North Carolina. — Brittain *v.* Westall, 137 N. Car. 30, 49 S. E. 54; Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015; West *v.* A. F. Messick Grocery Co., 138 N. Car. 166, 50 S. E. 565.

Ohio. — Day *v.* Forest City R. Co., 27 Ohio Cir. Ct. 60.

Oregon. — Sloan *v.* Sloan, 46 Oregon 36, 78 Pac. 893.

South Carolina. — Ragsdale *v.* Southern R. Co., 72 S. Car. 120, 51 S. E. 540.

Texas. — Higley *v.* Dennis, (Tex. Civ. App. 1905) 88 S. W. 400; St. Louis Southwestern R. Co. *v.* Irvine, (Tex. Civ. App. 1905) 89 S. W. 428; Ross *v.* Moskowitz, (Tex. 1907) 100 S. W. 768; International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93.

West Virginia. — Siers *v.* Wiseman, 58 W. Va. 340, 52 S. E. 460.

Wisconsin. — McCune *v.* Badger, 126 Wis. 186, 105 N. W. 667.

In Russell *v.* Washington Sav. Bank, 23 App. Cas. (D. C.) 398, the court said: "An agent is not incompetent to testify to facts showing or tending to show his own agency."

Error Cured by Subsequent Proof of Authority. — See Indiana Fruit Co. *v.* Sandlin, 125 Ga. 222, 54 S. E. 65.

Admissible in Connection with Other Proof of Agency. — Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 85 Pac. 321; Ham *v.* Brown, 2 Ga. App. 71, 58 S. E. 316; Singer Mfg. Co. *v.* Christian, 211 Pa. St. 534, 60 Atl. 1087.

In Connection with the Ratification of His Acts by the Alleged Principal the agency may be established by the declarations of the alleged agent. Robert Buist Co. *v.* Lancaster Mercantile Co., 73 S. Car. 48, 52 S. E. 789.

As an Admission Against Interest a statement by a party that he is agent for another is admissible against the former. McRae *v.* Preston, (Fla. 1907) 44 So. 946.

Acts of Agent. — Agency cannot be proven by the mere acts of the one who assumes to act in the capacity of agent. Richards *v.* Newstifter, 70 Kan. 350, 78 Pac. 824.

691. 1. Wichita Fourth Nat. Bank *v.* Frost, 70 Kan. 480, 78 Pac. 825; W. K. Niver Coal Co. *v.* Piedmont, etc., Coal Co., 136 Fed. 179, 69 C. C. A. 195; Gambill *v.* Fuqua, (Ala. 1906) 42 So. 735; Pease *v.* Fink, 3 Cal. App. 371, 85 Pac. 657; Masonic Temple Safety Deposit Co *v.* Langfelt, 117 Ill. App. 652; Blair-Baker Horse Co. *v.* Columbus First Nat. Bank, 164 Ind. 77, 72 N. E. 1027; Reason *v.* Detroit, etc., R. Co., (Mich. 1907) 113 N. W. 596; West *v.* A. F. Messick Grocery Co., 138 N. Car. 166, 50 S. E. 565; Bellman *v.* Pittsburg, etc., R. Co., 31 Pa. Super. Ct. 389.

2. *United States.* — Chicago, etc., R. Co. *v.* Cox, 145 Fed. 157, 76 C. C. A. 127; Schiffer *v.* Anderson, 146 Fed. 457, 76 C. C. A. 667; Mather *v.* Barnes, 146 Fed. 1000; Ætna Indemnity Co. *v.* Auto-Traction Co., 147 Fed. 95, 78 C. C. A. 262.

Alabama. — Gambill *v.* Fuqua, (Ala. 1906) 42 So. 735; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 627.

California. — Mabb *v.* Stewart, 147 Cal. 413, 81 Pac. 1073; People *v.* Owens, 3 Cal. App. 750, 86 Pac. 980; Bundy *v.* Sierra Lumber Co., 149 Cal. 772, 87 Pac. 622.

Florida. — Western Union Tel. Co. *v.* Wells, 50 Fla. 474, 39 So. 838.

Georgia. — Turner *v.* Turner, 123 Ga. 5, 50 S. E. 969; Cable Co. *v.* Walker, 127 Ga. 65, 56 S. E. 108; Gainesville Midland R. Co. *v.* Jackson, 1 Ga. App. 632, 57 S. E. 1007. See also Howell *v.* Maine, 127 Ga. 574, 56 S. E. 771.

Illinois. — Chicago, etc., R. Co. *v.* Keegan, 112 Ill. App. 338; Athens Min. Co. *v.* Carnduff, 123 Ill. App. 178, *affirmed* 221 Ill. 354, 77 N. E. 571.

Indiana. — Blair-Baker Horse Co. *v.* Columbus First Nat. Bank, 164 Ind. 77, 72 N. E. 1027.

Iowa. — Farrell *v.* Dubuque, 129 Iowa 447, 105 N. W. 696.

Kentucky. — Peyton *v.* Old Woolen Mills Co., (Ky. 1906) 91 S. W. 719; Brock *v.* Tennis Coal Co., (Ky. 1906) 97 S. W. 46; Nicola Bros. Co. *v.* Hurst, 88 S. W. 1081, 28 Ky. L. Rep. 87; Nicola Bros. Co. *v.* Hurst, (Ky. 1907) 99 S. W. 917.

Massachusetts. — Burbank *v.* Hammond, 189 Mass. 189, 75 N. E. 102; Phenix Nerve Beverage Co. *v.* Dennis Wharf, etc., Co., 189 Mass. 82, 75 N. E. 258; Randall *v.* Claflin, 194 Mass. 560, 80 N. E. 594; McNicholas *v.* New England Telephone, etc., Co., (Mass. 1907) 81 N. E. 889.

Minnesota. — See Trainor *v.* Schultz, 98 Minn. 213, 107 N. W. 812.

Missouri. — See Spencer *v.* Travelers Ins. Co., 112 Mo. App. 86, 86 S. W. 899.

Nebraska. — Shoemaker *v.* Commercial Union Assur. Co., (Neb. 1906) 106 N. W. 316.

New Jersey. — Carey *v.* Wolff, 72 N. J. L. 510, 63 Atl. 270.

New York. — McCarthy *v.* Meaney, 183 N. Y. 190, 76 N. E. 36; Horowitz *v.* Broads Mfg. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 569, 104 N. Y. Supp. 988. See also McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342.

North Carolina. — Brittain *v.* Westall, 137 N. Car. 30, 49 S. E. 54.

Oregon. Hildebrand *v.* United Artisans, (Oregon 1907) 91 Pac. 542. See also Alden *v.* Grande Ronde Lumber Co., 46 Oregon 593, 81 Pac. 385.

Pennsylvania. — Matteson *v.* New York Cent., etc., R. Co., 218 Pa. St. 527, 67 Atl. 847.

Rhode Island. — Havens *v.* Rhode Island Suburban R. Co., 26 R. I. 50, 58 Atl. 247.

South Carolina. — Ragsdale *v.* Southern R. Co., 72 S. Car. 120, 51 S. E. 540.

Texas. — Waggoner *v.* Snody, 98 Tex. 512, 85 S. W. 1134, *reversing* 36 Tex. Civ. App. 514, 82 S. W. 355; Austin *v.* Forbis, (Tex. 1905) 89 S. W. 405, *reversing* (Tex. Civ. App. 1905) 86 S. W. 29; International, etc., R. Co. *v.* Carr, (Tex. Civ. App. 1905) 91 S. W. 858; Austin *v.* Nuchols, (Tex. Civ. App. 1906) 94 S. W. 336; Galveston, etc., R. Co. *v.* Levy, (Tex. Civ. App. 1907) 100 S. W. 195; Gaines *v.* Perry, (Tex. Civ. App. 1907) 102 S. W. 755.

Virginia. — Lynchburg Telephone Co. *v.* Booker, 103 Va. 594, 50 S. E. 148; Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262; Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812; Virginia-Carolina Chemical Co. *v.* Knight, 106 Va. 674, 56 S. E. 725; Finch *v.* Causey, (Va. 1907) 57 S. E. 562.

Where an agent assumes to act for his principal without authority and his act is subsequently ratified by his principal, the admissions of the agent while so acting are admissible. Hamilton *v.* Jos. Schlitz Brewing Co., 129 Iowa 172, 105 N. W. 438.

"Agents of the parties cannot by words give a construction to a contract not warranted by its terms." Heimbuecher *v.* Goff, 119 Ill. App. 373.

Corporation Agents and Employees. — U. S. *v.* Lueders, 148 Fed. 398; Bailey *v.* Blacksher Co., 142 Ala. 254, 37 So. 827; Vincent *v.* Soper Lumber Co., 113 Ill. App. 463; Cudahy Packing Co. *v.* Hays, 74 Kan. 124, 85 Pac. 811; Huse *v.* St. Louis Belting, etc., Co., 121 Mo. App. 89, 97 S. W. 990; Dunbar Box, etc., Co. *v.* Martin, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 312, 103 N. Y. Supp. 91; Pacific Export Lumber Co. *v.* North Pac. Lumber Co., 46 Oregon 194, 80 Pac. 103; Marshall *v.* Columbia, etc., Electric St. R. Co., 73 S. Car. 241, 53 S. E. 417; Chilcott *v.* Washington State Colonization Co., (Wash. 1906) 88 Pac. 113.

But an admission by a corporate agent before incorporation is inadmissible. Horowitz *v.* Broads Mfg. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 569, 104 N. Y. Supp. 988.

Declarations made and directions given by subordinate officers of a railroad company with respect to the extent of a right of way and the occupancy of the disputed ground are inadmissible in ejectment by the railroad company to establish title to such disputed ground. Perkiomen R. Co. *v.* Kremer, 218 Pa. St. 641, 67 Atl. 913.

An admission of the agent of a corporation when not engaged in the business of the corporation is inadmissible. Collins Ice Cream Co. *v.* Normandie, 121 Ill. App. 140.

Admissions made by a corporate agent as a witness in an action between third parties do not bind the corporation in the absence of proof that the agent while upon the witness stand was actually representing the corporation. Harrison County *v.* State Sav. Bank, 127 Iowa 242, 103 N. W. 121.

Public Officers. — Commercial Wharf Corp. *v.* Boston, (Mass. 1907) 80 N. E. 645.

The declarations of the agents and officers of a county are not evidence against the title of the county to lands. Lamar County *v.* Talley, (Tex. Civ. App. 1906) 94 S. W. Rep. 1069.

The return of the assessor as to the value of realty is not admissible as against the owner to show the value of the property. Lewis *v.* Englewood El. R. Co., 223 Ill. 223, 79 N. E. 44.

Authority Not Shown. — A declaration of an agent is improperly admitted in evidence where it is not made to appear that in making such statement the agent was acting within the scope of his authority. Austin *v.* Forbis, (Tex. 1905) 89 S. W. 405.

One Agent to Another. — Declarations of the agent of one defendant to the agent of another are inadmissible in an action for conversion. Trammell *v.* J. M. Guffey Petroleum Co., (Tex. Civ. App. 1906) 94 S. W. 104.

693. 1. *United States.* — Schiffer *v.* Anderson, 146 Fed. 457, 76 C. C. A. 667; Ætna Indemnity Co. *v.* Auto-Traction Co., 147 Fed. 95, 78 C. C. A. 262.

Alabama. — Robinson *v.* Green, (Ala. 1906) 43 So. 797.

Arkansas. — Choctaw, etc., R. Co. *v.* Rolfe, 76 Ark. 220, 88 S. W. 870.

California. — Waldeck *v.* Pacific Coast Steamship Co., 2 Cal. App. 167, 83 Pac. 158; People *v.* Owens, 3 Cal. App. 750, 86 Pac. 980.

Kentucky. — Shelbyville Water, etc., Co. *v.* McDade, (Ky. 1906) 92 S. W. 568; Gray Tie Co. *v.* Clark, 98 S. W. 1000, 30 Ky. L. Rep. 409; Nicola Bros. Co. *v.* Hurst, (Ky. 1907) 99 S. W. 917.

Massachusetts. — Garfield *v.* Peerless Motor Car Co., 189 Mass. 395, 75 N. E. 695.

Missouri. — Redmon *v.* Metropolitan St. R. Co., 185 Mo. 1, 84 S. W. 26.

New York. — Campbell *v.* Emslie, 101 N. Y. App. Div. 369, 91 N. Y. Supp. 1069, *affirmed* 184 N. Y. 589, 77 N. E. 1183.

North Carolina. — Brittain *v.* Westall, 137 N. Car. 30, 49 S. E. 54.

Oregon. — Hildebrand *v.* United Artisans, (Oregon 1907) 91 Pac. 542.

Rhode Island. — Havens *v.* Rhode Island Suburban R. Co., 26 R. I. 50, 58 Atl. [illegible].

On the Question When the Agency Actually Terminated declarations of the agent made during the entire period as to which there is evidence to show the existence of the agency are admissible. Porter *v.* Adams, 115 Ill. App. 439.

Declarations Made Before the Agency Arose are admissible. Ohly *v.* Mendham, (Supm. Ct. App. T.) 104 N. Y. Supp. 413.

694. 1. *Alabama.* — Robinson *v.* Green, (Ala. 1906) 43 So. 797; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 627.

Arkansas. — Choctaw, etc., R. Co. *v.* Rolfe, 76 Ark. 220, 88 S. W. 870.

California. — Waldeck *v.* Pacific Coast Steamship Co., 2 Cal. App. 167, 83 Pac. 158; Bundy *v.* Sierra Lumber Co., 149 Cal. 772, 87 Pac. 622.

Georgia. — Georgia R., etc., Co. *v.* Harris, 1 Ga. App. 714, 57 S. E. 1076; Lizer *v.* Melton, (Ga. 1907) 58 S. E. 1055.

Illinois. — Prussian Nat. Ins. Co. *v.* Empire Catering Co., 113 Ill. App. 67.

Kentucky. — Peyton *v.* Old Woolen Mills Co., (Ky. 1906) 91 S. W. 719; Shelbyville Water, etc., Co. *v.* McDade, (Ky. 1906) 92 S. W. 568; Gray Tie Co. *v.* Clark, 98 S. W. 1000, 30 Ky. L. Rep. 409.

Massachusetts. — Garfield *v.* Peerless Motor Car Co., 189 Mass. 395, 75 N. E. 695.

Missouri. — Redmon *v.* Metropolitan St. R. Co., 185 Mo. 1, 84 S. W. 26; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 121.

New Mexico. — Eagle Min., etc., Co. *v.* Hamilton, (N. Mex. 1907) 91 Pac. 918.

New York. — Campbell *v.* Emslie, 101 N. Y. App. Div. 369, 91 N. Y. Supp. 1069, *affirmed* 184 N. Y. 589, 77 N. E. 1183.

North Carolina. — Brittain *v.* Westall, 137 N. Car. 30, 49 S. E. 54.

Oregon. — Hildebrand *v.* United Artisans, (Oregon 1907) 91 Pac. 542.

Pennsylvania. — Matteson *v.* New York Cent., etc., R. Co., 218 Pa. St. 527, 67 Atl. 847.

Texas. — Waggoner *v.* Snody, 98 Tex. 512, 85 S. W. 1134, *reversing* 36 Tex. Civ. App. 514, 82 S. W. 355; International, etc., R. Co. *v.* Carr, (Tex. Civ. App. 1905) 91 S. W. 858; Austin *v.* Nuchols, (Tex. Civ. App. 1906) 94 S. W. 336; Gaines *v.* Perry, (Tex. Civ. App. 1907) 102 S. W. 755.

"'The coincident rule' — that is, that the declarations or admissions must be strictly contemporaneous with the act, which obtains in some jurisdictions — does not prevail in this state." Austin *v.* Nuchols, (Tex. Civ. App. 1906) 94 S. W. 336.

695. 2. Harris *v.* Carstens Packing Co., 43 Wash. 647, 86 Pac. 1125.

3. *United States.* — The Maurice, 135 Fed. 516, 66 C. C. A. 228; Walker Mfg. Co. *v.* Knox, 136 Fed. 334, 69 C. C. A. 160; Inman *v.* Dudley, etc., Lumber Co., 146 Fed. 449, 76 C. C. A. 659.

Alabama. — Southern R. Co. *v.* Reeder, (Ala. 1907) 44 So. 699.

California. — Waldeck *v.* Pacific Coast Steamship Co., 2 Cal. App. 167, 83 Pac. 158.

Georgia. — Miller *v.* McKenzie, 126 Ga. 746, 55 S. E. 952.

Illinois. — Helbig *v.* Citizens Ins. Co., 120 Ill. App. 58.

Indiana. — Ft. Wayne, etc., Traction Co. *v.* Crosbie, (Ind. 1907) 81 N. E. 474, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 695.

Iowa. — Alquist *v.* Eagle Iron Works, 126 Iowa 67, 101 N. W. 520.

Kentucky. — Illinois Cent. R. Co. *v.* Winslow, 119 Ky. 877, 84 S. W. 1175; Kentucky, etc., Bridge, etc., Co. *v.* Nuttall, (Ky. 1906) 96 S. W. 1131.

Massachusetts. — McDonough *v.* Boston El. R. Co., 191 Mass. 509, 78 N. E. 141.

Missouri. — Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12.

Nebraska. — Shoemaker *v.* Commercial Union Assur. Co., (Neb. 1906) 106 N. W. 316.

New York. — Harkins *v.* Queen Ins. Co., 106 N. Y. App. Div. 170, 94 N. Y. Supp. 140; Hoffman *v.* Metropolitan Express Co., 111 N. Y. App. Div. 407, 97 N. Y. Supp. 838; Gardner *v.* Schenectady R. Co., 113 N. Y. App. Div. 133, 98 N. Y. Supp. 1034; Weinstein *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 468, 102 N. Y. Supp. 512.

Oregon. — Alden *v.* Grande Ronde Lumber Co., 46 Oregon 593, 81 Pac. 385.

Rhode Island. — Havens *v.* Rhode Island Suburban R. Co., 26 R. I. 50, 58 Atl. 247, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 695.

South Dakota. — Klingaman *v.* Fish, etc., Co., 19 S. Dak. 139, 102 N. W. 601.

Tennessee. — See American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

Texas. — Houston, etc., R. Co. *v.* Laforge, (Tex. Civ. App. 1905) 84 S. W. 1072; Waggoner *v.* Snody, 98 Tex. 512, 85 S. W. 1134, *reversing* 36 Tex. Civ. App. 514, 82 S. W. 355; Austin *v.* Forbis, (Tex. 1905) 89 S. W. 405; International, etc., R. Co. *v.* Carr, (Tex. Civ. App. 1905) 91 S. W. 858; Opet *v.* Denzer, (Tex. Civ. App. 1906) 93 S. W. 527; St. Louis, etc., R. Co. *v.* Frazar, (Tex. Civ. App. 1906) 97 S. W. 325.

Virginia. — Finch *v.* Causey, (Va. 1907) 57 S. E. 562.

Washington. — Cook *v.* Stimson Mill Co., 36 Wash. 36, 78 Pac. 39.

West Virginia. — Ravenswood Bank *v.* Wetzel, 58 W. Va. 7, 50 S. E. 886, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 695.

Wisconsin. — Garske *v.* Ridgeville, 123 Wis. 503, 102 N. W. 22; Manning *v.* School Dist. No. 6, 124 Wis. 84, 102 N. W. 356.

Under This Rule. — Wallace *v.* North Alabama Traction Co., 145 Ala. 682, 40 So. 89; Stecher Cooperage Works *v.* Steadman, 78 Ark. 381, 94 S. W. 41; Chicago, etc., R. Co. *v.* Keegan, 112 Ill. App. 338; Straight Creek Coal Co. *v.* Haney, (Ky. 1906) 87 S. W. 1114; Illinois Cent. R. Co. *v.* Houchins, 89 S. W. 530, 28 Ky. L. Rep. 499; Bachant *v.* Boston, etc., R. Co., 187 Mass. 392, 73 N. E. 642; Butler *v.* Detroit, etc., R. Co., 138 Mich. 206, 101 N. W. 232; Redmon *v.* Metropolitan St. R. Co., 185 Mo. 1, 84 S. W. 26; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12; Louisville, etc., R. Co. *v.* Bohan, 116 Tenn. 271, 94 S. W. 84.

698. 1. Chouteau Land, etc., Co. *v.* Chrisman, 204 Mo. 371, 102 S. W. 973; Havens *v.* Rhode Island Suburban R. Co., 26 R. I. 50, 58 Atl. 247, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 698; Three States Lumber Co. *v.* Blanks, (Tenn. 1907) 102 S. W. 79.

2. Mugge *v.* Jackson, 50 Fla. 239, 39 So. 157, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 698, 699; Kirchheimer *v.* Barrett, 125 Ill. App. 56.

6. Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703.

7. Horseshoe Min. Co. *v.* Miner's Ore Sampling Co., 147 Fed. 517; Daneri *v.* Gazzola, 2 Cal. App. 351, 83 Pac. 455; Compher *v.* Browning, 219 Ill. 429, 76 N. E. 678; Preston *v.* Davis, 112 Ill. App. 636; Kirchheimer *v.* Barrett, 125 Ill. App. 56; Everett *v.* Marston, 186 Mo. 587, 85 S. W. 540; Matousek *v.* Bohemian Roman Catholic First Cent. Union, 192 Mo.

588, 91 S. W. 538; Chouteau Land, etc., Co. *v.* Chrisman, (Mo. 1907) 102 S. W. 973; Stemmler *v.* New York, 179 N. Y. 473, 72 N. E. 581; J. L. Roper Lumber Co. *v.* Elizabeth City Lumber Co., 137 N. Car. 431, 49 S. E. 946; Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703.

A Mere Statement by One Attorney that Something Is Conceded, when nothing further is said about it, does not constitute a formal admission. People *v.* Markowitz, 119 N. Y. App. Div. 841, 104 N. Y. Supp. 872. See also Cadigan *v.* Crabtree, 192 Mass. 233, 78 N. E. 412.

699. 2. Daneri *v.* Gazzola, 2 Cal. App. 351, 83 Pac. 455, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 699; Moynahan *v.* Perkins, (Colo. 1906) 85 Pac. 1132; Kirchheimer *v.* Barrett, 125 Ill. App. 56; Stemmler *v.* New York, 179 N. Y. 473, 72 N. E. 581. See also Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

Whether Admissions General or Intended for Former Trial Only, Question for Court. — *Compare* Kirchheimer *v.* Barrett, 125 Ill. App. 56.

3. Miller *v.* U. S., 133 Fed. 337, 66 C. C. A. 399.

700. 2. McKee *v.* Owen, (Supm. Ct. App. T.) 104 N. Y. Supp. 373.

After Husband's Agency Has Ceased. — Hartman *v.* Thompson, 104 Md. 389, 65 Atl. 117.

3. Hoyt *v.* Zumwalt, 149 Cal. 381, 86 Pac. 600.

Wife's Title Depending on Husband's. — Where a wife's title to lands is derived from her husband, declarations, prior to his death, impeaching his title, are inadmissible against her. Hoyt *v.* Zumwalt, 149 Cal. 381, 86 Pac. 600.

701. 1. **In an Action for the Wrongful Death of the Wife,** brought by the husband, her admissions in matters relevant to the issue are admissible. Hardin *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 88 S. W. 440.

2. Ham *v.* Brown, 2 Ga. App. 71, 58 S. E. 316; Shesler *v.* Patton, 114 N. Y. App. Div. 846, 100 N. Y. Supp. 286.

702. 1. State *v.* Werner, (N. Dak. 1907) 112 N. W. 60, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 701, 702.

3. Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388; Knott *v.* Peterson, 125 Iowa 404, 101 N. W. 173; Opet *v.* Denzer, (Tex. Civ. App. 1906) 93 S. W. 527; Jangraw *v.* Perkins, 79 Vt. 107, 64 Atl. 449; Phillips *v.* Eggert, (Wis. 1907) 113 N. W. 686.

Admissions of Surety. — That an admission of continuing liability made by one surety is inadmissible against his cosurety is no ground for excluding it. Hunter *v.* Porter, 133 Iowa 391, 109 N. W. 284.

703. 1. Opet *v.* Denzer, (Tex. Civ. App. 1906) 93 S. W. 527.

"Admissions made by the legal representative of an estate, after his letters have been revoked, are inadmissible against the surety." Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388.

2. Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388.

704. 1. Summerville *v.* Penn Drilling Co., 119 Ill. App. 152; Whaples *v.* Fahys, 109 N. Y. App. Div. 594, 96 N. Y. Supp. 323; Pearsall *v.* Tennessee Cent. R. Co., 2 Tenn. Ch. App. 682; Peters *v.* Nolan Coal Co., (W. Va. 1907) 56 S. E. 735, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 703.

707. 1. **Statements Made by a Tenant in Common** recognizing the rights of his cotenant are admissible as admissions against interest where the tenant making the statement claims to have acquired adverse possession. Loranger *v.* Carpenter, 148 Mich. 549, 112 N. W. 125.

3. Johnson *v.* Johnson, (Tex. Civ. App. 1905) 85 S. W. 1023.

5. Fothergill *v.* Fothergill, 129 Iowa 93, 105 N. W. 377; King *v.* Gilson, 191 Mo. 307, 90 S. W. 367; Matter of Myer, 184 N. Y. 54, 76 N. E. 920, *reversing* 100 N. Y. App. Div. 512, 91 N. Y. Supp. 1104; Moore *v.* Caldwell, 27 Ohio Cir. Ct. 449.

708. 1. Illinois Cent. R. Co. *v.* Houchins, 89 S. W. 530, 28 Ky. L. Rep. 499; Krens *v.* State, (Neb. 1905) 106 N. W. 27.

4. Dondero *v.* O'Hara, 3 Cal. App. 633, 86 Pac. 985; Mitchem *v.* Allen, 128 Ga. 407, 57 S. E. 721.

After Dissolution. — Peoria Scrap Iron Co. *v.* Cohen, 113 Ill. App. 30; Mackintosh *v.* Kimball, 101 N. Y. App. Div. 494, 92 N. Y. Supp. 132.

710. 1. Dondero *v.* O'Hara, 3 Cal. App. 633, 86 Pac. 985.

A Statement Made in Reference to the Assets and Liabilities of a Firm to a Commercial Agency when not adopted by the partner against whom it is sought to be used is not made respecting a partnership transaction in such sense that the law makes the statement of one partner the declaration of the others. Kliger *v.* Rosenfield, 120 N. Y. App. Div. 396, 105 N. Y. Supp. 214.

3. Strode *v.* Gilpin, 187 Mo. 383, 86 S. W. 77; Franklin *v.* Hoadley, 115 N. Y. App. Div. 538, 101 N. Y. Supp. 374; Providence Mach. Co. *v.* Browning, 70 S. Car. 148, 49 S. E. 325. But see Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149.

As to Who Constitute the Partnership, the declarations of a conceded partner are inadmissible. Rector *v.* Robins, 74 Ark. 437, 86 S. W. 667.

711. 3. *California.* — People *v.* Smith, (Cal. 1907) 91 Pac. 511.

Colorado. — Smith *v.* People, (Colo. 1907) 88 Pac. 453.

Indiana. — Sanderson *v.* State, (Ind. 1907) 82 N. E. 525.

Indian Territory. — Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

Maryland. — Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

Missouri. — State *v.* Ruck, 194 Mo. 416, 92 S. W. 706; State *v.* Forshee, 199 Mo. 168, 97 S. W. 932; State *v.* Roberts, (Mo. 1907) 100 S. W. 484.

Montana. — State *v.* Allen, 34 Mont. 403, 87 Pac. 177.

New York. — Lederer *v.* Adler, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 564, 92 N. Y. Supp. 827.

Oregon. — State *v.* Ryan, 47 Oregon 338, 82 Pac. 703.

Texas. — Smith *v.* State, (Tex. Crim. 1905) 89 S. W. 817; Henderson County *v.* Carpenter, (Tex. Civ. App. 1906) 98 S. W. 413.

Wisconsin. Schultz *v.* State, (Wis. 1907) 113 N. W. 428.

4. *United States.* — U. S. *v.* Francis, 144 Fed. 520.

Arkansas. — Chapline *v.* State, 77 Ark. 444, 95 S. W. 477; Butt *v.* State, 81 Ark. 173, 98 S. W. 723.

California. — People *v.* Smith, (Cal. 1907) 91 Pac. 511.

Colorado. — Smith *v.* People, (Colo. 1907) 88 Pac. 453.

Illinois. — Christensen *v.* People, 114 Ill. App. 40, *judgment affirmed* 216 Ill. 354, 75 N. E. 108.

Indiana. — Sanderson *v.* State, (Ind. 1907) 82 N. E. 525.

Indian Territory. — Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

Kentucky. — Hall *v.* Com., (Ky. 1906) 93 S. W. 904; Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348.

Louisiana. — State *v.* Barrett, 117 La. 1086, 42 So. 513.

Maryland. — Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

Missouri. — Meier *v.* Buchter, 197 Mo. 68, 94 S. W. 883; State *v.* Forshee, 199 Mo. 142, 97 S. W. 932; State *v.* Vaughan, 200 Mo. 1, 98 S. W. 2.

Montana. — State *v.* Allen, 34 Mont. 403, 87 Pac. 177.

New Mexico. — Territory *v.* Neatherlin, (N. Mex. 1906) 85 Pac. 1044.

New York. — Lederer *v.* Adler, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 564, 92 N. Y. Supp. 827.

Oregon. — State *v.* Ryan, 47 Oregon 338, 82 Pac. 703.

Texas. — Nelson *v.* State, (Tex. Crim. 1905) 87 S. W. 143; Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041; Shelley *v.* Nolen, (Tex. Civ. App. 1905) 88 S. W. 524; Henderson County *v.* Carpenter, (Tex. Civ. App. 1906) 98 S. W. 413.

Washington. — State *v.* Dilley, 44 Wash. 207, 87 Pac. 133.

West Virginia. — State *v.* Grove, (W. Va. 1907) 57 S. E. 296.

Wisconsin. — Schultz *v.* State, (Wis. 1907) 113 N. W. 428.

It Is a Question of Fact for the jury whether the declarations were made in furtherance of a common design. State *v.* Dilley, 44 Wash. 207, 87 Pac. 133.

712. 1. *United States.* — U. S. *v.* Richards, 149 Fed. 443.

Arkansas. — Chapline *v.* State, 77 Ark. 444, 95 S. W. 477.

California. — People *v.* Murphy, 146 Cal. 502, 80 Pac. 709.

Colorado. — Smith *v.* People, (Colo. 1907) 88 Pac. 453.

Georgia. — Harrell *v.* State, 121 Ga. 607, 49 S. E. 703; Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1.

Illinois. — Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770.

Indiana. — Sanderson *v.* State, (Ind. 1907) 82 N. E. 525.

Iowa. — State *v.* Donovan, 125 Iowa 239, 101 N. W. 122; State *v.* Dickerhoff, 127 Iowa 404, 103 N. W. 350; State *v.* Arthur, (Iowa 1906) 109 N. W. 1083.

Kentucky. — Hall *v.* Com., (Ky. 1906) 93 S. W. 904.

Louisiana. — State *v.* Barrett, 117 La. 1086, 42 So. 513.

Massachusetts. — Com. *v.* Clancy, 187 Mass. 191, 72 N. E. 842.

Missouri. — State *v.* Darling, 199 Mo. 168, 97 S. W. 592; State *v.* Roberts, (Mo. 1907) 100 S. W. 484.

Montana. — State *v.* Allen, 34 Mont. 403, 87 Pac. 177.

New Mexico. — Territory *v.* Neatherlin, (N. Mex. 1906) 85 Pac. 1044.

New York. — Miller *v.* Harris, 117 N. Y. App. Div. 395, 102 N. Y. Supp. 604.

Oklahoma. — Wells *v.* Territory, 14 Okla. 436, 78 Pac. 124.

Oregon. — State *v.* Ryan, 47 Oregon 338, 82 Pac. 703; State *v.* White, 48 Oregon 416, 87 Pac. 137.

Texas. — Nelson *v.* State, (Tex. Crim. 1905) 87 S. W. 143; Whittle *v.* State, (Tex. Crim. 1906) 95 S. W. 1084; Henderson *v.* State, (Tex. Crim. 1906) 96 S. W. 37.

Wisconsin. — Schutz *v.* State, 125 Wis. 452, 104 N. W. 90.

Made in Absence of the Other Conspirators. — U. S. *v.* Francis, 144 Fed. 520; U. S. *v.* Richards, 149 Fed. 443; Toliver *v.* State, 142 Ala. 3, 38 So. 801; Knox *v.* State, 164 Ind. 226, 73 N. E. 255; Sanderson *v.* State, (Ind. 1907) 82 N. E. 525; State *v.* Dickerhoff, 127 Iowa 404, 103 N. W. 350; State *v.* Caine, (Iowa 1907) 111 N. W. 443; Hall *v.* Com., (Ky. 1907) 101 S. W. 376; State *v.* Copeman, 186 Mo. 108, 84 S. W. 942; State *v.* Darling, 199 Mo. 168, 97 S. W. 592; State *v.* Allen, 34 Mont. 403, 87 Pac. 177; Nelson *v.* State, (Tex. Crim. 1905) 87 S. W. 143; Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041; Green *v.* State, (Tex. Crim. 1905) 89 S. W. 838; State *v.* Dilley, 44 Wash. 207, 87 Pac. 133; State *v.* Grove, (W. Va. 1907) 57 S. E. 296.

It is not necessary to the admissibility of the declarations of a conspirator, made in the absence of his co-conspirators, to first require the witness to fix the time and place of the occurrence and to give the names of the persons present at the time. State *v.* Allen, 34 Mont. 403, 87 Pac. 177.

Made After Completion or Abandonment of Enterprise — *Arkansas.* — Benton *v.* State, 78 Ark. 284, 94 S. W. 688.

California. — People *v.* Smith, (Cal. 1907) 91 Pac. 511.

Colorado. — Smith *v.* People, (Colo. 1907) 88 Pac. 453.

District of Columbia. — Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337.

Indian Territory. — Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

Kentucky. — Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348.

Maryland. — Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

Missouri. — State *v.* Myers, 198 Mo. 225, 94 S. W. 242; State *v.* Forshee, 199 Mo. 142, 97 S. W. 932; State *v.* Roberts, (Mo. 1907) 100 S. W. 484.

Montana. — State *v.* Wells, 33 Mont. 291, 83 Pac. 476.

New York. — Lederer *v.* Adler, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 564, 92 N. Y. Supp. 827.

South Carolina. — State *v.* Philips, 73 S. Car. 236, 53 S. E. 370.

Texas. — Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041; Watson *v.* State, (Tex. Crim. 1905) 87 S. W. 1158; Parnell *v.* State, (Tex. Crim. 1906) 98 S. W. 269; Shiflett *v.* State, (Tex. Crim. 1907) 102 S. W. 1147.

Washington. — See State *v.* Mann, 39 Wash. 144, 81 Pac. 561.

West Virginia. — State *v.* McCoy, (W. Va. 1907) 57 S. E. 294.

But where the conspiracy includes a common design to fabricate a defense, after the principal act is done, declarations of one co-conspirator in furtherance of such design are admissible against all, though made subsequent to the principal act. State *v.* Dilley, 44 Wash. 207, 87 Pac. 133.

Not Competent Against One When Made Before His Connection with Enterprise. — State *v.* Allen, 34 Mont. 403, 87 Pac. 177. But see Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166. *Compare* Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348, holding that it is immaterial at what time any one entered into the conspiracy, so long as the declaration was made in furtherance of the common design.

An act contemplated by the terms of the conspiracy to be performed after the perpetration of the crime is admissible. Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1.

713. **1.** *United States.* — U. S. *v.* Francis, 144 Fed. 520; U. S. *v.* Richards, 149 Fed. 443.

Alabama. — Morris *v.* State, 146 Ala. 66, 41 So. 274.

Arkansas. — Butt *v.* State, 81 Ark. 173, 98 S. W. 723.

Georgia. — Harrell *v.* State, 121 Ga. 607, 49 S. E. 703; Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1.

Indiana. — Sanderson *v.* State, (Ind. 1907) 82 N. E. 525.

Indian Territory. — Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

Iowa. — State *v.* Crofford, 133 Iowa 478, 110 N. W. 921; State *v.* Caine, (Iowa 1907) 111 N. W. 443.

Kentucky. — Hall *v.* Com., (Ky. 1906) 93 S. W. 904; Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348.

Maryland. — Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

Massachusetts. — Com. *v.* Clancy, 187 Mass. 191, 72 N. E. 842.

Missouri. — Meier *v.* Buchter, 197 Mo. 68, 94 S. W. 883; State *v.* Darling, 199 Mo. 168, 97 S. W. 592; State *v.* Roberts, (Mo. 1907) 100 S. W. 484.

New York. — Lederer *v.* Adler, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 564, 92 N. Y. Supp. 827.

Oregon. — State *v.* Quen, 48 Oregon 347, 86 Pac. 791; State *v.* White, 48 Oregon 416, 87 Pac. 137.

Texas. — Whittle *v.* State, (Tex. Crim. 1906) 95 S. W. 1084; Nelson *v.* State, (Tex. Crim. 1905) 87 S. W. 143; Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041; Saye *v.* State, (Tex. Crim. 1907) 99 S. W. 551; Ripley *v.* State, (Tex. Crim. 1907) 100 S. W. 943.

Vermont. — Mower *v.* McCarthy, 79 Vt. 142, 64 Atl. 578.

Washington. — State *v.* Dilley, 44 Wash. 207, 87 Pac. 133.

West Virginia. — State *v.* Grove, (W. Va. 1907) 57 S. E. 296.

Wisconsin. — Schultz *v.* State, (Wis. 1907) 113 N. W. 428.

What a Sufficient Foundation. — The conspiracy may be established by circumstantial evidence. U. S. *v.* Richards, 149 Fed. 443; Butt *v.* State, 81 Ark. 173, 98 S. W. 723; Sanderson *v.* State, (Ind. 1907) 82 N. E. 525; State *v.* Crofford, 133 Iowa 478, 110 N. W. 921; Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348; State *v.* Darling, 199 Mo. 168, 97 S. W. 592; State *v.* Ryan, 47 Oregon 338, 82 Pac. 703; State *v.* White, 48 Oregon 416, 87 Pac. 137; Field *v.* Field, (Tex. Civ. App. 1905) 87 S. W. 726; State *v.* Dilley, 44 Wash. 207, 87 Pac. 133.

"In order to justify the admission of such evidence the proof, in the first place, need only show, *prima facie*, in the opinion of the judge, that the conspiracy existed." State *v.* Roberts, (Mo. 1907) 100 S. W. 484.

Whether the proof is sufficient to make a *prima facie* showing of conspiracy is a preliminary fact to be determined by the court. Schultz *v.* State, (Wis. 1907) 113 N. W. 428.

It is the province of the court to first determine whether a sufficient predicate has been laid to admit the declarations, unless there is a conflict in the testimony in regard to the predicate, in which case it is the duty of the court to instruct the jury that before considering the declarations they must first find that the conspiracy is shown independent of such declarations. Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041; Nelson *v.* State, (Tex. Crim. 1905) 87 S. W. 143.

When Receivable Before Prima Facie Case Established. — To the same effect as Hall *v.* State, 31 Fla. 176, cited in the original note, are Butt *v.* State, 81 Ark. 173, 98 S. W. 723; People *v.* Stokes, (Cal. App. 1907) 89 Pac. 997; Lawrence *v.* State, 103 Md. 17, 63 Atl. 96; State *v.* Darling, 199 Mo. 168, 97 S. W. 592; State *v.* Miller, 191 Mo. 587, 90 S. W. 767; Wells *v.* Territory, 14 Okla. 436, 78 Pac. 124; State *v.* White, 48 Oregon 416, 87 Pac. 137; State *v.* Ryan, 47 Oregon 338, 82 Pac. 703; State *v.* Dilley, 44 Wash. 207, 87 Pac. 133; Schultz *v.* State, (Wis. 1907) 113 N. W. 428. See also Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337.

Whether Conspiracy Existed Prima Facie Question for Court. — Schutz *v.* State, 125 Wis. 452, 104 N. W. 90.

Error Cured by Subsequent Proof of Conspiracy. — People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364, *rehearing denied* 2 Cal. App. 210, 84 Pac. 370.

2. A stranger's admission is not admissible when not made in the presence or brought to the knowledge of the party against whom it is sought to be used. Preston *v.* Newcomb, 149 Mich. 512, 113 N. W. 29.

714. 1. C. W. Zimmerman Mfg. Co. *v.* Dunn, (Ala. 1907) 44 So. 533; People *v.* Ouderkirk, 120 N. Y. App. Div. 650, 105 N. Y. Supp. 134; J. L. Roper Lumber Co. *v.* Elizabeth City Lumber Co., 137 N. Car. 431, 49 So. 946; Sawyer *v.* Roanoke R., etc., Co., (N. Car. 1907) 58 S. E. 598.

Uncertainty of Statement. — An indefinite admission in disparagement of title is inadmissible. Munsey *v.* Hanly, 102 Me. 423, 67 Atl. 217.

2. Maher *v.* Empire L. Ins. Co., 110 N. Y. App. Div. 723, 96 N. Y. Supp. 496.

3. Kidwell *v.* Ketler, 146 Cal. 12, 79 Pac. 514.

4. *Alabama.* — C. W. Zimmerman Mfg. Co. *v.* Dunn, (Ala. 1907) 44 So. 533; Southern R. Co. *v.* Reeder, (Ala. 1907) 44 So. 699.

Georgia. — Georgia R., etc., Co. *v.* Wallace, 122 Ga. 547, 50 S. E. 478.

Idaho. — Whitney *v.* Cleveland, (Idaho 1907) 91 Pac. 176.

Illinois. — Alminowicz *v.* People, 117 Ill. App. 415.

Indiana. — Indianapolis Northern Traction Co. *v.* Dunn, (Ind. App. 1905) 76 N. E. 269.

Iowa. — Castner *v.* Chicago, etc., R. Co., 126 Iowa 581, 102 N. W. 499; Millhollen *v.* A. Y. McDonald, etc., Mfg. Co., (Iowa 1907) 112 N. W. 812.

Kentucky. — Illinois Cent. R. Co. *v.* Colly, (Ky. 1905) 86 S. W. 536.

Maryland. — Biggs *v.* Langhammer, 103 Md. 94, 63 Atl. 198; Acker, etc., Co. *v.* McGaw, (Md. 1907) 68 Atl. 17.

New York. — O'Brien *v.* New York City R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 228, 105 N. Y. Supp. 238; Doncourt *v.* Denton, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 594, 105 N. Y. Supp. 906.

Pennsylvania. — Kaufman *v.* Pittsburg, etc., R. Co., 210 Pa. St. 440, 60 Atl. 2; Field *v.* Schuster, 26 Pa. Super. Ct. 82.

Rhode Island. — Wrynn *v.* Downey, 27 R. I. 454, 63 Atl. 401.

Texas. — Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49; Wall *v.* Melton, (Tex. Civ. App. 1906) 94 S. W. 358; St. Louis Southwestern R. Co. *v.* Kern, (Tex. Civ. App. 1907) 100 S. W. 971.

West Virginia. — Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

Admissions Made Before Compromise. — "Where a party makes admissions without regard to a compromise, and when it does not appear that any compromise or proposition to compromise is in view, the fact that she may afterwards propose that the parties compromise will not have a retroactive effect, so as to prevent her independent admissions from being proved." McBride *v.* Georgia R., etc., Co., 125 Ga. 515, 54 S. E. 674.

A Tender After Suit Brought is a conclusive admission of the cause of action as alleged in the complaint. Wells *v.* Missouri-Edison Electric Co., 108 Mo. App. 607, 84 S. W. 204. But see Young *v.* Stickney, 46 Oregon 101, 79 Pac. 345.

For Court to Determine Whether Offer Is for Compromise. — Biggs *v.* Langhammer, 103 Md. 94, 63 Atl. 198.

715. 1. State *v.* Nugent, (Iowa 1907) 111 N. W. 927; Hurst *v.* Williams, (Ky. 1907) 102 S. W. 1176; Cullen *v.* Insurance Co. of North America, (Mo. App. 1907) 104 S. W. 117; O'Brien *v.* New York City R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 228, 105 N. Y. Supp. 238.

Admissible on Issue of Fraudulent Settlement. — An offer to settle for a larger sum than that for which an alleged fraudulent settlement was made is competent as tending to prove the averment of fraud, but not to establish the liability of the party making the offer. Loveman *v.* Birmingham R., etc., Co., (Ala. 1906) 43 So. 411.

716. 1. Baker *v.* Haynes, (Ala. 1906) 40 So. 968; Miller *v.* Kinsel, 20 Colo. App. 346, 78 Pac. 1075; Whitney *v.* Cleveland, (Idaho 1907) 91 Pac. 176; Alminowicz *v.* People, 117 Ill. App. 415; Kuhn *v.* Williams, 124 Ill. App. 390; McCrum *v.* McCrum, (Ind. App. 1905) 76 N. E. 415; Milhollen *v.* A. Y. McDonald, etc., Mfg. Co., (Iowa 1907) 112 N. W. 812; Biggs *v.* Langhammer, 103 Md. 94, 63 Atl. 198.

4. Must Relate to Matters Material to the Issue. — Womble *v.* Wilbur, 3 Cal. App. 535, 86 Pac. 916; Nichols-Shepard Co. *v.* Ringler, (Iowa 1907) 112 N. W. 545; Sibley *v.* Nason, (Mass. 1907) 81 N. E. 887; Young *v.* Kinney, (Neb. 1907) 112 N. W. 558; Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 113 N. W. 524; Hentzler *v.* Weniger, 32 Pa. Super. Ct. 164.

5. Hunter *v.* Porter, 133 Iowa 391, 109 N. W. 283; Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275.

Admissions by Telephone are competent evidence. Edge *v.* Southwest Missouri Electric R. Co., (Mo. 1907) 104 S. W. 90. But the voice should be identified. Holzhauer *v.* Sheeny, (Ky. 1907) 104 S. W. 1034; Swing *v.* Walker, 27 Pa. Super. Ct. 366.

717. 3. Hill *v.* Hill, (Ky. 1906) 92 S. W. 924.

Letters. — Nichols-Shepard Co. *v.* Ringler, (Iowa 1907) 112 N. W. 543; Hubbard *v.* Cheney, (Kan. 1907) 91 Pac. 793; Commercial Wharf Corp. *v.* Boston, (Mass. 1907) 80 N. E. 645; Lembeck *v.* Stiefel, 71 N. J. L. 320, 59 Atl. 460; Chamberlain *v.* Iba, 181 N. Y. 486, 74 N. E. 481; Schreiner *v.* Kissock, (Supm. Ct. App. T.) 91 N. Y. Supp. 28; Kabat *v.* Moore, 48 Oregon 191, 85 Pac. 506; McGaughey *v.* American Nat. Bank, (Tex. Civ. App. 1905) 92 S. W. 1003; State *v.* Dilley, 44 Wash. 207, 87 Pac. 133.

Notes, Bonds, etc. — Lefevre *v.* Silo, 112 N. Y. App. Div. 464, 98 N. Y. Supp. 321.

A statement in a bond given by the defendant in an action for conversion to release from attachment in the cause the property alleged to have been converted, which tended to controvert his denial of the conversion declared on, or his claim and testimony at the trial, in relation to the title to the property, was an admission by him, which should have been received in evidence. Southern Car Mfg., etc., Co. *v.* Wagner, (N. Mex. 1907) 89 Pac. 259.

Entries in Books of Party, Made by Himself. — Hill *v.* Hill, 115 La. 490, 39 So. 503.

Tax List. — Fudge *v.* Marquell, 164 Ind. 447, 72 N. E. 565.

Tax Returns Admissible as Admission. — Ivey *v.* Cowart, 124 Ga. 159, 52 S. E. 436.

Memoranda, Receipts, etc. — Smith *v.* Miller, (Ala. 1907) 44 So. 399; Dunbar Box, etc., Co. *v.* Martin, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 312, 103 N. Y. Supp. 91; Peters *v.* Nolan Coal Co., (W. Va. 1907) 56 S. E. 735.

The admission of a receipt executed by a person not a party to the action is improper. Walnut Ridge Mercantile Co. *v.* Cohn, 79 Ark. 338, 96 S. W. 413.

A "Produce Price Current" stating the market price of apples at a given place between specified dates is admissible as an admission by the party sending it of the state of the market. Weidner *v.* Olivit, 108 N. Y. App. Div. 122, 96 N. Y. Supp. 37, *affirmed* in (N. Y. 1907) 81 N. E. 1178.

Deed. — Where the original deed is lost and a duplicate deed is given in its place which contains a statement that it is a duplicate, it is an admission of the execution of the original deed. Hickory *v.* Southern R. Co., 137 N. Car. 189, 49 S. E. 202.

Book of Accounts. — An entry, indefinite and detached from the usual course of business between the parties, though contained in a book of accounts, is admissible. Bader *v.* Ferguson, (Mo. App. 1906) 94 S. W. 836.

An admission by a deceased person that an account kept in a certain book is correct is not sufficient to warrant the admission in evidence of a copy of this account in another book. Fitch *v.* Martin, (Neb. 1905) 104 N. W. 1072.

Books of Account Kept by Agent Admissible. — Wright *v.* Chicago, etc., R. Co., 118 Mo. App. 392, 94 S. W. 555.

Corporate Records are admissible on the issue as to the time at which two trains left a given place. Louisville, etc., R. Co. *v.* Hall, (Ky. 1906) 94 S. W. 26.

Minute Book Kept by Agent of Fraternal Benefit Society Admissible as Admission Against Interest. — Plattdeutsche Grot Gilde *v.* Ross, 117 Ill. App. 247.

Books Kept by Agent of Purchaser Admissible to Show Sale of Personal Property to His Principal. — Daniel Forbes Co. *v.* Leonard, 119 Ill. App. 629.

Petition and Schedules in Insolvency. — In Spotswood *v.* Spotswood, 4 Cal. App. 711, 89 Pac. 362, the court admitted in evidence the "petition and schedules in insolvency * * *, and also the assessment of his property as given by him to the assessor. * * * These instruments did not contain the land in controversy, and they were clearly admissible as an act, declaration, or omission against interest."

The Mere Appending of a Waiver of the right of administration to a petition, the contents of which were unknown, cannot have the effect to conclude the party signing the waiver as to the facts alleged in the petition. Deming *v.* Gamble, (Cal. App. 1907) 91 Pac. 408.

A Book Entry shown to a party and approved by him is invested with probative value. Britian *v.* Fender, 116 Mo. App. 93, 92 S. W. 179.

719. **1.** Boulder, etc., Ditch Co. *v.* Leggitt Ditch, etc., Co., (Colo. 1906) 86 Pac. 101.

3. Palmer Transfer Co. *v.* Eaves, (Ky. 1905) 85 S. W. 750; Rausch *v.* Briefer, 138 Mich. 287, 101 N. W. 523, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 719; Miller *v.* Loverne, etc., Co., (Neb. 1905) 105 N. W. 84; Talbot *v.* Laubheim, 188 N. Y. 421, 81 N. E. 163; People *v.* Ouderkirk, 120 N. Y. App. Div. 650, 105 N. Y. Supp. 134; Norcum *v.* Savage, 140 N. Car. 472, 53 S. E. 289; Sawyer *v.* Roanoke R., etc., Co., (N. Car. 1907) 58 S. E. 598; Masterson *v.* Heitmann, (Tex. Civ. App. 1905) 87 S. W. 227; Lewis *v.* Crouch, (Tex. Civ. App. 1905) 85 S. W. 1009; Cameron *v.* Realmuto, (Tex. Civ. App. 1907) 100 S. W. 194.

A Deposition is admissible against the maker thereof, though he is present to testify. Southern Bank *v.* Nichols, 202 Mo. 309, 100 S. W. 613; Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423.

Pleading Withdrawn. — Admissions contained in a pleading which is withdrawn are admissible. Hallowell *v.* McLaughlin, (Iowa 1907) 111 N. W. 428; Reemsnyder *v.* Reemsnyder, 75 Kan. 565, 89 Pac. 1014; Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363; Norcum *v.* Savage, 140 N. Car. 472, 53 S. E. 289; O'Connell *v.* King, 26 R. I. 544, 59 Atl. 926; Pecos, etc., R. Co. *v.* Blasengame, (Tex. Civ. App. 1906) 93 S. W. 187; Miller *v.* Drought, (Tex. Civ. App. 1907) 102 S. W. 145; Schultz *v.* Culbertson, 125 Wis. 169, 103 N. W. 234. But see Kirven *v.* Virginia-Carolina Chemical Co., 145 Fed. 288, 76 C. C. A. 172, holding that an admission in a complaint sworn to by the plaintiff's attorney which was withdrawn before the appearance of the defendant was not admissible in evidence as an admission.

Plea of Tender. — "The effect of a plea of tender is an admission of plaintiff's demand to the extent of the amount tendered." Birmingham Paint, etc., Co. *v.* Crampton, (Ala. 1905) 39 So. 1020.

Pleading of One Defendant Against Another. — Where an assignee of a mortgage sues for its foreclosure, the admissions contained in the answer of the assignor joined as defendant may be introduced by the complainant to prove his title as against the mortgagor. Langley *v.* Andrews, 142 Ala. 665, 38 So. 238.

Answer Verified by One Defendant. — Where all the defendants unite in the answer, an admission contained therein is admissible in evidence against all the defendants despite the fact that the answer was actually verified by one defendant. Talbot *v.* Laubheim, 188 N. Y. 421, 81 N. E. 163.

A Party May Testify that He Did Not Make Any Statement to his attorney which would justify the admission contained in the pleading. Galveston, etc., R. Co. *v.* Fitzpatrick, (Tex. Civ. App. 1905) 91 S. W. 355.

Application for Continuance Containing Admission Admissible in Evidence. — Scott *v.* Woodard, (Tex. Civ. App. 1905) 88 S. W. 406.

A Plea of Guilty in a criminal prosecution is admissible as an admission. Yaska *v.* Swendrzynski, (Wis. 1907) 113 N. W. 959.

An Affidavit of Defense may be used to prove the admission which it contains. Farmers', etc., Nat. Bank *v.* Elizabethtown Nat. Bank, 30 Pa. Super. Ct. 271.

720. 1. New *v.* Young, 144 Ala. 420, 41 So. 523.

Depositions. — Sizer *v.* Melton, (Ga. 1907) 58 S. E. 1055; Dreyfus *v.* St. Louis, etc., R. Co., (Mo. App. 1907) 102 S. W. 53; Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423, *affirmed* in (N. Y. 1907) 81 N. E. 1173; Providence Mach. Co. *v.* Browning, 70 S. Car. 148, 49 S. E. 325.

The mere suing out by a party of interrogatories, or taking the depositions of a witness, does not render them admissible against him as an implied admission in a subsequent litigation. Sizer *v.* Melton, (Ga. 1907) 58 S. E. 1055.

Where a deposition not taken before the proper officer has been suppressed for that reason, statements made therein are inadmissible, in the absence of proof that they were correctly written down as made by the alleged declarant, and that he signed the same. German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068, *rehearing denied* (Tex. Civ. App. 1906) 96 S. W. 760.

Admissions of Witness. — Robinson *v.* Green, (Ala. 1906) 43 So. 797; Farnum *v.* Whitman, 187 Mass. 381, 73 N. E. 473; Hillman *v.* De Rosa, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 261, 92 N. Y. Supp. 67; Thompson *v.* Mills, (Tex. Civ. App. 1907) 101 S. W. 560; Sterling *v.* De Laune, (Tex. Civ. App. 1907) 105 S. W. 1169.

Plea of Guilty in Criminal Cause Used as Admission in Civil Action. — Risdon *v.* Yates, 145 Cal. 210, 78 Pac. 641.

A Plea of Guilty, Entered in the Police Court, is admissible as an admission in a criminal prosecution for operating a pool room. Ehrlick *v.* Com., 102 S. W. 289, 31 Ky. L. Rep. 401.

Not Admissible in Criminal Proceedings. — In Rev. St. U. S., § 860, p. 66, "Congress has expressly provided that no pleading of a party, and no evidence obtained from him by means of any judicial proceeding, shall be given in evidence or in any manner used against him in any criminal proceeding." Miller *v.* U. S., 133 Fed. 337, 66 C. C. A. 399.

721. 1. Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 85 Pac. 321.

Laying Foundation. — Where a party to an action is examined as a witness in his own behalf, it is unnecessary to lay a foundation for the admission of evidence of his declarations against his own interest. Young *v.* Kinney, (Neb. 1907) 112 N. W. 558.

3. Risdon *v.* Yates, 145 Cal. 210, 78 Pac. 641; Corning *v.* Dollmeyer, 123 Ill. App. 188; Hunter *v.* Johnson, 119 Mo. App. 487, 94 S. W. 311; Badanes *v.* Feder, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 91, 93 N. Y. Supp. 478; Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275; McAvoy *v.* Commonwealth Title Ins., etc., Co., 27 Pa. Super. Ct. 271; Galveston, etc., R. Co. *v.* Fitzpatrick, (Tex. Civ. App. 1905) 91 S. W. 355; State *v.* Bean, 77 Vt. 384, 60 Atl. 807.

Where Admissions Contained in Conversation. — Mitchem *v.* Allen, 128 Ga. 407, 57 S. E. 721; St. Louis Southwestern R. Co. *v.* Frazier, (Tex. Civ. App. 1905) 87 S. W. 400.

Deposition. — Where an admission in a deposition is admitted in evidence, the party making the deposition is thereafter entitled to have the entire deposition read. Southern Bank *v.* Nichols, 202 Mo. 300, 100 S. W. 613.

722. 3. Mitchem *v.* Allen, 128 Ga. 407, 57 S. E. 721; State *v.* Freddy, 117 La. 128, 41 So. 436, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 722.

723. 1. Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 1154; Castner *v.* Chicago, etc., R. Co., 126 Iowa 581, 102 N. W. 499; Scheer *v.* Ulrich, (Wis. 1907) 113 N. W. 661.

Primary Evidence. — Purinton *v.* Purinton, 101 Me. 250, 63 Atl. 925; Young *v.* Kinney, (Neb. 1907) 112 N. W. 558.

According to the Circumstances under Which They Were Made, admissions should be given weight. Yaska *v.* Swendrzynski, (Wis. 1907) 113 N. W. 959.

Not Conclusive. — An admission contained in an abandoned pleading is not conclusive. Miller *v.* Drought, (Tex. Civ. App. 1907) 102 S W. 145.

An admission contained in a pleading is not conclusive, and evidence is admissible to controvert the fact admitted. People *v.* Ouderkirk, 120 N. Y. App. Div. 650, 105 N. Y. Supp. 134.

Admissions in a pleading which are necessarily largely matters of opinion and belief are not conclusive, and may be controverted. People *v.* Ouderkirk, 120 N. Y. App. Div. 650, 105 N. Y. Supp. 134.

The Cogency of a Pleading prepared by the attorney to establish facts admitted therein depends largely upon the fullness of consultation with and disclosure from his client. Schultz *v.* Culbertson, 125 Wis. 169, 103 N. W. 234.

2. Ladd *v.* Lookout Mountain Distilling Co., 147 Ala. 173, 40 So. 610; Castner *v.* Chicago, etc., R. Co., 126 Iowa 581, 102 N. W. 499; Des Allemands Lumber Co. *v.* Morgan City Timber Co., 117 La. 1, 41 So. 332; Zacharie's Succession, (La. 1907) 43 So. 988; Rosenwald *v.* Middlebrook, 188 Mo. 58, 86 S. W. 200.

Under Code Civ. Pro. Cal., § 2061, "evidence of the oral admissions of a party must be received with caution." Humphrey *v.* Pope, 1 Cal. App. 374, 82 Pac. 223.

Admissions Made Loosely in Conversation. — Russell *v.* Sharp, 192 Mo. 270, 91 S. W. 134; Scheer *v.* Ulrich, (Wis. 1907) 113 N. W. 661.

724. 1. Moynahan *v.* Perkins, (Colo. 1906) 85 Pac. 1132; Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363; Kabat *v.* Moore, 48 Oregon 191, 85 Pac. 506; Masterson *v.* Heitmann, (Tex. Civ. App. 1905) 87 S. W. 227; Schultz *v.* Culbertson, 125 Wis. 169, 103 N. W. 234.

An Instruction that the plaintiff's admissions against his interest are presumably true is proper. Randolph *v.* Metropolitan St. R. Co., (Mo. App. 1907) 102 S. W. 1085.

ADOPT.

724. 7. **Adopted and Approved Synonymous Terms.** — Miller *v.* Union County, 48 Oregon 266, 86 Pac. 3.

ADOPTION OF CHILDREN.

726. 2. Sheffield *v.* Franklin, (Ala. 1907) 44 So. 373; Kennedy *v.* Borah, 226 Ill. 243, 80 N. E. 767; Matter of Huyck, (Surrogate Ct.)

49 Misc. (N. Y.) 391, 99 N. Y. Supp. 502, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 726.

4. Origin Traced to Egypt. — Hockaday *v.* Lynn, 200 Mo. 456, 98 S. W. 585.

727. 4. Ministerial Act. — Burnes *v.* Burnes, 132 Fed. 485, *affirmed* (C. C. A.) 137 Fed. 781.

Texas Statute. — Conrad *v.* Herring, 36 Tex. Civ. App. 616, 83 S. W. 427.

Illinois Statute Construed in Determining Right of Inheritance. — Swick *v.* Coleman, 218 Ill. 33, 75 N. E. 807.

Pennsylvania Statute. — The act of May 19, 1887 (P. L. 125) is intended to put the adopted child on the same footing as natural children. Morgan *v.* Reel, 213 Pa. St. 81, 62 Atl. 253.

Effect of Adoption Determinate upon Law in Force at Time Thereof. — Blodgett *v.* Stowell, 189 Mass. 142, 75 N. E. 138.

Conferring of Right of Inheritance Necessary to Adoption. — Wallace's Estate, 218 Pa. St. 39, 66 Atl. 1098.

Adoption Does Not Give Right to Custody. — Logan *v.* Lennix, (Tex. Civ. App. 1905) 88 S. W. 365; White *v.* Richeson, (Tex. Civ. App. 1906) 94 S. W. 202.

728. 1. Monk *v.* McDaniel, 120 Ga. 480, 47 S. E. 931; Matter of Huyck, (Surrogate Ct.) 49 Misc. (N. Y.) 391, 99 N. Y. Supp. 502, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 728; Brown's Adoption, 25 Pa. Super. Ct. 259, *quoting* 1 Am. and Eng. Encyc. of Law (2d ed.) 728.

There must be a strict compliance with the statute in all essential particulars. Purinton *v.* Jamrock, 195 Mass. 187, 80 N. E. 802.

Substantial Compliance. — Coleman *v.* Coleman, 81 Ark. 7, 98 S. W. 733; Kennedy *v.* Borah, 226 Ill. 243, 80 N. E. 767.

Where the jurisdictional fact of residence had been inadvertently omitted from a decree, an order correcting the error *nunc pro tunc* was held to be properly made even after a lapse of fifteen years. Ward *v.* Magness, 75 Ark. 12, 86 S. W. 822.

In Sires *v.* Melvin, (Iowa 1907) 113 N. W. 106, the court said: "So far as statutory directions pertain to manifest essentials, they are to be strictly construed; * * * failure to observe nonessentials or mere matters of detail will not operate to defeat the clear intention of the parties."

The inadvertent insertion in the order of adoption of the name of the mother of the infant, where the name of the adopting parent should have been written, was held to be immaterial, and disregarded in Cubitt *v.* Cubitt, 74 Kan. 353, 86 Pac. 475.

Noncompliance with Statutory Formalities Governing Execution. — Where married men and their wives signed and acknowledged a paper of adoption, but the wives were not examined separate and apart from their husbands as required by the Missouri statute, it was held that the instrument was valid as to the men. Burnes *v.* Burnes, 132 Fed. 485.

Presumptions Favor Regularity of Adoption Proceedings. — Jossey *v.* Brown, 119 Ga. 758, 47 S. E. 350.

2. Matter of Huyck, (Surrogate Ct.) 49 Misc. (N. Y.) 391, 99 N. Y. Supp. 502, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 728.

3. Adoption Proceedings Taken under an Unconstitutional Statute are not, of themselves, sufficient to establish the making of a contract of heirship. Albring *v.* Ward, 137 Mich. 352, 100 N. W. 609.

Proof of Contract Must Be Clear and Convincing. — Grantham *v.* Gossett, 182 Mo. 651, 81 S. W. 895.

Mere Agreement to Adopt Does Not Give Rise to Heirship. — Bowins *v.* English, 138 Mich. 178, 101 N. W. 204.

729. 1. *In re* Wright, (Neb. 1907) 112 N. W. 311.

Consent Dispensed With. — Purinton *v.* Jamrock, 195 Mass. 187, 80 N. E. 802, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 729.

Where the consent of the mother has not been obtained, and it is not affirmatively shown that such consent was necessary, the presumption obtains that it was unnecessary. James *v.* James, 35 Wash. 655, 77 Pac. 1082.

Consent of Natural Parents Unnecessary on Second Adoption. — Matter of MacRae, 189 N. Y. 142, 81 N. E. 956.

730. 1. Abandonment of Child. — State *v.* Wheeler, 43 Wash. 183, 86 Pac. 394 (to the same effect as Winans *v.* Luppie, 47 N. J. Eq. 302, set out in the original note).

Where, without being given an opportunity to defend, a father had been found guilty of deserting his child, and said child's adoption had been decreed in the absence of notice to the father, the decree of adoption was held to be void. Sullivan *v.* People, 224 Ill. 468, 79 N. E. 695.

The claim that the mother had abandoned her child is not established by a mere finding of the court, unless an opportunity to defend has been given to the mother. Beatty *v.* Davenport, (Wash. 1907) 88 Pac. 1109.

It was said in Taber *v.* Douglass, 101 Me. 363, 64 Atl. 653, at page 654: "When both parents are living there can be no consent by guardian, next of kin, or next friend, unless both parents have abandoned the child and ceased to provide for its support."

Evidence Reviewed and Held Not to Establish Abandonment. — *In re* Wright, (Neb. 1907) 112 N. W. 311.

2. It was held in State *v.* Wheeler, 43 Wash. 183, 86 Pac. 394, that the statutory notice not having been given to the father, his rights as to the custody of the child remained unimpaired.

The necessity of serving notice is not obviated by a judicial finding that the parent upon whom notice should be served has abandoned the child, unless such finding be had after opportunity given to defend. Beatty *v.* Davenport, (Wash. 1907) 88 Pac. 1109.

Absence of Notice Fatal to Effective Adoption. — Sullivan *v.* People, 224 Ill. 468, 79 N. E. 695.

3. Contra. — Dupre's Succession, 116 La. 1090, 41 So. 324.

Consent of Foster Parents. — Matter of MacRae, 189 N. Y. 142, 81 N. E. 956.

Consent of Grandparents Preferred to That of Wealthier Uncle. — Holmes *v.* Derrig, 127 Iowa 625, 103 N. W. 973.

731. 1. In *Washington* any unmarried in-

habitant of the state, or any husband and wife jointly, may adopt a child. Knight *v.* Gallaway, 42 Wash. 413, 85 Pac. 21.

Difference in Age Required. — In Caldwell's Succession, 114 La. 195, 38 So. 140, it was said that under the *Massachusetts* statute the only qualification as to age is that the person adopted must be younger than the person adopting, who must be at least twenty-one years old.

"Resident" Defined. — Brown's Adoption, 25 Pa. Super. Ct. 259 (following Wolff's Appeal, 22 W. N. C. (Pa.) 93, set out in the original note).

2. Joint Adoption by Husband and Wife. Under the *Missouri* Revised Statutes (Revision of 1899, § 5247) the husband and wife can adopt jointly. Hockaday *v.* Lynn, 200 Mo. 456, 98 S. W. 585.

The *Washington* statute permits a joint adoption by the husband and wife. Knight *v.* Gallaway, 42 Wash. 413, 85 Pac. 21.

In *New York* the statute providing that a married man, not lawfully separated from his wife, may not adopt a child without her consent, has reference to an adoption under the Domestic Relations Law, and, therefore, may not be regarded as rendering *malum prohibitum* a contract of adoption not made under the statute. See Middleworth *v.* Ordway, (Supm. Ct. Tr. T.) 49 Misc. (N. Y.) 74, 98 N. Y. Supp. 10.

732. 4. Alabama. — The word "child," as used in Code Ala. 1886, § 2367, is a term of relation, and not indicative of age. Sheffield *v.* Franklin, (Ala. 1907) 44 So. 373.

Louisiana. — Act La., No. 31 of 1872, p. 79, applies only to the adoption of minors, has no repealing clause, and did not abrogate the provisions of Civ. Code, art. 214, relative to the adoption of adults. Caldwell's Succession, 114 La. 195, 38 So. 140.

733. 1. Compliance with Laws of State of Adoption Must Be Shown. — James *v.* James, 35 Wash. 650, 77 Pac. 1080.

734. 2. Sullivan *v.* People, 224 Ill. 468, 79 N. E. 695.

In State *v.* Wheeler, 43 Wash. 183, 86 Pac. 394, it was held that where an order of adoption had been made, without the court having acquired jurisdiction over the father, the petition of the mother reciting that the father had abandoned the child, such father was entitled to have the decree of adoption revoked.

Interest of Child of Paramount Consideration. — Robertson *v.* Bass, 52 Fla. 420, 42 So. 243; Smiley *v.* McIntosh, 129 Iowa 337, 105 N. W. 577; Sullivan *v.* People, 224 Ill. 468, 79 N. E. 695; Purinton *v.* Jamrock, 195 Mass. 187, 80 N. E. 802; White *v.* Richeson, (Tex. Civ. App. 1906) 94 S. W. 202.

Decree Not Revocable Because of Mere Irregularities or Clerical Mistakes. — Cubitt *v.* Cubitt, 74 Kan. 353, 86 Pac. 475.

Differences in Religious Belief No Ground for Revocation. — Purinton *v.* Jamrock, 195 Mass. 187, 80 N. E. 802.

736. 1. Mistake. — The fact that the mother of the adopted child acted under the mistaken belief that she would not long survive is not ground for setting aside the decree. Nelson *v.* Nelson, 127 Ill. App. 422.

2. Coleman *v.* Coleman, 81 Ark. 7, 98 S. W. 733; Jossey *v.* Brown, 119 Ga. 758, 47 S. E. 350; Kennedy *v.* Borah, 226 Ill. 243, 80 N. E. 767; Caldwell's Succession, 114 La. 195, 38 So. 140, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 736.

But where the court made its order of commitment on the petition of the mother, without having acquired jurisdiction of the father by the giving of the statutory notice, it was held that such order could be attacked even in a collateral proceeding, and that the adoption proceedings were void. State *v.* Wheeler, 43 Wash. 183, 86 Pac. 394.

Rule Applicable Only to Parties or Their Privies. — Beatty *v.* Davenport, (Wash. 1907) 88 Pac. 1109.

Slight Evidence Repels Collateral Attack. — Omaha Water Co. *v.* Schamel, (C. C. A.) 147 Fed. 502.

ADULTERATION.

739. 2. Sale of Food and Drugs Acts — *England.* — See the following cases construing the various provisions of these acts. Dawes *v.* Wilkinson, (1907) 1 K. B. 278; Sanders *v.* Sadler, 95 L. T. N. S. 872; Evans *v.* Weatheritt, (1907) 2 K. B. 80; Kelly *v.* Lonsdale, (1906) 2 K. B. 486; Watts *v.* Stevens, (1906) 2 K. B. 323; Lowery *v.* Hallard, (1906) 1 K. B. 398; Suckling *v.* Parker, (1906) 1 K. B. 527; Crawford *v.* Harding, (1907) Sc. Ct. of Just. 11; Worthington *v.* Kyme, 93 L. T. N. S. 546; Soutar *v.* Kerr, (1907) Sc. Ct. of Just. 49; Keeloma Dairy Co. *v.* Jones, 22 Times L. Rep. 535; Parkinson *v.* McNair, 93 L. T. N. S. 553; Tanner *v.* Dyball, 94 L. T. N. S. 539, 21 Cox C. C. 123; Rex *v.* Otto Monsted, (1906) 2 K. B. 456; Wolfenden *v.* McCulloch, 92 L. T. N. S. 857; Oatley *v.* Lemon, 92 L. T. N. S. 200; Smith *v.* Savage, (1905) 2 K. B. 88; Bayley *v.* Cook, 92 L. T. N. S. 170; Hull *v.* Horsnell, 92 L. T. N. S. 81; Hunter *v.* Wintrup, Sc. Ct. of Just. 7 F. 22; Brooks *v.* Bagshaw, (1904) 2 K. B. 798; McNair *v.* Horan, 91 L. T. N. S. 555; Mcguire *v.* Porter, (1905) 2 Ir. R. 147; Roberts *v.* Leeming, 3 Local Gov. Rep. 1031, 69 J. P. 417; Sandys *v.* Jackson, 92 L. T. N. S. 646; Wilson *v.* Wilson, Sc. Ct. of Just. 6 F. 10; Souter *v.* Lean, Sc. Ct. of Just. 6 F. 20; Fennen *v.* Long, 90 L. T. N. S. 387; Farthing *v.* Parkinson, 90 L. T. N. S. 783; Beardsley *v.* Giddings, (1904) 1 K. B. 847.

Butter — *New York.* — The requirement of the statute that the package containing renovated butter shall be plainly marked "renovated butter" is not met by an oral warning to the purchaser that the article sold is renovated butter. People *v.* Waters, 114 N. Y. App. Div. 669, 100 N. Y. Supp. 177, *affirmed* 188 N. Y. 632, 81 N. E. 1171.

740. 1. Oleomargarine — Statute Prohibiting Sale Valid. — Com. *v.* Caulfield, 211 Pa. St. 644, 61 Atl. 243.

Statute Regulating Sale Valid. — Com. *v.* Spencer, 28 Pa. Super. Ct. 301; Com. *v.* Mellet, 27 Pa. Super. Ct. 41.

Construction of Statutes. — Act Cong. May 9, 1902, 32 U. S. Stat. at L. 193, c. 784, § 1, making process or renovated butter on ar-

rival in a state subject to the laws of such state in like manner as though produced in such state, confers no power on any person to remove the marks, etc., nor does it abrogate the penalty for a violation of any of the penal provisions of such act. U. S. *v.* Green, 137 Fed. 179.

Although Act Cong. Aug. 2, 1886, 24 U. S. Stat. at L. 209, c. 840, § 4, does not in terms make its violation a misdemeanor, such violations are in the nature of criminal offenses, and may be prosecuted by information or indictment. U. S. *v.* Joyce, 138 Fed. 455.

741. 1. If Below Standard, Wholesomeness Immaterial.—St. Louis *v.* Grafeman Dairy Co., 190 Mo. 570, 89 S. W. 627.

City Ordinances.—An ordinance designed to prevent the adulteration of milk is a proper exercise of the city's police power, the charter containing specific authority "to secure the general health." St. Louis *v.* Liessing, 190 Mo. 464, 89 S. W. 611; St. Louis *v.* Reuter, 190 Mo. 514, 89 S. W. 628; St. Louis *v.* Bippen, 201 Mo. 528, 100 S. W. 1048; St. Louis *v.* Schottell, (Mo. 1907) 100 S. W. 1049.

Dealers may be required to register and pay a fee, as compensation for inspection, such fee not amounting to a tax. St. Louis *v.* Grafeman Dairy Co., 190 Mo. 492, 89 S. W. 617.

The ordinance may absolutely prohibit the use of artificial preservatives or coloring matter in milk, and the question of wholesomeness is immaterial. St. Louis *v.* Schuler, 190 Mo. 524, 89 S. W. 621; St. Louis *v.* Polinsky, 190 Mo. 516, 89 S. W. 625.

Trade Name No Defense.—Where the statute prohibits the sale of cream containing less than twenty per centum of fat, it is no defense to an alleged violation that the article sold is in fact condensed milk, sold under the trade name of "evaporated cream." State *v.* Tetu, 98 Minn. 351, 107 N. W. 953.

Constitutionality of Statutes.—The Minnesota statute (Laws Minn. 1903, c. 155), prohibiting the selling of cream containing less than twenty per cent. of butter fat, is constitutional. State *v.* Tetu, 98 Minn. 351, 107 N. W. 953. So Laws N. Y. 1893, c. 338, as amended by Laws 1900, c. 101, prohibiting the sale of adulterated milk, is valid. People *v.* Bowen, 182 N. Y. 1, 74 N. E. 489.

742. 1. Regulations as to Skimmed Milk.—One who sells milk, the product of his own cows, is a "dealer" within the Ohio statute regulating the sale of skimmed milk. Guilder *v.* State, 26 Ohio Cir. Ct. 221.

3. Method of Test.—An ordinance fixing the standard of milk at a certain per cent. of butter fat, "estimated gravimetrically by the Adams paper coil process," is reasonable. The legislative body, dealing with a scientific question, had the right to fix a scientific standard, and the court cannot take judicial cognizance as to the propriety of the test. St. Louis *v.* Grafeman Dairy Co., 190 Mo. 507, 89 S. W. 627. Nor is such a provision void as establishing a rule of evidence. St. Louis *v.* Bippen, 201 Mo. 528, 100 S. W. 1048.

Duplicate Sample to Be Delivered to Owner.—The provision in the *New York* statute as to the delivery of a duplicate sample is imperative, and a failure of the inspector to comply therewith will prevent a recovery of the penalty. People *v.* Weaver, 116 N. Y. App. Div. 594, 101 N. Y. Supp. 961.

The Official Chemist's Analysis May Be Attacked by evidence tending to show that it is incorrect. People *v.* Bowen, 182 N. Y. 1, 74 N. E. 489.

A Pint of Milk Is a Reasonable Sample within the Act of Congress requiring dealers to furnish a reasonable sample to the agent of the health department, and a half pint is unreasonable where the milk is only put up in pint jars. District of Columbia *v.* Garrison, 25 App. Cas. (D. C.) 563.

743. 1. Sale of Drugs.—Laws N. Y. 1900, c. 667, § 197, providing that pharmaceutical preparations shall be of the standard established by the U. S. Pharmacopœia, is not affected by section 199, excepting the sale of certain specified substances by merchants, such exception applying only to the duties of the state board of pharmacy regarding the granting of licenses and visitation. State Board of Pharmacy *v.* Gasau, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 490, 102 N. Y. Supp. 539.

Validity of Statutes.—Laws N. Y. 1902, c. 30, § 70*f*, requiring carcasses of calves shipped to have annexed a tag stating the names of the shipper and the person who raised the calf, the points of shipping and destination, and the age, is not unconstitutional as regulating interstate commerce, and is within the police power of the state. People *v.* Bishopp, 106 N. Y. App. Div. 266, 94 N. Y. Supp. 773.

The amendment of Pub. Acts Mich. 1893, No. 211 (Laws Mich. 1905, Act No. 12) is constitutional, and the provisions fixing a standard of pure food for domestic animals are sufficiently within the scope of the original act establishing the dairy and food department. Pratt Food Co. *v.* Bird, 148 Mich. 631, 112 N. W. 701.

The *South Dakota* statute establishing a state food and dairy department and regulating the sale of foods, etc., so as to prevent adulteration [Laws S. Dak. 1905, c. 114], is within the police power of the state, except in so far as section 11, requiring the manufacturer's name and the location of the factory to appear on each container, constitutes an unreasonable interference with interstate commerce. Jewett *v.* Smail, (S. Dak. 1905) 105 N. W. 738.

Act Pa. June 26, 1895, P. L. 317, entitled "An act to provide against the adulteration of food," is unconstitutional so far as it assumes to apply to drink. Com. *v.* Kebort, 212 Pa. St. 289, 61 Atl. 895.

Question for Jury.—Under a statute providing that an article of food, containing no deleterious ingredients, shall not be deemed adulterated, if branded or labeled so as to indicate that it is a compound and to show its constituents, it is a question for the jury whether the label "honey syrup" is a sufficient characterization. People *v.* Berghoff, 112 N. Y. App. Div. 772, 99 N. Y. Supp. 201.

744. 1. False Invoice — Guilty Knowledge Not Necessary. — Laird *v.* Dobell, (1906) 1 K. B. 131.

ADULTERY (AS A CRIME).

749. 3. In Tison *v.* State, 125 Ga. 7, 53 S. E. 809, it was held that to authorize a conviction both parties must have been married.

750. 1. Elliott *v.* State, 125 Ga. 31, 53 S. E. 809; Reynolds *v.* U. S., (Indian Ter. 1907) 103 S. W. 762. See also People *v.* Salmon, 148 Cal. 303, 83 Pac. 42.

8. Joint Criminal Intent Unnecessary to Constitute Adultery.—State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738.

752. 2. **Contra,** State *v.* Clemenson, 123 Iowa 524, 99 N. W. 139.

3. State *v.* Clemenson, 123 Iowa 524, 99 N. W. 139.

6. See Taylor *v.* State, (Tex. Crim. 1905) 87 S. W. 148; Coons *v.* State, (Tex. Crim. 1906) 91 S. W. 1085; Curlee *v.* State, (Tex. Crim. 1906) 98 S. W. 840.

Habitual Carnal Intercourse sufficient to constitute adultery under the *Texas* statute is not shown by four or five acts of intercourse scattered over a period of about one month. Collins *v.* State, 46 Tex. Crim. 550, 80 S. W. 372.

Carnal Intercourse on Two Occasions not enough to constitute habitual carnal intercourse without living together. Quinn *v.* State, (Tex. Crim. 1907) 101 S. W. 248.

Master and Servant.— The fact that a female servant lived under the same roof as her master and his family does not constitute such a "living together" as would bring it under the statute. Boswell *v.* State, (Tex. Crim. 1905) 85 S. W. 1076.

Taking Meals at the Home of a Woman, but sleeping elsewhere, does not constitute adultery by living with the woman. Paul *v.* State, (Tex. Crim. 1905) 90 S. W. 171.

Living Together Sufficient — Living "as Man and Wife" Unnecessary.— Shaw *v.* State, (Tex. Crim. 1906) 91 S. W. 1087.

8. State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738; Counts *v.* State, (Tex. Crim. 1906) 94 S. W. 220.

An Explanation by the Husband that he left his wife because she made his life miserable and unsafe is admissible in evidence. State *v.* Koller, 129 Iowa 111, 105 N. W. 391.

753. 3. Counts *v.* State, (Tex. Crim. 1906) 94 S. W. 220. See also State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738.

Inclination and Opportunity to have carnal intercourse may be shown, but to prove adultery there must be circumstances which tend to show the actual commission of acts necessary to constitute the crime. State *v.* Thompson, 133 Iowa 741, 111 N. W. 319; Till *v.* State, (Wis. 1907) 111 N. W. 1109.

4. Sutton *v.* State, 124 Ga. 815, 53 S. E. 381.

5. State *v.* Connor, 142 N. Car. 700, 55 S. E. 787; State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738.

7. Counts *v.* State, (Tex. Crim. 1906) 94 S. W. 220.

Testimony of an Accomplice Admissible.— Coons *v.* State, (Tex. Crim. 1906) 91 S. W. 1085.

Corroboration of Accomplice.— Pregnancy of the *particeps criminis* does not in itself constitute corroboration of her testimony connecting the defendant therewith; but testimony of a physician as to the pregnancy has been held to be admissible in corroboration. State *v.* Thompson, 31 Utah 228, 87 Pac. 709.

754. 1. State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738; French *v.* State, (Tex. Crim. 1905) 85 S. W. 4; State *v.* Nelson, 39 Wash. 221, 81 Pac. 721; Till *v.* State, (Wis. 1907) 111 N. W. 1109.

3. State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738.

5. See State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738.

755. 1. French *v.* State, (Tex. Crim. 1905) 85 S. W. 4; Quinn *v.* State, (Tex. Crim. 1907) 101 S. W. 248. But see State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738.

3. State *v.* Eggleston, 45 Oregon 346; 77 Pac. 738; State *v.* Thompson, 31 Utah 228, 87 Pac. 709.

Where There Is Doubt as to whether the defendant's wife was alive at the time that the alleged offense was committed, the state must show that she was alive. Dixon *v.* State, (Tex. Crim. 1906) 97 S. W. 692.

5. McAllister *v.* State, 2 Ga. App. 654, 58 S. E. 1110. See also Counts *v.* State, (Tex. Crim. 1906) 94 S. W. 220.

Rule Does Not Preclude Proof of Other Acts Elsewhere.— Nobles *v.* State, 127 Ga. 212, 56 S. E. 125.

7. **Variance.**— Where the indictment alleged that the defendant was married to Mollie Garland, evidence that he was married to M. M. Allen, without proof that Mollie Garland and M. M. Allen were the same person, was held to be insufficient to sustain a conviction. Garland *v.* State, (Tex. Crim. 1907) 104 S. W. 898.

756. 3. **Necessity of Proving Marriage.** — State *v.* Nelson, 39 Wash. 221, 81 Pac. 721.

5. Tison *v.* State, 125 Ga. 7, 53 S. E. 809; State *v.* Nelson, 39 Wash. 221, 81 Pac. 721. See also Coons *v.* State, (Tex. Crim. 1906) 91 S. W. 1085.

7. State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738; State *v.* Thompson, 31 Utah 228, 87 Pac. 709. See also State *v.* Nelson, 39 Wash. 221, 81 Pac. 721.

9. **Confessions.**—State *v.* Thompson, 31 Utah 228, 87 Pac. 709.

10. **Certificate and Record of Marriage.** — State *v.* Thompson, 31 Utah 228, 87 Pac. 709. See also State *v.* Eggleston, 45 Oregon 346, 77 Pac. 738.

757. 1. State *v.* Thompson, 133 Iowa 741, 111 N. W. 319. See also Jackson *v.* State, (Tex. Crim. 1907) 101 S. W. 807.

4. State *v.* Clemenson, 123 Iowa 524, 99 N. W. 139.

ADVANCE — ADVANCES.

757. 9. See Central Trust Co. *v.* Egleston, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 693, 98 N. Y. Supp. 1055.

Whether Word Imports Loan. — Schwab *v.* Oatman, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741.

ADVANCEMENTS.

760. 1. Bowron *v.* Kent, 190 N. Y. 422, 83 N. E. 472, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 760.

Other Definitions. — Schweitzer *v.* Schweitzer, (Ky. 1904) 82 S. W. 625.

761. 2. Duckett *v.* Gerig, 223 Ill. 284, 79 N. E. 94, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 761.

762. 3. Barnett *v.* Thomas, 36 Ind. App. 441, 75 N. E. 868; Gilmore *v.* Jenkins, 129 Iowa 686, 106 N. W. 193; Hill *v.* Hill, (Ky. 1906) 92 S. W. 924; *Ex p.* Griffin, 142 N. Car. 116, 54 S. E. 1007.

4. Ogden's Estate, 211 Pa. St. 247, 60 Atl. 785.

763. 6. Doctrine of Advancements Applies Only to Cases of Intestacy. — *In re* Hall, 132 Iowa 664, 110 N. W. 148.

8. Bowron *v.* Kent, 190 N. Y. 422, 83 N. E. 472, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 763.

11. Gilmore *v.* Jenkins, 129 Iowa 686, 106 N. W. 193.

765. 4. Schlicher *v.* Keeler, (N. J. 1905) 62 Atl. 4; Seed *v.* Jennings, 47 Oregon 464, 83 Pac. 872, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 765.

766. 1. Cowden *v.* Cowden, 28 Ohio Cir. Ct. 71, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 765, 766.

2. Schlicher *v.* Keeler, (N. J. 1905) 62 Atl. 4.

5. *Ex p.* Griffin, 142 N. Car. 116, 54 S. E. 1007.

6. *Ex p.* Griffin, 142 N. Car. 116, 54 S. E. 1007.

767. 3. Gift by Parent to Child of Considerable Sum of Money Presumed Advancement. — Morrison *v.* Morrison, (Tex. Civ. App. 1906) 96 S. W. 100.

8. The *Kentucky* statute provides that money expended for the education and maintenance of a child or grandchild, without any view to a portion or settlement in life, shall not be deemed an advancement. Hill *v.* Hill, (Ky. 1906) 92 S. W. 924.

769. 4. Brennaman *v.* Schell, 212 Ill. 356, 72 N. E. 412.

771. 3. Liquidation of Parent's Indebtedness to Child No Advancement. — Schweitzer *v.* Schweitzer, (Ky. 1904) 82 S. W. 625.

4. Morrison *v.* Morrison, (Tex. Civ. App. 1906) 96 S. W. 100.

6. Rule Inapplicable When Child Takes Title Without Knowledge of Parent. — Moore *v.* Scruggs, 131 Iowa 692, 109 N. W. 205.

7. Brennaman *v.* Schell, 212 Ill. 356, 72 N. E. 412.

773. 4. Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 794; Brennaman *v.* Schell, 212 Ill. 356, 72 N. E. 412.

775. 9. Melony's Appeal, 78 Conn. 334, 62 Atl. 151; Brennaman *v.* Schell, 212 Ill. 356, 72 N. E. 412; Baum *v.* Palmer, 165 Ind. 513, 76 N. E. 108; Darby *v.* Darby, 118 La. 328, 42 So. 953.

Advancements Not Presumed to Be Gifts. — Matter of Robinson, (Surrogate Ct.) 45 Misc. (N. Y.) 551, 92 N. Y. Supp. 967.

Intention of Donor Immaterial in Case of Intestacy — Statute Regulates Advancements. — Sullivan *v.* Sullivan, (Ky. 1906) 92 S. W. 966.

10. Brennaman *v.* Schell, 212 Ill. 356, 72 N. E. 412.

776. 2. Parol Evidence Inadmissible Where Effect Is to Contradict Writing. — Schmidt *v.* Schmidt, 123 Wis. 295, 101 N. W. 678.

3. Schmidt *v.* Schmidt, 123 Wis. 295, 101 N. W. 678.

777. 1. Hill *v.* Hill, (Ky. 1906) 92 S. W. 924.

2. Miller *v.* Payne, 28 App. Cas. (D. C.) 396; Hill *v.* Hill, (Ky. 1906) 92 S. W. 924.

4. Contemporaneous Memoranda and Charges Admissible. — Hill *v.* Hill, (Ky. 1906) 92 S. W. 924.

778. 6. Lodge *v.* Fitch, 72 Neb. 652, 101 N. W. 338.

Presumption Arising from Note Rebuttable. — Baum *v.* Palmer, 165 Ind. 513, 76 N. E. 108.

779. 4. Baum *v.* Palmer, 165 Ind. 513, 76 N. E. 108.

780. 8. Gift or Loan Cannot Be Changed to Advancement After Donor's Death. — Hessler's Estate, (Neb. 1907) 113 N. W. 147.

9. Donor May Not Change Advancement into Debt. — Boblett *v.* Barlow, (Ky. 1904) 83 S. W. 145.

10. Baum *v.* Palmer, 165 Ind. 513, 76 N. E. 108.

Loan Converted into Advancement. — In order that a loan to an heir may be treated as an advancement, the evidence must clearly show that the ancestor expressed the intention to effect such change, and that the heir acquiesced. Lodge *v.* Fitch, 72 Neb. 652, 101 N. W. 338.

783. 6. Valuation Fixed by Parent Not Controlling. — Ward *v.* Johnson, (Ky. 1906) 97 S. W. 1110.

Property Valued at What It Would Be Worth at Decedent's Death, if in the same condition as when given. Eastwood *v.* Crane, 125 Iowa 707, 101 N. W. 481.

784. 2. Ward *v.* Johnson, (Ky. 1906) 97 S. W. 1110.

785. 3. Charging of Interest on Advancement Matter of Agreement or Intention. — Brown *v.* Brown, (N. J. 1907) 65 Atl. 739.

5. **Contra.** — Tobias *v.* Richardson, 26 Ohio Cir. Ct. 81.

Advancements Do Not Bear Interest in Absence of Manifest Intention Expressed in Will. — Stahl's Estate, 25 Pa. Super. Ct. 402.

7. Morrison *v.* Morrison, (Tex. Civ. App. 1906), 96 S. W. 100; McCoy *v.* McCoy, 105 Va. 829, 54 S. E. 995.

10. Under the *West Virginia* statute, a descendant who has received an advancement from a person dying intestate, is not compelled to await the expiration of a year from the date of the appointment of the representative before instituting a suit in equity for the purpose of bringing the estate into hotchpot. Meyer *v.* Meyer, 60 W. Va. 473, 56 S. E. 209.

ADVERSE POSSESSION.

789. 1. Berry *v.* W. M. Ritter Lumber Co., 141 N. Car. 396, 54 S. E. 278, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 780; Raleigh *v.* Wells, 29 Utah 224, 81 Pac. 908,

citing 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789. See also Swope *v.* Ward, 185 Mo. 316, 84 S. W. 895, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789.

Other Definitions. — Berry *v.* W. M. Ritter Lumber Co., 141 N. Car. 386, 54 S. E. 278, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789, note 1, and *quoting* as therein set forth the definition laid down in Alexander *v.* Polk, 39 Miss. 755.

"Possession" and "adverse possession" differ in that the latter is a possession held by one "not the owner" adversely to the actual owner. Ramos Lumber, etc., Co. *v.* Labarre, 116 La. 559, 40 So. 898.

Adverse possession is "an actual and visible appropriation of the land commenced and continued under a claim inconsistent with and hostile to the claim of another." Whitaker *v.* Thayer, (Tex. Civ. App. 1905) 86 S. W. 364; Link *v.* Bland, (Tex. Civ. App. 1906) 95 S. W. 1110.

2. Wade *v.* Crouch, 14 Okla. 593, 78 Pac. 91, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789; Yesler *v.* Holmes, 39 Wash. 34, 80 Pac. 851.

"**The Test** of adverse possession must be that it is such as would subject one to a possessory action." Northern Pac. R. Co. *v.* Spokane, (Wash. 1907) 88 Pac. 135.

4. Spotswood *v.* Spotswood, 4 Cal. App. 711, 89 Pac. 363, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789; Salt Lake Invest. Co. *v.* Fox (Utah 1907) 90 Pac. 564, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789.

790. 1. Boltz *v.* Colsch, (Iowa 1906) 109 N. W. 1106; Village Mills Co. *v.* Manley, (Tex. Civ. App. 1906) 94 S. W. 102.

Time of Intention to Claim Title. — Fischer *v.* Giddings, (Tex. Civ. App. 1906) 95 S. W. 33.

2. Lanham *v.* Bowlby, (Neb. 1907) 112 N. W. 324; Nona Mills Co. *v.* Wright, (Tex. 1907) 102 S. W. 1118.

Occupation in Belief that Land Is Vacant. — McDaniel *v.* Sloss Iron, etc., Co., (Ala. 1907) 44 So. 705; Missouri Lumber, etc., Co. *v.* Jewell, 200 Mo. 707, 98 S. W. 578; Fischer *v.* Giddings, (Tex. Civ. App. 1906) 95 S. W. 33; Yesler *v.* Holmes, 39 Wash. 34, 80 Pac. 851. See also Whitaker *v.* Thayer, (Tex. Civ. App. 1905) 86 S. W. 364, which held that where one goes on land in the belief that it is vacant and without any intention to acquire title from the state his holding is not adverse.

But see Maas *v.* Burdetzke, 93 Minn. 295, 101 N. W. 182; Village Mills Co. *v.* Manley, (Tex. Civ. App. 1906) 94 S. W. 102; Texas, etc., R. Co. *v.* Haynes, (Tex. Civ. App. 1906) 97 S. W. 849.

Intention to Hold until True Owner Makes Claim. — Bush *v.* Griffin, (Neb. 1906) 107 N. W. 247.

And an acknowledgment that one is holding with a view of purchasing from the true owner is fatal to a plea of adverse possession. Whitaker *v.* Thayer, (Tex. Civ. App. 1905) 86 S. W. 364. *Compare* Link *v.* Bland, (Tex. Civ. App. 1906) 95 S. W. 1110, where one who "intended to hold the land until he was put off," and who knew the real owner, was held to be in adverse possession.

But It Need Not Be Expressed. — Bennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546; Sawbridge *v.* Fergus Falls, 101 Minn. 378, 112 N. W. 385.

Filing Declaration. — Under Code *Alabama*, §§ 1541 to 1546, where possession is not taken "under color of title or *bona fide* claim of inheritance or of purchase" the adverse claimant must have filed a declaration of his intention to hold adversely in the office of the judge of probate. Brasher *v.* Shelby Iron Co., 144 Ala. 659, 40 So. 80; Brannan *v.* Henry, 143 Ala. 698, 39 So. 92; Campbell *v.* Noble, 145 Ala. 233, 41 So. 745; Powers *v.* Hatter, (Ala. 1907) 44 So. 859.

Evidence — Improvements. — That improvements are made with money furnished by a father, by whose invitation the daughter is on the land, does not show adverse possession. Brettmann *v.* Fischer, 216 Ill. 142, 74 N. E. 777.

Purchase. — Evidence that one purchased the land is admissible to show a claim of ownership. Anniston City Land Co. *v.* Edmondson, 145 Ala. 557, 40 So. 505; Luce *v.* Parsons, 192 Mass. 8, 77 N. E. 1032.

Good Faith Not Necessary. — Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286.

Purchase from Squatter. — A purchaser of a squatter's rights with knowledge was held not to acquire title by adverse possession. Compton *v.* Newton, 129 Ga. 619, 59 S. E. 270.

791. 1. *Arkansas.* — Shirey *v.* Whitlow, 80 Ark. 444, 97 S. W. 444; Goodwin *v.* Garibaldi, 83 Ark. 74, 102 S. W. 706.

District of Columbia. — Johnson *v.* Thomas, 23 App. Cas. (D. C.) 141.

Indiana. — Bennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 791, 792.

Iowa. — Atkins *v.* Pfaffe, (Iowa 1907) 114 N. W. 187.

Minnesota. — Weeks *v.* Upton, 99 Minn. 410, 109 N. W. 828.

Texas. — Logan *v.* Meade, (Tex. Civ. App. 1906) 98 S. W. 210; Wiess *v.* Goodhue, (Tex. Civ. App. 1907) 102 S. W. 793.

Virginia. — Davis *v.* Owen, (Va. 1907) 58 S. E. 581.

Washington. — Thornely *v.* Andrews, (Wash. 1907) 88 Pac. 757.

And see Robson *v.* Shelnutt, 122 Ga. 322, 50 S. E. 91; Lougee *v.* Shuhart, 127 Iowa 173, 102 N. W. 1125; Crane *v.* Judge, 30 Utah 50, 83 Pac. 566.

2. *Arkansas.* — Bayles *v.* Daugherty, 77 Ark. 201, 91 S. W. 304; Shirey *v.* Whitlow, 80 Ark. 444, 97 S. W. 444; Goodwin *v.* Garibaldi, 83 Ark. 74, 102 S. W. 706 (*obiter*).

Iowa. — Liddle *v.* Blake, 131 Iowa 165, 105 N. W. 649; Boltz *v.* Colsch, (Iowa 1906) 109 N. W. 1106.

Kansas. — Scott *v.* Williams, 74 Kan. 448, 87 Pac. 550.

Kentucky. — Chambers *v.* Tharp, 93 S. W. 627, 29 Ky. L. Rep. 271.

Texas. — Webb *v.* Lyerla, (Tex. Civ. App. 1906) 94 S. W. 1095; Wiess *v.* Goodhue, (Tex. Civ. App. 1907) 102 S. W. 793.

Washington. — Suksdorf *v.* Humphrey, 36 Wash. 1, 77 Pac. 1071; Wilcox *v.* Smith, 38

Wash. 585, 80 Pac. 803; Noyes *v.* Douglas, 39 Wash. 314, 81 Pac. 724; Thornely *v.* Andrews, (Wash. 1907) 88 Pac. 757.

Wyoming. — Fieldhouse *v.* Leisberg, (Wyo. 1907) 88 Pac. 214.

But see Niday *v.* Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027, which held that mere fencing unaccompanied by actual occupancy or open use does not constitute possession.

Intention to Remove Fence Back to Another Line. — But the expression of such intention and setting back the fence do not affect the adverse character of the possession of the remainder of the property. Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937.

792. 1. Bennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 791, 792; Broad *v.* Beatty, 73 Ark. 106, 83 S. W. 339; Bayles *v.* Daugherty, 77 Ark. 201, 91 S. W. 304; Cline *v.* Hays, (Ind. 1905) 76 N. E. 257; Davis *v.* Braswell, 185 Mo. 576, 84 S. W. 870; Erickson *v.* Murlin, 39 Wash. 43, 80 Pac. 853; Off *v.* Heinrichs, 124 Wis. 440, 102 N. W. 904; Dreger *v.* Budde, (Wis. 1907) 113 N. W. 950.

Improving Up to Fence. — Thornely *v.* Andrews, (Wash. 1907) 88 Pac. 757.

The mere fact that the one claiming and improving up to the fence stated that he did not want his neighbor's land does not affect his adverse holding. Davis *v.* Braswell, 185 Mo. 576, 84 S. W. 870.

Inclosure without "cultivation, use, or enjoyment" does not give adverse possession of a disputed strip of land. McDonald *v.* McCrabb, (Tex. Civ. App. 1907) 105 S. W. 238.

793. 1. Sonnemann *v.* Wertz, 221 Ill. 362, 77 N. E. 550; Kitchen *v.* Chantland, 130 Iowa 618, 105 N. W. 367; Andrews *v.* Meredith, 131 Iowa 716, 109 N. W. 287; Roberts *v.* Fellman Dry Goods Co., (Tex. Civ. App. 1906) 92 S. W. 1060; Lindley *v.* Johnston, 42 Wash. 257, 84 Pac. 822; Reitler *v.* Lindstrom, 126 Wis. 562, 106 N. W. 388.

See also Mann *v.* Mann, (Cal. 1907) 91 Pac. 994; Purtle *v.* Bell, 225 Ill. 523, 80 N. E. 350.

An unexecuted parol agreement is effectual to establish a boundary. Uker *v.* Thieman, 132 Iowa 79, 107 N. W. 167.

Where prior to the completion of the statutory bar a disputed line was surveyed by a surveyor engaged by the adjoining owners, and one of the parties did not reserve his right to hold up to the fence inclosing the disputed strips, he cannot claim adverse possession as to such strip. McDonald *v.* McCrabb, (Tex. Civ. App. 1907) 105 S. W. 238.

Where the Division Line Between Two Adjoining Estates Is Indefinite or Unascertained. — See Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026, which held that such an agreement must be based on actual uncertainty and doubt as to a dividing line, and the possession thereunder need be continued only long enough to show intent, as such rights are not founded in adverse possession. To show a line by acquiescence it must be for the statutory period.

794. 1. *Alabama.* — Anniston City Land Co. *v.* Edmondson, 145 Ala. 557, 40 So. 505; Louisville, etc., R. Co. *v.* Higginbotham, (Ala. 1907) 44 So. 872.

Arkansas. — Hope *v.* Shiver, 77 Ark. 177, 90 S. W. 1003; Chicot Lumber Co. *v.* Dardell, 84 Ark. 140, 104 S. W. 1100.

Illinois. — Brettmann *v.* Fischer, 216 Ill. 142, 74 N. E. 777.

Iowa. — Boltz *v.* Colsch, (Iowa 1906) 109 N. W. 1106.

Massachusetts. — Preston *v.* West Beach Corp., (Mass. 1907) 81 N. E. 253.

New York. — Miller *v.* Warren, 94 N. Y. App. Div. 192, 87 N. Y. Supp. 1011; Staples *v.* Cornwall, 114 N. Y. App. Div. 596, 99 N. Y. Supp. 1009.

Pennsylvania. — Wilson *v.* Cather, 214 Pa. St. 3, 63 Atl. 190.

Texas. — Crosby *v.* El Paso First Presb. Church, (Tex. Civ. App. 1907) 99 S. W. 584.

Wisconsin. — Pritchard *v.* Lewis, 125 Wis. 604, 104 N. W. 989.

Where a religious organization had built a meeting house on certain land, title to which had been taken in the name of an individual, the latter's attendance at meetings therein as a member of such society does not show that the occupation of the society was permissive rather than adverse. Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778.

Permission Presumed to Continue. — Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984.

795. 1. *Alabama.* — Chastang *v.* Chastang, 141 Ala. 458, 37 So. 799; Lawrence *v.* Alabama State Land Co., 144 Ala. 528, 41 So. 612, both cases *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 795; McDaniel *v.* Sloss Iron, etc., Co., (Ala. 1907) 44 So. 705.

Colorado. — Webber *v.* Wannemaker, (Colo. 1907) 89 Pac. 780, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 795, and cases cited.

Florida. — Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69.

Illinois. — Roby *v.* Calumet, etc., Canal, etc., Co., 211 Ill. 173, 71 N. E. 822; Clark *v.* Jackson, 222 Ill. 13, 78 N. E. 6; Page *v.* Bellamy, 222 Ill. 556, 78 N. E. 938; Purtle *v.* Bell, 225 Ill. 523, 80 N. E. 350.

Indiana. — Bennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546; May *v.* Dobbins, 166 Ind. 331, 77 N. E. 353.

Kentucky. — Interstate Invest. Co. *v.* Bailey, 93 S. W. 578, 29 Ky. L. Rep. 468; Overton *v.* Overton, (Ky. 1906) 96 S. W. 469.

Massachusetts. — Murphy *v.* Com., 187 Mass. 361, 73 N. E. 524.

Minnesota. — Maas *v.* Burdetzke, 93 Minn. 295, 101 N. W. 182; Sawbridge *v.* Fergus Falls, 101 Minn. 378, 112 N. W. 385.

Mississippi. — McCaughn *v.* Young, 85 Miss. 277, 37 So. 839.

Missouri. — Swope *v.* Ward, 185 Mo. 316, 84 S. W. 895, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 795; Crowl *v.* Crowl, 195 Mo. 338, 92 S. W. 890.

Nebraska. — Stryker *v.* Meagher, (Neb. 1906) 107 N. W. 792; Taylor *v.* Hover, (Neb. 1906) 108 N. W. 149. *Compare* Dredla *v.* Patz, (Neb. 1907) 111 N. W. 136, holding that a claim of right is not necessary.

North Carolina. — Monk *v.* Wilmington, 137 N. Car. 322, 49 S. E. 345.

Oklahoma. — Wade *v.* Crouch, 14 Okla. 593, 78 Pac. 91, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 795.

Oregon. — See McNear *v.* Giustin, (Oregon 1907) 92 Pac. 1075.

Virginia. — Austin *v.* Minor, (Va. 1907) 57 S. E. 609.

Washington. — Wilcox *v.* Smith, 38 Wash. 585, 80 Pac. 803; Yesler *v.* Holmes, 39 Wash. 34, 80 Pac. 851.

West Virginia. — Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409.

Wisconsin. — Illinois Steel Co. *v.* Jeka, 123 Wis. 419, 101 N. W. 399; Reitler *v.* Lindstrom, 126 Wis. 562, 106 N. W. 388.

The possession must be open, adverse, and continuous, and to a well-defined, marked boundary. Hughes *v.* Owens, (Ky. 1906) 92 S. W. 595.

796. 1. *Alabama.* — Henry *v.* Brown, 143 Ala. 446, 39 So. 325.

Arkansas. — Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 566, 1011.

Georgia. — Doris *v.* Story, 122 Ga. 611, 50 S. E. 348.

Illinois. — Roby *v.* Calumet, etc., Canal, etc, Co., 211 Ill. 173, 71 N. E. 822; Clark *v.* Jackson, 222 Ill. 13, 78 N. E. 6; Purtle *v.* Bell, 225 Ill. 523, 80 N. E. 350.

Iowa. — Bigelow *v.* Ritter, 131 Iowa 213, 108 N. W. 218; Boltz *v.* Colsch, (Iowa 1906) 109 N. W. 1106.

Maine. — Lancey *v.* Parks, 102 Me. 135, 66 Atl. 311.

Minnesota. — Sawbridge *v.* Fergus Falls, 101 Minn. 378, 112 N. W. 385.

Missouri. — Crowl *v.* Crowl, 195 Mo. 338, 92 S. W. 890; Missouri Lumber, etc., Co. *v.* Jewell, 200 Mo. 707, 98 S. W. 578; Heckescher *v.* Cooper, 203 Mo. 278, 101 S. W. 658; McCune *v.* Goodwillie, (Mo. 1907) 102 S. W. 997.

Nebraska. — Bush *v.* Griffin, (Neb. 1906) 107 N. W. 247.

Texas. — Logan *v.* Meade, (Tex. Civ. App. 1906) 98 S. W. 210; Earnest *v.* Lake, (Tex. Civ. App. 1907) 101 S. W. 479.

Utah. — Salt Lake Invest. Co. *v.* Fox, (Utah 1907) 90 Pac. 564.

Washington. — Lohse *v.* Burch, 42 Wash. 156, 84 Pac. 722.

Although the claimant knows his title is defective he may hold adversely. McDaniel *v.* Sloss Iron, etc., Co., (Ala. 1907) 44 So. 705.

There must be a distinct claim of title, and not a general assertion of ownership, connected with no source from which it is claimed to be deraigned. Jasperson *v.* Scharinkow, 150 Fed. 571, 80 C. C. A. 373.

See Davis *v.* Owen, (Va. 1907) 58 S. E. 581, which held that claimants' holding was not adverse, as those under whom they entered made no adverse claim.

Must Be Hostile to All the World. — Cass Farm Co. *v.* Detroit, 139 Mich. 318, 102 N. W. 848; Sawbridge *v.* Fergus Falls, 101 Minn. 378, 112 N. W. 385. *Compare* Whitaker *v.* Thayer, (Tex. Civ. App. 1905) 86 S. W. 364, which held that a charge requiring the jury to find that the holding was adverse to "all others" as well as plaintiff was erroneous in being misleading. See Wade *v.* Crouch, 14 Okla. 593, 78 Pac. 91 (to same effect as Creekmur *v.* Creekmur, 75 Va. 130, set forth in original work).

Need Not Be Hostile to Government. — Blumer *v.* Iowa Land R. Co., 129 Iowa 32, 105 N. W. 342; Maas *v.* Burdetzke, 93 Minn. 295, 101 N. W. 182.

Naked Possession. — It has been held that there need be no claim of ownership or right independent of that conferred by possession itself. Link *v.* Bland, (Tex. Civ. App. 1906) 95 S. W. 1110; Dredla *v.* Patz, (Neb. 1907) 111 N. W. 136.

Possession under Parol Gift. — Brown *v.* Norvell, 74 Ark. 484, 86 S. W. 306. But see Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, which held that convincing proof was required to show that one's holding under a parol gift was adverse and not as a licensee.

"He who enters into the possession of lands under a parol gift is a tenant at will, until there has been by him such adverse possession as, if continued for the statutory period, will work divestiture of the donor's title." Gillespie *v.* Gillespie, (Ala. 1907) 43 So. 12.

The fact that one claiming under an alleged gift allowed the donor to move the house on the land in order to sell a contiguous lot, is not a conclusive showing that possession was not adverse. West *v.* Webster, (Tex. Civ. App. 1905) 87 S. W. 196.

Verbal Assertion of Claim. — McCarthy *v.* Colton, (Iowa 1906) 108 N. W. 217.

797. 1. Must Be No Recognition of Title in Another. — Missouri Lumber, etc., Co. *v.* Jewell, 200 Mo. 707, 98 S. W. 578. *Compare* Link *v.* Bland, (Tex. Civ. App. 1906) 95 S. W. 1110.

Accepting Lease from Another. — Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957.

The presumption arising from the acceptance of a void lease may be overcome by testimony *dehors* the instrument. Broad *v.* Beatty, 73 Ark. 106, 83 S. W. 339.

A judgment for rent tends to show that the judgment debtor holds as tenant and not adversely. Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698.

Recognition by Fraud or under Mistake of One's Rights. — Shirey *v.* Whitlow, 80 Ark. 444, 97 S. W. 444.

Acceptance of Deed. — Where a vendee has been in adverse possession of a whole tract of land under an agreement of purchase, and later accepted a deed from the heir of vendor to part of the tract, he does not thereby surrender his claim to the remainder of the tract. Doty *v.* Jameson, (Ky. 1906) 93 S. W. 638.

Recognition of Superior Title After Statute Has Run. — Payment of rent to the owner of the paper title does not affect a projected adverse title. Martin *v.* Martin, (Neb. 1906) 107 N. W. 580. See Shirey *v.* Whitlow, 80 Ark. 444, 97 S. W. 444, holding that such recognition is merely evidence to be submitted to the jury on the issue of whether or not the possession was adverse. And see *infra*, this title, **883.** 1. *Title Once Acquired by Adverse Possession Cannot Be Divested by Subsequent Declarations.*

Recognition of Widow's Rights. — Where one claiming by adverse possession admits a widow's right to elect to be endowed of one-half the lands in lieu of her common-law dower, it is

tantamount to an admission that the title was in her husband and not in him claiming adversely. Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957.

Repurchase of Land from a vendee is evidence tending to show that the possession is in recognition of such vendee's title and not adverse to it. Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698.

798. 1. Shirey *v.* Whitlow, 80 Ark. 444, 97 S. W. 444; Blair *v.* Johnson, 215 Ill. 552, 74 N. E. 747.

Letters. — English *v.* Openshaw, 28 Utah 241, 78 Pac. 476.

2. Taylor *v.* Hover, (Neb. 1906) 108 N. W. 149, *citing* Ballard *v.* Hansen, 33 Neb. 861, set forth in original work; Lancey *v.* Parks, 102 Me. 135, 66 Atl. 311; Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957; Missouri Lumber, etc., Co. *v.* Jewell, 200 Mo. 707, 98 S. W. 578; McCune *v.* Goodwillie, (Mo. 1907) 102 S. W. 997. See Nicolai *v.* Baltimore, 100 Md. 579, 60 Atl. 627.

"Hostile in its beginning" means hostile as a matter of law. Purtle *v.* Bell, 225 Ill. 523, 80 N. E. 350.

But where defendant claimed by purchase without a deed, and by adverse possession, it was held error to instruct the jury in effect that the possession must be hostile from the date of the alleged purchase. Fox *v.* Spears, 78 Ark. 71, 93 S. W. 560.

Government Title. — Blumer *v.* Iowa Land R. Co., 129 Iowa 32, 105 N. W. 342.

3. *Alabama.* — Kennedy *v.* Rainey, 145 Ala. 572, 39 So. 813; Gillespie *v.* Gillespie, (Ala. 1907) 43 So. 12.

Arkansas. — Tillar *v.* Clayton, 76 Ark. 405, 88 S. W. 972; Perry *v.* Arkadelphia Lumber Co., 83 Ark. 374, 103 S. W. 724.

Florida. — See Wilson *v.* Johnson, 51 Fla. 370, 41 So. 395.

Georgia. — Doris *v.* Story, 122 Ga. 611, 50 S. E. 348.

Michigan. — Nugent *v.* Peterman, 137 Mich. 646, 100 N. W. 895, 11 Detroit Leg. N. 423; Lee *v.* Livingston, 143 Mich. 203, 106 N. W. 713, 12 Detroit Leg. N. 922; Ann Arbor Fruit, etc., Co. *v.* Ann Arbor R. Co., 136 Mich. 605, 99 N. W. 869, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 798.

Missouri. — Swope *v.* Ward, 185 Mo. 316, 84 S. W. 895; McCune *v.* Goodwillie, (Mo. 1907) 102 S. W. 997.

Nebraska. — Lanham *v.* Bowlby, (Neb. 1907) 112 N. W. 324.

New York. — Miller *v.* Warren, 94 N. Y. App. Div. 192, 87 N. Y. Supp. 1011, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 798.

Texas. — Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937; Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984. See also Whitaker *v.* Thayer, (Tex. Civ. App. 1905) 86 S. W. 364, holding that one may subsequently assume such claim and intention as to set the statute in motion.

Virginia. — Thompson *v.* Camper, 106 Va. 315, 55 S. E. 674.

Wisconsin. — Allen *v.* Ellis, 125 Wis. 565, 104 N. W. 739.

A vendee of land in the occupation of another than the owner is chargeable with notice of such adverse holding, although it presumably originated under permission of the owner. Howatt *v.* Green, 139 Mich. 289, 102 N. W. 734.

799. 1. Tillar *v.* Clayton, 76 Ark. 405, 88 S. W. 972; Perry *v.* Arkadelphia Lumber Co., 83 Ark. 374, 103 S. W. 724; Petroski *v.* Minzgohr, 144 Mich. 356, 108 N. W. 77; Runge *v.* Gilbough, (Tex. Civ. App. 1905) 87 S. W. 832; Wilson *v.* Nugent, (Tex. Civ. App. 1906) 91 S. W. 241; Thompson *v.* Camper, 106 Va. 315, 55 S. E. 674; State *v.* Harman, 57 W. Va. 447, 50 S. E. 828. See Moore *v.* Mobley, 123 Ga. 424, 51 S. E. 351.

There Must Be Some Unequivocal and Positive Action. — There must be a severance of the relation of vendor and vendee by a distinct avowal of adverse holding, and notice of disclaimer brought to the vendor. Marbach *v.* Holmes, 105 Va. 178, 52 S. E. 828.

Vendee by Title Bond. — Worth *v.* Wrenn, (N. Car. 1907) 57 S. E. 388.

Where B, under a title bond from A, is in actual possession of that part of the land which is included in a deed subsequently made by A to C, B's possession is adverse to C from the date of the latter's deed. King *v.* Thompson, 58 W. Va. 455, 52 S. E. 487.

Registration of Deed. — Execution, delivery, and registration of a deed by a vendee under an executory contract of purchase was held not to be notice to his vendor of the former's repudiation of title. Runge *v.* Gilbough, (Tex. Civ. App. 1905) 87 S. W. 832.

800. 1. Tillar *v.* Clayton, 76 Ark. 405, 88 S. W. 972.

2. Tillar *v.* Clayton, 76 Ark. 405, 88 S. W. 872.

3. Schauble *v.* Schulz, 137 Fed. 389, 69 C. C. A. 581; Barrett *v.* McKinney, (Tex. Civ. App. 1906) 93 S. W. 240.

4. See Runge *v.* Gilbough, (Tex. Civ. App. 1905) 87 S. W. 832, which held that a purchaser from a vendee was put on notice of the nature of the original vendee's holding by the recitals in the latter's unrecorded deed precluding such purchaser from holding adversely, and that the same rule applies to subsequent purchasers in the same chain of title.

801. 1. Schauble *v.* Schulz, 137 Fed. 389, 69 C. C. A. 581; Dickson *v.* Sentell, 83 Ark. 385, 104 S. W. 148; Fountain *v.* Lewiston Nat. Bank, 11 Idaho 451, 83 Pac. 505; Daniels *v.* Murray, (Tex. Civ. App. 1907) 103 S. W. 425.

Agreement for Partition. — Where an agreement for partition provided that one cotenant should arrange for the settlement of a locative interest outstanding, his possession is not adverse to such interest. Surghenor *v.* Taliaferro, (Tex. Civ. App. 1906) 98 S. W. 648.

802. 1. *United States.* — Rich *v.* Victoria Copper Min. Co., 147 Fed. 380.

Georgia. — Harriss *v.* Howard, 126 Ga. 325, 55 S. E. 59.

Iowa. — Curtis *v.* Barber, 131 Iowa 400, 108 N. W. 755.

Kansas. — Schoonover *v.* Tyner, 72 Kan. 475, 84 Pac. 124; Sparks *v.* Bodensick, 72 Kan. 8, 82 Pac. 463, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 801.

Kentucky. — Furnish *v.* Lilly, (Ky. 1905) 84 S. W. 734; Godsey *v.* Standifer, (Ky. 1907) 101 S. W. 921.

Massachusetts. — Joyce *v.* Dyer, 189 Mass. 64, 75 N. E. 81.

Michigan. — Dahlem *v.* Abbott, 146 Mich. 605, 110 N. W. 47.

Missouri. — Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957; Chapman *v.* Kullman, 191 Mo. 237, 89 S. W. 924.

North Carolina. — Bullin *v.* Hancock, 138 N. Car. 198, 50 S. E. 621; Dobbins *v.* Dobbins, 141 N. Car. 210, 53 S. E. 870.

South Carolina. — Green *v.* Cannady, 71 S. Car. 317, 51 S. E. 92.

Texas. — Stubblefield *v.* Hanson, (Tex. Civ. App. 1906) 94 S. W. 406.

West Virginia. — Logan *v.* Ward, 58 W. Va. 366, 52 S. E. 398; Clark *v.* Beard, 59 W. Va. 669, 53 S. E. 597.

See also Jordan *v.* Jordan, (Ala. 1905) 39 So. 992.

A tenant in possession cannot occupy the opposing positions of recognizing and purchasing the interest of some of his cotenants, and at the same time claim ouster of others. Schoonover *v.* Tyner, 72 Kan. 475, 84 Pac. 124.

Judgment for Land — Inures to Benefit of All Tenants. — But see Cobb *v.* Robertson, (Tex. 1905) 86 S. W. 746, 87 S. W. 1148.

803. 1. Steele *v.* Steele, 220 Ill. 318, 77 N. E. 232; Sires *v.* Melvin, (Iowa 1907) 113 N. W. 106; Schoonover *v.* Tyner, 72 Kan. 475, 84 Pac. 124; Godsey *v.* Standifer, (Ky. 1907) 101 S. W. 921; Tarplee *v.* Sonn, 109 N. Y. App. Div. 241, 96 N. Y. Supp. 6; Woodlief *v.* Woodlief, 136 N. Car. 133, 48 S. E. 583; Dobbins *v.* Dobbins, 141 N. Car. 210, 53 S. E. 870; Stubblefield *v.* Hanson, (Tex. Civ. App. 1906) 94 S. W. 406; Cox *v.* Tompkinson, 39 Wash. 70, 80 Pac. 1005.

Claiming under Deed to Whole. — Perkins *v.* Pfalzgraff, 60 W. Va. 121, 53 S. E. 913 (to same effect as Jackson *v.* Huntington, 5 Pet. (U. S.) 402, cited in original work); Arnold *v.* Limeburger, 122 Ga. 72, 49 S. E. 812; Hall *v.* Waterman, 222 Ill. 569, 77 N. E. 142; Wise *v.* Wolf, 120 Ky. 263, 85 S. W. 1191; Bloom *v.* Sawyer, 89 S. W. 204, 28 Ky. L. Rep. 349; Godsey *v.* Standifer, (Ky. 1907) 101 S. W. 921; Joyce *v.* Dyer, 189 Mass. 64, 75 N. E. 81; Payment *v.* Murphy, 141 Mich. 626, 104 N. W. 1111.

Purchase at Tax Sale. — Dahlem *v.* Abbott, 146 Mich. 605, 110 N. W. 47; Barrett *v.* McCarty, (S. Dak. 1905) 104 N. W. 907.

In *Texas* it is held that the rule that the purchase of an outstanding title inures to the benefit of cotenants does not apply where the one so purchasing is asserting a hostile claim. Doty *v.* Jameson, 93 S. W. 638, 29 Ky. L. Rep. 485.

Exclusive Possession. — Hall *v.* Waterman, 222 Ill. 569, 77 N. E. 142; Cole *v.* Lester, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 13, 96 N. Y. 67; Broom *v.* Pearson, 98 Tex. 469, 85 S. W. 790.

Such presumption is not defeated by the disabilities of cotenants. Dobbins *v.* Dobbins, 141 N. Car. 210, 53 S. E. 870.

The presumption of ouster arises where there is exclusive possession and no demand for rents or profits made. Whitaker *v.* Jenkins, 138 N. Car. 476, 51 S. E. 104; Joyce *v.* Dyer, 189 Mass. 64, 75 N. E. 81; Rohrbach *v.* Sanders, 212 Pa. St. 636, 62 Atl. 27; or where the conduct of the one in possession is equivalent to notice of adverse possession. Steele *v.* Steele, 220 Ill. 318, 77 N. E. 232. But see Logan *v.* Ward, 58 W. Va. 366, 52 S. E. 398.

Taking of Title from Hostile Source. — The purchase of an outstanding title subsequent to the institution of a suit repudiating the cotenancy does not inure to the benefit of cotenants. Stubblefield *v.* Hanson, (Tex. Civ. App. 1906) 94 S. W. 406.

Payment of Taxes, Accompanied by Possession. — Payment of taxes by the co-owners to whom a patent has been issued inures to the benefit of the other co-owners. Ballard *v.* Golob, 34 Colo. 417, 83 Pac. 376.

Payment of taxes gives merely an equitable lien on the cotenant's interests. Niday *v.* Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027.

The silent payment of taxes by one cotenant is not ouster. Clark *v.* Beard, 59 W. Va. 669, 53 S. E. 597.

The Mortgage of the Whole. — Where no possession is taken under such a mortgage, there is no ouster, Scottish-American Mortg. Co. *v.* Bunckley, 88 Miss. 641, 41 So. 502; nor is there an ouster where after the foreclosure of such a mortgage the sheriff pointed out the land, which was vacant, and told the purchaser he delivered it to him. Harriss *v.* Howard, 126 Ga. 325, 55 S. E. 59.

Partition. — Caudill *v.* Bayes, 89 S. W. 114; 28 Ky. L. Rep. 182.

A parol partition followed by long-continued exclusive possession of their several allotments, without demands between the cotenants for rents or profits, and the recognition of each other's hostile rights, raises the presumption of ouster and a supervening adverse possession. Rhea *v.* Craig, 141 N. Car. 602, 54 S. E. 408.

Obtaining Patent. — The obtaining of a patent to mining land by some of the co-owners is not adverse as to the others. Ballard *v.* Golob, 34 Colo. 417, 83 Pac. 376.

805. 1. Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142; Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957; Cox *v.* Tompkinson, 39 Wash. 70, 80 Pac. 1005.

The evidence required to establish an ouster by a tenant in common must be positive, clear, and unequivocal. Schoonover *v.* Tyner, 72 Kan. 475, 84 Pac. 124.

2. Notice to Cotenant. — Cole *v.* Lester, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 13, 96 N. Y. 67, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 805; Rich *v.* Victoria Copper Min. Co., 147 Fed. 380; Faubel *v.* McFarland, 144 Cal. 717, 78 Pac. 261; Curtis *v.* Barber, 131 Iowa 400, 108 N. W. 755; Doty *v.* Jameson, 93 S. W. 638, 29 Ky. L. Rep. 485; Dahlen *v.* Abbott, 146 Mich. 605, 110 N. W. 47; Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957; Keith *v.* Keith, (Tex. Civ. App. 1905) 87 S. W. 384; Stubblefield *v.* Hanson, (Tex. Civ. App. 1906) 94 S. W. 406; Clark *v.* Beard, 59 W. Va. 669, 53 S. E. 597.

Notice of Ouster to Cotenant May Be Constructive. Cox *v.* Tompkinson, 39 Wash. 70, 80 Pac. 1005.

Platting the property into lots and blocks as an addition to a city, and selling the same by deeds of warranty, is sufficient notice. Cox *v.* Tompkinson, 39 Wash. 70, 80 Pac. 1005.

806. 1. Stubblefield *v.* Hanson, (Tex. Civ. App. 1906) 94 S. W. 406.

2. Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 806; Gulf Red Cedar Lumber Co. *v.* Crenshaw, (Ala. 1906) 42 So. 564; Steele *v.* Steele, 220 Ill. 318, 77 N. E. 232; Brigham *v.* Reau, 139 Mich. 256, 102 N. W. 845, 11 Detroit Leg. N. 837; Sanford *v.* Safford, 99 Minn. 380, 109 N. W. 819; Gardiner *v.* Hinton, 86 Miss. 604, 38 So. 779; Wiese *v.* Union Pac. R. Co., (Neb. 1906) 108 N. W. 175; Wrich *v.* Union Pac. R. Co., (Neb. 1906) 108 N. W. 178; Stubblefield *v.* Hanson, (Tex. Civ. App. 1906) 94 S. W. 406. *Compare* Kirby *v.* Hayden, (Tex. Civ. App. 1906) 99 S. W. 746, which held that such conveyance was not an ouster unless one held the entire parcel in trust for his cotenants.

Lease by Cotenant. — One who is in possession under a lease made by one cotenant does not hold adversely to the others. Lee *v.* Livingston, 143 Mich. 203, 106 N. W. 713, 12 Detroit Leg. N. 922.

Sheriff's Deed. — A sheriff's deed of one tenant's interest in land is equivalent to a voluntary relinquishment by quitclaim, and does not amount to ouster of the other cotenant. Curtis *v.* Barber, 131 Iowa 400, 108 N. W. 755.

Grantee of Dower. — The purchaser of a dower right does not hold adversely to his cotenants. Bloom *v.* Sawyer, (Ky. 1905) 89 S. W. 204.

807. 1. Hinton *v.* Farmer, (Ala. 1906) 42 So. 563; Blair *v.* Johnson, 215 Ill. 552, 74 N. E. 747; Morrison *v.* Fletcher, 119 Ky. 488, 84 S. W. 548; McCormick *v.* Coddington, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 510, 95 N. Y. Supp. 46; Smith *v.* Proctor, 139 N. Car. 314, 51 S. E. 889; Mitchell *v.* Cleveland, 76 S. Car. 432, 57 S. E. 33.

A life tenant under a will who independently acquires title to the land which the testatrix failed to secure before her death, holds adversely to the state as remainderman. Com. *v.* Clark, (Ky. 1904) 83 S. W. 100.

Where testator devised land to his widow for life with remainder to their son on condition that she pay their son one-third thereof on his reaching majority, her possession is not adverse to the son, though the condition is broken, the son continuing to collect his share of the rents. Pierce *v.* Lee, 197 Mo. 480, 95 S. W. 426.

The heir of a life tenant with remainder to trustees for a charity, does not hold adversely before the appointment of the trustees. Kennedy *v.* Linn Orphan Asylum, (Ky. 1907) 103 S. W. 340.

Where a husband entered into possession of two properties as life tenant under his wife's will, one of which properties she was incapacitated from devising, those claiming under the husband are not estopped from setting up such incapacity, and title vested by adverse possession as to such latter property. *In re* Anderson, (1905) 2 Ch. 70, 74 L. J. Ch. 433.

Adverse Through Trustee. — Where a substituted trustee sells, without sufficient authority, land in which a widow and her children had a joint tenancy with remainder to the children, there being no merger of the estates, a grantee of the purchaser does not hold adversely until the death of life tenant. Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834.

Possession of Widow. — Bloom *v.* Sawyer, 89 S. W. 204, 28 Ky. L. Rep. 349.

Where the husband had no title in the land his wife's possession was held to be adverse from the time of his death. Hooper *v.* Stuart, 23 App. Cas. (D. C.) 434.

Curtesy. — Clinton *v.* Franklin, (Ky. 1904) 83 S. W. 142; Norcum *v.* Savage, 140 N. Car. 472, 53 S. E. 289.

808. 1. Weigel *v.* Green, 218 Ill. 227, 75 N. E. 913; Bullin *v.* Hancock, 138 N. Car. 198, 50 S. E. 621.

In *Louisiana* where a bequest in a will of a life estate in real property is void a sale of the property by the life tenant starts prescription immediately. Jordan *v.* Richards, 114 La. 329, 38 So. 206.

809. 1. See Weaver *v.* Oberholtzer, 31 Pa. Super. Ct. 425, which held that possession under the will of a life tenant was not adverse.

810. 1. State *v.* Harman, 57 W. Va. 462, 50 S. E. 828, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 810; Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21; Moulierre *v.* Coco, 116 La. 845, 41 So. 113; Brady *v.* Carteret Realty Co., 68 N. J. Eq. 55, 59 Atl. 639; Cobb *v.* Robertson, (Tex. 1905) 86 S. W. 746, 87 S. W. 1148.

Must Be Repudiation of Relationship and Assertion of Ownership. — San Augustine County *v.* Madden, (Tex. Civ. App. 1905) 87 S. W. 1056.

But Where Tenant Extends Boundaries. — *Compare* Ross *v.* Guentherodt, 142 Mich. 634, 105 N. W. 1120, which held that such encroachment did not become adverse until the tenant received a deed of the leased premises.

811. 2. Cobb *v.* Robertson, (Tex. 1905) 86 S. W. 746, 87 S. W. 1148; San Augustine County *v.* Madden, (Tex. Civ. App. 1905) 87 S. W. 1056.

3. But to Initiate Adverse Holding. — McCutchen *v.* McCutchen, 77 S. Car. 129, 57 S. E. 678; Bryson *v.* Boyce, (Tex. Civ. App. 1906) 92 S. W. 820.

Deed to Tenant from One Having No Title is not an adverse circumstance. San Augustine County *v.* Madden, (Tex. Civ. App. 1905) 87 S. W. 1056.

Purchase of Tax Title. — An entry under the tax title, or the equivalent, must be shown to start the statute. Lee *v.* Livingston, 143 Mich. 203, 106 N. W. 713, 12 Detroit Leg. N. 922.

4. Brady *v.* Carteret Realty Co., 68 N. J. Eq. 55, 59 Atl. 639; Miller *v.* Warren, 94 N. Y. App. Div. 192, 87 N. Y. Supp. 1011.

5. Cobb *v.* Robertson, (Tex. 1905) 86 S. W. 746, 87 S. W. 1148.

812. 1. See Korsstrom *v.* Barnes, 156 Fed. 280.

813. 1. Com. *v.* Clark, (Ky. 1904) 83 S. W. 100.

814. 3. Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 814; Cameron *v.* Hicks, 141 N. Car. 21, 53 S. E. 728.

4. Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142.

Death of Trustee. — Where the legal title has descended to the trustee's heirs, who are infants, adverse possession does not start the statute against either them or the *cestuis que trustent*. Cameron *v.* Hicks, 141 N. Car. 21, 53 S. E. 728.

Bar of Cotrustee. — Where one of several cotrustees is barred all are barred though some have been under the disability of infancy during the running of the statute. Cameron *v.* Hicks, 141 N. Car. 21, 53 S. E. 728.

815. 1. An agent is not legally incapable of acquiring adverse possession against his principal. Carney *v.* Hennessey, 77 Conn. 577, 60 Atl. 129.

2. Thornley *v.* Andrews, 40 Wash. 583, 82 Pac. 899, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 815.

816. 1. **Mortgage as Mere Lien.** — But in *Washington*, where a mortgage is regarded as a mere lien, the possession of a grantee of a mortgagor was held to be adverse from the time he took possession. Thornley *v.* Andrews, 40 Wash. 580, 82 Pac. 899, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 815.

817. 1. Hunter *v.* Coffman, 74 Kan. 311, 86 Pac. 451, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 817.

Mortgagee in Possession to Satisfy His Claim Out of Proceeds. — Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93.

2. Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792.

818. 1. A purchaser *pendente lite* who holds the land in defiance of a valid judgment, is without color or claim of title and without good faith. May *v.* Sutherlin, 41 Wash. 609, 84 Pac. 585.

2. Zebriska's Succession, (La. 1907) 44 So. 893, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818; Garst *v.* Brutsche, 129 Iowa 501, 105 N. W. 452; Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286; Love *v.* Turner, (S. Car. 1907) 59 S. E. 529; McAllen *v.* Alonzo, (Tex. Civ. App. 1907) 102 S. W. 475; English *v.* Openshaw, 28 Utah 241, 78 Pac. 476.

Execution Sale — Judgment Debtor. — There must be not only an ouster of the execution purchaser, but such an assertion of hostile claim as to bring notice to him. Woodward *v.* Johnson, 90 S. W. 1076, 28 Ky. L. Rep. 1091.

Vendor of Vacant Land. — The grantor of vacant lands may subsequently acquire title by adverse possession, the grantee upon conveyance made being constructively in possession. Bird *v.* Whetstone, 71 Kan. 430, 80 Pac. 942.

819. 1. Zebriska's Succession, (La. 1907) 44 So. 893, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818 *et seq.*; Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286.

2. Zebriska's Succession, (La. 1907) 44 So. 893, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818 *et seq.*; Godsey *v.* Standifer, (Ky. 1907) 101 S. W. 921; Love *v.* Turner, (S. Car. 1907) 59 S. E. 529; Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017.

Intention Must Be Manifest. — Garst *v.* Brutsche, 129 Iowa 501, 105 N. W. 452; Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286.

820. 1. **Void Foreclosure Sale.** — Possession under a warranty deed from a purchaser at a void foreclosure sale is adverse. Brynjolfson *v.* Dagner, 15 N. Dak. 332, 109 N. W. 320.

2. Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 820; Hinton *v.* Farmer, (Ala. 1906) 42 So. 563; Arnold *v.* Limeberger, 122 Ga. 72, 49 S. E. 812; Blair *v.* Johnson, 215 Ill. 552, 74 N. E. 747; Moore *v.* Gulley, 98 S. W. 1011, 30 Ky. L. Rep. 442; McPherson *v.* McPherson, (Neb. 1906) 106 N. W. 991.

To show that the wife held adversely to her husband while they were living together, evidence must be produced to overcome the presumption that the lands belonged to the husband. Drinkwater *v.* Crist, 83 Ark. 293, 103 N. W. 733.

Homestead. — The presumption is that a widow remaining in possession of homestead lands of her husband is in by virtue of her homestead right, and it will not be deemed she holds adversely to the heirs. Larson *v.* Anderson, (Neb. 1905) 104 N. W. 925.

Separate Property. — Where the wife's assertion of ownership began before marriage, the title vesting in her thereafter relates back and is her separate property. Alford *v.* Williams, (Tex. Civ. App. 1906) 91 S. W. 636.

Grantee of Husband. — McPherson *v.* McPherson, (Neb. 1906) 106 N. W. 991.

Dower of Wife. — The fact that dower has not been assigned does not render the widow's possession adverse to her husband's heirs. Moore *v.* Gulley, 98 S. W. 1011, 30 Ky. L. Rep. 442.

Polygamous Wife. — A plural wife may acquire title by adverse possession founded on her husband's gift in the same manner as a stranger. Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908.

821. 3. Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 821; Searle *v.* Laraway, 27 R. I. 557, 65 Atl. 269; Calhoun *v.* Welson, (Wash. 1907) 92 Pac. 448. See Cruse *v.* Richards, (Tex. Civ. App. 1907) 100 S. W. 205; Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984.

The residence of a father on land the purchase price of which he gave to his son on condition that he be provided with a home thereon, is not adverse. Hoyt *v.* Zumwalt, 149 Cal. 381, 86 Pac. 600.

Where a mother and son live together on the land neither can claim title by adverse possession. Irvine *v.* Irvine, 89 S. W. 193, 28 Ky. L. Rep. 262.

Widow. — The widow's continuation of her husband's adverse possession is not presumed to be adverse to the rights of their children and heirs. Larson *v.* Anderson, (Neb. 1905) 104 N. W. 925.

822. 1. *Iowa.* — Liddle *v.* Blake, 131 Iowa 165, 105 N. W. 649.

Kentucky. — Vincent *v.* Blanton, 85 S. W. 703, 27 Ky. L. Rep. 489; Woodward *v.* Johnson, 90 S. W. 1076, 28 Ky. L. Rep. 1091; Auxier *v.* Herald, (Ky. 1906) 96 S. W. 915.

Louisiana. — Ramos Lumber, etc., Mfg. Co. *v.* Sanders, 117 La. 615, 42 So. 158; Kernan *v.* Young, (La. 1907) 44 So. 1.

Minnesota. — Young *v.* Grieb, 95 Minn. 396, 104 N. W. 131.

Mississippi. — A. W. Stevens Lumber Co. *v.* Hughes, (Miss. 1905) 38 So. 769; Kennedy *v.* Sanders, (Miss. 1907) 43 So. 913.

Missouri. — Dixon *v.* Hunter, (Mo. 1907) 102 S. W. 970.

North Carolina. — Lindsay *v.* Austin, 139 N. Car. 463, 51 S. E. 990; Bland *v.* Beasley, (N. Car. 1907) 58 S. E. 993.

Oregon. — Seabrook *v.* Coos Bay Ice Co., (Oregon 1907) 89 Pac. 417.

Tennessee. — Lieberman *v.* Clark, 114 Tenn. 133, 85 S. W. 258, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 822.

2. Hunter *v.* Hodgson, (Tex. Civ. App. 1906) 95 S. W. 637.

823. 1. Nona Mills Co. *v.* Wright, (Tex. 1907) 102 S. W. 1118; Austin *v.* Minor, (Va. 1907) 57 S. E. 609; Illinois Steel Co. *v.* Jeka, 123 Wis. 419, 101 N. W. 399.

The occupation of pine land, by annually making turpentine on it, is such an actual possession as will oust a constructive possession by one claiming merely under a superior paper title. Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69.

2. Olson *v.* Howard, 38 Wash. 15, 80 Pac. 170.

3. Ramos Lumber, etc., Mfg. Co. *v.* Sanders, 117 La. 615, 42 So. 158; McCaughn *v.* Young, 85 Miss. 277, 37 So. 839.

Under Hurd's Rev. Stat. Ill. (1905), c. 83, § 4, limiting the time for the recovery of land in certain instances, there must be actual residence. Manternach *v.* Studt, 230 Ill. 356, 82 N. E. 829.

824. 1. See Austin *v.* Minor, (Va. 1907) 57 S. E. 609.

Wild Land — Paying Taxes. — The payment of taxes for the statutory period upon wild land under color and chain of title is sufficient to uphold a finding of ownership. Hardie *v.* Bissell, 80 Ark. 74, 94 S. W. 611.

3. Lieberman *v.* Clark, 114 Tenn. 133, 85 S. W. 258, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 824; Illinois Steel Co. *v.* Jeka, 123 Wis. 419, 101 N. W. 399.

4. Lieberman *v.* Clark, 114 Tenn. 134, 85 S. W. 258, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 825.

825. 4. Connerly *v.* Dickinson, 81 Ark. 258, 99 S. W. 82; Johnson *v.* Thomas, 23 App. Cas. (D. C.) 141; Overton *v.* Overton, (Ky. 1906) 96 S. W. 469; Ramos Lumber, etc., Mfg. Co. *v.* Labarre, 116 La. 559, 40 So. 898; Crain *v.* Peterman, 200 Mo. 295, 98 S. W. 600; McNear *v.* Giustin, (Oregon 1907) 92 Pac. 1075; Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409; Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026. But see Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362.

Occasional Hay Cutting Not Actual Possession. — British Canadian Loan, etc., Co. *v.* Farmer, 15 Manitoba 593.

826. 2. **Pitching Camp** on land for the purpose of hunting is not sufficient to show adverse possession. Nona Mills Co. *v.* Wright, (Tex. 1907) 102 S. W. 1118.

827. 1. Ball *v.* Loughridge, (Ky. 1907) 100 S. W. 275. See Miskwabik Development Assoc. *v.* Croze, 140 Mich. 194, 103 N. W. 558, 12 Detroit Leg. N. 133.

But where there are not facts sufficient to show adverse possession the issue need not be submitted to the jury. Nona Mills Co. *v.* Wright, (Tex. 1907) 102 S. W. 1118.

2. See Johnson *v.* Thomas, 23 App. Cas. (D. C.) 141; Phillips *v.* Beattyville Mineral, etc., Co., 88 S. W. 1058, 28 Ky. L. Rep. 12.

A contract of leasing or renting is not essential to such holding. Cobb *v.* Robertson, (Tex. 1905) 86 S. W. 746, 87 S. W. 1148.

No right inures to a landlord by the possession through tenants for less than the statutory period. See Wiley *v.* Bargman, (Tex. Civ. App. 1905) 90 S. W. 1116.

Municipality — Lessor. — Occupation of a lessee of a town is the latter's occupation. Murphy *v.* Com., 187 Mass. 361, 73 N. E. 524.

3. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 827, 828.

6. Cutting sod occasionally is not adverse possession. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 827, 828.

7. The cutting of trees for boards, and the like, done at infrequent intervals, does not show actual possession. Rogers *v.* Cuyler, 89 S. W. 2, 28 Ky. L. Rep. 129.

828. 1. Wade *v.* McDougle, 59 W. Va. 127, 52 S. E. 1026, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 827, 828; Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799; Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 566, 1011; Connerly *v.* Dickinson, 81 Ark. 258, 99 S. W. 82; Crain *v.* Peterman, 200 Mo. 295, 98 S. W. 600; Morgan *v.* Pott, 124 Mo. App. 371, 101 S. W. 717; Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409; Earle Imp. Co. *v.* Chatfield, 81 Ark. 296, 99 S. W. 84; Auxier *v.* Herald, (Ky. 1906) 96 S. W. 915; Dowdell *v.* Orphans' Home Soc., 114 La. 49, 38 So. 16.

2. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 827, 828; Dowdle *v.* Wheeler, 76 Ark. 529, 89 S. W. 1002; Interstate Invest. Co. *v.* Bailey, 93 S. W. 578, 29 Ky. L. Rep. 468; Crain *v.* Peterman, 200 Mo. 295, 98 S. W. 600. See Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362.

829. 1. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 827, 828; Lieberman *v.* Clark, 114 Tenn. 134, 85 S. W. 258, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 823; Howison *v.* Masson, 29 App. Cas. (D. C.) 338; Young *v.* Grieb, 95 Minn. 396, 104 N. W. 131; Dunn *v.* Taylor, (Tex. Civ. App. 1906) 94 S. W. 347; Webb *v.* Lyerla, (Tex. Civ. App. 1906) 94 S. W. 1095; Texas, etc., R. Co. *v.* Haynes, (Tex. Civ. App. 1906) 97 S. W. 849.

In trespass to try title, the denial of the owner of a fence that he gave plaintiff permission to use it in inclosing the property in dispute, does not affect plaintiff's right of possession, where he claimed the right to so use it. Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017.

2. Where one fenced in the land, visited it from time to time, and brought another on the same and executed a paper whereby that other was to hold possession for the former, sufficient possession is shown. Glos *v.* Dyche, 214 Ill. 417, 73 N. E. 757.

3. Nathan *v.* Dierssen, 146 Cal. 63, 79 Pac. 739.

Under Sayles's Annot. Civ. Stat. Tex. (1897), art. 3346, an inclosure of more than 5,000 acres including tracts belonging to various parties is ineffectual unless there is separation of the land claimed from the other tracts, or actual possession or cultivation of one-tenth thereof. Earnest *v.* Lake, (Tex. Civ. App. 1907) 101 S. W. 479.

4. A fence which was shown to be the best in the neighborhood was held sufficient. Carpenter *v.* Smith, 76 Ark. 447, 88 S. W. 976.

It is sufficient if the land be inclosed with other parcels held under claim of title. Botsford *v.* Eyraud, 148 Cal. 431, 83 Pac. 1008.

The mere erection of posts about a parcel of land is not sufficient to show actual possession. Peden *v.* Crenshaw, 98 Tex. 365, 84 S. W. 362.

The sufficiency of an inclosure to turn cattle is a test of its substantiality. Jones *v.* Hodges, 146 Cal. 160, 79 Pac. 869.

Natural Barriers. — Where the fence was but a small part of an alleged inclosure chiefly dependent on natural barriers it was held insufficient. Hyde *v.* McFaddin, 140 Fed. 433, 72 C. C. A. 655.

If the natural together with the artificial barriers used clearly indicate dominion and claim of possession, the statute is put in motion. Dowdle *v.* Wheeler, 76 Ark. 529, 89 S. W. 1002.

5. Fencing on Margin of River. — Loring *v.* Jackson, (Tex. Civ. App. 1906) 95 S. W. 19.

The fact that the river occasionally runs dry does not defeat adverse possession. Dunn *v.* Taylor, (Tex. Civ. App. 1906) 94 S. W. 347.

830. 1. See Western Pac. R. Co. *v.* Southern Pac. R. Co., 151 Fed. 376, 80 C. C. A. 606.

2. Carpenter *v.* Smith, 76 Ark. 447, 88 S. W. 976; Jones *v.* Hodges, 146 Cal. 160, 79 Pac. 869; Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937.

But where a fence is allowed to go to decay, and the rails are stolen, leaving nothing but a row of posts, the continuity will be regarded as broken. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

831. 1. Garst *v.* Brutsche, 129 Iowa 501, 105 N. W. 452; Overton *v.* Overton, (Ky. 1906) 96 S. W. 469; Young *v.* Grieb, 95 Minn. 396, 104 N. W. 131; Lutcher *v.* Allen, (Tex. Civ. App. 1906) 95 S. W. 572; Fuhrman *v.* Power, 43 Wash. 539, 86 Pac. 940, *quoting* 1 Am. and Eng. Encyc. of Law (2d ed.) 831. See Seabrook *v.* Coos Bay Ice Co., (Oregon 1907) 89 Pac. 417.

The assessment of land is not proof of payment of taxes or of ownership by adverse possession. Kennedy *v.* Sanders, (Miss. 1907) 43 So. 913.

Payment by Owner and Adverse Claimant. — Payment of taxes by an adverse claimant where the real owner has regularly paid the same is ineffectual. Turner *v.* Ladd, 42 Wash. 274, 84 Pac. 866.

Failure to Pay Taxes or Return for Assessment. — Failure to pay may be regarded as evidence that possession is not adverse. Heckescher *v.* Cooper, 203 Mo. 278, 101 S. W. 658; Bush *v.* Griffin, (Neb. 1906) 107 N. W. 247.

Failure to return land for assessment is a fact admissible to rebut testimony of adverse possession. Driver *v.* King, 145 Ala. 585, 40 So. 315.

Redemption from Sale. — Redemption from sale does not constitute payment of taxes, so as to form the basis of adverse possession. Webber *v.* Wannemaker, (Colo. 1907) 89 Pac. 780; Wyse *v.* Johnston, 83 Ark. 520, 104 S. W. 204.

2. Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799; McCaughn *v.* Young, 85 Minn. 277, 37 So. 839; Dredla *v.* Patz, (Neb. 1907) 111 N. W. 136; Loring *v.* Jackson, (Tex. Civ. App. 1906) 95 S. W. 19.

Illustrations. — Payment of taxes under a void deed does not show adverse possession. Hunter *v.* Hodgson, (Tex. Civ. App. 1906) 95 S. W. 637.

Payment of taxes, prevention of trespasses, occasional cutting of timber, are not sufficient to show actual possession. Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409.

3. Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799; White *v.* Eavenson, (Tex. Civ. App. 1907) 101 S. W. 1029.

4. Tax receipts are the primary and best evidence of the payment of taxes. Hardie *v.* Bissell, 80 Ark. 74, 94 S. W. 611.

5. *California.* — Nathan *v.* Dierssen, 146 Cal. 63, 79 Pac. 739; Mann *v.* Mann, (Cal. 1907) 91 Pac. 994.

Illinois. — Blair *v.* Johnson, 215 Ill. 552, 74 N. E. 747; Glos *v.* Holberg, 220 Ill. 167, 77 N. E. 80. See Glos *v.* Miller, 213 Ill. 22, 72 N. E. 714.

Under Hurd's Rev. Stat. Ill. (1905), §§ 6, 7, it must clearly appear that the taxes on unoccupied land were paid for seven successive years by the party claiming possession or by one acting as his agent. Manternach *v.* Studt, 230 Ill. 356, 82 N. E. 829.

Several states have passed statutes evidently intended to encourage the payment of taxes, and attaching as a reward thereto a modification of the necessity of actual occupation, a reduction of the duration of possession, or other amelioration of the common-law requirements. See the following cases:

United States. — Schauble *v.* Schulz, 137 Fed. 389, 69 C. C. A. 581.

Arkansas. — Price *v.* Greer, 76 Ark. 426, 88 S. W. 985; Cottonwood Lumber Co. *v.* Hardin, 78 Ark. 95, 92 S. W. 1118; Towson *v.* Denson, 74 Ark. 302, 86 S. W. 661; Macrae *v.* Johnson, 78 Ark. 603, 92 S. W. 1120; Updegraff *v.* Marked Tree Lumber Co., 83 Ark. 154, 103 S. W. 606; Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609; Gaither *v.* Gage, 82 Ark. 51, 100 S. W. 80; Connerly *v.* Dickinson, 81 Ark. 258, 99 S. W. 82; Wheeler *v.* Foote, 80 Ark. 435, 97 S. W. 447.

South Dakota. — Murphy *v.* Nelson, 19 S. Dak. 197, 102 N. W. 691.

Texas. — Wall *v.* Club Land, etc., Co., (Tex.

Civ. App. 1905) 88 S. W. 534, (Tex. 1906) 92 S. W. 984.

Utah. — Crane *v.* Judge, 30 Utah 50, 83 Pac. 566.

Washington. — Biggart *v.* Evans, 36 Wash. 212, 78 Pac. 925; Tremmel *v.* Mess, (Wash. 1907) 89 Pac. 487.

832. 1. Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 566, 1011; Calhoun *v.* Moore, 79 Ark. 109, 94 S. W. 931; Earle Imp. Co. *v.* Chatfield, 81 Ark. 296, 99 S. W. 84; Webber *v.* Wannemaker, (Colo. 1907) 89 Pac. 780; Howison *v.* Masson, 29 App. Cas. (D. C.) 338; Interstate Invest. Co. *v.* Bailey, 93 S. W. 578, 29 Ky. L. Rep. 468; Young *v.* Grieb, 95 Minn. 396, 104 N. W. 131; Heckescher *v.* Cooper, 203 Mo. 278, 101 S. W. 658; San Augustine County *v.* Madden, (Tex. Civ. App. 1905) 87 S. W. 1056; Nona Mills Co. *v.* Wright, (Tex. 1907) 102 S. W. 1118.

833. 1. See Kennedy *v.* Maness, 138 N. Car. 35, 50 S. E. 450, which held that it was the duty of a purchaser to inquire of the nature of the holding by one in possession.

An instruction that the requirement of notoriety is to establish general notice to all, is only equivalent to and takes the place of direct proof of actual notice to the true owner. Love *v.* Turner, 71 S. Car. 322, 51 S. E. 101.

A person's possession of land is notice to all the world of his claim, and the fact that another does not learn of his right to possession until after the statute has run is immaterial. Waterman Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142; Steele *v.* Steele, 220 Ill. 318, 77 N. E. 232.

2. McCaughn *v.* Young, 85 Miss. 277, 37 So. 839.

3. Godfrey *v.* Dixon Power, etc., Co., 228 Ill. 487, 81 N. E. 1089, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 833, and authorities in note 3.

Such record and possession together with the payment of taxes is sufficient notice. Stubblefield *v.* Hanson, (Tex. Civ. App. 1906) 94 S. W. 406.

A deed insufficient in description cannot be regarded as "duly recorded" so as to serve as notice. Young *v.* Trahan, (Tex. Civ. App. 1906) 97 S. W. 147.

834. 4. *Colorado.* — Webber *v.* Wannemaker, (Colo. 1907) 89 Pac. 780.

Delaware. — Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362.

Iowa. — Garst *v.* Brutsche, 129 Iowa 501, 105 N. W. 452; Boltz *v.* Colsch, (Iowa 1906) 109 N. W. 1106.

Michigan. — Cass Farm Co. *v.* Detroit, 139 Mich. 318, 102 N. W. 848, 11 Detroit Leg. N. 850.

North Carolina. — Lindsay *v.* Austin, 139 N. Car. 463, 51 S. E. 990.

Texas. — San Augustine County *v.* Madden, (Tex. Civ. App. 1905) 87 S. W. 1056; Wiley *v.* Bargman, (Tex. Civ. App. 1905) 90 S. W. 1116.

Utah. — Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, *citing* 1 AM AND ENG. ENCYC. OF LAW (2d ed.) 834.

Virginia. — Austin *v.* Minor, (Va. 1907) 57 S. E. 609.

Washington. — Lohse *v.* Burch, 42 Wash. 156, 84 Pac. 722; Turner *v.* Ladd, 42 Wash. 274, 84 Pac. 866.

Wisconsin. — Hemmy *v.* Dunn, 125 Wis. 275, 103 N. W. 1095; Lins *v.* Seefeld, 126 Wis. 610, 105 N. W. 917.

And see Jordan *v.* Jordan, (Ala. 1905) 39 So. 992.

After Bar of Statute. — The fact that possession is not exclusive after the statute has run is immaterial. Bennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546.

Illustrations. — Where a mill owner has erected scales, and a railroad a side track up to them, on the land in dispute, their use of the same is for mutual benefit, and the former has no title by adverse possession. Michigan Milling Co. *v.* Ann Arbor R. Co., 138 Mich. 216, 101 N. W. 574, 11 Detroit Leg. N. 556.

Where one attends regular meetings of a religious society as a member thereof and not as owner of the soil, the occupation of such society is not thereby rendered mixed. Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778.

Landlord and Tenant. — Occupation is exclusive though shared by others as tenants. Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

6. Interstate Invest. Co. *v.* Bailey, 93 S. W. 578, 29 Ky. L. Rep. 468.

835. 1. *Alabama.* — Henry *v.* Brown, 143 Ala. 446, 39 So. 325.

Arkansas. — Connerly *v.* Dickinson, 81 Ark. 258, 99 S. W. 82; Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 566, 1011.

Indiana. — Fatic *v.* Myer, 163 Ind. 401, 72 N. E. 142; McCaslin *v.* State, (Ind. 1905) 75 N. E. 844.

Iowa. — Boltz *v.* Colsch, (Iowa 1906) 109 N. W. 1106.

Kentucky. — Phillips *v.* Beattyville Mineral, etc., Co., 88 S. W. 1058, 28 Ky. L. Rep. 12; Overton *v.* Overton, (Ky. 1906) 96 S. W. 469.

Louisiana. — Ramos Lumber, etc., Co. *v.* Sanders, 117 La. 615, 42 So. 158.

Maine. — Proctor *v.* Maine Cent. R. Co., 101 Me. 459, 64 Atl. 839.

Minnesota. — Olson *v.* Burk, 94 Minn. 456, 103 N. W. 335.

North Carolina. — Monk *v.* Wilmington, 137 N. Car. 322, 49 S. E. 345.

Texas. — Lawless *v.* Wright, (Tex. Civ. App. 1905) 86 S. W. 1039; Wilson *v.* Nugent, (Tex. Civ. App. 1906) 91 S. W. 241; Cocke *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 407.

See Canton Co. *v.* Baltimore, (Md. 1907) 66 Atl. 679, which held that the making of a mortgage on the premises was immaterial, where the mortgagor had held for thirty years thereafter.

Possession must be of such a continuous nature that a superior claimant can sue the adverse claimant at any time during the statutory period. Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409.

3. Changing Fence. — See Dawson *v.* Falls City Boat Club, 142 Mich. 615, 106 N. W. 146, 12 Detroit Leg. N. 855.

836. 1. Chastang *v.* Chastang, 141 Ala.

451, 37 So. 799, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 836, and note; Garst *v.* Brutsche, 129 Iowa 501, 105 N. W. 452.

Death of Real Owner. — Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896.

Dower. — The fact that unassigned dower accrued after the statute began to run does not affect its operation. Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896.

Payment of Taxes. — Where the payment of taxes is an element of adverse possession, the payment thereof by the owner on an assessment to himself before payment by one claiming adversely is an interruption. Commercial Nat. Bank *v.* Schlitz, (Cal. App. 1907) 91 Pac. 750; Webber *v.* Wannemaker, (Colo. 1907) 89 Pac. 780.

Forfeiture for Non-payment of Interest on the purchase price by the vendee of the state will act as an interruption of the holding of one claiming adversely. Lawless *v.* Wright, (Tex. Civ. App. 1905) 86 S. W. 1039.

2. McPherson *v.* McPherson, (Neb. 1906) 106 N. W. 991.

The entry must bear upon its face an intention to resume possession, and evidence as to the undisclosed intention is properly excluded. Murphy *v.* Com., 187 Mass. 361, 73 N. E. 524.

By Statute. — See Place *v.* Place, 139 Mich. 509, 102 N. W. 996, which held, under Comp. L. Mich. (1897), § 9721, providing that to be deemed in possession by reason of entry one must remain in open and peaceable possession for at least a year, or begin an action within a year of disseizin, that the exercise of rights of ownership not acquiesced in by the adverse claimant does not interrupt the statute.

837. 5. Hoyle *v.* Mann, 144 Ala. 516, 41 So. 835.

8. Love *v.* Turner, (S. Car. 1907) 59 S. E. 529.

838. 1. Flood. — The fact that land lay idle for a year because of a flood does not affect the rights of one who had continuously cultivated it for six years. Robinson *v.* Nordman, 75 Ark. 593, 88 S. W. 592.

2. Olson *v.* Burk, 94 Minn. 456, 103 N. W. 335.

See Closuit *v.* John Arpin Lumber Co., 130 Wis. 258, 110 N. W. 222, which held that a casual admission that a fence was on the property of another did not interrupt the running of the statute.

Attornment. — An unwarranted scheme by which the plaintiff secured a judgment for possession, and the acceptance by defendant's tenant of a lease from plaintiff, unknown to defendant claiming adverse possession, is void. Briel *v.* Jordan, 27 App. Cas. (D. C.) 202.

Where a wife acquiesces in her husband's recognition of several successive lessors, her adverse holding is destroyed. Roby *v.* Calumet, etc., Canal, etc., Co., 211 Ill. 173, 71 N. E. 822.

Mere negotiations without the knowledge of the landlord for a lease from another and disclaimers by the tenants cannot affect the nature of the possession of the landlord. Cobb *v.* Robertson, (Tex. 1905) 86 S. W. 746, 87 S. W. 1148.

Disclaimer will not prevent one's subsequently acquiring title by adverse possession. Langston *v.* Cothran, (S. Car. 1907) 58 S. E. 956.

Disclaimer of Part. — Doty *v.* Jameson, (Ky. 1906) 93 S. W. 638; Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937.

Patenting part of the land does not show an abandonment of a possessory title. Asher *v.* Howard, (Ky. 1906) 91 S. W. 270.

839. 2. Fitch *v.* Gentry, (Ky. 1906) 92 S. W. 586; Wiese *v.* Union Pac. R. Co., (Neb. 1906) 108 N. W. 175; Wrich *v.* Union Pac. R. Co., (Neb. 1906) 108 N. W. 178.

840. 1. The purchase of a void tax title may be made for the purpose of strengthening title by adverse possession. Carpenter *v.* Smith, 76 Ark. 447, 88 S. W. 976.

2. Garst *v.* Brutsche, 129 Iowa 501, 105 N. W. 452; Liddle *v.* Blake, 131 Iowa 165, 105 N. W. 649; Howatt *v.* Green, 139 Mich. 289, 102 N. W. 734, 11 Detroit Leg. N. 847; Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984.

3. McCune *v.* Goodwillie, (Mo. 1907) 102 S. W. 997.

A claim of title is without merit where evidence of adverse possession is accompanied by proof that some one had brought a successful action for the land against the claimant during the statutory period. Fortner *v.* Fell, (Kan. 1906) 88 Pac. 66.

One Remaining in Possession After Adverse Decree. — See Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

Necessity of Suit. — In Cobb *v.* Robertson, (Tex. 1905) 86 S. W. 746, 87 S. W. 1148, it was held that under a statute defining peaceable possession as one "continuous and not interrupted by adverse suit," a continuous possession can be interrupted only by suit.

5. Where the judgment rendered is void for want of service of process there is no interruption. Barrett *v.* McKinney, (Tex. Civ. App. 1906) 93 S. W. 240.

6. Bradford *v.* Wilson, 140 Ala. 633, 37 So. 595.

841. 1. Illustrations.—Where one V. occupied a portion of the land in controversy for four years and left the state, and neither V. nor his heirs claimed the same for fifty succeeding years, except that V. at some time forbade trespassing, to which no attention was paid, the possession is insufficient. Veatch *v.* Gray, (Tex. Civ. App. 1905) 91 S. W. 324.

Where one in possession of land by mistake, upon ascertaining the true line by survey, removes all his improvements back to the true line, there is an abandonment as to the land vacated. Noyes *v.* Douglas, 39 Wash. 314, 81 Pac. 724.

Conveyance of Land. — Where there is no visible abandonment of the land, the mere fact that a conveyance of the land was executed by those in possession, under which the purchaser did not take possession for a year, does not amount to an interruption. Botsford *v.* Eyraud, 148 Cal. 431, 83 Pac. 1008.

Abandonment of Tenant. — Where the tenant abandons the place the continuity of possession is broken. Phillips *v.* Beattyville Mineral, etc., Co., 88 S. W. 1058, 28 Ky. L. Rep. 12.

2. McCaughn *v.* Young, 85 Miss. 277, 37 So.

839; Hunter *v.* Pinnell, 193 Mo. 142, 91 S. W. 472.

3. Presumption as to Continuance. — It is unreasonable to presume that one has abandoned land after a continuous cultivation for six years. Robinson *v.* Nordman, 75 Ark. 593, 88 S. W. 592.

842. **1.** Campbell *v.* Bates, 143 Ala. 338, 39 So. 144 (to same effect as McCall *v.* Pryor, 17 Ala. 533, set forth in original work); McCreary *v.* Jackson Lumber Co., (Ala. 1906) 41 So. 822.

2. Chicot Lumber Co. *v.* Dardell, 84 Ark. 140, 104 S. W. 1100; Bennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698; Off *v.* Heinrichs, 124 Wis. 440, 102 N. W. 904.

4. Haggart *v.* Ranney, 73 Ark. 344, 84 S. W. 703; Robinson *v.* Nordman, 75 Ark. 593, 88 S. W. 592; Hughes *v.* Owens, 92 S. W. 595, 29 Ky. L. Rep. 140; Booksh *v.* New Iberia Sugar Co., 115 La. 516, 39 So. 545; Moulierre *v.* Coco, 116 La. 845, 41 So. 113; McPherson *v.* McPherson, (Neb. 1906) 106 N. W. 991; Nash *v.* Northwest Land Co., 13 N. Dak. 566, 108 N. W. 792; Brucke *v.* Hubbard, 74 S. Car. 144, 54 S. E. 249; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698; Poland *v.* Porter, (Tex. Civ. App. 1906) 98 S. W. 214; Closuit *v.* John Arpin Lumber Co., 130 Wis. 258, 110 N. W. 222.

Husband and Wife — Widow. — The husband's adverse possession cannot be tacked to his widow's, both being independent trespassers. Hooper *v.* Stuart, 23 App. Cas. (D. C.) 434.

Compare Larson *v.* Anderson, (Neb. 1905) 104 N. W. 925, which held that the husband's possession could be tacked to that of his widow to make up the statutory period.

In North Carolina. — Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201. *Compare* Jennings *v.* White, 139 N. Car. 23, 51 S. E. 799.

Illustrations. — The several possessions of grantees must be successive in fact to permit of tacking them. McCreary *v.* Jackson Lumber Co., (Ala. 1906) 41 So. 822.

A mother's possession of land, devised to her by her husband on condition that she pay one-third to their son, is not adverse to the son where he waived the condition and continued to collect the rents up to the time the mother leased it to a third party, and cannot be tacked to the latter's possession. Pierce *v.* Lee, 197 Mo. 480, 95 S. W. 426.

Where the adverse holding of one is interrupted by forfeiture to the state for nonpayment by its vendee of interest on the purchase money, the fact of reinstatement does not enable the one holding adversely to join the holding before and after the interruption as against such vendee or his assignee. Lawless *v.* Wright, (Tex. Civ. App. 1905) 86 S. W. 1039.

844. **1.** Jennings *v.* White, 139 N. Car. 23, 51 S. E. 799. See Booksh *v.* New Iberia Sugar Co., 115 La. 516, 39 So. 545.

2. Holdrege *v.* Livingston, (Neb. 1907) 112 N. W. 341.

845. **2.** Walling *v.* Eggers, (Ky. 1907) 104 S. W. 360.

4. Messer *v.* Hibernia Sav., etc., Soc., 149 Cal. 122, 84 Pac. 835.

846. **1.** Beasley *v.* Equitable Securities Co., 72 Ark. 610, 84 S. W. 224, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 546; Little *v.* Crawford, (Idaho 1907) 88 Pac. 974.

2. Definitions Assuming Necessity of a Writing. — "Color of title is a paper writing (usually a deed) which professes and appears to pass the title, but fails to do so." Smith *v.* Proctor, 139 N. Car. 314, 51 S. E. 889.

847. **2. Instrument Insufficient to Give Color, Evidence of Claim of Title.** — Anniston City Land Co. *v.* Edmondson, 145 Ala. 557, 40 So. 505.

3. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847; Bradbury *v.* Dumond, 80 Ark. 82, 96 S. W. 390; May *v.* Dobbins, 166 Ind. 331, 77 N. E. 353; Bird *v.* Whetstone, 71 Kan. 430, 80 Pac. 942; Dredla *v.* Patz, (Neb. 1907) 111 N. W. 136.

Tennessee Doctrine. — Under Shannon's Code, Tenn., § 4458, adverse possession for seven years vests title only where the possession was under color or assurance of title. Bell *v.* North American Coal, etc., Co., 155 Fed. 712.

Statutes Requiring Color of Title. — To maintain the plea of prescription of ten years, *acquirendi causa,* there must be actual possession under a title translative of property. Kamos Lumber, etc., Co. *v.* Sanders, 117 La. 615, 43 So. 158.

848. **2.** Bradbury *v.* Dumond, 80 Ark. 82, 96 S. W. 390; Banton *v.* Herrick, 101 Me. 134, 63 Atl. 671.

3. See Moore *v.* Mobley, 123 Ga. 424, 51 S. E. 351.

Where by a verbal agreement the evidence of a debt is canceled and the grantee in a deed given as security therefor takes possession of the land, he holds under the deed as color of title and not by virtue of a verbal agreement. English *v.* Marshall, 128 Ga. 730, 58 S. E. 351.

Statutory Requirement of Writing. — Chicago, etc., R. Co. *v.* Abbott, 215 Ill. 416, 74 N. E. 412; Webber *v.* Wannemaker, (Colo. 1907) 89 Pac. 780.

See Call *v.* Dancy, (N. Car. 1907) 57 S. E. 220, holding that any deed made before the sale of an adverse claimant's interest in land pursuant to a mortgage, could not be used as color of title.

849. **1.** Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131 (*obiter*).

850. **2.** See Kaulbach *v.* Cook, 39 Nova Scotia 500.

4. Henry *v.* Brown, 143 Ala. 446, 39 So. 325; Fountain *v.* Lewiston Nat. Bank, 11 Idaho 451, 83 Pac. 505; Tarplee *v.* Sonn, 109 N. Y. App. Div. 241, 96 N. Y. Supp. 6; Milby *v.* Hester, (Tex. Civ. App. 1906) 94 S. W. 178; New Orleans State Nat. Bank *v.* Roberts, (Tex. Civ. App. 1907) 103 S. W. 454. See also Wheeler *v.* Foote, 80 Ark. 435, 97 S. W. 447; Bennett *v.* Calmes, 116 La. 598, 40 So. 911.

One cannot hold under color of title from himself. Collinsville Granite Co. *v.* Phillips, 123 Ga. 830, 51 S. E. 666.

Void Deed. — McCreary *v.* Jackson Lumber Co., (Ala. 1906) 41 So. 822; Southern R. Co. *v.* Hayes, (Ala. 1907) 43 So. 487; Dangerfield *v.* Williams, 26 App. Cas. (D. C.) 508; Floyd *v.* Ricketson, 129 Ga. 668, 59 S. E. 909; Regents

v. Calvary M. E. Church, 104 Md. 635, 65 Atl. 398.

And see Adams *v.* Carpenter, 187 Mo. 613, 86 S. W. 445.

Mortgagor's Deed to Mortgaged Premises. — Kirby *v.* Hayden, (Tex. Civ. App. 1906) 99 S. W. 746.

A Void Certificate. — Blumer *v.* Iowa R. Land Co., 129 Iowa 32, 105 N. W. 342; Olson *v.* Howard, 38 Wash. 15, 80 Pac. 170.

Wills. — A devise under a will duly recorded may give color of title. Harriss *v.* Howard, 126 Ga. 325, 55 S. E. 59. A foreign will witnessed by only two persons is color of title. Love *v.* Turner, 71 S. Car. 322, 51 S. E. 101.

Void Tax Deed. — A void tax deed is color of title, Gannon *v.* Moore, 83 Ark. 196, 104 S. W. 139; Gilbert *v.* Southern Land, etc., Co., 53 Fla. 319, 43 So. 754; McCash *v.* Penrod, 131 Iowa 631, 109 N. W. 180; Morgan *v.* Pott, 124 Mo. App. 371, 101 S. W. 717; McPherson *v.* McPherson, (Neb. 1906) 106 N. W. 991; State *v.* Harman, 57 W. Va. 447, 50 S. E. 828; unless void for indefinite description. Brannan *v.* Henry, 142 Ala. 698, 39 So. 92.

Security Deed. — A deed executed as security for a loan is not color of title where the grantor retains possession. Collinsville Granite Co. *v.* Phillips, 123 Ga. 830, 51 S. E. 666.

Ante-dated Deed. — An ante-dated deed operates as color of title from the time of its execution. Anniston City Land Co. *v.* Edmondson, 145 Ala. 557, 40 So. 505.

Conditional Sale. — A sale made on condition that the vendor shall be found to be the owner cannot serve as a basis for prescription, if the vendor is found not to be owner. Albert Hanson Lumber Co. *v.* Angelloz, 118 La. 861, 43 So. 529.

Indian's Deed of Patent. — Though the laws of the United States forbid an Indian the right of deeding the land within five years of the time it is patented to him, his deed in violation thereof gives color of title. Murphy *v.* Nelson, 19 S. Dak. 197, 102 N. W. 691.

852. **1.** Bradbury *v.* Dumond, 80 Ark. 82, 96 S. W. 390; McKewen *v.* Allen, 80 Ark. 181, 96 S. W. 392; New Orleans State Nat. Bank *v.* Roberts, (Tex. Civ. App. 1907) 103 S. W. 454.

2. Archer *v.* Beihl, 136 Fed. 113, 69 C. C. A. 101; Henry *v.* Brown, 143 Ala. 446, 39 So. 325; McCreary *v.* Jackson Lumber Co., (Ala. 1906) 41 So. 822; Hoyle *v.* Mann, 144 Ala. 516, 41 So. 835; Perkins Land, etc., Co. *v.* Irvin, 200 Mo. 485, 98 S. W. 580; Ledoux *v.* Samuels, 116 N. Y. App. Div. 726, 102 N. Y. Supp. 43; New Orleans State Nat. Bank *v.* Roberts, (Tex. Civ. App. 1907) 103 S. W. 454.

3. Tax Sale — Delinquent Life Tenant. — A tax deed of land listed in the life tenant's name was held not to be color of title against the remaindermen, as, under the statutes applicable, it operated to convey merely the life tenant's interest. Smith *v.* Proctor, 139 N. Car. 314, 51 S. E 889.

Execution and Conveyance Back. — A deed from a purchaser back to the execution debtor, who held by curtesy, gives color of title. Norcum *v.* Savage, 140 N. Car. 472, 53 S. E. 289.

853. **1. In Fraud of Creditors.** — Such a deed is color of title as to all persons not affected by the fraud. Moore *v.* Mobley, 123 Ga. 424, 51 S. E. 351.

4. Conveyance by Public Officer. — Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131; Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

Deed by Administrator Without Authority. — English *v.* Marshall, 128 Ga. 730, 58 S. E. 351.

Deed by Trustee Having No Authority. — Maynard *v.* Greer, 129 Ga. 709, 59 S. E. 798

854. **2.** Bradbury *v.* Dumond, 80 Ark. 82; 96 S. W. 390; McKewen *v.* Allen, 80 Ark. 181, 96 S. W. 392; Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609; McCaughn *v.* Young, 85 Miss. 277, 37 So. 839.

A commissioner's deed based on a void partition sale gives color. Lang *v.* Osceola Consol. Min. Co., 145 Mich. 370, 108 N. W. 678, 13 Detroit Leg. N. 474.

Sheriff's Deed Founded on Sale under Void Judgment. — Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896.

855. **2.** An hiatus in the paper chain is fatal as to so much of the land as is claimed by mere color. Morgan *v.* Pott, 124 Mo. App. 371, 101 S. W. 717.

3. Execution of an instrument offered as color of title need not be proved. Brannan *v.* Henry, 142 Ala. 698, 39 So. 92.

Color of title need not be executed in the form of a deed. Luttrell *v.* Whitehead, 121 Ga. 699, 49 S. E. 691.

Tax Deeds. — Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778; Mathews *v.* Blake, (Wyo. 1907) 92 Pac. 242.

857. **1.** Perkins Land, etc., Co. *v.* Irvin, 200 Mo. 485, 98 S. W. 580.

2. Dorlan *v.* Westervitch, 140 Ala. 283, 37 So. 382; Davis *v.* Arnold, 143 Ala. 228, 39 So. 141; Perkins Land, etc., Co. *v.* Irvin, 200 Mo. 485, 98 S. W. 580.

3. The same is true of a deed, executed by the husband, of his wife's interest. New Orleans State Nat. Bank *v.* Roberts, (Tex. Civ. App. 1907) 103 S. W. 454.

See Veeder *v.* Gilmer, (Tex. Civ. App. 1907) 105 S. W. 331, holding that evidence was admissible to correct such a defect in a deed, and thus render it sufficient as color of title.

5. Rich *v.* Victoria Copper Min. Co., 147 Fed. 380. See Bradbury *v.* Dumond, 80 Ark. 82, 96 S. W. 390.

In Stover *v.* Stover, 60 W. Va. 285, 54 S. E. 350, it was held that a partition contract, though not in form a conveyance, which described the lands, was sealed and in writing, and under which the parties took actual adverse possession, was color of title.

858. **4. Contradictory Description.** — Where the variance in description in a deed does not plainly relate to different land from that described in another deed in the chain it may give color of title. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

5. A deed failing to describe the land is equivalent to no deed at all. Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21.

But a deed sufficiently definite is not affected by a reference to another deed unrecorded. Club Land, etc., Co. *v.* Wall, (Tex. 1906) 92 S. W. 984.

6. Albert Hanson Lumber Co. *v.* Angelloz, 118 La. 861, 43 So. 529.

7. Woodall *v.* Edwards, 83 Ark. 334, 104 S. W. 128; Gannon *v.* Moore, 83 Ark. 196, 104 S. W. 139; Dickson *v.* Sentell, 83 Ark. 385, 104 S. W. 148; Luttrell *v.* Whitehead, 121 Ga. 699, 49 S. E. 691; Pitts *v.* Whitehead, 121 Ga. 704, 49 S. E. 693; Crawford *v.* Verner, 122 Ga. 814, 50 S. E. 958; Priester *v.* Melton, 123 Ga. 375, 51 S. E. 330; Dowdell *v.* Orphan's Home Soc., 114 La. 49, 38 So. 16; Marshall *v.* Corbett, 137 N. Car. 555, 50 S. E. 210; Kennedy *v.* Maness, 138 N. Car. 35, 50 S. E. 450. And see Brannan *v.* Henry, 142 Ala. 698, 39 So. 92.

859. 2. Brannan *v.* Henry, 142 Ala. 698, 39 So. 92.

The same certainty is required as is necessary to constitute an instrument a conveyance of title. Crawford *v.* Verner, 122 Ga. 814, 50 S. E. 958.

3. Caper *v.* Sheldon, 78 Vt. 39, 61 Atl. 864, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 859; Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142. See Booksh *v.* New Iberia Sugar Co., 115 La. 516, 39 So. 545.

A description which enables a surveyor to locate the land is sufficient to give color of title. Dorlan *v.* Westervitch, 140 Ala. 283, 37 So. 382.

Conveyance of All Grantor's Property in Specified Territory.— A devise in a will "of all my lands" was held sufficient as color of title to land in the county of testator's residence, to which he had recorded deeds, which formed part of a plantation known by his name, and of which he died in possession. Harriss *v.* Howard, 126 Ga. 325, 55 S. E. 59.

4. **Warranty of Title** will render an instrument without words of transfer color of title. Anniston City Land Co. *v.* Edmondson, 145 Ala. 557, 40 So. 505.

Intention. — Apt words of conveyance are unnecessary, where the intention of the grantor to transfer the legal title is manifested by the instrument. Henry *v.* Brown, 143 Ala. 446, 39 So. 325.

860. 1. Townsend *v.* Penrose, 84 Ark. 316, 105 S. W. 588.

4. Dorlan *v.* Westervitch, 140 Ala. 283, 37 So. 382; O'Brien *v.* Fletcher, 123 Ga. 427, 51 S. E. 405; Floyd *v.* Ricketson, 129 Ga. 668, 59 S. E. 909; Tarplee *v.* Sonn, 109 N. Y. App. Div. 241, 96 N. Y. Supp. 6; Janney *v.* Robbins, 141 N. Car. 400, 53 S. E. 863.

5. Archer *v.* Beihl, 136 Fed. 113, 69 C. C. A. 101; Little *v.* Crawford, (Idaho 1907) 88 Pac. 974; Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142.

861. 1. **Question of Fact.**— Where a deed varied in description from another in evidence, it was held a question of identity for the jury, that is, whether it could give any color as to the land in contest. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

3. Blair *v.* Johnson, 215 Ill. 552, 74 N. E. 747; Perkins Land, etc., Co. *v.* Irvin, 200 Mo. 485, 98 S. W. 580. See also Webber *v.* Wannemaker, (Colo. 1907) 89 Pac. 780; McIsaac *v.* McDonald, 37 Can. Sup. Ct. 157.

5. *Alabama.* — Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799; Henry *v.* Brown, 143 Ala. 446, 39 So. 325; Powers *v.* Hatter, (Ala. 1907), 44 So. 859.

Arkansas. — St. Louis Southwestern R. Co. *v.* Davis, 75 Ark. 283, 87 S. W. 445; Dickson *v.* Sentell, 83 Ark. 385, 104 S. W. 148.

District of Columbia. — Johnson *v.* Thomas, 23 App. Cas. (D. C.) 141.

Indiana. — May *v.* Dobbins, 166 Ind. 331, 77 N. E. 353.

Kentucky. — Hall *v.* Bowman, 90 S. W. 1051, 28 Ky. L. Rep. 1004; Interstate Invest. Co. *v.* Bailey, 93 S. W. 578, 29 Ky. L. Rep. 468; Kountze *v.* Hatfield, (Ky. 1907) 99 S. W. 262; Fuller *v.* Keesee, (Ky. 1907) 104 S. W. 700.

Maine. — Banton *v.* Herrick, 101 Me. 134, 63 Atl. 671.

North Carolina. — See Kennedy *v.* Maness, 138 N. Car. 35, 50 S. E. 450.

Oregon. — Bant *v.* Oregon R., etc., Co., (Oregon 1907) 90 Pac. 178.

Texas. — Webb *v.* Lyerla, (Tex. Civ. App. 1906) 94 S. W. 1095; Link *v.* Bland, (Tex. Civ. App. 1906) 95 S. W. 1110; Rice *v.* Goolsbee, (Tex. Civ. App. 1907) 99 S. W. 1031; White *v.* Eavenson, (Tex. Civ. App. 1907) 101 S. W. 1029.

Washington. — Miller *v.* O'Leary, 44 Wash. 472, 87 Pac. 113.

West Virginia. — Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

Wood Lot Used in Connection with Farm. — Rev. Stat. Me., c. 106, § 38, extends actual occupation of improved land over woodland when used as part of a farm. Banton *v.* Herrick, 101 Me. 134, 63 Atl. 671.

863. 1. *Alabama.* — Dorlan *v.* Westervitch, 140 Ala. 283, 37 So. 382; Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799; Campbell *v.* Bates, 143 Ala. 338, 39 So. 144.

Arkansas. — Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 568; Rucker *v.* Dixon, 78 Ark. 99, 93 S. W. 750; Bradbury *v.* Dumond, 80 Ark. 82, 96 S. W. 390; Jones *v.* Pond, etc., Mfg. Co., 79 Ark. 194, 96 S. W. 756; Wheeler *v.* Foote, 80 Ark. 435, 97 S. W. 447; Connerly *v.* Dickinson, 81 Ark. 258, 99 S. W. 82; Van Etten *v.* Daugherty, 83 Ark. 534, 103 S. W. 737.

District of Columbia. — Dangerfield *v.* Williams, 26 App. Cas. (D. C.) 508.

Florida. — Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69.

Georgia. — O'Brien *v.* Fletcher, 123 Ga. 427, 51 S. E. Rep. 405; Roberson *v.* Downing Co., 126 Ga. 175, 54 S. E. 1020; Harriss *v.* Howard, 126 Ga. 325, 55 S. E. 59; Baxter *v.* Wetherington, 128 Ga. 801, 58 S. E. 467.

Illinois. — Godfrey *v.* Dixon Power, etc., Co., 228 Ill. 487, 81 N. E. 1089.

Kentucky. — Cuyler *v.* Bush, 84 S. W. 579, 27 Ky. L. Rep. 148; Woodward *v.* Johnson, 90 S. W. 1076, 28 Ky. L. Rep. 1091.

Louisiana. — Dowdell *v.* Orphans' Home Soc., 114 La. 49, 38 So. 16 (*obiter*); Booksh *v.* New Iberia Sugar Co., 115 La. 516, 39 So. 545; Jones *v.* Goss, 115 La. 926, 40 So. 357; Railsback *v.* Leonard, 118 La. 916, 43 So. 548.

Maine. — Banton *v.* Herrick, 101 Me. 134, 63 Atl. 671.

Massachusetts. — Murphy *v.* Com., 187 Mass. 361, 73 N. E. 524.

Michigan. — Brigham *v.* Reau, 139 Mich. 256, 102 N. W. 845, 11 Detroit Leg. N. 837; Lang *v.* Osceola Consol. Min. Co., 145 Mich. 370, 108 N. W. 678, 13 Detroit Leg. N. 474.

Missouri. — Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131.

Texas. — Broom *v.* Pearson, 98 Tex. 469, 85 S. W. 790, 98 Tex. 476, 86 S. W. 733; Davidson *v.* Equitable Securities Co., (Tex. Civ. App. 1906) 96 S. W. 787.

Washington. — Olson *v.* Howard, 38 Wash. 15, 80 Pac. 170.

West Virginia. — Camden *v.* West Branch Lumber Co., 59 W. Va. 148, 53 S. E. 409.

Canada. — McDonald *v.* McIsaac, 38 Nova Scotia 163.

See Green *v.* Pennington, 105 Va. 801, 54 S. E. 877, holding that this principle applies to lands of the commonwealth as against persons not lawfully claiming under it.

Possession by Tenant. — "When a tenant is placed in possession of a definite part of a larger tract of land, the possession will not avail the landlord beyond the part so claimed and held. If, however, one claiming under assurance of title defining boundaries, place a tenant in possession without limiting him to any definite part, the tenant's possession will extend to the landlord's boundaries, although the land actually occupied will be but a small part of the whole." Bell *v.* North American Coal, etc., Co., 155 Fed. 712.

864. 1. Harriss *v.* Howard, 126 Ga. 325, 55 S. E. 59; Davidson *v.* Equitable Securities Co., (Tex. Civ. App. 1906) 96 S. W. 787.

2. Lawrence *v.* Alabama State Land Co., 144 Ala. 524, 41 So. 612, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 864.

3. Lawrence *v.* Alabama State Land Co., 144 Ala. 524, 41 So. 612, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 864. See Proctor *v.* Maine Cent. R. Co., 101 Me. 459, 64 Atl. 839, holding that where one acquired title to upland by deed and not by adverse possession there was no constructive possession of the flats.

865. 1. Archer *v.* Beihl, 136 Fed. 113, 69 C. C. A. 101; Woodward *v.* Johnson, 90 S. W. 1076, 28 Ky. L. Rep. 1091; Davidson *v.* Equitable Securities Co., (Tex. Civ. App. 1906) 96 S. W. 787; Young *v.* Trahan, (Tex. Civ. App. 1906) 97 S. W. 147; Perry *v.* Stevens, (Tex. Civ. App. 1906) 97 S. W. 1075; Miller *v.* O'Leary, 44 Wash. 172, 87 Pac. 113.

See Atascosa County *v.* Alderman, (Tex. Civ. App. 1905) 91 S. W. 846.

2. Bull *v.* Beiseker, (N. Dak. 1907) 113 N. W. 870.

But the deed under which entry was made determines the constructive possession and it cannot be extended to property held under another deed not contained in the former. Broom *v.* Pearson, 98 Tex. 469, 85 S. W. 790, 98 Tex. 476, 86 S. W. 733.

3. Henry *v.* Frohlichstein, (Ala. 1907) 43 So. 126; St. Louis, etc., R. Co. *v.* Moore, 83 Ark. 377, 103 S. W. 1136; Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69.

866. 1. And thus where one claims constructive possession through a tenant under an agreement that after five years a certain part of the property shall belong to the tenant, the landlord secures no rights under a ten-year statute of limitation, his tenant not having reduced any more land to actual possession than he was entitled to under the agreement. Carlyle *v.* Pruett, (Tex. Civ. App. 1904) 84 S. W. 372.

Executory Contract. — If such portion is sold by executory contract, possession is not lost. State *v.* Harman, 57 W. Va. 447, 50 S. E. 828.

2. Actual possession commenced under color of title may be continued by mere civil possession. Jones *v.* Goss, 115 La. 926, 40 So. 357.

Where there is a break in the chain of title under the color of which one claims, actual possession must be shown. Morgan *v.* Pott, 124 Mo. App. 371, 101 S. W. 717. See Lawrence *v.* Alabama State Land Co., 144 Ala. 524, 41 So. 612, which held that an instruction requiring an inclosure of part of land held under color, to be large enough to put the owner on notice that the whole was claimed, was not error.

3. State *v.* Harman, 57 W. Va. 447, 50 S. E. 828.

4. Henry *v.* Brown, 143 Ala. 446, 39 So. 325; Hardie *v.* Investment Guaranty, etc., Co., 81 Ark. 141, 98 S. W. 701; St. Louis, etc., R. Co. *v.* Moore, 83 Ark. 377, 103 S. W. 1136; Gates *v.* Thompson, (Ark. 1907) 104 S. W. 191; Proctor *v.* Maine Cent. R. Co., 100 Me. 27, 60 Atl. 423. See also Crist *v.* Boust, 26 Pa. Super. Ct. 543. *Compare* Brigham *v.* Reau, 139 Mich. 256, 102 N. W. 845.

"The occupation by another of land to which the first makes no claim does not charge the latter with notice that the other makes any hostile claim or put him upon inquiry in respect to the nature of the other's claim." Rich *v.* Victoria Copper Min. Co., (C. C. A.) 147 Fed. 380.

867. 1. McDonald *v.* McIsaac, 38 Nova Scotia 171, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 866.

2. See Ward *v.* Forrester, (Tex. Civ. App. 1905) 87 S. W. 751, which held that although one had actual possession of a strip in controversy, where such strip was not embraced in the patent under which he held, the statute of limitations did not apply.

3. **Mistake in Description Merely.** — The fact that a mistake was made in the description in deeds of adjoining properties does not limit a party taking under one of the deeds to the land described where he had actual possession of the land intended to be conveyed to him. Cooper *v.* Blair, (Oregon 1907) 92 Pac. 1074; Lougee *v.* Shuhart, 127 Iowa 173, 102 N. W. 1115.

868. 5. Sanders *v.* Thompson, 123 Ga. 4, 50 S. E. 976; Hunter *v.* Wethington, (Mo. 1907) 103 S. W. 543.

Where one accepts a deed of land chargeable with notice that it encroaches on a highway he cannot claim color of title to that part of the highway covered by his deed. Bigelow *v.* Ritter, 131 Iowa 213, 108 N. W. 218.

A sheriff's deed, translative of property, accompanied by a judgment and writ issued thereon, establishes a just title as a basis of prescription, Leverett *v.* Loeb, 117 La. 310,

41 So. 584; but a sheriff's deed not so accompanied is not a just title. Fontelieu *v.* Fontelieu, 116 La. 866, 41 So. 120.

Possession "under claim and color of title, made in good faith" so as to enable one to claim timber on the land, is not shown where the claimant bought with knowledge of a contract giving another a right to remove the timber. Brodack *v.* Morsbach, 38 Wash. 72, 80 Pac. 275.

Continuing Good Faith. — If the original possession was taken in good faith, subsequent knowledge of a defect in title rendering the continued possession fraudulent, will not defeat a prescriptive title. Bower *v.* Cohen, 126 Ga. 35, 54 S. E. 918. Continuity of good faith is not necessary. Bennett *v.* Calmes, 116 La. 598, 40 So. 911.

869. 1. There must be moral fraud, not merely legal fraud. Bower *v.* Cohen, 126 Ga. 35, 54 S. E. 918; Arnold *v.* Limeburger, 122 Ga. 72, 49 S. E. 812. See Adams *v.* Carpenter, 187 Mo. 613, 86 S. W. 445, which held that though one was entitled by adverse possession to a decree awarding title under the statute, yet where he suffered the holder of the recorded title to take possession and sell to an innocent purchaser, the latter would be protected.

2. Waterman Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142.

Where an illiterate person was justified in believing that interlineations were made by the officer issuing a tax deed, he will be held to be a possessor in good faith. Hickey *v.* Smith, 118 La. 169, 42 So. 762.

3. Bennett *v.* Calmes, 116 La. 598, 40 So. 911. See also Iowa R. Land Co. *v.* Blumer, 206 U. S. 482, 27 U. S. Sup. Ct. 769; Laws *v.* Newkirk, (Colo. 1907) 88 Pac. 861; Severson *v.* Gremm, 124 Iowa 729, 100 N. W. 862; Wenger *v.* Thompson, 128 Iowa 750, 105 N. W. 333.

4. Hunter *v.* Wethington, (Mo. 1907) 103 S. W. 543.

Good Faith Presumed. — Godfrey *v.* Dixon Power, etc., Co., 228 Ill. 487, 81 N. E. 1089.

Under Code La., art. 3481, good faith is presumed, and the burden of proving bad faith is on the person alleging it. Leverett *v.* Loeb, 117 La. 310, 41 So. 584.

6. Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 869, 870, 871, and notes; Connerly *v.* Dickinson, 81 Ark. 258, 99 S. W. 82; Crouch *v.* Colbert, 111 Mo. App. 93, 84 S. W. 992.

870. 1. Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 869, 870, 871, and notes; Texas, etc., R. Co. *v.* Haynes, (Tex. Civ. App. 1906) 97 S. W. 849; Hardie *v.* Investment Guaranty, etc., Co., 81 Ark. 141, 98 S. W. 701; Connerly *v.* Dickinson, 81 Ark. 258, 99 S. W. 82; Phillips *v.* Beattyville Mineral, etc., Co., 88 S. W. 1058, 28 Ky. L. Rep. 12; Ramos Lumber, etc., Co. *v.* Labarre, 116 La. 559, 40 So. 898; Crouch *v.* Colbert, 111 Mo. App. 93, 84 S. W. 992; Peden *v.* Crenshaw, 98 Tex. 365, 84 S. W. 362 (*obiter*).

2. Green *v.* Pennington, 105 Va. 801, 54 S. E. 877.

3. *Compare* Morris *v.* Jacks, (Tex. Civ. App. 1906) 96 S. W. 637, which held that as between two intruders the constructive possession of one destroyed that of the other and consequently both were restricted to their actual holdings.

Where one is in possession of a tract of prairie land under color of title he is not ousted by the fact that an adverse claimant has plowed several furrows around the land which were not seen by witnesses passing over the land. Jones *v.* Goss, 115 La. 926, 40 So. 357.

871. 3. Woodward *v.* Johnson, 90 S. W. 1076, 28 Ky. L. Rep. 1091; Courtney *v.* Ashcraft, (Ky. 1907) 105 S. W. 106; Cook *v.* Spencer, (Tex. Civ. App. 1906) 91 S. W. 813; Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409; Camden *v.* West Branch Lumber Co., 59 W. Va. 148, 53 S. E. 409.

Possession of a strip of land in dispute which defendant claims under color of title cannot be made out by his devisee's possession of part of the land outside of the overlap though prior to the plaintiff's constructive possession of the same under a deed. Cook *v.* Spencer, (Tex. Civ. App. 1906) 91 S. W. 813.

4. Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 869, 870, 871, and notes; Courtney *v.* Ashcraft, (Ky. 1907) 105 S. W. 106; Camden *v.* West Branch Lumber Co., 59 W. Va. 148, 53 S. E. 409.

Possession taken under an inferior title outside of a lap between a junior patent and a senior patent will not operate to extend the possession within the lap. Bates *v.* Collins, 93 S. W. 615, 29 Ky. L. Rep. 346.

In *Georgia* it is held that in such cases no prescription can arise in favor of either, but the rights of the parties will be determined according to superiority of title. Harriss *v.* Howard, 126 Ga. 325, 55 S. E. 59; Crawford *v.* Venner, 122 Ga. 814, 50 S. E. 958.

872. 1. Camden *v.* West Branch Lumber Co., 59 W. Va. 148, 53 S. E. 409 (*obiter*).

2. Hendrickson *v.* Linville, (Ky. 1907) 104 S. W. 688; King *v.* Thompson, 58 W. Va. 455, 52 S. E. 487 (*obiter*). See Camden *v.* West Branch Lumber Co., 59 W. Va. 148, 53 S. E. 409, stating that the rule is so modified as to extend the junior patentee's actual possession of part of the interlock to the limits thereof unless the senior patentee has a *pedis possessio* within it.

873. 1. Green *v.* Pennington, 105 Va. 801, 54 S. E. 877.

2. McLemore *v.* Lomax, (Tex. Civ. App. 1905) 86 S. W. 635; Camden *v.* West Branch Lumber Co., 59 W. Va. 148, 53 S. E. 409; Green *v.* Pennington, 105 Va. 801, 54 S. E. 877.

874. 3. Where coal is in a state of nature in a place undeveloped, limitations do not run, as there is no adverse possession thereof. Newman *v.* Newman, 60 W. Va. 371, 55 S. E. 377.

875. 1. Wallace *v.* Elm Grove Coal Co., 58 W. Va. 449, 52 S. E. 485, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 875; Fatic *v.* Myer, 163 Ind. 401, 72 N. E. 142. See also Huss *v.* Jacobs, 210 Pa. St. 145, 59 Atl. 991.

2. Alabama Consol. Coal, etc., Co. *v.* Turner, 145 Ala. 651, 39 So. 603, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 875.

3. The law of adverse possession applies to railroad rights of way. Louisville, etc., R. Co. *v.* Smith, (Ky. 1907) 101 S. W. 317.

876. 1. Where Legal Title Remains in United States. — Tyee Consol. Min. Co. *v.* Langstedt, 136 Fed. 124, 69 C. C. A. 548; Slaght *v.* Northern Pac. R. Co., 39 Wash. 576, 81 Pac. 1062. See further as to the time when, etc., Northern Pac. R. Co. *v.* Ely, 197 U. S. 1, 25 U. S. Sup. Ct. 302; Iowa R. Land Co. *v.* Blumer, 206 U. S. 482, 27 U. S. Sup. Ct. 769. See further Blumer *v.* Iowa R. Land Co., 129 Iowa 32, 105 N. W. 342.

A grant of a railroad right of way is conditional and adverse possession cannot ripen into a right which would divert the land from the uses intended by Congress. Oregon Short Line R. Co. *v.* Quigley, 10 Idaho 770, 80 Pac. 401.

Individuals cannot acquire title by adverse possession to any portion of a right of way title to which was vested in a railroad company by a grant *in præsenti* from the United States. Missouri, etc., R. Co. *v.* Watson, 74 Kan. 494, 87 Pac. 687.

Land used by a railroad for sidings and switches cannot be acquired by adverse possession. Reading Co. *v.* Seip, 30 Pa. Super. Ct. 330.

Grant by Crown of Crown Lands During Adverse Possession Valid. — Emmerson *v.* Maddison, (1906) A. C. 569, *affirming* 34 Can. Sup. Ct. 533.

Adverse Possession of Crown Lands in Canada for Less than Sixty Years Invalid. — Emmerson *v.* Maddison, (1906) A. C. 569, *affirming* 34 Can. Sup. Ct. 533.

2. Park Com'rs *v.* Taylor, 133 Iowa 453, 108 N. W. 927; Bright *v.* New Orleans R. Co., 114 La. 679, 38 So. 494; Lawless *v.* Wright, (Tex. Civ. App. 1905) 86 S. W. 1039. See also McCaslin *v.* State, (Ind. 1905) 75 N. E. 844; Green *v.* Pennington, 105 Va. 801, 54 S. E. 877.

The law in *Kentucky* has been changed, as by Stat. Ky. (1903), § 2523, statutes of limitation apply to the state. Gray *v.* Soden, 120 Ky. 277, 86 S. W. 515; Louisville, etc., R. Co. *v.* Smith, (Ky. 1907) 101 S. W. 317.

School Lands granted a state by the United States are not subject to adverse possession. Murtaugh *v.* Chicago, etc., R. Co., 102 Minn. 52, 112 N. W. 860; San Augustine County *v.* Madden, (Tex. Civ. App. 1905) 87 S. W. 1056.

877. 1. *Kentucky.* — Stat. Ky. (1903), § 2523, makes the statutes of limitations in regard to real property applicable to actions by the commonwealth. Gray *v.* Soden, 120 Ky. 277, 86 S. W. 515; Asher *v.* Howard, (Ky. 1906) 91 S. W. 270; Louisville, etc., R. Co. *v.* Smith, (Ky. 1907) 101 S. W. 317.

Missouri. — See Hunter *v.* Pinnell, 193 Mo. 142, 91 S. W. 472, which held that where the right of entry accrued before Rev. Stat. Mo. (1899), § 4270 became a law (Aug. 1, 1866), the statute ran against state land.

West Virginia. — The statute runs against the state as to its lands not used for governmental purposes. State *v.* Harman, 57 W. Va. 447, 50 S. E. 828.

878. 1. *North Carolina.* — Such possession as will raise the presumption of a grant "must be ascertained under known and visible lines or boundaries." Bullard *v.* Hollingsworth, 140 N. Car. 634, 53 S. E. 441.

South Carolina. — Uzzell *v.* Horn, 71 S. Car. 426, 51 S. E. 253.

Texas. — Ortiz *v.* State, (Tex. Civ. App. 1905) 86 S. W. 45.

2. Cases Holding that Title Can Be Acquired against Municipality. — El Dorado *v.* Ritchie Grocery Co., 84 Ark. 52, 104 S. W. 549; Baltimore City *v.* Rowe, (Md. 1907) 67 Atl. 93. See also Como *v.* Pointer, 87 Miss. 712, 40 So. 260; Wahoo *v.* Netheway, 73 Neb. 54, 102 N. W. 86; Houston *v.* Finnigan, (Tex. Civ. App. 1905) 85 S. W. 470; Victoria *v.* Victoria County, (Tex. Civ. App. 1906) 94 S. W. 368.

Kentucky. — See Covington *v.* Hall, (Ky. 1906) 98 S. W. 317, holding that the city must be notified in writing of the intention to hold a street adversely.

Street. — One who had within three years recognized a street as such, is in no position to claim adverse possession of the same though it has been closed for ten years. Heard *v.* Connor, (Tex. Civ. App. 1905) 84 S. W. 605.

Limitations do not affect a city as to its streets. Krause *v.* El Paso, (Tex. Civ. App. 1907) 101 S. W. 828.

Alley. — Reden *v.* Crenshaw, 98 Tex. 365, 84 S. W. 362 (to same effect as Folsom *v.* McGregor, 10 Tex. Civ. App. 555, 30 S. W. 846, set forth in original work).

Public Square. — Whether or not a statute excepts a municipality from the running of limitations is immaterial in an action by an individual to compel the removal of obstructions from public grounds, where the city officials have made no order of removal. Broad *v.* Beatty, 73 Ark. 106, 83 S. W. 339.

Cases Holding that Title Cannot Be Acquired against Municipality. — De Land *v.* Dixon Power, etc., Co., 225 Ill. 212, 80 N. E. 125; Bigelow *v.* Ritter, 131 Iowa 213, 108 N. W. 218; Minor *v.* New Orleans, 115 La. 301, 38 So. 999; McGrath *v.* Nevada, 188 Mo. 102, 86 S. W. 236; Christian *v.* Eugene, (Oregon 1907) 89 Pac. 419; Rapp *v.* Stratton, 41 Wash. 263, 83 Pac. 182. See also Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205.

Such a defense is not available between individuals. Cocke *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 407. See Nelson *v.* Randolph, 222 Ill. 531, 78 N. E. 914, to the effect that the owner of the fee of land over which the public have an easement may extinguish the same by adverse possession.

Partial Encroachment on Public Road. — Vorhes *v.* Ackley, 127 Iowa 658, 103 N. W. 998; New York *v.* De Peyster, (Supm. Ct. App. T.) 105 N. Y. Supp. 612.

882. 2. Land Held in Private Right. — See Wahoo *v.* Netheway, 73 Neb. 54, 102 N. W. 86, which, although refusing to apply a different rule in an action in ejectment by a city against one claiming adverse possession, held that the former rule was changed by Laws Neb. (1899), c. 79, p. 335.

Swamp Land. — Palmer *v.* Jones, 188 Mo. 163, 85 S. W. 1113.

3. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205. See also De Land *v.* Dixon Power, etc., Co., 225 Ill. 212, 80 N. E. 125; Vorhes *v.* Ackley, 127 Iowa 658, 103 N. W. 998; Bigelow *v.* Ritter, 131 Iowa 213, 108 N. W. 218.

A state, or one claiming under it, cannot be estopped by acts of city officials. Park Com'rs *v.* Taylor, 133 Iowa 453, 108 N. W. 927.

In *Texas* it has been held that the doctrine of equitable estoppel does not apply to the streets of a city. Krause *v.* El Paso, (Tex. Civ. App. 1907) 101 S. W. 828.

883. 1. *United States.* — Northern Pac. R. Co. *v.* Ely, 197 U. S. 1, 25 U. S. Sup. Ct. 302; Levi *v.* Mathews, 145 Fed. 152, 76 C. C. A. 122.

Alabama. — Southern R. Co. *v.* Hayes, (Ala. 1907) 43 So. 487.

Arkansas. — Brown *v.* Norvell, 74 Ark. 484, 86 S. W. 306; Robinson *v.* Nordman, 75 Ark. 593, 88 S. W. 592; Carpenter *v.* Smith, 76 Ark. 447, 88 S. W. 976; Sibly *v.* Gomillion, 76 Ark. 442, 91 S. W. 22; Bradbury *v.* Dumond, 80 Ark. 82, 96 S. W. 390; Shirey *v.* Whitlow, 80 Ark. 444, 97 S. W. 444; Wheeler *v.* Foote, 80 Ark. 435, 97 S. W. 447; Hudson *v.* Stillwell, 80 Ark. 575, 98 S. W. 356; Van Etten *v.* Daugherty, 83 Ark. 534, 103 S. W. 737; Dickson *v.* Sentell, 83 Ark. 385, 104 S. W. 148.

District of Columbia. — Briel *v.* Jordan, 27 App. Cas. (D. C.) 202.

Florida. — See Winn *v.* Coggins, 53 Fla. 327, 42 So. 897.

Georgia. — Arnold *v.* Limeburger, 122 Ga. 72, 49 S. E. 812; English *v.* Marshall, 128 Ga. 730, 58 S. E. 351; Floyd *v.* Ricketson, 129 Ga. 668, 59 S. E. 909.

Idaho. — Little *v.* Crawford, (Idaho 1907) 88 Pac. 974.

Illinois. — Chicago, etc., R. Co. *v.* Abbott, 215 Ill. 416, 74 N. E. 412; Wilder *v.* Aurora, etc., Traction Co., 216 Ill. 493, 75 N. E. 194; Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142; O'Laughlin *v.* Covell, 222 Ill. 162, 78 N. E. 59.

Indiana. — Rennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546; May *v.* Dobbins, 166 Ind. 331, 77 N. E. 353.

Indian Territory. — Choctaw, etc., R. Co. *v.* Rice, (Indian Ter. 1907) 104 S. W. 819.

Iowa. — McCarthy *v.* Colton, (Iowa 1906) 108 N. W. 217; Sires *v.* Melvin, (Iowa 1907) 113 N. W. 106.

Kansas. — Nicholson *v.* Hale, 73 Kan. 599, 85 Pac. 592, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 883.

Kentucky. — Wise *v.* Wolf, 120 Ky. 263, 85 S. W. 1191; King *v.* See, 87 S. W. 758, 27 Ky. L. Rep. 1011; Slusher *v.* Howard, 88 S. W. 1109, 28 Ky. L. Rep. 122; Rogers *v.* Cuyler, 89 S. W. 2, 28 Ky. L. Rep. 129; Hall *v.* Bowman, 90 S. W. 1051, 28 Ky. L. Rep. 1004; Aikman *v.* South, (Ky. 1906) 97 S. W. 4; Blackburn *v.* Hall, (Ky. 1906) 97 S. W. 399.

Louisiana. — Moulierre *v.* Coco, 116 La. 845, 41 So. 113; Decuir *v.* Loeb, 118 La. 332, 42 So. 955; Soniat *v.* Donovan, 118 La. 847, 43 So. 462.

Maryland. — Regents *v.* Calvary M. E. Church, 104 Md. 635, 65 Atl. 398; Canton Co. *v.* Baltimore, (Md. 1907) 66 Atl. 679.

Massachusetts. — Murphy *v.* Com., 187 Mass. 361, 73 N. E. 524; Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778.

Michigan. — Howatt *v.* Green, 139 Mich. 289, 102 N. W. 734, 11 Detroit Leg. N. 847; Pence *v.* Miller, 140 Mich. 205, 103 N. W. 582, 12 Detroit Leg. N. 110; Lang *v.* Osceola Consol. Min. Co., 145 Mich. 370, 108 N. W. 678, 13 Detroit Leg. N. 474.

Missouri. — Franklin *v.* Cunningham, 187 Mo. 184, 86 S. W. 79.

Nebraska. — McPherson *v.* McPherson, (Neb. 1906) 106 N. W. 991; Stryker *v.* Meagher, (Neb. 1906) 107 N. W. 792.

New York. — Ledoux *v.* Samuels, 116 N. Y. App. Div. 726, 102 N. Y. Supp. 43.

North Carolina. — Wall *v.* Wall, 142 N. Car. 387, 55 S. E. 283.

North Dakota. — Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792.

South Dakota. — Murphy *v.* Nelson, 19 S. Dak. 197, 102 N. W. 691.

Texas. — Lawless *v.* Wright, (Tex. Civ. App. 1905) 86 S. W. 1039; Magerstadt *v.* Lambert, (Tex. Civ. App. 1905) 87 S. W. 1068; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698; Stubblefield *v.* Hanson, (Tex. Civ. App. 1906) 94 S. W. 406.

Washington. — Thornely *v.* Andrews, 40 Wash. 580, 82 Pac. 899, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 883, and cases.

West Virginia. — State *v.* Harman, 57 W. Va. 447, 50 S. E. 828; Camden *v.* West Branch Lumber Co., 59 W. Va. 148, 53 S. E. 489.

Wisconsin. — Off *v.* Heinrichs, 124 Wis. 440, 102 N. W. 904; Reitler *v.* Lindstrom, 126 Wis. 562, 106 N. W. 388; Dreger *v.* Budde, (Wis. 1907) 113 N. W. 950.

See Atascosa County *v.* Alderman, (Tex. Civ App. 1905) 91 S. W. 846, holding that where a strip of land was not included by the calls in a patent adverse possession of the same did not give title.

Adverse possession for the statutory period raises the presumption of legal title. Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362.

Where there is no evidence as to what portion of a lot was held adversely no title to any part vests. Wiley *v.* Baryman, (Tex. Civ. App. 1905) 90 S. W. 1116.

Bar to Ejectment. — Dangerfield *v.* Williams, 26 App. Cas. (D. C.) 508; Heiss *v.* Adams, 149 Mich. 645, 113 N. W. 358; Palmer *v.* Jones, 188 Mo. 163, 85 S. W. 1113; Franklin *v.* Cunningham, 187 Mo. 184, 86 S. W. 79; Hughes *v.* Wright, (Tex. 1907) 101 S. W. 789.

Bar to Relief in Equity. — Botsford *v.* Eyraud, 148 Cal. 431, 83 Pac. 1008; Fountain *v.* Lewiston Nat. Bank, 11 Idaho 451, 83 Pac. 505; Rhodes *v.* Cooper, 113 La. 600, 37 So. 527; Caudill *v.* Bayes, 89 S. W. 114, 28 Ky. L. Rep. 182; Fitch *v.* Gentry, 92 S. W. 586, 29 Ky. L. Rep. 210; Penn *v.* Prevost, 114 La. 1080, 38 So. 865; Milby *v.* Hester, (Tex. Civ. App. 1906) 94 S. W. 178; State *v.* Harman, 57 W. Va. 447, 50 S. E. 828.

Title by adverse possession is sufficient to support a contract of sale of the land. Beste *v.* McGaugh, (Del. 1904) 63 Atl. 28; Ocean

City Assoc. *v.* Cresswell, (N. J. 1906) 65 Atl. 454. See also Fagan *v.* Hook, (Iowa 1905) 105 N. W. 155.

The adverse possession of a vendor who held for the statutory period may be set up by his vendee in an action to recover the land by the holder of the paper title, though the vendee had not held for the statutory period. Love *v.* Turner, 71 S. Car. 322, 51 S. E. 101.

Defects in Title are cured by adverse possession. *In re* Schmidt, 114 La. 78, 38 So. 26; Booksh *v.* New Iberia Sugar Co., 115 La. 516, 39 So. 545; Bryan *v.* Augusta Perpetual Bldg., etc., Co., 104 Va. 611, 52 S. E. 357.

Dower. — But ten years' possession after the death of the husband bars the widow's right to dower. Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896.

Adverse Possession of Land for Period Less than That Prescribed. — Davis *v.* Owen, (Va. 1907) 58 S. E. 581.

Raises No Presumption of Legal Title. — Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362. See Crain *v.* Peterman, 200 Mo. 295, 98 S. W. 600, which held that possession of one for less than the statutory period defeated an action for the land by the owner who had not been in possession or paid taxes for thirty years, as under such circumstances (Rev. Stat. Mo. 1899, § 4268) the owner had but one year to redeem. See Magerstadt *v.* Lambert, (Tex. Civ. App. 1905) 87 S. W. 1068, holding, *obiter*, that actual possession, irrespective of title by limitations, is sufficient to require a peremptory instruction in an action against naked trespassers.

Title Once Acquired by Adverse Possession Cannot Be Divested by Subsequent Declarations. — Shirey *v.* Whitlow, 80 Ark. 444, 97 S. W. 444; Rennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546; Stumpe *v.* Kopp, 201 Mo. 412, 99 S. W. 1073; Clark *v.* Beard, 59 W. Va. 669, 53 S. E. 597.

Admissions made after the bar of the statute do not constitute estoppel and only amount to evidence on the issue as to adverse possession. Walling *v.* Eggers, (Ky. 1907) 104 S. W. 360; Whitaker *v.* Thayer, (Tex. Civ. App. 1905) 86 S. W. 364; Barrett *v.* McKinney, (Tex. Civ. App. 1906) 93 S. W. 240.

By Adverse Possession. — Such title cannot be divested by adverse possession for a period less than ten years. Campbell *v.* Bates, 143 Ala. 338, 39 So. 144.

Payment of Rent to another claimant will not divest such title. Martin *v.* Martin, (Neb. 1906) 107 N. W. 580.

Purchase of Title. — The purchase of a title by one who had previously secured title by adverse possession does not divest the adverse title. Levi *v.* Mathews, 145 Fed. 152, 76 C. C. A. 122.

Agreement to Readjust Boundary. — Nor by an executory agreement to readjust a boundary line made by a descendant of one in whom title had vested. Hudson *v.* Stillwell, 80 Ark. 575, 98 S. W. 356.

Subsequent Survey of the land with the owner's consent does not affect his title. Fatic *v.* Myer, 163 Ind. 401, 72 N. E. 142.

886. **1.** Nicholson *v.* Hall, 73 Kan. 599, 85 Pac. 592; Clinton *v.* Franklin, (Ky. 1904) 83 S. W. 142; Beatty *v.* Lewis, (N. J. 1907) 68 Atl. 95.

2. Thomas *v.* Morgan, 15 Pa. Dist. 546, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 886.

Where the Facts Are Admitted or Undisputed. — Where the facts are clearly insufficient to constitute adverse possession it is not error to direct a verdict against such claim. Hillside Coal, etc., Co. *v.* Zeigler, 218 Pa. St. 319, 67 Atl. 617; Roberson *v.* Downing Co., 120 Ga. 175, 54 S. E. 1020.

3. Whether Requisite Facts Exist — Question for Jury — *Alabama.* — Campbell *v.* Bates, 143 Ala. 338, 39 So. 144; Driver *v.* King, 145 Ala. 585, 40 So. 315; Lawrence *v.* Alabama State Land Co., 141 Ala. 524, 41 So. 612; Theodore Land Co. *v.* Lyon, (Ala. 1906) 41 So. 682.

Arkansas. — Sibly *v.* Gomillion, 76 Ark. 442, 91 S. W. 22; Shirey *v.* Whitlow, 80 Ark. 444, 97 S. W. 444.

Georgia. — Georgia Iron, etc., Co. *v.* Allison, 121 Ga. 483, 49 S. E. 618.

Kentucky. — Blackburn *v.* Hall, (Ky. 1906) 97 S. W. 399; Walling *v.* Eggers, (Ky. 1907) 104 S. W. 360.

Minnesota. — Sawbridge *v.* Fergus Falls, 101 Minn. 378, 112 N. W. 385.

North Carolina. — Whitaker *v.* Jenkins, 138 N. Car. 476, 51 S. E. 104.

Texas. — Dunn *v.* Taylor, (Tex. Civ. App. 1906) 94 S. W. 347; Barrett *v.* McKinney, (Tex. Civ. App. 1906) 93 S. W. 240; West *v.* Webster, (Tex. Civ. App. 1905) 87 S. W. 196.

Wisconsin. — Illinois Steel Co. *v.* Jeka, 123 Wis. 419, 101 N. W. 399.

Or for the court sitting without a jury. Morrison *v.* Bomer, 195 Mo. 535, 94 S. W. 524.

Ouster. — Where the evidence is not free of conflict on the question of ouster the court will not direct a verdict. Harriss *v.* Howard, 126 Ga. 325, 55 S. E. 59.

887. **1. Burden of Proof** — *Alabama.* — Lawrence *v.* Alabama State Land Co., 141 Ala. 524, 41 So. 612.

Arkansas. — St. Louis Southwestern R. Co. *v.* Davis, 75 Ark. 283, 87 S. W. 445; Price *v.* Greer, 76 Ark. 426, 88 S. W. 985; Calhoun *v.* Moore, 79 Ark. 109, 94 S. W. 931; Gaither *v.* Gage, 82 Ark. 51, 100 S. W. 80.

California. — Nathan *v.* Dierssen, 146 Cal. 63, 79 Pac. 739.

Delaware. — Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362.

Florida. — Wilson *v.* Johnson, 51 Fla. 370, 41 So. 395.

Maine. — Proctor *v.* Maine Cent. R. Co., 101 Me. 459, 64 Atl. 839.

Missouri. — Morrison *v.* Bomer, 195 Mo. 535, 94 S. W. 524; Missouri Lumber, etc., Co. *v.* Jewell, 200 Mo. 707, 98 S. W. 578.

Nebraska. — Martin *v.* Martin, (Neb. 1906) 107 N. W. 580.

North Carolina. — Monk *v.* Wilmington, 137 N. Car. 322, 49 S. E. 345; Bullard *v.* Hollingsworth, 140 N. Car. 634, 53 S. E. 441; Bland *v.* Beasley, (N. Car. 1907) 58 S. E. 993.

Texas. — Fischer *v.* Giddings, (Tex. Civ. App. 1906) 95 S. W. 33; Morris *v.* Jacks, (Tex. Civ. App. 1906) 96 S. W. 637; Young *v.* Trahan, (Tex. Civ. App. 1906) 97 S. W. 147;

White *v.* Eavenson, (Tex. Civ. App. 1907) 101 S. W. 1029.

Utah. — English *v.* Openshaw, 28 Utah 241, 78 Pac. 476.

One claiming adverse possession founded on an oral gift has the burden of proving improvements and acts of ownership in reliance upon the gift. Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908.

Notice. — Where plaintiff seeks to establish title by naked adverse possession he has the burden of showing compliance with Code Ala., §§ 1541–1546, relative to the filing of a declaration of intention to hold adversely. Brasher *v.* Shelby Iron Co., 144 Ala. 659, 40 So. 80.

Ouster. — Rich *v.* Victoria Copper Min. Co., 147 Fed. 380; Lancey *v.* Parks, 102 Me. 135, 66 Atl. 311; Closuit *v.* John Arpin Lumber Co., 130 Wis. 258, 110 N. W. 222 (to same effect as Bryan *v.* Spivey, 109 N. Car. 57, cited in original work).

2. *United States.* — Iowa R. Land Co. *v.* Blumer, 206 U. S. 482, 27 U. S. Sup. Ct. 769.

Alabama. — Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799.

Florida. — Gilbert *v.* Southern Land, etc., Co., 53 Fla. 319, 43 So. 754.

Georgia. — Maynard *v.* Greer, 129 Ga. 709, 59 S. E. 798.

Illinois. — Roby *v.* Calumet, etc., Canal, etc., Co., 211 Ill. 173, 71 N. E. 822; Clark *v.* Jackson, 222 Ill. 13, 78 N. E. 6; Page *v.* Bellamy, 222 Ill. 556, 78 N. E. 938.

Indiana. — Rennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 888, 890.

Louisiana. — Ramos Lumber, etc., Co. *v.* Sanders, 117 La. 615, 42 So. 158.

Maine. — Lancey *v.* Parks, 102 Me. 135, 66 Atl. 311.

Oregon. — MacRae *v.* Small, 48 Oregon 146, 85 Pac. 503, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88[illegible].

Texas. — Earnest *v.* Lake, (Tex. Civ. App. 1907) 101 S. W. 479.

Wisconsin. — Pritchard *v.* Lewis, 125 Wis. 604, 104 N. W. 989.

Especially where adverse possession is based on an alleged parol gift. Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908.

Prima Facie Case. — Unless the adverse claimant makes out a *prima facie* case, a demurrer to the evidence must be sustained. Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409.

For Cases Where Evidence Was Held Sufficient to Show Adverse Possession, see the following cases:

Arkansas. — Broad *v.* Beatty, 73 Ark. 106, 83 S. W. 339; Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 568; Robinson *v.* Nordman, 75 Ark. 593, 88 S. W. 592; Carpenter *v.* Smith, 76 Ark. 447, 88 S. W. 976; Thomas *v.* Dowdle, 76 Ark. 615, 89 S. W. 1004; Wheeler *v.* Foote, 80 Ark. 435, 97 S. W. 447; Goodwin *v.* Garibaldi, 83 Ark. 74, 102 S. W. 706; Dickson *v.* Sentell, 83 Ark. 385, 104 S. W. 148; Chicot Lumber Co. *v.* Dardell, 84 Ark. 140, 104 S. W. 1100.

California. — Botsford *v.* Eyraud, 148 Cal. 431, 83 Pac. 1008.

District of Columbia. — Johnson *v.* Thomas, 23 App. Cas. (D. C.) 141.

Georgia. — Baxter *v.* Wetherington, 128 Ga. 801, 58 S. E. 467.

Illinois. — Wilder *v.* Aurora, etc., Traction Co., 216 Ill. 493, 75 N. E. 194.

Indiana. — Rennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 888, 890; Cline *v.* Hayes, (Ind. 1905) 76 N. E. 257.

Iowa. — McCarthy *v.* Cotton, (Iowa 1906) 108 N. W. 217; Beechley *v.* Beechley, (Iowa 1906) 108 N. W. 762; McCash *v.* Penrod, 131 Iowa 631, 109 N. W. 180.

Kentucky. — Rogers *v.* Cuyler, 89 S. W. 2, 28 Ky. L. Rep. 129; Hall *v.* Bowman, 90 S. W. 1051, 28 Ky. L. Rep. 1004; Doty *v.* Jameson, (Ky. 1906) 93 S. W. 638; Overton *v.* Overton, (Ky. 1906) 96 S. W. 469; Cornett *v.* Moore, (Ky. 1906) 97 S. W. 380; Blackburn *v.* Hall, (Ky. 1906) 97 S. W. 399.

Louisiana. — Dowdell *v.* Orphans' Home Soc., 114 La. 49, 38 So. 16; Booksh *v.* New Iberia Sugar Co., 115 La. 516, 39 So. 545; Bennett *v.* Calmes, 116 La. 598, 40 So. 911; Moulierre *v.* Coco, 116 La. 845, 41 So. 113; Railsback *v.* Leonard, 118 La. 916, 43 So. 548.

Maryland. — Canton Co. *v.* Baltimore, (Md. 1907) 66 Atl. 679; Baltimore City *v.* Rowe, (Md. 1907) 67 Atl. 93.

Michigan. — Brigham *v.* Reau, 139 Mich. 256, 102 N. W. 845; Place *v.* Place, 139 Mich. 509, 102 N. W. 996, 11 Detroit Leg. N. 925; Miskwabik Development Assoc. *v.* Croze, 140 Mich. 194, 103 N. W. 558, 12 Detroit Leg. N. 133.

Minnesota. — Weeks *v.* Upton, 99 Minn. 410, 109 N. W. 828; Sawbridge *v.* Fergus Falls, 101 Minn. 378, 112 N. W. 385.

Missouri. — Franklin *v.* Cunningham, 187 Mo. 184, 86 S. W. 79; Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131; Hunter *v.* Pinnell, 193 Mo. 142, 91 S. W. 472; Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896; De Harte *v.* Edmonds, 200 Mo. 246, 98 S. W. 744.

Nebraska. — Dredla *v.* Patz, (Neb. 1907) 111 N. W. 136.

New York. — Morris *v.* Morris, 114 N. Y. App. Div. 346, 99 N. Y. Supp. 964; Freedman *v.* Oppenheim, 187 N. Y. 101, 79 N. E. 841.

North Carolina. — Dean *v.* Gupton, 136 N. Car. 141, 48 S. E. 576; Wall *v.* Wall, 142 N. Car. 387, 55 S. E. 283.

Texas. — Houston *v.* Finnigan, (Tex. Civ. App. 1905) 85 S. W. 470; Magerstadt *v.* Lambert, (Tex. Civ. App. 1905) 87 S. W. 1068; Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937; Cook *v.* Spencer, (Tex. Civ. App. 1906) 91 S. W. 813; Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017; Village Mills Co. *v.* Manley, (Tex. Civ. App. 1906) 94 S. W. 102; Milby *v.* Hester, (Tex. Civ. App. 1906) 94 S. W. 178; Victoria *v.* Victoria County, (Tex. Civ. App. 1906) 94 S. W. 368; Daniels *v.* Murray, (Tex. Civ. App. 1907) 103 S. W. 425; Cochran *v.* Moerer, (Tex. Civ. App. 1907) 105 S. W. 1138.

Vermont. — Capen *v.* Sheldon, 78 Vt. 39, 61 Atl. 864.

Washington. — Erickson *v.* Murlin, 39 Wash. 43, 80 Pac. 853; Northern Pac. R. Co. *v.* Spokane, (Wash. 1907) 88 Pac. 135.

West Virginia. — State *v.* Harman, 57 W. Va. 447, 50 S. E. 828.

Wisconsin. — Reitler *v.* Lindstrom, 126 Wis. 562, 106 N. W. 388.

For Cases Where Evidence Was Held Insufficient to Show Adverse Possession see the following cases:

United States. — Davis *v.* Commonwealth Land, etc., Co., 141 Fed. 711; Rich *v.* Victoria Copper Min. Co., 147 Fed. 380.

Alabama. — Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799; Gillespie *v.* Gillespie, (Ala. 1907) 43 So. 12; Bolen *v.* Hoven, (Ala. 1907) 43 So. 736.

Arkansas. — Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 566, 1011; Price *v.* Greer, 76 Ark. 426, 88 S. W. 985; Dowdle *v.* Wheeler, 76 Ark. 529, 89 S. W. 1002; Hope *v.* Shiver, 77 Ark. 177, 90 S. W. 1003; Calhoun *v.* Moore, 79 Ark. 109, 94 S. W. 931; Connerly *v.* Dickinson, 81 Ark. 258, 99 S. W. 82; Drinkwater *v.* Crist, 83 Ark. 293, 103 N. W. 733.

California. — Goytino *v.* Los Angeles, (Cal. 1907) 88 Pac. 1091.

Florida. — Gilbert *v.* Southern Land, etc., Co., 53 Fla. 319, 43 So. 754.

Illinois. — Roby *v.* Calumet, etc., Canal, etc., Co., 211 Ill. 173, 71 N. E. 822; Blair *v.* Johnson, 215 Ill. 552, 74 N. E. 747; Clark *v.* Jackson, 222 Ill. 13, 78 N. E. 6; Nelson *v.* Randolph, 222 Ill. 531, 78 N. E. 914; Page *v.* Bellamy, 229 Ill. 556, 78 N. E. 938.

Iowa. — Vorhes *v.* Ackley, 127 Iowa 658, 103 N. W. 998; Liddle *v.* Blake, 131 Iowa 165, 105 N. W. 649.

Kentucky. — Phillips *v.* Beattyville Mineral, etc., Co., 88 S. W. 1058, 28 Ky. L. Rep. 12; Woodward *v.* Johnson, 90 S. W. 1076, 28 Ky. L. Rep. 1091; Interstate Invest. Co. *v.* Bailey, 93 S. W. 578, 29 Ky. L. Rep. 468; Bates *v.* Collins, 93 S. W. 615, 29 Ky. L. Rep. 346; Kountze *v.* Hatfield, (Ky. 1907) 99 S. W. 262; Courtney *v.* Ashcraft, (Ky. 1907) 105 S. W. 106.

Louisiana. — Ramos Lumber, etc., Co. *v.* Labarre, 116 La. 559, 40 So. 899; St. Paul *v.* Louisiana Cypress Lumber Co., 116 La. 585, 40 So. 906.

Maine. — Whitmore *v.* Brown, 100 Me. 410, 61 Atl. 985; Proctor *v.* Maine Cent. R. Co., 101 Me. 459, 64 Atl. 839.

Michigan. — Dahlem *v.* Abbott, 146 Mich. 605, 110 N. W. 47.

Minnesota. — Olson *v.* Buck, 94 Minn. 456, 103 N. W. 335; Young *v.* Grieb, 95 Minn. 396, 104 N. W. 131.

Mississippi. — A. W. Stevens Lumber Co. *v.* Hughes, (Miss. 1905) 38 So. 769; McMahon *v.* Yazoo Delta Lumber Co., (Miss. 1907) 43 So. 957.

Missouri. — Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957; Missouri Lumber, etc., Co. *v.* Jewell, 200 Mo. 707, 98 S. W. 578; Heckescher *v.* Cooper, 203 Mo. 278, 101 S. W. 658; Morgan *v.* Pott, 124 Mo. App. 371, 101 S. W. 717.

Nebraska. — Bush *v.* Griffin, (Neb. 1906) 107 N. W. 247.

New York. — Freedman *v.* Oppenheim, 102 N. Y. App. Div. 622, 92 N. Y. Supp. 878.

Oregon. — Seabrook *v.* Coos Bay Ice Co., (Oregon 1907) 89 Pac. 417; McNear *v.* Giustin, (Oregon 1907) 92 Pac. 1075.

Pennsylvania. — Huss *v.* Jacobs, 210 Pa. St. 145, 59 Atl. 991; Wickham *v.* Sutton, 33 Pa. Super. Ct. 368.

Texas. — Carlyle *v.* Pruett, (Tex. Civ. App. 1904) 84 S. W. 372; Wiley *v.* Bargman, (Tex. Civ. App. 1905) 90 S. W. 1116; Veatch *v.* Gray, (Tex. Civ. App. 1905) 91 S. W. 324; Taylor *v.* Doom, (Tex. Civ. App. 1906) 95 S. W. 4; Fischer *v.* Giddings, (Tex. Civ. App. 1906) 95 S. W. 33; Hunter *v.* Hodgson, (Tex. Civ. App. 1906) 95 S. W. 637; Mann *v.* Hossack, (Tex. Civ. App. 1906) 96 S. W. 767; Young *v.* Trahan, (Tex. Civ. App. 1906) 97 S. W. 147; Texas, etc., R. Co. *v.* Haynes, (Tex. Civ. App. 1906) 97 S. W. 849; Cruse *v.* Richards, (Tex. Civ. App. 1907) 100 S. W. 205; Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984.

Utah. — English *v.* Openshaw, 28 Utah 241, 78 Pac. 476; Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908; Salt Lake Invest. Co. *v.* Fox, (Utah 1907) 90 Pac. 564.

Virginia. — Davis *v.* Owen, (Va. 1907) 58 S. E. 581.

Washington. — Wilcox *v.* Smith, 38 Wash. 585, 80 Pac. 803; Lohse *v.* Burch, 42 Wash. 156, 84 Pac. 722.

West Virginia. — Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409.

Wisconsin. — Hemmy *v.* Dunn, 125 Wis. 275, 103 N. W. 1095; Pritchard *v.* Lewis, 125 Wis. 604, 104 N. W. 989.

Wyoming. — Fieldhouse *v.* Leisberg, (Wyo 1907) 88 Pac. 214.

889. 1. Johanson *v.* Atlantic City R. Co., 73 N. J. L. 767, 64 Atl. 1061, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 889; Wilson *v.* Johnson, 51 Fla. 370, 41 So. 395; Gilbert *v.* Southern Land, etc., Co., 53 Fla. 319, 43 So. 754; Missouri Lumber, etc., Co. *v.* Jewell, 200 Mo. 707, 98 S. W. 578; Bland *v.* Beasley, (N. Car. 1907) 58 S. E. 993. See Monk *v.* Wilmington, 137 N. Car. 322, 49 S. E. 345.

Burden of Proving Abandonment or Interruption. — Closuit *v.* John Arpin Lumber Co., 130 Wis. 258, 110 N. W. 222.

Presumption of Good Faith. — One holding under color of title is presumed to be relying in good faith thereon. Blumer *v.* Iowa R. Land Co., 129 Iowa 32, 105 N. W. 342.

890. 1. Rennert *v.* Shirk, 163 Ind. 542, 72 N. E. 546, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 889, 890; Rhea *v.* Craig, 141 N. Car. 602, 54 S. E. 408; Closuit *v.* John Arpin Lumber Co., 130 Wis. 258, 110 N. W. 222.

Presumption of Ouster. — See Rhea *v.* Craig, 141 N. Car. 602, 54 S. E. 408.

Offer to Purchase Title. — Such offer and declarations made after the running of the statute were held admissible to show the character of the possession, in Barrett *v.* McKinney, (Tex. Civ. App. 1906) 93 S. W. 240.

2. Varying Instrument in Writing. — The fact that one took under an instrument which in fact conveyed a life estate, does not render inadmissible evidence that the grantee claimed the fee with the grantor's acquiescence as showing adverse possession. Breland *v.* O'Neal, 88 Miss. 449, 40 So. 865.

Tax Receipts are admissible to show hostile possession. Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017.

Deeds — Description. — The fact that a deed varies in its description from one already in evidence does not render it inadmissible as color of title, where it is not plain that they refer to different land. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

In Whitehead *v.* Pitts, 127 Ga. 774, 56 S. E. 1004, it was held that a deed void because of indefinite description was not admissible, even though the grantee entered some land under the grantor.

A Commissioner's Deed not shown to have been executed on authority is admissible in connection with other deeds in the chain. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

Leases. — Entries in a town treasurer's books, leases, and votes relative to the land in dispute, are admissible to show that a town claimed the land adversely. Murphy *v.* Com., 187 Mass. 361, 73 N. E. 524.

Leases executed by one claiming adverse possession are admissible to show he was asserting ownership. Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017.

Maps. — In a suit by a city to recover land used for county purposes it was held not to be error to admit maps long in the county's custody to show the extent of its possession. Victoria *v.* Victoria County, (Tex. Civ. App. 1906) 94 S. W. 368.

Contracts. — The admissibility of contracts for the purchase of land cannot be affected on a showing, by one claiming adverse possession, that the vendor corporation had no deed to the land at the time when the contracts were made. Olson *v.* Burk, 94 Minn. 456, 103 N. W. 335.

Sale of part of the land claimed by prescription is admissible to show adverse possession. Dowdell *v.* Orphans' Home Soc., 114 La. 49, 38 So. 16.

Inventory — Tax Rendition. — In Webb *v.* Lyerla, (Tex. Civ. App. 1906) 94 S. W. 1095, it was held that an inventory of property in the handwriting of the tax assessor and not including the property in controversy, was admissible as showing in a greater or less degree that the property was not claimed during part of the statutory period.

891. 1. It is not error to exclude the record of a judgment alone, without a writ, and the dispossession of the one claiming adversely. Bradford *v.* Wilson, 140 Ala. 633, 37 So. 295.

The record of a suit for specific performance of a contract of sale of land is admissible to show that one was holding as vendee and not adversely. Marbach *v.* Holmes, 105 Va. 178, 52 S. E. 828.

2 Anniston City Land Co. *v.* Edmondson, 145 Ala. 557, 40 So. 505; Luce *v.* Parsons, 192 Mass. 8, 77 N. E. 1032; Whitaker *v.* Thayer, (Tex. Civ. App. 1905) 86 S. W. 364; Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937; Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

Declarations by Husband Binding on Wife. — Unauthorized statements by a husband in derogation of his wife's title are not sufficient to overcome a finding of adverse possession. Dredla *v.* Patz, (Neb. 1907) 111 N. W. 136.

892. 1. Anniston City Land Co. *v.* Edmondson, 145 Ala. 505, 40 So. 505. See Cornett *v.* Moore, (Ky. 1906) 97 S. W. 380.

Possession Cannot Be Established by Evidence of General Reputation. — Where claim of ownership is proved it is competent to show notoriety of the claim as tending to show knowledge by the owner, but ownership or title cannot be proved by reputation or general understanding. Henry *v.* Brown, 143 Ala. 446, 39 So. 325.

2. *Family Repute* is not admissible to show adverse possession. Luttrell *v.* Whitehead, 121 Ga. 699, 49 S. E. 691.

Other Evidence Admitted — Testimony of Witnesses. — In Dorlan *v.* Westervitch, 140 Ala. 283, 37 So. 382, it was held error to exclude the testimony of a witness in regard to whether or not the adverse claimant's ancestor had been in possession of the land.

But testimony of a witness as to what she heard one in possession of land say about losing his deed is properly excluded. Campbell *v.* Bates, 143 Cal. 338, 39 So. 144.

ADVICE OF COUNSEL.

894. 1. Priddy *v.* Mackenzie, 205 Mo. 181, 103 S. W. 968. See also Thweatt *v.* Freeman, 73 Ark. 575, 84 S. W. 720.

Question of Fact for Jury. — Cleveland *v.* Cromwell, 110 N. Y. App. Div. 82, 96 N. Y. Supp. 475.

897. 2. Fox *v.* Spears, 78 Ark. 71, 93 S. W. 560; Gabriel *v.* McMullin, 127 Iowa 426, 103 N. W. 355; Lindall *v.* Supreme Ct., 100 Minn. 87, 110 N. W. 358; Downey *v.* Owen, 98 N. Y. App. Div. 411, 90 N. Y. Supp. 280; Gulf, etc., R. Co. *v.* Gibson, (Tex. Civ. App. 1906) 93 S. W. 469; Rosebud *v.* State, (Tex. Crim. 1906) 98 S. W. 858. See also the title PRIVILEGED COMMUNICATIONS.

Advice Must Have Been Given in Course of Professional Employment. — Later *v.* Haywood, 12 Idaho 78, 85 Pac. 494; Mueller *v.* Batchelder, 131 Iowa 650, 109 N. W. 186.

Relation of Attorney and Client Must Exist. — Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504.

Must Be of a Confidential Nature and So Regarded by Client. — Matter of Elliott, 73 Kan. 151, 84 Pac. 750.

Not Necessary that a Fee Be Asked or Expected to Entitle Client to Invoke Protection. — Mack *v.* Sharp, 138 Mich. 448, 101 N. W. 631.

3. **Statements by Client in Presence of Attorney and Third Parties Not Privileged.** — Scott *v.* Aultman Co., 211 Ill. 612, 71 N. E. 1112; Matter of Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 1103; Mitchell *v.* Mitchell, 212 Pa. St. 62, 61 Atl. 570.

Rule Will Not Be Enforced Between the Attorney and Client to Extent of Depriving Attorney of His Own Rights. — Stern *v.* Daniel, (Wash. 1907) 91 Pac. 552.

4. Jones *v.* Nantahala Marble, etc., Co., 137 N. Car. 237, 49 S. E. 94; Missouri, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1906) 96 S. W. 1087.

6. **Waiver May Be Withdrawn at Any Time Before Acted Upon.** — Herpolsheimer *v.* Citizens Ins. Co., (Neb. 1907) 113 N. W. 152.

7. Wood *v.* Etiwanda Water Co., 147 Cal. 228, 81 Pac. 512; Pinson *v.* Campbell, 124 Mo.

App. 260, 101 S. W. 621; Brown *v.* Brown, (Neb. 1906) 108 N. W. 180.

9. Smith *v.* State, 46 Tex. Crim. 267, 81 S. W. 936, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897.

899. 4. Shannon *v.* Simms, 146 Ala. 673, 40 So. 574; Goldstein *v.* Drysdale, (Ala. 1906) 42 So. 744; Harr *v.* Ward, 73 Ark. 437, 84 S. W. 496, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 899; Van Meter *v.* Bass, (Colo. 1907) 90 Pac. 637; Staples *v.* Johnson, 25 App. Cas. (D. C.) 155; Young *v.* Lindstrom, 115 Ill. App. 239; National L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895; Slater *v.* Walter, 148 Mich. 650, 112 N. W. 682; Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33; Pandjiris *v.* Hartman, 196 Mo. 539, 94 S. W. 270; Pinson *v.* Campbell, 124 Mo. App. 260, 101 S. W. 621; Radcliffe *v.* Hollyfield, 216 Pa. St. 367, 65 Atl. 789; Baker *v.* Moore, 29 Pa. Super. Ct. 301; Cooper *v.* Flemming, 114 Tenn. 40, 84 S. W. 801; Simmons *v.* Gardner (Wash. 1907) 89 Pac. 887; Brinsley *v.* Schulz, 124 Wis. 426, 102 N. W. 918; King *v.* Apple River Power Co., 131 Wis. 575, 111 N. W. 668.

Probable Cause May Exist Independent of Advice of Counsel.— Sasse *v.* Rogers, (Ind. App. 1907) 81 N. E. 590.

901. 1. Harr *v.* Ward, 73 Ark. 437, 84 S. W. 496; National L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895; King *v.* Erskins, 116 La. 480, 40 So. 844; Davis *v.* McMillan, 142 Mich. 391, 105 N. W. 862; Pandjiris *v.* Hartman, 196 Mo. 539, 94 S. W. 270; Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78; Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33; Radcliffe *v.* Hollyfield, 216 Pa. St. 367, 65 Atl. 789; Cooper *v.* Flemming, 114 Tenn. 40, 84 S. W. 801; Haas *v.* Powers, 130 Wis. 406, 110 N. W. 205.

Proof that Counsel Knew All the Facts.— Simmons *v.* Gardner, (Wash. 1907) 89 Pac. 887.

903. 3. Haas *v.* Powers, 130 Wis. 406, 110 N. W. 205.

905. 1. Cook *v.* Proskey, (C. C. A.) 138 Fed. 273; Parr *v.* Loder, 97 N. Y. App. Div. 218, 89 N. Y. Supp. 823.

906. 1. Harr *v.* Ward, 73 Ark. 437, 84 S. W. 496, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 906; Davis *v.* McMillan, 142 Mich. 391, 105 N. W. 862; Radcliffe *v.* Hollyfield, 216 Pa. St. 367, 65 Atl. 789; Haas *v.* Powers, 130 Wis. 406, 110 N. W. 205.

2. Freeman *v.* Wright, 113 Ill. App. 159.

907. 1. Harr *v.* Ward, 73 Ark. 437, 84 S. W. 496, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 907; Cooper *v.* Flemming, 114 Tenn. 40, 84 S. W. 801; Simmons *v.* Gardner, (Wash. 1907) 89 Pac. 887.

2. Harr *v.* Ward, 73 Ark. 437, 84 S. W. 496, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 907.

AFFIDAVIT.

910. 3. Other Definitions.— Holman *v.* State, 144 Ala. 97, 39 So. 646, *quoting* State *v.* Sullivan, 39 S. Car. 400, 17 S. E. 865, set out in original, and *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 909.

AFFINITY.

912. 1. Bliss *v.* Caille Bros. Co., 149 Mich. 608, 113 N. W. 317, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 911.

AFFRAY.

915. 1. Justification — Self-defense. — Failure to charge on the law of self-defense, when within the issues raised, is error. Stepp *v.* State, (Tex. Crim. 1903) 77 S. W. 787.

Justification Is Question for Jury. — Blackwell *v.* State, 119 Ga. 314, 46 S. E. 432.

916. 2. Blackwell *v.* State, 119 Ga. 314, 46 S. E. 432.

4. Blackwell *v.* State, 119 Ga. 314, 46 S. E. 432.

AFORETHOUGHT.

920. 2. ***Aforethought*** means thought of beforehand, for any length of time, however short. State *v.* Tetrick, 199 Mo. 100, 97 S. W. 564.

AGE.

927. 2. Frost *v.* State, (Ala. 1907) 45 So. 203, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 927; *Ex p.* Wood, (Cal. App. 1907) 90 Pac. 961 (age of eighteen years); De Sonora *v.* Bankers' Mut. Casualty Co., 124 Iowa 576, 100 N. W. 532.

AGENCY.

937. 2. Ostensible Agency.— Dover *v.* Pittsburg Oil Co., 143 Cal. 501, 77 Pac. 405; Weidenaar *v.* New York L. Ins. Co., (Mont. 1908) 94 Pac. 1.

The Law of Partnership. — Taylor *v.* Felder, (Ga. 1907) 59 S. E. 844.

Agency a Fiduciary Relation.— Kroll *v.* Coach, 45 Oregon 459, 78 Pac. 397, 80 Pac. 900.

3. Steele *v.* Lawyer, (Wash. 1907) 91 Pac. 958.

938. 1. Keyser *v.* Hinkle, (Mo. App. 1907) 106 S. W. 98; Fulton *v.* Walters, 216 Pa. St. 56, 64 Atl. 860; Steele *v.* Lawyer, (Wash. 1907) 91 Pac. 958.

5. An Agent is one who represents another in dealing with third persons. Nicholls *v.* Mapes, 1 Cal. App. 349, 82 Pac. 265.

Statutory Definition.—Sumner *v.* Nevin, 4 Cal. App. 347, 87 Pac. 1105.

939. 9. Iowa L. & T. Co. *v.* McMurray, 129 Iowa 65, 105 N. W. 361.

940. 1. Insane Person.— Amos *v.* American Trust, etc., Bank, 125 Ill. App. 91.

2. Amos *v.* American Trust, etc., Bank, 125 Ill. App. 91.

942. 1. A Married Woman, her husband joining, may make a valid power of attorney to convey her lands. Linton *v.* Moorhead, 209 Pa. St. 646, 59 Atl. 264.

2. Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651.

944. 8. Citizens' L. Assur. Co. *v.* Brown, (1904) A. C. 423; Martin *v.* Martin, etc., Co., 27 App. Cas. (D. C.) 59; Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074;

People *v.* Eaton, 122 N. Y. App. Div. 706, 107 N. Y. Supp. 849; Arnold *v.* National Bank, 126 Wis. 362, 105 N. W. 828.

Treated as Natural Persons. — Colpe *v.* Jubilee Min. Co., 2 Cal. App. 393, 84 Pac. 324.

945. 4. Kanevsky *v.* New York, etc., R. Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 564, 103 N. Y. Supp. 727, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 945.

5. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 52 S. E. 679, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 945.

946. 4. Steffens *v.* Nelson, 94 Minn. 365, 102 N. W. 871; Evans *v.* Crawford County Farmers Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

Under an Illinois Statute permitting a woman to testify as to transactions in which she acts as her husband's agent she will not be permitted to testify upon showing that her husband sent her to the defendant's office merely to hold a conversation with him about certain options. Donk Bros. Coal, etc., Co. *v.* Stroetter, 229 Ill. 134, 82 N. E. 250.

947. 3. Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10; Lindsley *v.* Smith, (Mich. 1907) 114 N. W. 340; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Black *v.* McQuaid, (N. J. 1907) 68 Atl. 102; Francis *v.* Reeves, 137 N. Car. 269, 49 S. E. 213; Lurty *v.* Lurty, (Va. 1907) 59 S. E. 405; Peterson *v.* Hicks, 43 Wash. 412, 86 Pac. 634.

Question for Jury. — Reelman *v.* Grosfend, 140 Mich. 681, 104 N. W. 331.

Evidence Sufficient to Show Agency. — Rathke *v.* Tyler, (Iowa 1907) 111 N. Y. 435.

948. 1. Goodyear *v.* Williams, 73 Kan. 192, 85 Pac. 300; Harris *v.* Reynolds, (N. Dak. 1907) 114 N. W. 369; Fay *v.* Sullens, 15 Okla. 171, 81 Pac. 426.

2. Lewis *v.* Amorous, (Ga. 1907) 59 S. E. 338.

6. Goodyear *v.* Williams, 73 Kan. 192, 85 Pac. 300.

949. 3. Brown *v.* Gilpin, 75 Kan. 773, 90 Pac. 267; Harris *v.* Reynolds, (N. Dak. 1907) 114 N. W. 369; Fay *v.* Sullens, 15 Okla. 171, 81 Pac. 426.

10. Kidd *v.* New Hampshire Traction Co., (N. H. 1907) 66 Atl. 127.

950. 1. Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099.

2. Swindell *v.* Gilbert, 100 Md. 399, 60 Atl. 102.

4. Hartford *v.* McGillicuddy, (Me. 1907) 68 Atl. 860.

7. Rosehill Cemetery Co. *v.* Dempster, 223 Ill. 567, 79 N. E. 276; Arnold *v.* National Bank, 126 Wis. 362, 105 N. W. 828.

An Arrangement Between Two Railroad Companies that each should receive traffic from the other, one collecting the entire toll, does not create such an agency as to render one liable for the loss of the other. Houston, tc., R. Co. *v.* Groves, (Tex. Civ. App. 1907) 106 S. W. 416.

951. 1. Rosehill Cemetery Co. *v.* Dempster, 223 Ill. 567, 79 N. E. 276.

2. Rosehill Cemetery Co. *v.* Dempster, 223 Ill. 567, 79 N. E. 276; Crossley *v.* St. Philip Neri, (N. J. 1907) 67 Atl. 27.

3. **Appointment by Board.** — Where a corporate by-law requires a superintendent to be appointed by the board of directors, an appointment by the manager is invalid. Colpe *v.* Jubilee Min. Co., 2 Cal. App. 393, 84 Pac. 324.

4. **An Agent of a Corporation** must be appointed by the board of directors, when assembled. Cann *v.* Church of Redeemer, 111 Mo. App. 164, 85 S. W. 994.

952. 1. Brown *v.* British, etc., Mortg. Co., 86 Miss. 388, 38 So. 312; Crossley *v.* St. Philip Neri, (N. J. 1907) 67 Atl. 27; Empire Implement Mfg. Co. *v.* Hench, (Pa. 1907) 67 Atl. 995.

6. Lewis *v.* Amorous, (Ga. 1907) 59 S. E. 338; Caldwell *v.* Bigger, (Kan. 1907) 90 Pac. 1095.

7. Hayes *v.* Atlanta, 1 Ga. App. 25, 57 S. E. 1087.

953. 1. Horner *v.* Beasley, (Md. 1907) 65 Atl. 820, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 953; Hayes *v.* Atlanta, 1 Ga. App. 25, 57 S. E. 1087.

5. Horner *v.* Beasley, (Md. 1907) 65 Atl. 820, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 953; Calhoon *v.* Buhre, (N. J. 1907) 67 Atl. 1068.

Contra under Georgia Code. — Hayes *v.* Atlanta, 1 Ga. App. 25, 57 S. E. 1087.

954. 1. See also Donason *v.* Barbero, 230 Ill. 138, 82 N. E. 620.

955. 2. Hirsh *v.* Beverly, 125 Ga. 657, 54 S. E. 678; Case *v.* Kramer, 34 Mont. 142, 85 Pac. 878; Crossley *v.* St. Philip Neri, (N. J. 1907) 67 Atl. 27.

3. *In Montana* an agent to lease property for more than one year must have written authority. Landt *v.* Schneider, 31 Mont. 15, 77 Pac. 307.

9. Burk *v.* Johnson, (C. C. A.) 146 Fed. 209, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 955.

10. Friedman *v.* Suttle, (Ariz. 1906) 85 Pac. 726; Godsey *v.* Standifer, (Ky. 1907) 101 S. W. 921; Hopper *v.* McAllum, 87 Miss. 441, 40 So. 2; Campbell *v.* Hough, (N. J. 1908) 68 Atl. 759; Brown *v.* Honiss, (N. J. 1907) 68 Atl. 151.

An Authority to Sell Mules need not be in writing. Hirsh *v.* Beverly, 125 Ga. 657, 54 S. E. 678.

In Nebraska authority for the sale of land is void under the statute of frauds unless in writing. Frahm *v.* Metcalf, (Neb. 1905) 106 N. W. 227.

In Missouri, by Rev. Stat. Mo. 1899, § 3418, it is provided that no contract for the sale of lands made by an agent shall be binding on the principal unless the agent is authorized in writing to make such contract. Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228.

Statutes Requiring Authority to Be in Writing. — Czarnowski *v.* Holland, 5 Ariz. 119, 78 Pac. 890; Blankenship *v.* Decker, 34 Mont. 292, 85 Pac. 1035; Halsell *v.* Renfrow, 14 Okla. 674, 78 Pac. 118; Peirce *v.* Wheeler, 44 Wash. 326, 87 Pac. 361.

956. 1. Weaver *v.* Snively, 73 Neb. 35, 102 N. W. 77.

3. Crossley *v.* St. Philip Neri, (N. J. 1907) 67 Atl. 27.

4. Power to Execute a License to Cut Standing Timber may be orally given. Antrim Iron Co. *v.* Anderson, 140 Mich. 702, 104 N. W. 319.

5. Butman *v.* Butman, 213 Ill. 104, 72 N. E. 821.

A contract for the sale of land by an agent, having oral authority only, will bind the principal although a statute requires the agent's contract for a compensation to be in writing. Roberts *v.* Hilton Land Co., (Wash. 1907) 88 Pac. 946.

6. McCune *v.* Badger, 126 Wis. 186, 105 N. W. 667.

957. 5. Cable Co. *v.* Walker, 127 Ga. 65, 56 S. E. 108; Lindquist *v.* Dickson, 98 Minn. 369, 107 N. W. 958; Pine *v.* Mangus, (Neb. 1906) 107 N. W. 222.

A Corporate Director has no authority to act for the corporation unless he has been appointed its agent. Guillaume *v.* K. S. D. Fruit Land Co., 48 Oregon 400, 86 Pac. 883.

6. Presumption. — Where a deed is shown to have been executed by an agent more than thirty years ago, the agent's authority will be presumed. Frugia *v.* Trueheart, (Tex. Civ. App. 1907) 106 S. W. 736.

7. Feiner *v.* Boynton, 73 N. J. L. 136, 62 Atl. 420; Valois *v.* Gardner, 122 N. Y. App. Div. 245, 106 N. Y. Supp. 808; Howell *v.* Blesh, (Okla. 1907) 91 Pac. 893; Evans *v.* Crawford County Farmers Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

958. 1. Steinfield *v.* Girrard, (Me. 1907) 68 Atl. 630; Clothier *v.* Sigle, 73 N. J. L. 419, 63 Atl. 865; Feiner *v.* Boynton, 73 N. J. L. 136, 62 Atl. 420; Evans *v.* Crawford County Farmers Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952. See also Zent *v.* Sullivan, (Wash. 1907) 91 Pac. 1088.

3. Sanders *v.* Brown, 145 Ala. 665, 39 So. 732; Rheam *v.* Martin, 26 App. Cas. (D. C.) 181; Porter *v.* Terrell, 2 Ga. App. 269, 58 S. E. 493; McNemar *v.* Cohn, 115 Ill. App. 31; Lindsley *v.* Smith, (Mich. 1907) 114 N. W. 340; Cox *v.* St. Louis, etc., R. Co., 111 Mo. App. 394, 85 S. W. 989; Oatman *v.* Watrous, 120 N. Y. App. Div. 66, 105 N. Y. Supp. 174; Francis *v.* Reeves, 137 N. Car. 269, 49 S. E. 213, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 958.

A Husband Has No Implied Power to authorize a surgical operation to be performed upon his wife. Pratt *v.* Davis, 118 Ill. App. 161.

4. Francis *v.* Reeves, 137 N. Car. 269, 49 S. E. 213, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 958; Du Bose *v.* Gladden, 75 S. Car. 78, 55 S. E. 152.

7. Union Nat. Bank *v.* Neill, (C. C. A.) 149 Fed. 711; Alley *v.* Bowen-Merrill Co., 76 Ark. 4, 88 S. W. 838; Clark *v.* Ball, 34 Colo. 223, 82 Pac. 529; Eady *v.* Newton Coal, etc., Co., 123 Ga. 557, 51 S. E. 661; Gunning System *v.* La Pointe, 113 Ill. App. 405; Lemke *v.* Faustmann, 124 Ill. App. 624; Cohen *v.* Miller, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 106, 91 N. Y. Supp. 345; Shapek *v.* Oak Creek Valley Bank, (Okla. 1907) 91 Pac. 1129; Cassidy *v.* Saline County Bank, 14 Okla. 532, 78 Pac. 324; Hatchett *v.* Sunset Brick, etc., Co., (Tex. Civ. App. 1907) 99 S. W. Rep. 174; Harris *v.* Zier, 43 Wash. 573, 86 Pac. 928; Merrill *v.* O'Bryan, (Wash. 1908) 93 Pac. 916.

959. 5. *California.* — Anglo-Californian Bank *v.* Cerf, 147 Cal. 393, 81 Pac. 1081; Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 84 Pac. 321.

Georgia. — Noble *v.* Burney, 124 Ga. 960, 53 S. E. 463, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 959 *et seq.*; Cable Co. *v.* Walker, 127 Ga. 65, 56 S. E. 108; Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., (Ga. 1907) 59 S. E. 713.

Iowa. — Aga *v.* Harbach, 127 Iowa 144, 102 N. W. 833, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 959.

Kentucky. — Hall *v.* Ayer, etc., Tie Co., (Ky. 1907) 102 S. W. 867; Peyton *v.* Old Woolen Mills Co., (Ky. 1906) 91 S. W. 719.

Maryland. — Darrin *v.* Whittingham, (Md. 1907), 68 Atl. 269; Swindell *v.* Gilbert, 100 Md. 399, 60 Atl. 102.

Minnesota. — Lindquist *v.* Dickson, 98 Minn. 369, 107 N. W. 958.

Missouri. — Phillips *v.* Geiser Mfg. Co., (Mo. App. 1908) 107 S. W. 471.

New Jersey. — Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419.

Oklahoma. — See Cassidy *v.* Saline County Bank, 14 Okla. 532, 78 Pac. 324.

Oregon. — Baker County *v.* Huntington, 47 Oregon 328, 83 Pac. 532.

Virginia. — Lurty *v.* Lurty, (Va. 1907) 59 S. E. 405.

Washington. — Lough *v.* Davis, 35 Wash. 449, 77 Pac. 733.

West Virginia. — Siers *v.* Wiseman, 58 W. Va. 340, 52 S. E. 460; Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

Implied Agency Question for Jury. — Bloch *v.* De Lucia, (Conn. 1907) 66 Atl. 769.

960. 1. *California.* — Dover *v.* Pittsburg Oil Co., 143 Cal. 501, 77 Pac. 405.

Georgia. — Noble *v.* Burney, 124 Ga. 960, 53 S. E. 463, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 960 *et seq.*; Johnson *v.* Waxelbaum Co., 1 Ga. App. 511, 58 S. E. 56; Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., (Ga. App. 1907) 59 S. E. 713.

Illinois. — Swannell *v.* Byers, 123 Ill. App. 545.

Louisiana. — Richard *v.* Springfield F. & M. Ins. Co., 114 La. 794, 38 So. 563.

Maryland. — Carrington *v.* Turner, 101 Md. 437, 61 Atl. 324.

Missouri. — Dawson *v.* Wombles, 111 Mo. App. 532, 86 S. W. 271.

New Jersey. — Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419.

New York. — Benton *v.* Moss, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 376, 93 N. Y. Supp. 113.

North Carolina. — See Francis *v.* Reeves, 137 N. Car. 269, 49 S. E. 213.

Ohio. — General Cartage, etc., Co. *v.* Cox, 74 Ohio St. 284, 78 N. E. 371.

Oklahoma. — Jack *v.* National Bank, 17 Okla. 430, 89 Pac. 219.

Oregon. — Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482; Gardner *v.* Wiley, 46 Oregon 96, 79 Pac. 341.

Pennsylvania. — Ruane *v.* Murray, 26 Pa. Super. Ct. 187; Reel *v.* Adams Express Co., 27 Pa. Super. Ct. 77; Empire Implement Mfg. Co. *v.* Hench, (Pa. 1907) 67 Atl. 995; Bellman *v.* Pittsburg, etc., R. Co., 31 Pa. Super. Ct. 389.

Texas. — Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 960.

Washington. — Rowland *v.* P. P. Carroll Loan, etc., Co., 44 Wash. 413, 87 Pac. 482.

West Virginia. — Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

2. Dover *v.* Pittsburg Oil Co., 143 Cal. 501, 77 Pac. 405; Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., (Ga. 1907) 59 S. E. 713; General Cartage, etc., Co. *v.* Cox, 74 Ohio St. 284, 78 N. E. 371; Jack *v.* National Bank, 17 Okla. 430, 89 Pac. 219; Gardner *v.* Wiley, 46 Oregon 96, 79 Pac. 341; Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 960; Haner *v.* Furuya, 39 Wash. 122, 81 Pac. 98.

4. Fraternal Army of America *v.* Evans, 114 Ill. App. 578.

961. 2. Sloss Iron, etc., Co. *v.* Jackson Architectural Iron-Works, 103 N. Y. App. Div. 316, 92 N. Y. Supp. 1056; Marks *v.* Herren, 47 Oregon 603, 83 Pac. 385, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961; Blowers *v.* Southern R. Co., 74 S. Car. 221, 54 S. E. 368; Brennan *v.* Dansby, (Tex. Civ. App. 1906) 95 S. W. 700; Lough *v.* Davis, 35 Wash. 449, 77 Pac. 733; Fielder *v.* Camp Constr. Co., (W. Va. 1908) 60 S. E. 402.

962. 1. Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 962.

3. Wheeling Ice, etc., Co. *v.* Connor, (W. Va. 1906) 55 S. E. 982.

4. Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811; Bowles *v.* Rice, (Va. 1907) 57 S. E. 575; Black Lick Lumber Co. *v.* Camp Constr. Co., (W. Va. 1908) 60 S. E. 409, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 962; Cobb *v.* Glen Boom, etc., Co., 57 W. Va. 49, 49 S. E. 1005.

6. Authors, etc., Assoc. *v.* O'Gorman Co., 147 Fed. 616; Black Lick Lumber Co. *v.* Camp Constr. Co., (W. Va. 1908) 60 S. E. 409, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 962.

963. 1. Dawson *v.* Wombles, 111 Mo. App. 532, 86 S. W. 271.

Indorsing a Blank Note authorizes the indorsee to fill it up in any manner not inconsistent with the character of the paper. Stanley *v.* Davis, (Ky. 1908) 107 S. W. 773.

964. 1. See Hall *v.* Ayer, etc., Tie Co., (Ky. 1907) 102 S. W. 867.

6. Newton *v.* Hamden, (Conn. 1906) 64 Atl. 229; Broadstreet *v.* McKamey, (Ind. App. 1908) 83 N. E. 773; Pine *v.* Mangus, (Neb. 1906) 107 N. W. 222; Cassidy *v.* Saline County Bank, 14 Okla. 532, 78 Pac. 324; Fielder *v.* Camp Constr. Co., (W. Va. 1908) 60 S. E. 402. See also North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163. But see Wierman *v.* Bay City-Michigan Sugar Co., 142 Mich. 422, 106 N. W. 75.

965. 5. Weidenaar *v.* New York L. Ins. Co., (Mont. 1908) 94 Pac. 1, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 965; Heinzerling *v.* Agen, (Wash. 1907) 90 Pac. 262.

6. Pacific Vinegar, etc., Works *v.* Smith, 145 Cal. 352, 78 Pac. 550.

8. Broadstreet *v.* McKamey, (Ind. App. 1908) 83 N. E. 773; Wortham *v.* Illinois L. Ins. Co., (Ky. 1908) 107 S. W. 276; Haner *v.* Furuya, 39 Wash. 122, 81 Pac. 98.

966. 1. Keach *v.* Bunn, 116 Ill. App. 397; Corder *v.* O'Neill, (Mo. 1907) 106 S. W. 10.

Agent of Borrower Not Agent of Lender. — Boyd *v.* Boyd, 128 Iowa 699, 104 N. W. 798.

An Executor cannot represent a claimant against the estate. *In re* Hobson, (Colo. 1907) 91 Pac. 929.

2. Where Two Corporations Enter into a Partnership Enterprise the agent of one is the agent of both. Gunning System *v.* La Pointe, 113 Ill. App. 405.

967. 3. German Ins. Co. *v.* Goodfriend, (Ky. 1906) 97 S. W. 1098; Ryle *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 87; Belcher *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 399; Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482; Singer Mfg. Co. *v.* Christian, 211 Pa. St. 534, 60 Atl. 1087.

4. *United States.* — Robinson *v.* Union Cent. L. Ins. Co., 144 Fed. 1005.

Alabama. — Stephens *v.* Bailey, (Ala. 1906) 42 So. 740; Lewis *v.* Smith, (Ala. 1907) 43 So. 717; Robinson *v.* Green, (Ala. 1906) 43 So. 797.

Georgia. — Noble *v.* Burney, 124 Ga. 960, 53 S. E. 463.

Illinois. — Michigan Mut. L. Ins. Co. *v.* Vierra, 116 Ill. App. 476.

Indian Territory. — Hunt *v.* Johnson, etc., Dry Goods Co., (Indian Ter. 1907) 104 S. W. 841.

Maryland. — Darrin *v.* Whittingham, (Md. 1907) 68 Atl. 269.

Minnesota. — Bartleson *v.* Vanderhoff, 96 Minn. 184, 104 N. W. 820.

Missouri. — Bissell *v.* Zorn, 122 Mo. App. 688, 99 S. W. 458.

New Jersey. — Scull *v.* Skillton, 70 N. J. L. 792, 59 Atl. 457.

New York. — Schneider *v.* Finkelstein, (Supm. Ct. App. T.) 107 N. Y. Supp. 126; Hann *v.* Brettler, (Supm. Ct. App. T.) 107 N. Y. Supp. 78; Cohn *v.* James M'Creery Realty Corp., 102 N. Y. App. Div. 611, 92 N. Y. Supp. 143.

Oregon. — Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482.

Pennsylvania. — Singer Mfg. Co. *v.* Christian, 211 Pa. St. 534, 60 Atl. 1087; Carter *v.* Moss, 210 Pa. St. 612, 60 Atl. 310.

Washington. — Novelty Mill Co. *v.* Heinzerling, 39 Wash. 244, 81 Pac. 742; Harvey *v.* Sparks, (Wash. 1907) 88 Pac. 1108.

968. 1. Singer Mfg. Co. *v.* Christian, 211 Pa. St. 534, 60 Atl. 1087, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 968.

2. Robinson *v.* Green, (Ala. 1906) 43 So. 797; Broadstreet *v.* McKamey, (Ind. App. 1908)

83 N. E. 773; Peyton *v.* Old Woolen Mills Co., (Ky. 1906) 91 S. W. 719; Lindquist *v.* Dickson, 98 Minn. 369, 107 N. W. 958; Roberson *v.* Clevenger, 111 Mo. App. 622, 86 S. W. 512; Cox *v.* St. Louis, etc., R. Co., 111 Mo. App. 394, 85 S. W. 989; Ward *v.* M. E. Church, 27 R. I. 262, 61 Atl. 651; Fielder *v.* Camp Constr. Co., (W. Va. 1908) 60 S. E. 402, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 968.

Authority Not in Writing May Be Established by Parol. — Mucke *v.* Solomon, (Conn. 1906) 64 Atl. 738; Lough *v.* Davis, 35 Wash. 449, 77 Pac. 733.

3. *Alabama.* — Stephens *v.* Bailey, (Ala. 1906) 42 So. 740; Sanders *v.* Brown, 145 Ala. 665, 39 So. 732; Ebersole *v.* Southern Bldg., etc., Assoc., 147 Ala. 177, 41 So. 150.

Illinois. — Lee *v.* Chicago City R. Co., 127 Ill. App. 510.

Indian Territory. — Hunt *v.* Johnson, etc., Dry Goods Co., (Indian Ter. 1907) 104 S. W. 841.

Louisiana. — Interstate Bank, etc., Co. *v.* Welsh, 118 La. 676, 43 So. 274.

Maine. — Steinfield *v.* Girrard, (Me. 1907) 68 Atl. 630.

Missouri. — Warwick *v.* North American Invest. Co., 112 Mo. App. 633, 87 S. W. 78.

New Jersey. — Scull *v.* Skillton, 70 N. J. L. 792, 59 Atl. 457.

New York. — Turner *v.* Lane, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 387, 93 N. Y. Supp. 1083.

Oklahoma. — Scarritt-Comstock Furniture Co. *v.* Hudspeth, (Okla. 1907) 91 Pac. 843.

Pennsylvania. — E. Bradford Clarke Co. *v.* Baltimore, etc., R. Co., 27 Pa. Super. Ct. 257.

Rhode Island. — Ward *v.* M. E. Church, 27 R. I. 262, 61 Atl. 651; Principe *v.* White Star Line, (R. I. 1907) 68 Atl. 476.

Texas. — Baker *v.* Kellett-Chatham Machinery Co., (Tex. Civ. App. 1905) 84 S. W. 661.

West Virginia. — Day *v.* Fay, 59 W. Va. 65, 52 S. E. 1013.

The Burden of Proving a Change of Relation rests upon him who affirms it. Bergner *v.* Bergner, (Pa. 1907) 67 Atl. 999.

4. Hirsh *v.* Beverly, 125 Ga. 657, 54 S. E. 678; Day *v.* Fay, 59 W. Va. 65, 52 S. E. 1013.

969. 1. Pease *v.* Fink, 3 Cal. App. 371, 85 Pac. 657; Brinson *v.* Exley, 122 Ga. 8, 49 S. E. 810; John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741; Hutchinson Wholesale Grocery Co. *v.* McDonald, 71 Kan. 861, 80 Pac. 950; Richards *v.* Newstifter, 70 Kan. 350, 78 Pac. 824; Jos. Schlitz Brewing Co. *v.* Grimmon, 28 Nev. 235, 81 Pac. 43; MacLatchy *v.* Hannan, 104 N. Y. App. Div. 70, 93 N. Y. Supp. 282; Ward *v.* M. E. Church, 27 R. I. 262, 61 Atl. 651; Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698; International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93; Black Lick Lumber Co. *v.* Camp Constr. Co., (W. Va. 1908) 60 S. E. 409, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 969.

2. Arkansas Southwestern R. Co. *v.* Dickinson, 78 Ark. 483, 95 S. W. 802; International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93; Black Lick Lumber Co. *v.* Camp Constr. Co., (W. Va. 1908) 60 S. E. 409, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 969.

3. Brinson *v.* Exley, 122 Ga. 8, 49 S. E. 810; Berlin *v.* Cusachs, 114 La. 744, 38 So. 539; Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419; Lough *v.* Davis, 35 Wash. 449, 77 Pac. 733.

4. Ætna Indemnity Co. *v.* Ladd, (C. C. A.) 135 Fed. 636; Beekman Lumber Co. *v.* Kittrell, 80 Ark. 228, 96 S. W. 988; Russell *v.* Washington Sav. Bank, 23 App. Cas. (D. C.) 398; Ham *v.* Brown, 2 Ga. App. 71, 58 S. E. 316; Fritz *v.* Chicago Grain, etc., Co., (Iowa 1907) 114 N. W. 193; Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074; Jahren *v.* Palmer, 71 Kan. 841, 79 Pac. 1081; Peyton *v.* Old Woolen Mills Co., (Ky. 1906) 91 S. W. 719; Barnesville First Nat. Bank *v.* St. Anthony, etc., Elevator Co., (Minn. 1908) 114 N. W. 265; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Jos. Schlitz Brewing Co. *v.* Grimmon, 28 Nev. 235, 81 Pac. 43; Colloty *v.* Schuman, (N. J. 1907) 66 Atl. 933, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 969; Steuerwald *v.* Jackson, 123 N. Y. App. Div. 569, 108 N. Y. Supp. 41; Missouri, etc., R. Co. *v.* Kyser, (Tex. Civ. App. 1905) 87 S. W. 389.

Where a Husband Acts as Agent for His Wife he may testify as to facts occurring when she was not present, although she also testifies in the action. Miller *v.* Jones, (Ky. 1908) 107 S. W. 783.

5. Columbus Show Case Co. *v.* Brinson, 128 Ga. 487, 57 S. E. 871; Ham *v.* Brown, 2 Ga. App. 71, 58 S. E. 316; Horner *v.* Beasley, (Md. 1907) 65 Atl. 820. See also the title ADMISSIONS.

The Letters of a Principal are admissible to show the authority of an agent. Peycke *v.* Shinn, (Neb. 1906) 107 N. W. 386.

970. 1. Thompson *v.* Murphy, (W. Va. 1906) 53 S. E. 908.

3. Jos. Schlitz Brewing Co. *v.* Grimmon, 28 Nev. 235, 81 Pac. 43.

972. 2. Insurance Co. of North America *v.* Wisconsin Cent. R. Co., (C. C. A.) 134 Fed. 794; Allen *v.* Confederate Pub. Co., 121 Ga. 773, 49 S. E. 782; Groscup *v.* Downey, (Md. 1907) 65 Atl. 930; Chouteau Land, etc., Co. *v.* Chrisman, 204 Mo. 371, 102 S. W. 973; Bond *v.* Hurd, 31 Mont. 314, 78 Pac. 579; Cullinan *v.* Bowker, 180 N. Y. 93, 72 N. E. 911.

974. 3. State *v.* Jackson, (S. Dak. 1907) 113 N. W. 881, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 974; Arnold *v.* Anderson, (Tex. Civ. App. 1906) 93 S. W. 692.

975. 4. People *v.* Clean Street Co., 225 Ill. 470, 80 N. E. 298; Rich *v.* Woods, 118 Ky. 865, 82 S. W. 578; Bowling Green *v.* Gaines, 96 S. W. 852, 29 Ky. L. Rep. 1013; Baltimore *v.* Gahan, 104 Md. 145, 64 Atl. 716.

5. Bowling Green *v.* Gaines, 96 S. W. 852, 29 Ky. L. Rep. 1013.

976. 12. Allen *v.* Confederate Pub. Co., 121 Ga. 773, 49 S. E. 782.

977. 6. Spengler *v.* Kuhn, 212 Ill. 186, 72 N. E. 214.

978. 2. Continental Adjustment Co. *v.* Hoffman, 123 Ill. App. 69; Chicago, etc., Traction Co. *v.* Flaherty, 222 Ill. 67, 78 N. E. 29; Johnston *v.* Baca, (N. Mex. 1906) 85 Pac. 237.

Physicians. — Ghere *v.* Zey, (Mo. App. 1908) 107 S. W. 418.

5. Groscup *v.* Downey, (Md. 1907) 65 Atl. 930; Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213; Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247.

6. Estill County *v.* Embry, (C. C. A.) 144 Fed. 913; Spengler *v.* Kuhn, 212 Ill. 186, 72 N. E. 214; Calhoun *v.* Buhre, (N. J. 1907) 67 Atl. 1068; Wright *v.* Isaacks, (Tex. Civ. App. 1906) 95 S. W. 55, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 978.

979. 8. Groscup *v.* Downey, (Md. 1907) 65 Atl. 930.

980. 1. State *v.* Marley, 78 Conn. 330, 62 Atl. 85, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980.

2. Arkadelphia Lumber Co. *v.* Thornton, 83 Ark. 403, 104 S. W. 169, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980.

7. Arkadelphia Lumber Co. *v.* Thornton, 83 Ark. 403, 104 S. W. 169, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980.

10. Fritz *v.* Chicago Grain, etc., Co., (Iowa 1907) 114 N. W. 193; Banks *v.* Southern Express Co., 73 S. Car. 211, 53 S. E. 166, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980; Wright *v.* Isaacks, (Tex. Civ. App. 1906) 95 S. W. 55, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980.

981. 1. Fritz *v.* Chicago Grain, etc., Co., (Iowa 1907) 114 N. W. 193; Banks *v.* Southern Express Co., 73 S. Car. 211, 53 S. E. 166, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 981; Blowers *v.* Southern R. Co., 74 S. Car. 229, 54 S. E. 368, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 981.

Where a Broker Is Employed to Purchase Stock he may effect the purchase through a subagent. Hoogewerff *v.* Flack, 101 Md. 371, 61 Atl. 184.

2. Green *v.* Soule, 145 Cal. 96, 78 Pac. 337; Francis *v.* Johnson, 127 Iowa 391, 101 N. W. 878; White *v.* Green, (Tex. Civ. App. 1904) 82 S. W. 329.

3. A Broker, Employed to Purchase Stock, who does so through a subagent, is liable to the principal for the subagent's failure to deliver the stock, where the purchase money has been paid over to the subagent. Hoogewerff *v.* Flack, 101 Md. 371, 61 Atl. 184.

982. 3. Awde *v.* Chaurest, 30 Quebec Super. Ct. 9.

983. 3. Landa *v.* Traders Bank, 118 Mo. App. 356, 94 S. W. 770.

984. 1. Phillips *v.* Geiser Mfg. Co., (Mo. App. 1908) 107 S. W. 471; Hoyt *v.* Hoyt, 73 N. H. 549, 64 Atl. 18.

Principal Not Liable Where Agent Had No Authority to Employ. — National Cash Register Co. *v.* Hagan, (Tex. Civ. App. 1904) 83 S. W. 727; Bond *v.* Hurd, 31 Mont. 314, 78 Pac. 579.

985. 1. Triplett *v.* Jackson, 130 Iowa 408, 106 N. W. 954; National Cash Register Co. *v.* Hagan, (Tex. Civ. App. 1904) 83 S. W. 727; Houston County Oil Mills, etc., Co. *v.* Bibby, (Tex. Civ. App. 1906) 95 S. W. 562.

2. Ætna Indemnity Co. *v.* Ladd, (C. C. A.) 135 Fed. 636, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985; Columbus Show Case Co. *v.* Brinson, 128 Ga. 487, 57 S. E. 871, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985; Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52; Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861; Belcher *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 399; Robert Buist Co. *v.* Lancaster Mercantile Co., 73 S. Car. 48, 52 S. E. 789; Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

Locality or Extent of Territory is not the test of general or special agency. Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861.

3. Columbus Show Case Co. *v.* Brinson, 128 Ga. 487, 57 S. E. 871, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985; Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861; Belcher *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 399; Robert Buist Co. *v.* Lancaster Mercantile Co., 73 S. Car. 48, 52 S. E. 789; Bowles *v.* Rice, (Va. 1907) 57 S. E. 575, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985; Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

Code Definitions. — Moore *v.* Skyles, 33 Mont. 135, 82 Pac. 799.

Character of Agency — Question of Law or Fact. — Singer Mfg. Co. *v.* Christian, 211 Pa. St. 534, 60 Atl. 1087, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 986; Cassidy *v.* Saline County Bank, 14 Okla. 532, 78 Pac. 324; Lough *v.* Davis, 35 Wash. 449, 77 Pac. 733; Novelty Mill Co. *v.* Heinzerling, 39 Wash. 244, 81 Pac. 742.

986. 1. Columbus Show Case Co. *v.* Brinson, 128 Ga. 487, 57 S. E. 871, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 986.

3. Galvano Type Engraving Co. *v.* Jackson, 77 Conn. 564, 60 Atl. 127.

987. 1. Universal Agency Extremely Rare. — Belcher *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 399.

2. *California.* — Wickersham Banking Co. *v.* Nicholas, 2 Cal. App. 18, 82 Pac. 1124.

Illinois. — Merchants' Nat. Bank *v.* Nichols, etc., Co., 223 Ill. 41, 79 N. E. 38, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987; Kuecks *v.* New Home Sewing Mach. Co., 123 Ill. App. 660.

Kansas. — Sullivant *v.* Jahren, 71 Kan. 127, 79 Pac. 1071.

Mississippi. — Busby *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 1.

Montana. — Moore *v.* Skyles, 33 Mont. 135, 82 Pac. 799; Cornish *v.* Woolverton, 32 Mont. 456, 81 Pac. 4.

New Mexico. — Bank of Commerce *v.* Baird Min. Co., (N. Mex. 1906) 85 Pac. 970.

New York. — Commonwealth Trust Co. *v.* Young, 122 N. Y. App. Div. 502, 107 N. Y. Supp. 555.

Oregon. — Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139.

Texas. — Galveston, etc., R. Co. *v.* Allen, (Tex. Civ. App. 1906) 94 S. W. 417; Missouri, etc., R. Co. *v.* Wright, (Tex. Civ. App. 1907) 107 S. W. 77.

Washington. — Seattle Shoe Co. *v.* Packard, 43 Wash. 527, 86 Pac. 845; Lucile Dreyfus Min. Co. *v.* Willard, (Wash. 1907) 89 Pac. 935.

West Virginia. — Wheeling Ice, etc., Co. *v.* Connor, (W. Va. 1906) 55 S. E. 982; Cobb *v.*

Glenn Boom, etc., Co., 57 W. Va. 49, 49 S. E. 1005.

Duty to Inquire as to Agent's Authority. — Brown *v.* Grady, (Wyo. 1907) 92 Pac. 622, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987; Davis *v.* Traschler, 3 Cal. App. 554, 86 Pac. 610.

Parties Knowingly Dealing with an Agent are bound to know that he has no implied authority to accept payment in goods for his own personal benefit. Hook *v.* Crowe, 100 Me. 399, 61 Atl. 1080.

3. Friedman *v.* Kelly, 126 Mo. App. 279, 102 S. W. 1066, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987; Molloy *v.* Whitehall Portland Cement Co., 116 N. Y. App. Div. 839, 102 N. Y. Supp. 863; MacLatchy *v.* Hannan, 104 N. Y. App. Div. 70, 93 N. Y. Supp. 282; Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698; Bowles *v.* Rice, (Va. 1907) 57 S. E. 575; Seattle Shoe Co. *v.* Packard, 43 Wash. 527, 86 Pac. 845.

4. *Colorado.* — Conqueror Gold Min., etc., Co. *v.* Ashton, (Colo. 1907) 90 Pac. 1124.

Illinois. — Merchants' Nat. Bank *v.* Nichols, etc., Co., 223 Ill. 41, 79 N. E. 38, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987, *affirming* 123 Ill. App. 430.

Kansas. — Sullivant *v.* Jahren, 71 Kan. 127, 79 Pac. 1071.

Mississippi. — Busby *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 1.

Missouri. — Friedman *v.* Kelly, 126 Mo. App. 279, 102 S. W. 1066, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987; Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213.

Montana. — Moore *v.* Skyles, 33 Mont. 135, 82 Pac. 799; Cornish *v.* Woolverton, 32 Mont. 456, 81 Pac. 4.

Nebraska. — Fitzgerald *v.* Kimball Bros. Co., (Neb. 1906) 107 N. W. 227.

New Jersey. — Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82.

New Mexico. — Bank of Commerce *v.* Baird Min. Co., (N. Mex. 1906) 85 Pac. 970.

New York. — Jones *v.* Richards, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 645, 98 N. Y. Supp. 698; Harris *v.* Vienna Ice Cream Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 125, 91 N. Y. Supp. 317.

North Carolina. — Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811.

Pennsylvania. — Mynick *v.* Bickings, 30 Pa. Super. Ct. 401.

South Dakota. — Tollerton, etc., Co. *v.* Gilruth, (S. Dak. 1907) 112 N. W. 842.

Texas. — Galveston, etc., R. Co. *v.* Allen, (Tex. Civ. App. 1906) 94 S. W. 417; Maloney Mercantile Co. *v.* Dublin Quarry Co., (Tex. Civ. App. 1908) 107 S. W. 904.

Virginia. — Bowles *v.* Rice, (Va. 1907) 57 S. E. 575.

West Virginia. — Wheeling Ice, etc., Co. *v.* Connor, (W. Va. 1906) 55 S. E. 982.

Canada. — Granda Hermanos, etc., *v.* American Electrical, etc., Mfg. Co., 29 Quebec Super. Ct. 444.

Third Party Not Bound to Inquire as to Existence of Agency. — Armour Packing Co. *v.* Vietch-Young Produce Co., (Ala. 1903) 39 So. 680.

It Is a Question for the Jury whether the circumstances are sufficient to put a third party upon inquiry. Kops Bros. Co. *v.* Smith, 137 Mich. 28, 100 N. W. 169.

988. 1. Frahm *v.* Metcalf, (Neb. 1905) 106 N. W. 227; Finch *v.* Causey, (Va. 1907) 57 S. E. 562.

2. Indiana Trust Co. *v.* Jefferson Tp., 37 Ind. App. 424, 77 N. E. 63.

3. *United States.* — Robinson *v.* Union Cent. L. Ins. Co., 144 Fed. 1005.

Connecticut. — State *v.* Marley, 78 Conn. 330, 62 Atl. 85.

Delaware. — Harrington *v.* Hall, (Del. 1906) 63 Atl. 875.

Georgia. — Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., (Ga. 1907) 59 S. E. 713.

Illinois. — Cozzens, etc., Typesetting Co. *v.* Western Ranch, etc., Co., 112 Ill. App. 309.

Indiana. — American Telephone, etc., Co. *v.* Green, 164 Ind. 349, 73 N. E. 707, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 988; American Quarries Co. *v.* Lay, 37 Ind. App. 386, 73 N. E. 608.

Iowa. — New York L. Ins. Co. *v.* Chittenden, 134 Iowa 613, 112 N. W. 96, 11 L. R. A. N. S. 233.

Kentucky. — Richmond Second Nat. Bank *v.* Adams, (Ky. 1906) 93 S. W. 671, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 988.

Louisiana. — Richard *v.* Springfield F. & M. Ins. Co., 114 La. 794, 38 So. 563.

Minnesota. — Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861.

Nebraska. — Hanson *v.* Ætna L. Ins. Co., (Neb. 1907) 110 N. W. 1000.

New Jersey. — Kelly *v.* Jersey City Water Supply Co., (N. J. 1907) 67 Atl. 108.

New York. — Cullinan *v.* Bowker, 180 N. Y. 93, 72 N. E. 911.

North Carolina. — Swindell *v.* Latham, (N. Car. 1907) 58 S. E. 1010.

Texas. — San Antonio, etc., R. Co. *v.* Timon, (Tex. Civ. App. 1907) 99 S. W. 418.

Wisconsin. — Abrohams *v.* Freres, 129 Wis. 235, 107 N. W. 656.

989. 1. *Arizona.* — California Development Co. *v.* Yuma Valley Union Land, etc., Co., (Ariz. 1906) 84 Pac. 88.

California. — Dover *v.* Pittsburg Oil Co., 143 Cal. 501, 77 Pac. 405; Betts *v.* Southern California Fruit Exch., 144 Cal. 402, 77 Pac. 993.

Georgia. — Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., (Ga. 1907) 59 S. E. 713; Hutson *v.* Prudential Ins. Co., 122 Ga. 847, 50 S. E. 1000; Johnson *v.* Waxelbaum Co., 1 Ga. App. 511, 58 S. E. 56.

Illinois. — Cozzens, etc., Typesetting Co. *v.* Western Ranch, etc., Co., 112 Ill. App. 309; Swannell *v.* Byers, 123 Ill. App. 545.

Kansas. — Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074.

Louisiana. — Richard *v.* Springfield F. & M. Ins. Co., 114 La. 794, 38 So. 563.

Michigan. — Antrim Iron Co. *v.* Anderson, 140 Mich. 702, 104 N. W. 319.

Minnesota. — Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861.

Missouri. — Hoffman Heading, etc., Co. *v.* St. Louis, etc., R. Co., 119 Mo. App. 495, 94 S. W. 507.

Nebraska. — Hanson *v.* Ætna L. Ins. Co., (Neb. 1907) 110 N. W. 1000.

North Carolina. — Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811.

Oklahoma. — Jack *v.* National Bank, 17 Okla. 430, 89 Pac. 219.

South Carolina. — Williams *v.* Tolbert, (S. Car. 1907) 56 S. E. 908.

Utah. — Smith Table Co. *v.* Madsen, 30 Utah 297, 84 Pac. 885.

Washington. — Merrill *v.* O'Bryan, (Wash. 1908) 93 Pac. 917; Starr *v.* Mutual L. Ins. Co., 41 Wash. 228, 83 Pac. 116; Rowland *v.* P. P. Carroll Loan, etc., Co., 44 Wash. 413, 87 Pac. 482; Seattle Shoe Co. *v.* Packard, 43 Wash. 527, 86 Pac. 845; Harvey *v.* Sparks, (Wash. 1907) 88 Pac. 1108; Lucile Dreyfus Min. Co. *v.* Willard, (Wash. 1907) 89 Pac. 935.

West Virginia. — Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

Appearance of Authority Caused by Agent Only. — Wierman *v.* Bay City-Michigan Sugar Co., 142 Mich. 422, 106 N. W. 75, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990, note.

990. 1. Wierman *v.* Bay City-Michigan Sugar Co., 142 Mich. 438, 106 N. W. 75, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990.

2. Hutson *v.* Prudential Ins. Co., 122 Ga. 847, 50 S. E. 1000; Cowan *v.* Sargent Mfg. Co., 141 Mich. 87, 104 N. W. 377, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990; Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811; Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990.

The Conductor of a Railroad Train cannot bind the company for medical expenses incurred in treating a trespasser injured through his own negligence. Wills *v.* International, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 273.

A Railroad Claim Agent has authority to employ and agree to pay a physician for attending an injured person. Reynolds *v.* Chicago, etc., R. Co., 114 Mo. App. 670, 90 S. W. 100.

Liability for Acts Outside Authority. — A principal may so negligently conduct his business as to become liable for the acts of an agent outside of his actual authority. Eggleston *v.* Advance Thresher Co., 96 Minn. 241, 104 N. W. 891.

Accepting Service of Process. — Jurisdiction of a nonresident of the United States may be obtained under Burns' Ann. St. (Ind.) 1901, § 310, by service of process on his agent. Worthington *v.* Qualkinbush, (Ind. App. 1907) 82 N. E. 534.

Service of Process on a traveling salesman, as agent of a foreign corporation, where the corporation has an agent within the state upon whom service should be had, is insufficient. W. T. Adams Mach. Co. *v.* Castleberry, 84 Ark. 573, 106 S. W. 940.

991. 1. *United States.* — Adler *v.* Galbraith, 156 Fed. 259.

California. — Wickersham Banking Co. *v.* Nicholas, 2 Cal. App. 18, 82 Pac. 1124; Jones *v.* Waterman, (Cal. App. 1906) 87 Pac. 469; Northwestern Packing Co. *v.* Whitney, (Cal. App. 1907) 89 Pac. 981.

Georgia. — Collins *v.* Crews, (Ga. App. 1907) 59 S. E. 727; Hutson *v.* Prudential Ins. Co., 122 Ga. 847, 50 S. E. 1000; Southern R. Co. *v.* Chambers, 126 Ga. 404, 55 S. E. 37.

Illinois. — Chicago *v.* Malkan, 119 Ill. App. 542.

Massachusetts. — Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493.

Michigan. — Cowan *v.* Sargent Mfg. Co., 141 Mich. 87, 104 N. W. 377, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 991.

Mississippi. — Busby *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 1.

Missouri. — Ridgeley Nat. Bank *v.* Barse Live Stock Commission Co., 113 Mo. App. 696, 88 S. W. 1124; McGraw *v.* O'Neil, 123 Mo. App. 691, 101 S. W. 132; Friedman *v.* Kelly, 126 Mo. App. 279, 102 S. W. 1066; Merchants' Bank *v.* Prudential Ins. Co., 110 Mo. App. 62, 84 S. W. 101.

New Jersey. — Standard Oil Co. *v.* Linol Co., (N. J. 1907) 68 Atl. 174; Mausert *v.* Christian Feigenspan, 68 N. J. Eq. 671, 63 Atl. 610.

New York. — Harris *v.* Vienna Ice Cream Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 125, 91 N. Y. Supp. 317; Wood-Barker Co. *v.* Van Clief, (Supm. Ct. App. T.) 107 N. Y. Supp. 88.

North Carolina. — Holder *v.* Cannon Mfg. Co., 138 N. Car. 308, 50 S. E. 681.

Oregon. — Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139.

South Carolina. — Robert Buist Co. *v.* Lancaster Mercantile Co., 73 S. Car. 48, 52 S. E. 789.

South Dakota. — Quale *v.* Hazel, 19 S. Dak. 483, 104 N. W. 215.

Texas. — Texas, etc., R. Co. *v.* Merchants', etc., Cotton Oil Co., (Tex. Civ. App. 1905) 86 S. W. 1042; Guarantee Sav., etc., Co. *v.* Mitchell, (Tex. Civ. App. 1905) 87 S. W. 184; Texas, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 84 S. W. 852.

West Virginia. — Cobb *v.* Glen Boom, etc., Co., 57 W. Va. 49, 49 S. E. 1005; Thompson *v.* Murphy, (W. Va. 1906) 53 S. E. 908; Wheeling Ice, etc., Co. *v.* Connor, (W. Va. 1906) 55 S. E. 982.

992. 1. *Arkansas.* — Capital F. Ins. Co. *v.* Montgomery, 81 Ark. 508, 99 S. W. 687.

Delaware. — Harrington *v.* Hall, (Del. 1906) 63 Atl. 875.

Georgia. — Eady *v.* Newton Coal, etc., Co., 123 Ga. 557, 51 S. E. 661; Hutson *v.* Prudential Ins. Co., 122 Ga. 847, 50 S. E. 1000.

Illinois. — Gray *v.* Merchants' Ins. Co., 113 Ill. App. 537; Young *v.* Mueller Bros. Art, etc., Co., 124 Ill. App. 94.

Iowa. — Getchell, etc., Lumber, etc., Co. *v.* Peterson, 124 Iowa 599, 100 N. W. 550.

Kansas. — Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074.

Kentucky. — Continental Ins. Co. *v.* Thomasson, (Ky. 1905) 84 S. W. 546.

Michigan. — Grand Rapids Electric Co. *v.* Walsh Mfg. Co., 142 Mich. 4, 105 N. W. 1.

Missouri. — Freeman *v.* Junge Baking Co., 126 Mo. App. 124, 103 S. W. 565.

Nebraska. — Northwest Thresher Co. *v.* Eddyville State Bank, (Neb. 1907) 114 N. W. 291.

North Carolina. — Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015;

Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811.

Pennsylvania. — Empire Implement Mfg. Co. *v.* Hench, (Pa. 1907) 67 Atl. 995; American Car, etc., Co. *v.* Alexandria Water Co., 218 Pa. St. 542, 67 Atl. 861.

South Carolina. — Robert Buist Co. *v.* Lancaster Mercantile Co., 73 S. Car. 48, 52 S. E. 789.

Texas. — Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 992; Thompson *v.* Fitzgerald, (Tex. Civ. App. 1907) 105 S. W. 334; North American Acc. Ins. Co. *v.* Trenton, (Tex. Civ. App. 1907) 99 S. W. 740; Thompson *v.* Mills, (Tex. Civ. App. 1907) 101 S. W. 560.

Utah. — Smith Table Co. *v.* Madsen, 30 Utah 297, 84 Pac. 885, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 992.

Washington. — Chilcott *v.* Washington State Colonization Co., (Wash. 1906) 88 Pac. 113; Harvey *v.* Sparks, (Wash. 1907) 88 Pac. 1108; Rowland *v.* P. P. Carroll Loan, etc., Co., 44 Wash. 413, 87 Pac. 482.

Wisconsin. — Abrohams *v.* Freres, 129 Wis. 235, 107 N. W. 656.

Illustrations — Principal Bound. — An agent to collect premiums for an insurance company has authority to correct errors in the premium receipt book. McNicholas *v.* Prudential Ins. Co., (Mass. 1907) 82 N. E. 692.

993. 1. *United States.* — Thiel Detective Service Co. *v.* McClure, (C. C. A.) 142 Fed. 952.

Arkansas. — Schenck *v.* Griffith, 74 Ark. 557, 86 S. W. 850; Mutual L. Ins. Co. *v.* Reynolds, 81 Ark. 202, 98 S. W. 963.

California. — Iverson *v.* Metropolitan L. Ins. Co., (Cal. 1907) 91 Pac. 609; Davis *v.* Trachsler, 3 Cal. App. 554, 86 Pac. 610; Cayford *v.* Metropolitan L. Ins. Co., (Cal. App. 1907) 91 Pac. 266.

Kansas. — Brown *v.* Gilpin, 75 Kan. 773, 90 Pac. 267; Sullivant *v.* Jahren, 71 Kan. 127, 79 Pac. 1071; Peddicord *v.* Berk, 74 Kan. 236, 86 Pac. 465.

Kentucky. — Richmond Second Nat. Bank *v.* Adams, (Ky. 1906) 93 S. W. 671.

Massachusetts. — Collateral Loan Co. *v.* Sailinger, (Mass. 1907) 80 N. E. 811; Lovett, etc., Co. *v.* Sullivan, 189 Mass. 535, 75 N. E. 738.

Montana. — Moore *v.* Skyles, 33 Mont. 135, 82 Pac. 799.

Nebraska. — Driscoll *v.* Modern Brotherhood of America, (Neb. 1906) 109 N. W. 158; Frahm *v.* Metcalf, (Neb. 1905) 106 N. W. 227.

New Jersey. — Campbell *v.* Hough, (N. J. 1908) 68 Atl. 759.

New York. — Reis *v.* Drug, etc., Club, (Supm Ct. App. T.) 55 Misc. (N. Y.) 276, 105 N. Y. Supp. 285; Cohen *v.* Mincoff, (Supm. Ct. App. T.) 96 N. Y. Supp. 411.

North Carolina. — West *v.* A. F. Messick Grocery Co., 138 N. Car. 166, 50 S. E. 565.

Oklahoma. — Halsell *v.* Renfrow, 14 Okla. 674, 78 Pac. 118.

Oregon. — Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139.

Pennsylvania. — Maryland Casualty Co. *v.* Peoples, 26 Pa. Super. Ct. 142.

South Carolina. — Providence Mach. Co. *v.* Browning, 72 S. Car. 424, 52 S. E. 117; Robert Buist Co. *v.* Lancaster Mercantile Co., 73 S. Car. 48, 52 S. E. 789.

Texas. — Baker *v.* Kellett-Chatham Machinery Co., (Tex. Civ. App. 1905) 84 S. W. 661.

Virginia. — Bowles *v.* Rice, (Va. 1907) 57 S. E. 575.

Wyoming. — Brown *v.* Grady, (Wyo. 1907) 92 Pac. 622.

994. 1. *Arkansas.* — Schenck *v.* Griffith, 74 Ark. 557, 86 S. W. 850.

California. — Pease *v.* Fink, 3 Cal. App. 371, 85 Pac. 657; Iverson *v.* Metropolitan L. Ins. Co., (Cal. 1907) 91 Pac. 609; Davis *v.* Trachsler, 3 Cal. App. 554, 86 Pac. 610.

Idaho. — Valley Lumber, etc., Co. *v.* Nickerson, (Idaho 1907) 93 Pac. 24.

Illinois. — Kuecks *v.* New Home Sewing Mach. Co., 123 Ill. App. 660.

Kentucky. — Wheeler *v.* Citizens' Nat. Bank, (Ky. 1908) 107 S. W. 316.

Massachusetts. — Lovett, etc., Co. *v.* Sullivan, 189 Mass. 535, 75 N. E. 738.

Montana. — Moore *v.* Skyles, 33 Mont. 135, 82 Pac. 799.

Nebraska. — Fitzgerald *v.* Kimball Bros. Co., (Neb. 1906) 107 N. W. 227.

New Mexico. — Bank of Commerce *v.* Baird Min. Co., (N. Mex. 1906) 85 Pac. 970.

New York. — Molloy *v.* Whitehall Portland Cement Co., 116 N. Y. App. Div. 839, 102 N. Y. Supp. 863.

North Carolina. — Swindell *v.* Latham, (N. Car. 1907) 58 S. E. 1010.

Oregon. — Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139.

Virginia. — Bowles *v.* Rice, (Va. 1907) 57 S. E. 575.

Wyoming. — Brown *v.* Grady, (Wyo. 1907) 92 Pac. 622.

2. *United States.* — Authors, etc., Assoc. *v.* O'Gorman Co., 147 Fed. 616.

Alabama. — Western Union Tel. Co. *v.* Heathcoat, (Ala. 1907) 43 So. 117.

Arizona. — California Development Co. *v.* Yuma Valley Union Land, etc., Co., (Ariz. 1906) 84 Pac. 88.

Florida. — Dunwoody *v.* Saunders, 50 Fla. 202, 39 So. 965.

Georgia. — Johnson *v.* Waxelbaum Co., 1 Ga. App. 511, 58 S. E. 56.

Illinois. — Gray *v.* Merchants' Ins. Co., 113 Ill. App. 537.

Iowa. — Getchell, etc., Lumber, etc., Co. *v.* Peterson, 124 Iowa 599, 100 N. W. 550.

Kansas. — Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074.

Kentucky. — Buffalo Coal Creek Min. Co. *v.* Troendle, (Ky. 1907) 99 S. W. 622; Continental Ins. Co. *v.* Thomasson, (Ky. 1905) 84 S. W. 546.

Massachusetts. — Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66; Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649.

Michigan. — Grand Rapids Electric Co. *v.* Walsh Mfg. Co., 142 Mich. 4, 105 N. W. 1.

Missouri. — Reynolds *v.* Chicago, etc., R. Co., 114 Mo. App. 670, 90 S. W. 100; Kelly *v.* Chicago, etc., R. Co., 113 Mo. App. 468, 87 S. W. 583.

New York. — Cullinan *v.* Bowker, 180 N. Y. 93, 72 N. E. 911.

Pennsylvania. — Ruane *v.* Murray, 26 Pa. Super. Ct. 187; American Car, etc., Co. *v.* Alexandria Water Co., 218 Pa. St. 542, 67 Atl. 861.

Texas. — Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 994; Hayward Lumber Co. *v.* Cox, (Tex. Civ. App. 1907) 104 S. W. 403; San Antonio, etc., R. Co. *v.* Timon, (Tex. Civ. App. 1907) 99 S. W. 418.

Virginia. — Pine Beach Invest. Corp. *v.* Columbia Amusement Co., 106 Va. 810, 56 S. E. 822.

Washington. — Starr *v.* Mutual L. Ins. Co., 41 Wash. 228, 83 Pac. 116.

West Virginia. — Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 994.

Wisconsin. — Abrohams *v.* Freres, 129 Wis. 235, 107 N. W. 656.

995. 1. Fulton *v.* Sword Medicine Co., 145 Ala. 331, 40 So. 393; Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950; Hutson *v.* Prudential Ins. Co., 122 Ga. 847, 50 S. E. 1000; Fritz *v.* Chicago Grain, etc., Co., (Iowa 1907) 114 N. W. 193; Universal Metal Co. *v.* Durham, etc., R. Co., (N. Car. 1907) 59 S. E. 50; Deming Invest. Co. *v.* Shawnee F. Ins. Co., 16 Okla. 1, 83 Pac. 918; Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698; Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 995; Hoskins *v.* O'Brien, (Wis. 1907) 112 N. W. 466.

2. California Development Co. *v.* Yuma Valley Union Land, etc., Co., (Ariz. 1906) 84 Pac. 88; Williams *v.* Tolbert, (S. Car. 1907) 56 S. E. 908.

996. 2. Dunwoody *v.* Saunders, 50 Fla. 202, 39 So. 965; Young *v.* Mueller Bros. Art, etc., Co., 124 Ill. App. 94; American Telephone, etc., Co. *v.* Green, 164 Ind. 349, 73 N. E. 707; Crawford *v.* Traveler's Ins. Co., (Ky. 1907) 99 S. W. 963; Buffalo Coal Creek Min. Co. *v.* Troendle, (Ky. 1907) 99 S. W. 622; Berlin *v.* Cusachs, 114 La. 744, 38 So. 539; Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861; Friedman *v.* Kelly, 126 Mo. App. 279, 102 S. W. 1066; Wagaman *v.* Security Mut. L. Ins. Co., 110 Mo. App. 616, 85 S. W. 117; John Schroeder Lumber Co. *v.* Stearns, 122 Wis. 503, 100 N. W. 836.

A Corporation may confer greater power upon its officers than ordinarily belongs to them by holding them out to the public as possessing such powers. Carrington *v.* Turner, 101 Md. 437, 61 Atl. 324.

997. 3. British American Ins. Co. *v.* Wilson, 77 Conn. 559, 60 Atl. 293; Kearns *v.* Nickse, (Conn. 1907) 66 Atl. 779; Dunwoody *v.* Saunders, 50 Fla. 202, 39 So. 965; American Telephone, etc., Co. *v.* Green, 164 Ind. 349, 73 N. E. 707; Richard *v.* Springfield F. & M. Ins. Co., 114 La. 794, 38 So. 563; Grand Rapids Electric Co. *v.* Walsh Mfg. Co., 142 Mich. 4, 105 N. W. 1; Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213; Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482; Wright *v.* Isaacks, (Tex. Civ. App. 1906) 95 S. W. 55; Starr *v.* Mutual L. Ins. Co., 41 Wash. 228, 83 Pac. 116.

Power Not Necessarily Involved. — A traveling salesman has no implied authority to sell the samples furnished him for the purpose of soliciting orders. Hibbard *v.* Stein, 45 Oregon 507, 78 Pac. 665.

An Agent to Receive Freight has implied authority to contract orally as to the time when the freight may be delivered for shipment. San Antonio, etc., R. Co. *v.* Timon, (Tex. Civ. App. 1907) 99 S. W. 418.

998. 2. Groscup *v.* Downey, (Md. 1907) 65 Atl. 930; State *v.* Fellows, 98 Minn. 179, 108 N. W. 825; American Car, etc., Co. *v.* Alexandria Water Co., 218 Pa. St. 542, 67 Atl. 861; Singer Mfg. Co. *v.* Christian, 211 Pa. St. 534, 60 Atl. 1087.

999. 1. National Fence Mach. Co. *v.* Highleyman, 71 Kan. 347, 80 Pac. 568.

2. Spotswood *v.* Morris, 12 Idaho 360, 85 Pac. 1094, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 999; Thiel Detective Service Co. *v.* McClure, (C. C. A.) 142 Fed. 952; White *v.* Young, 122 Ga. 830, 51 S. E. 28; Simmons Hardware Co. *v.* Hargate, 122 Ill. App. 287; American Bonding Co. *v.* Ensey, (Md. 1907) 65 Atl. 921; Teagarden *v.* Patten, (Tex. Civ. App. 1908) 107 S. W. 909; Skirvin *v.* O'Brien, (Tex. Civ. App. 1906) 95 S. W. 696; Bowles *v.* Rice, (Va. 1907) 57 S. E. 575.

1000. 2. Moore *v.* Gould, (Cal. 1907) 91 Pac. 616, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1000; White *v.* Young, 122 Ga. 830, 51 S. E. 28.

1001. 1. Rogers *v.* Tompkins, (Tex. Civ. App. 1905) 87 S. W. 379.

1002. 1. **Recognition of Similar Acts.** — But see Wierman *v.* Bay City-Michigan Sugar Co., 142 Mich. 422, 106 N. W. 75.

2. **Employee of Corporation Has No Authority to Purchase.** — Young *v.* Chi Psi Cattle Co., (Neb. 1907) 112 N. W. 560.

No Authority to Exercise Personal Privilege for Principal. — Van Veer *v.* Malone, 134 Iowa 653, 112 N. W. 82.

1003. 1. Robinson *v.* Union Cent. L. Ins. Co., 144 Fed. 1005; Brockman Commission, etc., Co. *v.* Pound, 77 Ark. 364, 91 S. W. 183; Held *v.* Walker, 25 App. Cas. (D. C.) 486; Grand Rapids, etc., R. Co. *v.* King, (Ind. App. 1908) 83 N. E. 778; Groscup *v.* Downey, (Md. 1907) 65 Atl. 930; Darrin *v.* Whittingham, (Md. 1907) 68 Atl. 269; Superior Drill Co. *v.* Carpenter, (Mich. 1907) 114 N. W. 67; Grand Rapids Electric Co. *v.* Walsh Mfg. Co., 142 Mich. 4, 105 N. W. 1; Singer Mfg. Co. *v.* Christian, 211 Pa. St. 534, 60 Atl. 1087; American Car, etc., Co. *v.* Alexandria Water Co., 218 Pa. St. 542, 67 Atl. 861; Bellman *v.* Pittsburg, etc., R. Co., 31 Pa. Super. Ct. 389; International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93.

2. Grubel *v.* Busche, (Kan. 1907) 91 Pac. 73; Case *v.* Kramer, 34 Mont. 150, 85 Pac. 878, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 522 [1003]; Swindell *v.* Latham, (N. Car. 1907) 58 S. E. 1010; Winders *v.* Hill, 141 N. Car.

694, 54 S. E. 440; Bowles *v.* Rice, (Va. 1907) 57 S. E. 575.

Authority to Collect is not presumed from authority to sell goods. Collins *v.* Crews, (Ga. 1907) 59 S. E. 727.

3. Case *v.* Kramer, 34 Mont. 150, 85 Pac. 878, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 522 [1003].

1004. 1. Prichard *v.* Abbott, 104 Md. 560, 65 Atl. 421.

2. Kearns *v.* Nickse, (Conn. 1907) 66 Atl. 779; Roberts *v.* Francis, 123 Wis. 78, 100 N. W. 1076.

4. Grubel *v.* Busche, (Kan. 1907) 91 Pac. 73; Collateral Loan Co. *v.* Sallinger, (Mass. 1907) 80 N. E. 811; Miller *v.* Springfield Wagon Co., (Indian Ter. 1905) 89 S. W. 1011.

1005. 6. Davis *v.* Trachsler, 3 Cal. App. 554, 86 Pac. 610; Bowles *v.* Rice, (Va. 1907) 57 S. E. 575; Smith *v.* Merrill, (Wis. 1908) 114 N. W. 508.

1006. 1. Gault Lumber Co. *v.* Pyles, (Okla. 1907) 92 Pac. 175; Fay *v.* Sullens, 15 Okla. 171, 81 Pac. 426; McCune *v.* Badger, 126 Wis. 186, 105 N. W. 667.

An Agent to Find a Purchaser has no implied authority to sell. Halsell *v.* Renfrow, 14 Okla. 674, 78 Pac. 118; Larson *v.* O'Hara, 98 Minn. 71, 107 N. W. 821.

Presumption. — Where the name of a corporation, together with its seal, is affixed to a mortgage by one signing his name as treasurer, his authority will be presumed. Nelson *v.* Spence, (Ga. 1907) 58 S. E. 697.

1007. 2. Littlefield *v.* Dawson, (Wash. 1907) 92 Pac. 428, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1007; Roberts *v.* Hilton Land Co., (Wash. 1907) 88 Pac. 946.

Power to Contract for Sale cannot be implied from power to sell. Sullivant *v.* Jahren, 71 Kan. 127, 79 Pac. 1071.

3. Lanier *v.* Hebard, 123 Ga. 626, 51 S. E. 632; Teagarden *v.* Patten, (Tex. Civ. App. 1908) 107 S. W. 909.

Illustrations of Descriptions of Property — *All of the Principal's Land.* — Janney *v.* Robbins, 141 N. Car. 400, 53 S. E. 863.

1008. 2. Campbell *v.* Hough, (N. J. 1908) 68 Atl. 759; Colvin *v.* Blanchard, (Tex. 1908) 106 S. W. 323; Brown *v.* Grady, (Wyo. 1907) 92 Pac. 622.

Agent Cannot Sell After Time Limited. — Ropes *v.* Rosenfeld, 145 Cal. 671, 79 Pac. 354.

Authority to Sell for Cash does not warrant the making of an option contract. Smith *v.* Merrill, (Wis. 1908) 114 N. W. 508.

Directions as to Time of Payments. — Gilmour *v.* Simon, 37 Can. Sup. Ct. 422.

1009. 1. Halsell *v.* Renfrow, 14 Okla. 674, 78 Pac. 118.

2. No Implied Authority to Sell on Credit. — Winders *v.* Hill, 141 N. Car. 694, 54 S. E. 440.

1010. 2. No Authority to Waive Claims of Title. — Iowa R. Land Co. *v.* Fehring, 126 Iowa 1, 101 N. W. 120.

Authority to Sell and Convey confers no authority to make deeds in settlement of claims of parties to the land. Skirvin *v.* O'Brien, (Tex. Civ. App. 1906) 95 S. W. 696.

3. Wycoff *v.* Davis, 127 Iowa 399, 103 N. W. 349.

8. Fritz *v.* Chicago Grain, etc., Co., (Iowa 1907) 114 N. W. 193.

9. No Implied Power to Employ Subagent. — Groscup *v.* Downey, (Md. 1907) 65 Atl. 930.

1011. 1. Brown *v.* Gilpin, 75 Kan. 773, 90 Pac. 267, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1011.

1012. 2. Authority to Represent Acreage of Tract of Land. — Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

No Authority to Execute Indemnity Contract. — Funk *v.* Church, 132 Iowa 1, 109 N. W. 286.

3. Price. — Tollerton, etc., Co. *v.* Gilruth, (S. Dak. 1907) 112 N. W. 842.

May Fix Reasonable Terms of Sale. — Patton-Worsham Drug Co. *v.* Stark, (Tex. Civ. App. 1905) 89 S. W. 799.

Authority to Sell Confers No Authority to Purchase. — Cowan *v.* Sargent Mfg. Co., 141 Mich. 87, 104 N. W. 377.

1013. 2. Fulton *v.* Sword Medicine Co., 145 Ala. 331, 40 So. 393; Collateral Loan Co. *v.* Sallinger, (Mass. 1907) 80 N. E. 811; Swindell *v.* Latham, (N. Car. 1907) 58 S. E. 1010.

3. Kearns *v.* Nickse, (Conn. 1907) 66 Atl. 779.

No Implied Authority to Collect. — Collins *v.* Crews, (Ga. 1907) 59 S. E. 727.

No Implied Authority to Allow Goods to Be Returned. — Mange-Wiener Co. *v.* Patton Worsham Drug Co., 27 Pa. Super. Ct. 315.

Agent to Sell Machine May Waive Conditions for Benefit of Vendor. — Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497.

1014. 1. Kops Bros. Co. *v.* Smith, 137 Mich. 28, 100 N. W. 169; Bowles *v.* Rice, (Va. 1907) 57 S. E. 575, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1014.

7. Scarritt-Comstock Furniture Co. *v.* Hudspeth, (Okla. 1907) 91 Pac. 843, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1014. See also Moon Bros. Carriage Co. *v.* Devenish, 42 Wash. 415, 85 Pac. 17.

1015. 1. Collins *v.* Crews, (Ga. 1907) 59 S. E. 727; Scarritt-Comstock Furniture Co. *v.* Hudspeth, (Okla. 1907) 91 Pac. 843, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015.

2. Superior Mfg. Co. *v.* Russell, 127 Ga. 151, 56 S. E. 296; Scarritt-Comstock Furniture Co. *v.* Hudspeth, (Okla. 1907) 91 Pac. 843, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015.

3. Scarritt-Comstock Furniture Co. *v.* Hudspeth, (Okla. 1907) 91 Pac. 843, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015.

1016. 3. Superior Mfg. Co. *v.* Russell, 127 Ga. 151, 56 S. E. 296; Collins *v.* Crews, (Ga. 1907) 59 S. E. 727; Scarritt-Comstock Furniture Co. *v.* Hudspeth, (Okla. 1907) 91 Pac. 843, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1016. See also Gould *v.* Cates Chair Co., 147 Ala. 629, 41 So. 675.

No Implied Authority to Indorse Commercial Paper Payable to the Principal. — Goodell *v.* Sinclair, 112 Ill. App. 594.

3. A Traveling Salesman has no implied authority to borrow money. Seattle Shoe Co. *v.* Packard, 43 Wash. 527, 86 Pac. 845.

Authority to Compromise. — A traveling sales-

man has no implied authority to adjust a claim for breach of warranty against his principal. Lindow *v.* Cohn, (Cal. App. 1907) 90 Pac. 485.

1017. **1. An Agreement that Goods Sold May Be Returned** is not within the implied power of a traveling salesman. Friedman *v.* Kelly, 126 Mo. App. 279, 102 S. W. 1066.

3. Hibbard *v.* Stein, 45 Oregon 507, 78 Pac. 665.

Trade Discount.—A traveling salesman has authority to give a trade discount upon goods sold. Smith Table Co. *v.* Madsen, 30 Utah 297, 84 Pac. 885.

1018. **1. Authority to Mortgage Is Implied** in a trustee empowered to "take charge of, manage, and control" certain real estate. Ely *v.* Pike, 115 Ill. App. 284.

2. Wycoff *v.* Davis, 127 Iowa 399, 103 N. W. 349.

5. Under the Montana Code a lease by an agent for more than one year is invalid unless the agent's authority is in writing. Landt *v.* Schneider, 31 Mont. 15, 77 Pac. 307.

6. A Lease for Three Years, signed by an agent whose authority is not in writing, does not bind the principal under Gen. St. N. J., p. 1602. Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82.

Authority to Lease for a term of more than one year must be in writing under New York statute. Finkelstein *v.* Fabyik, (Supm. Ct. App. T.) 107 N. Y. Supp. 67.

8. Lease Adopted by Ratification. — A lease of corporate property by an agent of the corporation, acting without express authority, may be ratified by the corporation, and when so ratified, the lease having been executed in the name of the agent, it may be specifically enforced against the corporation upon showing that the lessee has expended money in improving the property. Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419.

Authority to Renew a Lease Cannot Be Implied from authority to collect rents. Noble *v.* Burney, 124 Ga. 960, 53 S. E. 463.

Agent to Rent Has Implied Power to Renew Lease. — Steuerwald *v.* Jackson, 123 N. Y. App. Div. 569, 108 N. Y. Supp. 41.

Authority to Procure Tenant Does Not Authorize Agreement to Lease. — Thuman *v.* Best, 97 L. T. N. S. 239.

1019. **3. Authority to Lease** does not warrant the agent in contracting for repairs or improvements. Peddicord *v.* Berk, 74 Kan. 236, 86 Pac. 465.

1020. **1.** Hood *v.* Hendrickson, 122 Ga. 795, 50 S. E. 994.

3. Hood *v.* Hendrickson, 122 Ga. 795, 50 S. E. 994.

5. Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1020; Brittain *v.* Westall, 137 N. Car. 30, 49 S. E. 54, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1020.

Authority to Purchase on Credit Cannot Be Implied from a special authority to sell certain goods and apply the money in a particular manner. Kelly *v.* Tracy, etc., Co., 71 Ohio St. 220, 73 N. E. 455.

1021. **1.** Swindell *v.* Latham, (N. Car. 1907) 58 S. E. 1010, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021; Brittain *v.* Westall, 137 N. Car. 30, 49 S. E. 54, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021.

2. Brittain *v.* Westall, 137 N. Car. 30, 49 S. E. 54, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021.

3. Swindell *v.* Latham, (N. Car. 1907) 58 S. E. 1010, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021; Brittain *v.* Westall, 137 N. Car. 30, 49 S. E. 54, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021.

4. May Pass upon Kind and Quality of Material — John Schroeder Lumber Co. *v.* Stearns, 122 Wis. 503, 100 N. W. 836.

1022. **2. Agent of Railroad.** — A station agent, having charge of the company's tracks, grounds, etc., at a station has authority to accept and hold cattle for shipment. Flint *v.* Boston, etc., R. Co., 73 N. H. 141, 59 Atl. 938.

3. American Telephone, etc., Co. *v.* Green, 164 Ind. 349, 73 N. E. 707; American Quarries Co. *v.* Lay, 37 Ind. App. 386, 73 N. E. 608; Frost *v.* North British, etc., Ins. Co., 77 Vt. 407, 60 Atl. 803.

No Implied Authority to Correct Customer Suspected of Theft. — Bernheimer *v.* Becker, 102 Md. 250, 62 Atl. 526.

The Manager of a Hotel Business has implied authority to contract for advertising. Calhoon *v.* Buhre, (N. J. 1907) 67 Atl. 1068.

The Superintendent of Lime Works has no implied authority to construct a ditch across a road running through his principal's property. Dunn *v.* Gunn, (Ala. 1906) 42 So. 686.

The General Manager of a Railroad has authority to offer a reward for the apprehension of persons obstructing the road. Arkansas Southwestern R. Co. *v.* Dickinson, 78 Ark. 483, 95 S. W. 802.

1023. **1. Surgical Aid.** — Freeman *v.* Junge Baking Co., 126 Mo. App. 124, 103 S. W. 565.

The agent of a street railway company has authority in an emergency to employ a physician to treat a stranger injured by one of the company's cars. Chicago Consol. Traction Co. *v.* Mathews, 117 Ill. App. 174.

The General Manager of a Real Estate Business is presumably authorized to contract for the sale of land. Harvey *v.* Sparks, (Wash. 1907) 88 Pac. 1108.

1024. **1.** Manhattan Liquor Co. *v.* German Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 1120.

Illustrations of Acts Beyond Authority. — A power authorizing the attorney in fact generally to manage and control the principal's business and to perform certain enumerated acts in connection with that business does not authorize him to employ a detective agency to investigate a corporation in which the principal is a small stockholder. Thiel Detective Service Co. *v.* McClure, (C. C. A.) 142 Fed. 952.

The general manager of a corporation cannot buy another distinct business. Manhattan Liquor Co. *v.* Magnus, (Tex. Civ. App. 1906) 94 S. W. 1117.

An agent to manage his principal's property has no implied authority to construct thereon a ditch for the purpose of draining water from

his own land. Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958.

2. An Agent Cannot Part with Property belonging to his principal where his authority was merely to procure it and bring it to the principal's store. Nash *v.* Noble, (Tex. Civ. App. 1907) 102 S. W. 736.

Authority to Sell Real Estate belonging to a land and cattle company is not implied in the office of vice-president and general manager. Hurlbut *v.* Gainor, (Tex. Civ. App. 1907) 103 S. W. 409.

President of Corporation Cannot Contract for Sale of Business.— Ft. Smith Wagon Co. *v.* Baker, 84 Ark. 444, 105 S. W. 591.

3. A Trustee to "Take Charge of, Manage, and Control" real property has implied power to mortgage. Ely *v.* Pike, 115 Ill. App. 284.

1025. **1.** Manhattan Liquor Co. *v.* German Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 1120.

No Authority to Purchase Rival Business.— Manhattan Liquor Co. *v.* Magnus, (Tex. Civ. App. 1906) 94 S. W. 1117.

2. Merchants' Nat. Bank *v.* Nichols, etc., Co., 223 Ill. 41, 79 N. E. 38.

5. Tombstone First Nat. Bank *v.* Abilene Hotel Co., (Tex. Civ. App. 1907) 103 S. W. 1120.

6. Making a Note Payable at a Certain Bank does not constitute the bank the agent of the payee or holder to accept payment. State Nat. Bank *v.* Hyatt, 75 Ark. 170, 86 S. W. 1002.

1026. **2.** Cunningham *v.* McDonald, 98 Tex. 316, 83 S. W. 372.

Authority to Receive Interest does not imply authority to receive the principal. Higley *v.* Dennis, (Tex. Civ. App. 1905) 88 S. W. 400.

3. See Dawson *v.* Wombles, 111 Mo. App. 532, 86 S. W. 271.

Possession of Bond and Mortgage.— See Cornish *v.* Woolverton, 32 Mont. 456, 81 Pac. 4.

Authority to Prepare a Mortgage does not give the attorney so authorized implied power to collect the principal from the mortgagor. Mynick *v.* Bickings, 30 Pa. Super. Ct. 401.

The Possession of a Pass Book does not authorize an agent to receive payments of principal and interest, where the original authority was to make investments, and the continued possession of the book is consistent with such authority. Belcher *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 399.

4. Bautz *v.* Adams, 131 Wis. 152, 111 N. W. 69.

When an Agent is Not in Possession of the Securities, actual authority is essential. Bautz *v.* Adams, 131 Wis. 152, 111 N. W. 69.

1027. **2.** Lindow *v.* Cohn, (Cal. App. 1907) 90 Pac. 485; Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13; John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741; Loy *v.* McClure, 124 Mo. App. 689, 101 S. W. 1148; Case *v.* Kramer, 34 Mont. 142, 85 Pac. 878; Parker *v.* Leech, (Neb. 1906) 107 N. W. 217; Wees *v.* Page, (Wash. 1907) 91 Pac. 766. See also Hook *v.* Crowe, 100 Me. 399, 61 Atl. 1080.

3. Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950.

1028. **1.** Loy *v.* McClure, 124 Mo. App. 689, 101 S. W. 1148; Wees *v.* Page, (Wash. 1907) 91 Pac. 766.

Agent Taking Property for His Own Use. Hook *v.* Crowe, 100 Me. 399, 61 Atl. 1080.

3. No Authority to Release.— Lee *v.* Chicago City R. Co., 127 Ill. App. 510.

No Authority to Settle Prior Disputes.— John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741.

4. Grooms *v.* Neff Harness Co., 79 Ark. 401, 96 S. W. 135; Parker *v.* Leech, (Neb. 1906) 107 N. W. 217, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1028; Maloney Mercantile Co. *v.* Dublin Quarry Co., (Tex. Civ. App. 1908) 107 S. W. 904.

1029. **1.** Cayford *v.* Metropolitan L. Ins. Co., (Cal. App. 1907) 91 Pac. 266; Indiana Natural Gas, etc., Co. *v.* Beales, (Ind. App. 1905) 74 N. E. 551. *Contra,* North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163; Metropolitan L. Ins. Co. *v.* Hall, 104 Va. 572, 52 S. E. 345.

An Agent with General Authority to Sell Lands may extend the time for payment. Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482.

2. Cunningham *v.* McDonald, 98 Tex. 316, 83 S. W. 372.

3. Authority to Collect Rent confers the right to demand of a buyer of a crop produced by a subtenant the value of the crop, Beck *v.* Minnesota, etc., Grain Co., 131 Iowa 62, 107 N. W. 1032; but does not imply authority to renew a lease, Noble *v.* Burney, 124 Ga. 960, 53 S. E. 463.

An Attorney retained in a case has not implied authority to employ assistant counsel. Emblem *v.* Bicksler, 34 Colo. 496, 83 Pac. 636.

4. Satterlee *v.* Columbus First Nat. Bank, (Neb. 1907) 111 N. W. 591, otherwise when distinct agreement to contrary.

Authority to Collect the Interest on a mortgage does not imply authority to collect the principal and discharge the mortgage. Cornish *v.* Woolverton, 32 Mont. 456, 81 Pac. 4.

1030. **1. An Indorsement to the Agent** of a note purchased with the principal's money gives the former the right to sue in his own name. Routh *v.* Kostacheks, 15 Okla. 234, 81 Pac. 429.

6. Goodell *v.* Sinclair, 112 Ill. App. 594; Hamilton Nat. Bank *v.* Nye, 37 Ind. App. 464, 77 N. E. 295; National Fence Mach. Co. *v.* Highleyman, 71 Kan. 347, 80 Pac. 568.

1031. **1. An Administrator's Agent** to settle an estate has authority to engage counsel and pay him a reasonable fee. Harms *v.* Wolf, 114 Mo. App. 387, 89 S. W. 1037.

4. Authority to Settle a dispute as to the occupancy of a house does not imply authority to permit the occupation to continue up to the time of settlement. Mead *v.* Owen, (Vt. 1907) 67 Atl. 722.

5. Allen *v.* Confederate Pub. Co., 121 Ga. 773, 49 S. E. 782, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1031.

6. An Attorney without authority from his client has no authority to sell his client's claim or judgment. Schroeder *v.* Wolf, 227 Ill. 133, 81 N. E. 13.

1032. **4.** Goodell *v.* Sinclair, 112 Ill. App.

594; Hamilton Nat. Bank *v.* Nye, 37 Ind. App. 464, 77 N. E. 295; Nickleson *v.* Dial, (Kan. 1908) 93 Pac. 606; Bank of Commerce *v.* Baird Min. Co., (N. Mex. 1906) 85 Pac. 970; Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811.

6. Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811.

1033. **1.** Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811; Vigaud *v.* De Werthemer, 30 Quebec Super. Ct. 229.

2. Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811; Vigaud *v.* De Werthemer, 30 Quebec Super. Ct. 229.

1034. **3.** Morganton Bank *v.* Hay, 143 N. Car. 326, 55 S. E. 811; Wheeling Ice, etc., Co. *v.* Conner, (W. Va. 1906) 55 S. E. 982.

4. Authority to Make Contracts of Employment will not be implied in an agent employed merely to solicit persons to engage in his principal's service. Nielsen *v.* Northeastern Siberian Co, 40 Wash. 194, 82 Pac. 292.

Authority to Sign a Contract for Shipment will not be implied from the fact that the alleged agent was in charge of the property at the time of its delivery to the carrier and during transit, where an oral contract has already been made by the owner. Atchison, etc., R. Co. *v.* Watson, 71 Kan. 696, 81 Pac. 499.

5. A General Roadmaster has implied authority to employ a supervisor of construction work. King *v.* Seaboard Air Line R. Co., 140 N. Car. 433, 53 S. E. 237.

Where Agents to Contract for Services are limited as to the amount to be paid, they cannot bind the principal for a price in excess of their powers, but, having entered into such an agreement, the third party can hold the principal for a reasonable value and one within the agents' authority. Galvano Type Engraving Co. *v.* Jackson, 77 Conn. 564, 60 Atl. 127.

An Attorney has no implied authority to employ associate counsel at his client's expense. Lathrop *v.* Hallett, 20 Colo. App. 207, 77 Pac. 1095.

1035. **1. Evidence that an Alleged Agent Had Acted as Attorney for the Principal** in various transactions is not admissible to establish an agency to borrow money. Keegan *v.* Rock, 128 Iowa 39, 102 N. W. 805.

2. Authority to Lend does not warrant the agent in making a loan to himself. Keyser *v.* Hinkle, (Mo. App. 1907) 106 S. W. 98.

1036. **1.** Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778.

1038. **1.** Cochran *v.* MacRae, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 530, 98 N. Y. Supp. 852, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 1038.

6. Conveyance Binding on Principal in Equity. — Rogerson *v.* Leggett, (N. Car. 1907) 58 S. E. 596.

1041. **2.** Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778.

1042. **2.** Burkhalter *v.* Perry, 127 Ga. 438, 56 S. E. 631.

3. Corporation Signature Followed by That of Officer. — Western Grocer Co. *v.* Lackman, 75 Kan. 34, 88 Pac. 527.

1043. **1.** Burkhalter *v.* Perry, 127 Ga. 438, 56 S. E. 631.

1044. **1.** Burkhalter *v.* Perry, 127 Ga. 438, 56 S. E. 631.

Attorneys. — Scottish-American Mortg. Co. *v.* Clowney, 70 S. Car. 229, 49 S. E. 569.

1050. **1.** Frambach *v.* Frank, 33 Colo. 529, 81 Pac. 247; Phinizy *v.* Bush, (Ga. 1907) 59 S. E. 259; Raleigh, etc., R. Co. *v.* Pullman Co., 122 Ga. 700, 50 S. E. 1008; Jones *v.* Gould, 123 N. Y. App. Div. 236, 108 N. Y. Supp. 31; Builders' Supply Co. *v.* North Augusta Electric, etc., Co., 71 S. Car. 375, 51 S. E. 231, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 1050.

1051. **1.** Frambach *v.* Frank, 33 Colo. 529, 81 Pac. 247; Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., (Ga. 1907) 59 S. E. 713; Jones *v.* Gould, 123 N. Y. App. Div. 236, 108 N. Y. Supp. 31.

2. Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., (Ga. 1907) 59 S. E. 713; Phinizy *v.* Bush, (Ga. 1907) 59 S. E. 259; Campbell *v.* Hough, (N. J. 1908) 68 Atl. 759; Collier *v.* Myers, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 116, 101 N. Y. Supp. 659; Henry *v.* Black, 213 Pa. St. 620, 63 Atl. 250.

1052. **1.** Schriner *v.* Dickinson, (S. Dak. 1906) 107 N. W. 536.

1053. **1.** Burkhalter *v.* Perry, 127 Ga. 438, 56 S. E. 631; New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559; Schriner *v.* Dickinson, (S. Dak. 1906) 107 N. W. 536.

1055. **1.** Raleigh, etc., R. Co. *v.* Pullman Co., 122 Ga. 700, 50 S. E. 1008.

2. Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., (Ga. 1907) 59 S. E. 713; New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559.

3. Rankin *v.* Blaine County Bank, (Okla. 1908) 93 Pac. 536.

1057. **3.** Colpe *v.* Jubilee Min. Co., 2 Cal. App. 393, 84 Pac. 324; Robbins *v.* Horgan, 192 Mass. 443, 78 N. E. 503, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 1057.

When Authority Is Vested in the Board of Directors of a corporation they must act as a board and cannot act individually. Audenried *v.* East Coast Milling Co., 68 N. J. Eq. 450, 59 Atl. 577.

1058. **3.** Continental Ins. Co. *v.* Clark, 126 Iowa 274, 100 N. W. 524; Northern Assur. Co. *v.* Borgelt, 67 Neb. 289, 93 N. W. 226, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 1058; Minneapolis Trust Co. *v.* Mather, 181 N. Y. 205, 73 N. E. 987.

5. British American Ins. Co. *v.* Wilson, 77 Conn. 557, 60 Atl. 293; Continental Ins. Co. *v.* Clark, 126 Iowa 274, 100 N. W. 524; King *v.* Zell, (Md. 1907) 66 Atl. 279; Whitney *v.* Abbott, 191 Mass. 59, 77 N. E. 524; Northern Assur. Co. *v.* Borgelt, 67 Neb. 289, 93 N. W. 226, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 1058; Minneapolis Trust Co. *v.* Mather, 181 N. Y. 205, 73 N. E. 987.

1060. **1. Agent Liable to Company for Failure to Reduce Insurance as Instructed.** — British American Ins. Co. *v.* Wilson, 77 Conn. 559, 60 Atl. 293.

3. Merchants' Nat. Bank *v.* Nichols, etc., Co., 123 Ill. App. 430.

4. Unremunerated Agent. — Halloway *v.* Arkansas City Milling Co., (Kan. 1908) 93 Pac. 577.

6. Kevane *v.* Miller, 4 Cal. App. 598, 88 Pac. 643, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060.

Not Responsible for Mistake. — Briere *v.* Taylor, 126 Wis. 347, 105 N. W. 817.

1061. 1. Henderson-Boyd Lumber Co. *v.* Cook, (Ala. 1906) 42 So. 838.

1063. 1. Minneapolis Trust Co. *v.* Mather, 181 N. Y. 205, 73 N. E. 987.

Measure of Damages. — Where a broker without authority sells stock held on margins, the excess over the price realized of the lowest sum for which the stock could have been repurchased by the principal, had he given an order to that effect with reasonable promptness after notice of the sale, is the measure of damages. Ling *v.* Malcom, 77 Conn. 517, 59 Atl. 698.

2. Chase *v.* Baskerville, 93 Minn. 402, 101 N. W. 950. See also Minneapolis Trust Co. *v.* Mather, 181 N. Y. 205, 73 N. E. 987.

3. Schery *v.* Welstead, (Supm. Ct. App. T.) 93 N. Y. Supp. 466.

Agent Not Liable for Failure to Provide for Events Not Contemplated. — Commonwealth Portland Cement Co. *v.* Weber, (1905) A. C. 66, 74 L. J. P. C. 25.

1065. 3. Thweatt *v.* Freeman, 73 Ark. 575, 84 S. W. 720; Lewis *v.* Helm, (Colo. 1907) 90 Pac. 97.

5. Knowles *v.* Savage, 140 N. Car. 372, 52 S. E. 930.

6. Agent to Invest Bound to Ordinary Diligence. — DeHart *v.* DeHart, 70 N. J. Eq. 774, 67 Atl. 1074.

1067. 1. Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

1068. 5. Salvesen *v.* Rederi Aktiebolaget Nordstjernan, (1905) A. C. 302, 74 L. J. P. C. 96, 92 L. T. N. S. 575.

6. B. F. Sturtevant Co. *v.* Dugan, (Md. 1907) 68 Atl. 351.

1069. 2. Pringle *v.* Modern Woodmen of America, (Neb. 1906) 107 N. W. 756. See also Deming Invest. Co. *v.* Meyer, (Okla. 1907) 91 Pac. 846.

1070. 1. Charlesworth *v.* Whitlow, 74 Ark. 277, 85 S. W. 423; Kevane *v.* Miller, 4 Cal. App. 598, 88 Pac. 643; Briere *v.* Taylor, 126 Wis. 347, 105 N. W. 817, each *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1070.

3. Not Responsible for Mistake. — Briere *v.* Taylor, 126 Wis. 347, 105 N. W. 817.

5. Physicians. — Medical College *v.* Rushing, 1 Ga. App. 468, 57 S. E. 1083.

1071. 1. Kevane *v.* Miller, 4 Cal. App. 598, 88 Pac. 643, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1071; Allsopp *v.* Joshua Hendy Mach. Works, (Cal. App. 1907) 90 Pac. 39, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1071; Curry *v.* King, (Cal. App. 1907) 92 Pac. 662; Southwestern Port Huron Co. *v.* Wilber, 75 Kan. 175, 88 Pac. 892; George N. Pierce Co. *v.* Beers, (Mass. 1906) 76 N. E. 603; Kingsley *v.* Wheeler, 95 Minn. 360, 104 N. W. 543; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1071; Dennison *v.* Aldrich, 114 Mo. App. 700, 91 S. W. 1024; Morrison *v.* Hunter, (Neb. 1905) 105 N. W. 88; Lease *v.* Christy, 28 Pa. Super. Ct. 507; Hahl *v.* Kellogg, (Tex. Civ. App. 1906) 94 S. W. 389; Lee *v.* Patillo, 105 Va. 10, 52 S. E. 696.

2. Kevane *v.* Miller, 4 Cal. App. 598, 88 Pac. 643, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1071; Curry *v.* King, (Cal. App. 1907) 92 Pac. 662; Forlaw *v.* Augusta Naval Stores Co., 124 Ga. 261, 52 S. E. 898; Quinn *v.* Burton, (Mass. 1907) 81 N. E. 257; George N. Pierce Co. *v.* Beers, (Mass. 1906) 76 N. E. 603; Kingsley *v.* Wheeler, 95 Minn. 360, 104 N. W. 543; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1071; Lease *v.* Christy, 28 Pa. Super. Ct. 507.

Acting as Agent for Others. — An agreement to act as the agent of one person and to "endeavor at all times to conserve the best interests of the agency" does not imply that the agent will not act for other persons engaged in the same business. Butterick Pub. Co. *v.* Boynton, 191 Mass. 175, 77 N. E. 705.

3. Lease *v.* Christy, 28 Pa. Super. Ct. 507.

1072. 1. *United States.* — Walker *v.* Pike County Land Co., (C. C. A.) 139 Fed. 609.

California. — Kevane *v.* Miller, 4 Cal. App. 598, 88 Pac. 643, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072.

Colorado. — Arkins *v.* Arkins, 20 Colo. App. 123, 77 Pac. 256.

Georgia. — Fricker *v.* Americus Mfg., etc., Co., 124 Ga. 165, 52 S. E. 65.

Indiana. — Tevis *v.* Hammersmith, (Ind. App. 1907) 81 N. E. 614.

Kansas. — Albright *v.* Phœnix Ins. Co., 72 Kan. 591, 84 Pac. 383.

Minnesota. — Schick *v.* Suttle, 94 Minn. 135, 102 N. W. 217; Kingsley *v.* Wheeler, 95 Minn. 360, 104 N. W. 543.

Missouri. — Dennison *v.* Aldrich, 114 Mo. App. 700, 91 S. W. 1024; Harrison *v.* Craven, 188 Mo. 590, 87 S. W. 962.

Nebraska. — State *v.* State Journal Co., (Neb. 1906) 110 N. W. 763; Morrison *v.* Hunter, (Neb. 1905) 105 N. W. 88.

New York. — Haight *v.* Haight, etc., Co., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 501, 92 N. Y. Supp. 934.

Oregon. — Kroll *v.* Coach, 45 Oregon 459, 78 Pac. 397, 80 Pac. 900.

Pennsylvania. — Humbird *v.* Davis, 210 Pa. St. 311, 59 Atl. 1082.

Washington. — Hanna *v.* Haynes, 42 Wash. 284, 84 Pac. 861.

West Virginia. — Thorne *v.* Brown, (W. Va. 1908) 60 S. E. 614.

Rule Applicable Only When Agency Established. — Bartleson *v.* Vanderhoff, 96 Minn. 184, 104 N. W. 820.

2. Moore *v.* Petty, (C. C. A.) 135 Fed. 668; Kevane *v.* Miller, 4 Cal. App. 598, 88 Pac. 643, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072; Forlaw *v.* Augusta Naval Stores Co., 124 Ga. 261, 52 S. E. 898; Deter *v.* Jackson, (Kan. 1907) 92 Pac. 546; Albright *v.* Phœnix Ins. Co., 72 Kan. 591, 84 Pac. 383; Gay *v.* Paige, (Mich. 1907) 114 N. W. 217; Kingsley *v.* Wheeler, 95 Minn. 360, 104 N. W. 543; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077; Kroll *v.* Coach, 45 Oregon 459, 78 Pac. 397, 80 Pac. 900; Merriman *v.* Thompson, (Wash. 1908) 93 Pac. 1075.

3. Moore *v.* Petty, (C. C. A.) 135 Fed. 668; Deter *v.* Jackson, (Kan. 1907) 92 Pac. 546; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077; Lee *v.* Patillo, 105 Va. 10, 52 S. E. 696; Merriman *v.* Thompson, (Wash. 1908) 93 Pac. 1075.

4. Walker *v.* Pike County Land Co., (C. C. A.) 139 Fed. 609; Kevane *v.* Miller, 4 Cal. App. 598, 88 Pac. 643, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072; Kroll *v.* Coach, 45 Oregon 459, 78 Pac. 397, 80 Pac. 900; Humbird *v.* Davis, 210 Pa. St. 311, 59 Atl. 1082.

1073. 2. Gay *v.* Paige, (Mich. 1907) 114 N. W. 217.

3. Jarrett *v.* Johnson, 116 Ill. App. 592; Fricker *v.* Americus Mfg., etc., Co., 124 Ga. 165, 52 S. E. 65.

4. Mastin *v.* Noble, (C. C. A.) 157 Fed. 506; Whitley *v.* James, 121 Ga. 521, 49 S. E. 600; Bunn *v.* Keach, 214 Ill. 259, 73 N. E. 419, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1073; Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322; Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723; Corder *v.* O'Neill, (Mo. 1907) 106 S. W. 10; Winter *v.* Carey, (Mo. App. 1907) 106 S. W. 539; Truslow *v.* Parkersburg Bridge, etc., R. Co., 61 W. Va. 628, 57 S. E. 51, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1073.

1074. 1. *Arkansas.* — Featherston *v.* Trone, 82 Ark. 381, 102 S. W. 196.

California. — Rauer's Law, etc., Co. *v.* Bradbury, 3 Cal. App. 256, 84 Pac. 1007.

Georgia. — Williams *v.* Moore-Gaunt Co., (Ga. 1908) 60 S. E. 372; Gann *v.* Zettler, (Ga. 1908) 60 S. E. 283.

Illinois. — Bunn *v.* Keach, 214 Ill. 259, 73 N. E. 419; Keach *v.* Bunn, 116 Ill. App. 397.

Massachusetts. — Quinn *v.* Burton, (Mass. 1907) 81 N. E. 257.

Missouri. — Atterbury *v.* Hopkins, 122 Mo. App. 172, 99 S. W. 11; Corder *v.* O'Neill, (Mo. 1907) 106 S. W. 10; Winter *v.* Carey, (Mo. App. 1907) 106 S. W. 539.

New York. — Hann *v.* Brettler, (Supm. Ct. App. T.) 107 N. Y. Supp. 78.

Pennsylvania. — Fulton *v.* Walters, 28 Pa. Super. Ct. 269; Lease *v.* Christy, 28 Pa. Super. Ct. 507.

South Dakota. — Lemon *v.* Little, (S. Dak. 1908) 114 N. W. 1001.

The Termination of the Agency leaves the agent free to serve himself or others. Dennison *v.* Aldrich, 114 Mo. App. 700, 91 S. W. 1024.

2. Todd *v.* German-American Ins. Co., 2 Ga. App. 789, 59 S. E. 94.

3. Todd *v.* German-American Ins. Co., 2 Ga. App. 789, 59 S. E. 94.

1075. 1. See Atterbury *v.* Hopkins, 122 Mo. App. 172, 99 S. W. 11.

3. *United States.* — Moore *v.* Petty, (C. C. A.) 135 Fed. 668.

Arkansas. — Thweatt *v.* Freeman, 73 Ark. 575, 84 S. W. 720.

California. — Curry *v.* King, (Cal. App. 1907) 92 Pac. 662.

Illinois. — Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1075.

Indiana. — See Pomeroy *v.* Wimer, 167 Ind. 440, 78 N. E. 233, 79 N. E. 446.

Kansas. — Albright *v.* Phœnix Ins. Co., 72 Kan. 591, 84 Pac. 383.

Kentucky. — Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723.

Massachusetts. — George N. Pierce Co. *v.* Beers, (Mass. 1906) 76 N. E. 603.

Missouri. — Montgomery *v.* Hundley, 205 Mo. 138, 103 S. W. 527; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077.

Nebraska. — Northup *v.* Bathrick, (Neb. 1907) 113 N. W. 808.

Texas. — Storms *v.* Mundy, (Tex. Civ. App. 1907) 101 S. W. 258.

West Virginia. — Campbell *v.* Beard, 57 W. Va. 501, 50 S. E. 747.

1076. 1. Mobile Land Imp. Co. *v.* Gass, 142 Ala. 520, 39 So. 229.

2. Mobile Land Imp. Co. *v.* Gass, 142 Ala. 520, 39 So. 229; Montgomery *v.* Hundley, 205 Mo. 138, 103 S. W. 527.

1077. 1. Montgomery *v.* Hundley, 205 Mo. 138, 103 S. W. 527; Révillon Bros. *v.* Boivin, 15 Quebec K. B. 314.

3. Thweatt *v.* Freeman, 73 Ark. 575, 84 S. W. 720; Rauer's Law, etc., Co. *v.* Bradbury, 3 Cal. App. 256, 84 Pac. 1007; Curry *v.* King, (Cal. App. 1907) 92 Pac. 662; Albright *v.* Phœnix Ins. Co., 72 Kan. 591, 84 Pac. 383; George N. Pierce Co. *v.* Beers, (Mass. 1906) 76 N. E. 603; Kingsley *v.* Wheeler, 95 Minn. 360, 104 N. W. 543; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077; Northup *v.* Bathrick, (Neb. 1907) 113 N. W. 808; Storms *v.* Mundy, (Tex. Civ. App. 1907) 101 S. W. 258.

Sale to Agent Terminates Agency. — Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435.

1078. 1. Northup *v.* Bathrick, (Neb. 1907) 113 N. W. 808; Campbell *v.* Beard, 57 W. Va. 50 50 S. E. 747.

An Agent Cannot Sell real property belonging to his principal to a corporation in which he is a director. Nekarda *v.* Presberger, 123 N. Y. App. Div. 418, 107 N. Y. Supp. 897.

1079. 1. Albright *v.* Phœnix Ins. Co., 72 Kan. 591, 84 Pac. 383.

2. Moore *v.* Petty, (C. C. A.) 135 Fed. 668; George N. Pierce Co. *v.* Beers, (Mass. 1906) 76 N. E. 603; Bush *v.* Halsted, 121 N. Y. App. Div. 538, 106 N. Y. Supp. 133.

3. Purchase by Auctioneer Invalid. — Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723.

1080. 4. Mobile Land Imp. Co. *v.* Gass, 142 Ala. 520, 39 So. 229; Van Dusen *v.* Bigelow, 13 N. Dak. 277, 100 N. W. 723.

6. Truslow *v.* Parkersburg Bridge, etc., R. Co., 61 W. Va. 628, 57 S. E. 51.

1081. 1. Campbell *v.* Beard, 57 W. Va. 501, 50 S. E. 747.

2. Curry *v.* King, (Cal. App. 1907) 92 Pac. 662; Kingsley *v.* Wheeler, 95 Minn. 360, 104 N. W. 543; Northup *v.* Bathrick, (Neb. 1907) 113 N. W. 808; Nekarda *v.* Presberger, 123 N. Y. App. Div. 418, 107 N. Y. Supp. 897; Van Dusen *v.* Bigelow, 13 N. Dak. 277, 100 N. W. 723, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1081; Fulton *v.* Walters, 28 Pa. Super. Ct. 269.

1082. 1. Drefahl *v.* Security Sav. Bank, 132 Iowa 563, 107 N. W. 179, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082.

3. Harrison *v.* Craven, 188 Mo. 590, 87 S.

W. 962; Bergner *v.* Bergner, (Pa. 1907) 67 Atl. 999, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082.

4. Bergner *v.* Bergner, (Pa. 1907) 67 Atl. 999, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082.

5. Kelly *v.* Keith, 77 Ark. 31, 90 S. W. 150, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082; Harrison *v.* Craven, 188 Mo. 590, 87 S. W. 962; Bergner *v.* Bergner, (Pa. 1907) 67 Atl. 999.

1084. 1. Harrison *v.* Craven, 188 Mo. 590, 87 S. W. 962.

1085. 2. Steinbeck *v.* Bon Homme Min. Co., (C. C. A.) 152 Fed. 333, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1085; Fricker *v.* Americus Mfg., etc., Co., 124 Ga. 165, 52 S. E. 65, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1085; Forlaw *v.* Augusta Naval Stores Co., 124 Ga. 261, 52 S. E. 898; Jones *v.* Adair, (Kan. 1907) 91 Pac. 78; Day *v.* Fay, 59 W. Va. 65, 52 S. E. 1013, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1085.

3. Steinbeck *v.* Bon Homme Min. Co., (C. C. A.) 152 Fed. 333, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1085; McRae *v.* Preston, (Fla. 1907) 44 So. 946; State *v.* Unknown Heirs, 113 Tenn. 298, 86 S. W. 717; Day *v.* Fay, 59 W. Va. 65, 52 S. E. 1013, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1085.

1086. 1. Fricker *v.* Americus Mfg., etc., Co., 124 Ga. 165, 52 S. E. 65; Day *v.* Fay, 59 W. Va. 65, 52 S. E. 1013, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1086.

4. Charlesworth *v.* Whitlow, 74 Ark. 277, 85 S. W. 423; Chicago Title, etc., Co. *v.* Ward, 113 Ill. App. 327; Gladiator Consol. Gold Mines, etc., Co. *v.* Steele, 132 Iowa 446, 106 N. W. 737; Manion *v.* Manion, 120 Ky. 1, 85 S. W. 197. See also Moss Mercantile Co. *v.* Payette First Nat. Bank, 47 Oregon 361, 82 Pac. 8; Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

1088. 1. Cheuvront *v.* Horner, (W. Va. 1908) 59 S. E. 964, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1088.

2. Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

4. Fisher *v.* Meeker, 118 N. Y. App. Div. 452, 103 N. Y. Supp. 261.

1090. **3. Agent Not Liable.**— Where an attorney is instructed by his clients to deposit money in his hands belonging to them, and thereupon deposits in his own name in a reputable bank, he is not responsible to his clients upon the failure of the bank. Matter of Shanley, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 8, 107 N. Y. Supp. 913.

1091. 1. Moss Mercantile Co. *v.* Payette First Nat. Bank, 47 Oregon 361, 82 Pac. 8.

3. Moss Mercantile Co. *v.* Payette First Nat. Bank, 47 Oregon 361, 82 Pac. 8.

4. Whinery *v.* Brown, 36 Ind. App. 276, 75 N. E. 605.

1092. 1. Allsopp *v.* Joshua Hendy Mach. Works, (Cal. App. 1907) 90 Pac. 39, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1092.

2. Allsopp *v.* Joshua Hendy Mach. Works, (Cal. App. 1907) 90 Pac. 39, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1092.

1093. 3. Allsopp *v.* Joshua Hendy Mach. Works, (Cal. App. 1907) 90 Pac. 39; Judith Inland Transp. Co. *v.* Williams, (Mont. 1907) 91 Pac. 1061.

1094. 2. Sidway *v.* American Mortg. Co., 222 Ill. 270, 78 N. E. 561, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1094.

Agent Not Chargeable with Compound Interest. — Sidway *v.* American Mortg. Co., 119 Ill. App. 502.

7. Campbell *v.* Cook, 193 Mass. 251, 79 N. E. 261; Allen *v.* O'Bryan, 118 N. Y. App. Div. 213, 103 N. Y. Supp. 125; Haight *v.* Haight, etc., Co., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 501, 92 N. Y. Supp. 934; Kroll *v.* Coach, 45 Oregon 459, 78 Pac. 397, 80 Pac. 900.

1095. 2. Hapgood *v.* Berry, (C. C. A.) 157 Fed. 807; Manion *v.* Manion, 120 Ky. 1, 85 S. W. 197. See also Charlesworth *v.* Whitlow, 74 Ark. 277, 85 S. W. 423.

4. Powell *v.* Georgia, etc., R. Co., 121 Ga. 803, 49 S. E. 759; Temby *v.* William Brunt Pottery Co., 229 Ill. 540, 82 N. E. 336; Starr *v.* Ætna L. Ins. Co., (Wash. 1906) 87 Pac. 1119.

1096. 1. Temby *v.* William Brunt Pottery Co., 229 Ill. 540, 82 N. E. 336; Miller *v.* Mason City, etc., R. Co., 132 Iowa 412, 108 N. W. 302; Louisville Foundry, etc., Co. *v.* Patterson, (Ky. 1906) 93 S. W. 22; Janpol *v.* Gold, 122 N. Y. App. Div. 401, 106 N. Y. Supp. 891; Fittichauer *v.* Van Wyck, (Supm. Ct. App. T.) 92 N. Y. Supp. 241.

2. Henry *v.* Gregory, 22 Times L. Rep. 53; Temby *v.* William Brunt Pottery Co., 229 Ill. 540, 82 N. E. 336; Fittichauer *v.* Van Wyck, (Supm. Ct. App. T.) 92 N. Y. Supp. 241; Janpol *v.* Gold, 122 N. Y. App. Div. 401, 106 N. Y. Supp. 891; Jackson *v.* Fraade, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 631, 107 N. Y. Supp. 706.

3. Janpol *v.* Gold, 122 N. Y. App. Div. 401, 106 N. Y. Supp. 891.

4. Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 84 Pac. 321; Cusick *v.* Boyne, 1 Cal. App. 643, 82 Pac. 985; Emblem *v.* Bicksler, 34 Colo. 496, 83 Pac. 636; Jones *v.* Moore, (Ky. 1907) 99 S. W. 286; Stewart *v.* Soubral, 119 La. 211, 43 So. 1009; Morrison *v.* New Haven, etc., Min. Co., 143 N. Car. 611, 55 S. E. 611; Stacy *v.* Cherokee Foundry, etc., Works, 70 S. Car. 178, 49 S. E. 223.

5. See Clammer *v.* Eddy, (Colo. 1907) 92 Pac. 722; Rogers *v.* Daniels, 116 Ill. App. 515; Burleigh *v.* St. Louis Transit Co., 124 Mo. App. 724, 102 S. W. 621; Hart *v.* Maloney, 101 N. Y. App. Div. 37, 91 N. Y. Supp. 922; Ice *v.* Maxwell, (W. Va. 1906) 55 S. E. 899, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1096.

1097. 1. Smith *v.* Park, 84 S. W. 304, 27 Ky. L. Rep. 12; Burleigh *v.* St. Louis Transit Co., 124 Mo. App. 724, 102 S. W. 621; Ice *v.* Maxwell, (W. Va. 1906) 55 S. E. 899, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097. See also Clammer *v.* Eddy, (Colo. 1907) 92 Pac. 722.

2. Fredricksen *v.* Locomobile Co., (Neb. 1907) 111 N. W. 845.

3. Merrill *v.* Gunnison, 145 Cal. 544, 79 Pac. 67; Dallman *v.* Frank, 1 Cal. App. 541, 82 Pac. 564; De Montague *v.* Bacharach, 187 Mass. 128, 72 N. E. 938; Franck *v.* McGilvray, 144 Mich.

318, 107 N. W. 886; Sharp *v.* Hoopes, (N. J. 1906) 64 Atl. 989; Sullivan *v.* Owens, (Tex. Civ. App. 1905) 90 S. W. 690; Mathier *v.* Hancock, 78 Vt. 414, 63 Atl. 143.

1098. 1. **If, However, There Was an Understanding Between the Parties.**— Bunting *v.* Dobson, 125 Ga. 447, 54 S. E. 102.

1099. 2. Finch *v.* Green, 225 Ill. 304, 80 N. E. 318; Mayer *v.* Schneider, 112 Ill. App. 628; *In re* Bishop, 130 Iowa 250, 106 N. W. 637; Fitzpatrick *v.* Dooley, 112 Mo. App. 165, 86 S. W. 719; Birch *v.* Birch, 112 Mo. App. 157, 86 S. W. 1106; Key *v.* Harris, 116 Tenn. 161, 92 S. W. 235; Hodge *v.* Hodge, (Wash. 1907) 91 Pac. 764.

3. Page *v.* Page, 73 N. H. 305, 61 Atl. 356; Haberman *v.* Kaufer, 70 N. J. Eq. 381, 61 Atl. 976.

Services by a Step Daughter, rendered to her step father, are not presumed to be gratuitous where she was not at the time living in his family. Brown *v.* Cummings, 27 R. I. 369, 62 Atl. 378.

1100. 1. Fitzpatrick *v.* Dooley, 112 Mo. App. 165, 86 S. W. 719; Key *v.* Harris, 116 Tenn. 161, 92 S. W. 235.

It Is for the Jury to determine whether the party rendering the services is a member of the recipient's family. *In re* Bishop, 130 Iowa 250, 106 N. W. 637.

2. Mayer *v.* Schneider, 112 Ill. App. 628; Birch *v.* Birch, 112 Mo. App. 157, 86 S. W. 1106.

3. Mayer *v.* Schneider, 112 Ill. App. 628; Page *v.* Page, 73 N. H. 305, 61 Atl. 356.

1101. 1. Levy *v.* Wolf, 2 Cal. App. 491, 84 Pac. 313; Newton *v.* Hamden, (Conn. 1906) 64 Atl. 229; Ice *v.* Maxwell, (W. Va. 1906) 55 S. E. 899, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1101. See also Colpe *v.* Jubilee Min. Co., 2 Cal. App. 393, 84 Pac. 324.

2. Munroe *v.* Taylor, 191 Mass. 483, 78 N. E. 106.

An Agent to Sell Real Estate under a contract providing for a commission "at such time as a sale shall be effected" is not entitled to a commission upon a sale by the owner, though his contract gave him the sole agency for the sale. Davis *v.* Van Tassel, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 910.

3. Sidway *v.* American Mortg. Co., 222 Ill. 270, 78 N. E. 561; Steele *v.* Crabtree, 130 Iowa 313, 106 N. W. 753.

4. Fairbairn *v.* Rausch, 104 N. Y. App. Div. 259, 93 N. Y. Supp. 666.

5. Sidway *v.* American Mortg. Co., 222 Ill. 270, 78 N. E. 561, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1101; Sidway *v.* American Mortg. Co., 119 Ill. App. 502.

6. **Lack of Diligence** is no defense to an action for commissions where the want of diligence was neither complained of nor acted upon during the agency. Spinks *v.* Georgia Quincy Granite Co., 114 La. 1044, 38 So. 824.

7. Quirk *v.* Quirk, 155 Fed. 199.

1102. 2. Featherston *v.* Trone, 82 Ark. 381, 102 S. W. 196; Taylor *v.* Godbold, 76 Ark. 395, 88 S. W. 959; Rauer's Law, etc., Co. *v.* Bradbury, 3 Cal. App. 256, 84 Pac. 1007; Williams *v.* Moore-Gaunt Co., (Ga. 1908) 60 S. E. 372; Keach *v.* Bunn, 116 Ill. App. 397; Sidway *v.* American Mortg. Co., 119 Ill. App. 502; Deter *v.* Jackson, (Kan. 1907) 92 Pac. 546; Harrison *v.* Craven, 188 Mo. 590, 87 S. W. 962; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077; Dennison *v.* Aldrich, 114 Mo. App. 700, 91 S. W. 1024; Low *v.* Woodbury, 107 N. Y. App. Div. 298, 95 N. Y. Supp. 336.

Must Obtain Best Price.— Where an agent to sell real estate could have obtained a higher price than that which he did obtain he will not be allowed to recover commissions. Lichenstein *v.* Case, 99 N. Y. App. Div. 570, 91 N. Y. Supp. 57.

When Secret Commissions Forfeited.— Nitedals Taendstikfabrik *v.* Bruster, (1906) 2 Ch. 671. See Hippisley *v.* Knee, (1905) 1 K. B. 1, 21 Times L. Rep. 5; La Compagnie, etc., *v.* Paquet, 29 Quebec Super. Ct. 211.

3. Lease *v.* Christy, 28 Pa. Super. Ct. 507.

Concealment of Material Fact — Secret Profit.— Price *v.* Metropolitan House Invest., etc., Co., 23 Times L. Rep. 630.

4. Rauer's Law, etc., Co. *v.* Bradbury, 3 Cal. App. 256, 84 Pac. 1007; Gibson *v.* Bailey Co., 114 Mo. App. 350, 89 S. W. 597, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1102; Lemon *v.* Little, (S. Dak. 1908) 114 N. W. 1001, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1102; Hahl *v.* Kellogg, (Tex. Civ. App. 1906) 94 S. W. 389.

1103. 1. Quirk *v.* Quirk, 155 Fed. 199.

5. New Kanawha Coal, etc., Co. *v.* Wright, 163 Ind. 529, 72 N. E. 550.

A Revocation of Agency, during the negotiations for the sale of property, does not deprive the agent of his right to commissions, where he brought about the sale and acted in good faith. Southwestern Port Huron Co. *v.* Wilber, 75 Kan. 175, 88 Pac. 892.

1104. 3. Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W. 985; Brown *v.* Crown Gold Milling Co., 150 Cal. 376, 89 Pac. 86; George O. Richardson Machinery Co. *v.* Swartzel, 70 Kan. 773, 79 Pac. 660; Poland *v.* Thomaston Face, etc., Brick Co., 100 Me. 133, 60 Atl. 795; Bailey *v.* Marden, 193 Mass. 277, 79 N. E. 257; Jenks *v.* Terry, 88 Miss. 364, 40 So. 641; Cann *v.* Church of Redeemer, 111 Mo. App. 164, 85 S. W. 994; Davis *v.* Brown County Coal Co., (S. Dak. 1906) 110 N. W. 113.

4. Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W 985; Brown *v.* Crown Gold Milling Co., 150 Cal. 376, 89 Pac. 86; George O. Richardson Machinery Co. *v.* Swartzel, 70 Kan. 773, 79 Pac. 660; Star F. Ins. Co. *v.* Ring, 118 N. Y. App. Div. 107, 103 N. Y. Supp. 137.

5. Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W. 985; Bailey *v.* Marden, 193 Mass. 277, 79 N. E. 257.

6. Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W. 985.

1105. 2. Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W. 985; Smith *v.* Ohler, (Ky. 1907) 104 S. W. 995.

Profits Earned and Which Might Have Been Earned.— Emerson *v.* Pacific Coast, etc., Packing Co., 96 Minn. 1, 104 N. W. 573.

1106. 3. Smith *v.* Ohler, (Ky. 1907) 104 S. W. 995; Ransom *v.* Boston, (Mass. 1907) 81 N. E. 998.

4. Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W. 985.

1107. 3. McDermott *v.* Mahoney, (Iowa 1908) 115 N. W. 32.

1108. 7. Lewis *v.* Omaha St. R. Co., (Neb. 1907) 114 N. W. 281.

1111. 3. Miller *v.* Mason City, etc., R. Co., 132 Iowa 412, 108 N. W. 302; Farwell *v.* Colman, 35 Wash. 308, 77 Pac. 379.

1113. 2. **Where an Agency to Sell Expires** pursuant to the contract of agency, the agent cannot recover for a sale thereafter accomplished. Ropes *v.* Rosenfeld, 145 Cal. 671, 79 Pac. 354.

3. Featherston *v.* Trone, 82 Ark. 381, 102 S. W. 196; Rauer's Law, etc., Co. *v.* Bradbury, 3 Cal. App. 256, 84 Pac. 1007; Williams *v.* Moore-Gaunt Co., (Ga. 1908) 60 S. E. 372; Bunn *v.* Keach, 214 Ill. 259, 73 N. E. 419; Keach *v.* Bunn, 116 Ill. App. 397; Quinn *v.* Burton, (Mass. 1907) 81 N. E. 257; Winter *v.* Carey, (Mo. App. 1907) 106 S. W. 539; Atterbury *v.* Hopkins, 122 Mo. App. 172, 99 S. W. 11; Hann *v.* Brettler, (Supm. Ct. App. T.) 107 N. Y. Supp. 78; Fulton *v.* Walters, 28 Pa. Super. Ct. 269.

4. Lemon *v.* Little, (S. Dak. 1908) 114 N. W. 1001, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1113; Tieck *v.* McKenna, 115 N. Y. App. Div. 701, 101 N. Y. Supp. 317. See also Quinn *v.* Burton, (Mass. 1907) 81 N. E. 257; Atterbury *v.* Hopkins, 122 Mo. App. 172, 99 S. W. 11.

1114. 2. Barngrover *v.* Pettigrew, 128 Iowa 533, 104 N. W. 904; Marshall *v.* Trerise, 33 Mont. 28, 81 Pac. 400.

Acting as Agent in Illegal Purchase of Liquor. — Wilkins *v.* Wallace, 38 N. Bruns. 80.

3. *United States.* — Sanger *v.* U. S., 40 Ct. Cl. 47.

Alabama. — Fuller *v.* Stevens, (Ala. 1905) 39 So. 623.

California. — Boland *v.* Ashurst Oil, etc., Co., 145 Cal. 405, 78 Pac. 871.

Delaware. — Tebo *v.* Mitchell, 5 Penn. (Del.) 356, 63 Atl. 327.

Georgia. — Powell *v.* Georgia, etc., R. Co., 121 Ga. 803, 49 S. E. 759.

New York. — Horst *v.* Lovdal, 113 N. Y. App. Div. 277, 98 N. Y. Supp. 996; Morehouse *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 152.

Rhode Island. — O'Connell *v.* King, 26 R. I. 544, 59 Atl. 926.

Texas. — Neblett *v.* McGraw, (Tex. Civ. App. 1905) 91 S. W. 309; Shropshire *v.* Adams, (Tex. Civ. App. 1905) 89 S. W. 448.

Washington. — Sessions *v.* Warwick, (Wash. 1907) 89 Pac. 482.

Statutory Limitation. — A statute limiting the amount which may be collected by an employment agent to ten per cent. of a month's wages in the employment furnished is unconstitutional. *Ex p.* Dickey, 144 Cal. 234, 77 Pac. 924.

Evidence. — In an action by a broker for commissions, wherein the meaning of the contract between the parties is at issue, evidence as to dealings between the defendant and other real estate agents is not admissible. Lloyd *v.* Kerley, (Tex. Civ. App. 1907) 106 S. W. 696.

1115. 1. *United States.* — Sanger *v.* U. S., 40 Ct. Cl. 47.

Arkansas. — Greenlee *v.* Roland, (Ark. 1908) 107 S. W. 193.

Colorado. — Emblem *v.* Bicksler, 34 Colo. 496, 83 Pac. 636.

Delaware. — Schuchler *v.* Cooper, 5 Penn. (Del.) 42, 62 Atl. 261; Lodge *v.* Fraim, 5 Penn. (Del.) 352, 63 Atl. 233; Tebo *v.* Mitchell, 5 Penn. (Del.) 356, 63 Atl. 327.

Illinois. — Chicago Consol. Traction Co. *v.* Mathews, 117 Ill. App. 174; Close *v.* Browne, 230 Ill. 228, 82 N. E. 629.

Iowa. — Hall *v.* Luckman, 133 Iowa 518, 110 N. W. 916.

Kentucky. — McGrew *v.* O'Donnell, 92 S. W. 301, 28 Ky. L. Rep. 1366; Jones *v.* Moore, (Ky. 1907) 99 S. W. 286.

Missouri. — Bissell *v.* Zorn, 122 Mo. App. 688, 99 S. W. 458; Dempsey *v.* Wells, 109 Mo. App. 470, 84 S. W. 1015.

New York. — Lockhart *v.* Hamlin, 190 N. Y. 132, 82 N. E. 1094.

North Carolina. — Morrison *v.* New Haven, etc., Min. Co., 143 N. Car. 250, 55 S. E. 611; Simmons *v.* Davenport, 140 N. Car. 407, 53 S. E. 225.

South Carolina. — Stacy *v.* Cherokee Foundry, etc., Works, 70 S. Car. 178, 49 S. E. 223.

Texas. — Stephens *v.* Tomlinson, (Tex. Civ. App. 1905) 88 S. W. 304.

Where a Contract for Services Is Void under the Statute of Frauds a recovery may be had on a *quantum meruit* for the services rendered thereunder. Stout *v.* Royston, (Ky. 1908) 107 S. W. 784.

Attorney's Fees. — A reasonable retaining fee may be included in fixing the value of an attorney's services. Clements *v.* Watson, (Cal. App. 1907) 93 Pac. 385.

2. Blair *v.* Columbian Fireproofing Co., 191 Mass. 333, 77 N. E. 762.

3. Graham *v.* Dubuque Specialty Mach. Works, (Iowa 1908) 114 N. W. 619; Blair *v.* Columbian Fireproofing Co., 191 Mass. 333, 77 N. E. 762.

4. Heblich *v.* Slater, 217 Pa. St. 404, 66 Atl. 655.

1116. 1. Jones *v.* Moore, (Ky. 1907) 99 S. W. 286.

Void Custom. — A custom which gives a real estate broker five per cent. of the purchase price regardless of the value of his services is void. Penland *v.* Ingle, 138 N. Car. 456, 50 S. E. 850.

Legal Services. — Evidence as to the amount paid another attorney in the same proceeding is immaterial in an action to recover for legal services. Heblich *v.* Slater, 217 Pa. St. 404, 66 Atl. 655.

2. **Declarations of Third Persons** under oath are not admissible to establish the value of services. Miner *v.* Rickey, (Cal. App. 1907) 90 Pac. 718.

3. Schurra *v.* Buffalo-Pitts Co., 44 Wash. 693, 87 Pac. 945; Ice *v.* Maxwell, (W. Va. 1906) 55 S. E. 899, both *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1116.

4. New York Metal Ceiling Co. *v.* Leonard, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 500, 96

N. Y. Supp. 187; Lucas *v.* Boss, 110 N. Y. App. Div. 220, 97 N. Y. Supp. 112.

1117. 1. Wertheimer *v.* Talcott, 118 N. Y. App. Div. 840, 103 N. Y. Supp. 692; Spence *v.* Bode, (Supm. Ct. App. T.) 108 N. Y. Supp. 593.

Illegal Transaction. — An agent, acting for a stock broker, who settles with a customer, knowing that the customer has been defrauded, is not entitled to hold the principal for the amount expended. Fuller *v.* Municipal Tel., etc., Co., 117 N. Y. App. Div. 352, 102 N. Y. Supp. 154.

1118. 2. **Where the Agent Has Failed to Keep Proper Accounts** he will not be entitled to disbursements upon an action by the principal for an accounting. Quirk *v.* Quirk, 155 Fed. 199.

5. Wier *v.* Blois, 40 Nova Scotia 266, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1119.

1119. 2. Fisher *v.* Mylius, (W. Va. 1907) 57 S. E. 276.

4. *United States.* — Great Lakes Towing Co. *v.* Worthington, 147 Fed. 926.

Arkansas. — Drake *v.* Pope, 78 Ark. 327, 95 S. W. 774.

California. — Schindler *v.* Green, (Cal. App. 1905) 82 Pac. 341; Moore *v.* Gould, (Cal. 1907) 91 Pac. 616.

Colorado. — Frambach *v.* Frank, 33 Colo. 529, 81 Pac. 247, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1119.

Georgia. — Phinizy *v.* Bush, (Ga. 1907) 59 S. E. 259, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1118 [1119]; Raleigh, etc., R. Co. *v.* Pullman Co., 122 Ga. 700, 50 S. E. 1008.

Illinois. — Laguna Valley Co. *v.* Fitch, 121 Ill. App. 607.

Iowa. — Doolittle *v.* Murray, 134 Iowa 536, 111 N. W. 999.

Michigan. — Mercer *v.* Leihy, 139 Mich. 447, 102 N. W. 972.

Mississippi. — Merchants', etc., Packet Co. *v.* Streuby, (Miss. 1907) 44 So. 791.

Nebraska. — Meade Plumbing, etc., Co. *v.* Irwin, (Neb. 1906) 109 N. W. 391.

New Hampshire. — Hoyt *v.* Hoyt, 73 N. H. 549, 64 Atl. 18.

New Jersey. — Colloty *v.* Schuman, 73 N. J. L. 92, 62 Atl. 186; Hauenstein *v.* Ruh, 73 N. J. L. 98, 62 Atl. 184; Zeigenfuss *v.* Moore, (N. J. 1905) 60 Atl. 520.

New York. — Jones *v.* Gould, 123 N. Y. App. Div. 236, 108 N. Y. Supp. 31, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1119; Argus Co. *v.* Hotchkiss, 121 N. Y. App. Div. 378, 107 N. Y. Supp. 138; Title Guarantee, etc., Co. *v.* Levitt, 121 N. Y. App. Div. 485, 106 N. Y. Supp. 147; Valois *v.* Gardner, 122 N. Y. App. Div. 245, 106 N. Y. Supp. 808; Cohen *v.* Barry, (Supm. Ct. App. T.) 108 N. Y. Supp. 573.

Washington. — Tripple *v.* Littlefield, (Wash. 1907) 89 Pac. 493, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1119.

Canada. — See Bell *v.* Rokeby, 15 Manitoba 327, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1119.

Executor. — Where an executor, without limiting his liability, contracts for services to the estate, he is liable individually. Smith *v.* Smith, 78 Vt. 33, 61 Atl. 558.

1120. 1. Tripple *v.* Littlefield, (Wash. 1907) 89 Pac. 493, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1120.

2. Phinizy *v.* Bush, (Ga. 1907) 59 S. E. 259; Martin *v.* Allen, 125 Mo. App. 636, 103 S. W. 138; Tripple *v.* Littlefield, (Wash. 1907) 89 Pac. 493, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1120; Bell *v.* Rokeby, 15 Manitoba 327. See also Pinkston *v.* Cedar Hill Nursery, etc., Co., 123 Ga. 302, 51 S. E. 387.

1121. 1. Hearn *v.* Gower, 1 Ga. App. 265, 57 S. E. 916; Hardman *v.* Kelley, 19 S. Dak. 608, 104 N. W. 272.

2. Frambach *v.* Frank, 33 Colo. 529, 81 Pac. 247.

3. Rowland *v.* Hall, 121 N. Y. App. Div. 459, 106 N. Y. Supp. 55.

5. Swartzman *v.* McCarrey, 15 Pa. Dist. 116, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1121.

1122. 2. **Illustration of Irresponsible Principal.** — Foreign insurance company not authorized to transact business. Latham Mercantile, etc., Co. *v.* Harrod, 71 Kan. 565, 81 Pac. 214.

An Agent Is Not Liable on a stock subscription, signed "agent for principal," where the principal was a corporation powerless to purchase stock and the vendor had knowledge thereof. Merchants', etc., Packet Co. *v.* Streuby, (Miss. 1907) 44 So. 791.

3. Thistle *v.* Jones, (County Ct.) 45 Misc. (N. Y.) 215, 92 N. Y. Supp. 113; Rowland *v.* Hall, 121 N. Y. App. Div. 459, 106 N. Y. Supp. 55.

4. *Alabama.* — Armour Packing Co. *v.* Vietch-Young Produce Co., (Ala. 1903) 39 So. 680.

Arkansas. — Drake *v.* Pope, 78 Ark. 327, 95 S. W. 774.

Colorado. — Haviland *v.* Mayfield, 38 Colo. 185, 88 Pac. 148.

Indian Territory. — Lowrey *v.* Scargill, (Indian Ter. 1907) 104 S. W. 813.

Michigan. — Mercer *v.* Leihy, 139 Mich. 447, 102 N. W. 972.

New York. — Beidleman *v.* Kelly, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 51, 99 N. Y. Supp. 907; Taubenblatt *v.* Galewski, (Supm. Ct. App. T.) 108 N. Y. Supp. 588.

North Carolina. — Rounsaville *v.* North Carolina Home Ins. Co., 138 N. Car. 191, 50 S. E. 619.

Texas. — Hunter *v.* Adoue, (Tex. Civ. App. 1905) 86 S. W. 622; Book *v.* Jones, (Tex. Civ. App. 1906) 98 S. W. 891; Hatchett *v.* Sunset Brick, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 174.

Washington. — State *v.* Superior Ct., (Wash. 1907) 88 Pac. 332.

Wisconsin. — Alexander, etc., Lumber Co. *v.* McGeehan, 124 Wis. 325, 102 N. W. 571.

1123. 1. **Agent's Duty to Disclose Agency.** — Book *v.* Jones, (Tex. Civ. App. 1906) 98 S. W. 891.

There is no absolute duty to disclose agency under all circumstances regardless of whether the third person knows the facts, or is chargeable with knowledge thereof from circumstances brought to his attention. Alexander, etc., Lumber Co. *v.* McGeehan, 124 Wis. 325, 102 N. W. 571.

1124. 1. Hunter *v.* Adoue, (Tex. Civ. App. 1905) 86 S. W. 622.

Disclosing Principal's Name Not Always Indispensable. Mercer *v.* Leihy, 130 Mich. 447, 10[illegible] N. W. 2.

2. American Alkali Co. *v.* Kurtz, 134 Fed. 663.

3. Wolff *v.* Wilson, 28 Pa. Super. Ct. 511.

1125. 1. Wolff *v.* Wilson, 28 Pa. Super. Ct. 511.

Under Statute. — The agent of a foreign insurance company, who has not complied with the laws of the state, is personally liable on a contract of insurance, though made without the state, under Act May 1, 1876, § 48 (P. L. 66), providing that such agents shall be so liable where the laws of the state are not complied with. Bartlett *v.* Rothschild, 214 Pa. St. 421, 63 Atl. 1030.

2. Maneer *v.* Sanford, 15 Manitoba 181.

Contract Must Be Valid to Hold Agent. — Morrison *v.* Hazzard, (Tex. Civ. App. 1905) 88 S. W. 385.

3. **One Who Buys Land from an Agent Without Authority to Sell,** and goes into possession, has a cause of action against the agent immediately upon being ejected by the owner. Kennedy *v.* Stonehouse, 13 N. Dak. 232, 100 N. W. 258.

1126. 3. Schloss *v.* McIntyre, 147 Ala. 557, 41 So. 11.

1127. 1. Title Guarantee, etc., Co. *v.* Levitt, 121 N. Y. App. Div. 485, 106 N. Y. Supp. 147.

2. Schloss *v.* McIntyre, 147 Ala. 557, 41 So. 11, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1127.

5. Rowland *v.* Hall, 121 N. Y. App. Div. 459, 106 N. Y. Supp. 55.

1128. 1. Rowland *v.* Hall, 121 N. Y. App. Div. 459, 106 N. Y. Supp. 55; Thistle *v.* Jones, (County Ct.) 45 Misc. (N. Y.) 215, 92 N. Y. Supp. 113; Kennedy *v.* Stonehouse, 13 N. Dak. 232, 100 N. W. 258.

1129. 1. Maneer *v.* Sanford, 15 Manitoba 181.

1130. 1. Martin *v.* Allen, 125 Mo. App. 636, 103 S. W. 138. See also Tripple *v.* Littlefield, (Wash. 1907) 89 Pac. 493.

2. Hauenstein *v.* Kuh, 73 N. J. L. 98, 62 Atl. 184.

3. **Money Properly Paid to Agent — Not Liable.** — Cohen *v.* Barry, (Supm. Ct. App. T.) 108 N. Y. Supp. 573.

1131. 2. Southern R. Co. *v.* Rowe, 2 Ga. App. 557, 59 S. E. 462; Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062; Carson *v.* Quinn, (Mo. App. 1907) 105 S. W. 1088.

3. Southern R. Co. *v.* Rowe, 2 Ga. App. 557, 59 S. E. 462; Carson *v.* Quinn, (Mo. App. 1907) 105 S. W. 1088.

1132. 1. Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009; Baker *v.* Davis, 127 Ga. 649, 57 S. E. 62; Central Nat. Bank *v.* Brooke, 71 Kan. 767, 81 Pac. 498; Cascarella *v.* National Grocer Co., (Mich. 1908) 114 N. W. 857; Carson *v.* Quinn, (Mo. App. 1907) 105 S. W. 1088; Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062; Texas, etc., R. Co. *v.* Eastin, (Tex. 1907) 102 S. W. 105; Lough *v.* Davis, 35 Wash. 449, 77 Pac. 733.

1135. 1. **Malicious Prosecution.** — Cascarella *v.* National Grocer Co., (Mich. 1908) 114 N. W. 857.

2. Donovan *v.* Purtell, 216 Ill. 640, 75 N. E. 334, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1135; Fidelity Funding Co. *v.* Vaughn, 18 Okla. 13, 90 Pac. 34, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1135.

1136. 1. Donovan *v.* Purtell, 216 Ill. 640, 75 N. E. 334, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1136; Cascarella *v.* National Grocer Co., (Mich. 1908) 114 N. W. 857.

2. Donovan *v.* Purtell, 216 Ill. 640, 75 N. E. 334, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1136; Jones *v.* Gould, 123 N. Y. App. Div. 236, 108 N. Y. Supp. 31.

1137. 2. *California.* — Niles *v.* Gonzales, 1 Cal. App. 324, 82 Pac. 212.

Georgia. — Raleigh, etc., R. Co. *v.* Pullman Co., 122 Ga. 700, 50 S. E. 1008; Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., (Ga. 1907) 59 S. E. 713.

Illinois. — Cozzens, etc., Typesetting Co. *v.* Western Ranch, etc., Co., 112 Ill. App. 309; Butman *v.* Butman, 213 Ill. 104, 72 N. E. 821.

Iowa. — Findley *v.* Koch, 126 Iowa 131, 101 N. W. 766.

Kansas. — Ross Oil, etc., Co. *v.* Eastham, 73 Kan. 464, 85 Pac. 531.

Missouri. — Freeman *v.* Junge Baking Co., 126 Mo. App. 124, 103 S. W. 565.

New Jersey. — Colloty *v.* Schuman, 73 N. J. L. 92, 62 Atl. 186.

New York. — Benton *v.* Moss, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 376, 93 N. Y. Supp. 1113.

Washington. — Littlefield *v.* Dawson, (Wash. 1907) 92 Pac. 428; Brittain *v.* Pioneer State Bank, (Wash. 1906) 87 Pac. 1051; Austin *v.* Elk Mercantile Co., 38 Wash. 365, 80 Pac. 525.

1138. 1. Rounsaville *v.* North Carolina Home Ins. Co., 138 N. Car. 191, 50 S. E. 619.

Undisclosed Principal. — Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322; Lindquist *v.* Dickson, 98 Minn. 369, 107 N. W. 958.

2. **Commencement of Action against Agent.** — Mussenden *v.* Raiffe, 131 Ill. App. 456.

1139. 3. McKee *v.* Cunningham, 2 Cal. App. 684, 84 Pac. 260; Van Dyke *v.* Van Dyke, 123 Ga. 686, 51 S. E. 582; Pinkston *v.* Cedar Hill Nursery, etc., Co., 123 Ga. 302, 51 S. E. 387; Hillman *v.* Hulett, 149 Mich. 289, 112 N. W. 918; Lindquist *v.* Dickson, 98 Minn. 369, 107 N. W. 958; City Trust, etc., Co. *v.* American Brewing Co., 182 N. Y. 285, 74 N. E. 948; Rounsaville *v.* North Carolina Home Ins. Co., 138 N. Car. 191, 50 S. E. 619; Phillips *v.* International Text Book Co., 26 Pa. Super. Ct. 230. See also New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559.

1140. 1. Mertz *v.* Hubbard, 75 Kan. 1, 88 Pac. 529, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1140; City Trust, etc., Co. *v.* American Brewing Co., 182 N. Y. 285, 74 N. E. 948.

1141. 1. Van Dyke *v.* Van Dyke, 123 Ga. 686, 51 S. E. 582, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1141; Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778.

2. Van Dyke *v.* Van Dyke, 123 Ga. 686, 51 S. E. 582, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1141.

3. New York L. Ins. Co. *v.* Martindale, 75

Kan. 142, 88 Pac. 559, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1141.

1142. 2. Arbuthnot *v.* Dupas, 15 Manitoba 634.

1143. 2. *Arkansas.* — Mutual Reserve Fund L. Assoc. *v.* Cotter, 81 Ark. 205, 99 S. W. 67.

Georgia. — Crankshaw *v.* Schweizer Mfg. Co., 1 Ga. App. 363, 58 S. E. 222; Cable Co. *v.* Walker, 127 Ga. 65, 56 S. E. 108; Turner *v.* Turner, 123 Ga. 5, 50 S. E. 969. See also Young *v.* Darien, etc., R. Co., 1 Ga. App. 317, 57 S. E. 921.

Illinois. — Prussian Nat. Ins. Co. *v.* Empire Catering Co., 113 Ill. App. 67.

Indiana. — Blair-Baker Horse Co. *v.* Columbus First Nat. Bank, 164 Ind. 77, 72 N. E. 1027.

Iowa. — Campbell *v.* Park, 128 Iowa 181, 101 N. W. 861; John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741.

Kentucky. — Smith *v.* Ohler, (Ky. 1907) 104 S. W. 995; Nicola Bros. Co. *v.* Hurst, (Ky. 1907) 99 S. W. 917.

Massachusetts. — Burbank *v.* Hammond, 189 Mass. 189, 75 N. E. 102.

North Carolina. — Brittain *v.* Westall, 137 N. Car. 30, 49 S. E. 54.

Oregon. — Alden *v.* Grande Ronde Lumber Co., 46 Oregon 593, 81 Pac. 385.

South Carolina. — Ragsdale *v.* Southern R. Co., 72 S. Car. 120, 51 S. E. 540; Marshall *v.* Columbia, etc., Electric St. R. Co., 73 S. Car. 241, 53 S. E. 417.

Texas. — Colorado Canal Co. *v.* McFarland, (Tex. Civ. App. 1906) 94 S. W. 400; Gulf, etc., R. Co. *v.* Huyett, (Tex. 1906) 92 S. W. 454.

Virginia. — Lynchburg Telephone Co. *v.* Booker, 103 Va. 594, 50 S. E. 148; Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812.

3. *California.* — Waldeck *v.* Pacific Coast Steamship Co., 2 Cal. App. 167, 83 Pac. 158.

Georgia. — Turner *v.* Turner, 123 Ga. 5, 50 S. E. 969; Miller *v.* McKenzie, 126 Ga. 746, 55 S. E. 952; Crankshaw *v.* Schweizer Mfg. Co., 1 Ga. App. 363, 58 S. E. 222. See also Georgia R., etc., Co. *v.* Harris, 1 Ga. App. 714, 57 S. E. 1076.

Illinois. — Hartford L. Ins. Co. *v.* Sherman, 223 Ill. 329, 78 N. E. 923, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1141 [1143].

Kentucky. — Peyton *v.* Old Woolen Mills Co., (Ky. 1906) 91 S. W. 719; Nicola Bros. Co. *v.* Hurst, (Ky. 1907) 99 S. W. 917; Holzhauer *v.* Sheeny, (Ky. 1907) 104 S. W. 1034.

Missouri. — Nute *v.* Hartford F. Ins. Co., 109 Mo. App. 585, 83 S. W. 83; Redmon *v.* Metropolitan St. R. Co., 185 Mo. 1, 84 S. W. 26.

New York. — Arnold *v.* Rockland Lake Trap Rock Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 296.

North Carolina. — Smith Premier Typewriter Co. *v.* Rowan Hardware Co., 143 N. Car. 97, 55 S. E. 417.

Oregon. — Alden *v.* Grande Ronde Lumber Co., 46 Oregon 593, 81 Pac. 385.

Texas. — Gulf, etc., R. Co. *v.* Huyett, (Tex. 1906) 92 S. W. 454; Waggoner *v.* Snody, 98 Tex. 512, 85 S. W. 1134.

Virginia. — Finch *v.* Causey, (Va. 1907) 57 S. E. 562.

Washington. — Chilcott *v.* Washington State Colonization Co., (Wash. 1906) 88 Pac. 113.

4. Harris *v.* Pellenz, 146 Mich. 529, 109 N. W. 1044.

5. Fayetteville Wagon, etc., Co. *v.* Kenefick Constr. Co., (Ark. 1905) 88 S. W. 1031; Indiana Trust Co. *v.* International Bldg., etc., Assoc., 36 Ind. App. 685, 74 N. E. 633; Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13.

Tender by Agent. — Under the *Georgia* Code a tender may be made by an agent. Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. 1908) 60 S. E. 470.

Payment to Unauthorized Agent. — Where a party, assuming to act as the agent of the assignee of a mortgage, collects interest without authority from the mortgagee, who does not ask to see the mortgage or mortgage note, the mortgagee cannot charge the assignee with the payments made. Ward *v.* M. E. Church, 27 R. I. 262, 61 Atl. 651.

1144. 1. *United States.* — Dennis *v.* Atlanta Nat. Bldg., etc., Assoc., (C. C. A.) 136 Fed. 539; Armstrong *v.* Ashley, 204 U. S. 272, 27 U. S. Sup. Ct. 270; Union Cent. L. Ins. Co. *v.* Robinson, (C. C. A.) 148 Fed. 358.

Alabama. — McCleskey *v.* Howell Cotton Co., 147 Ala. 573, 42 So. 67.

California. — Pacific Lumber Co. *v.* Wilson, (Cal. App. 1907) 92 Pac. 654.

Georgia. — Pursley *v.* Stahley, 122 Ga. 362, 50 S. E. 139; Taylor *v.* Felder, (Ga. 1907) 59 S. E. 844.

Illinois. — Metropolitan L. Ins. Co. *v.* Sullivan, 112 Ill. App. 500; Merchants' Nat. Bank *v.* Nichols, etc., Co., 123 Ill. App. 430; Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322; Hayes *v.* Wagner, 220 Ill. 256, 77 N. E. 211; Butman *v.* Butman, 213 Ill. 104, 72 N. E. 821.

Indiana. — Brotherhood of Painters, etc., *v.* Moore, (Ind. App. 1905) 76 N. E. 262; Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. 48, 76 N. E. 560.

Iowa. — Condon *v.* Barnum, (Iowa 1906) 106 N. W. 514.

Kentucky. — Crawford *v.* Traveler's Ins. Co., (Ky. 1907) 99 S. W. 963; Holzhauer *v.* Sheeny, (Ky. 1907) 104 S. W. 1034; Connolley *v.* Beckett, (Ky. 1907) 105 S. W. 446; Miller *v.* Jones, (Ky. 1908) 107 S. W. 783; Baries *v.* Louisville Electric Light Co., (Ky. 1905) 85 S. W. 1186.

Massachusetts. — Jaquith *v.* Davenport, 191 Mass. 415, 78 N. E. 93.

Minnesota. — Wiita *v.* Interstate Iron Co., (Minn. 1908) 115 N. W. 169.

Missouri. — Atterbury *v.* Hopkins, 122 Mo. App. 172, 99 S. W. 11; Bushnell *v.* Farmers Mut. Ins. Co., 110 Mo. App. 223, 85 S. W. 103.

Montana. — Coombs *v.* Barker, 31 Mont. 526, 79 Pac. 1.

Nebraska. — Pringle *v.* Modern Woodmen of America, (Neb. 1906) 107 N. W. 756.

New Jersey. — Boice *v.* Conover, (N. J. 1906) 65 Atl. 191.

New York. — Consolidated Fruit Jar Co. *v.* Wisner, 103 N. Y. App. Div. 453, 93 N. Y. Supp. 128.

Ohio. — Orme *v.* Baker, 74 Ohio St. 337, 78 N. E. 439.

Oregon. — Hoffman *v.* Habighorst, (Oregon 1907) 89 Pac. 952.

South Carolina. — Gibbes Machinery Co. *v.* Roper, 77 S. Car. 39, 57 S. E. 667; Pearlstine *v.* Phœnix Ins. Co., 74 S. Car. 246, 54 S. E. 372; Blowers *v.* Southern R. Co., 74 S. Car. 221, 54 S. E. 368.

Texas. — Morrill *v.* Bosley, (Tex. Civ. App. 1905) 88 S. W. 519; Security Mut. L. Ins. Co. *v.* Calvert, (Tex. Civ. App. 1907) 100 S. W. 1033; Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589.

Vermont. — Trow *v.* Preferred Acc. Ins. Co., (Vt. 1907) 67 Atl. 821.

Virginia. — Finch *v.* Causey, (Va. 1907) 57 S. E. 562.

Washington. — Elliott *v.* Knights of Modern Maccabees, (Wash. 1907) 89 Pac. 929, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1144; Lucile Dreyfus Min. Co. *v.* Willard, (Wash. 1907) 89 Pac. 935; Haynes *v.* Gay, 37 Wash. 230, 79 Pac. 794; Foster *v.* Pioneer Mut. Ins. Co., 37 Wash. 288, 79 Pac. 798; Lynch *v.* Kineth, 36 Wash. 368, 78 Pac. 923.

Agents of Corporations — *Alabama.* — Lea *v.* Iron Belt Mercantile Co., 147 Ala. 421, 42 So. 415.

Arkansas. — Carter *v.* Gray, 79 Ark. 273, 96 S. W. 377.

Indiana. — Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52.

Kansas. — Cudahy Packing Co. *v.* Hays, 74 Kan. 124, 85 Pac. 811.

Kentucky. — Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294; Mutual L. Ins. Co. *v.* Chosen Friends Lodge, (Ky. 1906) 93 S. W. 1044; Glenn *v.* Louisville, etc., R. Co., (Ky. 1906) 90 S. W. 975.

Maryland. — Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70.

Minnesota. — Robertson Lumber Co. *v.* Anderson, 96 Minn. 527, 105 N. W. 972.

Missouri. — Council *v.* St. Louis, etc., R. Co., 123 Mo. App. 432, 100 S. W. 57.

New Hampshire. — Brookhouse *v.* Union Pub. Co., 73 N. H. 368, 62 Atl. 219.

New Jersey. — Vulcan Detinning Co. *v.* America Can Co., 70 N. J. Eq. 588, 62 Atl. 881.

New York. — Lewis *v.* Guardian F., etc., Assur. Co., 181 N. Y. 392, 74 N. E. 224.

North Carolina. — Fishblate *v.* Fidelity, etc., Co., 140 N. Car. 589, 53 S. E. 354.

Texas. — Flynt *v.* Taylor, (Tex. Civ. App. 1905) 91 S. W. 864.

Wisconsin. — Petersen *v.* Elholm, 130 Wis. 1, 109 N. W. 76.

1145. **1.** Sebald *v.* Citizens' Deposit Bank, (Ky. 1907) 105 S. W. 130; Elliott *v.* Knights of Modern Maccabees, (Wash. 1907) 89 Pac. 929, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1145. See also William Bergenthal Co. *v.* Security State Bank, 102 Minn. 138, 112 N. W. 892.

2. *United States.* — Union Cent. L. Ins. Co. *v.* Robinson, (C. C. A.) 148 Fed. 358.

Florida. — Aycock Bros. Lumber Co. *v.* Dothan First Nat. Bank, (Fla. 1907) 45 So. 501.

Georgia. — Pursley *v.* Stahley, 122 Ga. 362, 50 S. E. 139.

Illinois. — Merchants' Nat. Bank *v.* Nichols, etc., Co., 223 Ill. 41, 79 N. E. 38; Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322; Merchants' Nat. Bank *v.* Nichols, etc., Co., 123 Ill. App. 430.

Kentucky. — Sebald *v.* Citizens' Deposit Bank, (Ky. 1907) 105 S. W. 130.

Michigan. — Brown *v.* Harris, 139 Mich. 372, 102 N. W. 960.

Minnesota. — Woodworth *v.* Carroll, (Minn. 1907) 112 N. W. 1054.

Nebraska. — Pringle *v.* Modern Woodmen of America, (Neb. 1906) 107 N. W. 756.

New Hampshire. — Brookhouse *v.* Union Pub. Co., 73 N. H. 368, 62 Atl. 219, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1145.

Oklahoma. — Sulphur Springs First Nat. Bank *v.* Stribling, 16 Okla. 41, 86 Pac. 512.

Washington. — Elliott *v.* Knights of Modern Maccabees, (Wash. 1907) 89 Pac. 929, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1145.

1146. **1.** McCourt *v.* Singers-Bigger, (C. C. A.) 145 Fed. 103; Merchants' Nat. Bank *v.* Nichols, etc., Co., 123 Ill. App. 430; Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322; Van Buren County *v.* American Surety Co., (Iowa 1908) 115 N. W. 24; Warren *v.* Hayes, (N. H. 1907) 68 Atl. 193; Elliott *v.* Knights of Modern Maccabees, (Wash. 1907) 89 Pac. 929. See also Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294.

2. Merritt *v.* Huber, (Iowa 1908) 114 N. W. 627; Blowers *v.* Southern R. Co., 74 S. Car. 221, 54 S. E. 368; Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589. See also North British Mercantile Ins. Co. *v.* Union Stockyards Co., (Ky. 1905) 87 S. W. 285.

3. *Alabama.* — Patterson *v.* Irvin, 142 Ala. 401, 38 So. 121.

Arkansas. — Arkansas Mut. F. Ins. Co. *v.* Clark, 84 Ark. 224, 105 S. W. 257.

California. — Iverson *v.* Metropolitan L. Ins. Co., (Cal. 1907) 91 Pac. 609.

Connecticut. — Marsh *v.* Wheeler, 77 Conn. 449, 59 Atl. 410.

Delaware. — Downs *v.* German Alliance Ins. Co., (Del. 1906) 67 Atl. 146.

Georgia. — Pursley *v.* Stahley, 122 Ga. 362, 50 S. E. 139; Collins *v.* Crews, (Ga. 1907) 59 S. E. 727.

Iowa. — Chicago Lumber, etc., Co. *v.* Garmer, 132 Iowa 282, 109 N. W. 780.

Kentucky. — German Ins. Co. *v.* Goodfriend, (Ky. 1906) 97 S. W. 1098.

Michigan. — Haapa *v.* Metropolitan L. Ins. Co., (Mich. 1907) 114 N. W. 380; Weaver *v.* Richards, (Mich. 1907) 113 N. W. 867.

Missouri. — King *v.* Rowlett, 120 Mo. App. 120, 96 S. W. 493.

Montana. — Collins *v.* Metropolitan L. Ins. Co., 32 Mont. 329, 80 Pac. 609.

New Hampshire. — Warren *v.* Hayes, (N. H. 1907) 68 Atl. 193.

New Jersey. — Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82.

New York. — Baer *v.* American Credit-Indemnity Co., 116 N. Y. App. Div. 233, 101 N. Y. Supp. 672; Butler *v.* Michigan Mut. L. Ins. Co., 184 N. Y. 337, 77 N. E. 398.

Oregon. — Price *v.* Oregon R. Co., 47 Oregon 350, 83 Pac. 843.

Texas. — Hurlbut *v.* Gainor, (Tex. Civ. App. 1907) 103 S. W. 409; Storms *v.* Mundy, (Tex. Civ. App. 1907) 101 S. W. 258.

Washington. — Moon Bros. Carriage Co. *v.* Devenish, 42 Wash. 415, 85 Pac. 17.

West Virginia. — Thompson *v.* Murphy, (W. Va. 1906) 53 S. E. 908.

Insurance Agent. — Metropolitan L. Ins. Co. *v.* Sullivan, 112 Ill. App. 500; Crawford *v.* Traveler's Ins. Co., (Ky. 1907) 99 S. W. 963; Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294; Security Mut. L. Ins. Co. *v.* Calvert, (Tex. Civ. App. 1907) 100 S. W. 1033.

Cashier of Bank. — Orme *v.* Baker, 74 Ohio St. 337, 78 N. E. 439.

Executive Officer. — Petersen *v.* Elholm, 130 Wis. 1, 109 N. W. 76.

Notice to a Station Agent that a drunken man was on the track ahead of a train then standing in the station is notice to the company. Glenn *v.* Louisville, etc., R. Co., (Ky. 1906) 90 S. W. 975.

1148. **1. Notice to One of Two Joint Agents** is notice to the principal although the one receiving notice was not the one to eventually accomplish the transaction in regard to which the notice was given. St. Paul F. & M. Ins. Co. *v.* Stogner, (Tex. Civ. App. 1906) 98 S. W. 218.

1149. **1.** Robertson Lumber Co. *v.* Anderson, 96 Minn. 527, 105 N. W. 972.

2. Miller *v.* Jones, (Ky. 1908) 107 S. W. 783.

Must Be Made When Some Act of Agency Is Pending. — Patterson *v.* Irvin, 142 Ala. 401, 38 So. 121.

Knowledge Must Be in Agent's Mind at Time of Transaction. — Badger *v.* Cook, 117 N. Y. App. Div. 328, 101 N. Y. Supp. 1067.

3. Miller *v.* Jones, (Ky. 1908) 107 S. W. 783; Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649.

1150. **1.** Miller *v.* Jones, (Ky. 1908) 107 S. W. 783.

2. Vulcan Detinning Co. *v.* American Can Co., (N. J. 1907) 67 Atl. 339.

1151. **1.** Harrington *v.* Hall, (Del. 1906) 63 Atl. 875; Baker *v.* Davis, 127 Ga. 649, 57 S. E. 62; Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009; Ziegenhein *v.* Smith, 116 Ill. App. 80; Crandall *v.* Boutell, 95 Minn. 116, 103 N. W. 890, *citing* 1 Am. and Eng. Encyc. of Law (2d ed.) 1151; Milton *v.* Missouri Pac. R. Co., 193 Mo. 56, 91 S. W. 949, *quoting* 1 Am. and Eng. Encyc. of Law (2d ed.) 1151; Williams *v.* Tolbert, (S. Car. 1907) 56 S. E. 908.

1152. **1.** *Alabama.* — Robinson *v.* Green, (Ala. 1906) 43 So. 797.

Arkansas. — St. Louis Southwestern R. Co. *v.* Furlow, 81 Ark. 496, 99 S. W. 689.

California. — Castroville Co-operative Creamery Co. *v.* Col, (Cal. App. 1907) 92 Pac. 648.

District of Columbia. — Pickford *v.* Talbott, 28 App. Cas. (D. C.) 498.

Georgia. — Century Bldg. Co. *v.* Lewkowitz, 1 Ga. App. 636, 57 S. E. 1036; Crockett *v.* Sibley, (Ga. 1908) 60 S. E. 326.

Indiana. — Grand Rapids, etc., R. Co. *v.* King, (Ind. App. 1908) 83 N. E. 778.

Iowa. — Rhomberg *v.* Avenarius, (Iowa 1907) 112 N. W. 548, *quoting* 1 Am. and Eng. Encyc. of Law (2d ed.) 1152.

Kentucky. — Louisville University *v.* Hammock, (Ky. 1907) 106 S. W. 219.

Maryland. — Deck *v.* Baltimore, etc., R. Co., 100 Md. 168, 59 Atl. 650; New England Mut. L. Ins. Co. *v.* Swain, 100 Md. 558, 60 Atl. 469.

Minnesota. — Crandall *v.* Boutell, 95 Minn. 116, 103 N. W. 890.

Mississippi. — Rivers *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 471.

Missouri. — Milton *v.* Missouri Pac. R. Co., 193 Mo. 56, 91 S. W. 949, *quoting* 1 Am. and Eng. Encyc. of Law (2d ed.) 1152; Barree *v.* Cape Girardeau, 197 Mo. 382, 95 S. W. 330.

New York. — Tway *v.* Salvin, 109 N. Y. App. Div. 288, 95 N. Y. Supp. 653; Dealy *v.* Coble, 112 N. Y. App. Div. 296, 98 N. Y. Supp. 452.

North Carolina. — Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015.

South Carolina. — Williams *v.* Tolbert, (S. Car. 1907) 56 S. E. 908.

Assault and Battery. — St. Louis, etc., R. Co. *v.* Grant, 75 Ark. 579, 88 S. W. 580, 1133; Ziegenhein *v.* Smith, 116 Ill. App. 80. See also Hardeman *v.* Williams, (Ala. 1907) 43 So. 726.

1154. **1.** International Text-Book Co. *v.* Heartt, (C. C. A.) 136 Fed. 129; Hardeman *v.* Williams, (Ala. 1907) 43 So. 726; Southern R. Co. *v.* Chambers, 126 Ga. 404, 55 S. E. 37; Chicago, etc., R. Co. *v.* Moran, 129 Ill. App. 38; Milton *v.* Missouri Pac. R. Co., 193 Mo. 56, 91 S. W. 949, *quoting* 1 Am. and Eng. Encyc. of Law (2d ed.) 1154; Cannon *v.* Sharon, etc., St. R. Co., 216 Pa. St. 408, 65 Atl. 795.

3. *Georgia.* — Savannah Electric Co. *v.* Wheeler, 128 Ga. 550, 58 S. E. 38; Century Bldg. Co. *v.* Lewkowitz, 1 Ga. App. 636, 57 S. E. 1036.

Indiana. — Grand Rapids, etc., R. Co. *v.* King, (Ind. App. 1908) 83 N. E. 778; Farmers' Mut. F. Ins. Assoc. *v.* Stewart, (Ind. 1906) 79 N. E. 490.

Kentucky. — Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551.

Maryland. — New England Mut. L. Ins. Co. *v.* Swain, 100 Md. 558, 60 Atl. 469.

Massachusetts. — White *v.* Apsley Rubber Co., 194 Mass. 97, 80 N. E. 500.

Michigan. — Cascarella *v.* National Grocer Co., (Mich. 1908) 114 N. W. 857.

Mississippi. — Rivers *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 471.

Missouri. — Barree *v.* Cape Girardeau, 197 Mo. 382, 95 S. W. 330.

North Carolina. — Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015.

Eleemosynary Corporations. — Medical College *v.* Rushing, 1 Ga. App. 468, 57 S. E. 1083.

A Charitable Corporation is not responsible for the negligence of its agent, where the corporation holds its property in trust for public charity. Abston *v.* Waldon Academy, 118 Tenn. 24, 102 S. W. 351.

1155. **1.** Banks *v.* Southern Express Co., 73 S. Car. 211, 53 S. E. 166, *quoting* 1 Am. and Eng. Encyc. of Law (2d ed.) 1155.

2. The Nellie, 139 Fed. 753; Davoust *v.* Alameda, 149 Cal. 69, 84 Pac. 760; Louisville University *v.* Hammock, (Ky. 1907) 106 S. W. 219; Owensboro Wagon Co. *v.* Boling, (Ky. 1908) 107 S. W. 264; Mattingly *v.* Montgomery, (Md. 1907) 68 Atl. 205; Geiselman *v.*

Schmidt, (Md. 1907) 68 Atl. 202; Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062; Hennessey *v.* Baugh, etc., Co., 29 Pa. Super. Ct. 310; New *v.* Milligan, 27 Pa. Super. Ct. 516.

1156. **1.** Lewis *v.* Amorous, (Ga. App. 1907) 59 S. E. 338; Evans *v.* A. L. Dyke Automobile Supply Co., 121 Mo. App. 266, 101 S. W. 1132.

See Milton *v.* Missouri Pac. R. Co., 193 Mo. 56, 91 S. W. 949, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1156.

3. Harrington *v.* Hall, (Del. 1906) 63 Atl. 875; Grand Rapids, etc., R. Co. *v.* King, (Ind. App. 1908) 83 N. E. 778; Cascarella *v.* National Grocer Co., (Mich. 1908) 114 N. W. 857; Milton *v.* Missouri Pac. R. Co., 193 Mo. 56, 91 S. W. 949, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1156; Magar *v.* Hammond, 183 N. Y. 387, 76 N. E. 474; Schmidt *v.* Vanderveer, 110 N. Y. App. Div. 758, 97 N. Y. Supp. 441; Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015.

Liability of Corporation for Malicious Acts. — Savannah Electric Co. *v.* Wheeler, 128 Ga. 550, 58 S. E. 38; Farmers' Mut. F. Ins. Assoc. *v.* Stewart, (Ind. 1906) 79 N. E. 490; Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551; White *v.* Apsley Rubber Co., 194 Mass. 97, 80 N. E. 500; Dwyer *v.* St. Louis Transit Co., 108 Mo. App. 152, 83 S. W. 303; Empire Cream Separator Co. *v.* DeLaval Dairy Supply Co., (N. J. 1907) 67 Atl. 711.

1158. **1.** Central of Georgia R. Co. *v.* Morris, 121 Ga. 484, 49 S. E. 606; Southern R. Co. *v.* Chambers, 126 Ga. 404, 55 S. E. 37; Milton *v.* Missouri Pac. R. Co., 193 Mo. 56, 91 S. W. 949, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1158; Canon *v.* Sharon, etc., St. R. Co., 216 Pa. St. 408, 65 Atl. 795.

2. Kendrick *v.* Colyar, 143 Ala. 597, 42 So. 110; Western Mfg. Co. *v.* Cotton, (Ky. 1907) 104 S. W. 758; New England Mut. L. Ins. Co. *v.* Swain, 100 Md. 558, 60 Atl. 469; Jaquith *v.* Davenport, 191 Mass. 415, 78 N. E. 93; Robertson *v.* Covenant Mut. L. Ins. Co., 123 Mo. App. 238, 100 S. W. 686; Keyser *v.* Hinkle, (Mo. App. 1907) 106 S. W. 98; Vulcan Detinning Co. *v.* American Can Co., 70 N. J. Eq. 588, 62 Atl. 881; Western Cottage Piano, etc., Co. *v.* Anderson, (Tex. Civ. App. 1907) 101 S. W. 1061.

Fraud Beyond Scope of Authority. — Merchants' Bank *v.* Prudential Ins. Co., 110 Mo. App. 62, 84 S. W. 101.

1159. **1.** Briggs *v.* Foster, (C. C. A.) 137 Fed. 773; Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16; Hahl *v.* Brooks, 213 Ill. 134, 72 N. E. 727; Hartford L. Ins. Co. *v.* Sherman, 223 Ill. 329, 78 N. E. 923; Chase *v.* Wolgamot, (Iowa 1908) 114 N. W. 614; Campbell *v.* Park, 128 Iowa 181, 101 N. W. 861; Western Cottage Piano, etc., Co. *v.* Anderson, (Tex. Civ. App. 1907) 101 S. W. 1061; Gulf, etc., R. Co. *v.* Huyett, (Tex. 1906) 92 S. W. 454; Arnold *v.* National Bank, 126 Wis. 362, 105 N. W. 828. See also Evans *v.* Crawford County Farmers Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

An Insurance Company is not liable for its agent's fraudulent representations as to a provision in the policy, where it appeared that the plaintiff, though able, failed to read his policy. Cathcart *v.* Life Ins. Co., (N. Car. 1907) 57 S. E. 390.

1160. **1.** Hartford L. Ins. Co. *v.* Sherman, 223 Ill. 329, 78 N. E. 923; John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741; Krolik *v.* Curry, 148 Mich. 214, 111 N. W. 761; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; Millard *v.* Smith, 119 Mo. App. 701, 95 S. W. 940; Heath *v.* Schroer, 119 Mo. App. 93, 96 S. W. 313; Gulf, etc., R. Co. *v.* Huyett, (Tex. 1906) 92 S. W. 454.

1161. **1.** Millard *v.* Smith, 119 Mo. App. 701, 95 S. W. 940.

2 Kittrell *v.* State, (Miss. 1907) 42 So. 609; Spokane *v.* Patterson, (Wash. 1907) 89 Pac. 402, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1161.

A Corporation Can Be Held Guilty of the offense of furnishing liquor to minors. Southern Express Co. *v.* State, 1 Ga. App. 700, 58 S. E. 67.

3. Great Lakes Towing Co. *v.* Worthington, 147 Fed. 926; Laguna Valley Co. *v.* Fitch, 121 Ill. App. 607; New England Mut. L. Ins. Co. *v.* Swain, 100 Md. 558, 60 Atl. 469, 473 (dictum); Fay *v.* Walsh, 190 Mass. 374, 77 N. E. 44.

1163. **1.** Buffington *v.* McNally, 192 Mass. 198, 78 N. E. 309.

2. Routh *v.* Kostachek, 15 Okla. 234, 81 Pac. 429.

Lease Signed by Agent. — Hunter *v.* Adoue, (Tex. Civ. App. 1905) 86 S. W. 622.

1164. **1.** Hewitt *v.* Torson, 124 Ill. App. 375; Simons *v.* Wittmann, 113 Mo. App. 357, 88 S. W. 791. See also Nicholson *v.* Dover, (N. Car. 1907) 58 S. E. 444.

The Fact that the Contract Is Made by a Subagent does not alter the rule. Shelby *v.* Burrow, 76 Ark. 558, 89 S. W. 464.

1166. **1.** Parks *v.* Fogleman, 97 Minn. 157, 105 N. W. 560, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1166.

1167. **1.** See Hunter *v.* Adoue, (Tex. Civ. App. 1905) 86 S. W. 622.

1168. **1.** Rea *v.* Barker, 135 Fed. 890; Cochran *v.* MacRae, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 530, 98 N. Y. Supp. 852, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1168; Moore *v.* Vulcanite Portland Cement Co., 121 N. Y. App. Div. 667, 106 N. Y. Supp. 393; Gulf, etc., R. Co. *v.* Brown, (Tex. Civ. App. 1905) 86 S. W. 53, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1168; Gulf, etc., R. Co. *v.* Zimmerman, (Tex. Civ. App. 1905) 86 S. W. 54.

3. *United States.* — Great Lakes Towing Co. *v.* Mill Transp. Co., (C. C. A.) 155 Fed. 11.

Alabama. — Western Union Tel. Co. *v.* Manker, 145 Ala. 418, 41 So. 850; Sellers *v.* Malone-Pilcher Co., (Ala. 1907) 44 So. 414.

Georgia. — Durant Lumber Co. *v.* Sinclair Lumber Co., 2 Ga. App. 209, 58 S. E. 485; Propeller Tow-Boat Co. *v.* Western Union Telegraph Co., 124 Ga. 478, 52 S. E. 766.

Maine. — See Hook *v.* Crowe, 100 Me. 399, 61 Atl. 1080.

Maryland. — Noel Constr. Co. *v.* Atlas Portland Cement Co., 103 Md. 209, 63 Atl. 384.

Massachusetts. — Buffington *v.* McNally, 192 Mass. 198, 78 N. E. 309.

Missouri. — Griffin *v.* Wabash R. Co., 115 Mo. App. 549, 91 S. W. 1015.

New York. — Moore *v.* Vulcanite Portland Cement Co., 121 N. Y. App. Div. 667, 106 N. Y. Supp. 393, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1168.

North Carolina. — Nicholson *v.* Dover, (N. Car. 1907) 58 S. E. 444.

Oklahoma. — Rankin *v.* Blaine County Bank, (Okla. 1908) 93 Pac. 536.

Texas. — Kempner *v.* Dillard, (Tex. 1907) 101 S. W. 437.

1170. 1. **Broker and Factor.** — Hall *v.* Fay, 15 Pa. Dist. 207, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1170.

2. Sellers *v.* Malone-Pilcher Co., (Ala. 1907) 44 So. 414; Frazier *v.* Poindexter, 78 Ark. 241, 95 S. W. 464; Durant Lumber Co. *v.* Sinclair Lumber Co., 2 Ga. App. 209, 58 S. E. 485; Hook *v.* Crowe, 100 Me. 399, 61 Atl. 1080.

1171. 1. Frazier *v.* Poindexter, 78 Ark. 241, 95 S. W. 464.

4. Birmingham Matinée Club *v.* McCarty, (Ala. 1907) 44 So. 642, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1171; Moore *v.* Vulcanite Portland Cement Co., 121 N. Y. App. Div. 667, 106 N. Y. Supp. 393, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1171.

1172. 1. Birmingham Matinée Club *v.* McCarty, (Ala. 1907) 44 So. 642, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1172.

2. Robards *v.* Hamrick, 39 Ind. 134, 79 N. E. 386; Prichard *v.* Abbott, 104 Md. 560, 65 Atl. 421; Westheimer *v.* State Loan Co., (Mass. 1907) 81 N. E. 289; Gussner *v.* Hawks, 13 N. Dak. 453, 101 N. W. 898; Nash *v.* Noble, (Tex. Civ. App. 1907) 102 S. W. 736. See also Wheeler *v.* Citizens' Nat. Bank, (Ky. 1908) 107 S. W. 316.

3. Chickering-Chase Bros. Co. *v.* Moulton, (Iowa 1906) 107 N. W. 434; Gussner *v.* Hawks, 13 N. Dak. 453, 101 N. W. 898.

1173. 1. *Compare* Gussner *v.* Hawks, 13 N. Dak. 453, 101 N. W. 898.

1174. 2. **Pledge for Personal Loan to Agent.** — Wycoff *v.* Davis, 127 Iowa 399, 103 N. W. 349.

3. Kempner *v.* Dillard, (Tex. 1907) 101 S. W. 437.

5. Miller *v.* Springfield Wagon Co., (Indian Ter. 1905) 89 S. W. 1011; Grubel *v.* Busche, (Kan. 1907) 91 Pac. 73, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1174.

Fund Deposited in Agent's Name. — Where a banker, with knowledge, accepts funds from an agent on deposit in the agent's name, he may not retain the deposit to satisfy a debt of the agent. Robards *v.* Hamrick, 39 Ind. App. 134, 79 N. E. 386.

1175. 1. Nicholls *v.* Mapes, 1 Cal. App. 349, 82 Pac. 265.

2. Prichard *v.* Abbott, 104 Md. 560, 65 Atl. 421.

Where an Agent Without Authority Indorses Commercial Paper payable to his principal and appropriates the proceeds, the bank to which the paper was indorsed is liable to the principal. Goodell *v.* Sinclair, 112 Ill. App. 594.

3. Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

Right to Follow Even into Hands of Bona Fide Holder. — Gussner *v.* Hawks, 13 N. Dak. 453, 101 N. W. 898.

1176. 1. Manhattan Web Co. *v.* Aquidneck Nat. Bank, 133 Fed. 76; Smith *v.* Farmers', etc., Bank, 2 Cal. App. 377, 84 Pac. 348; Blum *v.* Whipple, 194 Mass. 253, 80 N. E. 501. See also Robards *v.* Hamrick, 39 Ind. App. 134, 79 N. E. 386.

Test of Bona Fides. — Perry *v.* Oerman, (W. Va. 1908) 60 S. E. 604.

1178. 3. Roller *v.* McGraw, (W. Va. 1908) 60 S. E. 410.

1179. 1. **Where a Third Party Has Been Guilty of Collusion** with an agent in effecting a sale of real estate to the principal, the latter's right of action for fraud and deceit is not affected by the fact that he brings an action against the agent to recover a commission secretly paid to him by the vendor. Barnsdall *v.* O'Day, (C. C. A.) 134 Fed. 828.

1180. 1. **A Husband** is not entitled to recover for the loss of his wife's services as clerk in his store in an action for wrongful injuries to the wife. Kirkpatrick *v.* Metropolitan St. R. Co., (Mo. App. 1908) 107 S. W. 1025.

5. American Bonding Co. *v.* Loeb, (Wash. 1907) 92 Pac. 282.

6. **Payment to Authorized Agent.** — International Harvester Co. *v.* Smith, 51 Fla. 220, 40 So. 840.

Payment to an Agent Is No Defense where the agent has neither actual nor apparent authority to collect. Zilberman *v.* Friedman, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 256, 104 N. Y. Supp. 363.

Where a Sheriff Wrongfully Takes Property from an agent, it is no defense to an action by the principal that the property was sold and the proceeds applied to a debt due from the principal. Nash *v.* Noble, (Tex. Civ. App. 1907) 102 S. W. 736.

1181. 2. Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074; Steffens *v.* Nelson, 94 Minn. 365, 102 N. W. 871; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651; St. Louis Gunning Advertising Co. *v.* Wanamaker, 115 Mo. App. 270, 90 S. W. 737; Schmidt *v.* Rankin, 193 Mo. 254, 91 S. W. 78; Mutual L. Ins. Co. *v.* Granniss, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 174, 107 N. Y. Supp. 926; Hall *v.* New York, etc., R. Co., 27 R. I. 525, 65 Atl. 278.

1182. 4. **Husband May Ratify Wife's Act.** — Steffens *v.* Nelson, 94 Minn. 365, 102 N. W. 871.

5. Colpe *v.* Jubilee Mining Co., 2 Cal. App. 393, 84 Pac. 324; Rosehill Cemetery Co. *v.* Dempster, 223 Ill. 567, 79 N. E. 276; Tevis *v.* Hammersmith, (Ind. App. 1907) 81 N. E. 614; Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074; Carrington *v.* Turner, 101 Md. 437, 61 Atl. 324; Bishop *v.* Fuller, (Neb. 1907) 110 N. W. 715; Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419; Guillaume *v.* K. S. D. Fruit Land Co., 48 Oregon 400, 86 Pac. 883, 88 Pac. 586; Peach River Lumber Co. *v.* Ayers, (Tex. Civ. App. 1906) 91 S. W. 387; Cumberland Third Nat. Bank *v.* Laboringman's Mercantile, etc., Co., 56 W. Va. 446, 49 S. E. 544.

Ratification by Retention of Benefits. — Pres-

byterian Board, etc., *v.* Gilbee, 212 Pa. St. 310, 61 Atl. 925.

Formal Ratification. — Where a majority of the board of directors, with knowledge of the material facts, agreed to pay for an article furnished to a corporation, the corporation was bound, though no formal ratification at a regular meeting of the board was held. Possell *v.* Smith, (Colo. 1907) 88 Pac. 1064.

1183. 4. Britt *v.* Gordon, 132 Iowa 431, 108 N. W. 319; Driscoll *v.* Modern Brotherhood of America, (Neb. 1906) 109 N. W. 158.

1184. 1. Cassidy *v.* Saline County Bank, 14 Okla. 532, 78 Pac. 324.

8. The Obtaining of an Affidavit by Fraud and Threats by an agent whereby the affiant is induced to release a claim against the principal may be ratified by the latter. Fraternal Army of America *v.* Evans, 215 Ill. 629, 74 N. E. 689.

1185. 1. Crockett *v.* Sibley, (Ga. 1908) 60 S. E. 326; White *v.* Apsley Rubber Co., 194 Mass. 97, 80 N. E. 500.

2. See White *v.* Apsley Rubber Co., 194 Mass. 97, 80 N. E. 500.

1188. 1. Ilfeld *v.* Ziegler, (Colo. 1907) 91 Pac. 825; Virginia Pocahontas Coal Co. *v.* Lambert, (Va. 1907) 58 S. E. 561, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1188; Shuman *v.* Steinel, 129 Wis. 422, 109 N. W. 74.

1189. 1. Johnson *v.* Ogren, 102 Minn. 8, 112 N. W. 894; Virginia Pocahontas Coal Co. *v.* Lambert, (Va. 1907) 58 S. E. 561, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1189.

2. *United States.* — Adler *v.* Galbraith, 156 Fed. 259, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1189.

Arizona. — Valley Bank *v.* Brown, (Ariz. 1905) 83 Pac. 362.

Arkansas. — Schenck *v.* Griffith, 74 Ark. 557, 86 S. W. 850; Johnson *v.* Wynne, 76 Ark. 563, 89 S. W. 1049.

California. — Lindow *v.* Cohn, (Cal. App. 1907) 90 Pac. 485; Munroe *v.* Fette, (Cal. App. 1905) 82 Pac. 206; Wickersham Banking Co. *v.* Nicholas, 2 Cal. App. 18, 82 Pac. 1124; Pease *v.* Fink, 3 Cal. App. 371, 85 Pac. 657; Pacific Vinegar, etc., Works *v.* Smith, 145 Cal. 352, 78 Pac. 550.

Colorado. — Conqueror Gold Min., etc., Co. *v.* Ashton, (Colo. 1907) 90 Pac. 1124; Lathrop *v.* Hallett, 20 Colo. App. 207, 77 Pac. 1095.

Georgia. — Whitley *v.* James, 121 Ga. 521, 49 S. E. 600; Dolvin *v.* American Harrow Co., 125 Ga. 699, 54 S. E. 706.

Illinois. — Sill *v.* Pate, 230 Ill. 39, 82 N. E. 356.

Iowa. — Teeple *v.* Hawkeye Gold Dredging Co., (Iowa 1908) 114 N. W. 906; Van Veer *v.* Malone, 134 Iowa 653, 112 N. W. 82.

Kansas. — Sullivant *v.* Jahren, 71 Kan. 127, 79 Pac. 1071.

Massachusetts. — Tulhane University *v.* O'Connor, 192 Mass. 428, 78 N. E. 494; Foote *v.* Cotting, (Mass. 1907) 80 N. E. 600; Von Arnim *v.* American Tube Works, 188 Mass. 515, 74 N. E. 680.

Michigan. — Superior Drill Co. *v.* Carpenter, (Mich. 1907) 114 N. W. 67; Thiel Detective Service Co. *v.* Seavey, 145 Mich. 674, 108 N. W. 1080; Pittsburg, etc., Min. Co. *v.* Scully, 145 Mich. 229, 108 N. W. 503; Cowan *v.* Sargent Mfg. Co., 141 Mich. 87, 104 N. W. 377.

Minnesota. — Steffens *v.* Nelson, 94 Minn. 365, 102 N. W. 871.

Missouri. — Citizens' Sav. Bank *v.* Marr, (Mo. App. 1908) 107 S. W. 1009.

Montana. — Weidenaar *v.* New York L. Ins. Co., (Mont. 1908) 94 Pac. 1.

Nebraska. — Fitzgerald *v.* Kimball Bros. Co., (Neb. 1906) 107 N. W. 227.

New Jersey. — Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82; Belcher *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 399; Ryle *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 87.

New York. — McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342; Stewart *v.* Harris, 101 N. Y. App. Div. 181, 91 N. Y. Supp. 438; Prichard *v.* Sigafus, 103 N. Y. App. Div. 535, 93 N. Y. Supp. 152; Giebler Mfg. Co. *v.* Kranenberg, 102 N. Y. App. Div. 471, 92 N. Y. Supp. 843; Burnham *v.* Lawson, 118 N. Y. App. Div. 389, 103 N. Y. Supp. 482; Norden *v.* Duke, 120 N. Y. App. Div. 1, 104 N. Y. Supp. 854.

Pennsylvania. — Daley *v.* Iselin, 218 Pa. St. 515, 67 Atl. 837.

South Dakota. — Quale *v.* Hazel, 19 S. Dak. 483, 104 N. W. 215.

Tennessee. — Cason *v.* Cason, 116 Tenn. 173, 93 S. W. 89.

Texas. — Hurlbut *v.* Gainor, (Tex. Civ. App. 1907) 103 S. W. 409; Colvin *v.* Blanchard, (Tex. Civ. App. 1907) 103 S. W. 1118; Sterling *v.* De Laune, (Tex. Civ. App. 1907) 105 S. W. 1169; Suderman-Dolson Co. *v.* Rogers, (Tex. Civ. App. 1907) 104 S. W. 193; Skirvin *v.* O'Brien, (Tex. Civ. App. 1906) 95 S. W. 696.

Washington. — Heinzerling *v.* Agen, (Wash. 1907) 90 Pac. 262.

West Virginia. — Thompson *v.* Murphy, (W. Va. 1906) 53 S. E. 908; Cumberland Third Nat. Bank *v.* Laboringman's Mercantile, etc., Co., 56 W. Va. 446, 49 S. E. 544.

Wisconsin. — Roberts *v.* Francis, 123 Wis. 78, 100 N. W. 1076.

1190. 1. Valley Bank *v.* Brown, (Ariz. 1905) 83 Pac. 362; Heinzerling *v.* Agen, (Wash. 1907) 90 Pac. 262.

2. Ignorance Not Available When Circumstances Sufficient to Put Principal on Inquiry. — Bartleson *v.* Vanderhoff, 96 Minn. 184, 104 N. W. 820.

1191. 1. Giebler Mfg. Co. *v.* Kranenberg, 102 N. Y. App. Div. 471, 92 N. Y. Supp. 843; Hurlbut *v.* Gainor, (Tex. Civ. App. 1907) 103 S. W. 409.

3. Roberts *v.* Francis, 123 Wis. 78, 100 N. W. 1076.

1192. 4. *United States.* — Schiffer *v.* Anderson, (C. C. A.) 146 Fed. 457.

Alabama. — Philips, etc., Mfg. Co. *v.* Wild, 144 Ala. 545, 39 So. 359; Lineville First Nat. Bank *v.* Alexander, (Ala. 1907) 44 So. 866.

Florida. — DeBartlett *v.* DeWilson, 52 Fla. 497, 42 So. 189, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1192.

Georgia. — Dolvin *v.* American Harrow Co., 125 Ga. 699, 54 S. E. 706.

Kansas. — Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074.

Kentucky. — Western Mfg. Co. *v.* Cotton, (Ky. 1907) 104 S. W. 758.

Massachusetts. — McNicholas *v.* Prudential Ins. Co., (Mass. 1907) 82 N. E. 692.

Missouri. — Shinn *v.* Guyton, etc., Mule Co., 109 Mo. App. 557, 83 S. W. 1015.

New Hampshire. — Warren *v.* Hayes, (N. H. 1907) 68 Atl. 193.

New Jersey. — O'Brien *v.* Paterson Brewing, etc., Co., 69 N. J. Eq. 117, 61 Atl. 437.

North Carolina. — Smith Premier Typewriter Co. *v.* Rowan Hardware Co., 143 N. Car. 97, 55 S. E. 417; Cashmar-King Supply Co. *v.* Dowd, (N. Car. 1907) 59 S. E. 685; Corbett *v.* Clute, 137 N. Car. 546, 50 S. E. 216.

Oregon. — McLeod *v.* Despain, (Oregon 1907) 92 Pac. 1088, 90 Pac. 492.

Pennsylvania. — Singer Mfg. Co. *v.* Christian, 211 Pa. St. 534, 60 Atl. 1087.

Texas. — Brennan *v.* Dansby, (Tex. Civ. App. 1906) 95 S. W. 700.

Utah. — Shafer *v.* Russell, 28 Utah 444, 79 Pac. 559.

Washington. — Peterson *v.* Hicks, 43 Wash. 412, 86 Pac. 634.

West Virginia. — Wheeling Ice, etc., Co. *v.* Connor, (W. Va. 1906) 55 S. E. 982; Cumberland Third Nat. Bank *v.* Laboringman's Mercantile, etc., Co., 56 W. Va. 446, 49 S. E. 544.

Ratification in Part. — A corporation may ratify the appointment of an agent without ratifying the contract as to the amount of his compensation. Colpe *v.* Jubilee Min. Co., 2 Cal. App. 393, 84 Pac. 324.

1193. **1.** Cumberland Third Nat. Bank *v.* Laboringman's Mercantile, etc., Co., 56 W. Va. 446, 49 S. E. 544.

2. Cumberland Third Nat. Bank *v.* Laboringman's Mercantile, etc., Co., 56 W. Va. 446, 49 S. E. 544.

1194. **1.** Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1194; Ætna Ins. Co. *v.* Stambaugh-Thompson Co., 76 Ohio St. 138, 81 N. E. 173.

3. Bridwell *v.* Gate City Terminal Co., 127 Ga. 520, 56 S. E. 624, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1194.

1195. **1.** Bush *v.* Fourcher, (Ga. 1907) 59 S. E. 459, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1195; St. Louis Gunning Advertising Co. *v.* Wanamaker, 115 Mo. App. 270, 90 S. W. 737; Matthews *v.* French, 194 Mo. 553, 92 S. W. 634.

2. Circumstances Insufficient to Show Ratification. — See Brown *v.* Foster, 137 Mich. 35, 100 N. W. 167.

Transferring the Title to Goods Sold by an Agent constitutes a ratification. Doolittle *v.* Murray, 134 Iowa 536, 111 N. W. 999.

3. Gambill *v.* Fuqua, (Ala. 1906) 42 So. 735; Chase *v.* Baskerville, 93 Minn. 402, 101 N. W. 950; St. Louis Gunning Advertising Co. *v.* Wanamaker, 115 Mo. App. 270, 90 S. W. 737; Lilienthal *v.* German American Brewing Co., 121 N. Y. App. Div. 628, 106 N. Y. Supp. 402; Cassidy *v.* Saline County Bank, 14 Okla. 532, 78 Pac. 324; Hall *v.* New York, etc., R. Co., 27 R. I. 525, 65 Atl. 278; Quale *v.* Hazel, 19 S. Dak. 483, 104 N. W. 215; Teagarden *v.* Patten, (Tex. Civ. App. 1908) 107 S. W. 909.

1197. **1.** *United States.* — American China Development Co. *v.* Boyd, 148 Fed. 258; Love *v.* Export Storage Co., (C. C. A.) 143 Fed. 1.

Arkansas. — Carter *v.* Gray, 79 Ark. 273, 96 S. W. 377.

California. — Levy *v.* Wolf, 2 Cal. App. 491, 84 Pac. 313; Colpe *v.* Jubilee Min. Co., 2 Cal. App. 393, 84 Pac. 324; Pacific Vinegar, etc., Works *v.* Smith, 145 Cal. 352, 78 Pac. 550.

Florida. — DeBartlett *v.* DeWilson, 52 Fla. 497, 42 So. 189.

Illinois. — Fraternal Army of America *v.* Evans, 114 Ill. App. 578.

Michigan. — Krolik *v.* Curry, 148 Mich. 214, 111 N. W. 761.

Minnesota. — Johnson *v.* Ogren, 102 Minn. 8, 112 N. W. 894; Chase *v.* Baskerville, 93 Minn. 402, 101 N. W. 950.

Missouri. — Millard *v.* Smith, 119 Mo. App. 701, 95 S. W. 940.

New Jersey. — Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419.

Oregon. — Guillaume *v.* K. S. D. Fruit Land Co., 48 Oregon 400, 86 Pac. 883.

Pennsylvania. — Pannebaker *v.* Tuscarora Valley R. Co., (Pa. 1907) 67 Atl. 923; Rheinstrom *v.* Elk Brewing Co., 28 Pa. Super. Ct. 519; Equitable Bldg., etc., Assoc. *v.* Thomas, 216 Pa. St. 571, 65 Atl. 1100.

South Carolina. — Banks *v.* Southern Express Co., 73 S. Car. 211, 53 S. E. 166.

Texas. — Evans-Snider-Buel Co. *v.* Hilje, (Tex. Civ. App. 1904) 83 S. W. 208; Hayward Lumber Co. *v.* Cox, (Tex. Civ. App. 1907) 104 S. W. 403; Goldschmidt *v.* Wagner, (Tex. Civ. App. 1907) 99 S. W. 737; Stetson-Preston Co. *v.* Dodson, (Tex. Civ. App. 1907) 103 S. W. 685.

Vermont. — Lyndon Sav. Bank *v.* International Co., 78 Vt. 169, 62 Atl. 50.

Washington. — Irwin *v.* Buffalo Pitts Co., 39 Wash. 346, 81 Pac. 849; Peterson *v.* Hicks, 43 Wash. 412, 86 Pac. 634; Chilcott *v.* Washington State Colonization Co., (Wash. 1906) 88 Pac. 113; Roberts *v.* Hilton Land Co., (Wash. 1907) 88 Pac. 946.

West Virginia. — Cumberland Third Nat. Bank *v.* Laboringman's Mercantile, etc., Co., 56 W. Va. 446, 49 S. E. 544; Truslow *v.* Parkersburg Bridge, etc., R. Co., 61 W. Va. 628, 57 S. E. 51.

1198. **1.** McKinley *v.* Mineral Hill Consol. Min. Co., (Wash. 1907) 89 Pac. 495.

2. Evans-Snider-Buel Co. *v.* Hilje, (Tex. Civ. App. 1904) 83 S. W. 208; Hayward Lumber Co. *v.* Cox, (Tex. Civ. App. 1907) 104 S. W. 403.

1199. **1.** Farmer *v.* Graettinger Bank, 130 Iowa 477, 107 N. W. 170, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1199.

Accepting Results to Which Entitled Without Ratification. — Continental Ins. Co. *v.* Clark, 126 Iowa 274, 100 N. W. 524.

2. Johnson *v.* Ogren, 102 Minn. 8, 112 N. W. 894.

1201. **1.** Dowagiac Mfg. Co. *v.* Hellekson, 13 N. Dak. 257, 100 N. W. 717, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1201.

3. Western Mfg. Co. *v.* Cotton, (Ky. 1907) 104 S. W. 758; Rheinstrom *v.* Elk Brewing Co., 28 Pa. Super. Ct. 519.

1202. **2** Millard *v.* Smith, 119 Mo. App.

701, 95 S. W. 940; Goldschmidt *v.* Wagner, (Tex. Civ. App. 1907) 99 S. W. 737.

3. Krolik *v.* Curry, 148 Mich. 214, 111 N. W. 761; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

A Corporation cannot set up *ultra vires* as a defense to a contract of which it has received the benefit. Pannebaker *v.* Tuscarora Valley R. Co., (Pa. 1907) 67 Atl. 923.

1203. **1.** Allen *v.* McAllister, 39 Wash. 440, 81 Pac. 927.

2. *Arkansas.* — Ladenberg *v.* Beal-Doyle Dry Goods Co., 83 Ark. 440, 104 S. W. 145.

California. — Brown *v.* Crown Gold Milling Co., 150 Cal. 376, 89 Pac. 86; Pacific Vinegar, etc., Works *v.* Smith, (Cal. 1907) 93 Pac. 85.

Georgia. — Whitley *v.* James, 121 Ga. 521, 49 S. E. 600.

Illinois. — Donason *v.* Barbero, 230 Ill. 138, 82 N. E. 620.

Kansas. — Taylor *v.* Herron, 72 Kan. 652, 82 Pac. 1104; Halloway *v.* Arkansas City Milling Co., (Kan. 1908) 93 Pac. 577.

Kentucky. — Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551; Wheeler *v.* Citizens' Nat. Bank, (Ky. 1908) 107 S. W. 316.

Michigan. — Lindsley *v.* Smith, (Mich. 1907) 114 N. W. 340.

Missouri. — St. Louis Gunning Advertising Co. *v.* Wanamaker, 115 Mo. App. 270, 90 S. W. 737; Kansas City Star Pub. Co. *v.* Standard Warehouse Co., 123 Mo. App. 13, 99 S. W. 765.

New Jersey. — Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419.

New York. — Finch *v.* Gillespie, 122 N. Y. App. Div. 858, 107 N. Y. Supp. 418.

Oregon. — Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139.

Rhode Island. — Hall *v.* New York, etc., R. Co., 27 R. I. 525, 65 Atl. 278.

Washington. — Dusenberry *v.* McDole, 42 Wash. 470, 85 Pac. 40.

West Virginia. — Cumberland Third Nat. Bank *v.* Laboringman's Mercantile, etc., Co., 56 W. Va. 446, 49 S. E. 544; Thompson *v.* Murphy, (W. Va. 1906) 53 S. E. 908.

Wisconsin. — Evans *v.* Crawford County Farmers Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

Silence Not Ratification. — Colvin *v.* Blanchard, (Tex. 1908) 106 S. W. 323.

A Client Does Not Ratify his attorney's employment of associate counsel so as to be liable thereon by a failure to disavow the employment, such hiring being consistent with the theory that it is at the counsel's expense. Lathrop *v.* Hallett, 20 Colo. 207, 77 Pac. 1095.

Silence Does Not Work an Estoppel where the act is completed before it comes to the principal's knowledge and no change in the condition of the parties can occur from his delay. Ilfeld *v.* Ziegler, (Colo. 1907) 91 Pac. 825.

1205. **1.** Lathrop *v.* Hallett, 20 Colo. App. 207, 77 Pac. 1095; Burnham *v.* Lawson, 118 N. Y. App. Div. 389, 103 N. Y. Supp. 482; Norden *v.* Duke, 120 N. Y. App. Div. 1, 104 N. Y. Supp. 854; Colvin *v.* Blanchard, (Tex. Civ. App. 1907) 103 S. W. 1118; Thompson *v.* Murphy, (W. Va. 1906) 53 S. E. 908.

2. Whitley *v.* James, 121 Ga. 521, 49 S. E. 600; Halloway *v.* Arkansas City Milling Co., (Kan. 1908) 93 Pac. 577.

3. Ilfeld *v.* Ziegler, (Colo. 1907) 91 Pac. 825; Whitley *v.* James, 121 Ga. 521, 49 S. E. 600; St. Louis Gunning Advertising Co. *v.* Wanamaker, 115 Mo. App. 270, 90 S. W. 737; Nord *v.* Boston, etc., Consol. Copper, etc., Min. Co., 33 Mont. 464, 84 Pac. 1116; Colvin *v.* Blanchard, (Tex. 1908) 106 S. W. 323.

A Failure for Two Years on the part of a principal to notify the indorsee of notes that the agent who indorsed them had no authority does not constitute a ratification where the indorsee was not thereby prejudiced and the principal derived no benefit from the agent's act. Blum *v.* Whipple, 194 Mass. 253, 80 N. E. 501.

1206. **2.** Johnson *v.* Ogren, 102 Minn. 8, 112 N. W. 894, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206.

1207. **6.** Pacific Vinegar, etc., Works *v.* Smith, 145 Cal. 352, 78 Pac. 550; Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419; Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454, *affirmed* without opinion 185 N. Y. 575, 78 N. E. 1103; Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139; Cumberland Third Nat. Bank *v.* Laboringman's Mercantile, etc., Co., 56 W. Va. 446, 49 S. E. 544; Petersen *v.* Elholm, 130 Wis. 1, 109 N. W. 76.

1208. **2.** Britt *v.* Gordon, 132 Iowa 431, 108 N. W. 319.

1209. **3.** St. Louis Gunning Advertising Co. *v.* Wanamaker, 115 Mo. App. 270, 90 S. W. 737.

4. J. F. Bailey Co. *v.* West Lumber Co., 1 Ga. App. 398, 58 S. E. 120, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1209; Fraternal Army of America *v.* Evans, 215 Ill. 629, 74 N. E. 689, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1209; Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074; Daugherty *v.* Burgess, 118 Mo. App. 557, 94 S. W. 594; Shinn *v.* Guyton, etc., Mule Co., 109 Mo. App. 557, 83 S. W. 1015.

An Action Against an Agent by a principal to recover a commission secretly paid to him by the vendor of real property does not ratify the contract so as to deprive the principal of his right to proceed against the vendor in an action for fraud and deceit. Barnsdall *v.* O'Day, (C. C. A.) 134 Fed. 828.

1210. **1.** Fraternal Army of America *v.* Evans, 215 Ill. 629, 74 N. E. 689.

2. Daugherty *v.* Burgess, 118 Mo. App. 557, 94 S. W. 594; Shinn *v.* Guyton, etc., Mule Co., 109 Mo. App. 557, 83 S. W. 1015.

1211. **1.** See Philips, etc., Mfg. Co. *v.* Wild, 144 Ala. 545, 39 So. 359.

2. Hayes *v.* Atlanta, 1 Ga. App. 25, 57 S. E. 1087; Skirvin *v.* O'Brien, (Tex. Civ. App. 1906) 95 S. W. 696.

1212. **3. Contra under Georgia Code.** — Hayes *v.* Atlanta, 1 Ga. App. 25, 57 S. E. 1087.

1213. **2.** Massachusetts Constr. Co. *v.* Kidd, 142 Fed. 285; Todd *v.* German-American Ins. Co., 2 Ga. App. 789, 59 S. E. 94, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1213;

Whitley *v.* James, 121 Ga. 521, 49 S. E. 600; Brandon *v.* Pritchett, 126 Ga. 294, 55 S. E. 241; Rosehill Cemetery Co. *v.* Dempster, 223 Ill. 567, 79 N. E. 276; Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074; Rogers *v.* Babcock, 139 Mich. 97, 102 N. W. 636, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1213; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651; Mutual L. Ins. Co. *v.* Granniss, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 174, 107 N. Y. Supp. 926; Virginia Pocahontas Coal Co. *v.* Lambert, (Va. 1907) 58 S. E. 561; Truslow *v.* Parkersburg Bridge, etc., R. Co., 61 W. Va. 628, 57 S. E. 51.

1214. **2.** Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651; Equitable Bldg., etc., Assoc. *v.* Thomas, 216 Pa. St. 571, 65 Atl. 1100.

3. Principal Estopped to Deny Authority of Agent. — Lutjeharms *v.* Smith, (Neb. 1906) 107 N. W. 256.

4. *Contra,* Pacific Vinegar, etc., Works *v.* Smith, (Cal. 1907) 93 Pac. 85.

5. *Contra,* Pacific Vinegar, etc., Works *v.* Smith, (Cal. 1907) 93 Pac. 85.

7. Hillman *v.* Hulett, 149 Mich. 289, 112 N. W. 918; Steffens *v.* Nelson, 94 Minn. 365, 102 N. W. 871; Schmidt *v.* Rankin, 193 Mo. 254, 91 S. W. 78; Matthews *v.* French, 194 Mo. 553, 92 S. W. 634.

1216. **2.** Bradlee *v.* Southern Coast Lumber Co., 193 Mass. 378, 79 N. E. 777; Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213; McMahan *v.* Burns, 216 Pa. St. 448, 65 Atl. 806; Newton *v.* Conness, (Tex. Civ. App. 1907) 106 S. W. 892.

Revocation for Cause. — A continuous violation, by an agent employed to sell lots, of a provision in the contract of agency requiring moneys received to be deposited daily is a sufficient ground for a termination of the agency. Macfarren *v.* Gallniger, 210 Pa. St. 74, 59 Atl. 435.

3. Branch *v.* Moore, 84 Ark. 462, 105 S. W. 1178; Weisels-Gerhart Real Estate Co. *v.* Wainwright, (Mo. App. 1907) 105 S. W. 1096; McMahan *v.* Burns, 216 Pa. St. 448, 65 Atl. 806. See Hollingsworth *v.* Young County, (Tex. Civ. App. 1905) 91 S. W. 1094; Newton *v.* Conness, (Tex. Civ. App. 1907) 106 S. W. 892.

1217. **1.** McMahan *v.* Burns, 216 Pa. St. 448, 65 Atl. 806.

6. Frith *v.* Frith, (1906) A. C. 254, 22 Times L. Rep. 388; Rider *v.* Rider, 114 Ill. App. 202; Big Four Wilmington Coal Co. *v.* Wren, 115 Ill. App. 331; Shepard *v.* McNail, 122 Mo. App. 418, 99 S. W. 494; Fisher *v.* Southern L. & T. Co., 138 N. Car. 90, 50 S. E. 592.

1218 **1.** See Hollingsworth *v.* Young County, (Tex. Civ. App. 1905) 91 S. W. 1094.

3. Taylor *v.* Burns, 203 U. S. 120, 27 U. S. Sup. Ct. 40; Brandon *v.* Pritchett, 126 Ga. 294, 55 S. E. 241, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1218 (dissenting opinion); Weaver *v.* Richards, 144 Mich. 395, 108 N. W. 382; Shepard *v.* McNail, 122 Mo. App. 418, 99 S. W. 494; Fisher *v.* Southern L. & T. Co., 138 N. Car. 90, 50 S. E. 592.

4. Joynson *v.* Hunt, 93 L. T. N. S. 470, 21 Times L. Rep. 692; Taylor *v.* Burns, 203 U. S. 120, 27 U. S. Sup. Ct. 40; Brandon *v.* Pritchett, 126 Ga. 294, 55 S. E. 241, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1218 (dissenting opinion); Weaver *v.* Richards, 144 Mich. 395, 108 N. W. 382; Fisher *v.* Southern L. & T. Co., 138 N. Car. 90, 50 S. E. 592; McMahan *v.* Burns, 216 Pa. St. 448, 65 Atl. 806.

Evidence of Custom Requiring Notice Inadmissible. — Joynson *v.* Hunt, 93 L. T. N. S. 470.

1219. **1.** Frith *v.* Frith, (1906) A. C. 254, 22 Times L. Rep. 388.

2. Big Four Wilmington Coal Co. *v.* Wren, 115 Ill. App. 331.

3. Brandon *v.* Pritchett, 126 Ga. 294, 55 S. E. 241, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1219 (dissenting opinion).

Bringing Suit. — A power of attorney to release a claim for personal injuries is revoked by implication where the party granting the power commences suit on the claim. Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730.

1220. **2.** Spinks *v.* Georgia Quincy Granite Co., 114 La. 1044, 38 So. 824; Best *v.* Gunther, 125 Wis. 523, 104 N. W. 82, 918.

3. Burch *v.* Americus Grocery Co., 125 Ga. 153, 53 S. E. 1008; Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321; Ætna Ins. Co. *v.* Stambaugh-Thompson Co., 76 Ohio St. 138, 81 N. E. 173; Best *v.* Gunther, 125 Wis. 523, 104 N. W. 82, 918, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1220 (dissenting opinion).

1221. **1.** Burch *v.* Americus Grocery Co., 125 Ga. 153, 53 S. E. 1008; Parker *v.* Crilly, 113 Ill. App. 309; Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321; Ætna Ins. Co. *v.* Stambaugh-Thompson Co., 76 Ohio St. 138, 81 N. E. 173.

2. Best *v.* Gunther, 125 Wis. 527, 104 N. W. 82, 918, *quoting* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1221 (dissenting opinion).

1222. **4.** Security Trust, etc., Ins. Co. *v.* Ellsworth, 129 Wis. 349, 109 N. W. 125. (In the absence of express or implied agreement to the contrary.)

1223. **1.** *California.* — *In re* Kilborn, (Cal. App. 1907) 89 Pac. 985.

Colorado. — Wittman *v.* Pickens, 33 Colo. 484, 81 Pac. 299.

Georgia. — Anderson *v.* Goodwin, 125 Ga. 663, 54 S. E. 679.

Illinois. — Wallace *v.* Bozarth, 223 Ill. 339, 79 N. E. 57.

Iowa. — Condon *v.* Barnum, (Iowa 1906) 106 N. W. 514.

Maine. — Jones *v.* Jones, 101 Me. 447, 64 Atl. 815; Hartford *v.* McGillicuddy, (Me. 1907) 68 Atl. 860.

Massachusetts. — Barrett *v.* Towne, (Mass. 1907) 82 N. E. 698; Mills *v.* Smith, 193 Mass. 11, 78 N. E. 765.

Michigan. — Weaver *v.* Richards, 144 Mich. 395, 108 N. W. 382.

New York. — Oatman *v.* Watrous, 120 N. Y. App. Div. 66, 105 N. Y. Supp. 174.

North Carolina. — Fisher *v.* Southern L. & T. Co., 138 N. Car. 90, 50 S. E. 592.

North Dakota. — Moore *v.* Weston, 13 N. Dak. 574, 102 N. W. 163.

Oklahoma. — Kimmell *v.* Powers, (Okla. 1907) 91 Pac. 687, *citing* 1 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1022 [1223].

Texas. — Surghenor *v.* Taliaferro, (Tex. Civ. App. 1907) 98 S. W. 648.

Vermont. — See Mathie *v.* Hancock, 78 Vt. 414, 63 Atl. 143.

The Dissolution of a Partnership terminates the agency of the individual partners, where notice of dissolution is duly given. Harris *v.* Zier, 43 Wash. 573, 86 Pac. 928.

2. Death of the Husband will not affect the force and effect of a power of attorney executed by the husband and wife. Skirvin *v.* O'Brien, (Tex. Civ. App. 1906) 95 S. W. 696.

4. An Attorney's Authority Is Not Revoked by the death of a person who employed him to conduct a defense in behalf of his brother, where the deceased had retained no control over the attorney. Barrett *v.* Towne, (Mass. 1907) 82 N. E. 699.

5. Shepard *v.* McNail, 122 Mo. App. 418, 99 S. W. 494.

1225. 1. See also Kimmell *v.* Powers, (Okla. 1907) 91 Pac. 687.

1226. 1. Wallace *v.* Bozarth, 223 Ill. 339, 79 N. E. 57.

2. Love *v.* Peel, 79 Ark. 366, 95 S. W. 998 (attorney); Kimmell *v.* Powers, (Okla. 1907) 91 Pac. 687.

5. Hartford *v.* McGillicuddy, (Me. 1907) 68 Atl. 860.

1229. 4. Hartford *v.* McGillicuddy, (Me. 1907) 68 Atl. 860.

1230. 1. Authority Terminated by Sale. — Weisels-Gerhart Real Estate Co. *v.* Wainwright, (Mo. App. 1907) 105 S. W. 1096.

AGISTMENT.

4. 2. Must Exercise Same Care as Towards His Own Property. — Mattern *v.* McCarthy, 73 Neb. 228, 102 N. W. 468; Darr *v.* Donovan, 73 Neb. 424, 102 N. W. 1012; Nadon *v.* Pesant, 26 Quebec Super. Ct. 384.

5. 1. Agistor Liable Only When Negligent. — Brown *v.* St. John Trust Co., 71 Kan. 134, 80 Pac. 37; Mattern *v.* McCarthy, 73 Neb. 228, 102 N. W. 468; Nadon *v.* Pesant, 26 Quebec Super. Ct. 384.

Agistor Liable for Injuries from Overstocking. — Wallis *v.* Wallace, (Tex. Civ. App. 1905) 92 S. W. 43.

6. 3. Agistor Must Provide Suitable Pasture. — Darr *v.* Donovan, 73 Neb. 424, 102 N. W. 1012; Scovill *v.* Melton, (Tex. Civ. App. 1905) 85 S. W. 463; Tuttle *v.* Moody, (Tex. Civ. App. 1906) 94 S. W. 134.

7. 2. Agistor Must Maintain Good Fences. — Hawkey *v.* Ketchum, (Colo. 1907) 89 Pac. 777, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 7; Glassey *v.* Sligo Furnace Co., 120 Mo. App. 24, 96 S. W. 310; Wallis *v.* Wallace, (Tex. Civ. App. 1905) 92 S. W. 43.

11. 1. Trespasses by Cattle in Possession of Tenant. — Mott *v.* Scott, 35 Colo. 68, 83 Pac. 779.

14. 1. Liens — *Agistor Need Not Be in Business of Pasturing Stock.* — Seale *v.* McCarty, 148 Cal. 61, 82 Pac. 845.

Agistor Must Have Possession. — Speth *v.* Brangman, (Ky. 1905) 84 S. W. 1149; Cotton *v.* Arnold, 118 Mo. App. 596, 95 S. W. 280.

Lien Not Lost by Removal Without Agistor's Knowledge. — Everett *v.* Barse Live Stock Commission Co., 115 Mo. App. 482, 88 S. W. 165.

Lien Not Affected by Contract. — A contract between the owner of the animals and the agistor that the animals shall be pastured in the manner, for the time, and at the price agreed upon will not affect the statutory lien for a reasonable charge. Everett *v.* Barse Live Stock Commission Co., 115 Mo. App. 482, 88 S. W. 165.

Waiver of Lien. — The agistor waives the statutory lien in his favor by recovering judgment for the debt and attaching the property subject to the lien. Crismon *v.* Barse Live Stock Commission Co., 17 Okla. 117, 87 Pac. 876.

AGREEMENT.

16. 3. Understood Synonymous with Agreement. — Holman *v.* Clark, (Ala. 1906) 41 So. 765.

AGRICULTURAL SOCIETIES.

19. 1. Agricultural Societies as Agencies of State. — People *v.* San Joaquin Valley Agricultural Assoc., (Cal. 1907) 91 Pac. 740.

20. 1. Doctrine of Nonuser — When Not Applicable. — Toledo Exposition Co. *v.* Kerr, 28 Ohio Cir. Ct. 547.

2. Kentucky Live Stock Breeders' Assoc. *v.* Hager, (Ky. 1905) 85 S. W. 738; Sheldon *v.* Gage County Soc. of Agriculture, (Neb. 1906) 106 N. W. 474; State *v.* Holmes, (N. Dak. 1907) 112 N. W. 144.

Right of State upon Dissolution. — Where the aid given by the state is clearly intended as a donation to the association, upon the dissolution of the association the state cannot share in the proceeds of the sale of the association's property, although contributors to the association are authorized to do so. Maryland Jockey Club *v.* State, (Md. 1907) 67 Atl. 239.

21. 1. Property Not Liable to Execution When Association Is Agency of State. — People *v.* San Joaquin Valley Agricultural Assoc., (Cal. 1907) 91 Pac. 740.

May Conduct Baseball Game. — Williams *v.* Dean, 134 Iowa 216, 111 N. W. 931.

23. 1. Society Not Liable for False Imprisonment. — Berman *v.* Cosgrove, 95 Minn. 353, 104 N. W. 534.

25. 2. Must Render Buildings and Grounds Safe. — Higgins *v.* Franklin County Agricultural Soc., 100 Me. 565, 62 Atl. 708.

Directors Not Liable for Nonfeasance. — Williams *v.* Dean, 134 Iowa 216, 111 N. W. 931.

3. Misuser of Franchise. — If an association formed for the purpose of encouraging agriculture, although permitted to engage in horse racing, only uses its franchise for the promotion of horse racing and gambling, such use will be ground for the forfeiture of its franchise. State *v.* Delmar Jockey Club, (Mo. 1905) 92 S. W. 185.

AGRICULTURE.

26. 1. Employment in Agriculture — Workmen's Compensation Act. — One employed partly as gamekeeper and partly as carpenter and assistant farmer held to be employed in ***agriculture.*** Smith *v.* Coles, (1905) 2 K. B. 827.

AID.

27. 1. Public Works. — See Burke ***v.*** Snively, 208 Ill. 328, 70 N. E. 327.

AIDER AND ABETTOR.

30. 3. Manslaughter. — There may be aiders and abettors in manslaughter under the *Alabama* Code. Morris *v.* State, 146 Ala. 66, 41 So. 274.

4. State *v.* Jarrell, 141 N. Car. 722, 53 S. E. 127.

6. McLeod *v.* State, 128 Ga. 17, 57 S. E. 83; Lowe *v.* State, 125 Ga. 55, 53 S. E. 1038.

Abolished by Alabama Statute. — Morris *v.* State, 146 Ala. 66, 41 So. 274.

31. 1. Reed *v.* Com., (Ky. 1907) 100 S. W. 856; State *v.* Jarrell, 141 N. Car. 722, 53 S. E. 127; Morales *v.* State, (Tex. Crim. 1906) 95 S. W. 125.

2. Indictment as Against Principal in the First Degree. — Lowe *v.* State, 125 Ga. 55, 53 S. E. 1038; Abrams *v.* Com., (Ky. 1905) 85 S. W. 173; Com. *v.* Sherman, 191 Mass. 439, 78 N. E. 98; Kittrell *v.* State, (Miss. 1907) 42 So. 609; Du Cros *v.* Lambourne, (1907) 1 K. B. 40, 76 L. J. K. B. 50; Rex *v.* De Marny, (1907) 1 K. B. 388, 76 L. J. K. B. 210.

Indictment as Aider and Abettor. — In order to convict one of aiding and abetting another in a crime, it is necessary either to charge the principal with him in the indictment, or if this be not done, then the name of the principal

should be stated, if known, or, if unknown, that fact should appear, and the facts of aiding and abetting sufficiently set forth. Taylor *v.* Com., (Ky. 1906) 90 S. W. 581.

32. 2. See Holmes *v.* State, (Tex. Crim. 1906) 91 S. W. 588.

33. 1. State *v.* Crittenden, 191 Mo. 17, 89 S. W. 952.

34. 2. People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364, 370; State *v.* Crittenden, 191 Mo. 17, 89 S. W. 952; Swinger *v.* State, (Tex. Crim. 1907) 102 S. W. 114.

Instruction Not Implying Intent Erroneous. — The use of the conjunctive "or" in an instruction in defining a principal as one who "aids or abets" instead of the conjunctive "and" as prescribed by the *Montana* Penal Code, § 41, is erroneous, because the word "aid" does not imply guilty knowledge or felonious intent, while the term "abet" does. State *v.* Allen, 34 Mont. 403, 87 Pac. 177.

The Criminal Intent of the Principal is a fundamental issue in a prosecution for aiding and abetting. Brown *v.* U. S., (C. C. A.) 142 Fed. 1.

3. Morris *v.* State, 146 Ala. 66, 41 So. 274; Abrams *v.* Com., (Ky. 1905) 85 S. W. 173.

Illustrations. — As where the defendant kept watch, etc. Lowe *v.* State, 125 Ga. 55, 53 S. E. 1038.

Aiding and abetting may be by conduct, demonstrations, or menaces. Morris *v.* State, 146 Ala. 66, 41 So. 274.

An Instruction that the accused could not be guilty as aider and abettor on a trial for homicide if he gave no "assistance or uttered no word to the person doing the killing," etc., is misleading for using the word "or" instead of "and" between the words "assistance" and "uttered." Morris *v.* State, 146 Ala. 66, 41 So. 274.

36. 1. Morris *v.* State, 146 Ala. 66, 41 So. 274.

ALCOHOLISM, INTEMPERANCE, AND NARCOTICS (in Insurance).

39. 6. **Unless the Representation Is Substantially Untrue**, as to the use of intoxicants, it will not avoid the policy. Metropolitan L. Ins. Co. *v.* Ford, (Ky. 1907) 102 S. W. 876.

40. 1. Franklin L. Ins. Co. *v.* American Nat. Bank, 74 Ark. 1, 84 S. W. 789. See also Provident Sav. L. Assur. Co. *v.* Dees, 120 Ky. 285, 86 S. W. 522.

6. Puls *v.* Grand Lodge, etc., 13 N. Dak. 559, 102 N. W. 165; Fludd *v.* Equitable L. Assur. Soc., 75 S. Car. 315, 55 S. E. 762.

8. Puls *v.* Grand Lodge, etc., 13 N. Dak. 559, 102 N. W. 165.

Exceptional Excessive Use of Intoxicant Does Not Render Man Intemperate. — Fludd *v.* Equitable L. Assur. Soc., 75 S. Car. 315, 55 S. E. 762.

9. Mutual Reserve Fund L. Assoc. *v.* Cotter, 81 Ark. 205, 99 S. W. 67; Pacific Mut. L. Ins. Co. *v.* Terry, (Tex. Civ. App. 1904) 84 S. W. 656.

43. 4. One who occasionally waited on customers in a saloon without compensation was held not to be "connected" with the sale of liquors. Collins *v.* Metropolitan L. Ins. Co., 32 Mont. 329, 80 Pac. 609, 1092; Stevens *v.* Modern Woodmen of America, 127 Wis. 606, 107 N. W. 8.

44. 1. Pauley *v.* Modern Woodmen of America, 113 Mo. App. 473, 87 S. W. 990.

45. 2. Under Acts Ky. 1903, § 639, unless there is a material misrepresentation the policy will not be avoided. Provident Sav. L. Assur. Co. *v.* Dees, 120 Ky. 285, 86 S. W. 522.

48. 3. Puls *v.* Grand Lodge, etc., 13 N. Dak. 559, 102 N. W. 165.

49. 1. Metropolitan L. Ins. Co. *v.* Ford, (Ky. 1907) 102 S. W. 876.

2. Franklin L. Ins. Co. *v.* American Nat. Bank, 74 Ark. 1, 84 S. W. 789.

3. Provident Sav. L. Assur. Co. *v.* Dees, 120 Ky. 285, 86 S. W. 522; Pacific Mut. L. Ins. Co. *v.* Terry, (Tex. Civ. App. 1904) 84 S. W. 656.

8. **The Court Is Not Required to Define the Term "Use"** where a special charge is not requested. Pacific Mut. L. Ins. Co. *v.* Terry, (Tex. Civ. App. 1904) 84 S. W. 656.

50. 5. Metropolitan L. Ins. Co. *v.* Ford, (Ky. 1907) 102 S. W. 876. See also Paquette *v.* Prudential Ins. Co., 193 Mass. 215, 79 N. E. 250.

7. Puls *v.* Grand Lodge, etc., 13 N. Dak. 559, 102 N. W. 165; Pacific Mut. L. Ins. Co. *v.* Terry, (Tex. Civ. App. 1904) 84 S. W. 656.

8. Langdeau *v.* John Hancock Mut. L. Ins. Co., 194 Mass. 56, 80 N. E. 452.

51. 2. Ætna Life Ins. Co. *v.* Bockting, 39 Ind. 586, 79 N. E. 524.

3. Modern Woodmen of America *v.* Buckenridge, 75 Kan. 373, 89 Pac. 661.

ALIAS.

52. 1. **Alias.** — See State *v.* Barrick, 60 W. Va. 576, 55 S. E. 652.

ALIBI.

53. 1. **An Alibi.** — Williams *v.* State, 123 Ga. 138, 51 S. E. 322 (to the same effect as Wright *v.* State, 34 Ga. 114, stated in the original note).

54. 1. **Evidence of Alibi to Be Treated Like Other Evidence.** — State *v.* Bond, 191 Mo. 555, 90 S. W. 830.

2. **Failure to Instruct Not Error if No Request Made.** — State *v.* Bond, 191 Mo. 555, 90 S. W. 830; Heidelbaugh *v.* State, (Neb. 1907) 113 N. W. 145.

Where the Defense of Alibi Is Not Interposed, and the defendant offers no testimony on that subject, failure to instruct thereon is not error. State *v.* White, 189 Mo. 339, 87 S. W. 1188.

55. 1. **Refusal to Instruct Reversible Error.** — Burns *v.* State, 75 Ohio St. 407, 79 N. E. 929; Harper *v.* State, (Tex. Crim. 1906) 98 S. W. 839.

3. **Rule that Burden of Proof Remains upon Prosecution.** — Glover *v.* U. S., (C. C. A.) 147 Fed. 426, *reversing* 6 Indian Ter. 262, 91 S. W. 41.

56. 1. Burns *v.* State, 75 Ohio St. 407, 79 N. E. 929.

2. **Jury Must Acquit on Reasonable Doubt of Guilt.** — Glover *v.* U. S., (C. C. A.) 147 Fed. 426; Jordan *v.* State, 50 Fla. 94, 39 So. 155; Flanagan *v.* People, 214 Ill. 170, 73 N. E. 347; State *v.* Thomas, (Iowa 1906) 109 N.

W. 900; Briggs *v.* People, 219 Ill. 330, 76 N. E. 499; State *v.* Gadsden, 70 S. Car. 430, 50 S. E. 16.

57. 1. **Evidence Need Not Be Conclusive.** — Jordan *v.* State, 50 Fla. 94, 39 So. 155.

58. 1. **Evidence of Alibi Must Cover Whole Time of Offense.** — Briggs *v.* People, 219 Ill. 330, 76 N. E. 499.

ALIENATE, ALIENATION, ETC.

60. 2. **Deed of Trust by Married Woman** held to be an *alienation*. Collier *v.* Alexander, 142 Ala. 422, 38 So. 244.

Voluntary — Bankruptcy. — *In re* Cotgrave, (1903) 2 Ch. 705, 72 L. J. Ch. 777, 89 L. T. N. S. 433, 52 W. R. 411, 10 Manson 377.

ALIENS.

64. 2. Zartarian *v.* Billings, 204 U. S. 170, 27 U. S. Sup. Ct. 182; U. S. *v.* Williams, 132 Fed. 894; *In re* Buchsbaum, 141 Fed. 221; Low Foon Yin *v.* U. S. Immigration Com'r, (C. C. A.) 145 Fed. 791; Taylor *v.* U. S., (C. C. A.) 152 Fed. 1; Rodgers *v.* U. S., (C. C. A.) 152 Fed. 346; Donaldson *v.* State, 167 Ind. 553, 78 N. E. 182; State *v.* Jackson, 79 Vt. 504, 65 Atl. 657.

Presumption. — Long residence is not sufficient to overcome the presumption. Ehrlich *v.* Weber, 114 Tenn. 711, 88 S. W. 188.

A Citizen of Porto Rico is not an alien to the United States. Basso *v.* U. S., 40 Ct. Cl. 202.

Exclusion and Deportation. — Although an alien may have entered the United States wrongfully, he cannot be deported after having acquired a certificate of residence. *In re* Tom Hon, 149 Fed. 842.

The crown has power to exclude an alien and may delegate that power to Canada. Atty.-Gen. *v.* Cain, (1906) A. C. 542, *reversing Re* Gilhula, 10 Ont. L. Rep. 469.

Naturalization. — Where an alien comes to the United States, leaving minor children behind, his naturalization will not have the effect of making his children citizens. Zartarian *v.* Billings, 204 U. S. 170, 27 U. S. Sup. Ct. 182; U. S. *v.* Williams, 132 Fed. 894. See the title CITIZENSHIP.

65. 4. **Antenati.** — State *v.* Jackson, 79 Vt. 504, 65 Atl. 657.

66. 1. Green *v.* U. S., (C. C. A.) 150 Fed. 560; State *v.* Neibekier, 184 Mo. 211, 83 S. W. 523; Papageorgiouv *v.* Turner, 37 N. Bruns. 449.

67. 1. Patek *v.* American Smelting, etc., Co., (C. C. A.) 154 Fed. 190.

Suits Against United States in Court of Claims. — Basso *v.* U. S., 40 Ct. Cl. 202; Philippine Sugar Estates Development Co. *v.* U. S., 39 Ct. Cl. 225.

Suits between Aliens. — One alien cannot as a matter of right sue another alien in the state courts upon a cause of action accruing abroad, where the parties are transiently within the state. Gesellschaft *v.* Umbreit, 127 Wis. 651, 106 N. W. 821.

The courts of a state have jurisdiction of an action by one alien against another for a tort committed in a foreign country. *Per* Cassoday, C. J., *dissenting*, in Gesellschaft *v.* Umbreit, 127 Wis. 651, 106 N. W. 821, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 66, 67.

Suits between Aliens and Citizens. — An alien wife cannot sue under an act giving the wife the right to sue for damages for the wrongful death of her husband. Maiorano *v.* Baltimore, etc., R. Co., 216 Pa. St. 402, 65 Atl. 1077.

Personal Representative or Next of Kin May Bring Action for Wrongful Death. — Cleveland, etc., R. Co. *v.* Osgood, 36 Ind. App. 34, 73 N. E. 285; Baltimore, etc., R. Co. *v.* Baldwin, (C. C. A.) 144 Fed. 53; Rietveld *v.* Wabash R. Co., 129 Iowa 249, 105 N. W. 515; Atchison, etc., R. Co. *v.* Fajardo, 74 Kan. 314, 86 Pac. 301; Alfson *v.* Bush Co., 182 N. Y. 393, 75 N. E. 230; Tanas *v.* Municipal Gas Co., 88 N. Y. App. Div. 251, 84 N. Y. Supp. 1053; Pittsburgh, etc., R. Co. *v.* Naylor, 73 Ohio St. 115, 76 N. E. 505.

Suits Wherein Interest of Aliens and Citizens Conflict. — In garnishment proceedings wherein a alien and a citizen are claimants of funds belonging to an alien debtor, the citizen will be given preference whether his claim is prior in point of time or not. Gesellschaft *v.* Umbreit, 127 Wis. 651, 106 N. W. 821.

Alien Trustee in Involuntary Bankruptcy Proceedings Obtains No Title to Debtor's Property Within State. — Gesellschaft *v.* Umbreit, 127 Wis. 651, 106 N. W. 821.

68. 7. Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 107, 96 N. Y. Supp. 681.

Alien Administrator Must Give Bond. — Wyman, Petitioner, 191 Mass. 276, 77 N. E. 379.

8. Alien May Be Trustee in Bankruptcy. — *In re* Coe, 154 Fed. 162.

69. 1. State *v.* Jackson, 79 Vt. 504, 65 Atl. 657.

7. Criminal Cases. — The alienage of a juror may be waived. Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237.

70. 3. McCormack *v.* Coddington, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 510, 95 N. Y. Supp. 46; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; Abrams *v.* State, (Wash. 1907) 88 Pac. 327, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 70–74.

The Grantor of an Alien Is Estopped from claiming a deed to be invalid after standing by for several years and allowing the grantee to make valuable improvements. Abrams *v.* State, (Wash. 1907) 88 Pac. 327.

Public Lands. — An alien will be protected in his possession of public lands as against a trespasser. Johnson *v.* Eversole Lumber Co., (N. Car. 1907) 57 S. E. 518.

Administration of Alien's Estate — Right of Consul. — The Russian vice-consul has the right to administration on the estate of a Russian subject in preference to the public administrator. Wyman, Petitioner, 191 Mass. 276, 77 N. E. 379.

The State's Right to Declare a Forfeiture of an alien's land will not avail a citizen. Sparks *v.* Bodensick, 72 Kan. 5, 82 Pac. 463.

Mortgage Payable to Alien to Escape Taxation Not Void. — McKinnon *v.* Waterbury, 136 Fed. 489.

72. 1. Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

Alien May Be Beneficiary under Express Trust Created by Will. — Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

2. McCormack *v.* Coddington, 184 N. Y. 467, 77 N. E. 979, *reversing* 109 N. Y. App. Div. 741, 96 N. Y. Supp. 571; Abrams *v.* State, (Wash. 1907) 88 Pac. 327, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 70–74; State *v.* World Real Estate Commercial Co., (Wash. 1907) 89 Pac. 471.

73. 1. Stewart *v.* Russell, 184 N. Y. 601, 77 N. E. 983; Ehrlich *v.* Weber, 114 Tenn. 711, 88 S. W. 188; Abrams *v.* State, (Wash. 1907) 88 Pac. 327, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 70–74.

An Alien May Take by Descent under the New York Statute but cannot hold the property unless he files his declaration. McCormack *v.* Coddington, 184 N. Y. 467, 77 N. E. 979, *reversing* 109 N. Y. App. Div. 741, 96 N. Y. Supp. 571.

The Law Existing at the Time of Descent Cast governs the right to inherit. Sparks *v.* Bodensick, 72 Kan. 5, 82 Pac. 463; McCormack *v.* Coddington, 184 N. Y. 467, 77 N. E. 979, *reversing* 109 N. Y. App. Div. 741, 96 N. Y. Supp. 571.

74. 1. McCormack *v.* Coddington, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 510, 95 N. Y. Supp. 46; Haley *v.* Sheridan, 190 N. Y. 331, 83 N. E. 296, *affirming* 107 N. Y. App. Div. 17, 94 N. Y. Supp. 864; Abrams *v.* State, (Wash. 1907) 88 Pac. 327, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 70–74.

Escheat. — McCormack *v.* Coddington, 184 N. Y. 467, 77 N. E. 979, *reversing* 109 N. Y. App. Div. 741, 96 N. Y. Supp. 571.

The fact that a nonresident alien is a lunatic and that his property will escheat to the state on his death does not prevent his conservator from removing the property. Langmuir *v.* Landes, 113 Ill. App. 134.

Under the *Washington* Constitution, art. 2, § 33, it was held that the state having failed to declare a forfeiture or escheat, prior to death of alien, it had lost its right so to do. Abrams *v.* State, (Wash. 1907) 88 Pac. 327; State *v.* World Real Estate Commercial Co., (Wash. 1907) 89 Pac. 471.

Civ. Code Mont., §§ 1867, 1869, providing a method by which alien heirs may be compensated where property has escheated, does not apply to citizens. *In re* Pomeroy, 33 Mont. 69, 81 Pac. 629.

Under the Civ. Code Cal., §§ 672, 1404, land of an alien who dies and leaves only nonresident alien heirs will escheat after five years. State *v.* Miller, 149 Cal. 208, 85 Pac. 609.

In an Action to Escheat, all the rights of the parties are determined as of the time the action commenced. State *v.* Ellis, (Kan. 1905) 79 Pac. 1066, 1133.

75. 1. Stewart *v.* Russell, 184 N. Y. 601, 77 N. E. 983; McCormack *v.* Coddington, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 510, 95 N. Y. Supp. 46.

The common-law rule is abolished in *New York.* Haley *v.* Sheridan, 107 N. Y. App. Div. 17, 94 N. Y. Supp. 864, *affirmed* 190 N. Y. 331, 83 N. E. 296.

2. Cook *v.* Doron, 215 Pa. St. 393, 7 Ann. Cas. 502, 64 Atl. 595.

76. 1. **Statutes Modifying Common-law Rule as to Property Rights of Aliens.** — For authorities additional to the original article see Sh[illegible] *v.* Nilima, (C. C. A.) 133 Fed. 209; State *v.* Ellis, (Kan. 1905) 79 Pac. 1066, 1133; McCormack *v.* Coddington, 184 N. Y. 467, 77 N. E. 979, *reversing* 109 N. Y. App. Div. 741, 96 N. Y. Supp. 571; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; Haley *v.* Sheridan, 190 N. Y. 331, 83 N. E. 296, *affirming* 107 N. Y. App. Div. 17, 94 N. Y. Supp. 864; Cook *v.* Doron, 215 Pa. St. 393, 7 Ann. Cas. 502, 64 Atl. 595; Ehrlich *v.* Weber, 114 Tenn. 711, 88 S. W. 188; Abrams *v.* State, (Wash. 1907) 88 Pac. 327; State *v.* World Real Estate Commercial Co., (Wash. 1907) 89 Pac. 471; State *v.* Evans, (Wash. 1907) 89 Pac. 565.

81. 1. State *v.* Evans, (Wash. 1907) 89 Pac. 565.

The Right of a Locator Can Be Questioned Only by the United States. Stewart *v.* Gold, etc., Co., 29 Utah 443, 82 Pac. 475; Shea *v.* Nilima, 133 Fed. 209, 66 C. C. A. 263.

Defeasible Location of Mining Lands by Alien Cured by Grant to Citizen. — Stewart *v.* Gold, etc., Co., 29 Utah 443, 82 Pac. 475.

A Subsequent Declaration of Intention by a Locator prior to the inception of adverse rights relates back to the date of the location. Shea *v.* Nilima, (C. C. A.) 133 Fed. 209.

Agreement Between Aliens as to Location of Mining Claim Valid. — Shea *v.* Nilima, (C. C. A.) 133 Fed. 209.

2. Cleveland, etc., R. Co. *v.* Osgood, 36 Ind. App. 34, 73 N. E. 285, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 81.

82. 2. Abrams *v.* State, (Wash. 1907) 88 Pac. 327.

83. 1. **Alien Heirs May Have Partition.** — Ehrlich *v.* Weber, 114 Tenn. 711, 88 S. W. 188.

Partition of Property Devised to Alien Heirs May Be Decreed. — Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

4. Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

85. 2. **Rights Secured to Aliens by Treaty** — *Austria-Hungary.* — State *v.* Neibekier, 184 Mo. 211, 83 S. W. 523.

German Empire — Hanseatic Republic of Bremen. — Sparks *v.* Bodensick, 72 Kan. 5, 82 Pac. 463.

Great Britain. — Dockstader *v.* Kershaw, 4 Penn. (Del.) 398, 55 Atl. 341.

Italy. — Maiorano *v.* Baltimore, etc., R. Co., 216 Pa. St. 402, 65 Atl. 1077.

Prussia. — Gesellschaft *v.* Umbreit, 127 Wis. 651, 106 N. W. 821.

Russia. — Wyman, Petitioner, 191 Mass. 276, 77 N. E. 379.

Saxony. — Ehrlich *v.* Weber, 114 Tenn. 711, 88 S. W. 188.

Removal of Disability to Inherit. — Ehrlich *v.* Weber, 114 Tenn. 711, 88 S. W. 188.

Alien Heir Not Required to Make Formal Demand of Rights under Treaty. — Ehrlich *v.* Weber, 114 Tenn. 711, 88 S. W. 188.

86. 1. Dockstader *v.* Kershaw, 4 Penn. (Del.) 398, 55 Atl. 341, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 86; Ehrlich *v.* Weber, 114 Tenn. 711, 88 S. W. 188.

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92. 1. Soule *v.* Soule, 4 Cal. App. 97, 87 Pac. 205, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 92; Muir *v.* Muir, (Ky. 1906) 92 S. W. 314; State *v.* Judge, 114 La. 44, 38 So. 14; Cizek *v.* Cizek, 69 Neb. 800, 99 N. W. 28, *reversing* 69 Neb. 797, 96 N. W. 657. See also Stark *v.* Stark, 115 Mo. App. 436, 91 S. W. 413, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 92.

Maintenance and Permanent Alimony Are Synonymous. — Huffman *v.* Huffman, 47 Oregon 610, 86 Pac. 593.

94. 1. Rariden *v.* Rariden, 33 Ind. App. 284, 70 N. E. 398; Patton *v.* Patton, (N. J. 1904) 58 Atl. 1019.

2. Walker *v.* Walker, 127 Iowa 77, 102 N. W. 435; Breen *v.* Breen, (Ky. 1906) 91 S. W. 251; Rhoades *v.* Rhoades, (Neb. 1907) 111 N. W. 122; Brewer *v.* Brewer, (Neb. 1907) 113 N. W. 161; Cureton *v.* Cureton, 117 Tenn. 103, 96 S. W. 608, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 93, 94.

95. 1. Horton *v.* Horton, 75 Ark. 22, 86 S. W. 824; Cureton *v.* Cureton, 117 Tenn. 103, 96 S. W. 608, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95.

In Canada. — See Lovell *v.* Lovell, 11 Ont. L. Rep. 547, *affirmed* 13 Ont. L. Rep. 569.

96. 1. **Both Parties at Fault.** — See *contra,* Elliott *v.* Elliott, 34 Colo. 298, 83 Pac. 630.

3. Levin *v.* Levin, 68 S. Car. 123, 46 S. E. 945; Lovell *v.* Lovell, 11 Ont. L. Rep. 547, *affirmed* 13 Ont. L. Rep. 569.

When the Wife Left the Husband Without Justifiable Cause and imposed as a condition of returning that he should send away a little girl they had adopted, it was held that no alimony should be granted. Hilton *v.* Hilton, 88 Miss. 529, 41 So. 262, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 96 *et seq.*

97. 2. Garrison *v.* Garrison, (Ky. 1907) 104 S. W. 980.

98. 2. Bidwell *v.* Bidwell, 139 N. Car. 402, 52 S. E. 55.

99. 4. Brady *v.* Brady, 144 Ala. 414, 39 So. 237, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99.

Defeated Only by Agreement or by Misconduct of Wife. — Hawley *v.* Hawley, 95 N. Y. App. Div. 274, 88 N. Y. Supp. 606.

5. Brady *v.* Brady, 144 Ala. 414, 39 So. 237, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99; Nipper *v.* Nipper, 129 Ga. 450, 59 S. E. 226; Behrle *v.* Behrle, 120 Mo. App. 677, 97 S. W. 1005.

100. 6. Kowalsky *v.* Kowalsky, 145 Cal. 394, 78 Pac. 877; Sparks *v.* Sparks, 25 App. Cas. (D. C.) 356; Day *v.* Day, 12 Idaho 556, 86 Pac. 531, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 100; Steller *v.* Steller, 115 Ill. App. 323; Stark *v.* Stark, 115 Mo. App. 436, 91 S. W. 413, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 100; McArthur *v.* McArthur, 15 Manitoba 151.

101. 1. Brady *v.* Brady, 144 Ala. 414, 39 So. 237, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 101; Lesh *v.* Lesh, 21 App. Cas. (D. C.) 475; Smith *v.* Smith, 125 Ga. 384, 53 S. E. 958; Coley *v.* Coley, 128 Ga. 654, 58 S. E. 205; Steller *v.* Steller, 115 Ill. App. 323; Ross *v.* Ross, (Miss. 1906) 42 So. 382. See also Bishop *v.* Bishop, 124 Ga. 293, 52 S. E. 743; McLauchlin *v.* McLauchlin, 128 Ga. 653, 58 S. E. 156.

On Application for Alimony for the Wife and Children an award to the children only will not be disturbed if there was no abuse of discretion. Rochester *v.* Rochester, 124 Ga. 993, 53 S. E. 399.

The Evidence Being Conflicting as to whether the wife left the home voluntarily in unprovoked anger or was compelled to leave because of cruel treatment, it was held that there was no abuse of discretion in declining to grant temporary alimony. Pearson *v.* Pearson, 125 Ga. 132, 54 S. E. 194.

2. Reed *v.* Reed. 85 Miss. 126, 37 So. 642, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 101; Post *v.* Post, (Supm. Ct. Spec. T.) 105 N. Y. Supp. 910.

Court Should Be Satisfied of Complainant's Good Faith. — Brady *v.* Brady, 144 Ala. 414, 39 So. 237, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 101.

Right to Ultimate Relief Doubtful. — Smith *v.* Smith, 92 N. Y. App. Div. 442, 87 N. Y. Supp. 137.

Must Offer Some Evidence to show probable success. Heyman *v.* Heyman, 119 N. Y. App. Div. 182, 104 N. Y. Supp. 227.

Where Alimony Was Refused to the Wife but Granted for the Children, it was held that the fact that she collected some of the amount while the suit was pending was not ground for dismissing the bill of exceptions. Coley *v.* Coley, 128 Ga. 654, 58 S. E. 205.

102. 1. Abandonment by the wife of her application for alimony for herself and children does not prevent the judge from granting alimony to the children. Edmondson *v.* Edmondson, 128 Ga. 53, 57 S. E. 308.

104. 3. Stapleberg *v.* Stapleberg, 77 Conn. 31, 58 Atl. 233; Willits *v.* Willits, (Neb. 1906) 107 N. W. 379; Leckney *v.* Leckney, 26 R. I. 441, 59 Atl. 311, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 104.

New York. — In an action by a wife to annul the marriage alimony *pendente lite* cannot be allowed. Jones *v.* Brinsmade, 183 N. Y. 258, 5 Ann. Cas. 378, 76 N. E. 22, *reversing* 104 N. Y. App. Div. 619, 93 N. Y. Supp. 674, and *overruling* Gore *v.* Gore, 103 N. Y. App. Div. 74, 92 N. Y. Supp. 634, *affirming* (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 323, 89 N. Y. Supp. 902.

105. 1. **Separation Caused by Husband's Insanity.** — Moseley *v.* Larson, 86 Miss. 288, 38 So. 234.

Resumption of Marital Relations after the application for alimony *pendente lite* is a bar to an allowance. Fullhart *v.* Fullhart, 109 Mo. App. 705, 83 S. W. 541.

Where the Separation Was by Mutual Agreement alimony was not allowed. Patton *v.* Patton, (N. J. 1904) 58 Atl. 1019.

106. 1. Brady *v.* Brady, 144 Ala. 414, 39 So. 237; Steller *v.* Steller, 115 Ill. App. 323;

Stark v. Stark, 115 Mo. App. 436, 91 S. W. 413, *quoting* 2 Am. & Eng. Encyc. of Law (2d ed.) 105; Lambert v. Lambert, 100 Mo. App. 19, 84 S. W. 203.

2. Husband's Offer to Pay for Necessaries is insufficient answer to motion for interim alimony. Theakstone v. Theakstone, 10 Ont. L. Rep. 380.

3. Where the wife after the marriage received an income as a school teacher and had saved about $500 it was held that as her earnings presumably belonged to her husband on account of the marital relation or had been given to her by him, alimony *pendente lite* would not be granted. Richardson v. Richardson, (Supm. Ct. Spec. T.) 94 N. Y. Supp. 582.

107. 1. Ross v. Ross, (Miss. 1906) 42 So. 382.

108. 4. Allowance to Wife in Prison. — Alimony *pendente lite* was granted where the wife was in jail on complaint of her husband. Harmon v. Harmon, 8 Penn. (Del.) 152, 68 Atl. 1042.

5. Dean v. Dean, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 149, 96 N. Y. Supp. 472.

109. 8. See McArthur v. McArthur, 15 Manitoba 151.

110. 1. Gay v. Gay, 146 Cal. 237, 79 Pac. 885.

In Haddock v. Haddock, 109 N. Y. App. Div. 502, 96 N. Y. Supp. 522, the case had been taken on a writ of error to the United States Supreme Court and the judgment of the lower court had been stayed pending appeal, but it was held that this did not affect the authority of the lower court to award alimony pending the appeal.

Death of Husband Terminates Right. — Strickland v. Strickland, 80 Ark. 451, 97 S. W. 659.

2. Blankenmiester v. Blankenmiester, 106 Mo. App. 390, 80 S. W. 706.

3. On Appeal by the Wife in a Suit for Separate Maintenance alimony may be allowed if the appeal is in good faith. Behrle v. Behrle, 120 Mo. App. 677, 97 S. W. 1005.

Previous Decree of Separate Maintenance. — Where the wife obtained a decree for separate maintenance and the husband afterward brought suit and obtained judgment of divorce, it was held error to grant alimony pending an appeal from an order for a new trial without a showing that the provision made in the decree for separate maintenance was inadequate. Smith v. Smith, 147 Cal. 143, 81 Pac. 411.

111. 2. Yource v. Yource, 1 Cal. App. 152, 81 Pac. 1021; Wald v. Wald, 124 Iowa 183, 99 N. W. 720; Barker v. Barker, 136 N. Car. 316, 48 S. E. 733.

Should Not Exceed One-half of Husband's Net Income. — Brady v. Brady, 144 Ala. 414, 39 So. 237.

112. 5. Illustrations. — Where it appeared that the husband was worth $100,000 and received an income of $600 a month, it was not an abuse of discretion to allow the wife $100 a month alimony *pendente lite* and $250 counsel fees even though the wife had about $700 worth of property. Kowalsky v. Kowalsky, 145 Cal. 394, 78 Pac. 877.

In Weigand v. Weigand, 103 N. Y. App. Div. 42, 92 N. Y. Supp. 670, an allowance of $12 a week was made where it was not shown that the husband was earning more than $20 per week.

Where the husband's property consisted of an equity of $1,500 in an unimproved lot and equity of $2,000 in his residence on which he paid over $800 taxes, and a salary of $5,000, and he supported his mother and sister, it was held that an allowance of $20 a week and the use of the residence was excessive. Bressette v. Bressette, 95 N. Y. App. Div. 167, 88 N. Y. Supp. 580.

For Other Examples, see Melvin v. Melvin, 129 Ga. 42, 58 S. E. 474; Hancock v. Hancock, 134 Iowa 475, 109 N. W. 1000; Stark v. Stark, 115 Mo. App. 436, 91 S. W. 413.

113. 1. Trial Court Best Judge of Amount Required. — King v. King, (Neb. 1907) 113 N. W. 543.

Either as Plaintiff or Defendant. — Day v. Day, 21 Kan. 755, 80 Pac. 941.

114. 2. Plattner v. Plattner, 116 Mo. App. 405, 91 S. W. 459.

Past Expenses. — Gay v. Gay, 146 Cal. 237, 79 Pac. 885.

5. Bauer v. Bauer, (Supm. Ct. Spec. T.) 42 Misc. (N. Y.) 557, 87 N. Y. Supp. 607.

An Allowance of Counsel Fees is presumed to be included in the amount where the order is silent on the point. Van Dyke v. Van Dyke, 125 Ga. 491, 54 S. E. 537, similar to Bauman v. Bauman, (18 Ark. 320) in the original article.

On a Motion to Vacate a Judgment in her favor the wife may be allowed counsel fees. Grimanis v. Superior Ct., 143 Cal. 630, 77 Pac. 647.

A Divorce Obtained in One State which is not recognized as valid in another state is not a bar to counsel fees in a subsequent action in the latter state. Dean v. Dean, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 149, 96 N. Y. Supp. 472.

115. 1. Zent v. Sullivan, (Wash. 1906) 91 Pac. 1088.

4. Proof of the Amount of Labor or the Value of Services. — Sweat v. Sweat, 123 Ga. 801, 51 S. E. 716; Jones v. Jones, 111 Ill. App. 396; Cochran v. Cochran, 93 Minn. 284, 101 N. W. 179.

Illustrations as to Number of Counsel and Amount of Fees. — Bressette v. Bressette, 95 N. Y. App. Div. 167, 88 N. Y. Supp. 580; Schulz v. Schulz, 128 Wis. 28, 107 N. W. 302.

116. 4. Alimony Accrued at the Time of Discontinuance may be collected. Schulz v. Schulz, 128 Wis. 28, 107 N. W. 302.

6. Resumption of Marital Relations after application for alimony *pendente lite* does not bar the right to counsel fees for services rendered up to the time of the reconciliation. Fullhart v. Fullhart, 109 Mo. App. 705, 83 S. W. 541.

117. 5. Alimony Should Be Allowed if the separation is through the fault of the husband. Thompson v. Thompson, (Ky. 1906) 84 S. W. 730.

That the Husband's Fault Caused the Separation must be shown. Vollman v. Vollman, 147 Cal. 155, 81 Pac. 413; Smith v. Smith, (Ky. 1905) 86 S. W. 692; McMahon v. McMahon, (Ky. 1905) 87 S. W. 1140.

An Agreement to Pay Certain Monthly Amounts as a condition of discontinuance is in the nature

of alimony and enforceable in equity. Shirey *v.* Hill, 81 Ark. 137, 98 S. W. 731; Baker *v.* Baker, (Ky. 1905) 85 S. W. 729.

6. Not Assignable. — Fournier *v.* Clutton, 146 Mich. 298, 109 N. W. 425.

8. Jackson *v.* Burns, 116 La. 695, 41 So. 40; Willits *v.* Willits, (Neb. 1906) 107 N. W. 379.

118. 1. Right to Grant Inherent in Equity Court. — Gore *v.* Gore, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 323, 89 N. Y. Supp. 902, *affirmed* 103 N. Y. App. Div. 74, 92 N. Y. Supp. 634.

2. Under a statute allowing permanent alimony in any divorce excepting where caused by the adultery of the wife, and another statute providing that if the marriage was annulled for the adultery of the husband the wife should be entitled to dower, it was held proper to allow permanent alimony and also to allow dower rights. Sodini *v.* Sodini, 96 Minn. 329, 104 N. W. 976.

Under a statute providing that "in granting a decree the court * * * shall make provision for the guardianship, custody, support, and education of the minor children of the marriage," it was held that the court had authority to make an allowance for the support of the wife if she had the custody of the child. Claiborne *v.* Claiborne, (Wash. 1907) 91 Pac. 763.

In *Canada* it has been held no objection to an application for permanent alimony that the wife has obtained a decree *nisi* for divorce on the ground of impotency. Brown *v.* Brown, 13 British Columbia 73.

4. Neander *v.* Neander, 35 Colo. 495, 84 Pac. 69; Dollins *v.* Dollins, (Ky. 1904) 83 S. W. 95; Cole *v.* Cole, 115 Mo. App. 466, 91 S. W. 457.

Where the husband abandoned the wife and she was afterward guilty of adultery, thereby entitling the husband to a divorce, alimony was refused. Van Horn *v.* Arantes, 116 La. 130, 40 So. 592.

Physical Incapacity of the Wife which she does not disclose is sufficient fault to prevent an allowance. Mutter *v.* Mutter, (Ky. 1906) 97 S. W. 393.

119. 3. Stacker *v.* Stacker, 117 Ill. App. 549; Lofvander *v.* Lofvander, 146 Mich. 370, 109 N. W. 662; Pauly *v.* Pauly, 14 Okla. 1, 76 Pac. 148.

120. 4. Watson *v.* Watson, 37 Ind. App. 548, 77 N. E. 355; Muir *v.* Muir, (Ky. 1906) 92 S. W. 314; Read *v.* Read, 28 Utah 297, 78 Pac. 675.

Every Material Fact Should Be Placed Before Court. — Ferguson *v.* Ferguson, 145 Mich. 290, 108 N. W. 682.

Must Be Based on Income. — Goff *v.* Goff, 60 W. Va. 9, 53 S. E. 769.

122. 3. A decree allowing the wife property held in her name and which she owned before her marriage and ordering the husband to pay all debts heretofore contracted by him upon which she might be liable was held to be proper. Luick *v.* Luick, 132 Iowa 302, 109 N. W. 783.

Amount Should Not Be Less than the Interest of the Wife Before the Decree. — Brown *v.* Brown, 144 Mich. 654, 108 N. W. 288.

123. 2. Metcalf *v.* Metcalf, 73 Neb. 79, 102 N. W. 79.

Inferences of Court as to Value of Property Presumptively Correct. — King *v.* King, (Neb. 1907) 113 N. W. 538.

Probable Accretions of Wealth May Be Considered. — Muir *v.* Muir, (Ky. 1906) 92 S. W. 314.

Evidence of the Husband's Ability Was Insufficient where the only showing was the papers used on the motion for temporary alimony and a slight reference to the defendant's real estate. Boyle *v.* Boyle, (N. J. 1907) 67 Atl. 690.

124. 1. Bennett *v.* Bennett, (N. J. 1904) 59 Atl. 245.

Future Income from Career of Vice Will Not Be Considered. — King *v.* King, (Neb. 1907) 113 N. W. 538.

A Homestead Held by Both Parties as tenants in the entirety was included in Bowerman *v.* Bowerman, 145 Mich. 726, 108 N. W. 1086, wherein it was shown that the title once stood in the defendant and was conveyed on the only consideration of discontinuing a prior divorce suit.

125. 1. The Value of an Expectancy is to be determined by what purchasers would pay for it. Ferguson *v.* Ferguson, 147 Mich. 673, 111 N. W. 175.

2. See Stark *v.* Stark, 115 Mo. App. 436, 91 S. W. 413, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 125.

Failure to Consider Wealth of the Wife Is Error. — Ferguson *v.* Ferguson, 147 Mich. 673, 111 N. W. 175.

126. 3. A Judgment for Alimony Is Not a Bar to separate proceedings for support of the children. Graham *v.* Graham, 38 Colo. 453, 88 Pac. 852.

6. If the Wife Refuses, Without Cause, to Live with the Husband, and she has not contributed to the property, alimony will be refused. Isaacs *v.* Isaacs, 71 Neb. 537, 99 N. W. 268; Kessler *v.* Kessler, 2 Cal. App. 509, 83 Pac. 257.

7. The Communication of a Loathsome Disease to the wife by the husband may be considered. Muir *v.* Muir, (Ky. 1906) 92 S. W. 314.

127. 2. Silberschmidt *v.* Silberschmidt, 112 Ill. App. 58; Shemwell *v.* Carper, (Ky. 1905) 87 S. W. 771.

An Agreement, Without Collusion, where a valid ground for divorce exists, is binding upon the parties. Griswold *v.* Griswold, 111 Ill. App. 269. See also the title ILLEGAL CONTRACTS, vol. 15, p. 956 *et seq.*

Under an agreement valid on its face but void as against public policy the wife may not recover alimony without first returning the amount received under the agreement. McAllen *v.* McAllen, 97 Minn. 76, 106 N. W. 100.

An Agreement Through a Trustee is a bar to an action for separate maintenance if made in contemplation of immediate separation. Bailey *v.* Dillon, 186 Mass. 244, 71 N. E. 538.

An Antenuptial Contract fixing the amount of alimony in case there should be a separation is void as against public policy. Watson *v.* Watson, 37 Ind. App. 548, 77 N. E. 355.

5. An Agreement That Is Not Incorporated in the Decree does not bar revision of the judgment. Wallace *v.* Wallace, (N. H. 1907) 67 Atl. 580.

128. 1. Patrick *v.* Patrick, (Ky. 1907) 101 S. W. 328; Linse *v.* Linse, 98 Minn. 243, 108 N. W. 8.

The Judgment May Be Reopened if it does not conform to the agreement on which it was based. Sebree *v.* Sebree, (Ky. 1907) 99 S. W. 282.

3. In Gross. — Six hundred dollars was held not excessive where the wife's property was only five hundred and fifty dollars and the husband's between six and seven thousand. Watson *v.* Watson, 37 Ind. App. 548, 77 N. E. 355.

Where the parties had lived together for twenty-two years and by their joint efforts had accumulated about $3,000, and the wife was in poor health and was awarded the care of four children, it was held that an allowance of one-half the estate was proper. Crabtree *v.* Crabtree, (Ky. 1905) 85 S. W. 211.

Where the husband had an estate of $3,000 an allowance of $500 alimony and $500 for the support of the child was held to be just. Barlow *v.* Barlow, (Ky. 1906) 90 S. W. 216.

Where the husband was reasonably worth about $13,000 and the wife had no estate, it was held proper to allow $3,000 alimony, $500 for support of the child, and $500 for attorney's fees. Hooe *v.* Hooe, (Ky. 1906) 92 S. W. 317.

Excessive Allowances. — Kimbro *v.* Kimbro, 73 Neb. 171, 102 N. W. 271; Yaryan *v.* Yaryan, (Neb. 1907) 113 N. W. 138; Curtin *v.* Curtin, 111 N. Y. App. Div. 447, 97 N. Y. Supp. 771; Martin *v.* Martin, 126 Wis. 237, 105 N. W. 783.

Where the husband was a cripple able to earn only about $125 a year, and the wife was able to take care of herself, it was held that an allowance of $400 should be reduced to $150. Newton *v.* Newton, (Ky. 1905) 88 S. W. 1050.

For Further Illustrations as to Amount, see Stapleberg *v.* Stapleberg, 77 Conn. 31, 58 Atl. 233; Walker *v.* Walker, 127 Iowa 77, 102 N. W. 435; Halley *v.* Halley, 130 Iowa 683, 107 N. W. 807; Galutia *v.* Galutia, 72 Kan. 70, 82 Pac. 461; Baker *v.* Baker, (Ky. 1905) 85 S. W. 729; Thompson *v.* Thompson, (Ky. 1905) 85 S. W. 730; Breen *v.* Breen, (Ky. 1906) 91 S. W. 251; Bowerman *v.* Bowerman, 145 Mich. 726, 108 N. W. 1086; Sodini *v.* Sodini, 96 Minn. 320, 104 N. W. 976; Metcalf *v.* Metcalf, 73 Neb. 79, 102 N. W. 79; Price *v.* Price, (Neb. 1906) 106 N. W. 657; Hays *v.* Hays, (Neb. 1906) 106 N. W. 773; Bennett *v.* Bennett, (N. J. 1904) 59 Atl. 245; Dushinsky *v.* Dushinsky, 107 N. Y. App. Div. 607, 94 N. Y. Supp. 638; Pope *v.* Pope, 47 Oregon 298, 83 Pac. 786; Read *v.* Read, 28 Utah 297, 78 Pac. 675; Goff *v.* Goff, 60 W. Va. 9, 53 S. E. 769; Williams *v.* Williams, 122 Wis. 27, 99 N. W. 431; Uecker *v.* Thiedt, (Wis. 1907) 113 N. W. 447.

129. 1. **Judgment in an Action for Separate Maintenance Only** should not be in gross. Kusel *v.* Kusel, 147 Cal. 57, 81 Pac. 295, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 129; Chapman *v.* Chapman, (Neb. 1905) 104 N. W. 880.

130. 3. Washington *v.* Washington, (Neb. 1907) 111 N. W. 787.

5. Huffman *v.* Huffman, 47 Oregon 610, 86 Pac. 593.

6. **The Husband Is Not Bound to Repair Property** granted in fee as alimony. Wickes *v.* Wickes, 220 Ill. 32, 77 N. E. 101.

Partnership Property of the parties may be divided on a suit for divorce and alimony. Heyman *v.* Heyman, 210 Ill. 524, 71 N. E. 591, *affirming* 110 Ill. App. 87.

An Award in Gross Is a Full Discharge from all claims for future support. Griswold *v.* Griswold, 111 Ill. App. 269.

132. 6. **Contra.** — Goff *v.* Goff, 60 W. Va. 9, 53 S. E. 769, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 132, 133, 134, but holding that permanent alimony payable in instalments is a lien on land of the husband.

133. 2. **Wife May Be Allowed to Retain Husband's Personalty as Security.** — Conklin *v.* Conklin, 93 Minn. 188, 101 N. W. 70.

3. **Statute of Limitations Does Not Run** against decree for alimony. Peeke *v.* Fitzpatrick, 74 Ohio St. 396, 78 N. E. 519.

Lands Situated in Another State are not affected by the decree. Proctor *v.* Proctor, 215 Ill. 275, 74 N. E. 145.

134. 3. **Voluntary Conveyances in Contemplation of Marriage.** — Where the conveyance was voluntarily made shortly before the marriage, without the knowledge of the intended wife and with the apparent intention of defrauding her of her marital rights, it was held that a judgment for alimony would be a lien on the property. Goff *v.* Goff, 60 W. Va. 9, 53 S. E. 769.

4. Duncan *v.* Duncan, (Cal. App. 1907) 92 Pac. 310; Walker *v.* Walker, 127 Iowa 77, 102 N. W. 435; Muir *v.* Muir, (Ky. 1906) 92 S. W. 314; Cochran *v.* Cochran, 93 Minn. 284, 105 N. W. 183; Moseley *v.* Larson, 86 Miss. 288, 38 So. 234; Wilson *v.* Hinman, 99 N. Y. App. Div. 41, 90 N. Y. Supp. 746; Bennett *v.* Bennett, 15 Okla. 286, 81 Pac. 632.

Wife Within Statute of Fraudulent Conveyances. — Shepherd *v.* Shepherd, (Mass. 1907) 81 N. E. 897, wherein the action was for separate maintenance instead of divorce and alimony.

Fraud Need Not Be Proven if the grantee defaults. Patrick *v.* Patrick, (Ky. 1907) 101 S. W. 328.

135. 1. Zumbiel *v.* Zumbiel, (Ky. 1906) 96 S. W. 542.

136. 1. Wallace *v.* Wallace, (N. H. 1907) 67 Atl. 580.

4. Demonet *v.* Burkart, 23 App. Cas. (D. C.) 308.

Alimony Becomes a Vested Property Right after final decree and cannot be readjudicated as of the date of the decree. Goodsell *v.* Goodsell, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 158, 93 N. Y. Supp. 1038.

5. Soule *v.* Soule, 4 Cal. App. 97, 87 Pac. 205; Griswold *v.* Griswold, 111 Ill. App. 269.

137. 1. Goodsell *v.* Goodsell, 107 N. Y. App. Div. 625, 95 N. Y. Supp. 242, *affirming* (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 158, 93 N. Y. Supp. 1038; Dawson *v.* Dawson, 57 W. Va. 520, 56 S. E. 613, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 137.

Within Discretion of Court. — Smith *v.* Smith, 142 Cal. 636, 76 Pac. 489.

An Allowance Was Not Increased where the wife obtained a judgment for separation and alimony and the husband later brought a suit for absolute divorce, but it was held proper

to award counsel fees in the second action. Schmalholz *v.* Schmalholz, 111 N. Y. App. Div. 543, 98 N. Y. Supp. 510.

Alienation of the Affections of Defendant's Daughter caused by his remarriage, or increased expenses because of such remarriage, are not sufficient reasons for a modification. Smith *v.* Smith, 139 Mich. 133, 102 N. W. 631.

2. False Testimony by the Defendant at the trial as to the amount of his property is not such a change of circumstances. Graves *v.* Graves, 132 Iowa 199, 109 N. W. 707.

138. 3. Where the decree gave the wife alimony and the custody of the minor child and a right to his earnings, but made no provision for the maintenance of the child, it was held that the allowance could not be increased on account of grounds connected with the support of the child. Phillippi *v.* Phillippi, 113 Mo. App. 55, 87 S. W. 529.

6. Gerrein *v.* Michie, (Ky. 1906) 91 S. W. 252.

7. Parsons *v.* Parsons, (Ky. 1904) 80 S. W. 1187.

9. Cohen *v.* Cohen, 150 Cal. 99, 88 Pac. 267.

139. 1. Comstock *v.* Comstock, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 599, 99 N. Y. Supp. 1057.

6. Johnson *v.* Bates, 82 Ark. 284, 101 S. W. 412; Wilson *v.* Hinman, 182 N. Y. 408, 75 N. E. 236, *reversing* 99 N. Y. App. Div. 41, 90 N. Y. Supp. 746.

An Allowance May Continue Beyond the Life of the Husband if made a lien upon property. Wilson *v.* Hinman, 99 N. Y. App. Div. 41, 90 N. Y. Supp. 746.

140. 7. Gerrein *v.* Michie, (Ky. 1906) 91 S. W. 252.

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147. 9. All Evidence in Case. — An instruction for the jury to determine from "*all* the other circumstances in the case" is not equivalent to "*all* the evidence in the case" and is therefore error. Ryan *v.* People, 122 Ill. App. 461.

ALLEY.

149. 3. Talbert *v.* Mason, (Iowa 1907) 113 N. W. 918, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 149.

ALLOWANCES.

156. 1. Jones *v.* Layne, (N. Car. 1907) 57 S. E. 372.

3. Pavlicek *v.* Roessler, 222 Ill. 83, 78 N. E. 11, *reversing* 121 Ill. App. 219; *In re* Stewart, 140 N. Car. 28, 52 S. E. 255; Jones *v.* Layne, (N. Car. 1907) 57 S. E. 372. See also Moore *v.* Idlor, 26 Ohio Cir. Ct. 502.

Widow Entitled to Allowance as Matter of Right on Grounds of Public Policy. — *In re* Dougherty, 34 Mont. 336, 86 Pac. 38.

Right to Allowance Depends upon Marriage, Continuance of Marriage Relation until Death, and Survivorship of Wife. — Kroell *v.* Kroell, 219 Ill. 105, 76 N. E. 63.

For Present Support Only. — The allowance is for the maintenance of the family while the estate is in progress of settlement and its property in the custody of the executor or administrator. Bell *v.* Bell, 2 Cal. App. 338, 83 Pac. 814.

The statute contemplates an immediate allowance for the support of the family of the deceased without waiting for the final results of the deliberate processes of judicial determination. Strauch *v.* Uhler, 95 Minn. 304, 104 N. W. 535.

Where the widow is feeble in health and unable to earn her own living and has received nothing from the estate it is the duty of the court to order an allowance for her. Whitcomb *v.* Taylor, 192 Mass. 555, 78 N. E. 536.

158. 2. Widow of Nonresident. — A widow, if a *bona fide* resident of the state, should be allotted the year's provision, although her husband is domiciled elsewhere. Jones *v.* Layne, (N. Car. 1907) 57 S. E. 372.

159. 1. Phillips *v.* Phillips, (Ala. 1907) 44 So. 391; Strauch *v.* Uhler, 95 Minn. 304, 104 N. W. 535; *In re* Stewart, 140 N. Car. 28, 52 S. E. 255.

Children Not Residing with Widow — Widow Not Entitled to Additional Allowance for Children. — *In re* Stewart, 140 N. Car. 28, 52 S. E. 255.

161. 2. The provision in the *Kentucky* statute refers to "the widow or infant child or children" of the deceased, and stepchildren are not entitled to the benefit thereof. Howland *v.* Harr, (Ky. 1906) 97 S. W. 358.

3. Bowman *v.* Olrick, 165 Ind. 478, 75 N. E. 820; Rush *v.* Kelley, 34 Ind. App. 449, 73 N. E. 130; Hill *v.* Evans, 114 Mo. App. 715, 91 S. W. 1022; Ellis *v.* Ellis, 119 Mo. App. 63, 96 S. W. 260; *In re* Stewart, 140 N. Car. 28, 52 S. E. 255.

Exempt Personal Property. — The *New York* statute (Code Civ. Pro., § 2713) specifies the exemptions for the widow and children. Matter of Berns, (Surrogate Ct.) 52 Misc. (N. Y.) 426, 103 N. Y. Supp. 167; Matter of Griffin, 118 N. Y. App. Div. 515, 103 N. Y. Supp. 345; Matter of Weaver, (Surrogate Ct.) 53 Misc. (N. Y.) 244, 104 N. Y. Supp. 475.

If there are no articles of the precise nature described by the above provision, a sum of money equivalent to their value cannot be allotted to the widow. Matter of Campbell, (Surrogate Ct.) 48 Misc. (N. Y.) 278, 96 N. Y. Supp. 768; Matter of Griffith, (Surrogate Ct.) 49 Misc. (N. Y.) 405, 100 N. Y. Supp. 215. *Contra,* Matter of Berns, (Surrogate Ct.) 52 Misc. (N. Y.) 426, 103 N. Y. Supp. 167.

Money in Lieu of Specific Articles. — In *Indiana* if the widow fails or refuses to select all or any part of the inventoried articles of personal property of the value mentioned in the statute, she is entitled to the amount of the deficiency in cash. Rush *v.* Kelley, 34 Ind. App. 449, 73 N. E. 130.

4. *In re* Bump, (Cal. 1907) 92 Pac. 643; Matter of Nolan, 145 Cal. 559, 79 Pac. 428; Bell *v.* Bell, 2 Cal. App. 338, 83 Pac. 814; Wills *v.* Booth, (Cal. App. 1907) 91 Pac. 759; Whitcomb *v.* Taylor, 192 Mass. 555, 78 N. E. 536; Strauch *v.* Uhler, 95 Minn. 304, 104 N. W. 535. See also Shipman *v.* Unangst, 150 Cal. 425, 88 Pac. 1090.

162. 1. Bell *v.* Bell, 2 Cal. App. 338, 83 Pac. 814.

Extent of Allowance Must Be Determined Primarily by Value of Estate. — Strauch *v.* Uhler, 95 Minn. 304, 104 N. W. 535.

Interest upon Allowance from Time of Set-off by Appraisers Will Not Be Allowed. — Field *v.* Field, 215 Ill. 496, 74 N. E. 443, *affirming* 117 Ill. App. 307.

2. Bell *v.* Bell, 2 Cal. App. 338, 83 Pac. 814; Wills *v.* Booth, (Cal. App. 1907) 91 Pac. 759.

3. Moore *v.* Moore, 126 Ga. 735, 55 S. E. 950.

6. Reynolds *v.* Norvell, 129 Ga. 512, 59 S. E. 299.

The widow's rights under the statute cannot be taken away by hasty action of the executor or administrator in using the property for the payment of debts. Whitcomb *v.* Taylor, 192 Mass. 555, 78 N. E. 536.

A Delay of Three Months from the date of the letters of administration does not give rise to a presumption of an intention to waive the privilege. Marshall's Estate, 30 Pa. Super. Ct. 574.

Petition for Allowance Four Months After Death of Husband Is Filed Within Reasonable Time. — Whitcomb *v.* Taylor, 192 Mass. 555, 78 N. E. 536.

Remarriage of Widow. — Where lands belonging to the estate of a decedent have been duly set apart as a year's support to the widow and minor child, and the child becomes of age, marries, and removes from the land, the widow may sell the land for her support and maintenance, and her right to do so is unaffected by the fact that she has married again. Bridges *v.* Barbree, 127 Ga. 679, 56 S. E. 1025.

165. **1.** Desertion and open adultery bar a widow's right to statutory allowances even when the statute does not so expressly provide. Daniels *v.* Taylor, (C. C. A.) 145 Fed. 169, *reversing* 5 Indian Ter. 219, 82 S. W. 727.

166. **1.** See Field *v.* Field, 215 Ill. 496, 74 N. E. 443, *affirming* 117 Ill. App. 307.

2. Legal Marriage Essential. — See Kroell *v.* Kroell, 219 Ill. 105, 76 N. E. 63.

3. Kroell *v.* Kroell, 219 Ill. 105, 76 N. E. 63; Pavlicek *v.* Roessler, 222 Ill. 83, 78 N. E. 11, *reversing* 121 Ill. App. 219.

Allowance Need Not Be Relinquished in Terms, Any Language Sufficiently Comprehensive to Include Allowance Being Adequate. — Pavlicek *v.* Roessler, 222 Ill. 83, 78 N. E. 11, *reversing* 121 Ill. App. 219.

Allowance Cannot Be Released by Antenuptial Agreement Where Children Are Entitled to Share in Benefit of its Protection. — Pavlicek *v.* Roessler, 222 Ill. 83, 78 N. E. 11, *reversing* 121 Ill. App. 219.

A Postnuptial Agreement Whereby the Wife Relinquishes All Dower Rights and interests does not bar her right to the allowance. Bliss *v.* Caille Bros. Co., 149 Mich. 601, 112 N. W. 911.

167. **4.** *In re* Bump, (Cal. 1907) 92 Pac. 643.

Where upon the death of the husband a widow and minor children have a life estate in the property by virtue of a homestead, this does not defeat their right to the statutory year's support, even though for more than a year succeeding the husband's death they may have lived on the homestead estate and derived a support from it. Reynolds *v.* Norvell, 129 Ga. 512, 59 S. E. 299.

6. Reynolds *v.* Norvell, 129 Ga. 512, 59 S. E. 299; Bowman *v.* Olrick, 165 Ind. 478, 75 N. E. 820; Ellis *v.* Ellis, 119 Mo. App. 63, 96 S. W. 260.

168. **1.** *In re* Bump, (Cal. 1907) 92 Pac. 643; Bowman *v.* Olrick, 165 Ind. 478, 75 N. E. 820.

Allowance Expressly Barred by Will. — A widow is deprived of her right to a year's support when a legacy is given expressly in lieu thereof. Reynolds *v.* Norvell, 129 Ga. 512, 59 S. E. 299.

The intention of the testator to state that a testamentary provision shall be in lieu of the widow's statutory rights to the estate need not be declared in so many words, but may be deduced or implied when the enforcement of the widow's claim under the law would be plainly inconsistent with the will. Bowman *v.* Olrick, 165 Ind. 478, 75 N. E. 820.

Bequests Do Not Exclude Widow's Right to Allowance unless Will So States in Express Terms, or Contains Provisions Clearly Indicating Intention that Both Bequests and Allowance Shall Not Be Received. — Ellis *v.* Ellis, 119 Mo. App. 63, 96 S. W. 260.

Statutory Allowance Is Not Dower and a provision in a will that a bequest shall be in lieu of dower does not deprive the widow of her right to the allowance. Ellis *v.* Ellis, 119 Mo. App. 63, 96 S. W. 260.

2. Provisions of Will Attempting to Limit Allowance Are Immaterial When Widow Has Repudiated It. — *In re* Bump, (Cal. 1907) 92 Pac. 643.

3. Bowman *v.* Olrick, 165 Ind. 478, 75 N. E. 820; Ellis *v.* Ellis, 119 Mo. App. 63, 96 S. W. 260.

Electing to Take Child's Part in Lands in Lieu of Dower Does Not Bar Allowance. — Hill *v.* Evans, 114 Mo. App. 715, 91 S. W. 1022.

169. **2.** Hill *v.* Evans, 114 Mo. App. 715, 91 S. W. 1022; Ellis *v.* Ellis, 119 Mo. App. 63, 96 S. W. 260; Jones *v.* Layne, (N. Car. 1907) 57 S. E. 372.

Allowance Takes Precedence of Costs of Administration. — Jones *v.* Layne, (N. Car. 1907) 57 S. E. 372.

3. Allowance May Be Made Even if Estate Insolvent. — Strauch *v.* Uhler, 95 Minn. 304, 104 N. W. 535.

170. **1.** Calhoun *v.* Moore, 79 Ark. 109, 94 S. W. 931; Ellis *v.* Ellis, 119 Mo. App. 63, 96 S. W. 260; Jones *v.* Layne, (N. Car. 1907) 57 S. E. 372.

The term "personal property," as used in the statute, "means the personal property left by the deceased at the time of his death, and as to this property, upon the appointment of an executor or administrator, jurisdiction of the court attaches for the purpose of allowing to the widow as necessaries whatever she ought to receive." Taylor *v.* Whitcomb, 192 Mass. 555, 78 N. E. 536.

2. See Marshall's Estate, 30 Pa. Super. Ct. 574.

In Georgia Land May Be Set Apart as Year's Support. — McSwain *v.* Ricketson, 129 Ga. 176, 58 S. E. 655.

Indiana. — If the estate is clearly solvent the widow is entitled to have her allowance paid

out of the first moneys received by the executor or administrator. If the personalty is insufficient to pay the allowance in cash, any deficit constitutes a lien upon the real estate liable to sale for the payment of debts. (Burns' Ann. St. 1901, § 2424.) Rush *v.* Kelley, 34 Ind. App. 449, 73 N. E. 130.

171. 5. **Surplus After Payment of Partnership Debts Liable for Year's Support Allowed Widow.** — American Surety Co. *v.* Wood, 2 Ga. App. 641, 58 S. E. 1116.

172. 2. **Personalty in Which Deceased Had But Half Interest Cannot Be Set Apart to the Widow.** — Matter of Hallenbeck, 119 N. Y. App. Div. 757, 104 N. Y. Supp. 568.

5. Bell *v.* Bell, 2 Cal. App. 338, 83 Pac. 814.

173. 1. Matter of Nolan, 145 Cal. 559, 79 Pac. 428.

3. *In re* Dougherty, 34 Mont. 336, 86 Pac. 38.

If the Estate Is Solvent, under some statutes allowance is made to continue "during the progress of the settlement of the estate." *In re* Dougherty, 34 Mont. 336, 86 Pac. 38.

ALREADY.

177. 2. *Already* means "at this time" or "now." Godden *v.* Hythe Burial Board, (1906) 2 Ch. 270, 75 L. J. Ch. 595.

ALSO.

178. 1. Montgomery *v.* McPherson, 86 Miss. 4, 38 So. 196, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177; Platt *v.* Brannan, 34 Colo. 125, 81 Pac. 755, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 179.

ALTER, ALTERATION, ETC.

179. 1. Chicago Lumber, etc., Co. *v.* Garmer, 132 Iowa 289, 109 N. W. 780, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 179.

2. **Repairing** held not *alteration* of building. London County Council *v.* London, etc., R. Co., (1906) 2 K. B. 72, 75 L. J. K. B. 613.

Altering Streets or Road. — See Bennett *v.* Wellesley, 189 Mass. 308, 75 N. E. 717.

A Change in the Depth of the Foundation of a house held not to affect the identity of the structure and to be an *alteration* within a builder's contract and not an "extra." Chicago Lumber, etc., Co. *v.* Garmer, 132 Iowa 289, 109 N. W. 780.

ALTERATION OF INSTRUMENTS.

185. 2. **Immaterial Alteration.** — See Canfield *v.* Orange, 13 N. Dak. 622, 102 N. W. 313, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185.

Changing "Live" to "Life" Not Material. — Markey *v.* State, 47 Fla. 38, 37 So. 53, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185.

7. Bedgood-Howell Co. *v.* Moore, 123 Ga. 336, 51 S. E. 420; Hayes *v.* Wagner, 220 Ill. 256, 77 N. E. 211, *affirming* 113 Ill. App. 299; Babcock *v.* Henkle, 117 Ill. App. 640; Merritt *v.* Dewey, 218 Ill. 599, 75 N. E. 1066; Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515.

186. 2. New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186; Hecht *v.* Shenners, 126 Wis. 27, 105 N. W. 309, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186.

3. American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17; John A. Tolman Co. *v.* Hunter, 113 Mo. App. 671, 88 S. W. 636.

4. Koons *v.* St. Louis Car Co., 203 Mo. 227, 101 S. W. 49.

187. 2. New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559; John A. Tolman Co. *v.* Hunter, 113 Mo. App. 671, 88 S. W. 636; Adams *v.* Faircloth, (Tex. Civ. App. 1906) 97 S. W. 507; Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515.

3. Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108; Adams *v.* Faircloth, (Tex. Civ. App. 1906) 97 S. W. 507; Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515.

5. **Rule Applicable to Written Agreement Not Under Seal.** — Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515.

190. 4. Simons *v.* McDowell, 125 Ga. 203, 53 S. E. 1031; Babcock *v.* Henkle, 117 Ill. App. 640; Merritt *v.* Dewey, 218 Ill. 599, 75 N. E. 1066; Smith *v.* Dazey, 124 Ill. App. 399; New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559; Colonial Trust Co. *v.* Getz, 28 Pa. Super. Ct. 619.

191. 1. Adams *v.* Faircloth, (Tex. Civ. App. 1906) 97 S. W. 507.

192. 7. American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17; Simons *v.* McDowell, 125 Ga. 203, 53 S. E. 1031; John A. Tolman Co. *v.* Hunter, 113 Mo. App. 671, 88 S. W. 636.

8. **Material Alterations Discharge Guarantors** — John A. Tolman Co. *v.* Hunter, 113 Mo. App. 671, 88 S. W. 636.

193. 1. Hecht *v.* Shenners, 126 Wis. 27, 105 N. W. 309, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193.

Bona Fide Transferee of Materially Altered Promissory Note Cannot Sue Sureties. — Simons *v.* McDowell, 125 Ga. 203, 53 S. E. 1031.

3. **Bona Fide Pledgee of Altered Non-negotiable Bills of Lading Cannot Maintain Action against Carrier.** — Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108.

5. National Exch. Bank *v.* Lester, 119 N. Y. App. Div. 786, 104 N. Y. Supp. 418.

194. 4. Where an agreement was signed by all but one of the parties, and, in order to obtain his signature, one who had signed caused a material alteration to be made in the agreement, the agreement was held to be of no effect as to one who had signed it but did not know of the change. Hershman *v.* Stafford, 58 W. Va. 459, 52 S. E. 533.

196. 2. Hecht *v.* Shenners, 126 Wis. 27, 105 N. W. 309, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196.

197. 4. Flitcraft *v.* Commonwealth Title Ins., etc., Co., 211 Pa. St. 114, 60 Atl. 557.

198. 3. Flitcraft *v.* Commonwealth Title Ins., etc., Co., 211 Pa. St. 114, 60 Atl. 557.

Material Alteration by Consent of Parties Does Not Divest Grantee of Title. — Gibbs *v.* Potter, 166 Ind. 471, 77 N. E. 942.

200. 4. A Material Alteration Made Fraudulently, by a Party Relying on the Instrument, prevents his recovery on the original consideration. Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515.

5. Hayes *v.* Wagner, 220 Ill. 256, 77 N. E. 211, *affirming* 113 Ill. App. 299, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 200.

201. 1. Materially Altered Note Admissible Only to Prove Alteration. — Hecht *v.* Shenners, 126 Wis. 27, 105 N. W. 309

4. In a criminal prosecution for trespass, it was held that where the prosecuting witness had had the deed to the property for upwards of thirty years, and the alterations were in the deed when he received it, and no alterations had been made since, the deed was admissible in evidence to show title. Bentley *v.* State, (Ala. 1905) 39 So. 649.

5. Flitcraft *v.* Commonwealth Title Ins., etc., Co., 211 Pa. St. 114, 60 Atl. 557.

205. 2. When Parties Consent to Change, Material Alteration Does Not Avoid Writing. — Harrison *v.* Lakenan, 189 Mo. 581, 88 S. W. 53; State *v.* Baird, (Idaho 1907) 89 Pac. 298; Hunt *v.* Nance, (Ky. 1906) 92 S. W. 6; Owen *v.* Mercier, 14 Ont. L. Rep. 491, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 205.

3. Consent to Alteration May Be Proved by Parol. — State *v.* Baird, (Idaho 1907) 89 Pac. 298.

207. 4. Where a Deed Is Altered After Execution. — Where after a deed was acknowledged and delivered, and before it was recorded, certain interlineations were made with the consent of the parties, the effect of which interlineations was to lessen the estate conveyed, it was held that the deed was not invalid. Hunt *v.* Nance, (Ky. 1906) 92 S. W. 6.

211. 1. Insertion of Omitted Date in Testimonium Clause of Deed Does Not Vitiate Instrument. — Crediton *v.* Exeter, (1905) 2 Ch. 455, 74 L. J. Ch. 697.

212. 2. Rule Applies to Deeds. — Crediton *v.* Exeter, (1905) 2 Ch. 455, 74 L. J. Ch. 697.

4. See dissenting opinion of Clark, C. J., in Rollins *v.* Ebbs, 137 N. Car. 366, 49 S. E. 341, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 212.

214. 4. Tulane University *v.* O'Connor, 192 Mass. 428, 78 N. E. 494.

215. 6. Alteration of Guaranty Contract by Agent Without Authority Does Not Invalidate. — Tulane University *v.* O'Connor, 192 Mass. 428, 78 N. E. 494.

220. 4. Crediton *v.* Exeter, (1905) 2 Ch. 455, 74 L. J. Ch. 697.

221. 2. Nance *v.* Gray, 143 Ala. 234, 38 So. 916.

2. Campbell *v.* Bates, 143 Ala. 338, 39 So. 144; Nance *v.* Gray, 143 Ala. 234, 38 So. 916; Whitehead *v.* Emmerich, 38 Colo. 13, 87 Pac. 790; Wilder *v.* Aurora, etc., Electric Traction Co., 216 Ill. 493, 75 N. E. 194; Crowe *v.* Beem, 36 Ind. App. 207, 75 N. E. 304; Tulane University *v.* O'Connor, 192 Mass. 428, 78 N. E. 494; Wilson *v.* State, 85 Miss. 687, 38 So. 46.

222. 4. Wilson *v.* State, 85 Miss. 687, 38 So. 46; Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515.

223. 1. Whitehead *v.* Emmerich, 38 Colo. 13, 87 Pac. 790; Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892; McKenzie *v.* Barrett, (Tex. Civ. App. 1906) 98 S. W. 229.

Miscellaneous Instances of Immaterial Alterations. — The insertion of an omitted date in the *testimonium* clause of a deed. Crediton *v.* Exeter, (1905) 2 Ch. 455, 74 L. J. Ch. 697.

The writing of the word "fourth" after the words "north east" in the description of land contained in a deed. Campbell *v.* Bates, 143 Ala. 338, 39 So. 144.

Writing the word "west" after the word "south" in a description of land contained in a lien note of the vendor. Nance *v.* Gray, 143 Ala. 234, 38 So. 916.

Erasures of such words as make a second deed correspond with the original quitclaim deed. Wilder *v.* Aurora, etc., Electric Traction Co., 216 Ill. 493, 75 N. E. 194.

The insertion of the figures "90" at the beginning of a promissory note, just before the word "days," making the note read "90 days after date." Crowe *v.* Beem, 36 Ind. App. 207, 75 N. E. 302.

The affixing of seals to a contract of guaranty subsequent to its execution by one without authority to bind the plaintiff. Tulane University *v.* O'Connor, 192 Mass. 428, 78 N. E. 494.

Altering the figures "$2.50" to "$12.50" in upper right-hand corner of check, where the correct amount was written out in the body of the check, and the check was stamped "Ten Dollars or Less." Wilson *v.* State, 85 Miss. 687, 38 So. 46.

224. 4. Whitehead *v.* Emmerich, 38 Colo. 13, 87 Pac. 790; Hayes *v.* Wagner, 220 Ill. 256, 77 N. E. 211, *affirming* 113 Ill. App. 299; Bowen *v.* Laird, 166 Ind. 421, 77 N. E. 852; Hecht *v.* Shenners, 126 Wis. 27, 105 N. W. 309, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 225.

225. 4. New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 225; Adams *v.* Faircloth, (Tex. Civ. App. 1906) 97 S. W. 507; Hecht *v.* Shenners, 126 Wis. 27, 105 N. W. 309, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 225.

5. Nance *v.* Gray, 143 Ala. 234, 38 So. 916; Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892; Hayes *v.* Wagner, 220 Ill. 256, 77 N. E. 211, *affirming* 113 Ill. App. 299; Crowe *v.* Beem, 36 Ind. App. 207, 75 N. E. 302; New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 225; Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108; Wilson *v.* State, 85 Miss. 687, 38 So. 46; Harrison *v.* Lakenan, 189 Mo. 581, 88 S. W. 53; Flitcraft *v.* Commonwealth Title Ins., etc., Co., 211 Pa. St. 114, 60 Atl. 557; Adams *v.* Faircloth, (Tex. Civ. App. 1906) 97 S. W. 507; Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515; Hecht *v.* Shenners, 126 Wis. 27, 105 N. W. 309.

6. Insertion of Additional Property in Chattel Mortgage Vitiates Instrument. — Bedgood-Howell Co. *v.* Moore, 123 Ga. 336, 51 S. E. 420.

229. 5. Substitution of Promisor in Promissory Note Material Alteration. — Babcock *v.* Henkle, 117 Ill. App. 640.

230. 3. Unauthorized Substitution of New Payee in Promissory Note Releases Indorser. —

Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 444.

234. 2. Kistner *v.* Peters, *223* Ill. 607, 79 N. E. 311, *affirming* 126 Ill. App. 615.

4. Erasure of Name of Maker of Promissory Note Material Alteration. — Babcock *v.* Henkle, 117 Ill. App. 640.

237. 1. Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) *236, 237*; Moskowitz *v.* Deutsch, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 603, 92 N. Y. Supp. *721*.

238. 2. Adams *v.* Faircloth, (Tex. Civ. App. 1906) 97 S. W. 507.

3. Smith *v.* Dazey, 124 Ill. App. 399 (to the same effect as Monroe *v.* Paddock, 75 Ind. 422, cited in the original note).

239. 2. New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559.

5. Merritt *v.* Dewey, 218 Ill. 599, 75 N. E. 1066, *reversing* 115 Ill. App. 503.

241. **1. A Promissory Note Expressed No Time of Payment,** and while it was in the possession of the payee he inserted the figures "90" before the word "days," making the note read "90 days after date," etc. It was held that this insertion did not affect the rights of the payee or payors and was immaterial. Crowe *v.* Beem, 36 Ind. App. 207, 75 N. E. 304.

4. Alteration by Insertion of the Place of Payment Does Not Invalidate a Promissory Note in the hands of a *bona fide* purchaser, where the maker has been negligent in leaving the blank space. Bowen *v.* Laird, 166 Ind. 421, 77 N. E. 852.

243. **1. Alteration by Insertion of Additional Property in Chattel Mortgage Vitiates.** — Bedgood-Howell Co. *v.* Moore, 123 Ga. 336, 51 S. E. 420.

246. **1. Affixing Seal Where Legal Effect of Instrument Unaltered.** — Where an agent without authority from his principal affixed seals to a guaranty contract, already supported by a good consideration, after the execution of such contract, it was held that the act was that of a stranger, and did not affect the obligation created by the unsealed instrument or the right of the principal to sue upon it as such. Tulane University *v.* O'Connor, 192 Mass. 428, 78 N. E. 494.

253. 5. Friend *v.* Yahr, 126 Wis. 291, 104 N. W. 997.

In an *Indiana* case, where a promissory note was delivered with a long blank after the word "at," and before the same was indorsed to the plaintiff some one wrote in said blank the words "First National Bank, Lafayette, Ind.," the maker of the note was guilty of negligence and could not as against a *bona fide* holder complain of the alteration. Bowen *v.* Laird, 166 Ind. 421, 77 N. E. 852.

254. **8. Leaving Blank in Specialty Implies Right to Fill.** — Friend *v.* Yahr, 126 Wis. 291, 104 N. W. 997.

255. **1. In Case of Implied Authority, Instrument Does Not Require Re-execution.** — Friend *v.* Yahr, 126 Wis. 291, 104 N. W. 997.

256. 3. Crowe *v.* Beem, 36 Ind. App. 207, 75 N. E. 304.

5. Bowen *v.* Laird, 166 Ind. 421, 77 N. E. 852, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256.

257. 3. Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

4. See Wabash R. Co. *v.* Papin, 119 Ill. App. 99; Wabash R. Co. *v.* Meyer, 119 Ill. App. 104; Simmons Hardware Co. *v.* Hargate, 122 Ill. App. 287.

258. 2. National Exch. Bank *v.* Lester, 119 N. Y. App. Div. 786, 104 N. Y. Supp. 418.

259. 4. Stringfellow *v.* Petty, (N. Mex. 1907) 89 Pac. 258.

Forgery May Not Be Ratified. — Flitcraft *v.* Commonwealth Title Ins., etc., Co., 211 Pa. St. 114, 60 Atl. 557.

261. 1. Tulane University *v.* O'Connor, 192 Mass. 428, 78 N. E. 494.

Possession of Copy of Altered Instrument, and Payment of Rent Thereunder, Deemed Acceptance. — Landt *v.* McCullough, 218 Ill. 607, 75 N. E. 1069.

3. Stringfellow *v.* Petty, (N. Mex. 1907) 89 Pac. 258.

4. Hebert *v.* La Banque Nationale, 16 Quebec K. B. 191.

265. 1. Jersey *v.* Jersey, 146 Mich. 660, 110 N. W. 54, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 265.

268. 4. Campbell *v.* Bates, 143 Ala. 338, 39 So. 144; Bedgood-Howell Co. *v.* Moore, 123 Ga. 336, 51 S. E. 420; Grand Lodge, etc., *v.* Young, 123 Ill. App. 628; Hayes *v.* Wagner, *220* Ill. 256, 77 N. E. 211, *affirming* 113 Ill. App. 299; Colonial Trust Co. *v.* Getz, 28 Pa. Super. Ct. 619; McDonald *v.* Nalle, (Tex. Civ. App. 1906) 91 S. W. 632.

269. 4. Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108; Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515.

270. 2. Hayes *v.* Wagner, *220* Ill. 256, 77 N. E. 211.

3. Duplicate Copy of Instrument as Evidence. — Hayes *v.* Wagner, *220* Ill. 256, 77 N. E. 211, *affirming* 113 Ill. App. 299.

Parol Evidence Admissible to Show Alteration — Burnette *v.* Young, (Va. 1907) 57 S. E. 641; Price *v.* Stanbra, (Wash. 1906) 88 Pac. 115.

271. 2. Campbell *v.* Bates, 143 Ala. 338, 39 So. 144.

272. **1. A Mere Inability to Remember a Certain Provision** as having been in a contract is insufficient to establish alteration. Busby *v.* Compton, 112 Mo. App. 569, 87 S. W. 109.

3. Slyfield *v.* Willard, 43 Wash. 179, 86 Pac. 392.

273. 1. In a recent case in *Missouri* it was said: "Erasures and interlineations are but ordinary incidents in the genesis of a contract. Of themselves, without other indicia of spoliation or fraudulent intent, they amount to nothing, and in the absence of proof to the contrary are presumed to have been made prior to its execution." Kilpatrick *v.* Wiley, 197 Mo. 163, 95 S. W. 213.

2. When the party offering the instrument testified that at the time he executed it, it was in precisely the same condition as at the time of the trial, the court admitted the instrument over the objection that it contained material

alterations and interlineations. Landt *v.* McCullough, 121 Ill. App. 328.

Discretionary with Court to Admit Note Apparently Altered, Without Proof. — Wood *v.* Skelley, (Mass. 1907) 81 N. E. 872.

274. 1. Colonial Trust Co. *v.* Getz, 28 Pa. Super. Ct. 619.

2. A Question of Fact for the Jury. — Grand Lodge, etc., *v.* Young, 123 Ill. App. 628.

3. Manuel *v.* Flynn, (Cal. App. 1907) 90 Pac. 463; Grand Lodge, etc., *v.* Young, 123 Ill. App. 628; Merritt *v.* Dewey, 218 Ill. 599, 75 N. E. 1066; Colonial Trust Co. *v.* Getz, 28 Pa. Super. Ct. 619; Lawrence *v.* Meenach, (Wash. 1907) 88 Pac. 1120.

When a material alteration made after the execution of an agreement is made to appear the party producing the agreement has the burden of explaining the alteration. Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515.

275. 2. Merritt *v.* Dewey, 218 Ill. 599, 75 N. E. 1066.

4. Colonial Trust Co. *v.* Getz, 28 Pa. Super. Ct. 619.

5. Absence of Explanation of a Material Alteration Creates the Presumption that the Party Producing the instrument made the alteration. Philip Carey Mfg. Co. *v.* Watson, 58 W. Va. 189, 52 S. E. 515.

7. Alteration in Deed Presumed to Have Been Made Before Execution. — Gunkel *v.* Seiberth, (Ky. 1905) 85 S. W. 733.

8. Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213; McKenzie *v.* Barrett, (Tex. Civ. App. 1906) 98 S. W. 229.

277. 1. Gunkel *v.* Seiberth, (Ky. 1905) 85 S. W. 733.

279. 1. Matter of Pinkerton, (Surrogate Ct.) 49 Misc. (N. Y.) 363, 99 N. Y. Supp. 492.

An Alteration in Different Ink or Handwriting coupled with testimony to the effect that the note in question originally contained no erasures, was held to establish that the alteration occurred after the note had been executed and delivered. Hecht *v.* Shenners, 126 Wis. 27, 105 N. W. 309.

Alteration in Different Ink Tends to Rebut Presumption of Contemporaneous Alteration.— Rogers *v.* Page, (C. C. A.) 140 Fed. 596.

Interlineation of the word "fourth" after the words "north east," and over the word "quarter" in a deed, was held not to be such an evident mark of suspicion as would justify the rejection of the deed as evidence. Campbell *v.* Bates, 143 Ala. 338, 39 So. 144.

Change in Date and Change in Due Date Suspicious Alterations. — Colonial Trust Co. *v.* Getz, 28 Pa. Super. Ct. 619.

280. 6. **Presumption that Erasures Were Made by Testatrix Animo Cancellandi.** — Where the proof showed that the testatrix and her legal adviser had had exclusive possession of the will, the presumption obtained that erasures had been made by the testatrix *animo cancellandi.* Hilyard *v.* Wood, (N. J. 1906) 63 Atl. 7.

7. Will in Private Repository of Testator. — Hilyard *v.* Wood, (N. J. 1906) 63 Atl. 7.

Alterations Not Affecting Disposition of Property Presumed to Have Been Made Before Execution. — Jersey *v.* Jersey, 146 Mich. 660, 110 N. W. 54.

283. 4. **Erasures in Pencil Entitled to Same Prima Facie Consideration as Those in Ink.** — Hilyard *v.* Wood, (N. J. 1906) 63 Atl. 7.

AMBIGUITY.

287. 1. **Use of Term in Broad Sense.** — Novelty Hat Mfg. Co. *v.* Wiseberg, 126 Ga. 800, 55 S. E. 923; Barrett *v.* Kansas, etc., Coal Co., 70 Kan. 649, 79 Pac. 150.

Explanation by Expert. — Crawford *v.* Roney, 126 Ga. 763, 55 S. E. 499.

The terms "basis" and "returns" used in a contract for the sale of cotton are technical terms of trade, and testimony of experts in the cotton business was admissible to explain their meaning. Daniel *v.* Maddox-Rucker Banking Co., 124 Ga. 1063, 53 S. E. 573. *Compare* Stewart *v.* Raleigh, etc., Air Line R. Co., 141 N. Car. 253, 53 S. E. 877.

288. 1. Barrett *v.* Kansas, etc., Coal Co., 70 Kan. 649, 79 Pac. 150; Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 388 [288].

289. 1. Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 388 [288].

Another Definition of latent ambiguity is "an ambiguity which arises from some collateral circumstance or extrinsic matter in a case where the language of the instrument itself is intelligible." Barrett *v.* Kansas, etc., Coal Co., 70 Kan. 649, 79 Pac. 150.

2. Massey *v.* Dixon, 81 Ark. 337, 99 S. W. 383; Leverett *v.* Bullard, 121 Ga. 534, 49 S. E. 591; Jenkins *v.* Kirtley, 70 Kan. 801, 79 Pac. 671; Schuster *v.* Snawder, (Ky. 1907) 101 S. W. 1194; Ward *v.* Gay, 137 N. Car. 397, 49 S. E. 884; St. Louis, etc., R. Co. *v.* Payne, (Tex. Civ. App. 1907) 104 S. W. 1077; Schultz *v.* Simmons Fur Co., (Wash. 1907) 90 Pac. 917. *Compare* Barrett *v.* Kansas, etc., Coal Co., 70 Kan. 649, 79 Pac. 150.

3. Reynolds *v.* Lawrence, 147 Ala. 216, 40 So. 576; Morrison Mfg. Co. *v.* Bryson, 129 Iowa 645, 103 N. W. 1016, 106 N. W. 153; Elam *v.* Western Union Tel. Co., 113 Mo. App. 538, 88 S. W. 115.

4. Brannan *v.* Henry, 142 Ala. 698, 39 So. 92; Harten *v.* Loffler, 29 App. Cas. (D. C.) 490; Martin *v.* Kitchen, 195 Mo. 477, 93 S. W. 780; Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665.

291. 1. Wolverine Lumber Co. *v.* Phœnix Ins. Co., 145 Mich. 558, 108 N. W. 1088.

2. Reynolds *v.* Lawrence, 147 Ala. 216, 40 So. 576; Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972; Hill *v.* Hill, (N. H. 1907) 67 Atl. 406; Herman *v.* Dunman, (Tex. Civ. App. 1906) 95 S. W. 80; Grout *v.* Moulton, 79 Vt. 122, 64 Atl. 453.

292. 1. *United States.* — U. S. *v.* Bethlehem Steel Co., 205 U. S. 105, 27 U. S. Sup. Ct. 450, *reversing* 41 Ct. Cl. 19; Lowrey *v.* Hawaii, 206 U. S. 206, 27 U. S. Sup. Ct. 622.

Alabama. — Reynolds *v.* Lawrence, 147 Ala. 216, 40 So. 576.

Arizona. — Pringle *v.* King, (Ariz. 1904) 78 Pac. 367.

Arkansas. — Dugan *v.* Kelly, 75 Ark. 55, 86 S. W. 831.

California. — Matter of Garnier, 147 Cal. 457, 82 Pac. 68; Jersey Island Dredging Co. *v.* Whitney, 140 Cal. 269, 86 Pac. 691; Hale *v.* Milliken, (Cal. App. 1907) 90 Pac. 365.

Colorado. — San Miguel Consol. Gold Min. Co. *v.* Stubbs, (Colo. 1907) 90 Pac. 842.

District of Columbia. — Harten *v.* Loffler, 29 App. Cas. (D. C.) 490.

Florida. — L'Engle *v.* Scottish Union, etc., F. Ins. Co., 48 Fla. 82, 37 So. 462; Jacobs *v.* Parodi, 50 Fla. 541, 39 So. 833.

Georgia. — Leffler Co. *v.* Dickerson, 1 Ga. App. 63, 57 S. E. 911.

Illinois. — Brockmeyer *v.* Sanitary Dist., 118 Ill. App. 49; Gage *v.* Cameron, 212 Ill. 146, 72 N. E. 204.

Indiana. — Bache *v.* Coppes, etc., Co., 35 Ind. App. 351, 74 N. E. 41; Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972.

Iowa. — Colean Implement Co. *v.* Strong, 126 Iowa 598, 102 N. W. 506.

Kansas. — Jenkins *v.* Kirtley, 70 Kan. 801, 79 Pac. 671.

Kentucky. — Versailles *v.* Brown, 96 S. W. 1108, 29 Ky. L. Rep. 1223; Schuster *v.* Snawder, (Ky. 1907) 101 S. W. 1194; Fidelity, etc., Co. *v.* Southern R. News Co., (Ky. 1907) 103 S. W. 297; McSurley *v.* Venters, (Ky. 1907) 104 S. W. 365.

Massachusetts. — Callender, etc., Co. *v.* Flint, 187 Mass. 104, 72 N. E. 345; Scalpen *v.* Blanchard, 187 Mass. 73, 72 N. E. 346; Kennedy *v.* McLellen, 193 Mass. 528, 79 N. E. 819; Fullam *v.* Wright, etc., Wire Cloth Co., (Mass. 1907) 82 N. E. 711.

Mississippi. — Traders' Ins. Co. *v.* Edward Post, etc., 86 Miss. 135, 38 So. 779.

Missouri. — Laclede Constr. Co. *v.* T. J. Moss Tie Co., 185 Mo. 25, 84 S. W. 76; Bertig-Smythe Co. *v.* Bonsack Lumber Co., 112 Mo. App. 259, 86 S. W. 870; Zerr *v.* Klug, 121 Mo. App. 286, 98 S. W. 822; Great Western Printing Co. *v.* Belcher, (Mo. App. 1907) 104 S. W. 894; Webb *v.* Steiner, 113 Mo. App. 482, 87 S. W. 618.

New York. — New York House Wrecking Co. *v.* O'Rourke, 92 N. Y. App. Div. 217, 86 N. Y. Supp. 1116, *affirmed* 181 N. Y. 564, 74 N. E. 1121; Britton *v.* Marks, 105 N. Y. App. Div. 85, 93 N. Y. Supp. 828.

North Carolina. — Ivey *v.* Bessemer City Cotton Mills, 143 N. Car. 189, 55 S. E. 613.

Pennsylvania. — Edmonds *v.* Connellsville First Nat. Bank, 215 Pa. St. 547, 64 Atl. 671.

South Carolina. — Welborn *v.* Dixon, 70 S. Car. 108, 49 S. E. 232; Marshall *v.* Columbia, etc., Electric St. R. Co., 73 S. Car. 241, 53 S. E. 417.

Texas. — Houston Transfer Co. *v.* Lee, (Tex. Civ. App. 1906) 97 S. W. 842; Cockrell *v.* Egger, (Tex. Civ. App. 1907) 99 S. W. 568.

Virginia. — Shenandoah Land, etc., Co. *v.* Clark, 106 Va. 100, 55 S. E. 561; Pine Beach Invest. Corp. *v.* Columbia Amusement Co., 106 Va. 810, 56 S. E. 822; Albert *v.* Tidewater R. Co., (Va. 1907) 58 S. E. 575.

West Virginia. — Newman *v.* Kay, 57 W. Va. 98, 49 S. E. 926; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890; Clayton *v.* Gilmer County Ct., 58 W. Va. 253, 52 S. E. 103; Winton *v.* McGraw, 60 W. Va. 98, 54 S. E. 506; Bent *v.* Trimboli, 61 W. Va. 509, 56 S. E. 881.

Wisconsin. — Edwards *v.* Wisconsin Invest. Co., 124 Wis. 315, 102 N. W. 575.

A Promissory Note. — Dunbar Box, etc., Co. *v.* Martin, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 312, 103 N. Y. Supp. 91.

Court Records — Evidence to Identify Subject-matter Admissible. — Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101.

Evidence of Condition of Subject of Contract Admissible to Show Intention. — Walker *v.* Johnson, 116 Ill. App. 145; Rouseville Borough School Dist. *v.* Cornplanter Tp. School Dist., 29 Pa. Super. Ct. 214.

Words Not Shown by Extrinsic Evidence to Be Equivocal cannot be explained by parol evidence. Grout *v.* Moulton, 79 Vt. 122, 64 Atl. 453.

293. 1. Henderson-Boyd Lumber Co. *v.* Cook, (Ala. 1906) 42 So. 838; Southern R. Co. *v.* Cofer, (Ala. 1907) 43 So. 102; Norman Printers Supply Co. *v.* Ford, 77 Conn. 461, 59 Atl. 499; Daniel *v.* Maddox-Rucker Banking Co., 124 Ga. 1063, 53 S. E. 573; Brackett *v.* American Grocery Co., 127 Ga. 672, 56 S. E. 762; Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13; Rochester German Ins. Co. *v.* Peaslee Gaulbert Co., 120 Ky. 752, 9 Ann. Cas. 324, 87 S. W. 1115; Barnes *v.* Leidigh, 46 Oregon 43, 79 Pac. 51; Lovering *v.* Miller, 218 Pa. St. 212, 67 Atl. 209; O'Neill *v.* Ogden Ærie No. 118, (Utah 1907) 89 Pac. 464; Shenandoah Land, etc., Co. *v.* Clark, 106 Va. 100, 55 S. E. 561; Schultz *v.* Simmons Fur Co., (Wash. 1907) 90 Pac. 917. And see the title USAGES AND CUSTOMS, vol. 29, p. 427.

2. Lowrey *v.* Hawaii, 206 U. S. 206, 27 U. S. Sup. Ct. 622; Dugan *v.* Kelly, 75 Ark. 55, 86 S. W. 831; Carney *v.* Hennessey, 77 Conn. 577, 60 Atl. 129; Georgia, etc., R. Co. *v.* Shiver, 121 Ga. 708, 49 S. E. 700; Kitzman *v.* Carl, 133 Iowa 340, 110 N. W. 587; Laclede Constr. Co. *v.* T. J. Moss Tie Co., 185 Mo. 25, 84 S. W. 76; Marshall *v.* Columbia, etc., Electric St. R. Co., 73 S. Car. 241, 53 S. E. 417; Newman *v.* Kay, 57 W. Va. 98, 49 So. 926; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

294. 1. Newman *v.* Kay, 57 W. Va. 98, 49 S. E. 926.

2. Lambert Hoisting Engine Co. *v.* Carmody, 79 Conn. 419, 65 Atl. 141; Harten *v.* Loffler, 29 App. Cas. (D. C.) 490; Wellmaker *v.* Wheatley, 123 Ga. 201, 51 S. E. 436; Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972; Fidelity, etc., Co. *v.* Southern R. News Co., (Ky. 1907) 103 S. W. 297.

295. 1. *United States.* — Kilby Mfg. Co. *v.* Hinchman-Ranton Fire Proofing Co., (C. C. A.) 132 Fed. 957.

Arkansas. — Massey *v.* Dixon, 81 Ark. 337, 99 S. W. 383.

California. — Fireman's Fund Ins. Co. *v.* Aachen, etc., F. Ins. Co., 2 Cal. App. 690, 84 Pac. 253.

District of Columbia. — Okie *v.* Person, 23 App. Cas. (D. C.) 170; Harten *v.* Loffler, 29 App. Cas. (D. C.) 490.

Illinois. — Giger *v.* Busch, 122 Ill. App. 13.

Kansas. — Mayberry *v.* Beck, 71 Kan. 609, 81 Pac. 191.

Kentucky. — Slusher *v.* Slusher, (Ky. 1907) 102 S. W. 1188.

Massachusetts. — Buffington *v.* McNally, 192 Mass. 198, 78 N. E. 309; Smith *v.* Vose, etc., Piano Co., 194 Mass. 193, 80 N. E. 527.

Minnesota. — Sorenson *v.* Carey, 96 Minn. 202, 104 N. W. 958.

Missouri. — Bertig-Smythe Co. *v.* Bonsack Lumber Co., 112 Mo. App. 259, 86 S. W. 870.

New Hampshire. — Kimball *v.* Waterman, 73 N. H. 348, 61 Atl. 595.

New York. — Sholl *v.* Prince Line, 109 N. Y. App. Div. 591, 96 N. Y. Supp. 368; Clark *v.* Goodridge, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 140, 100 N. Y. Supp. 824.

North Carolina. — Walker *v.* Miller, 139 N. Car. 448, 52 S. E. 125.

Ohio. — Watson *v.* Lamb, 75 Ohio St. 481, 79 N. E. 1075.

Oregon. — Baker County *v.* Huntington, 46 Oregon 275, 79 Pac. 187; Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

Tennessee. — Staub *v.* Hampton, (Tenn. 1907) 101 S. W. 776.

Texas. — Warner *v.* Sapp, (Tex. Civ. App. 1906) 97 S. W. 125; Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665; St. Louis, etc., R. Co. *v.* Payne, (Tex. Civ. App. 1907) 104 S. W. 1077.

Utah. — Fayter *v.* North, 30 Utah 156, 83 Pac. 742.

To Aid in Identifying Property under a Sheriff's Levy and Sale, parol evidence is admissible. Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

296. 1. Jackson *v.* Hardin, (Ky. 1905) 87 S. W. 1119.

2. Hubbuck's Estate, (1905) P. 129; Giger *v.* Busch, 122 Ill. App. 13; Matter of Pearson, (Surrogate Ct.) 52 Misc. (N. Y.) 273, 102 N. Y. Supp. 965.

297. 3. St. James Orphan Asylum *v.* Shelby, (Neb. 1906) 106 N. W. 604.

298. 1. Pawnee City Second United Presb. Church *v.* Pawnee City First United Presb. Church, 71 Neb. 563, 99 N. W. 252, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 298; Hubbuck's Estate, (1905) P. 129, 92 L. T. N. S. 665; *In re* Paulson, 127 Wis. 612, 107 N. W. 484. See also *In re* Dominici, (Cal. 1907) 90 Pac. 448, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 298.

299. 2. Henderson *v.* Henderson, (1905) 1 Ir. R. 353; Atkins *v.* Best, 27 App. Cas. (D. C.) 148; Giger *v.* Busch, 122 Ill. App. 13; German Pioneer Verein *v.* Meyer, 70 N. J. Eq. 192, 63 Atl. 835; Clark *v.* Goodridge, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 140, 100 N. Y. Supp. 824.

300. 1. Leverett *v.* Bullard, 121 Ga. 534, 49 S. E. 591; Johnson *v.* McKay, 121 Ga. 763, 49 S. E. 757; Georgia, etc., R. Co. *v.* Shiver, 121 Ga. 708, 49 S. E. 700; Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665; Fayter *v.* North, 30 Utah 156, 83 Pac. 742. See also Walden *v.* Walden, 128 Ga. 126, 57 S. E. 323; Wheeler *v.* Moore, (Neb. 1907) 111 N. W. 120.

A Crop Mortgage may be explained by parol so as to identity the property. Read Phosphate Co. *v.* S. Weichselbaum Co., 1 Ga. App. 420, 58 S. E. 122.

Description of Debt in Mortgage. — Where the language of a mortgage as to the description of the debt intended to be secured is uncertain, indefinite, and general in its terms, and does not describe the debt intended to be secured with such precision as to identify it by a comparison with the mortgage, its identity may be established by parol evidence. Boyes *v.* Masters, 17 Okla. 460, 89 Pac. 198.

Where Boundary Is Variable. — See Haskell *v.* Friend, (Mass. 1907) 81 N. E. 962.

301. 2. Gage *v.* Cameron, 212 Ill. 146, 72 N. E. 204.

302. 2. Walker *v.* Miller, 139 N. Car. 448, 52 S. E. 125; Cobb *v.* Bryan, (Tex. Civ. App. 1906) 97 S. W. 513.

3. Dorlan *v.* Westervitch, 140 Ala. 283, 37 So. 382; Brannan *v.* Henry, 142 Ala. 698, 39 So. 92; Reynolds *v.* Lawrence, 147 Ala. 216, 40 So. 576; Chapman *v.* Zobelein, (Cal. 1907) 92 Pac. 188; Mayberry *v.* Beck, 71 Kan. 609, 81 Pac. 191; Wilkins *v.* Clawson, (Tex. Civ. App. 1904) 83 S. W. 732.

"The identical monument or boundary referred to in a deed is always a subject of parol evidence, and when disputed it is always left to the jury to say what was the actual boundary intended." Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665.

303. 1. *United States.* — Kilby Mfg. Co. *v.* Hinchman-Renton Fire Proofing Co., (C. C. A.) 132 Fed. 957; Lindblom *v.* Fallett, (C. C. A.) 145 Fed. 805.

Alabama. — Hanna *v.* Espalla, (Ala. 1906) 42 So. 443.

California. — Williams *v.* Ashurst Oil, etc., Co., 144 Cal. 619, 78 Pac. 28; Peterson *v.* Chaix, (Cal. App. 1907) 90 Pac. 948.

District of Columbia. — Okie *v.* Person, 23 App. Cas. (D. C.) 170; Harten *v.* Loffler, 29 App. Cas. (D. C.) 490.

Florida. — L'Engle *v.* Scottish Union, etc., F. Ins. Co., 48 Fla. 82, 37 So. 462.

Georgia. — Novelty Hat Mfg. Co. *v.* Wiseberg, 126 Ga. 800, 55 S. E. 923.

Illinois. — Stone *v.* Mulvaine, 217 Ill. 40, 75 N. E. 421, *affirming* 119 Ill. App. 443.

Iowa. — Blake *v.* Miller, (Iowa 1907) 112 N. W. 158.

Kentucky. — Slusher *v.* Slusher, (Ky. 1907) 102 S. W. 1188; Martin *v.* Ferguson, (Ky. 1907) 103 S. W. 257.

Massachusetts. — Smith *v.* Vose, etc., Piano Co., 194 Mass. 193, 80 N. E. 527.

Missouri. — Laclede Constr. Co. *v.* T. J. Moss Tie Co., 185 Mo. 25, 84 S. W. 76.

North Carolina. — Ward *v.* Gay, 137 N. Car. 397, 49 S. E. 884.

Oklahoma. — Halsell *v.* Renfrow, 14 Okla. 674, 78 Pac. 118.

Oregon. — Baker County *v.* Huntington, 46 Oregon 275, 79 Pac. 187.

Pennsylvania. — Cox *v.* Wilson, 25 Pa. Super. Ct. 635.

Texas. — Morrison *v.* Hazzard, (Tex. 1906) 92 S. W. 33.

Virginia. — Albert *v.* Tidewater R. Co., (Va. 1907) 58 S. E. 575.

Washington. — Schultz *v.* Simmons Fur Co., (Wash. 1907) 90 Pac. 917.

West Virginia. — Armstrong *v.* Ross, 61 W. Va. 38, 55 S. E. 895.

2. Where There Are Two Objects. — Parol evi-

dence is admissible to show that the vendees under a contract have no right to the lumber on certain land not included in the tract described in the contract by its generally known name. Jackson *v.* Hardin, (Ky. 1905) 87 S. W. 1119.

Where There Are Two Modes of Performance. — See Northern Pac. R. Co. *v.* Kempton, (C. C. A.) 138 Fed. 992.

304. 2. **Party to Contract.** — So, too, where the name of a certain person is mentioned in the body of a contract as the party of the second part, but a different name is signed to the contract, parol evidence is admissible to identify the person named in the contract as a party thereto. Wuertz *v.* Braun, 113 N. Y. App. Div. 459, 99 N. Y. Supp. 340.

5. Lomax *v.* Lomax, 218 Ill. 629, 75 N. E. 1076; Licking Rolling Mill Co. *v.* Snyder, (Ky. 1905) 89 S. W. 249; Ivey *v.* Bessemer City Cotton Mills, 143 N. Car. 189, 55 S. E. 613; Watson *v.* Lamb, 75 Ohio St. 481, 79 N. E. 1075.

AMOTION.

311. 3. Rogers *v.* Congleton, (Ky. 1905) 84 S. W. 521.

313. 5. City of San Antonio *v.* Serna, (Tex. Civ. App. 1907) 99 S. W. 875, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 313.

316. 2. O'Neal *v.* F. A. Neider Co., 118 Ky. 62, 80 S. W. 451, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 316.

Statute Applicable to Public Officers Only. — Le Bosquet *v.* Myers, (Indian Ter. 1907) 103 S. W. 770.

ANCIENT DOCUMENTS.

322. 1. **Only Necessary to Show They Were Thirty Years Old.** — McGuire *v.* Blount, 199 U. S. 142, 26 U. S. Sup. Ct. 1; Woodward *v.* Keck, (Tex. Civ. App. 1906) 97 S. W. 852.

2. **Deeds.** — Hyde *v.* McFaddin, (C. C. A.) 140 Fed. 433; Sydnor *v.* Texas Sav., etc., Invest. Assoc., (Tex. Civ. App. 1906) 94 S. W. 451; Jones *v.* Neal, (Tex. Civ. App. 1906) 98 S. W. 417; Dutton *v.* Wright, (Tex. Civ. App. 1905) 85 S. W. 1025; Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

Wills. — McGuire *v.* Blount, 199 U. S. 142, 26 U. S. Sup. Ct. 1.

Old Records. — Matter of Webster, 106 N. Y. App. Div. 360, 94 N. Y. Supp. 1050.

Letters Patent. — Woodward *v.* Keck, (Tex. Civ. App. 1906) 97 S. W. 852.

Records of Births and Marriages kept by a church corporation over a hundred years are ancient documents. Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72.

324. 2. Hyde *v.* McFaddin, (C. C. A.) 140 Fed. 433; McGuire *v.* Blount, 199 U. S. 142, 26 U. S. Sup. Ct. 1; Ford *v.* Ford, 27 App. Cas. (D. C.) 401, 7 Ann. Cas. 245; Matter of Webster, 106 N. Y. App. Div. 360, 94 N. Y. Supp. 1050, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 324; Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72; Woodward *v.* Keck, (Tex. Civ. App. 1906) 97 S. W. 852.

326. 1. **Proper Custody Raises Presumption of Genuineness.** — McGuire *v.* Blount, 199 U. S. 142, 26 U. S. Sup. Ct. 1; Matter of Webster, 106 N. Y. App. Div. 360, 94 N. Y. Supp. 1050, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 326; Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72; Woodward *v.* Keck, (Tex. Civ. App. 1906) 97 S. W. 852; Jones *v.* Neal, (Tex. Civ. App. 1906) 98 S. W. 417.

328. 5. Layton *v.* Kraft, 111 N. Y. App. Div. 842, 89 N. Y. Supp. 72; Jones *v.* Neal, (Tex. Civ. App. 1906) 98 S. W. 417.

331. 1. **Illustrations — for What Purposes Introduced** — *To Establish Recitals.* — A deed may be admitted in evidence to establish the truth of facts recited therein. Sydnor *v.* Texas Sav., etc., Invest. Assoc., (Tex. Civ. App. 1906) 94 S. W. 451.

To Establish Pedigree, Identity, etc. — Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

AND.

333. 2. **"Or" Read as "And" — Wills.** — Olcott *v.* Tope, 115 Ill. App. 121, *affirmed* 213 Ill. 124, 72 N. E. 751; Travers *v.* Reinhardt, 25 App. Cas. (D. C.) 567; Matter of Polley, 70 N. J. Eq. 659, 62 Atl. 553.

"Or" Not Read as "And" — Statutes. — Caster *v.* McClellan, 132 Iowa 502, 109 N. W. 1020.

337. 1. State *v.* Tiffany, 44 Wash. 602, 87 Pac. 932.

338. 2. **"Or" Read "And" and Vice Versa — Criminal Statutes.** — Williams *v.* U. S., 17 Okla. 31, 87 Pac. 647, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 337.

339. 4. **"And" Read "Or" — Contract.** — Geiger *v.* Cawley, 146 Mich. 550, 109 N. W. 1064.

ANIMALS.

342. 1. **General Ownership in State.** — State *v.* Mallory, 73 Ark. 236, 83 S. W. 955; Sherwood *v.* Stephens, (Idaho 1907) 90 Pac. 345; Cummings *v.* People, 211 Ill. 392, 71 N. E. 1031; Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; *In re* Schwartz, 119 La. 290, 44 So. 20; *Ex p.* Fritz, 86 Miss. 210, 38 So. 722; State *v.* Heger, 194 Mo. 707, 93 S. W. 252; People *v.* Bootman, 180 N. Y. 1, 2 Ann. Cas. 226, 72 N. E. 505; State *v.* Niles, 78 Vt. 266, 62 Atl. 795; State *v.* Nergaard, 124 Wis. 414, 102 N. W. 899.

2. **Wild Animals Reclaimed.** — State *v.* Mallory, 73 Ark. 236, 83 S. W. 955; Sherwood *v.* Stephens, (Idaho 1907) 90 Pac. 345.

4. **Fish Are Feræ Naturæ** and are not subject to private ownership until actually taken, except in land-locked ponds and artificial lakes. Ryall *v.* Allen, 143 Ala. 222, 38 So. 851. See further the title FISH AND FISHERIES.

344. 2. **Killing Animals on One's Own Land** — *Right Subject to Regulation by State.* — State *v.* Mallory, 73 Ark. 236, 83 S. W. 955; Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; People *v.* Bootman, 180 N. Y. 1, 2 Ann. Cas. 226, 72 N. E. 505. See further the title GAME AND GAME LAWS.

345. 1. **Trespassers.** — Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783.

347. 1. **Taxing Dogs as Affecting Question of Larceny.** — Harrington *v.* Hall, (Del. 1906) 63 Atl. 875.

Statute Providing for Killing Unlicensed Dog

Constitutional. — *Ex p.* Ackerman, (Cal. App. 1907) 91 Pac. 429.

Civil Action for Injury to Dog. — Harrington *v.* Hall, (Del. 1906) 63 Atl. 875; Columbus R. Co. *v.* Woolfolk, 128 Ga. 631, 58 S. E. 152, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347; Reed *v.* Goldneck, 112 Mo. App. 310, 86 S. W. 1104; Moore *v.* Charlotte Electric R., etc., Co., 136 N. Car. 554, 48 S. E. 822.

No Action Maintainable for Killing Unregistered Dog. — Dickerman *v.* Consolidated R. Co., 79 Conn. 427, 65 Atl. 289.

4. Statutes — "Personal Property." — State *v.* Soward, 83 Ark. 264, 103 S. W. 741; Harrington *v.* Hall, (Del. 1906) 63 Atl. 875; Reed *v.* Goldneck, 112 Mo. App. 310, 86 S. W. 1104.

5. Dog Subject of Larceny by Statute. — Columbus R. Co. *v.* Woolfolk, 128 Ga. 631, 58 S. E. 152.

Dogs Held to Be Property — Value Provable When Wrongfully Killed. — State *v.* Soward, 83 Ark. 264, 103 S. W. 741; Columbus R. Co. *v.* Woolfolk, 128 Ga. 631, 58 S. E. 152; Reed *v.* Goldneck, 112 Mo. App. 310, 86 S. W. 1104; Brookreson *v.* State, (Tex. Crim. 1906) 93 S. W. 725; State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

348. 1. Increase Follows the Dam. — Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561.

351. 1. Liability of Owner for Damages by Wild Animals — General Rule. — Hays *v.* Miller, (Ala. 1907) 43 So. 818, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351; Jackson *v.* Baker, 24 App. Cas. (D. C.) 100.

Wolf — Monkey — Deer. — Hays *v.* Miller, (Ala. 1907) 43 So. 818 (owner of a wolf).

Bees Attacking Horses. — Petey Mfg. Co. *v.* Dryden, 5 Penn. (Del.) 166, 62 Atl. 1056.

In Lucas *v.* Pettit, 12 Ont. L. Rep. 448, it was held that the owner of bees was liable for the death of horses stung to death by them.

No Liability When Injured Person Guilty of Contributory Negligence. — Molloy *v.* Starin, 113 N. Y. App. Div. 852, 99 N. Y. Supp. 603; Ervin *v.* Woodruff, 119 N. Y. App. Div. 603, 103 N. Y. Supp. 1051.

2. Bostock-Ferari Amusement Co. *v.* Brocksmith, 34 Ind. App. 566, 73 N. E. 281, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351; Molloy *v.* Starin, 113 N. Y. App. Div. 852, 99 N. Y. Supp. 603, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351; Lucas *v.* Pettit, 12 Ont. L. Rep. 448.

Mere Custodian Liable under Rule. — Hays *v.* Miller, (Ala. 1907) 43 So. 818, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351.

352. 1. Presumption of Negligence on Part of Owner. — Hays *v.* Miller, (Ala. 1907) 43 So. 818, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351; Jackson *v.* Baker, 24 App. Cas. (D. C.) 100; Molloy *v.* Starin, 113 N. Y. App. Div. 852, 99 N. Y. Supp. 603.

2. Liability of Owner for Injuries Done by Domestic Animals. — Cooper *v.* Cashman, 190 Mass. 75, 76 N. E. 461.

Duty to Restrain — Negligence Presumed. — Harris *v.* Carstens Packing Co., 43 Wash. 647, 86 Pac. 1125.

Duty of Owner to Give Notice. — One instance of a horse's kicking has been held not to constitute such evidence of viciousness as to render the owner liable for failing to notify the servant who had charge of it. Cooper *v.* Cashman, 190 Mass. 75, 76 N. E. 461.

Leaving Horse Near Walk — No Liability Where Contributory Negligence Appears. — Miller *v.* Atlantic Refining Co., 210 Pa. St. 628, 60 Atl. 306.

Defenses — Under the *Wisconsin* statute it has been held that care to prevent the escape of a bull was not a defense to an action for damages for injuries inflicted by the animal, but that diligence in the effort to recapture him after knowledge of the escape was a good defense. Hadtke *v.* Grzyll, 130 Wis. 275, 110 N. W. 225.

354. 1. Gist of Action. — Hays *v.* Miller, (Ala. 1907) 43 So. 818; Cooper *v.* Cashman, 190 Mass. 75, 76 N. E. 461; Quigley *v.* Adams Express Co., 27 Pa. Super. Ct. 116.

Liability Rests on Negligence Rather than Trespass. — Petey Mfg. Co. *v.* Dryden, 5 Penn. (Del.) 166, 62 Atl. 1056.

2. When Prima Facie Case Established. — Cooper *v.* Cashman, 190 Mass. 75, 76 N. E. 461.

3. Trespassing Animals. — *Right to Recover Not Dependent on Amount of Damage.* — Peterson *v.* Lacey, (Iowa 1905) 102 N. W. 153.

355. 1. Walters *v.* Stacey, 122 Ill. App. 658; Pacific Livestock Co. *v.* Murray, 45 Oregon 103, 76 Pac. 1079, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351 [355]; Tennessee Chemical Co. *v.* Henry, 114 Tenn. 152, 85 S. W. 401.

Ordinary Care Required. — Missouri Pac. R. Co. *v.* Olden, 72 Kan. 110, 83 Pac. 25.

Liability between Landlord and Tenant — *Person Having Control Is Liable.* — Mott *v.* Scott, 35 Colo. 68, 83 Pac. 779.

Exception to Rule — In *New York* the owner of uninclosed lands cannot recover for an inadvertent trespass of cattle being lawfully driven along a public highway; but this exception does not extend to prevent recovery for a trespass by cattle entering the plaintiff's lands from lands adjoining the highway, which they had crossed in escaping from their custodians. Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859, declaring the common-law rule, however, and *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351 [355].

Herd Law Held to Be Readoption of Common-law Rule. — Missouri Pac. R. Co. *v.* Olden, 72 Kan. 110, 83 Pac. 25. See generally the title HERD LAWS.

356. 1. Statutory Enactments. — Clear Creek Lumber Co. *v.* Gossom, (Ala. 1907) 44 So. 404; Clear Creek Lumber Co. *v.* Duncan, (Ala. 1907) 44 So. 404; Bell *v.* Gonzales, 35 Colo. 138, 83 Pac. 639; Swanson *v.* Groat, 12 Idaho 148, 85 Pac. 384; De Mers *v.* Rohan, 126 Iowa 488, 102 N. W. 413; Woods *v.* Carty, 110 Mo. App. 416, 85 S. W. 124, holding that failure to fence is contributory negligence; Moore *v.* Persson, (S. Dak. 1907) 111 N. W. 633; Painter *v.* Stahley, (Wyo. 1907) 90 Pac. 373. See also Hardman *v.* King, 14 Wyo. 503, 85 Pac. 382.

Oregon Statute Constitutional. — Reser *v.* Umatilla County, 48 Oregon 326, 86 Pac. 595.

Compliance with Statute Condition Precedent to Recovery. — Walls *v.* Cunningham, 123 Wis. 346, 101 N. W. 696.

Public Lands. — Healy *v.* Smith, 14 Wyo. 263,

83 Pac. 583. To similar effect see Richards *v.* Sanderson, (Colo. 1907) 89 Pac. 769.

Must Show Good Fence. — De Mers *v.* Rohan, 126 Iowa 488, 102 N. W. 413; Wilson *v.* Caffall, (Tex. Civ. App. 1904) 83 S. W. 726.

Lawful Fence Necessary. — Clear Creek Lumber Co. *v.* Duncan, (Ala. 1907) 44 So. 404.

Fence Sufficient to Restrain Ordinary Cattle Enough. — Trammell *v.* Turner, (Tex. Civ. App. 1904) 82 S. W. 325.

But Where Roaming Cattle — *Owner Not Liable Unless Cattle Breachy.* — Moore *v.* Pierson, (Tex. Civ. App. 1906) 93 S. W. 1007.

The Owner of Cattle of Known Roaming Propensities must take unusual precautions. Durkee *v.* Chino Land, etc., Co., (Cal. 1907) 91 Pac. 389.

357. 1. Wilful Trespass. — Bell *v.* Gonzales, 35 Colo. 138, 83 Pac. 639; Swanson *v.* Groat, 12 Idaho 148, 85 Pac. 384; Musselshell Cattle Co. *v.* Woolfolk, 34 Mont. 126, 85 Pac. 874; Healy *v.* Smith, 14 Wyo. 263, 83 Pac. 583; Painter *v.* Stahley, (Wyo. 1907) 90 Pac. 375.

2. Right to Drive Off Trespassing Stock. — Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859, holding further that it is the duty of the owner of trespassing cattle to remove them with all reasonable speed.

The Right Ceases when the animals have been driven upon lands where they have a lawful right to be. Richards *v.* Sanderson, (Colo. 1907) 89 Pac. 769.

358. 2. Limitation upon Right — May Not Kill Trespassing Animals. — Harrington *v.* Hall, (Del. 1906) 63 Atl. 875; Brookreson *v.* State, (Tex. Crim. 1906) 93 S. W. 725.

In the Case, However, of Animal Attacking Another. — Harrington *v.* Hall, (Del. 1906) 63 Atl. 875.

Double Damages. — In *Missouri,* under the statute providing that any one injuring animals while driving them from his land which has not been sufficiently fenced shall be liable for double damages for such injuries, it has been held that one is liable regardless of the care used in driving off the trespassing stock. Woods *v.* Carty, 110 Mo. App. 416, 85 S. W. 124.

A Dog Killing Sheep may be killed in *Missouri* under the statute. Reed *v.* Goldneck, 112 Mo. App. 310, 86 S. W. 1104.

3. Goff *v.* Byers, 70 Neb. 1, 96 N. W. 1037, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 358.

Duty of Owner to Prevent Damage. — Linn *v.* Hagan, (Ky. 1906) 92 S. W. 11.

359. 1. Test of Right to Distrain. — Cotton *v.* Huston, 110 Mo. App. 70, 84 S. W. 97 (to the same effect as Cox *v.* Chester, 77 Mich. 494, stated in the original note).

3. There Must Be a Lawful Fence. — Krahn *v.* Bickford, 118 Ill. App. 511. See also Walters *v.* Stacey, 122 Ill. App. 658.

361. 1. Runaway Team. — Lynch *v.* Kineth, 36 Wash. 368, 78 Pac. 923.

362. 1. Right to Drive Cattle Along Public Highway Maintained. — Wood *v.* Snider, 108 N. Y. App. Div. 168, 95 N. Y. Supp. 508.

One Training Unbroken Horses on the street is bound to exercise caution commensurate with the danger. Conway *v.* Rheims, 107 N. Y. App. Div. 289, 95 N. Y. Supp. 119.

364. 1. Morgan *v.* Hendricks, (Vt. 1907) 67 Atl. 702, discussing also the question what constitutes contributory negligence; Harris *v.* Carstens Packing Co., 43 Wash. 647, 86 Pac. 1125. See also North *v.* Woodland, 12 Idaho 50, 85 Pac. 215, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 364.

Evidence of Viciousness — *Vicious Conduct After Injury May Be Shown.* — Harris *v.* Carstens Packing Co., 43 Wash. 647, 86 Pac. 1125; *Evidence of Previous Acts Admissible.* — Morgan *v.* Hendricks, (Vt. 1907) 67 Atl. 702.

Scienter — Evidence of. — Evidence that a horse was muzzled before and after inflicting the injury complained of, implies knowledge on the part of the owner. Poland *v.* Minshall, (Supm. Ct. App. T.) 96 N. Y. Supp. 200.

Actual Notice Not Necessary. — Conway *v.* Rheims, 107 N. Y. App. Div. 289, 95 N. Y. Supp. 119.

Knowledge of Servant Imputed to Master. — Lynch *v.* Kineth, 36 Wash. 368, 78 Pac. 923; Harris *v.* Carstens Packing Co., 43 Wash. 647, 86 Pac. 1125.

365. 1. Rule Where Animal Is Trespasser. — *Compare* Harvey *v.* Buchanan, 121 Ga. 384, 49 S. E. 281, holding, where a kid was killed on the owner's premises by a mule running at large, that the owner of the mule was not liable in the absence of knowledge of viciousness, whether he was or was not at fault in allowing the mule to go at large.

366. 2. Vicious Dogs — General Rule as to Liability. — Barklow *v.* Avery, (Tex. Civ. App. 1905) 89 S. W. 417.

368. 1. Gist of Action — Keeping Dog with Knowledge of Its Viciousness. — Soronen *v.* Von Postau, 112 N. Y. App. Div. 437, 98 N. Y. Supp. 431; Ellingsen *v.* Linstrand, 121 N. Y. App. Div. 268, 105 N. Y. Supp. 598.

2. Prima Facie Liable. — Hunter *v.* Metropolitan Express Co., (Supm. Ct. App. T.) 30 Misc. (N. Y.) 158, 98 N. Y. Supp. 234.

3. Presumption of Negligence. — Bentz *v.* Page, 115 La. 560, 39 So. 599; Barklow *v.* Avery, (Tex. Civ. App. 1905) 89 S. W. 417.

369. 1. Barnes *v.* Lucille, 96 L. T. N. S. 680; Bogodonow *v.* New York Lumber, etc., Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 120, 91 N. Y. Supp. 331; Grissom *v.* Hofius, 39 Wash. 51, 80 Pac. 1002. See also Emmons *v.* Stevane, 73 N. J. L. 349, 64 Atl. 1014.

2. Proof of Savage Nature of Dog Equivalent to Express Notice on Part of Owner. — Grissom *v.* Hofius, 39 Wash. 51, 80 Pac. 1002.

Actual Notice Necessary. — See Fettman *v.* Hencken, etc., Co., (Supm. Ct. App. T.) 91 N. Y. Supp. 773.

3. Statutory Enactments. — Leone *v.* Kelly, 77 Conn. 569, 60 Atl. 136; Nohre *v.* Wright, 98 Minn. 477, 108 N. W. 865 (statute relating to killing sheep by dogs).

Statute Not Applicable to Injury on Keeper's Premises. — Oldham *v.* Hussey, 27 R. I. 366, 62 Atl. 377.

4. How Scienter Shown — Not Necessary to Show Previous Injury. — Grissom *v.* Hofius, 39 Wash. 51, 80 Pac. 1002.

It Is Not Necessary to Show that Dog Has Before Bitten Person. — Barnes *v.* Lucille, 96 L. T. N. S. 680.

Keeping Dog Confined. — The fact that the

owner of a dog kept him tied and had posted warning notices on his premises has been held to be insufficient to charge the owner with notice of the dog's viciousness. Bogodonow *v.* New York Lumber, etc., Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 120, 91 N. Y. Supp. 331.

Verdict of Jury Is Conclusive. — Grissom *v.* Hofius, 39 Wash. 51, 80 Pac. 1002.

370. 1. Evidence of Bad Reputation of Dog Competent. — A general statement by a dog dealer that bitches with pups are dangerous is not sufficient to show that the owner of the particular bitch complained of had knowledge of its disposition. Cook *v.* Levintan, (Supm. Ct. App. T.) 94 N. Y. Supp. 396.

Evidence that a dog was in the habit of attacking people who were getting on and off of street cars, and that the owner had seen him run out at people who were passing and had called him back, has been held to be sufficient to charge the owner with knowledge. Fitzgerald *v.* Warholy, 109 N. Y. App. Div. 606, 96 N. Y. Supp. 243.

Implied Notice of Viciousness. — Bentz *v.* Page, 115 La. 560, 39 So. 599.

Notice to Agent Notice to Principal. — Soronen *v.* Von Postau, 112 N. Y. App. Div. 437, 98 N. Y. Supp. 431.

Proof of Good Disposition Admissible. — Johnstone *v.* Tuttle, (Mass. 1907) 81 N. E. 886.

372. 3. Contributory Negligence as a Defense. — Under the *Iowa* statute making the owner liable for damages done by his dog, except where the person injured was doing an unlawful act, it is held that the unlawful act contemplated is one directly contributing to the injury. Beckler *v.* Merringer, 131 Iowa 614, 109 N. W. 185.

Maine — Freedom from Contributory Negligence Must Be Shown. — Garland *v.* Hewes, 101 Me. 549, 64 Atl. 914.

373. 1. Hunter *v.* Metropolitan Express Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 158, 98 N. Y. Supp. 234.

Person Inciting Attack. — To the same effect as the original note see Molloy *v.* Starin, 113 N. Y. App. Div. 852, 99 N. Y. Supp. 603; Ervin *v.* Woodruff, 119 N. Y. App. Div. 603, 103 N. Y. Supp. 1051.

Boy Teasing Dog. — Garland *v.* Hewes, 101 Me. 549, 64 Atl. 914.

374. 2. Statutory Enactments. — Nohre *v.* Wright, 98 Minn. 477, 108 N. W. 865. See also State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 372–374.

The Fact that a Dog Has Killed Sheep is evidence that it is dangerous under the English Dogs Act requiring the owner to keep the dog under proper control or destroy it. Williams *v.* Richards, (1907) 2 K. B. 88.

375. 1. Harborer of Vicious Dog — Rule as to Liability. — Barklow *v.* Avery, (Tex. Civ. App. 1905) 89 S. W. 417.

Keeping on Premises of Another. — McCosker *v.* Weatherbee, (Me. 1905) 59 Atl. 1019, *quoting* and *approving* Whittemore *v.* Thomas, 153 Mass. 349, 26 N. E. 875, quoted in the original note.

Husband and Wife. — A married woman is not liable for injuries caused by dogs owned by her husband although she permits them to remain on premises the legal title to which is in her. Burch *v.* Lowary, 131 Iowa 719, 109 N. W. 282.

377. 1. Damages by Several Animals Belonging to Different Persons. — Anderson *v.* Halverson, 126 Iowa 125, 101 N. W. 781.

A Joint Action Will Not Lie against separate owners of dogs that have killed sheep. Nohre *v.* Wright, 98 Minn. 477, 108 N. W. 865.

Joint Owners Are Jointly Liable. — Wilson *v.* White, (Neb. 1906) 109 N. W. 367.

2. Equal Share of Damages. — Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859.

Question of Equal Powers of Destruction Is for Jury. — Anderson *v.* Halverson, 126 Iowa 125, 101 N. W. 781.

378. 2. Animals Running at Large. — In the absence of fault or negligence on the part of the owner, escaped animals are not "at large" in the legal sense of the term. Howrigan *v.* Bakersfield, 79 Vt. 249, 64 Atl. 1130, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 378; Spurr *v.* Dominion Atlantic R. Co., 40 Nova Scotia 417, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 379.

Owner Held Liable. — Foster *v.* Bussey, 132 Iowa 640, 109 N. W. 1105.

379. 2. "An Estray Is Essentially Lost Property, and the finder has a good title thereto as against every one but the true owner, * * * and could convey by gift whatever title he had." Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561.

4. Distrainor as Trespasser. — One who has possession of an estray is a trespasser *ab initio* if he fails to comply strictly with the statute. Mills *v.* Fortune, 14 N. Dak. 460, 105 N. W. 235.

380. 2. Knowledge on the Part of the Seller that animals so sold by him were affected with a contagious disease is not essential to a conviction under the Canadian statute punishing the sale of such animals. Rex *v.* Perras, 9 Can. Crim. Cas. (N. W. Ter.) 364.

382. 1. See North *v.* Woodland, 12 Idaho 50, 85 Pac. 215, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 381, 382.

Sufficiency of Complaint. — In *Idaho* it is not necessary to allege or prove knowledge in a civil action if negligence is alleged. North *v.* Woodland, 12 Idaho 50, 85 Pac. 215.

Knowledge Need Not Be Alleged. — Canham *v.* Bruegman, (Neb. 1906) 109 N. W. 733.

ANNUAL — ANNUALLY.

385. 1. Annual Meeting Equivalent to Annual Election. — State *v.* Toledo, etc., Burial Assoc., 28 Ohio Cir. Ct. 397.

ANNUITIES.

387. 2. Sum Payable Quarterly May Be Annuity. — Steelman *v.* Wheaton, (N. J. 1907) 66 Atl. 195.

Sum Payable Semi-annually May Be Annuity. — Peck *v.* Kinney, (C. C. A.) 143 Fed. 76.

388. 1. Contract. — Hull *v.* Hull, 149 Mich. 500, 112 N. W. 1126.

By Will. — *In re* Rothschild, (N. J. 1906) 63 Atl. 615.

389. 1. When the Life Is a Bad One, a contract for a life annuity may be set aside on

account of undue influence. Barnes *v.* Waterman, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 392, 104 N. Y. Supp. 685.

4. Peck *v.* Kinney, (C. C. A.) 143 Fed. 76; Steelman *v.* Wheaton, (N. J. 1907) 66 Atl. 195.

Bequest of Interest. — Niagara Bank *v.* Talbot, 110 N. Y. App. Div. 519, 96 N. Y. Supp. 976.

Rule against Perpetuities. — Trusts to apply income invariably occasion suspension of the power of alienation, while annuities are releasable and assignable, and do not occasion suspension. Smith *v.* Havens Relief Fund Soc., (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 594, 9 N. Y. Supp. 168.

391. 5. Dixon *v.* Roessler, 76 S. Car. 415, 57 S. E. 203, where it was held that when the estate is exhausted, land in possession of a stranger tracing his title to the remainderman is subject to the annuity.

392. 1. When a Will Provides for Written Recognition of an Annuity it conveys property subject to tax at the present value of the annuity considered in the light of the legatee's probability of life. *In re* Rothschild, (N. J. 1906) 63 Atl. 615.

Deduction of Income Tax. — *In re* Barry, (1906) 2 Ch. 358. *Compare In re* Sharp, (1906) 1 Ch. 793.

393. 1. Willcox *v.* Willcox, 106 Va. 626, 56 S. E. 588; *In re* Finlay, (1907) 1 Ir. R. 24; *In re* Smith, (1905) 1 Ir. R. 453.

2. Peck *v.* Kinney, (C. C. A.) 143 Fed. 76.

396. 3. *In re* Trenchard, (1905) 1 Ch. 82; Willcox *v.* Willcox, 106 Va. 626, 56 S. E. 588.

397. 1. Robinson *v.* Kelso, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 89, 103 N. Y. Supp. 1098.

2. *In re* Trenchard, (1905) 1 Ch. 82.

399. 1. Stringer *v.* Stevens, 146 Mich. 181, 109 N. W. 269, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399.

2. Reid *v.* Brown, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 481, 106 N. Y. Supp. 27, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399.

Death of Annuitant — Rights of Representatives. — See *In re* Robbins, (1907) 2 Ch. 8, *affirming* (1906) 2 Ch. 648.

402. 2. The Statute of Limitations applies to a suit for annuities in arrears as in the case of an ordinary action on an implied contract, and the time is to be reckoned from the date when the right of action arises. Stringer *v.* Stevens, 146 Mich. 181, 109 N. W. 269.

403. 2. A Bequest of One-Half of the Net Income from an estate must be paid without deduction on account of an annuity provided for in same will. Townsend *v.* Wilson, 77 Conn. 411, 59 Atl. 417.

Using the Corpus of the Estate to pay annuities without having first provided for the legacies is not an improper diversion rendering the executors personally liable. Matter of Woolsey, 67 N. J. Eq. 574, 59 Atl. 463.

4. An Annuity Charged on the Beneficiaries by a Will is enforceable in equity. Spearman *v.* Foote, 126 Ill. App. 370.

404. 1. Proceeds — Sale of Property Charged. — An annuity which is a charge on real estate continues as such charge after the sale of the land for arrears of the annuity, and the balance resulting from the sale must be paid to the defendant in execution. Walters *v.* Steele, 210 Pa. St. 219, 59 Atl. 821.

2. *In re* Bigge, (1907) 1 Ch. 714.

406. 1. *Compare In re* Bigge, (1907) 1 Ch. 714.

Annuity in Lieu of Dower. — An annuity in lieu of dower payable out of the net annual income of a trust fund does not entitle the widow to any share of the income of such fund except such as accrued during the financial year for which payment is made. Comstock *v.* Comstock, 78 Conn. 606, 63 Atl. 449.

An annuity equal to the interest of one-third the selling price of land has been decreed to be a charge upon the land during the lifetime of the widow. Turner *v.* Kuehnle, (N. J. 1906) 64 Atl. 478.

2. Comstock *v.* Comstock, 78 Conn. 606, 63 Atl. 449, in which case it was held that a deficiency for any year could not be made up out of the net income of after years.

407. 2. Stringer *v.* Stevens, 146 Mich. 181, 109 N. W. 269; Willcox *v.* Willcox, 106 Va. 626, 56 S. E. 588, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 407.

Interest Discretionary. — Savage *v.* Savage, (C. C. A.) 141 Fed. 346, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 407.

409. 2. Matter of Title Guarantee, etc., Co., (Surrogate Ct.) 46 Misc. (N. Y.) 544, 95 N. Y. Supp. 59; Griffen *v.* Keese, 115 N. Y. App. Div. 264, 100 N. Y. Supp. 903.

When an Annuity Is Given by Will though without express direction to set apart a sum to meet it, the executor is authorized to set apart a sufficient sum. Merrill *v.* Wooster, 99 Me. 460, 59 Atl. 596; Harris *v.* Ingalls, (N. H. 1906) 64 Atl. 727.

Option as to Mode of Payment. — When the executors were authorized to invest a sufficient sum to secure the payment of annuities, it was held that the annuities might be paid out of the general estate or by setting aside specific sums. Smith *v.* Havens Relief Fund Soc., (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 594, 90 N. Y. Supp. 168.

ANY.

414. 7. Taylor *v.* Hutchinson, 145 Ala. 202, 40 So. 108; Stevens *v.* Meserve, 73 N. H. 293, 61 Atl. 420; Todd *v.* Todd, 27 Ohio Cir. Ct. 224.

APPEAR.

427. 2. Thornhill *v.* Hargreaves, (Neb. 1906) 107 N. W. 847.

Appear Beyond Reasonable Doubt. — *Appear* as used in an instruction that "it must *appear* beyond reasonable doubt," while not synonymous with "proven," does not exact a less degree of proof and is therefore not improper. State *v.* Crofford, 133 Iowa 478, 110 N. W. 921.

APPEARANCE.

427. 3. *Appearance* does not necessarily involve the actual physical presence either of the party or his attorney before the court. Thornhill *v.* Hargreaves, (Neb. 1906) 107 N. W. 847.

APPLIANCE.

431. 3. **Gate on Street Car.** — Stappers *v.* Interurban St. R. Co., (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 337, 106 N. Y. Supp. 854.

APPLICATION.

432. 1. **Application for Insurance Policy.** — Paquette *v.* Prudential Ins. Co., 193 Mass. 215, 79 N. E. 250.

APPLICATION OF PAYMENTS.

435. 7. **Payments on Usurious Contracts.** — If the original agreement was not usurious, payments in excess of the legal rate of interest cannot be recovered, nor will they be applied to the principal. Bosworth *v.* Kinghorn, (N Y. 1904) 72 N. E. 1139, *affirming* 94 N. Y. App. Div. 87, 87 N. Y. Supp. 983. See generally the title USURY.

437. 1. Austin *v.* Southern Home Bldg., etc., Assoc., 122 Ga. 439, 50 S. E. 382; Harding *v.* Harding, 120 Ill. App. 389; People *v.* Grant, 139 Mich. 26, 102 N. W. 226; Hawver *v.* Ingalls, 93 Minn. 371, 101 N. W. 604.

2. **Mortgage Securities.** — Where property covered by two mortgages is sold and the proceeds paid to the mortgagee, without direction by the debtor as to application, the creditor may apply them to either mortgage. Lyon *v.* Bass, 76 Ark. 534, 89 S. W. 849.

Creditor May Make Application to Least Secure Debt. — Advance Thresher Co. *v.* Hogan, 74 Ohio St. 307, 78 N. E. 436; Chestnut St. Trust, etc., Fund Co. *v.* Hart, 217 Pa. St. 506, 66 Atl. 870.

438. 2. **Revival of Barred Debt.** — McBride *v.* Noble, (Colo. 1907) 90 Pac. 1037.

Where the Creditor Has Assigned His Contract with the debtor, payments made to the assignee without direction by the debtor, are properly applied to items incurred under the assignor's contract, although the debtor owes the assignee for goods purchased after the assignment. Holloway *v.* White-Dunham Shoe Co., (C. C. A.) 151 Fed. 216.

439. 1. **An Open Account.** — Hamilton *v.* Rhodes, 72 Ark. 625, 83 S. W. 351.

440. 1. Wanamaker *v.* Powers, 186 N. Y. 562, 79 N. E. 1118, *affirming* 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19.

Money Furnished by Third Party. — Lee *v.* Storz Brewing Co., (Neb. 1905) 106 N. W. 220; Belcher *v.* J. I. Case Threshing Mach. Co., (Neb. 1907) 111 N. W. 848.

442. 2. Armour Packing Co. *v.* Vinegar Bend Lumber Co., (Ala. 1906) 42 So. 866, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 442.

444. 1. Wanamaker *v.* Powers, 186 N. Y. 562, 79 N. E. 1118, *affirming* 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19; Dean *v.* Womack, 2 Tenn. Ch. App. 72, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 444.

3. Debtor's Right Continues until Actual Application by Creditor. — Lynn *v.* Bean, 141 Ala. 236, 37 So. 515.

445. 3. **Civil Law Rule Declared Obiter.** — People *v.* Grant, 139 Mich. 26, 102 N. W. 226.

446. 1 Austin *v.* Southern Home Bldg., etc., Assoc., 122 Ga. 439, 50 S. E. 382; Stone *v.* Pettus, (Tex. Civ. App. 1907) 103 S. W. 413.

2. People *v.* Grant, 139 Mich. 26, 102 N. W. 226; Advance Thresher Co. *v.* Hogan, 74 Ohio St. 307, 78 N. E. 436.

3. Wanamaker *v.* Powers, 186 N. Y. 562, 79 N. E. 1118, *affirming* 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19.

Application Any Time Before Judgment or Verdict. — Mulherin *v.* Stansell, 70 S. Car. 568, 50 S. E. 497.

447. 2. Austin *v.* Southern Home Bldg., etc., Assoc., 122 Ga. 439, 50 S. E. 382; Barbee *v.* Morris, 221 Ill. 382, 77 N. E. 589; Jones *v.* Chandler, (N. Mex. 1906) 85 Pac. 392; Matter of Milligan, 112 N. Y. App. Div. 373, 98 N. Y. Supp. 480; Chestnut St. Trust, etc., Fund Co. *v.* Hart, 217 Pa. St. 506, 66 Atl. 870.

3. Wanamaker *v.* Powers, 186 N. Y. 562, 79 N. E. 1118, *affirming* 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19.

448. 1. Where a debtor sent money to his creditor and on the same day wrote a letter directing its application, and later, upon receiving a statement showing a different application, returned the statement and repeated his first instructions, he was entitled to have the money applied as directed, although the first letter was not received by the creditor. Mulherin *v.* Stansell, 70 S. Car. 568, 50 S. E. 497.

3. Wanamaker *v.* Powers, 186 N. Y. 562, 79 N. E. 1118, *affirming* 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19.

5. No Particular Form of Words Necessary. — Lynn *v.* Bean, 141 Ala. 236, 37 So. 515.

7. Lynn *v.* Bean, 141 Ala. 236, 37 So. 515.

8. Where the creditor gave a receipt specifying that a different application from the one directed had been made, he was bound, it being shown that the debtor had objected to the form of the receipt. Lynn *v.* Bean, 141 Ala. 236, 37 So. 515.

450. 1. Sloan *v.* Sloan, 46 Oregon 36, 78 Pac. 893.

2. Bird *v.* Benton, 127 Ga. 371, 56 S. E. 450; Sloan *v.* Sloan, 46 Oregon 36, 78 Pac. 893.

Receipt Showing Different Application. — Lynn *v.* Bean, 141 Ala. 236, 37 So. 515.

451. 1. Where a payment was credited on an account and a statement showing the credit was sent to the debtor, it was too late for the creditor to make a different application. People *v.* Grant, 139 Mich. 26, 102 N. W. 226.

452. 2. Wessel *v.* Bishop, (Neb. 1906) 107 N. W. 220.

453. 2. Hoskins *v.* Brown, (Ky. 1905) 84 S. W. 767.

3. Illegal Demands. — Legal demands will be discharged first although arising later than the illegal demands. Armour Packing Co. *v.* Vinegar Bend Lumber Co., (Ala. 1906) 42 So. 866.

First and Second Mortgages Held by Different Parties. — Where a debtor gave a chattel mortgage to secure a note and future advances, the mortgage being a first lien on the note and a secondary lien on the advances, the creditor had no right to apply a payment, which was sufficient to discharge the note, partly on the future advances, so as to leave the note partially unpaid, without the consent of the debtor and the second mortgagee. Davis *v.* Carlisle, (C. C. A.) 142 Fed. 106.

455. 2. Shaffer *v.* Chernyk, 130 Iowa 686, 107 N. W. 801.

3. Chestnut St. Trust, etc., Fund Co. *v.* Hart, 217 Pa. St. 506, 66 Atl. 870.

456. 2. Barbee *v.* Morris, 221 Ill. 382, 77 N. E. 589.

Partially Secured Account. — "Where a creditor has part of his debt secured and part unsecured, the law does not apply the payment to the older items of the account, but will apply it to the unsecured debt." New Roads Bank *v.* Kentucky Refining Co., (Ky. App. 1905) 85 S. W. 1103.

457. 2. **Oldest Debt.** — Hammer *v.* Crawford, (Mo. App. 1906) 93 S. W. 348.

459. 1. Armour Packing Co. *v.* Vinegar Bend Lumber Co., (Ala. 1906) 42 So. 866.

2. Wanamaker *v.* Powers, 186 N. Y. 562, 79 N. E. 1118, *affirming* 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19.

3. Where a mortgage provided that if the proceeds of the sale of the mortgaged property were insufficient to discharge the debt, for which notes maturing at different times had been given, the mortgagee might apply the proceeds as he saw fit, it was held that the court would order the proceeds applied, after foreclosure, in accordance with the mortgagor's election, provided such election was made in time. Advance Thresher Co. *v.* Hogan, 74 Ohio St. 307, 78 N. E. 436.

460. 1. **So also Where Several Notes Are Given at Different Times.** — Under the *California* statute (Civ. Code Cal., § 1479) providing that in the absence of direction as to the application of a payment, it will be applied to the debt earliest in date of maturity, it was held that a *pro rata* application would be made upon debts maturing simultaneously although they were incurred at different times. Star Mill, etc., Co. *v.* Porter, 4 Cal. App. 470, 88 Pac. 497.

461. 3. Star Mill, etc., Co. *v.* Porter, 4 Cal. App. 470, 88 Pac. 497; Belcher *v.* J. I. Case Threshing Mach. Co., (Neb. 1907) 111 N. W. 848; Chestnut St. Trust, etc., Fund Co. *v.* Hart, 217 Pa. St. 506, 66 Atl. 870; Dean *v.* Womack, 2 Tenn. Ch. App. 72, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 461; Fisher *v.* Brown Hardware Co., (Tex. Civ. App. 1907) 103 S. W. 655.

462. 1. Winston *v.* Farrow, (Ala. 1905) 40 So. 53; Ida County Sav. Bank *v.* Seidensticker, 128 Iowa 54, 5 Ann. Cas. 945, 102 N. W. 821, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 462; Houeye *v.* Henkel, 115 La. 1066, 40 So. 460; Jamison *v.* Alvarado Compress, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 1053.

466. 3. Winston *v.* Farrow, (Ala. 1905) 40 So. 53.

It is presumed that both parties intend that the proceeds of mortgaged property shall be applied to the payment of the mortgage debt, even though the mortgage is not due. Lyon *v.* Bass, 76 Ark. 534, 89 S. W. 849.

468. 1. Bramblett *v.* Deposit Bank, (Ky. 1906) 92 S. W. 283; Adams *v.* Illinois L. Ins. Co., (Ky. 1907) 104 S. W. 718; Russell *v.* Cassidy, 122 Mo. App. 565, 99 S. W. 781; Armijo *v.* Henry, (N. Mex. 1907) 89 Pac. 305; Jones *v.* Chandler, (N. Mex. 1906) 85 Pac. 392.

Amount Paid Equal to Amount of Principal. — Com. *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 267.

Less than Accrued Interest. — Northwestern Mortg. Trust Co. *v.* Ellis, (S. Dak. 1906) 108 N. W. 22.

Interest on Renewal Notes. — In the case of renewal notes, the unpaid interest is added to the principal, and the sum thus obtained constitutes a new principal upon which interest is calculated and payments applied. Bramblett *v.* Deposit Bank, (Ky. 1906) 92 S. W. 283.

469. 1. Adams *v.* Illinois L. Ins. Co., (Ky. 1907) 104 S. W. 718.

5. **Married Women — Application by Husband.** — Money given by a woman to her husband with instructions to pay it to her creditor could not be recovered by her where the husband directed the creditor to apply it on his own debt, which was older than that of his wife, unless the creditor had notice that the money belonged to the wife. Tanner *v.* Lee, 121 Ga. 524, 49 S. E. 592.

470. 5. Under the *Colorado* rule the creditor may apply an undirected payment to either the joint or individual liability. McBride *v.* Noble, (Colo. 1907) 90 Pac. 1037.

471. 2. Indiana Trust Co. *v.* International Bldg., etc., Assoc., 36 Ind. App. 685, 74 N. E. 633.

3. Houeye *v.* Henkel, 115 La. 1066, 40 So. 460.

The debtor cannot direct a different application after the payment has been applied in accordance with his first direction. Flynn *v.* Seale, 2 Cal. App. 665, 84 Pac. 263.

Where an agreement specifies that a factor could apply payments in any manner and at any time he chose, and he subsequently sent statements to the debtor showing that certain payments had been credited to the sum total of two notes, he could not thereafter change the application without consent so as to discharge one note and leave the other entirely unpaid. Lichtenstein *v.* Lyons, 115 La. 1051, 40 So. 454.

Debits and Credits Once Made by Consent of Both Parties cannot afterwards be shifted by the creditor. City Coal, etc., Co. *v.* New Britain Institute, 77 Conn. 715, 59 Atl. 33.

Consent May Be Implied from Acquiescence. — Bird *v.* Benton, 127 Ga. 371, 56 S. E. 450.

APPOINTING POWER.

473. 2. Duell *v.* Glynn, 122 N. Y. App. Div. 314, 106 N. Y. Supp. 716, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 473.

APPOINTMENT.

474. 2. **When the Term of Office Is Not Fixed** the appointing power has authority to determine its duration. Robertson *v.* Coughlin, (Mass. 1907) 82 N. E. 678.

475. 4. Cobb *v.* Hammock, 82 Ark. 584, 102 S. W. 382; State *v.* Wagner, (Ind. 1907) 82 N. E. 466, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 475.

5. State *v.* Addison, (Kan. 1907) 92 Pac. 581; Cobb *v.* Hammock, 82 Ark. 584, 102 S. W. 382.

476. 8. See Stone *v.* Forbes, 189 Mass. 163, 75 N. E. 141.

APPORTIONMENT ACTS.

479. **1. Mandamus Is the Proper Remedy** to compel the supervisors to make a constitutional apportionment. Matter of Timmerman, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 192, 100 N. Y. Supp. 57.

2. In New Hampshire the legislature has the power to divide the township into precincts and have the elections by precinct instead of town meetings. Opinion of Justices, 73 N. H. 618, 60 Atl. 847.

480. **2.** Williams *v.* Secretary of State, 145 Mich. 447, 108 N. W. 749.

3. Ulrich *v.* O'Brien, 162 Ind. 695, 71 N. E. 1142; Lindsay *v.* White, 162 Ind. 695, 71 N. E. 1142; Ragland *v.* Anderson, (Ky. 1907) 100 S. W. 865; Williams *v.* Secretary of State, 145 Mich. 447, 108 N. W. 749; Matter of Timmerman, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 192, 100 N. Y. Supp. 57; Sherrill *v.* O'Brien, 188 N. Y. 185, 81 N. E. 124, *reversing* 114 N. Y. App. Div. 890, 101 N. Y. Supp. 858.

481. **1. Island Counties.** — The mandatory provision of the *New York* Constitution relating to contiguity of territory is not violated by joining the island county of Richmond to the county of Queens, though such joining is bad for lack of compact form. Sherrill *v.* O'Brien, 188 N. Y. 185, 81 N. E. 124, *reversing* 114 N. Y. App. Div. 890, 101 N. Y. Supp. 858.

482. **2. Compact Form Requisite.** — Ragland *v.* Anderson, (Ky. 1907) 100 S. W. 865; Sherrill *v.* O'Brien, 188 N. Y. 185, 81 N. E. 124, *reversing* 114 N. Y. App. Div. 890, 101 N. Y. Supp. 858.

Means of Communication Should Be Considered. — Matter of Timmerman, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 192, 100 N. Y. Supp. 57; Payne *v.* O'Brien, 114 N. Y. App. Div. 890, 101 N. Y. Supp. 858.

483. **3. Creating New Counties.** — Where an act creating two counties out of the territory formerly included in one was held to be unconstitutional, it was held that a subsequent apportionment act was nevertheless constitutional. Heitman *v.* Gooding, 12 Idaho 581, 86 Pac. 785.

484. **1. Fatal Inequality of Representation — Illustrations.** — The *Indiana* Act of 1903 is void. Lindsay *v.* White, 162 Ind. 695, 71 N. E. 1142; Ulrich *v.* O'Brien, 162 Ind. 695, 71 N. E. 1142.

485. **3.** Lindsay *v.* White, 162 Ind. 695, 71 N. E. 1142; Ulrich *v.* O'Brien, 162 Ind. 695, 71 N. E. 1142; Ragland *v.* Anderson, (Ky. 1907) 100 S. W. 865; Smith *v.* Baker, (N. J. 1906) 64 Atl. 1067; Sherrill *v.* O'Brien, 188 N. Y. 185, 81 N. E. 124, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485, and *reversing* 114 N. Y. App. Div. 890, 101 N. Y. Supp. 858, on other grounds.

Protest Against Apportionment Must Be Seasonably Made. — Adams *v.* Bosworth, (Ky. 1907) 102 S. W. 861.

486. **1.** Ragland *v.* Anderson, (Ky. 1907) 100 S. W. 865.

2. Sherrill *v.* O'Brien, 114 N. Y. App. Div. 890, 101 N. Y. Supp. 858, 188 N. Y. 185, 81 N. E. 124.

4. Williams *v.* Secretary of State, 145 Mich. 447, 108 N. W. 749.

APPRECIATE.

487. **2. Appreciate Danger** equivalent to "be sensible of, to distinguish." Indianapolis St. R. Co. *v.* Hoffman, (Ind. App. 1907) 82 N. E. 543.

APPREHEND.

487. **4. Apprehension and Arrest Synonymous.** — Smith *v.* Vernon County, 188 Mo. 501, 87 S. W. 949.

APPRENTICES.

491. **2.** In *Kentucky* any orphan minor may be bound as an apprentice by its guardian, or if no guardian by its mother, with the consent entered of record in the County Court of the county where it may reside. Brock *v.* Whittaker, (Ky. 1906) 93 S. W. 623.

494. **3. Power of County Court** — *Record Must Show Facts Necessary to Give Jurisdiction.* — Brock *v.* Whittaker, (Ky. 1906) 93 S. W. 623.

500. **3. Term Extending Beyond Majority of Apprentice.** — Walton *v.* Atchison, etc., R. Co., 131 Iowa 423, 101 N. W. 506, holding further, however, that the provisions of the indenture as to the character of the service, payment, etc., may continue in force beyond majority.

4. Ratification by Apprentice upon Attaining His Majority. — Walton *v.* Atchison, etc., R. Co., 131 Iowa 423, 101 N. W. 506.

502. **7. What Constitutes Disobedience — Master Not Entitled to Determine Question.** — Bradley *v.* Perkins, 138 Mich. 356, 101 N. W. 583.

8. When the Apprentice Absconds the statute provides a remedy in *Kentucky*, and a writ awarding the custody of the apprentice to the master will not be granted. Brock *v.* Whittaker, (Ky. 1906) 93 S. W. 623.

503. **11.** Bradley *v.* Perkins, 138 Mich. 356, 101 N. W. 583.

504. **9. Time Lost by Sickness.** — The father cannot recover the apprentice's wages for a period during which the latter was ill, where the contract provided that he should make up time lost by reason of sickness and this was not done. Behney *v.* R. Stoever Foundry Co., 30 Pa. Super. Ct. 625.

505. **2. The Master's Removal of His Entire Plant** to another state constitutes a breach of the contract of apprenticeship. W. B. Conkey Co. *v.* Goldman, 125 Ill. App. 161.

7. As a Penalty for Disobedience an addition to the time provided in the contract is unwarranted, and an attempt to enforce such penalty warrants the apprentice in leaving. Bradley *v.* Perkins, 138 Mich. 356, 101 N. W. 583.

507. **2. Statutory Penalty.** — In *Kentucky* if a person entices away an apprentice from his master a remedy is provided by statute, and a writ of injunction awarding custody to the master will not be granted. Brock *v.* Whittaker, (Ky. 1906) 93 S. W. 623.

512. **2.** See Rohrer *v.* Culbertson, 16 Ohio Dec. 98, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 512.

An Agreement to Treat the Apprentice as an Adopted Child does not confer any right of inheritance, and the relation established ends when the apprentice becomes of age. Wallace's Estate, 218 Pa. St. 39, 66 Atl. 1098.

APPROVE — APPROVER — APPROVEMENT.

520. 1. The "Approved Service" for not less than twenty-five years required by the Police Act, 1890, § 1, to entitle a constable to a pension on retirement need not be continuous service. Garbutt *v.* Durham Joint Committee, (1906) A. C. 291, 75 L. J. K. B. 459.

APPURTENANCE — APPURTENANT.

522. 1. Stevens *v.* Taylor, 111 N. Y. App. Div. 561, 97 N. Y. Supp. 925.

A Furnace is an ***appurtenance*** to leased premises. Stevens *v.* Taylor, 111 N. Y. App. Div. 561, 97 N. Y. Supp. 925.

526. 1. **Irrigation — Utah.** — Fayter *v.* North, 30 Utah 156, 83 Pac. 742, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 523.

528. 1. **A Small Storehouse** situated in the same yard as a dwelling house and used in connection therewith held an ***appurtenance*** with a homestead exemption. Green *v.* Pennington, (Ky. 1906) 97 S. W. 766.

ARBITRATION AND AWARD.

539. 1. Millsaps *v.* Estes, 137 N. Car. 535, 50 S. E. 227, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 539.

540. 1. Readdy *v.* Tampa Electric Co., 51 Fla. 289, 41 So. 535, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 540, 541; Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 540; Hurst *v.* Funston, (Tex. Civ. App. 1905) 91 S. W. 319.

543. 1. **Parol Agreement Contemporaneous with Written Submission.** — Townsend *v.* Greenwich Ins. Co., 178 N. Y. 634, 71 N. E. 1140, *affirming* 86 N. Y. App. Div. 323, 83 N. Y. Supp. 909.

4. Billmyer *v.* Hamburg-Bremen F. Ins. Co., 57 W. Va. 42, 49 S. E. 901, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 543.

546. 3. **Utah.** — Under a statute which requires that a submission be filed with the clerk in order to make the award a judgment of the court, a failure to file the submission does not affect the jurisdiction of the arbitrators to hear the dispute, but their award cannot be enforced until the submission is filed. Richards *v.* Smith, (Utah 1907) 91 Pac. 683.

Presumption that Submission Is Statutory. — Bishop *v.* Valley Falls Mfg. Co., (S. Car. 1907) 58 S. E. 939.

547. 1. Matter of Abrams, 2 Cal. App. 237, 84 Pac. 363; Readdy *v.* Tampa Electric Co., 51 Fla. 289, 41 So. 535; Duffy *v.* Odell, 117 Ill. App. 336; Nay *v.* Boston, etc., St. R. Co., (Mass. 1906) 78 N. E. 547; Electric Steel Elevator Co. *v.* John Kam Malting Co., 112 N. Y. App. Div. 686, 98 N. Y. Supp. 604.

When Acknowledgment Required. — Gessner *v.* Minneapolis, etc., R. Co., 15 N. Dak. 560, 108 N. W. 786.

549. 3. **English Statutes Enforcing Arbitration.** — See *In re* Baxters and Midland R. Co., 95 L. T. N. S. 20, 22 Times L. Rep. 616; Crosfield *v.* Manchester Ship Canal Co., (1905) A. C. 421; Norwich *v.* Norwich Electric Tramways Co., (1906) 2 K. B. 119; Hodson *v.* Railway Pass. Assur. Co.,(1904) 2 K. B. 833.

For Compulsory References in Canada. — See Barter *v.* Sprague's Falls Mfg. Co., 38 N. Bruns. 207; Chisholm *v.* Centre Star Min. Co., 12 British Columbia 16.

550. 3. Bishop *v.* Valley Falls Mfg. Co., (S. Car. 1907) 58 S. E. 939.

553. 4. Houston Saengerbund *v.* Dunn, (Tex. Civ. App. 1906) 92 S. W. 429.

6. Houston Saengerbund *v.* Dunn, (Tex. Civ. App. 1906) 92 S. W. 429.

556. 1. **Ecclesiastical Award.** — Where the ecclesiastical court made an award without the agreement of either party to abide by the judgment, and both parties afterward abandoned it and appealed to the higher tribunal, it was held that the award was not enforceable in the civil courts. Poggenborg *v.* Conniff, (Ky. 1906) 96 S. W. 547.

565. 1. **Missouri.** — Thompson *v.* Turney, 4 Mo. App. 697, 89 S. W. 897.

569. 6. *Compare* Shell *v.* Asher, (Ky. 1907) 102 S. W. 879, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 569.

570. 1. Havens *v.* Robertson, (Neb. 1905) 106 N. W. 335.

2. Huber *v.* St. Joseph's Hospital, 11 Idaho 631, 83 Pac. 768; Maitland *v.* Reed, 37 Ind. App. 469, 77 N. E. 290; Lewis *v.* Brotherhood Acc. Co., 194 Mass. 1, 79 N. E. 802; Stevens *v.* Norwich Union F. Ins. Co., 120 Mo. App. 88, 96 S. W. 684; Wyckoff *v.* Woarms, 118 N. Y. App. Div. 699, 103 N. Y. Supp. 650; Grady *v.* Home F. & M. Ins. Co., 27 R. I. 435, 63 Atl. 173. *Compare* Shell *v.* Asher, (Ky. 1907) 102 S. W. 879, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 570.

An Agreement to Accept the Decision of the Court of Original Jurisdiction as final will be upheld. Hoste *v.* Dalton, 137 Mich. 522, 100 N. W. 750, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 570–578.

573. 2. Parsons *v.* Ambos, 121 Ga. 98, 48 S. E. 696; Pacaud *v.* Waite, 218 Ill. 138, 75 N. E. 779; Stevens *v.* Norwich Union F. Ins. Co., 120 Mo. App. 88, 96 S. W. 684; Townsend *v.* Greenwich Ins. Co., 178 N. Y. 634, 71 N. E. 1140, *affirming* 86 N. Y. App. Div. 323, 83 N. Y. Supp. 909; Wyckoff *v.* Woarms, 118 N. Y. App. Div. 699, 103 N. Y. Supp. 650; Leu *v.* Commercial Mut. F. Ins. Co., 15 N. Dak. 360, 107 N. W. 59; Werneberg *v.* Pittsburg, 210 Pa. St. 267, 59 Atl. 1000; Grady *v.* Home F. & M. Ins. Co., 27 R. I. 435, 63 Atl. 173.

576. 1. The plaintiff must show performance or an excuse for nonperformance. Grady *v.* Home F. & M. Ins. Co., 27 R. I. 435, 63 Atl. 173.

581. 1. Lawson *v.* Williamson Coal, etc., Co., 61 W. Va. 669, 57 S. E. 258.

2. Moore *v.* Sun Ins. Office, 100 Minn. 374, 111 N. W. 260.

The rule applies to all kinds of contracts. Andrew Lohr Bottling Co. *v.* Ferguson, 223 Ill. 88, 79 N. E. 35.

3. Western Assur. Co. *v.* Hall, 143 Ala. 168, 38 So. 853; O'Rourke *v.* German Ins. Co., 96 Minn. 154, 104 N. W. 900.

4. **In Cases Where the Total Loss Exceeds the Total Insurance** no appraisal is necessary. Moore *v.* Phœnix Ins. Co., 100 Minn. 393, 111 N. W. 263.

582. 4. *United States.* — Fruin-Bambrick

Constr. Co. *v.* Ft. Smith, etc., R. Co., 140 Fed. 465; Bush *v.* Jones, (C. C. A.) 144 Fed. 942; Cook *v.* Foley, (C. C. A.) 152 Fed. 41; Woarms *v.* U. S., 39 Ct. Cl. 10.

Illinois. — Barbee *v.* Findlay, *221* Ill. *251*, *77* N. E. 590; Andrew Lohr Bottling Co. *v.* Ferguson, *223* Ill. 88, *79* N. E. 35; Concord Apartment House Co. *v.* O'Brien, *228* Ill. 360, 81 N. E. 1038.

Kansas. — Edwards *v.* Hartshorn, *72* Kan. 19, 82 Pac. 520.

Maine. — Seretto *v.* Rockland, etc., R. Co., 101 Me. 140, 63 Atl. 651.

Maryland. — Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. *228*.

Massachusetts. — White *v.* Abbott, 188 Mass. 99, 74 N. E. 305; Hebert *v.* Dewey, 191 Mass. 403, *77* N. E. 822; Loftus *v.* Jorjorian, 194 Mass. 165, 80 N. E. 235.

Minnesota. — Robertson *v.* Grand Rapids, 96 Minn. 69, 104 N. W. 715.

Missouri. — McGregor *v.* J. A. Ware Constr. Co., 188 Mo. 611, 87 S. W. 981.

New York. — Heidlinger *v.* Onward Constr. Co., (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 555, 90 N. Y. Supp. 115, *affirmed* 107 N. Y. App. Div. 398, 95 N. Y. Supp. 1148.

North Carolina. — Webb *v.* Morganton Graded School, 143 N. Car. 299, 55 S. E. 719.

Pennsylvania. — Payne *v.* Roberts, *214* Pa. St. 568, 64 Atl. 86.

Tennessee. — McGavock *v.* Virginia-Carolina Chemical Co., 114 Tenn. 317, 86 S. W. 380.

Texas. — Carnegie Public Library Assoc. *v.* Harris, (Tex. Civ. App. 1906) 97 S. W. 520.

And see the title WORKING CONTRACTS.

The Agreement Should Be Clearly Expressed and not left to implication. Mercantile Trust Co. *v.* Hensey, 205 U. S. *298*, *27* U. S. Sup. Ct. 535, *affirming* *27* App. Cas. (D. C.) 210.

584. **1.** Cleveland *v.* Griffen, *27* Ohio Cir. Ct. 167.

Where One of the Stipulations of the Contract was that the certificate should not lessen the responsibility of the contractor it was held that the certificate was not conclusive. Olsen *v.* Schwarzwaelder, 109 N. Y. App. Div. *282*, 95 N. Y. Supp. 651.

Arbitration Without Witnesses. — Where an architect was arbitrator under a building contract he was not bound to call witnesses to determine whether the work had been completed according to the contract. Heidlinger *v.* Onward Constr. Co., (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 555, 90 N. Y. Supp. 115, *affirmed* 107 N. Y. App. Div. 398, 95 N. Y. Supp. 1148.

585. **4. The Evidence of Fraud Must Be Overwhelming** in order to overthrow the award. Choctaw, etc., R. Co. *v.* Newton, (C. C. A.) 140 Fed. *225*.

586. **1.** Payne *v.* Roberts, *214* Pa. St. 568, 64 Atl. 86; Fay *v.* Lester Piano Co., *32* Pa. Super. Ct. 437; Halsey *v.* Waukesha Spring Sanitarium Co., *125* Wis. 311, 104 N. W. 94.

Proof of Substantial Compliance is not sufficient evidence to dispense with the certificate. Levin *v.* Northwestern Nat. Ins. Co., 146 Fed. 76.

If the Certificate Is Fraudulently or Arbitrarily Withheld by the architect, suit may be brought without first obtaining it. Wyman *v.* Hooker, 2 Cal. App. 36, 83 Pac. 79; Fitzgerald *v.* Benner, 120 Ill. App. 447, *affirmed* *219* Ill. 485, 76 N. E. 709; Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. *228*; Hebert *v.* Dewey, 191 Mass. 403, *77* N. E. *822*.

2. Payne *v.* Roberts, *214* Pa. St. 568, 64 Atl. 86.

5. Western Underwriters Assoc. *v.* Hankins, *122* Ill. App. 600, *affirmed* *221* Ill. 304, *77* N. E. 447; Concord Apartment House Co. *v.* O'Brien, *228* Ill. 360, 81 N. E. 1038; Providence Washington Ins. Co. *v.* Wolf, 168 Ind. 690, 80 N. E. *26*; Hostford F. Ins. Co. *v.* Asher, (Ky. 1907) 100 S. W. *233*; O'Rourke *v.* German Ins. Co., 96 Minn. 154, 104 N. W. 900; O'Rourke *v.* German Ins. Co., 99 Minn. 293, 109 N. W. 401; Cullen *v.* Insurance Co. of North America, (Mo. App. 1907) 104 S. W. 117; Heidlinger *v.* Onward Constr. Co., (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 555, 90 N. Y. Supp. 115, *affirmed* 107 N. Y. App. Div. 398, 95 N. Y. Supp. 1148; Grant *v.* Pratt, 110 N. Y. App. Div. 867, 97 N. Y. Supp. 29, *affirmed* 186 N. Y. 611, 79 N. E. 1106.

591. **3.** Johnson *v.* Crawford, *212* Pa. St. 502, 61 Atl. 1103, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 591.

592. **5.** Johnson *v.* Crawford, *212* Pa. St. 502, 61 Atl. 1103.

594. **2.** Western Assur. Co. *v.* Hall, 143 Ala. 168, 38 So. 853; Providence Washington Ins. Co. *v.* Wolf, 168 Ind. 690, 80 N. E. *26*.

4. Parsons *v.* Ambos, 121 Ga. 98, 48 S. E. 696; Harrell *v.* Terrell, *125* Ga. 379, 54 S. E. 116; Thos. W. Finucane Co. *v.* Board of Education, 190 N. Y. 76, 82 N. E. 737.

Submission for Valuable Consideration. — Johnson *v.* Crawford, *212* Pa. St. 502, 61 Atl. 1103 (to the same effect as McGheehan *v.* Duffield, 5 Pa. St. 497, cited in the original note).

596. **1.** Thos. W. Finucane Co. *v.* Board of Education, 190 N. Y. 76, 82 N. E. 737.

597. **1.** Levy *v.* Scottish Union, etc., Ins. Co., 58 W. Va. 546, *52* S. E. Rep. 449.

598. **1.** Richards *v.* Smith, (Utah 1907) 91 Pac. 683.

599. **6.** In *New York* the submission is revocable at any time before it is finally submitted to the arbitrators. Thos. W. Finucane Co. *v.* Board of Education, 190 N. Y. 76, 82 N. E. 737.

7. It Was Not a Sufficient Revocation where the defendant made a written statement that he considered the agreement a common-law and not a statutory arbitration, but never participated in the arbitration. Bishop *v.* Valley Falls Mfg. Co., (S. Car. 1907) 58 S. E. 939.

8. A parol agreement of submission may be revoked by parol. Harrell *v.* Terrell, *125* Ga. 379, 54 S. E. 116.

600. **2.** Parsons *v.* Ambos, 121 Ga. 98, 48 S. E. 696.

601. Parsons *v.* Ambos, 121 Ga. 98, 48 S. E. 696; Werneberg *v.* Pittsburg, *210* Pa. St. 267, 59 Atl. 1000; Johnson *v.* Crawford, *212* Pa. St. 502, 61 Atl. 1103.

The withdrawal of an arbitrator after proper submission will not defeat the arbitration. Niagara F. Ins. Co. *v.* Boon, *76* Ark. 153, 88 S. W. 915.

605. **3.** Tyblewski *v.* Svea F., etc., Assur. Co., *121* Ill. App. 528, *affirmed* *220* Ill. 436, *77* N. E. 196.

615. 3. Under Comp. Laws Mich. 1897, § 10924, a married woman may make an agreement for a common-law arbitration, but is prohibited from being a party to a statutory arbitration. Hoste *v.* Dalton, 137 Mich. 522, 100 N. W. 750.

616. 1. Smith *v.* Bruton, 137 N. Car. 79, 49 S. E. 64.

5. Millsaps *v.* Estes, 137 N. Car. 535, 50 S. E. 227, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 616.

622. 3. Houston Saengerbund *v.* Dunn, (Tex. Civ. App. 1906) 92 S. W. 429.

625. 1. **Ratification.** — White Star Min. Co. *v.* Hultberg, 220 Ill. 578, 77 N. E. 327.

630. 1. Millsaps *v.* Estes, 137 N. Car. 535, 50 S. E. 227.

633. 1. Millsaps *v.* Estes, 137 N. Car. 535, 50 S. E. 227.

634. 1. Western Assur. Co. *v.* Hall, 143 Ala. 168, 38 So. 853.

635. 1. Duvall *v.* Sulzner, 155 Fed. 910.

Where the Chief Engineer of One of the Parties was chosen arbitrator it was held that in order to overthrow the award there must be overwhelming evidence that the judgment was biased, partial, and consciously unjust. Choctaw, etc., R. Co. *v.* Newton, (C. C. A.) 140 Fed. 225.

636. 1. **Evidence of Bias.**— Where the arbitrator appointed by the insurance company refused to agree upon any man in the vicinity of the property, giving as a reason that the company objected to a local man, it was held that he was biased and that the award would be set aside. Young *v.* Ætna Ins. Co., 101 Me. 294, 64 Atl. 584.

637. 1. **Partiality of the Arbitrator** in making the award will not impeach it unless the party benefited be implicated. McNally *v.* Montour R. Co., 33 Pa. Super. Ct. 51.

3. Western Assur. Co. *v.* Hall, 143 Ala. 168, 38 So. 853.

638. 4. Donaldson *v.* Buhlman, (Wis. 1907) 113 N. W. 638.

639. 1. **Misconduct of Arbitrator** may not be attacked in an action at law. Resort must be had to equity. Cook *v.* Foley, (C. C. A.) 152 Fed. 41; Kaplan *v.* Niagara F. Ins. Co., 73 N. J. L. 780, 65 Atl. 188; Garrebrant *v.* Continental Ins. Co., (N. J. 1907) 67 Atl. 90; Billmyer *v.* Hamburg-Bremen F. Ins. Co., 57 W. Va. 42, 49 S. E. 901.

An Allegation that the Arbitrator Acted Unfairly is insufficient to impeach the award unless the party benefited be implicated in the misconduct. Duvall *v.* Sulzner, 155 Fed. 910.

2. **Appraisers under the Standard Fire Insurance Policies** are not arbitrators but are the representative of the parties appointing them. Townsend *v.* Greenwich Ins. Co., 178 N. Y. 634, 71 N. E. 1140, *affirming* 86 N. Y. App. Div. 323, 83 N. Y. Supp. 909.

640. 1. **Missouri.** — Under a statute allowing arbitration regarding the question of the consolidation of school districts it was held that the statute should be construed independently of the general arbitration law, and as it did not specifically require an oath such an omission would not affect the award. State *v.* Job, 205 Mo. 1, 103 S. W. 493.

New York — *The Waiver Must Be in Writing*, both under the statutory and common-law forms of arbitration. This changes the rule of the original note and expressly overrules Cutter *v.* Cutter, 48 N. Y. Super. Ct. 470, therein cited. Hinkle *v.* Zimmerman, 184 N. Y. 114, 76 N. E. 1080, *affirming* 102 N. Y. App. Div. 616, 92 N. Y. Supp. 1128.

641. 3. Harvin *v.* Denton, 87 Miss. 238, 39 So. 456, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 641.

642. 1. **In Arkansas** it is the rule that an arbitration cannot be defeated, after it is properly submitted, by the withdrawal of an appraiser. Niagara F. Ins. Co. *v.* Boon, 76 Ark. 153, 88 S. W. 915.

643. 6. Fish *v.* Vermillion, 70 Kan. 348, 78 Pac. 811; Harvin *v.* Denton, 87 Miss. 238, 39 S. W. 456.

645. 3. Fish *v.* Vermillion, 70 Kan. 348, 78 Pac. 811, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645.

650. 1. Ehrlich *v.* Pike, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 328, 104 N. Y. Supp. 818.

652. 1. Townsend *v.* Greenwich Ins. Co., 178 N. Y. 634, 71 N. E. 1140, *affirming* 86 N. Y. App. Div. 323, 83 N. Y. Supp. 909.

654. 2. **Facts Amounting to Waiver — Illustration.** — Where a party stated that he had said all he cared to say and that he was going away and they could proceed without him, it was held to be a waiver of notice. Duvall *v.* Sulzner, 155 Fed. 910.

655. 4. Snead, etc., Iron Works *v.* Merchants' L. & T. Co., 225 Ill. 442, 80 N. E. 237, *reversing* 124 Ill. App. 558; Harth Bros. Grain Co. *v.* Continental Ins. Co., (Ky. 1907) 102 S. W. 242; Cohn *v.* Wemme, 47 Oregon 146, 81 Pac. 981, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 655.

Waiver. — Timely protest against the action of the arbitrators in refusing to receive evidence is sufficient to show that no waiver is intended. Roberts *v.* Consumers' Can Co., 102 Md. 362, 62 Atl. 585.

657. 3. **Arbitrator Appointed on Account of Special Knowledge.** — Heidlinger *v.* Onward Constr. Co., (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 555, 90 N. Y. Supp. 115, *affirmed* 107 N. Y. App. Div. 398, 95 N. Y. Supp. 1148.

Where the Opinion of the Counsel for One of the Parties was read before the arbitrators, in the presence of the adverse party, it was held not to be a sufficient reason for vacating the award. Stone *v.* Baldwin, 226 Ill. 338, 80 N. E. 890.

661. 1. Duvall *v.* Sulzner, 155 Fed. 910; Lumbard *v.* Holdiman, 115 Ill. App. 458, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 661; Tyblewski *v.* Svea F., etc., Assur. Co., 121 Ill. App. 528, *affirmed* 220 Ill. 436, 77 N. E. 196; Roberts *v.* Consumers' Can Co., 102 Md. 362, 62 Atl. 585; Smith *v.* Bruton, 137 N. Car. 79, 49 S. E. 64.

2. Eureka Pipe Line Co. *v.* Simms, (W. Va. 1907) 59 S. E. 618.

667. 4. Hurst *v.* Funston, (Tex. Civ. App. 1905) 91 S. W. 319.

669. 2. *In re* Southern Pac. Co., 155 Fed. 1001; Johnson *v.* Crawford, 212 Pa. St. 502, 61 Atl. 1103.

670. 1. Niagara F. Ins. Co. *v.* Boon, 76 Ark. 153, 88 S. W. 915; Proctor, etc., Co. *v.*

Blakely Oil, etc., Co., 128 Ga. 606, 57 S. E. 879; Seibert *v.* Germania F. Ins. Co., 132 Iowa 58, 106 N. W. 507; Richards *v.* Smith, (Utah 1907) 91 Pac. 683.

671. 1. Quebec Bridge, etc., Co. *v.* Quebec Imp. Co., 16 Quebec K. B. 107, *reversing* 9 Quebec Super. Ct. 328.

680. 1. Matter of Burke, 117 N. Y. App. Div. 477, 102 N. Y. Supp. 785.

688. 3. Stone *v.* Baldwin, 127 Ill. App. 563, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

692. 2. **Award Remitted for Omission to Award Costs.** — *Re* Baxters and Midland R. Co., 95 L. T. N. S. 20, 22 Times L. Rep. 616.

696. 4. Matter of Abrams, 2 Cal. App. 237, 84 Pac. 363; Hegan *v.* Beckley, (Ky. 1907) 105 S. W. 969; Johnson *v.* Crawford, 212 Pa. St. 502, 61 Atl. 1103.

697. 1. Johnson *v.* Crawford, 212 Pa. St. 502, 61 Atl. 1103, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 591 [697].

699. 1. St. Charles *v.* Stookey, (C. C. A.) 154 Fed. 772; Brown *v.* Durham, 110 Mo. App. 424, 85 S. W. 120, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 698, 699.

701. 2. **Fair Remuneration of Arbitrator Not to Be Reduced by Court.** — Mason *v.* Lovatt, 23 Times L. Rep. 486.

702. 4. Harris *v.* Brand, 27 Ohio Cir. Ct. 713.

706. 1. Stone *v.* Baldwin, 226 Ill. 338, 80 N. E. 890.

3. Ehrlich *v.* Pike, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 328, 104 N. Y. Supp. 818.

710. 3. **Qualifications of the Umpire Cannot Affect the Award** if he takes no part in the proceedings. Kaplan *v.* Niagara F. Ins. Co., 73 N. J. L. 780, 65 Atl. 188.

711. 1. **Umpire Should Not Act as Arbitrator** — Home Ins. Co. *v.* Schiff, 103 Md. 648, 64 Atl. 63.

Where the provision in the submission was that two appraisers should estimate the loss and that they should select an umpire "who shall act in matters of difference only" it was held that an award made by the umpire and one appraiser on withdrawal of the other appraiser was not valid as to matters which the two appraisers had not considered. Seibert *v.* Germania F. Ins. Co., 132 Iowa 58, 106 N. W. 507.

714. 3. **Umpire May Sit with Arbitrators.** — Tyblewski *v.* Svea F., etc., Assur. Co., 220 Ill. 436, 77 N. E. 196, *affirming* 121 Ill. App. 528.

718. 2. **What Amounts to Submission to Umpire.** — Where one appraiser learned of the opinion of the other, and thinking he could not agree with him, consulted with the umpire, it was held that an award by the umpire and the other appraiser was binding. Garrebrant *v.* Continental Ins. Co. (N. J. 1907) 67 Atl. 90.

719. 5. Richards *v.* Smith, (Utah 1907) 91 Pac. 683, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719.

"An award is the result of an examination in some form or other by a person mutually agreed upon." Cherokee Nation *v.* U. S., 40 Ct. Cl. 252.

The award is the judgment of the arbitrators and is generally conclusive in its effect. Millsaps *v.* Estes, 137 N. Car. 525, 50 S. E. 227.

720. 1. Hines *v.* Fisher, 61 W. Va. 565, 56 S. E. 904, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720.

722. 3. **Admissions and Declarations of the Arbitrators,** made during the course of an arbitration, do not constitute an award. Miller *v.* Carnes, 95 Minn. 179, 103 N. W. 877.

723. 2. **A Joint Award** on the submission of two separate causes of action is bad. Nay *v.* Boston, etc., St. R. Co., (Mass. 1906) 78 N. E. 547.

729. 3. Ehrlich *v.* Pike, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 328, 104 N. Y. Supp. 818 (to the same effect as Isaacs *v.* Beth Hamedash Soc., 1 Hilt. (N. Y.) 469, cited in the original note).

730. 3. Where the arbitrators failed to deliver the award to either of the parties, but delivered it to the clerk of the court, and it was not shown that the complaining party had suffered any injury from the irregularity, it was held that the award was valid. Lumbard *v.* Holdiman, 115 Ill. App. 458.

731. 4. Harvin *v.* Denton, 87 Miss. 238, 39 So. Rep. 456.

6. **Utah.** — Under a statute which required that a statutory award must be filed before it had the effect of a judgment it was held that it was not the duty of the arbitrators to file the award but that it must be filed by the party desiring to take advantage of it. Richards *v.* Smith, (Utah 1907) 91 Pac. 683.

732. 1. **A Common-law Award** needs no confirmation of the court to give it validity. Waisner *v.* Waisner, (Wyo. 1907) 89 Pac. 580.

2. Hegan *v.* Beckley, (Ky. 1907) 105 S. W. 969.

736. 2. **A Failure to Make a Finding as to One of the Parties** may be construed as a finding in his favor. Brock *v.* Lawton, 210 Pa. St. 195, 59 Atl. 997.

5. Hegan *v.* Beckley, (Ky. 1907) 105 S. W. 969.

6. Eureka Pipe Line Co. *v.* Simms, (W. Va. 1907) 59 S. E. 618.

738. 4. W. G. Duncan Coal Co. *v.* Duncan, (Ky. 1906) 97 S. W. 43; Donaldson *v.* Buhlman, (Wis. 1907) 113 N. W. 638; Quebec Bridge, etc., Co. *v.* Quebec Imp. Co., 16 Quebec K. B. 107.

740. 3. Eureka Pipe Line Co. *v.* Simms, (W. Va. 1907) 59 S. E. 618.

741. 6. Palatine Ins. Co. *v.* O'Brien, (C. C. A.) 152 Fed. 922, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 741, 742; Heidlinger *v.* Onward Constr. Co., (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 555, 90 N. Y. Supp. 115, *affirmed* 107 N. Y. App. Div. 398, 95 N. Y. Supp. 1148; Donaldson *v.* Buhlman, (Wis. 1908) 114 N. W. 431, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 741 *et seq.*; Waisner *v.* Waisner, (Wyo. 1907) 89 Pac. 580.

746. 1. Palatine Ins. Co. *v.* O'Brien, (C. C. A.) 152 Fed. 922; Snead, etc., Iron Works *v.* Merchants L. & T. Co., 225 Ill. 442, 80 N. E. 237, *reversing* 124 Ill. App. 558; Donaldson *v.* Buhlman, (Wis. 1908) 114 N. W. 431; Quebec Bridge, etc., Co. *v.* Quebec Imp. Co., 16 Quebec K. B. 107.

748. 1. Donaldson *v.* Buhlman, (Wis. 1908) 114 N. W. 431.

750. 1. Harrell *v.* Terrell, 125 Ga. 379, 54 S. E. 116.

753. 3. Brock *v.* Lawton, 210 Pa. St. 195, 59 Atl. 997.

5. Harrell *v.* Terrell, 125 Ga. 379, 54 S. E. 116.

755. 2. Real Estate Title Ins., etc., Co. *v.* McNichol, 217 Pa. St. 545, 66 Atl. 768.

758. 2. Palatine Ins. Co. *v.* O'Brien, (C. C. A.) 152 Fed. 922; Heidlinger *v.* Onward Constr. Co., (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 555, 90 N. Y. Supp. 115, *affirmed* 107 N. Y. App. Div. 398, 95 N. Y. Supp. 1148; Real Estate Title Ins., etc., Co. *v.* McNichol, 217 Pa. St. 545, 66 Atl. 768.

3. Eureka Pipe Line Co. *v.* Simms, (W. Va. 1907) 59 S. E. 618, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758.

764. 1. Hines *v.* Fisher, 61 W. Va. 565, 56 S. E. 904.

766. 2. Tyblewski *v.* Svea, etc., Assur. Co., 121 Ill. App. 528, *affirmed* 220 Ill. 436, 77 N. E. 196.

774. 4. Niagara F. Ins. Co. *v.* Boon, 76 Ark. 153, 88 S. W. 915; Proctor, etc., Co. *v.* Blakely Oil, etc., Co., 128 Ga. 606, 57 S. E. 879; Tyblewski *v.* Svea F., etc., Assur. Co., 121 Ill. App. 528, *affirmed* 220 Ill. 436, 77 N. E. 196; Seibert *v.* Germania F. Ins. Co., 132 Iowa 58, 106 N. W. 507; Roberts *v.* Consumers' Can Co., 102 Md. 362, 62 Atl. 585; Kaplan *v.* Niagara F. Ins. Co., 73 N. J. L. 780, 65 Atl. 188; Richards *v.* Smith, (Utah 1907) 91 Pac. 683; Bland *v.* Russian Bank, 11 Com. Cas. (Eng.) 71.

777. 1. **Award Set Aside for Omission of Arbitrator to Annex Statutory Declaration.** — Ludlow Corp. *v.* Prosser, 22 Times L. Rep. 597.

778. 1. *United States.* — Roberts, etc., Shoe Co. *v.* Westinghouse Electric, etc., Co., (C. C. A.) 143 Fed. 218.

Georgia. — Parsons *v.* Ambos, 121 Ga. 98, 48 S. E. 696.

Illinois. — Tyblewski *v.* Svea F., etc., Assur. Co., 121 Ill. App. 528, *affirmed* 220 Ill. 436, 77 N. E. 196; White Star Min. Co. *v.* Hultberg, 220 Ill. 578, 77 N. E. 327; Stone *v.* Baldwin, 226 Ill. 338, 80 N. E. 890; Stone *v.* Baldwin, 127 Ill. App. 563, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 778.

Maryland. — Roberts *v.* Consumers' Can Co., 102 Md. 362, 62 Atl. 585.

Massachusetts. — Phaneuf *v.* Corey, 190 Mass. 237, 76 N. E. 718.

Missouri. — State *v.* Job, 205 Mo. 1, 103 S. W. 493.

New Jersey. — Kaplan *v.* Niagara F. Ins. Co., 73 N. J. L. 780, 65 Atl. 188, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 776 [778].

New York. — Heidlinger *v.* Onward Constr. Co., (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 555, 90 N. Y. Supp. 115, *affirmed* 107 N. Y. App. Div. 398, 95 N. Y. Supp. 1148; Matter of Burke, 117 N. Y. App. Div. 477, 102 N. Y. Supp. 785; Ehrlich *v.* Pike, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 328, 104 N. Y. Supp. 818.

North Carolina. — Smith *v.* Bruton, 137 N. Car. 79, 49 S. E. 64.

Pennsylvania. — March *v.* Lukens, 214 Pa. St. 206, 63 Atl. 427.

Texas. — Ridgill *v.* Dupree, (Tex. Civ. App. 1905) 85 S. W. 1166.

West Virginia. — Eureka Pipe Line Co. *v.* Simms, (W. Va. 1907) 59 S. E. 618, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 778.

Wisconsin. — Donaldson *v.* Buhlman, (Wis. 1907) 113 N. W. 638.

Decision of Engineers and Architects. — McNally *v.* Montour R. Co., 33 Pa. Super. Ct. 51 (to the same effect as the first paragraph of the original note).

780. 1. Eureka Pipe Line Co. *v.* Simms, (W. Va. 1907) 59 S. E. 618.

2. Commercial Union Assur. Co. *v.* Parker, 119 Ill. App. 126.

781. 2. Philadelphia F. Assoc. *v.* Allesina, (Oregon 1907) 89 Pac. 960.

An Award Induced by the Negligence of one of the parties may be set aside. Campbell *v.* Walker, (Ky. 1907) 105 S. W. 959.

782. 1. White Star Min. Co. *v.* Hultberg, 220 Ill. 578, 77 N. E. 327; Heidlinger *v.* Onward Constr. Co., (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 555, 90 N. Y. Supp. 115, *affirmed* 107 N. Y. App. Div. 398, 95 N. Y. Supp. 1148.

783. 2. See dissenting opinion of Cartwright and Hand, JJ., in White Star Min. Co. *v.* Hultberg, 220 Ill. 578, 77 N. E. 327, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 783.

Question Whether Such Stipulations Directory or Mandatory. — Where the stipulation was that the decision should be upon competent evidence and according to law it was held that the decision of the arbitrators as to the law was final. White Star Min. Co. *v.* Hultberg, 220 Ill. 578, 77 N. E. 327.

784. 1. **Stating Special Case under Statutes.** — *Re* Carpenter, 97 L. T. N. S. 461, 23 Times L. Rep. 654; *Re* Holland Steamship Co., 95 L. T. N. S. 769, 23 Times L. Rep. 59; *Re* Powell, 9 Ont. L. Rep. 236.

787. 1. White Star Min. Co. *v.* Hultberg, 220 Ill. 578, 77 N. E. 327 (to the same effect as Smith *v.* Boston, etc., R. Co., 16 Gray (Mass.) 521, stated in the original note).

789. 3. Stone *v.* Baldwin, 127 Ill. App. 563.

791. 3. **Award Remitted for Omission to Award Costs.** — *Re* Baxters and Midland R. Co., 95 L. T. N. S. 20, 22 Times L. Rep. 616.

Remittal for Failure to State a Special Case. — *Re* Powell, 9 Ont. L. Rep. 236.

792. 1. Matter of Burke, 117 N. Y. App. Div. 477, 102 N. Y. Supp. 785.

794. 5. Nay *v.* Boston, etc., St. R. Co., (Mass. 1906) 78 N. E. 547; Merchants' Nat. Bank *v.* East Grand Forks, 94 Minn. 246, 102 N. W. 703; State *v.* Job, 205 Mo. 1, 103 S. W. 493; Kaplan *v.* Niagara F. Ins. Co., 73 N. J. L. 780, 65 Atl. 188; Brock *v.* Lawton, 210 Pa. St. 195, 59 Atl. 997; Astwood *v.* Wanamaker, 26 Pa. Super. Ct. 591.

797. 3. Home Ins. Co. *v.* Schiff, 103 Md. 648, 64 Atl. 63.

An Award Based on an Illegal Contract will not be enforced. Pittsburgh Constr. Co. *v.* West Side Belt R. Co., 151 Fed. 125.

798. 4. Billmyer *v.* Hamburg-Bremen F. Ins. Co., 57 W. Va. 42, 49 S. E. 901.

805. 3. E. E. Souther Iron Co. *v.* Laclede Power Co., 109 Mo. App. 353, 84 S. W. 450;

Billmyer *v.* Hamburg-Bremen F. Ins. Co., 57 W. Va. 42, 49 S. E. 901.

806. 3. Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389.

6. Harrell *v.* Terrell, 125 Ga. 379, 54 S. E. 116.

Accepting Benefits under Award. — Hegan *v.* Beckley, (Ky. 1907) 105 S. W. 969.

Where the award is separable a party may accept benefits under part of the award and question the validity of the remainder. Waisner *v.* Waisner, (Wyo. 1907) 89 Pac. 580.

807. 2. Tyblewski *v.* Svea F., etc., Assur. Co., 220 Ill. 436, 77 N. E. 196, *affirming* 121 Ill. App. 528.

813. 4. **Appraisers Failing to Agree.** — Where the appraisers appointed under an insurance policy failed to agree the insured is not bound to select new appraisers. Lancashire Ins. Co. *v.* Lyon, 124 Ill. App. 491.

ARCHITECTS.

816. 2. Halsey *v.* Waukesha Springs Sanitarium Co., 125 Wis. 311, 104 N. W. 94.

3. Preliminary Plans and Specifications are frequently submitted gratuitously by architects in the hope of being engaged to make the working plans. Kinney *v.* Manitowoc County, (C. C. A.) 135 Fed. 491.

4. Custom Entitling Architect to Plans After Payment and Completion of Building Unreasonable. — Gibbon *v.* Pease, (1905) 1 K. B. 810.

818. 2. Kinney *v.* Manitowoc County, (C. C. A.) 135 Fed. 491; Graham *v.* Bell-Irving, (Wash. 1907) 91 Pac. 8.

3. Dunne *v.* Robinson, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 545, 103 N. Y. Supp. 878.

5. In California it is a misdemeanor for a person to practice architecture without having first secured a license from the state license board, which passes upon his qualification. Fitzhugh *v.* Mason, 2 Cal. App. 220, 83 Pac. 282.

6. No Liability for Defective View Not Due to Plans. — Saint-Jean *v.* Strubbe, 27 Quebec Super. Ct. 266.

819. 1. **Architect Cannot Recover for Defective Plans.** — Dunne *v.* Robinson, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 545, 103 N. Y. Supp. 878.

3. The Interpretation of the Building Specifications may properly be left to the architect. Norcross *v.* Wyman, 187 Mass. 25, 72 N. E. 347.

4. Bush *v.* Jones, (C. C. A.) 144 Fed. 942; Stephens *v.* Essex County Park Commission, (C. C. A.) 143 Fed. 844; Wyman *v.* Hooker, 2 Cal. App. 36, 83 Pac. 79; Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709; Barbee *v.* Findlay, 221 Ill. 251, 77 N. E. 590; Andrew Lohr Bottling Co. *v.* Ferguson, 223 Ill. 88, 79 N. E. 35; Louisville Foundry, etc., Co. *v.* Patterson, (Ky. 1906) 93 S. W. 22; Dogue *v.* Levy, 114 La. 21, 37 So. 995; Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. 228; Norcross *v.* Wyman, 187 Mass. 25, 72 N. E. 347; White *v.* Abbott, 188 Mass. 99, 74 N. E. 305; Hebert *v.* Dewey, 191 Mass. 403, 77 N. E. 822; Loftus *v.* Jorjorian, 194 Mass. 169, 80 N. E. 235; Heidlinger *v.* Onward Constr. Co., (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 555, 90 N. Y. Supp. 115; Olsen *v.* Schwarzwaelder, 109 N. Y. App. Div. 282, 95 N. Y. Supp. 651; Traitel *v.* Oussani, (Surrogate Ct.) 51 Misc. (N. Y.) 667, 101 N. Y. Supp. 105; Eastham *v.* Blanchette, (Tex. Civ. App. 1906) 94 S. W. 441; Carnegie Public Library Assoc. *v.* Harris, (Tex. Civ. App. 1906) 97 S. W. 520; Lavanway *v.* Cannon, 37 Wash. 593, 79 Pac. 1117; Halsey *v.* Waukesha Springs Sanitarium Co., 125 Wis. 311, 104 N. W. 94; Modern Steel Structural Co. *v.* English Constr. Co., 129 Wis. 31, 108 N. W. 70; Robins *v.* Goddard, (1905) 1 K. B. 294.

This question is generally raised in actions by contractors against the owners for the contract price. For a further discussion of the question, see the title WORKING CONTRACTS.

823. 1. Loftus *v.* Green, (Tex. Civ. App. 1907) 104 S. W. 396. See also Chappell *v.* Nolan, 38 Nova Scotia 74.

4. Where It Is Not Provided When the Fee Shall Fall Due, it will be held that the employer is liable only upon the completion of the work. Fitzhugh *v.* Mason, 2 Cal. App. 220, 83 Pac. 282.

824. 1. **Lien in Favor of Architects.** — Friedlander *v.* Taintor, 14 N. Dak. 393, 104 N. W. 527.

An Architect Is Not Entitled to a Lien for preparing plans and specifications for a proposed building, upon the building erected by other plans and by other specifications after his first plan had been abandoned. Buckingham *v.* Flummerfelt, 15 N. Dak. 112, 106 N. W. 403.

In Massachusetts it has been held that an architect is not entitled to a lien for preparing the plans and specifications for a building. Libbey *v.* Tidden, 192 Mass. 175, 78 N. E. 313.

4. Friedlander *v.* Taintor, 14 N. Dak. 393, 104 N. W. 527.

ARISE.

826. 3. **Arising and Accruing — Payment of Claims under Fire Insurance Policy.** — See U. S. Fidelity, etc., Co. *v.* Fultz, 76 Ark. 410, 89 S. W. 93.

ARRAIGNMENT.

829. 5. Powell *v.* State, 74 Ark. 355, 85 S. W. 781.

ARREST.

836. 1. McAleer *v.* Good, 216 Pa. St. 473, 65 Atl. 934.

838. 3. Sherman *v.* State, 2 Ga. App. 686, 58 S. E. 1122.

839. 1. **For a Discussion of Arrests in Civil Actions,** see the title IMPRISONMENT FOR DEBT AND IN CIVIL ACTIONS.

842. 4. **Officer Not Known Must Show Authority.** — State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542.

845. 2. **The Person Named in the Warrant,** and no other, must be arrested. Blocker *v.* Clark, 126 Ga. 484, 54 S. E. 1022.

846. 1. **Mistake No Excuse.** — Vice *v.* Holley, 88 Miss. 572, 41 So. 7.

2. Blocker *v.* Clark, 126 Ga. 484, 54 S. E. 1022.

4. Janes *v.* Wilson, 119 La. 491, 44 So. 275.

847. 2. State *v.* Coleman, 186 Mo. 151, 84 S. W. 978.

818. 3. State *v.* Smith, 127 Iowa 531, 4 Ann. Cas. 758, 103 N. W. 944; Stevens *v.* Com., (Ky. 1906) 98 S. W. 284.

819. 1. State *v.* Shockley, 29 Utah 25, 80 Pac. 865.

4. State *v.* Smith, (Iowa 1904) 101 N. W. 110, 127 Iowa 534, 4 Ann. Cas. 758, 103 N. W. 944; Stevens *v.* Com., (Ky. 1906) 98 S. W. 284.

860. 2. Smith *v.* Jerome, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 22, 93 N. Y. Supp. 202.

862. 4. *Ex p.* Smotherman, 140 Ala. 168, 37 So. 376; Sneed *v.* McFatridge, (Tex. Civ. App. 1906) 97 S. W. 113.

863. 1. Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291.

865. 1. McDuffie *v.* State, 121 Ga. 580, 49 S. E. 708.

3. **A License Inspector** has no authority to arrest a person for violating the license law, without a warrant. Gambill *v.* Fuqua, 148 Ala. 448, 42 So. 735.

An Inspector of Roads and Bridges may be sworn in as a deputy sheriff, and as such have power to make arrests for the violation of the criminal laws of the state as other deputy sheriffs. Massey *v.* State, 124 Ga. 24, 52 S. E. 78.

868. 1. Wright *v.* Templeton, (Vt. 1907) 67 Atl. 817.

4. Sherman *v.* State, 2 Ga. App. 686, 58 S. E. 1122.

869. 2. An officer has no authority without a warrant to search a suspected person. Hebrew *v.* Pulis, 73 N. J. L. 621, 64 Atl. 121.

3. **Warrant Generally Necessary.** — Hughes *v.* State, 2 Ga. App. 29, 58 S. E. 390; Stewart *v.* State, 2 Ga. App. 98, 58 S. E. 390; Smith *v.* Dulion, 113 La. 882, 37 So. 864; Klein *v.* Pollard, 149 Mich. 200, 112 N. W. 717; State *v.* Williams, 45 Oregon 314, 77 Pac. 965, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 869; Regan *v.* Harkey, (Tex. Civ. App. 1905) 87 S. W. 1164.

870. 1. **Authorities in United States.** — *Ex p.* Smotherman, 140 Ala. 168, 37 So. 376; Johnson *v.* Collins, (Ky. 1905) 89 S. W. 253; Stevens *v.* Com., (Ky. 1906) 98 S. W. 284; O'Malley *v.* Whitaker, 118 La. 906, 43 So. 545; Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291.

872. 2. Wood *v.* Olson, 117 Ill. App. 128.

4. **Texas.** — An officer cannot arrest a person for seduction without a warrant. Earles *v.* State, (Tex. Crim. 1905) 85 S. W. 1.

873. 1. **Right to Arrest for Breach of Peace.** — Yates *v.* State, 127 Ga. 813, 56 S. E. 1017; Com. *v.* Robinson, (Ky. 1905) 84 S. W. 319; Meyers *v.* Dunn, (Ky. 1907) 104 S. W. 352; Paulding *v.* Lane, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 37, 104 N. Y. Supp. 1051; Percival *v.* Bailey, 70 S. Car. 72, 49 S. E. 7.

Offense Must Be in Officer's Presence. — People *v.* Breen, (Supm. Ct.) 44 Misc. (N. Y.) 375, 89 N. Y. Supp. 998.

The Officer Must Be Able to Detect the Offense by sight or hearing as that of the accused. Brown *v.* Wallis, (Tex. Civ. App. 1906) 101 S. W. 1068.

Merely Calling an Officer Names without disturbing the public peace will not justify an arrest without a warrant. Heath *v.* Hagan, (Iowa 1907) 113 N. W. 342, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 874.

875. 1. Hammond *v.* State, 147 Ala. 79, 41 So. 761; Porter *v.* State, 124 Ga. 297, 52 S. E. 283; Hughes *v.* State, 2 Ga. App. 29, 58 S. E. 390; Enright *v.* Gibson, 219 Ill. 550, 76 N. E. 689; Snyder *v.* Thompson, 134 Iowa 725, 112 N. W. 239; Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597; Weaver *v.* McGovern, (Ky. 1906) 90 S. W. 984; Com. *v.* McCann, (Ky. 1906) 94 S. W. 645; Reed *v.* Com., (Ky. 1907) 100 S. W. 856; State *v.* Boyd, 108 Mo. App. 518, 84 S. W. 1911; Philips *v.* Leary, 114 N. Y. App. Div. 871, 100 N. Y. Supp. 200; Higby *v.* Pennsylvania R. Co., 209 Pa. St. 452, 58 Atl. 858; State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542; Early *v.* State, (Tex. Crim. 1906) 97 S. W. 82; Garner *v.* State, (Tex. Crim. 1906) 97 S. W. 98; Hull *v.* State, (Tex. Crim. 1907) 100 S. W. 403; Rex *v.* Sabeans, 37 Nova Scotia 223.

Gambling. — Massey *v.* State, 124 Ga. 24, 52 S. E. 78 (to the same effect as Willis *v.* Warren, 1 Hilt. (N. Y.) 590, set out in the original note).

An Arrest for Vagrancy without a warrant is lawful. People *v.* Craig, (Cal. 1907) 91 Pac. 997.

877. 1. Yates *v.* State, 127 Ga. 813, 56 S. E. 1017.

878. 1. *In re* Stilts, 74 Kan. 805, 87 Pac. 1134, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 876–878.

2. Weaver *v.* McGovern, (Ky. 1906) 90 S. W. 984.

879. 1. Smith *v.* Dulion, 113 La. 882, 37 So. 864; Percival *v.* Bailey, 70 S. Car. 72, 49 S. E. 7.

880. 4. **Disposition of Prisoner.** — If an arrest be made without a warrant, whether by an officer or a private person, the prisoner should forthwith be carried before the most convenient magistrate of the county and the cause inquired into. Johnson *v.* Collins, (Ky. 1905) 89 S. W. 253; Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597.

882. 5. State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542.

884. 2. Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291; State *v.* Shockley, 29 Utah 25, 80 Pac. 865.

885. 1. Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597; Moebus's Petition, 73 N. H. 350, 62 Atl. 170.

An Arrest by an Individual to Prevent a Felon from Escaping may be made without a warrant. Porter *v.* State, 124 Ga. 297, 52 S. E. 283.

2. State *v.* Griffin, 74 S. Car. 412, 54 S. E. 603.

Under the Illinois Statute a private person cannot arrest on suspicion. Enright *v.* Gibson, 219 Ill. 550, 76 N. E. 689, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 885.

888. 1. Enright *v.* Gibson, 219 Ill. 550, 76 N. E. 689; Rich *v.* Bailey, (Ky. 1906) 97 S. W. 747.

889. 2. Pandjiris *v.* Hartman, 196 Mo. 539, 94 S. W. 270.

893. 3. State *v.* Williams, 45 Oregon 314, 77 Pac. 965, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 893; Casselini *v.* Booth, 77 Vt.

255, 59 Atl. 833, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 893.

897. 1. McCarg *v.* Burr, 106 N. Y. App. Div. 275, 94 N. Y. Supp. 675; Goodell *v.* Tower, 77 Vt. 61, 58 Atl. 790, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897.

898. 1. Bohri *v.* Barnett, (C. C. A.) 144 Fed. 389; Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774.

901. 1. Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774.

904. 2. Janes *v.* Wilson, 119 La. 491, 44 So. 275.

905. 1. Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

907. 1. McDuffie *v.* State, 121 Ga. 580, 49 S. E. 708; State *v.* Horner, 139 N. Car. 603, 52 S. E. 136; State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542.

Assault with Intent to Murder. — A person who, in resisting arrest, attempts to kill an officer, is guilty of assault with intent to murder. Massey *v.* State, 124 Ga. 24, 52 S. E. 78.

909. 2. Porter *v.* State, 124 Ga. 297, 52 S. E. 283; Ryan *v.* Chicago, 124 Ill. App. 188; Mann *v.* Com., 118 Ky. 800, 82 S. W. 438, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 909; Earles *v.* State, (Tex. Crim. 1906) 94 S. W. 464.

3. Porter *v.* State, 124 Ga. 297, 52 S. E. 283; Yates *v.* State, 127 Ga. 813, 56 S. E. 1017; State *v.* Durham, 141 N. Car. 741, 53 S. E. 720; Earles *v.* State, (Tex. Crim. 1905) 85 S. W. 1; Earles *v.* State, (Tex. Crim. 1906) 94 S. W. 461.

913. 2. Mœbus's Petition, 73 N. H. 350, 62 Atl. 170.

914. 4. Moore *v.* Peace, (Ky. 1906) 97 S. W. 762; Gould *v.* Chickasaw County, 85 Miss. 123, 37 So. 710; Couch *v.* State, 14 N. Dak. 361, 103 N. W. 942.

A Reward Is Not Earned by merely giving information which leads to the arrest. McClaughrey *v.* King, 135 Fed. 195, *affirmed* (C. C. A.) 147 Fed. 463.

Prior Knowledge of the Offer is essential to a recovery of a reward. Broadnax *v.* Ledbetter, (Tex. 1907) 99 S. W. 1111; Smith *v.* Vernon County, 188 Mo. 501, 87 S. W. 949.

5. Gould *v.* Chickasaw County, 85 Miss. 123, 37 So. 710; Atwood *v.* Armstrong, 192 N. Y. App. Div. 601, 92 N. Y. Supp. 596; Com. *v.* Lane, 28 Pa. Super. Ct. 149.

ARRIVAL.

915. 1. Arrival in a Bill of Lading providing that ship commence discharging immediately upon *arrival* means arrival at a place where discharge is possible. Tweedie Trading Co. *v.* Pitch Pine Lumber Co., 156 Fed. 88.

ARSON.

917. 1. Mai *v.* People, 224 Ill. 414, 79 N. E. 633, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 917.

Common-law Definition Applicable in Absence of Statutory Definition. — U. S. *v.* Cardish, 143 Fed. 640.

918. 1. State *v.* Harvey, 130 Iowa 394, 106 N. W. 938.

"Wilful" and "Malicious" Denote Distinct Ideas, and a charge of one is not the equivalent of a charge of the other. State *v.* Willing, 129 Iowa 72, 105 N. W. 355.

2. State *v.* Morgan, 136 N. Car. 628, 48 S. E. 670.

919. 3. Colbert *v.* State, 125 Wis. 423, 104 N. W. 61.

921. 2. Mai *v.* People, 224 Ill. 414, 79 N. E. 633, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921.

4. Policy Is Best Evidence, and Must Be Produced or Failure Explained. — State *v.* Harvey, 130 Iowa 394, 106 N. W. 938.

923. 4. Moore *v.* State, (Tex. Crim. 1907) 103 S. W. 188.

924. 2. U. S. *v.* Cardish, 143 Fed. 640; Harrell *v.* State, 121 Ga. 607, 49 S. E. 703; State *v.* Lintner, 19 S. Dak. 447, 104 N. W. 205; Goldsmith *v.* State, 46 Tex. Crim. 556, 81 S. W. 710.

926. 2. Davis *v.* State, (Ala. 1907) 44 So. 1018, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926, 927.

3. Vacant Dwelling House. — See People *v.* Mix, 149 Mich. 260, 112 N. W 907.

930. 3. Mai *v.* People, 224 Ill. 414, 79 N. E. 633; State *v.* Lintner, 19 S. Dak. 447, 104 N. W. 205.

931. 1. **Building Resting upon Posts Not Inclosed.** — In Caddell *v.* State, (Tex. Crim. 1906) 97 S. W. 705, it was held that a building resting upon posts which were not inclosed, was nevertheless a "house" within the meaning of a statute which defined a house as a building, device, or structure, inclosed with walls and covered.

3. Com. *v.* Napier, (Ky. 1905) 84 S. W. 536; Raymond *v.* Com., (Ky. 1906) 96 S. W. 515; State *v.* McLain, 43 Wash. 267, 86 Pac. 390.

932. 3. Davis *v.* State, (Ala. 1907) 44 So. 545.

"Corncrib" means a building or structure in its entirety, and does not include a room or apartment in a barn used as a corncrib. Jackson *v.* State, 145 Ala. 54, 40 So. 979.

933. 4. State *v.* Hunt, 190 Mo. 353, 88 S. W. 719.

9. A Box Car is a "building" within the meaning of a statute defining arson. State *v.* Lintner, 19 S. Dak. 447, 104 N. W. 205.

934. 1. **Proof of Ownership** of the building burned must be made by the introduction of a deed when it is private property and unoccupied. Goldsmith *v.* State, 46 Tex. Crim. 556, 81 S. W. 710.

4. State *v.* Harvey, 130 Iowa 394, 106 N. W. 938; People *v.* Mix, 149 Mich. 260, 112 N. W. 907; State *v.* Yates, 99 Minn. 461, 109 N. W. 1070; People *v.* Brown, 110 N. Y. App. Div. 490, 96 N. Y. Supp. 957; State *v.* Mann, 39 Wash. 144, 81 Pac. 561.

Burning to Defraud Insurance Company Not Arson. — In *Illinois* it is held that the crime of arson and the crime of maliciously burning property with intent to defraud an insurance company as defined in the statutes are entirely distinct offenses. Mai *v.* People, 224 Ill. 414, 79 N. E. 633; Elgin *v.* People, 226 Ill. 486, 80 N. E. 1014.

935. 1. State *v.* Perry, 74 S. Car. 551, 54 S. E. 764, *quoting* 2 AM. AND ENG. ENCYC. OF

LAW (2d ed.) 935; Heard *v.* State, 116 Tenn. 713, 94 S. W. 605, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 935.

936. 4. Posey *v.* U. S., 26 App. Cas. (D. C.) 302.

A Rent Receipt is admissible to prove ownership in another. State *v.* Watson, 47 Oregon 543, 85 Pac. 336.

937. 1. People *v.* Wagner, 180 N. Y. 58, 72 N. E. 577.

4. **Sufficient Evidence of Overt Act.** — See State *v.* Taylor, 47 Oregon 455, 84 Pac. 82.

938. 1. Morgan *v.* State, 120 Ga. 499, 48 S. E. 238; Williams *v.* State, 125 Ga. 741, 54 S. E. 661; Ragland *v.* State, 2 Ga. App. 492, 58 S. E. 689; State *v.* Harvey, 130 Iowa 394, 106 N. W. 938; People *v.* Wagner, 71 N. Y. App. Div. 399, 75 N. Y. Supp. 950.

2. Davis *v.* State, 141 Ala. 62, 37 So. 676; Williams *v.* State, 125 Ga. 741, 54 S. E. 661; State *v.* Rogoway, 45 Oregon 601, 78 Pac. 987, 81 Pac. 234; Dunlap *v.* State, (Tex. Crim. 1906) 98 S. W. 845.

3. State *v.* Pienick, (Wash. 1907) 90 Pac. 645.

940. 1. State *v.* Morgan, 136 N. Car. 628, 48 S. E. 670.

Absence of Motive for the crime should be taken into consideration in passing upon the guilt of a person charged with arson. State *v.* Morney, 196 Mo. 43, 93 S. W. 1117.

2. Morgan *v.* State, 120 Ga. 499, 48 S. E. 238; People *v.* Wagner, 180 N. Y. 58, 72 N. E. 577; State *v.* McLain, 43 Wash. 267, 86 Pac. 390.

General Threats Inadmissible. — Raymond *v.* Com., (Ky. 1906) 96 S. W. 515.

Evidence Admitted to Rebut Motive. — See Dunlap *v.* State, (Tex. Crim. 1906) 98 S. W. 845.

941. 1. People *v.* Helwig, 146 Cal. 601, 80 Pac. 1030; State *v.* Harvey, 130 Iowa 394, 106 N. W. 938; People *v.* Mix, 149 Mich. 260, 112 N. W. 907; State *v.* Rogoway, 45 Oregon 601, 78 Pac. 987, 81 Pac. 234.

Evidence that Defendant Had Had Other Fires Held Inadmissible. — People *v.* Brown, 110 N. Y. App. Div. 490, 96 N. Y. Supp. 957, *affirmed* 188 N. Y. 554, 80 N. E. 1115.

Removal of Goods from Building Before Burning is admissible evidence. State *v.* Mann, 39 Wash. 144, 81 Pac. 561.

942. 1. Morgan *v.* State, 120 Ga. 499, 48 S. E. 238; People *v.* Wagner, 180 N. Y. 58, 72 N. E. 577.

The Absence of Any Evidence that the Defendant Was Present at the Building at the Time It Was Fired is important as going to show that the defendant was not guilty of the crime. State *v.* Morney, 196 Mo. 43, 93 S. W. 1117.

3. Davis *v.* State, 141 Ala. 62, 37 So. 676; Williams *v.* State, 123 Ga. 278, 51 S. E. 344; State *v.* Hunter, 143 N. Car. 607, 56 S. E. 547; Tinnan *v.* State, (Tex. Crim. 1905) 86 S. W. 753; Moore *v.* State, (Tex. Crim. 1907) 103 S. W. 188; State *v.* McLain, 43 Wash. 267, 86 Pac. 390.

Tracks of a Horse near the scene of burning were held not sufficiently shown to be the tracks of the defendant's horse to justify conviction of the defendant. Jones *v.* Com., 103 Va. 1012, 49 S. E. 663.

The Opinion of a Witness Testifying to Footprints, that they were made by the accused, cannot be given in evidence. Heidelbaugh *v.* State, (Neb. 1907) 113 N. W. 145.

4. State *v.* McLain, 43 Wash. 267, 86 Pac. 390.

ARTICLE.

946. 1. **Articles of Glass.** — See R. Hoehn Co. *v.* U. S., 139 Fed. 301, *affirmed* (C. C. A.) 142 Fed. 1038.

Glass vases ornamented with metal filigree work held to be *articles* of glass within Tariff Act. Gallenkamp *v.* Rachman, 147 Fed. 769.

Articles Commonly Known as Jewelry. — Chatelaine purses held not to be *articles* commonly known as jewelry within a Tariff Act. Steinhardt *v.* U. S., 148 Fed. 512.

ASSAILANT.

951. 3. Gregory *v.* State, (Ala. 1906) 42 So. 829.

ASSAULT AND BATTERY.

953. 1. "An assault is an unlawful attempt, by violence, to do injury to the person of another; the person making the attempt having the present ability to commit such injury." State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227. To the same effect see State *v.* Dyer, 5 Penn. (Del.) 88, 58 Atl. 947; State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790; State *v.* Brown, 5 Penn. (Del.) 440, 63 Atl. 328; State *v.* Handy, (Del. 1907) 66 Atl. 336.

By statute in *Arkansas* and *California* "an assault is an unlawful attempt, coupled with present ability to commit a violent injury on the person of another." Anderson *v.* State, 77 Ark. 37, 90 S. W. 846; People *v.* Wells, 145 Cal. 138, 78 Pac. 470; People *v.* Bradbury, (Cal. 1907) 91 Pac. 497.

An assault is any wilful and unlawful attempt or offer, with force or violence, to do a corporal hurt to another. Baysinger *v.* Territory, 15 Okla. 386, 82 Pac. 728.

Under the *Washington* Code an assault is an attempt in a rude, insolent, and angry manner unlawfully to touch, strike, beat, or wound another person, coupled with a present ability to carry such attempt into execution. State *v.* McFadden, 42 Wash. 1, 84 Pac. 401.

"An assault is an intentional offer or attempt by violence to do an injury to the person of another." State *v.* Daniel, 136 N. Car. 571, 48 S. E. 544.

An assault is simply an attempt to hurt, with the power to hurt. Montgomery *v.* State, 85 Miss. 330, 37 So. 835.

Implies Force. — The word "assault," as used in a statute providing for the punishment of assault with intent to commit rape, implies force by the assailant, and resistance by the one assaulted. People *v.* Collins, (Cal. App. 1907) 91 Pac. 158.

Lexiconic Sense. — The offense of assault involves a wrongful purpose and does not necessarily involve actually reaching the assaulted person, while the term "assault" in its mere lexiconic sense means the doing of violence by one to another, which may or may not include

the element essential to criminality. Holmes *v.* State, 124 Wis. 133, 102 N. W. 321.

2. "The Actual Infliction of the Injury." — State *v.* Dyer, 5 Penn. (Del.) 88, 58 Atl. 947.

The South Dakota Code defines a battery as "any wilful and unlawful use of force or violence upon the person of another." State *v.* Schmidt, 19 S. Dak. 585, 104 N. W. 259.

Every Battery Includes Assault. — State *v.* Handy, (Del. 1907) 66 Atl. 336; Montgomery *v.* State, 85 Miss. 330, 37 So. 835.

3. Anderson *v.* State, 77 Ark. 37, 90 S. W. 846; McAfee *v.* State, (Tex. Crim. 1904) 83 S. W. 376; Jordan *v.* State, (Tex. Crim. 1905) 84 S. W. 823; Jackson *v.* State, (Tex. Crim. 1907) 103 S. W. 927.

Motive Need Not Be Shown. — State *v.* Carmon, (N. Car. 1907) 59 S. E. 657.

In Assault by Throwing Acid the wilfulness, malice, and intent to injure are the necessary requisites in order to constitute the assault a felony. State *v.* District Ct., 35 Mont. 321, 89 Pac. 63.

Intent Essential Element of Attempt to Provoke Another to Commit Assault. — Heard *v.* State, 38 Ind. App. 511, 78 N. E. 358.

954. 1. Nicholls *v.* Cowell, 113 Ill. App. 219.

Intention to Do Harm Essence of Assault. — Salomon *v.* Buechele, 127 Ill. App. 420.

955. 1. Griffin *v.* State, (Ala. 1907) 43 So. 197; Thompson *v.* State, (Tex. Crim. 1905) 89 S. W. 1081.

Intent Presumed Only When Injury Is Inflicted. — Tubbs *v.* State, (Tex. Crim. 1906) 95 S. W. 112.

Advice of Counsel No Defense. — Com. *v.* Middleby, 187 Mass. 342, 73 N. E. 208.

2. People *v.* Wells, 145 Cal. 138, 78 Pac. 470. But see State *v.* Mulhall, 199 Mo. 202, 97 S. W. 583 (assault with intent to kill).

Assault with Intent to Rob. — In a prosecution for assault with intent to rob, when the defendants intended to steal property from a building, and assaulted a watchman to overcome his resistance, the offense is complete without proof of a specific intent to steal money or goods that were actually on his person. O'Donnell *v.* People, 224 Ill. 218, 8 Ann. Cas. 123, 79 N. E. 639.

956. 1. Haupt *v.* Swenson, 125 Iowa 694, 101 N. W. 520; State *v.* Daniel, 136 N. Car. 571, 48 S. E. 544; State *v.* McFadden, 42 Wash. 1, 84 Pac. 401.

Pointing Concealed Unloaded Pistol Is Assault. — State *v.* Atkinson, 141 N. Car. 734, 53 S. E. 228.

Raising Stone and Attempting to Strike Sufficient. — State *v.* Tetrick, 199 Mo. 100, 97 S. W. 564.

The Unlawful Act Must Be the Beginning or part of the act to injure, and not of preparation to commit some contemplated crime. Anderson *v.* State, 77 Ark. 37, 90 S. W. 846.

957. 1. State *v.* Cummings, 128 Iowa 522, 105 N. W. 57; State *v.* Daniel, 136 N. Car. 571, 48 S. E. 544. But it is otherwise when the intent is to provoke a difficulty. Money *v.* State, (Tex. Crim. 1906) 97 S. W. 90. Thus, calling one a "damn liar" in order to provoke a difficulty has been held to render the party guilty of an assault. Coleman *v.* State, (Tex. Crim. 1906) 91 S. W. 783.

In Indiana using threats or abuse constitutes the offense of an attempt to provoke another to commit an assault. Heard *v.* State, 38 Ind. App. 511, 78 N. E. 358.

2. Scott *v.* State, 75 Ark. 142, 86 S. W. 1004; Le Laurin *v.* Murray, 75 Ark. 232, 87 S. W. 131; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Cephus, (Del. 1906) 67 Atl. 150; Guy *v.* State, 37 Ind. App. 691, 77 N. E. 855; Doerhoefer *v.* Shewmaker, (Ky. 1906) 97 S. W. 7; Coleman *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 473. See also Roth *v.* Slobodien, (N. J. 1905) 60 Atl. 59.

Insulting Remarks No Defense. — State *v.* Leuhrsman, 123 Iowa 476, 99 N. W. 140; State *v.* Tooker, 188 Mo. 438, 87 S. W. 487; Bruster *v.* State, (Tex. Crim. 1906) 95 S. W. 1066.

Rule Applies to Civil Cases. — Parham *v.* Langford, (Tex. Civ. App. 1906) 93 S. W. 525.

Insult to Woman. — *Contra,* Mitchell *v.* United R. Co., 125 Mo. App. 1, 102 S. W. 661.

Rule in Alabama and Georgia. — Miller *v.* State, 146 Ala. 686, 40 So. 342. See also Morris Hotel Co. *v.* Henley, 145 Ala. 678, 40 So. 52.

Not Applicable to Civil Actions for Damages. — Mitchell *v.* Gambill, 140 Ala. 316, 37 So. 290.

Will Not Justify Attack with Deadly Weapon. — Mathews *v.* State, 125 Ga. 50, 54 S. E. 196; Sutton *v.* State, 2 Ga. App. 659, 58 S. E. 1108.

Defense Not to Be Invoked by Party First Using Abusive Language. — Mitchell *v.* Gambill, 140 Ala. 316, 37 So. 290.

Insulting Language and Gestures Used by a Child nine years old to an adult furnish no justification for an assault and battery of the child by the adult. McKinley *v.* State, 121 Ga. 193, 48 S. E. 917.

Insulting Remarks to Wife Will Not Justify Assault by Husband. — Hubbard *v.* Perlie, 25 App. Cas. (D. C.) 477.

Charge of Swindling No Justification. — Wells *v.* Englehart, 118 Ill. App. 217.

Abusive Language Cannot Be Pleaded as a justification. Rarden *v.* Maddox, 141 Ala. 506, 39 So. 95.

Demand of Excessive Toll Does Not Justify Assault and Battery. — Com. *v.* Rider, 29 Pa. Super. Ct. 621.

958. 1. Anderson *v.* State, 77 Ark. 37, 90 S. W. 846.

2. State *v.* Daniel, 136 N. Car. 571, 48 S. E. 544.

Pointing Unloaded Pistol an Assault. — State *v.* Atkinson, 141 N. Car. 734, 53 S. E. 228. *Contra,* People *v.* Wells, 145 Cal. 138, 78 Pac. 470.

959. 1. Anderson *v.* State, 77 Ark. 37, 90 S. W. 846.

2. Surgical Operation Without Patient's Consent an Assault. — Mohr *v.* Williams, 95 Minn. 261, 104 N. W. 12.

960. 4. Smyth *v.* State, (Tex. Crim. 1907) 103 S. W. 903, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 960.

961. 2. Sheehan *v.* West, 27 R. I. 84, 60 Atl. 761.

An officer will not be held to strict accountability for the amount of force used when struggling with a powerful man seeking to avoid

capture. Sheehan *v.* West, 27 R. I. 84, 60 Atl. 761.

Officer Liable for Using Unwarranted Violence. — Marbury Lumber Co. *v.* Wainwright, (Ala. 1907) 43 So. 733; Greenberg *v.* People, 225 Ill. 174, 80 N. E. 100.

3. Moriarty *v.* Harris, 10 Ont. L. Rep. 610; Johnson *v.* Mask, 141 Mich. 99, 104 N. W. 395.

Liable for Excessively Rough Treatment of Sick Man. — McConathy *v.* Deck, 34 Colo. 461, 7 Ann. Cas. 896, 83 Pac. 135.

Whether Force Excessive, Question For Jury. — Com. *v.* D'Angelo, 29 Pa. Super. Ct. 378.

962. 2. State *v.* Koonse, 123 Mo. App. 655, 101 S. W. 139.

3. Fortinberry *v.* Holmer, 89 Miss. 373, 42 So. 799.

5. Holmes *v.* State, (Ala. 1905) 39 So. 569.

Power Must Be Exercised in Moderation. — State *v.* Thorton, 136 N. Car. 610, 48 S. E. 602.

963. 1. Holmes *v.* State, (Ala. 1905) 39 So. 569; State *v.* Koonse, 123 Mo. App. 655, 101 S. W. 139.

964. 4. **Sheriff May Use Force to Quiet Violent Language of Prisoner.** — McNally *v.* Arnold, 127 Iowa 437, 103 N. W. 361.

965. 2. **Malicious Assault Not Distinct Offense at Common Law.** — State *v.* Frisbee, 142 N. Car. 671, 55 S. E. 722.

In Assault with Intent to Inflict Great Bodily Injury, there must be an attempt to inflict an injury of a more serious character than an ordinary battery. Bice *v.* State, (Neb. 1906) 108 N. W. 1066.

Use of a Weapon Simply with Intent to Alarm, constitutes only a simple assault. McCutcheon *v.* State, (Tex. Crim. 1906) 95 S. W. 525.

Shooting with Mere Intent to Frighten Only Simple Assault. — Barnett *v.* State, (Tex. Crim. 1906) 93 S. W. 722.

966. 3. State *v.* Bond, 191 Mo. 555, 90 S. W. 830.

5. Smith *v.* State, 141 Ala. 59, 37 So. 423; Jordan *v.* State, 50 Fla. 94, 39 So. 155; Barber *v.* State, 52 Fla. 5, 42 So. 86.

Assault and Battery in a Private Residence is an aggravated assault in *Texas.* Herd *v.* State, (Tex. Crim. 1907) 99 S. W. 1119.

6. *Alabama.* — Teague *v.* State, 144 Ala. 42, 40 So. 312.

Arkansas. — Anderson *v.* State, 77 Ark. 37, 90 S. W. 846.

California. — People *v.* Hower, (Cal. 1907) 91 Pac. 507; People *v.* Green, 1 Cal. App. 432, 82 Pac. 544.

Delaware. — State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227.

Michigan. — People *v.* Sanford, 149 Mich. 266, 112 N. W. 910.

Missouri. — State *v.* Wilson, (Mo. App. 1907) 103 S. W. 110.

Nebraska. — McConnell *v.* State, (Neb. 1906) 110 N. W. 666.

North Carolina. — State *v.* Archbell, 139 N. Car. 537, 51 S. E. 801.

Tennessee. — Fuerst *v.* State, 115 Tenn. 357, 89 S. W. 955.

Texas. — Pastrana *v.* State, (Tex. Crim. 1905) 87 S. W. 347.

Canada. — Rex *v.* De Wolfe, 9 Can. Crim. Cas. (Nova Scotia) 38.

967. 1. **Murder Includes Assault with Intent to Murder** only when the assault is connected with and forms a part of the act charged in the indictment. Letcher *v.* State, 145 Ala. 669, 39 So. 922.

2. State *v.* Williams, 36 Wash. 143, 78 Pac. 780.

Actual Infliction of Injury No Part of Offense. — State *v.* Mulhall, 199 Mo. 202, 97 S. W. 583.

3. *Alabama.* — Letcher *v.* State, 145 Ala. 669, 39 So. 922; Ray *v.* State, 147 Ala. 5, 41 So. 519; Wright *v.* State, (Ala. 1907) 42 So. 745.

Arkansas. — Hinson *v.* State, 76 Ark. 366, 88 S. W. 947.

Delaware. — State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227; State *v.* Brown, 5 Penn. (Del.) 440, 63 Atl. 328.

Florida. — Barber *v.* State, 52 Fla. 5, 42 So. 86; Lindsey *v.* State, 53 Fla. 56, 43 So. 87.

Georgia. — Naffer *v.* State, 123 Ga. 571, 51 S. E. 592; Duncan *v.* State, 1 Ga. App. 118, 58 N. E. 248.

Indiana. — Larkin *v.* State, 163 Ind. 375, 71 N. E. 959.

Iowa. — State *v.* Bennett, 128 Iowa 713, 5 Ann. Cas. 997, 105 N. W. 324.

Mississippi. — Bell *v.* State, (Miss. 1907) 43 So. 84.

Oregon. — State *v.* Remington, (Oregon 1907) 91 Pac. 473.

Washington. — State *v.* Williams, 36 Wash. 143, 78 Pac. 780.

Notice May Be Either Express or Implied. — Chaney *v.* State, (Tex. Crim. 1906) 98 S. W. 847.

Aiming at One and Wounding Another. — State *v.* Mulhall, 199 Mo. 202, 97 S. W. 583.

Intent Not Restricted to Person Shot at. — State *v.* Shanley, (S. Dak. 1905) 104 N. W. 522.

Where Accused Intends to Kill One Person and Stabs Another he is guilty of an assault with intent to murder. Smith *v.* State, (Tex. Crim. 1906) 95 S. W. 1057.

Malice Essential. — Satterwhite *v.* State, 82 Ark. 64, 100 S. W. 70; Woods *v.* State, (Miss. 1907) 43 So. 433; Carr *v.* State, (Tex. Crim. 1905) 87 S. W. 346.

Intent to Wound Not Sufficient. — State *v.* Romano, 41 Wash. 241, 83 Pac. 1.

Premeditation Not Necessary Element. — Smith *v.* State, 141 Ala. 59, 37 So. 423.

Intent to Murder, as Well as to Kill, Necessary. — McCaa *v.* State, (Miss. 1905) 38 So. 228.

Both Intent to Kill and Malice Aforethought Necessary. — Cunningham *v* State, 87 Miss. 417, 39 So. 531; Hibbler *v.* State, 87 Miss. 362, 39 So. 896.

Intoxication as Defense. — Brown *v.* State, 142 Ala. 287, 38 So. 268.

968. 1. Brown *v.* State, 142 Ala. 287, 38 So. 268; Ray *v.* State, 147 Ala. 5, 41 So. 519; Griffin *v.* State, (Ala. 1907) 43 So. 197; State *v.* Brown, 5 Penn. (Del.) 440, 63 Atl. 328; State *v.* Bennett, 128 Iowa 713, 5 Ann. Cas. 997, 105 N. W. 324; People *v.* Haxer, 144 Mich. 575, 108 N. W. 90; Johnson *v.* State, (Tex. Crim. 1906) 93 S. W. 735.

Intent Inferred from Means Used. — Satterwhite *v.* State, 82 Ark. 64, 100 S. W. 70; State *v.* Mulhall, 199 Mo. 202, 97 S. W. 583.

Deadly Weapon Not Essential. — People *v.*

Owens, 3 Cal. App. 750, 86 Pac. 980; Lindsey *v.* State, 53 Fla. 56, 43 So. 87; Walker *v.* State, 124 Ga. 440, 52 S. E. 738; Paschal *v.* State, 125 Ga. 279, 54 S. E. 172. See also Taylor *v.* State, 49 Fla. 69, 38 So. 380.

Intent May Be Inferred but Not Presumed. — Napper *v.* State, 123 Ga. 571, 51 S. E. 592; Duncan *v.* State, 1 Ga. App. 118, 58 S. E. 248; Burris *v.* State, 2 Ga. App. 418, 58 S. E. 545; State *v.* Williams, 36 Wash. 143, 78 Pac. 780.

Pointing Loaded Pistol Raises Presumption of Intent. — People *v.* Wells, 145 Cal. 138, 78 Pac. 470.

Intent May Be Inferred from Use of Deadly Weapon. — State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227; Larkin *v.* State, 163 Ind. 375, 71 N. E. 959.

969. 1. *Alabama.* — Griffin *v.* State, (Ala. 1907) 43 So. 197.

Arkansas. — Satterwhite *v.* State, 82 Ark. 64, 100 S. W. 70.

Delaware. — State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227; State *v.* Brown, 5 Penn. (Del.) 440, 63 Atl. 328.

Georgia. — Napper *v.* State, 123 Ga. 571, 51 S. E. 592; Burris *v.* State, 2 Ga. App. 418, 58 S. E. 545.

Kentucky. — Greenwell *v.* Com., (Ky. 1907) 100 S. W. 852.

Texas. — Jones *v.* State, (Tex. Crim. 1906) 95 S. W. 1044; Young *v.* State, (Tex. Crim. 1906) 97 S. W. 698; Bagley *v.* State, (Tex. Crim. 1906) 103 S. W. 874.

Fact that Resulting Homicide Would Have Been Murder Not Conclusive. — Napper *v.* State, 123 Ga. 571, 51 S. E. 592; Shockley *v.* State, 125 Ga. 778, 54 S. E. 692.

Not Assault to Murder, if Done in Passion. — Roch *v.* State, (Tex. Crim. 1907) 105 S. W. 202.

2. Brown *v.* State, 142 Ala. 287, 38 So. 268; Burris *v.* State, 2 Ga. App. 418, 58 S. E. 545.

Shooting at an Officer to Prevent an Illegal Arrest does not amount to an assault with intent to murder. Porter *v.* State, 124 Ga. 297, 52 S. E. 283.

970. 4. Lindsey *v.* State, 53 Fla. 56, 43 So. 87.

971. 1. State *v.* Ruck, 194 Mo. 416, 92 S. W. 706.

Intent to Injure Is Presumed from the Use of a Deadly Weapon with violence upon the person of another. State *v.* Bock, (Oregon 1907) 88 Pac. 318.

3. Winzel *v.* State, (Tex. Crim. 1904) 83 S. W. 187.

Assault to Rob. — Under a statute relating to assault with intent to rob when armed with a dangerous weapon, it is an essential element of the crime that the defendant be armed with a dangerous weapon. Lipscomb *v.* State, 130 Wis. 238, 109 N. W. 986.

Where an Indictment Charges Assault with a Knife, the knife must be shown to be a deadly weapon, before a conviction for aggravated assault can be had. Hext *v.* State, (Tex. Crim. 1905) 90 S. W. 43.

4. State *v.* Archbell, 139 N. Car. 537, 51 S. E. 801.

All Guns are deadly weapons under the *New Mexico* statute. Territory *v.* Gonzales, (N. Mex. 1907) 89 Pac. 250.

5. **An Unloaded Pistol** is a deadly weapon under the *North Carolina* statute. State *v.* Atkinson, 141 N. Car. 734, 53 S. E. 228.

Loaded Revolver. — Lipscomb *v.* State, 130 Wis. 238, 109 N. W. 986.

972. 1. Johnston *v.* U. S., (C. C. A.) 154 Fed. 445; State *v.* Archbell, 139 N. Car. 537, 51 S. E. 801; Hardin *v.* State, (Tex. Crim. 1905) 84 S. W. 591. See also Yzaguirre *v.* State, (Tex. Crim. 1904) 85 S. W. 14.

Knife as Deadly Weapon. — Paschal *v.* State, 125 Ga. 279, 54 S. E. 172.

Beer Bottle. — State *v.* Ruck, 194 Mo. 416, 92 S. W. 706.

Prima Facie Case Made by Showing Pointing of Gun Within Shooting Distance. — Lipscomb *v.* State, 130 Wis. 238, 109 N. W. 986.

973. 1. Horseford *v.* State, 124 Ga. 784, 53 S. E. 322; Anderson *v.* State, 77 Ark. 37, 90 S. W. 846; Fewox *v.* State, (Tex. Crim. 1905) 90 S. W. 178; Warren *v.* State, (Tex. Crim. 1907) 103 S. W. 888; Cotton *v.* State, (Tex. Crim. 1907) 105 S. W. 185.

Specific Intent to Commit Rape Essential. — Bowman *v.* Com., (Ky. 1907) 104 S. W. 263.

Force an Essential Ingredient. — Rahke *v.* State, 168 Ind. 615, 81 N. E. 584; Scott *v.* State, (Tex. Crim. 1907) 100 S. W. 159.

"There must be a taking hold of the person for the purpose of committing the rape." Hudson *v.* State, (Tex. Crim. 1905) 90 S. W. 177.

Missouri and New York. — But there must be some physical force put in motion toward the female. State *v.* Riseling, 186 Mo. 521, 85 S. W. 372.

Intent Is Question for Jury. — People *v.* Collins, (Cal. App. 1907) 91 Pac. 158.

Intent May Be Inferred from Circumstances. — Gibson *v.* Com., (Ky. 1907) 104 S. W. 351.

974. 1. State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790; Newman *v.* People, 223 Ill. 324, 79 N. E. 80.

Charge of Rape Includes Assault with Intent. — State *v.* Barkley, 129 Iowa 484, 105 N. W. 506. But see State *v.* Bell, 194 Mo. 264, 91 S. W. 898.

Defined as Incompleted Rape. — Bourland *v.* State, (Tex. Crim. 1906) 93 S. W. 115.

The Assault and the Intent to Have Intercourse Must Concur as to time. Hudson *v.* State, (Tex. Crim. 1905) 90 S. W. 177.

Impotency Is No Defense to an indictment for assault with intent to rape. State *v.* Bartlett, 127 Iowa 689, 104 N. W. 285.

2. Linville *v.* Green, 125 Mo. App. 289, 102 S. W. 67. As to females under the age of consent, see *infra*, this title, **987. 4.**

975. 1. Knight *v.* State, (Tex. Crim. 1905) 85 S. W. 1067.

Texas — Aggravated Assault. — Koen *v.* State, (Tex. Crim. 1906) 95 S. W. 114.

Indecent Proposals, unaccompanied by any physical injury, do not constitute an assault. Davis *v.* Richardson, 76 Ark. 348, 89 S. W. 318.

Not Liable for Acts Done After and Unconnected with Assault. — Clay *v.* State, 75 Ark. 513, 88 S. W. 306.

Lapse of Time Does Not Affect Admissibility of Evidence of Complaint. — Rex *v.* Barron, 9 Can. Crim. Cas. (Nova Scotia) 196.

3. State *v.* Handy, (Del. 1907) 60 Atl. 336;

State *v.* Ruck, 194 Mo. 416, 92 S. W. 706; State *v.* Platner, 196 Mo. 128, 93 S. W. 403; State *v.* Mizis, 48 Oregon 181, 86 Pac. 361; Pedro *v.* State, (Tex. Crim. 1905) 88 S. W. 233; Chaney *v.* State, (Tex. Crim. 1906) 98 S. W. 847; Whittle *v.* State, (Tex. Crim. 1906) 95 S. W. 1084.

Fight by Mutual Consent. — McNeil *v.* Mullin, 70 Kan. 634, 79 Pac. 168.

Some Overt Act Necessary. — Com. *v.* Middleby, 187 Mass. 342, 73 N. E. 208.

Conviction of One Raises No Presumption of Guilt against Another. — Mixon *v.* State, 123 Ga. 581, 51 S. E. 580.

977. 1. State *v.* Dyer, 5 Penn. (Del.) 88, 58 Atl. 947; Coleman *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 473; McQuerry *v.* Metropolitan St. R. Co., 117 Mo. App. 255, 92 S. W. 912; Chapman *v.* State, (Tex. Crim. 1905) 85 S. W. 1073; Wenzel *v.* State, (Tex. Crim. 1905) 90 S. W. 28; McCutcheon *v.* State, (Tex. Crim. 1906) 95 S. W. 525; Friar *v.* Orange, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 274; Bagley *v.* State, (Tex. Crim. 1906) 103 S. W. 874.

Defense from Serious Bodily Harm. — Hix *v.* State, (Tex. Crim. 1907) 102 S. W. 405.

Where Two Persons Fight Willingly. — McNeil *v.* Mullin, 70 Kan. 634, 79 Pac. 168; Thomas *v.* Riley, 114 Ill. App. 520.

Attack Need Not Be with Deadly Weapon to Justify Self-defense. — Jackson *v.* State, (Tex. Crim. 1905) 90 S. W. 34.

Person May Defend against Any Unlawful Assault. — Sprinkle *v.* State, (Tex. Crim. 1906) 91 S. W. 787.

In Assault to Murder, sudden passion must concur with self-defense to justify the assault. Lasana *v.* State, (Tex. Crim. 1906) 98 S. W. 855.

Self-defense and Defense of Intoxication Are Inconsistent. — State *v.* Yates, 132 Iowa 475, 109 N. W. 1005.

Conductor May Use Force to Protect Himself from Passenger. — Read *v.* New York, etc., R. Co., 116 N. Y. App. Div. 709, 102 N. Y. Supp. 19; Dallas Consol. Electric St. R. Co. *v.* Pettit, (Tex. Civ. App. 1907) 105 S. W. 42.

Person Not Justified in Committing Assault in His Own House, Except When Attacked. — Delaney *v.* State, 14 Wyo. 1, 81 Pac. 792.

Accused Not Liable for Accidental Blow to Third Person While Defending Himself. — State *v.* Mount, 72 N. J. L. 365, 61 Atl. 259.

2. State *v.* Cummings, 128 Iowa 522, 105 N. W. 57; Sloan *v.* Pierce, 74 Kan. 65, 85 Pac. 812; Crabtree *v.* Dawson, 119 Ky. 148, 83 S. W. 557; Harrison *v.* State, (Tex. Crim. 1905) 85 S. W. 1058; Coper *v.* State, (Tex. Crim. 1905) 85 S. W. 1059; Jones *v.* State, (Tex. Crim. 1906) 95 S. W. 1044; Gafford *v.* State, (Tex. Crim. 1907) 99 S. W. 998. But see Dawson *v.* State, (Ala. 1906) 41 So. 803.

Repelling Threatened Danger by Striking First. — State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227.

Apprehension Must Be Reasonable. — Dallas Consol. Electric St. R. Co. *v.* Pettit, (Tex. Civ. App. 1907) 105 S. W. 42.

Jury to Decide Reasonableness of Belief. — Edmondson *v.* State, 1 Ga. App. 116, 57 N. E. 947; Beck *v.* Minneapolis Union R. Co., 95 Minn. 73, 103 N. W. 746; State *v.* Tooker, 188 Mo. 438, 87 S. W. 487; McQuiggan *v.* Ladd, 79 Vt. 90, 64 Atl. 503.

Burden of Proof — Self-defense. — Wright *v.* State, (Ala. 1907) 42 So. 745; State *v.* Sharp, 127 Iowa 526, 103 N. W. 770; State *v.* Yates, 132 Iowa 475, 109 N. W. 1005; McQuiggan *v.* Ladd, 79 Vt. 90, 64 Atl. 503; State *v.* Schmidt, 19 S. Dak. 585, 104 N. W. 259. See generally the title SELF-DEFENSE, vol. 25, p. 283.

978. 1. Coleman *v.* State, (Tex. Crim. 1906) 91 S. W. 783.

Assailed Party Not Obliged to Retreat. — Jacobs *v.* State, 146 Ala. 103, 42 So. 70; Cooper *v.* State, (Tex. Crim. 1905) 89 S. W. 1068; Hix *v.* State, (Tex. Crim. 1907) 102 S. W. 405.

The Aggressor Must Withdraw in Good Faith and not for the purpose of renewing the assault, before he can shoot his adversary in self-defense. Delaney *v.* State, 14 Wyo. 1, 81 Pac. 792.

Need Not Retreat When on Own Premises. — State *v.* Bennett, 128 Iowa 713, 5 Ann. Cas. 997, 105 N. W. 324.

The Assailed Party Must Escape if he can do so without increasing his peril. Wright *v.* State, (Ala. 1907) 42 So. 745.

2. State *v.* Cephus, (Del. 1906) 67 Atl. 150; Wells *v.* Englehart, 118 Ill. App. 217; Lizana *v.* Lang, (Miss. 1907) 43 So. 477; Brouster *v.* Fox, 117 Mo. App. 711, 93 S. W. 318; Sanders *v.* State, (Tex. Crim. 1904) 83 S. W. 712; Money *v.* State, (Tex. Crim. 1906) 97 S. W. 90; Milam *v.* Milam, (Wash. 1907) 90 Pac. 595.

Use of Deadly Weapon in Self-defense. — State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; McEvoy *v.* State, 123 Ga. 506, 51 S. E. 500; State *v.* Hill, 141 N. Car. 769, 53 S. E. 311.

Attack with Fist Returned with Deadly Weapon. — Larkin *v.* State, 163 Ind. 375, 71 N. E. 959.

979. 1. Burris *v.* State, 2 Ga. App. 418, 58 S. E. 545; Thompson *v.* Stottler, (Iowa 1904) 100 N. W. 852; Beck *v.* Minneapolis Union R. Co., 95 Minn. 73, 103 N. W. 746.

A charge should not leave it to the jury to determine what elements would justify the shooting, in a prosecution for simple assault, but they should be set out. Andrews *v.* State, (Ala. 1907) 43 So. 196.

980. 1. Wells *v.* Englehart, 118 Ill. App. 217; Crowe *v.* Com., (Ky. 1906) 91 S. W. 663; State *v.* Tooker, 188 Mo. 438, 87 S. W. 487; State *v.* Remington, (Oregon 1907) 91 Pac. 473; Sanders *v.* State, (Tex. Crim. 1904) 83 S. W. 712; Holmes *v.* State, 124 Wis. 133, 102 N. W. 321.

Revival of Right of Self-defense. — Sanders *v.* State, (Tex. Crim. 1906) 97 S. W. 1046 (to the same effect as Carter *v.* State, 28 Tex. App. 355, 13 S. W. 147, cited in the original note).

To make the right of self-defense available, there must be an actual withdrawal from the conflict, and not a mere attempt in good faith to retreat. Collock *v.* State, (Ala. 1906) 41 So. 727.

Motive can never justify an assault with a weapon. Griffin *v.* State, (Ala. 1907) 43 So. 197.

Seeking a Party for the Purpose of Provoking a Difficulty does not, of itself, forfeit the right of self-defense. Barstado *v.* State, (Tex. Crim. 1905) 87 S. W. 344.

Withdrawal in Good Faith. — "If the defendant was the aggressor, this eliminates the question of self-defense, unless he had withdrawn in good faith." Jacobs *v.* State, 146 Ala. 103, 42 So. 70.

2. Porter *v.* State, 124 Ga. 297, 52 S. E. 283; Shubert *v.* State, 127 Ga. 42, 55 S. E. 1045.

981. 2. A Member of a Social Party may aid another member who is assaulted, provided the latter is not at fault himself so as to forfeit his right to use the same force as is exerted in his behalf by the third person. Brouster *v.* Fox, 117 Mo. App. 711, 93 S. W. 318.

4. Defense of Brother. — Palmer *v.* State, (Tex. Crim. 1904) 83 S. W. 202.

7. Slingerland *v.* Gillespie, 70 N. J. L. 720, 59 Atl. 162; State *v.* Scott, 142 N. Car. 582, 55 S. E. 69; George *v.* State, (Tex. Crim. 1905) 84 S. W. 1057; Roch *v.* State, (Tex. Crim. 1907) 105 S. W. 202.

Right of Tenant to Defend Possession. — Wenzel *v.* State, (Tex. Crim. 1905) 90 S. W. 28; Johnston *v.* U. S., (C. C. A.) 154 Fed. 445.

Election Officers May Repel Attempt to Capture Ballot Boxes. — State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147.

A Trespass Is Not a Sufficient Provocation to warrant the owner in using a dangerous weapon. Johnston *v.* U. S., (C. C. A.) 154 Fed. 445.

982. 2. Question of Fact for Jury. — State *v.* Scott, 142 N. Car. 582, 55 S. E. 69.

983. 1. State *v.* Scott, 142 N. Car. 582, 55 S. E. 69; Monson *v.* Lewis, 123 Wis. 583, 101 N. W. 1094, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983.

May Not Use Unnecessary Force. — Miller *v.* Sadowsky, 138 Mich. 502, 101 N. W. 621.

984. 1. Cox *v.* Klein, 149 Mich. 162, 112 N. W. 729; Shellabarger *v.* Morris, 115 Mo. App. 566, 91 S. W. 1005; Stanley *v.* Payne, 78 Vt. 235, 62 Atl. 495; Winter *v.* Beebe, 126 Wis. 379, 105 N. W. 953; Farley *v.* Briebach, 130 Wis. 231, 109 N. W. 979; Monson *v.* Lewis, 123 Wis. 583, 101 N. W. 1094.

2. Wenzel *v.* State, (Tex. Crim. 1905) 90 S. W. 28; Doucetie *v.* Therio, 38 Nova Scotia 402.

A Person Delivering Articles to a Tenant may use force to remove the owner's servant who is blocking his way. Williams *v.* Lubbering, 73 N. J. L. 317, 63 Atl. 90.

985. 1. Doucetie *v.* Therio, 38 Nova Scotia 402.

2. Nashville, etc., R. Co. *v.* Moore, 148 Ala. 63, 41 So. 984; Hillman *v.* Georgia R., etc., Co., 126 Ga. 814, 56 S. E. 68; Williams *v.* St. Louis, etc., R. Co., 119 Mo. App. 663, 96 S. W. 307; Hunt *v.* Caskey, (N. J. 1905) 60 Atl. 42; Kaase *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 444; Clark *v.* Great Northern R. Co., 37 Wash. 537, 79 Pac. 1108.

Ejectment of Person from Railroad Station. — A station agent has no right to follow a person outside the depot and renew the assault. State *v.* Tooker, 188 Mo. 438, 87 S. W. 487.

Brakeman Has Right to Disarm Intoxicated Passenger. — Friar *v.* Orange, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 274.

986. 1. Nashville, etc., R. Co. *v.* Moore, 148 Ala. 63, 41 So. 984; Peoria, etc., Terminal R. Co. *v.* Hoerr, 120 Ill. App. 65; McQuerry *v.* Metropolitan St. R. Co., 117 Mo. App. 255, 92 S. W. 912; Virginia, etc., R. Co. *v.* Hill, 105 Va. 729, 54 S. E. 872.

The Jury Should Not Weigh with Too Much Nicety the degree of force resorted to. Clark *v.* Great Northern R. Co., 37 Wash. 537, 79 Pac. 1108.

Passenger's Right to Resist Ejection. — Breen *v.* St. Louis Transit Co., 108 Mo. App. 443, 83 S. W. 998.

2. Chase *v.* Knabel, (Wash. 1907) 90 Pac. 642.

Plaintiff's Status as Guest or Stranger Not Material. — Morris Hotel Co. *v.* Henley, 145 Ala. 678, 40 So. 52.

3. Where the Plaintiff Willingly Engages in a Friendly Scuffle with the defendant, the latter is only liable for recklessness or negligence, or for using greater force than the circumstances warrant. Nicholls *v.* Colwell, 113 Ill. App. 210.

987. 1. McNeil *v.* Mullin, 70 Kan. 634, 79 Pac. 168, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987.

Agreement to Fight No Bar to Recovery. — Thomas *v.* Riley, 114 Ill. App. 520; Lizana *v.* Lang, (Miss. 1907) 43 So. 477.

2. State *v.* Johnson, 133 Iowa 38, 110 N. W. 170.

3. Linville *v.* Green, 125 Mo. App. 289, 102 S. W. 67.

4. Tuttle *v.* State, 83 Ark. 379, 104 S. W. 135; People *v.* Collins, (Cal. App. 1907) 91 Pac. 158; Gibbs *v.* People, 36 Colo. 452, 85 Pac. 425; People *v.* Chamblin, 149 Mich. 653, 113 N. W. 27.

988. 1. Crabtree *v.* Dawson, 119 Ky. 148, 83 S. W. 557; Menach *v.* State, (Tex. Crim. 1906) 97 S. W. 503; Jackson *v.* State, (Tex. Crim. 1907) 103 S. W. 927.

989. 1. All Persons Present and Participating in any way in the assault are liable in damages. Brouster *v.* Fox, 117 Mo. App. 711, 93 S. W. 318; Britton *v.* Young, 36 Ind. App. 622, 76 N. E. 327.

Offender and Aggressor Cannot Recover Damages. — Massett *v.* Keff, 116 La. 1107, 41 So. 330.

The Plaintiff May Recover Damages for Simple Assault, although the facts entitle her to a greater right of recovery. Linville *v.* Green, 125 Mo. App. 289, 102 S. W. 67.

2. Evidence of Acquittal Inadmissible. — Powell *v.* Wiley, 125 Ga. 823, 54 S. E. 732.

Record of Conviction Inadmissible Except Where Accused Pleaded Guilty. — Risdon *v.* Yates, 145 Cal. 210, 78 Pac. 641.

4. When Intent Becomes Material. — Noonan *v.* Luther, 119 N. Y. App. Div. 701, 104 N. Y. Supp. 684.

990. 2. Morris Hotel Co. *v.* Henley, 145 Ala. 678, 40 So. 52, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990; Marbury Lumber Co. *v.* Wainwright, (Ala. 1907) 43 So. 733; St. Louis, etc., R. Co. *v.* Grant, 75 Ark. 579, 88 S. W. 580; Coleman *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 473; McQuerry *v.* Metro-

politan St. R. Co., 117 Mo. App. 255, 92 S. W. 912; Williams *v.* St. Louis, etc., R. Co., 119 Mo. App. 663, 96 S. W. 307.

Hotel Keeper Liable for Assault upon Guest by Servant. — Clancy *v.* Barker, 71 Neb. 83, 103 N. W. 446. See generally the title INNS AND INNKEEPERS.

Carrier Not Liable Where Conductor Acted in Self-defense. — Reed *v.* New York, etc., R. Co., 116 N. Y. App. Div. 709, 102 N. Y. Supp. 19.

Under Admiralty Rule 16, a ship is not liable for an assault by the master upon a seaman. The Sallie Ion, 153 Fed. 659.

The Fact that Plaintiff Was Not in Favor with the Defendant Railroad Company's Officials does not in law connect them or the company with an assault committed by its servant. Douglas *v.* Carr, (Vt. 1907) 67 Atl. 1089.

991. 1. See Pittsburgh, etc., R. Co. *v.* Haislup, (Ind. 1907) 79 S. E. 1035.

Implied Contract for Safe Transportation. — The Western States, 151 Fed. 929; St. Louis, etc., R. Co. *v.* Dowgiallo, 82 Ark. 289, 101 S. W. 412; Citizens St. R. Co. *v.* Clark, 33 Ind. App. 190, 71 N. E. 53; McQuerry *v.* Metropolitan St. R. Co., 117 Mo. App. 255, 92 S. W. 912; Danziger *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 845; Rein *v.* Brooklyn Heights R. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 675, 94 N. Y. Supp. 636; Busch *v.* Interborough Rapid Transit Co., 110 N. Y. App. Div. 705, 96 N. Y. Supp. 747.

Must Be Within Scope of Servant's Authority. — Chicago, etc., R. Co. *v.* Moran, 117 Ill. 42; Reilly *v.* New York City R. Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 72, 91 N. Y. Supp. 319; Chase *v.* Knabel, (Wash. 1907) 90 Pac. 642. See also The Sallie Ion, 153 Fed. 659.

Duty of Carrier to Protect Passengers from Assaults of Fellow Passengers. —Hillman *v.* Georgia R., etc., Co., 126 Ga. 814, 56 S. E. 68; Pittsburg, etc., R. Co. *v.* Richardson, (Ind. App. 1907) 82 N. E. 536; McCardell *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 102 S. W. 941; Norfolk, etc., R. Co. *v.* Birchfield, 105 Va. 809, 54 S. E. 879.

992. 1. St. Louis, etc., R. Co. *v.* Grant, 75 Ark. 579, 88 S. W. 580; Crocker *v.* Haley, (Ky. 1906) 92 S. W. 574.

Recovery for Injuries Naturally Result of Wrongful Act. — Dallas Consol. Electric St. R. Co. *v.* Pettit, (Tex. Civ. App. 1907) 105 S. W. 42.

Recovery for Medical Aid and Wages Lost. — Happy *v.* Prichard, 111 Mo. App. 6, 85 S. W. 655; Shoemaker *v.* Sonju, 15 N. Dak. 518, 108 N. W. 42.

Possible Future Consequences cannot be considered in the absence of evidence that they will result. Davis *v.* Richardson, 76 Ark. 348, 89 S. W. 318.

Only Present Worth of Future Earnings Recoverable. — Miller *v.* Sadowsky, 138 Mich. 502, 101 N. W. 621.

Nominal Damages, at least, are recoverable where the assault is proved. Hetrich *v.* Crouch, 141 Mich. 649, 105 N. W. 131.

2. The Western States, 151 Fed. 929; Irby *v.* Wilde, (Ala. 1907) 43 So. 574; Hubbard *v.* Perlie, 25 App. Cas. (D. C.) 477; Doerhoefer *v.* Shewmaker, (Ky. 1906) 97 S. W. 7; Henderson *v.* Agon, 148 Mich. 252, 111 N W. 778; Happy *v.* Prichard, 111 Mo. App. 6, 85 S W. 655; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495; Galveston, etc., R. Co. *v.* Bean, (Tex. Civ. App. 1907) 99 S. W. 721.

Amount Rests Largely in Discretion of Jury. — Lake St. El. R. Co. *v.* Collins, 118 Ill. App. 270.

Indecent Proposals, unaccompanied by any physical injury, are not an element of damage. Davis *v.* Richardson, 76 Ark. 348, 89 S. W. 318.

A Pregnant Woman Is Restricted in recovering damages for mental suffering to such damages only as are the direct result of the assault upon her, apart from any injury to the child. Haupt *v.* Swenson, 125 Iowa 694, 101 N. W. 520.

993. 1. *Alabama.* — Mitchell *v.* Gambill, 140 Ala. 316, 37 So. 290; Marbury Lumber Co. *v.* Wainwright, (Ala. 1907) 43 So. 733.

Colorado. — McConathy *v.* Deck, 34 Colo. 461, 7 Ann. Cas. 896, 83 Pac. 135.

Illinois. — Coal Belt Electric R. Co. *v.* Young, 126 Ill. App. 651.

Kentucky. — Doerhoefer *v.* Shewmaker, (Ky. 1906) 97 S. W. 7; Crabtree *v.* Dawson, 119 Ky. 148, 83 S. W. 557.

Mississippi. — Kitteringham *v.* McClutchie, (Miss. 1906) 41 So. 65.

Missouri. — Happy *v.* Prichard, 111 Mo. App. 6, 85 S. W. 655; Williams *v.* St. Louis, etc., R. Co., 119 Mo. App. 663, 96 S. W. 307; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495; Baxter *v.* Magill, (Mo. App. 1907) 105 S. W. 679.

North Dakota. — Shoemaker *v.* Sonju, 15 N. Dak. 518, 108 N. W. 42.

Wisconsin. — Lowe *v.* Ring, 123 Wis. 107, 101 N. W. 381.

Whether Malice Must Be Shown. — Chicago Consol. Traction Co. *v.* Mahoney, 230 Ill. 562, 82 N. E. 868; Kerley *v.* Germscheid, (S. Dak. 1906) 106 N. W. 136.

Damages for Humiliation Recoverable. — Morgan *v.* Langford, 126 Ga. 58, 54 S. E. 818.

Punitive Damages Recoverable for Intentional Ejection from Passenger Train. — Richardson *v.* Atlantic Coast Line R. Co., 71 S. Car. 444, 51 S. E. 261.

994. 1. Danziger *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 845.

Only Expenses of Litigation in Excess of Taxable Costs Awardable. — People *v.* Hower, (Cal. 1907) 91 Pac. 507; Hanna *v.* Sweeney, 78 Conn. 492, 62 Atl. 785.

2. *Compare* Peterson *v.* Middlesex, etc., Traction Co., 71 N. J. L. 296, 59 Atl. 456.

3. Crocker *v.* Haley, (Ky. 1906) 92 S. W. 574; Parriconi *v.* Greco, 115 La. 558, 39 So. 599; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

Exemplary Damages — Question for Jury. — Johnston *v.* Wells, 112 Mo. App. 557, 87 S. W. 70.

Verdict Held Not Excessive. — In Solomon *v.* Buechele, 119 Ill. App. 595, the injuries were of a permanent character and a verdict of five thousand dollars was held not to be excessive.

A verdict of five hundred dollars is not excessive where the assault was fiendish and

brutal. Cody *v.* Gremmler, 121 Mo. App. 359, 99 S. W. 46.

Excessive Damages. — In Nagle *v.* Cohn, (R. I. 1907) 67 Atl. 419, a verdict for six hundred dollars was held excessive, the injuries being neither grave nor permanent.

995. **1. Evidence of Insulting Language Admissible.** — Osteryoung *v.* St. Louis Transit Co., 108 Mo. App. 703, 84 S. W. 179.

Evidence of Loss of Time and physicians' fees is not admissible, where special damages have not been pleaded. Irby *v.* Wilde, (Ala. 1907) 43 So. 574.

996. 1. Davis *v.* Richardson, 76 Ark. 348, 89 S. W. 318; Baxter *v.* Magill, (Mo. App. 1907) 105 S. W. 679.

3. Doerhoefer *v.* Shewmaker, (Ky. 1906) 97 S. W. 7.

Provocation Mitigates Punitive but Not Actual Damages. — Mitchell *v.* Gambill, 140 Ala. 316, 37 So. 290; Le Laurin *v.* Murray, 75 Ark. 232, 87 S. W. 131.

997. 1 **Fight by Mutual Consent.** Thomas *v.* Riley, 114 Ill. App. 520.

2. Le Laurin *v.* Murray, 75 Ark. 232, 87 S. W. 131; Parham *v.* Langford, (Tex. Civ. App. 1906) 93 S. W. 525.

Insulting Words. — Lizana *v.* Lang, (Miss. 1907) 43 So. 477 (by statute); Mitchell *v.* United R. Co., 125 Mo. App. 1, 102 S. W. 661.

Evidence of Abusive Language Admissible. — Mitchell *v.* Gambill, 140 Ala. 316, 37 So. 290; Rarden *v.* Maddox, 141 Ala. 506, 39 So. 95.

Evidence of Insult to Defendant's Daughter Not Admissible. — Lovelace *v.* Miller, (Ala. 1907) 43 So. 734.

When the Defendant Plainly Exceeded the Limits Justified by the Occasion it is the duty of the court to so instruct the jury. Monize *v.* Begaso, 190 Mass. 87, 76 N. E. 460.

Burden of Proof. — Wells *v.* Englehart, 118 Ill. App. 217; Cassidy *v.* Cady, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 478, 97 N. Y. Supp. 1046.

998. **2. Evidence of Acquittal Inadmissible.** — Powell *v.* Wiley, 125 Ga. 823, 54 S. E. 732.

4. Mitchell *v.* Gambill, 140 Ala. 316, 37 So. 290; Rarden *v.* Maddox, 141 Ala. 506, 39 So. 95; Le Laurin *v.* Murray, 75 Ark. 232, 87 S. W. 131; Shoemaker *v.* Jackson, 128 Iowa 488, 104 N. W. 503; Leachman *v.* Cohen, (Tex. Civ. App. 1906) 91 S. W. 809. But see Lenfest *v.* Robbins, 101 Me. 176, 63 Atl. 729.

999. 3. *United States.* — The Western States, 151 Fed. 929.

Alabama. — Holmes *v.* State, (Ala. 1905) 39 So. 569.

Arkansas. — St. Louis, etc., R. Co. *v.* Grant, 75 Ark. 579, 88 S. W. 580; Hinson *v.* State, 76 Ark. 366, 88 S. W. 947; Abbott *v.* State, 77 Ark. 337, 91 S. W. 754; Satterwhite *v.* State, 82 Ark. 64, 100 S. W. 70.

Florida. — Taylor *v.* State, 49 Fla. 69, 38 So. 380; Freeman *v.* State, 50 Fla. 38, 39 So. 785; Jordan *v.* State, 50 Fla. 94, 39 So. 155; Odom *v.* State, 51 Fla. 91, 40 So. 182.

Georgia. — Mixon *v.* State, 123 Ga. 581, 51 S. E. 580; Watkins *v.* State, 125 Ga. 143, 53 S. E. 1024; Ridgley *v.* State, 124 Ga. 454, 52 S. E. 761; Fuller *v.* State, 127 Ga. 47, 55 S. E. 1047.

Indiana. — Larkin *v.* State, 163 Ind. 375, 71 N. E. 959.

Minnesota. — Bech *v.* Minneapolis Union R. Co., 95 Minn. 73, 103 N. W. 746.

Mississippi. — Canterberry *v.* State, (Miss. 1907) 43 So. 678.

Missouri. — State *v.* Stock, 111 Mo. App. 502, 86 S. W. 269; State *v.* Harris, 199 Mo. 716, 98 S. W. 457; State *v.* Williams, 191 Mo. 205, 90 S. W. 448.

New York. — People *v.* Maggiore, 119 N. Y. App. Div. 284, 104 N. Y. Supp. 526; People *v.* Gatto, 120 N. Y. App. Div. 81, 105 N. Y. Supp. 165.

North Carolina. — State *v.* Scott, 142 N. Car. 582, 55 S. E. 69.

Texas. — Franklin *v.* State, (Tex. Crim. 1904) 82 S. W. 514; Martinus *v.* State, (Tex. Crim. 1905) 84 S. W. 827; Gill *v.* State, (Tex. Crim. 1905) 85 S. W. 1062; Butler *v.* State, (Tex. Crim. 1905) 89 S. W. 647; Thompson *v.* State, (Tex. Crim. 1905) 89 S. W. 1081; Wright *v.* State, (Tex. Crim. 1905) 90 S. W. 36; Davis *v.* State, (Tex. Crim. 1905) 90 S. W. 646; Wilson *v.* State, (Tex. Crim. 1907) 100 S. W. 956; Ford *v.* State, (Tex. Crim. 1907) 102 S. W. 404; Avery *v.* State, (Tex. Crim. 1907) 102 S. W. 405.

Washington. — State *v.* Romano, 41 Wash. 241, 83 Pac. 1.

Canada. — Doucetie *v.* Therio, 38 Nova Scotia 402.

Assault with Intent to Rape. — Payne *v.* State, 148 Ala. 609, 42 So. 988; Tuttle *v.* State, 83 Ark. 379, 104 S. W. 135; People *v.* Collins, (Cal. App. 1907) 91 Pac. 158; State *v.* Bartlett, 127 Iowa 689, 104 N. W. 285; State *v.* Callahan, 100 Minn. 63, 110 N. W. 342; State *v.* Urspruch, 191 Mo. 43, 90 S. W. 451; State *v.* Platner, 196 Mo. 128, 93 S. W. 403; Bourland *v.* State, (Tex. Crim. 1906) 93 S. W. 115.

Defendants Held Not Entitled to Affirmative Charge. — Morris Hotel Co. *v.* Henley, 145 Ala. 678, 40 So. 52; Williams *v.* State, (Ala. 1907) 43 So. 720.

4. *Alabama.* — Simmons *v.* State, 145 Ala. 61, 40 So. 660; Barlow *v.* Hamilton, (Ala. 1907) 44 So. 657.

Arkansas. — Clerget *v.* State, 83 Ark. 227, 103 S. W. 381.

Georgia. — Porter *v.* State, 124 Ga. 297, 52 S. E. 283; Johnson *v.* State, 127 Ga. 277, 56 S. E. 420.

Iowa. — State *v.* Hoover, 134 Iowa 17, 111 N. W. 323.

Minnesota. — Rector *v.* Anderson, 96 Minn. 123, 104 N. W. 884.

Missouri. — State *v.* Hahn, 189 Mo. 241, 87 S. W. 1006.

Nebraska. — Bice *v.* State, (Neb. 1906) 108 N. W. 1066.

South Dakota. — State *v.* Wood, 19 S. Dak. 260, 103 N. W. 25.

Texas. — McAfee *v.* State, (Tex. Crim. 1904) 83 S. W. 376; Jordan *v.* State, (Tex. Crim. 1905) 84 S. W. 823; George *v.* State, (Tex. Crim. 1905) 84 S. W. 1057; Reyes *v.* State, (Tex. Crim. 1905) 88 S. W. 245; Hext *v.* State, (Tex. Crim. 1905) 90 S. W. 43; McCutcheon *v.* State, (Tex. Crim. 1906) 95 S. W. 525; Nalley *v.* State, (Tex. Crim. 1907) 100 S. W. 385; Harrison *v.* State, (Tex. Crim. 1907) 102 S. W. 412.

Assault with Intent to Rape. — Anderson *v.*

State, 77 Ark. 37, 90 S. W. 846; Horseford *v.* State, 124 Ga. 784, 53 S. E. 322; Newman *v.* People, 223 Ill. 324, 79 N. E. 80; Scott *v.* State, (Tex. Crim. 1907) 100 S. W. 159; Cotton *v.* State, (Tex. Crim. 1907) 105 S. W. 185.

1000. 1. Newman *v.* People, 223 Ill. 324, 79 N. E. 80; Bowman *v.* Com., (Ky. 1907) 104 S. W. 263; People *v.* Haxer, 144 Mich. 575, 108 N. W. 90; Purdy *v.* State, (Tex. Crim. 1906) 97 S. W. 480; Herd *v.* State, (Tex. Crim. 1907) 99 S. W. 1119; State *v.* McFadden, 42 Wash. 1, 84 Pac. 401; Holmes *v.* State, 124 Wis. 133, 102 N. W. 321.

Remarks Made After Assault. — Miller *v.* State, 146 Ala. 686, 40 So. 342.

Evidence that immediately after the shooting the accused said that he had done wrong is admissible. Fuller *v.* State, 127 Ga. 47, 55 S. E. 1047. See also Coruth *v.* Jones, 77 Vt. 441, 60 Atl. 814.

Admissible When Part of Res Gestæ. — Robinson *v.* Stahl, (N. H. 1907) 67 Atl. 577; Adams *v.* State, (Tex. Crim. 1907) 99 S. W. 1015.

Testimony of Defendant as to His Intention Relevant. — Money *v.* State, (Tex. Crim. 1906 97 S. W. 90.

Evidence of Nature and Extent of Prosecutor's Injuries. — Brown *v.* State, 142 Ala. 287, 38 So. 268; Jacobs *v.* State, 146 Ala. 103, 42 So. 70; Wright *v.* State, (Ala. 1907) 42 So. 745; Holmes *v.* State, (Ala. 1905) 39 So. 569; Hubbard *v.* Perlie, 25 App. Cas. (D. C.) 477; Monize *v.* Begaso, 190 Mass. 87, 76 N. E. 460; State *v.* Mulhall, 199 Mo. 202, 97 S. W. 583; State *v.* Spaugh, 199 Mo. 147, 97 S. W. 901; People *v.* Way, 119 N. Y. App. Div. 344, 104 N. Y. Supp. 277; State *v.* Remington, (Oregon 1907) 91 Pac. 473; Mayes *v.* State, (Tex. Crim. 1907) 100 S. W. 386; Whittle *v.* State, (Tex. Crim. 1906) 95 S. W. 1084 (holding that the wife of the assaulted person may testify as to such injuries).

Evidence of Intoxication as Bearing on Intent. — Teague *v.* State, 144 Ala. 42, 40 So. 312; People *v.* Hower, (Cal. 1907) 91 Pac. 507; State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790; State *v.* Bennett, 128 Iowa 713, 5 Ann. Cas. 997, 105 N. W. 324; State *v.* Yates, 132 Iowa 475, 109 N. W. 1005. See generally the title INTOXICATION.

Intent — Question for Jury. — State *v.* Cummings, 128 Iowa 522, 105 N. W. 57.

Declaration Made in Presence of Accused Admissible. — Simmons *v.* State, 145 Ala. 61, 40 So. 660.

Evidence of Defendant's Actions After Assault Admissible. — Payne *v.* State, 148 Ala. 609, 42 So. 988.

Evidence that Defendant and Accomplice Were Armed Shortly Afterward Admissible. — State *v.* Ruck, 194 Mo. 416, 92 N. W. 706.

Evidence that Shotgun Was Found in Accused's Room After Arrest Admissible. — State *v.* Romano, 41 Wash. 241, 83 Pac. 1.

Evidence that Pistol Was Loaded Admissible. — People *v.* Wells, 145 Cal. 138, 78 Pac. 470.

Evidence of Pain Is Admissible, as the violence of the assault is material in showing the intent of the assaulting party. Harmon *v.* State, 48 Fla. 44, 37 So. 520.

Evidence Tending to Show the Plaintiff's Intent to Provoke the assault is admissible. Lowe *v.* Ring, 123 Wis. 107, 101 N. W. 381.

In an Action of Assault for Ejection of a Stockholder from a Meeting, evidence of the notice to him to attend the meeting is admissible, as it tends to show a recognition of his ownership of stock. Noller *v.* Wright, 138 Mich. 416, 101 N. W. 553.

1001. 1. Williams *v.* State, (Ala. 1907) 43 So. 720. See also Wright *v.* State, (Ala. 1907) 42 So. 745.

Evidence of Prior Controversy Concerning Defendant's Relations with Plaintiff's Wife Admissible. — Coruth *v.* Jones, 77 Vt. 441, 60 Atl. 814.

Evidence of Previous Threats by Prosecutor Inadmissible When Self-defense Is Not Claimed. — State *v.* Horn, (S. Dak. 1907) 111 N. W. 552.

2. State *v.* Johnson, 133 Iowa 38, 110 N. W. 170.

3. Lenfest *v.* Robbins, 101 Me. 176, 63 Atl. 729.

Plaintiff's Motive in Bringing Suit May Be Inquired into for Purpose of Impeachment. — Lowe *v.* Ring, 123 Wis. 107, 101 N. W. 381.

Where Self-defense Is Pleaded, evidence of plaintiff's general reputation as a quarrelsome and pugnacious person is admissible. Lowe *v.* Ring, 123 Wis. 107, 101 N. W. 381. See also McQuiggan *v.* Ladd, 79 Vt. 90, 64 Atl. 503.

1002. 1. Coruth *v.* Jones, 77 Vt. 441, 60 Atl. 814.

2. Money *v.* State, (Tex. Crim. 1906) 97 S. W. 90.

Testimony Should Be Confined to General Character. — State *v.* Thornton, 136 N. Car. 610, 48 S. E. 602.

3. Woods *v.* State, (Miss. 1907) 43 So. 433.

Evidence of Subsequent Assault by Prosecutor upon Third Person Inadmissible. — Honeycutt *v.* State, (Tex. Crim. 1906) 92 S. W. 421.

4. **Evidence of Conviction of Misdemeanor Not Admissible.** — Gray *v.* State, (Tex. Crim. 1905) 86 S. W. 764.

5. Livingston *v.* State, (Tex. Crim. 1904) 83 S. W. 1111; Gray *v.* State, (Tex. Crim. 1905) 86 S. W. 764.

1003. 1. See Miller *v.* State, 146 Ala. 686, 40 So. 342; Hughes *v.* State, (Ala. 1907) 44 So. 694; Com. *v.* Middleby, 187 Mass. 342, 73 N. E. 208.

Former Conviction of Felony. — State *v.* Mount, 72 N. J. L. 365, 61 Atl. 259. *Compare* O'Donnell *v.* People, 224 Ill. 218, 8 Ann. Cas. 123, 79 N. E. 639.

Former Conviction for Same Offense. — Yaska *v.* Swendrzynski, (Wis. 1907) 113 N. W. 959.

Statements Made Before Grand Jury Admissible. — Hudson *v.* State, (Tex. Crim. 1905) 90 S. W. 177.

ASSIGNMENTS.

1010. 2. Rodijkeit *v.* Andrews, 74 Ohio St. 104, 6 Ann. Cas. 761, 77 N. E. 747.

4. Rodijkeit *v.* Andrews, 74 Ohio St. 104, 6 Ann. Cas. 761, 77 N. E. 747.

5. Union Trust Co. *v.* Bulkeley, (C. C. A.) 150 Fed. 510, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1010.

1011. 4. "Heirs and Executors." — A liv-

ing person has no "heirs and executors," and an assignment to such is consequently void. Sayer *v.* Humphrey, 216 Ill. 426, 75 N. E. 170.

5. **Executor or Administrator May Assign Right of Action Belonging to Estate.** — Wickham *v.* Roberts, 112 N. Y. App. Div. 742, 98 N. Y. Supp. 1092.

1012. 9. **Firm May Assign Debt to Individual Copartner.** — Lipp *v.* Good, (Colo. 1907) 91 Pac. 1104.

1015. 7. National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134; Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408; Sperry, etc., Co. *v.* Hertzberg, 69 N. J. Eq. 264, 60 Atl. 368; Bradford *v.* Montgomery Furniture Co., 115 Tenn. 610, 92 S. W. 1104; Campbell *v.* J. E. Grant Co., 36 Tex. Civ. App. 641, 82 S. W. 794; Tolhurst *v.* Associated Portland Cement Manufacturers, (1903) A. C. 414, 72 L. J. K. B. 834.

Mere Colorable Assignment Unenforceable. — Coombs *v.* Harford, 99 Me. 426, 59 Atl. 529; Douglas *v.* Walker, (Tex. Civ. App. 1906) 92 S. W. 1026.

Equity Regards Substance Rather than Mere Form of Assignment. — Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888.

Under the Texas Statute all choses in action are assignable, whether they were assignable in law or not. McLaury *v.* Watelsky, (Tex. Civ. App. 1905) 87 S. W. 1045.

1016. 2. Slade *v.* Zeitfuss, 77 Conn. 457, 59 Atl. 406.

1017. 1. Yolo Bank *v.* Woodland Bank, 3 Cal. App. 561, 86 Pac. 820; New Haven City Bank *v.* Thorp, 78 Conn. 211, 61 Atl. 428; Sincell *v.* Davis, 24 App. Cas. (D. C.) 218; Karrick *v.* Wetmore, 22 App. Cas. (D. C.) 487; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408; Wallace *v.* Leroy, 57 W. Va. 263, 50 S. E. 243; Fitzroy *v.* Cave, (1905) 2 K. B. 364, 74 L. J. K. B. 829.

4. Holmes *v.* Loud, 149 Mich. 410, 112 N. W. 1109; Boogren *v.* St. Paul City R. Co., 97 Minn. 51, 106 N. W. 104; Forbes *v.* Omaha, (Neb. 1907) 112 N. W. 326; McLaury *v.* Watelsky, (Tex. Civ. App. 1905) 87 S. W. 1045.

1018. 2. **Debt.** — In *England*, under the Judicature Act, where the assignment of a debt is absolute, the assignee may sue in his own name. Fitzroy *v.* Cave, (1905) 2 K. B. 364, 74 L. J. K. B. 829.

Claim for Damages for Breach of Contract Assignable. — Weinberg *v.* Ogdens, 22 Times L. Rep. 58.

Trading Stamps Assignable as Choses in Action. — Sperry, etc., Co. *v.* Hertzberg, 69 N. J. Eq. 264, 60 Atl. 368.

Claim for Goods Sold and Delivered Assignable. Buchholz *v.* Damick, 115 N. Y. App. Div. 843, 101 N. Y. Supp. 17.

Contract for Protection Against Competition Assignable. — Bradford *v.* Montgomery Furniture Co., 115 Tenn. 610, 92 S. W. 1104.

Claim of Depositor Against Bank Assignable. — Johnson *v.* Shuey, 40 Wash. 22, 82 Pac. 123.

Claim for Detention of Proceeds of Pension Check Assignable. — Alexander *v.* Gloversville, 110 N. Y. App. Div. 791, 97 N. Y. Supp. 198.

Claim of Contractor against City Cannot Be Assigned to Bank of Which Mayor Is Stockholder. — People's Sav. Bank *v.* Big Rock Stone, etc., Co., 81 Ark. 599, 99 S. W. 836.

Claim of Contractors Against City Assignable to Bank for Advances. — Sovereign Bank *v.* International Portland Cement Co., 14 Ont. L. Rep. 511.

Assignment of an Interest in a Gratuity Fund in Disregard of a By-law is ineffectual to secure the payment of a debt which had no relation to the fund. Holmes *v.* Seaman, 184 N. Y. 486, 77 N. E. 724, *reversing* 99 N. Y. App. Div. 624, 91 N. Y. Supp. 1098.

1020. 1. Boogren *v.* St. Paul City R. Co., 97 Minn. 51, 106 N. W. 104.

Action for Fraud Not Assignable. — McConnell *v.* Pierce, 116 Ill. App. 103.

2. Hicks *v.* Steel, 142 Mich. 292, 105 N. W. 767; Wickham *v.* Roberts, 112 N. Y. App. Div. 742, 98 N. Y. Supp. 1092.

3. Holmes *v.* Loud, 149 Mich. 410, 112 N. W. 1109; Forbes *v.* Omaha, (Neb. 1907) 112 N. W. 326; Wickham *v.* Roberts, 112 N. Y. App. Div. 742, 98 N. Y. Supp. 1092.

1021. 1. Alexander *v.* Gloversville, 110 N. Y. App. Div. 791, 97 N. Y. Supp. 198.

2. Holmes *v.* Loud, 149 Mich. 410, 112 N. W. 1109.

Compensation for Lands Injuriously Affected. — Dawson *v.* Great Northern, etc., R. Co., (1905) 1 K. B. 260.

1023. 1. Boogren *v.* St. Paul City R. Co., 97 Minn. 51, 106 N. W. 104.

Right of Action Against Railroad Company — Not Assignable. — Weller *v.* Jersey City, etc., St. R. Co., 68 N. J. Eq. 659, 61 Atl. 459, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021–1023; McCormack *v.* Toronto R. Co., 13 Ont. L. Rep. 656, 7 Ann. Cas. 500.

Claim for Personal Injuries Unassignable Before Judgment. — Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730.

Under New York Statute, Personal Injury Means Actual Injury to Person. — Keeler *v.* Dunham, 114 N. Y. App. Div. 94, 99 N. Y. Supp. 669.

A Cause of Action in a Husband for loss of services and expenditures for medical attendance, etc., occasioned by a negligent and wrongful injury to his wife, is one which survives and is assignable. Forbes *v.* Omaha, (Neb. 1907) 112 N. W. 326.

5. **Invalid Agreement Not Assignable.** — Slater *v.* Slater, 114 N. Y. App. Div. 160, 99 N. Y. Supp. 564, *affirming* (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 332, 94 N. Y. Supp. 900.

6. McConnell *v.* Pierce, 116 Ill. App. 103.

Action for Deceit Assignable in New York. — Keeler *v.* Dunham, 114 N. Y. App. Div. 94, 99 N. Y. Supp. 669.

1024. 1. Hicks *v.* Steel, 142 Mich. 292, 105 N. W. 767.

Right of Action for Fraud Affecting Estate Assignable by Executor or Administrator. — Wickham *v.* Roberts, 112 N. Y. App. Div. 742, 98 N. Y. Supp. 1092.

Survivorship Not Test of Assignability in New York. — Keeler *v.* Dunham, 114 N. Y. App. Div. 94, 99 N. Y. Supp. 669.

2. **Assignment for Purpose of Effectuating Agreement Contrary to Public Policy Not Recognized.** — Slade *v.* Zeitfuss, 77 Conn. 457, 59 Atl. 406.

1025. 3. Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730.

1026. 4. Helms *v.* Helms, 137 N. Car. 206, 49 S. E. 110; Rodijkeit *v.* Andrews, 74 Ohio St. 194, 6 Ann. Cas. 761, 77 N. E. 747; O'Niel *v.* Wm. B. H. Kerr Co., 124 Wis. 234, 102 N. W. 573.

1027. 1. Union Trust Co. *v.* Bulkeley, (C. C. A.) 150 Fed. 510.

Mere Possibility of Reverter Held Not Assignable. — Helms *v.* Helms, 137 N. Car. 206, 49 S. E. 110.

2. **Money to Become Due.** — Sutter *v.* Grosse, (Ky. 1904) 82 S. W. 278; Madison First Nat. Bank *v.* School Dist. No. 1, (Neb. 1906) 110 N. W. 349; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 809, 64 Atl. 973; Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949; Campbell *v.* J. E. Grant Co., 36 Tex. Civ. App. 641, 82 S. W. 794; Tolhurst *v.* Associated Portland Cement Manufacturers, (1903) A. C. 414, 72 L. J. K. B. 834.

Non-specification of Amount Does Not Affect Validity of Assignment. — Yolo Bank *v.* Woodland Bank, 3 Cal. App. 561, 86 Pac. 820.

1028. 1. See Rodijkeit *v.* Andrews, 74 Ohio St. 104, 6 Ann. Cas. 761, 77 N. E. 747.

Future Profits of Charter-Parties Assignable. — Yolo Bank *v.* Woodland Bank, 3 Cal. App. 561, 86 Pac. 820.

2. **Account Not Yet Due Assignable.** — Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 809, 64 Atl. 973.

Proceeds of Future Sales Not Assignable. — O'Niel *v.* Wm. B. H. Kerr Co., 124 Wis. 234, 102 N. W. 573.

1029. 1. Hudson *v.* Hudson, 222 Ill. 527, 78 N. E. 917; Betts *v.* Harding, 133 Iowa 7, 109 N. W. 1074.

Assent of Ancestor — Kentucky. — A mere verbal assent, whereby the ancestor does not part with his power of disposition, is not sufficient. Elliott *v.* Leslie, (Ky. 1907) 99 S. W. 619.

Consent of Ancestor and Consideration Essential to Assignment of Expectancy. — McAdams *v.* Bailey, (Ind. App. 1907) 80 N. E. 171.

1030. 1. **Assignment of Expectancy Presumed Fraudulent.** — McAdams *v.* Bailey, (Ind. App. 1907) 80 N. E. 171.

1031. 2. Colorado Fuel, etc., Co. *v.* Kidwell, 20 Colo. App. 8, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1031; Leitch *v.* Northern Pac. R. Co., 95 Minn. 35, 103 N. W. 704; Quigley *v.* Walter, 95 Minn. 383, 104 N. W. 236; Brooks Co. *v.* Tolman, 27 Ohio Cir. Ct. 321, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1031; Rodijkeit *v.* Andrews, 74 Ohio St. 104, 6 Ann. Cas. 761, 77 N. E. 747.

Assignment of Unearned Wages by Railroad Employee Void under Georgia Statute. — Central of Georgia R. Co. *v.* Dover, 1 Ga. App. 240, 57 S. E. 1002.

In *Georgia* it seems that an assignment of wages to be earned must be assented to by the employer, either by an acceptance of the order or by payment thereunder. Usher *v.* Seaboard Air-Line R. Co., 125 Ga. 809, 54 S. E. 704.

1032. 1. **Wages to Be Earned under Existing Contract of Indefinite Duration Assignable.** — Rodijkeit *v.* Andrews, 74 Ohio St. 104, 6 Ann. Cas. 761, 77 N. E. 747.

3. **Assignment of Wages to Be Earned, Without Limit as to Amount or Time, Void.** — Leitch *v.* Northern Pac. R. Co., 95 Minn. 35, 103 N. W. 704.

5. *In re* Home Discount Co., 147 Fed. 538; Rodijkeit *v.* Andrews, 74 Ohio St. 104, 6 Ann. Cas. 761, 77 N. E. 747.

Proceeds of Future Sales Unassignable. — O'Niel *v.* Wm. B. H. Kerr Co., 124 Wis. 234, 102 N. W. 573.

1033. 2. McGowan *v.* New Orleans, 118 La. 429, 43 So. 40, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1033; People *v.* Grout, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 505, 92 N. Y. Supp. 742.

Public Officer Can Assign Salary Already Earned. — Oberdorfer *v.* Louisville School Board, (Ky. 1905) 85 S. W. 696.

3. McGowan *v.* New Orleans, 118 La. 429, 43 So. 40.

1034. 11. **Superintendent of Out-door Poor in Department of Public Charities Cannot Assign Future Salary.** — People *v.* Grout, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 505, 92 N. Y. Supp. 742.

12. **Assignability Depends upon Nature and Character of Obligation Assumed.** — Jetter *v.* Scollan, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 546, 96 N. Y. Supp. 274.

1035. 2. Sargent Glass Co. *v.* Matthews Land Co., 35 Ind. App. 45, 72 N. E. 474. See also Swarts *v.* Narragansett Electric Lighting Co., 26 R. I. 388, 59 Atl. 77. But under the *Iowa* statute the rule is otherwise. Thomassen *v.* De Goey, 133 Iowa 278, 110 N. W. 581.

Parties to Otherwise Unassignable Contract May Provide for Assignment. — Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

3. Asphaltic Limestone Concrete Co. *v.* Glasgow, (1907) Sc. Ct. of Sess. 463; Wing, etc., Co. *v.* U. S. Fidelity, etc., Co., 150 Fed. 672; Hudson River Water Power Co. *v.* Glens Falls Portland Cement Co., 107 N. Y. App. Div. 548, 95 N. Y. Supp. 421; Tolhurst *v.* Associated Portland Cement Manufacturers, (1903) A. C. 414, 72 L. J. K. B. 834. See also New York Bank Note Co. *v.* Hamilton Bank Note Engraving, etc., Co., 180 N. Y. 280, 73 N. E. 48.

Contracts in Restraint of Trade. — New York Bank Note Co. *v.* Hamilton Bank Note Engraving, etc., Co., 180 N. Y. 280, 73 N. E. 48.

1036. 1. Asphaltic Limestone Concrete Co. *v.* Glasgow, (1907) Sc. Ct. of Sess. 463.

1037. 1. Kemp *v.* Baerselman, (1906) 2 K. B. 604; Demarest *v.* Dunton Lumber Co., 151 Fed. 508; Sumner *v.* Nevin, 4 Cal. App. 347, 87 Pac. 1105; Sargent Glass Co. *v.* Matthews Land Co., 35 Ind. App. 45, 72 N. E. 474; Corson *v.* Lewis, (Neb. 1906) 109 N. W. 735; People's Bank, etc., Co. *v.* Weidinger, 73 N. J. L. 433, 64 Atl. 179; Wooster *v.* Crane, (N. J. 1907) 66 Atl. 1093; Jetter *v.* Scollan, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 546, 96 N. Y. Supp. 274; New York Bank Note Co. *v.* Hamilton Bank Note Engraving, etc., Co., 180 N. Y. 280, 73 N. E. 48; Swarts *v.* Narragansett Electric Lighting Co., 26 R. I. 388, 59 Atl. 77; Deaton *v.* Lawson, 40 Wash. 486, 82 Pac. 879; Kemp *v.* Baerselman, (1906) 2 K. B. 604, 75 L. J. K. B. 873.

2. Demarest *v.* Dunton Lumber Co., 151 Fed. 508; Sargent Glass Co. *v.* Matthews Land Co., 35 Ind. App. 45, 72 N. E. 474; Wooster *v.* Crane, (N. J. 1907) 66 Atl. 1093; New York

Bank Note Co. *v.* Hamilton Bank Note Engraving, etc., Co., 180 N. Y. 280, 73 N. E. 48.

1038. 1. Claim for Detention of Proceeds of Pension Check Assignable. — Alexander *v.* Gloversville, 110 N. Y. App. Div. 791, 97 N. Y. Supp. 198.

1039. 2. Jones *v.* Rutherford, 26 App. Cas. (D. C.) 114; Roberts *v.* Consaul, 24 App. Cas. (D. C.) 551.

1041. 9. Wallace *v.* Leroy, 57 W. Va. 263, 50 S. E. 243.

Bond for Deed Assignable in Equity. — Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888.

1045. 1. Lien Bond Securing Advances to Aid in Cultivation of Land Assignable. — Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

Option to Purchase Given to One and His Assigns Assignable. — See Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

Beneficiary Cannot Assign Income of Real Property under New York Statute. — Slater *v.* Slater, 114 N. Y. App. Div. 160, 99 N. Y. Supp. 564, *affirming* (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 332, 94 N. Y. Supp. 900; Stringer *v.* Barker, 110 N. Y. App. Div. 37, 96 N. Y. Supp. 1052.

Future Estate Assignable if Vested. — Stringer *v.* Barker, 110 N. Y. App. Div. 37, 96 N. Y. Supp. 1052.

Unpaid Purchase Money of Land Assignable. — McCleery *v.* Stoup, 32 Pa. Super. Ct. 42.

Dower After Husband's Death Unassignable Except to Extinguish Release to Terretenant. — Francis *v.* Sandlin, (Ala. 1907) 43 So. 829.

1046. 1. Contract for Conveyance of Land Assignable in Equity. — Moore *v.* Gariglietti, 228 Ill. 143, 81 N. E. 826; Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888.

Executory Contract for Sale of Land Assignable. — Lamm *v.* Armstrong, 95 Minn. 434, 104 N. W. 304.

2. Warranty of Peaceable Possession Assignable. — Patterson *v.* Cappon, 125 Wis. 198, 102 N. W. 1083.

1047. 1. Thompson *v.* Richmond, (Me. 1906) 66 Atl. 649.

3. Thompson *v.* Richmond, (Me. 1906) 66 Atl. 649.

1048. 3. Restriction against Assignment Construed. — See *In re* Spark, (1905) 1 Ch. 456; Langton *v.* Henson, 92 L. T. N. S. 805.

1051. 2. Lien Bond Securing Advances to Aid in Cultivation of Land Assignable. — Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

5. Landlord's Lien Assignable under Alabama Statute. — Farrow *v.* Wooley, (Ala. 1907) 43 So. 144.

1054. 8. Under the *Alabama* statute which provides for the assignment of a rent claim, such an assignment need not be in writing. Bennett *v.* McKee, 144 Ala. 601, 38 So. 129.

1055. 1. Brandt *v.* Dunlop Rubber Co., (1905) A. C. 454; Union Trust Co. *v.* Bulkeley, (C. C. A.) 150 Fed. 510; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 809, 64 Atl. 973; McCleery *v.* Stoup, 32 Pa. Super. Ct. 42; Brandt *v.* Dunlop Rubber Co., (1905) A. C. 454.

Delivery of Drafts to a Bank with the understanding that when collected the proceeds are to be paid to a certain person constitutes an equitable assignment. Zilke *v.* Woodley, 36 Wash. 84, 78 Pac. 299.

Words Not Constituting Assignment. — Where a contract was indorsed, "For value received, we hereby guarantee the payment of the within conditional purchase contract, and waive presentation, demand, protest, notice of nonpayment, and notice of protest," it was held that such words did not constitute an assignment. Andrews *v.* John Church Co., 1 Ga. App. 560, 58 S. E. 130.

1056. 4. Haller *v.* Ingraham, (Supm. Ct. App. T.) 101 N. Y. Supp. 789; Campbell *v.* J. E. Grant Co., 36 Tex. Civ. App. 641, 82 S. W. 794.

Assignment of Chose in Action by Parol for Purposes of Security Valid. — Union Trust Co. *v.* Bulkeley, (C. C. A.) 150 Fed. 510.

1057. 4. Gray *v.* Bever, 122 Ill. App. 1.

Issuance of Trading Stamps Constitutes Assignment of Property Represented. — Sperry, etc., Co. *v.* Hertzberg, 69 N. J. Eq. 264, 60 Atl. 368.

Indorsement and Delivery of Bill of Lading Effects Assignment. — National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134.

Delivery of Drafts to a bank with the understanding that the proceeds when collected are to be paid to a certain person constitutes an equitable assignment. Zilke *v.* Woodley, 36 Wash. 84, 78 Pac. 299.

Delivery of Pass Book Unnecessary in Assignment of Deposit in Bank. — Augsbury *v.* Shurtliff, 114 N. Y. App. Div. 626, 99 N. Y. Supp. 989.

1058. 1. Delivery of Bank Book and Order Constitutes Assignment. — McGuire *v.* Murphy, 107 N. Y. App. Div. 104, 94 N. Y. Supp. 1005.

2. Delivery of Insurance Policies Unnecessary to Their Assignment. — Wilder *v.* Watts, 138 Fed. 426.

1059. 4. *In re* Oliver, 132 Fed. 588; Hipwell *v.* National Surety Co., 130 Iowa 656, 105 N. W. 318; Lutter *v.* Grosse, (Ky. 1904) 82 S. W. 278; Armstrong *v.* Chisolm, 99 N. Y. App. Div. 465, 91 N. Y. Supp. 299; Botsford *v.* Lull, 30 Pa. Super. Ct. 292; Comer *v.* Floore, (Tex. Civ. App. 1905) 88 S. W. 246; Wamsley *v.* Ward, 61 W. Va. 65, 55 S. E. 998.

In a *Georgia* case it was held that an instrument, other than a draft, purporting to assign a sum of money to be paid out of a fund claimed to be in the hands of another, without describing the identical money intended to be conveyed, will not of itself convey legal title to any part of the fund. Western, etc., R. Co. *v.* Union Invest. Co., 128 Ga. 74, 57 S. E. 100.

1060. 1. Botsford *v.* Lull, 30 Pa. Super. Ct. 292; Wamsley *v.* Ward, 61 W. Va. 65, 55 S. E. 998.

2. *In re* Oliver, 132 Fed. 588; Campbell *v.* J. E. Grant Co., 36 Tex. Civ. App. 641, 82 S. W. 794.

Potential Existence Must Be as of Date of Assignment. — Johnson *v.* Donohue, 113 Tenn. 446, 83 S. W. 360.

1062. 3. See Western, etc., R. Co. *v.* Union Invest. Co., 128 Ga. 74, 57 S. E. 100.

Unaccepted Draft Not Assignment. — Clark *v.* Toronto Bank, 72 Kan. 1, 82 Pac. 582.

Under the *Washington* statute, an unaccepted bill of exchange does not operate as an assign-

ment. The acceptance must be in writing. Frederick *v.* Spokane Grain Co., (Wash. 1907) 91 Pac. 570.

1065. 3. Kuhnes *v.* Cahill, 128 Iowa 594, 104 N. W. 1025; Loan, etc., Bank *v.* Farmers', etc., Bank, 74 S. Car. 210, 54 S. E. 364.

5. Poland *v.* Love, (Indian Ter. 1907) 103 S. W. 759; Love *v.* Ardmore Stock Exch., 5 Indian Ter. 202, 82 S. W. 721; Clark *v.* Toronto Bank, 72 Kan. 1, 82 Pac. 582, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1064; Lonier *v.* State Sav. Bank, 149 Mich. 483, 112 N. W. 1119.

Check Drawn on General Account No Assignment at Law or in Equity. — Pennell *v.* Ennis, (Mo. App. 1907) 103 S. W. 147. See also Bowker *v.* Haight, etc., Co., 146 Fed. 257.

1069. 1. **Claim for Wages.** — There can be no assignment of a part only of wages due without the assent of the debtor. Cincinnati, etc., R. Co. *v.* Lima R. Supply Co., 27 Ohio Cir. Ct. 807.

Partial Assignment Without Consent of Debtor Unenforceable at Law. — Sincell *v.* Davis, 24 App. Cas. (D. C.) 218; Central of Georgia R. Co. *v.* Dover, 1 Ga. App. 240, 57 S. E. 1002.

2. Wamsley *v.* Ward, 61 W. Va. 65, 55 S. E. 998.

Where the Debtor Has Accepted an Order and Promised to Pay, He Cannot Complain that the assignment was merely partial. Gray *v.* Bever, 122 Ill. App. 1.

In New York the assignee of a part of a claim may maintain an action to recover the portion assigned. Chase *v.* Deering, 104 N. Y. App. Div. 192, 93 N. Y. Supp. 434.

1070. 1. Sincell *v.* Davis, 24 App. Cas. (D. C.) 218; Central of Georgia R. Co. *v.* Dover, 1 Ga. App. 240, 57 S. E. 1002; Cincinnati, etc., R. Co. *v.* Lima R. Supply Co., 27 Ohio Cir. Ct. 807.

Garnishee Cannot Object as to Partial Assignment. — Gray *v.* Bever, 122 Ill. App. 1.

2. Chase *v.* Deering, 104 N. Y. App. Div. 192, 93 N. Y. Supp. 434; Wamsley *v.* Ward, 61 W. Va. 65, 55 S. E. 998.

1072. 2. **Rule Applicable to Unaccepted Draft.** — Rosselle Park *v.* Montgomery, (N. J. 1905) 60 Atl. 954.

3. **Order for Payment of Specific Sum Out of Larger Amount Assignment Pro Tanto.** — Hipwell *v.* National Surety Co., 130 Iowa 656, 105 N. W. 318.

1073. 1. **Action at Law.** — Kuhnes *v.* Cahill, 128 Iowa 594, 104 N. W. 1025; Boswell *v.* Citizens' Sav. Bank, (Ky. 1906) 96 S. W. 797; Loan, etc., Bank *v.* Farmers', etc., Bank, 74 S. Car. 210, 54 S. E. 364.

7. Holmes *v.* Seaman, 117 N. Y. App. Div. 381, 102 N. Y. Supp. 616.

Where Assignment under Seal, Consideration Presumed. — Chamberlain *v.* Fernbach, 118 Ill. App. 145.

1074. 2. **Promise to Marry Valid Consideration for Assignment.** — Huntress *v.* Hanley, (Mass. 1907) 80 N. E. 946.

3. **Extension of Time for Payment of Debt Valuable Consideration.** — Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

Partial Discharge of Subsisting Legal Indebtedness No Consideration for Assignment. — Holmes *v.* Seaman, 117 N. Y. App. Div. 381, 102 N. Y. Supp. 616.

Existing Marriage Relation Valuable Consideration. — Indiana Match Co. *v.* Kirk, 118 Ill. App. 102.

Moral Obligation Deemed Sufficient Consideration. — McCleery *v.* Stoup, 32 Pa. Super. Ct. 42.

Consideration Grossly Inadequate. — Where fraud was practiced in the procurance of the assignment, and the consideration given was grossly inadequate, the court decreed the cancellation of the assignment. Obney *v.* Obney, 26 Pa. Super. Ct. 122.

1075. 3. Yolo Bank *v.* Woodland Bank, 3 Cal. App. 561, 86 Pac. 820.

4. **Gift of Deposit in Savings Bank by Delivery of Bank Book and Order Imports Consideration.** — McGuire *v.* Murphy, 107 N. Y. App. Div. 104, 94 N. Y. Supp. 1005.

5. Western Union Tel. Co. *v.* Ryan, 126 Ga. 191, 55 S. E. 21; Dewey *v.* Komar, (S. Dak. 1906) 110 N. W. 90; St. Louis Southwestern R. Co. *v.* Jenkins, (Tex. Civ. App. 1905) 89 S. W. 1106; Rutan *v.* Huck, 30 Utah 217, 83 Pac. 833; Wallace *v.* Leroy, 57 W. Va. 263, 50 S. E. 243. But see Coombs *v.* Harford, 99 Me. 426, 59 Atl. 529.

1076. 1. Quigley *v.* Welter, 95 Minn. 383, 104 N. W. 236; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408; Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949; Campbell *v.* J. E. Grant Co., 36 Tex. Civ. App. 641, 82 S. W. 794; Brandt *v.* Dunlop Rubber Co., (1905) A. C. 454; Sovereign Bank *v.* International Portland Cement Co., 14 Ont. L. Rep. 511.

As between Assignee and Receiver of Assignor Notice Unnecessary. — Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 809, 64 Atl. 973, *reversing* 69 N. J. Eq. 358, 60 Atl. 408.

2. Shepherd *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 291.

1077. 3. Jack *v.* National Bank, 17 Okla. 430, 89 Pac. 219.

4. Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

6. Bush *v.* Prescott, etc., R. Co., 76 Ark. 497, 89 S. W. 86; Kansas City, etc., R. Co. *v.* Joslin, 74 Ark. 551, 86 S. W. 435; Weinberger *v.* Brumberg, 69 N. J. Eq. 669, 61 Atl. 732, *quoting* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1077; Gulf, etc., R. Co. *v.* Eldredge, 35 Tex. Civ. App. 467, 80 S. W. 556, *citing* 2 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1077. See also Wabash R. Co. *v.* Papin, 119 Ill. App. 99.

Assent of Debtor Unnecessary. — Armstrong *v.* Chisolm, 99 N. Y. App. Div. 465, 91 N. Y. Supp. 299.

Unless Debtor Shows Injury, Want of Notice No Defense. — Knickerbocker Trust Co. *v.* Coyle, 139 Fed. 792.

1078. 1. Wheelock *v.* Hull, 124 Iowa 752, 100 N. W. 863; Gordon *v.* Omaha, (Neb. 1906) 110 N. W. 313; Brandt *v.* Dunlop Rubber Co., (1905) A. C. 454, 74 L. J. K. B. 898.

After Notice Debtor Protected in Making Payments to Assignee. — North Penn Iron Co. *v.* International Lithoid Co., 217 Pa. St. 538, 66 Atl. 860.

Giving of Notice Protects Assignee Against Attaching Creditors. — Bunnell *v.* Bronson, 78 Conn. 679, 63 Atl. 396.

1079. 1. Brandt *v.* Dunlop Rubber Co., (1905) A. C. 454.

Service of Notice Works Equitable Assignment. — Wheelock *v.* Hull, 124 Iowa 752, 100 N. W. 863.

4. Williams *v.* Neely, (C. C. A.) 134 Fed. 1; Demarest *v.* Dunton Lumber Co., 151 Fed. 508; Watrous *v.* Hilliard, 38 Colo. 255, 88 Pac. 185; Moore *v.* Gariglietti, 228 Ill. 143, 81 N. E. 826; Hipwell *v.* National Surety Co., 130 Iowa 656, 105 N. W. 318; Wheelock *v.* Hull, 124 Iowa 752, 100 N. W. 863; Strong *v.* Moore, 75 Kan. 437, 89 Pac. 895; Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356; Jack *v.* National Bank, 17 Okla. 430, 89 Pac. 219; Loan, etc., Bank *v.* Farmers', etc., Bank, 74 S. Car. 210, 54 S. E. 364.

Void Contract Not Vitalized by Assignment. — Lowe *v.* Walker, 77 Ark. 103, 91 S. W. 22.

1080. 1. Williams *v.* Neely, (C. C. A.) 134 Fed. 1; Michigan Yacht, etc., Co. *v.* Busch, (C. C. A.) 143 Fed. 929; Sincell *v.* Davis, 24 App. Cas. (D. C.) 218; Tanner *v.* Bowen, 34 Mont. 121, 85 Pac. 876; National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134; Reynolds *v.* Cavanaugh, 139 Mich. 387, 102 N. W. 986; Quigley *v.* Welter, 95 Minn. 383, 104 N. W. 236; Thalmann *v.* Giles, 116 N. Y. App. Div. 437, 101 N. Y. Supp. 980; Jack *v.* National Bank, 17 Okla. 430, 89 Pac. 219; Randall Co. *v.* Glendenning, (Okla. 1907) 92 Pac. 158; Isaac Eberly Co. *v.* Gibson, (Va. 1907) 58 S. E. 591.

Each Successive Assignee Takes Subject to Prior Equities. — Indiana Match Co. *v.* Kirk, 118 Ill. App. 102.

Rule Applicable Where Contract Assigned Contrary to Stipulation. — Thomassen *v.* De Goey, 133 Iowa 278, 110 N. W. 581.

1081. 1. National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134.

1084. 3. Shepherd *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 291.

4. Levy *v.* Cohen, 103 N. Y. App. Div. 195, 92 N. Y. Supp. 1074, *affirming* (Supm. Ct. Spec. Ct.) 45 Misc. (N. Y.) 95, 91 N. Y. Supp. 594.

In Determining What Passes, Intention of Parties Controlling Factor. — Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

1086. 1. Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949, *quoting* 2 Am. and Eng. Encyc. of Law (2d ed.) 1086.

1088. 4. **Assignee of Chose in Action Will Be Protected.** — Kuhnes *v.* Cahill, 128 Iowa 594, 104 N. W. 1025.

5. *In re* Oliver, 132 Fed. 588; Massachusetts Constr. Co. *v.* Kidd, 142 Fed. 285; Sperry, etc., Co. *v.* Hertzberg, 69 N. J. Eq. 264, 60 Atl. 368; Foster *v.* Central Nat. Bank, 183 N. Y. 379, 76 N. E. 338, *affirming* 106 N. Y. App. Div. 616, 94 N. Y. Supp. 1146; Johnson *v.* Donohue, 113 Tenn. 446, 83 S. W. 360; Parkhurst *v.* Dickinson, 41 Wash. 420, 83 Pac. 895.

1090. 5. **Implied Warranty of Existence of Chose in Action.** — Atwood *v.* Sault Ste. Marie Light, etc., Co., 148 Mich. 224, 111 N. W. 747, *citing* 2 Am. and Eng. Encyc. of Law (2d ed.) 1090.

1094. 2. **Assignee May Sue in Name of Assignor.** — Massachusetts Constr. Co. *v.* Kidd, 142 Fed. 285; Karrick *v.* Wetmore, 22 App. Cas. (D. C.) 487; Independent Credit Co. *v.* South Chicago City R. Co., 121 Ill. App. 595.

Assignee Cannot Sue in Own Name. — Peoria Scrap Iron Co. *v.* Cohen, 113 Ill. App. 30.

1095. 1. Johnson *v.* Donohue, 113 Tenn. 446, 83 S. W. 360.

4. Remedy at Law Does Not Oust Court of Equity of Concurrent Jurisdiction. — Bush *v.* Prescott, etc., R. Co., 76 Ark. 497, 89 S. W. 86.

1097. 6. Sincell *v.* Davis, 24 App. Cas. (D. C.) 218; Foster *v.* Central Nat. Bank, 76 N. Y. 379, 76 N. E. 338, *affirming* 106 N. Y. App. Div. 616, 94 N. Y. Supp. 1146; Haller *v.* Ingraham, (Supm. Ct. App. T.) 101 N. Y. Supp. 789; Wallace *v.* Leroy, 57 W. Va. 263, 50 S. E. 243; Fitzroy *v.* Cave, (1905) 2 K. B. 364, 74 L. J. K. B. 829.

In *Colorado* the real party in interest is entitled to sue, regardless of the negotiability of the original contract. Doyle *v.* Nesting, (Colo. 1907) 88 Pac. 862.

1099. 3. Weinberger *v.* Brumberg, 69 N. J. Eq. 669, 61 Atl. 732, *quoting* 2 Am. and Eng. Encyc. of Law (2d ed.) 1099; Gulf, etc., R. Co. *v.* Eldredge, 35 Tex. Civ. App. 467, 80 S. W. 556, *citing* 2 Am. and Eng. Encyc. of Law (2d ed.) 1099.

Mere Want of Notice No Defense Without Consequential Injury. — Knickerbocker Trust Co. *v.* Coyle, 139 Fed. 792.

4. After Debtor Has Knowledge of Assignment. — Isaac Eberly Co. *v.* Gibson, (Va. 1907) 58 S. E. 591 (to the same effect as Creighton *v.* Hyde Park, 6 Ill. App. 272, cited in the original note).

Debtor Disregards Notice at His Peril. — Brandt *v.* Dunlop Rubber Co., (1905) A. C. 454.

After Notice Debtor Protected in Making Payments to Assignee. — North Penn Iron Co. *v.* International Lithoid Co., 217 Pa. St. 538, 66 Atl. 860.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

7. 1. Do Not Violate "Sales in Bulk" Laws. — McAvoy *v.* Jennings, 44 Wash. 79, 87 Pac. 53.

11. 1. Jackson *v.* Citizens' Bank, etc., Co., 53 Fla. 265, 44 So. 527.

13. 2. Jackson *v.* Citizens' Bank, etc., Co., 53 Fla. 265, 44 So. 527, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 13.

Where the defendant agreed to sell a hay crop to the plaintiff and the plaintiff agreed to apply the proceeds to the payment of certain debts of the defendant, it was held that it was not an assignment for the benefit of creditors. Ives *v.* Sanguinetti, (Ariz. 1906) 85 Pac. 480.

14. 1. Wylly-Gabbett Co. *v.* Williams, 53 Fla. 872, 42 So. 910.

18. 1. Assignment Statutes. — As to the construction of statutes of various states, see the following cases: Taylor *v.* Hutchinson, 145 Ala. 202, 40 So. 108; Lucy *v.* Freeman, 93 Minn. 274, 101 N. W. 167; Pritchard *v.* Mitchell, 139 N. Car. 54, 51 S. E. 783; National Union Bank *v.* Hollingsworth, 143 N. Car. 520, 55 S. E. 809; Hart's Assigned Estate, 211 Pa. St. 219, 60 Atl. 728; Gilbert Paper Co. *v.* Whiting Paper Co., 123 Wis. 472, 102 N. W. 20.

2. Locke *v.* Martin, 145 Ala. 274, 40 So. 387; Smith *v.* Huntsberry, (Ky. 1907) 99 S. W. 911.

23. 4. Lothrop Pub. Co. *v.* Lothrop, etc., Co., 191 Mass. 353, 77 N. E. 841.

7. California. — An assignment of mining lands requires, by Act of April 23, 1880, § 1, the consent of the holders of two-thirds of the capital stock. Lacy *v.* Gunn, 144 Cal. 511, 78 Pac. 30.

31. 5. Brockett *v.* Lewis, 144 Mich. 560, 108 N. W. 429.

35. 3. Good Will, Trademarks, and Trade Names, Pass. — Lothrop Pub. Co. *v.* Lothrop, etc., Co., 191 Mass. 353, 77 N. E. 841.

37. 2. Defeasible Fee Passes to Assignee. — Whalin *v.* Bailey, (Ky. 1906) 96 S. W. 1105.

Sufficient Description of Property Conveyed. — The words "all and singular the real and personal estate, wheresoever situate, * * * and all other property of every nature, kind, and description and wheresoever situate of us the said," etc., were held to be sufficient. Roberts *v.* Roberts, 102 Md. 131, 5 Ann. Cas. 805, 62 Atl. 161.

39. 1. Life Insurance. — A policy in favor of the assignor's children, with a power reserved to the assignor to surrender it at a certain time and receive a cash surrender value, is not assignable. Townsend's Assignee *v.* Townsend, (Ky. 1907) 105 S. W. 937.

40. 3. Claims for Personal Torts, Such as Libel, Slander, etc., do not pass. Robinson *v.* Wiley, 188 Mass. 533, 74 N. E. 923.

Causes of Action for Breach of Contract Pass. — Robinson *v.* Wiley, 188 Mass. 533, 74 N. E. 923.

42. 3. Must Be Exempt at Time of Assignment. — Miller *v.* Swhier, (Ind. App. 1907) 79 N. E. 1092.

45. 3. As to Sufficiency of Description, see Roberts *v.* Roberts, 102 Md. 131, 5 Ann. Cas. 805, 62 Atl. 161; Robinson *v.* Wiley, 188 Mass. 533, 74 N. E. 923; Joel Bailey Davis Co. *v.* Augustus, 105 Va. 843, 54 S. E. 985.

46. 1. McDaniel *v.* Osborn, 166 Ind. 1, 75 N. E. 647; Little *v.* Sturgis, 127 Iowa 298, 103 N. W. 205; Lucy *v.* Freeman, 93 Minn. 274, 101 N. W. 167; Murchie *v.* Wentworth, 74 N. H. 3, 64 Atl. 507; Hunt *v.* Marquand, 109 N. Y. App. Div. 729, 96 N. Y. Supp. 546; Webber *v.* Conklin, (S. Dak. 1905) 104 N. W. 675; Craig *v.* McKay, 12 Ont. L. Rep. 121.

47. 2. Jenks *v.* Smith, 129 Iowa 139, 105 N. W. 396.

48. 3. *In re* John L. Nelson, etc., Co., 149 Fed. 590.

Partnership Assignment — Partners and Property in Two States. — Where one partner lived in Pennsylvania and the other in New Jersey, but the evidence showed that they elected to have the estate administered in Pennsylvania, it was held that after such election the assignee could not divide the administration of the assets between the courts of the two states. *In re* Browning, 68 N. J. Eq. 751, 61 Atl. 1066.

49. 2. The Rule of Comity. — Where the laws of *Illinois* would not allow property of a nonresident debtor to be withdrawn from the state before creditors residing in the state had been paid, it was held that where the situations were reversed an Illinois assignee was not entitled to funds in the hands of an attaching creditor in New York until the New York creditors were paid. *In re* John L. Nelson, etc., Co., 149 Fed. 590.

53. 1. Kirkendall *v.* Weatherley, (Neb. 1906) 109 N. W. 757.

56. 2. Cincinnati Third Nat. Bank *v.* Jackson, 156 Fed. 144.

57. 4. Tapp *v.* Harper, (Ark. 1907) 103 S. W. 161.

58. 1. *In re* Salmon, 143 Fed. 395; Cincinnati Third Nat. Bank *v.* Jackson, 156 Fed. 144.

2. An Assignment May Be Void as to Creditors but Valid as between the parties. Lucy *v.* Freeman, 93 Minn. 274, 101 N. W. 167.

62. 2. Assent by Becoming Assignee. — Reddy *v.* Raymond, 194 Mass. 367, 80 N. E. 485.

3. Creditor Who Assents to Transfer Cannot Allege Fraud. — McAvoy *v.* Jennings, 39 Wash. 109, 81 Pac. 77.

63. 2. Lacy *v.* Gunn, 144 Cal. 511, 78 Pac. 30; Royster *v.* Heck, (Ky. 1906) 94 S. W. 8.

Where the Debtor Suggested a Person for Trustee it was held not to be sufficient to bind him to the deed of assignment. *In re* Mills, (1906) 1 K. B. 389.

Where a Creditor by His Acts Has Assented to the Assignment he cannot afterward set up the assignment as an act of bankruptcy. *In re* Brindley, (1906) 1 K. B. 377; *In re* Mills, (1906) 1 K. B. 389.

64. 4. Where the Assent of All the Creditors Is Required the title will not pass until all the creditors have given their assent. Peeples *v.* Slayden-Kirksey Woolen Mills, (Tex. Civ. App. 1905) 90 S. W. 61.

66. 2. Noyes *v.* American Freehold Land

Mortg. Co., 97 Minn. 38, 105 N. W. 1126; Stokes *v.* Hardy, 73 N. J. L. 255, 62 Atl. 1002.

Execution and Recording Vests Title. — Miller *v.* Swhier, (Ind. App. 1907) 79 N. E. 1092.

71. 3. McAvoy *v.* Jennings, 44 Wash. 79, 87 Pac. 53.

73. 3. Wylly-Gabbett Co. *v.* Williams, 53 Fla. 872, 42 So. 910; Hines *v.* Hays, (Ky. 1904) 82 S. W. 1007; Hart's Assigned Estate, 211 Pa. St. 219, 60 Atl. 728; Craig *v.* McKay, 8 Ont. L. Rep. 651.

Rebuttable Presumption of Intent to Defraud. — Craig *v.* McKay, 12 Ont. L. Rep. 121.

Preference Given to Holders of Bank Notes and to Depositors. — Taylor *v.* Hutchinson, 145 Ala. 202, 40 So. 108.

76. 2. Visalia Bank *v.* Dillonwood Lumber Co., 148 Cal. 18, 82 Pac. 374.

78. 1. Jackson *v.* Citizens' Bank, etc., Co., 53 Fla. 265, 44 So. 517.

2. Hutchinson *v.* National Bank of Commerce, 145 Ala. 196, 41 So. 143.

80. 3. Construction of Statutes Preferring Wages. — McDaniel *v.* Osborn, 166 Ind. 1, 75 N. E. 647.

A Preference for Wages and Materials furnished to manufacturing establishments, mines, railroads, public improvement companies, rolling mills, and foundries, is given by Ky. Stat. 1903, § 2487. Hall *v.* Guthrie, (Ky. 1907) 103 S. W. 721.

81. 3. Metcalfe *v.* Merchants, etc., Bank, 89 Miss. 649, 41 So. 377.

5. A Reservation of Power to Require the Trustee to Close Up the Business does not render the deed void as fraudulent. Bowling *v.* Davidson, (Va. 1907) 59 S. E. 368.

83. 5. Money in Lieu of Homestead. — By *Kentucky* Stat. 1903, § 86, the court may, in certain cases, order the sale of the homestead and the payment of the money to the assignor. Maupin *v.* Maupin's Assignee, (Ky. 1905) 89 S. W. 238.

6. Where the reservation was for $300 worth of personal property which was immediately thereafter appraised and set aside, it was held that the title to the property so set aside remained in the assignor. Miller *v.* Jackson, 34 Pa. Super. Ct. 31.

86. 6. Joel Bailey Davis Co. *v.* Augustus, 105 Va. 843, 54 S. E. 985; McAvoy *v.* Jennings, 44 Wash. 79, 87 Pac. 53.

Reasonable Time to Make Election. — Joel Bailey Davis Co. *v.* Augustus, 105 Va. 843, 54 S. E. 985.

90. 6. Haswell *v.* Blake, (Tex. Civ. App. 1905) 90 S. W. 1125.

Power to Compromise Disputed Claims Valid. — Joel Bailey Davis Co. *v.* Augustus, 105 Va. 843, 54 S. E. 985.

94. 6. Royster *v.* Heck, (Ky. 1906) 94 S. W. 8.

95. 4. A Power to Pay in Full Any Creditor Declining to Assent to the assignment is an improper proviso. *In re* Brindley, (1906) 1 K. B. 377.

A Provision for Payment of Debts Inadvertently Omitted is valid. Joel Bailey Davis Co. *v.* Augustus, 105 Va. 843, 54 S. E. 985.

96. 4. Where, at the time of the assignment, certain shares of stock belonging to the assignor were pledged as security for two notes, it was held that the assignor and a purchaser of the notes could not, without consent of the assignee, change the conditions of the pledge. Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214.

99. 3. Tapp *v.* Harper, (Ark. 1907) 103 S. W. 161.

4. White's Assigned Estate, 209 Pa. St. 627, 59 Atl. 271.

Rhode Island. — Under Laws 1902, p. 61, c. 984, § 4, it is provided that "every assignment * * * shall be effectual to dissolve any attachment, levy, or lien placed upon the property * * * not more than four months prior to the making of such assignment." Under such a statute it was held that a bond, given to dissolve an attachment made within the four months, was not vacated by a general assignment. Eldred *v.* Avedisian, 27 R. I. 68, 60 Atl. 677.

Pennsylvania. — The Act of June 4, 1901 (P. L. 413, 415) authorizes the court on application to vacate and set aside all legal proceedings not wholly completed and to stay executions. For construction of this act, see Weist *v.* Wuller, 210 Pa. St. 143, 59 Atl. 820.

100. 4. Murchie *v.* Wentworth, 74 N. H. 3, 64 Atl. 507.

101. 4. Statutory Wage Preferences Do Not Become Liens Superior to Existing Mortgages. — McDaniel *v.* Osborn, 166 Ind. 1, 75 N. E. 647.

103. 1. Gilbert Paper Co. *v.* Whiting Paper Co., 123 Wis. 472, 102 N. W. 20.

106. 2. Carpenter *v.* Jones County, 130 Iowa 494, 107 N. W. 435.

112. 1. The Assignee Has a Right to Possession unaffected by a vendor's statutory lien. Goodbar *v.* Knight, 89 Miss. 124, 42 So. 539.

113. 3. Com. *v.* Scoville, (Ky. 1907) 101 S. W. 1188.

114. 2. Statutory Provisions. — Kentucky Stat. (1903), §§ 2356, 87, 96, allows the assignee to sell realty at private sale. Kentucky Distilleries, etc., Co. *v.* Blanton, (C. C. A.) 149 Fed. 31.

Sale Not Necessarily Fraudulent Because of Inadequacy of Price. — Lacy *v.* Gunn, 144 Cal. 511, 78 Pac. 30.

Conveyance to Creditors in Settlement of Claims. — Where the assignee, after trying to sell the interest of the assignor in certain mortgaged houses, conveyed them to some of the creditors in extinguishment of their claims, it was held that he should not be charged with the difference between what the creditors allowed for the houses and their appraisement when the evidence showed that the arrangement was as favorable as could be expected. Real Estate Invest. Co.'s Assigned Estate, 212 Pa. St. 304, 61 Atl. 924.

5. Courts Usually Require Realty to Be Sold at Public Auction. — Cincinnati Third Nat. Bank *v.* Jackson, 156 Fed. 144.

115. 7. Craig *v.* McKay, 8 Ont. L. Rep. 651; Nodine *v.* Richmond, 48 Oregon 527, 87 Pac. 775, wherein the evidence was held to be insufficient to show that the land was purchased for the joint benefit of the purchaser and one of the trustees.

A Guaranty by the Assignee to the Buyer that

the assignee would find a purchaser if the buyer wanted to sell, was held to render the sale voidable at the option of the creditors. Nabours *v.* McCord, (Tex. 1907) 100 S. W. 1152.

117. 3. **Entitled to Compensation for Rent of His Own Office.** — Real Estate Invest. Co.'s Assigned Estate, 212 Pa. St. 304, 61 Atl. 924.

118. 4. **Attorney's Fees.** — For illustrations of both reasonable and excessive allowances, see Drey *v.* Watson, (C. C. A.) 138 Fed. 792.

Where the Trustee Was Merely a Formal Party attorney's fees were not allowed. Wilson *v.* Langhorne, 105 Va. 64, 52 S. E. 841.

119. 2. Merrit *v.* Torrance, 129 Iowa 310, 105 N. W. 585.

No Commissions to Trustee Where Commissioner of Court Made Sale. — Wilson *v.* Langhorne, 105 Va. 64, 52 S. E. 841.

Where the Compensation Was Fixed by the Deed of Assignment it was held to be proper for the court to allow additional compensation where it appeared that the services were different from those contemplated. McDougal *v.* Fuller, 148 Cal. 521, 83 Pac. 701.

For Illustration of Excessive Allowance, see Drey *v.* Watson, (C. C. A.) 138 Fed. 792.

121. 1. **Assignors and Creditors with Notice of Proceedings** are bound by the judgment of discharge. Freeman *v.* Wood, 14 N. Dak. 95, 103 N. W. 392.

4. German Security Bank *v.* Columbia Finance, etc., Co., (Ky. 1905) 85 S. W. 761; Haswell *v.* Blake, (Tex. Civ. App. 1905) 90 S. W. 1125.

Liable for Unlawfully Preferring Creditor. — Andrews *v.* Tuttle-Smith Co., 191 Mass. 461, 78 N. E. 99.

Assignee Not Liable if He Acts in Good Faith. — Merrit *v.* Torrance, 129 Iowa 310, 105 N. W. 585.

Acceptance of an Assignment makes the assignee a trustee of all the goods, effects, and credits assigned, even though he does not take actual possession, and he will be charged as trustee unless he fully accounts. Thompson *v.* Dyer, 100 Me. 421, 62 Atl. 76.

122. 2. Krodel's Assigned Estate, 27 Pa. Super. Ct. 419.

123. 3. Andrews *v.* Tuttle-Smith Co., 191 Mass. 461, 78 N. E. 99.

127. 2. **On the Question of the Liability of the Assignee** for goods purchased to complete the contracts of the assignor, evidence was admissible as to whether his services were gratuitous. Megowan *v.* Peterson, 102 N. Y. App. Div. 350, 92 N. Y. Supp. 611.

134. 4. **A Claim Is Not Extinguished** by the fact of filing or by payment of a dividend therein less in amount than the face of the claim. Little *v.* Sturgis, 127 Iowa 298, 103 N. W. 205.

Defective Affidavits Cannot Be Amended and Filed Nunc Pro Tunc. — Hughes *v.* Potts, (Tex. Civ. App. 1905) 87 S. W. 708.

135. 1. **Extension of Time Within Discretion of Court.** — Neff *v.* Clark, 95 Minn. 1, 103 N. W. 562.

137. 3. **Compliance with Statute.** — Where a statute required an affidavit to state "that the statement is true, that the debt is just, and that there are no credits or offsets," it was held that an affidavit "that the account is correct" was not a sufficient compliance with the statute. Hughes *v.* Potts, (Tex. Civ. App. 1905) 87 S. W. 708.

141. 2. Corbett *v.* Joannes, 125 Wis. 370, 104 N. W. 69.

153. 2. Early *v.* Early, 75 S. Car. 15, 54 S. E. 827, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153.

3. Early *v.* Early, 75 S. Car. 15, 54 S. E. 827, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153.

154. 6. **Order of Discharge Has All Elements of Final Judgment.** — Freeman *v.* Wood, 14 N. Dak. 95, 103 N. W. 392.

ASSIGNS.

156. 3. **Under Lessee Not "Assign."** — South of England Dairies *v.* Baker, (1906) 2 Ch. 637, 76 L. J. Ch. 78.

ASSUME.

163. 3. **Assume Synonymous with Presume.** — Com. *v.* Lavery, 188 Mass. 13, 73 N. E. 884.

AT.

168. 1. Harris *v.* Theus, (Ala. 1907) 43 So. 131.

175. 1. **At Least.** — Gregg's Estate, 213 Pa. St. 260, 62 Atl. 856.

177. 1. **At Once.** — Continental Casualty Co. *v.* Wade, (Tex. 1907) 105 S. W. 35.

ATTACHMENT.

184. 3. Bailey *v.* Ætna Indemnity Co., (Cal. App. 1907) 91 Pac. 416; Jewett *v.* Huffman, 14 N. Dak. 110, 103 N. W. 408; Warner *v.* Yates, 118 Tenn. 548, 102 S. W. 92; Advance Thresher Co. *v.* Schimke, (Wash. 1907) 91 Pac. 645.

Merely a Possessory Process. — Lowenthal *v.* Hodge, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 374, 105 N. Y. Supp. 120.

4. Holman *v.* Cooper, (Wash. 1907) 92 Pac. 781.

6. The lien obtained by the levying of an attachment affords the plaintiff the footing requisite to enable him to maintain a bill in equity to set aside a fraudulent deed which impedes the operation of the writ. Bainbridge *v.* Allen, 70 N. J. Eq. 355, 61 Atl. 706.

7. Dye *v.* Crary, 12 N. Mex. 460, 78 Pac. 533, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 184.

185. 1. Vandiver *v.* Waller, 143 Ala. 411, 39 So. 136; Drake *v.* De Witt, 1 Cal. App. 617, 82 Pac. 982.

3. De Arman *v.* Massey, (Ala. 1907) 44 So. 688; Merriman *v.* Currier, 191 Mass. 133, 77 N. E. 708; Bainbridge *v.* Allen, 70 N. J. Eq. 355, 61 Atl. 706; Avery *v.* Avery, 119 N. Y. App. Div. 698, 104 N. Y. Supp. 290; Katz *v.* Obenchain, 48 Oregon 352, 85 Pac. 617.

186. 4. **A Contract** made and to be performed in Minnesota, did not authorize an attachment against the defendant in California, under the statutes of that state. Drake *v.* De Witt, 1 Cal. App. 617, 82 Pac. 982.

In an Action on a Contract, a nonresident plaintiff is entitled to an attachment against a nonresident defendant. Bridges *v.* Wade, 110 N. Y. App. Div. 106, 97 N. Y. Supp. 156.

A Nonresident Is Not Entitled to an Attachment against a Foreign Corporation under a contract made out of the state for work to be performed out of the state. Bridges *v.* Wade, 113 N. Y. App. Div. 350, 99 N. Y. Supp. 126.

5. Attachment by a Federal Court cannot be enjoined by proceedings in the state courts. Beardslee *v.* Ingraham, 183 N. Y. 411, 76 N. E. 456.

188. 1. Anvil Gold Min. Co. *v.* Hoxsie, (C. C. A.) 125 Fed. 724; Shepherd *v.* Shepherd, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 418, 100 N. Y. Supp. 401.

2. Avery *v.* Avery, 119 N. Y. App. Div. 698, 104 N. Y. Supp. 290.

Under the Washington Statutes attachment is not an additional remedy, before judgment, in foreclosure proceedings. Advance Thresher Co. *v.* Schimke, (Wash. 1907) 91 Pac. 645.

3. Under the Wyoming Statute an attachment may issue in a civil action for the recovery of money. Collins *v.* Stanley, (Wyo. 1907) 88 Pac. 620.

4. Hale *v.* Milliken, 142 Cal. 134, 75 Pac. 653; McKay *v.* Elder, (Tex. Civ. App. 1906) 92 S. W. 268.

189. 1. Stewart *v.* Chappell, 100 Md. 538, 60 Atl. 625; Dudley *v.* Armenia Ins. Co., 115 N. Y. App. Div. 380, 100 N. Y. Supp. 818.

The Louisiana Code provides that the property of a debtor may be attached in the hands of a third person by his creditor, whether the amount be liquidated or not. Morgan's Louisiana, etc., R., etc., Co. *v.* Stewart, 119 La. 392, 44 So. 138.

2. Collins *v.* Stanley, (Wyo. 1907) 88 Pac. 620.

An Attachment Will Lie for Unliquidated Damages arising out of a contract as well as for a liquidated demand. John E. Hall Commission Co. *v.* Crook, 87 Miss. 445, 40 So. 20.

3. Martin *v.* Gunnison, 27 Ohio Cir. Ct. 113; McKay *v.* Elder, (Tex. Civ. App. 1906) 92 S. W. 268.

4. An action to recover back money paid on a contract which has been wrongfully rescinded, is on an implied contract within the meaning of the attachment laws of *Oregon.* William Hanley Co. *v.* Combs, (Oregon 1906) 87 Pac. 143.

190. 1. Adams *v.* Clark, 36 Colo. 65, 85 Pac. 642; Goodstein *v.* Frantz McRay Iron Works Co., (Colo. 1907) 92 Pac. 703.

2. Jordan *v.* Crickett, 123 Iowa 576, 99 N. W. 163.

192. 3. **Embezzlement.** — R. C. Stone Milling Co. *v.* McWilliams, 121 Mo. App. 319, 98 S. W. 828.

193. 1. In *Texas,* where the defendant is a nonresident, the plaintiff is authorized to sue by attachment for conversion of his property by the defendant. Hitson *v.* Hunt, (Tex. Civ. App. 1907) 101 S. W. 292.

6. Moshell *v.* Reed, (Ky. 1906) 97 S. W. 372.

194. 2. Lord *v.* F. M. Dowling Co., 52 Fla. 313, 42 So. 585; National Tube Works Co. *v.* Ring Refrigerating, etc., Co., 201 Mo. 30, 98 S. W. 620; Carstens *v.* Milo, 40 Wash. 335, 82 Pac. 410.

195. 2. **Obtaining Property by False Pretenses** is not, under the *South Dakota* statute, a ground for attachment. Pearsons *v.* Peters, 19 S. Dak. 162, 102 N. W. 606.

6. Foreign Corporation Cannot Be Attached at Suit of Nonresident. — Bridges *v.* Wade, 113 N. Y. App. Div. 350, 99 N. Y. Supp. 126.

8. Brooks *v.* Hutchinson, 122 Ga. 838, 50 S. E. 926; Blackburn *v.* Hanlon, (Ky. 1907) 99 S. W. 252.

197. 5. **An Intent to Give an Unfair Preference to a Creditor** is a statutory ground for attachment in *Louisiana.* Patterson Bank *v.* Urban Co., 114 La. 788, 38 So. 561.

6. Haas *v.* Cook, (Ala. 1906) 41 So. 731; Pelzer Mfg. Co. *v.* Pitts, 76 S. Car. 349, 57 S. E. 29.

7. Need Not Specify Names of Partners. — Taylor *v.* Folds, 2 Ga. App. 453, 58 S. E. 683.

8. Albright *v.* United Clay Production Co., 5 Penn. (Del.) 198, 62 Atl. 726; Pacific Selling Co. *v.* Albright-Prior Co., (Ga. App. 1907) 59 S. E. 468 (*obiter*).

Must Be Proved to Be Foreign Corporation. — American Trading Co. *v.* Bedouin Steam Nav. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 624, 96 N. Y. Supp. 271.

198. 4. Webb *v.* Wheeler, (Neb. 1907) 112 N. W. 369.

5. Brand *v.* Auto Service Co., (N. J. 1907) 67 Atl. 19.

6. An Uncontradicted Recital in a Contract is sufficient to show nonresidence. Anglo-Wyoming Oil Fields *v.* Miller, 216 Ill. 272, 74 N. E. 821.

199. 1. **A Corporation Is a Resident,** irrespective of its domicil, when it does business in the state and its officers reside there, upon whom process may be served. Conversely, a corporation, no matter when incorporated, which is doing business in the state and does not have officers residing in the state upon whom process may be served, is a nonresident. Brand *v.* Auto Service Co., (N. J. 1907) 67 Atl. 19.

2. Mahoney *v.* Tyler, 136 N. Car. 40, 48 S. E. 549.

200. 2. Morgan *v.* D. W. Alderman, etc., Co., 70 S. Car. 462, 50 S. E. 26.

3. Appearance in Action Gives Jurisdiction. — Savannah Grocery Co. *v.* Rizer, 70 S. Car. 501, 50 S. E. 199.

4. Under the Ohio Statute a foreign corporation which has secured the prescribed certificate entitling it to do business in the state is not liable to attachment on the ground of nonresidence. Armour Car Lines *v.* Bigelow Fruit Co., 26 Ohio Cir. Ct. 496.

201. 2. Farris *v.* Gross, 75 Ark. 391, 5 Ann. Cas. 616, 87 S. W. 633; Carstarphen Warehouse Co. *v.* Fried, 124 Ga. 544, 52 S. E. 598; Lyons *v.* Urgalones, 189 Mass. 424, 75 N. E. 950.

Good Faith Must Be Shown to remove the transaction from the imputation of fraud. Northfield First Nat. Bank *v.* Anderson, 101 Minn. 107, 111 N. W. 947.

5. Breeden *v.* Peale, 106 Va. 39, 55 S. E. 2.

The placing by a debtor of his property in

the hands of another with instructions to convert it into cash and pay the proceeds to certain persons to the exclusion of others amounts to a fraud. Frank *v.* Minsterketter, (Ky. 1907) 99 S. W. 219.

6. Frank *v.* Minsterketter, (Ky. 1907), 99 S. W. 219.

Gist of Offense Is Intent.— Farris *v.* Gross, 75 Ark. 391, 5 Ann. Cas. 616, 87 S. W. 633.

Intent Cannot Be Inferred from a preference given to certain creditors, when such preference is not inhibited. Breeden *v.* Peale, 106 Va. 39, 55 S. E. 2.

7. Bainbridge *v.* Allen, 70 N. J. Eq. 355, 61 Atl. 706.

8. **The Burden of Proving Fraudulent Intent** is on the party applying for the writ. Durkin *v.* Paten, 97 N. Y. App. Div. 139, 89 N. Y. Supp. 622.

202. 1. Parson *v.* Plew, (Ky. 1907) 105 S. W. 377.

10. Goodyear Tire, etc., Co. *v.* Consolidated Rubber Tire Co., 26 Ohio Cir. Ct. 269.

203. 1. Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

205. 7. **Instruments of Interstate Commerce Not Attachable.**— Davis *v.* Cleveland, etc., R. Co., 146 Fed. 403; Connery *v.* Quincy, etc., R. Co., 92 Minn. 20, 2 Ann. Cas. 347, 97 N. W. 365; Shore *v.* Baltimore, etc., R. Co., 76 S. Car. 472, 57 S. E. 526.

207. 1. **Affidavit by Agent Sufficient.** — Skinner Mfg. Co. *v.* Vineberg, 8 Quebec Pr. 201.

8. W. L. Adamson Co. *v.* Izor, 76 Ohio St. 64, 80 N. E. 1037.

In New Jersey no bond is required. Wilkinson *v.* Block, (N. J. 1907) 67 Atl. 117.

209. 2. **How Return Compelled.** — McLaughlin *v.* Jackson Circuit Judge, 147 Mich. 379, 110 N. W. 1029.

Burden on Debtor to Show Irregularities. — Lewis *v.* Rasp, 14 Okla. 69, 76 Pac. 142.

6. **Plaintiff May Prove Title in Defendant.** — American Nat. Bank *v.* Lee, 124 Ga. 863, 53 S. E. 268.

7. **Property of the Estate of a Decedent** is subject to attachment, under the *Massachusetts* statute, in a writ against an administrator. Herthel *v.* McKim, 190 Mass. 522, 5 Ann. Cas. 911, 77 N. E. 695.

10. **Real Property of Nonresident May Be Attached.**— Johnson *v.* Miner, 144 Cal. 785, 78 Pac. 240; Munger *v.* Doolan, 75 Conn. 655, 55 Atl. 169.

11. **Life Rent Attachable.** — Lamoureux *v.* Blanchard, 8 Quebec Pr. 317.

12. Sheehy *v.* Scott, 128 Iowa 551, 104 N. W. 1139; Tucker *v.* Denico, 27 R. I. 239, 61 Atl. 642.

210. 8. **Uncertain Interest Not Attachable.**— Boyer *v.* Robison, 43 Wash. 97, 86 Pac. 385.

11. See Arkenburgh *v.* Arkenburgh, 114 N. Y. App. Div. 436, 99 N. Y. Supp. 1127.

12. Dumas *v.* Geer, 144 Mich. 377, 108 N. W. 84; Morrison *v.* New Haven, etc., Min. Co., 143 N. Car. 250, 55 S. E. 611.

211. 2. **Property Acquired by Fraudulent Sale.** — Jordan *v.* Crickett, 123 Iowa 576, 99 N. W. 163.

Property of Foreign Corporation.— Connery *v.* Quincy, etc., R. Co., 92 Minn. 20, 2 Ann. Cas. 347, 97 N. W. 365.

4. Scott *v.* Houpt, 73 Ark. 78, 83 S. W. 1057; Lipscomb *v.* Condon, 56 W. Va. 416, 49 S. E. 392.

5. **Equitable Interest Attachable in South Carolina.**— Pelzer Mfg. Co. *v.* Pitts, 76 S. Car. 349, 57 S. E. 29.

212. 1. Morris *v.* Hart, 73 N. J. L. 364, 63 Atl. 903; Lemly *v.* Ellis, 143 N. Car. 200, 55 S. E. 629; *In re* John L. Nelson, etc., Co., 149 Fed. 590.

2. **Property Sold on Condition.** — McIver *v.* Williamson-Halsell-Frazier Co., (Okla. 1907) 92 Pac. 170.

3. **Property Held under Contract by Bank.** — New Roads Bank *v.* Kentucky Refining Co., (Ky. 1905) 85 S. W. 1103.

4. Fleisher *v.* Hinde, (Mo. App. 1906) 93 S. W. 1126.

213. 1. Fleisher *v.* Hinde, (Mo. App. 1906) 93 S. W. 1126.

4. Vandiver *v.* Waller, 143 Ala. 411, 39 So. 136; McLaughlin *v.* Jackson Circuit Judge, 147 Mich. 379, 110 N. W. 1079.

8. **Salary of Choir Master Not Attachable.** — Lefebvre *v.* Drolet, 8 Quebec Pr. 200.

9. See Fisken *v.* Marshall, 10 Ont. L. Rep. 552.

Policy Having No Cash Surrender Value. — Marks *v.* Equitable L. Assur. Soc., 109 N. Y. App. Div. 675, 96 N. Y. Supp. 551.

11. Evans *v.* Groesbeck, (Tex. Civ. App. 1906) 93 S. W. 1005; Jenness *v.* Shrives, 188 Mass. 70, 74 N. E. 312.

Pledgor's Interest Attachable.— Ottumwa Nat. Bank *v.* Totten, 114 Mo. App. 97, 89 S. W. 65.

214. 1. Holmes *v.* Marshall, 145 Cal. 777, 2 Ann. Cas. 88, 79 Pac. 534.

7. *United States.* — U. S. *v.* Neely, 146 Fed. 764.

Arkansas. — Johnson *v.* Gillenwater, 75 Ark. 114, 87 S. W. 439; Terry *v.* Clark, 77 Ark. 567, 92 S. W. 788; Tillar *v.* Liebke, (Ark. 1906) 95 S. W. 769; Faulkner *v.* Cook, 83 Ark. 205, 103 S. W. 384.

Florida. — Valdosta Mercantile Co. *v.* White, 52 Fla. 453, 42 So. 633.

Georgia. — Hopper *v.* Wilson, 128 Ga. 776, 58 S. E. 359.

Iowa. — Anderson *v.* Taylor, 131 Iowa 485, 108 N. W. 1051; City Nat. Bank *v.* Crahan, (Iowa 1907), 112 N. W. 793.

Kentucky. — Patton *v.* Madison Nat. Bank, (Ky. 1907) 104 S. W. 264.

Louisiana. — Hicks Co. *v.* Thomas, 114 La. 219, 38 So. 148.

Minnesota. — Wright *v.* Tanner, 92 Minn. 94, 99 N. W. 422.

Mississippi. — Canty *v.* Wood, (Miss. 1905) 38 So. 315.

Missouri. — Siling *v.* Hendrickson, 193 Mo. 365, 92 S. W. 105; Lafferty *v.* Hilliker, 109 Mo. App. 56, 81 S. W. 910; Vermillion *v.* Parsons, 118 Mo. App. 260, 94 S. W. 298.

Nebraska. — Danker *v.* Jacobs, (Neb. 1907) 112 N. W. 579.

New York. — Lipschitz *v.* Halperin, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 280, 103 N. Y. Supp. 202.

Pennsylvania. — Rogers *v.* Schadt, 218 Pa. St. 617, 67 Atl. 919.

Texas. — Horstman *v.* Little, (Tex. Civ. App. 1905) 88 S. W. 286; Terry *v.* Webb, (Tex. Civ. App. 1906) 96 S. W. 70; Groesbeck *v.* Evans, (Tex. Civ. App. 1904) 83 S. W. 430.

Washington. — Perkins *v.* Bailey, 38 Wash. 46, 80 Pac. 177.

215. 1. **Acquires No Greater Interest than Defendant Had.** — City Nat. Bank *v.* Crahan, (Iowa 1907) 112 N. W. 793.

2. Kelley *v.* Tarbox, 102 Me. 119, 66 Atl. 9.

3. See dissenting opinion of Hoke, J., in Coffin *v.* Harris, 141 N. Car. 714, 54 S. E. 437, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 215.

222. 3. Walsh *v.* Hiawatha First Nat. Bank, 228 Ill. 446, 81 N. E. 1067, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 222; Seward *v.* Miller, 106 Va. 309, 55 S. E. 681.

4. Rhodes *v.* Samuels, 67 Neb. 1, 93 N. W. 148, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 222.

8. Katz *v.* Obenchain, 48 Oregon 352, 85 Pac. 617.

The Lien of an Attachment Becomes Merged in the subsequent judgment if the identical property remains in the judgment debtor when the judgment is docketed. Water Supply Co. *v.* Sarnow, (Cal. App. 1907) 92 Pac. 667.

224. 3. Lutter *v.* Grosse, (Ky. 1904) 82 S. W. 278.

229. 8. Haines *v.* Conwell, 48 Oregon 469, 87 Pac. 265.

230. 1. **Unrecorded Resulting Trust.** — Waterman *v.* Buckingham, 79 Conn. 286, 64 Atl. 212.

2. Ray *v.* Keith, 218 Ill. 182, 75 N. E. 921; Paris Grocer Co. *v.* Burks, (Tex. 1907) 105 S. W. 174.

5. **A Foreign Corporation.** — Dudley *v.* Chicago, etc., R. Co., 58 W. Va. 604, 52 S. E. 718.

6. Pearne *v.* Coyne, 79 Conn. 570, 65 Atl. 973.

Does Not Validate Void Levy. — Jones *v.* Baxter, 146 Ala. 620, 41 So. 781.

A Demand of the Attached Property by the Mortgagee, even though the property was wrongfully attached, will not constitute a dissolution. Cousins *v.* O'Brien, 188 Mass. 146, 74 N. E. 289.

Report of Appraisers on Value of Land. — Hawkins *v.* Farley, 191 Mass. 236, 77 N. E. 319.

231. 1. McCartney *v.* Williams, 17 Ohio Dec. 645, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 231.

233. 5. Virginia *v.* Staake, (C. C. A.) 133 Fed. 717; *In re* Warner, 144 Fed. 987; Cavanaugh *v.* Fenley, 94 Minn. 505, 103 N. W. 711; Meyers *v.* Smith, (Mo. App. 1906) 98 S. W. 104; D. C. Wise Coal Co. *v.* Columbia Lead, etc., Co., 123 Mo. App. 249, 100 S. W. 680; Goodnough Mercantile Co. *v.* Galloway, 48 Oregon 239, 84 Pac. 1049; Gardiner *v.* Ross, 19 S. Dak. 497, 104 N. W. 220; Farrell *v.* Lockett, 115 Tenn. 494, 91 S. W. 209; Batchelder *v.* Wedge, (Vt. 1907) 67 Atl. 828.

237. 4. **Death Dissolves Attachment.** — Dunbar *v.* Kelly, 189 Mass. 390, 75 N. E. 740; Herthel *v.* McKim, 190 Mass. 522, 5 Ann. Cas. 911, 77 N. E. 695.

239. 2. **On Final Judgment for the Plaintiff on the Merits,** if no order is taken subjecting the attached property, the attachment is abandoned. Mullendore *v.* Hall, 2 Tenn. Ch. App. 273. See also Moore Schafer Shoe Mfg. Co. *v.* Billings, 46 Oregon 401, 80 Pac. 422.

241. 3. Gunnison *v.* Abbott, 73 N. H. 590, 64 Atl. 23.

4. **But When Nonsuit Set Aside at Same Term.** — Gunnison *v.* Abbott, 73 N. H. 590, 64 Atl. 23.

242. 2. **A Judgment against the Defendant** in an attachment suit, without a judgment of sale of the property will not release the lien of the attachment. Reynolds *v.* Williams, (Ala. 1907) 44 So. 406.

A Tender by the Defendant before suit was brought of the amount of the decree, except the interest, is no ground for discharging the attachment and declaring the bond released, where no money has been paid into court. Dudley *v.* Chicago, etc., R. Co., 58 W. Va. 604, 52 S. E. 718.

244. 4. Dunbar *v.* Kelly, 189 Mass. 390, 75 N. E. 740.

245. 6. O'Brien *v.* Quinn, 35 Mont. 441, 90 Pac. 166; Cahoon *v.* Hoggan, 31 Utah 74, 86 Pac. 763.

An attachment procured in an action brought in the name of a person who has not authorized or sanctioned it is wrongful. Bauer *v.* Mitchell, (Neb. 1907) 113 N. W. 986.

246. 1. See Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009.

3. Vandiver *v.* Waller, 143 Ala. 411, 39 So. 136; Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009; Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 143 N. Car. 54, 55 S. E. 422; Sanger *v.* Brandon, (Tex. Civ. App. 1905) 88 S. W. 431; Faroux *v.* Cornwell, (Tex. Civ. App. 1905) 90 S. W. 537.

Levy on Exempt Property. — Faroux *v.* Cornwell, (Tex. Civ. App. 1905) 90 S. W. 537.

The Burden Is on the Defendant to prove the wrongful serving out of the attachment. McFaddin *v.* Sims, (Tex. Civ. App. 1906) 97 S. W. 335.

6. Duff, etc., Furniture Co. *v.* Read, 74 Kan. 730, 88 Pac. 263, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 246.

247. 1. Kentucky Refining Co. *v.* Morilton Bank, (Ky. 1905) 89 S. W. 492; Walsh *v.* Brown, 194 Mass. 317, 80 N. E. 465; McFaddin *v.* Sims, (Tex. Civ. App. 1906) 97 S. W. 335.

The failure of the sheriff to deliver the property to the defendant on the vacation of the attachment, is a default of the sheriff, for which the plaintiff is not liable. Mahoney *v.* Tyler, 136 N. Car. 40, 48 S. E. 549.

2. Fite *v.* Briedenback, (Ky. 1907) 105 S. W. 1182.

3. Carey *v.* Wolff, 72 N. J. L. 510, 63 Atl. 270.

5. **Measure of Damages.** — New Sharon Creamery Co. *v.* Knowlton, 132 Iowa 672, 108 N. W. 770; Bell *v.* Thompson, (Ky. 1907) 102 S. W. 830; Carr *v.* Wood, (Ky. 1907) 103 S. W. 314; Wallingford *v.* Kaiser, 110 N. Y. App. Div. 503, 96 N. Y. Supp. 981; Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 143 N. Car. 54, 55 S. E. 422; W. L. Adamson Co. *v.* Izor,

76 Ohio St. 64, 80 N. E. 1037; McKay *v.* Elder, (Tex. Civ. App. 1906) 92 S. W. 268; McGill *v.* Fuller, (Wash. 1907) 88 Pac. 1038.

Punitive Damages.— Carey *v.* Wolff, 72 N. J. L. 510, 63 Atl. 270; Faroux *v.* Cornwell, (Tex. Civ. App. 1905) 90 S. W. 537.

7. Stewart *v.* Smallwood, (Tex. Civ. App. 1907) 102 S. W. 159; McGill *v.* Fuller, (Wash. 1907) 88 Pac. 1038.

Counsel Fees — When Recoverable. — Vandiver *v.* Waller, 143 Ala. 411, 39 So. 136; Tullis *v.* McClary, 128 Iowa 493, 104 N. W. 505; Tripp *v.* Hymer, (Ky. 1907), 99 S. W. 330; Bonds *v.* Garvey Co., 87 Miss. 335, 39 So. 492; State *v.* Allen, 124 Mo. App. 465, 103 S. W. 1090; Plymouth Gold Min. Co. *v.* U. S. Fidelity, etc., Co., 35 Mont. 23, 88 Pac. 565.

ATTEMPT.

249. 1. Radebaugh *v.* Scanlan, (Ind. App. 1907) 82 N. E. 547, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 249.

ATTEMPTS TO COMMIT CRIME.

251. 1. State *v.* Doran, 99 Me. 329, 59 Atl. 440; State *v.* Wood, 19 S. Dak. 261, 103 N. W. 25, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 250; Rudolph *v.* State, 128 Wis. 222, 107 N. W. 466, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 250.

For Further Expositions. — State *v.* Taylor, 47 Oregon 455, 8 Ann. Cas. 627, 84 Pac. 82, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 250.

6. Suicide — In Maine. — An attempt to commit suicide is not an indictable offense in the state of Maine. May *v.* Pennell, 101 Me. 516, 8 Ann. Cas. 351, 64 Atl. 885.

Larceny. — Tinker *v.* State, 125 Ga. 743, 54 S. E. 662; Com. *v.* Flaherty, 25 Pa. Super. Ct. 490.

253. 1. Assault and Battery. — Heard *v.* State, 38 Ind. App. 511, 78 N. E. 358.

255. 1. Assault with Intent to Rape. — State *v.* Callahan, 100 Minn. 63, 110 N. W. 342. See also State *v.* Barkley, 129 Iowa 484, 105 N. W. 506.

Attempt to Commit Rape. — People *v.* Ah Lung, 2 Cal. App. 278, 83 Pac. 296; State *v.* Marselle, 43 Wash. 273, 86 Pac. 586.

Attempt to Commit Incest. — State *v.* Winslow, 30 Utah 403, 8 Ann. Cas. 908, 85 Pac. 433.

Attempt to Commit Larceny. — Tinker *v.* State, 125 Ga. 743, 54 S. E. 662.

Attempt to Escape from Custody. — Bradford *v.* State, 146 Ala. 150, 41 So. 471.

Breaking with Intent to Commit Larceny. — Com. *v.* Flaherty, 25 Pa. Super. Ct. 490.

2. Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310; Heard *v.* State, 38 Ind. App. 511, 78 N. E. 358. See also Chelsey *v.* State, 121 Ga. 340, 49 S. E. 258.

May Be Proved by Positive or Circumstantial Evidence. — Heard *v.* State, 38 Ind. App. 511, 78 N. E. 358.

258. 2. See State *v.* Barkley, 129 Iowa 484, 105 N. W. 506.

An Assault and Battery upon a female of tender years will not alone sustain a conviction for assault with intent to rape. Anderson *v.* State, 77 Ark. 37, 90 S. W. 846.

The Evidence may be such that the court should not say that the jury are not entitled to pass upon it for the purpose of determining if the crime has been committed. State *v.* Marselle, 43 Wash. 273, 86 Pac. 586.

259. 1. People *v.* Ah Lung, 2 Cal. App. 278, 83 Pac. 296; Bourland *v.* State, (Tex. Crim. 1906) 93 S. W. 115.

261. 1. Evidence of Sufficient Force to Manifest Intent. — Castle *v.* State, (Tex. Crim. 1905) 90 S. W. 32.

To Sustain a Conviction for an assault with intent to commit rape, every ingredient of the crime of rape, except the accomplishment of that crime, must be established beyond a reasonable doubt. Newman *v.* People, 223 Ill. 324, 79 N. E. 80.

262. 5. In Attempt to Provoke Another to Commit Assault intent is an essential element. Heard *v.* State, 38 Ind. App. 511, 78 N. E. 358.

263. 6. Hogan *v.* State, 50 Fla. 86, 7 Ann. Cas. 139, 39 So. 464; State *v.* Doran, 99 Me. 329, 59 Atl. 440.

264. 1. Rex *v.* Linneker, (1906) 2 K. B. 99, 75 L. J. K. B. 385.

3. Rudolph *v.* State, 128 Wis. 222, 107 N. W. 466. See also State *v.* Taylor, 47 Oregon 455, 8 Ann. Cas. 627, 84 Pac. 82.

16. Com. *v.* Flaherty, 25 Pa. Super. Ct. 490.

265. 1. The furnishing of materials to commit arson and the payment of compensation are sufficient overt acts. State *v.* Taylor, 47 Oregon 455, 8 Ann. Cas. 627, 84 Pac. 82.

2. State *v.* Hurley, 79 Vt. 28, 64 Atl. 78.

4. Davis *v.* State, 89 Miss. 21, 42 So. 542; State *v.* Bell, 194 Mo. 264, 91 S. W. 898.

10. People *v.* Buckley, 91 N. Y. App. Div. 586, 87 N. Y. Supp. 191; State *v.* Hurley, 79 Vt. 28, 64 Atl. 78.

266. 6. State *v.* Wood, 19 S. Dak. 261, 103 N. W. 25.

The Procuring of Tools adapted to jail breaking does not constitute an attempt to break jail. State *v.* Hurley, 79 Vt. 28, 64 Atl. 78, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 266.

267. 6. Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310.

Proof of Throwing Red Pepper in the eyes of a person will not sustain a conviction for mayhem where it is shown that red pepper will not destroy the eye, but only inflame it. Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310.

ATTORNEY AND CLIENT.

281. 3. An attorney is a man set apart by the law to expound to all persons who seek him the laws of the land, relating to high interests of property, liberty, and life. Ingersoll *v.* Coal Creek Coal Co., 117 Tenn. 263, 98 S. W. 178.

An Attorney Who Has Not Filed His Certificate as required by law and has practiced for one year only, since which time he has not been engaged in the practice of law, is not an attorney within the meaning of a statute prohibiting attorneys from buying claims for the purpose of bringing actions upon them. Thompson *v.* Stiles, (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 334, 89 N. Y. Supp. 876.

283. 1. *Connecticut.* — *In re* Durant, (Conn. 1907) 67 Atl. 497.

Illinois. — People *v.* Payson, 215 Ill. 476, 74 N. E. 383.

Missouri. — Barkley Cemetery Assoc. *v.* McCune, 119 Mo. App. 349, 95 S. W. 295; *In re* Clark, (Mo. App. 1907) 103 S. W. 1105.

New Jersey. — *In re* Young, (N. J. 1907) 67 Atl. 717.

New York. — People *v.* Haas, 105 N. Y. App. Div. 119, 93 N. Y. Supp. 790; Matter of Holland, 110 N. Y. App. Div. 799, 97 N. Y. Supp. 202; Matter of Manheim, 113 N. Y. App. Div. 136, 99 N. Y. Supp. 87; Matter of Kaffenburgh, 115 N. Y. App. Div. 346, 101 N. Y. Supp. 507; *In re* Klein, (Supm. Ct. Spec. T.) 101 N. Y. Supp. 663.

Oklahoma. — Nolan *v.* St. Louis, etc., R. Co., (Okla. 1907) 91 Pac. 1128.

Tennessee. — Ingersoll *v.* Coal Creek Coal Co., 117 Tenn. 263, 98 S. W. 178.

Utah. — *In re* Jones, 29 Utah 333, 81 Pac. 162.

Washington. — State *v.* Ballinger, 41 Wash. 23, 82 Pac. 1018; State *v.* Martin, (Wash. 1906) 87 Pac. 1054.

2. *Compare* Matter of Manheim, 113 N. Y. App. Div. 136, 99 N. Y. Supp. 87.

4. *In re* Hovey, 1 Cal. App. xviii, 81 Pac. 1019; *In re* Durant, (Conn. 1907) 67 Atl. 497; O'Brien's Petition, 79 Conn. 46, 63 Atl. 777; *In re* Musgrave, (Pa. 1907) 66 Atl. 84. But see *In re* Applicants for License, 143 N. Car. 1, 55 S. E. 635.

284. 1. Where on the application of a disbarred attorney to be restored, it appeared that his disbarment was for professional misconduct involving no criminality and no serious wrong to any one, and that for ten years before his application for restoration he had lived an unobjectionable life, it was held that he should be restored. *In re* Burris, 147 Cal. 370, 81 Pac. 1077.

3. A regularly admitted attorney of another state may be admitted to practice in Pennsylvania on motion by complying with the statutory requirements. *In re* Musgrave, (Pa. 1907) 66 Atl. 84.

285. 4. *In re* French, 37 N. Bruns. 359.

287. 5. O'Brien's Petition, 79 Conn. 46, 63 Atl. 777. See also dissenting opinion of Brown, J., in *In re* Applicants for License, 143 N. Car. 1, 55 S. E. 635, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 287.

288. 1. **Appeal from Order Refusing Admission.** — O'Brien's Petition, 79 Conn. 46, 63 Atl. 777.

291. 6. Husband *v.* Georgia, etc., R. Co., (Ga. App. 1907) 59 S. E. 326, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 291.

294. 2. Fuller *v.* Stevens, (Ala. 1905) 39 So. 623; Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756; State *v.* Drake, 128 Iowa 539, 105 N. W. 54; Darrell *v.* Com., (Ky. 1904) 82 S. W. 289; Miller *v.* State, (Tex. Crim. 1904) 83 S. W. 393.

295. 2. Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756.

4. *Ex p.* Randall, (Ala. 1906) 42 So. 870; Bryant *v.* McIntosh, 3 Cal. App. 95, 84 Pac. 440; People *v.* Keithley, 225 Ill. 30, 80 N. E. 50; State *v.* Rocker, 130 Iowa 239, 106 N. W. 645; Jenkins *v.* Barber, 85 Miss. 666, 38 So. 36; Johnson *v.* Johnson, 141 N. Car. 91, 53 S. E. 623.

Counsel Who Appear for the Executor or Trustee in cases brought for the construction of wills ought not to appear and act for legatees and devisees under the will. Smith *v.* Jordan, 77 Conn. 469, 59 Atl. 507.

Relations Not Inconsistent. — An attorney may act for both parties, to the knowledge of each, in the preparation of papers needed to effect their purpose, where he gives all the advice necessary to the protection of each. Taylor *v.* Vail, (Vt. 1907) 66 Atl. 820.

An Attorney for a Trustee in Bankruptcy May Prepare a Claim for a Creditor where the interests of the bankrupt estate are not prejudiced. *In re* Habegger, (C. C. A.) 139 Fed. 623, 3 Ann. Cas. 276.

296. 2. Whitcomb *v.* Collier, 133 Iowa 303, 110 N. W. 836.

299. 2. See People *v.* Johnson, (Colo. 1907) 90 Pac. 1038.

300. 5. *In re* Durant, (Conn. 1907) 67 Atl. 497; *In re* Newby, (Neb. 1906) 107 N. W. 850; Ingersoll *v.* Coal Creek Coal Co., 117 Tenn. 263, 98 S. W. 178; State *v.* Grover, (Wash. 1907) 91 Pac. 564.

State Court May Disbar for Misconduct Committed Before Federal Court. — Matter of Lamb, 105 N. Y. App. Div. 462, 94 N. Y. Supp. 331.

In Disbarment Proceeding Court Is Trier of Both Facts and Law. — Matter of Smith, 73 Kan. 743, 85 Pac. 584.

Charges Require Clear and Convincing Evidence. — Matter of Burnette, 70 Kan. 229, 78 Pac. 440.

Court Should Never Disbar on Testimony of Doubtful Character. — Dempsey *v.* Wells, 109 Mo. App. 470, 84 S. W. 1015.

Power Must Be Exercised with Great Caution. — *In re* Adriaans, 28 App. Cas. (D. C.) 515.

Statute of Limitations No Defense to Disbarment Proceedings. — People *v.* Hooper, 218 Ill. 313, 75 N. E. 896.

302. 2. Matter of Smith, 73 Kan. 743, 85 Pac. 584, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 302; Matter of Burnette, 70 Kan. 229, 78 Pac. 440. But see *In re* Collins, 147 Cal. 8, 81 Pac. 220.

4. *In re* Young, (N. J. 1907) 67 Atl. 717.

Disbarment proceedings against an attorney are not designed as a penalty or punishment for crime, but are solely for the purpose of purging the roll of legal practitioners of an unworthy or disreputable member. In such a proceeding no fine, imprisonment, or other punitive sentence can be imposed; but the judgment therein can only be one revoking the attorney's license to practice. State *v.* McRae, 49 Fla. 389, 6 Ann. Cas. 580, 38 So. 605.

5. State *v.* Mosher, 128 Iowa 82, 5 Ann. Cas. 984, 103 N. W. 105; Matter of Smith, 73 Kan. 743, 85 Pac. 584, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 302; *In re* Young, (N. J. 1907) 67 Atl. 717; *Ex p.* Eastham, 46 Oregon 475, 80 Pac. 1057, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 302; State *v.* Martin, (Wash. 1906) 87 Pac. 1054.

Practising under an Assumed Name is not warranted by Penal Code N. Y., § 363*b*, which authorizes the conducting of a business under an assumed name upon complying with certain formalities. Matter of Kaffenburgh, 115 N. Y. App. Div. 346, 101 N. Y. Supp. 507.

Deceit and Malpractice. — Where a New York attorney went to Texas, and by operating under an assumed name attempted with his client to escape from Texas and thus prevent the extradition of said client, who was wanted in New York as a witness, it was held that the attorney was guilty of conduct that was unprofessional, and guilty of such deceit and malpractice as to subject him to disbarment. Matter of Kaffenburgh, 115 N. Y. App. Div. 346, 101 N. Y. Supp. 507.

Where an attorney practiced under the name of a firm, one member of which was dead and the other suspended from practice, it was held that he was guilty of deceit and malpractice and should be disbarred. Matter of Kaffenburgh, 115 N. Y. App. Div. 346, 101 N. Y. Supp. 507.

Fraudulent or Corrupt Conduct Must Be Proved — *In re* Jones, 29 Utah 333, 81 Pac. 162.

6. Disbarment for "Deceit" — Statute. — See Matter of Clark, 184 N. Y. 222, 77 N. E. 1.

303. 1. *In re* Durant, (Conn. 1907) 67 Atl. 497; State *v.* Mosher, 128 Iowa 82, 5 Ann. Cas. 984, 103 N. W. 105; State *v.* Tanner, (Oregon 1907) 88 Pac. 301.

Admission Procured by Fraud. — People *v.* Gilmore, 214 Ill. 569, 73 N. E. 737; People *v.* Propper, 220 Ill. 455, 77 N. E. 208; Matter of Marx, 115 N. Y. App. Div. 448, 101 N. Y. Supp. 680; State Board of Law Examiners *v.* Williams, 116 Tenn. 51, 92 S. W. 521. But see Beckner *v.* Com., (Ky. 1907) 103 S. W. 378.

2. Contempt Proceeding and Proceeding to Suspend Cannot Be Combined. — People *v.* O'Brien, 196 Ill. 250, 63 N. E. 667; People *v.* Kavanagh, 220 Ill. 49, 77 N. E. 107.

304. 1. People *v.* Bryce, 36 Colo. 125, 84 Pac. 816.

2. Matter of Smith, 73 Kan. 743, 85 Pac. 584; State *v.* Sale, 188 Mo. 493, 87 S. W. 967; *In re* Thresher, 33 Mont. 441, 8 Ann. Cas. 845, 84 Pac. 876; *In re* Young, (N. J. 1907) 67 Atl. 717.

Acquittal Held No Bar to Disbarment Proceedings. — People *v.* Thomas, 36 Colo. 126, 91 Pac. 36. *Contra,* People *v.* John, 212 Ill. 615, 72 N. E. 789.

305. 1. People *v.* Burton, (Colo. 1907) 88 Pac. 1063; People *v.* Gilmore, 214 Ill. 569, 73 N. E. 737.

2. People *v.* Payson, 215 Ill. 476, 74 N. E. 383.

4. Matter of Clark, 184 N. Y. 222, 77 N. E. 1, *affirming* 108 N. Y. App. Div. 150, 95 N. Y. Supp. 388.

306. 2. Johnson *v.* State, (Ala. 1907) 44 So. 671; *In re* Collins, 147 Cal. 8, 81 Pac. 220.

A Private Letter to a judge to which the writer gave no publicity was held not to call for disbarment. Matter of Manheim, 113 N. Y. App. Div. 136, 99 N. Y. Supp. 87.

307. 4. People *v.* Nicholas, 36 Colo. 42, 84 Pac. 67; People *v.* Gilmore, 214 Ill. 569, 73 N. E. 737; People *v.* Stirlen, 224 Ill. 636, 79 N. E. 969; Bar Assoc. *v.* Casey, (Mass. 1907) 81 N. E. 892; *In re* Thresher, 33 Mont. 441, 8 Ann. Cas. 845, 84 Pac. 876; Matter of Clark, 108 N. Y. App. Div. 150, 95 N. Y. Supp. 388; Matter of Cohn, 120 N. Y. App. Div. 378, 105 N. Y. Supp. 84; Matter of Stern, 120 N. Y. App. Div. 375, 105 N. Y. Supp. 199.

310. 4. Submitting a Proposition to Change an Opinion of a Court for a Money Consideration is ground for disbarment. People *v.* Reaugh, 224 Ill. 541, 79 N. E. 936.

311. 4. People *v.* Huggard, 217 Ill. 366, 75 N. E. 371; Matter of Lamb, 105 N. Y. App. Div. 462, 94 N. Y. Supp. 331; Matter of Hansen, 120 N. Y. App. Div. 377, 105 N. Y. Supp. 159; State *v.* Turner, (Oregon 1907) 89 Pac. 426.

6. People *v.* Shirley, 214 Ill. 142, 73 N. E. 303; People *v.* Frisch, 218 Ill. 275, 75 N. E. 904; State Board of Examiners *v.* Byrnes, 100 Minn. 76, 110 N. W. 341.

312. 1. People *v.* Brown, 218 Ill. 301, 75 N. E. 907; State Board of Examiners *v.* Lane, 93 Minn. 425, 101 N. W. 613.

2. *In re* Carleton, 33 Mont. 431, 84 Pac. 788.

313. 2. People *v.* Hooper, 218 Ill. 313, 75 N. E. 896.

6. Where it appeared a district attorney refrained from prosecuting persons unlawfully engaged in conducting gambling places, for a money consideration, and refused to prosecute persons charged with grand larceny unless the prosecuting witness would advance him money, it was held that he should be disbarred. People *v.* Anglin, 33 Colo. 40, 78 Pac. 687.

Where it appeared that a solicitor in chancery in Delaware, who was trustee of a trust estate which came into his hands safely, wisely, and securely invested in conservative securities, had from time to time disposed of these securities, using the funds so obtained for the promotion of speculative industrial enterprises in which he in his personal capacity was interested, thereby wasting and dissipating the fund, it was held that such facts were sufficient to require his suspension. *In re* Hoffecker, (Del. 1905) 60 Atl. 981.

Where an attorney, employed to represent a client in the prosecution of another on a criminal charge, accepts money from the accused as a consideration for dismissing the charge, he is guilty of malpractice and should be disbarred. Tudor *v.* Com., (Ky. 1905) 84 S. W. 522.

Where the attorney for an administrator induced the administrator to give him possession of money belonging to the estate, a portion of which he had arranged to borrow from the administrator, and applied a portion of the money so deposited to pay his own indebtedness to the bond, giving the administrator fifty dollars in cash for making the loan, and subsequently gave the administrator a note for the amount borrowed and a check for the balance, it was held that he should be disbarred. Matter of Freedman, 113 N. Y. App. Div. 327, 99 N. Y. Supp. 135.

Where an attorney who received $360 from

a client charged with petit larceny to settle the charge did so by paying the person making the charge $300 and retained $60 for his fee, it was held that, as this was without the express authority of the client to make such a settlement and without informing the magistrate of the circumstances, the attorney should be censured but not disbarred. Matter of Woytisek, 120 N. Y. App. Div. 373, 105 N. Y. Supp. 144.

315. 1. In *Delaware* an attorney's position as attorney at law is absolutely independent of his position as solicitor in chancery, and an attorney in that state may practice in the law courts though he is suspended from practicing as a solicitor in chancery. *In re* Hoffecker, (Del. 1905) 60 Atl. 981.

Where it appeared that an attorney's action fell short of criminal conduct it was held that the fact that he was suspended from practice in the Circuit Court of Appeals did not authorize his disbarment from the Circuit Court for the Eastern District of Pennsylvania. *In re* Watt, 149 Fed. 1009.

316. 2. State Board of Examiners *v.* Lane, 93 Minn. 425, 101 N. W. 613; Reynolds *v.* Lynch, 98 Minn. 58, 107 N. W. 144; State *v.* Tanner, (Oregon 1907) 88 Pac. 301.

Where an attorney aided and encouraged the concealment of a person whom he knew would be required as a witness in a criminal case it was held sufficient grounds for suspension from practice for one year. Cavanaugh *v.* Robinson, 138 Mich. 554, 101 N. W. 824.

Under the Canadian Statute authorizing the Supreme Court to strike the name of an advocate off the rolls for default in payment of money received, the court has no power to suspend from practice. *In re* Forbes, 2 N. W. Ter. 410.

4. Burke *v.* Baker, 111 N. Y. App. Div. 422, 97 N. Y. Supp. 768.

Relation May Be Established Though Attorney Has Not Appeared in Legal Proceedings. — Sheehan *v.* Erbe, 103 N. Y. App. Div. 7, 92 N. Y. Supp. 862.

317. 3. Caldwell *v.* Bigger, (Kan. 1907) 90 Pac. 1095.

319. 1. Where an attorney regularly admitted to practice was in jail awaiting the determination of an appeal from a judgment convicting him of a crime, it was held upon the hearing of a petition for a writ of mandate to compel the court to allow said attorney to appear and defend petitioner in an action that the court had inherent power to refuse to allow the attorney to act. Pedersen *v.* Superior Ct., 149 Cal. 389, 86 Pac. 712.

3. Boca, etc., R. Co. *v.* Superior Ct., 150 Cal. 153, 88 Pac. 718.

320. 3. Barkley Cemetery Assoc. *v.* McCune, 119 Mo. App. 349, 95 S. W. 295.

6. Brown *v.* Arnold, (C. C. A.) 131 Fed. 723; Allison *v.* Falconer, 75 Ark. 343, 87 S. W. 639; Mabb *v.* Stewart, 147 Cal. 413, 81 Pac. 1073; Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 84 Pac. 321; Griswold *v.* Smith, 221 Ill. 341, 77 N. E. 551; Carr *v.* Jeffersonville First Nat. Bank, 35 Ind. App. 216, 73 N. E. 947; Conery *v.* His Creditors, 115 La. 643, 39 So. 792; McKenna *v.* McArdle, 191 Mass. 96, 77 N. E. 782; Priddy *v.* Mackenzie, 205 Mo. 181, 103 S. W. 968; Scottish-American Mortg. Co. *v.* Clowney, 70 S. Car. 229, 3 Ann. Cas. 437, 49 S. E. 569.

321. 1. **Notice Must Be as to Matters Wherein Relation of Attorney and Client Exists.** — Where it appeared that an attorney examined the title to land for one for whom he procured a loan and by whom he was paid for his services, it was held that knowledge obtained by the attorney from such examination could not be charged to the one who loaned the money. Flanders *v.* Rosoff, 111 N. Y. App. Div. 1, 97 N. Y. Supp. 514.

324. 5. Beal-Doyle Dry Goods Co. *v.* Barton, 80 Ark. 326, 97 S. W. 58; Barber *v.* Dewes, 101 N. Y. App. Div. 432, 91 N. Y. Supp. 1059.

327. 1. **Admissions by Attorney.** — Everett *v.* Marston, 186 Mo. 587, 85 S. W. 540; Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703; Heywood Bros., etc., Co. *v.* Doernbecher Mfg. Co., 48 Oregon 359, 86 Pac. 357, 87 Pac. 530, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 327. See also Preston *v.* Davis, 112 Ill. App. 636.

In an action on a note by a plumber for labor and materials, where the defendant claimed that the work and materials furnished were worthless, it was held that a letter written by the defendant's attorney asking for an itemized bill, with the statement "she will pay your bill as soon as satisfied of its correctness," was binding on the defendant, requiring her to show if she could that her attorney in writing it went beyond his authority. McNamara *v.* Douglas, 78 Conn. 219, 61 Atl. 368.

2. Jefferson Bank *v.* Gossett, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 630, 90 N. Y. Supp. 1049; Irwin *v.* Buffalo Pitts Co., 39 Wash. 346, 81 Pac. 849.

4. Brown *v.* Arnold, (C. C. A.) 131 Fed. 723; Conklin *v.* Conklin, 113 N. Y. App. Div. 743, 99 N. Y. Supp. 310.

A person acting for a defendant in a justice court in *New York* acts as an attorney in fact, his authority ceasing when the case is finally submitted. Cutting *v.* Jessmer, 101 N. Y. App. Div. 283, 91 N. Y. Supp. 658.

328. 1. An attorney of record cannot terminate the relation, so far as the opposite party is concerned, until the end of the litigation without an order of the court. Krieger *v.* Krieger, 221 Ill. 479, 77 N. E. 909.

2. *Ex p.* Randall, (Ala. 1906) 42 So. 870, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 328; Matter of Cable, 114 N. Y. App. Div. 375, 99 N. Y. Supp. 1096.

Question for Jury Whether Acts of Client Intended as Revocation. — Weil *v.* Fineran, 78 Ark. 87, 93 S. W. 568.

3. **Death of Attorney Terminates Relation.** — Love *v.* Peel, 79 Ark. 366, 95 S. W. 998.

Death of Either Party Terminates Relation. — Corson *v.* Lewis, (Neb. 1906) 109 N. W. 735.

Insanity of Client Terminates Relation. — Matter of Stenton, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 515, 105 N. Y. Supp. 295.

In the absence of any other adjudication than commitment to a hospital, there being no guardian, the relation continues in full force as to

all matters included in an original contract. McKenna *v.* McArdle, 191 Mass. 96, 77 N. E. 782.

329. 2. Conklin *v.* Conklin, 113 N. Y. App. Div. 743, 99 N. Y. Supp. 310; Fisher *v.* Mylius, (W. Va. 1907) 57 S. E. 276.

330. 2. **Assignment of Judgment Terminates Relation.** — Caldwell *v.* Bigger, (Kan. 1907) 90 Pac. 1095.

332. 2. **Rule Does Not Obtain as to Mere Contract of Retainer.** — Title Guarantee, etc, Co. *v.* Stemberg, 119 N. Y. App. Div. 28, 103 N. Y. Supp. 857.

3. *Arkansas.* — Thweatt *v.* Freeman, 73 Ark. 575, 84 S. W. 720.

Colorado. — Lewis *v.* Helm, (Colo. 1907) 90 Pac. 97.

Illinois. — People *v.* Shirley, 214 Ill. 142, 73 N. E. 303; Mansfield *v.* Wallace, 217 Ill. 610, 75 N. E. 682.

Kentucky. — Lytle *v.* Bach, (Ky. 1906) 93 S. W. 608.

Massachusetts. — Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831.

Nebraska. — Levara *v.* McNeny, 73 Neb. 414, 102 N. W. 1042.

New York. — Bingham *v.* Sheldon, 101 N. Y. App. Div. 48, 91 N. Y. Supp. 917; Kissam *v.* Squires, 102 N. Y. App. Div. 536, 92 N. Y. Supp. 873; Werner *v.* Knowlton, 107 N. Y. App. Div. 158, 94 N. Y. Supp. 1054; Matter of Holland, 110 N. Y. App. Div. 799, 97 N. Y. Supp. 202, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 332, 333; Matter of Stern, 120 N. Y. App. Div. 375, 105 N. Y. Supp. 199.

Oregon. — Hamilton *v.* Holmes, 48 Oregon 453, 87 Pac. 154, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 332.

Tennessee. — Ingersoll *v.* Coal Creek Coal Co., 117 Tenn. 263, 98 S. W. 178.

Utah. — *In re* Jones, 29 Utah 333, 81 Pac. 162, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 332, 334.

Where it appeared that a contract of retainer was dictated by the lawyer, and that the client could not read English, and knew nothing about what she signed, except as the attorney explained it to her, it was held that the client was entitled to the most favorable reading of which the language was capable. Harkavy *v.* Zisman, (Supm. Ct. App. T.) 96 N. Y. Supp. 214.

The fidelity which an attorney owes to his client is to use every endeavor in his power to the advantage of his client. Nichols *v.* Riley, 118 N. Y. App. Div. 404, 103 N. Y. Supp. 554.

Relation of Attorney and Client Must Exist. — Adams *v.* Schmitt, 68 N. J. Eq. 168, 60 Atl. 345.

333. 2. Thweatt *v.* Freeman, 73 Ark. 575, 84 S. W. 720, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 333; Mansfield *v.* Wallace, 217 Ill. 610, 75 N. E. 682; Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 333; Levara *v.* McNeny, 73 Neb. 415, 102 N. W. 1042; Bingham *v.* Sheldon, 101 N. Y. App. Div. 48, 91 N. Y. Supp. 917; Purdy *v.* Wallace, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 163, 93 N. Y. Supp. 608; Harkavy *v.* Zisman, (Supm. Ct. App. T.) 96 N. Y. Supp. 214; Matter of Holland, 110 N. Y. App. Div. 799, 97 N. Y. Supp. 202, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 333.

334. 1. Nichols *v.* Riley, 118 N. Y. App. Div. 404, 103 N. Y. Supp. 554.

4. Lewis *v.* Helm, (Colo. 1907) 90 Pac. 97; Hamilton *v.* Holmes, 48 Oregon 453, 87 Pac. 154; *In re* Jones, 29 Utah 333, 81 Pac. 162, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 334.

335. 4. Thweatt *v.* Freeman, 73 Ark. 575, 84 S. W. 720; Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831; Sinclair *v.* Higgins, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 136, 93 N. Y. Supp. 195; Purdy *v.* Wallace, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 163, 93 N. Y. Supp. 608.

Where an attorney comes into relations with a client as a lawyer the mere fact that he is paid in full to a certain date does not terminate the relation in the absence of a distinct and unequivocal understanding that the relationship shall cease, where the attorney continues to advise the client in business matters. Bingham *v.* Sheldon, 101 N. Y. App. Div. 48, 91 N. Y. Supp. 917.

337. 1. Mansfield *v.* Wallace, 217 Ill. 610, 75 N. E. 682.

Burden on Attorney to Show Transfer Was Fair. — Sheehan *v.* Erbe, 103 N. Y. App. Div. 7, 92 N. Y. Supp. 862.

2. Thweatt *v.* Freeman, 73 Ark. 575, 84 S. W. 720.

339. 1. Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831.

340. 1. Lewis *v.* Helm, (Colo. 1907) 90 Pac. 97.

5. Malone's Committee *v.* Lebus, (Ky. 1906) 96 S. W. 519; Bucher *v.* Hohl, 199 Mo. 320, 97 S. W. 922; Bush *v.* Halsted, 121 N. Y. App. Div. 538, 106 N. Y. Supp. 133; Whitman *v.* O'Brien, 29 Pa. Super. Ct. 208.

343. 1. Stanwood *v.* Wishard, 134 Fed. 959; Roberts *v.* Gates, 146 Mich. 169, 109 N. W. 264; Levara *v.* McNeny, 73 Neb. 414, 102 N. W. 1042, *modifying* 98 N. W. 679.

345. 1. Stevens *v.* Sheriff, (Kan. 1907) 90 Pac. 799; Moreland *v.* Devenney, 72 Kan. 471, 83 Pac. 1097; Comstock *v.* Flower, 109 Mo. App. 275, 84 S. W. 207.

3. Horseshoe Min. Co. *v.* Miner's Ore Sampling Co., (C. C. A.) 147 Fed. 517; Hey *v.* Simon, (Ky. 1906) 93 S. W. 50; West *v.* A. F. Messick Grocery Co., 138 N. Car. 166, 50 S. E. 565; McLain *v.* Nurnberg, (N. Dak. 1907) 112 N. W. 243.

Illustrations — What Authority Is or Is Not Implied. — The general employment of an attorney by the receiver of a bankrupt's estate does not cover authority to make a sale of property of the estate and take the proceeds thereof. Mason *v.* Wolkowich, (C. C. A.) 150 Fed. 699.

An attorney ordinarily has no implied power to bind his client by contract, and a general retainer does not authorize him either to sell or purchase property on behalf of his client. Matter of Amsterdam Ave., 112 N. Y. App. Div. 160, 163, 98 N. Y. Supp. 331, 334.

An attorney employed to effect an arrangement by which the interest on certain bonds

owned by his principal should be paid has no authority to waive the payment of the interest. Real Estate Trust Co. *v.* Union Trust Co., 10 Md. 41, 61 Atl. 228.

Has Power to Bind Client for Payment of Stenographer's and Referee's Fees. — Bottome *v.* Neely, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 258, 104 N. Y. Supp. 429.

Question of Authority for Jury. — Erickson *v.* McNeeley, 41 Wash. 509, 84 Pac. 3.

350. 2. Smith *v.* Smith, 145 Cal. 615, 79 Pac. 275.

351. 4. Tootle-Weakley Millinery Co. *v.* Billingsley, (Neb. 1905) 105 N. W. 85.

352. 1. Corson *v.* Lewis, (Neb. 1906) 109 N. W. 735; Johnston *v.* Baca, 13 N. Mex. 338, 85 Pac. 237. *Compare* Reich *v.* Cochran, 105 N. Y. App. Div. 542, 94 N. Y. Supp. 404, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 827, where it was held that an attorney had authority to request another attorney to appear for him on the return of a precept in summary proceedings and move for a continuance.

4. Chicago, etc., Traction Co. *v.* Flaherty, 222 Ill. 67, 78 N. E. 29, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 352; Bissell *v.* Zorn, 122 Mo. App. 688, 99 S. W. 458.

353. 5. Attorney Has No Authority to Surrender any Substantial Right. — Van Kannell Door Co. *v.* Astor, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 378, 105 N. Y. Supp. 683.

354. 1. Tevis *v.* Palatine Ins. Co., 149 Fed. 560; Westheimer *v.* State Loan Co., (Mass. 1907) 81 N. E. 289; Morris *v.* Press Pub. Co., 98 N. Y. App. Div. 143, 90 N. Y. Supp. 673; J. L. Roper Lumber Co. *v.* Elizabeth City Lumber Co., 137 N. Car. 431, 49 S. E. 946; *In re* Skelly, (S. Dak. 1907) 113 N. W. 91; Memphis Consol. Gas, etc., Co. *v.* Simpson, 118 Tenn. 532, 103 S. W. 788.

Attorney May Stipulate After Judgment. — Brown *v.* Arnold, (C. C. A.) 131 Fed. 723, *reversing* 127 Fed. 387.

Court May Relieve Against Improvident Stipulation. — Morris *v.* Press Pub. Co., 98 N. Y. App. Div. 143, 90 N. Y. Supp. 673.

2. Ephraim *v.* Pacific Bank, 149 Cal. 222, 85 Pac. 507; Hill *v.* Penn Mut. L. Ins. Co., 120 Ky. 190, 85 S. W. 759; Markey *v.* Louisiana, etc., R. Co., 185 Mo. 348, 84 S. W. 61; Dixon *v.* Floyd, 73 S. Car. 202, 53 S. E. 167; Cauthen *v.* Cauthen, 76 S. Car. 226, 56 S. E. 978.

356. 2. Leahy *v.* Stone, 115 Ill. App. 138.

357. 1. Keoughan *v.* Equitable Oil Co., 116 La. 773, 41 So. 88. See *contra,* Jones *v.* Spokane Valley Land, etc., Co., 44 Wash. 146, 87 Pac. 65.

2. See Barnes *v.* Brown, 1 Tenn. Ch. App. 726.

7. Boca, etc., R. Co. *v.* Superior Ct., 150 Cal. 153, 88 Pac. 718; Miedreich *v.* Rank, (Ind. App. 1907) 82 N. E. 117, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 357; Frederick Milling Co. *v.* Frederick Farmers' Alliance Co., (S. Dak. 1906) 106 N. W. 298, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 357; Gibson *v.* Holmes, 78 Vt. 110, 62 Atl. 11.

358. 1. *United States.* — Miocene Ditch Co. *v.* Moore, (C. C. A.) 150 Fed. 483.

Georgia. — Hirsh *v.* Beverly, 125 Ga. 657, 54 S. E. 678.

Illinois. — Schroeder *v.* Wolf, 227 Ill. 133, 81 N. E. 13.

Indiana. — Miedreich *v.* Rank, (Ind. App. 1907) 82 N. E. 117.

Kentucky. — Sebree *v.* Sebree, (Ky. 1907) 99 S. W. 282; National Bank of Commerce *v.* Bowman, (Ky. 1907) 100 S. W. 831.

Louisiana. — Landry's Succession, 117 La. 193, 41 So. 490.

Massachusetts. — Riley *v.* Boston El. R. Co., (Mass. 1907) 81 N. E. 197.

Missouri. — Kelly *v.* Chicago, etc., R. Co., 113 Mo. App. 468, 87 S. W. 583.

New York. — Matter of Amsterdam Ave., 112 N. Y. App. Div. 160, 98 N. Y. Supp. 331; Matter of Neufeld, (Surrogate Ct.) 50 Misc. (N. Y.) 215, 100 N. Y. Supp. 444, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 358.

Oregon. — Fleishman *v.* Meyer, 46 Oregon 267, 80 Pac. 209, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 358.

No Implied Authority to Make Offer of Judgment. — Matter of Amsterdam Ave., 112 N. Y. App. Div. 160, 98 N. Y. Supp. 331.

359. 2. Sebree *v.* Sebree, (Ky. 1907) 99 S. W. 282.

360. 3. Where a client gave his attorney an assignment of a claim, the purpose of which was to enable the attorney, without interference by the client, to settle and adjust conflicting claims according to his best judgment, having in view the client's interests, it was held that after settlements were made they were binding on the client, and it was too late for him to revoke the authority. Foot *v.* Smythe, 20 Colo. App. 320, 78 Pac. 619.

361. 2. Where an attorney's express authority to compromise was apparently full authority, but in fact restricted as to amount, which restriction was not known to the third party, it was held that the compromise was binding on the client though the attorney exceeded his authority. Kelly *v.* Chicago, etc., R. Co., 113 Mo. App. 468, 87 S. W. 583.

364. 3. Burgraf *v.* Byrnes, 94 Minn. 418, 103 N. W. 215; Matter of Amsterdam Ave., 112 N. Y. App. Div. 160, 98 N. Y. Supp. 331.

365. 1. But see Sawyer *v.* Vermont L. & T. Co., 41 Wash. 524, 84 Pac. 8.

2. Brown *v.* Arnold, (C. C. A.) 131 Fed. 723; Gordon *v.* Omaha, (Neb. 1906) 110 N. W. 313.

368. 1. Matter of Amsterdam Ave., 112 N. Y. App. Div. 160, 98 N. Y. Supp. 331.

Washington — Power Given by Statute. — State *v.* Ballinger, 41 Wash. 23, 82 Pac. 1018; Hayes *v.* Koepfli, (Wash. 1907) 89 Pac. 151.

3. Harniska *v.* Dolph, (C. C. A.) 133 Fed. 158; Hollenbeck *v.* Glover, 128 Ga. 52, 57 S. E. 108; Wilkie *v.* Reynolds, 34 Ind. App. 527, 72 N. E. 179.

369. 6. Schroeder *v.* Wolf, 227 Ill. 133, 81 N. E. 13.

370. 4. Bacon *v.* Mitchell, 14 N. Dak. 451, 106 N. W. 129.

Where it appeared that an attorney in dismissing a suit by stipulation was not assuming to act by virtue of the authority conferred upon him as the attorney of record for the plaintiff but under the mistaken idea that he had express authority to do so, it was held

that the settlement should be set aside. Schaefer *v.* Schoenborn, 94 Minn. 490, 103 N. W. 501.

371. 1. Matter of Amsterdam Ave., 112 N. Y. App. Div. 160, 98 N. Y. Supp. 331.

3. Brown *v.* Arnold, (C. C. A.) 131 Fed. 723; Barber *v.* Dewes, 101 N. Y. App. Div. 432, 91 N. Y. Supp. 1059; Gibson *v.* Holmes, 78 Vt. 110, 62 Atl. 11.

In New York in the case of debts sent from other states to attorneys for collection, the attorney has no authority to indemnify the sheriff for his clients in order to induce him to levy. Audley *v.* Townsend, (Supm. Ct. Tr. T.) 49 Misc. (N. Y.) 23, 96 N. Y. Supp. 430.

6. Client and Attorney Liable for an Illegal Attachment. — Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009.

372. 1. Where an attorney directed a sheriff to commit a person to jail in a county other than the one where the arrest was made, in violation of a statute, it was held that the client was liable. Gibson *v.* Holmes, 78 Vt. 110, 62 Atl. 11.

374. 5. Ford *v.* Bigger, 80 Ark. 300, 97 S. W. 65; Plank *v.* Hertha, 132 Iowa 213, 109 N. W. 732; Van Gordon *v.* Goldamer, (N. Dak. 1907) 113 N. W. 609; Sawyer *v.* Vermont L. & T. Co., 41 Wash. 524, 84 Pac. 8; State *v.* Spokane, 44 Wash. 688, 87 Pac. 944.

To amount to an implied ratification the act of the client must be done with full knowledge of the facts, and must be inconsistent with any other reasonable hypothesis than that of approval of the acts of the attorney. Batesville Bank *v.* Maxey, 76 Ark. 472, 88 S. W. 968.

375. 1. As to what amounts to a ratification under particular circumstances, see the following cases: Fenimore *v.* White, (Neb. (1907) 111 N. W. 204; Kissam *v.* Squires, 102 N. Y. App. Div. 536, 92 N. Y. Supp. 873; Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

4. *United States.* — Brown *v.* Arnold, (C. C. A.) 131 Fed. 723, *reversing* 127 Fed. 387; Aaron *v.* U. S., (C. C. A.) 155 Fed. 833.

Alabama. — Barnewell *v.* Stephens, 142 Ala. 609, 38 So. 662, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 375; Ashby Brick Co. *v.* Ely, etc., Dry Goods Co., (Ala. 1907) 44 So. 96; Doe *v.* Abbott, (Ala. 1907) 44 So. 637.

California. — People's Home Sav. Bank *v.* Rauer, 2 Cal. App. 445, 84 Pac. 329.

Indiana. — Rose *v.* Owen, 37 Ind. App. 125, 76 N. E. 412.

Iowa. — Lake City Electric Light Co. *v.* McCrary, 132 Iowa 624, 110 N. W. 19; Rizer *v.* Tapper, 133 Iowa 628, 110 N. W. 1038.

Nebraska. — Ebel *v.* Stringer, (Neb. 1905) 102 N. W. 466.

New York. — Hookey *v.* Greenstein, 119 N. Y. App. Div. 209, 104 N. Y. Supp. 621; Cutting *v.* Jessmer, 101 N. Y. App. Div. 283, 91 N. Y. Supp. 658; Lockwood *v.* Dillenbeck, 104 N. Y. App. Div. 71, 93 N. Y. Supp. 321; Hookey *v.* Greenstein, 119 N. Y. App. Div. 209, 104 N. Y. Supp. 621.

North Dakota. — Bacon *v.* Mitchell, 14 N. Dak. 454, 106 N. W. 129.

Oklahoma. — Nolan *v.* St. Louis, etc., R. Co., (Okla. 1907) 91 Pac. 1128.

Pennsylvania. — Munley *v.* Sugar Notch Borough, 215 Pa. St. 228, 64 Atl. 377.

Tennessee. — Memphis Consol. Gas, etc., Co. *v.* Simpson, 118 Tenn. 532, 103 S. W. 788.

Texas. — McBurnett *v.* Lampkin, (Tex. Civ. App. 1907) 101 S. W. 864.

377. 1. Doe *v.* Abbott, (Ala. 1907) 44 So. 637; State *v.* Harris, 14 N. Dak. 501, 105 N. W. 621.

Under Comp. Laws Mich., § 762, proof of authority must be shown upon request by the opposite party. Hirsh *v.* Fisher, 138 Mich. 95, 101 N. W. 48.

2. Brown *v.* Arnold, (C. C. A.) 131 Fed. 723.

3. Doe *v.* Abbott, (Ala. 1907) 44 So. 637; Bacon *v.* Mitchell, 14 N. Dak. 454, 106 N. W. 129.

379. 1. Morehead's Trustee *v.* Anderson, (Ky. 1907) 100 S. W. 340; Kissam *v.* Squires, 102 N. Y. App. Div. 536, 92 N. Y. Supp. 873; Memphis Consol. Gas, etc., Co. *v.* Simpson, 118 Tenn. 532, 103 S. W. 788.

Survival of Causes. — Causes of action for breaches of duty by attorneys to their clients, by which the property rights and interests of the client are affected injuriously, survive the death of either party. Newman *v.* Gates, 165 Ind. 171, 6 Ann. Cas. 649, 72 N. E. 638.

Burden on Client to Show Lack of Care. — Schreiber *v.* Heath, 103 N. Y. App. Div. 364, 92 N. Y. Supp. 1043.

Failure of an Attorney to Set Up a Futile Defense and to attempt to prove it involves no lack of reasonable diligence. Reich *v.* Cochran, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 827.

386. 2. Humboldt Bldg. Assoc. Co. *v.* Ducker, (Ky. 1904) 82 S. W. 969; Priddy *v.* Mackenzie, 205 Mo. 181, 103 S. W. 968.

388. 4. An attorney employed to collect a note has no authority to extend the time of payment. Mason *v.* Edward Thompson Co., 94 Minn. 472, 103 N. W. 507.

390. 2. **Where the Judgment Is Assigned** by the client, the relation is terminated, and the attorney is not bound to proceed further. Caldwell *v.* Bigger, (Kan. 1907) 90 Pac. 1095.

392. 1. Vooth *v.* McEachen, 181 N. Y. 28, 73 N. E. 488, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 391.

394. 4. Wood *v.* Claiborne, 82 Ark. 514, 102 S. W. 219.

Where it appeared that a judgment debtor delivered a draft payable to the clerk of the court where the judgment was obtained, to the plaintiff's attorney, and that the attorney delivered the draft to the clerk, who misappropriated a portion of the fund, it was held that the attorney was not liable for the loss. Missouri, etc., R. Co. *v.* Ferris, (Tex. Civ. App. 1906) 99 S. W. 896.

395. 3. Goodin *v.* Hays, (Ky. 1905) 88 S. W. 1101.

Interest Begins When Money Actually Collected. — Hackavy *v.* Zisman, (Supm. Ct. App. T.) 96 N. Y. Supp. 214.

396. 3. Whinery *v.* Brown, 36 Ind. App. 276, 75 N. E. 605; Whitney *v.* Abbott, 191

Mass. 59, 77 N. E. 524; Vooth *v.* McEachen, 181 N. Y. 28, 73 N. E. 488.

7. Existence of Debt Alleged to Have Been Lost Must Be Proved. — Vooth *v.* McEachen, 181 N. Y. 28, 73 N. E. 488, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 396.

398. 4. Vooth *v.* McEachen, 181 N. Y. 28, 73 N. E. 488.

401. 2. Where in a suit on an insurance policy it appeared that a portion of the money recovered was payable to a mortgagee; that the attorney for the plaintiff had notice of this fact; that notwithstanding this he paid all the money to his client, it was held that the attorney was liable to the mortgagee for the amount due him. Beistle *v.* McConnell, 141 Mich. 463, 104 N. W. 729.

403. 1. Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009.

When Attorney Liable for Illegal Seizure under Process Prepared by Him. — Where an attachment was vacated upon the ground that the papers upon which it was granted were insufficient in law, it was held that the attorney was personally liable to the sheriff for his fees. Gadski-Tauscher *v.* Graff, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 418, 89 N. Y. Supp. 1019.

405. 2. Rickert *v.* Pollock, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 275, 92 N. Y. Supp. 89.

4. Russell *v.* Ferguson, 77 Vt. 433, 60 Atl. 802.

406. 2. Solicitor Personally Liable for Stenographer's Fees. — Cocks *v.* Bruce, 21 Times L. Rep. 62.

407. 1. Attorney Personally Liable for Bailiff's Fees. — Lachance *v.* Casault, 26 Quebec Super. Ct. 90.

409. 3. Silverman *v.* Pennsylvania R. Co., 141 Fed. 382; Kelly *v.* Horsely, 147 Ala. 508, 41 So. 902, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 409; Gordin *v.* Hayes, (Ky. 1905) 88 S. W. 1101; Anglo-Continental Chemical Works *v.* Dillon, 111 N. Y. App. Div. 418, 97 N. Y. Supp. 1081; People *v.* Staten Island Bank, 112 N. Y. App. Div. 791, 99 N. Y. Supp. 486; Johnson *v.* Ravitch, 113 N. Y. App. Div. 810, 99 N. Y. Supp. 1059; Matter of Cable, 114 N. Y. App. Div. 375, 99 N. Y. Supp. 1096; Roake *v.* Palmer, 119 N. Y. App. Div. 64, 103 N. Y. Supp. 862. See Giraud *v.* Chamy, 9 Quebec Pr. 29.

Reasonable Compensation Only Allowed Regardless of Contract. — Goodin *v.* Hays, (Ky. 1905) 88 S. W. 1101.

If the Discharge Is for Cause the Question of Fee May Become Eliminated, or the client may even have the right to an action over. Goodin *v.* Hays, (Ky. 1905) 88 S. W. 1101.

Where the Client Is Receiver of an Insolvent Corporation, acting for the benefit of his creditors, the right of such receiver to change attorneys does not rest entirely upon his volition; the court then has the right to examine the reasons for the contemplated change and determine how it will affect the interests of the intended beneficiaries. People *v.* Staten Island Bank, 112 N. Y. App. Div. 791, 99 N. Y. Supp. 486.

Order of Court — Compensation for Past Services. — If an attorney does not consent to a change of attorneys, it must be made by an order of the court, which will always provide for payment of fees and charges owing to the attorney. Matter of Smith, 111 N. Y. App. Div. 23, 97 N. Y. Supp. 171; People *v.* Staten Island Bank, 112 N. Y. App. Div. 791, 99 N. Y. Supp. 486.

410. 1. Du Bois *v.* New York, (C. C. A.) 134 Fed. 570; New York Phonograph Co. *v.* Edison Phonograph Co., 150 Fed. 233; Goodin *v.* Hays, (Ky. 1905) 88 S. W. 1101. But see Roake *v.* Palmer, 119 N. Y. App. Div. 64, 103 N. Y. Supp. 862.

Under Contract on Contingent Fee Allowance for Past Services Discretionary with Court. — Silverman *v.* Pennsylvania R. Co., 141 Fed. 382.

411. 7. McSween *v.* Windham, 77 S. Car. 223, 57 S. E. 847, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 411.

8. People *v.* Feenaughty, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 468, 101 N. Y. Supp 700.

Summary Jurisdiction to Compel Solicitor to Pay Money to Person Not Client. — *In re* A Solicitor, (1907) 2 K. B. 539.

413. 1. Haygood *v.* McKenzie, 119 Ga. 466, 46 S. E. 624, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 413; Haygood *v.* McKenzie, 119 Ga. 466, 46 S. E. 625.

4. People *v.* Feenaughty, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 468, 101 N. Y. Supp. 700.

414. 10. Miedreich *v.* Rank, (Ind. App. 1907) 82 N. E. 117; Wait *v.* Atchison, etc., R. Co., 204 Mo. 491, 103 S. W. 60; Deering *v.* Schreyer, 110 N. Y. App. Div. 200, 97 N. Y. Supp. 14; Matter of Smith, 111 N. Y. App. Div. 23, 97 N. Y. Supp. 171; Ransom *v.* Cutting, 112 N. Y. App. Div. 150, 98 N. Y. Supp. 282; Spencer *v.* Busch, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 284, 98 N. Y. Supp. 690; Burke *v.* Baker, 111 N. Y. App. Div. 422, 97 N. Y. Supp. 768; Ingersoll *v.* Coal Creek Coal Co., 117 Tenn. 263, 98 S. W. 178.

Attorney Entitled to Fee as per Contract. — Forsee *v.* McGuire, 109 Mo. App. 701, 83 S. W. 518.

416. 3. See McKenna *v.* McArdle, 191 Mass. 96, 77 N. E. 782.

417. 3. Fee of Guardian ad Litem. — Cochran *v.* Lee, (Ky. 1905) 87 S. W. 769.

4. Contest of Will. — The estate was charged with attorney's fees in Fillinger *v.* Conley, 163 Ind. 584, 72 N. E. 597.

5. Watkins *v.* Bigelow, 96 Minn. 53, 104 N. W. 683.

The compensation for services rendered should not be greater because an executor employs three attorneys instead of one. Ward *v.* Koenig, (Md. 1907) 67 Atl. 236.

418. 4. Iowa Statute. — See Tomlinson *v.* Monroe County, 134 Iowa 608, 112 N. W. 100.

420. 1. Foot *v.* Smythe, 20 Colo. App. 320, 78 Pac. 619; Chicago, etc., Traction Co. *v.* Flaherty, 222 Ill. 67, 78 N. E. 29; Gates *v.* McClenahan, (Iowa 1905) 103 N. W. 969; Morehead's Trustee *v.* Anderson, (Ky. 1907) 100 S. W. 340, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 420; Dempsey *v.* Wells, 109 Mo. App. 470, 84 S. W. 1015; Smith *v.* Couch, 117

Mo. App. 267, 92 S. W. 1143; Bissell *v.* Zorn, 122 Mo. App. 688, 99 S. W. 458; Simmons *v.* Davenport, 140 N. Car. 407, 53 S. E. 225.

Question of Fact. — New Amsterdam Casualty Co. *v.* Shields, (C. C. A.) 155 Fed. 54; Weil *v.* Fineran, 78 Ark. 87, 93 S. W. 568; Jones *v.* Roughton, 1 Ga. App. 759, 57 S. E. 1061; Bowen *v.* Waxelbaum, 2 Ga. App. 521, 58 S. E. 784; McDonald *v.* De Vito, 118 N. Y. App. Div. 566, 103 N. Y. Supp. 508; Cauthen *v.* Cauthen, 76 S. Car. 226, 56 S. E. 978.

Express Contract — No Quantum Meruit unless Contract Rescinded. — Weil *v.* Fineran, 78 Ark. 87, 93 S. W. 568.

Amount Named in Contract Binding. — Werner *v.* Knowlton, 107 N. Y. App. Div. 158, 94 N. Y. Supp. 1054.

121. 1. Clifton *v.* Clark, 84 Miss. 795, 37 So. 746.

3. Cusick *v.* Boyne, 1 Cal. App. 643, 82 Pac. 985; Chicago, etc., Traction Co. *v.* Flaherty, 222 Ill. 67, 78 N. E. 29; Blair *v.* Columbian Fireproofing Co., 191 Mass. 333, 77 N. E. 762; Trimble *v.* Kansas City, etc., R. Co., 201 Mo. 372, 100 S. W. 7; Heblich *v.* Slater, 217 Pa. St. 404, 66 Atl. 655.

122. 1. Cusick *v.* Boyne, 1 Cal. App. 643, 82 Pac. 985; Morehead's Trustee *v.* Anderson, (Ky. 1907) 100 S. W. 340, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 420; Smith *v.* Couch, 117 Mo. 267, 92 S. W. 1143; Trimble *v.* Kansas City, etc., R. Co., 201 Mo. 372, 100 S. W. 7.

2. Chicago, etc., Traction Co. *v.* Flaherty, 222 Ill. 67, 78 N. E. 29; Gates *v.* McClenahan, (Iowa 1905) 103 N. W. 969.

3. Chicago, etc., Traction Co. *v.* Flaherty, 222 Ill. 67, 78 N. E. 29; Blair *v.* Columbian Fireproofing Co., 191 Mass. 333, 77 N. E. 762; Hamilton *v.* Holmes, 48 Oregon 453, 87 Pac. 154.

123. 2. Chicago, etc., Traction Co. *v.* Flaherty, 222 Ill. 67, 78 N. E. 29; Clifton *v.* Clark, 84 Miss. 795, 37 So. 746; Trimble *v.* Kansas City, etc., R. Co., 201 Mo. 372, 100 S. W. 7; Heblich *v.* Slater, 217 Pa. St. 404, 66 Atl. 655.

4. Hall *v.* Wabash R. Co., 133 Iowa 714, 110 N. W. 1039; Morehead's Trustee *v.* Anderson, (Ky. 1907) 100 S. W. 340; Dinkelspiel *v.* Pons, 119 La. 236, 43 So. 1018; Burke *v.* Baker, 111 N. Y. App. Div. 422, 99 N. Y. Supp. 768.

125. 3. Philbrook *v.* Moxey, 191 Mass. 33, 77 N. E. 520.

In an action against an attorney to recover an amount paid as a retainer, where it appeared that the money was paid by the client for the purpose of commencing an action, that the attorney prepared papers in the suit and was always ready to proceed, and that the suit was abandoned by the client, it was held that the money could not be recovered. Riehl *v.* Levy, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 425, 90 N. Y. Supp. 441.

126. 3. Where an attorney agrees to conduct a defense to the termination of the suit for a certain sum, he may recover the agreed amount though the suit is disposed of by agreement between the parties without trial. Cordes *v.* Bailey, 39 Ind. App. 84, 78 N. E. 678.

5. Sessions *v.* Warwick, (Wash. 1907) 89 Pac. 482.

127. 1. Pratt *v.* Kerns, 123 Ill. App. 86, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 427.

3. Compromise by Client — Defense to Recovery. — An attorney who goes to the scene of a disaster, and induces persons having a right of action for injuries or death caused by such disaster, to intrust him with the prosecution of their suits, is guilty of unprofessional conduct which bars his right to collect fees upon such suits being compromised. Ingersoll *v.* Coal Creek Coal Co., 117 Tenn. 263, 98 S. W. 198.

129. 1. Bissell *v.* Zorn, 122 Mo. App. 688, 99 S. W. 458.

2. Cary *v.* Cary, 97 N. Y. App. Div. 471, 89 N. Y. Supp. 1061.

130. 2. See dissenting opinion of Walker, J., in Wilmington *v.* Bryan, 141 N. Car. 666, 54 S. E. 543, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 430.

4. Johnston *v.* Bernalillo County, 12 N. Mex. 237, 78 Pac. 43, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 430.

132. 1. Cudahy Packing Co. *v.* St. Louis State Nat. Bank, (C. C. A.) 134 Fed. 538, *affirming* 126 Fed. 543; Green *v.* Spires, 71 S. Car. 107, 4 Ann. Cas. 261, 50 S. E. 554.

2. *In re* Chadwick, 140 Fed. 674; Browne *v.* Edwards, 122 Ga. 277, 50 S. E. 110.

133. 1. Robinson *v.* Sharp, 201 Ill. 86, 66 N. E. 299, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 433; Ingersoll *v.* Coal Creek Coal Co., 117 Tenn. 263, 98 S. W. 178.

134. 5. See Whiting *v.* Davidge, 23 App. Cas. (D. C.) 156.

135. 2. Davis *v.* Trimble, 76 Ark. 115, 88 S. W. 920; Caldwell *v.* Bigger, (Kan. 1907) 90 Pac. 1095; Weldon *v.* Finley, (Ky. 1907) 104 S. W. 701; Forman *v.* Sewerage, etc., Board, 119 La. 49, 43 So. 908; Altkrug *v.* Horowitz, 111 N. Y. App. Div. 420, 97 N. Y. Supp. 716.

Where the Employment and the Value of the Services Are Admitted, it is then incumbent on the defendant to establish a separate defense, as an agreement that the services were to be gratuitous. Bogart *v.* Tannenbaum, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 310, 103 N. Y. Supp. 98.

Existence of Contract Question for Jury. — Dempsey *v.* Wells, 109 Mo. App. 470, 84 S. W. 1015.

Obligation to Pay May Arise by Ratification of Services Rendered. — Newton *v.* Hamden, 79 Conn. 237, 64 Atl. 229.

137. 1. Paul *v.* Wilbur, 189 Mass. 48, 75 N. E. 63; Simmons *v.* Davenport, 140 N. Car. 407, 53 S. E. 225.

138. 1. Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 84 Pac. 321; Emblem *v.* Bicksler, 34 Colo. 496, 83 Pac. 636; Trimble *v.* Texarkana, etc., R. Co., 199 Mo. 44, 97 S. W. 164.

Contract Implied Where Services Availed of Without Objection. — Patterson *v.* Fleenor, (Ky. 1905) 89 S. W. 705; Morris *v.* Kesterson, (Tex. Civ. App. 1905) 88 S. W. 277.

3. Forman *v.* Sewerage, etc., Board, 119 La. 49, 43 So. 908, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 438; Trimble *v.* Kansas City, etc., R. Co., 201 Mo. 372, 100 S. W. 7.

440. 1. *Alabama.* — German *v.* Brown, 145 Ala. 364, 39 So. 742.

District of Columbia. — See Heiberger *v.* Worthington, 23 App. Cas. (D. C.) 565.

Indiana. — Whinery *v.* Brown, 36 Ind. App. 276, 75 N. E. 605, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 440.

Kansas. — Stevens *v.* Sheriff, (Kan. 1907) 90 Pac. 799.

Mississippi. — Humphreys *v.* McLachlan, 87 Miss. 532, 40 So. 151.

Missouri. — Lipscomb *v.* Adams, 193 Mo. 530, 91 S. W. 1046; Taylor *v.* St. Louis Transit Co., 198 Mo. 715, 97 S. W. 155.

New Jersey. — Johnston *v.* Reilly, 68 N. J. Eq. 130, 59 Atl. 1044.

New York. — Morehouse *v.* Brooklyn Heights R. Co., 185 N. Y. 520, 78 N. E. 179, *reversing* 102 N. Y. App. Div. 627, 92 N. Y. Supp. 1134; Matter of Speranza, 186 N. Y. 280, 78 N. E. 1070; Oishei *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 709, 97 N. Y. Supp. 447; Ransom *v.* Cutting, 112 N. Y. App. Div. 150, 98 N. Y. Supp. 282; Ransom *v.* Cutting, 188 N. Y. 447, 81 N. E. 324, *affirming* 112 N. Y. App. Div. 150, 98 N. Y. Supp. 282.

Tennessee. — Ingersoll *v.* Coal Creek Coal Co., 117 Tenn. 263, 98 S. W. 178.

Canada. — See *Re* Solicitor, 14 Ont. L. Rep. 464.

Contracts for contingent fees are subject to the rule that a client may dismiss or supersede his attorney at will, and if this is done, the attorney will be entitled to compensation only for the services he has actually rendered, but for such services he has a first lien on the fruits of the litigation. Johnson *v.* Ravitch, 113 N. Y. App. Div. 810, 99 N. Y. Supp. 1059.

441. 1. Lathrop *v.* Hallett, 20 Colo. App. 207, 77 Pac. 1095; Emblem *v.* Bicksler, 34 Colo. 496, 83 Pac. 636; Chicago, etc., Traction Co. *v.* Flaherty, 222 Ill. 67, 78 N. E. 29; Continental Adjustment Co. *v.* Hoffman, 123 Ill. App. 69; Forman *v.* Sewerage, etc., Board, 119 La. 49, 43 So. 908, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 441; Kneeland *v.* Hurdy, (Supm. Ct. App. T.) 97 N. Y. Supp. 957.

Implied Ratification by Client. — Dorr *v.* Dudley, (Iowa 1907) 112 N. W. 203.

442. 2. Gates *v.* McClenahan, (Iowa 1905) 103 N. W. 969.

3. Fuller *v.* Stevens, (Ala. 1905) 39 So. 623; Chicago, etc., Traction Co. *v.* Flaherty, 222 Ill. 67, 78 N. E. 29; Cordes *v.* Bailey, 39 Ind. App. 84, 78 N. E. 1060.

In *Massachusetts* the right of an attorney to charge a retaining fee, in addition to charges for ordinary services, is not limited to cases of express stipulation for such a payment. Blair *v.* Columbian Fireproofing Co., 191 Mass. 333, 77 N. E. 762.

An Attorney Who Is a Trustee cannot perform legal services for himself as trustee, and have compensation therefor from the estate he represents, but he is under no obligation to perform such legal services. *In re* McKenna, 137 Fed. 611; *In re* George Halbert Co., (C. C. A.) 134 Fed. 236.

443. 1. Barcus *v.* Sherwood, (C. C. A.) 136 Fed. 184, *affirming* 130 Fed. 364; Sandford *v.* Bronson, 109 N. Y. App. Div. 835, 96 N. Y. Supp. 859.

3. Mansfield *v.* Wallace, 217 Ill. 610, 75 N. E. 682; McDonald *v.* De Vito, 118 N. Y. App. Div. 566, 103 N. Y. Supp. 508; Enterline *v.* Miller, 27 Pa. Super. Ct. 463.

Attorney Cannot Recover for Unnecessary Services. — Buckler *v.* Robinson, (Ky. 1906) 96 S. W. 1110.

The alleged misconduct must have been in connection with the particular matter for which the compensation is sought. Smith *v.* Hocktor, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 649, 99 N. Y. Supp. 843.

446. 2. Earley *v.* Whitney, 106 N. Y. App. Div. 399, 94 N. Y. Supp. 728; Oishei *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 709, 97 N. Y. Supp. 447.

447. 2. Matter of Smith, 111 N. Y. App. Div. 23, 97 N. Y. Supp. 171.

Lien Cannot Exist Concerning Property to Which Client Has No Title or Claim. — Matter of Brackett, 114 N. Y. App. Div. 257, 99 N. Y. Supp. 802.

448. 1. Mathot *v.* Triebel, 98 N. Y. App. Div. 328, 90 N. Y. Supp. 903.

2. Smith *v.* Cayuga Lake Cement Co., 107 N. Y. App. Div. 524, 95 N. Y. Supp. 236; Matter of Smith, 111 N. Y. App. Div. 23, 97 N. Y. Supp. 171.

449. 6. Where an attorney employs associate counsel on his own account such associate counsel has no lien on the results of the action. Lathrop *v.* Hallett, 20 Colo. App. 207, 77 Pac. 1095.

450. 3. **The Assignee of a Substituted Attorney** may bring an action to enforce the lien against the party or parties or either of them who applied for the substitution. Fenlon *v.* Paillard, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 151, 93 N. Y. Supp. 1101.

6. Curtis *v.* Metropolitan St. R. Co., 118 Mo. App. 341, 94 S. W. 762.

451. 1. See Hall *v.* Lockerman, 127 Ga. 537, 56 S. E. 759; Miedreich *v.* Rank, (Ind. App. 1907) 82 N. E. 117; Hubbard *v.* Ellithorpe, (Iowa 1907) 112 N. W. 796; Tyler *v.* Slemp, (Ky. 1906) 90 S. W. 1041; Lytle *v.* Bach, (Ky. 1906) 93 S. W. 608; Yonge *v.* St. Louis Transit Co., 109 Mo. App. 235, 84 S. W. 184; Curtis *v.* Metropolitan St. R. Co., 118 Mo. App. 341, 94 S. W. 762; O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 8 Ann. Cas. 703, 97 S. W. 150; Taylor *v.* St. Louis Transit Co., 198 Mo. 715, 97 S. W. 155; Wait *v.* Atchison, etc., R. Co., 204 Mo. 491, 103 S. W. 60; Gilchrist *v.* Hore, 34 Mont. 443, 87 Pac. 443; Taylor *v.* Stull, (Neb. 1907) 112 N. W. 577; Jackson *v.* Stearns, 48 Oregon 25, 84 Pac. 798.

2. *In re* Baxter, (C. C. A.) 154 Fed. 22; Miedreich *v.* Rank, (Ind. App. 1907) 82 N. E. 117; Wilson *v.* Seeber, (N. J. 1907) 66 Atl. 909; Matter of Smith, 111 N. Y. App. Div. 23, 97 N. Y. Supp. 171.

Agreement for Contingent Fee. — Weller *v.* Jersey City, etc., St. R. Co., 68 N. J. Eq. 659, 6 Ann. Cas. 442, 61 Atl. 459, *affirming* 66 N. J. Eq. 11, 57 Atl. 730 (to the same effect as Bromwell *v.* Turner, 37 Ill. App. 561, cited in the original note).

An attorney has a lien, on a judgment obtained by him for his client, for his services in the case, the amount whereof is fixed by special contract, although payment thereof cannot be had under the terms of the contract until the money is actually recovered. Fisher *v.* Mylius, (W. Va. 1907) 57 S. E. 276.

An Attorney's Lien on a Judgment Is Assignable and may be enforced by the assignee. Fisher *v.* Mylius, (W. Va. 1907) 57 S. E. 276.

Lien in Bastardy Proceedings. — Where an attorney contracts with the mother of an illegitimate child to help prosecute the proceedings, his fee to be allowed out of the fund, it was held that he was entitled to a lien on the fund. Costigan *v.* Stewart, (Kan. 1907) 91 Pac. 83.

No Equitable Lien Before Judgment Obtained. — De Wandelaer *v.* Sawdey, 78 Conn. 654, 63 Atl. 446.

453. 6. See Girtman *v.* Starbuck, 48 Fla. 265, 5 Ann. Cas. 833, 37 So. 731.

454. 1. Cooper *v.* Trout, (Ky. 1907) 102 S. W. 798.

5. *In re* Baxter, (C. C. A.) 154 Fed. 22; Matter of Edward Ney Co., 114 N. Y. App. Div. 467, 99 N. Y. Supp. 982; Matter of McGuire, 106 N. Y. App. Div. 131, 94 N. Y. Supp. 97.

Lien on Drafts. — Where attorneys held drafts which were deposited with them to prevent the drafts from being subject to attachment, it was held that the attorneys had no lien for advice given the client concerning the management of the funds which the drafts represented. Watts *v.* Newberry, (Va. 1907) 57 S. E. 657.

Lien on Bank Books. — Matter of Stenton, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 515, 105 N. Y. Supp. 295.

455. 1. Heyward *v.* Maynard, 119 N. Y. App. Div. 66, 103 N. Y. Supp. 1028.

2. Le Sueur First State Bank *v.* Sibley County Bank, 96 Minn. 456, 105 N. W. 489; Anglo-Continental Chemical Works *v.* Dillon, 111 N. Y. App. Div. 418, 97 N. Y. Supp. 1081.

456. 7. Where the parties settle before alimony is allowed, and the case is dismissed, the attorney is not entitled to revive the case and prosecute for his own benefit. Petersen *v.* Petersen, (Neb. 1906) 107 N. W. 391; Hillman *v.* Hillman, 42 Wash. 595, 85 Pac. 61.

8. Macdonald *v.* State, 143 Ala. 101, 39 So. 257; Nodine *v.* Hannum, 1 Alaska 302; Matter of Snyder, 119 N. Y. App. Div. 277, 104 N. Y. Supp. 571; Cartier *v.* Spooner, 118 N. Y. App. Div. 342, 103 N. Y. Supp. 505. See also Whinery *v.* Brown, 36 Ind. App. 276, 75 N. E. 605.

Amount Determined on Petition of Attorney or Client. — Matter of Edward Ney Co., 114 N. Y. App. Div. 467, 99 N. Y. Supp. 982; Sullivan *v.* McCann, 115 N. Y. App. Div. 146, 100 N. Y. Supp. 739; Cartier *v.* Spooner, 118 N. Y. App. Div. 342, 103 N. Y. Supp. 505.

457. 1. Holmes *v.* Waymire, 73 Kan. 104, 84 Pac. 558, 9 Ann. Cas. 624; Taylor *v.* Stull, (Neb. 1907) 112 N. W. 577; Rose *v.* Whiteman, (Supm. Ct. Tr. T.) 52 Misc. (N. Y.) 210, 101 N. Y. Supp. 1024.

2. **After Client's Death.** — Meloy *v.* Meloy, 24 App. Cas. (D. C.) 239.

No Lien on Money Paid into Court as Security for Costs. — Gibson *v.* Le Temps Pub. Co., 10 Ont. L. Rep. 434.

458. 4. See Valentinuzzi *v.* Lenarduzzi, 16 Manitoba 121.

5. *In re* Baxter, (C. C. A.) 154 Fed. 22; Wait *v.* Atchison, etc., R. Co., 204 Mo. 491, 103 S. W. 60.

459. 4. Matter of Smith, 111 N. Y. App. Div. 23, 97 N. Y. Supp. 171.

461. 2. Kelly *v.* Horsely, 147 Ala. 508, 41 So. 902; Holmes *v.* Waymire, 73 Kan. 104, 9 Ann. Cas. 624, 84 Pac. 558, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 461; Lytle *v.* Bach, (Ky. 1906) 93 S. W. 608.

462. 1. **No Lien in Absence of Statute.** — *In re* Baxter, (C. C. A.) 154 Fed. 22, Boogren *v.* St. Paul City R. Co., 97 Minn. 51, 106 N. W. 104.

Agreement for Contingent Fee Not Assignment of Part of Cause of Action. — American Cotton Co. *v.* Simmons, (Tex. Civ. App. 1905) 87 S. W. 842.

By Statute in Kentucky an Attorney Has a Lien on Cause of Action for the amount of agreed fee or for a reasonable fee. Proctor Coal Co. *v.* Tye, (Ky. 1906) 96 S. W. 512.

Municipal Court of City of New York. — Code Civ. Pro. N. Y., § 66, gives an attorney a lien for services rendered in the Municipal Court. Tynan *v.* Mart, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 49, 103 N. Y. Supp. 1033.

464. 5. **Waiver Does Not Prevent Suit for Fees.** — Davis *v.* Farwell, (Vt. 1907) 67 Atl. 129; Flannery *v.* Geiger, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 619, 92 N. Y. Supp. 785.

6. **Municipal Court of New York City Has No Power to Enforce Lien.** — Van Der Beek *v.* Thomason, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 52;, 99 N. Y. Supp. 538; Tynan *v.* Mart, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 49, 103 N. Y. Supp. 1033.

Equity Will Enforce Where No Adequate Remedy at Law. — Wait *v.* Atchison, etc., R. Co., 204 Mo. 491, 103 S. W. 60.

7. Smith *v.* Acker Process Co., 102 N. Y. App. Div. 170, 92 N. Y. Supp. 351.

465. 2. *United States.* — *In re* Baxter, (C. C. A.) 154 Fed. 22. But see *In re* Adamo, 151 Fed. 716.

Connecticut. — De Wandelaer *v.* Sawdey, 78 Conn. 654, 63 Atl. 446.

Minnesota. — Boogren *v.* St. Paul City R. Co., 97 Minn. 51, 106 N. W. 104.

Nebraska. — Petersen *v.* Petersen, (Neb. 1906) 107 N. W. 391.

New Jersey. — Weller *v.* Jersey City, etc., St. R. Co., 68 N. J. Eq. 659, 6 Ann. Cas. 442, 61 Atl. 459, 66 N. J. Eq. 11, *affirming* 57 Atl. 730.

New York. — Gurley *v.* Gruenstein, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 268, 89 N. Y. Supp. 887; Van Der Beek *v.* Thomason, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 524, 99 N. Y.

Supp. 538; Crossman *v.* Smith, 116 N. Y. App. Div. 791, 102 N. Y. Supp. 18.

North Dakota. — Olson *v.* Sargent County, 15 N. Dak. 146, 107 N. W. 43.

Oregon. — Jackson *v.* Stearns, 48 Oregon 25, 84 Pac. 798, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 465.

Tennessee. — Ingersoll *v.* Coal Creek Coal Co., 117 Tenn. 263, 98 S. W. 198.

Washington. — Hillman *v.* Hillman, 42 Wash. 595, 85 Pac. 61.

Settlement in Fraud of Attorney Set Aside. — Jackson *v.* Stearns, 48 Oregon 25, 84 Pac. 798.

Statutes Authorizing Recovery of Reasonable Fee. — Bush *v.* Prescott, etc., R. Co., 83 Ark. 210, 103 S. W. 176; Proctor Coal Co. *v.* Tye, (Ky. 1906) 96 S. W. 512.

466. 3. Oishei *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 709, 97 N. Y. Supp. 447.

467. 4. Wait *v.* Atchison, etc., R. Co., 204 Mo. 491, 103 S. W. 60.

468. 8. Plaintiff a Necessary Party. — Oishei *v.* Pennsylvania R. Co., 117 N. Y. App. Div. 110, 102 N. Y. Supp. 368.

5. Meighan *v.* American Grass Twine Co., (C. C. A.) 154 Fed. 346; Morehouse *v.* Brooklyn Heights R. Co., (Supm. Ct. Spec. T.) 43 Misc. (N. Y.) 414, 89 N. Y. Supp. 332, *affirmed* 102 N. Y. App. Div. 627, 92 N. Y. Supp. 1134; Kuehn *v.* Syracuse Rapid Transit Co., 104 N. Y. App. Div. 580, 93 N. Y. Supp. 883; Matter of Williams, 187 N. Y. 286, 79 N. E. 1019; Oishei *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 709, 97 N. Y. Supp. 447; Ransom *v.* Cutting, 112 N. Y. App. Div. 150, 98 N. Y. Supp. 282; Sullivan *v.* McCann, 113 N. Y. App. Div. 61, 98 N. Y. Supp. 947; Horn *v.* Horn, 115 N. Y. App. Div. 292, 100 N. Y. Supp. 790; Baxter *v.* Connor, 119 N. Y. App. Div. 450, 104 N. Y. Supp. 327; Matter of Snyder, 119 N. Y. App. Div. 277, 104 N. Y. Supp. 571. For a discussion of the *New York* statute, see Boogren *v.* St. Paul City R. Co., 97 Minn. 51, 106 N. W. 104, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 468.

The lien is not defeated by a settlement and payment of the whole amount to the client. In such case the attorney may proceed against the other party. Oishei *v.* Pennsylvania R. Co., 117 N. Y. App. Div. 110, 102 N. Y. Supp. 368.

Lien Exists Before Actual Commencement of Action. — Mathot *v.* Triebel, 98 N. Y. App. Div. 328, 90 N. Y. Supp. 903.

Where Attorney Not Prejudiced by Settlement. — Mathews *v.* Damainville, 100 N. Y. App. Div. 311, 91 N. Y. Supp. 524, *reversing* (Supm. Ct. Spec. T.) 43 Misc. (N. Y.) 546, 89 N. Y. Supp. 493.

Lien Attaches to Judgment for Costs Though Answer Contained no Counterclaim. — Agricultural Ins. Co. *v.* Smith, 112 N. Y. App. Div. 840, 98 N. Y. Supp. 347.

The Application Must Show that the money cannot be recovered from the client. Smith *v.* Acker Process Co., 102 N. Y. App. Div. 170, 92 N. Y. Supp. 351.

Statute Amended by Laws 1899, c. 61. — Radley *v.* Gaylor, 98 N. Y. App. Div. 158, 90 N. Y. Supp. 758; Agricultural Ins. Co. *v.* Smith, 112 N. Y. App. Div. 840, 98 N. Y. Supp. 347.

Similar Statute in Missouri. — Yonge *v.* St. Louis Transit Co., 109 Mo. App. 235, 84 S. W. 184; Dempsey *v.* Wells, 109 Mo. App. 470, 84 S. W. 1015; Conkling *v.* Austin, 111 Mo. App. 292, 86 S. W. 911; Curtis *v.* Metropolitan St. R. Co., 118 Mo. App. 341, 94 S. W. 762; Wait *v.* Atchison, etc., R. Co., 204 Mo. 491, 103 S. W. 60 (setting aside satisfaction of judgment).

May Settle if Attorney Not Prejudiced. — Curtis *v.* Metropolitan St. R. Co., 118 Mo. App. 341, 94 S. W. 762; O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 8 Ann. Cas. 703, 97 S. W. 150; Taylor *v.* St. Louis Transit Co., 198 Mo. 715, 97 S. W. 155.

Does Not Apply to Suit for Personal Injuries. — Curtis *v.* Metropolitan St. R. Co., 118 Mo. App. 341, 94 S. W. 762.

May Sue Defendant Independently. — Taylor *v.* St. Louis Transit Co., 198 Mo. 715, 97 S. W. 155; Wait *v.* Atchison, etc., R. Co., 204 Mo. 491, 103 S. W. 60.

May Sue in Justice's Court. — O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 8 Ann. Cas. 703, 97 S. W. 150.

470. 2. Where there is no counterclaim involved there can be no statutory lien. Crossman *v.* Smith, 116 N. Y. App. Div. 791, 102 N. Y. Supp. 18.

An attorney who defends an action in which it is sought to recover property is not entitled to a lien upon the property that he succeeds in saving. Forrester *v.* Howard, (Ky. 1907) 98 S. W. 984.

4. De Santis *v.* Canadian Pac. R. Co., 14 Ont. L. Rep. 108.

Under Missouri Statute No Actual Notice Necessary. — Taylor *v.* St. Louis Transit Co., 198 Mo. 715, 97 S. W. 155.

Kentucky — What Sufficient Notice. — Proctor Coal Co. *v.* Tye, (Ky. 1906) 96 S. W. 512.

471. 4. Notice Must Be Clear and Explicit. — De Santis *v.* Canadian Pac. R. Co., 14 Ont. L. Rep. 108.

472. 4. De Santis *v.* Canadian Pac. R. Co., 14 Ont. L. Rep. 108.

5. Tyler *v.* Slemp, (Ky. 1906) 90 S. W. 1041.

473. 3. Lupton *v.* Taylor, 39 Ind. App. 412, 78 N. E. 689; Powell *v.* Roberts, 116 Mo. App. 629, 92 S. W. 752; Priddy *v.* Mackenzie, 205 Mo. 181, 103 S. W. 968; Bessie *v.* Northern Pac. R. Co., 14 N. Dak. 614, 105 N. W. 936.

3*a*. Liability for Partner's Fraud. — One partner is not liable for the fraud of another partner in a matter which is not firm business. Tendring Hundred Waterworks Co. *v.* Jones, (1903) 2 Ch. 615.

4. Lockwood *v.* Dillenbeck, 104 N. Y. App. Div. 71, 93 N. Y. Supp. 321.

8. In the absence of an express agreement to the contrary, any professional services rendered by a member of a firm of lawyers should be presumed to be for the benefit of the firm. MacFarland *v.* Altschuler, (Neb. 1906) 108 N. W. 151.

474. 2. Newman *v.* Gates, 165 Ind. 171, 6 Ann. Cas. 649, 72 N. E. 638.

ATTORNEY-GENERAL.

176. 2. **Discretion of Attorney-General in Conduct of Litigation Not Subject to Control by Court.** — Atty.-Gen. *v.* Hargrave, 11 Ont. L. Rep. 530.

Relator Liable for Costs — Attorney-General Not Liable. — Atty.-Gen. *v.* Ruffner, 12 British Columbia 200.

Whether Relator's Laches Imputable to Attorney-General. — See Atty.-Gen. *v.* Metcalf, (1907) 2 Ch. 23.

5. **Must Be Public Interest.** — Atty.-Gen. *v.* Garner, (1907) 2 K. B. 480.

177. 1. See dissenting opinion of Whitfield, C. J., in Henry *v.* State, 87 Miss. 103, 39 So. 856, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 477.

The Act of July 31, 1894, c. 174, § 8, provided that "The head of any executive department * * * may apply for, and the comptroller of the treasury shall render, his decision upon any question involving a payment to be made by [him] or under [him], which decision * * * shall govern the auditor and the comptroller of the treasury in passing upon the account containing said disbursement."

The opinion of the attorney-general should be no longer asked in such cases except in matters of great importance. 21 Op. Atty.-Gen. 178; 21 Op. Atty.-Gen. 405; 21 Op. Atty.-Gen. 530; 22 Op. Atty.-Gen. 581; 23 Op. Atty.-Gen. 1; 23 Op. Atty.-Gen. 2; 23 Op. Atty.-Gen. 86; 23 Op. Atty.-Gen. 431; 23 Op. Atty.-Gen. 586; 24 Op. Atty.-Gen. 85; 24 Op. Atty.-Gen. 553; 25 Op. Atty.-Gen. 185; 25 Op. Atty.-Gen. 270; 25 Op. Atty.-Gen. 614.

But if the attorney-general conceives that the question is an important one and renders an opinion thereon his decision is binding on the officers of the treasury department. 25 Op. Atty.-Gen. 301.

Opinions as Precedents. — 20 Op. Atty.-Gen. 648; 21 Op. Atty.-Gen. 264; 24 Op. Atty.-Gen. 55.

In Giving His Advice and Opinions on Questions Submitted by the President the attorney-general is not confined strictly to questions of law. 23 Op. Atty.-Gen. 360.

Opinion as to Pending Actions Not Given. — 23 Op. Atty.-Gen. 221.

Need Not Give Advice to Private Parties. — 20 Op. Atty.-Gen. 463; 20 Op. Atty.-Gen. 465; 20 Op. Atty.-Gen. 667.

Opinion Not Given as to Advisability of Changing Laws. — 19 Op. Atty.-Gen. 598.

The Attorney-General May Dismiss, Compromise, or Discontinue Suits in which the government is interested. 22 Op. Atty.-Gen. 491; 23 Op. Atty.-Gen. 507.

Opinions Given Only for Guidance of Heads of Departments. — 20 Op. Atty.-Gen. 251; 20 Op. Atty.-Gen. 608; 20 Op. Atty.-Gen. 724; 21 Op. Atty.-Gen. 174.

Opinions Should Be Regarded as Law until withdrawn or overruled by the courts. 20 Op. Atty.-Gen. 654; 20 Op. Atty.-Gen. 719.

Opinion Not Given as to the Reasonableness of Fees of persons proposing to act as attorneys for Indian litigants. 20 Op. Atty.-Gen. 620.

Will Not Give an Opinion as to Advisability of Bringing a Suit. — 20 Op. Atty.-Gen. 702.

Opinions Not Given on Questions Properly Justiciable in Appropriate Courts. — 19 Op. Atty.-Gen. 56; 19 Op. Atty.-Gen. 671; 20 Op. Atty.-Gen. 210; 20 Op. Atty.-Gen. 277; 20 Op. Atty.-Gen. 314; 20 Op. Atty.-Gen. 524; 20 Op. Atty.-Gen. 539; 20 Op. Atty.-Gen. 673; 21 Op. Atty.-Gen. 369; 21 Op. Atty.-Gen. 557; 22 Op. Atty.-Gen. 181; 24 Op. Atty.-Gen. 69; 25 Op. Atty.-Gen. 97.

Under an Executive Order Requiring the Attorney-General to Give an Opinion in cases where the heads of departments and the Civil Service Commission cannot agree as to whether an examination is required for a certain position, it was held that no opinion would be given until there had been an actual conference and disagreement. 25 Op. Atty.-Gen. 492.

Will Not Express Opinion upon Matters Lying Within Discretion of Heads of Departments. — 25 Op. Atty.-Gen. 94; 25 Op. Atty.-Gen. 524.

178. 1. **The Attorney-General Will Not Exercise Appellate Jurisdiction** over departmental decisions depending upon mixed questions of law and fact. 22 Op. Atty.-Gen. 342.

2. 19 Op. Atty.-Gen. 672; 19 Op. Atty.-Gen. 696; 20 Op. Atty.-Gen. 253; 20 Op. Atty.-Gen. 384; 20 Op. Atty.-Gen. 459; 20 Op. Atty.-Gen. 487; 20 Op. Atty.-Gen. 494; 20 Op. Atty.-Gen. 530; 20 Op. Atty.-Gen. 590; 20 Op. Atty.-Gen. 614; 20 Op. Atty.-Gen. 697; 20 Op. Atty.-Gen. 740; 20 Op. Atty.-Gen. 742; 21 Op. Atty.-Gen. 36; 21 Op. Atty.-Gen. 96; 21 Op. Atty.-Gen. 129; 21 Op. Atty-Gen. 133; 21 Op. Atty.-Gen. 240; 21 Op. Atty.-Gen. 255; 21 Op. Atty.-Gen. 260; 21 Op. Atty.-Gen. 454; 21 Op. Atty.-Gen. 594; 22 Op. Atty.-Gen. 156; 23 Op. Atty.-Gen. 232; 25 Op. Atty.-Gen. 183.

Will Not Give Opinion upon Law of Foreign Nation. — 21 Op. Atty.-Gen. 377.

Request for Opinion Should Formulate Specific Question of Law. — 19 Op. Atty.-Gen. 396; 20 Op. Atty.-Gen. 220; 20 Op. Atty.-Gen. 249; 20 Op. Atty.-Gen. 258; 20 Op. Atty.-Gen. 699; 20 Op. Atty.-Gen. 711; 21 Op. Atty.-Gen. 179; 21 Op. Atty.-Gen. 201; 22 Op. Atty.-Gen. 351; 22 Op. Atty.-Gen. 498; 23 Op. Atty.-Gen. 92; 23 Op. Atty.-Gen. 472; 24 Op. Atty.-Gen. 59.

3. 19 Op. Atty.-Gen. 7; 19 Op. Atty.-Gen. 331; 19 Op. Atty.-Gen. 556; 19 Op. Atty.-Gen. 695; 20 Op. Atty.-Gen. 50; 20 Op. Atty.-Gen. 158; 20 Op. Atty.-Gen. 178; 20 Op. Atty.-Gen. 312; 20 Op. Atty.-Gen. 383; 20 Op. Atty.-Gen. 391; 20 Op. Atty.-Gen. 420; 20 Op. Atty.-Gen. 500; 20 Op. Atty.-Gen. 536; 20 Op. Atty.-Gen. 588; 20 Op. Atty.-Gen. 602; 20 Op. Atty.-Gen. 618; 20 Op. Atty.-Gen. 703; 20 Op. Atty.-Gen. 714; 20 Op. Atty.-Gen. 723; 20 Op. Atty.-Gen. 728; 21 Op. Atty.-Gen. 6; 21 Op. Atty.-Gen. 106; 21 Op. Atty.-Gen. 167; 21 Op. Atty.-Gen. 186; 21 Op. Atty.-Gen. 219; 21 Op. Atty.-Gen. 457; 21 Op. Atty.-Gen. 478; 21 Op. Atty.-Gen. 510; 23 Op. Atty.-Gen. 330; 25 Op. Atty.-Gen. 369; 25 Op. Atty.-Gen. 543; 25 Op. Atty.-Gen. 584.

Will Not Examine or Approve Codes of Rules, forms of applications, bonds, etc. 20 Op. Atty.-Gen. 738.

Will Not Give Opinion on Hypothetical Question. — 20 Op. Atty.-Gen. 440; 20 Op. Atty.-Gen. 583; 20 Op. Atty.-Gen. 729; 21 Op. Atty.-Gen. 109; 21 Op. Atty.-Gen. 320; 21 Op. Atty.-Gen. 508; 21 Op. Atty.-Gen. 568; 22 Op. Atty.-Gen. 77; 23 Op. Atty.-Gen. 582; 24 Op. Atty.-Gen. 118; 24 Op. Atty.-Gen. 556; 25 Op. Atty.-Gen. 94; 25 Op. Atty.-Gen. 179; 25 Op. Atty.-Gen. 369.

4. 19 Op. Atty.-Gen. 396; 20 Op. Atty.-Gen. 220; 20 Op. Atty.-Gen. 270; 20 Op. Atty.-Gen. 493; 20 Op. Atty.-Gen. 526; 20 Op. Atty.-Gen. 614; 20 Op. Atty.-Gen. 640; 20 Op. Atty.-Gen. 699; 20 Op. Atty.-Gen. 711; 21 Op. Atty.-Gen. 220; 21 Op. Atty.-Gen. 506; 21 Op. Atty.-Gen. 583; 22 Op. Atty.-Gen. 85; 23 Op. Atty.-Gen. 178; 24 Op. Atty.-Gen. 102.

A noncompliance with the rule of the text may be disregarded in cases where public and private interests require a prompt decision. 21 Op. Atty.-Gen. 486; 22 Op. Atty.-Gen. 477.

Weight of Evidence and Credibility of Witnesses are not questions to be considered by the attorney-general. 21 Op. Atty.-Gen. 58.

479. 3. State *v.* Robinson, 101 Minn. 277, 112 N. W. 269.

Power to Bind Successor. — A decision of an attorney-general not to bring an action is not a bar to a subsequent action by the same attorney-general or his successor. People *v.* McClellan, 118 N. Y. App. Div. 177, 103 N. Y. Supp. 146, *affirmed* 188 N. Y. 618, 81 N. E. 1171.

Duties Such as Fixed by Legislature. — Com. *v.* Southern Pac. Co., (Ky. 1907) 105 S. W. 466; Brady *v.* Brooks, (Tex. 1905) 89 S. W. 1052.

Legislature May Abridge, Alter, or Increase Powers of Attorney-General. — People *v.* Santa Clara Lumber Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 507, 106 N. Y. Supp. 624.

Statutory Powers Cannot Be Varied or Enlarged by Usage. — Hord *v.* State, 167 Ind. 622, 79 N. E. 916.

In Arkansas the attorney-general has no powers except such as are given by statute. Railroad Tax Cases, 136 Fed. 233.

480. 1. U. S. *v.* Milwaukee Refrigerator Transit Co., 145 Fed. 1007; Southern R. Co. *v.* McNeill, 155 Fed. 756; State *v.* Hackley, 119 La. 482, 44 So. 272; People *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 339, 101 N. Y. Supp. 354; State *v.* Cornwell, 14 Wyo. 526, 85 Pac. 977.

Idaho. — The attorney-general is attorney for a county in a case on appeal, unless the interest of the county is adverse to the state or some officer thereof. Corker *v.* Elmore County, 11 Idaho 787, 84 Pac. 509.

481. 1. State *v.* Vandalia, 119 Mo. App. 406, 94 S. W. 1009; Com. *v.* Bowditch, 217 Pa. St. 527, 66 Atl. 867.

Life Insurance Companies. — By statute, Code of Civ. Pro. N. Y., § 1781, the attorney-general may bring an action against the officers and directors of a life insurance company for an accounting for losses sustained by reason of their neglect of duty. People *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 339, 101 N. Y. Supp. 354.

If the Attorney-General Signs the Petition it is immaterial what persons prosecute it in his name. Hamlin *v.* Higgins, 102 Me. 510, 67 Atl. 625.

3. State *v.* Vandalia, 119 Mo. App. 406, 94 S. W. 1009.

4. State *v.* Vandalia, 119 Mo. App. 406, 94 S. W. 1009.

482. 1. California, etc., R. Co. *v.* State, 1 Cal. App. 142, 81 Pac. 971; State *v.* Bryan, 50 Fla. 293, 39 So. 929.

Necessary Parties. — Where the complaint not only claims that one party is not entitled to the office but also that another party is entitled to it, both claimants are necessary parties to the proceeding. People *v.* McClellan, 119 N. Y. App. Div. 416, 104 N. Y. Supp. 447.

483. 1. State *v.* Missouri, etc., R. Co., (Tex. 1906) 91 S. W. 214. See dissenting opinion of Whitfield, C. J., in Henry *v.* State, 87 Miss. 98, 39 So. 856, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 483.

Where Quo Warranto Is Brought in the Name of the Attorney-General it is no objection that the petition states that it is on relation of a private person. Atty.-Gen. *v.* Booth, 143 Mich. 89, 106 N. W. 868.

484. 2. Hord *v.* State, 167 Ind. 622, 79 N. E. 916. See also McQuesten *v.* Atty.-Gen., 187 Mass. 185, 72 N. E. 963.

3. Employment of Experts. — In Ritchie *v.* State, 42 Wash. 653, 85 Pac. 417, it was held that the attorney-general had no authority to employ an architect to assist him in preparing a defense to an action on a building contract.

4. State *v.* Bryan, 50 Fla. 293, 39 So. 929.

The Question of the Propriety of Employing an Attorney for a Private Party, to assist in the prosecution of a suit by the United States, in which suit the private party is interested, is within the discretion of the attorney-general. U. S. *v.* Chandler-Dunbar Water Power Co., (C. C. A.) 152 Fed. 25.

485. 1. Mandamus Will Lie Only in Extreme Cases, if at all. Lamb *v.* Webb, (Cal. 1907) 91 Pac. 102.

AUCTIONS AND AUCTIONEERS.

489. 2. New York Statute. — Gregory *v.* U. S. Fidelity, etc., Co., (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 112, 91 N. Y. Supp. 595; Moser *v.* Bankers' Surety Co., 109 N. Y. App. Div. 172, 95 N. Y. Supp. 609.

490. 1. Moser *v.* Bankers' Surety Co., 109 N. Y. App. Div. 172, 95 N. Y. Supp. 609.

3. Failure to Account for Property Sold. — Gregory *v.* U. S. Fidelity, etc., Co., (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 112, 91 N. Y. Supp. 595; Plummer *v.* Bankers Surety Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 97, 101 N. Y. Supp. 529.

Sureties Are Not Liable to a mortgagee for an auctioneer personally buying goods subject to the mortgage and selling them at auction, himself retaining the proceeds. Moser *v.* Bankers' Surety Co., 109 N. Y. App. Div. 172, 95 N. Y. Supp. 609.

491. 1. Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723.

An Auctioneer Is a Mere Special Agent, having no authority from the parties to change their contract. Kelly *v.* Holbrook, 191 Mass. 565, 77 N. E. 1037.

2. Williams *v.* Corker, 144 Cal. 468, 77 Pac. 1004; Campbell *v.* Eno, 31 Quebec Super. Ct. 152, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 491.

4. **When Auctioneer's Authority Is Revoked under Facts Stated.** — Byrne *v.* Fremont Realty Co., 120 N. Y. App. Div. 692, 105 N. Y. Supp. 838.

6. **Right of Auctioneer to Withdraw Subject of Sale.** — Fenwick *v.* Macdonald, Sc. Ct. of Sess. 6 F. 850.

493. 2. Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 493.

494. 1. Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723.

496. 5. An auctioneer who has accepted a bid less than the reserve price of goods, and after the discovery of his mistake refuses to sign a contract of sale, is not liable in an action by the purchaser for either breach of duty or for breach of warranty of authority. McManus *v.* Fortescue, (1907) 2 K. B. 1.

497. 5. Plummer *v.* Bankers Surety Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 97, 101 N. Y. Supp. 529.

7. Greer *v.* Newland, 70 Kan. 315, 78 Pac. 835, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 497.

The identification of the principal by the auctioneer will relieve him from liability. Mercer *v.* Leihy, 139 Mich. 447, 102 N. W. 972.

498. 3. Mercer *v.* Leihy, 139 Mich. 447, 102 N. W. 972.

499. 1. Bailey *v.* Manley, 77 Vt. 157, 59 Atl. 200, holding further that a tender to return the property was not necessary to make the rescission complete.

501. 1. **Retraction.** — McPherson Bros. Co. *v.* Okanogan County, (Wash. 1907) 88 Pac. 199.

2. Mallard *v.* Curran, 123 Ga. 872, 51 S. E. 712, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 501; McPherson Bros. Co. *v.* Okanogan County, (Wash. 1907) 88 Pac. 199.

504. 6. **A "Puffer's" Bid Will Not Avoid a Sale,** but make it voidable at the election of the purchaser. Gregory *v.* U. S. Fidelity, etc., Co., (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 112, 91 N. Y. Supp. 595.

507. 1. Satterfield *v.* Kindley, (N. Car. 1907) 57 S. E. 145, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 506, 507.

509. 2. Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723.

3. Brown *v.* Doherty, 185 N. Y. 383, 78 N. E. 147, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 509.

511. 3. Andrews *v.* Frierson, 144 Ala. 470, 39 So. 512.

512. 2. **An Agreement between an Auctioneer and an Administrator of an Estate** as to commissions may be modified by the court so as to increase the commissions. Andrews *v.* Frierson, 144 Ala. 470, 39 So. 512.

AUDIT.

513. 3. Byrne's Case, 34 Pa. Co. Ct. 521, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513.

AUTHORITY — AUTHORIZE.

516. 5. **Power and Authority Synonymous with Jurisdiction.** — Lee *v.* State, 143 Ala. 93, 39 So. 366.

Authorized by Law. — See Diefenderfer *v.* State, 14 Wyo. 302, 83 Pac. 591.

Authorized Course of Vessel — Regulations for Preventing Collisions. — See The Anselm, (1907) P. 151, 76 L. J. P. 54, 97 L. T. N. S. 16, 23 Times L. Rep. 378.

BAGGAGE.

529. 1. Pullman Co. *v.* Schaffner, 126 Ga. 609, 55 S. E. 933; Yazoo, etc., Valley R. Co. *v.* Georgia Home Ins. Co., 85 Miss. 7, 37 So. 500; Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52; Missouri, etc., R. Co. *v.* Meek, 33 Tex. Civ. App. 47, 75 S. W. 317, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 529; Texas, etc., R. Co. *v.* Russell, (Tex. Civ. App. 1906) 97 S. W. 1090.

530. 1. Kast *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 107.

531. 1. Kast *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 107.

2. Little Rock, etc., R. Co. *v.* Record, 74 Ark. 125, 85 S. W. 421 (shotgun held baggage).

533. 1. Brick *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 58 S. E. 1073, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 533.

A husband was allowed to recover the value of his own and his wife's property which was in her trunk, she alone being the passenger. Battle *v.* Columbia, etc., R. Co., 70 S. Car. 329, 49 S. E. 849.

3. McElroy *v.* Iowa Cent. R. Co., 133 Iowa 544, 110 N. W. 915, *citing* 2 [3] AM. AND ENG. ENCYC. OF LAW (2d ed.) 533; Katz *v.* Cleveland, etc., R. Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 259, 91 N. Y. Supp. 720.

A sample case is not baggage within the meaning of the *Mississippi* statute allowing double damages for the wilful loss of, or injury to, baggage. New Orleans, etc., R. Co. *v.* Shackelford, 87 Miss. 610, 6 Ann. Cas. 826, 40 So. 427.

Exemption from Liability for Commercial Travelers' Samples Must Be by Special Contract — English Statute. — Wilkinson *v.* Lancashire, etc., R. Co., (1907) 2 K. B. 222, (1906) 2 K. B. 619.

534. 3. Pullman Co. *v.* Schaffner, 126 Ga. 609, 55 S. E. 933; Brick *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 58 S. W. 1073, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 534; Battle *v.* Columbia, etc., R. Co., 70 S. Car. 329, 49 S. E. 849, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 534.

535. 1. Knieriem *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 709, 96 N. Y. Supp. 602.

2. Pullman Co. *v.* Schaffner, 126 Ga. 609, 55 S. E. 933.

3. Pullman Co. *v.* Schaffner, 126 Ga. 609, 55 S. E. 933; Knieriem *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 709, 96 N. Y. Supp. 602; Battle *v.* Columbia, etc., R. Co., 70 S. Car. 329, 49 S. E. 849, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 535; Texas, etc., R. Co. *v.* Lawrence, (Tex. Civ. App. 1906) 95 S. W. 663.

537. 8. Special Cases — What Has Been Held to Constitute Baggage. — A shotgun. Little Rock, etc., R. Co. *v.* Record, 74 Ark. 125, 85 S. W. 421.

A razor. Pullman Co. *v.* Schaffner, 126 Ga. 609, 55 S. E. 933.

Money. Battle *v.* Columbia, etc., R. Co., 70 S. Car. 329, 49 S. E. 849, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 535.

Children's clothing. Battle *v.* Columbia, etc., R. Co., 70 S. Car. 329, 49 S. E. 849.

Articles bought and used for a child paying no fare. Withey *v.* Pere Marquette R. Co., 141 Mich. 412, 12 Detroit Leg. N. 511, 7 Ann. Cas. 57, 104 N. W. 773.

Articles Not Baggage. — Principal's business papers in agent's trunk. Yazoo, etc., Valley R. Co. *v.* Georgia Home Ins. Co., 85 Miss. 7, 37 So. 500.

Samples of stationery. Rossier *v.* Wabash R. Co., 115 Mo. App. 515, 91 S. W. 1018.

Winter clothing carried on a short summer journey. Missouri, etc., R. Co. *v.* Meek, 33 Tex. Civ. App. 47, 75 S. W. 317.

538. 1. McKibbin *v.* Wisconsin Cent. R. Co., 100 Minn. 270, 110 N. W. 964.

2. Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52; Missouri, etc., R. Co. *v.* Meek, 33 Tex. Civ. App. 47, 75 S. W. 317, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 538; Texas, etc., R. Co. *v.* Russell, (Tex. Civ. App. 1906) 97 S. W. 1090.

539. 1. McElroy *v.* Iowa Cent. R. Co., 133 Iowa 544, 110 N. W. 915, *citing* 2 [3] AM. AND ENG. ENCYC. OF LAW (2d ed.) 539; Rossier *v.* Wabash R. Co., 115 Mo. App. 515, 91 S. W. 1018; Illinois Southern R. Co. *v.* Antoon, 122 Ill. App. 359; Brick *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 58 S. E. 1073, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 539.

2. Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52.

540. 2. Charlotte Trouser Co. *v.* Seaboard Air Line R. Co., 139 N. Car. 382, 51 S. E. 973; Brick *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 58 S. E. 1073.

541. 1. New Orleans, etc., R. Co. *v.* Shackelford, 87 Miss. 610, 6 Ann. Cas. 826, 40 So. 427; Saleeby *v.* Central R. Co., 184 N. Y. 597, 77 N. E. 1196; Charlotte Trouser Co. *v.* Seaboard Air Line R. Co., 139 N. Car. 382, 51 S. E. 973.

2. Dahrooge *v.* Pere Marquette R. Co., 144 Mich. 544, 108 N. W. 283, 13 Detroit Leg. N. 381; McKibbin *v.* Wisconsin Cent. R. Co., 100 Minn. 270, 110 N. W. 964; St. Louis, etc., R. Co. *v.* Green, (Tex. Civ. App. 1906) 97 S. W. 531.

That Certain Cases Were Called "Sample Cases" was held not to be conclusive proof that the carrier knew they contained merchandise. Rossier *v.* Wabash R. Co., 115 Mo. App. 515, 91 S. W. 1018.

542. 2. Saleeby *v.* Central R. Co., 184 N. Y. 597, 77 N. E. 1196.

3. Brick *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 58 S. E. 1073, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 542.

543. 1. Illinois Southern R. Co. *v.* Antoon, 122 Ill. App. 359.

3. See Morrison *v.* Belfast, etc., R. Co., 12 R. & Can. T. Cas. 99.

6. Atlanta Terminal Co. *v.* American Baggage, etc., Co., 125 Ga. 677, 54 S. E. 711; Hart *v.* Atlanta Terminal Co., 128 Ga. 754, 58 S. E. 452, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 543.

544. 6. A Carrier May Remove Heavy Articles from a passenger car in a reasonable manner, where there is a rule against their carriage and the passenger refuses to remove them. Smith *v.* Atchison, etc., R. Co., 122 Mo. App. 85, 97 S. W. 1007.

545. 1. Sullivan *v.* Southern R. Co., 74 S. Car. 377, 54 S. E. 586.

3. Sullivan *v.* Southern R. Co., 74 S. Car. 377, 54 S. E. 586.

546. 3. Wolf *v.* Grand Rapids, etc., R. Co., 149 Mich. 75, 112 N. W. 732, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 546; Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52; Brick *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 58 S. E. 1073; Chesapeake, etc., R. Co. *v.* Beasley, 104 Va. 788, 52 S. E. 566.

547. 4. Hatch *v.* Pullman Sleeping Car Co., (Tex. Civ. App. 1904) 84 S. W. 246.

548. 1. Sperry *v.* Consolidated R. Co., 79 Conn. 565, 65 Atl. 962.

549. 2. Knieriem *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 709, 96 N. Y. Supp. 602, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 549.

550. 4. Knieriem *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 709, 96 N. Y. Supp. 602, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 550.

553. 1. McKibbin *v.* Wisconsin Cent. R. Co., 100 Minn. 270, 110 N. W. 964, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 553.

2. Brick *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 58 S. E. 1073.

554. 2. Mogill *v.* Central R. Co., 25 Pa. Super. Ct. 164.

Under the New York Statute (Laws of 1907, p. 911, c. 429, § 38) which provides that every carrier shall be liable for loss of baggage to its full value, provided its value above $150 is stated, no exemption from liability is allowed regardless of value, provided the excess is stated, and the baggage must be carried whatever its value may be. Baum *v.* Long Island R. Co., (N. Y. City Ct. Tr. T.) 58 Misc. (N. Y.) 34, 108 N. Y. Supp. 1113.

555. 1. Under a clause in a steamship ticket requiring a declaration of value "at or before the delivery of said luggage to the ship," it was held that, where baggage disappeared after delivery at the dock, but before it was carried aboard the vessel, the company was liable although there had been no declaration of value, as the passenger had a right to assume that the baggage would be placed on the ship and the declaration could there be made to the proper officer. Holmes *v.* North German Lloyd Steamship Co., 100 N. Y. App. Div. 36, 90 N. Y. Supp. 834, *affirmed* 184 N. Y. 280, 77 N. E. 21.

3. White *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 86 S. W. 962; Chesa-

peake, etc., R. Co. *v.* Beasley, 104 Va. 788, 52 S. E. 566.

556. 1. White *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 86 S. W. 962; Hutto *v.* Southern R. Co., 75 S. Car. 295, 55 S. E. 445.

557. 1. Rose *v.* Northern Pac. R. Co., 35 Mont. 70, 88 Pac. 767; Mogill *v.* Central R. Co., 25 Pa. Super. Ct. 164.

2. Little Rock, etc., R. Co. *v.* Record, 74 Ark. 125, 85 S. W. 421; Hutchins *v.* Pennsylvania R. Co., 181 N. Y. 186, 73 N. E. 972; Lunansky *v.* Hamburg American Packet Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 21, 99 N. Y. Supp. 810; Kast *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 107.

558. 2. In Rose *v.* Northern Pac. R. Co., 35 Mont. 70, 88 Pac. 767, it was held a passenger who signed a ticket limiting liability could not, in the absence of fraud, be heard to say that he did not know or understand its contents.

One Who Signed a Mileage Book limiting the carrier's liability to wearing apparel was held not entitled to recover for the loss of certain tools. Kast *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 107.

560. 1. Holmes *v.* North German Lloyd Steamship Co., 100 N. Y. App. Div. 36, 90 N. Y. Supp. 834.

561. 1. Battle *v.* Columbia, etc., R. Co., 70 S. Car. 329, 49 S. E. 849, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 561.

562. 3. Ft. Worth, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1906) 94 S. W. 178.

5. Haas *v.* Louisiana, etc., R. Co., 76 Ark. 607, 89 S. W. 1001; Texas, etc., R. Co. *v.* Weatherby, (Tex. Civ. App. 1906) 92 S. W. 58.

Delivery at the baggage room, as directed by the only person in charge of the station, and under his assurance that he would take charge of the baggage, he being at the time engaged at the telegraph instrument, was held a sufficient delivery. Battle *v.* Columbia, etc., R. Co., 70 S. Car. 329, 49 S. E. 849, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 562.

563. 3. Gregory *v.* Webb, (Tex. Civ. App. 1905) 89 S. W. 1109.

Unloading trunks upon a wheeled truck kept on and about the platform, and in the absence of the station officials, although there was a regular and safe place for the reception of baggage, does not constitute delivery where baggage was injured by a passing train. Lennon *v.* Illinois Cent. R. Co., 127 Iowa 431, 103 N. W. 343.

564. 3. Southern R. Co. *v.* Rosenheim, 1 Ga. App. 766, 58 S. E. 81; Zeigler *v.* Mobile, etc., R. Co., 87 Miss. 367, 39 So. 811; Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52; Rossier *v.* Wabash R. Co., 115 Mo. App. 515, 91 S. W. 1018; Charlotte Trouser Co. *v.* Seaboard Air Line R. Co., 139 N. Car. 382, 51 S. E. 973; Moyer *v.* Pennsylvania R. Co., 31 Pa. Super. Ct. 559; Chesapeake, etc., R. Co. *v.* Beasley, 104 Va. 788, 52 S. E. 566.

565. 1. **Question for Jury.** — Zeigler *v.* Mobile, etc., R. Co., 87 Miss. 367, 39 So. 811.

567. 3. **Illustrations of Unreasonable Time.** — Moyer *v.* Pennsylvania R. Co., 31 Pa. Super. Ct. 559.

569. 5. Southern R. Co. *v.* Edmundson, 123 Ga. 474, 51 S. E. 388; Hicks *v.* Wabash R. Co., 131 Iowa 295, 108 N. W. 534; Charlotte Trouser Co. *v.* Seaboard Air Line R. Co., 139 N. Car. 382, 51 S. E. 973.

570. 3. Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52; Rossier *v.* Wabash R. Co., 115 Mo. App. 515, 91 S. W. 1018; Charlotte Trouser Co. *v.* Seaboard Air Line R. Co., 139 N. Car. 382, 51 S. E. 973.

571. 5. Kansas City, etc., R. Co. *v.* Washington, 74 Ark. 9, 85 S. W. 406.

573. 6. Little Rock, etc., R. Co. *v.* Record, 74 Ark. 125, 85 S. W. 421; Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52; Adger *v.* Blue Ridge R. Co., 71 S. Car. 213, 50 S. E. 783.

576. 1. Hicks *v.* Wabash R. Co., 131 Iowa 295, 108 N. W. 534; Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52; Griffith *v.* Atchison, etc., R. Co., 114 Mo. App. 591, 90 S. W. 408; Talcott *v.* Wabash R. Co., 109 N. Y. App. Div. 491, 96 N. Y. Supp. 548.

579. 5. St. Louis, etc., R. Co. *v.* Green, (Tex. Civ. App. 1906) 97 S. W. 531.

6. Park *v.* Southern R. Co., (S. Car. 1907) 58 S. E. 931.

580. 1. Park *v.* Southern R. Co., (S. Car. 1907) 58 S. E. 931.

3. Graham, etc., Transp. Co. *v.* Young, 117 Ill. App. 257.

581. 1. St. Louis, etc., R. Co. *v.* Stone, 78 Ark. 318, 95 S. W. 470.

582. 2. **Admissibility of List of Articles Lost in Trunk.** — Graham, etc., Transp. Co. *v.* Young, 117 Ill. App. 257.

5. Battle *v.* Columbia, etc., R. Co., 70 S. Car. 329, 49 S. E. 849.

584. 2. Pullman Co. *v.* Schaffner, 126 Ga. 609, 55 S. E. 933; Zeigler *v.* Mobile, etc., R. Co., 87 Miss. 367, 39 So. 811; Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W 52; Saleeby *v.* Central R. Co., 184 N. Y. 597, 77 N. E. 1196; Park *v.* Southern R. Co., (S. Car. 1907) 58 S. E. 931.

5. Wall *v.* Atlantic Coast Line R. Co., 71 S. Car. 337, 51 S. E. 95; Turner *v.* Southern R. Co., 75 S. Car. 58, 54 S. E. 825; St. Louis, etc., R. Co. *v.* Green, (Tex. Civ. App. 1906) 97 S. W. 531.

585. 1. Turner *v.* Southern R. Co., 75 S. Car. 58, 54 S. E. 825, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; Ft. Worth, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1906) 94 S. W. 178.

2. Turner *v.* Southern R. Co., 75 S. Car. 58, 54 S. E. 825.

3. Katz *v.* Cleveland, etc., R. Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 259, 91 N. Y. Supp. 720; Wall *v.* Atlantic Coast Line R. Co., 71 S. Car. 337, 51 S. E. 95; Texas, etc., R. Co. *v.* Russell, (Tex. Civ. App. 1906) 97 S. W. 1090.

586. 4. Sullivan *v.* Southern R. Co., 74 S. Car. 377, 54 S. E. 586.

BAIL (IN CIVIL CASES).

591. 7. Preston *v.* McNeil Lumber Co., 143 Fed. 557, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 591.

596. 3. Banning *v.* Roy, 47 Oregon 119, 82 Pac. 708.

598. 7. In *Georgia* a defendant is entitled to be released without security upon showing that he can neither give security nor produce the property. Hinson *v.* Battle, 127 Ga. 459, 56 S. E. 489.

613. 4. **Condition Requiring Obedience to Impossible Order.** — There can be no default as to a bail bond the condition of which is that the principal shall be obedient to an order of court, which the court has no authority to make. Bristol *v.* Graff, 79 N. Y. App. Div. 426, 80 N. Y. Supp. 39, *affirmed* 179 N. Y. 551, 71 N. E. 1135.

617. 1. Keyes *v.* Bennett, 218 Ill. 625, 75 N. E. 1075, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 617.

633. 5. Keyes *v.* Bennett, 218 Ill. 625, 75 N. E. 1075.

639. 6. **Principal Released on Habeas Corpus.** — A defendant who was not originally liable to arrest and had been discharged on habeas corpus cannot be held upon surrender by his sureties. Ledford *v.* Emerson, 143 N. Car. 527, 55 S. E. 969.

BAIL AND RECOGNIZANCE (IN CRIMINAL CASES).

654. 3. **Power to Bail in Court Having Prisoner in Charge.** — *Ex p.* Doyle, (W. Va. 1907) 57 S. E. 824, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 654.

Power Limited to Persons or Courts Having Power to Arrest or Commit Offender. — Territory *v.* Woodring, 15 Okla. 203, 6 Ann. Cas. 950, 82 Pac. 572; Territory *v.* Allen, 15 Okla. 417, 82 Pac. 574; Territory *v.* Allen, 15 Okla. 421, 82 Pac. 575; Territory *v.* Reynolds, 15 Okla. 185, 186, 82 Pac. 574.

655. 4. Territory *v.* Allen, 15 Okla. 417, 82 Pac. 574; Territory *v.* Allen, 15 Okla. 421, 82 Pac. 575.

656. 2. *Ex p.* Doyle, (W. Va. 1907) 57 S. E. 824, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 656.

Upon Appeal. — The Supreme Court of the District of Columbia has power on appeal to it to admit to bail. *In re* Moss, 23 App. Cas. (D. C.) 474.

657. 3. Sutherland *v.* St. Lawrence County, 101 N. Y. App. Div. 299, 91 N. Y. Supp. 962.

Justice Given Jurisdiction to Fix Bail in Capital Cases. — *Ex p.* Wasson, (Tex. Crim. 1906) 97 S. W. 103.

658. 2. Reardon *v.* People, 123 Ill. App. 81; Smith *v.* State, 86 Miss. 315, 38 So. 319.

659. 1. Territory *v.* Woodring, 15 Okla. 203, 6 Ann. Cas. 950, 82 Pac. 572, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659; Territory *v.* Reynolds, 15 Okla. 185, 186, 82 Pac. 574.

City "Bond Clerk" Without Authority to Fix Amount of Bail. — San Francisco *v.* Hartnett, 1 Cal. App. 652, 82 Pac. 1064.

660. 5. **Kansas Statute.** — See McKie *v.* State, 74 Kan. 21, 85 Pac. 827, considering what custody of the accused is essential to the sheriff's authority to take bail.

Authority Limited to Misdemeanor Cases. — State *v.* Crosswhite, 195 Mo. 1, 93 S. W. 247.

661. 1. **Statute Permitting Sheriff to Fix Bail.** — Territory *v.* Sellers, 15 Okla. 419, 82 Pac. 575.

2. **Texas Statute — Duty to Take New Bail in Same Amount on Surrender of Deceased.** — *Ex p.* Wasson, (Tex. Crim. 1906) 97 S. W. 103.

662. 3. U. S. *v.* Louis, 149 Fed. 277.

Only Judicial Officers Mentioned by Statute Authorized to Take Bail. — Roberts *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 388.

664. 3. Vanderford *v.* Brand, 126 Ga. 67, 9 Ann. Cas. 617, 54 S. E. 822, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 664; Shuler *v.* Willis, 126 Ga. 73, 54 S. E. 965.

665. 3. State *v.* District Ct., 35 Mont. 504, 90 Pac. 513; State *v.* Kauffman, (S. Dak. 1906) 108 N. W. 246.

Infant Sentenced to Reform School, Entitled to Bail by Statute, Pending Appeal. — Packenham *v.* Reed, 37 Wash. 258, 79 Pac. 786.

666. 3. Vanderford *v.* Brand, 126 Ga. 67, 9 Ann. Cas. 617, 54 S. E. 822; *Ex p.* Doyle, (W. Va. 1907) 57 S. E. 824, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 666.

667. 2. **Federal Statute Making All but Capital Cases Bailable.** — U. S. *v.* Louis, 149 Fed. 277.

4. *Ex p.* Proctor, (Tex. Crim. 1907) 99 S. W. 1010.

668. 4. State *v.* Kauffman, (S. Dak. 1906) 108 N. W. 246. See also State *v.* District Ct., 35 Mont. 504, 90 Pac. 513.

671. 5. **Federal Statute — Bail Before or After Indictment.** — U. S. *v.* Louis, 149 Fed. 277.

673. 3. U. S. *v.* Louis, 149 Fed. 277; *Ex p.* Doyle, (W. Va. 1907) 57 S. E. 824, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 673.

In New York. — See People *v.* Reardon, 186 N. Y. 164, 78 N. E. 860.

Commitment in Execution Ends Right to Bail. — *In re* Comolli, 78 Vt. 337.

675. 1. **England — Bail Refused After Conviction.** — See *In re* Comolli, 78 Vt. 337.

5. Vanderford *v.* Brand, 126 Ga. 67, 9 Ann. Cas. 617, 54 S. E. 822, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 675. See also People *v.* West, 143 Mich. 586, 107 N. W. 283.

In New York a person convicted of a crime not punishable with death cannot be admitted to bail "pending the determination of an application for a certificate of reasonable doubt." People *v.* Reardon, 186 N. Y. 164, 78 N. E. 860.

Idaho. — "The right of admission to bail after conviction of a felony does not necessarily follow the right to have a certificate of probable cause issue." *In re* Neil, 12 Idaho 749, 87 Pac. 881.

676. 1. **Bail After Conviction of Felony Granted Only under Special Circumstances.** — Vanderford *v.* Brand, 126 Ga. 67, 9 Ann. Cas. 617, 54 S. E. 822, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 676.

677. 3*a*. **The Facts that the Defendant Is a Physician** with a family in reduced circum-

stances, and that his patients will be deprived of his services, furnish no legal ground for an order granting bail. Winegarden *v.* State, 87 Miss. 264, 39 So. 1013.

5. Winegarden *v.* State, 87 Miss. 264, 39 So. 1013.

680. 1. See Farrell *v.* Hawley, 78 Conn. 150, 3 Ann. Cas. 874, 61 Atl. 502.

5. *Ex p.* Finn, (Tex. Crim. 1905) 90 S. W. 29.

681. 3. Reduction on Habeas Corpus. — *Ex p.* Barnett, (Tex. Crim. 1904) 83 S. W. 378; *Ex p.* Finn, (Tex. Crim. 1905) 90 S. W. 29.

Homicide Not Murder in First Degree — Bail Reduced to Fifteen Hundred Dollars. — *Ex p.* Harris, (Tex. Crim. 1906) 91 S. W. 794.

682. 5. Deposit Not Assignable by Prisoner After Conviction. — Way *v.* Day, 187 Mass. 476, 73 N. E. 543.

No Recovery of Money Deposited as Bail Because Misappropriated by Depositor — Sutherland *v.* St. Lawrence County, 101 N. Y. App. Div. 299, 91 N. Y. Supp. 962.

683. 3. Ottawa *v.* Johnson, 73 Kan. 165, 9 Ann. Cas. 707, 84 Pac. 749, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683.

Recognizance without a Surety. — "A recognizance upon appeal, entered into by the defendant without any surety whatever, although it fails to meet the requirements of the law, is not utterly void, but if approved and acted upon is effective to bind the signer and confer jurisdiction upon the appellate court." Ottawa *v.* Johnson, 73 Kan. 165, 9 Ann. Cas. 707, 84 Pac. 749.

686. 3. Com. *v.* Lamar, 32 Pa. Super. Ct. 200; State *v.* Dorr, 59 W. Va. 188, 8 Ann. Cas. 1016, 53 S. E. 120, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 686.

Must Be of Record. — Tully *v.* Lewitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 350, 97 N. Y. Supp. 829, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 686.

"A Recognizance Entered into by the Defendant Alone is insufficient to perfect a valid appeal." Zobel *v.* State, 72 Neb. 427, 100 N. W. 947.

687. 1. U. S. *v.* Zarafonitis, (C. C. A.) 150 Fed. 97; State *v.* Dorr, 59 W. Va. 188, 8 Ann. Cas. 1016, 53 S. E. 120, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687.

2. State *v.* Dorr, 59 W. Va. 188, 8 Ann. Cas. 1016, 53 S. E. 120, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687.

688. 2. San Francisco *v.* Hartnett, 1 Cal. App. 652, 82 Pac. 1064; Reardon *v.* People, 123 Ill. App. 81; Com. *v.* Phillips, 116 Ky. 329, 76 S. W. 118; Smith *v.* State, 86 Miss. 315, 38 So. 319; State *v.* Crosswhite, 195 Mo. 1, 93 S. W. 247.

Recognizance Not Invalid Because Taken After Committing Justice Had Sent Up Transcript. — Com. *v.* Lamar, 32 Pa. Super. Ct. 200.

689. 1. San Francisco *v.* Hartnett, 1 Cal. App. 652, 82 Pac. 1064; Territory *v.* Woodring, 15 Okla. 203, 6 Ann. Cas. 950, 82 Pac. 572, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688, 689; Territory *v.* Reynolds, 15 Okla. 185, 186, 82 Pac. 574.

3. State *v.* White, 40 Wash. 560, 82 Pac. 907.

690. 2. In the Federal Courts the sufficiency of a bail bond is governed by the law of the state where the bond is taken. U. S. *v.* Zarafonitis, (C. C. A.) 150 Fed. 97.

3. People *v.* Tidmarsh, 113 Ill. App. 153.

691. 1. Preliminary Matters such as the making and the return of the warrant and the fact that the defendant pleaded need not be recited in the bond. State *v.* Russ, 100 Me. 76, 60 Atl. 704.

A Recognizance Not Showing the State, County, and Township of the Justice before whom it was taken is not invalid on that account. Leis *v.* State, 71 Kan. 381, 80 Pac. 949.

2. Bond Substantially the Same as Statutory Bond Made Sufficient by Statute. — Tully *v.* Lewitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 350, 97 N. Y. Supp. 829; People *v.* Torn, 110 N. Y. App. Div. 676, 97 N. Y. Supp. 523.

3. State *v.* Russ, 100 Me. 76, 60 Atl. 704.

4. Williams *v.* State, (Tex. Crim. 1907) 103 S. W. 929.

602. 2. Recognizance **Not Invalidated by Misspelled Name.** — People *v.* Tidmarsh, 113 Ill. App. 153.

A Fictitious Name has been held not to invalidate the recognizance where the surety does not deny his signature nor that he procured the release of the person for whom he signed the recognizance. Com. *v.* Lamar, 32 Pa. Super. Ct. 200.

693. 3. Nichols *v.* State, (Tex. Crim. 1904) 83 S. W. 1113.

694. 2. Sufficient Description — Criminal District Court "of Harris County, Now in Session." — Nichols *v.* State, (Tex. Crim. 1904) 83 S. W. 1113.

696. 1. Territory *v.* Mills, (N. Mex. 1907) 88 Pac. 1131.

Inserting an Impossible Date for appearance does not invalidate a bond requiring appearance at the "next term." Territory *v.* Conner, 17 Okla. 135, 87 Pac. 591.

2. Territory *v.* Minter, (N. Mex. 1907) 88 Pac. 1130, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 696; Territory *v.* Mills, (N. Mex. 1907) 88 Pac. 1131.

In Mississippi, by statute, a bond is sufficient whether it describes the offense actually committed or not. Smith *v.* State, 86 Miss. 315, 38 So. 319, where the bond charged robbery and the forfeiture was had for failure to answer a charge of grand larceny.

In New York an inaccurate or insufficient description of the crime, or a failure to state a crime, does not relieve the surety from liability. People *v.* Torn, 110 N. Y. App. Div. 676, 97 N. Y. Supp. 523.

In the Federal Courts a sufficient specification of the charge is that the accused appear to answer "such matters and things as have or shall be objected against him." Kirk *v.* U. S., (C. C. A.) 137 Fed. 753, *affirmed* 204 U. S. 668, 27 U. S. Sup. Ct. 788; U. S. *v.* Graner, 155 Fed. 679.

Under the Texas Statute (Code Civ. Pro., art. 209) a bail bond must describe a felony as a felony and a misdemeanor as a misdemeanor. Wisdom *v.* State, (Tex. Crim. 1905) 86 S. W. 756. Under the statute, to clearly identify the

offense by any description is sufficient. U. S. *v.* Zarafonitis, (C. C. A.) 150 Fed. 97. This statute is complied with where the recognizance describes the offense as "embezzlement over the value of fifty dollars," as that describes a felony. Nichols *v.* State, (Tex. Crim. 1904) 83 S. W. 1113. A recognizance not stating the amount embezzled leaves it in doubt as to whether the offense is a misdemeanor or felony and is insufficient. Nichols *v.* State, (Tex. Crim. 1904) 83 S. W. 1113.

3. Territory *v.* Minter, (N. Mex. 1907) 88 Pac. 1130, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 696; Territory *v.* Conner, 17 Okla. 135, 87 Pac. 591.

False Pretenses. — "Obtaining property by means of false representations and pretense" is a sufficient description. Territory *v.* Conner, 17 Okla. 135, 87 Pac. 591.

697. 1. U. S. *v.* Zarafonitis, (C. C. A.) 150 Fed. 97; Territory *v.* Minter, (N. Mex. 1907) 88 Pac. 1130; Territory *v.* Conner, 17 Okla. 135, 87 Pac. 591.

698. 1. Territory *v.* Conner, 17 Okla. 135, 87 Pac. 591.

699. 1. **Amending Information.** — A recognizance is not invalidated by amending the information. Carter *v.* People, 122 Ill. App. 77.

The defendant is required to appear and answer the charge set out in the amended information. Jones *v.* State, 73 Kan. 771, 85 Pac. 302.

Oklahoma Statute. — The defendant may be properly bound over for an offense other than that charged in the complaint or warrant. Trimble *v.* Territory, 15 Okla. 620, 86 Pac. 64.

2. Specific Reference to Indictment Sufficient Description. — State *v.* Epstein, 186 Mo. 89, 84 S. W. 1120; State *v.* Epstein, 186 Mo. 102, 84 S. W. 1182.

700. 3. The sureties are bound although a blank space in the bond preceding the words "hundred dollars" is not filled in, it appearing from the first blank space properly filled in that the amount is "twenty hundred dollars." People *v.* Torn, 110 N. Y. App. Div. 676, 97 N. Y. Supp. 523.

701. 1. **Bond Not Invalidated by Misdescription of Officer to Whom Payable.** — Tully *v.* Lewitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 350, 97 N. Y. Supp. 829.

2. **Signature of Accused Unnecessary.** — Thomas *v.* Territory, (Ariz. 1906) 85 Pac. 1063; Territory *v.* Conner, 17 Okla. 135, 87 Pac. 591; Com. *v.* Lamar, 32 Pa. Super. Ct. 200; State *v.* Cornell, 70 S. Car. 409, 50 S. E. 22.

4. **Facts Creating Presumption that Surety Intended Principal Should Sign.** — See Tully *v.* Lewitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 350, 98 N. Y. Supp. 829.

702. 4. **Sureties May Justify Before Notary Public.** — State *v.* Baird, (Idaho 1907) 89 Pac. 298.

705. 4. **"Place" of Holding the Court Must Be Stated.** — Russell *v.* State, (Tex. Crim. 1905) 84 S. W. 589.

5. Davis *v.* State, (Tex. Crim. 1904) 82 S. W. 512; Parish *v.* State, (Tex. Crim. 1904) 82 S. W. 517; Hart *v.* State, (Tex. Crim. 1905) 84 S. W. 592.

706. 3. **Punishment Imposed Must Be Stated.** — Everett *v.* State, (Tex. Crim. 1904) 82 S. W. 512; Hart *v.* State, (Tex. Crim. 1905) 84 S. W. 592; Hannon *v.* State, (Tex. Crim. 1905) 87 S. W. 152; Thomas *v.* State, (Tex. Crim. 1905) 87 S. W. 353.

Texas Statute — *Conviction of Misdemeanor to Be Stated.* — Hannon *v.* State, (Tex. Crim. 1905) 87 S. W. 152.

The use of the phrase convicted "in this court of a misdemeanor" instead of "in this cause of a misdemeanor," as provided by statute, has been held not to vitiate an appeal recognizance. Cassens *v.* State, (Tex. Crim. 1905) 88 S. W. 229.

Misdemeanor Sufficiently Charged by Description of Offense. — McCarty *v.* State, (Tex. Crim. 1906) 94 S. W. 899.

5. **Omission of Concluding Words.** — A recognizance which binds the accused not to "depart without leave of this court in order to abide the judgment of the court of criminal appeals of the state," but omits the concluding words "in this case" as prescribed by Code Crim. Pro. Tex., art. 887, is insufficient. Mallard *v.* State, (Tex. Crim. 1904) 83 S. W. 1114; Hannon *v.* State, (Tex. Crim. 1905) 87 S. W. 152.

707. 6. **Consent to Alteration.** — The bond is not invalidated if the sureties consented to the alterations, and such consent may be proved by parol. State *v.* Baird, (Idaho 1907) 89 Pac. 298.

8. People *v.* Torn, 110 N. Y. App. Div. 676, 97 N. Y. Supp. 523, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 707; Tully *v.* Lewitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 350, 97 N. Y. Supp. 829.

708. 2. McNeal *v.* Van Denser, 142 Mich. 593, 105 N. W. 1109.

Under the North Carolina Statute the sureties may surrender their principal at any time before execution against them. State *v.* Schenck, 138 N. Car. 560, 3 Ann. Cas. 928, 49 S. E. 719.

709. 4. **For a Surrender in Open Court to Be Effective** the attention of the court must be called to the presence of the principal and the intention to surrender him must be definitely expressed and understood. Perkins *v.* Terrell, 1 Ga. App. 250, 58 S. E. 133.

5. **Georgia Statute — Proper Surrender in Open Court, or in Vacation to Sheriff.** — Perkins *v.* Terrell, 1 Ga. App. 250, 58 S. E. 133.

710. 1. **Illinois Statutes Authorize Surrender to Court.** — Young *v.* Deneen, 220 Ill. 350, 77 N. E. 193.

Surrender to Justice of the Peace Unauthorized. — Bird *v.* Terrell, 128 Ga. 386, 57 S. E. 777.

2. **Surety Exonerated by Surrender After Action Begun on Forfeited Bond.** — McNeal *v.* Van Duser, 142 Mich. 593, 105 N. W. 1109.

4. Young *v.* Deneen, 220 Ill. 350, 77 N. E. 193.

9. U. S. *v.* Manthei's Bondsmen, 2 Alaska 459, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 710.

10. People *v.* Tidmarsh, 113 Ill. App. 153.

712. 2. **Under the Missouri Statute** requiring the taking of a recognizance on postponement by a justice of the peace, the original

recognizance is released by the appearance of the accused. Allen *v.* Cape Brewery, etc., Co., 196 Mo. 435, 95 S. W. 417.

3. State *v.* Boehm, 184 Mo. 201, 83 S. W. 477.

4. Bail Bound Where Offense in Bond Includes Offense in Indictment or Contains Similar Element. Wells *v.* Terrell, 121 Ga. 368, 49 S. E. 319.

713. 1. State *v.* Schenck, 138 N. Car. 560, 3 Ann. Cas. 928, 49 S. E. 719.

3. U. S. *v.* Manthei's Bondsmen, 2 Alaska 459, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 713; Salter *v.* State, 125 Ga. 760, 54 S. E. 685; State *v.* Boehm, 184 Mo. 201, 83 S. W. 477.

4. Kirk *v.* U. S., 131 Fed. 331, *affirmed* (C. C. A.) 137 Fed. 753.

Appearance at Adjourned Sessions Required. — People *v.* Newman, 100 N. Y. App. Div. 436, 91 N. Y. Supp. 811.

714. 1. People *v.* Tidmarsh, 113 Ill. App. 153.

2. Kirk *v.* U. S., 131 Fed. 331, *affirmed* (C. C. A.) 137 Fed. 753; Hollister *v.* U. S., (C. C. A.) 145 Fed. 773.

715. 1. Williams *v.* State, (Tex. Crim. 1907) 103 S. W. 929.

2. Kirk *v.* U. S., 131 Fed. 331, *affirmed* (C. C. A.) 137 Fed. 753; State *v.* Schenck, 138 N. Car. 560, 3 Ann. Cas. 928, 49 S. E. 719, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 715.

Answering Different Charge. — An undertaking in a homicide case that the accused will at all times render himself amenable to the orders and process of the court, may be forfeited by the failure of the accused to appear and answer a charge of perjury committed on the coroner's inquest into the death. Pernetti *v.* People, 99 N. Y. App. Div. 391, 91 N. Y. Supp. 210, *affirmed* 181 N. Y. 556, 74 N. E. 1124.

717. 5. **The Sickness of the Principal** does not release the bail, though his death would. The sureties are bound until the principal is able to, and does, appear. Bonner *v.* Com., (Ky. 1905) 85 S. W. 1196.

718. 3. **Requiring Increased Bail** by a new bond does not exonerate the former bond until the new bond is furnished. People *v.* Newman, 100 N. Y. App. Div. 436, 91 N. Y. Supp. 811.

719. 7. **Arrest and Detention of the Principal in Another County** has been held to prevent forfeiture of the bail, provided he subsequently appears. Woods *v.* State, (Tex. Crim. 1907) 103 S. W. 895.

720. 3. **No Discharge by Continuance.** — State *v.* Epstein, 186 Mo. 144, 84 S. W. 1123; State *v.* Morgan, 136 N. Car. 593, 48 S. E. 604.

721. 1. **District Attorney.** — An oral agreement by the government's attorney that the accused need not appear unless a certain indictment should be filed cannot modify the terms of a bond conditioned that the accused shall appear and answer all matters objected against him. U. S. *v.* Graner, 155 Fed. 679.

722. 3. Lamphire *v.* State, 73 N. H. 463, 6 Ann. Cas. 615, 62 Atl. 786.

4. Laches. — The estreat of a recognizance is not defeated by laches in six years. State *v.* Cornell, 70 S. Car. 409, 50 S. E. 22.

5. Commitment of the Accused by a Magistrate or waiver thereof by the accused need not appear in order to authorize a forfeiture of the bond given for appearance in the higher court. Bird *v.* Terrell, 128 Ga. 386, 57 S. E. 777.

724. 2. State *v.* Morgan, 136 N. Car. 593, 48 S. E. 604.

4. State *v.* Morgan, 136 N. Car. 593, 48 S. E. 604; State *v.* Frankgos, 114 Tenn. 76, 85 S. W. 79.

Remission Only at Term at Which Forfeiture Adjudged and When Defendant in Custody. — Com. *v.* Hillis, (Ky. 1906) 96 S. W. 873.

726. 2. State *v.* Morgan, 136 N. Car. 593, 48 S. E. 604.

3. See Woods *v.* State, (Tex. Crim. 1907) 103 S. W. 895, construing the *Texas* statute, making sickness or unavoidable absence of the principal a defense to forfeiture of bail.

727. 3. **The Capture and Conviction of the Principal After Default Is No Ground for Remission,** the sureties having been secured by a transfer of property. State *v.* Adair, 115 La. 770, 40 So. 41.

728. 5. **Title in United States.** — U. S. *v.* Alexandroff, 148 Fed. 652.

BAILMENTS.

733. 1. Bates *v.* Bigby, 123 Ga. 727, 51 S. E. 717; Haines *v.* Chappell, 1 Ga. App. 480, 58 S. E. 220; Armour *v.* Ross, (S. Car. 1907) 58 S. E. 941.

Blackstone's Definition. — See Nicolette Lumber Co. *v.* Peoples Coal Co., 26 Pa. Super. Ct. 575.

A Lease of Chattels. — See Baker, etc., Mfg. Co. *v.* Clayton, (Tex. Civ. App. 1905) 90 S. W. 519.

Residuary Legatee as Bailee. — Guillet *v.* Rex, 15 Quebec K. B. 385, 12 Can. Crim. Cas. 186, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 734, note.

A Check Deposited in Aid of a Bond and to strengthen the security is a bailment. Haines *v.* Chappell, 1 Ga. App. 480, 58 S. E. 220.

A Person Receiving Money to Be Used for a Particular Purpose is a bailee. People *v.* Kellogg, 105 N. Y. App. Div. 505, 94 N. Y. Supp. 617, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733 *et seq.*

736. 1. *In re* Columbus Buggy Co., (C. C. A.) 143 Fed. 859.

2. McColligan *v.* Pennsylvania R. Co., 214 Pa. St. 229, 63 Atl. 792; Wetherill *v.* Gallagher, 217 Pa. St. 635, 66 Atl. 849; Miller *v.* Douglas, 32 Pa. Super. Ct. 158; Armour *v.* Ross, (S. Car. 1907) 58 S. E. 941; Doddridge County Oil, etc., Co. *v.* Smith, 154 Fed. 970.

Contracts Held to Be Sales. — Allyn *v.* Burns, 37 Ind. App. 223, 76 N. E. 636; Whitlock *v.* Auburn Lumber Co., (N. Car. 1907) 58 S. E. 909.

739. 2. *In re* Columbus Buggy Co., (C. C. A.) 143 Fed. 859.

Bailment Convertible into Sale. — Davis *v.* Wewoka First Nat. Bank, 6 Indian Ter. 124, 89 S. W. 1015.

741. 4. Smith *v.* F. W. Heitman Co., (Tex. Civ. App. 1906) 98 S. W. 1074.

742. 2. Morris Storage, etc., Co. *v.* Wilkes, 1 Ga. App. 751, 58 S. E. 232.

744. 1. Haralson *v.* Hahl, (Tex. Civ. App. 1905) 85 S. W. 1008.

2. **Driving or Working Sick Horse.** — The fact that a horse in the possession of the bailee became sick during a journey does not impute negligence on the part of the bailee. Haralson *v.* Hahl, (Tex. Civ. App. 1905) 85 S. W. 1008.

745. 2. Bullen *v.* Swan Electric Engraving Co., 22 Times L. Rep. 275; Ross *v.* Daugherty, 127 Ill. App. 572; Gerrish *v.* Muskegon Sav. Bank, 138 Mich. 46, 4 Ann. Cas. 1083, 100 N. W. 1000, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 749 [745]; Sprinkle *v.* Brim, (N. Car. 1907) 57 S. E. 148.

746. 2. Sanderson *v.* Collins, (1904) 1 K. B. 628, 73 L. J. K. B. 358, 90 L. T. N. S. 243, 52 W. R. 354, 20 Times L. Rep. 249; Bowen *v.* Isenberg Bros. Co., (Del. 1907) 67 Atl. 152; Evans *v.* Nail, 1 Ga. App. 42, 57 S. E. 1020; Haines *v.* Chappell, 1 Ga. App. 480, 58 S. E. 220; Mattern *v.* McCarty, (Neb. 1905) 102 N. W. 468; Sinischalchi *v.* Baslico, (Supm. Ct. App. T.) 92 N. Y. Supp. 722; Littlefield *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 637, 101 N. Y. Supp. 75; Campbell *v.* Klein, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 123, 101 N. Y. Supp. 577; Phillips *v.* International Text Book Co., 26 Pa. Super. Ct. 230; Haralson *v.* Hahl, (Tex. Civ. App. 1905) 85 S. W. 1008; Baker, etc., Mfg. Co. *v.* Clayton, (Tex. Civ. App. 1907) 103 S. W. 197.

Illustrations — Liability of Shopkeepers. — Wamser *v.* Browning, 109 N. Y. App. Div. 53, 95 N. Y. Supp. 1051. See also Wamser *v.* Browning, 187 N. Y. 87, 79 N. E. 861.

Bailee for Hire Must Exercise Good Faith. — Morris Storage, etc., Co. *v.* Wilkes, 1 Ga. App. 751, 58 S. E. 235.

For the Torts of the Bailee the bailor is not liable to third persons. McColligan *v.* Pennsylvania R. Co., 214 Pa. St. 229, 63 Atl. 792.

747. 1. Fairmont Coal Co. *v.* Jones, etc., Co., (C. C. A.) 134 Fed. 711; Hunter *v.* Riche, 127 Iowa 108, 102 N. W. 826; Campbell *v.* Klein, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 123, 101 N. Y. Supp. 577.

748. 1. Bowen *v.* Isenberg Bros. Co., (Del. 1907) 67 Atl. 152; Fairmont Coal Co. *v.* Jones, etc., Co., (C. C. A.) 134 Fed. 711; Whitlock *v.* Auburn Lumber Co., (N. Car. 1907) 58 S. E. 909.

2. See Smith *v.* O'Brien, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 325, 94 N. Y. Supp. 673.

749. 5. Campbell *v.* Klein, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 123, 101 N. Y. Supp. 577.

6. Fairmont Coal Co. *v.* Jones, etc., Co., (C C. A.) 134 Fed. 711.

750. 4. Evans *v.* Nail, 1 Ga. App. 42, 57 S. E. 1020; Alden *v.* Grande Ronde Lumber Co., 46 Oregon 593, 81 Pac. 385.

5. Denver Public Warehouse Co. *v.* Munger, 20 Colo. App. 56, 77 Pac. 5, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 750.

751. 1. Phipps *v.* New Claridge's Hotel, 22 Times L. Rep. 49; Central of Georgia R. Co. *v.* Jones, (Ala. 1907) 43 So. 575, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 750, 751; Morris Storage, etc., Co. *v.* Wilkes, 1 Ga. App. 751, 58 S. E. 232; Polack *v.* O'Brien, 114 N. Y. App. Div. 366, 100 N. Y. Supp. 385. See also Hayes *v.* Adams Express Co., (N. J. 1907) 65 Atl. 1044, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 750.

7. Polack *v.* O'Brien, 114 N. Y. App. Div. 366, 100 N. Y. Supp. 385.

752. 2. See Bullen *v.* Swan Electric Engraving Co., 23 Times L. Rep. 258.

4. Alabama Cotton Oil Co. *v.* Weeden, (Ala. 1907) 43 So. 926; Lavelle *v.* Belliu, 121 Mo. App. 442, 97 S. W. 200.

Bailor May Sue His Bailee for Conversion. — Barker *v.* S. A. Lewis Storage, etc., Co., 79 Conn. 342, 65 Atl. 143.

5. **The Measure of Damages** for the unwarranted use of the property of another by a bailee is not the value that may be produced by the labor and investment of the wrongdoer combined with such use of the property, but is the value of the use itself and any damage that may be done to the property in so using it, or if it amounts to a conversion the measure of damages will be the value of the property itself. State *v.* State Journal Co., (Neb. 1905) 106 N. W. 434.

753. 1. Haines *v.* Chappell, 1 Ga. App. 480, 58 S. E. 220.

2. Carney *v.* Rease, 60 W. Va. 676, 55 S. E. 729, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

755. 1. Atlantic, etc., R. Co. *v.* Spires, 1 Ga. App. 22, 57 S. E. 973, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 756–759 [755].

2. Riddle *v.* Blair, 148 Ala. 461, 42 So. 560.

756. 1. Riddle *v.* Blair, 148 Ala. 461, 42 So. 560.

3. Riddle *v.* Blair, 148 Ala. 461, 42 So. 560.

757. 4. Sprinkle *v.* Brim, (N. Car. 1907) 57 S. E. 148.

Bailee Is Entitled to Reasonable Delay in Delivery. — Dutton *v.* Shaw, (Miss. 1905) 38 So. 638.

Measure of Damages. — Where the bailee improperly delayed return of a cylinder upon which he was to do some work, and no notice was given him that it was part of the machinery used in running the mill, he was not liable in special damages. Pine Bluff Iron Works *v.* Boling, 75 Ark. 469, 88 S. W. 306.

758. 4. Riddle *v.* Blair, 148 Ala. 461, 42 So. 560.

7. Riddle *v.* Blair, 148 Ala. 461, 42 So. 560; Barker *v.* S. A. Lewis Storage, etc., Co., 79 Conn. 342, 65 Atl. 143; Atlantic, etc., R. Co. *v.* Spires, 1 Ga. App. 22, 57 S. E. 973; Cook *v.* Bartlett, 115 N. Y. App. Div. 829, 100 N. Y. Supp. 1032; Klein *v.* Patterson, 30 Pa. Super. Ct. 495, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758.

759. 1. Riddle *v.* Blair, 148 Ala. 461, 42 So. 560.

5. Woodford *v.* Kelly, 18 S. Dak. 615, 101 N. W. 1069.

6. Pine Bluff Iron Works *v.* Boling, 75 Ark. 469, 88 S. W. 306; Dutton *v.* Shaw, (Miss. 1905) 38 So. 638.

760. 2. Palin *v.* Cooke, 125 Ga. 442, 54 S. E. 90.

6. Smith *v.* O'Brien, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 325, 94 N. Y. Supp. 673.

Facts Held to Be Waiver of Lien. — Where cotton was delivered to a gin and not received when called for, although demand was not made and if made delivery was refused, such refusal was held to be a waiver of the lien. Alabama Cotton Oil Co. *v.* Weeden, (Ala. 1907) 43 So. 926.

Bailee Entitled to Compensation Before Delivery. — Where the bailee in returning the bailed machinery upon which he has done work, attaches a draft for more than is due him to the bill of lading, the bailor is not entitled to obtain possession of the machinery unless he tenders what is actually due. Dutton *v.* Shaw, (Miss. 1905) 38 So. 638.

761. 5. Abrahamovitz *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 539, 104 N. Y. Supp. 663.

762. 1. McCrossan *v.* Reilly, 33 Pa. Super. Ct. 628; Waggoner *v.* Snody, 98 Tex. 512, 85 S. W. 1134.

5. Lavelle *v.* Belliu, 121 Mo. App. 442, 97 S. W. 200.

763. 7. See opinion of Gary, J., in Battle *v.* Columbia, etc., R. Co., 70 S. Car. 340, 49 S. E. 849, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 763.

10. New Liverpool Salt Co. *v.* Western Salt Co., (Cal. 1907) 91 Pac. 152, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 763; Heisley *v.* Economy Tool Mfg. Co., 33 Pa. Super. Ct. 218.

765. 1. **The Statute of Limitations does not** begin to run against the bailor until he has notice that the bailee is holding adversely or so long as the relationship of bailee and bailor continues. Woodward *v.* San Antonio Traction Co., (Tex. Civ. App. 1906) 95 S. W. 76.

BALANCE.

767. 1. Foil *v.* Newsome, 138 N. Car. 115, 50 S. E. 597.

BALLOT.

768. 4. *Ex p.* Owens, (Ala. 1906) 42 So. 676; Lynch *v.* Malley, 215 Ill. 574, 74 N. E. 723, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 768.

Ballot Imports Secrecy. — *Ex p.* Owens, (Ala. 1906) 42 So. 676; Lynch *v.* Malley, 215 Ill. 574, 74 N. E. 723; State *v.* State Board of Canvassers, (S. Car. 1907) 59 S. E. 145.

BANKABLE.

770. 5. **Bankable Paper.** — See Byrne Mill Co. *v.* Robertson, (Ala. 1907) 42 So. 1008.

BANKNOTES.

777. 3. Pelletier *v.* State Nat. Bank, 114 La. 174, 38 So. 132.

BANKS AND BANKING.

790. 1. **Not Unusual for Same Institution to Exercise Two or Even All Three Functions.** — State *v.* German Sav. Bank, 103 Md. 196, 63 Atl. 481.

794. 1. **Sovereign Authority of State May Regulate and Restrain Right of Banking.** — State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085.

Certificate of Incorporation under General Corporation Act Does Not Confer Banking Powers. — McCarter *v.* Imperial Trustee Co., 72 N. J. L. 42, 60 Atl. 223.

Legislature May Authorize Adoption of Reasonable System of Inspection and Reports. — State *v.* Struble, 19 S. Dak. 646, 104 N. W. 465.

796. 3. **Excessive Loan.** — Where in evidence of a loan actually made to a bank, the lending bank accepts from the borrowing bank a note signed by the latter's cashier, personally, and indorsed by the borrowing bank, this being done to avoid disclosing on the face of the transaction an excessive loan to the borrowing bank, the borrowing bank is not thereby relieved of its obligation as a debtor. Portage First Nat. Bank *v.* State Bank, 15 N. Dak. 594, 109 N. W. 61.

797. 2. **May Pledge Notes of Another Bank to Secure Money Borrowed.** — Citizens' Bank *v.* Bank of Waddy's Receiver, (Ky. 1907) 103 S. W. 249.

799. 1. **A Bank, though Not Expressly Authorized to Deal in Real Estate,** or authorized by statute to do so, may, as an incident to its business, and for the purpose of securing itself from loss in the transaction of its authorized business, become the lawful owner of real estate. State Security Bank *v.* Hoskins, 130 Iowa 339, 106 N. W. 764.

May Hold Deeds of Real Property as Security for Past Indebtedness. — Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760.

802. 1. **A Statute Prohibiting a Bank from Employing Its Money Directly in Trade** was held not applicable to a contract by which the bank "carried" a person for money used in trade. Griffin *v.* Wabash R. Co., 115 Mo. App. 549, 91 S. W. 1015.

3. Manhattan L. Ins. Co. *v.* Denver First Nat. Bank, 20 Colo. App. 529, 80 Pac. 467, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 802.

803. 3. State Nat. Bank *v.* Hyatt, 75 Ark. 170, 5 Ann. Cas. 296, 86 S. W. 1002, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 803.

804. 2. See Interstate Nat. Bank *v.* Ringo, 72 Kan. 116, 83 Pac. 119, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 804.

May Receive Draft or Check in Conditional Satisfaction of Claim. — Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13. See also San Francisco Nat. Bank *v.* American Nat. Bank, (Cal. App. 1907) 90 Pac. 558.

Where Property Is Accepted in payment it becomes charged with the equitable rights and interests of the person for whom the collection is made. National L. Ins. Co. *v.* Mather, 118 Ill. App. 491.

805. 4. Manhattan L. Ins. Co. *v.* Denver First Nat. Bank, 20 Colo. App. 529, 80 Pac. 467.

806. 1. Jefferson County Sav. Bank *v.* Hendrix, 147 Ala. 670, 39 So. 295; Howard *v.* Bank of Metropolis, 115 N. Y. App. Div. 326, 100 N. Y. Supp. 1003.

809. 3. Jefferson County Sav. Bank *v.* Hendrix, 147 Ala. 670, 39 So. 295; R. H. Herron Co. *v.* Mawby, (Cal. App. 1907) 89 Pac. 872; Chicago First Nat. Bank *v.* Whittier Bank, 221 Ill. 319, 5 Ann. Cas. 653, 77 N. E. 563; Rocky Mt. Bank *v.* Floyd, 142 N. Car. 187, 55 S. E. 95.

A Custom of Bankers to Select the Drawee Bank as Agent is unreasonable and void. Farley Nat. Bank *v.* Pollock, 145 Ala. 321, 8 Ann. Cas. 370, 39 So. 612.

810. 1. Manhattan L. Ins. Co. *v.* Denver First Nat. Bank, 20 Colo. App. 529, 80 Pac. 467.

812. 3. Rocky Mt. Bank *v.* Floyd, 142 N. Car. 187, 55 S. E. 95.

Where the Forwarding Bank Was to Receive a Consideration, the court refused to apply the rule. Landa *v.* Traders' Bank, 118 Mo. App. 356, 94 S. W. 770.

814. 2. Jefferson County Sav. Bank *v.* Hendrix, 147 Ala. 670, 39 So. 295; Becker *v.* Harvey First Nat. Bank, 15 N. Dak. 279, 107 N. W. 968; People's Nat. Bank *v.* Brogden, 98 Tex. 360, 83 S. W. 1098, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 814.

815. 1. Hilburn *v.* Mercantile Nat. Bank, (Colo. 1907) 89 Pac. 45.

817. 1. Hendrix *v.* Jefferson County Sav. Bank, (Ala. 1907) 45 So. 136, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 817; Ocean Park Bank *v.* Rogers, (Cal. App. 1907) 92 Pac. 879, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 817; Interstate Nat. Bank *v.* Ringo, 72 Kan. 128, 83 Pac. 119, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 817.

Compare, however, Noble *v.* Doughten, 72 Kan. 336, 83 Pac. 1048, wherein it was held that if the payee of a check drawn on a bank in a city other than that of his residence indorse it and deposit it in his home bank in the usual and ordinary manner, and without any agreement or understanding in reference to the transaction other than such as the law implies, the check becomes the property of the indorsee. And see to the same effect Aebi *v.* Evansville Bank, 124 Wis. 73, 102 N. W. 329.

818. 1. Garrison *v.* Union Trust Co., 139 Mich. 392, 5 Ann. Cas. 813, 102 N. W. 978.

819. 2. Jefferson County Sav. Bank *v.* Hendrix, 147 Ala. 670, 39 So. 295.

3. North Carolina Corp. Commission *v.* Merchants', etc., Bank, 137 N. Car. 697, 2 Ann. Cas. 537, 50 S. E. 308, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 819; T. S. Reed Grocery Co. *v.* Canton Nat. Bank, 100 Md. 299, 59 Atl. 716.

If, However, Directions Are to Collect and Remit, the money collected is a trust fund and the relation of debtor and creditor does not exist. National L. Ins. Co. *v.* Mather, 118 Ill. App. 491.

821. 1. North Carolina Corp. Commission *v.* Merchants', etc., Bank, 137 N. Car. 697, 2 Ann. Cas. 537, 50 S. E. 308, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 820.

View that Collecting Bank Is a Trustee. — Holder *v.* Western German Bank, (C. C. A.) 136 Fed. 90.

Where a bank known by its officers to be insolvent receives and collects on a draft, the money collected becomes a trust fund and the customer may recover the amount collected from the receiver of the bank. Western German Bank *v.* Norvell, (C. C. A.) 134 Fed. 724.

822. 1. *Compare* Holder *v.* Western German Bank, (C. C. A.) 136 Fed. 90.

3. **May Not Apply Deposit to Another Purpose.** — Van Buren County Sav. Bank *v.* Sterling Woolen Mills Co., 125 Iowa 645, 101 N. W. 477.

May Not Apply Deposit for Wife to Debt of Husband. — Robards *v.* Hamrick, 39 Ind. App. 134, 79 N. E. 386.

4. Lennan *v.* Pollock State Bank, (S. Dak. 1907) 110 N. W. 834.

5. Hutchinson *v.* National Bank of Commerce, 145 Ala. 196, 41 So. 143; McGregor *v.* Battle, 128 Ga. 577, 58 S. E. 28; Whitcomb *v.* Carpenter, 134 Iowa 227, 111 N. W. 825.

823. 2. **Collateral Collected by a Bank After the Loan Which It Was Given to Secure Is Paid** becomes a deposit for the use and benefit of the owner if he so elects to treat it. Madill First Nat. Bank *v.* Pickens, (Indian Ter. 1907) 104 S. W. 947.

826. 3. McGregor *v.* Battle, 128 Ga. 577, 58 S. E. 28.

11. *United States.* — *In re* Salmon, 145 Fed. 649.

Alabama. — Clisby *v.* Mastin, (Ala. 1907) 43 So. 742.

Colorado. — Manitou *v.* Colorado Springs First Nat. Bank, 37 Colo. 344, 86 Pac. 75.

Georgia. — McGregor *v.* Battle, 128 Ga. 577, 58 S. E. 28.

Illinois. — National Bank of Republic *v.* Young, 125 Ill. App. 139; Chicago Sav. Bank *v.* Block, 126 Ill. App. 128; Troike *v.* Cook County Sav. Bank, 127 Ill. App. 413.

Iowa. — State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500.

Michigan. — Lonier *v.* State Sav. Bank, 149 Mich. 483, 112 N. W. 1119.

New York. — Fricano *v.* Columbia Nat. Bank, 118 N. Y. App. Div. 567, 103 N. Y. Supp. 189; Kearny *v.* Metropolitan Trust Co., 110 N. Y. App. Div. 236, 97 N. Y. Supp. 274; Gittings *v.* Russel, 114 N. Y. App. Div. 405, 99 N. Y. Supp. 1064.

Ohio. — Baker *v.* Orme, 27 Ohio Cir. Ct. 465.

Wisconsin. — Koelzer *v.* Whitewater First Nat. Bank, 125 Wis. 595, 4 Ann. Cas. 1144, 104 N. W. 838.

General Deposits Neither Loans Nor Bailments in Strict Sense of Term. — Elliott *v.* Capital City State Bank, 128 Iowa 275, 103 N. W. 777.

828. 1. State *v.* Dickerson, 71 Kan. 769, 81 Pac. 497, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 827.

6. Manitou *v.* Colorado Springs First Nat. Bank, 37 Colo. 344, 86 Pac. 75; Troike *v.* Cook County Sav. Bank, 127 Ill. App. 413.

829. 2. Hilburn *v.* Mercantile Nat. Bank, (Colo. 1907) 89 Pac. 45; Clark *v.* Farmers' Nat. Bank, (Ky. 1907) 99 S. W. 674.

4. Elliott *v.* Capital City State Bank, 128 Iowa 275, 103 N. W. 777.

5. **Implied Promise to Repay Moneys Deposited.** — Anderson *v.* Santa Cruz County, 4 Cal. App. 427, 88 Pac. 379.

The Promise Implied is that bank will hold the funds and pay them out according to the order of the depositor. Columbia Nat. Bank *v.* MacKnight, 29 App. Cas. (D. C.) 580.

Bank Bound Absolutely to Repay All Moneys Deposited. — Fricano *v.* Columbia Nat. Bank, 118 N. Y. App. Div. 567, 103 N. Y. Supp. 189.

Deposits May Be Withdrawn in Parcels. — Turner *v.* Hot Springs Nat. Bank, 18 S. Dak. 498, 5 Ann. Cas. 937, 101 N. W. 348.

Right of Action Arising on Promise Assignable. — Johnson *v.* Shuey, 40 Wash. 22, 82 Pac. 1[illegible].

830. 3. Mishawaka First Nat. Bank *v.* Stapf, 165 Ind. 162, 74 N. E. 987.

832. 3. American Nat. Bank *v.* Fidelity, etc., Co., 129 Ga. 126, 58 S. E. 867, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 832.

Evidence Held to Show No Participation by Bank. — Batchelder *v.* Central Nat. Bank, 188 Mass. 25, 73 N. E. 1024.

833. 3. Cunningham *v.* Nampa Bank, (Idaho 1907) 88 Pac. 975.

834. 3. Not Per Se Negligence. — Cope *v.* Westbay, 188 Mo. 638, 87 S. W. 504.

4. Earle *v.* Munce, 133 Fed. 1008.

835. 1. Troike *v.* Cook County Sav. Bank, 127 Ill. App. 413.

2. Manitou *v.* Colorado Springs First Nat. Bank, 37 Colo. 344, 86 Pac. 75, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 835.

A Bank Receiving a Deposit Even After Maturity of notes payable to it, must nevertheless apply the same in satisfaction of the notes, otherwise sureties thereon are released. Taylorsville Bank *v.* Hardesty, (Ky. 1906) 91 S. W. 729.

836. 3. Spartanburg Bank *v.* Mahon, (S. Car. 1907) 59 S. E. 31.

837. 3. Van Zandt *v.* Hanover Nat. Bank, (C. C. A.) 149 Fed. 127.

839. 1. Mishawaka First Nat. Bank *v.* Stapf, 165 Ind. 162, 6 Ann. Cas. 631, 74 N. E. 987; Elliott *v.* Capital City State Bank, 128 Iowa 275, 103 N. W. 777; Clark *v.* Farmers' Nat. Bank, (Ky. 1907) 99 S. W. 674; O'Neil *v.* New England Trust Co., (R. I. 1907) 67 Atl. 63; Johnson *v.* Shuey, 40 Wash. 22, 82 Pac. 123; Koelzer *v.* Whitewater First Nat. Bank, 125 Wis. 595, 4 Ann. Cas. 1144, 104 N. W. 838, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 838.

840. 3. West *v.* Caruthersville Bank, 110 Mo. App. 490, 85 S. W. 601.

844. 1. Montgomery First Nat. Bank *v.* Fidelity, etc., Co., 145 Ala. 335, 8 Ann. Cas. 241, 40 So. 415; Lemon *v.* Sigourney Sav. Bank, 131 Iowa 79, 108 N. W. 104; Citizens' Bank *v.* Bank of Waddy's Receiver, (Ky. 1907) 103 S. W. 249; Humboldt First Nat. Bank *v.* Heim, (Neb. 1906) 107 N. W. 1019; Sing Sing First Nat. Bank *v.* Sing Sing Gas Mfg. Co., 120 N. Y. App. Div. 542, 104 N. Y. Supp. 1040.

845. 1. Western Bank *v.* Coldeway, (Ky. 1906) 94 S. W. 1.

3. Baker *v.* Orme, 27 Ohio Cir. Ct. 465.

847. 1. **Facts Must Be Within Sphere of Officer's Duty.**— Grayson County Nat. Bank *v.* Hall, (Tex. Civ. App. 1906) 91 S. W. 807.

Must Show Previous Authority or Subsequent Ratification. — Emmetsburg First Nat. Bank *v.* Gunhus, 133 Iowa 409, 110 N. W. 611; LeRoy Bank *v.* Purdy, 100 N. Y. App. Div. 64, 91 N. Y. Supp. 310; Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017.

Contract by President in Own Interest Held Not Binding. — Fowler *v.* Walch, 119 N. Y. App. Div. 542, 104 N. Y. Supp. 54.

3. Payment of Check by Insolvent Bank. — If a bank, though insolvent, is still conducting its business and pays a check of a depositor in the usual course of business, and the depositor has no notice of the insolvency of the bank, the payment is good, and the depositor will be protected. If, however, the depositor is paid, not in the usual course of business, but at a time when he has notice or knowledge that the bank is insolvent, and that the intent of the bank is to create a preference in his favor over other creditors, the payment is not good, and such depositor is liable to repay to the bank, or its representative, such an amount as would be the difference between the amount received by him and his *pro rata* share of the assets of the bank upon a final winding up of its affairs. McGregor *v.* Battle, 128 Ga. 577, 58 S. E. 28, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847.

4. Hutchinson *v.* National Bank of Commerce, 145 Ala. 196, 41 So. 143, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847; McGregor *v.* Battle, 128 Ga. 577, 58 S. E. 28, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847; Williams *v.* Van Norden Trust Co., 104 N. Y. App. Div. 251, 93 N. Y. Supp. 821; Orme *v.* Baker, 74 Ohio St. 337, 78 N. E. 439; Baker *v.* Orme, 27 Ohio Cir. Ct. 465; Willoughby *v.* Weinberger, 15 Okla. 226, 79 Pac. 777.

When Repayment Refused. — Where a bank receives deposits while in a failing condition, and at the time it closes its doors it has on hand a sufficient amount of cash to repay such deposits, such payment will not be made ahead of the others, when the evidence on the particular trial affirmatively shows, when measured by the legal presumption, that such cash was deposited by other creditors. Cherry *v.* Territory, 17 Okla. 221, 89 Pac. 192.

Statutes Exist Making Officers of Insolvent Banks Criminally Responsible for Receiving Deposits. — See State *v.* Dunning, 130 Iowa 678, 107 N. W. 927; State *v.* Quackenbush, 98 Minn. 515, 108 N. W. 953; State *v.* Strait, 99 Minn. 327, 109 N. W. 598; Com. *v.* Tryon, 31 Pa. Super. Ct. 146.

850. 3. Hume *v.* Miller, (Neb. 1906) 106 N. W. 1006; *Ex p.* Savings Bank, 73 S. Car. 393, 53 S. E. 614.

Statute May Exist Giving Preference to Such Creditors as Are Depositors. — State *v.* Corning State Sav. Bank, 127 Iowa 198, 103 N. W. 97.

BASE.

869. 2. **The Words "at the Base,"** in a contract for cutting timber above a certain diameter at the *base*, held to mean at the ground, though it was a custom in that section to cut timber two feet above the ground. Banks *v.*

Blades Lumber Co., 142 N. Car. 49, 54 S. E. 844.

BASTARDY.

872. 1. Parker *v.* Nothomb, 65 Neb. 308, 91 N. W. 395, *affirmed* on rehearing 93 N. W. 851.

Under the Georgia Code, § 2507, a bastard is defined to be "a child born out of wedlock, and whose parents do not subsequently intermarry, or a child the issue of adulterous intercourse of the wife during wedlock." McLoud *v.* State, 122 Ga. 393, 50 S. E. 145.

873. 1. Moore *v.* Moore, (Ky. 1907) 98 S. W. 1027; McAllen *v.* Alonzo, (Tex. Civ. App. 1907) 102 N. W. 475.

3. Bowman *v.* Little, 101 Md. 273, 61 Atl. 1084; Buckner *v.* Buckner, 120 Ky. 596, 87 S. W. 776; Canaan *v.* Avery, 72 N. H. 591, 58 Atl. 509; Wallace *v.* Wallace, (N. J. 1907) 67 Atl. 612; Matter of Kelly, (Surrogate Ct.) 46 Misc. (N. Y.) 541, 95 N. Y. Supp. 57.

Not Disavowed During Lifetime of Husband. — Where the evidence shows beyond dispute that a child was conceived and born during marriage, and was not disavowed by the husband during his lifetime in the mode prescribed by law, the status of legitimacy is fixed, and can be questioned by no one in any form of proceeding. Ezidore *v.* Cureau's Heirs, 113 La. 839, 37 So. 773.

874. 1. Evans *v.* State, 165 Ind. 369, 6 Ann. Cas. 813, 74 N. E. 244, 75 N. E. 651; Burton *v.* Belvin, 142 N. Car. 151, 55 S. E. 71.

Quasi Criminal. — Meyer *v.* Meyer, 123 Wis. 538, 102 N. W. 52.

Preponderance of Evidence. — Where a prosecution for bastardy is regarded as a civil proceeding, a preponderance of the evidence only is required to warrant the jury in finding the defendant guilty. Alminowicz *v.* People, 117 Ill. App. 415.

So, too, where the defense is an alibi, it can be established by a preponderance of the evidence. Jones *v.* People, 116 Ill. App. 64.

876. 3. Wallace *v.* Wallace, (N. J. 1907) 67 Atl. 612.

877. 1. Canaan *v.* Avery, 72 N. H. 591, 58 Atl. 509.

878. 1. See Wallace *v.* Wallace, (N. J. 1907) 67 Atl. 612; Evans *v.* State, 165 Ind. 369, 6 Ann. Cas. 813, 74 N. E. 244, 75 N. E. 651.

In Indiana by Statute a married woman is competent to prove nonaccess of the husband. Evans *v.* State, 165 Ind. 369, 6 Ann. Cas. 813, 74 N. E. 244, 75 N. E. 651.

879. 1. Johnson *v.* Walker, 86 Miss. 757, 39 So. 49. See also Shailer *v.* Bullock, 78 Conn. 65, 61 Atl. 65.

Pregnancy or Intercourse. — It is not error to exclude evidence that up to the date of her confinement the prosecutrix, a girl of eighteen years of age, denied that she was pregnant or had ever had sexual intercourse. Johnson *v.* Walker, 86 Miss. 757, 39 So. 49.

2. By Statute such declarations of a deceased mother may be made admissible. Johnson *v.* Walker, 86 Miss. 757, 39 So. 49.

3. Evidence Contradictory to Mother's Statements. — Walker *v.* State, 165 Ind. 94, 74 N. E. 614; Busse *v.* State, 129 Wis. 171, 108 N. W. 64.

In Rebuttal. — The admission of evidence in rebuttal to support the prosecutrix's testimony is within the sound discretion of the court. Eckhardt *v.* People, 116 Ill. App. 408.

Contradiction as to Date. — Where the contradiction between the testimony of the prosecutrix and that of the defendant is irreconcilable, it is error to exclude testimony that the defendant at the time to which the testimony of the prosecutrix refers was seriously ill and confined to his bed. Com. *v.* Pearl, 29 Pa. Super. Ct. 307.

880. 2. Declarations Corroboratively Admissible. — Burns *v.* Donoghue, 185 Mass. 71, 69 N. E. 1060.

881. 1. Johnson *v.* Walker, 86 Miss. 757, 39 So. 49.

Impeachment of Defendant. — Evidence is competent in impeachment of the defendant which directly contradicts his statement that he was not present at the prosecutrix's home on the date in question. Eckhardt *v.* People, 116 Ill. App. 408.

2. Matter of Kelly, (Surrogate Ct.) 46 Misc. (N. Y.) 541, 95 N. Y. Supp. 57.

883. 1. Allred *v.* State, (Ala. 1907) 44 So. 60; Stahl *v.* State, 67 Kan. 864, 74 Pac. 238; Johnson *v.* State, (Wis. 1907) 113 N. W. 674.

Confined Within Period of Gestation. — Zimmerman *v.* People, 117 Ill. App. 54.

A Witness's Testimony of Acts of Intercourse Outside the Period of Gestation is inadmissible to contradict the prosecutrix, in the statement made by her, that she had never had intercourse with him. Allred *v.* State, (Ala. 1907) 44 So. 60.

884. 1. Allred *v.* State, (Ala. 1907) 44 So. 60.

885. 4. Testimony of a witness that the bastard child resembled the accused was held inadmissible in McCalman *v.* State, 121 Ga. 491, 49 S. E. 609. But see Higley *v.* Bostick, 79 Conn. 97, 63 Atl. 786, holding that it was proper to exhibit the child, then nearly a year old, to the jury for the avowed purpose of showing its claimed resemblance to the defendant. See also Shailer *v.* Bullock, 78 Conn. 65, 61 Atl. 65.

Immaturity of Child. — See Com. *v.* Pearl, 33 Pa. Super. Ct. 97.

Presence of Child at Trial. — Esch *v.* Graue, 72 Neb. 719, 101 N. W. 978.

It was held not error to permit the prosecutrix to take with her upon the stand the child, then eight months old, where it did not appear that she had any friend present to take care of the child. Benes *v.* People, 121 Ill. App. 103.

It is not error for the court to permit the complaining witness to hold her baby in her arms while testifying, where there is no effort to offer the baby in evidence, or to exhibit it to the jury. Johnson *v.* State, (Wis. 1907) 113 N. W. 674.

The Momentary Presence of the Child before the jury does not constitute reversible error,

where it was not exhibited to the jury and attention was not called to it in any way. Johnson *v.* Walker, 86 Miss. 757, 39 So. 49.

Question of Resemblance Submitted to Jury.— After the district attorney in the presence of the jury took the child, then sixteen months old, in his arms and commented on the resemblance between it and the defendant, it was held that the court fairly submitted the question of alleged similarity to the jury by saying, "if there is any resemblance between the child and this defendant which is apparent to the jury, the jury is at liberty to take that fact into consideration." Com. *v.* Pearl, 33 Pa. Super. Ct. 97, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 885.

Refusal to Require Child's Production.— An error of the court in refusing to require the prosecutrix to produce the child in court is cured by the subsequent production of the child before the jury and calling their attention thereto. Stahl *v.* State, 67 Kan. 864, 74 Pac. 238.

886. 1. Where Question Arises with Regard to Color. — Brady *v.* Shirley, 18 S. Dak. 613, 5 Ann. Cas. 972, 101 N. W. 886, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 886.

3. See Reffell *v.* Morton, 70 J. P. 347.

Where There Are Corroborating Facts and Circumstances, the verdict against the defendant will not be set aside on the ground that the prosecutrix's testimony was inherently weak and unreliable. Higley *v.* Bostick, 79 Conn. 97, 63 Atl. 786.

By Statute in Indiana corroboration of the evidence of the prosecutrix is not necessary. Evans *v.* State, 165 Ind. 369, 6 Ann. Cas. 813, 74 N. E. 244, 75 N. E. 651.

887. 1. See McCalman *v.* State, 121 Ga. 491, 49 S. E. 609, holding that upon a trial under an indictment charging the accused with the offense of bastardy, evidence that he had previously been tried under an indictment charging him with the seduction of the mother of the bastard child, and found guilty of the offense of fornication, was irrelevant and inadmissible.

2. When Immaterial. — Where the defendant denies having had intercourse with the prosecutrix during the period of gestation, his letters not written during that period are properly excluded as immaterial. Allred *v.* State, (Ala. 1907) 44 So. 60.

888. 2. Lipsey *v.* Battle, 80 Ark. 287, 97 S. W. 49; Puriton *v.* Jamrock, (Mass. 1907) 80 N. E. 802; Hesselman *v.* Haas, (N. J. 1906) 64 Atl. 165.

889. 2. In Lipsey *v.* Battle, 80 Ark. 287, 97 N. W. 49, the court said: "The mother cannot by the mere gift of her child release herself from the obligation to support it or deprive herself of the right of its custody."

4. State *v.* Hausewedell, 94 Minn. 177, 102 N. W. 204; Sonnenberg *v.* State, 124 Wis. 124, 102 N. W. 233.

890. 3. Trayer *v.* Setzer, 72 Neb. 845, 101 N. W. 989; Burton *v.* Belvin, 142 N. Car. 151, 55 S. E. 71.

In Burton *v.* Belvin, 142 N. Car. 151, 55 S. E. 71, the court said: "It is true that a contract for future cohabitation is immoral and void, as against public policy. But a contract in consideration of past cohabitation to support the mother and children is in the nature of reparation, as far as it goes, and to be commended. It is neither void nor immoral, even though the illegal cohabitation continues, if there is no stipulation for future cohabitation."

Execution of Contract. — In an action on a contract for the support of a bastard child, the evidence must establish the indispensable fact of the execution of the contract by the alleged father. Butler *v.* Setser, (Ky. 1907) 99 S. W. 972.

891. 6. Brisbin *v.* Huntington, 128 Iowa 166, 5 Ann. Cas. 931, 103 N. W. 144.

892. 1. At Common Law a Bastard Could Not Marry Within the Levitical Degrees, and within the act requiring the consent thereto of parent or guardian. Brisbin *v.* Huntington, 128 Iowa 166, 5 Ann. Cas. 931, 103 N. W. 144.

3. Johnson *v.* Shepherd, 143 Ala. 325, 5 Ann. Cas. 143, 39 So. 223; Miller *v.* Pennington, 218 Ill. 220, 75 N. E. 919; Brisbin *v.* Huntington, 128 Iowa 166, 5 Ann. Cas. 931, 103 N. W. 144; Moore *v.* Moore, (Ky. 1907) 98 S. W. 1027; Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345; Lee *v.* Bolden, (Tex. Civ. App. 1905) 85 S. W. 1027.

4. Brisbin *v.* Huntington, 128 Iowa 166, 5 Ann. Cas. 931, 103 N. W. 144; Overton *v.* Overton, (Ky. 1906) 96 S. W. 469; Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345.

Legitimation by Father — Right of Inheritance. — A statute which authorizes a bastard child acknowledged by a man dying without legitimate children to inherit applies where the acknowledgment was prior to the statute. Daggy *v.* Wells, 38 Ind. App. 27, 76 N. E. 524; Townsend *v.* Meneley, 37 Ind. App. 132, 74 N. E. 274, 76 N. E. 321.

In Indiana a bastard may, by statute, inherit from his father except where the latter left surviving legitimate children or descendants of legitimate children, where the former has been publicly acknowledged by the latter as his son during his lifetime. Bonham *v.* Doyle, 39 Ind. App. 434, 77 N. E. 859.

In Iowa a bastard child is, by statute, entitled to inherit from his father if it sufficiently appears that the latter publicly recognized him as his own child. Morgan *v.* Strand, 133 Iowa 299, 110 N. W. 596.

Legitimation by Father — Right of Inheritance. — It has been held that where a bastard has been legitimated by a public acknowledgment by the father, under a statute providing for that manner of legitimation and declaring that every illegitimate child is an heir of the father so acknowledging him, the right once vested in the illegitimate extends to his descendants and they likewise become heirs in the event of the death of their father. *In re* Garr, 31 Utah 57, 86 Pac. 757.

Children legitimated by notarial act have the same legal status as heirs as have children born in lawful wedlock. Davenport *v.* Davenport, 116 La. 1009, 41 So. 240.

A writing which sufficiently complies with a statute providing for legitimation by written

acknowledgment establishes the heirship of the child legitimated. Pederson *v.* Christofferson, 97 Minn. 491, 106 N. W. 958.

Inheritable Blood as to Mother. — Where by statute illegitimates have been given inheritable blood as to the mother, the blood relatives of such a person include his brothers and sisters of the common mother, though they are also illegitimates, and also include their descendants. Sander's Estate, 126 Wis. 660, 5 Ann. Cas. 508, 105 N. W. 1064.

Texas Statute Invests Bastards with Inheritable Blood on Mother's Side. — Berry *v.* Powell, (Tex. 1907) 104 S. W. 1044; Berry *v.* Tullis, (Tex. Civ. App. 1907) 105 S. W. 348.

893. 1. Will Construed — "Heirs" — "Children" — "Grandchildren." — In the absence of statutory provisions modifying the common law with respect to illegitimate children, the words "issue," "child," or "children" found in a will, whether qualified by the word "lawful" or not, are to be construed as referring only to those who are legitimate, and, if others are intended, this must be deduced from the language employed, without resort to extrinsic facts. Brisbin *v.* Huntington, 128 Iowa 166, 5 Ann. Cas. 931, 103 N. W. 144.

895. 2. Hall *v.* Gabbert, 213 Ill. 208, 72 N. E. 806; Miller *v.* Pennington, 218 Ill. 220, 75 N. E. 919; Alderson *v.* Alderson's Guardian, 113 Ky. 830, 69 S. W. 700; Davenport *v.* Davenport, 116 La. 1009, 41 So. 240; Landry *v.* American Creosote Works, 119 La. 231, 43 So. 1016; Breidenstein *v.* Bertram, 198 Mo. 328, 95 S. W. 828; Bettis *v.* Avery, 140 N. Car. 184, 52 S. E. 584.

The Kentucky Statute. — Hall *v.* Hall, 82 S. W. 300, 26 Ky. L. Rep. 610.

In Nebraska, under section 31 of chapter 23 of the Compiled Statutes of 1903, "the parents must, after the marriage, have had other children, and the father must have adopted the bastard into his family, or acknowledged him in writing signed in the presence of a competent witness." Trayer *v.* Seltzer, 72 Neb. 845, 101 N. W. 989.

896. 1. Miller *v.* Pennington, 218 Ill. 220, 75 N. E. 919.

897. 1. Miller *v.* Pennington, 218 Ill. 220, 75 N. E. 919; Bonham *v.* Doyle, 39 Ind. App. 434, 77 N. E. 858; Morgan *v.* Strand, 133 Iowa 299, 110 N. W. 596; Davenport *v.* Davenport, 116 La. 1009, 41 So. 240; *In re* Garr, 31 Utah 57, 86 Pac. 757, *citing* 3 Am. and Eng. Encyc. of Law (2d ed.) 897.

Written Acknowledgment. — So long as the written acknowledgment complies with the statute, it is not necessary that it be made for the express purpose of legitimation. Pederson *v.* Christofferson, 97 Minn. 491, 106 N. W. 958.

Under the *Nebraska* statute providing for legitimation by written acknowledgment, it has been held that the writing must be one in which the paternity is directly, unequivocally, and unquestionably acknowledged. Moore *v.* Flack, (Neb. 1906) 108 N. W. 143.

2. Miller *v.* Pennington, 218 Ill. 220, 75 N. E. 919; Townsend *v.* Meneley, 37 Ind. App. 132, 74 N. E. 274, 76 N. E. 321, *citing* 3 Am. and Eng. Encyc. of Law (2d ed.) 897. See also Landry *v.* American Creosote Works, 119 La. 231, 43 So. 1016; Brisbin *v.* Huntington, 128 Iowa 166, 5 Ann. Cas. 931, 103 N. W. 144, where it was held that the evidence fell far short of establishing either general or notorious recognition.

Where the Statute Does Not Fix Any Method or Standard by which a putative father may acknowledge his illegitimate offspring, such acknowledgment may be established by evidence in each particular case, as any other fact may be established. Townsend *v.* Meneley, 37 Ind. App. 127, 74 N. E. 274, 76 N. E. 321.

3. Morin *v.* Holliday, 39 Ind. App. 201, *citing* 3 Am. and Eng. Encyc. of Law (2d ed.) 897; Landry *v.* American Creosote Works, 119 La. 231, 43 So. 1016; Breidenstein *v.* Bertram, 198 Mo. 328, 95 S. W. 828, holding that the effect of legitimation is to place a child in the same favorable position as one born during wedlock; that it can only be rendered a bastard after such legitimation by the same kind of proof which is required to overturn the legitimacy of a child born in lawful wedlock; and that it is entitled to the same presumptions.

Retrospective Effect. — Provisions of a statute for the legitimation of bastard children by acknowledgment without marriage apply to children acknowledged before the enactment of the statute. Townsend *v.* Meneley, 37 Ind. App. 127, 74 N. E. 274, 76 N. E. 321.

4. In Some of the United States the Same Principle Has Been Adopted. — Hall *v.* Gabbert, 213 Ill. 208, 72 N. E. 806, holding further, however, that "On the other hand, it cannot be material that the claimant could not inherit under the laws of some other state. * * * If he bring himself within the requirements and provisions of the statutes and laws of this state he may take according to them."

BEACH.

901. 2. Boundaries. — See Merwin *v.* Backer, (Conn. 1907) 68 Atl. 373.

BEARER.

903. 5. Mayers *v.* McRimmon, 140 N. Car. 640, 53 S. E. 447.

BEER.

907. 1. Williams *v.* State, 72 Ark. 20, 77 S. W. 597, *citing* 3 Am. and Eng. Encyc. of Law (2d ed.) 907.

Judicial Notice. — Williams *v.* State, 72 Ark. 20, 77 S. W. 597.

BEFORE.

908. 3. Physical Examination Before Physicians. — The *New York* statute providing for the examination of a female *before* physicians or surgeons of her own sex means that the examination shall be made by them and not merely in their presence. Potter *v.* Hammondsport, 112 N. Y. App. Div. 91, 98 N. Y. Supp. 186.

BEHALF.

910. 5. Meyers *v.* State, (Tex. Civ. App. 1907) 105 S. W. 48.

BENEFICIARIES (IN INSURANCE).

929. 1. *United States.* — Mutual L. Ins. Co. *v.* Lane, 151 Fed. 276.

Arkansas. — Matlock *v.* Bledsoe, 77 Ark. 60, 90 S. W. 848.

Georgia. — Rylander *v.* Allen, 125 Ga. 206, 5 Ann. Cas. 355, 53 S. E. 1032.

Indiana. — American Mut. L. Ins. Co. *v.* Mead, (Ind. 1906) 79 N. E. 526.

Kansas. — Metropolitan L. Ins. Co. *v.* Elison, 72 Kan. 199, 7 Ann. Cas. 909, 83 Pac. 410.

Kentucky. — Bromley *v.* Washington L. Ins. Co., 122 Ky. 402, 92 S. W. 17; Hess *v.* Segenfelter, (Ky. 1907) 105 S. W. 476; Hull *v.* Grand Lodge, etc., (Ky. 1907) 105 S. W. 479.

Michigan. — Dolan *v.* Supreme Council, etc., (Mich. 1907) 113 N. W. 10.

Missouri. — Locher *v.* Kuechenmiester, 120 Mo. App. 701, 98 S. W. 92, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 929; Ryan *v.* Metropolitan L. Ins. Co., 117 Mo. App. 688, 93 S. W. 347.

New York. — Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734.

Wisconsin. — Grand Lodge, etc., *v.* Lemke, 124 Wis. 483, 102 N. W. 911.

933. 11. **Definition of Insurable Interest.** — Hess *v.* Segenfelter, (Ky. 1907) 105 S. W. 476.

934. 3. **Reasons for Rule Stated.** — Bromley *v.* Washington L. Ins. Co., 122 Ky. 402, 92 S. W. 17.

940. 1. Locher *v.* Kuechenmiester, 120 Mo. App. 701, 98 S. W. 92.

In a Mutual Benefit Certificate, a brother may name his brother as the beneficiary. Stake *v.* Stake, 228 Ill. 630, 81 N. E. 1146.

941. 6. Metropolitan L. Ins. Co. *v.* Elison, 72 Kan. 199, 7 Ann. Cas. 909, 83 Pac. 410.

10. **Cousin Has No Insurable Interest.** — Hess *v.* Segenfelter, (Ky. 1907) 105 S. W. 476; Ryan *v.* Metropolitan L. Ins. Co., 117 Mo. App. 688, 93 S. W. 347.

11. Lewis *v.* Palmer, 106 Va. 522, 56 S. E. 341.

942. 5. **Concubine.** — In *Louisiana,* a concubine may be named the beneficiary of a life policy only to the extent of one-tenth interest therein. New York L. Ins. Co. *v.* Neal, 114 La. 652, 38 So. 485. *Compare* Johnson's Succession, 115 La. 20, 38 So. 880, wherein, it appearing that the concubine paid all the premiums, she was allowed to recover the full value of the policy.

943. 1. See Starr *v.* Knights of Maccabees of the World, 27 Ohio Cir. Ct. 475.

945. 9. **A Mother-in-law Who Becomes the Custodian of Her Son-in-law's Children** has an insurable interest in his life. Matlock *v.* Bledsoe, 77 Ark. 60, 90 S. W. 848.

Son-in-law Has No Insurable Interest in Life of Mother-in-law. — American Mut. L. Ins. Co. *v.* Mead, (Ind. 1906) 79 N. E. 526.

946. 4. Dewey *v.* Fleischer, 129 Wis. 591, 109 N. W. 525.

957. 3. **Proceeds of the Policy Fall to the Heirs,** where the beneficiary has no insurable interest. New York L. Ins. Co. *v.* Neal, 114 La. 652, 38 So. 485.

4 **Recovery Denied Beneficiary Without Insurable Interest.** — Ryan *v.* Metropolitan L. Ins. Co., 117 Mo. App. 688, 93 S. W. 347.

958. 3. Troy *v.* London, 145 Ala. 280, 39 So. 713; Ryan *v.* Metropolitan L. Ins. Co., 117 Mo. App. 688, 93 S. W. 347.

960. 5. **Insurable Interest Need Not Be Continuous.** — Schmidt *v.* Hauer, (Iowa 1907) 111 N. W. 966. And see Caldwell *v.* Grand Lodge, etc., 148 Cal. 195, 7 Ann. Cas. 356, 82 Pac. 781 (recognizing the general rule, but holding it not applicable to the facts of the case).

7. *California.* — Caldwell *v.* Grand Lodge, etc., 148 Cal. 195, 7 Ann. Cas. 356, 82 Pac. 781.

Illinois. — Miller *v.* Prelle, 122 Ill. App. 380.

Kentucky. — Sturges *v.* Sturges, (Ky. 1907) 102 S. W. 884.

Michigan. — Brinen *v.* Supreme Council, etc., 140 Mich. 220, 103 N. W. 603; Supreme Lodge, etc., *v.* Dewey, 142 Mich. 666, 7 Ann. Cas. 681, 106 N. W. 140.

Mississippi. — Tutt *v.* Jackson, 87 Miss. 207, 39 So. 420.

Missouri. — Pauley *v.* Modern Woodmen of America, 113 Mo. App. 473, 87 S. W. 990; Dennis *v.* Modern Brotherhood of America, 119 Mo. App. 210, 95 S. W. 967.

New York. — Klee *v.* Klee, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 101, 93 N. Y. Supp. 588.

Ohio. — Starr *v.* Knights of Maccabees of the World, 27 Ohio Cir. Ct. 475.

South Dakota. — Foss *v.* Petterson, (S. Dak. 1905) 104 N. W. 915.

Texas. — Coleman *v.* Anderson, 98 Tex. 570, 86 S. W. 730.

Wisconsin. — Grand Lodge, etc., *v.* Lemke, 124 Wis. 483, 102 N. W. 911.

In the Absence of a Prescribed Class, the insured may designate whom he pleases as his beneficiary. Supreme Council, etc., *v.* Fitzpatrick, (R. I. 1907) 68 Atl. 367.

961. 1. Brinen *v.* Supreme Council, etc., 140 Mich. 220, 103 N. W. 603.

By-laws Subsequently Adopted govern the rights of the member in naming a beneficiary. Caldwell *v.* Grand Lodge, etc., 148 Cal. 195, 7 Ann. Cas. 356, 82 Pac. 781.

3. Supreme Lodge, etc., *v.* Dewey, 142 Mich. 666, 7 Ann. Cas. 681, 106 N. W. 140; Grand Lodge, etc., *v.* Lemke, 124 Wis. 483, 102 N. W. 911.

4. St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 447, 91 S. W. 968, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961; Alfsen *v.* Crouch, 115 Tenn. 352, 89 S. W. 329.

7. Sturges *v.* Sturges, (Ky. 1907) 102 S. W. 884, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961.

8. St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 447, 91 S. W. 968, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961; Dennis *v.* Modern Brotherhood of America, 119 Mo. App. 210, 95 S. W. 967; Lehman *v.* Lehman, 215 Pa. St. 344, 64 Atl. 598.

962. 1. St. Louis Police Relief Assoc. *v.*

Tierney, 116 Mo. App. 447, 91 S. W. 968, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 962.

963. **1. Valid Designation May Be Made by Will.** — Brooklyn Trust Co. *v.* Seventh Regiment Veteran, etc., League, 113 N. Y. App. Div. 717, 99 N. Y. Supp. 248.

3. Payment May Be Provided for "as Directed by the Will" of Insured. — Jacob *v.* Jacob, (Ky. 1905) 89 S. W. 246.

964. 1. Starnes *v.* Atlanta Police Relief Assoc., 2 Ga. App. 237, 58 S. E. 481, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 963, and defining the term "family" as used in beneficial insurance contracts.

Term "Family" Expression of Great Flexibility. — Supreme Lodge, etc., *v.* Dewey, 142 Mich. 666, 7 Ann. Cas. 681, 106 N. W. 140.

"Family" Includes Adult Daughter. — Dalton *v.* Knights of Columbus, (Conn. 1907) 67 Atl. 510.

3. "Family" Does Not Include Personal Representatives so that the latter can maintain an action on the policy. Jackson *v.* Brothers & Sisters of Promise, 2 Ga. App. 761, 59 S. E. 11.

965. **2. Designated Member of "Family" Must Be Member of Insured's Family at His Death.** — Spear *v.* Boston Relief Assoc., (Mass. 1907) 81 N. E. 196.

11. Lehman *v.* Lehman, 215 Pa. St. 344, 64 Atl. 598.

966. **2.** Lehman *v.* Lehman, 29 Pa. Super. Ct. 60.

3. A Policy Payable to "Wife and Children" refers to the children then in existence, so that where one of the children dies but leaves an heir, the heir is entitled to the child's part. Michigan Mut. L. Ins. Co. *v.* Basler, 140 Mich. 233, 103 N. W. 596.

967. **8. Wife — Confined to Marital Relation.** — Gaines *v.* Fidelity, etc., Co., 111 N. Y. App. Div. 386, 97 N. Y. Supp. 836.

"Widow" Does Not Include Wife of Bigamous Marriage. — Tutt *v.* Jackson, 87 Miss. 207, 39 So. 420.

A Woman Whom the Insured Was Forced to Marry is not his "widow" as that term is used in insurance certificates. Grand Lodge, etc., *v.* Smith, (Miss. 1906) 42 So. 89.

968. **1.** Miller *v.* Prelle, 122 Ill. App. 380.

969. **6. Adopted Orphan Held a Dependent.** — Murphy *v.* Nowak, 223 Ill. 301, 79 N. E. 112.

Sister-in-law Held Dependent upon Brother-in-law. — Wilber *v.* Supreme Lodge, etc., 192 Mass. 477, 78 N. E. 445.

970. **4.** Miller *v.* Prelle, 122 Ill. App. 380.

Woman Living with Man Unlawfully in Honest Belief that She Was Lawful Wife Held Dependent. — Starr *v.* Knights of Maccabees of the World, 27 Ohio Cir. Ct. 475.

7. "Relationship by Blood" Includes Illegitimate Daughter. — Stahl *v.* Grand Lodge, etc., (Tex. Civ. App. 1907) 98 S. W. 643.

8. Stepson Not a Relative. — Morey *v.* Monk, 145 Ala. 301, 40 So. 411.

971. **2. Heir Includes Widow.** — Burns *v.* Burns, 109 N. Y. App. Div. 98, 95 N. Y. Supp. 797.

976. **4.** Harton's Estate, 213 Pa. St. 499, 62 Atl. 1058.

8. Policy by Wife Payable to Executors, Administrators, and Assigns — Husband Not Entitled to Proceeds. — Ferretti *v.* Prudential Ins. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 489, 97 N. Y. Supp. 1007.

978. **5. Where an Application for Insurance Designates the Beneficiary,** and the policy does not contain the name of any beneficiary, the person named in the application will be treated as the beneficiary. Ogletree *v.* Hutchinson, 126 Ga. 454, 55 S. E. 179.

980. **10.** Perry *v.* Tweedy, 128 Ga. 402, 57 S. E. 782, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980; Provident Sav. L. Assur. Co. *v.* Dees, 120 Ky. 285, 86 S. W. 522; Townsend *v.* Townsend, (Ky. 1907) 105 S. W. 937; Blum *v.* New York L. Ins. Co., 197 Mo. 513, 7 Ann. Cas. 1021, 95 S. W. 317, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980; Smith *v.* Grand Lodge, etc., 124 Mo. App. 181, 101 S. W. 662; Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 111 N. W. 797 (recognizing the general rule, but holding it not applicable to mutual benefit insurance); Lanier *v.* Eastern L. Ins. Co., 142 N. Car. 14, 54 S. E. 786; Smith *v.* Metropolitan L. Ins. Co., 34 Pa. Super. St. 72.

984. **9.** Blum *v.* New York L. Ins. Co., 197 Mo. 513, 7 Ann. Cas. 1021, 95 S. W. 317.

A Life Policy Made Payable to the Insured's Legal Representatives may be changed to a named beneficiary at any time with the insurer's consent. Gaines *v.* Gaines, (Ky. 1907) 99 S. W. 600.

985. **1. Right of Insured to Change Beneficiary May Be Reserved.** — Alba *v.* Provident Sav. L. Assur. Soc., 118 La. 1021, 43 So. 663.

5. Provident Sav. L. Assur. Co. *v.* Dees, 120 Ky. 285, 86 S. W. 522; Freund *v.* Freund, 218 Ill. 189, 75 N. E. 925.

6. Rule Applied to Endowment Policy. — Wallace *v.* Mutual Ben. L. Ins. Co., 97 Minn. 27, 106 N. W. 84.

987. **2.** Perry *v.* Tweedy, 128 Ga. 402, 57 S. E. 782, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987; Smith *v.* Grand Lodge, etc., 124 Mo. App. 181, 101 S. W. 662.

3. Rule Applied to Mutual Benefit Certificates. — Anderson *v.* Supreme Council, etc., 69 N. J. Eq. 176, 60 Atl. 759.

990. **1.** Morey *v.* Monk, 145 Ala. 301, 40 So. 411.

2. See, to the Same Effect: Perry *v.* Tweedy, 128 Ga. 402, 57 S. E. 782, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990; Gordon *v.* Gordon, 117 Ill. App. 91; Wandell *v.* Mystic Toilers, 130 Iowa 639, 105 N. W. 448; Knights of Maccabees of the World *v.* Sackett, 34 Mont. 357, 86 Pac. 423; Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 111 N. W. 797; Klee *v.* Klee, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 101, 93 N. Y. Supp. 588; McCloskey *v.* Supreme Council, etc., 109 N. Y. App. Div. 309, 96 N. Y. Supp. 347; Alfsen *v.* Crouch, 115 Tenn. 352, 89 S. W. 329; Coleman *v.* Anderson, 98 Tex. 570, 86 S. W. 730, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990; Bernheim *v.* Martin, (Wash. 1906) 88 Pac. 106.

Ontario — Must Be Consent by Beneficiary to Change of Benefit Certificate. — Cartwright *v.* Cartwright, 12 Ont. L. Rep. 272.

991. **2.** Perry *v.* Tweedy, 128 Ga. 402, 57 S. E. 782, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 991.

6. Amendment of By-law After Insured's Death Has No Retrospective Operation. — Spear *v.* Boston Relief Assoc., (Mass. 1907) 81 N. E. 196.

An Amendment of the By-laws enlarging the class of those who may be designated beneficiaries has a retrospective operation. Morey *v.* Monk, 145 Ala. 301, 40 So. 411.

992. 2. Grand Lodge, etc., *v.* O'Malley, 114 Mo. App. 191, 89 S. W. 68.

Member Has Right to Change Beneficiary.— Bernheim *v.* Martin, (Wash. 1906) 88 Pac. 106.

4. Coleman *v.* Anderson, 98 Tex. 570, 86 S. W. 730, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 992, recognizing the general rule, but holding it inapplicable to the facts of the case.

993. 2. Original Designation of Father as Beneficiary Revoked by Son's Marriage. — Larkin *v.* Knights of Columbus, 188 Mass. 22, 73 N. E. 850.

Where the Original Beneficiary Dies, and no new beneficiary is named, the fund is payable as provided by the constitution of the insurance organization. Harris *v.* Harris, (Tex. Civ. App. 1906) 97 S. W. 504.

7. Knights of Maccabees of the World *v.* Sackett, 34 Mont. 357, 86 Pac. 423.

8. Gordon *v.* Gordon, 117 Ill. App. 91; Grand Lodge, etc., *v.* O'Malley, 114 Mo. App. 191, 89 S. W. 68; Pennsylvania R. Co. *v.* Warren, 69 N. J. Eq. 706, 60 Atl. 1122; Flowers *v.* Sovereign Camp, etc., (Tex. Civ. App. 1905) 90 S. W. 526; Gray *v.* Sovereign Camp, etc., (Tex. Civ. App. 1907) 106 S. W. 176; Chevalier *v.* Catholic Mut. Ben. Assoc., 29 Quebec Super. Ct. 399.

11. The Insurer May Be Presumed to Have Given Its Consent to a change in the beneficiaries. Mathewson *v.* Supreme Council, etc., 146 Mich. 671, 110 N. W. 69.

995. 3. Pennsylvania R. Co. *v.* Warren, 69 N. J. Eq. 706, 60 Atl. 1122.

997. 5. St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 447, 91 S. W. 968; Stronge *v.* Supreme Lodge, etc., 111 N. Y. App. Div. 87, 97 N. Y. Supp. 661; Alfsen *v.* Crouch, 115 Tenn. 352, 89 S. W. 329.

998. 6. Knights of Maccabees of the World *v.* Sackett, 34 Mont. 357, 86 Pac. 423, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 998. See also Flowers *v.* Sovereign Camp, etc., (Tex. Civ. App. 1905) 90 S. W. 526.

999. 3. Bernheim *v.* Martin, (Wash. 1906) 88 Pac. 106, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 999.

4. See Flowers *v.* Sovereign Camp, etc., (Tex. Civ. App. 1905) 90 S. W. 526.

5. Alfsen *v.* Crouch, 115 Tenn. 352, 89 S. W. 329; Coleman *v.* Anderson, 98 Tex. 570, 86 S. W. 730, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 999.

1008. 5. Proceeds of Policy May Be Disposed of by Wife in Her Will. — Bradshaw *v.* Mutual L. Ins. Co., 109 N. Y. App. Div. 375, 95 N. Y. Supp. 780.

1012. 3. Lanier *v.* Eastern L. Ins. Co., 142 N. Car. 14, 54 S. E. 786.

1017. 1. Davis *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 294.

1025. 3. Matlock *v.* Bledsoe, 77 Ark. 60, 90 S. W. 848; Rylander *v.* Allen, 125 Ga. 206, 5 Ann. Cas. 355, 53 S. E. 1032.

Ohio. — But see Evans *v.* Moore, 28 Ohio Cir. Ct. 1; Harrison *v.* Northwestern Mut. L. Ins. Co., 78 Vt. 473, 63 Atl. 321.

Assignment under Seal Imports Consideration.— Von Schuckmann *v.* Heinrich, 93 N. Y. App. Div. 278, 87 N. Y. Supp. 673, *affirmed* 182 N. Y. 538, 75 N. E. 1135.

A Policy Payable to the Legal Representatives of the Insured may be assigned to a person nominally acting as general agent of the insurer. Peck *v.* Washington L. Ins. Co., 91 N. Y. App. Div. 597, 87 N. Y. Supp. 210.

1027. 1. Federal Courts. — An insured who assigns his policy to a person having no insurable interest in his life, cannot attack the assignment on that ground. Clark *v.* Equitable L. Assur. Soc., 143 Fed. 175.

1028. 1. Evans *v.* Moore, 28 Ohio Cir. Ct. 1.

2. Mutual L. Ins. Co. *v.* Lane, 151 Fed. 276; Troy *v.* London, 145 Ala. 280, 39 So. 713; Bromley *v.* Washington L. Ins. Co., 122 Ky. 402, 92 S. W. 17; Bramblett *v.* Hargis, (Ky. 1906) 94 S. W. 20.

Insurable Interest Requisite to Sustain Assignment of Policy.— Metropolitan L. Ins. Co. *v.* Elison, 72 Kan. 199, 7 Ann. Cas. 909, 83 Pac. 410.

1030. 1. Coleman *v.* Anderson, 98 Tex. 570, 86 S. W. 730, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1030.

Insured's Administrator Cannot Question Validity of Assignment. — Matlock *v.* Bledsoe, 77 Ark. 60, 90 S. W. 848.

5. Bramblett *v.* Hargis, (Ky. 1906) 94 S. W. 20.

1033. 8. Assignee of Policy May Maintain Action in His Own Name. — Peck *v.* Washington L. Ins. Co., 91 N. Y. App. Div. 597, 87 N. Y. Supp. 210.

BENEVOLENT OR BENEFICIAL ASSOCIATIONS.

1045. 7. An association of mail clerks, which provides for the payment of benefits to disabled members, but has no ritualistic form of ceremony, admitting members merely upon payment of dues, is not a beneficial association. Young *v.* Railway Mail Assoc., 126 Mo. App. 325, 103 S. W. 557.

1047. 3. Must Have Representative Form of Government. — Lange *v.* Royal Highlanders, (Neb. 1905) 106 N. W. 224.

4. Subsequent compliance with a statute by a foreign society which had been doing business in Missouri without authority, was held to exempt previously executed contracts from the laws regulating ordinary life insurance companies. Schmidt *v.* United Order of Foresters, 124 Mo. App. 165, 101 S. W. 625.

1048. 4. Southern Mut. Aid Assoc. *v.* Boyd, 145 Ala. 167, 41 So. 164; Pond *v.* Royal League, 127 Ill. App. 476.

No Power to Issue Promissory Notes unless Provided by Charter. — Scott *v.* Bankers' Union of World, 73 Kan. 575, 85 Pac. 604.

5. Policies providing for the return of assessments less the benefits paid at a certain time are unauthorized by the charter of a mutual society formed for the purpose of paying bene-

fits to its sick and disabled members and their dependents. Southern Mut. Aid Assoc. *v.* Boyd, 145 Ala. 167, 41 So. 164.

6. Flaherty *v.* Portland Longshoremen's Benev. Soc., 99 Me. 253, 59 Atl. 58.

1049. 5. Power to Change to Ordinary Insurance Plan. — Iversen *v.* Minnesota Mut. L. Ins. Co., 137 Fed. 268.

Amendment Not Given Retrospective Effect. — Brown *v.* Grand Fountain, etc., 28 App. Cas. (D. C.) 200.

6. Lange *v.* Royal Highlanders, (Neb. 1905) 106 N. W. 224.

Effect of Amendment of Statute on Charter and Contract. — Sturges *v.* Sturges, (Ky. 1907) 102 S. W. 884.

1052. 1. In Missouri. — Tice *v.* Supreme Lodge, etc., 204 Mo. 349, 102 S. W. 1013.

Where an association issued a certificate making the benefits payable to the "legal representatives, heir, or legatee" of the member, it was held to be an insurance company. Herzberg *v.* Modern Brotherhood of America, 110 Mo. App. 328, 85 S. W. 986.

Power of Legislature to Limit Scope of Mutual Companies. — Sturges *v.* Sturges, (Ky. 1907) 102 S. W. 884.

1053. 2. Question of Profit. — Under the *Missouri* statute (Rev. Stat. 1899, § 1408) defining a fraternal association as one carried on for the sole benefit of its members and their beneficiaries, and not for profit, it was held that the Knights of Pythias, whose constitution provides that its property shall not be divided among its members, but descend to its successors for benevolent purposes, and also contains a provision that certain endowment funds shall be used for expenses and death losses, is not a profit-sharing association, although the fund accumulated from assessments may exceed the sum necessary to pay benefits. Tice *v.* Supreme Lodge, etc., 123 Mo. App. 85, 100 S. W. 519.

Royal Arcanum a Fraternal Order. — Gilligan *v.* Supreme Council of Royal Arcanum, 26 Ohio Cir. Ct. 42.

1055. 6. Unincorporated Associations Considered Partnerships for Purposes of Suits at Law. — Guild *v.* Allen, (R. I. 1907) 67 Atl. 855. But see Pearson *v.* Anderburg, 28 Utah 495, 80 Pac. 307, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1055.

Unincorporated Associations Held Not to Be Partnership. — St. Paul Typothetæ *v.* St. Paul Bookbinders' Union, 94 Minn. 351, 3 Ann. Cas. 695, 102 N. W. 725.

1056. 4. Adoption of New Constitution Repeals Old One. — Bachman *v.* Harrington, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 26, 102 N. Y. Supp. 406.

1057. 2. Maxwell *v.* Theatrical Mechanical Assoc., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 619, 104 N. Y. Supp. 815.

1058. 4. "Mutual benefit societies are subject to the same rules of law that govern other life insurance companies, except in so far as the rules of law appertaining to other life insurance societies may be lawfully modified by the objects and purposes of the organization of the society." Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791.

Condition to Interposition of Courts. — See *contra*; Pearson *v.* Anderburg, 28 Utah 495, 80 Pac. 307.

1059. 2. Kern *v.* Arbeiter Unterstuetzungs Verein, 139 Mich. 233, 102 N. W. 746, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059.

4. Kern *v.* Arbeiter Unterstuetzungs Verein, 139 Mich. 233, 102 N. W. 746, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059.

5. Cannot Be Amended So as to Impair Vested Rights. — Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313.

Amendment as to Naming of Beneficiaries Held Not Retroactive. — Cigar Makers' International Union *v.* Hecker, 123 Ill. App. 336.

The Adoption of a New Constitution by a committee appointed to revise the constitution and laws is invalid where procedure provided for by the old constitution was not complied with. National Council, etc., *v.* State Council, etc., 27 App. Cas. (D. C.) 1.

1060. 3. Disfranchisement. — Strict compliance with the by-laws may be insisted upon by a member with respect to proceedings for his expulsion. Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597.

4. Bornstein *v.* District Grand Lodge, No. 4, 2 Cal. App. 624, 84 Pac. 271; Court of Honor *v.* Hutchens, (Ind. App. 1906) 79 N. E. 409; Wineland *v.* Knights of Maccabees, 148 Mich. 608, 112 N. W. 696.

6. The Power to Amend By-laws, when they have been adopted, is deemed a part of the contract of membership. Maxwell *v.* Theatrical Mechanical Assoc., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 619, 104 N. Y. Supp. 815.

8. A by-law providing that resolutions shall have the effect of by-laws cannot be made to apply to a resolution inconsistent with, or having the effect of amending, existing by-laws. Flaherty *v.* Portland Longshoremen's Benev. Soc., 99 Me. 253, 59 Atl. 58.

1061. 2. Fraternal Aid Assoc. *v.* Hitchcock, 121 Ill. App. 402.

Constitutional Provision Prohibiting Disposition of Benefit by Will Valid. — Thomas *v.* Covert, 126 Wis. 593, 5 Ann. Cas. 456, 105 N. W. 922.

3. But Reasonable Regulations. — McGuinness *v.* Court Elm City, etc., 78 Conn. 43, 3 Ann. Cas. 209, 60 Atl. 1023.

1062. 1. Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313.

A by-law reducing the value of a certificate without the member's consent was held to be void as impairing the obligation of the contract. Bornstein *v.* District Grand Lodge No. 4, 2 Cal. App. 624, 84 Pac. 271.

4. By-law Restricting Ability to Waive Forfeiture Invalid. — Cline *v.* Sovereign Camp, etc., 111 Mo. App. 601, 86 S. W. 501.

7. Chicago, etc., R. Co. *v.* Hendricks, 125 Ill. App. 580; Olson *v.* Court of Honor, 100 Minn. 117, 110 N. W. 374; Phœnix Council No. 85 *v.* Bennett, 26 Ohio Cir. Ct. 110.

1063. 1. Expulsion. — A by-law providing for the expulsion of a member for resorting to the courts before exhausting provisions for appeal within the order is valid. McGuinness *v.* Court Elm City, etc., 78 Conn. 43, 3 Ann. Cas. 209, 60 Atl. 1023.

A by-law providing for the expulsion of mem-

bers for defamation of fellow members "for reasons connected with the society" is reasonable. Del Ponte *v.* Societa Italiana, etc., 27 R. I. 1, 60 Atl. 237.

By-laws Held Unreasonable. — A by-law reducing the value of the certificate is unreasonable. Bornstein *v.* District Grand Lodge No. 4, 2 Cal. App. 624, 84 Pac. 271.

Where a by-law, providing that a society would pay the benefit named in a certificate in case of the suicide of a member while under treatment for insanity, was amended so as to limit the benefit to five per cent. of the face of the certificate for each year the insured had been a member, such amendment was held to be invalid as being unreasonable. Olson *v.* Court of Honor, 100 Minn. 117, 110 N. W. 374.

A by-law increasing the assessments has been held invalid. Pearson *v.* Knight Templars, etc., L. Indemnity Co., 114 Mo. App. 283, 89 S. W. 588; Wright *v.* Knights of Maccabees, etc., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 558, 95 N. Y. Supp. 996; Zimmerman *v.* Supreme Tent, etc., 122 Mo. App. 591, 99 S. W. 817.

Where a contract of benefit insurance provided that the member would "comply with" and "conform to" all subsequently enacted by-laws, it was held that a by-law limiting the society's liability in case of suicide was unreasonable. Lewine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99 S. W. 821.

A by-law forbidding members to be absent from their homes at eight o'clock while receiving sick benefits is unreasonable. Loftus *v.* Ancient Order of Hibernians, (N. J. 1905) 60 Atl. 1119.

A by-law striking out a time limit as to suicide is unreasonable and void as to existing contracts. Fargo *v.* Supreme Tent, etc., 185 N. Y. 578, 78 N. E. 1103, 96 N. Y. App. Div. 491, 89 N. Y. Supp. 65.

A by-law providing that a member shall not be entitled to sick benefits until one month after paying arrears is void as unreasonable. Burns *v.* Manhattan Brass Mut. Aid Soc., 102 N. Y. App. Div. 467, 92 N. Y. Supp. 846.

A by-law providing that a certificate of the treasurer should be conclusive evidence of the mailing of a notice of assessment is invalid. Duffy *v.* Fidelity Mut. L. Ins. Co., 142 N. Car. 103, 55 S. E. 79.

By-laws Held Reasonable. — A by-law limiting liability in case of suicide passed after the certificate had become incontestable was held to be reasonable. Fraternal Union of America *v.* Zeigler, 145 Ala. 287, 39 So. 751.

A by-law limiting beneficiaries to those of the member's family, blood relatives, or dependents is valid. Caldwell *v.* Grand Lodge, etc., 148 Cal. 195, 7 Ann. Cas. 356, 82 Pac. 781.

A by-law permitting members to engage in previously forbidden occupations, but increasing the assessments of those who should do so, was held to be reasonable. Head Camp, etc., *v.* Woods, 34 Colo. 1, 81 Pac. 261.

A by-law providing that in case of suicide of the member the society's liability would be only one-half of the face value of the certificate was not unreasonable. Scow *v.* Supreme Council, etc., 223 Ill. 32, 79 N. E. 42.

A by-law passed by a two-thirds vote, in pursuance of a constitutional provision for the amendment of by-laws, imposing compulsory insurance and the payment of one dollar per month on all members under a certain age who were not disabled, was held to be reasonable. Ward *v.* David, etc., Lodge, (Miss. 1907) 43 So. 302.

A by-law limiting payments of sick benefits to a period of ten weeks is reasonable. Courtney *v.* Fidelity Mut. Aid Assoc., 120 Mo. App. 110, 94 S. W. 768.

A by-law which provides for the suspension of a member for nonpayment of dues without other notice than that imparted by the by-law is reasonable and will be upheld. Nelson *v.* Modern Brotherhood of America, (Neb. 1907) 110 N. W. 1008.

A by-law increasing the assessment is reasonable, if necessary for the carrying out of the society's purpose. Shepperd *v.* Banker's Union of the World, (Neb. 1906) 108 N. W. 188.

A by-law providing for the sending of notice of an assessment by mail is reasonable. Duffy *v.* Fidelity Mut. L. Ins. Co., 142 N. Car. 103, 55 S. E. 79.

A by-law reducing the benefit from five thousand dollars to two thousand dollars, and establishing a limitation period for the beginning of suits, was held to be reasonable. McCloskey *v.* Supreme Council, etc., 109 N. Y. App. Div. 309, 96 N. Y. Supp. 347.

An amendment forbidding certain occupations was held valid. Gienty *v.* Knights of Columbus, (Supm. Ct. Tr. T.) 35 Misc. (N. Y.) 98, 105 N. Y. Supp. 244.

A by-law increasing the rate of assessments was held to be valid where the original contract provided for extra assessments without limiting the amount. Mock *v.* Supreme Council, etc., 121 N. Y. App. Div. 474, 106 N. Y. Supp. 155.

A by-law making suicide a cause of forfeiture is reasonable. Tisch *v.* Protected Home Circle, 72 Ohio St. 233, 74 N. E. 188.

Where a by-law, placing an assessment at $2.17 payable as deaths occurred, was amended so as to increase the assessment 100 per cent., and later another amendment was made increasing the rate of assessment and providing that members should be assessed at their attained age, such amendments were held to be reasonable. Conner *v.* Supreme Commandery Golden Cross, 117 Tenn. 549, 97 S. W. 306.

1064. 1. Maxwell *v.* Theatrical Mechanical Assoc., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 619, 104 N. Y. Supp. 815.

3. **By-law Establishing Disproportionate Assessments Void.** — Benjamin *v.* Mutual Reserve Fund L. Assoc., 146 Cal. 34, 79 Pac. 517.

1065. 1. Court of Honor *v.* Hutchens, (Ind. App. 1906) 79 N. E. 409.

2. An amendment providing for fewer assessments at a greater rate was binding where the increase was proportionate on all the members. Wineland *v.* Knights of Maccabees, 148 Mich. 608, 112 N. W. 696.

A by-law which attempts to relieve the association from an act of estoppel under the law

is void. Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791.

Amendment Invalid unless Required Vote Shown. — Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313.

3. Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313.

4. Bornstein *v.* District Grand Lodge, No. 4, 2 Cal. App. 624, 84 Pac. 271; Court of Honor *v.* Hutchens, (Ind. App. 1907) 82 N. E. 89, (Ind. App. 1906) 79 N. E. 409; Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313; Pearson *v.* Knight Templars, etc., L. Indemnity Co., 114 Mo. App. 283, 89 S. W. 588; Zimmermann *v.* Supreme Tent, etc., 122 Mo. App. 591, 99 S. W. 817; Lewine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99 S. W. 821; Evans *v.* Masonic Relief Assoc., 182 N. Y. 453, 75 N. E. 317; Ayers *v.* Grand Lodge, etc., 188 N. Y. 280, 80 N. E. 1020; Wright *v.* Knights of Maccabees, etc., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 558, 95 N. Y. Supp. 996; Wiedynska *v.* Pulaski Polish Benev. Soc., 110 N. Y. App. Div. 732, 97 N. Y. Supp. 413; Mock *v.* Supreme Council, etc., 121 N. Y. App. Div. 474, 106 N. Y. Supp. 155.

5. A by-law limiting the time within which an action could be brought upon a certificate is invalid as to certificates issued prior to its enactment. Atty.-Gen. *v.* Supreme Council, etc., (Ill. 1907) 81 N. E. 966.

A by-law forfeiting certificates for engaging in hazardous occupations is void if passed after an injury occurs. Brotherhood of Painters, etc., *v.* Moore, 36 Ind. App. 580, 76 N. E. 262.

An amendment to a by-law suspending members who engage in certain occupations is invalid. Ayers *v.* Grand Lodge, etc., 188 N. Y. 280, 80 N. E. 1020.

A by-law providing that claims for sick benefits must be made within a week after the sickness began was held not to apply to a case where the sickness began before the adoption of such by-law. Dary *v.* Providence Police Assoc., 27 R. I. 377, 62 Atl. 513.

A By-law Limiting Liability for Suicide was held to be valid though passed after the time stipulated for the certificate becoming incontestable. Fraternal Union of America *v.* Zeigler, 145 Ala. 287, 39 So. 751.

A by-law, when a certificate was issued, provided that the benefit payable, in case of suicide within two years, would be only one-half of the face value of the certificate. The two-year clause was eliminated by a subsequent by-law, and this was held to apply to a certificate issued when the former by-law was in force, that no vested rights were disturbed thereby, and that it was reasonable and binding. Scow *v.* Supreme Council, etc., 223 Ill. 32, 79 N. E. 42.

A By-law Reducing Sick Benefits passed during a member's illness was held to be invalid. Wiedynska *v.* Pulaski Polish Benev. Soc., 110 N. Y. App. Div. 732, 97 N. Y. Supp. 413.

6. An amendment providing that sick benefits should not be paid to a member who was in arrears was held to be valid. Maxwell *v.* Theatrical Mechanical Assoc., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 619, 104 N. Y. Supp. 815.

Amendments Reducing Benefits do not affect previously existing contracts. Guthrie *v.* Supreme Tent, etc., 4 Cal. App. 184, 87 Pac. 405.

A by-law allowing increase of assessments and providing that the amount of the increase should be deducted from the present members' benefit at death, was held not to apply to an increase made after a member's death. Shepperd *v.* Bankers Union of the World, (Neb. 1906) 108 N. W. 188.

Where a certificate provided that the holder would receive an endowment upon reaching the age of seventy years, but did not state that after that age was reached the member would be exempt from assessments, it was held that no contract rights were disturbed by an amendment providing that the member could not receive the endowment without paying assessments. Wineland *v.* Knights of Maccabees, 148 Mich. 608, 112 N. W. 696.

An amendment to a by-law reducing the amount of the benefit payable in case of suicide was not binding although the member had agreed to be bound by future by-laws. Olson *v.* Court of Honor, 100 Minn. 117, 110 N. W. 374.

1066. 1. See Wiedynska *v.* Pulaski Polish Benev. Soc., 110 N. Y. App. Div. 732, 97 N. Y. Supp. 413, holding, where the facts were practically the same as in Poultney *v.* Bachman, (Supm. Ct.) 62 How. Pr. (N. Y.) 466, set out in the original note, that the right to sick benefits became vested by the occurrence of the illness and could not be reduced.

A Contrary View. — Ayers *v.* Grand Lodge, etc., 188 N. Y. 280, 80 N. E. 1020.

2. Caldwell *v.* Grand Lodge, etc., 148 Cal. 195, 7 Ann. Cas. 356, 82 Pac. 781; Murphy *v.* Nowak, 223 Ill. 301, 79 N. E. 112; Wineland *v.* Knights of Maccabees, 148 Mich. 608, 112 N. W. 696. *Compare* Benjamin *v.* Mutual Reserve Fund L. Assoc., 146 Cal. 34, 79 Pac. 517.

The agreement is subject to an implied condition that the amendment will be reasonable. Olson *v.* Court of Honor, 100 Minn. 117, 110 N. W. 374.

Objections to a by-law reducing the benefit and establishing a short limitation for the commencement of an action were held to have been waived by paying twenty-six assessments at the lower rate occasioned by the reduction of the benefit. McCloskey *v.* Supreme Council, etc., 109 N. Y. App. Div. 309, 96 N. Y. Supp. 347.

In New York it is held that, notwithstanding such an agreement, a by-law limiting the time in which suits may be brought does not operate retrospectively. Butler *v.* Supreme Council, etc., 105 N. Y. App. Div. 164, 93 N. Y. Supp. 1012.

Suicide. — Fraternal Union of America *v.* Zeigler, 145 Ala. 287, 39 So. 751; Scow *v.* Supreme Council, etc., 223 Ill. 32, 79 N. E. 42; Lange *v.* Royal Highlanders, (Neb. 1905) 106 N. W. 224; Tisch *v.* Protected Home Circle, 72 Ohio St. 233, 74 N. E. 188; Plunkett *v.* Supreme Conclave, etc., 105 Va. 643, 55 S. E. 9. But see Zimmermann *v.* Supreme Tent, etc., 122 Mo. App. 591, 99 S. W. 817; Lewine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99

S. W. 821; Sautter *v.* Supreme Conclave, etc., 72 N. J. L. 325, 62 Atl. 529.

In *New York* it is held that such an amendment is void as being an impairment of vested rights. Fargo *v.* Supreme Tent, etc., 185 N. Y. 578, 78 N. E. 1103, 96 N. Y. App. Div. 491, 89 N. Y. Supp. 65.

Agreement Presumed — Laches on Part of Member. — Where the value of a certificate was reduced it was held that the holder thereof could elect to consider the contract rescinded, but having continued to pay assessments for more than two years he lost the right of election although such payments were made under protest. Supreme Council, etc., *v.* Lippincott, (C. C. A.) 134 Fed. 824; Supreme Council, etc., *v.* McAlarney, (C. C. A.) 135 Fed. 72; Clymer *v.* Supreme Council, etc., 138 Fed. 476.

Agreement Restricted to Matters of Internal Management. — Bornstein *v.* District Grand Lodge, No. 4, 2 Cal. App. 624, 84 Pac. 271.

Member Bound by Amendment Providing for Appeal. — Union Fraternal League *v.* Johnston, 124 Ga. 902, 53 S. E. 241.

Amendment Forbidding Sale of Liquor Binding. — State *v.* Camden Lodge, etc., 73 N. J. L. 500, 64 Atl. 93.

Assent by Taking Out New Certificate After By-laws Are Amended. — Breslow *v.* Southern Tier Masonic Relief Assoc., 107 N. Y. App. Div. 123, 94 N. Y. Supp. 787.

1067. 2. Wright *v.* Knights of Maccabees, etc., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 558, 95 N. Y. Supp. 996.

A by-law renouncing liability for negligence and misconduct of officers of a subordinate lodge is invalid. Thompson *v.* Supreme Tent, etc., 189 N. Y. 294, 82 N. E. 141.

4. Supreme Council, etc., *v.* Haas, 116 Ill. App. 587; Lewine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99 S. W. 821; Lange *v.* Royal Highlanders, (Neb. 1905) 106 N. W. 224.

Not Given Retroactive Effect unless Intent Manifest. — Nowak *v.* Murray, 127 Ill. App. 125; Hadley *v.* Queen City Camp, No. 27, 1 Tenn. Ch. App. 413.

5. Starnes *v.* Atlanta Police Relief Assoc., 2 Ga. App. 237, 58 S. E. 481; Switchmen's Union *v.* Colehouse, 227 Ill. 561, 81 N. E. 696; Taylor *v.* Modern Woodmen of America, 72 Kan. 443, 83 Pac. 1099; Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791; Soehner *v.* Grand Lodge, etc., (Neb. 1905) 104 N. W. 871.

Illustration. — Where an application for membership stipulated that statements therein should have the effect of warranties, but the laws of the order provided that the certificate should be void only in case such statements were wilfully false, it was held that such statements were not warranties. O'Connor *v.* Grand Lodge, etc., 146 Cal. 484, 80 Pac. 688.

1068. 3. **Officers of Subordinate Lodge Agents of Grand Lodge.** — Johanson *v.* Grand Lodge, etc., 31 Utah 45, 86 Pac. 494.

Officers Resigning for Pay are guilty of a breach of trust and are liable to the order for the money they received. Heineman *v.* Marshall, 117 Mo. App. 546, 92 S. W. 1131.

1069. 2. Regulation of officers' fees by members is not binding on the society when the power to regulate salaries and fees is in an executive committee. Burdick *v.* Sons, etc., of Protection, (Neb. 1906) 106 N. W. 466.

Unauthorized Amendment of Constitution Void — Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313.

3. Elliott *v.* Knights of Modern Maccabees, (Wash. 1907) 89 Pac. 929, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1069; Pirrung *v.* Supreme Council, etc., 104 N. Y. App. Div. 571, 93 N. Y. Supp. 575.

A clerk of a local order has been held to have authority to waive a by-law that provides for the delivery of a certificate to the applicant in person while such applicant is in good health, where he represented to the applicant's mother that he had such authority, and the association is bound by his act. Sovereign Camp, etc., *v.* Carrington, (Tex. Civ. App. 1905) 90 S. W. 921.

Cannot Issue Certificate until Requirements for Admission Are Complied with. — Loyd *v.* Modern Woodmen of America, 113 Mo. App. 19, 87 S. W. 530.

No Power to Waive Method Prescribed for Change of Beneficiary. — Sterling *v.* Head Camp, etc., 28 Utah 505, 80 Pac. 375.

1070. 3. Where by-laws provided for the payment of benefits out of a certain fund, and the directors of an insolvent society transferred all of its assets to another society, with the consent of the stockholders, without first paying an accrued benefit out of the fund, which was sufficient therefor, it was held that the directors were personally liable to the beneficiary. Harvey *v.* Wasson, 74 Kan. 489, 87 Pac. 720.

Officers Not Liable for Irregular Acts While Trying Charges. — Moon *v.* Flack, (N. H. 1907) 65 Atl. 829.

1071. 2. **Right to Remove Officer by Amending By-laws.** — See Butler *v.* Springmount Co-operative Dairy Soc., (1906) 2 Ir. 193.

3. **Right of Subordinate Order to Withdraw.** — A subordinate order may withdraw from the supreme body and such withdrawal does not have the effect of dissolving the subordinate order. State Council, etc., *v.* National Council, etc., (N. J. 1906) 64 Atl. 561.

Where a rule of a supreme lodge provides that a subordinate lodge can only withdraw for causes specified in certain by-laws, the subordinate lodge cannot withdraw for any cause not so specified. Sabourin *v.* Lippe, (Mass. 1907) 81 N. E. 282.

A subordinate lodge cannot withdraw if such action would impair the obligation of existing contracts. Kern *v.* Arbeiter Unterstuetzungs Verein, 139 Mich. 233, 102 N. W. 746.

Illegal Expulsion for want of jurisdiction of the charge is not validated by an affirmance on appeal to the superior tribunal of the society. Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597.

4. **Delegation of Power.** — Lange *v.* Royal Highlanders, (Neb. 1907) 110 N. W. 1110.

1072. 7. **Saloon Keeper.** — See Grand Lodge, etc., *v.* Haddock, 72 Kan. 35, 82 Pac. 583, where action on the part of the society was held to be necessary in order to forfeit the member's certificate.

In Taylor *v.* Modern Woodmen of America,

72 Kan. 443, 83 Pac. 1099, it was held that a by-law declaring that the certificate of any member "heretofore or hereafter" adopted should become null and void, if such member should become intemperate in the use of drugs, did not apply to a member who was intemperate at the time it was passed.

9. For "Conduct Unbecoming a Member," as a threat to kill a fellow member. Moon *v.* Flack, (N. H. 1907) 65 Atl. 829.

Belief that Violation Is Justified No Excuse. — Coughlin *v.* Knights of Columbus, 79 Conn. 218, 64 Atl. 223.

1073. **1.** Harris *v.* Aiken, (Kan. 1907) 92 Pac. 537, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072, 1073.

2. Andrews *v.* Mitchell, (1905) A. C. 78; Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469; Sabourin *v.* Lippe, (Mass. 1907) 81 N. E. 282; Byrne *v.* Supreme Circle, etc., (N. J. 1907) 65 Atl. 839, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1073; Venezia *v.* Italian Mut. Benev. Soc., (N. J. 1907) 65 Atl. 898; Pearson *v.* Anderburg, 28 Utah 495, 80 Pac. 307.

Rule Applies to Voluntary Associations. — Williamson *v.* Randolph, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644.

Expulsion Void if Tribunal Lacks Jurisdiction. — Bachman *v.* Harrington, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 26, 102 N. Y. Supp. 406.

3. Waiver of Objection to Committee by Appearance. — Moon *v.* Flack, (N. H. 1907) 65 Atl. 829.

Service of Charges Waived by Appearance. — Williamson *v.* Randolph, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644; Fritz *v.* Knaub, (Supm. Ct. Tr. T.) 103 N. Y. Supp. 1003.

1074. **2. Restriction on Right to Sue.** — Pearson *v.* Anderburg, 28 Utah 495, 80 Pac. 307, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1074; Butler *v.* Supreme Council, etc., 105 N. Y. App. Div. 164, 93 N. Y. Supp. 1012.

When No Appeal Provided for Action May Be Commenced at Once. — Bachman *v.* Harrington, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 26, 102 N. Y. Supp. 406.

1075. **1.** Court of Honor *v.* Hutchens, (Ind. App. 1906) 79 N. E. 409; Williamson *v.* Randolph, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644; Fritz *v.* Knaub, (Supm. Ct. Tr. T.) 103 N. Y. Supp. 1003; People *v.* Manufacturers', etc., Protective Assoc., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 332, 104 N. Y. Supp. 575; Crow *v.* Capital City Council, 26 Pa. Super. Ct. 411; Kelly *v.* Grand Circle, etc., 40 Wash. 691, 82 Pac. 1007, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1075, 1076.

2. Immediate Resort to Courts Proper in Case of Expulsion under Invalid By-law. — Loftus *v.* Ancient Order of Hibernians, (N. J. 1905) 60 Atl. 1119.

1076. **1.** Thompson *v.* Grand International Brotherhood, etc., (Tex. Civ. App. 1905) 91 S. W. 834.

Procedure Prescribed by Constitution. — Williamson *v.* Randolph, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644.

Void Expulsion May Be Collaterally Attacked. — Plattdeutsche Grot Gilde *v.* Ross, 117 Ill. App. 247.

Decision by Arbitration Committee of Friendly Society reviewable by court where the committee was without jurisdiction, the rules of the society having been disregarded upon a question of substance. Andrews *v.* Mitchell, (1905) A. C. 78.

2. McGuinness *v.* Court Elm City, etc., 78 Conn. 43, 3 Ann. Cas. 209, 60 Atl. 1023; Union Fraternal League *v.* Johnston, 124 Ga. 902, 53 S. E. 241; Hickey *v.* Baine, (Mass. 1907) 81 N. E. 201; Ward *v.* David, etc., Lodge, (Miss. 1907) 43 So. 302; Beeman *v.* Supreme Lodge, etc., 29 Pa. Super. Ct. 387.

Failure to Appeal — Waiver. — An exception to the general rule has been recognized in cases where the appeal provided for could not be heard for two years, where the complaining member would constitute a part of the superior tribunal, or where the appeal would have to be heard in another state. Fritz *v.* Knaub, (Supm. Ct. Tr. T.) 103 N. Y. Supp. 1003.

Appeal Unnecessary if No Notice of Proceedings Was Given. — Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469.

Malicious Expulsion. — The association's tribunals need not be resorted to before beginning an action for damages for a malicious expulsion. Thompson *v.* Grand International Brotherhood, etc., (Tex. Civ. App. 1905) 91 S. W. 834.

1077. **1. Questions of Internal Management to Be Decided by Association's Boards.** — Mock *v.* Supreme Council, etc., 121 N. Y. App. Div. 474, 106 N. Y. Supp. 155.

3. An Action for Damages. — Thompson *v.* Grand International Brotherhood, etc., (Tex. Civ. App. 1905) 91 S. W. 834.

4. Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597; United Brothers *v.* Williams, 126 Ga. 19, 54 S. E. 907; Byrne *v.* Supreme Circle, etc., (N. J. 1907) 65 Atl. 839; Venezia *v.* Italian Mut. Benev. Soc., (N. J. 1907) 65 Atl. 898; Moeller *v.* Machine Printers' Beneficial Assoc., 27 R. I. 22, 60 Atl. 591.

Method Prescribed in By-laws Must First Be Followed. — Beeman *v.* Supreme Lodge, etc., 215 Pa. St. 627, 64 Atl. 792.

1078. **2. Incorporated and Unincorporated.** — Mesisco *v.* Giuliano, 190 Mass. 352, 76 N. E. 907.

Restoration to Membership in an Unincorporated Society was enforced by mandamus in Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597.

4. Officers May Not Waive Condition as to Age. — Pirrung *v.* Supreme Council, etc., 104 N. Y. App. Div. 571, 93 N. Y. Supp. 575. But see Edmonds *v.* Modern Woodmen of America, 125 Mo. App. 214, 102 S. W. 601.

Attaching Application to Policy. — A similar statute in *Kentucky* was held to apply to beneficial associations, and failure to comply with the provisions of the statute prevented the company from availing itself of an exemption from liability provided for in the policy. Grand Lodge, etc., *v.* Edwards, (Ky. 1905) 85 S. W. 701.

1079. **1.** Membership begins after compliance with the rules although the certificate bears

a different date. Arrison *v.* Supreme Council, etc., 129 Iowa 303, 105 N. W. 580.

Signing and mailing an application without conforming with the regulations for admission is not sufficient to effect the contract. Brotherhood of Locomotive Firemen *v.* Hand, (Miss. 1907) 44 So. 161.

Informal Admission. — Knights of Maccabees *v.* Gordon, 83 Ark. 17, 102 S. W. 711.

Issuance of Certificate Not Binding if Conditions Not Complied with. — Loyal Mystic Legion of America *v.* Richardson, (Neb. 1906) 107 N. W. 795.

2. **Provisions for Reinstatement Are Not Waived** by sending a blank application and offering to receive past due assessments where it appears that the offer was not acted upon. Sovereign Camp, etc., *v.* Hicks, (Tex. Civ. App. 1904) 84 S. W. 425.

3. **Waiver by Delivery of Certificate and Collection of Dues with Knowledge of Facts.** — Sovereign Camp, etc., *v.* Dismukes, (Miss. 1905) 38 So. 351.

May Not Be Waived by Society's Physician. — Warner *v.* Modern Woodmen of America, 119 Mo. App. 222, 96 S. W. 222.

4. Loyd *v.* Modern Woodmen of America, 113 Mo. App. 19, 87 S. W. 530; Loyal Mystic Legion of America *v.* Richardson, (Neb. 1906) 107 N. W. 795.

Where the constitution of a beneficiary association requires the initiation of a member as a condition precedent to the delivery to him of a benefit certificate, the unauthorized delivery of such certificate to him by a subordinate officer will not operate as a waiver of such condition. Driscoll *v.* Modern Brotherhood of America, (Neb. 1906) 109 S. W. 158.

Waiver. — Election of an applicant to an office in a lodge, where such applicant has never been initiated nor attended any meetings, is not a waiver of the requirements for admission. Supreme Lodge, etc., *v.* Johnson, (Ark. 1907) 99 S. W. 834.

Reinstatement. — Where a member complied with the requirements for reinstatement, but died before the meeting of the lodge at which the required vote could be taken, his beneficiary could not recover. Butler *v.* Grand Lodge, etc., 146 Cal. 172, 79 Pac. 861.

Initiation Condition Precedent unless Waived. — Bruner *v.* Brotherhood of American Yeomen, (Iowa 1907) 111 N. W. 977.

1080. 1. Loehr *v.* Supreme Assembly, etc., (Wis. 1907) 112 N. W. 441.

Under the statutes of some states false representations will not invalidate the certificate unless made with deceitful intent, or unless they are material to the risk. Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469; Modern Order of Prætorians *v.* Hollmig, (Tex. Civ. App. 1907) 103 S. W. 474.

False Representation as to Age. — Krause *v.* Modern Woodmen of America, 133 Iowa 199, 110 N. W. 452; Pirrung *v.* Supreme Council, etc., 104 N. Y. App. Div. 571, 93 N. Y. Supp. 575; Elliott *v.* Knights of Modern Maccabees, (Wash. 1907) 89 Pac. 929.

Good Faith. — Modern Woodmen of America *v.* Wilson, (Neb. 1906) 107 N. W. 568, to practically the same effect as Illinois Masons' Benev. Soc. *v.* Winthrop, 85 Ill. 537, cited in the original note, and holding further that the question of good faith is for the jury.

The Burden of Proof is on the association to show that the statements were erroneous and that they were wilfully made. O'Connor *v.* Grand Lodge, etc., 146 Cal. 484, 80 Pac. 688.

Warranty. — Modern Woodmen of America *v.* Angle, (Mo. App. 1907) 104 S. W. 297.

A statement in an application for membership that the beneficiary named therein comes within the class limited by the by-laws amounts to a warranty. Caldwell *v.* Grand Lodge, etc., 148 Cal. 195, 7 Ann. Cas. 356, 82 Pac. 781.

In an application prepared by the father of the applicant, he being the intended beneficiary, statements as to his daughter's health, made without her knowledge, were held to be mere expressions of opinion, and, if untrue, would not necessarily invalidate the contract. Home Circle Soc. No. 2 *v.* Shelton, (Tex. Civ. App. 1905) 85 S. W. 320.

False Statements in Health Certificate Erroneously Demanded Immaterial. — Arrison *v.* Supreme Council, etc., 129 Iowa 303, 105 N. W. 580.

False Statements as to Previous Insanity. — Mudge *v.* Supreme Ct., etc., 149 Mich. 467, 112 N. W. 1130.

Intent to Commit Suicide when the policy is taken out invalidates the contract. Lange *v.* Royal Highlanders, (Neb. 1907) 110 N. W. 1110.

False Representations as to Hereditary Disease. — Hoagland *v.* Supreme Council, etc., 70 N. J. Eq. 607, 61 Atl. 982.

The Right to the Return of Assessments in cases of false representations is discussed in Taylor *v.* Grand Lodge, etc., 96 Minn. 441, 105 N. W. 408.

2. Woodmen of the World *v.* Jackson, 80 Ark. 419, 97 S. W. 673.

But see Modern Woodmen of America *v.* Vincent, (Ind. App. 1907) 80 N. E. 427, where it was held that failure of a society to act upon a forfeiture for breach of a warranty constitutes an election on the part of the society to consider the contract valid.

Fraud or Mistake on the part of the society's agent in transcribing answers to questions will estop the association from claiming a breach of warranty. Lyon *v.* United Moderns, 148 Cal. 470, 7 Ann. Cas. 672, 83 Pac. 804.

Incorrect Statement of Age Waived When Society Has Means of Knowing Correct Age. — Wood *v.* Supreme Ruling, etc., 212 Ill. 532, 72 N. E. 783.

Collusion Between the Applicant and Agent for the society in making false statements does not estop the society from denying such statements. Mudge *v.* Supreme Ct., etc., 149 Mich. 467, 112 N. W. 1130.

3. If the act relied upon as constituting a waiver was *ultra vires*, there can be no question of estoppel. Steele *v.* Fraternal Tribunes, 215 Ill. 190, 74 N. E. 121.

Where an applicant stated his age and the date of his birth and the two were inconsistent, the association was estopped from invalidating

the certificate after accepting assessments for nine years. Edmonds *v.* Modern Woodmen of America, 125 Mo. App. 214, 102 S. W. 601.

Where a physician, who was the medical examiner of a beneficial society and also the physician of an applicant for membership therein, answered the questions in the application without the applicant's knowledge, the latter merely signing his name to the statement, it was held that the society was estopped from denying the truth of such answers. Modern Woodmen of America *v.* Angle, (Mo. App. 1907) 104 S. W. 297.

4. Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1080.

1081. 2. *Arkansas.* — Woodmen of the World *v.* Jackson, 80 Ark. 419, 97 S. W. 673; Supreme Lodge, etc., *v.* Johnson, (Ark. 1907) 99 S. W. 834.

California. — O'Connor *v.* Grand Lodge, etc., 146 Cal. 484, 80 Pac. 688, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1081; Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597.

Connecticut. — Coughlin *v.* Knights of Columbus, 79 Conn. 218, 64 Atl. 223.

Kentucky. — Sturges *v.* Sturges, (Ky. 1907) 102 S. W. 884.

Missouri. — Lewine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99 S. W. 821, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1081; Loyd *v.* Modern Woodmen of America, 113 Mo. App. 19, 87 S. W. 530.

Nebraska. — Soehner *v.* Grand Lodge, etc., (Neb. 1905) 104 N. W. 871.

New York. — Delaney *v.* Kelly, 103 N. Y. App. Div. 409, 92 N. Y. Supp. 1021; Butler *v.* Supreme Council, etc., 105 N. Y. App. Div. 164, 93 N. Y. Supp. 1012.

Ohio. — The Chevaliers *v.* Shearer, 27 Ohio Cir. Ct. 509.

Pennsylvania. — Myers *v.* Alta Friendly Soc., 29 Pa. Super. Ct. 492.

Texas. — Sovereign Camp, etc., *v.* Hicks, (Tex. Civ. App. 1904) 84 S. W. 425; Supreme Lodge, etc., *v.* Johnson, (Tex. Civ. App. 1907) 104 S. W. 508.

Utah. — Sterling *v.* Head Camp, etc., 28 Utah 505, 80 Pac. 375.

Virginia. — Fraternities Acc. Order *v.* Armstrong, 106 Va. 746, 56 S. E. 565.

Wisconsin. — Thomas *v.* Covert, 126 Wis. 593, 5 Ann. Cas. 456, 105 N. W. 922.

Constitution of General Society Held to Be Part of Contract Made by Local Society. — Kern *v.* Arbeiter Unterstuetzungs Verein, 139 Mich. 233, 102 N. W. 746.

1082. 1. Society Estopped from Setting up Mistake in Certificate. — Binder *v.* National Masonic Acc. Assoc., 127 Iowa 25, 102 N. W. 190.

5. Certificates Are Insurance Policies. — Bornstein *v.* District Grand Lodge No. 4, 2 Cal. App. 624, 84 Pac. 271; Lewine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99 S. W. 821; Soehner *v.* Grand Lodge, etc., (Neb. 1905) 104 N. W. 871; Modern Order of Prætorians *v.* Hollmig, (Tex. Civ. App. 1907) 103 S. W. 474; Cosmopolitan L. Ins. Co. *v.* Koegel, 104 Va. 619, 52 S. E. 166.

Illustration of Certificates. — Head Camp, etc., *v.* Woods, 34 Colo. 1, 81 Pac. 261; Boman *v.* Bankers' Union of the World, (Kan. 1907) 91 Pac. 49; Wineland *v.* Knights of Maccabees, 148 Mich. 608, 112 N. W. 696; Thomas *v.* Covert, 126 Wis. 593, 5 Ann. Cas. 456, 105 N. W. 922.

Certificate Not Essential to Completion of Contract. — Knights of Maccabees *v.* Gordon, 83 Ark. 17, 102 S. W. 711; Social Benev. Soc. No. 1 *v.* Holmes, 127 Ga. 586, 56 S. E. 775; Bruner *v.* Brotherhood of American Yeomen, (Iowa 1907) 111 N. W. 977; Sovereign Camp, etc., *v.* Dees, (Tex. Civ. App. 1907) 100 S. W. 366.

But where a certificate contained a clause providing that the liability thereunder would only commence upon its delivery, it was held that delivery was a condition precedent to membership. Sterling *v.* Head Camp, etc., 28 Utah 505, 80 Pac. 375.

Ambiguity in Certificate Construed Strictly against Society. — Peterson *v.* Modern Brotherhood of America, 125 Iowa 562, 101 N. W. 289; Binder *v.* National Masonic Acc. Assoc., 127 Iowa 25, 102 N. W. 190; Clemens *v.* Royal Neighbors of America, 14 N. Dak. 116, 8 Ann. Cas. 1111, 103 N. W. 402.

1083. 1. Secretary of Local Lodge as Agent of Grand Lodge. — Soehner *v.* Grand Lodge, etc., (Neb. 1906) 104 N. W. 871.

Certificate Is Written Promise to Pay Money. — Grand Lodge, etc., *v.* Barwe, 38 Ind. App. 308, 75 N. E. 971.

Questions and Answers in Application Construed Strictly against Society. — Modern Woodmen of America *v.* Wilson, (Neb. 1906) 107 N. W. 568.

4. Binder *v.* National Masonic Acc. Assoc., 127 Iowa 25, 102 N. W. 190.

Certificate Controls When Amount of Benefit Affected. — Courtney *v.* Fidelity Mut. Aid Assoc., 120 Mo. App. 110, 94 S. W. 768.

Doubt Will Be Resolved in Favor of Member. — Butler *v.* Supreme Council, etc., 105 N. Y. App. Div. 164, 93 N. Y. Supp. 1012.

1084. 1. Conspiracy. — Mudge *v.* Supreme Ct., etc., 149 Mich. 467, 112 N. W. 1130; Elliott *v.* Knights of Modern Maccabees, (Wash. 1907) 89 Pac. 929.

2. In Sovereign Camp, etc., *v.* Carrington, (Tex. Civ. App. 1905) 90 S. W. 921, it was held that a clerk of a local order could waive a provision contained in a by-law and the certificate of membership requiring the certificate to be delivered to the applicant in person while in good health in order to commence the liability of the society.

3. Member May Enjoin Violation of By-laws. — Flaherty *v.* Portland Longshoremen's Benev. Soc., 99 Me. 253, 59 Atl. 58.

An Agreement to Be Bound by Subsequent By-laws concludes a member from objecting to such a by-law unless it is unreasonable. Theorell *v.* Supreme Ct. of Honor, 115 Ill. App. 313.

1085. 3. Caldwell *v.* Grand Lodge, etc., 148 Cal. 195, 7 Ann. Cas. 356, 82 Pac. 781 (to the same effect as Coleman *v.* Supreme Lodge, etc., 18 Mo. App. 189, cited in the original note).

1086. 5. O'Connor *v.* Grand Lodge, etc.,

146 Cal. 484, 80 Pac. 688; Starnes *v.* Atlanta Police Relief Assoc., 2 Ga. App. 237, 58 S. E. 481; Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Modern Woodmen of America *v.* Breckenridge, 75 Kan. 373, 89 Pac. 661; Lewine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99 S. W. 821, *citing* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1086; Soehner *v.* Grand Lodge, etc., (Neb. 1905) 104 N. W. 871; Nelson *v.* Modern Brotherhood of America, (Neb. 1907) 110 N. W. 1008.

6. Starnes *v.* Atlanta Police Relief Assoc., 2 Ga. App. 237, 58 S. E. 481; Chicago City Railway Employees' Mut. Aid Assoc. *v.* Hogan, 124 Ill. App. 447; Sleight *v.* Supreme Council, etc., 133 Iowa 379, 107 N. W. 183.

Burden of Proving Forfeiture by Suicide on Society. — Clemens *v.* Royal Neighbors of America, 14 N. Dak. 116, 8 Ann. Cas. 1111, 103 N. W. 402.

7. Modern Woodmen of America *v.* Breckenridge, 75 Kan. 373, 89 Pac. 661.

8. Starnes *v.* Atlanta Police Relief Assoc., 2 Ga. App. 237, 58 S. E. 481; Brooks *v.* Conservative L. Ins. Co., 132 Iowa 377, 106 N. W. 913; Grand Lodge, etc., *v.* Haddock, 72 Kan. 35, 82 Pac. 583; Soehner *v.* Grand Lodge, etc., (Neb. 1905) 104 N. W. 871.

1087. **1.** Starnes *v.* Atlanta Police Relief Assoc., 2 Ga. App. 237, 58 S. E. 481; Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791; Soehner *v.* Grand Lodge, etc., (Neb. 1905) 104 N. W. 871; Beeman *v.* Supreme Lodge, etc., 215 Pa. St. 627, 64 Atl. 792. But see Butler *v.* Grand Lodge, etc., 146 Cal. 172, 79 Pac. 861; Lavin *v.* Grand Lodge, etc., 112 Mo. App. 1, 86 S. W. 600; Sovereign Camp, etc., *v.* Ogden, (Neb. 1906) 107 N. W. 860; Sovereign Camp, etc., *v.* Hicks, (Tex. Civ. App. 1904) 84 S. W. 425; Delaney *v.* Kelley, 103 N. Y. App. Div. 409, 92 N. Y. Supp. 1021, holding that the certificate became *ipso facto* void although the member died within the time limited for reinstatement.

In Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469, it was held that such a provision operates to cancel a benefit certificate in the same manner as a provision in an ordinary insurance policy declaring the consequences of failure to pay a premium.

Provision for Reinstatement Construed as Implying Necessity for Declaration. — Brooks *v.* Conservative L. Ins. Co., 132 Iowa 377, 106 N. W. 913.

Suicide — Declaration of Forfeiture and Tender of Assessments to Beneficiary Not Necessary. — Tisch *v.* Protected Home Circle, 72 Ohio St. 233, 74 N. E. 188.

2. Lewine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99 S. W. 821.

Suicide. — To a similar effect see Fargo *v.* Supreme Tent, etc., 96 N. Y. App. Div. 491, 89 N. Y. Supp. 65, *affirmed* in mem. 185 N. Y. 578, 78 N. E. 1103. But *compare* Lange *v.* Royal Highlanders, (Neb. 1905) 106 N. W. 224.

Assent of Member — Saloon Keeper. — State *v.* Camden Lodge, etc., 73 N. J. L. 500, 64 Atl. 93; Taylor *v.* Modern Woodmen of America, 72 Kan. 443, 83 Pac. 1099.

But see, as to the effect of accepting dues in a similar case with knowledge of the facts, Grand Lodge, etc., *v.* Haddock, 72 Kan. 35, 82 Pac. 583.

3. Engaging in a Prohibited Occupation prevents a recovery on the certificate. Mutual Protective League *v.* Langsdorf, 126 Ill. App. 572; Gienty *v.* Knights of Columbus, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 98, 105 N. Y. Supp. 244.

1088. **2. Liability of Society Ceases After Suspension.** — Supreme Lodge, etc., *v.* Johnson, (Ark. 1907) 99 S. W. 834.

No Forfeiture for Nonpayment of Illegal Assessments. — Benjamin *v.* Mutual Reserve Fund L. Assoc., 146 Cal. 34, 79 Pac. 517.

3. Suicide while sane will, in the absence of any provision, avoid the policy only in case it is by its terms payable to the insured or his personal representatives. Grand Legion, etc., *v.* Beaty, 117 Ill. App. 657.

A By-law making suicide *ipso facto* a forfeiture is not subject to another by-law providing that forfeiture for false representations or concealment shall not be enforced without notice and hearing. Supreme Tribe, etc., *v.* Miller, 122 Ill. App. 489.

Burden of Proof on Society. — Hildebrand *v.* United Artisans, (Oregon 1907) 91 Pac. 542.

4. Conviction of Felony. — Under a provision that if a member should be convicted of a felony he would cease to be a member of the lodge, it was held that the acceptance of assessments after knowledge of such conviction estopped the lodge from declaring the beneficiary's certificate void. Pringle *v.* Modern Woodmen of America, (Neb. 1907) 113 N. W. 231.

6. Society Estopped from Claiming Certificate Forfeited. — Cline *v.* Sovereign Camp, etc., 111 Mo. App. 601, 86 S. W. 501.

The Receipt of Payment. — The rights of the beneficiary are lost although the member dies within the time provided for reinstatement, as payment may only be made by a member. Delaney *v.* Kelley, 103 N. Y. App. Div. 409, 92 N. Y. Supp. 1021.

Right of Reinstatement Does Not Survive to Executor. — Supreme Commandery, etc., *v.* Bernard, 26 App. Cas. (D. C.) 169, 6 Ann. Cas. 694.

1089. **1.** Soehner *v.* Grand Lodge, etc., (Neb. 1905) 104 N. W. 871; Morrison *v.* Mutual Benev. Assoc., (S. Car. 1907) 59 S. E. 27.

2. Lane *v.* Yeomen of America, 125 Ill. App. 406; Tuttle *v.* Iowa State Traveling Men's Assoc., 132 Iowa 652, 104 N. W. 1131; Anderson *v.* Alta Friendly Soc., 26 Pa. Super. Ct. 630.

A requirement that an extension of the time of payment shall be in writing is waived where the society grants such extension orally. Farmers', etc., L. Assoc. *v.* Caine, 224 Ill. 599, 79 N. E. 956, *affirmed* 123 Ill. App. 419.

Acts by Agent. — Wood *v.* Iowa Legion of Honor, 133 Iowa 33, 110 N. W. 164; Davidson *v.* Temple of Supreme Tribe, etc., (Iowa 1907) 111 N. W. 46.

The supreme lodge is charged with knowledge possessed by an agent of a local lodge. Brotherhood of Painters, etc., *v.* Moore, 36 Ind. App. 580, 76 N. E. 262,

When an officer is authorized to reinstate a suspended member he may waive the suspension in the absence of a by-law restricting such authority. Reed *v.* Bankers' Union of World, 121 Mo. App. 419, 99 S. W. 55.

The secretary of a subordinate society is an agent of the general society. Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099.

The secretary has no authority to waive requirements for membership. Driscoll *v.* Modern Brotherhood of America, (Neb. 1906) 109 N. W. 158.

The fact that the secretary of a local lodge had been accustomed to receive assessments at his home, did not estop the society from claiming a forfeiture where it appeared that a member had sent a payment to the secretary's house during his absence and made no further attempt to have it delivered to him. Schoeller *v.* Grand Lodge, etc., 110 N. Y. App. Div. 456, 96 N. Y. Supp. 1088.

The acceptance of dues by an agent waives a forfeiture. Singleton *v.* Progressive Ben. Assoc., 77 S. Car. 531, 58 S. E. 609; Soehner *v.* Grand Lodge, etc., (Neb. 1905) 104 N. W. 871.

Where by-laws declared that the secretary of a local lodge was the agent of that lodge, and that he had no authority to waive the rules of the association, it was held that an agreement by the secretary that he would notify the beneficiary of assessments during a member's illness was not binding on the society, the by-laws prescribing the manner of notice. Sheridan *v.* Modern Woodmen of America, 44 Wash. 230, 87 Pac. 127.

Acceptance of dues by the secretary waives a forfeiture for felony. Pringle *v.* Modern Woodmen of America, (Neb. 1906) 107 N. W. 756.

Express Authority to the Agent to waive, or subsequent ratification by the company, must be shown. Supreme Commandery, etc., *v.* Bernard, 26 App. Cas. (D. C.) 169, 6 Ann. Cas. 694.

Acts of Subordinate Lodge. — Court of Honor *v.* Dinger, 221 Ill. 176, 77 N. E. 557, *affirmed* 123 Ill. App. 406.

No Power to Waive Rules as to Time of Payment. — Coughlin *v.* Knights of Columbus, 79 Conn. 218, 64 Atl. 223.

May Waive Forfeiture. — Modern Woodmen of America *v.* Breckenridge, 75 Kan. 373, 89 Pac. 661.

May Bind Supreme Lodge by Waiver. — Pringle *v.* Modern Woodmen of America, (Neb. 1907) 113 N. W. 231.

Subordinate Lodge Held to Have Power to Waive By-laws Relating to Payment of Dues. — Johanson *v.* Grand Lodge, etc., 31 Utah 45, 86 Pac. 494.

Waiver by Accepting Assessments at Former Rate After Rate Is Increased. — Boman *v.* Bankers' Union of the World, (Kan. 1907) 91 Pac. 49.

Beneficial Associations Subject to Law of Estoppel and Waiver. — Edmonds *v.* Modern Woodmen of America, 125 Mo. App. 214, 102 S. W. 601.

1090. **1.** U. S. Indemnity Soc. *v.* Griggs, 118 Ill. App. 577; National Council, etc., *v.* Burch, 126 Ill. App. 15; Catholic Order of Foresters *v.* Lynch, 126 Ill. App. 439; Reed *v.* Bankers' Union of the World, 121 Mo. App. 419, 99 S. W. 55; Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791; Soehner *v.* Grand Lodge, etc., (Neb. 1905) 104 N. W. 871; Pringle *v.* Modern Woodmen of America, (Neb. 1906) 107 N. W. 756; Pringle *v.* Modern Woodmen of America, (Neb. 1907) 113 N. W. 231; Cardinale *v.* Society of Civility, etc., (Supm. Ct. App. T.) 102 N. Y. Supp. 471; Pearson *v.* Anderburg, 28 Utah 495, 80 Pac 307.

No Estoppel unless Money Retained. — Woodmen of the World *v.* Jackson, 80 Ark. 419, 97 S. W. 673.

Knowledge of Breach of Condition. — Gienty *v.* Knights of Columbus, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 98, 105 N. Y. Supp. 244.

Acceptance by Subordinate Lodge Binding on Supreme Lodge. — Court of Honor *v.* Dinger, 221 Ill. 176, 77 N. E. 557, *affirmed* 123 Ill. App. 406.

There Is No Estoppel if an Ordinary Assessment Is Retained where the member is required to pay an extra assessment in order to secure benefits for death while engaged in a nazardous occupation. Head Camp, etc., *v.* Woods, 34 Colo. 1, 81 Pac. 261.

Where an Advance Assessment is required from an applicant for membership, there can be no forfeiture for a subsequent delinquency until such advance payment has been applied to some accrued assessment. Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099.

Tender of an Assessment, when erroneously refused by an agent, will not bind the company when no further attempt is made on the part of the beneficiary to assert his rights for a period of more than two years. Sheridan *v.* Modern Woodmen of America, 44 Wash. 230, 87 Pac. 127.

1091. **1.** Schoeller *v.* Grand Lodge, etc., 110 N. Y. App. Div. 456, 96 N. Y. Supp. 1088; Pete *v.* Woodmen of the World, 26 Ohio Cir. Ct. 653. But see Grand Lodge, etc., *v.* Haddock, 72 Kan. 35, 82 Pac. 583; Taylor *v.* Woodmen of America, 72 Kan. 443, 83 Pac. 1099.

2. Coughlin *v.* Knights of Columbus, 79 Conn. 218, 64 Atl. 223 (holding further that where the subordinate lodge always paid the assessments and collected them later from members there was no estoppel). But see Johanson *v.* Grand Lodge, etc., 31 Utah 45, 86 Pac. 494.

Payment by Officer on Behalf of Member Binding. — Puls *v.* Grand Lodge, etc., 13 N. Dak. 559, 102 N. W. 165.

4. Foresters of America *v.* Hollis, 70 Kan. 71, 3 Ann. Cas. 535, 78 Pac. 160; Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Wood *v.* Iowa Legion of Honor, 133 Iowa 33, 110 N. W. 164; Davidson *v.* Temple of Supreme Tribe, etc., (Iowa 1907) 111 N. W. 46.

Customary Acceptance of Overdue Assessments by a subordinate lodge is not a waiver where the power to waive rules is restricted and the member knows of such restriction. Coughlin *v.* Knights of Columbus, 79 Conn. 218, 64 Atl. 223.

5. United Moderns *v.* Rathbun, 104 Va. 736, 52 S. E. 552. But see, as to refusal by the grand lodge after acceptance by the secretary of a local lodge, Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Wood *v.* Iowa Legion of Honor, 133 Iowa 33, 110 N. W. 164; Davidson *v.* Temple of Supreme Tribe, etc., (Iowa 1907) 111 N. W. 46.

Where overdue assessments were refused when offered during the member's illness, the fact that the society had previously accepted assessments that were past due did not constitute a waiver of the right to claim a forfeiture. Hay *v.* People's Mut. Benev. Assoc., 143 N. Car. 256, 55 S. E. 623.

Customary notice of assessments cannot be predicated upon a single act of an agent in violation of the society's by-laws. Sheridan *v.* Modern Woodmen of America, 44 Wash. 230, 87 Pac. 127.

1095. 2. **When Discretion Allowed by By-laws Legality of Assessment Cannot Be Questioned.** — Sovereign Camp Woodmen of the World *v.* Ogden, (Neb. 1906) 107 N. W. 860.

Courts Will Not Interfere with the acts of officers unless there is a manifest abuse of discretion. Barrows *v.* Mutual Reserve L. Ins. Co., (C. C. A.) 151 Fed. 461.

5. Where directors were authorized to make assessments, the fact that the executive committee acted with them in the matter did not invalidate the assessments. Barrows *v.* Mutual Reserve L. Ins. Co., (C. C. A.) 151 Fed. 461.

1097. 2. **Sufficiency of Notice Question for Jury.** — Lockney *v.* Police Beneficiary Assoc., 217 Pa. St. 568, 66 Atl. 844.

3. **Publication Insufficient.** — Where a constitution provided that notice of assessments should be "made and sent" by an officer in the manner prescribed by the order, and that the publication of the official paper of the society on the first of each month should be sufficient notice, it was held that a member was not bound unless such paper was actually sent to him. Grand Legion, etc., *v.* Beaty, 224 Ill. 346, 8 Ann. Cas. 160, 79 N. E. 565.

1098. 3. **The Burden Is on the Society** to prove that the notice was mailed, properly addressed, within the time provided. Duffy *v.* Fidelity Mut. L. Ins. Co., 142 N. Car. 103, 55 S. E. 79.

1099. 1. **Question Whether Custom Established for Jury.** — Donnelly *v.* Supreme Council, etc., (Md. 1907) 67 Atl. 276.

3. **Receipt of Notice Must Be Proved.** — Duffy *v.* Fidelity Mut. L. Ins. Co., 142 N. Car. 103, 55 S. E. 79.

1100. 1. **Liberty to Pay or Not.** — Blackwell *v.* Mutual Reserve Fund L. Assoc., 141 N. Car. 117, 53 S. E. 833.

If an Assessment Is Invalid because disproportionate, tender of the legal amount is not necessary to preserve the member's rights. Benjamin *v.* Mutual Reserve Fund L. Assoc., 146 Cal. 34, 79 Pac. 517.

2. Payment of an ordinary assessment before delinquency need not be applied to an assessment added for engaging in a dangerous occupation. Head Camp, etc., *v.* Woods, 34 Colo. 1, 81 Pac. 261.

Advance Assessment Cannot Be Applied until Member Regularly Admitted. — Triple Tie Ben. Assoc. *v.* Wood, 73 Kan. 124, 84 Pac. 565; Arrison *v.* Supreme Council, etc., 129 Iowa 303, 105 N. W. 580.

No Liability for Prior Losses. — Hetzel *v.* Knights, etc., 129 Iowa 655, 106 N. W. 157.

Advance Assessment Must Be Applied to First Liability of Member After Admission. — Rambousek *v.* Supreme Council, etc., 133 Iowa 375, 106 N. W. 947; Sleight *v.* Supreme Council, etc., 133 Iowa 379, 107 N. W. 183.

3. **Member Liable for Subsequent Assessments if Assessment Unpaid at Time of Withdrawal.** — Nichol *v.* Murphy, 145 Mich. 424, 108 N. W. 704.

4. **Mailing on Last Day Insufficient unless Received on Same Day.** — Beeman *v.* Supreme Lodge, etc., 215 Pa. St. 627, 64 Atl. 792.

Payment Mailed to Officer Who Had Resigned. — Supreme Lodge, etc., *v.* Johnson, (Tex. Civ. App. 1907) 104 S. W. 508.

1101. 2. If no method of payment is prescribed in the by-laws, the society will be bound by a payment sent in the same manner as former payments. Vancura *v.* Zapadni Cesko Bratrska Zednota, (Neb. 1907) 111 N. W. 845.

1102. 1. **A Requirement in the Certificate** that payments be made direct to the society and not to agents may be waived. Courtney *v.* Fidelity Mut. Aid Assoc., 120 Mo. App. 110, 94 S. W. 768.

2. Courtney *v.* Fidelity Mut. Aid Assoc., 120 Mo. App. 110, 94 S. W. 768; Foresters of America *v.* Hollis, 70 Kan. 71, 3 Ann. Cas. 535, 78 Pac. 160.

4. **An Unauthorized Refusal to Accept Payment** cannot create a forfeiture. Foresters of America *v.* Hollis, 70 Kan. 71, 3 Ann. Cas. 535, 78 Pac. 160.

Absence of Person Authorized to Accept Payment. — Sovereign Camp, etc., *v.* Hicks, (Tex. Civ. App. 1904) 84 S. W. 425.

6. **Insanity.** — Sheridan *v.* Modern Woodmen of America, 44 Wash. 230, 87 Pac. 127.

1103. 1. Sleight *v.* Supreme Council, etc., 133 Iowa 379, 107 N. W. 183; Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469. But see Woodmen of the World *v.* Jackson, 80 Ark. 419, 97 S. W. 673.

6. **Increase of Liability.** — Blackwell *v.* Mutual Reserve Fund L. Assoc., 141 N. Car. 117, 53 S. E. 833.

1108. 1. **The Executor of the Insured** may maintain an action on a certificate in which the wife, since deceased, was the original beneficiary, where after the insured's death his executor obtained an assignment from the wife's executor and next of kin. Supreme Commandery, etc., *v.* Bernard, 26 App. Cas. (D. C.) 169, 6 Ann. Cas. 694.

2. Stake *v.* Stake, 228 Ill. 630, 81 N. E. 1146.

Beneficiary Has No Assignable Interest until Death of Member. — Dexter *v.* Supreme Council, etc., 97 N. Y. App. Div. 545, 90 N. Y. Supp. 292.

1109. 1. When proof of death is required to be furnished by officers of a local society their statements are binding on the general society. Hildebrand *v.* United Artisans, (Oregon 1907) 91 Pac. 542.

Proof of Death Waived by Denial of Liability. Arrison *v.* Supreme Council, etc., 129 Iowa 303, 105 N. W. 580.

Statements Not Binding on Beneficiary When Proof of Death Made by Third Person. — Puls *v.* Grand Lodge, etc., 13 N. Dak. 559, 102 N. W. 165.

1110. 1. Such a provision is not against public policy although it avoids the statute of limitations. Dolan *v.* Royal Neighbors of America, 123 Mo. App. 147, 100 S. W. 498.

Time Does Not Begin to Run until the beneficiary has notice of the refusal of payment. Switchmen's Union *v.* Colehouse, 227 Ill. 561, 81 N. E. 696.

2. But see Supreme Court, etc., *v.* Herlinger, 27 Ohio Cir. Ct. 151.

Provision Fixing Time after Death for Payment of Benefits Binding on Beneficiary. — Arrison *v.* Supreme Council, etc., 129 Iowa 303, 105 N. W. 580.

3. Union Fraternal League *v.* Johnston, 124 Ga. 902, 53 S. E. 241 (to the same effect as Grant *v.* Langstaff, 52 Ill. App. 128, cited in the original note).

If a time is fixed, after the filing of proofs of disability, when benefits shall be payable, an action brought within the time is not premature if the society has denied liability. Binder *v.* National Masonic Acc. Assoc., 127 Iowa 25, 102 N. W. 190.

Action Maintainable by Administrator to Recover Sick Benefits. — Pearson *v.* Anderburg, 28 Utah 495, 80 Pac. 307.

BEQUEATH — BEQUEST.

1. 2. Campbell *v.* Cole, (N. J. 1906) 64 Atl. 401.

BET — BETTING.

5. 2. Stevens *v.* Cincinnati Times-Star Co., 72 Ohio St. 112, 73 N. E. 1058.

3. Windsor *v.* State, 46 Tex. Crim. 140, 79 S. W. 312, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 5.

Betting and Gaming Distinguished. — See Opinion of Justices, 73 N. H. 625, 6 Ann. Cas. 689, 63 Atl. 505.

BETWEEN.

9. 1. Jackson *v.* Mason, 145 Mich. 338, 108 N. W. 697.

BICYCLES.

16. 1. State *v.* Missouri Pac. R. Co., 71 Mo. App. 385.

2. State *v.* Missouri Pac. R. Co., 71 Mo. App. 385; Hall *v.* Herr, 16 Pa. Dist. 667.

3. State *v.* Missouri Pac. R. Co., 71 Mo. App. 385; Hall *v.* Herr, 16 Pa. Dist. 667.

17. 2. See State *v.* Missouri Pac. R. Co., 71 Mo. App. 385.

19. 1. A city is not required to pave the entire width of a street, but only to maintain in a reasonably safe condition for travel the paved portion thereof; but where the entire space between sidewalks is in fact paved, a person riding a bicycle has the right to use any portion of the pavement for travel, because of the implied invitation of the city so to use it. Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141.

Municipal Ordinance. — An ordinance requiring the placing at night of lights upon piles of material left in the street by persons using the same in construction, repair, or alteration of buildings, is admissible in evidence, on the question of negligence in an action for injuries resulting to a bicyclist in running into a pile of cinders placed in the street by defendant, notwithstanding the cause of action pleaded is not founded upon the ordinance, but upon the negligence of the defendant. Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141.

8. See Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141.

20. 4. An ordinance making it unlawful for any person to drive or propel, or cause to be driven or propelled, any wagon, sleigh, or other vehicle (except baby carriages) upon or along any sidewalk, except for the purpose of crossing the same, provided that "nothing herein contained shall be construed to include the conveyance of children on sidewalks in small carriages, wagons, or sleds commonly used for such purposes, or the riding of bicycles on any street in said city not within the following described district, to wit," does not affirmatively permit or prohibit bicycle riding on the sidewalks in the district described. Rogers *v.* Binghamton, 101 N. Y. App. Div. 352, 92 N. Y. Supp. 179.

23. 1. **Failure to Enact Prohibitive Ordinance.** — A municipal corporation which has merely failed to pass an ordinance prohibiting the riding of bicycles on its sidewalks, and not having in any way authorized it, is not liable to a person for injuries received on a sidewalk by being run into by a bicyclist riding thereon. Rogers *v.* Binghamton, 101 N. Y. App. Div. 352, 92 N. Y. Supp. 179; Bryant *v.* Orangeburg, 70 S. Car. 137, 49 S. E. 229.

24. 1. It is not negligence *per se* for the rider of a bicycle, riding between the rails of one track of a street railway, to turn upon the space between the rails of the other track when he finds his way on the first obstructed. Preston *v.* Toronto R. Co., 13 Ont. L. Rep. 369, *affirming* 11 Ont. L. Rep. 56.

A person riding a bicycle is entitled to use that part of a highway between street railway tracks, provided he does not unnecessarily interfere with the traffic upon that part or knowingly or recklessly expose himself to imminent and apparent danger by going upon it. Preston *v.* Toronto R. Co., 13 Ont. L. Rep. 369, *affirming* 11 Ont. L. Rep. 56.

2. A person riding a bicycle is not in the exercise of due care in attempting to cross a double track of an electric railway when his view of the farther track is obstructed by a car on the nearer track; he must wait until the view of the farther track is unobstructed before attempting to cross. Bartlett *v.* Winchester Consol. St. R. Co., 189 Mass. 360, 75 N. E. 706. *Compare* Preston *v.* Toronto R Co., 13 Ont. L. Rep. 369, *affirming* 11 Ont. L. Rep. 56.

25. 3. Hall *v.* Herr, 16 Pa. Dist. 667.

5. Hall *v.* Herr, 16 Pa. Dist. 667.

27. 2. The fact that there was a path on the left side, or that the road was not so good or even not fit to ride on, on the right side, is no excuse for the failure of a person riding a bicycle to turn to the right. Hall *v.* Herr, 16 Pa. Dist. 667.

29. 11. **Negligence in Absence of Ordinance.** — See Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141.

30. 7. A bicycle is not "ordinary baggage" within the meaning of a statute fixing the charges of carriers and requiring them to include the carriage of one hundred pounds of "ordinary baggage." State *v.* Missouri Pac. R. Co., 71 Mo. App. 385.

31. 1. A bicycle is not "ordinary luggage" within the meaning of an act allowing a railway passenger to have his "ordinary luggage" up to and within a certain weight carried by the train in which he is traveling, free of any charge beyond the charge paid for his ticket. Britten *v.* Great Northern R. Co., (1899) 1 Q. B. 243.

32. 1. **Accident Insurance — "Accidental Means."** — Under an insurance policy providing that, if death resulted solely from bodily injuries effected through external, violent, and accidental means, which, independent of all other causes, resulted in the death of the insured, his representatives would be entitled to a certain sum; and that, if such death resulted from an accident while riding a bicycle, the representatives would be entitled to double that sum, and that, in case death resulted from other

causes, the insurer would not be liable, the insurer is not liable for the death of the insured resulting from appendicitis, due to the movement of the "psoas" muscle in riding a bicycle. Appel *v.* Ætna L. Ins. Co., 86 N. Y. App. Div. 83, 83 N. Y. Supp. 238, *affirmed* without opinion 180 N. Y. 514, 72 N. E. 1139.

BIENS.

33. **2. Biens.** — See Lindsay *v.* Wilson, 103 Md 252, 63 Atl. 566.

BIGAMY.

36. **5. Power of Territory to Enact Statute as to Bigamy** — *Federal Statute Held to Supersede Territorial Enactment.* — Territory *v.* Alexander, (Ariz. 1907) 89 Pac. 514.

7. Subsisting Prior Marriage. — Goad *v.* State, (Tex. Crim. 1907) 102 S. W. 121.

8. The Massachusetts Statute permitting the guilty party to remarry after the expiration of two years from the granting of the divorce is not unconstitutional as applied to a case where the divorce was obtained before its enactment and the removal of the impediment occurred after its enactment. Com. *v.* Josselyn, 186 Mass. 186, 71 N. E. 313.

37. **7. Validity of Prior Marriage an Essential Element.** — McCombs *v.* State, (Tex. Crim. 1906) 99 S. W. 1017.

8. Void Prior Marriages. — McCombs *v.* State, (Tex. Crim. 1906) 99 S. W. 1017. See also Rex *v.* Sellars, 9 Can. Crim. Cas. (Nova Scotia) 235.

12. No Particular Form of Ceremony Necessary. — Hearne *v.* State, (Tex. Crim. 1906) 97 S. W. 489.

38. **5. Cases of Three Marriages.** — Lane *v.* State, 82 Miss. 555, 34 So. 353, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 38.

The second marriage may become valid when the impediment is removed. Com. *v.* Josselyn, 186 Mass. 186, 71 N. E. 313.

39. **2. Repudiation of Second Marriage by Innocent Party Immaterial.** — Burks *v.* State, (Tex. Crim. 1906) 94 S. W. 1040.

9. In England — Present Statute. — Russell's Trial, (1901) A. C. 446.

40. **2. Defendant May Be Tried in Place of Cohabitation.** — State *v.* Stewart, 194 Mo. 345, 5 Ann. Cas. 963, 92 S. W. 878; State *v.* Long, 143 N. Car. 670, 57 S. E. 349.

Statute Constitutional. — State *v.* Stewart, 194 Mo. 345, 5 Ann. Cas. 963, 92 S. W. 878.

3. Canada. — In Rex *v.* Brinkley, 14 Ont. L. Rep. 434, it was held that when a person, being married, left Canada with intent to go through a form of marriage with another person he was guilty of bigamy. *Following* Matter of Criminal Code, 27 Can. Sup. Ct. 461.

4. Under the Arkansas Statute against Marrying a Married Person one cannot be convicted merely because he was negligent in pursuing inquiries, even if he had knowledge of circumstances which made it probable that the one he married was the wife of another. Brooks *v.* State, 74 Ark. 58, 84 S. W. 1033.

41. **1.** Parnell *v.* State, 126 Ga. 103, 54 S. E. 804, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 40; State *v.* Ackerly, 79 Vt. 69, 64 Atl. 450, 8 Ann. Cas. 1103, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 40.

2. Inquiries Must Be Made and Proper Care Exercised. — Welch *v.* State, 46 Tex. Crim. 528, 81 S. W. 50.

Where the wife was driven away, it was held that her absence for the statutory period did not excuse the husband from inquiry as to whether or not she was alive. State *v.* Goulden, 134 N. Car. 743, 47 S. E. 450.

3. Contra. — Rex *v.* Brinkley, 14 Ont. L. Rep. 434, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 41.

8. Acting upon Wrong Advice Not Defense. — Rex *v.* Brinkley, 14 Ont. L. Rep. 434.

42. **6. Marriage Must Be Proved.** — Sokel *v.* People, 212 Ill. 238, 72 N. E. 382; State *v.* Hansbrough, 181 Mo. 348, 80 S. W. 900; McCombs *v.* State, (Tex. Crim. 1906) 99 S. W. 1017.

7. Record. — The prior marriage cannot be proved by the record of a divorce. State *v.* Sharkey, 73 N. J. L. 491, 63 Atl. 866.

43. **2. Circumstantial Evidence.** — State *v.* Hansbrough, 181 Mo. 348, 80 S. W. 900.

5. Admissions as Evidence. — Caldwell *v.* State, 146 Ala. 141, 41 So. 473; Williams *v.* State, (Ala. 1907) 44 So. 57; McLein *v.* State, 120 Ga. 175, 47 S. E. 544; Murphy *v.* State, 122 Ga. 149, 50 S. E. 48; State *v.* Pendleton, 67 Kan. 180, 72 Pac. 527.

44. **2. Foreign Marriage Is Presumed to Be Valid.** — Sokel *v.* People, 212 Ill. 238, 72 N. E. 382.

3. Record. — Sokel *v.* People, 212 Ill. 238, 72 N. E. 382.

4. When Record Is Admissible. — Ferrell *v.* State, 45 Fla. 26, 34 So. 220; State *v.* Pendleton, 67 Kan. 180, 72 Pac. 527.

7. Eyewitnesses. — Richardson *v.* State, 103 Md. 112, 63 Atl. 317.

45. **1. Admissions as Evidence.** — Williams *v.* State, (Ala. 1907) 44 So. 57.

Cohabitation for twenty years and the presentation of one another to friends as husband and wife have been held not sufficient evidence of a valid marriage to overcome the presumption of innocence. State *v.* Hansbrough, 181 Mo. 348, 80 S. W. 900.

5. Burden of Proof upon Defendant. — State *v.* Goulden, 134 N. Car. 743, 47 S. E. 450; State *v.* Kniffen, 44 Wash. 485, 87 Pac. 837, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 45.

46. **1.** See State *v.* Rocker, 130 Iowa 239, 106 N. W. 645, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 46.

3. Defendant's Knowledge of Absent Party's Life. — Poss *v.* State, (Tex. Crim. 1904) 83 S. W. 1109.

Contra. — State *v.* Goulden, 134 N. Car. 743, 47 S. E. 450.

47. **3. Competent by Statute.** — Richardson *v.* State, 103 Md. 112, 63 Atl. 317.

4. State *v.* Kniffen, 44 Wash. 485, 87 Pac. 837.

9. Second Husband or Wife Competent Witness. — Murphy *v.* State, 122 Ga. 149, 50 S. E. 48; Hoch *v.* People, 219 Ill. 265, 76 N. E. 356, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 47.

BILL.

49. 10. Conniff *v.* Luzerne County, 32 Pa. Co. Ct. 44, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 49.

50. 3. Conniff *v.* Luzerne County, 32 Pa. Co. Ct. 44, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50.

BILL AND NOTE BROKERS.

51. 3. See Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

52. 3. Notice to an agent who purchases a note, that it was given partly in payment of usurious interest, is notice to his principal. Haynes *v.* Gay, 37 Wash. 230, 79 Pac. 794.

Where an agent sells a note knowing that there is a lack of consideration for the note, the knowledge of the agent is the knowledge of the principal and the latter is bound thereby. Condon *v.* Barnum, (Iowa 1906) 106 N. W. 514.

53. 2. See Moore *v.* Skyles, 33 Mont. 135, 82 Pac. 799.

54. 1. See Sill *v.* Pate, 230 Ill. 39, 82 N. E. 356.

2. Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

Recovery of Commissions. — A broker cannot recover commissions for the sale of a note and mortgage where the vendee refuses to consummate the sale because the security is not legally satisfactory to him. Wiggin *v.* Holbrook, 190 Mass. 157, 76 N. E. 463.

BILL OF ATTAINDER.

56. 2. French *v.* Senate, 146 Cal. 604, 2 Ann. Cas. 756, 80 Pac. 1031.

BILL OF CREDIT.

63. 1. **Revenue Bond Scrip** issued under an act of the legislature to relieve the state of liability for its guaranty of certain bonds, and providing "that the same will be received in payment of taxes and all other dues to the state, except special tax levied ti pay interest on the public debt," constitutes bills of credit within the prohibition of the Constitution of the United States, art, 1, § 10. Robinson *v.* Lee, 122 Fed. 1012, *affirmed* 196 U. S. 64, 25 U. S. Sup. Ct. 180.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

76. 1. Woodall *v.* People's Nat. Bank, (Ala. 1907) 45 So. 194, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76.

Definition under Negotiable Instruments Law. — Amsinck *v.* Rogers, 189 N. Y. 252, 82 N. E. 134; Columbian Banking Co. *v.* Bowen, (Wis. 1908) 114 N. W. 451.

77. 1. **Definition under Negotiable Instruments Law.** — Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; Harris *v.* Pate, (Indian Ter. 1907) 104 S. W. 812; Alexander *v.* Hazelrigg, (Ky. 1906) 97 S. W. 353; A. B. Farquhar Co. *v.* Higham, (N. Dak. 1907) 112 N. W. 557; Edelman *v.* Rams, (Supm. Ct. App. T.) 109 N. Y. Supp. 816; Fishburn *v.* Londershausen, (Oregon 1907) 92 Pac. 1060.

78. 5. **Holder Defined.** — Welch *v.* Kinney, 46 Oregon 406, 80 Pac. 648.

7. **Definition under Negotiable Instruments Law.** — Amsinck *v.* Rogers, 189 N. Y. 252, 82 N. E. 134.

79. 1. **Purpose and Effect of Negotiable Instruments Law.** — Columbian Banking Co. *v.* Bowen, (Wis. 1908) 114 N. W. 451.

80. 6. **Title Subject to Equities.** — Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708; Union Stockyards Nat. Bank *v.* Bolan, (Idaho 1908) 93 Pac. 508; Kimpton *v.* Studebaker Bros. Co., (Idaho 1908) 94 Pac. 1039; Randall Co. *v.* Glendenning, (Okla. 1907) 92 Pac. 158; Dickerson *v.* Higgins, 15 Okla. 588, 82 Pac. 649; Gilley *v.* Harrell, 118 Tenn. 115, 101 S. W. 424.

81. 5. Waddell *v.* Hanover Nat. Bank, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 578, 97 N. Y. Supp. 305.

84. 4. Waddell *v.* Hanover Nat. Bank, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 578, 97 N. Y. Supp. 305; Fulton *v.* Varney, 117 N. Y. App. Div. 572, 102 N. Y. Supp. 608.

85. 1. Kimpton *v.* Studebaker Bros. Co., (Idaho 1908) 94 Pac. 1039.

87. 2. Northern Trust Co. *v.* Wilmette, 220 Ill. 417, 5 Ann. Cas. 193, 77 N. E. 169, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 87; Allison *v.* Hollenbeak, (Iowa 1908) 114 N. W. 1059; Hutchinson First Nat. Bank *v.* Lightner, 74 Kan. 736, 88 Pac. 59; Fulton *v.* Varney, 117 N. Y. App. Div. 572, 102 N. Y. Supp. 608.

Agreement to Pay Out of Particular Fund Held Binding. — Keller *v.* Cohen, 217 Pa. St. 522, 66 Atl. 862.

88. 3. Hutchinson First Nat. Bank *v.* Lightner, 74 Kan. 736, 88 Pac. 59; Waddell *v.* Hanover Nat. Bank, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 578, 97 N. Y. Supp. 305.

89. 1. Hutchinson First Nat. Bank *v.* Lightner, 74 Kan. 736, 88 Pac. 59, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 89.

2. Hutchinson First Nat. Bank *v.* Lightner, 74 Kan. 736, 88 Pac. 59, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 89; Waddell *v.* Hanover Nat. Bank, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 578, 97 N. Y. Supp. 305.

3. Hutchinson First Nat. Bank *v.* Lightner, 74 Kan. 736, 88 Pac. 59, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 89.

90. 4. Union Stockyards Nat. Bank *v.* Bolan, (Idaho 1908) 93 Pac. 508; Kimpton *v.* Studebaker Bros. Co., (Idaho 1908) 94 Pac. 1039; Rosenthal *v.* Rambo, 165 Ind. 584, 76 N. E. 404; Harris *v.* Firth, (N. J. 1908) 68 Atl. 1064.

5. **Reasonable Time Allowed for Exercising Option to Declare Note Due on Default in Instalment.** — Kinsel *v.* Ballou, (Cal. 1907) 91 Pac. 620.

Note Payable on Demand After Date. a Demand Note. — Schlesinger *v.* Schultz, 110 N. Y. App. Div. 356, 96 N. Y. Supp. 383.

91. 2. Harris *v.* Firth, (N. J. 1908) 68 Atl. 1064.

5. Union Stockyards Nat. Bank *v.* Bolan, (Idaho 1908) 93 Pac. 508; Rosenthal *v.* Rambo, 165 Ind. 584, 76 N. E. 404.

The negotiable character of a note is not destroyed by reason of its containing a clause providing that a surety, if such there be on the note, will not claim a release from his collateral liability on the instrument, if an extension of time shall be granted the makers without notice to him. Farmer *v.* Graettinger, 130 Iowa 469, 107 N. W. 170.

92. 2. **Note Payable at Death Valid.** — Matter of Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 1103.

3. **Corporation Certificate Payable On or Before a Certain Date Negotiable.** — National Salt Co. *v.* Ingraham, (C. C. A.) 143 Fed. 805.

94. 1. **Effect of Agreement for Extension of Time.** — Bell *v.* San Francisco Sav. Union, (Cal. 1908) 94 Pac. 225.

4. Martin *v.* Jesse French Piano, etc., Co., (Ala. 1907) 44 So. 112, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 94.

5. **Note May Provide for Maturity of Series on Default in Payment of One.** — Stocking *v.* Moury, 128 Ga. 414, 57 S. E. 704.

95. 1. Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; Loring *v.* Anderson, 95 Minn. 101, 103 N. W. 722; Pace *v.* Gilbert School, 118 Mo. App. 369, 93 S. W. 1124; Green *v.* Spires, 71 S. Car. 107, 4 Ann. Cas. 261, 50 S. E. 554.

3. **Amount Rendered Certain by Accompanying Instrument.** — Griggs *v.* Corson, 71 Kan. 884, 81 Pac. 471.

96. 2. Loring *v.* Anderson, 95 Minn. 101, 103 N. W. 722, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 96; Pace *v.* Gilbert School, 118 Mo. App. 369, 93 S. W. 1124; Green *v.* Spires, 71 S. Car. 107, 4 Ann. Cas. 261, 50 S. E. 554.

3. Loring *v.* Anderson, 95 Minn. 101, 103 N. W. 722, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 96.

5. Buck *v.* Harris, 125 Mo. App. 365, 102 S. W. 640.

97. 2. Buck *v.* Harris, 125 Mo. App. 365, 102 S. W. 640.

98. 1. **Recovery of Attorney's Fees Allowed in Texas.** — Moore *v.* Brown, (Tex. Civ. App. 1905) 89 S. W. 310.

9. Dumas *v.* People's Bank, 146 Ala. 226, 40 So. 964; Harris *v.* Pate, (Indian Ter. 1907) 104 S. W. 812; Elmore *v.* Rugely, (Tex. Civ. App. 1908) 107 S. W. 151.

99. 1. Browne *v.* Edwards, 122 Ga. 277, 50 S. E. 110; German-American Bank *v.* Martin, (Mo. App. 1908) 107 S. W. 1108.

Recovery of Attorney's Fees under California Statute. — Graham *v.* Light, 4 Cal. App. 400, 88 Pac. 373.

Recovery of Attorney's Fees under Georgia Statute. — Pritchard *v.* McCrary, 122 Ga. 606, 50 S. E. 366; Everett *v.* Ferst, 126 Ga. 662, 55 S. E. 916; American Mortg. Co. *v.* Rawlings, 127 Ga. 82, 56 S. E. 110; Stocking *v.* Moury, 128 Ga. 414, 57 S. E. 704; Mt. Vernon Bank *v.* Gibbs, 1 Ga. App. 662, 58 S. E. 269; Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038; Clements *v.* National Bank, (Ga. App. 1908) 61 S. E. 146.

Recovery of Attorney's Fees under Idaho Statute. — Rinker *v.* Lauer, 13 Idaho 163, 88 Pac. 1057.

Recovery of Attorney's Fees under Texas Statute. — Houston Ice, etc., Co. *v.* Nicolini, (Tex. Civ. App. 1906) 96 S. W. 84.

100. 3. Creston Nat. Bank *v.* Salmon, 117 Mo. App. 506, 93 S. W. 288; Pace *v.* Gilbert School, 118 Mo. App. 369, 93 S. W. 1124; Buck *v.* Harris, 125 Mo. App. 365, 102 S. W. 640; Green *v.* Spires, 71 S. Car. 107, 4 Ann. Cas. 261, 50 S. E. 554.

101. 4. Arden Lumber Co. *v.* Henderson Iron Works, etc., Co., 83 Ark. 240, 103 S. W. 185; Fields *v.* Fields, 105 Va. 714, 54 S. E. 888.

102. 2. Elmore *v.* Rugely, (Tex. Civ. App. 1908) 107 S. W. 151.

103. 1. **Manner of Recovery under Alabama Statute.** — Boyett *v.* Standard Chemical, etc., Co., 146 Ala. 554, 41 So. 756.

Method of Recovery under Texas Statute. — Elmore *v.* Rugely, (Tex. Civ. App. 1908) 107 S. W. 151.

109. 2. Kistner *v.* Peters, 223 Ill. 607, 79 N. E. 311.

10. **Ratification of Unauthorized Signature.** — Ritchie County Bank *v.* Bee, (W. Va. 1907) 59 S. E. 181.

110. 1. **Order in Which Signatures Appear Presumed to Be Order in Which Signed.** — Beem *v.* Farrell, (Iowa 1907) 113 N. W. 509.

2. Union Nat. Bank *v.* Neill, (C. C. A.) 149 Fed. 711.

111. 1. **Extent of Liability as between Joint Makers.** — Will A. Watkin Music Co. *v.* Basham, (Tex. Civ. App. 1907) 106 S. W. 734.

115. 5. **A Note Payable to Order** is considered as payable to a fictitious person and may be sued upon by any *bona fide* holder. Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639.

6. Seaboard Nat. Bank *v.* Bank of America, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 103, 100 N. Y. Supp. 740.

116. 1. Seaboard Nat. Bank *v.* Bank of America, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 103, 100 N. Y. Supp. 740.

Sufficiency of Evidence to Show Knowledge and Intention. — Seaboard Nat. Bank *v.* Bank of America, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 103, 100 N. Y. Supp. 740.

120. 4. Sherman *v.* Goodwin, (Ariz. 1907) 89 Pac. 517; Simon *v.* Mintz, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 670, 101 N. Y. Supp. 86; Edelman *v.* Rams, (Supm. Ct. App. T.) 109 N. Y. Supp. 816; Roach *v.* Sanborn Land Co., (Wis. 1908) 115 N. W. 1102.

5. Roach *v.* Sanborn Land Co., (Wis. 1908) 115 N. W. 1102.

122. 7. **Where a Note Is Payable to Order** without any other payee being named, and is indorsed in blank, the indorsee may fill in the blank with the name of the person by whom the notes were indorsed. Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639.

123. 9. **Effect of Adding Seal.** — Langley *v.* Owens, 52 Fla. 302, 42 So. 457.

Effect of Seal. — In order to render a promissory note a sealed instrument, it must be so recited in the body of the note. The mere addition of a seal after the signature of the maker is insufficient. Civ. Code 1895, § 3765. Jackson *v.* Augusta Southern R. Co., 125 Ga. 801, 54 S. E. 697.

121. 2. Sheffield *v.* Johnson County Sav. Bank, 2 Ga. App. 221, 58 S. E. 386.

126. 2. **Chattel Mortgage Given as Security Does Not Impair Negotiability.** — Dumas *v.* People's Bank, 146 Ala. 226, 40 So. 964.

3. Dumas *v.* People's Bank, 146 Ala. 226, 40 So. 964.

128. 3. **Absence of Date Does Not Invalidate Note under New York Negotiable Instruments Law.** — Church *v.* Stevens, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 572, 107 N. Y. Supp. 310.

129. 3. Helm *v.* Briley, 17 Okla. 314, 87 Pac. 595.

4. **Antedating Does Not Invalidate Note in Absence of Fraud.** — Rathfon *v.* Locher, 215 Pa. St. 571, 64 Atl. 790.

131. 1. Chestnut *v.* Chestnut, 104 Va. 539, 7 Ann. Cas. 802, 52 S. E. 348, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 131.

Right Lost by Unreasonable Delay. — Chestnut *v.* Chestnut, 104 Va. 539, 7 Ann. Cas. 802, 52 S. E. 348.

2. Chestnut *v.* Chestnut, 104 Va. 539, 7 Ann. Cas. 802, 52 S. E. 348, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 131.

132. 3. Walston *v.* Davis, 146 Ala. 510, 40 So. 1017.

5. Swope *v.* Boone County Deposit Bank, (Ky. 1907) 101 S. W. 334; Union Bank, etc., Co. *v.* Ford, (Ky. 1907) 101 S. W. 347.

10. **Ambiguity — Parol Evidence.** — Where the year is omitted from the time at which the note was made payable, parol evidence is admissible to show the actual date intended. A note dated on March 25, 1904, and payable on "the 1st day of November" without specifying a year, is, in the absence of anything in the instrument requiring a contrary construction, to be considered as maturing on the first day of November of the year named. Leffler Co. *v.* Dickerson, 1 Ga. App. 63, 57 S. E. 911.

133. 3. Hutchinson First Nat. Bank *v.* Lightner, 74 Kan. 736, 88 Pac. 59, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 133; Didato *v.* Coniglio, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 280, 100 N. Y. Supp. 466.

134. 1. Barrow *v.* Blasingame, 1 Ga. App. 358, 57 S. E. 926; Harvey *v.* Hamilton Bank, 1 Can. Sup. Ct. Cas. 129.

Must Be Payable to Order or Bearer under New York Negotiable Instruments Law. — Fulton *v.* Varney, 117 N. Y. App. Div. 572, 102 N. Y. Supp. 608.

Under Tennessee Negotiable Instruments Law Words of Negotiability Are Essential. — Gilley *v.* Harrell, 118 Tenn. 115, 101 S. W. 424.

136. 4. Locher *v.* Kuechenmiester, 120 Mo. App. 701, 98 S. W. 92.

6. **Patent-right Notes under Georgia Act of 1897.** — Lee *v.* Hightower, (Ga. App. 1907) 59 S. E. 597.

Patent-right Notes under Kansas Statute. — Nyhart *v.* Kubach, (Kan. 1907) 90 Pac. 796.

Patent-right Notes under Kentucky Statute. — Bugg *v.* Holt, (Ky. 1906) 97 S. W. 29; McAfee *v.* Mercer Nat. Bank, (Ky. 1907) 104 S. W. 287; Arnett *v.* Pinson, (Ky. 1908) 108 S. W. 852.

Patent-right Notes under Wisconsin Statute. — J. H. Clark Co. *v.* Rice, 127 Wis. 451, 7 Ann. Cas. 505, 106 N. W. 231.

Kentucky Statute Not Repealed by Negotiable Instruments Law. — Lawson *v.* Fulton First Nat. Bank, (Ky. 1907) 102 S. W. 324.

Sufficiency of Patent Right as Consideration. — Twentieth Century Co. *v.* Quilling, 130 Wis. 318, 110 N. W. 174.

Lightning-rod Note. — A failure to comply with the statutory requirements as to stating the consideration of "lightning rod" notes, is not a defense against a *bona fide* holder. Arnd *v.* Sjoblom, 131 Wis. 642, 111 N. W. 666.

137. 1. **The Constitutionality** of statutes of this character requiring the note to show that it was given in consideration of patent rights has been upheld as against the plea that they violated the provision of the Federal Constitution giving to Congress the right to protect authors and inventors (article 1, section 8), and interfered with the federal statute (U. S. Rev. Stat., § 4898) passed in pursuance thereof. Allen *v.* Riley, 203 U. S. 347, 8 Ann. Cas. 137, 27 U. S. Sup. Ct. 95; Woods *v.* Carl, 203 U. S. 358, 27 U. S. Sup. Ct. 99.

The Arkansas Statute (Sand. & H. Dig., §§ 493–496) has been held unconstitutional because of its discrimination between articles of property of the same class or character, the discrimination being against property protected by federal patents. Ozan Lumber Co. *v.* Union County Nat. Bank, (C. C. A.) 145 Fed. 344, 7 Ann. Cas. 390.

139. 1. A note which is dated "August 4, 1902" and reads "On September 20, we promise," etc., is to be deemed as maturing in the same year at a specified date. Helm *v.* Briley, 17 Okla. 314, 87 Pac. 595.

144. 2. Myrick *v.* Purcell, 95 Minn. 133, 5 Ann. Cas. 148, 103 N. W. 902, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 144; Armijo *v.* Henry, (N. Mex. 1907) 89 Pac. 705, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 144; Security Trust, etc., Ins. Co. *v.* Ellsworth, 129 Wis. 349, 109 N. W. 125, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 144.

3. Kurth *v.* Farmers', etc., State Bank, (Kan. 1908) 94 Pac. 798; Bank of America *v.* Waydell, 187 N. Y. 115, 79 N. E. 857; Aden *v.* Doub, (N. Car. 1907) 59 S. E. 162; Keller *v.* Cohen, 217 Pa. St. 522, 66 Atl. 862; National Bank *v.* Shaw, 218 Pa. St. 612, 67 Atl. 875; Kempner *v.* Patrick, (Tex. Civ. App. 1906) 95 S. W. 51; Kampmann *v.* McCormick, (Tex. Civ. App. 1907) 99 S. W. 1147; Nottingham *v.* Ackiss, (Va. 1907) 57 S. E. 592.

Parties without Notice. — Hunter *v.* Johnson, 119 Mo. App. 487, 94 S. W. 311.

145. 2. National Bank *v.* Shaw, 218 Pa. St. 612, 67 Atl. 875.

5. Aden *v.* Doub, (N. Car. 1907) 59 S. E. 162; Nottingham *v.* Ackiss, (Va. 1907) 57 S. E. 592.

6. Crilly *v.* Gallice, (C. C. A.) 148 Fed. 835.

147. 1. *United States.* — Payne *v.* Mutual L. Ins. Co., (C. C. A.) 141 Fed. 339.

Colorado. — Whitehead *v.* Emmerich, 38 Colo. 13, 87 Pac. 790.

District of Columbia. — Hutchins *v.* Langley, 27 App. Cas. (D. C.) 234.

Georgia. — Union Cent. L. Ins. Co. *v.* Wynne, 123 Ga. 470, 51 S. E. 389; Byrd *v.* Marietta Fertilizer Co., 127 Ga. 30, 56

S. E. 86; Bowen *v.* Waxelbaum, 2 Ga. App. 521, 58 S. E. 784; Carroll *v.* Hutchinson, 2 Ga. App. 60, 58 S. E. 309; Vanzant *v.* Abbeville Bank, 2 Ga. App. 763, 59 S. E. 85; Crooker *v.* Hamilton, (Ga. App. 1907) 59 S. E. 722.

Iowa. — Mosnat *v.* Uchytil, 129 Iowa 274, 105 N. W. 519; City Deposit Bank *v.* Green, 130 Iowa 384, 106 N. W. 942; Houts *v.* Sioux City Brass Works, 134 Iowa 484, 110 N. W. 166.

New York. — Hover *v.* Magley, 116 N. Y. App. Div. 84, 101 N. Y. Supp. 245.

Oklahoma. — Page *v.* Geiser Mfg. Co., 17 Okla. 110, 87 Pac. 851; Buxton *v.* Alton-Dawson Mercantile Co., 18 Okla. 287, 90 Pac. 19; Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017; Guthrie, etc., R. Co. *v.* Rhodes, (Okla. 1907) 91 Pac. 1119.

Oregon. — Pomeroy First Nat. Bank *v.* McCullough, (Oregon 1908) 93 Pac. 366.

Texas. — Alston *v.* Orr. (Tex. Civ. App. 1907) 105 S. W. 234.

West Virginia. — Duty *v.* Sprinkle, (W. Va. 1908) 60 S. E. 882.

Parol Agreement Inadmissible in Suit by Maker to Cancel Note. — Bass *v.* Sanborn, 119 Mo. App. 103, 95 S. W. 955.

2. Payne *v.* Mutual L. Ins. Co., (C. C. A.) 141 Fed. 339; Byrd *v.* Marietta Fertilizer Co., 127 Ga. 30, 56 S. E. 86; Terwilliger *v.* George O. Richardson Mach. Co., 15 Okla. 664, 83 Pac. 715; Duty *v.* Sprinkle, (W. Va. 1908) 60 S. E. 882.

3. Vanzant *v.* Abbeville Bank, 2 Ga. App. 763, 59 S. E. 85; Wilkes *v.* Pope, (Ga. App. 1908) 60 S. E. 823; McNeil *v.* Cullen, 37 Nova Scotia 13.

149. 1. Crooker *v.* Hamilton, (Ga. App. 1907) 59 S. E. 722.

2. Carroll *v.* Hutchinson, 2 Ga. App. 60, 58 S. E. 309; Page *v.* Geiser Mfg. Co., 17 Okla. 110, 87 Pac. 851.

150. 3. Bowen *v.* Waxelbaum, 2 Ga. App. 521, 58 S. E. 784; Terwilliger *v.* George O. Richardson Mach. Co., 15 Okla. 664, 83 Pac. 715.

5. Parol Evidence Admissible to Show that Note Was Never Executed. — Acme Food Co. *v.* Tousey, 148 Mich. 697, 112 N. W. 484.

Parol Evidence as to Fraud in Securing Note Admissible in Suit to Cancel Note. — Karner *v.* Ross, (Tex. Civ. App. 1906) 95 S. W. 46.

6. Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831.

151. 4. Dial *v.* McKay, (Ala. 1907) 43 So. 218; Graham *v.* Remmel, 76 Ark. 140, 6 Ann. Cas. 167, 88 S. W. 899; McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831; O'Brien *v.* Paterson Brewing, etc., Co., 69 N. J. Eq. 117, 61 Atl. 437; National Park Bank *v.* Saitta, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 93, 106 N. Y. Supp. 328; Hover *v.* Magley, 116 N. Y. App. Div. 84, 101 N. Y. Supp. 245; Ewell *v.* Turney, 39 Wash. 615, 81 Pac. 1047; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192.

Sufficiency of Evidence to Show Conditional Delivery. — Ewell *v.* Turney, 39 Wash. 615, 81 Pac. 1047.

152. 2. Righetti *v.* Righetti, (Cal. App. 1907) 90 Pac. 50.

3. Lineville First Nat. Bank *v.* Alexander, (Ala. 1907) 44 So. 866.

4. Pomeroy First Nat. Bank *v.* McCullough, (Oregon 1908) 93 Pac. 366.

5. Evans *v.* Freeman, 142 N. Car. 61, 54 S. E. 847.

154. 5. Dunbar Box, etc., Co. *v.* Martin, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 312, 103 N. Y. Supp. 91.

6. Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017.

7. Gibson *v.* Wallace, 147 Ala. 322, 41 So. 960; Weller *v.* Ralston, (Ky. 1905) 89 S. W. 698; Scott *v.* Bales, (Ky. 1906) 96 S. W. 528; Kaufman *v.* Barbour, 98 Minn. 158, 107 N. W. 1128; Morgan *v.* Thompson, 72 N. J. L. 244, 62 Atl. 410; Windhorst *v.* Bergendahl, (S. Dak. 1907) 111 N. W. 544.

Proof that One Joint Maker Signed as Surety Not Admissible. — Vanderford *v.* Farmers', etc., Nat. Bank, 105 Md. 164, 66 Atl. 47.

9. Prepayment of Interest as Consideration for Extension of Time. — Welch *v.* Kukuk, 128 Wis. 419, 107 N. W. 301.

155. 2. Effect of Oral Agreement to Extend Time. — Lahn *v.* Koep, (Iowa 1908) 115 N. W. 877.

163. 5. Walker *v.* Winn, 142 Ala. 560, 4 Ann. Cas. 537, 39 So. 12.

164. 1. Right of Guardian to Enjoin Suit on Note Secured by Fraud. — Heath *v.* Capital Sav. Bank, etc., Co., 79 Vt. 301, 64 Atl. 1127.

4. The insanity of the payee of a note and the inadequacy of the consideration which was paid him by his indorsee, are no defense in an action by such indorsee against the maker. Walker *v.* Winn, 142 Ala. 560, 4 Ann. Cas. 537, 39 So. 12.

165. 6. Abbeville Trading Co. *v.* Butler, (Ga. App. 1907) 59 S. E. 450.

8. Watson *v.* Ruderman, 79 Conn. 687, 66 Atl. 515.

166. 1. Memphis Coffin Co. *v.* Patton, (Tex. Civ. App. 1907) 106 S. W. 697.

2. Implied Ratification by Infant Partner. — Mathis *v.* Taylorsville Bank, (Ky. 1908) 106 S. W. 1174.

168. 3. T. G. Northwall Co. *v.* Osgood, (Neb. 1908) 115 N. W. 308.

169. 8. Middleborough Nat. Bank *v.* Cole, 191 Mass. 168, 77 N. E. 781.

Presumption as to Validity, under Georgia Statute. — Farmers, etc., Bank *v.* Eubanks, 2 Ga. App. 839, 59 S. E. 193.

174. 5. Packard *v.* Dunfee, 119 N. Y. App. Div. 599, 104 N. Y. Supp. 140.

176. 3. Union Nat. Bank *v.* Neill, (C. C. A.) 149 Fed. 711; Mitchell *v.* Whaley, (Ky. 1906) 92 S. W. 556; Browerville First Nat. Bank *v.* Stadden, (Minn. 1908) 115 N. W. 198; Shapek *v.* Oak Creek Valley Bank, (Okla. 1907) 91 Pac. 1129; Hatchett *v.* Sunset Brick, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 174.

4. Osborn *v.* Wood, 125 Mo. App. 250, 102 S. W. 580.

5. Browerville First Nat. Bank *v.* Stadden, (Minn. 1908) 115 N. W. 198.

177. 3. Union Nat. Bank *v.* Neill, (C. C. A.) 149 Fed. 711.

180. 3. Dockery *v.* Faulkner, (Tex. Civ. App. 1907) 101 S. W. 501.

4. Dockery *v.* Faulkner, (Tex. Civ. App. 1907) 101 S. W. 501.

5. Dockery *v.* Faulkner, (Tex. Civ. App. 1907) 101 S. W. 501.

182. 7. Osborn *v.* Wood, 125 Mo. App. 250, 102 S. W. 580.

183. 1. Osborn *v.* Wood, 125 Mo. App. 250, 102 S. W. 580.

4. Fraternal Association Not Authorized to Issue Notes. — Scott *v.* Bankers' Union of the World, 73 Kan. 575, 85 Pac. 604.

9. Jamieson *v.* Heim, 43 Wash. 153, 86 Pac. 165.

184. 5. Stouffer *v.* Smith Davis Hardware Co., (Ala. 1908) 45 So. 621.

Bona Fide Holder Cannot Recover Where Issue Is Unauthorized. — Scott *v.* Bankers' Union of the World, 73 Kan. 575, 85 Pac. 604.

6. Stouffer *v.* Smith Davis Hardware Co, (Ala. 1908) 45 So. 621; Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

185. 1. Pelton *v.* Spider Lake Sawmill, etc., Co., (Wis. 1907) 112 N. W. 29.

3. Wickersham Banking Co. *v.* Nicholas, 2 Cal. App. 18, 82 Pac. 1124.

186. 4. Gates *v.* Morton Hardware Co., 146 Ala. 692, 40 So. 509; Keating *v.* Morrissey, (Cal. App. 1907) 91 Pac. 677; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544.

Due Bill Imports Consideration. — Locher *v.* Kuechenmiester, 120 Mo. App. 701, 98 S. W. 92.

5. Moore *v.* Gould, (Cal. 1907) 91 Pac. 616; Union Trust Co. *v.* Morgans, 140 Mich. 134, 103 N. W. 568, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186; Dawson *v.* Wombles, 123 Mo. App. 340, 100 S. W. 547; Harris *v.* Firth, (N. J. 1908) 68 Atl. 1064; Matter of Pinkerton, (Surrogate Ct.) 49 Misc. (N. Y.) 363, 97 N. Y. Supp. 492; Joveshof *v.* Rockey, (Supm. Ct. App. T.) 109 N. Y. Supp. 818; Lassas *v.* McCarty, 47 Oregon 474, 84 Pac. 76.

187. 2. An Obligation under Seal, for the payment of money, imports a valid consideration until the contrary appears from the evidence. Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374.

188. 1. Russell Electric Co. *v.* Bassett, 79 Conn. 709, 66 Atl. 531; Crawford County State Bank *v.* Stegemann, (Iowa 1908) 114 N. W. 549; Taylor *v.* Industrial Mut. Deposit Co., (Ky. 1906) 96 S. W. 462; Parnell *v.* Davenport, (Mont. 1908) 93 Pac. 939; Matter of Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 1103; Doxy *v.* Exchange Bank, (Okla. 1907) 92 Pac. 150.

The difference between a solvent and insolvent signer is a valuable consideration to another to sign, relying on the financial responsibility of those who join as makers. City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893.

2. Hale *v.* Harris, (Ky. 1906) 91 S. W. 660; Steger *v.* Jackson, (Ky. 1907) 102 S. W. 329; Doxy *v.* Exchange Bank, (Okla. 1907) 92 Pac. 150.

3. Smith *v.* Hightower, (Ga. App. 1907) 59 S. E. 593; Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034; Steger *v.* Jackson, (Ky. 1907) 102 S. W. 329; Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303; Doxy *v.* Exchange Bank, (Okla. 1907) 92 Pac. 150; Adams *v.* Bartell, (Tex. Civ. App. 1907) 102 S. W. 779.

There is not sufficient consideration to support a note given by a widow in consideration of a note given by her deceased husband, where the wife received from the estate of her deceased husband no property subject to execution. Gilbert *v.* Brown, (Ky. 1906) 97 S. W. 40.

4. Matter of Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 1103.

The rendition of voluntary services without expectation of pay is insufficient to support a note. Matter of Pinkerton, (Surrogate Ct.) 49 Misc. (N. Y.) 363, 97 N. Y. Supp. 492.

5. Youle *v.* Fosha, (Kan. 1906) 90 Pac. 1090.

Services to Be Rendered after Maturity. — A note given for the performance of services in the future is based on sufficient consideration, even though the services are not to be rendered before the maturity of the note. Morrison *v.* Hart, 122 Ga. 660, 50 S. E. 471.

6. Beebe *v.* Wells, (C. C. A.) 153 Fed. 133; Russell Electric Co. *v.* Bassett, 79 Conn. 709, 66 Atl. 531; Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034; Steger *v.* Jackson, (Ky. 1907) 102 S. W. 329; Matter of Kemp, (Surrogate Ct.) 49 Misc. (N. Y.) 396, 100 N. Y. Supp. 221; Emerson *v.* Sheffer, 113 N. Y. App. Div. 19, 98 N. Y. Supp. 1057; Allentown Nat. Bank *v.* Clay Product Supply Co., 217 Pa. St. 128, 66 Atl. 252; Goll *v.* Fehr, 131 Wis. 141, 111 N. W. 235; La Banque Nationale *v.* Drolet, 28 Quebec Super. Ct. 146; Soulis *v.* McNeil, 37 Nova Scotia 525; Smith *v.* Frame, 41 Nova Scotia 20.

In order that forbearance to sue may constitute a valid consideration, the party forbearing must have as against the party to whom the favor is granted, a *bona fide* claim which may give rise to an action to enforce it. There is no consideration where the forbearance is extended to one as against whom there is no claim and who can derive no benefit from the forbearance, and where the person granting the forbearance does not suffer any inconvenience or detriment in so doing. Ontario Bank *v.* Hoskins, 3 Mont. 306, 83 Pac. 493.

Extent of Time Sufficient Consideration for Indorsement. — Lyndon Sav. Bank *v.* International Co., 78 Vt. 169, 62 Atl. 50.

7. Brink *v.* Stratton, 112 N. Y. App. Div. 299, 98 N. Y. Supp. 421.

Surrender of Mortgage to a Third Person Sufficient Consideration. — Doxy *v.* Exchange Bank, (Okla. 1907) 92 Pac. 150.

Renewal Note Given by Wife for Note of Deceased Husband Based on Sufficient Consideration. — Rathfon *v.* Locher, 215 Pa. St. 571, 64 Atl. 790.

Wife's Note as Security for Existing Debt of Husband. — A wife's note given to a third person in payment of her husband's debt is for a valuable consideration, but a note given as security for such debt previously existing, is not based on valuable consideration. Widger *v.* Baxter, 190 Mass. 130, 76 N. E. 509.

9. Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708; Glenn *v.* Zenovitch, 128 Ga. 596, 58 S. E. 26; Sheffield *v.* International Harvesting Mach. Co., (Ga. App. 1908) 59 S. E. 1113; Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034; Fay *v.* Hunt, 190 Mass. 378, 77 N. E. 502; Baines *v.* Coos Bay, etc., R., etc., Co., (Oregon 1907) 89 Pac. 371.

Release of Judgment against Maker Sufficient Consideration. — Blythe *v.* Cordingly, 20 Colo. App. 508, 80 Pac. 495.

Settlement of Invalid Claim Not Sufficient Consideration. — Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708.

Forbearance to Sue on Void Obligation Not Sufficient Consideration. — Kennedy *v.* Welch, (Mass. 1907) 83 N. E. 11.

189. 6. A Moral Obligation is not a sufficient consideration to support a promise of a third person to discharge it. Widger *v.* Baxter, 190 Mass. 130, 76 N. E. 509.

8. A note given by a wife for an unsecured unenforceable debt against her husband which had been discharged in insolvency, and which is worthless except as constituting a mere moral obligation, is not based upon sufficient consideration. Widger *v.* Baxter, 190 Mass. 130, 76 N. E. 509.

10. Sullivan *v.* Sullivan, 122 Ky. 707, 92 S. W. 966.

Under Georgia Civ. Code 1895, § 3658, a good consideration, as well as a valuable consideration, will support a note. Dicks *v.* Andrews, 120 Ga. 756, 59 S. E. 782.

13. Nyhart *v.* Kubach, (Kan. 1907) 90 Pac. 796; Kennedy *v.* Welch, (Mass. 1907) 83 N. E. 11; Hapgoods *v.* Barrett, (County Ct.) 106 N. Y. Supp. 189.

190. 1. Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708; Morton *v.* Provident Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 189.

2. Pratt *v.* Ashmore, 224 Ill. 587, 79 N. E. 952; Stewart *v.* Hutchinson, 120 Mo. App. 32, 96 S. W. 253; Zeller *v.* Leiter, 189 N. Y. 361, 82 N. E. 158.

Bona Fide Holder without Notice May Recover though Note Based on Stock Gambling Consideration. — Myers *v.* Kessler, (C. C. A.) 142 Fed. 730.

5. A note given to a person in settlement of an indebtedness due him has value though the indebtedness was for money borrowed for gambling purposes, provided such person had no knowledge of the purpose for which the loan was effected. Stewart *v.* Hutchinson, 120 Mo. App. 32, 96 S. W. 253.

6. Cooley *v.* Allen, (Ky. 1906) 90 S. W. 1048.

8. Keene *v.* Behan, 40 Wash. 505, 82 Pac. 884.

Usury Not a Defense against Bona Fide Holder without Notice. — Wood *v.* Babbitt, 149 Fed. 818; Broadway Trust Co. *v.* Manheim, (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 415, 95 N. Y. Supp. 93.

Usury a Defense against Holder Taking with Notice. — Schlesinger *v.* Lehmaier, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 610, 99 N. Y. Supp. 389.

191. 3. Keating *v.* Morrissey, (Cal. App. 1907) 91 Pac. 677; W. T. Joyce Co. *v.* Rohan, 134 Iowa 12, 111 N. W. 319; Corbett *v.* Clute, 137 N. Car. 546, 50 S. E. 216.

Note Given for Lobbying Services Not Enforceable. — Le Tourneux *v.* Gilliss, 1 Cal. App. 546, 82 Pac. 627.

Note Given in Consideration of Unauthorized Extension by Government Official Not Based on Sufficient Consideration. — U. S. *v.* Kauhoe, (C. C. A.) 147 Fed. 185.

Note Given for Amount of Fine Paid for Third Person Not Against Public Policy. Dorsey *v.* Redwine, 1 Ga. App. 626, 57 S. E. 1073.

Subsequent Delivery without Duress Does Not Validate Note Given to Compound Felony. — Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034.

Note Given for Money for Election Use Not Invalid in the Hands of Bona Fide Holder. — Hale *v.* Harris, (Ky. 1906) 91 S. W. 660.

Note Given to Influence Location of Railroad against Public Policy. — McGuffin *v.* Coyle, 16 Okla. 648, 85 Pac. 954, 86 Pac. 962.

Illegality of Note Not Affected by Guilt or Innocence of Person Accused. — Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034; W. T. Joyce Co. *v.* Rohan, 134 Iowa 12, 111 N. W. 319.

Cancellation of Note Given as Part of Scheme to Defraud Public. — Champion Funding, etc., Co. *v.* Heskett, 125 Mo. App. 516, 102 S. W. 1050.

4. Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034.

A promissory note given in payment, or renewal, of notes of the maker bearing indorsements forged by him, to the bank which discounted and holds the latter paper and is aware of the forgery on it, is valid, and, as a consequence, the indorser of such a note is liable to the bank for the amount, more particularly if, at the time he indorsed it, he was not aware of the forgery and fraud in question. La Banque Nationale *v.* Drolet, 28 Quebec Super. Ct. 146.

5. Kampmann *v.* McCormick, (Tex. Civ. App. 1907) 99 S. W. 1147.

192. 2. Alabama Nat. Bank *v.* Parker, 146 Ala. 513, 40 So. 987; Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034; Quiggle *v.* Herman, 131 Wis. 379, 111 N. W. 479.

Note Founded on Gaming Consideration Void. — Alexander *v.* Hazelrigg, (Ky. 1906) 97 S. W. 353.

Note Given for Gaming Consideration Valid in the Hands of Bona Fide Holder without Notice. — Myers *v.* Kessler, (C. C. A.) 142 Fed. 730.

3. State *v.* Wilson, 73 Kan. 343, 84 Pac. 737, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 192; Bugg *v.* Holt, (Ky. 1906) 97 S. W. 29.

193. 1. Note Given to Enable Maker to Prosecute Immoral Business Invalid in Hands of Holder with Notice. — Anderson *v.* Freeman, (Tex. Civ. App. 1907) 100 S. W. 350.

5. Baum *v.* Palmer, 165 Ind. 513, 76 N. E. 108; German-American Security Co. *v.* McCulloch, (Ky. 1905) 89 S. W. 5; Davis *v.* Ferguson, (Ky. 1906) 92 S. W. 968.

A plea of total failure of consideration filed to an action upon a note given for future services, is not good when the time for the performance of the services has not expired, even

though the note has matured. Morrison *v.* Hart, 122 Ga. 660, 50 S. E. 471; Wilensky *v.* Morrison, 122 Ga. 664, 50 S. E. 472.

191. 1. **Gift of Note under Seal Upheld.** — Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374.

195. 2. Greene *v.* Osceola Gold Mines Co., 3 Cal. App. 427, 86 Pac. 733.

3. Alabama Nat. Bank *v.* Parker, 146 Ala. 513, 40 So. 987.

4. Muir *v.* Hamilton, (Cal. 1908) 93 Pac. 857; Alexander County Nat. Bank *v.* Foster, 124 Mo. App. 344, 101 S. W. 685; Rouse *v.* Sarratt, 74 S. Car. 575, 54 S. E. 757.

Holder May Recover Back Amount Paid Where Consideration Fails Totally. — Bullion Min. Co. *v.* Cartwright, 10 Ont. L. Rep. 438.

5. Sullivan *v.* Sullivan, 122 Ky. 707, 92 S. W. 966; Tuttle *v.* George A. Tuttle Co., 101 Me. 287, 8 Ann. Cas. 260, 64 Atl. 496.

196. 2. Muir *v.* Hamilton, (Cal. 1908) 93 Pac. 857, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 196; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; Deming Invest. Co. *v.* Wallace, 73 Kan. 291, 85 Pac. 139, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 196; German-American Security Co. *v.* McCulloch, (Ky. 1905) 89 S. W. 5; Clark *v.* Holway, 101 Me. 391, 64 Atl. 642; Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831; Stone *v.* Stone, 191 Mass. 371, 77 N. E. 845; Rogers *v.* Mercantile Adjuster Pub. Co., 118 Mo. App. 1, 93 S. W. 328; Alexander County Nat. Bank *v.* Foster, 124 Mo. App. 344, 101 S. W. 685; Rouse *v.* Sarratt, 74 S. Car. 575, 54 S. E. 757.

Surety May Defend on Ground of Want or Failure of Consideration. — Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754.

Waiver of Failure of Consideration. — Sizemore *v.* Woolard, (Ga. App. 1907) 59 S. E. 833.

3. Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893; Deming Invest. Co. *v.* Wallace, 73 Kan. 291, 85 Pac. 139, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 196; German-American Security Co. *v.* McCulloch, (Ky. 1905) 89 S. W. 5; Hill *v.* Hall, 191 Mass. 253, 77 N. E. 845; Northwest Thresher Co. *v.* Hulburt, (Minn. 1908) 115 N. W. 159; Rouse *v.* Sarratt, 74 S. Car. 575, 54 S. E. 757.

198. 1. Luverne Bank *v.* Sharpe, (Ala. 1907) 44 So. 871; Jones *v.* Evans, (Cal. App. 1907) 91 Pac. 532; Johnson County Sav. Bank *v.* Roberts, 125 Ga. 41, 53 S. E. 808; Bothell *v.* Whitley, (Ga. App. 1908) 60 S. E. 371; Harris *v.* Pate, (Indian Ter. 1907) 104 S. W. 812; Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357; First Nat. Bank *v.* Leeper, 121 Mo. App. 688, 97 S. W. 636; Empire Trust Co. *v.* Magee, 117 N. Y. App. Div. 34, 102 N. Y. Supp. 9; Brown *v.* Feldwert, 46 Oregon 363, 80 Pac. 414; Adams *v.* Bartell, (Tex. Civ. App. 1907) 102 S. W. 779; Jamieson *v.* Heim, 43 Wash. 153, 86 Pac. 165.

The directors of an insolvent bank cannot plead want of consideration against the receiver when sued on notes made up and carried by the bank in order not to show overdue paper, with the understanding that the notes were to be paid out of the profits arising from its business. State Bank *v.* Kirk, 216 Pa. St. 452, 65 Atl. 932.

6. Dunlap *v.* Plummer, 1 Cal. App. 426, 82 Pac. 445; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; Slaton *v.* Fowler, 124 Ga. 955, 53 S. E. 567; City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893; Lynds *v.* Van Valkenburgh, (Kan. 1908) 93 Pac. 615; Chillicothe Bank *v.* Ornsdorff, (Mo. App. 1907) 105 S. W. 664; Joveshof *v.* Rockey, (Supm. Ct. App. T.) 109 N. Y. Supp. 818; Rogers *v.* Morton, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 494, 95 N. Y. Supp. 49.

199. 2. Gresham *v.* Ragsdale, 145 Ala. 683, 40 So. 99; Leonhardt *v.* Small, 117 Tenn. 153, 96 S. W. 1051, *quoting* 4 Am. and Eng. Encyc. of Law (2d ed.) 199.

3. Leonhardt *v.* Small, 117 Tenn. 153, 96 S. W. 1051, *quoting* 4 Am. and Eng. Encyc. of Law (2d ed.) 199.

5. *Alabama.* — Dial *v.* McKay, (Ala. 1907) 43 So. 218.

California. — Dunlap *v.* Plummer, 1 Cal. App. 426, 82 Pac. 445; Muir *v.* Hamilton, (Cal. 1908) 93 Pac. 857; Gillespie *v.* Salmon, 2 Cal. App. 501, 84 Pac. 310.

Connecticut. — McNamara *v.* Douglas, 78 Conn. 219, 61 Atl. 368.

Georgia. — Whitt *v.* Blount, 124 Ga. 671, 53 S. E. 205; Byrd *v.* Marietta Fertilizer Co., 127 Ga. 30, 56 S. E. 86; Croker *v.* Hamilton, (Ga. App. 1907) 59 S. E. 722.

Iowa. — McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858.

Kansas. — Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074, *quoting* 4 Am. and Eng. Encyc. of Law (2d ed.) 199; Deming Invest. Co. *v.* Wallace, 73 Kan. 291, 85 Pac. 139.

Kentucky. — German-American Security Co. *v.* McCulloch, (Ky. 1905) 89 S. W. 5.

Missouri. — Chillicothe Bank *v.* Ornsdorff, (Mo. App. 1907) 105 S. W. 664.

North Carolina. — Watson *v.* Farmer, 141 N. Car. 452, 54 S. E. 419.

Washington. — Johnson County Sav. Bank *v.* Rapp. (Wash. 1907) 91 Pac. 382.

Wisconsin. — McCourt *v.* Peppard, 126 Wis. 326, 105 N. W. 809.

Canada. — Clarke *v.* Union Stock Underwriting Co., 14 Ont. L. Rep. 198.

In an action to recover on a note given for an insurance premium, it is proper to refuse to admit evidence to show that the application which was made a part of the contract of insurance contained a false statement, where the insurance company is estopped to assert a forfeiture of the policy on this ground by accepting the premium and delivering the policy with the knowledge of the false statement. Doyle *v.* Hill, 75 S. Car. 261, 55 S. E. 446.

Parol Evidence to Show Character of Consideration Admissible. — Davis *v.* Evans, 142 N. Car. 464, 55 S. E. 344.

200. 1. Aultman Thrashing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074, *quoting* 4 Am. and Eng. Encyc. of Law (2d ed.) 200.

2. Cochran *v.* Perkins, 146 Ala. 689, 40 So. 351; Gates *v.* Morton Hardware Co., 146 Ala. 692, 40 So. 509; Keating *v.* Morrissey, (Cal. App. 1907) 91 Pac. 677; Best *v.* Rocky Moun-

tain Nat. Bank, 37 Colo. 149, 85 Pac. 1124; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; Mercantile Guaranty Co. *v.* Hilton, 191 Mass. 141, 77 N. E. 312; Lombard *v.* Bryne, 194 Mass. 236, 80 N. E. 489; Matter of Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 1103; New York Metal Ceiling Co. *v.* Leonard, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 500, 96 N. Y. Supp. 187; Emerson *v.* Sheffer, 113 N. Y. App. Div. 19, 98 N. Y. Supp. 1057; Joveshof *v.* Rockey, (Supm. Ct. App. T.) 109 N. Y. Supp. 818; Pelton *v.* Spider Lake Sawmill, etc., Co., (Wis. 1907) 112 N. W. 29; Ross *v.* Gannon, 39 Nova Scotia 65.

If the plaintiff does not rest upon the presumption of consideration which attaches to the note, but gives affirmative proof to establish the consideration, no other consideration than that to which the evidence is directed will be presumed, and if the preponderance of evidence shows that consideration to be legally insufficient, the presumption will not supply the defect. Matter of Pinkerton, (Surrogate Ct.) 49 Misc. (N. Y.) 363, 99 N. Y. Supp. 492.

Want of Consideration an Affirmative Defense — Mushet *v.* Fox, (Cal. App. 1907) 91 Pac. 514.

Question of Consideration a Question of Fact. — Mercantile Guaranty Co. *v.* Hilton, 191 Mass. 141, 77 N. E. 312.

3. Webb *v.* Simmons, (Ga. App. 1908) 60 S. E. 334; Lynds *v.* Van Valkenburgh, (Kan. 1908) 93 Pac. 615; Arnett *v.* Pinson, (Ky. 1908) 108 S. W. 852; Steven *v.* Henderson, (Neb. 1907) 110 N. W. 646; Andersen *v.* Young, (N. H. 1908) 69 Atl. 122; Gutta Percha, etc., Mfg. Co. *v.* Cleburne, (Tex. Civ. App. 1908) 107 S. W. 157.

Sufficiency of Evidence to Show Failure of Consideration. — McGue *v.* Rommel, 148 Cal. 539, 83 Pac. 1000.

201. 2. Jones *v.* Jones, 101 Me. 447, 64 Atl. 815; Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

3. Jones *v.* Jones, 101 Me. 447, 64 Atl. 815; Viets *v.* Silver, 15 N. Dak. 51, 106 N. W. 35.

4. Godman *v.* Henby, 37 Ind. App. 1, 76 N. E. 423; Jones *v.* Jones, 101 Me. 447, 64 Atl. 815; Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

When Delivery Presumed. — Hibernia Bank, etc., Co. *v.* Smith, 89 Miss. 298, 42 So. 345.

202. 1. Digan *v.* Mandel, 167 Ind. 586, 79 N. E. 899; Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

An exception to this rule obtains where the departure from the intention of the parties is one of mode only and affects no substantial right. Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

Securing of Note without Knowledge of Maker Not Sufficient Delivery. — Godman *v.* Henby, 37 Ind. App. 1, 76 N. E. 423.

Delivery by Way of Pledge or Collateral Security Valid. — Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

203. 2. Palmer *v.* McFarlane, (Neb. 1907) 111 N. W. 794.

Death of Maker before Delivery. — If the maker having delivered a note to an agent for delivery to the payee, dies before delivery by the agent, the agent's authority is thereby revoked and a subsequent delivery by him is ineffectual to create liability. Jones *v.* Jones, 101 Me. 447, 64 Atl. 815.

9. Negotiable Instrument Delivered on Sunday Void. — Gordon *v.* Levine, (Mass. 1908) 83 N. E. 861.

Duty of Maker to Restore Consideration on Note Delivered on Sunday. — Hale *v.* Harris, (Ky. 1906) 91 S. W. 660.

Execution and Delivery on Sunday No Defense against Bona Fide Holder without Notice. — Myers *v.* Kessler, (C. C. A.) 142 Fed. 730.

204. 2. Possession Prima Facie Evidence of Due Delivery. — Grady *v.* Bissell, (Neb. 1908) 115 N. W. 534.

3. Delivery before Maturity Required. — Exchange Bank *v.* Veirs, 3 Cal. App. 71, 84 Pac. 455.

4. Law of Place of Execution Controls. — Bailey *v.* Devine, 123 Ga. 653, 51 S. E. 603.

6. Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831.

205. 1. Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831.

2. Jones *v.* Jones, 101 Me. 447, 64 Atl. 815.

3. Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192.

Where a note is delivered under an agreement that it is not to become binding until signed by another person whose signature is to be obtained by the maker, it does not become binding until this signature is secured, unless the securing of the signature is wrongfully prevented by the maker. Key *v.* Usher, (Ky. 1907) 99 S. W. 324.

206. 2. Meyer *v.* Foster, 147 Cal. 166, 81 Pac. 402, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 206.

207. 1. Stanley *v.* Davis, (Ky. 1908) 107 S. W. 773.

2. Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

4. Stanley *v.* Davis, (Ky. 1908) 107 S. W. 773.

210. 4. Seattle Shoe Co. *v.* Packard, 43 Wash. 527, 86 Pac. 845.

212. 2. Hammond *v.* American Express Co., (Md. 1908) 68 Atl. 496; Sanders *v.* St. Helens Smelting Co., 39 Nova Scotia 370.

213. 8. Written Acceptance Essential under Washington Laws 1899. — Seattle Shoe Co. *v.* Packard, 43 Wash. 527, 86 Pac. 845.

218. 2. Golsen *v.* Golsen, 127 Ill. App. 84, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 218.

220. 6. St. Louis Southwestern R. Co. *v.* James, 78 Ark. 490, 8 Ann. Cas. 611, 95 S. W. 804, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 220.

222. 5. St. Louis Southwestern R. Co. *v.* James, 78 Ark. 490, 8 Ann. Cas. 611, 95 S. W. 804.

225. 3. Sanders *v.* St. Helens Smelting Co., 39 Nova Scotia 370.

229. 4. Acceptance on Particular Account. — No obligation to honor any draft excepting one for the price of stock shipped to the drawee is assumed by a live-stock commission firm in writing thus to a bank: "We will

honor Mr. Payne's draft for one thousand dollars on hogs or cattle." Stough *v.* Healy, 75 Kan. 526, 89 Pac. 898.

6. Foley *v.* Houston Co-operative, etc., Co., (Tex. Civ. App. 1907) 106 S. W. 160.

Promise to Pay on Completion of Contract as Conditional Acceptance. — Pohlman *v.* Wilcox, 146 Cal. 440, 80 Pac. 625.

230. 1. Barnsdall *v* Waltemeyer, (C. C. A.) 142 Fed. 415; Pohlman *v.* Wilcox, 146 Cal. 440, 80 Pac. 625; Knoll *v.* Melone, 1 Cal. App. 637, 82 Pac. 982.

Where Funds of the Drawer Are in the Hands of the Acceptor, and he has agreed to accept, he is liable under this agreement, although a condition attached thereto has not been complied with by the drawer. McPhee *v.* Fowler, 36 Colo. 202, 85 Pac. 421.

235. 5. Barnsdall *v.* Waltemeyer, (C. C. A.) 142 Fed. 415.

242. 2. Acceptance "With Exchange" Implied. — State Bank *v.* American Hardwood Lumber Co., 121 Mo. App. 324, 98 S. W. 786.

243. 3. State Bank *v.* Citizens' Nat. Bank, 114 Mo. App. 663, 90 S. W. 123.

4. State Bank *v.* Citizens' Nat. Bank, 114 Mo. App. 663, 90 S. W. 123.

246. 8. Gardner *v.* Beacon Trust Co., 190 Mass. 27, 5 Ann. Cas. 581, 76 N. E. 455.

248. 2. Maturity of Sight Draft with Bill of Lading Attached. — Hammond *v.* American Express Co., (Md. 1908) 68 Atl. 496.

Demand Note Matures at Time of Delivery. — Church *v.* Stevens, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 572, 107 N. Y. Supp. 310.

250. 2. Charleston Sav. Inst. *v.* Farmers', etc., Bank, 73 S. Car. 545, 54 S. E. 216.

251. 2. Stiles *v.* Shedden, 2 Ga. App. 317, 58 S. E. 515; South *v.* People's Nat. Bank, (Ga. App. 1908) 60 S. E. 1087; Charleston Sav. Inst. *v.* Farmers', etc., Bank, 73 S. Car. 545, 54 S. E. 216; Myrick Bros. Co. *v.* Jackson, (Tex. Civ. App. 1906) 99 S. W. 143; Roach *v.* Sanborn Land Co., (Wis. 1908) 115 N. W. 1102.

253. 1. Pomeroy First Nat. Bank *v.* McCullough, (Oregon 1908) 93 Pac. 366.

Pledgee of Note Transferred by Delivery without Indorsement May Sue. — Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

2. Pomeroy First Nat. Bank *v.* McCullough, (Oregon 1908) 93 Pac. 366.

3. Pomeroy First Nat. Bank *v.* McCullough, (Oregon 1908) 93 Pac. 366; Elmore *v.* Rugely, (Tex. Civ. App. 1908) 107 S. W. 151.

4. Pomeroy First Nat. Bank *v.* McCullough, (Oregon 1908) 93 Pac. 366; O'Connor *v.* Slatter, (Wash. 1908) 93 Pac. 1078.

5. Keel *v.* East Carolina Stone, etc., Co., 143 N. Car. 429, 55 S. E. 826; Pomeroy First Nat. Bank *v.* McCullough, (Oregon 1908) 93 Pac. 366; O'Connor *v.* Slatter, (Wash. 1908) 93 Pac. 1078.

256. 3. Kistner *v.* Peters, 223 Ill. 607, 79 N. E. 311, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256.

257. 1. Kistner *v.* Peters, 223 Ill. 607, 79 N. E. 311, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 257.

258. 4. Indorsement of Nonnegotiable Paper. — A promissory note not containing any words of negotiability is so far negotiable by indorsement of the payee in blank as to pass the title to a *bona fide* holder and enable him to sue the maker in his own name; and while the maker of such note could, as against the holder, set up all the defenses which would have been open to him against the payee, nevertheless, if, when sued by the holder upon the note, the maker fails to set up and sustain by evidence any defense which would have been good as against the payee, the holder is entitled to a recovery against the maker. Shelley *v.* Baker, 125 Ga. 663, 54 S. E. 653.

7. Sheffield *v.* Johnson County Sav. Bank, 2 Ga. App. 221, 58 S. E. 386.

9. Mayers *v.* McRimmon, 140 N. Car. 640, 53 S. E. 447, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 258.

10. Mayers *v.* McRimmon, 140 N. Car. 640, 53 S. E. 447, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 258.

260. 4. Sheffield *v.* Johnson County Sav. Bank, 2 Ga. App. 221, 58 S. E. 386; Mayes Mercantile Co. *v.* Handley, 6 Indian Ter. 357, 98 S. W. 125; Rowe *v.* Gohlman, (Tex. Civ. App. 1906) 98 S. W. 1077.

A writing on the back of a promissory note by its payee, which guarantees the payment of the note at maturity and waives notice of nonpayment and demand, is an indorsement in a commercial sense, and makes the person to whom it was transferred an indorsee under the law merchant. Mullen *v.* Jones, 102 Minn. 72, 112 N. W. 1048.

261. 1. Sheffield *v.* Johnson County Sav. Bank, 2 Ga. App. 221, 58 S. E. 386.

Corporate Name Sufficient Indorsement. — Sheffield *v.* Johnson County Sav. Bank, 2 Ga. App. 221, 58 S. E. 386.

6. Indorsement by Unauthorized Person Ineffectual. — Fourteenth St. Bank *v.* Gersten, 118 N. Y. App. Div. 905, 103 N. Y. Supp. 11.

262. 2. Kaufman *v.* State Sav. Bank, (Mich. 1908) 114 N. W. 863; Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

4. Kaufman *v.* State Sav. Bank, (Mich. 1908) 114 N. W. 863.

5. Kaufman *v.* State Sav. Bank, (Mich. 1908) 114 N. W. 863.

268. 2. Neely *v.* Black, 80 Ark. 212, 96 S. W. 984; Kistner *v.* Peters, 223 Ill. 607, 79 N. E. 311; Tyson *v.* Joyrer, 139 N. Car. 69, 51 S. E. 803.

270. 2. Indorser Not Bound by Different Terms Added to Note. — Columbia Finance, etc., Co. *v.* Purcell, 146 Fed. 85.

271. 10. Kistner *v.* Peters, 223 Ill. 607, 79 N. E. 311; Tyson *v.* Joyner, 139 N. Car. 69, 51 S. E. 803.

273. 6. Indorsee Has Rights of Bona Fide Holder. — Neely *v.* Black, 80 Ark. 212, 96 S. W. 984.

Restrictive Indorsement Does Not Affect Negotiability under Tennessee Negotiable Instruments Law. — Elgin City Banking Co. *v.* Hall, (Tenn. 1907) 108 S. W. 1068.

274. 1. Smith *v.* Bayer, 46 Oregon 143, 79 Pac. 497; Welch *v.* Kinney, 46 Oregon 406, 80 Pac. 648.

275. 2. Smith *v.* Bayer, 46 Oregon 143,

79 Pac. 497, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 275; Welch *v.* Kinney, 46 Oregon 406, 80 Pac. 648.

5. Revival of Negotiability. — Where a bank received back a note which it had indorsed to its president for collection, the president indorsing it to the bank without recourse, and the bank thereafter reissued the note for value without striking out its former indorsement, it was held that in legal effect it indorsed the note in blank upon reissuing it. Moore *v.* Ouray First Nat. Bank, 38 Colo. 336, 88 Pac. 78.

276. 4. Evans *v.* Freeman, 142 N. Car. 61, 54 S. E. 847.

279. 4. Jerman *v.* Edwards, 29 App. Cas. (D. C.) 535.

A holder in due course of a note indorsed in blank, who has created special indorsement to himself by placing his name above that of the indorser in blank, may after the maturity of the note cancel his special indorsement and specially indorse it to a third person, and such third person becomes a holder in due course. Sovereign Bank *v.* Gordon, 9 Ont. L. Rep. 146.

5. Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

280. 1. McCormick *v.* Shea, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 592, 99 N. Y. Supp. 467.

3. Consideration for Cancellation Not Essential. — McCormick *v.* Shea, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 592, 99 N. Y. Supp. 467.

Cancellation by Holder's Agent Releases Indorser. — McCormick *v.* Shea, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 592, 99 N. Y. Supp. 467.

281. 1. Burden of Proving Cancellation by Maker on Party Alleging It. — McCormick *v.* Shea, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 592, 99 N. Y. Supp. 467.

4. De Clerque *v.* Campbell, 231 Ill. 442, 83 N. E. 224.

282. 7. Fishburn *v.* Londershausen, (Oregon 1907) 92 Pac. 1060.

9. Woodall *v.* People's Nat. Bank, (Ala. 1907) 45 So. 194; Keene *v.* Behan, 40 Wash. 505, 82 Pac. 884; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192.

Definition of Holder in Due Course under Negotiable Instruments Law. — Vander Ploeg *v.* Van Zuuk, (Iowa 1907) 112 N. W. 807; Hawkins *v.* Young, (Iowa 1908) 114 N. W. 1041; Wilkins *v.* Usher, (Ky. 1906) 97 S. W. 37; Elgin City Banking Co. *v.* Hall, (Tenn. 1907) 108 S. W. 1068; Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353; Farmers', etc., Bank *v.* Rutherford Bank, 115 Tenn. 64, 88 S. W. 939.

283. 1. Woodall *v.* People's Nat. Bank, (Ala. 1907) 45 So. 194; Youle *v.* Fosha, (Kan. 1906) 90 Pac. 1090, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 283; Rogers *v.* Morton, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 494, 95 N. Y. Supp. 49; Bank of America *v.* Waydell, 187 N. Y. 115, 79 N. E. 857; Hynes *v.* Plastino, 45 Wash. 190, 87 Pac. 1127; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192. See also Gumbel *v.* Ryan, 118 La. 606, 43 So. 251.

Definition of Value under Negotiable Instruments Law. — Wilkins *v.* Usher, (Ky. 1906) 97 S. W. 37; Elgin City Banking Co. *v.* Hall, (Tenn. 1907) 108 S. W. 1068.

Advance for Future Services. — Where the holder of a promissory note received it as a part of an advance payment on a contract which obligated him to drill oil wells for the indorser, and he expends large sums of money in preparation for such work, he will be regarded as a purchaser for value. Youle *v.* Fosha, (Kan. 1906) 90 Pac. 1090.

284. 1. Wilkins *v.* Usher, (Ky. 1906) 97 S. W. 37; Rogers *v.* Morton, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 494, 95 N. Y. Supp. 49; Ludlow *v.* Woodward, 117 N. Y. App. Div. 525, 102 N. Y. Supp. 647.

285. 2. Barnsdall *v.* Waltemeyer, (C. C. A.) 142 Fed. 415; Gates *v.* Morton Hardware Co., 146 Ala. 692, 40 So. 509; Harrell *v.* National Bank of Commerce, 128 Ga. 504, 57 S. E. 869.

Payment by Surety Not a Purchase for Value. — Rockefeller *v.* Ringle, (Kan. 1908) 94 Pac. 810.

Note Given in Payment of Debt Based on Consideration. — Bigelow Co. *v.* Automatic Gas Producer Co., (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 389, 107 N. Y. Supp. 894.

Pre-existing Debt a Valuable Consideration under North Carolina Negotiable Instruments Law. — Singer Mfg. Co. *v.* Summers, 143 N. Car. 102, 55 S. E. 522.

286. 1. Release of Original Evidence of Debt. — Ward *v.* City Trust Co., 117 N. Y. App. Div. 130, 102 N. Y. Supp. 50.

287. 2. Rowe *v.* Gohlman, (Tex. Civ. App. 1906) 98 S. W. 1077.

Renewal Note Not Based on Consideration Where Original Not Canceled. — Gansevoort Bank *v.* Gilday, (N. Y. City Ct. Tr. T.) 53 Misc. (N. Y.) 107, 103 N. Y. Supp. 271.

289. 1. Monett State Bank *v.* Eubanks, 124 Mo. App. 499, 101 S. W. 687; Stewart *v.* Givens, (Mo. App. 1908) 107 S. W. 422.

290. 4. Harrell *v.* National Bank of Commerce, 128 Ga. 504, 57 S. E. 869; Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357; Woodworth *v.* Carroll, (Minn. 1907) 112 N. W. 1054; Morrison First Nat. Bank *v.* Busch, 102 Minn. 365, 113 N. W. 898; Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639; Staff *v.* Victoria First Nat. Bank, (Tex. Civ. App. 1906) 97 S. W. 1089; Martin *v.* German American Nat. Bank, (Tex. Civ. App. 1907) 102 S. W. 131.

The rule which protects paper thus transferred applies when the antecedent debt is in the form of a contingent liability as indorser of discounted paper. Morrison First Nat. Bank *v.* Busch, 102 Minn. 365, 113 N. W. 898.

Pre-existing Debt a Valuable Consideration under New York Negotiable Instruments Law. — *In re* Hopper-Morgan Co., 154 Fed. 249, construing *New York* statute.

Under Kentucky Negotiable Instruments Law, (Acts 1904, c. 102, § 27) where the holder has a lien on the instrument arising either from contract or by implication of law, he is deemed a holder for value to the extent of

his lien. Wilkins *v.* Usher, (Ky. 1906) 97 S. W. 37.

297. 1. Dunlap *v.* Plummer, 1 Cal. App. 426, 82 Pac. 445.

298. 1. City Deposit Bank *v.* Green, 130 Iowa 384, 106 N. W. 942, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 298; McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; Montrose Sav. Bank *v.* Clausen, (Iowa 1908) 114 N. W. 547; Union Nat. Bank *v.* Winsor, 101 Minn. 470, 112 N. W. 999, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 298; National Bank *v.* Foley, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 126, 103 N. Y. Supp. 553; Wallabout Bank *v.* Peyton, 123 N. Y. App. Div. 727, 108 N. Y. Supp. 42; Elgin City Banking Co. *v.* Hall, (Tenn. 1907) 108 S. W. 1068; Sperlin *v.* Peninsular Loan, etc., Co., (Tex. Civ. App. 1907) 103 S. W. 232; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192.

Entry upon Books a Purchase for Value When Other Consideration Passes. — Allentown Nat. Bank *v.* Clay Product Supply Co., 217 Pa. St. 128, 66 Atl. 252.

Sufficiency of Evidence to Show Whether Bank a Bona Fide Holder. — City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893.

Effect of Withdrawal of Deposit before Notice to Bank. — Security Bank *v.* Petruschke, 101 Minn. 478, 112 N. W. 1000; Northfield Nat. Bank *v.* Arndt, (Wis. 1907) 112 N. W. 451.

301. 1. *United States.* — National Salt Co. *v.* Ingraham, (C. C. A.) 143 Fed. 805; Council Bluffs First Nat. Bank *v.* Moore, (C. C. A.) 148 Fed. 953; Union Nat. Bank *v.* Neill, (C. C. A.) 149 Fed. 711; *In re* Hopper-Morgan Co., 156 Fed. 525.

Arkansas. — Old Nat. Bank *v.* Marcy, 79 Ark. 149, 9 Ann. Cas. 339, 95 S. W. 145, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 301.

California. — Meyer *v.* Lovdal, (Cal. App. 1907) 92 Pac. 322.

Connecticut. — Mack *v.* Starr, 78 Conn. 184, 61 Atl. 472.

District of Columbia. — Hutchins *v.* Langley, 27 App. Cas. (D. C.) 234.

Illinois. — Bradwell *v.* Pryor, 221 Ill. 602, 77 N. E. 1115.

Iowa. — McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; Montrose Sav. Bank *v.* Clausen, (Iowa 1908) 114 N. W. 547.

Kansas. — Youle *v.* Fosha, (Kan. 1906) 90 Pac. 1090, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 301.

Missouri. — Creston Nat. Bank *v.* Salmon, 117 Mo. App. 506, 93 S. W. 288; First Nat. Bank *v.* Leeper, 121 Mo. App. 688, 97 S. W. 636.

Nebraska. — Norwood *v.* Bank of Commerce, (Neb. 1906) 109 N. W. 152.

New Jersey. — Aldrich *v.* Peckham, (N. J. 1907) 68 Atl. 345.

New York. — Ward *v.* City Trust Co., 117 N. Y. App. Div. 130, 102 N. Y. Supp. 50.

North Dakota. — Walters *v.* Rock, (N. Dak. 1908) 115 N. W. 511.

West Virginia. — Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

Sufficiency of Evidence to Show Bad Faith a Question of Fact. — McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858.

What Circumstances Sufficient to Put Purchaser on Inquiry under New York Negotiable Instruments Law. — Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353.

302. 1. Montrose Sav. Bank *v.* Clausen, (Iowa 1908) 114 N. W. 547.

3. *United States.* — First Nat. Bank *v.* Gebbie, 145 Fed. 448; *In re* Hopper-Morgan Co., 156 Fed. 525.

Arkansas. — Old Nat. Bank *v.* Marcy, 79 Ark. 149, 9 Ann. Cas. 339, 95 S. W. 145, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 302.

Connecticut. — Mack *v.* Starr, 78 Conn. 184, 61 Atl. 472.

Georgia. — Morrison *v.* Hart, 122 Ga. 660, 50 S. E. 471; House *v.* Martin, 125 Ga. 642, 54 S. E. 735; Farmers', etc., Bank *v.* Eubanks, 2 Ga. App. 839, 59 S. E. 193; Oliver *v.* Miller, (Ga. 1908) 60 S. E. 254.

Idaho. — Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873.

Illinois. — Sill *v.* Pate, 230 Ill. 39, 82 N. E. 356.

Iowa. — Wickham *v.* Evans, 133 Iowa 552, 110 N. W. 1046.

Kansas. — Youle *v.* Fosha, (Kan. 1906) 90 Pac. 1090.

Michigan. — Carey *v.* Nissle, 145 Mich. 383, 108 N. W. 733.

Missouri. — Vette *v.* Sacher, 114 Mo. App. 363, 89 S. W. 360; Chillicothe Bank *v.* Ornsdorff, (Mo. App. 1907) 105 S. W. 664.

New York. — Bank of America *v.* Waydell, 187 N. Y. 115, 79 N. E. 857; Schlesinger *v.* Lehmaier, 119 N. Y. 69, 83 N. E. 657.

Washington. — Nethercutt *v.* Hopkins, 38 Wash. 577, 80 Pac. 798; Keene *v.* Behan, 40 Wash. 505, 82 Pac. 884; Hynes *v.* Plastino, 45 Wash. 190, 87 Pac. 1127.

West Virginia. — Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

Wisconsin. — Collins *v.* Schmidt, 126 Wis. 227, 105 N. W. 671; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192; Quiggle *v.* Herman, 131 Wis. 379, 111 N. W. 479.

Canada. — Guimond *v.* Batalon, 29 Quebec Super. Ct. 8.

Notice of Equities as a Defense under Georgia Act of 1897, p. 82. — Lee *v.* Hightower, (Ga. App. 1907) 59 S. E. 597.

Sufficiency of Evidence to Show Notice. — Ditto *v.* Slaughter, (Ky. 1906) 92 S. W. 2.

Notice a Question of Fact for Jury. — Neyens *v.* Worthington, 150 Mich. 580 114 N. W. 404.

303. 1. Ladd *v.* Myers, 4 Cal. App. 352, 87 Pac. 1110; Rochford *v.* Barrett, (S. Dak. 1908) 115 N. W. 522.

2. Old Nat. Bank *v.* Marcy, 79 Ark. 149, 9 Ann. Cas. 339, 95 S. W. 145, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 303.

4. House *v.* Martin, 125 Ga. 642, 54 S. E. 735; Keene *v.* Behan, 40 Wash. 505, 82 Pac. 884; Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880; Collins *v.* Schmidt, 126 Wis. 227, 105 N. W. 671.

304. 1. The fact that the payee of a note

made by a corporation is a director of the corporation, is not notice of any infirmity in the note, and does not put the holder on inquiry concerning the circumstances under which it was issued or came into the hands of the payee. Orr *v.* South Amboy Terra Cotta Co., 113 N. Y. App. Div. 103, 98 N. Y. Supp. 1036.

The Fact that the Original Note Passed through the Bank, by whom the renewal note was purchased, is not sufficient to charge the bank with notice that the note was without any value except as a renewal of the original note. Spencer Nat. Bank *v.* Inman Mills, 74 S. Car. 76, 53 S. E. 951.

Notice of Loss of Instrument as Affecting Rights of Purchaser. — Barringer *v.* Loder, 47 Oregon 223, 81 Pac. 778.

Purchase of Note at Discount Not Notice. — Lassas *v.* McCarty, 47 Oregon 474, 84 Pac. 76.

2. Indorsement without Recourse Not Notice under Tennessee Negotiable Instruments Law. — Elgin City Banking Co. *v.* Hall, (Tenn. 1907) 108 S. W. 1068.

5. Notice from Erasures and Alterations. — Clifford Banking Co. *v.* Donovan Commission Co., 195 Mo. 262, 94 S. W. 528.

Erasure of Rubber Stamp Marks Not Sufficient to Put on Notice. — Nassau Trust Co. *v.* Matherson, 113 N. Y. App. Div. 693, 100 N. Y. Supp. 55.

6. Capital City Brick Co. *v.* Jackson, 2 Ga. App. 771, 59 S. E. 92.

"Where the party primarily liable on a draft or note presents the same for discount with the name of the drawer or indorser thereon the transaction on its face shows that the drawer or indorser is a mere accommodation party and the bank or person receiving such paper is chargeable with notice of the accommodation character of the paper." Cook *v.* American Tubing, etc., Co., (R. I. 1905) 65 Atl. 645.

Notice Not Imputed from Collateral Agreement — Aldrich *v.* Peckham, (N. J. 1907) 68 Atl. 345.

Notice that Note Is to Be Held as Collateral. — Sill *v.* Pate, 230 Ill. 39, 82 N. E. 356.

Admissibility of Evidence to Show Notice. — Meyer *v.* Lovdal, (Cal. App. 1907) 92 Pac. 342.

305. 2. McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858.

3. A provision in the body of the note, that upon default in payment of interest the note shall become due, is sufficient to charge with notice one who takes after such a default, and to prevent him from being a *bona fide* holder in due course. Hodge *v.* Wallace, 129 Wis. 84, 108 N. W. 212.

The indorsee of a promissory note made payable with interest, payable annually, who acquired the note after default in payment of one of the annual interest instalments and with knowledge of the default, is not a holder of the note in due course. Moore *v.* Scott, 16 Manitoba 492.

4. McLeod *v.* Despain, (Oregon 1907) 90 Pac. 492.

306. 2. Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880; Wheeling Ice, etc., Co. *v.* Conner, (W. Va. 1906) 55 S. E. 982; Pelton *v.* Spider Lake Sawmill, etc., Co., (Wis. 1907) 112 N. W. 29.

Burden of Proving Want of Notice on Person Taking Draft Issued to Agent. — Royal Bank *v.* German-American Ins. Co., (Supm. Ct. App. T.) 109 N. Y. Supp. 822.

Inquiry of Agent as to the Extent of His Powers Insufficient. — Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

3. Morrison *v.* Hart, 122 Ga. 660, 50 S. E. 471; Palmer *v.* McFarlane, (Neb. 1907) 111 N. W. 794.

Sufficiency of Evidence to Show Notice. — Mack *v.* Starr, 78 Conn. 184, 61 Atl. 472; Chillicothe Bank *v.* Ornsdorff, (Mo. App. 1907) 105 S. W. 664.

Sufficiency of Evidence to Negative Notice. — McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858.

4. *In re* Hopper-Morgan Co., 158 Fed. 351; Bettanier *v.* Smith, 129 Iowa 597, 105 N. W. 999; Wickham *v.* Evans, 133 Iowa 552, 110 N. W. 1046; New Birdsall Co. *v.* Stordalen, (S. Dak. 1906) 109 N. W. 516; Rochford *v.* Barrett, (S. Dak. 1908) 115 N. W. 522.

307. 3. Johnson County Sav. Bank *v.* Roberts, 125 Ga. 41, 53 S. E. 808.

308. 2. *In re* Hopper-Morgan Co., 156 Fed. 525; Walters *v.* Rock, (N. Dak. 1908) 115 N. W. 511.

"The holder of a note who has no actual knowledge or notice of a defect in the title, or other equities between the parties, when circumstances come to his knowledge sufficient to put him upon inquiry, is chargeable with knowledge of all the facts that such inquiry would have revealed." Royal Bank *v.* German-American Ins. Co., (Supm. Ct. App. T.) 109 N. Y. Supp. 824.

3. Montrose Sav. Bank *v.* Clausen, (Iowa 1908) 114 N. W. 547; Aragon Coffee Co. *v.* Rogers, 105 Va. 51, 8 Ann. Cas. 623, 52 S. E. 843.

One cannot, by causing a promissory note, for which he himself is to furnish the consideration, to be made payable to another person, and by having the latter to indorse it, become that *bona fide* transferee for value to whom the law accords rights superior to those of ordinary promisees. Empire Mut. Annuity, etc., Ins. Co. *v.* Avery, (Ga. 1907) 59 S. E. 324.

309. 1. Aragon Coffee Co. *v.* Rogers, 105 Va. 51, 8 Ann. Cas. 623, 52 S. E. 843.

310. 1. Youle *v.* Fosha, (Kan. 1906) 90 Pac. 1090.

2. Walters *v.* Rock, (N. Dak. 1908) 115 N. W. 511.

4. Condon *v.* Barnum, (Iowa 1906) 106 N. W. 514; Rogers *v.* Morton, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 494, 95 N. Y. Supp. 49; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192.

311. 2. Mayers *v.* McRimmon, 140 N. Car. 640, 53 S. E. 447.

5. Hutchins *v.* Langley, 27 App. Cas. (D. C.) 234.

312. 1. **Trustee under Assignment for Benefit of Creditors, a Holder in Due Course under Nego-**

tiable Instruments Law. — American Bank *v.* McComb, 105 Va. 473, 54 S. E. 14.

4. Hall *v.* Coats, 2 Ga. App. 202, 58 S. E. 365; Hodge *v.* Wallace, 129 Wis. 84, 108 N. W. 212; Carrington *v.* Turner, 101 Md. 437, 61 Atl. 324; American Seeding Mach. Co. *v.* Slocum, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 1042; Mayfield Grocer Co. *v.* Price, (Tex. Civ. App. 1906) 95 S. W. 31.

Effect of Negligence of Owner. — Where the owner of an overdue note transfers it under circumstances which enable his transferee to deal with it, though obtained by fraud, as if he were the true owner, no equity attaches to the note in favor of the true owner as against the innocent purchaser for value, since it was the owner's act that enabled the perpetrator of the fraud to commit it. Gardner *v.* Beacon Trust Co., 190 Mass. 27, 5 Ann. Cas. 581, 76 N. E. 455.

Executrix of Purchaser of Overdue Paper Takes Subject to Defenses. — Kampmann *v.* McCormick, (Tex. Civ. App. 1907) 99 S. W. 1147.

315. 1. Ludlow *v.* Woodward, 117 N. Y. App. Div. 525, 102 N. Y. Supp. 647.

3. Lindsay *v.* Dutton, 217 Pa. St. 148, 66 Atl. 250.

316. 2. Butler *v.* Mitchell, 128 Ga. 431, 57 S. E. 764.

318. 1. *United States.* — Council Bluffs First Nat. Bank *v.* Moore, (C. C. A.) 148 Fed. 953.

Alabama. — Hughes *v.* Black, (Ala. 1905) 39 So. 984.

Arkansas. — Graham *v.* Remmel, 76 Ark. 140, 6 Ann. Cas. 167, 88 S. W. 899; Roberts *v.* Padgett, 82 Ark. 331, 101 S. W. 753.

California. — Exchange Bank *v.* Veirs, 3 Cal. App. 71, 84 Pac. 455; Jones *v.* Evans, (Cal. App. 1907) 91 Pac. 532; Meyer *v.* Lovdal, (Cal. App. 1907) 92 Pac. 322.

Colorado. — Gumaer *v.* Jackson, 37 Colo. 39, 86 Pac. 884.

Connecticut. — Johnson County Sav. Bank *v.* Walker, (Conn. 1908) 69 Atl. 15.

Florida. — Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886.

Georgia. — Johnson County Sav. Bank *v.* Roberts, 125 Ga. 41, 53 S. E. 808; Sheffield *v.* Johnson County Sav. Bank, 2 Ga. App. 221, 58 S. E. 386; Thomas *v.* Siesel, 2 Ga. App. 663, 58 S. E. 1131; Farmers', etc., Bank *v.* Eubanks, 2 Ga. App. 839, 59 S. E. 193; Abbeville Trading Co. *v.* Butler, (Ga. App. 1907) 59 S. E. 450; Martin *v.* Monroe, (Ga. 1908) 60 S. E. 253; Oliver *v.* Miller, (Ga. 1908) 60 S. E. 254; Webb *v.* Simmons, (Ga. App. 1908) 60 S. E. 334; Bothell *v.* Whitley, (Ga. App. 1908) 60 S. E. 371; Carolina Locust Pin, etc., Co. *v.* Chattanooga Machinery Co., (Ga. App. 1908) 60 S. E. 375; South *v.* People's Nat. Bank, (Ga. App. 1908) 60 S. E. 1087.

Indian Territory. — Harris *v.* Pate, (Indian Ter. 1907) 104 S. W. 812.

Kansas. — Youle *v.* Fosha, (Kan. 1906) 90 Pac. 1090.

Kentucky. — Wilkins *v.* Usher, (Ky. 1906) 97 S. W. 37.

Mississippi. — Hibernia Bank, etc., Co. *v.* Smith, 89 Miss. 298, 42 So. 345.

Nebraska. — Home Sav. Bank *v.* Stewart, (Neb. 1907) 110 N. W. 947.

New York. — Arons *v.* Ziegfeld, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 571, 102 N. Y. Supp. 898; Engle *v.* Hyman, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 251, 104 N. Y. Supp. 390; Colborn *v.* Abrecam, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 623, 104 N. Y. Supp. 986.

North Carolina. — Tyson *v.* Joyner, 139 N. Car. 69, 51 S. E. 803; Evans *v.* Freeman, 142 N. Car. 61, 54 S. E. 847; Singer Mfg. Co. *v.* Summers, 143 N. Car. 102, 55 S. E. 522.

Rhode Island. — National Exch. Bank *v.* Lubrano, (R. I. 1908) 68 Atl. 944.

South Carolina. — Gebbes Machinery Co. *v.* Roper, 77 S. Car. 39, 57 S. E. 667.

South Dakota. — Rochford *v.* Barrett, (S. Dak. 1908) 115 N. W. 522.

Texas. — Myrick Bros. Co. *v.* Jackson, (Tex. Civ. App. 1906) 99 S. W. 143; Gutta Percha, etc., Mfg. Co. *v.* Cleburne, (Tex. Civ. App. 1908) 107 S. W. 157.

West Virginia. — Merchants', etc., Nat. Bank *v.* Ohio Valley Furniture Co., 57 W. Va. 625, 50 S. E. 880.

Canada. — First Nat. Bank *v.* McLean, 16 Manitoba 32.

Payee Prima Facie Owner. — Duty *v.* Sprinkle, (W. Va. 1908) 60 S. E. 882.

Presumption as to Sole Ownership by Payee. — McGuffin *v.* Coyle, 16 Okla. 648, 85 Pac. 954, 86 Pac. 962.

Rebutting Presumption of Ownership. — National Bank of Commerce *v.* Rotan Grocery Co., (Tex. Civ. App. 1908) 108 S. W. 1192.

Possession Prima Facie Evidence of Due Delivery. — Gandy *v.* Bissell, (Neb. 1908) 115 N. W. 571.

319. 1. Jones *v.* Evans, (Cal. App. 1907) 91 Pac. 532; Bush *v.* Brandecker, 123 Mo. App. 470, 100 S. W. 48; Colborn *v.* Abrecam, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 623, 104 N. Y. Supp. 986; Kerr *v.* Anderson, (N. Dak. 1907) 111 N. W. 614; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192; Roach *v.* Sanborn Land Co., (Wis. 1908) 115 N. W. 1102.

320. 1. Johnson County Sav. Bank *v.* Roberts, 125 Ga. 41, 53 S. E. 808.

Production of a note and coupon for interest thereon, but detached therefrom, by a person not named therein as payee, the note and coupon as well being in form payable to order, and the note being duly indorsed, but the coupon having no indorsement, raises a presumption that the holder became the owner of the note when the coupon was attached thereto, and formed a mere incident thereof, and so did not require any indorsement separately from that on the note. Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

4. *United States.* — Council Bluffs First Nat. Bank *v.* Moore, (C. C. A.) 148 Fed. 953; Wood *v.* Babbitt, 149 Fed. 818.

Alabama. — Hughes *v.* Black, (Ala. 1905) 39 So. 984; Woodall *v.* People's Nat. Bank, (Ala. 1907) 45 So. 194.

Arkansas. — Old Nat. Bank *v.* Marcy, 79 Ark. 149, 9 Ann. Cas. 339, 95 S. W. 145.

California. — Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708; Meyer *v.* Lovdal, (Cal. App. 1907) 92 Pac. 322.

Delaware. — Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374.

Georgia. — Sheffield *v.* Johnson County Sav. Bank, 2 Ga. App. 221, 58 S. E. 386; Martin *v.* Monroe, (Ga. 1908) 60 S. E. 253; Bothell *v.* Whitley, (Ga. App. 1908) 60 S. E. 371.

Iowa. — City Deposit Bank *v.* Green, 130 Iowa 384, 106 N. W. 942.

Kansas. — Youle *v.* Fosha, (Kan. 1906) 90 Pac. 1090.

Kentucky. — Crabtree *v.* Sisk, (Ky. 1907) 99 S. W. 268.

Louisiana. — Yowell *v.* Walker, 118 La. 28, 42 So. 635.

Minnesota. — Wellington First Nat. Bank *v.* Person, 101 Minn. 30, 111 N. W. 730.

New York. — Arons *v.* Ziegfeld, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 571, 102 N. Y. Supp. 898; Wallabout Bank *v.* Peyton, 123 N. Y. App. Div. 727, 108 N. Y. Supp. 42.

North Carolina. — Evans *v.* Freeman, 142 N. Car. 61, 54 S. E. 847; Singer Mfg. Co. *v.* Summers, 143 N. Car. 102, 55 S. E. 522.

North Dakota. — Kerr *v.* Anderson, (N. Dak. 1907) 111 N. W. 614.

South Carolina. — Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639.

Texas. — Cochran *v.* Priddy, (Tex. Civ. App. 1908) 107 S. W. 616.

Washington. — Warnock *v.* Itawis, 38 Wash. 144, 80 Pac. 297.

West Virginia. — Wheeling Ice, etc., Co. *v.* Conner, (W. Va. 1906) 55 S. E. 982.

Wisconsin. — Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192.

Evidence of Other Fraudulent Acts. — In an action by a *bona fide* purchaser of a negotiable instrument for value before maturity without notice, where the defense is fraud in the procurement of the paper, evidence of similar frauds committed by the agent of the payee about the same time is inadmissible. Hunt *v.* Van Burg, (Neb. 1905) 106 N. W. 329.

321. 1. *United States.* — *In re* Hopper-Morgan Co., 158 Fed. 351.

Alabama. — Alabama Nat. Bank *v.* Parker, 146 Ala. 513, 40 So. 987; Woodall *v.* People's Nat. Bank, (Ala. 1907) 45 So. 194.

California. — Le Tourneux *v.* Gilliss, 1 Cal. App. 546, 82 Pac. 627; Meyer *v.* Lovdal, (Cal. App. 1907) 92 Pac. 322.

Georgia. — Johnson County Sav. Bank *v.* Roberts, 125 Ga. 41, 53 S. E. 808.

Iowa. — McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; Hawkins *v.* Young, (Iowa 1908) 114 N. W. 1041; City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893.

Kansas. — Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

Kentucky. — Arnett *v.* Pinson, (Ky. 1908) 108 S. W. 852.

Michigan. — Stouffer *v.* Fletcher, 146 Mich. 341, 109 N. W. 684.

Minnesota. — Morrison First Nat. Bank *v.* Busch, 102 Minn. 365, 113 N. W. 898.

Missouri. — Clifford Banking Co. *v.* Donovan Commission Co., 195 Mo. 262, 94 S. W. 528; First Nat. Bank *v.* Leeper, 121 Mo. App. 688, 97 S. W. 636; New Madrid Banking Co. *v.* Poplin, (Mo. App. 1908) 108 S. W. 115.

Nebraska. — Lahrman *v.* Bauman, (Neb. 1906) 107 N. W. 1008.

New York. — National Bank *v.* Foley, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 126, 103 N. Y. Supp. 553; Engle *v.* Hyman, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 251, 104 N. Y. Supp. 390.

North Carolina. — Singer Mfg. Co. *v.* Summers, 143 N. Car. 102, 55 S. E. 522.

North Dakota. — Tamlyn *v.* Peterson, 15 N. Dak. 488, 107 N. W. 1081; Kerr *v.* Anderson, (N. Dak. 1907) 111 N. W. 614; Walters *v.* Rock, (N. Dak. 1908) 115 N. W. 511.

Oregon. — Brown *v.* Feldwert, 46 Oregon 363, 80 Pac. 414.

South Dakota. — Rochford *v.* Barrett, (S. Dak. 1908) 115 N. W. 522.

Washington. — Keene *v.* Behan, 40 Wash. 505, 82 Pac. 884.

Wisconsin. — Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192; Pelton *v.* Spider Lake Sawmill, etc., Co., (Wis. 1907) 112 N. W. 29.

Canada. — First Nat. Bank *v.* McLean, 16 Manitoba 32.

When Burden Shifts under Arkansas Statute. — Roberts *v.* Padgett, 82 Ark. 331, 101 S. W. 753.

Under Negotiable Instruments Law. — "Under the provisions of the negotiable instruments law, the *prima facie* validity of the holder's title ceases when the fraudulent character of the paper is shown, and the burden is then thrown upon the holder to exonerate himself from complicity in the fraud." Cook *v.* American Tubing, etc., Co., (R. I. 1905) 65 Atl. 646.

323. 1. Engle *v.* Hyman, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 251, 104 N. Y. Supp. 390.

2. Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 323.

3. Walters *v.* Rock, (N. Dak. 1908) 115 N. W. 511; National Bank *v.* Foley, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 126, 103 N. Y. Supp. 553; Keene *v.* Behan, 40 Wash. 505, 82 Pac. 884; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 323.

Burden of Proving Ignorance of Alteration in Note. — Where the defense is an alteration in the note sued on, which is claimed to have been open and patent, it is not proper to instruct that the burden is on the plaintiff to satisfy the jury beyond reasonable doubt that he acted in good faith, and without notice of any legal infirmities in the instrument, as such an instrument would exact of the plaintiff the burden of proof required in criminal cases instead of that required in civil cases. Wood *v.* Skelley, (Mass. 1907) 81 N. E. 872.

4. Keene *v.* Behan, 40 Wash. 505, 82 Pac. 884; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 323.

5. Walters *v.* Rock, (N. Dak. 1908) 115 N. W. 511; Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 323.

6. Walters *v.* Rock, (N. Dak. 1908) 115 N. W. 511.

325. 1. Sheffield *v.* Johnson County Sav.

Bank, 2 Ga. App. 221, 58 S. E. 386; Norwood *v.* Bank of Commerce, (Neb. 1906) 109 N. W. 152.

3. Grinnell *v.* Hill, 1 Cal. App. 492, 82 Pac. 445; Crooker *v.* Hamilton, (Ga. App. 1907) 59 S. E. 722; McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; Deming Invest. Co. *v.* Wallace, 73 Kan. 291, 85 Pac. 139; Mueller *v.* Buch, 71 N. J. L. 486, 58 Atl. 1092, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 325; Wilson *v.* Cohen, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 654, 96 N. Y. Supp. 113; Douglass *v.* Richards, 116 N. Y. App. Div. 27, 101 N. Y. Supp. 299; Elgin City Banking Co. *v.* Hall, (Tenn. 1907) 108 S. W. 1068; Hynes *v.* Plastino, 45 Wash. 190, 87 Pac. 1127.

Sufficiency of Evidence to Show Fraudulent Misrepresentation. — Champion Funding, etc., Co. *v.* Heskett, 125 Mo. App. 516, 102 S. W. 1050.

Exclusion of Evidence as to Fraudulent Misrepresentation Error. — Turner *v.* Ware, 2 Ga. App. 57, 58 S. E. 310.

Fraudulent Intent. — A promise made by the payee of a note in reference to the consideration for giving the same, that he does not intend to fulfil, constitutes a fraud that will defeat the note except in the hands of an innocent holder. Walters *v.* Rock, (N. Dak. 1908) 115 N. W. 511.

Fraudulent Misrepresentation a Defense against Holder with Notice. — First Nat. Bank *v.* Gebbie, 145 Fed. 448.

Offer to Refund. — Where an indorser, sued on his indorsement, defends on the ground that he was induced to indorse through false and fraudulent representations made to him by the plaintiff, it is not necessary that he shall first offer to rescind the maker's contract, or to restore the consideration which the maker may have received. Roessle *v.* Lancaster, 119 N. Y. App. Div. 368, 104 N. Y. Supp. 217.

4. Woodall *v.* People's Nat. Bank, (Ala. 1907) 45 So. 194; Hutchins *v.* Langley, 27 App. Cas. (D. C.) 234; Johnson County Sav. Bank *v.* Roberts, 125 Ga. 41, 53 S. E. 808; Harrell *v.* National Bank of Commerce, 128 Ga. 504, 57 S. E. 869; Smith *v.* Hightower, (Ga. App. 1907) 59 S. E. 593; Oliver *v.* Miller, (Ga. 1908) 60 S. E. 254; Connolly *v.* Dammann, 232 Ill. 175, 83 N. E. 531; Morrison First Nat. Bank *v.* Busch, 102 Minn. 365, 113 N. W. 898; Isaac Eberly Co. *v.* Gibson, (Va. 1907) 58 S. E. 591; Jamieson *v.* Heim, 43 Wash. 153, 86 Pac. 165.

Breach of Agreement to Renew as Fraud. — Beaumont Carriage Co. *v.* Price, (Tex. Civ. App. 1907) 104 S. W. 499.

Fraud a Defense as to Holder with Notice. — Chillicothe Bank *v.* Ornsdorff, (Mo. App. 1907) 105 S. W. 664.

327. 1. Home Nat. Bank *v.* Hill, 165 Ind. 226, 74 N. E. 1086, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 327; Wickham *v.* Evans, 133 Iowa 552, 110 N. W. 1046; Biddeford Nat. Bank *v.* Hill, 102 Me. 346, 66 Atl. 721; Hulett *v.* Marine Sav. Bank, 143 Mich. 219, 106 N. W. 879; New Madrid Banking Co. *v.* Poplin, (Mo. App. 1908) 108 S. W. 115; Yakima Valley Bank *v.* McAllister, 37 Wash. 566, 79 Pac. 1119; Jamieson *v.* Heim, 43 Wash. 153, 86 Pac. 165.

Negotiable Instruments Law. — The *Iowa* Code, Supp. 1902, par. 3060a23, provides that "Where a signature is forged, or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority." Under this provision the forged unauthorized signature of any party cannot be made the basis of any right against any party to the instrument on which such signature appears. It does not follow, however, that proof of one forged signature on a note must of necessity and in all cases be given effect to avoid the note in favor of those whose signatures thereto are found to be genuine. This provision does not apply in favor of persons who are parties to the wrong, either actively in procuring it to be done, or passively by acquiescence on full knowledge. Beem *v.* Farrell, (Iowa 1907) 113 N. W. 509.

Under the Wisconsin Negotiable Instruments Law (Laws 1899, c. 356, § 1676), which provides that the title of a person who negotiates an instrument is defective when he obtains the instrument or any signature thereto by fraud, if a party so defrauded be released from liability on the instrument such fraud makes the instrument voidable by all other persons who sign it, though they did not participate in and were ignorant of the fraudulent conduct at the time they signed. Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192.

Under the further provision of the same section of this statute, that the title of a person negotiating any note is absolutely void when the instrument or signature to it was fraudulently procured from a person who did not know the nature of the instrument and could not have obtained this knowledge by the use of ordinary care, the title to the instrument is void not only as to such signers whose signatures were fraudulently procured, but also as to all of them. Aukland *v.* Arnold, 131 Wis. 64, 111 N. W. 212.

3. Connolly *v.* Dammann, 232 Ill. 175, 83 N. E. 531; Palo Alto Stock Farm *v.* Brooker 131 Iowa 229, 108 N. W. 307; Fay *v.* Hunt, 190 Mass. 378, 77 N. E. 502; First Nat. Bank *v.* Hall, (Mo. App. 1908) 108 S. W. 633; Brown *v.* Feldwert, 46 Oregon 363, 80 Pac. 414.

328. 1. Biddeford Nat. Bank *v.* Hill, 102 Me. 346, 66 Atl. 721; Warnock *v.* Itawis, 38 Wash. 144, 80 Pac. 297.

Sufficiency of Evidence to Show Negligence. — Johnson County Sav. Bank *v.* Hall, 102 Minn. 414, 113 N. W. 1011.

3. Wilkins *v.* Usher, (Ky. 1906) 97 S. W. 37; First Nat. Bank *v.* Hall, (Mo. App. 1908) 108 S. W. 633; Home Ins. Co. *v.* Winn, 125 Mo. App. 384, 102 S. W. 590; New Madrid Banking Co. *v.* Poplin, (Mo. App. 1908) 108 S. W. 115; Guthrie, etc., R. Co. *v.* Rhodes,

(Okla. 1907) 91 Pac. 1119; Brown *v.* Feldwert, 46 Oregon 363, 80 Pac. 414.

Negligence of Maker in Failing to Read as Affecting Liability to Payee. — Holmes *v.* Baker, 129 Iowa 49, 105 N. W. 349.

Sufficiency of Evidence to Show Fraud. — Hulett *v.* Marine Sav. Bank, 143 Mich. 219, 106 N. W. 879.

329. 1. Wickham *v.* Evans, 133 Iowa 552, 110 N. W. 1046.

Where there is evidence that an illiterate person signing a note by making his mark had the note read and explained to him, the presumption arises that he was acquainted with the contents of the note when he signed it, and this presumption cannot be overcome without evidence that imposition or fraud was practiced upon him to procure his signature. Dawson *v.* Wombles, 123 Mo. App. 340, 100 S. W. 547.

3. **Minnesota Statute — Protection Afforded Maker of Note Obtained by Fraud.** — Sibley First Nat. Bank *v.* Doeden, (S. Dak. 1907) 113 N. W. 81.

331. 2. **Bona Fide Holder of Stolen Instrument May Recover.** — Ehrlich *v.* Jennings, (S. Car. 1907) 58 S. E. 922.

332. 3. National Exch. Bank *v.* Lester, 119 N. Y. App. Div. 786, 104 N. Y. Supp. 418.

Erasure of Pencil Words No Defense against Bona Fide Holder without Notice. — Maxon *v.* Irwin, 15 Ont. L. Rep. 81.

Filling in Place of Payment. — If a person signs and delivers a note which is blank as to the place where payable, the filling in of such blank by the payee with words appropriate to supply the deficiency is not such an alteration as will invalidate the note as to one who takes it for value and without notice, provided the insertion left the note in such a condition as not to arouse the suspicion of a cautious man. Bowen *v.* Laird, 166 Ind. 421, 77 N. E. 852.

334. 1. **Forgery of Signature as Affecting Indorser's Liability.** — A *bona fide* holder may sue on the indorsement and guaranties on a note although the signature to the note is forged. City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893.

The Forgery of a Part of the Signatures on a joint and several note does not release the persons whose signatures are genuine from liability to a *bona fide* holder. Durand First Nat. Bank *v.* Shaw, 149 Mich. 362, 112 N. W. 904.

2. Harlan *v.* Gladding, (Cal. App. 1907) 93 Pac. 400; Whitt *v.* Blount, 124 Ga. 671, 53 S. E. 205; Thompson *v.* Hicks, (Tex. Civ. App. 1907) 100 S. W. 357.

Waiver of Duress by Payment of Note. — Lilienthal *v.* George Bechtel Brewing Co., 118 N. Y. App. Div. 205, 102 N. Y. Supp. 1051.

335. 1. Hutchins *v.* Langley, 27 App. Cas. (D. C.) 234; Wilkes *v.* Pope, (Ga. App. 1908) 60 S. E. 823; McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; First Nat. Bank *v.* McLean, 16 Manitoba 32.

Note Pledged before Maturity Good in Hands of Bona Fide Purchaser without Notice. — Brown *v.* James, (Neb. 1908) 114 N. W. 591.

336. 2. Wilkes *v.* Pope, (Ga. App. 1908) 60 S. E. 823; Kidd *v.* Beckley, (W. Va. 1908) 60 S. E. 1089.

337. 1. Vander Ploeg *v.* Van Zuuk, (Iowa 1907) 112 N. W. 807.

2. Stanley *v.* Davis, (Ky. 1908) 107 S. W. 773; Clifford Banking Co. *v.* Donovan Commission Co., 195 Mo. 262, 94 S. W. 528; Hess *v.* Gerstlauer, 214 Pa. St. 10, 63 Atl. 366.

Where Agent Acts without Authority. — Where a principal gives to his agent a power of attorney to manage his affairs, and leaves with him blank signed notes with instructions that the blanks be filled in only on further notice from him, and the agent fills in the blanks without such further instructions, the principal, never having authorized the filling and issuance of the notes, is not estopped to defend against the *bona fide* holder. Smith *v.* Prosser, (1907) 2 K. B. 735.

Payee of Note Wrongfully Filled in by One of Joint Makers Not a Bona Fide Holder under Iowa Negotiable Instruments Law. — Vander Ploeg *v.* Van Zuuk (Iowa 1907) 112 N. W. 807.

3. Lloyd's Bank *v.* Cooke, (1907) 1 K. B. 794, 8 Ann. Cas. 182.

339. 5. **Renewal Defined.** — Lowry Nat. Bank *v.* Fickett, 122 Ga. 489, 50 S. E. 396.

Renewal Note Invalidated by Illegality of Original Note. — Kennedy *v.* Welch, (Mass. 1907) 83 N. E. 11.

Invalidity of Original for Want of Consideration Attaches to Renewal Note. — Cochran *v.* Perkins, 146 Ala. 689, 40 So. 351; Wilkins *v.* Usher, (Ky. 1906) 97 S. W. 37.

Effect of Renewal with Knowledge of Defense. — One who gives a note in renewal of another note, with knowledge at the time of a partial failure of the consideration for the original note, or false representations by the payee, etc., waives such defense, and cannot set it up to defeat a recovery on the renewal note; and where one giving such renewal note either had knowledge of such facts and circumstances, or by the exercise of ordinary diligence could have discovered them and ascertained his rights, it became his duty to make such inquiry and investigation before executing the renewal note, and if he fails so to do he is as much bound as if he had actual knowledge thereof. Padgett *v.* Lewis, (Fla. 1907) 45 So. 29.

Right of Holder to Sue on Original When Renewal Note Defective. — Councilman *v.* Towson Nat. Bank, 103 Md. 469, 64 Atl. 358.

Renewal Note as Conditional Payment of Original. — Keyser *v.* Hinkle, (Mo. App. 1907) 106 S. W. 98.

342. 1. Bass *v.* Wellesley, 192 Mass. 526, 78 N. E. 543.

2. Stanley *v.* Penny, 75 Kan. 179, 88 Pac. 875; Boline *v.* Wilson, 75 Kan. 829, 89 Pac. 678; Fisher Mach. Works Co. *v.* Leavenworth Nat. Bank, (Kan. 1908) 94 Pac. 124; Dawson *v.* Wombles, 123 Mo. App. 340, 100 S. W. 547; Eagle Min., etc., Co. *v.* Lund, (N. Mex. 1908) 94 Pac. 949.

Action on Note to Order of Agent of Corporation. — A promissory note payable to the order of an agent of a corporation, both being specified by name in the note, is in legal effect

payable to the corporation; but either the principal or the agent can maintain an action on it. Young *v.* Murray, (Ga. App. 1907) 59 S. E. 717.

Action by Purchaser of Note Sold under Attachment. — Fishburn *v.* Londershausen, (Oregon 1907) 92 Pac. 1060.

Action by Pledgee. — Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

Right of Pledgor to Sue under California Statute. — Graham *v.* Light, 4 Cal. App. 400, 88 Pac. 373.

3. Boline *v.* Wilson, 75 Kan. 829, 89 Pac. 678.

4. Jump *v.* Leon, 192 Mass. 511, 78 N. E. 532; Home Sav. Bank *v.* Stewart, (Neb. 1907) 110 N. W. 947.

Holder of Note Indorsed for Collection May Sue. — Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622.

5. Digan *v.* Mandel, 167 Ind. 586, 79 N. E. 899.

An Action May Be Maintained in the Name of the Payee, without regard to the actual ownership of it. Wolfboro Loan, etc., Co. *v.* Rollins, (Mass. 1907) 81 N. E. 204.

Right of Real Owner to Sue on Note Payable to Another by Mistake. — Best *v.* Rocky Mountain Nat. Bank, 37 Colo. 149, 85 Pac. 1124.

343. 1. No Joint Action against Several Makers Where Note Provides for Several Liability. — National Bank *v.* Buckwalter, 214 Pa. St. 289, 63 Atl. 689.

2. Iowa Code, § 3465. — Swartley *v.* Oak Leaf Creamery Co., (Iowa 1907) 113 N. W. 496.

3. Effect on Indorser's Liability of Delay of Holder to Enforce Payment. — Rogers *v.* Detroit Sav. Bank, 146 Mich. 639, 110 N. W. 74.

344. 4. Proof of Execution under Alabama Code 1896, § 1801. — Gates *v.* Morton Hardware Co., 146 Ala. 692, 40 So. 509.

Production as Evidence of Execution. — Ellis *v.* Marshall Car Wheel, etc., Co., (Tex. Civ. App. 1906) 95 S. W. 689; Walker *v.* Tomlinson, (Tex. Civ. App. 1906) 98 S. W. 906.

In an action to recover on a note given in payment of services, no recovery can be had without producing the note. Dawdy *v.* Dawdy, 118 Mo. App. 336, 94 S. W. 767.

Proof of Execution. — Where the execution of a note is denied by a plea of *non est factum,* the note will not be received in evidence until some extrinsic evidence of its execution has been submitted. Slight evidence is sufficient to lay the foundation for its admission, but the sufficiency of the evidence for this purpose is for the determination of the court. Patton *v.* La Fayette Bank, 124 Ga. 965, 4 Ann. Cas. 639, 53 S. E. 664.

When Production Insufficient to Prove Execution. — Clark *v.* Clark, 122 Ky. 145, 91 S. W. 284.

Production of Copy Insufficient under Maryland Statute. — Councilman *v.* Towson Nat. Bank, 103 Md. 469, 64 Atl. 358.

345. 1. Exchange Bank *v.* Veirs, 3 Cal. App. 71, 84 Pac. 455; DeClerque *v.* Campbell, 231 Ill. 442, 83 N. E. 224; Godman *v.* Henby, 37 Ind. App. 1, 76 N. E. 423; Digan *v.* Mandel, 167 Ind. 586, 79 N. E. 899; Durand First Nat. Bank *v.* Shaw, 149 Mich. 362, 112 N. W. 904; Tyson *v.* Joyner, 139 N. Car. 69, 51 S. E. 803; Memphis Coffin Co. *v.* Patton, (Tex. Civ. App. 1907) 106 S. W. 697; Horner *v.* Amick, (W. Va. 1908) 61 S. E. 40.

Sufficiency of Proof of Execution. — O'Donnell *v.* Wade, (Mich. 1908) 114 N. W. 871; Bolden *v.* Hughes, (Tex. Civ. App. 1908) 107 S. W. 91.

Burden of Proving Delivery on Plaintiff. — Digan *v.* Mandel, 167 Ind. 586, 79 N. E. 899.

Effect of Verified Denial of Execution. — Kurth *v.* Farmers, etc., State Bank, (Kan. 1908) 94 Pac. 798.

Proof of Signature Not Essential When Not Denied. — Hibernia Bank, etc., Co. *v.* Smith, 89 Miss. 298, 42 So. 345.

Proof of Execution of Note Not Essential in Absence of Denial. — Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

Under Iowa Code, § 3640. — In the absence of a denial of the genuineness of the defendant's signature, the burden is on him to prove that the note was not executed by him. Gray *v.* Bennett, (Iowa 1905) 105 N. W. 377.

2. Peevey *v.* Tapley, 148 Ala. 320, 42 So. 561; Tyson *v.* Joyner, 139 N. Car. 69, 51 S. E. 803; Mayers *v.* McRimmon, 140 N. Car. 640, 53 S. E. 447; *In re* Church, (Vt. 1907) 67 Atl. 549; Pelton *v.* Spider Lake Sawmill, etc., Co., (Wis. 1907) 112 N. W. 29.

Proof of Indorsement Not Essential When Not Denied. — Hibernia Bank, etc., Co. *v.* Smith, 89 Miss. 298, 42 So. 345; Milwaukee Trust Co. *v.* Van Valkenburgh (Wis. 1907) 112 N. W. 1083.

In Absence of Denial under Oath Proof of Indorsement Not Necessary. — South *v.* People's Nat. Bank, (Ga. App. 1908) 60 S. E. 1087.

And unless denied on oath, an indorsement need not be proved, although the name of the indorser purported to have been signed by the agent, and the action is against the maker. Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622.

4. The transferee of a negotiable promissory note, who has purchased the same in the usual course of trade for value, may maintain an action at law against the maker without proof of indorsement. Madison First Nat. Bank *v.* Sprout, (Neb. 1907) 110 N. W. 713.

346. 2. Lassas *v.* McCarty, 47 Oregon 474, 84 Pac. 76.

3. Sperlin *v.* Peninsular Loan, etc., Co., (Tex. Civ. App. 1907) 103 S. W. 232.

Iowa Statute. — Creston Nat. Bank *v.* Salmon, 117 Mo. App. 506, 93 S. W. 288.

347. 3. Camden Nat. Bank *v.* Fries-Breslin Co., 214 Pa. St. 395, 63 Atl. 1022, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347.

348. 2. State Bank *v.* American Hardwood Lumber Co., 121 Mo. App. 324, 98 S. W. 786.

350. 6. U. S. *v.* Martindale, 146 Fed. 280, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 350.

352. 5. Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; A. B. Farquhar Co. *v.* Higham, (N. Dak. 1907) 112 N. W. 557; Galbraith *v.* Shepard, 43 Wash. 698, 86 Pac. 1113.

Presentment of Foreign Bill for Payment Necessary. — Amsinck *v.* Rogers, 189 N. Y. 252, [illegible]

353. 4. Allison *v.* Hollenbeak, (Iowa 1908) 114 N. W. 1059.

5. Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

354. 1. **Under the Colorado Statute** (Sess. Laws 1897, p. 225, c. 64) which provides that "Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part." Proof of presentment and demand and refusing of payment does not devolve upon the plaintiff. Florence Oil, etc., Co. *v.* Cannon City First Nat. Bank, 38 Colo. 119, 88 Pac. 182; Gumaer *v.* Cannon City First Nat. Bank, 38 Colo. 123, 88 Pac. 183.

2. Church *v.* Stevens, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 572, 107 N. Y. Supp. 310; Hyman *v.* Doyle, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 597, 103 N. Y. Supp. 778.

358. 2. **Presentment to Receiver of Insolvent Bank at Which Note Made Payable Not Required.** — Schlesinger *v.* Schultz, 110 N. Y. App. Div. 356, 96 N. Y. Supp. 383.

361. 3. Bayless *v.* Marbut, (Mo. App. 1907) 101 S. W. 617.

4. **Demand Not Necessary Where Note Payable at Particular Time and Place.** — Farmers Nat. Bank *v.* Venner, 192 Mass. 531, 7 Ann. Cas. 690, 78 N. E. 540. See also *infra*, this title, **373.** 4. *Presentment at Place Designated Unnecessary as to Maker.*

362. 2. Demelman *v.* Brazier, 193 Mass. 588, 79 N. E. 812.

6. Bayless *v.* Marbut, (Mo. App. 1907) 101 S. W. 617.

7. Bayless *v.* Marbut, (Mo. App. 1907) 101 S. W. 617.

363. 1. Columbian Banking Co. *v.* Bowen, (Wis. 1908) 114 N. W. 451.

Extent to Which Question of Reasonableness of Time One of Law. — Commercial Nat. Bank *v.* Zimmerman, 185 N. Y. 210, 77 N. E. 1020.

2. Hampton *v.* Miller, 78 Conn. 267, 61 Atl. 952.

Reasonable Time for Presentment of Note Payable "on Demand after Date," — Schlesinger *v.* Schultz, 110 N. Y. App. Div. 356, 96 N. Y. Supp. 383.

Burden of Showing Reasonableness of Time on Holder. — Commercial Nat. Bank *v.* Zimmerman, 185 N. Y. 210, 77 N. E. 1020.

Doctrine in New York under Negotiable Instruments Law — Commercial Nat. Bank *v.* Zimmerman, 185 N. Y. 210, 77 N. E. 1020.

365. 4. **Reasonableness of Time of Presenting Question of Fact.** — West Branch State Bank *v.* Haines, (Iowa 1907) 112 N. W. 552.

366. 9. **Grace Abolished by Negotiable Instruments Law** (Mass. Rev. Laws, c. 73, § 103). Demelman *v.* Brazier, 193 Mass. 588, 79 N. E. 812.

Abolishment of Grace in a Sister State Not Presumed. — Demelman *v.* Brazier, 193 Mass. 588, 79 N. E. 812.

367. 3. Demelman *v.* Brazier, 193 Mass. 588, 79 N. E. 812.

370. 5. **Presumption that Presentment Was Made during Banking Hours.** — Schlesinger *v.* Schultz, 110 N. Y. App. Div. 356, 96 N. Y. Supp. 383.

371. 2. Bayless *v.* Marbut, (Mo. App. 1907) 101 S. W. 617.

Presentment to Receiver of Insolvent Bank Not Required. — Schlesinger *v.* Schultz, 110 N. Y. App. Div. 356, 96 N. Y. Supp. 383.

372. 2. Where a note on its face was made payable in a named city, and the maker added to his signature a certain address in that city, presentation of the note at the address so given in the absence of any change of address and notice thereof to the payee or holder, would be sufficient, although the maker was on that day absent from the city. Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892.

373. 4. Hibernia Bank, etc., Co. *v.* Smith, 89 Miss. 298, 42 So. 345, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 373; Farmers Nat. Bank *v.* Venner, 192 Mass. 531, 7 Ann. Cas. 690, 78 N. E. 540, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 373. See also *supra*, this title, **361.** 4. *Instrument Payable at Particular Place.*

A Refusal of a Demand Made at Another Place than that specified in the note, constitutes a default in payment thereof. Farmers Nat. Bank *v.* Venner, 192 Mass. 531, 7 Ann. Cas. 690, 78 N. E. 540.

378. 6. Sherman *v.* Ecker, (N. Y. City Ct. Spec. T.) 109 N. Y. Supp. 679.

380. 1. Waples-Painter Co. *v.* Bank of Commerce, 6 Indian Ter. 326, 97 S. W. 1025.

When Protest Unnecessary under Georgia Statute. — Davis *v.* West, 127 Ga. 407, 56 S. E. 403.

2. **Presumption that Notary Performed Duties in Proper Manner.** — Kupferberg *v.* Horowitz, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 488, 102 N. Y. Supp. 502.

Protest of Foreign Bill Controlled by Law of Place Where Drawn. — Amsinck *v.* Rogers, 189 N. Y. 252, 82 N. E. 134.

383. 6. **Absence of Seal as Affecting Certificate of Protest as Evidence.** — London, etc., Bank *v.* Carr, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 94, 105 N. Y. Supp. 679.

385. 1. **Interest in Note Does Not Disqualify Notary.** — Patton *v.* La Fayette Bank, 124 Ga. 965, 4 Ann. Cas. 639, 53 S. E. 664.

Proof of Authority of Foreign Officer. — London, etc., Bank *v.* Carr, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 94, 105 N. Y. Supp. 679.

3. **Protest as Evidence of Due Diligence in Giving Notice.** — Siegel *v.* Dubinsky, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 681, 107 N. Y. Supp. 678.

386. 1. Patton *v.* La Fayette Bank, 124 Ga. 965, 4 Ann. Cas. 639, 53 S. E. 664; Bayless *v.* Marbut, (Mo. App. 1907) 101 S. W. 617; Schlesinger *v.* Schultz, 110 N. Y. App. Div. 356, 96 N. Y. Supp. 383.

Foreign Certificate of Protest as Evidence. — London, etc., Bank *v.* Carr, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 94, 105 N. Y. Supp. 679.

387. 6. **Presentment at Proper Time Presumed from Certificate that Paper Was Presented.** — Columbian Banking Co. *v.* Bowen, (Wis. 1907) 114 N. W. 451.

388. 2. Bayless *v.* Marbut, (Mo. App. 1907) 101 S. W. 617.

397. 5. Marshall *v.* Sonneman, 216 Pa. St. 65, 64 Atl. 874.

6. Notice of Dishonor of Foreign Bill Necessary. — Amsinck *v.* Rogers, 189 N. Y. 252, 82 N. E. 134.

7. Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; Ennis *v.* Reynolds, 127 Ga. 112, 56 S. E. 104; Wisdom *v.* Bille, (La. 1908) 45 So. 554; Siegel *v.* Dubinsky, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 681, 107 N. Y. Supp. 678; Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445; Sherman *v.* Ecker, (N. Y. City Ct. Spec. T.) 109 N. Y. Supp. 678; Colonial Nat. Bank *v.* Duerr, 108 N. Y. App. Div. 215, 95 N. Y. Supp. 810; A. B. Farquhar Co. *v.* Higham, (N. Dak. 1907) 112 N. W. 557; Marshall *v.* Sonneman, 216 Pa. St. 65, 64 Atl. 874; Cook *v.* American Tubing, etc., Co., (R. I. 1905) 65 Atl. 646; Galbraith *v.* Shepard, 43 Wash. 698, 86 Pac. 1113; Royal Bank *v.* Kirk, 13 British Columbia 4.

When Payable at Indorser's Bank. — The fact that a note is payable at a bank of which the indorser is president and a director, does not dispense with the necessity of notice. Ennis *v.* Reynolds, 127 Ga. 112, 56 S. E. 104.

Rule Applies to Note Containing Option to Declare Whole Debt Due for Nonpayment of Interest. — Galbraith *v.* Shepard, 43 Wash. 698, 86 Pac. 1113.

Burden of Proving Notice to Indorser on Holder. — Fuller Buggy Co. *v.* Waldron, 112 N. Y. App. Div. 814, 99 N. Y. Supp. 561.

401. 3. State Bank, etc., Co. *v.* Evans, (Mass. 1908) 84 N. E. 329.

4. **Notice to Irregular Indorser Essential under Rhode Island Negotiable Instruments Law.** — Deahy *v.* Choquet, (R. I. 1907) 67 Atl. 421.

402. 3. Wills *v.* Booth, (Cal App. 1907) 91 Pac. 759.

4. Wills *v.* Booth, (Cal. App. 1907) 91 Pac 759.

403. 8. Luverne Bank *v.* Sharpe, (Ala. 1907) 44 So. 871; Allison *v.* Hollenbeak, (Iowa 1908) 114 N. W. 1059; Smith *v.* Tyler First State Bank, 95 Minn. 496, 104 N. W. 369, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 403.

405. 1. **Surety Not Entitled to Notice under Negotiable Instruments Law.** — Rouse *v.* Wooten, 140 N. Car. 557, 6 Ann. Cas. 280, 53 S. E. 430.

410. 9. **A Notice Addressed to a Deceased Indorser,** as if he were living, is sufficient if actually received by his administrator. Ravenswood Bank *v.* Wetzel, 58 W. Va. 1, 6 Ann. Cas. 48, 50 S. E. 886.

414. 6. Derham *v.* Donohue, (C. C. A.) 155 Fed. 385.

7. Marshall *v.* Sonneman, 216 Pa. St. 65, 64 Atl. 874.

415. 4. Marshall *v.* Sonneman, 216 Pa. St. 65, 64 Atl. 874.

417. 1. Derham *v.* Donohue, (C. C. A.) 155 Fed. 385.

424. 3. Click *v.* Sample, 73 Ark. 194, 83 S. W. 932, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 424.

425. 1. Click *v.* Sample, 73 Ark. 194, 83 S. W. 932, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 425.

2. Click *v.* Sample, 73 Ark. 194, 83 S. W. 932, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 425.

428. 3. Merchants' Exch. Co. *v.* Sanders, 74 Ark. 16, 4 Am. Cas. 955, 84 S. W. 786, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428.

What Will Amount to Sufficient Evidence of Mailing. — Goucher *v.* Carthage Novelty Co., 116 Mo. App. 99, 91 S. W. 447, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428.

431. 1. Albany Trust Co. *v.* Frothingham, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 598, 99 N. Y. Supp. 343.

Evidence Sufficient to Show Time Within Which Notice Given Reasonable. — Fleming *v.* McLeod, 39 Can. Sup. Ct. 290.

2. Time of Deposit in Mail. — Where the notice is sent by mail to an indorser residing in the same city, it must be shown that it was deposited in the post office in time to reach the indorser in the usual course on the day following, under the New York Negotiable Instruments Law. Siegel *v.* Dubinsky, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 598, 99 N. Y. Supp. 678.

433. 4. **Failure to Send by First Available Steamer an Unreasonable Delay.** — Fleming *v.* McLeod, 37 N. Bruns. 630.

436. 12. Albany Trust Co. *v.* Frothingham, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 598, 99 N. Y. Supp. 343.

440. 4. Albany Trust Co. *v.* Frothingham, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 598, 99 N. Y. Supp. 343.

5. Albany Trust Co. *v.* Frothingham, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 598, 99 N. Y. Supp. 343.

451. 9. **Sufficiency of Evidence to Show Inability to Make Presentment.** — Wills *v.* Booth, (Cal. App. 1907) 91 Pac. 759.

453. 6. Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; Swope *v.* Boone County Deposit Bank, (Ky. 1907) 101 S. W. 334; Burgettstown Nat. Bank *v.* Nill, 213 Pa. St. 456, 5 Ann. Cas. 476, 63 Atl. 186, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 453.

Admissibility of Evidence to Show Fraud in Obtaining Waiver. — Toole *v.* Crafts, 193 Mass. 110, 78 N. E. 775.

Parol Evidence of Waiver. — Parol evidence is not competent to limit a waiver of demand, notice, and protest, except upon the issues of fraud or mistake, or to apply the language of the waiver to its subject-matter, or for the purpose of showing the circumstances under which the agreement to waive was made, in order to aid the court in ascertaining the true construction of the agreement. Toole *v.* Crafts, 193 Mass. 110, 82 N. E. 22.

455. 5. Swope *v.* Boone County Deposit Bank, (Ky. 1907) 101 S. W. 334.

456. 5. Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

6. Toole *v.* Crafts, 193 Mass. 110, 82 N. E. 22; Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

457. 2. Toole *v.* Crafts, 193 Mass. 110, 82 N. E. 22; Burgettstown Nat. Bank *v.* Nill, 213 Pa. St. 456, 5 Ann. Cas. 476, 63 Atl. 186.

5. Burgettstown Nat. Bank *v.* Nill, 213 Pa. St. 456, 5 Ann. Cas. 476, 63 Atl. 186.

7. Burgettstown Nat. Bank *v.* Nill, 213 Pa. St. 456, 5 Ann. Cas. 476, 63 Atl. 186.

8. Torbert *v.* Montague, (Colo. 1906) 87 Pac. 1145.

11. Swope *v.* Boone County Deposit Bank, (Ky. 1907) 101 S. W. 334.

458. 3. Dewey *v.* Sibert, (S. Dak. 1907) 113 N. W. 721, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 458.

459. 3. Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; Swope *v.* Boone County Deposit Bank, (Ky. 1907) 101 S. W. 334; Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

4. Waiver of Demand and Protest Not a Waiver of Notice. — Wisdom *v.* Bille, (La. 1908) 45 So. 554.

460. 6. Torbert *v.* Montague, (Colo. 1906) 87 Pac. 1145; Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 460; Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

Where the defendant testifies that he did not expect, and the circumstances show that he did not expect, presentment for payment to be made, there is an implied waiver by him. Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886.

Payment after Maturity as Waiver by Indorser. — Rogers *v.* Detroit Sav. Bank, 146 Mich. 639, 110 N. W. 74.

Parol Evidence of Acts Constituting Waiver Admissible. — Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886.

462. 5. **Indorsement of Renewal Note Without Notice to Holder of Original.** — The act of one of several joint indorsers in indorsing a renewal note before the maturity of the original, without the knowledge of the holder of the original, before indorsement by the other indorsers, and returning it to the maker, is not sufficient to constitute a waiver on his part of demand and notice of dishonor as to the renewal. Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

463. 3. Brittain *v.* Murphy, 118 Mo. App. 235, 94 S. W. 303.

A statement to the indorser, at the time the note was purchased, made by the agent of the purchaser, that the purchaser would not release the indorser as such, is not equivalent to a waiver of notice on the part of the indorser. Luxora Banking Co. *v.* Turner, 84 Ark. 366, 105 S. W. 873.

466. 1. **Ignorance of Legal Effect Does Not Invalidate Waiver.** — Toole *v.* Crafts, 193 Mass. 110, 78 N. E. 775.

469. 5. **Contract of Drawer of Foreign Bill of Exchange.** — Amsinck *v.* Rogers, 189 N. Y. 252, 82 N. E. 134.

470. 7. Campbell *v.* J. I. Campbell Co. 117 La. 402, 41 So. 696.

8. Campbell *v.* J. I. Campbell Co., 117 La. 402, 41 So. 696.

474. 1. Barnsdall *v.* Waltemeyer, (C. C. A.) 142 Fed. 415; Gresham *v.* Ragsdale, 145 Ala. 683, 40 So. 99.

5. Campbell *v.* J. I. Campbell Co., 117 La. 402, 41 So. 696.

Maker's Guaranty of Genuineness of Signature. — Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639.

Admissibility of Parol Evidence to Vary Maker's Engagement. — Citizens' Nat. Bank *v.* Burch, (N. Car. 1907) 59 S. E. 71.

6. The joint maker of a note with a corporation, is liable to an innocent holder where the corporation had no authority to make such a note. Scott *v.* Bankers' Union of the World, 73 Kan. 575, 85 Pac. 604.

478. 1. Chemical Nat. Bank *v.* Kellogg, 183 N. Y. 92, 5 Ann. Cas. 158, 75 N. E. 1103.

Place of Making and Place of Indorsement Presumed Same in Absence of Notice, under Negotiable Instruments Law, c. 612, § 76. — Chemical Nat. Bank *v.* Kellogg, 183 N. Y. 92, 5 Ann. Cas. 158, 75 N. E. 1103.

2. Suretyship Distinguished from Indorsement. — Rouse *v.* Wooten, 140 N. Car. 557, 6 Ann. Cas. 280, 53 S. E. 430.

479. 1. **Under the Iowa Code** (Supp. 1902, § 3060*a*65) an indorsement "without recourse" carries with it a warranty of genuineness and of title. City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893.

2. Effect of Assignment under Nebraska Comp. Stat. 1901, § 3380. — Leahy *v.* Haworth, (C. C. A.) 141 Fed. 850, *construing* Nebraska statute.

3. Effect of Assignment under Tex. Rev. Stat. 1895, Art. 307. — Rowe *v.* Gohlman, (Tex. Civ. App. 1906) 98 S. W. 1077.

4. Question of Liability of Indorser "with Recourse after All Security Has Been Exhausted." — Smith *v.* Bradley, (N. Dak. 1907) 112 N. W. 1062.

5. Kistner *v.* Peters, 223 Ill. 607, 79 N. E. 311.

Effect of Indorsement in Form of Guaranty under Nebraska Comp. Stat. 1901, § 3380. — Leahy *v.* Haworth, (C. C. A.) 141 Fed. 850, *construing* Nebraska statute.

Indorsement in Form of Guaranty — Nature o Indorser's Liability. — Mullen *v.* Jones, 102 Minn. 72, 112 N. W. 1048.

480. 3. **Indorser of Nonnegotiable Note Liable to Same Extent as Indorser of Negotiable Note.** — Luverne Bank *v.* Sharpe, (Ala. 1907) 44 So 871.

481. 1. Allison *v.* Hollenbeak, (Iowa 1908) 114 N. W. 1059.

Liability under Iowa Negotiable Instruments Law. — Allison *v.* Hollenbeak, (Iowa 1908) 114 N. W. 1059.

2. Marietta Fertilizer Co. *v.* Beckwith, (Ga. App. 1908) 61 S. E. 149; City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893.

Warranty Applies to Condition of Paper at Time of Leaving Indorser's Hands. — Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

3. Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

4. Seaboard Nat. Bank *v.* Bank of America, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 103, 100

N. Y. Supp. 740.; Ford *v.* People's Bank, 74 S. Car. 180, 7 Ann. Cas. 744, 54 S. E. 204; Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639; Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

"The indorser of negotiable paper does not warrant to the drawee the genuineness of the signature of the maker, but such warranty only extends to subsequent holders in due course of trade." Farmers', etc., Bank *v.* Rutherford Bank, 115 Tenn. 64, 88 S. W. 940.

Indorser's Liability on Warranty Not Affected by Fact that Forged Check Was Negligently Accepted by Drawer in Payment for Draft. — Seaboard Nat. Bank *v.* Bank of America, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 103, 100 N. Y. Supp. 740.

483. 1. Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893; Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445; Colonial Nat. Bank *v.* Duerr, 108 N. Y. App. Div. 215, 95 N. Y. Supp. 810; A. B. Farquhar Co. *v.* Higham, (N. Dak. 1907) 112 N. W. 557; York First Nat. Bank *v.* Diehl, 218 Pa. St. 588, 67 Atl. 897.

2. A. B. Farquhar Co. *v.* Higham, (N. Dak. 1907) 112 N. W. 557.

4. Wilson *v.* Hendee, (N. J. 1907) 66 Atl. 413; State Bank *v.* Kahn, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 500, 98 N. Y. Supp. 858; Haddock *v.* Haddock, 118 N. Y. App. Div. 412, 103 N. Y. Supp. 584.

5. Wilson *v.* Hendee, (N. J. 1907) 66 Atl. 413; Haddock *v.* Haddock, 118 N. Y. App. Div. 412, 103 N. Y. Supp. 584.

484. 3. **In Equity** the tru relationship of the parties may be inquired into and it may be shown that the maker was, in fact, a surety and the indorser the principal. Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214.

4. Byrd *v.* Marietta Fertilizer Co., 127 Ga. 30, 56 S. E. 86.

485. 1. **Statute of Frauds as Affecting Contract between Indorsers.** — Wilson *v.* Hendee, (N. J. 1907) 66 Atl. 413.

486. 1. Torbert *v.* Montague, (Colo. 1906) 87 Pac. 1145.

Indorsement as Agent. — A person whose name does not appear upon a promissory note cannot be charged as an indorser thereof by parol proof that the nominal payee in accepting and indorsing it was acting as his authorized agent, where nothing upon the face of the note suggests the existence of an agency. New York L. Ins. Co. *v.* Martindale, 75 Kan. 142, 88 Pac. 559.

5. Kinsel *v.* Ballou, (Cal. 1907) 91 Pac. 620.

6. **Parol Evidence Inadmissible to Show that Condition Was Attached to an Indorsement.** — Hopkins *v.* Merrill, 79 Conn. 626, 66 Atl. 174.

487. 1. Nethercutt *v.* Hopkins, 38 Wash. 577, 80 Pac. 798.

2. Nethercutt *v.* Hopkins, 38 Wash. 577, 80 Pac. 798.

6. Goette *v.* Sutton, 128 Ga. 179, 57 S. E. 308.

7. **Indorsement by Payee and Return to Maker.** — Where the payee indorsed a note and returned it to the maker under an agreement that the maker should deliver it to a third person, such third person having knowledge of this agreement, it was held that the payee could not be held liable as an indorser. Bradley *v.* Bush, 1 Cal. App. 516, 82 Pac. 560.

488. 3. Keyser *v.* Warfield, 100 Md. 72, 59 Atl. 189, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488.

6. De Clerque *v.* Campbell, 231 Ill. 442, 83 N. E. 224.

489. 1. De Clerque *v.* Campbell, 231 Ill. 442, 83 N. E. 224.

3. Columbia Finance, etc., Co. *v.* Purcell, 146 Fed. 85; Lake *v.* Little Rock Trust Co., 77 Ark. 53, 7 Ann. Cas. 394, 90 S. W. 847; Jones *v.* Pine Bluff Bank, 80 Ark. 285, 96 S. W. 1060; Keyser *v.* Warfield, 103 Md. 161, 63 Atl. 217; Oexner *v.* Loehr, 117 Mo. App. 698, 93 S. W. 333; Thompson *v.* Brown, 121 Mo. App. 524, 97 S. W. 242; Lyndon Sav. Bank *v.* International Co., 78 Vt. 169, 62 Atl. 50.

Liability of Irregular Indorser under Negotiable Instruments Law. — Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; Quimby *v.* Varnum, 190 Mass. 211, 76 N. E. 671; Wilson *v.* Hendee, (N. J. 1907) 66 Atl. 413; Gibbs *v.* Guaraglia, (N. J. 1907) 67 Atl. 81; Haddock *v.* Haddock, 118 N. Y. App. Div. 412, 103 N. Y. Supp. 584; Deahy *v.* Choquet, (R. I. 1907) 67 Atl. 421.

Partner Irregularly Indorsing Firm Note Liable as Indorser as Well as Maker, under Rhode Island Negotiable Instruments Law. — National Exch. Bank *v.* Lubrano, (R. I. 1908) 68 Atl. 944.

490. 4. Meyer *v.* Foster, 147 Cal. 166, 81 Pac. 402, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 490.

Massachusetts. — Prior to the enactment of the Negotiable Instruments Law an indorser before delivery was a joint promissor. It is otherwise since that enactment. Quimby *v.* Varnum, 190 Mass. 211, 76 N. E. 671; Toole *v.* Crafts, 193 Mass. 110, 78 N. E. 775; State Bank, etc., Co. *v.* Evans, (Mass. 1908) 84 N. E. 329. And see cases cited in preceding note.

491. 1. De Clerque *v.* Campbell, 231 Ill. 442, 83 N. E. 224.

Nature of Irregular Indorser's Liability in West Virginia. — Golding Sons Co. *v.* Cameron Pottery Co., 60 W. Va. 317, 55 S. E. 396; Peters *v.* Nolan Coal Co., 61 W. Va. 392, 56 S. E. 735; Quesenberry *v.* Wood, (W. Va. 1907) 60 S. E. 881.

492. 1. **Under the Negotiable Instruments Law** (N. Y. Laws 1897, c. 612, § 114) an irregular indorser before delivery is liable as indorser where the instrument is payable to the order of a third person, and this liability is to the payee and to all subsequent parties. Far Rockaway Bank *v.* Norton, 186 N. Y. 484, 79 N. E. 709. And see cases cited *ante*, **489.** 3.

3. Thompson *v.* Brown, 121 Mo. App. 524, 97 S. W. 242; Lyndon Sav. Bank *v.* International Co., 78 Vt. 169, 62 Atl. 50.

4. Kinsel *v.* Wieland, 38 Colo. 296, 88 Pac. 153; Crosby *v.* Woodbury, (Colo. 1905) 89 Pac. 34; De Clerque *v.* Campbell, 231 Ill. 442, 83 N. E. 224; Oexner *v.* Loehr, 117 Mo. App. 698, 93 S. W. 333.

Admissibility of Parol Evidence under Negotiable Instruments Law. — Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; Wilson *v.* Hendee, (N. J. 1907) 66 Atl. 413.

494. 2. State *v.* Allen, 124 Mo. App. 465, 103 S. W. 1090.

Irregular Indorser Liable as Guarantor. — Thompson *v.* Brown, 121 Mo. App. 524, 97 S. W. 242.

3. Kidd *v.* Beckley, (W. Va. 1908) 60 S. E. 1089.

495. 3. **Method of Discharge under Maryland Negotiable Instruments Law.** — Vanderford *v.* Farmers', etc., Nat. Bank, 105 Md. 164, 66 Atl. 47.

Payment by Mistake Recovered Back by Trustee in Bankruptcy Insufficient to Discharge Indorser or Surety. — Second Nat. Bank *v.* Prewett, 117 Tenn. 1, 96 S. W. 334; Hooker *v.* Blount, (Tex. Civ. App. 1906) 97 S. W. 1083.

7. **When Payment after Banking Hours Allowed.** — Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892.

Burden of Proving Payment on Person Alleging It. — L. W. Blinn Lumber Co. *v.* McArthur, 150 Cal. 610, 89 Pac. 437.

Sufficiency of Evidence to Show Extension of Time of Payment. — Brenneke *v.* Smallman, 2 Cal. App. 306, 83 Pac. 302; Woolwine *v.* Storrs, 148 Cal. 7, 82 Pac. 434.

Extension of Time — Sufficiency of Consideration. — Kellam *v.* Brode, 1 Cal. App. 315, 82 Pac. 213. "An agreement to pay interest is a sufficient consideration for the extension of time of the payment of a note." Agnew *v.* Agnew, 38 Ind. App. 16, 77 N. E. 952.

Paying Interest in Advance Not a Contract for Extension of Time of Payment. — Brenneke *v.* Smallman, 2 Cal. App. 306, 83 Pac. 302.

496. 2. Gemkow *v.* Link, 225 Ill. 21, 80 N. E. 47; Hunter *v.* Johnson, 119 Mo. App. 487, 94 S. W. 311; Hoffmaster *v.* Black, (Ohio 1908) 84 N. E. 423; Staff *v.* Victoria First Nat. Bank, (Tex. Civ. App. 1906) 97 S. W. 1089; Marling *v.* Mommensen, 127 Wis. 363, 7 Ann. Cas. 364, 106 N. W. 844.

Effect of Agreement that Payment Shall Be Made to Third Person. — Bovaird, etc., Mfg. Co. *v.* Ferguson, 215 Pa. St. 235, 64 Atl. 513. Where the owner of a note clothes another with the indicia of ownership and ostensible authority to contract with the maker of the note for the discharge thereof, and the maker, relying upon such ostensible ownership and authority, delivers to such person certain property, which the latter accepts in payment and discharge of the note, the owner is estopped to deny the authority of such person to act in the premises. Home Sav. Bank *v.* Stewart, (Neb. 1907) 110 N. W. 947.

Payment to the Agent of the Holder at whose office the note is payable, and who has possession of it, is sufficient to release the payor. Fifth Cong. Church *v.* Bright, 28 App. Cas. (D. C.) 229.

Payment to Payee of Nonnegotiable Note Sufficient in Absence of Notice of Assignment. — Dickerson *v.* Higgins, 15 Okla. 588, 82 Pac. 649.

497. 1. Theard *v.* Gueringer, 115 La. Ann. 242, 38 So. 979.

2. The original payee of a negotiable note in possession thereof, is presumed to be the owner, and has ostensible authority to accept money or property in discharge thereof, although the note bears the blank indorsement of such payee. Home Sav. Bank *v.* Stewart, (Neb. 1907) 110 N. W. 947.

3. Theard *v.* Gueringer, 115 La. Ann. 242, 38 So. 979.

4. **Illegal Payment.** — The rule that payment of a note by the maker terminates the liability of the indorser, does not apply where the payment is preferential payment and made contrary to statute, as such a payment is not payment in the contemplation of the law. Perry *v.* Van Norden Trust Co., 118 N. Y. App. Div. 288, 103 N. Y. Supp. 543.

Deposit of Security as Payment. — The fact that one of the joint makers of a note deposits securities to protect the holder in case the holder recovers judgment against the other and the judgment is not paid, does not constitute a payment of the note so as to prevent the maintenance of the action against the other signer. Capital Nat. Bank *v.* Robinson, 41 Wash. 454, 83 Pac. 1021.

Payment by Maker a Recognition of Note's Validity. — Staunton *v.* Smith, (Del. 1906) 65 Atl. 593.

6. In the case of a joint note, any payment by either inures to the benefit of all. Alston *v.* Orr, (Tex. Civ. App. 1907) 105 S. W. 234, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 497.

499. 6. Quimby *v.* Varnum, 190 Mass. 211, 76 N. E. 671. See also Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

Payment by Executor of Deceased Indorser Releases Estate. — Packard *v.* Dunfee, 119 N. Y. App. Div. 599, 104 N. Y. Supp. 140.

Right of Person Paying Note of Third Person by Mistake. — Charnock *v.* Jones, (S. Dak. 1908) 115 N. W. 1072.

500. 2. **Indorser before Delivery Cannot Reissue Note after Payment.** — Quimby *v.* Varnum, 190 Mass. 211, 76 N. E. 671.

Holder Cannot Reissue after Payment by Indorser. — Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533.

502. 1. **Payment to Impostor.** — Where the drawer of a draft or bill of exchange delivers it to an impostor, supposing him to be the person whose name he has assumed, the drawer must, as against the drawee or a *bona fide* holder for value, bear the loss, where the impostor obtains payment of or negotiates the draft or note. Seaboard Nat. Bank *v.* Bank of America, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 103, 100 N. Y. Supp. 740.

Recovery from Indorser of Money Paid on False Indorsement. — Heim *v.* Neubert, (Wash. 1908) 94 Pac. 104.

Negligence of Drawee as Affecting Right to Recover under Law of France. — Kessler *v.* Armstrong Cork Co., (C. C. A.) 158 Fed. 744.

Payment on Forged Instrument. — To entitle a holder to retain money obtained by forgery, he should be able to maintain that the whole responsibility of determining the validity of the signature was placed upon the drawee of

the bill, and that the negligence of the drawee was not lessened by any disregard of duty on the holder's part, or by the failure of any precaution which from his implied assertion in presenting the instrument as a sufficient voucher, the drawee had a right to believe he had taken. Ford *v.* People's Bank, 74 S. Car. 180, 7 Ann. Cas. 744, 54 S. E. 204.

504. 3. Burden of Proving Cancellation Unintentional or Unauthorized on Party Alleging It. — McCormick *v.* Shea, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 592, 99 N. Y. Supp. 467.

505. 6. Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674; Browere *v.* Carpenter, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 525, 99 N. Y. Supp. 531; Fitts *v.* A. F. Messick Grocery Co., 144 N. Car. 463, 57 S. E. 164; York First Nat. Bank *v.* Diehl, 218 Pa. St. 588, 67 Atl. 897; Deahy *v.* Choquet, (R. I. 1907) 67 Atl. 421.

7. Indorsers Not Released by Extension Granted Indorser after Protest and Notice. — York First Nat. Bank *v.* Diehl, 218 Pa. St. 588, 67 Atl. 897.

8. Ravenswood Bank *v.* Wetzel, 58 W. Va. 1, 6 Ann. Cas. 48, 50 S. E. 886.

Written Release Essential under Washington Negotiable Instruments Law. — (Laws 1899, p. 361, § 122.) Baldwin *v.* Daly, 41 Wash. 416, 83 Pac. 724.

Extension Granted by Cashier of Bank Owning Note Does Not Relieve Indorser. — Ravenswood Bank *v.* Wetzel, 58 W. Va. 1, 6 Ann. Cas. 48, 50 S. E. 886.

506. 1. Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674.

2. Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674; Ravenswood Bank *v.* Wetzel, 58 W. Va. 1, 6 Ann. Cas. 48, 50 S. E. 886; Fleming *v.* McLeod, 39 Can. Sup. Ct. 290.

Payment of Interest in Advance Not Sufficient Consideration. — Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674.

3. York First Nat. Bank *v.* Diehl, 218 Pa. St. 588, 67 Atl. 897; Welch *v.* Kukuk, 128 Wis. 419, 107 N. W. 301.

Payment of Interest in Advance Not Sufficient to Release Indorser. — Miners, etc., Bank *v.* Rogers, 123 Mo. App. 569, 100 S. W. 534.

5. Miners, etc., Bank *v.* Rogers, 123 Mo. App. 569, 100 S. W. 534.

Effect of Reservation after Release of One of Joint Makers. — Bogart *v.* Robertson, 11 Ont. L. Rep. 295.

An Agreement by the Holder of Past Due Notes made with the maker, without the knowledge or consent of the indorser, to extend the time for payment to a fixed date, and accept in full satisfaction a compromise if paid at the date fixed, will discharge the indorser although the compromise was not paid, and it was expressly agreed that in that event the holder's rights against all parties should be preserved. Fleming *v.* McLeod, 37 N. Bruns. 630.

7. Failure of Holder to Enforce Payment. — The fact that a bank which is the owner of a note upon which there is a surety is, at its maturity, indebted, upon general deposit account, to the principal upon the note in a sum larger than that due upon the note, and fails to exercise its right to set off the amount of the note against this deposit indebtedness, and allows the deposit to be checked out by such depositor, does not discharge the surety on the note. Davenport *v.* State Banking Co., 126 Ga. 136, 7 Ann. Cas. 1000, 54 S. E. 977.

8. Where two purchasers of the property gave their joint note for a part of the purchase price, and their individual note for the balance, an agreement between the payee and one of such parties that the latter would have to pay no part of his note, does not release the other party. Commercial, etc., Bank *v.* Pott, 150 Cal. 357, 89 Pac. 431.

Intention Controlling. — Rockwell *v.* Wood, 39 Nova Scotia 423.

9. Joint Maker Not Released by Unauthorized Extension of Time. — Vanderford *v.* Farmers, etc., Nat. Bank, 105 Md. 164, 66 Atl. 47.

BILLS OF LADING.

509. 5. Sellers *v.* Savannah, etc., R. Co., 123 Ga. 386, 51 S. E. 398, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 509.

A Receipt for goods for the purpose of shipping them to a point named in the memorandum following the shipper's signature, is not a bill of lading. Pittsburgh, etc., R. Co. *v.* Bryant, 36 Ind. App. 340, 75 N. E. 829.

510. 3. Pittsburgh, etc., R. Co. *v.* Bryant, 36 Ind. App. 340, 75 N. E. 829.

511. 1. See Atlantic, etc., R. Co. *v.* Howard Supply Co., 125 Ga. 478, 54 S. E. 530.

2. Statutory Enactments. — Watkins Nat. Bank *v.* Cleveland, etc., R. Co., 117 Mo. App. 248, 93 S. W. 846.

512. 6. See Southern Kansas R. Co. *v.* J. W. Burgess Co., (Tex. Civ. App. 1905) 90 S. W. 189.

513. 7. A shipping receipt containing the expression, "Received * * * by the Panhandle R. R. Co." does not necessarily mean that such railroad was the initial carrier, in the absence of explanation to the contrary. Hoye *v.* Pennsylvania R. Co., 114 N. Y. App. Div. 821, 100 N. Y. Supp. 190.

8. Estoppel of Carrier to Deny Authority of Agent to Make Terms. — Louisville, etc., R. Co. *v.* Mink, (Ky. 1907) 103 S. W. 294.

Reference to Charter Party. — See West Hartlepool Steam Nav. Co. *v.* 450 Tons Kainit, 151 Fed. 886; Temperley Steam Shipping Co. *v.* Smyth, (1905) 2 K. B. 791 (*overruling* Runciman *v.* Smyth, 20 Times L. Rep. 625); Moel Tryvan Ship Co. *v.* Kruger, (1906) 2 K. B. 792; The Northumbria, (1906) P. 292; Akbar *v.* Anglo-Arabian, etc., Steamship Co., 95 L. T. N. S. 610.

Cases Construing Terms. — Tweedie Trading Co. *v.* Pitch Pine Lumber Co., 156 Fed. 88; Winslow *v.* Thompson, (C. C. A.) 134 Fed. 546, *affirming* 130 Fed. 1001; Pittsburgh, etc., R. Co. *v.* Bryant, 36 Ind. App. 340, 75 N. E. 829; Rosenstein *v.* Vogemann, 102 N. Y. App. Div. 39, 92 N. Y. Supp. 86; Turner *v.* Haji Goolam Mahomed Azam, (1904) A. C. 826.

Limitation of Liability. — See Southern R. Co. *v.* Goldstein, 146 Ala. 386, 41 So. 173; The Folmina, 143 Fed. 636; Arkansas Southern R. Co. *v.* Murphy, 83 Ark. 562, 103 S. W.

743; Hecht *v.* Grand Trunk R. Co., (Wis. 1907) 113 N. W. 68.

9. Missouri, etc., R. Co. *v.* Patrick, 5 Indian Ter. 742, 88 S. W. 330, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513. See also Bell *v.* Western, etc., R. Co., 125 Ga. 510, 54 S. E. 532; Moel Tryvan Ship Co. *v.* Kruger, (1906) 2 K. B. 792.

An unsigned bill of lading is competent evidence of the contract of shipment as actually made. Missouri, etc., R. Co. *v.* Patrick, (C. C. A.) 144 Fed. 632, *modifying* 5 Indian Ter. 742, 88 S. W. 330.

514. 2. Turner *v.* Haji Goolam Mahomed Azam, (1904) A. C. 826.

7. Missouri, etc., R. Co. *v.* Patrick, 5 Indian Ter. 742, 88 S. W. 330, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 514.

515. 1. An express stipulation in a bill of lading that the goods shall be taken as worth not more than a given sum, or that the company will not be liable beyond a given amount, will not be enforced so as to exempt a negligent carrier from liability for the true value. Atlantic Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070.

2. De Wolff *v.* Adams Express Co., (Md. 1907) 67 Atl. 1099. See also Donlon *v.* Southern Pac. Co., (Cal. 1907) 91 Pac. 603; Liquid Carbonic Co. *v.* Norfolk, etc., R. Co., (Va. 1907) 58 S. E. 569.

3. Baltimore, etc., R. Co. *v.* Doyle, (C. C. A.) 142 Fed. 669, *affirming* 126 Fed. 841. See also Missouri, etc., R. Co. *v.* Patrick, (C. C. A.) 144 Fed. 632, *modifying* 5 Indian Ter. 742, 88 S. W. 330.

Under the Code of *Georgia*, in order that a clause of a bill of lading limiting a carrier's liability may be binding upon the shipper, he must expressly assent thereto. Central of Georgia R. Co. *v.* City Mills Co., 128 Ga. 841, 58 S. E. 197; Southern Express Co. *v.* Briggs, 1 Ga. App. 294, 57 S. E. 1066.

A bill of lading limiting the carrier's liability must be governed by the laws of the state where it is made. Frasier *v.* Charleston, etc., R. Co., 73 S. Car. 140, 52 S. E. 964.

4. St. Louis, etc., R. Co. *v.* Burgin, (Ark. 1907) 104 S. W. 161; St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760. *Compare* Gulf, etc., R. Co. *v.* Funk, (Tex. Civ. App. 1906) 92 S. W. 1032.

516. 3. Cau *v.* Texas, etc., R. Co., 194 U. S. 431, 24 U. S. Sup. Ct. 663; Missouri, etc., R. Co. *v.* Patrick, 5 Indian Ter. 742, 88 S. W. 330, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 516; De Wolff *v.* Adams Express Co., (Md. 1907) 67 Atl. 1099; Singer *v.* Merchants Despatch Transp. Co., 191 Mass. 449, 77 N. E. 882; Hoffman *v.* Metropolitan Express Co., 111 N. Y. App. Div. 407, 97 N. Y. Supp. 838. See also Frasier *v.* Charleston, etc., R. Co., 73 S. Car. 140, 52 S. E. 964.

Where an unsigned bill of lading is received and acted upon by the shipper's agent and by the shipper himself, it must be treated as the contract of shipment, and the shipper cannot be heard to say that his agent did not read or appreciate the provisions. Missouri, etc., R. Co. *v.* Patrick, (C. C. A.) 144 Fed. 632, *modifying* 5 Indian Ter. 742, 88 S. W. 330.

Under the Code of *Georgia* a common carrier cannot limit its liability except by express contract, and the mere acceptance of a bill of lading which contains a limit upon liability does not amount to an express contract. Central of Georgia R. Co. *v.* City Mills Co., 128 Ga. 841, 58 S. E. 197; Atlantic Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070.

517. 1. Missouri, etc., R. Co. *v.* Patrick, 5 Indian Ter. 742, 88 S. W. 330, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 517.

3. Baltimore, etc., R. Co. *v.* Doyle, (C. C. A.) 142 Fed. 669, *affirming* 126 Fed. 841.

518. 1. Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29; The Citta Di Palermo, 153 Fed. 378; Gulf, etc., R. Co. *v.* Funk, (Tex. Civ. App. 1906) 92 S. W. 1032. See also Southern R. Co. *v.* Levy, 144 Ala. 614, 39 So. 95, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 517; Frey *v.* New York Cent., etc., R. Co., 114 N. Y. App. Div. 747, 100 N. Y. Supp. 225.

519. 1. See Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29.

4. Baltimore, etc., R. Co. *v.* Doyle, (C. C. A.) 142 Fed. 669, *affirming* 126 Fed. 841.

521. 2. Singer *v.* Merchants Despatch Transp. Co., 191 Mass. 449, 77 N. E. 882.

Doctrine of United States Courts. — See Baltimore, etc., R. Co. *v.* Doyle, (C. C. A.) 142 Fed. 669, *affirming* 126 Fed. 841.

3. See Hoffman *v.* Metropolitan Express Co., 111 N. Y. App. Div. 407, 97 N. Y. Supp. 838; Turner *v.* Haji Goolam Mahomed Azam, (1904) A. C. 826.

Where there is a charter party, a bill of lading operates as a receipt for the goods, and as a document of title passing the property of the goods, but not as varying the contract between the charterer and the shipowner. The Fri, (C. C. A.) 154 Fed. 333, *reversing* 140 Fed. 123.

522. 1. Hardie *v.* Vicksburg, etc., R. Co., 118 La. 253, 42 So. 793; National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 123.

2. Stamped Signature Must Be Proved. — Bell *v.* Western, etc., R. Co., 125 Ga. 510, 54 S. E. 532.

3. Bell *v.* Western, etc., R. Co., 125 Ga. 510, 54 S. E. 532.

4. In Absence of Charter Party. — The Eva D. Rose, 151 Fed. 704.

5. The Presque Isle, 140 Fed. 202, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 522; Alabama G. S. R. Co. *v.* Commonwealth Cotton Mfg. Co., 146 Ala. 388, 42 So. 406; Irwin Bank *v.* American Express Co., 127 Iowa 1, 102 N. W. 107; Illinois Cent. R. Co. *v.* Nelson, (Ky. 1906) 97 S. W. 757.

6. Alabama G. S. R. Co. *v.* Commonwealth Cotton Mfg. Co., 146 Ala. 388, 42 So. 406; Mussellam *v.* Cincinnati, etc., R. Co., (Ky. 1907) 104 S. W. 337; Pittsburg, etc., R. Co. *v.* American Tobacco Co., (Ky. 1907) 104 S. W. 377.

7. The Presque Isle, 140 Fed. 202, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 522.

Statement that Goods Were in Apparent Good Order. — An acknowledgment of the good condition of merchandise cannot be presumed from the mere delivery of a bill of lading containing the expressions that the goods when received were "in apparent good order, except as noted, contents and condition of contents of packages unknown." Jean *v.* Flagg, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 421, 90 N. Y. Supp. 289.

523. 1. Alabama G. S. R. Co. *v.* Commonwealth Cotton Mfg. Co., 146 Ala. 388, 42 So. 406.

525. 4. Atlantic, etc., R. Co. *v.* Spires, 1 Ga. App. 22, 57 S. E. 973.

526. 4. See Atlantic, etc., R. Co. *v.* Spires, 1 Ga. App. 22, 57 S. E. 973.

7. Mussellam *v.* Cincinnati, etc., R. Co., (Ky. 1907) 104 S. W. 337; Pittsburg, etc., R. Co. *v.* American Tobacco Co., (Ky. 1907) 104 S. W. 377.

527. 1. Alabama G. S. R. Co. *v.* Commonwealth Cotton Mfg. Co., 146 Ala. 388, 42 So. 406. See also Irwin Bank *v.* American Express Co., 127 Iowa 1, 102 N. W. 107.

2. Alabama G. S. R. Co. *v.* Commonwealth Cotton Mfg. Co., 146 Ala. 388, 42 So. 406.

3. Alabama G. S. R. Co. *v.* Commonwealth Cotton Mfg. Co., 146 Ala. 388 42 So. 406; Mussellam *v.* Cincinnati, etc., R. Co., (Ky. 1907) 104 S. W. 337; Pittsburg, etc., R. Co. *v.* American Tobacco Co., (Ky. 1907) 104 S. W. 377.

Words "Weight, Measure, and Contents Unknown." — The Seefahrer, 133 Fed. 793.

529. 2. **Stipulation in Charter Party Making Bill of Lading Conclusive Evidence.** — Oostzee Stoomvart Maats *v.* Bell, 11 Com. Cas. (Eng.) 214, 22 Times L. Rep. 643.

5. Foley *v.* Lehigh Valley R. Co., (Supm. Ct. App. T.) 96 N. Y. Supp. 182.

6. **Admissibility of Parol Evidence to Show Actual Condition of Goods.** — Foley *v.* Lehigh Valley R. Co., (Supm. Ct. App. T.) 96 N. Y. Supp. 182; Hoffman *v.* Metropolitan Express Co., 111 N. Y. App. Div. 407, 97 N. Y. Supp. 838.

530. 1. Foley *v.* Lehigh Valley R. Co., (Supm. Ct. App. T.) 96 N. Y. Supp. 182.

531. 4. Compania Naviera Vasconzada *v.* Churchill, (1906) 1 K. B. 237.

532. 1. Compania Naviera Vasconzada *v.* Churchill, (1906) 1 K. B. 237.

3. Roy *v.* Northern Pac. R. Co., 42 Wash. 572, 7 Ann. Cas. 728, 85 Pac. 53.

4. Clarke *v.* Clyde Steamship Co., 148 Fed. 243; Alabama G. S. R. Co. *v.* Commonwealth Cotton Mfg. Co., 146 Ala. 388, 42 So. 406; Watkins Nat. Bank *v.* Cleveland, etc., R. Co., 117 Mo. App. 248, 93 S. W. 846.

533. 2. Blanchet *v.* Powell's Llantivit Collieries Co., L. R. 9 Exch. 74.

5. Henderson *v.* Louisville, etc., R. Co., 116 La. 1047, 41 So. 252; Swedish-American Nat. Bank *v.* Chicago, etc., R. Co., 96 Minn. 436, 105 N. W. 69; Roy *v.* Northern Pac. R. Co., 42 Wash. 572, 7 Ann. Cas. 728, 85 Pac. 53.

Under the *Missouri* statute prohibiting carriers from issuing bills of lading except for goods actually received, a railway company which has issued bills of lading for goods in the hands of a connecting carrier, is not estopped from denying that it received the goods. Watkins Nat. Bank *v.* Cleveland, etc., R. Co., 117 Mo. App. 248, 93 S. W. 846.

Reason for Following English Doctrine. — Swedish-American Nat. Bank *v.* Chicago, etc., R. Co., 96 Minn. 436, 105 N. W. 69.

534. 1. **Statutory Enactments.** — Thompson *v.* Alabama Midland R. Co., 122 Ala. 378, 24 So. 931; Alabama G. S. R. Co. *v.* Commonwealth Cotton Mfg. Co., 146 Ala. 388, 42 So. 406; Loyd *v.* Kansas City, etc., R. Co., 88 Miss. 422, 40 So. 1005.

535. 3. Watkins Nat. Bank *v.* Cleveland, etc., R. Co., 117 Mo. App. 248, 93 S. W. 846. See also Thompson *v.* Alabama Midland R. Co., 122 Ala. 378, 24 So. 931.

4. **"Contents and Condition Unknown."** — Alabama G. S. R. Co. *v.* Commonwealth Cotton Mfg. Co., 146 Ala. 388, 42 So. 406.

536. 5. The Presque Isle, 140 Fed. 202.

537. 1. St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760.

538. 6. Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29; Gulf, etc., R. Co. *v.* Funk, (Tex. Civ. App. 1906) 92 S. W. 1032. See also The Citta Di Palermo, 153 Fed. 378.

539. 2. **Stipulation in Respect to Damages in Case of Loss.** — Southern R. Co. *v.* Cofer, (Ala. 1907) 43 So. 102.

540. 2. **Clause for Delivery "with Reasonable Dispatch."** — See Southern R. Co. *v.* Cofer, (Ala. 1907) 43 So. 102.

4. **Where a Bill of Lading Is Ambiguous** as to the place of delivery, evidence of the existence of a custom is admissible to show the sense in which the contracting parties intended the bill of lading should be understood in respect to the place of delivery. Southern R. Co. *v.* Cofer, (Ala. 1907) 43 So. 102.

5. See St. Louis, etc., R. Co. *v.* Burgin, (Ark. 1907) 104 S. W. 161; Atlantic Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070; Georgia Southern, etc., R. Co. *v.* Greer, 2 Ga. App. 516, 58 S. E. 782; Rosenstein *v.* Vogemann, 102 N. Y. App. Div. 39, 92 N. Y. Supp. 86.

545. 1. Singer *v.* Merchants Despatch Transp. Co., 191 Mass. 449, 77 N. E. 882.

2. Steidl *v.* Minneapolis, etc., R. Co., 94 Minn. 233, 102 N. W. 701, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 545.

4. National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134; Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108.

546. 1. Walsh *v.* Hiawatha First Nat. Bank, 228 Ill. 446, 81 N. E. 1067; Kentucky Refining Co. *v.* Morilton Bank, (Ky. 1905) 89 S. W. 492; Midland Nat. Bank *v.* Missouri. etc., R. Co., 62 Mo. App. 531; Gratiot St. Warehouse Co. *v.* Missouri, etc., R. Co., 124 Mo. App. 545, 102 S. W. 11.

Statutory Provisions. — Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247; Roy *v.* Northern Pac. R. Co., 42 Wash. 572, 7 Ann. Cas. 728, 85 Pac. 53.

Effect of Words "Not Negotiable" Printed

Across Face of Bill. — Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108; Midland Nat. Bank *v.* Missouri, etc., R. Co., 62 Mo. App. 531.

The non-negotiability of a bill of lading does not prevent it from being assignable. National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134.

Effect of Words "Not Negotiable unless Delivery Is to Be Made to the Consignee or Order." — Barnum Grain Co. *v.* Great Northern R. Co., 102 Minn. 147, 112 N. W. 1030, 1049.

2. Midland Nat. Bank *v.* Missouri, etc., R. Co., 62 Mo. App. 531.

4. Walsh *v.* Hiawatha First Nat. Bank, 228 Ill. 446, 81 N. E. 1067; National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134; National Bank *v.* Citizens' Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 209.

547. 2. Hiawatha First Nat. Bank *v.* Walsh, 131 Ill. App. 508; Barnum Grain Co. *v.* Great Northern R. Co., 102 Minn. 147, 112 N. W. 1030, 1049; Midland Nat. Bank *v.* Missouri, etc., R. Co., 62 Mo. App. 531; National Bank *v.* Citizens' Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 209. See also Delta Bag Co. *v.* Kearns, 112 Ill. App. 269.

3. See Midland Nat. Bank *v.* Missouri, etc., R. Co., 62 Mo. App. 531.

548. 1. Barnum Grain Co. *v.* Great Northern R. Co., 102 Minn. 147, 112 N. W. 1030, 1049.

3. Mather *v.* Gordon, 77 Conn. 341, 59 Atl. 424; Seward *v.* Miller, 106 Va. 309, 55 S. E. 681. See also National Bank *v.* Citizens' Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 209; Ferris *v.* Canadian Northern R. Co., 15 Manitoba 134.

The special property in the goods which the transferee who discounts a bill of exchange acquires, is superior to the rights of an attaching creditor of the consignor. Mather *v.* Gordon, 77 Conn. 341, 59 Atl. 424; Tishomingo Sav. Inst. *v.* Johnson, 146 Ala. 691, 40 So. 503; Walsh *v.* Hiawatha First Nat. Bank, 228 Ill. 446, 81 N. E. 1067; Sabel *v.* Planters Nat. Bank, 110 Ky. 299, 61 S. W. 367; Temple Nat. Bank *v.* Louisville Cotton Oil Co., (Ky. 1904) 82 S. W. 253.

4. Walsh *v.* Hiawatha First Nat. Bank, 228 Ill. 446, 81 N. E. 1067. See also Kentucky Refining Co. *v.* Morilton Bank, (Ky. 1905) 89 S. W. 492.

Transferee Not Liable for Breach of Contract of Sale. — Leonhardt *v.* Small, 117 Tenn. 153, 96 S. W. 1051.

5. Askew *v.* Southern R. Co., 1 Ga. App. 79, 58 S. E. 242; Seward *v.* Miller, 106 Va. 309, 55 S. E. 681.

549. 1. Hardie *v.* Vicksburg, etc., R. Co., 118 La. 253, 42 So. 793; National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134; Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108; Gratiot St. Warehouse Co. *v.* Missouri, etc., R. Co., 124 Mo. App. 545, 102 S. W. 11; National Bank *v.* Citizens' Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 209.

3. Haas *v.* Citizens Bank, 144 Ala. 562, 39 So. 129, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 549.

6. Merchants Nat. Bank *v.* Bales, 148 Ala. 279, 41 So. 516; National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134; Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108.

7. Merchants Nat. Bank *v.* Bales, 148 Ala. 279, 41 So. 516.

Where a bank buys drafts with bills of lading attached, with knowledge that the consignor does not own the goods, is insolvent, and is going to appropriate the money received instead of turning it over to the true owners, the latter may follow the goods or what the bank gets for them, into its hands. Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247.

550. 4. Merchants Nat. Bank *v.* Bales, 148 Ala. 279, 41 So. 516.

551. 2. See Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247.

552. 2. National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134. See also Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108.

553. 4. Barnum Grain Co. *v.* Great Northern R. Co., 102 Minn. 147, 112 N. W. 1030, 1049. See also National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134.

5. Barnum Grain Co. *v.* Great Northern R. Co., 102 Minn. 147, 112 N. W. 1030, 1049.

554. 3. Henderson *v.* Louisville, etc., R. Co., 116 La. 1047, 41 So. 252; Merchants Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108.

Under the *Louisiana* statute providing that bills of lading are "negotiable to the same extent as bills of exchange and promissory notes," bills of lading are negotiable instruments in full without restriction. Hardie *v.* Vicksburg, etc., R. Co., 118 La. 253, 42 So. 793 (*overruling* Hunt *v.* Mississippi Cent. R. Co., 29 La. Ann. 448).

Statutes Making Bills of Lading Negotiable by Indorsement and Delivery. — Barnum Grain Co. *v.* Great Northern R. Co., 102 Minn. 147, 112 N. W. 1030, 1049; Roy *v.* Northern Pac. R. Co., 42 Wash. 572, 7 Ann. Cas. 728, 85 Pac. 53.

BILLS OF SALE.

555. 2. Promissory Note Retaining Title Not Bill of Sale. — Berry *v.* Robinson, 122 Ga. 575, 50 S. E. 378.

557. 2. The Affidavit Is Not Bad because it is sworn to before the solicitor who drew the bill of sale. Mosher *v.* O'Brien, 37 Nova Scotia 286.

558. 1. Klein *v.* Patterson, 30 Pa. Super. Ct. 495, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 558.

562. 1. Greeson *v.* German Nat. Bank, 78 Ark. 141, 95 S. W. 439; Clark *v.* Williams, 190 Mass. 219, 76 N. E. 723. See further the title CHATTEL MORTGAGES, **951.** 1 *et seq.*

A Recital in an instrument purporting to be a bill of sale that it is made in consideration of the surrender and cancellation of a note is not conclusive of its character as such. Gibbons *v.* Joseph Gibbons Consol. Min., etc., Co., 37 Colo. 96, 86 Pac. 94.

565. 2. Gibbons *v.* Joseph Gibbons Consol. Min., etc., Co., 37 Colo. 96, 86 Pac. 94. See further the title CHATTEL MORTGAGES, 951. 1.

568. 3. Lower *v.* Hickman, 80 Ark. 505, 97 S. W. 681.

569. 3. **Registration of Instrument Necessary.** — Maas *v.* Pepper, (1905) A. C. 102, 92 L. T. N. S. 371, 74 L. J. K. B. 452, *affirming* Mellor *v.* Maas, (1903) 1 K. B. 226; Hopkins *v.* Gudgeon, (1906) 1 K. B. 690, 94 L. T. N. S. 578, 75 L. J. K. B. 452; Miller *v.* Blair, 37 Nova Scotia 293.

Failure to Record Immaterial if Vendee Is Actual Owner. — Montesano Nat. Bank *v.* Graham, 40 Wash. 490, 82 Pac. 881.

As against One Who Is Not a Bona Fide Purchaser of the property, and who has notice of the claim, an unregistered bill of sale is good. McLeod *v.* Doucette, 38 Nova Scotia 151.

Letters of Lien in the nature of bills of sale used in the ordinary course of business are not required to be registered. *In re* Young, (1905) 2 K. B. 772, 74 L. J. K. B. 905.

570. 1. **When Instrument a Mortgage, Must Be Recorded.** — Clark *v.* Williams, 190 Mass. 219, 76 N. E. 723.

571. 1. Hopkins *v.* Gudgeon, (1906) 1 K. B. 690, 94 L. T. N. S. 578, 75 L. J. K. B. 452.

But When the Property Is in the Hands of a Third Person, delivery of the bill of sale to the vendee without notice to the person having possession of the property is not sufficient. Clark *v.* Williams, 190 Mass. 219, 76 N. E. 723.

BLASPHEMY AND PROFANITY.

580. 3. **The Words "Go to Hell, You Low-down Devils,"** are not profane, as they lack any imprecation of Divine vengeance and do not imply Divine condemnation. Stafford *v.* State, (Miss. 1907) 44 So. 801.

581. 4. **Defendant Must Know that Others Are Present.** — Roberts *v.* State, 123 Ga. 505, 51 S. E. 505.

582. 2. Stafford *v.* State, (Miss. 1907) 44 So. 801.

BLOCK.

583. 1. Fruita *v.* Williams, 33 Colo. 159, 80 Pac. 132, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 582.

Whether Block Includes Part of Street. — Patterson *v.* Johnson, 214 Ill. 481, 73 N. E. 761.

BLOOD STAINS.

587. 1. **Blood-stained Clothes Worn by the Deceased** are admissible if the testimony in the case is thereby rendered more intelligible. Lucas *v.* State, (Tex. Crim. 1906) 95 S. W. 1055.

588. 1. Mack *v.* State, (Fla. 1907) 44 So. 706.

3. **A Witness Cannot Testify as to the Place** from which a shot was fired simply because he had seen blood in the corner of the room. State *v.* Jennings, 48 Oregon 483, 87 Pac. 524, 89 Pac. 421.

4. People *v.* Pekarz, (N. Y. 1906) 78 N. E. 294; Turner *v.* State, (Tex. Crim. 1905) 89 S. W. 975; Ozark *v.* State, (Tex. Crim. 1907) 100 S. W. 927.

Testimony to Show the Finding of Articles of Clothing on which was fresh blood, on the bank of a creek, a mile from the scene of the murder, on the morning after it was committed, is inadmissible where there is no evidence to connect these clothes with the prisoner. Com. *v.* Johnson, 213 Pa. St. 607, 63 Atl. 134.

Evidence of the Resemblance between Spots upon clothing produced and spots which had been cut from the same clothing, and used by experts in determining whether they were spots of blood, is admissible. State *v.* Miller. 71 N. J. L. 527, 60 Atl. 202.

5. People *v.* Pekarz, (N. Y. 1906) 78 N. E. 294; People *v.* Furlong, 187 N. Y. 198, 79 N. E. 978.

A Hammer Stained with Human Blood, found in close proximity to the dead bodies of persons whose skulls had been crushed with some instrument, may be introduced in evidence. People *v.* Bonier, 189 N. Y. 108, 81 N. E. 949.

Evidence of the Coincidence between the Hand of the accused and a bloody print of a hand upon the wall of the house where the crime was committed, is admissible. State *v.* Miller, 71 N. J. L. 527, 60 Atl. 202.

BOARD.

592. 1. Holstein *v.* Phillips, (N. Car. 1907) 59 S. E. 1037.

2. Holstein *v.* Phillips, (N. Car. 1907) 59 S. E. 1037.

4. Holstein *v.* Phillips, (N. Car. 1907) 59 S. E. 1037.

BOARDS OF HEALTH.

597. 1. **Boards of Health Are Administrative, Not Judicial, Bodies.** — Trabue *v.* Todd County, (Ky. 1907) 102 S. W. 309; State *v.* Adcock, (Mo. 1907) 105 S. W. 270.

The action of a board of health in revoking a license to sell milk is administrative, not judicial, and is, therefore, not reviewable on appeal or certoriari. People *v.* Health Dept., 189 N. Y. 187, 82 N. E. 187, *reversing* 116 N. Y. App. Div. 890, 102 N. Y. Supp. 1145.

598. 1. **Local Board Cannot Delegate Its Powers.** — Taylor *v.* Adair County, 119 Ky. 374, 84 S. W. 299; Com. *v.* Staples, 191 Mass. 384, 77 N. E. 712.

Rules of State Board Must Be Enforced by Local Board. — Frankfort *v.* Irvin, 34 Ind. App. 280, 72 N. E. 652.

Members of a City Board of Health Are City Officers within the meaning of the *New York* Constitution, art. 10, § 2, and an appointment by a county judge to fill a vacancy is invalid. People *v.* Houghton, 182 N. Y. 301, 74 N. E. 830, *affirming* 102 N. Y. App. Div. 209, 92 N. Y. Supp. 661.

Removal. — In the absence of statute a town may not remove members of a board of health. Atty.-Gen. *v.* Stratton, 194 Mass. 50, 79 N. E. 1073.

599. **1. Powers.** — A sanitary district has power to acquire lands and rights of way necessary for the legitimate purposes for which the district was organized. Sanitary Dist. *v.* Martin, 129 Ill. App. 308, *affirmed* 227 Ill. 260, 81 N. E. 417.

3. Pierce *v.* Doolittle, 130 Iowa 333, 106 N. W. 751; Belmont *v.* New England Brick Co., 190 Mass. 442, 77 N. E. 504. See also concurring opinion of Jenks, J., in People *v.* Health Dept., 117 N. Y. App. Div. 856, 103 N. Y. Supp. 275, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 599.

May Require Reasonable Treatment of Infectious Diseases. — Trabue *v.* Todd County, (Ky. 1907) 102 S. W. 309.

600. **6. Cannot Dictate What Physicians an Individual Shall Employ.** — Trabue *v.* Todd County, (Ky. 1907) 102 S. W. 309.

601. **3.** See State *v.* St. Louis, (Mo. 1907) 105 S. W. 748.

Notice must be personally served upon the occupant or person in charge of the premises. Belmont *v.* New England Brick Co., 190 Mass. 442, 77 N. E. 504.

4. Belmont *v.* New England Brick Co., 190 Mass. 442, 77 N. E. 504.

602. **4.** Naccari *v.* Rappelet, 119 La. 272, 44 So. 13.

6. White Plains *v.* Tarrytown, etc., R. Co., 117 N. Y. App. Div. 841, 102 N. Y. Supp. 1046; Morton *v.* St. Patrick Roman Catholic Church Soc., (Supm. Ct. Eq. T.) 56 Misc. (N. Y.) 71, 105 N. Y. Supp. 1100.

605. **1.** Frankfort *v.* Irvin, 34 Ind. App. 280, 72 N. E. 652; Knightstown *v.* Homer, 36 Ind. App. 139, 75 N. E. 13 (expense for nursing); Copple *v.* Davie County, 138 N. Car. 127, 50 S. E. 574.

Necessity for Professional Aid. — The board of health is the sole judge of the necessity for employing professional aid. Thomas *v.* Ingham County, 142 Mich. 319, 105 N. W. 771.

Compensation Must Be Commensurate with Services Performed. — Butler County *v.* Gardner, (Ky. 1906) 96 S. W. 582.

Where the Statute Provided for a Reasonable Compensation, it was held that the council could not fix the salary in advance because of the likelihood that the services would vary in value considerably from year to year. Taylor *v.* Adair County, 119 Ky. 374, 84 S. W. 299.

Members of Board Not Eligible. — Members of the board of health are not eligible to appointment as board physician where it is the duty of the board to audit the physician's bill for services. Gaw *v.* Ashley, (Mass. 1907) 80 N. E. 790.

A Member of the Common Council May Be Employed as board physician where such employment is not required to be approved by the council. Dewitt *v.* Mills County, 126 Iowa 169, 101 N. W. 766.

Where the Board Failed to Prescribe the Duties of the health officer in a formal manner, it was held not to be sufficient reason for withholding his compensation. People *v.* Blood, 120 N. Y. App. Div. 614, 105 N. Y. Supp. 20.

2. Health Officer May Not Delegate Powers. — Copple *v.* Davie County, 138 N. Car. 127, 50 S. E. 574.

606. **1.** People *v.* Blood, 120 N. Y. App. Div. 614, 105 N. Y. Supp. 20.

Duty of Board of Supervisors to Order Bill Paid as Approved. — Resner *v.* Carroll County, 126 Iowa 423, 102 N. W. 148.

3. Decision Conclusive. — The decision of the board of health as to the necessity for quarantine is conclusive. Bardstown *v.* Nelson County, (Ky. 1906) 90 S. W. 246.

Supplies for Quarantined Houses. — The municipality is liable for supplies furnished to quarantined houses by order of the board of health. Borger *v.* Alliance, 28 Pa. Super. Ct. 407.

5. May Not Take Private Property for hospital purposes without due process of law. Barry *v.* Smith, 191 Mass. 78, 6 Ann. Cas. 817, 77 N. E. 1099.

6. Private Residences. — A board of health may not use a private residence for a hospital without the owner's consent, except under warrant issued in compliance with the statute. Sallinger *v.* Smith, 192 Mass. 317, 78 N. E. 470.

607. **3.** Barry *v.* Smith, 191 Mass. 78, 6 Ann. Cas. 817, 77 N. E. 1099; Rohn *v.* Osmun, 143 Mich. 68, 106 N. W. 697.

5. Liable for Misfeasance, but Not for Nonfeasance. — Barry *v.* Smith, 191 Mass. 78, 6 Ann. Cas. 817, 77 N. E. 1099.

BOAT.

609. **1. Barge.** — An averment that injuries were caused by defects of a barge is sustained by a finding that the defects were on a ***boat.*** The word ***boat*** in its ordinary acceptation may include a barge. Monongahela River Consol. Coal, etc., Co. *v.* Hardsaw, (Ind. App. 1907) 79 N. E. 1062.

BODY.

611. **3. Body Equivalent to Whole Person.** — In Elgin, etc., Traction Co. *v.* Wilson, 120 Ill. App. 371, *affirmed* 217 Ill. 47, 75 N. E. 436, it was held that there was no variance between a declaration in a negligence case charging that the bones of plaintiff's ***body*** were broken, and proof that it was the bones of her limbs and arms, since the word ***body*** means the whole person.

BONA FIDE.

615. **3. Bona Fide Employees.** — Weaver *v.* Ann Arbor R. Co., 139 Mich. 590, 5 Ann. Cas. 764, 102 N. W. 1037.

BONDS.

620. **1.** Pratt *v.* S. J. Langston Mercantile Co., 111 Mo. App. 96, 85 S. W. 134.

622. **1. Failure of Principal to Execute Renders Bond Void as to Sureties.** — Bjoin *v.* Anglim, 97 Minn. 526, 107 N. W. 558; Tully *v.* Lewitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 350, 98 N. Y. Supp. 829.

3. Delivery to Obligee Is Waiver of Condition

Not on Face of Bond. — Bieber *v.* Gans, 24 App. Cas. (D. C.) 517.

623. 3. Bieber *v.* Gans, 24 App. Cas. (D. C.) 517; Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262.

4. Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262.

5. Delivery in Escrow to Officer of Obligee Corporation Valid. — Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262.

624. 3. **Omission of Date Not Fatal to Validity.** — W. W. Kimball Co. *v.* Tasca, 26 R. I. 565, 59 Atl. 919.

632. 2. Misrepresentations as to the financial situation and property of one of the parties to a negotiation, were held insufficient in A. S. Ripley Bldg. Co. *v.* Coors, 37 Colo. 78, 84 Pac. 817.

Obligee's Concealment of Facts Concerning Character of Principal — Rights of Surety. — Wright *v.* German Brewing Co., 103 Md. 377, 63 Atl. 807.

Misrepresentation as to Position of Agent — When Held Not Fraudulent. — See Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

633. 1. **Burden of Proof upon Attacking Party.** — Burwell *v.* Burwell, 103 Va. 314, 49 S. E. 68.

645. 4. Tully *v.* Lewitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 350, 98 N. Y. Supp. 829, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645.

663. 3. **Whole Language of Bond Must Be Considered.** — Westfall *v.* Albert, 212 Ill. 68, 72 N. E. 4.

664. 3. Danby Tp. *v.* Beebe, 147 Mich. 312, 110 N. W. 1066.

666. 1. Danby Tp. *v.* Beebe, 147 Mich. 312, 110 N. W. 1066, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665, 666.

667. 2. Montague *v.* Furness, 145 Cal. 205, 78 Pac. 640.

668. 1. **Requirements as to Sureties.** — Under the statute of *Texas* a liquor dealer's bond, having but one surety, is not a valid statutory bond. Hillman *v.* Mayher, (Tex. Civ. App. 1905) 85 S. W. 818.

669. 1. **Omission or Mistake in Date Immaterial.** — W. W. Kimball Co. *v.* Tasca, 26 R. I. 565, 59 Atl. 919.

Failure to File Accompanying Contract Immaterial. — A. S. Ripley Bldg. Co. *v.* Coors, 37 Colo. 78, 84 Pac. 817.

2. American Book Co. *v.* Wells, (Ky. 1904) 83 S. W. 622.

670. 1. W. W. Kimball Co. *v.* Tasca, 26 R. I. 565, 59 Atl. 919; Chambers *v.* Cline, 60 W. Va. 588, 55 S. E. 999.

3. Statutory Declaration that Nonconforming Bonds Shall Be Void. — San Francisco *v.* Hartnett, 1 Cal. App. 652, 82 Pac. 1064.

Bond Invalid as Statutory Bond, Not Good as Common-law Bond. — San Francisco *v.* Hartnett, 1 Cal. App. 652, 82 Pac. 1064; Territory *v.* Woodring, 15 Okla. 203, 6 Ann. Cas. 950, 82 Pac. 572.

672. 1. Wilson *v.* White, 82 Ark. 407, 102 S. W. 201, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 667.

It was held in *Texas* that a liquor dealer's bond was not such as could be enforced as a valid common-law obligation independently of the statute under which it was given. Hillman *v.* Mayher, (Tex. Civ. App. 1905) 85 S. W. 818.

2. Wall *v.* Mount, 121 Ga. 831, 49 S. E. 778.

To uphold a bond which does not comply with statutory conditions, as a valid common-law obligation, it must be done independently of the statute under which it was given. Hillman *v.* Mayher, (Tex. Civ. App. 1905) 85 S. W. 818.

676. 3. **Statutory Bond.** — But see Chambers *v.* Cline, 60 W. Va. 588, 55 S. E. 999.

4. Instances of Conditions Broken by Failure to Perform — *To Complete Buildings.* — Equitable Trust Co. *v.* National Surety Co., 214 Pa. St. 159, 6 Ann. Cas. 465, 63 Atl. 699.

"*For the Prosecution of the Action,*" *etc.* — Broken by plaintiff's failure to prosecute the action to a final termination upon the merits, whether his failure to do so is due to his own fault or to the fault of the justice of the peace before whom the action is pending in entering up a void judgment. Siebolt *v.* Konatz Saddlery Co., 15 N. Dak. 87, 106 N. W. 564.

Mere Noncompliance with a Demand by the Obligee is not such a breach as renders a surety liable. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

677. 1. **Failure to Perform One of Several Conditions.** — Siebolt *v.* Konatz Saddlery Co., 15 N. Dak. 87, 106 N. W. 564.

679. 1. State *v.* Wotring, 56 W. Va. 394, 49 S. E. 365.

680. 5. Lanham *v.* Dies, (Tex. Civ. App. 1906) 98 S. W. 897.

685. 2. **Failure to Perform Building Contract.** — Equitable Trust Co. *v.* National Surety Co., 214 Pa. St. 159, 6 Ann. Cas. 465, 63 Atl. 699.

687. 1. Brock *v.* Williams, 16 Okla. 124, 82 Pac. 922.

Rule Not Applicable Where Obligee's Act Justified by Default of Indemnified Party. — Keene *v.* Newark Watch Case Material Co., 112 N. Y. App. Div. 7, 98 N. Y. Supp. 68, *affirmed* 188 N. Y. 598, 81 N. E. 1167.

2. Waiver to Be Valid Must Be Supported Either by Consideration or Estoppel. — Bieber *v.* Gans, 24 App. Cas. (D. C.) 517.

691. 5. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

692. 2. Guilford Granite Co. *v.* Harrison Granite Co., 23 App. Cas. (D. C.) 1.

693. 2. **Facts Held Not to Constitute Release.** — White River, etc., R. Co. *v.* Star Ranch, etc., Co., 77 Ark. 128, 91 S. W. 14; A. S. Ripley Bldg. Co. *v.* Coors, 37 Colo. 78, 84 Pac. 817; Guilford Granite Co. *v.* Harrison Granite Co., 23 App. Cas. (D. C.) 1; Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; Fidelity, etc., Co. *v.* Western Bank, (Ky. 1906) 94 S. W. 3; Wright *v.* German Brewing Co., 103 Md. 377, 63 Atl. 807; Donovan *v.* Harlem Occidental Club, (Supm. Ct. App. T.) 94 N. Y. Supp. 518; Keene *v.* Newark Watch Case Material Co., 112 N. Y. App. Div. 7, 98 N. Y. Supp. 68; Rocky Mountain L. & T. Co. *v.* Price, 103 Va. 298, 49 S. E. 73.

Impairment of Security Discharges Surety to

Extent Thereof in Absence of Consent. — Enterprise Hotel Co. *v.* Book, 48 Oregon 58, 85 Pac. 333.

694. 1. Premature Payment by Principal to Contractor Discharges Surety. — Enterprise Hotel Co. *v.* Book, 48 Oregon 58, 85 Pac. 333.

The Principal's Discharge of a Contractor as to Part of Work was held not to justify complaint by the surety. Guilford Granite Co. *v.* Harrison Granite Co., 23 App. Cas. (D. C.) 1.

3. Equitable Trust Co. *v.* National Surety Co., 214 Pa. St. 159, 6 Ann. Cas. 465, 63 Atl. 699.

695. 1. Westfall *v.* Albert, 212 Ill. 68, 72 N. E. 4.

Example of One Instrument Forming Bond of Indemnity and Bond of Guaranty. — Equitable Trust Co. *v.* National Surety Co., 214 Pa. St. 159, 6 Ann. Cas. 465, 63 Atl. 699.

699. 2. Penalty Held Liquidated Damages Despite Expressed Intention — Choctaw R., etc., Co. *v.* McAlester, (Indian Ter. 1907) 104 S. W. 821.

BOOK.

703. 3. Sheets of Letterpress with Illustrations Held Book within Copyright Act. — Davis *v.* Benjamin, (1906) 2 Ch. 491, 75 L. J. Ch. 800.

BOOM COMPANIES.

708. 1. Nicomen Boom Co. *v.* North Shore Boom, etc., Co., 40 Wash. 315, 82 Pac. 412.

2. Potlatch Lumber Co. *v.* Peterson, 12 Idaho 769, 88 Pac. 426; Nicomen Boom Co. *v.* North Shore Boom, etc., Co., 40 Wash. 315, 82 Pac. 412.

A Private Corporation, not organized under the law regarding boom companies, may not take land by eminent domain for the purpose of building dams to facilitate the floating of logs during the ordinary state of the river. Matthews *v.* Belfast Mfg. Co., 35 Wash. 662, 77 Pac. 1046.

5. Burrows *v.* Grays Harbor Boom Co., 44 Wash. 630, 87 Pac. 937.

709. 1. Exclusive Grants — Plaintiff Entitled to Injunction. — Nicomen Boom Co. *v.* North Shore Boom, etc., Co., 40 Wash. 315, 82 Pac. 412.

That the Company Has a Practical Monopoly is no objection where the nature of the stream prevents the operation of more than one boom. Nicomen Boom Co. *v.* North Shore Boom, etc., Co., 40 Wash. 315, 82 Pac. 412.

4. McKinney *v.* Northcutt, 114 Mo. App. 146, 89 S. W. 351.

712. 1. Matthews *v.* Belfast Mfg. Co., 35 Wash. 662, 77 Pac. 1046.

Right to Use of Banks of Stream. — The driver must in no event go upon the banks of the stream in his operations, without the owner's permission. Burrows *v.* Grays Harbor Boom Co., 44 Wash. 630, 87 Pac. 937.

The Company Is Liable for Negligence, but not for incidental damages where due care is exercised. Hot Springs Lumber, etc., Co. *v.* Revercomb, 106 Va. 176, 55 S. E. 580; Mitchell *v.* Lea Lumber Co., 43 Wash. 195, 86 Pac. 405.

The Measure of Damages for overflowing the plaintiff's premises and covering them with débris has been held to be the difference in value of the farm before and after the wrongful acts. Osborn *v.* Mississippi, etc., River Boom Co., 95 Minn. 149, 103 N. W. 879.

713. 2. The Exercise of the Right of Eminent Domain in the improvement of a non-navigable river for the purpose of floating logs does not thereby secure the exclusive control of such stream to the party making the improvement. Potlach Lumber Co. *v.* Peterson, 12 Idaho 769, 88 Pac. 426.

5. Burrows *v.* Grays Harbor Boom Co., 44 Wash. 630, 87 Pac. 937.

714. 1. Matthews *v.* Belfast Mfg. Co., 35 Wash. 662, 77 Pac. 1046; Burrows *v.* Grays Harbor Boom Co., 44 Wash. 630, 87 Pac. 937.

715. 1. The Scale Bill of a Surveyor agreed upon between the parties in a log-driving operation is, in the absence of fraud, binding upon them, and the scale book is evidence of the scale. Madunkeunk Dam, etc., Co. *v.* E. F. Allen Clothing Co., 102 Me. 257, 66 Atl. 537.

3. International Boom Co. *v.* Rainy Lake River Boom Corp., 97 Minn. 513, 107 N. W. 735.

Waiver of Lien. — There is no waiver of the lien by the surrender and delivery of part of the logs handled during the season. International Boom Co. *v.* Rainy Lake River Boom Corp., 97 Minn. 513, 107 N. W. 735.

716. 2. Marsh *v.* Great Northern Paper Co., 101 Me. 489, 64 Atl. 844.

717. 7. Due Care and Diligence Required. — Marsh *v.* Great Northern Paper Co., 101 Me. 489, 64 Atl. 844.

BORN.

719. 5. There is no fixed rule of construction which compels a court to hold that a child was born in the lifetime of a testator because it was at that time *en ventre sa mère.* That peculiar rule of construction is limited to cases where that construction of the word ***born*** is necessary for the benefit of the unborn child. Villar *v.* Gilbey, (1907) A. C. 139, 7 Ann. Cas. 130, 76 L. J. Ch. 339, *reversing* (1906) 1 Ch. 583.

BOROUGHS.

723. 2. Petition to Exclude Lands. — Under Act Pa., April 1, 1863, P. L. 200, the Court of Quarter Sessions has the power, on the petition of the party aggrieved, to exclude lands used exclusively for farming, and a decree of incorporation without excluding such lands is a legal refusal of the petition. Mill Creek Borough, 32 Pa. Super. Ct. 465.

Approval of Grand Jury No Longer Necessary. — La Porte Borough, 26 Pa. Super. Ct. 333.

Judgment of Quarter Sessions Reversed Only for Abuse of Discretion. — Edgeworth Borough, 25 Pa. Super. Ct. 554; Leetsdale Borough, 25 Pa. Super Ct. 623; La Porte Borough, 26 Pa. Super. Ct. 333.

3. Remaindermen Are Not Freeholders within the meaning of the statute. Mountville Borough, 31 Pa. Super. Ct. 18.

The Application need not set forth the number of freeholders residing within the proposed territory, and it need not be verified by affidavit. Mountville Borough, 31 Pa. Super. Ct. 18.

Description of Boundaries. — The legislative intent was to render the courses certain, and if they are accurately and plainly set out in figures it will be sufficient to confer jurisdiction. Edgeworth Borough, 25 Pa. Super. Ct. 551.

725. 2. Change in Mode of Annexation. — Acts Pa., April 22, 1903, P. L. 247, changes the mode of annexing territory and gives to the burgess and town council practically unlimited jurisdiction in respect to the annexation of territory, subject only to review by the Court of Quarter Sessions as to the legality of the ordinance and the regularity of the proceedings. Washington Borough, 26 Pa. Super. Ct. 296; Donora *v.* Donora, 26 Pa. Super. Ct. 300.

726. 1. A Petition which stated that the petitioners' "interests and that of the citizens and taxpayers of the said borough would be promoted by a division of the borough into wards" was held to be sufficient. Avalon Borough, 31 Pa. Super. Ct. 167.

2. Adjournment. — If the hearings are, upon reasonable grounds, regularly adjourned from time to time by the court, the spirit of the act is complied with, the purpose of the legislation being to give all persons interested an opportunity to be heard. Leetsdale Borough, 25 Pa. Super. Ct. 623.

3. A Report of the Commissioners which states "that it is desirable and proper that the prayer of the petitioners should be granted and that the interests of the citizens and inhabitants of the borough will be best subserved by the division" is a sufficient finding that the division will "suit the convenience of the inhabitants" as required by the law. Avalon Borough, 31 Pa. Super. Ct. 167.

4. Ultra Vires Acts of a borough may be reviewed by certiorari on the suit of any taxpayer. Rehill *v.* East Newark, 73 N. J. L. 220, 63 Atl. 81.

Officers of the borough cannot bind it by any contract not within the scope of its powers. Bloomsburg Land Imp. Co. *v.* Bloomsburg, 215 Pa. St. 452, 64 Atl. 602.

Franchises. — Under a statute which empowered boroughs "to light the streets" it was held that a borough had authority to make a contract with an electric-light company for the exclusive right to furnish light for ten years with a privilege to the borough to renew the contract at the end of that time or purchase the plant. Muncy Electric, etc., Co. *v.* People's Electric Light, etc., Co., (Pa. 1907) 67 Atl. 956.

A Borough May Not Furnish Water to persons outside the borough limits. Stauffer *v.* East Stroudsburg, 215 Pa. St. 143, 64 Atl. 411.

A Borough May Sell Its Property of a Private Nature, held for the emolument of the municipality, unless restricted by charter or statute. Carlisle Gas, etc., Co. *v.* Carlisle, (Pa. 1907) 67 Atl. 844.

Boroughs May Regulate the Use of Streets and ordain penalties for the violation of the regulations. Edgewood *v.* Scott, 29 Pa. Super. Ct. 156.

The New Jersey Borough Act of 1897 (Laws 1897, p. 285) repeals inconsistent provisions of previous local or special charters. Smith *v.* Hightstown, 71 N. J. L. 536, 60 Atl. 393.

5. Borough Ordinances Reviewable by Certiorari. — Reed *v.* Woodcliff, (N. J. 1905) 60 Atl. 1128.

Justices of the Peace Have No Jurisdiction regarding the violation of borough ordinances. Vineland *v.* Kelk, 73 N. J. L. 285, 63 Atl. 5.

Under a Statutory Authority to Regulate the Planting and Protection of Shade Trees the council may not pass an ordinance requiring a person having shade or ornamental trees in a street to remove them. Sproul *v.* Stockton, 73 N. J. L. 158, 62 Atl. 275.

727. 7. Classification. — Act Pa., June 1, 1883, applies to boroughs divided into wards as well as to those not so divided. Hayes *v.* Sturges, 215 Pa. St. 605, 64 Atl. 828.

728. 7. Action on the Part of the Chief Burgess Is Not Required on a resolution awarding a contract in pursuance of a regularly adopted ordinance. Kolb *v.* Tamaqua, (Pa. 1907) 67 Atl. 44.

729. 6. Police Officers Are Not Agents of the Borough, and the borough is not liable for their unlawful acts. Miller *v.* Hastings, 25 Pa. Super. Ct. 569.

7. Clark *v.* Torrington, 79 Conn. 42, 63 Atl. 657; Reed *v.* Tarentum, 213 Pa. St. 357, 62 Atl. 928; Munley *v.* Sugar Notch, 215 Pa. St. 228, 64 Atl. 377; Bucher *v.* Sunbury, 216 Pa. St. 89, 64 Atl. 906; Farrell *v.* Plymouth, 26 Pa. Super. Ct. 183.

Borough Not Liable for Injuries on Unaccepted Street. — Downing *v.* Coatesville, 214 Pa. St. 291, 63 Atl. 696.

Surface Water Drainage. — The borough is not liable for damages resulting from an error of judgment with respect to the location of pipes for the drainage of surface water. Siegfried *v.* South Bethlehem, 27 Pa. Super. Ct. 456.

Borough May Compel Abutting Owners to Lay Sidewalks. — Meanor *v.* Goldsmith, 216 Pa. St. 489, 65 Atl. 1084; Angle *v.* Stroudsburg, 29 Pa. Super. Ct. 601.

Borough Liable for Injury to Abutting Owner by Change of Grade. — Klenke *v.* West Homestead, 216 Pa. St. 476, 65 Atl. 1079.

Allowing an Amusement Company to Erect Its Tents and paraphernalia in the streets of the borough has been held to be gross negligence. Bechtel *v.* Mahanoy City, 30 Pa. Super. Ct. 135.

730. 1. Borough Not Liable for Latent Defects. — Murdaugh *v.* Oxford, 214 Pa. St. 384, 63 Atl. 696.

Notice Implied after Reasonable Time. — Rife *v.* Middletown, 32 Pa. Super. Ct. 68.

BOTTOMRY AND RESPONDENTIA.

737. **5. A Draft Drawn by the Master** at the instance of the agents of the owner for the purpose of paying for necessary supplies is in the nature of a bottomry bond. The Wyandotte, (C. C. A.) 145 Fed. 321.

7. It Is Not Necessary to Set Out Each Item in the schedule accompanying the bond. The Wyandotte, (C. C. A.) 145 Fed. 321.

738. **2. Contract Held to Be Governed by Laws of Country Where Made.** — The Wyandotte, (C. C. A.) 145 Fed. 321.

742. 7. The Wyandotte, (C. C. A.) 145 Fed. 321.

746. 5. The Wyandotte, 136 Fed. 470.

747. 1. The Wyandotte, (C. C. A.) 145 Fed. 321.

749. 5. The Wyandotte, (C. C. A.) 145 Fed. 321.

BOUGHT AND SOLD NOTES.

752. 2. Day Leather Co. *v.* Michigan Leather Co., 141 Mich. 533, 104 N. W. 797.

BOUNDARIES.

760. 4. Matheny *v.* Allen, (W. Va. 1908) 60 S. E. 407.

5. Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898.

761. 4. Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275; Matheny *v.* Allen, (W. Va. 1908) 60 S. E. 407.

762. 1. Giddings *v.* Thompson, (Tex. Civ. App. 1906) 92 S. W. 1043.

4. Where the Beginning Corner Is Lost or Obliterated, it must be found or re-established from some known corner by approved methods. Seabrook *v.* Coos Bay Ice Co., (Oregon 1907) 89 Pac. 417.

763. 2. Wilkins *v.* Clawson, (Tex. Civ. App. 1904) 83 S. W. 732; Giddings *v.* Thompson, (Tex. Civ. App. 1906) 92 S. W. 1043.

Beginning Corner Not of Greater Dignity than Marked Line. — Deaton *v.* Feazle, (Tex. Civ. App. 1905) 90 S. W. 534.

4. Hamlin *v.* Atty.-Gen., (Mass. 1907) 81 N. E. 275.

Calls for Metes and Bounds, if Established, control calls for courses and distances. Whitridge *v.* Baltimore, 103 Md. 412, 63 Atl. 808.

764. 1. McIrwin *v.* Charlebois, 38 Wash. 151, 80 Pac. 285.

4. A boundary line may be located and terminated by calling for a body of water by name. Patapsco Guano Co. *v.* Bowers-White Lumber Co., (N. Car. 1907) 59 S. E. 538.

765. 1. *United States.* — Davis *v.* Commonwealth Land, etc., Co., 141 Fed. 711.

Arizona. — Meyer-Clarke-Rowe Mines Co. *v.* Steinfeld, 9 Ariz. 245, 80 Pac. 400.

California. — Kimball *v.* McKee, 149 Cal. 435, 86 Pac. 1089.

Delaware. — Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362.

Georgia. — Leverett *v.* Bullard, 121 Ga. 534, 49 S. E. 591.

Illinois. — Tinnea *v.* Piel, 122 Ill. App. 304.

Iowa. — Liddle *v.* Blake, 131 Iowa 165, 105 N. W. 649; Park Com'rs *v.* Taylor, 133 Iowa 453, 108 N. W. 927.

Kentucky. — Kendrick *v.* Burchett, (Ky. 1905) 89 S. W. 239; Brockman *v.* Rose, (Ky. 1906) 90 S. W. 539; Huff *v.* Woosley, (Ky. 1906) 92 S. W. 572; Morgan *v.* Lewis, (Ky. 1906) 92 S. W. 970; Bramblette *v.* Howard, (Ky. 1906) 93 S. W. 902; Morgan *v.* Renfro, (Ky. 1907) 99 S. W. 311; Lewis *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 658.

Maryland. — Hill *v.* McConnell, (Md. 1907) 68 Atl. 199.

Nebraska. — Bridenbaugh *v.* Bryant, (Neb. 1907) 112 N. W. 571; Hurn *v.* Alter, (Neb. 1907) 113 N. W. 986; Bock *v.* Porterfield, (Neb. 1908) 114 N. W. 597.

New Mexico. — Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

North Carolina. — Moore *v.* McClain, 141 N. Car. 473, 54 S. E. 382.

North Dakota. — Propper *v.* Wohlwend, (N. Dak. 1907) 112 N. W. 967.

Oregon. — Christenson *v.* Simmons, 47 Oregon 184, 82 Pac. 805.

Texas. — Giddings *v.* Thompson, (Tex. Civ. App. 1906) 92 S. W. 1043; Thaxton *v.* Wadsworth, (Tex. Civ. App. 1906) 95 S. W. 91; Thatcher *v.* Matthews, (Tex. 1907) 105 S. W. 317, 1006; Jaggers *v.* Stringer, (Tex. Civ. App. 1907) 106 S. W. 151.

Virginia. — Schwalm *v.* Beardsley, 106 Va. 407, 56 S. E. 135; Fentress *v.* Pocahontas Fowling Club, (Va. 1908) 60 S. E. 633.

West Virginia. — Lewis *v.* Yates, (W. Va. 1908) 59 S. E. 1073.

Wisconsin. — Thompson *v.* Fuhrmann, 130 Wis. 375, 110 N. W. 236; Miller *v.* Lavelle, 130 Wis. 500, 110 N. W. 421.

"Near" Construed as "At." — Where the description in a patent called for a stake near Cumberland Gap, it was held that the word "near" should be construed "at" and would control an erroneous call for courses and distances. Davis *v.* Farmer, 141 Fed. 703; Davis *v.* Hinckley, 141 Fed. 708. See also Davis *v.* Commonwealth Land, etc., Co., 141 Fed. 711.

A Call for a Railroad Right of Way, Unexplained, will be treated as if it had been a call for another tract of land and will control the call for distance. Couch *v.* Texas, etc., R. Co., (Tex. 1906) 90 S. W. 860, *reversing* (Tex. Civ. App. 1905) 87 S. W. 847.

769. 2. Meyer-Clarke-Rowe Mines Co. *v.* Steinfeld, 9 Ariz. 245, 80 Pac. 400; Washington Rock Co. *v.* Young, 29 Utah 108, 80 Pac. 382, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 769.

770. 4. Kimball *v.* McKee, 149 Cal. 435, 86 Pac. 1089.

6. Boundaries Cannot Be Constructed from Objects found on the ground but not called for. Hamilton *v.* Blackburn, (Tex. Civ. App. 1906) 95 S. W. 1094.

Well-known and Established Objects Called for control objects found on the ground but not called for. Brodbent *v.* Carper, (Tex. Civ. App. 1907) 100 S. W. 183.

771. 2. Chambers *v.* Tharp, (Ky. 1906) 93 S. W. 627; Hill *v.* Dalton, 140 N. Car. 9,

52 S. E. 273; Goldsmith *v.* Fillman, 33 Pa. Super. Ct. 44; Deaton *v.* Feazle, (Tex. Civ. App. 1905) 90 S. W. 534; Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898; Giddings *v.* Thompson, (Tex. Civ. App. 1906) 92 S. W. 1043; Thatcher *v.* Matthews, (Tex. 1907) 105 S. W. 317.

773. 1. Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898.

2. Kitchen *v.* Chantland, 130 Iowa 618, 8 Ann. Cas. 81, 105 N. W. 367; Frederitzie *v.* Boeker, 193 Mo. 228, 92 S. W. 227; Smith *v.* Curtice, 73 Neb. 167, 106 N. W. 460; Stryker *v.* Meagher, (Neb. 1906) 107 N. W. 792; Hurn *v.* Alter, (Neb. 1907) 113 N. W. 986; Shaffer *v.* Murray, (Neb. 1907) 113 N. W. 988; Propper *v.* Wohlwend, (N. Dak. 1907) 112 N. W. 967; Unzelmann *v.* Shelton, 19 S. Dak. 389, 103 N. W. 646; Stangair *v.* Roads, 41 Wash. 583, 84 Pac. 405; Strunz *v.* Hood, 44 Wash. 99, 87 Pac. 45.

Upon Resurvey, Original Corners Prevail, if Found. — Washington Rock Co. *v.* Young, 29 Utah 108, 80 Pac. 382.

775. 1. Strunz *v.* Hood, 44 Wash. 99, 87 Pac. 45.

776. 4. Whitaker *v.* McBride, 197 U. S. 510, 25 U. S. Sup. Ct. 530, *affirming* 65 Neb. 137, 90 N. W. 966; Berry *v.* Hoogendorn, 133 Iowa 437, 108 N. W. 923.

Where a Stream, Lake, or Bay Is Meandered by a Public Survey, the shore becomes the real boundary line and not the meander line as surveyed, if there is a discrepancy. Seabrook *v.* Coos Bay Ice Co., (Oregon 1907) 89 Pac. 417.

778. 3. Thatcher *v.* Matthews, (Tex. 1907) 105 S. W. 317, 1006.

779. 1. **The Law Establishes a Corner Where the Surveyor Actually Locates It,** rather than where it ought to be located by a correct survey. Inmon *v.* Pearson, (Wash. 1907) 92 Pac. 279.

A Lost Ccorner May Be Found Where Known Corners Precede and Follow It, by running the line from the first known corner according to the course and distance called for, and then reversing the call for the last known corner until the two lines intersect. Chambers *v.* Tharp, (Ky. 1906) 93 S. W. 627.

Where All the Monuments Have Disappeared but One, it is proper to begin at the remaining monument and run reverse courses. Cahill *v.* Mullins, (Ky. 1906) 97 S. W. 370.

780. 2. Chapman *v.* Hamblet, 100 Me. 454, 62 Atl. 215; Hill *v.* McConnell, (Md. 1907) 68 Atl. 199; Goyette *v.* Keenan, (Mass. 1907) 82 N. E. 427; Hill *v.* Dalton, 140 N. Car. 9, 52 S. E. 273; Fincannon *v.* Sudderth, 140 N. Car. 246, 52 S. E. 579; Whitaker *v.* Cover, 140 N. Car. 280, 52 S. E. 581; Steusoff *v.* Jackson, (Tex. Civ. App. 1905) 89 S. W. 445; Isaacs *v.* Texas Land, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 1040; Ridgell *v.* Atherton, (Tex. Civ. App. 1908) 107 S. W. 129; Shindler *v.* Lutcher, etc., Lumber Co., (Tex. Civ. App. 1908) 107 S. W. 941.

Where the Tract Is Supposed to Lie between Older Grants, and the lines and corners of the older grant are called for on one side, but no reference is made to those lying on the other side, the tract must be so located as not to ignore the location of the older grants, lines, and corners, although by so doing there is caused an interlock with the older grants on the other side. Lewis *v.* Yates, (W. Va. 1908) 59 S. E. 1073.

A Corner May Be in the Line of an Adjoining Survey, and if it is the nearest point in the line to the last call in the instrument designating it, it should be accepted as the point intended. Morgan *v.* Renfro, (Ky. 1907) 99 S. W. 311.

A Call for an Adjoining Survey Will Not Prevail over a call for monuments where there is a repugnancy between them. Matheny *v.* Allen, (W. Va. 1908) 60 S. E. 407.

781. 1. Whitaker *v.* Cover, 140 N. Car. 280, 52 S. E. 581.

2. **The True Line Called for Controls** as against a conventional line agreed upon in parol by the parties. Hall *v.* Davis, 122 Ga. 252, 50 S. E. 106.

782. 2. Burt, etc., Lumber Co. *v.* Wilson, (Ky. 1906) 93 S. W. 906.

783. 3. Zerbey *v.* Allan, 215 Pa. St. 383, 64 Atl. 587.

784. 3. Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362; Eshleman *v.* Rankin, 32 Pa. Super. Ct. 254.

4. Christenson *v.* Simmons, 47 Oregon 184, 82 Pac. 805; Hamilton *v.* Blackburn, (Tex. Civ. App. 1906) 95 S. W. 109

5. Mathews *v.* Pursifull, (Ky. 1906) 96 S. W. 803; Jaggers *v.* Stringer, (Tex. Civ. App. 1907) 106 S. W. 151.

6. Goldsmith *v.* Fillman, 33 Pa. Super. Ct. 44; Mays *v.* Hinchman, 57 W. Va. 602, 50 S. E. 823.

Call for Courses and Distances Controls Call for an Undefined Line. — Pinney *v.* Winsted, 79 Conn. 606, 66 Atl. 337.

785. 1. Meyer-Clarke-Rowe Mines Co. *v.* Steinfeld, 9 Ariz. 245, 80 Pac. 400; Lewis *v.* Yates, (W. Va. 1908) 59 S. E. 1073.

2. Hill *v.* McConnell, (Md. 1907) 68 Atl. 199, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 785.

3. Lewis *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 658; Lee *v.* Glass, (Ky. 1907) 104 S. W. 739; Hill *v.* McConnell, (Md. 1907) 68 Atl. 199, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 784, 785; Hymen *v.* Gatta, 33 Pa. Super. Ct. 438; Pereles *v.* Gross, 126 Wis. 122, 105 N. W. 217.

786. 5. Williams *v.* Virginia-Pocahontas Coal Co., 60 W. Va. 239, 53 S. E. 923, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 786.

787. 3. Rudolph *v.* Sales, (Ky. 1907) 105 S. W. 975.

5. Fincannon *v.* Sudderth, 144 N. Car. 587, 57 S. E. 337; Washington Rock Co. *v.* Young, 29 Utah 108, 80 Pac. 382, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 787; Williams *v.* Virginia-Pocahontas Coal Co., 60 W. Va. 239, 53 S. E. 923, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 787.

788. 1. Kerr *v.* DeLaney, (Ky. 1906) 91 S. W. 286; Chambers *v.* Tharp, (Ky. 1906) 93 S. W. 627; Morgan *v.* Renfro, (Ky. 1907) 99 S. W. 311; Giddings *v.* Thompson, (Tex. Civ. App. 1906) 92 S. W. 1043; Shindler *v.*

Lutcher, etc., Lumber Co., (Tex. Civ. App. 1908) 107 S. W. 941.

2. Green *v.* Pennington, 105 Va. 801, 54 S. E. 877.

789. 1. Davis *v.* Commonwealth Land, etc., Co., 141 Fed. 711; Bramblet *v.* Davis, 141 Fed. 776, 72 C. C. A. 204; Carter *v.* Kirby Lumber Co., (C. C. A.) 152 Fed. 622; McCoy *v.* Cassidy, (Ky. 1905) 86 S. W. 1130; Morgan *v.* Lewis, (Ky. 1906) 92 S. W. 970; Craft *v.* Taylor, (Ky. 1907) 105 S. W. 128; Combs *v.* Virginia Iron, etc., Co., (Ky. 1908) 106 S. W. 815; Newbold *v.* Condon, 104 Md. 100, 64 Atl. 356, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789; Twombly *v.* Lord, (N. H. 1907) 66 Atl. 486; Calatro *v.* Chabut, 72 N. J. L. 458, 63 Atl. 272.

A Course May Be Reversed and Run Backward for the purpose of finding a lost corner. Asheville Land Co. *v.* Lang, (N. Car. 1907) 59 S. E. 703.

3. Mayberry *v.* Beck, 71 Kan. 609, 81 Pac. 191; Kendrick *v.* Burchett, (Ky. 1905) 89 S. W. 239; O'Brien *v.* Clark, 104 Md. 30, 64 Atl. 53, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789; McDonald *v.* McCrabb, (Tex. Civ. App. 1907) 105 S. W. 238; McIrwin *v.* Charlebois, 38 Wash. 151, 80 Pac. 285.

790. 1. O'Brien *v.* Clark, 104 Md. 30, 64 Atl. 53, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 790; McDonald *v.* McCrabb, (Tex. Civ. App. 1907) 105 S. W. 238.

791. 1. Barbour *v.* Tompkins, 58 W. Va. 572, 52 S. E. 707, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 791.

4. O'Brien *v.* Clark, 104 Md. 30, 64 Atl. 53, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 791.

792. 3. Mayberry *v.* Beck, 71 Kan. 609, 81 Pac. 191, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 792.

793. 1. Adams *v.* Betz, 167 Ind. 161, 78 N. E. 649.

2. Chapman *v.* Hamblet, 100 Me. 454, 62 Atl. 215; Antigonish *v.* Overseers of Poor, 38 Nova Scotia 112, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 793.

794. 1. Sherwin *v.* Bitzer, 97 Minn. 252, 106 N. W. 1046.

3. Mineral Development Co. *v.* Tuggle Land, etc., Co., (C. C. A.) 151 Fed. 450.

795. 2. Upshur County *v.* Lewright, (Tex. Civ. App. 1907) 101 S. W. 1013, *modifying* (Tex. Civ. App. 1906) 99 S. W. 441.

3. Carney *v.* Hennessey, 77 Conn. 577, 60 Atl. 129; Okie *v.* Person, 23 App. Cas. (D. C.) 170; Leverett *v.* Bullard, 121 Ga. 534, 49 S. E. 591; Mayberry *v.* Beck, 71 Kan. 609, 81 Pac. 191; Haskell *v.* Friend, (Mass. 1907) 81 N. E. 962.

797. 1. Barbour *v.* Tompkins, 58 W. Va. 572, 52 S. E. 707, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 797.

2. Shackelford *v.* Orris, 129 Ga. 791, 59 S. E. 772, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 797; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 797; Williams *v.* State, (Tex. Crim. 1908) 107 S. W. 1121; Lins *v.* Seefeld, 126 Wis. 610, 105 N. W. 917.

798. 2. Barbour *v.* Tompkins, 58 W. Va. 572, 52 S. E. 707, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 798.

799. 3. Barbour *v.* Tompkins, 58 W. Va. 572, 52 S. E. 707, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 799.

800. 1. Kendrick *v.* Burchett, (Ky. 1905) 89 S. W. 239; Hall *v.* Smith, (Ky. 1906) 97 S. W. 1125; Hamlin *v.* Atty.-Gen., (Mass. 1907) 81 N. E. 275; Ridgell *v.* Atherton, (Tex. Civ. App. 1908) 107 S. W. 129.

2. Hornet *v.* Dumbeck, 39 Ind. App. 482, 78 N. E. 691; Haskell *v.* Friend, (Mass. 1907) 81 N. E. 962.

3. Black *v.* Skinner Mfg. Co., 53 Fla. 1090, 43 So. 921, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 800; Shackelford *v.* Orris, 129 Ga. 791, 59 S. E. 772.

801. 3. Isabella Gold Min. Co. *v.* Glenn, 37 Colo. 165, 86 Pac. 349, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 801; Hornet *v.* Dumbeck, 39 Ind. App. 482, 78 N. E. 691; Quade *v.* Pillard, (Iowa 1907) 112 N. W. 646; Chapman *v.* Hamblet, 100 Me. 454, 62 Atl. 215; Cole *v.* Mueller, 187 Mo. 638, 86 S. W. 193, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 801; Van Winkle *v.* Van Winkle, 184 N. Y. 193, 77 N. E. 33, *affirming* 95 N. Y. App. Div. 605, 89 N. Y. Supp. 26.

4. Mineral Development Co. *v.* Tuggle Land, etc., Co., (C. C. A.) 151 Fed. 450.

802. 3. Unless There Is Some Call in a Deed for a Natural Object or its equivalent, the land cannot be located. Marshall *v.* Corbett, 137 N. Car. 555, 50 S. E. 210.

803. 1. Hornet *v.* Dumbeck, 39 Ind. App. 482, 78 N. E. 691; Gudger *v.* White, 141 N. Car. 515, 54 S. E. 386, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 803.

A Recorded Map Referred to in a Deed may be regarded as an artificial monument and will control a call for distance. Wilson *v.* Chicago Lumber, etc., Co., (C. C. A.) 143 Fed. 705, *reversing* 129 Fed. 636.

The Deed of a Former Grantor Will Control as to the width of a lane described as a boundary, not only at its commencement, but throughout its whole length, although no reference is made to it. Rafferty *v.* Anderson, 106 N. Y. App. Div. 383, 94 N. Y. Supp. 927.

804. 1. Park Com'rs *v.* Taylor, 133 Iowa 453, 108 N. W. 927; Quade *v.* Pillard, (Iowa 1907) 112 N. W. 646; Neumeister *v.* Goddard, 125 Wis. 82, 103 N. W. 241; Pereles *v.* Gross, 126 Wis. 122, 105 N. W. 217.

The Fact that a Plat as Recorded Does Not Correctly State the Width of a Lot, does not prohibit its lines from controlling courses and distances where the intention of the parties was manifest. Liddle *v.* Blake, 131 Iowa 165, 105 N. W. 649.

805. 1. Whitmore *v.* Brown, 100 Me. 410, 61 Atl. 985; Haley *v.* Martin, 85 Miss. 698, 38 So. 99; Patapsco Guano Co. *v.* Bowers-White Lumber Co., (N. Car. 1907) 59 S. E. 538; Clayton *v.* Gilmer County, 58 W. Va. 253, 52 S. E. 103.

2. Where Deeds Call for Straight Lines from

Corner to Corner, marked objects which would make the line crooked will not be considered. Nicholson *v.* Hopper, (Ky. 1906) 92 S. W. 979.

807. 2. Seitz *v.* People's Sav. Bank, 140 Mich. 109, 103 N. W. 545, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 807.

808. 1. Vincent *v.* Blanton, (Ky. 1905) 85 S. W. 703; Kerr *v.* DeLaney, (Ky. 1906) 91 S. W. 286; Keystone Mills Co. *v.* Peach River Lumber Co., (Tex. Civ. App. 1906) 96 S. W. 64.

3. A Call for "East" May Be Read "West" if the call can be made to close thereby. Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

809. 2. Tinnea *v.* Piel, 122 Ill. App. 304.

3. The Question as to What Lines and Corners Are, is a matter of law for the determination of the court. Wilson *v.* Powell, 37 Ind. App. 44, 75 N. E. 611.

Location of Boundary Line Question for Jury — *Georgia.* — Ivey *v.* Cowart, 124 Ga. 159, 52 S. E. 436.

Kentucky. — Burt, etc., Lumber Co. *v.* Wilson, (Ky. 1906) 93 S. W. 906.

Massachusetts. — Harriman *v.* Whitney, (Mass. 1907) 82 N. E. 671.

Michigan. — Rix *v.* Smith, 145 Mich. 203, 108 N. W. 691; Turner *v.* Angus, 145 Mich. 679, 108 N. W. 1100.

Missouri. — Cole *v.* Mueller, 187 Mo. 638, 86 S. W. 193.

North Carolina. — Rowe *v.* Cape Fear Lumber Co., 138 N. Car. 465, 50 S. E. 848.

Pennsylvania. — Richardson *v.* Morris, 26 Pa. Super. Ct. 192.

Texas. — Giddings *v.* Thompson, (Tex. Civ. App. 1906) 92 S. W. 1043; Clawson *v.* Wilkins, (Tex. Civ. App. 1906) 93 S. W. 1086; Upshur County *v.* Lewright, (Tex. Civ. App. 1906) 99 S. W. 441, *modified on rehearing* (Tex. Civ. App. 1907) 101 S. W. 1013; Titterington *v.* Kirby, (Tex. Civ. App. 1907) 106 S. W. 899.

West Virginia. — Williams *v.* Virginia-Pocahontas Coal Co., 60 W. Va. 239, 53 S. E. 923, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 809.

Wisconsin. — Neumeister *v.* Goddard, 125 Wis. 82, 103 N. W. 241.

810. 1. Everett *v.* Fall River, 189 Mass. 513, 75 N. E. 946; Gray *v.* Kelley, 194 Mass. 533, 80 N. E. 651; Van Winkle *v.* Van Winkle, 184 N. Y. 204, 77 N. E. 33, *affirming* 95 N. Y. App. Div. 605, 89 N. Y. Supp. 26, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 809; Neely *v.* Philadelphia, 212 Pa. St. 551, 61 Atl. 1096; Andreas *v.* Steigerwalt, 29 Pa. Super. Ct. 1; Durbin *v.* Roanoke Bldg. Co., (Va. 1908) 60 S. E. 86; Lins *v.* Seefeld, 126 Wis. 610, 105 N. W. 917; Wegge *v.* Madler, 129 Wis. 412, 109 N. W. 223.

The Fact that the Side Lines Do Not Extend to the Centre of the Way is not enough to change the operation of the rule. Gould *v.* Wagner, (Mass. 1907) 82 N. E. 10.

A Conveyance of Lots on Each Side of the Street conveys the fee in the street. Cocke *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 407.

Where Land Is Bounded by a Projected Street the grantee takes to the centre thereof, although it is not subsequently opened. Trowbridge *v.* Ehrich, 116 N. Y. App. Div. 457, 101 N. Y. Supp. 995.

A Conveyance of Lots and Blocks, Describing Them by Numbers Only, passes the fee to the centre of the street. Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21.

Rule Applicable to Lease Renewable Forever. — Maryland Telephone, etc., Co. *v.* Ruth, (Md. 1907) 68 Atl. 358.

Railroad. — A railroad right of way is not a public highway, and the rules which apply to land bounded by a public highway will not be applied so as to make a deed convey land not included in its terms. Couch *v.* Texas, etc., R. Co., (Tex. 1906) 90 S. W. 860, *reversing* (Tex. Civ. App. 1905) 87 S. W. 847.

The grantee of land bounded by a railroad does not take the minerals underlying the same. The rule that the grantee of land bounded by a highway takes the fee *usque ad medium filum viæ* does not apply in such case. Thompson *v.* Hickman, (1907) 1 Ch. 550, 76 L. J. Ch. 254, 96 L. T. N. S. 454.

Lot Abutting on Navigable River. — But where the owner of an island sells a lot abutting on a street which extends along a navigable river, the grantee takes the fee to the whole of the street subject to the easement of the right of way. Johnson *v.* Grenell, 188 N. Y. 407, 81 N. E. 161, *affirming* 112 N. Y. App. Div. 620, 98 N. Y. Supp. 629.

811. 2. Tietjen *v.* Palmer, 121 N. Y. App. Div. 233, 105 N. Y. Supp. 790.

812. 2. Western Union Tel. Co. *v.* Krueger, 36 Ind. App. 348, 74 N. E. 25; Red River *v.* Caddo, 118 La. 940, 43 So. 556, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 812; Wiess *v.* Goodhue, (Tex. Civ. App. 1907) 102 S. W. 793.

813. 3. Hamlin *v.* Atty.-Gen., (Mass. 1907) 81 N. E. 275; Mitchell *v.* Einstein, 105 N. Y. App. Div. 413, 94 N. Y. Supp. 210.

Where Land Is Described as Bounding "on" a Way, evidence as to the laying out and construction of the way and the condition of the locality is admissible in determining the boundary. Gould *v.* Wagner, (Mass. 1907) 82 N. E. 10.

Where a Line Runs to a Stake or Mark upon a Fence upon the side of a highway and thence along the highway, it will be deemed to indicate the place of the line and not the end thereof. Van Winkle *v.* Van Winkle, 184 N. Y. 193, 77 N. E. 33, *affirming* 95 N. Y. App. Div. 605, 89 N. Y. Supp. 20.

Where the Deed Calls for a Railroad Right of Way as a Boundary, the line of the right of way is the intended boundary. Hymen *v.* Gatta, 33 Pa. Super. Ct. 438.

814. 2. Hamlin *v.* Atty.-Gen., (Mass. 1907) 81 N. E. 275; Harriman *v.* Whitney, (Mass. 1907) 82 N. E. 671; Tietjen *v.* Palmer, 121 N. Y. App. Div. 233, 105 N. Y. Supp. 790. *Compare* Hudson River Telephone Co. *v.* Forrestal, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 133, 106 N. Y. Supp. 404.

Where the Deed to a Lot Recited that It Was "Aside from B Street Vacated," it was held that

the street was excluded. Lins *v.* Seefeld, 126 Wis. 610, 105 N. W. 917.

816. 3. Gray *v.* Kelley, 194 Mass. 533, 80 N. E. 651; Gould *v.* Wa ner, (Mass. 1907) 82 N. E. 10.

Where a Street Called for Is Not a Public Highway, the grantee does not take the fee to the centre of it, but only acquires an easement over it. Andreas *v.* Steigerwalt, 29 Pa. Super. Ct. 1.

818. 3. Roberts *v.* Fellman Dry Goods Co., (Tex. Civ. App. 1906) 92 S. W. 1060; Schwalm *v.* Beardsley, 106 Va. 407, 56 S. E. 135.

820. 2. District of Columbia *v.* Cropley, 23 App. Cas. (D. C.) 232.

In Washington, in Grants Made Prior to the Adoption of the Constitution, ordinary high water marks the boundary only where the shore has not been meandered, or the meander line runs above the line of ordinary high water. Van Siclen *v.* Muir, (Wash. 1907) 89 Pac. 188.

821. 2. **A Deed Describing Land as Bounded "On or Toward the West by the Seashore,"** conveys the land to medium high-water mark. Mellor *v.* Walmesley, (1905) 2 Ch. 164, 74 L. J. Ch. 475, 93 L. T. N. S. 574, 21 Times L. Rep. 591.

823. 1. Smith *v.* Bartlett, 180 N. Y. 360, 73 N. E. 63, *reversing* 79 N. Y. App. Div. 174, 81 N. Y. Supp. 231, and *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 823; Polson *v.* Aberdeen, 44 Wash. 155, 87 Pac. 73.

2. Huffman *v.* Charles, (Ky. 1906) 97 S. W. 775; Smith *v.* Bartlett, 180 N. Y. 360, 73 N. E. 63, *reversing* 79 N. Y. App. Div. 174, 81 N. Y. Supp. 231.

In a Grant by the City of New York of Lands Bordering upon the Hudson River, the grantee takes the fee of the uplands only to the high-water mark. Matter of New York, 182 N. Y. 361, 75 N. E. 156, *affirming* 102 N. Y. App. Div. 615, 92 N. Y. Supp. 1119.

825. 1. Harrison *v.* Fite, 148 Fed. 781, 78 C. C. A. 447.

826. 1. Frank *v.* Goddin, 193 Mo. 390, 91 S. W. 1057; Edwards *v.* Woodruff, 25 Pa. Super. Ct. 575.

828. 1. Columbia Land Co. *v.* Van Dusen Invest. Co., (Oregon 1907) 91 Pac. 469, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 828.

4. Harrison *v.* Fite, 148 Fed. 781, 78 C. C. A. 447; Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; Foster *v.* Bussey, 132 Iowa 640, 109 N. W. 1105; Spurrier *v.* Hodges, (Ky. 1906) 90 S. W. 559; Wall *v.* Wall, 142 N. Car. 387, 55 S. E. 283; Edwards *v.* Woodruff, 25 Pa. Super. Ct. 575.

If the Thread of the Stream Changes Gradually, the boundary of a tract shifts with it. Spurrier *v.* Hodges, (Ky. 1906) 90 S. W. 559.

830. 2. Peoria *v.* Central Nat. Bank, 224 Ill. 43, 79 N. E. 296, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 830.

831. 1. Bramblette *v.* Howard, (Ky. 1906) 93 S. W. 902; Red River *v.* Caddo, 118 La. 940, 43 So. 556, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 831.

833. 1. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783.

When a Government Lot Abuts upon a Lake, the shifting water line, and not the meander line, is the boundary of the lot. Sherwin *v.* Bitzer, 97 Minn. 252, 106 N. W. 1046.

834. 1. To the same effect as Felder *v.* Bonnett, 2 McMull. L. (S. Car.) 45, stated in the original note, is Red River *v.* Caddo, 118 La. 940, 43 So. 556, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 835.

835. 1. **Meander Line May Be Adopted as Boundary.** — Tolleston Club *v.* Lindgren, 39 Ind. App. 448, 77 N. E. 818.

836. 2. **Where a Deed Describes a Lot as Bounded "by the City Reservoir"** which is subsequently abandoned, the grantee cannot thereafter claim the land formerly occupied by the reservoir. Dillon *v.* Burke, 73 N. H. 539, 63 Atl. 927.

837. 1. Patapsco Guano Co. *v.* Bowers-White Lumber Co., (N. Car. 1907) 59 S. E. 538.

838. 2. **A Controversy as to a Boundary** cannot be settled in a suit to enjoin a trespass. Hume *v.* Burns, (Oregon 1907) 90 Pac. 1009.

839. 3. Hays *v.* Bouchelle, 147 Ala. 212, 41 So. 518; Deidrich *v.* Simmons, 75 Ark. 400, 87 S. W. 649; Livingston County Bldg., etc., Assoc. *v.* Keach, 219 Ill. 9, 76 N. E. 72; McCreery Land, etc., Co. *v.* Myers, 70 S. Car. 282, 49 S. E. 848; Watkins *v.* Childs, (Vt. 1907) 66 Atl. 805.

A Court of Equity May Determine a Boundary Line when encountered while administering a remedy which properly belongs to some head of equity jurisprudence. Dolan *v.* Smith, 147 Mich. 276, 110 N. W. 932.

840. 2. Hays *v.* Bouchelle, 147 Ala. 212, 41 So. 518; Watkins *v.* Childs, (Vt. 1907) 66 Atl. 805; Le Comte *v.* Freshwater, 56 W. Va. 336, 49 S. E. 238.

841. 1. Watkins *v.* Childs, (Vt. 1907) 66 Atl. 805.

2. Livingston County Bldg., etc., Assoc. *v.* Keach, 219 Ill. 9, 76 N. E. 72; Watkins *v.* Childs, (Vt. 1907) 66 Atl. 805.

842. 2. **Appointment of Commissioners Discretionary.** — Stangair *v.* Roads, 41 Wash. 583, 84 Pac. 405.

Report of Processioner or Surveyor as Evidence of Location. — The report of processioners is *prima facie* evidence of the true location of boundaries. Crouch *v.* Wainscott, 122 Ky. 107, 91 S. W. 289.

In a proceeding to locate a boundary, the surveyor's report to which no exception is filed is *prima facie* evidence of the true location, and the court should locate the line in accordance therewith. Bates *v.* Baker, (Ky. 1907) 101 S. W. 340.

Before the statute (Acts Ga., 1901, p. 39) it was necessary for the processioners and the surveyor to trace and mark anew the lines around the applicant's tract before the plot certified by the surveyor and the lines so marked should be *prima facie* correct and admissible in evidence without further proof; otherwise in the trial of an issue formed by a protest to the return of the processioners, it was proper to dismiss the proceedings. Gillis *v.* Taylor, 127 Ga. 676, 56 S. E. 992.

Michigan — Lands in City. — Public Acts Mich. 1899, page 388, No. 248, providing for

the survey of lands does not apply to land situated within an incorporated city. Paldi *v.* Cady, 143 Mich. 82, 106 N. W. 709.

847. 3. **Deeds Originating from the Same Grantor,** although covering different tracts of land from that in dispute, are admissible to show what was intended to be conveyed. Lee *v.* Giles, 124 Ga. 494, 52 S. E. 806.

4. Park Com'rs *v.* Taylor, 133 Iowa 453, 108 N. W. 927; Ratliff *v.* May, (Ky. 1905) 84 S. W. 731; Herbert *v.* Steele, (N. H. 1907) 68 Atl. 411; Naughton *v.* Elliott, 68 N. J. Eq. 259, 59 Atl. 869.

848. 1. Shackelford *v.* Orris, 129 Ga. 791, 59 S. E. 772; Hornet *v.* Dumbeck, 39 Ind. App. 482, 78 N. E. 691; Haskell *v.* Friend, (Mass. 1907) 81 N. E. 962; Wilkins *v.* Clawson, (Tex. Civ. App. 1904) 83 S. W. 732; Hamilton *v.* Blackburn, (Tex. Civ. App. 1906) 95 S. W. 1094.

849. 1. Ratliff *v.* May, (Ky. 1905) 84 S. W. 731; Rix *v.* Smith, 145 Mich. 203, 108 N. W. 691; Twombly *v.* Lord, (N. H. 1907) 66 Atl. 486; Selkirk *v.* Watkins, (Tex. Civ. App. 1907) 105 S. W. 1161.

Admissible to Prove Location of Division Fence. — Ross *v.* Roy, (Ala. 1905) 39 So. 583.

Field Notes of a Survey Cannot Be Controlled by parol evidence of the existence of objects found on the ground which are not called for. Hamilton *v.* Blackburn, (Tex. Civ. App. 1906) 95 S. W. 1094.

850. 1. Cooper *v.* Henderson County, (Ky. 1906) 90 S. W. 576; Collins *v.* McKay, (Mont. 1907) 92 Pac. 295; Reed *v.* Burrell, (Neb. 1906) 108 N. W. 155; Marshall *v.* Corbett, 137 N. Car. 555, 50 S. E. 210; Broadwell *v.* Morgan, 142 N. Car. 475, 55 S. E. 340; Douglas Land Co. *v.* T. W. Thayer Co., (Va. 1907) 58 S. E. 1101; Stewart *v.* Doak, 58 W. Va. 172, 52 S. E. 95; Laurentides Mica Co. *v.* Fortin, 15 Quebec K. B. 432.

Evidence that Boundary Lines of Fields, fences, and roads as fixed by early settlers coincide with the monuments in question, is admissible. Bridenbaugh *v.* Bryant, (Neb. 1907) 112 N. W. 571.

The Opinion of a Surveyor as to a Supposed Monument found by him is a mere conclusion of the witness and inadmissible. Clarke *v.* Case, 144 Mich. 148, 107 N. W. 893.

2. Phillips *v.* Stewart, (Ky. 1906) 97 S. W. 6; Stewart *v.* Doak, 58 W. Va. 172, 52 S. E. 95.

7. Inmon *v.* Pearson, (Wash. 1907) 92 Pac. 279, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 850.

851. 1. Hemphill *v.* Hemphill, 138 N. Car. 504, 51 S. E. 42; Inmon *v.* Pearson, (Wash. 1907) 92 Pac. 279, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 851.

3. *Alabama.* — Driver *v.* King, 145 Ala. 585, 40 So. 315.

Kentucky. — Phillips *v.* Stewart, (Ky. 1906) 97 S. W. 6.

Maine. — Emmett *v.* Perry, 100 Me. 139, 60 Atl. 872.

Massachusetts. — Gray *v.* Kelley, 190 Mass. 184, 76 N. E. 724.

Montana. — Collins *v.* McKay, (Mont. 1907) 92 Pac. 295.

New York. — Dibble *v.* Cole, 102 N. Y. App. Div. 229, 92 N. Y. Supp. 938.

North Carolina. — Yow *v.* Hamilton, 136 N. Car. 357, 48 S. E. 782; Hemphill *v.* Hemphill, 138 N. Car. 504, 51 S. E. 42; Hill *v.* Dalton, 140 N. Car. 9, 52 S. E. 273; Bullard *v.* Hollingsworth, 140 N. Car. 634, 53 S. E. 441; Broadwell *v.* Morgan, 142 N. Car. 475, 55 S. E. 340; Fincannon *v* Sudderth, 144 N. Car. 587, 57 S. E. 337.

Texas. — Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898; Keystone Mills Co. *v.* Peach River Lumber Co., (Tex. Civ. App. 1906) 96 S. W. 64; McKeon *v.* Roan, (Tex. Civ. App. 1907) 106 S. W. 404.

West Virginia. — Stewart *v.* Doak, 58 W. Va. 172, 52 S. E. 95.

852. 1. Driver *v.* King, 145 Ala. 585, 40 So. 315; Manuel *v.* Flynn, (Cal. App. 1907) 90 Pac. 463; Rix *v.* Smith, 145 Mich. 203, 108 N. W. 691.

2. Okie *v.* Person, 23 App. Cas. (D. C.) 170; Dee *v.* Nachbar, (Mo. 1907) 106 S. W. 35; Bollinger *v.* McMinn, (Tex. Civ. App. 1907) 104 S. W. 1079.

854. 3. Phillips *v.* Stewart, (Ky. 1906) 97 S. W. 6; Bland *v.* Beasley, 140 N. Car. 628, 53 S. E. 443; Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898; Douglas Land Co. *v.* T. W. Thayer Co., (Va. 1907) 58 S. E. 1101.

5. Hemphill *v.* Hemphill, 138 N. Car. 504, 51 S. E. 42; Bland *v.* Beasley, 140 N. Car. 628, 53 S. E. 443; Camp *v.* League, (Tex. Civ. App. 1906) 92 S. W. 1062.

6. Bland *v.* Beasley, 140 N. Car. 628, 53 S. E. 443.

855. 1. Bland *v.* Beasley, 140 N. Car. 628, 53 S. E. 443; Douglas Land Co. *v.* T. W. Thayer Co., (Va. 1907) 58 S. E. 1101.

4. **Field Notes.** — Hogg *v.* Lusk, 120 Ky. 419, 86 S. W. 1128; Combs *v.* Virginia Iron, etc., Co., (Ky. 1908) 106 S. W. 815; Bradshaw *v.* Edelen, 194 Mo. 640, 92 S. W. 691; Asheville Land Co. *v.* Lang, (N. Car. 1907) 59 S. E. 703; Barrow *v.* Lyons, (Tex. Civ. App. 1905) 86 S. W. 773; Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898; Giddings *v.* Thompson, (Tex. Civ. App. 1906) 92 S. W. 1043; Stangair *v.* Roads, 41 Wash. 583, 84 Pac. 405.

Field notes in the handwriting of the surveyor and contained in a book handed down to his successor, are admissible. Camp *v.* League, (Tex. Civ. App. 1906) 92 S. W. 1062.

Field notes of an adjoining survey are not admissible if the field notes of survey in question are not inconsistent. Upshur County *v.* Lewright, (Tex. Civ. App. 1907) 101 S. W. 1013.

Field notes of another survey made by another party subsequently, are not admissible, where it appears that the party making it had no knowledge of the lines of the survey in question. Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898.

Field notes of the surveyor are admissible to establish the existence of posts and other marks defining a boundary. Laurentides Mica Co. *v.* Fortin, 15 Quebec K. B. 432.

Field notes of a resurvey under government

authority control those of the original survey. Kimball *v.* McKee, 149 Cal. 435, 86 Pac. 1089.

856. 4. Cravath *v.* Baylis, 113 N. Y. App. Div. 666, 99 N. Y. Supp. 973; Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898.

Map Not Made from Actual Measurements Inadmissible. — Seabrook *v.* Coos Bay Ice Co., (Oregon 1907) 89 Pac. 417.

858. 3. **Where a Party Has Actual Possession of a Portion of Land,** such possession gives him constructive possession only of the land within the true boundaries, although he had lines run at the time of his purchase. Davidson *v.* Equitable Securities Co., (Tex. Civ. App. 1906) 96 S. W. 787.

859. 1. Bock *v.* Porterfield, (Neb. 1908) 114 N. W. 597.

860. 1. *Arkansas.* — Deidrich *v.* Simmons, 75 Ark. 400, 87 S. W. 649.

Illinois. — Purtle *v.* Bell, 225 Ill. 523, 80 N. E. 350, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 860–862; Kincaid *v.* Vickers, 217 Ill. 423, 75 N. E. 527; Sonnemann *v.* Mertz, 221 Ill. 362, 77 N. E. 550; Roberts *v.* Birks, 223 Ill. 291, 79 N. E. 103.

Indiana. — Adams *v.* Betz, 167 Ind. 161, 78 N. E. 649.

Iowa. — Kitchen *v.* Chantland, 130 Iowa 618, 8 Ann. Cas. 81, 105 N. W. 367.

Kentucky. — Frazier *v.* Mineral Development Co., (Ky. 1905) 86 S. W. 983; Hollingsworth *v.* Barrett, (Ky. 1905) 89 S. W. 107; Lost Creek Coal Co. *v.* Napier, (Ky. 1905) 89 S. W. 264; Samples *v.* Smyth, (Ky. 1907) 98 S. W. 1047; Martin *v.* Conley, (Ky. 1907) 99 S. W. 613; Morgan *v.* Lewis, (Ky. 1907) 99 S. W. 676; Ball *v.* Loughridge, (Ky. 1907) 100 S. W. 275; Fields *v.* Sizemore, (Ky. 1907) 105 S. W. 438; J. D. Hughes Lumber Co. *v.* Valentine, (Ky. 1908) 106 S. W. 839.

Michigan. — Breakey *v.* Woolsey, 149 Mich. 86, 112 N. W. 719.

New Jersey. — Albanesius *v.* Peerless Rubber Mfg. Co., (N. J. 1907) 67 Atl. 1025.

Texas. — Roberts *v.* Fellman Dry Goods Co., (Tex. Civ. App. 1906) 92 S. W. 1060; McKeon *v.* Roan, (Tex. Civ. App. 1907) 106 S. W. 404.

West Virginia. — Le Comte *v.* Freshwater, 56 W. Va. 336, 49 S. E. 238, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 860; Mays *v.* Hinchman, 57 W. Va. 602, 50 S. E. 823; Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

Canada. — Mooney *v.* McIntosh, 1 Can. Sup. Ct. Cas. 171; Holesworth *v.* Fitch, 37 Nova Scotia 143.

Agreed Line May Be Changed by Parol. — McDonald *v.* McCrabb, (Tex. Civ. App. 1907) 105 S. W. 238.

Where a Remote Grantor of Land Agreed with Certain Heirs upon a boundary line, such agreement will not be binding either upon the immediate grantor or his grantee if they did not know of the line. Taylor *v.* Blackwell, (Tex. Civ. App. 1907) 105 S. W. 214.

861. 1. Lewis *v.* Ogram, 149 Cal. 505, 87 Pac. 60; Fleming *v.* Baker, 12 Idaho 346, 85 Pac. 1092; Sonnemann *v.* Mertz, 221 Ill. 362, 77 N. E. 550; McKeon *v.* Roan, (Tex. Civ. App. 1907) 106 S. W. 404; Le Comte *v.* Freshwater, 56 W. Va. 336, 49 S. E. 238, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 861.

862. 1. Roberts *v.* Birks, 223 Ill. 291, 79 N. E. 103; Wilson *v.* Powell, 37 Ind. App. 44, 75 N. E. 611.

Line Run by Surveyor. — Where the line is run by the county surveyor after due notice to the parties, and the parties accept and act upon the line so established, the survey unappealed from is at least *prima facie* evidence of the correctness of the corners and boundary line established. Korporal *v.* Robinson, 38 Ind. App. 110, 78 N. E. 84.

A boundary line run by a surveyor under an agreement between the parties is not binding if not satisfactory to one of them. Huff *v.* Woosley, (Ky. 1906) 92 S. W. 572.

A random line run by the surveyor will not be binding; the survey must be definite and the parties must agree to abide thereby. Anderson *v.* Huebel, (Wis. 1907) 113 N. W. 975.

Survey Not Agreed upon Not Binding. — Liddle *v.* Blake, 131 Iowa 165, 105 N. W. 649.

2. Lewis *v.* Ogram, 149 Cal. 505, 87 Pac. 60; Gray *v.* Kelley, 190 Mass. 184, 76 N. E. 724; McMurray *v.* Dixon, 105 Va. 605, 54 S. E. 481; Le Comte *v.* Freshwater, 56 W. Va. 336, 49 S. E. 238; Mays *v.* Hinchman, 57 W. Va. 602, 50 S. E. 823.

3. Sonnemann *v.* Mertz, 221 Ill. 362, 77 N. E. 550, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 862; Purtle *v.* Bell, 225 Ill. 523, 80 N. E. 350.

863. 1. Hollingsworth *v.* Barrett, (Ky. 1905) 89 S. W. 107.

Arkansas. — Goodwin *v.* Garibaldi, 83 Ark. 74, 102 S. W. 706.

California. — Lewis *v.* Ogram, 149 Cal. 505, 87 Pac. 60.

Georgia. — Catoosa Springs Co. *v.* Webb, 123 Ga. 33, 50 S. E. 942.

Illinois. — Kincaid *v.* Vickers, 217 Ill. 423, 75 N. E. 527; Roberts *v.* Birks, 223 Ill. 291, 79 N. E. 103.

Iowa. — Erikson *v.* Slate, 130 Iowa 187, 106 N. W. 621; Watson *v.* Hogan, 130 Iowa 350, 106 N. W. 759; Amber *v.* Cain, (Iowa 1907) 110 N. W. 1053; Quade *v.* Pillard, (Iowa 1907) 112 N. W. 646.

Kentucky. — Fields *v.* Sizemore, (Ky. 1907) 105 S. W. 438; Rudolph *v.* Sales, (Ky. 1907) 105 S. W. 975; Turner *v.* Dixon, (Ky. 1908) 106 S. W. 814; Woodford *v.* Clay, (Ky. 1908) 107 S. W. 269.

Massachusetts. — Gray *v.* Kelley, 190 Mass. 184, 76 N. E. 724.

Minnesota. — Kistner *v.* Beseke, 96 Minn. 137, 104 N. W. 759.

Nevada. — Adams *v.* Child, 28 Nev. 169, 88 Pac. 1087.

New Jersey. — Albanesius *v.* Peerless Rubber Mfg. Co., (N. J. 1907) 67 Atl. 1025.

New York. — Herse *v.* Mazza, 100 N. Y. App. Div. 59, 91 N. Y. Supp. 778.

Virginia. — McMurray *v.* Dixon, 105 Va. 605, 54 S. E. 481.

West Virginia. — Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 863.

Wisconsin. — Vernon *v.* Nicolai, 125 Wis. 319, 103 N. W. 1111.

Where a Fence Had Been Erected between Adjoining Owners, it was held that the doctrine of acquiescence would not apply in the absence of a showing that the fence was originally intended to mark the boundary. Boltz *v.* Colsch, 134 Iowa 480, 109 N. W. 1106.

Acquiescence of Certain Landowners Whose lands Are Bounded by a County Line, as to the location of such boundary, will not be binding on other landowners not holding under them and whose lands touch the county line at another place. Ivey *v.* Cowart, 124 Ga. 159, 52 S. E. 430.

Effect of Acquiescence. — The actual location of lines by parties who have long since been dead, after the lines were made, is the best evidence of their true location, when this location has been acquiesced in until all of that generation had passed away. Wand *v.* Corbin, (Ky. 1908) 107 S. W. 753.

A line acquiesced in for the statutory period will control a line determined by a survey based on a description in the conveyance or plat under which the grantee claims; and the fact that the line acquiesced in is crooked, while the one called for is straight, is immaterial. Laughlin *v.* Francis, 129 Iowa 62, 105 N. W. 360.

If a line has been acquiesced in for more than the statutory period it cannot be changed by parol unless followed by possession or improvement with reference thereto. Uker *v.* Thieman, 132 Iowa 79, 107 N. W. 167.

A line acquiesced in for twenty years will not be overthrown by a survey fixing it elsewhere if there is no agreement to accept the survey. Andrews *v.* Meredith, 131 Iowa 716, 109 N. W. 287.

A line long acquiesced in, although the occupation is not of such nature as to give title by prescription, may be declared to be the true boundary in a suit in equity by the parties to quiet title. Challen *v.* Martin, 28 Ohio Cir. Ct. 745, *affirmed* 75 Ohio St. 640, 80 N. E. 1124.

Oral Recognition of Line by Grantor. — Where a boundary line has been long acquiesced in and the grantor conveys with an oral declaration recognizing the new line, the description in the conveyance as against subsequent grantees, must be construed with reference thereto. Rix *v.* Smith, 145 Mich. 203, 108 N. W. 691.

Acquiescence by County. — Long acquiescence in a boundary line by a county raises no presumption that it is the true line. Atascosa County *v.* Alderman, (Tex. Civ. App. 1905) 91 S. W. 846.

Not Applicable to Highway Line. — The doctrine of acquiescence does not apply in fixing a boundary between an abutting owner and a highway. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205.

864. 1. **Other Periods of Acquiescence.** — Thirty years. Davis *v.* Waggoner, (Ind. App. 1908) 83 N. E. 381.

Twenty-five years. McBride *v.* Bair, 134 Iowa 661, 112 N. W. 169.

Twenty-four years. Lindley *v.* Johnston, 42 Wash. 257, 84 Pac. 822.

Twenty years. Younker *v.* White, (Iowa 1907) 111 N. W. 824.

2. Deidrich *v.* Simmons, 75 Ark. 400, 87 S. W. 649.

Where an Old Fence Has Been Recognized as a Boundary Line for more than twenty years, it will be taken as the true boundary line. Sullivan *v.* Michael, (Tex. Civ. App. 1905) 87 S. W. 1061.

Where the Owner of Adjoining Lots Had the Dividing Line Run by a Surveyor and marked on the ground, and subsequently sold the lots to different parties who acquiesced in the line for ten years, the line thus acquiesced in is conclusive, although erroneous. Herse *v.* Mazzo, 100 N. Y. App. Div. 59, 91 N. Y. Supp. 778.

3. See Holmes *v.* Judge, 31 Utah 269, 87 Pac. 1009.

Where Buildings Are Partly Erected When Doubt Arises as to the True Boundary, and the parties agree to complete the buildings to save the cost of tearing them down, the wall is not a true boundary line, as the agreement was simply to disregard the true line for the purpose of erecting the buildings. Thoman *v.* Gross, 148 Mich. 505, 112 N. W. 111.

865. 1. Stumpe *v.* Kopp, 201 Mo. 412, 99 S. W. 1073; Holmes *v.* Judge, 31 Utah 269, 87 Pac. 1009.

2. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205; Holmes *v.* Judge, 31 Utah 269, 87 Pac. 1009.

3. Connell *v.* Clifford, 39 Colo. 121, 88 Pac. 850; Cottrell *v.* Pickering, (Utah 1907) 88 Pac. 696.

4. Watson *v.* Hogan, 130 Iowa 350, 106 N. W. 759; Kitchen *v.* Chantland, 130 Iowa 618, 8 Ann. Cas. 81, 105 N. W. 367; Cleveland Cliffs Iron Co. *v.* Gauthier, 143 Mich. 296, 106 N. W. 862.

In the Absence of Fraud, a Practical Location by the Parties and acquiescence therein for a long time, although for a less period than the statutory period of limitation, is binding by way of estoppel. Adams *v.* Betz, 167 Ind. 161, 78 N. E. 649.

Making Improvements on Faith of Line Marked Creates Estoppel. — Deidrich *v.* Simmons, 75 Ark. 400, 87 S. W. 649.

Failure to Raise Issue upon Denial of Title. — Where the defendant in a processioning proceeding denies the title of the plaintiff and also the location of his boundary, the plaintiff by failure to raise an issue thereon is estopped thereafter from denying the boundary established. Davis *v.* Wall, 142 N. Car. 450, 55 S. E. 350.

Where a Line Marked by the Owner Is Only Tentative and does not run between objects called for in the patent, he is not estopped to deny that it is the true line. Asher *v.* Cornett, (Ky. 1908) 107 S. W. 225.

866. 1. Clark *v.* Hindman, 46 Oregon 67, 79 Pac. 56.

The Naming of a Boundary Line by a Predecessor in Title estops the successor thereof to deny the boundary so named. Mellor *v.* Walmesley, (1905) 2 Ch. 164, 74 L. J. Ch.

475, 93 L. T. N. S. 574, 21 Times L. Rep. 591.

Conveyance of the Right to Use a Wall does not make the wall the boundary line. Crane *v.* Judge, 30 Utah 50, 83 Pac. 566.

2. Boone *v.* Graham, 215 Ill. 511, 74 N. E. 559; Turner *v.* Angus, 145 Mich. 679, 108 N. W. 1100; Cottrell *v.* Pickering, (Utah 1907) 88 Pac. 696; Pereles *v.* Gross, 126 Wis. 122, 105 N. W. 217.

867. 1. If the Vendee Is Informed of a Mistake in the Survey and thereafter pays the purchase price and accepts the deed which excludes part of the land, he will be estopped from claiming any part of the land so excluded. Williams *v.* Virginia-Pocahontas Coal Co., 60 W. Va. 239, 53 S. E. 923.

2. Andrews *v.* Meredith, 131 Iowa 716, 109 N. W. 287.

3. Although the Owner Aided in Locating a Line before he purchased the property, he will not be estopped to claim the true boundary thereafter. Christenson *v.* Simmons, 47 Oregon 184, 82 Pac. 805.

6. Columbia Land Co. *v.* Van Dusen Invest. Co., (Oregon 1907) 91 Pac. 469.

7. Cleveland-Cliffs Iron Co. *v.* Gauthier, 143 Mich. 296, 106 N. W. 862.

8. Austin *v.* Espuela Land, etc., Co., (Tex. Civ. App. 1908) 107 S. W. 1138.

868. 6. *In re* Richardson, 74 Kan. 557, 87 Pac. 678; Ridgell *v.* Atherton, (Tex. Civ. App. 1908) 107 S. W. 129; Pereles *v.* Gross, 126 Wis. 122, 105 N. W. 217.

Where More Objects Are Embraced in a Call than Are Possible, that course must be run which includes a majority of them. Kerr *v.* DeLaney, (Ky. 1906) 91 S. W. 286.

869. 1. Where No Natural or Artificial Monuments Are Called for, the line in dispute may be established by running it upon the variations of the needle proved by test to have been employed in blocks from which the grantee's surveys take their connection. Smith *v.* Jarvis, (Tex. Civ. App. 1907) 105 S. W. 1168.

Where the Beginning Corner Is on the Bank of a Stream, the lines must be run with reference to the point where the beginning stood at the date of the deed, although the doctrine of accretion applies. Asheville Land Co. *v.* Lang, (N. Car. 1907) 59 S. E. 703.

Other Illustrations. — King *v.* Carmichael, (Wash. 1906) 87 Pac. 1120; Lindsay *v.* Austin, 139 N. Car. 463, 51 S. E. 990.

BRANDS AND MARKS.

875. 5. State *v.* Dunn, 13 Idaho 9, 88 Pac. 235; Hurst *v.* Territory, 16 Okla. 600, 86 Pac. 280; State *v.* Eddy, (Wash. 1907) 90 Pac. 641.

Where, in an action to recover possession of certain horses, the defendant claimed that a mare was one owned and branded by him prior to the sale of his brand to the plaintiff, it was held that it was competent to show that the mare was of a sufficient age to have been branded by him prior to the sale. Belknap *v.* Belknap, (S. Dak. 1906) 107 N. W. 692.

7. Statutes — Only Recorded Brands Evidence of Ownership. — A statute providing that unrecorded stock brands shall not be recognized "as evidence of ownership" does not prevent the recognition of a duly recorded brand as evidence bearing on the question of ownership prior to the record of the brand. Territory *v.* Meredith, (N. Mex. 1907) 91 Pac. 731.

Recording Necessary to Acquire Ownership of Brand — Idaho Statute. — State *v.* Dunn, 13 Idaho 9, 88 Pac. 235.

877. 1. State *v.* Dunn, 13 Idaho 9, 88 Pac. 235.

2. State *v.* Dunn, 13 Idaho 9, 88 Pac. 235.

878. 7. By Statute in Arizona, a public or civil officer may seize all unmarked or unbranded calves or yearlings, and all animals freshly branded or marked, or any livestock the ownership of which is questioned, and upon making such seizure he must report the fact to a judge of the District Court or justice of the peace, who shall cause a citation to be published upon the return of which proof to determine the ownership is taken. Lacey *v.* Parks, 9 Ariz. 241, 80 Pac. 367.

BREACH OF PROMISE OF MARRIAGE.

883. 2. O'Reilly *v.* Sweeney, (Supm. Ct. Spec. T.) 34 Misc. (N. Y.) 408, 105 N. Y. Supp. 1033; Leaman *v.* Thompson, 43 Wash. 579, 86 Pac. 926.

3. Leaman *v.* Thompson, 43 Wash. 579, 86 Pac. 926.

12. Contract Void Where One Party Married. — Leaman *v.* Thompson, 43 Wash. 579, 86 Pac. 926, holding, however, that a renewal of the promise after removal of the disability will support the action.

14. Wilson *v.* Carnley, 23 Times L. Rep. 757.

884. 8. Grubbs *v.* Pence, (Ky. 1903) 73 S. W. 785.

10. Formal Words Unnecessary — Fixed Time Not Requisite. — McKee *v.* Mouser, 131 Iowa 203, 108 N. W. 228.

885. 1. McKee *v.* Mouser, 131 Iowa 203, 108 N. W. 228; Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

Mere Option to Marry Plaintiff Not Sufficient. — Smythe *v.* Greacen, 100 N. Y. App. Div. 275, 91 N. Y. Supp. 450.

5. McKee *v.* Mouser, 131 Iowa 203, 108 N. W. 228.

886. 1. Letters Expressive of Affection. — Welker *v.* Metcalf, 209 Pa. St. 373, 58 Atl. 687; Cain *v.* Corley, (Tex. Civ. App. 1906) 99 S. W. 168.

Letter as Corroborative Evidence. — Hansen *v.* Dixon, 96 L. T. N. S. 32, 23 Times L. Rep. 56.

Evidence of Sexual Intercourse Not Admissible to Show Promise. — Wrynn *v.* Downey, 27 R. I. 454, 8 Ann. Cas. 912, 63 Atl. 401.

889. 3. Sramek *v.* Sklenar, 73 Kan. 450, 85 Pac. 566; Edmonds *v.* Hughes, 115 Ky. 561, 74 S. W. 283.

4. Promises on Condition. — A promise by the defendant to marry "just as soon as his mother got well," or "just as soon as his mother recovered," has been held to be bind-

ing upon the defendant as an unconditional promise. Anderson *v.* Kirby, 125 Ga. 62, 5 Ann. Cas. 103, 54 S. E. 197.

890. 6. Birum *v.* Johnson, 87 Minn. 362, 92 N. W. 1.

891. 1. Grubbs *v.* Pence, (Ky. 1903) 73 S. W. 785; Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

3. Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

8. Birum *v.* Johnson, 87 Minn. 362, 92 N. W. 1.

9. Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

892. 4. Williams *v.* Fahn, 119 Iowa 746, 94 N. W. 252, holding further that proof of specific acts of unchastity is unnecessary. Welker *v.* Metcalf, 209 Pa. St. 373, 58 Atl. 687.

6. Williams *v.* Fahn, 119 Iowa 746, 94 N. W. 252.

894. 1. **Inability of the Plaintiff to Bear Children,** resulting from an operation subsequent to the promise, is a good defense. Edmonds *v.* Hughes, 115 Ky. 561, 74 S. W. 283.

Where the Plaintiff Was Affected with Pulmonary Tuberculosis, the defendant was held to be relieved from liability for a breach of his promise to marry her, on grounds of public policy, though he knew of her condition at the time of the promise. Grover *v.* Zook, 44 Wash. 504, 87 Pac. 638, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 893, 894.

2. **The Record of Lunacy Proceedings Adjudicating the Defendant Insane** has been held to be conclusive evidence that at the time of the illegal contract of marriage the defendant was incapable of making a valid contract. O'Reilly *v.* Sweeney, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 408, 105 N. Y. Supp. 1033.

2. **Supervening Insanity Good Defense.** — Liddell *v.* Easton, (1907) Sc. Ct. of Sess. 154.

895. 2. Edmonds *v.* Hughes, 115 Ky. 561, 74 S. W. 283.

3. **Circumstances Held Not a Release.** — For a letter held not to amount to a release when construed as a whole, though isolated expressions in it might be taken otherwise, see Mickens *v.* Phillips, (Va. 1905) 51 S. E. 354.

896. 5. McCarty *v.* Heryford, 125 Fed. 46; Lanigan *v.* Neely, 4 Cal. App. 760, 89 Pac. 441.

6. Heasley *v.* Nichols, 38 Wash. 485, 80 Pac. 769.

897. 1. Jacoby *v.* Stark, 205 Ill. 34, 68 N. E. 557.

2. Birum *v.* Johnson, 87 Minn. 362, 92 N. W. 1; Massuco *v.* Tomasi, (Vt. 1907) 67 Atl. 551; Heasley *v.* Nichols, 38 Wash. 485, 80 Pac. 769.

Actual or Reputed Wealth. — In *Nebraska* it has been held that general reputation for wealth, as distinguished from actual wealth, cannot be taken into account in estimating damages. Johansen *v.* Modahl, (Neb. 1903) 94 N. W. 532. But the contrary rule has been declared in *Iowa.* McKee *v.* Mouser, 131 Iowa 203, 108 N. W. 228.

3. Massuco *v.* Tomasi, (Vt. 1907) 67 Atl. 551.

4. Heasley *v.* Nichols, 38 Wash. 485, 80 Pac. 769.

5. Sramek *v.* Sklenar, 73 Kan. 450, 85 Pac. 566; Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

6. Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

7. Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024; Heasley *v.* Nichols, 38 Wash. 485, 80 Pac. 769.

8. Graves *v.* Rivers, 123 Ga. 224, 51 S. E. 318; Grubbs *v.* Pence, (Ky. 1903) 73 S. W. 785; Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

898. 1. Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

2. Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

All circumstances found that placed the plaintiff in a worse position, or debarred her from other opportunities of marriage, by reason of the contract with the defendant, may be properly considered. Sramek *v.* Sklenar, 73 Kan. 450, 85 Pac. 566.

5. **Loss of Salary Because of Ill Health Not Proper Element.** — Liddell *v.* Easton, (1907) Sc. Ct. of Sess. 154.

6. McCarty *v.* Heryford, 125 Fed. 46; Lanigan *v.* Neely, 4 Cal. App. 760, 89 Pac. 441; Anderson *v.* Kirby, 125 Ga. 62, 5 Ann. Cas. 103, 54 S. E. 197; Sramek *v.* Sklenar, 73 Kan. 450, 85 Pac. 566. *Contra,* Wrynn *v.* Downey, 27 R. I. 454, 8 Ann. Cas. 912, 63 Atl. 401; Biela *v.* Urbanczyk, (Tex. Civ. App. 1905) 85 S. W. 451.

899. 6. Graves *v.* Rivers, 123 Ga. 224, 51 S. E. 318.

900. 1. **The Manner of Conducting the Defense,** so as to aggravate the plaintiff's actual suffering, has been held to be properly taken into consideration. Broyhill *v.* Norton, 175 Mo. 190, 74 S. W. 1024.

3. McCarty *v.* Heryford, 125 Fed. 46.

901. 10. **Alabama Rule Applied in Oregon.** — McCarty *v.* Heryford, 125 Fed. 46. *Contra,* Heasley *v.* Nichols, 38 Wash. 485, 80 Pac. 769.

BREACH OF THE PEACE.

902. 1. Stancliff *v.* U. S., 5 Indian Ter. 486, 82 S. W. 882, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 902.

903. 1. Heath *v.* Hagan, (Iowa 1907) 113 N. W. 342, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 903; King *v.* Com., (Ky. 1907) 105 S. W. 419.

904. 1. *Ex p.* Boynton, 1 Cal. App. 294, 82 Pac. 90.

The Refusal by a Person to Give His Reasons to a police officer for being in a certain place does not constitute a breach of the peace such as will justify the officer in arresting him without a warrant. Cook *v.* Hastings, 150 Mich. 289, 114 N. W. 71.

An Assault upon a Person in a Saloon, accompanied by abusive language, constitutes a breach of the peace. Neola *v.* Reichart, 131 Iowa 492, 109 N. W. 5.

2. Mobley *v.* State, (Ala. 1907) 44 So. 379.

Cursing and Abusing Another under circum-

stances reasonably calculated to provoke a breach of the peace is punishable under the *Texas* statute. Trezevant *v.* State, (Tex. Crim. 1905) 84 S. W. 828.

Committing an Assault and Battery upon a person in the presence of his family is a breach of the peace. Wilcox *v.* U. S., (Indian Ter. 1907) 103 S. W. 774.

The Rattling of the Door of the House of Another in the nighttime by the defendant, under the mistaken belief that he is at another place where he has business, does not constitute a breach of the peace; but it is otherwise if the defendant while in an intoxicated condition does so, at the same time using loud, boisterous, and threatening language, although he has mistaken the house. Garrett *v.* State, (Tex. Crim. 1906) 91 S. W. 577.

Where the Defendant Was Heard to Say, "Let's go shoot 'em up," after which shots were heard in the direction the parties had gone, it was not error to submit the question as to whether the conduct of the defendant under all the circumstances disturbed the peace. Stancliff *v.* U. S., 5 Indian Ter. 486, 82 S. W. 882.

Acts Not Constituting Breach of Peace. — Where loud and vulgar language was used in the presence of a peace officer who made no effort to prevent the same, such officer is not one who can claim that his peace was disturbed in violation of a village ordinance. Salem *v.* Coffey, 113 Mo. App. 675, 88 S. W. 772.

Where the defendant while passing along the public road halloed loud enough for several people to hear him, but it appeared that no one was disturbed thereby, and that such conduct was not uncommon, the court held that the defendant was not guilty of an offense under a statute providing punishment for a breach of the peace. Hale *v.* State, (Tex. Crim. 1907) 106 S. W. 354.

The unlawful striking of a person by another with a hard substance is not a disturbance of that person's peace and quiet within the meaning of a statute punishing breaches of the peace, but is an assault and battery. Miles *v.* U. S., (Indian Ter. 1907) 103 S. W. 598.

905. 1. Wilcox *v.* U. S., (Indian Ter. 1907) 103 S. W. Rep. 774.

BRIBERY.

907. 1. Where a prisoner, while being conveyed to jail, asked the officer how much he would take to let him go, it was held that this was not a sufficient offer to support a prosecution for bribery. Evans *v.* State, (Tex. Crim. 1905) 89 S. W. 1080.

It is immaterial whether or not one is actually influenced by the bribe, provided it was given and received with corrupt intent. State *v.* Dunn, 125 Wis. 181, 102 N. W. 935.

2. U. S. *v.* Green, 136 Fed. 618; State *v.* Dunn, 125 Wis. 181, 102 N. W. 935.

908. 1. Garner *v.* State, (Tex. Crim. 1906) 97 S. W. 98.

Absence of a corrupt intent on the part of the person giving the bribe does not affect the question of the guilt of the one who accepts it. People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364.

3. State *v.* Dunn, 125 Wis. 181, 102 N. W. 935.

4. **Bribery to Procure Illegal Contract.** — People *v.* Ellen, 138 Mich. 34, 100 N. W. 1008.

Where a member of a school board accepted a bribe to influence him in voting on a proposition to let a contract, he was guilty of bribery although the board had passed a resolution authorizing an employee of the board to let the contract, it appearing that the accused member had given the contract with the consent of the employee. State *v.* Campbell, 73 Kan. 688, 85 Pac. 784.

Where an alderman accepted a bribe to vote on a proposition to give a contract that the city council of which he was a member had no authority to give, but which might come before it, this was held to constitute bribery under the *Michigan* statute. People *v.* Mol, 137 Mich. 692, 4 Ann. Cas. 960, 100 N. W. 913.

It is no defense to a prosecution for bribing an alderman with intent to influence his vote on an act, to show that the act, if passed, would be illegal. Murphy *v.* State, 124 Wis. 635, 102 N. W. 1087.

5. See Benson *v.* U. S., 27 App. Cas. (D. C.) 331.

6. **Future Illegal Promise as Bribe.** — Under the *Wisconsin* statute defining bribery as the receiving of any present or prospective pecuniary or personal advantage, the taking of a promise of money to be paid in the future constitutes the offense. Schutz *v.* State, 125 Wis. 452, 104 N. W. 90.

909. 2. Whether a witness is an accomplice is a question to be determined by the jury. People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364.

In *Wisconsin* it has been held that it is within the discretion of the trial court whether or not to direct an acquittal, when the evidence consists solely of the uncorroborated testimony of the defendant's accomplice. Murphy *v.* State, 124 Wis. 635, 102 N. W. 1087.

Feigned Accomplices. — Witnesses who had not advised the receipt of money by a state senator, but who assisted in obtaining it from an accomplice with a view to entrapping the senator, were not accomplices. People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364.

4. At common law it was a felony to bribe a judicial officer. **State** *v.* Sullivan, 110 Mo. App. 75, 84 S. W. 105.

910. 3. **Legislative Officers—Bribery of Aldermen.** — An alderman is not exempt from prosecution for bribery on the ground that he had appeared and testified before the grand jury on the subject of bribery in public affairs. State *v.* Murphy, 128 Wis. 201, 107 N. W. 470; Rudolph *v.* State, 128 Wis. 222, 107 N. W. 466.

Bribery of Legislator. — A state senator who accepted a bribe from the officers of building associations, while he was chairman of a committee which was making an investigation of such associations, it being understood that those paying the bribe should be exempt from investigation, was guilty of bribery although

no investigation of those particular associations was pending. People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364.

Under the *Missouri* statute making it a felony to bribe a legislative officer, it has been held that for such an officer to solicit a bribe is a misdemeanor. State *v.* Sullivan, 110 Mo. App. 75, 84 S. W. 105.

Under the *California* statute providing for the punishment of a member of the legislature who accepts a bribe, one convicted of this offense is disqualified for office and disfranchised. *In re* Bunkers, 1 Cal. App. 61, 81 Pac. 748.

911. 1. Police Officers. — See Com. *v.* Wilson, 30 Pa. Super. Ct. 26.

Under the *Virginia* statute punishing the bribery of executive officers, it has been held that a policeman comes within that classification. Haynes *v.* Com., 104 Va. 854, 52 S. E. 358.

School Director Held to Be Administrative Officer. — Com. *v.* Brown, 23 Pa. Super. Ct. 470. See also Com. *v.* Miller, 31 Pa. Super. Ct. 317.

912. 1. Canada — Punishment — Penalty. — See Asseltine *v.* Shibley, 9 Ont. L. Rep. 327.

914. 2. Offer to Receive Bribe. — State *v.* Sullivan, 110 Mo. App. 75, 84 S. W. 105; Rudolph *v.* State, 128 Wis. 222, 107 N. W. 466.

Under the *Kansas* statute defining bribery the solicitation of a bribe has been held not to constitute a criminal offense. State *v.* Bowles, 70 Kan. 821, 79 Pac. 726.

Under the *New York* statute making it a crime for a public officer to ask a bribe to influence his official action, it has been held that for a coroner to ask for money to influence his action which was unauthorized and unofficial was not bribery. People *v.* Jackson, (Ct. Gen. Sess.) 47 Misc. (N. Y.) 60, 95 N. Y. Supp. 286.

Where one solicits a bribe it is immaterial that the party solicited refuses to give it. Rudolph *v.* State, 128 Wis. 222, 107 N. W. 466.

915. 1. In Texas actual tender of the bribe is not necessary to complete the offense in this state. Lee *v.* State, (Tex. Crim. 1905) 85 S. W. 804.

BRIDGES.

919. 1. "Bridge" and "Culvert" Not Synonymous. — Cleveland *v.* Washington, 79 Vt. 498, 65 Atl. 584.

2. Wilson *v.* Barnstead, (N. H. 1906) 65 Atl. 298, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919.

Bridges as Real Estate. — A sale of a "bridge and masonry" was held not to include the real estate upon which the bridge was erected. Nicolai *v.* Baltimore, 100 Md. 579, 60 Atl. 627.

3. Howington *v.* Madison County, 126 Ga. 699, 55 S. E. 941, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919.

4. U. S. *v.* Cincinnati, etc., R. Co., 134 Fed. 353, 67 C. C. A. 335, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919; Wilson *v.* Barnstead, (N. H. 1906) 65 Atl. 298; *In re* Mud Lake Bridge, 12 Ont. L. Rep. 159.

Abutments. — Howington *v.* Madison County, 126 Ga. 699, 55 S. E. 941, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919.

Approaches.—Schell *v.* German Flats, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116; Williamsport *v.* Lycoming County, 34 Pa. Super. Ct. 221.

Nebraska Statute — "Bridges" Held Not to Include Approaches. — Central City *v.* Morquis, (Neb. 1905) 106 N. W. 221.

920. 1. Cloud County *v.* Mitchell County, 75 Kan. 750, 90 Pac. 286; Police Jury *v.* Robichaux, 116 La. 286, 40 So. 705; Haeussler *v.* St. Louis, 205 Mo. 656, 103 S. W. 1034, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 920; Cavender *v.* Charleston, (W. Va. 1907) 59 S. E. 734, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 920; Noble *v.* Municipality, 15 Manitoba 514.

A Petition for Laying Out a Highway impliedly includes all necessary bridges. Andrews *v.* Weckerman, 144 Mich. 199, 107 N. W. 870.

3. Statute. — The *Kansas* statute defines the words "highway" and "road" to include public bridges. Cloud County *v.* Mitchell County, 75 Kan. 750, 90 Pac. 286.

Terms "Bridge" and "Highway" Not Convertible. — Flemingsburg *v.* Fleming County, (Ky. 1907) 105 S. W. 133.

4. Howington *v.* Madison County, 126 Ga. 699, 55 S. E. 941; Early County *v.* Fain, 2 Ga. App. 288, 58 S. E. 528.

921. 1. Action Brought in the Name of Town. — Palatine *v.* Canajoharie Water Supply Co., 184 N. Y. 582, 77 N. E. 1197, *affirming* 90 N. Y. App. Div. 548, 86 N. Y. Supp. 412.

3. Montezuma *v.* Law, 1 Ga. App. 579, 57 S. E. 1026, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921; Early County *v.* Fain, 2 Ga. App. 288, 58 S. E. 528, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921; Cloud *v.* Mitchell County, 75 Kan. 750, 90 Pac. 286.

922. 1. Must Erect and Maintain Approaches. — Hertfordshire County Council *v.* New River, (1904) 2 Ch. 513.

No Duty to Repair Where Road Laid Out after Canal. — State *v.* Davis, 143 N. Car. 611, 56 S. E. 511.

923. 1. U. S. *v.* Union Bridge Co., 143 Fed. 377, *affirmed* 204 U. S. 364, 27 U. S. Sup. Ct. 367.

Compensation.—The Secretary of War has no authority to compel a county to tear down a bridge over a navigable river at a place entirely within the limits of one state without offering adequate compensation therefor. State *v.* Ashtabula County, 28 Ohio Cir. Ct. 212.

Congress alone can order the removal of a bridge as an obstruction to navigation where the right to erect the bridge was given by Congress, and then only on the payment of adequate compensation. U. S. *v.* Parkersburg Branch R. Co., 134 Fed. 969.

3. Pedrick *v.* Raleigh, etc., R. Co., 143 N. Car. 485, 55 S. E. 877.

A Right to Maintain a Bridge Across Navigable Waters carries with it a right to erect temporary structures necessary to prevent an interference with traffic while the bridge is being repaired. Rogers Sand Co. *v.* Pittsburgh, etc., R. Co., (C. C. A.) 139 Fed. 7.

924. 1. Rogers Sand Co. *v.* Pittsburgh, etc., R. Co., (C. C. A.) 139 Fed. 7.

925. 3. **Individual Seeking Abatement Must Show Special Damage.** — Thomas *v.* Wade, 48 Fla. 311, 37 So. 743; Viebahn *v.* Crow Wing County, 96 Minn. 276, 104 N. W. 1089; Pedrick *v.* Raleigh, etc., R. Co., 143 N. Car. 485, 55 S. E. 877.

926. 2. Southern R. Co. *v.* Reeder, (Ala. 1907) 44 So. 699.

Traveler Owes Duty to Stop, Look, and Listen. — Anne Arundel County *v.* State, (Md. 1908) 68 Atl. 602.

927. 1. Com. *v.* Baker, 212 Pa. St. 230, 61 Atl. 910.

Reasonable Care and Diligence Required. — Southern R. Co. *v.* Reeder, (Ala. 1907) 44 So. 699.

6. State *v.* Myers, 71 Kan. 280, 80 Pac. 638; Livingston *v.* Stafford, 99 N. Y. App. Div. 108, 91 N. Y. Supp. 172, 184 N. Y. 536, *affirmed* 76 N. E. 1099; Cavender *v.* Charleston, (W. Va. 1907) 59 S. E. 734.

Construction of Bridges a Public Purpose. — Haeussler *v.* St. Louis, 205 Mo. 656, 103 S. W. 1034.

929. 3. Opinion of Justices, 99 Me. 515, 60 Atl. 85; Pedrick *v.* Raleigh, etc., R. Co., 143 N. Car. 485, 55 S. E. 877.

3*a*. **Bridges over Railways.** — The state may require a railroad company to erect and maintain a bridge at a railroad crossing on a street opened subsequent to the construction of the railway. State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 8 Ann. Cas. 1047, 108 N. W. 261.

The Fact that the Legislature Authorizes a Bridge does not shield the corporation which constructs it from liability for trespass committed in its administration. Sadlier *v.* New York, 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579, *reversing* (Supm. Ct. Spec. T.) 40 Misc. (N. Y.) 78, 81 N. Y. Supp. 308.

930. 2. Opinion of Justices, 99 Me. 515, 60 Atl. 85.

4. Bloomer *v.* Bloomer, 128 Wis. 297, 107 N. W. 974.

7. **A City May Erect and Maintain** a bridge over a navigable river separating two states. Haeussler *v.* St. Louis, 205 Mo. 656, 103 S. W. 1034.

931. 1. Cloud County *v.* Mitchell County, 75 Kan. 750, 90 Pac. 286; Flemingsburg *v.* Fleming County, (Ky. 1907) 105 S. W. 133; Bristol County, Petitioner, 193 Mass. 257, 79 N. E. 339; Colby *v.* Mt. Morris, 114 N. Y. App. Div. 915, 100 N. Y. Supp. 362; East Fishkill *v.* Wappinger, 107 N. Y. App. Div. 622, 95 N. Y. Supp. 92, 188 N. Y. 568, *affirmed* 80 N. E. 1121; State *v.* Sexton, 124 Wis. 352, 102 N. W. 24; *In re* Mud Lake Bridge, 12 Ont. L. Rep. 159.

If One Municipality Refuses to Act the other may build the bridge and recover the proper proportion of the cost. Dodge County *v.* Saunders County, (Neb. 1906) 110 N. W. 756; Bloomer *v.* Bloomer, 128 Wis. 297, 107 N. W. 974.

Where a Bridge Was in Two Separate Parts, separated by an island, and one part was entirely within one county it was held that the other county was not thereby relieved from contributing to the repair of the entire structure. Dodge County *v.* Saunders County, (Neb. 1906) 110 N. W. 756. But see Haley *v.* Calef, (R. I. 1907) 67 Atl. 323.

Where Two Counties Have Agreed to Join in the construction of a bridge across the county line neither can withdraw without the consent of the other. Bremer County *v.* Walstead, 130 Iowa 164, 106 N. W. 352.

2. The county authorities may contract with a mill owner to allow him to join his mill-dam to the piles of the bridge, providing he contributes to the expense of erecting the bridge. Wright *v.* Floyd County, 1 Ga. App. 582, 58 S. E. 72.

934. 2. Howington *v.* Madison County, 126 Ga. 699, 55 S. E. 941; Russell *v.* Westmoreland County, 26 Pa. Super. Ct. 425.

Traveler Has Right to Assume that Bridge Is Safe. — Central City *v.* Morquis, (Neb. 1905) 106 N. W. 221; Mackay *v.* Salt Lake City, 29 Utah 247, 4 Ann. Cas. 824, 81 Pac. 81; Cleveland *v.* Washington, 79 Vt. 498, 65 Atl. 584.

936. 5. Nelson County *v.* Bardstown, (Ky. 1907) 99 S. W. 940.

937. 1. Early County *v.* Fain, 2 Ga. App. 288, 58 S. E. 528; Wilson *v.* Wapello County, 129 Iowa 77, 6 Ann. Cas. 958, 105 N. W. 363; People *v.* Early, 106 N. Y. App. Div. 269, 94 N. Y. Supp. 640; People *v.* Voorhies, 114 N. Y. App. Div. 351, 99 N. Y. Supp. 918, 187 N. Y. 539, *affirmed* 80 N. E. 1118; Schell *v.* German Flats, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116; Taylor *v.* Matteawan, 122 N. Y. App. Div. 406, 106 N. Y. Supp. 841; Ridings *v.* Marion County, (Oregon 1907) 91 Pac. 22; Williamsport *v.* Lycoming County, 34 Pa. Super. Ct. 221; Bloomer *v.* Bloomer, 128 Wis. 297, 107 N. W. 974.

Where a Right of Action Was Given for wrongful neglect to repair, it was held that there could be no recovery when the accident occurred at the time the repairs were being made. Mattlage *v.* Chosen Freeholders, 72 N. J. L. 50, 60 Atl. 195.

938. 1. **Arkansas — City Held Not Liable for Defects.** — Gray *v.* Batesville, 74 Ark. 519, 86 S. W. 295.

Louisiana — Parish Not Liable. — Bankins *v.* Police Jury, 116 La. 639, 40 So. 925.

Massachusetts — Municipalities Liable. — Meaney *v.* Boston, 194 Mass. 396, 80 N. E. 522.

New Hampshire — Towns Liable. — Wilson *v.* Barnstead, (N. H. 1906) 65 Atl. 298.

Canada. — Municipalities are liable for damages caused by failure to repair bridges under their control. Curle *v.* Brandon, 15 Manitoba, 122; Noble *v.* Municipality, 15 Manitoba 514.

941. 1. Howington *v.* Madison County, 126 Ga. 699, 55 S. E. 941.

942. 1. Williamsport *v.* Lycoming County, 34 Pa. Super. Ct. 221.

3. Cutting *v.* Shelburne, 193 Mass. 1, 78 N. E. 752.

A town is not liable for negligence for failure to place guards or railings on a bridge only nine feet wide between abutments. Mack *v.* Shawangunk, 98 N. Y. App. Div. 577, 90 N. Y. Supp. 760.

913. 2. Howington *v.* Madison County, 126 Ga. 699, 55 S. E. 941; Cedartown *v.* Brooks, 2 Ga. App. 583, 59 S. E. 836; Clingan *v.* Dixon County, (Neb. 1905) 105 N. W. 710; Benson *v.* Spokane, 39 Wash. 101, 80 Pac. 1106.

3. Early County *v.* Fair 2 Ga. App. 288, 58 S. E. 528; Indianapolis *v.* Cauley, 164 Ind. 304, 73 N. E. 691; Cavender *v.* Charleston, (W. Va. 1907) 59 S. E. 734.

5. Schlensig *v.* Monona County, 126 Iowa 625, 102 N. W. Rep. 514.

914. 1. **Not a Common Carrier.** — Gibler *v.* Terminal R. Assoc., 203 Mo. 208, 101 S. W. 37.

3. Hellyer *v.* Trenton City Bridge Co., 133 Fed. 843.

Must Have Notice of Particular Defect. — Scruggs *v.* Leavenworth County, 71 Kan. 848, 80 Pac. 595.

Sufficiency of Notice. — The county is charged with notice of the defect where it is shown that the defective material was placed in the bridge under the direct supervision of the bridge commissioner. Howard *v.* Snohomish County, 38 Wash. 149, 80 Pac. 293.

Constructive Notice Sufficient. — Adams *v.* Somerset County, (Md. 1907) 66 Atl. 695; Central City *v.* Morquis, (Neb. 1905) 106 N. W. 221.

Kansas — Actual Notice Required. — Under the *Kansas* statute imposing a liability upon the county for damages caused by a defective bridge where the county has five days' notice of the defect it was held that the notice required was actual personal notice. Parr *v.* Shawnee County, 70 Kan. 111, 78 Pac. 449.

Notice to Road Commissioners Is Notice to County. — Howington *v.* Madison County, 126 Ga. 699, 55 S. E. 941, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 944.

915. 1. Mallory *v.* Saratoga Lake Bridge Co., (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 446, 104 N. Y. Supp. 1025, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 945.

916. 1. **Franchise Strictly Construed.** — Mallory *v.* Saratoga Lake Bridge Co., (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 446, 104 N. Y. Supp. 1025.

917. 1. **Charter Prohibiting Toll Bridges within Certain Limits.** — Where the charter provided that no other bridge should be erected "within half a league above the said bridge and below said bridge" it was held that the distance should be measured along the course of the river and not in a straight line. Roueau *v.* Pouliot, 36 Can. Sup. Ct. 224.

918. 5. **The Right to Exact Toll Is Confined** to the animals and vehicles specifically mentioned in the charter conferring the franchise. Mallory *v.* Saratoga Lake Bridge Co., (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 446, 104 N. Y. Supp. 1025.

951. 3. Gibler *v.* Terminal R. Assoc., 203 Mo. 208, 101 S. W. 37.

BROKERS.

960. 1. Southwestern Port Huron Co. *v.* Wilber, (Kan. 1907) 88 Pac. 892; Alt *v.* Doscher, 102 N. Y. App. Div. 344, 92 N. Y. Supp. 439.

A Broker Acting as a Factor will be liable in the latter capacity for embezzlement although his general business is that of a broker. Green *v.* U. S., 25 App. Cas. (D. C.) 549.

A Person Is an Agent and Not a Broker when he binds himself to act for one principal to the exclusion of all others. Lake Charles *v.* Equitable L. Assur. Soc., 114 La. 836, 38 So. 578. See the title INSURANCE BROKERS.

961. 3. Robinson *v.* Corsicana Cotton Factory, (Ky. 1907) 99 S. W. 305, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961; Hall *v.* Fay, 15 Pa. Dist. 207, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961.

962. 11. **In Order to Avail Himself of an Alleged Usage,** the broker must show that his principal expressly or impliedly agreed that the transaction be carried on in accordance with such custom. Robbins *v.* Maher, 14 N. Dak. 228, 103 N. W. 755.

964. 4. **Implied Authority — Illustrations** — *A Real-estate Broker Has No Implied Authority to Sign a Contract of Sale.* — Sullivant *v.* Jahren, 71 Kan. 127, 79 Pac. 1071, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 964; Hetling *v.* Darby, 71 Kan. 107, 79 Pac. 1073; Halsell *v.* Renfrow, 14 Okla. 674, 2 Ann. Cas. 286, 78 Pac. 118; Gilmour *v.* Simon, 37 Can. Sup. Ct. 422, *affirming* 15 Manitoba 205.

965. 1. Robinson *v.* Corsicana Cotton Factory, (Ky. 1907) 99 S. W. 305, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 965; Louis Bergdoll Brewing Co. *v.* Babe, 33 Pa. Super. Ct. 490.

2. Robbins *v.* Maher, 14 N. Dak. 228, 103 N. W. 755.

966. 2. Bunn *v.* Keach, 214 Ill. 259, 73 N. E. 419; Burr *v.* Beacon Trust Co., 188 Mass. 131, 74 N. E. 300; Averbach *v.* Curie, 119 N. Y. App. Div. 175, 104 N. Y. Supp. 233; Nekarda *v.* Presberger, (Supm. Ct. App. Div.) 107 N. Y. Supp. 897.

967. 2. Southack *v.* Ireland, 109 N. Y. App. Div. 45, 95 N. Y. Supp. 621.

5. Jayne *v.* Drake, (Miss. 1906) 41 So. 372; Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; Raleigh Real Estate, etc., Co. *v.* Adams, (N. Car. 1907) 58 S. E. 1008.

7. Bell *v.* Rokeby, 15 Manitoba 327, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 967.

968. 1. **Where a Broker Is Employed by Another Broker** to make a purchase for a customer of the latter, such customer is not the principal of the purchasing broker and cannot hold him liable. Horlacher *v.* Bear, 32 Pa. Super. Ct. 269.

3. Hinricks *v.* Brady, (S. Dak. 1906) 103 N. W. 332.

969. 1. Kingsley *v.* Wheeler, 95 Minn. 360, 104 N. W. 543; Harrison *v.* Craven, 188 Mo. 590, 87 S. W. 962.

Forfeit Money deposited with a broker by an intending purchaser who fails to take title belongs to the principal, notwithstanding a custom to the contrary. Chambers *v.* Herring, (Tex. Civ. App. 1905) 88 S. W. 371.

2. Borst *v.* Lynch, 133 Iowa 567, 110 N. W. 1031; Deter *v.* Jackson, (Kan. 1907) 92 Pac. 546.

970. 2. Walker *v.* Baldwin, (Md. 1907) 68 Atl. 25.

3. Walker Mfg. Co. *v.* Knox, (C. C. A.) 136 Fed. 334; New Kanawha Coal, etc., Co. *v.* Wright, 163 Ind. 529, 72 N. E. 550; De Kremen *v.* Clothier, 109 N. Y. App. Div. 481, 96 N. Y. Supp. 525; Stephens *v.* Tomlinson, (Tex. Civ. App. 1905) 88 S. W. 304.

4. Stephens *v.* Bailey, (Ala. 1906) 42 So. 740; Ropes *v.* Rosenfeld, 145 Cal. 671, 79 Pac. 354; Clammer *v.* Eddy, (Colo. 1907) 92 Pac. 722; Knotts *v.* Midkiff, 114 La. 234, 38 So. 153; Sharp *v.* Hoopes, (N. J. 1906) 64 Atl. 989; Kaake *v.* Griswold, 104 N. Y. App. Div. 137, 93 N. Y. Supp. 459; Burrows *v.* Standard Oil Co., 109 N. Y. App. Div. 593, 96 N. Y. Supp. 370; Davenport *v.* Corbett, 112 N. Y. App. Div. 382, 98 N. Y. Supp. 403; Morris *v.* Poundt, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 6, 99 N. Y. Supp. 844; Denton *v.* Abrams, 120 N. Y. App. Div. 593, 105 N. Y. Supp. 2; Harris *v.* Reynolds, (N. Dak. 1907) 114 N. W. 369; Henderson *v.* Sonneborn, 30 Pa. Super. Ct. 182.

Employment May Be Implied from all the facts and circumstances of the transaction. Ice *v.* Maxwell, (W. Va. 1906) 55 S. E. 899.

Sale after Expiration of Agreement. — Where the employment was for a limited term, the broker is not entitled to a commission on a sale thereafter made to the same customer with whom he negotiated. Beadle *v.* Sage Land, etc., Co., 140 Mich. 199, 6 Ann. Cas. 53, 103 N. W. 554.

971. 1. Crosthwaite *v.* Lebus, 146 Ala. 525, 41 So. 853; Engle *v.* Johnson, 34 Ind. App. 593, 73 N. E. 272; Hunt *v.* Tuttle, 133 Iowa 647, 110 N. W. 1026; Stearns *v.* Jennings, 128 Wis. 379, 107 N. W. 327.

2. Talcott *v.* Mastin, 20 Colo. App. 488, 79 Pac. 973; Robertson *v.* Vasey, 125 Iowa 526, 101 N. W. 271; Schreiner *v.* Kissock, (Supm. Ct. App. T.) 91 N. Y. Supp. 28; Raleigh Real Estate, etc., Co. *v.* Adams, (N. Car. 1907) 58 S. E. 1008.

Where the Principal Consents to the Alteration of Terms the broker is entitled to a commission. Reid *v.* McNerney, 128 Iowa 350, 103 N. W. 1001; Davis *v.* Weber, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 590, 92 N. Y. Supp. 823; Hancock *v.* Dodge, 85 Miss. 228, 37 So. 711; Ullmann *v.* Land, (Tex. Civ. App. 1904) 84 S. W. 294.

3. Taylor *v.* Godbold, 76 Ark. 395, 88 S. W. 959; McAfee *v.* Bending, 36 Ind. App. 628, 76 N. E. 412; Braden *v.* Randles, 128 Iowa 653, 105 N. W. 195; Deter *v.* Jackson, (Kan. 1907) 92 Pac. 546; Low *v.* Woodbury, 107 N. Y. App. Div. 298, 95 N. Y. Supp. 336, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 971; Roome *v.* Robinson, 99 N. Y. App. Div. 143, 90 N. Y. Supp. 1055; Lichtenstein *v.* Case, 99 N. Y. App. Div. 570, 91 N. Y. Supp. 57; Lease *v.* Christy, 28 Pa. Super. Ct. 507; Hahl *v.* Kellogg, (Tex. Civ. App. 1906) 94 S. W. 389. *Compare* Lee *v.* Patillo, 105 Va. 10, 52 S. E. 696.

972. 3. Chambers *v.* Ackley, (Supm. Ct. Tr. T.) 91 N. Y. Supp. 78.

No Compensation Where No Sale Effected and Contract Unenforceable. — Northwestern Packing Co. *v.* Whitney, (Cal. App. 1907) 89 Pac. 981; Stotts *v.* Miller, 128 Iowa 633, 105 N. W. 127; Milstein *v.* Doring, 102 N. Y. App. Div. 349, 92 N. Y. Supp. 417.

4. Harrison *v.* Augerson, 115 Ill. App. 226; Guthrie *v.* Bright, (Ky. 1904) 82 S. W. 985; Dorlon *v.* Forrest, 101 N. Y. App. Div. 32, 91 N. Y. Supp. 431; Marriott *v.* Breman, 14 Ont. L. Rep. 508.

A Broker Employed to Secure Options at a satisfactory figure is entitled to commissions irrespective of whether the options are exercised or not. Worthington *v.* McGarry, (Ala. 1907) 42 So. 988.

Commissions for Procuring a Loan on Land are earned when the broker finds a person ready to make the loan. Brillow *v.* Oziemkowski, 112 Ill. App. 165.

5. *California.* — E. P. Vandercook Co. *v.* Wilmans Co., (Cal. App. 1906) 87 Pac. 1116.

Colorado. — Wagner *v.* Norris, 39 Colo. 106, 88 Pac. 973.

Georgia. — Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259.

Illinois. — Scott *v.* Stuart, 115 Ill. App. 535; Lemon *v.* Carter, 116 Ill. App. 421; Whalen *v.* Gore, 116 Ill. App. 504; Dennis *v.* Walters, 123 Ill. App. 93; Oldham *v.* Howser, 125 Ill. App. 543; Newman *v.* Lumley, 125 Ill. App. 382; Packer *v.* Sheppard, 127 Ill. App. 598.

Indiana. — Storer *v.* Markley, 164 Ind. 535, 73 N. E. 1081.

Kansas. — Long *v.* Thompson, 73 Kan. 76, 84 Pac. 552.

Massachusetts. — Taylor *v.* Schofield, 191 Mass. 1, 77 N. E. 652.

Minnesota. — McDonald *v.* Smith, 99 Minn. 42, 108 N. W. 291.

Missouri. — Nichols *v.* Whitacre, 112 Mo. App. 692, 87 S. W. 594; Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; Morgan *v.* Keller, 194 Mo. 663, 92 S. W. 75.

New York. — Marks *v.* Elliot, (Supm. Ct. App. T.) 90 N. Y. Supp. 331; Getzelsohn *v.* Donnelly, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 164, 98 N. Y. Supp. 213; Moore *v.* McGuire, (Supm. Ct. App. T.) 98 N. Y. Supp. 752; Lovett *v.* Clench, 115 N. Y. App. Div. 635, 101 N. Y. Supp. 174; King *v.* Knowles, 122 N. Y. App. Div. 414, 106 N. Y. Supp. 760.

Pennsylvania. — Black *v.* Pentony, 30 Pa. Super. Ct. 38.

Washington. — Norman *v.* Hopper, 38 Wash. 415, 80 Pac. 551.

973. 2. Chapman *v.* Winson, 91 L. T. N. S. 17, 20 Times L. Rep. 663; Munroe *v.* Taylor, 191 Mass. 483, 78 N. E. 106; Horton *v.* Imen, 145 Mich. 438, 108 N. W. 746; Keating *v.* Haley, 147 Mich. 279, 110 N. W. 943; Van Norman *v.* Fitchette, 100 Minn. 145, 110 N. W. 851; Hardloper *v.* Weaver Coal, etc., Co., (Supm. Ct. App. T.) 45 Misc. (N. Y.) 610, 91 N. Y. Supp. 74; Reichard *v.* Wallach, (Supm. Ct. App. T.) 91 N. Y. Supp. 347; Cohn *v.* James McCreery Realty Corp., 102 N. Y. App. Div. 611, 92 N. Y. Supp. 143; Fittichauer *v.* Van Wyck, (Supm. Ct. App. T.) 92 N. Y. Supp. 241; Couper *v.* O'Neill, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 319, 103 N. Y. Supp. 122; Murray *v.* Rickard, 103 Va. 132,

48 S. E. 871; Johnson *v.* Appleton, 11 British Columbia 1.

Illustrations. — Where the contract fixes the commission of a broker at the excess of the purchase price over a specified sum, on a sale at such figure the broker is entitled to no compensation, although the purchaser was procured by him. Holcomb *v.* Stafford, 102 Minn. 233, 113 N. W. 449; Matter of French, (Surrogate Ct.) 51 Misc. (N. Y.) 457, 101 N. Y. Supp. 734.

A broker employed to procure a loan cannot recover unless the loan is actually made or fails because of his principal's fault; a mere agreement to make the loan is not sufficient. Duckworth *v.* Rogers, 109 N. Y. App. Div. 168, 95 N. Y. Supp. 1089.

974. 1. Bunks *v.* Pierce, 33 Colo. 440, 80 Pac. 1036; Innes *v.* Bogan, (Colo. 1907) 91 Pac. 1108; Marcy *v.* Whallon, 115 Ill. App. 435; Blackledge *v.* Davies, 129 Iowa 591, 105 N. W. 1000; Wiggin *v.* Holbrook, 190 Mass. 157, 76 N. E. 463; Weiss *v.* Robinson, 112 N. Y. App. Div. 276, 98 N. Y. Supp. 429; Haase *v.* Schneider, 112 N. Y. App. Div. 336, 98 N. Y. Supp. 587; Shapiro *v.* Nadler, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 13, 99 N. Y. Supp. 879; Ward *v.* Kennedy, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 422, 101 N. Y. Supp. 524; Ball *v.* Dolan, 18 S. Dak. 558, 101 N. W. 719; Neely *v.* Lewis, 38 Wash. 20, 80 Pac. 175; McCune *v.* Badger, 126 Wis. 186, 105 N. W. 667.

2. Bingham *v.* Davidson, 141 Ala. 551, 37 So. 738; Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 974; Norris *v.* Byrne, 38 Wash. 592, 80 Pac. 808.

975. 1. Czarnowski *v.* Holland, 5 Ariz. 119, 78 Pac. 890. *Compare* Alt *v.* Doscher, 102 N. Y. App. Div. 344, 92 N. Y. Supp. 439.

2. **Contra.** — Fox *v.* Denargo Land Co., 37 Colo. 203, 86 Pac. 344; Russell *v.* Hurd, 113 Ill. App. 63; Snyder *v.* Fidler, 125 Iowa 378, 101 N. W. 130; Sherburn Land Co. *v.* Sexton, 130 Iowa 85, 106 N. W. 378; McDermott *v.* Mahoney, (Iowa 1906) 106 N. W. 925; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228. See also Tracy *v.* Fobes, 132 Iowa 250, 109 N. W. 772.

4. *California.* — Carlin *v.* Lifur, 2 Cal. App. 590, 84 Pac. 292.

Delaware. — Tebo *v.* Mitchell, 5 Penn. (Del.) 356, 63 Atl. 327.

District of Columbia. — Dotson *v.* Milliken, 27 App. Cas. (D. C.) 500.

Indiana. — Isphording *v.* Wolfe, 36 Ind. App. 250, 75 N. E. 598.

Iowa. — McDermott *v.* Mahoney, (Iowa 1906) 106 N. W. 925.

Kansas. — Stanton *v.* Barnes, 72 Kan. 541, 84 Pac. 116; Staley *v.* Hufford, 73 Kan. 686, 85 Pac. 763.

Minnesota. — Marlin *v.* Sipprell, 93 Minn. 271, 101 N. W. 169.

Missouri. — Perrin *v.* Kimberlin, 110 Mo. App. 661, 85 S. W. 630; Brown *v.* Smith, 113 Mo. App. 59, 87 S. W. 556; O'Neil *v.* Printz, 115 Mo. App. 215, 91 S. W. 174; McCray *v.* Pfost, 118 Mo. App. 672, 94 S. W. 998; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228.

New York. — Levy *v.* Timble, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 394, 94 N. Y. Supp. 3; Martin *v.* Wermann, 107 N. Y. App. Div. 482, 95 N. Y. Supp. 284; Finck *v.* Schmitt, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 503, 96 N. Y. Supp. 197; Lucas *v.* Smith, 113 N. Y. App. Div. 31, 98 N. Y. Supp. 1037; Seidman *v.* Rauner, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 10, 99 N. Y. Supp. 862; McGill *v.* Gargoula, (Supm. Ct. App. T.) 103 N. Y. Supp. 113; Milne *v.* Ingersoll-Sergeant Drill Co., 120 N. Y. App. Div. 465, 104 N. Y. Supp. 1053; Brand *v.* Nagle, 122 N. Y. App. Div. 490, 107 N. Y. Supp. 156.

North Dakota. — Canfield *v.* Orange, 13 N. Dak. 622, 102 N. W. 313; Kepner *v.* Ford, (N. Dak. 1907) 111 N. W. 619.

Texas. — Clark *v.* Wilson, (Tex. Civ. App. 1906) 91 S. W. 627.

Vermont. — Reynolds-McGinness Co. *v.* Green, 78 Vt. 28, 61 Atl. 556.

Washington. — Muir *v.* Moeller, (Wash. 1907) 90 Pac. 1042; Foster *v.* Taylor, 44 Wash. 313, 87 Pac. 358.

Wisconsin. — Arnold *v.* National Bank, 126 Wis. 362, 105 N. W. 828.

976. 2. Courter *v.* Lydecker, 71 N. J. L. 511, 58 Atl. 1093; Alt *v.* Doscher, 102 N. Y. App. Div. 344, 92 N. Y. Supp. 439; Strout *v.* Kenny, (Supm. Ct. App. T.) 107 N. Y. Supp. 92; Goodman *v.* Hess, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 482, 107 N. Y. Supp. 112; Frank *v.* Connor, (Supm. Ct. App. T.) 107 N. Y. Supp. 132; Godley *v.* Haley, 27 Ohio Cir. Ct. 606; Yoder *v.* Randol, 16 Okla. 308, 83 Pac. 537; Albritton *v.* Mexia First Nat. Bank, (Tex. Civ. App. 1905) 86 S. W. 646.

No Recovery When Broker in Fault. — Mercantile Trust Co. *v.* Niggeman, 119 Mo. App. 56, 96 S. W. 293; Shropshire *v.* Frankel, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 616, 91 N. Y. Supp. 79; Corbin *v.* Mechanics', etc., Bank, 121 N. Y. App. Div. 744, 106 N. Y. Supp. 573.

Where a Customer Fails to Complete the Purchase, through no fault of the vendor, the broker is not entitled to commission. McGinn *v.* Garber, 125 Iowa 533, 101 N. W. 279.

977. 1. Hollyday *v.* Southern Farm Agency, 100 Md. 294, 59 Atl. 646; Gamble *v.* Grether, 108 Mo. App. 340, 83 S. W. 306; Burrows *v.* Standard Oil Co., 109 N. Y. App. Div. 593, 96 N. Y. Supp. 370; Blumberg *v.* Sterling Bronze Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 477, 107 N. Y. Supp. 142.

978. 1. McMillin *v.* Beves, (C. C. A.) 147 Fed. 218; Hunton *v.* Marshall, 76 Ark. 375, 88 S. W. 963; Indiana Fruit Co. *v.* Sandlin, 125 Ga. 222, 54 S. E. 65; Ridon *v.* More, 226 Ill. 382, 80 N. E. 901; Shannon *v.* Potts, 117 Ill. App. 80; Clements *v.* Stapleton, (Iowa 1907) 113 N. W. 546; Southwestern Port Huron Co. *v.* Wilber, (Kan. 1907) 88 Pac. 892; Reade *v.* Haak, 147 Mich. 42, 110 N. W. 130; Enochs *v.* Paxton, 87 Miss. 660, 40 So. 14; Ross *v.* Moskowitz, (Tex. Civ. App. 1906) 95 S. W. 86; Grieb *v.* Koeffler, 127 Wis. 314, 106 N. W. 113.

It Is for the Jury to Decide whether the broker was the procuring cause. Jacobs *v.* Heppe, 29 Pa. Super. Ct. 406.

2. Girardeau *v.* Gibson, 122 Ga. 313, 50 S. E. 91; Walker *v.* Baldwin, (Md. 1907) 68 Atl. 25; Smith *v.* Kimball, 193 Mass. 582, 79 N. E. 800; De Zavala *v.* Rogaliner, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 430, 90 N. Y. Supp. 563; Stone *v.* Plaut, (Supm. Ct. App. T.) 96 N. Y. Supp. 1030; Miller *v.* Vining, 112 N. Y. App. Div. 304, 98 N. Y. Supp. 466; Cole *v.* Kosch, 116 N. Y. App. Div. 715; 102 N. Y. Supp. 14; William P. Rae Co. *v.* Kane, 121 N. Y. App. Div. 494, 106 N. Y. Supp. 47; Schano *v.* Storch, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 484, 107 N. Y. Supp. 26.

3. Loxley *v.* Studebacker, (N. J. 1907) 68 Atl. 98; Donovan *v.* Weed, 182 N. Y. 43, 74 N. E. 563.

979. 1. Iowa Land Co. *v.* Schoenewe, (Iowa 1905) 102 N. W. 817; Brooke *v.* Byrnes, 133 Iowa 697, 110 N. W. 1028; Helling *v.* Darby, 71 Kan. 107, 79 Pac. 1073; Pescia *v.* Haims, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 550, 99 N. Y. Supp. 421; Ettinghoff *v.* Horowitz, 115 N. Y. App. Div. 571, 100 N. Y. Supp. 1002.

The Fact that the Broker's Agency Is Exclusive does not prevent the owner selling to a purchaser who is not procured by the broker. Davis *v.* Van Tassel, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 911.

3. Hill *v.* McCoy, 1 Cal. App. 159, 81 Pac. 1015; Levy *v.* Wolf, 2 Cal. App. 491, 84 Pac. 313; Wood *v.* Broderson, 12 Idaho 190, 85 Pac. 490; Wineteer *v.* Jones, 113 Ill. App. 129; Finkelstein *v.* Spurck, 115 Ill. App. 521; Hubbard *v.* Leiter, 145 Mich. 387, 108 N. W. 735; Elmendorf *v.* Golden, 37 Wash. 664, 80 Pac. 264; Norris *v.* Byrne, 38 Wash. 592, 80 Pac. 808; Bowe *v.* Gage, 127 Wis. 245, 106 N. W. 1074.

980. 1. Boland *v.* Ashurst Oil, etc., Co., 145 Cal. 405, 78 Pac. 871; Morris *v.* Francis, 75 Kan. 580, 89 Pac. 901; McGovern *v.* Bennett, 146 Mich. 558, 109 N. W. 1055; Coon *v.* St. Paul Park Realty Co., 101 Minn. 391, 112 N. W. 526, 862; Staehlin *v.* Kramer, 118 Mo. App. 329, 94 S. W. 785; Southwick *v.* Swavienski, 114 N. Y. App. Div. 681, 99 N. Y. Supp. 1079; Bowman *v.* Hartman, 27 Ohio Cir. Ct. 309; Ice *v.* Maxwell, (W. Va. 1906) 55 S. E. 899; Burdon *v.* Briquelet, 125 Wis. 341, 104 N. W. 83; Oliver *v.* Katz, 131 Wis. 409, 111 N. W. 509; Bowe *v.* Gage, (Wis. 1907) 112 N. W. 469. *Compare* Ryan *v.* Page, 134 Iowa 60, 111 N. W. 405.

Where the Price Only Was Specified to the broker, and the terms were mutually arranged between the owner and a purchaser procured by the broker, but without any further action upon his part, he is entitled to commissions. Frost *v.* Houx, (Wyo. 1907) 89 Pac. 568.

2. Compare Quist *v.* Goodfellow, 99 Minn. 509, 9 Ann. Cas. 431, 110 N. W. 65.

982. 2. Contra, Anderson *v.* Holbrook, 128 Ga. 233, 57 S. E. 500.

4. Reeder *v.* Jones, (Del. 1902) 65 Atl. 571.

5. Coates *v.* Locust Point Co., 102 Md. 291, 5 Ann. Cas. 895, 62 Atl. 625; Walker *v.* Baldwin, 103 Md. 352, 63 Atl. 362; J. B. Watkins Land Mortg. Co. *v.* Thetford, (Tex. Civ. App. 1906) 96 S. W. 72.

983. 1. Peek *v.* Slifer, 122 Ill. App. 21, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 983; Votaw *v.* McKeever, (Kan. 1907) 92 Pac. 1120; Freeman *v.* Polstein, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 644, 97 N. Y. Supp. 1032; Hodge *v.* Appelles, 122 N. Y. App. Div. 437, 107 N. Y. Supp. 170.

2. Votaw *v.* McKeever, (Kan. 1907) 92 Pac. 1120.

3. McCleary *v.* Willis, 35 Wash. 676, 77 Pac. 1073.

Agreement to Divide Commissions Is Not Assignment of Claim. — Bray *v.* Riggs, 110 Mo. App. 630, 85 S. W. 116.

984. 4. Rauer's Law, etc., Co. *v.* Bradbury, 3 Cal. App. 256, 84 Pac. 1007; Bunn *v.* Keach, 214 Ill. 259, 73 N. E. 419; Quinn *v.* Burton, (Mass. 1907) 81 N. E. 257; Pinch *v.* Morford, 142 Mich. 63, 105 N. W. 22; Perkins *v.* Aldrich, 118 N. Y. App. Div. 170, 103 N. Y. Supp. 25; Bellin *v.* Weir, (Supm. Ct. App. T.) 104 N. Y. Supp. 360; Hann *v.* Brettler, (Supm. Ct. App. T.) 107 N. Y. Supp. 78; Fulton *v.* Walters, 28 Pa. Super. Ct. 269; Tasse *v.* Kindt, 125 Wis. 631, 104 N. W. 703.

5. Hanna *v.* Haynes, 42 Wash. 284, 84 Pac. 861, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 984, 985.

985. 2. Wasser *v.* Western Land Securities Co., 97 Minn. 460, 107 N. W. 160; Shropshire *v.* Adams, (Tex. Civ. App. 1905) 89 S. W. 448.

3. Evans *v.* Rockett, 32 Pa. Super. Ct. 365.

4. McLure *v.* Luke, (C. C. A.) 154 Fed. 647; Tieck *v.* McKenna, 115 N. Y. App. Div. 701, 101 N. Y. Supp. 317.

986. 5. Butman *v.* Butman, 213 Ill. 104, 72 N. E. 821; Eau Claire Canning Co. *v.* Western Brokerage Co., 213 Ill. 561, 73 N. E. 430; Tuthill Spring Co. *v.* Holliday, 164 Ind. 13, 72 N. E. 872; Kinsey *v.* Meaney, 98 N. Y. App. Div. 420, 90 N. Y. Supp. 327; John Schroeder Lumber Co. *v.* Stearns, 122 Wis. 503, 100 N. W. 836.

988. 3. Drake *v.* Pope, 78 Ark. 327, 95 S. W. 774.

BROTHER.

990. 3. Watkins *v.* Blount, (Tex. Civ. App. 1906) 94 S. W. 1116, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 990.

BUILDER.

994. 1. Wilson *v.* District of Columbia, 26 App. Cas. (D. C.) 110, *quoting* 4 Am. and Eng. Encyc. of Law (2d ed.) 994, and holding that a bricklayer is not a ***building*** contractor within a statute imposing a license tax on ***building*** contractors.

"Contractor" Synonymous with "Builder." — State *v.* Clark, 43 Wash. 665, 86 Pac. 1067, *citing* 4 Am. and Eng. Encyc. of Law (2d ed.) 995.

BUILDING.

994. 4. A Fence is a ***building*** within the *New York* statute providing for the opening of new streets. Parsons *v.* New York, 107 N. Y. App. Div. 324, 95 N. Y. Supp. 131, *affirmed* 184 N. Y. 604, 77 N. E. 1192.

Box Car Held Building within Arson Statute. — State *v.* Lintner, 19 S. Dak. 447, 104 N. W. 205.

Chicken Coop held not a *building* within burglary statute. Bailey *v.* State, 26 Ohio Cir. Ct. 375, *affirmed* 69 Ohio St. 551, 70 N. E. 1130.

BUILDING AND LOAN ASSOCIATIONS.

1001. 1. See State *v.* Co-Operative Home Builders, (Wash. 1907) 91 Pac. 953.

1002. 2. See Com. *v.* Home, etc., Bldg. Assoc., (Ky. 1907) 106 S. W. 221.

1004. 3. Cobe *v.* Lovan, 193 Mo. 235, 92 S. W. 93, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1004.

1006. 2. All Stock in Series Must Mature at Same Time. — Whelpley *v.* Ross, 25 App. Cas. (D. C.) 207.

1007. 3. Parker *v.* Heald, 29 App. Cas. (D. C.) 35.

1011. 6. People *v.* New York Bldg.-Loan Banking Co., 119 N. Y. App. Div. 830, 104 N. Y. Supp. 892.

1012. 1. See Com. *v.* Home, etc., Bldg. Assoc., (Ky. 1907) 106 S. W. 221.

6. Taxation of Shares Not Unconstitutional. — Nebraska Cent. Bldg., etc., Assoc. *v.* Board of Equalization, (Neb. 1907) 111 N. W. 147.

May Appoint Collectors and Solicitors. — Folk *v.* State Capital Sav., etc., Assoc., 214 Pa. St. 529, 63 Atl. 1013.

1014. 1. Acts Contrary to Charter or By-Laws. — The payment of dues to an officer not authorized by the by-laws to receive them does not bind the association unless it actually or impliedly ratifies such payments. Manchester Bldg., etc., Assoc. *v.* Geyer, (N. J. 1906) 63 Atl. 545; Louchheim *v.* Somerset Bldg., etc., Assoc., 211 Pa. St. 499, 3 Ann. Cas. 728, 60 Atl. 1054.

2. Manchester Bldg., etc., Assoc. *v.* Beardsley, (N. J. 1907) 66 Atl. 1.

3. Acts Binding Only When Authorized or Ratified. — Abraham Lincoln Bldg., etc., Assoc. *v.* Walsh, 126 Ill. App. 76; Manchester Bldg., etc., Assoc. *v.* Beardsley, (N. J. 1907) 66 Atl. 1; Guarantee Sav., etc., Co. *v.* Mitchell, (Tex. Civ. App. 1905) 87 S. W. 184.

4. Kellenberger *v.* Oskaloosa Nat. Bldg., etc., Assoc., 129 Iowa 582, 105 N. W. 836.

1015. 4. David Reus Permanent Loan, etc., Co. *v.* Conrad, 101 Md. 224, 60 Atl 737.

1017. 5. May Not Transfer Stockholder's Loan to Another Association. — Cobe *v.* Lovan, 193 Mo. 235, 92 S. W. 93.

1018. 2. Can Assign Note Taken Out of Ordinary Course of Business. — Russell *v.* Cassidy, 122 Mo. App. 565, 99 S. W. 781.

7. May Not Plead Ultra Vires to Executed Contract. — Assets Realization Co. *v.* Heiden, 215 Ill. 9, 74 N. E. 56.

1019. 5. All By-laws Suspended by Insolvency. — Ft. Smith Bldg. Assoc. *v.* Cohn, 75 Ark. 497, 87 S. W. 1172.

1020. 2. By-laws Must Be Made as Law Prescribes. — Garlick *v.* Mutual Loan, etc., Assoc., 116 Ill. App. 311; Free Home, etc., Assoc. *v.* Edwards, 223 Ill. 126, 79 N. E. 64, *affirming* 124 Ill. App. 191.

4. Whelpley *v.* Ross, 25 App. Cas. (D. C.) 207; Guaranty Sav., etc., Assoc. *v.* Simko, 35 Ind. App. 412, 74 N. E. 273.

5. Tautphoeus *v.* Harbor, etc., Bldg., etc., Assoc., 104 N. Y. App. Div. 451, 93 N. Y. Supp. 916, *reversed* on other grounds 185 N. Y. 308, 78 N. E. 69.

1021. 1. Home Bldg., etc., Assoc. *v.* McKay, 217 Ill. 551, 75 N. E. 569.

1023. 1. Parker *v.* Heald, 29 App. Cas. (D. C.) 35; Bohn *v.* Boone Bldg., etc., Assoc., (Iowa 1907) 112 N. W. 199, *reversing* (Iowa 1906) 108 N. W. 1025.

2. Bettle *v.* Republic Sav., etc., Assoc., (N. J. 1906) 64 Atl. 176.

4. Bohn *v.* Boone Bldg., etc., Assoc., (Iowa 1907) 112 N. W. 199, *reversing* (Iowa 1906) 108 N. W. 1025.

7. Bettle *v.* Republic Sav., etc., Assoc., (N. J. 1906) 64 Atl. 176.

1028. 8. Home Bldg., etc., Assoc. *v.* McKay, 217 Ill. 551, 75 N. E. 569.

1029. 3. Bohn *v.* Boone Bldg., etc., Assoc., (Iowa 1907) 112 N. W. 199; Cunningham *v.* Mutual Loan, etc., Assoc., 72 N. J. L. 175, 62 Atl. 307.

5. Burkheimer *v.* National Mut. Bldg., etc., Assoc., 59 W. Va. 209, 53 S. E. 373.

1030. 1. Rule. — In Middle State Loan, etc., Co. *v.* Miller, 104 Va. 464, 51 S. E. 846, the following rule was laid down: The estate of the member should be charged with the amount of the loan and interest from the date of the loan and credited with all sums paid on the loan as of the date of such payments, and on the balance thus found should be credited the withdrawal value of the stock of the deceased member, ascertained according to the by-laws of the company for determining the withdrawal value of the stock of a borrowing member who pays back in advance of the maturity of his stock the money loaned to him. To this amount should be added the interest from the time of the member's death, unpaid fines, and taxes on the trust property

The Same Rule Applies where the member has the right to sever his contractual relations because of the gross mismanagement of the association. Burkheimer *v.* National Mut. Bldg., etc., Assoc., 59 W. Va. 209, 53 S. E. 372.

5. Foresters' Bldg., etc., Assoc. *v.* Quinn, 119 Ill. App. 572; Scaife *v.* Scammon Invest., etc., Assoc., 71 Kan. 402, 80 Pac. 957; Folk *v.* State Capital Sav., etc., Assoc., 214 Pa. St. 529, 63 Atl. 1013.

1032. 5. An Estimate of the Time of Maturity is not a guaranty that the stock will mature at that time. Ebersole *v.* Southern Bldg., etc., Assoc., 147 Ala. 177, 41 So. 150.

6. Provisions of the Articles of Association Inconsistent with the Certificate are not binding on the member. Tautphoeus *v.* Harbor, etc., Bldg., etc., Assoc., 185 N. Y. 308, 78 N. E. 69, *reversing* 104 N. Y. App. Div. 451, 93 N. Y. Supp. 916.

Construction of By-laws. — Where the by-laws provided that the shares should be ma-

tured when the payments and earnings amounted to $100 per share and that no more than one hundred payments should be required it was held that the completion of one hundred payments did not mature the stock unless it had reached the par value of $100. Le Mars Bldg., etc., Assoc. *v.* Burgess, 129 Iowa 422, 105 N. W. 641.

1033. **3. After a Declaration of Maturity by the Directors** the holder of shares ceases to be a member and becomes a creditor. Bohn *v.* Boone Bldg., etc., Assoc., (Iowa 1907) 112 N. W. 199, *reversing* (Iowa 1906) 108 N. W. 1025; Cunningham *v.* Mutual Loan, etc., Assoc., 72 N. J. L. 175, 62 Atl. 307; Rogers *v.* Ogden Bldg., etc., Assoc., 30 Utah 188, 83 Pac. 754.

1034. **1.** Manchester Bldg., etc., Assoc. *v.* Beardsley, (N. J. 1907) 66 Atl. 1; Tautphoeus *v.* Harbor, etc., Bldg., etc., Assoc., 104 N. Y. App. Div. 451, 93 N. Y. Supp. 916, *reversed* on other grounds 185 N. Y. 308, 78 N. E. 69.

8. Interest Allowed on Amount Due from Date of Maturity. — Rogers *v.* Ogden Bldg., etc., Assoc., 30 Utah 188, 83 Pac. 754.

1035. **1.** Preston *v.* Brinley, 106 N. Y. App. Div. 593, 94 N. Y. Supp. 782.

The rule is, in the absence of binding express agreement, that the debts and expenses are to be first paid and then each shareholder is entitled to a dividend *pro rata* upon the amount which he has paid upon his stock. People *v.* New York Bldg.-Loan Banking Co., 110 N. Y. App. Div. 554, 97 N. Y. Supp. 81.

In the absence of express agreement the preferred stock and the common stock share equally in the distribution of assets on the dissolution of the corporation. People *v.* New York Bldg.-Loan Banking Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 23, 100 N. Y. Supp. 459; People *v.* Metropolitan Mut. Sav., etc., Assoc., 103 N. Y. App. Div. 153, 92 N. Y. Supp. 689, *affirmed* 182 N. Y. 531, 75 N. E. 1132.

Where the stock was issued in series and the agreement and custom was that one series should be paid before the following one, it was held that the holder of matured stock would be preferred to other stockholders. Rogers *v.* Ogden Bldg., etc., Assoc., 30 Utah 188, 83 Pac. 754.

8. Preston *v.* Brinley, 106 N. Y. App. Div. 593, 94 N. Y. Supp. 782; People *v.* New York Bldg.-Loan Banking Co., 110 N. Y. App. Div. 554, 97 N. Y. Supp. 81; Folk *v.* State Capital Sav., etc., Assoc., 214 Pa. St. 529, 63 Atl. 1013; Globe Mut. Bldg., etc., Assoc. *v.* Schutte, 29 Pa. Super. Ct. 265.

Where the association deposited certain of its securities with the treasurer of another state as a security for the members in that state it was held that this created a preference and destroyed the mutuality of the plan and placed the borrowing member in the position of a debtor of the association, and relieved him of the liability to contribute to the losses. Clarke *v.* Darr, 168 Ind. 101, 80 N. E. 19.

1036. **1.** Cunningham *v.* Mutual Loan, etc., Assoc., 72 N. J. L. 175, 62 Atl. 307.

1040. **5. Contra.** — "The fines are imposed as a penalty, and, before collection can be made, a clear legal right thereto must be made to appear." *Per* McLoughlin, J., in Preston *v.* Brinley, 106 N. Y. App. Div. 593, 94 N. Y. Supp. 782.

1041. **1.** Egg Harbor Bldg., etc., Assoc. *v.* Baake, (N. J. 1907) 65 Atl. 864.

4. Such Statutes Constitutional. — Cramer *v.* Southern Ohio L. & T. Co., 72 Ohio St. 395, 2 Ann. Cas. 990, 74 N. E. 200.

1042. **1.** Egg Harbor Bldg., etc., Assoc. *v.* Baake, (N. J. 1907) 65 Atl. 864.

1044. **3.** Preston *v.* Brinley, 106 N. Y. App. Div. 593, 94 N. Y. Supp. 782.

Provision Must Be Certain and Specific. — Egg Harbor Bldg., etc., Assoc. *v.* Baake, (N. J. 1907) 65 Atl. 864.

4. Preston *v.* Brinley, 106 N. Y. App. Div. 593, 94 N. Y. Supp. 782.

8. Burden on Association to Show Forfeiture. — Big Four Bldg. Assoc. *v.* Clegg, 39 Ind. App. 188, 79 N. E. 517.

1047. **3.** Folk *v.* State Capital Sav., etc., Assoc., 214 Pa. St. 529, 63 Atl. 1013.

1049. **3. Association May Waive Notice.** — Big Four Bldg. Assoc. *v.* Clegg, 39 Ind. App. 188, 79 N. E. 517.

1051. **1.** Aldrich *v.* Gray, (C. C. A.) 147 Fed. 453, 8 Ann. Cas. 832; Ft. Smith Bldg. Assoc. *v.* Cohn, 75 Ark. 497, 87 S. W. 1172; McKee *v.* Home Sav., etc., Co., 133 Iowa 548, 110 N. W. 908; Carpenter *v.* Sherman, 2 Tenn. Ch. App. 326.

1052. **1.** In Le Mars Bldg., etc., Assoc. *v.* Burgess, 129 Iowa 422, 105 N. W. 641, wherein the by-laws provided that the withdrawal value of the shares should be the amount paid to the association with interest at . . . less than eight per cent., it was held that the amount paid on account of the loan should not be included.

Association May Fix Reasonable Withdrawal Fee. — Folk *v.* State Capital Sav., etc., Assoc., 214 Pa. St. 529, 63 Atl. 1013.

Interest on the sum due begins to run after sufficient funds have accrued to pay the claim in the regular order. Taylor *v.* Bankers' Loan, etc., Co., 118 N. Y. App. Div. 27, 102 N. Y. Supp. 1029.

4. Before notice is given, the withdrawing member is a stockholder and not a creditor. Harrison *v.* Fleischman, 70 N. J. Eq. 301, 61 Atl. 1025.

1053. **2.** Bohn *v.* Boone Bldg., etc., Assoc., (Iowa 1907) 112 N. W. 199.

Money Paid on Matured Stock after Insolvency cannot be recovered if the member had no knowledge of the insolvency. McKee *v.* Home Sav., etc., Co., 133 Iowa 548, 110 N. W. 908.

4. Big Four Bldg. Assoc. *v.* Clegg, 39 Ind. App. 188, 79 N. E. 517.

The withdrawing member is entitled to interest on the amount due after notice of withdrawal. Kellenberger *v.* Oskaloosa Nat. Bldg., etc., Assoc., 129 Iowa 582, 105 N. W. 836.

1055. **1. A Subscription for Stock for the Purpose of Securing a Loan** does not make the transaction usurious if the association was unaware of the object of the subscription. Guarantee Sav., etc., Co. *v.* Mitchell, (Tex. Civ. App. 1905) 87 S. W. 184.

7. See Whelpley *v.* Koss, 25 App. Cas. (D. C.) 207.

1056. 4. Armor *v.* Loudon Bank, 86 Miss. 658, 39 So. 17.

1057. 4. Co-Operative Bank *v.* Meldrum, 128 Iowa 694, 105 N. W. 206; Le Mars Bldg., etc., Assoc. *v.* Burgess, 129 Iowa 422, 105 N. W. 641; Preston *v.* Rockey, 185 N. Y. 186, 72 N. E. 1156, *affirming* 110 N. Y. App. Div. 920, 96 N. Y. Supp. 857; Carmichael *v.* Indemnity Sav., etc., Co., 15 Ohio Dec. 341; Bryan *v.* Augusta Perpetual Bldg., etc., Co., 104 Va. 611, 52 S. E. 357.

5. Cobe *v.* Summers, 143 Mich. 117, 106 N. W. 707.

Under a statute allowing usurious rates of interest by loan associations it was held that a loan made by "borrowers' certificates" instead of money was not within the law and that such a transaction was usurious. Wineman *v.* First Mortg. Loan Co., 117 Ill. App. 302.

9. Beckley *v.* U. S. Savings, etc., Co., 147 Ala. 195, 40 So. 655; Fidelity Sav. Assoc. *v.* Bank of Commerce, 12 Wyo. 315, 75 Pac. 448, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1057.

No Interest on Stock Payments. — O'Sullivan *v.* Traders', etc., Permanent Sav. Assoc., (Md. 1907) 68 Atl. 349.

1058. 1. Loudon Bank *v.* Armor, (Miss. 1907) 44 So. 66; Kurtz *v.* Campbell, 218 Pa. St. 524, 67 Atl. 843; Fidelity Sav. Assoc. *v.* Bank of Commerce, 12 Wyo. 315, 75 Pac. 448, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1058.

1059. 2. Cooper *v.* Brazelton, (C. C. A.) 135 Fed. 476.

5. Kurtz *v.* Campbell, 218 Pa. St. 524, 67 Atl. 843, 31 Pa. Super. Ct. 516; Christensen *v.* Colorado Invest. Loan Co., (Utah 1907) 91 Pac. 581. See also Butson *v.* Home Sav., etc., Co., 129 Iowa 370, 105 N. W. 645.

Insolvency of Association Does Not Affect Prior Appropriation. — Kurtz *v.* Campbell, [illegible] Pa. Super. Ct. 516.

No Appropriation after Insolvency. — Haspel *v.* Moffitt, 32 Pa. Super. Ct. [illegible] 4.

The Borrower Is Not Entitled to Dividends if he elects to have his stock payments credited on his loan. Norman *v.* Warsaw [illegible]ldg., etc., Assoc., (Ky. 1906) 91 S. W. 695.

1065. 5. Preston *v.* D'Ambrosio, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 523, 95 N. Y. Supp. 70.

1067. 8. Preston *v.* Brinley, 106 N. Y. App. Div. 593, 94 N. Y. Supp. 782, *affirmed* 186 N. Y. 515, 78 N. E. 1111; Fidelity Sav. Assoc. *v.* Bank of Commerce, 12 Wyo. 315, 75 Pac. 448, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1067. See also Flinn *v.* Interstate Bldg., etc., Assoc., 141 Fed. 672.

Premiums Are Not Usurious if there is bidding for the loan. Equitable Bldg., etc., Assoc. *v.* Thomas, 216 Pa. St. 571, 65 Atl. 1100.

1069. 2. **Premium Not Usurious if Number of Payments Definite.**— Thompson *v.* National Mut. Bldg., etc., Assoc., 57 W. Va. 551, 50 S. E. 756; Burkheimer *v.* National Mut. Bldg., etc., Assoc., 59 W. Va. 209, 53 S. E. 372; Tahaney *v.* Washington Nat. Bldg., etc., Assoc., 59 W. Va. 296, 53 S. E. 791; Brown *v.* Rockey, (W. Va. 1906) 54 S. E. 343; Miller *v.* Prudential Banking, etc., Co., (W. Va. 1907) 59 S. E. 977.

5. Beckley *v.* U. S. Savings, etc., Co., 147 Ala. 195, 40 So. 655.

Such Statutes Held Constitutional. — Cramer *v.* Southern Ohio L. & T. Co., 72 Ohio St. 395, 2 Ann. Cas. 990, 74 N. E. 200.

Statute Must Be Strictly Complied with. — Miller *v.* Prudential Banking, etc., Co., (W. Va. 1907) 59 S. E. 977.

6. If the statute requires competitive bidding and a loan at more than legal interest is made without such bidding it is usurious. Cobe *v.* Summers, 143 Mich. 117, 106 N. W. 707.

1070. 1. Sargent *v.* Home Bldg., etc., Assoc., 114 Ill. App. 393; Bechtel *v.* Saginaw Bldg., etc., Assoc., 143 Mich. 599, 107 N. W. 695; Roeser *v.* German Nat. Bldg., etc., Assoc., 32 Pa. Super. Ct. 100; Klein *v.* Pennsylvania Sav. Fund, etc., Assoc., 216 Pa. St. 516, 65 Atl. 1103; Miller *v.* Prudential Banking, etc., Co., (W. Va. 1907) 59 S. E. 977, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1070.

Opportunity Must Be Given for Competitive Bidding. — Home Bldg., etc., Assoc. *v.* McKay, 217 Ill. 551, 75 N. E. 569.

If opportunity is given, the fact that only one person makes a bid will not make the transaction usurious. Hotchkiss *v.* Norwood Park Bldg., etc., Assoc., 229 Ill. 248, 82 N. E. 257.

Bids May Be Made in Writing without the presence of the bidder. Savage *v.* Evanston Sav., etc., Assoc., 228 Ill. 431, 81 N. E. 1062; Broch *v.* French, 116 Ill. App. 15.

2. Beckley *v.* U. S. Savings, etc., Co., 147 Ala. 195, 40 So. 655; Cramer *v.* Southern Ohio L. & T. Co., 72 Ohio St. 395, 2 Ann. Cas. 990, 74 N. E. 200; Tahaney *v.* Washington Nat. Bldg., etc., Assoc., 59 W. Va. 296, 53 S. E. 791.

1071. 4. Cooper *v.* Brazelton, (C. C. A.) 135 Fed. 476; Broch *v.* French, 116 Ill. App. 15.

Payment of Interest after Cessation of Dues and Preminms, until the stock matures, is not usurious. Tahaney *v.* Washington Nat. Bldg., etc., Assoc., 59 W. Va. 296, 53 S. E. 791.

9. Hotchkiss *v.* Norwood Park Bldg., etc., Assoc., 229 Ill. 248, 82 N. E. 257; Eastern Bldg., etc., Assoc. *v.* Tonkinson, (Neb. 1906) 107 N. W. 762; Middle States Loan, etc., Co. *v.* Miller, 104 Va. 464, 51 S. E. 846. See also Rabb *v.* Texas Loan, etc., Co., (Tex. Civ. App. 1906) 96 S. W. 77.

1072. 5. Beckley *v.* U. S. Savings, etc., Co., 147 Ala. 195, 40 So. 655; Galletley *v.* Strickland, 74 S. Car. 394, 54 S. E. 576; Middle States Loan, etc., Co. *v.* Miller, 104 Va. 464, 51 S. E. 846.

11. Home Bldg., etc., Assoc. *v.* McKay, 118 Ill. App. 586, *reversed* on other grounds 217 Ill. 551, 75 N. E. 569.

Defense of Usury Available So Long as Any Portion of Debt Due. — Garlick *v.* Mutual Loan, etc., Assoc., 116 Ill. App. 311.

A Borrower Is Not Estopped to set up usury when it is not shown that he had knowledge

that the association was not complying with the law. Free Home Bldg., etc., Assoc. *v.* Edwards, 223 Ill. 226, 79 N. E. 64, *affirming* 124 Ill. App. 191.

1073. **8.** Home Bldg., etc., Assoc. *v.* McKay, 217 Ill. 551, 75 N. E. 569; Free Home Bldg., etc., Assoc. *v.* Edwards, 223 Ill. 126, 79 N. E. 64, *affirming* 124 Ill. App. 191; Wineman *v.* First Mortg. Loan Co., 117 Ill. App. 302; Co-Operative Bank *v.* Meldrum, 128 Iowa 694, 105 N. W. 206; Le Mars Bldg., etc., Assoc. *v.* Burgess, 129 Iowa 422, 105 N. W. 641; Preston *v.* Rockey, 185 N. Y. 186, 77 N. E. 1156, *affirming* 110 N. Y. App. Div. 920, 96 N. Y. Supp. 857; Carmichael *v.* Indemnity Sav., etc., Co., 15 Ohio Dec. 341; Brooklyn Bldg., etc., Assoc. Co. *v.* Desnoyers, 26 Ohio Cir. Ct. 352; Bryan *v.* Augusta Perpetual Bldg., etc., Co., 104 Va. 611, 52 S. E. 357; Miller *v.* Prudential Banking, etc., Co., (W. Va. 1907) 59 S. E. 977.

1074. **1. Exempting Acts Not Unconstitutional.** — Cramer *v.* Southern Ohio L. & T. Co., 72 Ohio St. 395, 2 Ann. Cas. 990, 74 N. E. 200; Carmichael *v.* Indemnity Sav., etc., Co., 15 Ohio Dec. 341; Brooklyn Bldg., etc., Assoc. Co. *v.* Desnoyers, 26 Ohio Cir. Ct. 352.

3. Garlick *v.* Mutual Loan, etc., Assoc., 116 Ill. App. 311.

4. Free Home Bldg., etc., Assoc. *v.* Edwards, 223 Ill. 126, 79 N. E. 64, *affirming* 124 Ill. App. 191; Cobe *v.* Airey, 125 Ill. App. 43; Garlick *v.* Mutual Loan, etc., Assoc., 129 Ill. App. 402.

1076. **1.** Darr *v.* Guaranty Sav., etc., Assoc., 47 Oregon 88, 81 Pac. 565; Cain *v.* Reeve, 30 Utah 56, 83 Pac. 568.

Estoppel. — Under by-laws providing that dues and premiums shall be payments on the stock, a member who allowed such payments to be credited in his pass book as payments on stock cannot afterwards deny consent. Globe Mut. Bldg., etc., Assoc. *v.* Schutte, 29 Pa. Super Ct. 265.

2. Oskaloosa Nat. Bldg., etc., Assoc. *v.* Bailey, 129 Iowa 287, 105 N. W. 417; Kentucky Bldg., etc., Assoc. *v.* Daugherty, (Ky. 1905) 86 S. W. 705; Kurtz *v.* Campbell, 31 Pa. Super. Ct. 516; Cain *v.* Reeve, 30 Utah 56, 83 Pac. 568.

1079. **2. Defenses.** — On an instalment mortgage wherein the association agrees to convey the premises free and clear after payment of the last instalment it is not a defense that the association might not be able to complete its contract. Harbor, etc., Bldg., etc., Assoc. *v.* Wood, 121 N. Y. App. Div. 507, 106 N. Y. Supp. 173.

1080. **5.** Ft. Smith Bldg. Assoc. *v.* Cohn, 75 Ark. 497, 87 S. W. 1172; Watkins *v.* Commonwealth Sav., etc., Assoc., (N. J. 1906) 64 Atl. 751.

Where the association, in order to raise money for the use of borrowing members, issued certificates payable in three years and secured by mortgages deposited with a trust company, it was held that the holders of such certificates were creditors and not stockholders. Bettle *v.* Republic Sav., etc., Assoc., (N. J. 1906) 64 Atl. 176.

1081. **2.** Preston *v.* Rockey, 185 N. Y. 186, 77 N. E. 1156, *affirming* 110 N. Y. App. Div. 920, 96 N. Y. Supp. 857; Preston *v.* Albee, 120 N. Y. App. Div. 89, 105 N. Y. Supp. 33; Preston *v.* Brinley, 106 N. Y. App. Div. 593, 94 N. Y. Supp. 782; Graves *v.* Seifried, 31 Utah 203, 87 Pac. 674.

Advance Payments of Dues do not make the member a creditor of the association to the amount of such advances. People *v.* New York Bldg.-Loan Banking Co., 110 N. Y. App. Div. 554, 97 N. Y. Supp. 81.

Guaranty Stock. — Where stock was issued for the purpose of forming a permanent capital and as a guaranty of the obligations of the company it was held that the shareholders were not entitled to share equally with the other shareholders in the distribution of assets. People *v.* New York Bldg.-Loan Banking Co., 119 N. Y. App. Div. 830, 104 N. Y. Supp. 892.

3. The Basis upon Which the Assets Are Distributed is the withdrawal value of the stock at the time of the appointment of the receiver. People *v.* Metropolitan Mut. Sav., etc., Assoc., 103 N. Y. App. Div. 153, 92 N. Y. Supp. 689.

4. Flinn *v.* Interstate Bldg., etc., Assoc., 141 Fed. 672, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1081; Croissant *v.* Empire State Realty Co., 29 App. Cas. (D. C.) 538; Harris *v.* Nevins, 68 N. J. Eq. 684, 63 Atl. 172; *In re* State Mut. Bldg., etc., Assoc., (N. J. 1907) 68 Atl. 108; Preston *v.* Woodland, (Md. 1906) 65 Atl. 336.

A Preference Created by the Deposit of Securities with the Authorities of Another State for the benefit of the stockholders of that state, places the borrowing member in the position of an ordinary debtor. Clarke *v.* Darr, 168 Ind. 101, 80 N. E. 19.

Rule Same for Defaulting and Non-defaulting Borrowers. — *In re* State Mut. Bldg., etc., Assoc., (N. J. 1907) 68 Atl. 108.

5. Scaife *v.* Scammon Invest., etc., Assoc., 71 Kan. 402, 80 Pac. 957; Kentucky Bldg., etc., Assoc. *v.* Daugherty, (Ky. 1905) 86 S. W. 705, *reversing* 84 S. W. 1178; Sokoloski *v.* New South Bldg., etc., Assoc., (Miss. 1907) 43 So. 674; Carpenter *v.* Sherman, 2 Tenn. Ch. App. 326.

New York Rule. — The borrower should not be charged with the premium or any part thereof. Preston *v.* Lamano, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 304, 93 N. Y. Supp. 210.

He should not be credited with payments made on the premium, with interest paid on the premium, or with monthly dues. Preston *v.* Lamano, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 304, 93 N. Y. Supp. 210; People *v.* Rockey, 185 N. Y. 186, 77 N. E. 1156, *affirming* 110 N. Y. App. Div. 920, 96 N. Y. Supp. 857; Roberts *v.* Cronk, 182 N. Y. 546, 75 N. E. 1133, *affirming* 94 N. Y. App. Div. 171, 88 N. Y. Supp. 103; Preston *v.* Reinhart, 100 N. N. App. Div. 781, 96 N. Y. Supp. 851, *affirmed* 185 N. Y. 555, 78 N. E. 1111; Preston *v.* Willich, 110 N. Y. App. Div. 921, 96 N. Y. Supp. 857.

1082. **1.** Broch *v.* French, 116 Ill. App. 15.

2. Broch *v.* French, 116 Ill. App. 15; Graves *v.* Seifried, 31 Utah 203, 87 Pac. 674.

BUILDING RESTRICTIONS AND RESTRICTIVE AGREEMENTS.

1. 1. Covenant against Nuisance Runs with Land. — Dieterlen *v.* Miller, 114 N. Y. App. Div. 40, 99 N. Y. Supp. 699.

2. **A Covenant in a Deed** that no house should be erected on the premises conveyed nearer than twenty-five feet to the front street line, runs with the land. McDonald *v.* Spang, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 332, 105 N. Y. Supp. 617.

5. 8. **Considered as Equitable Restriction.** — Welch *v.* Austin, 187 Mass. 256, 72 N. E. 972.

Considered as Equitable Servitude. — Boyden *v.* Roberts, 131 Wis. 659, 111 N. W. 701.

6. 3. Korn *v.* Campbell, 119 N. Y. App. Div. 401, 104 N. Y. Supp. 462, *reversing* (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 220, 102 N. Y. Supp. 108.

7. 1. **Covenant for Dwelling House of Certain Cost Valid.** — James *v.* Irvine, 141 Mich. 376, 104 N. W. 631.

A Restriction that the Building Erected Shall Cost a Certain Amount is not violated by the erection of a stable costing that amount. Peck *v.* Hartshorn, 189 Mass. 110, 75 N. E. 133.

A Restriction against the Erection of a Tenement is not violated by the erection of an apartment house. Kitching *v.* Brown, 92 N. Y. App. Div. 160, 87 N. Y. Supp. 75, *affirmed* 180 N. Y. 414, 73 N. E. 241; Marx *v.* Brogan, 111 N. Y. App. Div. 480, 98 N. Y. Supp. 88.

A Flat Is Not One Dwelling House within the meaning of the latter term as used in a covenant providing that not more than one dwelling house should be erected on each lot. Sanders *v.* Dixon, 114 Mo. App. 229, 89 S. W. 577. *Compare* Pank *v.* Eaton, 115 Mo. App. 171, 89 S. W. 586.

2. Mitchell *v.* Packham, 103 Md. 693, 63 Atl. 219; Barton *v.* Slifer, (N. J. 1907) 66 Atl. 899.

3. Righter *v.* Winters, 68 N. J. Eq. 252, 59 Atl. 770; McDonald *v.* Spang, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 332, 105 N. Y. Supp. 617.

Merely Ornamental Projections Are Immaterial and do not violate the covenant. Morrow *v.* Hasselman, 69 N. J. Eq. 612, 61 Atl. 369; Emery *v.* Bliss, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 418, 105 N. Y. Supp. 1057.

8. 1. **A Restriction against the Erection of a Flat** is violated where there are one or more suites of rooms on each floor of the house erected for separate housekeeping purposes. Lignot *v.* Jaekle, (N. J. 1906) 65 Atl. 221.

A Covenant Not to Use the Property for Club Purposes is violated by using the same as a landing place for golf grounds and boat house. Boyden *v.* Roberts, 131 Wis. 659, 111 N. W. 701.

Board Fence Held Building. — MacGregor *v.* Linney, 27 Ohio Cir. Ct. 490.

2. **A Provision in a Deed Prohibiting the Erection of a Livery Stable** on the conveyed premises is not invalid as against public policy. Klasener *v.* Robinson, (Ky. 1907) 100 S. W. 255.

A Restriction against the Sale of Intoxicants on the named premises is valid. Scudder *v.* Watt, 98 N. Y. App. Div. 228, 90 N. Y. Supp. 605.

The Erection of an Automobile Garage is a nuisance within the meaning of a covenant that no business should be conducted on the property conveyed that was offensive to the residential neighborhood. Evans *v.* Foss, 194 Mass. 513, 80 N. E. 587.

9. 1. **A Covenant against Carrying on a Saloon Business** will be enforced. De Lima *v.* Hitchell, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 171, 98 N. Y. Supp. 811.

10. 3. Bayard *v.* Bancroft, (Del. Ch. 1905) 62 Atl. 6; Evans *v.* Foss, 194 Mass. 513, 80 N. E. 587; James *v.* Irvine, 141 Mich. 376, 104 N. W. 631; Scharer *v.* Pantler, (Mo. App. 1907) 105 S. W. 668, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 9; Morrow *v.* Hasselman, 69 N. J. Eq. 612, 61 Atl. 369; Lignot *v.* Jaekle, (N. J. 1906) 65 Atl. 221; Woodbine Land, etc., Co. *v.* Riener, (N. J. 1907) 65 Atl. 1004; Barton *v.* Slifer, (N. J. 1907) 66 Atl. 899; De Lima *v.* Mitchell, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 171, 98 N. Y. Supp. 811; Silberman *v.* Uhrlaub, 116 N. Y. App. Div. 869, 102 N. Y. Supp. 299; McDonald *v.* Spang, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 332, 105 N. Y. Supp. 617; St. Peter's Church *v.* Bragaw, (N. Car. 1907) 56 S. E. 688; Robinson *v.* Edgell, 57 W. Va. 157, 49 S. E. 1027; Boyden *v.* Roberts, 131 Wis. 659, 111 N. W. 701.

Where an Assignee Takes without Notice, the court will refuse to grant an injunction. Roak *v.* Davis, 194 Mass. 481, 80 N. E. 690.

11. 1. Barton v. Slifer, (N. J. 1907) 66 Atl. 899.

12. 1. Boyden *v.* Roberts, 131 Wis. 659, 111 N. W. 701.

13. 1. Silberman *v.* Mayer, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 468, 96 N. Y. Supp. 928.

7. Evans *v.* Foss, 194 Mass. 513, 80 N. E. 587; Morrow *v.* Hasselman, 69 N. J. Eq. 612, 61 Atl. 369; Barton *v.* Slifer, (N. J. 1907) 66 Atl. 899; Silberman *v.* Uhrlaub, 116 N. Y. App. Div. 869, 102 N. Y. Supp. 299; Robinson *v.* Edgell, 57 W. Va. 157, 49 S. E. 1027; Boyden *v.* Roberts, 131 Wis. 659, 111 N. W. 701.

14. 4. **A Restriction in the Nature of a Forfeiture** will not be enforced, since it partakes of the nature of a penalty. Klasener *v.* Robinson, (Ky. 1907) 100 S. W. 255.

A Restriction in the Form of a Condition in a deed has been held to be a mere personal covenant, and not a condition subsequent for which a forfeiture could be enforced. Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248.

15. 4. Scharer *v.* Pantler, (Mo. App. 1907) 105 S. W. 668, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 15; Robinson *v.* Edgell, 57 W. Va. 157, 49 S. E. 1027.

5. Righter *v.* Winters, 68 N. J. Eq. 252, 59 Atl. 770; Hemsley *v.* Marlborough House Co., 68 N. J. Eq. 596, 61 Atl. 455; Island Heights Assoc. *v.* Island Heights Water Power, etc., Co., (N. J. 1906) 62 Atl. 773.

16. 1. Brown *v.* Wrightman, (Cal. App. 1907) 90 Pac. 467; Lignot *v.* Jaekle, (N. J.

1906) 65 Atl. 221; Woodbine Land, etc., Co. *v.* Riener, (N. J. 1907) 65 Atl. 1004; Barton *v.* Slifer, (N. J. 1907) 66 Atl. 899; Levy *v.* Halcyon Casino Hotel Co., (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 289, 92 N. Y. Supp. 231.

Laches May Bar Relief. — Island Heights Assoc. *v.* Island Heights Water Power, etc., Co., (N. J. 1906) 62 Atl. 773.

Abandonment of the Original Plan will disentitle the plaintiff to relief. Chelsea Land, etc., Co. *v.* Adams, (N. J. 1907) 66 Atl. 180.

17. 2. Brown *v.* Wrightman, (Cal. App. 1907) 90 Pac. 467; Scharer *v.* Pantler, (Mo. App. 1907) 105 S. W. 668, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 17; Righter *v.* Winters, 68 N. J. Eq. 252, 59 Atl. 770; McClure *v.* Leaycraft, 183 N. Y. 36, 75 N. E. 960, *reversing* 97 N. Y. App. Div. 518, 90 N. Y. Supp. 233; Schwarz *v.* Duhne, 118 N. Y. App. Div. 105, 103 N. Y. Supp. 14; Schefer *v.* Ball, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 451, 104 N. Y. Supp. 1028.

7. Bayard *v.* Bancroft, (Del. Ch. 1905) 62 Atl. 6; Joseph Schlitz Brewing Co. *v.* Nielsen, (Neb. 1906) 110 N. W. 746; Morrow *v.* Hasselman, 69 N. J. Eq. 612, 61 Atl. 369.

BURDEN OF PROOF.

22. 1. Chicago Union Traction Co. *v.* Mee, 218 Ill. 9, 4 Ann. Cas. 7, 75 N. E. 800, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22, and *reversing* 119 Ill. App. 332.

2. Colston *v.* Bean, 78 Vt. 283, 62 Atl. 1015, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22.

"The burden of proof, meaning the obligation to establish the truth of the claim by a preponderance of evidence, rests throughout upon the plaintiff." Chicago Union Traction Co. *v.* Mee, 218 Ill. 9, 4 Ann. Cas. 7, 75 N. E. 800, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22, and *reversing* 119 Ill. App. 332.

Where the Burden Is on the Defendant under the pleading at the start it remains on him to the end. Roberts *v.* Padgett, 82 Ark. 331, 101 S. W. 753.

A Defendant Alleging Fraud bears the burden of proving it. Williams *v.* Finlayson, 49 Fla. 267, 38 So. 50, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22, 23.

23. 4. Fundamental Rule — Burden on Party Holding Affirmative. — Walker *v.* Carpenter, 144 N. Car. 674, 57 S. E. 461; Klunk *v.* Hocking Valley R. Co., 74 Ohio St. 125, 77 N. E. 752.

25. 3. Adams *v.* Pease, 113 Ill. App. 356. *No Consideration;* in defense to an action on a promissory note. Roberts *v.* Padgett, 82 Ark. 331, 101 S. W. 753.

Set-off. — Holmes *v.* McKennan, 120 Ill. App. 320.

26. 1. Rapp *v.* Sarpy County, 71 Neb. 382, 102 N. W. 242.

28. 1. Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52.

30. 1. Daley *v.* Iselin, 212 Pa. St. 279, 61 Atl. 919, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 28–30.

2. When Defendant Has Burden of Proving Negative. — Prince *v.* Kennedy, 3 Cal. App. 404, 85 Pac. 859; Johnson *v.* Berdo, 131 Iowa 524, 106 N. W. 609; Bogart *v.* Tannenbaum, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 310, 103 N. Y. Supp. 98; State *v.* Connor, 142 N. Car. 700, 55 S. E. 787; John Ainsfield Co. *v.* Rasmussen, 30 Utah 453, 85 Pac. 1002.

Illustrations. — Fraud; in an action on breach of contract by attorney against client. Weil *v.* Fineran, 78 Ark. 87, 93 S. W. 568.

The defense of payment of the plaintiff's debts, in an action for money loaned, is upon the defendant. Bailey *v.* Porter, (Ky. 1907) 99 S. W. 932.

Where the defendant in an action on an insurance policy alleges that the insured came to his death in consequence of the violation of the laws, the burden of proving such fact is on the defendant. Supreme Lodge, etc., *v.* Lipscomb, 50 Fla. 414, 39 So. 637, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30.

4. Vertrees *v.* Gage County, (Neb. 1905) 106 N. W. 331.

33. 1. New Matter — Burden of Proving Issue Raised Held to Be on Defendant. — John Ainsfield Co. *v.* Rasmussen, 30 Utah 453, 85 Pac. 1002.

2. Criminal Cases — Burden Is on Prosecution. — U. S. *v.* Cole, 153 Fed. 801; State *v.* Wolf, (Del. 1907) 66 Atl. 739; State *v.* Briscoe, (Del. 1907) 67 Atl. 154; State *v.* Samuels, (Del. 1904) 67 Atl. 164; State *v.* Stewart, (Del. 1907) 67 Atl. 786; O'Brien's Appeal, 100 Me. 156, 60 Atl. 880; State *v.* Lax, 71 N. J. L. 386, 59 Atl. 18; State *v.* Hazlett, (N. Dak. 1907) 113 N. W. 374, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33; State *v.* Newton, 39 Wash. 491, 81 Pac. 1002.

Self-defense. — See Bluett *v.* State, (Ala. 1907) 44 So. 84; State *v.* Cephus, (Del. 1906) 67 Atl. 150; State *v.* Moss, 77 S. Car. 391, 57 S. E. 1098. And for a specific discussion, see the title SELF-DEFENSE, **283.** 2.

Alibi — Burden Is on Defendant. — Flanagan *v.* People, 214 Ill. 170, 73 N. E. 347; State *v.* Quigley, 26 R. I. 263, 58 Atl. 905.

37. 2. Justification — Burden Said to Be on Defendant. — People *v.* Grill, (Cal. 1907) 91 Pac. 515.

39. 1. Defense of Insanity — Burden of Proof on Defendant. — People *v.* Willard, 150 Cal. 543, 89 Pac. 124; State *v.* Humbles, 126 Iowa 462, 102 N. W. 409; State *v.* Austin, 71 Ohio St. 317, 73 N. E. 218; State *v.* Quigley, 26 R. I. 263, 3 Ann. Cas. 920, 58 Atl. 905; Fults *v.* State, (Tex. Civ. App. 1906) 98 S. W. 1057.

Defense of Intoxication — Burden Held to Be on Defendant. — State *v.* Sparegrove, 134 Iowa 599, 112 N. W. 83.

41. 1. Presumption Shifts Duty of Going Forward. — See State *v.* Cephus, (Del. 1906) 67 Atl. 150; Kerr *v.* U. S., (Indian Ter. 1907) 104 S. W. 809; State *v.* Rosenthal, 123 Wis. 442, 102 N. W. 49.

42. 1. Negative Claims Provable Only by Opposite Party. — Gains *v.* State, (Ala. 1907) 43 So. 137.

BURGLARY.

44. 1. For Other Expositions. — Gunter *v.* State, 79 Ark. 432, 96 S. W. 181; Com. *v.* Woolfolk, (Ky. 1905) 89 S. W. 110; State *v.* Descant, 117 La. 1016, 42 So. 486; State *v.* McGuire, 193 Mo. 215, 91 S. W. 939; Claiborne *v.* State, 113 Tenn. 261, 83 S. W. 352; Jones *v.* State, (Tex. Crim. 1906) 96 S. W. 44; Mason *v.* State, (Tex. Crim. 1907) 100 S. W. 383, correcting judgment and denying rehearing (Tex. Crim. 1906) 98 S. W. 854; State *v.* Hows, 31 Utah 168, 87 Pac. 163; State *v.* Richards, 29 Utah 310, 81 Pac. 142; State *v.* Randall, 36 Wash. 438, 78 Pac. 998.

45. 3. Breaking Essential. — The term "break" in the *Arkansas* statute is to be given the same meaning as at common law. Anderson *v.* State, 84 Ark. 54, 104 S. W. 1096.

Actual Breaking Essential to Daytime Burglary. — Bates *v.* State, (Tex. Crim. 1907) 99 S. W. 551.

Raising Window Partly Open Held to Be Sufficient Breaking. — Claiborne *v.* State, 113 Tenn. 261, 83 S. W. 352.

Where the Curtain Covering a Transom Was Torn Away, it was held that there was a sufficient breaking. Hofland *v.* State, (Tex. Crim. 1905) 85 S. W. 798.

Insertion of Arm through Glass Already Broken Sufficient Breaking. — Jones *v.* State, (Tex. Crim. 1905) 87 S. W. 1157.

46. 1. Lifting Latch or Drawing Bolt. — Abrams *v.* Com., (Ky. 1905) 85 S. W. 173.

Enlarging Opening. — Claiborne *v.* State, 113 Tenn. 261, 83 S. W. 352.

Domestic Servant. — Alexander *v.* State, (Tex. Crim. 1905) 89 S. W. 642 (to the same effect as Neiderluck *v.* State, 23 Tex. App. 38, 3 S. W. 573, stated in the original note).

Inmate of House. — *Contra,* State *v.* Descant, 117 La. 1016, 42 So. 486, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 46.

Where a person who is an inmate of a boarding house burglarizes a room therein in the exclusive control of another inmate, he may be convicted of burglary. Hofland *v.* State, (Tex. Crim. 1905) 85 S. W. 798.

Opening of Closed Door Sufficient Breaking. — State *v.* Brower, 127 Iowa 687, 104 N. W. 284.

48. 1. Admission Secured by Fraud Sufficient Breaking. — Young *v.* Com., (Ky. 1907) 104 S. W. 266.

Entrance by Aid of Servant Sufficient Breaking. — Alexander *v.* State, (Tex. Crim. 1905) 89 S. W. 642.

51. 1. Entry by Collusion of Detective Not Burglary Where Owner Was Connected with Original Design. — Bird *v.* State, (Tex. Crim. 1905) 90 S. W. 651.

Mere Knowledge on Part of Owner No Defense. — State *v.* Currie, 13 N. Dak. 655, 102 N. W. 875.

Owner, Where Witness, Must Prove Want of Consent. — Caddell *v.* State, (Tex. Crim. 1905) 90 S. W. 1013.

Circumstantial Evidence Admissible to Prove Want of Consent Where Owner Dead. — Jackson *v.* State, (Tex. Crim. 1906) 91 S. W. 788.

52. 1. A Smokehouse was declared to be not necessarily an outhouse within the meaning of the *Kentucky* statute. Dunn *v.* Com., 119 Ky. 457, 84 S. W. 321.

54. 2. Cronan *v.* State, 113 Tenn. 539, 82 S. W. 477.

Railroad Depot. — Under the *Alabama* statute, a railroad depot cannot be the subject of burglary. Dickinson *v.* State, (Ala. 1906) 41 So. 929.

Attempt to Break and Enter Railroad Car No Offense. — Summers *v.* State, (Tex. Crim. 1905) 90 S. W. 310.

4. Chicken House. — In *Arkansas,* a chicken house was held to be embraced within the phrase "house, tenement, railway car, or other building." Gunter *v.* State, 79 Ark. 432, 96 S. W. 181.

Under the *Ohio* burglary statute, the words "other buildings" do not embrace a chicken house. Bailey *v.* State, 26 Ohio Cir. Ct. 375, *affirmed* without opinion 69 Ohio St. 551, 70 N. E. 1130.

A Smokehouse was held to be not necessarily included in the phrase "any outhouse belonging to or used with any dwelling house." Dunn *v.* Com., 119 Ky. 457, 84 S. W. 321.

55. 1. House. — Where the count of the indictment charged the burglarizing of a "house," and the proof showed that the house burglarized was a private dwelling where a family resided, it was held that there was a variance. Martinus *v.* State, (Tex. Crim. 1905) 84 S. W. 831.

Shed. — It was held that a buggy shed was a "house" within the meaning of the *Texas* statute, notwithstanding the fact that it was boarded up and contained no door. Crow *v.* State, (Tex. Crim. 1905) 85 S. W. 1057.

56. 1. A Smokehouse is not an "outhouse" within the meaning of the *Kentucky* statute. Dunn *v.* Com., 119 Ky. 457, 84 S. W. 321.

57. 3. To constitute a building a dwelling house it is not necessary that it be actually occupied as a residence at the time of the burglary. Com. *v.* Woolfolk, (Ky. 1905) 89 S. W. 110.

Absence of the family on vacation, and of the servants temporarily, does not cause the house to be uninhabited within the meaning of the *Ohio* statute. State *v.* Mason, 74 Ohio St. 65, 77 N. E. 283.

The term "dwelling house" was held to embrace the different rooms of the house. State *v.* Descant, 117 La. 1016, 42 So. 486.

In *Washington,* the term "dwelling house" is used in its ordinary and usual acceptation, and does not include disconnected buildings which are not occupied by a member of the family. State *v.* Randall, 36 Wash. 438, 78 Pac. 998.

4. Outhouse.—It was held in *Washington* that in order to charge burglary of an outhouse it is necessary to allege the building burglarized as both adjoining the dwelling house and occupied therewith. State *v.* Randall, 36 Wash. 438, 78 Pac. 998.

58. 1. Time May Be Shown from Circumstantial Evidence.—Keeler *v.* State, 73 Neb. 441, 103 N. W. 64; Simon *v.* State, 125 Wis. 439, 103 N. W. 1100.

2. In Louisiana it is by statute made a crime to enter a dwelling house in the daytime with intent to steal. State *v.* Curtis, 116 La. 749, 41 So. 58.

59. 1. In California, when burglary is committed in the nighttime it is classed as first-degree burglary. People *v.* Perry, 144 Cal. 748, 78 Pac. 284.

2. Bird *v.* State, (Tex. Crim. 1905) 90 S. W. 651; Jones *v.* State, (Tex. Crim. 1905) 87 S. W. 1157; Harris *v.* State, (Tex. Crim. 1907) 103 S. W. 390; Mason *v.* State, (Tex. Crim. 1904) 83 S. W. 689; Price *v.* State, (Tex. Crim. 1904) 83 S. W. 185.

One who enters a room of a house with burglarious intent, enters the house with such intent. State *v.* Descant, 117 La. 1016, 42 So. 486, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 59.

61. 1. Williams *v.* State, 48 Fla. 65, 37 So. 521. See also State *v.* Leonard, (Iowa 1907) 112 N. W. 784.

3. Gunter *v.* State, 79 Ark. 432, 96 S. W. 181; Johnson *v.* State, (Tex. Crim. 1906) 96 S. W. 45; Winsky *v.* State, 126 Wis. 99, 105 N. W. 480. But see Flanagan *v.* People, 214 Ill. 347, 73 N. E. 347.

In *Texas* it was held not erroneous for the court to refuse to charge that the mere possession of stolen property is not sufficient alone to convict of burglary, but is only a circumstance to be taken in connection with other facts. Hays *v.* State, (Tex. Crim. 1907) 100 S. W. 926; McCormick *v.* State, 141 Ala. 75, 37 So. 377; State *v.* Wright, (Del. 1907) 66 Atl. 364; State *v.* Donovan, 125 Iowa 239, 101 N. W. 122.

Unexplained Possession Regarded as Sufficient. — State *v.* Brower, 127 Iowa 687, 104 N. W. 284

62. 1. State *v.* James, 194 Mo. 268, 5 Ann. Cas. 1007, 92 S. W. 679; Reyes *v.* State, (Tex. Crim. 1907) 102 S. W. 421; Nightingale *v.* State, (Tex. Crim. 1906) 95 S. W. 531; Winsky *v.* State, 126 Wis. 99, 105 N. W. 480; Delmont *v.* State, (Wyo. 1907) 88 Pac. 623.

Possession Must Be Recent. — Scott *v.* State, 122 Ga. 138, 50 S. E. 49; Flanagan *v.* People, 214 Ill. 347, 73 N. E. 347; State *v.* Toohey, 203 Mo. 674, 102 S. W. 530.

Possession Must Be Personal and Exclusive. — — State *v.* Wright, (Del. 1907) 66 Atl. 364.

The possession of the room in which the stolen property was found need not be exclusive. People *v.* Barker, 144 Cal. 705, 78 Pac. 266.

Evidence of Possession of Stolen Goods Admissible. — People *v.* Lowrie, 4 Cal. App. 137, 87 Pac. 253; Herndon *v.* State, (Tex. Crim. 1907) 99 S. W. 558.

Evidence of Possession of Burglar's Tools. — McCoy *v.* State, (Tex. Crim. 1905) 85 S. W. 1072.

Declarations of Accused Made After Commission of Crime Admissible. — Dupree *v.* State, (Ala. 1907) 42 So. 1004.

Goods Must Be Identified as Those Stolen. — Caddell *v.* State, (Tex. Crim. 1905) 90 S. W. 1013; Barnett *v.* State, (Tex. Crim. 1907) 99 S. W. 556.

Evidence of Failure to Find Burglar's Tools Inadmissible to Establish Innocence. — People *v.* Lowrie, 4 Cal. App. 137, 87 Pac. 253.

Possession of Wife Constructively Possession of Husband. — Jenkins *v.* State, 2 Ga. App. 684, 58 S. E. 1115.

65. 1. Henderson *v.* State, (Tex. Crim. 1907) 99 S. W. 1001.

Time May Be Proved by Circumstantial Evidence. — State *v.* Richards, 29 Utah 310, 81 Pac. 142.

66. 2. Russell *v.* State, (Ala. 1905) 38 So. 291; People *v.* Noon, 1 Cal. App. 44, 81 Pac. 746; Brown *v.* State, 85 Miss. 27, 37 So. 497; Johnson *v.* State, (Tex. Crim. 1905) 88 S. W. 813.

Presumption of Intent from Breaking and Entering. — Where the state proved the breaking and entering, it was held that the intent to steal was reasonably predicable of these facts. Brown *v.* State, 85 Miss. 27, 37 So. 497.

Evidence Held Insufficient to Prove Intent. — Taylor *v.* State, (Miss. 1904) 37 So. 498.

Evidence Held Sufficient to Prove Intent. — Smith *v.* State, (Tex. Crim. 1907) 102 S. W. 406.

67. 1. Pointer *v.* State, (Ala. 1906) 41 So. 929; Barnett *v.* State, (Tex. Crim. 1907) 99 S. W. 556; Herndon *v.* State, (Tex. Crim. 1907) 99 S. W. 558; Reagan *v.* State, (Tex. Crim. 1906) 93 S. W. 733; Johnson *v.* State, (Tex. Crim. 1906) 96 S. W. 45.

2. State *v.* Donovan, 125 Iowa 239, 101 N. W. 122; State *v.* Toohey, 203 Mo. 674, 102 S. W. 530.

4. Circumstantial Evidence Sufficient to Prove that Building Was Closed. — Winsky *v.* State, 126 Wis. 99, 105 N. W. 480.

68. 1. Russell *v.* State, (Ala. 1905) 38 So. 291; State *v.* Arthur, (Iowa 1906) 109 N. W. 1083; State *v.* Donavan, 125 Iowa 239, 101 N. W. 122.

Evidence of an Agreement of Co-conspirators was held to be inadmissible where the defendant was not present at the time such agreement was made and the making occurred before a conspiracy had been formed. Green *v.* State, (Tex. Crim. 1906) 90 S. W. 1115.

2. *Alabama.* — Dupree *v.* State, (Ala. 1907) 42 So. 1004.

Arkansas. — Gunter *v.* State, 79 Ark. 432, 96 S. W. 181.

California. — People *v.* King, 4 Cal. App. 213, 87 Pac. 400; People *v.* Noon, 1 Cal. App. 44, 81 Pac. 746.

Florida. — Lamps *v.* State, 51 Fla. 51, 40 So. 180; Williams *v.* State, 48 Fla. 65, 37 So. 521.

Georgia. — Jenkins *v.* State, 2 Ga. App. 684, 58 S. E. 1115; Lofton *v.* State, 121 Ga. 172, 48 S. E. 908; Williams *v.* State, 2 Ga. App. 394, 58 S. E. 549; Woods *v.* State, 127 Ga. 41, 55 S. E. 1044.

Illinois. — Flanagan *v.* People, 214 Ill. 170, 73 N. E. 347.

Iowa. — State *v.* Arthur, (Iowa 1906) 109 N. W. 1083; State *v.* Leonard, (Iowa 1907) 112 N. W. 784; State *v.* McPherson, 126 Iowa 77, 101 N. W. 738.

Kentucky. — Abrams *v.* Com., (Ky. 1905) 85 S. W. 173; Radley *v.* Com., (Ky. 1905) 89 S. W. 519.

Mississippi. — Dees *v.* State, 89 Miss. 754, 42 So. 605.

Missouri. — State *v.* DeWitt, 191 Mo. 51, 90 S. W. 77; State *v.* Howard, 203 Mo. 600, 102 S. W. 504; State *v.* McGuire, 193 Mo. 215, 91 S. W. 939.

Nebraska. — Keeler *v.* State, 73 Neb. 441, 103 N. W. 64.

Texas. — Archibald *v.* State, (Tex. Crim. 1904) 83 S. W. 189; Bartley *v.* State, (Tex. Crim. 1904) 83 S. W. 190; Caddell *v.* State, (Tex. Crim. 1905) 90 S. W. 1013; Carroll *v.* State, (Tex. Crim. 1905) 86 S. W. 1012; Clark *v.* State, (Tex. Crim. 1904) 83 S. W. 695; Hofland *v.* State, (Tex. Crim. 1905) 85 S. W. 798; Jackson *v.* State, (Tex. Crim. 1906) 91 S. W. 788; McCoy *v.* State, (Tex. Crim. 1905) 85 S. W. 1072; Johnson *v.* State, (Tex. Crim. 1906) 98 S. W. 266; Martinez *v.* State, (Tex. Crim. 1907) 103 S. W. 930; Mason *v.* State, (Tex. Crim. 1904) 83 S. W. 689; Miller *v.* State, (Tex. Crim. 1907) 100 S. W. 398; Reyes *v.* State, (Tex. Crim. 1907) 102 S. W. 421; Smith *v.* State, (Tex. Crim. 1907) 102 S. W. 406; Smith *v.* State, (Tex. Crim. 1905) 90 S. W. 638; Stevens *v.* State, (Tex. Crim. 1906) 95 S. W. 505; Stone *v.* State, (Tex. Crim. 1905) 90 S. W. 884; Tally *v.* State, (Tex. Crim. 1905) 90 S. W. 1113.

Utah. — State *v.* Richards, 29 Utah 310, 81 Pac. 142.

Washington. — State *v.* Royce, 38 Wash. 111, 3 Ann. Cas. 351, 80 Pac. 268.

Wisconsin. — Simon *v.* State, 125 Wis. 439, 103 N. W. 1100; Winsky *v.* State, 126 Wis. 99, 105 N. W. 480.

Wyoming. — Delmont *v.* State, (Wyo. 1907) 88 Pac. 623.

3. Williams *v.* State, 125 Ga. 268, 54 S. E. 166; State *v.* Burke, 11 Idaho 420, 83 Pac. 228; Reid *v.* State, (Miss. 1905) 38 So. 320; Ross *v.* State, (Miss. 1907) 42 So. 801; Taylor *v.* State, (Miss. 1904) 37 So. 498; People *v.* Mullen, (County Ct.) 49 Misc. (N. Y.) 289, 99 N. Y. Supp. 227; People *v.* Rosenberg, 120 N. Y. App. Div. 334, 105 N. Y. Supp. 218; Burrell *v.* State, (Tex. Crim. 1906) 97 S. W. 706; Simmons *v.* State, (Tex. Crim. 1906) 97 S. W. 1052; State *v.* Hutchings, 30 Utah 319, 84 Pac. 893.

69. **3.** State *v.* Doran, 99 Me. 329, 59 Atl. 440.

For Acts Held to Constitute an Attempt, see Com. *v.* Flaherty, 25 Pa. Super. Ct. 490; Mason *v.* State, (Tex. Crim. 1907) 100 S. W. 383, correcting judgment and denying rehearing (Tex. Crim. 1906) 98 S. W. 854.

4. See State *v.* Erdlen, 127 Iowa 620, 103 N. W. 984 (*citing* Code Iowa, § 4790); Com. *v.* Conlin, 188 Mass. 282, 74 N. E. 351 (*citing* Rev. L. Mass., c. 208, § 41).

For Evidence Sufficient to Prove Possession, see State *v.* Hanley, 133 Iowa 474, 110 N. W. 911.

Indictment Must Specify Burglarious Implements. — State *v.* Erdlen, 127 Iowa 620, 103 N. W. 984.

BUSINESS.

72. **1.** Bennett *v.* Hebbard, (N. H. 1907) 68 Atl. 537, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 72.

2. Business Not Synonymous with Cause of Action. — Sanipoli *v.* Pleasant Valley Coal Co., 31 Utah 114, 86 Pac. 865.

Doing Business within State — Foreign Corporation. — See Alley *v.* Bowen-Merrill Co., 76 Ark. 4, 6 Ann. Cas. 127, 88 S. W. 838; New York Architectural Terra Cotta Co. *v.* Williams, 102 N. Y. App. Div. 1, 92 N. Y. Supp. 808; Halifax *v.* McLaughlin Carriage Co., 39 Can. Sup. Ct. 174.

Same — Management of Real Estate. — Bennett *v.* Hebbard, (N. H. 1907) 68 Atl. 537.

BUT.

79. **1.** See Towson *v.* Denson, 74 Ark. 302, 86 S. W. 661, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 79.

BY-LAWS.

87. **1.** Manes Tailoring Co. *v.* Willson, 14 Ont. L. Rep. 89, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 87.

"By-laws are simply the rules of corporate government. While they aid in the orderly transaction of the corporate business, they also serve sometimes as a protection of the corporation itself, or of the minority members, against ill-advised or illegal acts of the majority." Flaherty *v.* Portland Longshoremen's Benev. Soc., 99 Me. 253, 59 Atl. 58.

"A by-law of a private corporation is a rule or law adopted by it for its internal government, and to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs." People's Home Sav. Bank *v.* Sadler, 1 Cal. App. 189, 81 Pac. 1029. To the same effect see Bornstein *v.* District Grand Lodge, etc., 2 Cal. App. 624, 84 Pac. 271.

88. **2.** See Manes Tailoring Co. *v.* Willson, 14 Ont. L. Rep. 89, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88.

5. Power to Enact By-laws Inherent. — People's Home Sav. Bank *v.* Sadler, 1 Cal. App. 189, 81 Pac. 1029; Bornstein *v.* District Grand Lodge, etc., 2 Cal. App. 624, 84 Pac. 271.

89. **5. Where the Statute Vests the Power in the Directors,** the stockholders of a corporation have no power to adopt or amend its by-laws or require their ratification by themselves. Manufacturers' Exhibition Bldg. Co. *v.* Landay, 219 Ill. 168, 76 N. E. 146.

90. **2. Where the Directors and the Stockholders Are the Same,** by-laws adopted by the stockholders are valid though the power to adopt them is vested in the directors by statute. Manufacturers' Exhibition Bldg. Co. *v.* Landay, 219 Ill. 168, 76 N. E. 146.

3. Amendment and Repeal of By-laws. — Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313; Stein *v.* Marks,

(Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 140, 89 N. Y. Supp. 921.

The adoption of a new constitution and by-laws by a voluntary organization, covering the same grounds and intended for the same purpose, supersedes the earlier, and penalties imposed in the former, but omitted in the later, fall. Bachman *v.* Harrington, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 26, 102 N. Y. Supp. 407.

4. A Simple Resolution in favor of some object which is forbidden by a by-law, cannot override the by-law. Flaherty *v.* Portland Longshoremen's Benev. Soc., 99 Me. 253, 59 Atl. 58.

91. 7. In the Absence of Any Restriction by the legislature, the propriety and character of the by-laws are to be determined by the corporation itself, subject to the condition that they must be reasonable, and must not contravene or be inconsistent with its charter or any existing law. People's Home Sav. Bank *v.* Sadler, 1 Cal. App. 189, 81 Pac. 1029.

9. By-laws Must Not Contravene the Law or Public Policy. — Stein *v.* Marks, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 140, 89 N. Y. Supp. 921.

95. 9. By-laws Repugnant to Charter Void. — Bornstein *v.* District Grand Lodge, etc., 2 Cal. App. 624, 84 Pac. 271; Garlick *v.* Mutual Loan, etc., Assoc., 116 Ill. App. 311.

Expressio Unius Est Exclusio Alterius. — Where the statute gives no power of removal to the board of a state asylum it cannot confer such power on itself by its by-laws. Wall *v.* Board of Directors of Deaf, etc., Asylum, 145 Cal. 468, 78 Pac. 951.

96. 6. By-laws May Not Impair Vested Rights. — Bornstein *v.* District Grand Lodge, etc., 2 Cal. App. 624, 84 Pac. 271; Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313; Ayers *v.* Grand Lodge, etc., 188 N. Y. 280, 80 N. E. 1020, *affirming* 109 N. Y. App. Div. 919, 95 N. Y. Supp. 1112; March *v.* Fairmount Creamery Assoc., 32 Pa. Super. Ct. 517.

97. 1. Fraternal Union of America *v.* Zeigler, 145 Ala. 287, 39 So. 751; Murphy *v.* Nowak, 223 Ill. 301, 79 N. E. 112.

2. But Where the Insured Agrees to Subject Himself to by-laws subsequently enacted, reducing the society's liability in case of suicide, such a by-law does not impair vested rights. Scow *v.* Supreme Council, etc., 223 Ill. 32, 79 N. E. 42.

4. Must Be Reasonable. — People's Home Sav. Bank *v.* Sadler, 1 Cal. App. 189, 81 Pac. 1029; Bornstein *v.* District Grand Lodge, etc., 2 Cal. App. 624, 84 Pac. 271; Chicago, etc., R. Co. *v.* Hendricks, 125 Ill. App. 580; Olson *v.* Court of Honor, 100 Minn. 117, 110 N. W. 374; Stein *v.* Marks, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 140, 89 N. Y. Supp. 921; Maxwell *v.* Theatrical Mechanical Assoc., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 619, 104 N. Y. Supp. 817; Phœnix Council No. 85 *v.* Bennett, 26 Ohio Cir. Ct. 110.

98. 8. Expulsion. — Venezia *v.* Italian Mut. Benev. Soc., (N. J. 1907) 65 Atl. 898; Stein *v.* Marks, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 140, 89 N. Y. Supp. 921.

10. For Examples of By-laws Held to Be Reasonable, see Fraternal Union of America *v.* Zeigler, 145 Ala. 287, 39 So. 751; Caldwell *v.* Grand Lodge, etc., 148 Cal. 195, 7 Ann. Cas. 356, 82 Pac. 783; Scow *v.* Supreme Council, etc., 223 Ill. 32, 79 N. E. 42; Ward *v.* David & Jonathan Lodge, (Miss. 1907) 43 So. 302; Stein *v.* Marks, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 140, 89 N. Y. Supp. 921; Ponte *v.* Societa Italiana, etc., 27 R. I. 1, 60 Atl. 237.

By-law Requiring Certificate from Attending Physician. — Myers *v.* Alta Friendly Soc., 29 Pa. Super. Ct. 492.

Rule of Board of Trade fixing minimum amount of commissions chargeable by members held valid. Dickinson *v.* Board of Trade, 114 Ill. App. 295.

99. 2. See Chicago, etc., R. Co. *v.* Hendricks, 125 Ill. App. 580.

8. Walker *v.* John Hancock Mut. L. Ins. Co., (N. J. 1907) 68 Atl. 113, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99.

100. 3. Binding Effect upon Members. — Caldwell *v.* Grand Lodge, etc., 148 Cal. 195, 7 Ann. Cas. 356, 82 Pac. 781; Stein *v.* Marks, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 140, 89 N. Y. Supp. 921.

The By-laws Constitute a Contract between the association and its members. Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597; Butler *v.* Supreme Council, etc., 105 N. Y. App. Div. 164, 93 N. Y. Supp. 1012; The Chevaliers *v.* Shearer, 27 Ohio Cir. Ct. 509.

4. Louchheim *v.* Somerset Bldg., etc., Assoc., 25 Pa. Super. Ct. 325.

102. 5. Court Will Not Construe By-law So as to Impair Vested Rights. — Nowak *v.* Murray, 127 Ill. App. 125.

8. Supreme Council, etc., *v.* Haas, 116 Ill. App. 587.

103. 4. Starnes *v.* Atlanta Police Relief Assoc., 2 Ga. App. 237, 58 S. E. 481.

104. 1. Dickinson *v.* Board of Trade, 114 Ill. App. 295.

CAMP-MEETING.

109. 4. See Nye *v.* Whittemore, 193 Mass. 213, 79 N. E. 253, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 109.

CANALS.

111. 2. Congress Has Power to Construct Interstate Highways, and under treaty rights has the power to construct the Panama canal. Wilson *v.* Shaw, 204 U. S. 24, 27 U. S. Sup. Ct. 233.

113. 4. Prescription. — Lechman *v.* Mills, (Wash. 1907) 91 Pac. 11.

121. 4. Negligence. — Crowley *v.* State, 99 N. Y. App. Div. 52, 90 N. Y. Supp. 496; Adkinson *v.* State, 114 N. Y. App. Div. 249, 99 N. Y. Supp. 792.

The state is liable only for such part of the damages as would not have resulted except for its negligence. Carhart *v.* State, 115 N. Y. App. Div. 1, 100 N. Y. Supp. 499.

122. 1. **The Grantee of a Private Canal** is vested only with the rights secured by the company. Stevens *v.* Worcester, (Mass. 1907) 81 N. E. 907.

Purchasers of Private Canal Not Liable to Lessees for Improvements. — Diederiech *v.* Rose, 228 Ill. 610, 81 N. E. 1140.

2. **Duty of Canal Company as to Bridges** — *Cannot Be Released by Leasing Canal.* — Ryerson *v.* Morris Canal, etc., Co., 71 N. J. L. 381, 2 Ann. Cas. 859, 59 Atl. 29.

The State May Authorize and Supervise the construction of bridges over canals and watercourses. The Nonpariel, 149 Fed. 521.

125. 3. **Power of Canal Company to Keep Part of Canal Open for Traffic and Part Closed and Used as Feeder.** — See Rothschild *v.* Grand Junction Canal Co., 91 L. T. N. S. 386, 20 Times L. Rep. 503.

126. 1. **By English Statute** traders may sue to compel canal company to dredge to maintain certain depth of water. Crosfield *v.* Manchester Ship Canal, 22 Times L. Rep. 192.

CANCEL — CANCELLATION.

128. 2. **Distinguished from Pay.** — The term ***cancel*** used in a codicil directing the executor to ***cancel*** certain obligations excludes the idea of payment; ***cancellation*** being the forgiving and obliteration of a debt. Brown *v.* Gibson, (Va. 1907) 59 S. E. 384.

CANDIDATE.

130. 1. State *v.* Bates, 102 Minn. 104, 112 N. W. 1026.

CAPITAL — CAPITAL STOCK.

134. 4. **The Words Capital Expenditure** in the Education Act do not mean the expenditure of money taken from capital, but the expenditure of money which on its being laid out becomes capital irrespective of the source from which it is taken. Rex *v.* Wraith, (1907) 2 K. B. 756, 76 L. J. K. B. 881, 97 L. T. N. S. 577, 71 J. P. 447, 5 Local Gov. Rep. 1091.

136. 1. Smith *v.* Dana, 77 Conn. 543, 60 Atl. 117.

139. 1. Smith *v.* Dana, 77 Conn. 543, 60 Atl. 117.

CAPTURE.

143. 3. **Marine Insurance.** — Putting prize crew aboard held a ***capture***. Andersen *v.* Marten, (1907) 2 K. B. 248, 76 L. J. K. B. 674, 97 L. T. N. S. 375, 12 Com. Cas. (Eng.) 309, 23 Times L. Rep. 534.

CARRIERS OF GOODS.

159. 1. Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185; Indiana, etc., R. Co. *v.* Empire Rubber Mfg. Co., 118 Ill. App. 652.

160. 1. **Mere Delivery and Acceptance Imply Contract to Carry.** — St. Louis Southwestern R. Co. *v.* Kilberry, 83 Ark. 87, 102 S. W. 894; Cohen *v.* Missouri, etc., R. Co., 126 Mo. App. 244, 102 S. W. 1029.

3. Yazoo, etc., R. Co. *v.* Blum, 88 Miss. 180, 40 So. 748, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 160; Bibb Broom Corn Co. *v.* Atchison, etc., R. Co., 94 Minn. 269, 3 Ann. Cas. 450, 102 N. W. 709.

4. Yazoo, etc., R. Co. *v.* Blum, 88 Miss. 180, 40 So. 748, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 160.

162. 5. State *v.* Atlantic Coast Line R. Co., 51 Fla. 543, 41 So. 529; Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185.

6. Nor will the carrier's election to obey an invalid municipal ordinance. Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185.

8. A suit for mandatory injunction is within the jurisdiction of the courts to compel an interstate carrier to transport goods, and recourse is not required to be had to the Interstate Commerce Commission in the first instance. Danciger *v.* Wells, 154 Fed. 379.

166. 2. Gratiot St. Warehouse Co. *v.* Missouri, etc., R. Co., 124 Mo. App. 545, 102 S. W. 11.

4. The carrier's right to designate the route may be changed by parol. Steidl *v.* Minneapolis, etc., R. Co., 94 Minn. 233, 102 N. W. 701.

167. 3. St. Louis, etc., R. Co. *v.* Wynne Hoop, etc., Co., 81 Ark. 373, 99 S. W. 375; St. Louis, etc., R. Co. *v.* Vaughan, (Ark. 1907) 105 S. W. 573; Di Giorgio Importing, etc., Co. *v.* Pennsylvania R. Co., 104 Md. 693, 65 Atl. 425; Kibby *v.* Michigan Cent. R. Co., 142 Mich. 313, 105 N. W. 769, 12 Detroit Leg. N. 717; Yazoo, etc., R. Co. *v.* Blum, 88 Miss. 180, 40 So. 748, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 167; Hoffman Heading, etc., Co. *v.* St. Louis, etc., R. Co., 119 Mo. App. 495, 94 S. W. 597.

Furnishing Properly Iced Cars for Milk. — A railroad company which is a common carrier of milk has the duty of furnishing properly iced cars for its transportation. Baker *v.* Boston, etc., R. Co., (N. H. 1906) 65 Atl. 386.

168. 1. St. Louis, etc., R. Co. *v.* Wynne Hoop, etc., Co., 81 Ark. 373, 99 S. W. 375; Yazoo, etc., R. Co. *v.* Blum, 89 Miss. 242, 42 So. 282; Yazoo, etc., R. Co. *v.* McKay, (Miss. 1907) 44 So. 780; Mauldin *v.* Seaboard Air Line R. Co., 73 S. Car. 9, 52 S. E. 677, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 168.

169. 5. Yazoo, etc., R. Co. *v.* Blum, 88 Miss. 180, 40 So. 748, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 169.

170. 2. Baker *v.* Boston, etc., R. Co., (N. H. 1906) 65 Atl. 386; Missouri, etc., R. Co. *v.* Kyser, (Tex. Civ. App. 1905) 87 S. W. 389.

172. 2. A statute imposing damages and penalties for failure to furnish cars unless prevented by strikes or other public calamities does not preclude any other legitimate defense and is therefore not unconstitutional, as a regulation of intra-state commerce, though not as regards interstate commerce. Allen *v.*

Texas, etc., R. Co., (Tex. 1907) 101 S. W. 792, *reversing* Texas, etc., R. Co. *v.* Allen, (Tex. Civ. App. 1906) 98 S. W. 450.

3. Section *23* of the *Illinois* Act relating to the fencing and operation of railroads does not authorize the recovery of treble damages for the failure to "start, furnish, and run cars" as required by section *22* of the act. Atchison, etc., R. Co. *v.* People, *227* Ill. 270, 81 N. E. 342, *reversing* 128 Ill. App. 38.

173. **1.** Houston, etc., R. Co. *v.* Buchanan, (Tex. Civ. App. 1905) 84 S. W. 1073.

174. **3.** Houston, etc., R. Co. *v.* Buchanan, (Tex. Civ. App. 1906) 94 S. W. 199.

175. **1.** St. Louis, etc., R. Co. *v.* Marshall, 74 Ark. 597, 86 S. W. 802; St. Louis, etc., R. Co. *v.* Renfroe, 82 Ark. 143, 100 S. W. 889; Georgia Southern, etc., R. Co. *v.* Barfield, 1 Ga. App. 203, 58 S. E. 236; Chicago, etc., R. Co. *v.* Reyman, (Ind. 1905) 73 N. E. 587.

Duty to Re-ice Cars containing perishable fruit agreed to be carried in a refrigerator car is on the carrier. C. C. Taft Co. *v.* American Express Co., 133 Iowa 522, 110 N. W. 897; Brennisen *v.* Pennsylvania R. Co., 100 Minn. 102, 10 Ann. Cas. 169, 110 N. W. 362.

2. The duty to keep a refrigerator car containing perishable fruit, which the railroad company has undertaken to transport, properly iced, is on the carrier, although the car is the property of a third person. St. Louis, etc., R. Co. *v.* Renfroe, 82 Ark. 143, 100 S. W. 889.

3. St. Louis, etc., R. Co. *v.* Marshall, 74 Ark. 597, 86 S. W. 802; Texas, etc., R. Co. *v.* Townsend, (Tex. Civ. App. 1907) 106 S. W. 760; Nevius *v.* Chicago, etc., R. Co., 124 Wis. 313, 102 N. W. 489.

That Shipper Chose Cars Immaterial. — St. Louis, etc., R. Co. *v.* Marshall, 74 Ark. 597, 86 S. W. 802.

177. **2.** Olanta Coal Min. Co. *v.* Beech Creek R. Co., 144 Fed. 150; State *v.* Atlantic Coast Line R. Co., 51 Fla. 578, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177; State *v.* Atlantic Coast Line R. Co., 52 Fla. 646, 41 So. 705, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177; Larabee Flour Mills Co. *v.* Missouri Pac. R. Co., 74 Kan. 808, 88 Pac. 72; Louisville, etc., R. Co. *v.* Central Stockyards Co., (Ky. 1906) 97 S. D. 778.

178. **5.** Wright *v.* Baltimore, etc., R. Co., 32 Pa. Super. Ct. 5.

180. **8.** Seaboard Air Line R. Co. *v.* Friedman, 128 Ga. 316, 57 S. E. 778; Cincinnati, etc., R. Co. *v.* Saulsbury, 115 Tenn. 402, 5 Ann. Cas. 744, 90 S. W. 624; Chicago, etc., R. Co. *v.* Pollock, (Wyo. 1908) 93 Pac. 847.

181. **4.** Louisville, etc., R. Co. *v.* U. S., 39 Ct. Cl. 405; Anderson *v.* Mobile, etc., R. Co., (Miss. 1905) 38 So. 661.

Rebuttal of Evidence of Delivery. — Any fact or circumstance legitimately tending to disprove or rebut the shipper's proof upon the point of delivery to the carrier is admissible under the general issue. Wells *v.* Hanson, (Tex. Civ. App. 1905) 91 S. W. 321.

182. **1.** Chicago, etc., R. Co. *v.* Powers, 73 Neb. 816, 103 N. W. 678; Eisenstein *v.* Old Dominion Steamship Co., (N. Y. City Ct. Spec. T.) 56 Misc. (N. Y.) 335, 108 N. Y. Supp. 1013; Baum *v.* Long Island R. Co., (N. Y. City Ct. Tr. T.) 58 Misc. (N. Y.) 34, 108 N. Y. Supp. 1113.

Question for Jury.—Southern R. Co. *v.* Johnson, 2 Ga. App. 36, 58 S. E. 333; Copeland *v.* Southern R. Co., 76 S. Car. 476, 57 S. E. 535; Wells *v.* Hanson, (Tex. Civ. App. 1905) 91 S. W. 321.

183. **4.** Chicago, etc., R. Co. *v.* Powers, 73 Neb. 816, 103 N. W. 678.

184. **1.** Atlantic, etc., R. Co. *v.* Howard Supply Co., 125 Ga. 478, 54 S. E. 530; Pittsburg, etc., R. Co. *v.* American Tobacco Co., (Ky. 1907) 104 S. W. 377.

185. **1.** Pittsburg, etc., R. Co. *v.* American Tobacco Co., (Ky. 1907) 104 S. W. 377; Yarborough *v.* Southern R. Co., (S. Car. 1907) 58 S. E. 936.

2. Reel *v.* Adams Express Co., *27* Pa. Super. Ct. 77.

Agents Authorized to Accept Delivery — Drivers of Express Wagons. — Admissions of evidence of agent's authority, see Pacific Express Co. *v.* Needham, (Tex. Civ. App. 1906) 94 S. W. 1070.

186. **2.** Rosenfeld *v.* Central Vermont R. Co., 111 N. Y. App. Div. 371, 97 N. Y. Supp. 905.

187. **1.** Missouri, etc., R. Co. *v.* Patrick, (C. C. A.) 144 Fed. 632; Southern R. Co. *v.* Johnson, 2 Ga. App. 36, 58 S. E. 333.

After constructive delivery of freight according to custom the shipper is entitled to a receipt therefor, notwithstanding that a receipt has been given to another person. Atlantic, etc., R. Co. *v.* Howard Supply Co., 125 Ga. 478, 54 S. E. 530.

2. Pine Bluff, etc., R. Co. *v.* McKenzie, 75 Ark. 100, 86 S. W. 834; Garner *v.* St. Louis, etc., R. Co., 79 Ark. 353, 96 S. W. 187.

188. **1.** Clark *v.* Clyde Steamship Co., 148 Fed. 243; Pittsburg, etc., R. Co. *v.* American Tobacco Co., (Ky. 1907) 104 S. W. 377.

2. Swedish-American Nat. Bank *v.* Chicago, etc., R. Co., 96 Minn. 436, 105 N. W. 69.

189. **1.** The Presque Isle, 140 Fed. 202; Illinois Cent. R. Co. *v.* Nelson, (Ky. 1906) 97 S. W. 757; Mussellam *v.* Cincinnati, etc., R. Co., (Ky. 1907) 104 S. W. 337; Loyd *v.* Kansas City, etc., R. Co., 88 Miss. 422, 40 So. 1005.

2. Henderson *v.* Louisville, etc., R. Co., 116 La. 1047, 41 So. 252.

The carrier's liability under the statute is not changed by a subsequent receipt of the goods. Watkins Nat. Bank *v.* Cleveland, etc., R. Co., 117 Mo. App. 248, 93 S. W. 846.

Under the *Mississippi* statute the bill of lading is binding upon the carrier although it has not received the goods. Loyd *v.* Kansas City, etc., R. Co., 88 Miss. 422, 40 So. 1005.

5. Southern R. Co. *v.* Smith, 102 S. W. 232, 31 Ky. L. Rep. 243. See also Vaughan Mach. Co. *v.* Stanton Tanning Co., 106 Va. 445, 56 S. E. 140.

190. **6. Shipping Receipt as Evidence.** — Strawn *v.* Missouri, etc., R. Co., 120 Mo. App. 135, 96 S. W. 488.

8. Zambakian *v.* Werner, (Supm. Ct. App. T.) 102 N. Y. Supp. 533.

191. 7. **Question for Jury.** — Berney *v.* Pennsylvania R. Co., 34 Pa. Super. Ct. 260.

192. 2. Where the consignee verified the goods and gave a receipt therefor, the carrier was thereafter held liable, if at all, as a gratuitous bailee only for gross negligence. C. D. Kenny Co. *v.* Atlanta, etc., R. Co., 122 Ga. 365, 50 S. E. 132.

193. 1. Where the consignee has accepted delivery and removed and sold some of the goods, the fact that the remainder remains on the cars does not constitute the carrier liable even as a warehouseman. Vaughan *v.* New York, etc., R. Co., 27 R. I. 235, 61 Atl. 695; C. D. Kenny Co. *v.* Atlanta, etc., R. Co., 122 Ga. 365, 50 S. E. 132; Stewart *v.* Central of Georgia R. Co., (Ga. App. 1908) 60 S. E. 1.

194. 1. Atlantic, etc., R. Co. *v.* Howard Supply Co., 125 Ga. 478, 54 S. E. 530.

196. 3. Georgia R., etc., Co. *v.* Haas, 127 Ga. 187, 9 Ann. Cas. 677, 56 S. E. 313, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196.

197. 4. Adrian Knitting Co. *v.* Wabash R. Co., 145 Mich. 323, 108 N. W. 706.

199. 2. Hurst *v.* St. Louis, etc., R. Co., 117 Mo. App. 25, 94 S. W. 794; Faust *v.* Southern R. Co., 74 S. Car. 360, 54 S. E. 566.

200. 2. Arkansas Southern R. Co. *v.* German Nat. Bank, 77 Ark. 482, 92 S. W. 522; Barnum Grain Co. *v.* Great Northern R. Co., 102 Minn. 147, 112 N. W. 1030, *rehearing denied* 102 Minn. 158, 112 N. W. 1049.

202. 1. Arkansas Southern R. Co. *v.* German Nat. Bank, 77 Ark. 482, 92 S. W. 522.

2. The rule is stated in Nashville, etc., R. Co. *v.* Grayson County Nat. Bank, (Tex. 1906) 93 S. W. 431, to be that in the absence of a stipulation that the goods shall not be delivered without the production of a bill of lading, the carrier may deliver to the consignee without requiring its production.

3. Louisville, etc., R. Co. *v.* Britton, (Ala. 1907) 43 So. 108; Sellers *v.* Savannah, etc., R. Co., 123 Ga. 386, 51 S. E. 398; Chesapeake Steamship Co. *v.* Merchants' Nat. Bank, 102 Md. 589, 63 Atl. 113; Merchants' Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108.

After delivery of goods to a purchaser from the consignee without production and surrender of the bill of lading, the carrier cannot base on such right of production and surrender any defense against an action for unreasonable delay in delivery. Russell Grain Co. *v.* Wabash R. Co., 114 Mo. App. 488, 89 S. W. 908.

205. 3. Isham *v.* Erie R. Co., 112 N. Y. App. Div. 612, 98 N. Y. Supp. 609; General Electric Co. *v.* Southern R. Co., 72 S. Car. 251, 51 S. E. 695.

There must be an actual or constructive delivery to the person to be "notified," in order to constitute conversion for misdelivery. Schopp Fruit Co. *v.* Missouri Pac. R. Co., 115 Mo. App. 353, 91 S. W. 402.

206. 1. The carrier may show, in an action for the amount of the draft, that the goods were so inferior to what was contracted for, that the payment made covered the value of the entire amount shipped and that there was no balance due. Stearns *v.* Grand Trunk R. Co., 148 Mich. 271, 111 N. W. 769, 14 Detroit Leg. N. 108.

The consignor's rights against the carrier may be waived by the former treating with the person who received the goods for payment. Callaway *v.* Southern R. Co., 126 Ga. 192, 55 S. E. 22.

209. 6. A carrier is liable for delivery to a director of the consignee company who has got possession of an unindorsed bill of lading and converted the goods to his own use. Cane Belt R. Co. *v.* Peden Iron, etc., Co., (Tex. Civ. App. 1907) 101 S. W. 528.

Permission given by the carrier without authority to inspect property at the point of destination, whereby the consignor, who consigned to his own order with directions to notify, fails to consummate a sale, does not constitute a conversion by misdelivery. Dudley *v.* Chicago, etc., R. Co., 58 W. Va. 604, 52 S. E. 718.

210. 2. Atlantic, etc., R. Co. *v.* Spires, 1 Ga. App. 22, 57 S. E. 973.

But where one fraudulently orders goods from a shipper under a fictitious name, and the carrier delivers the same, the latter cannot be held liable to the shipper for their value. Fulton Bag, etc., Mills *v.* Hudson Nav. Co., 157 Fed. 987.

212. 3. Singer *v.* Merchants' Despatch Transp. Co., 191 Mass. 449, 77 N. E. 882.

5. Where the railroad company has no other place of delivery than the stores and platform of a compress company, its exchange of its own bills of lading for the receipts of the compress company passes to the company the constructive possession and control of the cotton, and constitutes delivery. Arthur *v.* Texas, etc., R. Co., 204 U. S. 505, 27 U. S. Sup. Ct. 338.

214. 1. Loeb *v.* Wabash R. Co., (Mo. App. 1904) 85 S. W. 118; Russell Grain Co. *v.* Wabash R. Co., 114 Mo. App. 488, 89 S. W. 908.

Where the company has no freight house, delivery is not complete until the consignee has been notified and the car placed in a convenient place for unloading. Bachant *v.* Boston, etc., R. Co., 187 Mass. 392, 73 N. E. 642.

218. 4. Baum *v.* Long Island R. Co., (N. Y. City Ct. Tr. T.) 58 Misc. (N. Y.) 34, 108 N. Y. Supp. 1113; Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949.

219. 3. Stone *v.* Clyde Steamship Co., 139 N. Car. 193, 51 S. E. 894; Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

220. 1. The Alnwick, 135 Fed. 884.

221. 1. Central of Georgia R. Co. *v.* Montmollen, 145 Ala. 468, 39 So. 820, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221; Chesapeake, etc., R. Co. *v.* Saulsberry, 103 S. W. 254, 31 Ky. L. Rep. 624; Illinois Cent. R. Co. *v.* Johnson, (Tenn. 1906) 94 S. W. 600; Gulf, etc., R. Co. *v.* Somerville Mercantile Agency, (Tex. Civ. App. 1907) 104 S. W. 1072.

Where Only a Part of the Goods Are Damaged. — Missouri, etc., R. Co. *v.* Moore, (Tex. Civ. App. 1907) 105 S. W. 532.

Returning the goods to the consignor is no conversion. Stafsky *v.* Southern R. Co., 143 Ala. 272, 39 So. 132.

The Consignor, on failure of the consignee to receive, cannot refuse to accept tender of the goods and sue for their full value. Block *v.* U. S. Express Co., (N. J. 1907) 68 Atl. 173.

2. Clark *v.* American Express Co., 130 Iowa 254, 106 N. W. 642.

There can be no recovery for damages occurring after the consignee's refusal to accept. Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252.

Shortage in Goods. — Central of Georgia R. Co. *v.* Montmollen, 145 Ala. 468, 39 So. 820.

222. 4. As Supporting the Rule in the Text, see Smith *v.* Canadian Express Co., 12 Ont. L. Rep. 84.

Notice to the consignor is not necessary to relieve the carrier from liability for subsequent loss by theft, in the absence of proof of his negligence. Adler *v.* Weir, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 134, 96 N. Y. Supp. 730.

223. 2. Danciger *v.* Wells, 154 Fed. 379.

224. 6. A special agreement that the shipper shall accept the return of goods sent C. O. D. within thirty days if not accepted by the consignee, and pay the freight, contemplates the return of the goods in good order. Freeman *v.* Weir, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 681, 94 N. Y. Supp. 327.

230. 1. Atchison, etc., R. Co. *v.* Schriver, 72 Kan. 550, 84 Pac. 119; Louisville, etc., R. Co. *v.* Britton, 145 Ala. 654, 39 So. 585.

Under a contract for delivery on the order of the consignor and to notify a third person, delivery can only be made on demand by the consignor or the party holding his order, and therefore, to recover, demand and failure to deliver must be proved by the consignee. Thaxter *v.* Missouri Pac. R. Co., 123 Mo. App. 636, 100 S. W. 1102.

3. Blowers *v.* Canadian Pac. R. Co., 155 Fed. 935, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 230.

231. 1. Blowers *v.* Canadian Pac. R. Co., 155 Fed. 935, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 231.

232. 3. Tishomingo Sav. Inst. *v.* Johnson, 146 Ala. 691, 40 So. 503; Atchison, etc., R. Co. *v.* Schriver, 72 Kan. 550, 84 Pac. 119.

4. Refusal to Deliver until Freight Charges Paid, Where Damage Exceeds Amount of These. — Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 9 Ann. Cas. 790, 85 Pac. 408, 87 Pac. 80, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 232.

6. Atlantic Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070.

To constitute conversion by wrongful delivery of goods received for delivery to the consignor, an actual or constructive delivery to another must be shown. Schopp Fruit Co. *v.* Missouri Pac. R. Co., 115 Mo. App. 353.

7. Central of Georgia R. Co. *v.* Montmollen, 145 Ala. 468, 39 So. 820.

233. 5. Rosenfeld *v.* Central Vermont R. Co., 111 N. Y. App. Div. 371, 97 N. Y. Supp. 905.

6. Atlantic Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070; Gates *v.* Bekins, 44 Wash. 422, 87 Pac. 505.

7. Louisville, etc., R. Co. *v.* Britton, (Ala. 1907) 43 So. 108.

234. 3. Pinkerton *v.* Missouri Pac. R. Co., 117 Mo. App. 288, 93 S. W. 849.

4. Fentiman *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 939.

235. 4. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679; Elam *v.* St. Louis, etc., R. Co., (Mo. App. 1906) 93 S. W. 851.

Burden of Proof that an act of God is the proximate cause of the loss is on the carrier. Fentiman *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 939.

5. Question for Jury. — Southern R. Co. *v.* Smith, (Ky. 1907) 102 S. W. 232; Fentiman *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 939.

240. 4. Malott *v.* Johnson, 37 Ind. App. 678, 77 N. E. 866, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 240.

241. 4. Damage during Detention for Nonpayment of Customs Duties. — J. H. Cownie Glove Co. *v.* Merchants' Dispatch Transp. Co., 130 Iowa 327, 106 N. W. 749.

242. 2. Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252; Schwartz *v.* Erie R. Co., (Ky. 1908) 106 S. W. 1188; Calender-Vanderhoof Co. *v.* Chicago, etc., R. Co., 99 Minn. 295, 109 N. W. 402.

243. 1. Atchison, etc., R. Co. *v.* Madden, (Tex. Civ. App. 1907) 103 S. W. 1193.

244. 3. The Gordon Campbell, 141 Fed. 435; St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760; Chesapeake, etc., R. Co. *v.* Saulsberry, 103 S. W. 254, 31 Ky. L. Rep. 624; Houston, etc., R. Co. *v.* Foster, (Tex. Civ. App. 1905) 86 S. W. 44.

245. 1. Southern R. Co. *v.* Cofer, (Ala. 1907) 43 So. 102; Harby *v.* Southern R. Co., 75 S. Car. 321, 55 S. E. 760; Houston, etc., R. Co. *v.* Foster, (Tex. Civ. App. 1905) 86 S. W. 44; St. Louis Southwestern R. Co. *v.* Thompson, (Tex. Civ. App. 1907) 103 S. W. 684.

247. 1. Frey *v.* New York Cent., etc., R. Co., 114 N. Y. App. Div. 747, 100 N. Y. Supp. 225.

2. Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458; Cummins *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 58 S. E. 944; St. Louis Southwestern R. Co. *v.* Thompson, (Tex. Civ. App. 1907) 103 S. W. 684.

249. 2. Frey *v.* New York Cent., etc., R. Co., 114 N. Y. App. Div. 747, 100 N. Y. Supp. 225.

250. 1. Atlantic Coast Line R. Co. *v.* Wells, (Ga. 1908) 60 S. E. 170.

251. 1. North Carolina Statute. — The statute does not affect the carrier's common-law duty. Meredith *v.* Seaboard Air Line R. Co., 137 N. Car. 478, 50 S. E. 1.

Sundays Included. — Davis *v.* Atlantic Coast Line R. Co., 145 N. Car. 207, 59 S. E. 53; Watson *v.* Atlantic Coast Line R. Co., 145 N. Car. 236, 59 S. E. 55.

254. 3. Want of tender of freight is no excuse in the absence of notice of arrival of the goods and demand for freight. Gerogia, etc., R. Co. *v.* Elliot, (Ga. App. 1908) 60 S. E. 363.

255. 2. Norfolk, etc., R. Co. *v.* Wilkinson, 106 Va. 775, 56 S. E. 808, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 254, 255.

3. Moffatt Commission Co. *v.* Union Pac. R. Co., 113 Mo. App. 544, 88 S. W. 117.

5. The Gordon Campbell, 141 Fed. 435.

256. 4. Yazoo, etc., R. Co. *v.* Blum, 88 Miss. 180, 40 So. 748, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256.

5. Southern R. Co. *v.* Gardner, 127 Ga. 320, 56 S. E. 454; Yazoo, etc., R. Co. *v.* Blum, 88 Miss. 180, 40 So. 748, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256; Russell Grain Co. *v.* Wabash R. Co., 114 Mo. App. 488, 89 S. W. 908; Texas, etc., R. Co. *v.* Kolp, (Tex. Civ. App. 1905) 88 S. W. 417.

259. 1. Alabama G. S. R. Co. *v.* Elliott, (Ala. 1907) 43 So. 738; Arkansas Southern R. Co. *v.* Murphy, 83 Ark. 562, 103 S. W. 743; Green-Wheeler Shoe Co. *v.* Chicago, etc., R. Co., 130 Iowa 123, 8 Ann. Cas. 45, 106 N. W. 498; Bibb Broom Corn Co. *v.* Atchison, etc., R. Co., 94 Minn. 269, 3 Ann. Cas. 450, 102 N. W. 709; Gratiot St. Warehouse Co. *v.* Missouri, etc., R. Co., 124 Mo. App. 545, 102 S. W. 11; Wabash R. Co. *v.* Sharpe, (Neb. 1906) 107 N. W. 758.

But see Moffatt Commission Co. *v.* Union Pac. R. Co., 113 Mo. App. 544, 88 S. W. 117, where it was held that the injury must not be too remote, but must be a natural and probable consequence of the negligence.

2. Empire State Cattle Co. *v.* Atchison, etc., R. Co., 135 Fed. 135, *affirmed* (C. C. A.) 147 Fed. 463; Texas, etc., R. Co. *v.* Coutourie, 135 Fed. 465, 68 C. C. A. 177; Rodgers *v.* Missouri Pac. R. Co., 75 Kan. 222, 88 Pac. 885; Lightfoot *v.* St. Louis, etc., R. Co., 126 Mo. App. 532, 104 S. W. 482.

263. 5. **Georgia.** — Southern R. Co. *v.* Born Steel Range Co., 126 Ga. 527, 55 S. E. 173; Knight *v.* Wrightsville, etc., R. Co., 127 Ga. 204, 56 S. E. 363.

Illinois — Where No Warehouse, Freight May Be Warehoused in Cars on Side Track. — Gratiot St. Warehouse Co. *v.* St. Louis, etc., R. Co., 221 Ill. 418, 77 N. E. 675.

Iowa. — Hicks *v.* Wabash R. Co., 131 Iowa 295, 108 N. W. 534.

Pennsylvania. — Moyer *v.* Pennsylvania R. Co., 31 Pa. Super. Ct. 559.

265. 2. **Alabama.** — Alabama G. S. R. Co. *v.* Elliott, (Ala. 1907) 43 So. 738; Bowdon *v.* Atlantic Coast Line R. Co., 148 Ala. 29, 41 So. 294.

Maryland. — United Fruit Co. *v.* New York, etc., Transp. Co., 104 Md. 567, 65 Atl. 415.

Michigan. — Reasonable time after notification, although shipper knows probable date of arrival. Walters *v.* Detroit United R. Co., 139 Mich. 303, 102 N. W. 745, 11 Detroit Leg. N. 828.

New York. — Rosenstein *v.* Vogemann, 184 N. Y. 325, 77 N. E. 625, *affirming* 102 N. Y. App. Div. 39, 92 N. Y. Supp. 86.

Oregon. — McGregor *v.* Oregon R. Co., (Oregon 1908) 93 Pac. 465.

South Carolina follows the *New Hampshire* rule. Brunson *v.* Atlantic Coast Line R. Co., 76 S. Car. 9, 56 S. E. 538; Murphy *v.* Southern R. Co., 77 S. Car. 76, 57 S. E. 664.

West Virginia. — Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949.

267. 1. Hirschel *v.* Great Eastern R. Co., 96 L. T. N. S. 147.

269. 1. United Fruit Co. *v.* New York, etc., Transp. Co., 104 Md. 567, 65 Atl. 415.

2. United Fruit Co. *v.* New York, etc., Transp. Co., 104 Md. 567, 65 Atl. 415.

3. United Fruit Co. *v.* New York, etc., Transp. Co., 104 Md. 567, 65 Atl. 415, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 268.

4. Storage Must Have Been in Proper Place. — McGregor *v.* Oregon R. Co., (Oregon 1908) 93 Pac. 465.

270. 3. United Fruit Co. *v.* New York, etc., Transp. Co., 104 Md. 567, 65 Atl. 415, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 270; McGregor *v.* Oregon R. Co., (Oregon 1908) 93 Pac. 465.

4. When Question for Court. — Where the facts are few and simple and conclusively established, the question of reasonable time is for the court. McGregor *v.* Oregon R. Co., (Oregon 1908) 93 Pac. 465.

271. 1. **What Is Not a Reasonable Time.** — Seven hours of daylight were held not to constitute a reasonable time to change the character of the carrier to that of warehouseman, when it was not shown where the consignee resided or that he knew of the arrival of the goods. Central of Georgia R. Co. *v.* Merrill, (Ala. 1907) 45 So. 628.

273. 1. United Fruit Co. *v.* New York, etc., Transp. Co., 104 Md. 567, 65 Atl. 415, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 273.

277. 2. Chicago, etc., R. Co. *v.* Reyman, (Ind. 1905) 73 N. E. 587; Jonesville Mfg. Co. *v.* Southern R. Co., 77 S. Car. 480, 58 S. E. 422.

278. 2. Walters *v.* Detroit United R. Co., 139 Mich. 303, 102 N. W. 745, 11 Detroit Leg. N. 828; Rogers *v.* Fargo, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 155, 93 N. Y. Supp. 550; Brunson *v.* Atlantic Coast Line R. Co., 76 S. Car. 9, 56 S. E. 538.

3. Southern R. Co. *v.* Cofer, (Ala. 1907) 43 So. 102.

4. Naas *v.* Chicago, etc., R. Co., 96 Minn. 84, 104 N. W. 717.

279. 1. **Absence of Notice Excused — Package Not Properly Addressed.** — American Standard Jewelry Co. *v.* Witherington, 81 Ark. 134, 98 S. W. 695.

2. American Standard Jewelry Co. *v.* Witherington, 81 Ark. 134, 98 S. W. 695.

5. Where it was provided that the carrier's liability was to cease when the goods left the ship's deck or tackle, and the consignee did not receive notice of the arrival and location of the ship until between 2 and 3 P. M. of the day of arrival, and the goods were destroyed by the breaking down of the wharf about 5 o'clock of that day, it was held that the no-

tice was insufficient. Rosenstein *v.* Vogemann, 102 N. Y. App. Div. 39, 92 N. Y. Supp. 86, *affirmed* 184 N. Y. 325, 77 N. E. 625.

280. 2. Brounton *v.* Southern Pac. Co., 2 Cal. App. 173, 83 Pac. 265.

A notice sent to one of forty persons of the same name in a city, the address being selected by chance from the city directory, does not fulfil the requirement. Wood *v.* Baltimore, etc., R. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 643, 96 N. Y. Supp. 184.

284. 5. Louisville, etc., R. Co. *v.* U. S., 39 Ct. Cl. 405; Southern R. Co. *v.* Aldredge, 142 Ala. 368, 38 So. 805; Kight *v.* Wrightsville, etc., R. Co., 127 Ga. 204, 56 S. E. 363; Becker *v.* Pennsylvania R. Co., 109 N. Y. App. Div. 230, 96 N. Y. Supp. 1; Stone *v.* Clyde Steamship Co., 139 N. Car. 193, 51 S. E. 894; Brunson *v.* Atlantic Coast Line R. Co., 76 S. Car. 9, 56 S. E. 538; Murphy *v.* Southern R. Co., 77 S. Car. 76, 57 S. E. 664.

286. 5. Brunson *v.* Atlantic Coast Line R. Co., 76 S. Car. 9, 56 S. E. 538.

287. 4. **Failure to Deliver** or to account for such failure throws the burden of proof of ordinary care upon the carrier. Southern R. Co. *v.* Aldredge, 142 Ala. 368, 38 So. 805.

Where goods were destroyed by fire while in the hands of a company as warehouseman, it was held that the burden was on the company to show how the loss occurred and that due care was exercised. McCord *v.* Atlantic Coast Line R. Co., 76 S. Car. 469, 57 S. E. 477.

288. 2. John Hood Co. *v.* American Pneumatic Service Co., 191 Mass. 27, 77 N. E. 638; Fulbright *v.* Wabash R. Co., 118 Mo. App. 482, 94 S. W. 992; St. Louis, etc., R. Co. *v.* Phillips, 17 Okla. 264, 87 Pac. 470.

290. 3. Baltimore, etc., R. Co. *v.* Doyle, (C. C. A.) 142 Fed. 669; Southern Express Co. *v.* Briggs, 1 Ga. App. 294, 57 S. E. 1066; Wabash R. Co. *v.* Thomas, 222 Ill. 337, 78 N. E. 777.

Mere knowledge by a shipper that a carrier's rates are based upon the value of the goods will not affect the carrier's liability in the absence of his express assent to a limitation of the value. Hayes *v.* Adams Express Co., (N. J. 1907) 65 Atl. 1044.

292. 2. See also, as to the rule of the text, Barnes *v.* Long Island R. Co., 115 N. Y. App. Div. 44, 100 N. Y. Supp. 593; Pennsylvania Co. *v.* Shearer, 75 Ohio St. 249, 9 Ann. Cas. 15, 79 N. E. 431.

293. 4. Atlantic Coast Line R. Co. *v.* Dexter, 50 Fla. 180, 39 So. 634; De Wolff *v.* Adams Express Co., (Md. 1907) 67 Atl. 1099, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 293; John Hood Co. *v.* American Pneumatic Service Co., 191 Mass. 27, 77 N. E. 638; Singer *v.* Merchants Despatch Transp. Co., 191 Mass. 449, 77 N. E. 882. But see Baltimore, etc., R. Co. *v.* Doyle, (C. C. A.) 142 Fed. 669.

294. 1. Atlantic Coast Line R. Co. *v.* Dexter, 50 Fla. 180, 39 So. 634; Royal Costume Co. *v.* Weir, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 376, 95 N. Y. Supp. 575; Lansing *v.* New York Cent., etc., R. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 334, 102 N. Y. Supp. 1092. *Compare* Fried *v.* Wells, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 669, 100 N. Y. Supp. 1007; Missouri, etc., R. Co. *v.* Patrick, 5 Indian Ter. 742, 88 S. W. 330.

2. Atlantic Coast Line R. Co. *v.* Dexter, 50 Fla. 180, 39 So. 634; Coggswell *v.* Weir, (Supm. Ct. App. T.) 101 N. Y. Supp. 188. *Compare* Baltimore, etc., R. Co. *v.* Doyle, (C. C. A.) 142 Fed. 669.

Where the receipt was taken from the shipper's own book of receipts it was held that in order to overcome the reasonable inference that he knew the form of the receipt, it was not sufficient to show that he had not read the receipt at the time of shipment. Fried *v.* Wells, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 669, 100 N. Y. Supp. 1007.

295. 2. Baltimore, etc., R. Co. *v.* Fox, 113 Ill. App. 180; Indiana, etc., R. Co. *v.* Empire Rubber Mfg. Co., 118 Ill. App. 652.

In the *District of Columbia* also this seems to be the rule. Adams Express Co. *v.* Adams, 29 App. Cas. (D. C.) 250.

3. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679.

Assent Generally Question for Jury. — Central of Georgia R. Co. *v.* City Mills Co., 128 Ga. 841, 58 S. E. 197.

296. 3. Indiana, etc., R. Co. *v.* Empire Rubber Mfg. Co., 118 Ill. App. 652.

297. 2. Gulf, etc., R. Co. *v.* Funk, (Tex. Civ. App. 1906) 92 S. W. 1032, to the same effect as King *v.* Woodbridge, 34 Vt. 565, cited in the original note.

Oral Contract to Furnish Cars — Subsequent Written Contract. — In an action for delay in furnishing cars it was held that the court erred in ignoring a written contract executed subsequent to the oral one obligating the company to furnish cars within a specified time, since, in the absence of a pleading putting in issue its validity, the written contract imported a consideration, besides reciting as a consideration for its execution a reduction in the freight rate. Ft. Worth, etc., R. Co. *v.* Underwood, (Tex. Civ. App. 1905) 87 S. W. 713.

298. 2. Donlon *v.* Southern Pac. Co., 151 Cal. 763, 91 Pac. 603; Norfolk, etc., R. Co. *v.* Harman, 104 Va. 501, 52 S. E. 368.

Contract Must Be Just and Reasonable. — Murphy *v.* Wells-Fargo, etc., Express, 99 Minn. 230, 108 N. W. 1070.

3. Southern Express Co. *v.* Hill, 81 Ark. 1, 98 S. W. 371; St. Louis, etc., R. Co. *v.* Marshall, 74 Ark. 597, 86 S. W. 802; St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760; Chicago, etc., R. Co. *v.* Hare, 36 Ind. App. 422, 75 N. E. 867; Meyers *v.* Missouri, etc., R. Co., 120 Mo. App. 288, 96 S. W. 737; Scott County Milling Co. *v.* St. Louis, etc., R. Co., 127 Mo. App. 80, 104 S. W. 924; Everett *v.* Norfolk, etc., R. Co., 138 N. Car. 68, 50 S. E. 557; Pennsylvania Co. *v.* Shearer, 75 Ohio St. 249, 9 Ann. Cas. 15, 79 N. E. 431.

A Free Transportation Pass accepted by the shipper's agent is a sufficient consideration. Carter *v.* Southern R. Co., (Ga. App. 1907) 59 S. E. 209.

4. Chicago, etc., R. Co. *v.* Hare, 36 Ind. App. 422, 75 N. E. 867; Murphy *v.* Wells-Fargo, etc., Express, 99 Minn. 230, 108 N. W. 1070; Baker *v.* Boston, etc., R. Co., (N. H. 1906) 65 Atl. 386.

The shipper need not be told of the rate, if the information is available from other sources. St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760.

299. **1.** Evansville, etc., R. Co. *v.* McKinney, 34 Ind. App. 402, 73 N. E. 148; Ficklin *v.* Wabash R. Co., 117 Mo. App. 221, 93 S. W. 847; Phœnix Powder Mfg. Co. *v.* Wabash R. Co., 120 Mo. App. 566, 97 S. W. 256.

The recital in the bill of lading is *prima facie* evidence of a reduced rate, and the burden is on the shipper to prove the contrary. Georgia Southern, etc., R. Co. *v.* Greer, 2 Ga. App. 516, 58 S. E. 782.

300. **1.** See *contra,* Phœnix Powder Mfg. Co. *v.* Wabash R. Co., 120 Mo. App. 566, 94 S. W. 235.

301. **1.** Gerry *v.* American Express Co., 100 Me. 519, 62 Atl. 498.

2. Southern R. Co. *v.* Levy, 144 Ala. 614, 39 So. 95; Adams Express Co. *v.* Adams, 29 App. Cas. (D. C.) 250; McGregor *v.* Oregon R. Co., (Oregon 1908) 93 Pac. 465; Frasier *v.* Charleston, etc., R. Co., 73 S. Car. 140, 52 S. E. 964.

302. **3.** Cleveland, etc., R. Co. *v.* Druien, 118 Ky. 237, 4 Ann. Cas. 1102, 80 S. W. 778, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 302; Cappel *v.* Weir, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 441, 92 N. Y. Supp. 365; Barnes *v.* Long Island R. Co., (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 318, 93 N. Y. Supp. 616.

Law of State Need Not Be Pleaded. — Frasier *v.* Charleston, etc., R. Co., 73 S. Car. 140, 52 S. E. 964.

Contra, law of state where negligent breach of contract occurs. Trexler *v.* Baltimore, etc., R. Co., 28 Pa. Super. Ct. 207. And *compare* Cincinnati, etc., R. Co. *v.* Hansford, (Ky. 1907) 100 S. W. 251.

A contract is not necessarily to be construed according to the law of the state where made, when it is to be performed wholly or partly in another state. Carter *v.* Southern R. Co., (Ga. App. 1907) 59 S. E. 209.

The law of the state where the contract was made will not be enforced when contrary to public policy of the state where the contract is to be performed. International, etc., R. Co. *v.* Vandeventer, (Tex. Civ. App. 1908) 107 S. W. 560; Atlanta, etc., R. Co. *v.* Broome, (Ga. App. 1908) 60 S. E. 355.

The validity of a stipulation that suit must be brought within a specified time is governed by the law of the forum. Missouri, etc., R. Co. *v.* Godair Commission Co., (Tex. Civ. App. 1905) 87 S. W. 871.

304. **1.** Barnes *v.* Long Island R. Co., (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 318, 93 N. Y. Supp. 616.

305. **4.** Missouri, etc., R. Co. *v.* Patrick, (C. C. A.) 144 Fed. 632; Addoms *v.* Weir, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 487, 108 N. Y. Supp. 146.

Not Necessary that Agent Should Understand Provision. — Lansing *v.* New York Cent., etc., R. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 334, 102 N. Y. Supp. 1092.

Exception. — The giving a recipt containing a limitation of liability to one who is not an employee of the shipper, but who has merely undertaken to deliver a parcel to the carrier when called for, does not bind the shipper. Woolsey *v.* Long Island R. Co., 106 N. Y. App. Div. 228, 94 N. Y. Supp. 56.

306. **3.** Bell *v.* Western, etc., R. Co., 125 Ga. 510, 54 S. E. 532.

308. **1.** *United States.* — Arthur *v.* Texas, etc., R. Co., 204 U. S. 505, 27 U. S. Sup. Ct. 338, 51 U. S. (L. ed.) 590, *judgment reversed* (C. C. A.) 139 Fed. 127.

Alabama. — Central of Georgia R. Co. *v.* Merrill, (Ala. 1907) 45 So. 628; Southern Express Co. *v.* Owens, 146 Ala. 412, 9 Ann. Cas. 1143, 41 So. 752.

California. — Civ. Code Cal., § 2174, abrogates the common-law rule stated in the text, and § 2175 applies the prohibition to limitation for gross negligence only. Donlon *v.* Southern Pac. Co., 151 Cal. 763, 91 Pac. 603.

Georgia. — Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679; Atlanta, etc., R. Co. *v.* Broome, (Ga. App. 1908) 60 S. E. 355.

Illinois. — Baltimore, etc., R. Co. *v.* Fox, 113 Ill. App. 180; Wabash R. Co. *v.* Foster, 127 Ill. App. 201.

Kentucky. — Southern R. Co. *v.* Smith, (Ky. 1907) 102 S. W. 232.

Mississippi. — Southern Express Co. *v.* Rothenberg, 87 Miss. 656, 40 So. 65.

Missouri. — Ficklin *v.* Wabash R. Co., 117 Mo. App. 211, 93 S. W. 861.

New Hampshire. — Peerless Mfg. Co. *v.* New York, etc., R. Co., 73 N. H. 328, 61 Atl. 511.

New York. — Isham *v.* Erie R. Co., 112 N. Y. App. Div. 612, 98 N. Y. Supp. 609.

North Carolina. — Everett *v.* Norfolk, etc., R. Co., 138 N. Car. 68, 50 S. E. 557; McConnell *v.* Southern R. Co., 144 N. Car. 87, 56 S. E. 559.

Oklahoma. — St. Louis, etc., R. Co. *v.* Phillips, 17 Okla. 264, 87 Pac. 470.

Pennsylvania. — Eckert *v.* Pennsylvania R. Co., 211 Pa. St. 267, 60 Atl. 781.

Texas. — International, etc., R. Co. *v.* Vandeventer, (Tex. Civ. App. 1908) 107 S. W. 560; San Antonio, etc., R. Co. *v.* Dolan, (Tex. Civ. App. 1905) 85 S. W. 302.

A statute declaring invalid contracts "exempting" carriers from liability for negligence applies also to contracts limiting liability. Chesapeake, etc., R. Co. *v.* Beasley, 104 Va. 788, 52 S. E. 566.

313. **2.** See Forder *v.* Great Western R. Co., (1905) 2 K. B. 532, 74 L. J. K. B. 871, 93 L. T. N. S. 344, 53 W. R. 574, 21 Times L. Rep. 625.

5. The Contract of Release Must Be Accepted by the Shipper or His Agent. — Hailparn *v.* Joy Steamship Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 566, 99 N. Y. Supp. 464.

314. **2.** Galloway *v.* Erie R. Co., 116 N. Y. App. Div. 777, 102 N. Y. Supp. 25; Hoye

v. Pennsylvania R. Co., 191 N. Y. 101, 83 N. E. 586.

319. 5. Arthur *v.* Texas, etc., R. Co., (C. C. A.) 139 Fed. 127; Arthur *v.* Texas, etc., R. Co., 204 U. S. 505, 27 U. S. Sup. Ct. 338, 51 U. S. (L. ed.) 590, *reversing* (C. C. A.) 139 Fed. 127; Cleveland, etc., R. Co. *v.* Druien, 118 Ky. 237, 4 Ann. Cas. 1102, 80 S. W. 778; Anderson *v.* Mobile, etc., R. Co., (Miss. 1905) 38 So. 661.

320. 6. St. Louis, etc., R. Co. *v.* Burgin, 85 Ark. 502, 104 S. W. 161.

Carrier May Waive Stipulation. — Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29; Missouri, etc., R. Co. *v.* Godair Commission Co., (Tex. Civ. App. 1905) 87 S. W. 871.

The Law of the Forum governs the validity of the stipulation. Missouri, etc., R. Co. *v.* Godair Commission Co., (Tex. Civ. App. 1905) 87 S. W. 871.

Burden of Proof of Reasonableness on Carrier. — Missouri, etc., R. Co. *v.* Godair Commission Co., (Tex. Civ. App. 1905) 87 S. W. 871.

321. 7. Broadwood *v.* Southern Express Co., 148 Ala. 17, 41 So. 769; Freeman *v.* Kansas City Southern R. Co., 118 Mo. App. 526, 93 S. W. 302; Pennsylvania Co. *v.* Shearer, 75 Ohio St. 249, 9 Ann. Cas. 15, 79 N. E. 431; St. Louis, etc., R. Co. *v.* Phillips, 17 Okla. 264, 87 Pac. 470.

Application of Rule. — So of a claim requiring notice in writing within thirty hours after arrival. St. Louis, etc., R. Co. *v.* Phillips, 17 Okla. 264, 87 Pac. 470.

Requiring Claim to Be Made in Thirty Days. — Liquid Carbonic Co. *v.* Norfolk, etc., R. Co., 107 Va. 323, 58 S. E. 569.

A letter sent to the carrier by the cargo owner's proctor within the thirty days, stating that he had a claim for collection for damages to the cargo, was held a sufficient compliance with the stipulation where the claimed damage was known to the carrier. The D. Harvey, 139 Fed. 755.

323. 1. The Niceto, 134 Fed. 655; Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29; Wabash R. Co. *v.* Foster, 127 Ill. App. 201; John Hood Co. *v.* American Pneumatic Service Co., 191 Mass. 27, 77 N. E. 638; Kaplan *v.* Metropolitan Express Co., (Supm. Ct. App. T.) 98 N. Y. Supp. 228; Isham *v.* Erie R. Co., 112 N. Y. App. Div. 612, 98 N. Y. Supp. 609.

3. Southern Express Co. *v.* Stevenson, 89 Miss. 233, 42 So. 670.

324. 1. Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29; Broadwood *v.* Southern Express Co., 148 Ala. 17, 41 So. 769; Wabash R. Co. *v.* Thomas, 222 Ill. 337, 78 N. E. 777.

Written notice of claims within one day after delivery held reasonable. St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760.

2. St. Louis, etc., R. Co. *v.* Phillips, 17 Okla. 264, 87 Pac. 470.

Reasonableness of rule requiring original receipt to be annexed to claim for loss is for jury. Adams Express Co. *v.* Gordon, 27 Ohio Cir. Ct. 243.

Question of Law for Court. — Broadwood *v.* Southern Express Co., 148 Ala. 17, 41 So. 769.

4. Loeb *v.* Wabash R. Co., (Mo. App. 1904) 85 S. W. 118; Frey *v.* New York Cent., etc., R. Co., 114 N. Y. App. Div. 747, 100 N. Y. Supp. 225.

5. Freeman *v.* Kansas City Southern R. Co., 118 Mo. App. 526, 93 S. W. 302; Samuel Hardin Grain Co. *v.* Missouri Pac. R. Co., 120 Mo. App. 203, 96 S. W. 681; Scott County Milling Co. *v.* St. Louis, etc., R. Co., 127 Mo. App. 80, 104 S. W. 924; Isham *v.* Erie R. Co., 112 N. Y. App. Div. 612, 98 N. Y. Supp. 609; Chesapeake, etc., R. Co. *v.* Stock, 104 Va. 97, 51 S. E. 161, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 324.

Waiver of right to insist upon formal notice for jury. Eckert *v.* Pennsylvania R. Co., 211 Pa. St. 267, 60 Atl. 781.

325. 1. Merchants, etc., Transp. Co. *v.* Moore, 124 Ga. 482, 52 S. E. 802.

2. Nairn *v.* Missouri, etc., R. Co., 126 Mo. App. 707, 106 S. W. 102.

3. **Texas Statute.** — Houston, etc., R. Co. *v.* Mayes, (Tex. Civ. App. 1906) 97 S. W. 318.

326. 1. Hoye *v.* Pennsylvania R. Co., 191 N. Y. 101, 83 N. E. 586. *Compare* St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760.

2. The Persiana, 156 Fed. 1019.

327. 2. Freeman *v.* Kansas City Southern R. Co., 118 Mo. App. 526, 93 S. W. 302.

A stipulation for notice of claim "to the agent at the point of delivery," is complied with by notice to the agent of the final carrier at the place of delivery, where the defendant's line does not extend to that point, although it has an agent at that point. Mulrooney, etc., Co. *v.* Western Transit Co., 102 Minn. 142, 112 N. W. 988.

5. Such a stipulation must be based upon a consideration. Scott County Milling Co. *v.* St. Louis, etc., R. Co., 127 Mo. App. 80, 104 S. W. 924.

328. 3. **United States.** — Missouri, etc., R. Co. *v.* Patrick, (C. C. A.) 144 Fed. 632.

Alabama. — Southern Express Co. *v.* Owens, 146 Ala. 412, 9 Ann. Cas. 1143, 41 So. 752.

Arkansas. — St. Louis, etc., R. Co. *v.* Burgin, 85 Ark. 502, 104 S. W. 161.

California. — Donlon *v.* Southern Pac. Co., 151 Cal. 763, 91 Pac. 603.

Delaware. — Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252.

Florida. — Atlantic Coast Line R. Co. *v.* Dexter, 50 Fla. 180, 39 So. 634, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 328.

Georgia. — The stipulation is not valid in the case of conversion. Central of Georgia R. Co. *v.* Chicago Portrait Co., 122 Ga. 11, 49 S. E. 727.

Maine. — Gerry *v.* American Express Co., 100 Me. 519, 62 Atl. 498.

Maryland. — De Wolff *v.* Adams Express Co., (Md. 1907) 67 Atl. 1099.

Mississippi. — Southern Express Co. *v.* Stevenson, 89 Miss. 233, 42 So. 670; Southern Express Co. *v.* Rothenberg, 87 Miss. 656, 40 So. 65.

Missouri. — Norton *v.* Adams Express Co., 123 Mo. App. 233, 100 S. W. 502.

Nebraska. — Wabash R. Co. *v.* Sharpe, (Neb. 1906) 107 N. W. 758.

New Jersey. — Limitation invalid when loss shown to have resulted from negligence. Hayes *v.* Adams Express Co., (N. J. 1907) 65 Atl. 1044, *judgment affirmed* 73 N. J. L. 105, 62 Atl. 284.

New York. — Addoms *v.* Weir, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 487, 108 N. Y. Supp. 146; Baum *v.* Long Island R. Co., (N. Y. City Ct. Tr. T.) 58 Misc. (N. Y.) 34, 108 N. Y. Supp. 1113.

North Carolina. — Does not cover losses arising from carrier's negligence. Everett *v.* Norfolk, etc., R. Co., 138 N. Car. 68, 50 S. E. 557.

Texas. — See International, etc., R. Co. *v.* Vandeventer, (Tex. Civ. App. 1908) 107 S. W. 560.

333. 1. Colvin *v.* Fargo, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 642, 94 N. Y. Supp. 377.

2. U. S. Lace Curtain Mills *v.* Oceanic Steam Nav. Co., 145 Fed. 702, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 333; Southern Express Co. *v.* Owens, 146 Ala. 412, 9 Ann. Cas. 1143, 41 So. 752; Atlantic Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070; Everett *v.* Norfolk, etc., R. Co., 138 N. Car. 68, 50 S. E. 557.

An arbitrary preadjustment of the measure of damages, though with the assent of the shipper, will not exempt the carrier from liability for the true value on account of negligence. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679.

334. 2. Bates *v.* Weir, 121 N. Y. App. Div. 275, 105 N. Y. Supp. 785.

4. The Texas doctrine has been followed in *Virginia.* Chesapeake, etc., R. Co. *v.* Stock, 104 Va. 97, 51 S. E. 161.

In *North Carolina* such a stipulation is void. McConnell *v.* Southern R. Co., 144 N. Car. 87, 56 S. E. 559.

Invalid in *Pennsylvania* as against a loss arising from negligence. Rhymer *v.* Delaware, etc., R. Co., 27 Pa. Super. Ct. 345.

335. 2. **Void Where No Consideration.** — St. Louis, etc., R. Co. *v.* Marshall, 74 Ark. 597, 86 S. W. 802; Gratiot St. Warehouse Co. *v.* Missouri, etc., R. Co., 124 Mo. App. 545, 102 S. W. 11, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 335.

Not Binding in Suit for Conversion. — Merchants, etc., Transp. Co. *v.* Moore, 124 Ga. 482, 52 S. E. 802.

338. 2. Kansas City Southern R. Co. *v.* Embry, 76 Ark. 589, 90 S. W. 15; Elderslie Steamship Co. *v.* Borthwick, 92 L. T. N. S. 274, *affirming* (1905) A. C. 93. See also The Pearlmoor, 90 L. T. N. S. 319.

339. 4. **Texas.** — International, etc., R. Co. *v.* Vandeventer, (Tex. Civ. App. 1908) 107 S. W. 560.

341. 7. See Hirschel *v.* Great Eastern R. Co., 96 L. T. N. S. 147.

344. 3. A declaration as to nature and value for the purpose of fulfilling custom-house rules, treating four bales of furs as one parcel, is not a sufficient declaration under the act. The declaration must be as to each separate parcel and for the purposes of the reduced rate. Hirschel *v.* Great Eastern R. Co., 96 L. T. N. S. 147.

9. Hirschel *v.* Great Eastern R. Co., 96 L. T. N. S. 147.

345. 3. Bottum *v.* Charlestown, etc., R. Co., 72 S. Car. 375, 5 Ann. Cas. 118, 51 S. E. 985, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 345.

348. 2. Where there is nothing to mislead the carrier or prevent its agents from making inquiries as to the value of the goods, the carrier is liable. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679.

350. 6. Southern R. Co. *v.* Johnson, 2 Ga. App. 36, 58 S. E. 333.

In an action for conversion where a shipper proves his cause of action by showing that he delivered the property to the defendant for transportation, the burden of proof is cast upon the carrier to show that it received the goods in good faith under a mistake as to the ownership and that it was the true owner. Valentine *v.* Long Island R. Co., 187 N. Y. 121, 79 N. E. 849.

351. 3. Gulf, etc., R. Co. *v.* Jackson, (Tex. 1905) 89 S. W. 968, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351.

352. 1. The testimony of a railroad company's live-stock agent, that he had authority to contract for cars to ship cattle, sufficiently shows him to be a general agent. Missouri, etc., R. Co. *v.* Kyser, (Tex. Civ. App. 1905) 87 S. W. 389.

3. Gulf, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 86 S. W. 47, *judgment reversed* (Tex. 1905) 89 S. W. 968, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 352; Pittsburgh, etc., R. Co. *v.* Bryant, 36 Ind. App. 340, 75 N. E. 829. But see Marshall Medicine Co. *v.* Chicago, etc., R. Co., 126 Mo. App. 455, 104 S. W. 479.

Company Estopped to Deny Agent's Authority. — The carrier is estopped by acquiescence to question the authority of an agent resigned but still acting. Louisville, etc., R. Co. *v.* Mink, 103 S. W. 294, 31 Ky. L. Rep. 833.

353. 1. Texas, etc., R. Co. *v.* Merchants', etc., Cotton Oil Co., (Tex. Civ. App. 1905) 86 S. W. 1042; Gulf, etc., R. Co. *v.* Fromme, (Tex. Civ. App. 1905) 86 S. W. 651.

The company may show want of authority in its agent to contract for the delivery of cars in other counties. Texas, etc., R. Co. *v.* Ray, (Tex. Civ. App. 1905) 84 S. W. 691.

A station agent has no implied authority to order cars for another station. Southern Kansas R. Co. *v.* Cox, (Tex. Civ. App. 1907) 103 S. W. 1122.

5. Sufficient Ratification of Contract of Employment. — Murray *v.* New York Cent., etc., R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 573, 99 N. Y. Supp. 477.

7. St. Louis, etc., R. Co. *v.* Watkins, (Tex. Civ. App. 1907) 100 S. W. 162.

354. 1. **Contra** in Georgia. Ohlen *v.* Atlanta, etc., R. Co., 2 Ga. App. 323, 58 S. E. 511.

Goods Receipted for as "in Apparent Good Order." — Foley *v.* Lehigh Valley R. Co., (Supm. Ct. App. T.) 96 N. Y. Supp. 182.

2. Freeman *v.* Winkler, (Supm. Ct. App. T.) 103 N. Y. Supp. 215; Creager *v.* McGowan, (Supm. Ct. App. T.) 104 N. Y. Supp. 416.

Presumption. — Where it has been the custom to notify the consignee of the arrival of goods, though not required by law, the absence of notification raises a presumption of non-arrival of the goods. Jonesville Mfg. Co. *v.* Southern R. Co., 77 S. Car. 480, 58 S. E. 422.

In Action for Delay the plaintiff must prove failure to deliver in a reasonable time, under ordinary circumstances. Russell Grain Co. *v.* Wabash R. Co., 114 Mo. App. 488, 89 S. W. 908.

355. 1. *United States.* — The La Kroma, 138 Fed. 936.

Alabama. — Alabama G. S. R. Co. *v.* Quarles, 145 Ala. 436, 8 Ann. Cas. 308, 40 So. 120; Southern R. Co. *v.* Aldredge, 142 Ala. 368, 38 So. 805.

Georgia. — Georgia Southern, etc., R. Co. *v.* Barfield, 1 Ga. App. 203, 58 S. E. 236; Ohlen *v.* Atlanta, etc., R. Co., 2 Ga. App. 323, 58 S. E. 511.

Illinois. — Michigan Cent. R. Co. *v.* Osmus, 129 Ill. App. 79.

Indiana. — Chicago, etc., R. Co. *v.* Hare, 36 Ind. App. 422, 75 N. E. 867.

Iowa. — Swiney *v.* American Express Co., (Iowa 1908) 115 N. W. 212.

Louisiana. — Lehman *v.* Morgan's Louisiana, etc., Steamship Co., 115 La. 1, 5 Ann. Cas. 818, 38 So. 873.

Maryland. — Orem Fruit, etc., Co. *v.* Northern Cent. R. Co., (Md. 1907) 66 Atl. 436.

Minnesota. — Fockens *v.* U. S. Express Co., 99 Minn. 404, 109 N. W. 834; Brennisen *v.* Pennsylvania R. Co., 100 Minn. 102, 10 Ann. Cas. 169, 110 N. W. 362; Paterson *v.* Chicago, etc., R. Co., 95 Minn. 57, 103 N. W. 621; Brennisen *v.* Pennsylvania R. Co., 101 Minn. 120, 111 N. W. 945.

Missouri. — Nairn *v.* Missouri, etc., R. Co., 126 Mo. App. 707, 106 S. W. 102; Hammett *v.* Wabash R. Co., (Mo. App. 1908) 106 S. W. 1106; Alexander *v.* McNally, 112 Mo. App. 563, 87 S. W. 1; Russell Grain Co. *v.* Wabash R. Co., 114 Mo. App. 488, 89 S. W. 908.

New York. — Jacoby *v.* Platt, (Supm. Ct. App. T.) 94 N. Y. Supp. 435.

North Carolina. — Everett *v.* Norfolk, etc., R. Co., 138 N. Car. 68, 50 S. E. 557.

Pennsylvania. — Rhymer *v.* Delaware, etc., R. Co., 27 Pa. Super. Ct. 345.

Texas. — Gulf, etc., R. Co. *v.* Roberts, (Tex. Civ. App. 1905) 85 S. W. 479; Gulf, etc., R. Co. *v.* Belton Oil Co., (Tex. Civ. App. 1907) 99 S. W. 430; Chicago, etc., R. Co. *v.* Gillett, (Tex. Civ. App. 1907) 99 S. W. 712.

357. 3. Modern Match Co. *v.* Baltimore, etc., R. Co., 140 Mich. 570, 104 N. W. 19.

7. Evidence that perishable dead freight was sound when loaded and unsound when unloaded, and that the car ventilators were open when the car left the place of shipment and closed when it arrived at the place of delivery, has been held sufficient to make a *prima facie* case. Hurst *v.* St. Louis, etc., R. Co., 117 Mo. App. 25, 94 S. W. 799.

358. 2. Alabama G. S. R. Co. *v.* Quarles, 145 Ala. 436, 8 Ann. Cas. 308, 40 So. 120; Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679.

Where the carrier showed destruction by an act of God, it was held that the burden was on the shipper to show concurrent negligence of the carrier. Elam *v.* St. Louis, etc., R. Co., (Mo. App. 1906) 93 S. W. 851.

359. 1. The Presque Isle, 140 Fed. 202; Southern R. Co. *v.* Aldredge, 142 Ala. 368, 38 So. 805; Southern R. Co. *v.* Levy, 144 Ala. 614, 39 So. 95; Alabama G. S. R. Co. *v.* Quarles, 145 Ala. 436, 8 Ann. Cas. 308, 40 So. 120; Adams Express Co. *v.* Adams, 29 App. Cas. (D. C.) 250; Carter *v.* Southern R. Co., (Ga. App. 1907) 59 S. E. 209; Atlanta, etc., R. Co. *v.* Broome, (Ga. App. 1908) 60 S. E. 355; Atlantic Coast Line R. Co. *v.* Dexter, 50 Fla. 180, 39 So. 634; Jenkins *v.* Southern R. Co., 73 S. Car. 289, 53 S. E. 480.

360. 1. Lazarus *v.* Barber, (C. C. A.) 136 Fed. 534; The Claverburn, 147 Fed. 850; Vaughn *v.* New York, etc., R. Co., 27 R. I. 235, 61 Atl. 695; Hecht *v.* Grand Trunk R. Co., (Wis. 1907) 113 N. W. 68.

361. 1. McCord *v.* Atlantic Coast Line R. Co., 76 S. Car. 469, 57 S. E. 477.

In Missouri. — Fulbright *v.* Wabash R. Co., 118 Mo. App. 482, 94 S. W. 992, and Hurst *v.* St. Louis, etc., R. Co., 117 Mo. App. 25, 94 S. W. 794, follow the doctrine as stated in the text.

2. Southern R. Co. *v.* Levy, 144 Ala. 614, 39 So. 95; Carter *v.* Southern R. Co., (Ga. App. 1907) 59 S. E. 209; Atlanta, etc., R. Co. *v.* Broome, (Ga. App. 1908) 60 S. E. 355; Peerless Mfg. Co. *v.* New York, etc., R. Co., 73 N. H. 328, 61 Atl. 511; Texas, etc., R. Co. *v.* Dishman, (Tex. Civ. App. 1905) 85 S. W. 319.

In *Louisiana* under the code the effect is the same as under special contract, although liability for loss by fire is not stipulated against. Lehman *v.* Morgan's Louisiana, etc., Steamship Co., 115 La. 1, 5 Ann. Cas. 818, 38 So. 873.

363. 1. Modern Match Co. *v.* Baltimore, etc., R. Co., 140 Mich. 570, 104 N. W. 19, 12 Detroit Leg. N. 269.

5. *Alabama.* — Southern R. Co. *v.* Aldredge, 142 Ala. 368, 38 So. 805.

California. — Brounton *v.* Southern Pac. Co., 2 Cal. App. 173, 83 Pac. 265.

Georgia. — Georgia Southern, etc., R. Co. *v.* Barfield, 1 Ga. App. 203, 58 S. E. 236.

Kansas. — Missouri, etc., R. Co. *v.* L. A. Watkins Merchandise Co., (Kan. 1907) 92 Pac. 1102.

Michigan. — Modern Match Co. *v.* Baltimore, etc., R. Co., 140 Mich. 570, 104 N. W. 19.

Missouri. — Fulbright *v.* Wabash R. Co., 118 Mo. App. 482, 94 S. W. 992.

New Jersey. — Hanson *v.* Pennsylvania R. Co., 72 N. J. L. 407, 60 Atl. 1101.

New York. — Hoye *v.* Pennsylvania R. Co., 114 N. Y. App. Div. 821, 100 N. Y. Supp. 190.

North Carolina. — McConnell *v.* Southern R. Co., 144 N. Car. 87, 56 S. E. 559.

South Carolina. — McCord *v.* Atlantic Coast Line R. Co., 76 S. Car. 469, 57 S. E. 477; Sanders *v.* Atlantic Coast Line R. Co., (S. Car. 1908) 60 S. E. 526.

Wisconsin. — Hecht *v.* Grand Trunk R. Co., (Wis. 1907) 113 N. W. 68.

Question Whether Carrier Exercised Reasonable and Ordinary Care as Warehouseman Is for Jury. — Moyer *v.* Pennsylvania R. Co., 31 Pa. Super. Ct. 559.

The question whether a railroad company had exercised reasonable care for the safety of perishable fruit sidetracked over night was held to be one for the jury, in Anderson *v.* Pittsburg, etc., R. Co., 31 Pa. Super Ct. 302.

364. 1. **Perishable Fruit.** — Carriers holding themselves out as shippers of perishable fruit are held to a higher degree of care than in regard to articles not perishable. Brennisen *v.* Pennsylvania R. Co., 101 Minn. 120, 111 N. W. 945.

366. 2. Texas, etc., R. Co. *v.* Coutourie, 135 Fed. 465, 68 C. C. A. 177; Searle *v.* Lund, 90 L. T. N. S. 529.

368. 1. Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252; Schwartz *v.* Erie R. Co., (Ky. 1908) 106 S. W. 1188.

Where Shipper of Fruit Undertook to Ice Refrigerator Car, in the absence of proof of negligence on the part of the carrier, an injury to the fruit from heat must be attributed to the shipper. Chicago, etc., R. Co. *v.* Reyman, 166 Ind. App. 278, 76 N. E. 970.

369. 1. International, etc., R. Co. *v.* Drought, (Tex. Civ. App. 1907) 100 S. W. 1011.

370. 1. Broadwood *v.* Southern Express Co., 148 Ala. 17, 41 So. 769, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370.

The Burden of Proof that a package was correctly addressed is on the shipper. Southern Express Co. *v.* Hill, 81 Ark. 1, 98 S. W. 371.

A receipt given by the carrier is only *prima facie* evidence that the goods were properly addressed. Southern Express Co. *v.* Hill, (Ark. 1907) 105 S. W. 877.

3. Rabinowitz *v.* Hall, 123 Ill. App. 65; Gerhard Mennen Chemical Co. *v.* Merchants' Express, etc., Co., (N. J. 1908) 68 Atl. 906.

371. 3. **Understating Weight of Article.** — The shipper is not guilty of contributory negligence in understating the weight of an article which has been injured in unloading by the use of insufficient tackle, though the tackle is sufficient for the weight stated. Hanna *v.* Pitt, 121 N. Y. App. Div. 420, 106 N. Y. Supp. 145.

373. 3. *Georgia.* — Southern Express Co. *v.* Briggs, 1 Ga. App. 294, 57 S. E. 1066; Atlantic, etc., R. Co. *v.* Howard Supply Co., 125 Ga. 478, 54 S. E. 530.

Kentucky. — Cincinnati, etc., R. Co. *v.* Hansford, (Ky. 1907) 100 S. W. 251.

Minnesota. — Paterson *v.* Chicago, etc., R. Co., 95 Minn. 57, 103 N. W. 621.

Missouri. — Gratiot St. Warehouse Co. *v.* Missouri, etc., R. Co., 124 Mo. App. 545, 102 S. W. 11, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 373; Loeb *v.* Wabash R. Co., (Mo. App. 1904) 85 S. W. 118.

North Carolina. — McConnell *v.* Southern R. Co., 144 N. Car. 87, 56 S. E. 559.

South Carolina. — Brown *v.* Northwestern R. Co., 75 S. Car. 20, 54 S. E. 829.

Texas. — Missouri, etc., R. Co. *v.* Rines, (Tex. Civ. App. 1905) 84 S. W. 1092; Texas, etc., R. Co. *v.* Dishman, (Tex. Civ. App. 1905) 85 S. W. 319; Gulf, etc., R. Co. *v.* Roberts, (Tex. Civ. App. 1905) 85 S. W. 479; Texas, etc., R. Co. *v.* Tracy, (Tex. Civ. App. 1905) 85 S. W. 833; Missouri, etc., R. Co. *v.* Kyser, (Tex. Civ. App. 1905) 87 S. W. 389; St. Louis, etc., R. Co. *v.* Watkins, (Tex. Civ. App. 1907) 100 S. W. 162.

Virginia. — Chesapeake, etc., R. Co. *v.* Stock, 104 Va. 97, 51 S. E. 161.

374. 1. Evidence that the goods were worth "about" a stated value is not equivalent to proof that their value amounts to such a sum. Atlantic, etc., R. Co. *v.* Howard Supply Co., 125 Ga. 478, 54 S. E. 530.

2. Southern R. Co. *v.* Cofer, (Ala. 1907) 43 So. 102; Matheson *v.* Southern R. Co., (S. Car. 1908) 60 S. E. 437.

3. **If the Goods Do Not Arrive** at the place of destination, evidence of their value at the place of shipment is admissible to establish value at place of destination. Marshall Medicine Co. *v.* Chicago, etc., R. Co., 126 Mo. App. 455, 104 S. W. 479. See also The Olympia, 156 Fed. 252; Lambert-Murray Co. *v.* Southern Express Co., (N. Car. 1907) 56 S. E. 991.

375. 1. McKerall *v.* Atlantic Coast Line R. Co., 76 S. Car. 338, 56 S. E. 965.

2. **Shipper's Sales Agent May Testify as to Values.** — Norfolk, etc., R. Co. *v.* Wilkinson, 106 Va. 775, 56 S. E. 808.

3. **Standard Price Lists and Market Reports.** — St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760.

4. Texas, etc., R. Co. *v.* Townsend, (Tex. Civ. App. 1907) 106 S. W. 760.

Carriage dealers and repairers are competent as expert witnesses as to value of second-hand vehicles. Texas, etc., R. Co. *v.* Wilson Hack Line, (Tex. Civ. App. 1907) 101 S. W. 1042.

The jury are not absolutely bound by the opinion of an expert witness as to the market value, and it is error to direct a verdict upon such a supposition. Atlantic, etc., R. Co. *v.* Howard Supply Co., 125 Ga. 478, 54 S. E. 530.

376. 1. Texas, etc., R. Co. *v.* Arnett, (Tex. Civ. App. 1905) 88 S. W. 448; Southern Kansas R. Co. *v.* Cox, (Tex. Civ. App. 1907) 103 S. W. 1122.

377. 2. Paterson *v.* Chicago, etc., R. Co., 95 Minn. 57, 103 N. W. 621.

In an action for conversion for refusal to deliver goods, an instruction authorizing damages as to which there is no evidence is erroneous. Gates *v.* Bekins, 44 Wash. 422, 87 Pac. 505.

3. The court must instruct the jury as to the rule for measuring damages. Houston, etc., R. Co. *v.* Buchanan, (Tex. Civ. App. 1905) 84 S. W. 1073; Chicago, etc., R. Co. *v.* Chestnut, (Ky. 1905) 89 S. W. 298.

379. 1. The Bérengére, 155 Fed. 439; Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252; Cincinnati, etc., R. Co. *v.* Hansford, (Ky. 1907) 100 S. W. 251; Houston, etc., R. Co. *v.* Bath, (Tex. Civ. App. 1905) 90 S. W. 55; Carter *v.* International, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 681.

Where interest is not recoverable *eo nomine*, the jury may consider all the circumstances and increase the damages by a sum equal to the interest on the value. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679.

381. 3. Central of Georgia R. Co. *v.* Chicago Portrait Co., 122 Ga. 11, 49 S. E. 727.

382. 4. The Bérengére, 155 Fed. 439; Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252; Wabash R. Co. *v.* Foster, 127 Ill. App. 201; Michigan Cent. R. Co. *v.* Osmus, 129 Ill. App. 79, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 382; Paterson *v.* Chicago, etc., R. Co., 95 Minn. 57, 103 N. W. 621; Houston, etc., R. Co. *v.* Bath, (Tex. Civ. App. 1905) 90 S. W. 55.

Where goods shipped are ordered to be returned and are injured in transit, the owner cannot refuse to accept them and recover the total value. He can only recover the difference between the value when shipped and when returned and offered to him. Reason *v.* Detroit, etc., R. Co., 150 Mich. 50, 113 N. W. 506.

The consignee is only entitled to actual damage, and where he had sold the goods and compromised a suit with the purchaser, the company may show the amount so paid in compromise. St. Louis, etc., R. Co. *v.* McDurmitt Grain Co., (Tex. Civ. App. 1905) 87 S. W. 355.

383. 1. Houston, etc., R. Co. *v.* Bath, (Tex. Civ. App. 1905) 90 S. W. 55.

384. 1. Chicago, etc., R. Co. *v.* Chestnut, (Ky. 1905) 89 S. W. 298.

But he is not bound to take the goods from the custody of the carrier while the carriage is unfinished in order to avert loss. Hurst *v.* St. Louis, etc., R. Co., 117 Mo. App. 25, 94 S. W. 794; D'Olier *v.* New York Cent., etc., R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 635, 98 N. Y. Supp. 649.

5. Wabash R. Co. *v.* Foster, 127 Ill. App. 201; Illinois Cent. R. Co. *v.* Nelson, (Ky. 1906) 97 S. W. 757; Samuel Hardin Grain Co. *v.* Missouri Pac. R. Co., 120 Mo. App. 203, 96 S. W. 681; Frey *v.* New York Cent., etc., R. Co., 114 N. Y. App. Div. 747, 100 N. Y. Supp. 225; Chicago, etc., R. Co. *v.* Broe, 16 Okla. 25, 86 Pac. 441; McKerall *v.* Atlantic Coast Line R. Co., 76 S. Car. 338, 56 S. E. 965; Houston, etc., R. Co. *v.* Foster, (Tex. Civ. App. 1905) 86 S. W. 44; Chicago, etc., R. Co. *v.* C. C. Mill Elevator, etc., Co., (Tex. Civ. App. 1905) 87 S. W. 753.

Where thrashing machines had been already sold by the consignee as agent for the consignor, the measure of damages was held to be the price at which the sale was made. Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 9 Ann. Cas. 790, 85 Pac. 408, 87 Pac. 80.

Mere Delay Not a Conversion. — Southern R. Co. *v.* Moody, (Ala. 1907) 44 So. 94; Clark *v.* American Express Co., 130 Iowa 254, 106 N. W. 642; Wells *v.* Hanson, (Tex. Civ. App. 1905) 91 S. W. 321.

Delay in Delivery of Part is equivalent to delay in delivery of the whole shipment, if the part is necessary to make the whole effective. McKerall *v.* Atlantic Coast Line R. Co., 76 S. Car. 338, 56 S. E. 965.

Rental Value of Mill Outfit. — St. Louis Southwestern R. Co. *v.* Burke, (Tex. Civ. App. 1906) 91 S. W. 812.

Evidence of Values. — Evidence of sale of the goods is admissible to show value. Isham *v.* Erie R. Co., 112 N. Y. App. Div. 612, 98 N. Y. Supp. 609.

Usable Rental Value of the property which the carrier had in keeping, not of the outfit of which it formed a part, was held to be the measure of damages in Illinois Cent. R. Co. *v.* Johnson, (Tenn. 1906) 94 S. W. 600.

Damage to Goods and Damages for Delay. — Central of Georgia R. Co. *v.* Montmollen, 145 Ala. 468, 39 So. 820.

386. 2. Yazoo, etc., R. Co. *v.* Christmas, 89 Miss. 686, 42 So. 169; McKerall *v.* Atlantic Coast Line R. Co., 76 S. Car. 338, 56 S. E. 965. *Compare* Southern R. Co. *v.* Coleman, (Ala. 1907) 44 So. 837.

The Expense of Telegraphing and Telephoning to trace the goods delayed is recoverable. Haberzettle *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 219.

Storage Charges of Lumber while it was held for a rising market, such holding having been made necessary by the delay in delivery. Norfolk, etc., R. Co. *v.* Wilkinson, 106 Va. 775, 56 S. E. 808.

Loss of Commission on Sale Included as Element of Damages. — Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 9 Ann. Cas. 790, 85 Pac. 408, 87 Pac. 80.

387. 1. Damages occurring after delivery to the consignee are not chargeable to the carrier, although they would not have occurred but for the carrier's original negligence. Chicago, etc., R. Co. *v.* Chestnut, (Ky. 1905) 89 S. W. 298.

2. Crutcher *v.* Choctaw, etc., R. Co., 74 Ark. 358, 85 S. W. 770; Clark *v.* American Express Co., 130 Iowa 254, 106 N. W. 642; Chicago, etc., R. Co. *v.* Broe, 16 Okla. 25, 86 Pac. 441.

388. 2. The measure of damages for the refusal of a vessel to meet its contract to carry goods is the difference necessarily paid by the shipper to procure an equal service in advance of the contract price, and such damage as unavoidably flows from the breach of the carrier's contract. Miners' Co-operative Assoc. *v.* The Monarch, 2 Alaska 383.

389. 2. The damages recoverable are the highest proved value between the dates of conversion and trial, after deducting the freight charges. Merchants, etc., Transp. Co. *v.* Moore, 124 Ga. 482, 52 S. E. 802.

Damages to Goods Caused by an Act of God, are the value of the goods in their damaged condition, where the carrier subsequently fails

to deliver. Starr, etc., Co. *v.* Missouri, etc., R. Co., 122 Mo. App. 26, 97 S. W. 959.

390. 1. Southern Express Co. *v.* Owens, 146 Ala. 412, 9 Ann. Cas. 1143, 41 So. 752.

For a Conversion by Sale of Perishable Goods without Complying with Statute, the measure of damages is the value at time of conversion, with interest, less freight charges due. Carter *v.* International, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 681.

391. 1. Weston *v.* Boston, etc., R. Co., 190 Mass. 298, 5 Ann. Cas. 825, 76 N. E. 1050.

2. Benedict *v.* Chicago, etc., R. Co., (Tex. Civ. App. 1906) 91 S. W. 811.

392. 1. **Household Goods.** — No recovery can be had for outrage of feelings, in an action for conversion based on the refusal to deliver household goods until payment of freight charges claimed. Gates *v.* Bekins, 44 Wash. 422, 87 Pac. 505.

2. Southern R. Co. *v.* Coleman, (Ala. 1907) 44 So. 837; Choctaw, etc., R. Co. *v.* Rolfe, 76 Ark. 220, 88 S. W. 870; Seaboard Air-Line R. Co. *v.* Harris, 121 Ga. 707, 49 S. E. 703; Central of Georgia R. Co. *v.* Chicago Portrait Co., 122 Ga. 11, 49 S. E. 727; Louisville, etc., R. Co. *v.* Mink, 103 S. W. 294, 31 Ky. L. Rep. 833; Cincinnati, etc., R. Co. *v.* Hansford, (Ky. 1907) 100 S. W. 251; Lewark *v.* Norfolk, etc., R. Co., 137 N. Car. 383, 49 S. E. 882; Choctaw, etc., R. Co. *v.* Jacobs, 15 Okla. 493, 82 Pac. 502; Choctaw, etc., R. Co. *v.* Bourland, (Tex. Civ. App. 1905) 87 S. W. 173.

Knowledge of Special Circumstances. — Crutcher *v.* Choctaw, etc., R. Co., 74 Ark 358, 85 S. W. 770; Traynick *v.* Southern R. Co., 71 S. Car. 82, 50 S. E. 549; Daube *v.* Chicago, etc., R. Co., (Tex. Civ. App. 1905) 86 S. W. 797; Chicago, etc., R. Co. *v.* C. C. Mill Elevator, etc., Co., (Tex. Civ. App. 1905) 87 S. W. 753.

Carrier Must Have Been Informed at Time of Shipment. — Crutcher *v.* Choctaw, etc., R. Co., 74 Ark. 358, 85 S. W. 770; Illinois Cent. R. Co. *v.* Johnson, (Tenn. 1906) 94 S. W. 600.

Notice must have been given to the carrier or the agent who entered into particular contract or under whose authority it was made. Louisville, etc., R. Co. *v.* Mink, 103 S. W. 294, 31 Ky. L. Rep. 833.

Time of Notice. — Where the loss did not arise from delay in transportation, or from any cause which would make notice at the time of the contract important, but from delay in delivery after arrival, notice of special damage at the time of arrival would make the carrier liable for damages arising from its agent's delay in delivering thereafter. Bourland *v.* Choctaw, etc., R. Co., (Tex. Civ. App. 1906) 90 S. W. 483, *reversing* (Tex. Civ. App. 1905) 87 S. W. 173.

Carrier's Knowledge of Special Circumstances May Always Be Shown on Question of Damages. — Expense of keeping teams necessary for loading logs awaiting the performance of the company's agreement to furnish cars is recoverable where the shipper has explained to the company's agent the method and expense of loading. Choctaw, etc., R. Co. *v.* Rolfe, 76 Ark. 220, 88 S. W. 870.

394. 2. Illinois Cent. R. Co. *v.* Nelson, (Ky. 1906) 97 S. W. 757.

When the testimony in regard to the notice is clear and incontrovertible, the question of notice is no longer for the jury, but one of law for the court. Illinois Cent. R. Co. *v.* Johnson, (Tenn. 1906) 94 S. W. 600, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 394.

4. Texas, etc., R. Co. *v.* Wilson Hack Line, (Tex. Civ. App. 1907) 101 S. W. 1042.

Where Actual Value Greater than Sale Price. — Where title passes to consignee the carrier is liable not for the sale price only, but for the actual value if that is greater. Texas, etc., R. Co. *v.* Wilson Hack Line, (Tex. Civ. App. 1907) 101 S. W. 1042.

395. 3. Houston, etc., R. Co. *v.* Brown, 33 Tex. Civ. App. 237, 76 S. W. 580, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 395.

396. 1. The Bérengére, 155 Fed. 439.

3. Illinois Cent. R. Co. *v.* Nelson, (Ky. 1906) 97 S. W. 757; Louisville, etc., R. Co. *v.* Mink, 103 S. W. 294, 31 Ky. L. Rep. 833; Matheson *v.* Southern R. Co., (S. Car. 1908) 60 S. E. 437; Missouri, etc., R. Co. *v.* Sproles, (Tex. Civ. App. 1906) 92 S. W. 40; Haberzettle *v.* Trinity, etc., R. Co. (Tex. Civ. App. 1907) 103 S. W. 219.

Notice to Carrier's Agent. — Notice to any of the carrier's agents authorized to make contracts for the shipment and transportation of freight is sufficient. Illinois Cent. R. Co. *v.* Mossbarger, (Ky. 1906) 91 S. W. 1121; Illinois Cent. R. Co. *v.* Watkins, (Ky. 1906) 91 S. W. 1122.

Depreciation in Value of Cattle from delay in transportation of cattle feed where notice given. Illinois Cent. R. Co. *v.* Mossbarger, (Ky. 1906) 91 S. W. 1121; Illinois Cent. R. Co. *v.* Watkins, (Ky. 1906) 91 S. W. 1122.

398. 2. Chicago, etc., R. Co. *v.* Calvert, (Tex. Civ. App. 1905) 91 S. W. 825; Missouri, etc., R. Co. *v.* Sproles, (Tex. Civ. App. 1906) 92 S. W. 40.

399. 2. Lembeck *v.* Jarvis Terminal Cold Storage Co., 68 N. J. Eq. 492, 59 Atl. 360, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399.

3. The Hibernian, (1907) P. 277; Southern R. Co. *v.* Born Steel Range Co., 126 Ga. 527, 55 S. E. 173; Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714; Nicolette Lumber Co. *v.* Peoples Coal Co., 26 Pa. Super. Ct. 575.

5. Nicolette Lumber Co. *v.* People's Coal Co., 213 Pa. St. 379, 5 Ann. Cas. 387, 62 Atl. 1060; Wallace *v.* Baltimore, etc., R. Co., 216 Pa. St. 311, 65 Atl. 665.

Contra. — Common-law lien for demurrage irrespective of special contract. Pittsburgh, etc., R. Co. *v.* H. L. Mooar Lumber Co., 27 Ohio Cir. Ct. 588; Yazoo, etc., R. Co. *v.* Searles, 85 Miss. 520, 37 So. 939; Spurlock *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 1124.

A common carrier may refuse to deliver cars of freight upon the private siding of the consignee until he pays demurrage charged

for the unreasonable detention of cars previously placed upon the siding. Thomas Phillips Co. *v.* Erie R. Co., *27* Ohio Cir. Ct. 486.

400. 5. Atchison, etc., R. Co. *v.* Bourdett, 74 Kan. 137, 85 Pac. 820.

403. 3. Savannah, etc., R. Co. *v.* Talbot, 123 Ga. 378, 3 Ann. Cas. 1092, 51 S. E. 401.

405. 1. Lembeck *v.* Jarvis Terminal Cold Storage Co., 68 N. J. Eq. 492, 59 Atl. 360, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405.

6. Lembeck *v.* Jarvis Terminal Cold Storage Co., 68 N. J. Eq. 492, 59 Atl. 360, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405.

8. The lien only extends to the contract price as contained in the bill of lading. Beasley *v.* Baltimore, etc., R. Co., *27* App. Cas. (D. C.) 595.

Extent of Lien. — The lien of the last connecting carrier is only to the extent of the contract price as shown by the bill of lading. If it claims a lien for a larger sum it does so at its peril. Beasley *v.* Baltimore, etc., R. Co., *27* App. Cas. (D. C.) 595.

406. 1. Andrus *v.* Columbian, etc., Steamboat Co., (Wash. 1907) 92 Pac. 128.

408. 2. **Absence of Knowledge by Final Carrier that Charge Was Unlawful.** — Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714.

411. 2. Lembeck *v.* Jarvis Terminal Cold Storage Co., 68 N. J. Eq. 492, 59 Atl. 360, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 411, *affirmed* 69 N. J. Eq. 781, 7 Ann. Cas. 960, 63 Atl. 257.

412. 3. **Goods Taken Out of Carrier's Possession without His Consent.** — Hahl *v.* Laux, (Tex. Civ. App. 1906) 93 S. W. 1080.

415. 1. Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 9 Ann. Cas. 790, 85 Pac. 408, 87 Pac. 80.

416. 1. Atchison, etc., R. Co. *v.* Hinsdell, (Kan. 1907) 90 Pac. 800, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 416.

417. 1. **Georgia.** — Southern R. Co. *v.* Born Steel Range Co., 126 Ga. 527, 55 S. E. 173.

Kentucky. — The sale must be within the state. Chesapeake, etc., R. Co. *v.* Saulsberry, 103 S. W. 254, 31 Ky. L. Rep. 624.

Texas. — Missouri, etc., R. Co. *v.* Rines, (Tex. Civ. App. 1905) 84 S. W. 1092.

A sale carried through without attempting to comply with the statute constitutes a conversion. Carter *v.* International, etc., R. Co., (Tex. Civ. App. 1905) 93 S. W. 681.

418. 4. Dudley *v.* Chicago, etc., R. Co., 58 W. Va. 604, 52 S. E. 718.

On refusal of the consignee to accept goods the carrier can only sell after due notice to the consignee and after notice of the sale sufficient to insure realization of their reasonable market value. Missouri, etc., R. Co. *v.* Groce, (Tex. Civ. App. 1907) 106 S. W. 720.

419. 1. Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 9 Ann. Cas. 790, 85 Pac. 408, 87 Pac. 80.

421. 1. Bradley *v.* Lehigh Valley R. Co., (C. C. A.) 153 Fed. 350.

423. 1. Allen *v.* Wells, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 610, 95 N. Y. Supp. 597.

425. 3. F. T. James Co. *v.* Dominion Express Co., 13 Ont. L. Rep. 211.

426. 1. Chicago G. W. R. Co. *v.* Dunlap, 71 Kan. 67, 80 Pac. 34; Thorley *v.* Orchis Steamship Co., (1907) 1 K. B. 660, 7 Ann. Cas. 281.

CARRIERS OF LIVE STOCK.

428. 3. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428; Cincinnati, etc., R. Co. *v.* Greening, (Ky. 1907) 100 S. W. 825, *following* Louisville, etc., R. Co. *v.* Hedger, 9 Bush (Ky.) 645, cited in the original text.

430. 3. Evans *v.* Mobile, etc., R. Co., (Ky. 1906) 90 S. W. 588; Texas, etc., R. Co. *v.* Barrow, (Tex. Civ. App. 1906) 94 S. W. 176; San Antonio, etc., R. Co. *v.* Timon, (Tex. Civ. App. 1907) 99 S. W. 418; Ft. Worth, etc., R. Co. *v.* Harrold, (Tex. Civ. App. 1907) 101 S. W. 267.

Statutes. — Texas, etc., R. Co. *v.* Shipman, (Tex. Civ. App. 1906) 98 S. W. 449.

Statute Strictly Construed. — Houston, etc., R. Co. *v.* Buchanan, (Tex. Civ. App. 1906) 94 S. W. 199.

4. Gulf, etc., R. Co. *v.* Taliaferro, (Tex. Civ. App. 1905) 89 S. W. 1120; Ft. Worth, etc., R. Co. *v.* Cage Cattle Co., (Tex. Civ. App. 1906) 95 S. W. 705.

Where Stock Pens Are Infected with Contagious Disease, if the carrier is ignorant of the condition of the pens he is not liable. Texas, etc., R. Co. *v.* Beal, (Tex. Civ. App. 1906) 97 S. W. 329.

It Is for the Jury to say whether the muddy condition of live-stock pens is negligence on the part of the carrier. Ft. Worth, etc., R. Co. *v.* Glanton, (Tex. Civ. App. 1907) 100 S. W. 166.

5. St. Louis, etc., R. Co. *v.* Burgin, 83 Ark. 502, 104 S. W. 161; Knight *v.* Quincy, etc., R. Co., 120 Mo. App. 311, 96 S. W. 716.

431. 1. **The Failure to Keep a Stock Yard in Reasonably Safe Condition** amounts to negligence. St. Louis, etc., R. Co. *v.* Beets, 75 Kan. 295, 89 Pac. 683.

3. Atchison, etc., R. Co. *v.* Veale, (Tex. Civ. App. 1905) 87 S. W. 202; Texas, etc., R. Co. *v.* Felker, (Tex. Civ. App. 1907) 99 S. W. 439.

433. 3. Texas, etc., R. Co. *v.* Dishman, (Tex. Civ. App. 1906) 91 S. W. 828.

434. 3. **A Shipper Who Has Knowledge of Defects in Cars** furnished him assumes the risk. Ficklin *v.* Wabash R. Co., 115 Mo. App. 633, 92 S. W. 347.

436. 2. Wabash R. Co. *v.* Thomas, 222 Ill. 337, 78 N. E. 777; Knight *v.* Quincy, etc., R. Co., 120 Mo. App. 311, 96 S. W. 716; Southern Kansas R. Co. *v.* Burgess, (Tex. Civ. App. 1905) 90 S. W. 189.

437. 3. **Needlessly Taking Live Stock through a Cholera-infected Zone** imposes a liability on the carrier. Council *v.* St. Louis, etc., R. Co., 123 Mo. App. 432, 100 S. W. 57.

Where the Weather Is Inclement the live stock must not be negligently exposed by the carrier. Atchison, etc., R. Co. *v.* Nation, (Tex. Civ. App. 1906) 92 S. W. 823.

But a carrier of live stock is not liable for injuries resulting from unprecedented climatic conditions. Louisville, etc., R. Co. *v.* Warfield, (Ky. 1906) 98 S. W. 313.

The Rough Handling of cattle does not amount to negligence as matter of law. Missouri, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1905) 87 S. W. 172.

Rough handling of cattle may be shown by evidence that other cattle on the same train were killed. Southern Kansas R. Co. *v.* Bennett, (Tex. Civ. App. 1907) 103 S. W. 1115.

A Depreciation in Live Stock Naturally and Necessarily Caused by long shipments does not impose upon the carrier any liability. St. Louis, etc., R. Co. *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 1176.

139. 1. St. Louis Southwestern R. Co. *v.* Butler, 82 Ark. 469, 102 S. W. 378; St. Louis, etc., R. Co. *v.* Burgin, 83 Ark. 502, 104 S. W. 161; Illinois Cent. R. Co. *v.* Holt, (Ky. 1906) 92 S. W. 540; Houston, etc., R. Co. *v.* Mayes, (Tex. Civ. App. 1906) 97 S. W. 318; Norfolk, etc., R. Co. *v.* Sutherland, 105 Va. 545, 54 S. E. 465.

140. 1. Welch *v.* Northern Pac. R. Co., 14 N. Dak. 19, 103 N. W. 396, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 440.

142. 3. Ft. Worth, etc., R. Co. *v.* Hamm, (Tex. Civ. App. 1906) 93 S. W. 215.

Statute Cannot Be Waived. — Reynolds *v.* Great Northern R. Co., 40 Wash. 163, 82 Pac. 161.

A Contract for Through Transportation without Unloading is illegal under the statute. St. Louis, etc., R. Co. *v.* Frazar, (Tex. Civ. App. 1906) 97 S. W. 325.

An Unavoidable Delay in Transportation through an act of God does not relieve the carrier of the provisions of the statutes. Chicago, etc., R. Co. *v.* Slattery, (Neb. 1906) 107 N. W. 1045.

143. 4. Louisville, etc., R. Co. *v.* Smitha, 145 Ala. 686, 40 So. 117; St. Louis Southwestern R. Co. *v.* Kilberry, 83 Ark. 87, 102 S. W. 894; Georgia Southern, etc., R. Co. *v.* Greer, 2 Ga. App. 516, 58 S. E. 782, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 443; Ross *v.* Minneapolis, etc., R. Co., 102 Minn. 249, 113 N. W. 573; Yazoo, etc., R. Co. *v.* Cox, (Miss. 1906) 40 So. 547; McFall *v.* Wabash R. Co., 117 Mo. App. 477, 94 S. W. 570; Knight *v.* Quincy, etc., R. Co., 120 Mo. App. 311, 96 S. W. 716; Texas, etc., R. Co. *v.* Snyder, (Tex. Civ. App. 1905) 86 S. W. 1041; Missouri, etc., R. Co. *v.* Russell, (Tex. Civ. App. 1905) 88 S. W. 379; Texas Cent. R. Co. *v.* Hunter, (Tex. Civ. App. 1907) 104 S. W. 1075.

146. 4. When Liability Begins. — Nelson *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 741. See also Gulf, etc., R. Co. *v.* House, (Tex. Civ. App. 1905) 88 S. W. 1110, which held that a carrier was liable for the failure to feed and water live stock awaiting shipment.

147. 1. Jones *v.* St. Louis, etc., R. Co., 115 Mo. App. 232, 91 S. W. 158.

3. But for Overpacked Crates of Fowl the shipper is liable. Cohn *v.* Platt, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 378, 95 N. Y. Supp. 535.

4. St. Louis Southwestern R. Co. *v.* Butler, 82 Ark. 469, 102 S. W. 378.

149. 5. Frasier *v.* Charleston, etc., R. Co., 73 S. Car. 140, 52 S. E. 964; Gulf, etc., R. Co. *v.* Prater, (Tex. Civ. App. 1907) 102 S. W. 739.

150. 3. *Arkansas.* — St. Louis Southwestern R. Co. *v.* McNeil, 79 Ark. 470, 96 S. W. 163; St. Louis, etc., R. Co. *v.* Crowder, 82 Ark. 562, 103 S. W. 172.

Iowa. — Tiller *v.* Chicago, etc., R. Co., (Iowa 1907) 112 N. W. 631.

Kentucky. — Illinois Cent. R. Co. *v.* Holt, (Ky. 1906) 92 S. W. 540; Cincinnati, etc., R. Co. *v.* Pendleton, (Ky. 1906) 96 S. W. 434.

Missouri. — Turner *v.* Wabash R. Co., 114 Mo. App. 539, 90 S. W. 391; Ficklin *v.* Wabash R. Co., 117 Mo. App. 211, 221, 93 S. W. 861, 847; Ratliff *v.* Quincy, etc., R. Co., 118 Mo. App. 644, 94 S. W. 1005; Farmers Bank *v.* St. Louis, etc., R. Co., 119 Mo. App. 1, 95 S. W. 286.

Nebraska. — Union Pac. R. Co. *v.* Thompson, (Neb. 1906) 106 N. W. 598; Union Pac. R. Co. *v.* Nelson, (Neb. 1906) 106 N. W. 1036.

Texas. — Gulf, etc., R. Co. *v.* Beattie, (Tex. Civ. App. 1905) 88 S. W. 367; Missouri, etc., R. Co. *v.* Stanfield, (Tex. Civ. App. 1905) 90 S. W. 517; Texas, etc., R. Co. *v.* Coggin, (Tex. Civ. App. 1905) 90 S. W. 523; St. Louis, etc., R. Co. *v.* Berry, (Tex. Civ. App. 1906) 93 S. W. 1107; Rogers *v.* Texas, etc., R. Co., (Tex. Civ. App. 1906) 94 S. W. 158; St. Louis, etc., R. Co. *v.* Easley, (Tex. Civ. App. 1906) 94 S. W. 206; San Antonio, etc., R. Co. *v.* Turner, (Tex. Civ. App. 1906) 94 S. W. 214; Missouri, etc., R. Co. *v.* Kyser, (Tex. Civ. App. 1906) 95 S. W. 747; Missouri, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 96 S. W. 53; Texas, etc., R. Co. *v.* Stewart, (Tex. Civ. App. 1906) 96 S. W. 106; St. Louis, etc., R. Co. *v.* Gunter, (Tex. Civ. App. 1907) 99 S. W. 152; Texas, etc., R. Co. *v.* Coggin, (Tex. Civ. App. 1907) 99 S. W. 1052; Southern Kansas R. Co. *v.* Bennett, (Tex. Civ. App. 1907) 103 S. W. 1115.

Delay Due to Failure to Furnish Cars. — Baltimore, etc., R. Co. *v.* Whitehill, 104 Md. 295, 64 Atl. 1033.

United States Statute. — Acton *v.* Chicago, etc., R. Co., 125 Mo. App. 223, 102 S. W. 575.

A Delay Due to a Wreck raises a presumption of negligence. McFall *v.* Wabash R. Co., 117 Mo. App. 477, 94 S. W. 570.

Unusual Delay Prima Facie Evidence of Negligence. — Chicago, etc., R. Co. *v.* Gillett, (Tex. Civ. App. 1907) 99 S. W. 712.

Mere Delay Not Evidence of Negligence. — Wright *v.* Chicago, etc., R. Co., 118 Mo. App. 392, 94 S. W. 555.

151. 1. St. Louis Merchants Bridge Terminal R. Co. *v.* Tassey, 122 Ill. App. 339.

Question Is for Jury. — Fulbright *v.* Wabash R. Co., 118 Mo. App. 482, 94 S. W. 992.

152. 2. Georgia Southern, etc., R. Co. *v.*

Greer, 2 Ga. App. 516, 58 S. E. 782; Ecton *v.* Chicago, etc., R. Co., 125 Mo. App. 223, 102 S. W. 575.

A Delay Due to the Interference of Strikers is an unavoidable delay. Sterling *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1905) 86 S. W. 655.

4. McFall *v.* Wabash R. Co., 117 Mo. App. 477, 94 S. W. 570; Fulbright *v.* Wabash R. Co., 118 Mo. App. 482, 94 S. W. 992; Bushnell *v.* Wabash R. Co., 118 Mo. App. 618, 94 S. W. 1001; Smith *v.* Chicago, etc., R. Co., 112 Mo. App. 610, 87 S. W. 9.

453. 5. St. Louis, etc., R. Co. *v.* Wells, 81 Ark. 469, 99 S. W. 534.

Failure of Shipper to Accompany Stock. — A common carrier is not relieved from its responsibility to care for animals intrusted to it for transportation by reason of the express terms of a written contract whereby the shipper agreed to accompany the stock, where the company, with knowledge of the failure on the part of the shipper to accompany the stock, proceeds under the shipping contract. Chicago, etc., R. Co. *v.* Slattery, (Neb. 1906) 107 N. W. 1045. See also Louisville, etc., R. Co. *v.* Smitha, 145 Ala. 686, 40 So. 117.

6. St. Louis Southwestern R. Co. *v.* Butler, 82 Ark. 469, 102 S. W. 378.

454. 2. St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760; St. Louis, etc., R. Co. *v.* Puckett, (Ark. 1907) 101 S. W. 762; Atchison, etc., R. Co. *v.* Means, 71 Kan. 845, 80 Pac. 604; Missouri, etc., R. Co. *v.* Fry, (Kan. 1906) 87 Pac. 754.

Texas. — Missouri, etc., R. Co. *v.* Allen, (Tex. Civ. App. 1905) 87 S. W. 168. *Compare* St. Louis, etc., R. Co. *v.* Hambrick, (Tex. Civ. App. 1906) 97 S. W. 1072, wherein it was held that where the stipulation was made in Arkansas, where it was valid, it was enforceable in Texas.

The Consideration need not be an independent one. Hatch *v.* Minneapolis, etc., R. Co., 15 N. Dak. 490, 107 N. W. 1087.

Stipulation Construed Not to Apply to Stock Killed in Transit. — Missouri, etc., R. Co. *v.* Frogley, 75 Kan. 440, 89 Pac. 903.

Injuries Resulting from the Failure to Furnish Cars in Time are not covered by the stipulation. St. Louis Southwestern R. Co. *v.* McNeil, 79 Ark. 470, 96 S. W. 163.

456. 2. St. Louis, etc., R. Co. *v.* Phillips, 17 Okla. 264, 87 Pac. 470.

457. 1. St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760.

458. 2. Baltimore, etc., R. Co. *v.* Hubbard, 72 Ohio St. 302, 74 N. E. 214.

3. Louisville, etc., R. Co. *v.* Smitha, 145 Ala. 686, 40 So. 117; Ficklin *v.* Wabash R. Co., 117 Mo. App. 211, 221, 93 S. W. 861, 847; Davis *v.* Wabash R. Co., 122 Mo. App. 637, 99 S. W. 17; Jones *v.* St. Louis, etc., R. Co., 115 Mo. App. 232, 91 S. W. 158; St. Louis, etc., R. Co. *v.* Phillips, 17 Okla. 264, 87 Pac. 470; Eckert *v.* Pennsylvania R. Co., 211 Pa. St. 267, 60 Atl. 781; Southern Kansas R. Co. *v.* Burgess, (Tex. Civ. App. 1905) 90 S. W. 189. See also Jones *v.* Quincy, etc., R. Co., 117 Mo. App. 523, 94 S. W. 735.

459. 2. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679. See also Trexler *v.* Baltimore, etc., R. Co., 28 Pa. Super. Ct. 207, which held that the rule applied in West Virginia, where the cause of action arose.

460. 3. See Galloway *v.* Erie R. Co., 116 N. Y. App. Div. 777, 102 N. Y. Supp. 25, *affirming* 107 N. Y. App. Div. 210, 95 N. Y. Supp. 17; Wilson *v.* Delaware, etc., R. Co., 119 N. Y. App. Div. 675, 104 N. Y. Supp. 293.

462. 2. The Sickness of Animals does not require the shipper to receive them while in transit. Houston, etc., R. Co. *v.* Burns, (Tex. Civ. App. 1905) 90 S. W. 688.

6. Reynolds *v.* Great Northern R. Co., 40 Wash. 163, 82 Pac. 161.

463. 5. Limitation of Liability — Declaration of Value. — See Williams *v.* Midland R. Co., 24 Times L. Rep. 170.

468. 2. Trexler *v.* Baltimore, etc., R. Co., 28 Pa. Super. Ct. 198; Houston, etc., R. Co. *v.* Burns, (Tex. Civ. App. 1905) 90 S. W. 688.

469. 3. Laurel Mercantile Co. *v.* Mobile, etc., R. Co., 87 Miss. 675, 40 So. 259.

4. St. Louis Southwestern R. Co. *v.* Kilberry, 83 Ark. 87, 102 S. W. 894; Chicago, etc., R. Co. *v.* Woodward, 164 Ind. 360, 72 N. E. 558, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 469; Cincinnati, etc., R. Co. *v.* Greening, (Ky. 1907) 100 S. W. 825.

471. 1. Thomas *v.* Wells-Fargo Express Co., (Tex. Civ. App. 1906) 95 S. W. 723.

472. 2. When Shipper Assumes Care of Stock. — Atlantic Coast Line R. Co. *v.* Dexter, 50 Fla. 188, 39 So. 634, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 472.

CARRIERS OF PASSENGERS.

481. 1. City Operating Ferry Boat Held to Be Common Carrier. — Davies *v.* Boston, 190 Mass. 194, 76 N. E. 663.

7. Cable Line. — Redmon *v.* Metropolitan St. R. Co., 185 Mo. 1, 84 S. W. 26.

Street Railways. — Lehner *v.* Metropolitan St. R. Co., 110 Mo. App. 215, 85 S. W. 110; Schloemer *v.* St. Louis Transit Co., 204 Mo. 99, 102 S. W. 565; Lincoln Traction Co. *v.* Webb, 73 Neb. 136, 102 N. W. 258.

11. Lewark *v.* Parkinson, 73 Kan. 553, 85 Pac. 601.

482. 1. *United States.* — Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937.

Alabama. — Morgan *v.* Saks, 143 Ala. 139, 38 So. 848.

Illinois. — Masonic Fraternity Temple Assoc. *v.* Collins, 210 Ill. 482, 71 N. E. 396; Anderson Art Co. *v.* Greenburg, 118 Ill. App. 220.

Kentucky. — H. B. Phillips Co. *v.* Pruitt, (Ky. 1904) 82 S. W. 628.

Missouri. — Goldsmith *v.* Holland Bldg. Co., 182 Mo. 597, 81 S. W. 1112; Hensler *v.* Stix, 113 Mo. App. 162, 88 S. W. 108; Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062.

Rhode Island. — *Contra,* Edwards *v.* Manufacturers' Bldg. Co., 27 R. I. 248, 61 Atl. 646.

Washington. — See Edwards *v.* Burke, 36 Wash. 107, 78 Pac. 610.

Wisconsin. — Bremer *v.* Pleiss, 121 Wis. 61, 98 N. W. 945.

A person who has been justifiably prohibited

from riding in an elevator and does so is not a passenger. Ferguson *v.* Truax, (Wis. 1907) 110 N. W. 395, *rehearing* (Wis. 1907) 111 N. W. 657, *reversed* on other grounds (Wis. 1907) 112 N. W. 513.

5. Chicago, etc., R. Co. *v.* Mann, (Neb. 1907) 111 N. W. 379; Hutchinson *v.* Southern R. Co., 140 N. Car. 123, 52 S. E. 263.

185. 1. Ketchum *v.* New York City R. Co., 118 N. Y. App. Div. 248, 103 N. Y. Supp. 486.

186. 1. Alabama City, etc., R. Co. *v.* Bates, (Ala. 1907) 43 So. 98; Chicago, etc., R. Co. *v.* Moran, 117 Ill. App. 42, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486.

2. Alabama City, etc., R. Co. *v.* Bates, (Ala. 1907) 43 So. 98; O'Donnell *v.* Kansas City, etc., R. Co., 197 Mo. 110, 95 S. W. 196, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486.

187. 1. Indianapolis Traction, etc., Co. *v.* Lawson, (C. C. A.) 143 Fed. 837, 6 Ann. Cas. 666, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487; Quantz *v.* Southern R. Co., 137 N. Car. 136, 49 S. E. 79.

2. Indianapolis Traction, etc., Co. *v.* Lawson, (C. C. A.) 143 Fed. 837, 6 Ann. Cas. 666; Graham *v.* Chicago, etc., R. Co., 131 Iowa 741, 107 N. W. 595.

3. Indianapolis Traction, etc., Co. *v.* Lawson, (C. C. A.) 143 Fed. 837, 6 Ann. Cas. 666.

4. Conductor on Sleeping Car Not a Passenger. — Denver, etc., R. Co. *v.* Whan, 39 Colo. 230, 89 Pac. 39.

188. 1. Anderson *v.* Missouri Pac. R. Co., 196 Mo. 442, 93 S. W. 394.

When Presumption Does Not Arise — Person in Act of Boarding Train. — Alabama City, etc., R. Co. *v.* Bates, (Ala. 1907) 43 So. 98.

2. St. Louis Southwestern R. Co. *v.* Wainwright, (C. C. A.) 152 Fed. 626, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488; Alabama City, etc., R. Co. *v.* Bates, (Ala. 1907) 43 So. 98, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488; Strong *v.* North Chicago St. R. Co., 116 Ill. App. 246; Chicago, etc., R. Co. *v.* Moran, 117 Ill. App. 42, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486; Andrews *v.* Yazoo, etc., R. Co., 86 Miss. 129, 38 So. 773, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488; Busch *v.* Interborough Rapid Transit Co., 110 N. Y. App. Div. 705, 96 N. Y. Supp. 747 (*citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488), *affirmed* 187 N. Y. 388; Foster *v.* Seattle Electric Co., 35 Wash. 177, 76 Pac. 995.

Person Attempting to Board Moving Street Car Held Not to Be a Passenger. — Lehnick *v.* Metropolitan St. R. Co., 118 Mo. App. 611, 94 S. W. 996.

189. 1. St. Louis Southwestern R. Co. *v.* Wainwright, (C. C. A.) 152 Fed. 624, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488; Alabama City, etc., R. Co. *v.* Bates, (Ala. 1907) 43 So. 98; Hicks *v.* Union Pac. R. Co., (Neb. 1906) 107 N. W. 798; Snipes *v.* Norfolk, etc., R. Co., 144 N. Car. 18, 56 S. E. 477; Lewis *v.* Houston Electric Co., (Tex. Civ. App. 1905) 88 S. W. 489.

Going upon Carrier's Premises. — Abbott *v.* Oregon R. Co., 46 Oregon 549, 7 Ann. Cas. 961, 80 Pac. 1012.

One in Act of Getting on Street Car Is Passenger. — Green *v.* Houston Electric Co., (Tex. Civ. App. 1905) 89 S. W. 44

Person Attempting to Board Rapidly Moving Train. — It has been held that one who attempts to jump upon a rapidly moving train does not become a passenger upon the train, although he may have a ticket for it. Illinois Cent. R. Co. *v.* Cotter, (Ky. 1907) 103 S. W. 279.

Running to Get on Board a Moving Street Car is not of itself enough to constitute one a passenger. Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 303, 76 N. E. 341, *reversing* 117 Ill. App. 183.

190. 1. Acceptance for Carriage Necessary. — Alabama City, etc., R. Co. *v.* Bates, (Ala. 1907) 43 So. 98; Strong *v.* North Chicago St. R. Co., 116 Ill. App. 246; Louisville, etc., R. Co. *v.* McNally, (Ky. 1907) 105 S. W. 124; Robertson *v.* Boston, etc., R. Co., 190 Mass. 108, 76 N. E. 513.

One Who Signals an interurban electric railway car by the company's right signal device, responded to by the motorman whistling or setting his brake, is a passenger. Karr *v.* Milwaukee Light, etc., Co., (Wis. 1907) 113 N. W. 62.

2. Atchison, etc., R. Co. *v.* Holloway, 71 Kan. 1, 80 Pac. 31.

3. Ticket Need Not Be Purchased Directly from Carrier. — Pittsburgh, etc., R. Co. *v.* Higgs, 165 Ind. 694, 76 N. E. 299.

191. 1. Columbia, etc., R. Co. *v.* Means, 136 Fed. 83, 68 C. C. A. 651; Williams *v.* Louisville, etc., R. Co., (Ala. 1907) 43 So. 576; Williamson *v.* Central of Georgia R. Co., 127 Ga. 125, 56 S. E. 119; Cleveland, etc., R. Co. *v.* Scott, 111 Ill. App. 234; Galveston, etc., R. Co. *v.* Fink, (Tex. Civ. App. 1906) 99 S. W. 204.

2. Birmingham R., etc., Co. *v.* Wise, (Ala. 1906) 42 So. 821; Wabash R. Co. *v.* Jellison, 124 Ill. App. 652.

3. Snipes *v.* Norfolk, etc., R. Co., 144 N. Car. 18, 56 S. E. 477.

5. Being in Waiting Room intending to take a train constitutes one a passenger. Chicago, etc., R. Co. *v.* Walker, 217 Ill. 605, 75 N. E. 520; Chicago Terminal Transfer R. Co. *v.* Young, 118 Ill. App. 226.

Person Using Station as Lounging Room Not Passenger. — Archer *v.* Union Pac. R. Co., 110 Mo. App. 349, 85 S. W. 934.

Waiting Beside Street Car Track to Board Car. — Spencer *v.* St. Louis Transit Co., 111 Mo. App. 653, 86 S. W. 593.

6. Going to Train by Other than Regular Way, in disregard of warnings, does not constitute one a passenger. Raymond *v.* Chicago, etc., R. Co., 126 Ill. App. 240.

Person Approaching Street Car. — A foot traveler on the highway who is approaching a street car stopped to receive him as a passenger, but who has not actually reached the car, is not a passenger. Duchemin *v.* Boston El. R. Co., 186 Mass. 353, 71 N. E. 780, 104 Am. St. Rep. 585.

192. 1. Columbia, etc., R. Co. *v.* Means, 136 Fed. 83, 68 C. C. A. 651.

In Act of Entering the Vehicle. — One who is in the act of stepping on a street car is a passenger. Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874; Hall *v.* Terre Haute Electric Co., 38 Ind. App. 43, 76 N. E.

334; Devoy *v.* St. Louis Transit Co., 192 Mo. 197, 91 S. W. 140.

A Person Becomes a Passenger by entry into a car placed near a station for the use of passengers awaiting a train which is to leave several hours later. Missouri, etc., R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 89 S. W. 991.

493. 1. Gulf, etc., R. Co. *v.* Bunn, (Tex. Civ. App. 1906) 95 S. W. 640.

494. 1. **Person on Wrong Street Car Held Not to Be a Passenger.** — Robertson *v.* Boston, etc., R. Co., 190 Mass. 108, 76 N. E. 513.

2. Cleveland, etc., R. Co. *v.* Scott, 111 Ill. App. 234; Wabash R. Co. *v.* Jellison, 124 Ill. App. 652; Hall *v.* Terre Haute Electric Co., 38 Ind. App. 43, 76 N. E. 334; Reynolds *v.* St. Louis Transit Co., 189 Mo. 408, 88 S. W. 50; Anderson *v.* Missouri Pac. R. Co., 196 Mo. 442, 93 S. W. 394.

496. 3. Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280; Hudson *v.* Lynn, etc., R. Co., 185 Mass. 510, 71 N. E. 66; Gates *v.* Quincy, etc., R. Co., 125 Mo. App. 334, 102 S. W. 50.

497. 1. McBride *v.* Georgia R., etc., Co., 125 Ga. 515, 54 S. E. 674, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 497; Ft. Worth, etc., R. Co. *v.* Hardin, (Tex. Civ. App. 1905) 90 S. W. 679.

2. **Remaining on Train after Reaching Destination.** — The failure of a passenger to leave the train upon reaching his destination does not necessarily terminate the relation of carrier and passenger. Forbes *v.* Chicago, etc., R. Co., (Iowa 1907) 113 N. W. 477.

A passenger who through mistake has failed to disembark at the station of his destination does not thereafter become a trespasser, but rather a licensee. Fanning *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 86 S. E. 354.

3. Atlantic City R. Co. *v.* Kiefer, (N. J. 1907) 66 Atl. 930, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 497; Brooks *v.* Philadelphia, etc., R. Co., 218 Pa. St. 1, 66 Atl. 872; Kaase *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 444; St. Louis Southwestern R. Co. *v.* Bryant, (Tex. Civ. App. 1906) 92 S. W. 813; Houston, etc., R. Co. *v.* Easton, (Tex. Civ. App. 1906) 97 S. W. 833.

Relation Continues until Reasonable Opportunity Afforded Passenger to Leave Premises. — Chicago, etc., R. Co. *v.* Tracey, 109 Ill. App. 563; Abbott *v.* Oregon R. Co., 46 Oregon 549, 7 Ann. Cas. 961, 80 Pac. 1012.

498. 6. O'Brien *v.* St. Louis Transit Co., 185 Mo. 263, 84 S. W. 939.

Relation Continues While Passenger Alighting. — Maxwell *v.* Fresno City R. Co., 4 Cal. App. 745, 89 Pac. 367; Senf *v.* St. Louis, etc., R. Co., 112 Mo. App. 74, 86 S. W. 887; Chicago Union Traction Co. *v.* Rosenthal, 217 Ill. 458, 75 N. E. 578, *affirmed* 118 Ill. App. 278; Nelson *v.* Metropolitan St. R. Co., 113 Mo. App. 702, 88 S. W. 1119.

499. 2. Hodges *v.* Southern Pac. Co., 3 Cal. App. 307, 86 Pac. 620; Glenn *v.* Lake Erie, etc., R. Co., (Ind. App. 1905) 73 N. E. 861; Glenn *v.* Lake Erie, etc., R. Co., 165 Ind. 659, 75 N. E. 282; Houston, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 103 S. W. 239.

3. A passenger alighted from a vestibuled train, the doors of which opened on the west side, on which side were the station, the town, and his home. After the departure of his train his body was found on a track to the eastward, where he had been killed by another train. It was held that his relation as a passenger had ceased prior to his death. Payne *v.* Illinois Cent. R. Co., (C. C. A.) 155 Fed. 73.

A passenger who has left the train, passed from the train shed to the passenger station, and has selected one of several passageways leading to the street, where he is injured by falling over a cuspidor, has ceased to be a passenger before the accident. Green *v.* Baltimore, etc., R. Co., 214 Pa. St. 240, 63 Atl. 603.

4. **Relation Terminated When Passenger Has Safely Alighted.** — Macon R., etc., Co. *v.* Vining, 120 Ga. 511, 48 S. E. 232; Conroy *v.* Boston El. R. Co., 188 Mass. 411, 74 N. E. 672; Reilly *v.* New York City R. Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 72, 91 N. Y. Supp. 319; Poland *v.* United Traction Co., 107 N. Y. App. Div. 561, 95 N. Y. Supp. 498.

5. Zeccardi *v.* Yonkers R. Co., 113 N. Y. App. Div. 649, 99 N. Y. Supp. 936.

500. 3. Arkansas Cent. R. Co. *v.* Bennett, 82 Ark. 393, 102 S. W. 198; Texas Midland R. Co. *v.* Ellison, (Tex. Civ. App. 1905) 87 S. W. 213.

A passenger who is allowed to wait for his train in a well-lighted car, and who is not necessarily compelled to leave it, is guilty of contributory negligence if he leaves the car on a dark night to walk on an unlighted platform merely for exercise. Abbott *v.* Oregon R. Co., 46 Oregon 549, 80 Pac. 1012.

502. 2. Colorado Springs, etc., R. Co. *v.* Petit, 37 Colo. 326, 86 Pac. 121; Wood *v.* Metropolitan St. R. Co., 181 Mo. 433, 81 S. W. 152; Walger *v.* Jersey City, etc., St. R. Co., 71 N. J. L. 356, 59 Atl. 14; Clark *v.* Durham Traction Co., 138 N. Car. 77, 50 S. E. 518; Blomsness *v.* Puget Sound Electric R. Co., (Wash. 1907) 92 Pac. 414.

503. 3. Fitzmaurice *v.* New York, etc., R. Co., 192 Mass. 159, 78 N. E. 418.

5. A circus employee, riding in a car belonging to his employers, who had contracted with the railroad company for motive power, the use of its tracks, and trainmen, under a contract exempting the company from liability for injuries to any person using the train from any cause whatever, has been held not to be a passenger. Clough *v.* Grand Trunk Western R. Co., (C. C. A.) 155 Fed. 81.

506. 1. A carrier may waive its right to insist that a person entering a special street car and tendering the fare is not a passenger by the conductor allowing him to keep his seat with the intention of transporting him to his destination. McCarter *v.* Greenville Traction Co., 72 S. Car. 134, 51 S. E. 545.

507. 4. Indianapolis Traction, etc., Co. *v.* Lawson, (C. C. A.) 143 Fed. 834, 6 Ann. Cas. 666; St. Louis, etc., R. Co. *v.* Pitcock, 82 Ark. 441, 101 S. W. 725; Indianapolis Traction, etc., Co. *v.* Klentschy, 167 Ind. 598, 79 N. E. 908, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 507; Southern R. Co. *v.* Lee,

(Ky. 1907) 101 S. W. 307; Bradburn *v.* Whatcom County R., etc., Co., 45 Wash. 582, 88 Pac. 1020; Kenny *v.* Canadian Pac. R. Co., 5 N. W. Ter. 420; Ryckman *v.* Hamilton, etc., Electric R. Co., 10 Ont. L. Rep. 419, 4 Ann. Cas. 1126, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 507, 508. See also St. Louis Southwestern R. Co. *v.* Fowler, (Tex. Civ. App. 1906) 93 S. W. 484. But see Marshall *v.* Nashville R., etc., Co., 118 Tenn. 254, 101 S. W. 419, where it was held that a carrier is liable to a gratuitous passenger for wilful, reckless, or wanton negligence.

Persons Riding Free by Consent of the Company. — Ball *v.* Mobile Light, etc., Co., 146 Ala. 309, 39 So. 584.

Boy Riding Free on Cable Car by Permission of Gripman Not a Passenger. — Drogmund *v.* Metropolitan St. R. Co., 122 Mo. App. 154, 98 S. W. 1091.

508. 1. Ryckman *v.* Hamilton, etc., Electric R. Co., 10 Ont. L. Rep. 419, 4 Ann. Cas. 1126, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 507, 508; Bradburn *v.* Whatcom County R., etc., Co., 45 Wash. 582, 88 Pac. 1020.

2. Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255; Bradburn *v.* Whatcom County R., etc., Co., 45 Wash. 582, 88 Pac. 1020.

3. A street railroad company carrying a police officer without charge in obedience to a municipal ordinance which is unconstitutional is liable for injuries sustained by him through the negligence of its motorman. Bradburn *v.* Whatcom County R., etc., Co., 45 Wash. 582, 88 Pac. 1020, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 507, 508.

5. *Illinois.* — Illinois Cent. R. Co. *v.* Jennings, 217 Ill. 140, 75 N. E. 457, *reversing* 119 Ill. App. 317.

Indiana. — Lake Shore, etc., R. Co. *v.* Teeters, (Ind. App. 1905) 74 N. E. 1014; Lake Shore, etc., R. Co. *v.* Teeters, (Ind. App. 1906) 77 N. E. 599; Southern R. Co. *v.* Roach, (Ind. App. 1906) 77 N. E. 606; Evansville, etc., R. Co. *v.* Mills, 37 Ind. App. 598, 77 N. E. 608.

Michigan. — Weaver *v.* Ann Arbor R. Co., 139 Mich. 590, 102 N. W. 1037.

Pennsylvania. — Rowdin *v.* Pennsylvania R. Co., 208 Pa. St. 623, 57 Atl. 1125.

Texas. — Mullen *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 1000; Houston, etc., R. Co. *v.* Wilkins, (Tex. Civ. App. 1906) 98 S. W. 202. See also Texas, etc., R. Co. *v.* Lynch, (Tex. Civ. App. 1906) 94 S. W. 1093.

Vermont. — Sprigg *v.* Rutland R. Co., 77 Vt. 347, 60 Atl. 143.

Distinguished from Ordinary Passenger for Hire. — Chicago, etc., R. Co. *v.* Troyer, 70 Neb. 294, 103 N. W. 680.

Not a Passenger within Nebraska Statute Defining Liability of Carrier to Passengers While Being Transported. — Riley *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 847.

510. 5. A Drover Riding on the Engine may, under some circumstances, be a passenger. Southern R. Co. *v.* Cullen, 221 Ill. 392, 77 N. E. 470, *affirming* 122 Ill. App. 293.

In Illinois Cent. R. Co. *v.* Jennings, 217 Ill. 140, 75 N. E. 457, *reversing* 119 Ill. App. 317, it was held that whether a drover had the right, under the circumstances of the case, to ride on the engine with the consent and by direction of the conductor, notwithstanding a stipulation that he should ride in the caboose, was a question for the jury.

Person Riding on Engine of Freight Train with Consent of Conductor Not a Passenger. — Illinois Cent. R. Co. *v.* Jennings, 229 Ill. 608, 82 N. E. 403.

One Having an Employee's Pass and Riding on the Engine by permission of the company may be a passenger. Wilkes *v.* Buffalo, etc., R. Co., 216 Pa. St. 355, 65 Atl. 787.

511. 4. *United States.* — Cavin *v.* Southern Pac. Co., 136 Fed. 592, 69 C. C. A. 366; Yarrington *v.* Delaware, etc., Co., 143 Fed. 565, *affirmed* (C. C. A.) 152 Fed. 396; Southern Pac. Co. *v.* Cavin, (C. C. A.) 144 Fed. 348.

District of Columbia. — Chesapeake, etc., R. Co. *v.* Patton, 23 App. Cas. (D. C.) 113; Lindsey *v.* Pennsylvania R. Co., 26 App. Cas. (D. C.) 503, 6 Ann. Cas. 862.

Illinois. — Wabash R. Co. *v.* Jellison, 124 Ill. App. 652, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 511.

Indiana. — Malott *v.* Central Trust Co., 168 Ind. 428, 79 N. E. 369.

Massachusetts. — Rice *v.* New York Cent., etc., R. Co., 186 Mass. 521, 72 N. E. 79.

Minnesota. — Decker *v.* Chicago, etc., R. Co., 102 Minn. 99, 112 N. W. 901, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 511.

Tennessee. — Illinois Cent. R. Co. *v.* Porter, 117 Tenn. 13, 94 S. W. 666.

Texas. — Sproule *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1906) 91 S. W. 657.

Canada. — Kenny *v.* Canadian Pac. R. Co., 5 N. W. Ter. 420.

Apparent Exception to Rule in Pennsylvania. — See Yarrington *v.* Delaware, etc., Co., 143 Fed. 565, *affirmed* (C. C. A.) 152 Fed. 396.

512. 2. Davis *v.* Chesapeake, etc., R. Co., 92 S. W. 339, 29 Ky. L. Rep. 53. See also Shannon *v.* Chesapeake, etc., R. Co., 104 Va. 645, 52 S. E. 376.

513. 2. Wieland *v.* Southern Pac. Co., 1 Cal. App. 343, 82 Pac. 226; Gray *v.* Columbia River, etc., R. Co., (Oregon 1907) 88 Pac. 297; Houston, etc., R. Co. *v.* Berry, (Tex. Civ. App. 1904) 84 S. W. 258; Young *v.* Missouri Pac. R. Co., 113 Mo. App. 636, 88 S. W. 767; Mullen *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 1000; International, etc., R. Co. *v.* Cruseturner, (Tex. Civ. App. 1906) 98 S. W. 423.

514. 1. See St. Louis Southwestern R. Co. *v.* Morgan, (Tex. Civ. App. 1906) 98 S. W. 408.

2. Harvey *v.* Deep River Logging Co., (Oregon 1907) 90 Pac. 501.

515. 1. Person Riding on Freight Train Unlawfully, Not a Passenger. — O'Donnell *v.* Kansas City, etc., R. Co., 197 Mo. 110, 95 S. W. 196.

A Person Riding Unlawfully on a Flat Car instead of the caboose of a freight train operated for logging and other private purposes is not a passenger. Boisen *v.* Cobbs, 147 Mich. 429, 111 N. W. 82.

2. Where the carrier's agent sold the plaintiff a ticket good for a freight train and promised him a permit, testimony by the plaintiff is admissible that he did not know what a permit was, and did not understand that he would require to have any evidence of it other than the ticket. Houston, etc., R. Co. *v.* Berry, (Tex. Civ. App. 1904) 84 S. W. 258.

3. Vassor *v.* Atlantic Coast Line R. Co., 142 N. Car. 68, 54 S. E. 849.

516. 1. An Employee Being Transported to or from Work is not a passenger. Southern Indiana R. Co. *v.* Messick, 35 Ind. App. 676, 74 N. E. 1097; Kilduff *v.* Boston El. R. Co., 195 Mass. 307, 81 N. E. 191; St. Clair *v.* St. Louis, etc., R. Co., 122 Mo. App. 527, 99 S. W. 775, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 516. But see Indianapolis Traction, etc., Co. *v.* Romans, (Ind. App. 1907) 79 N. E. 1068, wherein the finding of a jury that such a person was a passenger was sustained.

Where the employee received as remuneration a certain sum and transportation tickets, on one of which he was riding home after his day's work had been finished, it was held that he was a passenger. Enos *v.* Rhode Island Suburban R. Co., 28 R. I. 291, 67 Atl. 5.

An Employee Who Rides on a Freight Elevator in the employer's building in going to and from work is not a passenger. Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158.

517. 1. Haas *v.* St. Louis, etc., R. Co., 111 Mo. App. 706, 90 S. W. 1155; Johnson *v.* Texas Cent. R. Co., (Tex. Civ. App. 1906) 93 S. W. 433; St. Louis Southwestern R. Co. *v.* Hill, (Tex. Civ. App. 1907) 103 S. W. 227.

518. 2. Indianapolis Traction, etc., Co. *v.* Lawson, (C. C. A.) 143 Fed. 834, 6 Ann. Cas. 666, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 518; Chicago Union Traction Co. *v.* Lowenrosen, 125 Ill. App. 194, *affirmed* 222 Ill. 506, 78 N. E. 813; Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216; Dunne *v.* New York, etc., R. Co., 99 N. Y. App. Div. 571, 91 N. Y. Supp. 145; Chesapeake, etc., R. Co. *v.* Fortune, 107 Va. 412, 59 S. E. 1096, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 518. See also O'Brien *v.* Arbib, (1907) Sc. Ct. Sess. 975.

Person Known to Be Assisting Passenger Entitled to Reasonable Opportunity to Alight. — Southern R. Co. *v.* Patterson, 148 Ala. 77, 41 So. 964.

Carrier Liable for Injury by Negligent Handling of Baggage. — Atlantic, etc., R. Co. *v.* Owens, 123 Ga. 393, 51 S. E. 404.

Carrier's Relation to Such Persons. — A company will not be liable for the result of an unsuccessful attempt of a brakeman to prevent such a person from alighting from the train after it has started. Chesapeake, etc., R. Co. *v.* Paris, 107 Va. 408, 59 S. E. 398.

520. 3. Tracks — Highest Degree of Care. — St. Louis, etc., R. Co. *v.* Boyer, (Tex. Civ. App. 1906) 97 S. W. 1070.

4. Jackson *v.* Natchez, etc., R. Co., 114 La. 981, 38 So. 701.

521. 3. Ball *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 129, 96 N. Y. Supp. 739; Cain *v.* Atlantic Coast Line R. Co., 74 S. Car. 89, 54 S. E. 244; Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255; Galveston, etc., R. Co. *v.* Patillo, (Tex. Civ. App. 1907) 101 S. W. 492.

5. Philadelphia, etc., R. Co. *v.* Allen, 103 Md. 110, 62 Atl. 245.

522. 2. France *v.* New York Cent., etc., R. Co., 118 N. Y. App. Div. 550, 102 N. Y. Supp. 991.

3. Dangerous Proximity of Parallel Tracks Constitutes Negligence. — Georgetown, etc., R. Co. *v.* Smith, 25 App. Cas. (D. C.) 259; Smith *v.* St. Louis Transit Co., 120 Mo. App. 328, 97 S. W. 218; Staples *v.* Rhode Island Suburban R. Co., (R. I. 1906) 67 Atl. 431.

Dangerous Proximity of Structures to Track May Be Negligence. — City Electric R. Co. *v.* Salmon, 1 Ga. App. 491, 57 S. E. 926; Pomeroy *v.* Boston, etc., R. Co., 193 Mass. 507, 79 N. E. 764.

523. 5. St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343.

6. Citizens' R. Co. *v.* Sinclair, 36 Tex. Civ. App. 266, 81 S. W. 329; Boyles *v.* Texas, etc., R. Co., (Tex. Civ. App. 1905) 86 S. W. 936.

A street railroad company is negligent in using for the transportation of small children a car, the seats of which project beyond the floor so that a child may fall into the street. Northern Texas Traction Co. *v.* Roye, (Tex. Civ. App. 1905) 86 S. W. 621.

The carrier's duty being limited to safe transportation does not include the duty to provide dressing rooms for passengers. Ozanne *v.* Illinois Cent. R. Co., 151 Fed. 900.

Car Steps. — Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167; Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395; Traphagen *v.* Erie R. Co., 73 N. J. L. 759, 64 Atl. 1072, 67 Atl. 753.

The Platform Gate of a Street Car is an appliance in the maintenance of which the utmost human skill, care, and foresight is required. Stappers *v.* Interurban St. R. Co., (N. Y. City Ct., Tr. T.) 56 Misc. (N. Y.) 337, 106 N. Y. Supp. 854.

Stoves and Furnaces. — A right of action accrues to a postal clerk for a breach of the duty to properly warm postal cars as required by the federal statutes. Lindsey *v.* Pennsylvania R. Co., 26 App. Cas. (D. C.) 503, 6 Ann. Cas. 862.

A railroad company is liable for injuries caused by furnishing a car incapable of being kept comfortably warm. Missouri, etc., R. Co. *v.* Foster, (Tex. Civ. App. 1905) 87 S. W. 879.

Defective Insulation of Electric Street Car. — South Covington, etc., St. R. Co. *v.* Smith, 86 S. W. 970, 27 Ky. L. Rep. 811.

Wheels. — Lowenthal *v.* Vicksburg, etc., R. Co., 117 La. 1007, 42 So 483.

Injury by Breaking of Seat. — Gould *v.* Boston El. R. Co., 191 Mass. 396, 77 N. E. 712.

Cable Grip. — Roscoe *v.* Metropolitan St. R. Co., 202 Mo. 576, 101 S. W. 32.

Vestibules. — A railroad company is not bound to have its cars vestibuled, but having done so, it cannot by acts and words lead its passengers to believe that the doors of the vestibule will be kept closed between stations, and then negligently leave them open, without in-

curring liability to passengers injured thereby. Crandall *v.* Minneapolis, etc., R. Co., 96 Minn. 434, 105 N. W. 185.

Defective Door Latch. — Missouri, etc., R. Co. *v.* Perry, (Tex. Civ. App. 1906) 95 S. W. 42.

524. 3. Howell *v.* Lansing City Electric R. Co., 136 Mich. 432, 99 N. W. 406.

525. 4. Paine *v.* Geneva, etc., Traction Co., 115 N. Y. App. Div. 729, 101 N. Y. Supp. 204; St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343.

527. 1. Jackson *v.* Natchez, etc., R. Co., 114 La. 981, 38 So. 701.

Street Railway Company. — Mannon *v.* Camden Interstate R. Co., 56 W. Va. 554, 49 S. E. 450.

The Degree of Care required in keeping the company's appliances in reasonably good repair is that high degree of care which would be exercised by very cautious, competent, and prudent persons under the same or similar circumstances. St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343.

3. Lowenthal *v.* Vicksburg, etc., R. Co., 117 La. 1007, 42 So. 483; Wood *v.* Metropolitan St. R. Co., 181 Mo. 433, 81 S. W. 152; Cleveland, etc., Traction Co. *v.* Ward, 27 Ohio Cir. Ct. 761; Texas, etc., R. Co. *v.* Leakey, (Tex. Civ. App. 1905) 87 S. W. 1168; St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343; Galveston, etc., R. Co. *v.* Young, (Tex. Civ. App. 1907) 100 S. W. 993.

528. 4. Cleveland, etc., Traction Co. *v.* Ward, 27 Ohio Cir. Ct. 761.

530. 6. **Station Platform Owned by Another than Carrier.** — Houston, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1905) 89 S. W. 805.

532. 1. Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216; Hancock *v.* New York Cent., etc., R. Co., 100 N. Y. App. Div. 161, 91 N. Y. Supp. 601, *affirmed* 184 N. Y. 540, 76 N. E. 1096; Schlessinger *v.* Manhattan R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 504, 98 N. Y. Supp. 840.

Platforms. — Maxfield *v.* Maine Cent. R. Co., 100 Me. 79, 60 Atl. 710, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532; Beverley *v.* Boston El. R. Co., 194 Mass. 450, 80 N. E. 507; Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395; Wood *v.* Metropolitan St. R. Co., 181 Mo. 433, 81 S. W. 152; Newcomb *v.* New York Cent., etc., R. Co., 182 Mo. 687, 81 S. W. 1069; Laub *v.* Chicago, etc., R. Co., 118 Mo. App. 488, 94 S. W. 550; Windels *v.* Interurban Rapid Transit R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 646, 98 N. Y. Supp. 854.

Duty to Clear Platforms of Obstructions. — Matthieson *v.* Burlington, etc., R. Co., 125 Iowa 90, 100 N. W. 51; Scholtz *v.* Interborough Rapid Transit R. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 619, 95 N. Y. Supp. 557.

Duty to Light Platforms. — Merryman *v.* Chicago G. W. R. Co., (Iowa 1907) 113 N. W. 357; Illinois Cent. R. Co. *v.* Cruse, 96 S. W. 821, 29 Ky. L. Rep. 914; Gerhart *v.* Wabash R. Co., 110 Mo. App. 105, 84 S. W. 100.

Snow and Ice on Platform. — McGuire *v.* Interborough Rapid Transit Co., 104 N. Y. App. Div. 105, 93 N. Y. Supp. 316.

Street Railways. — A carrier by street railway is not bound to build platforms in the city street on a level with the rails. Sweet *v.* Detroit United R. Co., 141 Mich. 650, 105 N. W. 132, 12 Detroit Leg. N. 575.

2. Glenn *v.* Lake Erie, etc., R. Co., (Ind. App. 1905) 73 N. E. 861.

3. Pittsburgh, etc., R. Co. *v.* Harris, 38 Ind. App. 77, 77 N. E. 1051; McNaughton *v.* Illinois Cent. R. Co., (Iowa 1907) 113 N. W. 844; Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532; Maxfield *v.* Maine Cent. R. Co., 100 Me. 79, 60 Atl. 710, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532; Chicago, etc., R. Co. *v.* Mann, (Neb. 1907) 111 N. W. 379.

533. 1. White *v.* Seattle, etc., Nav. Co., 36 Wash. 281, 78 Pac. 909.

2. Blumenthal *v.* Union Electric Co., 129 Iowa 322, 105 N. W. 588.

534. 2. The Napolitan Prince, 134 Fed. 159.

535. 1. **A Pullman Car Conductor** is a servant of the railroad company so as to make it liable for the wrongful ejection by him of a passenger but not of a trespasser. Blake *v.* Kansas City Southern R. Co., (Tex. Civ. App. 1905) 85 S. W. 430.

536. 4. Kuhlen *v.* Boston, etc., R. Co., 193 Mass. 341, 79 N. E. 815.

538. 1. Price *v.* St. Louis, etc., R. Co., 75 Ark. 479, 88 S. W. 575; Louisville, etc., R. Co. *v.* McNally, (Ky. 1907) 105 S. W. 124.

4. Illinois Cent. R. Co. *v.* Allen, 89 S. W. 150, 28 Ky. L. Rep. 108, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 538; Toledo, etc., Traction Co. *v.* McFall, 28 Ohio Cir. Ct. 362; Texas, etc., R. Co. *v.* Harrington, (Tex. Civ. App. 1906) 98 S. W. 653, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 538.

540. 1. Wieland *v.* Southern Pac. Co., 1 Cal. App. 343, 82 Pac. 226; Louisville, etc., R. Co. *v.* DuBose, 120 Ga. 339, 47 S. E. 917; Gardner *v.* St. Louis, etc., R. Co., 117 Mo. App. 138, 93 S. W. 917.

2. Gardner *v.* St. Louis, etc., R. Co., 117 Mo. App. 138, 93 S. W. 917.

541. 2. Cincinnati, etc., R. Co. *v.* Taylor, 85 S. W. 168, 27 Ky. L. Rep. 351; Louisville, etc., R. Co. *v.* Beard, 90 S. W. 944, 28 Ky. L. Rep. 921; Artherholt *v.* Erie Electric Motor Co., 27 Pa. Super. Ct. 141.

A carrier is liable for damages to the clothing and sensibilities of a passenger in a street car by a dog brought in by another passenger and allowed to remain there. Westcott *v.* Seattle, etc., R. Co., 41 Wash. 618, 84 Pac. 588.

3. Garvik *v.* Burlington, etc., R. Co., 131 Iowa 415, 108 N. W. 327; O'Brien *v.* St. Louis Transit Co., 185 Mo. 263, 84 S. W. 939; Artherholt *v.* Erie Electric Motor Co., 27 Pa. Super. Ct. 141; Cincinnati, etc., R. Co. *v.* Harris, 115 Tenn. 501, 91 S. W. 211; Lindsay *v.* Oregon Short Line Co., 13 Idaho 477, 90 Pac. 984; Blomsness *v.* Puget Sound Electric R. Co., (Wash. 1907) 92 Pac. 414. See also O'Brien *v.* Arbib, (1907) Sc. Ct. Sess. 975.

542. **1.** The Minnetonka, (C. C. A.) 146 Fed. 514, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 542, 545; Hayne *v.* Union St. R. Co., 189 Mass. 551, 76 N. E. 219; Gulf, etc., R. Co. *v.* Luther, (Tex. Civ. App. 1905) 90 S. W. 44; Galveston, etc., R. Co. *v.* Bean, (Tex. Civ. App. 1907) 99 S. W. 721.

543. **2.** Gardner *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 45 Misc. (N. Y.) 424, 90 N. Y. Supp. 373; Reilly *v.* New York City R. Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 72, 91 N. Y. Supp. 319; St. Louis, etc., R. Co. *v.* Hatch, 116 Tenn. 580, 94 S. W. 671.

545. **1.** *Arkansas.* — Little Rock R., etc., Co. *v.* Goerner, 80 Ark. 158, 95 S. W. 1007; St. Louis, etc., R. Co. *v.* Mynott, 83 Ark. 6, 102 S. W. 380.

Connecticut. — Levidow *v.* Starin, 77 Conn. 600, 60 Atl. 123.

Iowa. — Garvik *v.* Burlington, etc., R. Co., 124 Iowa 691, 100 N. W. 498.

Minnesota. — Farrell *v.* Great Northern R. Co., 100 Minn. 361, 111 N. W. 388.

Mississippi. — Yazoo, etc., R. Co. *v.* Williams, 87 Miss. 344, 39 So. 489.

Missouri. — Flynn *v.* St. Louis Transit Co., 113 Mo. App. 185, 87 S. W. 560; McQuerry *v.* Metropolitan St. R. Co., 117 Mo. App. 255, 92 S. W. 912.

New York. — Danziger *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 845; Busch *v.* Interborough Rapid Transit Co., 187 N. Y. 388, 80 N. E. 197, *affirming* 110 N. Y. App. Div. 705, 96 N. Y. Supp. 747; Zeccardi *v.* Yonkers R. Co., 113 N. Y. App. Div. 649, 99 N. Y. Supp. 936.

Texas. — Galveston, etc., R. Co. *v.* Bean, (Tex. Civ. App. 1907) 99 S. W. 721.

Washington. — Blomsness *v.* Puget Sound Electric R. Co., (Wash. 1907) 92 Pac. 414.

Carrier Liable for Unintentional but Negligent Assault by Conductor. — Kohner *v.* Capital Traction Co., 22 App. Cas. (D. C.) 181.

Passenger's Negligence Will Not Justify an Assault. — Artherholt *v.* Erie Electric Motor Co., 27 Pa. Super. Ct. 141.

Passenger Pushed from Platform of Car. — International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000.

Assaults Committed by Brakemen. — St. Louis, etc., R. Co. *v.* Dowgiallo, 82 Ark. 289, 101 S. W. 412.

Rape of Passenger by Brakeman. — Garvik *v.* Burlington, etc., R. Co., 131 Iowa 415, 108 N. W. 327.

Relation of Carrier and Passenger Must Exist. — Chicago, etc., R. Co. *v.* Stratton, 111 Ill. App. 142.

547. **6.** O'Brien *v.* St. Louis Transit Co., 185 Mo. 263, 84 S. W. 939; Reed *v.* New York, etc., R. Co., 116 N. Y. App. Div. 709, 102 N. Y. Supp. 19; Friar *v.* Orange, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 274.

548. **3.** Coleman *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 473; O'Brien *v.* St. Louis Transit Co., 185 Mo. 263, 84 S. W. 939; Mitchell *v.* United R. Co., 125 Mo. App. 1, 102 S. W. 661; Danziger *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 845.

549. **3.** St. Louis, etc., R. Co. *v.* Mynott, 83 Ark. 6, 102 S. W. 380; Chicago Terminal Transfer R. Co. *v.* Young, 118 Ill. App. 226; Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280; Ruebsam *v.* St. Louis Transit Co., 108 Mo. App. 437, 83 S. W. 984; Mahoning Valley R. Co. *v.* De Pascale, 70 Ohio St. 179, 71 N. E. 633; Lindsay *v.* Oregon Short Line Co., 13 Idaho 477, 90 Pac. 984.

Carrier Liable for Wrongful Expulsion — *United States.* — Baltimore, etc., R. Co. *v.* Kitchin, 135 Fed. 520, 68 C. C. A. 70; La Gascogne, 135 Fed. 577.

Illinois. — Chicago Union Traction Co. *v.* McClevey, 126 Ill. App. 21.

Kentucky. — Southern R. Co. *v.* Cassell, 122 Ky. 317, 92 S. W. 281.

Michigan. — Pierson *v.* Illinois Cent. R. Co., 149 Mich. 167, 112 N. W. 923.

Missouri. — Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

New York. — Samuels *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 137, 101 N. Y. Supp. 534.

Ohio. — Ellsworth *v.* Pennsylvania Co., 25 Ohio Cir. Ct. 797; Cleveland City R. Co. *v.* Conner, 74 Ohio St. 225, 78 N. E. 376.

Pennsylvania. — Golden *v.* Pittsburg R. Co., 28 Pa. Super. Ct. 313.

Rhode Island. — Arnold *v.* Rhode Island Co., 28 R. I. 118, 163, 66 Atl. 60.

South Carolina. — McCarter *v.* Greenville Traction Co., 72 S. Car. 134, 51 S. E. 545.

Texas. — Texas, etc., R. Co. *v.* Payne, (Tex. Civ. App. 1905) 87 S. W. 330; International, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 709; Texas, etc., R. Co. *v.* Lynch, (Tex. Civ. App. 1906) 94 S. W. 1093; Gulf, etc., R. Co. *v.* Dyer, (Tex. Civ. App. 1906) 95 S. W. 12.

West Virginia. — De Board *v.* Camden Interstate R. Co., (W. Va. 1907) 57 S. E. 279.

A carrier is liable for injuries received by a passenger as the proximate result of his expulsion at a dangerous time and place. Tilburg *v.* Northern Cent. R. Co., 217 Pa. St. 618, 66 Atl. 846.

Carrier Liable for Unlawful and Violent Ejection. — Seaboard Air Line R. Co. *v.* O'Quin, 124 Ga. 357, 52 S. E. 427.

Expulsion from Moving Train. — Louisville, etc., R. Co. *v.* McNally, (Ky. 1907) 105 S. W. 124.

Carrier Held Liable for Threat by Conductor to Eject. — Georgia R., etc., Co. *v.* Baker, 125 Ga. 562, 54 S. E. 639.

550. **1.** *Georgia.* — Wolfe *v.* Georgia R., etc., Co., 2 Ga. App. 499, 58 S. E. 899.

Illinois. — Chicago Union Traction Co. *v.* McClevey, 126 Ill. App. 21.

Kentucky. — Illinois Cent. R. Co. *v.* Winslow, 84 S. W. 1175, 27 Ky. L. Rep. 329.

Texas. — Gulf, etc., R. Co. *v.* Luther, (Tex. Civ. App. 1905) 90 S. W. 44; San Antonio Traction Co. *v.* Lambkin, (Tex. Civ. App. 1907) 99 S. W. 574; St. Louis Southwestern R. Co. *v.* Granger, (Tex. Civ. App. 1907) 100 S. W. 987; San Antonio Traction Co. *v.* Davis, (Tex. Civ. App. 1907) 101 S. W. 554; St. Louis Southwestern R. Co. *v.* Hill, (Tex. Civ. App. 1907) 103 S. W. 227.

2. Georgia R., etc., Co. *v.* Baker, 120 Ga. 991, 48 S. E. 355, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 550; Cincinnati, etc., R. Co. *v.* Harris, 115 Tenn. 501, 91 S. W. 211; Gulf, etc., R. Co. *v.* Luther, (Tex. Civ. App. 1905) 90 S. W. 44.

551. 1. Daniel *v.* Atlantic Coast Line R. Co., 136 N. Car. 517, 48 S. E. 816.

Malicious Prosecution. — Boden *v.* St. Louis Transit Co., 108 Mo. App. 696, 84 S. W. 181.

2. Chicago, etc., R. Co. *v.* Gwin, 125 Ill. App. 456; Dwyer *v.* St. Louis Transit Co., 108 Mo. App. 152, 83 S. W. 303; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

552. 2. But see Texas Midland R. Co. *v.* Dean, 98 Tex. 517, 85 S. W. 1135.

3. **Carrier Liable for False Arrest of Passenger by Mistake of Servant.** — Tolchester Beach Imp. Co. *v.* Scharnagl, 105 Md. 199, 65 Atl. 916.

4. Schmidt *v.* New Orleans R. Co., 116 La. 311, 40 So. 714.

553. 2. **Contra.** — In a similar case the company was held liable where the agent knew that he was infected with the disease. Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589.

3. *Alabama.* — Montgomery Traction Co. *v.* Whatley, (Ala. 1907) 44 So. 538.

Indiana. — Pittsburg, etc., R. Co. *v.* Richardson, (Ind. App. 1907) 82 N. E. 536.

Massachusetts. — Kuhlen *v.* Boston, etc., R. Co., 193 Mass. 341, 79 N. E. 815.

Missouri. — Williams *v.* St. Louis, etc., R. Co., 119 Mo. App. 663, 96 S. W. 307; Woas *v.* St. Louis Transit Co., 198 Mo. 664, 96 S. W. 1017.

Nebraska. — Bevard *v.* Lincoln Traction Co., 74 Neb. 802, 105 N. W. 635.

New York. — Stutsky *v.* Brooklyn Heights R. Co., (Supm. Ct. App. T.) 94 N. Y. Supp. 433; Grogan *v.* Brooklyn Heights R. Co., 107 N. Y. App. Div. 254, 95 N. Y. Supp. 23.

Pennsylvania. — Kennedy *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 623.

South Carolina. — Franklin *v.* Atlanta, etc., Air Line R. Co., 74 S. Car. 359, 54 S. E. 578, *citing* (in the dissenting opinion) 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 553.

Tennessee. — Nashville, etc., R. Co. *v.* Flake, 114 Tenn. 671, 88 S. W. 326, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 553.

Virginia. — Norfolk, etc., R. Co. *v.* Birchfield, 105 Va. 809, 54 S. E. 879.

Notice of Threatened Violence or Impending Danger Necessary. — Anderson *v.* South Carolina, etc., R. Co., 58 S. E. 149, 77 S. Car. 434.

Carrier Liable Only for Acts Which Can Reasonably Be Anticipated. — Buchter *v.* New York City R. Co., (Supm. Ct. App. T.) 90 N. Y. Supp. 335: Madden *v.* New York Cent., etc., R. Co., 98 N. Y. App. Div. 406, 90 N. Y. Supp. 261.

Opportunity to Know of Threatened Injury. — Taylor *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 59 S. E. 641; Texas, etc., R. Co. *v.* Storey, 37 Tex. Civ. App. 156, 83 S. W. 852.

Degree of Care — Utmost Vigilance and Care. — Bosworth *v.* Union R. Co., 26 R. I. 316, 3 Ann. Cas. 1080, 58 Atl. 982, (dissenting opinion) *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 554, note.

Ordinary Care and Prudence. — Bosworth *v.* Union R. Co., 26 R. I. 316, 3 Ann. Cas. 1080, 58 Atl. 982.

555. 2. *United States.* — Brown *v.* Chicago, etc., R. Co., (C. C. A.) 139 Fed. 972, 3 Ann. Cas. 251.

Georgia. — Hillman *v.* Georgia R., etc., Co., 126 Ga. 814, 56 S. E. 68; Grimsley *v.* Atlantic Coast Line R. Co., 1 Ga. App. 557, 57 S. E. 943.

Michigan. — McWilliams *v.* Lake Shore, etc., R. Co., 146 Mich. 216, 109 N. W. 272, 13 Detroit Leg. N. 722.

Tennessee. — St. Louis, etc., R. Co. *v.* Hatch, 116 Tenn. 580, 94 S. W. 671.

Texas. — McCardell *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 102 S. W. 941.

Virginia. — Norfolk, etc., R. Co. *v.* Birchfield, 105 Va. 809, 54 S. E. 879.

Canada. — Canadian Pac. R. Co. *v.* Blain, 36 Can. Sup. Ct. 159.

The assaulted passenger may recover although his damage consists of mental anguish and humiliation only, unaccompanied by physical injuries. International, etc., R. Co. *v.* Henderson, (Tex. Civ. App. 1904) 82 S. W. 1065.

Protection from Arrest. — It is not the duty of a conductor to resist a known officer of the law in making an arrest. Bowden *v.* Atlantic Coast Line R. Co., 144 N. Car. 28, 56 S. E. 558.

556. 2. **Accidental Injuries.** — Madden *v.* New York Cent., etc., R. Co., 98 N. Y. App. Div. 406, 90 N. Y. Supp. 261.

A carrier is liable for injuries caused by permission given to passengers to recklessly discharge firearms on board its vessel. Northern Commercial Co. *v.* Nestor, (C. C. A.) 138 Fed. 383.

557. 5. **Carrier Liable for Permitting Profane and Vulgar Language in Presence of Women Passengers.** — Williams *v.* St. Louis, etc., R. Co., 119 Mo. App. 663, 96 S. W. 307.

558. 1. Montgomery Traction Co. *v.* Whatley, (Ala. 1907) 44 So. 538.

There Must Be Opportunity to Discover, with the exercise of reasonable care, the passenger's condition and intent. Texas, etc., R. Co. *v.* Storey, 37 Tex. Civ. App. 156, 83 S. W. 852.

2. Adderley *v.* Great Northern R. Co., (1905) 2 Ir. R. 378.

A carrier is not liable for injuries received by a passenger on a street car from an intoxicated passenger, when the only negligence alleged was the admission of the intoxicated passenger into the car and the evidence showed that there was no appearance of his being intoxicated when admitted. Brehony *v.* Pottsville Union Traction Co., 218 Pa. St. 123, 66 Atl. 1006.

6. *Alabama.* — Southern R. Co. *v.* Cunningham, (Ala. 1907) 44 So. 658.

Arkansas. — Little Rock Traction, etc., Co. *v.* Kimbro, 75 Ark. 211, 87 S. W. 121.

Indiana. — Wabash River Traction Co. *v.* Baker, 167 Ind. 266, 78 N. E. 196, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 558; Pittsburg, etc., R. Co. *v.* Richardson, (Ind. App. 1907) 82 N. E. 536.

Pennsylvania. — Englehaupt *v.* Erie R. Co., 209 Pa. St. 182, 58 Atl. 154.

Tennessee. — St. Louis, etc., R. Co. *v.* Hatch, 116 Tenn. 580, 94 S. W. 671.

Utah. — Paul *v.* Salt Lake City R. Co., 30 Utah 48, 83 Pac. 563, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 558; Mathis *v.* Southern Pac. Co., 31 Utah 507, 88 Pac. 668.

Washington. — Jordan *v.* Seattle, etc., R. Co., (Wash 1907) 92 Pac. 284, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 558.

559. 1. *United States.* — Cavin *v.* Southern Pac. Co., 136 Fed. 592, 69 C. C. A. 366.

Maine. — Maxfield *v.* Maine Cent. R. Co., 100 Me. 79, 60 Atl. 710.

Massachusetts. — Pomeroy *v.* Boston, etc., R. Co., 193 Mass. 507, 79 N. E. 764; Millmore *v.* Boston El. R. Co., 194 Mass. 323, 80 N. E. 445; Egan *v.* Old Colony St. R. Co., 195 Mass. 159, 80 N. E. 696; Pitcher *v.* Old Colony St. R. Co., (Mass. 1907) 81 N. E. 876; Isbell *v.* Pittsfield Electric St. R. Co., (Mass. 1907) 82 N. E. 3.

Texas. — St. Louis Southwestern R. Co. *v.* Harkey, (Tex. Civ. App. 1905) 88 S. W. 506.

Washington. — Denham *v.* Washington Water Power Co., 38 Wash. 354, 80 Pac. 546.

A carrier of passengers must exercise such reasonable diligence for the safety of passengers during transportation as the nature of the business requires. Chaffe *v.* Consolidated R. Co., (Mass. 1907) 82 N. E. 497.

560. 1. *United States.* — Ozanne *v.* Illinois Cent. R. Co., 151 Fed. 900.

Alabama. — Birmingham R., etc., Co. *v.* King, (Ala. 1906) 42 So. 612.

Arkansas. — Little Rock Traction, etc., Co. *v.* Kimbro, 75 Ark. 211, 87 S. W. 121.

Delaware. — Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153; Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167.

Georgia. — Southern R. Co. *v.* Cunningham, 123 Ga. 90, 50 S. E. 979.

Illinois. — Ware *v.* Illinois Cent. R. Co., 119 Ill. App. 456.

Indiana. — Pittsburgh, etc., R. Co. *v.* Rose, (Ind. App. 1907) 79 N. E. 1094.

Iowa. — Blumenthal *v.* Union Electric Co., 129 Iowa 322, 105 N. W. 588.

Kansas. — Lewark *v.* Parkinson, 73 Kan. 553, 85 Pac. 601.

Maryland. — Western Maryland R. Co. *v.* Shivers, 101 Md. 391, 61 Atl. 618; Philadelphia, etc., R. Co. *v.* Allen, 102 Md. 110, 62 Atl. 245; United R., etc., Co. *v.* Weir, 102 Md. 286, 62 Atl. 588.

Massachusetts. — Millmore *v.* Boston El. R. Co., 194 Mass. 323, 80 N. E. 445.

Missouri. — McKinstry *v.* St. Louis Transit Co., 108 Mo. App. 12, 82 S. W. 1108; Maggioli *v.* St. Louis Transit Co., 108 Mo. App. 416, 83 S. W. 1026; Evers *v.* Wiggins Ferry Co., 116 Mo. App. 130, 92 S. W. 118.

Nebraska. — Omaha St. R. Co. *v.* Boesen, 74 Neb. 764, 105 N. W. 303; Bevard *v.* Lincoln Traction Co., 74 Neb. 802, 105 N. W. 635.

New York. — Moskowitz *v.* Brooklyn Heights R. Co., 89 N. Y. App. Div. 425, 85 N. Y. Supp. 960, 183 N. Y. 521, 76 N. E. 1101; Crolly *v.* Union R. Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 417, 92 N. Y. Supp. 313; Atkins *v.* New York City R. Co., (Supm. Ct. App. T.) 94 N. Y. Supp. 500; O'Neil *v.* New York, etc., R. Co., 121 N. Y. App. Div. 487, 106 N. Y. Supp. 128.

North Carolina. — Hollingsworth *v.* Skelding, 142 N. Car. 246, 55 S. E. 212; Marable *v.* Southern R. Co., 142 N. Car. 557, 55 S. E. 355.

Rhode Island. — Edwards *v.* Manufacturers' Bldg. Co., 27 R. I. 248, 61 Atl. 646; Brunnchow *v.* Rhode Island Co., 26 R. I. 211, 58 Atl. 656.

South Carolina. — Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255.

Texas. — Missouri, etc., R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 89 S. W. 991; St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343; Gilmore *v.* Houston Electric Co., (Tex. Civ. App. 1907) 102 S. W. 168.

Washington. — Johnson *v.* Seattle Electric Co., 35 Wash. 382, 77 Pac. 677; Edwards *v.* Burke, 36 Wash. 107, 78 Pac. 610.

In an action for an assault by a servant, it was said that as to the acts of its servants the duty of the carrier is that of an insurer. McQuerry *v.* Metropolitan St. R. Co., 117 Mo. App. 255, 92 S. W. 912.

3. *United States.* — Columbia, etc., R. Co. *v.* Means, 136 Fed. 83, 68 C. C. A. 651; International Mercantile Marine Co. *v.* Smith, 145 Fed. 891, 76 C. C. A. 423.

California. — Griffin *v.* Pacific Electric R. Co., 1 Cal. App. 678, 82 Pac. 1084; Dinnigan *v.* Peterson, 3 Cal. App. 764, 87 Pac. 218; Maxwell *v.* Fresno City R. Co., 4 Cal. App. 745, 89 Pac. 367; Kline *v.* Santa Barbara Consol. R. Co., 150 Cal. 741, 90 Pac. 125.

Indiana. — Pittsburgh, etc., R. Co. *v.* Rose, (Ind. App. 1907) 79 N. E. 1094.

Maryland. — Western Maryland R. Co. *v.* Shivers, 101 Md. 391, 61 Atl. 618; Philadelphia, etc., R. Co. *v.* Allen, 102 Md. 110, 62 Atl. 245.

Missouri. — Evers *v.* Wiggins Ferry Co., 116 Mo. App. 130, 92 S. W. 118.

Nebraska. — Lincoln Traction Co. *v.* Webb, 73 Neb. 136, 102 N. W. 258.

Oklahoma. — Chicago, etc., R. Co. *v.* Stibbs, 17 Okla. 97, 87 Pac. 293.

Washington. — Williams *v.* Spokane Falls, etc., R. Co., 39 Wash. 77, 80 Pac. 1100.

561. 1. *United States.* — Indianapolis Traction, etc., Co. *v.* Lawson, (C. C. A.) 143 Fed. 834, 6 Ann. Cas. 666; Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937.

Alabama. — Louisville, etc., R. Co. *v.* Mulder, (Ala. 1906) 42 So. 742.

Arkansas. — St. Louis, etc., R. Co. *v.* Leamons, 82 Ark. 504, 102 S. W. 363.

California. — Renfro *v.* Fresno City R. Co., 2 Cal. App. 317, 84 Pac. 357.

Delaware. — Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167.

Iowa. — Fitch *v.* Mason City, etc., Traction Co., 124 Iowa 665, 100 N. W. 618; Garvik *v.* Burlington, etc., R. Co., 131 Iowa 415, 108 N. W. 327.

Kentucky. — Louisville, etc., R. Co. *v.* Beard, 90 S. W. 944, 28 Ky. L. Rep. 921; Chicago, etc., R. Co. *v.* Hollis, 91 S. W. 258, 28 Ky. L. Rep. 1102.

Maryland. — Baltimore, etc., R. Co. *v.* Jean, 98 Md. 546, 57 Atl. 540.

Missouri. — Hamilton *v.* Metropolitan St. R.

Co., 114 Mo. App. 504, 89 S. W. 893; Laub *v.* Chicago, etc., R. Co., 118 Mo. App. 488, 94 S. W. 550.

South Carolina. — Latour *v.* Southern R. Co., 71 S. Car. 532, 51 S. E. 265; Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255; Anderson *v.* South Carolina, etc., R. Co., 77 S. Car. 434, 58 S. E. 149.

Washington. — Foster *v.* Seattle Electric Co., 35 Wash. 177, 76 Pac. 995.

Highest Care Consistent with Nature of Undertaking. — United R., etc., Co. *v.* Weir, 102 Md. 286, 62 Atl. 588.

2. Southern R. Co. *v.* Cunningham, 123 Ga. 90, 50 S. E. 979; Hutcheis *v.* Cedar Rapids, etc., R. Co., 128 Iowa 279, 103 N. W. 779.

562. 1. Ordinary Care. — In accordance with the modern tendency to refuse to recognize degrees of negligence, it has been held that the care which a carrier of passengers is bound to exercise is expressed by the terms "due care," "reasonable care," or "ordinary care." Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602; McCormick *v.* Detroit, etc., R. Co., 141 Mich. 17, 104 N. W. 390, 12 Detroit Leg. N. 326.

2. Chicago City R. Co. *v.* Shaw, 220 Ill. 532, 77 N. E. 139; Cincinnati, etc., R. Co. *v.* Bravard, 38 Ind. App. 422, 76 N. E. 899; Pittsburgh, etc., R. Co. *v.* Rose, (Ind. App. 1907) 79 N. E. 1094; Pittsburg, etc., R. Co. *v.* Richardson, (Ind. App. 1907) 82 N. E. 536; Hensler *v.* Stix, 113 Mo. App. 162, 88 S. W. 108; McKinstry *v.* St. Louis Transit Co., 108 Mo. App. 12, 82 S. W. 1108; Brod *v.* St. Louis Transit Co., 115 Mo. App. 202, 91 S. W. 993.

3. *Georgia.* — Grimsley *v.* Atlantic Coast Line R. Co., 1 Ga. App. 557, 57 S. E. 943.

Missouri. — Magrane *v.* St. Louis, etc., R. Co., 183 Mo. 119, 81 S. W. 1158; Redmon *v.* Metropolitan St. R. Co., 185 Mo. 1, 84 S. W. 26; Gilroy *v.* St. Louis Transit Co., 117 Mo. App. 663, 92 S. W. 1152; Schloemer *v.* St. Louis Transit Co., 204 Mo. 99, 102 S. W. 565; O'Gara *v.* St. Louis Transit Co., 204 Mo. 724, 103 S. W. 54.

North Carolina. — Overcash *v.* Charlotte Electric R., etc., Co., 144 N. Car. 572, 57 S. E. 377.

Texas. — Boyles *v.* Texas, etc., R. Co., (Tex. Civ. App. 1905) 86 S. W. 936.

4. *Kentucky.* — Louisville R. Co. *v.* Pulliam, (Ky. 1907) 101 S. W. 295.

Missouri. — Goldsmith *v.* Holland Bldg. Co., 182 Mo. 597, 81 S. W. 1112; McKinstry *v.* St. Louis Transit Co., 108 Mo. App. 12, 82 S. W. 1108; Lehner *v.* Metropolitan St. R. Co., 110 Mo. App. 215, 85 S. W. 110.

Texas. — Contreras *v.* San Antonio Traction Co., (Tex. Civ. App. 1904) 83 S. W. 870; Denison, etc., R. Co. *v.* Freeman, (Tex. Civ. App. 1905) 85 S. W. 55; St. Louis Southwestern R. Co. *v.* Martin, (Tex. Civ. App. 1905) 87 S. W. 387; Green *v.* Houston Electric Co., (Tex. Civ. App. 1905) 89 S. W. 442; Missouri, etc., R. Co. *v.* Wolf, (Tex. Civ. App. 1905) 89 S. W. 778; Missouri, etc., R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 89 S. W. 991; St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343; Sproule *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1906) 91 S. W. 657; San Antonio Traction Co. *v.* Parks, (Tex. Civ. App. 1906) 93 S. W. 130; Gulf, etc., R. Co. *v.* Turner, (Tex. Civ. App. 1906) 93 S. W. 195; St. Louis Southwestern R. Co. *v.* Black, (Tex. Civ. App. 1906) 93 S. W. 1071; Moore *v.* Northern Texas Traction Co., (Tex. Civ. App. 1906) 95 S. W. 652; Galveston, etc., R. Co. *v.* Fink, (Tex. Civ. App. 1906) 99 S. W. 204; San Antonio Traction Co. *v.* Flory, (Tex. Civ. App. 1907) 100 S. W. 200; Missouri, etc., R. Co. *v.* Schroeder, (Tex. Civ. App. 1906) 100 S. W. 808; Galveston, etc., R. Co. *v.* Young, (Tex. Civ. App. 1907) 100 S. W. 993; International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000; International, etc., R. Co. *v.* Tasby, (Tex. Civ. App. 1907) 100 S. W. 1030; Gilmore *v.* Houston Electric Co., (Tex. Civ. App. 1907) 102 S. W. 168. See also Lewis *v.* Houston Electric Co., (Tex. Civ. App. 1905) 88 S. W. 489.

Whether a conductor may lock the doors of a car containing a number of school children traveling during the night, in observance of his duty, without rendering the company liable for illegal restraint, is a matter properly to be submitted to the jury. Peck *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1905) 91 S. W. 323.

563. 1. Southern R. Co. *v.* Burgess, 143 Ala. 364, 42 So. 35; Snider *v.* Chicago, etc., R. Co., 108 Mo. App. 234, 83 S. W. 530.

2. *Illinois.* — Chicago City R. Co. *v.* Bundy, 210 Ill. 39, 71 N. E. 28; Chicago City R. Co. *v.* Lannon, 212 Ill. 477, 72 N. E. 585; Alton Light, etc., Co. *v.* Oliver, 217 Ill. 15, 75 N. E. 419; Tri-City R. Co. *v.* Gould, 217 Ill. 317, 75 N. E. 493; Chicago City R. Co. *v.* Schmidt, 217 Ill. 396, *affirming* 117 Ill. App. 213; Chicago City R. Co. *v.* Shaw, 220 Ill. 532, 77 N. E. 139; Illinois Cent. R. Co. *v.* Johnson, 221 Ill. 42, 77 N. E. 592, *reversing* 123 Ill. App. 300; Chicago Consol. Traction Co. *v.* Schritter, 222 Ill. 364, 78 N. E. 820, *affirming* 124 Ill. App. 578; Frank Parmelee Co. *v.* Wheelock, 224 Ill. 194, 79 N. E. 652, *affirming* 127 Ill. App. 500; Chicago City R. Co. *v.* Pural, 224 Ill. 324, 79 N. E. 686, *affirming* 127 Ill. App. 652; Chicago City R. Co. *v.* Smith, 226 Ill. 178, 80 N. E. 716; Chicago City R. Co. *v.* Shreve, 226 Ill. 530, 80 N. E. 1049; Cleveland, etc., R. Co. *v.* Scott, 111 Ill. App. 234; Harvey *v.* Chicago, etc., R. Co., 116 Ill. App. 507, *affirmed* 221 Ill. 242, 77 N. E. 569; Alton Light, etc., Co. *v.* Oller, 119 Ill. App. 181, *affirmed* 217 Ill. 15, 75 N. E. 419; Morris *v.* Chicago Union Traction Co., 119 Ill. App. 527; Chicago Consol. Traction Co. *v.* Schritter, 124 Ill. App. 578, *affirmed* 222 Ill. 364, 78 N. E. 820; Chicago, etc., R. Co. *v.* Smith, 124 Ill. App. 627.

Nebraska. — Omaha St. R. Co. *v.* Boesen, 74 Neb. 764, 105 N. W. 303.

Consideration of Mode of Conveyance Used. — Maxfield *v.* Maine Cent. R. Co., 100 Me. 79, 60 Atl. 710; Pomroy *v.* Bangor, etc., R. Co., 102 Me. 497, 67 Atl. 561.

Freight Train. — Mullen *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 1000; Hamilton *v.* Boston, etc., R. Co., 193 Mass. 324, 79 N. E. 734.

4. An Invalid Passenger is entitled to such a degree of care as will reasonably insure her safety, and to assistance in alighting when

necessary. Gulf, etc., R. Co. *v.* Coopwood, (Tex. Civ. App. 1906) 96 S. W. 102.

564. **1.** Horn *v.* Southern R. Co., (S. Car. 1907) 58 S. E. 963; Galveston, etc., R. Co. *v.* Crier, (Tex. Civ. App. 1907) 100 S. W. 1177.

2. Lawson *v.* Seattle, etc., R. Co., 34 Wash. 500, 76 Pac. 71.

The carrier owes an intoxicated passenger a degree of care commensurate with his condition. Sullivan *v.* Seattle Electric Co., 44 Wash. 53, 86 Pac. 786.

3. Georgia, etc., R. Co. *v.* Brown, 120 Ga. 380, 47 S. E. 942.

Protection of Passenger at Station from Insult and Injury. — Tate *v.* Illinois Cent. R. Co., 81 S. W. 256, 26 Ky. L. Rep. 309, 341.

Assisting Passenger Not in Need of Assistance. — In Moody *v.* Boston, etc., R. Co., 189 Mass. 277, 75 N. E. 631, it was held that in a case where, although the highest degree of care does not require that a passenger should receive assistance, the conductor attempts to assist her because of a rule of the defendant, he is doing something which neither the law relating to carriers nor the contract between the passenger and the carrier requires him to do; if the conductor exercises reasonable care under those circumstances the plaintiff cannot complain.

Ordinary Incidents of Railroad Travel. — A carrier will not be liable in damages for injuries arising from the ordinary incidents of railroad travel, such as the opening of windows in summer by other passengers. Louisville, etc., R. Co. *v.* Fisher, (C. C. A.) 155 Fed. 68.

4. Southern Pac. Co. *v.* Schuyler, 135 Fed. 1015, 68 C. C. A. 409; Prospect *v.* Rhode Island Suburban R. Co., 28 R. I. 367, 67 Atl. 522.

Passenger at Place Near Station Not Intended for Passengers. — Illinois Cent. R. Co. *v.* Proctor, 122 Ky. 92, 89 S. W. 714.

565. **1.** Seaboard Air Line R. Co. *v.* Rainey, 122 Ga. 307, 50 S. E. 88; Stevens *v.* Kansas City El. R. Co., 126 Mo. App. 619, 105 S. W. 26; Atchison, etc., R. Co. *v.* Calhoun, 18 Okla. 75, 89 Pac. 207; Englehaupt *v.* Erie R. Co., 209 Pa. St. 182, 58 Atl. 154; Brooks *v.* Philadelphia, etc., R. Co., 218 Pa. St. 1, 66 Atl. 872.

Care to Be Exercised to Make Announcement Intelligible. — Laub *v.* Chicago, etc., R. Co., 118 Mo. App. 488, 94 S. W. 550.

3. Englehaupt *v.* Erie R. Co., 209 Pa. St. 182, 58 Atl. 154.

Duty to Warn Passenger Not to Alight. — Blue Grass Traction Co. *v.* Skillman, (Ky. 1907) 102 S. W. 809.

567. **1.** Delmonte *v.* Southern Pac. Co., 2 Cal. App. 211, 83 Pac. 269; Sappington *v.* Atlanta, etc., R. Co., 127 Ga. 178, 56 S. E. 311.

3. Southern R. Co. *v.* Bandy, 120 Ga. 463, 47 S. E. 923.

5. Caldwell *v.* Atlantic Coast Line R. Co., 75 S. Car. 74, 55 S. E. 131; Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3.

568. **1.** Hancock *v.* Louisville, etc., R. Co., 85 S. W. 210, 27 Ky. L. Rep. 434; Texas, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1905) 87 S. W. 730; International, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 595.

3. Hancock *v.* Louisville, etc., R. Co., 85 S. W. 210, 27 Ky. L. Rep. 434; Hutchinson *v.* Southern R. Co., 140 N. Car. 123, 52 S. E. 263; Albin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 589; St. Louis Southwestern R. Co. *v.* Townsend, (Tex. Civ. App. 1907) 101 S. W. 455.

4. Rountree *v.* Atlantic Coast Line R. Co., 73 S. Car. 268, 53 S. E. 424; St. Louis Southwestern R. Co. *v.* Turner, (Tex. Civ. App. 1905) 84 S. W. 1094; Missouri, etc., R. Co. *v.* Glass, (Tex. Civ. App. 1907) 102 S. W. 447. See also Milhous *v.* Southern R. Co., 76 S. Car. 492, 57 S. E. 474.

Where a person presents himself at a flag station a reasonable time before the train is due, and the engineer fails to see his signal and stop, the carrier is liable in actual damages; if the engineer wilfully fails to stop, the carrier is liable in punitive damages. Williams *v.* Carolina, etc., R. Co., 144 N. Car. 498, 57 S. E. 216.

If an engineer intentionally passes a flag station seeing a passenger waiting there the carrier will be liable in punitive damages. Milhouse *v.* Southern R. Co., 72 S. Car. 442, 52 S. E. 41.

570. **2. Not Bound to Stop Except at Regular Station.** — Sellers *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 81 N. E. 1087.

Wilful Failure to Carry to Destination Justifies Punitive Damages. — Williamson *v.* Central of Georgia R. Co., 127 Ga. 125, 56 S. E. 119.

5. Gulf, etc., R. Co. *v.* Moore, 98 Tex. 302, 83 S. W. 362.

Conductor Cannot Make Binding Agreement. — Sellers *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 81 N. E. 1087.

571. **2.** Cain *v.* Louisville, etc., R. Co., 84 S. W. 583, 27 Ky. L. Rep. 201; Carter *v.* Southern R. Co., 75 S. Car. 355, 55 S. E. 771; Texas, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1905) 87 S. W. 730; International, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 595; Albin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 589; O'Connor *v.* Halifax Electric Tramway Co., 38 Nova Scotia 212, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 571.

572. **1.** *Alabama.* — Mobile Light, etc., Co. *v.* Walsh, 146 Ala. 290, 40 So. 559.

California. — Maxwell *v.* Fresno City R. Co., 4 Cal. App. 745, 89 Pac. 367.

Connecticut. — Elwood *v.* Connecticut R., etc., Co., 77 Conn. 145, 58 Atl. 751.

Illinois. — Baltimore, etc., R. Co. *v.* Mullen, 217 Ill. 203, 75 N. E. 474; Harvey *v.* Chicago, etc., R. Co., 116 Ill. App. 507, *affirmed* 221 Ill. 242, 77 N. E. 569.

Kansas. — Atchison, etc., R. Co. *v.* Holloway, 71 Kan. 1, 80 Pac. 31.

Kentucky. — Mobile, etc., R. Co. *v.* Reeves, 80 S. W. 471, 25 Ky. L. Rep. 2236.

Michigan. — Lemon *v.* Grand Rapids, etc., R. Co., 136 Mich. 647, 100 N. W. 22; Smith *v.* Detroit United R. Co., 145 Mich. 629, 108 N. W. 1024, 13 Detroit Leg. N. 576.

Missouri. — O'Brien *v.* St. Louis Transit Co., 185 Mo. 263, 84 S. W. 939; West *v.* St. Louis Southwestern R. Co., 187 Mo. 351, 86 S. W. 140; Cramer *v.* Springfield Traction Co., 112 Mo. App. 350, 87 S. W. 24.

New York. — Truesdell *v.* Erie R. Co., 114

N. Y. App. Div. 34, 99 N. Y. Supp. 694; Bellinger *v.* Broadhead, (County Ct.) 52 Misc. (N. Y.) 57, 102 N. Y. Supp. 381.

North Carolina. — Mangum *v.* North Carolina R. Co., 145 N. Car. 152, 58 S. E. 913.

Pennsylvania. — Brooks *v.* Philadelphia, etc., R. Co., 218 Pa. St. 1, 66 Atl. 872.

Rhode Island. — Howland *v.* New York, etc., R. Co., 26 R. I. 138, 58 Atl. 683.

Texas. — San Antonio Traction Co. *v.* Flory, (Tex. Civ. App. 1907) 100 S. W. 200; Texas, etc., R. Co. *v.* Beezley, (Tex. Civ. App. 1907) 101 S. W. 1051.

Virginia. — Chesapeake, etc., R. Co. *v.* Harris, 103 Va. 635, 49 S. E. 997; Chesapeake, etc., R. Co. *v.* Smith, 103 Va. 326, 49 S. E. 487.

Duty to Exercise Care to Stop Street Car at Reasonably Safe Place. — Macon R., etc., Co. *v.* Vining, 120 Ga. 511, 48 S. E. 232; Macon R., etc., Co. *v.* Vining, 123 Ga. 770, 51 S. E. 719; MacDonald *v.* St. Louis Transit Co., 108 Mo. App. 374, 83 S. W. 1001; Tilden *v.* Rhode Island Co., 27 R. I. 482, 63 Atl. 675.

If an interurban car is stopped, and a passenger invited to alight, at a place more hazardous than that at which the car might conveniently have been stopped, the carrier is negligent. McGovern *v.* Interurban R. Co., (Iowa 1907) 111 N. W. 412.

Hole in Platform. — Pineus *v.* Atlantic Coast Line R. Co., 140 N. Car. 450, 53 S. E. 297.

Duty as to Lights. — Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86; Atchison, etc., R. Co. *v.* Calhoun, 18 Okla. 75, 89 Pac. 207; Abbott *v.* Oregon R. Co., 46 Oregon 549, 7 Ann. Cas. 961, 80 Pac. 1012; St. Louis Southwestern R. Co. *v.* Ratley, (Tex. Civ. App. 1905) 87 S. W. 407; Missouri, etc., R. Co. *v.* Cannady, 36 Tex. Civ. App. 646, 82 S. W. 1069; Missouri, etc., R. Co. *v.* Corse, (Tex. Civ. App. 1907) 101 S. W. 522.

Running Car on Parallel Track by Car Which Is Discharging Passengers. — Louisville City R. Co. *v.* Hudgins, 98 S. W. 275, 30 Ky. L. Rep. 316.

Piece of Tobacco on Step. — A carrier is not liable for injuries sustained by a passenger from stepping on a piece of tobacco lying on a stairway leading to a railroad station, where there is nothing in the evidence to indicate that the tobacco has been there a sufficient length of time to impute notice to the carrier. Kaplowitz *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 646, 103 N. Y. Supp. 721.

Inadequate or Unsafe Passageway. — Although all of a passageway is not owned by the railroad company, if it is used by passengers in going to and from trains with the knowledge of the company, it is bound to use at least ordinary care to see that the way is properly constructed and in proper repair. Cotant *v.* Boone Suburban R. Co., 125 Iowa 46, 99 N. W. 115.

A railway company has been held liable for injuries sustained by a passenger using an authorized means of exit from a station, by a spark from an engine on the railway, where it was shown that the company's attention had been called to the danger and they had declined to protect the path, although that could have been done at reasonable cost. Atherton *v.* London, etc., R. Co., 93 L. T. N. S. 464.

Stool or Step. — When the station platform is so much below the level of the lower steps of the car as to make it unsafe for passengers to alight without an intermediate stool or step, it is the duty of the carrier to provide such step. Merryman *v.* Chicago G. W. R. Co., (Iowa 1907) 113 N. W. 357.

Failure to Have Footstool in Position. — Missouri, etc., R. Co. *v.* Corse, (Tex. Civ. App. 1907) 101 S. W. 522.

573. **1.** *California.* — Griffin *v.* Pacific Electric R. Co., 1 Cal. App. 678, 82 Pac. 1084.

Georgia. — Turley *v.* Atlanta, etc., R. Co., 127 Ga. 594, 56 S. E. 748.

Illinois. — Lake St. El. R. Co. *v.* Craig, 126 Ill. App. 361.

Kentucky. — Louisville R. Co. *v.* Williams, 99 S. W. 245, 30 Ky. L. Rep. 493; Louisville, etc., R. Co. *v.* Deason, 96 S. W. 1115, 29 Ky. L. Rep. 1259; Illinois Cent. R. Co. *v.* Colly, 86 S. W. 536, 27 Ky. L. Rep. 730.

Missouri. — Young *v.* Missouri Pac. R. Co., (Mo. App. 1904) 84 S. W. 175; Young *v.* Missouri Pac. R. Co., 113 Mo. App. 636, 88 S. W. 767.

New Jersey. — Gottlob *v.* North Jersey St. R. Co., 73 N. J. L. 305, 62 Atl. 1003.

New York. — Bollinger *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 293, 98 N. Y. Supp. 641. But see Winchell *v.* New York Cent., etc., R. Co., 121 N. Y. App. Div. 52, 105 N. Y. Supp. 425.

North Carolina. — Clark *v.* Durham Traction Co., 138 N. Car. 77, 50 S. E. 518.

Pennsylvania. — Boulfrois *v.* United Traction Co., 210 Pa. St. 263, 59 Atl. 1007. See also White *v.* Columbia, etc., Electric R. Co., 215 Pa. St. 462, 64 Atl. 676.

South Carolina. — Hiers *v.* Atlantic Coast Line R. Co., 75 S. Car. 311, 55 S. E. 457.

Texas. — St. Louis Southwestern R. Co. *v.* Turner, (Tex. Civ. App. 1905) 84 S. W. 1094; San Antonio Traction Co. *v.* Warren, (Tex. Civ. App. 1905) 85 S. W. 26; Texas, etc., R. Co. *v.* Leakey, (Tex. Civ. App. 1905) 87 S. W. 1168; Young *v.* Missouri Pac. R. Co., 113 Mo. App. 636, 88 S. W. 767; Feagin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 346; International, etc., R. Co. *v.* Tasby, (Tex. Civ. App. 1907) 100 S. W. 1030; Galveston, etc., R. Co. *v.* Patillo, (Tex. Civ. App. 1907) 101 S. W. 492; Houston, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 103 S. W. 239. See also Green *v.* Houston Electric Co., (Tex. Civ. App. 1905) 89 S. W. 442.

Sudden Starting of Street Car When Passenger About to Alight. — Little Rock R., etc., Co. *v.* Doyle, 79 Ark. 378, 96 S. W. 353.

574. **2.** Brooks *v.* Philadelphia, etc., R. Co., 218 Pa. St. 1, 66 Atl. 872; Kinney *v.* Yazoo, etc., R. Co., 116 Tenn. 450, 92 S. W. 1116; Chesapeake, etc., R. Co. *v.* Smith, 103 Va. 326, 49 S. E. 487; Chesapeake, etc., R. Co. *v.* Harris, 103 Va. 635, 49 S. E. 997; Guay *v.* Canadian Northern R. Co., 15 Manitoba 275.

575. **2.** Brooks *v.* Philadelphia, etc., R. Co., 218 Pa. St. 1, 66 Atl. 872.

576. **1.** See Chesapeake, etc., R. Co. *v.* Smith, 103 Va. 326, 49 S. E. 487.

2. Chesapeake, etc., R. Co. *v.* Harris, 103 Va. 635, 49 S. E. 997.

3. *United States.* — St. Louis Southwestern R. Co. *v.* Wainwright, (C. C. A.) 152 Fed. 624, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576; St. Louis Southwestern R. Co. *v.* Wainwright, (C. C. A.) 152 Fed. 626, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576.

Arkansas. — Barringer *v.* St. Louis, etc., R. Co., 73 Ark. 548, 85 S. W. 94; Choctaw, etc., R. Co. *v.* Hickey, 81 Ark. 579, 99 S. W. 839; Arkansas Cent. R. Co. *v.* Bennett, 82 Ark. 393, 102 S. W. 198.

Delaware. — Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874; Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153.

Georgia. — Western, etc., R. Co. *v.* Burnham, 123 Ga. 28, 50 S. E. 984; Southern R. Co. *v.* Dean, 128 Ga. 366, 57 S. E. 702.

Indiana. — Louisville, etc., Traction Co. *v.* Leaf, (Ind. App. 1907) 79 N. E. 1066; Evansville Electric R. Co. *v.* Lerch, (Ind. App. 1907) 81 N. E. 225.

Iowa. — Jaques *v.* Sioux City Traction Co., 124 Iowa 257, 99 N. W. 1069.

Kentucky. — Lexington, etc., R. Co. *v.* Herring, 96 S. W. 558, 29 Ky. L. Rep. 794, 97 S. W. 1127, 30 Ky. L. Rep. 269; Louisville R. Co. *v.* Bohon, 99 S. W. 915, 30 Ky. L. Rep. 862; Louisville R. Co. *v.* Pulliam, (Ky. 1907) 101 S. W. 295; Louisville R. Co. *v.* Worley, (Ky. 1907) 101 S. W. 926; Louisville, etc., R. Co. *v.* Arnold, (Ky. 1907) 102 S. W. 322.

Maryland. — United R., etc., Co. *v.* Weir, 102 Md. 286, 62 Atl. 588.

Michigan. — Selby *v.* Detroit R. Co., 141 Mich. 112, 104 N. W. 376, 12 Detroit Leg. N. 382; O'Dea *v.* Michigan Cent. R. Co., 142 Mich. 265, 105 N. W. 746, 12 Detroit Leg. N. 718; Burke *v.* Bay City Traction, etc., Co., 147 Mich. 172, 110 N. W. 524, 13 Detroit Leg. N. 974.

Mississippi. — Alabama, etc., R. Co. *v.* Dear, 87 Miss. 339, 39 So. 812.

Missouri. — McKinstry *v.* St. Louis Transit Co., 108 Mo. App. 12, 82 S. W. 1108; Parker *v.* St. Louis Transit Co., 108 Mo. App. 465, 83 S. W. 1016; Maggioli *v.* St. Louis Transit Co., 108 Mo. App. 416, 83 S. W. 1026; Gress *v.* Missouri Pac. R. Co., 109 Mo. App. 716, 84 S. W. 122; Hecker *v.* Chicago, etc., R. Co., 110 Mo. App. 162, 84 S. W. 126; Young *v.* Missouri Pac. R. Co., (Mo. App. 1904) 84 S. W. 175; Lehner *v.* Metropolitan St. R. Co., 110 Mo. App. 215, 85 S. W. 110; Franklin *v.* St. Louis, etc., R. Co., 188 Mo. 533, 87 S. W. 930; Young *v.* Missouri Pac. R. Co., 113 Mo. App. 636, 88 S. W. 767; Devoy *v.* St. Louis Transit Co., 192 Mo. 197, 91 S. W. 140; Kohr *v.* Metropolitan St. R. Co., 117 Mo. App. 302, 92 S. W. 1145; Wegeschiede *v.* St. Louis Transit Co., 118 Mo. App. 295, 94 S. W. 774; Parks *v.* St. Louis Transit Co., 119 Mo. App. 445, 96 S. W. 426; Hurley *v.* Metropolitan St. R. Co., 120 Mo. App. 262, 96 S. W. 714; Kupke *v.* St. Louis Transit Co., 122 Mo. App. 355, 99 S. W. 472; Murphy *v.* Metropolitan St. R. Co., 125 Mo. App. 269, 102 S. W. 64; Ghio *v.* Metropolitan St. R. Co., 125 Mo. App. 710, 103 S. W. 142; Bell *v.* Central Electric R. Co., 125 Mo. App. 660, 103 S. W. 144.

Nebraska. — Lincoln Traction Co. *v.* McCarty, (Neb. 1906) 107 N. W. 1021.

New York. — Gleason *v.* Metropolitan St. R. Co., 99 N. Y. App. Div. 209, 90 N. Y. Supp. 1025; Fine *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 45 Misc. (N. Y.) 587, 91 N. Y. Supp. 43; Gordon *v.* Nassau Electric R. Co., (Supm. Ct. App. T.) 93 N. Y. Supp. 487; Murphy *v.* Union R. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 672, 94 N. Y. Supp. 350; Vondershe *v.* Metropolitan St. R. Co., 109 N. Y. App. Div. 28, 95 N. Y. Supp. 1048. See Laverty *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 510, 98 N. Y. Supp. 846; Silber *v.* New York City R. Co., (Supm. Ct. App. T.) 99 N. Y. Supp. 837; Frauhauf *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 135, 101 N. Y. Supp. 781.

North Dakota. — Hall *v.* Northern Pac. R. Co., (N. Dak. 1907) 111 N. W. 609.

Oklahoma. — Atchison, etc., R. Co. *v.* Calhoun, 18 Okla. 75, 89 Pac. 207.

Pennsylvania. — Redington *v.* Harrisburg Traction Co., 210 Pa. St. 648, 60 Atl. 305.

South Carolina. — Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3.

Texas. — St. Louis Southwestern R. Co. *v.* Turner, (Tex. Civ. App. 1905) 84 S. W. 1094; San Antonio, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 85 S. W. 445; St. Louis Southwestern R. Co. *v.* Martin, (Tex. Civ. App. 1905) 87 S. W. 387; Lewis *v.* Houston Electric Co., (Tex. Civ. App. 1905) 88 S. W. 489; St. Louis, etc., R. Co. *v.* Ross, (Tex. Civ. App. 1905) 89 S. W. 1105; Johnson *v.* Texas Cent. R. Co., (Tex. Civ. App. 1906) 93 S. W. 433; Houston, etc., R. Co. *v.* Easton, (Tex. Civ. App. 1906) 97 S. W. 833; Galveston, etc., R. Co. *v.* Fink, (Tex. Civ. App. 1906) 99 S. W. 204; San Antonio Traction Co. *v.* Flory, (Tex. Civ. App. 1907) 100 S. W. 200; St. Louis Southwestern R. Co. *v.* Bryant, (Tex. Civ. App. 1907) 103 S. W. 237.

Utah. — Paul *v.* Salt Lake City R. Co., 30 Utah 41, 83 Pac. 563.

Street Cars. — Louisville R. Co. *v.* Owens, 97 S. W. 356, 29 Ky. L. Rep. 1294; Nelson *v.* Metropolitan St. R. Co., 113 Mo. App. 702, 88 S. W. 1119; Gilroy *v.* St. Louis Transit Co., 117 Mo. App. 663, 92 S. W. 1152; Davis *v.* Camden, etc., R. Co., 73 N. J. L. 415, 63 Atl. 843; Gregorio *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 249, 97 N. Y. Supp. 373; Tauger *v.* New York City R. Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 681; Graham *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 566, 104 N. Y. Supp. 869; Johnston *v.* New York City R. Co., 120 N. Y. App. Div. 456, 104 N. Y. Supp. 1030.

The duty does not arise until the car has been brought to a stop or the passenger has been invited to board it. Schwartz *v.* New York City R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 214, 105 N. Y. Supp. 1.

It is not necessary to keep a street car stationary until a boarding passenger is seated. Bennett *v.* Louisville R. Co., 90 S. W. 1052, 28 Ky. L. Rep. 998; Weeks *v.* Boston El. R. Co., 190 Mass. 563, 77 N. E. 654; Miller *v.*

Metropolitan St. R. Co., 125 Mo. App. 414, 102 S. W. 592.

Reasonable Time Question for Jury. — Houston, etc., R. Co. *v.* Schuttee, (Tex. Civ. App. 1906) 91 S. W. 806.

577. **1.** Chicago, etc., R. Co. *v.* Meyer, 127 Ill. App. 314; Philadelphia, etc., R. Co. *v.* Hand, 101 Md. 233, 61 Atl. 285.

A Passenger Failing to Alight Promptly Because Asleep does not necessarily cease to be a passenger. Bass *v.* Cleveland, etc., R. Co., 142 Mich. 177, 105 N. W. 151, 12 Detroit Leg. N. 694.

578. **1.** Louisville, etc., R. Co. *v.* Arnold, (Ky. 1907) 102 S. W. 322; Chicago, etc., R. Co. *v.* Wimmer, 72 Kan. 573, 84 Pac. 378, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 577.

2. St. Louis Southwestern R. Co. *v.* Haynes, (Tex. Civ. App. 1905) 86 S. W. 934.

Notice as to Infirmity of Passenger — Requirement of Longer Time. — Clark *v.* Durham Traction Co., 138 N. Car. 77, 50 S. E. 518; Toledo, etc., Traction Co. *v.* McFall, 28 Ohio Cir. Ct. 362.

Sufficiency of Stoppage a Question of Fact. — Metropolitan St. R. Co. *v.* Warren, (Kan. 1907) 89 Pac. 656.

Notification of the starting of the train after a reasonable time has elapsed is not necessary if the circumstances surrounding the case do not demand it. Gulf, etc., R. Co. *v.* Booth, (Tex. Civ. App. 1906) 97 S. W. 128.

3. *Indiana.* — Union Traction Co. *v.* Siceloff, 34 Ind. App. 511, 72 N. E. 266.

Kentucky. — Houghton *v.* Louisville R. Co., 81 S. W. 695, 26 Ky. L. Rep. 393; Louisville R. Co. *v.* Owens, 97 S. W. 356, 29 Ky. L. Rep. 1294; Louisville R. Co. *v.* Pulliam, (Ky. 1907) 101 S. W. 295.

New York. — Randazzo *v.* Brooklyn Heights R. Co., 121 N. Y. App. Div. 573, 106 N. Y. Supp. 193.

North Carolina. — Snipos *v.* Norfolk, etc., R. Co., 144 N. Car. 18, 56 S. E. 477; Darden *v.* Atlantic Coast Line R. Co., 144 N. Car. 1, 56 S. E. 512.

Pennsylvania. — Hatch *v.* Philadelphia, etc., R. Co., 212 Pa. St. 29, 61 Atl. 480.

Texas. — Houston, etc., R. Co. *v.* Copley, 38 Tex. Civ. App. 568, 87 S. W. 219; Houston, etc., R. Co. *v.* Easton, (Tex. Civ. App. 1906) 97 S. W. 833.

Washington. — See Plattor *v.* Seattle Electric Co., 44 Wash. 408, 87 Pac. 489.

West Virginia. — Normile *v.* Wheeling Traction Co., 57 W. Va. 132, 49 S. E. 1030.

Street Cars — Rule Applied. — Pittsburgh R. Co. *v.* Bloomer, 146 Fed. 720, 77 C. C. A. 146; Little Rock Traction, etc., Co. *v.* Kimbro, 75 Ark. 211, 87 S. W. 121; South Covington, etc., R. Co. *v.* Core, 96 S. W. 562, 29 Ky. L. Rep. 836; Behen *v.* St. Louis Transit Co., 186 Mo. 430, 85 S. W. 346; Murphy *v.* Metropolitan St. R. Co., 125 Mo. App. 269, 102 S. W. 64.

Starting Street Car Before Boarding Passenger Is Seated Not Negligence. — Birmingham R., etc., Co. *v.* Hawkins, (Ala. 1907) 44 So. 983.

Where an aged woman was injured by the starting of a street car before she had reached a place of safety, it was held that the question of negligence of the carrier's servant was for the jury. Morrow *v.* Brooklyn Heights R. Co., 119 N. Y. App. Div. 22, 103 N. Y. Supp. 998.

The Premature Signal to Start must have been given by some one authorized to do so to render the carrier liable. Moore *v.* Woonsocket St. R. Co., 27 R. I. 450, 63 Atl. 313.

579. **1.** Dunning *v.* Lake Erie, etc., R. Co., 38 Ind. App. 91, 77 N. E. 1049; Hatch *v.* Philadelphia, etc., R. Co., 212 Pa. St. 29, 61 Atl. 480.

2. Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874; Weaver *v.* Pennsylvania R. Co., 212 Pa. St. 632, 61 Atl. 1117.

3. *Georgia.* — Tucker *v.* Central of Georgia R. Co., 122 Ga. 387, 50 S. E. 128.

Indiana. — Indianapolis Traction, etc., Co. *v.* Pressell, 39 Ind. App. 472, 77 N. E. 357; Sellers *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 81 N. E. 1087.

Iowa. — Dieckmann *v.* Chicago, etc., R. Co., (Iowa 1906) 105 N. W. 526; Merryman *v.* Chicago G. W. R. Co., (Iowa 1907) 113 N. W. 357.

Kentucky. — Illinois Cent. R. Co. *v.* Cruse, 96 S. W. 821, 29 Ky. L. Rep. 914, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579.

Massachusetts. — Hawes *v.* Boston El. R. Co., 192 Mass. 324, 78 N. E. 480.

Texas. — *Compare* Missouri, etc., R. Co. *v.* Corse, (Tex. Civ. App. 1907) 101 S. W. 522.

Carrier Bound to Assist Infirm Person Accepted as Passenger. — Williams *v.* Louisville, etc., R. Co., (Ala. 1907) 43 So. 576.

580. **1.** Illinois Cent. R. Co. *v.* Cruse, 96 S. W. 821, 29 Ky. L. Rep. 914, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579.

2. McGovern *v.* Interurban R. Co., (Iowa 1907) 111 N. W. 412; Louisville, etc., R. Co. *v.* Arnold, (Ky. 1907) 102 S. W. 322; Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3; Flory *v.* San Antonio Traction Co., (Tex. Civ. App. 1905) 89 S. W. 278; Ft. Worth, etc., R. Co. *v.* Work, (Tex. Civ. App. 1907) 100 S. W. 962.

Carrier Is Bound to Render Reasonable Assistance to a passenger whose inability to take care of himself has been made known to the carrier. Horn *v.* Southern R. Co., (S. Car. 1907) 58 S. E. 963.

If a Servant of the Carrier Undertakes to Assist a passenger to alight, the carrier will be responsible for negligence in rendering the assistance. Hanlon *v.* Central R. Co., 187 N. Y. 73, 79 N. E. 846, *affirming* 110 N. Y. App. Div. 918, 96 N. Y. Supp. 1127; Black *v.* New York, etc., R. Co., 193 Mass. 448, 79 N. E. 797.

Duty Dependent upon Circumstances. — Collins *v.* Southern R. Co., 89 Miss. 375, 42 So. 167.

4. Central of Georgia R. Co. *v.* McNab, (Ala. 1907) 43 So. 222.

5. Duty to See Whether Passengers Are Getting On or Off Street Car — *District of Columbia.* — Guenther *v.* Metropolitan R. Co., 23 App. Cas. (D. C.) 493.

Indiana. — Union Traction Co. *v.* Siceloff, 34 Ind. App. 511, 72 N. E. 266.

Iowa. — Jaques *v.* Sioux City Traction Co., 124 Iowa 257, 99 N. W. 1069.

Kentucky. — Louisville R. Co. *v.* Pulliam, (Ky. 1907) 101 S. W. 295.

Massachusetts. — Meade *v.* Boston El. R. Co.,

185 Mass. 327, 70 N. E. 197; Hamilton *v.* Boston, etc., R. Co., 193 Mass. 324, 79 N. E. 734; Millmore *v.* Boston El. R. Co., 194 Mass. 323, 80 N. E. 445.

Missouri. — Cramer *v.* Springfield Traction Co., 112 Mo. App. 350, 87 S. W. 24; Nelson *v.* Metropolitan St. R. Co., 113 Mo. App. 702, 88 S. W. 1119; Kohr *v.* Metropolitan St. R. Co., 117 Mo. App. 302, 92 S. W. 1145; Hurley *v.* Metropolitan St. R. Co., 120 Mo. App. 262, 96 S. W. 714; Green *v.* Metropolitan St. R. Co., 122 Mo. App. 647, 99 S. W. 28; Bell *v.* Central Electric R. Co., 125 Mo. App. 660, 103 S. W. 144.

New Jersey. — Speer *v.* West Jersey, etc., R. Co., 74 N. J. L. 282, 65 Atl. 896.

Duty to Know Whether Passengers Are Getting On or Off Elevated Train. — McGarry *v.* Boston El. R. Co., 195 Mass. 538, 81 N. E. 194.

581. **2.** Hill *v.* Louisville, etc., R. Co., 124 Ga. 243, 52 S. E. 651; Dunne *v.* New York, etc., R. Co., 99 N. Y. App. Div. 571, 91 N. Y. Supp. 145.

Rule Applied Where Injury Resulted While Alighting from Moving Train. — Georgia, etc., R. Co. *v.* Hutchins, 121 Ga. 317, 48 S. E. 939; Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 100 S. W. 290; Flaherty *v.* Boston, etc., R. Co., 186 Mass. 567, 72 N. E. 66.

Where a person is given permission to carry a passenger's baggage into a railroad car, the carrier becomes charged with the duty of holding the train stationary until he can, in the exercise of reasonable care and diligence, alight in safety. Bond *v.* Chicago, etc., R. Co., 122 Mo. App. 207, 99 S. W. 30.

4. Rodgers *v.* Choctaw, etc., R. Co., (Ark. 1905) 89 S. W. 468; Chicago City R. Co. *v.* McCaughna, 216 Ill. 202, 74 N. E. 819; Pittsburg, etc., R. Co. *v.* Richardson, (Ind. App. 1907) 82 N. E. 536; Blue Grass Traction Co. *v.* Skillman, (Ky. 1907) 102 S. W. 809; Stevens *v.* Kansas City El. R. Co., 126 Mo. App. 619, 105 S. W. 26; Windels *v.* Interurban Rapid Transit R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 646, 98 N. Y. Supp. 854; Cruseturner *v.* International, etc., R. Co., 38 Tex. Civ. App. 466, 86 S. W. 778; San Antonio Traction Co. *v.* Flory, (Tex. Civ. App. 1907) 100 S. W. 200.

A carrier is not bound to inform a passenger when the first train to his destination will depart from a junction in the absence of a request for the information. Latimer *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 90 S. W. 665.

Duty to Warn Intoxicated Passenger. — Fox *v.* Michigan Cent. R. Co., 138 Mich. 433, 101 N. W. 624.

Passenger Need Not Be Warned of Obvious Danger. — Hawes *v.* Boston El. R. Co., 192 Mass. 324, 78 N. E. 480; Thompson *v.* Gardner, etc., R. Co., 193 Mass. 133, 78 N. E. 854; Hogan *v.* Boston El. R. Co., 195 Mass. 313, 81 N. E. 198; Tietz *v.* International R. Co., 186 N. Y. 347, 78 N. E. 1083.

It is not negligence for the servants of a street railway company in charge of a car to fail to give notice of the existence of a space between the step of a car and the platform, or between the cars of an elevated train. Hilborn *v.* Boston, etc., R. Co., 191 Mass. 14, 77 N. E. 646.

Passenger Passing Between Cars Not Entitled to Be Warned of Danger of Stepping into Opening Between Cars. — Falkins *v.* Boston El. R. Co., 188 Mass. 153, 74 N. E. 338.

Giving Warning Before Starting Street Car. — There is no general rule requiring a warning to be given the passenger before starting a street car. Metropolitan St. R. Co. *v.* Warren, 74 Kan. 244, 86 Pac. 131.

Right of Passenger to Rely upon Directions. — Arkansas Cent. R. Co. *v.* Bennett, 82 Ark. 393, 102 S. W. 198.

To Advise of Quarantine. — A carrier is liable for the failure of a conductor to advise a passenger of quarantine as to which the passenger has asked for information. Hasseltine *v.* Southern R. Co., 75 S. Car. 141, 55 S. E. 142.

582. **1.** Robertson *v.* Louisville, etc., R. Co., 142 Ala. 216, 37 So. 831; St. Louis, etc., R. Co. *v.* White, 99 Tex. 359, 89 S. W. 746; International, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 709.

Carrier Not Liable When Employee Acting Merely for Accommodation of Passenger. — Jewell *v.* St. Louis, etc., R. Co., 82 Ark. 598, 102 S. W. 370; Baltimore, etc., R. Co. *v.* Jean, 98 Md. 546, 57 Atl. 540.

583. **1.** Fanning *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 86 S. W. 354; St. Louis Southwestern R. Co. *v.* Highnote, 99 Tex. 23, 86 S. W. 923.

2. Wertheimer *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 540, 102 N. Y. Supp. 706.

3. Georgia R., etc., Co. *v.* McAllister, 126 Ga. 447, 54 S. E. 957; Williamson *v.* Central of Georgia R. Co., 127 Ga. 125, 56 S. E. 119; Tennessee Cent. R. Co. *v.* Brasher, 97 S. W. 349, 29 Ky. L. Rep. 1277; Frankfort, etc., Traction Co. *v.* Marshall, 98 S. W. 1035, 30 Ky. L. Rep. 431.

Carrier Liable for Ejecting Passenger Before Reaching Destination. — McDonald *v.* Central R. Co., 72 N. J. L. 280, 62 Atl. 405.

Passenger May Be Required to Change from One Street Car to Another. — Dryden *v.* St. Louis Transit Co., 120 Mo. App. 424, 96 S. W. 1044.

584. **1.** International, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 595.

4. Right of Passenger to Rely upon Directions. — Staines *v.* Central R. Co., 72 N. J. L. 268, 61 Atl. 385.

5. King *v.* Southern R. Co., 128 Ga. 285, 57 S. E. 507; Indianapolis, etc., R. Co. *v.* Barnes, 35 Ind. App. 485, 74 N. E. 583; Chesapeake, etc., R. Co. *v.* Lynch, 89 S. W. 517, 28 Ky. L. Rep. 467; Louisville, etc., R. Co. *v.* Gaddie, (Ky. 1907) 102 S. W. 817; Harlan *v.* Wabash R. Co., 117 Mo. App. 537, 94 S. W. 737; Henderson *v.* Metropolitan St. R. Co., 123 Mo. App. 666, 100 S. W. 1111; Stevens *v.* Kansas City El. R. Co., 126 Mo. App. 619, 105 S. W. 26.

It is the duty of a carrier whose servants have been informed of the illness of a passenger and requested to call him so that he may get off at his destination to reasonably anticipate injury from the negligence of its servants in failing to call the passenger. Nelson *v.* Chicago, etc., R. Co., 130 Wis. 214, 109 N. W. 933.

Failure to Stop Street Car at Usual Stopping Place. — Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153.

Failure to Stop Street Car at Street Named by Passenger. — Kentucky, etc., Bridge, etc., R. Co. *v.* Buckler, (Ky. 1907) 100 S. W. 328.

585. 1. Seaboard Air Line R. Co. *v.* Rainey, 122 Ga. 307, 50 S. E. 88.

2. See Fanning *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 86 S. W. 354.

3. Green *v.* Missouri, etc., R. Co., 121 Mo. App. 720, 97 S. W. 646; Latour *v.* Southern R. Co., 71 S. Car. 532, 51 S. E. 265; Texas, etc., R. Co. *v.* Harrington, (Tex. Civ. App. 1906) 98 S. W. 653, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 585; Gulf, etc., R. Co. *v.* Redeker, (Tex. Civ. App. 1907) 100 S. W. 362.

4. Coleman *v.* Southern R. Co., 138 N. Car. 351, 50 S. E. 690, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 585.

586. 1. Gerardy *v.* Louisville, etc., R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 466, 102 N. Y. Supp. 549, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 586.

2. Gulf, etc., R. Co. *v.* Redeker, (Tex. Civ. App. 1907) 100 S. W. 362.

587. 1. Magee *v.* New York, etc., R. Co., 195 Mass. 111, 80 N. E. 689; Isbell *v.* Pittsfield Electric St. R. Co., (Mass. 1907) 82 N. E. 3; Lomas *v.* New York City R. Co., 111 N. Y. App. Div. 332, 97 N. Y. Supp. 658, *affirmed* 188 N. Y. 628, 81 N. E. 1169 mem.; Wagoner *v.* Wabash R. Co., 197 Mo. 196, 94 S. W. 293; Kenny *v.* Canadian Pac. R. Co., 5 N. W. Ter. 420.

Duty of Steamship to Keep Passengers Below Deck in Very Bad Weather. — The Prinzess Irene, 139 Fed. 810.

2. Massell *v.* Boston El. R. Co., 191 Mass. 491, 78 N. E. 108.

Passenger Struck by Handle of Car Brake. — Kentucky, etc., Bridge, etc., Co. *v.* Shrader, 80 S. W. 1094, 26 Ky. L. Rep. 206; Thompson *v.* St. Louis, etc., R. Co., 111 Mo. App. 465, 86 S. W. 465.

Servant of Carrier Negligently Colliding with Passenger. — Chicago, etc., R. Co. *v.* Ferguson, 74 Kan. 253, 86 Pac. 471; Spinney *v.* Boston El. R. Co., 188 Mass. 30, 73 N. E. 1021.

Sudden Stopping of Train. — Todd *v.* Missouri Pac. R. Co., 126 Mo. App. 684, 105 S. W. 671.

Sudden Stopping of Street Car. — Willis *v.* St. Joseph R., etc., Co., 111 Mo. App. 580, 86 S. W. 567.

Management of Street Car when Passenger Compelled to Occupy Insecure Position. — Van Horn *v.* St. Louis Transit Co., 198 Mo. 481, 95 S. W. 372.

Overcrowding Conveyance. — Kohn *v.* Interborough Rapid Transit Co., 104 N. Y. App. Div. 237, 93 N. Y. Supp. 671; Horan *v.* Rockwell, 110 N. Y. App. Div. 522, 96 N. Y. Supp. 973; Schmidt *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 255, 97 N. Y. Supp. 390.

Falling of Window on Hand of Passenger. — Strembel *v.* Brooklyn Heights R. Co., 110 N. Y. App. Div. 23, 96 N. Y. Supp. 903.

Falling of Fare Register upon Passenger. — Weir *v.* Union R. Co., 112 N. Y. App. Div. 109, 98 N. Y. Supp. 268.

Crushing Hand by Suddenly Shutting Door may make the carrier liable in damages. Carroll *v.* Boston, etc., R. Co., 186 Mass. 97, 71 N. E. 89; Stein *v.* Manhattan R. Co., (Supm. Ct. App. T.) 90 N. Y. Supp. 437; O'Rourke *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 453, 92 N. Y. Supp. 317.

Crushing Hand by Shutting of Door by Sudden Motion of Car. — Graf *v.* West Jersey, etc., R. Co., (N. J. 1905) 62 Atl. 333.

Crushing Hand by Door Swinging Closed has been held not to make a railroad company liable to the injured passenger. Mason *v.* Boston, etc., R. Co., 190 Mass. 255, 76 N. E. 717.

Explosion and Flames in Street Car Caused by Burning Out of Fuse. — Lord *v.* Manchester St. R. Co., (N. H. 1907) 67 Atl. 639.

Duty to Heat Car. — Atlantic Coast Line R. Co. *v.* Powell, 127 Ga. 805, 56 S. E. 1006.

Statute Requiring Railroad Companies to Supply Trains with Drinking Water Not Applicable to Street Railways. — Dean *v.* State, (Ala. 1907) 43 So. 24.

Where Suburban Electric Cars Had Become Stalled in a snowstorm and a female passenger and her child were compelled to remain in the car suffering from cold for eleven and one-half hours, it was held that the conductor was not obliged sooner to find shelter for the plaintiff outside the car. Prospect *v.* Rhode Island Suburban R. Co., 28 R. I. 367, 67 Atl. 522.

588. 2. Indiana Union Traction Co. *v.* McKinney, 39 Ind. App. 86, 78 N. E. 203.

589. 2. *Arkansas.* — Rodgers *v.* Choctaw, etc., R. Co., (Ark. 1905) 89 S. W. 468.

Missouri. — Young *v.* Missouri Pac. R. Co., (Mo. App. 1904) 84 S. W. 175; Hedrick *v.* Missouri Pac. R. Co., 195 Mo. 104, 93 S. W. 268; Green *v.* Missouri, etc., R. Co., 121 Mo. App. 720, 97 S. W. 646.

Nebraska. — Chicago, etc., R. Co. *v.* Troyer, 70 Neb. 294, 103 N. W. 680.

North Carolina. — Marable *v.* Southern R. Co., 142 N. Car. 557, 55 S. E. 355; Miller *v.* Atlanta, etc., Air Line R. Co., 143 N. Car. 115, 55 S. E. 439, *reversed* on other grounds 144 N. Car. 545, 57 S. E. 345.

Texas. — Missouri, etc., R. Co. *v.* Schroeder, (Tex. Civ. App. 1906) 100 S. W. 808; Hardin *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 995.

4. *Alabama.* — Southern R. Co. *v.* Burgess, 143 Ala. 364, 42 So. 35.

Missouri. — Young *v.* Missouri Pac. R. Co., (Mo. App. 1904) 84 S. W. 175; Hedrick *v.* Missouri Pac. R. Co., 195 Mo. 104, 93 S. W. 268; Green *v.* Missouri, etc., R. Co., 121 Mo. App. 720, 97 S. W. 646; Bussell *v.* Quincy, etc., R. Co., 125 Mo. App. 441, 102 S. W. 613.

Nebraska. — Chicago, etc., R. Co. *v.* Troyer, 70 Neb. 294, 103 N. W. 680.

Oregon. — Harvey *v.* Deep River Logging Co., (Oregon 1907) 90 Pac. 501.

Texas. — Texas, etc., R. Co. *v.* Bump, (Tex. Civ. App. 1906) 95 S. W. 29.

Mixed Trains. — Southern R. Co. *v.* Cunningham, 123 Ga. 90, 50 S. E. 979.

Special Trains. — Gerhart *v.* Wabash R. Co., 110 Mo. App. 105, 84 S. W. 100.

590. 2. *Arkansas.* — St. Louis, etc., R. Co. *v.* Taylor, 74 Ark. 31, 84 S. W. 1035.

Illinois. — Chicago City R. Co. *v.* Lannon, 212 Ill. 477, 72 N. E. 585; Cicero, etc., R. Co. *v.* Reiser, 115 Ill. App. 146; Chicago, etc., R. Co. *v.* Smith, 124 Ill. App. 627.

Indiana. — Indianapolis Traction, etc., Co. *v.* Romans, (Ind. App. 1907) 79 N. E. 1068.

Kentucky. — Southern R. Co. *v.* Brewer, (Ky. 1907) 105 S. W. 160.

Massachusetts. — Savage *v.* Marlborough St. R. Co., 186 Mass. 203, 71 N. E. 531; Jordan *v.* Old Colony St. R. Co., 190 Mass. 330, 76 N. E. 909.

Mississippi. — Kansas City, etc., R. Co. *v.* Nichols, (Miss. 1905) 38 So. 371.

Missouri. — Magrane *v.* St. Louis, etc., R. Co., 183 Mo. 119, 81 S. W. 1158.

New Jersey. — Rodman *v.* North Jersey St. R. Co., 71 N. J. L. 43, 58 Atl. 1095; Walsh *v.* North Jersey St. R. Co., 71 N. J. L. 641, 60 Atl. 335; Stevens *v.* New Jersey, etc., R. Co., 74 N. J. L. 237, 65 Atl. 874.

591. 1. See St. Louis, etc., R. Co. *v.* Nance, (Tex. Civ. App. 1907) 101 S. W. 294; Horton *v.* Houston, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 467.

592. 1. Forsythe *v.* Los Angeles R. Co., 149 Cal. 569, 87 Pac. 24; Cordiner *v.* Los Angeles Traction Co., 5 Cal. App. 400, 91 Pac. 436; Louisville, etc., Mail Co. *v.* Barnes, 117 Ky. 860, 79 S. W. 261; Louisville R. Co. *v.* Blum, 89 S. W. 186, 28 Ky. L. Rep. 253. See St. Louis, etc., R. Co. *v.* Nance, (Tex. Civ. App. 1907) 101 S. W. 294.

593. 2. *Illinois.* — Chicago, etc., R. Co. *v.* Newell, 212 Ill. 332, 72 N. E. 416, 113 Ill. App. 263; Chicago City R. Co. *v.* Bennett, 214 Ill. 26, 73 N. E. 343; North Chicago St. R. Co. *v.* Canfield, 118 Ill. App. 353; Alton Light, etc., Co. *v.* Oller, 119 Ill. App. 181, *affirmed* 217 Ill. 15, 75 N. E. 419; Elgin, etc., Traction Co. *v.* Wilson, 120 Ill. App. 371, *affirmed* 75 N. E. 436, 217 Ill. 47.

Indiana. — Southern Indiana R. Co. *v.* Messick, 35 Ind. App. 676, 74 N. E. 1097.

Iowa. — Fitch *v.* Mason City, etc., Traction Co., 124 Iowa 665, 100 N. W. 618; Dieckmann *v.* Chicago, etc., R. Co., (Iowa 1906) 105 N. W. 526.

Massachusetts. — Partelow *v.* Newton, etc., St. R. Co., (Mass. 1907) 81 N. E. 894.

Missouri. — Chadwick *v.* St. Louis Transit Co., 195 Mo. 517, 93 S. W. 798.

New York. — Moskowitz *v.* Brooklyn Heights R. Co., 89 N. Y. App. Div. 425, 85 N. Y. Supp. 960, 183 N. Y. 521, 76 N. E. 1101.

Tennessee. — Illinois Cent. R. Co. *v.* Porter, 117 Tenn. 13, 94 S. W. 666.

Conditions by Which Rate of Speed to Be Judged. — See Galveston, etc., R. Co. *v.* Patillo, (Tex. Civ. App. 1907) 101 S. W. 492.

Running Street Cars at Speed Greater than Allowed by Ordinance Negligence Per Se. — Dallas Consol. Electric St. R. Co. *v.* Ison, 37 Tex. Civ. App. 219, 83 S. W. 408.

594. 2. *United States.* — Missouri, etc., R. Co. *v.* Smith, (C. C. A.) 152 Fed. 608.

District of Columbia. — Shortsleeves *v.* Capital Traction Co., 28 App. Cas. (D. C.) 365.

Georgia. — McCook *v.* Dublin, etc., R. Co., 2 Ga. App. 374, 58 S. E. 491.

Illinois. — Chicago, etc., R. Co. *v.* Stratton, 111 Ill. App. 142; Peoria, etc., Terminal R. Co. *v.* Hoerr, 120 Ill. App. 65.

Kentucky. — Flood *v.* Chesapeake, etc., R. Co., 80 S. W. 184, 25 Ky. L. Rep. 2135; Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280.

New Jersey. — Shelton *v.* Erie R. Co., 73 N. J. L. 558, 66 Atl. 403, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 594.

New York. — Maxson *v.* Pennsylvania R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 502, 97 N. Y. Supp. 962.

Texas. — Texas, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 84 S. W. 852; Gulf, etc., R. Co. *v.* Riney, (Tex. Civ. App. 1906) 92 S. W. 54; Gulf, etc., R. Co. *v.* McCormick, (Tex. Civ. App. 1907) 100 S. W. 202.

Virginia. — Virginia, etc., R. Co. *v.* Hill, 105 Va. 729, 54 S. E. 872.

Washington. — Braymer *v.* Seattle, etc., R. Co., 35 Wash. 346, 77 Pac. 495.

A Tender of the Fare by a Third Person, consented to by the passenger, is equivalent to a tender by the passenger himself. Missouri, etc., R. Co. *v.* Smith, (C. C. A.) 152 Fed. 608.

595. 2. Southern R. Co. *v.* Fleming, 128 Ga. 241, 57 S. E. 481.

4. Rivers *v.* Kansas City, etc., R. Co., 86 Miss. 571, 38 So. 508; Ammons *v.* Southern R. Co., 138 N. Car. 555, 51 S. E. 127, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 595; Gulf, etc., R. Co. *v.* Dyer, (Tex. Civ. App. 1906) 95 S. W. 12.

596. 1. Talbert *v.* Charleston, etc., R. Co., 72 S. Car. 137, 51 S. E. 564, *affirmed* 75 S. Car. 136, 55 S. E. 138.

4. Seaboard Air Line R. Co. *v.* Scarborough, 52 Fla. 425, 42 So. 706.

597. 1. Seaboard Air Line R. Co. *v.* Scarborough, 52 Fla. 425, 42 So. 706.

2. See Gulf, etc., R. Co. *v.* Bunn, (Tex. Civ. App. 1906) 95 S. W. 640.

Mere Verbal Offer to Pay Without Actual Tender Insufficient. — Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280.

Tender of Fare by Fellow Passenger after Expulsion Begun Is Unavailing. — Gates *v.* Quincy, etc., R. Co., 125 Mo. App. 334, 102 S. W. 50; Missouri, etc., R. Co. *v.* Smith, (C. C. A.) 152 Fed. 608.

But it has been held that the duty to carry is reimposed by a tender of the fare by a fellow passenger, although the train has been stopped, where the person whose fare is so tendered is on the train in entire good faith. Missouri, etc., R. Co. *v.* Smith, (Indian Ter. 1905) 89 S. W. 668.

598. 2. Gulf, etc., R. Co. *v.* Riney, (Tex. Civ. App. 1906) 92 S. W. 54.

4. Leonard *v.* St. Louis Transit Co., 115 Mo. App. 349, 91 S. W. 452; McQuerry *v.* Metropolitan St. R. Co., 117 Mo. App. 255, 92 S. W. 912.

599. 2. See Greenwood *v.* Union Traction Co., 30 Pa. Super. Ct. 488.

Where a drunken and disorderly passenger, who is physically capable of taking care of himself, is ejected at a station and follows the train on foot and either falls or jumps from a bridge into a river and is drowned the com-

pany is not liable. Delahanty *v.* Michigan Cent. R. Co., 10 Ont. L. Rep. 388.

600. 3. Violation of Reasonable Rules Justifies Expulsion. — Dobbins *v.* Little Rock R., etc., Co., 79 Ark. 85, 95 S. W. 794.

Violation of Reasonable Rules Justifies Refusal to Allow Access to Platform. — Sickels *v.* Brooklyn Heights R. Co., 113 N. Y. App. Div. 680, 99 N. Y. Supp. 953.

601. 3. Flood *v.* Chesapeake, etc., R. Co., 80 S. W. 184, 25 Ky. L. Rep. 2135.

4. Retention of Expired Ticket Gives No Right to Passage. — Elliott *v.* Southern Pac. Co., 145 Cal. 441, 79 Pac. 420.

602. 2. Baltimore, etc., R. Co. *v.* Evans, (Ind. 1907) 82 N. E. 773.

603. 1. St. Louis Southwestern R. Co. *v.* Ferlow, 81 Ark. 496, 99 S. W. 689; Illinois Cent. R. Co. *v.* Jackson, 117 Ky. 900, 79 S. W. 1187; Southern R. Co. *v.* Hawkins, 89 S. W. 258, 28 Ky. L. Rep. 364; Cherry *v.* Chicago, etc., R. Co., 191 Mo. 511, 90 S. W. 381, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 603. See also Shannon *v.* Northern Pac. R. Co., 44 Wash. 321, 87 Pac. 351. But see Virginia, etc., R. Co. *v.* Hill, 105 Va. 729, 54 S. E. 872.

Carrier Liable Only for Breach of Contract. — Little Rock R., etc., Co. *v.* Goerner, 80 Ark. 158, 95 S. W. 1007.

607. 1. *Alabama.* — Birmingham R., etc., Co. *v.* Mason, 144 Ala. 387, 39 So. 590.

Arkansas. — St. Louis, etc., R. Co. *v.* Mynott, 83 Ark. 6, 102 S. W. 380.

Iowa. — Bettis *v.* Chicago, etc., R. Co., 131 Iowa 46, 108 N. W. 103.

Kentucky. — Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280.

Michigan. — Lindsay *v.* Wabash R. Co., 141 Mich. 204, 104 N. W. 656, 12 Detroit Leg. N. 430.

Missouri. — McQuerry *v.* Metropolitan St. R. Co., 117 Mo. App. 255, 92 S. W. 912.

Virginia. — Virginia, etc., R. Co. *v.* Hill, 105 Va. 729, 54 S. E. 872.

Washington. — Clark *v.* Great Northern R. Co., 37 Wash. 537, 79 Pac. 1108.

2. Louisville, etc.. R. Co. *v.* Quinn, 146 Ala. 330, 39 So. 756; McGhee *v.* Cashin, (Ala. 1905) 40 So. 63; Chicago, etc., R. Co. *v.* Stratton, 111 Ill. App. 142; Louisville, etc., R. Co. *v.* McNally, (Ky. 1907) 105 S. W. 124; Boling *v.* St. Louis, etc., R. Co., 189 Mo. 219, 88 S. W. 35; Mahoning Valley R. Co. *v.* De Pascale, 70 Ohio St. 179, 71 N. E. 633; Klenk *v.* Oregon Short Line R. Co., 27 Utah 428, 76 Pac. 214.

Right of Passenger to Offer Reasonable Resistance. — Breen *v.* St. Louis Transit Co., 108 Mo. App. 443, 83 S. W. 998; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

3. Tuttle *v.* Cincinnati, etc., R. Co., 80 S. W. 802, 26 Ky. L. Rep. 152.

Where a passenger is put off at a dangerous place, on its being discovered that he has passed the station at which he ought to have alighted, the liability of the company for such negligence ceases when he has extricated himself from such dangerous place, and does not revive when he voluntarily and needlessly returns thereto and is injured. Gwyn *v.* Cincinnati, etc., R. Co., (C. C. A.) 155 Fed. 88.

610. 1. Rule of Company Unknown to Passenger. — De Board *v.* Camden Interstate R. Co., (W. Va. 1907) 57 S. E. 279.

614. 1. Cherry *v.* Chicago, etc., R. Co., 191 Mo. 511, 90 S. W. 381, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 614.

615. 1. Cleveland, etc., R. Co. *v.* Henry, (Ind. App. 1907) 80 N. E. 636; Weaver *v.* Ann Arbor R. Co., 139 Mich. 590, 102 N. W. 1037; Baker *v.* Boston, etc., R. Co., (N. H. 1906) 65 Atl. 386; Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255; Galveston, etc., R. Co. *v.* Bean, (Tex. Civ. App. 1907) 99 S. W. 721; Sprigg *v.* Rutland R. Co., 77 Vt. 347, 60 Atl. 143; Shannon *v.* Chesapeake, etc., R. Co., 104 Va. 645, 52 S. E. 376.

621. 1. Decisions under the Railway and Canal Traffic Act. — The words "at passengers' own risk," printed on the face of a ticket, and conditions on the back will not protect a company from liability for injuries to a passenger owing to the negligence of its servants, where it is found that the passenger did not observe or read any notice upon the ticket, and that no reasonably sufficient notice was given to him that the ticket contained conditions. Hooper *v.* Furness R. Co., 25 Times L. Rep. 451.

2. Stipulation Held Valid. — Northern Pac. R. Co. *v.* Adams, 192 U. S. 440, 24 U. S. Sup. Ct. 408, 48 U. S. (L. ed.) 513.

Stipulation Held Void. — Galveston, etc., R. Co. *v.* Bean, (Tex. Civ. App. 1907) 99 S. W. 721; Robinson *v.* St. Johnsbury, etc., R. Co., (Vt. 1907) 66 Atl. 814.

Contract Between Carrier and Employer Not Binding on Employee. — Cleveland, etc., R. Co. *v.* Henry, (Ind. App. 1907) 80 N. E. 636.

Employee Riding on Pass. — Where a pass is issued as a gratuity, a clause providing that the holder assumes all the risks of accident is binding, but where such pass is issued to an employee as one of the terms of his employment, the clause is not binding. Dugan *v.* Blue Hill St. R. Co., 193 Mass. 431, 79 N. E. 748.

Drovers. — Since a drover is a passenger for hire a stipulation in the drover's pass exempting the carrier from liability for negligence is void. Weaver *v.* Ann Arbor R. Co., 139 Mich. 590, 102 N. W. 1037.

Express Messengers — Contract Valid. — Kelly *v.* Malott, 135 Fed. 74, 67 C. C. A. 548.

Circus Trains, etc. — Clough *v.* Grand Trunk Western R. Co., (C. C. A.) 155 Fed. 81.

Employees of Shippers in Charge of Shipment are entitled to recover for negligence of the carrier although there is a contract between the shipper and the carrier exempting the carrier from liability. Baker *v.* Boston, etc., R. Co., (N. H. 1906) 65 Atl. 386.

623. 1. *United States.* — New Jersey St. R. Co. *v.* Purdy, (C. C. A.) 142 Fed. 955.

Alabama. — Mobile Light, etc., Co. *v.* Walsh, 146 Ala. 290, 40 So. 559, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622.

District of Columbia. — Washington, etc., R. Co. *v.* Chapman, 26 App. Cas. (D. C.) 472, 6

Ann. Cas. 721; Kehan *v.* Washington R., etc., Co., 28 App. Cas. (D. C.) 108.

Indiana. — Evansville, etc., R. Co. *v.* Mills, 37 Ind. App. 598, 77 N. E. 608.

Kansas. — Metropolitan St. R. Co. *v.* Warren, 74 Kan. 244, 86 Pac. 131.

Kentucky. — Louisville, etc., R. Co. *v.* Beard, 90 S. W. 944, 28 Ky. L. Rep. 921.

Louisiana. — Spurlock *v.* Shreveport Traction Co., 118 La. 1, 42 So. 575.

South Carolina. — Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255.

Presumption Recognized by Statute in Arkansas. — Kansas City Southern R. Co. *v.* Davis, 83 Ark. 217, 103 S. W. 603; Barringer *v.* St. Louis, etc., R. Co., 73 Ark. 548, 85 S. W. 94.

No Presumption Where Specific Acts of Negligence Are Pleaded. — Chicago Union Traction Co. *v.* Leonard, 126 Ill. App. 189; Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062; Hamilton *v.* Metropolitan St. R. Co., 114 Mo. App. 504, 89 S. W. 893; Ferguson *v.* St. Louis, etc., R. Co., 123 Mo. App. 590, 100 S. W. 537; Roscoe *v.* Metropolitan St. R. Co., 202 Mo. 576, 101 S. W. 32.

Gross Negligence Not Presumed. — Southern R. Co. *v.* Lee, (Ky. 1907) 101 S. W. 307.

624. 1. *California.* — Renfro *v.* Fresno City R. Co., 2 Cal. App. 317, 84 Pac. 357.

Delaware. — Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153.

Georgia. — Georgia R., etc., Co. *v.* McAllister, 126 Ga. 447, 54 S. E. 957.

Illinois. — Chicago Union Traction Co. *v.* Crosby, 109 Ill. App. 644; Feitl *v.* Chicago City R. Co., 113 Ill. App. 381, *judgment affirmed* 211 Ill. 279, 71 N. E. 991.

Iowa. — Fitch *v.* Mason City, etc., Traction Co., 124 Iowa 665, 100 N. W. 618.

Michigan. — Renders *v.* Grand Trunk R. Co., 144 Mich. 387, 108 N. W. 368, 13 Detroit Leg. N. 314.

Missouri. — Allen *v.* St. Louis Transit Co., 183 Mo. 411, 81 S. W. 1142; Hendrick *v.* Missouri Pac. R. Co., 195 Mo. 104, 93 S. W. 268.

Nebraska. — Lincoln Traction Co. *v.* Heller, 72 Neb. 127, 100 N. W. 197, 102 N. W. 262; Lincoln Traction Co. *v.* Webb, 73 Neb. 136, 102 N. W. 258; Lincoln Traction Co. *v.* Shepherd, 74 Neb. 369, 104 N. W. 882, 107 N. W. 764.

New York. — Munzer *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 45 Misc. (N. Y.) 568, 91 N. Y. Supp. 21; Strembel *v.* Brooklyn Heights R. Co., 110 N. Y. App. Div. 23, 96 N. Y. Supp. 903.

Oregon. — Goss *v.* Northern Pac. R. Co., 48 Oregon 439, 87 Pac. 149.

Washington. — Allen *v.* Northern Pac. R. Co., 35 Wash. 221, 77 Pac. 204.

Alighting from Car. — Wilbur *v.* Rhode Island Co., 27 R. I. 205, 61 Atl. 601.

The Fact that a Train Parts While in Transit raises a presumption of negligence. Feldschneider *v.* Chicago, etc., R. Co., 122 Wis. 423, 99 N. W. 1034.

2. Statements of the Rule — *Arkansas.* — Price *v.* St. Louis, etc., R. Co., 75 Ark. 479, 88 S. W. 575.

District of Columbia. — Kohner *v.* Capital Traction Co., 22 App. Cas. (D. C.) 181.

Maryland. — State *v.* United R., etc., Co., 101 Md. 183, 60 Atl. 249; Western Maryland R. Co. *v.* Shivers, 101 Md. 391, 61 Atl. 618.

Massachusetts. — Weinschenk *v.* New York, etc., R. Co., 190 Mass. 250, 76 N. E. 662. See also Hebblethwaite *v.* Old Colony St. R. Co., 192 Mass. 295, 78 N. E. 477.

Missouri. — McRae *v.* Metropolitan St. R. Co., 125 Mo. App. 562, 102 S. W. 1032; Woas *v.* St. Louis Transit Co., 198 Mo. 664, 96 S. W. 1017; Trotter *v.* St. Louis, etc., R. Co., 122 Mo. App. 405, 99 S. W. 508.

New York. — Flynn *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 529, 96 N. Y. Supp. 259.

South Carolina. — Anderson *v.* South Carolina, etc., R. Co., 77 S. Car. 434, 58 S. E. 149.

Presumption Arises When Injury Produced by Operation of Instrumentalities Employed in Business. — French *v.* Pacific Electric R. Co., 1 Cal. App. 401, 82 Pac. 395; Griffin *v.* Pacific Electric R. Co., 1 Cal. App. 678, 82 Pac. 1084; Alton Light, etc., Co. *v.* Oller, 119 Ill. App. 181, *affirmed* 217 Ill. 15, 75 N. E. 419.

Foot Caught in Car Step. — Rattan *v.* Central Electric R. Co., 120 Mo. App. 270, 96 S. W. 735.

Blowing Out of Controller. — Firebaugh *v.* Seattle Electric Co., 40 Wash. 658, 82 Pac. 995; Lynch *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 90 N. Y. Supp. 378.

Injuries by Sparks from Engine. — Evidence that sparks and cinders of considerable size escaped from the engine and injured the plaintiff was held to make a *prima facie* case of negligence on the part of the company. St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343.

Sudden Stoppage, causing a passenger to fall, raises a presumption of negligence. Todd *v.* Missouri Pac. R. Co., 126 Mo. App. 684, 105 S. W. 671; Bussell *v.* Quincy, etc., R. Co., 125 Mo. App. 441, 102 S. W. 613.

Sudden Starting of Street Car gives rise to a presumption of negligence. Cody *v.* Market St. R. Co., 148 Cal. 90, 82 Pac. 666; Bell *v.* Central Electric R. Co., 125 Mo. App. 660, 103 S. W. 144.

The Sudden Lurching of a Car may raise a presumption of negligence. Fitch *v.* Mason City, etc., Traction Co., 124 Iowa 665, 100 N. W. 618.

Overturning Stage Coach or Carriage. — Dinnigan *v.* Peterson, 3 Cal. App. 764, 87 Pac. 218.

Injury in Making Transfer Because of Defect in Way Raises Presumption. — Colorado Springs, etc., R. Co. *v.* Petit, 37 Colo. 326, 86 Pac. 121.

The Falling of a Window upon the Hand of a Passenger does not raise a presumption of negligence. Strembel *v.* Brooklyn Heights R. Co., 110 N. Y. App. Div. 23, 96 N. Y. Supp. 903.

Management of Conveyance. — By statute in Georgia a presumption of negligence arises where an injury is caused by the running of locomotives, or cars or other machinery. Georgia R., etc., Co. *v.* Reeves, 123 Ga. 697, 51 S. E. 610.

625. 1. *Alabama.* — Birmingham R., etc., Co. *v.* Moore, 148 Ala. 115, 42 So. 1024.

Illinois. — Elgin, etc., Traction Co. *v.* Wilson, 217 Ill. 47, 75 N. E. 436.

Indiana. — New York, etc., R. Co. *v.* Callahan, (Ind. App. 1907) 81 N. E. 670; Pittsburgh, etc., R. Co. *v.* Higgs, 165 Ind. 694, 76 N. E. 299.

Kentucky. — Southern R. Co. *v.* Brewer, (Ky. 1907) 105 S. W. 160.

Mississippi. — Kansas City, etc., R. Co. *v.* Nichols, (Miss. 1905) 38 So. 371.

Missouri. — Estes *v.* Missouri Pac. R. Co., 110 Mo. App. 725, 85 S. W. 627; Wilbur *v.* Southwest Missouri Electric R. Co., 110 Mo. App. 689, 85 S. W. 671.

Pennsylvania. — Rowdin *v.* Pennsylvania R. Co., 208 Pa. St. 623, 57 Atl. 1125.

Washington. — Williams *v.* Spokane Falls, etc., R. Co., 39 Wash. 77, 80 Pac. 1100; Russell *v.* Seattle, etc., R. Co., (Wash. 1907) 92 Pac. Rep. 288.

Canada. — Ryckman *v.* Hamilton, etc., Electric R. Co., 10 Ont. L. Rep. 419, 4 Ann. Cas. 1126.

Collision Between Street Cars.— Sedoff *v.* Chicago City R. Co., 124 Ill. App. 609; Chaffe *v.* Consolidafed R. Co., (Mass. 1907) 82 N. E. 497; Magrane *v.* St. Louis, etc., R. Co., 183 Mo. 119, 81 S. W. 1158; Reynolds *v.* St. Louis Transit Co., 189 Mo. 408, 88 S. W. 50; Goodloe *v.* Metropolitan St. R. Co., 120 Mo. App. 194, 96 S. W. 482; O'Clair *v.* Rhode Island Co., 27 R. I. 448, 63 Atl. 238; Simone *v.* Rhode Island Co., 28 R. I. 186, 66 Atl. 202.

Collision Between Street Car and Wagon. — It has been held that a collision between a street car and a wagon or other vehicle, not under the control of the carrier, does not raise a presumption of negligence. Wolf *v.* Chicago Union Traction Co., 119 Ill. App. 481; Loehner *v.* North Chicago St. R. Co., 116 Ill. App. 365; Chicago Union Traction Co. *v.* Mee, 218 Ill. 9, 75 N. E. 800, *reversing* 119 Ill. App. 332; Munzer *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 45 Misc. (N. Y.) 568, 91 N. Y. Supp. 21; Maher *v.* Metropolitan St. R. Co., 102 N. Y. App. Div. 517, 92 N. Y. Supp. 825; Fagan *v.* Rhode Island Co., 27 R. I. 51, 60 Atl. 672. *Contra,* Houghton *v.* Market St. R. Co., 1 Cal. App. 576, 82 Pac. 972; Bamberg *v.* International R. Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 403, 103 N. Y. Supp. 297.

Horse's Head Coming through Window of Car does not raise a presumption of negligence. Grant *v.* Metropolitan St. R. Co., 99 N. Y. App. Div. 422, 91 N. Y. Supp. 202.

626. 1. *Illinois.* — Anderson Art Co. *v.* Greenburg, 118 Ill. App. 220; Chicago Union Traction Co. *v.* Newmiller, 116 Ill. App. 625, *affirmed* 215 Ill. 383, 74 N. E. 410.

Missouri. — Redmon *v.* Metropolitan St. R. Co., 185 Mo. 1, 84 S. W. 26; Brod *v.* St. Louis Transit Co., 115 Mo. App. 202, 91 S. W. 993; Evers *v.* Wiggins Ferry Co., 116 Mo. App. 130, 92 S. W. 118.

New York. — Glassberg *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 92 N. Y. Supp. 731.

Ohio. — Cincinnati Traction Co. *v.* Holzenkamp, 74 Ohio St. 379, 78 N. E. 529.

Breaking of Coupler. — Galveston, etc., R. Co. *v.* Young, (Tex. Civ. App. 1907) 100 S. W. 993.

Broken Wheel of Car. — Lowenthal *v.* Vicksburg, etc., R. Co., 117 La. 1007, 42 So. 483.

Broken Chain. — Dougherty *v.* Pittsburgh R. Co., 213 Pa. St. 346, 62 Atl. 926.

Explosion of Locomotive Boiler. — Kelly *v.* Chicago, etc., R. Co., 113 Mo. App. 468, 87 S. W. 583.

627. 1. Bridge Giving Way. — Jackson *v.* Natchez, etc., R. Co., 114 La. 981, 38 So. 701.

United States. — Minahan *v.* Grand Trunk Western R. Co., (C. C. A.) 138 Fed. 37; Southern Pac. Co. *v.* Cavin, (C. C. A.) 144 Fed. 348.

Illinois. — Hill *v.* Chicago City R. Co., 126 Ill. App. 152.

Indiana. — Cincinnati, etc., R. Co. *v.* Bravard, 38 Ind. App. 422, 76 N. E. 899; Indiana Union Traction Co. *v.* McKinney, 39 Ind. App. 86, 78 N. E. 203.

Kentucky. — Louisville St. R. Co. *v.* Brownfield, 96 S. W. 912, 29 Ky. L. Rep. 1097.

Mississippi. — Brown *v.* Yazoo, etc., R. Co., 88 Miss. 687, 41 So. 383.

Missouri. — Logan *v.* Metropolitan St. R. Co., 183 Mo. 582, 82 S. W. 126; Bowlin *v.* Union Pac. R. Co., 125 Mo. App. 419, 102 S. W. 631; O'Gara *v.* St. Louis Transit Co., 204 Mo. 724, 103 S. W. 54.

Nebraska. — Omaha St. R. Co. *v.* Boesen, 74 Neb. 764, 105 N. W. 303.

New York. — Braun *v.* Union R. Co., 115 N. Y. App. Div. 566, 100 N. Y. Supp. 1012; Ludinsky *v.* Dry Dock, etc., R. Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 569, 103 N. Y. Supp. 711.

North Carolina. — Overcash *v.* Charlotte Electric R., etc., Co., 144 N. Car. 572, 57 S. E. 377.

Tennessee. — Illinois Cent. R. Co. *v.* Porter, 117 Tenn. 13, 94 S. W. 666.

Texas. — St. Louis Southwestern R. Co. *v.* Harkey, (Tex. Civ. App. 1905) 88 S. W. 506; Galveston, etc., R. Co. *v.* Green, (Tex. Civ. App. 1905) 91 S. W. 380; St. Louis Southwestern R. Co. *v.* Black, (Tex. Civ. App. 1906) 93 S. W. 1071; Galveston, etc., R. Co. *v.* Gracia, (Tex. Civ. App. 1907) 100 S. W. 198.

628. 4. Price *v.* St. Louis, etc., R. Co., 75 Ark. 479, 88 S. W. 575; Blake *v.* Camden Interstate R. Co., 57 W. Va. 300, 50 S. E. 408.

629. 5. Evers *v.* Wiggins Ferry Co., 116 Mo. App. 130, 92 S. W. 118; Omaha St. R. Co. *v.* Boesen, 74 Neb. 764, 105 N. W. 303.

6. McGinn *v.* New Orleans R., etc., Co., 118 La. 811, 43 So. 450; Lynch *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 90 N. Y. Supp. 378; Overcash *v.* Charlotte Electric R., etc., Co., 144 N. Car. 572, 57 S. E. 377; Goss *v.* Northern Pac. R. Co., 48 Oregon 439, 87 Pac. 149; Illinois Cent. R. Co. *v.* Porter, 117 Tenn. 13, 94 S. W. 666; St. Louis Southwestern R. Co. *v.* Black, (Tex. Civ. App. 1906) 93 S. W. 1071.

Question of Rebuttal for Jury. — Simone *v.* Rhode Island Co., 28 R. I. 186, 66 Atl. 202; Firebaugh *v.* Seattle Electric Co., 40 Wash. 658, 82 Pac. 995.

630. 1. Philadelphia, etc., R. Co. *v.* Allen, 102 Md. 110, 62 Atl. 245; Galveston, etc., R. Co. *v.* Crier, (Tex. Civ. App. 1907) 100 S. W. 1177.

Negligence Concurring with Act of God. — Where the injury is caused by the carrier's

negligence concurring with an act of God, the carrier is liable. Chicago, etc., R. Co. *v.* Cain, 37 Tex. Civ. App. 531, 84 S. W. 682.

2. Swigelsky *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 91 N. Y. Supp. 350.

9. *England.* — Ayers *v.* London, etc., R., *22* Times L. Rep. *222.*

United States. — Southern Pac. Co. *v.* Schuyler, 135 Fed. 1015, 68 C. C. A. 409; Pennsylvania R. Co. *v.* McCaffrey, 149 Fed. 404, 79 C. C. A. *224.*

California. — Patterson *v.* San Francisco, etc., Electric R. Co., 147 Cal. 178, 81 Pac. 531; French *v.* Pacific Electric R. Co., 1 Cal. App. 401, 82 Pac. 395.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167; Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153.

District of Columbia. — Washington, etc., R. Co. *v.* Chapman, *26* App. Cas. (D. C.) *472,* 6 Ann. Cas. *721*; Kehan *v.* Washington R., etc., Co., *28* App. Cas. (D. C.) 108.

Illinois. — Chicago City R. Co. *v.* Bundy, *210* Ill. 39, *71* N. E. *28*; Chicago Union Traction Co. *v.* Straud, 114 Ill. App. 479; North Chicago St. R. Co. *v.* O'Donnell, 115 Ill. App. 110.

Michigan. — Thurston *v.* Detroit United R. Co., 137 Mich. *231,* 100 N. W. 395.

Missouri. — Young *v.* Missouri Pac. R. Co., (Mo. App. 1904) 84 S. W. 175; Roscoe *v.* Metropolitan St. R. Co., *202* Mo. 576, 101 S. W. *32.*

Nebraska. — Lincoln Traction Co. *v.* Heller, *72* Neb. *127,* 100 N. W. 197, 102 N. W. *262*; Lincoln Traction Co. *v.* Webb, *73* Neb. 136, 102 N. W. 258; Lincoln Traction Co. *v.* Shepherd, 74 Neb. 369, 104 N. W. 882, 107 N. W. 764; Omaha St. R. Co. *v.* Boesen, 74 Neb. 764, 105 N. W. 303.

New York. — Dean *v.* Tarrytown, etc., R. Co., 113 N. Y. App. Div. 437, 99 N. Y. Supp. 250; Mosesco *v.* Interborough Rapid Transit Co., 113 N. Y. App. Div. 517, 99 N. Y. Supp. 345; Greer *v.* Union R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 560, 99 N. Y. Supp. 428.

Pennsylvania. — Weaver *v.* Pennsylvania R. Co., *212* Pa. St. *632,* 61 Atl. 1117.

Rhode Island. — Heltzen *v.* Union R. Co., *26* R. I. 576, 59 Atl. 918; Fagan *v.* Rhode Island Co., *27* R. I. 51, 60 Atl. *672.*

Texas. — St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343; Rambie *v.* San Antonio, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. *1022*; International, etc., R. Co. *v.* Tasby, (Tex. Civ. App. 1907) 100 S. W. 1030.

Virginia. — Berkley St. R. Co. *v.* Simpson, 106 Va. 548, 56 S. E. 331.

Wisconsin. — Peat *v.* Chicago, etc., R. Co., 128 Wis. 86, 107 N. W. 355.

631. **2.** Hutcheis *v.* Cedar Rapids, etc., R. Co., 128 Iowa *279,* 103 N. W. *779.* But see Union Traction Co. *v.* Sullivan, 38 Ind. App. 513, *76* N. E. 116, wherein it was said that contributory negligence was a matter of defense.

A Drover Riding in a Stock Car has the burden of proof, it has been held, to show that he was justified in riding where he did. Lake Shore, etc., R. Co. *v.* Teeters, (Ind. App. 1905) 74 N. E. 1014.

3. Little Rock R., etc., Co. *v.* Doyle, 79 Ark. 378, 96 S. W. 353; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Lewis *v.* Houston Electric Co., (Tex. Civ. App. 1905) 88 S. W. 489; St. Louis Southwestern R. Co. *v.* Gammage, (Tex. Civ. App. 1906) 96 S. W. 645; Gulf, etc., R. Co. *v.* Booth, (Tex. Civ. App. 1906) 97 S. W. 128; El Paso Electric R. Co. *v.* Kitt, (Tex. Civ. App. 1907) 99 S. W. 587; Selman *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 1030.

Shifting Burden of Proof. — Missouri, etc., R. Co. *v.* Avis, (Tex. 1907) 101 S. W. 424.

632. **1.** See Indianapolis, etc., R. Co. *v.* Barnes, 35 Ind. App. 485, 74 N. E. 583.

Contributory Negligence May Be Established by Plaintiff's Evidence. — Philadelphia, etc., R. Co. *v.* Hand, 101 Md. *233,* 61 Atl. *285*; Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788.

636. **1. Derailment of Car at Different Place Held Admissible.** — East St. Louis, etc., R. Co. *v.* Zink, *229* Ill. 180, 82 N. E. 283.

Proof that other cars ran off the track at the place of derailment is inadmissible in the absence of proof that the track was in the same condition as at the time of the accident. Overcash *v.* Charlotte Electric R., etc., Co., 144 N. Car. *572,* 57 S. E. 377.

2. Nelson *v.* Union R. Co., *26* R. I. 251, 58 Atl. 780.

4. Union Traction Co. *v.* Sullivan, 38 Ind. App. 513, *76* N. E. 116.

In Manning *v.* London, etc., R. Co., *23* Times L. Rep. *222,* where it was alleged that the plaintiff's injuries were incurred by the footboard of the carriage from which he was alighting being at an unreasonable height above the platform, evidence that the platforms at a large number of the company's other stations in the district were as low as the one in question and that no accident had happened, was held to be admissible.

Absence of Previous Accidents, it has been held, cannot be shown. Newcomb *v.* New York Cent., etc., R. Co., 182 Mo. 687, 81 S. W. 1069.

637. **2.** Beverley *v.* Boston El. R. Co., 194 Mass. 450, 80 N. E. 507.

638. **2. Admissibility to Show Practicability of Different Construction of Platform.** — Beverley *v.* Boston El. R. Co., 194 Mass. 450, 80 N. E. 507.

To Show Usual Stopping Place. — Birmingham R., etc., Co. *v.* Enslen, 144 Ala. 343, 39 So. 74.

639. **5.** Cherry *v.* Chicago, etc., R. Co., 191 Mo. 511, 90 S. W. 381, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 639.

6. Chicago Consol. Traction Co. *v.* Mahoney, *230* Ill. 562, 82 N. E. 868.

7. Birmingham R., etc., Co. *v.* Enslen, 144 Ala. 343, 39 So. 74; Birmingham R., etc., Co. *v.* Rutledge, 142 Ala. 195, 39 So. 338; Weeks *v.* Boston El. R. Co., 190 Mass. 563, 77 N. E. 654; O'Dea *v.* Michigan Cent. R. Co., 142 Mich. 265, 105 N. W. 746, 12 Detroit Leg.

N. 718; McHugh *v.* St. Louis Transit Co., 190 Mo. 85, 88 S. W. 853; Estes *v.* Missouri Pac. R. Co., 110 Mo. App. 725, 85 S. W. 627.

610. 1. Complaints of Pain Need Not Be Made at Time of Accident. — Battis *v.* Chicago, etc., R. Co., 124 Iowa 623, 100 N. W. 543.

Complaints Three or Four Weeks after Injury Admissible.— St. Louis Southwestern R. Co. *v.* Haynes, (Tex. Civ. App. 1905) 86 S. W. 934.

Complaints More than Eight Months after Injury. — Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207.

2. McCormick *v.* Detroit, etc., R. Co., 141 Mich. 17, 104 N. W. 390, 12 Detroit Leg. N. 326; O'Dea *v.* Michigan Cent. R. Co., 142 Mich. 265, 105 N. W. 746, 12 Detroit Leg. N. 718.

611. 1. Hutcheis *v.* Cedar Rapids, etc., R. Co., 128 Iowa 279, 103 N. W. 779.

Declarations by a passenger while he lay upon the ground, made not more than five minutes after the accident, that he had been pushed from the platform of a tram car, were held admissible in International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000.

2. Southern R. Co. *v.* Thurman, 90 S. W. 240, 28 Ky. L. Rep. 699; Illinois Cent. R. Co. *v.* Cotter, (Ky. 1907) 103 S. W. 279.

Evidence of statements of an employee to another passenger at the time of using insulting language to the plaintiff, and connected with such act, has been held admissible to show that the language was used in the presence of other passengers. Southern Pac. Co. *v.* Bailey, (Tex. Civ. App. 1906) 91 S. W. 820.

612. 2. Illinois Cent. R. Co. *v.* Winslow, 84 S. W. 1175, 27 Ky. L. Rep. 329; Redmon *v.* Metropolitan St. R. Co., 185 Mo. 1, 84 S. W. 26.

613. 1. Declarations made by the conductor while taking up the tickets immediately before a train wreck, in which he was killed, have been held admissible in an action by a passenger for injuries received in the wreck. Cain *v.* Atlantic Coast Line R. Co., 74 S. Car. 89, 54 S. E. 244.

614. 1. Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318.

3. Gulf, etc., R. Co. *v.* Coopwood, (Tex. Civ. App. 1906) 96 S. W. 102.

4. Declarations of Bystanders. — Kehan *v.* Washington R., etc., Co., 28 App. Cas. (D. C.) 108.

The testimony of a witness that some time after the accident he called the attention of other parties to the defective condition of a car step, is inadmissible. Texas Midland R. Co. *v.* Ellison, (Tex. Civ. App. 1905) 87 S. W. 213.

5. Insults by Employee. — An exclamation by one of the insulted passenger's children, made at the time, to the effect that they should leave the depot, was held admissible as part of the *res gestæ*. Gulf, etc., R. Co. *v.* Luther, (Tex. Civ. App. 1905) 90 S. W. 44.

615. 1. *Alabama.* — Birmingham R., etc., Co. *v.* Enslen, 144 Ala. 343, 39 So. 74.

Arkansas. — Kansas City Southern R. Co. *v.* McGinty, 76 Ark. 356, 88 S. W. 1001.

California. — Fraser *v.* California St. Cable R. Co., 146 Cal. 714, 81 Pac. 29; Joyce *v.* Los Angeles R. Co., 147 Cal. 274, 82 Pac. 204.

Indiana. — Indianapolis Traction, etc., Co. *v.* Pressell, 39 Ind. App. 472, 77 N. E. 357.

New York. — Kleffmann *v.* Dry Dock, etc., R. Co., 104 N. Y. App. Div. 416, 93 N. Y. Supp. 741; Cunningham *v.* Metropolitan St. R. Co., 104 N. Y. App. Div. 525, 93 N. Y. Supp. 700.

South Carolina. — Hunter *v.* Atlantic Coast Line R. Co., 72 S. Car. 336, 51 S. E. 860.

Washington. — Kroeger *v.* Seattle Electric Co., 37 Wash. 544, 79 Pac. 1115.

Slight Negligence Not a Defense. — Harvey *v.* Chicago, etc., R. Co., 116 Ill. App. 507, *affirmed* 221 Ill. 242, 77 N. E. 569.

Passenger's Negligence Must Materially Contribute to Accident. — Yazoo, etc., R. Co. *v.* Byrd, (Miss. 1906) 42 So. 286.

2. Wichita R., etc., Co. *v.* Cummings, 72 Kan. 694, 84 Pac. 121; Riley *v.* Cincinnati Traction Co., 28 Ohio Cir. Ct. 626.

3. Morgan *v.* Saks, 143 Ala. 139, 38 So. 848; Sweet *v.* Birmingham R., etc., Co., 145 Ala. 667, 39 So. 767; Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167; Chicago Union Traction Co. *v.* Grommes, 110 Ill. App. 113; Johnson *v.* Yonkers R. Co., 101 N. Y. App. Div. 65, 91 N. Y. Supp. 508; Houston, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1905) 89 S. W. 805.

4. Gross Negligence. — A plaintiff may recover, notwithstanding there was negligence on his part in exposing himself to the risk of injury, if the injury was nevertheless proximately and immediately caused by the gross neglect of the defendant to use reasonable care to avoid such injury, after having had such notice of the plaintiff's danger as would put a prudent man upon his guard. Chicago City R. Co. *v.* Schmidt, 117 Ill. App. 213, *affirmed* 217 Ill. 396, 75 N. E. 383.

616. 1. Miller *v.* Atlanta, etc., Air Line R. Co., 144 N. Car. 545, 57 S. E. 345.

2. *United States.* — Columbia, etc., R. Co. *v.* Means, 136 Fed. 83, 68 C. C. A. 651.

Arkansas. — Kansas City Southern R. Co. *v.* Davis, 83 Ark. 217, 103 S. W. 603; Midland Valley R. Co. *v.* Hamilton, 84 Ark. 81, 104 S. W. 540.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898.

Iowa. — Matthieson *v.* Burlington, etc., R. Co., 125 Iowa 90, 100 N. W. 51.

Massachusetts. — Black *v.* New York, etc., R. Co., 193 Mass. 448, 79 N. E. 797.

Pennsylvania. — Artheuholt *v.* Erie Electric Motor Co., 27 Pa. Super. Ct. 141.

South Carolina. — Talbert *v.* Charleston, etc., R. Co., 72 S. Car. 137, 51 S. E. 564, *affirmed* 75 S. Car. 136, 55 S. E. 138.

Texas. — Denison, etc., R. Co. *v.* Freeman, (Tex. Civ. App. 1905) 85 S. W. 55; San Antonio, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 85 S. W. 445; St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343; Hardin *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 995.

3. Rodgers *v.* Choctaw, etc., R. Co., (Ark. 1905) 89 S. W. 468; Louisville City R. Co. *v.* Hudgins, 98 S. W. 275, 30 Ky. L. Rep. 316; Coleman *v.* St. Louis Transit Co., 117 Mo. App. 123, 93 S. W. 920; Foland *v.* Southwest-

ern Missouri Electric R. Co., 119 Mo. App. 284, 95 S. W. 958.

Failure to Care for Injured Passenger will render the carrier liable for damages sustained thereby, although the passenger's negligence may have contributed to the accident. Yazoo, etc., R. Co. *v.* Byrd, (Mass. 1906) 42 So. 286.

647. **2.** Abelson *v.* St. Louis, etc., R. Co., 84 Ark. 181, 105 S. W. 81; Behen *v.* St. Louis Transit Co., 186 Mo. 430, 85 S. W. 346.

648. **5.** Boesen *v.* Omaha St. R. Co., (Neb. 1907) 112 N. W. 614; Staines *v.* Central R. Co., 72 N. J. L. 268, 61 Atl. 385; O'Brien *v.* Brooklyn Heights R. Co., 109 N. Y. App. Div. 833, 96 N. Y. Supp. 857.

Carrier's Implied Assurance of Safety. — A passenger on an interurban car, which is stopped for him to alight at a highway crossing, may reasonably assume that the car has been stopped in a portion of the highway where he is invited to alight, unless warned of danger, and is not conclusively negligent in accepting the invitation to alight at a place which is in fact unsafe. McGovern *v.* Interurban R. Co., (Iowa 1907) 111 N. W. 412.

649. **1.** Chicago Union Traction Co. *v.* Newmiller, 215 Ill. 383, 74 N. E. 410; Williamson *v.* St. Louis Transit Co., 202 Mo. 345, 100 S. W. 1072.

2. Firebaugh *v.* Seattle Electric Co., 40 Wash. 658, 82 Pac. 995; Normile *v.* Wheeling Traction Co., 57 W. Va. 132, 49 S. E. 1030. See also Denison, etc., R. Co. *v.* Freeman, (Tex. Civ. App. 1905) 85 S. W. 55.

650. **1.** Alabama City, etc., R. Co. *v.* Bates, (Ala. 1907) 43 So. 98; Shamblin *v.* New Orleans, etc., R. Co., 114 La. 467, 38 So. 421.

3. Kroeger *v.* Seattle Electric Co., 37 Wash. 544, 79 Pac. 1115.

651. **1.** Price *v.* St. Louis, etc., R. Co., 75 Ark. 479, 88 S. W. 575; Illinois Cent. R. Co. *v.* Johnson, 221 Ill. 42, 77 N. E. 592, *reversing* 123 Ill. App. 300; Cleveland, etc., R. Co. *v.* Scott, 111 Ill. App. 234; Rothschild *v.* Levy, 118 Ill. App. 78; Chesapeake, etc., R. Co. *v.* Lynch, 89 S. W. 517, 28 Ky. L. Rep. 467; Fry *v.* St. Louis Transit Co., 111 Mo. App. 324, 85 S. W. 960; Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3. See also Galveston, etc., R. Co. *v.* Fink, (Tex. Civ. App. 1906) 99 S. W. 204.

2. See Texas, etc., R. Co. *v.* Harrington, (Tex. Civ. App. 1906) 98 S. W. 653.

3. Hollingsworth *v.* Southern R. Co., 72 S. Car. 114, 51 S. E. 560.

652. **1.** Indianapolis Traction, etc., Co. *v.* Richey, (Ind. App. 1907) 80 N. E. 170.

2. Kansas City Southern R. Co. *v.* Davis, 83 Ark. 217, 103 S. W. 603; Louisville, etc., R. Co. *v.* Deason, 96 S. W. 1115, 29 Ky. L. Rep. 1259; Black *v.* New York, etc., R. Co., 193 Mass. 448, 79 N. E. 797; St. Louis Southwestern R. Co. *v.* Turner, (Tex. Civ. App. 1905) 84 S. W. 1094; Lawson *v.* Seattle, etc., R. Co., 34 Wash. 500, 76 Pac. 71.

3. Louisville, etc., R. Co. *v.* Payne, (Ky. 1907) 104 S. W. 752; Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86.

4. *United States.* — International Mercantile Marine Co. *v.* Smith, 145 Fed. 891, 76 C. C. A. 423; Boston, etc., R. Co. *v.* Stockwell, 146 Fed. 505, 77 C. C. A. 19.

Alabama. — Morgan *v.* Saks, 143 Ala. 139, 38 So. 848; Birmingham R., etc., Co. *v.* Willis, 143 Ala. 220, 38 So. 1016; Mobile Light, etc., Co. *v.* Walsh, 146 Ala. 290, 40 So. 559.

Arkansas. — St. Louis Southwestern R. Co. *v.* Byrne, 73 Ark. 377, 84 S. W. 469; Price *v.* St. Louis, etc., R. Co., 75 Ark. 479, 88 S. W. 575.

California. — Maxwell *v.* Fresno City R. Co., 4 Cal. App. 745, 89 Pac. 367.

Colorado. — Colorado Springs, etc., R. Co. *v.* Petit, 37 Colo. 326, 86 Pac. 121.

Connecticut. — Hoyt *v.* New York, etc., R. Co., 78 Conn. 709, 63 Atl. 393.

District of Columbia. — Capital Traction Co. *v.* Brown, 29 App. Cas. (D. C.) 473.

Georgia. — McDonald *v.* Savannah Electric Co., 120 Ga. 49, 47 S. E. 547; Tucker *v.* Central of Georgia R. Co., 122 Ga. 387, 50 S. E. 128.

Indiana. — Union Traction Co. *v.* Siceloff, 34 Ind. App. 511, 72 N. E. 266; Hall *v.* Terre Haute Electric Co., 38 Ind. App. 43, 76 N. E. 334; Indiana Union Traction, etc., Co. *v.* Jacobs, 167 Ind. 85, 78 N. E. 325.

Iowa. — Cotant *v.* Boone Suburban R. Co., 125 Iowa 46, 99 N. W. 115.

Maryland. — Philadelphia, etc., R. Co. *v.* McGugan, 102 Md. 270, 62 Atl. 752.

Minnesota. — Olson *v.* Chicago, etc., R. Co., 94 Minn. 241, 102 N. W. 449.

Missouri. — Gress *v.* Missouri Pac. R. Co., 109 Mo. App. 716, 84 S. W. 122.

New York. — Ward *v.* Metropolitan St. R. Co., 99 N. Y. App. Div. 126, 90 N. Y. Supp. 897.

North Carolina. — Miller *v.* Atlanta, etc., Air Line R. Co., 143 N. Car. 115, 55 S. E. 439, *reversed* on other grounds 144 N. Car. 545, 57 S. E. 345.

North Dakota. — Hall *v.* Northern Pac. R. Co., (N. Dak. 1907) 111 N. W. 612, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652.

Pennsylvania. — Abel *v.* Northampton Traction Co., 212 Pa. St. 329, 61 Atl. 915; Weaver *v.* Pennsylvania R. Co., 212 Pa. St. 632, 61 Atl. 1117; Skean *v.* Schuylkill Valley Traction Co., 32 Pa. Super. Ct. 558.

South Carolina. — Talbert *v.* Charleston, etc., R. Co., 72 S. Car. 137, 51 S. E. 564, *affirmed* 75 S. Car. 136, 55 S. E. 138.

Texas. — San Antonio, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 85 S. W. 445; Latimer *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 90 S. W. 665; Parks *v.* San Antonio Traction Co., (Tex. 1906) 94 S. W. 331; Nix *v.* San Antonio Traction Co., (Tex. Civ. App. 1906) 94 S. W. 335; International, etc., R. Co. *v.* Cruseturner, (Tex. Civ. App. 1906) 98 S. W. 423. See Houston, etc., R. Co. *v.* Easton, (Tex. Civ. App. 1906) 97 S. W. 833.

Wisconsin. — Nelson *v.* Chicago, etc., R. Co., 130 Wis. 214, 109 N. W. 933.

Contributory Negligence Generally a Question of Fact — *Iowa.* — McGovern *v.* Interurban R. Co., (Iowa 1907) 111 N. W. 412; Matthieson *v.* Burlington, etc., R. Co., 125 Iowa 90, 100 N. W. 51.

Kentucky. — Illinois Cent. R. Co. *v.* Proctor,

122 Ky. 92, 89 S. W. 714; Kentucky, etc., Bridge, etc., R. Co. *v.* Buckler, (Ky. 1907) 100 S. W. 328.

Maryland. — Baltimore, etc., R. Co. *v.* Jean, 98 Md. 546, 57 Atl. 540; United R., etc., Co. *v.* Weir, 102 Md. 286, 62 Atl. 588; Baltimore, etc., R. Co. *v.* Trader, (Md. 1907) 68 Atl. 12.

Massachusetts. — Meade *v.* Boston El. R. Co., 185 Mass. 327, 70 N. E. 197.

Michigan. — Lucas *v.* Marquette City, etc., R. Co., 136 Mich. 142, 98 N. W. 980; McCormick *v.* Detroit, etc., R. Co., 141 Mich. 17, 104 N. W. 390, 12 Detroit Leg. N. 326; O'Dea *v.* Michigan Cent. R. Co., 142 Mich. 265, 105 N. W. 746, 12 Detroit Leg. N. 718; Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395.

Minnesota. — Decker *v.* Chicago, etc., R. Co., 102 Minn. 99, 112 N. W. 901.

Missouri. — MacDonald *v.* St. Louis Transit Co., 108 Mo. App. 374, 83 S. W. 1001; Fry *v.* St. Louis Transit Co., 111 Mo. App. 324, 85 S. W. 960.

Nebraska. — Chicago, etc., R. Co. *v.* Troyer, 70 Neb. 294, 103 N. W. 680.

New Jersey. — Wheeler *v.* South Orange, etc., Traction Co., 70 N. J. L. 725, 58 Atl. 927; Walger *v.* Jersey City, etc., St. R. Co., 71 N. J. L. 356, 59 Atl. 14.

New York. — Brettner *v.* Westchester Electric R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 508, 98 N. Y. Supp. 857; Johnson *v.* Yonkers R. Co., 101 N. Y. App. Div. 65, 91 N. Y. Supp. 508; Butler *v.* New York City R. Co., 109 N. Y. App. Div. 658, 96 N. Y. Supp. 254; Wood *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 770, 96 N. Y. Supp. 419.

653. **1.** *Alabama.* — Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207; Southern R. Co. *v.* Burgess, 143 Ala. 364, 42 So. 35.

California. — Fraser *v.* California St. Cable R. Co., 146 Cal. 714, 81 Pac. 29; Hodges *v.* Southern Pac. Co., 3 Cal. App. 307, 86 Pac. 620.

District of Columbia. — Guenther *v.* Metropolitan R. Co., 23 App. Cas. (D. C.) 493.

Georgia. — Central of Georgia R. Co. *v.* Forehand, 128 Ga. 547, 58 S. E. 44.

Illinois. — Alton R., etc., Co. *v.* Webb, 219 Ill. 563, 76 N. E. 687, *affirming* 119 Ill. App. 75; East St. Louis, etc., R. Co. *v.* Zink, 229 Ill. 180, 82 N. E. 283; Cleveland, etc., R. Co. *v.* Scott, 131 Ill. App. 234.

Indiana. — Ft. Wayne Traction Co. *v.* Hardendorf, 164 Ind. 403, 72 N. E. 593; Union Traction Co. *v.* Sullivan, 38 Ind. App. 513, 76 N. E. 116; Wabash River Traction Co. *v.* Baker, 167 Ind. 266, 78 N. E. 196.

Maryland. — Strauss *v.* United R., etc., Co., 101 Md. 497, 61 Atl. 137.

Massachusetts. — Kuhlen *v.* Boston, etc., R. Co., 193 Mass. 341, 79 N. E. 815; Pomeroy *v.* Boston, etc., R. Co., 193 Mass. 507, 79 N. E. 764.

Missouri. — Allen *v.* St. Louis Transit Co., 183 Mo. 411, 81 S. W. 1142; Laub *v.* Chicago, etc., R. Co., 118 Mo. App. 488, 94 S. W. 550.

New York. — Hancock *v.* New York Cent., etc., R. Co., 100 N. Y. App. Div. 161, 91 N. Y. Supp. 601, *affirmed* 184 N. Y. 540, 76 N. E. 1096.

Pennsylvania. — Hess *v.* Baltimore, etc., R. Co., 28 Pa. Super. Ct. 220.

South Carolina. — Drawdy *v.* Atlantic Coast Line R. Co., 75 S. Car. 308, 55 S. E. 444.

Utah. — McCollum *v.* Southern Pac. Co., 31 Utah 494, 88 Pac. 663; Mathis *v.* Southern Pac. Co., 31 Utah 507, 88 Pac. 668; Fitzgerald *v.* Southern Pac. Co., 31 Utah 510, 88 Pac. 669.

West Virginia. — Mannon *v.* Camden Interstate R. Co., 56 W. Va. 554, 49 S. E. 450.

Passenger on Freight Car. — The question whether want of knowledge of switching operation was due to the negligence of the passenger and whether such negligence contributed to the accident was held to be for the jury. Hardin *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 995.

2. *United States.* — Christensen *v.* Metropolitan St. R. Co., (C. C. A.) 137 Fed. 708.

District of Columbia. — Chunn *v.* City, etc., R. Co., 23 App. Cas. (D. C.) 551.

Illinois. — Hewes *v.* Chicago, etc., R. Co., 217 Ill. 500, 75 N. E. 515; North Chicago St. R. Co. *v.* Canfield, 118 Ill. App. 353.

Mississippi. — Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788.

North Carolina. — Ray *v.* Aberdeen, etc., R. Co., 141 N. Car. 84, 53 S. E. 622.

Pennsylvania. — Scanlon *v.* Philadelphia Rapid Transit Co., 208 Pa. St. 195, 57 Atl. 521.

Washington. — Kroeger *v.* Seattle Electric Co., 37 Wash. 544, 79 Pac. 1115.

West Virginia. — Normile *v.* Wheeling Traction Co., 57 W. Va. 132, 49 S. E. 1030.

Wisconsin. — Bremer *v.* Pleiss, 121 Wis. 61, 98 N. W. 945.

3. Standing Dangerously Close to Street Car Track. — Neale *v.* Springfield St. R. Co., 189 Mass. 351, 75 N. E. 702.

Boarding Open Street Car at Side Next Parallel Track Not Negligence. — Costello *v.* St. Louis Transit Co., 119 Mo. App. 391, 96 S. W. 425.

Woman Boarding Street Car Encumbered with Bundles Not Negligent as Matter of Law. — Jaques *v.* Sioux City Traction Co., 124 Iowa 257, 99 N. W. 1069.

654. **2.** Texas Midland R. Co. *v.* Ellison, (Tex. Civ. App. 1905) 87 S. W. 213. See also Kroeger *v.* Seattle Electric Co., 37 Wash. 544, 79 Pac. 1115.

655. **2.** Texas Midland R. Co. *v.* Ellison, (Tex. Civ. App. 1905) 87 S. W. 213. See also Houston, etc., R. Co. *v.* Schuttee, (Tex. Civ. App. 1906) 91 S. W. 806.

Boarding Car at Night Encumbered by Bundle Is Contributory Negligence. — Smith *v.* Birmingham R., etc., Co., 147 Ala. 702, 41 So. 307.

3. Atchison, etc., R. Co. *v.* Holloway, 71 Kan. 1, 80 Pac. 31; Feagin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 346. *Contra*, Tobin *v.* Pennsylvania R. Co., 211 Pa. St. 457, 60 Atl. 999.

Boarding Moving Street Car ordinarily is not negligence *per se*.

Illinois. — Chicago Union Traction Co. *v.* Lundhahl, 215 Ill. 289, 74 N. E. 155; Pope *v.* Chicago City R. Co., 113 Ill. App. 503.

Kentucky. — Lexington, etc., R. Co. *v.* Herring, 96 S. W. 558, 29 Ky. L. Rep. 794, 97 S. W. 1127, 30 Ky. L. Rep. 269.

Missouri. — Spencer *v.* St. Louis Transit

Co., 111 Mo. App. 653, 86 S. W. 593; McKee *v.* St. Louis Transit Co., 108 Mo. App. 470, 83 S. W. 1013; Schmitt *v.* St. Louis Transit Co., 115 Mo. App. 445, 90 S. W. 421.

Pennsylvania. — *Contra,* Boulfrois *v.* United Traction Co., 210 Pa. St. 263, 59 Atl. 1007.

Rhode Island. — Garvey *v.* Rhode Island Co., 26 R. I. 80, 58 Atl. 456.

Texas. — Lewis *v.* Houston Electric Co., (Tex. Civ. App. 1905) 88 S. W. 489.

Under some circumstances attempting to board a moving street car has been held to be contributory negligence. Coles *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 246, 97 N. Y. Supp. 289.

Boarding Street Car Moving Eight or Ten Miles an Hour has been held to be negligence *per se.* Spencer *v.* St. Louis Transit Co., 111 Mo. App. 653, 86 S. W. 593.

Boarding Moving Street Car Near Obstruction in the Street Close to the Track has been held to be negligence. Berry *v.* Utica Belt Line St. R. Co., 181 N. Y. 198, 73 N. E. 970, *reversing* 87 N. Y. App. Div. 620, 83 N. Y. Supp. 1102.

Boarding Slowly Moving Street Car Negligence Per Se. — There may be exceptions to the *Pennsylvania* general rule requiring the case to be submitted to the jury. Powelson *v.* United Traction Co., 216 Pa. St. 583, 66 Atl. 78.

656. 1. Feagin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 346. See also McFadden *v.* Hall, 1 Can. Sup. Ct. Cas. 589.

Whether a statement by the conductor is a warning or an invitation to board the train is a question of fact for the jury. Talbert *v.* Charleston, etc., R. Co., 72 S. Car. 137, 51 S. E. 564, *affirmed* 75 S. Car. 136, 55 S. E. 138.

657. 1. Texas Midland R. Co. *v.* Ellison, (Tex. Civ. App. 1905) 87 S. W. 213. See also San Antonio, etc., R. Co. *v.* Trigo, (Tex. Civ. App. 1907) 101 S. W. 254.

2. Meeks *v.* Atlantic, etc., R. Co., 122 Ga. 266, 50 S. E. 99.

3. Southern R. Co. *v.* Burgess, 143 Ala. 364, 42 So. 35; Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153; Rice *v.* New York Cent., etc., R. Co., 186 Mass. 521, 72 N. E. 79; Hilborn *v.* Boston, etc., R. Co., 191 Mass. 14, 77 N. E. 646; Dunning *v.* Lake Erie, etc., R. Co., 38 Ind. App. 91, 77 N. E. 1049; Quinlan *v.* Newton, etc., R. Co., 191 Mass. 58, 77 N. E. 486; Cincinnati Traction Co. *v.* McKee, 27 Ohio Cir. Ct. 630; Missouri, etc., R. Co. *v.* Wolf, (Tex. Civ. App. 1905) 89 S. W. 778.

Attempting to Alight While Encumbered with Baggage. — St. Louis Southwestern R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 94 S. W. 162.

Alighting from Stationary Street Car with Back Towards Front of Car Not Negligence Per Se. — Birmingham R., etc., Co. *v.* Handy, (Ala. 1905) 39 So. 917.

658. 1. Fadley *v.* Baltimore, etc., R. Co., (C. C. A.) 153 Fed. 514; Louisville, etc., R. Co. *v.* Payne, (Ky. 1907) 104 S. W. 752; Rambie *v.* San Antonio, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 1022.

659. 1. Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86.

2. Murphey *v.* Southern Pac. Co., 2 Cal. App. 275, 83 Pac. 299; Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86.

660. 1. **Alighting from a Street Car by the Front Platform** is not negligence *per se.* Pim *v.* St. Louis Transit Co., 108 Mo. App. 713, 84 S. W. 155.

3. La Clair *v.* New York City R. Co., (Supm. Ct. App. T.) 92 N. Y. Supp. 837; McGuire *v.* Interborough Rapid Transit Co., 104 N. Y. App. Div. 105, 93 N. Y. Supp. 316.

661. 1. Hunter *v.* Louisville, etc., R. Co., (Ala. 1907) 43 So. 802; Farrell *v.* Great Northern R. Co., 100 Minn. 361, 111 N. W. 388; Young *v.* Missouri Pac. R. Co., 113 Mo. App. 636, 84 S. W. 175; Margo *v.* Pennsylvania R. Co., 213 Pa. St. 463, 62 Atl. 1079; Mercher *v.* Texas Midland R. Co., (Tex. Civ. App. 1905) 85 S. W. 468; Ft. Worth, etc., R. Co. *v.* Gribble, (Tex. Civ. App. 1907) 102 S. W. 157.

662. 1. Tilden *v.* Rhode Island Co., 27 R. I. 482, 63 Atl. 675.

Alighting from Street Car at Unsuitable Place by Direction of Conductor. — Senf *v.* St. Louis, etc., R. Co., 112 Mo. App. 74, 86 S. W. 887.

Invitation Inferred from Circumstances. — Southern R. Co. *v.* Burgess, 143 Ala. 364, 42 So. 35.

Pregnant Woman Alighting. — A pregnant woman who is invited by the train conductor to alight at an unsafe place entirely behind the station platform and does so in ignorance that there is a platform is not guilty of contributory negligence in failing to disclose her pregnancy to the conductor. Guay *v.* Canadian Northern R. Co., 15 Manitoba 275.

2. Illinois Cent. R. Co. *v.* Warren, 149 Fed. 658, 79 C. C. A. 350; Shaw *v.* Seaboard Air Line R. Co., 143 N. Car. 312, 55 S. E. 713; Hollingsworth *v.* Southern R. Co., 72 S. Car. 114, 51 S. E. 560.

663. 1. Davis *v.* Kansas City Southern R. Co., 75 Ark. 165, 86 S. W. 995; Baltimore, etc., R. Co. *v.* Jean, 98 Md. 546, 57 Atl. 540.

Question for Jury. — Wolf *v.* Chicago, etc., R. Co., 131 Wis. 335, 111 N. W. 514.

664. 1. Bartle *v.* New York, etc., R. Co., 121 N. Y. App. Div. 72, 105 N. Y. Supp. 522.

Alighting from Moving Street Car by Walking Backwards Is Negligence Per Se. — Birmingham R., etc., Co. *v.* Glover, 142 Ala. 492, 38 So. 836.

2. *Alabama.* — Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207.

Georgia. — Turley *v.* Atlanta, etc., R. Co., 127 Ga. 594, 56 S. E. 748.

Missouri. — Gress *v.* Missouri Pac. R. Co., 109 Mo. App. 716, 84 S. W. 122.

Texas. — Long *v.* Red River, etc., R. Co., (Tex. Civ. App. 1905) 85 S. W. 1048; Mercher *v.* Texas Midland R. Co., (Tex. Civ. App. 1905) 85 S. W. 468; St. Louis Southwestern R. Co. *v.* Ratley, (Tex. Civ. App. 1905) 87 S. W. 407; Gulf, etc., R. Co. *v.* Booth, (Tex. Civ. App. 1906) 97 S. W. 128; St. Louis Southwestern R. Co. *v.* Bryant, (Tex. Civ. App. 1907) 103 S. W. 237; Houston, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 103 S. W. 239.

Virginia. — Newport News, etc., R., etc., Co. *v.* McCormick, 106 Va. 517, 56 S. E. 281.

Alighting from Moving Street Car Is Not Negligence Per Se. — Camden, etc., R. Co. *v.* Rice, 137 Fed. 326, 69 C. C. A. 656; Wabash River Traction Co. *v.* Baker, 167 Ind. 266, 78 N. E. 196; Ford *v.* Paducah City R. Co., 96

S. W. 441, 29 Ky. L. Rep. 752; United R., etc., Co. *v.* Weir, 102 Md. 286, 62 Atl. 588; Cody *v.* Duluth St. R. Co., 94 Minn. 77, 102 N. W. 397; Green *v.* Metropolitan St. R. Co., 122 Mo. App. 647, 99 S. W. 28; Dockham *v.* North Jersey St. R. Co., (N. J. 1907) 66 Atl. 961. *Contra,* Boulfrois *v.* United Traction Co., 210 Pa. St. 263, 59 Atl. 1007; Kitler *v.* People's St. R. Co., 27 Pa. Super. Ct. 602.

Alighting from a moving street car is not negligence *per se* where the car is moving so slowly that the passenger does not know that it is in motion. Burke *v.* Bay City Traction, etc., Co., 147 Mich. 172, 110 N. W. 524, 13 Detroit Leg. N. 974.

But in Chicago City R. Co. *v.* Lundberg, 124 Ill. App. 144, alighting from a moving street car was held to be negligence.

3. Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207; Joyce *v.* Los Angeles R. Co., 147 Cal. 274, 82 Pac. 204; St. Louis Southwestern R. Co. *v.* Highnote, 99 Tex. 23, 86 S. W. 923, *reversing* (Tex. Civ. App. 1904) 84 S. W. 365.

Slowly Moving Train. — Texas, etc., R. Co. *v.* Whiteley, (Tex. Civ. App. 1906) 96 S. W. 109.

667. 1. Walker *v.* Georgia R., etc., Co., 122 Ga. 368, 50 S. E. 121; Dunning *v.* Lake Erie, etc., R. Co., 38 Ind. App. 91, 77 N. E. 1049; Newlin *v.* Iowa Cent. R. Co., 127 Iowa 654, 103 N. W. 999; Galveston, etc., R. Co. *v.* De Castillo, (Tex. Civ. App. 1904) 83 S. W. 25; St. Louis Southwestern R. Co. *v.* Highnote, 99 Tex. 23, 86 S. W. 923, *reversing* (Tex. Civ. App. 1904) 84 S. W. 365; De Castillo *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 547; Dallas Consol. Electric St. R. Co. *v.* Lasch, (Tex. Civ. App. 1907) 99 S. W. 729.

669. 1. **A Woman of Sixty-three Years of Age and Weighing Two Hundred Pounds** attempting to leave a train at a time when it had attained a speed of from five to six miles an hour has been held to be negligent as a matter of law. Hecker *v.* Chicago, etc., R. Co., 110 Mo. App. 162, 84 S. W. 126.

3. See St. Louis Southwestern R. Co. *v.* Bryant, (Tex. Civ. App. 1907) 103 S. W. 237.

Descending Steps of Car Before Train Stops Held to Be Negligence. — Fletcher *v.* Boston, etc., R. Co., 187 Mass. 463, 73 N. E. 552.

5. Southern R. Co. *v.* Bandy, 120 Ga. 463, 47 S. E. 923; Baltimore, etc., R. Co. *v.* Mullen, 217 Ill. 203, 75 N. E. 474; Fore *v.* Alabama, etc., R. Co., 87 Miss. 211, 39 So. 493, 690; King *v.* Yazoo, etc., R. Co., 87 Miss. 270, 39 So. 810; Wolford *v.* New York Cent., etc., Co., 118 N. Y. App. Div. 553, 102 N. Y. Supp. 1008; Texas, etc., R. Co. *v.* Whiteley, (Tex. Civ. App. 1906) 96 S. W. 109; Newport News, etc., R., etc., Co. *v.* McCormick, 106 Va. 517, 56 S. E. 281, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 669.

Conduct Held Not to Amount to an Invitation. — Mearns *v.* Central R. Co., (C. C. A.) 139 Fed. 543.

Indicating to a passenger the door by which he is to leave by saying "this door," is not an invitation to alight from the train while it is in motion. Alabama, etc., R. Co. *v.* Jones, 86 Miss. 263, 38 So. 545.

Invitation to Alight Not Implied from Slowing Up of Train. — Sweet *v.* Birmingham R., etc., Co., 145 Ala. 667, 39 So. 767.

Invitation of Porter. — Newcomb *v.* New York Cent., etc., R. Co., 182 Mo. 687, 81 S. W. 1069.

672. 1. The fact that a passenger has been warned not to alight from a moving train does not make him guilty of contributory negligence as a matter of law if an ordinarily careful and prudent person might have done so under the same circumstances. Bond *v.* Chicago, etc., R. Co., 122 Mo. App. 207, 99 S. W. 30.

673. 4. See Paine *v.* Geneva, etc., Traction Co., 115 N. Y. App. Div. 729, 101 N. Y. Supp. 204.

674. 3. Columbus R. Co. *v.* Muns, 27 Ohio Cir. Ct. 277; Kracker *v.* Philadelphia Rapid Transit Co., 34 Pa. Super. Ct. 10; Mullane *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 24, 99 N. Y. Supp. 798; El Paso Electric R. Co. *v.* Kitt, (Tex. Civ. App. 1905) 90 S. W. 678, *affirmed* (Tex. Civ. App. 1906) 91 S. W. 598.

Resting Hand Against Jamb of Doorway. — Carroll *v.* Boston, etc., R. Co., 186 Mass. 97, 71 N. E. 89.

Whether Riding in the Cupola of the Caboose is contributory negligence is a question for the jury. St. Louis Southwestern R. Co. *v.* Morgan, (Tex. Civ. App. 1906) 98 S. W. 408.

676. 2. Bromley *v.* New York, etc., R. Co., 193 Mass. 453, 79 N. E. 775.

Riding in the Baggage Car when the Passenger Cars or Platforms Are Crowded is not negligence *per se.* Lane *v.* Choctaw, etc., R. Co., (Okla. 1907) 91 Pac. 883.

678. 1. Illinois Cent. R. Co. *v.* Warren, 149 Fed. 658, 79 C. C. A. 350.

Standing on Platform in Violation of Rules ordinarily bars a recovery. Pike *v.* Boston El. R. Co., 192 Mass. 426, 78 N. E. 497; McDonough *v.* Boston El. R. Co., 191 Mass. 509, 78 N. E. 141; Shaw *v.* Seaboard Air Line R. Co., 143 N. Car. 312, 55 S. E. 713, *quoting,* in dissenting opinion, 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 678, note.

Riding on Front Platform of Street Car. — Moore *v.* Northern Texas Traction Co., (Tex. Civ. App. 1906) 95 S. W. 652.

Unnecessarily Riding on Running Board of Street Car. — Rice *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 147, 63 Atl. 419.

Descending to Step of Car in Rapidly Moving Train Held to Be Negligence. — Louisville, etc., R. Co. *v.* Edmondson, 128 Ga. 478, 57 S. E. 877.

679. 1. Englehardt *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 474, 102 N. Y. Supp. 516; Kleffmann *v.* Metropolitan St. R. Co., 116 N. Y. App. Div. 334, 101 N. Y. Supp. 582; Kirchner *v.* Oil City St. R. Co., 210 Pa. St. 45, 59 Atl. 270; Gaffney *v.* Union Traction Co., 211 Pa. St. 91, 60 Atl. 488; Burns *v.* Johnstown Pass. R. Co., 213 Pa. St. 143, 62 Atl. 564; McDade *v.* Philadelphia Rapid Transit Co., 215 Pa. St. 105, 64 Atl. 327.

Standing on the Platform When There Are No Vacant Seats is not negligence as a matter of law. Yazoo, etc., R. Co. *v.* Byrd, (Miss. 1906) 42 So. 286.

Where a Passenger Was Directed and Forcibly Urged to Go Out upon the Rear Platform of a

street car he was not by so doing guilty of contributory negligence although there were unoccupied seats inside the car. Druzepski *v.* People's St. R. Co., 30 Pa. Super. Ct. 380.

2. Same Rule Declared in Canada. — Burriss *v.* Père Marquette R. Co., 9 Ont. L. Rep. 259, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 678, 681.

Riding on the Platform of a Crowded Street Car is not negligence as a matter of law. Kiefer *v.* Brooklyn Heights R. Co., 111 N. Y. App. Div. 404, 97 N. Y. Supp. 841.

680. 1. See Cincinnati, etc., Electric St. R. Co. *v.* Lohe, 27 Ohio Cir. Ct. 138.

681. 1. Riding on Platform of Street Car Without Grasping Handhold has been held to be contributory negligence. South Covington, etc., St. R. Co. *v.* Physioc, 92 S. W. 305, 29 Ky. L. Rep. 14.

2. *Alabama.* — Louisville, etc., R. Co. *v.* Mulder, (Ala. 1906) 42 So. 742.

District of Columbia. — Capital Traction Co. *v.* Brown, 29 App. Cas. (D. C.) 473.

Illinois. — Chicago, etc., R. Co. *v.* Newell, 212 Ill. 332, 72 N. E. 416, 113 Ill. App. 263.

Iowa. — Forbes *v.* Chicago, etc., R. Co., (Iowa 1907) 113 N. W. 477.

Louisiana. — Jackson *v.* Natchez, etc., R. Co., 114 La. 981, 38 So. 701.

Ohio. — Cincinnati, etc., Electric St. R. Co. *v.* Lohe, 27 Ohio Cir. Ct. 138.

Riding on Platform of Street Car is not negligence *per se.* Chicago Union Traction Co. *v.* Lawrence, 113 Ill. App. 269, *judgment affirmed* 211 Ill. 373, 71 N. E. 1024; Chicago City R. Co. *v.* McCaughna, 216 Ill. 202, 74 N. E. 819; Alton Light, etc., Co. *v.* Oliver, 217 Ill. 15, 75 N. E. 419; Alton R., etc., Co. *v.* Webb, 219 Ill. 563, 76 N. E. 687, *affirming* 119 Ill. App. 75; Chicago Consol. Traction Co. *v.* Schritter, 222 Ill. 364, 78 N. E. 820, *affirming* 124 Ill. App. 578; Wellmeyer *v.* St. Louis Transit Co., 198 Mo. 527, 95 S. W. 925; Depew *v.* New York City R. Co., 112 N. Y. App. Div. 260, 98 N. Y. Supp. 276; Baskett *v.* Metropolitan St. R. Co., 123 Mo. App. 725, 101 S. W. 138; Brunnchow *v.* Rhode Island Co., 26 R. I. 211, 58 Atl. 656.

Standing on Platform of Stationary Car Not Negligence Per Se. — Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318.

Riding on the Running Board of a Street Car ordinarily is not negligence as a matter of law. Koontz *v.* District of Columbia, 24 App. Cas. (D. C.) 59; Ft. Wayne Traction Co. *v.* Hardendorf, 164 Ind. 403, 72 N. E. 593; Indianapolis St. R. Co. *v.* Haverstick, 35 Ind. App. 281, 74 N. E. 34; Union Traction Co. *v.* Sullivan, 38 Ind. App. 513, 76 N. E. 116; Maxfield *v.* Maine Cent. R. Co., 100 Me. 79, 60 Atl. 710; Wheeler *v.* South Orange, etc., Traction Co., 70 N. J. L. 725, 58 Atl. 927; Brennan *v.* Schuylkill Traction Co., 27 Pa. Super. Ct. 188; Verrone *v.* Rhode Island Suburban R. Co., 27 R. I. 370, 62 Atl. 512.

And this is especially true where the car is crowded. Egan *v.* Old Colony St. R. Co., 195 Mass. 159, 80 N. E. 696; Magrane *v.* St. Louis, etc., R. Co., 183 Mo. 119, 81 S. W. 1158; Horan *v.* Rockwell, 110 N. Y. App. Div. 522, 96 N. Y. Supp. 973.

But it has been held as matter of law that it is contributory negligence to ride on the running board of a street car when there is plenty of room inside. Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788.

And riding on the running board of a street car outside of a lowered bar has been held to be negligence *per se.* Harding *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 69, 66 Atl. 151.

A passenger riding on the footboard of a street car has been held to be chargeable with negligence because of a failure to exercise the care which the position demanded. Rosen *v.* Dry Dock, etc., R. Co., (Supm. Ct. App. T.) 91 N. Y. Supp. 333.

Riding on the Lower Step of the Platform of a Crowded Street Car is not negligence *per se.* Coffey *v.* Omaha, etc., R. Co., (Neb. 1907) 112 N. W. 589.

Standing on the Bumper of a Street Car for the purpose of allowing outgoing passengers to pass, is not negligence *per se.* Chicago City R. Co. *v.* Schmidt, 117 Ill. App. 213, *affirmed* 217 Ill. 396, 75 N. E. 383.

Going upon Platform of Railway Car Preparatory to Alighting Not Negligence Per Se. — Washington, etc., R. Co. *v.* Chapman, 26 App. Cas. (D. C.) 472, 6 Ann. Cas. 721.

Going upon Platform of Crowded Street Car preparatory to alighting is not negligence *per se.* Pim *v.* St. Louis Transit Co., 108 Mo. App. 713, 84 S. W. 155; Bendekovick *v.* Omaha, etc., R. Co., (Neb. 1907) 113 N. W. 988.

Stepping to Side of Open Street Car. — It is not negligence *per se* to rise from a seat and step to the side of a slowly moving open car, which is coming to a stop, for the purpose of getting upon the runboard to alight when the car does stop. Davis *v.* Camden, etc., R. Co., 73 N. J. L. 415, 63 Atl. 843.

3. St. Louis, etc., R. Co. *v.* Billingsley, 79 Ark. 335, 96 S. W. 357; St. Louis, etc., R. Co. *v.* Taylor, 74 Ark. 31, 84 S. W. 1035; Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318; Strauss *v.* United R., etc., Co., 101 Md. 497, 61 Atl. 137; Morgan *v.* Lake Shore, etc., R. Co., 138 Mich. 626, 101 N. W. 836.

Knowledge of Danger of Standing Up in Open Car. — Cottrell *v.* Pawtucket St. R. Co., 27 R. I. 565, 65 Atl. 269.

Changing Seat — Question of Contributory Negligence for Jury. — Columbia, etc., R. Co. *v.* Means, 136 Fed. 83, 68 C. C. A. 651.

Standing Near Open Door constitutes negligence where there are exceptional circumstances of danger. Foley *v.* Boston, etc., R. Co., 193 Mass. 332, 79 N. E. 765.

Standing Up in Freight Train. — It has been held that it is not negligence as a matter of law for a passenger on a freight train to stand up for a short time while the train is moving slowly. Pasley *v.* St. Louis, etc., R. Co., 83 Ark. 22, 102 S. W. 387.

682. 3. Failure to Take Seat Before Starting Street Car Not Negligence as Matter of Law. — Cutcliff *v.* Birmingham R., etc., Co., 148 Ala. 108, 41 So. 873.

4. Leaving One's Seat when the car is approaching its destination is not negligence as a matter of law. Ranous *v.* Seattle Electric Co., (Wash. 1907) 92 Pac. 382.

5. Leaving Seat in Street Car upon Approaching

Destination — Pennsylvania. Bendon *v.* Union Traction Co., 26 Pa. Super. Ct. 539.

6. Southern R. Co. *v.* Hundley, (Ala. 1907) 44 So. 195; Illinois Cent. R. Co. *v.* Jolly, 117 Ky. 632, 78 S. W. 476, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682.

7. Boston, etc., R. Co. *v.* Stockwell, 146 Fed. 505, 77 C. C. A. 19; Hunter *v.* Atlantic Coast Line R. Co., 72 S. Car. 336, 51 S. E. 860; Wagoner *v.* Wabash R. Co., 197 Mo. 196, 94 S. W. 293; St. Louis, etc., R. Co. *v.* Neely, (Tex. Civ. App. 1907) 101 S. W. 481; Galveston, etc., R. Co. *v.* Patillo, (Tex. Civ. App. 1907) 101 S. W. 492.

8. Ft. Wayne Traction Co. *v.* Hardendorf, 164 Ind. 403, 72 N. E. 593, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682.

683. 2. St. Louis Transit Co. *v.* Thompson, (C. C. A.) 137 Fed. 713.

Riding on Platform of Street Car with Body Projecting Beyond Line of Car. — Huber *v.* Cedar Rapids, etc., R. Co., 124 Iowa 556, 100 N. W. 478.

Riding on Platform and Swinging Body Beyond Line of Car has been held to be contributory negligence as a matter of law. Hewes *v.* Chicago, etc., R. Co., 217 Ill. 500, 75 N. E. 515.

Protrusion of Arm from Window of Interurban Electric Street Car Unnecessarily is contributory negligence as a matter of law. Interurban R., etc., Co. *v.* Hancock, 75 Ohio St. 88, 78 N. E. 964.

Resting Arm on Window Sill Not Negligence as a Matter of Law. — Schloemer *v.* St. Louis Transit Co., 204 Mo. 99, 102 S. W. 565.

684. 1. Georgetown, etc., R. Co. *v.* Smith, 25 App. Cas. (D. C.) 259; City Electric R. Co. *v.* Salmon, 1 Ga. App. 491, 57 S. E. 926; Goller *v.* Fonda, etc., R. Co., 110 N. Y. App. Div. 620, 96 N. Y. Supp. 483.

Question for Jury. — Smith *v.* St. Louis Transit Co., 120 Mo. App. 328, 97 S. W. 218.

Placing Hand on Door Jamb Not Negligence Per Se. — Louisville, etc., R. Co. *v.* Mulder, (Ala. 1906) 42 So. 742.

685. 1. Van Ostrand *v.* Delaware, etc., R. Co., 112 N. Y. App. Div. 783, 99 N. Y. Supp. 548; Truesdell *v.* Erie R. Co., 114 N. Y. App. Div. 34, 99 N. Y. Supp. 694.

In using a station platform with holes in it, or rotten planks, a passenger must use care proportioned to the risk arising from its known or obvious and apparent condition. Houston, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1905) 89 S. W. 805.

686. 1. Deviation of thirty feet from a straight line between the waiting room and the entrance slips to a boat does not constitute contributory negligence. White *v.* Seattle, etc., Nav. Co., 36 Wash. 281, 78 Pac. 909.

687. 2. MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Illinois Cent. R. Co. *v.* Proctor, 122 Ky. 92, 89 S. W. 714.

3. St. Louis, etc., R. Co. *v.* Cleere, 76 Ark. 377, 88 S. W. 995; Illinois Cent. R. Co. *v.* Proctor, (Ky. 1907) 102 S. W. 826; Atlantic City R. Co. *v.* Kiefer, (N. J. 1907) 66 Atl. 930; Drawdy *v.* Atlantic Coast Line R. Co., 75 S. Car. 308, 55 S. E. 444; Karr *v.* Milwaukee Light, etc., Co., (Wis. 1907) 113 N. W. 62. See Pendleton *v.* Richmond, etc., R. Co., 104 Va. 813, 52 S. E. 574. *Contra,* Dieckmann *v.* Chicago, etc., R. Co., (Iowa 1906) 105 N. W. 526.

Passing Behind Street Car Across Parallel Track. — Eagen *v.* Jersey City, etc., R. Co., 74 N. J. L. 699, 67 Atl. 24; Craven *v.* International R. Co., 100 N. Y. App. Div. 157, 91 N. Y. Supp. 625.

Crossing in Front of Street Car Known to Be Approaching on Parallel Track. — Fry *v.* St. Louis Transit Co., 111 Mo. App. 324, 85 S. W. 960.

691. 1. Baltimore, etc., R. Co. *v.* Sheridan, (Ky. 1907) 101 S. W. 928; Louisville, etc., R. Co. *v.* Gaddie, (Ky. 1907) 102 S. W. 817; Cleveland, etc., Traction Co. *v.* Hamner, 27 Ohio Cir. Ct. 820.

692. 1. Remote Damages Not Recoverable. — Sappington *v.* Atlanta, etc., R. Co., 127 Ga. 178, 56 S. E. 311.

Necessity of Borrowing Money to Pay Fare Illegally Exacted. — Missouri, etc., R. Co. *v.* Welch, (Tex. 1906) 94 S. W. 333, *affirming* (Tex. Civ. App. 1906) 91 S. W. 621; St. Louis Southwestern R. Co. *v.* Crane, (Tex. Civ. App. 1907) 102 S. W. 738.

Losses in Business. — Where a passenger was infected with smallpox from a ticket agent from whom he purchased tickets, losses in business on account of patrons staying away through fear of infection were held not too remote as an element of damages. Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589.

693. 1. International, etc., R. Co. *v.* Addison, (Tex. 1906) 97 S. W. 1037, *reversing* (Tex. Civ. App. 1906) 93 S. W. 1081.

694. 1. Southern Pac. Co. *v.* Cavin, (C. C. A.) 144 Fed. 348; Missouri, etc., R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 89 S. W. 991; Nelson *v.* Chicago, etc., R. Co., 130 Wis. 214, 109 N. W. 933.

Question for Jury whether the carrier's negligence was the proximate cause of an aggravation of an existing illness. Nelson *v.* Chicago, etc., R. Co., 130 Wis. 214, 109 N. W. 933.

695. 1. Houston, etc., R. Co. *v.* Berry, (Tex. Civ. App. 1904) 84 S. W. 258; Gulf, etc., R. Co. *v.* Bunn, (Tex. Civ. App. 1906) 95 S. W. 640.

696. 2. Carter *v.* Southern R. Co., 75 S. Car. 355, 55 S. E. 771.

698. 1. The Cost of the Passenger's Ticket is an element of damage. Caldwell *v.* Atlantic Coast Line R. Co., 75 S. Car. 74, 55 S. E. 131.

2. Georgia R., etc., Co. *v.* McAllister, 126 Ga. 447, 54 S. E. 957; St. Louis Southwestern R. Co. *v.* Foster, (Tex. Civ. App. 1907) 103 S. W. 194.

3. Milhouse *v.* Southern R. Co., 72 S. Car. 442, 52 S. E. 41.

699. 2. Rountree *v.* Atlantic Coast Line R. Co., 73 S. Car. 268, 53 S. E. 424.

Damages Ordinarily Not Recoverable for Humiliation. — St. Louis Southwestern R. Co. *v.* Knight, 77 Ark. 20, 88 S. W. 1035.

Damages Recoverable for Mortification and Humiliation. — Tennessee Cent. R. Co. *v.* Brasher, 97 S. W. 349, 29 Ky. L. Rep. 1277.

Sickness from Being Compelled to Make the Trip by Buggy has been held to be an element of

damages. St. Louis Southwestern R. Co. *v.* Foster, (Tex. Civ. App. 1907) 103 S. W. 194.

700. 1. La Gascogne, 135 Fed. 577; St. Louis Southwestern R. Co. *v.* Furlow, 81 Ark. 496, 99 S. W. 689; Missouri, etc., R. Co. *v.* Smith, (Indian Ter. 1905) 89 S. W. 668; Camden Interstate R. Co. *v.* Frazier, 97 S. W. 776, 30 Ky. L. Rep. 186; Ammons *v.* Southern R. Co., 140 N. Car. 196, 52 S. E. 731.

Evidence of Insulting Language accompanying unlawful ejection is admissible for the purpose of aggravating the damages. Osteryoung *v.* St. Louis Transit Co., 108 Mo. App. 703, 84 S. W. 179.

2. Indignity Suffered under Forcible Ejection. — Samuels *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 137, 101 N. Y. Supp. 534.

Indignity suffered in being obliged to leave vessel regardless of violence used. La Gascogne, 135 Fed. 577.

Not an Element When Passenger Desires Ejection for Purpose of Bringing Suit. — Brenner *v.* Jonesboro, etc., R. Co., 82 Ark. 128, 100 S. W. 893. See also Gulf, etc., R. Co. *v.* McCormick, (Tex. Civ. App. 1907)100 S. W. 202.

Evidence of Mental Distress and Worry arising from insulting conduct where a passenger has been carried beyond his station is admissible. Milhous *v.* Southern R. Co., 76 S. Car. 492, 57 S. E. 474.

701. 1. Ammons *v.* Southern R. Co., 140 N. Car. 196, 52 S. E. 731.

Injuries Caused by Passenger's Resistance. — Little Rock R., etc., Co. *v.* Goerner, 80 Ark. 158, 95 S. W. 1007.

Inconvenience Suffered by a Female Passenger in being unable to take a sleeper owing to the refusal of the conductor to honor her ticket. Missouri, etc., R. Co. *v.* Welch, (Tex. Civ. App. 1906) 91 S. W. 621.

2. Ejection with Unnecessary Force. — Peoria, etc., Terminal R. Co. *v.* Hoerr, 120 Ill. App. 65; Louisville, etc., R. Co. *v.* Fowler, 96 S. W. 568, 29 Ky. L. Rep. 905; Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280.

702. 1. Wrongful Arrest of Passenger — Damages for Pain or Injury to Feelings Recoverable. — Dwyer *v.* St. Louis Transit Co., 108 Mo. App. 152, 83 S. W. 303.

Assault by Carrier's Employee. — Chicago, etc., R. Co. *v.* Tracey, 109 Ill. App. 563; Galveston, etc., R. Co. *v.* Bean, (Tex. Civ. App. 1907) 99 S. W. 721.

Mental Anguish caused by insults to a female passenger by an employee of the company. Gulf, etc., R. Co. *v.* Luther, (Tex. Civ. App. 1905) 90 S. W. 44.

703. 1. Columbia, etc., R. Co. *v.* Means, 136 Fed. 83, 68 C. C. A. 651; Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874; Louisville R. Co. *v.* Blum, 89 S. W. 186, 28 Ky. L. Rep. 253; Lexington, etc., R. Co. *v.* Herring, 96 S. W. 558, 29 Ky. L. Rep. 794, 97 S. W. 1127, 30 Ky. L. Rep. 269; South Covington, etc., R. Co. *v.* Core, 96 S. W. 562, 29 Ky. L. Rep. 836; Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216; West *v.* St. Louis Southwestern R. Co., 187 Mo. 351, 86 S. W. 140; Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86.

Damages Recoverable for Physical Inconvenience. — Costello *v.* St. Louis Transit Co., 119 Mo. App. 391, 96 S. W. 425.

Damages Recoverable for Mental and Physical Suffering. — Chicago Consol. Traction Co. *v.* Schritter, 124 Ill. App. 578, *affirmed* 222 Ill. 364, 78 N. E. 820.

2. Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86; Chicago, etc., R. Co. *v.* Stibbs, 17 Okla. 97, 87 Pac. 293.

Only Reasonable Expense of Medical Attendance, Nursing, and Drugs Recoverable. — El Paso Electric R. Co. *v.* Harry, 37 Tex. Civ. App. 90, 83 S. W. 735.

Recovery for Medicines and Medical Attendance is limited to sums necessarily expended therefor. Mullen *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 1000.

Bill for Medical Attendance Need Not Have Been Paid. — Wilbur *v.* Southwest Missouri Electric R. Co., 110 Mo. App. 689, 85 S. W. 671.

There Must Be Proof of the amount contracted to be paid for medical services or of their reasonable value to authorize recovery therefor. St. Louis Southwestern R. Co. *v.* Haynes, (Tex. Civ. App. 1905) 86 S. W. 934.

Value of Minister's Time lost in attending upon his injured wife is recoverable. El Paso Electric R. Co. *v.* Harry, 37 Tex. Civ. App. 90, 83 S. W. 735.

Loss of Income from Business is an element of damages. Chicago Union Traction Co. *v.* Brethauer, 223 Ill. 521, 79 N. E. 287, *affirming* 125 Ill. App. 204.

Loss of Time by Unemployed Person. — A woman who has no employment may nevertheless recover for the value of time which she can no longer employ in her own service. Kline *v.* Santa Barbara Consol. R. Co., 150 Cal. 741, 90 Pac. 125.

704. 1. *Alabama.* — McGhee *v.* Cashin, (Ala. 1905) 40 So. 63.

Arkansas. — St. Louis, etc., R. Co. *v.* Leamons, 82 Ark. 504, 102 S. W. 363.

Delaware. — Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153.

Louisiana. — Marx *v.* Louisiana Western R. Co., 112 La. 1085, 36 So. 862.

North Carolina. — Clark *v.* Durham Traction Co., 138 N. Car. 77, 50 S. E. 518.

Ohio. — Cincinnati Traction Co. *v.* McKee, 27 Ohio Cir. Ct. 630.

Texas. — Galveston, etc., R. Co. *v.* Fink, (Tex. Civ. App. 1906) 99 S. W. 204; St. Louis Southwestern R. Co. *v.* Foster, (Tex. Civ. App. 1907) 103 S. W. 194; Galveston, etc., R. Co. *v.* Gracia, (Tex. Civ. App. 1907) 100 S. W. 198.

705. 1. Cotant *v.* Boone Suburban R. Co., 125 Iowa 46, 99 N. W. 115; Bettis *v.* Chicago, etc., R. Co., 131 Iowa 46, 108 N. W. 103; Clark *v.* Durham Traction Co., 138 N. Car. 77, 50 S. E. 518.

Future Expense for Medicine and Medical Attendance. — Parker *v.* St. Louis Transit Co., 108 Mo. App. 465, 83 S. W. 1016.

Damages are recoverable only for such future medical expenses as will necessarily be incurred. Chicago City R. Co. *v.* Henry, 218 Ill. 92, 75 N. E. 758.

Future Physical and Mental Suffering. — Bell

v. Central Electric R. Co., 125 Mo. App. 660, 103 S. W. 144.

Loss of Probable Earnings. — Reynolds *v.* St. Louis Transit Co., 189 Mo. 408, 88 S. W. 50.

2. Cordiner *v.* Los Angeles Traction Co., 5 Cal. App. 400, 91 Pac. 436; Olson *v.* Chicago, etc., R. Co., 94 Minn. 241, 102 N. W. 449; McKinstry *v.* St. Louis Transit Co., 108 Mo. App. 12, 82 S. W. 1108.

3. Chicago Consol. Traction Co. *v.* Schritter, 222 Ill. 364, 78 N. E. 820, *affirming* 124 Ill. App. 578; Galveston, etc., R. Co. *v.* Fink, (Tex. Civ. App. 1906) 99 S. W. 204; Galveston, etc., R. Co. *v.* Gracia, (Tex. Civ. App. 1907) 100 S. W. 198; St. Louis, etc., R. Co. *v.* Neely, (Tex. Civ. App. 1907) 101 S. W. 481.

Diminished Capacity to Earn Money. — Lake Shore, etc., R. Co. *v.* Teeters, (Ind. App. 1905) 74 N. E. 1014. See also St. Louis Southwestern R. Co. *v.* Smith, (Tex. Civ. App. 1905) 86 S. W. 943; International, etc., R. Co. *v.* Cruseturner, (Tex. Civ. App. 1906) 98 S. W. 423.

707. 1. Sappington *v.* Atlanta, etc., R. Co., 127 Ga. 178, 56 S. E. 311; Williamson *v.* Central of Georgia R. Co., 127 Ga. 125, 56 S. E. 119; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495; Maynard *v.* Oregon R., etc., Co., 46 Oregon 15, 78 Pac. 983; Taylor *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 59 S. E. 641.

2. Lindsay *v.* Oregon Short Line R. Co., 13 Idaho 477, 90 Pac. 984, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 707; Samuels *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 137, 101 N. Y. Supp. 534; St. Louis Southwestern R. Co. *v.* Granger, (Tex. Civ. App. 1907) 100 S. W. 987; Gulf, etc., R. Co. *v.* Luther, (Tex. Civ. App. 1905) 90 S. W. 44.

Mental Anguish caused by the neglectful treatment of an invalid daughter, both being passengers, may be an element of damages in an action by the mother. Gulf, etc., R. Co. *v.* Coopwood, (Tex. Civ. App. 1906) 96 S. W. 102.

The Rendering of a Female Passenger Very Nervous almost to sickness by unlawfully threatening ejection has been held to be a physical injury and discomfort. Southern Pac. Co. *v.* Bailey, (Tex. Civ. App. 1906) 91 S. W. 820.

708. 1. Williamson *v.* Central of Georgia R. Co., 127 Ga. 125, 56 S. E. 119; Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255; Caldwell *v.* Atlantic Coast Line R. Co., 75 S. Car. 74, 55 S. E. 131; Hull *v.* Seaboard Air Line R. Co., 76 S. Car. 278, 57 S. E. 28; Richardson *v.* Atlantic Coast Line R. Co., 51 S. E. 261, 71 S. Car. 444; Bûssey *v.* Charleston, etc., R. Co., 75 S. Car. 116, 55 S. E. 163; Horn *v.* Southern R. Co., (S. Car. 1907) 58 S. E. 963.

Allowance of Exemplary Damages Discretionary with Jury. — Berg *v.* St. Paul City R. Co., 96 Minn. 513, 105 N. W. 191; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

Same Rule Applies to Carriers as to Individuals. — Little Rock R., etc., Co. *v.* Dobbins, 78 Ark. 553, 95 S. W. 788.

2. Little Rock Traction, etc., Co. *v.* Winn, 75 Ark. 529, 87 S. W. 1025; Chicago Consol. Traction Co. *v.* Mahoney, 230 Ill. 562, 82 N. E. 868; Berg *v.* St. Paul City R. Co., 96 Minn. 513, 105 N. W. 191; Greenwood *v.* Union Traction Co., 30 Pa. Super. Ct. 48[illegible]; Trapp *v.* Southern R. Co., 72 S. Car. 343, 51 S. E. 919.

Express Malice, Violence, Oppression, or Wanton Recklessness Must Be Shown. — Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

Wantonly Carrying Beyond Destination. — Harlan *v.* Wabash R. Co., 117 Mo. App. 537, 94 S. W. 737; Hutchinson *v.* Southern R. Co., 140 N. Car. 123, 52 S. E. 263.

Wanton Ejection of Passenger. — Lexington R. Co. *v.* O'Brien, 84 S. W. 1170, 27 Ky. L. Rep. 336; Sommerfield *v.* St. Louis Transit Co., 108 Mo. App. 718, 84 S. W. 172; Parrott *v.* Atlantic, etc., R. Co., 140 N. Car. 546, 53 S. E. 432.

Wanton Manner Accompanying Lawful Ejection. — Madigan *v.* St. Louis Transit Co., 117 Mo. App. 118, 93 S. W. 316.

Assault on Passenger by Employee. — Ford *v.* Minneapolis St. R. Co., 98 Minn. 96, 107 N. W. 817; Yazoo, etc., R. Co. *v.* Williams, 87 Miss. 344, 39 So. 489.

Unlawful Ejection of Passenger through Mistake. — Southern R. Co. *v.* Hawkins, 89 S. W. 258, 28 Ky. L. Rep. 364; Ammons *v.* Southern R. Co., 140 N. Car. 196, 52 S. E. 731.

Unlawful Ejection in Insulting Manner. — Gardner *v.* St. Louis, etc., R. Co., 117 Mo. App. 138, 93 S. W. 917.

Unlawful and Rude Ejection. — Southern Light, etc., Co. *v.* Compton, 86 Miss. 269, 38 So. 629.

Wilful Failure to Stop at Flag Station When Signaled. — Williams *v.* Carolina, etc., R. Co., 144 N. Car. 498, 57 S. E. 216.

711. 1. **Malice Inferred from Manner of Ejection.** — Chicago Consol. Traction Co. *v.* Mahoney, 230 Ill. 562, 82 N. E. 868.

Ejection in Improper Manner. — Seaboard Air Line R. Co. *v.* O'Quin, 124 Ga. 357, 52 S. E. 427.

2. Louisville St. R. Co. *v.* Brownfield, 96 S. W. 912, 29 Ky. L. Rep. 1097; Southern R. Co. *v.* Brewer, (Ky. 1907) 105 S. W. 160; Yazoo, etc., R. Co. *v.* Roberts, 88 Miss. 80, 40 So. 481; Hull *v.* Seaboard Air Line R. Co., 76 S. Car. 278, 57 S. E. 28.

Mere Negligence Is Not Sufficient. — Birmingham R., etc., Co. *v.* Wise, (Ala. 1906) 42 So. 821; Illinois Cent. R. Co. *v.* Lence, (Ky. 1907) 100 S. W. 215; Louisville, etc., R. Co. *v.* Mount, (Ky. 1907) 101 S. W. 1182; Choctaw, etc., R. Co. *v.* Cantwell, 78 Ark. 331, 95 S. W. 771.

715. 1. Texas, etc., R. Co. *v.* Beezley, (Tex. Civ. App. 1907) 101 S. W. 1051.

Unlawful Ejection with Unnecessary Violence. — Peterson *v.* Middlesex, etc., Traction Co., 71 N. J. L. 296, 59 Atl. 456.

717. 1. Artherholt *v.* Erie Electric Motor Co., 27 Pa. Super. Ct. 141; Richardson *v.* Atlantic Coast Line R. Co., 51 S. E. 261, 71 S. Car. 444; Milhouse *v.* Southern R. Co., 72 S. Car. 442, 52 S. E. 41; Caldwell *v.* Atlantic Coast Line R. Co., 75 S. Car. 74, 55 S. E. 131.

718. 1. Barron *v.* Northern Pac. R. Co., (N. Dak. 1907) 113 N. W. 103, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 718; Nor-

mile *v.* Wheeling Traction Co., 57 W. Va. 132, 49 S. E. 1030.

Province of Court and Jury. — Birmingham R., etc., Co. *v.* Rutledge, 142 Ala. 195, 39 So. 338.

720. 1. *Alabama.* — Southern R. Co. *v.* Burgess, 143 Ala. 364, 42 So. 35.

Arkansas. — St. Louis, etc., R. Co. *v.* Cleere, 76 Ark. 377, 88 S. W. 995; St. Louis Southwestern R. Co. *v.* Furlow, 81 Ark. 496, 99 S. W. 689; St. Louis, etc., R. Co. *v.* Knight, 81 Ark. 429, 99 S. W. 684; St. Louis, etc., R. Co. *v.* Snell, 82 Ark. 61, 100 S. W. 67; St. Louis, etc., R. Co. *v.* Mynott, 83 Ark. 6, 102 S. W. 380.

California. — Delmonte *v.* Southern Pac. Co., 2 Cal. App. 211, 83 Pac. 269; Marlow *v.* Southern Pac. Co., 151 Cal. 383, 90 Pac. 928.

Colorado. — Denver, etc., R. Co. *v.* Gunning, 33 Colo. 280, 80 Pac. 727; Colorado Springs, etc., R. Co. *v.* Petit, 37 Colo. 326, 86 Pac. 121.

Georgia. — Central of Georgia R. Co. *v.* Forehand, 128 Ga. 547, 58 S. E. 44.

Illinois. — Chicago, etc., R. Co. *v.* Tracey, 109 Ill. App. 563; Chicago City R. Co. *v.* Schmidt, 117 Ill. App. 213, *affirmed* 217 Ill. 396, 75 N. E. 383; Illinois Cent. R. Co. *v.* Downs, 122 Ill. App. 545.

Indiana. — Dayton, etc., Traction Co. *v.* Marshall, 36 Ind. App. 491, 75 N. E. 824; Pittsburgh, etc., R. Co. *v.* Coll, 37 Ind. App. 232, 76 N. E. 816; Malott *v.* Central Trust Co., 168 Ind. 428, 79 N. E. 369; Evansville Electric R. Co. *v.* Lerch, (Ind. App. 1907) 81 N. E. 225; Indianapolis Traction, etc., Co. *v.* Beckman, (Ind. App. 1907) 81 N. E. 82.

Indian Territory. — Missouri, etc., R. Co. *v.* Smith, 6 Indian Ter. 99, 89 S. W. 668.

Iowa. — Garvik *v.* Burlington, etc., R. Co., 131 Iowa 415, 108 N. W. 327.

Kentucky. — Southern R. Co. *v.* Hawkins, 89 S. W. 258, 28 Ky. L. Rep. 364.

Maine. — Pomroy *v.* Bangor, etc., R. Co., 102 Me. 497, 67 Atl. 561; Stone *v.* Lewiston, etc., St. R. Co., 99 Me. 243, 59 Atl. 56.

Michigan. — Dupuis *v.* Saginaw Valley Traction Co., 146 Mich. 151, 109 N. W. 413, 13 Detroit Leg. N. 767.

Missouri. — Mitchell *v.* United R. Co., 125 Mo. App. 1, 102 S. W. 661; O'Gara *v.* St. Louis Transit Co., 204 Mo. 724, 103 S. W. 54; Bragg *v.* Metropolitan St. R. Co., 192 Mo. 331, 91 S. W. 527; Devoy *v.* St. Louis Transit Co., 192 Mo. 197, 91 S. W. 140.

New York. — Burfeindt *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 651, 101 N. Y. Supp. 589.

Ohio. — Toledo, etc., Traction Co. *v.* McFall, 28 Ohio Cir. Ct. 362.

Pennsylvania. — White *v.* Columbia, etc., Electric R. Co., 215 Pa. St. 462, 64 Atl. 676.

Tennessee. — Cincinnati, etc., R. Co. *v.* Harris, 115 Tenn. 501, 91 S. W. 211.

Texas. — Southern Pac. Co. *v.* Bailey, (Tex. Civ. App. 1906) 91 S. W. 820; St. Louis Southwestern R. Co. *v.* Morrow, (Tex. Civ. App. 1906) 93 S. W. 162; St. Louis Southwestern R. Co. *v.* Foster, (Tex. Civ. App. 1907) 103 S. W. 194.

Virginia. — Chesapeake, etc., R. Co. *v.* Harris, 103 Va. 635, 49 S. E. 997.

West Virginia. — Normile *v.* Wheeling Traction Co., 57 W. Va. 132, 49 S. E. 1030; De Board *v.* Camden Interstate R. Co., (W. Va. 1907) 57 S. E. 279.

Rule Stated. — St. Louis Southwestern R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 94 S. W. 162.

Personal Injuries — Damages Held Not Excessive. — Baltimore, etc., R. Co. *v.* Kitchin, 135 Fed. 520, 68 C. C. A. 70 (two hundred dollars); St. Louis, etc., R. Co. *v.* Neely, (Tex. Civ. App. 1907) 101 S. W. 481 (six hundred dollars); Louisville R. Co. *v.* Pulliam, (Ky. 1907) 101 S. W. 295 (twelve hundred and fifty dollars); Texas, etc., R. Co. *v.* Leakey, (Tex. Civ. App. 1905) 87 S. W. 1168 (twelve hundred and fifty dollars for injuries to foot and hip and fracture of three ribs); Citizens' R. Co. *v.* Wade, (Tex. Civ. App. 1905) 91 S. W. 645 (two thousand dollars); Houston, etc., R. Co. *v.* Wilkins, (Tex. Civ. App. 1906) 98 S. W. 202 (twenty-five hundred dollars for permanent injuries); Galveston, etc., R. Co. *v.* Bean, (Tex. Civ. App. 1907) 99 S. W. 721 (twenty-five hundred dollars for permanent injuries to sight and hearing); San Antonio, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 85 S. W. 445 (forty-two hundred dollars for permanent injuries); St. Louis Southwestern R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 94 S. W. 162 (five thousand dollars for permanent injuries); St. Louis Southwestern R. Co. *v.* Harkey, (Tex. Civ. App. 1905) 88 S. W. 506 (ten thousand dollars for serious injuries); Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279 (sixteen thousand dollars for serious injuries).

Where a passenger, knocked down in a collision and rendered unconscious, received a slight cut in the hand, a sprained wrist, and a bruised leg and knee, and was confined to his home for a considerable period, five hundred dollars was held not to be excessive. Jordan *v.* Seattle, etc., R. Co., (Wash. 1907) 92 Pac. 284.

Three thousand dollars was held not an excessive amount where the passenger had three ribs broken, suffered from cough and a rapid heart and greatly lost in flesh. Galveston, etc., R. Co. *v.* Gracia, (Tex. Civ. App. 1907) 100 S. W. 198.

For injuries resulting in the loss of an arm a verdict of five thousand dollars was held not to be excessive. Missouri, etc., R. Co. *v.* Schroeder, (Tex. Civ. App. 1906) 100 S. W. 808.

A verdict for fifteen thousand dollars was held not to be excessive where the plaintiff was rendered an invalid and a cripple for life. International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000.

Fifteen thousand dollars was held not excessive for injuries to a practicing surgeon earning from $4,000 to $8,000 a year, whose collar bone was broken in two places, and right arm broken, and its use impaired, and his nervous system and heart affected. Galveston, etc., R. Co. *v.* Young, (Tex. Civ. App. 1907) 100 S. W. 993.

Unlawful Ejection. — In the following cases verdicts for unlawful ejection were held not to be excessive: Arnold *v.* Rhode Island Co., 28 R. I. 118, 163, 66 Atl. 60 (one hundred and seventy-five dollars); Southern Pac. Co. *v.* Craner, (Tex. Civ. App. 1907) 101 S. W. 534

(three hundred dollars); El Paso Electric R. Co. *v.* Alderete, 36 Tex. Civ. App. 142, 81 S. W. 1246 (five hundred dollars); Gulf, etc., R. Co. *v.* Bunn, (Tex. Civ. App. 1906) 95 S. W. 640 (five hundred dollars).

In Southern Pac. Co. *v.* Bailey, (Tex. Civ. App. 1906) 91 S. W. 820, verdicts giving two female passengers four hundred dollars and six hundred dollars, respectively, for threatened ejection accompanied by offensive and insulting language, were held not to be excessive.

In the following cases the damages were held excessive: Gulf, etc., R. Co. *v.* Russell, (Tex. Civ. App. 1905) 85 S. W. 299 (four hundred dollars); Texas, etc., R. Co. *v.* Lynch, (Tex. Civ. App. 1905) 87 S. W. 884 (one thousand dollars where passenger had money to pay fare).

Where a passenger through the fault of a ticket exchanger giving her a wrong receipt for her ticket was put off at an intermediate station and delayed twenty-four hours, during which she was ill from worry over the loss of her ticket, one thousand dollars was held to be excessive damages and was reduced to five hundred. Shannon *v.* Northern Pac. R. Co., 44 Wash. 321, 87 Pac. 351.

Insults and Abuse. — Two thousand five hundred dollars was held not to be excessive damages for mental anguish caused to a female passenger by the insults of an employee of the company. Gulf, etc., R. Co. *v.* Luther, (Tex. Civ. App. 1905) 90 S. W. 44.

For abusive language by a conductor to a female passenger on account of her refusal to pay fare for her child two hundred and fifty dollars was held not to be excessive. St. Louis Southwestern R. Co. *v.* Granger, (Tex. Civ. App. 1907) 100 S. W. 987.

Assault by Passengers — Not Excessive. — One thousand dollars was held not to be an excessive amount for an assault by passengers where the plaintiff was compelled to leave the train and walk twelve miles to his destination in the night, although he suffered no physical injury. International, etc., R. Co. *v.* Henderson, (Tex. Civ. App. 1904) 82 S. W. 1065.

722. 1. Insult and Indignity. — Mueller *v.* St. Louis Transit Co., 108 Mo. App. 325, 83 S. W. 270, holding five hundred dollars not to be excessive.

Refusal to Carry Accompanied by Insult and Indignity has been held to justify a verdict for twenty-five hundred dollars. Yazoo, etc., R. Co. *v.* Mattingly, (Miss. 1905) 37 So. 708.

CARRYING WEAPONS.

730. 1. Statutes against Carrying Concealed Weapons Constitutional. — Salina *v.* Blaksley, 72 Kan. 230, 7 Ann. Cas. 925, 83 Pac. 619; State *v.* Robira, 118 La. 251, 42 So. 792; State *v.* Gohl, (Wash. 1907) 90 Pac. 259.

Idaho Statute against Carrying Weapons Unconstitutional. — *In re* Brickey, 8 Idaho 597, 1 Ann. Cas. 55, 70 Pac. 609.

Forfeiture of Weapon. — Apparently *contra* is McConathy *v.* Deck, 34 Colo. 461, 7 Ann. Cas. 896, 83 Pac. 135, holding that a violation of the statute *ipso facto* works a forfeiture, without conviction as a condition precedent.

Repeal of Statutes. — The *Louisiana* statute of June 29, 1906, repealed prior statutes on the subject. State *v.* Smith, 118 La. 248, 42 So. 791; State *v.* Robira, 118 La. 251, 42 So. 792; State *v.* Dueffechaux, 118 La. 459, 43 So. 50.

2. State Legislatures Not Affected by Provisions of United States Constitution. — Salina *v.* Blaksley, 72 Kan. 230, 7 Ann. Cas. 925, 83 Pac. 619.

731. 1. Statutes Are Police Regulations. — *In re* Brickey, 8 Idaho 597, 1 Ann. Cas. 55, 70 Pac. 609.

County Ordinances Are Police Regulations. — *Ex p.* Luening, 3 Cal. App. 76, 84 Pac. 445.

No Express Provision Is Necessary for a village to pass an ordinance prohibiting the carrying of concealed weapons. The general police power is sufficient. Orrick *v.* Akers, 109 Mo. App. 662, 83 S. W. 549.

2. Possession of Concealed Weapon a Carrying. — Where the defendant had a pistol when he got out of a wagon and carried it until he returned from a quarrel, he was held to be guilty of carrying. Thompson *v.* State, (Tex. Crim. 1905) 86 S. W. 1032.

Weapon Must Be Carried as Arms. — Easlick *v.* U. S., (Indian Ter. 1907) 104 S. W. 941; Kendall *v.* State, 118 Tenn. 156, 101 S. W. 189. But see Edwards *v.* State, 126 Ga. 89, 54 S. E. 809, holding that the purpose of carriage is immaterial.

Carrying While Intoxicated. — Evidence that the defendant was intoxicated should be excluded where its admission would merely prejudice the jury. Hainey *v.* State, 147 Ala. 146, 41 So. 968.

Act Continuous — Two Indictments for One Offense. — A person may commit but one offense in carrying a concealed weapon from place to place in the presence of different people, but the moment the continuity of the act constituting the offense is broken a new and distinct offense begins when the weapon is again concealed. Morgan *v.* State, 119 Ga. 964, 47 S. E. 567.

Carrying Weapon to Public Gathering. — Under the *Georgia* statute, a barbecue is a "public gathering," and one who leaves it, procures a gun from a neighboring point, and returns with the gun to the barbecue commits an offense. Wynne *v.* State, 123 Ga. 566, 51 S. E. 636. But coming into possession of a pistol while at a public gathering is not carrying it to the gathering. Amorous *v.* State, 1 Ga. App. 313, 57 S. E. 999.

Carrying a pistol into a barroom adjacent to a ballroom is not carrying it to a "social gathering" within the meaning of the *Texas* statute. Schroeder *v.* State, (Tex. Crim. 1907) 99 S. W. 1003.

3. Carrying in Wagon or Vehicle. — A driver of a hack carrying a pistol under his seat is guilty under the *Tennessee* statute. Kendall *v.* State, 118 Tenn. 156, 101 S. W. 189.

But in *Texas* it has been held that carrying a pistol on some cotton in a wagon half way between the seat and the rear end of the wagon did not constitute the offense. Thompson *v.* State, (Tex. Crim. 1905) 86 S. W. 1033.

For Evidence Held to Be Sufficient to Sustain a Conviction of carrying a concealed weapon, see Millner *v.* State, (Ala. 1904) 43 So. 194;

Sanders *v.* State, 122 Ga. 143, 50 S. E. 66; Edwards *v.* State, 126 Ga. 89, 54 S. E. 809; State *v.* Miles, 124 Mo. App. 283, 101 S. W. 671; Smith *v.* State, (Tex. Crim. 1905) 90 S. W. 170; Prewitt *v.* State, (Tex. Crim. 1906) 92 S. W. 800; Hill *v.* State, (Tex. Crim. 1907) 100 S. W. 384; Hutchins *v.* State, (Tex. Crim. 1907) 101 S. W. 795; Brown *v.* State, (Tex. Crim. 1907) 102 S. W. 406; James *v.* State, (Tex. Crim. 1907) 103 S. W. 934; Johnson *v.* State, (Tex. Crim. 1907) 104 S. W. 902.

732. 2. What Amounts to Concealment. — Brown *v.* State, 2 Ga. App. 417, 58 S. E. 549 (similar to Street *v.* State, 67 Ala. 87, stated in the original note).

Carrying a Pistol Wrapped in a Bundle, so that it cannot readily be seen and recognized as a pistol, has been held to constitute the offense. Edwards *v.* State, 126 Ga. 89, 54 S. E. 809.

3. Question for Jury. — Hainey *v.* State, 147 Ala. 146, 41 So. 968; Sanders *v.* State, 122 Ga. 143, 50 S. E. 66; State *v.* Miles, 124 Mo. App. 283, 101 S. W. 671; State *v.* Simmons, 143 N. Car. 613, 56 S. E. 701; Simpson *v.* State, (Tex. Crim. 1905) 85 S. W. 15.

A Pistol Carried with Part of the Handle Showing may be concealed if enough of the weapon is not exposed to show plainly that it is a pistol. Orrick *v.* Akers, 109 Mo. App. 662, 83 S. W. 549.

733. 1. Where Weapon Is Not Concealed on Person. — Johnson *v.* State, (Tex. Crim. 1907) 104 S. W. 902.

In *Tennessee* the weapon (except a razor) need not be concealed about the person to constitute a violation of the statute. Kendall *v.* State, 118 Tenn. 156, 101 S. W. 189.

735. 1. To the same effect as Sanders *v.* State, (Tex. Crim. 1892) 20 S. W. 556, stated in the original note, see State *v.* Simmons, 143 N. Car. 613, 56 S. E. 701.

Evidence to Disprove Innocence of Intent. — State *v.* Miles, 124 Mo. App. 283, 101 S. W. 671; Irvin *v.* State, (Tex. Crim. 1907) 100 S. W. 779; Johnson *v.* State, (Tex. Crim. 1907) 104 S. W. 902. See also Cordova *v.* State, (Tex. Crim. 1906) 97 S. W. 87; Granger *v.* State, (Tex. Crim. 1906) 98 S. W. 836.

2. Innocent Motive No Defense. — State *v.* Simmons, 143 N. Car. 613, 56 S. E. 701 (supporting the text generally).

3. No Intent of Violating Law — Illustrations — Carrying as Merchandise.—See generally Schroeder *v.* State, (Tex. Crim. 1907) 99 S. W. 1003; Lewis *v.* State, (Tex. Crim. 1907) 104 S. W. 901; Huff *v.* State, (Tex. Crim. 1907) 102 S. W. 407.

Carrying between Residence and Place of Business. — Hutchins *v.* State, (Tex. Crim. 1907) 101 S. W. 795; Johnson *v.* State, (Tex. Crim. 1907) 104 S. W. 902 (both cases similar to Chambers *v.* State, 34 Tex. Crim. 293, 30 S. W. 357, stated in the original note).

A stopping on the way home from business long enough to get lunch is not a sufficient deflection to warrant a conviction under the *Texas* code. Mays *v.* State, (Tex. Crim. 1907) 101 S. W. 233.

Carrying a Pistol to Be Repaired and returning home with it is not a violation of the *Texas* Penal Code. Mangum *v.* State, (Tex. Crim. 1905) 90 S. W. 31.

737. 2. Condition of Weapon. — To like effect as Atwood *v.* State, 53 Ala. 508, stated in the original note, see Smith *v.* State, (Tex. Crim. 1906) 96 S. W. 1086; State *v.* Tapit, 52 W. Va. 473, 44 S. E. 231. In effect similar to Evins *v.* State, 46 Ala. 88, stated in the original note, see State *v.* Casto, 119 Mo. App. 265, 95 S. W. 961.

738. 2. Deputy Constable. — A person specially deputized by a defective deputation as a constable and given writs *pro fine* improperly indorsed, to serve in another county, is justified in carrying a pistol in that county. Black *v.* State, (Tex. Crim. 1905) 85 S. W. 1143.

A Justice of the Peace, under the *Texas* code, when he deems it necessary, may authorize any person other than a peace officer to execute a warrant of arrest by naming such person in the warrant, and in such case such person will have the same authority and be subject to the same rules that are conferred upon and govern peace officers in like cases. Jenkins *v.* State, (Tex. Crim. 1904) 82 S. W. 1036.

A Surety on a Bail Bond is not excused for carrying a pistol contrary to law when in search of his principal without a warrant. Smith *v.* State, (Tex. Crim. 1904) 85 S. W. 1078.

3. Where a Deputy Sheriff Attempted Orally to Deputize another person to make an arrest, it was held that such person had no authority to carry a pistol while on another mission. Brown *v.* State, (Tex. Crim. 1907) 102 S. W. 406.

739. 1. A Game Warden, invested with the authority and power of a constable for all purposes, but not in the actual performance of his duties, does not come within the exceptions of the statute. State *v.* Simmons, 143 N. Car. 613, 56 S. E. 701.

740. 1. Exception in Favor of One Who Is Threatened or Who Apprehends Attack. — For cases illustrating the exception generally, see Maxwell *v.* State, 143 Ala. 57, 39 So. 382; State *v.* Kelly, 123 Mo. App. 680, 101 S. W. 155; Williams *v.* State, 44 Tex. Crim. 494, 72 S. W. 380; Hood *v.* State, (Tex. Crim. 1903) 72 S. W. 592; Cunningham *v.* State, 45 Tex. Crim. 557, 78 S. W. 930; Thompson *v.* State, (Tex. Crim. 1905) 86 S. W. 1033; Quinn *v.* State, (Tex. Crim. 1906) 96 S. W. 33.

Texas. — The statutory exception does not give permission for the defendant to depart from his direct route and visit unnecessary places. Cordova *v.* State, (Tex. Crim. 1906) 97 S. W. 87. And it cannot be set up in favor of one who after shooting a person follows such person four hundred or five hundred yards to shoot him again. Woodroe *v.* State, (Tex. Crim. 1906) 96 S. W. 30.

Apprehension of Attack as Mitigating Punishment. — Evidence that the defendant apprehended an attack may be introduced in mitigation of the punishment to be imposed. Maxwell *v.* State, 143 Ala. 57, 39 So. 382.

741. 1. Actual Belief in Impending Danger

is necessary under the *Missouri* statute. State *v.* Venable, 117 Mo. App. 501, 93 S. W. 356. But a *prima facie* defense is made out by showing that threats have been made, and the burden of showing want of good reason to believe that the threats would be executed is on the prosecution. State *v.* Casto, 119 Mo. App. 265, 95 S. W. 961.

A Mere Difficulty with Another does not *per se* authorize the carrying of a pistol. Hood *v.* State, (Tex. Crim. 1903) 72 S. W. 592.

742. 1. A Railroad Train Porter on Duty is at his "place of business" within the exception of the *Texas* statute. Williams *v.* State, 44 Tex. Crim. 494, 72 S. W. 380.

A Storehouse Used for a Business Office has been held to be within the exemption. Smith *v.* State, (Tex. Crim. 1907) 100 S. W. 155.

Evidence that the Defendant Had Just Closed His Place of Business and was on his way home, carrying a pistol, is insufficient to sustain a conviction. Mathonican *v.* State, (Tex. Crim. 1907) 102 S. W. 1123.

Two Pieces of Land a Mile Apart and connected by a road do not constitute one place of business within the exception of the statute. Banks *v.* State, (Tex. Crim. 1906) 98 S. W. 242.

743. 1. State *v.* Venable, 117 Mo. App. 501, 93 S. W. 356; Monson *v.* State, 45 Tex. Crim. 426, 76 S. W. 570, holding that a person not an officer, but partly in control of the premises, had no right to carry a pistol at a pleasure gathering.

2. Actual Journey or Traveling Essential. — Easlick *v.* U. S., (Indian Ter. 1907) 104 S. W. 941; Harris *v.* State, (Tex. Crim. 1903) 77 S. W. 610; Underwood *v.* State, (Tex Crim. 1905) 85 S. W. 794. See also Simpson *v.* State, (Tex. Crim. 1905) 85 S. W. 15.

Question of Fact. — Easlick *v.* U. S., (Indian Ter. 1907) 104 S. W. 941.

A Railroad Train Porter whose run takes him one hundred and fifty miles or more every day is a traveler under the *Texas* statute. Williams *v.* State, 44 Tex. Crim. 494, 72 S. W. 380.

One Making an Unprovoked Attack cannot claim the statutory exemption of a traveler. State *v.* Miles, 124 Mo. App. 283, 101 S. W. 671.

744. 1. Mail Carrier. — See Easlick *v.* U. S., (Indian Ter. 1907) 104 S. W. 941.

2. Holland *v.* State, 73 Ark. 425, 84 S. W. 468.

Under the *Texas* statute a person is protected as a traveler as long as he is engaged in the pursuit of his journey or some business connected therewith only. Navarro *v.* State, (Tex. Crim. 1906) 96 S. W. 932.

A Day After Reaching the Destination the exemption is no longer in force. Rosaman *v.* Okolona, 85 Miss. 583, 37 So. 641.

745. 1 Traveler Stopping on Journey. — To the same effect as the first paragraph of the original note, see Ackerson *v.* State, 76 Ark. 301, 89 S. W. 550; Navarro *v.* State, (Tex. Crim. 1906) 96 S. W. 932.

A Mere Delay incidental to the defendant's journey does not deprive him of his defense as a traveler. Irvin *v.* State, (Tex. Crim. 1907) 100 S. W. 779.

3. Burden of Proof. — Harris *v.* State, (Tex. Crim. 1903) 77 S. W. 610. See also McDonald *v.* State, 83 Ark. 26, 102 S. W. 703.

CART.

746. 1. Private Railroad Not a Cartway. — Cozard *v.* Kanawha Hardwood Co., 139 N. Car. 283, 51 S. E. 932.

CASE.

748. 9. Barnett *v.* Pemiscot County Ct., 111 Mo. App. 699, 86 S. W. 575, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 748.

751. 1. Case — Synonymous with Cause. — See Barnett *v.* Pemiscot County Ct., 111 Mo. App. 699, 86 S. W. 575.

CASH.

757. 1. Cash Value — Taxation. — See State *v.* Nevada Cent. R. Co., 28 Nev. 186, 81 Pac. 99.

CASHIER.

761. 1. Cashier of Bank. — People *v.* Messer, 148 Mich. 175, 111 N. W. 854, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 761.

CATCHING BARGAIN.

765. 1. Assignment. — Dixon *v.* Bentley, 68 N. J. Eq. 108, 59 Atl. 1036.

5. Cornish *v.* Johns, 74 Ark. 231, 85 S. W. 764; McAdams *v.* Bailey, (Ind. App. 1907) 80 N. E. 171, *affirmed* (Ind. 1907) 82 N. E. 1057.

766. 2. Cornish *v.* Johns, 74 Ark. 231, 85 S. W. 764; Hudson *v.* Hudson, 222 Ill. 527, 78 N. E. 917; McAdams *v.* Bailey, (Ind. App. 1907) 80 N. E. 171, *affirmed* (Ind. 1907) 82 N. E. 1057, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 766.

767. 5. Indiana. — It has been said that if a sale of a bare expectant interest is made for a fair price, and the ancestor consent thereto, such sale is unimpeachable. McAdams *v.* Bailey, (Ind. App. 1907) 80 N. E. 171, *affirmed* (Ind. 1907) 82 N. E. 1057.

769. 1. Dixon *v.* Bentley, 68 N. J. Eq. 108, 59 Atl. 1036.

CAUSE.

772. 2. Appeal from Order of Distribution by Probate Court Not a Cause. — Ford *v.* Ford, 117 Ill. App. 502.

776. 1. Kirby-Carpenter Co. *v.* Burnett, (C. C. A.) 144 Fed. 635.

CAUSE OF ACTION.

776. 2. Cox *v.* American Freehold, etc., Mortg. Co., 88 Miss. 102, 40 So. 739, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 776.

Other Definitions. — The ***cause of action*** is the fact or facts that "justify it or show the right to maintain it." Cox *v.* American Freehold, etc., Mortg. Co., 88 Miss. 102, 40 So. 739.

Proceedings to Enforce Chinese Exclusion Act are not *cause of action* within the federal statute granting a jury trial in such cases. Toy Tong *v.* U. S., (C. C. A.) 146 Fed. 343.

CEMETERIES.

782. 1*a.* **English Statute — Rector's Fees for Burials.** — See Young *v.* Joint Burials Committee, (1906) 1 K. B. 338, (1907) 1 K. B. 416.

2. McCann *v.* Mt. Gilead Cemetery, 166 Ind. 573, 77 N. E. 1090, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 782.

3. Starr Burying Ground Assoc. *v.* North Lane Cemetery Assoc., 77 Conn. 83, 58 Atl. 467.

4. Not Strictly a Public Use. — Starr Burying Ground Assoc. *v.* North Lane Cemetery Assoc., 77 Conn. 83, 58 Atl. 467.

783. 1. Shiel *v.* Walker, 114 Mo. App. 521, 90 S. W. 124.

2. Starr Burying Ground Assoc. *v.* North Lane Cemetery Assoc., 77 Conn. 83, 58 Atl. 467.

4. Railroads by Statute Prohibited from Locating on Land Used as Cemetery. — McCann *v.* Mt. Gilead Cemetery, 166 Ind. 573, 77 N. E. 1090.

784. 3. Wormley *v.* Wormley, 207 Ill. 411, 69 N. E. 865, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 784.

When Land Is Appropriated by a Municipality it is open, under reasonable regulations, to the use of the public for the burial of the dead. Starr Burying Ground Assoc. *v.* North Lane Cemetery Assoc., 77 Conn. 83, 58 Atl. 467.

4. Wormley *v.* Wormley, 207 Ill. 411, 69 N. E. 865, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 784.

785. 1. Wormley *v.* Wormley, 207 Ill. 411, 69 N. E. 865.

2. Incorporation. — Palmer *v.* Hickory Grove Cemetery, 84 N. Y. App. Div. 600, 82 N. Y. Supp. 973; American Exch. Nat. Bank *v.* Woodlawn Cemetery, 120 N. Y. App. Div. 119, 105 N. Y. Supp. 305.

2*a*. Liability to Execution. — See Spear *v.* Locust Wood Cemetery Co., (N. J. 1907) 66 Atl. 1068; Woodland Cemetery Co. *v.* Stout, (Ky. 1906) 97 S. W. 756.

786. 1. State *v.* Scoville, 78 Conn. 90, 61 Atl. 63; Clark *v.* Rahway Cemetery Co., 69 N. J. Eq. 636, 61 Atl. 261.

2. State *v.* Scoville, 78 Conn. 90, 61 Atl. 63.

787. 1. Easement to Bury Distinguished from License. — Anderson *v.* Acheson, 132 Iowa 744, 110 N. W. 335; Robertson *v.* Mt. Olivet Cemetery Co., (Tenn. 1906) 93 S. W. 574.

789. 3. Rights of Lot-owners. — Richmond Cemetery Co. *v.* Walker, (Ky. 1906) 97 S. W. 34; Clark *v.* Rahway Cemetery, 69 N. J. Eq. 636, 61 Atl. 261; Robertson *v.* Mt. Olivet Cemetery Co., (Tenn. 1906) 93 S. W. 574.

The Body of a Murderer and Suicide is entitled to burial in a public burying ground. Kitchen *v.* Wilkinson, 26 Pa. Super. Ct. 75.

4. Anderson *v.* Acheson, 132 Iowa 744, 110 N. W. 335; People *v.* Hogan, 101 N. Y. App. Div. 216, 91 N. Y. Supp. 715.

Heirs Take Subject to All Conditions under Which Ancestor Held. — Robertson *v.* Mt. Olivet Cemetery Co., (Tenn. 1906) 93 S. W. 574.

790. 1. Lot-owner Entitled to Right of Way Over Walks and Roads. — Mt. Greenwood Cemetery Assoc. *v.* Hildebrand, 126 Ill. App. 399.

Implied Right of Way of Necessity to Private Burial Ground. — May *v.* Belson, 10 Ont. L. Rep. 686.

2. McGann *v.* McGann, (R. I. 1907) 66 Atl. 52.

3. The Title to Monuments remains in the persons who erect them, during life, and then passes to the heirs. McGann *v.* McGann, (R. I. 1907) 66 Atl. 52.

791. 1. Payne *v.* Wayland, 131 Iowa 659, 109 N. W. 203.

4. Equity Will Enjoin the Burial of the Dead when the health of the community is likely to be injured. Braasch *v.* Cemetery Assoc., etc., 69 Neb. 300, 5 Ann. Cas. 132, 95 N. W. 646; Payne *v.* Wayland, 131 Iowa 659, 109 N. W. 203; Elliott *v.* Ferguson, (Tex. Civ. App. 1907) 103 S. W. 453.

792. 1. Hume *v.* Laurel Hill Cemetery, 142 Fed. 552; Palmer *v.* Hickory Grove Cemetery, 84 N. Y. App. Div. 600, 82 N. Y. Supp. 973; Morton *v.* St. Patrick's Roman Catholic Church Soc., (Supm. Ct. Eq. T.) 56 Misc. (N. Y.) 71, 105 N. Y. Supp. 1100; Carpenter *v.* Yeadon, 151 Fed. 879.

Municipal Restrictions. — Laurel Hill Cemetery *v.* San Francisco, (Cal. 1907) 93 Pac. 70.

793. 1. Palmer *v.* Hickory Grove Cemetery, 84 N. Y. App. Div. 600, 82 N. Y. Supp. 973.

3. Burial within One Hundred Yards of Dwelling House — Injunction. — See Godden *v.* Hythe Burial Board, (1906) 2 Ch. 270.

4. Wilson *v.* Read, (N. H. 1907) 68 Atl. 37.

Courts May Restrain Disinterment. — Cohen *v.* Congregation Shearith Israel, 114 N. Y. App. Div. 117, 99 N. Y. Supp. 732.

794. 2. Anderson *v.* Acheson, 132 Iowa 744, 110 N. W. 335; Hassenclever *v.* Romkey, 133 Iowa 470, 110 N. W. 905; Feeley *v.* Andrews, 191 Mass. 313, 77 N. E. 766; Palmer *v.* Hickory Grove Cemetery, 84 N. Y. App. Div. 600, 82 N. Y. Supp. 973. See also Wormley *v.* Wormley, 207 Ill. 411, 69 N. E. 865.

Where the Defendant Was Hired by the Plaintiff to prepare a grave for the plaintiff's father, and in the course of the work injury was done to the body of the plaintiff's mother, it was held that there could be no recovery. Feeley *v.* Andrews, 191 Mass. 319, 77 N. E. 766.

Against a Trespasser anterior possession alone is sufficient to maintain ejectment. Wilkinson *v.* Strickland, (Miss. 1903) 35 So. 177.

795. 2. May *v.* Belson, 10 Ont. L. Rep. 686.

CERTIFICATES OF DEPOSIT.

801. 1. Young *v.* American Bank, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 308, 89 N. Y. Supp. 913, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 801.

802. 5. Interest After Maturity. — A certificate of deposit payable on demand bears interest after maturity. Portage First Nat.

Bank *v.* State Bank, 15 N. Dak. 594, 109 N. W. 61.

803. 4. Taylor *v.* Hutchinson, 145 Ala. 202, 40 So. 108, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 803; Lamar, etc., Drug Co. *v.* Albany First Nat. Bank, 127 Ga. 448, 56 S. E. 486; Mishawaka First Nat. Bank *v.* Stapf, 165 Ind. 162, 6 Ann. Cas. 631, 74 N. E. 987; State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500; Hanna *v.* Manufacturers' Trust Co., 104 N. Y. App. Div. 90, 93 N. Y. Supp. 304.

Certificate of Deposit Distinguished from Promissory Note. — Elliott *v.* Capital City State Bank, 128 Iowa 275, 103 N. W. 777.

804. 2. Lamar, etc., Drug Co. *v.* Albany First Nat. Bank, 127 Ga. 448, 56 S. E. 486; Elliott *v.* Capital City State Bank, 128 Iowa 275, 103 N. W. 777; Young *v.* American Bank, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 308, 89 N. Y. Supp. 915.

805. 1. Mishawaka First Nat. Bank *v.* Stapf, 165 Ind. 162, 6 Ann. Cas. 631, 74 N. E. 987; Young *v.* American Bank, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 308, 89 N. Y. Supp. 915; Hanna *v.* Manufacturers' Trust Co., 104 N. Y. App. Div. 90, 93 N. Y. Supp. 304.

A Certificate of Deposit Containing No Promise to Pay the Deposit cannot be assigned by a mere indorsement of the paper. Young *v.* American Bank, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 308, 89 N. Y. Supp. 913.

806. 1. Mishawaka First Nat. Bank *v.* Stapf, 165 Ind. 162, 6 Ann. Cas. 631, 74 N. E. 987.

5. **A Lapse of Twenty-four Years** in the presentation of a certificate of deposit for payment raises the presumption that it has been paid. Rosenstock *v.* Dessar, 109 N. Y. App. Div. 10, 95 N. Y. Supp. 1064.

809. 3. State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500.

CHAMPERTY AND MAINTENANCE.

815. 1. Mud Valley Oil, etc., Co. *v.* Hitchcock, (Ind. App. 1907) 81 N. E. 111; Gelo *v.* Pfister, etc., Leather Co., (Wis. 1907) 113 N. W. 69.

816. 2. Brush *v.* Carbondale, 229 Ill. 144, 82 N. E. 252; Mud Valley Oil, etc., Co. *v.* Hitchcock, (Ind. App. 1907) 81 N. E. 111; Phelps *v.* Manecke, 119 Mo. App. 139, 96 S. W. 221; Gelo *v.* Pfister, etc., Leather Co., (Wis. 1907) 113 N. W. 69.

820. 1. Gelo *v.* Pfister, etc., Leather Co., (Wis. 1907) 113 N. W. 69.

3. Mexican Nat. Coal, etc., Co. *v.* Frank, 154 Fed. 217, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 820; Elser *v.* Gross Point, 223 Ill. 230, 79 N. E. 27, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 820; Breeden *v.* Frankford Marine, etc., Ins. Co., 110 Mo. App. 312, 85 S. W. 930, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 820.

Aiding Poor Person to Prosecute Suit Not Unlawful. — Jahn *v.* Champagne Lumber Co., 157 Fed. 407; Holden *v.* Thompson, (1907) 2 K. B. 489, 76 L. J. K. B. 889, 97 L. T. N. S. 138.

821. 1. **An Action for Damages for Unlawful Maintenance** will lie although the suit terminated unsuccessfully, if special damages are shown. Newswander *v.* Giegerich, 12 British Columbia 272.

A Labor Union Is Liable for the Costs of a suit which was instituted and carried on by it on the behalf of one of its members and which was dismissed with costs. Greig *v.* National Amalgamated Union, 22 Times L. Rep. 274.

822. 3. Cochran *v.* Zachery, (Iowa 1908) 115 N. W. 486.

Whether a Contract Is Champertous is to be determined by the laws of the state where the suit is brought. Roller *v.* Murray, (Va. 1907) 59 S. E. 421.

823. 1. Mud Valley Oil, etc., Co. *v.* Hitchcock, (Ind. App. 1907) 81 N. E. 111; Phelps *v.* Manecke, 119 Mo. App. 139, 96 S. W. 221; Kelerher *v.* Henderson, 203 Mo. 498, 101 S. W. 1083.

Virginia. — Even if the Act of December 8, 1792 (1 Rev. Code 1819, c. 144, p. 558), defining the offense of champerty and prescribing its punishment was repealed by its omission from the revisal of 1849, the common law with reference thereto was thereby revived. Roller *v.* Murray, (Va. 1907) 59 S. E. 421.

826. 1. Calkins *v.* Pease, 125 Ill. App. 270; Parker *v.* People, 126 Ill. App. 538; Whinery *v.* Brown, 36 Ind. App. 276, 75 N. E. 605; Landry's Succession, 116 La. 970, 41 So. 226; Taylor *v.* St. Louis Transit Co., 198 Mo. 715, 97 S. W. 155, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 826; Matter of Speranza, 186 N. Y. 280, 78 N. E. 1070, *reversing* 114 N. Y. App. Div. 913, 100 N. Y. Supp. 1144; Ransom *v.* Cutting, 188 N. Y. 447, 81 N. E. 324, *affirming* 112 N. Y. App. Div. 150, 98 N. Y. Supp. 282; Bailey *v.* Toledo, etc., R. Co., 15 Ohio Dec. 745.

Where It Does Not Appear that the Aid Alleged to Have Been Offered to the client to maintain his suit was offered before he signed, or was induced to sign, a paper giving an interest in the judgment as a retainer, the retainer is valid. O'Neill *v.* Campbell, 118 N. Y. App. Div. 64, 103 N. Y. Supp. 150.

2. Granat *v.* Kruse, 114 Ill. App. 488, writ of error dismissed, 213 Ill. 328, 72 N. E. 744; Calkins *v.* Pease, 125 Ill. App. 270; Cochran *v.* Zachery, (Iowa 1908) 115 N. W. 486; Moreland *v.* Devenney, 72 Kan. 471, 83 Pac. 1097; Comstock *v.* Flower, 109 Mo. App. 275, 84 S. W. 207; Kelerher *v.* Henderson, 203 Mo. 498, 101 S. W. 1083; Matter of Speranza, 186 N. Y. 280, 78 N. E. 1070, *reversing* 114 N. Y. App. Div. 913, 100 N. Y. Supp. 1144.

Agreement to Pay Defendant's Witnesses Champertous. — Barngrover *v.* Pettigrew, 128 Iowa 533, 104 N. W. 904.

An Agreement to Pay Costs and Expenses of litigation is not champertous where the consideration therefor arises out of another transaction not connected with the suit. McCoy *v.* Griswold, 114 Ill. App. 556.

The Extreme Poverty of the Plaintiff Is Not Conclusive of the fact that the attorneys have agreed to pay costs and expenses of litigation; but taken in connection with other facts and circumstances it may be evidentiary as to the

true agreement between the client and the attorneys. Lyttle *v.* Goldberg, 131 Wis. 613, 111 N. W. 718.

827. 2. Donaldson *v.* Eaton, (Iowa 1907) 114 N. W. 19.

828. 3. Brush *v.* Carbondale, 229 Ill. 144, 82 N. E. 252, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 828. But see Moreland *v.* Devenney, 72 Kan. 471, 83 Pac. 1097.

No Recovery if Contract Procured by Fraud. — Donaldson *v.* Eaton, (Iowa 1907) 114 N. W. 19.

May Recover Only Up to Time of Making Champertous Contract. — Dreyfuss *v.* Jones, 116 Ill. App. 75.

829. 6. Ransom *v.* Cutting, 188 N. Y. 447, 81 N. E. 324, *affirming* 112 N. Y. App. Div. 150, 98 N. Y. Supp. 282.

An Attorney Who Conducts a Case Gratuitously for his client, may recover costs advanced. *In re* Solicitors, 9 Ont. L. Rep. 708.

8. Roller *v.* Murray, (Va. 1907) 59 S. E. 421, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 829.

Voluntarily Becoming Surety for Costs by an attorney in another suit does not render champertous a contract entered into between the attorney and the plaintiff and others to prosecute suits, where the suits have been brought according to the contract and the rights of the parties have already become vested. Taylor *v.* St. Louis Transit Co., 198 Mo. 715, 97 S. W. 155.

9. **Assignment of Claim Void.** — Slade *v.* Zeitfuss, 77 Conn. 457, 59 Atl. 406.

Assignments Not Void. — An assignment of an insurance policy to attorneys to secure their fees in the case is not champertous. Ball *v.* Royal Ins. Co., (Mo. App. 1908) 107 S. W. 1097.

The assignment to the attorney of the amount recovered as collateral security for his retainer is not champertous. Lamothe *v.* Montreal St. R. Co., 16 Quebec K. B. 1.

Where the statute forbids an attorney to buy a note for the purpose of bringing suit, but exempts from the prohibition a case wherein the attorney receives the note for property sold, services rendered, or for a debt antecedently contracted, the burden is upon the attorney to show that the claim comes within the exception. Lieberman *v.* Mandel, (Supm. Ct. App. T.) 98 N. Y. Supp. 201.

Where the attorney has no personal interest in the claim, but simply holds the legal title obviously for the purpose of enforcing the claim for the benefit of others, the contract is not champertous. Wightman *v.* Catlin, 113 N. Y. App. Div. 24, 98 N. Y. Supp. 1071; Oldmixon *v.* Severance, 119 N. Y. App. Div. 821, 104 N. Y. Supp. 1042.

833. 1. Kelerher *v.* Henderson, 203 Mo. 498, 101 S. W. 1083; Comstock *v.* Flower, 109 Mo. App. 275, 84 S. W. 207; Major *v.* Insurance Co. of North America, 112 Mo. App. 235, 86 S. W. 883.

834. 1. Caldwell *v.* Boone County, (Ind. App. 1908) 83 N. E. 355; Campbell *v.* Boone County, (Ind. App. 1908) 83 N. E. 357; Ball *v.* Royal Ins. Co., (Mo. App. 1908) 107 S. W. 1097.

835. 5. In Alabama, a Conveyance or Sale of property in the adverse possession of another is champertous and void. Doe *v.* Edmondson, 145 Ala. 557, 40 So. 505; Posey *v.* Gamble, (Ala. 1906) 41 So. 416.

Conveyance of Land Held Adversely Good as between Parties. — Mahan *v.* Smith, (Ala. 1907) 44 So. 375; Huston *v.* Scott, (Okla. 1907) 94 Pac. 512.

837. 1. **Recognized as Obsolete.** — Chesapeake Beach R. Co. *v.* Washington, etc., R. Co., 23 App. Cas. (D. C.) 587, *affirmed* 199 U. S. 247, 26 U. S. Sup. Ct. 25.

A Deed Is Not Champertous and Void under the *North Dakota* statute, Rev. Code 1905, § 8733, where the grantee or his attorney examines the records before the deed is given and discovers defects in tax deeds of record on which title is claimed. State Finance Co. *v.* Myers, (N. Dak. 1907) 112 N. W. 76; State Finance Co. *v.* Trimble, (N. Dak. 1907) 112 N. W. 984.

A Deed Taken by the Grantee with Actual Notice of an adverse claim is void. Brynjolfson *v.* Dagner, 15 N. Dak. 332, 109 N. W. 320.

839. 1. Mahan *v.* Smith, (Ala. 1907) 44 So. 375.

The Possession of a Conditional Vendee is not such adverse possession as will render the vendor's deed to a third person champertous. Dannelly *v.* Russ, (Fla. 1907) 45 So. 496.

An Occasional Cutting of Hay from unoccupied lands by the permission of one claiming title adversely to the plaintiff's grantor, is not sufficient to constitute adverse possession so as to avoid the deed for maintenance. State Finance Co. *v.* Beck, 15 N. Dak. 374, 109 N. W. 357.

4. Gilman *v.* Dolan, 114 N. Y. App. Div. 774, 100 N. Y. Supp. 186; Udell *v.* Stearns, (Supm. Ct. App. Div.) 109 N. Y. Supp. 407; Saranac Land, etc., Co. *v.* Roberts, (Supm. Ct. App. T.) 109 N. Y. Supp. 547.

841. 1. Lost Creek Coal Co. *v.* Napier, (Ky. 1905) 89 S. W. 264; Lieberman *v.* Clark, 114 Tenn. 117, 85 S. W. 258.

Actual Possession Must Be Open and Notorious. — Interstate Invest. Co. *v.* Bailey, (Ky. 1906) 93 S. W. 578.

The Conveyance by a Widow of Her Dower Right is void if made while the property is held adversely. Bridgewater *v.* Byassee, (Ky. 1906) 93 S. W. 35.

Possession Not Sufficient to Render Sale Invalid. — The possession or holding of an easement appurtenant to or over real property is not such adverse possession as will render a sale of the property champertous. Williams *v.* Poole, (Ky. 1907) 103 S. W. 336; Kevil *v.* Wilford, (Ky. 1907) 104 S. W. 348.

The mere fact that a party obtains a conveyance is not of itself sufficient to invest him with an adverse holding so as to render a sale of the land champertous. Collinsworth *v.* Enterprise Land, etc., Co., (Ky. 1907) 99 S. W. 234.

The possession of the wife and children of the vendor of timber is not adverse so as to render his contract champertous, especially where he resided with them. Barnes *v.* F. Weikel Chair Co., (Ky. 1905) 89 S. W. 222.

One claiming to hold land amicably will not be permitted to assert an adverse title subsequently, and a sale of the property before the amicable holding is renounced will not be champertous. Madison Stockyards Co. *v.* Frazee, (Ky. 1906) 98 S. W. 283.

Possession of the original grantor is consistent with and not hostile to the title which he has conveyed, and a conveyance by heirs of the grantee is not champertous, especially if there is no fraud. Behrens *v.* Crawford, (Ky. 1908) 108 S. W. 288.

The possession of the surface of land is not actual possession of the minerals so as to render a sale of the latter void where the mineral rights had been conveyed previously by the parties through whom the occupant of the surface held. Combs *v.* Virginia Iron, etc., Co., (Ky. 1908) 106 S. W. 815; Price *v.* Big Sandy Co., (Ky. 1908) 107 S. W. 725.

One in possession of land as purchaser from an infant does not hold adversely to the infant. Smith *v.* Cornett, (Ky. 1906) 98 S. W. 297.

4. Saranac Land, etc., Co. *v.* Roberts, (Supm. Ct. App. T.) 109 N. Y. Supp. 547.

842. 1. The Conveyance of Trust Property by the Trustee while the *cestui que trust* is in actual adverse possession is champertous and void. Cyrus *v.* Holbrook, (Ky. 1907) 106 S. W. 300.

3. Woodward *v.* Johnson, 122 Ky. 160, 90 S. W. 1076; Cook *v.* Burton, (Ky. 1906) 92 S. W. 322; State Finance Co. *v.* Halstenson, (N. Dak. 1908) 114 N. W. 724.

843. 1. Not Applicable to Mortgages. — State Finance Co. *v.* Halstenson, (N. Dak. 1908) 114 N. W. 724.

5. Emerson *v.* McDonnell, 129 Wis. 67, 107 N. W. 1037.

Not Champertous if Vendee Did Not Know of Pendency of Suit. — Jennings *v.* Brown, (Okla. 1908) 94 Pac. 557.

Where a Suit Is Pending against a Surety Company and the administrator of an estate, the sale of their distributive shares by certain of the distributees to the attorney for the surety company is not champertous. Moseley *v.* Johnson, 144 N. Car. 257, 56 S. E. 922.

CHANCE.

845. 5. See Stevens *v.* Cincinnati Times-Star Co., 72 Ohio St. 112, 73 N. E. 1058.

CHARACTER (IN EVIDENCE).

852. 1. Reputation Is the Evidence of Character. — State *v.* Simmons, (Kan. 1906) 88 Pac. 57.

2. Burns *v.* State, 75 Ohio St. 407, 79 N. E. 929.

853. 1. Bloomer *v.* State, 75 Ark. 297, 87 S. W. 438; State *v.* Lejeune, 116 La. 193, 40 So. 632; Melton *v.* State, (Tex. Crim. 1904) 83 S. W. 822; Gregory *v.* State, (Tex. Crim. 1906) 94 S. W. 1041; Keith *v.* State, (Tex. Crim. 1906) 94 S. W. 1044; Wakefield *v.* State, (Tex. Crim. 1906) 94 S. W. 1046; Arnwine *v.* State, (Tex. Crim. 1906) 96 S. W. 4; Puryear *v.* State, (Tex. Crim. 1906) 98 S. W. 258; Bays *v.* State, (Tex. Crim. 1907) 99 S. W. 561.

Where the Defendant Has Attacked the Character of the Deceased the state may show that it was good. Weaver *v.* State, 83 Ark. 119, 102 S. W. 713.

Presumption as to Chastity in Seduction. — State *v.* Kelley, 191 Mo. 680, 90 S. W. 834.

854. 1. Missouri, etc., R. Co. *v.* Dumas, (Tex. Civ. App. 1906) 93 S. W. 493.

2. Clinton *v.* State, 53 Fla. 98, 43 So. 312; State *v.* Thompson, 127 Iowa 440, 103 N. W. 377; Newman *v.* Com., (Ky. 1905) 88 S. W. 1089; Ball *v.* Com., (Ky. 1907) 99 S. W. 326; State *v.* Stone, 96 Minn. 482, 105 N. W. 187; State *v.* Beckner, 194 Mo. 281, 91 S. W. 892; State *v.* Richardson, 194 Mo. 326, 92 S. W. 649; State *v.* Kelleher, 201 Mo. 614, 100 S. W. 470; State *v.* Lee, 46 Oregon 40, 79 Pac. 577; State *v.* Grove, 61 W. Va. 697, 57 S. E. 296.

No Presumption as to Character of Defendant in Criminal Prosecution. — Gater *v.* State, 141 Ala. 10, 37 So. 692; Mixon *v.* State, 123 Ga. 581, 51 S. E. 580.

856. 1. Harper *v.* U. S., (Indian Ter. 1907) 104 S. W. 673; State *v.* Bessa, 115 La. 259, 38 So. 985; State *v.* Griggsby, 117 La. 1046, 42 So. 497; Schultz *v.* State, (Wis. 1907) 113 N. W. 428.

Larceny.—Evidence must be limited to general reputation for honesty. State *v.* Moyer, 58 W. Va. 146, 6 Ann. Cas. 344, 52 S. E. 30.

Peace and Quiet — When Personal Violence an Element. — Smith *v.* State, 142 Ala. 14, 39 So. 329; Demaree *v.* Com., (Ky. 1904) 82 S. W. 231.

Evidence that Plaintiff Is a "Double Grass Widow" Is Inadmissible to affect her credibility as a witness. Edger *v.* Kupper, 110 Mo. App. 280, 85 S. W. 949.

857. 1. The defendant's reputation as a peaceable and quiet man is irrelevant in a prosecution for rape. Wistrand *v.* People, 218 Ill. 323, 75 N. E. 891.

3. People *v.* Albers, 137 Mich. 678, 100 N. W. 908.

5. Same Rule Applies to Criminal Prosecutions. — Ballew *v.* State, (Tex. Crim. 1905) 85 S. W. 1063.

859. 1. "Dead Beat." — Evidence that a witness is a "dead beat" is inadmissible to impeach him. State *v.* Grubb, 201 Mo. 585, 99 S. W. 1083.

Evidence that a Witness Consorted with Thieves is inadmissible for purposes of impeachment. Miller *v.* Oklahoma, (C. C. A.) 149 Fed. 330, 9 Ann. Cas. 389.

2. State *v.* Haupt, 126 Iowa 152, 101 N. W. 739.

3. Baker *v.* State, 51 Fla. 1, 40 So. 673; State *v.* Baudoin, 115 La. 837, 40 So. 239; Davis *v.* State, 87 Miss. 337, 39 So. 522; York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604.

860. 1. State *v.* Detwiler, 60 W. Va. 583, 55 S. E. 654.

To Impeach a Prosecutrix on a trial for rape, the witness must confine himself to what he knew before the offense. State *v.* Barrick, 60 W. Va. 576, 55 S. E. 652.

6. State *v.* Simmons, (Kan. 1906) 88 Pac. 57.

861. 2. Van Horn *v.* Van Horn, (Cal. App. 1907) 91 Pac. 261, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 861.

862. 3. **Good Character of Wife and Corespondent Inadmissible.** — Van Horn *v.* Van Horn, (Cal. App. 1907) 91 Pac. 260.

865. 4. See Van Horn *v.* Van Horn, (Cal. App. 1907) 91 Pac. 260, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 865.

866. 1. Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78.

3. *United States.* — U. S. *v.* Breese, 131 Fed. 915.

Alabama. — Taylor *v.* State, (Ala. 1907) 42 So. 996.

Arkansas. — Weaver *v.* State, 83 Ark. 119, 102 S. W. 713.

District of Columbia. — Posey *v.* U. S., 26 App. Cas. (D. C.) 302.

Kansas. — State *v.* Simmons, (Kan. 1906) 88 Pac. 57.

Michigan. — People *v.* Albers, 137 Mich. 678, 100 N. W. 908.

Mississippi. — Johnson *v.* State, (Miss 1906) 40 So. 324.

New York. — People *v.* Ellenbogen, 114 N. Y. App. Div. 182, 99 N. Y. Supp. 897.

Texas. — Saye *v.* State, (Tex. Crim. 1907) 99 S. W. 551.

West Virginia. — State *v.* Moyer, 58 W. Va. 146, 6 Ann. Cas. 344, 52 S. E. 30.

Wisconsin. — Schultz *v.* State, (Wis. 1907) 113 N. W. 428.

867. 1. Taylor *v.* State, (Ala. 1907) 42 So. 996; Com. *v.* Dingman, 26 Pa. Super. Ct. 615.

868. 2. *Alabama.* — Taylor *v.* State, (Ala. 1907) 42 So. 996.

Delaware. — State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Johns, (Del. 1906) 65 Atl. 763.

Georgia. — Culver *v.* State, 124 Ga. 822, 53 S. E. 316; Fordham *v.* State, 125 Ga. 791, 54 S. E. 694.

Illinois. — Miller *v.* People, 229 Ill. 376, 82 N. E. 391, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 868.

Missouri. — State *v.* Maupin, 196 Mo. 164, 93 S. W. 379.

Montana. — State *v.* Jones, 32 Mont. 442, 80 Pac. 1095.

New York. — People *v.* Ellenbogen, 114 N. Y. App. Div. 182, 99 N. Y. Supp. 897; People *v.* Birnbaum, 114 N. Y. App. Div. 480, 100 N. Y. Supp. 160.

Ohio. — Burns *v.* State, 75 Ohio St. 407, 79 N. E. 929; Baum *v.* State, 27 Ohio Cir. Ct. 569.

Oklahoma. — Wells *v.* Territory, 14 Okla. 436, 78 Pac. 124.

870. 1. State *v.* Wertz, 191 Mo. 569, 90 S. W. 838; State *v.* Maupin, 196 Mo. 164, 93 S. W. 379; State *v.* Jones, 32 Mont. 442, 80 Pac. 1095; Wells *v.* Territory, 14 Okla. 436, 78 Pac. 124.

871. 1. See Rex *v.* Aho, 11 British Columbia, 114, 8 Can. Crim. Cas. 453.

3. **In a Prosecution for Rape** the general moral character of the prosecutrix at the time of the alleged offense is immaterial. State *v.* Blackburn, (Iowa 1907) 110 N. W. 275.

872. 1. Rodgers *v.* State, 144 Ala. 32, 40 So. 572; Bullard *v.* State, 127 Ga. 289, 56 S. E. 429; Osburn *v.* State, 164 Ind. 272, 73 N. E. 601, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 872; Birkenfeld *v.* State, (Md. 1906) 65 Atl. 1.

2. People *v.* Lamar, 148 Cal. 564, 83 Pac. 993; Com. *v.* Tircinski, 189 Mass. 257, 4 Ann. Cas. 337, 75 N. E. 261, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 872; Moseley *v.* State, 89 Miss. 802, 41 So. 384; State *v.* Feeley, 194 Mo. 300, 92 S. W. 663; State *v.* Andrews, 73 S. Car. 257, 53 S. E. 423; Orange *v.* State, (Tex. Crim. 1904) 83 S. W. 385; Menefee *v.* State, (Tex. Crim. 1906) 97 S. W. 486.

873. 2. Rodgers *v.* State, 144 Ala. 32, 40 So. 572; Jackson *v.* State, 147 Ala. 699, 41 So. 178; Warrick *v.* State, 125 Ga. 133, 53 S. E. 1027.

874. 3. *Alabama.* — Hammond *v.* State, 147 Ala. 79, 41 So. 761.

California. — People *v.* Eldridge, 147 Cal. 782, 82 Pac. 442.

Florida. — Baker *v.* State, 51 Fla. 1, 40 So. 673.

Georgia. — Powell *v.* State, 122 Ga. 571, 50 S. E. 369.

Iowa. — State *v.* Haupt, 126 Iowa 152, 101 N. W. 739.

Kansas. — State *v.* Pugh, 75 Kan. 792, 90 Pac. 242.

Kentucky. — Britton *v.* Com., (Ky. 1906) 96 S. W. 556.

Louisiana. — State *v.* Griggsby, 117 La. 1046, 42 So. 497.

Michigan. — Lansing *v.* Michigan Cent. R. Co., 143 Mich. 48, 106 N. W. 692; People *v.* Tubbs, 147 Mich. 1, 110 N. W. 132; People *v.* Mix, 149 Mich. 260, 112 N. W. 907.

Missouri. — State *v.* Beckner, 194 Mo. 281, 91 S. W. 892.

Texas. — Lewter *v.* Lindley, (Tex. Civ. App. 1905) 89 S. W. 784; Willis *v.* State, (Tex. Crim. 1905) 90 S. W. 1100.

875. 1. Choctaw, etc., R. Co. *v.* Newton, (C. C. A.) 140 Fed. 225; Womble *v.* Wilbur, 3 Cal. App. 535, 86 Pac. 916; Alexander *v.* State, 1 Ga. App. 289, 57 So. 996; Chicago City R. Co. *v.* Gregory, 221 Ill. 591, 6 Ann. Cas. 220, 77 N. E. 1112; Steinke *v.* State, (Tex. Crim. 1905) 86 S. W. 753; Reyes *v.* State, (Tex. Crim. 1905) 88 S. W. 245; Franklin *v.* State, (Tex. Crim. 1905) 88 S. W. 357; Quinn *v.* State, (Tex. Crim. 1907) 101 S. W. 248; Rex *v.* Hutchinson, 11 British Columbia 24.

2. *United States.* — Ball *v.* U. S., (C. C. A.) 147 Fed. 32.

Alabama. — Mitchell *v.* State, (Ala. 1907) 42 So. 1014; Wefel *v.* Stillman, (Ala. 1907) 44 So. 203.

California. — People *v.* Soeder, 150 Cal. 12, 87 Pac. 1016.

Connecticut. — Carney *v.* Hennessey, 77 Conn. 577, 60 Atl. 129.

Florida. — Maloy *v.* State, 52 Fla. 101, 41 So. 791; Clinton *v.* State, 53 Fla. 98, 43 So. 312.

Indian Territory. — McCoy *v.* U. S., 6 Indian Ter. 415, 98 S. W. 144.

Kansas. — State *v.* Buffington, 71 Kan. 804, 81 Pac. 465.

Kentucky. — Newman *v.* Com., (Ky. 1905) 88 S. W. 1089.

Louisiana. — State *v.* Clark, 117 La. 920, 42 So. 425.

Massachusetts. — Com. *v.* Walsh, (Mass. 1907) 82 N. E. 19.

Michigan. — People *v.* De Camp, 146 Mich. 533, 109 N. W. 1047.

Mississippi. — Williams *v.* State, 87 Miss. 373, 39 So. 1006.

Missouri. — State *v.* Woodward, 191 Mo. 617, 90 S. W. 90; State *v.* Beckner, 194 Mo. 281, 91 S. W. 892; State *v.* Brooks, 202 Mo. 106, 100 S. W. 416; State *v.* Barnett, 203 Mo. 640, 102 S. W. 506.

Nebraska. — Ferguson *v.* State, 72 Neb. 350, 100 N. W. 800.

New Jersey. — State *v.* Mount, 72 N. J. L. 365, 61 Atl. 259.

Tennessee. — Powers *v.* State, 117 Tenn. 363, 97 S. W. 815.

Texas. — Brittain *v.* State, (Tex. Crim. 1905) 85 S. W. 278; Lucas *v.* State, (Tex. Crim. 1906) 90 S. W. 880.

3. Jackson *v.* State, 147 Ala. 699, 41 So. 178; State *v.* Blackburn, (Iowa 1907) 110 N. W. 275; State *v.* Simmons, (Kan. 1906) 88 Pac. 57; Russell *v.* State, (Neb. 1906) 110 N. W. 380; State *v.* Thornton, 136 N. Car. 610, 48 S. E. 602; State *v.* Dean, 72 S. Car. 74, 51 S. E. 524; Douglass *v.* State, (Tex. Crim. 1906) 98 S. W. 840; Schultz *v.* State, (Wis. 1907) 113 N. W. 428.

Witnesses.— Perry *v.* State, (Ala. 1907) 43 So. 18; Spotswood *v.* Spotswood, 4 Cal. App. 711, 89 Pac. 362; *In re* Durant, (Conn. 1907) 67 Atl. 497; Baker *v.* State, 51 Fla. 1, 40 So. 673; McDuffie *v.* State, 121 Ga. 580, 49 S. E. 708; List *v.* List, (Ky. 1904) 82 S. W. 446; State *v.* Romero, 117 La. 1003, 42 So. 482; Richardson *v.* State, 103 Md. 112, 63 Atl. 317; Wright *v.* Kansas City, 187 Mo. 678, 86 S. W. 452; State *v.* White, 48 Oregon 416, 87 Pac. 137; McQuiggan *v.* Ladd, 79 Vt. 90, 64 Atl. 503; Bringgold *v.* Bringgold, 40 Wash. 121, 82 Pac. 179.

878. 8. Plunkett *v.* State, 72 Ark. 409, 82 S. W. 845; State *v.* Blackburn, (Iowa 1907) 110 N. W. 275; State *v.* Stimpson, 78 Vt. 124, 6 Ann. Cas. 639, 62 Atl. 14; State *v.* Bebb, 125 Iowa 494, 101 N. W. 189, recognizing the general rule, but recognizing an exception under the particular facts of the case.

879. 1. State *v.* Blackburn, (Iowa 1907) 110 N. W. 275.

3. A Teacher's Certificate is not competent evidence of reputation for chastity. Russell *v.* State, (Neb. 1906) 110 N. W. 380.

5. State *v.* Viscome, 78 Vt. 485, 63 Atl. 877.

880. 3. Moore *v.* Dozier, 128 Ga. 90, 57 S. E. 110, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 880; State *v.* Simmons, (Kan. 1906) 88 Pac. 57.

881. 1. Southern R. Co. *v.* Hubbs, (Ala. 1907) 43 So. 844; State *v.* Stewart, (Del. 1907) 67 Atl. 786; State *v.* Simmons, (Kan. 1906) 88 Pac. 57; Stevens *v.* Com., (Ky. 1906) 98 S. W. 284; People *v.* Albers, 137 Mich. 678, 100 N. W. 908.

882. 2. Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 882.

3. Negative Evidence Is Admissible. — Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 882; Spencer *v.* State, (Wis. 1907) 112 N. W. 462.

883. 2. People *v.* Murphy, 146 Cal. 502, 80 Pac. 709; Lynch *v.* People, 33 Colo. 132, 79 Pac. 1015, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 883; People *v.* Mix, 149 Mich. 260, 112 N. W. 907.

Seven Years Before — Inadmissible. — State *v.* Shouse, 188 Mo. 473, 87 S. W. 480.

3. State *v.* Norman, (Iowa 1907) 113 N. W. 340; Craft *v.* Barron, (Ky. 1905) 88 S. W. 1099.

CHARITIES AND TRUSTS FOR CHARITABLE USES.

894. 2. Bruce *v.* Central M. E. Church, 147 Mich. 230, 110 N. W. 951, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 894; MacKenzie *v.* Presbytery, 67 N. J. Eq. 665, 61 Atl. 1027, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 894.

895. 1. Smith *v.* Havens Relief Fund Soc., (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 594, 90 N. Y. Supp. 168.

897. 1. St. John Cathedral *v.* Treasurer, etc., 37 Colo. 378, 86 Pac. 1021, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897.

2. Hadley *v.* Forsee, 203 Mo. 418, 101 S. W. 59; Trenton Soc., etc., *v.* Howell, (N. J. 1906) 63 Atl. 1110.

898. 4. Tincher *v.* Arnold, (C. C. A.) 147 Fed. 665, 8 Ann. Cas. 917; Thompson *v.* Hale, 123 Ga. 305, 51 S. E. 383; Schools for Industrial Education *v.* Hoboken, 70 N. J. Eq. 630, 62 Atl. 1; Inglish *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 558.

900. 1. Welch *v.* Caldwell, 226 Ill. 488, 80 N. E. 1014; Crow *v.* Clay County, 196 Mo. 261, 95 S. W. 369.

902. 1. Tincher *v.* Arnold, (C. C. A.) 147 Fed. 665, 8 Ann. Cas. 917; Biscoe *v.* Thweatt, 74 Ark. 545, 4 Ann. Cas. 1136, 86 S. W. 432; Codman *v.* Brigham, 187 Mass. 309, 72 N. E. 1008; Merrill *v.* American Baptist Missionary Union, 73 N. H. 414, 6 Ann. Cas. 646, 62 Atl. 647; Smith *v.* Havens Relief Fund Soc., (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 594, 90 N. Y. Supp. 168; Robb *v.* Washington, etc., College, 103 N. Y. App. Div. 327, 93 N. Y. Supp. 92; St. John *v.* Andrews Institute, 117 N. Y. App. Div. 698, 102 N. Y. Supp. 808.

903. 1. *In re* Swain, (1905) 1 Ch. 669.

905. 2. Dulle's Estate, 218 Pa. St. 162, 67 Atl. 49; Wood *v.* Fourth Baptist Church, 26 R. I. 594, 61 Atl. 279, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905; Selleck *v.* Thompson, (R. I. 1907) 67 Atl. 425.

907. 2. District of Columbia. — *Beneficiaries Held Sufficiently Certain.* — Columbian University *v.* Taylor, 25 App. Cas. (D. C.) 124; Colbert *v.* Speer, 24 App. Cas. (D. C.)

187, *affirmed* 200 U. S. 130, 26 U. S. Sup. Ct. 201.

4. Illinois. — Welch *v.* Caldwell, 226 Ill. 488, 80 N. E. 1014, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905.

909. 5. Missouri. — Crow *v.* Clay County, 196 Mo. 261, 95 S. W. 369, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 909.

Certainty Insufficient. — Where the general object of the bequest is not pointed out, but is confided by the testator to his wife, the trust is insufficient for judicial cognizance. Hadley *v.* Forsee, 203 Mo. 418, 101 S. W. 59.

6. In Rhode Island a trust is valid although the donor leaves the selection of the beneficiaries to the trustees. Selleck *v.* Thompson, (R. I. 1907) 67 Atl. 425.

910. 1. In New Jersey a trust is invalid and fails if the donor leaves the selection of the beneficiaries to the trustees. Hegeman *v.* Roome, 70 N. J. Eq. 562, 62 Atl. 392.

10. The statute abrogating the rule requiring definiteness in the beneficiaries has been applied in the following cases: Bowman *v.* Domestic, etc., Missionary Soc., 182 N. Y. 494, 75 N. E. 535; Rothschild *v.* Goldenberg, 103 N. Y. App. Div. 235, 92 N. Y. Supp. 1076; Fralick *v.* Lyford, 107 N. Y. App. Div. 543, 95 N. Y. Supp. 433, *affirmed* 187 N. Y. 524, 79 N. E. 1105; Kingsbury *v.* Brandegee, 113 N. Y. App. Div. 606, 100 N. Y. Supp. 353.

911. 3. Pennsylvania. — Dulle's Estate, 218 Pa. St. 162, 67 Atl. 49.

912. 2. Later Virginia Doctrine. — Jordan *v.* Universalist Gen. Convention Trustees, (Va. 1907) 57 S. E. 652.

913. 1. Minot *v.* Atty.-Gen., 189 Mass. 176, 75 N. E. 149; Schools for Industrial Education *v.* Hoboken, 70 N. J. Eq. 630, 62 Atl. 1, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 913.

914. 5. Sales under Charitable Trusts Acts. — See Atty.-Gen. *v.* Mathieson, (1907) 2 Ch. 383; *In re* Society, etc., (1907) 2 Ch. 486; *Re* Harding, 92 L. T. N. S. 641.

915. 6. Jenkins *v.* Berry, 119 Ky. 350, 83 S. W. 594.

916. 6. St. John Cathedral *v.* Treasurer, 37 Colo. 378, 86 Pac. 1021; Brewer *v.* American Missionary Assoc., 124 Ga. 490, 52 S. E. 804; Norton *v.* Louisville, 118 Ky. 836, 82 S. W. 621; Widows', etc., Home *v.* Com., (Ky. 1907) 103 S. W. 354; Curtis *v.* Androscoggin Lodge, etc., 99 Me. 356, 59 Atl. 518; Franklin Square House *v.* Boston, 188 Mass. 409, 74 N. E. 675; Michigan Sanitarium, etc., Assoc. *v.* Battle Creek, 138 Mich. 676, 101 N. W. 855; Plattsmouth Lodge, etc., *v.* Cass County, (Neb. 1907) 113 N. W. 167; Sisters of Charity *v.* Thompson, 72 N. J. L. 426, 61 Atl. 387; Sisters of Charity *v.* Corey, (N. J. 1907) 65 Atl. 500; People *v.* Wells, 179 N. Y. 257, 71 N. E. 1126; Matter of Didion, (Surrogate Ct.) 54 Misc. (N. Y.) 201, 105 N. Y. Supp. 924; Mattern *v.* Canevin, 213 Pa. St. 588, 63 Atl. 131.

"Purely Public Charity." — Pocono Pines Assembly *v.* Monroe County, 29 Pa. Super. Ct. 36.

917. 4. *In re* Allen, (1905) 2 Ch. 400; Speer *v.* Colbert, 200 U. S. 130, 26 U. S. Sup. Ct. 201; McDonald *v.* Shaw, 81 Ark. 235, 98 S. W. 952; Cook *v.* Universalist Gen. Convention, 138 Mich. 157, 101 N. W. 217; Rothschild *v.* Goldenberg, 103 N. Y. App. Div. 235, 92 N. Y. Supp. 1076; Matter of North, (Surrogate Ct.) 52 Misc. (N. Y.) 429, 103 N. Y. Supp. 574; *In re* Murray, 141 N. Car. 588, 54 S. E. 435; Dulle's Estate, 218 Pa. St. 162, 67 Atl. 49; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855; Carson *v.* Carson, 115 Tenn. 37, 88 S. W. 175; Banner *v.* Rolf, (Tex. Civ. App. 1906) 94 S. W. 1125.

918. 1 Cook *v.* Universalist Gen. Convention, 138 Mich. 157, 101 N. W. 217; Matter of North, (Surrogate Ct.) 52 Misc. (N. Y.) 429, 103 N. Y. Supp. 574; Carson *v.* Carson, 115 Tenn. 37, 88 S. W. 175.

4. Brigham *v.* Peter Bent Brigham Hospital, (C. C. A.) 134 Fed. 513; Beardsley's Appeal, 77 Conn. 705, 60 Atl. 664; Codman *v.* Brigham, 187 Mass. 309, 72 N. E. 1008.

5. Briscoe *v.* Thweatt, 74 Ark. 545, 4 Ann. Cas. 1136, 86 S. W. 432; Christian Church *v.* Church of Christ, 219 Ill. 503, 76 N. E. 703; Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914.

A Contrary Doctrine prevails in New York. Fralick *v.* Lyford, 107 N. Y. App. Div. 543, 95 N. Y. Supp. 433, *affirmed* 187 N. Y. 524, 79 N. E. 1105; Catt *v.* Catt, 118 N. Y. App. Div. 742, 103 N. Y. Supp. 740.

919. 2. In *Iowa* it is provided that no person shall devise more than one-fourth of his estate to a corporation for charitable purposes; but this statute does not apply to devises to individuals. Rine *v.* Wagner, (Iowa 1907) 113 N. W. 471.

Maryland. — Statutory restraints construed: Speer *v.* Colbert, 200 U. S. 130, 26 U. S. Sup. Ct. 201.

New York. — Robb *v.* Washington, etc., College, 103 N. Y. App. Div. 327, 93 N. Y. Supp. 92; Matter of Cooney, 112 N. Y. App. Div. 659, 98 N. Y. Supp. 676; Pearson *v.* Collins, 113 N. Y. App. Div. 657, 99 N. Y. Supp. 932.

Pennsylvania. — Gregg's Estate, 213 Pa. St. 260, 62 Atl. 856.

920. 1. Woodroof *v.* Hundley, (Ala. 1905) 39 So. 907; Cook *v.* Universalist Gen. Convention, 138 Mich. 157, 101 N. W. 217; De Silver's Estate, 211 Pa. St. 459, 60 Atl. 1048; Wood *v.* Fourth Baptist Church, 26 R. I. 594, 61 Atl. 279; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855; Inglish *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 558.

921. 2. Successors Selected by Trustees must be first approved by a court of equity. Selleck *v.* Thompson, (R. I. 1907) 67 Atl. 425.

922. 1. Worcester City Missionary Soc. *v.* Memorial Church, 186 Mass. 531, 72 N. E. 71.

3. Stearns *v.* Newport Hospital, 27 R. I. 309, 8 Ann. Cas. 1176, 62 Atl. 132, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922.

A Corporation to Be Organized in the Future may be named as a trustee of a charitable bequest. Watkins *v.* Bigelow, 93 Minn. 210, 100 N. W. 1104.

4. A Municipal Corporation may take a pub-

lic library as a gift for charity. Schools of Industrial Education *v.* Hoboken, 70 N. J. Eq. 630, 62 Atl. 1, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922.

In Rhode Island it is provided by statute that a municipal corporation may take and hold property in trust for any charity other than religious uses. Stearns *v.* Newport Hospital, 27 R. I. 309, 8 Ann. Cas. 1176, 62 Atl. 132.

923. 3. Authorities Denying Liability for Servant's Negligence. — Fordyce *v.* Woman's Christian Nat. Library Assoc., 79 Ark. 550, 96 S. W. 155, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923; Parks *v.* Northwestern University, 218 Ill. 381, 4 Ann. Cas. 103, 75 N. E. 991, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923; Farrigan *v.* Pevear, 193 Mass. 147, 8 Ann. Cas. 1109, 78 N. E. 855; Adams *v.* University Hospital, 122 Mo. App. 675, 99 S. W. 453; Noble *v.* Hahnemann Hospital, 112 N. Y. App. Div. 663, 98 N. Y. Supp. 605. See also Gitzhoffen *v.* Sisters of Holy Cross Hospital Assoc., (Utah 1907) 88 Pac. 601.

Authorities Enforcing Liability for Servant's Act — Hewett *v.* Woman's Hospital Aid Assoc., 73 N. H. 556, 64 Atl. 190.

926. 1. Biscoe *v.* Thweatt, 74 Ark. 545, 4 Ann. Cas. 1136, 86 S. W. 432; Worcester City Missionary Soc. *v.* Memorial Church, 186 Mass. 531, 72 N. E. 71; MacKenzie *v.* Presbytery, 67 N. J. Eq. 665, 61 Atl. 1027.

5. *Re* Kenny, 97 L. T. N. S. 130; Carson *v.* Carson, 115 Tenn. 37, 88 S. W. 175.

927. 1. Worcester City Missionary Soc. *v.* Memorial Church, 186 Mass. 531, 72 N. E. 71; Sears *v.* Atty.-Gen., 193 Mass. 551, 9 Ann. Cas. 1200, 79 N. E. 772.

Trusts to Present Fit Persons to Livings Invalid. — *In re* Church Patronage Trust, (1904) 2 Ch. 643.

3. MacKenzie *v.* Presbytery, 67 N. J. Eq. 652, 61 Atl. 1027.

4. Arnott *v.* Arnott, (1906) 1 Ir. R. 127.

Bequest to Vicar and Churchwardens to Be Applied in Their Discretion Valid. — *In re* Garrard, (1907) 1 Ch. 382.

928. 3. Bequest Upheld — Direction for Masses Collateral and Incidental. — Matter of Didion, (Surrogate Ct.) 54 Misc. (N. Y.) 201, 105 N. Y. Supp. 924.

929. 1. Food Reform by Vegetarian Societies Valid. — *In re* Slatter, 21 Times L. Rep. 295.

2. Tincher *v.* Arnold, (C. C. A.) 147 Fed. 665, 8 Ann. Cas. 917; Crow *v.* Clay County, 196 Mo. 234, 95 S. W. 369.

930. 1. *In re* Hawkins, 22 Times L. Rep. 521; Amole's Estate, 32 Pa. Super. Ct. 636.

3. Schools of Industrial Education *v.* Hoboken, 70 N. J. Eq. 630, 62 Atl. 1.

4. Bequest for Library for Officers of Regiment Valid, but Bequest of Houses Invalid. — *In re* Good, (1905) 2 Ch. 60.

7. Woodroof *v.* Hundley, (Ala. 1905) 39 So. 907; McDonald *v.* Shaw, 81 Ark. 235, 98 S. W. 952; Washburn College *v.* O'Hara, 75 Kan. 700, 90 Pac. 234.

9. Crow *v.* Clay County, 196 Mo. 261, 95 S. W. 369.

931. 1. Cleland *v.* Cleland, (1907) Sc. Ct. of Sess. 591; Watkins *v.* Bigelow, 93 Minn. 210, 100 N. W. 1104; German Pioneer Verein *v.* Meyers, (N. J. 1907) 67 Atl. 23; Smith *v.* Havens Relief Fund Soc., (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 594, 90 N. Y. Supp. 168.

2. Norton *v.* Louisville, 118 Ky. 836, 82 S. W. 621.

3. Banner *v* Rolf, (Tex. Civ. App. 1906) 94 S. W. 1125.

932. 2. Bequest for Education and Support of Poor of Certain Name in Ireland Invalid. — Laverty *v.* Laverty, (1907) 1 Ir. R. 9.

7. Hospitals. — Brigham *v.* Peter Bent Brigham Hospital, (C. C. A.) 134 Fed. 513; St. John Cathedral *v.* Treasurer, 37 Colo. 378, 86 Pac. 1021; Codman *v.* Brigham, 187 Mass. 309, 72 N. E. 1008; Michigan Sanitarium, etc., Assoc. *v.* Battle Creek, 138 Mich. 676, 101 N. W. 855; Adams *v.* University Hospital, 122 Mo. App. 675, 99 S. W. 453; Johnston *v.* Hughes, 187 N. Y. 446, 80 N. E. 373, *reversing* 112 N. Y. App. Div. 524, 98 N. Y. Supp. 525; Matter of Roche, (Surrogate Ct.) 53 Misc. (N. Y.) 187, 104 N. Y. Supp. 601.

Charitable Homes. — Kennedy *v.* Linn Orphan Asylum, (Ky. 1907) 103 S. W. 340; Widows', etc., Home *v.* Com., (Ky. 1907) 103 S. W. 354; Franklin Square House *v.* Boston, 188 Mass. 409, 74 N. E. 675; Franklin *v.* Boone, (Tex. Civ. App. 1905) 88 S. W. 262; Jordan *v.* Richmond Home for Ladies, 106 Va. 710, 56 S. E. 730; Rader *v.* Stubblefield, 43 Wash. 334, 86 Pac. 560.

933. 10. *In re* Allen, (1905) 2 Ch. 400.

12. Bequest to Such Charitable or Religious Societies as Trustees May Select Invalid. — Grimond *v.* Grimond, (1905) A. C. 124. See also Shaw *v.* Esson, Sc. Ct. of Sess., 8 F. 52. *Compare In re* Pardoe, (1906) 2 Ch. 184.

Bequest to Local or Scottish Charitable Institutions as Trustees May Select Valid. — Dick *v.* Dick, (1907) Sc. Ct. of Sess. 953.

Bequest for Charitable and Philanthropic Purposes Valid. — *Re* Huyck, 10 Ont. L. Rep. 480.

934. 1. McIlvain *v.* Hockaday, 36 Tex. Civ. App. 1, 81 S. W. 54, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933.

Bequest for Maintenance of Headstones Valid. — *In re* Pardoe, (1906) 2 Ch. 184.

Bequest for Repair of Churchyard Valid. — *In re* Douglas, (1905) 1 Ch. 279.

Bequest to Keep Burial Ground in Order Valid. — *In re* Manser, (1905) 1 Ch. 68.

936. 6. Crow *v.* Clay County, 196 Mo. 261, 95 S. W. 369, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 936.

940. 1. *In re* Waring, (1907) 1 Ch. 166.

4. See *In re* Unite, 22 Times L. Rep. 242; Atty.-Gen. *v.* Edâlji, 97 L. T. N. S. 292.

942. 2. MacKenzie *v.* Presbytery, 67 N. J. Eq. 665, 61 Atl. 1027; Tincher *v.* Arnold, (C. C. A.) 147 Fed. 665, 8 Ann. Cas. 917; Codman *v.* Brigham, 187 Mass. 309, 72 N. E. 1008; Sears *v.* Atty.-Gen., 193 Mass. 551, 9 Ann. Cas. 1200, 79 N. E. 772; Hubbard *v.* Worcester Art Museum, 194 Mass. 280, 80 N. E. 490; Nichols *v.* Newark Hospital, (N. J. 1906) 63 Atl. 621; English *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 558.

3. Cannot Be Invoked When Founder's Scheme Practicable. — MacKenzie *v.* Presbytery, 67 N. J. Eq. 652, 61 Atl. 1027.

943. 1. Woodroof *v.* Hundley, (Ala. 1905) 39 So. 907; Universalist Convention *v.* May, 147 Ala. 455, 41 So. 515.

In New York the doctrine has subsequently been adopted by legislation. Loch *v.* Mayer, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 442, 100 N. Y. Supp. 837.

CHATTEL MORTGAGES.

947. 1. Hurt *v.* Hubbard, (Colo. 1907) 92 Pac. 908.

A Deed of Trust and a chattel mortgage with power of sale are practically one and the same instrument, as understood in the District of Columbia. Hunt *v.* Springfield F. & M. Ins. Co., 196 U. S. 47, 25 U. S. Sup. Ct. 179.

2. Holman *v.* Ketcham, (Ala. 1907) 45 So. 206; Fischback *v.* Garrison Milling, etc., Co., 20 Colo. App. 448, 79 Pac. 749; Brass *v.* Green, 113 Ill. App. 58; Stearns *v.* Oberle, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 349, 94 N. Y. Supp. 37; Gore *v.* Glover, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 473, 97 N. Y. Supp. 969.

Whenever Transaction Resolves Itself into Security for Debt. — Hastings *v.* Fithian, 71 N. J. L. 311, 60 Atl. 350; Thompson *v.* Crosby, 16 Okla. 316, 82 Pac. 643.

Montana — Title Does Not Pass. — Demers *v.* Graham, (Mont. 1907) 93 Pac. 268.

3. Wylly-Gabbett Co. *v.* Williams, 53 Fla. 872, 42 So. 910; Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476. See also Lewman *v.* Ogden, 143 Ala. 351, 5 Ann. Cas. 265, 42 So. 102.

3. Absolute Sale and Mortgage Back. — *In re* Ducker, 133 Fed. 771.

Absolute Sale with Option to Repurchase Regarded as Mortgage. — Collins *v.* Denny Clay Co., 41 Wash. 136, 82 Pac. 1012.

948. 1. Instances of Chattel Mortgages. — An assignment of the rents and profits of a farm as security for a note is a mortgage. Thatcher *v.* Jeffries, (Tex. Civ. App. 1905) 91 S. W. 1091.

Leases. — Reservation in a lease of a specific lien on personalty is in effect a chattel mortgage. Saunders *v.* Ohlhausen, (Mo. App. 1908) 106 S. W. 541.

Reservation of "Lien." — Fleisher *v.* Hinde, 122 Mo. App. 218, 99 S. W. 25, *affirming* (Mo. App. 1906) 93 S. W. 1126; Eason *v.* De Long, (Tex. Civ. App. 1905) 86 S. W. 347.

Reservation of Title. — Wright *v.* Texas Moline Plow Co., (Tex. Civ. App. 1905) 90 S. W. 905; Crews *v.* Harlan, (Tex. 1905) 87 S. W. 656, *reversing* (Tex. Civ. App. 1905) 88 S. W. 411.

950. 1. Winston *v.* Farrow, (Ala. 1905) 40 So. 53; Furgeson *v.* Twisdale, 137 N. Car. 414, 49 S. E. 914; Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

2. Furgeson *v.* Twisdale, 137 N. Car. 414, 49 S. E. 914.

8. Ottumwa Nat. Bank *v.* Totten, 114 Mo. App. 97, 89 S. W. 65.

11. Chattel Mortgage Not Assignment. — Hannah *v.* Richter Brewing Co., 149 Mich. 220, 112 N. W. 713.

951. 1. *Colorado.* — Gibbons *v.* Joseph Gibbons Consol. Min., etc., Co., 37 Colo. 96, 86 Pac. 94.

Connecticut. — See Morin *v.* Newbury, 79 Conn. 338, 65 Atl. 156.

Florida. — Smith *v.* Hope, 51 Fla. 541, 41 So. 69.

Georgia. — Nelson *v.* Spence, 129 Ga. 35, 58 S. E. 697.

New York. — Heise *v.* Selected Securities Co., (Supm. Ct. Spec. T.) 105 N. Y. Supp. 1079.

Texas. — Harris *v.* Staples, (Tex. Civ. App. 1905) 89 S. W. 801.

Wisconsin. — Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

952. 1. Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

953. 6. D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 137 Fed. 625.

Bill of Sale as Security. — A bill of sale of mortgaged property is but a second mortgage, where it is intended only as a security to the buyer. Rogers *v.* Nidiffer, 5 Indian Ter. 55, 82 S. W. 673.

8. J. F. White Co. *v.* Carroll, (N. Car. 1907) 59 S. E. 678. See also Swafford *v.* Asher, (Ky. 1907) 105 S. W. 164.

Good between Parties Though Irregular. — Stewart *v.* Hoffman, 31 Mont. 190, 77 Pac. 689, 81 Pac. 3.

954. 5. Strop *v.* Hughes, 123 Mo. App. 547, 101 S. W. 146.

6. J. F. White Co. *v.* Carroll, (N. Car. 1907) 59 S. E. 678; Mower *v.* McCarthy, 79 Vt. 142, 64 Atl. 578.

Writing Governs. — Where the written and printed portions of a chattel mortgage are inconsistent the former govern. Sylvester *v.* Ammons, 126 Iowa 140, 101 N. W. 782.

955. 3. An Equitable Owner may execute a valid chattel mortgage. Lyon *v.* Phillips, (S. Dak. 1906) 108 N. W. 554.

A Lessee cannot mortgage the land property without the consent of the lessor. Wetzel *v.* Deseret Nat. Bank, 30 Utah 62, 83 Pac. 570.

6. Washington Trust Co. *v.* Morse Iron Works, etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495.

8. Denison *v.* Sawyer, 95 Minn. 420, 104 N. W. 305, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 955; Cohen *v.* Miller, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 106, 91 N. Y. Supp. 345; Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624. See also Chapman *v.* Greene, 18 S. Dak. 505, 101 N. W. 351.

Individual Debts of Partner. — A partner without the consent of the copartner cannot mortgage the firm's chattels to secure an individual debt, so as to defeat claims of partnership creditors. Sedalia Nat. Bank *v.* Cassidy Bros. Live Stock Commission Co., 109 Mo. App. 249, 84 S. W. 142.

A mortgage by a partner to secure his own debts creates a lien only on his interest in the firm property after an accounting. Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062.

Each Partner Should Sign the Mortgage, under

Rev. St. Wyo. 1899, § 2808. Lellman *v.* Mills, (Wyo. 1906) 87 Pac. 985.

Under this statute one partner cannot be authorized to execute or sign a chattel mortgage. Thomas *v.* Schmitz, (Wyo. 1906) 87 Pac. 996.

9. A married woman, who has engaged in trade as her husband's partner, may bind her interest in the property of the two by joining with the husband in a chattel mortgage on the firm property. Hackley Nat. Bank *v.* Jeannot, 143 Mich. 454, 106 N. W. 1121.

956. 1. Mortgage of Exempt Property. — In *Kansas* the consent of the wife is necessary before the husband can execute a valid mortgage of exempt property. Reeves *v.* Bascue, (Kan. 1907) 91 Pac. 77.

3. An Agent of a Corporation may execute a chattel mortgage. Garmany *v.* Lawton, 124 Ga. 876, 53 S. E. 669.

957. 1. State Nat. Bank *v.* Cudahy Packing Co., 126 Fed. 543; Wood *v.* West Pratt Coal Co., 146 Ala. 479, 40 So. 959, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 956, 957; Davis *v.* Horne, (Fla. 1907) 45 So. 476; Dendy *v.* Cobleskill First Nat. Bank, (Kan. 1907) 91 Pac. 682; Rudolph *v.* National Live Stock Commission Co., (Kan. 1907) 92 Pac. 1103.

Whole Description Should Be Considered. — Des Moines Nat. Bank *v.* Council Bluffs Sav. Bank, (C. C. A.) 150 Fed. 301.

2. Westinghouse *v.* McGrath, 130 Iowa 226, 108 N. W. 449.

3. Klug *v.* Munce, (Colo. 1907) 90 Pac. 603; Rudisell *v.* Jennings, 38 Ind. App. 408, 78 N. E. 263; Golden *v.* Moore, 126 Mo. App. 518, 104 S. W. 481; Harless *v.* Jester, (Tex. Civ. App. 1906) 97 S. W. 138; Williamson *v.* Payne, 103 Va. 551, 49 S. E. 660.

958. 1. National Bank *v.* Schufelt, 5 Indian Ter. 27, 82 S. W. 927.

Misdescription Does Not Invalidate. — Emerson *v.* Knight, (Ga. 1908) 60 S. E. 255.

Incorrect Description of a Part of the mortgaged property which was exempt does not invalidate the mortgage as to the part correctly described. Molle *v.* Kewaskum Mut. F. Ins. Co., (Wis. 1908) 114 N. W. 798.

2. State Nat. Bank *v.* Cudahy Packing Co., 126 Fed. 543; Klug *v.* Munce, (Colo. 1907) 90 Pac. 603; Sedalia Nat. Bank *v.* Cassidy Bros. Live Stock Commission Co., 109 Mo. App. 249, 84 S. W. 142; South Omaha Nat. Bank *v.* McGillin, (Neb. 1906) 108 N. W. 257; Longerbeam *v.* Huston, (S. Dak. 1905) 105 N. W. 743; Scaling *v.* Wichita Falls First Nat. Bank, (Tex. Civ. App. 1905) 87 S. W. 715; Graveley *v.* Springer, 3 N. W. Ter. 120.

Illustrations. — The following description was held sufficient: "Also, one bay horse 12 years old, named Mike, one bay mare, white star in forehead named Mollie, 12 years old, the last named animals being the ones purchased by H. G. from S. of Onawa, Iowa." Colean Implement Co. *v.* Strong, 126 Iowa 598, 102 N. W. 506.

A description of mortgaged chattels as "15 spans of mules," "the described stock being all of the kind now owned by me, and are in my undisputed possession * * * and kept on its premises on sections Nos. 19, 30, and 31 in township No. 46, range 32, in Cass county, Mo.," is sufficient. Strop *v.* Hughes, 123 Mo. App. 547, 101 S. W. 146.

A description of a mule as "one blue mare mule, 13½ hands high, of the value of $100," is sufficient. Watt *v.* Parlin, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 428.

Mixing Other Cattle of like description with those mortgaged cannot defeat the mortgage, either in favor of the mortgagor or of a subsequent purchaser under him. Tootle *v.* Buckingham, 190 Mo. 183, 88 S. W. 619.

959. 2. In Massachusetts a mortgage on household furniture, where interest is charged at 18% or more on $100 or less, must contain a statement of the actual expense of making the loan. Ternan *v.* Dunn, 194 Mass. 585, 80 N. E. 603.

3. McDavid *v.* Phillips, (Tex. Civ. App. 1906) 94 S. W. 1129.

Illustrations. — A description of mortgaged property as "twelve acres of cotton" is insufficient. Hampton *v.* State, 124 Ga. 3, 52 S. E. 19.

960. 1. Read Phosphate Co. *v.* S. Weichselbaum Co., 1 Ga. App. 420, 58 S. E. 122.

2. Street *v.* Sederburg, (Colo. 1907) 92 Pac. 29; National Bank *v.* Schufelt, 5 Indian Ter. 27, 82 S. W. 927.

Misdescription as to Location, the description in other respects being ample, is immaterial. Tootle *v.* Buckingham, 190 Mo. 183, 88 S. W. 619.

962. 1. Description Too General. — A description of mortgaged property as "all bedding, dishes, cooking utensils, together with all things, both useful and ornamental," is too general. Simonson *v.* McHenry, (Colo. 1907) 92 Pac. 906.

Rule of Ejusdem Generis Applies. — Goldie *v.* Taylor, 2 N. W. Ter. 298.

2. Rudisell *v.* Jennings, 38 Ind. App. 408, 78 N. E. 263, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 962; Westinghouse Co. *v.* McGrath, 131 Iowa 226, 108 N. W. 449; Massachusetts Sheep Co. *v.* Humble, (Mont. 1907) 92 Pac. 527; South Omaha Nat. Bank *v.* McGillin, (Neb. 1906) 108 N. W. 257.

Subsequent Separation Valid. — South Omaha Nat. Bank *v.* McGillin, (Neb. 1906) 108 N. W. 257.

Valid as to Parties with Knowledge. — A description in a mortgage of a given number of articles out of a larger number is not sufficient. But such a mortgage is valid against those who know the facts. Northwestern Nat. Bank *v.* Freeman, 171 U. S. 620, 19 U. S. Sup. Ct. 36.

963. 1. As between the Mortgagee and a Trespasser a description good between the parties is *prima facie* sufficient. Longerbeam *v.* Huston, (S. Dak. 1905) 105 N. W. 743.

Subsequent Purchaser. — A mortgage with a defective description is good as against a subsequent purchaser or mortgagee who fails to show that he purchased in good faith and without notice of the mortgage. South Omaha Nat. Bank *v.* Stewart, 75 Neb. 716, 106 N. W. 969.

Estoppel. — A party, with actual knowledge of the mortgage, is estopped to deny its validity on the ground of an insufficient description. Gaulding *v.* Masterson, (Tex. Civ. App. 1907) 101 S. W. 1017.

2. Wood *v.* West Pratt Coal Co., 146 Ala. 479, 40 So. 959; Rudisell *v.* Jennings, 38 Ind. App. 408, 78 N. E. 263, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 963; South Omaha Nat. Bank *v.* Stewart, 75 Neb. 716, 106 N. W. 969.

964. 1. Aldrich *v.* Higgins, 77 Conn. 370, 59 Atl. 498; Ottumwa Nat. Bank *v.* Totten, 114 Mo. App. 97, 89 S. W. 65. See also Massachusetts Sheep Co. *v.* Humble, (Mont. 1907) 92 Pac. 527.

2. Davis *v.* Horne, (Fla. 1907) 45 So. 476; Read Phosphate Co. *v.* S. Weichselbaum Co., 1 Ga. App. 420, 58 S. E. 122; Emerson *v.* Knight, (Ga. 1908) 60 S. E. 255; Rudisell *v.* Jennings, 38 Ind. App. 408, 78 N. E. 263; Colean Implement Co. *v.* Strong, 126 Iowa 598, 102 N. W. 506.

6. The Law Implies a Consideration in the absence of proof to the contrary. Strop *v.* Hughes, 123 Mo. App. 547, 101 S. W. 146.

965. 1. Martin *v.* Lesan, 129 Iowa 573, 105 N. W. 996.

3. Kitchen *v.* Schuster, (N. Mex. 1907) 89 Pac. 261.

966. 2. Present Payment. — A mortgage to secure repayment of money presently paid by the mortgagee for the benefit of the mortgagor is valid as against a prior unrecorded mortgage. Patterson *v.* Irvin, 142 Ala. 401, 38 So. 121.

967. 1. Wright *v.* Voorhees, 131 Iowa 408, 9 Ann. Cas. 1149, 108 N. W. 758; Bullard *v.* Stewart, (Tex. Civ. App. 1907) 102 S. W. 174. See also Omaha Bank *v.* Pope, (Tex. Civ. App. 1907) 103 S. W. 692.

2. Winston *v.* Farrow, (Ala. 1905) 40 So. 53.

968. 1. Cannot Be Defeated by Parol. — Davis *v.* Carlisle, (C. C. A.) 142 Fed. 106.

3. Prior Liability Protects. — "When, under a mortgage providing for future advances, but leaving it optional with the mortgagee whether he shall make them, they are made after he has been advised that a subsequent mortgage has been given upon the property, his lien for such advances will be postponed to that of the junior incumbrancer." Davis *v.* Carlisle, (C. C. A.) 142 Fed. 106.

5. The description of the debt is governed by the rules applicable to real estate mortgages. Thompson *v.* Fairbanks, 75 Vt. 361, 56 Atl. 11.

Scope of Condition. — Thompson *v.* Fairbanks, 75 Vt. 361, 56 Atl. 11.

Mortgage Note. — Greeson *v.* German Nat. Bank, 78 Ark. 141, 95 S. W. 439.

Extent of Security. — The mortgage is security for such demands only as are in the contemplation of the parties at the time. Winston *v.* Farrow, (Ala. 1905) 40 So. 53.

969. 1. An Excessive Consideration with intent to defraud avoids the mortgage. Adams *v.* Pease, 113 Ill. App. 356.

970. 3. Delivery to Third Party Sufficient. — Tooker *v.* Siegel-Cooper Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 68, 106 N. Y. Supp. 277.

971. 2. Ottumwa Nat. Bank *v.* Totten, 114 Mo. App. 97, 89 S. W. 65.

6. Farson *v.* Gilbert, 114 Ill. App. 17.

Stockholder in Mortgage Corporation May Be Subscribing Witness. — Morris *v.* Attalla Bank, (Ala. 1907) 45 So. 219.

972. 1. Acknowledgment, Regular on Face, Entitles Mortgage to Record. — Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624.

2. Name Blank. — The acknowledgment is sufficient although the name of the person acknowledging is left blank. Fennis *v.* Gifford, 133 Iowa 372, 110 N. W. 586.

973. 1. Kitchen *v.* Schuster, (N. Mex. 1907) 89 Pac. 261; Williams *v.* Ontario First Nat. Bank, 48 Oregon 571, 87 Pac. 890.

2. Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062.

4. Butte First Nat. Bank *v.* Beley, 32 Mont. 291, 80 Pac. 256; Meighen *v.* Armstrong, 16 Manitoba 5.

6. Both Parties Must Sign — Statute. — Tisdale *v.* John H. Pray Sons Co., 73 N. H. 357, 62 Atl. 168.

974. 5. Washington Trust Co. *v.* Morse Iron Works, etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495.

975. 1. Vessel Mortgages. — "State statutes are inoperative as to vessel mortgages which have been properly recorded pursuant to the laws of Congress." The Gordon Campbell, 131 Fed. 963.

2. Exempt Property. — In *Kansas* exempt property, within the meaning of subdivision 8, § 3018, Gen. St. 1901, cannot be mortgaged by the husband without the consent of his wife. Reeves *v.* Bascue, (Kan. 1907) 91 Pac. 77.

976. 7. Buvinger *v.* Evening Union Printing Co., (N. J. 1907) 65 Atl. 482.

14. Liquor License May Be Mortgaged. — Nicolini *v.* Langermann, (Tex. Civ. App. 1907) 104 S. W. 501.

977. 1. Winston *v.* Farrow, (Ala. 1905) 40 So. 53; Thurston *v.* Osborne-McMillan Elevator Co., 13 N. Dak. 508, 101 N. W. 892; Reeves *v.* Sheets, 16 Okla. 342, 82 Pac. 487; Meighen *v.* Armstrong, 16 Manitoba 5.

Employee May Mortgage His Interest. — Bourland *v.* McKnight, 79 Ark. 427, 96 S. W. 179.

Potential Existence of Crop Necessary. — Hall *v.* State, 2 Ga. App. 739, 59 S. E. 26.

A Lawful Removal of the Crop from the land of the mortgagor destroys the lien. Gates *v.* Tom Quong, 3 Cal. App. 443, 85 Pac. 662.

6. Northwestern Nat. Bank *v.* Freeman, 171 U. S. 620, 19 U. S. Sup. Ct. 36; Roper *v.* Scott, 16 Manitoba 594. But see Demers *v.* Graham, (Mont. 1907) 93 Pac. 268.

Wool of Sheep Not "Increase." — Libert *v.* Unfried, (Wash. 1907) 91 Pac. 776.

979. 1. See Spinney *v.* Meloon, (N. H. 1907) 68 Atl. 410.

Void as against Trustee in Bankruptcy. — Zartman *v.* Waterloo First Nat. Bank, 189 N. Y. 267, 82 N. E. 127.

Operation as Executory Contract for Lien. — Wasserman *v.* McDonnell, 190 Mass. 326, 76 N. E. 959; Fidelity Trust Co. *v.* Staten Island Clay Co., 70 N. J. Eq. 550, 67 Atl. 1078;

Netzorg *v.* National Supply Co., 28 Ohio Cir. Ct. 112.

2. Zartman *v.* Waterloo First Nat. Bank, 189 N. Y. 267, 82 N. E. 127.

980. 2. Cunningham *v.* Alryan Woolen Mills, 69 N. J. Eq. 710, 61 Atl. 372.

Title in Vendor. — After-acquired property of which the vendor retains title until paid for may be mortgaged. Washington Trust Co. *v.* Morse Iron Works, etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495.

981. 1. Concordia First Nat. Bank *v.* McIntosh, etc., Live-Stock, etc., Co., 72 Kan. 603, 84 Pac. 535; Schlatter *v.* Young, (Mass. 1907) 83 N. E. 2; Medina Gas, etc., Co. *v.* Buffalo Loan, etc., Co., 119 N. Y. App. Div. 245, 104 N. Y. Supp. 625; Netzorg *v.* National Supply Co., 28 Ohio Cir. Ct. 112. See also Burmeister *v.* Koster, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 373, 107 N. Y. Supp. 636.

Valid between Parties. — A mortgage embracing future acquisition of goods is valid between the parties. J. F. White Co. *v.* Carroll, (N. Car. 1907) 59 S. E. 678. See also Madson *v.* Rutten, (N. Dak. 1907) 113 N. W. 872.

982. 1. Fidelity, etc., Co. *v.* B. F. Sturtevant Co., 86 Miss. 509, 38 So. 783; Flanders *v.* French, (S. Dak. 1906) 106 N. W. 54.

2. Kastner *v.* Fashion Livery Co., (Ariz. 1906) 85 Pac. 120; Concordia First Nat. Bank *v.* McIntosh, etc., Live-Stock, etc., Co., 72 Kan. 603, 84 Pac. 535; Armour *v.* Ross, 75 S. Car. 201, 55 S. E. 315; Flanders *v.* French, (S. Dak. 1906) 106 N. W. 54.

3. Delta Cotton Co. *v.* Arkansas Cotton Oil Co., 80 Ark. 431, 97 S. W. 440; Creech *v.* Long, 72 S. Car. 32, 51 S. E. 614, *citing* 5 Am. and Eng. Encyc. of Law (2d ed.) 982.

Railroad Property. — Guaranty Trust Co. *v.* Atlantic Coast Electric R. Co., (C. C. A.) 138 Fed. 517, 132 Fed. 68.

986. 1. Hardison *v.* Plummer, (Ala. 1907) 44 So. 591; Holman *v.* Ketcham, (Ala. 1907) 45 So. 206; Kitchen *v.* Schuster, (N. Mex. 1907) 89 Pac. 261.

987. 1. Bartles *v.* Dodd, 56 W. Va. 391, 49 S. E. 414, *citing* 5 Am. and Eng Encyc. of Law (2d ed.) 987. See also Briggs *v.* Gelm, 122 N. Y. App. Div. 102, 106 N. Y. Supp. 693.

Good between Parties. — *In re* Canton First Nat. Bank, (C. C. A.) 135 Fed. 62.

Presumption of Fraud. — There is no presumption of fraud against a mortgagee in favor of an attaching creditor, where the mortgagee has obtained possession before the attachment. Fred Krug Brewing Co. *v.* Healey, 71 Neb. 662, 101 N. W. 329.

2. Hereford *v.* Benton, 20 Colo. App. 500.

988. 1. Kitchen *v.* Schuster, (N. Mex. 1907) 89 Pac. 261.

989. 2. **Change of Possession** does not affect the mortgagee's title. Ely *v.* Williams, (Cal. App. 1907) 92 Pac. 393.

990. 2. See Carson *v.* Dewar, 115 Mo. App. 673, 92 S. W. 723.

991. 2. Oppenheimer *v.* Moore, 107 N. Y. App. Div. 301, 95 N. Y. Supp. 138; Warren *v.* Osborne, (Tex. Civ. App. 1906) 97 S. W. 851.

992. 1. Slyfield *v.* Willard, 43 Wash. 179, 86 Pac. 392.

3. *United States.* — St. Louis Fourth Nat. Bank *v.* Camden Lumber Co., 142 Fed. 257; Dodge *v.* Norlin, (C. C. A.) 133 Fed. 370; *In re* Standard Telephone, etc., Co., 157 Fed. 106. See also *In re* Marine Constr., etc., Co., (C. C. A.) 144 Fed. 649.

Alabama. — Rike *v.* Ryan, 147 Ala. 497, 41 So. 959; Albes *v.* Keith, (Ala. 1907) 44 So. 693.

Colorado. — Wilson *v.* Jones, 20 Colo. App. 317.

Illinois. — Adams *v.* Pease, 113 Ill. App. 356.

Mississippi. — Belknap *v.* Lyell, 89 Miss. 197, 42 So. 799.

Missouri. — Independent Packing Co. *v.* Barth, (Mo. App. 1908) 106 S. W. 1121.

New York. — Pfeiffer *v.* Roe, 108 N. Y. App. Div. 54, 95 N. Y. Supp. 1014; Zartman *v.* Waterloo First Nat. Bank, 189 N. Y. 267, 82 N. E. 127. See also Skilton *v.* Codington, 185 N. Y. 80, 77 N. E. 790.

North Dakota. — Madson *v.* Rutten, (N. Dak. 1907) 113 N. W. 872.

Texas. — Wright *v.* Texas Moline Plow Co., (Tex. Civ. App. 1905) 90 S. W. 905.

Rule Applies to After-acquired Property. — Locke *v.* New England Brick Co., 73 N. H. 492, 63 Atl. 178.

A Mortgage Is Not Fraudulent as a Matter of Law, where there is no fraudulent intent. Fleisher *v.* Hinde, 122 Mo. App. 218, 99 S. W. 25.

Good Faith of Mortgagor Renders Mortgage Valid. — *In re* Burnham, 140 Fed. 926.

A clause in a mortgage of a lumber business, empowering the mortgagor to sell and replace worn-out machinery, animals, carts, etc., does not render the mortgage void. Wylly-Gabbett Co. *v.* Williams, 53 Fla. 872, 42 So. 910.

Proceeds Applied on Debt. — A provision for sale in a mortgage, where the proceeds are to be applied upon the debt, does not render the mortgage fraudulent. Pritchard *v.* Hooker, 114 Mo. App. 605, 90 S. W. 415.

Possession, under such a mortgage, before the rights of third parties have intervened, creates a valid lien. Hock *v.* Magerstadt, 124 Ill. App. 140.

993. 1. Roswell First Nat. Bank *v.* Stewart, (N. Mex. 1906) 86 Pac. 622; Kelly *v.* Tracy, etc., Co., 71 Ohio St. 220, 73 N. E. 455.

995. 1. Fleisher *v.* Hinde, (Mo. App. 1906) 93 S. W. 1126.

2. Kelly *v.* Tracy, etc., Co., 71 Ohio St. 220, 73 N. E. 455.

4. Ilfeld *v.* Ziegler, (Colo. 1907) 91 Pac 825; Locke *v.* New England Brick Co., 73 N. H. 492, 63 Atl. 178, *citing* 5 Am. and Eng. Encyc. of Law (2d ed.) 995. See also Morris *v.* Persing, (Neb. 1906) 107 N. W. 218.

A Gift of Mortgaged Property is subject to the rights of the mortgagee. Speakman *v.* Vest, (Ala. 1907) 44 So. 1021.

5. Ranger Mercantile Co. *v.* Terrett, (Tex. Civ. App. 1907) 106 S. W. 1145.

6. Sciberling *v.* Porter, 165 Ind. 7, 74 N.

L. 516; Farmer *v.* Graettinger Bank, 130 Iowa 469, 107 N. W. 170.

The Consent of the Mortgagee to a sale is not a waiver of his lien where he refuses to release the mortgage. Trabue *v.* Wade, (Tex. Civ. App. 1906) 95 S. W. 616.

996. 6. Ilfeld *v.* Ziegler, (Colo. 1907) 91 Pac. 825.

997. 1. **Equitable Lien.** — Property purchased by the mortgagor for which he transfers the mortgaged property in part payment is impressed with an equitable lien to the extent of the value of the mortgaged property. American Soda Fountain Co. *v.* Futrall, 73 Ark. 464, 84 S. W. 505.

2. **Consent of Mortgagee.** — Where the mortgagee permits the mortgagor to retain and use the chattels, authority is impliedly given to make necessary repairs and impose an artficers' lien for the work done. Ruppert *v.* Zang, 73 N. J. L. 216, 62 Atl. 998.

5. John O'Brien Lumber Co. *v.* Wilkinson, 123 Wis. 272, 101 N. W. 1050.

998. 1. Golden *v.* Moore, 126 Mo. App. 518, 104 S. W. 481; Spring *v.* Jenkins, 47 Oregon 502, 84 Pac. 479.

3. Skow *v.* Locke, 72 Neb. 681, 101 N. W. 340; Richter *v.* Buchanan, (Wash. 1907) 92 Pac. 782; Kellogg *v.* Malick, 125 Wis. 239, 4 Ann. Cas. 893, 103 N. W. 1116.

Trover. — The mortgagor cannot maintain trover against the mortgagee for an illegal foreclosure after he has ratified the sale by accepting the proceeds. Merritt *v.* Ward, 113 Ill. App. 208.

4. Lusch *v.* Huber Mfg. Co., (Neb. 1907) 112 N. W. 284; Kellogg *v.* Malick, 125 Wis. 239, 4 Ann. Cas. 893, 103 N. W. 1116.

But this rule cannot be invoked unless the defendant pleads the amount due in mitigation of damages. Springer *v.* Jenkins, 47 Oregon 502, 84 Pac. 479.

999. 5. **Replevin** will lie to recover chattels held by an officer under a writ of attachment. Beaman *v.* Interstate Nat. Bank, 35 Colo. 573, 85 Pac. 426.

6. Ely *v.* Williams, (Cal. App. 1907) 92 Pac. 393; Fred Krug Brewing Co. *v.* Healey, 71 Neb. 662, 101 N. W. 329; Mackey *v.* George W. McAlpin Co., 28 Ohio Cir. Ct. 837; Sweeney *v.* Taylor, (Tex. Civ. App. 1906) 92 S. W. 442; Scaling *v.* Wichita Falls First Nat. Bank, (Tex. Civ. App. 1905) 87 S. W. 715.

Demand and Refusal are necessary before a mortgagee can hold a purchaser of the mortgaged property liable for conversion. Catlett *v.* Stokes, (S. Dak. 1906) 110 N. W. 84.

Mortgagee Must Be Entitled to Possession. — Wilson *v.* Curry, (Ala. 1907) 42 So. 753.

Measure of Damages. — Recovery is limited to the value of the property not exceeding the amount due on the mortgage. Agne *v.* Skewis-Moen, Co., 98 Minn. 32, 107 N. W. 415.

Notice. — If the mortgage is unrecorded the mortgagee must show that the defendant had notice of his lien. Alabama Cotton Products Co. *v.* Myrick, (Ala. 1907) 44 So. 587.

A Commission Merchant who sells mortgaged property without the consent of the mortgagee does not derive such a benefit from the transaction as to authorize the mortgagee to waive the tort and recover on an implied contract. Greer *v.* Newland, 70 Kan. 315, 78 Pac. 835.

1001. 3. Fischback *v.* Garrison Milling, etc., Co., 20 Colo. App. 448, 79 Pac. 749; Bordeaux *v.* Hartman Furniture, etc., Co., 115 Mo. App. 556, 91 S. W. 1020; Kraus *v.* Black, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 641, 107 N. Y. Supp. 609; Hazlett *v.* Hamilton Storage, etc., Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 660, 94 N. Y. Supp. 580; Shelton *v.* Holzwasser, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 76, 91 N. Y. Supp. 328.

Enforcement of Possession — After Forfeiture. — Fidelity Loan Assoc. *v.* Connolly, (Supm. Ct. App. T.) 92 N. Y. Supp. 252.

The mortgagee is not estopped because he saw the mortgaged property in the possession of others and failed to give notice of his mortgage other than to record it. Grafton *v.* Patrick, 77 S. Car. 420, 58 S. E. 1.

Taking Must Be Peaceable. — Gilliland *v.* Martin, (Ala. 1906) 42 So. 7; Bordeaux *v.* Hartman Furniture, etc., Co., 115 Mo. App. 556, 91 S. W. 1020.

On Default Mortgagee Must Take Possession or Refile Mortgage. — Sloan *v.* National Surety Co., 111 N. Y. App. Div. 94, 97 N. Y. Supp. 561, *affirmed* 188 N. Y. 596, 81 N. E. 1176.

Possession by a Mortgagee Is Rightful so long as the property remains intact and the right of foreclosure exists. Brockway *v.* Abbott, 37 Wash. 263, 79 Pac. 924.

1002. 1. Cassell *v.* Deisher, 39 Colo. 367, 89 Pac. 773; Richley *v.* Childs, 114 Ill. App. 173.

1003. 5. **Creditor of Mortgagor May Redeem after Default.** — Cartier *v.* Pabst Brewing Co., 112 N. Y. App. Div. 419, 98 N. Y. Supp. 516.

6. Brockway *v.* Abbott, 37 Wash. 263, 79 Pac. 924.

7. Farrell *v.* Danbury, 141 Mich. 81, 104 N. W. 383; Kellogg *v.* Malick, 125 Wis. 239, 4 Ann. Cas. 893, 103 N. W. 1116.

1004. 4. Kellogg *v.* Malick, 125 Wis. 239, 4 Ann. Cas. 893, 103 N. W. 1116.

9. **The Place of Sale** should be the county where the statute requires the advertisement to be made. Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639.

The property need not be sold at the place of seizure. Croze *v.* St. Mary's Canal Mineral Land Co., 143 Mich. 514, 107 N. W. 92.

A Seizure of Chattels by the Mortgagee without Sale entitles the mortgagor to credit on the debt for their value. Green *v.* Scruggs, 73 S. Car. 403, 53 S. E. 612.

Extinguishment of Debt. — The doctrine that seizure and irregular sale extinguish the debt does not apply where the mortgagor consents to the sale. Workingmen's Bldg., etc., Assoc. *v.* Epstin, 73 S. Car. 575, 53 S. E. 952.

1005. 1. Skow *v.* Locke, 72 Neb. 681, 101 N. W. 340.

Waiver. — Bekkedal *v.* Johnson, 127 Wis. 624, 107 N. W. 5.

1006. 1. O. S. Kelly Co. *v.* McCarty, 75 Kan. 818, 88 Pac. 882.

5. Harrison Nat. Bank *v.* Leslie, 72 Kan. 401, 83 Pac. 984.

Excessive Sales. — Skow *v.* Locke, 72 Neb. 681, 101 N. W. 340.

1008. 3. *United States.* — *In re* Beede, 138 Fed. 441.

Georgia. — Henry Vogt Mach. Co. *v.* Bailey, 2 Ga. App. 204, 58 S. E. 314.

Illinois. — Harding *v.* Thuet, 124 Ill. App. 437.

Kansas. — Youngberg *v.* Walsh, 72 Kan. 220, 83 Pac. 972.

Michigan. — Sachs *v.* Norn, 139 Mich. 357, 102 N. W. 983.

Missouri. — Saunders *v.* Ohlhausen, (Mo. App. 1908) 106 S. W. 541.

New Jersey. — Brockhurst *v.* Cox, (N. J. 1906) 64 Atl. 182; Hardcastle *v.* Stiles, 69 N. J. L. 551, 55 Atl. 104; Hastings *v.* Fithian, 71 N. J. L. 311, 60 Atl. 350.

New York. — Russell *v.* St. Mart, 180 N. Y. 359, 73 N. E. 31; Tooker *v.* Siegel-Cooper Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 68, 106 N. Y. Supp. 277.

Oklahoma. — Thompson *v.* Crosby, 16 Okla. 316, 82 Pac. 643.

Texas. — McCarthy *v.* North Texas Loan Co., (Tex. Civ. App. 1907) 101 S. W. 835.

Substantial Compliance with Statute Sufficient. — Strop *v.* Hughes, 123 Mo. App. 547, 101 S. W. 146.

Possession which will invalidate an unrecorded chattel mortgage must be immediate. Pryor *v.* Gray, 70 N. J. Eq. 413, 62 Atl. 439.

Possession under Wis. St. 1898, § 2313, must be actual, open, unequivocal, and exclusive. George Walter Brewing Co. *v.* Lockery, Wis. 1907) 114 N. W. 120.

A mortgagee in possession is entitled to the property as against subsequent purchasers from the mortgagor, though the mortgage has not been filed. Brockway *v.* Abbott, 37 Wash. 263, 79 Pac. 924.

Filing for Record. — A chattel mortgage filed in the recorder's office with directions not to record it is not filed for record within the meaning of the *Arkansas* statute. Honey Grove First Nat. Bank *v.* Bedingfield, 83 Ark. 109, 102 S. W. 683.

Priorities. — The lien of a mortgage, duly recorded, is superior to that of a purchaser under an execution issued after the registration of the mortgage. Howard *v.* Deens, 143 Ala. 423, 39 So. 346.

A mortgage on growing crops, taken in good faith, is prior to a mortgage contained in a lease of the land, though neither are recorded. Lingle *v.* Owosso Sugar Co., 139 Mich. 203, 102 N. W. 639.

Bankruptcy. — An unfiled chattel mortgage is void as to creditors, even if the mortgagee is in possession of the property, where proceedings in bankruptcy have been commenced prior to a sale of the property to satisfy such mortgage. Cornelius *v.* Boling, (Okla. 1907) 90 Pac. 874.

Mortgage Note Need Not Be Recorded. — Greeson *v.* German Nat. Bank, 78 Ark. 141, 95 S. W. 439.

4. National Bank of Commerce *v.* Jones, 18 Okla. 555, 91 Pac. 191; Bryant *v.* Thigpen, 73 S. Car. 223, 51 S. E. 535, 53 S. E. 368.

Notice to the World. — Hirsh *v.* Beverly, 125 Ga. 657, 54 S. E. 678.

The Record Gives Constructive Notice, though the mortgagee's name be not correctly given. Brayton *v.* Beall, 73 S. Car. 308, 53 S. E. 641.

Constitutes Constructive Notice Only When Statute So Provides. — Jordan *v.* Pence, 123 Mo. App. 321, 100 S. W. 529.

5. Bank of America *v.* Waggoner, (C. C. A.) 143 Fed. 53; Murray *v.* Zeller, (N. J. 1904) 59 Atl. 261; Scaling *v.* Wichita Falls First Nat. Bank, (Tex. Civ. App. 1905) 87 S. W. 715; Eastman *v.* Parkinson, (Wis. 1907) 113 N. W. 649.

Index. — Bryant *v.* Thigpen, 73 S. Car. 223, 51 S. E. 535, 53 S. E. 368.

A Mistake in the Record as to the Amount of the mortgage debt does not affect a subsequent purchaser. Burriss *v.* Owen, (S. Car. 1907) 57 S. E. 542.

1009. 1. *United States.* — Ward *v.* Ward, 131 Fed. 946; *In re* Ducker, 133 Fed. 772; *In re* Beede, 138 Fed. 445; Rogers *v.* Page, (C. C. A.) 140 Fed. 596.

Colorado. — Fischback *v.* Garrison Milling, etc., Co., 20 Colo. App. 448, 79 Pac. 749.

New Jersey. — Law *v.* Smith, 68 N. J. Eq. 81, 59 Atl. 327; Fidelity Trust Co. *v.* Staten Island Clay Co., 70 N. J. Eq. 550, 67 Atl. 1078.

New Mexico. — Kitchen *v.* Schuster, (N. Mex. 1907) 89 Pac. 261.

Oregon. — Williams *v.* Ontario First Nat. Bank, 48 Oregon 571, 87 Pac. 890.

Wisconsin. — Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797; Eastman *v.* Parkinson, (Wis. 1907) 113 N. W. 649.

Valid as to Prior Creditors. — Swafford *v.* Asher, (Ky. 1907) 105 S. W. 164.

As Against a Trustee in Bankruptcy, failure to record does not render a mortgage invalid. Eppstein *v.* Wilson, (C. C. A.) 149 Fed. 197.

But it is otherwise if the mortgagee fails to retain possession. Goodrich *v.* Dore, 194 Mass. 493, 80 N. E. 480.

2. Murray *v.* Zeller, (N. J. 1904) 59 Atl. 261.

Reasonable Time. — A delay of two days is not unreasonable. Briggs *v.* Gelm, 122 N. Y. App. Div. 102, 106 N. Y. Supp. 693.

Immediate Possession or Immediate Recording means as soon as may be by reasonable dispatch under the circumstances of the case. Brockhurst *v.* Cox, (N. J. 1906) 64 Atl. 182; Hardcastle *v.* Stiles, 69 N. J. L. 551, 55 Atl. 104.

In Kansas, under the statute, a mortgage, although invalid while withheld from record, becomes valid whenever recorded. Youngberg *v.* Walsh, 72 Kan. 220, 83 Pac. 972.

1010. 1. Monmouth Second Nat. Bank *v.* Thuet, 124 Ill. App. 501; Reynolds *v.* Smith, 123 Mo. App. 229, 100 S. W. 535.

2. *In re* Greene, 134 Fed. 137.

3. Himmels *v.* Sentous, (Cal. 1907) 91 Pac. 327; Williams *v.* Ontario First Nat. Bank, 48 Oregon 571, 87 Pac. 890; Hulbert *v.* Peterson, 36 Can. Sup. Ct. 324.

Removal of the Property from the County, and failure of the mortgagee to record it

within thirty days, exempt the property from the lien of the mortgagee in favor of the creditors of the mortgagor. Hopper *v.* Keys, (Cal. 1907) 92 Pac. 1017.

Lex Situs Governs.— F. E. Creelman Lumber Co. *v.* Lesh, 73 Ark. 16, 3 Ann. Cas. 108, 83 S. W. 320; Bridges *v.* Barrett, 126 Ill. App. 122.

Removal Without the Mortgagee's Knowledge does not destroy the mortgage lien. Yund *v.* Shawnee First Nat. Bank, (Wyo. 1905) 82 Pac. 6.

The mortgage need not be refiled where the property was removed without the consent of the mortgagee. National Bank of Commerce *v.* Jones, 18 Okla. 555, 91 Pac. 191.

Consent by the Mortgagee to the removal of the property is a waiver of the mortgage as against third persons. Jones *v.* North Pac. Fish, etc., Co., 42 Wash. 332, 84 Pac. 1122.

A Mortgage Given by Two Mortgagors, residing in different places, is void unless recorded in both places. Russell *v.* St. Mart, 180 N. Y. 355, 73 N. E. 31.

Construction of Statutory Provisions.. — See Merritt *v.* Russell, 44 Wash. 143, 87 Pac. 70.

1012. 2. Rosenbaum *v.* Ryan Bros. Cattle Co., 33 Mont. 424, 84 Pac. 1120; Thomson *v.* Quirk, 1 Can. Sup. Ct. Cas. 436.

Void Mortgage Not Validated by Renewal. — Butte First Nat. Bank *v.* Beley, 32 Mont. 291, 80 Pac. 256.

A Second Mortgage Covering the Same Property, issued within a year from the time the first mortgage was issued, does not take precedence over the first mortgage because the latter was not refiled at the expiration of the year. Schwab Mfg. Co. *v.* Aizenman, 106 N. Y. App. Div. 478, 94 N. Y. Supp. 729.

The Affidavit may be sworn to by an officer of a corporation before a notary who is an officer and stockholder in said corporation. Fair *v.* Citizens' State Bank, 70 Kan. 612, 79 Pac. 144.

Where the affidavit of renewal is made by an agent of the mortgagee, the fact of the agency must be sworn to. Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797.

4. A Bailee cannot retain the chattels as against the mortgagee although the latter has failed to file his mortgage. Fischback *v.* Garrison Milling, etc., Co., 20 Colo. App. 448, 79 Pac. 749.

1013. 1. Murray *v.* Zeller, (N. J. 1904) 59 Atl. 261.

3. Nolen *v.* Farrow, (Ala. 1907) 45 So. 183.

A subsequent purchaser, under § 29 of the Bills of Sale and Chattel Mortgage Act, is one who purchased after the time limited for registration in the district to which the goods had been removed. Roper *v.* Scott, 16 Manitoba 594.

Subpurchasers.— Failure to record operates equally in favor of immediate purchasers and subpurchasers. Williams *v.* Vining, (Ala. 1907) 43 So. 744.

Under the Alabama Code (1896), § 1009, a purchase must be from the owner when the mortgage was executed, or some one holding under him or who has authority from him to sell. Couch *v.* Holmes, (Ala. 1907) 43 So. 858.

1014. 1. Ard *v.* Crittenden, (Ala. 1903) 39 So. 675; Fischback *v.* Garrison Milling, etc., Co., 20 Colo. App. 448, 79 Pac. 749; Bazelman Lumber Co. *v.* Hinton, (Neb. 1907) 112 N. W. 603.

Actual Notice of an Unrecorded Mortgage dispenses with the necessity of recording or filing. *In re* Ducker, 133 Fed. 772; Williams *v.* Ontario First Nat. Bank, 48 Oregon 571, 87 Pac. 890.

Constructive Notice. — Howard *v.* Deens, 143 Ala. 423, 39 So. 346.

In the absence of a change of possession a mortgage made by the vendee of property, even if recorded, is not constructive notice to subsequent purchasers. Martin *v.* Lesan, 129 Iowa 573, 105 N. W. 996.

The filing of a chattel mortgage for record does not impart constructive notice to a commission merchant to whom the mortgaged property is sent for sale. Greer *v.* Newland, 70 Kan. 315, 78 Pac. 835.

Unauthorized registration of a mortgage is not constructive notice of its existence. Tisdale *v.* John H. Pray Sons Co., 73 N. H. 357, 62 Atl. 168.

Registration of a chattel mortgage, executed by a married woman, without being joined therein by her husband, is not constructive notice. Sweeney *v.* Taylor, (Tex. Civ. App. 1906) 92 S. W. 442.

Bona Fide Purchaser.— Where grain has been removed from the land of the mortgagor, the mere fact that the buyer had knowledge that it was once mortgaged is not alone sufficient to prevent his being a *bona fide* purchaser. Brande *v.* Babcock Hardware Co., 35 Mont. 256, 88 Pac. 949.

Defense of Innocent Purchaser. — "A purchaser of mortgaged grain from the mortgagor is not permitted to set up the defense that he was an innocent purchaser, simply because the mortgagee did not take proper precautions to protect himself." Endreson *v.* Larson, 101 Minn. 417, 112 N. W. 628.

1015. 2. Beaumont Rice Mills *v.* Bridges, (Tex. Civ. App. 1907) 101 S. W. 511.

A mortgagee is not in the position of a subsequent purchaser where the debt secured by his mortgage is usurious. Morris *v.* Attalla Bank, 142 Ala. 638, 38 So. 804.

A prior mortgagee is affected only by actual notice of a subsequent mortgage. Omaha Bank *v.* Pope, (Tex. Civ. App. 1907) 103 S. W. 692.

3. Notice to Junior Mortgagee.— Where a junior mortgage is taken subject to the first mortgage, the junior mortgagee is bound by notice of the first mortgage and its terms in his junior mortgage. Davis *v.* Carlisle, 5 Indian Ter. 83, 82 S. W. 682.

5. Subsequent Mortgagee's Right of Action. — A second mortgagee may seize and sell the mortgaged property. Schwab Mfg. Co. *v.* Aizenman, 106 N. Y. App. Div. 478, 94 N. Y. Supp. 729.

A subsequent mortgagee cannot question the taking possession and disposing of the mort-

gaged property by the first mortgagee where the transaction was with the consent of the first mortgagee. Atkins *v.* Boyle, 33 Colo. 434, 80 Pac. 1067.

6. Redemption. — A second mortgagee has the right to redeem, under § 5894, Rev. Codes N. Dak., 1899, from a chattel mortgage sale by advertisement. Brown *v.* Smith, 13 N. Dak. 580, 102 N. W. 171.

1016. 1. *In re* Cutting, 145 Fed. 388; *In re* Beede, 138 Fed. 445; Murphy *v.* Murphy, 126 Iowa 57, 101 N. W. 486; Youngberg *v.* Walsh, 72 Kan. 220, 83 Pac. 972; Wasserman *v.* McDonnell, 190 Mass. 326, 76 N. E. 959; Brockhurst *v.* Cox, (N. J. 1906) 64 Atl. 182; Skilton *v.* Codington, 185 N. Y. 86, 79 N. E. 790; Schwab Mfg. Co. *v.* Aizenman, 106 N. Y. App. Div. 478, 94 N. Y. Supp. 729.

In New Jersey creditors of a purchaser from the mortgagor are protected by the recording act. Fidelity Trust Co. *v.* Staten Island Clay Co., 70 N. J. Eq. 558, 67 Atl. 1078.

In Kentucky it has been held under the statute [Ky. St. (1903), § 496] that a creditor may take advantage of the recording act, although he have no "hold" on the property. *In re* Ducker, 133 Fed. 771.

"Debts Created Before the Mortgage cannot have priority over it, whether it is recorded or not." *In re* Ducker, 133 Fed. 772.

A creditor extending credit to the mortgagor before the mortgage was filed has superior rights to the mortgagee. American Book Co. *v.* Chapman, 119 Mo. App. 275, 95 S. W. 957.

A Mortgage, Unfiled for Five Years, is void against creditors of the mortgagor where the claims accrued prior to such filing. Skelton *v.* Codington, 185 N. Y. 80, 77 N. E. 790.

Fraud. — A *bona fide* chattel mortgage of goods obtained by fraud is good as against the vendee of such goods where it is filed before he takes any step to reclaim the goods. Heenan *v.* Forest City Paint, etc., Co., 138 Mich. 548, 101 N. W. 806.

"A creditor who becomes such after the execution of a mortgage, and before notice thereof, may be heard to assail such mortgage on the ground of fraud in that he was induced to extend a credit that would not otherwise have been given." Murphy *v.* Murphy, 126 Iowa 57, 101 N. W. 486.

2. Ott *v.* Sutcliffe, (N. J. 1905) 60 Atl. 965.

Agreement to Withhold. — Rogers *v.* Page, (C. C. A.) 140 Fed. 596; *In re* Ewald, 135 Fed. 168; *In re* Shaw, 146 Fed. 273; Ward *v.* Parker, 128 Iowa 124, 103 N. W. 104.

An agreement to withhold, where there is no fraudulent intent, simply postpones the lien. Rike *v.* Ryan, 147 Ala. 497, 41 So. 959.

Insertion of Additional Property Fraudulent. — Bedgood-Howell Co. *v.* Moore, 123 Ga. 336, 51 S. E. 420.

1017. 1. For Jury. — Mower *v.* McCarthy, 79 Vt. 142, 64 Atl. 578.

2. Aldrich *v.* Higgins, 77 Conn. 370, 59 Atl. 498.

1018. 3. South Omaha Nat. Bank *v.* McGillin, (Neb. 1906) 108 N. W. 257.

Assignment of the debt does not convey to the assignee the legal title to the mortgaged property. Perry County Bank *v.* Rankin, 73 Ark. 589, 84 S. W. 725, 86 S. W. 279.

The assignee of a mortgagee in possession according to the terms of the mortgage, is not liable to the mortgagor in an action to recover the value of the chattels. Hurt *v.* Hubbard, (Colo. 1907) 92 Pac. 908.

A Sale passes the entire interest of the mortgagee. Monmouth Second Nat. Bank *v.* Thuet, 124 Ill. App. 501.

No Delivery Necessary. — A transfer of mortgage notes passes an interest in the mortgage without any formal assignment of the latter. Chandless *v.* Globe Storage, etc., Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 562, 98 N. Y. Supp. 511.

Conversion. — An assignee may maintain an action for conversion. State Nat. Bank *v.* Cudahy Packing Co., 126 Fed. 543.

Assignee May Bring Replevin. — Dendy *v.* Cobleskill First Nat. Bank, (Kan. 1907) 91 Pac. 682.

But replevin cannot be maintained by an assignee of the debt unless title to the mortgaged property has been conveyed. Perry County Bank *v.* Rankin, 73 Ark. 589, 84 S. W. 725, 86 S. W. 279.

4. Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062.

Debt Principal Thing. — Brass *v.* Green, 113 Ill. App. 58.

5. National Live Stock Bank *v.* Geneseo First Nat. Bank, 203 U. S. 296, 27 U. S. Sup. Ct. 79; Chicago First Nat. Bank *v.* Baird, (C. C. A.) 141 Fed. 862; Cudahy Packing Co. *v.* State Nat. Bank, (C. C. A.) 134 Fed. 538.

Assignment of Note Carries Mortgage. — Brass *v.* Green, 113 Ill. App. 58.

Equitable Assignment of Mortgage. — See Dumas *v.* Peoples' Bank, 146 Ala. 226, 40 So. 964.

1019. 2. Payment of Future Advances Extinguishes Mortgage Lien. — Wright *v.* Voorhees, 131 Iowa 408, 9 Ann. Cas. 1149, 108 N. W. 758.

Payment of Mortgage Note Discharges Mortgage. — National Live Stock Bank *v.* Geneseo First Nat. Bank, 203 U. S. 296, 27 U. S. Sup. Ct. 79.

4. Delivery of Defective Real Estate Mortgage Not Payment. — Shaw *v.* Cooke, 111 N. Y. App. Div. 202, 97 N. Y. Supp. 235.

1020. 1. Surrender of Mortgage on Tender of Payment. — See Sellers *v.* Malone-Pilcher Co., (Ala. 1907) 44 So. 415.

3. Tender after default and possession by the mortgagee is not sufficient to divest title, even where followed by payment of money into court. Schaffer *v.* Castle, 6 Indian Ter. 244, 91 S. W. 35.

5. Hase *v.* Schotle, 109 Mo. App. 458; Spears *v.* Fields, 72 S. Car. 395, 52 So. 44.

6. Schaffer *v.* Castle, 6 Indian Ter. 244, 91 S. W. 35.

1021. 4. Brannen *v.* Harris, (Ala. 1905) 39 So. 721.

Valuable Consideration Necessary. — Lynn *v.* Bean, 141 Ala. 236, 37 So. 515.

5. Bronson *v.* American Type Founders Co., 128 Ill. App. 552, *following* Merritt *v.* Niles, 25 Ill. 282.

1022. 1. Dawson *v.* Thigpen, 137 N. Car. 462, 49 S. E. 959. See also Holden *v.* Gilfeather, 78 Vt. 405, 63 Atl. 144.

New Note.— Dawson *v.* Thigpen, 137 N. Car. 462, 49 S. E. 959.

The Intention of the Parties, in taking a second mortgage in renewal of a prior mortgage, governs. Daniel *v.* Jordan, 146 Ala. 229, 40 So. 940.

Substitution of Property does not satisfy the mortgage. Jones *v.* Wolfort, 80 Ark 474, 97 S. W. 452.

2. See Dawson *v.* Thigpen, 137 N. Car. 462, 49 S. E. 959.

CHATTELS.

1022. 3. **Chattels Real.** — Mining lease held ***chattel*** real under *West Virginia* taxation statute. Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 616, 53 S. E. 928, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1024.

CHECKS.

1029. 1. U. S. *v.* Green, 136 Fed. 645, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029, *affirmed* 199 U. S. 601, 26 U. S. Sup. Ct. 748.

1030. 2. **Compared with Bills of Exchange.** — Lewis *v.* Montgomery Supply Co., 59 W. Va. 80, 52 S. E. 1017, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1030.

Statutes Classing Checks as Bills of Exchange Payable on Demand. — Plover Sav. Bank *v.* Moodie (Iowa 1906) 110 N. W. 29; Amsinck *v.* Rogers, 103 N. Y. App. Div. 428, 93 N. Y. Supp. 87.

3. Negotiability.— Boswell *v.* Citizens' Sav. Bank, (Ky. 1906) 96 S. W. 797.

Post-dated Checks are negotiable instruments subject to the laws relating to negotiable paper. Symonds *v.* Riley, 188 Mass. 470, 74 N. E. 926.

An Indorsement in Blank Makes a Check Payable to Bearer, and the bank is not liable when it pays the amount in cash to a messenger instead of placing it on deposit. Peerrot *v.* Mt. Morris Bank, 120 N. Y. App. Div. 247, 104 N. Y. Supp. 1045.

It Is Not Necessary that the Holder Be Identified when cashing a check payable to bearer. Farmers, etc., Bank *v.* Rutherford Bank, 115 Tenn. 64, 88 S. W. 939.

1031. 8. **Payable in "Current Funds."** — Dille *v.* White, 132 Iowa 327, 109 N. W. 909, in which it was held that a check payable in current funds had not the qualities of negotiable paper.

1032. 3. **Post-dated Checks.** — Symonds *v.* Riley, 188 Mass. 470, 74 N. E. 926.

1034. 1. **View that Such Instruments Are Checks.**— In *Michigan* an order drawn upon a bank and payable at a future day named is not entitled to days of grace, being treated as a check and not a bill of exchange. Jocque *v.* McRae, 142 Mich. 370, 105 N. W. 874.

1036. 1. **A Banker** on whom a check is drawn must ascertain at his peril the identity of the person named in it as payee. Murphy *v.* Metropolitan Nat. Bank, 191 Mass. 159, 77 N. E. 693.

1037. 4. Sheldon Canal Co. *v.* Miller, (Tex. Civ. App. 1905) 90 S. W. 206.

5. State *v.* Jahraus, 117 La. 286, 41 So. 575.

6. **Extrinsic Evidence.**— State *v.* Jahraus, 117 La. 286, 41 So. 575; Sheldon Canal Co. *v.* Miller, (Tex. Civ. App. 1905) 90 S. W. 206.

1040. 1. **When in Hands of Third Party.** — Metropolitan Printing Co. *v.* Springer, (Supm. Ct. App. T.) 90 N. Y. Supp. 376.

2. **General Rule as to Necessity of Presentment and Notice.**— Detroit First Nat. Bank *v.* Currie, 147 Mich. 72, 110 N. W. 499; Ross *v.* Saron, (Supm. Ct. App. T.) 93 N. Y. Supp. 553.

The Law of the Place Where Payable. — Amsinck *v.* Rogers, 103 N. Y. App. Div. 428, 93 N. Y. Supp. 87.

1041. 1. **What Is Reasonable Time.**— Burns *v.* Yocum, 81 Ark. 127, 98 S. W. 956 (delay of five days unreasonable); Plover Sav. Bank *v.* Moodie, (Iowa 1906) 110 N. W. 29; Citizens Bank *v.* Pleasantville First Nat. Bank, (Iowa 1907) 113 N. W. 481; Gordon *v.* Levine, 194 Mass. 418, 80 N. E. 505; Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017.

3. **When Question for Jury.** — Citizens Bank *v.* Pleasantville First Nat. Bank, (Iowa 1907) 113 N. W. 481.

4. **When Question for Court.**— Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017.

1042. 2. **Where Check Is on Local Bank.**— R. H. Herron Co. *v.* Mawby, (Cal. App. 1907) 89 Pac. 872; Cox *v.* Citizens State Bank, 73 Kan. 789, 85 Pac. 762; Noble *v.* Doughten, 72 Kan. 336, 83 Pac. 1048; Gordon *v.* Levine, 194 Mass. 418, 80 N. E. 505; Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1042; Aebi *v.* Evansville Bank, 124 Wis. 73, 102 N. W. 329.

Sunday Intervening. — Citizens Bank *v.* Pleasantville First Nat. Bank, (Iowa 1907) 113 N. W. 481.

3. Where Check Is on Distant Bank. — R. H. Herron Co. *v.* Mawby, (Cal. App. 1907) 89 Pac. 872; Cox *v.* Citizens State Bank, 73 Kan. 789, 85 Pac. 762; Manitoba Mortg., etc., Co. *v.* Weiss, 18 S. Dak. 459, 5 Ann. Cas. 868, 101 N. W. 37; Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1042; Aebi *v.* Evansville Bank, 124 Wis. 73, 102 N. W. 329.

1043 1. **Check Received After Banking Hours.** — Temple *v.* Carroll, (Neb. 1905) 105 N. W. 989.

2. **Sending by Circuitous Route.**— Plover Sav. Bank *v.* Moodie, (Iowa 1906) 110 N. W. 29; Travers *v.* Sinclair, 122 Ill. App. 203, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1043.

3. Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017; Citizens Bank *v.* Pleasantville First Nat. Bank, (Iowa 1907) 113 N. W. 481.

4. **Deposit for Collection.** — Gordon *v.* Levine,

194 Mass. 418, 80 N. E. 505, in which case it was held that transfer to successive holders does not extend the time for presentment; Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017.

1044. **1. By What Mail Check to Be Sent.** — Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017.

2. Presumption as to Business Hours. — Courts judicially know that banks do not ordinarily open for business before 9 A. M. Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017.

3. Effect of Laches as to Drawer. — Lester-Whitney Shoe Co. *v.* Oliver Co., 1 Ga. App. 244, 58 S. E. 212; Travers *v.* Sinclair, 122 Ill. App. 203, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1044; Cox *v.* Citizens State Bank, 73 Kan. 789, 85 Pac. 762; Noble *v.* Doughten, 72 Kan. 336, 83 Pac. 1048; Moskowitz *v.* Deutsch, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 603, 92 N. Y. Supp. 721; Pink Front Bankrupt Store *v.* Mistrot, (Tex. Civ. App. 1905) 90 S. W. 75.

1045. **2. Indorser Discharged.** — Citizens Bank *v.* Pleasantville First Nat. Bank, (Iowa 1907) 113 N. W. 481; Travers *v.* Sinclair, 122 Ill. App. 203, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1045; Detroit First Nat. Bank *v.* Currie, 147 Mich. 72, 110 N. W. 499; Lewis *v.* Commercial Nat. Bank, (Tex. Civ. App. 1904) 83 S. W. 423; Aebi *v.* Evansville Bank, 124 Wis. 73, 102 N. W. 329.

1046. **2. No Funds in Hands of Drawee.** — Lester-Whitney Shoe Co. *v.* Oliver Co., 1 Ga. App. 244, 58 S. E. 212; Detroit First Nat. Bank *v.* Currie, 147 Mich. 72, 110 N. W. 499; Carson *v.* Fincher, 138 Mich. 666, 101 N. W. 844.

1047. **1. Reasonable Belief that Check Would Be Paid.** — Lester-Whitney Shoe Co. *v.* Oliver, Co., 1 Ga. App. 244, 58 S. E. 212.

3. Ignorance of a Bank Employee of the Existence of the Check is no excuse for not presenting it at the proper time. Temple *v.* Carroll, (Neb. 1905) 105 N. W. 989.

1048. **2. Extension of Time.** — Pflueger *v.* Lewis Foundry, etc., Co., (C. C. A.) 134 Fed. 28.

A Promise to Redeem a Check if the Drawee Bank Failed has been held not to be a waiver of the right to have the check promptly presented. Burns *v.* Yocum, 81 Ark. 127, 98 S. W. 956.

5. Detroit First Nat. Bank *v.* Currie, 147 Mich. 72, 110 N. W. 499.

1049. **5. Presentment by Post Discountenanced.** — Jefferson County Sav. Bank *v.* Hendrix, 147 Ala. 670, 39 So. 295; Farley Nat. Bank *v.* Pollock, 145 Ala. 321, 8 Ann. Cas. 370, 39 So. 612; R. H. Herron Co. *v.* Mawby, (Cal. App. 1907) 89 Pac. 872; Plover Sav. Bank *v.* Moodie, (Iowa 1906) 110 N. W. 29; Citizens Bank *v.* Pleasantville First Nat. Bank, (Iowa 1907) 113 N. W. 481; Rocky Mt. Bank *v.* Floyd, 142 N. Car. 187, 55 S. E. 95.

1050. **1.** Jefferson County Sav. Bank *v.* Hendrix, 147 Ala. 670, 39 So. 295.

1051. **1. Certification of Checks.** — The language used must clearly and unequivocally import an absolute promise to pay. Atchison First Nat. Bank *v.* Commercial Sav. Bank, (Kan. 1906) 87 Pac. 746.

2. Verbal Acceptance.—In *Colorado* it has been held that the holder of a check who was informed verbally by the drawee bank that the check was "good," or "all right," could not maintain an action for its nonpayment against the bank when payment was afterwards stopped by the drawer. Van Buskirk *v.* State Bank, 35 Colo. 142, 83 Pac. 778.

3. Where Drawer Has No Funds — Statute of Frauds. — Bullard *v.* Madison Bank, 121 Ga. 527, 49 S. E. 615; Interstate Nat. Bank *v.* Ringo, 72 Kan. 116, 83 Pac. 119.

4. Acceptance by Telegraph. — A check is not certified by a bank by returning to the telegraphic inquiry, "Is J. F. Donald's check on you for $350 good?" the telegraphic response "J. F. Donald's check is good for sum named." Atchison First Nat. Bank *v.* Commercial Sav. Bank, (Kan. 1906) 87 Pac. 746.

Telegraphic acceptance for the sum named in the check is not acceptance for that sum with exchange. State Bank *v.* Citizens' Nat. Bank, 114 Mo. App. 663, 90 S. W. 123. See also Farmers', etc., Nat. Bank *v.* Elizabethtown Nat. Bank, 30 Pa. Super. Ct. 271.

1052. **6.** State *v.* Miller, 47 Oregon 562, 85 Pac. 81.

7. Where Drawer Is Without Funds. — Detroit Nat. Bank *v.* Union Trust Co., 145 Mich. 656, 108 N. W. 1092, holding, however, that the holder must prove that he is a *bona fide* purchaser.

1053. **2. Effect of Certification.** — Detroit First Nat. Bank *v.* Currie, 147 Mich. 72 110 N. W. 499; Meuer *v.* Phenix Nat. Bank, 94 N. Y. App. Div. 331, 88 N. Y. Supp. 83, *affirmed* 183 N. Y. 511, 76 N. E. 1100; State *v.* Miller, 47 Oregon 562, 85 Pac. 81.

1054. **1. Drawee by Acceptance Makes Himself Guarantor.** — Farmers', etc., Bank *v.* Rutherford Bank, 115 Tenn. 64, 88 S. W. 939.

1055. **1. Liability of Bank upon Certification.** — Detroit First Nat. Bank *v.* Currie, 147 Mich. 72, 110 N. W. 499; Meuer *v.* Phenix Nat. Bank, 94 N. Y. App. Div. 331, 88 N. Y. Supp. 83, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 155 [1055].

1056. **3.** Meuer *v.* Phenix Nat. Bank, 94 N. Y. App. Div. 331, 88 N. Y. Supp. 83.

6. Certification by Holder — Drawer Released. — Detroit First Nat. Bank *v.* Currie, 147 Mich. 72, 110 N. W. 499; Meuer *v.* Phenix Nat. Bank, 94 N. Y. App. Div. 331, 88 N. Y. Supp. 83, *affirmed* 183 N. Y. 511, 76 N. E. 1100.

1057. **1. Check Does Not Have Priority over Garnishee.** — Boswell *v.* Citizens' Sav. Bank, (Ky. 1906) 96 S. W. 797.

1058. **1. Check Deposited in Bank upon Which Drawn.**—The return of a check marked "Paid" is not conclusive as to payment, but is open to explanation or denial. Patterson *v.* Humboldt First Nat. Bank, (Neb. 1905) 102 N. W. 765.

The Surrender of a Check and Acceptance of a Deposit Receipt have been held to be an election to accept payment in that way. Burns *v.* Yocum, 81 Ark. 127, 98 S. W. 956.

2. General Rule as to Mode of Payment. — Noble *v.* Doughten, 72 Kan. 336, 83 Pac. 1048.

1059. 3. Inter-state Nat. Bank *v.* Ringo, 72 Kan. 123, 83 Pac. 119, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1058.

Payment under Mistake — Liability of Drawer. — The drawer of a check who collects through an intermediate bank is liable to the drawee bank for the amount of the check, if it honors the check through inadvertence and the drawer has no funds there. Iowa State Bank *v.* Cereal Refund, etc., Co., 132 Iowa 266, 109 N. W. 719.

4. General Rule as to Bank's Undertaking. — North Carolina Corp. Commission *v.* Merchants, etc., Bank, 137 N. Car. 697, 2 Ann. Cas. 537, 50 S. E. 308; O'Neil *v.* New England Trust Co., (R. I. 1907) 67 Atl. 63; Loan, etc., Bank *v.* Farmers, etc., Bank, 74 S. Car. 210, 54 S. E. 364; Lorick *v.* Palmetto Bank, etc., Co., 74 S. Car. 185, 7 Ann. Cas. 818, 54 S. E. 206; Johnson *v.* Shuey, 40 Wash. 22, 82 Pac. 123; Koelzer *v.* Whitewater First Nat. Bank, 125 Wis. 595, 4 Ann. Cas. 1144, 104 N. W. 838.

Money Must Be on Deposit Account Subject to Check. — McKnight *v.* Acadia Bank, 114 La. 289, 38 So. 172.

Right of Action Is ex Contractu and Assignable. — Robinson *v.* Wiley, 188 Mass. 533, 74 N. E. 923.

1060. 1. Measure of Damages. — Peabody *v.* Citizens State Bank, 98 Minn. 302, 108 N. W. 272; Metropolitan Supply Co. *v.* Garden City Banking, etc., Co., 114 Ill. App. 318; Columbia Nat. Bank *v.* MacKnight, 29 App. Cas. (D. C.) 580, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060; Weller *v.* Western State Bank, 18 Okla. 491, 90 Pac. 877, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060.

When Dishonor Was Due to Mistake, it has been variously held that the bank was not liable. Sprowl *v.* Southern Nat. Bank, (Ky. 1905) 86 S. W. 1117; that the recovery should be restricted to nominal damages, T. B. Clark Co. *v.* Mt. Morris Bank, 85 N. Y. App. Div. 362, 83 N. Y. Supp. 447, *affirmed* (N. Y. 1905) 73 N. E. 1133; and that the damages recoverable "are something more than nominal, though they may be insignificant." Lorick *v.* Palmetto Bank, etc., Co., 74 S. Car. 185, 7 Ann. Cas. 818, 54 S. E. 206.

1062. 1. No Assignment. — Bowker *v.* Haight, etc., Co., 146 Fed. 257; Eastern Milling, etc., Co. *v.* Eastern Milling, etc., Co., 146 Fed. 761; Peoples Sav. Bank, etc., Co., *v.* Lacy, 146 Ala. 688, 40 So. 346; Roney *v.* Dunleary, 39 Ind. App. 108, 79 N. E. 398; Chapple *v.* Kansas Vitrified Brick Co., 70 Kan. 723, 79 Pac. 666; Clark *v.* Toronto Bank, (Kan. 1905) 82 Pac. 582; Lonier *v.* State Sav. Bank, 149 Mich. 483, 112 N. W. 1119; Pennell *v.* Ennis, 126 Mo. App. 355, 103 S. W. 147; Meuer *v.* Phenix Nat. Bank, 94 N. Y. App. Div. 331, 88 N. Y. Supp. 83; Pease, etc., Co. *v.* State Nat. Bank, 114 Tenn. 693, 88 S. W. 172.

1064. 2. Varley *v.* Sims, 100 Minn. 331, 111 N. W. 269. But *compare* Phinney *v.* State, 36 Wash. 236, 78 Pac. 927, holding that a check for nearly but not quite the whole of a deposit, delivered as a gift *causa mortis*, operated as an assignment of the whole deposit. See generally the title GIFTS.

1065. 2. Implied Contract. — Turner *v.* Hot Springs Nat. Bank, 18 S. Dak. 498, 5 Ann. Cas. 937, 101 N. W. 348.

3. Assignment. — Kuhnes *v.* Cahill, 128 Iowa 594, 104 N. W. 1025; Parkersburg Mill Co. *v.* Farmers', etc., Nat. Bank, (Ky. 1904) 82 S. W. 1003; Loan, etc., Bank *v.* Farmers, etc., Bank, 74 S. Car. 210, 54 S. E. 364.

Where There Were No Conflicting Interests of creditors or other assignees or donees of the deceased, the giving of a check was regarded as an assignment of the fund. See Phinney *v.* State, 36 Wash. 236, 78 Pac. 927.

1066. 2. Amount Recoverable by Check Holder. — Damages for nonpayment of a check stopped for misrepresentation have been held to be the amount of the check less the loss caused by the misrepresentation. Fayette Nat. Bank *v.* Summers, 105 Va. 689, 54 S. E. 862.

3. Rule in Case of Forged Checks. — Fricano *v.* Columbia Nat. Bank, 118 N. Y. App. Div. 567, 103 N. Y. Supp. 189; Kearny *v.* Metropolitan Trust Co., 110 N. Y. App. Div. 236, 97 N. Y. Supp. 274; Yarborough *v.* Banking L. & T. Co., 142 N. Car. 377, 55 S. E. 296; Morris *v.* Beaumont Nat. Bank, (Tex. Civ. App. 1904) 83 S. W. 36.

As to Evidence of Forgery see, in relation to the subject of checks, Bolton *v.* State, (Ala. 1906) 40 So. 409; Greenwald *v.* Ford, (S. Dak. 1906) 109 N. W. 516; Laudermilk *v.* State, (Tex. Crim. 1904) 83 S. W. 1107, and see generally the title FORGERY.

1067. 1. Where Drawer at Fault. — Langdale *v.* Citizens Bank, 121 Ga. 105 2 Ann. Cas. 257, 48 S. E. 708; Murphy *v.* Metropolitan Nat. Bank, 191 Mass. 159, 77 N. E. 693; Campbell *v.* Schenectady Sav. Bank, 114 N. Y. App. Div. 337, 99 N. Y. Supp. 927; Land Title, etc., Co. *v.* Northwestern Nat. Bank, 211 Pa. St. 211, 60 Atl. 723.

1068. 1. Bank Liable for Forged Check Paid to Pretended Agent of Payee. — Houser *v.* National Bank, 27 Pa. Super. Ct. 613.

1069. 1. Notice of Forgery. — U. S. *v.* National Bank of Republic, 141 Fed. 208; Kearny *v.* Metropolitan Trust Co., 110 N. Y. App. Div. 236, 97 N. Y. Supp. 274; Greenwald *v.* Ford, (S. Dak. 1906) 109 N. W. 516.

Delay Immaterial Where No Injury Caused Thereby. — Murphy *v.* Metropolitan Nat. Bank, 191 Mass. 159, 77 N. E. 693.

2. See dissenting opinion of Aldrich, J., in National Exch. Bank *v.* U. S., (C. C. A.) 151 Fed. 402, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1069.

What Is Due Diligence in Giving Notice. — Farmers', etc., Bank *v.* Rutherford Bank, 115 Tenn. 64, 88 S. W. 939, holding that a delay of thirty days estops the bank from denying the genuineness of the signature.

1070. 2. See Rex *v.* Montreal Bank, 10 Ont. L. Rep. 117.

The Depositor Is Not Bound to Examine Indorsements to see if they are forgeries. Murphy *v.*

Metropolitan Nat. Bank, 191 Mass. 159, 77 N. E. 693.

1071. **2. Forged Check — Bona Fide Holder.** — Farmers', etc., Bank *v.* Rutherford Bank, 115 Tenn. 64, 88 S. W. 939; Ford *v.* People's Bank, 74 S. Car. 180, 7 Ann. Cas. 744, 54 S. E. 204, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1071.

1072. 1. Ford *v.* People's Bank, 74 S. Car. 180, 7 Ann. Cas. 744, 54 S. E. 204, *quoting* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072.

When Recovery Allowed. — The drawee of a forged check who has paid it without detecting the forgery may, upon discovery of the forgery, recover the money paid from the party who received it, even though the latter was a holder in good faith, provided the latter has not been misled or prejudiced by the drawee's failure to detect the forgery. Lisbon First Nat. Bank *v.* Wyndmore Bank, 15 N. Dak. 299, 108 N. W. 546. See also Canadian Bank of Commerce *v.* Bingham, (Wash. 1907) 91 Pac. 185, where a similar rule was applied as between banks.

1073. **1. Without Proper Precautions and Misleading Drawee.** — See Williamsburgh Trust Co. *v.* Tum Suden, 120 N. Y. App. Div. 518, 105 N. Y. Supp. 335, in which case it was held that upon the first indorser is the burden of the first precaution, and his negligence will exonerate the drawee bank.

Unrestricted Indorsement Tends to Mislead Drawee. — Ford *v.* People's Bank, 74 S. Car. 180, 7 Ann. Cas. 744, 54 S. E. 204.

1074. **1. Alteration of Date.** — Moskowitz *v.* Deutsch, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 603, 92 N. Y. Supp. 721.

1075. 1. Chicago Sav. Bank *v.* Block, 126 Ill. App. 128.

2. Leaving Spaces Not Negligence. — Colonial Bank *v.* Marshall, (1906) A. C. 559, 5 Ann. Cas. 771, 75 L. J. P. C. 76, *following* Scholfield *v.* Londesborough, (1896) A. C. 514.

1076. **1. Forged Indorsement — Liability of Bank.** — Hamilton Nat. Bank *v.* Nye, (Ind. 1906) 77 N. E. 295; New York Brick, etc., Co. *v.* Bronx Borough Bank, (Supm. Ct. Tr. T.) 42 Misc. (N. Y.) 31, 85 N. Y. Supp. 557, *affirmed* 186 N. Y. 559, 79 N. E. 1112.

What Is Such Acceptance. — Clark *v.* Warren Sav. Bank, 31 Pa. Super. Ct. 647.

1077. 1. Salem *v.* State Bank, 110 N. Y. App. Div. 636, 97 N. Y. Supp. 361.

2. Effect of Indorsement. — Hamilton Nat. Bank *v.* Nye, 37 Ind. App. 464, 77 N. E. 295; Wellington Nat. Bank *v.* Robbins, 71 Kan. 748, 81 Pac. 487; Greenwald *v.* Ford, (S. Dak. 1906) 109 N. W. 516; Oriental Bank *v.* Gallo, 112 N. Y. App. Div. 360, 98 N. Y. Supp. 561; Seaboard Nat. Bank *v.* Bank of America, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 103, 100 N. Y. Supp. 740.

3. Liability of Depositor. — Merchants' Bank *v.* Prudential Ins. Co., 110 Mo. App. 62, 84 S. W. 101.

Execution — Presumption. — Moak *v.* Stevens, (Supm. Ct. Tr. T.) 45 Misc. (N. Y.) 147, 91 N. Y. Supp. 903, in which case the evidence was held insufficient to overcome the presumption that possession of a check implies valid delivery.

1078. **2. To Whom Liable.** — Salem *v.* State Bank, 110 N. Y. App. Div. 636, 97 N. Y. Supp. 361.

3. When the Payee Indorses a Check in Blank and it is lost, he cannot recover from the bank for paying it to a *bona fide* purchaser, though he had notified the bank of the loss. Unaka Nat. Bank *v.* Butler, 113 Tenn. 574, 83 S. W. 655.

4. Indemnity — Duplicate Check. — Gibony *v.* Com., (Ky. 1906) 91 S. W. 732.

Drawer Not Discharged of Debt When Check Lost. — By accepting a check a party does not surrender any right. Upon destruction of the check he may sue on the original debt. Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949. See generally the title PAYMENT.

An Indorsement on a Duplicate Check does not create a new liability different from the liability on the original. Lewis *v.* Commercial Nat. Bank, (Tex. Civ. App. 1904) 83 S. W. 423.

1079. **1. Drawer Countermanding Payment** — Van Buskirk *v.* State Bank, 35 Colo. 142, 83 Pac. 778; *In re* Morgan, 125 Iowa 247, 101 N. W. 127; Grimes *v.* Ericson, 94 Minn. 461, 103 N. W. 334; National Bank *v.* Sayer, 73 N. H. 595, 64 Atl. 189; Kendall *v.* Fries, 71 N. J. L. 401, 58 Atl. 1090; Caren *v.* Liebovitz, 113 N. Y. App. Div. 674, 99 N. Y. Supp. 952; Citizens' State Bank *v.* Cowles, 180 N. Y. 346, 73 N. E. 33; Rosenthal *v.* Freedman, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 595, 103 N. Y. Supp. 714; Pease, etc., Co. *v.* State Nat. Bank, 114 Tenn. 693, 88 S. W. 172.

Check Procured by Fraud. — *Contra,* Loan, etc., Bank *v.* Farmers, etc., Bank, 74 S. Car. 210, 54 S. E. 364.

A Check the Fruits of a Gambling Contract is property about which parties are allowed to litigate, and its payment cannot be stopped after the contract is executed. Russell *v.* Kidd, (Tex. Civ. App. 1904) 84 S. W. 273. See generally the title GAMBLING CONTRACTS.

Telegram Placed in Bank's Letter Box Insufficient Countermand. — Curtice *v.* London City, etc., Bank, 24 Times L. Rep. 176.

2. Pease, etc., Co. *v.* State Nat. Bank, 114 Tenn. 693, 88 S. W. 172.

3. When the Deposit Is Garnished the bank is not liable for damages for refusing to honor a check drawn against it. Kent *v.* Ozan Bank, (Ark. 1906) 94 S. W. 700.

1080. **1. Death of Drawer.** — Fisher *v.* Ludwig, (Cal. App. 1907) 91 Pac. 658.

In Pennell *v.* Ennis, 126 Mo. App. 355, 103 S. W. 147, it was held that a check drawn on the drawer's general account, neither accepted nor paid prior to the death of the drawer, does not constitute a gift, for want of a complete delivery, a check being only a promise to pay. But see Phinney *v.* State, 36 Wash. 236, 78 Pac. 927, stated *supra,* this title, **1064.** *2.*

CHILD — CHILDREN.

1085. **1.** Gorringe *v.* Mahlstedt, (1907) A. C. 225; Duckett's Estate, 214 Pa. St. 362, 63 Atl. 830.

1089. **1.** *In re* Olney, 27 R. I. 495, 63 Atl. 956.

Children Distinguished from Issue. — In Duckett's Estate, 214 Pa. St. 362, 63 Atl. 830, it was said: "If the word were 'issue,' beyond doubt remoter descendants would take under the devise; but the word 'issue' having been found to mean 'children,' none but those within the class so indicated can take."

1090. **1. "Issue" Read as "Children."** — Brisbin *v.* Huntington, 128 Iowa 166, 5 Ann. Cas. 931, 103 N. W. 144; Duckett's Estate, 214 Pa. St. 362, 63 Atl. 830.

1091. **1. Limitations Over.** — Beckley *v.* Riegert, 212 Pa. St. 91, 61 Atl. 641.

1092. **1. "Children" Held Word of Purchase and Not Construed as Equivalent to "Heirs."** — Wills *v.* Foltz, 61 W. Va. 262, 56 S. E. 473, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1092.

1093. **1.** Strawbridge *v.* Strawbridge, 220 Ill. 61, 77 N. E. 78, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1093; Dick *v.* Ricker, 222 Ill. 413, 78 N. E. 823, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1092; Beckley *v.* Riegert, 212 Pa. St. 91, 61 Atl. 641.

1094. **1. "Heirs" Held Not to Be Equivalent to "Children."** — *In re* Olney, 27 R. I. 495, 63 Atl. 956.

1095. **1.** Woolwich Union *v.* Fulham, (1906) 2 K. B. 240 (poor laws); Brisbin *v.* Huntington, 128 Iowa 166, 5 Ann. Cas. 931, 103 N. W. 144; Lynch *v.* Knoop, 118 La. 611, 43 So. 252, *citing* 5 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1095, 1096; Bealafeld *v.* Slaughenhaupt, 213 Pa. St. 565, 62 Atl. 1113.

Legitimized Children. — For evidence held to be insufficient to show legitimation, see Lee *v.* Bolden, (Tex. Civ. App. 1905) 85 S. W. 1027.

1097. **1. Succession.** — *In re* De Cigaran, 150 Cal. 682, 89 Pac. 833; Townsend *v.* Meneley, 37 Ind. App. 127, 74 N. E. 274; Swick *v.* Coleman, 218 Ill. 33, 75 N. E. 807; Brisbin *v.* Huntington, 128 Iowa 166, 5 Ann. Cas. 931, 103 N. W. 146; Reese *v.* Starner, (Md. 1907) 66 Atl. 443; Bettis *v.* Avery, 140 N. Car. 184, 52 S. E. 584.

1098. **1. "Children" Embracing Illegitimates.** — Frogley's Estate, (1905) P. 137, 74 L. J. P. 72, 92 L. T. N. S. 429, 54 W. R. 48, 21 Times L. Rep. 341; *In re* Loveland, (1906) 1 Ch. 542.

Grant of Probate to Illegitimate Child. — Frogley's Estate, (1905) P. 137.

2. Adopted Children. — Peterson's Estate, 212 Pa. St. 453, 61 Atl. 1005; *In re* Olney, 27 R. I. 495, 63 Atl. 956.

Wills. — In Cochran *v.* Cochran, (Tex. Civ. App. 1906) 95 S. W. 731, it was held that a devise to the "child or children of a named person could not be construed to be a devise to the adopted heir of such person." But in *In re* Truman, 27 R. I. 209, 61 Atl. 598, a devise to the "children or issue" of a deceased brother was held to include an adopted child when the intention of the testatrix was clear to that effect.

CHINESE EXCLUSION ACTS.

1102. **7. Subsequent Legislation** on the subject is included in the treaty of December 8, 1894, and Act Cong. April 29, 1902, amended by Act Cong. April 27, 1904. See Hong Wing *v.* U. S., (C. C. A.) 142 Fed. 128.

11. U. S. *v.* Ngum Lun May, 153 Fed. 209.

1103. **1. Persons within Acts.** — The term "laborers" is not confined solely to manual laborers, under the Act of 1893. U. S. *v.* Yee Gee You, (C. C. A.) 152 Fed. 157.

3. Merchants within Meaning of McCreary Act of 1893. — For evidence held in the first case to be sufficient and in the second case insufficient to prove that the defendants were merchants, see U. S. *v.* Lee Wing, 136 Fed. 701; U. S. *v.* Ngum Lun May, 153 Fed. 209.

Burden of Proof. — Low Foon Yin *v.* U. S. Immigration Com'r, (C. C. A.) 145 Fed. 791; Toy Tong *v.* U. S., (C. C. A.) 146 Fed. 343; Lee Yuen Sue *v.* U. S., (C. C. A.) 146 Fed. 670; U. S. *v.* Lam Jung Sing, 151 Fed. 715; U. S. *v.* Yee Gee You, (C. C. A.) 152 Fed. 157.

When a Chinese Merchant Became a Laborer, after the passing of the Chinese Exclusion Act, he was not thereby rendered subject to deportation. U. S. *v.* Seid Bow, 139 Fed. 56; *Ex p.* Ow Guen, 148 Fed. 926; U. S. *v.* Quong Chee, (Ariz. 1907) 89 Pac. 525.

Marriage to a Chinese Inhabitant who belongs to the prohibited class will not legalize the presence in the United States of a Chinese woman unlawfully entering it. U. S. *v.* Ah Sou, (C. C. A.) 138 Fed. 775.

Minor Children of a Chinese merchant resident in the United States are entitled to enter and remain. U. S. *v.* Chin Sing, 153 Fed. 590. But a person lawfully entering as the minor son of a resident Chinese merchant, and afterwards becoming a laborer before the Registration Act was passed, is liable to deportation if not registered. U. S. *v.* Joe Dick, 134 Fed. 988.

Adopted Children of a Chinese merchant domiciled in the United States may lawfully be brought in. *Ex p.* Fong Yim, 134 Fed. 938.

1104. **1. Persons Born in United States.** — Lee Yuen Sue *v.* U. S., (C. C. A.) 146 Fed. 670; Moy Suey *v.* U. S., (C. C. A.) 147 Fed. 697; U. S. *v.* Loy Too, 147 Fed. 750, *affirmed* (C. C. A.) 152 Fed. 1022; U. S. *v.* Lam Jung Sing, 151 Fed. 715; Ho Ngen Jung *v.* U. S., 153 Fed. 232; Pang Sho Yin *v.* U. S., (C. C. A.) 154 Fed. 660.

2. Being Minor Does Not Exempt from Duty to Register. — U. S. *v.* Joe Dick, 134 Fed. 988.

Effect of Certificate of Residence. — A certificate of residence obtained under the McCreary Act has been held to vacate an order for deportation previously made by a United States District Court. *In re* Tom Hon, 149 Fed. 842.

6. Mar Sing *v.* U. S., (C. C. A.) 137 Fed. 875; Lee Won Jeong *v.* U. S., (C. C. A.) 145 Fed. 512; Lee Joe Yen *v.* U. S., (C. C. A.) 148 Fed. 682.

Evidence of Nationality. — The appearance of the defendant, his dress, physiognomy, queue, etc., have been held to be sufficient, in the absence of contrary proof, to show that he was Chinese. Low Foon Yin *v.* U. S. Immigration Com'r, (C. C. A.) 145 Fed. 791.

Who May Hear Charges. — The commissioners of immigration have jurisdiction of charges growing out of the Chinese Exclusion Acts. Low Foon Yin *v.* U. S. Immigration Com'r, (C. C. A.) 145 Fed. 791.

Review of Judgment. — Section 13 of the Act of Sept. 13, 1888, provides that a judgment of deportation entered by a United States commissioner may be appealed from to the United States District Court within ten days from the date of the judgment. U. S. *v.* Yuen Yee Sum, 153 Fed. 494; U. S. *v.* Loy Too, 147 Fed. 750.

It would appear, however, that a judgment of the United States commissioner discharging the defendant is conclusive and not reviewable by the courts, nor can the person be afterwards proceeded against in the District Court. Wong Sang *v.* U. S., (C. C. A.) 144 Fed. 968; Toy Tong *v.* U. S., (C. C. A.) 146 Fed. 343; U. S. *v.* Yeung Chu Keng, 140 Fed. 748. But see U. S. *v.* Yee Gee You, (C. C. A.) 152 Fed. 157, where the government was permitted to sue out a writ of error to the United States Circuit Court from an order of the District Court discharging the defendant. See also U. S. *v.* Ju Toy, 198 U. S. 253, 25 U. S. Sup. Ct. 644, where an appeal by the government was allowed, apparently as a matter of course, from a judgment of discharge.

A Writ of Habeas Corpus may issue from the United States District Court to determine whether a Chinese subject is being illegally excluded. *Ex p.* Fong Yim, 134 Fed. 938.

7. Mar Sing *v.* U. S., (C. C. A.) 137 Fed. 875; U. S. *v.* Yee Gee You, (C. C. A.) 152 Fed. 157.

1105. 1. U. S. *v.* Ju Toy, 198 U. S. 253, 25 U. S. Sup. Ct. 644; Low Foon Yin *v.* U. S. Immigration Com'r, (C. C. A.) 145 Fed. 791; Toy Tong *v.* U. S., (C. C. A.) 146 Fed. 343; *In re* Lam Jung Sing, 150 Fed. 608; U. S. *v.* Ngum Lun May, 153 Fed. 209.

3. U. S. *v.* Ju Toy, 198 U. S. 253, 25 U. S. Sup. Ct. 644; *Ex p.* Ng Quong Ming, 135 Fed. 378; Ow Yang Dean *v.* U. S., (C. C. A.) 145 Fed. 801; *Ex p.* Ow Guen, 148 Fed. 926.

5. The Term "Vessel" is broad enough to include tackle, apparel, furniture, and appurtenances. The Frolic, 148 Fed. 921.

6. Where the Violation Was Committed by One Not Authorized by the Owner of the vessel, it was held in The Frolic, 148 Fed. 918, that the vessel was nevertheless subject to condemnation.

CHOICE.

1. 3. **Choice and Strictly Choice Synonymous in Contract of Sale.** — Ennis Brown Co. *v.* Hurst, 1 Cal. App. 752, 82 Pac. 1056.

CITE.

13. 3. Wilson *v.* Maher, 17 Ohio Dec. 134, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 13.

CITIZENSHIP.

15. 2. Devanney *v.* Hanson, 60 W. Va. 3, 53 S. E. 603, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 15.

16. 4. **Presumption from Residence.** — Buckley *v.* McDonald, 33 Mont. 483, 84 Pac. 1114; State *v.* Jackson, 79 Vt. 504, 65 Atl. 657; Devanney *v.* Hanson, 60 W. Va. 3, 53 S. E. 603.

17. 1. Ehrlich *v.* Weber, 114 Tenn. 711, 88 S. W. 188.

19. 6. **Limitation on Right of Suffrage.** — A provision in a state constitution limiting the right of suffrage to those admitted to citizenship three months is not an abridgment of the privileges of citizens of the United States. State *v.* Weber, 96 Minn. 422, 105 N. W. 490.

21. 3. **Court of Record Having Common-law Jurisdiction Defined.** — State *v.* Weber, 96 Minn. 422, 105 N. W. 490.

22. 2. State *v.* Libby, (Wash. 1907) 92 Pac. 350.

23. 4. **Foreigner Must Take Oaths of Allegiance and Renunciation — Taking Preliminary Oath of Intention Insufficient.** — State *v.* Collister, 27 Ohio Cir. Ct. 529.

8. After Pleading Guilty to a Serious Offense, a person cannot be admitted to citizenship for five years. *In re* Guliano, 156 Fed. 420.

24. 2. Tinn *v.* U. S. District Atty., 148 Cal. 773, 84 Pac. 152; State *v.* Weber, 96 Minn. 422, 105 N. W. 490.

25. 1. Tinn *v.* U. S. District Atty., 148 Cal. 773, 84 Pac. 152; Peterson *v.* State, (Tex. Civ. App. 1905) 89 S. W. 81, holding that the state cannot bring suit to set aside a judgment admitting to citizenship procured through fraud in a state court, although the United States may sue for that purpose.

27. 3. U. S. *v.* Raisch, 144 Fed. 486; Green *v.* U. S., (C. C. A.) 150 Fed. 360.

28. 1. **Children Born Out of United States.** — Buckley *v.* McDonald, 33 Mont. 483, 84 Pac. 1114.

29. 1. **Inchoate Status of Minor.** — State *v.* Jackson, 79 Vt. 504, 65 Atl. 657.

Children Detained at Ellis Island in the custody of the immigration officers are not "dwelling in the United States" and do not become citizens by their father's naturalization while they are so detained. U. S. *v.* Williams, 132 Fed. 894.

An Alien Child Who Has Never Dwelt in the United States, coming to join a naturalized parent, is not a citizen and may be debarred from landing, when afflicted with a dangerous contagious disease within the Federal Statute. Zartarian *v.* Billings, 204 U. S. 170, 27 U. S. Sup. Ct. 182.

31. 2. **Actual Removal and Intention to Acquire New Citizenship Essential.** — Evidence of an actual removal or a continued residence abroad with a fixed purpose to throw off the former allegiance must be produced in order to prove a change of citizenship. State *v.* Jackson, 79 Vt. 504, 65 Atl. 657.

32. 3. Stevens *v.* Larwill, 110 Mo. App. 156, 84 S. W. 113, *quoting* 6 AM. AND ENG. ENG. ENCYC. OF LAW (2d ed.) 34.

CITY.

32. 4. **City and Town Synonymous Terms.** — Bailey *v.* Hunt, 27 Quebec Super. Ct. 90, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 32, 33.

CIVIL.

34. 3. Ensley Development Co. *v.* Powell, 147 Ala. 305, 40 So. 137, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34.

CIVIL DAMAGE ACTS.

37. 7. Choate *v.* Vlha, (Tex. Civ. App. 1905) 89 S. W. 1082.

41. 1. Garrigan *v.* Kennedy, 19 S. Dak. 11, 8 Ann. Cas. 1125, 101 N. W. 1081.

42. 1. **In Michigan** it does not matter whether it is a sale or gift. Hilliker *v.* Farr, 149 Mich. 444, 112 N. W. 1116.

2. Sullivan *v.* Conrad, (Neb. 1907) 112 N. W. 660.

43. 5. See Kelley *v.* Malhoit, 115 Ill. App. 23.

44. 1. Triggs *v.* McIntyre, 215 Ill. 369, 74 N. E. 400; Danley *v.* Hibbard, 222 Ill. 88, 78 N. E. 39, *affirming* 123 Ill. App. 666; Kelley *v.* Malhoit, 115 Ill. App. 23; Currier *v.* McKee, 99 Me. 364, 3 Ann. Cas. 57, 59 Atl. 442; Jessen *v.* Willhite, 74 Neb. 608, 104 N. W. 1064.

45. 3. Earp *v.* Lilly, 217 Ill. 582, 75 N. E. 552, *affirming* 120 Ill. App. 123 (to the same effect as Lane *v.* Tippy, 52 Ill. App. 532, cited in the original note).

46. 1. **Proximate Cause.** — Anderson *v.* Diaz, 77 Ark. 606, 92 S. W. 861; Johnson *v.* Johnson, 145 Mich. 586, 108 N. W. 1011; Andresen *v.* Jetter, (Neb. 1906) 107 N. W. 789.

Question of Proximate Cause Usually for Jury. — Botwinis *v.* Allgood, 113 Ill. App. 188; Currier *v.* McKee, 99 Me. 364, 3 Ann. Cas. 57, 59 Atl. 442; Temme *v.* Schmidt, 210 Pa. St. 507, 60 Atl. 158; Garrigan *v.* Kennedy, 19 S. Dak. 11, 8 Ann. Cas. 1125, 101 N. W. 1081.

Death by Suffocation. — Where the deceased was so intoxicated that he was unable to extricate himself from a position into which he had fallen, and as a result died of suffocation, it was held that the intoxication was the proximate cause of the death. Triggs *v.* McIntyre, 115 Ill. App. 257, *affirmed* 215 Ill. 369, 74 N. E. 400.

Killed on Railroad Track — Intoxication as Proximate Cause of Accident. — Kelley *v.* Malhoit, 115 Ill. App. 23.

47. 1. **Need Not Be Proximate Cause.** — Zibold *v.* Beneer, 73 Kan. 312, 85 Pac. 290; Bistline *v.* Ney, 134 Iowa 172, 111 N. W. 422;

Currier *v.* McKee, 99 Me. 364, 3 Ann. Cas. 57, 59 Atl. 442; Wiese *v.* Gerndorf, 75 Neb. 826, 106 N. W. 1025.

48. 1. Zibold *v.* Beneer, 73 Kan. 312, 85 Pac. 290.

3. Bistline *v.* Ney, 134 Iowa 172, 111 N. W. 422; Garrigan *v.* Kennedy, 19 S. Dak. 11, 8 Ann. Cas. 1125, 101 N. W. 1081.

5. Mathre *v.* Story City Drug Co., 130 Iowa 111, 8 Ann. Cas. 275, 106 N. W. 368.

An Express Company Is Not Liable because it carried a C. O. D. package of liquor to the plaintiff's husband. Chambers *v.* Adams Express Co., 128 Iowa 154, 103 N. W. 152.

49. 1. Triggs *v.* McIntyre, 115 Ill. App. 257.

50. 4. Hilliker *v.* Farr, 149 Mich. 444, 112 N. W. 1116.

The Liability of Sureties Is Not Destroyed by the death of the principal. State *v.* Soale, 36 Ind. App. 73, 74 N. E. 1111; Garrigan *v.* Huntimer, (S. Dak. 1905) 105 N. W. 278.

51. 1. **Injury to Plaintiff's Feelings.** — The jury may consider the fact that the child had been intoxicated at other times, in estimating the injury to the plaintiff's feelings. Bailey *v.* Briggs, 143 Mich. 303, 106 N. W. 863.

3. Judson *v.* Parry, 38 Wash. 37, 80 Pac. 194.

4. **Money Paid for Liquor.** — See *contra,* Manzer *v.* Phillips, 139 Mich. 61, 102 N. W. 292.

52. 1. Mathre *v.* Devendorf, 130 Iowa 107, 106 N. W. 366.

The gist of the action is the injury to the means of support and not the personal injuries of the intoxicated person. Nelson *v.* Nevels, (Neb. 1907) 113 N. W. 119.

Loss of Position Due to Intoxication is proper evidence for the jury. Mathre *v.* Story City Drug Co., 130 Iowa 111, 8 Ann. Cas. 275, 106 N. W. 368.

4. Where the only complaint was that the husband did not save as much money as he would have if he kept sober it was held that there was no cause of action, as there was no injury to plaintiff's means of support. Manzer *v.* Phillips, 139 Mich. 61, 102 N. W. 293.

56. 2. **Aggrieved Party.** — Under a statute allowing an "aggrieved party" to sue, it was held that a widow might sue for injury caused by the sale of liquor to her adult son. Coughtry *v.* Haupt, (Tex. Civ. App. 1907) 105 S. W. 516.

The Rights of Action of the Widow and Children are separate and distinct. Stecker *v.* People, 217 Ill. 348, 75 N. E. 501.

A Mother, under Legal Obligation to Support Her Son because of his habitual intoxication, may bring an action. Danley *v.* Hibbard, 222 Ill. 88, 78 N. E. 39, *affirming* 123 Ill. App. 666.

A Posthumous Child has a right of action for loss of support. State *v.* Soale, 36 Ind. App. 73, 74 N. E. 1111.

59. 1. Leverenz *v.* Stevens, 124 Ill. App. 401 (to the same effect as Lloyd *v.* Kelly, 48 Ill. App. 554, cited in the original note).

A statement made by the wife to the defendant that she "would not object to an occasional drink, if he would drink and go about his business," was held not to bar recovery. Earp *v.* Lilly, 217 Ill. 582, 75 N. E. 552, *affirming* 120 Ill. App. 123.

In an action on a liquor dealer's bond for selling liquor to a minor it was held that the fact that the plaintiff was willing to a violation of the bond did not, as a matter of law, bar recovery. Wakeham *v.* Price, (Tex. Civ. App. 1905) 89 S. W. 1093.

4. **Liable for All Damages.** — Where the plaintiff's husband became an habitual drunkard it was held that the defendants were liable, not only for the damages occurring during the period they furnished the liquor, but for all damages without reference to the length of time through which they may continue. Jessen *v.* Willhite, 74 Neb. 608, 104 N. W. 1064.

60. 4. Johnson *v.* Johnson, 145 Mich. 586, 108 N. W. 1011.

Under the *Illinois* statute, exemplary damages may be assessed against the owner of the premises. Beckerle *v.* Brandon, 229 Ill. 323, 82 N. E. 266.

61. 1. Leverenz *v.* Stevens, 124 Ill. App. 401; Manzer *v.* Phillips, 139 Mich. 61, 102 N. W. 292; Merrinane *v.* Miller, 148 Mich. 412, 111 N. W. 1050.

3. Earp *v.* Lilly, 217 Ill. 582, 75 N. E. 552, *affirming* 120 Ill. App. 1[illegible]

Sales in Disregard of Notice Not to Sell. — Danley *v.* Hibbard, 222 Ill. 88, 78 N. E. 39 (to the same effect as Rouse *v.* Melsheimer, 82 Mich. 172, 46 N. W. 372, cited in the original note).

Illegal Selling May Be Considered in determining whether the acts of the defendant were wilful and wanton. Merrinane *v.* Miller, 148 Mich. 412, 111 N. W. 1050.

62. 2. Earp *v.* Lilly, 217 Ill. 582, 75 N. E. 552, *affirming* 120 Ill. App. 123; Beckerle *v.* Brandon, 229 Ill. 323, 82 N. E. 266.

It is not a defense that the husband was an habitual drunkard and did not support his wife. Leverenz *v.* Stevens, 124 Ill. App. 401.

The Fact that the Liquor was Obtained on a Forged Order was held to be no excuse. Bailey *v.* Briggs, 143 Mich. 303, 106 N. W. 863.

63. 4. Earp *v.* Lilly, 217 Ill. 582, 75 N. E. 552, *affirming* 120 Ill. App. 123; Wiese *v.* Gerndorf, 75 Neb. 826, 106 N. W. 1025; Ellis *v.* Brooks, (Tex. 1907) 102 S. W. 94.

The Situation and Condition of the Plaintiff and her dependence upon her husband are proper matters to submit to the jury. Martin *v.* Fisher, 143 Mich. 462, 107 N. W. 86.

CIVIL RIGHTS.

69. 6. Merchants' Nat. Bank *v.* Ford, (Ky. 1907) 99 S. W. 260; Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689.

Corporations Not Citizens. — Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168.

73. 1. **No Security for Right of Citizen of State within His Own State.** — McCarter *v.* Hudson County Water Co., (N. J. 1906) 65 Atl. 489.

The Right to Hold Office is not included within the meaning of "privileges and immunities." *In re* Mulford, 217 Ill. 242, 3 Ann. Cas. 986, 75 N. E. 345; Shaw *v.* Marshalltown, 131 Iowa 128, 9 Ann. Cas. 1039, 104 N. W. 1121.

75. 4. Shaw *v.* Marshalltown, 131 Iowa 128, 9 Ann. Cas. 1039, 104 N. W. 1121.

6. U. S. *v.* Adair, 152 Fed. 737; Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52.

77. 2. State *v.* Weber, 96 Minn. 422, 105 N. W. 496.

6. A Woman Is a "Person" within the meaning of the amendment. Carrithers *v.* Shelbyville, (Ky. 1907) 104 S. W. 744.

78. 1. McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Carrithers *v.* Shelbyville, (Ky. 1907) 104 S. W. 744.

3. Phipps *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 456.

80. 2. White *v.* Bracelin, 144 Mich. 332, 8 Ann. Cas. 256, 107 N. W. 1055; People *v.* Warden, 183 N. Y. 223, 76 N. E. 11.

81. 6. Washington *v.* State, (Tex. Crim. 1907) 103 S. W. 879.

7. Martin *v.* Texas, 200 U. S. 316, 26 U. S. Sup. Ct. 338; Montgomery *v.* State, 53 Fla. 115, 42 So. 894; Thomas *v.* State, (Tex. Crim. 1906) 95 S. W. 1069.

82. 1. State *v.* West, 116 La. 626, 40 So. 920, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 82.

83. 1. Patterson *v.* Taylor, 51 Fla. 275, 40 So. 493.

84. 1. Berea College *v.* Com., (Ky. 1906) 94 S. W. 623; State *v.* Wolf, (N. Car. 1907) 59 S. E. 40.

85. 3. Greenberg *v.* Western Turf Assoc., 148 Cal. 126, 82 Pac. 684; Humburd *v.* Crawford, 128 Iowa 743, 105 N. W. 330.

86. 1. Colored Nurses Having the Care of White Children cannot be exempted from the provisions of the statute. State *v.* Patterson, 50 Fla. 127, 7 Ann. Cas. 272, 39 So. 398. *Compare* Morrison *v.* State, 116 Tenn. 534, 95 S. W. 494.

87. 2. Cartwright *v.* Board of Education, 73 Kan. 32, 84 Pac. 382.

CIVIL SERVICE.

91. 1. People *v.* Milliken, 110 N. Y. App. Div. 579, 97 N. Y. Supp. 223.

A Rule of a Civil Service Commission, which contravenes a provision in the city's charter, is void. Hale *v.* Worstell, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 339, 95 N. Y. Supp. 485.

92. 1. An Indorsement of Two Citizens that an applicant for appointment as laborer under the civil service regulations of Greater New York possesses the necessary qualifications, may dispense with a personal examination by the commission. Burke *v.* Holtzmann, 110 N. Y. App. Div. 564, 97 N. Y. Supp. 218.

6. A Certificate of the Civil Service Commission that an applicant is eligible for appointment as policeman is conclusive as to the applicant's eligibility upon the police board. Matter of Lazenby, 116 N. Y. App. Div. 135, 101 N. Y. Supp. 5.

Under the New York Statute, the fact that a person stood highest on the list of eligibles for appointment to the office of inspector in the police department, does not require that he be appointed. People *v.* McAdoo, 110 N. Y. App. Div. 432, 96 N. Y. Supp. 362.

93. 1. Ransom *v.* Boston, 192 Mass. 299, 78 N. E. 481.

Iowa Act Constitutional. — Shaw *v.* Marshalltown, 131 Iowa 128, 9 Ann. Cas. 1039, 104 N. W. 1121.

94. 4. Discharge from Office. — Where a veteran employed by a city pursuant to the civil service rules of the city is wrongfully discharged, he may maintain an action for damages against the city. Ransom *v.* Boston, 192 Mass. 299, 78 N. E. 481; Bean *v.* Clausen, 113 N. Y. App. Div. 129, 99 N. Y. Supp. 44.

95. 1*a*. New Matter — Courts Will Not Interfere with a Classification made by a civil service commission, where they acted within their authority. People *v.* McWilliams, 185 N. Y. 92, 77 N. E. 785.

Transfers. — An employee may be transferred from an exempt class to a competitive class, though he did not stand highest on the eligible list. Peters *v.* Adam, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 29, 106 N. Y. Supp. 158.

Promotions. — A rule of a civil service commission requiring a stated period of service in a lower grade before taking an examination for qualification to a higher grade, is valid and constitutional. Matter of Ricketts, 111 N. Y. App. Div. 669, 98 N. Y. Supp. 502.

A Patrolman is not entitled to a promotion until the expiration of one year from the end of his probation term, under the civil service rules of Greater New York. People *v.* McAdoo, 110 N. Y. App. Div. 740, 96 N. Y. Supp. 445.

The Record of a Policeman During His Probationary Period cannot be considered in determining his rating for promotion. People *v.* Baker, (Supm. Ct. Spec. T.) 49 Misc. N. Y.) 143, 97 N. Y. Supp. 453.

An Advance from a Roundsman to a Detective Sergeant is a promotion within the meaning of the civil service regulations which require promotions to be made pursuant to examination. People *v.* McAdoo, 108 N. Y. App. Div. 1, 95 N. Y. Supp. 400, *affirmed* 185 N. Y. 537, 77 N. E. 1194; People *v.* McAdoo, 108 N. Y. App. Div. 355, 95 N. Y. Supp. 403; People *v.* McAdoo, 108 N. Y. App. Div. 356, 95 N. Y. Supp. 404; People *v.* McAdoo, 108 N. Y. App. Div. 356, 95 N. Y. Supp. 404; People *v.* McAdoo, 108 N. Y. App. Div. 355, 95 N. Y. Supp. 404; People *v.* McAdoo, 108 N. Y. App. Div. 355, 95 N. Y. Supp. 405; People *v.* McAdoo, 108 N. Y. App. Div. 355, 95 N. Y. Supp. 405.

Civil Service Rules for Promotion Do Not Apply to employees in the ungraded service. People *v.* Tully, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 275, 95 N. Y. Supp. 916.

Removals. — *In the Absence of Notice* to an employee against whom charges have been preferred, a civil service commission has no jurisdiction to hear charges against a civil service employee of a municipality. Powell *v.* Bullis,

221 Ill. 379, 77 N. E. 575; Chicago *v.* Gillen, 222 Ill. 112, 78 N. E. 13.

Cause for Removal. — Where it is provided by law that civil service employees may be removed for "cause," the statute being silent as to what constitutes "cause," the right to determine such question is within the jurisdiction of the civil service commission. Kammann *v.* Chicago, 222 Ill. 63, 78 N. E. 16.

False Statement in Application for Appointment is ground for removal of a policeman. People *v.* Lindblom, 215 Ill. 58, 74 N. E. 73.

Unlawfully Obtaining Money is ground for removing a policeman. Joyce *v.* Chicago, 216 Ill. 466, 75 N. E. 184.

CIVIL SUIT, ACTION, CASE, ETC.

96. 1. Suit in Equity — Injunction. — Ensley Development Co. *v.* Powell, 147 Ala. 305, 40 So. 137, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 96.

CLAIM.

99. 1. Other Definitions. — See Gordon *v.* Wageman, (Neb. 1906) 108 N. W. 1067.

CLASS.

108. 3. Class Legislation. — See Elba *v.* Rhodes, 142 Ala. 689, 38 So. 807.

CLEAR.

109. 3. Clear Proceeds in the Sense of Net Proceeds. — State *v.* Maultsby, 139 N. Car. 583, 51 S. E. 956.

CLERK.

131. 2. Secretary of Company Not Clerk — English Bankruptcy Act. — Cairney *v.* Back, (1906) 2 K. B. 746, 75 L. J. K. B. 1014.

CLERKS OF COURTS.

133. 1. Property In Custodia Legis. — *Ex p.* Brown, 166 Ind. 593, 78 N. E. 553.

Clerk Custodian of Records and Papers. — Dorrow *v.* Chicago, etc., R. Co., (Ind. 1907) 81 N. E. 1081, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 133.

A Clerk Cannot by Oral Authority Confer General Powers upon another to sign his name to executions. Biggers *v.* Winkles, 124 Ga. 990, 53 S. E. 397.

134. 1. Must Follow Statute in Issuing Process. — Lord *v.* Dowling, 52 Fla. 313, 42 So. 585.

3. An Appointee to Fill a Vacancy holds until there is a regular or intervening general election. Bodwell *v.* Rowland, 137 N. Car. 617, 50 S. E. 319.

A Clerk Appointed to Act until His Successor Is Duly Elected is not ousted by the election of a clerk at an election held prematurely. State *v.* Smith, 35 Mont. 523, 90 Pac. 750.

7. Watson *v.* Paschall, 73 S. Car. 413, 53 S. E. 646; Houston, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 97 S. W. 519.

Approval of Security for Costs. — Mayfield *v.* Tuscaloosa County Ct., 148 Ala. 548, 41 So. 932.

9. A Clerk May Administer Oaths before the court of which he is clerk. State *v.* Harter, 131 Iowa 199, 9 Ann. Cas. 764, 108 N. W. 232.

In Louisiana, clerks of court are authorized by statute to grant such orders and do such acts as may be necessary for the furtherance of justice, without any judicial approval. Holliday *v.* Hammond State Bank, 118 La. 1000, 43 So. 656.

135. 1. Where a clerk improperly refuses to file a paper, and later files it, it will be held that the date of filing relates back to the date when the papers were given to the clerk. Dowie *v.* Chicago, etc., R. Co., 214 Ill. 49, 73 N. E. 354.

3. Livingston County Bldg., etc., Assoc. *v.* Keach, 213 Ill. 59, 72 N. E. 769; Washington Nat. Bank *v.* Williams, 188 Mass. 103, 74 N. E. 470; Territory *v.* Woodring, 15 Okla. 203, 6 Ann. Cas. 950, 82 Pac. 572; Territory *v.* Reynolds, 15 Okla. 185, 186, 82 Pac. 574.

4. Moore *v.* Fannin, (Indian Ter. 1907) 104 S. W. 842.

136. 5. In Florida, when the clerk of court dies before the expiration of his term of office, it becomes the duty of the judge of the court to appoint a clerk to hold office until the governor can make an appointment to fill the unexpired term. State *v.* Givens, 48 Fla. 165, 37 So. 308.

137. 1. Fees of Clerks of Circuit and District Courts. — U. S. *v.* Keatley, 204 U. S. 562, 27 U. S. Sup. Ct. 404; Michigan Cent. R. Co. *v.* Harsha, (C. C. A.) 134 Fed. 217; Cudahy Packing Co. *v.* McGuire, 135 Fed. 891; Mohrstadt *v.* Mutual L. Ins. Co., 145 Fed. 751.

Fees of Clerks of Various State Courts — *Arkansas.* — Durden *v.* Sebastian County, 73 Ark. 305, 83 S. W. 1048; Hempstead County *v.* Harkness, 73 Ark. 600, 84 S. W. 799.

California. — Gaffey *v.* Mann, 3 Cal. App. 124, 84 Pac. 424.

Florida. — State *v.* McMillan, 49 Fla. 243, 6 Ann. Cas. 537, 38 So. 666.

Idaho. — Rhea *v.* Washington County, 12 Idaho 455, 88 Pac. 89.

Indiana. — Hargis *v.* Perry County, 165 Ind. 194, 73 N. E. 915; *Ex p.* Brown, 166 Ind. 593, 78 N. E. 553; State *v.* Williams, 39 Ind. App. 376, 77 N. E. 1137.

Kentucky. — Greenleaf *v.* Woods, (Ky. 1906) 96 S. W. 458.

Maryland. — State *v.* Turner, 101 Md. 584, 61 Atl. 334.

Minnesota. — State *v.* Rogers, 97 Minn. 322, 106 N. W. 345.

Missouri. — State *v.* Police Com'rs, 108 Mo. App. 98, 82 S. W. 960; Buckman *v.* Missouri, etc., R. Co., (Mo. App. 1906) 98 S. W. 820.

Nebraska. — Boettcher *v.* Lancaster County, 74 Neb. 148, 103 N. W. 1075; Sheibley *v.* Hurley, 74 Neb. 31, 103 N. W. 1082.

New Mexico. — Sena *v.* Bernalillo County, 12 N. Mex. 385, 78 Pac. 46.

New York. — Costa *v.* New York City R. Co., (N. Y. City Ct. Spec. T.) 100 N. Y. Supp. 558.

Tennessee. — Plyley *v.* Allison, 113 Tenn. 500, 82 S. W. 475.

Costs of the Clerk May Be Disallowed where the record on an appeal is in confusion. Sharp *v.* State, 117 Tenn. 537, 97 S. W. 812.

2. State *v.* Police Com'rs, 108 Mo. App. 98, 82 S. W. 960.

138. 1. Scarbrough *v.* Watson, 140 Ala. 349, 37 So. 281; Williams *v.* Willock, 123 Wis. 293, 101 N. W. 927.

5. U. S. *v.* Bell, (C. C. A.) 135 Fed. 336, recognizing the general rule of liability, but holding that the plaintiff had not been damaged.

A Clerk Is Liable Criminally for falsifying his accounts. State *v.* Haulin, 134 Iowa 493, 110 N. W. 162.

140. 3. In Kentucky it is a penal offense for a clerk to wrongfully withhold the name of a regularly nominated candidate from the official ballot. Com. *v.* Combs, 120 Ky. 368, 86 S. W. 697.

4. Taylor *v.* Gardner, (Tex. Civ. App. 1907) 99 S. W. 411.

6. State *v.* McMillan, 49 Fla. 243, 6 Ann. Cas. 537, 38 So. 666.

141. 3. Lanham *v.* Dies, (Tex. Civ. App. 1906) 98 S. W. 897.

142. 8. Milburn-Stoddard Co. *v.* Stickney, 14 N. Dak. 282, 103 N. W. 752.

143. 4. For a False Certificate of Acknowledgment a clerk is liable in damages. Samuels *v.* Brand, 119 Ky. 13, 82 S. W. 977.

In Taking an Acknowledgment, if the clerk uses such diligence as a reasonably prudent person would exercise, neither he nor his sureties are liable in damages to a person injured by the acknowledgment being false. Com. *v.* Johnson, (Ky. 1906) 96 S. W. 801.

A Clerk Is Liable in Damages for failing to transmit a transcript of the record in an action, the venue of which had been changed to another county. Higbee *v.* Spangler, 127 Mo. App. 220, 104 S. W. 1143.

144. 6. Whelan *v.* Reynolds, 101 Minn. 290, 112 N. W. 223.

CLOUD ON TITLE.

150. 1. Roby *v.* South Park Com'rs, 215 Ill. 200, 74 N. E. 125.

The Suspension of a Levy constitutes a cloud upon a title. Dunbar *v.* Kelly, 189 Mass. 390, 75 N. E. 740.

2. Birmingham *v.* McCormick, 145 Ala. 685, 40 So. 111.

3. Townsend *v.* Driver, (Cal. App. 1907) 90 Pac. 1071; Red Diamond Clothing Co. *v.* Steidemann, 120 Mo. App. 519, 97 S. W. 220, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 150.

151. 1. Personal Property in possession of the plaintiff, will not sustain an action to quiet title. Red Diamond Clothing Co. *v.* Steidemann, 120 Mo. App. 519, 97 S. W. 220.

152. 1. Costello *v.* Muheim, 9 Ariz. 422, 84 Pac. 906; Nugent *v.* Stofella, (Ariz. 1906) 84 Pac. 910; De Leonis *v.* Hammel, 1 Cal. App. 390, 82 Pac. 349; Lockwood *v.* Meade Land, etc., Co., 71 Kan. 739, 81 Pac. 496; Powell *v.* Crow, 204 Mo. 481, 102 S. W. 1024; Hudson *v.* Wright, 204 Mo. 412, 103 S. W. 8; Mount *v.* McAulay, 47 Oregon 444, 83 Pac. 529; Richey *v.* Bues, 31 Utah 262, 87 Pac. 903; Cushing *v.* Spokane, 45 Wash. 193, 87 Pac. 1121.

4. The Sailors *v.* Woelfle, 118 Tenn. 755, 102 S. W. 1109, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152.

153. 1. Collinsworth *v.* Enterprise Land, etc., Co., (Ky. 1907) 99 S. W. 234; Bucher *v.* Hohl, 199 Mo. 320, 97 S. W. 922; Parks *v.* Worthington, (Tex. Civ. App. 1907) 104 S. W. 921; Turner *v.* Ladd, 42 Wash. 274, 84 Pac. 850.

3. *Alabama.* — Bradley *v.* Bell, 142 Ala. 382, 38 So. 759.

Illinois. — Roby *v.* South Park Com'rs, 215 Ill. 200, 74 N. E. 125, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153; Petty *v.* Beers, 224 Ill. 129, 79 N. E. 704.

Maine. — Smith *v.* Libby, 101 Me. 338, 64 Atl. 612.

Massachusetts. — Revere Water Co. *v.* Winthrop, (Mass. 1906) 78 N. E. 497.

Mississippi. — Jones *v.* Rogers, 85 Miss. 802, 38 So. 742; Gambrell Lumber Co. *v.* Saratoga Lumber Co., 87 Miss. 773, 40 So. 485.

Texas. — Openshaw *v.* Rickmeyer, (Tex. Civ. App. 1907) 102 S. W. 467.

Plaintiff Must Succeed on Strength of His Own Title. — Mason *v.* Gates, 82 Ark. 294, 102 S. W. 190.

The Validity of all Claims Set Forth in the Defendant's Answer must be determined by the court. Spencer *v.* Beiseker, 15 N. Dak. 140, 107 N. W. 189.

156. 1. See Weller *v.* Gadsden, 141 Ala. 642, 3 Ann. Cas. 981, 37 So. 682, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 155.

2. A Patent for Lands is presumed to have been issued to the proper persons. Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609.

The State may maintain an action to establish the validity of a tax deed. State *v.* Coughran, 19 S. Dak. 271, 103 N. W. 31.

4. *California.* — Reiner *v.* Schroeder, 146 Cal. 411, 80 Pac. 517; Dorris *v.* McManus, 4 Cal. App. 147, 87 Pac. 287.

Illinois. — Glos *v.* Greiner, 226 Ill. 546, 80 N. E. 1055, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 156.

Kentucky. — Fox *v.* Cornett, (Ky. 1906) 92 S. W. 959.

Mississippi. — Kennedy *v.* Sanders, (Miss. 1907) 43 So. 913.

New York. — Brown *v.* Brown, 110 N. Y. App. Div. 913, 96 N. Y. Supp. 1002.

Texas. — Laffare *v.* Knight, (Tex. Civ. App. 1907) 101 S. W. 1034.

Virginia. — Tax Title Co. *v.* Denoon, (Va. 1907) 57 S. E. 586.

Washington. — Coates *v.* Teabo, 44 Wash. 271, 87 Pac. 355.

Complainant's Title Must Be Valid — *Alabama.* — Southern R. Co. *v.* Hall, 145 Ala. 224, 41 So. 135.

Arkansas. — Carpenter *v.* Smith, 76 Ark. 447, 88 S. W. 976.

California. — Meyer *v.* O'Rourke, 150 Cal. 177, 88 Pac. 706.

Florida. — Gibson *v.* Tuttle, 53 Fla. 979, 43 So. 310; Basco *v.* Doyle, 50 Fla. 488, 39 So. 103.

Georgia. — Adams *v.* Johnson, 129 Ga. 611, 59 S. E. 269.

Idaho. — Coleman *v.* Jaggers, 12 Idaho 125, 85 Pac. 894.

Illinois. — Stannard *v.* Aurora, etc., R. Co., 220 Ill. 469, 77 N. E. 254; Glos *v.* Ptacek, 226 Ill. 188, 80 N. E. 727.

Kansas. — Parker *v.* Conrad, 74 Kan. 111, 85 Pac. 810.

Missouri. — Rausch *v.* Michel, 192 Mo. 293, 91 S. W. 99.

Virginia. — Lennig *v.* Harrisburg Land, etc., Co., (Va. 1907) 59 S. E. 400, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 156.

Washington. — Boyer *v.* Robison, 43 Wash. 97, 86 Pac. 385.

West Virginia. — Mills *v.* Henry Oil Co., 57 W. Va. 255, 4 Ann. Cas. 427, 50 S. E. 157; Holderby *v.* Hagan, 57 W. Va. 341, 4 Ann. Cas. 401, 50 S. E. 437; Wallace *v.* Elm Grove Coal Co., 58 W. Va. 449, 52 S. E. 485; Logan *v.* Ward, 58 W. Va. 366, 52 S. E. 398; Whitehouse *v.* Jones, 60 W. Va. 680, 55 S. E. 730.

The complainant cannot maintain an action after he has conveyed his interest or is adjudged a bankrupt. Allen *v.* Foss, 102 Me. 163, 66 Atl. 379.

He may show a chain of title from the state, or by adverse possession. Marshall *v.* Corbett, 137 N. Car. 555, 50 S. E. 210.

A conveyance by a married woman to secure a debt of her husband, being void under the statute, equity cannot be invoked to clear the title. Patterson *v.* Simpson, 147 Ala. 550, 41 So. 842.

Remedy Given to True Owner. — Weyman *v.* Atlanta, 122 Ga. 539, 50 S. E. 492.

The Burden of Proving Title is on the plaintiff. Keller *v.* McGilliard, (Cal. App. 1907) 90 Pac. 483.

One Who Holds an Equitable Fee will be treated as the owner and may maintain a suit against the record title. Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709.

Complainant's Title Need Not Be Indefeasible as against Whole World. — Graton *v.* Holliday-Klotz Land, etc., Co., 189 Mo. 322, 87 S. W. 37.

Where Both Parties Agree on a Common Source of Title the plaintiff need not go back of such common source. Harrison Mach. Works *v.* Bowers, 200 Mo. 219, 98 S. W. 770.

When the Plaintiff's Title Is by a Patent from the county, the defendant may show want of consideration to the county. Wheeler *v.* Reynolds Land Co., 193 Mo. 279, 91 S. W. 1050; Ferguson *v.* Girard Trust Co., (Mo. 1906) 91 S. W. 1055.

The Plaintiff Need Not Establish Title from the Government when the defendant's claim is through a tax proceeding. Gage *v.* Cantwell, 191 Mo. 698, 91 S. W. 119.

157. 3. Siedschlag *v.* Griffin, (Wis. 1907) 112 N. W. 18.

4. Jackson Milling Co. *v.* Scott, 130 Wis. 267, 110 N. W. 184.

7. Scottish-American Mortg. Co. *v.* Bunckley, 88 Miss. 641, 41 So. 502.

158. 1. *Alabama.* — Kendrich *v.* Colyar, 143 Ala. 597, 42 So. 110.

California. — Oldham *v.* Ramsner, 149 Cal. 540, 87 Pac. 18; Harris *v.* Harris, (Cal. App. 1906) 88 Pac. 384; McLean *v.* Baldwin, 150 Cal. 615, 89 Pac. 429.

Kansas. — Crane *v.* Cheney, (Kan. 1907) 91 Pac. 67.

Kentucky. — Begley *v.* Dixon, (Ky. 1907) 101 S. W. 963.

Nebraska. — McMaster *v.* Douhit, (Neb. 1906) 110 N. W. 574.

Washington. — Ferrell *v.* Lord, 43 Wash. 667, 86 Pac. 1060.

A Sheriff's Deed under foreclosure vests a fee, which in the absence of actual entry and adverse possession by another, authorizes an action to quiet title. Keener *v.* Wilkinson, 33 Colo. 445, 80 Pac. 1043.

159. 2. Bolen *v.* Allen, (Ala. 1907) 43 So. 202; Foote *v.* Brown, 78 Conn. 369, 62 Atl. 667; Livingston County Bldg., etc., Assoc. *v.* Keach, 219 Ill. 9, 76 N. E. 72; Fearl *v.* Johnstown, 216 Pa. St. 205, 65 Atl. 549; Mash *v.* Bloom, 130 Wis. 366, 110 N. W. 203.

3. Brown *v.* Doherty, 185 N. Y. 383, 78 N. E. 147; Whitehouse *v.* Jones, 60 W. Va. 680, 55 S. E. 730, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 159.

160. 1. Whitehouse *v.* Jones, 60 W. Va. 680, 55 S. E. 730, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 160.

2. Dorris *v.* McManus, 3 Cal. App. 576, 86 Pac. 909; Hodges *v.* Wheeler, 126 Ga. 848, 56 S. E. 76; Pence *v.* Long, 38 Ind. App. 63, 77 N. E. 961; Strong *v.* Whybark, 204 Mo. 341, 102 S. W. 968; Reynolds *v.* Rickgauer, 75 Neb. 163, 106 N. W. 175; Burns *v.* Kennedy, (Oregon 1907) 90 Pac. 1102; Du Bose *v.* Kell, 76 S. Car. 313, 56 S. E. 968.

161. 4. Drum *v.* Bryan, 145 Ala. 686, 40 So. 131; Krugmeier *v.* Hackett, (Wis. 1907) 113 N. W. 1103.

A Mortgage Given by One Other than the Owner will constitute a cloud. Pritchard *v.* Lewis, 125 Wis. 604, 104 N. W. 989.

162. 1. Mitchell *v.* Bickford, 192 Mass. 244, 78 N. E. 453; Flint Land Co. *v.* Fochtman, 140 Mich. 341, 103 N. W. 813; Scottish-American Mortg. Co. *v.* Bunckley, 88 Miss. 641, 41 So. 502; Peterson *v.* Ramsey, (Neb. 1907) 110 N. W. 728.

163. 3. Spar Consol. Min. Co. *v.* Casserleigh, 34 Colo. 454, 83 Pac. 1058; Payne *v.* Daviess County Sav. Assoc., 126 Mo. App. 593, 105 S. W. 15; Dueber *v.* Wolfe, (Wash. 1907) 92 Pac. 455.

4. Pettit *v.* Coachman, 51 Fla. 521, 41 So. 401; Morehead *v.* Allen, 127 Ga. 510, 56 S. E. 745; Rasmussen *v.* Hagler, 15 N. Dak. 542, 108 N. W. 541.

164. 4. Sugar *v.* Froehlich, 229 Ill. 397, 82 N. E. 414; Bales *v.* Roberts, 189 Mo. 49, 87 S. W. 914.

166. 6. Haggart *v.* Capman, etc., Land Co., 77 Ark. 527, 7 Ann. Cas. 333, 92 S. W. 792.

7. Mash *v.* Bloom, 130 Wis. 366, 110 N. W. 203.

8. Norman *v.* Pugh, 75 Ark. 52, 86 S. W. 833.

167. 1. Whitehouse *v.* Jones, 60 W. Va. 680, 55 S. E. 730, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 167.

Forfeited Mechanic's Lien Cloud on Title.— Sheets *v.* Prosser, (N. Dak. 1907) 112 N. W. 72.

5. Hardie *v.* Bissell, 80 Ark. 74, 94 S. W. 611; Orack *v.* Powelson, 3 Cal. App. 282, 85 Pac. 129; Dawson *v.* Orange, 78 Conn. 96, 61 Atl. 101; Overton *v.* Overton, (Ky. 1906) 96 S. W. 469; Bonsor *v.* Madison County, 204 Mo. 84, 102 S. W. 494; Coppom *v.* Forman, 74 Neb. 275, 104 N. W. 167; Marshall *v.* Corbett, 137 N. Car. 555, 50 S. E. 210; Holmes *v.* Wolfard, 47 Oregon 93, 81 Pac. 819; Austin *v.* Minor, (Va. 1907) 57 S. E. 609; Lohse *v.* Burch, 42 Wash. 156, 84 Pac. 722.

11. Davis *v.* Hinckley, 141 Fed. 708; Davis *v.* Commonwealth Land, etc., Co., 141 Fed. 711; Adams *v.* Betz, 167 Ind. 161, 78 N. E. 649; Lewis *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 658; Kindrick *v.* Burchett, (Ky. 1905) 89 S. W. 239.

168. 1. Devine *v.* Los Angeles, 202 U. S. 313, 26 U. S. Sup. Ct. 652; Amburgy *v.* Burt, etc., Lumber Co., (Ky. 1905) 89 S. W. 680; Newman *v.* Newman, (Tex. Civ. App. 1905) 86 S. W. 635; Case *v.* Perrigo, (Wash. 1907) 92 Pac. 432.

5. Womble *v.* Pike, 17 Okla. 122, 87 Pac. 427.

CODICILS.

175. 1. *In re* Stocum, (Surrogate Ct.) 94 N. Y. Supp. 588; Logan *v.* Cassidy, 71 S. Car. 175, 50 S. E. 794, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 175.

2. Logan *v.* Cassidy, 71 S. Car. 175, 50 S. E. 794. *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 175.

176. 3. Hill *v.* Kehr, 228 Ill. 204, 81 N. E. 848.

An Unsigned Draft of a Proposed Codicil, inclosed in a letter to the testator's attorney, and indorsed "Copy of codicil to my will," is not a valid codicil. Willing's Estate, 212 Pa. St. 136, 61 Atl. 812.

179. 1. A Will Void for Lack of Proper Attestation, in *New York*, cannot be validated by, or incorporated into a subsequent validly executed codicil. Matter of Emmons, 110 N. Y. App. Div. 701, 96 N. Y. Supp. 506.

3. Whitney *v.* Hanington, 36 Colo. 407, 85 Pac. 84; Sigel's Estate, 213 Pa. St. 14, 62 Atl. 175; Pardee *v.* Kuster, 15 Wyo. 368, 89 Pac. 572; *Re* Hanmer, 9 Ont. L. Rep. 348.

184. 1. Sigel's Estate, 213 Pa. St. 14, 62 Atl. 175.

3. Every Effect Contemplated by Express Revocation Must Be Given.— Dowler *v.* Rodes, (Ky. 1904) 83 S. W. 115; Ladd *v.* Ladd, (N. H. 1907) 68 Atl. 463.

Revocation of Charge of Debts, Etc.— Manlove *v.* Gaut, 2 Tenn. Ch. App. 410.

185. 4. Matter of Dominici, 151 Cal. 181, 90 Pac. 448.

An Ambiguous Codicil will not revoke a clear provision in the will. McGauly *v.* McGauly, (Ala. 1905) 39 So. 677.

186. 1. Williams *v.* Dearborn, 101 Me. 506, 64 Atl. 851; Logan *v.* Cassidy, 71 S. Car. 175, 50 S. E. 794, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186; Pardee *v.* Kuster, 15 Wyo. 368, 89 Pac. 572, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186.

190. 5. Matter of Dominici, 151 Cal. 181, 90 Pac. 448; Pardee *v.* Kuster, 15 Wyo. 368, 89 Pac. 572.

191. 1. Codicil Operative Only to Extent of Inconsistency.—Roats's Estate, 30 Pa. Super. Ct. 521.

195. 1. *In re* Stocum, (Surrogate Ct.) 94 N. Y. Supp. 588.

2. Matter of Emmons, 110 N. Y. App. Div. 701, 96 N. Y. Supp. 506.

196. 2. A Will Revoked by Operation of Law, as by marriage, may be revived by a valid codicil. Matter of Emmons, 110 N. Y. App. Div. 701, 96 N. Y. Supp. 506.

198. 4. Stone *v.* Forbes, 189 Mass. 163, 75 N. E. 141.

COLLUSION.

212. 1. Wallace *v.* Jones, 122 N. Y. App. Div. 497, 107 N. Y. Supp. 288; Scofield *v.* Excelsior Oil Co., 27 Ohio Cir. Dec. 319, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 212.

COMFIT.

215. 7. U. S. *v.* Schall, 147 Fed. 760, wherein it was held that boiled marrons or chestnuts preserved in syrup are ***comfits*** within the Tariff Act.

COMMERCIAL TRAVELERS OR DRUMMERS.

223. 1. See State *v.* Nelson, 128 Iowa 740, 105 N. W. 327.

3. Insurance Agent Not Drummer.— See Lake Charles *v.* Equitable L. Assur. Co., 114 La. 841, 38 So. 578, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 223.

224. 1. Seattle Shoe Co. *v.* Packard, 43 Wash. 527, 86 Pac. 845, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224.

2. Violation of Duty by Enticing Customers of Principal to Give Orders to Others.— Gibson *v.* Bailey Co., 114 Mo. App. 350, 89 S. W. 597.

3. Friedman *v.* Kelly, 126 Mo. App. 279, 102 S. W. 1066, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224; Mahler-Wolf Produce Co. *v.* Meyer, 26 Ohio Cir. Ct. 165; Moon Bros. Carriage Co. *v.* Devenish, 42 Wash. 415, 7 Ann. Cas. 649, 85 Pac. 17, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224, 226; Seattle Shoe Co. *v.* Packard, 43 Wash. 527, 86 Pac. 845, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224.

Restrictions on Salesman's Authority in Contract of Sale Sufficient Notice.— Fulton *v.* Sword Medicine Co., 145 Ala. 331, 40 So. 393.

Acceptance of an Order Binds the Principal unless the purchaser had actual knowledge that the drummer's act was unauthorized.

Western Mfg. Co. *v.* Cotton, (Ky. 1907) 104 S. W. 758.

4. That Drafts Drawn by a Drummer Had Frequently Been Paid by his employers was not sufficient to establish the drummer's authority to make such drafts. Seattle Shoe. Co. *v.* Packard, 43 Wash. 527, 86 Pac. 845, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224.

6. Friedman *v.* Kelly, 126 Mo. App. 279, 102 S. W. 1066, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224; Patton-Worsham Drug Co. *v.* Stark, (Tex. Civ. App. 1905) 89 S. W. 799.

7. Friedman *v.* Kelly, 126 Mo. App. 279, 102 S. W. 1066, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224.

225. 1. Principal Not Bound Where Contract with Purchaser Renounces Liability for Separate Agreements of Salesmen. — Pratt *v.* Meyer, 75 Ark. 206, 87 S. W. 123.

2. Philips, etc., Mfg. Co. *v.* Wild, 144 Ala. 545, 39 So. 359.

In an Action on a Warranty made by a salesman, it has been held that the purchaser is bound to show that the making of the warranty was within the scope of the salesman's authority. Philips, etc., Mfg. Co. *v.* Wild, 144 Ala. 545, 39 So. 359.

No Authority to Agree upon Settlement for Breach of Warranty. — Lindow *v.* Cohn, (Cal. App. 1907) 90 Pac. 485.

5. Zilberman *v.* Friedman, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 256, 104 N. Y. Supp. 363; Scarritt-Comstock Furniture Co. *v.* Hudspeth, (Okla. 1907) 91 Pac. 843; Moon Bros. Carriage Co. *v.* Devenish, 42 Wash. 415, 7 Ann. Cas. 649, 85 Pac. 17, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224, 226.

227. 6. Gould *v.* Cates Chair Co., 147 Ala. 629, 41 So. 675; Lindow *v.* Cohn, (Cal. App. 1907) 90 Pac. 485, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 227; Bauman *v.* McManus, 75 Kan. 106, 89 Pac. 15, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 227.

Compare Brennan *v.* Dansby, (Tex. Civ. App. 1906) 95 S. W. 700.

228. 2. Rossier *v.* Wabash R. Co., 115 Mo. App. 515, 91 S. W. 1018; Kast *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 107.

Not Liable for Delay in Delivery. — McElroy *v.* Iowa Cent. R. Co., 133 Iowa 544, 110 N. W. 915.

3. New Orleans, etc., R. Co. *v.* Shackleford, 87 Miss. 610, 6 Ann. Cas. 826, 40 So. 427; Saleeby *v.* Central R. Co., 99 N. Y. App. Div. 163, 90 N. Y. Supp. 1042; Charlotte Trouser Co. *v.* Seaboard Air Line R. Co., 139 N. Car. 382, 51 S. E. 973; Fleischman *v.* Southern R. Co., 76 S. Car. 237, 56 S. E. 974.

Railroad Company Liable — English Railway Act. — Wilkinson *v.* Lancashire, etc., R. Co., (1906) 2 K. B. 619, 75 L. J. K. B. 603.

4. Saleeby *v.* Central R. Co., 99 N. Y. App. Div. 163, 90 N. Y. Supp. 1042; Charlotte Trouser Co. *v.* Seaboard Air Line R. Co., 139 N. Car. 382, 51 S. E. 973.

COMMISSION.

228. 5. See Wilson *v.* Fisher, 148 Cal. 13, 82 Pac. 421.

COMMON.

233. 1. Common Lodging House. — A charitable institution for the reception of the destitute, held not to be a common lodging house within a statute requiring the same to be registered and licensed. Parker *v.* Talbot, (1905) 2 Ch. 643, 75 L. J. Ch. 8.

COMMON CARRIERS.

237. 1. Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252; Hahl *v.* Laux, (Tex. Civ. App. 1906) 93 S. W. 1080.

242. 3. A Person Employed to Deliver Brick and Lumber, who does not hold himself out to carry for all persons, is a private carrier for hire. McBurnie *v.* Stelsly, (Ky. 1906) 97 S. W. 42.

245. 4. Ownership of the Means of Transportation is not essential to constitute a person a common carrier. J. H. Cownie Glove Co. *v.* Merchants' Dispatch Transp. Co., 130 Iowa 327, 106 N. W. 749.

A Person Operating an Elevator in a store for the transportation of customers sustains to them the relation of carrier, and is bound to exercise the highest degree of care for their safety while they are entering or aboard the elevator. Morgan *v.* Saks, 143 Ala. 139, 38 So. 848; Hensler *v.* Stix, 113 Mo. App. 162, 88 S. W. 108. But see Edwards *v.* Manufacturers' Bldg. Co., 27 R. I. 248, 8 Ann. Cas. 974, 61 Atl. 646.

246. 3. Hahl *v.* Laux, (Tex. Civ. App. 1906) 93 S. W. 1080.

253. 4. Baker *v.* Boston, etc., R. Co., (N. H. 1906) 65 Atl. 386; Cincinnati, etc., R. Co. *v.* Saulsbury, 115 Tenn. 402, 5 Ann. Cas. 744, 90 S. W. 624.

Logging Road Carrying Freight and Passengers. — See Amos Kent Lumber, etc., Co. *v.* Tax Assessor, 114 La. 864, 38 So. 587, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 253.

257. 1. Platt *v.* Le Cocq, 150 Fed. 391; Southern Express Co. *v.* Rose Co., 124 Ga. 81, 53 So. 185.

258. 4. A Messenger Company Furnishing a Messenger to Carry Money is not a common carrier, and is not liable for a loss of the money. Haskell *v.* Boston Dist. Messenger Co., 190 Mass. 189, 5 Ann. Cas. 796, 76 N. E. 215.

5. White *v.* Postal Tel., etc., Co., 25 App. Cas. (D. C.) 364, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 258; Gilman *v.* Postal Tel. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 372, 95 N. Y. Supp. 564, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 258.

260. 2. Sleeping Car Companies Not Common Carriers. — Calhoun *v.* Pullman Palace Car Co., 149 Fed. 546.

261. 2. Telephone and Telegraph Companies Are Common Carriers of News. — State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 194, 86 S. W. 390.

3. As to Services Rendered by Messengers, telegraph companies are not common carriers. Hirsch *v.* American Dist. Tel. Co., 112 N. Y. App. Div. 265, 98 N. Y. Supp. 371.

263. 1. Southern R. Co. *v.* Levy, 144 Ala. 614, 39 So. 95; Carpenter *v.* Baltimore, etc.,

R. Co., (Del. 1906) 64 Atl. 252; Ohlen *v.* Atlanta, etc., R. Co., 2 Ga. App. 323, 58 S. E. 511; J. H. Cownie Glove Co. *v.* Merchants' Dispatch Transp. Co., 130 Iowa 327, 106 N. W. 749; Lehman *v.* Morgan's Louisiana, etc., R. Co., 115 La. 1, 5 Ann. Cas. 818, 38 So. 873; Fentiman *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 939; Chesapeake, etc., R. Co. *v.* Beasley, 104 Va. 788, 52 S. E. 566.

A Common Carrier's Liability Begins when the carrier has actually received the goods as carrier. Pittsburg, etc., R. Co. *v.* American Tobacco Co., (Ky. 1907) 104 S. W. 377.

A Common Carrier Is Liable for Injury to Goods by an Act of God where the goods were exposed to injury by the carrier's inexcusable delay or detention. Green-Wheeler Shoe Co. *v.* Chicago, etc., R. Co., 130 Iowa 123, 8 Ann. Cas. 45, 106 N. W. 498.

264. 1. Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252.

2. **Rule Extends to Interstate Carriers.**— Ficklin *v.* Wabash R. Co., 117 Mo. App. 221, 93 S. W. 847.

265. 1. Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252.

266. 3. Carpenter *v.* Baltimore, etc., R. Co., (Del. 1906) 64 Atl. 252.

COMMON LAW.

269. 1*a*. **Exists for All the People.** — It is an essential characteristic of the common law that it exists for all the people, and has regard for their solidarity of interest as an integral whole. Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585.

270. 3. Brown *v.* Rouse, 116 Ill. App. 513; Davis *v.* Abstract Constr. Co., 121 Ill. App. 121; Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770; Waters *v.* Gerard, 189 N. Y. 309, 82 N. E. 143, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 270.

4. Reed *v.* Goldneck, 112 Mo. App. 310, 86 S. W. 1104; Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345. See also Tulane University *v.* Assessors, 115 La. 1025, 40 So. 445.

5. Brown *v.* Rouse, 116 Ill. App. 513; Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585.

Contra.— Rev. Stat. Tex., § 3, provides that this rule shall have no application to the Revised Statutes, but that they shall be liberally construed although in derogation of the common law. Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345; Galveston, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1907) 106 S. W. 705.

Rev. Stat. Utah (1898), § 2489, provides for a liberal construction of statutes in derogation of the common law. *In re* Garr, 31 Utah 57, 86 Pac. 757.

9. Roller *v.* Roller, 37 Wash. 242, 3 Ann. Cas. 1, 79 Pac. 788.

271. 2. *In re* Burkell, 2 Alaska 108; Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585; Waters *v.* Gerard, 189 N. Y. 309, 82 N. E. 143.

272. 1. See concurring opinion of Whitfield, C. J., in Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 272.

2. *In re* Burkell, 2 Alaska 108.

3. See concurring opinion of Whitfield, C. J., in Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 272.

273. 1. Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038; Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290; Waters *v.* Gerard, 189 N. Y. 309, 82 N. E. 143; Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821. See also *In re* Burkell, 2 Alaska 108.

2. "The common law includes those principles, usages, and rules of action applicable to the government and security of person and property which do not rest for their authority on any express and positive declaration of the will of the legislature." *In re* Burkell, 2 Alaska 108.

276. 4. Midland Steel Co. *v.* Citizens Nat. Bank, 34 Ind. App. 107, 72 N. E. 290.

277. 1. *In re* Burkell, 2 Alaska 108; Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146. And see the concurring opinion of Whitfield, C. J., in Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290, *quoting* 6 Am. and Eng. Encyc. of Law (2d ed.) 277.

279. 1. **Florida.**— Myers *v.* Hodges, 53 Fla. 197, 44 So. 357.

Vermont.— Under the Vermont statutes the statute laws and parts of laws of England passed before 1760, with regard to the common law and which are not repugnant to the state law and constitution, are made a part of the law of the state. Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

279. 3. Myers *v.* Hodges, 53 Fla. 205, 44 So. 357, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 279.

280. 1. Myers *v.* Hodges, 53 Fla. 205, 44 So. 357; Brookhaven *v.* Smith, 188 N. Y. 74, 80 N. E. 665; Johnson *v.* Union Pac. Coal Co., 28 Utah 56, 76 Pac. 1089, *quoting* 6 Am. and Eng. Encyc. of Law (2d ed.) 279, 280.

281. 4. *Compare* St. Louis, etc., R. Co. *v.* Johnson, 74 Kan. 83, 86 Pac. 156.

282. 1. Frank *v.* Gump, 104 Va. 306, 51 S. E. 358. See also Watford *v.* Alabama, etc., Lumber Co., (Ala. 1907) 44 So. 567.

3. The presumption does not exist with regard to *Florida*, Watford *v.* Alabama, etc., Lumber Co., (Ala. 1907) 44 So. 567; nor with regard to *Idaho*, McManus *v.* Oregon Short Line R. Co., 118 Mo. App. 152, 94 S. W. 743.

4. Watford *v.* Alabama, etc., Lumber Co., (Ala. 1907) 44 So. 567 (*obiter*).

5. *Alabama.* — Watford *v.* Alabama, etc., Lumber Co., (Ala. 1907) 44 So. 567.

Georgia. — Southern R. Co. *v.* Cunningham, 123 Ga. 90, 50 S. E. 979; Bailey *v.* Devine, 125 Ga. 653, 51 S. E. 603; Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77; Ellington *v.* Harris, 127 Ga. 85, 56 S. E. 134.

Illinois. — Scholten *v.* Barber, 217 Ill. 148, 75 N. E. 460; Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028; Crane *v.* Blackman, 126 Ill. App. 631.

Indiana. — Penn Mut. L. Ins. Co. *v.* Norcross, 163 Ind. 379, 72 N. E. 132; Midland Steel Co. *v.* Citizens Nat. Bank, 34 Ind. App. 107, 72 N. E. 290.

Maryland. — National Bank *v.* Baltimore, etc., R. Co., 99 Md. 661, 59 Atl. 134.

Missouri. — Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52; Jordan *v.* Pence, 123 Mo. App. 321, 100 S. W. 529.

New York. — Robb *v.* Washington and Jefferson College, 185 N. Y. 485, 78 N. E. 359.

South Carolina. — Jonesville Mfg. Co. *v.* Southern R. Co., 77 S. Car. 480, 58 S. E. 422.

283. 1. Dorr Cattle Co. *v.* Des Moines Nat. Bank, 127 Iowa 167, 4 Ann. Cas. 519, 98 N. W. 918, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 283.

3. *Georgia.* — Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77.

Illinois. — Brennan *v.* Electrical Installation Co., 120 Ill. App. 461.

Indiana. — Penn Mut. L. Ins. Co. *v.* Norcross, 163 Ind. 379, 72 N. E. 132; Southern R. Co. *v.* Elliott, (Ind. 1907) 82 N. E. 1051.

Iowa. — Dorr Cattle Co. *v.* Des Moines Nat. Bank, 127 Iowa 167, 4 Ann. Cas. 519, 98 N. W. 918.

Kansas. — St. Louis, etc., R. Co. *v.* Johnson, 74 Kan. 83, 86 Pac. 156.

Massachusetts. — Callender, etc., Co. *v.* Flint, 187 Mass. 104, 72 N. E. 345; Cherry *v.* Sprague, 187 Mass. 113, 72 N. E. 456; Hodgkins *v.* Bowser, (Mass. 1907) 80 N. E. 796; Atty.-Gen. *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 966; Com. *v.* Stevens, (Mass. 1907) 82 N. E. 33.

New York. — Robb *v.* Washington and Jefferson College, 185 N. Y. 485, 78 N. E. 359; Spencer *v.* Busch, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 284, 98 N. Y. Supp. 690.

South Carolina. — Jonesville Mfg. Co. *v.* Southern R. Co., 77 S. Car. 480, 58 S. E. 422.

In Fallon *v.* Mertz, 110 N. Y. App. Div. 755, 97 N. Y. Supp. 417, it was stated that, as the law of the state where the accident occurred was not in evidence, an action therefor was governed by the common law of New York.

284. 4. Frank *v.* Gump, 104 Va. 306, 51 S. E. 358. See also Midland Steel Co. *v.* Citizens Nat. Bank, 34 Ind. App. 107, 72 N. E. 290.

286. 1. Hamilton *v.* U. S., 26 App. Cas. (D. C.) 382.

3. Smith *v.* North Memphis Sav. Bank, 115 Tenn. 12, 89 S. W. 392; Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

287. 1. Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

288. 2. Spencer *v.* Busch, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 284, 98 N. Y. Supp. 690.

3. Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290; Brookhaven *v.* Smith, 188 N. Y. 74, 80 N. E. 665. See also Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 571.

5. Waters *v.* Gerard, 189 N. Y. 309, 82 N. E. 143.

289. 1. *In re* Burkell, 2 Alaska 108; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038; Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585; Kinkead *v.* Turgeon, (Neb. 1906) 109 N. W. 744; Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

2. **Testimony of Attorney.** — Dimpfel *v.* Wilson, (Md. 1908) 68 Atl. 561; Rieck *v.* Griffen, 74 Neb. 102, 103 N. W. 1061.

3. Dimpfel *v.* Wilson, (Md. 1908) 68 Atl. 561, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 289; Bath Gas Light Co. *v.* Rowland, 84 N. Y. App. Div. 563, 82 N. Y. Supp. 841, *affirmed* 178 N. Y. 631, 71 N. E. 1127.

4. See Penn Mut. L. Ins. Co. *v.* Norcross, 163 Ind. 379, 72 N. E. 132, to the effect that an unofficial publication of a case was insufficient to show what was the law of a sister state.

5. Porter *v.* U. S., (Indian Ter. 1907) 104 S. W. 855.

6. U. S. *v.* Cardish, 143 Fed. 640.

290. 1. U. S. *v.* Cardish, 143 Fed. 640.

2. Hamilton *v.* U. S., 26 App. Cas. (D. C.) 382; Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770.

COMMUNITY PROPERTY.

295. 1. **Prevails in Porto Rico.** — See Garrozi *v.* Dastas, 204 U. S. 64, 27 U. S. Sup. Ct. 224.

299. 1. **Common Law Marriage Recognized.** — Dever *v.* Selz, (Tex. Civ. App. 1905) 87 S. W. 891; Edelstein *v.* Brown, (Tex. Civ. App. 1906) 95 S. W. 1126.

300. 2. **Marriage by Duress.** — In Merrell *v.* Moore, (Tex. Civ. App. 1907) 104 S. W. 514, it was held that the evidence failed to show conclusively that the marriage was procured by duress, there being also evidence that the husband subsequently recognized the woman as his lawful wife.

301. 2. Hurst *v.* Thompson, 118 La. 57, 42 So. 645.

4. Donovan *v.* Olsen, (Wash. 1907) 92 Pac. 276.

302. 1. Letot *v.* Peacock, (Tex. Civ. App. 1906) 94 S. W. 1121; Heintz *v.* Brown, (Wash. 1907) 90 Pac. 211; Beneke *v.* Beneke, (Wash. 1907) 91 Pac. 641. See also Woodward *v.* Davidson, 150 Fed. 840; Donovan *v.* Olsen, (Wash. 1907) 92 Pac. 276.

303. 2. Pierce's Succession, 119 La. 727, 44 So. 446.

304. 2. **Such Gifts Revocable.** — Leverett *v.* Loeb, 117 La. 310, 41 So. 584.

An Antenuptial Agreement by which a wife releases her rights as heir of her husband, defeats her claim to a community interest. *In re* Warner, (Cal. App. 1907) 92 Pac. 191.

3. Kaltschmidt *v.* Weber, 145 Cal. 596, 79 Pac. 272.

305. 2. Kaltschmidt *v.* Weber, 145 Cal. 596, 79 Pac. 272.

4. **Illustrations.**—No presumption can be indulged, from the fact that the notes in payment for property of the wife's separate estate were payable to both husband and wife, that she thereby intended to make a gift to the hus-

band or otherwise change the character of the property. Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751.

As between the parties, the mere fact that a husband bought land with his separate estate and had the deed made to his wife, is sufficient to show that he intended it as a gift to her. Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751.

309. 1. Pierce's Succession, 119 La. 727, 44 So. 446 (to the same effect as Moore *v.* Stancel, 36 La. Ann. 819, cited in the original note).

4. Ligon *v.* Ligon, (Tex. Civ. App. 1905) 87 S. W. 838.

311. 2. Bekins *v.* Dieterle, (Cal. App. 1907) 91 Pac. 173; Merrell *v.* Moore, (Tex. Civ. App. 1907) 104 S. W. 514 (although divided solely from the efforts of the husband).

312. 5. *Compare* Heintz *v.* Brown, (Wash. 1907) 90 Pac. 211, wherein it is declared that funds borrowed by the wife, even though on her separate property, are community property.

317. 1. See Cox *v.* Tompkinson, 39 Wash. 70, 80 Pac. 1005.

Land loses its community character the moment it becomes homestead. Yardley *v.* San Joaquin Valley Bank, 3 Cal. App. 651, 86 Pac. 978.

2. **United States Homestead and Exemption Laws.**—The Federal statutes supersede the state laws in determining the nature of homestead rights. Cunningham *v.* Krutz, 41 Wash. 190, 83 Pac. 109; Hall *v.* Hall, 41 Wash. 186, 83 Pac. 108.

318. 2. **Right Initiated Before Marriage.**—See Woodward *v.* Davidson, 150 Fed. 840.

3. **Right Initiated During Marriage.**—Crochet *v.* McCamant, 116 La. 1, 40 So. 474.

320. 2. **Execution against Husband.** — De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476.

321. 2. De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476.

5. See De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476, holding that the fact that the husband contributes nothing to the earning and collection of the rents of the wife's separate property does not render the rents her separate property.

323. 2. **Interest to Be Paid by Husband on Wife's Loan.** — See Bashore *v.* Parker, 146 Cal. 525, 80 Pac. 707.

4. See Hester *v.* Stine, (Wash. 1907) 90 Pac. 594.

324. 6. Donovan *v.* Olsen, (Wash. 1907) 92 Pac. 276.

7. **Where a Married Woman Engages in Trade,** it is presumed to be with community funds. Bashore *v.* Parker, 146 Cal. 525, 80 Pac. 707.

9. Meteye's Succession, 113 La. 1012, 37 So. 909; Summerville *v.* King, 98 Tex. 332, 83 S. W. 680, *modified* 98 Tex. 341, 84 S. W. 643.

"Improvements erected upon land, the separate property of the wife, by the husband out of community funds, will not be presumed to be a gift, in the absence of evidence to show such intention." Collins *v.* Bryan, (Tex. Civ. App. 1905) 88 S. W. 432.

In Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751, it is stated that if the community be benefited by the husband's conversion of the wife's separate estate, he is liable to her estate for the value of such improvement.

325. 2. See Hamilton *v.* Blackburn, (Tex. Civ. App. 1906) 95 S. W. 1094.

5. If the community advances money to compromise a disputed claim against the separate property of a spouse, it does not to any extent change its separate character, but merely gives rise to a claim for the amount advanced. Beneke *v.* Beneke, (Wash. 1907) 91 Pac. 641.

7. *Texas.* — York *v.* Hilger, (Tex. Civ. App. 1905) 84 S. W. 1117; Hoopes *v.* Mathis, (Tex. Civ. App. 1905) 89 S. W. 36; Smith *v.* Smith, (Tex. Civ. App. 1906) 91 S. W. 815; Cope *v.* Blount, (Tex. Civ. App. 1905) 91 S. W. 615; Sweeney *v.* Taylor, (Tex. Civ. App. 1906) 92 S. W. 442; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146, *reversed* (Tex. 1904) 94 S. W. 324; Stein *v.* Mentz, (Tex. Civ. App. 1906) 94 S. W. 447; Edelstein *v.* Brown, (Tex. Civ. App. 1906) 95 S. W. 1126; Henry *v.* Vaughan, (Tex. Civ. App. 1907) 103 S. W. 192; Parks *v.* Worthington, (Tex. Civ. App. 1907) 104 S. W. 921.

Washington. — Stevens *v.* Kittredge, 44 Wash. 347, 87 Pac. 484; Ballard *v.* Slyfield, (Wash. 1907) 91 Pac. 642. *Compare* Guye *v.* Plimpton, 40 Wash. 234, 82 Pac. 596.

326. 3. Newman *v.* Newman, (Tex. Civ. App. 1905) 86 S. W. 635; Parks *v.* Worthington, (Tex. Civ. App. 1907) 104 S. W. 921; Ballard *v.* Slyfield, (Wash. 1907) 91 Pac. 642.

327. 2. Letot *v.* Peacock, (Tex. Civ. App. 1906) 94 S. W. 1121.

Clear and Satisfactory Proof Required. — Smith *v.* Smith, (Tex. Civ. App. 1906) 91 S. W. 815; Ballard *v.* Slyfield, (Wash. 1907) 91 Pac. 642.

Evidence Held Sufficient. — Hester *v.* Stine, (Wash. 1907) 90 Pac. 594; Ballard *v.* Slyfield, (Wash. 1907) 91 Pac. 642; Donovan *v.* Olsen, (Wash. 1907) 92 Pac. 276.

Evidence Held Insufficient. — York *v.* Hilger, (Tex. Civ. App. 1905) 84 S. W. 1117; Henry *v.* Vaughan, (Tex. Civ. App. 1907) 103 S. W. 192.

3. Hoopes *v.* Mathis, (Tex. Civ. App. 1905) 89 S. W. 36.

5. Edelstein *v.* Brown, (Tex. Civ. App. 1906) 95 S. W. 1126.

328. 2. **Property Conveyed to Husband.** — York *v.* Hilger, (Tex. Civ. App. 1905) 84 S. W. 1117.

4. Jaegel *v.* Johnson, 148 Cal. 695, 84 Pac. 175.

5. See Newman *v.* Newman, (Tex. Civ. App. 1905) 86 S. W. 635.

7. A "donation" made specially to the wife will not fall into the community. Hurst *v.* Thompson, 118 La. 57, 42 So. 645.

329. 7. **California.** — Under Civ. Code Cal., § 164 (Amendment of 1889), it is provided that "whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property." This

presumption was held to be overcome in Bekins *v.* Dieterle, (Cal. App. 1907) 91 Pac. 173.

331. 1. Newman *v.* Newman, (Tex. Civ. App. 1905) 86 S. W. 635; King *v.* King, (Tex. Civ. App. 1906) 91 S. W. 633; Sweeney *v.* Taylor, (Tex. Civ. App. 1906) 92 S. W. 442.

In *Porto Rico* the husband has practically the same control over community property as in Louisiana. Garrozi *v.* Dastas, 204 U. S. 64, 27 U. S. Sup. Ct. 224.

Where Community Property Becomes Homestead. — The moment community property becomes a valid homestead it ceases to be community property and the husband is divested of such absolute control as he would have had had it retained its character as community. Yardley *v.* San Joaquin Valley Bank, 3 Cal. App. 651, 86 Pac. 978.

2. See Garrozi *v.* Dastas, 204 U. S. 64, 27 U. S. Sup. Ct. 224; Sparks *v.* Taylor, (Tex. 1906) 90 S. W. 485; Parks *v.* Worthington, (Tex. Civ. App. 1907) 104 S. W. 921.

3. See Campbell *v.* Kerns, 13 Idaho 287, 90 Pac. 108; Hamilton *v.* Blackburn, (Tex. Civ. App. 1906) 95 S. W. 1094.

The husband may sue on a note made payable to the wife, and given for a loan of money the result of their joint earnings. Brenneke *v.* Smallman, 2 Cal. App. 306, 83 Pac. 302.

332. 6. **A Deed by the Wife Alone of Community Property** standing in her name is good where the husband authorized the same. Roos *v.* Basham, (Tex. Civ. App. 1906) 91 S. W. 656.

Insanity of Wife. — Rev. Stat. Tex., art. 2220, providing that upon the insanity of a spouse, there being no children and no separate estate, the community property passes to the "survivor," was not intended to work a change of title, but was intended to enable the same spouse to treat the property as his own for the payment of debts, and other transactions incident to the marital relation. Schwartz *v.* West, (Tex. Civ. App. 1904) 84 S. W. 282.

333. 1. **Right of Wife Not Exclusive.** — "Such right of disposition so conferred is not exclusive as against the husband, and does not work a forfeiture of his right to sell such property himself in payment of community debts, or to otherwise dispose of the same." King *v.* King, (Tex. Civ. App. 1906) 91 S. W. 633.

3. **Insanity of Husband.** — See Schwartz *v.* West, (Tex. Civ. App. 1904) 84 S. W. 282.

4. See Merrell *v.* Moore, (Tex. Civ. App. 1907) 104 S. W. 514.

334. 1. Schaadt *v.* Mutual L. Ins. Co., 2 Cal. App. 715, 84 Pac. 249.

335. 7. The husband's release of community rights under a contract of purchase of land without any affirmative action on the wife's part is invalid as to her. Zeimantz *v.* Blake, 39 Wash. 6, 80 Pac. 822.

A contract for the sale of community land held in trust to secure advances, and signed by the husband alone without his wife's knowledge, will not support a claim of *bona fide* purchase. Norgren *v.* Jordan, (Wash. 1907) 90 Pac. 597.

The husband's contract for the sale of community land is sufficient if it has the sanction or subsequent ratification of the wife. Washington State Bank *v.* Dickson, 35 Wash. 641, 77 Pac. 1067.

In an Action by a City to Foreclose an Assessment Lien on community property the wife is a proper and necessary party. McNair *v.* Ingebrigtsen, 36 Wash. 186, 78 Pac. 789.

Specific Performance of Wife's Contract. — Where the husband has ratified the acts of his wife in negotiating a sale of community property he will be bound by the contract of sale. Stevens *v.* Kittredge, 44 Wash. 347, 87 Pac. 484.

338. 4. Where in replevin the husband and wife answer jointly alleging ownership as of community property, a judgment against the husband for failure to answer interrogatories does not bind the wife, she having answered similar ones addressed to herself. Glass *v.* Buttner, 39 Wash. 296, 81 Pac. 699.

5. Heintz *v.* Brown, (Wash. 1907) 90 Pac. 211.

Community creditors are entitled to preference over separate creditors. Scovel *v.* Levy, 118 La. 982, 43 So. 642.

Where goods were purchased for a community business by the husband, and shipped and billed in his wife's name without objection, her separate estate was held liable therefor. Conrad *v.* Mertz, 45 Wash. 119, 87 Pac. 1118.

6. Dever *v.* Selz, (Tex. Civ. App. 1905) 87 S. W. 891.

339. 1. It is proper to cancel a deed of trust by a husband and wife on the latter's separate property to secure the former's debt, in so far as it affects the separate realty, and to appoint a receiver of the rents of such property to be applied to the debt. De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476.

2. See Lane *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 211; Hester *v.* Stine, (Wash. 1907) 90 Pac. 594.

Torts of Wife. — Community property is subject to a judgment carrying exemplary damages rendered in an action for slander uttered by the wife. Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146, *reversed* on other grounds (Tex. 1906) 94 S. W. 324.

340. 2. See Floding *v.* Denholm, 40 Wash. 463, 82 Pac. 738.

4. Floding *v.* Denholm, 40 Wash. 463, 82 Pac. 738 (to the same effect as Horton *v.* Donohoe Kelly Banking Co., 15 Wash. 399, 46 Pac. 409, 47 Pac. 435, set forth in the original note).

The fact that the wife was opposed to the purchase of the stock, or that the corporation was insolvent when the levy was made, does not change the liability of the community property. Floding *v.* Denholm, 40 Wash. 463, 82 Pac. 738.

341. 3. See Jones *v.* Jones, 119 La. 677, 44 So. 429.

But a judgment for separation rendered at the suit of the wife by agreement with her husband, may be set aside at the wife's instance. Driscoll *v.* Pierce, 115 La. 156, 38 So. 949.

5. The Mere Existence of Grounds for Divorce against the wife does not deprive her of her community interest. Merrell *v.* Moore, (Tex. Civ. App. 1907) 104 S. W. 514.

In Order to Set Aside a Husband's Deed of community property under Rev. Stat. Tex., art. 2983, declaring void any fraudulent alienation by the husband after a suit for divorce is brought, the wife must show that the suit was filed before the deed was made. Sparks *v.* Taylor, (Tex. 1906) 90 S. W. 485.

6. Garrozi *v.* Dastas, 204 U. S. 64, 27 U. S. Sup. Ct. 224; Sawyer *v.* Vermont L. & T. Co., 41 Wash. 524, 84 Pac. 8.

7. Driscoll *v.* Pierce, 115 La. 156, 38 So. 949; King *v.* King, (Tex. Civ. App. 1906) 91 S. W. 633; Ligon *v.* Ligon, (Tex. Civ. App. 1905) 87 S. W. 838. See also Merrell *v.* Moore, (Tex. Civ. App. 1907) 104 S. W. 514.

8. The remarriage of a wife under the mistaken belief that her husband, who had deserted her, had obtained a divorce, does not work a forfeiture of her community interest. Merrell *v.* Moore, (Tex. Civ. App. 1907) 104 S. W. 514.

In Dever *v.* Selz, (Tex. Civ. App. 1905) 87 S. W. 891, where both spouses who had formed a common-law marriage afterward remarried, the community interest was held to continue until the death of the wife.

Abandonment and Adultery by Husband. — In King *v.* King, (Tex. Civ. App. 1906) 91 S. W. 633, it was declared that the abandonment of the wife by the husband even though he should thereafter live in adultery with another woman did not forfeit his community interest.

9. Ligon *v.* Ligon, (Tex. Civ. App. 1905) 87 S. W. 838; Smith *v.* Smith, (Tex. Civ. App. 1906) 91 S. W. 815. See also Hill *v.* Hill, 115 La. 490, 39 So. 503.

Where a decree of divorce fails to dispose of certain community real estate the divorced parties become tenants in common thereof. Tabler *v.* Peverill, 4 Cal. App. 671, 88 Pac. 994.

Under the *Porto Rican* code the wife does not forfeit all her rights to a share in the community property by reason of a divorce for her adultery, as was the case under the Spanish law. Garrozi *v.* Dastas, 204 U. S. 64, 27 U. S. Sup. Ct. 224.

10. Budlong *v.* Budlong, 43 Wash. 423, 86 Pac. 648.

342. 1. Luria *v.* Cote Blanche Co., 114 La. 385, 38 So. 279.

3. The property of the community, dissolved by the death of the wife, may be sold by the surviving husband to liquidate a community debt. Elizardi *v.* Kelly, 115 La. 713, 39 So. 851.

4. Luria *v.* Cote Blanche Co., 114 La. 385, 38 So. 279.

343. 1. Elizardi *v.* Kelly, 115 La. 712, 39 So. 851.

2. The widow in community, administering the succession of her deceased husband, and as natural tutrix, may bring an action to eject an alleged lessee from community property. Campbell *v.* Hart, 118 La. 871, 43 So. 533.

Wife as Party to Action. — The surviving wife is a necessary party to an action to set aside a sale of community property by the husband during marriage. Bankston *v.* Owl Bayou Cypress Co., 117 La. 1053, 42 So. 500.

4. Levy *v.* Moody, (Tex. Civ. App. 1905) 87 S. W. 205; Rippy *v.* Harlow, (Tex. Civ. App. 1907) 101 S. W. 851.

A trust deed to secure a community debt given by a surviving husband creates a valid lien, and a sale thereunder passes title. Echols *v.* Jacobs Mercantile Co., (Tex. Civ. App. 1905) 84 S. W. 1082.

False Recitals in Deed — Effect. — The fact that a deed of community property by a husband, who had been appointed guardian of his minor children, falsely recites that such sale was made pursuant to an order of and had been confirmed by the county court, does not affect its validity where the property was conveyed to satisfy a community debt. Rippy *v.* Harlow, (Tex. Civ. App. 1907) 101 S. W. 851.

344. 5. See Milby *v.* Hester, (Tex. Civ. App. 1906) 94 S. W. 178.

6. Summerville *v.* King, 98 Tex. 332, 83 S. W. 680, *modified* 98 Tex. 341, 84 S. W. 643; Cope *v.* Blount, (Tex. Civ. App. 1905) 91 S. W. 615; Cox *v.* Oliver, (Tex. Civ. App. 1906) 95 S. W. 596.

The wife as survivor cannot dispose of property subject to a chattel mortgage without first satisfying the mortgage. Embree-McLean Carriage Co. *v.* Johnson, (Tex. Civ. App. 1905) 85 S. W. 1021.

The wife as survivor may make an agreement for the extension of time for the payment of notes secured by a trust deed, thus bringing the obligation within the statute of limitations. Dashiell *v.* Moody, (Tex. Civ. App. 1906) 97 S. W. 843.

The surviving wife may herself pay the community debt and reimburse herself by taking the community property if fairly done; and this is true although she has not qualified as survivor. Jennings *v.* Borton, (Tex. Civ. App. 1906) 98 S. W. 445.

She may convey the property to discharge an equitable lien. Henry *v.* Vaughan, (Tex. Civ. App. 1907) 103 S. W. 192.

Remarriage. — Summerville *v.* King, 98 Tex. 332, 83 S. W. 680, *modified* 98 Tex. 341, 84 S. W. 643.

Surviving Wife as Party to Actions. — Dashiell *v.* Moody, (Tex. Civ. App. 1906) 97 S. W. 843.

A creditor's judgment against a wife as survivor is superfluous and unwarranted where she was made independent executrix of the estate. Hartz *v.* Hausser, (Tex. Civ. App. 1905) 90 S. W. 63.

Under Rev. Stat. Tex. (1895), art. 2220, a suit to enforce a community debt can properly be brought directly against the surviving widow only in event no children survived and the deceased left no separate estate. Whitmire *v.* Farmers' Nat. Bank, (Tex. Civ. App. 1906) 97 S. W. 512.

Judgments Rendered for or against Survivor. — Henry *v.* Vaughan, (Tex. Civ. App. 1907) 103 S. W. 192.

Divorce from Second Husband. — Where a surviving wife remarries, her subsequent divorce restores her to her previous rights as survivor. Summerville *v.* King, 98 Tex. 332, 83 S. W. 680, *modified* 98 Tex. 341, 84 S. W. 643.

345. 2. See Matter of Angle, 148 Cal. 102, 82 Pac. 668.

346. 1. Schwartz *v.* West, (Tex. Civ. App. 1904) 84 S. W. 282. See also Matter of Lux, 149 Cal. 200, 85 Pac. 147.

6. The fact that instead of the regular administration the husband gives a bond as survivor and returns an inventory does not in any way change the rights of the deceased wife's children. Belt *v.* Cetti, (Tex. 1906) 93 S. W. 1000.

Failure to allege facts showing no necessity for an administration in an action for a community debt against a surviving wife who had not qualified, is fatal. Whitmire *v.* Farmers' Nat. Bank, (Tex. Civ. App. 1906) 97 S. W. 512.

347. 3. Luria *v.* Cote Blanche Co., 114 La. 385, 38 So. 279; Jones *v.* Jones, 119 La. 677, 44 So. 429; Wiess *v.* Goodhue, 98 Tex. 274, 83 S. W. 178; Summerville *v.* King, 98 Tex. 332, 83 S. W. 680, *modified* 98 Tex. 341, 84 S. W. 643; Belt *v.* Cetti, (Tex. 1906) 93 S. W. 1000.

4. See Meteye's Succession, 113 La. 1012, 37 So. 909; Echols *v.* Jacobs Mercantile Co., (Tex. Civ. App. 1905) 84 S. W. 1082.

The widow as usufructuary is not required to give a bond. Glancey's Succession, 114 La. 1051, 38 So. 826; Dielmann's Succession, 119 La. 101, 43 So. 972.

The heir's right will be defeated by the wife's adverse possession of alleged community land under a claim as exclusive owner. Heidelberg *v.* Behrens, (Tex. Civ. App. 1905) 85 S. W. 1029.

5. Letot *v.* Peacock, (Tex. Civ. App. 1906) 94 S. W. 1121.

349. 1. In a partnership venture the wife is merely a creditor of the husband. Hoopes *v.* Mathis, (Tex. Civ. App. 1905) 89 S. W. 36.

6. **In Washington.**— See Woodward *v.* Davidson, 150 Fed. 840.

But Where Wife Was Party to Negotiations. — Specific performance of a husband's contract of sale of community property may be decreed where the wife sanctioned or ratified the same. Washington State Bank *v.* Dickson, 35 Wash. 641, 77 Pac. 1067.

353. 1. Brookman *v.* Durkee, (Wash. 1907) 90 Pac. 914; Witherill *v.* Fraunfelter, (Wash. 1907) 91 Pac. 1086.

355. 4. See *In re* Myer, (N. Mex. 1907) 89 Pac. 246.

356. 1. Brookman *v.* Durkee, (Wash. 1907) 90 Pac. 914; Witherill *v.* Fraunfelter, (Wash. 1907) 91 Pac. 1086. See also Hoopes *v.* Mathis, (Tex. Civ. App. 1905) 89 S. W. 36.

COMPANY.

358. 1. **Broad Scope of Term.**— See Efland *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 355.

Fraternal Association Not a Company.— Lyon *v.* United Moderns, 148 Cal. 470, 7 Ann. Cas. 672, 83 Pac. 804.

COMPARATIVE NEGLIGENCE.

362. 3. Rollestone *v.* Cassirer, (Ga. App. 1907) 59 S. E. 442; Malott *v.* Schlosser, 119 Ill. App. 259.

4. Pendleton *v.* Chicago City R. Co., 120 Ill. App. 405.

5. Star Brewery Co. *v.* Hauck, 222 Ill. 348, 78 N. E. 827, *affirming* 126 Ill. App. 608; Black *v.* New York, etc., R. Co., 193 Mass. 448, 9 Ann. Cas. 485, 79 N. E. 797.

363. 3. Birmingham R., etc., Co. *v.* Ryan, 148 Ala. 69, 41 So. 616.

4. Montgomery St. R. Co. *v.* Rice, 142 Ala. 674, 38 So. 857; Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 903; Tinsley *v.* Western Union Tel. Co., 72 S. Car. 350, 51 S. E. 913; Talbert *v.* Charleston, etc., R. Co., 75 S. Car. 136, 55 S. E. 138; Bussey *v.* Charleston, etc., R. Co., 75 S. Car. 116, 55 S. E. 163.

364. 1. **Plaintiff Must Use Ordinary Care.** — Rollestone *v.* Cassirer, (Ga. App. 1907) 59 S. E. 442.

3. Rothschild *v.* Levy, 118 Ill. App. 78; Kinnare *v.* Chicago, etc., R. Co., 114 Ill. App. 230; Citizens' Electric R., etc., Co. *v.* Bell, 26 Ohio Cir. Ct. 691, *affirmed* (Ohio 1904) 72 N. E. 1155.

4. Cincinnati Traction Co. *v.* Blackson, 27 Ohio Cir. Ct. 191; Columbus R. Co. *v.* Connor, 27 Ohio Cir. Ct. 229.

5. Rollestone *v.* Cassirer, (Ga. App. 1907) 59 S. E. 442.

8. Kelly *v.* Malott, (C. C. A.) 135 Fed. 74; Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602.

365. 1. The Asbury Park, 136 Fed. 269.

3. **Abrogated.** — Malott *v.* Schlosser, 119 Ill. App. 259.

366. 1. Rollestone *v.* Cassirer, (Ga. App. 1907) 59 S. E. 442.

368. 1. Denver, etc., R. Co. *v.* Maydole, 33 Colo. 150, 79 Pac. 1023; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602; Harrison *v.* Kansas City Electric Light Co., 195 Mo. 606, 93 S. W. 951; Weaver *v.* Pennsylvania R. Co., 212 Pa. St. 632, 61 Atl. 1117; Missouri, etc., R. Co. *v.* Kellerman, (Tex. Civ. App. 1905) 87 S. W. 401 (holding that the doctrine of comparative negligence does not obtain in *Kansas*); Woolf *v.* Washington R., etc., Co., 37 Wash. 491, 79 Pac. 997.

COMPETENT.

370. 2. **The Word Competent Does Mot Mean Disinterested** as used in a statute providing for the appointment of three *competent* persons as drainage commissioners, and owners of land in the district are *competent* persons. *In re* Cranberry Creek Drainage Dist., 128 Wis. 98, 107 N. W. 25.

The Phrase, "One Competent Man," in the English statute requiring one *competent* man

on each lighter navigating the Thames river means a licensed lighterman or waterman. Gardner *v.* Doe, (1906) 2 K. B. 171, 75 L. J. K. B. 814.

COMPLETE.

373. **1. Construction and Completion Synonymous.** — U. S. *v.* Perth Amboy Shipbuilding, etc., Co., 137 Fed. 685.

COMPOSITION WITH CREDITORS.

377. **3.** Hoidale *v.* Wood, 93 Minn. 190, 100 N. W. 1100; Tucker *v.* Dolan, 109 Mo. App. 442, 84 S. W. 1126; Chamberlain *v.* Smith, 110 Mo. App. 657, 85 S. W. 645; Silander *v.* Gronna, 15 N. Dak. 552, 108 N. W. 544.

4. *Compare* Mt. Vernon Rattan Co. *v.* Joachimson, 119 N. Y. App. Div. 71, 103 N. Y. Supp. 1045, wherein an agreement between creditors and a solvent corporation to accept a *pro rata* distribution of the corporation's assets, and to refrain from enforcing payment, was held to be without consideration.

378. **1. Composition with One Creditor.** — Where a creditor refused to accept the payment agreed upon by other creditors, but after all other creditors had received fifty per cent. of their claims, offered to accept a like amount, it was held that there was sufficient consideration for the agreement, as it was based upon the composition. Williams Shoe Co. *v.* Gotzian, 130 Iowa 710, 107 N. W. 807.

2. Covenants Providing for Discharge of Claims and Barring of Suits Essential. — Reynolds *v.* Pennsylvania Oil Co., 150 Cal. 629, 89 Pac. 610.

380. **3.** Corbett *v.* Joannes, 125 Wis. 370, 104 N. W. 69.

387. **1. Composition Avoided by Filing Petition in Bankruptcy.** — *In re* Carton, 148 Fed. 63.

390. **1. Compromise Must Be Executed.** — *In re* Carton, 148 Fed. 63. To the same effect as the cases cited in the original note.

392. **1. The Burden of Proof** is on a creditor who claims that the stipulation was omitted by mistake. Robinson *v.* Meyers, (Ky. 1907) 105 S. W. 428.

3. Storms *v.* Horton, 77 Conn. 334, 59 Atl. 421; Burgess *v.* Simpson Grocery Co., 128 Ga. 423, 57 S. E. 717, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 392.

4. Burgess *v.* Simpson Grocery Co., 128 Ga. 423, 57 S. E. 717, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 392.

393. **1.** Storms *v.* Horton, 77 Conn. 334, 59 Atl. 421.

394. **2. If the Facts Are Known,** an agreement to pay more to one than to another is valid. Hickman *v.* Galveston Dry Goods Co., (Tex. Civ. App. 1906) 94 S. W. 157.

395. **1.** McCormick *v.* Solinsky, (C. C. A.) 152 Fed. 984.

COMPOUNDING OFFENSES.

400. **6. Compounding and Misprision Distinguished.** — See State *v.* Wilson, (Vt. 1907) 67 Atl. 533.

401. **1.** Richter *v.* Phœnix Bldg., etc., Co., 27 Ohio Cir. Ct. 793.

The Agreement must be not to prosecute the person guilty of the felony, or, as said in some cases, "the guilty person" or "the criminal." State *v.* Hodge, 142 N. Car. 665, 9 Ann. Cas. 563, 55 S. E. 626.

Sufficiency of Information. — An information for misprision of felony must allege that the defendant intended to hinder the course of judgment and to cause the felon to escape unpunished. An information alleging that the defendant "did conceal and keep secret" is insufficient without further words showing a neglect to discover the felony, with the name and place of resort of the felon. State *v.* Wilson, (Vt. 1907) 67 Atl. 533.

402. **4. Must a Crime Have Been Committed?** — In State *v.* Hodge, 142 N. Car. 665, 9 Ann. Cas. 563, 55 S. E. 626, the court said: "It would seem that, in the light of the language uniformly used, there could be no doubt that, before a conviction can be had, it must be made to appear that a felony has been committed by the person with whom the corrupt agreement was made."

403. **1. Indictment Must Charge that Defendant Had Knowledge of Actual Commission of Crime.** — The indictment must allege that a felony had been committed and that the felon was known to the defendant. State *v.* Hodge, 142 N. Car. 665, 9 Ann. Cas. 563, 55 S. E. 626.

An information is sufficient if it sets forth in form and substance with time and place the commission of grand larceny, with the name and place of the offender, all of which the respondent on the same day and at the same place knew, etc. State *v.* Wilson, (Vt. 1907) 67 Atl. 533.

The Indictment Must Charge the Agreement, which is the gist of the offense. State *v.* Hodge, 142 N. Car. 665, 9 Ann. Cas. 563, 55 S. E. 626.

Bad Information. — An information that charges the compounding of a crime, based on a violation of the local-option law, and fails to allege the legal publication of the result of the election in the county, is bad. It is also bad for failure to allege that there was an agreement between the accused and his associates to make an agreement with a third person to obtain the money. Williams *v.* State, (Tex. Crim. 1907) 100 S. W. 149.

407. **1. Venue of Offense.** — Where the defendant went into another county and induced the party to go to the county where the misdemeanor was committed and the guilty party resided, and secure from him money and property in consideration of the defendant's not prosecuting him, it was held that the offense was committed in the county where the misdemeanor was committed. Powell *v.* State, (Tex. Crim. 1907) 101 S. W. 1006.

409. **2. An Agreement to Abandon or Suppress** the prosecution is necessary. Merely telling a person that he will be prosecuted if he does not obtain a mortgage from another will not vitiate the mortgage when obtained. Moyer *v.* Dodson, 212 Pa. St. 344, 61 Atl. 937.

Effect of Legality of Consideration. — Where a father guarantees the debts of his sons to

suppress a criminal prosecution against them, the fact that the father gave legal consideration does not make the guaranty valid. Beale, etc., Dry Goods Co. *v.* Barton, 80 Ark. 326, 97 S. W. 58.

410. 2. **An Agent's Agreement** not to prosecute is binding on his principal so far as to vitiate a note and mortgage given in consideration thereof. Corbett *v.* Clute, 137 N. Car. 546, 50 S. E. 216.

An Agreement to Pay for the Return of a Watch presumed to have been stolen is not compounding a felony, and is valid and enforceable. Schirm *v.* Wieman, 103 Md. 541, 7 Ann. Cas. 1008, 63 Atl. 1056. See generally the title REWARDS.

Discontinuance of Bastardy Proceedings. — A mortgage executed to secure the support of a mother and child and to have bastardy proceedings against the son discontinued is not against public policy, and is valid. Jangraw *v.* Perkins, 77 Vt. 375, 60 Atl. 385.

5. Deen *v.* Williams, 128 Ga. 265, 57 S. E. 427.

6. Schirm *v.* Wieman, 103 Md. 547, 7 Ann. Cas. 1008, 63 Atl. 1056, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 410.

413. 1. **Contracts Made in Consideration of Compounding Not Enforceable Between Parties.** — Beal, etc., Dry Goods Co. *v.* Barton, 80 Ark. 326, 97 S. W. 58; Deen *v.* Williams, 128 Ga. 265, 57 S. E. 427; Corbett *v.* Clute, 137 N. Car. 546, 50 S. E. 216; Atchison, etc., R. Co. *v.* Holmes, 18 Okla. 92, 90 Pac. 22.

415. 1. **Money Paid or Property Transferred Cannot Be Recovered.** — Atchison, etc., R. Co. *v.* Holmes, 18 Okla. 92, 90 Pac. 22.

416. 2. Richter *v.* Phœnix Bldg, etc., Co., 27 Ohio Cir. Ct. 793.

3. **Equitable Estoppel May Not Be Invoked.** — Where a deed is executed to a prosecutor who is himself a party to an agreement to suppress a criminal prosecution, there being no other consideration, he cannot invoke an equitable estoppel against the assertion of the legal title by the holder thereof. Deen *v.* Williams, 128 Ga. 265, 57 S. E. 427.

417. 1. Burton *v.* McMillan, 52 Fla. 483, 42 So. 849, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 416, 417.

COMPROMISE.

418. 3. Armijo *v.* Henry, (N. Mex. 1907) 89 Pac. 308, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 418.

CONCEAL — CONCEALMENT.

420. 4. *In re* Shoesmith, 135 Fed. 684, 68 C. C. A. 322.

CONCEALMENT OF BIRTH OR DEATH.

428. 2. "Secret Disposition." — To constitute the offense of concealment of birth within section 60 of the Offenses Against the Person Act, 1861, there must be a concealment of the fact of birth and that concealment must be carried out by the secret disposition of the dead body. The secret disposition must be of such a nature that any one coming to the place where the body is would not be likely to see it. Rex *v.* Rosenberg, 70 J. P. 264.

CONCERN — CONCERNED — CONCERNS.

430. 9. **Covenant Not to Be Concerned in Business.** — See Cory *v.* Harrison, (1906) A. C. 274, 75 L. J. Ch. 714.

CONCLUSIVE.

432. 2. **Conclusive.** — See Masterson *v.* Whipple, 27 R. I. 192, 61 Atl. 446.

CONCUBINAGE.

433. 1. State *v.* Tucker, 72 Kan. 481, 84 Pac. 126.

CONDITIONAL SALES.

437. 2. "A conditional sale is one in which the vesting of the title in the purchaser is subject to a condition precedent, or in which its revesting in the seller is subject to a failure of the buyer to comply with a condition subsequent." *In re* Columbus Buggy Co., (C. C. A.) 143 Fed. 859.

Examples of Conditional Sales. — Townsend *v.* Melvin, 5 Penn. (Del.) 495, 63 Atl. 330.

439. 1. *In re* Cullman Fruit, etc., Assoc., 155 Fed. 374, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 438; Harron *v.* Wilson, (Cal. 1906) 88 Pac. 512; McLean *v.* Griot, 118 N. Y. App. Div. 100, 103 N. Y. Supp. 129.

6. Cooper *v* Payne, 103 N. Y. App. Div. 118, 93 N. Y. Supp. 69.

440. 1. Wittler-Corbin Machinery Co. *v.* Martin, (Wash. 1907) 91 Pac. 629.

3. **Standing Timber May Be Subject of Conditional Sale.** — Van Buren *v.* Stubbings, 149 Mich. 206, 112 N. W. 706.

5. Knowles Loom Works *v.* Knowles, (Del. 1906) 65 Atl. 26; Wittler-Corbin Machinery Co. *v.* Martin, (Wash. 1907) 91 Pac. 629.

442. 1. National Cash Register Co. *v.* Paulson, 16 Okla. 204, 83 Pac. 793.

3. Lees *v.* Harding, (N. J. 1905) 60 Atl. 352; Studebaker Bros. Co. *v.* Mau, 13 Wyo. 358, 80 Pac. 151, *affirmed* 14 Wyo. 68, 82 Pac. 2.

Where the Bankruptcy Act has not declared another rule, the bankruptcy court will follow the law of the state where the contract was drawn in determining whether it is a lease or a conditional sale. *In re* Sheets Printing, etc., Co., 136 Fed. 989; *In re* Tice, 139 Fed. 52; *In re* Newton, (C. C. A.) 153 Fed. 841.

4. Bradley *v.* Kingman Implement Co., (Neb. 1907) 112 N. W. 346.

6. **By Statute in Texas** (Rev. St. 1895, art. 3327) where goods are sold with the reservation of the title to secure the purchase money it constitutes a mortgage. Wright *v.* Texas Moline Plow Co., (Tex. Civ. App. 1905) 90 S. W. 905.

443. 1. D. A. Tompkins Co. *v.* Monti-

cello Cotton Oil Co., 137 Fed. 625; Scotch Mfg. Co. *v.* Carr, 53 Fla. 480, 43 So. 427; Smith *v.* Nixon, 145 Mich. 593, 108 N. W. 971; Studebaker Bros. Co. *v.* Mau, 13 Wyo. 358, 80 Pac. 151, *affirmed* 14 Wyo. 68, 82 Pac. 2.

2. D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 137 Fed. 625; American Soda Fountain Co. *v.* Blue, 146 Ala. 682, 40 So. 218; Blue *v.* American Soda Fountain Co., (Ala. 1907) 43 So. 709; White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

The whole doctrine of treating a conditional sale as a mortgage is the creature of equity, and will not be applied when the parties have unreasonably slept on their rights, and to apply the doctrine would be to do injustice, not equity. Sheffield *v.* Hurst, (Ky. 1907) 104 S. W. 350.

5. Hogan *v.* Detroit United Railway, 140 Mich. 101, 103 N. W. 543.

444. 1. Phillips *v.* Hallenberg Music Co., 82 Ark. 9, 99 S. W. 1105.

2. D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 137 Fed. 625; White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

446. 3. Where a contract provided that upon default the seller should retake the property and sell it and, after retaining enough to pay his claim, give the remainder to the buyer, it was held that the seller did not retain title but merely a lien thereon. Knowles Loom Works *v.* Knowles, (Del. 1906) 65 Atl. 26.

4. Bierce *v.* Hutchins, 205 U. S. 340, 27 U. S. Sup. Ct. 524; Riley *v.* Dillon, 148 Ala. 283, 41 So. 768; Townsend *v.* Melvin, 5 Penn. (Del.) 495, 63 Atl. 330; Tompkins *v.* Fonda Glove Lining Co., 188 N. Y. 261, 80 N. E. 933; People *v.* Gluck, 188 N. Y. 167, 80 N. E. 1022; Tweedie *v.* Clark, 114 N. Y. App. Div. 296, 99 N. Y. Supp. 856; Studebaker Bros. Co. *v.* Mau, 13 Wyo. 358, 80 Pac. 151 (*citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 446), *affirmed* 14 Wyo. 68, 82 Pac. 2.

447. 1. For Other Cases of contracts held to be bailments and not sales, see *In re* Columbus Buggy Co., (C. C. A.) 143 Fed. 859; *In re* Angeny, 151 Fed. 959; Lambert Hoisting Engine Co. *v.* Carmody, 79 Conn. 419, 65 Atl. 141; Gilbert Book Co. *v.* Sheridan, 114 Mo. App. 332, 89 S. W. 555; Cincinnati Equipment Co. *v.* Strang, 215 Pa. St. 475, 64 Atl. 678.

2. Morrison Mfg. Co. *v.* Fargo Storage, etc., Co., (N. Dak. 1907) 113 N. W. 605.

6. *In re* Sheets Printing, etc., Co., 136 Fed. 989; *In re* Tice, 139 Fed. 52; Unitype Co. *v.* Long, (C. C. A.) 143 Fed. 315; Manson *v.* Dayton, (C. C. A.) 153 Fed. 258; Staunton *v.* Smith, (Del. 1906) 65 Atl. 593; Wilmerding *v.* Rhodes-Haverty Furniture Co., 122 Ga. 317, 50 S. E. 100.

447. 6. Rosenbaum *v.* King, 114 Ill. App. 648; Hamilton *v.* Hilands, 144 N. Car. 279, 56 S. E. 929, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 447; Pringle *v.* Canfield, 19 S. Dak. 506, 104 N. W. 223; Kelly Springfield Road Roller Co. *v.* Spyker, 215 Pa. St. 332, 64 Atl. 546; Kidder *v.* Wittler-Corbin Machinery Co., 38 Wash. 179, 80 Pac. 301.

450. 3. John Deere Plow Co. *v.* McDavid, (C. C. A.) 137 Fed. 802; Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1.

453. 2. Tilford *v.* Atlantic Match Co., 134 Fed. 924; Murphy *v.* American Soda Fountain Co., 86 Miss. 791, 39 So. 100; Cooper *v.* Payne, 103 N. Y. App. Div. 118, 93 N. Y. Supp. 69.

455. 1. See *contra* American Soda Fountain Co. *v.* Blue, 146 Ala. 682, 40 So. 218.

2. Phillips *v.* Hallenberg Music Co., 82 Ark. 9, 99 S. W. 1105, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 455; Jessup *v.* Fairbanks, 38 Ind. App. 673, 78 N. E. 1050; Whitlock *v.* Auburn Lumber Co., 145 N. Car. 120, 58 S. E. 909; Marion Mfg. Co. *v.* Buchanan, 118 Tenn. 238, 99 S. W. 984; La Valley *v.* Ravenna, 78 Vt. 152, 6 Ann. Cas. 684, 62 Atl. 47.

456. 1. Bierce *v.* Hutchins, 205 U. S. 340, 27 U. S. Sup. Ct. 524; Anderson Carriage Co. *v.* Bartley, 102 Me. 492, 67 Atl. 567.

Where the vendor receives, from the purchaser, the note of a third person, the presumption is that the note was accepted in payment and satisfaction of the purchase price. McLean *v.* Griot, 118 N. Y. App. Div. 100, 103 N. Y. Supp. 129.

Seller Cannot Maintain Detinue until Maturity of Note and Default in Payment. — Wellden *v.* Witt, 145 Ala. 605, 40 So. 126.

2. Kester *v.* Schuldt, 11 Idaho 663, 85 Pac. 974; Watts *v.* Ainsworth, (Miss. 1907) 42 So. 672; Whitlock *v.* Auburn Lumber Co., 145 N. Car. 120, 58 S. E. 909.

4. *In re* Cullman Fruit, etc., Assoc., 155 Fed. 374; McIver *v.* Williamson-Halsell-Frazier Co., (Okla. 1907) 92 Pac. 170, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 456.

457. 1. *In re* Cullman Fruit, etc., Assoc., 155 Fed. 374.

2. McIver *v.* Williamson-Halsell-Frazier Co., (Okla. 1907) 92 Pac. 170.

458. 3. Flaherty *v.* Ginsberg, (Iowa 1907) 110 N. W. 1050; Bowen *v.* Dawley, 116 N. Y. App. Div. 568, 101 N. Y. Supp. 878.

6. Woodman *v.* Needham Piano, etc., Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 683, 94 N. Y. Supp. 371.

459. 1. National Cash Register Co. *v.* Cervone, 76 Ohio St. 12, 80 N. E. 1033.

462. 3. Virginia-Carolina Lumber Co. *v.* Eisinger, 29 App. Cas. (D. C.) 531; Delahunty Dyeing Mach. Co. *v.* Pennsylvania Knitting Mills, 27 Pa. Super. Ct. 433.

469. 1. Sweeney *v.* Waterhouse, 39 Wash. 507, 81 Pac. 1005.

472. 1. Cooper *v.* Payne, 103 N. Y. App. Div. 118, 93 N. Y. Supp. 69.

474. 4. Carpenter *v.* Crow, 77 Ark. 522, 92 S. W. 779; Hyatt *v.* Bell, 83 Ark. 360, 103 S. W. 748.

Question of Waiver for Jury. — Kindelberger *v.* Kunow, 122 N. Y. App. Div. 158, 106 N. Y. Supp. 597.

475. 3. Frech *v.* Lewis, 32 Pa. Super. Ct. 279.

476. 3. Frech *v.* Lewis, 32 Pa. Super. Ct. 279.

477. 1. *In re* Cullman Fruit, etc., Assoc., 155 Fed. 374.

5. Greenwald *v.* Tinsley, (Miss. 1906) 42 So. 89.

478. 1. A vendor, by commencing an action on a note given for the purchase price of a machine, title of which is to remain in the vendor until full payment, will ordinarily be held to have waived his title to the property. Fredrickson *v.* Schmittroth, (Neb. 1907) 112 N. W. 564.

Effect of Attachment. — Attachment is not necessarily a waiver of the contract. Cooper *v.* Smith, 125 Ga. 167, 53 S. E. 1013.

2. E. E. Forbes Piano Co. *v.* Wilson, 144 Ala. 586, 39 So. 645.

6. Townsend *v.* Melvin, 5 Penn. (Del.) 495, 63 Atl. 330; Gilroy *v.* Everson-Hickok Co., 118 N. Y. App. Div. 733, 103 N. Y. Supp. 620.

479. 2. Riley *v.* Dillon, 148 Ala. 283, 41 So. 768; Little Rock Vehicle, etc., Co. *v.* Robinson, 75 Ark. 548, 87 S. W. 1029; Staunton *v.* Smith, (Del. 1906) 65 Atl. 593; Scotch Mfg. Co. *v.* Carr, 53 Fla. 480, 43 So. 427; Wilmerding *v.* Rhodes-Haverty Furniture Co., 122 Ga. 312, 50 S. E. 100; Barton *v.* Groseclose, 11 Idaho 227, 81 Pac. 623; Pels *v.* Cambridge Architectural Iron Works, (Mass. 1906) 77 N. E. 1152; Lane *v.* Dreger, 95 Minn. 4, 103 N. W. 710; Fairbanks Co. *v.* Graves, (Miss. 1907) 43 So. 675; Roach *v.* Curtis, 115 N. Y. App. Div. 765, 101 N. Y. Supp. 333; Kindelberger *v.* Kunow, 122 N. Y. App. Div. 158, 106 N. Y. Supp. 597; McIver *v.* Williamson-Halsell-Frazier Co., (Okla. 1907) 92 Pac. 170; National Cash Register Co. *v.* Petsas, 43 Wash. 376, 86 Pac. 662.

Where goods shipped under a contract of conditional sale are not such as ordered, the vendor, upon the vendee's failing to make payments, may recover the goods only upon tendering to the vendee the amount paid by him. American Soda Fountain Co. *v.* Dean Drug Co., (Iowa 1907) 111 N. W. 534.

A vendor of personal property under a conditional sale may recover in conversion for the same, after default by his vendee, against a vendor under contract of real estate to which said personal property has been attached by said vendee, who was also the vendee under and had made default upon the real estate contract. Davis *v.* Bliss, 187 N. Y. 77, 79 N. E. 851.

480. 2. Foster *v.* Briggs Machinery, etc., Co., 6 Indian Ter. 342, 98 S. W. 120; Cambridge Soc. *v.* Elliot, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 159, 98 N. Y. Supp. 232.

The vendor cannot attach other property of the vendee to secure payments until the property which is the subject of the conditional sale is exhausted. Barton *v.* Groseclose, 11 Idaho 227, 81 Pac. 623.

The vendor is entitled to interest from the date payment becomes due, at the legal rate, though no demand for payment was made before commencement of the action. Morrison Mfg. Co. *v.* Fargo Storage, etc., Co., (N. Dak. 1907) 113 N. W. 605.

3. Manson *v.* Dayton, (C. C. A.) 153 Fed. 258; Davis *v.* Millings, 141 Ala. 378, 37 So. 737, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 480; Butler *v.* Dodson, 78 Ark. 569, 94 S. W. 703; A. G. Rhodes, etc., Furniture Co. *v.* Jenkins, (Ga. App. 1907) 58 S. E. 897; Whitney *v.* Abbott, 191 Mass. 59, 77 N. E. 524; Cooper *v.* Payne, 111 N. Y. App. Div. 785, 97 N. Y. Supp. 863; Edmead *v.* Anderson, 118 N. Y. App. Div. 16, 103 N. Y. Supp. 369.

Compare E. E. Forbes Piano Co. *v.* Wilson, 144 Ala. 586, 39 So. 645, which approves Thomason *v.* Lewis, 103 Ala. 426, 15 So. 830, stated in the original note, but holds that the mere bringing of an action for the purchase price of the article and recovering judgment therefor, which is not averred to have been paid, does not operate to divest the plaintiff of his title to the property.

In Cooper *v.* Smith, 125 Ga. 167, 53 S. E. 1013, it was held that, where the seller seizes the property under an attachment sued out for the purchase price and himself buys the property under an illegal sale, before the rendition of judgment in his favor, it does not amount to an election to rescind the contract.

Abandonment Implied Where Seller Neglects to Reclaim Possession for Unreasonable Time. — Knowles Loom Works *v.* Knowles, (Del. 1906) 65 Atl. 26.

Property Abandoned by Vendee. — The vendor may retake the property where it has been abandoned by the vendee and it appears that it would be a total loss unless cared for, and then sue the vendee for the balance due. Jones *v.* Reynolds, 45 Wash. 371, 88 Pac. 577.

481. 4. Fredrickson *v.* Schmittroth, (Neb. 1907) 112 N. W. 564.

482. 5. South Bend Iron Works *v.* Reedy, 5 Penn. (Del.) 361, 60 Atl. 698.

483. 1. *In re* Gilligan, (C. C. A.) 152 Fed. 605; Oliver Chilled Plow Works *v.* Dolan, 139 Mich. 668, 103 N. W. 186.

It is authoritatively settled in *Arkansas* that a contract of conditional sale is valid notwithstanding it contains a provision that the vendee may sell the property in the usual course of trade. *In re* Newton, (C. C. A.) 153 Fed. 841.

Where goods were sold conditionally, the seller retaining the title until the purchase money was paid, to be retailed in the regular course of business, with the understanding that the proceeds of the sale should remain the property of the seller until the purchase price was paid, the vendee to execute notes to secure the purchase price, it was held that upon executing the notes he was entitled to the possession of the goods, and to retail the same in due course of trade, until he failed to comply with the conditions of the sale to him, and the seller could not retake the goods simply because he deemed the vendee insolvent. Rex Buggy Co. *v.* Ross, 80 Ark. 388, 97 S. W. 291.

Void by Statute in Texas. — Slayton *v.* Horsey, (Tex. Civ. App. 1906) 91 S. W. 799.

484. 2. **Estoppel After Four Years.** — Townsend *v.* Melvin, 5 Penn. (Del.) 495, 63 Atl. 330.

3. Milicie *v.* Pearson, 110 N. Y. App. Div 770, 97 N. Y. Supp. 431.

485. 4. Barton *v.* Groseclose, 11 Idaho

227, 81 Pac. 623, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485.

5. Townsend *v.* Southern Product Co., 127 Ga. 342, 56 S. E. 436.

486. 1. Gilbert Book Co. *v.* Sheridan, 114 Mo. App. 332, 89 S. W. 555.

Purchaser May Mortgage Subject to Rights of Seller. — Washington Trust Co. *v.* Morse Iron Works, etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495; Washington Trust Co. *v.* Morse Iron Works, etc., Co., 114 N. Y. App. Div. 886, 100 N. Y. Supp. 254.

2. Kilmer *v.* Moneyweight Scale Co., 36 Ind. App. 568, 76 N. E. 271.

Vendee of Conditional Sale of Personalty May Recover for Tort Thereto. — Emanuel County *v.* Thompson, (Ga. App. 1907) 59 S. E. 603.

487. 1. Riley *v.* Dillon, 148 Ala. 283, 41 So. 768; Wilmerding *v.* Rhodes-Haverty Furniture Co., 122 Ga. 312, 50 S. E. 100; Van Buren *v.* Stubbings, 149 Mich. 206, 112 N. W. 706; Fairbanks Co. *v.* Graves, (Miss. 1907) 43 So. 675; Bowen *v.* Dawley, 116 N. Y. App. Div. 568, 101 N. Y. Supp. 878, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486, 487.

Where the vendor of a conditional sale knew that the vendee was under a contract to put fixtures in a store of a third party and that title was to pass to such third party, such vendor had no title to the fixtures as against the third party. Milicie *v.* Pearson, 110 N. Y. App. Div. 770, 97 N. Y. Supp. 431.

No Demand Necessary Before Suit to Recover Property from Third Person. — Worthington *v.* A. G. Rhodes, etc., Co., 145 Ala. 656, 39 So. 614.

489. 4. Duplex Printing Press Co. *v.* Clipper Pub. Co., 213 Pa. St. 207, 62 Atl. 841.

490. 3. Pearne *v.* Coyne, 79 Conn. 570, 65 Atl. 973; Roach *v.* Curtis, 115 N. Y. App. Div. 765, 101 N. Y. Supp. 333; McIver *v.* Williamson-Halsell-Frazier Co., (Okla. 1907) 92 Pac. 170.

493. 1. *In re* Tice, 139 Fed. 52; Duplex Printing Press Co. *v.* Clipper Pub. Co., 213 Pa. St. 207, 62 Atl. 841.

Hotel Keeper's Lien Good as Against Vendor of Property Sold Conditionally to Guest. — Waters *v.* Gerard, 189 N. Y. 302, 82 N. E. 143.

494. 2. *United States.* — Tilford *v.* Atlantic Match Co., 134 Fed. 924; General Fire Extinguisher Co. *v.* Lamar, (C. C. A.) 141 Fed. 353; Unitype Co. *v.* Long, (C. C. A.) 143 Fed. 315; *In re* Franklin, 151 Fed. 642.

Connecticut. — Lambert Hoisting Engine Co. *v.* Carmody, 79 Conn. 419, 65 Atl. 141.

Florida. — Onyx Soda Fountain Co. *v.* L'Engle, 53 Fla. 314, 43 So. 771.

Iowa. — National Cash Register Co. *v.* Zangs, 127 Iowa 710, 104 N. W. 360.

Missouri. — Gilbert Book Co. *v.* Sheridan, 114 Mo. App. 332, 89 S. W. 555.

Nebraska. — Starr *v.* Dow, (Neb. 1906) 108 N. W. 1065; Johns *v.* Reed, (Neb. 1906) 109 N. W. 738.

New York. — Bowen *v.* Dawley, 116 N. Y. App. Div. 568, 101 N. Y. Supp. 878; McLean *v.* Bloch, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 545, 102 N. Y. Supp. 838; Kirk *v.* Crystal, 118 N. Y. App. Div. 32, 103 N. Y. Supp. 17.

Ohio. — York Mfg. Co. *v.* Cassell, 201 U. S. 344, 26 U. S. Sup. Ct. 481.

Oklahoma. — Shafer *v.* National Cash Register Co., 16 Okla. 117, 82 Pac. 646; S. Twichell Co. *v.* Lawton First Nat. Bank, 18 Okla. 375, 90 Pac. 14.

South Dakota. — Pringle *v.* Canfield, 19 S. Dak. 506, 104 N. W. 223; Webber *v.* Conklin, (S. Dak. 1905) 104 N. W. 675.

Washington. — Wittler-Corbin Machinery Co. *v.* Martin, (Wash. 1907) 91 Pac. 629.

Household Goods Excepted in Some States. — Wake *v.* Thoms, 78 Conn. 273, 61 Atl. 949; Lamb *v.* King, 73 N. H. 400, 62 Atl. 493.

CONDITIONS.

500. 1. Krueger *v.* St. Louis, etc., R. Co., 185 Mo. 227, 84 S. W. 898.

2. Reclamation Dist. No. 551 *v.* Sels, 145 Cal. 181, 78 Pac. 638.

3. Burgson *v.* Jacobson, 124 Wis. 295, 102 N. W. 563.

4. Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296; Fisher *v.* Fisher, (Neb. 1907) 113 N. W. 1004; Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258; Korn's Will, 128 Wis. 428, 107 N. W. 659. See also Littlejohn *v.* Chicago, etc., R. Co., 219 Ill. 584, 76 N. E. 840; Pitchford *v.* Limer, 139 N. Car. 13, 51 S. E. 789.

5. Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296; Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248; Moss *v.* Chappell, 126 Ga. 196, 54 S. E. 968; Spencer *v.* Wabash R. Co., 132 Iowa 129, 109 N. W. 453; Randall *v.* Wentworth, 100 Me. 177, 60 Atl. 871; Hamel *v.* Minneapolis, etc., R. Co., 97 Minn. 334, 107 N. W. 139; Minneapolis Threshing Mach. Co. *v.* Hanson, 101 Minn. 260, 112 N. W. 217; Watts *v.* Griffin, 137 N. Car. 574, 50 S. E. 218; Ordway *v.* Farrow, 79 Vt. 192, 64 Atl. 1116; Lewiston Water, etc., Co. *v.* Brown, 42 Wash. 555, 85 Pac. 47.

501. 2. See Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248; Gall *v.* Gall, 126 Wis. 390, 105 N. W. 953.

3. See Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248.

5. Norris *v.* Coffman, (Tex. Civ. App. 1906) 95 S. W. 1088.

6. Bain *v.* Parker, 77 Ark. 168, 90 S. W. 1000; Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248; Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757; Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498; Richter *v.* Distelhurst, 116 N. Y. App. Div. 269, 101 N. Y. Supp. 634; Korn's Will, 128 Wis. 428, 107 N. W. 659. See also Krueger *v.* St. Louis, etc., R. Co., 185 Mo. 227, 84 S. W. 898; Sylvester *v.* State, (Wash. 1907) 91 Pac. 15.

In the case of a will, a devise over will show the intent. Clark *v.* Goodridge, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 140, 100 N. Y. Supp. 824.

"Shall Revert." — Moss *v.* Chappell, 126 Ga. 196, 54 S. E. 968; Hamel *v.* Minneapolis, etc., R. Co., 97 Minn. 334, 107 N. W. 130; McCue *v.* Barrett, 99 Minn. 353, 109 N. W. 594; White *v.* Britton, 75 S. Car. 428, 56 S. E. 232.

"Make Null and Void."— Minneapolis Threshing Mach. Co. *v.* Hanson, 101 Minn. 260, 112 N. W. 217.

Provision for Re-entry Not Indispensable if Intent Clear. — Johnson *v.* Paulson, (Minn. 1908) 114 N. W. 739.

8. Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248; Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972.

"A condition is not to be implied from the mention of a consideration if it does not go to the whole consideration." Heaston *v.* Krieg, 167 Ind. 101, 77 N. E. 805.

9. See Clark *v.* Goodridge, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 140, 100 N. Y. Supp. 824.

502. 1. Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757; Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498; Clark *v.* Goodridge, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 140, 100 N. Y. Supp. 824.

2. Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248; Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757; St. Peter's Church *v.* Bragaw, (N. Car. 1907) 56 S. E. 688.

3. Sylvester *v.* State, (Wash. 1907) 91 Pac. 15. See also Harris *v.* Hirsch, 121 N. Y. App. Div. 767, 106 N. Y. Supp. 631.

5. Johnson *v.* Paulson, (Minn. 1908) 114 N. W. 739; St. Peter's Church *v.* Bragaw, (N. Car. 1907) 56 S. E. 688; Scott *v.* Murray, 218 Pa. St. 186, 67 Atl. 47; Spies *v.* Arvondale, etc., R. Co., 60 W. Va. 389, 55 S. E. 464.

In deeds it is the intent of the parties which governs. Burnett *v.* Piercy, 149 Cal. 178, 86 Pac. 603; Krueger *v.* St. Louis, etc., R. Co., 185 Mo. 227, 84 S. W. 898; Burgson *v.* Jacobson, 124 Wis. 295, 102 N. W. 563.

6. Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248; Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757; Krueger *v.* St. Louis, etc., R. Co., 185 Mo. 227, 84 S. W. 898; St. Peter's Church *v.* Bragaw, (N. Car. 1907) 56 S. E. 688; Spies *v.* Arvondale, etc., R. Co., 60 W. Va. 389, 55 S. E. 464.

7. Union Stockyards Co. *v.* Nashville Packing Co., (C. C. A.) 140 Fed. 701; Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972; Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757; Hamel *v.* Minneapolis, etc., R. Co., 97 Minn. 334, 107 N. W. 139; Johnson *v.* Paulson, (Minn. 1908) 114 N. W. 739; Ashuelot Nat. Bank *v.* Keene, (N. H. 1907) 65 Atl. 826; Spies *v.* Arvondale, etc., R. Co., 60 W. Va. 389, 55 S. E. 464. See also Kitching *v.* Brown, 180 N. Y. 414, 73 N. E. 241.

Evidence May Be Admitted, when necessary, to show the circumstances under which the contract was made. Lowry *v.* Hawaii, 206 U. S. 206, 27 U. S. Sup. Ct. 622.

8. Minard *v.* Delaware, etc., R. Co., 139 Fed. 60; Union Stockyards Co. *v.* Nashville Packing Co., (C. C. A.) 140 Fed. 701; Richter *v.* Distelhurst, 116 N. Y. App. Div. 269, 101 N. Y. Supp. 634; St. Peter's Church *v.* Bragaw, (N. Car. 1907) 56 S. E. 688.

9. *United States.* — Quinlan *v.* Green County, (C. C. A.) 157 Fed. 33, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 502; Minard *v.* Delaware, etc., R. Co., 139 Fed. 60; Union Stockyards Co. *v.* Nashville Packing Co., (C. C. A.) 140 Fed. 701.

Arkansas. — Bain *v.* Parker, 77 Ark. 168, 90 S. W. 1000.

California. — Reclamation Dist. No. 551 *v.* Sels, 145 Cal. 181, 78 Pac. 638; Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248; Brown *v.* Wrightman, (Cal. App. 1907) 90 Pac. 467.

Illinois. — Calkins *v.* Calkins, 220 Ill. 111, 77 N. E. 102.

Indiana. — Heaston *v.* Krieg, 167 Ind. 101, 77 N. E. 805.

Kentucky. — Louisville, etc., R. Co. *v.* Baskett, (Ky. 1907) 104 S. W. 695.

Maryland. — Carlin *v.* Harris, 100 Md. 49, 59 Atl. 122.

Michigan. — Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757.

Minnesota. — Hamel *v.* Minneapolis, etc., R. Co., 97 Minn. 334, 107 N. W. 139; McCue *v.* Barrett, 99 Minn. 352, 109 N. W. 594. See also Minneapolis Threshing Mach. Co. *v.* Hanson, 101 Minn. 260, 112 N. W. 217.

Missouri. — Krueger *v.* St. Louis, etc., R. Co., 185 Mo. 227, 84 S. W. 898.

New Hampshire. — Ashuelot Nat. Bank *v.* Keene, (N. H. 1907) 65 Atl. 826.

New York. — Clark *v.* Goodridge, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 140, 100 N. Y. Supp. 824; Richter *v.* Distelhurst, 116 N. Y. App. Div. 269, 101 N. Y. Supp. 634.

North Carolina. — St. Peter's Church *v.* Bragaw, (N. Car. 1907) 56 S. E. 688.

Pennsylvania. — Dempwolf *v.* Greybill, 213 Pa. St. 163, 62 Atl. 645.

West Virginia. — Spies *v.* Arvondale, etc., R. Co., 60 W. Va. 389, 55 S. E. 464.

Wisconsin. — Burgson *v.* Jacobson, 124 Wis. 295, 102 N. W. 563.

Where It Is Doubtful Whether a Breach Has Occurred, the courts will if possible avoid a forfeiture. Durran *v.* Durran, 91 L. T. N. S. 819.

503. 1. Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296.

2. *Re* Emson, 93 L. T. N. S. 104, 74 L. J. Ch. 565; Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296; Bright *v.* Louisville, etc., R. Co., (Ky. 1905) 87 S. W. 780.

Condition Subsequent Preferred.— Spies *v.* Arvondale, etc., R. Co., 60 W. Va. 389, 55 S. E. 464.

3. Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296; Spies *v.* Arvondale, etc., R. Co., 60 W. Va. 389, 55 S. E. 464. See also McDowell *v.* Blue Ridge, etc., R. Co., 144 N. Car. 721, 57 S. E. 520.

4. *Re* Emson, 93 L. T. N. S. 104, 74 L. J. Ch. 565; Bell *v.* Bair, (Ky. 1905) 89 S. W. 732.

5. *In re* Ross, 7 Ont. L. Rep. 493; Lowrey *v.* Hawaii, 206 U. S. 206, 27 U. S. Sup. Ct. 622; Wilmore Coal Co. *v.* Brown, 147 Fed. 931; Bright *v.* Louisville, etc., R. Co., (Ky. 1907) 87 S. W. 780; McDowell *v.* Blue Ridge, etc., R. Co., 144 N. Car. 721, 57 S. E. 520; White *v.* Britton, 75 S. Car. 428, 56 S. E. 232;

Spies *v.* Arvondale, etc., R. Co., 60 W. Va. 389, 55 S. E. 464.

Illustration.—A grant of land to a railroad to be built and completed within three years, where part of the consideration was some of the stock and bonds of the railroad, was construed to be upon a condition subsequent. Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296.

6. Union Stockyards Co. *v.* Nashville Packing Co., (C. C. A.) 140 Fed. 701; Louisville, etc., R. Co. *v.* Baskett, (Ky. 1907) 104 S. W. 695; Hasbrouck *v.* New Paltz, etc., Co., 98 N. Y. App. Div. 563, 90 N. Y. Supp. 977; Gaffney *v.* Wood, 74 S. Car. 323, 54 S. E. 573; Burgson *v.* Jacobson, 124 Wis. 295, 102 N. W. 563.

Injunction against Breach of Covenant.—Kitching *v.* Brown, 180 N. Y. 414, 73 N. E. 241.

504. 1. Defeasible Fee.—McCready *v.* Morris, (Ky. 1906) 94 S. W. 24; Gilman *v.* Stone, (Ky. 1906) 94 S. W. 28; Whalin *v.* Bailey, (Ky. 1906) 96 S. W. 1105; Riner *v.* Kenfro, (Ky. 1907) 104 S. W. 951; Gannon *v.* Pauk, 200 Mo. 75, 98 S. W. 471.

Determinable Fee.—Tyler *v.* Theilig, 124 Ga. 204, 52 S. E. 606; Ahlfield *v.* Curtis, 229 Ill. 139, 82 N. E. 276; Carpenter *v.* Sangamon Loan, etc., Co., 229 Ill. 486, 82 N. E. 418; Crocker *v.* Van Vlissingen, 230 Ill. 225, 82 N. E. 614; Brenock *v.* Brenock, 230 Ill. 519, 82 N. E. 816; Chenault *v.* Burgess, (Ky. 1906) 93 S. W. 664; Lawton *v.* Joesting, 96 Minn. 163, 104 N. W. 830.

Fee Conditional at Common Law.—It seems that in *Iowa* a deed to one and the heirs of his body is a fee conditional as it was at common law before the statute *de donis*, and that the grantee may alien as soon as a child is born to him. Kepler *v.* Larson, 131 Iowa 438 108 N. W. 1033. See also Dillard *v.* Yarboro, 77 S. Car. 227, 57 S. E. 841.

Possibility of Reverter.—Ashuelot Nat. Bank *v.* Keene, (N. H. 1907) 65 Atl. 826.

The possibility of reverter is, it seems, alienable under the *California* code and is termed a contingent future estate. Pavkovich *v.* Southern Pac. R. Ca., 150 Cal. 39, 87 Pac. 1097.

Easement.—In Burlington, etc., R. Co. *v.* Colorado Eastern R. Co., 38 Colo. 95, 88 Pac. 154, it was held that where an easement was subject to extinguishment for nonuser, this was a limitation and not a condition subsequent, and that no re-entry was required.

An easement "is not capable of seizin. It lies in grant, not in seizin. For that reason no condition could be attached." Gray *v.* Cambridge, 189 Mass. 405, 76 N. E. 195.

2. Contingency.—See *In re* Goulder, (1905) 2 Ch. 100; Pitchford *v.* Limer, 139 N. Car. 13, 51 S. E. 789.

3. Ashuelot Nat. Bank *v.* Keene, (N. H. 1907) 65 Atl. 826.

6. Kessner *v.* Phillips, 189 Mo. 515, 3 Ann. Cas. 1005, 88 S. W. 66.

7. *In re* Ross, 7 Ont. L. Rep. 493.

9. *In re* Croxon, (1904) 1 Ch. 252.

10. Carllee *v.* Ellsberry, 82 Ark. 209, 101 S. W. 407; Kessner *v.* Phillips, 189 Mo. 515, 3 Ann. Cas. 1005, 88 S. W. 66.

11. Bell *v.* Bair, (Ky. 1905) 89 S. W. 732. See also Fisher *v.* Fisher, (Neb. 1907) 113 N. W. 1004.

505. 3. See Thomas *v.* Blue Ridge, etc., R. Co., 144 N. Car. 729, 57 S. E. 523. *Compare* Minneapolis Threshing Mach. Co. *v.* Hanson, 101 Minn. 260, 112 N. W. 217.

4. Conditions Precedent and Perpetuities.—See as illustrating a condition in accordance with the rule against perpetuities, Hill *v.* Gianelli, 221 Ill. 286, 77 N. E. 458; and as illustrating a violation of the rule, Johnson *v.* Preston, 226 Ill. 447, 80 N. E. 1001.

7. Ordway *v.* Farrow, 79 Vt. 192, 64 Atl. 1116. See also Warren *v.* Ash, 129 Ga. 329, 58 S. E. 858.

12. Schnell *v.* Schnell, 39 Ind. App. 556, 80 N. E. 432; Hoyt *v.* Hoyt, 77 Vt. 244, 59 Atl. 845.

But a devise to a son in consideration that he maintain the testator's wife was held to be a personal obligation of the son which ended at the latter's death. Wood *v.* Ogden, 121 Mo. App. 668, 97 S. W. 610.

506. 1. Wills—Ignorance of Condition No Defense.—Where a testator devised certain property to one of his sons in case such son should keep, care for, and support the testator during the remainder of his life, it was held that ignorance of the condition could not affect the result of nonperformance of it. Fisher *v.* Fisher, (Neb. 1907) 113 N. W. 1004.

2. *Re* Emson, 93 L. T. N. S. 104, 74 L. J. Ch. 565.

3. Performance Impossible.—*In re* Croxon, (1904) 1 Ch. 252.

7. Brown *v.* Wrightman, (Cal. App. 1907) 90 Pac. 467; Ordway *v.* Farrow, 79 Vt. 192, 64 Atl. 1116.

9. Condition Illegal.—Booker *v.* Booker, 119 N. Y. App. Div. 482, 104 N. Y. Supp. 21.

10. Condition Uncertain.—Watts *v.* Griffin, 137 N. Car. 574, 50 S. E. 218.

11. Hamel *v.* Minneapolis, etc., R. Co., 97 Minn. 334, 107 N. W. 139; Norris *v.* Coffman, (Tex. Civ. App. 1906) 95 S. W. 1088; Gall *v.* Gall, 126 Wis. 390, 105 N. W. 953.

Failure to Build Railway in Five Years.—McDowell *v.* Blue Ridge, etc., R. Co., 144 N. Car. 721, 57 S. E. 520.

Failure of Horse-racing Association to Maintain Fence.—Randall *v.* Wentworth, 100 Me. 177, 60 Atl. 871.

Violation of Prohibition against Use of Land for Barroom, Saloon, or Brewery.—Lewiston Water, etc., Co. *v.* Brown, 42 Wash. 555, 85 Pac. 47.

Nonuser.—Where a grant for the use of a school was followed by such use for a time, but afterwards there was a nonuser for two and one-half years, the court declined to adjudge a forfeiture on such nonuser. Buck *v.* Macon, 85 Miss. 580, 37 So. 460, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 506 *et seq.*

508. 1. Wilmore Coal Co. *v.* Brown, 147 Fed. 931; Richter *v.* Distelhurst, 116 N. Y. App. Div. 269, 101 N. Y. Supp. 634.

2. *Compare* Johnson *v.* Paulson, (Minn. 1908) 114 N. W. 739; Norris *v.* Coffman, (Tex. Civ. App. 1906) 95 S. W. 1088.

3. Randall *v.* Wentworth, 100 Me. 177, 60 Atl. 871; Norris *v.* Coffman, (Tex. Civ. App. 1906) 95 S. W. 1088.

Re-entry or Some Equivalent Necessary. — Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296; Wilmore Coal Co. *v.* Brown, 147 Fed. 931; Moss *v.* Chappell, 126 Ga. 196, 54 S. E. 968; White *v.* Britton, 75 S. Car. 428, 56 S. E. 232; Ordway *v.* Farrow, 79 Vt. 192, 64 Atl. 1116.

Suit Equivalent to Re-entry. — Lewiston Water, etc., Co. *v.* Brown, 42 Wash. 555, 85 Pac. 47.

If the Grantor Is in Possession it is advisable for him to signify that he intends to hold as under a breach. See McDowell *v.* Blue Ridge, etc., R. Co., 144 N. Car. 721, 57 S. E. 520, where the deed in question contained a clause to the effect that there was no obligation on the grantors to re-enter.

5. Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296; Brown *v.* Wrightman, (Cal. App. 1907) 90 Pac. 467; Moss *v.* Chappell, 126 Ga. 196, 54 S. E. 968; Hill *v.* Gianelli, 221 Ill. 286, 77 N. E. 458; Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757; McCue *v.* Barrett, 99 Minn. 352, 109 N. W. 594. See also Fisher *v.* Fisher, (Neb. 1907) 113 N. W. 1004; Lewiston Water, etc., Co. *v.* Brown, 42 Wash. 555, 85 Pac. 47.

6. Bain *v.* Parker, 77 Ark. 168, 90 S. W. 1000; Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757; McCue *v.* Barrett, 99 Minn. 352, 109 N. W. 594; Carp *v.* Queen Ins. Co., 116 Mo. App. 542, 92 S. W. 1137, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 508. *Compare* Warren *v.* Ash, 129 Ga. 329, 58 S. E. 858.

Waivers Favored to Avoid Forfeitures. — Brown *v.* Wrightman, (Cal. App. 1907) 90 Pac. 467.

7. Contra. — The grantor's "consent to a continuance of the estate in the grantee is presumed from his silence and inactivity." Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296. See also Bright *v.* Louisville, etc., R. Co., (Ky. 1905) 87 S. W. 780; Common School Dist. No. 7 *v.* Patrick, (Ky. 1907) 102 S. W. 237.

8. In Gall *v.* Gall, 126 Wis. 390, 105 N. W. 953, it was held that prior actions for damages for successive failures to support were no bar to a forfeiture for a subsequent breach.

When Waiver Not Enlarged. — It has been recently held by the Supreme Court of Georgia that "a waiver of a forfeiture resulting from the breach of a condition subsequent in a deed in favor of a named person and for a stated purpose is limited to the terms of the waiver, and does not destroy the condition altogether." Moss *v.* Chappell, 126 Ga. 196, 54 S. E. 968.

509. 1. Hubbird *v.* Goin, (C. C. A.) 137 Fed. 822; Johnson *v.* Preston, 226 Ill. 447, 80 N. E. 1001; Pearson *v.* Hanson, 230 Ill. 610, 82 N. E. 813; Female Orphan Soc. *v.* Young Men's Christian Assoc., 119 La. 278, 44 So. 15; Kessner *v.* Phillips, 189 Mo. 515, 3 Ann. Cas. 1005, 88 S. W. 66. See also Ripperdan *v.* Weldy, 149 Cal. 667, 87 Pac. 276.

Where the Grantor Retains No Reversionary Interest, a provision in restraint of alienation is void. Kepler *v.* Larson, 131 Iowa 438, 108 N. W. 1033.

4. See *In re* Cotgrave, (1903) 2 Ch. 705; Pitchford *v.* Limer, 139 N. Car. 13, 51 S. E. 789.

A provision that land shall not be liable for the grantee's debts and that it shall not be sold by him for thirty years is void. Kessner *v.* Phillips, 189 Mo. 515, 3 Ann. Cas. 1005, 88 S. W. 66.

New York. — A restraint on alienation for twenty-one years is void and the conveyance is free of the condition. Booker *v.* Booker, 119 N. Y. App. Div. 482, 104 N. Y. Supp. 21.

512. 1. Defeasance in Case Testator's Wife Marry Again Person Able to Support Her in Comfort and Affluence, Held Valid. — *Re* Moore, 96 L. T. N. S. 44.

2. *In re* Wright, (1907) 1 Ch. 231.

But where the income of a trust fund is limited to a daughter so long as she remains single, this is not to be construed as in restraint of her marriage, as her husband ought to provide for her. Trenton Trust, etc., Co. *v.* Armstrong, 70 N. J. Eq. 572, 62 Atl. 456. See also Holbrook's Estate, 213 Pa. St. 93, 5 Ann. Cas. 137, 62 Atl. 368, where the views of the Supreme Court of Pennsylvania on the general question are fully set forth.

So in the case of a sister. Harlow *v.* Bailey, 189 Mass. 208, 75 N. E. 259.

California. — Conditions in general restraint of a daughter's marriage are void under the California Civil Code, § 710. Matter of Alexander, 149 Cal. 146, 9 Ann. Cas. 1141, 85 Pac. 308.

3. Scott *v.* Murray, 218 Pa. St. 186, 67 Atl. 47.

4. Limited Restraint of Marriage. — *In re* Whiting, (1905) 1 Ch. 96.

513. 1. Holt *v.* Deshon, (Ky. 1907) 103 S. W. 281.

It has been held in *California* that a liquor restriction designed to give the grantor a monopoly of the sale of liquor is unlawful. Burdell *v.* Grandi, (Cal. 1907) 92 Pac. 1022.

Residing on Premises During Lifetime. — See *In re* Wright, (1907) 1 Ch. 231.

2. Compare, as declining to enforce a forfeiture on the ground that it was in the nature of a penalty, and intimating that an injunction was the proper remedy for a breach, Klasener *v.* Robinson, (Ky. 1907) 100 S. W. 255.

3. Welch *v.* Austin, 187 Mass. 256, 72 N. E. 972; Lignot *v.* Jaekle, (N. J. 1906) 65 Atl. 221; McNichol *v.* Townsend, (N. J. 1907) 67 Atl. 938. See also James *v.* Irvine, 141 Mich. 376, 104 N. W. 631.

Abandonment. — Chelsea Land, etc., Co. *v.* Adams, (N. J. 1907) 66 Atl. 180.

Stipulations. — Evans *v.* Foss, 194 Mass. 513, 80 N. E. 587; Kitching *v.* Brown, 180 N. Y. 414, 73 N. E. 241.

514. 1. James *v.* Irvine, 141 Mich. 376, 104 N. W. 631; Scharer *v.* Pantler, 127 Mo. App. 433, 105 S. W. 668, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513; Test Oil Co. *v.* La Tourette, (Okla. 1907) 91 Pac. 1025.

2. Conditional Limitations. — Matlock *v.* Lock, 38 Ind. App. 281, 73 N. E. 171; Matter of

Wiley, 111 N. Y. App. Div. 590, 97 N. Y. Supp. 1017.

3. See Sutton *v.* Dickerson, (Ky. 1905) 85 S. W. 687.

5. See Storrs *v.* Burgess, (R. I. 1907) 67 Atl. 731.

6. See Johnson *v.* Preston, 226 Ill. 447, 80 N. E. 1001; Carlin *v.* Harris, 100 Md. 49, 59 Atl. 122.

7. Tyler *v.* Theilig, 124 Ga. 204, 52 S. E. 606; Weyler *v.* Weyler, (Ky. 1907) 99 S. W. 222; Haseltine *v.* Shepherd, 99 Me. 495, 59 Atl. 1025; Haab *v.* Schneeberger, 147 Mich. 583, 111 N. W. 185; Cooper *v.* Cooper, (S. Car. 1907) 58 S. E. 950. See also Appleby *v.* Appleby, 100 Minn. 408, 111 N. W. 305.

8. Haab *v.* Schneeberger, 147 Mich. 583, 111 N. W. 185.

Where a testator devised all his estate to his wife "and her heirs and assigns forever," "so long as she remains my widow," it was held that the widow took a defeasible fee, which became absolute on her death without remarriage. Scott *v.* Murray, 218 Pa. St. 186, 67 Atl. 47.

515. 1. Burnett *v.* Piercy, 149 Cal. 178, 86 Pac. 603; Haseltine *v.* Shepherd, 99 Me. 495, 59 Atl. 1025; Harlow *v.* Bailey, 189 Mass. 208, 75 N. E. 259.

2. See *In re* Walsh, (1905) 1 Ir. R. 261; *In re* Goulder, (1905) 2 Ch. 100; Smith *v.* Ellis, (Tex. Civ. App. 1905) 87 S. W. 856.

4. Dent *v.* Pickens, 61 W. Va. 488, 58 S. E. 1029. See also Webel *v.* Kelly, 111 N. Y. App. Div. 521, 97 N. Y. Supp. 1009; Mull *v.* Masten, 113 N. Y. App. Div. 893, 98 N. Y. Supp. 746.

5. Littlejohn *v.* Chicago, etc., R. Co., 219 Ill. 584, 76 N. E. 840; Elsea *v.* Adkins, 164 Ind. 580, 74 N. E. 242; Spencer *v.* Wabash R. Co., 132 Iowa 129, 109 N. W. 453; Gill *v.* Fletcher, 74 Ohio St. 295, 78 N. E. 433; Edwards *v.* Brusha, 18 Okla. 234, 90 Pac. 727; Redding *v.* Vogt, 140 N. Car. 562, 6 Ann. Cas. 312, 53 S. E. 337; Pritchard *v.* Lewis, 125 Wis. 604, 104 N. W. 989; Williams *v.* Jones, 131 Wis. 361, 111 N. W. 505. See also Burlington, etc., R. Co. *v.* Colorado Eastern R. Co., 38 Colo. 95, 88 Pac. 154; Hall *v.* Wabash R. Co., 133 Iowa 714, 110 N. W. 1039.

6. Stadler *v.* Missouri River Power Co., (C. C. A.) 139 Fed. 305; Burlington, etc., R. Co. *v.* Colorado Eastern R. Co., 38 Colo. 95, 88 Pac. 154; Spencer *v.* Wabash R. Co., 132 Iowa 129, 109 N. W. 453; Meyers *v.* Russell, 124 Mo. App. 317, 101 S. W. 606, *quoting* 6 Am. and Eng. Encyc. of Law (2d ed.) 515; Edwards *v.* Brusha, 18 Okla. 234, 90 Pac. 727.

Creation of Easement a Reservation. — Hale *v.* Jenkins, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 119, 106 N. Y. Supp. 282.

Reservation Something Taken Back. — Pritchard *v.* Lewis, 125 Wis. 604, 104 N. W. 989 (where the distinctions are fully discussed); Williams *v.* Jones, 131 Wis. 361, 111 N. W. 505.

8. Intent Controls.—Gill *v.* Fletcher, 74 Ohio St. 295, 78 N. E. 433; Edwards *v.* Brusha, 18 Okla. 234, 90 Pac. 727.

Indiscriminate Use of the Terms. — See Elsea *v.* Adkins, 164 Ind. 580, 74 N. E. 242; Lever *v.* Grant, 139 Mich. 273, 102 N. W. 848, 103 N. W. 843.

If There Is an Ambiguity Which Cannot Be Resolved from the Deed, extrinsic evidence is admissible. Pritchard *v.* Lewis, 125 Wis. 604, 104 N. W. 989.

516. 1. Redding *v.* Vogt, 140 N. Car. 562, 6 Ann. Cas. 312, 53 S. E. 337; Brace *v.* Van Eps, (S. Dak. 1906) 109 N. W. 147.

2. Elsea *v.* Adkins, 164 Ind. 580, 74 N. E. 242; Hall *v.* Wabash R. Co., 133 Iowa 714, 110 N. W. 1039; Sharp *v.* Sharp, 148 Mich. 278, 111 N. W. 767. See also Gordon County *v.* Calhoun, 128 Ga. 781, 58 S. E. 360.

Must Not Be Inconsistent with Estate Granted. — O'Neil *v.* Potter, 140 Mich. 696, 104 N. W. 396.

The Modern Theory in some jurisdictions is to construe all parts of a deed together. Pavkovich *v.* Southern Pac. R. Co., 150 Cal. 39, 87 Pac. 1097.

3. See Elsea *v.* Adkins, 164 Ind. 580, 74 N. E. 242.

8. Stadler *v.* Missouri River Power Co., (C. C. A.) 139 Fed. 305; Littlejohn *v.* Chicago, etc., R. Co., 219 Ill. 584, 76 N. E. 840; O'Neil *v.* Potter, 140 Mich. 696, 104 N. W. 396; Hale *v.* Jenkins, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 119, 106 N. Y. Supp. 282. *Compare* Pavkovich *v.* Southern Pac. R. Co., 150 Cal. 39, 87 Pac. 1097.

Where Meaning Plain, It Must Be Followed. — Elsea *v.* Adkins, 164 Ind. 580, 74 N. E. 242.

9. Same True of Exceptions. — Elsea *v.* Adkins, 164 Ind. 580, 74 N. E. 242.

11. See Pavkovich *v.* Southern Pac. R. Co., 150 Cal. 39, 87 Pac. 1097.

12. See Union Water Power Co. *v.* Libbey, etc., Co., 102 Me. 439, 67 Atl. 357.

517. 3. Moore *v.* Vickers, 126 Ga. 42, 54 S. E. 814. *Compare* Williams *v.* Jones, 131 Wis. 361, 111 N. W. 505.

In *Georgia* an instrument conveying timber is considered a deed, and the estate of the purchaser in the trees, a fee determinable on his failure to cut and remove the timber within the time agreed upon. Warren *v.* Ash, 129 Ga. 329, 58 S. E. 858.

The same is true in *North Carolina*. "Standing or growing timber is realty." Midyette *v.* Grubbs, (N. Car. 1907) 58 S. E. 795.

The same is true in *Wisconsin*. Williams *v.* Jones, 131 Wis. 361, 111 N. W. 505.

4. Williams *v.* Jones, 131 Wis. 361, 111 N. W. 505.

5. Does Not Give Right to Sell Timber. — Gulf Red Cedar Lumber Co. *v.* Crenshaw, 148 Ala. 343, 42 So. 564.

6. See Gill *v.* Fletcher, 74 Ohio St. 295, 78 N. E. 433.

In Brady *v.* Smith, 181 N. Y. 178, 73 N. E. 963, it appeared that a deed conveying land on which there was outcropping limestone contained the following exception and reservation: "Excepting and reserving therefrom unto the parties of the first part, their heirs and assigns forever, all mines and minerals which may be found on the above piece of land,

with the right of entering at any time with workmen and others to dig and carry the same away," and it was held that this exception and reservation was not broad enough to include the limestone and the open quarrying of the same.

CONFECTIONERY.

519. 2. Sweetened biscuits and sugar wafers not dutiable as *confectionery* under Tariff Act. U. S. *v.* Meadows, 147 Fed. 757.

CONFESSIONS.

521. 1. Shelton *v.* State, 144 Ala. 112, 42 So. 30, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 521; Riley *v.* State, 1 Ga. App. 651, 57 S. E. 1031; Ransom *v.* State, 2 Ga. App. 826, 59 S. E. 101; Carpenter *v.* Com., (Ky. 1906) 92 S. W. 552; State *v.* Miller, 73 S. Car. 277, 53 S. E. 426; State *v.* Royce, 38 Wash. 111, 3 Ann. Cas. 351, 80 Pac. 268.

2. Neville *v.* State, (Ala. 1906) 41 So. 1011; Folds *v.* State, 123 Ga. 167, 51 S. E. 305; State *v.* Campbell, 73 Kan. 688, 85 Pac. 784.

4. Riley *v.* State, 1 Ga. App. 651, 57 S. E. 1031.

522. 1. Shelton *v.* State, 144 Ala. 113, 42 So. 30, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 522; Johnson *v.* State, 1 Ga. App. 129, 57 S. E. 934.

523. 4. Stacy *v.* Com., (Ky. 1906) 97 S. W. 39; State *v.* White, 189 Mo. 339, 87 S. W. 1188; State *v.* Werner, (N. Dak. 1907) 112 N. W. 60; Wood *v.* State, (Tex. Crim. 1907) 99 S. W. 1009.

8. Whatley *v.* State, 144 Ala. 68, 39 So. 1014; People *v.* Ah Lung, 2 Cal. App. 278, 83 Pac. 296; Com. *v.* Bond, 188 Mass. 91, 74 N. E. 293; Cook *v.* State, 85 Miss. 738, 38 So. 110; Caleman *v.* State, (Tex. Crim. 1905) 89 S. W. 828.

524. 1. State *v.* Kelley, 191 Mo. 680, 90 S. W. 834.

Forfeiture of Recognizance. — State *v.* Kesner, 72 Kan. 87, 82 Pac. 720.

2. People *v.* Melandrez, 4 Cal. App. 396, 88 Pac. 372.

5. Com. *v.* Dewhirst, 190 Mass. 293, 76 N. E. 1052; O'Hearn *v.* State, (Neb. 1907) 113 N. W. 130; State *v.* Sudduth, 74 S. Car. 498, 54 S. E. 1013; State *v.* Kinney, (S. Dak. 1907) 113 N. W. 77.

Question for Jury. — State *v.* Quirk, 101 Minn. 334, 112 N. W. 409; State *v.* Major, 70 S. Car. 387, 50 S. E. 13.

527. 1. Rex *v.* Hope Young, 38 Nova Scotia 444, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 526.

2. Smith *v.* State, 125 Ga. 252, 54 S. E. 190; Adams *v.* State, (Tex. Crim. 1905) 86 S. W. 334.

528. 1. People *v.* Silvers, (Cal. App. 1907) 92 Pac. 506.

Threats. — Powers *v.* State, 75 Neb. 226, 106 N. W. 332; Johnson *v.* State, (Tex. Crim. 1905) 88 S. W. 223.

Washington Code. — State *v.* Poole, 42 Wash. 192, 84 Pac. 727.

Cruelty. — Jackson *v.* State, (Tex. Crim. 1906) 97 S. W. 312.

Where the Accused Was Cursed by a Witness for committing a crime his subsequent confession was held voluntarily made, and uninfluenced by the language of the witness. Butler *v.* State, 83 Ark. 272, 103 S. W. 382.

530. 1. Maxwell *v.* State, (Miss. 1906) 40 So. 615.

5. Johnson *v.* State, 89 Miss. 773, 42 So. 606; Watson *v.* State, (Tex. Crim. 1905) 87 S. W. 1158.

531. 1. Sorenson *v.* U. S., (C. C. A.) 143 Fed. 820.

2. Rosczyniala *v.* State, 125 Wis. 418, 104 N. W. 113, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 531; Pearsall *v.* Com., (Ky. 1906) 92 S. W. 589.

533. 1. State *v.* Moran, 131 Iowa 645, 109 N. W. 187.

536. 2. Carr *v.* State, 81 Ark. 589, 99 S. W. 831.

3. *Alabama.* — Hamilton *v.* State, 147 Ala. 110, 41 So. 940.

Arkansas. — Ince *v.* State, 77 Ark. 426, 93 S. W. 65.

Iowa. — State *v.* Westcott, 130 Iowa 1, 104 N. W. 341.

Missouri. — State *v.* Barrington, 198 Mo. 23, 95 S. W. 235; State *v.* Armstrong, 203 Mo. 554, 102 S. W. 503; State *v.* Church, 199 Mo. 605, 98 S. W. 16.

New Mexico. — Territory *v.* Emilio, (N. Mex. 1907) 89 Pac. 239.

North Carolina. — State *v.* Jones, (N. Car. 1907) 59 S. E. 353; State *v.* Exum, 138 N. Car. 599, 50 S. E. 283; State *v.* Smith, 138 N. Car. 700, 50 S. E. 859.

South Carolina. — State *v.* Henderson, 74 S. Car. 477, 55 S. E. 117.

Texas. — Bawcom *v.* State, (Tex. Crim. 1906) 94 S. W. 462; Herndon *v.* State, (Tex. Crim. 1907) 99 S. W. 558.

Confessions to Constable. — Rex *v.* Bruce, 13 British Columbia 1, 12 Can. Crim. Cas. 275.

Confessions to Police Officers. — Confessions made voluntarily by accused persons to police officers while in custody are admissible. Hooker *v.* State, 75 Ark. 67, 86 S. W. 846.

Confessions While in Custody Held Inadmissible. — See Johnson *v.* State, 1 Ga. App. 129, 57 S. E. 934 (under statute); Binkley *v.* State, (Tex. Crim. 1907) 100 S. W. 780.

537. 1. State *v.* Hogan, 117 La. 863, 42 So. 352.

Texas Code of Criminal Procedure. — Curry *v.* State, (Tex. Crim. 1906) 94 S. W. 1058; Flagg *v.* State, (Tex. Crim. 1907) 103 S. W. 855; Fonseca *v.* State, (Tex. Crim. 1905) 85 S. W. 1069; Henderson *v.* State, (Tex. Crim. 1906) 95 S. W. 131; Jackson *v.* State, (Tex. Crim. 1906) 91 S. W. 788; Jones *v.* State, (Tex. Crim. 1907) 106 S. W. 126; Lasister *v.* State, (Tex. Crim. 1906) 94 S. W. 233; Salinas *v.* State, (Tex. Crim. 1907) 102 S. W. 116; Stephens *v.* State, (Tex. Crim. 1906) 93 S. W. 545; Thomas *v.* State, (Tex. Crim. 1906) 95 S. W. 1069.

538. 1. State *v.* Rugero, 117 La. 1039, 42 So. 495.

539. 3. Birkenfeld *v.* State, 104 Md. 253, 65 Atl. 1; State *v.* Barrington, 198 Mo. 23, 95 S. W. 235; State *v.* Landers, (S. Dak. 1908) 114 N. W. 717; Purdy *v.* State, (Tex. Crim. 1906) 97 S. W. 480; Rex *v.* Bruce, 13 British Columbia 1, 12 Can. Crim. Cas. 275.

540. 4. State *v.* Vey, (S. Dak. 1908) 114 N. W. 719.

541. 2. Rex *v.* Lai Ping, 11 British Columbia 102, 8 Can. Crim. Cas. 467.

542. 1. Milner *v.* State, 124 Ga. 86, 52 S. E. 302, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 542.

543. 1. State *v.* Foster, (Iowa 1907) 114 N. W. 36.

3. Rex *v.* Hope Young, 38 Nova Scotia 433, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 542–543.

545. 2. State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55.

547. 2. State *v.* Sherman, 35 Mont. 512, 90 Pac. 981.

548. 3. Smith *v.* State, 74 Ark. 397, 85 S. W. 1123; State *v.* Mann, 39 Wash. 144, 81 Pac. 561.

551. 4. Hopkins *v.* State, 52 Fla. 46, 42 So. 52, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 551.

553. 1. Jones *v.* State, (Tex. Crim. 1906) 96 S. W. 930.

554. 1. State *v.* Stallings, 142 Ala. 112, 38 So. 261; State *v.* Armstrong, 203 Mo. 554, 102 S. W. 503; Smith *v.* State, 74 Ark. 397, 85 S. W. 1123; Rex *v.* Tutty, 9 Can. Crim. Cas. (Nova Scotia) 544.

Admissibility of Confession to Person in Authority for the Court. — Rex *v.* Knight, 20 Cox C. C. 711, 69 J. P. 108, 21 Times L. Rep. 310.

2. Thurman *v.* State, (Ind. 1907) 82 N. E. 64.

4. *Alabama.* — Richardson *v.* State, 145 Ala. 46, 8 Ann. Cas. 108, 41 So. 82.

District of Columbia. — Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337.

Indiana. — Thurman *v.* State, (Ind. 1907) 82 N. E. 64.

Kentucky. — Pearsall *v.* Com., (Ky. 1906) 92 S. W. 589.

Missouri. — State *v.* Hottman, 196 Mo. 110, 94 S. W. 237; State *v.* Ruck, 194 Mo. 416, 5 Ann. Cas. 976, 92 S. W. 706; State *v.* Stebbins, 188 Mo. 387, 87 S. W. 460.

Montana. — State *v.* Sherman, 35 Mont. 512, 90 Pac. 981.

North Carolina. — State *v.* Bohanon, 142 N. Car. 695, 55 S. E. 797.

South Carolina. — State *v.* Henderson, 74 S. Car. 477, 55 S. E. 117.

South Dakota. — State *v.* Landers, (S. Dak. 1908) 114 N. W. 717.

Wisconsin. — Hintz *v.* State, 125 Wis. 405, 104 N. W. 110; Rosczyniala *v.* State, 125 Wis. 418, 104 N. W. 113.

556. 1. Peck *v.* State, 147 Ala. 100, 41 So. 759; Owsley *v.* Com., (Ky. 1907) 101 S. W. 366.

3. Com. *v.* Johnson, 217 Pa. St. 77, 66 Atl. 233; Johnson *v.* State, (Tex. Crim. 1905) 88 S. W. 223; Johnson *v.* State, (Tex. Crim. 1906) 94 S. W. 224; Clay *v.* State, 15 Wyo. 42, 86 Pac. 17.

557. 2. Campbell *v.* State, (Ala. 1907) 43 So. 743.

4. People *v.* Sullivan, 3 Cal. App. 502, 86 Pac. 834; Lumpkin *v.* State, 125 Ga. 24, 53 S. E. 810; Lyon *v.* Com., (Ky. 1906) 96 S. W. 857; State *v.* Baruth, (Wash. 1907) 91 Pac. 977; Rex *v.* McCraw, 12 Can. Crim. Cas. (Quebec) 263, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 557.

558. 2. State *v.* Kelleher, 201 Mo. 614, 100 S. W. 470; State *v.* Richardson, 194 Mo. 326, 92 S. W. 649; Simmons *v.* State, (Tex. Crim. 1906) 97 S. W. 1052.

3. Finch *v.* Com., (Ky. 1906) 92 S. W. 940.

559. 1. Bloomer *v.* State, 75 Ark. 297, 87 S. W. 438.

2. Eaton *v.* Com., 122 Ky. 7, 90 S. W. 972; People *v.* Cascone, 185 N. Y. 317, 78 N. E. 287.

Whether Understood Question for Jury. — State *v.* Rosa, 72 N. J. L. 462, 62 Atl. 695.

Intoxicated Person. — See Bloomer *v.* State, 75 Ark. 299, 87 S. W. 438, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 537 [559].

6. Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

561. 2. **Under the Colorado Constitution** such evidence is not admissible. Tuttle *v.* People, 33 Colo. 243, 3 Ann. Cas. 513, 79 Pac. 1035.

562. 6. State *v.* Banusik, (N. J. 1906) 64 Atl. 994.

567. 1. State *v.* Johnny, (Nev. 1906) 87 Pac. 3.

5. **Coroner's Inquest.** — The testimony of a witness subpœnaed at a coroner's inquest, who was then not accused of a crime or under arrest, can subsequently be used against him at his trial for the commission of the crime. State *v.* Finch, 71 Kan. 793, 81 Pac. 494.

568. 2. Adams *v.* State, 129 Ga. 248, 58 S. E. 822.

569. 1. Taylor *v.* Com., (Ky. 1906) 92 S. W. 292; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100; State *v.* Dalton, 43 Wash. 278, 86 Pac. 590; State *v.* Poole, 42 Wash. 192, 84 Pac. 727.

2. Daniels *v.* State, (Ala. 1906) 41 So. 525; People *v.* Grill, 3 Cal. App. 514, 86 Pac. 613; People *v.* Fallon, 149 Cal. 287, 86 Pac. 689; *Ex p.* Patterson, (Tex. Crim. 1906) 95 S. W. 1061.

Confession May Be Used in Making Out Corpus Delicti. — Sowles *v.* State, (Tex. Crim. 1907) 105 S. W. 178.

570. 4. Owsley *v.* Com., (Ky. 1907) 101 S. W. 366; Binkley *v.* State, (Tex. Crim. 1907) 100 S. W. 780.

6. State *v.* Hogan, 117 La. 863, 42 So. 352.

571. 4. Chadwick *v.* U. S., (C. C. A.) 141 Fed. 225; Raymond *v.* People, 226 Ill. 433, 80 N. E. 996; State *v.* Roberts, 201 Mo. 702, 100 S. W. 484; State *v.* Ryan, 47 Oregon 338, 82 Pac. 703.

5. Soreson *v.* U. S., (C. C. A.) 143 Fed. 820; State *v.* Wells, 33 Mont. 291, 83 Pac. 476; People *v.* Quinn, (Supm. Ct. App. T.) 107 N. Y. Supp. 1101; Shiflett *v.* State, (Tex. Crim. 1907) 102 S. W. 1147; State *v.* McCoy, 61 W. Va. 258, 57 S. E. 294.

572. 3. Burk *v.* State, (Tex. Crim. 1906)

95 S. W. 1064; State *v.* Mann, 39 Wash. 144, 81 Pac. 561; Rex *v.* Martin, 9 Ont. L. Rep. 228, 4 Ann. Cas. 912, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 572.

573. 3. Clark *v.* Com., (Ky. 1907) 105 S. W. 393.

574. 5. Dupree *v.* State, (Ala. 1907) 42 So. 1004; State *v.* Castigno, 71 Kan. 851, 80 Pac. 630; Clay *v.* State, 15 Wyo. 42, 86 Pac. 17.

7. Miller *v.* People, 216 Ill. 309, 74 N. E. 743; Dunmore *v.* State, 86 Miss. 788, 39 So. 69; State *v.* Bean, 77 Vt. 384, 60 Atl. 807; Rex *v.* Martin, 9 Ont. L. Rep. 228, 4 Ann. Cas. 912.

Statements of Both Parties to Conversation. — Loudenback *v.* Territory, (Okla. 1907) 91 Pac. 1030.

575. 1. State *v.* Lu Sing, 34 Mont. 31, 9 Ann. Cas. 344, 85 Pac. 521.

576. 4. Lowe *v.* State, 125 Ga. 55, 53 S. E. 1038; State *v.* Jennings, 48 Oregon 483, 87 Pac. 524.

579. 2. Rucker *v.* State, 2 Ga. App. 140, 58 S. E. 295; Griffin *v.* State, (Tex. Crim. 1906) 93 S. W. 732; State *v.* Hutchings, 30 Utah 319, 84 Pac. 893.

3. State *v.* Tilghman, (Del. 1906) 63 Atl. 773.

580. 1. State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Westcott, 130 Iowa 1, 104 N. W. 341; State *v.* Von Kutzleben, (Iowa 1907) 113 N. W. 484; State *v.* Foster, (Iowa 1907) 114 N. W. 36; State *v.* Stebbins, 188 Mo. 387, 87 S. W. 460; Hintz *v.* State, 125 Wis. 405, 104 N. W. 110; Rosczyniala *v.* State, 125 Wis. 414, 104 N. W. 113.

Where There Are Circumstances Showing a Confession to Be Involuntary in a criminal proceeding, a proper instruction in the subject should be given. Follis *v.* State, (Tex. Crim. 1907) 101 S. W. 242.

Jury May Give Unequal Credit to Different Parts of Confession. — State *v.* Tilghman, (Del. 1906) 63 Atl. 772; Herndon *v.* State, (Tex. Crim. 1907) 99 S. W. 558.

582. 1. McAllister *v.* State, 2 Ga. App. 654, 58 S. E. 1110; Williams *v.* State, 125 Ga. 741, 54 S. E. 661; State *v.* Rogoway, 45 Oregon 608, 78 Pac. 987, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 582; State *v.* Marselle, 43 Wash. 273, 86 Pac. 586.

Existence of Proof Aliunde of Commission of Offense and of Prisoner's Agency. — Bradford *v.* State, 142 Ala. 150, 41 So. 471; Com. *v.* Killion, 194 Mass. 153, 80 N. E. 222; Gallegos *v.* State, (Tex. Crim. 1905) 85 S. W. 1150.

Under Statute. — State *v.* Abrams, 131 Iowa 479, 108 N. W. 1041.

2. Dimmick *v.* U. S., (C. C. A.) 135 Fed. 263, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 582; State *v.* Banusik, (N. J. 1906) 64 Atl. 994.

583. 1. People *v.* Eldridge, 3 Cal. App. 648, 86 Pac. 832; State *v.* Westcott, 130 Iowa 1, 104 N. W. 34 (under statute); State *v.* Ruck, 194 Mo. 416, 5 Ann. Cas. 976, 92 S. W. 706; Curran *v.* State, 12 Wyo. 562, 76 Pac. 577, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 582, 583.

584. 1. Burk *v.* State, (Tex. Crim. 1906) 95 S. W. 1064; Bradshaw *v.* State, (Tex. Crim. 1905) 94 S. W. 223; Dunlap *v.* State, (Tex. Crim. 1906) 98 S. W. 845; Griffin *v.* State, (Tex. Crim. 1906) 93 S. W. 732.

CONFINE — CONFINEMENT.

587. 5. **The Words Confinement on the Streets,** as used in a sentence, held to mean *confined* at labor on the streets. Shuler *v.* Willis, 126 Ga. 73, 54 S. E. 965.

CONFUSION OF GOODS.

592. 2. See Mattawamkeag Log Driving Co. *v.* Byron, 101 Me. 181, 63 Atl. 913.

Where a Levy Is Made on the interest of one party, the other must point out his own goods or the officer seizing them is not to be considered a trespasser. Johnson *v.* Emery, 31 Utah 126, 86 Pac. 869.

594. 2. McClendon *v.* McKissack, 143 Ala. 188, 38 So. 1020.

4. Smith *v.* Au Gres Tp., 150 Fed. 257; Mugge *v.* Jackson, 53 Fla. 323, 43 So. 91; Alexander *v.* Zeigler, 84 Miss. 560, 36 So. 536; Kelly-Goodfellow Shoe Co. *v.* Sally, 114 Mo. App. 222, 89 S. W. 889; Mengal Box Co. *v.* Moore, 114 Tenn. 596, 4 Ann. Cas. 1047, 87 S. W. 415. See also Lance *v.* Butler, 135 N. Car. 419, 47 S. E. 488.

595. 3. Maloney *v.* King, 30 Mont. 158, 76 Pac. 4, applying the rule to a confusion of ores; St. Paul Boom Co. *v.* Kemp, 125 Wis. 138, 103 N. W. 259.

4. Smith *v.* Au Gres Tp., 150 Fed. 257.

5. McKnight *v.* U. S., (C. C. A.) 130 Fed. 659.

Cattle Not Always Distinguishable. — Tootle *v.* Buckingham, 190 Mo. 183, 88 S. W. 619.

Logs. — See St. Paul Boom Co. *v.* Kemp, 125 Wis. 138, 103 N. W. 259, *citing* 11 [6] AM. AND ENG. ENCYC. OF LAW (2d ed.) 595–597.

596. 2. Smith *v.* Au Gres Tp., 150 Fed. 257; Mugge *v.* Jackson, 53 Fla. 323, 43 So. 91; Kelly-Goodfellow Shoe Co. *v.* Sally, 114 Mo. App. 222, 89 S. W. 889; Rabe *v.* Jourdan, (Tex. Civ. App. 1907) 102 S. W. 1167, wherein it appeared that, the confusion being by the act of the defendant, and the plaintiff's goods being not distinguishable, he demanded them of the defendant, who offered to permit the plaintiff to select and remove his goods, and it was held that this was equivalent to a demand and refusal of the goods.

597. 1. **Where Natural Gas Was Wrongfully Taken** and mingled with the product of some sixty wells by the defendant, it was held that the recovery should be the value of one-sixtieth of the whole mixture. Great Southern Gas, etc., Co. *v.* Logan Natural Gas, etc., Co., (C. C. A.) 155 Fed. 114.

598. 1. Hutchinson *v.* National Bank of Commerce, 145 Ala. 196, 41 So. 143.

Confusion by Trustee or Bailee. — Where a car company upon obtaining possession of certain boards by an oversight on the part of an employee of the owner of the boards, held

them as trustee or bailee for the owner, it was held that the owner was entitled to their value, notwithstanding they had been negligently or by mistake intermingled with other boards of the car company in the manufacture of cars. Southern Pine Co. *v.* Savannah Trust Co., (C. C. A.) 141 Fed. 802, *citing* 6 AM. AND ENG. ENCYC. OF L.. / (2d ed.) 594–599.

2. Smith *v.* Au Gres Tp., 150 Fed. 257; Weaver *v.* Neal, 61 W. Va. 57, 55 S. E. 909, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 598.

CONNECT, CONNECTIONS, ETC.

600. 3. Collins *v.* Metropolitan L. Ins. Co., 32 Mont. 329, 80 Pac. 609, 1092.

CONNECTING CARRIERS (OF GOODS).

606. 5. Louisville, etc., R. Co. *v.* Central Stockyards Co., 30 Ky. L. Rep. 18, 97 S. W. 778.

608. 5. Sterling *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1905) 86 S. W. 655; Andrus *v.* Columbia, etc., Steamboat Co., (Wash. 1907) 92 Pac. 128.

An Impending Flood is a sufficient excuse for refusing a shipment. Gray *v.* Wabash R. Co., 119 Mo. App. 144, 95 S. W. 983.

609. 4. Where the Words "Prompt Shipment Required" appear in the bill of lading the initial carrier is liable for the delay of a connecting carrier. Salley *v.* Seaboard Air Line R. Co., 76 S. Car. 173, 56 S. E. 782.

5. Harper Furniture Co. *v.* Southern Express Co., (N. Car. 1907) 57 S. E. 460, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 609.

The Burden of Proof is upon the initial carrier to show delivery to the connecting carrier without unreasonable delay. Allen-Fleming Co. *v.* Southern R. Co., (N. Car. 1907) 58 S. E. 793.

610. 1. Isham *v.* Erie R. Co., 112 N. Y. App. Div. 612, 98 N. Y. Supp. 609.

612. 1. Southern R. Co. *v.* Levy, 144 Ala. 614, 39 So. 95; St. Louis Southwestern R. Co. *v.* Kilberry, 83 Ark. 87, 102 S. W. 894; Wabash R. Co. *v.* Thomas, 222 Ill. 337, 78 N. E. 777; Allen, etc., Co. *v.* Canadian Pac. R. Co., 42 Wash. 64, 7 Ann. Cas. 468, 84 Pac. 620.

615. 2. Cincinnati, etc., R. Co. *v.* Greening, (Ky. 1907) 100 S. W. 825; Reason *v.* Detroit, etc., R. Co., 150 Mich. 50, 113 N. W. 596, 14 Detroit Leg. N. 600; Hirsch *v.* New York Cent., etc., R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 568, 99 N. Y. Supp. 431; Glazer *v.* Old Dominion Steamship Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 290, 103 N. Y. Supp. 112; Sabbatino *v.* Snow's U. S. Sample Express Co., 120 N. Y. App. Div. 416, 104 N. Y. Supp. 1004; Watson *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 59 S. E. 55; Smith *v.* Illinois Cent. R. Co., 33 Pa. Super. Ct. 643; Roy *v.* Chesapeake, etc., R. Co., 61 W. Va. 616, 57 S. E. 39, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 615.

In Oklahoma by statute the carrier's liability ceases when it delivers the freight to a competent connecting line, but on demand it may be compelled to furnish satisfactory proof that an injury or loss did not occur on its line. St. Louis, etc., R. Co. *v.* McGivney, (Okla. 1907) 91 Pac. 693.

618. 5. Texas, etc., R. Co. *v.* Warner, (Tex. Civ. App. 1906) 93 S. W. 489.

619. 3. Initial Carrier Held Liable under Statute. — See Hurst *v.* St. Louis, etc., R. Co., 117 Mo. App. 25, 94 S. W. 794.

An Interstate Shipment is not governed by the statute. Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714.

620. 1. The Latest Decisions are to the effect that an initial carrier contracting for a through shipment cannot stipulate against liability for the negligence of the connecting carrier. Lee *v.* Wabash R. Co., (Mo. App. 1906) 94 S. W. 991; Bushnell *v.* Wabash R. Co., 118 Mo. App. 618, 94 S. W. 1001; Ratliff *v.* Quincy, etc., R. Co., 118 Mo. App. 644, 94 S. W. 1005; McLendon *v.* Wabash R. Co., 119 Mo. App. 128, 95 S. W. 943; Samuel Hardin Grain Co. *v.* Missouri Pac. R. Co., 120 Mo. App. 203, 96 S. W. 681. *Compare* Marshall Medicine Co. *v.* Chicago, etc., R. Co., 126 Mo. App. 455, 104 S. W. 478.

3. Receipt Negativing that Goods When Received Were "In Good Order." — A railroad company, receiving goods from a connecting line, may protect itself from the conclusive presumption arising from a receipt expressly stating that the goods were "in good order," or from a rebuttable presumption arising from a failure to state the condition of the goods in a receipt, by a receipt setting forth an exception as to the condition of the goods. Any statement in the receipt negativing that the goods, when received, were in good order, will relieve the company from a presumption that they were in such condition. Southern R. Co. *v.* Waters, 125 Ga. 520, 54 S. E. 620.

622. 3. Compliance with Statute Shown. — See Fairfield *v.* Pacific Coast Steamship Co., 3 Cal. App. 106, 84 Pac. 438.

623. 2. Norfolk, etc., R. Co. *v.* Wilkinson, 106 Va. 775, 56 S. E. 808, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623.

625. 6. Walter *v.* Alabama G. S. R. Co., 142 Ala. 474, 39 So. 87; Walker *v.* Southern R. Co., 76 S. Car. 308, 56 S. E. 952.

Where the Car Containing the Goods Was Sealed during transit the last carrier was held to be not liable for their damaged condition, the car itself being in good condition. Vincent *v.* Yazoo, etc., R. Co., 114 La. 1021, 38 So. 816.

A Receipt by the last carrier that the goods when received by it were in good condition is subject to explanation. International, etc., R. Co. *v.* Shands, (Tex. Civ. App. 1906) 93 S. W. 1105.

In Michigan the rule is that where goods are transported by successive carriers, and an action is brought against the terminal carrier for damage to the goods, it is not enough to show that the goods were delivered to the initial carrier in good condition, but it is incumbent upon the plaintiff to show that they

were in good order when received by the defendant. Rolfe *v.* Lake Shore, etc., R. Co., 144 Mich. 169, 107 N. W. 899, 13 Detroit Leg. N. 235.

7. Berkowitz *v.* Chicago, etc., R. Co., 109 N. Y. App. Div. 878, 96 N. Y. Supp. 825, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 625.

In Mississippi by statute the last carrier of damaged goods or goods part of which are lost must furnish on demand true copies of "all notations, exceptions, records, and memoranda entered on the books of each carrier touching the receipt, transfer, and handling of the freight while in transit," and its failure to furnish the same gives rise to a presumption that it caused the damage. Miss. Code 1892, § 4301. The presumption raised is a conclusive one. Russell *v.* Mobile, etc., R. Co., 87 Miss. 806, 40 So. 1015. As to the "demand" it was held in Threefoot *v.* New Orleans, etc., R. Co., 89 Miss. 192, 43 So. 303, that a request by the consignee to trace a shortage was not a demand within the meaning of the statute.

626. 1. Coté *v.* Grand Trunk R. Co., 28 Quebec Super. Ct. 529.

3. Southern R. Co. *v.* Goldstein, 146 Ala. 386, 41 So. 173; Goehrend *v.* Pere Marquette R. Co., 146 Mich. 497, 109 N. W. 849, 13 Detroit Leg. N. 851.

4. Cincinnati, etc., R. Co. *v.* Pendleton, 29 Ky. L. Rep. 721, 96 S. W. 434; Houston, etc., R. Co. *v.* Buchanan, (Tex. Civ. App. 1906) 94 S. W. 199; Pecos River R. Co. *v.* Harrington, (Tex. Civ. App. 1907) 99 S. W. 1050; Texas, etc., R. Co. *v.* Eastin, (Tex. 1907) 102 S. W. 105.

An Intermediate Carrier is not liable for diverting a shipment to a different line from that selected by the initial carrier where a flood makes the diversion necessary. Empire State Cattle Co. *v.* Atchison, etc., R. Co., 135 Fed. 135.

630. 5. Defective Car. — The initial carrier's limitation of liability does not relieve him from injuries resulting on the connecting line through the defective condition of the car which he furnished. Kirby *v.* Michigan Cent. R. Co., 142 Mich. 313, 105 N. W. 769.

631. 4. Chicago, etc., R. Co. *v.* Woodward, 164 Ind. 364, 72 N. E. 558, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 631; Cohen *v.* Missouri, etc., R. Co., 126 Mo. App. 244, 102 S. W. 1029; Sabbatino *v.* Snow's U. S. Sample Express Co., 120 N. Y. App. Div. 416, 104 N. Y. Supp. 1004.

632. 2. Pittsburgh, etc., R. Co. *v.* Bryant, 36 Ind. App. 340, 75 N. E. 829; Weis *v.* St. Louis, etc., R. Co., (Supm. Ct. App. T.) 97 N. Y. Supp. 993.

633. 1. Pittsburgh, etc., R. Co. *v.* Bryant, 36 Ind. App. 340, 75 N. E. 829.

637. 1. Roy *v.* Chesapeake, etc., R. Co., 61 W. Va. 616, 57 S. E. 39.

638. 1. Texas Cent. R. Co. *v.* Miller, (Tex. Civ. App. 1905) 88 S. W. 499.

639. 1. McGuire *v.* Great Northern R. Co., 153 Fed. 434; Walter *v.* Alabama G. S. R. Co., 142 Ala. 474, 39 So. 87; Southern R. Co. *v.* Goldstein, 146 Ala. 386, 41 So. 173; Bell *v.* Western, etc., R. Co., 125 Ga. 510, 54 S. E. 532; Southern R. Co. *v.* Montag, 1 Ga. App. 649, 57 S. E. 933; Michigan Cent. R. Co. *v.* Chicago Electric Vehicle Co., 124 Ill. App. 158; Pittsburgh, etc., R. Co. *v.* Bryant, 36 Ind. App. 340, 75 N. E. 829; Brunk *v.* Ohio, etc., R. Co., (Ky. 1907) 105 S. W. 443; Illinois Cent. R. Co. *v.* Stevens, 29 Ky. L. Rep. 1079, 96 S. W. 888.

642. 2. Contrary View. — Under a recent *Texas* statute making any one of the connecting carriers liable for losses occurring anywhere on the line of shipment, it is held, contrary to the rule in the text, that a connecting carrier cannot by contract limit its liability to losses occurring on its own line provided the shipment is not an interstate one. Gulf, etc., R. Co. *v.* Terry, (Tex. Civ. App. 1905) 89 S. W. 792.

But in an interstate shipment the initial carrier may limit its liability to damages occurring on its own line. Gulf, etc., R. Co. *v.* McCampbell, (Tex. Civ. App. 1905) 85 S. W. 1158; Atchison, etc., R. Co. *v.* Nation, (Tex. Civ. App. 1906) 92 S. W. 823; International, etc., R. Co. *v.* Heittner, (Tex. Civ. App. 1906) 94 S. W. 189; Cane Hill Cold Storage, etc., Co. *v.* San Antonio, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 751; Houston, etc., R. Co. *v.* Mayes, (Tex. Civ. App. 1906) 97 S. W. 318; Houston, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 97 S. W. 836; St. Louis, etc., R. Co. *v.* Stokes, (Tex. Civ. App. 1906) 99 S. W. 120; Texas, etc., R. Co. *v.* Gray, (Tex. Civ. App. 1907) 99 S. W. 1125; Texas, etc., R. Co. *v.* Weisman, (Tex. Civ. App. 1907) 105 S. W. 45.

3. Wabash R. Co. *v.* Thomas, 222 Ill. 337, 78 N. E. 777.

4. Allen, etc., Co. *v.* Canadian Pac. R. Co., 42 Wash. 64, 7 Ann. Cas. 468, 84 Pac. 620, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 642.

643. 1. Allen, etc., Co. *v.* Canadian Pac. R. Co., 42 Wash. 64, 7 Ann. Cas. 468, 84 Pac. 620, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 643.

2. Harby *v.* Southern R. Co., 75 S. Car. 321, 55 S. E. 760.

648. 2. Lehigh Valley Transp. Co. *v.* Post Sugar Co., 228 Ill. 121, 81 N. E. 819.

649. 3. Jonesville Mfg. Co. *v.* Southern R. Co., 77 S. Car. 480, 58 S. E. 422.

652. 1. Kansas City Southern R. Co. *v.* Embry, 76 Ark. 589, 90 S. W. 15; St. Louis, etc., R. Co. *v.* Renfroe, 82 Ark. 143, 100 S. W. 889; Jones *v.* St. Louis, etc., R. Co., 115 Mo. App. 232, 91 S. W. 158; Berkowitz *v.* Chicago, etc., R. Co., 109 N. Y. App. Div. 878, 96 N. Y. Supp. 825, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Charles *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 58 S. E. 927; Cooper *v.* Seaboard Air Line R. Co., (S. Car. 1907) 58 S. E. 930; Houston, etc., R. Co. *v.* Everett, (Tex. 1905) 89 S. W. 761; Vineyard *v.* McCombs, (Tex. Civ. App. 1905) 90 S. W. 720.

Presumption Does Not Prevail Where Shipper Accompanies Goods. — Texas, etc., R. Co. *v.* Scoggin, (Tex. Civ. App. 1905) 90 S. W. 521.

653. 1. Houston, etc., R. Co. *v.* Scott,

(Tex. 1905) 89 S. W. 763, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653; Norfolk, etc., R. Co. *v.* Wilkinson, 106 Va. 775, 56 S. E. 808, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

2. St. Louis, etc., R. Co. *v.* Pearce, 82 Ark. 353, 101 S. W. 760; Southern R. Co. *v.* Montag, 1 Ga. App. 649, 57 S. E. 933; Illinois Cent. R. Co. *v.* Stevens, 29 Ky. L. Rep. 1079, 96 S. W. 888; Reason *v.* Detroit, etc., R. Co., 150 Mich. 50, 113 N. W. 596, 14 Detroit Leg. N. 600; Watson *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 59 S. E. 55.

654. **2.** St. Louis, etc., R. Co. *v.* Dodson, (Tex. Civ. App. 1906) 97 S. W. 523.

655. **2.** Southern R. Co. *v.* Thomas, 28 Ky. L. Rep. 951, 90 S. W. Rep. 1043.

3. Wolf *v.* Grand Rapids, etc., R. Co., 149 Mich. 78, 112 N. W. 732, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 655; Illinois Cent. R. Co. *v.* Jones, 87 Miss. 489, 39 So. 493.

658. **1.** Meyers *v.* Missouri, etc., R. Co., 120 Mo. App. 288, 96 S. W. 737.

660. **6.** See also Andrus *v.* Columbia, etc., Steamboat Co., (Wash. 1907) 92 Pac. 128.

CONSENT.

663. **3.** Bartle *v.* Bartle, (Wis. 1907) 112 N. W. 471.

Mechanic's Lien — Consent of Owner. — See Clark *v.* North, 131 Wis. 599, 111 N. W. 681.

CONSIDERATION.

672. **1.** A consideration is any benefit to the promisor, or any loss, trouble, or inconvenience to or charge upon the person to whom the promise is made. Ward *v.* Young, (Tex. Civ. App. 1905) 89 S. W. 456.

673. **6.** *Arkansas.* — St. Louis, etc., R. Co. *v.* Marshall, 74 Ark. 597, 86 S. W. 802; Southern Express Co. *v.* Hill, 81 Ark. 1, 98 S. W. 371.

California. — Loagomarsino *v.* Giannini, 146 Cal. 545, 80 Pac. 698; Schaadt *v.* Mutual L. Ins. Co., 2 Cal. App. 715, 84 Pac. 249; Nixon *v.* Goodwin, 3 Cal. App. 358, 85 Pac. 169.

Indiana. — Baum *v.* Palmer, 165 Ind. 513, 76 N. E. 108; Chicago, etc., R. Co. *v.* Hare, 36 Ind. App. 422, 75 N. E. 867.

Kentucky. — Gilbert *v.* Brown, (Ky. 1906) 97 S. W. 40.

Massachusetts. — Chase *v.* Chase, (Mass. 1906) 78 N. E. 115.

Michigan. — Nowack *v.* Lehmann, 139 Mich. [illegible], 102 N. W. 992; Trombly *v.* Klersy, 141 Mich. 73, 104 N. W. 419; Detroit First Nat. Bank *v.* Currie, 147 Mich. 72, 110 N. W. 499.

Mississippi. — Comstock *v.* North, 88 Miss. 754, 41 So. 374.

Missouri. — Ficklin *v.* Wabash R. Co., 117 Mo. App. 221, 93 S. W. 847; Meyers *v.* Missouri, etc., R. Co., 120 Mo. App. 288, 96 S. W. 737; Phœnix Powder Mfg. Co. *v.* Wabash R. Co., 120 Mo. App. 566, 97 S. W. 256; Hedden *v.* Schneblin, 126 Mo. App. 478, 104 S. W. 887.

Nebraska. — Simmons *v.* Kelsey, (Neb. 1906) 107 N. W. 122.

New Jersey. — Graham *v.* Spence, (N. J. 1906) 63 Atl. 344.

New York. — Kramer *v.* Kramer, 181 N. Y. 477, 74 N. E. 474; Strevell *v.* Jones, 106 N. Y. App. Div. 334, 94 N. Y. Supp. 627; Snyder *v.* Monroe Eckstein Brewing Co., 107 N. Y. App. Div. 328, 95 N. Y. Supp. 144; Smith *v.* Burditt, 107 N. Y. App. Div. 628, 95 N. Y. Supp. 188; Engel *v.* Gordon, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 641, 97 N. Y. Supp. 981; Martin *v.* Flahive, 112 N. Y. App. Div. 347, 98 N. Y. Supp. 577; Brush, etc., Co. *v.* Ross, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 44, 99 N. Y. Supp. 796; Holmes *v.* Seaman, 117 N. Y. App. Div. 381, 102 N. Y. Supp. 616; Price *v.* Press Pub. Co., 117 N. Y. App. Div. 854, 103 N. Y. Supp. 296.

Oregon. — Bull *v.* Payne, 47 Oregon 580, 84 Pac. 697; Sprague *v.* Schotte, 48 Oregon 609, 87 Pac. 1046.

Pennsylvania. — Fox *v.* Seabury, 211 Pa. St. 140, 60 Atl. 508.

Utah. — Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

678. **3.** Hayes *v.* Shirk, 167 Ind. 569, 78 N. E. 653, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 678; White *v.* C. & G. Cooper Co., 27 Ohio Cir. Ct. 703.

679. **1.** Parsons *v.* Teller, 188 N. Y. 318, 80 N. E. 930; Matter of Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 11[illegible].

2. Finch *v.* Green, 225 Ill. 304, 80 N. E. 318; Littlefield *v.* Perkins, 100 Me. 96, 60 Atl. 707; Linz *v.* Schuck, (Md. 1907) 67 Atl. 286; Willoughby *v.* Willoughby, 70 S. Car. 516, 50 S. E. 208, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679.

680. **2.** Commercial Nat. Bank *v.* Citizen's State Bank, 132 Iowa 706, 109 N. W. 198; Brown *v.* Akeson, 74 Kan. 301, 86 Pac. 299, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680.

683. **3.** Redmond *v.* Cass, 226 Ill. 120, 80 N. E. 708.

685. **3.** Dilcher *v.* Nellany, (Supm. Ct. Tr. T.) 52 Misc. (N. Y.) 364, 102 N. Y. Supp. 264.

686. **1.** Keating *v.* Morrissey, (Cal. App. 1907) 91 Pac. 677; Hayes *v.* Shirk, 167 Ind. 569, 78 N. E. 653; Ford *v.* Ingles Coal Co., (Ky. 1907) 102 S. W. 332; Doxy *v.* Exchange Bank, (Okla. 1907) 92 Pac. 150.

687. **1. An Accommodation Note Is Valid,** although the consideration passes to a third person. Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017.

5. Warder, etc., Co. *v.* Johnson, 114 Mo. App. 571, 90 S. W. 392.

688. **4.** Gilman *v.* Ferguson, 116 Ill. App. 347, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

689. **1.** Strode *v.* St. Louis Transit Co., 197 Mo. 616, 7 Ann. Cas. 1084, 95 S. W. 851, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689.

2. Buffington *v.* McNally, 192 Mass. 198, 78 N. E. 309; Underwood Typewriter Co. *v.* Century Realty Co., 118 Mo. App. 197, 94 S. W. 785.

691. **1.** Riley *v.* Stevenson, 118 Mo. App. 187, 94 S. W. 781; Zerr *v.* Klug, (Mo. App.

1906) 98 S. W. 822; Leeming *v.* Duryea, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 240, 97 N. Y. Supp. 355.

3. Kephart *v.* Buddecke, 20 Colo. App. 546, 80 Pac. 501; Grimes *v.* Grimes, (Ky. 1905) 89 S. W. 548; Widger *v.* Baxter, 190 Mass. 130, 76 N. E. 509; Whitehead *v.* American Lamp, etc., Co., 70 N. J. Eq. 581, 62 Atl. 554; Tyler *v.* Jaeger, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 84, 93 N. Y. Supp. 558; Bluff Springs Mercantile Co. *v.* White, (Tex. Civ. App. 1905) 90 S. W. 710, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 691; McKone *v.* Metropolitan L. Ins. Co., 131 Wis. 243, 110 N. W. 472.

693. **3.** Strevell *v.* Jones, 106 N. Y. App. Div. 334, 94 N. Y. Supp. 627, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 693; Matter of Pinkerton, (Surrogate Ct.) 49 Misc. (N. Y.) 363, 99 N. Y. Supp. 492.

4. Friedman *v.* Suttle, (Ariz. 1906) 85 Pac. 726.

694. **3.** Allen *v.* Ruland, 79 Conn. 405, 8 Ann. Cas. 344, 65 Atl. 138; Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645; Pittsburg Vitrified Paving, etc., Co. *v.* Bailey, (Kan. 1907) 90 Pac. 803, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 694–696; Fontenette *v.* Kling, 118 La. 152, 42 So. 756; Strong *v.* Whybark, 204 Mo. 341, 102 S. W. 968, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 694; Stamper *v.* Venable, 117 Tenn. 557, 97 S. W. 812; Rust *v.* Fitzhugh, (Wis. 1907) 112 N. W. 508.

Consideration Must Be Serious and Proportionate to Value of Contract — Civil Law. — The civil law, differently from the common law, requires that the consideration of a contract be serious, and not out of all proportion with the value of the contract. Hence, in a contract of more than $100 in value, the traditional one dollar consideration of a common-law contract is looked upon by the civil law as not being a serious consideration; that is to say, as not being any consideration at all. And the same may be said of two dollars for the privilege of retiring at any time from such a contract. Murray *v.* Barnhart, 117 La. 1030, 42 So. 489.

696. **2.** Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781.

697. **1.** Ullsperger *v.* Meyer, 217 Ill. 262, 3 Ann. Cas. 1032, 75 N. E. 482; Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Watkins *v.* Robertson, 105 Va. 269, 54 S. E. 33.

Specific Performance of a Contract Will Be Denied where it is unsupported by any consideration other than one dollar. Berry *v.* Frisbie, 120 Ky. 337, 86 S. W. 558.

698. **2.** Powers *v.* Powers, 46 Oregon 479, 80 Pac. 1058; Newman *v.* Newman, (Tex. Civ. App. 1905) 86 S. W. 635; Deepwater Council, etc., *v.* Renick, 59 W. Va. 343, 53 S. E. 552.

699. **1.** Ober *v.* Phillips-Buttoff Mfg. Co., 145 Ala. 625, 40 So. 278; Strong *v.* Whybark, 204 Mo. 341, 102 S. W. 968; Stamper *v.* Venable, 117 Tenn. 557, 97 S. W. 812; Rust *v.* Fitzhugh, (Wis. 1907) 112 N. W. 508.

702. **5.** Worth *v.* Daniel, 1 Ga. App. 15, 57 S. E. 898; Doan *v.* Hostetler, 215 Ill. 635, 74 N. E. 767; Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544; Rittenhouse *v.* Swango, (Ky. 1906) 97 S. W. 743.

703. **7.** Strode *v.* St. Louis Transit Co., 197 Mo. 616, 7 Ann. Cas. 1084, 95 S. W. 851, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 703.

A Valuable Consideration Is Defined to be money or something that is worth money. Strong *v.* Whybark, 204 Mo. 341, 102 S. W. 968.

704. **2. A Payment of Money** is a valuable consideration. Taylor *v.* Industrial Mut. Deposit Co., (Ky. 1906) 96 S. W. 462.

A Contract for the Sale of Real Estate, showing a consideration of five hundred dollars, is not invalid for lack of a sufficient consideration. Winch *v.* Edmunds, 34 Colo. 359, 83 Pac. 632.

4. Welch *v.* Kukuk, 128 Wis. 419, 107 N. W. 301.

707. **4.** The existence of a debt is sufficient to support an express promise to pay it. Armijo *v.* Henry, (N. Mex. 1907) 89 Pac. 305; Singer Mfg. Co. *v.* Summers, 143 N. Car. 102, 55 S. E. 522; Baines *v.* Cove Bay R., etc., Co., (Oregon 1907) 89 Pac. 371.

A Pre-existing Debt is sufficient to support an assignment of moneys which might become due to the assignor. Yolo Bank *v.* Woodland Bank, 3 Cal. App. 561, 86 Pac. 820.

708. **2.** Gates *v.* Morton Hardware Co., 146 Ala. 692, 40 So. 509.

709. **2.** Illinois Roofing, etc., Co. *v.* Aerial Advertising Co., 142 Mich. 698, 106 N. W. 274; Scanlon *v.* Wallach, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 104, 102 N. Y. Supp. 1090.

3. Winston *v.* Farrow, (Ala. 1905) 40 So. 53; Matter of Kemp, (Surrogate Ct.) 49 Misc. (N. Y.) 396, 100 N. Y. Supp. 221.

The First Note Must Be Canceled, to constitute a sufficient consideration for the second. Gansevoort Bank *v.* Gilday, (N. Y. City Ct. Tr. T.) 53 Misc. (N. Y.) 107, 104 N. Y. Supp. 271.

A Note Given for Release of Judgment against the Maker is sustained by a sufficient consideration. Blythe *v.* Cordingly, 20 Colo. App. 508, 80 Pac. 495.

4. Garrigue *v.* Kellar, 164 Ind. 676, 74 N. E. 523.

5. Spartanburg Bank *v.* Mahon, 75 S. Car. 255, 55 S. E. 529.

711. **1.** *United States.* — Sims *v.* Three States Lumber Co., (C. C. A.) 135 Fed. 1019.

California. — Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708.

Georgia. — Belt *v.* Lazenby, 126 Ga. 767, 56 S. E. 81.

Kentucky. — Martin *v.* Conley, (Ky. 1907) 99 S. W. 613.

Nebraska. — Gering *v.* School Dist. No. 28, (Neb. 1906) 107 N. W. 250.

New Hampshire. — National Bank *v.* Sayer, 73 N. H. 595, 64 Atl. 189.

New Jersey. — Bowers Hydraulic Dredging Co. *v.* Hess, 71 N. J. L. 327, 60 Atl. 362.

New York. — Warshawsky *v.* Grand Theatre Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 615, 94 N. Y. Supp. 522.

North Carolina. — York *v.* Westall, 143 N. Car. 276, 55 S. E. 724.

Oregon. — Multnomah County *v.* Title Guarantee Co., 46 Oregon 523, 80 Pac. 409; Dickey *v.* Jackson, 47 Oregon 531, 84 Pac. 701.

Pennsylvania. — Gaynor *v.* Quinn, 212 Pa. St. 362, 61 Atl. 944.

712. 1. Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781; Lewallen's Estate, 27 Pa. Super. Ct. 320.

714. 2. Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 708; McCrary *v.* Thompson, 123 Mo. App. 596, 100 S. W. 535; Silander *v.* Gronna, 15 N. Dak. 552, 108 N. W. 544.

717. 1. Burton *v.* Belvin, 142 N. Car. 151, 55 S. E. 71; Jangraw *v.* Perkins, 77 Vt. 375, 60 Atl. 385.

718. 1. **Assuming Liabilities in Recovering a Lost Watch for the Promisor** is a sufficient consideration to support a promise. Schirm *v.* Wieman, 103 Md. 541, 7 Ann. Cas. 1008, 63 Atl. 1056.

2. Griffis *v.* Connersville First Nat. Bank, (Ind. 1906) 79 N. E. 230; Western Assur. Co. *v.* Walden, 117 Mo. App. 438, 94 S. W. 725.

719. 2. Finch *v.* Green, 225 Ill. 304, 80 N. E. 318; Scanlon *v.* Northwood, 147 Mich. 139, 110 N. W. 493; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228; Matter of Bradbury, 105 N. Y. App. Div. 250, 93 N. Y. Supp. 418; Parsons *v.* Teller, 111 N. Y. App. Div. 637, 97 N. Y. Supp. 808; Title Guarantee, etc., Co. *v.* Stemberg, 119 N. Y. App. Div. 28, 103 N. Y. Supp. 857; Texarkana Lumber Co. *v.* Lennard, (Tex. Civ. App. 1907) 104 S. W. 506; Pond *v.* Pond, 79 Vt. 352, 65 Atl. 97; Schultz *v.* Simmons Fur Co., (Wash. 1907) 90 Pac. 917.

720. 1. Matter of Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 1103.

721. 1. **An Understanding that Future Services Were to Be Rendered** by a bank clerk, is a sufficient consideration to support the bank's promise to pay for his services during a vacation given him. Birch *v.* Glasgow Sav. Bank, 114 Mo. App. 711, 90 S. W. 746.

Agreement to Obtain Necessary Signatures Valid Consideration. — Drainage Dist. No. 15 *v.* Armthong, 44 Wash. 26, 87 Pac. 52, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721.

3. Robertson *v.* Newman, 2 Tenn. Ch. App. 181; Duguay *v.* Lanteigne, 3 N. Bruns. Eq. Rep. 132.

723. 1. Buhler *v.* Trombly, 139 Mich. 569, 102 N. W. 647, 108 N. W. 343, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 722.

Incurring Risk by loaning a sum of money on insufficient security in order to exact an agreement from the borrower is a sufficient consideration to support the agreement. Christian Feigenspan *v.* Nizolek, (N. J. 1907) 65 Atl. 703.

725. 1. Indiana Match Co. *v.* Kirk, 118 Ill. App. 102.

2. Kroell *v.* Kroell, 219 Ill. 105, 4 Ann. Cas. 801, 76 N. E. 63; Frazer *v.* Andrews, 134 Iowa 621, 112 N. W. 93.

727. 1. *Georgia.* — Morrison *v.* Hart, 122 Ga. 660, 50 S. E. 471.

Illinois. — Kissack *v.* Bourke, 224 Ill. 352, 79 N. E. 619; Gray *v.* Bloomington, etc., R. Co., 120 Ill. App. 159; McKenna *v.* McKenna, 118 Ill. App. 240.

Iowa. — Mueller *v.* Batcheler, 131 Iowa 650, 109 N. W. 186.

Kentucky. — Kernan *v.* Carter, (Ky. 1907) 104 S. W. 308.

Maryland. — Linz *v.* Schuck, (Md. 1907) 67 Atl. 286.

Massachusetts. — Pierce *v.* O'Brien, 189 Mass. 58, 75 N. E. 61.

Minnesota. — Barnett *v.* Bloch, 94 Minn. 138, 102 N. W. 390, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 727.

New Hampshire. — White *v.* Poole, 73 N. H. 403, 62 Atl. 494.

New York. — Electric Fireproofing Co. *v.* Smith, 113 N. Y. App. Div. 615, 99 N. Y. Supp. 37.

Pennsylvania. — Person, etc., Co. *v.* Lipps, 219 Pa. St. 99, 67 Atl. 1081.

Vermont. — Holden *v.* Gilfeather, 78 Vt. 405, 63 Atl. 144.

Virginia. — Smokeless Fuel Co. *v.* Seaton, 105 Va. 170, 52 S. E. 829.

731. 2. **A Conveyance of Real Estate** is a valid consideration. Hiss *v.* Hiss, 228 Ill. 414, 81 N. E. 1056; Faust *v.* Faust, 144 N. Car. 383, 57 S. E. 22.

A Purchase of Real Property is a sufficient consideration to sustain collateral agreements in connection therewith. Bourne *v.* Sherrill, 143 N. Car. 381, 55 S. E. 799; Hoch *v.* Braxmar, 109 N. Y. App. Div. 209, 95 N. Y. Supp. 647.

4. McKinley *v.* Wilson, (Tex. Civ. App. 1906) 96 S. W. 112; Moody *v.* Rowland, (Tex. Civ. App. 1906) 102 S. W. 911.

732. 2. Kinkead *v.* Peet, (Iowa 1907) 111 N. W. 48; Beverlin *v.* Casto, (W. Va. 1907) 57 S. E. 411.

Conveyance Valid to Extent of Dower Released. — Moore *v.* Green, (C. C. A.) 145 Fed. 472.

3. **An Assignment of a Lease** is a valuable consideration. Norton *v.* Stroud State Bank, 17 Okla. 295, 87 Pac. 848; Harris *v.* Theus, (Ala. 1907) 43 So. 131.

The Assignment of a Void Lease is not a valuable consideration. Conqueror Gold Min., etc., Co. *v.* Ashton, 39 Colo. 133, 90 Pac. 1124.

4. **A Surrender of a Lease** by the lessee is a sufficient consideration to support a promise on the part of the lessor not to insist on payment of future rents. Livesley *v.* Heise, 48 Oregon 147, 85 Pac. 509.

A Surrender of One Lease is a sufficient consideration for a second lease. Great Western Oil Co. *v.* Carpenter, (Tex. Civ. App. 1906) 95 S. W. 57.

734. 3. **A Sale of a Patent Right** is a valuable consideration. Twentieth Century Co. *v.* Quilling, 130 Wis. 318, 110 N. W. 174.

A Sale and Delivery of Building Material is a sufficient consideration for an order on the owner to pay therefor. Meserole *v.* Zimmerman, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 636, 96 N. Y. Supp. 135.

4. **A Transfer of Stock in a Corporation** is a sufficient consideration for a deed of land.

Clint *v.* Eureka Crude Oil Co., 3 Cal. App. 463, 86 Pac. 817.

A Purchase of Stock in a Corporation affords a sufficient consideration for a contemporaneous agreement by the seller not to engage in the business in which the corporation was engaged. Kradwell *v.* Thiesen, 131 Wis. 97, 111 N. W. 233.

A purchase of stock is a sufficient consideration to support an agreement from the president of the corporation in which the stock was purchased to hold the purchaser harmless against any loss therefrom. Patrick *v.* Barker, (Neb. 1907) 112 N. W. 358.

735. **1. A Purchase of the Good Will of a Business** is a sufficient consideration for a promise from the vendor to the vendee not to engage in the same business. My Laundry Co. *v.* Schmeling, 129 Wis. 597, 109 N. W. 540.

737. **1. A Release of Rights in a Settlement of a Decedent's Estate** constitutes a valuable consideration. Merchants', etc., State Bank *v.* Dawdy, 230 Ill. 199, 82 N. E. 606.

738. **1. A Change of Residence** at another's request is a sufficient consideration to support a promise to pay money. Burgesser *v.* Wendel, 73 N. J. L. 286, 62 Atl. 994.

A Promise to Remain in a Certain City is a sufficient consideration to support a promise to convey land. White *v.* Poole, 73 N. H. 403, 62 Atl. 494.

4. A Consideration Is Unnecessary for the modification of an executory contract. Warren *v.* Cash, 143 Ala. 158, 39 So. 124; Wellden *v.* Witt, 145 Ala. 605, 40 So. 126; Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018; Cannon-Weiner Elevator Co. *v.* Boswell, 117 Mo. App. 473, 93 S. W. 355.

5. Brown *v.* Jennett, 130 Iowa 311, 106 N. W. 747; Parsons *v.* Teller, 111 N. Y. App. Div. 637, 97 N. Y. Supp. 808.

740. **1.** Milby *v.* Mowry, 125 Ill. App. 417.

2. An agreement whereby an administrator promises to pay a claim against his decedent's estate if the claimant will not press it is not without consideration. Blake *v.* Robinson, 129 Iowa 196, 105 N. W. 401.

741. **4. The Permission of an Officer** to allow the defendant in an attachment levy to sell the property levied on is a sufficient consideration to support a promise from the purchaser to pay the purchase price to the officer. Lamb *v.* Zundell, 78 Vt. 232, 62 Atl. 33.

742. **1.** Wierman *v.* Bay City-Michigan Sugar Co., 142 Mich. 422, 106 N. W. 75.

743. **2.** Gilman *v.* Ferguson, 116 Ill. App. 347, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 743; Welch *v.* Kukuk, 128 Wis. 419, 107 N. W. 301, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 743.

An Illegal Agreement to Forbear is not a sufficient consideration. U. S. *v.* Kauhoe, (C. C. A.) 147 Fed. 185.

3. Noyes *v.* Young, 32 Mont. 226, 79 Pac. 1063, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 743.

Forbearance for a Definite Period is a sufficient consideration for a new promise to pay. Goll *v.* Fehr, 131 Wis. 141, 111 N. W. 235.

4. Forbearance for Indefinite Period Is Valid Consideration. — Muir *v.* Greene, 115 N. Y. App. Div. 173, 100 N. Y. Supp. 722.

744. **4. Forbearance to Assert Claim for Commissions** is a valuable consideration. Cole *v.* Mendenhall, 117 N. Y. App. Div. 786, 102 N. Y. Supp. 1030.

Forbearance to Enforce Claim for a Stated Period is a valuable consideration. Niles-Bement-Pond Co. *v.* Ury, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 305, 103 N. Y. Supp. 226.

746. **2.** Daniels *v.* Daniels, 3 Cal. App. 294, 85 Pac. 134; Russell Electric Co. *v.* Bassett, (Conn. 1907) 66 Atl. 531; Fay *v.* Hunt, 190 Mass. 378, 77 N. E. 502; Emerson *v.* Sheffer, 113 N. Y. App. Div. 19, 98 N. Y. Supp. 1057; Soulis *v.* McNeil, 37 Nova Scotia 525.

3. Parsons *v.* Silva, 1 Cal. App. 602, 82 Pac. 685; Martin *v.* Lesan, 129 Iowa 573, 105 N. W. 996.

747. **5.** Steger *v.* Hume, 97 Tex. 326, 79 S. W. 20, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747.

748. **1.** Harness *v.* McKee-Brown Lumber Co., 17 Okla. 624, 89 Pac. 1020.

5. Forbearance to Enforce Execution against Body Good Consideration for Promissory Note by Debtor. — Smith *v.* Frame, 41 Nova Scotia 20.

6. Snellgrove *v.* Evans, 145 Ala. 600, 40 So. 567; Fay *v.* Hunt, 190 Mass. 378, 77 N. E. 502; Franchi *v.* Tirelli, (Supm. Ct. App. T.) 92 N. Y. Supp. 784; Virginia Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949; Burton *v.* Belvin, 142 N. Car. 151, 55 S. E. 71; Lyndon Sav. Bank *v.* International Co., 78 Vt. 169, 62 Atl. 50.

Dismissal of Suit — Sufficient Consideration of Note. — Glenn *v.* Zenovitch, 128 Ga. 596, 58 S. E. 26.

7. Noyes *v.* Young, 32 Mont. 239, 79 Pac. 1063.

A Promise of Forbearance to Sue a Third Person, who becomes surety on a note in consideration of such promise, until the third person has collected the amount of the note from the maker, is no consideration for the third person's becoming surety. Ontario Bank *v.* Hoskins, 33 Mont. 306, 83 Pac. 493.

750. **1.** Blake *v.* Robinson, 129 Iowa 196, 105 N. W. 401.

A Promise of an Heir not to contest the probate of a will is a valid consideration for a promise by another heir to divide the property according to certain terms. Grochowski *v.* Grochowski, (Neb. 1906) 109 N. W. 742.

3. Ward *v.* Goodrich, 34 Colo. 369, 82 Pac. 701; Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674; Lehnhoff's Estate, (Neb. 1906) 109 N. W. 164; Utah Sav., etc., Co. *v.* Bamberger, 29 Utah 370, 81 Pac. 887, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 750.

Testifying as Witness Invalid Consideration. — Hargarten *v.* Berz, 126 Ill. App. 368.

752. **4.** Strange *v.* Carrington, etc., Co., 116 Ill. App. 410; Petze *v.* Leary, 117 N. Y. App. Div. 829, 102 N. Y. Supp. 960; Seymour *v.* Hughes, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 248, 105 N. Y. Supp. 249.

754. **4. An Anticipated Payment on a Note** is a sufficient consideration to support the payee's agreement to extend the time of pay-

ment of the balance. Browere *v.* Carpenter, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 525, 99 N. Y. Supp. 531.

5. Siewing *v.* Tacke, 112 Mo. App. 414, 86 S. W. 1103.

756. 1. Precht *v.* Howard, 110 N. Y. App. Div. 680, 97 N. Y. Supp. 462.

757. 1. *California.* — Ballerino *v.* Ballerino, 147 Cal. 544, 82 Pac. 199; Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708; Keating *v.* Morrissey, (Cal. App. 1907) 91 Pac. 677.

Iowa. — Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034.

Kentucky. — Johnson *v.* Johnson, 122 Ky. 13, 90 S. W. 964; McLane *v.* Dixon, (Ky. 1907) 99 S. W. 601.

Michigan. — Walhier *v.* Weber, 142 Mich. 322, 105 N. W. 772; Dierkes *v.* Wideman, 143 Mich. 181, 106 N. W. 735.

Missouri. — Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614; Phelps *v.* Manecke, 119 Mo. App. 139, 96 S. W. 221.

New York. — Remer *v.* Ettinger, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 641, 96 N. Y. Supp. 263.

North Carolina. — Corbett *v.* Clute, 137 N. Car. 546, 50 S. E. 216.

Oklahoma. — McGuffin *v.* Coyle, 16 Okla. 648, 85 Pac. 954, 86 Pac. 962.

Pennsylvania. — See Moyer *v.* Dodson, 212 Pa. St. 344, 61 Atl. 937.

Texas. — McNeese *v.* Carver, (Tex. Civ. App. 1905) 89 S. W. 430.

Washington. — Keene *v.* Behan, 40 Wash. 505, 82 Pac. 884.

2. State *v.* Wilson, 73 Kan. 334, 80 Pac. 639, 84 Pac. 737; Klauber *v.* Schloss, 198 Mo. 502, 95 S. W. 930.

762. 1. Checks. — McGuire *v.* Murphy, 107 N. Y. App. Div. 104, 94 N. Y. Supp. 1005.

2. Kennedy *v.* Lee, 147 Cal. 596, 82 Pac. 257; Castor *v.* Bernstein, 2 Cal. App. 703, 84 Pac. 244; Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544; Noyes *v.* Young, 32 Mont. 226, 79 Pac. 1063; Matter of Pinkerton, (Surrogate Ct.) 49 Misc. (N. Y.) 363, 99 N. Y. Supp. 492.

Alabama. — Southern R. Co. *v.* Blunt, 155 Fed. 496; Gates *v.* Monton Hardware Co., 146 Ala. 692, 40 So. 509.

3. Illinois. — Waterloo First Nat. Bank *v.* Bennett, 215 Ill. 398, 74 N. E. 405.

Missouri. — Locher *v.* Kuechenmiester, 120 Mo. App. 701, 98 S. W. 92.

4. Cooley *v.* Moss, 123 Ga. 707, 51 S. E. 625, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 762; Smith *v.* Hightower, (Ga. App. 1907) 59 S. E. 593; Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645; Chamberlain *v.* Fernbach, 118 Ill. App. 145; Fletcher *v.* Fletcher, 191 Mass. 211, 77 N. E. 758; Parsons *v.* Teller, 111 N. Y. App. Div. 637, 97 N. Y. Supp. 808, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 762; Dickey *v.* Jackson, 47 Oregon 531, 84 Pac. 701; Phillips *v.* American Telephone, etc., Co., 71 S. Car. 571, 51 S. E. 247; Watkins *v.* Robertson, 105 Va. 269, 54 S. E. 33; Monro *v.* National Surety Co., (Wash. 1907) 92 Pac. 280.

763. 1. Cooley *v.* Moss, 123 Ga. 707, 51 S. E. 625, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 763.

4. Keating *v.* Morrissey, (Cal. App. 1907) 91 Pac. 677; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; Holmes *v.* Horn, 120 Ill. App. 359; Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544; Yowell *v.* Walker, 118 La. 27, 42 So. 635; Lombard *v.* Bryne, 194 Mass. 236, 80 N. E. 489; New York Metal Ceiling Co. *v.* Leonard, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 500, 96 N. Y. Supp. 187; Matter of Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 1103; Masterson *v.* Heitmann, (Tex. Civ. App. 1905) 87 S. W. 227.

765. 1. Otis *v.* McCaskill, 51 Fla. 516, 41 So. 458.

5. Kinkead *v.* Peet, (Iowa 1907) 111 N. W. 48.

6. Holmes *v.* Horn, 120 Ill. App. 359; Aultman Threshing, etc., Co. *v.* Knoll, 71 Kan. 109, 79 Pac. 1074; Deming Invest. Co. *v.* Wallace, 73 Kan. 291, 85 Pac. 139; German-American Security Co. *v.* McCulloch, (Ky. 1905) 89 S. W. 5; Gaar *v.* Hill, 113 Mo. App. 10, 87 S. W. 609; Cameron *v.* Fraser, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 8, 94 N. Y. Supp. 1058; McPeters *v.* English, 141 N. Car. 491, 54 S. E. 417; Davis *v.* Evans, 142 N. Car. 464, 55 S. E. 344; Moroney *v.* Coombes, (Tex. Civ. App. 1905) 88 S. W. 430.

766. 1. Redmond *v.* Cass, 226 Ill. 120, 80 N. E. 708, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 766.

2. Parol Evidence Is Admissible to show the consideration for a contract where such consideration is not clearly expressed. Ivey *v.* Bessemer City Cotton Mills, 143 N. Car. 189, 55 S. E. 613.

3. Allen *v.* Rees, (Iowa 1907) 110 N. W. 583.

767. 3. Laad *v.* Lookout Mountain Distilling Co., 147 Ala. 173, 40 So. 610; St. Louis, etc., R. Co. *v.* Crandall, 75 Ark. 89, 86 S. W. 855; Continental Casualty Co. *v.* Jasper, (Ky. 1905) 88 S. W. 1078; Barton *v.* Eminence Bldg., etc., Assoc., (Ky. 1906) 93 S. W. 9; Crafton *v.* Inge, (Ky. 1906) 98 S. W. 325; Kampmann *v.* McCormick, (Tex. Civ. App. 1907) 99 S. W. 1147; McCourt *v.* Peppard, 126 Wis. 326, 105 N. W. 809.

The Consideration of a Deed Cannot Be Contradicted in a hypothecary action. Abbeville Rice Mill *v.* Shambaugh, 115 La. 1047, 40 So. 453.

768. 2. Levine *v.* Carroll, 121 Ill. App. 105; Faust *v.* Faust, 144 N. Car. 383, 57 S. E. 22.

770. 1. Mueller *v.* Cook, 126 Wis. 504, 105 N. W. 1054.

771. 4. Right to Cut and Remove Timber. — Walker *v.* Johnson, 116 Ill. App. 145.

772. 2. Dilcher *v.* Nellany, (Supm. Ct. Tr. T.) 52 Misc. (N. Y.) 364, 102 N. Y. Supp. 264; Whitman *v.* Corley, 72 S. Car. 410, 52 S. E. 40.

775. 1. Wellmaker *v.* Wheatley, 123 Ga. 201, 51 S. E. 436, *quoting* 6 Am. and Eng. Encyc. of Law (2d ed.) 775.

777. 1. Minneapolis Threshing Mach. Co. *v.* Otis, (Neb. 1907) 110 N. W. 550.

780. 1. Slaton *v.* Fowler, 124 Ga. 955, 53 S. E. 567, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 780.

788. 2. **Entire Want of Consideration of an Agreement** to pay a bonus to a servant renders a promise to pay nonenforceable. Price *v.* Press Pub. Co., 117 N. Y. App. Div. 854, 103 N. Y. Supp. 296.

An entire want of consideration to the maker of a promissory note entitles the maker to the right of having the note canceled. Dille *v.* White, 132 Iowa 327, 109 N. W. 909.

3. Littlefield *v.* Perkins, 100 Me. 96, 60 Atl. 707.

789. 1. Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754; Miller *v.* Shelburn, 15 N. Dak. 182, 107 N. W. 51.

3. Lafferty *v.* Evans, 17 Okla. 247, 87 Pac. 304, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789; Bullion Min. Co. *v.* Cortwright, 19 Ont. L. Rep. 438.

790. 3. **A Contract May Be Rescinded** for a partial failure of consideration. Sterling *v.* Gregory, 149 Cal. 117, 85 Pac. 305.

791. 1. Sullivan *v.* Sullivan, 122 Ky. 707, 92 S. W. 966; Steckbauer *v.* Leykom, 130 Wis. 438, 110 N. W. 217.

796. 2. **Even though the Consideration Fails** in whole or in part, a deed made freely, voluntarily, and without fraud, by one who is competent, passes title. Ripperdan *v.* Weldy, 149 Cal. 667, 87 Pac. 276.

CONSOLIDATION OF CORPORATIONS.

802. 5. Mobile, etc., R. Co. *v.* State, 89 Miss. 724, 41 So. 259.

Where there is no legislative authority there can be no corporation either *de jure* or *de facto*. Whaley *v.* Bankers Union of the World, (Tex. Civ. App. 1905) 88 S. W. 259.

803. 1. See Van Deusen *v.* U. S., (C. C. A.) 151 Fed. 989.

3. **All Must Have Power to Unite.** — Spencer *v.* Seaboard Air Line R. Co., 137 N. Car. 107, 49 S. E. 96.

804. 4. **The New York** statute of 1869, c. 916, under which the New York Central and the Hudson River railroad companies were consolidated, did not require that the two railroads should be connected by a bridge owned by one of them. New York Cent., etc., R. Co. *v.* Yonkers, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 252.

805. 3. Longview *v.* Crawfordsville, 164 Ind. 126, 3 Ann. Cas. 496, 73 N. E. 78, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 805.

4. Whaley *v.* Bankers' Union of the World, (Tex. Civ. App. 1905) 88 S. W. 259.

806. 1. Spencer *v.* Seaboard Air Line R. Co., 137 N. Car. 107, 49 S. E. 96.

2. Spencer *v.* Seaboard Air Line R. Co., 137 N. Car. 107, 49 S. E. 96.

3. **Laches.** — Spencer *v.* Seaboard Air Line R. Co., 137 N. Car. 107, 49 S. E. 96. See also **810.** 5, *infra*.

807. 5. **Stockholder May Enjoin Unfair Consolidation.** — Colgate *v.* U. S. Leather Co., (N J. 1907) 67 Atl. 657; Colby *v.* Equitable Trust Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 355, 106 N. Y. Supp. 801.

Stockholder May Annul for Fraud. — Jones *v.* Missouri-Edison Electric Co., (C. C. A.) 144 Fed. 765.

7. Van Deusen *v.* U. S., (C. C. A.) 151 Fed. 989.

Where Statute Authorizes. — Jones *v.* Missouri-Edison Electric Co., (C. C. A.) 144 Fed. 765.

808. 2. Colgate *v.* U. S. Leather Co., (N. J. 1907) 67 Atl. 657, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 808.

4. The New York Membership Corporations Law (c. 559 of 1895) does not authorize the consolidation of a membership corporation with a religious corporation. Selkir *v.* Klein, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 194, 100 N. Y. Supp. 449.

810. 4. See Shreveport Traction Co. *v.* Kansas City, etc., Co., 119 La. 759, 44 So. 457.

A Consolidation Without Legislative Authority is subject to collateral attack. Whaley *v.* Bankers' Union of the World, (Tex. Civ. App. 1905) 88 S. W. 259.

5. **Estoppel by Laches.** — Dana *v.* American Tobacco Co., (N. J. 1907) 65 Atl. 730; Beling *v.* American Tobacco Co., (N. J. 1907) 65 Atl. 725.

811. 1. Solmonovich *v.* Denver Consol. Tramway Co., 39 Colo. 282, 89 Pac. 57. See also State *v.* Consolidated Gas, etc., Co., 104 Md. 364, 65 Atl. 40; Motter *v.* Kennett Tp. Electric Co., 212 Pa. St. 613, 62 Atl. 104.

A consolidation strictly involves the dissolution of the old corporations and the forming of a new one; in merger one corporation is absorbed by another. Lee *v.* Atlantic Coast Line R. Co., 150 Fed. 775.

The consolidation of mining corporations results in a new and distinct corporation, but the old corporations continue to exist as far as their creditors are concerned. Isom *v.* Rex Crude Oil Co., 147 Cal. 663, 82 Pac. 319.

2. Lee *v.* Atlantic Coast Line R. Co., 150 Fed. 775; Bank of Long Island *v.* Young, 101 N. Y. App. Div. 88, 91 N. Y. Supp. 849.

814. 5. See Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457. *Compare* Rochester R. Co. *v.* Rochester, 205 U. S. 236, 27 U. S. Sup. Ct. 460.

A Guaranty. — Bank of Long Island *v.* Young, 101 N. Y. App. Div. 88, 91 N. Y. Supp. 849.

Corporate Life. — The property acquired by a corporation is not forfeited by the expiration of the period of corporate life provided in its charter, nor will its successor lose such property on the expiration of such period. Matter of Consolidated Gas Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407; New York Cent., etc., R. Co. *v.* Yonkers, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 252.

Appointment as Executor. — Where a trust company named as executor in a will had been merged in another corporation having other powers in addition to those of a trust company, it was held that the latter was not en-

titled to letters testamentary under the will. Matter of Stikeman, (Surrogate Ct.) 48 Misc. (N. Y.) 156, 96 N. Y. Supp. 460.

Religious Corporations.—As to the effect of the consolidation of religious corporations upon gifts to a constituent corporation where questions of a change of doctrine arise, see Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184.

815. 2. Atlantic Coast Line Co. *v.* Cone, 53 Fla. 1017, 43 So. 514, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 815.

3. See Bank of Long Island *v.* Young, 101 N. Y. App. Div. 88, 91 N. Y. Supp. 849.

When the services for which a recovery was sought were completed before the consolidation, it was held to be no defense to say that the contract being for personal services was not assignable. U. S. Title Guaranty, etc., Co. *v.* Marks, 116 N. Y. App. Div. 341, 101 N. Y. Supp. 483.

816. 3. Smith *v.* Cleveland, etc., R. Co., (Ind. 1907) 81 N. E. 501.

But an immunity granted by statute to a corporation is not assignable to its successor without the state's consent. Rochester R. Co. *v.* Rochester, 205 U. S. 236, 27 U. S. Sup. Ct. 469, where it was held that an authorization to a street railroad to assign its "estate, property, rights, privileges, and franchises" did not enable it to transfer to its successor an immunity from the expense of street paving.

817. 3. *Contra in Indiana.*—Smith *v.* Cleveland, etc., R. Co., (Ind. 1907) 81 N. E. 501; Van Deusen *v.* U. S., (C. C. A.) 151 Fed. 989.

7. *Compare* Rochester R. Co. *v.* Rochester, 205 U. S. 236, 27 U. S. Sup. Ct. 469.

818. 5. Camden Interstate R. Co. *v.* Lee, (Ky. 1905) 84 S. W. 332, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818.

Where the consolidation is void as without legislative authority the only recourse is against the original corporations. Whaley *v.* Bankers' Union of the World, (Tex. Civ. App. 1905) 88 S. W. 259.

819. 2. Atlantic, etc., R. Co, *v.* Johnson, 127 Ga. 392, 56 S. E. 482; Kansas City-Leavenworth R. Co. *v.* Langley, 70 Kan. 453, 78 Pac. 858.

And successive consolidations will carry the liability with them. Birmingham R., etc., Co. *v.* Enslen, 144 Ala. 343, 39 So. 74.

820. 3. Atlantic Coast Line Co. *v.* Cone, 53 Fla. 1017, 43 So. 514, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 820.

822. 2. Atlantic Coast Line Co. *v.* Cone, 53 Fla. 1017, 43 So. 514, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 822.

5. See Burlington City L. & T. Co. *v.* Princeton Lighting Co., (N. J. 1907) 67 Atl. 1019.

823. 2. Birmingham R., etc., Co. *v.* Cunningham, 141 Ala. 470, 37 So. 680. See also Howell *v.* Lansing, etc., Traction Co., 146 Mich. 450, 109 N. W. 846.

Action May Be Continued Against Old Corporation.—Wells *v.* Missouri-Edison Electric Co., 108 Mo. App. 607, 84 S. W. 204.

May Be Revived in Name of Consolidated Corporation.—Kansas City-Leavenworth R. Co. *v.* Langley, 70 Kan. 453, 78 Pac. 858.

824. 2. See Smith *v.* Cleveland, etc., R. Co., (Ind. 1907) 81 N. E. 501.

Where by a merger a Virginia railroad corporation acquired the property, etc., of a South Carolina corporation and thereafter took out a South Carolina charter, it was held that it remained a citizen of Virginia so far as the jurisdiction of the federal courts was concerned, and that an action brought against it in the federal court in South Carolina could not be remanded to the state court. Lee *v.* Atlantic Coast Line R. Co., 150 Fed. 775.

825. 2. Parallel or Competing Lines.—See State *v.* Mobile, etc., R. Co., 86 Miss. 172, 38 So. 732.

CONSPIRACY.

832. 4. *United States.*—U. S. *v.* Greene, 146 Fed. 803.

Arkansas.—Butt *v.* State, 81 Ark. 173, 98 S. W. 723, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 832.

Florida.—Jetton-Dekle Lumber Co. *v.* Mather, 53 Fla. 969, 43 So. 590.

Illinois.—Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176; Johnson *v.* People, 124 Ill. App. 213.

Indiana.—Karges Furniture Co. *v.* Amalgamated Woodworkers Local Union No. 131, 165 Ind. 421, 6 Ann. Cas. 829, 75 N. E. 877; Sanderson *v.* State, (Ind. 1907) 82 N. E. 525.

Massachusetts.—Revere Water Co. *v.* Winthrop, (Mass. 1906) 78 N. E. 497.

Rhode Island.—State *v.* Bacon, 27 R. I. 252, 61 Atl. 653, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 832.

South Carolina.—State *v.* Ameker, 73 S. Car. 330, 53 S. E. 484, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 832.

Washington.—State *v.* Messner, 43 Wash. 206, 86 Pac. 636, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 832.

Wisconsin.—White *v.* White, (Wis. 1907) 111 N. W. 1116.

833. 1. Woodruff *v.* Hughes, 2 Ga. App. 361, 58 S. E. 551; State *v.* Ameker, 73 S. Car. 330, 53 S. E. 484.

834. 3. State *v.* Bacon, 27 R. I. 252, 61 Atl. 653; State *v.* Ameker, 73 S. Car. 330, 53 S. E. 484.

4. State *v.* Messner, 43 Wash. 206, 86 Pac. 636.

835. 4. Under Revised Statutes of New York.—People *v.* Summerfield, (Supm. Ct. Crim. Branch) 48 Misc. (N. Y.) 242, 96 N. Y. Supp. 502; People *v.* Flynn, 114 N. Y. App. Div. 578, 100 N. Y. Supp. 31.

836. 4. U. S. *v.* Greene, 146 Fed. 803; *Ex p.* Black, 147 Fed. 832; State *v.* Ameker, 73 S. Car. 330, 53 S. E. 484.

5. See State *v.* Loser, 132 Iowa 419, 104 N. W. 337.

837. 5. Wilder *v.* U. S., (C. C. A.) 143 Fed. 433.

See also U. S. *v.* Powell, 151 Fed. 648, holding that private individuals were not indictable under Rev. Stat. U. S., §§ 5508, 5509, as for a conspiracy to deprive one of a constitutional right to trial by jury, by reason of

having taken a prisoner from official custody and murdered him.

13. U. S. *v.* Stone, 135 Fed. 392; U. S. *v.* Scott, 139 Fed. 697; Francis *v.* U. S., (C. C. A.) 152 Fed. 155; Stearns *v.* U. S., (C. C. A.) 152 Fed. 900; Hyde *v.* Shine, 199 U. S. 62, 25 U. S. Sup. Ct. 760; Dimond *v.* Shine, 199 U. S. 88, 25 U. S. Sup. Ct. 766.

A conspiracy to commit a crime in the *District of Columbia* is an offense against the United States. Geist *v.* U. S., 26 App. Cas. (D. C.) 594. See also Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337.

Must Be to Effect Object of Conspiracy. — *Ex p.* Black, 147 Fed. 832; U. S. *v.* Richards, 149 Fed. 443; U. S. *v.* Cole, 153 Fed. 801.

An act post-dating the consummation of the conspiracy cannot be relied on as an overt act in proof of the conspiracy. *Ex p.* Black, 147 Fed. 832.

Necessity for Overt Act — When Committed Affects All.— U. S. *v.* Richards, 149 Fed. 443.

And successive overt acts make the conspiracy a continuing offense. U. S. *v.* Brace, 149 Fed. 874.

838. 2. A conspiracy to defraud the United States, not merely contrary to any criminal statute, but "in any manner or for any purpose" accompanied by an overt act, is indictable. U. S. *v.* Stone, 135 Fed. 392.

Section 5440 "must be interpreted as though standing alone. It covers all conspiracies. And the subject of the conspiracy may be any act covered by any criminal statute; in any event, that which is a misdemeanor." U. S. *v.* Thomas, 145 Fed. 74.

The term includes a conspiracy to conceal from a trustee assets of a bankrupt though antedating the bankruptcy proceedings, U. S. *v.* Cohn, 142 Fed. 983; and a conspiracy to impede the due administration of justice in a civil suit in a court of the United States between private parties, Wilder *v.* U. S., (C. C. A.) 143 Fed. 433.

Since imprisonment for giving rebates has been abolished an indictment for conspiring to give the same cannot stand. U. S. *v.* New York Cent., etc., R. Co., 146 Fed. 298.

4. Johnson *v.* People, 124 Ill. App. 213; Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176; State *v.* Loser, 132 Iowa 419, 104 N. W. 337; State *v.* Bacon, 27 R. I. 252, 61 Atl. 653; State *v.* Ameker, 73 S. Car. 330, 53 S. E. 484.

Under United States Statutes. — U. S. *v.* Greene, 146 Fed. 803; U. S. *v.* Richards, 149 Fed. 443; U. S. *v.* Cole, 153 Fed. 801.

839. 2. The Danger of Combinations. — See Allis-Chalmers Co. *v.* Iron Molders' Union No. 125, 150 Fed. 155, wherein it was said: "The union of individual forces by agreement, to accomplish injury, gives to such agreement or combination the character of a purpose to reach the end by violence, and the accomplishment thereof the character of a purpose effected by violence."

840. 4. Johnson *v.* People, 124 Ill. App. 213.

6. U. S. *v.* Cole, 153 Fed. 801; Ware *v.* U. S., (C. C. A.) 154 Fed. 577; Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 842 [840].

Voluntary Organization. — The fact that a voluntary organization had no written articles of association, does not relieve its members from the legal effect of its acts. Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770.

841. 1. Woodruff *v.* Hughes, 2 Ga. App. 361, 58 S. E. 551.

2. Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770; Com. *v.* Haun, 27 Pa. Super. Ct. 33; State *v.* Bacon, 27 R. I. 252, 61 Atl. 653; State *v.* Messner, 43 Wash. 206, 86 Pac. 636.

Under Colorado Statute. — A "conspiracy" is a criminal act, and it is unnecessary to aver the means by which the conspiracy was to be carried out. Imboden *v.* People, (Colo. 1907) 90 Pac. 608.

Conspiracies to Cheat and Defraud — Materiality of Means to Be Employed — Doctrine in Some of United States.— See State *v.* Eno, 131 Iowa 619, 9 Ann. Cas. 856, 109 N. W. 119, to the effect that real property not being a subject of cheating by false pretenses, the means used must be set out in an indictment for conspiracy to obtain real estate by false pretenses. See also Geist *v.* U. S., 26 App. Cas. (D. C.) 594; State *v.* Bacon, 27 R. I. 252, 61 Atl. 653.

842. 1. State *v.* Eno, 131 Iowa 619, 9 Ann. Cas. 856, 109 N. W. 119.

843. 1. Com. *v.* Haun, 27 Pa. Super. Ct. 33; State *v.* Bacon, 27 R. I. 252, 61 Atl. 653; Rex *v.* Hutchinson, 11 British Columbia 24, 8 Can. Crim. Cas. 486.

844. 3. U. S. *v.* Bradford, 148 Fed. 413, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 844, and notes; People *v.* Summerfield, (Supm. Ct. Crim. Branch) 48 Misc. (N. Y.) 242, 96 N. Y. Supp. 502.

Venue of Offense.—If the conspiracy be entered into within the jurisdiction of the trial court, the indictment will lie there, though the overt act is shown to have been committed in another jurisdiction. Hyde *v.* Shine, 199 U. S. 62, 25 U. S. Sup. Ct. 760; Dimond *v.* Shine, 199 U. S. 88, 25 U. S. Sup. Ct. 766.

4. People *v.* Summerfield, (Supm. Ct. Crim. Branch) 48 Misc. (N. Y.) 242, 96 N. Y. Supp. 502.

845. 1. U. S. *v.* Cohn, 142 Fed. 983; U. S. *v.* Bradford, 148 Fed. 413; State *v.* Loser, 132 Iowa 419, 104 N. W. 337; Com. *v.* Haun, 27 Pa. Super. Ct. 33; State *v.* Bacon, 27 R. I. 252, 61 Atl. 653.

3. *Ex p.* Black, 147 Fed. 832. See also Ware *v.* U. S., (C. C. A.) 154 Fed. 577.

846. 1. Rex *v.* Brailsford, (1905) 2 K. B. 730; U. S. *v.* Greene, 146 Fed. 803; U. S. *v.* Richards, 149 Fed. 443; Brown *v.* Evans, 149 Mich. 429, 112 N. W. 1079. See also Com. *v.* Valverdi, 218 Pa. St. 7, 66 Atl. 877.

A Corporation may be a party to a conspiracy though it could not commit the offense intended. Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

847. 4. Husband and Wife and Third Person — See Smith *v.* State, (Tex. Crim. 1905) 89

S. W. 817, wherein the indictment was for conspiracy between the defendant and his father and mother.

849. 4. Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770; Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176; State *v.* Loser, 132 Iowa 419, 104 N. W. 337; Com. *v.* Haun, 27 Pa. Super. Ct. 33.

Acts Requiring Co-operation. — But where the act requires more than one perpetrator (the giving and receiving of a rebate in this case) it has been held that the agreement to accomplish the act is not an indictable conspiracy, the act itself not being indictable. U. S. *v.* New York Cent., etc., R. Co., 146 Fed. 298.

853. 1. Ferguson *v.* State, (Ala. 1907) 43 So. 16; Rigsby *v.* State, (Ala. 1907) 44 So. 608; Taylor *v.* Com., (Ky. 1906) 90 S. W. 581; Com. *v.* Haun, 27 Pa. Super. Ct. 33; State *v.* Grove, 61 W. Va. 697, 57 S. E. 296.

Conspiracy to Commit Abortion. — Though a woman may not be an accomplice in the abortion committed upon her, she may conspire to commit the offense. State *v.* Crofford, 133 Iowa 478, 110 N. W. 921.

A Combination to Deprive One of Proper Medical Care and Nursing whereby death was caused was held not to be a conspiracy to commit any indictable offense known to the law. Rex *v.* Goodfellow, 11 Ont. L. Rep. 359.

854. 7. See Randall *v.* Lonstorf, 126 Wis. 147, 5 Ann. Cas. 371, 105 N. W. 663, to the effect that such a conspiracy is not criminal.

855. 4. Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770.

To Cheat and Defraud Public. — Lowell *v.* People, 229 Ill. 227, 82 N. E. 226.

Combination to Obtain by False Representations Passport in Name of One Person to Be Used by Another. — Rex *v.* Brailsford, (1905) 2 K. B. 730.

856. 1. Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770.

3. State *v.* Bacon, 27 R. I. 252, 61 Atl. 653, *quoting* 6 Am. and Eng. Encyc. of Law (2d ed.) 856.

Conspiracy to Obstruct Election Laws. — Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248; Com. *v.* Valverdi, 218 Pa. St. 7, 66 Atl. 877.

Under United States Statutes — Knowledge and Intent. — This section is violated by a conspiracy to suppress facts material to an action of ejectment between private parties in a federal court, as such litigant has a right to discover such evidence and present it in his discretion. Wilder *v.* U. S. (C. C. A.) 143 Fed. 433.

857. 2. Tedford *v.* People, 219 Ill. 23, 76 N. E. 60.

4. Lederer *v.* Adler, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 564, 92 N. Y. Supp. 827; State *v.* Bacon, 27 R. I. 252, 61 Atl. 653; State *v.* Hillman, 42 Wash. 615, 85 Pac. 63; State *v.* Messner, 43 Wash. 206, 86 Pac. 636.

858. 1. State *v.* Bacon, 27 R. I. 252, 61 Atl. 653.

860. 2. State *v.* Ryan, 47 Oregon 338, 82 Pac. 703.

861. 3. **Excluding Dramatic Critic from Theatres.** — Where the managers of theatres combined to keep a critic out of their theatres, they were held not liable for conspiracy, their sole purpose not being to prevent him from following his calling, but they being actuated by a dislike of the critic and his writings. People *v.* Flynn, 114 N. Y. App. Div. 578, 100 N. Y. Supp. 31, *affirmed* 189 N. Y. 180, 82 N. E. 169.

863. 6. U. S. *v.* Scott, 139 Fed. 697; U. S. *v.* Thomas, 145 Fed. 74.

864. 2. *United States.* — Browne *v.* U. S., (C. C. A.) 145 Fed. 1; U. S. *v.* Greene, 146 Fed. 803; U. S. *v.* Richards, 149 Fed. 443.

Alabama. — Morris *v.* State, 146 Ala. 66, 41 So. 274.

Arkansas. — Chapline *v.* State, 77 Ark. 344, 95 S. W. 477; Butt *v.* State, 81 Ark. 173, 98 S. W. 723.

District of Columbia. — Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337.

Illinois. — Tedford *v.* People, 219 Ill. 23, 76 N. E. 60.

Iowa. — State *v.* Caine, 134 Iowa 147, 111 N. W. 443.

Maryland. — Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

Michigan. — Brown *v.* Evans, 150 Mich. 429, 112 N. W. 1079.

Missouri. — State *v.* Sykes, 191 Mo. 62, 89 S. W. 851; State *v.* Darling, 199 Mo. 168, 97 S. W. 592.

Oregon. — State *v.* Ryan, 47 Oregon 338, 82 Pac. 703.

Texas. — Ripley *v.* State, (Tex. Crim. 1907) 100 S. W. 943.

Evidence Tending to Prove Independent Offenses. — State *v.* Allen, 34 Mont. 403, 87 Pac. 177. See also Van Gesner *v.* U. S., (C. C. A.) 153 Fed. 46, to the effect that such evidence is admissible if confined to the question of motive.

Correspondence between Alleged Conspirators. — State *v.* Dilley, 44 Wash. 207, 87 Pac. 133. See also Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337.

The Antecedent State of Mind of a conspirator distinctly relating to the subject of the conspiracy, is admissible in evidence and may be shown by letter-press copies, though the original letter was not in fact sent. U. S. *v.* Greene, 146 Fed. 784.

865. 1. U. S. *v.* Greene, 146 Fed. 803.

2. U. S. *v.* Greene, 146 Fed. 803; State *v.* Roberts, 201 Mo. 702, 100 S. W. 484; Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041; Morrill *v.* Bosley, (Tex. Civ. App. 1905) 88 S. W. 519. See also Ware *v.* U. S., (C. C. A.) 154 Fed. 577.

866. 1. State *v.* Loser, 132 Iowa 419, 104 N. W. 337; State *v.* Ryan, 47 Oregon 338, 82 Pac. 703.

But it must be shown that the conspiracy existed before the committing of the overt act. U. S. *v.* Richards, 149 Fed. 443.

4. *United States.* — U. S. *v.* Francis, 144 Fed. 520; U. S. *v.* Richards, 149 Fed. 443; Ware *v.* U. S., (C. C. A.) 154 Fed. 577.

Arkansas. — Butt *v.* State, 81 Ark. 173, 98 S. W. 723.

California. — People *v.* Stokes, (Cal. App. 1907) 89 Pac. 997.

Illinois. — Cooke *v.* People, 231 Ill. 9, 82 N. E. 863.

Indiana. — Sanderson *v.* State, (Ind. 1907) 82 N. E. 525.

Indian Territory. — Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

Iowa. — State *v.* Crofford, 133 Iowa 478, 110 N. W. 921; State *v.* Caine, 134 Iowa 147, 111 N. W. 443.

Maryland. — Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

Montana. — State *v.* Allen, 34 Mont. 403, 87 Pac. 177.

New Mexico. — Territory *v.* Neatherlin, 13 N. Mex. 491, 85 Pac. 1044.

New York. — People *v.* Summerfield, (Supm. Ct. Crim. Branch) 48 Misc. (N. Y.) 242, 96 N. Y. Supp. 502.

Ohio. — Hutchinson *v.* State, 28 Ohio Cir. Ct. 595.

Oregon. — State *v.* Ryan, 47 Oregon 338, 82 Pac. 703; State *v.* Quen, 48 Oregon 347, 86 Pac. 791; State *v.* White, 48 Oregon 416, 87 Pac. 137.

Texas. — Burton *v.* State, (Tex. Crim. 1907) 101 S. W. 226; Nelson *v.* State, (Tex. Crim. 1905) 87 S. W. 143; Smith *v.* State, (Tex. Crim. 1905) 89 S. W. 817.

Washington. — State *v.* Dilley, 44 Wash. 207, 87 Pac. 133.

West Virginia. — State *v.* Grove, 61 W. Va. 697, 57 S. E. 296.

Wisconsin. — Schutz *v.* State, 125 Wis. 452, 104 N. W. 90.

Declarations Admissible as Part of Res Gestæ. — Toliver *v.* State, 142 Ala. 3, 38 So. 801.

Acts and Declarations Before Formation of Conspiracy. — Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

Prima Facie Proof Sufficient. — Morris *v.* State, 146 Ala. 66, 41 So. 274; Sanderson *v.* State, (Ind. 1907) 82 N. E. 525; State *v.* Caine, 134 Iowa 147, 111 N. W. 443; Lawrence *v.* State, 103 Md. 17, 63 Atl. 96; State *v.* Roberts, 201 Mo. 702, 100 S. W. 484; State *v.* Grove, 61 W. Va. 697, 57 S. E. 296.

Must Be in Furtherance of Object of Conspiracy. People *v.* Smith, 151 Cal. 619, 91 Pac. 511; Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041.

Consent to Existence of Conspiracy. — The same rules of law and evidence govern the trial of the issue whether or not the defendant jointly with others consented or agreed to the existence of the conspiracy and the subsequent execution of its scheme, which control the trial of the issue whether or not the conspiracy was originally formed, where that is the crucial test. Ware *v.* U. S., (C. C. A.) 154 Fed. 577.

Effect of Statute of Limitations. — Where a prosecution for conspiracy is otherwise barred by limitations, an overt act done by one conspirator without the conscious participation of the other within the period is not admissible against the latter. Ware *v.* U. S. (C. C. A.) 154 Fed. 577.

868. **1.** U. S. *v.* Richards, 149 Fed. 443.

2. Wallace *v.* State, (Tex. Crim. 1905) 87 S. W. 1041.

If Conspiracy Be Shown to Exist. — See U. S. *v.* Richards, 149 Fed. 443 (to the same effect as U. S. *v.* Goldberg, 7 Biss. (U. S.) 175, set forth in original note).

869. **2.** Butt *v.* State, 81 Ark. 173, 98 S. W. 723; People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364; State *v.* Miller, 191 Mo. 587, 90 S. W. 767; State *v.* Ryan, 47 Oregon 338, 82 Pac. 703.

Such evidence may be admitted upon the prosecutor's undertaking to establish later the conspiracy. Lawrence *v.* State, 103 Md. 17, 63 Atl. 96; People *v.* Stokes, (Cal. App. 1907) 89 Pac. 997.

Order of Proof in Court's Discretion. — Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337.

4. *Arkansas.* — Benton *v.* State, 78 Ark. 284, 94 S. W. 688.

Colorado. — Smith *v.* People, 38 Colo. 509, 88 Pac. 453.

Indian Territory. — Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

Maryland. — Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

Missouri. — State *v.* Sykes, 191 Mo. 62, 89 S. W. 851; State *v.* Myers, 198 Mo. 225, 94 S. W. 242; State *v.* Forshee, 199 Mo. 142, 97 S. W. 933.

New York. — Lederer *v.* Adler, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 564, 92 N. Y. Supp. 827.

Texas. — Nelson *v.* State, (Tex. Crim. 1905) 87 S. W. 143; Shiflett *v.* State, (Tex. Crim. 1907) 102 S. W. 1147.

West Virginia. — State *v.* McCoy, 61 W. Va. 258, 57 S. E. 294, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 869.

In Browne *v.* U. S., (C. C. A.) 145 Fed. 1, acts postdating the conspiracy as charged were held admissible not as direct proof of an act then done in furtherance of the conspiracy, but as throwing light upon prior casual acts and purposes.

Receivable in Evidence against Party Making. — Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337.

The court must by instructions confine such testimony to the party making the declaration. State *v.* McCoy, 61 W. Va. 258, 57 S. E. 294, *citing* 6 Am. and Eng. Encyc. of Law (2d ed.) 869.

870. **1.** In an action to recover money obtained by conspiracy it was held immaterial on the question of admissibility whether the acts and declarations of the defendant bank's cashier in similar transactions occurred before or after the one in issue. Exchange Bank *v.* Moss, (C. C. A.) 149 Fed. 340.

3. State *v.* Allen, 34 Mont. 403, 87 Pac. 177; Bink *v.* State, (Tex. Crim. 1905) 89 S. W. 1075, 1077.

4. U. S. *v.* Greene, 146 Fed. 803; Rigsby *v.* State, (Ala. 1907) 44 So. 608; Christensen *v.* People, 114 Ill. App. 40; Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770; Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176; Shoemaker *v.* Jackson, 128 Iowa 488, 104 N. W. 503; People *v.* Sum-

merfield, (Supm. Ct. Crim. Branch) 48 Misc. (N. Y.) 242, 96 N. Y. Supp. 502.

Responsibility of Party Who Joins Pre-formed Conspiracy.— Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166; Cooke *v.* People, 231 Ill. 9, 82 N. E. 863.

Rule Applicable in Civil Cases. — Grover *v.* Cavanaugh, (Ind. App. 1907) 82 N. E. 104; Purington *v.* Hinchliff, 219 Ill. 159, 76 N. E. 47. See also Employing Printer's Club *v.* Doctor Blosser Co., 122 Ga. 509, 2 Ann. Cas. 694, 50 S. E. 353.

Corporation. — In an action for conspiracy to destroy plaintiff's business, the act and declarations of the president bind the corporation. American Freehold Land Mortg. Co. *v.* Brown, (Tex. Civ. App. 1907) 101 S. W. 856.

871. 1. Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

872. 3. Britton *v.* Young, 36 Ind. App. 622, 76 N. E. 327, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 872.

"The major significance of the conspiracy is in that it renders liable to the person wronged each participant in the combination, regardless of the degree of his activity in accomplishing the wrongful purpose." White *v.* White, (Wis. 1907) 111 N. W. 1116. To the same effect see Woodruff *v.* Hughes, 2 Ga. App. 361, 58 S. E. 551.

4. McBride *v.* Gould, 16 Ohio Dec. 246, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 872.

Conspirators Jointly and Severally Liable. — Woodruff *v.* Hughes, 2 Ga. App. 361, 58 S. E. 551.

Judgment against One Defendant. — James *v.* Evans, (C. C. A.) 149 Fed. 136; Harvey *v.* Harvey, 75 Neb. 557, 106 N. W. 660.

Where Recovery against All Is Sought. — Schon *v.* Whitt, (Ky. 1906) 92 S. W. 280.

873. 1. Where one of two alleged conspirators was the plaintiff's attorney, judgment against the other alone cannot be sustained, as conspiracy in such case is the gist of the action, the plaintiff otherwise being charged with the attorney's knowledge. Evans *v.* Freeman, 140 Fed. 419.

If the tort be actionable only when committed by a conspiracy, no recovery can be had without proof of the conspiracy. Harvey *v.* Harvey, 75 Neb. 557, 106 N. W. 660.

2. Menner *v.* Slater, 148 Cal. 284, 83 Pac. 35; Britton *v.* Young, 36 Ind. App. 622, 76 N. E. 327, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 873; Karges Furniture Co. *v.* Amalgamated Woodworkers Local Union No. 131, 165 Ind. 421, 6 Ann. Cas. 829, 75 N. E. 877; Bilafsky *v.* Conveyancers' Title Ins. Co., 192 Mass. 504, 78 N. E. 534. But see Loewe *v.* California State Federation of Labor, 139 Fed. 71; People *v.* Flynn, 114 N. Y. App. Div. 578, 100 N. Y. Supp. 31.

Rule in Wisconsin. — See Allis-Chalmers Co. *v.* Iron Molders' Union No. 125, 150 Fed. 155, wherein it was said that "the doctrine that an act which is not actionable if done by one is not when done by many is not the law of Wisconsin." See also Randall *v.* Lonstorf, 126 Wis. 147, 5 Ann. Cas. 371, 105 N. W. 663.

Matter of Aggravation. — Woodruff *v.* Hughes, 2 Ga. App. 361, 58 S. E. 551.

3. James *v.* Evans, (C. C. A.) 149 Fed. 136; Woodruff *v.* Hughes, 2 Ga. App. 361, 58 S. E. 551; Hall *v.* Chicago First Nat. Bank, 120 Ill. App. 441; McBride *v.* Gould, 16 Ohio Dec. 246; White *v.* White, (Wis. 1907) 111 N. W. 1116. See also Allis-Chalmers Co. *v.* Iron Molders' Union No. 125, 150 Fed. 155.

Members of a fraternal organization who confederate to expel a member are not liable for conspiracy where there was probable cause for such expulsion. Moon *v.* Flack, 74 N. H. 140, 65 Atl. 829.

874. 1. Woodruff *v.* Hughes, 2 Ga. App. 361, 58 S. E. 551; Hall *v.* Chicago First Nat. Bank, 120 Ill. App. 441; Britton *v.* Young, 36 Ind. App. 622, 76 N. E. 327, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 873 *et seq.*; Levy *v.* Collins, 115 La. 204, 38 So. 966; Shields *v.* City Nat. Bank, 138 N. Car. 185, 50 S. E. 591.

2. Britton *v.* Young, 36 Ind. App. 622, 76 N. E. 327, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 873 *et seq.*; Wills *v.* Central Ice, etc., Co., (Tex. Civ. App. 1905) 88 S. W. 265.

875. 3. **Liability of Party after Severance from Conspiracy.** — Where one has severed his connection with a combination before the commencement of a suit, he will not be denied protection against an illegal act of such combination because of his previous connection therewith. Employing Printers' Club *v.* Doctor Blosser Co., 122 Ga. 509, 2 Ann. Cas. 694, 50 S. E. 353.

Combining to Withdraw Children from School and Thus Reducing Teacher's Compensation Not Unlawful Act. — Sweney *v.* Coote, (1906) 1 Ir. R. 51, *affirmed* (1907) A. C. 221.

877. 1. Employing Printers' Club *v.* Doctor Blosser Co., 122 Ga. 509, 2 Ann. Cas. 694, 50 S. E. 353; Purington *v.* Hinchliff, 219 Ill. 159, 76 N. E. 47; American Freehold Land Mortg. Co. *v.* Brown, (Tex. Civ. App. 1907) 101 S. W. 856.

878. 1. See McElroy *v.* Harnack, 213 Pa. St. 444, 63 Atl. 127, where the court refused to set aside a judgment against stockbrokers who conspired with two others to give certain stocks and bonds a fictitious market value thereby enabling such others to borrow money thereon.

880. 1. See Menner *v.* Slater, 148 Cal. 284, 83 Pac. 35.

3. Loewe *v.* California State Federation of Labor, 139 Fed. 71; Seattle Brewing, etc., Co. *v.* Hansen, 144 Fed. 1011; Employing Printers' Club *v.* Doctor Blosser Co., 122 Ga. 509, 2 Ann. Cas. 694, 50 S. E. 353; Franklin Union No. 4 *v.* People, 22 Ill. 355, 77 N. E. 176; George Jonas Glass Co. *v.* Glass Bottle Blowers' Assoc., (N. J. 1907) 66 Atl. 953.

4. New York Cent. Iron Works Co. *v.* Brennan, (Supm. Ct. Spec. T.) 105 N. Y. Supp. 865. See also Jetton-Dekle Lumber Co. *v.* Mather, 53 Fla. 969, 43 So. 590.

CONSTITUTIONAL LAW.

888. 4. **Definition and Nature of Constitution.** Frantz *v.* Autry, 18 Okla. 561, 91 Pac. 193.

896. 7. Frantz *v.* Autry, 18 Okla. 561, 91 Pac. 193.

897. 2. **Possesses No Powers of Independent Legislation.** — *Ex p.* Birmingham, etc., R. Co., 145 Ala. 514, 42 So. 118.

898. 4. *Ex p.* Birmingham, etc., R. Co., 145 Ala. 514, 42 So. 118, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 896–898.

901. 4. People *v.* Cook, 147 Mich. 127, 110 N. W. 514.

902. 3. Knight *v.* Shelton, 134 Fed. 423; State *v.* Winnett, (Neb. 1907) 110 N. W. 1113.

903. 1. Murphy Chair Co. *v.* Atty.-Gen., 148 Mich. 563, 112 N. W. 127.

904. 2. Chicago *v.* Reeves, 220 Ill. 274, 77 N. E. 237.

6. Failure to Enter on Journal Not Fatal. — West *v.* State, 50 Fla. 154, 39 So. 412.

906. 10. Warfield *v.* Vandiver, 101 Md. 78, 4 Ann. Cas. 692, 60 Atl. 538.

907. 3. Lobaugh *v.* Cook, 127 Iowa 181, 102 N. W. 1121.

908. 4. Knight *v.* Shelton, 134 Fed. 423.

912. 2. Tampa Water Works Co. *v.* Tampa, 199 U. S. 241, 26 U. S. Sup. Ct. 23; Taylor *v.* Hutchinson, 145 Ala. 202, 40 So. 108, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 912; Bodwell *v.* Rowland, 137 N. Car. 617, 50 S. E. 319; Acme Dairy Co. *v.* Astoria, (Oregon 1907) 90 Pac. 153, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 912.

913. 4. *Ex p.* Riggins, 134 Fed. 404; Armour Packing Co. *v.* Vinegar Bend Lumber Co., (Ala. 1906) 42 So. 866; Day *v.* Day, 12 Idaho 556, 86 Pac. 531; Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 913; Halsey *v.* Belle Plaine, 128 Iowa 467, 104 N. W. 494; Merchants' Police, etc., Tel. Co. *v.* Citizens' Telephone Co., (Ky. 1906) 93 S. W. 642; Gabisso's Succession, 119 La. 704, 44 So. 438; Campbell *v.* Bryant, 104 Va. 509, 52 S. E. 638.

10. Swift *v.* Newport News, 105 Va. 114, 52 S. E. 821, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 913.

A Provision Granting an Equity of Redemption to the owner of land sold for taxes is self-executing. Lincoln *v.* Lincoln St. R. Co., 75 Neb. 523, 106 N. W. 317.

914. 4. Halsey *v.* Belle Plaine, 128 Iowa 467, 104 N. W. 494; Blood *v.* Beal, 100 Me. 30, 60 Atl. 427; Robertson *v.* Staunton, 104 Va. 73, 51 S. E. 178.

915. 3. State *v.* Helena, 34 Mont. 67, 85 Pac. 744; Newport News *v.* Woodwood, 104 Va. 58, 7 Ann. Cas. 625, 51 S. E. 193.

919. 5. Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919.

921. 2. Knight *v.* Shelton, 134 Fed. 423; State *v.* Bryan, 50 Fla. 381, 39 So. 929, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921; Chicago *v.* Reeves, 220 Ill. 274, 77 N. E. 237.

6. Opinion of Justices, 99 Me. 515, 60 Atl. 85; State *v.* Henry, 87 Miss. 125, 40 So. 152; Acme Dairy Co. *v.* Astoria, (Oregon 1907) 90 Pac. 153, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921; Smith *v.* St. Paul, etc., R. Co., 39 Wash. 355, 81 Pac. 840.

922. 2. Knight *v.* Shelton, 134 Fed. 423; State *v.* Henry, 87 Miss. 125, 40 So. 152; Booth *v.* Weigand, 28 Utah 392, 79 Pac. 570, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922.

Language Used the Primary Consideration. — Oughton *v.* Black, 212 Pa. St. 1, 4 Ann. Cas. 141, 61 Atl. 346.

924. 8. Halsey *v.* Belle Plaine, 128 Iowa 467, 104 N. W. 494; Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821.

925. 8. Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353; Thompson *v.* Kidder, (N. H. 1906) 65 Atl. 392; State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

Punctuation is entitled to consideration as much as the words used. Blood *v.* Beal, 100 Me. 30, 60 Atl. 427.

926. 3. State *v.* Bryan, 50 Fla. 293, 39 So. 929.

5. Keller *v.* State, (Tex. Crim. 1905) 87 S. W. 669.

928. 7. State *v.* Stark County, 14 N. Dak. 368, 103 N. W. 913.

929. 9. State *v.* Stimpson, 78 Vt. 124, 6 Ann. Cas. 639, 62 Atl. 14.

930. 2. **Proceedings of a Constitutional Convention** may be considered in construing the constitution. Sanipoli *v.* Pleasant Valley Coal Co., 31 Utah 114, 86 Pac. 865.

3. State *v.* Bryan, 50 Fla. 381, 39 So. 929, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 929, 930; Halsey *v.* Belle Plaine, 128 Iowa 467, 104 N. W. 494; Bonsal *v.* Yeilott, 100 Md. 481, 60 Atl. 593; Opinion of Justices, 99 Me. 515, 60 Atl. 85.

6. Sanipoli *v.* Pleasant Valley Coal Co., 31 Utah 123, 86 Pac. 865, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 930.

931. 2. People *v.* District Ct., 37 Colo. 443, 86 Pac. 87, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 931.

6. Thompson *v.* Kidder, (N. H. 1906) 65 Atl. 392.

7. Victoria Lumber Co. *v.* Rives, 115 La. 996, 40 So. 382; Bonsal *v.* Yellott, 100 Md. 481, 60 Atl. 593; State *v.* Herring, (Mo. 1907) 106 S. W. 984, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 931; State *v.* Galusha, 74 Neb. 188, 104 N. W. 197; State *v.* Sheldon, (Neb. 1907) 111 N. W. 372; Higgins *v.* Tax Assessors, 27 R. I. 401, 63 Atl. 34; State *v.* Harden, (W. Va. 1907) 58 S. E. 715; State *v.* Samuelson, 131 Wis. 499, 111 N. W. 712.

932. 9. Nye *v.* Foreman, 215 Ill. 285, 74 N. E. 140; Chicago *v.* Reeves, 220 Ill. 274, 77 N. E. 237; Cook County *v.* Healy, 222 Ill. 310, 78 N. E. 623; McCleary *v.* Babcock, (Ind. 1907) 82 N. E. 453; Wallace *v.* Board of Equalization, (Oregon 1906) 86 Pac. 365; Button *v.* State Corp. Commission, 105 Va. 634, 54 S. E. 769, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 932.

933. 4. **Executive Construction Not Binding on Courts.** — Wanthey *v.* Vincent, 145 Mich. 327, 108 N. W. 667.

5. Knight *v.* Shelton, 134 Fed. 423; Nye *v.* Foreman, 215 Ill. 285, 74 N. E. 140; Arnett *v.* State, 168 Ind. 180, 80 N. E. 153; Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168.

Executive Construction of a Statute is valuable where the statute is ambiguous, but such interpretation cannot be used to defeat the plain meaning of a statute. Hord *v.* State, 167 Ind. 622, 79 N. E. 916.

934. 3. State Legislation Valid unless Prohibited — *United States.* — Platt *v.* Le Cocq, 150 Fed. 391.

Alabama. — Ensley Development Co. *v.* Powell, 147 Ala. 300, 40 So. 137.

Arkansas. — Hendricks *v.* Block, 80 Ark. 333, 97 S. W. 63.

California. — Redlands *v.* Brook, 151 Cal. 474, 91 Pac. 150.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929.

Illinois. — People *v.* Edgar County, 223 Ill. 187, 79 N. E. 123.

Indiana. — State *v.* Marion County, (Ind. 1907) 82 N. E. 482.

Iowa. — McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902.

Kansas. — Ratcliff *v.* Wichita Union Stock-Yards Co., 74 Kan. 1, 86 Pac. 150.

Kentucky. — Bullitt *v.* Sturgeon, (Ky. 1907) 105 S. W. 468.

Maryland. — Kenneweg *v.* Alleghany County, 102 Md. 119, 62 Atl. 249.

Mississippi. — State *v.* Henry, 87 Miss. 125, 40 So. 152.

Missouri. — State *v.* Sheppard, 192 Mo. 497, 91 S. W. 477.

Montana. — Missouri River Power Co. *v.* Steele, 32 Mont. 433, 80 Pac. 1093; Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

Ohio. — Fairview *v.* Giffee, 73 Ohio St. 183, 76 N. E. 865.

Tennessee. — Wright *v.* Cunningham, 115 Tenn. 445, 91 S. W. 293.

Texas. — *Ex p.* Allison, (Tex. 1906) 90 S. W. 870.

Virginia. — Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

Washington. — Thurston County *v.* Tenino Stone Quarries, 44 Wash. 351, 87 Pac. 634.

Wisconsin. — State *v.* Samuelson, 131 Wis. 499, 111 N. W. 712.

Wyoming. — State *v.* Irvine, 14 Wyo. 318, 84 Pac. 90.

In New York it has been said that the authority of the representatives in the legislature is a delegated authority and is wholly derived from and dependent upon the constitution. Matter of Sherrill, 188 N. Y. 185, 81 N. E. 124.

5. Button *v.* State Corp. Commission, 105 Va. 634, 54 S. E. 769, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934.

935. 2. Alford *v.* Hicks, 142 Ala. 355, 38 So. 752; Alabama Girls' Industrial School *v.* Reynolds, 143 Ala. 579, 42 So. 114; Gillespie *v.* State, 168 Ind. 298, 80 N. E. 829.

3. State *v.* Cudahy Packing Co., 33 Mont. 179, 8 Ann. Cas. 717, 82 Pac. 833; Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322; Com. *v.* Atlantic Coast Line R. Co., 106 Va. 61, 9 Ann. Cas. 1124, 55 S. E. 572.

5. Knight *v.* Shelton, 134 Fed. 423; Henry F. Michell Co. *v.* Matthues, 134 Fed. 493; Sioux Falls *v.* Farmers' L. & T. Co., (C. C. A.) 136 Fed. 721; Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; *Ex p.* Brown, 140 Fed. 461.

938. 3. State *v.* Schaeffer, 129 Wis. 459, 109 N. W. 522.

939. 1. Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; State *v.* Schaeffer, 129 Wis. 459, 109 N. W. 522.

2. Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131; State *v.* Harman, 57 W. Va. 454, 50 S. E. 828, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 939.

4. Lanzer *v.* Butt, 84 Ark. 335, 105 S. W. 595, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 939.

940. 2. Baird *v.* Monroe, 150 Cal. 560, 89 Pac. 352; Redlands *v.* Brook, 151 Cal. 474, 91 Pac. 150; Cranor *v.* Volusia County, (Fla. 1907) 45 So. 455; Durrett *v.* Davidson, 122 Ky. 851, 93 S. W. 25; Philip *v.* Heraty, 147 Mich. 473, 111 N. W. 93; Anderson *v.* Wilkins, 142 N. Car. 154, 55 S. E. 272, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 940; Spokane Terminal Co. *v.* Stanford, 44 Wash. 45, 87 Pac. 37.

941. 8. Orlando *v.* Giles, 51 Fla. 436, 40 So. 334.

9. Acts of a School Board May Be Validated by an act of the legislature. Board of Education *v.* Hyatt, (Cal. 1907) 93 Pac. 117, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 941.

945. 9. Legislature May Cure Invalid Tax Levies. — Wallapai Min., etc., Co. *v.* Territory, 9 Ariz. 373, 84 Pac. 85; People *v.* Wisconsin Cent. R. Co., 219 Ill. 94, 76 N. E. 80; Haynes *v.* State, (Tex. Civ. App. 1906) 99 S. W. 405; Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

After a Tax Levy Has Been Declared Illegal, it cannot be validated by a legislature. Chicago, etc., R. Co. *v.* People, 219 Ill. 408, 76 N. E. 571.

946. 1. Orlando *v.* Giles, 51 Fla. 436, 40 So. 834, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 945, 946; Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115.

947. 2. Plummer *v.* Northern Pac. R. Co., 152 Fed. 206; Vindicator Consol. Gold Min. Co. *v.* Firstbrook, 36 Colo. 498, 86 Pac. 313; Philip *v.* Heraty, 147 Mich. 473, 111 N. W. 93; Williams *v.* Galveston, (Tex. Civ. App. 1905) 90 S. W. 505; Johnson *v.* Smith, 78 Vt. 145, 62 Atl. 9; Gaffney *v.* Jones, 39 Wash. 587, 81 Pac. 1058.

3. An Existing Remedy Is a Part of a Contract, and cannot be taken away, though it may be modified, or another substituted. Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314.

An Act Abolishing All Remedy for future collections for the sale of intoxicating liquors has been sustained. Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131.

949. 4. The Measure of Damages in a given action may be changed by the legislature. Atwood *v.* Buckingham, 78 Conn. 423, 62 Atl. 616.

950. 2. Barclift *v.* Fields, 145 Ala. 264, 41 So. 84.

3. Tift *v.* Southern R. Co., 138 Fed. 753;

Low Foon Yin *v.* U. S. Immigration Com'r, (C. C. A.) 145 Fed. 701; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874; Philip *v.* Heraty, 147 Mich. 473, 111 N. W. 93; State *v.* Barrett, 138 N. Car. 630, 50 S. E. 506; State *v.* Kline, (Oregon 1907) 93 Pac. 237; Samuel and Jessie Kenney Presb. Home *v.* Kenney, 45 Wash. 106, 88 Pac. 108.

Right to Prescribe Rules of Evidence. — State *v.* Thomas, 144 Ala. 77, 6 Ann. Cas. 744, 40 So. 271; St. Louis Southwestern R. Co. *v.* Kavanaugh, 78 Ark. 468, 96 S. W. 409; Banks *v.* State, 124 Ga. 15, 52 S. E. 74; Vance *v.* State, 128 Ga. 661, 57 S. E. 889; Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; Schradin *v.* New York Cent., etc., R. Co., (Supm. Ct. Tr. T.) 103 N. Y. Supp. 73.

951. 1. Schauble *v.* Schulz, (C. C. A.) 137 Fed. 389; Arbuckle *v.* Kelley, 144 Fed. 276; Tipton *v.* Smythe, 78 Ark. 392, 8 Ann. Cas. 521, 94 S. W. 678; Fitzgerald *v.* Scovil Mfg. Co., 77 Conn. 528, 60 Atl. 132; Wooster *v.* Bateman, 126 Iowa 552, 102 N. W. 521; Terry *v.* Heisen, 115 La. 1070, 40 So. 461; Mulvey *v.* Boston, (Mass. 1908) 83 N. E. 402; Davidson *v.* Witthaus, 106 N. Y. App. Div. 182, 94 N. Y. Supp. 428; Hoffman *v.* Milwaukee Electric R., etc., Co., 127 Wis. 76, 106 N. W. 808; Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884.

952. 1. Gaffney *v.* Jones, 44 Wash. 158, 87 Pac. 114, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 952.

3. Slover *v.* Union Bank, 115 Tenn. 350, 89 S. W. 399, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 952.

955. 2. *United States.* — American Smelting, etc., Co. *v.* Colorado, 204 U. S. 103, 9 Ann. Cas. 978, 27 U. S. Sup. Ct. 198; Ft. Madison *v.* Ft. Madison Water Co., (C. C. A.) 134 Fed. 214; Cleveland Electric R. Co. *v.* Cleveland, 135 Fed. 368; Wicomico County *v.* Bancroft, (C. C. A.) 135 Fed. 977; Detroit, etc., R. Co. *v.* Powers, 138 Fed. 264; Myers *v.* Knickerbocker Trust Co., (C. C. A.) 139 Fed. 111; Farmers' L. & T. Co. *v.* Meridian Waterworks Co., 139 Fed. 661; Knickerbocker Trust Co. *v.* Cremen, 140 Fed. 973; Gamble *v.* Rural Independent School Dist., (C. C. A.) 146 Fed. 113; Omaha Water Co. *v.* Omaha, (C. C. A.) 147 Fed. 1, 8 Ann. Cas. 614; University of the South *v.* Jetton, 155 Fed. 182.

Arizona. — Bennett *v.* Nichols, 9 Ariz. 138, 80 Pac. 392.

California. — Welsh *v.* Cross, 146 Cal. 621, 2 Ann. Cas. 796, 81 Pac. 229.

Delaware. — Pusey *v.* Love, (Del. 1906) 66 Atl. 1013.

Indiana. — Rushville *v.* Rushville Natural Gas Co., 164 Ind. 162, 3 Ann. Cas. 86, 73 N. E. 87.

Maryland. — Arnsperger *v.* Crawford, 101 Md. 247, 61 Atl. 413, Baltimore, etc., R. Co. *v.* Waters, 105 Md. 396, 66 Atl. 685; Maryland Jockey Club *v.* State, (Md. 1907) 67 Atl. 239.

Massachusetts. — Opinion of Justices, 190 Mass. 605, 77 N. E. 1038.

Maine. — Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785.

Michigan. — Kern *v.* Arbeiter Unterstuetzungs Verein, 139 Mich. 233, 102 N. W. 746; Lohrstorfer *v.* Lohrstorfer, 140 Mich. 551, 104 N. W. 142.

Minnesota. — Folsom *v.* Whitney, 95 Minn. 322, 104 N. W. 140.

Mississippi. — Gulf, etc., R. Co. *v.* Adams, (Miss. 1907) 45 So. 91.

New Jersey. — Dickinson *v.* Chosen Freeholders, 71 N. J. L. 589, 60 Atl. 220; McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 525, 61 Atl. 710.

North Dakota. — Boggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322.

Oklahoma. — National Bank of Commerce *v.* Jones, 18 Okla. 555, 91 Pac. 191.

Oregon. — Davidson *v.* Richardson, (Oregon 1907) 91 Pac. 1080.

South Carolina. — Columbia Water Power Co. *v.* Campbell, 75 S. Car. 34, 54 S. E. 833.

South Dakota. — Fremont, etc., R. Co. *v.* Pennington County, (S. Dak. 1905) 105 N. W. 929.

Utah. — Garey *v.* St. Joe Min. Co., (Utah 1907) 91 Pac. 369.

Washington. — Investment Co. *v.* Hambach. 37 Wash. 629, 80 Pac. 190; Howard *v.* Ross, 38 Wash. 627, 3 Ann. Cas. 1146, 80 Pac. 819; Fischer *v.* Kittinger, 39 Wash. 174, 81 Pac. 551; Williams *v.* Packard, 39 Wash. 217, 81 Pac. 710.

957. 2. Anderson *v.* Wilkins, 142 N. Car. 154, 55 S. E. 272, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 957.

A License by the State to Sell Liquor is not a vested right. State *v.* Corron, 73 N. H. 434, 6 Ann. Cas. 486, 62 Atl. 1044.

958. 3. **A Corporation Is Not a Citizen** within the meaning of section two of article four of the U. S. Constitution. *In re* Speed, 216 Ill. 23, 74 N. E. 809; Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168; Merchants' Nat. Bank *v.* Ford, (Ky. 1907) 99 S. W. 260; Atty.-Gen. *v.* Electric Storage Battery Co., 188 Mass. 239, 3 Ann. Cas. 631, 74 N. E. 467.

4. **The Right to Be Appointed and Act as Executor** is not a "privilege" guaranteed by the constitution. *In re* Mulford, 217 Ill. 242, 75 N. E. 345.

962. 2. Hammond Packing Co. *v.* State, 81 Ark. 519, 100 S. W. 407.

4. Hunter *v.* Pittsburgh, 207 U. S. 161, 28 U. S. Sup. Ct. 40.

5. Darden *v.* State, 80 Ark. 295, 97 S. W. 449; Spurgeon *v.* Rhodes, 167 Ind. 1, 78 N. E. 228.

7. Barton *v.* Kimmerley, 165 Ind. 609, 76 N. E. 250; Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033.

9. Pittman *v.* State, 51 Fla. 94, 41 So. 385.

10. Right of Jury Trial in Civil Cases. — Carlson *v.* Sullivan, (C. C. A.) 146 Fed. 476.

963. 2. *Ex p.* Riggins, 134 Fed. 404; *Ex p.* Drayton, 153 Fed. 986.

3. **The Term "Involuntary Servitude,"** as used in the amendment, does not apply to the detention on the ground of insanity of a person acquitted of murder. State *v.* Snell, (Wash. 1907) 89 Pac. 931.

966. 5. Wadleigh *v.* Newhall, 136 Fed. 941; Shaw *v.* Marshalltown, 131 Iowa 128, 9 Ann. Cas. 1039, 104 N. W. 1121.

6. *United States.* — Lochner *v.* New York, 198 U. S. 45, 3 Ann. Cas. 1133, 25 U. S. Sup. Ct. 539; *Ex p.* Hutchinson, 137 Fed. 949; Humes *v.* Little Rock, 138 Fed. 929.

Alabama. — Montgomery *v.* Kelly, 142 Ala. 552, 38 So. 67.

California. — *Ex p.* Hayden, 147 Cal. 649, 82 Pac. 315; *Ex p.* Drexel, 147 Cal. 763, 3 Ann. Cas. 878, 82 Pac. 429; *Ex p.* West, 147 Cal. 774, 82 Pac. 434.

Colorado. — La Junta *v.* Heath, 38 Colo. 372, 88 Pac. 459.

Missouri. — Leach *v.* Missouri Tie, etc., Co., 111 Mo. App. 650, 86 S. W. 579.

New York. — Schnaier *v.* Navarre Hotel, etc., Co., 182 N. Y. 83, 74 N. E. 561; Wright *v.* Hart, 182 N. Y. 330, 3 Ann. Cas. 263, 75 N. E. 404; People *v.* Marcus, 185 N. Y. 257, 77 N. E. 1073; People *v.* Williams, 189 N. Y. 131, 81 N. E. 778.

Ohio. — State *v.* Robins, 71 Ohio St. 273, 2 Ann. Cas. 485, 73 N. E. 470.

Washington. — Bacon *v.* Locke, 42 Wash. 215, 7 Ann. Cas. 589, 83 Pac. 721; Leonard *v.* Bassindale, (Wash. 1907) 89 Pac. 879.

7. O'Brien's Petition, 79 Conn. 46, 63 Atl. 777.

967. 1. State *v.* Weber, 96 Minn. 422, 105 N. W. 490.

7. *United States.* — Raymond *v.* Chicago Union Traction Co., 207 U. S. 20, 28 U. S. Sup. Ct. 7; Ozan Lumber Co. *v.* Union County Nat. Bank, (C. C. A.) 145 Fed. 344, 7 Ann. Cas. 390; *Ex p.* Drayton, 153 Fed. 986; Chicago, etc., R. Co. *v.* Ludwig, 156 Fed. 152.

Alabama. — Elba *v.* Rhodes, 142 Ala. 689, 38 So. 807.

Arkansas. — *Ex p.* Deeds, 75 Ark. 542, 87 S. W. 1030.

California. — *Ex p.* Sohncke, 148 Cal. 262, 7 Ann. Cas. 475, 82 Pac. 956; Builders' Supply Depot *v.* O'Connor, 150 Cal. 265, 88 Pac. 982; Merced Lumber Co. *v.* Bruschi, (Cal. 1907) 92 Pac. 844.

Colorado. — La Junta *v.* Heath, 38 Colo. 372, 88 Pac. 459.

Florida. — State *v.* Patterson, 50 Fla. 127, 7 Ann. Cas. 272, 39 So. 398.

Illinois. — Badenoch *v.* Chicago, 222 Ill. 71, 78 N. E. 31; Starne *v.* People, 222 Ill. 189, 78 N. E. 61; People *v.* Clean Street Co., 225 Ill. 470, 80 N. E. 298.

Indiana. — Elkhart *v.* Murray, 165 Ind. 304, 6 Ann. Cas. 748, 75 N. E. 593; Bedford Quarries Co. *v.* Bough, 168 Ind. 671, 80 N. E. 529; Toledo, etc., R. Co. *v.* Long, (Ind. 1907) 82 N. E. 757.

Maryland. — Baltimore *v.* Starr M. P. Church, (Md. 1907) 67 Atl. 261.

Michigan. — Brown *v.* Judge, 145 Mich. 413, 108 N. W. 717.

Mississippi. — Hyland *v.* Sharp, 88 Miss. 567, 41 So. 264.

Missouri. — State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784.

Montana. — State *v.* Cudahy Packing Co., 33 Mont. 179, 8 Ann. Cas. 717, 82 Pac. 833.

New Jersey. — Murphy *v.* Long Branch, (N. J. 1905) 61 Atl. 593; State *v.* Nealon, 73 N. J. L. 100, 62 Atl. 182.

New York. — Matter of New York, 190 N. Y. 350, 83 N. E. 299.

North Dakota. — State *v.* Mayo, 15 N. Dak. 327, 108 N. W. 36.

Oregon. — Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

South Carolina. — Laurens *v.* Anderson, 75 S. Car. 62, 9 Ann. Cas. 1003, 55 S. E. 136.

Texas. — Caven *v.* Coleman, (Tex. Civ. App. 1906) 96 S. W. 774.

Vermont. — State *v.* Abraham, 78 Vt. 53, 61 Atl. 766; State *v.* Hazleton, 78 Vt. 467, 63 Atl. 305.

Washington. — Matter of Camp, 38 Wash. 393, 80 Pac. 547; Bacon *v.* Locke, 42 Wash. 215, 7 Ann. Cas. 589, 83 Pac. 721; State *v.* Great Northern R. Co., 43 Wash. 658, 86 Pac. 1056.

8. *United States.* — New York *v.* Van De Carr, 199 U. S. 552, 26 U. S. Sup. Ct. 144; Armour Packing Co. *v.* Lacy, 200 U. S. 226, 26 U. S. Sup. Ct. 232; Ozan Lumber Co. *v.* Union County Nat. Bank, 207 U. S. 251, 28 U. S. Sup. Ct. 89; *In re* Home Discount Co., 147 Fed. 538; Grainger *v.* Douglas Park Jockey Club, (C. C. A.) 148 Fed. 513, 8 Ann. Cas. 997, *reversing* 146 Fed. 414.

Alabama. — Miller *v.* Birmingham, (Ala. 1907) 44 So 388.

California. — People *v.* Coleman, 145 Cal. 609, 79 Pac. 283; *In re* Finley, 1 Cal. App. 198, 81 Pac. 1041; *In re* Newell, 2 Cal. App. 767, 84 Pac. 226.

Colorado. — McClelland *v.* Denver, 36 Colo. 486, 86 Pac. 126.

Delaware. — State *v.* Wickenhoefer, (Del. 1906) 64 Atl. 273.

Georgia. — Smith *v.* Clark, 122 Ga. 528, 50 S. E. 480.

Hawaii. — Hall *v.* Dickey, 15 Hawaii 590, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 967.

Idaho. — State *v.* Calloway, 11 Idaho 719, 84 Pac. 27.

Illinois. — Kettles *v.* People, 221 Ill. 221, 77 N. E. 472; Chicago Terminal Transfer R. Co. *v.* Greer, 223 Ill. 104, 79 N. E. 46; People *v.* Edgar County 223 Ill. 187, 79 N. E. 123; Douglas *v.* People, 225 Ill. 536, 80 N. E. 341.

Indiana. — Seelyville Coal, etc., Co. *v.* McGlosson, 166 Ind. 561, 9 Ann. Cas. 234, 77 N. E. 1044; State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085.

Iowa. — Iowa Mut. Tornado Ins. Assoc. *v.* Gilbertson, 129 Iowa 658, 106 N. W. 153; Mier *v.* Phillips Fuel Co., 130 Iowa 570, 107 N. W. 621; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902.

Kansas. — Sons and Daughters of Justice *v.* Swift, 73 Kan. 255, 84 Pac. 984.

Kentucky. — Com. *v.* Remington Typewriter Co., (Ky. 1907) 105 S. W. 399.

Louisiana. — Crowley *v.* Ellsworth, 114 La. 308, 38 So. 199.

Maryland. — Kenneweg *v.* Allegany County, 102 Md. 119, 62 Atl. 249; Watson *v.* State, 105 Md. 650, 66 Atl. 635.

Maine. — Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131.

Massachusetts. — Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745.

Michigan. — Spurr *v.* Travis, 145 Mich. 721, 9 Ann. Cas. 250, 108 N. W. 1090.

Minnesota. — State *v.* Bazille, 97 Minn. 11, 7 Ann. Cas. 1056, 106 N. W. 93; State *v.* Henderson, 97 Minn. 369, 106 N. W. 348; Joyce *v.* Great Northern R. Co., 100 Minn. 225, 110 N. W. 975.

New Jersey. — Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689; McCarter *v.* Hudson County Water Co., (N. J. 1906) 65 Atl. 489.

New Mexico. — Territory *v.* Newman, 13 N. Mex. 98, 79 Pac. 706, dissenting opinion 13 N. Mex. 104, 79 Pac. 813.

New York. — People *v.* City Prison, 183 N. Y. 11, 76 N. E. 11; Wright *v.* Hart, 103 N. Y. App. Div. 218, 93 N. Y. Supp. 60; People *v.* Ronner, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 436, 95 N. Y. Supp. 518.

North Dakota. — Powers Elevator Co. *v.* Pottner, (N. Dak. 1907) 113 N. W. 703.

Pennsylvania. — Com. *v.* Middleton, 210 Pa. St. 582, 60 Atl. 297; Com. *v.* Fisher, 213 Pa. St. 48, 5 Ann. Cas. 92, 62 Atl. 198.

Rhode Island. — State *v.* McCrillis, (R. I. 1907) 66 Atl. 301.

Texas. — Green *v.* State, (Tex. Crim. 1906) 92 S. W. 847; *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1083; Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1907) 99 S. W. 743.

Vermont. — State *v.* Niles, 78 Vt. 266, 62 Atl. 795; Lawrence *v.* Rutland R. Co., (Vt. 1907) 67 Atl. 1091.

Washington. — State *v.* Newland, 37 Wash. 428, 79 Pac. 983.

Wisconsin. — State *v.* Evans, 130 Wis. 381, 110 N. W. 241.

969. 7. Com. *v.* Hana, (Mass. 1907) 81 N. E. 149.

8. *In re* Speed, 216 Ill. 23, 74 N. E. 809; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Carrithers *v.* Shelbyville, (Ky. 1907) 104 S. W. 744; Mays *v.* Seaboard Air Line R. Co., 75 S. Car. 455, 56 S. E. 30; Lawrence *v.* Rutland R Co., (Vt. 1907) 67 Atl. 1091; Ward Lumber Co. *v.* Henderson-White Mfg. Co., (Va. 1907) 59 S. E. 476.

970. 3. **An Iron-clad Rule of Equal Taxation Is Not Required** by the Fourteenth Amendment. So long as taxpayers are assessed at the same rate on the same basis, the state may make divisions and classes for the purpose of taxation. Seattle *v.* Kelleher, 195 U. S. 351, 25 U. S. Sup. Ct. 44; Cook *v.* Marshall County, 196 U. S. 261, 25 U. S. Sup. Ct. 233; Coulter *v.* Louisville, etc., R. Co., 196 U. S. 599, 25 U. S. Sup. Ct. 342; Scottish Union, etc., Ins. Co. *v.* Bowland, 196 U. S. 611, 25 U. S. Sup. Ct. 345; Kehrer *v.* Stewart, 197 U. S. 60, 25 U. S. Sup. Ct. 403; Michigan R. Tax Cases, 138 Fed. 223; Western Union Tel. Co. *v.* Omaha, 73 Neb. 527, 103 N. W. 84; Bergen, etc., R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 668; Central R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 672; State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

4. **State May Exempt Property Employed for Public Uses.** — New York *v.* Tax Com'rs, 199 U. S. 1, 4 Ann. Cas. 381, 25 U. S. Sup. Ct. 705.

5. Jacobson *v.* Massachusetts, 197 U. S. 11, 3 Ann. Cas. 765, 25 U. S. Sup. Ct. 358; Ah Sin *v.* Wittman, 198 U. S. 500, 25 U. S. Sup. Ct. 756; New York *v.* Van De Carr, 199 U. S. 552, 26 U. S. Sup. Ct. 144; State *v.* Hanlon, 77 Ohio St. 19, 82 N. E. 662.

971. 3. Martin *v.* Texas, 200 U. S. 316, 26 U. S. Sup. Ct. 338; Montgomery *v.* State, 53 Fla. 115, 42 So. 894; Miller *v.* Com., (Ky. 1907) 105 S. W. 899; Thomas *v.* State, (Tex. Crim. 1906) 95 S. W. 1069.

973. 9. Humphrey *v.* Eakeley, 72 N. J. L. 424, 5 Ann. Cas. 929, 60 Atl. 1097.

Legislature Cannot Require Advance for Jury Fee as Precedent to Trial. — Scott *v.* Young, 113 Mo. App. 46, 87 S. W. 544.

974. 4. *Ex p.* Brown, 140 Fed. 461; Carlson *v.* Sullivan, (C. C. A.) 146 Fed. 476.

6. *United States.* — Hollister *v.* U. S., (C. C. A.) 145 Fed. 773; Toy Tong *v.* U. S., (C. C. A.) 146 Fed. 343.

Connecticut. — Dawson *v.* Orange, 78 Conn. 96, 61 Atl. 101.

Georgia. — De Lamar *v.* Dollar, 1 Ga. App. 687, 57 S. E. 85.

Illinois. — Larkins *v.* Terminal R. Assoc., 221 Ill. 428, 77 N. E. 678; Hull *v.* Sangamon River Drainage Dist., 219 Ill. 454, 76 N. E. 701; Chicago *v.* Knobel, 232 Ill. 112, 83 N. E. 459.

Indiana. — Hoosier Constr. Co. *v.* National Bank, 35 Ind. App. 270, 73 N. E. 1006.

Massachusetts. — Hubbard *v.* Lamburn, 189 Mass. 296, 75 N. E. 707.

Montana. — Chessman *v.* Hale, 31 Mont. 577, 3 Ann. Cas. 1038, 79 Pac. 254.

Nebraska. — Gandy *v.* Wiltse, (Neb. 1907) 112 N. W. 569.

New York. — Metz *v.* Maddox, 189 N. Y. 460, 82 N. E. 507.

North Dakota. — Gorthy *v.* Jarvis, 15 N. Dak. 509, 108 N. W. 39.

Oregon. — Puffer *v.* American Cent. Ins. Co., 48 Oregon 475, 87 Pac. 523.

Rhode Island. — Gunn *v.* Union R. Co., 27 R. I. 320, 432, 62 Atl. 118, 63 Atl. 239.

South Dakota. — *In re* McClellan, (S. Dak. 1906) 107 N. W. 681, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 974.

975 2. **Rule Applicable to Cases Triable by Jury at Common Law.** — Louisiana, etc., R. Co. *v.* State, 75 Ark. 435, 5 Ann. Cas. 637, 88 S. W. 559; State *v.* Lytle, 138 N. Car. 738, 51 S. E. 66; *In re* McQuown, (Okla. 1907) 91 Pac. 689; Com. *v.* Andrews, 211 Pa. St. 110, 60 Atl. 554; Marler *v.* Wear, 117 Tenn. 244, 96 S. W. 447.

3. *United States.* — *In re* Plant, 148 Fed. 37.

California. — Meek *v.* De Latour, 2 Cal. App. 261, 83 Pac. 300; Noble *v.* Learned, (Cal. App. 1906) 87 Pac. 402.

Connecticut. — Meriden Sav. Bank *v.* McCormack, 79 Conn. 260, 64 Atl. 338.

Georgia. — Hogan *v.* Walsh, 122 Ga. 283, 50 S. E. 84; Houston *v.* Polk, 124 Ga. 103, 52 S. E. 83.

Idaho. — Shields *v.* Johnson, 10 Idaho 476, 3 Ann. Cas. 245, 79 Pac. 391.

Illinois. — Shedd *v.* Seefeld, 230 Ill. 118, 82 N. E. 580.

Indiana. — Burck *v.* Davis, 35 Ind. App. 648, 73 N. E. 192.

Kansas. — Cowdery *v.* State, 71 Kan. 450, 80 Pac. 953.

Montana. — Demars *v.* Hudon, 33 Mont. 170, 82 Pac. 952.

Nebraska. — Daniels *v.* Mutual Ben. Ins. Co., (Neb. 1905) 102 N. W. 458.

New Hampshire. — Curtice *v.* Dixon, 73 N. H. 393, 62 Atl. 492; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

New Jersey. — Brady *v.* Carteret Realty Co., 70 N. J. Eq. 748, 64 Atl. 1078.

New Mexico. — Mogollon Gold, etc., Co. *v.* Stout, (N. Mex. 1907) 91 Pac. 724.

New York. — Vollkommer *v.* Frank, 107 N. Y. App. Div. 594, 95 N. Y. Supp. 324; Page *v.* Herkimer Lumber Co., 109 N. Y. App. Div. 391, 96 N. Y. Supp. 272.

North Dakota. — Avery Mfg. Co. *v.* Crumb, 14 N. Dak. 57, 103 N. W. 410, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 975; Blakemore *v.* Cooper, 15 N. Dak. 5, 106 N. W. 566.

Oklahoma. — Gulley *v.* Territory, (Okla. 1907) 91 Pac. 1037.

Wisconsin. — Spafford *v.* McNally, 130 Wis. 537, 110 N. W. 387.

A Consolidation of an Equitable and Legal Cause of Action does not deprive the parties of a trial by jury. Sandstrom *v.* Smith, 12 Idaho 446, 86 Pac. 416. See also Meek *v.* De Latour, 2 Cal. App. 264, 83 Pac. 300, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 975.

976. 4. Suit to Determine Mining Rights — Not Entitled to Jury Trial. — Hickey *v.* Anaconda Copper Min. Co., 33 Mont. 46, 81 Pac. 806.

7. Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Avery Mfg. Co. *v.* Crumb, 14 N. Dak. 57, 103 N. W. 410.

977. 1. Cowan *v.* Skinner, 52 Fla. 486, 42 So. 730; Kountze *v.* Hatfield, (Ky. 1907) 99 S. W. 262; State *v.* Jackson, 56 W. Va. 578, 49 S. E. 465, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 974, 976.

2. Parham *v.* Potts-Thompson Liquor Co., 127 Ga. 303, 56 S. E. 460.

978. 1. *In re* Fellerman, 149 Fed. 244; People *v.* Tool, 35 Colo. 225, 86 Pac. 224; O'Brien *v.* People, 216 Ill. 354, 3 Ann. Cas. 966, 75 N. E. 108; Drady *v.* District Ct., 126 Iowa 345, 102 N. W. 115; State *v.* Thomas, 74 Kan. 360, 86 Pac. 499; O'Flynn *v.* State, 89 Miss. 850, 43 So. 82; *Ex p.* Allison, (Tex. Crim. 1905) 90 S. W. 492.

2. Harris *v.* People, 218 Ill. 439, 75 N. E. 1012.

3. Miller *v.* Birmingham, (Ala. 1907) 44 So. 388; Littlejohn *v.* Stells, 123 Ga. 427, 51 S. E. 390; Little *v.* Ft. Valley, 123 Ga. 503, 51 S. E. 501; Pearson *v.* Wimbish, 124 Ga. 701, 4 Ann. Cas. 501, 52 S. E. 751; Duren *v.* Thomasville, 125 Ga. 1, 53 S. E. 814; Lovilia *v.* Cobb, 126 Iowa 557, 102 N. W. 496; Topeka *v.* Kersch, 70 Kan. 840, 79 Pac. 681, 80 Pac. 29; Stone *v.* Paducah, 120 Ky. 322, 86 S. W. 531; State *v.* Marciniak, 97 Minn. 355, 105 N. W. 965; State *v.* Nichols, 27 R. I. 69, 60 Atl. 763.

979. 1. Cassady *v.* Morris, (Okla. 1907) 91 Pac. 888.

6. *In re* McClellan, (S. Dak. 1906) 107 N. W. 681; Tolle *v.* Tolle, (Tex. 1907) 104 S. W. 1049.

980. 4. State *v.* Jones, 139 N. Car. 613, 52 S. E. 240.

981. 2. Nelson *v.* Steele, 12 Idaho 762, 88 Pac. 95; Marler *v.* Wear, 117 Tenn. 244, 96 S. W. 447.

982. 1. **Jury Trial May Be Demanded to Determine True Count of Ballots.** — Metz *v.* Maddox, 189 N. Y. 460, 82 N. Y. 507.

2. Dinson *v.* Drosta, 39 Ind. App. 432, 80 N. E. 32; Com. *v.* Fisher, 213 Pa. St. 48, 5 Ann. Cas. 92, 62 Atl. 198.

3. Matter of Brown, 39 Wash. 160, 4 Ann. Cas. 488, 81 Pac. 552.

983. 5. Price *v.* Central of Georgia R. Co., 124 Ga. 899, 53 S. E. 455.

984. 1. Bohn *v.* Pacific Electric R. Co., (Cal. App. 1907) 91 Pac. 115.

4. **Reasonable Restrictions May Be Imposed** upon the right of trial by jury. Peirson *v.* Boston El. R. Co., 191 Mass. 223, 77 N. E. 769.

986. 3. Bettge *v.* Territory, 17 Okla. 85, 87 Pac. 897.

987. 1. Bettge *v.* Territory, 17 Okla. 85, 87 Pac. 897.

4. Bettge *v.* Territory, 17 Okla. 85, 87 Pac. 897.

988. 3. **Verdict by Less than Twelve in Missouri — Applicable to Civil Cases.** — Franklin *v.* St. Louis, etc., R. Co., 188 Mo. 533, 87 S. W. 930; Logan *v.* Field, 192 Mo. 54, 90 S. W. 127.

989. 3. Rassmussen *v.* U. S., 197 U. S. 516, 25 U. S. Sup. Ct. 514.

7. Brock *v.* Fuller Lumber Co., (C. C. A.) 153 Fed. 272.

Notwithstanding Waiver, Court May Impanel Jury to Try Cause. — Wood *v.* Rio Grande Western R. Co., 28 Utah 351, 79 Pac. 182; Knapp *v.* Order of Pendo, 36 Wash. 601, 79 Pac. 209; Hart *v.* Cascade Timber Co., 39 Wash. 279, 81 Pac. 738.

990. 1. Lindstrom *v.* Hope Lumber Co., 12 Idaho 714, 88 Pac. 92; Sharrock *v.* Kreiger, 6 Indian Ter. 466, 98 S. W. 161; Brooklyn Heights R. Co. *v.* Brooklyn City R. Co., 105 N. Y. App. Div. 88, 93 N. Y. Supp. 849; Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141; Hurley *v.* Walter, 129 Wis. 508, 109 N. W. 558.

Acts Not Amounting to Waiver. — Howard *v.* Maxwell, (Ky. 1907) 98 S. W. 1013; Allworth *v.* Interstate Consol. R. Co., 27 R. I. 106, 60 Atl. 834; Albien *v.* Smith, 19 S. Dak. 421, 103 N. W. 655; Worthington *v.* Nashville, etc., R. Co., 114 Tenn. 177, 4 Ann. Cas. 1002, 86 S. W. 307; San Jacinto Oil Co. *v.* Culberson, (Tex. 1907) 101 S. W. 197.

991. 1. Lucas *v.* State, 75 Neb. 11, 105 N. W. 976.

Accused Entitled to Jurors Possessing Statutory Qualification. — Kentucky *v.* Powers, 139 Fed. 452.

992. 1. **Constitutional Provisions for Benefit of Persons Accused May Be Waived.** — Busse *v.* Barr, 132 Iowa 463, 109 N. W. 920.

2. Simmons *v.* State, 75 Ohio St. 346, 9 Ann. Cas. 260, 79 N. E. 555; *In re* McQuown, (Okla. 1907) 91 Pac. 689; Archer *v.* State, (Tex. Crim. 1907) 100 S. W. 769.

Accused May Waive Jury Trial. — U. S. *v.* Praeger, 149 Fed. 474; Moore *v.* State, 124 Ga. 30, 52 S. E. 81.

3. Jacobs *v.* People, 218 Ill. 500, 75 N. E. 1034; State *v.* Morrison, 165 Ind. 461, 75 N. E. 968; Otto *v.* State, (Tex. Crim. 1905) 87 S. W. 698.

Statute Abrogating Right to Jury Trial in Misdemeanor Cases Constitutional.— People *v.* Flaherty, 119 N. Y. App. Div. 462, 104 N. Y. Supp. 173.

In Alabama it is provided by statute that in misdemeanor cases a failure to demand a trial by jury constitutes a waiver thereof. Jones *v.* State, 147 Ala. 701, 41 So. 299.

1001. 13. Atty.-Gen. *v.* Lowrey, 199 U. S. 233, 26 U. S. Sup. Ct. 27.

1005. 3. Congress Can Delegate to President Power of Deciding Whether State Government Is Republican in Form. — Frantz *v.* Autry, 18 Okla. 561, 91 Pac. 193.

1015. 2. State *v.* Board of Inspectors, 114 Tenn. 519, 86 S. W. 319, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015, 1016.

1016. 2. Warfield *v.* Vandiver, 101 Md. 78, 4 Ann. Cas. 692, 60 Atl. 538.

1020. 4. Sluder *v.* St. Louis Transit Co., 189 Mo. 149, 88 S. W. 648, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1020.

1021. 1. A legislature cannot grant away the state's right of eminent domain so as to bind future legislatures. Com. *v.* Broad St. Rapid Transit St. R. Co., 219 Pa. St. 11, 67 Atl. 958.

5. See *Ex p.* Schwarting, (Neb. 1906) 108 N. W. 125.

6. People *v.* Election Com'rs, 221 Ill. 9, 5 Ann. Cas. 562, 77 N. E. 321, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021; Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021; King *v.* Concordia F. Ins. Co., 140 Mich. 258, 6 Ann. Cas. 87, 103 N. W. 616; State *v.* Great Northern R. Co., 100 Minn. 445, 111 N. W. 289; Sluder *v.* St. Louis Transit Co., 189 Mo. 149, 88 S. W. 648, *quoting* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1020; State *v.* Budge, 14 N. Dak. 532, 105 N. W. 724; State *v.* Rogers, 71 Ohio St. 203, 73 N. E. 461.

1022. 1. See the dissenting opinion in Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1022.

1023. 4. Chicago Terminal Transfer R. Co. *v.* Greer, 223 Ill. 104, 79 N. E. 46; Arnett *v.* State, 168 Ind. 180, 80 N. E. 153.

6. Chicago Terminal Transfer R. Co. *v.* Greer, 223 Ill. 104, 79 N. E. 46.

1024. 8. Atty.-Gen. *v.* Springwells, 143 Mich. 523, 107 N. W. 87.

1025. 2. Stanton *v.* Essex County, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 415, 96 N. Y. Supp. 840.

4. Schools and School Districts — Establishment. — Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462.

1026. 1. State *v.* Kline, (Oregon 1907) 93 Pac. 237.

2. Wright *v.* Cunningham, 115 Tenn. 445, 91 S. W. 293.

4. The Judicial Function of Determining Facts upon Which the Law Is to Become Effective, in respect to the creation of municipal corporations, may be delegated to the courts. Nash *v.* Fries, 129 Wis. 120, 108 N. W. 210.

1027. 4. U. S. *v.* Matthews, 146 Fed. 306.

8. Delegation from Federal to State Government Valid — Right to Make Supplementary Regulations concerning the location of mining claims. Butte City Water Co. *v.* Baker, 196 U. S. 119, 25 U. S. Sup. Ct. 211.

9. Home Telephone, etc., Co. *v.* Los Angeles, 155 Fed. 554; Baton Rouge *v.* Butler, 118 La. 73, 42 So. 650; Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745; Albert *v.* Gibson, 141 Mich. 698, 105 N. W. 19; Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; People *v.* Milliken, 110 N. Y. App. Div. 579, 97 N. Y. Supp. 223; Vallelly *v.* Park Com'rs, (N. Dak. 1907) 111 N. W. 615; Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115; Carty *v.* Winooski, 78 Vt. 104, 6 Ann. Cas. 436, 62 Atl. 45.

Delegation of Legislative Authority by Congress to Agencies in Philippine Islands. — U. S. *v.* Heinszen, 206 U. S. 370, 27 U. S. Sup. Ct. 742.

1029. 1. Arnett *v.* State, 168 Ind. 180, 80 N. E. 153, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029.

5. Trinity County *v.* Mendocino County, 151 Cal. 279, 90 Pac. 685, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029.

1030. 5. Dickinson *v.* Chosen Freeholders, 71 N. J. L. 589, 60 Atl. 220.

1031. 6. McCall *v.* Calhoun Circuit Judge, 146 Mich. 324, 109 N. W. 601, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1031.

1032. 1. Trinity County *v.* Mendocino County, 151 Cal. 279, 90 Pac. 685, *citing* 6 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1032.

5. State *v.* McNay, 100 Md. 622, 60 Atl. 273.

1034. 1. Weisberg *v.* Weisberg, 112 N. Y. App. Div. 231, 98 N. Y. Supp. 260.

1048. 5. Tyson *v.* Washington County, (Neb. 1907) 110 N. W. 634.

1049. 3. Morgan *v.* Reel, 213 Pa. St. 81, 62 Atl. 253; Higgins *v.* Tax Assessors, 27 R. I. 401, 63 Atl. 34.

5. Legal Procedure may be changed by the legislature. Johnson County Sav. Bank *v.* Walker, 79 Conn. 348, 65 Atl. 132; Johnson *v.* Smith, 78 Vt. 145, 62 Atl. 9.

1050. 12. Rules of Evidence May Be Prescribed by a Legislature, and such a provision is not an invasion of the province of the judiciary. State *v.* Thomas, 144 Ala. 77, 6 Ann. Cas. 744, 40 So. 271; Johnson County Sav. Bank *v.* Walker, 79 Conn. 348, 65 Atl. 132.

1052. 5. The General Competency of Witnesses may be controlled by legislative action. Wester *v.* State, 142 Ala. 56, 38 So. 1010.

8. Proceedings of a Legislative Body in reference to its own rules are not subject to judicial control. State *v.* Savings Bank, 79 Conn. 141, 64 Atl. 5.

12. The Expulsion of a Member by the legislature cannot be reviewed by the courts. French *v.* Senate, 146 Cal. 604, 2 Ann. Cas. 756, 80 Pac. 1031.

1053. 2. It Is the Province of the Courts to Determine the Meaning and true construction of constitutions and statutes. Nye *v.* Foreman, 215 Ill. 285, 74 N. E. 140.

3. Spencer's Appeal, 78 Conn. 301, 61 Atl. 1010.

1060. 5. People *v.* Chetlain, 219 Ill. 248, 76 N. E. 364; *In re* Terrett, 34 Mont. 325, 86 Pac. 266

1062. 10. State *v.* Brill, 100 Minn. 499, 111 N. W. 294, 639.

1069. 11. **New Hampshire. — The Governor and Council** may ask for an advisory opinion, which the Supreme Court is bound to answer. Opinion of Justices, 73 N. H. 625, 6 Ann. Cas. 689, 63 Atl. 505.

1070. 1. See Opinion of Justices, 190 Mass. 605, 77 N. E. 1038; Opinion of Justices, 73 N. H. 618, 60 Atl. 847; Opinion of Justices, 73 N. H. 625, 6 Ann. Cas. 689, 63 Atl. 505.

1077. 10. Opinion of Justices, 99 Me. 515, 60 Atl. 85.

1084. 5. *Arkansas.* — Woods *v.* Carl, 75 Ark. 328, 5 Ann. Cas. 423, 87 S. W. 621; Martin *v.* State, 79 Ark. 236, 96 S. W. 372; Sturdivant *v.* Tollette, 84 Ark. 412, 105 S. W. 1037.

Colorado. — Gutshall *v.* Kornaley, 38 Colo. 195, 88 Pac. 158.

Georgia. — Oglesby *v.* State, 123 Ga. 506, 51 S. E. 505; Southern R. Co. *v.* Schlittler, 1 Ga App. 20, 58 S. E. 59; Sawyer *v.* Blakely, 2 Ga App. 159, 58 S. E. 399.

Idaho. — Mills Novelty Co. *v.* Dunbar, 1 Idaho 671, 83 Pac. 932.

Indiana. — White *v.* Sun Pub. Co., 164 Ind 426, 73 N. E. 890; South East, etc., R. Co. *v.* Evansville, etc., R. Co., (Ind. 1907) 82 N. E. 765; Chicago, etc., R. Co. *v.* Hunt, (Ind. App 1907) 79 N. E. 927.

Iowa. — State *v.* Nebraska Telephone Co., 127 Iowa 194, 103 N. W. 120; Iowa Cent. Bldg., etc., Assoc. *v.* Klock, (Iowa 1905) 104 N. W. 352; Thompson *v.* Mitchell, 133 Iowa 527, 110 N. W. 901.

Kentucky. — International Harvester Co. *v.* Com., (Ky. 1907) 99 S. W. 637.

Minnesota. — Berman *v.* Cosgrove, 95 Minn. 353, 104 N. W. 534.

Mississippi. — Hart *v.* State, 87 Miss. 171, 39 So. 523; Native Lumber Co. *v.* Harrison County, 89 Miss. 171, 42 So. 665; Flora *v.* American Express Co., (Miss. 1908) 45 So. 149.

Oklahoma. — Robertson *v.* Grant County, 14 Okla. 407, 79 Pac. 97.

Oregon. — State *v.* Malheur County Ct., 46 Oregon 519, 81 Pac. 368.

Pennsylvania. — McDowell *v.* Lindsay, 213 Pa. St. 591, 63 Atl. 130.

South Carolina. — State *v.* Cain, (S. Car. 1907) 58 S. E. 937.

Vermont. — Blanchard *v.* Barre, 77 Vt. 420, 60 Atl. 970; State *v.* Paige, 78 Vt. 286, 6 Ann. Cas. 725, 62 Atl. 1017.

1085. 6. *United States.* — Crescent Liquor Co. *v.* Platt, 148 Fed. 894; Spain *v.* St. Louis, etc., R. Co., 151 Fed. 522; Kelley *v.* Great Northern R. Co., 152 Fed. 211; International Mercantile Marine Co. *v.* Stranahan, 155 Fed. 428.

Arkansas. — State *v.* Moore, 76 Ark. 197, 88 S. W. 881; Stilwell *v.* Jackson, 77 Ark. 250, 93 S. W. 71.

California. — Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353.

Florida. — Thomas *v.* Williamson, 51 Fla. 332, 40 So. 831; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874; Hayes *v.* Walker, (Fla. 1907) 44 So. 747.

Idaho. — Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903.

Illinois. — Hill *v.* Tohill, 225 Ill. 384, 8 Ann. Cas. 423, 80 N. E. 253.

Indiana. — Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201.

Iowa. — McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902.

Michigan. — Albert *v.* Gibson, 141 Mich. 698, 105 N. W. 19.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

Nevada. — *Ex p.* Kair, 28 Nev. 127, 80 Pac. 463, (Nev. 1905) 82 Pac. 453; Nash *v.* McNamara, (Nev. 1908) 93 Pac. 405.

New York. — People *v.* Wells, 181 N. Y. 252, 73 N. E. 1025; Seeley *v.* Stevens, 190 N. Y. 158, 82 N. E. 1095.

North Carolina. — State *v.* Lytle, 138 N. Car. 738, 51 S. E. 66.

North Dakota. — Vallelly *v.* Park Com'rs, (N. Dak. 1907) 111 N. W. 615.

South Carolina. — Seegers *v.* Seaboard Air Line R. Co., 73 S. Car. 71, 52 S. E. 797; Brown *v.* Tharpe, 74 S. Car. 207, 54 S. E. 363.

Virginia. — National Council, etc., *v.* State Council, etc., 104 Va. 197, 51 S. E. 166.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

Wisconsin. — Nash *v.* Fries, 129 Wis. 120, 108 N. W. 210; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

7. *United States.* — Michie *v.* New York, etc., R. Co., 151 Fed. 694.

Alabama. — Mobile Docks Co. *v.* Mobile, 146 Ala. 198, 9 Ann. Cas. 1230, 40 So. 205.

California. — People *v.* Richards, 1 Cal. App. 566, 82 Pac. 691.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929; Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874.

Illinois. — Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615.

Kentucky. — Chesapeake Stone Co. *v.* Moreland, (Ky. 1907) 104 S. W. 762.

Mississippi. — State *v.* Henry, 87 Miss. 125, 40 So. 152.

South Carolina. — Ware Shoals Mfg. Co. *v.* Jones, (S. Car. 1907) 58 S. E. 811.

Texas. — State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

Wisconsin. — State *v.* Anson, (Wis. 1907) 112 N. W. 475.

1086. 1. *United States.* — Spain *v.* St. Louis, etc., R. Co., 151 Fed. 522; Snead *v.* Central of Georgia R. Co., 151 Fed. 608.

Arkansas. — Arkansas, etc., R. Co. *v.* Kennedy, 84 Ark. 364, 105 S. W. 885.

Colorado. — Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61.

Connecticut. — Young *v.* Lemieux, (Conn. 1907) 65 Atl. 436.

Florida. — Hayes *v.* Walker, (Fla. 1907) 44 So. 747.

Idaho. — Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903.

Illinois. — Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615.

Indiana. — U. S. Express Co. *v.* State, 164 Ind. 196, 73 N. E. 101; Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201; McCleary *v.* Babcock, (Ind. 1907) 82 N. E. 453.

Kansas. — *In re* Burnette, 73 Kan. 609, 85 Pac. 575.

Louisiana. — Amet *v.* Texas, etc., R. Co., 117 La. 454, 41 So. 721.

Mississippi. — Hart *v.* State, 87 Miss. 171, 39 So. 523; State *v.* Henry, 87 Miss. 125, 40 So. 152.

Missouri. — State *v.* Seebold, 192 Mo. 720, 91 S. W. 491.

New York. — Wright *v.* Hart, 103 N. Y. App. Div. 218, 93 N. Y. Supp. 60; People *v.* Reardon, 101 N. Y. App. Div. 821, 97 N. Y. Supp. 535; Richman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 216, 100 N. Y. Supp. 81.

North Carolina. — Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267.

South Carolina. — Ware Shoals Mfg. Co. *v.* Jones, (S. Car. 1907) 58 S. E. 811.

Texas. — Austin *v.* Cahill, (Tex. 1905) 88 S. W. 542.

Virginia. — Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

Washington. — Gaffney *v.* Jones, 44 Wash. 158, 87 Pac. 114.

West Virginia. — Underwood Typewriter Co. *v.* Piggott, 60 W. Va. 532, 55 S. E. 664.

Wisconsin. — Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

1087. **1.** Hunter *v.* Pittsburgh, 207 U. S. 161, 28 U. S. Sup. Ct. 40; Stillwell *v.* Jackson, 77 Ark. 250, 93 S. W. 71; State *v.* Bryan, 50 Fla. 293, 39 So. 929; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Rice *v.* Ionia Probate Judge, 141 Mich. 692, 105 N. W. 17; State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 9 Ann. Cas. 204, 87 Pac. 980; Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462; State *v.* Cohen, 73 N. H. 543, 63 Atl. 928; Seegers *v.* Seaboard Air Line R. Co., 73 S. Car. 71, 52 S. E. 797.

2. State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085; National Council, etc., *v.* State Council, etc., 104 Va. 197, 51 S. E. 166.

4. Jacobson *v.* Massachusetts, 197 U. S. 11, 3 Ann. Cas. 765, 25 U. S. Sup. Ct. 358; Park Com'rs *v.* Diamond Ice Co., 130 Iowa 603, 8 Ann. Cas. 28, 105 N. W. 203; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Kenneweg *v.* Allegany County, 102 Md. 119, 62 Atl. 249; National Council, etc., *v.* State Council, etc., 104 Va. 197, 51 S. E. 166.

Acts Inconsistent with the Spirit of a Constitution, so it has been said, are as much prohibited by its terms as are acts directly enumerated and forbidden therein. McDonald *v.* Doust, 11 Idaho 14, 81 Pac. 60.

5. State *v.* Terre Haute, etc., R. Co., 166 Ind. 580, 77 N. E. 1077; Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; People *v.* Gardner, 143 Mich. 104, 106 N. W. 541; State *v.* Smith, 42 Wash. 237, 7 Ann. Cas. 577, 84 Pac. 851; State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

1088. **1.** State *v.* Dow, 78 Conn. 53, 60 Atl. 1063; Hayes *v.* Walker, (Fla. 1907) 44 So. 747; State *v.* Robb, 100 Me. 180, 4 Ann. Cas. 275, 60 Atl. 874; Kennedy *v.* State Board of Registration, 145 Mich. 241, 9 Ann. Cas. 125, 108 N. W. 730; *In re* Port Reading R. Co., (N. J. 1907) 68 Atl. 219; Quiggle *v.* Herman, 131 Wis. 379, 111 N. W. 479.

3. *Arkansas.* — Waterman *v.* Hawkins, 75 Ark. 120, 86 S. W. 844; Woods *v.* Carl, 75 Ark. 328, 5 Ann. Cas. 423, 87 S. W. 621; Porter *v.* Waterman, 77 Ark. 383, 91 S. W. 754; Pryor *v.* Murphy, 80 Ark. 150, 96 S. W. 445.

Florida. — State *v.* Bry 1, 50 Fla. 293, 39 So. 929; Hayes *v.* Walker, (Fla. 1907) 44 So. 747.

Georgia. — Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

Illinois. — People *v.* Olsen, 222 Ill. 117, 78 N. E. 23; People *v.* Munroe, 227 Ill. 604, 81 N. E. 704; Smith *v.* Claussen Park Drainage, etc., Dist., 229 Ill. 155, 82 N. E. 278.

Indiana. — Elkhart County *v.* Albright, 168 Ind. 564, 81 N. E. 578; Harlin *v.* Schafer, (Ind. 1907) 81 N. E. 721.

Massachusetts. — Lentell *v.* Boston, etc., R. Co., 187 Mass. 445, 73 N. E. 542; Scollard *v.* American Felt Co., 194 Mass. 127, 80 N. E. 233.

Minnesota. — State *v.* Bates, 96 Minn. 110, 104 N. W. 709.

Missouri. — Finck *v.* Schneider Granite Co., 187 Mo. 244, 86 S. W. 213; State *v.* Heger, 194 Mo. 707, 93 S. W. 252.

New Hampshire. — State *v.* Cohen, 73 N. H. 543, 63 Atl. 928.

New Jersey. — State *v.* Davis, 72 N. J. L. 345, 61 Atl. 2; State *v.* Harned, 72 N. J. L. 353, 61 Atl. 5.

New York. — People *v.* Ronner, 110 N. Y. App. Div. 816, 97 N. Y. Supp. 550.

North Carolina. — State *v.* McGinnis, 138 N. Car. 724, 51 S. E. 50; State *v.* Gatewood, 138 N. Car. 749, 51 S. E. 53; Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267.

South Carolina. — State *v.* Burns, 73 S. Car. 194, 52 S. E. 960.

Tennessee. — Fite *v.* State, 114 Tenn. 646, 4 Ann. Cas. 1108, 88 S. W. 941; Franklin Turnpike Co. *v.* Long Distance Telephone, etc., Co., 118 Tenn. 88, 99 S. W. 373; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

Texas. — State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71; State *v.* Missouri, etc., R. Co., (Tex. 1907) 100 S. W. 146; Allen *v.* Texas, etc., R. Co., (Tex. 1907) 101 S. W. 792.

Utah. — Skeen *v.* Chambers, 31 Utah 36, 86 Pac. 492.

Vermont. — State *v.* Abraham, 78 Vt. 53, 61 Atl. 766; State *v.* Hazelton, 78 Vt. 467, 63 Atl. 305.

Washington. — *In re* O'Neill, 41 Wash. 1[illegible], 6 Ann. Cas. 869, 83 Pac. 104; State *v.* Superior Ct., 42 Wash. 491, 85 Pac. 264.

West Virginia. — State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

Wisconsin. — Quiggle *v.* Herman, 131 Wis. 379, 111 N. W. 479.

1089. **1.** *United States.* — Cella Commission Co. *v.* Bohlinger, (C. C. A.) 147 Fed. 419.

Arkansas. — *Ex p.* Deeds, 75 Ark. 542, 87 S. W. 1030.

Florida. — State *v.* Patterson, 50 Fla. 127, 7 Ann. Cas. 272, 39 So. 398.

Maryland. — Maryland Jockey Club *v.* State, (Md. 1907) 67 Atl. 239.

Massachusetts. — American Unitarian Assoc. *v.* Com., 193 Mass. 470, 79 N. E. 878; Com. *v.* Hana, (Mass. 1907) 81 N. E. 149.

Michigan. — Brown *v.* Judge, 145 Mich. 413, 108 N. W. 717.

Missouri. — State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784.

Montana. — State *v.* Cudahy Packing Co., 33 Mont. 179, 8 Ann. Cas. 717, 82 Pac. 833; State *v.* Ætna Banking, etc., Co., 34 Mont. 379, 87 Pac. 268.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

New York. — Matter of Sherrill, 188 N. Y. 185, 81 N. E. 124.

Ohio. — State *v.* Robins, 71 Ohio St. 273, 2 Ann. Cas. 485, 73 N. E. 470; Friend *v.* Levy, 76 Ohio St. 26, 80 N. E. 1036.

Tennessee. — Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

Washington. — Fischer *v.* Kittinger, 39 Wash. 174, 81 Pac. 551.

Wisconsin. — Huber *v.* Martin, 127 Wis. 412, 7 Ann. Cas. 400, 105 N. W. 1031, *rehearing denied* 127 Wis. 448, 105 N. W. 1135.

1090. **1.** *United States.* — Spain *v.* St. Louis, etc., R. Co., 151 Fed. 522.

Idaho. — Bacon *v.* Rice, (Idaho 1908) 93 Pac. 511.

Illinois. — People *v.* Olsen, 215 Ill. 620, 74 N. E. 785; Kettles *v.* People, 221 Ill. 221, 77 N. E. 472.

Indiana. — Chicago, etc., R. Co. *v.* Indianapolis, etc., Traction Co., 165 Ind. 453, 74 N. E. 513; Adams *v.* Pittsburgh, etc., R. Co., 165 Ind. 648, 74 N. E. 991; Bedford Quarries Co. *v.* Bough, 168 Ind. 671, 80 N. E. 529; Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; Daly *v.* Gubbins, (Ind. 1907) 82 N. E. 659.

Iowa. — Thompson *v.* Mitchell, 133 Iowa 527, 110 N. W. 901.

Kansas. — Brown *v.* Gilpin, 75 Kan. 773, 90 Pac. 267.

Michigan. — Wells *v.* Torrey, 144 Mich. 689, 108 N. W. 423.

Missouri. — State *v.* Seebold, 192 Mo. 720, 91 S. W. 491; State *v.* McIntosh, 205 Mo. 589, 103 S. W. 1078.

Montana. — *In re* Terrett, 34 Mont. 325, 86 Pac. 266.

Oklahoma. — Robertson *v.* Grant County, 14 Okla. 407, 79 Pac. 97.

Pennsylvania. — Com. *v.* Crow, 218 Pa. St. 234, 67 Atl. 355.

South Carolina. — State *v.* Cain, (S. Car. 1907) 58 S. E. 937.

South Dakota. — Jewett *v.* Small, (S. Dak. 1905) 105 N. W. 738.

Texas. — Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138; Routledge *v.* Rambler Automobile Co., (Tex. Civ. App. 1906) 95 S. W. 749; White *v.* Manning, (Tex. Civ. App. 1907) 102 S. W. 1160.

Vermont. — State *v.* Barr, 78 Vt. 97, 62 Atl. 43; State *v.* Paige, 78 Vt. 286, 6 Ann. Cas. 725, 62 Atl. 1017.

Washington. — Smith *v.* Seattle, 41 Wash. 60, 82 Pac. 1098, *citing* 6 A. AND ENG. ENCYC. OF LAW (2d ed.) 1090.

West Virginia. — State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

6. Hindman *v.* Boyd, 42 Wash. 17, 84 Pac. 609.

1091. **2.** Green *v.* Hutchinson, 128 Ga. 379, 57 S. E. 353; Chicago, etc., Coal Co. *v.* People, 214 Ill. 421, 73 N. E. 770; State *v.* Several Parcels of Land, (Neb. 1907) 111 N. W. 601; Bartlett *v.* State, 73 Ohio St. 54, 75 N. E. 939; Campbell *v.* Bryant, 104 Va. 509, 52 S. E. 638.

CONSTRUCTIVE CONTEMPTS.

3. 1. Saal *v.* South Brooklyn R. Co., 122 N. Y. App. Div. 364, 106 N. Y. Supp. 996.

CONSTRUCTIVE POSSESSION.

4. 4. Oyster Bay *v.* Jacob, 109 N. Y. App. Div. 613, 96 N. Y. Supp. 620.

CONSULS.

8. 3. **Action for Use of Sovereign's Name.** — A consul is entitled to maintain an action against one who, without right, uses his sovereign's name as an advertisement. Von Thodorovich *v.* Franz Josef Beneficial Assoc., 154 Fed. 911.

10. 3. **Estates of Decedents.** — Under the treaty with Russia, and the treaty between the United States and the Argentine Republic, the Russian vice-consul is entitled to administer the personal estate of a Russian subject dying intestate in the United States, to the exclusion of the public administrator; but he must give a bond. Wyman, Petitioner, 191 Mass. 276, 77 N. E. 379.

Under the treaty with Denmark, the Danish consul is without power to waive the rights of an infant in a probate proceeding in the Surrogate's Court. Matter of Peterson, (Surrogate Ct.) 51 Misc. (N. Y.) 367, 101 N. Y. Supp. 285.

19. 1. **Under the Treaty with Germany** the German consul has no jurisdiction of a suit to recover wages for employment on a German vessel where the service began and terminated within the United States. The Neck, 138 Fed. 144.

21. 8. **"Absence from His Post,** in the sense used in the statute, does not mean, in our opinion, mere temporary absence from the consular office itself, when, at the same time, the officer is within his district, but either a wilful or inexcusable abstention from the performance of his ordinary duties, or such continuous illness, beyond the period of a regular leave of absence, as may wholly disable him from such performance." U. S. *v.* Day, 27 App. Cas. (D. C.) 466.

Compensation of Consular Agents and Liability of Consul for Overpayment of Consular Agents. — See Mahin *v.* U. S., 41 Ct. Cl. 1.

22. 4. Mahin *v.* U. S., 41 Ct. Cl. 1.

CONTEMPT.

27. 1. Saal *v.* South Brooklyn R. Co., 122 N. Y. App. Div. 368, 106 N. Y. Supp. 996; Hunt *v.* State, 27 Ohio Cir. Ct. 16, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 27.

28. 4. *Ex. p.* Clark, (Mo. 1907) 106 S. W. 996, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 27.

5. *Ex p.* Clark, (Mo. 1907) 106 S. W. 996, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 28.

6. Saal *v.* South Brooklyn R. Co., 122 N. Y. App. Div. 368, 106 N. Y. Supp. 996, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 28.

29. 1. Perry *v.* Pernet, 165 Ind. 67, 6 Ann. Cas. 533, 74 N. E. 609, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 29; French *v.* Com., (Ky. 1906) 97 S. W. 427; *Ex p.* Clark, (Mo. 1907) 106 S. W. 996, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 29; Matter of Clark, 126 Mo. App. 391, 103 S. W. 1105; Davidson *v.* Munsey, 29 Utah 181, 80 Pac. 743, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 29; Vilter Mfg. Co. *v.* Humphrey, (Wis. 1907) 112 N. W. 1095.

30. 1. *In re* Riggsbee, 151 Fed. 701; Lamberson *v.* Superior Ct., (Cal. 1907) 91 Pac. 100; People *v.* News-Times Pub. Co., 35 Colo. 253, 84 Pac. 912; People *v.* Tool, 35 Colo. 225, 86 Pac. 224; State *v.* Rose, 74 Kan. 260, 85 Pac. 803; State *v.* Thomas, 74 Kan. 360, 86 Pac. 499; French *v.* Com., (Ky. 1906) 97 S. W. 427; Matter of Clark, 126 Mo. App. 391, 103 S. W. 1105; *In re* Chartz, (Nev. 1906) 85 Pac. 352; Lowenthal *v.* Hodge, 120 N. Y. App. Div. 304, 105 N. Y. Supp. 120; *Ex p.* McCown, 139 N. Car. 95, 51 S. E. 957; *In re* Consolidated Rendering Co., (Vt. 1907) 66 Atl. 790.

31. 4. Faircloth *v.* Macon, 122 Ga. 795, 50 S. E. 915; Matter of Banning, 108 N. Y. App. Div. 12, 95 N. Y. Supp. 467.

33. 1. State *v.* Bland, 189 Mo. 197, 3 Ann. Cas. 1044, 88 S. W. 28; *Ex p.* McCown, 139 N. Car. 95, 51 S. E. 957; Yoder *v.* Com., (Va. 1907) 57 S. E. 581.

2. State *v.* Thomas, 74 Kan. 360, 86 Pac. 499.

34. 1. Otis *v.* Superior Ct., (Cal. 1905) 82 Pac. 853.

35. 3. *Missouri.* — A statute permitting a review of a judgment *nisi* in constructive contempts is constitutional. State *v.* Bland, 189 Mo. 197, 3 Ann. Cas. 1044, 88 S. W. 28.

36. 1. Drew *v.* Hogan, 26 App. Cas. (D. C.) 55, 6 Ann. Cas. 589.

In Vacation, a court has no power to issue a rule to show cause in a contempt proceeding. Dupoyster *v.* Clarke, (Ky. 1906) 90 S. W. 1. *Contra,* State *v.* Cape Fear Lumber Co., 72 S. Car. 322, 51 S. E. 873.

40. 3. **Refusing to Pay Money Fraudulently Withheld** when directed so to do by an order of court, is a contempt. Meeks *v.* State, (Ark. 1906) 98 S. W. 378; Carnahan *v.* Carnahan, 143 Mich. 390, 8 Ann. Cas. 53, 107 N. W. 73, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40; Matter of Strong, 111 N. Y. App. Div. 281, 97 N. Y. Supp. 459.

41. 2. Lane *v.* Lane, 27 App. Cas. (D. C.) 171; Van Dyke *v.* Van Dyke, 125 Ga. 491, 54 S. E. 537; Stokes *v.* Stokes, 126 Ga. 804, 55 S. E. 1023; Gray *v.* Gray, 127 Ga. 345, 56 S. E. 438; Perry *v.* Pernet, 165 Ind. 67, 6 Ann. Cas. 533, 74 N. E. 609; Woolworth *v.* Woolworth, 115 N. Y. App. Div. 405, 100 N. Y. Supp. 865; Stanley *v.* Stanley, 116 N. Y. App. Div. 544, 101 N. Y. Supp. 725; Mowry *v.* Bliss, (R. I. 1907) 65 Atl. 616.

3. Lane *v.* Lane, 27 App. Cas. (D. C.) 171.

Where Party Disables Himself to Pay. — McAtee *v.* McAtee, 116 Ill. App. 511.

24. 4. Matter of Banning, 108 N. Y. App. Div. 12, 95 N. Y. Supp. 467.

5. Commitment for Contempt in Aid of Bill for Discovery. — See Garden City Sand Co. *v.* People, 118 Ill. App. 372.

7. See *Re* Ayotte, 15 Manitoba 156, 9 Can. Crim. Cas. 133.

44. 2. **The Order Must Be Served upon the Attorney,** else he cannot be committed for contempt. People *v.* Feenaughty, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 468, 101 N. Y. Supp. 700.

4. Lowenthal *v.* Hodge, 120 N. Y. App. Div. 304, 105 N. Y. Supp. 120.

6. **Contemptuous Language** in the presence of the court is a contempt. *In re* Chartz, (Nev. 1907) 85 Pac. 352.

Presenting a Scandalous Affidavit in support of an application for a change of judges is a contempt of court. Lamberson *v.* Superior Ct., (Cal. 1907) 91 Pac. 100.

Charging Judge with Bias or Prejudice Not Contempt. — Hunt *v.* State, 27 Ohio Cir. Ct. 16.

Testing Validity of Rule of Court Not Contempt. — Hunt *v.* State, 27 Ohio Cir. Ct. 16.

Absence of Attorney from Court Room as Indirect Contempt. — See *Ex p.* Clark, (Mo. 1907) 106 S. W. 990.

45. 1. People *v.* Kavanagh, 220 Ill. 49, 77 N. E. 107.

2. **Power of High Court to Suspend Advocate.** — — *In re* Sarbadhicary, 23 Times L. Rep. 180.

46. 5. Fairfield *v.* U. S., (C. C. A.) 146 Fed. 508; *In re* Butler, (Neb. 1906) 107 N. W. 572; Grant *v.* Greene, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 383, 105 N. Y. Supp. 641.

Necessity that Witness Fees Be Tendered or Paid. — Hollister *v.* People, 116 Ill. App. 338.

47. 9. Bowker *v.* Haight, etc., Co., 146 Fed. 256; Desina's Succession, 118 La. 278, 42 So. 936; State *v.* Dalton, 43 Wash. 278, 86 Pac. 590.

The Refusal of a Witness to Answer a Proper Question upon a hearing before a referee in bankruptcy is punishable by the District Court, but not by the referee. Ravenswood Bank *v.* Johnson, (C. C. A.) 143 Fed. 463.

Refusal of Witness to Produce Papers and Books. — U. S. *v.* Collins, 145 Fed. 709.

48. 6. State *v.* Sieber, (Oregon 1907) 88 Pac. 313, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 48.

49. 1. *In re* Consolidated Rendering Co., (Vt. 1907) 66 Atl. 790.

52. 1. State *v.* District Ct., 33 Mont. 359, 83 Pac. 641; Lowenthal *v.* Hodge, 120 N. Y. App. Div. 304, 105 N. Y. Supp. 120.

54. 6. *United States.* — Universal Talking Mach. Co. *v.* Keen, 136 Fed. 456; Atchison, etc., R. Co. *v.* Gee, 140 Fed. 153; Robinson *v.* S. & B. Lederer Co., 146 Fed. 993; Victor Talking Mach. Co. *v.* Leeds, etc., Co., 150 Fed. 147; Allis-Chalmers Co. *v.* Iron Molders' Union Co., 150 Fed. 155; Aaron *v.* U. S., (C. C. A.) 155 Fed. 833.

Colorado. — People *v.* Tool, 35 Colo. 225, 86 Pac. 224.

Illinois. — O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108; Christian Hospital *v.* People, 223 Ill. 244, 79 N. E. 72; Flannery *v.* People, 225 Ill. 62, 80 N. E. 60.

Iowa. — State *v.* Thompson, (Iowa 1906) 106 N. W. 515.

Kansas. — State *v.* Thomas, 74 Kan. 360, 86 Pac. 499.

Kentucky. — Smith *v.* Miller, 122 Ky. 289, 91 S. W. 1140.

Minnesota. — State *v.* District Ct., 98 Minn. 136, 107 N. W. 963.

New York. — People *v.* Marr, 181 N. Y. 463, 3 Ann. Cas. 25, 74 N. E. 431; Stearns *v.* Marr, (Supm. Ct. Spec. T.) 41 Misc. (N. Y.) 252, 84 N. Y. Supp. 36; Marson *v.* Rochester, 112 N. Y. App. Div. 51, 97 N. Y. Supp. 881.

North Dakota. — State *v.* Harris, 14 N. Dak. 501, 105 N. W. 621.

Texas. — *Ex p.* Kruegel, (Tex. Crim. 1905) 86 S. W. 1020; Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 316; *Ex p.* Cash, (Tex. Crim. 1907) 99 S. W. 1118.

Utah. — Davidson *v.* Munsey, 29 Utah 181, 80 Pac. 743.

West Virginia. — Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257.

55. 1. **Service on One of Two Executors Sufficient.** — *Re* Ellis, 95 L. T. N. S. 80.

2. Public Service Corp. *v.* De Grote, 70 N. J. Eq. 454, 62 Atl. 65.

4. Kistler *v.* Tettmar, (1905) 1 K. B. 39; Anderson *v.* Hall, 128 Ga. 525, 58 S. E. 43.

6. Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 316.

56. 1. Blake *v.* Nesbet, 144 Fed. 279; Christian Hospital *v.* People, 223 Ill. 244, 79 N. E. 72; Butler *v.* Champlin, 124 Ill. App. 29; Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 90 S. W. 316.

2. Franklin Union *v.* People, 220 Ill. 355, 77 N. E. 176; Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 316.

57. 1. *Ex p.* Robinson, (C. C. A.) 144 Fed. 835; *Ex p.* Garza, (Tex. Crim. 1906) 95 S. W. 1059.

58. 2. Employers' Teaming Co. *v.* Teamsters' Joint Council, 141 Fed. 679; Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 316.

Violators of an Injunction with Knowledge Thereof, although not parties therein, may be punished for contempt. O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108; People *v.* Marr, 88 N. Y. App. Div. 422, 84 N. Y. Supp. 965; *In re* Wilk, 155 Fed. 943.

A Successor in Right to One of the Parties is liable to contempt proceedings for violating an injunction. State *v.* District Ct., 34 Mont. 258, 86 Pac. 798.

59. 2. See Atchison, etc., R. Co. *v.* Gee, 140 Fed. 153, for a discussion of the nature of the punishment for violating injunctions.

Refusal to Comply with Order of Court Directing Payment of Money Not Ground for Imprisonment. — Norwood First Nat. Bank *v.* Claus, 26 Ohio Cir. Ct. 107.

3. Hughes *v.* Territory, (Ariz. 1906) 85 Pac. 1058; People *v.* News-Times Pub. Co., 35 Colo. 253, 84 Pac. 912, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 59; Globe Newspaper Co. *v.* Com., 188 Mass. 449, 3 Ann. Cas. 761, 74 N. E. 682. See also *In re* Sarbadhicary, 23 Times L. Rep. 180.

61. 3. *In re* Townshend, 22 Times L. Rep. 341; Fellman *v.* Mercantile F. & M. Ins. Co., 116 La. 723, 41 So. 49, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 61.

64. 1. *Ex p.* Caldwell, 138 Fed. 487.

Upon Refusal to Answer a Proper Question, a committee of the legislature may punish the witness for contempt. *Ex p.* Parker, 74 S. Car. 466, 55 S. E. 122.

65. 4. Hurley *v.* Com., 188 Mass. 443, 3 Ann. Cas. 757, 74 N. E. 677.

An Attempt to Bribe a Witness is a contempt of court. White *v.* White, (N. J. 1905) 62 Atl. 430.

6. Emery *v.* State, (Neb. 1907) 111 N. W. 374.

Attempt to Influence Juryman Corruptly in Pending Cause Contempt. — McCaully *v.* U. S., 25 App. Cas. (D. C.) 404.

10. *In re* Young, 137 N. Car. 552, 50 S. E. 220.

66. 1*a*. **Other Instances of Contempt** in failing to perform the orders of the court. Cox *v.* Clarke, 108 N. Y. App. Div. 363, 95 N. Y. Supp. 707.

2. State *v.* Bland, 189 Mo. 197, 3 Ann. Cas. 1044, 88 S. W. 28.

4. In *Indian Territory* the punishment for contempt is limited to a fine of fifty dollars and to imprisonment for ten days. *In re* Conner, (Indian Ter. 1907) 103 S. W. 760.

In *Kentucky* a court cannot for contempt impose upon the offender a fine exceeding thirty dollars or imprisonment exceeding thirty hours, without the intervention of a jury. French *v.* Com., (Ky. 1906) 97 S. W. 427.

In *Texas* the District Court has power to punish by fine not exceeding one hundred dollars and by imprisonment not exceeding three days any person guilty of contempt of said court. *Ex p.* Morgan, (Tex. Crim. 1905) 86 S. W. 755.

68. 3. State *v.* Bland, 189 Mo. 197, 3 Ann. Cas. 1044, 88 S. W. 28, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 68; Davidson *v.* Munsey, 29 Utah 181, 80 Pac. 743, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 68.

4. State *v.* Miesen, 98 Minn. 19, 108 N. W. 513.

6. Perry *v.* Pernet, 165 Ind. 67, 6 Ann. Cas. 533, 74 N. E. 609, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 68.

69. 1. Czarra *v.* Czarra, 124 Ill. App. 622; Anderson *v.* Anderson, 124 Ill. App. 613; Perry *v.* Pernet, 165 Ind. 67, 6 Ann. Cas. 533, 74 N. E. 609, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 69.

72. 3. Employers' Teaming Co. *v.* Teamsters' Joint Council, 141 Fed. 679; *In re* Fellerman, 149 Fed. 244.

6. Perry *v.* Pernet, 165 Ind. 67, 6 Ann. Cas. 533, 74 N. E. 609, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 72; *In re* Scarborough, 139 N. Car. 423, 51 S. E. 931.

73. 1. Perry *v.* Pernet, 165 Ind. 67, 6 Ann. Cas. 533, 74 N. E. 609, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 73.

76. 1. Perry *v.* Pernet, 165 Ind. 67, 6 Ann. Cas. 533, 74 N. E. 609, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76.

2. State *v.* Cape Fear Lumber Co., 72 S. Car. 327, 51 S. E. 873, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76.

77. 2. State *v.* Cahill, 131 Iowa 286, 108 N. W. 453.

3. Victor Talking Mach. Co. *v.* Leeds, etc., Co., 150 Fed. 147.

CONTINGENCY.

80. 1. People *v.* Toledo, etc., R. Co., 231 Ill. 128, 83 N. E. 118, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 80.

CONTRACT LABOR LAW.

84. 1. U. S. *v.* Aultman Co., 143 Fed. 922, *affirmed* (C. C. A.) 148 Fed. 1022.

4. *In re* Buchsbaum, 141 Fed. 221; U. S. *v.* Aultman Co., 143 Fed. 922, *affirmed* (C. C. A.) 148 Fed. 1022; Rodgers *v.* U. S., (C. C. A.) 152 Fed. 346.

CONTRACTS.

91. 4. Turner *v.* Owen, 122 Ill. App. 501.

93. 4. **Raises Rebuttable Presumption of Consideration.** — Dickey *v.* Jackson, 47 Oregon 531, 84 Pac. 701.

5. **Imports Consideration.** — Gray *v.* Bloomington, etc., R. Co., 120 Ill. App. 159; Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645; Fletcher *v.* Fletcher, 191 Mass. 211, 77 N. E. 758; Walter *v.* Rafalsky, 113 N. Y. App. Div. 223, 98 N. Y. Supp. 915; Compton's Estate, 30 Pa. Super. Ct. 605; Eastern R. Co. *v.* Tuteur, 127 Wis. 382, 105 N. W. 1067.

Under the *Oregon* statute a seal is *prima facie* evidence of a consideration. Dickey *v.* Jackson, 47 Oregon 531, 84 Pac. 701.

Presence of Seal and Acknowledgment of Receipt of $1, Import Consideration. — Parsons *v.* Teller, 111 N. Y. App. Div. 637, 97 N. Y. Supp. 808.

95. 7. Sterling *v.* Gregory, 149 Cal. 117, 85 Pac. 305; Cantwell *v.* Crawley, 188 Mo. 44, 86 S. W. 251, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95.

8. Less *v.* English, 75 Ark. 288, 87 S. W. 447; Sterling *v.* Gregory, 149 Cal. 117, 85 Pac. 305; Bearden Mercantile Co. *v.* Madison Oil Co., 128 Ga. 695, 58 S. E. 200; Chicago, etc., R. Co. *v.* Southern Indiana R. Co., (Ind. App. 1904) 70 N. E. 843, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95; Galt *v.* Provan, 131 Iowa 277, 108 N. W. 760; Ganong *v.* Brown, 88 Miss. 53, 40 So. 556; Cantwell *v.* Crawley, 188 Mo. 44, 86 S. W. 251; Warwick First Nat. Bank *v.* Mitchell, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 30, 93 N. Y. Supp. 231; Rodgers *v.* New York, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 120, 100 N. Y. Supp. 745, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95; Pacific Mill Co. *v.* Inman, 46 Oregon 352, 80 Pac. 424; McKeefry *v.* U. S. Radiator Co., 31 Pa. Super. Ct. 263; Sprigg *v.* Rutland R. Co., 77 Vt. 347, 60 Atl. 143.

9. Schiller *v.* Blyth, etc., Co., (Wyo. 1907) 88 Pac. 648, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95.

10. Rockwell *v.* Light, (Cal. 1907) 92 Pac. 649, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95; Cantwell *v.* Crawley, 188 Mo. 44, 86 S. W. 251; Schlosser *v.* Moores, (N. Dak. 1907) 112 N. W. 78, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95–97.

11. Less *v.* English, 75 Ark. 288, 87 S. W. 447; Sterling *v.* Gregory, 149 Cal. 117, 85 Pac. 305; Pacific Mills Co. *v.* Inman, 46 Oregon 352, 80 Pac. 424.

96 3 Thomas *v.* Richards, 124 Ga. 942, 53 S. E. 400.

4. Partial Breach of Entire Contracts Gives Rise to Independent Cause of Action. — Jones *v.* Gammel Statesman Pub. Co., (Tex. 1907) 99 S. W. 701, *reversing* (Tex. Civ. App. 1906) 94 S. W. 191.

97. 1. Poynter *v.* U. S., 41 Ct. Cl. 443; Norris *v.* Clark, 29 Pa. Super. Ct. 562; Manthey *v.* Stock, (Wis. 1907) 113 N. W. 443; Mueller *v.* Cook, 126 Wis. 504, 105 N. W. 1054. But see Milske *v.* Steiner Mantel Co., 103 Md. 235, 63 Atl. 471.

2. Norris *v.* Clark, 29 Pa. Super. Ct. 562.

3. Keel *v.* East Carolina Stone, etc., Co., 143 N. Car. 429, 55 S. E. 826.

4. Thomas *v.* Richards, 124 Ga. 942, 53 S. E. 400; Pacific Mill Co. *v.* Inman, 46 Oregon 352, 80 Pac. 424.

Where Contract Divisible but Not Wholly Legal, Good Stands, Bad Falls. — Sprigg *v.* Rutland R. Co., 77 Vt. 347, 60 Atl. 143.

5. A contract for the complete erection of a house and stable is an entire contract, notwithstanding the house and stable are to be erected on different lots. Warwick First Nat. Bank *v.* Mitchell, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 30, 93 N. Y. Supp. 231.

Other Illustrations of Entire Contracts are found in the following cases:

United States. — Poynter *v.* U. S., 41 Ct. Cl. 443.

California. — American Copying Co. *v.* Lehmann, (Cal. 1907) 91 Pac. 414; McConnell *v.* Corona City Water Co., 149 Cal. 60, 85 Pac. 920.

Georgia. — Bearden Mercantile Co. *v.* Madison Oil Co., 128 Ga. 695, 58 S. E. 200.

Iowa. — Galt *v.* Provan, 131 Iowa 277, 108 N. W. 760.

Illinois. — Rider *v.* Rider, 114 Ill. App. 202.

Maine. — American Mercantile Exch. *v.* Blunt, 102 Me. 128, 66 Atl. 212.

Maryland. — Milske *v.* Steiner Mantel Co., 103 Md. 235, 63 Atl. 471.

Mississippi. — Floyd *v.* Arky, (Miss. 1906) 42 So. 569.

New York. — Tinley *v.* Van Wert, 120 N. Y. App. Div. 904, 104 N. Y. Supp. 3.

Pennsylvania. — McKeefry *v.* U. S. Radiator Co., 31 Pa. Super. Ct. 263.

Texas. — Jones *v.* Gammel Statesman Pub. Co., (Tex. 1907) 99 S. W. 701, *reversing* (Tex. Civ. App. 1906) 94 S. W. 191; Binz *v.* National Supply Co., (Tex. Civ. App. 1907) 105 S. W. 543.

Wisconsin. — Manthey *v.* Stock, (Wis. 1907) 113 N. W. 443.

Divisible Contracts — Illustrations. — A contract for a loan evidenced by nine promissory notes, all in the same form, and by a deed of trust, was held to be divisible. Less *v.* English, 75 Ark. 288, 87 S. W. 447..

For Other Instances of Divisible Contracts see the following cases: Edward Thompson Co. *v.* Washburn, (Mass. 1906) 77 N. E. 483; Ganong *v.* Brown, 88 Miss. 53, 40 So. 556; Keel *v.* East Carolina Stone, etc., Co., 143 N. Car. 429, 55 S. E. 826.

99. 1. **Under the South Dakota Code** it is essential to the existence of a contract that there should be (1) parties capable of contracting; (2) their consent; (3) a lawful object; and (4) sufficient cause or consideration. Iowa L. & T. Co. *v.* Schnose, 19 S. Dak. 248, 9 Ann. Cas. 255, 103 N. W. 22.

2. Rounsaville *v.* Leonard Mfg. Co., 127 Ga. 735, 56 S. E. 1030; American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387; Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

Parties Must Be Described. — North Packing, etc., Co. *v.* Lynch, (Mass. 1907) 81 N. E. 891.

100. 1. Hauber *v.* Leibold, (Neb. 1906) 107 N. W. 1042; Iowa L. & T. Co. *v.* Schnose, 19 S. Dak. 248, 9 Ann. Cas. 255, 103 N. W. 22.

102. 1. Cole *v.* Manners, (Neb. 1906) 107 N. W. 777.

3. Moreing *v.* Weber, 3 Cal. App. 14, 84 Pac. 220; Walter *v.* Rafalsky, 113 N. Y. App. Div. 223, 98 N. Y. Supp. 915.

4. Under the *California* statute persons severally liable upon the same obligation may all or any of them be included in the same action at the option of the plaintiff. Moreing *v.* Weber, 3 Cal. App. 14, 84 Pac. 220.

5. Shubert *v.* Lincoln, (Supm. Ct. App. T.) 92 N. Y. Supp. 784.

7. Wright *v.* Kaynor, 150 Mich. 7, 113 N. W. 779, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

104. 1. *Compare* McKee *v.* Cunningham, 2 Cal. App. 684, 84 Pac. 260, where it was presumed that the contract was joint and several.

107. 1. Dilcher *v.* Nellany, (Supm. Ct. Tr. T.) 52 Misc. (N. Y.) 364, 102 N. Y. Supp. 264; Greenley *v.* Greenley, 114 N. Y. App. Div. 640, 100 N. Y. Supp. 114.

3. Rochester Dry Goods Co. *v.* Fahy, 111 N. Y. App. Div. 748, 97 N. Y. Supp. 1013. See also Northern Cent. R. Co. *v.* United R., etc., Co., (Md. 1907) 66 Atl. 444, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107.

4. Rochester Dry Goods Co. *v.* Fahy, 111 N. Y. App. Div. 748, 97 N. Y. Supp. 1013, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107; Jarmulowsky *v.* Susskind, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 603, 103 N. Y. Supp. 763; Webb's Academy, etc., *v.* Hidden, 118 N. Y. App. Div. 711, 103 N. Y. Supp. 659. See also Punta Gorda Bank *v.* State Bank, 52 Fla. 399, 42 So. 846, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 104–110.

5. *California.* — Northup *v.* Altadena Min., etc., Syndicate, (Cal. 1907) 91 Pac. 422; Peters *v.* George, 1 Cal. App. 239, 81 Pac. 1117.

Colorado. — Hastings *v.* Pringle, 37 Colo. 86, 86 Pac. 93.

Florida. — Punta Gorda Bank *v.* State Bank, 52 Fla. 399, 42 So. 846, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 104–110; Mugge *v.* Tampa Water Works Co., 52 Fla. 381, 42 So. 81, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 105–108.

Illinois. — Abbott *v.* Scotten, 127 Ill. App. 58; Mackay-Nisbet Co. *v.* Kuhlman, 119 Ill. App. 144; Searles *v.* Flora, 225 Ill. 167, 80 N. E. 98; Rodhouse *v.* Chicago, etc., R. Co., 219 Ill. 596, 76 N. E. 836.

Indiana. — Ochs *v.* M. J. Carnahan Co., (Ind. App. 1907) 80 N. E. 163.

Iowa. — A. E. Shorthill Co. *v.* Bartlett, 131 Iowa 259, 108 N. W. 308.

Kentucky. — Ballard *v.* American Hemp Co., (Ky. 1907) 100 S. W. 271; Morrison *v.* Payton, (Ky. 1907) 104 S. W. 685.

Louisiana. — Allen, etc., Mfg. Co. *v.* Shreveport Waterworks Co., 113 La. 1091, 2 Ann. Cas. 471, 37 So. 980, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 106.

Missouri. — Scheele *v.* Lafayette Bank, (Mo. App. 1906) 97 S. W. 621; Van Meter *v.* Poole, 119 Mo. App. 296, 95 S. W. 960.

New Jersey. — People's Bank, etc., Co. *v.* Weidinger, 73 N. J. L. 433, 64 Atl. 179.

Oregon. — Hoffman *v.* Habighorst, (Oregon 1907) 89 Pac. 952.

Pennsylvania. — Bruce *v.* Howley, 29 Pa. Super. Ct. 169.

Utah. — Smith *v.* Bowman, (Utah 1907) 88 Pac. 687.

Wisconsin. — Fanning *v.* Murphy, 126 Wis. 538, 5 Ann. Cas. 435, 105 N. W. 1056; Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

When a vendee of personal property assumes and agrees to pay as the purchase price, or a part of it, an indebtedness of the vendor to a third person, the creditor may enforce the obligation by a suit at law against both parties to the agreement. Butler *v.* Bruce, 75 Neb. 322, 106 N. W. 445.

108. **1. In Georgia,** a third person for whose benefit a contract is made has no right of action thereon against the representative of the obligor's estate. Cooper *v.* Claxton, 122 Ga. 596, 50 S. E. 399.

Maryland. — Northern Cent. R. Co. *v.* United R., etc., Co., (Md. 1907) 66 Atl. 444, following the New York doctrine stated on page 107 (note 3) of the original.

109. **1.** McIlvane *v.* Big Stony Lumber Co., 105 Va. 613, 54 S. E. 473.

2. Rhodes *v.* Honolulu Rapid Transit, etc., Co., 16 Hawaii 322, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 109.

Where a Third Party Avails Himself of Advantages of Contract Made for His Benefit, he must bear the burdens that properly belong to him as a party to the contract. Meridian Life, etc., Co. *v.* Eaton, (Ind. App. 1907) 82 N. E. 480.

3. Fish *v.* Seattle First Nat. Bank, (C. C. A.) 150 Fed. 524; Malanaphy *v.* Fuller, etc., Mfg. Co., 125 Iowa 719, 101 N. W. 640, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 109.

5. Abbott *v.* Scotten, 127 Ill. App. 58.

110. **6.** Cranford *v.* Western Union Tel. Co., 138 N. Car. 162, 50 S. E. 585, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 110.

10. Toledo Computing Scale Co. *v.* Garrison, 28 App. Cas. (D. C.) 243; Central of Georgia R. Co. *v.* Gortatowsky, 123 Ga. 366, 51 S. E. 469; Kernan *v.* Carter, (Ky. 1907) 104 S. W. 308; Smith *v.* Richardson, (Ky. 1907) 104 S. W. 705; Western Mfg. Co. *v.* Cotton, (Ky. 1907) 104 S. W. 758; Iowa L. & T. Co. *v.* Schnose, 19 S. Dak. 248, 9 Ann. Cas. 255, 103 N. W. 22; San Antonio, etc., R. Co. *v.* Timon, (Tex. Civ. App. 1907) 99 S. W. 418; Furst *v.* Galloway, 56 W. Va. 246, 49 S. E. 146, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 110.

Assent Induced By Duress Insufficient. — Greenwell *v.* Negley, (Ky. 1907) 101 S. W. 961.

Assent May Be Implied from Facts and Circumstances. — Condon *v.* St. Augustine Church, 112 N. Y. App. Div. 168, 98 N. Y. Supp. 253.

112. **1. Understanding of Provisions Implied from Making of Contract.** — Lonergan *v.* San Antonio L. & T. Co., (Tex. 1907) 104 S. W. 1061.

113. **2.** Kernan *v.* Carter, (Ky. 1907) 104 S. W. 308; Smith *v.* Richardson, (Ky. 1907) 104 S. W. 705; Fifer *v.* Clearfield, etc., Coal, etc., Co., 103 Md. 1, 62 Atl. 1122; Lonergan *v.* San Antonio L. & T. Co., (Tex. 1907) 104 S. W. 1061; San Antonio, etc., R. Co. *v.* Timon, (Tex. Civ. App. 1907) 99 S. W. 418; Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

114. **3.** Quigley *v.* Spencer Stone Co., (C. C. A.) 143 Fed. 86; Santaella *v.* Otto F. Lange Co., (C. C. A.) 155 Fed. 719; Emerson *v.* Pacific Coast, etc., Packing Co., 96 Minn. 1, 6 Ann. Cas. 973, 104 N. W. 573; Campbell *v.* American Handle Co., 117 Mo. App. 19, 94 S. W. 815, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 114; Jones *v.* Gammel-Statesman Pub. Co., (Tex. Civ. App. 1906) 94 S. W. 191; Tyler Ice Co. *v.* Coupland, (Tex. Civ. App. 1906) 99 S. W. 133.

4. *United States.* — Santaella *v.* Otto F. Lange Co., (C. C. A.) 155 Fed. 719; American Fine Art Co. *v.* Simon, (C. C. A.) 140 Fed. 529.

Georgia. — Cooley *v.* Moss, 123 Ga. 707, 51 S. E. 707, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 114.

Illinois. — Butterick Pub. Co. *v.* Whitcomb, 225 Ill. 605, 80 N. E. 247; Joseph Schlitz Brewing Co. *v.* Komp, 118 Ill. App. 566.

Indiana. — Bache *v.* Coppes, etc., Co., 35 Ind. App. 351, 74 N. E. 41.

Kentucky. — Lowe *v.* Ayer-Lord Tie Co., (Ky. 1906) 97 S. W. 383.

Louisiana. — Kaplan *v.* Whitworth, 116 La. 337, 40 So. 723.

Michigan. — Co-operative Telephone Co. *v.* Katus, 140 Mich. 367, 103 N. W. 814.

Missouri. — Campbell *v.* American Handle Co., 117 Mo. App. 19, 94 S. W. 815.

New York. — Bosoian *v.* Hubbard, 121 N. Y. App. Div. 510, 106 N. Y. Supp. 178; Durkin *v.* New York, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 114, 96 N. Y. Supp. 1059; Jackson *v.* Alpha Portland Cement Co., 122 N. Y. App. Div. 345, 106 N. Y. Supp. 1052; Sager *v.* Gonnermann, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

North Carolina. — Rankin *v.* Mitchem, 141 N. Car. 277, 53 S. E. 854.

Ohio. — Artemus-Jellico Coal Co. *v.* Ulland, 28 Ohio Cir. Ct. 437.

Texas. — Tyler Ice Co. *v.* Coupland, (Tex. Civ. App. 1906) 99 S. W. 133.

Virginia. — Smokeless Fuel Co. *v.* Seaton, 105 Va. 170, 52 S. E. 829.

West Virginia. — Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

Wisconsin. — Eastern R. Co. *v.* Tuteur, 127 Wis. 382, 105 N. W. 1067.

An oral agreement which relates to a subject-matter not within the statute of frauds and which contains mutual promises is not unilateral. Pope *v.* Graniteville Mfg. Co., (Ga. 1907) 57 S. E. 949.

Contract to Supply All Castings Required Not Void for Want of Mutuality. — Lima Locomotive,

etc., Co. *v.* National Steel Castings Co., (C. C. A.) 155 Fed. 77.

115. 1. Underwood Typewriter Co. *v.* Century Realty Co., 118 Mo. App. 197, 94 S. W. 787, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 115.

5. **Subject Destroyed or Nonexistent.** — German-American Security Co. *v.* McCulloch, (Ky. 1905) 89 S. W. 5; Keel *v.* East Carolina Stone, etc., Co., 143 N. Car. 429, 55 S. E. 826.

116. 2. The rule applies where the event which renders the contract incapable of performance is the cessation or nonexistence of an express condition or state of things, going to the root of the contract and essential to its performance. Krell *v.* Henry, (1903) 2 K. B. 740, 72 L. J. K. B. 794.

Rule Without Application Where Thing Destroyed Is Thing Contracted For. — Logan *v.* Consolidated Gas Co., 107 N. Y. App. Div. 384, 95 N. Y. Supp. 163.

3. Cantwell *v.* Crawley, 188 Mo. 44, 86 S. W. 251; Price *v.* Atkinson, 117 Mo. App. 52, 94 S. W. 816; Durkin *v.* New York, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 114, 96 N. Y. Supp. 1059; Jackson *v.* Alpha Portland Cement Co., 122 N. Y. App. Div. 345, 106 N. Y. Supp. 1052; Wills *v.* Pennell, 116 N. Y. App. Div. 493, 101 N. Y. Supp. 1017; Butler *v.* Kemmerer, 218 Pa. St. 242, 67 Atl. 332; Eastern R. Co. *v.* Tuteur, 127 Wis. 382, 105 N. W. 1067.

A contract providing that one of the parties was not to sell all or any part of certain stock "at any time, until I have first offered the same to W. S. Witham" (plaintiff) "giving him ample time to accept or refuse," was held not to be void for indefiniteness. Cothran *v.* Witham, 123 Ga. 190, 51 S. E. 285.

Where a contract provided for a cash payment of "between $100 and $200," and the giving of a note for the balance and accrued interest, it was held not to be void for uncertainty. IIllinois Roofing, etc., Co. *v.* Aerial Advertising Co., 142 Mich. 698, 106 N. W. 274.

A contract is not void for indefiniteness where its provisions clearly indicate what each party is to do. Electric Fireproofing Co. *v.* Smith, 113 N. Y. App. Div. 615, 99 N. Y. Supp. 37.

Contingency Not Uncertain After It Has Actually Happened. — Noyes *v.* Young, 32 Mont. 226, 79 Pac. 1063.

Uncertainty Must Be Such as Prevents Meeting of Minds of Parties. — American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387.

Law Leans against Destruction of Contracts on Ground of Uncertainty. — Leffler Co. *v.* Dickerson, (Ga. 1907) 57 S. E. 911.

118. 2. Lewman *v.* U. S., 41 Ct. Cl. 470; Milske *v.* Steiner Mantel Co., 103 Md. 235, 63 Atl. 471 (to the same effect as Moss *v.* Smoker, 2 La. Ann. 989, cited in the original note).

Failure to Perform Implied Promise Constitutes Cause of Action. — Jones *v.* Gammel-Statesman Pub. Co., (Tex. Civ. App. 1907) 99 S. W. 701, *reversing* (Tex. Civ. App. 1906) 94 S. W. 191.

3. Where the plaintiff sold to a corporation certain machinery, and in part payment therefor received bonds of the corporation, which the defendant corporation agreed to purchase within a specified time, it was held that plaintiff's consent to sell the bonds would be presumed. Erie City Iron Works *v.* Thomas, (C. C. A.) 139 Fed. 995.

Where a contract provided that the plaintiff was to supply such horses, harness, and drivers as might be required by the defendant at specified prices for one year, it was held that a term obligating defendant to employ plaintiff would not be implied. Moon *v.* Camberwell, 89 L. T. 595.

A contract to install radiation for steam heating and connect said radiation with a boiler used to heat other houses on the same block, requires the doing of all work necessary to make the connection reasonably efficient for its intended use. Ideal Heating Co. *v.* Kramer, 127 Iowa 137, 102 N. W. 840.

A contract to do all the freight handling appertaining to the plaintiff's business, requires the plaintiff to furnish all its freight to the promisor to handle. Eastern R. Co. *v.* Tuteur, 127 Wis. 382, 105 N. W. 1067.

Promise to Perform Incidental Acts Implied. — Finney *v.* Bennett, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 230, 97 N. Y. Supp. 291; Teachenor *v.* Tibbals, 31 Utah 10, 86 Pac. 483.

Promise to Use Reasonable Care, Diligence, Skill, and Knowledge Implied. — Mathieson Alkali Works *v.* Mathieson, (C. C. A.) 150 Fed. 241.

Obligation to Use Suitable Material and Exercise Skill Implied in Contract to Construct Machine. — Foote, etc., Co. *v.* Houchin Mfg. Co., (Ga. 1907) 58 S. E. 368.

4. American Fine Art Co. *v.* Simon, (C. C. A.) 140 Fed. 529; Galt *v.* Provan, 131 Iowa 277, 108 N. W. 760; Cavanagh *v.* Iowa Beer Co., (Iowa 1907) 113 N. W. 856.

119. 2. Seitman *v.* Seitman, 122 Ill. App. 361; Thompson *v.* Hoppert, 120 Ill. App. 588.

120. 3. Olympia Min. Co. *v.* Kerns, 13 Idaho 514, 91 Pac. 92; Thompson *v.* Hoppert, 120 Ill. App. 588; Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. 228; Standard Constr. Co. *v.* Brantley Granite Co., (Miss. 1907) 43 So. 300; Sager *v.* Gonnermann, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406; Spears *v.* Sorge, (County Ct.) 106 N. Y. Supp. 141.

121. 2. Fletcher *v.* Verser, (Ark. 1906) 96 S. W. 384.

Failure to Perform Condition Precedent Defeats Right to Recovery. — Sager *v.* Gonnermann, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

4. Wood *v.* Scurich, (Cal. 1907) 90 Pac. 51; Landvoigt *v.* Paul, 27 App. Cas. (D. C.) 423; Haydon *v.* St. Louis, etc., R. Co., 117 Mo. App. 76, 93 S. W. 833, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 121.

122. 2. **A Condition Subsequent** is defined as "one which, if performed, or violated, defeats the contract." Galt *v.* Provan, 131 Iowa 277, 108 N. W. 760.

3. Galt *v.* Provan, 131 Iowa 277, 108 N. W. 760.

Forfeiture Regarded with Disfavor. — Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Andrew Lohr Bottling Co. *v.* Fer-

guson, 223 Ill. 88, 79 N. E. 35, *affirming* 122 Ill. App. 270; Hobbs *v.* Ray, (Ky. 1906) 96 S. W. 589; Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Mueller *v.* Cook, 126 Wis. 504, 105 N. W. 1054; F. H. Mills Co. *v.* State, 110 N. Y. App. Div. 843, 97 N. Y. Supp. 676.

124. 1. Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397.

Waiver of Condition of Forfeiture May Be by Parol. — Wallace *v.* Kelly, 148 Mich. 336, 111 N. W. 1049.

3. Wallace *v.* Kelly, 148 Mich. 336, 111 N. W. 1049.

125. 7. *United States.* — Hartman *v.* U. S., 40 Ct. Cl. 133.

Arkansas. — Sadler-Lusk Trading Co. *v.* Logan, 83 Ark. 512, 104 S. W. 205.

California. — Buchtel College *v.* Chamberloix, 3 Cal. App. 246, 84 Pac. 1000.

District of Columbia. — Harten *v.* Loffler, 29 App. Cas. (D. C.) 490.

Indiana. — Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582.

Maryland. — Sharp *v.* Bates, 102 Md. 344, 62 Atl. 747.

Massachusetts. — Buffington *v.* McNally, 192 Mass. 198, 78 N. E. 309.

New York. — Alden Speare's Sons Co. *v.* Casein Co., 122 N. Y. App. Div. 22, 106 N. Y. Supp. 980; Baker *v.* Packaid, 112 N. Y. App. Div. 543, 98 N. Y. Supp. 804; Peirce *v.* Cornell, 117 N. Y. App. Div. 66, 102 N. Y. Supp. 102.

Rhode Island. — Beggs *v.* James Hanley Brewing Co., 27 R. I. 385, 62 Atl. 373.

Texas. — Tyler Ice Co. *v.* Coupland, (Tex. Civ. App. 1906) 99 S. W. 133.

Virginia. — Lurty *v.* Lurty, (Va. 1907) 59 S. E. 405.

West Virginia. — Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

Instances of Contract Arising out of Accepted Offer. — See Philp *v.* Knoblauch, (1907) Sc. Ct. of Sess. 994.

Proposition to Sell Realty Made by Letter Enforcible if Accepted. — Sennett *v.* Melville, (Neb. 1906) 107 N. W. 991.

Minds of Parties Need Not Meet on "Express Words Clearly Expressed." — Zitske *v.* Grohn, 128 Wis. 159, 107 N. W. 20.

126. 1. Kernan *v.* Carter, (Ky. 1907) 104 S. W. 308; Franck *v.* McGilvray, 144 Mich. 318, 107 N. W. 886; Sennett *v.* Melville, (Neb. 1906) 107 N. W. 991; Ellis *v.* Durkee, 79 Vt. 341, 65 Atl. 94.

128. 1. Burton *v.* U. S., 202 U. S. 344, 6 Ann. Cas. 362; McCleskey *v.* Howell Cotton Co., 147 Ala. 573, 42 So. 67, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 128; Sennett *v.* Melville, (Neb. 1906) 107 N. W. 991; Durkin *v.* New York, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 114, 96 N. Y. Supp. 1059; North Eastern Constr. Co. *v.* North Hempstead, 121 N. Y. App. Div. 187, 105 N. Y. Supp. 581; Sager *v.* Gonnermann, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406; Ellis *v.* Durkee, 79 Vt. 341, 65 Atl. 94.

Where Offer Is Made by Letter a Presumption of Continuation of the Intention to Contract obtains until the time when the contract may be closed by acceptance. Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582.

129. 3. Kennedy *v.* Supreme Lodge, etc., 124 Ill. App. 55; Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Sawyer *v.* Walker, (Mo. 1907) 102 S. W. 544; Alden Speare's Sons Co. *v.* Casein Co., 122 N. Y. App. Div. 22, 106 N. Y. Supp. 980; Person, etc., Co. *v.* Lipps, 219 Pa. St. 99, 67 Atl. 1081.

Offer May Be Accepted by Telegram. — Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327.

Written Offer May Be Accepted Both Orally and in Writing. — Walter *v.* Boutell Transp., etc., Co., (Mass. 1907) 81 N. E. 650; Metropolitan Coal Co. *v.* Boutell Transp., etc., Co., (Mass. 1907) 81 N. E. 645.

132. 2. Swing *v.* Walker, 27 Pa. Super. Ct. 366; Ingham *v.* Cisco Oil Mill, (Tex. Civ. App. 1905) 86 S. W. 630.

4. Hartford L. Ins. Co. *v.* Milet, (Ky. 1907) 105 S. W. 144; Franck *v.* McGilvray, 144 Mich. 318, 107 N. W. 886; New York Architectural Terra-Cotta Co. *v.* Williams, 102 N. Y. App. Div. 1, 92 N. Y. Supp. 808, *affirmed* without opinion (N. Y. 1906) 77 N. E. 1192; Northeastern Constr. Co. *v.* North Hempstead, 121 N. Y. App. Div. 187, 105 N. Y. Supp. 581; Swing *v.* Walker, 27 Pa. Super. Ct. 366; Ingham *v.* Cisco Oil Mill, (Tex. Civ. App. 1905) 86 S. W. 630.

One Who Accepts Terms of Contract in Part Must Accept as a Whole. — William Cramp, etc., Ship, etc., Bldg. Co. *v.* U. S., 41 Ct. Cl. 164.

Where the Seller Is Asked to Fix a Day Certain within the option period when the property may be delivered and the purchase price paid, and he does designate such a day, the acceptance is not conditional. Baker *v.* Packard, 112 N. Y. App. Div. 543, 98 N. Y. Supp. 804.

134. 1. Traylor *v.* Brimbery, (Ga. 1907) 58 S. E. 371; Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

Where Time for Acceptance Limited, Offer May Be Revoked Before Expiration. — Ellis *v.* Durkee, 79 Vt. 341, 65 Atl. 94.

2. Burton *v.* U. S., 202 U. S. 344, 6 Ann. Cas. 362; Ellis *v.* Durkee, 79 Vt. 341, 65 Atl. 94.

Performance — Reasonable Time, Where None Specified. — Bearden Mercantile Co. *v.* Madison Oil Co., 128 Ga. 695, 58 S. E. 200; McKinnie *v.* Lane, 230 Ill. 544, 82 N. E. 878; Puls *v.* Casey, 18 Okla. 142, 92 Pac. 388.

3. Burton *v.* U. S., 202 U. S. 344, 6 Ann. Cas. 362; Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

4. Price *v.* Atkinson, 117 Mo. App. 52, 94 S. W. 816.

135. 2. Burton *v.* U. S., 202 U. S. 344, 6 Ann. Cas. 362; Merchant's Exch. Co. *v.* Sanders, 74 Ark. 16, 4 Ann. Cas. 955, 84 S. W. 786, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 135; Price *v.* Atkinson, 117 Mo. App. 52, 94 S. W. 816.

136. 1. Burton *v.* U. S., 202 U. S. 344, 6 Ann. Cas. 362; New York Architectural Terra-Cotta Co. *v.* Williams, 102 N. Y. App. Div. 1, 92 N. Y. Supp. 808, *affirmed* without opinion, (N. Y. 1906) 77 N. E. 1192.

2. Burton *v.* U. S., 202 U. S. 344, 6 Ann.

Cas. 362; Price *v.* Atkinson, 117 Mo. App. 52, 94 S. W. 816.

138. 4. Boyers *v.* Duke, (1905) 2 Ir. R. 617; Buckberg *v.* Washburn-Crosby Co., 115 Mo. App. 701, 92 S. W. 733, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 138.

139. 1. Preliminary Negotiations Not to Be Construed into Completed Agreement.— Peirce *v.* Cornell, 117 N. Y. App. Div. 66, 102 N. Y. Supp. 102.

140. 1. Jenkins, etc., Co. *v.* Alpena Portland Cement Co., (C. C. A.) 147 Fed. 641; Featherstone Foundry, etc., Co. *v.* Criswell, 36 Ind. App. 681, 75 N. E. 30, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140; Kaplan *v.* Whitworth, 116 La. 337, 40 So. 723, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140; Hudson *v.* Rodgers, (Mo. 1906) 98 S. W. 778; Peirce *v.* Cornell, 117 N. Y. App. Div. 66, 102 N. Y. Supp. 102; Rankin *v.* Mitchem, 141 N. Car. 277, 53 S. E. 854; Smith *v.* Kaufman, 30 Pa. Super. Ct. 265; International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93.

2. Jenkins, etc., Co. *v.* Alpena Portland Cement Co., (C. C. A.) 147 Fed. 641; Scott *v.* Fowler, 227 Ill. 104, 81 N. E. 34, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140; Featherstone Foundry, etc., Co. *v.* Criswell, 36 Ind. App. 681, 75 N. E. 30, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140; Kaplan *v.* Whitworth, 116 La. 337, 40 So. 723, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140; Vicksburg Waterworks Co. *v.* J. M. Guffey Petroleum Co., 86 Miss. 60, 38 So. 302; Hudson *v.* Rodgers, (Mo. 1906) 98 S. W. 778; Peirce *v.* Cornell, 117 N. Y. App. Div. 66, 102 N. Y. Supp. 102; Rankin *v.* Mitchem, 141 N. Car. 277, 53 S. E. 854; Smith *v.* Kaufman, 30 Pa. Super. Ct. 265; International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93.

Oral Contract Agreed to Be Reduced to Writing Incomplete until Fully Executed by Delivery of Writing. — McCrimmon *v.* Brundage, 53 Fla. 478, 43 So. 431.

142. 3. Harten *v.* Loffler, 29 App. Cas. (D. C.) 490; Alden Speare's Sons Co. *v.* Casein Co., 122 N. Y. App. Div. 22, 106 N. Y. Supp. 980; Lurty *v.* Lurty, (Va. 1907) 59 S. E. 405.

7. Cross *v.* Snakenberg, 126 Iowa 636, 102 N. W. 508, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 142; Ramsay Realty Co. *v.* Ramsay, (Iowa 1907) 113 N. W. 468; Reed *v.* Coughran, (S. Dak. 1907) 111 N. W. 559.

9. Naylor *v.* Stene, 96 Minn. 57, 104 N. W. 685.

One Signing in Representative Capacity May Be Bound Individually. — Ramsay Realty Co. *v.* Ramsay, (Iowa 1907) 113 N. W. 468.

10. Object of Signature to Show Mutuality. — Ramsay Realty Co. *v.* Ramsay, (Iowa 1907) 113 N. W. 468.

143. 1. Bonewell *v.* Jacobson, 130 Iowa 170, 106 N. W. 614.

144. 9. Bartram *v.* Lloyd, 90 L. T. N. S. 357.

145. 8. Olympia Min. Co. *v.* Kerns, 13 Idaho 514, 91 Pac. 92; Peet *v.* East Grand Forks, 101 Minn. 518, 112 N. W. 1003; Sager *v.* Gonnermann, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406; Spears *v.* Sorge, (County Ct.) 106 N. Y. Supp. 141; Norris *v.* Clark, 29 Pa. Super. Ct. 562.

Performance Is Defined as "such a thorough fulfilment of a duty as puts an end to obligations by leaving nothing more to be done." McGuire *v.* J. Neils Lumber Co., 97 Minn. 293, 107 N. W. 130.

9. Valley Lumber Co. *v.* Struck, 146 Cal. 273, 80 Pac. 405, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 145; Lombard *v.* Overland Ditch, etc., Co., (Colo. 1907) 92 Pac. 695; Bloomington Hotel Co. *v.* Garthwait, 227 Ill. 613, 81 N. E. 714; Old Settlers' Invest. Co. *v.* Marshall Vinegar, etc., Co., (Iowa 1907) 113 N. W. 326, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 145; Skowhegan Water Co. *v.* Skowhegan Village Corp., (Me. 1906) 66 Atl. 714; Ramstedt *v.* Brooker, 113 N. Y. App. Div. 45, 98 N. Y. Supp. 1044; Van Orden *v.* MacRae, 121 N. Y. App. Div. 143, 105 N. Y. Supp. 600; Manthey *v.* Stock, (Wis. 1907) 113 N. W. 443.

For Further Illustrations of What Is Substantial Performance, see Concord Apartment House Co. *v.* O'Brien, 228 Ill. 360, 81 N. E. 1038; Whitcomb *v.* Roll, (Ind. App. 1907) 81 N. E. 106; Peet *v.* East Grand Forks, 101 Minn. 518, 112 N. W. 1003; New Jersey Co. *v.* Nathaniel Wise Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 294, 105 N. Y. Supp. 231; Hatch *v.* Hall, (Wash. 1907) 92 Pac. 937, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 145.

For Further Illustrations of What Is Not Substantial Performance, see Bush *v.* Jones, (C. C. A.) 144 Fed. 942; Hoglund *v.* Sortedahl, 101 Minn. 359, 112 N. W. 408; Lucas *v.* Ætna Indemnity Co., 32 Pa. Super. Ct. 148; Hoover *v.* Beech Creek Coal, etc., Co., 29 Pa. Super. Ct. 615.

Substantial Performance Will Not Authorize Recovery of Full Contract Price.— Oakes *v.* Barbre, 127 Ill. App. 208.

147. 2. Landvoigt *v.* Paul, 27 App. Cas. (D. C.) 423; Olympia Min. Co. *v.* Kerns, 13 Idaho 514, 91 Pac. 92; Puls *v.* Casey, 18 Okla. 142, 92 Pac. 388; Norris *v.* Clark, 29 Pa. Super. Ct. 562.

3. Napier *v.* Spielmann, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 96, 103 N. Y. Supp. 982, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146.

4. Lima Locomotive, etc., Co. *v.* National Steel Castings Co., (C. C. A.) 155 Fed. 77; Macfarland *v.* Barber Asphalt Paving Co., 29 App. Cas. (D. C.) 506.

5. See American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387.

148. 3. Civil Service Co-operative Soc. *v.* General Steam Nav. Co., (1903) 2 K. B. 756, 72 L. J. K. B. 933; Herne Bay Steam Boat Co. *v.* Hutton, (1903) 2 K. B. 683, 72 L. J. K. B. 879; Link Belt Engineering Co. *v.* U. S., (C. C. A.) 142 Fed. 243; Milske *v.* Steiner Mantel Co., 103 Md. 235, 63 Atl. 471; Standard Constr. Co. *v.* Brantley Granite Co., (Miss. 1907) 43 So. 300; Harris *v.* Sheffel, 117 Mo. App. 514, 94 S. W. 738; Logan *v.* Consolidated Gas Co., 107 N. Y. App. Div. 384, 95 N. Y. Supp. 163; American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98

S. W. 387; Vale *v.* Suiter, 58 W. Va. 353, 52 S. E. 313.

Test Is Whether Impossibility Might Have Been Anticipated and Guarded Against. — Krell *v.* Henry, (1903) 2 K. B. 740, 72 L. J. K. B. 794.

149. 2. Lewman *v.* U. S., 41 Ct. Cl. 470; Macfarland *v.* Barber Asphalt Paving Co., 29 App. Cas. (D. C.) 506.

3. Mobley *v.* Lott, 127 Ga. 572, 56 S. E. 637, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 149.

5. Lewman *v.* U. S., 41 Ct. Cl. 470; Hennessey *v.* Fleming Bros., (Colo. 1907) 90 Pac. 77; Macfarland *v.* Barber Asphalt Paving Co., 29 App. Cas. (D. C.) 506.

Contract Should Provide Against It. — Civil Service Co-operative Soc. *v.* General Steam Nav. Co., (1903) 2 K. B. 756, 72 L. J. K. B. 933; Morse Dry Dock, etc., Co. *v.* Seaboard Transp. Co., (C. C. A.) 154 Fed. 90; Milske *v.* Steiner Mantel Co., 103 Md. 235, 63 Atl. 471; Logan *v.* Consolidated Gas Co., 107 N. Y. App. Div. 384, 95 N. Y. Supp. 163; American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387; Vale *v.* Suiter, 58 W. Va. 353, 52 S. E. 313.

150. 1. Alachua Phosphate Co. *v.* Anglo-Continental Guano Works, 51 Fla. 143, 40 So. 71; National Contracting Co. *v.* Hudson River Water Power Co., 110 N. Y. App. Div. 146, 97 N. Y. Supp. 92, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 149 [150].

5. Landvoigt *v.* Paul, 27 App. Cas. (D. C.) 423; Puls *v.* Casey, 18 Okla. 142, 92 Pac. 388; Longfellow *v.* Huffman, (Oregon 1907) 90 Pac. 907.

6. Michigan Yacht, etc., Co. *v.* Busch, (C. C. A.) 143 Fed. 929; Fletcher *v.* Verser, (Ark. 1906) 96 S. W. 384; Landvoigt *v.* Paul, 27 App. Cas. (D. C.) 423; Cooley *v.* Moss, 123 Ga. 707, 51 S. E. 625, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 149, 150; Globe Fertilizer Co. *v.* Tennessee Phosphate Co., (Ky. 1905) 85 S. W. 1177; Hobbs *v.* Ray, (Ky. 1906) 96 S. W. 589; Seymour *v.* Warren, 114 N. Y. App. Div. 813, 100 N. Y. Supp. 267, (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 316, *reversing* 93 N. Y. Supp. 651; Longfellow *v.* Huffman, (Oregon 1907) 90 Pac. 907.

151. 1. McGuire *v.* J. Neils Lumber Co., 97 Minn. 293, 107 N. W. 130; Teachenor *v.* Tibbals, 31 Utah 10, 86 Pac. 483.

2. Camden *v.* Jarrett, (C. C. A.) 154 Fed. 788; Worthington *v.* McGarry, (Ala. 1907) 42 So. 988, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 150–152; Hobbs *v.* Ray, (Ky. 1906) 96 S. W. 589; Delmar Oil Co. *v.* Bartlett, (W. Va. 1907) 59 S. E. 634.

152. 2. Limerick *v.* Lee, 17 Okla. 165, 87 Pac. 859, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152.

3. McConnell *v.* Corona City Water Co., 149 Cal. 60, 85 Pac. 929, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152; Longfellow *v.* Huffman (Oregon 1907) 90 Pac. 907.

In a *Louisiana* case, the court said: "When a breach occurs, an election must be made then and there between asking for a dissolution and insisting upon further performance, and the choice is made once for all." Des Allemands Lumber Co. *v.* Morgan City Timber Co., 117 La. 1, 41 So. 332.

4. McConnell *v.* Corona City Water Co., 149 Cal. 60, 85 Pac. 929, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152; Peet *v.* East Grand Forks, 101 Minn. 518, 112 N. W. 1003; Official Catalogue Co. *v.* American Car, etc., Co., 120 Mo. App. 575, 97 S. W. 231; Warwick First Nat. Bank *v.* Mitchell, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 30, 93 N. Y. Supp. 231; Longfellow *v.* Huffman, (Oregon 1907) 90 Pac. 907; Meacham *v.* Gardner, 27 Pa. Super. Ct. 296.

Rescission Necessitates Restoration to Status Quo. — Modern Woodmen of America *v.* Vincent, (Ind. App. 1907) 82 N. E. 475.

153. 1. McConnell *v.* Corona City Water Co., 149 Cal. 60, 85 Pac. 929, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152; Wright *v.* Craig, 116 Ill. App. 493; Longfellow *v.* Huffman, (Oregon 1907) 90 Pac. 907.

2. McConnell *v.* Corona City Water Co., 149 Cal. 60, 85 Pac. 969, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152; Landvoigt *v.* Paul, 27 App. Cas. (D. C.) 423; Official Catalogue Co. *v.* American Car, etc., Co., 120 Mo. App. 575, 97 S. W. 231; Stumpf *v.* Merz, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 610, 92 N. Y. Supp. 789, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152; Longfellow *v.* Huffman, (Oregon 1907) 90 Pac. 907.

Breach by One Party Excuses Continuance of Performance by Other. — Michigan Yacht, etc., Co. *v.* Busch, (C. C. A.) 143 Fed. 929.

3. Pope *v.* Graniteville Mfg. Co., (Ga. 1907) 57 S. E. 949; Official Catalogue Co. *v.* American Car, etc., Co., 120 Mo. App. 575, 97 S. W. 231, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153; Napier *v.* Spielmann, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 96, 103 N. Y. Supp. 982, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153.

5. Dishman *v.* Huetter, 41 Wash. 629, 84 Pac. 590, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153.

7. Howe *v.* Howe, etc., Ball Bearing Co., (C. C. A.) 154 Fed. 820; Taussig *v.* Southern Mill, etc., Co., (Mo. App. 1907) 101 S. W. 602, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 150.

154. 4. Louisville, etc., R. Co. *v.* Mason, etc., Co., (Ky. 1907) 104 S. W. 975.

5. Louisville, etc., R. Co. *v.* Mason, etc., Co., (Ky. 1907) 104 S. W. 975; St. Regis Paper Co. *v.* Santa Clara Lumber Co., 186 N. Y. 89, 78 N. E. 701, *reversing* 105 N. Y. App. Div. 341, 93 N. Y. Supp. 1146; Lavanway *v.* Cannon, 37 Wash. 593, 79 Pac. 1117.

6. Payment of Money on Account Before an Opportunity to Determine as to whether the contract had been complied with, was held not to constitute a waiver. Graham *v.* Bell-Irving, Wash. 1907) 91 Pac. 8.

155. 1. Murmann *v.* Wissler, 116 Mo. App. 397, 92 S. W. 355, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 154 [155].

2. Waiver Mixed Question of Law and Fact. — Harlev *v.* Sanitary Dist., 226 Ill. 213, 80 N. E. 771.

3. Bosoian *v.* Hubbard, 121 N. Y. App. Div, 510, 106 N. Y. Supp. 178,

In a *New York* case, it was held that mere knowledge and assent do not constitute a waiver. The court said: "There must be a formal release, sufficient consideration, or such conduct upon the part of the assenting person as will have created a condition to the detriment of the other party." Pope Mfg. Co. *v.* Rubber Goods Mfg. Co., 110 N. Y. App. Div. 341, 97 N. Y. Supp. 73.

No Waiver Without Estoppel. — Hampton Stave Co. *v.* Gardner, (C. C. A.) 154 Fed. 805.

4. Graham *v.* Bell-Irving, (Wash. 1907) 91 Pac. 8.

Mere Knowledge Insufficient to Create Waiver — Formal Release Necessary. — Pope Mfg. Co. *v.* Rubber Goods Mfg. Co., 110 N. Y. App. Div. 341, 97 N. Y. Supp. 73.

CONTRACTS OF AFFREIGHTMENT AND CHARTER-PARTIES.

165. 1. Golcar Steamship Co. *v.* Tweedie Trading Co., 146 Fed. 563; The Charles Tiberghien, 147 Fed. 307; Hills *v.* Leeds, 149 Fed. 878; Grimberg *v.* Columbia Packers' Assoc., 47 Oregon 257, 8 Ann. Cas. 491, 83 Pac. 194.

Fact that Owner Is to Provide Crew Not Inconsistent with Demise. — Hills *v.* Leeds, 149 Fed. 878; Auten *v.* Bennett, 183 N. Y. 496, 5 Ann. Cas. 620, 76 N. E. 609.

Where a Charter Party Gives the Charterer the Full Capacity of the ship, the owner is not a common carrier, but a bailee to transport as a private carrier for hire. The Fri, (C. C. A.) 154 Fed. 333.

166. 1. Peabody *v.* Whitcomb, (Mass. 1907) 81 N. E. 193.

3. Wehner *v.* Dene Steam Shipping Co., (1905) 2 K. B. 92, 21 Times L. Rep. 339; Grimberg *v.* Columbia Packers' Assoc., 47 Oregon 257, 8 Ann. Cas. 491, 83 Pac. 194; Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389.

167. 1. Grimberg *v.* Columbia Packers' Assoc., 47 Oregon 257, 8 Ann. Cas. 491, 83 Pac. 194, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 167.

3. The Rygja, 149 Fed. 896; Walsh *v.* Tweedie Trading Co., 152 Fed. 276.

168. 1. Walsh *v.* Tweedie Trading Co., 152 Fed. 276.

What Ports Included, Question of Fact. — Tweedie Trading Co. *v.* Glasgow Steam Shipping Co., 143 Fed. 184.

3. Donald *v.* U. S., 39 Ct. Cl. 357.

169. 4. The Disa, 153 Fed. 322; The Eva D. Rose, 153 Fed. 912; Peabody *v.* Whitcomb, (Mass. 1907) 81 N. E. 193.

170. 1. Rights and Liabilities under Transfer of Charter.—Frese *v.* Moore, 1 Cal. App. 587, 82 Pac. 542.

2. Societa, etc., *v.* U. S., 155 Fed. 245.

171. 1. Metropolitan Coal Co. *v.* Boutell Transp., etc., Co., (Mass. 1907) 81 N. E. 645.

172. 3. Michigan Steamship Co. *v.* American Bonding Co., 104 N. Y. App. Div. 347, 93 N. Y. Supp. 805.

173. 1. Alteration without Surety's Knowledge Relieves Surety. — Michigan Steamship Co. *v.* American Bonding Co., 104 N. Y. App. Div. 347, 93 N. Y. Supp. 805.

3. Reformation on Proof of Mutual Mistake. — Leonard *v.* Bosch, (N. J. 1906) 64 Atl. 1001.

177. 1. Ardan Steamship Co. *v.* Weir, (1905) A. C. 501, 21 Times L. Rep. 723; Darling *v.* Raeburn, (1906) 1 K. B. 572.

In an action to recover dead freight it appeared that the charter contained the usual clause as to space and provided that if all the cargo space was not used the charterer should pay dead freight, any difference between chartered and bills of lading freight being settled on clearance; it also appeared that the bills of lading signed by the master recited that the ship was down to her works. It was held that no dead freight could be recovered though the cargo space was not in fact filled. West Hartlepool Steam Nav. Co. *v.* Vogemann, 134 Fed. 1008.

2. Presumption that Cargo Is Equivalent to Carrying Capacity.—The Brig Maria, 39 Ct. Cl. 39.

3. Steamship City of Lincoln *v.* Smith, (1904) A. C. 250, 91 L. T. N. S. 206.

178. 7. The Arne, (1904) P. 154, 20 Times L. Rep. 221; Houlder *v.* Weir, (1905) 2 K. B. 267, 92 L. T. N. S. 861.

Reasonable Time Presumed Where No Time Fixed. — Peck *v.* U. S., 152 Fed. 524.

Where there is no stipulated time for unloading no liability arises if goods are unloaded within a reasonable time in view of all the evidence based upon the facts of the case. West Hartlepool Steam Nav. Co. *v.* 450 Tons of Kainit, 151 Fed. 886.

179. 2. Designated or Customary Place. — See Leonis Steamship Co. *v.* Rank, (1907) 1 K. B. 344.

181. 3. Weir *v.* Northwestern Commercial Co., 134 Fed. 991; Hughes *v.* J. S. Hoskins Lumber Co., 136 Fed. 435; Adamson *v.* 4,300 Tons Pyrites Ore, 137 Fed. 998.

Custom. — Where it was agreed "that the lay days for * * * discharging shall be * * * as customary," it was held that a maritime association rule of the port of delivery would not govern in computing demurrage where it did not appear that the parties had such rule in mind. Smith *v.* Sizer, 134 Fed. 928.

4. Owner Liable to Consignee. — The Heathdene, 155 Fed. 368.

182. 2. Cesser Clauses Strictly Construed. — West Hartlepool Steam Nav. Co. *v.* 450 Tons of Kainit, 151 Fed. 886.

183. 1. The provision for a lien is often made a part of the cesser clause, as for example, "Owner to have a lien on the cargo for freight, dead freight, and demurrage, charterer's liability to cease when cargo is shipped." West Hartlepool Steam Nav. Co. *v.* 450 Tons of Kainit, 151 Fed. 886.

185. 2. Where a charter contains a clause allowing the charterer to cancel if the vessel should not arrive at a certain port at a certain date, the charterer cannot be required to exercise his option to cancel prior to the arrival of the ship at that port. Karran *v.* Peabody, (C. C. A.) 145 Fed. 166.

9. West Hartlepool Steam Nav. Co. *v.* 450 Tons of Kainit, 151 Fed. 886; Grimberg *v.* Columbia Packers' Assoc., 47 Oregon 257, 8 Ann. Cas. 491, 83 Pac. 194.

186. 1. Steel *v.* Grand Canary Coaling Co., 90 L. T. N. S. 729; Henry Cowell Lime, etc., Co. *v.* Globe Nav. Co., (C. C. A.) 141 Fed. 12; W. K. Niver Coal Co. *v.* Cherona Steamship Co., (C. C. A.) 142 Fed. 402; The Benclif, 155 Fed. 242.

2. Barque Quilpué *v.* Brown, (1904) 2 K. B. 264, 90 L. T. N. S. 765; Turner *v.* Bannatyne, 91 L. T. N. S. 618; Rosasco *v.* Pitch Pine Lumber Co., (C. C. A.) 138 Fed. 25; Grimberg *v.* Columbia Packers' Assoc., 47 Oregon 257, 8 Ann. Cas. 491, 83 Pac. 194.

Reasonable Not Technical Construction Adopted. — Wilhelmsen *v.* Tweedie Trading Co., 149 Fed. 928.

4. Bowers Hydraulic Dredging Co. *v.* Federal Contracting Co., (C. C. A.) 153 Fed. 870.

Correspondence presenting facts and circumstances pertinent to the charter and out of which it grew and not inconsistent therewith is admissible. Sewall *v.* Wood, (C. C. A.) 135 Fed. 12.

6. Borthwick *v.* Elderslie Steamship Co., (1904) 1 K. B. 319, 90 L. T. N. S. 187; The Rygja, 149 Fed. 896; Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29.

Modification of Rule. — Charters are properly construed historically, and when so studied the necessity of complete reconcilement at times disappears, and when new clauses are introduced into a standard form and are inconsistent with provisions in such form the new matter masters the rest of the document. W. K. Niver Coal Co. *v.* Cheronea Steamship Co., (C. C. A.) 142 Fed. 402.

Where a charter contained a clause to the effect that if the vessel should not arrive at a certain port in good order on or before a certain date the charterer could cancel, followed by a clause excepting the "dangers of the seas," etc., it was held that the latter clause had no relation to the former so far as extending the canceling date was concerned. Karran *v.* Peabody, (C. C. A.) 145 Fed. 166.

187. 2. **Conditions Precedent May Be Waived.** — Atlantic, etc., Steamship Co. *v.* Guggenheim, (C. C. A.) 147 Fed. 103.

188. 1. Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29.

2. Perry *v.* Acme Oil Co., (Ind. App. 1907) 80 N. E. 175, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187 (in construing a lease).

3. Harding *v.* Cargo of 4,698 Tons of New Rivers Steam Coal, 147 Fed. 971.

5. The Presque Isle, 140 Fed. 202; Morris *v.* Chesapeake, etc., Steamship Co., (C. C. A.) 148 Fed. 11,986 (for opinion see 125 Fed. 62).

189. 1. Arenburg *v.* Grupe, 135 Fed. 238; The Mary N. Bourke, 135 Fed. 895; Biggs *v.* Langhammer, 103 Md. 94, 63 Atl. 198.

190. 1. W. K. Niver Coal Co. *v.* Cheronea Steamship Co., (C. C. A.) 142 Fed. 402.

3. Harding *v.* Cargo of 4,698 Tons of New Rivers Steam Coal, 147 Fed. 971.

192. 1. Temperley Steam Shipping Co. *v.* Smyth, (1905) 2 K. B. 791, 21 Times L. Rep. 739; The Citta di Palermo, 153 Fed. 378; The Fri, (C. C. A.) 154 Fed. 333; Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29.

In the absence of a charter party, the bill of lading delivered to the shipper is taken as the best evidence of the contraact, or as a substitute for a regularly drawn charter party. The Eva D. Rose, 151 Fed. 704.

Charter May Provide that It Shall Be Superseded by Bills of Lading, in Which Case Latter Will Control. — The Drottning Sophia, 153 Fed. 1017.

193. 2. The Wyandotte, (C. C. A.) 145 Fed. 321.

Special Stipulation that Foreign Law Shall Apply Valid. — Canada Sugar Refining Co. *v.* Furness, Withy Co., 27 Quebec Super. Ct. 502.

194. 1. **Loss Due to Quarantine.** — Where a charter provided that in the event of the loss of time from deficiency of men the payment of the hire should cease until the deficiency was made good, it was held that the charterer was not liable for hire during a period when the whole crew, by reason of exposure to a contagious disease, had become disqualified from prosecuting the voyage. Tweedie Trading Co. *v.* George D. Emery Co., (C. C. A.) 154 Fed. 472, *affirming* 146 Fed. 618.

Obligation to Provide Men to Run Winches Implies No Obligation to Provide Personæ Gratæ to Charterer's Stevedores. — British Maritime Trust *v.* Munson Steamship Line, 149 Fed. 533.

3. The Brig Maria, 39 Ct. Cl. 39; The Santona, 152 Fed. 516.

195. 3. Andrews *v.* San Juan Fish Co., (Wash. 1907) 90 Pac. 643.

196. 5. Shailer *v.* Hanlon, 26 Ohio Cir. Ct. 120; The Golden Rod, (C. C. A.) 153 Fed. 171; The J. S. Warden, 155 Fed. 697; Russel *v.* Myers Excursion, etc., Co., (N. J. 1907) 67 Atl. 1016; Matter of Fremont, 110 N. Y. App. Div. 72, 96 N. Y. Supp. 1061.

Vessel Liable for Pilot's Fees. — The Cervantes, 135 Fed. 573.

Credit Must Have Been Given to Ship. — The William P. Donnelly, 156 Fed. 302; The Heathglen, 153 Fed. 213; The Cimbria, 156 Fed. 378.

197. 1. Andrews *v.* San Juan Fish Co., (Wash. 1907) 90 Pac. 643.

Consignee Liable. — A consignee upon whom is imposed the duty of discharging a vessel is bound to exercise diligence in ascertaining the condition of the dock and of the berths, and when he fails in this he is liable for damage to the vessel occasioned by an unsafe berth. Look *v.* Portsmouth, etc., St. R. Co., 141 Fed. 182.

198. 4. **Charterer Liable.** — Bleakley *v.* New York City, 139 Fed. 807; Cotton *v.* Almy, (C. C. A.) 141 Fed. 358; Hills *v.* Leeds, 149 Fed. 878.

Liable for Negligence of Towage Company. — Where a charterer assumes the duty of furnishing towage he is responsible to the vessel for damage or injury caused by the negligent manner in which the service is performed by the towing company. The Naos, 144 Fed. 292.

Liable for Breaking Masts Used as Derricks. — British Maritime Trust *v.* Munson Steamship Line, 149 Fed. 533.

Liable for Loss Due to Special Machinery. — Where a charter provided that the owners should furnish tackle to handle ordinary cargo, the charterer was held liable for damage to the

ship occasioned by special machinery installed and operated by the charterer's men. Bollman *v.* Tweedie Trading Co., 150 Fed. 434.

Liable for Cost of Returning Vessel to Port Named in Charter. — Swenson *v.* Ward, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 534, 96 N. Y. Supp. 175.

5. Bleakley *v.* Sheridan, 120 N. Y. App. Div. 471, 104 N. Y. Supp. 1060, *reversing* 115 N. Y. App. Div. 657, 100 N. Y. Supp. 1029.

Owner Liable for Loss Due to Fire. — Where a leased boat is destroyed by fire the negligence of the lessee not contributing the loss falls on the owner. D'Echaux *v.* Gibson Cypress Lumber Co., 114 La. 626, 38 So. 476.

Owner Liable for Damage By Vessel. — Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389.

202. 1. Carrier under Contract of Affreightment Is a Bailee and May Sue Third Party to Recover for Destruction of Cargo. — The Nonpareil, 149 Fed. 521.

203. 1. Higgins *v.* Hamburg-American Packet Co., (C. C. A.) 145 Fed. 24; Southern R. Co. *v.* Levy, 144 Ala. 614, 39 So. 95.

Liability Commences when Vessel Loaded. — Leonard *v.* Bosch, (N. J. 1906) 64 Atl. 1001.

No Liability for Goods Not Received. — A carrier cannot be bound for goods not actually received for shipment though the master of a vessel issues a bill of lading for them. Clark *v.* Clyde Steamship Co., 148 Fed. 243.

2. Kennedy *v.* Weston, (C. C. A.) 136 Fed. 166.

Where oil possesses drying qualities and has a tendency to shrink barrels in which it is shipped and to render the wood brittle, making leakage possible, the shipowner is not liable for the loss due to leakage. The Claveburn, 147 Fed. 850.

204. 2. The D. Harvey, 139 Fed. 755.

Going Aground Not Ipso Facto Negligence. — The Eva D. Rose, 151 Fed. 704.

3. Agreement to Hold Charterer Free from Liability for Freight where Goods Lost Through Negligence. — Burn Line *v.* U. S., etc., Steamship Co., 150 Fed. 423.

5. Corsar *v.* J. D. Spreckels, etc., Co., (C. C. A.) 141 Fed. 260; Dunwoody *v.* Saunders, 50 Fla. 202, 39 So. 965.

206. 3. A. J. Tower Co. *v.* Southern Pac. Co., (Mass. 1907) 80 N. E. 809.

8. Barque Quilpué *v.* Brown, (1904) 2 K. B. 264, 90 L. T. N. S. 765; Jones *v.* Green, (1904) 2 K. B. 275, 90 L. T. N. S. 768; Philadelphia, etc., R. Co. *v.* Peale, 135 Fed. 606; La Conner Trading, etc., Co. *v.* Widmer, (C. C. A.) 136 Fed. 177; The Gordon Campbell, 141 Fed. 435; Haller *v.* Pendleton, 148 Fed. 1014, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 206.

Waiver. — Where in an action for damages for a delay in furnishing a vessel for a cargo of lumber it appeared that there was no definite arrangement that the boat should be ready at any particular time, and that the cargo owner accepted the boat when it was tendered, it was held that damages would not be allowed. Murray *v.* George W. Jump Co., 148 Fed. 123.

208. 3. Thorley *v.* Orchis Steamship Co., (1907) 1 K. B. 660, 7 Ann. Cas. 281.

4. Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29.

209. 5. An authorized deviation does not give a ship the right, after arriving at the port of delivery, to return to the port of shipment and thence make a second voyage to the port of delivery. Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29.

211. 5. Borthwick *v.* Elderslie Steamship Co., (1904) 1 K. B. 319, 90 L. T. N. S. 187; Donaldson *v.* J. W. Perry Co., (C. C. A.) 138 Fed. 643; Corsar *v.* J. D. Spreckels, etc., Co., (C. C. A.) 141 Fed. 260.

Waiver. — To amount to a waiver of seaworthiness it must appear that the charterer examined and accepted the vessel with knowledge of her condition. The Presque Isle, 140 Fed. 202

Applies Equally to Time and Voyage Charters. — Dene Shipping Co. *v.* Tweedie Trading Co., (C. C. A.) 143 Fed. 854.

Fact that Insurance Cannot Be Obtained Not Evidence of Unseaworthiness. — Moore *v.* Cornwall, (C. C. A.) 144 Fed. 22.

Negligence in Leaving Port Open. — If a ship starts on a voyage with a port negligently left open, causing damage, her owners are liable for failing to provide a ship seaworthy at the beginning of the voyage. The Tenedos, (C. C. A.) 151 Fed. 1022, *affirming* 137 Fed. 443.

6. Dene Shipping Co. *v.* Tweedie Trading Co., (C. C. A.) 143 Fed. 854; Harloff *v.* Barber, 150 Fed. 185.

Under a covenant of fitness the owner is not obliged to remove supports merely to facilitate loading. Keyser *v.* Duit, (C. C. A.) 150 Fed. 328.

Deficiency in Unloading Apparatus. — Under a stipulation for fitness the charterer is entitled to recovery for time lost in consequence of a deficiency in apparatus for unloading. Munson Steamship Line *v.* Miramar Steamship Co., 150 Fed. 437.

212. 3. Warranty of Seaworthiness in Sense of Being Fit to Receive Cargo Not Continuing Warranty. — McFadden *v.* Blue Star Line, (1905) 1 K. B. 697, 21 Times L. Rep. 345.

213. 2. Heller *v.* Pendleton, 148 Fed. 1014.

4. Corsar *v.* J. D. Spreckels, etc., Co., (C. C. A.) 141 Fed. 260.

5. Rathbone *v.* MacIver, (1903) 2 K. B. 378, 89 L. T. N. S. 378.

214. 2. National Board, etc., *v.* Bowring, 148 Fed. 1010; The Eva D. Rose, 151 Fed. 704; The Wildcroft, 201 U. S. 378, 26 U. S. Sup. Ct. 467.

4. The Gordon Campbell, 141 Fed. 435; The Folmina, (C. C. A.) 153 Fed. 364.

216. 3. Southern R. Co. *v.* Webb, 143 Ala. 304, 5 Ann. Cas. 97, 39 So. 262.

217. 1. Smith *v.* Sizer, 134 Fed. 928; Stone *v.* Clyde Steamship Co., 139 N. Car. 193, 51 S. E. 894; Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

Delivery at Pier Selected by Charterers Sufficient Though Unsafe. — Rosenstein *v.* Vogemann, 184 N. Y. 325, 6 Ann. Cas. 13, 77 N. E. 625.

Where Delivery in Strict Compliance Waived. — Delivery in strict compliance with the contract may be waived by the consignee, and a waiver takes place when a consignee accepts

goods at a place where the vessel is aground. The Eva D. Rose, 151 Fed. 704.

218. 1. Rosenstein *v.* Vogemann, 184 N. Y. 325, 6 Ann. Cas. 13, 77 N. E. 625; Stone *v.* Clyde Steamship Co., 139 N. Car. 193, 51 S. E. 894.

219. 2. The Alnwick, 135 Fed. 884.

Need Not Protect After Actual Notice to Consignee. — Stone *v.* Clyde Steamship Co., 139 N. Car. 193, 51 S. E. 894.

220. 2. Searle *v.* Lund, 90 L. T. N. S. 529; The Eva D. Rose, 153 Fed. 912; Pratt *v.* Northern Pac. Express Co., 13 Idaho 373, 90 Pac. 341, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 220.

222. 1. **Dangers of Rivers and River Navigation — Floating Ice within Exception.** — Philadelphia, etc., R. Co. *v.* Peale, 135 Fed. 606.

Unusual Weather Conditions — Peril of Sea. — Munson Steamship Line *v.* Steiger, (C. C. A.) 136 Fed. 772.

2. Cook *v.* Southeastern Lime, etc., Co., 146 Fed. 101.

223. 1. The Langfond, 143 Fed. 150.

3. Where there was a delay in unloading cargo which had been rendered in an unfit condition for rapid unloading by stranding of the vessel it was held that the charterer was liable for the full time taken for unloading. Lake Steam Shipping Co. *v.* Bacon, 137 Fed. 961.

224. 6. **Intention to Except Seaworthiness Must Plainly Appear.** — Rathbone *v.* MacIver, (1903) 2 K. B. 378, 89 L. T. N. S. 378; Borthwick *v.* Elderslie Steamship Co., (1904) 1 K. B. 319, 90 L. T. N. S. 187.

225. 2. The Disa, 153 Fed. 322.

3. The La Kroma, 138 Fed. 936; The Claverburn, 147 Fed. 850.

226. 3. **Detention at Quarantine within Scope of Clause.** — Tweedie Trading Co. *v.* George D. Emery Co., 146 Fed. 618; Glasgow Steam Shipping Co. *v.* Tweedie Trading Co., 154 Fed. 84. But see The Santona, 152 Fed. 516; Aktieselskabet Lina *v.* Turnbull, (1907) Sc. Ct. of Sess. 507.

227. 1. New York, etc., Mail Steamship Co. *v.* Ansonia Clock Co., 139 Fed. 894; N. S. Lace Curtain Mills *v.* Oceanic Steam Nav. Co., 145 Fed. 701; The Tampico, 151 Fed. 689; Louisville, etc., R. Co. *v.* Smitha, 145 Ala. 686, 40 So. 117; Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 4 Ann. Cas. 128, 52 S. E. 679.

Owner May Limit Liability if Damage Occasioned without His Privity or Knowledge. — Rev. St. U. S., § 4283; The Harry Hudson Smith, (C. C. A.) 142 Fed. 724.

Stipulations in Bills of Lading requiring claims for damage to be filed within a certain time will be enforced provided a reasonable time is given. Pacific Coast Co. *v.* Yukon Independent Transp. Co., (C. C. A.) 155 Fed. 29.

2. The Torbryan, (1903) P. 194, 89 L. T. N. S. 265; Packwood *v.* Union-Castle Mail Steamship Co., 20 Times L. Rep. 59; Yrazu *v.* Astral Shipping Co., 20 Times L. Rep. 153; Wade *v.* Cockerline, 21 Times L. Rep. 296.

Canada. — Canada Sugar Refining Co. *v.* Furness Withy Co., 27 Quebec Super. Ct. 502; Mathys *v.* The Manchester Liners, 25 Quebec Super. Ct. 426.

Must Use Plain and Explicit Language. — Price *v.* Union Lighterage Co., (1904) 1 K. B. 412, 89 L. T. N. S. 731; The Pearlmoor, (1904) P. 286, 90 L. T. N. S. 319.

228. 2. Steel *v.* Grand Canary Coaling Co., 90 L. T. N. S. 729.

5. *In re* Traae, (1904) 2 K. B. 377, 90 L. T. N. S. 407.

229. 1. Hughes *v.* J. S. Hoskins Lumber Co., 136 Fed. 435; Munson Steamship Line *v.* Steiger, (C. C. A.) 136 Fed. 772; The La Kroma, 138 Fed. 936; The Folmina, 143 Fed. 636; The Wildcroft, 201 U. S. 378, 26 U. S. Sup. Ct. 467; Southern R. Co. *v.* Levy, 144 Ala. 614, 39 So. 95; Louisville, etc., R. Co. *v.* Smitha, 145 Ala. 686, 40 So. 117.

The right of a shipowner to limit its liability is dependent upon his want of complicity in the acts causing the disaster, and the burden of proof rests upon him to show affirmatively that he has properly officered and equipped the vessel for the contemplated service. McGill *v.* Michigan Steamship Co., (C. C. A.) 144 Fed. 788.

Must Show that Damage Was Actually Caused by Excepted Peril. — The Presque Isle, 140 Fed. 202.

2. Lazarus *v.* Barber, (C. C. A.) 136 Fed. 534; The Wildcroft, 201 U. S. 378, 26 U. S. Sup. Ct. 467.

230. 3. **Owner Liable for Negligence in Loading.** — Steamship City of Lincoln *v.* Smith, (1904) A. C. 250, 91 L. T. N. S. 206.

6. **Delayed Delivery Due to Negligence of Shipowner's Servants — Consignee May Recover.** — Searle *v.* Lund, 90 L. T. N. S. 529.

231. 2. **Applies Only to Loss Occurring During Voyage.** — Ralli *v.* New York, etc., Steamship Co., (C. C. A.) 154 Fed. 286.

232. 1. The second section of the Harter Act relates to contracts of affreightment and was not intended to regulate the terms and conditions of a charter party amounting to a lease of the ship. Golcar Steamship Co. *v.* Tweedie Trading Co., 146 Fed. 563.

2. **Open Port-hole Negligence — Owner Liable.** — The Tenedos, 137 Fed. 443.

Failure to Screen End of Pipe. — Where it appeared that a vessel was fitted with a tank which could be used for stowing cargo or could be filled with water for ballast; that a pipe led from this tank to the water for the purpose of emptying or filling the tank; and that a piece of wood entered the pipe, partially opening a valve used for keeping the water out while cargo was stored in the tank, allowing water to enter and damage the cargo, it was held that failure to screen the end of the pipe was a failure to exercise due diligence and that damages could be recovered. The Brilliant, 138 Fed. 743.

Owner Must Affirmatively Show Due Diligence. — The Fri, 140 Fed. 123.

The carrier can only avail himself of the exemptions from liability for errors of management and navigation, provided by section 3 (Harter Act), by affirmative proof that the vessel was seaworthy at the beginning of the voyage, or that due diligence had been used to make her so, which proof cannot be supplied by inference or presumption. Bradley *v.* Lehigh Valley R. Co., (C. C. A.) 153 Fed. 350.

No Liability Though Master Does Not Stop to Repair. — Where a vessel is seaworthy at the beginning of a voyage but damaged during the voyage, the fact that the master does not stop for repairs, in consequence of which the cargo is damaged, does not preclude the owner from claiming "no liability" under section three of the act. Corsar *v.* J. D. Spreckels, etc., Co., (C. C. A.) 141 Fed. 260.

No Application to Contract of Towage. — Bradley *v.* Lehigh Valley R. Co., 145 Fed. 569.

Negligence of Agent of Owner in Providing Equipment. — Where the owner has provided a suitable person, or persons, as his agent to inspect or provide for the proper equipment of the vessel, he is not deprived of the benefit of the statute limiting liability by proof of negligence of such agent, where he has had no notice or knowledge of such negligence or resultant defect. The Tommy, (C. C. A.) 151 Fed. 570.

If Vessel Seaworthy No Liability Though Master Proceeded Without Consulting Reports of Weather Bureau When Warning Signal Was Observed. — Hanson *v.* Haywood Bros., etc., Co., (C. C. A.) 152 Fed. 401.

233. 2. The Tampico, 151 Fed. 689.

234. 3. **Return of Advanced Freight Condition Precedent to Claim of Limitation of Liability.** — La Bourgogne, (C. C. A.) 139 Fed. 433.

Liability for Death of Passenger Not Exceeding Value of Vessel and Pending Freight. — The Southside, 155 Fed. 368.

240. 1. **The English View** seems to have been adopted in The Eliza Lines, 199 U. S. 119, 4 Ann. Cas. 406, 26 U. S. Sup. Ct. 8.

243. 1. Vacarrezza *v.* 567,000 Gallons of Molasses, 149 Fed. 792.

2. Sewall *v.* Wood, (C. C. A.) 135 Fed. 12. Where the whole amount of goods called for in a contract of affreightment was not loaded and delivered, but an agent of the owner of the goods signed a bill of lading calling for more goods than actually delivered, under protest, under the impression that the bill of lading would be required to obtain possession of the goods, it was held that the owner could recover the excess of freight collected and damages for partial breach of the contract of affreightment. The Citta di Palermo, 153 Fed. 378.

No Freight Allowance for Shortage Where Mistake in Count Proven. — The Charles Tiberghien, 147 Fed. 307.

248. 4. La Bourgogne, (C. C. A.) 139 Fed. 433; Burn Line *v.* U. S., etc., Steamship Co., 150 Fed. 423.

250. 3. Albis Co. *v.* Munson, (C. C. A.) 139 Fed. 234.

254. 3. Where there was a dispute as to the amount of lumber transported it was held that an estimate founded upon the usual capacity of the vessel should not be permitted to prevail against a reasonably accurate tally made at the place of shipment. Murray *v.* George W. Jump Co., 148 Fed. 123.

266. 2. Temperley Steam Shipping Co. *v.* Smyth, (1905) 2 K. B. 791, 21 Times L. Rep. 739; Murray *v.* George W. Jump Co., 148 Fed. 123; West Hartlepool Steam Nav. Co. *v.* 450 Tons of Kainit, 151 Fed. 886; Southern R. Co. *v.* Webb, 143 Ala. 304, 5 Ann. Cas. 97, 39 So. 262; Miners' Co-operative Assoc. *v.* The Monarch, 2 Alaska 383; Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714.

Transferee of Shipowner or Charterer May Enforce Lien. — Bank of British North America *v.* Freights, etc., (C. C. A.) 137 Fed. 534.

268. 1. Wehner *v.* Dene Steam Shipping Co., (1905) 2 K. B. 92, 21 Times L. Rep. 339.

2. A shipowner is not entitled to a lien for freight payable under a time charter on the goods of a third party, who was no party to the charter, but whose goods were carried in the ship under a subcharter and bill of lading. Turner *v.* Haji Goolam Mahomed Azam, (1904) A. C. 826, 91 L. T. N. S. 216.

No lien created by the charter party — however explicit its literal expression — can be enforced against the goods of a third party, without a meritorious claim for liability against such goods or such party, unless that party is clearly shown to be privy to the contract creating the lien. West Hartlepool Steam Nav. Co. *v.* 450 Tons of Kainit, 151 Fed. 886.

269. 1. A cargo owner who, on the issuance to him of a bill of lading, paid to the charterer a portion of the freight, in good faith, is protected in such payment as against a lien on subfreight reserved by the shipowner in the charter, of which the shipper has no knowledge or notice. Larsen *v.* 150 Bales of Sisal Grass, 147 Fed. 783.

2. Larsen *v.* 150 Bales of Sisal Grass, 147 Fed. 783.

272. 4. Portland Flouring Mills Co. *v.* Portland, etc., Steamship Co., 145 Fed. 687.

275. 2. Portland Flouring Mills Co. *v.* Portland, etc., Steamship Co., 145 Fed. 687, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 275; Plummer *v.* Two Hundred Tons of Rails, 149 Fed. 888.

278. 2. The Bencliff, 155 Fed. 242.

Draft by Ship's Master on Owner for Supplies Creates Lien on Vessel. — The Wyandotte, (C. C. A.) 145 Fed. 321.

5. Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714.

6. Going aground is not, *ipso facto*, negligence which gives to parties having freight aboard a lien on a vessel. The Eva D. Rose, 151 Fed. 704.

285. 4. Harloff *v.* Barber, 150 Fed. 185. Where a charter provides that the charterer shall keep the vessel in repair and return her in good condition he will not be allowed to rescind his contract by attempting to show that she was unseaworthy at the beginning, where it appears that he had ample opportunity to know of her condition, and was not prevented from ascertaining her true condition, before he entered into the agreement. Andrews *v.* San Juan Fish Co., (Wash. 1907) 90 Pac. 647.

286. 2. Schooner Mahukona Co. *v.* 180,000 Feet of Lumber, 142 Fed. 578.

287. 1. Schooner Mahukona Co. *v.* Charles Nelson Co., 142 Fed. 615.

288. 2. The rule laid down in the case of Under Straits of Dover Steamship Co. *v.* Munson, 95 Fed. 690, *affirmed* in (C. C. A.) 100 Fed. 1005, that a time charter continues in force until the voyage is completed, rests upon

a commercial necessity, arising from the impossibility of having a time chartered vessel in port exactly at the expiration of a definite period, and beyond the requirements of this commercial urgency it will not be extended. The Rygja, 149 Fed. 896.

289. 4. An assertion, made during negotiations for a lump sum charter, that the vessel had carried a certain amount of cargo, made in belief that it was true, is a warranty for a breach of which the charterer is entitled to damages. Hassan *v.* Runciman, 91 L. T. N. S. 808.

291. 3. The Bérengére, 155 Fed. 439.

292. 1. The A. Denicke, (C. C. A.) 138 Fed. 645; The Bérengére, 155 Fed. 439.

2. No Damages Where Shipper's Acts in Relation to Hiring New Vessel Amount to Abandonment of Original Contract. — Johanson *v.* Sondheim, 2 Alaska 556.

293. 1. Metropolitan Coal Co. *v.* Boutell Transp., etc., Co., (Mass. 1907) 81 N. E. 645; Miner's Co-operative Assoc. *v.* The Monarch, 2 Alaska 383.

294. 2. Donaldson *v.* Severn River Glass Sand Co., 138 Fed. 691; Venus Shipping Co. *v.* Wilson, (C. C. A.) 152 Fed. 170.

295. 3. U. S. Shipping Co. *v.* U. S., 146 Fed. 914.

CONTRACTS OF HIRE (LAW OF BAILMENTS).

302. 1. J. T. Stark Grain Co. *v.* Automatic Weighing Mach. Co., (Ark. 1907) 99 S. W. 1103; Evans *v.* Nail, 1 Ga. App. 42, 57 S. E. 1020; Sinischalchi *v.* Baslico, (Supm. Ct. App. T.) 92 N. Y. Supp. 722; Grady *v.* Schweinler, (N. Dak. 1907) 113 N. W. 1031; Haralson *v.* Hahl, (Tex. Civ. App. 1905) 85 S. W. 1008.

3. Haralson *v.* Hahl, (Tex. Civ. App. 1905) 85 S. W. 1008.

303. 1. Evans *v.* Nail, 1 Ga. App. 42, 57 S. E. 1020; Grady *v.* Schweinler, (N. Dak. 1907) 113 N. W. 1031.

A Special Contract of Bailment Prevails in determining the liabilities of the parties, as against general principles of law applicable in the absence of express agreement. Concordia First Nat. Bank *v.* McIntosh, etc., Live-Stock, etc., Co., 72 Kan. 603, 84 Pac. 535.

304. 1. Morris Storage, etc., Co. *v.* Wilkes, 1 Ga. App. 751, 58 S. E. 232.

In *New York* it has been held that the burden of proof is on the bailee for hire to show that an injury which does not ordinarily occur was not occasioned by his negligence. Selesky *v.* Vollmer, 107 N. Y. App. Div. 300, 95 N. Y. Supp. 130.

306. 6. Baker, etc., Mfg. Co. *v.* Clayton, (Tex. Civ. App. 1905) 90 S. W. 519.

308. 2. **A Bailee May Recover Damages** for injury to property in his possession. Waggoner *v.* Snody, 98 Tex. 512, 85 S. W. 1134.

309. 3. Sinischalchi *v.* Baslico, (Supm. Ct. App. T.) 92 N. Y. Supp. 722; Alden *v.* Grande Ronde Lumber Co., 46 Oregon 593, 81 Pac. 385; Haralson *v.* Hahl, (Tex. Civ. App. 1905) 85 S. W. 1008.

310. 1. Alden *v.* Grande Ronde Lumber Co., 46 Oregon 593, 81 Pac. 385.

311. 1. **Driving a Sick Horse Home** is not negligence as a matter of law. Haralson *v.* Hahl, (Tex. Civ. App. 1905) 85 S. W. 1008.

3. Liability Determined by Special Contract — Agreement to Return Stallion in as Good Condition as when Received. — Grady *v.* Schweinler, (N. Dak. 1907) 113 N. W. 1031.

314. 1. Carney *v.* Rease, 60 W. Va. 676, 55 S. E. 729.

3. Alden *v.* Grande Ronde Lumber Co., 46 Oregon 593, 81 Pac. 385.

315. 1. Sanderson *v.* Collins, (1904) 1 K. B. 628, *distinguishing* Coupé Co. *v.* Maddick, (1891) 2 Q. B. 413, set out in original note.

317. 2. Pine Bluff Iron Works *v.* Boling, 75 Ark. 469, 88 S. W. 306; Ocala Foundry, etc., Works *v.* Lester, 49 Fla. 199, 38 So. 51; Ocala Foundry, etc., Works *v.* Lester, 49 Fla. 347, 38 So. 56; Dutton *v.* Show, (Miss. 1905) 38 So. 638; Solomon *v.* Bok, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 493, 98 N. Y. Supp. 838.

318. 1. Smith *v.* O'Brien, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 325, 94 N. Y. Supp. 673, *affirming* 103 N. Y. App. Div. 596, 92 N. Y. Supp. 1146.

A Ginner's Refusal to Deliver Cotton left with him to be ginned, has been held to constitute a waiver of any lien he may have had. Alabama Cotton Oil Co. *v.* Weeden, (Ala. 1907) 43 So. 926.

2. The Lien May Be Lost by Special Agreement as to payment. Palin *v.* Cooke, 125 Ga. 442, 54 S. E. 90.

4. Bowen *v.* Isenberg Bros. Co., (Del. 1907) 67 Atl. 152.

319. 1. **Loss by Fire.** — Bowen *v.* Isenberg Bros. Co., (Del. 1907) 67 Atl. 152.

3. An Employer Has a Right to Presume that a person holding himself out as engaged in a particular line of repairing business possesses all the requisite knowledge and qualifications to discharge properly the duties assumed. Bowen *v.* Isenberg Bros. Co., (Del. 1907) 67 Atl. 152.

322. 1. **A Custodian of Household Furniture** is bound to exercise ordinary diligence. Morris Storage, etc., Co. *v.* Wilkes, 1 Ga. App. 751, 58 S. E. 232.

The Proprietor of a Bathing Establishment is liable for the loss of jewelry occurring from want of ordinary care on his part. Walpert *v.* Bohan, 126 Ga. 535, 8 Ann. Cas. 89, 55 S. E. 181, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 321, 322.

CONTRARY.

323. 4. **Contrary to Law — Revenue Law.** — See U. S. *v.* Fifty Waltham Watch Movements, 139 Fed. 291.

Contrary Intention. — See *In re* Valpy, (1906) 1 Ch. 531, 75 L. J. Ch. 301.

CONTRIBUTION AND EXONERATION.

326. 3. Enscor *v.* Fletcher, 1 Cal. App. 659, 82 Pac. 1075; Putnam *v.* Misochi, 189 Mass. 421, 4 Ann. Cas. 733, 75 N. E. 956.

4. Sherling *v.* Long, 122 Ga. 797, 50 S. E. 935; Putnam *v.* Misochi, 189 Mass. 421, 4 Ann. Cas. 733, 75 N. E. 956; Caldwell *v.* Hurley, 41

Wash. 296, 83 Pac. 318; Bloomer *v.* Bloomer, 128 Wis. 297, 107 N. W. 974, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 326.

327. 1. Payne *v.* Payne, 129 Wis. 450, 109 N. W. 105.

Illustrations. — Where the assignee of one of three contractors for the purchase of property paid the purchase price he was entitled to contribution from the others. Ocean City Assoc. *v.* Cresswell, (N. J. L. 1906) 65 Atl. 454.

One discharging a joint judgment at a less sum than was due thereon was held to be entitled to a contribution of one-half of the amount paid from his joint debtor. Thompson *v.* Fitzgerald, (Tex. Civ. App. 1907) 105 S. W. 334.

A member of a firm, upon paying a judgment on a firm note, was held to have a cause of action against his partner for contribution, although process was not served nor judgment entered against the partner. Moran Bros. Co. *v.* Watson, 44 Wash. 392, 87 Pac. 508.

328. 6. The *Georgia* statute giving a surety a right of action for contribution against his cosureties was held to be a codification of the common law as it was applied in that state prior to the Revolution. Bigby *v.* Douglas, 123 Ga. 635, 51 S. E. 606.

7. Must Come into Equity with Clean Hands. — Where money of an insolvent bank was improperly in the possession of two directors, one of them who paid a note of the bank on which both were sureties was not entitled to contribution from the other director. Skiles's Estate, 211 Pa. St. 631, 61 Atl. 245.

Equities of Parties Must Be Equal. — Where certain property, owned by a husband and wife, and other property owned by the wife separately, was mortgaged for a debt of the husband, and, upon foreclosure, was purchased by a judgment creditor of the husband, it was held that such judgment creditor was not entitled to contribution from those inheriting the wife's property, the equities of the parties being unequal. Schroeder *v.* Bogarth, 224 Ill. 310, 79 N. E. 583.

329. 1. Sherling *v.* Long, 122 Ga. 797, 50 S. E. 935; Caldwell *v.* Hurley, 41 Wash. 296, 83 Pac. 318; Payne *v.* Payne, 129 Wis. 450, 109 N. W. 105.

330. 1. Sherling *v.* Long, 122 Ga. 797, 50 S. E. 935; Comstock *v.* Keating, 115 Mo. App. 372, 91 S. W. 416; Jarvis *v.* Matson, (Tex. Civ. App. 1906) 94 S. W. 1079.

331. 1. Caldwell *v.* Hurley, 41 Wash. 296, 83 Pac. 318.

Obligation Both Equitable and Legal. — Fanning *v.* Murphy, 126 Wis. 538, 5 Ann. Cas. 435, 105 N. W. 1056.

2. Sherling *v.* Long, 122 Ga. 797, 50 S. E. 935.

332. 2. **All Co-obligors on Bond May Be Joined in Suit for Contribution.** — Jarvis *v.* Matson, (Tex. Civ. App. 1906) 94 S. W. 1070.

3. Colket's Estate, 217 Pa. St. 643, 66 Atl. 980.

Legatees Liable After Distribution of Estate. — Comstock *v.* Keating, 115 Mo. App. 372, 91 S. W. 416.

4. Under a party-wall agreement the rule as to cosureties has been held to apply, the building of the wall by one owner and its use by the other being sufficient to give the one who built it a right of action for contribution. Watkins *v.* Glas, (Cal. App. 1907) 89 Pac. 840.

333. 1. Sherling *v.* Long, 122 Ga. 797, 50 S. E. 935.

Where three sureties had paid an equal amount, and agreed to prosecute a suit to recover the amount paid from their principal's property, one who refused to join in an appeal from an adverse judgment was not entitled to contribution from his cosureties who appealed and recovered judgment. Pollard *v.* Pittman, 37 Ind. App. 475, 77 N. E. 293.

2. National Surety Co. *v.* Di Marsico, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 302, 105 N. Y. Supp. 272; Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

334. 1. National Surety Co. *v.* Di Marsico, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 302, 105 N. Y. Supp. 272; Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

336. 2. Fanning *v.* Murphy, 126 Wis. 538, 5 Ann. Cas. 435, 105 N. W. 1056.

337. 1. Fanning *v.* Murphy, 126 Wis. 538, 5 Ann. Cas. 435, 105 N. W. 1056.

338. 1. Fitch *v.* Fraser, 188 N. Y. 605, 81 N. E. 1164, *affirming* 109 N. Y. App. Div. 440, 96 N. Y. Supp. 85.

Payment by Negotiable Note or Bond. — Hill *v.* Fuller, 188 Mass. 195, 74 N. E. 361 (to the same effect as Knighton *v.* Curry, 62 Ala. 104, cited in the original note).

339. 2. Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14; Hall *v.* Taylor, (Tex. Civ. App. 1906) 95 S. W. 755.

340. 1. If the obligation is joint and several under the contract the discharge of the principal and part of the sureties does not prevent a surety who pays the debt from enforcing contribution from his cosureties or indemnity from the principal. Lane *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 211.

4. Sherling *v.* Long, 122 Ga. 797, 50 S. E. 935; Caldwell *v.* Hurley, 41 Wash. 296, 83 Pac. 318.

In *Georgia* the action may be based upon the written evidence of indebtedness or upon the implied contract for contribution, and the period of limitation applicable will be determined accordingly. Bigby *v.* Douglas, 123 Ga. 635, 51 S. E. 606.

In a case where the statute of limitations would have been a bar to an action for contribution it was held that a surety who had paid a judgment could bring an action against his cosurety before the rights of the judgment creditor against the principal would have been barred, upon the ground that there had been an equitable assignment to him of the creditor's rights. Burrus *v.* Cook, 117 Mo. App. 385, 93 S. W. 888.

5. Sherling *v.* Long, 122 Ga. 797, 50 S. E. 935. *Compare* Bigby *v.* Douglas, 123 Ga. 635, 51 S. E. 606.

Where the statute of limitations had barred a part of a joint debt, an action for contribution was maintainable by the debtor who paid only the enforceable part of such debt. Hill *v.* Fuller, 188 Mass. 195, 74 N. E. 361.

341. 1. Sanders *v.* Herndon, 122 Ky. 760,

93 S. W. 14; Putnam *v.* Misochi, 189 Mass. 421, 4 Ann. Cas. 733, 75 N. E. 956, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 341; Smart *v.* Panther, (Tex. Civ. App. 1906) 95 S. W. 679.

342. 5. Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

7. Miller *v.* Perkerson, 128 Ga. 465, 57 S. E. 787.

A surety who carries out his principal's contract after the latter's default must account for the money thereby earned. Labbe *v.* Bernard, (Mass. 1907) 82 N. E. 688.

343. 1. Qualifications and Exceptions. — Where property given as security to indemnify two sureties was sold and the proceeds applied upon the judgment for which they became liable upon the principal's default, one surety could not enforce his claim for indemnity against the property after it had been redeemed at sheriff's sale by his cosurety. Elrod *v.* Gastineau, (Ky. 1907) 99 S. W. 903.

345. 3. Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435.

In *Kansas* under Civil Code, § 480, a surety who pays a judgment may have the benefit of it for the purpose of enforcing contribution from his cosureties or payment by the principal, without resorting to an action for contribution. Honce *v.* Schram, 73 Kan. 368, 85 Pac. 535.

A similar statute is in force in *Georgia,* Civil Code 1895, § 5376. Miller *v.* Perkerson, 128 Ga. 465, 57 S. E. 787.

And in *Kentucky,* Ky. St. 1903, § 4665. Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14.

346. 1. Craighead *v.* Swartz, 219 Pa. St. 149, 67 Atl. 1003.

2. Tarlton *v.* Orr, (Tex. Civ. App. 1905) 90 S. W. 534.

347. 1. Labbe *v.* Bernard, (Mass. 1907) 82 N. E. 688.

2. Craighead *v.* Swartz, 219 Pa. St. 149, 67 Atl. 1003.

348. 1. Labbe *v.* Bernard, (Mass. 1907) 82 N. E. 688.

349. 3. A surety may enforce contribution although he paid the debt by purchasing the property given as security, where it appears that such purchase was made with a view to the better protection of his right to contribution. Fanning *v.* Murphy, 126 Wis. 538, 5 Ann. Cas. 435, 105 N. W. 1056.

352. 4. Contra. — Jarvis *v.* Matson, (Tex. Civ. App. 1906) 94 S. W. 1079.

353. 1. In Fire Insurance Policies Not Liable to Contribute Where Policy Contains Provisional Liability Clauses. — Fireman's Fund Ins. Co. *v.* Palatine Ins. Co., 150 Cal. 252, 88 Pac. 907.

2. Where insurance policies provided that they should cover additions to the buildings insured, but that the companies should be liable for only a proportionate share of the loss, and thereafter additions were built and insured under policies containing a similar provision, it was held that companies paying a loss under the latter policies could enforce contribution from the companies issuing the former policies. Meigs *v.* London Assur. Co., (C. C. A.) 134 Fed. 1021, *affirming* 126 Fed. 781.

354. 1. Ellis *v.* Witmer, 148 Cal. 528, 83 Pac. 800.

2. Cunniff *v.* McDonnell, 196 Mass. 7, 81 N. E. 879.

356. 3. Right of One Municipality to Contribution from Another for Repairs to Bridge. — Bloomer *v.* Bloomer, 128 Wis. 297, 107 N. W. 974.

357. 2. Stickley *v.* Mulrooney, 36 Colo. 242, 87 Pac. 547.

358. 4. Where a decree in a partition suit provided that the lands of all the heirs should stand as security for the title of one of the heirs, the latter was entitled to contribution from the others upon the failure of her title. Eck *v.* Tate, (Ala. 1907) 44 So. 384.

360. 3. Theus *v.* Armistead, 116 La. 795, 41 So. 95.

Action Maintainable by Partner Without Paying Barred Debts. — Hill *v.* Fuller, 188 Mass. 195, 74 N. E. 361.

361. 1. Where the successors of a firm gave their individual notes to a creditor of the former partners, it was held not to be a partnership transaction, and the one paying the notes was allowed to recover from the other the latter's share of the debt. Theus *v.* Armistead, 116 La. 795, 41 So. 95.

362. 1. Builder Can Recover Contribution. — Watkins *v.* Glas, (Cal. App. 1907) 89 Pac. 840, holding further that the assignee of the one who builds the wall may maintain an action for contribution although his assignor has not paid for the wall, it appearing that the wall was built by him and used by the other owner.

Running of Party Wall Agreement with Land. — In *Iowa* by statute an adjoining owner may make use of a party wall by paying half of its value to the person who erected it, and such adjoining owner's liability begins at the time of making use of the wall. Pier *v.* Salot, 134 Iowa 357, 111 N. W. 989.

363. 1. Putnam *v.* Misochi, 189 Mass. 421, 4 Ann. Cas. 733, 75 N. E. 956, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 363; See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843.

364. 2. Forsythe *v.* Los Angeles R. Co., 149 Cal. 569, 87 Pac. 24; Wanack *v.* Michels, 215 Ill. 87, 74 N. E. 84, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 364, *affirmed* 114 Ill. App. 631; Goldsmith *v.* Koopman, (C. C. A.) 152 Fed. 173; Fakes *v.* Price, 18 Okla. 413, 89 Pac. 1123; Consolidated Kansas City Smelting, etc., Co. *v.* Binkley, (Tex. Civ. App. 1906) 99 S. W. 181; Northern Texas Traction Co. *v.* Caldwell, (Tex. Civ. App. 1907) 99 S. W. 869; Cox *v.* Cameron Lumber Co., 39 Wash. 562, 82 Pac. 116.

365. 1. Mayberry *v.* Northern Pac. R. Co., 100 Minn. 79, 110 N. W. 356, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365; Eaton, etc., Co. *v.* Mississippi Valley Trust Co., 123 Mo. App. 117, 100 S. W. 551, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365.

2. Eaton, etc., Co. *v.* Mississippi Valley Trust Co., 123 Mo. App. 117, 100 S. W. 551; Northern Ohio R. Co. *v.* Akron Canal, etc., Co., 75 Ohio St. 620, 80 N. E. 1130, *affirming* 28 Ohio Cir. Ct. 51.

3. Where two railroad companies entered into an agreement to bear equally the damages

caused by negligence of a watchman at a certain crossing, one company, having settled a claim in full, was held to be entitled to contribution from the other company, its liability arising *ex contractu*. Southwest Missouri Electric R. Co. *v.* Missouri Pac. R. Co., 110 Mo. App. 300, 85 S. W. 966.

Under the *Missouri* statute providing for contribution among defendants in an action for the redress of a private wrong, the owner of a building was held to be liable for contribution to a contractor, where the unintentional wrong of both caused the death of a workman under the supervision of the owner. Eaton, etc., Co. *v.* Mississippi Valley Trust Co., 123 Mo. App. 117, 100 S. W. 551.

Contribution May Be Enforced with Respect to Court Costs in Judgment against Joint Wrongdoers. — Fakes *v.* Price, 18 Okla. 413, 89 Pac. 1123.

366. 1. Contractor Entitled to Indemnity from Subcontractor. — Phœnix Bridge Co. *v.* Creem, 102 N. Y. App. Div. 354, 92 N. Y. Supp. 855.

CONTRIBUTORY NEGLIGENCE.

371. 3. Various Definitions of Contributory Negligence — *Arkansas.* — St. Louis, etc., R. Co. *v.* Dillard, 78 Ark. 520, 94 S. W. 617.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 331, 85 Pac. 630, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371.

Connecticut. — Wilmot *v.* McPadden, 78 Conn. 276, 61 Atl. 1069.

Illinois. — Belvidere Gas, etc., Co. *v.* Boyer, 122 Ill. App. 116, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371.

Indiana. — Indianapolis, etc., Rapid Transit Co. *v.* Edwards, 36 Ind. App. 202, 74 N. E. 533.

Iowa. — Struble *v.* Burlington, etc., R. Co., 128 Iowa 158, 103 N. W. 142.

Kentucky. — Louisville R. Co. *v.* Esselman, (Ky. 1906) 93 S. W. 50; Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1906) 97 S. W. 14; South Covington, etc., R. Co. *v.* Cleveland, (Ky. 1907) 100 S. W. 283.

Missouri. — Cornovski *v.* St. Louis Transit Co., 207 Mo. 263, 106 S. W. 51.

Montana. — Birsch *v.* Citizens' Electric Co., (Mont. 1908) 93 Pac. 940, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371; Leary *v.* Anaconda Copper Min. Co., (Mont. 1907) 92 Pac. 477.

Ohio. — Cincinnati Traction Co. *v.* Forrest, 73 Ohio St. 5, 75 N. E. 818, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371.

Pennsylvania. — Weaver *v.* Pennsylvania R. Co., 212 Pa. St. 632, 61 Atl. 1117.

South Carolina. — Wilson *v.* Southern R. Co., 73 S. Car. 501, 53 S. E. 968, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371; Charping *v.* Toxaway Mills, 70 S. Car. 470, 50 S. E. 186; Sanders *v.* Aiken Mfg. Co., 71 S. Car. 58, 50 S. E. 679; Duncan *v.* Greenville County, 73 S. Car. 254, 53 S. E. 367.

Tennessee. — Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

Texas. — St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343; Gulf, etc., R. Co. *v.* Tullis, (Tex. Civ. App. 1905) 91 S. W. 317; Selman *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 1030.

Canada. — Toronto R. Co. *v.* Mulvaney, 38 Can. Sup. Ct. 327.

4. Plummer *v.* Northern Pac. R. Co., 152 Fed. 206, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371, 372; Madison *v.* Clippinger, 74 Kan. 700, 88 Pac. 260, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 372 *et seq.*

Rule Never Departed From. — See Kansas City, etc., R. Co. *v.* Williford, 115 Tenn. 108-88 S. W. 178.

For Statements of the Doctrine see the following cases:

United States. — Southern R. Co. *v.* Carroll, (C. C. A.) 138 Fed. 638; St. Louis, etc., R. Co. *v.* Chapman, (C. C. A.) 140 Fed. 129; Northern Pac. R. Co. *v.* Jones, (C. C. A.) 144 Fed. 47.

Arkansas. — Burns *v.* St. Louis Southwestern R. Co., 76 Ark. 10, 88 S. W. 824; St. Louis Southwestern R. Co. *v.* Cochran, 77 Ark. 398, 91 S. W. 747; Abelson *v.* St. Louis, etc., R. Co., 84 Ark. 181, 105 S. W. 81.

California. — Johnson *v.* Center, 4 Cal. App. 616, 88 Pac. 727.

Colorado. — Colorado, etc., R. Co. *v.* Sonne, 34 Colo. 206, 83 Pac. 383; Westerkamp *v.* Chicago, etc., R. Co., (Colo. 1907) 92 Pac. 687.

Connecticut. — Wilmot *v.* McPadden, 78 Conn. 276, 61 Atl. 1069.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Illinois. — Martin *v.* Surman, 116 Ill. App. 282; Chicago Terminal Transfer R. Co. *v.* Korando, 129 Ill. App. 620.

Indiana. — Indianapolis Traction, etc., Co. *v.* Pressell, (Ind. 1906) 77 N. E. 357; Cleveland, etc., R. Co. *v.* Henry, (Ind. App. 1907) 80 N. E. 636.

Iowa. — Rietveld *v.* Wabash R. Co., 129 Iowa 249, 105 N. W. 515.

Kansas. — National Brass Mfg. Co. *v.* Rawlings, 71 Kan. 246, 80 Pac. 628.

Kentucky. — Louisville, etc., R. Co. *v.* Sights, (Ky. 1905) 89 S. W. 132; Frankfort *v.* Chinn, (Ky. 1905) 89 S. W. 188; Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 100 S. W. 302; Southern R. Co. *v.* Clark, (Ky. 1907) 105 S. W. 384; Ewing *v.* Callahan, (Ky. 1907) 105 S. W. 387.

Minnesota. — Richardson *v.* Davis, 94 Minn. 315, 102 N. W. 868; O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805.

Mississippi. — Illinois Cent. R. Co. *v.* Bethea, 88 Miss. 119, 40 So. 813.

Missouri. — Hensler *v.* Stix, 113 Mo. App. 162, 88 S. W. 108; Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Walker *v.* Wabash R. Co., 193 Mo. 453, 92 S. W. 83; Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884; Sims *v.* St. Louis, etc., R. Co., 116 Mo. App. 572, 92 S. W. 909; Wallack *v.* St. Louis Transit Co., 123 Mo. App. 160, 100 S. W. 496; Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624.

Nebraska. — Hubler *v.* Johnson-McLean Co., 74 Neb. 840, 105 N. W. 247.

North Carolina. — Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703; Pressly *v.* Dover Yarn Mills, 138 N. Car. 410, 51 S. E. 69.

Pennsylvania. — McClelland *v.* Pittsburg R. Co., 216 Pa. St. 593, 66 Atl. 76.

South Carolina. — Charping *v.* Toxaway Mills, 70 S. Car. 470, 50 S. E. 186.

Texas. — St. Louis Southwestern R. Co. *v.* Arnold, (Tex. Civ. App. 1905) 87 S. W. 173; Southern Constr. Co. *v.* Hinkle, (Tex. Civ. App. 1905) 89 S. W. 309.

Virginia. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211; Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731; Clark *v.* Fehlhaber, 106 Va. 803, 56 S. E. 817; Southern R. Co. *v.* Hansbrough, 107 Va. 733, 60 S. E. 58.

Washington. — Duteau *v.* Seattle Electric Co., 45 Wash. 418, 88 Pac. 755.

In Georgia Comparative Negligence Rule Prevails. — See COMPARATIVE NEGLIGENCE.

Special Statutory Modifications. — As illustrating various statutory modifications of the rule in certain instances, see the following cases:

Florida. — Louisville, etc., R. Co. *v.* Goulding, 52 Fla. 327, 42 So. 854; Wade *v.* Louisville, etc., R. Co., (Fla. 1907) 45 So. 472; Bookman *v.* Seaboard Air Line R. Co., (C. C. A.) 152 Fed. 686.

Massachusetts. — Kenny *v.* Boston, etc., R. Co., 188 Mass. 127, 74 N. E. 309; Dolphin *v.* Worcester Consol. St. R. Co., 189 Mass. 270, 75 N. E. 635; Lanci *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 1.

Mississippi. — Sledge *v.* Yazoo, etc., R. Co., 87 Miss. 566, 40 So. 13.

South Carolina. — Osteen *v.* Southern R. Co., 76 S. Car. 368, 57 S. E. 196.

372. **1.** See Kansas City, etc., R. Co. *v.* Williford, 115 Tenn. 108, 88 S. W. 178.

373. **1.** Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

"The law recognizes no gradations of fault in such cases." Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56; Southern R. Co. *v.* Hansbrough, 107 Va. 733, 60 S. E. 58.

And it will not measure the extent of contribution. Volosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090.

3. Cincinnati Traction Co. *v.* Forrest, 73 Ohio St. 1, 75 N. E. 818; Talbert *v.* Charleston, etc., R. Co., 72 S. Car. 137, 51 S. E. 564; Texas, etc., R. Co. *v.* Buch, (Tex. Civ. App. 1907) 102 S. W. 124.

No Defense in Case of Wilful or Wanton Injuries — Vicksburg, etc., R. Co. *v.* Barmore, 87 Miss. 273, 39 So. 1013; La Fitte *v.* Southern R. Co., 73 S. Car. 467, 53 S. E. 755.

Elements of Contributory Negligence. — Ensley Mercantile Co. *v.* Otwell, 142 Ala. 576, 4 Ann. Cas. 512, 38 So. 839, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 373; Sledge *v.* Weldon Lumber Co., 140 N. Car. 460, 53 S. E. 295, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 373; Adams *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 105 S. W. 526.

4. *United States.* — Quinette *v.* Bisso, (C. C. A.) 136 Fed. 825.

Alabama. — Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198; Reaves *v.* Anniston Knitting Mills, (Ala. 1907) 45 So. 702.

Arkansas. — Kansas City Southern R. Co. *v.* Davis, 83 Ark. 217, 103 S. W. 603.

California. — Jansen *v.* Southern Pac. Co., 5 Cal. App. 12, 89 Pac. 616; Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976.

Connecticut. — Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Delaware. — Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Indiana. — Baltimore, etc., R. Co. *v.* Clapp, 35 Ind. App. 403, 74 N. E. 267; Indianapolis St. R. Co. *v.* James, 35 Ind. App. 543, 74 N. E. 536; Diamond Block Coal Co. *v.* Cuthbertson, 166 Ind. 290, 76 N. E. 1060; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347.

Kansas. — National Brass Mfg. Co. *v.* Rawlings, 71 Kan. 246, 80 Pac. 628.

Kentucky. — South Covington, etc., R. Co. *v.* Nelson, (Ky. 1905) 89 S. W. 200.

Louisiana. — Shamblin *v.* New Orleans, etc., R. Co., 114 La. 467, 38 So. 421.

Massachusetts. — Black *v.* New York, etc., R. Co., 193 Mass. 448, 9 Ann. Cas. 485, 79 N. E. 797.

Mississippi. — Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788.

Nebraska. — Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

New York. — Berry *v.* Utica Belt Line St. R. Co., 181 N. Y. 198, 73 N. E. 970.

North Carolina. — Sawyer *v.* Roanoke R., etc., Co., 145 N. Car. 24, 58 S. E. 598.

Ohio. — Toledo, etc., R. Co. *v.* McFall, 8 Ohio Cir. Ct. (N. S.) 271.

Rhode Island. — Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584.

South Carolina. — Sanders *v.* Aiken Mfg. Co., 71 S. Car. 58, 50 S. E. 679; Cooper *v.* Richland County, 76 S. Car. 202, 56 S. E. 958.

Tennessee. — Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

Texas. — St. Louis Southwestern R. Co. *v.* Rea, (Tex. 1905) 87 S. W. 324; Gulf, etc., R. Co. *v.* Melville, (Tex. Civ. App. 1905) 87 S. W. 863.

Virginia. — See Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

Wisconsin. — Owen *v.* Portage Telephone Co., 126 Wis. 412, 105 N. W. 924; Sorensen *v.* J. I. Case Threshing Mach. Co., 129 Wis. 366, 109 N. W. 84.

See also cases cited *infra*, **380. 2.**

374. **1.** Rodgers *v.* St. Louis Transit Co., 117 Mo. App. 678, 92 S. W. 1154.

Confesses and Avoids Plaintiff's Case. — Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731. See also Illinois Cent. R. Co. *v.* Bethea, 88 Miss. 119, 40 So. 813.

Is an Affirmative Traverse. — Plummer *v.* Northern Pac. R. Co., 152 Fed. 206.

375. **1.** Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238; Indianapolis Traction,

etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 375; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 375; Indianapolis St. R. Co. *v.* O'Donnell, 35 Ind. App. 312, 74 N. E. 253; Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810; Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

3. Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Black *v.* New York, etc., R. Co., 193 Mass. 448, 9 Ann. Cas. 485, 79 N. E. 797; Union Pac. R. Co. *v.* Connelly, (Neb. 1906) 109 N. W. 368.

4. *United States.* — Laclede Gaslight Co. *v.* Cottone, (C. C. A.) 152 Fed. 629; Gloucester Electric Co. *v.* Dover, (C. C. A.) 153 Fed. 139; Philadelphia, etc., R. Co. *v.* Baker, 155 Fed. 407; The Ranza, 156 Fed. 373; Columbia Box, etc., Co. *v.* Drown, (C. C. A.) 156 Fed. 459.

California. — Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738.

Delaware. — Boudwin *v.* Wilmington City R. Co., 4 Penn. (Del.) 381, 60 Atl. 865.

District of Columbia. — District of Columbia *v.* Duryee, 29 App. Cas. (D. C.) 327.

Georgia. — Tucker *v.* Central of Georgia R. Co., 122 Ga. 387, 50 S. E. 128; Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709; Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948; Rollestone *v.* Cassirer, (Ga. App. 1907) 59 S. E. 442; Central of Georgia R. Co. *v.* Clay, (Ga. App. 1907) 59 S. E. 843.

Illinois. — Chicago City R. Co. *v.* Nelson, 215 Ill. 436, 74 N. E. 458; Cullen *v.* Higgins, 216 Ill. 78, 74 N. E. 698; Chicago, etc., R. Co. *v.* Hamler, 215 Ill. 525, 3 Ann. Cas. 42, 74 N. E. 705; North American Restaurant, etc., *v.* McElligott, 227 Ill. 317, 81 N. E. 388; Sampsell *v.* Rybczynski, 229 Ill. 75, 82 N. E. 244; Illinois Cent. R. Co. *v.* Siler, 229 Ill. 390, 82 N. E. 362; Purcell *v.* Chicago, 231 Ill. 164, 83 N. E. 137; Pauckner *v.* Wakem, 231 Ill. 276, 83 N. E. 202; Belvidere Gas, etc., Co. *v.* Boyer, 122 Ill. App. 116; Bloomington, etc., R., etc., Co. *v.* Koss, 123 Ill. App. 497; Kahl *v.* Chicago, etc., R. Co., 125 Ill. App. 294; Illinois Cent. R. Co. *v.* McMillion, 129 Ill. App. 27.

Indiana. — Indianapolis St. R. Co. *v.* Haverstick, 35 Ind. App. 281, 74 N. E. 34; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514; Valparaiso *v.* Schwerdt, (Ind. App. 1907) 82 N. E. 923.

Iowa. — Perjue *v.* Citizens' Electric Light, etc., Co., 131 Iowa 710, 109 N. W. 280.

Kansas. — Atchison, etc., R. Co. *v.* Holloway, 71 Kan. 1, 80 Pac. 31.

Kentucky. — Louisville *v.* Romer, (Ky. 1906) 97 S. W. 348; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Brownsville *v.* Arbuckle, (Ky. 1907) 99 S. W. 239; Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337; Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606; Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 100 S. W. 302; Oliver *v.* Roach, (Ky. 1907) 102 S. W. 274; Jones *v.* Illinois Cent. R. Co., (Ky. 1907) 104 S. W. 258; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Ewing *v.* Callahan, (Ky. 1907) 105 S. W. 387; Louisville R. Co. *v.* Hutchcraft, (Ky. 1907) 105 S. W. 983.

Maryland. — Baltimore, etc., R. Co. *v.* Trader, (Md. 1907) 68 Atl. 12; United R., etc., Co. *v.* Rosik, (Md. 1908) 68 Atl. 511.

Massachusetts. — Dechene *v.* Greenfield, etc., St. R. Co., 188 Mass. 423, 74 N. E. 600; Briggs *v.* Boston, etc., R. Co., 188 Mass. 463, 74 N. E. 667; Ahearn *v.* Boston El. R. Co., 194 Mass. 350, 80 N. E. 217; Brown *v.* Naun, 195 Mass. 161, 80 N. E. 791; Clinton *v.* Revere, 195 Mass. 151, 80 N. E. 813.

Minnesota. — Stegner *v.* Chicago, etc., R. Co., 94 Minn. 166, 102 N. W. 205.

Mississippi. — Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788.

Missouri. — Mertens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; Rose *v.* Kansas City, 125 Mo. App. 231, 102 S. W. 578; Heberling *v.* Warrensburg, 204 Mo. 604, 103 S. W. 36; Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115; Lattimore *v.* Union Electric Light, etc., Co., (Mo. App. 1908) 106 S. W. 543.

Nebraska. — Vanderveer *v.* Moran, (Neb. 1907) 112 N. W. 581.

New Hampshire. — Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848.

New Jersey. — Atlantic City R. Co. *v.* Kiefer, (N. J. 1907) 66 Atl. 930.

New York. — Mangan *v.* Hudson River Telephone Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 388, 100 N. Y. Supp. 539.

North Carolina. — Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86.

Ohio. — Wheeling, etc., R. Co. *v.* Parker, 9 Ohio Cir. Ct. (N. S.) 28.

Oklahoma. — Metropolitan R. Co. *v.* Fonville, (Okla. 1907) 91 Pac. 902.

Pennsylvania. — Dannenhower *v.* Western Union Tel. Co., 218 Pa. St. 216, 67 Atl. 207; Mosten *v.* Lake Shore, etc., R. Co., 218 Pa. St. 392, 67 Atl. 740.

Rhode Island. — Purnell *v.* Whitford, (R. I. 1907) 67 Atl. 421.

Tennessee. — Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

Texas. — Missouri, etc., R. Co. *v.* Purdy, 98 Tex. 557, 86 S. W. 321; Fanning *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 86 S. W. 354; Texas L. & T. Co. *v.* Angel, (Tex. Civ. App. 1905) 86 S. W. 1056; International, etc., R. Co. *v.* Wray, (Tex. Civ. App. 1906) 96 S. W. 74; Galveston, etc., R. Co. *v.* Morrison, (Tex. Civ. App. 1907) 102 S. W. 143; Missouri, etc., R. Co. *v.* Saunders, (Tex. Civ. App. 1907) 103 S. W. 457; Adams *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 105 S. W. 526.

Virginia. — Mitchel *v.* Richmond, 107 Va. 193, 57 S. E. 570.

Utah. — Hickey *v.* Rio Grande Western R. Co., 29 Utah 392, 82 Pac. 29; Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Washington. — Gage *v.* Springston Lumber Co., (Wash. 1907) 91 Pac. 558, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 375.

West Virginia. — Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416.

Wisconsin. — Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738.

377. 1. Lewis *v.* Vicksburg, etc., R. Co., 114 La. 161, 38 So. 92.

3. Rietveld *v.* Wabash R. Co., 129 Iowa 249, 105 N. W. 515.

5. Chicago, etc., R. Co. *v.* Hamler, 215 Ill. 525, 3 Ann. Cas. 42, 74 N. E. 705; Valparaiso *v.* Schwerdt, (Ind. App. 1907) 82 N. E. 923.

378. 1. *United States.* — Laclede Gaslight Co. *v.* Cottone, (C. C. A.) 152 Fed. 629.

Arkansas. — St. Louis, etc., R. Co. *v.* Hilt, 76 Ark. 227, 88 S. W. 908.

California. — Schindler *v.* Schroth, 146 Cal. 433, 80 Pac. 624.

Delaware. — Boudwin *v.* Wilmington City R. Co., 4 Penn. (Del.) 381, 60 Atl. 865; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167.

District of Columbia. — District of Columbia *v.* Duryee, 29 App. Cas. (D. C.) 327.

Georgia. — Southern R. Co. *v.* Cunningham, 123 Ga. 90, 50 S. E. 979; Sanders *v.* Central of Georgia R. Co., 123 Ga. 763, 51 S. E. 728; Cedartown *v.* Brooks, 2 Ga. App. 583, 59 S. E. 836.

Illinois. — Christy *v.* Elliott, 216 Ill. 31, 3 Ann. Cas. 487, 74 N. E. 1035; Illinois Cent. R. Co. *v.* Siler, 229 Ill. 390, 82 N. E. 362; Belvidere Gas, etc., Co. *v.* Boyer, 122 Ill. App. 116; Chicago Union Traction Co. *v.* Hansen, 125 Ill. App. 153; Chicago, etc., R. Co. *v.* Louderback, 125 Ill. App. 323.

Indiana. — Indianapolis St. R. Co. *v.* Haverstick, 35 Ind. App. 281, 74 N. E. 34; Muncie *v.* Hey, 164 Ind. 570, 74 N. E. 250; Baltimore, etc., R. Co. *v.* Rosborough, (Ind. App. 1907) 80 N. E. 869.

Iowa. — Kaiser *v.* Hahn, 126 Iowa 561, 102 N. W. 504; Tuttle *v.* Clear Lake, (Iowa 1905) 102 N. W. 136.

Kansas. — Garnett *v.* Smith, 72 Kan. 664, 83 Pac. 615.

Kentucky. — Frankfort *v.* Chinn, (Ky. 1905) 89 S. W. 188; Cincinnati, etc., R. Co. *v.* Hill, (Ky. 1905) 89 S. W. 523; Illinois Cent. R. Co. *v.* Cane, (Ky. 1906) 90 S. W. 1061; Louisville R. Co. *v.* Esselman, (Ky. 1906) 93 S. W. 50; Henderson City R. Co. *v.* Lockett, (Ky. 1906) 98 S. W. 303; Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810.

Massachusetts. — Kerr *v.* Boston El. R. Co., 188 Mass. 434, 74 N. E. 669.

Mississippi. — Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788; Pascagoula *v.* Kirkwood, 86 Miss. 630, 38 So. 547.

Missouri. — Reyburn *v.* Missouri Pac. R. Co., 187 Mo. 565, 86 S. W. 174; Wright *v.* Kansas City, 187 Mo. 678, 86 S. W. 452; Neves *v.* Green, 111 Mo. App. 634, 86 S. W. 508; Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354; Nephler *v.* Woodward, 200 Mo. 179, 98 S. W. 488; Heberling *v.* Warrensburg, 204 Mo. 604, 103 S. W. 36; Gibler *v.* Terminal R. Assoc., 203 Mo. 208, 101 S. W. 37.

New York. — McCarragher *v.* Proal, 114 N. Y. App. Div. 470, 100 N. Y. Supp. 208.

North Carolina. — Marks *v.* Harriet Cotton Mills, 138 N. Car. 401, 3 Ann. Cas. 812, 50 S. E. 769; Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

Oregon. — Carroll *v.* Grande Ronde Electric Co., 47 Oregon 424, 84 Pac. 389.

Pennsylvania. — Dougherty *v.* Philadelphia, 210 Pa. St. 591, 60 Atl. 261.

Texas. — Boyles *v.* Texas, etc., R. Co., (Tex. Civ. App. 1905) 86 S. W. 936; Texas L. & T. Co. *v.* Angel, (Tex. Civ. App. 1905) 86 S. W. 1056; St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343; Texas, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 106 S. W. 773.

Virginia. — Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373.

Washington. — Benson *v.* Spokane, 39 Wash. 101, 80 Pac. 1106.

West Virginia. — Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416.

Wisconsin. — Williams *v.* North Wisconsin Lumber Co., 124 Wis. 328, 102 N. W. 589; Pumorlo *v.* Merrill, 125 Wis. 102, 103 N. W. 464; Zentner *v.* Oshkosh Gas Light Co., 126 Wis. 196, 105 N. W. 911; Coppins *v.* Jefferson, 126 Wis. 578, 105 N. W. 1078.

Canada. — Misener *v.* Wabash R. Co., 12 Ont. L. Rep. 71.

"The distinction in degrees of care, such as 'slight,' 'ordinary,' or 'great,' is unscientific and impracticable, as the law furnishes no definition of these terms which can be applied in practice. Ordinary care, under the circumstances, is the legal standard in all cases." Pomroy *v.* Bangor, etc., R. Co., 102 Me. 497, 67 Atl. 561.

The Test of the Conduct of the injured person is that of an ordinarily careful and prudent persons under the circumstances.

United States. — Ward *v.* Dampskibselskabet Kjoebenhaven, 136 Fed. 502; Baltimore, etc., R. Co. *v.* Connell, (C. C. A.) 137 Fed. 8; Farrell *v.* Erie R. Co., (C. C. A.) 138 Fed. 28; Klutt *v.* Philadelphia, etc., R. Co., (C. C. A.) 142 Fed. 394; Omaha Water Co. *v.* Schamel, (C. C. A.) 147 Fed. 502; Buckley *v.* New York, etc., R. Co., 148 Fed. 460; Rich *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 79; Gloucester Electric Co. *v.* Dover, (C. C. A.) 153 Fed. 139; Columbia Box, etc., Co. *v.* Drown, (C. C. A.) 156 Fed. 459; Union Pac. R. Co. *v.* Rosewater, (C. C. A.) 157 Fed. 168; Washington Mills *v.* Cox, (C. C. A.) 157 Fed. 634.

Alabama. — Morgan *v.* Saks, 143 Ala. 139, 38 So. 848; Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207; Alabama G. S. R. Co. *v.* Fulton, 144 Ala. 332, 39 So. 282; Pierson Lumber Co. *v.* Hart, 144 Ala. 239, 39 So. 566; Reiter-Connolly Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280; Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844; Birmingham R., etc., Co. *v.* Lee, (Ala. 1907) 45 So. 292.

Arkansas. — Choctaw, etc., R. Co. *v.* Jones, 77 Ark. 367, 7 Ann. Cas. 430, 92 S. W. 244; St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613; St. Louis, etc., R. Co. *v.* Dillard, 78 Ark. 520, 94 S. W. 617; Abelson *v.* St. Louis, etc., R. Co., 84 Ark. 181, 105 S. W. 81.

California. — Jansen *v.* Southern Pac. Co., 5 Cal. App. 12, 89 Pac. 616; Doyle *v.* Eschen, 5 Cal. App. 55, 89 Pac. 836; Maxwell *v.* Fresno City R. Co., 4 Cal. App. 745, 89 Pac. 367; Higgins *v.* Los Angeles R. Co., 5 Cal. App. 748, 91 Pac. 344.

Delaware. — Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153.

District of Columbia. — Jennings *v.* Philadelphia, etc., R. Co., 29 App. Cas. (D. C.) 219.

Georgia. — Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709.

Illinois. — Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387; Toledo, etc., R. Co. *v.* Hammett, 220 Ill. 9, 5 Ann. Cas. 73, 77 N. E. 72; Elgin, etc., R. Co. *v.* Hoadley, 220 Ill. 462, 77 N. E. 151; Illinois Southern R. Co. *v.* Hamill, 226 Ill. 88, 80 N. E. 745; Wallace *v.* Farmington, 231 Ill. 232, 83 N. E. 180; Chicago, etc., R. Co. *v.* Doyle, 119 Ill. App. 303; City Water Works *v.* Lane, 122 Ill. App. 427; Kahl *v.* Chicago, etc., R. Co., 125 Ill. App. 294.

Indiana. — Indianapolis St. R. Co. *v.* Slifer, 35 Ind. App. 700, 74 N. E. 19; Union Traction Co. *v.* Sullivan, 38 Ind. App. 513, 76 N. E. 116; Southern Indiana R. Co. *v.* Corps, (Ind. App. 1906) 76 N. E. 902; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Indianapolis St. R. Co. *v.* Coyner, 39 Ind. App. 510, 80 N. E. 168; Indianapolis Traction, etc., Co. *v.* Richey, (Ind. App. 1907) 80 N. E. 170; Chicago, etc., R. Co. *v.* Gallion, 39 Ind. App. 604, 80 N. E. 547; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514.

Iowa. — Pierson *v.* Chicago, etc., R. Co., 127 Iowa 13, 102 N. W. 149; Buchholtz *v.* Radcliffe, 129 Iowa 27, 105 N. W. 336; Perjue *v.* Citizens' Electric Light, etc., Co., 131 Iowa 710, 109 N. W. 280; Doherty *v.* Des Moines City R. Co., (Iowa 1907) 114 N. W. 183.

Kansas. — Atchison, etc., R. Co. *v.* Holloway, 71 Kan. 1, 80 Pac. 31; Ottawa *v.* Green, 72 Kan. 214, 83 Pac. 616; Metropolitan St. R. Co. *v.* Fawcett, (Kan. 1907) 92 Pac. 543.

Kentucky. — Covington *v.* Lee, (Ky. 1905) 89 S. W. 493; Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Illinois Cent. R. Co. *v.* Proctor, (Ky. 1905) 89 S. W. 714; Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 219, 91 S. W. 685; Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1906) 97 S. W. 14; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337; Blue Grass Traction Co. *v.* Skillman, (Ky. 1907) 102 S. W. 809; Berger *v.* Standard Oil Co., (Ky. 1907) 103 S. W. 245; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167.

Maine. — Marden *v.* Portsmouth, etc., St. R. Co., 100 Me. 41, 60 Atl. 530.

Maryland. — Baltimore, etc., R. Co. *v.* Trader, (Md. 1907) 68 Atl. 12; Geiselman *v.* Schmidt, (Md. App. 1907) 68 Atl. 202.

Massachusetts. — Jordan *v.* Old Colony St. R. Co., 188 Mass. 124, 74 N. E. 315; Finnick *v.* Boston, etc., St. R. Co., 190 Mass. 382, 77 N. E. 500; Stubbs *v.* Boston, etc., St. R. Co., 193 Mass. 513, 79 N. E. 705; Chaput *v.* Haverhill, etc., St. R. Co., 194 Mass. 218, 80 N. E. 597; Moret *v.* George A. Fuller Co., 195 Mass. 118, 80 N. E. 789; Keith *v.* Worcester, etc., St. R. Co., (Mass. 1907) 82 N. E. 680.

Michigan. — Ablard *v.* Detroit United R. Co., 139 Mich. 248, 102 N. W. 741; Coffee *v.* Pere Marquette R. Co., 139 Mich. 378, 102 N. W. 953; Milbourne *v.* Arnold Electric Power Station Co., 140 Mich. 316, 103 N. W. 821; Hodge *v.* St. Louis, 146 Mich. 173, 109 N. W. 252; Barnum *v.* Grand Trunk Western R. Co., 148 Mich. 370, 111 N. W. 1036.

Minnesota. — Richardson *v.* Davis, 94 Minn. 315, 102 N. W. 868; O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805; Schutt *v.* Adair, 99 Minn. 7, 108 N. W. 811.

Mississippi. — Jackson *v.* Mobile, etc., R. Co., 89 Miss. 32, 42 So. 236.

Missouri. — Spencer *v.* St. Louis Transit Co., 111 Mo. App. 653, 86 S. W. 593; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12; Waechter *v.* St. Louis, etc., R. Co., 113 Mo. App. 270, 88 S. W. 147; Ryan *v.* St. Louis Traction Co., 190 Mo. 621, 89 S. W. 865; Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012; Walker *v.* Wabash R. Co., 193 Mo. 453, 92 S. W. 83; Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884; Haley *v.* Missouri Pac. R. Co., 197 Mo. 15, 93 S. W. 1120; Sites *v.* Knott, 197 Mo. 684, 96 S. W. 206; Fechley *v.* Springfield Traction Co., 119 Mo. App. 358, 96 S. W. 421; Diamond *v.* Kansas City, 120 Mo. App. 185, 96 S. W. 492; Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115; Brockschmidt *v.* St. Louis, etc., R. Co., 205 Mo. 435, 103 S. W. 964; Canter *v.* St. Joseph, 126 Mo. App. 629, 105 S. W. 1.

Montana. — Anderson *v.* Northern Pac. R. Co., 34 Mont. 181, 85 Pac. 884.

Nebraska. — Omaha St. R. Co. *v.* Mathiesen, 73 Neb. 820, 103 N. W. 666; Chicago, etc., R. Co. *v.* Troyer, 70 Neb. 294, 103 N. W. 680; New Omaha Thomson-Houston Electric Light Co. *v.* Dent, (Neb. 1905) 103 N. W. 1091; Hubler *v.* Johnson-McLean Co., 74 Neb. 840, 105 N. W. 247; Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368; Nicholson *v.* South Omaha, (Neb. 1906) 110 N. W. 558.

New Hampshire. — Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848; Minot *v.* Boston, etc., R. Co., 73 N. H. 317, 61 Atl. 509; Wright *v.* Boston, etc., R. Co., (N. H. 1907) 65 Atl. 687.

New Jersey. — Kathmeyer *v.* Mehl, (N. J. 1905) 60 Atl. 40; Hageman *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 834; Weston *v.* Pennsylvania R. Co., (N. J. 1907) 65 Atl. 1015.

New York. — Volosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090; Fisher *v.* Central Vermont R. Co., 109 N. Y. App. Div. 449, 95 N. Y. Supp. 693; Waters *v.* United Traction Co., 114 N. Y. App. Div. 275, 99 N. Y. Supp. 763; Dutcher *v.* Rockland Electric Co., 123 N. Y. App. Div. 765, 108 N. Y. Supp. 567.

North Carolina. — Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86; Hudson *v.* Atlantic Coast Line R. Co., 142 N. Car. 198, 55 S. E. 103; Miller *v.* Atlanta, etc., Air Line R. Co., 141 N. Car. 545, 57 S. E. 345.

Ohio. — Dayton *v.* Glaser, 76 Ohio St. 471, 81 N. E. 991; Toledo *v.* Fuller, 27 Ohio Cir. Ct. 729.

Oklahoma. — Stillwater *v.* Swisher, 16 Okla.

585, 85 Pac. 1110; Lane *v.* Choctaw, etc., R. Co., (Okla. 1907) 91 Pac. 883.

Oregon. — Abbott *v.* Oregon R. Co., 46 Oregon 540, 80 Pac. 1012.

Pennsylvania. — Cohen *v.* Philadelphia, etc., R. Co., 211 Pa. St. 227, 60 Atl. 729; McCarthy *v.* Philadelphia, etc., R. Co., 211 Pa. St. 193, 60 Atl. 778; Riegert *v.* Thackery, 212 Pa. St. 86, 61 Atl. 614; Becker *v.* Philadelphia, 212 Pa. St. 379, 61 Atl. 942; Little *v.* Central Dist., etc., Tel. Co., 213 Pa. St. 229, 62 Atl. 848; Steck *v.* Allegheny, 213 Pa. St. 573, 62 Atl. 1115; Bickel *v.* Pennsylvania R. Co., 217 Pa. St. 456, 66 Atl. 756; Fetterman *v.* Rush Tp., 28 Pa. Super. Ct. 77.

South Carolina. — Kennedy *v.* Greenville, (S. Car. 1907) 58 S. E. 989.

Tennessee. — Ridley *v.* Mobile, etc., R. Co., 114 Tenn. 727, 86 S. W. 606.

Texas. — Missouri, etc., R. Co. *v.* Purdy, 98 Tex. 557, 86 S. W. 321; Texas, etc., R. Co. *v.* Hemphill, (Tex. Civ. App. 1905) 86 S. W. 350; St. Louis, etc., R. Co. *v.* Vestal, (Tex. Civ. App. 1905) 86 S. W. 790; St. Louis Southwestern R. Co. *v.* Arnold, (Tex. Civ. App. 1905) 87 S. W. 173; Texas Midland R. Co. *v.* Ellison, (Tex. Civ. App. 1905) 87 S. W. 213; Gulf, etc., R. Co. *v.* Boyce, (Tex. Civ. App. 1905) 87 S. W. 395; Rio Grande, etc., R. Co. *v.* Martinez, (Tex. Civ. App. 1905) 87 S. W. 853; Missouri, etc., R. Co. *v.* Criswell, (Tex. Civ. App. 1905) 88 S. W. 373; International, etc., R. Co. *v.* Glover, (Tex. Civ. App. 1905) 88 S. W. 515; St. Louis Southwestern R. Co. *v.* Everett, (Tex. Civ. App. 1905) 89 S. W. 457; Cowans *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1116; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918; El Paso Electric R. Co. *v.* Kitt, (Tex. Civ. App. 1906) 91 S. W. 598; St. Louis Southwestern R. Co. *v.* Dixon, (Tex. Civ. App. 1906) 91 S. W. 626; Houston, etc., R. Co. *v.* Evans, (Tex. Civ. App. 1906) 92 S. W. 1077; International, etc., R. Co. *v.* Ploeger, (Tex. Civ. App. 1906) 96 S. W. 56; Galveston, etc., R. Co. *v.* Still, (Tex. Civ. App. 1907) 100 S. W. 176; San Antonio Traction Co. *v.* Haines, (Tex. Civ. App. 1907) 100 S. W. 788; Missouri, etc., R. Co. *v.* Brown, (Tex. Civ. App. 1907) 101 S. W. 464; Galveston, etc., R. Co. *v.* Patillo, (Tex. Civ. App. 1907) 101 S. W. 492; Galveston, etc., R. Co. *v.* Morrison, (Tex. Civ. App. 1907) 102 S. W. 143; City of Cleburne *v.* Elder, (Tex. Civ. App. 1907) 102 S. W. 464; St. Louis Southwestern R. Co. *v.* Boyd, (Tex. Civ. App. 1907) 105 S. W. 519; Northern Texas Traction Co. *v.* Nelson, (Tex. Civ. App. 1907) 105 S. W. 846; St. Louis Southwestern R. Co. *v.* Cunningham, (Tex. Civ. App. 1907) 106 S. W. 407; Chicago, etc., R. Co. *v.* Cleaver, (Tex. Civ. App. 1907) 106 S. W. 721; Runnells *v.* Pecos, etc., R. Co., (Tex. Civ. App. 1908) 107 S. W. 647.

Utah. — Hickey *v.* Rio Grande Western R. Co., 29 Utah 392, 82 Pac. 29; Steed *v.* Rio Grande Western R. Co., 29 Utah 448, 82 Pac. 476; Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Virginia. — Wilkie *v.* Richmond Traction Co., 105 Va. 290, 54 S. E. 43; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

Washington. — Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323; Niemyer *v.* Washington Water Power Co., 45 Wash. 170, 88 Pac. 103; Duteau *v.* Seattle Electric Co., 45 Wash. 418, 88 Pac. 755; Lampe *v.* Jacobsen, (Wash. 1907) 90 Pac. 654; Stone *v.* Smith-Premier Typewriter Co., (Wash. 1908) 93 Pac. 209.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

Wisconsin. — Lightfoot *v.* Winnebago Traction Co., 123 Wis. 479, 102 N. W. 30; Morey *v.* Lake Superior Terminal, etc., Co., 125 Wis. 148, 103 N. W. 271; Owen *v.* Portage Telephone Co., 126 Wis. 412, 105 N. W. 924; Dralle *v.* Reedsburg, 130 Wis. 347, 110 N. W. 210; Karr *v.* Milwaukee Light, etc., Co., (Wis. 1907) 113 N. W. 62; Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738.

"The standard from which to determine the question as to whether the plaintiff exercised such care as a reasonably prudent person would exercise under the like circumstances is the common knowledge and experience of men, and not the scientific knowledge and experience possessed by experts." Morrison *v.* Lee, (N. Dak. 1907) 113 N. W. 1025.

379. **1. "Gross Negligence."** — Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 616, 86 Pac. 903; Illinois Cent. R. Co. *v.* Cane, (Ky. 1906) 90 S. W. 1061; Yazoo, etc., R. Co. *v.* Block, 86 Miss. 426, 38 So. 372; Banks *v.* Braman, 188 Mass. 367, 74 N. E. 594. See also cases cited *infra*, **444.** 1.

Under Statutes. — Kenny *v.* Boston, etc., R. Co., 188 Mass. 127, 74 N. E. 309; Dolphin *v.* Worcester Consol. St. R. Co., 189 Mass. 270, 75 N. E. 635; Manning *v.* Conway, 192 Mass. 122, 78 N. E. 401; Lanci *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 1; Osteen *v.* Southern R. Co., 76 S. Car. 368, 57 S. E. 196; Drawdy *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 58 S. E. 980.

2. There Are No Degrees of Negligence. — Kelly *v.* Malott, (C. C. A.) 135 Fed. 74; Chicago, etc., R. Co. *v.* Hamler, 215 Ill. 525, 3 Ann. Cas. 42, 74 N. E. 705; Valparaiso *v.* Schwerdt, (Ind. App. 1907) 82 N. E. 923. See also Hutcheis *v.* Cedar Rapids, etc., R. Co., 128 Iowa 279, 103 N. W. 779.

In Tennessee There Is a Modification of the doctrine of contributory negligence. Louisville, etc., R. Co. *v.* Martin, 113 Tenn. 266, 87 S. W. 418; Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902. See also *infra*, **452.** 1.

380. **2. Must Be Proximate** — *United States.* — Coney Island Co. *v.* Dennan, (C. C. A.) 149 Fed. 687, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 380.

Alabama. — Alabama G. S. R. Co. *v.* Bonner, (Ala. 1905) 39 So. 619; Central of Georgia R. Co. *v.* Hyatt, (Ala. 1907) 43 So. 867.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898.

Indiana. — Indianapolis, etc., Rapid Transit Co. *v.* Edwards, 36 Ind. App. 202, 74 N. E. 533; Abney *v.* Indiana Union Traction Co., (Ind. App. 1908) 83 N. E. 387.

Massachusetts. — Smith *v.* Thomson-Houston Electric Co., 188 Mass. 371, 74 N. E. 664.

Mississippi. — Illinois Cent. R. Co. *v.* Bethea, 88 Miss. 119, 40 So. 813.

Missouri. — Spencer *v.* St. Louis Transit Co., 111 Mo. App. 653, 86 S. W. 593.

Nebraska. — Holmes *v.* Chicago, etc., R. Co., 73 Neb. 489, 103 N. W. 77.

New Hampshire. — Hanson *v.* Manchester St. R. Co., 73 N. H. 395, 62 Atl. 595.

New York. — Gerber *v.* Boorstein, 113 N. Y. App. Div. 808, 99 N. Y. Supp. 1091.

North Carolina. — Miller *v.* Atlanta, etc., Air Line R. Co., 141 N. Car. 545, 57 S. E. 345.

Pennsylvania. — Ditchfield *v.* Philadelphia, etc., Traction Co., 32 Pa. Super. Ct. 531.

South Carolina. — Anderson *v.* Southern R. Co., 70 S. Car. 490, 50 S. E. 202.

Texas. — El Paso, etc., R. Co. *v.* Darr, (Tex. Civ. App. 1906) 93 S. W. 166.

3. Tennessee Coal, etc., Co. *v.* Bridges, 144 Ala. 229, 39 So. 902; Adams *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 105 S. W. 526; Gage *v.* Springston Lumber Co., (Wash. 1907) 91 Pac. 558, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 380.

381. **1.** Wilson *v.* Southern R. Co., 73 S. Car. 481, 53 S. E. 968.

2. Southern R. Co. *v.* Jones, 143 Ala. 328, 39 So. 118, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 381; Pittsburgh, etc., R. Co. *v.* Cozatt, 39 Ind. App. 682, 79 N. E. 534; Anderson *v.* Southern R. Co., 70 S. Car. 490, 50 S. E. 202.

Negligence to be a proximate cause of an injury "must contribute directly and materially" to its infliction. Indianapolis, etc., Rapid Transit Co. *v.* Edwards, 36 Ind. App. 202, 74 N. E. 533.

For Other Cases on proximate cause see the following:

California. — Jansen *v.* Southern Pac. Co., 5 Cal. App. 12, 89 Pac. 616.

Colorado. — Denver *v.* Utzler, (Colo. 1906) 88 Pac. 143.

Connecticut. — Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Illinois. — Illinois Cent. R. Co. *v.* Siler, 229 Ill. 390, 82 N. E. 362.

Missouri. — Houck *v.* Chicago, etc., R. Co., 116 Mo. App. 559, 92 S. W. 738.

New Hampshire. — Hanson *v.* Manchester St. R. Co., 73 N. H. 395, 62 Atl. 595.

Pennsylvania. — Morford *v.* Sharpsville, 28 Pa. Super. Ct. 544; Ditchfield *v.* Philadelphia, etc., Traction Co., 32 Pa. Super. Ct. 531.

South Carolina. — Hunter *v.* Atlantic Coast Line R. Co., 72 S. Car. 336, 51 S. E. 860; Cooper *v.* Richland County, 76 S. Car. 202, 56 S. E. 958.

Texas. — Missouri, etc., R. Co. *v.* Purdy, 98 Tex. 557, 86 S. W. 321.

Virginia. — Foreman *v.* Norfolk, etc., Co., 106 Va. 770, 56 S. E. 805.

Wisconsin. — Owen *v.* Portage Telephone Co., 126 Wis. 412, 105 N. W. 924; Sorensen *v.* J. I. Case Threshing Mach. Co., 129 Wis. 366, 109 N. W. 84.

Canada. — Quebec, etc., Ferry Co. *v.* Jess, 35 Can. Sup. Ct. 693.

3. Reiter-Connolly Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514; Doherty *v.* Des Moines City R. Co., (Iowa 1907) 114 N. W. 183; Hansen *v.* Manchester St. R. Co., 73 N. H. 395, 62 Atl. 595; Columbus R. Co. *v.* Connor, 27 Ohio Cir. Ct. 229; Black *v.* New York, etc., R. Co., 193 Mass. 448, 9 Ann. Cas. 485, 79 N. E. 797; Waechter *v.* St. Louis, etc., R. Co., 113 Mo. App. 270, 88 S. W. 147; Short *v.* Spokane, 41 Wash. 257, 83 Pac. 183.

382. **5. Discovered Peril** — *United States.* — Chunn *v.* City, etc., R. Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63; Garside *v.* New York Transp. Co., 146 Fed. 588.

Alabama. — Alabama G. S. R. Co. *v.* Fulton, 144 Ala. 332, 39 So. 282; Birmingham R., etc., Co. *v.* Ryan, 148 Ala. 69, 41 So. 616; Daniels *v.* Carney, 148 Ala. 81, 42 So. 452; Johnson *v.* Birmingham R., etc., Co., (Ala. 1907) 43 So. 33; Duncan *v.* St. Louis, etc., R. Co., (Ala 1907) 44 So. 418; Harris *v.* Nashville, etc., R. Co., (Ala. 1907) 44 So. 962; Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032; Tuscaloosa Belt R. Co. *v.* Fuller, (Ala. 1907) 45 So. 156; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177; Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238. See also Garth *v.* Alabama Traction Co., 148 Ala. 96, 42 So. 627.

Arkansas. — St. Louis, etc., R. Co. *v.* Hill, 74 Ark. 478, 86 S. W. 303; St. Louis, etc., R. Co. *v.* Evans, 74 Ark. 407, 86 S. W. 426; Griffie *v.* St. Louis, etc., R. Co., 80 Ark. 186, 96 S. W. 750; Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976; Ft. Smith Light, etc., Co. *v.* Flint, 81 Ark. 231, 99 S. W. 79; St. Louis, etc., R. Co. *v.* Cain, (Ark. 1907) 104 S. W. 533. See also St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613; Chicago, etc., R. Co. *v.* Bunch, 82 Ark. 522, 102 S. W. 369.

California. — Sauer *v.* Eagle Brewing Co., 3 Cal. App. 127, 84 Pac. 425; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Johnson *v.* Center, 4 Cal. App. 616, 88 Pac. 727; Jansen *v.* Southern Pac. Co., 5 Cal. App. 12, 89 Pac. 616; Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976; Zipperlen *v.* Southern Pac. Co., (Cal. App. 1907) 93 Pac. 1049. See also Rowe *v.* Southern California R. Co., 4 Cal. App. 1, 87 Pac. 220.

Connecticut. — Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

District of Columbia. — Georgetown, etc., R. Co. *v.* Smith, 25 App. Cas. (D. C.) 259.

Illinois. — Star Brewery *v.* Hauck, 22 Ill. 348, 78 N. E. 827; Pendleton *v.* Chicago City R. Co., 120 Ill. App. 405.

Iowa. — McBride *v.* Des Moines City R. Co., 134 Iowa 398, 109 N. W. 618; Doherty *v.* Des Moines City R. Co., (Iowa 1907) 114 N. W. 183.

Kansas. — See Dyerson *v.* Union Pac. R. Co., 74 Kan. 528, 87 Pac. 680.

Kentucky. — Glenn *v.* Louisville, etc., R. Co., (Ky. 1906) 90 S. W. 975; Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; South

Covington, etc., R. Co. *v.* Cleveland, (Ky. 1907) 100 S. W. 283; Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810; Davis *v.* Ohio Valley Banking, etc., Co., (Ky. 1908) 106 S. W. 843; Hovius *v.* Cincinnati, etc., R. Co., (Ky. 1908) 107 S. W. 214. See also Louisville, etc., R. Co. *v.* Hathaway, (Ky. 1905) 89 S. W. 724; Louisville, etc., R. Co. *v.* Jolly, (Ky. 1906) 90 S. W. 977.

Michigan. — Daniels *v.* Bay City Traction, etc., Co., 143 Mich. 493, 107 N. W. 94.

Minnesota. — Cameron *v.* Duluth-Superior Traction Co., 94 Minn. 104, 102 N. W. 208; Teal *v.* St. Paul City R. Co., 96 Minn. 379, 104 N. W. 945; Anderson *v.* Minneapolis, etc., R. Co., (Minn. 1908) 114 N. W. 1123.

Missouri. — Woods *v.* Wabash R. Co., 188 Mo. 229, 86 S. W. 1082; Hensler *v.* Stix, 113 Mo. App. 162, 88 S. W. 108; Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Jager *v.* Metropolitan St. R. Co., 114 Mo. App. 10, 89 S. W. 62; Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Latson *v.* St. Louis Transit Co., 192 Mo. 449, 91 S. W. 109; Lange *v.* Missouri Pac. R. Co., 115 Mo. App. 582, 91 S. W. 989; Rodgers *v.* St. Louis Transit Co., 117 Mo. App. 678, 92 S. W. 1154; Coleman *v.* St. Louis Transit Co., 117 Mo. App. 423, 93 S. W. 920; Peterson *v.* St. Louis Transit Co., (Mo. 1906) 97 S. W. 860; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Wallack *v.* St. Louis Transit Co., 123 Mo. App. 160, 100 S. W. 496; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655; White *v.* St. Louis, etc., R. Co., 202 Mo. 539, 101 S. W. 14; Smith *v.* Wabash R. Co., (Mo. App. 1908) 107 S. W. 22; Prendeville *v.* St. Louis Transit Co., (Mo. App. 1908) 107 S. W. 453. See also Masterson *v.* St. Louis Transit Co., 204 Mo. 507, 103 S. W. 48.

New Hampshire. — Yeaton *v.* Boston, etc., R. Co., 73 N. H. 285, 61 Atl. 522; Hanson *v.* Manchester St. R. Co., 73 N. H. 395, 62 Atl. 595. See also Duggan *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 829.

New York. — Thayer *v.* New York Cent., etc., R. Co., 117 N. Y. App. Div. 318, 102 N. Y. Supp. 135. See also Kerin *v.* United Traction Co., 117 N. Y. App. Div. 314, 102 N. Y. Supp. 42.

South Dakota. — Edwards *v.* Chicago, etc., R. Co., (S. Dak. 1907) 110 N. W. 832.

Tennessee. — Kansas City, etc., R. Co. *v.* Williford, 115 Tenn. 108, 88 E. W. 178. See also Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

Texas. — St. Louis, etc., R. Co. *v.* Vestal, (Tex. Civ. App. 1905) 86 S. W. 790; Hendrix *v.* Texas, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 461; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918; Gulf, etc., R. Co. *v.* Gibson, (Tex. Civ. App. 1906) 93 S. W. 469; Texas, etc., R. Co. *v.* Brannon, (Tex. Civ. App. 1906) 96 S. W. 1005; Houston, etc., R. Co. *v.* Ramsey, (Tex. Civ. App. 1906) 97 S. W. 1067; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863; Johnson *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 206; Dallas Consol. Electric St. R. Co. *v.* Conn, (Tex. Civ. App. 1907) 100 S. W. 1019; San Antonio, etc., R. Co. *v.* McMillan, (Tex. Civ. App. 1907) 102 S. W. 103; Texas, etc., R. Co. *v.* Patterson, (Tex. Civ. App. 1907) 102 S. W. 138; International, etc., R. Co. *v.* Munn, (Tex. Civ. App. 1907) 102 S. W. 442; Missouri, etc., R. Co. *v.* Saunders, (Tex. Civ. App. 1907) 103 S. W. 457; Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408; Texas, etc., R. Co. *v.* Tucker, (Tex. Civ. App. 1907) 106 S. W. 764; Nacogdoches, etc., R. Co. *v.* Beene, (Tex. Civ. App. 1907) 106 S. W. 456; Houston, etc., R. Co. *v.* Finn, (Tex. Civ. App. 1908) 107 S. W. 94. See also Houston, etc., R. Co. *v.* O'Donnell, (Tex. 1906) 92 S. W. 409; International, etc., R. Co. *v.* Ploeger, (Tex. Civ. App. 1906) 96 S. W. 56.

Virginia. — Norfolk, etc., R. Co. *v.* Spencer, 104 Va. 657, 52 S. E. 310; Norfolk, etc., R. Co. *v.* Dean, 107 Va. 505, 59 S. E. 389.

West Virginia. — Kelley *v.* Ohio River R. Co., 58 W. Va. 216, 52 S. E. 520.

Washington. — Dean *v.* Oregon R., etc., Co., 38 Wash. 565, 80 Pac. 842; Duteau *v.* Seattle Electric Co., 45 Wash. 418, 88 Pac. 755. See also Hall *v.* Washington, etc., Co., (Wash. 1907) 89 Pac. 553.

"**The Principle** upon which the doctrine of discovered peril rests does not include, but excludes, the failure of the defendant to make discovery." San Antonio Traction Co. *v.* Kelleher, (Tex. Civ. App. 1908) 107 S. W. 64.

384. 1. Sawyer *v.* Roanoke R., etc., Co., 145 N. Car. 24, 58 S. E. 598. See also Sims *v.* St. Louis, etc., R. Co., 116 Mo. App. 572, 92 S. W. 909.

385. 1. **The Duty of Discovering the Peril** — *United States.* — Garside *v.* New York Transp. Co., 146 Fed. 588, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 385; Klutt *v.* Philadelphia, etc., R. Co., (C. C. A.) 142 Fed. 394; Philadelphia, etc., R. Co. *v.* Klutt, (C. C. A.) 148 Fed. 818.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 331, 85 Pac. 630.

Delaware. — Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

District of Columbia. — Hawley *v.* Columbia R. Co., 25 App. Cas. (D. C.) 1.

Illinois. — Star Brewery *v.* Hauck, 222 Ill. 348, 78 N. E. 827.

Kentucky. — Louisville R. Co. *v.* Hoskins, (Ky. 1905) 88 S. W. 1087; McCabe *v.* Maysville, etc., R. Co., (Ky. 1905) 89 S. W. 683; Illinois Cent. R. Co. *v.* Proctor, (Ky. 1905) 89 S. W. 714; Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776; Chesapeake, etc., R. Co. *v.* Perkins, (Ky. 1907) 105 S. W. 148. See also Louisville R. Co. *v.* Bossmeyer, (Ky. 1907) 104 S. W. 337.

Missouri. — Woods *v.* Wabash R. Co., 188 Mo. 229, 86 S. W. 1082; McQuade *v.* St. Louis, etc., R. Co., 200 Mo. 150, 98 S. W. 552; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Campbell *v.* St. Louis Transit Co., 121 Mo. App. 406, 99 S. W. 58; Brown *v.* St. Louis, etc., R. Co., (Mo. App. 1907) 106 S. W. 83.

New Hampshire. — See Duggan *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 829.

Ohio. — Columbus R. Co. *v.* Connor, 27 Ohio Cir. Ct. 229.

South Carolina. — See Harbert *v.* Atlanta, etc., R. Co., (S. Car. 1907) 59 S. E. 644.

Texas. — See Hutchens *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 89 S. W. 24.

Virginia. — Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321. See also Norfolk, etc., R. Co. *v.* Johnson, 103 Va. 787, 50 S. E. 268; Norfolk, etc., R. Co. *v.* Carr, 106 Va. 508, 56 S. E. 276.

"Last Clear Chance" Doctrine — *Indiana.* — Indianapolis St. R. Co. *v.* Bolin, 39 Ind. App. 169, 78 N. E. 210; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514.

Louisiana. — Harvey *v.* Louisiana Western R. Co., 114 La. 1065, 38 So. 859.

Missouri. — Reyburn *v.* Missouri Pac. R. Co., 187 Mo. 565, 86 S. W. 174; Hensler *v.* Stix, 113 Mo. App. 162, 88 S. W. 108; Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Waddell *v.* Metropolitan St. R. Co., 113 Mo. App. 680, 88 S. W. 765.

Montana. — Riley *v.* Northern Pac. R. Co., (Mont. 1908) 93 Pac. 948.

Nebraska. — See McLean *v.* Omaha, etc., R., etc., Co., 72 Neb. 447, 103 N. W. 285.

New Hampshire. — Yeaton *v.* Boston, etc., R. Co., 73 N. H. 285, 61 Atl. 522.

North Carolina. — Reid *v.* Atlanta, etc., Air Line R. Co., 140 N. Car. 146, 52 S. E. 307; Ray *v.* Aberdeen, etc., R. Co., 141 N. Car. 84, 53 S. E. 622; Sawyer *v.* Roanoke R., etc., Co., 145 N. Car. 24, 58 S. E. 598.

Virginia. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211.

See also the authorities collected in the dissenting opinion of Jaggard, J., in Anderson *v.* Minneapolis, etc., R. Co., (Minn. 1908) 114 N. W. 1123.

In Iowa its application is limited, it seems, to cases of discovered peril except in the case of street railroads. Doherty *v.* Des Moines City R. Co., (Iowa 1907) 114 N. W. 183.

Doctrine Unrecognized. — Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032; St. Louis Southwestern R. Co. *v.* Cochran, 77 Ark. 398, 91 S. W. 747; Barry *v.* Kansas City, etc., R. Co., 77 Ark. 401, 91 S. W. 748; Owen *v.* Portage Telephone Co., 126 Wis. 412, 105 N. W. 924.

How Applied to Trespassers. — It is sometimes said that in crowded places some care must be taken by railroads on behalf of trespassers. Shaw *v.* Georgia R. Co., 127 Ga. 8, 55 S. E. 960; Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Williams *v.* Metropolitan St. R. Co., 114 Mo. App. 1, 89 S. W. 59; Eppstein *v.* Missouri Pac. R. Co., 197 Mo. 720, 94 S. W. 967; Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402. See also Rader *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 774; Griffin *v.* Seaboard Air Line R. Co., 138 N. Car. 55, 50 S. E. 516. And that a failure to look out for them is wantonness. Alabama G. S. R. Co. *v.* Guest, 144 Ala. 373, 39 So. 654.

"Humanitarian Doctrine" — *Missouri.* — The Missouri decisions on this subject are in a hopeless tangle. In Clancy *v.* St. Louis Transit Co., 192 Mo. 615, 91 S. W. 509, it was said that the "humanitarian doctrine" prevailed in that state, requiring "an element of recklessness, wantonness, or wilfulness in the case, as distinguished from mere ordinary negligence, or as distinguished from the 'last chance doctrine.'" See also Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; Sites *v.* Knott, 197 Mo. 684, 96 S. W. 206; Abbott *v.* Kansas City El. R. Co., 121 Mo. App. 580, 97 S. W. 198; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; Recktenwald *v.* Metropolitan St. R. Co., 121 Mo. App. 595, 97 S. W. 557; Mayes *v.* Metropolitan St. R. Co., 121 Mo. App. 614, 97 S. W. 612; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Mertens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; Richmond *v.* Metropolitan St. R. Co., 123 Mo. App. 495, 100 S. W. 54; Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566; Grout *v.* Central Electric R. Co., 125 Mo. App. 552, 102 S. W. 1026; Ghio *v.* Metropolitan St. R. Co., 125 Mo. App. 710, 103 S. W. 142; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006.

Canada — Theory of "Ultimate Negligence." — Brenner *v.* Toronto R. Co., 13 Ont. L. Rep. 423.

386. **1.** Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

2. Washington Mills *v.* Cox, (C. C. A.) 157 Fed. 634; Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948. See also Snow *v.* Coe Brass Mfg. Co., (Conn. 1907) 66 Atl. 881; Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Southern R. Co. *v.* Gore, 128 Ga. 627, 58 S. E. 180; Western, etc., R. Co. *v.* York, 129 Ga. 687, 58 S. E. 183.

387. **1.** Eppstein *v.* Missouri Pac. R. Co., 197 Mo. 720, 94 S. W. 967; Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402; Hall *v.* Washington Water Power Co., (Wash. 1907) 89 Pac. 553. See also Western Union Telegraph Co. *v.* Barlow, 51 Fla. 358, 40 So. 491, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 387.

2. Illinois Cent. R. Co. *v.* Ackerman, (C. C. A.) 144 Fed. 959; Eppstein *v.* Missouri Pac. R. Co., 197 Mo. 720, 94 S. W. 967; Baltimore, etc., R. Co. *v.* Lee, 106 Va. 32, 55 S. E. 1. See also Little Rock Traction, etc., Co. *v.* Kimbro, 75 Ark. 216, 87 S. W. 644.

3. Metropolitan St. R. Co. *v.* Summers, 75 Kan. 342, 89 Pac. 652.

The contributory negligence of the person injured on a railroad track is a bar to a recovery founded on the failure of an engineer to look out for persons on the track. Such failure is antecedent. Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032.

4. Northern Pac. R. Co. *v.* Jones, (C. C. A.) 144 Fed. 47; Jansen *v.* Southern Pac. Co., 5 Cal. App. 12, 89 Pac. 616; Matteson *v.* Southern Pac. Co., (Cal. App. 1907) 92 Pac. 101; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Dyerson *v.* Union Pac. R. Co., 74 Kan. 536, 87 Pac. 680, *quoting* 7 AM. AND ENG. ENCYC. OF

LAW (2d ed.) 387; Missouri Pac. R. Co. *v.* Bentley, (Kan. 1907) 93 Pac. 150; Sims *v.* St. Louis, etc., R. Co., 116 Mo. App. 572, 92 S. W. 909; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256; Kruger *v.* Omaha, etc., St. R. Co., (Neb. 1908) 114 N. W. 571.

388. **1.** See St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343; Rowe *v.* Whatcom County R., etc., Co., 44 Wash. 658, 87 Pac. 921.

2. Louisville, etc., R. Co. *v.* Mount, (Ky. 1907) 101 S. W. 1182. See also Southern R. Co. *v.* Cunningham, 123 Ga. 90, 50 S. E. 979.

3. Georgia R., etc., Co. *v.* McAllister, 126 Ga. 447, 54 S. E. 957; Kimberly *v.* Howland, 143 N. Car. 398, 55 S. E. 778. See also Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207.

4. San Antonio, etc., R. Co. *v.* Kivlin, (Tex. Civ. App. 1906) 93 S. W. 709. See also Roenbeck *v.* Brooklyn Heights R. Co., 123 N. Y. App. Div. 606, 108 N. Y. Supp. 80.

5. Roswell *v.* Davenport, (N. Mex. 1907) 89 Pac. 256, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 388; St. Louis Southwestern R. Co. *v.* Johnson, (Tex. 1906) 97 S. W. 1039. See also Smart *v.* Kansas City, (Mo. 1907) 105 S. W. 709.

7. Pomroy *v.* Bangor, etc., R. Co., 102 Me. 497, 67 Atl. 561.

Malpractice. — It is a good defense to an action for malpractice that the patient's negligence at the time contributed to the injury, but if the patient's negligence is subsequent it will not relieve against the primary liability, but may be shown in mitigation of damages. Beadle *v.* Paine, 46 Oregon 424, 80 Pac. 903.

8. Foley *v.* Pioneer Min., etc., Co., 144 Ala. 178, 40 So. 273.

389. **1.** Pomroy *v.* Bangor, etc., R. Co., 102 Me. 497, 67 Atl. 561; Smart *v.* Kansas City, (Mo. 1907) 105 S. W. 709.

3. Colorado Springs, etc., R. Co. *v.* Nichols, (Colo. 1907) 92 Pac. 691; Hendrix *v.* Texas, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 461.

6. See Georgia R., etc., Co. *v.* McAllister, 126 Ga. 447, 54 S. E. 957.

390. **1.** Young *v.* Missouri Pac. R. Co., 113 Mo. App. 636, 88 S. W. 767.

5. See St. Louis Southwestern R. Co. *v.* Johnson, (Tex. 1906) 97 S. W. 1039.

391. **1.** Hooper *v.* Bacon, 101 Me. 533, 64 Atl. 950. See also Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359. But see Wade *v.* Mt. Vernon, 124 N. Y. App. Div. 927, 108 N. Y. Supp. 241; Viou *v.* Brooks-Scanlon Lumber Co., 99 Minn. 97, 9 Ann. Cas. 318, 108 N. W. 801.

Injured Person Must Use Ordinary Care for His Cure. — Rowe *v.* Whatcom County R., etc., Co., 44 Wash. 658, 87 Pac. 921.

2. *United States.* — Coney Island Co. *v.* Dennan, (C. C. A.) 149 Fed. 687.

Georgia. — See Mandeville Mills *v.* Dale, 2 Ga. App. 607, 58 S. E. 1060.

Illinois. — East St. Louis, etc., R. Co. *v.* Zink, 229 Ill. 180, 82 N. E. 283.

Indiana. — Ft. Wayne Cooperage Co. *v.* Page, (Ind. App. 1907) 82 N. E. 83; Indianapolis St. R. Co. *v.* Hoffman, (Ind. App. 1907) 82 N. E. 543.

Iowa. — Gardner *v.* Waterloo Cream Separator Co., 134 Iowa 6, 111 N. W. 316.

Kansas. — Atchison, etc., R. Co. *v.* Wilkie, (Kan. 1907) 90 Pac. 775.

Massachusetts. — Hamilton *v.* Taylor, 195 Mass. 68, 80 N. E. 592; Power *v.* Beattie, 194 Mass. 170, 80 N. E. 606.

Missouri. — Newvahner *v.* Wabash R. Co., 126 Mo. App. 643, 105 S. W. 21.

New Hampshire. — Hobbs *v.* G. W. Blanchard, etc., Co., (N. H. 1906) 65 Atl. 382; Minot *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 825.

Pennsylvania. — Waltz *v.* Pennsylvania R. Co., 31 Pa. Super. Ct. 286.

Texas. — Gulf, etc., R. Co. *v.* Wittnebert, (Tex. Civ. App. 1907) 104 S. W. 424.

Utah. — Larkin *v.* Saltair Beach Co., 30 Utah 86, 83 Pac. 686.

Vermont. — Drown *v.* New England Telephone, etc., Co., (Vt. 1907) 66 Atl. 801.

Wisconsin. — Leque *v.* Madison Gas, etc., Co., (Wis. 1907) 113 N. W. 946.

392. **1.** *United States.* — Chunn *v.* City, etc., R. Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63; Dover *v.* Gloucester Electric Co., 155 Fed. 256; Union Light, etc., Co. *v.* Arntson, (C. C. A.) 157 Fed. 540.

California. — Bresee *v.* Los Angeles Traction Co., 149 Cal. 131, 85 Pac. 152.

District of Columbia. — Clements *v.* Potomac Electric Power Co., 26 App. Cas. (D. C.) 482.

Indiana. — Rink *v.* Lowry, 38 Ind. App. 132, 77 N. E. 967; Pittsburgh, etc., R. Co. *v.* Simons, 168 Ind. 333, 79 N. E. 911.

Iowa. — Ambroz *v.* Cedar Rapids Electric Light, etc., Co., 131 Iowa 336, 108 N. W. 540.

Louisiana. — Taliaferro *v.* Vicksburg, etc., R. Co., 115 La. 443, 39 So. 437.

Massachusetts. — Pickwick *v.* McCauliff, 193 Mass. 70, 8 Ann. Cas. 1041, 78 N. E. 730; Brown *v.* Nawn, 195 Mass. 161, 80 N. E. 791.

Michigan. — Karrer *v.* Detroit, 142 Mich. 331, 106 N. W. 64; Fitzpatrick *v.* Michigan Cent. R. Co., 149 Mich. 194, 112 N. W. 915. See also McQuisten *v.* Detroit Citizens' St. R. Co., 147 Mich. 67, 110 N. W. 118.

Montana. — Anderson *v.* Northern Pac. R. Co., 34 Mont. 181, 85 Pac. 884.

Nebraska. — Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596.

New Jersey. — See Nolan *v.* Bridgeton, etc., Traction Co., (N. J. 1907) 65 Atl. 992.

New York. — Cranch *v.* Brooklyn Heights R. Co., 107 N. Y. App. Div. 341, 95 N. Y. Supp. 169. See also Dutcher *v.* Rockland Electric Co., 123 N. Y. App. Div. 765, 108 N. Y. Supp. 567.

North Carolina. — Miller *v.* Atlanta, etc., Air Line R. Co., 144 N. Car. 545, 57 S. E. 345.

Texas. — See Ft. Worth, etc., R. Co. *v.* Morris, (Tex. Civ. App. 1907) 101 S. W. 1038.

Washington. — Abby *v.* Wood, 43 Wash. 379, 86 Pac. 558; Curtis *v.* Barber Asphalt Pav. Co., 44 Wash. 334, 87 Pac. 345.

Wisconsin. — See Fay *v.* Minneapolis, etc., R. Co., 131 Wis. 639, 111 N. W. 683.

2. Southern R. Co. *v.* Sittasen, (Ind. 1905) 74 N. E. 898; Snyder *v.* Mutual Telephone Co., (Iowa 1907) 112 N. W. 776; Kerr *v.* Boston El. R. Co., 188 Mass. 434, 74 N. E. 669; Haley

v. Missouri Pac. R. Co., 197 Mo. 15, 93 S. W. 1120. See also Wolf *v.* City R. Co., (Oregon 1907) 91 Pac. 460.

3. Spencer *v.* St. Louis Transit Co., 111 Mo. App. 653, 86 S. W. 593.

"Momentary forgetfulness of a known danger does not of itself, as a matter of law, necessarily constitute contributory negligence." Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323.

393. **1.** *United States.* — Casey *v.* Chicago, etc., R. Co., (C. C. A.) 157 Fed. 66.

Arkansas. — Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976; St. Louis, etc., R. Co. *v.* Ferrell, 84 Ark. 270, 105 S. W. 263.

California. — Hatch *v.* McCloud River Lumber Co., 150 Cal. 111, 88 Pac. 355; Shade *v.* Bay Counties Power Co., (Cal. 1907) 92 Pac. 62.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778.

Georgia. — Southern R. Co. *v.* Rowe, 2 Ga. App. 557, 59 S. E. 462; Georgia R., etc., Co. *v.* Williams, (Ga. App. 1907) 59 S. E. 846; Southern R. Co. *v.* Mouchet, (Ga. App. 1907) 59 S. E. 927.

Kansas. — Limb *v.* Kansas City, etc., R. Co., 73 Kan. 220, 84 Pac. 136.

Kentucky. — Illinois Cent. R. Co. *v.* Willis, (Ky. 1906) 97 S. W. 21; Citizens' Telephone Co. *v.* Westcott, (Ky. 1907) 99 S. W. 1153; Jones *v.* Illinois Cent. R. Co., (Ky. 1907) 104 S. W. 258.

Louisiana. — Riley *v.* Shreveport Traction Co., 114 La. 135, 38 So. 83; Shamblin *v.* New Orleans, etc., R. Co., 114 La. 467, 38 So. 421; McDonnell *v.* New Orleans Cypress Co., 115 La. 67, 38 So. 896; Sanders *v.* Texas, etc., R. Co., 118 La. 174, 42 So. 764.

Massachusetts. — Bartlett *v.* Worcester Consol. St. R. Co., 189 Mass. 360, 75 N. E. 706; Madden *v.* Boston El. R. Co., 194 Mass. 491, 80 N. E. 447.

Mississippi. — Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788.

Missouri. — Hutchinson *v.* Missouri Pac. R. Co., 195 Mo. 546, 93 S. W. 931; Eppstein *v.* Missouri Pac. R. Co., 197 Mo. 720, 94 S. W. 967; Diamond *v.* Kansas City, 120 Mo. App. 185, 96 S. W. 492; Frye *v.* St. Louis, etc., R. Co., 200 Mo. 377, 98 S. W. 566.

New Jersey. — Nirk *v.* Jersey City, etc., Co., (N. J. 1907) 68 Atl. 158.

New York. — Cranch *v.* Brooklyn Heights R. Co., 186 N. Y. 310, 78 N. E. 1078; Gregory *v.* Elmira Water, etc., Co., 190 N. Y. 363, 83 N. E. Rep. 32; Kramer *v.* Brooklyn Heights R. Co., 190 N. Y. 310, 83 N. E. Rep. 35; Hanson *v.* Whalen, 110 N. Y. App. Div. 793, 97 N. Y. Supp. 237; Mangan *v.* Hudson River Telephone Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 388, 100 N. Y. Supp. 539; Healy *v.* United Traction Co., 115 N. Y. App. Div. 868, 101 N. Y. Supp. 331; Grathwohl *v.* New York Cent., etc., R. Co., 116 N. Y. App. Div. 176, 101 N. Y. Supp. 667; Litzour *v.* New York City R. Co., 116 N. Y. App. Div. 477, 101 N. Y. Supp. 990; Feldheim *v.* Brooklyn, etc., R. Co., 122 N. Y. App. Div. 883, 107 N. Y. Supp. 413.

Ohio. — Akron *v.* Keister, 27 Ohio Cir. Ct. 809.

Oregon. — Carroll *v.* Grande Ronde Electric Co., 47 Oregon 424, 84 Pac. 389.

Pennsylvania. — Harding *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 69, 66 Atl. 151.

Texas. — St. Louis Southwestern R. Co. *v.* Highnote, (Tex. 1905) 86 S. W. 923; Texas Midland R. Co. *v.* Ellison, (Tex. Civ. App. 1905) 87 S. W. 213; Houston, etc., R. Co. *v.* Evans, (Tex. Civ. App. 1906) 92 S. W. 1077.

Washington. — Miller *v.* Moran Bros. Co., 39 Wash. 631, 81 Pac. 1089.

2. Metropolitan St. R. Co. *v.* Summers, 75 Kan. 342, 89 Pac. 652.

3. Spencer *v.* St. Louis Transit Co., 111 Mo. App. 653, 86 S. W. 593.

4. Highland Park *v.* Gerkin, 122 Ill. App. 149. See also Shamblin *v.* New Orleans, etc., R. Co., 114 La. 467, 38 So. 421.

394. **1.** Calvert *v.* Springfield Electric Light, etc., Co., 231 Ill. 290, 83 N. E. 184; Blue Grass Traction Co. *v.* Skillman, (Ky. 1907) 102 S. W. 809; Davis *v.* Ohio Valley Banking, etc., Co., (Ky. 1908) 106 S. W. 843. See also Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94.

2. Senf *v.* St. Louis, etc., R. Co., 112 Mo. App. 74, 86 S. W. 887; Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596. See also Bowles *v.* Chesapeake, etc., R. Co., (W. Va. 1907) 57 S. E. 131.

395. **1.** Ridley *v.* Mobile, etc., R. Co., 114 Tenn. 727, 86 S. W. 606; Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408.

2. Ridley *v.* Mobile, etc., R. Co., 114 Tenn. 727, 86 S. W. 606, *quoting* 7 Am. and Eng. Encyc. of Law (2d ed.) 394, 395; Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408. See also Miller *v.* Union R. Co., 191 N. Y. 77, 83 N. E. 583.

3. *Compare.* — Miller *v.* Union R. Co., 191 N. Y. 77, 83 N. E. 583.

5. Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408.

8. Ridley *v.* Mobile, etc., R. Co., 114 Tenn. 727, 86 S. W. 606, *quoting* 7 Am. and Eng. Encyc. of Law (2d ed.) 395.

396. **5.** Illinois Cent. R. Co. *v.* Siler, 229 Ill. 390, 82 N. E. 362.

7. Missouri, etc., R. Co. *v.* Saunders, (Tex. Civ. App. 1907) 103 S. W. 457; Christensen *v.* Oregon Short Line R. Co., 29 Utah 192, 80 Pac. 746. See also Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373.

But an employee who exposes himself rashly to obvious danger solely to rescue his employer's property, cannot recover if he is injured in his attempt. Pegram *v.* Seaboard Air Line R. Co., 139 N. Car. 303, 4 Ann. Cas. 214, 51 S. E. 975.

397. **1.** Colorado, etc., Southern R. Co. *v.* Sonne, 34 Colo. 206, 83 Pac. 383; Southern R. Co. *v.* Clark, (Ky. 1907) 105 S. W. 384; Frederickson *v.* Central Wharf Towboat Co., 101 Me. 406, 64 Atl. 666.

4. MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009;

Gainesville, etc., Electric R. Co. *v.* Austin, 127 Ga. 120, 56 S. E. 254; Rainbow Coal, etc., Co. *v.* Martin, 35 Ind. App. 658, 74 N. E. 902; Brunson *v.* Southwestern Development Co., (Indian Ter. 1907) 104 S. W. 593; Williamson *v.* St. Louis Transit Co., 202 Mo. 345, 100 S. W. 1072; White *v.* Roydhouse, 211 Pa. St. 13, 60 Atl. 316; Small *v.* Pittsburg R. Co., 216 Pa. St. 584, 66 Atl. 76; McCabe *v.* Philadelphia, 217 Pa. St. 140, 66 Atl. 247.

398. 1. Southern Pac. Co. *v.* Schuyler, (C. C. A.) 135 Fed. 1015; Quincy Gas, etc., Co. *v.* Schmitt, 123 Ill. App. 649; Foster *v.* Chicago, etc., R. Co., 127 Iowa 84, 102 N. W. 422; Templin *v.* Boone, 127 Iowa 91, 102 N. W. 789; Birsch *v.* Citizens' Electric Co., (Mont. 1908) 93 Pac. 940; Gulf, etc., R. Co. *v.* Boyce, (Tex. Civ. App. 1905) 87 S. W. 395; Galveston, etc., R. Co. *v.* Fitzpatrick, (Tex. Civ. App. 1905) 91 S. W. 355; Thomas *v.* North Norwich Tp., 9 Ont. L. Rep. 666. See also Illinois Cent. R. Co. *v.* Siler, 229 Ill. 390, 82 N. E. 362; Harrison *v.* Kansas City Electric Light Co., 195 Mo. 606, 93 S. W. 951.

399. 2. *United States.* — Omaha Water Co. *v.* Schamel, (C. C. A.) 147 Fed. 502.

Arkansas. — Jacks *v.* Reeves, 78 Ark. 426, 95 S. W. 781.

California. — Bilton *v.* Southern Pac. Co., 148 Cal. 443, 83 Pac. 440.

Delaware. — Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778.

District of Columbia. — Jennings *v.* Philadelphia, etc., R. Co., 29 App. Cas. (D. C.) 219.

Georgia. — See Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948; Cedartown *v.* Brooks, 2 Ga. App. 583, 59 S. E. 836.

Illinois. — Chicago Union Traction Co. *v.* Newmiller, 215 Ill. 383, 74 N. E. 410; Chicago, etc., R. Co. *v.* Walters, 217 Ill. 87, 75 N. E. 441; Chicago, etc., R. Co. *v.* O'Leary, 126 Ill. App. 311.

Indiana. — Cincinnati, etc., R. Co. *v.* Acrea, (Ind. App. 1907) 82 N. E. 1009; Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030.

Kansas. — McCallion *v.* Missouri Pac. R. Co., 74 Kan. 785, 88 Pac. 50.

Kentucky. — Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776; Louisville, etc., R. Co. *v.* Molloy, (Ky. 1908) 107 S. W. 217.

Louisiana. — Jackson *v.* Natchez, etc., R. Co., 114 La. 981, 38 So. 701.

Massachusetts. — Green *v.* Haverhill, etc., St. R. Co., 193 Mass. 428, 79 N. E. 735.

Michigan. — See Karrer *v.* Detroit, 142 Mich. 331, 106 N. W. 64; Deneen *v.* Houghton County St. R. Co., 150 Mich. 235, 113 N. W. 1126.

Minnesota. — Holden *v.* Great Northern R. Co., (Minn. 1908) 114 N. W. 365.

Mississippi. — Yazoo, etc., R. Co. *v.* Block, 86 Miss. 426, 38 So. 372.

Missouri. — West *v.* St. Louis Southwestern R. Co., 187 Mo. 351, 86 S. W. 140; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12; Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012; McManus *v.* Metropolitan St. R. Co., 116 Mo. App. 110, 92 S. W. 176; McFern *v.* Gardner, 121 Mo. App. 1, 97 S. W. 972; Lange *v.* Missouri Pac. R. Co., (Mo. 1907) 106 S. W. 660.

Nebraska. — Kruger *v.* Omaha, etc., St. R. Co., (Neb. 1908) 114 N. W. 571.

New Jersey. — Staines *v.* Central R. Co., 72 N. J. L. 268, 61 Atl. 385.

New York. — Acker *v.* Stern, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 650, 97 N. Y. Supp. 1041; Paine *v.* Geneva, etc., Co., 115 N. Y. App. Div. 729, 101 N. Y. Supp. 204.

Ohio. — Isley *v.* Wabash R. Co., 27 Ohio Cir. Ct. 785.

Pennsylvania. — Cohn *v.* May, 210 Pa. St. 615, 60 Atl. 301; Doyle *v.* Chester Traction Co., 214 Pa. St. 382, 63 Atl. 604; Hess *v.* Baltimore, etc., R. Co., 28 Pa. Super. Ct. 220; Flaherty *v.* Scranton Gas, etc., Co., 30 Pa. Super. Ct. 446.

Texas. — Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 90 S. W. 185; Gulf, etc., R. Co. *v.* Tullis, (Tex. Civ. App. 1905) 91 S. W. 317; Gulf, etc., R. Co. *v.* Wittnebert, (Tex. Civ. App. 1907) 104 S. W. 424.

Washington. — Sandquist *v.* Independent Tel. Co., 38 Wash. 313, 80 Pac. 539.

400. 1. Pierson Lumber Co. *v.* Hart, 144 Ala. 239, 39 So. 566; Dinnigan *v.* Peterson, 3 Cal. App. 764, 87 Pac. 218; Illinois Southern R. Co. *v.* Hamill, 226 Ill. 88, 80 N. E. 745; McIntyre *v.* Orner, 166 Ind. 157, 8 Ann. Cas. 1087, 76 N. E. 750; Maysville, etc., R. Co. *v.* McCabe, (Ky. 1907) 100 S. W. 219; Boyce *v.* Chicago, etc., R. Co., 120 Mo. App. 168, 96 S. W. 670; Williamson *v.* St. Louis Transit Co., 202 Mo. 345, 100 S. W. 1072; Mosten *v.* Lake Shore, etc., R. Co., 218 Pa. St. 392, 67 Atl. 740; Ft. Worth, etc., R. Co. *v.* Morris, (Tex. Civ. App. 1907) 101 S. W. 1038.

And it seems that the peril need not be caused by the defendant. McRae *v.* Erickson, 1 Cal. App. 326, 82 Pac. 209.

401. 1. Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56.

2. Ensley Mercantile Co. *v.* Otwell, 142 Ala. 577, 4 Ann. Cas. 512, 38 So. 839, *quoting* 7 Am. and Eng. Encyc. of Law (2d ed.) 401; McCarragher *v.* Proal, 114 N. Y. App. Div. 470, 100 N. Y. Supp. 208. See also Star Brewery *v.* Hauck, 222 Ill. 348, 78 N. E. 827; Indianapolis St. R. Co. *v.* Slifer, 35 Ind. App. 700, 74 N. E. 19; Brunelle *v.* Lowell Electric Light Corp., 194 Mass. 407, 80 N. E. 466. *Compare* Malloy *v.* American Hide, etc., Co., 148 Fed. 482.

3. When Plaintiff's Action Founded on His Violation of Law. — Brunelle *v.* Lowell Electric Light Corp., 188 Mass. 493, 74 N. E. 676.

402. 1. *United States.* — Texas, etc., R. Co. *v.* Modawell, (C. C. A.) 151 Fed. 421; Grand Trunk R. Co. *v.* Flagg, (C. C. A.) 156 Fed. 359.

Alabama. — Southern R. Co. *v.* Gullatt, (Ala. 1907) 43 So. 577; Southern R. Co. *v.* Stewart, (Ala. 1907) 45 So. 51.

Arkansas. — St. Louis Southwestern R. Co. *v.* Bryant, 81 Ark. 368, 99 S. W. 693; Adams *v.* St. Louis, etc., R. Co., 83 Ark. 300, 103 S. W. 725.

Georgia. — Hall *v.* Western, etc., R. Co., 123 Ga. 213, 51 S. E. 311; Atlantic Coast Line R. Co. *v.* Riley, 127 Ga. 566, 56 S. E. 635.

Illinois. — Thompson *v.* Cleveland, etc., R. Co., 226 Ill. 543, 80 N. E. 1054; Bartlett *v.* Wabash R. Co., 116 Ill. App. 67; McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111; McLain *v.* Chicago, etc., R. Co., 121 Ill. App. 614.

Iowa. — Clemans *v.* Chicago, etc., R. Co., 128 Iowa 394, 104 N. W. 431; Davis *v.* Bonaparte, (Iowa 1908) 114 N. W. 896.

Kansas. — Limb *v.* Kansas City, etc., R. Co., 73 Kan. 220, 84 Pac. 136.

Kentucky. — Hulsey *v.* Louisville, etc., R. Co., (Ky. 1905) 87 S. W. 302; Flint *v.* Illinois Cent. R. Co., (Ky. 1905) 88 S. W. 1055; Yates *v.* Illinois Cent. R. Co., (Ky. 1905) 89 S. W. 161; Louisville, etc., R. Co. *v.* Hathaway, (Ky. 1905) 89 S. W. 724; Smith *v.* Illinois Cent. R. Co., (Ky. 1906) 90 S. W. 254; Johnson *v.* Louisville, etc., R. Co., 122 Ky. 487, 91 S. W. 707; Louisville, etc., R. Co. *v.* Redmon, 122 Ky. 385, 91 S. W. 722; Prince *v.* Illinois Cent. R. Co., (Ky. 1906) 99 S. W. 293; Louisville, etc., R. Co. *v.* Woolfork, (Ky. 1907) 99 S. W. 294; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246; Skirvin *v.* Louisville, etc., R. Co., (Ky. 1907) 100 S. W. 308; Adams *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 363.

Louisiana. — Gilliam *v.* Texas, etc., R. Co., 114 La. 272, 38 So. 166; White *v.* Illinois Cent. R. Co., 114 La. 825, 38 So. 574.

Maine. — See Copp *v.* Maine Cent. R. Co., 100 Me. 568, 62 Atl. 735.

Massachusetts. — McManus *v.* Thing, 194 Mass. 362, 80 N. E. 487; Burke *v.* Boston, etc., R. Co., 195 Mass. 179, 80 N. E. 695.

Minnesota. — Wickenburg *v.* Minneapolis, etc., R. Co., 94 Minn. 276, 102 N. W. 713.

Missouri. — Frye *v.* St. Louis, etc., R. Co., 200 Mo. 377, 98 S. W. 566; Burde *v.* Chicago, etc., R. Co., 123 Mo. App. 629, 100 S. W. 509.

New York. — Keller *v.* Erie R. Co., 183 N. Y. 67, 75 N. E. 965; Weitzmann *v.* A. L. Barber Asphalt Co., 190 N. Y. 452, 83 N. E. 477; Thayer *v.* New York Cent., etc., R. Co., 117 N. Y. App. Div. 318, 102 N. Y. Supp. 135.

Texas. — Houston, etc., R. Co. *v.* Ramsey, (Tex. Civ. App. 1906) 97 S. W. 1067.

Utah. — Hern *v.* Southern Pac. Co., 29 Utah 127, 81 Pac. 902.

Virginia. — Southern R. Co. *v.* Back, 103 Va. 778, 50 S. E. 257; Seaboard, etc., R. Co. *v.* Vaughan, 104 Va. 113, 51 S. E. 452; Chesapeake, etc., R. Co. *v.* Farrow, 106 Va. 137, 55 S. E. 569.

404. 1. *United States.* — Peirce *v.* Lyden, (C. C. A.) 157 Fed. 552.

Colorado. — Denver City Tramway Co. *v.* Nicholas, 35 Colo. 462, 84 Pac. 813.

Illinois. — Lake Erie, etc., R. Co. *v.* Klinkrath, 130 Ill. App. 322.

Indiana. — Indianapolis Water Co. *v.* Harold, (Ind. App. 1906) 79 N. E. 542.

Kansas. — Kansas City *v.* Siese, 71 Kan. 283, 80 Pac. 626.

Maryland. — Chesapeake Beach R. Co. *v.* Donahue, (Md. 1908) 68 Atl. 507.

Minnesota. — Berg *v.* Minneapolis, etc., R. Co., 95 Minn. 404, 5 Ann. Cas. 375, 104 N. W. 293; Mattson *v.* Minnesota, etc., Co., 95 Minn. 477, 5 Ann. Cas. 498, 104 N. W. 443.

South Carolina. — Franks *v.* Southern Cotton Oil Co., (S. Car. 1907) 58 S. E. 960, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 403, 404.

Texas. — Ott *v.* Johnson, (Tex. Civ. App. 1905) 86 S. W. 649. But see Isbell *v.* Hayward Lumber Co., (Tex. Civ. App. 1907) 105 S. W. 211.

Utah. — Brown *v.* Salt Lake City, (Utah 1908) 93 Pac. 570.

Washington. — McAllister *v.* Seattle Brewing, etc., Co., 44 Wash. 179, 87 Pac. 68.

The Modern Tendency of the courts is to limit the doctrine of the "turntable cases" very strictly. See the following cases:

District of Columbia. — Sullivan *v.* Huidekoper, 27 App. Cas. (D. C.) 154, 7 Ann. Cas. 196.

Georgia. — Etheredge *v.* Central of Georgia R. Co., 122 Ga. 853, 50 S. E. 1003.

Illinois. — Seymour *v.* Union Stockyards, etc., Co., 224 Ill. 579, 79 N. E. 950.

Iowa. — Brown *v.* Rockwell City Canning Co., 132 Iowa 631, 110 N. W. 12.

Louisiana. — Lopes *v.* Sahuque, 114 La. 1004, 38 So. 810.

Minnesota. — Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827.

Missouri. — Carey *v.* Kansas City, 187 Mo. 715, 86 S. W. 438; Houck *v.* Chicago, etc., R. Co., 116 Mo. App. 559, 92 S. W. 738.

Montana. — Driscoll *v.* Clark, 32 Mont. 172, 80 Pac. 1, *rehearing denied* 32 Mont. 192, 80 Pac. 373.

Nebraska. — Huber *v.* Chicago, etc., R. Co., 73 Neb. 478, 103 N. W. 51; Johnston *v.* New Omaha Thomson-Houston Electric Light Co., (Neb. 1907) 113 N. W. 526.

Ohio. — Akron, etc., Co. *v.* Swartz, 8 Ohio Cir. Ct. (N. S.) 509.

Tennessee. — Foster-Herbert Cut Stone Co. *v.* Pugh, 115 Tenn. 688, 91 S. W. 199.

Washington. — Harris *v.* Cowles, 38 Wash. 331, 80 Pac. 537; Graves *v.* Washington Water Power Co., 44 Wash. 675, 87 Pac. 956.

Doctrine Repudiated. — In some states the courts apply the same rule to infant trespassers as to adults.

United States. — See Hastings *v.* Southern R. Co., (C. C. A.) 143 Fed. 260.

Alabama. — Chambers *v.* Milner Coal, etc., Co., 143 Ala. 255, 39 So. 170; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177.

Connecticut. — Wilmot *v.* McPadden, (Conn. 1906) 65 Atl. 157.

Georgia. — Southern R. Co. *v.* Chatman, 124 Ga. 1026, 4 Ann. Cas. 675, 53 S. E. 692.

Massachusetts. — Dalin *v.* Worcester Consol. St. R. Co., 188 Mass. 344, 74 N. E. 597; Anternoitz *v.* New York, etc., R. Co., 193 Mass. 542, 79 N. E. 789.

Michigan. — Katzinski *v.* Grand Trunk R. Co., 141 Mich. 75, 104 N. W. 409; Hamilton *v.* Detroit, etc., R. Co., 142 Mich. 56, 105 N. W. 82.

New York. — See Kane *v.* Erie R. Co., 110 N. Y. App. Div. 7, 96 N. Y. Supp. 810.

Ohio. — Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66 (reviewing the cases).

Pennsylvania. — Thompson *v.* Baltimore, etc., R. Co., 218 Pa. St. 444, 67 Atl. 768.

Virginia. — Walker *v.* Potomac, etc., R. Co., 105 Va. 226, 53 S. E. 113.

Canada. — Coley *v.* Canadian Pac. R. Co., 29 Quebec Super. Ct. 282.

105. **1.** Chicago Union Traction Co. *v.* Lundahl, 215 Ill. 289, 74 N. E. 155; Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373. See also Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 7 Ann. Cas. 241, 39 So. 183.

2. *United States.* — Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937.

Alabama. — Chambers *v.* Milner Coal, etc., Co., 143 Ala. 255, 39 So. 170.

Arkansas. — St. Louis, etc., R. Co. *v.* Sparks, 81 Ark. 187, 99 S. W. 73, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405.

Colorado. — Denver City Tramway, etc., Co. *v.* Nicholas, 35 Colo. 462, 84 Pac. 813.

Delaware. — Goldstein *v.* People's R. Co., 5 Penn. (Del.) 306, 60 Atl. 975.

Georgia. — Stewart *v.* Southern Bell Telephone, etc., Co., 124 Ga. 224, 52 S. E. 331.

Illinois. — Chicago Union Traction Co. *v.* Lundahl, 215 Ill. 289, 74 N. E. 155.

Indiana. — See Pittsburgh, etc., R. Co. *v.* Simons, 168 Ind. 333, 79 N. E. 911.

Missouri. — Holmes *v.* Missouri Pac. R. Co., 190 Mo. 98, 88 S. W. 623, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405, 406, 407; Lange *v.* Missouri Pac. R. Co., 115 Mo. App. 582, 91 S. W. 989.

Texas. — Houston, etc., R. Co. *v.* Adams, (Tex. Civ. App. 1906) 98 S. W. 222.

3. *United States.* — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709; Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937.

Alabama. — Birmingham R., etc., Co. *v.* Jones, 146 Ala. 277, 41 So. 146; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177; Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198.

Arizona. — De Amado *v.* Friedman, (Ariz. 1907) 89 Pac. 588, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405.

Illinois. — Richardson *v.* Nelson, 221 Ill. 254, 77 N. E. 583; Chicago, etc., Electric R. Co. *v.* Freeman, 125 Ill. App. 318.

Kentucky. — Mills *v.* Cavanaugh, (Ky. 1906) 94 S. W. 651.

Michigan. — Boehm *v.* Detroit, 141 Mich. 277, 104 N. W. 626.

Minnesota. — Cameron *v.* Duluth-Superior Traction Co., 94 Minn. 104, 102 N. W. 208.

Missouri. — Cornovski *v.* St. Louis Traction Co., 207 Mo. 263, 106 S. W. 51.

New Jersey. — Naputana *v.* Young, (N. J. 1907) 65 Atl. 1052.

New York. — Rosenberg *v.* Zeitchik, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 153, 101 N. Y. Supp. 591; Barth *v.* Borden's Condensed Milk Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 487, 102 N. Y. Supp. 498.

Pennsylvania. — Addis *v.* Hess, 29 Pa. Super. Ct. 505.

Texas. — Missouri, etc., R. Co. *v.* Nesbit, (Tex. Civ. App. 1906) 97 S. W. 825.

Virginia. — American Tobacco Co. *v.* Polisco, 104 Va. 777, 52 S. E. 563.

West Virginia. — Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416.

Canada. — Coley *v.* Canadian Pac. R. Co., 29 Quebec Super. Ct. 282.

When Care of Child for Jury. — Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318; Wabash R. Co. *v.* Jones, 121 Ill. App. 390; Fishburn *v.* Burlington, etc., R. Co., 127 Iowa 483, 103 N. W. 481; Duggan *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 829; Wabnich *v.* Dry Dock, etc., R. Co., 112 N. Y. App. Div. 4, 98 N. Y. Supp. 38; Gerber *v.* Boorstein, 113 N. Y. App. Div. 808, 99 N. Y. Supp. 1091; Bracken *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 22; Tucker *v.* Buffalo Cotton Mills, 76 S. Car. 539, 57 S. E. 626; Lynchburg Telephone Co. *v.* Bokker, 103 Va. 594, 50 S. E. 148. See also cases cited *infra,* **409.** 1.

106. **1.** *California.* — Fries *v.* American Lead Pencil Co., 2 Cal. App. 148, 83 Pac. 173.

Colorado. — Denver City Tramway Co. *v.* Nicholas, 35 Colo. 462, 84 Pac. 813.

Illinois. — Chicago Union Traction Co. *v.* Lundahl, 215 Ill. 289, 74 N. E. 155; Rothschild *v.* Levy, 118 Ill. App. 78.

Iowa. — Fishburn *v.* Burlington, etc., R. Co., 127 Iowa 483, 103 N. W. 481.

Maine. — Colomb *v.* Portland, etc., St. R. Co., 100 Me. 418, 61 Atl. 898.

Massachusetts. — Slattery *v.* Lawrence Ice Co., 190 Mass. 79, 76 N. E. 459; Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740; Beale *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867.

Michigan. — O'Leary *v.* Michigan State Tel. Co., 146 Mich. 243, 109 N. W. 434.

Missouri. — Lange *v.* Missouri Pac. R. Co., 115 Mo. App. 582, 91 S. W. 989.

New Jersey. — Smith *v.* North Jersey St. R. Co., 73 N. J. L. 298, 67 Atl. 753, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 406.

New York. — Serano *v.* New York Cent., etc., R. Co., 188 N. Y. 157, 80 N. E. 1025; Wabnich *v.* Dry Dock, etc., R. Co., 112 N. Y. App. Div. 4, 98 N. Y. Supp. 38; Kostenbaum *v.* New York City R. Co., 120 N. Y. App. Div. 160, 105 N. Y. Supp. 65.

South Dakota. — Edwards *v.* Chicago, etc., R. Co., (S. Dak. 1907) 110 N. W. 832.

Virginia. — Lynchburg Telephone Co. *v.* Bokker, 103 Va. 594, 50 S. E. 148.

Wisconsin. — Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120.

"Due care in a child of tender years is such care as its capacity, mental and physical, fits it for exercising in the actual circumstances of the occasion and situation under investigation." Herrington *v.* Macon, 125 Ga. 58, 54 S. E. 71.

407. **1.** *United States.* — Coney Island Co. *v.* Dennan, (C. C. A.) 149 Fed. 687.

Alabama. — Sloss-Sheffield Steel, etc., Co. *v.* Smith, (Ala. 1905) 40 So. 91.

Colorado. — Daniels *v.* Johnston, 39 Colo. 177, 89 Pac. 811.

District of Columbia. — Barstow *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362.

Georgia. — Stewart *v.* Southern Bell Telephone, etc., Co., 124 Ga. 224, 52 S. E. 331. See also Atlanta *v.* Harper, (Ga. 1907) 59 S. E. 230.

Illinois. — Illinois Cent. R. Co. *v.* Johnson, 221 Ill. 42, 77 N. E. 592; Peterson *v.* Chicago Consol. Traction Co., 231 Ill. 324, 83 N. E.

159. See also United Breweries Co. *v.* Bass, 121 Ill. App. 299.

Indiana. — Roberts *v.* Terre Haute Electric Co., 37 Ind. App. 664, 76 N. E. 895; Baltimore, etc., R. Co. *v.* Hickman, (Ind. App. 1907) 81 N. E. 1086; Louisville, etc., Traction Co. *v.* Short, (Ind. App. 1908) 83 N. E. 265.

Kentucky. — Louisville R. Co. *v.* Esselman, (Ky. 1906) 93 S. W. 50; Louisville R. Co. *v.* Edelen, (Ky. 1906) 96 S. W. 901; Louisville R. Co. *v.* Hofgesand, (Ky. 1907) 104 S. W. 361; Ewing *v.* Callahan, (Ky. 1907) 105 S. W. 387; Davis *v.* Ohio Valley Banking, etc., Co., (Ky. 1908) 106 S. W. 843.

Maine. — Garland *v.* Hewes, 101 Me. 549, 64 Atl. 914.

Massachusetts. — See Holian *v.* Boston El. R. Co., 194 Mass. 74, 80 N. E. 1.

Missouri. — Houck *v.* Chicago, etc., R. Co., 116 Mo. App. 559, 92 S. W. 738; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566; Cytron *v.* St. Louis Transit Co., 205 Mo. 692, 104 S. W. 109; Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624; Brown *v.* St. Louis, etc., R. Co., (Mo. App. 1907) 106 S. W. 83; Zalotuchin *v.* Metropolitan St. R. Co., (Mo. App. 1908) 106 S. W. 548; Lange *v.* Missouri Pac. R. Co., (Mo. 1907) 106 S. W. 660.

New York. — Buscher *v.* New York Transp. Co., 114 N. Y. App. Div. 85, 99 N. Y. Supp. 673. See also Sherwood *v.* New York Cent., etc., R. Co., 120 N. Y. App. Div. 639, 105 N. Y. Supp. 547.

North Carolina. — Rolin *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 300, 8 Ann. Cas. 638, 53 S. E. 891.

Ohio. — Cincinnati Traction Co. *v.* Blackson, 27 Ohio Cir. Ct. 191; Columbus R. Co. *v.* Connor, 27 Ohio Cir. Ct. 229.

Oregon. — Mundhenke *v.* Oregon City Mfg. Co., (Oregon 1905) 81 Pac. 977.

Pennsylvania. — Wertz *v.* Girardville, 30 Pa. Super. Ct. 260.

Texas. — El Paso Electric R. Co. *v.* Kitt, (Tex. Civ. App. 1906) 91 S. W. 598. But see San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863.

Utah. — Christensen *v.* Oregon Short Line R. Co., 29 Utah 192, 80 Pac. 746; Gesas *v.* Oregon Short Line R. Co., (Utah 1907) 93 Pac. 274.

Washington. — Kirkham *v.* Wheeler-Osgood Co., 39 Wash. 415, 81 Pac. 869.

West Virginia. — Rice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

Canada. — Coley *v.* Canadian Pac. R. Co., 29 Quebec Super. Ct. 282.

Not only the age, capacity, and intelligence of the child must be considered, but also its experience. Lake Shore, etc., R. Co. *v.* Klinkrath, 227 Ill. 430, 81 N. E. 377.

2. Sloss-Sheffield Steel, etc., Co. *v.* Smith, (Ala. 1905) 40 So. 91; Fries *v.* American Lead Pencil Co., 2 Cal. App. 148, 83 Pac. 173; Siegel *v.* Trcka, 218 Ill. 559, 75 N. E. 1053; Chambers *v.* Woodbury Mfg. Co., (Md. App. 1907) 68 Atl. 290; McDonald *v.* Champion Iron, etc., Co., 140 Mich. 401, 103 N. W. 829; Rolin *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 300, 8 Ann. Cas. 638, 53 S. E. 891; Mundhenke *v.* Oregon City Mfg. Co., (Oregon 1905) 81 Pac. 977, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 407; Kirkham *v.* Wheeler-Osgood Co., 39 Wash. 415, 81 Pac. 869. See also the title MASTER AND SERVANT, vol. 20, p. 99.

3. Jenson *v.* Will, etc., Co., 150 Cal. 398, 89 Pac. 113; Daniels *v.* Johnston, 39 Colo. 177, 89 Pac. 811; Gracia *v.* C. N. Maestri Furniture Mfg. Co., 114 La. 371, 38 So. 275; Rudberg *v.* Bowden Felting Co., 188 Mass. 365, 74 N. E. 590; Sterling *v.* Union Carbide Co., 142 Mich. 284, 105 N. W. 755; Greenan *v.* Eggeling, 30 Pa. Super. Ct. 253; Bolton *v.* Ovitt, (Vt. 1907) 67 Atl. 881.

408. 1. Mace *v.* Boedker, 127 Iowa 721, 104 N. W. 475; Beckwith Organ Co. *v.* Malone, (Ky. 1908) 106 S. W. 809; Slattery *v.* Lawrence Ice Co., 190 Mass. 79, 76 N. E. 459; Noden *v.* Verlenden, 211 Pa. St. 135, 60 Atl. 505; Gage *v.* Springston Lumber Co., (Wash. 1907) 91 Pac. 558, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 407, 408.

2. *United States.* — Peirce *v.* Lyden, (C. C. A.) 157 Fed. 552.

Alabama. — See Wells *v.* Gallagher, 144 Ala. 363, 39 So. 747.

Colorado. — Denver City Tramway Co. *v.* Nicholas, 35 Colo. 462, 84 Pac. 813.

District of Columbia. — Barstow *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362.

Indiana. — Indianapolis Water Co. *v.* Harold, (Ind. App. 1906) 79 N. E. 542.

Kentucky. — Covington Saw Mill, etc., Co. *v.* Drexilius, 120 Ky. 493, 87 S. W. 266; Louisville R. Co. *v.* Esselman, (Ky. 1906) 93 S. W. 50.

Louisiana. — See Lynch *v.* Knoop, 118 La. 611, 43 So. 252.

Massachusetts. — Slattery *v.* Lawrence Ice Co., 190 Mass. 79, 76 N. E. 459.

Michigan. — O'Leary *v.* Michigan State Tel. Co., 146 Mich. 243, 109 N. W. 434.

Pennsylvania. — Addis *v.* Hess, 29 Pa. Super. Ct. 505.

South Carolina. — Franks *v.* Southern Cotton Oil Co., (S. Car. 1907) 58 S. E. 960.

Utah. — Brown *v.* Salt Lake City, (Utah 1908) 93 Pac. 570.

Virginia. — See Newport News *v.* Scott, 103 Va. 794, 50 S. E. 266.

Washington. — See Akin *v.* Bradley Engineering, etc., Co., (Wash. 1907) 92 Pac. 903.

Canada. — Coley *v.* Canadian Pac. R. Co., 29 Quebec Super. Ct. 282, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 408.

3. Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; Davis *v.* Ohio Valley Banking, etc., Co., (Ky. 1908) 106 S. W. 843; Iamurri *v.* Saginaw City Gas Co., 148 Mich. 27, 111 N. W. 884; Wahl *v.* St. Louis Transit Co., 203 Mo. 261, 101 S. W. 1; Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404; Missouri, etc., R. Co. *v.* Nesbit, (Tex. Civ. App. 1906) 97 S. W. 825.

4. Holmes *v.* Missouri Pac. R. Co., 190 Mo. 98, 88 S. W. 623, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 408. See generally the title NEGLIGENCE.

409. 1. *United States.* — Coney Island Co. *v.* Dennan, (C. C. A.) 149 Fed. 687.

Alabama. — Chambers *v.* Milner Coal, etc., Co., 143 Ala. 255, 39 So. 170.

Arkansas. — St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613; St. Louis, etc., R. Co. *v.* Sparks, 81 Ark. 187, 99 S. W. 73.
California. — Fries *v.* American Lead Pencil Co., 2 Cal. App. 148, 83 Pac. 173.
Colorado. — Denver City Tramway Co. *v.* Nicholas, 35 Colo. 462, 84 Pac. 813; Daniels *v.* Johnston, 39 Colo. 177, 89 Pac. 811; Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815.
Connecticut. — Wilmot *v.* McPadden, 78 Conn. 276, 61 Atl. 1069.
District of Columbia. — Barstow *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362.
Georgia. — Stewart *v.* Southern Bell Telephone, etc., Co., 124 Ga. 224, 52 S. E. 331.
Illinois. — Siegel *v.* Trcka, 218 Ill. 559, 75 N. E. 1053, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 408, 409.
Indiana. — Roberts *v.* Terre Haute Electric Co., 37 Ind. App. 664, 76 N. E. 323, 895; Baltimore, etc., R. Co. *v.* Hickman, (Ind. App. 1907) 81 N. E. 1086; Hammond, etc., Electric St. R. Co. *v.* Blockie, (Ind. App. 1907) 82 N. E. 541.
Kentucky. — Louisville R. Co. *v.* Hofgesand, (Ky. 1907) 104 S. W. 361.
Maine. — Garland *v.* Hewes, 101 Me. 549, 64 Atl. 914.
Maryland. — Chambers *v.* Woodbury Mfg. Co., (Md. App. 1907) 68 Atl. 290.
Massachusetts. — Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740; Beale *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867.
Michigan. — O'Leary *v.* Michigan State Tel. Co., 146 Mich. 243, 109 N. W. 434.
Missouri. — Holmes *v.* Missouri Pac. R. Co., 190 Mo. 98, 88 S. W. 623; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737.
New Jersey. — Smith *v.* North Jersey St. R. Co., 73 N. J. L. 298, 67 Atl. 753.
New York. — Serano *v.* New York Cent., etc., R. Co., 188 N. Y. 156, 80 N. E. 1025; Buscher *v.* New York Transp. Co., 114 N. Y. App. Div. 85, 99 N. Y. Supp. 673; Pittel *v.* Burkhard, 121 N. Y. App. Div. 571, 106 N. Y. Supp. 245. See also Noakes *v.* New York Cent., etc., R. Co., 121 N. Y. App. Div. 716, 106 N. Y. Supp. 522.
North Carolina. — Rolin *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 316, 8 Ann. Cas. 638, 53 S. E. 891, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 409.
Ohio. — Cincinnati Traction Co. *v.* Blackson, 27 Ohio Cir. Ct. 191.
Oregon. — Mundhenke *v.* Oregon City Mfg. Co., (Oregon 1905) 81 Pac. 977.
Pennsylvania. — Meyers *v.* Central R. Co., 218 Pa. St. 305, 67 Atl. 620; Wertz *v.* Girardville, 30 Pa. Super. Ct. 260. See also Metzler *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 180.
South Dakota. — Edwards *v.* Chicago, etc., R. Co., (S. Dak. 1907) 110 N. W. 832.
Texas. — El Paso Electric R. Co. *v.* Kitt, (Tex. Civ. App. 1906) 91 S. W. 598; Davis *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1906) 92 S. W. 831; Gulf, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 99 S. W. 162.
Utah. — Christensen *v.* Oregon Short Line R. Co., 29 Utah 192, 80 Pac. 746; Gesas *v.* Oregon Short Line R. Co., (Utah 1907) 93 Pac. 274.
Vermont. — Bolton *v.* Ovitt, (Vt. 1907) 67 Atl. 881.
West Virginia. — Bice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.
Wisconsin. — Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120.
Canada. — Burtch *v.* Canadian Pac. R. Co., 13 Ont. L. Rep. 632.

2. Goldstein *v.* People's R. Co., 5 Penn. (Del.) 306, 60 Atl. 975; Louisville R. Co. *v.* Edelen, (Ky. 1906) 96 S. W. 901; Miller *v.* St. Charles St. R. Co., 114 La. 409, 38 So. 401; Bouthillier *v.* Old Colony St. R. Co., 189 Mass. 537, 75 N. E. 960; Hendrix *v.* Cooleemee Cotton Mills, 138 N. Car. 169, 50 S. E. 561; Leitzel *v.* Harrisburg Traction Co., 212 Pa. St. 608, 62 Atl. 102; Sontgen *v.* Kittanning, etc., St. R. Co., 213 Pa. St. 114, 62 Atl. 523; Meloy *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 189, 66 Atl. 253; J. I. Case Threshing Mach. Co. *v.* Burns, (Tex. Civ. App. 1905) 86 S. W. 65. See also Colomb *v.* Portland, etc., St. R. Co., 100 Me. 418, 61 Atl. 898.

3. *United States.* — Grand Trunk R. Co. *v.* Flagg, (C. C. A.) 156 Fed. 359.
Connecticut. — Wilmot *v.* McPadden, (Conn. 1906) 65 Atl. 157.
District of Columbia. — Sullivan *v.* Huidekoper, 27 App. Cas. (D. C.) 154, 7 Ann. Cas. 196.
Illinois. — Seymour *v.* Union Stockyards, etc., Co., 224 Ill. 579, 79 N. E. 950; Belt R. Co. *v.* Charters, 123 Ill. App. 322.
Iowa. — Brown *v.* Rockwell City Canning Co., 132 Iowa 631, 110 N. W. 12.
Kentucky. — Louisville R. Co. *v.* Edelen, (Ky. 1906) 96 S. W. 901.
Louisiana. — Sanders *v.* Texas, etc., R. Co., 118 La. 174, 42 So. 764; Lynch *v.* Knoop, 118 La. 611, 43 So. 252.
Massachusetts. — Phelan *v.* Fitzpatrick, 188 Mass. 237, 74 N. E. 326; Cummings *v.* Ayer, 188 Mass. 292, 74 N. E. 336; Anternoitz *v.* New York, etc., R. Co., 193 Mass. 542, 79 N. E. 789.
Michigan. — Burtram *v.* Michigan Cent. R. Co., 148 Mich. 166, 111 N. W. 749.
Nebraska. — Johnston *v.* New Omaha Thomson-Houston Electric Light Co., (Neb. 1907) 110 N. W. 711.
New Jersey. — Meyer *v.* Benton, (N. J. 1907) 65 Atl. 1023.
Ohio. — Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66.
Pennsylvania. — Estep *v.* Webster Coal, etc., Co., 213 Pa. St. 471, 62 Atl. 1082.
Canada. — Newell *v.* Canadian Pac. R. Co., 12 Ont. L. Rep. 21.

4. Chicago, etc., R. Co. *v.* Laughlin, 74 Kan. 567, 87 Pac. 749; Sanders *v.* Texas, etc., R. Co., 118 La. 174, 42 So. 764; Stackpole *v.* Boston El. R. Co., 193 Mass. 562, 79 N. E. 740; Masterson *v.* St. Louis Transit Co., (Mo. 1906) 98 S. W. 504. See also Peterson *v.* Interurban St. R. Co., 118 N. Y. App. Div. 210, 103 N. Y. Supp. 8.

410. 1. Hanna *v.* Iowa Cent. R. Co., 129 Ill. App. 134, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 410; Coy *v.* Missouri Pac. R. Co.,

74 Kan. 853, 86 Pac. 468; Lynch *v.* Knoop, 118 La. 611, 43 So. 252; Colomb *v.* Portland, etc., St. R. Co., 100 Me. 418, 61 Atl. 898; Holian *v.* Boston El. R. Co., 194 Mass. 74, 80 N. E. 1; Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566; Cranbuck *v.* Delaware, etc., R. Co., (N. J. 1907) 65 Atl. 1031; Gehring *v.* Atlantic City R. Co., (N. J. 1907) 68 Atl. 61; Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155. See also Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158; Walker *v.* Wabash R. Co., 193 Mo. 453, 92 S. W. 83; Molloy *v.* Starin, 113 N. Y. App. Div. 852, 99 N. Y. Supp. 603.

A boy of seventeen is presumably capable of the care of an adult. Doggett *v.* Chicago, etc., R. Co., 134 Iowa 690, 112 N. W. 171. But *compare* Bice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

411. 2. *California.* — Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122.

Colorado. — Ft. Collins *v.* Yetter, (Colo. 1906) 89 Pac. 777.

Connecticut. — Clark *v.* Torrington, 79 Conn. 42, 63 Atl. 657.

Delaware. — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792.

Georgia. — Atlanta *v.* Harper, (Ga. 1907) 59 S. E. 230.

Illinois. — Chicago *v.* Jarvis, 226 Ill. 614, 80 N. E. 1079; Purcell *v.* Chicago, 231 Ill. 164, 83 N. E. 137; Perry *v.* People's Gas Light, etc., Co., 119 Ill. App. 389.

Indiana. — Muncie *v.* Hey, 164 Ind. 570, 74 N. E. 250; Jeffersonville *v.* Gray, 165 Ind. 26, 74 N. E. 611; Winamac *v.* Stout, 165 Ind. 365, 75 N. E. 158; Indianapolis *v.* Mullally, 38 Ind. App. 125, 77 N. E. 1132; Sellersburg *v.* Ford, 39 Ind. App. 94, 79 N. E. 220; Indianapolis *v.* Keeley, 167 Ind. 516, 79 N. E. 499; Valparaiso *v.* Schwerdt, (Ind. App. 1907) 82 N. E. 923; Bloomington *v.* Woodworth, (Ind. App. 1907) 81 N. E. 611.

Iowa. — Considine *v.* Dubuque, 126 Iowa 283, 102 N. W. 102; Earl *v.* Cedar Rapids, 126 Iowa 361, 102 N. W. 140; Templin *v.* Boone, 127 Iowa 91, 102 N. W. 789; Machacek *v.* Hall, 131 Iowa 412, 105 N. W. 690; Patton *v.* Sanborn, 133 Iowa 650, 110 N. W. 1032; Cook *v.* Hedrick, (Iowa 1907) 112 N. W. 157.

Kansas. — Iola *v.* Farmer, 72 Kan. 620, 84 Pac. 386.

Kentucky. — Frankfort *v.* Chinn, (Ky. 1905) 89 S. W. 188; Brownsville *v.* Arbuckle, (Ky. 1907) 99 S. W. 239; Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337; Louisville *v.* Adams, (Ky. 1907) 100 S. W. 218.

Louisiana. — See Weber *v.* Union Development, etc., Co., 118 La. 77, 42 So. 652.

Massachusetts. — Clinton *v.* Revere, 195 Mass. 151, 80 N. E. 813; Keith *v.* Worcester, etc., St. R. Co., (Mass. 1907) 82 N. E. 680; Cammett *v.* Haverhill, (Mass. 1908) 83 N. E. 721.

Michigan. — Cutcher *v.* Detroit, 139 Mich. 186, 102 N. W. 629; Davis *v.* Adrian, 147 Mich. 300, 110 N. W. 1084.

Missouri. — Conner *v.* Nevada, 188 Mo. 148, 86 S. W. 256; Wright *v.* Kansas City, 187 Mo. 678, 86 S. W. 452; Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Drake *v.* Kansas City, 190 Mo. 370, 88 S. W. 689; Haxton *v.* Kansas City, 190 Mo. 53, 88 S. W. 714; Dinsmore *v.* St. Louis, 192 Mo. 255, 91 S. W. 95; Cassaday *v.* Kansas City, 119 Mo. App. 116, 95 S. W. 948; Lattimore *v.* Union Electric Light, etc., Co., (Mo. App. 1908) 106 S. W. 543.

Montana. — Storm *v.* Butte, 35 Mont. 385, 89 Pac. 726.

Nebraska. — Central City *v.* Marquis, 75 Neb. 233, 106 N. W. 221.

New Mexico. — See Roswell *v.* Davenport, (N. Mex. 1907) 89 Pac. 256.

New York. — Fox *v.* Manchester, 183 N. Y. 141, 75 N. E. 1116; Corcoran *v.* New York, 188 N. Y. 131, 80 N. E. 660; Walsh *v.* New York, 109 N. Y. App. Div. 541, 96 N. Y. Supp. 540; Manney *v.* Curtis, 113 N. Y. App. Div. 421, 99 N. Y. Supp. 288; Romaine *v.* Spring Valley, 120 N. Y. App. Div. 501, 105 N. Y. Supp. 256; Newman *v.* New York, (Supm. Ct. App. T.) 57 Misc. (N. Y.) 636, 108 N. Y. Supp. 676.

North Carolina. — Kinsey *v.* Kinston, 145 N. Car. 106, 58 S. E. 912.

Ohio. — Lalond *v.* Toledo, 27 Ohio Cir. Ct. 220.

Oklahoma. — Stillwater *v.* Swisher, 16 Okla. 585, 85 Pac. 1110; Oklahoma City *v.* Reed, 17 Okla. 518, 87 Pac. 645.

Oregon. — Ridings *v.* Marion County, (Oregon 1907) 91 Pac. 22.

Pennsylvania. — Dougherty *v.* Philadelphia, 210 Pa. St. 591, 60 Atl. 261; Walker *v.* Philadelphia, 211 Pa. St. 33, 60 Atl. 318; Gillard *v.* Chester, 212 Pa. St. 338, 61 Atl. 929; Becker *v.* Philadelphia, 212 Pa. St. 379, 61 Atl. 942.

South Dakota. — See Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 630.

Texas. — Dallas *v.* McCullough, (Tex. Civ. App. 1906) 95 S. W. 1121.

Vermont. — Cleveland *v.* Washington, 79 Vt. 498, 65 Atl. 584.

Washington. — Benson *v.* Spokane, 39 Wash. 101, 80 Pac. 1106; Cady *v.* Seattle, 42 Wash. 402, 85 Pac. 19; Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924; Ashley *v.* Aberdeen, (Wash. 1907) 90 Pac. 210.

West Virginia. — Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416; Cavender *v.* Charleston, (W. Va. 1907) 59 S. E. 732.

Wisconsin. — Pumorlo *v.* Merrill, 125 Wis. 102, 103 N. W. 464.

Canada. — Morrison *v.* Toronto, 12 Ont. L. Rep. 333. See also Thomas *v.* North Norwich Tp., 9 Ont. L. Rep. 666.

412. 1. *Alabama.* — Mobile *v.* Shaw, (Ala. 1907) 43 So. 94.

Connecticut. — Clark *v.* Torrington, 79 Conn. 42, 63 Atl. 657.

Delaware. — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792.

District of Columbia. — District of Columbia *v.* Duryee, 29 App. Cas. (D. C.) 327.

Georgia. — Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709; Americus *v.* Johnson, (Ga. App. 1907) 58 S. E. 518.

Illinois. — Wallace *v.* Farmington, 231 Ill. 232, 83 N. E. 180.

Indiana. — See Chicago, etc., R. Co. *v.* Gallion, 39 Ind. App. 604, 80 N. E. 547.

Iowa. — Templin *v.* Boone, 127 Iowa 91, 102 N. W. 789; Rea *v.* Sioux City, 127 Iowa 615, 103 N. W. 949; Arnold *v.* Waterloo, 128 Iowa 410, 104 N. W. 442; Clark *v.* Cedar Rapids, 129 Iowa 358, 105 N. W. 651; Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933; Crandall *v.* Dubuque, (Iowa 1907) 112 N. W 555.

Kansas. — Ottawa *v.* Green, 72 Kan. 214, 83 Pac. 616.

Kentucky. — Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606.

Massachusetts. — Torphy *v.* Fall River, 188 Mass. 310, 74 N. E. 465; Campbell *v.* Boston, 189 Mass. 7, 75 N. E. 96; Cutting *v.* Shelburne, 193 Mass. 1, 78 N. E. 752.

Michigan. — Barker *v.* Kalamazoo, 146 Mich. 257, 109 N. W. 427.

Minnesota. — Murphy *v.* South St. Paul, 101 Minn. 341, 112 N. W. 259.

Mississippi. — See Natchez *v.* Lewis, (Miss. 1907) 43 So. 471.

Missouri. — Deland *v.* Cameron, 112 Mo. App. 704, 87 S. W. 597; Fischer *v.* St. Louis, 189 Mo. 567, 88 S. W. 82; Heberling *v.* Warrensburg, 204 Mo. 604, 103 S. W. 36.

Nebraska. — Lexington *v.* Kreitz, 73 Neb. 770, 103 N. W. 444; Nicholson *v.* South Omaha, (Neb. 1906) 110 N. W. 558.

New York. — Dickerman *v.* Weeks, 108 N. Y. App. Div. 257, 95 N. Y. Supp. 714; Mayhood *v.* New York, 119 N. Y. App. Div. 100, 103 N. Y. Supp. 856; Schell *v.* German Flats, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116.

North Dakota. — Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359.

Ohio. — Toledo *v.* Fuller, 27 Ohio Cir. Ct. 729.

Pennsylvania. — Wertz *v.* Girardville, 30 Pa. Super. Ct. 260.

South Carolina. — Kennedy *v.* Greenville, (S. Car. 1907) 58 S. E. 989.

Texas. — See St. Louis Southwestern R. Co. *v.* Smith, (Tex. Civ. App. 1908) 107 S. W. 638.

Utah. — Bowman *v.* Ogden City, (Utah 1908) 93 Pac. 561.

Washington. — Lemman *v.* Spokane, 38 Wash. 98, 80 Pac. 280.

Wisconsin. — Coppins *v.* Jefferson, 126 Wis. 578, 105 N. W. 1078; Dralle *v.* Reedsburg, 130 Wis. 347, 110 N. W. 210.

The Failure to Take Another Route is ordinarily a matter for the consideration of the jury. Harrell *v.* Macon, 1 Ga. App. 413, 58 S. E. 124; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387; Normal *v.* Bright, 125 Ill. App. 478; Garnett *v.* Smith, 72 Kan. 664, 83 Pac. 615; Pascagoula *v.* Kirkwood, 86 Miss. 630, 38 So. 547; Beatrice *v.* Forbes, 74 Neb. 125, 103 N. W. 1069; Steck *v.* Allegheny, 213 Pa. St. 573, 62 Atl. 1115; Fetterman *v.* Rush Tp., 28 Pa. Super. Ct. 77; Cleburne *v.* Elder, (Tex. Civ. App. 1907) 102 S. W. 464; Shannon *v.* Tacoma, 41 Wash. 220, 83 Pac. 186. See also Covington *v.* Lee, (Ky. 1905) 89 S. W. 493.

But it may be negligence as matter of law. Chicago *v.* France, 124 Ill. App. 648.

2. *Colorado.* — See Denver *v.* Utzler, (Colo. 1906) 88 Pac. 143.

Delaware. — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792.

Georgia. — Southern R. Co. *v.* Rowe, 2 Ga App. 557, 59 S. E. 462.

Illinois. — White *v.* Chicago, 120 Ill. App. 607.

Iowa. — Tuttle *v.* Clear Lake, (Iowa 1905) 102 N. W. 136.

Kentucky. — Louisville Gas Co. *v.* Hammer, (Ky. 1908) 106 S. W. 826.

Massachusetts. — Harvey *v.* Malden, 188 Mass. 133, 74 N. E. 327.

Michigan. — Hodge *v.* St. Louis, 146 Mich. 173, 109 N. W. 252.

Missouri. — Diamond *v.* Kansas City, 120 Mo. App. 185, 96 S. W. 492.

New York. — McHugh *v.* Inter-State Paving Co., 121 N. Y. App. Div. 517, 106 N. Y. Supp. 165; Wrigley *v.* New York, 122 N. Y. App. Div. 402, 106 N. Y. Supp. 812.

Ohio. — Akron *v.* Keister, 27 Ohio Cir. Ct. 809.

Pennsylvania. — Byrne *v.* Philadelphia, 211 Pa. St 598, 61 Atl. 80; Smith *v.* Philadelphia, 217 Pa. St. 118, 66 Atl. 142; Lautenbacher *v.* Philadelphia, 217 Pa. St. 318, 66 Atl. 549.

Virginia. — See Mitchel *v.* Richmond, 107 Va. 193, 57 S. E. 570.

Washington. — Nelson *v.* Spokane, 45 Wash. 31, 87 Pac. 1048.

Wisconsin. — Hammacher *v.* New Berlin, 124 Wis. 249, 102 N. W. 489.

414. 1. *England.* — Young *v.* Hoffmann Mfg. Co., (1907) 2 K. B. 646.

United States. — Southern Pac. R. Co. *v.* Hetzer, (C. C. A.) 135 Fed. 272; Hull *v.* Northern Pac. R. Co., (C. C. A.) 136 Fed. 153; Deye *v.* Lodge, etc., Mach. Tool Co., (C. C. A.) 137 Fed. 480; Florence, etc., R. Co. *v.* Whipps, (C. C. A.) 138 Fed. 13.

Alaska. — Seittn *v.* Alaska Treadwell Gold Min. Co., 2 Alaska 8.

Arkansas. — Grayson-McLeod Lumber Co. *v.* Carter, 76 Ark. 69, 88 S. W. 597.

Colorado. — Dickson *v.* Newhouse, 34 Colo. 228, 82 Pac. 537.

Connecticut. — Dickenson *v.* Vernon, 77 Conn. 537, 60 Atl. 270.

District of Columbia. — Butler *v.* Frazee, 25 App. Cas. (D. C.) 392.

Illinois. — Simpson *v.* Weir, etc., Mfg. Co., 116 Ill. App. 286; City Water Works *v.* Lane, 122 Ill. App. 427.

Indiana. — Robertson *v.* Ford, 164 Ind. 538, 74 N. E. 1; Bedford Quarries Co. *v.* Turner, (Ind. App. 1905) 75 N. E. 25; Shaver *v.* Home Telephone Co., 36 Ind. App. 233, 75 N. E. 288.

Iowa. — Brooks *v.* W. T. Joyce Co., 127 Iowa 266, 103 N. W. 91; Andrews *v.* Chicago G. W. R. Co., 129 Iowa 162, 105 N. W. 404.

Maine. — Leard *v.* International Paper Co., 100 Me. 59, 60 Atl. 700; Bryant *v.* Great Northern Paper Co., 100 Me. 171, 60 Atl. 797; Frederickson *v.* Central Wharf Towboat Co., 101 Me. 406, 64 Atl. 666.

Maryland. — Gans Salvage Co. *v.* Byrnes, 102 Md. 230, 62 Atl. 155.

Massachusetts. — Higgins *v.* Higgins, 188 Mass. 113, 74 N. E. 471; Chisholm *v.* Donovan, 188 Mass. 378, 74 N. E. 652.

Michigan. — Hathaway *v.* Washington Milling Co., 139 Mich. 708, 103 N. W. 164.

Missouri. — Lee *v.* St. Louis, etc., R. Co.,

112 Mo. App. 393, 87 S. W. 12, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 413.

New Hampshire. — Smith *v.* Boston, etc., R. Co., 73 N. H. 325, 61 Atl. 359.

New York. — Russell *v.* Lehigh Valley R. Co., 188 N. Y. 344, 81 N. E. 122.

Ohio. — Marshka *v.* Republic Iron, etc., Co., 27 Ohio Cir. Ct. 721.

Pennsylvania. — Meixner *v.* Philadelphia Brewing Co., 210 Pa. St. 597, 60 Atl. 259.

Rhode Island. — McLaughlin *v.* Atlantic Mills, 27 R. I. 158, 61 Atl. 42.

South Carolina. — Charping *v.* Toxaway Mills, 70 S. Car. 470, 50 S. E. 186.

Texas. — Missouri, etc., R. Co. *v* Hanson, (Tex. Civ. App. 1905) 90 S. W. 1122.

Utah. — Dunn *v.* Oregon Short Line R. Co., 28 Utah 478, 80 Pac. 311.

Washington. — Griffiths *v.* Craney, 38 Wash. 90, 80 Pac. 274; Lee *v.* Northern Pac. R. Co., 39 Wash. 388, 81 Pac. 834; Anderson *v.* Columbia Imp. Co., 41 Wash. 83, 82 Pac. 1037.

West Virginia. — Purkey *v.* Southern Coal, etc., Co., 57 W. Va. 595, 50 S. E. 755.

Wisconsin. — Faber *v.* C. Reiss Coal Co., 124 Wis. 554, 102 N. W. 1049.. And see the title MASTER AND SERVANT.

416. 1. *United States.* — Schlemmer *v.* Buffalo, etc., R. Co., 205 U. S. 1, 27 U. S. Sup. Ct. 407.

Alabama. — Foley *v.* Pioneer Min., etc., Co., 144 Ala. 178, 40 So. 273.

Arkansas. — Choctaw, etc., R. Co. *v.* Jones, 7 Ann. Cas. 430, 77 Ark. 367, 92 S. W. 244.

Indiana. — Diamond Block Coal Co. *v.* Cuthbertson, 166 Ind. 290, 76 N. E. 1060.

Missouri. — Shore *v.* American Bridge Co., 111 Mo. App. 278, 86 S. W. 905; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12.

North Carolina. — Biles *v.* Seaboard Air Line R. Co., 139 N. Car. 528, 52 S. E. 129.

Texas. — St. Louis Southwestern R. Co. *v.* Rea, (Tex. 1905) 87 S. W. 324; El Paso, etc., R. Co. *v.* Foth, (Tex. Civ. App. 1907) 100 S. W. 171; Houston, etc., R. Co. *v.* McHale, (Tex. Civ. App. 1907) 105 S. W. 1149.

Washington. — Hall *v.* West, etc., Mill Co., 39 Wash. 447, 81 Pac. 915; Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323.

Wisconsin. — *Compare* Lounsbury *v.* Davis, 124 Wis. 432, 102 N. W. 941; Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048.

2. *United States.* — Santa Fe Pac. R. Co. *v.* Holmes, 202 U. S. 438, 26 U. S. Sup. Ct. 676.

Alabama. — Western R. Co. *v.* Russell, 144 Ala. 142, 39 So. 311.

Arkansas. — Choctaw, etc., R. Co. *v.* Doughty, 77 Ark. 1, 91 S. W. 768; Choctaw, etc., R. Co. *v.* Jones, 7 Ann. Cas. 430, 77 Ark. 367, 92 S. W. 244.

Florida. — Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516.

Illinois. — Pittsburg, etc., R. Co. *v.* Bovard, 223 Ill. 176, 79 N. E. 128.

Indiana. — Flickner *v.* Lambert, 36 Ind. App. 524, 74 N. E. 263; Muncie Pulp Co. *v.* Hacker, 37 Ind. App. 194, 76 N. E. 770.

Iowa. — Mumford *v.* Chicago, etc., R. Co., 128 Iowa 685, 104 N. W. 1135.

Massachusetts. — Finnegan *v.* Samuel Winslow Skate Mfg. Co., 189 Mass. 580, 76 N. E. 192.

Minnesota. — Viou *v.* Brooks-Scanlon Lumber Co., 99 Minn. 97, 9 Ann. Cas. 318, 108 N. W. 891.

Missouri. — Stafford *v.* Adams, 113 Mo. App. 717, 88 S. W. 1130.

Ohio. — Isley *v.* Wabash R. Co., 27 Ohio Cir. Ct. 785.

Oregon. — Sorenson *v.* Oregon Power Co., (Oregon 1905) 82 Pac. 10.

Pennsylvania. — Esher *v.* Mineral R., etc., Co., 28 Pa. Super. Ct. 387.

Texas. — Galveston, etc., R. Co. *v.* Fitzpatrick, (Tex. Civ. App. 1905) 91 S. W. 355.

Wisconsin. — Zentner *v.* Oshkosh Gas Light Co., 126 Wis. 196, 105 N. W. 911.

417. 1. Miller *v.* Boston, etc., R. Co., 73 N. H. 330, 61 Atl. 360; Crapo *v.* Syracuse, 183 N. Y. 395, 76 N. E. 465; Patterson *v.* Harrisburg Trust Co., 211 Pa. St. 173, 60 Atl. 265; Petrarca *v.* Quidnick Mfg. Co., 27 R. I. 265, 61 Atl. 648; O'Brien *v.* Page Lumber Co., 39 Wash. 537, 82 Pac. 114; Dossett *v.* St. Paul, etc., Lumber Co., 40 Wash. 276, 82 Pac. 273.

The Ross Case is still followed in Washington. See Mullin *v.* Northern Pac. R. Co., 38 Wash. 550, 80 Pac. 814.

418. 1. *United States.* — Mountain Copper Co. *v.* Pierce, (C. C. A.) 136 Fed. 150.

California. — Jenson *v.* Will, etc., Co., 150 Cal. 398, 89 Pac. 113.

Connecticut. — Anderson *v.* U. S. Rubber Co., 78 Conn. 48, 60 Atl. 1057.

Indiana. — Flickner *v.* Lambert, 36 Ind. App. 524, 74 N. E. 263.

Iowa. — Wilder *v.* G. W. Cereal Co., 130 Iowa 263, 104 N. W. 434.

Louisiana. — Burns *v.* Ruddock-Orleans Cypress Co., 114 La. 247, 38 So. 157; Gracia *v.* C. N. Maestri Furniture Mfg. Co., 114 La. 371, 38 So. 275.

Maryland. — Chambers *v.* Woodbury Mfg. Co., (Md. App. 1907) 68 Atl. 290.

Massachusetts. — Rudberg *v.* Bowden Felting Co., 188 Mass. 365, 74 N. E. 590; Moylon *v.* D. T. McDonald Co., 188 Mass. 499, 74 N. E. 929.

North Carolina. — Rolin *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 300, 8 Ann. Cas. 638, 53 S. E. 891.

Ohio. — Jackson Knife, etc., Co. *v.* Hathaway, 27 Ohio Cir. Ct. 745.

Pennsylvania. — Sweigert *v.* Klingensmith, 210 Pa. St. 565, 60 Atl. 253; Noden *v.* Verlenden, 211 Pa. St. 135, 3 Ann. Cas. 367, 60 Atl. 505; Greenan *v.* Eggeling, 30 Pa. Super. Ct. 253.

Texas. — Texarkana Table, etc., Co. *v.* Webb, (Tex. Civ. App. 1905) 86 S. W. 782.

Wisconsin. — Yess *v.* Chicago Brass Co., 124 Wis. 406, 102 N. W. 932.

Where the Risk Is Obvious even to the inexperienced the rule does not apply. Stevens *v.* Gair, 109 N. Y. App. Div. 621, 96 N. Y. Supp. 303.

419. 1. *California.* — Olsen *v.* Gray, 147 Cal. 112, 81 Pac. 414.

Illinois. — Franke *v.* Hanly, 215 Ill. 216,

74 N. E. 130; Sargent Co. *v.* Baublis, 215 Ill. 428, 74 N. E. 455; Illinois Third Vein Coal Co. *v.* Cioni, 215 Ill. 583, 74 N. E. 750.

Kansas. — McCallion *v.* Missouri Pac. R. Co., 74 Kan. 785, 88 Pac. 50.

Louisiana. — Fuller *v.* Tremont Lumber Co., 114 La. 266, 38 So. 164; Moses *v.* Grant Lumber Co., 114 La. 933, 38 So. 684; Smith *v.* Minden Lumber Co., 114 La. 1035, 38 So. 821.

Massachusetts. — Smith *v.* Thomson-Houston Electric Co., 188 Mass. 371, 74 N. E. 664; Feeney *v.* York Mfg. Co., 189 Mass. 336, 75 N. E. 733; Chambers *v.* Wampanoag Mills, 189 Mass. 529, 75 N. E. 1093.

Minnesota. — Haidt *v.* Swift, 94 Minn. 146, 102 N. W. 388.

Mississippi. — Mississippi Cent. R. Co. *v.* Hardy, 88 Miss. 732, 41 So. 505.

Missouri. — Dutro *v.* Metropolitan St. R. Co., 111 Mo. App. 258, 86 S. W. 915.

Montana. — Anderson *v.* Northern Pac. R. Co., 34 Mont. 181, 85 Pac. 884.

North Carolina. — Pressly *v.* Dover Yarn Mills, 138 N. Car. 410, 51 S. E. 69.

Pennsylvania. — Sweigert *v.* Klingensmith, 210 Pa. St. 565, 60 Atl. 253; Wallace *v.* Henderson, 211 Pa. St. 142, 60 Atl. 574; McKee *v.* Crucible Steel Co., 213 P. St. 333, 62 Atl. 921.

South Carolina. — Roache *v.* Haile Gold Min. Co., 71 S. Car. 79, 50 S. E. 543.

Texas. — Peck *v.* Peck, (Tex. 1905) 87 S. W. 248; American Cotton Co. *v.* Simmons, (Tex. Civ. App. 1905) 87 S. W. 842; Texas Cent. R. Co. *v.* George, (Tex. Civ. App. 1905) 89 S. W. 1091; Missouri, etc., R. Co. *v.* Lynch, (Tex. Civ. App. 1905) 90 S. W. 511.

Virginia. — Wood *v.* Southern R. Co., 104 Va. 650, 52 S. E. 371.

Wisconsin. — Sorensen *v.* J. I. Case Threshing Mach. Co., 129 Wis. 366, 109 N. W. 84.

Where the servant is injured by a defect which in the exercise of ordinary care and diligence he would not have discovered, the fact that it was his duty to inspect will not excuse the negligence of the master. George Weidemann Brewing Co. *v.* Wood, (Ky. 1905) 87 S. W. 772.

2. *Connecticut.* — Rincicotti *v.* John J. O'Brien Contracting Co., 77 Conn. 617, 60 Atl. 115.

Illinois. — Chicago, etc., R. Co. *v.* Walters, 217 Ill. 87, 75 N. E. 441.

Louisiana. — Burns *v.* Ruddock-Orleans Cypress Co., 114 La. 247, 38 So. 157; Williams *v.* Levert Lumber, etc., Co., 114 La. 805, 38 So. 567.

Maryland. — Crawford *v.* United R., etc., Co., 101 Md. 402, 61 Atl. 287.

Massachusetts. — Harris *v.* Putnam Mach. Co., 188 Mass. 85, 74 N. E. 287; Fountaine *v.* Wampanoag Mills, 189 Mass. 498, 75 N. E. 738; Finnegan *v.* Samuel Winslow Skate Mfg. Co., 189 Mass. 580, 76 N. E. 192.

Missouri. — Zongker *v.* People's Union Mercantile Co., 110 Mo. App. 382, 86 S. W. 486.

New Jersey. — Ferguson *v.* Central R. Co., 71 N. J. L. 647, 60 Atl. 382.

New York. — Koehler *v.* New York Steam Co., 183 N. Y. 1, 75 N. E. 538.

North Carolina. — Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703.

Rhode Island. — Petrarca *v.* Quidnick Mfg. Co., 27 R. I. 265, 61 Atl. 648.

Texas. — Texas Short Line R. Co. *v.* Waymire, (Tex. Civ. App. 1905) 89 S. W. 452; Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070.

120. 1. *United States.* — Santa Fe Pac. R. Co. *v.* Holmes, 202 U. S. 438, 26 U. S. Sup. Ct. 676.

Alaska. — Seittn *v.* Alaska Treadwell Gold Min. Co., 2 Alaska 8.

Arizona. — Gila Valley, etc., R. Co. *v.* Lyon, 9 Ariz. 218, 80 Pac. 337.

California. — Powley *v.* Swensen, 146 Cal. 471, 80 Pac. 722; McRae *v.* Erickson, 1 Cal. App. 326, 82 Pac. 209.

Illinois. — Macon County Telephone Co. *v.* West, 116 Ill. App. 435; Waukegan *v.* Sturm, 118 Ill. App. 479.

Iowa. — Calloway *v.* Agar Packing Co., 129 Iowa 1, 104 N. W. 721.

Kansas. — Crist *v.* Wichita Gas, etc., Co., 72 Kan. 135, 83 Pac. 199.

Kentucky. — Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; Covington, etc., Bridge Co. *v.* Hull, (Ky. 1906) 90 S. W. 1055.

Louisiana. — Fuller *v.* Tremont Lumber Co., 114 La. 266, 38 So. 164; Smith *v.* Minden Lumber Co., 114 La. 1035, 38 So. 821.

Massachusetts. — Dawson *v.* Lawrence Gas Light Co., 188 Mass. 481, 74 N. E. 912; Carroll *v.* Metropolitan Coal Co., 189 Mass. 159, 75 N. E. 84.

Minnesota. — Merrill *v.* Pike, 94 Minn. 186, 102 N. W. 393; Viou *v.* Brooks-Scanlon Lumber Co., 99 Minn. 97, 9 Ann. Cas. 318, 108 N. W. 891.

Missouri. — Neves *v.* Green, 111 Mo. App. 634, 86 S. W. 508; Shore *v.* American Bridge Co., 111 Mo. App. 278, 86 S. W. 905; Day *v.* Emery-Bird-Thayer Dry Goods Co., 114 Mo. App. 479, 89 S. W. 903.

Nevada. — Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210.

New Jersey. — Van Blarcom *v.* Central R. Co., 72 N. J. L. 33, 60 Atl. 182; D'Agostino *v.* Pennsylvania R. Co., 72 N. J. L. 358, 60 Atl. 1113; Kalker *v.* Hedden, 72 N. J. L. 239, 61 Atl. 395.

New York. — Burke *v.* Manhattan R. Co., 109 N. Y. App. Div. 722, 96 N. Y. Supp. 516.

North Carolina. — Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703.

Pennsylvania. — Miller *v.* Merritt, 211 Pa. St. 127, 60 Atl. 508; Hickey *v.* Solid Steel Casting Co., 212 Pa. St. 255, 61 Atl. 798; Delaney *v.* Penn Steel Casting, etc., Co., 30 Pa. Super. Ct. 387.

South Carolina. — Willis *v.* Cherokee Falls Mfg. Co., 72 S. Car. 126, 51 S. E. 538.

Texas. — Gulf, etc., R. Co. *v.* Boyce, (Tex. Civ. App. 1905) 87 S. W. 395; Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932.

Utah. — Leach *v.* Oregon Short Line R. Co., 29 Utah 285, 81 Pac. 90.

Virginia. — Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373.

2. Hayward *v.* Key, (C. C. A.) 138 Fed. 34; Cincinnati, etc., R. Co. *v.* Robertson, (C. C. A.) 139 Fed. 519; Burch *v.* Southern Pac.

Co., 140 Fed. 270; Anderson *v.* Seropian, 147 Cal. 201, 81 Pac. 521; Odin Coal Co. *v.* Tadlock, 216 Ill. 624, 75 N. E. 332; Cleveland, etc., R. Co. *v.* Patterson, 37 Ind. App. 617, 75 N. E. 857; Foster *v.* Chicago, etc., R. Co., 127 Iowa 84, 102 N. W. 422; Viou *v.* Brooks-Scanlon Lumber Co., 99 Minn. 97, 9 Ann. Cas. 318, 108 N. W. 891; Maines *v.* Harbison-Walker Co., 213 Pa. St. 145, 62 Atl. 640; Tucker *v.* American Car, etc., Co., 218 Pa. St. 323, 67 Atl. 616; Coolidge *v.* Hallauer, 126 Wis. 244, 105 N. W. 568.

421. 1. Santa Fe Pac. R. Co. *v.* Holmes, 202 U. S. 438, 26 U. S. Sup. Ct. 676; Crawford *v.* United R., etc., Co., 101 Md. 402, 61 Atl. 287; McCarthy *v.* Pennsylvania R. Co., 189 N. Y. 170, 81 N. E. 770; Virginia Iron, etc., Co. *v.* Lore, 104 Va. 217, 51 S. E. 371.

2. Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822; Scott *v.* Iowa Telephone Co., 126 Iowa 524, 102 N. W. 432; Tucker *v.* American Car, etc., Co., 218 Pa. St. 323, 67 Atl. 616; Anderson *v.* Southern R. Co., 70 S. Car. 490, 50 S. E. 202; Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048.

422. 1. Denko *v.* Carbon Hill Coal Co., (C. C. A.) 136 Fed. 162; Rincicotti *v.* John J. O'Brien Contracting Co., 77 Conn. 617, 60 Atl. 115; Odin Coal Co. *v.* Tadlock, 216 Ill. 624, 75 N. E. 332; Flickner *v.* Lambert, 36 Ind. App. 524, 74 N. E. 263; George Weidemann Brewing Co. *v.* Wood, (Ky. 1905) 87 S. W. 772; Crawford *v.* United R., etc., Co., 101 Md. 402, 61 Atl. 287; Dawson *v.* Lawrence Gas Light Co., 188 Mass. 481, 74 N. E. 912; Hjelm *v.* Western Granite Contraction Co., 94 Minn. 169, 102 N. W. 384; Koehler *v.* New York Steam Co., 183 N. Y. 1, 75 N. E. 538; Schiglizzo *v.* Dunn, 211 Pa. St. 253, 60 Atl. 724; Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85. *Compare* Tutwiler Coal, etc., Co. *v.* Farrington, 144 Ala. 157, 39 So. 898.

423. 1. Choctaw, etc., R. Co. *v.* Jones, 7 Ann. Cas. 430, 77 Ark. 367, 92 S. W. 244; Hinchliff *v.* Robinson, 118 Ill. App. 450; Cleveland, etc., R. Co. *v.* Patterson, 37 Ind. App. 617, 75 N. E. 857; Ross-Paris Co. *v.* Brown, (Ky. 1906) 90 S. W. 568; Taylor *v.* Boston, etc., R. Co., 188 Mass. 390, 74 N. E. 591; Crapo *v.* Syracuse, 183 N. Y. 395, 76 N. E. 465; Lorain Steel Co. *v.* Hayes, 27 Ohio Cir. Ct. 407; Sorenson *v.* Oregon Power Co., (Oregon 1905) 82 Pac. 10; Schiglizzo *v.* Dunn, 211 Pa. St. 253, 60 Atl. 724; Wilson *v.* Southern R. Co., 73 S. Car. 481, 53 S. E. 968; International, etc., R. Co. *v.* Wray, (Tex. Civ. App. 1906) 96 S. W. 74; Sandquist *v.* Independent Tel. Co., 38 Wash. 313, 80 Pac. 539.

424. 1. *United States.* — National Biscuit Co. *v.* Nolan, (C. C. A.) 138 Fed. 6; Law *v.* Central Dist. Printing, etc., Co., 140 Fed. 558.

Alaska. — Seittn *v.* Alaska Treadwell Gold Min. Co., 2 Alaska 8.

California. — Vinson *v.* Los Angeles Pac. R. Co., 147 Cal. 479, 82 Pac. 53.

Illinois. — City Water Works *v.* Lane, 122 Ill. App. 1, 7.

Indiana. — Baltimore, etc., R. Co. *v.* Clapp, 35 Ind. App. 403, 74 N. E. 267; McElwaine-Richards Co. *v.* Wall, 166 Ind. 267, 76 N. E. 408.

Kentucky. — Carmony *v.* Louisville, etc., R. Co., (Ky. 1905) 87 S. W. 319; Louisville, etc., R. Co. *v.* Mounce, (Ky. 1906) 90 S. W. 956; Hilman Land, etc., Co. *v.* Littlejohn, (Ky. 1906) 90 S. W. 1053.

Louisiana. — Welton *v.* Genesee Lumber Co., 114 La. 842, 38 So. 580.

Maine. — Erickson *v.* Monson Consol. Slate Co., 100 Me. 107, 60 Atl. 708.

Massachusetts. — Aziz *v.* Atlantic Cotton Mills, 189 Mass. 153, 75 N. E. 73; Flansberg *v.* Heywood Bros., etc., Co., 190 Mass. 125, 76 N. E. 599.

Missouri. — Dickey *v.* Dickey, 111 Mo. App. 304, 86 S. W. 909; Whaley *v.* Coleman, 113 Mo. App. 594, 88 S. W. 119.

Nebraska. — Hubler *v.* Johnson-McLean Co., 74 Neb. 840, 105 N. W. 247.

New York. — Dillon *v.* National Coal Tar Co., 181 N. Y. 215, 73 N. E. 978; Stevens *v.* Gair, 109 N. Y. App. Div. 621, 96 N. Y. Supp. 303.

North Carolina. — Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703; Covington *v.* Smith Furniture Co., 138 N. Car. 374, 50 S. E. 761.

Rhode Island. — Carbury *v.* Eastern Nut, etc., Co., 27 R. I. 116, 60 Atl. 773.

South Carolina. — Keys *v.* Winnsboro Granite Co., 72 S. Car. 97, 51 S. E. 549.

Tennessee. — Nashville Spoke, etc., Co. *v.* Thomas, 114 Tenn. 458, 86 S. W. 379.

Texas. — Missouri, etc., R. Co. *v.* Purdy, 98 Tex. 557, 86 S. W. 321; Burns *v.* Chronister Lumber Co., (Tex. Civ. App. 1905) 87 S. W. 163; Wagnon *v.* Houston, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1112; Pecos, etc., R. Co. *v.* Blasengame, (Tex. Civ. App. 1906) 93 S. W. 187; Texas, etc., R. Co. *v.* Cotts, (Tex. Civ. App. 1906) 95 S. W. 602.

Virginia. — Newport News Pub. Co. *v.* Beaumeister, 104 Va. 744, 52 S. E. 627.

Washington. — Stratton *v.* C. H. Nichols Lumber Co., 39 Wash. 323, 81 Pac. 831.

425. 1. Seittn *v.* Alaska Treadwell Gold Min. Co., 2 Alaska 8; Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148; Moore *v.* St. Louis, etc., R. Co., 115 La. 86, 38 So. 913; Tkac *v.* Maryland Steel Co., 101 Md. 179, 60 Atl. 618; Johnson *v.* Minneapolis, etc., R. Co., 140 Mich. 292, 103 N. W. 594; Burris *v.* Minneapolis, etc., R. Co., 95 Minn. 30, 103 N. W. 717; Thayer *v.* Utica Knitting Co., 183 N. Y. 18, 75 N. E. 577; Stewart *v.* Van Deventer Carpet Co., 138 N. Car. 60, 50 S. E. 562; Brown *v.* Northern Pac. R. Co., 44 Wash. 1, 86 Pac. 1053.

Disobedience of Rules Not Negligence Per Se. — Texas, etc., R. Co. *v.* Cotts, (Tex. Civ. App. 1906) 95 S. W. 602; Galveston, etc., R. Co. *v.* Still, (Tex. Civ. App. 1907) 100 S. W. 176,

Sanction of Violation by Master. — Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070.

426. 1. **Illustrations** — *Landlord and Tenant.* — Martin *v.* Surman, 116 Ill. App. 282; Rosenberg *v.* Zeitchik, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 153, 101 N. Y. Supp. 591.

Physician and Patient. — Beadle *v.* Paine, 46 Oregon 424, 80 Pac. 903.

427. 1. Southern R. Co. *v.* Carroll, (C.

C. A.) 138 Fed. 638; Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

2. *California.* — Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976.

Connecticut. — McCarthy *v.* Consolidated R. Co., 79 Conn. 73, 63 Atl. 725.

Delaware. — Hanniga *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254.

Illinois. — Lake Shore, etc., R. Co. *v.* Enright, 227 Ill. 403, 81 N. E. 374.

Indiana. — Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Ft. Wayne Cooperage Co. *v.* Page, (Ind. App. 1907) 82 N. E. 83.

Iowa. — Ambroz *v.* Cedar Rapids Electric Light, etc., Co., 131 Iowa 336, 108 N. W. 540.

Maryland. — Phillips *v.* Washington, etc., R. Co., 104 Md. 455, 10 Ann. Cas. 334, 65 Atl. 422.

Michigan. — Wider *v.* Detroit United R. Co., 147 Mich. 537, 111 N. W. 100.

Minnesota. — Youngquist *v.* Minneapolis St. R. Co., 102 Minn. 501, 114 N. W. 259.

Missouri. — Haley *v.* Missouri Pac. R. Co., 197 Mo. 15, 93 S. W. 1120; Diamond *v.* Kansas City, 120 Mo. App. 185, 96 S. W. 492.

New Jersey. — Hageman *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 834.

New York. — Neary *v.* Citizens' R., etc., Co., 110 N. Y. App. Div. 769, 97 N. Y. Supp. 420; Duffy *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 177, 101 N. Y. Supp. 767; Geoghegan *v.* Union R. Co., 122 N. Y. App. Div. 646, 107 N. Y. Supp. 503.

Pennsylvania. — Becker *v.* Philadelphia, 212 Pa. St. 379, 61 Atl. 942; Minnich *v.* Wright, 214 Pa. St. 201, 63 Atl. 428.

427. 1. *Connecticut.* — Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020.

Illinois. — Elgin, etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407.

Kentucky. — Louisville, etc., R. Co. *v.* Cleaver, (Ky. 1905) 89 S. W. 494; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167.

Missouri. — Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012.

North Carolina. — Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 6 Ann. Cas. 71, 52 S. E. 932.

Ohio. — Weaver *v.* Columbus, etc., R. Co., 76 Ohio St. 164, 81 N. E. 180; Wheeling, etc., R. Co. *v.* Parker, 9 Ohio Cir. Ct. (N. S.) 28.

Pennsylvania. — Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877.

Texas. — International, etc., R. Co. *v.* Glover, (Tex. Civ. App. 1905) 88 S. W. 515; San Antonio, etc., R. Co. *v.* Mertink, (Tex. Civ. App. 1907) 102 S. W. 153.

Utah. — Christensen *v.* Oregon Short Line R. Co., 29 Utah 192, 80 Pac. 746.

West Virginia. — Bowles *v.* Chesapeake, etc., R. Co., (W. Va. 1907) 57 S. E. 131.

Wisconsin. — Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88.

428. 4. *United States.* — Southern R. Co. *v.* Carroll, (C. C. A.) 138 Fed. 638.

California. — Bilton *v.* Southern Pac. Co., 148 Cal. 443, 83 Pac. 440.

Connecticut. — Norris *v.* New York, etc., R. Co., 78 Conn. 314, 61 Atl. 1075; Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020.

Georgia. — *Compare,* under Georgia statute, Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948.

Illinois. — Chicago, etc., R. Co. *v.* Louderback, 125 Ill. App. 323.

Indiana. — New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804; Baltimore, etc., R. Co. *v.* Rosborough, (Ind. App. 1907) 80 N. E. 869; Lowden *v.* Pennsylvania Co., (Ind. App. 1907) 82 N. E. 941.

Iowa. — Meyer *v.* Chicago, etc., R. Co., 134 Iowa 722, 112 N. W. 194.

Kansas. — Chicago, etc., R. Co. *v.* Wheelbarger, 75 Kan. 811, 88 Pac. 531.

Kentucky. — Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1906) 97 S. W. 14; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810; Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167.

Massachusetts. — Kenny *v.* Boston, etc., R. Co., 188 Mass. 127, 74 N. E. 309.

Michigan. — Coffee *v.* Pere Marquette R. Co., 139 Mich. 378, 102 N. W. 953.

Mississippi. — Jackson *v.* Mobile, etc., R. Co., 89 Miss. 32, 42 So. 236.

Missouri. — Deane *v.* St. Louis Transit Co., 192 Mo. 575, 91 S. W. 505; Mitchell *v.* St. Louis, etc., R. Co., 122 Mo. App. 50, 97 S. W. 552.

New Jersey. — Atlantic City R. Co. *v.* Kiefer, (N. J. 1907) 66 Atl. 930.

New York. — Fisher *v.* Central Vermont R. Co., 109 N. Y. App. Div. 449, 95 N. Y. Supp. 693; Fancher *v.* Fonda, etc., R. Co., 111 N. Y. App. Div. 4, 97 N. Y. Supp. 666; Best *v.* New York Cent., etc., R. Co., 117 N. Y. App. Div. 739, 102 N. Y. Supp. 957.

North Carolina. — Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 6 Ann. Cas. 71, 52 S. E. 932; Hodgin *v.* Southern R. Co., 143 N. Car. 93, 55 S. E. 413.

Ohio. — Wheeling, etc., R. Co. *v.* Parker, 9 Ohio Cir. Ct. (N. S.) 28.

Texas. — International, etc., R. Co. *v.* Glover, (Tex. Civ. App. 1905) 88 S. W. 515; International, etc., R. Co. *v.* Edwards, (Tex. 1906) 93 S. W. 106.

Virginia. — Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155; Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56.

2. *Arkansas.* — St. Louis, etc., R. Co. *v.* Hitt, 76 Ark. 227, 88 S. W. 908.

Kentucky. — Wilson *v.* Chesapeake, etc., R. Co., (Ky. 1905) 86 S. W. 690; Louisville, etc., R. Co. *v.* Cleaver, (Ky. 1905) 89 S. W. 494.

Maine. — Shepard *v.* Lewiston, etc., St. R. Co., 101 Me. 591, 65 Atl. 20.

Maryland. — Phillips *v.* Washington, etc., R. Co., 104 Md. 455, 10 Ann. Cas. 334, 65 Atl. 422.

Minnesota. — Greenwood *v.* Chicago, etc., R. Co., 95 Minn. 284, 104 N. W. 3.

Mississippi. — Louisville, etc., R. Co. *v.* Crominarity, 86 Miss. 464, 38 So. 633.

Missouri. — Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012; Hafner *v.* St. Louis Transit Co., 197 Mo. 196, 94 S. W. 291; Stotler *v.* Chicago, etc., R. Co., 204 Mo. 619, 103 S. W. 1.

Nebraska. — Chicago, etc., R. Co. *v.* Schwanenfeldt, 75 Neb. 80, 105 N. W. 1101.

New Hampshire. — Wright *v.* Boston, etc., R. Co., (N. H. 1907) 65 Atl. 687.

New York. — Walsh *v.* Fonda, etc., R. Co., 114 N. Y. App. Div. 272, 99 N. Y. Supp. 773, Read *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 228, 107 N. Y. Supp. 1068.

Ohio. — Cincinnati, etc., R. Co. *v.* Levy, 8 Ohio Cir. Ct. (N. S.) 353.

Virginia. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211.

429. 1. *United States.* — Baltimore, etc., R. Co. *v.* Connell, (C. C. A.) 137 Fed. 8; Farrell *v.* Erie R. Co., (C. C. A.) 138 Fed. 28; Sealey *v.* Southern R. Co., (C. C. A.) 151 Fed. 736.

Arkansas. — St. Louis, etc., R. Co. *v.* Dillard, 78 Ark. 520, 94 S. W. 617.

California. — Bilton *v.* Southern Pac. Co., 148 Cal. 443, 83 Pac. 440.

Delaware. — Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009

Georgia. — Southern R. Co. *v.* Tankersley, (Ga. App. 1908) 60 S. E. 297, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 427 *et seq.*

Illinois. — Toledo, etc., R. Co. *v.* Hammett, 220 Ill. 9, 5 Ann. Cas. 73, 77 N. E. 72; Elgin, etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407; Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821; Illinois Cent. R. Co. *v.* Johnson, 123 Ill. App. 300; Illinois Southern R. Co. *v.* Hayer, 128 Ill. App. 315.

Indiana. — Southern Indiana R. Co. *v.* Corps, (Ind. App. 1906) 76 N. E. 902.

Kentucky. — Wilson *v.* Chesapeake, etc., R. Co., (Ky. 1905) 86 S. W. 690.

Massachusetts. — Orth *v.* Boston El. R. Co., 188 Mass. 427, 74 N. E. 673

Michigan. — Coffee *v.* Pere Marquette R. Co., 139 Mich. 378, 102 N. W. 953; Hintz *v.* Michigan Cent. R. Co., 140 Mich. 565, 104 N. W. 23; Welch *v.* Michigan Cent. R. Co., 147 Mich. 207, 110 N. W. 1069.

Minnesota. — Stegner *v.* Chicago, etc., R. Co., 94 Minn. 166, 102 N. W. 205.

Mississippi. — Louisville, etc., R. Co. *v.* Crominarity, 86 Miss. 464, 38 So. 633.

Missouri. — Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136.

New York. — Noakes *v.* New York Cent., etc., R. Co., 121 N. Y. App. Div. 716, 106 N. Y. Supp. 522.

Ohio. — Cincinnati, etc., R. Co. *v.* Taylor, 27 Ohio Cir. Ct. 757.

South Carolina. — Osteen *v.* Southern R. Co., 76 S. Car. 368, 57 S. E. 196.

Texas. — Gulf, etc., R. Co. *v.* Melville, (Tex. Civ. App. 1905) 87 S. W. 863.

Virginia. — Southern R. Co. *v.* Stockdon, 106 Va. 693, 56 S. E. 713.

Canada. — Champaigne *v.* Grand Trunk R. Co., 9 Ont. L. Rep. 589; Grand Trunk R. Co. *v.* Hainer, 36 Can. Sup. Ct. 180.

Street Railroads. — Some of the courts exact less care of the traveler in crossing street railroads than in crossing those propelled by steam.

United States. — See Los Angeles Traction Co. *v.* Conneally, (C. C. A.) 136 Fed. 104; Berger *v.* Philadelphia Rapid Transit Co., 141 Fed. 1020.

California. — Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Hamlin *v.* Pacific Electric R. Co., 150 Cal. 776, 89 Pac. 1109.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 331, 85 Pac. 630.

Indiana. — Indianapolis St. R. Co. *v.* Marschke, 166 Ind. 490, 77 N. E. 945; Indianapolis St. R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436.

Iowa. — Perjue *v.* Citizens' Electric Light, etc., Co., 131 Iowa 710, 109 N. W. 280.

Maine. — Marden *v.* Portsmouth, etc., St. R. Co., 100 Me. 41, 60 Atl. 530.

Massachusetts. — Finnick *v.* Boston, etc., St. R. Co., 190 Mass. 382, 77 N. E. 500. See also Hamblin *v.* New York, etc., R. Co., 195 Mass. 555, 81 N. E. 258.

Michigan. — Hebblethwaite *v.* Detroit United R. Co., 145 Mich. 13, 108 N. W. 433.

Minnesota. — Smith *v.* Minneapolis St. R. Co., 95 Minn. 254, 104 N. W. 16.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Washington. — Niemyer *v.* Washington Water Power Co., 45 Wash. 170, 88 Pac. 103.

But the distinction is not recognized everywhere. Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884; Metropolitan R. Co. *v.* Fonville, (Okla. 1907) 91 Pac. 902.

2. Hooks *v.* Huntsville R., etc., Co., 147 Ala. 700, 41 So. 273; Dryden *v.* Pennsylvania R. Co., 211 Pa. St. 620, 61 Atl. 249; Thompson *v.* Pennsylvania R. Co., 215 Pa. St. 113, 7 Ann. Cas. 351, 64 Atl. 323; Messinger *v.* Pennsylvania R. Co., 215 Pa. St. 497, 64 Atl. 682; Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877. See also Birmingham R., etc., Co. *v.* Ryan, 148 Ala. 69, 41 So. 616; Cromley *v.* Pennsylvania R. Co., 211 Pa. St. 429, 60 Atl. 1007.

The rule in *Maryland* is that the traveler must always look and listen, and if the crossing is of more than ordinary danger and the view obstructed, he must also stop. State *v.* Western Maryland R. Co., 102 Md. 257, 62 Atl. 754.

Rule Applied to Drawbridge. — Anne Arundel County *v.* State, (Md. App. 1908) 68 Atl. 602.

3. In a recent case in *Pennsylvania* where one stopped, looked, and listened before he got on the first track, it was held not to be negligence *per se* to fail to do so afterwards, although he was still required to use ordinary care. Cohen *v.* Philadelphia, etc., R. Co., 211 Pa. St. 227, 60 Atl. 720.

4. Mankewicz *v.* Lehigh Valley R. Co., 214 Pa. St. 386, 63 Atl. 604. See also Dryden *v.* Pennsylvania R. Co., 211 Pa. St. 620, 61 Atl. 249; Griffith *v.* West Chester St. R. Co., 214 Pa. St. 293, 63 Atl. 740.

430. 1. *Georgia.* — Bryson *v.* Southern R. Co., (Ga. App. 1908) 59 S. E. 1124; Southern R. Co. *v.* Tankersley, (Ga. App. 1908) 60 S. E. 297.

Kentucky. — Louisville, etc., R. Co. *v.*

Cleaver, (Ky. 1905) 89 S. W. 494; Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1906) 97 S. W. 14; Chesapeake, etc., R. Co. *v.* Vaughn, (Ky. 1906) 97 S. W. 774; Davis *v.* Louisville, etc., R. Co., (Ky. 1906) 97 S. W. 1122; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988.

Massachusetts. — Fitzhugh *v.* Boston, etc., R. Co., 195 Mass. 202, 80 N. E. 792.

Mississippi. — Louisville, etc., R. Co. *v.* Crominarity, 86 Miss. 464, 38 So. 633; Jackson *v.* Mobile, etc., R. Co., 89 Miss. 32, 42 So. 236.

Missouri. — Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012.

Canada. — Misener *v.* Wabash R. Co., 12 Ont. L. Rep. 71.

2. *United States.* — Rollins *v.* Chicago, etc., R. Co., (C. C. A.) 139 Fed. 639; St. Louis, etc., R. Co. *v.* Chapman, (C. C. A.) 140 Fed. 129; Gipson *v.* Southern R. Co., 140 Fed. 410; Chicago G. W. R. Co. *v.* Smith, (C. C. A.) 141 Fed. 930; Wabash R. Co. *v.* De Tar, (C. C. A.) 141 Fed. 932; Illinois Cent. R. Co. *v.* Ackerman, (C. C. A.) 144 Fed. 959; Rich *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 79; Union Pac. R. Co. *v.* Rosewater, (C. C. A.) 157 Fed. 168.

Arkansas. — St. Louis, etc., R. Co. *v.* Johnson, 74 Ark. 372, 86 S. W. 282; St. Louis, etc., R. Co. *v.* Hitt, 76 Ark. 224, 88 S. W. 911; Tiffin *v.* St. Louis, etc., R. Co., 78 Ark. 55, 93 S. W. 564; Choctaw, etc., R. Co. *v.* Baskins, 78 Ark. 355, 93 S. W. 757; St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613; St. Louis, etc., R. Co. *v.* Dillard, 78 Ark. 520, 94 S. W. 617; St. Louis, etc., R. Co. *v.* Wyatt, 79 Ark. 241, 96 S. W. 376; Griffie *v.* St. Louis, etc., R. Co., 80 Ark. 186, 96 S. W. 750.

California. — Bilton *v.* Southern Pac. Co., 148 Cal. 443, 83 Pac. 440; Martin *v.* Southern Pac. Co., 150 Cal. 124, 88 Pac. 701; Matteson *v.* Southern Pac. Co., (Cal. App. 1907) 92 Pac. 101.

Connecticut. — Metcalf *v.* Central Vermont R. Co., 78 Conn. 614, 63 Atl. 633.

Delaware. — Boudwin *v.* Wilmington City R. Co., 4 Penn. (Del.) 381, 60 Atl. 865.

Florida. — Seaboard Air Line R. Co. *v.* Barwick, 51 Fla. 304, 41 So. 70.

Illinois. — Cleveland, etc., R. Co. *v.* Sparks, 122 Ill. App. 400; Illinois Cent. R. Co. *v.* McMillion, 129 Ill. App. 27.

Indiana. — Baltimore, etc., R. Co. *v.* Rosborough, (Ind. App. 1907) 80 N. E. 869; Wendel *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 82 N. E. 469; Wamsley *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 82 N. E. 490, *affirmed* on rehearing (Ind. App. 1908) 83 N. E. 640; Cleveland, etc., R. Co. *v.* Wuest, (Ind. App. 1908) 83 N. W. 620.

Indian Territory. — Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182.

Iowa. — Swanger *v.* Chicago, etc., R. Co., 132 Iowa 32, 109 N. W. 308; Meyer *v.* Chicago, etc., R. Co., 134 Iowa 722, 112 N. W. 194; Doherty *v.* Des Moines City R. Co., (Iowa 1907) 114 N. W. 183.

Kansas. — Bressler *v.* Chicago, etc., R. Co., 74 Kan. 256, 86 Pac. 472.

Maryland. — Anderson *v.* Baltimore, etc., R. Co., 101 Md. 487, 61 Atl. 575; Hatcher *v.* McDermott, 103 Md. 78, 63 Atl. 214; Annapolis, etc., R. Co. *v.* State, 104 Md. 659, 65 Atl. 434; Columbia, etc., R. Co. *v.* State, (Md. 1907) 65 Atl. 625.

Massachusetts. — Hamblin *v.* New York, etc., R. Co., 195 Mass. 555, 81 N. E. 258.

Michigan. — Storrs *v.* Grand Trunk Western R. Co., 142 Mich. 375, 105 N. W. 764.

Minnesota. — Carlson *v.* Chicago, etc., R. Co., 96 Minn. 504, 105 N. W. 555.

Mississippi. — Illinois Cent. R. Co. *v.* Bethea, 88 Miss. 119, 40 So. 813.

Missouri. — Rissler *v.* St. Louis Transit Co., 113 Mo. App. 120, 87 S. W. 578; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256; Sanguinette *v.* Mississippi River, etc., R. Co., 196 Mo. 466, 95 S. W. 386; Fechley *v.* Springfield Traction Co., 119 Mo. App. 358, 96 S. W. 421; Mitchell *v.* St. Louis, etc., R. Co., 122 Mo. App. 50, 97 S. W. 552; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880; Grout *v.* Central Electric R. Co., 125 Mo. App. 552, 102 S. W. 1026; Ross *v.* Metropolitan St. R. Co., 125 Mo. App. 614, 102 S. W. 1036; Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115.

Nebraska. — Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368; Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

New Jersey. — Fuchs *v.* Lehigh Valley R. Co., (N. J. 1905) 61 Atl. 1; Cranbuck *v.* Delaware, etc., R. Co., (N. J. 1907) 65 Atl. 1031; Gehring *v.* Atlantic City R. Co., (N. J. 1907) 68 Atl. 61.

New York. — Keller *v.* Erie R. Co., 183 N. Y. 67, 75 N. E. 965; Hood *v.* Lehigh Valley R. Co., 109 N. Y. App. Div. 418, 96 N. Y. Supp. 431; Paige *v.* New York Cent., etc., R. Co., 111 N. Y. App. Div. 828, 98 N. Y. Supp. 183; Noakes *v.* New York Cent., etc., R. Co., 121 N. Y. App. Div. 716, 106 N. Y. Supp. 522.

North Carolina. — Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 6 Ann. Cas. 71, 52 S. E. 932; Allen *v.* Atlanta, etc., Air Line R. Co., 141 N. Car. 340, 53 S. E. 866; Hodgin *v.* Southern R. Co., 143 N. Car. 93, 55 S. E. 413; Morrow *v.* North Carolina R. Co., (N. Car. 1907) 59 S. E. 158.

Ohio. — Cleveland, etc., R. Co. *v.* Sivey, 27 Ohio Cir. Ct. 248; Cincinnati, etc., R. Co. *v.* Taylor, 27 Ohio Cir. Ct. 757; Wheeling, etc., R. Co. *v.* Parker, 9 Ohio Cir. Ct. (N. S.) 28.

Oklahoma. — Metropolitan R. Co. *v.* Fonville, (Okla. 1907) 91 Pac. 902.

Oregon. — Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141.

Rhode Island. — Price *v.* Rhode Island Co., (R. I. 1907) 66 Atl. 200.

Texas. — St. Louis Southwestern R. Co. *v.* Hunt, (Tex. Civ. App. 1907) 100 S. W. 968; International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560.

Vermont. — Guilmont *v.* Central Vermont R. Co., 78 Vt. 185, 62 Atl. 54.

Virginia. — Stokes *v.* Southern R. Co., 104

Va. 807, 52 S. E. 855; Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155; Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56; Southern R. Co. *v.* Hansbrough, 107 Va. 733, 60 S. E. 58.

Washington. — Baker *v.* Tacoma Eastern R. Co., 44 Wash. 575, 87 Pac. 826.

Wisconsin. — Marshall *v.* Green Bay, etc., R. Co., 125 Wis. 96, 103 N. W. 249; Morice *v.* Milwaukee Electric R., etc., Co., 129 Wis. 529, 109 N. W. 567.

433. **1.** Bryson *v.* Southern R. Co., (Ga. App. 1908) 59 S. E. 1124. See also Tiffin *v.* St. Louis, etc., R. Co., 78 Ark. 55, 93 S. W. 564.

While it is ordinarily the duty of a traveler to stop, look, and listen, the law does not require an impossible or useless thing. Central of Georgia R. Co. *v.* Hyatt, (Ala. 1907) 43 So. 867.

2. Central of Georgia R. Co. *v.* Hyatt, (Ala. 1907) 43 So. 867; Bamberg *v.* Atlantic Coast Line R. Co., 72 S. Car. 392, 51 S. E. 988, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 433. See also the dissenting opinion of Clark, C. J., in Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 6 Ann. Cas. 71, 52 S. E. 932, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 433.

434. **1.** State *v.* Western Maryland R. Co., 102 Md. 257, 62 Atl. 754; Baltimore, etc., R. Co. *v.* State, 104 Md. 76, 64 Atl. 304; Storrs *v.* Grand Trunk Western R. Co., 142 Mich. 375, 105 N. W. 764; Sanguinette *v.* Mississippi River, etc., R. Co., 196 Mo. 466, 95 S. W. 386; Spencer *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 789, 108 N. Y. Supp. 245; Sellers *v.* Philadelphia, etc., R. Co., 214 Pa. St. 298, 63 Atl. 606. See also Tiffin *v.* St. Louis, etc., R. Co., 78 Ark. 55, 93 S. W. 564.

2. *United States.* — Farrell *v.* Erie R. Co., (C. C. A.) 138 Fed. 28.

Alabama. — Central of Georgia R. Co. *v.* Hyatt, (Ala. 1907) 43 So. 867; Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032.

Arkansas. — St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613.

Iowa. — Meyer *v.* Chicago, etc., R. Co., 134 Iowa 722, 112 N. W. 194.

Kentucky. — Louisville, etc., R. Co. *v.* Cleaver, (Ky. 1905) 89 S. W. 494.

Missouri. — Mitchell *v.* St. Louis, etc., R. Co., 122 Mo. App. 50, 97 S. W. 552.

North Carolina. — Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 6 Ann. Cas. 71, 52 S. E. 932.

Ohio. — Cincinnati, etc., R. Co. *v.* Taylor, 27 Ohio Cir. Ct. 757.

Oregon. — Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 434.

South Carolina. — Bamberg *v.* Atlantic Coast Line R. Co., 72 S. Car. 389, 51 S. E. 988.

Texas. — International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918; Texas, etc., R. Co. *v.* Huber, (Tex. Civ. App. 1906) 95 S. W. 568.

Virginia. — Southern R. Co. *v.* Stockdon, 106 Va. 693, 56 S. E. 713.

Canada. — Champaigne *v.* Grand Trunk R. Co., 9 Ont. L. Rep. 589; Misener *v.* Wabash R. Co., 12 Ont. L. Rep. 71.

435. **1.** Cleveland, etc., R. Co. *v.* Wuest, (Ind. App. 1908) 83 N. E. 620; Swanger *v.* Chicago, etc., R. Co., 132 Iowa 32, 109 N. W. 308; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167; Columbia, etc., R. Co. *v.* State, (Md. 1907) 65 Atl. 625; Dryden *v.* Pennsylvania R. Co., 211 Pa. St. 620, 61 Atl. 249; Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155; Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56. This rule applies to the railway company also. Southern R. Co. *v.* Hansbrough, 107 Va. 733, 60 S. E. 58.

2. *Arkansas.* — St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613.

California. — Bilton *v.* Southern Pac. Co., 148 Cal. 443, 83 Pac. 440.

Colorado. — Colorado, etc., R. Co. *v.* Thomas, 33 Colo. 517, 3 Ann. Cas. 700, 81 Pac. 801.

Delaware. — Boudwin *v.* Wilmington City R. Co., 4 Penn. (Del.) 381, 60 Atl. 865.

Illinois. — Toledo, etc., R. Co. *v.* Hammett, 220 Ill. 9, 5 Ann. Cas. 73, 77 N. E. 72.

Maryland. — State *v.* Western Maryland R. Co., 102 Md. 257, 62 Atl. 754; Annapolis, etc., R. Co. *v.* State, 104 Md. 659, 65 Atl. 434.

Missouri. — Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012.

Nebraska. — Chicago, etc., R. Co. *v.* Schwanenfeldt, 75 Neb. 80, 105 N. W. 1101.

New Jersey. — Fuchs *v.* Lehigh Valley R. Co., (N. J. 1905) 61 Atl. 1.

436. **1.** *United States.* — Chicago G. W. R. Co. *v.* Smith, (C. C. A.) 141 Fed. 930; Illinois Cent. R. Co. *v.* Ackerman, (C. C. A.) 144 Fed. 959.

Arkansas. — St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613.

California. — Martin *v.* Southern Pac. Co., 150 Cal. 124, 88 Pac. 701; Hutson *v.* Southern California R. Co., 150 Cal. 701, 89 Pac. 1093.

Indiana. — New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804; Southern Indiana R. Co. *v.* Corps, (Ind. App. 1906) 76 N. E. 902.

Kentucky. — Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 219, 91 S. W. 685; Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1906) 97 S. W. 14.

Minnesota. — Carlson *v.* Chicago, etc., R. Co., 96 Minn. 504, 105 N. W. 555.

Mississippi. — Louisville, etc., R. Co. *v.* Crominarity, 86 Miss. 464, 38 So. 633; Illinois Cent. R. Co. *v.* Bethea, 88 Miss. 119, 40 So. 813; Jackson *v.* Mobile, etc., R. Co., 89 Miss. 32, 42 So. 236.

Missouri. — Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Green *v.* Missouri Pac. R. Co., 192 Mo. 131, 90 S. W. 805; Walker *v.* Wabash R. Co., 193 Mo. 453, 92 S. W. 83; Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880.

New Jersey. — Gehring *v.* Atlantic City R. Co., (N. J. 1907) 68 Atl. 61.

New York. — Fisher *v.* Central Vermont R. Co., 109 N. Y. App. Div. 449, 95 N. Y. Supp. 693; Hood *v.* Lehigh Valley R. Co., 109 N. Y. App. Div. 478, 96 N. Y. Supp. 431.

North Carolina. — Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 6 Ann. Cas. 71, 52 S. E. 932.

Pennsylvania. — See Bracken *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 22.

Texas. — International, etc., R. Co. *v.* Edwards, (Tex. 1906) 93 S. W. 106.

Virginia. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211; Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56.

Canada. — Champaigne *v.* Grand Trunk R. Co., 9 Ont. L. Rep. 589; Misener *v.* Wabash R. Co., 12 Ont. L. Rep. 71.

In South Carolina the rule is otherwise by statute. Walker *v.* Southern R. Co., 77 S. Car. 161, 57 S. E. 764; Harbert *v.* Atlanta, etc., R. Co., (S. Car. 1907) 58 S. E. 644; Drawdy *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 58 S. E. 980; Southern R. Co. *v.* Carroll, (C. C. A.) 138 Fed. 638.

In Massachusetts, under Rev. Laws, c. 111, § 268, where the railroad company has failed to give the statutory signals, the traveler will not be barred of a recovery unless he was guilty of "gross" negligence. Kelsall *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 674.

437. 1. See Frank *v.* St. Louis Transit Co., 112 Mo. App. 496, 87 S. W. 88.

2. Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437; Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402. See also cases cited *supra,* **382.** 5. to **387.** 5.

3. Baltimore, etc., R. Co. *v.* Connell, (C. C. A.) 137 Fed. 8; Illinois Cent. R. Co. *v.* Morris, (Ky. 1906) 90 S. W. 979; Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 100 S. W. 302; Northern Cent. R. Co. *v.* State, 100 Md. 404, 3 Ann. Cas. 445, 60 Atl. 19; Potter *v.* Pere Marquette R. Co., 140 Mich. 362, 103 N. W. 808; Stegner *v.* Chicago, etc., R. Co., 94 Minn. 166, 102 N. W. 205; Illinois Cent. R. Co. *v.* Bethea, 88 Miss. 119, 40 So. 813; Shafer *v.* Lehigh Valley R. Co., (N. J. 1907) 66 Atl. 1072; Cohen *v.* Philadelphia, etc., R. Co., 211 Pa. St. 227, 60 Atl. 729; McCarthy *v.* Philadelphia, etc., R. Co., 211 Pa. St. 193, 60 Atl. 778.

But the plaintiff in crossing by invitation takes the risk of fright to his horse by the whistling of a train. Lake Erie, etc., R. Co. *v.* Fike, 35 Ind. App. 554, 74 N. E. 636.

438. 1. Union Pac. R. Co. *v.* Rosewater, (C. C. A.) 157 Fed. 168; Koch *v.* Southern California R. Co., 148 Cal. 677, 7 Ann. Cas. 795, 84 Pac. 176; Pittsburgh, etc., R. Co. *v.* Puszdrakiewicz, 129 Ill. App. 295; Cincinnati, etc., R. Co. *v.* Levy, 8 Ohio Cir. Ct. (N. S.) 353.

2. *United States.* — Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397.

Arkansas. — Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976.

Colorado. — Colorado, etc., R. Co. *v.* Thomas, 33 Colo. 517, 3 Ann. Cas. 700, 81 Pac. 801.

Georgia. — Harris *v.* Southern R. Co., 129 Ga. 388, 58 S. E. 873.

Illinois. — Pittsburgh, etc., R. Co. *v.* Puszdrakiewicz, 129 Ill. App. 295.

Kansas. — Missouri Pac. R. Co. *v.* Trahern, (Kan. 1907) 91 Pac. 48.

Kentucky. — Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1906) 97 S. W. 14.

Maryland. — Columbia, etc., R. Co. *v.* State, (Md. 1907) 65 Atl. 625.

Michigan. — Storrs *v.* Grand Trunk Western R. Co., 142 Mich. 375, 105 N. W. 764.

Missouri. — Hutchinson *v.* Missouri Pac. R. Co., 195 Mo. 546, 93 S. W. 931; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256.

New York. — Fancher *v.* Fonda, etc., R. Co., 111 N. Y. App. Div. 4, 97 N. Y. Supp. 666.

Pennsylvania. — Ellis *v.* Pennsylvania R. Co., 216 Pa. St. 415, 65 Atl. 803.

South Carolina. — Drawdy *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 58 S. E. 980.

Virginia. — Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155.

3. Newvahner *v.* Wabash R. Co., 126 Mo. App. 643, 105 S. W. 21. And see Central of Georgia R. Co. *v.* North, 129 Ga. 106, 58 S. E. 647.

439. 2. Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509.

Under the *Florida* statute (Laws 1891, p. 113, c. 4071, § 1) the presumption is against the railroad company. Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 7 Ann. Cas. 241, 39 So. 183; Seaboard Air Line R. Co. *v.* Barwick, 51 Fla. 304, 41 So. 70; Seaboard Air Line R. Co. *v.* Smith, 53 Fla. 375, 43 So. 235; Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318.

440. 1. Plaintiff Making Prima Facie Case. — St. Louis, etc., R. Co. *v.* Evans, 80 Ark. 19, 96 S. W. 616. See also Gerringer *v.* North Carolina R. Co., (N. Car. 1907) 59 S. E. 152.

2. Georgia Statute. — Under Civ. Code Ga. (1895), § 2225, there is a presumption that the railroad company was negligent. Louisville, etc., R. Co. *v.* Hurt, 129 Ga. 234, 58 S. E. 706; Bryson *v.* Southern R. Co., (Ga. App. 1908) 59 S. E. 1124.

441. 1. Holmes *v.* Missouri Pac. R. Co., 190 Mo. 98, 88 S. W. 623. See also Mattson *v.* Minnesota, etc., R. Co., 95 Minn. 477, 5 Ann. Cas. 498, 104 N. W. 443, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 441.

2. Midland Valley R. Co. *v.* Hamilton, 84 Ark. 81, 104 S. W. 540; Louisville, etc., R. Co. *v.* Payne, (Ky. 1907) 104 S. W. 752. See also Forrest *v.* Georgia R., etc., Co., 128 Ga. 77, 57 S. E. 98; Morrison *v.* Toronto, 12 Ont. L. Rep. 333.

3. Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173; Sharpton *v.* Augusta, etc., R. Co., 72 S. Car. 162, 51 S. E. 553; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563.

4. Midland Valley R. Co. *v.* Hamilton, 84 Ark. 81, 104 S. W. 540; Louisville, etc., R. Co. *v.* Payne, (Ky. 1907) 104 S. W. 752; Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86. See also Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49.

Must Be Proximate to Bar Recovery. — Black *v.* New York, etc., R. Co., 193 Mass. 448, 9 Ann. Cas. 485, 79 N. E. 797.

442. 1. Keeshan *v.* Elgin, etc., Traction Co., 229 Ill. 533, 82 N. E. 360; Covington *v.* Lee, (Ky. 1905) 89 S. W. 493; Illinois Cent. R. Co. *v.* Proctor, (Ky. 1905) 89 S. W. 714; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918.

Rollestone *v.* Cassirer, (Ga. App. 1907) 59 S. E. 442; Keeshan *v.* Elgin, etc., Traction Co.,

229 Ill. 533, 82 N. E. 360; Louisville, etc., R. Co. *v.* Payne, (Ky. 1907) 104 S. W. 752.

3. Rollestone *v.* Cassirer, (Ga. App. 1907) 59 S. E. 442; Glenn *v.* Louisville, etc., R. Co., (Ky. 1906) 90 S. W. 975. See also Glinn *v.* Louisville, etc., R. Co., (Ky. 1907) 105 S. W. 437; Black *v.* New York, etc., R. Co., 193 Mass. 448, 9 Ann. Cas. 485, 79 N. E. 797.

443. 2. Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976; Toledo, etc., R. Co. *v.* Hammett, 220 Ill. 9, 5 Ann. Cas. 73, 77 N. E. 72; Toledo, etc., R. Co. *v.* Smart, 116 Ill. App. 523; Kaiser *v.* Hahn, 126 Iowa 561, 102 N. W. 504; Adams *v.* Boston, etc., St. R. Co., 191 Mass. 486, 78 N. E. 117; Keith *v.* Worcester, etc., St. R. Co., (Mass. 1907) 82 N. E. 680; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Stillwater *v.* Swisher, 16 Okla. 585, 85 Pac. 1110. See also Osteen *v.* Southern R. Co., 76 S. Car. 368, 57 S. E. 196.

The Test in the case of a blind man is ordinary care in his condition. Chesapeake, etc., Telephone Co. *v.* Lysher, (Md. App. 1908) 68 Atl. 619.

3. Lacey *v.* Louisville, etc., R. Co., (C. C. A.) 152 Fed. 134; Birmingham R., etc., Co. *v.* Jones, 146 Ala. 277, 41 So. 146; Birmingham R., etc., Co. *v.* Brown, (Ala. 1907) 44 So. 572; Banks *v.* Braman, 188 Mass. 367, 74 N. E. 594; La Fitte *v.* Southern R. Co., 73 S. Car. 467, 53 S. E. 755.

4. Kelly *v.* Malott, (C. C. A.) 135 Fed. 74; Chicago City R. Co. *v.* Jordan, 215 Ill. 390, 74 N. E. 452; Chicago, etc., R. Co. *v.* Hamler, 215 Ill. 525, 3 Ann. Cas. 42, 74 N. E. 705; Pittsburgh, etc., R. Co. *v.* Ferrell, 39 Ind. App. 515, 78 N. E. 988, 80 N. E. 425. See also Morrison *v.* Lee, (N. Dak. 1907) 113 N. W. 1025, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 443.

444. 1. Wantonness or Recklessness as Equivalent to Wilfulness.— Alabama G. S. R. Co. *v.* Guest, 144 Ala. 373, 39 So. 654; Birmingham R., etc., Co. *v.* Ryan, 148 Ala. 69, 41 So. 616; Louisville, etc., R. Co. *v.* Perkins, (Ala. 1907) 44 So. 602; Birmingham R., etc., Co. *v.* Jaffee, (Ala. 1908) 45 So. 469; Cleveland, etc., R. Co. *v.* Ricker, 116 Ill. App. 428; Dyerson *v.* Union Pac. R. Co., 74 Kan. 528, 87 Pac. 680; Yazoo, etc., R. Co. *v.* Block, 86 Miss. 426, 38 So. 372. See also Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

In *Minnesota* the failure to use reasonable care to avoid an injury to another after his danger is seen, is wilful negligence. Teal *v.* St. Paul City R. Co., 96 Minn. 379, 104 N. W. 945; Anderson *v.* Minneapolis, etc., R. Co., (Minn. 1908) 114 N. W. 1123.

2. Chicago, etc., R. Co. *v.* Hamler, 215 Ill. 525, 3 Ann. Cas. 42, 74 N. E. 705; Thomasson *v.* Southern R. Co., 72 S. Car. 1, 51 S. E. 443. *Compare* Bussey *v.* Charleston, etc., R. Co., 75 S. Car. 116, 55 S. E. 163.

5. Russell *v.* Oregon Short Line R. Co., (C. C. A.) 155 Fed. 22; St. Louis Southwestern R. Co. *v.* Graham, 83 Ark. 61, 102 S. W. 700; Kahl *v.* Chicago, etc., R. Co., 125 Ill. App. 294; Citizens' Telephone Co. *v.* Westcott, (Ky. 1907) 99 S. W. 1153; Manning *v.* Conway, 192 Mass. 122, 78 N. E. 401; Baxter *v.* Auburn, etc., Electric R. Co., 190 N. Y. 439, 83 N. E. 469; Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075; Brown *v.* Northern Pac. R. Co., 44 Wash. 1, 86 Pac. 1053.

445. 1. Chaput *v.* Haverhill, etc., St. R. Co., 194 Mass. 218, 80 N. E. 597; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

2. See Cotton *v.* Willmar, etc., R. Co., 99 Minn. 366, 9 Ann. Cas. 935, 109 N. W. 835; Loso *v.* Lancaster County, (Neb. 1906) 109 N. W. 752.

3. A Husband may not recover for injuries to his wife to which his own negligence contributed. Feille *v.* San Antonio Traction Co., (Tex. Civ. App. 1908) 107 S. W. 367.

4. Instances Where the Doctrine Does Not Apply — *Negligence of Engineer Not Imputable to Conductor.* — St. Louis, etc., R. Co. *v.* McFall, 75 Ark. 30, 5 Ann. Cas. 161, 86 S. W. 824.

Hose Cart Driver's Negligence Not Imputable to Fireman. — McBride *v.* Des Moines City R. Co., 134 Iowa 398, 109 N. W. 618.

Negligence of Master Not Imputable to Servant. — See Carlson *v.* White Star Steamship Co., 39 Wash. 394, 81 Pac. 838.

446. 2. Louisville, etc., Mail Co. *v.* Barnes, 117 Ky. 868, 79 S. W. 261. See the title CARRIERS OF PASSENGERS.

447. 5. Doctrine Generally Abandoned. — See Shultz *v.* Old Colony St. R. Co., 193 Mass. 309, 9 Ann. Cas. 402, 79 N. E. 873, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 447, and exhaustively reviewing the cases. See also Cotton *v.* Willmar, etc., R. Co., 99 Minn. 366, 9 Ann. Cas. 935, 109 N. W. 835; Loso *v.* Lancaster County, (Neb. 1906) 109 N. W. 752.

448. 1. *United States.* — See Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599.

California. — Bresee *v.* Los Angeles Traction Co., 149 Cal. 152, 85 Pac. 152.

Georgia. — Southern R. Co. *v.* King, 128 Ga. 383, 57 S. E. 687.

Illinois. — Chicago Union Traction Co. *v.* Leach, 215 Ill. 184, 74 N. E. 119; Eckels *v.* Muttschall, 230 Ill. 462, 82 N. E. 872; Buckler *v.* Newman, 116 Ill. App. 546; Chicago, etc., R. Co. *v.* Condon, 121 Ill. App. 440. See also Christy *v.* Elliott, 216 Ill. 31, 3 Ann. Cas. 487, 74 N. E. 1035.

Kentucky. — Bevis *v.* Vanceburg Telephone Co., (Ky. 1905) 89 S. W. 126; Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 219, 91 S. W. 685.

Massachusetts. — Shultz *v.* Old Colony St. R. Co., 193 Mass. 309, 9 Ann. Cas. 402, 79 N. E. 873. *Compare* Kane *v.* Boston El. R. Co., 192 Mass. 386, 78 N. E. 485.

Minnesota. — Teal *v.* St. Paul City R. Co., 96 Minn. 379, 104 N. W. 945.

Missouri. — Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; Peterson *v.* St. Louis Transit Co., (Mo. 1906) 97 S. W. 860; Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509; Burleigh *v.* St. Louis Traction Co., 124 Mo. App. 724, 102 S. W. 621; Agnew *v.* Metropolitan St. R. Co., 125 Mo. App. 587, 102 S. W. 1041; Zalotuchin *v.* Metropolitan St. R. Co., (Mo. App. 1908) 106 S. W. 548.

Nebraska. — Loso *v.* Lancaster County, (Neb.

1906) 109 N. W. 752, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 447.

New Jersey. — Mumma *v.* Easton, etc., R. Co., (N. J. 1906) 65 Atl. 208.

New York. — Rockland Lake Trap, etc., Co. *v.* Lehigh Valley R. Co., 115 N. Y. App. Div. 628, 101 N. Y. Supp. 222; *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 447, 448; Penna *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 647, 96 N. Y. Supp. 208; Scheib *v.* New York City R. Co., 115 N. Y. App. Div. 578, 100 N. Y. Supp. 986; Ward *v.* Brooklyn Heights R. Co., 119 N. Y. App. Div. 487, 104 N. Y. Supp. 95; Doctoroff *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 216, 105 N. Y. Supp. 229; Sherwood *v.* New York Cent., etc., R. Co., 120 N. Y. App. Div. 639, 105 N. Y. Supp. 547; Noakes *v.* New York Cent., etc., R. Co., 121 N. Y. App. Div. 716, 106 N. Y. Supp. 522.

North Carolina. — Baker *v.* Norfolk, etc., R. Co., 144 N. Car. 36, 56 S. E. 553.

Pennsylvania. — Little *v.* Central Dist., etc., Tel. Co., 213 Pa. St. 229, 62 Atl. 848.

Texas. — See Routledge *v.* Rambler Automobile Co., (Tex. Civ. App. 1906) 95 S. W. 749.

Canada. — Plant *v.* Normanby Tp., 10 Ont. L. Rep. 16.

In Wisconsin the rule is otherwise. Lightfoot *v.* Winnebago Traction Co., 123 Wis. 479, 102 N. W. 30.

Rule Applied to Person Rowing Boat. — Quinette *v.* Bisso, (C. C. A.) 136 Fed. 825.

If Driver's Companion Remain Carelessly Inert, He May Be Guilty of Contributory Negligence. — St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613; Colorado, etc., R. Co. *v.* Thomas, 33 Colo. 517, 3 Ann. Cas. 700, 81 Pac. 801; Cleveland, etc., R. Co. *v.* Dukeman, 130 Ill. App. 105; New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804; Wood *v.* Maine Cent. R. Co., 101 Me. 469, 64 Atl. 833; Cotton *v.* Willmar, etc., R. Co., 99 Minn. 366, 9 Ann. Cas. 935, 109 N. W. 835; Fechley *v.* Springfield Traction Co., 119 Mo. App. 358, 96 S. W. 421; Canter *v.* St. Joseph, 126 Mo. App. 629, 105 S. W. 1; Read *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 228, 107 N. Y. Supp. 1068; Kunkle *v.* Lancaster County, 219 Pa. St. 52, 67 Atl. 918; Bracken *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 22.

Negligence in Selecting Driver. — And if the plaintiff's failure to exercise ordinary care in the selection of a driver is the proximate cause of the accident, he may not recover. Hanson *v.* Manchester St. R. Co., 73 N. H. 395, 62 Atl. 595.

2. Buckler *v.* Newman, 116 Ill. App. 546; Kerin *v.* United Traction Co., 117 N. Y. App. Div. 314, 102 N. Y. Supp. 423; Dryden *v.* Pennsylvania R. Co., 211 Pa. St. 620, 61 Atl. 249. See also Louisville, etc., R. Co. *v.* Armstrong, (Ky. 1907) 105 S. W. 473; Ft. Worth, etc., St. R. Co. *v.* Hawes, (Tex. Civ. App. 1908) 107 S. W. 556.

3. Parent's Duty of Care. — Norris *v.* Anthony, 193 Mass. 225, 79 N. E. 258; Cornovski *v.* St. Louis Transit Co., 207 Mo. 263, 106 S. W. 51; Wabnich *v.* Dry Dock, etc., R. Co., 112 N. Y. App. Div. 4, 98 N. Y. Supp. 38; Vinnette *v.* Northern Pac. R. Co., (Wash. 1907) 91 Pac. 975. See also Rosenberg *v.* Zeitchik, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 153, 101 N. Y. Supp. 591; Compty *v.* C. H. Starke Dredge, etc., Co., 129 Wis. 622, 109 N. W. 650.

Allowing Child to Go in Street Not Negligence. — Slattery *v.* Lawrence Ice Co., 190 Mass. 79, 76 N. E. 459; Serano *v.* New York Cent., etc., R. Co., 188 N. Y. 156, 80 N. E. 1025; Buscher *v.* New York Transp. Co., 114 N. Y. App. Div. 85, 99 N. Y. Supp. 673.

449. 1. See Manning *v.* Conway, 192 Mass. 122, 78 N. E. 401; Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827; Buscher *v.* New York Transp. Co., 114 N. Y. App. Div. 85, 99 N. Y. Supp. 673; Joost *v.* Brooklyn Heights R. Co., 113 N. Y. App. Div. 499, 99 N. Y. Supp. 409.

Parent Barred When Child Not. — St. Louis Southwestern R. Co. *v.* Cochran, 77 Ark. 398, 91 S. W. 747; Illinois Cent. R. Co. *v.* Warriner, 229 Ill. 91, 82 N. E. 246; Mills *v.* Cavanaugh, (Ky. 1906) 94 S. W. 651; Pollack *v.* Pennsylvania R. Co., 210 Pa. St. 634, 60 Atl. 312; Weida *v.* Hanover Tp., 30 Pa. Super. Ct. 424; Houston, etc., R. Co. *v.* Adams, (Tex. Civ. App. 1906) 98 S. W. 222; Vinnette *v.* Northern Pac. R. Co., (Wash. 1907) 91 Pac. 975.

Question for Jury. — Mattes *v.* Great Northern R. Co., 95 Minn. 386, 104 N. W. 234; Mattson *v.* Minnesota, etc., R. Co., 98 Minn. 296, 108 N. W. 517; Addis *v.* Hess, 29 Pa. Super. Ct. 505; Newport News *v.* Scott, 103 Va. 794, 50 S. E. 266.

450. 1. *Connecticut.* — Wilmot *v.* McPadden, 78 Conn. 276, 61 Atl. 1069.

Florida. — Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 7 Ann. Cas. 241, 39 So. 183; Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318.

Georgia. — Herrington *v.* Macon, 125 Ga. 58, 54 S. E. 71.

Illinois. — Richardson *v.* Nelson, 221 Ill. 254, 77 N. E. 583.

Michigan. — Boehm *v.* Detroit, 141 Mich. 277, 104 N. W. 626.

Minnesota. — Mattson *v.* Minnesota, etc., R. Co., 95 Minn. 477, 5 Ann. Cas. 498, 104 N. W. 443, overruling the former Minnesota rule on the subject, and referring to the citation of authorities in 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 448 *et seq.*

Oklahoma. — Atchison, etc., R. Co. *v.* Calhoun, 18 Okla. 81, 89 Pac. 207, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 450.

Texas. — Northern Texas Traction Co. *v.* Roye, (Tex. Civ. App. 1905) 86 S. W. 621.

451. 1. Paige *v.* New York Cent., etc., R. Co., 111 N. Y. App. Div. 823, 98 N. Y. Supp. 183; Morford *v.* Sharpsville, 28 Pa. Super. Ct. 544.

452. 1. In Georgia, by statute, there may be a recovery where the negligence of both parties is concurrent, the jury to diminish the damages in proportion to the plaintiff's fault. Atlantic Coast Line R. Co. *v.* Taylor, 125 Ga. 454, 54 S. E. 622; Wrightsville, etc., R. Co. *v.* Gornto, 120 Ga. 204, 58 S. E. 769. See also Tucker *v.* Central of Georgia R. Co., 122 Ga. 387, 50 S. E. 128.

In Tennessee so-called "remote contributory

negligence" is to be considered in mitigation of damages. Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902.

3. Colorado Springs, etc., R. Co. *v.* Nichols, (Colo. 1907) 92 Pac. 691.

453. 2. *Connecticut.* — Wilmot *v.* McPadden, 78 Conn. 276, 61 Atl. 1069.

Illinois. — Chicago Union Traction Co. *v.* Lundahl, 215 Ill. 289, 74 N. E. 155; Cullen *v.* Higgins, 216 Ill. 78, 74 N. E. 698; Illinois Third Vein Coal Co. *v.* Cioni, 215 Ill. 583, 74 N. E. 750; Chicago City R. Co. *v.* Schmidt, 217 Ill. 396, 75 N. E. 383; West Chicago St. R. Co. *v.* Schulz, 217 Ill. 322, 75 N. E. 495; Lockport *v.* Licht, 221 Ill. 35, 77 N. E. 581; Highland Park *v.* Gerkin, 122 Ill. App. 149; Kahl *v.* Chicago, etc., R. Co., 125 Ill. App. 294.

Iowa. — Hutcheis *v.* Cedar Rapids, etc., R. Co., 128 Iowa 279, 103 N. W. 779; Wilder *v.* G. W. Cereal Co., 130 Iowa 263, 104 N. W. 434; Calloway *v.* Agar Packing Co., 129 Iowa 1, 104 N. W. 721; Buchholtz *v.* Radcliffe, 129 Iowa 27, 105 N. W. 336.

Maine. — Colomb *v.* Portland, etc., St. R. Co., 100 Me. 418, 61 Atl. 898; Garland *v.* Hewes, 101 Me. 549, 64 Atl. 914.

Massachusetts. — King *v.* Norcross, (Mass. 1907) 82 N. E. 17, *citing* 7 Am. and Eng. Encyc. of Law (2d ed.) 453; Jordan *v.* Old Colony St. R. Co., 188 Mass. 124, 74 N. E. 315; Smith *v.* Thomson-Houston Electric Co., 188 Mass. 371, 74 N. E. 664; Briggs *v.* Boston, etc., R. Co., 188 Mass. 463, 74 N. E. 667; Finnick *v.* Boston, etc., St. R. Co., 190 Mass. 382, 77 N. E. 500; Adams *v.* Boston, etc., St. R. Co., 191 Mass. 486, 78 N. E. 117; Beale *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867.

New Hampshire. — See Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848.

New York. — McEntee *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 673, 97 N. Y. Supp. 476; McCarragher *v.* Proal, 114 N. Y. App. Div. 470, 100 N. Y. Supp. 208; Gilfillan *v.* German Hospital, 115 N. Y. App. Div. 48, 100 N. Y. Supp. 601; MacGuire *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 591, 102 N. Y. Supp. 749; Truesdell *v.* Erie R. Co., 119 N. Y. App. Div. 371, 104 N. Y. Supp. 243; Wrigley *v.* New York, 122 N. Y. App. Div. 402, 106 N. Y. Supp. 812; Stappers *v.* Interurban St. R. Co., (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y) 337, 106 N. Y. Supp. 854; Gilman *v.* New York City R. Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 770.

Death by Wrongful Act. — Some of the courts which hold that the burden is on the plaintiff to show the absence of contributory negligence, presume, in actions for wrongful death, that the deceased was in the exercise of due care if there be no evidence on the subject. Reitveld *v.* Wabash R. Co., 129 Iowa 249, 105 N. W. 515; Ellis *v.* Republic Oil Co., 133 Iowa 11, 110 N. W. 20; Powers *v.* Pere Marquette R. Co., 143 Mich. 379, 106 N. W. 1117.

But in others this presumption is not recognized.

Illinois. — Chicago, etc., R. Co. *v.* Wilson, 225 Ill. 50, 80 N. E. 56; Baltimore, etc., R. Co. *v.* Ayers, 119 Ill. App. 108. *Compare* Chicago Terminal Transfer R. Co. *v.* Reddick, 131 Ill. App. 515.

Massachusetts. — Manning *v.* Conway, 192 Mass. 122, 78 N. E. 401; McCarty *v.* Clinton Gas Light Co., 193 Mass. 76, 78 N. E. 739.

New Hampshire. — Wright *v.* Boston, etc., R. Co., (N. H. 1907) 65 Atl. 687.

New York. — Voorhees *v.* Hudson River Telephone Co., 109 N. Y. App. Div. 465, 95 N. Y. Supp. 703; Sobol *v.* Union R. Co., 122 N. Y. App. Div. 817, 107 N. Y. Supp. 656.

But in such cases less evidence of due care is required. Elgin, etc., R. Co. *v.* Hoadley, 220 Ill. 462, 77 N. E. 151; Miller *v.* Boston, etc., R. Co., 73 N. H. 330, 61 Atl. 360; Axelrod *v.* New York City R. Co., 109 N. Y. App. Div. 87, 95 N. Y. Supp. 1072; Charters *v.* Palmer, 113 N. Y. App. Div. 108, 98 N. Y. Supp. 887; Causullo *v.* Lenox Constr. Co., 122 N. Y. App. Div. 672, 107 N. Y. Supp. 431. See also Koehler *v.* New York Steam Co., 183 N. Y. 1, 75 N. E. 538.

Where the evidence of the conduct of the deceased is confined to inferences from circumstances, and the defendant's misconduct is clear, greater latitude is allowed in permitting the inference of an exercise of ordinary care. Baxter *v.* Auburn, etc., Electric R. Co., 190 N. Y. 439, 83 N. E. 469.

4. *United States.* — Looney *v.* Metropolitan R. Co., 200 U. S. 480, 26 U. S. Sup. Ct. 303; Ward *v.* Dampskibselskabet Kjoebenhaven, 136 Fed. 502; Armour *v.* Carlas, (C. C. A.) 142 Fed. 721; Union Light, etc., Co. *v.* Arntson, (C. C. A.) 157 Fed. 540.

Alabama. — See Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844.

Arizona. — De Amado *v.* Friedman, (Ariz. 1907) 89 Pac. 588.

Arkansas. — Choctaw, etc., R. Co. *v.* Doughty, 77 Ark. 1, 91 S. W. 768; Choctaw, etc., R. Co. *v.* Baskins, 78 Ark. 355, 93 S. W. 757; Little Rock R., etc., Co. *v.* Doyle, 79 Ark. 378, 96 S. W. 353; St. Louis, etc., R. Co. *v.* Sparks, 81 Ark. 187, 99 S. W. 73.

California. — Hutson *v.* Southern California R. Co., 150 Cal. 701, 89 Pac. 1093; Wistrom *v.* Redlick, (Cal. App. 1907) 92 Pac. 1048; Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122.

Florida. — Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516.

Georgia. — Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948; Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213.

Indiana. — Indianapolis, etc., R. Co. *v.* Barnes, (Ind. App. 1905) 74 N. E. 583; New Castle Bridge Co. *v.* Doty, 37 Ind. App. 84, 76 N. E. 557; New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804; Fletcher *v.* Kelly, 37 Ind. App. 254, 76 N. E. 813; Roberts *v.* Terre Haute Electric Co., 37 Ind. App. 664, 76 N. E. 323, 895; Indianapolis St. R. Co. *v.* Marschke, 166 Ind. 490, 77 N. E. 945; Indianapolis *v.* Mullally, 38 Ind. App. 125, 77 N. E. 1132; Stephens *v.* American Car, etc., Co., 38 Ind. App. 414, 78 N. E. 335; Sellersburg *v.* Ford, 39 Ind. App. 94, 79 N. E. 220; Indianapolis *v.* Keeley, 167 Ind. 516, 79 N. E. 499; Indianapolis St. R. Co. *v.* Coyner, 39 Ind. App. 510, 80 N. E. 168; Cleveland, etc., R. Co. *v.* Henry, (Ind. App. 1907) 80 N. E. 636; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App.

1907) 81 N. E. 514; Lowden *v.* Pennsylvania Co., (Ind. App. 1907) 82 N. E. 941; Louisville, etc., Traction Co. *v.* Short, (Ind. 1908) 83 N. E. 265.

Kansas. — Metropolitan St. R. Co. *v.* Fawcett, (Kan. 1907) 92 Pac. 543.

Kentucky. — Frankfort *v.* Chinn, (Ky. 1905) 89 S. W. 188.

Maryland. — See Anne Arundel County *v.* State, (Md. App. 1908) 68 Atl. 602.

Minnesota. — Schutt *v.* Adair, 99 Minn. 7, 108 N. W. 811.

Mississippi. — Simms *v.* Forbes, 86 Miss. 416, 38 So. 546; Mississippi Cent. R. Co. *v.* Hardy, 88 Miss. 732, 41 So. 505. *Compare* Jackson *v.* Mobile, etc., R. Co., 89 Miss. 32, 42 So. 236.

Missouri. — Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Forrester *v.* Metropolitan St. R. Co., 116 Mo. App. 37, 91 S. W. 401; Diamond *v.* Kansas City, 120 Mo. App. 185, 96 S. W. 492; Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509; Coffey *v.* Carthage, 200 Mo. 616, 98 S. W. 562; Underwood *v.* Metropolitan St. R. Co., 125 Mo. App. 490, 102 S. W. 1045; Cornovski *v.* St. Louis Transit Co., 207 Mo. 263, 106 S. W. 51; Lattimore *v.* Union Electric Light, etc., Co., (Mo. App. 1908) 106 S. W. 543.

Montana. — Nord *v.* Boston, etc., Consol. Copper, etc., Min. Co., 33 Mont. 464, 84 Pac. 1116; Birsch *v.* Citizens' Electric Co., (Mont. 1908) 93 Pac. 940.

Nebraska. — Rapp *v.* Sarpy County, 71 Neb. 382, 102 N. W. 242; Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

North Carolina. — Stewart *v.* Raleigh, etc., Air-Line R. Co., 137 N. Car. 687, 50 S. E. 312; Reid *v.* Atlanta, etc., Air Line R. Co., 140 N. Car. 146, 52 S. E. 307; Duffy *v.* Atlantic, etc., R. Co., 144 N. Car. 26, 56 N. E. 557; Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86; Goforth *v.* Southern R. Co., 144 N. Car. 569, 57 S. E. 209.

Ohio. — Jackson Knife, etc., Co. *v.* Hathaway, 27 Ohio Cir. Ct. 745; Cincinnati I. Co. *v.* Haines, 8 Ohio Cir. Ct. (N. S.) 77; Toledo, etc., Co. *v.* Rippon, 8 Ohio Cir. Ct. (N. S.) 334; Cincinnati, etc., R. Co. *v.* Levy, 8 Ohio Cir. Ct. (N. S.) 353.

Oklahoma. — Oklahoma City *v.* Reed, 17 Okla. 518, 87 Pac. 645.

South Carolina. — Tucker *v.* Buffalo Cotton Mills, 76 S. Car. 539, 57 S. E. 626.

Texas. — Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Houston, etc., R. Co. *v.* Anglin, (Tex. Civ. App. 1907) 99 S. W. 897; Galveston, etc., R. Co. *v.* Patillo, (Tex. Civ. App. 1907) 101 S. W. 492; Selman *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 1030; Ft. Worth, etc., R. Co. *v.* Morris, (Tex. Civ. App. 1907) 101 S. W. 1038; International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560.

Utah. — Hickey *v.* Rio Grande Western R. Co., 29 Utah 392, 82 Pac. 29.

Virginia. — Lane *v.* Bott, 104 Va. 615, 52 S. E. 258; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

Washington. — Sandquist *v.* Independent Tel. Co., 38 Wash. 313, 80 Pac. 539; Norman *v.* Bellingham, (Wash. 1907) 89 Pac. 559.

West Virginia. — Bowles *v.* Chesapeake, etc., R. Co., (W. Va. 1907) 57 S. E. 131.

Wisconsin. — Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88.

Canada. — Grand Trunk R. Co. *v.* Hainer, 36 Can. Sup. Ct. 180.

Death by Wrongful Act — Presumption that Deceased Exercised Ordinary Care in Absence of Evidence — *United States.* — Klutt *v.* Philadelphia, etc., R. Co., (C. C. A.) 142 Fed. 394; Baker *v.* Philadelphia, etc., R. Co., 149 Fed. 882. See also Los Angeles Traction Co. *v.* Conneally, (C. C. A.) 136 Fed. 104; Rollins *v.* Chicago, etc., R. Co., (C. C. A.) 139 Fed. 639; St. Louis, etc., R. Co. *v.* Chapman, (C. C. A.) 140 Fed. 129; Wabash R. Co. *v.* De Tar, (C. C. A.) 141 Fed. 932; Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397; Rich *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 79.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898.

Indiana. — Pittsburgh, etc., R. Co. *v.* Reed, 36 Ind. App. 67, 75 N. E. 50; Wamsley *v.* Cleveland, etc., R. Co., (Ind. App. 1908) 83 N. E. 640, *affirming* on rehearing (Ind. App. 1907) 82 N. E. 490.

Kansas. — Bressler *v.* Chicago, etc., R. Co., 74 Kan. 256, 86 Pac. 472. See also Atchison, etc., R. Co. *v.* Baumgartner, 74 Kan. 148, 85 Pac. 822.

Kentucky. — Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308.

Maryland. — See Baltimore, etc., R. Co. *v.* State, 104 Md. 76, 64 Atl. 304.

Mississippi. — Yazoo, etc., R. Co. *v.* Landrum, 89 Miss. 399, 42 So. 675.

Missouri. — Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655. See also Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880.

Nebraska. — Grimm *v.* Omaha Electric Light, etc., Co., (Neb. 1908) 114 N. W. 769.

New Jersey. — Merkl *v.* Jersey City, etc., R. Co., (N. J. 1907) 68 Atl. 74.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076. See also Waters-Pierce Oil Co. *v.* Deselms, 18 Okla. 107, 89 Pac. 212.

Pennsylvania. — Schwartz *v.* Delaware, etc., R. Co., 211 Pa. St. 625, 61 Atl. 255; Unger *v.* Philadelphia, etc., R. Co., 217 Pa. St. 106, 66 Atl. 235; Bickel *v.* Pennsylvania R. Co., 217 Pa. St. 456, 66 Atl. 756; Corrigan *v.* Pennsylvania Co., 218 Pa. St. 336, 67 Atl. 619; Mosten *v.* Lake Shore, etc., R. Co., 218 Pa. St. 392, 67 Atl. 740.

Texas. — Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563.

Utah. — See Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075.

But it seems that in *Indiana* there is no presumption that a person killed at a highway crossing was not a trespasser. Chicago, etc., R. Co. *v.* McCandish, (Ind. 1907) 79 N. E. 903.

154. 1. *United States.* — Gipson *v.* Southern R. Co., 140 Fed. 410; Fadley *v.* Baltimore, etc., R. Co., (C. C. A.) 153 Fed. 514.

Alabama. — Bradley *v.* Louisville, etc., R. Co., (Ala. 1906) 42 So. 818.

Arizona. — See De Amado *v.* Friedman, (Ariz. 1907) 89 Pac. 588.

Arkansas. — See Choctaw, etc., R. Co. *v.* Doughty, 77 Ark. 1, 91 S. W. 768; St. Louis, etc., R. Co. *v.* Sparks, 81 Ark. 187, 99 S. W. 73.

California. — Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122. See also Wistrom *v.* Redlick, (Cal. App. 1907) 92 Pac. 1048.

Delaware. — Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

Georgia. — Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948; Louisville, etc., R. Co. *v.* Edmondson, 128 Ga. 478, 57 S. E. 877. See also Southern R. Co. *v.* Rowe, 2 Ga. App. 557, 59 S. E. 462.

Indiana. — Pittsburgh, etc., R. Co. *v.* Reed, 36 Ind. App. 67, 75 N. E. 50; Indianapolis Traction, etc., Co. *v.* Pressell, 39 Ind. App. 472, 77 N. E. 357; Indianapolis *v.* Mullally, 38 Ind. App. 125, 77 N. E. 1132; Indianapolis *v.* Keeley, 167 Ind. 516, 79 N. E. 499; Wamsley *v.* Cleveland, etc., R. Co., (Ind. App. 1908) 83 N. E. 640, *affirming* on rehearing (Ind. App. 1907) 82 N. E. 490. See also Winamac *v.* Stout, 165 Ind. 365, 75 N. E. 158.

Indian Territory. — See Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182.

Kansas. — Missouri Pac. R. Co. *v.* Bentley, (Kan. 1907) 93 Pac. 150.

Maryland. — Philadelphia, etc., R. Co. *v.* Hand, 101 Md. 233, 61 Atl. Rep. 285.

Minnesota. — Schutt *v.* Adair, 99 Minn. 7, 108 N. W. 811; Anderson *v.* Minneapolis, etc., R. Co., (Minn. 1908) 114 N. W. 1123.

Missouri. — Green *v.* Missouri Pac. R. Co., 192 Mo. 131, 90 S. W. 805; Sims *v.* St. Louis, etc., R. Co., 116 Mo. App. 572, 92 S. W. 909; Rodgers *v.* St. Louis Transit Co., 117 Mo. App. 678, 92 S. W. 1154. See also Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158; Diamond *v.* Kansas City, 120 Mo. App. 185, 96 S. W. 492.

Nebraska. — Rapp *v.* Sarpy County, 71 Neb. 382, 102 N. W. 242; Hubler *v.* Johnson-McLean Co., 74 Neb. 840, 105 N. W. 247; Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368; Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

New York. — McEntee *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 673, 97 N. Y. Supp. 476.

Ohio. — Cincinnati I. Co. *v.* Haines, 8 Ohio Cir. Ct. (N. S.) 77; Cincinnati, etc., R. Co. *v.* Levy, 8 Ohio Cir. Ct. (N. S.) 353.

Oklahoma. — Oklahoma City *v.* Reed, 17 Okla. 518, 87 Pac. 645.

Oregon. — Carroll *v.* Grande Ronde Electric Co., 47 Oregon 424, 84 Pac. 389.

Rhode Island. — Tilden *v.* Rhode Island Co., 27 R. I. 482, 63 Atl. 675.

South Carolina. — Talbert *v.* Charleston, etc., R. Co., 72 S. Car. 137, 51 S. E. 564.

Texas. — Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070; Missouri, etc., R. Co. *v.* Plunkett, (Tex. Civ. App. 1907) 103 S. W. 663. See also Ft. Worth, etc., R. Co. *v.* Morris, (Tex. Civ. App. 1907) 101 S. W. 1038.

Virginia. — Seaboard, etc., R. Co. *v.* Vaughan, 104 Va. 113, 51 S. E. 452; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

Wisconsin. — Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88.

In Houston, etc., R. Co. *v.* Anglin, (Tex. 1905) 89 S. W. 966, it is said: "It is also insisted that the evidence of the plaintiff and of his own witnesses exposed him to a suspicion of contributory negligence, and that, therefore, the burden was upon him to show that he was not guilty of such negligence. That rule was at one time recognized by this court as the law of this state, but it is now definitely settled that in every case in which the plaintiff seeks to recover of the defendant on the ground of negligence of the defendant, and the defendant relies upon the defense of contributory negligence, in order to maintain that defense, it must appear by a preponderance of the evidence that the plaintiff was guilty of such negligence."

455. 2. Oklahoma City *v.* Reed, 17 Okla. 522, 87 Pac. 645, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 455. See also Looney *v.* Metropolitan R. Co., 200 U. S. 480, 26 U. S. Sup. Ct. 303; Lincoln Traction Co. *v.* Shepherd, (Neb. 1906) 107 N. W. 764; Lewis *v.* Houston Electric Co., (Tex. Civ. App. 1905) 88 S. W. 489.

456. 1. *United States.* — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709; Camden, etc., R. Co. *v.* Rice, (C. C. A.) 137 Fed. 326; Armour *v.* Carlas, (C. C. A.) 142 Fed. 721; Boston, etc., R. Co. *v.* Stockwell, (C. C. A.) 146 Fed. 505; Philadelphia, etc., R. Co. *v.* Klutt, (C. C. A.) 148 Fed. 818; Sealey *v.* Southern R. Co., (C. C. A.) 151 Fed. 736; Laclede Gaslight Co. *v.* Cottone, (C. C. A.) 152 Fed. 629; Memphis Consol. Gas, etc., Co. *v.* Bell, (C. C. A.) 152 Fed. 677; Columbia Box, etc., Co. *v.* Drown, (C. C. A.) 156 Fed. 459; Union Light, etc., Co. *v.* Arntson, (C. C. A.) 157 Fed. 540.

Alabama. — Morgan *v.* Saks, 143 Ala. 139, 38 So. 848.

Arkansas. — St. Louis, etc., R. Co. *v.* Johnson, 74 Ark. 372, 86 S. W. 282; Price *v.* St. Louis, etc., R. Co., 75 Ark. 479, 88 S. W. 575; St. Louis, etc., R. Co. *v.* Hitt, 76 Ark. 227, 88 S. W. 908; St. Louis, etc., R. Co. *v.* Evans, 80 Ark. 19, 96 S. W. 616.

California. — Doyle *v.* Eschen, 5 Cal. App. 55, 89 Pac. 836.

Delaware. — Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

District of Columbia. — Georgetown, etc., R. Co. *v.* Smith, 25 App. Cas. (D. C.) 259.

Georgia. — Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948; Turley *v.* Atlanta, etc., R. Co., 127 Ga. 594, 56 S. E. 748; Central of Georgia R. Co. *v.* Forehand, 128 Ga. 547, 58 S. E. 44.

Illinois. — Blakeslee's Express, etc., Co. *v.* Ford, 215 Ill. 230, 74 N. E. 135; Chicago City R. Co. *v.* Nelson, 215 Ill. 436, 74 N. E. 458; Illinois Third Vein Coal Co. *v.* Cioni, 215 Ill. 583, 74 N. E. 751; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387; B. Shoninger Co. *v.* Mann,

219 Ill. 242, 76 N. E. 354; Chicago, etc., R. Co. v. Steckman, 224 Ill. 500, 79 N. E. 602; Chicago, etc., Electric R. Co. v. Wanic, 230 Ill. 530, 82 N. E. 821; Pittsburgh, etc., R. Co. v. O'Donnell, 118 Ill. App. 335; Perry v. People's Gas Light, etc., Co., 119 Ill. App. 389.

Indiana. — Indianapolis St. R. Co. v. Slifer, 35 Ind. App. 700, 74 N. E. 19; Indianapolis St. R. Co. v. O'Donnell, 35 Ind. App. 312, 74 N. E. 253; Flickner v. Lambert, 36 Ind. App. 524, 74 N. E. 263; Greenawaldt v. Lake Shore, etc., R. Co., 165 Ind. 219, 74 N. E. 1087; Union Traction Co. v. Sullivan, 38 Ind. App. 513, 76 N. E. 116; New York, etc., R. Co. v. Robbins, 38 Ind. App. 172, 76 N. E. 804; Fletcher v. Kelly, 37 Ind. App. 254, 76 N. E. 813; Diamond Block Coal Co. v. Cuthbertson, 166 Ind. 290, 76 N. E. 1060; Stephens v. American Car, etc., Co., 38 Ind. App. 414, 78 N. E. 335; Cleveland, etc., R. Co. v. Henry, (Ind. App. 1907) 80 N. E. 636; Baltimore, etc., R. Co. v. Rosborough, (Ind. App. 1907) 80 N. E. 869; Cleveland, etc., R. Co. v. Schneider, (Ind. App. 1907) 80 N. E. 985; Cleveland, etc., R. Co. v. Hadley, (Ind. App. 1907) 82 N. E. 1025; Kokomo R., etc., Co. v. Studebaker, (Ind. App. 1908) 83 N. E. 260.

Iowa. — Earl v. Cedar Rapids, 126 Iowa 361, 102 N. W. 140; Pierson v. Chicago, etc., R. Co., 127 Iowa 13, 102 N. W. 149; Burk v. Creamery Package Mfg. Co., 126 Iowa 730, 102 N. W. 793; Mace v. Boedker, 127 Iowa 721, 104 N. W. 475; Calloway v. Agar Packing Co., 129 Iowa 1, 104 N. W. 721; Arenschield v. Chicago etc., R. Co., 128 Iowa 677, 105 N. W. 200; Van Camp v. Keokuk, 130 Iowa 716, 107 N. W. 933; Perjue v. Citizens' Electric Light, etc., Co., 131 Iowa 710, 109 N. W. 280.

Kansas. — Atchison, etc., R. Co. v. Holloway, 71 Kan. 1, 80 Pac. 31; Crist v. Wichita Gas, etc., Co., 72 Kan. 135, 83 Pac. 199.

Kentucky. — Wilson v. Chesapeake, etc., R. Co., (Ky. 1905) 86 S. W. 690; McCabe v. Maysville, etc., R. Co., (Ky. 1905) 89 S. W. 683.

Maine. — Marden v. Portsmouth, etc., St. R. Co., 100 Me. 41, 60 Atl. 530.

Maryland. — Sheridan v. Baltimore, etc., R. Co., 101 Md. 50, 60 Atl. 280; Strauss v. United R., etc., Co., 101 Md. 497, 61 Atl. 137; United R., etc., Co. v. Weir, 102 Md. 286, 62 Atl. 588; Baltimore, etc., R. Co. v. State, 104 Md. 76, 64 Atl. 304; Baltimore, etc., R. Co. v. Trader, (Md. 1907) 68 Atl. 12.

Massachusetts. — Linton v. Weymouth Light, etc., Co., 188 Mass. 276, 74 N. E. 321; Taylor v. Boston, etc., R. Co., 188 Mass. 390, 74 N. E. 591; Kerr v. Boston El. R. Co., 188 Mass. 434, 74 N. E. 669; Orth v. Boston El. R. Co., 188 Mass. 427, 74 N. E. 673; Mahan v. Newton, etc., St. R. Co., 189 Mass. 1, 75 N. E. 59; LeBaron v. Old Colony St. R. Co., (Mass. 1908) 83 N. E. 674.

Michigan. — Ablard v. Detroit United R. Co., 139 Mich. 248, 102 N. W. 741; Milbourne v. Arnold Electric Power Station Co., 140 Mich. 316, 103 N. W. 821; Hebblethwaite v. Detroit United R. Co., 145 Mich. 13, 108 N. W. 433; Barker v. Kalamazoo, 146 Mich. 257, 109 N. W. 427; Cutler v. Grand Rapids, etc., R. Co., 147 Mich. 615, 111 N. W. 191; Hengesbach v. Detroit United R. Co., 147 Mich. 681, 111 N. W. 345.

Minnesota. — Stegner v. Chicago, etc., R. Co., 94 Minn. 116, 102 N. W. 205; Olson v. Chicago, etc., R. Co., 94 Minn. 241, 102 N. W. 449; Graham v. Minneapolis, etc., R. Co., 95 Minn. 49, 103 N. W. 714; Smith v. Minneapolis St. R. Co., 95 Minn. 254, 104 N. W. 16; Viou v. Brooks-Scanlon Lumber Co., 99 Minn. 97, 9 Ann. Cas. 318, 108 N. W. 891; Curran v. St. Paul City R. Co., 100 Minn. 58, 110 N. W. 259.

Mississippi. — Louisville, etc., R. Co. v. Crominarity, 86 Miss. 464, 38 So. 633; Anderson v. Cumberland Telephone, etc., Co., 86 Miss. 341, 38 So. 786.

Missouri. — Adams v. McCormick Harvesting Mach. Co., 110 Mo. App. 367, 86 S. W. 484; Shore v. American Bridge Co., 111 Mo. App. 278, 86 S. W. 905; Fouts v. Swift, 113 Mo. App. 526, 88 S. W. 167; Stafford v. Adams, 113 Mo. App. 717, 88 S. W. 1130; Kennedy v. Kansas City, etc., R. Co., 190 Mo. 424, 89 S. W. 370; Eckhard v. St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Haley v. Missouri Pac. R. Co., 197 Mo. 15, 93 S. W. 1120; Deschner v. St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737.

Montana. — Anderson v. Northern Pac. R. Co., 34 Mont. 181, 85 Pac. 884.

Nebraska. — Holmes v. Chicago, etc., R. Co., 73 Neb. 489, 103 N. W. 77; Chicago, etc., R. Co. v. Troyer, 70 Neb. 294, 103 N. W. 680; New Omaha Thomson-Houston Electric Light Co. v. Dent, (Neb. 1905) 103 N. W. 1091; Union Pac. R. Co. v. Connolly, (Neb. 1906) 109 N. W. 368.

New Hampshire. — Stevens v. United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848; Minot v. Boston, etc., R. Co., 73 N. H. 317, 61 Atl. 509.

New Jersey. — Staines v. Central R. Co., 72 N. J. L. 268, 61 Atl. 385; Schramm v. Parker, 72 N. J. L. 243, 62 Atl. 410; Turner v. Hall, (N. J. 1906) 64 Atl. 1060; Nolan v. Bridgeton, etc., Traction Co., (N. J. 1907) 65 Atl. 992; Weston v. Pennsylvania R. Co., (N. J. 1907) 65 Atl. 1015; Eagen v. Jersey City, etc., R. Co., (N. J. 1907) 67 Atl. 24; Record v. Pennsylvania R. Co., (N. J. 1907) 67 Atl. 1040.

New York. — Loomis v. Lake Shore, etc., R. Co., 182 N. Y. 380, 75 N. E. 228; Neary v. Citizens' R., etc., Co., 110 N. Y. App. Div. 769, 97 N. Y. Supp. 420; Robbins v. New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 625, 98 N. Y. Supp. 198; Griffin v. Bell, 119 N. Y. App. Div. 673, 104 N. Y. Supp. 295.

North Carolina. — Ray v. Aberdeen, etc., R. Co., 141 N. Car. 84, 53 S. E. 622; Miller v. Atlanta, etc., Air Line R. Co., 141 N. Car. 545, 57 S. E. 345.

North Dakota. — Pyke v. Jamestown, 15 N. Dak. 157, 107 N. W. 359.

Oklahoma. — Oklahoma Gas, etc., Co. v. Lukert, 16 Okla. 397, 84 Pac. 1076; Choctaw, etc., R. Co. v. Wilker, 16 Okla. 384, 84 Pac. 1086; Lane v. Choctaw, etc., R. Co., (Okla. 1907) 91 Pac. 883.

Oregon. — Viohl v. North Pac. Lumber Co., 16 Oregon 207, 50 Pac. 112.

Pennsylvania. — Cohen v. Philadelphia, etc.,

R. Co., 211 Pa. St. 227, 60 Atl. 729; Cromly *v.* Pennsylvania R. Co., 211 Pa. St. 429, 60 Atl. 1007; Becker *v.* Philadelphia, 212 Pa. St. 379, 61 Atl. 942; Armstrong *v.* Consolidated Traction Co., 216 Pa. St. 595, 66 Atl. 75; Weida *v.* Hanover Tp., 30 Pa. Super. Ct. 424; Ackley *v.* Bradford Tp., 32 Pa. Super. Ct. 487.

South Carolina. — Sanders *v.* Aiken Mfg. Co., 71 S. Car. 58, 50 S. E. 679; Talbert *v.* Charlestown, etc., R. Co., 72 S. Car. 137, 51 S. E. 564; Gyles *v.* Southern R. Co., (S. Car. 1908) 60 S. E. 433.

Texas. — Missouri, etc., R. Co. *v.* Purdy, 98 Tex. 557, 86 S. W. 321; Texarkana Table, etc., Co. *v.* Webb, (Tex. Civ. App. 1905) 86 S. W. 782; Hutchens *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 89 S. W. 24; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; San Antonio, etc., R. Co. *v.* Mertink, (Tex. Civ. App. 1907) 102 S. W. 153; Paris, etc., R. Co. *v.* Calvin, (Tex. Civ. App. 1907) 103 S. W. 428.

Utah. — Steed *v.* Rio Grande Western R. Co., 29 Utah 448, 82 Pac. 476; Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Virginia. — Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731; Norfolk, etc., R. Co. *v.* Spencer, 104 Va. 657, 52 S. E. 310; Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373; Massey *v.* Southern R. Co., 106 Va. 515, 56 S. E. 275.

Washington. — Hansen *v.* Seattle Lumber Co., 41 Wash. 349, 83 Pac. 102; Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323; Thomson *v.* Issaquah Shingle Co., 43 Wash. 253, 86 Pac. 588; Stone *v.* Smith-Premier Typewriter Co., (Wash. 1908) 93 Pac. 209.

Wisconsin. — Morey *v.* Lake Superior Terminal, etc., Co., 125 Wis. 148, 103 N. W. 271; Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88; Karr *v.* Milwaukee Light, etc., Co., (Wis. 1907) 113 N. W. 62. *Compare* Morice *v.* Milwaukee Electric R., etc., Co., 129 Wis. 529, 109 N. W. 567.

Canada. — Wright *v.* Grand Trunk R. Co., 12 Ont. L. Rep. 114; Preston *v.* Toronto R. Co., 13 Ont. L. Rep. 369.

2. *United States.* — St. Louis Southwestern R. Co. *v.* Purcell, (C. C. A.) 135 Fed. 499; Christensen *v.* Metropolitan St. R. Co., (C. C. A.) 137 Fed. 708; Southern R. Co. *v.* Carroll, (C. C. A.) 138 Fed. 638; Rollins *v.* Chicago, etc., R. Co., (C. C. A.) 139 Fed. 639; St. Louis, etc., R. Co. *v.* Chapman, (C. C. A.) 140 Fed. 129; Gipson *v.* Southern R. Co., 140 Fed. 410; Northern Pac. R. Co. *v.* Jones, (C. C. A.) 144 Fed. 47; Rich *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 79; Fadley *v.* Baltimore, etc., R. Co., (C. C. A.) 153 Fed. 514; Delaware, etc., R. Co. *v.* Wilkins, (C. C. A.) 153 Fed. 845; Russell *v.* Oregon Short Line R. Co., (C. C. A.) 155 Fed. 22; Casey *v.* Chicago, etc., R. Co., (C. C. A.) 157 Fed. 66.

Alaska. — Seittn *v.* Alaska Treadwell Gold Min. Co., 2 Alaska 8.

Arkansas. — Burns *v.* St. Louis Southwestern R. Co., 76 Ark. 10, 88 S. W. 824.

California. — Vinson *v.* Los Angeles Pac. R. Co., 147 Cal. 479, 82 Pac. 53; Hamlin *v.* Pacific Electric R. Co., 150 Cal. 776, 89 Pac. 1109; Shade *v.* Bay Counties Power Co., (Cal. 1907) 92 Pac. 62.

Colorado. — Colorado, etc., R. Co. *v.* Sonne, 34 Colo. 206, 83 Pac. 383.

Florida. — Seaboard Air Line R. Co. *v.* Barwick, 51 Fla. 304, 41 So. 70.

Georgia. — Weeks *v.* Atlantic, etc., R. Co., 122 Ga. 266, 50 S. E. 99.

Illinois. — Cullen *v.* Higgins, 216 Ill. 78, 74 N. E. 698; Hewes *v.* Chicago, etc., R. Co., 217 Ill. 500, 75 N. E. 515; Belt R. Co. *v.* Skszypczak, 225 Ill. 242, 80 N. E. 113; Ludolph *v.* Chicago, etc., R. Co., 116 Ill. App. 239; North Chicago St. R. Co. *v.* Canfield, 118 Ill. App. 353; Chicago, etc., R. Co. *v.* Doyle, 119 Ill. App. 303; Illinois Cent. R. Co. *v.* McMillion, 129 Ill. App. 27.

Iowa. — Brooks *v.* W. T. Joyce Co., 127 Iowa 266, 103 N. W. 91.

Kansas. — National Brass Mfg. Co. *v.* Rawlings, 71 Kan. 246, 80 Pac. 628.

Kentucky. — Louisville, etc., R. Co. *v.* Mounce, (Ky. 1906) 90 S. W. 956; Illinois Cent. R. Co. *v.* Willis, (Ky. 1906) 97 S. W. 21; Central Consumers Co. *v.* Booher, (Ky. 1908) 107 S. W. 198.

Maryland. — Garvick *v.* United R., etc., Co., 101 Md. 239, 61 Atl. 138; Anderson *v.* Baltimore, etc., R. Co., 101 Md. 487, 61 Atl. 575; Phillips *v.* Washington, etc., R. Co., 104 Md. 455, 10 Ann. Cas. 334, 65 Atl. 422.

Massachusetts. — Harvey *v.* Malden, 188 Mass. 133, 74 N. E. 327; Quinn *v.* Boston El. R. Co., 188 Mass. 473, 74 N. E. 687.

Michigan. — Hodge *v.* St. Louis, 146 Mich. 173, 109 N. W. 252.

Minnesota. — Swanson *v.* Boutell, 95 Minn. 138, 103 N. W. 886; Greenwood *v.* Chicago, etc., R. Co., 95 Minn. 284, 104 N. W. 3; O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805.

Mississippi. — Alabama, etc., R. Co. *v.* Jones, 86 Miss. 263, 38 So. 545; Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788.

Missouri. — Dickey *v.* Dickey, 111 Mo. App. 304, 86 S. W. 909; Ayers *v.* Wabash R. Co., 190 Mo. 228, 88 S. W. 608; Walker *v.* Wabash R. Co., 193 Mo. 453, 92 S. W. 83; Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256; Sanguinette *v.* Mississippi River, etc., R. Co., 196 Mo. 466, 95 S. W. 386.

Nebraska. — Chicago, etc., R. Co. *v.* Schwanenfeldt, 75 Neb. 80, 105 N. W. 1101.

New York. — Berry *v.* Utica Belt Line St. R. Co., 181 N. Y. 198, 73 N. E. 970; Lofsten *v.* Brooklyn Heights R. Co., 184 N. Y. 148, 76 N. E. 1035; Volosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090; Healy *v.* United Traction Co., 115 N. Y. App. Div. 868, 101 N. Y. Supp. 331; Grathwohl *v.* New York Cent., etc., R. Co., 116 N. Y. App. Div. 176, 101 N. Y. Supp. 667; Stassen *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 577, 102 N. Y. Supp. 468.

North Carolina. — Allen *v.* Atlanta, etc., Air Line R. Co., 141 N. Car. 340, 53 S. E. 866; Crenshaw *v.* Asheville, etc., R. Co., 144 N. Car. 314, 56 S. E. 945.

North Dakota. — Morrison *v.* Lee, (N. Dak. 1907) 113 N. W. 1025.

Oregon. — Abbott *v.* Oregon R. Co., 46 Oregon 549, 80 Pac. 1012.

Pennsylvania. — Miller *v.* Atlantic Refining Co., 210 Pa. St. 628, 60 Atl. 306; Gaffney *v.* Union Traction Co., 211 Pa. St. 91, 60 Atl. 488; Boring *v.* Union Traction Co., 211 Pa. St. 594, 61 Atl. 77; Wessel *v.* Jones, etc., Steel Co., 28 Pa. Super. Ct. 332.

Tennessee. — Nashville Spoke, etc., Co. *v.* Thomas, 114 Tenn. 458, 86 S. W. 379; Greenlaw *v.* Louisville, etc., R. Co., 114 Tenn. 187, 86 S. W. 1072; Kansas City, etc., R. Co. *v.* Williford, 115 Tenn. 108, 88 S. W. 178.

Texas. — Burns *v.* Chronister Lumber Co., (Tex. Civ. App. 1905) 87 S. W. 163; Texas Midland R. Co. *v.* Ellison, (Tex. Civ. App. 1905) 87 S. W. 213; Gulf, etc., R. Co. *v.* Matthews, (Tex. 1905) 88 S. W. 192; Texas, etc., R. Co. *v.* McDonald, (Tex. 1905) 88 S. W. 201; International, etc., R. Co. *v.* Edwards, (Tex. 1906) 93 S. W. 106; Texas, etc., R. Co. *v.* Cotts, (Tex. Civ. App. 1906) 95 S. W. 602; Texas, etc., R. Co. *v.* Shivers, (Tex. Civ. App. 1907) 106 S. W. 894.

Virginia. — Risque *v.* Chesapeake, etc., R. Co., 104 Va. 476, 51 S. E. 730; Pendleton *v.* Richmond, etc., R. Co., 104 Va. 813, 52 S. E. 574.

Washington. — Criss *v.* Seattle Electric Co., 38 Wash. 320, 80 Pac. 525; Coats *v.* Seattle Electric Co., 39 Wash. 386, 81 Pac. 830; Brown *v.* Northern Pac. R. Co., 44 Wash. 1, 86 Pac. 1053; Skinner *v.* Tacoma R., etc., Co., (Wash. 1907) 89 Pac. 488.

Wisconsin. — Marshall *v.* Green Bay, etc., R. Co., 125 Wis. 96, 103 N. W. 249.

457. **1.** Doyle *v.* Eschen, 5 Cal. App. 55, 89 Pac. 836; Indianapolis St. R. Co. *v.* O'Donnell, 35 Ind. App. 312, 74 N. E. 253; Indianapolis St. R. Co. *v.* Marschke, 166 Ind. 490, 77 N. E. 945; Mangan *v.* Hudson River Telephone Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 388, 100 N. Y. Supp. 539; Weaver *v.* Southern R. Co., 76 S. Car. 49, 56 S. E. 657. See also Southern Indiana R. Co. *v.* Corps, (Ind. App. 1906) 76 N. E. 902.

2. *Compare* El Paso, etc., R. Co. *v.* Vizard, (Tex. Civ. App. 1905) 88 S. W. 457.

CONVERSION AND RECONVERSION.

464. **1.** Conversion is "a change of property from real into personal and from personal into real, not actually taking place, but presumed to exist only by construction or intendment of equity." Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109.

3. Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645; Nelson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679; Severn's Estate, 211 Pa. St. 65, 60 Atl. 492.

465. **3. Mere Direction to Change Investments Not Conversion.** — Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

4. *United States.* — *In re* L'Hommedieu, 138 Fed. 606.

Illinois. — Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645.

Indiana. — Nelson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679.

Kentucky. — Crane *v.* Crane, (Ky. 1907) 105 S. W. 370.

Maryland. — Boyce *v.* Kelso Home for Orphans, (Md. 1908) 68 Atl. 550; State *v.* Mobley, 102 Md. 408, 62 Atl. 963.

Massachusetts. — Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

Missouri. — Llewellyn *v.* Llewellyn, 122 Mo. App. 467, 99 S. W. 809.

New Hampshire. — Harris *v.* Ingalls, (N. H. 1907) 68 Atl. 34, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 466.

New York. — Boehmcke *v.* McKeon, 119 N. Y. App. Div. 30, 103 N. Y. Supp. 930; Coann *v.* Culver, 188 N. Y. 9, 80 N. E. 362; Foersch *v.* Schmitt, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 608, 106 N. Y. Supp. 935; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; Stebbens *v.* Turner, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 587, 105 N. Y. Supp. 945; Westervelt *v.* Mahony, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 409, 106 N. Y. Supp. 637.

Pennsylvania. — Tasker's Estate, 215 Pa. St. 267, 64 Atl. 527; Severn's Estate, 211 Pa. St. 65, 60 Atl. 492.

Wisconsin. — *In re* Benner, (Wis. 1907) 113 N. W. 663.

Intention Sometimes Determined by Implication from General Tenor of Instrument. — Matter of Bruchaeser, (Surrogate Ct.) 49 Misc. (N. Y.) 194, 98 N. Y. Supp. 937.

5. Allen *v.* Coffee, 85 Miss. 766, 38 So. 186, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 465; Harris *v.* Ingalls, (N. H. 1907) 68 Atl. 34; Bascom *v.* Weeds, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 496, 105 N. Y. Supp. 459; Severn's Estate, 211 Pa. St. 65, 60 Atl. 492; Bennett *v.* Gallaher, 115 Tenn. 568, 92 S. W. 66.

6. *In re* L'Hommedieu, 138 Fed. 606; Nelson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679; Llewellyn *v.* Llewellyn, 122 Mo. 467, 99 S. W. 809; Boehmcke *v.* McKeon, 119 N. Y. App. Div. 30, 103 N. Y. Supp. 930; Matter of Bruchaeser, (Surrogate Ct.) 49 Misc. (N. Y.) 194, 98 N. Y. Supp. 937; *In re* Caldwell, 188 N. Y. 115, 80 N. E. 663; Coann *v.* Culver, 188 N. Y. 9, 80 N. E. 362; Monjo *v.* Widmayer, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 352, 94 N. Y. Supp. 835; Severn's Estate, 211 Pa. St. 65, 60 Atl. 492; Bennett *v.* Gallaher, 115 Tenn. 568, 92 S. W. 66.

Power Coupled with Direction Constitutes Imperative Duty. — Stebbens *v.* Turner, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 587, 105 N. Y. Supp. 945.

Direction to Sell Need Not Be Imperative. — Boyce *v.* Kelso Home for Orphans, (Md. 1908) 68 Atl. 550.

466. **1.** *District of Columbia.* — Miller *v.* Payne, 28 App. Cas. (D. C.) 396.

Kentucky. — Crane *v.* Crane, (Ky. 1907) 105 S. W. 370.

Maryland. — Stake *v.* Mobley, 102 Md. 408, 62 Atl. 963, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 466; Boyce *v.* Kelso Home for Orphans, (Md. 1908) 68 Atl. 550.

Missouri. — Llewellyn *v.* Llewellyn, 122 Mo. App. 467, 99 S. W. 809.

New Hampshire. — Harris *v.* Ingalls, (N. H. 1907) 68 Atl. 34, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 466.

New York. — Bascom *v.* Weed, (Supm. Ct.

Tr. T.) 53 Misc. (N. Y.) 496, 105 N. Y. Supp. 459; Matter of Faile, (Surrogate Ct.) 51 Misc. (N. Y.) 166, 100 N. Y. Supp. 856; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; Keyser *v.* Mead, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 114, 103 N. Y. Supp. 1091; St. John *v.* Andrews Institute, 117 N. Y. App. Div. 698, 102 N. Y. Supp. 808; Westervelt *v.* Mahony, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 409, 106 N. Y. Supp. 637.

Pennsylvania. — Severn's Estate, 211 Pa. St. 65, 60 Atl. 492; Tasker's Estate, 215 Pa. St. 267, 64 Atl. 527.

Tennessee. — Hardin *v.* Hassell, 118 Tenn. 143, 100 S. W. 720.

Wisconsin. — *In re* Benner, (Wis. 1907) 113 N. W. 663.

Direction for Sale of Land and Disposition of Proceeds. — Iglehart *v.* Iglehart, 26 App. Cas. (D. C.) 209, 6 Ann. Cas. 732, *affirmed* 204 U. S. 478; Vogt *v.* Vogt, 26 App. Cas. (D. C.) 46; Burbach *v.* Burbach, 217 Ill. 547, 75 N. E. 519; Llewellyn *v.* Llewellyn, 122 Mo. App. 467, 99 S. W. 809; Foersch *v.* Schmitt, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 608, 106 N. Y. Supp. 935.

Intention Sometimes Determined by Implication from General Tenor of Instrument. — Matter of Bruchaeser, (Surrogate Ct.) 49 Misc. (N. Y.) 194, 98 N. Y. Supp. 937.

2. Crane *v.* Crane, (Ky. 1907) 105 S. W. 370; Stake *v.* Mobley, 102 Md. 408, 62 Atl. 963, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 466; Boyce *v.* Kelso Home for Orphans, (Md. 1908) 68 Atl. 550; Llewellyn *v.* Llewellyn, 122 Mo. App. 467, 99 S. W. 809; Matter of Faile, (Surrogate Ct.) 51 Misc. (N. Y.) 166, 100 N. Y. Supp. 856; Tasker's Estate, 215 Pa. St. 267, 64 Atl. 527.

Adaptability of Property to Division Material Fact in Ascertainment of Intention. — Harris *v.* Ingalls, (N. H. 1907) 68 Atl. 34.

467. 1. *In re* L'Hommedieu, 138 Fed. 606; Coann *v.* Culver, 188 N. Y. 9, 80 N. E. 362; Bascom *v.* Weed, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 496, 105 N. Y. Supp. 459; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; Monjo *v.* Widmayer, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 352, 94 N. Y. Supp. 835; Westervelt *v.* Mahony, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 409, 106 N. Y. Supp. 637; Bennett *v.* Gallaher, 115 Tenn. 568, 92 S. W. 66.

Absence of Imperative Direction to Sell Not Fatal to Conversion. — Boyce *v.* Kelso Home for Orphans, (Md. 1908) 68 Atl. 550.

2. Holmes's Estate, 15 Pa. Dist. 775, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 467.

468. 1. Matter of Bruchaeser, (Surrogate Ct.) 49 Misc. (N. Y.) 194, 98 N. Y. Supp. 937; Keyser *v.* Mead, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 114, 103 N. Y. Supp. 1091; Severn's Estate, 211 Pa. St. 65, 60 Atl. 492; Tasker's Estate, 215 Pa. St. 267, 64 Atl. 527.

Discretion as to Time of Sale Will Not Prevent Conversion. — Burbach *v.* Burbach, 217 Ill. 547, 75 N. E. 519.

2. Delay in Making Sale Does Not Vitiate Conversion. — Matter of Faile, (Surrogate Ct.) 51 Misc. (N. Y.) 166, 100 N. Y. Supp. 856.

469. 5. Stake *v.* Mobley, 102 Md. 408, 62 Atl. 963; Bennett *v.* Gallaher, 115 Tenn. 568, 92 S. W. 66.

470. 1. Holmes's Estate, 15 Pa. Dist. 775.

2. Williams *v.* Lobban, 206 Mo. 399, 104 S. W. 58; Train *v.* Davis, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 162, 98 N. Y. Supp. 816.

Conversion Occurs at Time Directed for Sale. — Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109.

3. Iglehart *v.* Iglehart, 26 App. Cas. (D. C.) 209, 6 Ann. Cas. 732, *affirmed* 204 U. S. 478; Miller *v.* Payne, 28 App. Cas. (D. C.) 396; Nelson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679; Miller *v.* Sageser, (Ky. 1907) 99 S. W. 913.

471. 1. Matter of Strang, 131 Iowa 583, 106 N. W. 631; Griggs Land Co. *v.* Smith, (Wash. 1907) 89 Pac. 477, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 471; Davie *v.* Davie, (Wash. 1907) 91 Pac. 950, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 471.

475. 3. Darst *v.* Swearingen, 224 Ill. 220, 79 N. E. 635; Starr *v.* Willoughby, 218 Ill. 485, 75 N. E. 1029; Wilson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679; Crane *v.* Crane, (Ky. 1907) 105 S. W. 370; Miller *v.* Sageser, (Ky. 1907) 99 S. W. 913; *In re* Caldwell, 188 N. Y. 115, 80 N. E. 663.

Property Assumes Character Intended. — Vogt *v.* Vogt, 26 App. Cas. (D. C.) 46; Burbach *v.* Burbach, 217 Ill. 547, 75 N. E. 519; Crane *v.* Crane, (Ky. 1907) 105 S. W. 370; Llewellyn *v.* Llewellyn, 122 Mo. App. 467, 99 S. W. 809; Harris *v.* Ingalls, (N. H. 1907) 68 Atl. 34; Keyser *v.* Mead, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 114, 103 N. Y. Supp. 1091; Stebbens *v.* Turner, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 587, 105 N. Y. Supp. 945; St. John *v.* Andrews Institute, 117 N. Y. App. Div. 698, 102 N. Y. Supp. 808; Train *v.* Davis, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 162, 98 N. Y. Supp. 816.

476. 5. Until Conversion Fee in Heirs — Subject to Judgment Lien. — Williams *v.* Lobban, 206 Mo. 399, 104 S. W. 58.

477. 3. Boehmcke *v.* McKeon, 119 N. Y. App. Div. 30, 103 N. Y. Supp. 930.

480. 3. Reconversion Occurs "where the direction to convert is countermanded by the parties entitled to the property." Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109.

Reconversion Is Not to Be Assumed from the Bare Fact of Joinder of the Heirs in a Conveyance, and the retention by the executor of the proceeds of sale for distribution. Miller *v.* Payne, 28 App. Cas. (D. C.) 396.

4. Williams *v.* Lobban, 206 Mo. 399, 104 S. W. 58; Train *v.* Davis, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 162, 98 N. Y. Supp. 816.

8. Williams *v.* Lobban, 206 Mo. 399, 104 S. W. 58; Harris *v.* Ingalls, (N. H. 1907) 68 Atl. 34; Train *v.* Davis, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 162, 98 N. Y. Supp. 816.

Consent of All Parties Beneficially Interested Essential to Reconversion. — Darst *v.* Swearingen, 224 Ill. 220, 79 N. E. 635; Starr *v.* Willoughby, 218 Ill. 485, 75 N. E. 1020; Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109.

Election of Beneficiaries to Effect Reconversion Need Not Be Simultaneous. — Williams *v.* Lobban, 206 Mo. 399, 104 S. W. 58.

9. Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109.

181. 1. Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109.

2. Train *v.* Davis, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 162, 98 N. Y. Supp. 816.

11. Husband of Sole Beneficiary May Elect to Effect Reconversion. — Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109.

182. 3. Williams *v.* Jones, 131 Wis. 361, 111 N. W. 505.

5. Election Extinguishes Power of Sale under Will. — Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109; Train *v.* Davis, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 162, 98 N. Y. Supp. 816.

7. Williams *v.* Jones, 131 Wis. 361, 111 N. W. 505.

Valid Election Necessitates Concurrence of All Interests. — Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109.

CONVEY — CONVEYANCE.

484. 2. Convey Synonymous with Grant. — Germer *v.* Triple-State Natural Gas, etc., Co., 60 W. Va. 143, 54 S. E. 509; Blood *v.* Sielert, 38 Wash. 643, 80 Pac. 799.

Convey Synonymous with Dedicate. — Leadville *v.* Coronado Min. Co., 37 Colo. 234, 86 Pac. 1034.

487. 3. Goodman *v.* Greenberg, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 583, 103 N. Y. Supp. 779.

488. 2. Cornish *v.* Woolverton, 32 Mont. 456, 81 Pac. 4.

492. 1. Power of Attorney to *convey* real estate not a *conveyance*. Best *v.* Gunther, 125 Wis. 518, 104 N. W. 918.

Unregistered Deed Conveyance of Land. — McNeill *v.* Allen, (N. Car. 1907) 59 S. E. 689.

Conveyance on Sale — English Stamp Act. — See Maple *v.* Inland Revenue, (1906) 2 K. B. 834, 76 L. J. K. B. 1.

494. 1. Merchandise Conveyed. — The word *conveyed* in the English statute prescribing rates for merchandise *conveyed* means actually carried, and does not refer to a contract of carriage. Lancashire, etc., Coal Assoc. *v.* London, etc., R. Co., (1907) 2 K. B. 902, 76 L. J. K. B. 1020, 97 L. T. N. S. 569, 23 Times L. Rep. 645.

COPARTIES.

506. 2. Coparties — Indiana Statute. — Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. App. 1907) 82 N. E. 1013.

COPYRIGHT.

512. 1. American Tobacco Co. *v.* Werckmeister, 28 U. S. Sup. Ct. 72, *affirming* (C. C. A.) 146 Fed. 375; Bobbs-Merrill Co. *v.* Straus, (C. C. A.) 147 Fed. 15, *affirming* 139 Fed. 155.

3. Bobbs-Merrill Co. *v.* Straus, (C. C. A.) 147 Fed. 15, *affirming* 139 Fed. 155; State *v.* State Journal Co., (Neb. 1906) 110 N. W. 763, denying rehearing of (1905) 106 N. W. 434.

Distinguished from Common-law Right. — Hartman *v.* John D. Park, etc., Co., 145 Fed. 358.

513. 4. Harper *v.* Donohue, 144 Fed. 491; Caliga *v.* Inter Ocean Newspaper Co., (C. C. A.) 157 Fed. 188; State *v.* State Journal Co., (Neb. 1906) 110 N. W. 763, denying rehearing of (1905) 106 N. W. 434; Vernon Abstract Co. *v.* Waggoner Title Co., (Tex. Civ. App. 1908) 107 S. W. 919, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513.

514. 2. Abstract Books and Indexes. — Vernon Abstract Co. *v.* Waggoner Title Co., (Tex. Civ. App. 1908) 107 S. W. 919.

5. Caliga *v.* Inter Ocean Newspaper Co., (C. C. A.) 157 Fed. 188.

6. Bobbs-Merrill Co. *v.* Straus, (C. C. A.) 147 Fed. 15, *affirming* 139 Fed. 155.

516. 1. Hartman *v.* John D. Park, etc., Co., 145 Fed. 358; Vernon Abstract Co. *v.* Waggoner Title Co., (Tex. Civ. App. 1908) 107 S. W. 919.

517. 1. Hartman *v.* John D. Park, etc., Co., 145 Fed. 358; Bobbs-Merrill Co. *v.* Straus, (C. C. A.) 147 Fed. 15, *affirming* 139 Fed. 155.

May Sell Right to Copyright and Retain Right of Dramatization. — Ford *v.* Charles E. Blaney Amusement Co., 148 Fed. 642.

2. American Tobacco Co. *v.* Werckmeister, 28 U. S. Sup. Ct. 72, *affirming* (C. C. A.) 146 Fed. 375; Werckmeister *v.* American Lithographic Co., 142 Fed. 827.

518. 1. White-Smith Music Pub. Co. *v.* Apollo Co., (C. C. A.) 139 Fed. 427, *affirmed* 147 Fed. 226, 28 U. S. Sup. Ct. 319.

520. 3. American Tobacco Co. *v.* Werckmeister, 28 U. S. Sup. Ct. 72, *affirming* (C. C. A.) 146 Fed. 375; Harper *v.* Donohue, 144 Fed. 491; Caliga *v.* Inter Ocean Newspaper Co., (C. C. A.) 157 Fed. 188; Bamford *v.* Douglass Post Card, etc., Co., 158 Fed. 355 (photograph post cards); State *v.* State Journal Co., (Neb. 1906) 110 N. W. 763, denying rehearing of (1905) 106 N. W. 434; Vernon Abstract Co. *v.* Waggoner Title Co., (Tex. Civ. App. 1908) 107 S. W. 919.

Common-law Right Ends Where Statutory Right Begins. — Bobbs-Merrill Co. *v.* Straus, (C. C. A.) 147 Fed. 15, *affirming* 139 Fed. 155.

Effect of Interim Copyright Act of 1904. — The Interim Copyright Act of Jan. 7, 1904, 33 U. S. Stat. at L. 4, c. 2, for the protection of exhibitors of foreign literary, artistic, or musical works at the Louisiana Purchase Exposition, was held not to extend the copyright protection to books exhibited at the exposition which had been previously published in the United States. Encyclopedia Britannica Co. *v.* American Newspaper Assoc., (C. C. A.) 142 Fed. 966, *affirming* 135 Fed. 841.

521. 4. Caliga *v.* Inter Ocean Newspaper Co., (C. C. A.) 157 Fed. 188.

5. Bobbs-Merrill Co. *v.* Straus, (C. C. A.) 147 Fed. 15, *affirming* 139 Fed. 155.

522. 3. Macmillan *v.* Dent, (1907) 1 Ch. 107, 76 L. J. Ch. 136, 95 L. T. N. S. 730, 23 Times L. Rep. 45, *affirming* (1906) 1 Ch. 101; Werckmeister *v.* American Lithographic Co., 142 Fed. 827.

523. 1. Vernon Abstract Co. *v.* Waggoner Title Co., (Tex. Civ. App. 1908) 107 S. W.

919, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 523.

2. Vernon Abstract Co. *v.* Waggoner Title Co., (Tex. Civ. App. 1908) 107 S. W. 919.

6. Werckmeister *v.* American Lithographic Co., 142 Fed. 827.

525. 3. Macmillan *v.* Dent, (1907) 1 Ch. 107, 76 L. J. Ch. 136, *affirming* (1906) 1 Ch. 101; Werckmeister *v.* American Lithographic Co., 142 Fed. 827.

526. 1. Contra. — American Tobacco Co. *v.* Werckmeister, 28 U. S. Sup. Ct. 72, *affirming* (C. C. A.) 146 Fed. 375.

528. 2. Consent of Owner — Publication Without. — Where American publishers made a contract with an English author by which they were to secure a copyright in the United States, but before publication, although the title had already been filed, the book was published in England and America by another firm by consent of the author and without any notice of copyright affixed, it was held that such publication was not an abandonment of the copyright by the owners thereof. Harper *v.* Donohue, 144 Fed. 491.

529. 5. Term "Book" Includes a Letter. — Macmillan *v.* Dent, (1906) 1 Ch. 101, 3 Ann. Cas. 1113, 94 L. T. N. S. 84, 54 W. R. 262, 22 Times L. Rep. 117.

6. Single Sheet Sufficient. — Life Pub. Co. *v.* Rose Pub. Co., 12 Ont. L. Rep. 386.

Trade Advertisement with Illustrations Within Statute. — Davis *v.* Benjamin, (1906) 2 Ch. 491, 75 L. J. Ch. 800, 95 L. T. N. S. 671, 22 Times L. Rep. 702.

530. 2. Prints. — Pictures which have been printed in successive colors from metal plates, from which plates part of the metal has been cut out so as to leave portions thereof in relief, are within the copyright law. Hills *v.* Hoover, 136 Fed. 701.

531. 3. American Mutoscope, etc., Co. *v.* Edison Mfg. Co., 137 Fed. 262.

4. Moving Picture Films Within Copyright Law. — American Mutoscope, etc., Co. *v.* Edison Mfg. Co., 137 Fed. 262.

540. 1. *Ex p.* Brown, 166 Ind. 593, 78 N. E. 553, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 540.

2. *Ex p.* Brown, 166 Ind. 593, 78 N. E. 553, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 540.

544. 2. Contra. — Life Pub. Co. *v.* Rose, Pub. Co., 12 Ont. L. Rep. 386.

3. International Copyright Acts of England in Force in Canada. — Mary *v.* Hubert, 29 Quebec Super. Ct. 334, *affirmed* 15 Quebec K. B. 381.

4. Under the International Copyright Act if an author complies with the conditions in his own country for securing a copyright, it gives him a copyright in Canada without conforming to the Copyright Act, c. 62, R. S. C. Mary *v.* Hubert, 29 Quebec Super. Ct. 334, *affirmed* 15 Quebec. K. B. 381.

546. 1. Where an English author made a contract with publishers in the United States giving them the exclusive right of publication in the United States, and the publishers agreed "to secure their own rights and those of the author in said work" under the copyright laws of the United States, it was held to be proper for the publishers to take out the copyright in their own name. Harper *v.* Donohue, 144 Fed. 491.

2. Under International Copyright Amendments. — A person who is a citizen of a foreign country which has no reciprocal copyright relations with the United States cannot convey to a person who is a citizen of a country which has such copyright relations any legal right to a copyright while retaining the original article. Bong *v.* Alfred S. Campbell Art Co., (C. C. A.) 155 Fed. 116.

548. 4. Letters Published After Death of Author. — Under the English Copyright Act of 1842 the copyright of a letter published after the death of the author is vested in the person owning the actual letter and not in the representatives of the author. Macmillan *v.* Dent, (1906) 1 Ch. 101, 75 L. J. Ch. 99, *affirmed* (1907) 1 Ch. 107.

552. 2. Copyrighting Periodical as a Whole Protects All Articles Therein. — Harper *v.* Donohue, 144 Fed. 491; Ford *v.* Charles E. Blaney Amusement Co., 148 Fed. 642.

7. Bobbs-Merrill Co. *v.* Straus, (C. C. A.) 147 Fed. 15, *affirming* 139 Fed. 155; White-Smith Music Pub. Co. *v.* Apollo Co., (C. C. A.) 147 Fed. 226, *affirmed* 28 U. S. Sup. Ct. 319.

9. Werckmeister *v.* American Lithographic Co., 142 Fed. 827; Bracken *v.* Rosenthal, 151 Fed. 136, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 552; Harper *v.* Donohue, 144 Fed. 491; Ford *v.* Charles E. Blaney Amusement Co., 148 Fed. 642.

554. 3. Only One Valid Copyright may be obtained upon the same subject-matter. Caliga *v.* Inter Ocean Newspaper Co., (C. C. A.) 157 Fed. 188.

556. 4. Notice Containing Surplus Words. — A notice was not bad because it contained the surplus word "published." Hills *v.* Hoover, 136 Fed. 701.

558. 1. Where a Book Is Copyrighted in Two Countries the failure to insert a notice of the domestic copyright in the foreign edition is not a waiver of the domestic copyright. United Dictionary Co. *v.* G. & C. Merriam Co., 28 U. S. Sup. Ct. 290, *affirming* (C. C. A.) 146 Fed. 354.

560. 1. Contra. — American Tobacco Co. *v.* Werckmeister, 28 U. S. Sup. Ct. 72, *affirming* (C. C. A.) 146 Fed. 375; Werckmeister *v.* American Lithographic Co., 142 Fed. 827.

8. Harper *v.* Donohue, 144 Fed. 491.

Copyright Law Does Not Give Right to Combine in Restraint of Trade. — Mines *v.* Scribner, 147 Fed. 927.

No Right of Restricted Publication under Copyright Laws. — A court of equity will not enforce the provisions of the copyright laws to prevent a sale of a copyrighted article merely because the publisher has affixed a notice to the article to the effect that any sale at less than a stated price would be considered an infringement of copyright. Bobbs-Merrill Co. *v.* Straus, (C. C. A.) 147 Fed. 15, *affirming* 139 Fed. 155.

562. 2. Price Restriction. — Where the defendant purchased copyrighted books of the plaintiff, paying full retail price, or purchased of persons who had purchased of the plaintiff, and there was no notice restricting the title

conveyed, it was held that the defendant secured full title to the books and was not liable for copyright infringement because of a sale at less price than that fixed by the publishers. Scribner *v.* Straus, 139 Fed. 193, *affirmed* (C. C. A.) 147 Fed. 28.

3. Copyright of Pamphlet Does Not Protect System Expounded Therein. — Burk *v.* Johnson, (C. C. A.) 146 Fed. 209.

564. 7. Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858.

Where the Title Has Acquired a Secondary Meaning indicating to the public a book published and sold by the publisher who secured the copyright, a person who uses the title after the copyright has expired must accompany his publication with such indications of the source of publication as will inform the public that the book is published by himself and not by the original publisher. Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858.

566. 4. Construction of Publishing Contracts. — *In re* Jude's Musical Compositions, (1906) 2 Ch. 595, 76 L. J. Ch. 65, *affirmed* (1907) 1 Ch. 651.

7. **Assignment of Right to Print and Sell for Limited Period Is a License.** — Imperial Book Co. *v.* Black, 35 Can. Sup. Ct. 488, *affirming* 8 Ont. L. Rep. 9.

10. Ward *v.* Long, (1906) 2 Ch. 550, 75 L. J. Ch. 732, 95 L. T. N. S. 345, 22 Times L. Rep. 798.

567. 7. **Photographing a Piece of Sculpture** is "copying" within the meaning of the copyright law. Bracken *v.* Rosenthal, 151 Fed. 136.

571. 1. See Hanfstaengl *v.* Smith, (1905) 1 Ch. 519, 74 L. J. Ch. 304, 92 L. T. N. S. 351.

Copying Imported Edition. — Where a book was copyrighted in the United States and Great Britain it was held that the publication in the United States of a photographic reprint of the foreign edition was an infringement of the United States copyright. G. & C. Merriam *v.* United Dictionary Co., (C. C. A.) 146 Fed. 354, *affirmed* 28 U. S. Sup. Ct. 290.

4. Injury to Sale of Original. — Hanfstaengl *v.* Smith, (1905) 1 Ch. 519, 74 L. J. Ch. 304.

573. 2. G. & C. Merriam Co. *v.* United Dictionary Co., (C. C. A.) 146 Fed. 354, *affirmed* 28 U. S. Sup. Ct. 290.

574. 4. Life Pub. Co. *v.* Rose Pub. Co., 12 Ont. L. Rep. 386.

577. 2. Dun *v.* Lumbermen's Credit Assoc., (C. C. A.) 144 Fed. 83, *affirmed* 28 U. S. Sup. Ct. 335; Hartford Printing Co. *v.* Hartford Directory, etc., Co., 146 Fed. 332.

578. 1. Edward Thompson Co. *v.* American Law Book Co., (C. C. A.) 157 Fed. 1003, *affirming* 130 Fed. 639.

3. Sampson, etc., Co. *v.* Seaver-Radford Co., (C. C. A.) 140 Fed. 539, *reversing* 134 Fed. 890; Hartford Printing Co. *v.* Hartford Directory, etc., Co., 146 Fed. 332.

582. 2. Perforated Slips for Organettes No Infringement of Sheet Music. — White-Smith Music Pub. Co. *v.* Apollo Co., 28 U. S. Sup. Ct. 319, *affirming* (C. C. A.) 147 Fed. 226.

583. 1. **Importation of Piratical Copies.** — No rights can be founded on the publication of a book from a copy imported in violation of statute. Harper *v.* Donohue, 144 Fed. 491.

The Statute Has No Application to a book which has been copyrighted in Great Britain and a copy of which is imported for the purpose of publication in the United States. G. & C. Merriam *v.* United Dictionary Co., (C. C. A.) 146 Fed. 354, *affirmed* 28 U. S. Sup. Ct. 290.

586. 5. Delay Pending Establishment of Title at Law. — Wooster *v.* Crane, (C. C. A.) 147 Fed. 515.

587. 1. Sweet *v.* Bromley, 154 Fed. 754.

Violation of Sale Price. — Where the complainant sold its books only through authorized agents on the express condition that they should maintain a certain price and each book contained a notice of the conditions, it was held that a preliminary injunction would be granted against the defendant who secured several copies of the books with knowledge of the conditions and offered them for sale at less than the fixed price. Authors, etc., Assoc. *v.* O'Gorman Co., 147 Fed. 616.

5. Periodical Publications. — A preliminary injunction will not be granted to restrain the publication of future numbers of a publication which have not been published or copyrighted. Sweet *v.* Bromley, 154 Fed. 754.

588. 4. American Mutoscope, etc., Co. *v.* Edison Mfg. Co., 137 Fed. 262; Littleton *v.* Fischer, 137 Fed. 684; De Jonge *v.* Breuker, etc., Co., 147 Fed. 763; Gopsill *v.* C. E. Howe Co., 149 Fed. 905.

5. Dun *v.* Lumbermen's Credit Assoc., 28 U. S. Sup. Ct. 335, *affirming* 144 Fed. 83; Ricordi *v.* Hammerstein, 150 Fed. 450.

Penalties and Forfeitures Must Be Enforced in a Single Action in the nature of replevin. Werckmeister *v.* American Tobacco Co., 28 U. S. Sup. Ct. 124, *affirming* (C. C. A.) 144 Fed. 1023.

6. Littleton *v.* Fischer, 137 Fed. 684.

7. Where the Infringing and Noninfringing Parts Are Intermingled and the defendant makes no effort to separate them it must account for the profit on all the sales. Hartford Printing Co. *v.* Hartford Directory, etc., Co., 146 Fed. 332.

589. 3. Sampson, etc., Co. *v.* Seaver-Radford Co., (C. C. A.) 140 Fed. 539, *reversing* 134 Fed. 890.

590. 7. Werckmeister *v.* American Tobacco Co., 28 U. S. Sup. Ct. 124, *affirming* (C. C. A.) 144 Fed. 1023; Harper *v.* Donohue, 144 Fed. 491; Caliga *v.* Inter Ocean Newspaper Co., (C. C. A.) 157 Fed. 186.

592. 5. Penalty Limited to Sheets Found in Defendant's Possession. — The rule laid down by the cases cited in the original note was not changed by the Rev. St., § 4965, as amended by Act March 2, 1895, c. 194, 28 Stat. 965. Boston Traveler Co. *v.* Purdy, (C. C. A.) 137 Fed. 717.

Paintings. — The rule as to paintings is broader than that stated in the text and covers copies "sold or offered for sale" by the defendant. American Lithographic Co. *v.* Werckmeister, (C. C. A.) 146 Fed. 377.

593. 2. Walker *v.* Globe Newspaper Co., (C. C. A.) 140 Fed. 305, 5 Ann. Cas. 274, *reversing* 130 Fed. 593.

5. See Wooster *v.* Crane, (C. C. A.) 147 Fed. 515.

12. The Federal Circuit Courts have jurisdiction to enforce rights secured by the copyright laws. Wooster *v.* Crane, (C. C. A.) 147 Fed. 515.

594. 8. Entry at Stationers' Hall. — A certified copy of the entry at Stationers' Hall is *prima facie* evidence of proprietorship under sections 18 and 19 of the Imperial Copyright Act of 1842 (5 & 6 Vict., c. 45). Imperial Book Co. *v.* Black, 35 Can. Sup. Ct. 488, *affirming* 8 Ont. L. Rep. 9.

595. 1. American Mutoscope, etc., Co. *v.* Edison Mfg. Co., 137 Fed. 262.

6. Hartford Printing Co. *v.* Hartford Directory, etc., Co., 146 Fed. 332.

CORAM NON JUDICE.

595. 8*a*. See People *v.* Harrison, 223 Ill. 543, 79 N. E. 164, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 595.

CORONERS.

598. 1. Coroner County Officer. — People *v.* Horan, 34 Colo. 304, 86 Pac. 252; People *v.* Warner, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 270.

603. 5. Investigation of Violent Deaths Principal Function of Coroners. — Moore *v.* Box Butte County, (Neb. 1907) 111 N. W. 469.

6. People *v.* Jackson, 121 N. Y. App. Div. 856, 106 N. Y. Supp. 1046. *Contra* in *Indiana*, Stults *v.* Allen County, 168 Ind. 539, 81 N. E. 471.

Inquest Essentially Criminal Proceeding. — Acker *v.* Anderson County, 77 S. Car. 478, 58 S. E. 337.

7. Morgan *v.* San Diego County, 3 Cal. App. 454, 86 Pac. 720; Stults *v.* Allen County, 168 Ind. 539, 81 N. E. 471; Finarty *v.* Marion County, 127 Iowa 543, 103 N. W. 772; Moore *v.* Box Butte County, (Neb. 1907) 111 N. W. 469; People *v.* Warner, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 279; Miller *v.* Cambria County, 29 Pa. Super. Ct. 166.

604. 1. Holding Inquest Discretionary with Coroner. — Morgan *v.* San Diego County, 3 Cal. App. 454, 86 Pac. 720; Finarty *v.* Marion County, 127 Iowa 543, 103 N. W. 772; Moore *v.* Box Butte County, (Neb. 1907) 111 N. W. 469.

Inquest Held Presumed to Have Been Warranted. — Stults *v.* Allen County, 168 Ind. 539, 81 N. E. 471.

3. Stults *v.* Allen County, 168 Ind. 539, 81 N. E. 471; Miller *v.* Cambria County, 29 Pa. Super. Ct. 166.

4. **As Far as Jurors and Witnesses Are Concerned,** the coroner's determination has been held to be final. Moore *v.* Box Butte County, (Neb. 1907) 111 N. W. 469.

5. **Inquest in Prison.** — It is the duty of a coroner holding an inquest in prison to make as full an inquiry concerning the death of a prisoner as in the case of an ordinary inquest outside the prison, notwithstanding the fact that the death of the prisoner was caused by a wound inflicted before admission to the prison and that there has been a previous investigation by magistrates regarding the injury. Rex *v.* Graham, 93 L. T. N. S. 371, 21 Times L. Rep. 576.

8. People *v.* Jackson, (Ct. Gen. Sess) 47 Misc. (N. Y.) 60, 95 N. Y. Supp. 286, 121 N. Y. App. Div. 856, 106 N. Y. Supp. 1046.

605. 5. Moore *v.* Box Butte County, (Neb. 1907) 111 N. W. 469.

606. 3. One Inquest Lawfully Held Is Sufficient, even though held by a justice instead of by the coroner. Morgan *v.* San Diego County, 3 Cal. App. 454, 86 Pac. 720.

607. 6. Summoning of Physicians Discretionary with Coroner. — People *v.* Warner, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 279.

One or More Physicians or Surgeons May Be Summoned. — Finarty *v.* Marion County, 127 Iowa 543, 103 N. W. 772.

612. 3. Fact of Witnesses Having Testified at Inquest May Be Shown on Trial. — Newcomb *v.* State, (Tex. Crim. 1906) 95 S. W. 1048.

5. Inquests Inadmissible in Civil Cases to Prove Manner and Cause of Death. — Kane *v.* Supreme Tent, etc., 113 Mo. App. 104, 87 S. W. 547.

Verdict at Inquest Inadmissible in Probate Proceeding. — Matter of Dolbeer, 149 Cal. 227, 9 Ann. Cas. 795, 86 Pac. 695.

CORPORATIONS (PRIVATE).

633. 1. *In re* Rieger, 157 Fed. 609, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 633; U. S. *v.* Milwaukee Refrigerator Transit Co., 142 Fed. 247; Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123; Greathouse *v.* Martin, (Tex. Civ. App. 1906) 91 S. W. 385.

634. 1. *In re* Rieger, 157 Fed. 609, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 633.

637. 2. Charter Declaration as to Character of Corporation. — State *v.* Irvine, 14 Wyo. 318, 84 Pac. 90, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637.

638. 2. Hinds County *v.* Natchez, 85 Miss. 599, 38 So. 189.

641. 3. St. John *v.* Iowa Business Men's Bldg., etc., Assoc., (Iowa 1907) 113 N. W. 863.

645. 3. Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123.

647. 5. Illustrations — *Michigan.* — Pub. Acts Mich., 1903, p. 230, No. 171, which provides for the incorporation of associations not for pecuniary profit includes an association "for the purpose of improving the breed of horses by promoting the interests of the American trotting turf," there being no provision for a capital stock, for the carrying on of any business, or the acquisition of any proprety, except membership fees and annual dues. American Matinee Assoc. *v.* Secretary of State, 140 Mich. 579, 104 N. W. 141.

650. 5. That One of the Three Necessary Corporators Was a Married Woman and the wife of another corporator did not affect the legal existence of the corporation. Good Land Co. *v.* Cole, 131 Wis. 467, 110 N. W. 895.

9. The Acknowledgments of the Corporators cannot be taken before one of the signers. People *v.* Railroad Com'rs, 105 N. Y. App. Div. 273, 93 N. Y. Supp. 584.

652. 1. McChesney *v.* Batman, (Ky. 1905) 89 S. W. 198.

653. 1. Minneapolis, etc., Suburban R. Co. *v.* Manitou Forest Syndicate, 101 Minn. 132, [illegible]

654. 6. In Missouri the period is twenty years unless otherwise specified in the charter. See State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761; State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752.

7. Matter of Consolidated Gas Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407.

655. 1. Central of Georgia R. Co. *v.* Union Springs, etc., R. Co., 144 Ala. 639, 39 So. 473; Marshall *v.* Keach, 227 Ill. 35, 10 Ann. Cas. 164, 81 N. E. 29; Clark *v.* American Cannel Coal Co., 35 Ind. App. 65, 73 N. E. 727; Louisiana Nat. Bank *v.* Henderson, 116 La. 413, 40 So. 779; McCarter *v.* Ketcham, 72 N. J. Eq. 247, 62 Atl. 693; Marsters *v.* Umpqua Valley Oil Co., (Oregon 1907) 90 Pac. 151; Mitchell *v.* Jensen, 29 Utah 346, 81 Pac. 165.

2. Clinton Novelty Iron Works *v.* Neiting, 134 Iowa 311, 111 N. W. 974; Ford River Lumber Co., *v.* Perron, 148 Mich. 399, 111 N. W. 1074; Whaley *v.* Banker's Union of the World, (Tex. Civ. App. 1905) 88 S. W. 259; Newport News Shipbuilding, etc., Co. *v.* Jones, 105 Va. 503, 54 S. E. 314; State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

660. 4. Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395.

662. 2. Bridge St., etc., Gravel Road Co. *v.* Hogadone, 150 Mich. 638, 114 N. W. 917.

665. 3. Leavengood *v.* McGee, (Oregon 1907) 91 Pac. 453.

666. 1. Clinton Novelty Iron Works *v.* Neiting, 134 Iowa 311, 111 N. W. 974.

668. 2. White River, etc., R. Co. *v.* Star Ranch, etc., Co., 77 Ark. 128, 91 S. W. 14; Callahan *v.* Chilcott Ditch Co., (Colo. 1906) 86 Pac. 123; Kanawha Dispatch *v.* Fish, 219 Ill. 236, 76 N. E. 352; Keokuk, etc., Bridge Co. *v.* Wetzel, 228 Ill. 253, 81 N. E. 864; Patterson *v.* Northern Trust Co., 230 Ill. 334, 82 N. E. 837; Clark *v.* American Cannel Coal Co., 35 Ind. App. 65, 73 N. E. 727; Western Invest. Co. *v.* Davis, (Indian Ter. 1907) 104 S. W. 573; State Security Bank *v.* Hoskins, 130 Iowa 339, 106 N. W. 764; Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224; Comanche Cotton Oil Co. *v.* Browne, (Tex. Civ. App. 1905) 90 S. W. 528.

3. *Arkansas.* — Arkadelphia Lumber Co. *v.* Posey, 74 Ark. 377, 85 S. W. 1127.

California. — Kelly *v.* Ning Nung Benev. Assoc., 2 Cal. App. 460, 84 Pac. 321.

Illinois. — Stacy *v.* Glen Ellyn Hotel, etc., Co., 223 Ill. 546, 79 N. E. 133; Patterson *v.* Northern Trust Co., 230 Ill. 334, 82 N. E. 837.

Iowa. — Marshalltown First Nat. Bank *v.* Church Federation of America, 129 Iowa 268, 105 N. W. 578; Banker's Mut. Casualty Co. *v.* Council Bluffs First Nat. Bank, 131 Iowa 456, 108 N. W. 1046; Farmers' Mut. Telephone Co. *v.* Howell, 132 Iowa 22, 109 N. W. 294.

Kentucky. — Licking Valley Bldg. Assoc. *v.* Com., (Ky. 1905) 89 S. W. 682.

Louisiana. — Blanc *v.* Germania Nat. Bank, 114 La. 739, 38 So. 537; Provident Bank, etc., Co. *v.* Saxon, 116 La. 408, 40 So. 778; Louisiana Nat. Bank *v.* Henderson, 116 La. 413, 40 So. 779.

Nebraska. — Lincoln Butter Co. *v.* Edwards-Bradford Lumber Co., (Neb. 1906) 107 N. W. 797; Union Pacific Lodge, etc., *v.* Bankers Surety Co., (Neb. 1907) 113 N. W. 263.

New Jersey. — Campbell *v.* Perth Amboy Ship Bldg., etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

669. 2. Boca, etc., R. Co. *v.* Sierra Valleys R. Co., 2 Cal. App. 546, 84 Pac. 298; Colpe *v.* Jubilee Min. Co., 2 Cal. App. 393, 84 Pac. 324; Brown *v.* Maryland Telephone, etc., Co., 101 Md. 574, 61 Atl. 338; People *v.* Ellison, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 413, 101 N. Y. Supp. 444, 188 N. Y. 523, 81 N. E. 447; Comanche Cotton Oil Co. *v.* Brown, (Tex. Civ. App. 1905) 90 S. W. 528; Garey *v.* St. Joe Min. Co., (Utah 1907) 91 Pac. 369.

671. 3. *In re* Cyclists' Touring Club, (1907) 1 Ch. 269.

5. State *v.* St. Mary's Franco-American Petroleum Co., 58 W. Va. 108, 6 Ann. Cas. 38, 51 S. E. 865, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671.

673. 2. Bernstein *v.* Kaplan, (Ala. 1907) 43 So. 581; Lewis *v.* Northern Pac. R. Co., (Mont. 1907) 92 Pac. 469; Lord *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 187, 94 N. Y. Supp. 65; Garey *v.* St. Joe Min. Co., (Utah 1907) 91 Pac. 369.

674. 2. Ware Shoals Mfg. Co. *v.* Jones, (S. Car. 1907) 58 S. E. 811.

676. 2. Huber *v.* Martin, 127 Wis. 412, 7 Ann. Cas. 400, 105 N. W. 1031.

677. 2. Southern Indiana R. Co. *v.* Indianapolis, etc., R. Co., (Ind. 1907) 81 N. E. 65; Martin *v.* Atlas Estate Co., (N. J. 1907) 65 Atl. 881; Harrison *v.* Carbon Timber Co., 14 Wyo. 246, 83 Pac. 215.

678. 1. San Joaquin, etc., Canal, etc., Co. *v.* Merced County, 2 Cal. App. 593, 84 Pac. 285.

679. 1. Boca, etc., R. Co. *v.* Sierra Valleys R. Co., 2 Cal. App. 546, 84 Pac. 298.

680. 4. Werle *v.* Northwestern Flint, etc., Co., 125 Wis. 534, 104 N. W. 743.

681. 1. **Effect upon Stock Subscriptions.** — Pope *v.* Merchants' Trust Co., 118 Tenn. 506, 103 S. W. 792.

684. 11. State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684; State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761.

685. 1. **In Kentucky the Word "Incorporated"** must be used with the corporate name. Jung Brewing Co. *v.* Com., (Ky. 1906) 96 S. W. 476; Com. *v.* American Snuff Co., (Ky. 1907) 101 S. W. 364.

3. People *v.* Rose, 219 Ill. 46, 76 N. E. 42.

687. 3. Sumter Tobacco Warehouse Co. *v.* Phœnix Assur. Co., 76 S. Car. 76, 56 S. E. 654; Wright-Cæsar Tobacco Co. *v.* Hoen, 105 Va. 327, 54 S. E. 309.

688. 3. State *v.* Colias, (Ala. 1907) 43 So. 190; Claryville, etc., Turnpike Co. *v.* Com., (Ky. 1908) 107 S W. 327; Knights of Maccabees of the World *v.* Searle, 75 Neb. 285, 106 N. W. 448.

689. 2. McDonald *v.* Shaw, 81 Ark. 235, 98 S. W. 952.

690. 1. British Vacuum Cleaner Co. *v.*

New Vacuum Cleaner Co., (1907) 2 Ch. 312; People *v.* Rose, 225 Ill. 496, 80 N. E. 293; People *v.* O'Brien, 101 N. Y. App. Div. 296, 91 N. Y. Supp. 649, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689 [690].

692. **1.** Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687; Strop *v.* Smoote, (Mo. App. 1907) 101 S. W. 149; Strop *v.* Hughes, (Mo. App. 1907) 101 S. W. 149; Strop *v.* Butler, (Mo. App. 1907) 101 S. W. 149; Washington Nat. Bldg., etc., Assoc. *v.* Buser, 61 W. Va. 590, 57 S. E. 40.

693. **1.** St. Louis Fourth Nat. Bank *v.* Camden Lumber Co., 142 Fed. 257.

5. Seal Prima Facie Evidence of Corporate Authority. — Kirkpatrick *v.* Eastern Milling, etc., Co., 135 Fed. 144.

The Authenticity of a Corporate Seal is presumed when it is admitted that the corporation signed the instrument. Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687.

6. Bliss *v.* Harris, 38 Colo. 72, 87 Pac. 1076; U. S. *v.* Mercantile Trust Co., 213 Pa. St. 411, 62 Atl. 1062.

694. **3.** People's Home Sav. Bank *v.* Sadler, 1 Cal. App. 189, 81 Pac. 1029; Manufacturer's Exhibition Bldg. Co. *v.* Landay, 219 Ill. 168, 76 N. E. 146; Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313; Miller *v.* Farmer's Milling, etc., Co., (Neb. 1907) 110 N. W. 995.

4. Baumgarten *v.* Alliance Assur. Co., 153 Fed. 301; Philippine Sugar Estates Development Co. *v.* U. S., 39 Ct. Cl. 225.

695. **8.** *England.* — Atty.-Gen. *v.* North Eastern R. Co., (1906) 2 Ch. 675; *In re* Kingsbury Collieries, (1907) 2 Ch. 259.

United States. — Evans *v.* Johnson, (C. C. A.) 149 Fed. 978; Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32.

Alabama. — Bernstein *v.* Kaplan, (Ala. 1907) 43 So. 581.

California. — Bornstein *v.* District Grand Lodge No. 4, 2 Cal. App. 624, 84 Pac. 271; Northwestern Packing Co. *v.* Whitney, 5 Cal. App. 105, 89 Pac. 981; Harris *v.* Independent Gas Co., (Kan. 1907) 92 Pac. 1123; South Pasadena *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 490.

Colorado. — Carlsbad Water Co. *v.* New, 33 Colo. 389, 81 Pac. 34.

District of Columbia. — Dancy *v.* Clark, 24 App. Cas. (D. C.) 487.

Illinois. — Manufacturer's Exhibition Bldg. Co. *v.* Landay, 219 Ill. 168, 76 N. E. 146; Merchants Nat. Bank *v.* Nichols, etc., Co., 223 Ill. 41, 79 N. E. 38; Gay *v.* Kohlsaat, 223 Ill. 260, 79 N. E. 77; Pond *v.* Royal League, 127 Ill. App. 476.

Iowa. — Johnson *v.* Des Moines, etc., R. Co., 129 Iowa 281, 105 N. W. 509; Banker's Mut. Casualty Co. *v.* Council Bluffs First Nat. Bank, 131 Iowa 456, 108 N. W. 1046.

Kansas. — Scott *v.* Bankers' Union of the World, 73 Kan. 575, 85 Pac. 604, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 695.

Kentucky. — Greene *v.* Middlesborough Town, etc., Co., (Ky. 1905) 89 S. W. 228.

Louisiana. — Louisiana Nav., etc., Co. *v.* Doullut, 114 La. 906, 38 So. 613; Bartlett *v.* Fourton, 115 La. 26, 38 So. 882.

Maine. — Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785.

Maryland. — Brown *v.* Maryland Telephone, etc., Co., 101 Md. 574, 61 Atl. 338.

Massachusetts. — Nye *v.* Whittemore, 193 Mass. 208, 79 N. E. 253.

Michigan. — Berlin *v.* Belle Isle Scenic R. Co., 141 Mich. 646, 105 N. W. 130.

Minnesota. — Minneapolis Threshing Mach. Co. *v.* Jones, 95 Minn. 127, 103 N. W. 1017; Minneapolis, etc., Suburban R. Co. *v.* Manitou Forest Syndicate, 101 Minn. 132, 112 N. W. 13; Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395.

Missouri. — St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 447, 91 S. W. 968, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 695; Brinkerhoff Zinc Co. *v.* Boyd, 192 Mo. 597, 91 S. W. 523; State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185; State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761; State *v.* Lewin, (Mo. App. 1907) 106 S. W. 581.

Nebraska. — Horst *v.* Lewis, 71 Neb. 365, 103 N. W. 460; Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685; State Electro-Medical Institute *v.* Platner, 74 Neb. 40, 103 N. W. 1079; Willow Springs Irrigation Dist. *v.* Wilson, 74 Neb. 269, 104 N. W. 165; Bishop *v.* Fuller, (Neb. 1907) 110 N. W. 715; Miller *v.* Farmer's Milling, etc., Co., (Neb. 1907) 110 N. W. 995.

New Hampshire. — Kidd *v.* New Hampshire Traction Co., (N. H. 1907) 66 Atl. 127.

New Jersey. — Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419; Jersey City *v.* North Jersey St. R. Co., 73 N. J. L. 175, 63 Atl. 906; Lawrence *v.* Rutland R. Co., (N. J. 1907) 67 Atl. 1091.

New York. — Continental Ins. Co. *v.* New York, etc., R. Co., 187 N. Y. 225, 79 N. E. 1026.

North Dakota. — Ruettell *v.* Greenwich Ins. Co., (N. Dak. 1907) 113 N. W. 1029.

South Carolina. — Ware Shoals Mfg. Co. *v.* Jones, (S. Car. 1907) 58 S. E. 811.

South Dakota. — Wood *v.* Saginaw Gold Min., etc., Co., (S. Dak. 1905) 105 N. W. 101; Davis *v.* Brown County Coal Co., (S. Dak. 1906) 110 N. W. 113.

Texas. — Whaley *v.* Banker's Union of the World, (Tex. Civ. App. 1905) 88 S. W. 259; Manhattan Liquor Co. *v.* Magnus, (Tex. Civ. App. 1906) 94 S. W. 1117; Manhattan Liquor Co. *v.* German Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 1120.

Utah. — Garey *v.* St. Joe Min. Co., (Utah 1907) 91 Pac. 369.

Washington. — McKinley *v.* Mineral Hill Consol. Min. Co., (Wash. 1907) 89 Pac. 495.

Wisconsin. — Figge *v.* Bergenthal, 130 Wis. 594, 109 N. W. 581.

A Quasi-public Corporation can exercise no authority not granted to it by its charter or from some other act of the legislature which granted the charter. Quinby *v.* Consumers' Gas Trust Co., 140 Fed. 362.

698. **4.** People's Home Sav. Bank *v.* Sadler, 1 Cal. App. 189, 81 Pac. 1029; Colpe *v.* Jubilee Min. Co., 2 Cal. App. 393, 84 Pac. 324; Nowak *v.* Murray, 127 Ill. App. 125; Maryland

Trust Co. *v.* National Mechanics Bank, 102 Md. 608, 63 Atl. 70; Richardson *v.* Devine, 193 Mass. 336, 79 N. E. 771; Pine Beach Invest. Corp. *v.* Columbia Amusement Co., 106 Va. 810, 56 S. E. 822; Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337.

5. Commercial Wood, etc., Co. *v.* Northampton Portland Cement Co., 190 N. Y. 1, 82 N. E. 730; March *v.* Fairmont Creamery Assoc., 32 Pa. Super. Ct. 517; Tombstone First Nat. Bank *v.* Abilene Hotel Co., (Tex. Civ. App. 1907) 103 S. W. 1120.

699. 10. *California.* — Robinson *v.* Blood, 151 Cal. 504, 91 Pac. 258.

Colorado. — Conqueror Gold Min., etc., Co. *v.* Ashton, 39 Colo. 133, 90 Pac. 1124.

Georgia. — Johnson *v.* Waxelbaum, 1 Ga. App. 511, 58 S. E. 56.

Indiana. — Tevis *v.* Hammersmith, (Ind. App. 1907) 81 N. E. 614; Meridian L., etc., Co. *v.* Eaton, (Ind. App. 1907) 81 N. E. 667.

Mississippi. — Brown *v.* British, etc., Mortg. Co., 86 Miss. 388, 38 So. 312.

New Hampshire. — Kidd *v.* New Hampshire Traction Co., (N. H. 1907) 66 Atl. 127.

New York. — People *v.* Ellison, 188 N. Y. 523, 81 N. E. 447.

Oregon. — Pacific Mill Co. *v.* Inman, etc., Co., (Oregon 1907) 90 Pac. 1099.

South Carolina. — Ware Shoals Mfg. Co. *v.* Jones, (S. Car. 1907) 58 S. E. 811.

Texas. — Manhattan Liquor Co. *v.* German Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 1120; Manhattan Liquor Co. *v.* Magnus, (Tex. Civ. App. 1906) 94 S. W. 1117.

Virginia. — Newport News Shipbuilding, etc., Co. *v.* Jones, 105 Va. 503, 54 S. E. 314, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 699.

700. 1. Scott *v.* Bankers' Union of the World, 73 Kan. 575, 85 Pac. 604, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 700; St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 447, 91 S. W. 968, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 701.

702. 8. Pocono Spring Water Ice Co. *v.* American Ice Co., 214 Pa. St. 640, 64 Atl. 398.

703. 1. Schaeffer Piano Mfg. Co. *v.* National Fire Extinguisher Co., (C. C. A.) 148 Fed. 159; Berlin *v.* Cusachs, 114 La. 744, 38 So. 522.

708. 7. Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123; Greene *v.* Middlesborough Town, etc., Co., (Ky. 1905) 89 S. W. 228; Nye *v.* Whittemore, 193 Mass. 208, 79 N. E. 253; State *v.* Lewin, (Mo. App. 1907) 106 S. W. 581; Millville Gas Light Co. *v.* Vineland Light, etc., Co., (N. J. 1906) 65 Atl. 504; Garey *v.* St. Joe Min. Co., (Utah 1907) 91 Pac. 369; Germer *v.* Triple-State Natural Gas, etc., Co., 60 W. Va. 143, 54 S. E. 509; Canadian Pac. R. Co. *v.* James Bay R. Co., 36 Can. Sup. Ct. 42, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 708.

709. 3. Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123; People *v.* Whalen, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 278, 106 N. Y. Supp. 434, *affirmed* 119 N. Y. App. Div. 749, 104 N. Y. Supp. 555, (N. Y. 1907) 82 N. E. 1131.

710. 4. Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395; Morris-Scarboro-Moffitt Co. *v.* Southern Express Co., (N. Car. 1907) 59 S. E. 667; Garey *v.* St. Joe Min. Co., (Utah 1907) 91 Pac. 369.

When a Corporation Engages in Interstate Commerce it is subject to all the regulative provisions concerning commerce constitutionally prescribed by Congress. Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32.

711. 7. Alaska Gold Min. Co. *v.* Ebner, 2 Alaska 611, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 711.

712. 3. Canadian Pac. R. Co. *v.* James Bay R. Co., 36 Can. Sup. Ct. 42, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 712.

714. 3. St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 447, 91 S. W. 968, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714.

5. Stagg *v.* Medway Nav. Co., (1903) 1 Ch. 169; Northeastern Telephone, etc., Co. *v.* Hepburn, (N. J. 1907) 65 Atl. 747.

6. Reed *v.* Munn, (C. C. A.) 148 Fed. 737; Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434; Louisville School Board *v.* King, (Ky. 1908) 107 S. W. 247; Beasley *v.* Aberdeen, etc., R. Co., 145 N. Car. 272, 59 S. E. 60.

715. 1. State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761; Matter of Consolidated Gas Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407.

A corporation may be disabled or forbidden by the organic or statute law of a state from holding land except for particular purposes, or from holding land beyond a prescribed limit or quantity, yet if it holds land in the face of such disabilities or prohibitions, its title will be good except as against the state alone. Louisville School Board *v.* King, (Ky. 1908) 107 S. W. 247.

718. 2. New England Mut. L. Ins. Co. *v.* Wing, 191 Mass. 192, 77 N. E. 376; Marr *v.* Marr, (N. J. 1907) 66 Atl. 182.

3. Walnut Ridge Mercantile Co. *v.* Cohn, 79 Ark. 338, 96 S. W. 413; Jones *v.* Carnes, 17 Okla. 470, 87 Pac. 652, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 718.

720. 3. Jacksonville Cigar Co. *v.* Dozier, 53 Fla. 1059, 43 So. 523.

Authorized Leases. — Fred K. Higbie Co. *v.* Charles Weeghman Co., 126 Ill. App. 97.

May Lease to Prevent Competition. — Brooklyn Distilling Co. *v.* Standard Distilling, etc., Co., 120 N. Y. App. Div. 237, 105 N. Y. Supp. 265.

A Lease Taken for the Benefit of a Corporation Before Its Organization, but afterwards ratified by the corporation, becomes the property of the corporation. Central Trust Co. *v.* Lappe, 216 Pa. St. 549, 65 Atl. 1111.

721. 3. Smith *v.* Havens Relief Fund Soc., 118 N. Y. App. Div. 678, 103 N. Y. Supp. 770.

723. 1. Lafferty *v.* Evans, 17 Okla. 247, 87 Pac. 304; Montreal, etc., Light, etc., Co. *v.* Robert, 25 Quebec Super. Ct. 485, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 723.

726. 5. Collier *v.* Alexander, 142 Ala. 422, 38 So. 244.

728. 4. Jones *v.* Evans, (Cal. App. 1907) 91 Pac. 532.

729. 1. Taking Assignment of Account, —

Maroney *v.* Cole, (N. Y. City Ct. Tr. T.) 52 Misc. (N. Y.) 451, 103 N. Y. Supp. 560.

730. 4. Jordan *v.* Richmond Home, 106 Va. 710, 56 S. E. 730.

732. 2. State *v.* Higby, 130 Iowa 69, 106 N. W. 382, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 732; Brookhouse *v.* Union Pub. Co., 73 N. H. 368, 6 Ann. Cas. 675, 62 Atl. 219; Jordan *v.* Richmond Home, 106 Va. 710, 56 S. E. 730.

734. 1. *England.* — Stagg *v.* Medway Nav. Co., (1903) 1 Ch. 169; *In re* Kingsbury Collieries, (1907) 2 Ch. 259.

United States. — Kessler *v.* Ensley Co., 141 Fed. 130; Ansley Land Co. *v.* H. Weston Lumber Co., 152 Fed. 841.

California. — Nixon *v.* Goodwin, 3 Cal. App. 358, 85 Pac. 169; Holmes *v.* Salamanca Gold Min., etc., Co., 5 Cal. App. 659, 91 Pac. 160; South Pasadena *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 490.

Delaware. — Diamond State Iron Co. *v.* Husband, 8 Del. Ch. 205, 68 Atl. 240.

New Jersey. — Mitchell *v.* United Box Board, etc., Co., (N. J. 1907) 66 Atl. 938.

Oregon. — West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666.

South Carolina. — Marshall *v.* Columbia, etc., Electric St. R. Co., 73 S. Car. 241, 53 S. E. 417.

West Virginia. — Germer *v.* Triple-State Natural Gas, etc., Co., 60 W. Va. 143, 54 S. E. 509; Deepwater Council No. 40, etc., *v.* Renick, 59 W. Va. 343, 53 S. E. 552.

735. 1. Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781. But see Tillis *v.* Brown, (Ala. 1908) 45 So. 589; South Pasadena *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 490.

4. Miller *v.* Farmer's Milling, etc., Co., (Neb. 1907) 110 N. W. 995.

736. 2. *In re* Tangier Amalgamated Min. Co., 39 Nova Scotia 373.

737. 2. Stagg *v.* Medway Nav. Co., (1903) 1 Ch. 169; Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854; Pine Beach Invest. Corp. *v.* Columbia Amusement Co., 106 Va. 810, 56 S. E. 822.

5. Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82; Anderson *v.* Shawnee Compress Co., 17 Okla. 231, 87 Pac. 315; Starke *v.* J. M. Guffey Petroleum Co., 98 Tex. 542, 4 Ann. Cas. 1057, 86 S. W. 1.

738. 5. West Point *v.* Bland, 106 Va. 792, 56 S. E. 802.

A Dedication Cannot Be Effected by the directors of a corporation where they are not vested by the charter with authority to dedicate. Stacy *v.* Glen Ellyn Hotel, etc., Co., 223 Ill. 546, 79 N. E. 133.

6. *England.* — Stagg *v.* Medway Nav. Co., (1903) 1 Ch. 169.

Canada. — Trusts, etc., Co. *v.* Abbott Mitchell Iron, etc., Co., 11 Ont. L. Rep. 403.

United States. — *In re* Adamant Plaster Co., 137 Fed. 251; Farmers' L. & T. Co. *v.* New England Waterworks Co., (C. C. A.) 137 Fed. 729; Black *v.* Wiedersheim, 143 Fed. 359; Omaha Water Co. *v.* Omaha, (C. C. A.) 147 Fed. 1, 8 Ann. Cas. 614; Farmers' L. & T. Co. *v.* Madison Mfg. Co., 153 Fed. 310; *In re* Wyoming Valley Ice Co., 153 Fed. 787.

Arkansas. — Stiewel *v.* Webb Press Co., 79 Ark. 45, 94 S. W. 915.

California. — Anglo-Californian Bank *v.* Field, 146 Cal. 644, 80 Pac. 1080; Continental Bldg., etc., Assoc. *v.* Light, (Cal. App. 1907) 92 Pac. 1034; Youd *v.* German Sav., etc., Soc., 3 Cal. App. 706, 86 Pac. 991.

Georgia. — Garmany *v.* Lawton, 124 Ga. 876, 53 S. E. 669; Nelson *v.* Spence, 129 Ga. 35, 58 S. E. 697.

Illinois. — Kraft *v.* West Side Brewery Co., 219 Ill. 205, 76 N. E. 372.

Kentucky. — Fidelity Trust Co. *v.* National Coal, etc., Co., (Ky. 1905) 89 S. W. 718.

Louisiana. — *In re* Red River Line, 115 La. 867, 40 So. 250.

Maryland. — Union Trust Co. *v.* Thomas, (Md. 1907) 66 Atl. 450.

Michigan. — Webster *v.* Ypsilanti Canning Co., 149 Mich. 489, 113 N. W. 7.

Missouri. — Pitman *v.* Chicago-Joplin Lead, etc., Co., 113 Mo. App. 513, 87 S. W. 10; Hasbrouch *v.* Rich, 113 Mo. App. 389, 88 S. W. 131.

New Jersey. — Empire State Trust Co. *v.* Fisher, 67 N. J. Eq. 602, 3 Ann. Cas. 393, 60 Atl. 940; Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167; Camden Safe Deposit, etc., Co. *v.* Citizens Ice, etc., Co., 69 N. J. Eq. 718, 61 Atl. 529; Porch *v.* Agnew Co., 70 N. J. Eq. 328, 61 Atl. 721; Campbell *v.* Perth Amboy Ship Bldg., etc., Co., 70 N. J. Eq. 40, 62 Atl. 319; Brown *v.* Citizens Ice, etc., Co., (N. J. 1907) 66 Atl. 181; Voorhees *v.* Nixon, (N. J. 1907) 66 Atl. 192.

New York. — Tschetinian *v.* City Trust Co., 186 N. Y. 432, 79 N. E. 401.

Oregon. — Curtze *v.* Iron Dyke Copper Min. Co., 46 Oregon 601, 81 Pac. 815; Haines Mercantile Co. *v.* Highland Gold Min. Co., (Oregon 1907) 88 Pac. 865; Marsters *v.* Umpqua Valley Oil Co., (Oregon 1907) 90 Pac. 151.

Wisconsin. — Eastman *v.* Parkinson, (Wis. 1907) 113 N. W. 649.

Wyoming. — Matthews *v.* Nefsy, 13 Wyo. 458, 81 Pac. 305.

Can Mortgage After-acquired Property. — Washington Trust Co. *v.* Morse Iron Works, etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495.

739. 1. St. Louis Fourth Nat. Bank *v.* Camden Lumber Co., 142 Fed. 257; Strop *v.* Hughes, (Mo. App. 1907) 101 S. W. 146; Doty *v.* Oriental Print Works Co., (R. I. 1907) 67 Atl. 586; Eastman *v.* Parkinson, (Wis. 1907) 113 N. W. 649.

2. Love *v.* Export Storage Co., (C. C. A.) 143 Fed. 1; Blanc *v.* Germania Nat. Bank, 114 La. 739, 38 So. 537; *In re* Mills, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 1057.

3. Allen *v.* Alston, 147 Ala. 609, 41 So. 159; New York Bank Note Co. *v.* Kidder Press Mfg. Co., 192 Mass. 391, 78 N. E. 463; Ward *v.* City Trust Co., 117 N. Y. App. Div. 130, 102 N. Y. Supp. 50; Dreeben *v.* McKinney First Nat. Bank, (Tex. 1907) 99 S. W. 850; Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

740. 5. Beach *v.* McKinnon, 148 Fed. 734.

741. 1. Van Slyck *v.* Woodruff, 118 N. Y. App. Div. 47, 103 N. Y. Supp. 139.

Perry *v.* Van Norden Trust Co., 118 N. Y. App. Div. 288, 103 N. Y. Supp. 543.

742. 1. Moody *v.* Chicago Title, etc., Co., 126 Ill. App. 68; Pitman *v.* Chicago-Joplin Lead, etc., Co., 113 Mo. App. 513, 87 S. W. 10; Gordon *v.* Southgate Bldg. Co., 109 N. Y. App. Div. 838, 96 N. Y. Supp. 717; Voss *v.* Smith, 110 N. Y. App. Div. 104, 97 N. Y. Supp. 3; Wright *v.* Gansevoort Bank, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 214, 103 N. Y. Supp. 47; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 742.

743. 1. Pitman *v.* Chicago-Joplin Lead, etc., Co., 113 Mo. App. 513, 87 S. W. 10.

2. Moody *v.* Chicago Title, etc., Co., 126 Ill. App. 68.

745. 4. **"A Corporation May Not Sell, Mortgage, or Lease** property only for the individual benefit of an officer or stockholder." Minneapolis Threshing Mach. Co. *v.* Jones, 95 Minn. 127, 103 N. W. 1017.

747. 3. Indianapolis *v.* Consumers' Gas Trust Co., (C. C. A.) 144 Fed. 640; Georgia R., etc., Co. *v.* Haas, 127 Ga. 187, 9 Ann. Cas. 677, 56 S. E. 313.

751. 2. Carstens *v.* Hofius, 44 Wash. 456, 87 Pac. 631.

754. 4. Marsters *v.* Umpqua Valley Oil Co., (Oregon 1907) 90 Pac. 151.

755. 1. *United States.* — Rascovor *v.* American Linseed Co., (C. C. A.) 135 Fed. 341; Monarch Electric, etc., Co. *v.* National Conduit, etc., Co., (C. C. A.) 138 Fed. 18; Ophir Consol. Mines Co. *v.* Brynteson, (C. C. A.) 143 Fed. 829; Kessel *v.* Austin Min. Co., 144 Fed. 859; Hall's Safe Co. *v.* Herring-Hall-Marvin Safe Co., (C. C. A.) 146 Fed. 37; Bauersmith *v.* Extreme Gold Min., etc., Co., 146 Fed. 95; Mason *v.* Chicago, etc., R. Co., (C. C. A.) 156 Fed. 959.

Alabama. — Alston *v.* Broadus Cotton Mill, (Ala. 1907) 44 So. 654.

Arkansas. — Carter *v.* Gray, 79 Ark. 273, 96 S. W. 377.

California. — Wickersham Banking Co. *v.* Nicholas, 2 Cal. App. 18, 82 Pac. 1124; Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 84 Pac. 321; Sierra Land, etc., Co. *v.* Bricker, 3 Cal. App. 190, 85 Pac. 665; Miser Gold Min., etc., Co. *v.* Moody, 37 Colo. 310, 86 Pac. 335; Freyberg *v.* Los Angeles Brewing Co., 4 Cal. App. 403, 88 Pac. 378; Mebius, etc., Co. *v.* Mills, 150 Cal. 229, 88 Pac. 917; Brown *v.* Crown Gold Milling Co., 150 Cal. 376, 89 Pac. 86; Watkins *v.* Glas, 5 Cal. App. 68, 89 Pac. 840; West *v.* Prather, (Cal. App. 1907) 93 Pac. 892.

Florida. — Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687; Skinner Mfg. Co. *v.* Donville, (Fla. 1907) 44 So. 1014.

Georgia. — Dublin, etc., R. Co. *v.* Akerman, (Ga. 1907) 59 S. E. 10.

Idaho. — Lewiston Lumber, etc., Co. *v.* Garvey, 13 Idaho 257, 89 Pac. 940.

Illinois. — Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434.

Indiana. — Tevis *v.* Hammersmith, (Ind. App. 1907) 81 N. E. 614; Meridian L., etc., Co. *v.* Eaton, (Ind. App. 1907) 81 N. E. 667.

Indian Territory. — Western Invest. Co. *v.* Davis, (Indian Ter. 1907) 104 S. W. 573.

Iowa. — Miller *v.* Mason City, etc., R. Co., 132 Iowa 412, 108 N. W. 302.

Kentucky. — Kessler *v.* Ellis, (Ky. 1905) 87 S. W. 798.

Louisiana. — Mayville Canal Co. *v.* Lake Arthur Rice Milling Co., 119 La. 447, 44 So. 260.

Minnesota. — Wasser *v.* Western Land Securities Co., 97 Minn. 460, 107 N. W. 160.

Missouri. — Deadwood First Nat. Bank *v.* Rockefeller, 195 Mo. 15, 93 S. W. 761; Freeman *v.* Junge Baking Co., 126 Mo. App. 124, 103 S. W. 565.

New Jersey. — Crossley *v.* St. Philip Neri's Catholic Church, (N. J. 1907) 67 Atl. 27; Kelley *v.* Jersey City Water Supply Co., (N. J. 1907) 67 Atl. 108.

New Mexico. — Bank of Commerce *v.* Baird Min. Co., (N. Mex. 1906) 85 Pac. 970.

New York. — Vonnoh *v.* Sixty-seventh St. Atelier Bldg., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 222, 105 N. Y. Supp. 155; Matter of Consolidated Gas Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407.

Oregon. — Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139; Guillaume *v.* K. S. D. Fruit Land Co., 48 Oregon 400, 86 Pac. 883.

Pennsylvania. — American Car, etc., Co. *v.* Alexander Water Co., 218 Pa. St. 542, 67 Atl. 861; Pannebaker *v.* Tuscarora Valley R. Co., 219 Pa. St. 60, 67 Atl. 923.

Tennessee. — Pearsall *v.* Tennessee Cent. R. Co., 2 Tenn. Ch. App. 682.

Texas. — Howard Lumber Co. *v.* Cox, (Tex. Civ. App. 1907) 104 S. W. 403.

Washington. — Vulcan Iron Works *v.* Burrell Constr. Co., 39 Wash. 319, 81 Pac. 836; Jamieson *v.* Heim, 43 Wash. 153, 86 Pac. 165; Lawson *v.* Black Diamond Coal Min. Co., 44 Wash. 26, 86 Pac. 1120; Rowland *v.* P. P. Carroll Loan, etc., Co., 44 Wash. 413, 87 Pac. 482; Chilcott *v.* Washington State Colonization Co., 45 Wash. 148, 88 Pac. 113; Roberts *v.* Hilton Land Co., 45 Wash. 464, 88 Pac. 946.

Wisconsin. — Peterson *v.* Elholm, 130 Wis. 1, 109 N. W. 76; Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

757. 3. *England.* — Manners *v.* St. David's Gold, etc., Mines, (1904) 2 Ch. 593, 73 L. J. Ch. 764; Pedlar *v.* Road Block Gold Mines, (1905) 2 Ch. 427, 74 L. J. Ch. 753; *In re* English, etc., Produce Co., (1906) 2 Ch. 435, 75 L. J. Ch. 831; *In re* Otto Electrical Mfg. Co., (1906) 2 Ch. 390.

Canada. — Montreal, etc., Light, etc., Co. *v.* Robert, 25 Quebec Super. Ct. 473.

United States. — Quinby *v.* Consumers' Gas Trust Co., 140 Fed. 362; *In re* Cullman Fruit, etc., Assoc., 155 Fed. 372; Harriman *v.* Northern Securities Co., 197 U. S. 244, 25 U. S. Sup. Ct. 493.

Alabama. — Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403; Lineville First Nat. Bank *v.* Alexander, (Ala. 1907) 44 So. 866.

Arizona. — Leatherwood *v.* Hill, (Ariz. 1906) 89 Pac. 521.

Colorado. — Lincoln Mountain Gold Min. Co. *v.* Williams, 37 Colo. 192, 85 Pac. 844.

Georgia. — Capital City Brick Co. *v.* Jackson, (Ga. 1907) 59 S. E. 92.

Illinois. — Dunbar *v.* American Telephone, etc., Co., 224 Ill. 9, 79 N. E. 423; Peoria Star Co. *v.* Cutright, 115 Ill. App. 492; Keeley Brewing Co. *v.* Mason, 116 Ill. App. 603; Lloyd *v.* Matthews, 119 Ill. App. 546, *affirmed* 223 Ill. 477, 79 N. E. 172.

Indiana. — Breinig *v.* Sparrow, 39 Ind. App. 455, 80 N. E. 37; Cushman *v.* Cloverland Coal, etc., Co., (Ind. 1908) 83 N. E. 390.

Iowa. — State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500.

Kansas. — Ross Oil, etc., Co. *v.* Eastham, 73 Kan. 464, 85 Pac. 531; Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123.

Louisiana. — Jackson Brewing Co. *v.* Canton, 118 La. 823, 43 So. 454.

Maryland. — Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70.

Michigan. — Stone *v.* Fox Mach. Co., 145 Mich. 689, 109 N. W. 659; Wright *v.* St. Louis Sugar Co., 146 Mich. 555, 109 N. W. 1062; Taylor *v.* Scott, 149 Mich. 525, 113 N. W. 32.

Minnesota. — Bond *v.* Pike, 101 Minn. 127, 111 N. W. 916.

Missouri. — Kansas City Star Co. *v.* Standard Warehouse Co., (Mo. App. 1907) 99 S. W. 765.

Nebraska. — Horst *v.* Lewis, 71 Neb. 365, 103 N. W. 460.

New Jersey. — Whitehead *v.* American Lamp, etc., Co., 70 N. J. Eq. 581, 62 Atl. 554; Edwards *v.* National Window Glass Jobbers Assoc., (N. J. 1908) 68 Atl. 800.

New York. — Wormser *v.* Metropolitan St. R. Co., 184 N. Y. 83, 6 Ann. Cas. 123, 76 N. E. 1036; Matter of Long Acre Electric Light, etc., Co., 188 N. Y. 361, 80 N. E. 1101; Bowers *v.* Ocean Acc., etc., Corp., 110 N. Y. App. Div. 691, 97 N. Y. Supp. 485.

North Carolina. — Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

Rhode Island. — Cook *v.* American Tubing, etc., Co., (R. I. 1905) 65 Atl. 641.

Tennessee. — Woodward *v.* Beasley, 2 Tenn. Ch. App. 339.

Texas. — Deaton Grocery Co. *v.* International Harvester Co., (Tex. Civ. App. 1907) 105 S. W. 556.

Virginia. — Redwood *v.* Rogers, 105 Va. 155, 53 S. E. 6.

Washington. — Pitcher *v.* Lone Pine Surprise Consol. Min. Co., 39 Wash. 608, 81 Pac. 1047; Belch *v.* Big Store Co., (Wash. 1907) 89 Pac. 174.

Wisconsin. — Eastman *v.* Parkinson, (Wis. 1907) 113 N. W. 649.

A Contract between Two Corporations made by the directors and ratified by a majority of the stockholders cannot be set aside by the minority stockholders. Continental Ins. Co. *v.* New York, etc., R. Co., 103 N. Y. App. Div. 282, 93 N. Y. Supp. 27.

759. 5. Werle *v.* Northwestern Flint, etc., Co., 125 Wis. 534, 104 N. W. 743.

7. Buffalo Coal Creek Min. Co. *v.* Troendle, (Ky. 1907) 99 S. W. 622; Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454; San Antonio Light Pub. Co. *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 867; Figge *v.* Bergenthal, 130 Wis. 594, 109 N. W. 581, *rehearing denied* 130 Wis. 626, 110 N. W. 798.

9. White Star Line *v.* Star Line of Steamers, 141 Mich. 604, 105 N. W. 135; Finck *v.* Schneider Granite Co., 187 Mo. 244, 86 S. W. 213.

760. 3. Marshalltown First Nat. Bank *v.* Church Federation of America, 129 Iowa 268, 105 N. W. 578.

761. 1. National Hollow Brake Beam Co. *v.* Chicago R. Equipment Co., 226 Ill. 28, 80 N. E. 556; Blanc *v.* Germania Nat. Bank, 114 La. 739, 38 So. 537, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 761; Brown *v.* British, etc., Mortg. Co., 86 Miss. 388, 38 So. 312, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 761; State Electro-Medical Institute *v.* State, 74 Neb. 40, 103 N. W. 1078; Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698.

A Contract Made by the President, without the sanction of the board of directors, for the sale of the corporation's products, is not binding on the corporation. Northwestern Packing Co. *v.* Whitney, 5 Cal. App. 105, 89 Pac. 981.

767. 1. St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 447, 91 S. W. 968, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 764.

769. 1. Rankin *v.* Southwestern Brewing, etc., Co., 12 N. Mex. 49, 73 Pac. 612, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 769.

770. 5. Hurlbut *v.* Gainor, (Tex. Civ. App. 1907) 103 S. W. 409.

771. 1. *England.* — *In re* Payne, (1904) 2 Ch. 608, 73 L. J. Ch. 849.

United States. — Kirkpatrick *v.* Eastern Milling, etc., Co., 135 Fed. 144.

Illinois. — Peoria Star Co. *v.* Cutright, 115 Ill. App. 492; Kraft *v.* West Side Brewery Co., 121 Ill. App. 371, *affirmed* 219 Ill. 205, 76 N. E. 372.

Indiana. — Meridian L., etc., Co. *v.* Eaton, (Ind. App. 1907) 81 N. E. 667.

Kentucky. — Martin *v.* Logan, (Ky. 1907) 99 S. W. 648.

Michigan. — Webster *v.* Ypsilanti Canning Co., 149 Mich. 489, 113 N. W. 7.

Missouri. — Pitman *v.* Chicago-Joplin Lead, etc., Co., 113 Mo. App. 513, 87 S. W. 10.

New Jersey. — Brown *v.* Citizens Ice, etc., Co., (N. J. 1907) 66 Atl. 181; Marr *v.* Marr, (N. J. 1907) 66 Atl. 182.

Pennsylvania. — Law *v.* Fuller, 217 Pa. St. 439, 66 Atl. 754.

Texas. — Jones *v.* Smith, (Tex. Civ. App. 1905) 87 S. W. 210.

Wisconsin. — Eastman *v.* Parkinson, (Wis. 1907) 113 N. W. 649.

772. 1. Stagg *v.* Medway Nav. Co., (1903) 1 Ch. 169; *In re* Payne, (1904) 2 Ch. 608.

775. 5. *In re* Payne, (1904) 2 Ch. 608, 73 L. J. Ch. 849.

Rule in United States. — *In re* Wyoming Valley Ice Co., 153 Fed. 787.

779. 2. *Arkansas.* — El Dorado Imp. Co. *v.* Citizens' Bank, (Ark. 1908) 107 S. W. 676.

Florida. — Somers *v.* Florida Pebble Phosphate Co., 50 Fla. 275, 39 So. 61.

Illinois. — Peoria Star Co. *v.* Cutright, 115 Ill. App. 492; Blue Island Brewing Co. *v.* Frantz, 123 Ill. App. 26.

Iowa. — Houts *v.* Sioux City Brass Works, [illegible]

Kansas. — Western Grocer Co. *v.* Lackman, 75 Kan. 34, 88 Pac. 527.

New York. — National Bank *v.* H. P. Snyder Mfg. Co., 107 N. Y. App. Div. 95, 94 N. Y. Supp. 982; Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454.

Pennsylvania. — Law *v.* Fuller, 217 Pa. St. 439, 66 Atl. 754.

Vermont. — Lyndon Sav. Bank *v.* International Co., 78 Vt. 169, 62 Atl. 50.

Washington. — Jamieson *v.* Heim, 43 Wash. 153, 86 Pac. 165.

780. 2. National Bank *v.* H. P. Snyder Mfg. Co., 117 N. Y. App. Div. 370, 102 N. Y. Supp. 478.

782. 2. Pelton *v.* Spider Lake Sawmill, etc., Co., (Wis. 1907) 112 N. W. 29.

3. Capital City Brick Co. *v.* Jackson, (Ga. 1907) 59 S. E. 92; Tombstone First Nat. Bank *v.* Abilene Hotel Co., (Tex. Civ. App. 1907) 103 S. W. 1120.

783. 3. Farmers' L. & T. Co. *v.* Madison Mfg. Co., 153 Fed. 310; American Ice, etc., Co. *v.* Crane, 142 Ala. 620, 39 So. 233; Keystone Nat. Bank *v.* Palos Coal, etc., Co., (Ala. 1907) 43 So. 570; Camden Safe Deposit, etc., Co. *v.* Citizens Ice, etc., Co., 69 N. J. Eq. 718, 61 Atl. 529; Brown *v.* Citizens Ice, etc., Co., (N. J. 1907) 66 Atl. 181; Bergen *v.* Rogers, (N. J. 1907) 67 Atl. 290; Tschetinian *v.* City Trust Co., 186 N. Y. 432, 79 N. E. 401; Shellenberger *v.* Altoona, etc., Connecting R. Co., 212 Pa. St. 413, 61 Atl. 1000; Rice *v.* Shealey, 71 S. Car. 161, 50 S. E. 868.

784. 7. Fletcher *v.* Alpena Circuit Judge, 136 Mich. 511, 99 N. W. 746, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 784.

785. 1. Jones *v.* Smith, (Tex. Civ. App. 1905) 87 S. W. 210.

3. Western Supply, etc., Co. *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1906) 92 S. W. 986.

786. 1. *In re* Wyoming Valley Ice Co., 153 Fed. 787, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 786.

788. 4. *In re* New York Car Wheel Works, 141 Fed. 430; Lloyd *v.* Matthews, 119 Ill. App. 546, *affirmed* 223 Ill. 477, 79 N. E. 172; Western Maryland R. Co. *v.* Blue Ridge Hotel Co., 102 Md. 307, 62 Atl. 351, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 788; J. G. Brill Co. *v.* Norton, etc., St. R. Co., 189 Mass. 431, 75 N. E. 1090; Whitehead *v.* American Lamp, etc., Co., 70 N. J. Eq. 581, 62 Atl. 554; National Union Bank *v.* Hollingsworth, 143 N. Car. 520, 55 S. E. 809; Wheeling Ice, etc., Co. *v.* Conner, 61 W. Va. 111, 55 S. E. 982.

793. 6. Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167; Cook *v.* American Tubing, etc., Co., (R. I. 1905) 65 Atl. 641, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 793.

794. 4. Breinig *v.* Sparrow, 39 Ind. App. 455, 80 N. E. 37.

795. 1. Canon *v.* Sharon, etc., St. R. Co., 216 Pa. St. 408, 65 Atl. 795.

797. 5. Garrison Canning Co. *v.* Stanley, 133 Iowa 57, 110 N. W. 171.

799. 1. Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434.

801. 2. *In re* Beaver Knitting Mills, (C. C. A.) 154 Fed. 320.

4. Dennis *v.* Atlanta Nat. Bldg., etc., Assoc, (C. C. A.) 136 Fed. 539; Farmers' L. & T. Co. *v.* New England Waterworks Co., (C. C. A.) 137 Fed. 729.

810. 1. O'Connor *v.* International Silver Co., 68 N. J. Eq. 680, 62 Atl. 408; Motter *v.* Kennett Tp. Electric Co., 212 Pa. St. 613, 62 Atl. 104.

811. 1. Dixie Cotton Oil Co. *v.* Morris, 79 Ark. 113, 94 S. W. 933; Newman *v.* Mercantile Trust Co., 189 Mo. 423, 88 S. W. 6; Windmuller *v.* Standard Distilling, etc., Co., 106 N. Y. App. Div. 246, 94 N. Y. Supp. 52.

2. Germer *v.* Triple-State Natural Gas, etc., Co., 60 W. Va. 143, 54 S. E. 509.

813. 2. Matter of Consolidated Gas Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407.

4. Brownsville Glass Co. *v.* Appert Glass Co., 136 Fed. 240; Harriman *v.* Northern Securities Co., 197 U. S. 244, 25 U. S. Sup. Ct. 493; Dunbar *v.* American Telephone, etc., Co., 224 Ill. 9, 79 N. E. 423; Brooklyn Distilling Co. *v.* Standard Distilling, etc., Co., 120 N. Y. App. Div. 237, 105 N. Y. Supp. 265.

814. 1. Dunbar *v.* American Telephone, etc., Co., 224 Ill. 9, 79 N. E. 423.

818. 3. *United States.* — *In re* Castle Braid Co., 145 Fed. 224, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818; Burnes *v.* Burnes, 132 Fed. 485; Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781.

Alabama. — Dacovich *v.* Canizas, (Ala. 1907) 44 So. 473, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818.

Georgia. — Perkins *v.* State, 126 Ga. 578, 55 S. E. 501, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818.

Iowa. — State *v.* Higby, 130 Iowa 69, 106 N. W. 382.

Michigan. — McIntyre *v.* Bement, 146 Mich. 74, 10 Ann. Cas. 143, 109 N. W. 45.

New Jersey. — Knickerbocker Importation Co. *v.* State Board of Assessors, (N. J. 1907) 65 Atl. 913.

Virginia. — U. S. Mineral Co. *v.* Camden, 106 Va. 663, 56 S. E. 561.

Washington. — Krisch *v.* Interstate Fisheries Co., 39 Wash. 381, 81 Pac. 855.

819. 1. Hall *v.* Alabama Terminal, etc., Co., 143 Ala. 464, 5 Ann. Cas. 363, 39 So. 285; Bartlett *v.* Fourton, 115 La. 26, 38 So. 882; Maryland Trust Co. *v.* National Mechanics Bank, 102 Md. 608, 63 Atl. 70, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 819.

2. **Protection of Stockholders.** — Maryland Trust Co. *v.* National Mechanics Bank, 102 Md. 608, 63 Atl. 70, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 819.

820. 2. Dacovich *v.* Canizas, (Ala. 1907) 44 So. 473, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 820.

824. 5. Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 824.

825. 1. *England.* — Citizens' L. Assur. Co. *v.* Brown, (1904) A. C. 423, 73 L. J. P. C. 102; Shepheard *v.* Bray, (1906) 2 Ch. 235.

United States. — International Text-Book Co.

v. Heartt, (C. C. A.) 136 Fed. 129; Folwell *v.* Miller, (C. C. A.) 145 Fed. 495, 7 Ann. Cas. 455; Stewart *v.* Wright, (C. C. A.) 147 Fed. 321.

Alabama. — Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403; Birmingham R., etc., Co. *v.* Spencer, (Ala. 1905) 39 So. 477.

Alaska. — U. S. *v.* Ames Mercantile Co., 2 Alaska 74.

California. — Allen *v.* Gorrill, (Cal. 1907) 92 Pac. 1017; Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011.

Colorado. — Overland Cotton Mills *v.* People, 32 Colo. 263, 75 Pac. 924.

Georgia. — Tuggle *v.* Enterprise Lumber Co., 123 Ga. 480, 51 S. E. 433; Southern R. Co. *v.* State, 125 Ga. 287, 5 Ann. Cas. 411, 54 S. E. 160; Southern R. Co. *v.* Chambers, 126 Ga. 404, 55 S. E. 37; Savannah Electric Co. *v.* Wheeler, 128 Ga. 128, 58 S. E. 38; Southern Express Co. *v.* State, 1 Ga. App. 700, 58 S. E. 67.

Illinois. — Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176; North American Restaurant, etc., *v.* McElligott, 227 Ill. 317, 81 N. E. 388; Keokuk Bridge Co. *v.* Wetzel, 228 Ill. 253, 81 N. E. 864.

Indiana. — Farmers' Mut. F. Ins. Assoc. *v.* Stewart, (Ind. 1906) 79 N. E. 490.

Iowa. — Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629.

Kentucky. — Com. *v.* F. W. Cook Brewing Co., (Ky. 1907) 104 S. W. 255.

Massachusetts. — Aberthaw Constr. Co. *v.* Cameron, 194 Mass. 208, 80 N. E. 478; White *v.* Apsley Rubber Co., 194 Mass. 97, 80 N. E. 500; Paine *v.* Armour, 194 Mass. 334, 80 N. E. 500; Conklin *v.* Consolidated R. Co., (Mass. 1907) 82 N. E. 23.

Missouri. — State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185.

New Jersey. — Vulcan Detinning Co. *v.* American Can Co., 70 N. J. Eq. 588, 62 Atl. 881; Seastream *v.* New Jersey Exhibition Co., (N. J. 1907) 65 Atl. 982; Empire Cream Separator Co. *v.* De Laval Dairy Supply Co., (N. J. 1907) 67 Atl. 711.

New York. — Cooley *v.* Curran, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 572, 104 N. Y. Supp. 751; Shepard *v.* Morgan, 123 N. Y. App. Div. 128, 108 N. Y. Supp. 379.

North Carolina. — Holder *v.* Cannon Mfg. Co., 138 N. Car. 308, 50 S. E. 681; Sawyer *v.* Norfolk, etc., R. Co., 142 N. Car. 1, 9 Ann. Cas. 440, 54 S. E. 793; McIver *v.* Young Hardware Co., 144 N. Car. 478, 57 S. E. 169.

Oklahoma. — Sulphur Springs First Nat. Bank *v.* Stribling, 16 Okla. 41, 86 Pac. 512.

Pennsylvania. — McCullough *v.* Ford Natural Gas Co., 213 Pa. St. 110, 62 Atl. 521; Canon *v.* Sharon, etc., St. R. Co., 216 Pa. St. 408, 65 Atl. 795; Green *v.* Sun Co., 32 Pa. Super. Ct. 521.

Texas. — Cleghon *v.* Barstow Irrigation Co., (Tex Civ. App. 1906) 93 S. W. 1020; American Freehold Land Mortg. Co. *v.* Brown, (Tex. Civ. App. 1907) 101 S. W. 856.

West Virginia. — Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 494.

826. 1. **Promoters of a Corporation** are not its agents so as to bind it by their acts when it comes into existence. State *v.* People's U. S. Bank, 197 Mo. 574, 94 S. W. 953.

827. 5. Savannah Electric Co. *v.* Wheeler, 128 Ga. 128, 58 S. E. 38; Conklin *v.* Consolidated R. Co., (Mass. 1907) 82 N. E. 23.

828. 3. State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752; Green *v.* Sun Co., 32 Pa. Super. Ct. 521.

829. 5. North American Restaurant, etc., *v.* McElligott, 227 Ill. 317, 81 N. E. 388; Com. *v.* F. W. Cook Brewing Co., (Ky. 1907) 104 S. W. 255; White *v.* Apsley Rubber Co., 194 Mass. 97, 80 N. E. 500; Paine *v.* Armour, 194 Mass. 334, 80 N. E. 500; Council *v.* St. Louis, etc., R. Co., 123 Mo. App. 432, 100 S. W. 57.

830. 1. Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 830.

6. Barrie *v.* United R. Co., (Mo. App. 1907) 102 S. W. 1078.

831. 1. *United States.* — Love *v.* Export Storage Co., (C. C. A.) 143 Fed. 1; Stewart *v.* Wright, (C. C. A.) 147 Fed. 321.

California. — Allen *v.* Gorrill, (Cal. 1907) 92 Pac. 1017; Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011.

Iowa. — Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629.

New Jersey. — Vulcan Detinning Co. *v.* American Can Co., 70 N. J. Eq. 588, 62 Atl. 881.

New York. — Shepard *v.* Morgan, 123 N. Y. App. Div. 128, 108 N. Y. Supp. 379.

Oklahoma. — Sulphur Springs First Nat. Bank *v.* Stribling, 16 Okla. 41, 86 Pac. 512.

Texas. — Cleghon *v.* Barstow Irrigation Co., (Tex. Civ. App. 1906) 93 S. W. 1020.

Washington. — Tacoma Ledger Co. *v.* Western Home Bldg. Assoc., 37 Wash. 467, 79 Pac. 992.

832. 1. Farmers' Mut. F. Ins. Assoc. *v.* Stewart, (Ind. 1906) 79 N. E. 490.

833. 1. Citizens' L. Assur. Co. *v.* Brown, (1904) A. C. 423, 73 L. J. P. C. 102; Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224; Empire Cream Separator Co. *v.* De Laval Dairy Supply Co., (N. J. 1907) 67 Atl. 711.

2. Sawyer *v.* Norfolk, etc., R. Co., 142 N. Car. 1, 9 Ann. Cas. 440, 54 S. E. 793.

3. International Text-Book Co. *v.* Heartt, (C. C. A.) 136 Fed. 129; Rivers *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 471.

4. Aberthaw Constr. Co. *v.* Cameron, 194 Mass. 208, 80 N. E. 478.

834. 3. American Freehold Land Mortg. Co. *v.* Brown, (Tex. Civ. App. 1907) 101 S. W. 856.

5. Arkansas, etc., R. Co. *v.* Stroude, 77 Ark. 109, 91 S. W. 18

835. 2. T. J. Moss Tie Co. *v.* Com., (Ky. 1907) 105 S. W. 163; Com. *v.* Remington Typewriter Co., (Ky. 1907) 105 S. W. 399.

838. 1. McWilliams *v.* New York, 134 Fed. 1015; Empire State Cattle Co. *v.* Atchison, etc., R. Co., 135 Fed. 135; Birmingham R., etc., Co. *v.* Spencer, (Ala. 1905) 39 So. 477; Keokuk, etc., Bridge Co. *v.* Wetzel, 228 Ill. 253, 81 N. E. 864; Polhemus *v.* Polhemus, 114 N. Y. App. Div. 781, 100 N. Y. Supp. 263; Sawyer *v.* Norfolk, etc., R. Co., 142 N. Car. 1, 9 Ann. Cas. 440, 54 S. E. 793.

841. 3. People *v.* Palermo Land, etc., Co., 4 Cal. App. 717, 89 Pac. 723; Overland Cot-

ton Mills *v.* People, 32 Colo. 263, 75 Pac. 924, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 841; Southern Express Co. *v.* State, 1 Ga. App. 700, 58 S. E. 67.

4. U. S. *v.* Ames Mercantile Co., 2 Alaska 74; Southern R. Co. *v.* State, 125 Ga. 287, 5 Ann. Cas. 411, 54 S. E. 160, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 841; Standard Oil Co. *v.* Com., (Ky. 1906) 91 S. W. 1128; Claryville, etc., Turnpike Co. *v.* Com., (Ky. 1908) 107 S. W. 327; State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185; McIver *v.* Young Hardware Co., 144 N. Car. 478, 57 S. E. 169.

812. **2.** Cooley *v.* Curran, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 572, 104 N. Y. Supp. 751.

817. **4.** Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847; Seastream *v.* New Jersey Exhibition Co., (N. J. 1907) 65 Atl. 982.

5. Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847.

818. **1.** Cherokee Mills *v.* Gate City Cotton Mills, 122 Ga. 268, 50 S. E. 82; T. H. Rogers Lumber Co. *v.* McRea, (Indian Ter. 1907) 104 S. W. 803; Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202; Independent Trembowler Young Men's Benev. Assoc. *v.* Somach, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 538, 102 N. Y. Supp. 495; Ninneman *v.* Fox, 43 Wash. 43, 86 Pac. 213.

4. Wetzel, etc., R. Co. *v.* Tennis Bros. Co., (C. C. A.) 145 Fed. 458, 7 Ann. Cas. 426.

Replevin. — Stovell *v.* Alert Gold Min. Co., 38 Colo. 80, 87 Pac. 1071.

819. **8.** Hawkeye Gold Dredging Co. *v.* State Bank, 157 Fed. 253; First Baptist Soc. *v.* Dexter, 193 Mass. 187, 79 N. E. 342; Hoopes *v.* Basic Co., 69 N. J. Eq. 679, 61 Atl. 979; Groll *v.* United Electric Co., 70 N. J. Eq. 616, 61 Atl. 1061; Vulcan Detinning Co. *v.* American Can Co., (N. J. 1907) 67 Atl. 339; Carstens *v.* Hofius, 44 Wash. 456, 87 Pac. 631.

11. San Diego Gas Co. *v.* Frame, 148 Cal. 252, 82 Pac. 1049; Dockstader *v.* Young Men's Christian Assoc., (Iowa 1906) 109 N. W. 906.

820. **5.** *United States.* — Jones *v.* Missouri-Edison Electric Co., (C. C. A.) 144 Fed. 765; Robinson *v.* Holbrook, 148 Fed. 107; Godfrey *v.* McConnell, 151 Fed. 783.

Alabama. — Tillis *v.* Brown, (Ala. 1908) 45 So. 589.

Arizona. — Steinfeld *v.* Zeckendorf, (Ariz. 1906) 86 Pac. 7.

Michigan. — Starr *v.* Shepard, 145 Mich. 302, 108 N. W. 709.

New York. — Young *v.* Equitable L. Assur., (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 347, 99 N. Y. Supp. 446; Polhemus *v.* Polhemus, 114 N. Y. App. Div. 781, 100 N. Y. Supp. 263.

South Dakota. — Glover *v.* Manila Gold Min., etc., Co., 19 S. Dak. 559, 104 N. W. 261.

Virginia. — Virginia Pass., etc., Co. *v.* Fisher, 104 Va. 121, 51 S. E. 198.

6. McCourt *v.* Singers-Bigger, (C. C. A.) 145 Fed. 103, 7 Ann. Cas. 287; Graham *v.* Dubuque Specialty Mach. Works, (Iowa 1908) 114 N. W. 619; Groel *v.* United Electric Co., 70 N. J. Eq. 616, 61 Atl. 1061; Hoopes *v.* Basic Co., 69 N. J. Eq. 679, 61 Atl. 979; Clark *v.* Apex Gold Min. Co., 13 N. Mex. 416, 85 Pac. 968.

7. Cook *v.* Anderson Food Co., 69 N. J. Eq. 660, 61 Atl. 449; Lembeck *v.* Jarvis Terminal Cold Storage Co., (N. J. 1905) 60 Atl. 955; Swing *v.* Consolidated Fruit Jar Co., (N. J. 1906) 63 Atl. 899; Reinhardt *v.* Interstate Telephone Co., (N. J. 1906) 63 Atl. 1097; Pottsville Bank *v.* Minersville Water Co., 211 Pa. St. 566, 61 Atl. 119.

8. Converse *v.* Ætna Nat. Bank, (Conn. 1906) 64 Atl. 341; Abbott *v.* Goodall, 100 Me. 231, 60 Atl. 1030; Montgomery *v.* Seaboard Air Line R. Co., 73 S. Car. 503, 53 S. E. 987; Mangum *v.* Lane City Rice Milling Co., (Tex. Civ. App. 1906) 95 S. W. 605.

851. **3.** McCullough *v.* Ford Natural Gas Co., 213 Pa. St. 110, 62 Atl. 521.

5. Tuggle *v.* Enterprise Lumber Co., 123 Ga. 480, 51 S. E. 433.

6. Peru Plow, etc., Co. *v.* Harker, (C. C. A.) 144 Fed. 673.

7. Folwell *v.* Miller, (C. C. A.) 145 Fed. 495, 7 Ann. Cas. 455.

852. **3.** Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136; Matter of Long Acre Electric Light, etc., Co., 188 N. Y. 361, 80 N. E. 1101; People *v.* Central Fish Co., 117 N. Y. App. Div. 77, 101 N. Y. Supp. 1108; Oklahoma City *v.* Oklahoma R. Co., (Okla. 1907) 93 Pac. 48; Clawson *v.* Clayton, (Utah 1908) 93 Pac. 729.

4. State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185; State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752; State *v.* King Bridge Co., 28 Ohio Cir. Ct. 147; State *v.* Toledo, etc., Burial Assoc., 28 Ohio Cir. Ct. 397.

7. Schmidt *v.* Pritchard, (Iowa 1907) 112 N. W. 801.

853. **1.** Dudley *v.* Armenia Ins. Co., 115 N. Y. App. Div. 380, 100 N. Y. Supp. 818.

6. Dickinson *v.* Traphagan, 147 Ala. 442, 41 So. 272.

Acts of a Corporation after Insolvency are valid, under the statute of New Jersey. Russell, etc., Mfg. Co. *v.* E. C. Faitoute Hardware Co., (N. J. 1905) 62 Atl. 421.

854. **1.** Crossman *v.* Vivienda Water Co., 150 Cal. 575, 89 Pac. 335, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 854.

3. Fred K. Higbie Co. *v.* Charles Weeghman Co., 126 Ill. App. 97.

6. International Coal Min. Co. *v.* Pennsylvania R. Co., 152 Fed. 551.

7. Droege *v.* Emery, (Ky. 1907) 105 S. W. 374.

Corporations May Be Proceeded Against in Supplementary Proceeding under the New York code. Keystone Pub. Co. *v.* Hill Dryer Co., (N. Y. City Ct. Spec. T.) 55 Misc. (N. Y.) 625, 105 N. Y. Supp. 894.

859. **2. Mandamus.** — American Fruit Product Co. *v.* Ward, 113 N. Y. App. Div. 319, 99 N. Y. Supp. 717.

6. Bradford Constr. Co. *v.* Helflin, 88 Misc. 314, 8 Ann. Cas. 1077, 42 So. 174, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 859.

CORPUS DELICTI.

861. 2. **In Arson.**— Heidelbaugh *v.* State, (Neb. 1907) 113 N. W. 145; State *v.* Pienick, (Wash. 1907) 90 Pac. 645.

In Burglary Must Prove Breaking and Entering with Intent to Steal.— Delmont *v.* State, (Wyo. 1907) 88 Pac. 623, *rehearing denied* (Wyo. 1907) 88 Pac. 1102.

Elements in Murder.— The *corpus delicti* in murder has two components: death as the result, and the criminal agency of another as the means. People *v.* Frank, 2 Cal. App. 283, 83 Pac. 578.

862. 1. People *v.* Frank, 2 Cal. App. 283, 83 Pac. 578; People *v.* Eldridge, 3 Cal. App. 648, 86 Pac. 832; Tatum *v.* State, 1 Ga. App. 778, 57 S. E. 956; State *v.* Abrams, 131 Iowa 479, 108 N. W. 1041; State *v.* Teachey, 138 N. Car. 587, 50 S. E. 232; State *v.* Barnes, 47 Oregon 592, 85 Pac. 998; Rex *v.* King, 9 Can. Crim. Cas. 426.

2. People *v.* Staples, 149 Cal. 405, 86 Pac. 886; State *v.* Teachey, 138 N. Car. 587, 50 S. E. 232; State *v.* Bean, 77 Vt. 384, 60 Atl. 807.

When Corpus Delicti Must Be First Proved.— Bradford *v.* State, 146 Ala. 150, 41 So. 471; People *v.* Grill, 3 Cal. App. 514, 86 Pac. 613.

When Corpus Delicti Need Not Be First Proved.— The *corpus delicti* should first be shown ordinarily, but unless it clearly appears that the defendant was prejudiced thereby, a ruling permitting evidence before the *corpus delicti* is established will not justify a reversal of the judgment. People *v.* Bianchino, (Cal. App. 1907) 91 Pac. 112.

Not Essential that Corpus Delicti Be Established by Proof Entirely Independent of a Confession.— Hubbard *v.* State, 77 Ark. 126, 91 S. W. 11.

863. 1. State *v.* Williams, 46 Oregon 287, 80 Pac. 655, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 863.

2. *United States.*— Dimmick *v.* U. S., (C. C. A.) 135 Fed. 263, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 863.

Alabama.— Dupree *v.* State, 148 Ala. 620, 42 So. 1004.

California.— People *v.* Grill, 3 Cal. App. 514, 86 Pac. 613; People *v.* Fallon, 149 Cal. 287, 86 Pac. 689.

Georgia.— Miles *v.* State, 129 Ga. 589, 59 S. E. 274.

Missouri.— State *v.* White, 189 Mo. 339, 87 S. W. 1188; State *v.* Heusack, 189 Mo. 295, 88 S. W. 21; State *v.* Barrington, 198 Mo. 23, 95 S. W. 235.

Oregon.— State *v.* Barnes, 47 Oregon 592, 85 Pac. 998.

Pennsylvania.— Com. *v.* Karamarkovic, 218 Pa. St. 405, 67 Atl. 650; Com. *v.* Sheffer, 218 Pa. St. 437, 67 Atl. 761.

South Carolina.— State *v.* Gillis, 73 S. Car. 318, 6 Ann. Cas. 993, 53 S. E. 487.

Wisconsin.— Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237.

Wyoming.— Delmont *v.* State, (Wyo. 1907) 88 Pac. 623.

Canada.— Rex *v.* King, 9 Can. Crim. Cas. 426.

All Circumstances Combined Must Tend to Positive Proof.— People *v.* Staples, 149 Cal. 405, 86 Pac. 886.

Proof of Corpus Delicti in Conjunction with Confession Plenary Proof.— Gallegos *v.* State, (Tex. Crim. 1905) 90 S. W. 492.

864. 4. People *v.* Frank, 2 Cal. App. 283, 83 Pac. 578; Blacker *v.* State, 74 Neb. 671, 105 N. W. 302; State *v.* Marselle, 43 Wash. 273, 86 Pac. 586.

The *corpus delicti* cannot be made out by a confession, but wherever it has been proven, the confession may be used to connect the defendant with the crime. *Ex p.* Patterson, (Tex. Crim. 1906) 95 S. W. 1061.

CORROBORATIVE EVIDENCE.

866. 3. **One Witness with Corroborating Circumstances Sufficient in Prosecution for Having Illicit Intercourse.**— Rex *v.* Burr, 13 Ont. L. Rep. 485, 12 Can. Crim. Cas. 103.

867. 1. Cook *v.* U. S., 26 App. Cas. (D. C.) 427, 6 Ann. Cas. 810; Nance *v.* State, 126 Ga. 95, 54 S. E. 932; Sweat *v.* Com., (Ky. 1906) 96 S. W. 843; Stamper *v.* Com., (Ky. 1907) 100 S. W. 286; Howell *v.* Com., (Ky. 1907) 104 S. W. 685; People *v.* Sturgis, 110 N. Y. App. Div. 1, 96 N. Y. Supp. 1046; State *v.* Pratt, (S. Dak. 1907) 112 N. W. 152; State *v.* Rutledge, 37 Wash. 523, 79 Pac. 1123. See further the title PERJURY, **694.** 5 *et seq.*

Same — Adopted by Statute.— People *v.* Smith, 3 Cal. App. 68, 84 Pac. 452; Grady *v.* State, (Tex. Crim. 1905) 90 S. W. 38; Cleveland *v.* State, (Tex. Crim. 1906) 95 S. W. 521; Kelley *v.* State, (Tex. Crim. 1907) 103 S. W. 189; Conant *v.* State, (Tex. Crim. 1907) 103 S. W. 897.

Contra as to Subornation of Perjury.— Boren *v.* U. S., (C. C. A.) 144 Fed. 801. And see the title PERJURY, **697.** 9, 10.

868. 6. See Matteson *v.* People, 122 Ill. App. 66.

3. Evans *v.* State, 165 Ind. 369, 6 Ann. Cas. 813, 75 N. E. 651, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 868. See also State *v.* Knutson, 18 S. Dak. 444, 101 N. W. 33; Esch *v.* Graue, 72 Neb. 719, 101 N. W. 978; Souchek *v.* Karr, (Neb. 1907) 111 N. W. 150. And see the title BASTARDY, **886.** 3 *et seq.*

10. Getty *v.* Getty, (1907) P. 334.

COTTON.

872. 2. **Revenue Laws.**— See U. S. *v.* Bernhard, 150 Fed. 375 (cotton cloth); Wilson *v.* U. S., (C. C. A.) 146 Fed. 64 (cotton table damask); Mills *v.* Robertson, 147 Fed. 634 (cotton laces).

COUNCIL.

872. 2. **Council Synonymous with Board of Aldermen.**— See Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141.

COUNTERFEITING.

877. 1. **Similitude Must Be Such as to Predicate Intention to Palm Off.**— U. S. *v.* Beebe, 149 Fed. 618.

878. 1. **Intention to Deceive Essential.** — U. S. *v.* Beebe, 149 Fed. 618.

881. 2. **A Document Purporting to Be a Ten Dollar Bill of the Bank of Montreal** is a "forged note" and also a "counterfeit token of value" within the Canada Criminal Code. Rex *v.* Tutty, 38 Nova Scotia 136, 9 Can. Crim. Cas. 544.

886. 1. Rex *v.* Tutty, 38 Nova Scotia 136, 9 Can. Crim. Cas. 544.

889. 5. **Knowledge of Counterfeit Nature of Bank Note Must Be Proved.** — Gallagher *v.* U. S., (C. C. A.) 144 Fed. 87.

890. 1. **Evidence of Knowledge Beyond that Resulting from Mere Passing Essential.** — Gallagher *v.* U. S., (C. C. A.) 144 Fed. 87.

COUNTIES.

900. 1. Wright *v.* Floyd County, 1 Ga. App. 582, 58 S. E. 72; Silver *v.* Clay County, (Kan. 1907) 91 Pac. 55; McDonald *v.* Franklin County, (Ky. 1907) 109 S. W. 861; Frantz *v.* Autry, 18 Okla. 561, 91 Pac. 193; Walck *v.* Murray, 18 Okla. 712, 91 Pac. 238; McCollister *v.* Murray, 18 Okla. 710, 91 Pac. 239; Haines *v.* Murray, (Okla. 1907) 91 Pac. 240; Southern R. Co. *v.* Hamblin County, 115 Tenn. 526, 92 S. W. 238; State *v.* King County, 45 Wash. 519, 88 Pac. 935; Kinney *v.* Manitowoc County, (C. C. A.) 135 Fed. 491.

901. 4. Brown *v.* State, 73 Kan. 69, 84 Pac. 549.

902. 2. Silver *v.* Clay County, (Kan. 1907) 91 Pac. 55.

4. Herman *v.* Chosen Freeholders, (N. J. 1906) 64 Atl. 742; Union Stone Co. *v.* Chosen Freeholders, (N. J. 1906) 65 Atl. 466; State *v.* King County, 45 Wash. 519, 88 Pac. 935.

903. 2. Southern R. Co. *v.* Hamblen County, 115 Tenn. 526, 92 S. W. 238.

904. 3. **Creation by Constitutional Convention Adopting First Constitution for New State.** — Frantz *v.* Autry, 18 Okla. 561, 91 Pac. 193; Walck *v.* Murray, 18 Okla. 712, 91 Pac. 238; McCollister *v.* Murray, 18 Okla. 710, 91 Pac. 239; Haines *v.* Murray, (Okla. 1907) 91 Pac. 240.

6. Conner *v.* Gray, 88 Miss. 489, 9 Ann. Cas. 120, 41 So. 186; State *v.* Superior Ct., (Wash. 1907) 92 Pac. 345.

In Minnesota Rev. Laws of 1905, § 380, and the following sections relating to the creation and organization of new counties were held to be a continuation of the existing statutes upon the subject and not new independent enactments. State *v.* McDonald, 101 Minn. 349, 112 N. W. 278.

8. **Quo Warranto to Determine Validity of Proceedings for Creation of New County.** — The Supreme Court may in its discretion permit a private suit in the nature of quo warranto to determine the validity of proceedings for the creation of a new county, without the consent of the attorney-general; but leave will be granted only in exceptional cases. State *v.* McDonald, 101 Minn. 349, 112 N. W. 278.

905. 3. Trinity County *v.* Mendocino County, 151 Cal. 279, 90 Pac. 685; Allison *v.* [illegible], 46 Or[illegible] 81 Pac. 101.

Boundaries Established by Constitutional Convention Adopting First Constitution for New State. — Frantz *v.* Autry, 18 Okla. 561, 91 Pac. 193; Walck *v.* Murray, 18 Okla. 712, 91 Pac. 238; McCollister *v.* Murray, 18 Okla. 710, 91 Pac. 239; Haines *v.* Murray, (Okla. 1907) 91 Pac. 240.

5. Crawford *v.* Brown, 74 Ark. 568, 86 S. W. 425; Foskuhl *v.* Herzer, (Kan. 1907) 91 Pac. 56; Caddo *v.* DeSoto, 114 La. 366, 38 So. 273; Red River *v.* Caddo, 118 La. 938, 43 So. 556; Caddo *v.* DeSoto, 119 La. 120, 43 So. 978; Red River *v.* DeSoto, 119 La. 992, 44 So. 822.

The interpretation of a law, the declared purpose of which is to establish the boundaries between two parishes, is a judicial function. Caddo *v.* DeSoto, 114 La. 366, 38 So. 273.

Right of Surveyor General to Make Second Survey. — Where a boundary line between certain counties has been run and established there is neither authority nor necessity for the surveyor general to resurvey a boundary line. Trinity County *v.* Mendocino County, 151 Cal. 279, 90 Pac. 685.

Remedy Provided by Statute Must Be Exhausted First. — Where the law provides a particular method of fixing the boundaries between parishes in the event of disagreement as to the proper interpretation of the statute on the subject, the remedy so provided must be exhausted before the jurisdiction of the courts can be invoked. Caddo *v.* Red River, 114 La. 370, 38 So. 274.

6. **Establishing Boundaries by Surveyors Appointed by Respective Parishes.** — The surveyors reached different conclusions and the court decided that the natural line controlled. Caddo *v.* DeSoto, 119 La. 120, 43 So. 978.

Governor. — By the constitution of South Carolina the question whether a proposed new county embraces the same territory as was embraced in a proposed county voted on within four years is for the governor to decide. State *v.* Ansel, (S. Car. 1907) 58 S. E. 933.

906. 2. Bealmear *v.* Hutchins, (C. C. A.) 148 Fed. 560, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 906.

907. 2. **Under Statute in North Dakota** the right of a county to exercise its corporate powers over the territory added thereto cannot be assailed, even by a direct attack either at the suit of a private person or by the state. Ward *v.* Gradin, 15 N. Dak. 649, 109 N. W. 57.

4. Barnard *v.* Polk County, 98 Minn. 289, 108 N. W. 294.

5. **Long Acquiescence.** — The county cannot part with its land by a long acquiescence in a boundary line. Atascosa County *v.* Aldeman, (Tex. Civ. App. 1905) 91 S. W. 846.

908. 6. Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353; Uzzell *v.* Anderson, 38 Colo. 32, 89 Pac. 785.

Addition of Portion of County to Another. — When a county is changed in its territory by the addition of territory, it becomes a new county, although the name be unchanged and although it be accomplished by a law which in terms attaches the territory to the old county. Bay County *v.* Edmunds, 139 Mich. 466, 102 N. W. 998.

909. 2. Conner *v.* Gray, 88 Miss. 489, 9 Ann. Cas. 120, 41 So. 186.

3. The constitution of Idaho recognizes the counties organized and existing at the date of its adoption and it is not within the power of the legislature to destroy or abolish such governmental organizations. McDonald *v.* Doust, 11 Idaho 14, 81 Pac. 60.

5. Uzzell *v.* Anderson, 38 Colo. 32, 89 Pac. 785.

6. The fact that a majority of the voters in a county voted for the extension of boundaries under the law did not avoid a constitutional objection thereto, because, the law being void, all proceedings under it were also void. State *v.* Stark County, 14 N. Dak. 368, 103 N. W. 913.

Depriving Office Holders of Right to Hold Office. — An act creating a new county from parts of an old one is not unconstitutional because it will deprive certain officers of the right to hold office. Conner *v.* Gray, 88 Miss. 489, 9 Ann. Cas. 120, 41 So. 186.

7. **California.**— Herbert *v.* Superior Ct., (Cal. 1907) 91 Pac. 800.

South Carolina. — Parler *v.* Fogle, (S. Car. 1907) 59 S. E. 707.

North Dakota.— Laws N. Dak. 1903, c. 69, p. 78, authorizing the extension of the boundaries of S. county so as to include certain unorganized territory, was held unconstitutional because it did not require the consent of a majority of the voters of S. county. State *v.* Stark County, 14 N. Dak. 368, 103 N. W. 913.

In Oklahoma it was held that a court of equity had no power to restrain or enjoin the constitutional convention, from submission of the constitution or any proposition therein contained, which would change the boundary lines of certain counties, to a vote of the people in advance of its adoption and ratification by the people, and its approval by the president. Greer County *v.* Constitutional Delegate Convention, 18 Okla. 707, 91 Pac. 239; Walck *v.* Murray, 18 Okla. 712, 91 Pac. 238.

910. 2. Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353; Shoshone County *v.* Profit, 11 Idaho 763, 84 Pac. 712; Conner *v.* Gray, 88 Miss. 489, 9 Ann. Cas. 120, 41 So. 187.

3. Kline *v.* State, 146 Ala. 1, 41 So. 952; Bay County *v.* Edmunds, 139 Mich. 466, 102 N. W. 998; Conner *v.* Gray, 88 Miss. 489, 9 Ann. Cas. 120, 41 So. 186.

911. 1. See Conner *v.* Gray, 88 Miss. 489, 9 Ann. Cas. 120, 41 So. 186.

912. 2. **Proceeding Instituted by Public Officers.** — A bill to enjoin an election to determine whether a new county shall be created, cannot be maintained by a justice of the peace or members of the board of supervisors until they are directly affected. Conner *v.* Gray, 88 Miss. 489, 9 Ann. Cas. 120, 41 So. 186.

3. **Question Raised by Taxpayers.** — In Mississippi it was held that the creation of a new county from parts of old counties would not be enjoined because of additional expense to taxpayers. Conner *v.* Gray, 88 Miss. 489, 9 Ann. Cas. 120, 41 So. 186.

913. 1. **Dissolution of County.**— Where an existing corporation is dissolved and its territory annexed to another corporation, the latter succeeds to the obligations as well as to the property of the dissolved corporation. Barnard *v.* Polk County, 98 Minn. 289, 108 N. W. 294.

2. **Where a County Is Dissolved**, the liability for the debts of the old corporation then rests upon the theory that the one corporation is the successor of the other, or upon the general principle that the corporation which receives the territory and the benefits resulting therefrom must also assume the debts. Barnard *v.* Polk County, 98 Minn. 289, 108 N. W. 294.

The Idaho Constitution provides that "when any part of a county is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken." Therefore the detached territory continues liable for its ratable proportion of the indebtedness existing against the mother county at the time of segregation. Shoshone County *v.* Profit, 11 Idaho 763, 84 Pac. 712.

3. **The Idaho Constitution** is as much a prohibition against the legislature imposing the ratable proportion of indebtedness on the county to which the detached territory is annexed as it is a prohibition against leaving the entire indebtedness to be paid by the old county from which the portion is stricken off. Shoshone County *v.* Profit, 11 Idaho 763, 84 Pac. 712.

914. 1. Shoshone County *v.* Profit, 11 Idaho 763, 84 Pac. 712, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 914; Territory *v.* Santa Fe County, (N. Mex. 1907) 89 Pac. 252.

In Georgia it was held that after the passage of an act to lay out and organize a new county, and while it was in process of organization, the county commissioners of the old county could not bind persons whose residences and property were cut off, by the levy of a special or extra tax not for the purpose of meeting a liability arising prior to the creation of the new county. Pope *v.* Matthews, 125 Ga. 341, 54 S. E. 152.

Under a South Carolina Statute creating a township for the purpose of giving aid to a railway, and declaring that the county auditor and treasurer should levy and collect the taxes for the payment of the bonds issued, on the change of the boundaries which placed the township within another county it was the duty of the officers of the latter county to levy and collect the taxes. Folsom *v.* Greenwood County, (C. C. A.) 137 Fed. 449.

The new county will not be liable for that portion of a tax levy necessary for the purpose of erecting new bridges when the contracts were entered into after the date of the act creating the new county. Yow *v.* Sullivan, 129 Ga. 187, 58 S. E. 662.

916. 1. Shoshone County *v.* Schuldt, 12 Idaho 507, 86 Pac. 418.

921. 4. Folsom *v.* Greenwood County, (C. C. A.) 137 Fed. 449.

923. 1. Bealmear *v.* Hutchins, (C. C. A.) 148 Fed. 560, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 929 [923].

2. Pope *v.* State, 124 Ga. 805, 4 Ann. Cas. 551, 53 S. E. 384, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923.

924. 2. Pope *v.* State, 124 Ga. 805, 4 Ann. Cas. 551, 53 S. E. 384, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 924.

If the act of taking territory from one county and adding to another is unconstitutional, the indictment for a crime committed in the changed territory should be found in the original county. Kline *v.* State, 146 Ala. 1, 41 So. 952.

3. The Terms of Office of County Commissioners terminated immediately on the taking effect of a constitutional amendment merging the county with a city. Uzzell *v.* Anderson, 38 Colo. 32, 89 Pac. 785.

925. 5. Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353.

926. 3. Chase *v.* Boulder County, 37 Colo. 268, 86 Pac. 1011; Wright *v.* Floyd County, 1 Ga. App. 582, 58 S. E. 72; Stevens *v.* Henry County, 218 Ill. 468, 4 Ann. Cas. 136, 75 N. E. 1024; Brown *v.* State, 73 Kan. 69, 84 Pac. 550, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926; Silver *v.* Clay County, (Kan. 1907) 91 Pac. 55; State *v.* King County, 45 Wash. 519, 88 Pac. 935.

In Oklahoma it was held that by the Act of Congress approved March 3, 1901, the board of county commissioners of Comanche county had no power or authority to allow any claim against the county revenues and issue a warrant prior to Dec. 15, 1903, unless the contracting or incurring of such indebtedness was first authorized by the secretary of the interior. Indian Territory Bank *v.* Eckles, (Okla. 1907) 91 Pac. 695.

927. 1. Commissioners Ct. *v.* State, 146 Ala. 439, 41 So. 463; Terrell County *v.* York, 127 Ga. 166, 56 S. E. 309; Stevens *v.* Henry County, 218 Ill. 468, 4 Ann. Cas. 136, 75 N. E. 1024; Arenac County *v.* Iosco County, 144 Mich. 52, 107 N. W. 725; Vincent *v.* Nassau County, 110 N. Y. App. Div. 730, 96 N. Y. Supp. 446; State *v.* Fronizer, 28 Ohio Cir. Ct. 709.

Laches. — In *Kansas* it was held that a suit against a county by taxpayers to enjoin the building of a bridge was not in behalf of the public or in any representative capacity, but for the protection of their own interests, and the doctrine of estoppel might be invoked when they were guilty of laches. Meistrell *v.* Ellis County, (Kan. 1907) 91 Pac. 65.

Action to Recover County Funds. — Where the fiscal court of a county appropriated funds of the county and refused to authorize the institution of an action to recover them, the county judge acting as the county court may do so in the name of the county. Hopkins County *v.* Givens, (Ky. 1906) 96 S. W. 819.

Enforcement of Contractual Obligations. — A county in its corporate character is a competent and proper party to sue for the enforcement of all contracts and obligations in its behalf, unless the statute expressly provides otherwise, and this right is not impaired by the fact that the obligation may be or is required by law to be discharged by payment of a liquidated sum to the county treasurer. Johnson County *v.* Chamberlain Banking House, 74 Neb. 549, 104 N. W. 1061.

928. 6. May Sue for Road Tax. — Kootenai County *v.* Hope Lumber Co., 13 Idaho 262, 89 Pac. 1054.

929. 6. Korf *v.* Jasper County, 132 Iowa 682, 108 N. W. 1031; Morrow *v.* Pike County, 189 Mo. 610, 88 S. W. 99; Vincent *v.* Nassau County, 110 N. Y. App. Div. 730, 96 N. Y. Supp. 446; Reed *v.* Gormley, (Wash. 1907) 91 Pac. 1093.

Tennessee — Power Vested in Justices of County. — State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

Authority of Counsel to Bind County. — A county attorney who is required by law and by the order of the county board to institute actions for the benefit of the county may bind the county to pay the reasonable and necessary expense incident thereto. Christner *v.* Hayes County, (Neb. 1907) 112 N. W. 347.

9. Must Be Conferred Expressly or by Necessary Implication. — McDonald *v.* Franklin County, (Ky. 1907) 100 S. W. 861.

930. 1. State *v.* Newton County, 165 Ind. 262, 6 Ann. Cas. 468, 74 N. E. 1091; Kraus *v.* Lehman, (Ind. 1907) 80 N. E. 550; State *v.* Parks, (Ind. 1907) 81 N. E. 76; Cheney *v.* Unroe, 166 Ind. 550, 77 N. E. 1041; Brown *v.* State, 73 Kan. 69, 84 Pac. 549; Jefferson County *v.* Young, 120 Ky. 456, 86 S. W. 985; Morrow *v.* Pike County, 189 Mo. 610, 88 S. W. 99; Venango County *v.* Penn Bridge Co., 215 Pa. St. 199, 64 Atl. 445; Madison County *v.* Alexander, (Tenn. 1906) 94 S. W. 604.

County May Be Enjoined from Performing. — Stevens *v.* Henry County, 218 Ill. 468, 4 Ann. Cas. 136, 75 N. E. 1024.

4. Tehama County *v.* Sisson, (Cal. 1907) 92 Pac. 64; McNutt *v.* Lemhi County, 12 Idaho 63, 84 Pac. 1054; Murphy *v.* Police Jury, 118 La. 401, 42 So. 979; Brix *v.* Clatsop County, 46 Oregon 223, 80 Pac. 650; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

933. 3. Essex County Park Commission *v.* West Orange, (N. J. 1907) 67 Atl. 1065.

Title by Devise. — See Barnes *v.* Multnomah County, 145 Fed. 695.

934. 1. Yegen *v.* Yellowstone County, 34 Mont. 79, 85 Pac. 740.

935. 1. Dupuy *v.* Police Jury, 116 La. 783, 41 So. 91.

2. Barnes *v.* Multnomah County, 145 Fed. 695.

3. Swamp Lands being public lands and held by the counties in which they lie as school lands, the legislature may create a state board of education with power to employ an attorney in each congressional district to look after them. Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231.

4. The police jury of a parish has no authority to sell a courthouse site and building thereon without the authority of the legislature. Dupuy *v.* Police Jury, 116 La. 783, 41 So. 91.

Lease with Option to Purchase. — In a lease by a county the lessees were given an option to purchase the land provided the county still wished to dispose of it. The county afterward entered into an agreement with the lessees to sell, and it was held that a variation from the lease in the final terms of the contract of sale was immaterial as far as the rights of the de-

fendant were concerned. Slaughter *v.* Mallet Land, etc., Co., (C. C. A.) 141 Fed. 282.

May Not Dispose of Fee of School Lands Except by Sale. — Atascosa County *v.* Alderman (Tex. Civ. App. 1905) 91 S. W. 846.

937. 4. Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; Watkins *v.* Chosen Freeholders, 73 N. J. L. 213, 62 Atl. 1134.

7. Wright *v.* Floyd County, 1 Ga. App. 582, 58 S. E. 72; Meistrell *v.* Ellis County, (Kan. 1907) 91 Pac. 65.

9. Washington County *v.* State, (Ala. 1907) 44 So. 465; Anderson *v.* Newton, 123 Ga. 512, 51 S. E. 508; Shoshone County *v.* Rollins, 11 Idaho 314, 82 Pac. 105; Murphy *v.* Police Jury, 118 La. 401, 42 So. 979; Herman *v.* Chosen Freeholders, (N. J. 1906) 64 Atl. 742; Lyon *v.* Steuben County, 115 N. Y. App. Div. 193, 100 N. Y. Supp. 676; Mackenzie *v.* State, 76 Ohio St. 369, 81 N. E. 638; Brix *v.* Clatsop County, 46 Oregon 223, 80 Pac. 650; Kinney *v.* Manitowoc County, (C. C. A.) 135 Fed. 491.

10. Shoshone County *v.* Rollins, 11 Idaho 314, 82 Pac. 105; Christie *v.* Chosen Freeholders, (N. J. 1907) 66 Atl. 1073.

938. 1. Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753, *affirming* 140 Fed. 89; Estill County *v.* Embry, (C. C. A.) 144 Fed. 913; State *v.* Knowles, 117 La. 129, 41 So. 439; Tolson *v.* Police Jury, 119 La. 215, 43 So. 1011; Tolman *v.* Onslow County, 140 Fed. 89.

Submission to Vote of People. — Tolson *v.* Police Jury, 119 La. 215, 43 So. 1011.

State Cannot Deprive Bondholders of Remedy. — Folsom *v.* Greenwood County, (C. C. A.) 137 Fed. 449, *reversing* 130 Fed. 730.

939. 10. *Alabama.* — White *v.* Hewlett, 143 Ala. 374, 42 So. 78.

Colorado. — Chase *v.* Boulder County, 37 Colo. 268, 86 Pac. 1011.

Florida. — Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697.

Georgia. — Wright *v.* Floyd County, 1 Ga. App. 582, 58 S. E. 72.

Indiana. — Newton County *v.* Wild, 37 Ind. App. 32, 76 N. E. 256.

Kansas. — Brown *v.* State, 73 Kan. 69, 84 Pac. 550.

Massachusetts. — Bartlett *v.* New York Cent. etc., R. Co., (Mass. 1907) 81 N. E. 204.

Montana. — Yegen *v.* Yellowstone County, 34 Mont. 79, 85 Pac. 740; Picket Pub. Co. *v.* Carbon County, (Mont. 1907) 92 Pac. 524.

Ohio. — Mackenzie *v.* State, 76 Ohio St. 369, 81 N. E. 638.

Washington. — Reed *v.* Gormley, (Wash. 1907) 91 Pac. 1093.

Authority to Contract. — Where the county gives an agent authority to sell property but does not specify any time to sell, a reasonable time is implied and not an irrevocable power to sell. Hollingsworth *v.* Young County, (Tex. Civ. App. 1905) 91 S. W. 1094.

940. 1. Jefferson County *v.* Young, 120 Ky. 456, 86 S. W. 985; Murphy *v.* Police Jury, 118 La. 401, 42 So. 979; Knowles *v.* Chemung County, 112 N. Y. App. Div. 138, 97 N. Y. Supp. 1111.

Powers Exercised by Officials Other than County Court or Commissioners. — Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697.

2. Stevens *v.* Henry County, 218 Ill. 468, 4 Ann. Cas. 136, 75 N. E. 1024; Jay County *v.* Pike Civil Tp., (Ind. 1907) 81 N. E. 489; Brown *v.* State, 73 Kan. 69, 84 Pac. 549; State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

3. Jay County *v.* Pike Civil Tp., (Ind. 1907) 81 N. E. 489.

Commissioners Must Act as Body. — Jackson-Foxworth Lumber Co. *v.* Hutchinson County, (Tex. Civ. App. 1905) 88 S. W. 412.

5. Herman *v.* Chosen Freeholders, (N. J. 1906) 64 Atl. 742; People *v.* Delaware County, 108 N. Y. App. Div. 83, 95 N. Y. Supp. 458.

Ratification of Unauthorized Act. — Where the county commissioners recognized the lease of lands made in behalf of the county and received rentals thereunder, and subsequently made contracts subject thereto, it was held to be a ratification of the lease. Slaughter *v.* Mallet Land, etc., Co., (C. C. A.) 141 Fed. 282.

Where a county judge made a proposal for the purchase of road machinery and a warrant was drawn and paid in part payment, it was held to be a ratification of the transaction. Woodward *v.* San Antonio Traction Co., (Tex. Civ. App. 1906) 95 S. W. 76.

What Does Not Constitute Ratification. — Where a county board of supervisors issued illegal warrants for the purchase of road machines, the fact that the board later issued warrants for interest on the road fund did not amount to such ratification that would bind the county. Harrison County *v.* Ogden, 133 Iowa 9, 110 N. W. 32.

Where a quarterly court of a county had no power to employ counsel, the court's order approving the conduct of its chairman does not validate the contract. State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

Knowledge and consent of county court that plaintiff rendered services on a void order does not amount to a ratification of the supposed contract of employment. Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231.

There Can Be No Ratification by a county of an act done in violation of the constitution. McNutt *v.* Lemhi County, 12 Idaho 63, 84 Pac. 1054.

Where an attorney is employed by an invalid order, the county cannot afterwards ratify it. Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231.

Agent's Authority May Be Shown by Parol. — Jackson-Foxworth Lumber Co. *v.* Hutchinson County, (Tex. Civ. App. 1905) 88 S. W. 412.

942. 1. See Morrow *v.* Pike County, 189 Mo. 610, 88 S. W. 99; Picket Pub. Co. *v.* Carbon County, (Mont. 1907) 92 Pac. 524; State *v.* Fronizer, (Ohio 1907) 82 N. E. 518.

A Resolution Adopted by a County Board designating a certain newspaper as one in which the county treasurer shall publish a notice does not constitute a contract between the county and the newspaper, and the county cannot be enjoined from giving the contract to another paper. World Pub. Co. *v.* Douglas County, (Neb. 1907) 113 N. W. 539.

Doctrine of Estoppel Held Not to Apply to County. — Tehama County *v.* Sisson, (Cal. 1907) 92 Pac. 64; Zuelly *v.* Casper, (Ind. 1906)

76 N. E. 646; Harrison County *v.* Ogden, 133 Iowa 9, 110 N. W. 32; Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231; Baldwin *v.* Travis County, (Tex. Civ. App. 1905) 88 S. W. 480.

2. *United States.* — Kinney *v.* Manitowoc County, (C. C. A.) 135 Fed. 491.

Colorado. — Chase *v.* Boulder County, 37 Colo. 268, 86 Pac. 1011.

Georgia. — Robinson-Humphrey Co. *v.* Wilcox County, 129 Ga. 104, 58 S. E. 644.

Indiana. — Howard County *v.* Garrigus, 164 Ind. 605, 74 N. E. 249, denying rehearing 164 Ind. 589, 73 N. E. 82; State *v.* Newton County, 165 Ind. 262, 6 Ann. Cas. 468, 74 N. E. 1091; Kraus *v.* Lehman, (Ind. 1907) 80 N. E. 550; State *v.* Parks, (Ind. 1907) 81 N. E. 76.

Iowa. — Harrison County *v.* Ogden, 133 Iowa 9, 110 N. W. 32.

Kansas. — Brown *v.* State, 73 Kan. 69, 84 Pac. 549.

Massachusetts. — Cutter *v.* Middlesex County, 189 Mass. 451, 75 N. E. 954.

Nebraska. — See Christner *v.* Hayes County, (Neb. 1907) 112 N. W. 347.

New York. — Vincent *v.* Nassau County, 110 N. Y. App. Div. 730, 96 N. Y. Supp. 446.

Pennsylvania. — Venango County *v.* Penn Bridge Co., 215 Pa. St. 199, 64 Atl. 445.

Tennessee. — Madison County *v.* Alexander, (Tenn. 1906) 94 S. W. 604.

3. Reed *v.* Gormley, (Wash. 1907) 91 Pac. 1093. See also Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231.

944. 1. Korf *v.* Jasper County, 132 Iowa 682, 108 N. W. 1031; People *v.* Delaware County, 108 N. Y. App. Div. 83, 95 N. Y. Supp. 458.

Tennessee — Power of Chairman of County Court. — State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

2. Reed *v.* Gormley, (Wash. 1907) 91 Pac. 1093.

Where an Attorney Is Employed by an Invalid Order the county cannot afterwards ratify it. Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231.

3. John *v.* Dallas County, 146 Ala. 593, 40 So. 962; Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231. See also People *v.* Westchester County, 116 N. Y. App. Div. 844, 102 N. Y. Supp. 402.

County Solicitor Cannot Employ Assistant. — Bechtel *v.* Fry, 217 Pa. St. 591, 66 Atl. 992.

945. 1. Bechtel *v.* Fry, 217 Pa. St. 591, 66 Atl. 992.

Where a district attorney agreed to act as attorney for the county in all civil actions pending at the commencement of his term or thereafter brought by or against the county, it was held that he could not collect extra compensation for services rendered during that term on actions begun prior to his term. People *v.* Delaware County, 108 N. Y. App. Div. 83, 95 N. Y. Supp. 458.

2. State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

Where the authority to employ counsel to protect the school lands was in the board of education the County Court had no right to employ the plaintiff to assist in the prosecution. Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231.

3. Korf *v.* Jasper County, 132 Iowa 682, 108 N. W. 1031; Long *v.* Miami County, 75 Ohio St. 539, 80 N. E. 188. See also Com. *v.* Dillen, 210 Pa. St. 579, 60 Atl. 263.

6. Marion County *v.* Bonds, 81 Ark. 413, 99 S. W. 532; Darling *v.* Box Butte County, (Neb. 1907) 111 N. W. 470; Sheridan County *v.* Denebrink, (Wyo. 1907) 89 Pac. 7.

946. 1. Marion County *v.* Bonds, 81 Ark. 413, 99 S. W. 532; Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231; Christner *v.* Hayes County, (Neb. 1907) 112 N. W. 347.

2. Only Reasonable Value of Services Rendered. — Phillips *v.* Butler County, 187 Mo. 698, 86 S. W. 231.

947. 1. See McDonald *v.* Franklin County, (Ky. 1907) 100 S. W. 861.

5. Terrell County *v.* York, 127 Ga. 166, 56 S. E. 309; Hopper *v.* Douglas County, 75 Neb. 329, 106 N. W. 330; Moest *v.* Buffalo, 116 N. Y. App. Div. 657, 101 N. Y. Supp. 996.

948. 1. Terrell County *v.* York, 127 Ga. 166, 56 S. E. 309; Silver *v.* Clay County, (Kan. 1907) 91 Pac. 55.

Not Liable for Erroneous Quarantine. — Beeks *v.* Dickinson County, 131 Iowa 244, 9 Ann. Cas. 812, 108 N. W. 311.

949. 2. Defective Elevator in Court House. — Simons *v.* Gregory, 120 Ky. 116, 85 S. W. 751.

950. 2. Hopper *v.* Douglas County, 75 Neb. 329, 106 N. W. 330; Siewerssen *v.* Harris County, (Tex. Civ. App. 1905) 91 S. W. 333.

954. 2. Jay County *v.* Pike Civil Tp., (Ind. 1907) 81 N. E. 489. *Compare* Demarest *v.* Holdeman, 34 Ind. App. 685, 73 N. E. 714.

5. Montezuma County *v.* Wheeler, 39 Colo. 207, 89 Pac. 50.

955. 3. Newton *v.* Luzerne County, 30 Pa. Super. Ct. 347.

3. See McGuire *v.* Iowa County, 133 Iowa 636, 111 N. W. 34.

956. 4. Superintendents of Poor *v.* County Auditors, 147 Mich. 384, 110 N. W. 1080.

957. 3. Marion County *v.* Bonds, 81 Ark. 413, 99 S. W. 532.

8. Quigg *v.* Monroe County, (Wis. 1907) 113 N. W. 723; Penn *v.* Northern Bldg. Co., 140 Fed. 973.

9. Henry *v.* San Miguel County, (Colo. 1907) 92 Pac. 697; McGuire *v.* Iowa County, 133 Iowa 636, 111 N. W. 34.

Claim for Services Not Negotiable. — Perry County *v.* Eversole, (Ky. 1907) 98 S. W. 1019.

959. 1. Anderson *v.* Ashe, (Tex. 1906) 99 S. W. 872; Quigg *v.* Monroe County, (Wis. 1907) 113 N. W. 723.

3. Murphy *v.* Bondshu, 2 Cal. App. 249, 83 Pac. 278; Elbert County *v.* Swift, 2 Ga. App. 47, 58 S. E. 396; Pearson *v.* Newton County, 110 Ga. 863, 47 S. E. 180.

4. Bechtel *v.* Fry, 217 Pa. St. 591, 66 Atl. 992.

But in California. — Riverside County *v.* Yawman, etc., Mfg. Co., 3 Cal. App. 691, 86 Pac. 900; Tehama County *v.* Sisson, (Cal. 1907) 92 Pac. 64.

Commissioners' Decision Not Appealable. — Long *v.* Miami County, 75 Ohio St. 539, 80 N. E. 188.

Not Subject to Collateral Attack. — Territory

v. Santa Fe County, (N. Mex. 1907) 89 Pac. 252; State *v.* Goodwin, (S. Car. 1907) 59 S. E. 35.

960. 1. Placer County *v.* Freeman, 149 Cal. 738, 87 Pac. 628; Kootenai County *v.* Hope Lumber Co., 13 Idaho 262, 89 Pac. 1054; Loup County *v.* Wirsig, 73 Neb. 505, 103 N. W. 56; Territory *v.* Santa Fe County, (N. Mex. 1907) 89 Pac. 252; Multnomah County *v.* White, 48 Oregon 183, 81 Pac. 388, 85 Pac. 78.

But the *Idaho* statute provides the right of appeal only for persons and taxpayers, and does not contemplate the county itself as a municipal corporation taking an appeal from the action or order of its own board of commissioners. McNutt *v.* Lemhi County, 12 Idaho 63, 84 Pac. 1054; Kootenai County *v.* Dittemore, 12 Idaho 758, 88 Pac. 232.

Appeal by Taxpayer. — The county is known in law by its board of commissioners and in an action in which judgment is rendered against the county an appeal will be dismissed if taken by a taxpayer who was not a party to the suit. Newton County *v.* Wild, 37 Ind. App. 32, 76 N. E. 256.

4. Jay County *v.* Pike Civil Tp., (Ind. 1907) 81 N. E. 489; State *v.* Goodwin, (S. Car. 1907) 59 S. E. 35; Campbell County *v.* Oversby, (S. Dak. 1906) 108 N. W. 247.

961. 1. Riverside County *v.* Yawman, etc., Mfg. Co., 3 Cal. App. 691, 86 Pac. 900; Zuelly *v.* Casper, (Ind. 1906) 76 N. E. 646; Jay County *v.* Pike Civil Tp., (Ind. 1907) 81 N. E. 489; McDonald *v.* Franklin County, (Ky. 1907) 100 S. W. 861; Hicks *v.* Eggleston, 105 N. Y. App. Div. 73, 93 N. Y. Supp. 909; Campbell County *v.* Overby, (S. Dak. 1906) 108 N. W. 247.

2. Anderson *v.* Ashe, (Tex. 1906) 90 S. W. 872; Quigg *v.* Monroe County, (Wis. 1907) 113 N. W. 723. See also Commissioners Ct. *v.* State, 146 Ala. 439, 41 So. 463.

Accepting Part Allowance Not Waiver of Right of Appeal. — Center *v.* Breathett County, (Ky. 1906) 90 S. W. 1054. But see People *v.* Rockland County, 120 N. Y. App. Div. 552, 105 N. Y. Supp. 19.

Acceptance and Retention of a Less Sum tendered as payment in full bars the remainder of the claim. Hunt *v.* Franklin County, 100 Me. 445, 62 Atl. 243.

Subsequent Board Cannot Reconsider Rejected Claim. — Wey *v.* O'Hara, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 82, 95 N. Y. Supp. 81.

962. 1. Millard *v.* Kern County, 147 Cal. 682, 82 Pac. 329.

963. 1. Commissioners Ct. *v.* State, 146 Ala. 439, 41 So. 463.

2. Commissioners Ct. *v.* State, 146 Ala. 439, 41 So. 463, 465; Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697.

But mandamus will not lie to compel a county supervisor to draw a warrant for the payment of unpaid claims, when the return shows no funds in the hands of the county treasurer applicable. State *v.* Goodwin, (S. Car. 1907) 59 S. E. 35.

Mandamus Will Lie to Compel Judge of Probate to Issue Warrant. — Smith *v.* McCutchen, 146 Ala. 455, 41 So. 619.

3. Commissioners Ct. *v.* State, 146 Ala. 439, 41 So. 463.

6. **Action of Board Final Unless Appealed From.** — Lincoln Tp. *v.* Kearney County, (Neb. 1907) 112 N. W. 608.

What Does Not Amount to Auditing — See Commissioners Ct. *v.* State, 146 Ala. 439, 41 So. 463; Smith *v.* McCutchen, 146 Ala. 455, 41 So. 619.

964. 4. State *v.* Alexander, 115 Tenn. 156, 90 S. W. 20.

966. 5. **Illegal Expenditures May Be Enjoined.** — Murphy *v.* Police Jury, 118 La. 401, 42 So. 979.

967. 2. **Previous Appropriation Necessary.** — State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

Funds May Be Used to Defend Actions. — Jackson County *v.* Branaman, 39 Ind. App. 193, 76 N. E. 1030, rehearing denied (Ind. App. 1906) 78 N. E. 356.

It Is a Question for the Court whether the expenditure is for a county purpose or not. Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697.

The Protection of Navigable Streams is a county purpose. Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697.

3. Taylor *v.* Braxton County Ct., 57 W. Va. 165, 50 S. E. 720.

968. 3. Smith *v.* Haney, 73 Kan. 506, 85 Pac. 550.

971. 1. Folsom *v.* Greenwood County, (C. C. A.) 137 Fed. 449; Fremont, etc., R. Co. *v.* Pennington County, (S. Dak. 1905) 105 N. W. 929. See also State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

COUNTRY.

973. 2. See Myers *v.* U. S., 140 Fed. 648.

COUNTY COMMISSIONERS.

975. 1. Jackson County *v.* Branaman, 39 Ind. App. 193, 76 N. E. 1030.

Board Bound by Predecessor's Acts. — Picket Pub. Co. *v.* Carbon County, (Mont. 1907) 92 Pac. 524.

976. 1. **Indiana — Are Courts of Record.** — Brooks *v.* Morgan, 36 Ind. App. 672, 76 N. E. 331.

2. Newton County *v.* Wild, 37 Ind. App. 32, 76 N. E. 256.

3. State *v.* Denoist, 115 La. 949, 40 So. 365.

977. 1. **Conveyance to Commissioners Is Conveyance to County.** — Barnes *v.* Multnomah County, 145 Fed. 695.

3. **Holdings under Provisions of Particular Statutes.** — Conner *v.* Gray, 83 Miss. 400, 6 Ann. Cas. 120, 41 So. 186; Wright *v.* Campbell, (N. J. 1907) 67 Atl. 186; State *v.* Mulhern, 74 Ohio St. 363, 6 Ann. Cas. 856, 78 N. E. 507; Com. *v.* Wise, 216 Pa. St. 152, 65 Atl. 535.

Creation of New County — Effect of. — See Uzzell *v.* Anderson, 38 Colo. 32, 89 Pac. 785.

979. 1. Marsh *v.* People, 226 Ill. 464, 80 N. E. 1006; McDonald *v.* Franklin County, (Ky. 1907) 100 S. W. 861; Hittner *v.* Outagamie County, 126 Wis. 430, 105 N. W. 950.

Indiana — Duration of Meetings. — An Indiana statute provides that a regular session of the board of county commissioners shall continue only so long as the necessary business of such

session absolutely requires. Perdue *v.* Gill, 35 Ind. App. 99, 73 N. E. 844.

2. Shoshone County *v.* Rollins, 11 Idaho 314, 82 Pac. 105; Dupuy *v.* Police Jury, 115 La. 579, 39 So. 627.

981. 5. Marsh *v.* People, 226 Ill. 464, 80 N. E. 1006; State *v.* Rhodes, 48 Oregon 133, 85 Pac. 332.

Place of Meeting — *Building in Court House Yard Not Proper Place.* — Sexton *v.* Coahoma County, 86 Miss. 380, 38 So. 636.

982. 2. **Adjourned Meeting after Expiration of Time for Regular Meeting.** — If a board of supervisors had power to keep its September meeting alive by adjourning to meet again on October 16th, when it failed to meet on that date, its September session was as effectually ended as if it had adjourned in September *sine die*, and there was no power in either the board or its chairman to prolong the life of the September session by calling a special meeting for October 24th. Marsh *v.* People, 226 Ill. 464, 80 N. E. 1006.

983. 1. Commissioners Ct. *v.* Johnson, 145 Ala. 553, 39 So. 910; Commissioners Ct. *v.* Whitley, (Ala. 1906) 39 So. 911; Brooks *v.* Morgan, 36 Ind. App. 672, 76 N. E. 331; Morrow *v.* Pike County, 189 Mo. 610, 88 S. W. 99; State *v.* Goodwin, (S. Car. 1907) 59 S. E. 35.

2. School Dist. No. 25 *v.* Rice, 11 Idaho 99, 81 Pac. 155; Brooks *v.* Morgan, 36 Ind. App. 672, 76 N. E. 331.

984. 1. In Eder *v.* Kreiter, (Ind. App. 1907) 82 N. E. 552, it was held that when a board of commissioners acts in its judicial capacity it can only speak by its record, but its administrative acts may be shown by parol.

Record of Contract Held Essential. — McDonald *v.* Franklin County, (Ky. 1907) 100 S. W. 861; State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

2. Chicago, etc., R. Co. *v.* People, 218 Ill. 463, 75 N. E. 1021; Brooks *v.* Morgan, 36 Ind. App. 672, 76 N. E. 331; Howland *v.* Prentice, 143 Mich. 347, 106 N. W. 1105.

Action by a Commissioners' Court is wholly ineffectual when not recorded in the minutes. Commissioners Ct. *v.* State, 146 Ala. 439, 41 So. 463.

985. 1. See Jackson-Foxworth Lumber Co. *v.* Hutchinson County, (Tex. Civ. App. 1905) 88 S. W. 412.

A motion formally made, seconded, and voted upon and entered on the minutes showing how each member voted is not necessary for the legal acceptance of a bid. Le Moyne *v.* Washington County, 213 Pa. St. 123, 62 Atl. 516.

The failure to enter on the minutes of the Commissioners' Court an order authorizing the county judge to make a lease of school lands was held not to affect the validity of the lease. Slaughter *v.* Mallet Land, etc., Co., 141 Fed. 282, 72 C. C. A. 430.

4. **Kentucky — Signing Essential.** — McDonald *v.* Franklin County, (Ky. 1907) 100 S. W. 861.

986. 1. Bennett *v.* Wellesley, 189 Mass. 308, 75 N. E. 717. But see Brickley *v.* Westphal, 134 Iowa 266, 111 N. W. 829, where it was held that a board of supervisors had no power to amend their records four years after they were made.

2. Beach *v.* Kent, 142 Mich. 347, 105 N. W. 867.

Rules of Evidence. — It is provided by statute in *Indiana* that boards of commissioners are governed by the rules of law obtaining in the Circuit Courts. Summe *v.* Browne, 165 Ind. 490, 76 N. E. 99.

3. Wallace *v.* Jones, 182 N. Y. 37, 74 N. E. 576; Berks County *v.* Linderman, 30 Pa. Super. Ct. 119.

The law does not specify the maximum number of hours which shall constitute a day for county commissioners' services, but there can be no more than one day charged for services performed in the twenty-four hours. State *v.* Richardson, (N. Dak. 1906) 109 N. W. 1026.

987. 1. An order made by the board of commissioners allowing one of its own members compensation to which he is not entitled by law is void for want of jurisdiction and may be collaterally attacked. Kootenai County *v.* Dittemore, 12 Idaho 768, 88 Pac. 232.

988. 1. Chase *v.* Boulder County, 37 Colo. 268, 86 Pac. 1011; Silver *v.* Clay County, (Kan. 1907) 91 Pac. 55; State *v.* King County, 45 Wash. 519, 88 Pac. 935.

3. Woodward *v.* San Antonio Traction Co., (Tex. Civ. App. 1906) 95 S. W. 76.

Where the Commissioners Had No Authority to do the act in question they had no power to ratify it. McNutt *v.* Lemhi County, 12 Idaho 63, 84 Pac. 1054; State *v.* True, 116 Tenn. 294, 95 S. W. 1028; Baldwin *v.* Travis County, (Tex. Civ. App. 1905) 88 S. W. 480.

5. Pike County *v.* Sowards, (Ky. 1907) 98 S. W. 1032.

989. 1. Jackson-Foxworth Lumber Co. *v.* Hutchinson Co., (Tex. Civ. App. 1905) 88 S. W. 412.

2. State *v.* Stewart, 49 Fla. 259, 38 So. 600; Robinson-Humphrey Co. *v.* Wilcox County, 129 Ga. 104, 58 S. E. 644; Krans *v.* Lehman, (Ind. App. 1907) 80 N. E. 550; McDonald *v.* Franklin County, (Ky. 1907) 100 S. W. 861; Kline *v.* Jefferson County, (Ky. 1907) 101 S. W. 356; Jefferson County *v.* Young, 120 Ky. 456, 86 S. W. 985; Venango County *v.* Penn Bridge Co., 215 Pa. St. 199, 64 Atl. 445; Baldwin *v.* Travis County, (Tex. Civ. App. 1905) 88 S. W. 480.

Presumption of Validity of Contract — Burden of Proof. — The County Court, whether quorum or quarterly, has only such powers and jurisdiction as are vested in it by statute, and when the power or jurisdiction exercised by it is called in question, the party relying on the action of the court must be able to point out the statute conferring the jurisdiction. State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

990. 1. Gutschow *v.* Washington County, 74 Neb. 378, 104 N. W. 602; Knight *v.* Cass County, 14 N. Dak. 340, 103 N. W. 940.

In People *v.* Edgcomb, 112 N. Y. App. Div. 604, 98 N. Y. Supp. 965, it was held that the bond of the successful bidder for county printing must be accepted even though he refused to undertake to use the label of the allied printing trades council as requested by the advertisement for bids.

2. Lainhart *v.* Burr, 49 Fla. 315, 38 So. 711;

Madison County *v.* Alexander, 116 Tenn. 685, 94 S. W. 604.

In *Indiana* all contracts are utterly void that are entered into in contravention of the statute providing that county commissioners or their appointees must not be interested in any contract made by the county. Cheney *v.* Unroe, 166 Ind. 550, 77 N. E. 1041. *Compare* Carr *v.* Duhme, 167 Ind. 76, 78 N. E. 322.

991. 1. People *v.* Brower, 111 N. Y. App. Div. 915, 97 N. Y. Supp. 349.

3. **Issuing Bonds.** — The county officers of counties in *Nebraska* are invested with authority to issue county bonds for precinct indebtedness. Flatt *v.* Hitchcock County, 139 Fed. 929, 71 C. C. A. 649.

5. State *v.* Newton County, 165 Ind. 262, 6 Ann. Cas. 468, 74 N. E. 1091; Bingham *v.* Milwaukee County, 127 Wis. 344, 106 N. W. 1071.

992. 1. Kootenai County *v.* Hope Lumber Co., 13 Idaho 262, 89 Pac. 1054; Morrow *v.* Pike County, 189 Mo. 610, 88 S. W. 99; People *v.* Delaware County, 108 N. Y. App. Div. 83, 95 N. Y. Supp. 458; Vincent *v.* Nassau County, 119 N. Y. App. Div. 730, 96 N. Y. Supp. 446; People *v.* Westchester County, 116 N. Y. App. Div. 844, 102 N. Y. Supp. 402; State *v.* True, 116 Tenn. 294, 95 S. W. 1028; Reed *v.* Gormley, (Wash. 1907) 91 Pac. 1093.

In Oklahoma by statute the county commissioners have no authority to employ other counsel than the regularly elected county attorney. Logan County *v.* State Capital Co., 16 Okla. 625, 86 Pac. 518.

Employing Attorney to Assist in Prosecution. — And in *Pennsylvania.* Bechtel *v.* Fry, (Pa. 1907) 66 Atl. 992.

993. 3. Calhoun County *v.* Watson, (Ala. 1907) 44 So. 702; Placer County *v.* Freeman, 149 Cal. 738, 87 Pac. 628; Kootenai County *v.* Sisson, 12 Idaho 768, 88 Pac. 233; Beach *v.* Kent, 142 Mich. 347, 105 N. W. 867; Sanderson *v.* Pike County, 195 Mo. 598, 93 S. W. 942; Scranton *v.* Lackawanna County, 214 Pa. St. 509, 63 Atl. 968.

4. Massie *v.* Harrison County, 129 Iowa 277, 105 N. W. 507; Butler County *v.* Gardner, (Ky. 1906) 96 S. W. 582; State *v.* Newland, 37 Wash. 428, 79 Pac. 983; Mather *v.* King County, 39 Wash. 693, 82 Pac. 121.

Appointee Refusing or Neglecting to Give Bonds. — *In re* Nether Providence Tp., 215 Pa. St. 119, 64 Atl. 443.

994. 1. Chase *v.* Boulder County, 37 Colo. 268, 86 Pac. 1011.

995. 1. Delta County *v.* Blackburn, (Tex. 1906) 93 S. W. 419.

In *Texas* a lease which gives the lessee of school lands the preference right to buy is not void as contrary to public policy. Slaughter *v.* Mallet Land, etc., Co., 141 Fed. 282, 72 C. C. A. 430.

996. 1. *United States.* — Kinney *v.* Manitowoc County, 135 Fed. 491, 68 C. C. A. 203.

Alabama. — Tally *v.* Commissioners' Ct., (Ala. 1905) 39 So. 167; Watson *v.* Scarborough, 147 Ala. 689, 40 So. 672; White *v.* Hewlett, 143 Ala. 374, 42 So. 78, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 996.

Arkansas. — Kerwin *v.* Caldwell, 80 Ark. 280, 96 S. W. 1058.

Georgia. — Anderson *v.* Newton, 123 Ga. 512, 51 S. E. 568.

Indiana. — Kraus *v.* Lehman, (Ind. App. 1907) 80 N. E. 550.

Kansas. — Smith *v.* Haney, 73 Kan. 506, 85 Pac. 550.

Kentucky. — Simons *v.* Gregory, 120 Ky. 116, 85 S. W. 751; Courthouse Dist. *v.* Newport, (Ky. 1906) 94 S. W. 629.

Louisiana. — Dupuy *v.* Police Jury, 115 La. 579, 39 So. 627; Murphy *v.* Police Jury, 118 La. 401, 42 So. 979.

Massachusetts. — Cutter *v.* Middlesex County, 189 Mass. 451, 75 N. E. 954.

Michigan. — Atty.-Gen. *v.* Montcalm County, 141 Mich. 590, 104 N. W. 792.

Minnesota. — Upton *v.* Strommer, 101 Minn. 97, 111 N. W. 956.

Montana. — Yegen *v.* Yellowstone County, 34 Mont. 79, 85 Pac. 740.

New Jersey. — Herman *v.* Chosen Freeholders, (N. J. 1906) 64 Atl. 742.

New York. — Stanton *v.* Essex County, 112 N. Y. App. Div. 877, 98 N. Y. Supp. 1059.

Ohio. — Mackenzie *v.* State, 76 Ohio St. 369, 81 N. E. 638; State *v.* Mackenzie, 76 Ohio St. 375, 81 N. E. 640.

Oklahoma. — Territory *v.* Baxter, 16 Okla. 359, 83 Pac. 709.

Tennessee. — Southern R. Co. *v.* Hamblen County, (Tenn. 1906) 97 S. W. 455.

998. 1. **Consequential Damages.** — "Neither the county, the fiscal court, nor county officers are liable to a person injured from defects in the county highways, bridges, or other structures which the county is by law required to maintain." Simons *v.* Gregory, 120 Ky. 116, 85 S. W. 751.

999. 1. Laporte County *v.* Wolff, 166 Ind. 325, 76 N. E. 247; MacGinitie *v.* Silvers, 167 Ind. 321, 78 N. E. 1013; State *v.* Marion County, (Ind. 1907) 82 N. E. 482; State *v.* Myers, 71 Kan. 280, 80 Pac. 638; Bevis *v.* Vanceburg Telephone Co., (Ky. 1905) 89 S. W. 126; Bartlett *v.* New York Cent., etc., R. Co., (Mass. 1907) 81 N. E. 204; Gainer *v.* Nelson, 147 Mich. 113, 110 N. W. 511; State *v.* Switzer, (Neb. 1907) 112 N. W. 297; State *v.* Fronizer, 77 Ohio St. 7, 82 N. E. 518; Le Moyne *v.* Washington County, 213 Pa. St. 123, 62 Atl. 516.

In Griffin *v.* Sanborn, 127 Ga. 17, 56 S. E. 71, it was held that the word "road" did not include a private way.

1000. 1. Latah County *v.* Hasfurther, 12 Idaho 797, 88 Pac. 433; Bennett *v.* Wellesley, 189 Mass. 308, 75 N. E. 717; Wellesley *v.* Norfolk County, 189 Mass. 324, 75 N. E. 725; Livermore *v.* Norfolk County, 189 Mass. 326, 75 N. E. 724; Jackson County *v.* Branaman, 39 Ind. App. 193, 76 N. E. 1030.

1001. 1. Dodge *v.* Kings County, 150 Cal. 96, 88 Pac. 266; World Pub. Co. *v.* Douglas County, (Neb. 1907) 113 N. W. 539.

In *Kansas* a contract for printing a statement showing the personal property assessed by all persons in the county was held to be *ultra vires.* Brown *v.* State, 73 Kan. 69, 84 Pac. 549.

So also in *Texas* the citation by publication of the unknown owners of lands upon which the taxes were delinquent was held to be an ex-

pense not authorized by statute. Baldwin *v.* Travis County, (Tex. Civ. App. 1905) 88 S. W. 480.

Designating Official Newspaper.— Sturges *v.* Vail, 127 Iowa 705, 104 N. W. 366; Matter of Troy Press Co., 187 N. Y. 279, 79 N. E. 1006.

Section 1580 of the New York City Charter, transferring all powers and duties of the boards of supervisors not transferred to any administrative department, to the board of aldermen, included the power to designate an official newspaper. Standard Pub. Co. *v.* New York, 111 N. Y. App. Div. 260, 97 N. Y. Supp. 740.

Other county officers, such as the county treasurer, are not bound by an order of the county commissioners selecting an official newspaper. Logan County *v.* State Capital Co., 16 Okla. 625, 86 Pac. 518.

2. Young *v.* Jefferson County, (Ky. 1907) 100 S. W. 335; Com. *v.* Croop, 14 Pa. Dist. 836, *quoting* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1001.

Paying Money under Mistake.— But see McDonald *v.* Franklin County, (Ky. 1907) 100 S. W. 861.

1002. 1. Stillwell *v.* Jackson, 77 Ark. 250, 93 S. W. 71; Harrison County *v.* Ogden, 133 Iowa 9, 110 N. W. 32; Smith *v.* Haney, 73 Kan. 506, 85 Pac. 550; Jefferson County *v.* Young, 120 Ky. 456, 86 S. W. 985; Troutman *v.* Hays, (Ky. 1907) 101 S. W. 976; Murphy *v.* Police Jury, 118 La. 401, 42 So. 979; Tolson *v.* Police Jury, 119 La. 215, 43 So. 1011; Lincoln County *v.* Chicago, etc., R. Co., (Neb. 1906) 108 N. W. 178; Hagler *v.* Kelly, 14 N. Dak. 218, 103 N. W. 630; State *v.* Goodwin, (S. Car. 1907) 59 S. E. 35; Southern R. Co. *v.* Hamblen County, (Tenn. 1906) 97 S. W. 455; State *v.* County Ct., 60 W. Va. 339, 55 S. E. 382.

2. Black *v.* Polk County, 97 Minn. 487, 107 N. W. 560; *In re* Nether Providence Tp., 215 Pa. St. 119, 64 Atl. 443; Hardison *v.* Yeaman, 115 Tenn. 639, 91 S. W. 1111.

When one enters into office the sureties on his bond are estopped to deny the validity of the bond executed by them, and this estoppel applies to the amount of the penalty as well as to any other misrecital in the obligation. When one signs a bond the law writes in all necessary recitals, including a proper penalty. State *v.* Smith, 87 Miss. 551, 40 So. 22.

1003. 1. *Alabama.*— Miller *v.* State, (Ala. 1905) 39 So. 658; Calhoun County *v.* Watson, (Ala. 1907) 44 So. 703.

Arkansas.— Saline County *v.* Kinkead, 84 Ark. 329, 105 S. W. 581.

California.— Millard *v.* Kern County, 147 Cal. 682, 82 Pac. 329.

Florida.— Escambia County *v.* Pilot Com'rs, (Fla. 1906) 42 So. 697.

Michigan.— Bishop *v.* Ottawa County, 140 Mich. 177, 103 N. W. 585; Thomas *v.* Ingham County, 142 Mich. 319, 105 N. W. 771; Albert *v.* Gibson, 141 Mich. 698, 105 N. W. 19.

Mississippi.— Marshall County *v.* Rivers, 88 Miss. 45, 40 So. 1007.

Nebraska.— Lincoln Tp. *v.* Kearney County, (Neb. 1907) 112 N. W. 608.

New York.— Vincent *v.* Nassau County, 110 N. Y. App. Div. 730, 96 N. Y. Supp. 446; People *v.* Warner, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 279; Hicks *v.* Eggleston, 105 N. Y. App. Div. 73, 93 N. Y. Supp. 909.

South Carolina.— State *v.* Goodwin, (S. Car. 1907) 59 S. E. 35.

Wisconsin.— Quigg *v.* Monroe County, (Wis. 1907) 113 N. W. 723.

Accounts Not Legally Chargeable.— Jay County *v.* Pike Civil Tp., 168 Ind. 535, 81 N. E. 489; Campbell County *v.* Overby, (S. Dak. 1906) 108 N. W. 247.

The allowance of a claim for the salary of one not legally elected did not render the members of the fiscal court allowing it guilty of malfeasance. Henry *v.* Com., (Ky. 1907) 103 S. W. 371.

Members of a board of supervisors who by their fraudulent and collusive acts suffer the funds of a county to be illegally paid out are personally liable for the amount so paid. Wallace *v.* Jones, 182 N. Y. 37, 74 N. E. 576.

Allowance of Illegal Claims Not Cause for Removal.— Corker *v.* Pence, 12 Idaho 152, 85 Pac. 388.

1004. 1. Tehama County *v.* Sisson, (Cal. 1907) 92 Pac. 64; Murphy *v.* Bondshu, 2 Cal. App. 249, 83 Pac. 278; Birdsall *v.* Kewaunee, 124 Wis. 576, 103 N. W. 1.

Cannot Bind County by Allowance of Illegal Claims.— Eder *v.* Kreiter, (Ind. App. 1907) 82 N. E. 552; People *v.* Westchester County, 116 N. Y. App. Div. 844, 102 N. Y. Supp. 402.

Appeal from Commissioners' Decision.— Section 978, Ky. Stat. 1903, provides that appeals may be taken to the Circuit Court from all orders and judgments of the fiscal court where the amount in controversy exceeds twenty-five dollars. Jefferson County *v.* Young, 120 Ky. 456, 86 S. W. 985; Butler County *v.* Gardner, (Ky. 1906) 96 S. W. 582.

In *Mississippi* appeal is allowed by statute from the board of supervisors to the Circuit Court and from the Circuit Court to the Supreme Court. Marshall County *v.* Rivers, 88 Miss. 45, 40 So. 1007.

Under the *Nebraska* statute appeals from the decision of a county board should be entered, tried, and determined in the District Court the same as appeals from justices of the peace. Loup County *v.* Wirsig, 73 Neb. 505, 103 N. W. 56.

In *Oklahoma* by statute an appeal may be taken from the order of the Commissioners' Court to the District Court. Logan County *v.* State Capital Co., 16 Okla. 625, 86 Pac. 518.

Rejection by Auditor.— The rejection by the county auditor of a claim puts it out of the power of the Commissioners' Court to afterwards allow it, and the claimant must sue the county to establish his claim. Anderson *v.* Ashe, (Tex. 1906) 90 S. W. 872.

2. Wey *v.* O'Hara, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 82, 95 N. Y. Supp. 81.

1005. 1. Commissioners Ct. *v.* State, 146 Ala. 439, 41 So. 463.

Partial Allowance Accepted Bars Rest of Claim.— Hunt *v.* Franklin County, 100 Me. 445, 62 Atl. 213.

1006. 1. Power to Compromise.— Hagler *v.* Kelly, 14 N. Dak. 218, 103 N. W. 620; Multnomah County *v.* Portland First Nat. Bank,

(Oregon 1905) 82 Pac. 23; Denman *v.* Coffee, (Tex. Civ. App. 1906) 91 S. W. 800.

1007. 5. In proceedings for vacating streets, lots, etc., a board of commissioners acts judicially, and from its final order or judgment an appeal is authorized. MacGinnitie *v.* Silvers, 167 Ind. 321, 78 N. E. 1013.

1008. 2. Gulnac *v.* Chosen Freeholders, (N. J. 1906) 64 Atl. 998; Multnomah County *v.* Title Guarantee, etc., Co., 46 Oregon 523, 80 Pac. 409.

Cannot Change Order Once Made. — Delta County *v.* Blackburn, (Tex. 1906) 93 S. W. 419.

1009. 2. Southern R. Co. *v.* Hamblen County, (Tenn. 1906) 97 S. W. 455.

5. Van Emburgh *v.* Trall, 73 N. J. L. 394, 64 Atl. 173; People *v.* Rockland County, 120 N. Y. App. Div. 552, 105 N. Y. Supp. 19; Long *v.* Miami County, 75 Ohio St. 539, 80 N. E. 188.

6. White *v.* Hewlett, 143 Ala. 374, 42 So. 78, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1009.

7. Riverside County *v.* Yawman, etc., Mfg. Co., 3 Cal. App. 691, 86 Pac. 900; Brooks *v.* Morgan, 36 Ind. App. 672, 76 N. E. 331; Bartlett *v.* New York Cent., etc., R. Co., (Mass. 1907) 81 N. E. 204; State *v.* Goodwin, (S. Car. 1907) 59 S. E. 35.

Where the action of a board of county commissioners is only voidable a review thereof must be had by appeal. Johnston *v.* Savidge, 11 Idaho 204, 81 Pac. 616.

8. **Indiana — When Appeal Lies.** — Summe *v.* Browne, 165 Ind. 490, 76 N. E. 99.

In Carr *v.* Duhme, 167 Ind. 76, 78 N. E. 322, it was held that an appeal lies only from a final decision of the board of commissioners.

COUNTY-SEAT.

1013. 1. **Judicial Notice.** — A court will take judicial notice that a certain place is a county seat, Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423; even that it is a *de facto* county seat, Day County *v.* Kansas, (Okla. 1907) 91 Pac. 699; and that a county seat is a municipal corporation. Brownsville *v.* Arbuckle, (Ky. 1907) 99 S. W. 239.

1014. 5. **May Be at Any Point Within County.** — State *v.* Porter, 145 Ala. 541, 40 So. 144.

1015. 1. **Designation Sufficient if Place Well Known.** — In Commissioners Ct. *v.* State, (Ala. 1907) 44 So. 465, it was held that the use of the words "city, town, or village," in an act designating to what places a county seat may be removed, was simply to enable the voters to know the locality, and a place containing a post office, a store, and one residence was held to be a village.

1019. 4. **In Oklahoma, under Territorial Government,** the removal of a county seat by the votes of a county in accordance with an act of the legislature was required to be subsequently legalized by an Act of Congress. Territory *v.* Yates, 17 Okla. 465, 87 Pac. 863.

1020. 1. **Not a Delegation of Legislative Power.** — Stanton *v.* Essex County, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 415, 96 N. Y. Supp. 840.

3. **When Consent of Electors Not Required.** — No change in the county seat, within the meaning of the requirement of submission to a vote of the people, is worked by a mere removal of the county buildings from one site to another in the same town, Christie *v.* Chosen Freeholders, (N. J. 1907) 66 Atl. 1073; or by the building of an additional court house, Lyon *v.* Steuben County, 115 N. Y. App. Div. 193, 100 N. Y. Supp. 676.

1028. 2. De Kalb County Ct. *v.* Pogue, 115 Ill. App. 391; State *v.* Boyden, (S. Dak. 1906) 108 N. W. 897.

1029. 3. **Withdrawal Petition — Formality Required.** — A withdrawal petition must be presented with the same formality as the original petition in order to be effective. State *v.* Porter, 145 Ala. 541, 40 So. 144.

1030. 7. Mann *v.* Mercer County Ct., 58 W. Va. 651, 52 S. E. 776.

1031. 1. Kaufer *v.* Ford, 100 Minn. 49, 110 N. W. 364.

2. Chambers *v.* Cline, 60 W. Va. 588, 55 S. E. 999.

1034. 2. **Vote Required to Remove.** — In *Mississippi* a majority of the votes cast is sufficient if the contemplated removal is to a point nearer to the center of the county; otherwise consent of two-thirds of the qualified electors of the county is required. Simpson County *v.* Buckley, 85 Miss. 713, 38 So. 104.

3. *Ex p.* Owens, 148 Ala. 402, 42 So. 676.

1035. 1. **Evidence.** — Where a two-thirds vote of the electors of a county is necessary, testimony in an election contest showing the number of names in the registration books after erasure therefrom of the names of all persons erroneously thereon, or who have died, removed, or become disqualified as electors, is competent though not conclusive proof of the number of qualified electors in the county. Simpson County *v.* Buckley, 85 Miss. 713, 38 So. 104.

2. **Special Election.** — Where an election in general election year is declared void it is competent for the court to order a special election in the subsequent year. Chambers *v.* Cline, 60 W. Va. 588, 55 S. E. 999.

4. Simpson County *v.* Buckley, 85 Miss. 713, 38 So. 104.

1040. 4. Loomis *v.* Hodson, 224 Ill. 147, 79 N. E. 590.

5. Griffin *v.* Walworth County, (S. Dak. 1905) 104 N. W. 1117.

Withdrawing Contestants Liable for Costs. — Reese *v.* Cannon, 80 Ark. 574, 98 S. W. 370.

1041. 1. **When Collateral Attack Allowed.** — When a board of supervisors exceeded its jurisdiction, and no direct appeal was taken from its decision, it was held that such decision might be collaterally attacked. Simpson County *v.* Buckley, 85 Miss. 713, 38 So. 104.

3. **Conditional Subscriptions for County Buildings.** — The fact that two of the county commissioners were stockholders in the company that donated the lot to the county upon which the court house is to be built can have no possible effect upon the validity of the removal of the county seat. Commissioners Ct. *v.* State, (Ala. 1907) 44 So. 465.

1045. 6. Day County *v.* Kansas, (Okla.

1907) 91 Pac. 699, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1045.

COUPLING CARS (INJURIES BY).

1047. 2. Baltimore, etc., R. Co. *v.* Davis, (C. C. A.) 149 Fed. 191; Chicago, etc., R. Co. *v.* Snedaker, 223 Ill. 395, 79 N. E. 169; Buttner *v.* South Baltimore Steel Car, etc., Co., 101 Md. 168, 4 Ann. Cas. 761, 60 Atl. 597; Liles *v.* Fosburg Lumber Co., 142 N. Car. 39, 54 S. E. 795; Hairston *v.* U. S. Leather Co., 143 N. Car. 512, 55 S. E. 847.

1048. 1. Buttner *v.* South Baltimore Steel Car, etc., Co., 101 Md. 168, 4 Ann. Cas. 761, 60 Atl. 597; McManus *v.* Oregon Short Line R. Co., 118 Mo. App. 152, 94 S. W. 743.

1049. 1. **A Shovel Car** is a car within the meaning of the act requiring automatic couplers. Schlemmer *v.* Buffalo, etc., R. Co., 205 U. S. 1, 27 U. S. Sup. Ct. 407, *reversing* on other grounds 207 Pa. St. 198, 56 Atl. 417.

Railroad Liable for Penalty — Failure to Equip Cars with Automatic Couplers. — U. S. *v.* Great Northern R. Co., 150 Fed. 229.

2. **The Michigan Statute** does not require the placing of such couplers on the tenders of locomotives. Blanchard *v.* Detroit, etc., R. Co., 139 Mich. 694, 103 N. W. 170.

1050. 1. **Allowing a Steel Rail to Lie Near the Track** cannot be deemed a negligent act. Zipperer *v.* Seaboard Air-Line R. Co., 129 Ga. 387, 58 S. E. 872.

1052. 1. Wabash R. Co. *v.* Kithcart, (C. C. A.) 149 Fed. 108, 9 Ann. Cas. 497; Choctaw, etc., R. Co. *v.* Thompson, 82 Ark. 11, 100 S. W. 83.

1053. 1. Chicago, etc., R. Co. *v.* Walters, 217 Ill. 87, 75 N. E. 441.

2. U. S. *v.* Chicago, etc., R. Co., 149 Fed. 486; Galveston, etc., R. Co. *v.* Parish, (Tex. Civ. App. 1906) 93 S. W. 682; Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070.

1054. 1. **It Is Not Negligence** to employ a young man, nineteen years old, who has sufficient intelligence to justify the employment. Moore *v.* St. Louis, etc., R. Co., 115 La. 86, 38 So. 913.

1056. 4. Buttner *v.* South Baltimore Steel Car, etc., Co., 101 Md. 168, 4 Ann. Cas. 761, 60 Atl. 597, *citing* 7 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1056.

1057. 2. Choctaw, etc., R. Co. *v.* Thompson, 82 Ark. 11, 100 S. W. 83; Wilson *v.* Lake Shore, etc., R. Co., 145 Mich. 509, 108 N. W. 1021; Kennedy *v.* Kansas City, etc., R. Co., 190 Mo. 424, 89 S. W. 370; Brady *v.* Kansas City, etc., R. Co., 206 Mo. 509, 102 S. W. 978; Norman *v.* Southern R. Co., (Tenn. 1907) 104 S. W. 1088.

1058. 2. Marshall *v.* St. Louis, etc., R. Co., 78 Ark. 213, 8 Ann. Cas. 420, 94 S. W. 56; Dumphy *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 675; Trinity, etc., R. Co. *v.* Perdue, (Tex. Civ. App. 1907) 101 S. W. 485; Southern R. Co. *v.* Simmons, 105 Va. 651, 55 S. E. 459.

1060. 1. **An Employee Assumes No Risk** of defects in the track of which he has no knowledge. Mumford *v.* Chicago, etc., R. Co., 128 Iowa 685, 104 N. W. 1135.

1062. 1. Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 179.

2. **The Question Whether the Plaintiff Was Injured While Out of the Line of His Service** should be submitted to the jury as a separate issue. Hairston *v.* U. S. Leather Co., 143 N. Car. 512, 55 S. E. 847.

1064. 1. **The Master Should Give Warning** that cars are about to be moved. Louisville, etc., R. Co. *v.* Herndon, (Ky. 1907) 104 S. W. 732; Edington *v.* St. Louis, etc., R. Co., 204 Mo. 61, 102 S. W. 491.

1065. 1. Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 179; St. Louis, etc., R. Co. *v.* Ames, (Tex. Civ. App. 1906) 94 S. W. 1112.

3. **It Should Be Left to the Jury** to determine whether a rule ought to have been adopted, where the proof showed that the rule was in force by other railroads. Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 179.

6. **For Cases of Negligence Justifying Recovery** see the following: St. Louis, etc., R. Co. *v.* Fisher, 80 Ark. 376, 97 S. W. 279; Chicago, etc., R. Co. *v.* Snedaker, 223 Ill. 395, 79 N. E. 169; Kennedy *v.* Kansas City, etc., R. Co., 190 Mo. 424, 89 S. W. 370; Phippin *v.* Missouri Pac. R. Co., 196 Mo. 321, 93 S. W. 410; Missouri, etc., R. Co. *v.* Barnes, (Tex. Civ. App. 1906) 95 S. W. 714; Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070; Texas Mexican R. Co. *v.* Higgins, (Tex. Civ. App. 1906) 99 S. W. 200.

7. Mumford *v.* Chicago, etc., R. Co., 128 Iowa 685, 104 N. W. 1135.

1066. 1. **The Burden of Showing Contributory Negligence** of the plaintiff is on defendant. Edington *v.* St. Louis, etc., R. Co., 204 Mo. 61, 102 S. W. 491; Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070; Texas Mexican R. Co. *v.* Higgins, (Tex. Civ. App. 1906) 99 S. W. 200.

1067. 1. Lyon *v.* Charleston, etc., R. Co., 77 S. Car. 328, 58 S. E. 12.

2. Alabama G. S. R. Co. *v.* Bonner, (Ala. 1905) 39 So. 619; East St. Louis Connecting R. Co. *v.* Meeker, 229 Ill. 98, 82 N. E. 202.

1068. 1. Suttle *v.* Choctaw, etc., R. Co., (C. C. A.) 144 Fed. 668; Moore *v.* St. Louis, etc., R. Co., 115 La. 86, 38 So. 913; Dumphy *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 675.

1071. 1. Huggins *v.* Southern R. Co., 148 Ala. 153, 41 So. 856.

1072. 2. Huggins *v.* Southern R. Co., 148 Ala. 153, 41 So. 856; Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070.

3. Alabama G. S. R. Co. *v.* Bonner, (Ala. 1905) 39 So. 619; Chicago, etc., R. Co. *v.* Walters, 217 Ill. 87, 75 N. E. 441.

1073. 1. **Negligence Question for Jury** — *United States.* — Denver, etc., R. Co. *v.* Arrighi, (C. C. A.) 141 Fed. 67; Lyle *v.* Alabama G. S. R. Co., (C. C. A.) 145 Fed. 611; Baltimore, etc., R. Co. *v.* Davis, (C. C. A.) 149 Fed. 191.

Arkansas. — Choctaw, etc., R. Co. *v.* Craig, 79 Ark. 53, 95 S. W. 168; Choctaw, etc., R. Co. *v.* Thompson, 82 Ark. 11, 100 S. W. 83.

Illinois. — Chicago, etc., R. Co. *v.* Snedaker, 223 Ill. 395, 79 N. E. 169; East St. Louis Con-

necting R. Co. *v.* Meeker, 229 Ill. 98, 82 N. E. 202; Donk Bros. Coal, etc., Co. *v.* Retzloff, 229 Ill. 194, 82 N. E. 214.

Massachusetts. — Taylor *v.* Boston, etc., R. Co., 188 Mass. 390, 74 N. E. 591.

Missouri. — Kennedy *v.* Kansas City, etc., R. Co., 190 Mo. 424, 89 S. W. 370; Phippin *v.* Missouri Pac. R. Co., 196 Mo. 321, 93 S. W. 410; McManus *v.* Oregon Short Line R. Co., 118 Mo. App. 152, 94 S. W. 743; Edington *v.* St. Louis, etc., R. Co., 204 Mo. 61, 102 S. W. 491; Brady *v.* Kansas City, etc., R. Co., 206 Mo. 509, 102 S. W. 978.

New York. — Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 170.

Texas. — Texas, etc., R. Co. *v.* Green, (Tex. Civ. App. 1906) 95 S. W. 694; Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070; Texas Mexican R. Co. *v.* Higgins, (Tex. Civ. App. 1906) 99 S. W. 200.

Wisconsin. — Hayes *v.* Chicago, etc., R. Co., 131 Wis. 399, 111 N. W. 471.

Lifting One's Head a Little Too High while coupling a car, after being warned of the danger, is not contributory negligence as a matter of law. Schlemmer *v.* Buffalo, etc., R. Co., 205 U. S. 1, 27 U. S. Sup. Ct. 407, *reversing* 207 Pa. St. 198, 56 Atl. 417.

3. Engineer and Car Coupler Held to Be Fellow Servants. — Lyon *v.* Charleston, etc., R. Co., 77 S. Car. 328, 58 S. E. 12.

Foreman and Car Coupler Not Fellow Servants. — East St. Louis Connecting R. Co. *v.* Meeker, 229 Ill. 98, 82 N. E. 202.

COUPONS.

3. 6. Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353; Ehrlich *v.* Jennings, (S. Car. 1907) 58 S. E. 922.

4. 1. Bonds Issued by a Joint Stock Association and made payable out of a particular trust fund and limiting the liability of the stockholders were held to be negotiable. Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353.

4. Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353; Ehrlich *v.* Jennings, (S. Car. 1907) 58 S. E. 922.

5. 3. Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353.

7. 3. The Negotiability of Unmatured and Undetached Coupons depends upon the negotiability of the bonds. Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353.

8. 3. Fletcher *v.* Hickman, (C. C. A.) 136 Fed. 568.

10. 4. Parsons *v.* Utica Cement Mfg. Co., (Conn. 1907) 66 Atl. 1024.

Coupons bear interest after maturity even though they may not have been detached. Rice *v.* Shealey, 71 S. Car. 161, 50 S. E. 868.

13. 2. See *contra*, Parsons *v.* Utica Cement Mfg. Co., (Conn. 1907) 66 Atl. 1024.

4. Conversely.— No demand was necessary where it was shown that no funds were placed in the bank to meet the demand. Parsons *v.* Utica Cement Mfg. Co., (Conn. 1907) 66 Atl. 1024.

14. 2. Real Estate Trust Co. *v.* Union Trust Co., 102 Md. 41, 61 Atl. 228, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 13 [14].

16. 1. Rice *v.* Shealey, 71 S. Car. 161, 50 S. E. 868.

COURTS.

22. 2. *In re* Steele, 156 Fed. 853, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22; State *v.* Baudoin, 115 La. 773, 40 So. 42; Marsden *v.* Harlocker, 48 Oregon 90, 85 Pac. 328, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22.

3. Presence of Judge.— *In re* Steele, 156 Fed. 853, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22; State *v.* Jackson, (S. Dak. 1907) 113 N. W. 881, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22.

4. Atlantic Coast Line R. Co. *v.* Mallard, 53 Fla. 544, 43 So. 755, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22; State *v.* Baudoin, 115 La. 773, 40 So. 42.

24. 1. State *v.* Baudoin, 115 La. 773, 40 So. 42, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 24.

2. *In re* Steele, 156 Fed. 853, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 24.

25. 2. State *v.* Jackson, (S. Dak. 1907) 113 N. W. 881, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 25.

26. 1. Pecuniary Interest.— Priddy *v.* MacKenzie, 205 Mo. 181, 103 S. W. 968; New York L. Ins. Co. *v.* Sides, (Tex. Civ. App. 1907) 101 S. W. 1163; Grafton *v.* Holt, 58 W. Va. 182, 52 S. E. 21.

A Judge Is Not Disqualified Because He Is a Taxpayer of a public corporation which has a suit pending before him. La Plant *v.* Marshalltown, 134 Iowa 261, 111 N. W. 816; Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141.

Interest from Relationship.— Layton *v.* Jacobs, 5 Penn. (Del.) 71, 62 Atl. 691; Olliff *v.* State, 1 Ga. App. 553, 57 S. E. 941; Gulf, etc., R. Co. *v.* Looney, (Tex. Civ. App. 1906) 95 S. W. 691.

A judge is not disqualified whose wife is second cousin of the wife of a party to the action. Bliss *v.* Tyler, 141 Mich. 601, 113 N. W. 317.

In People *v.* Patrick, 183 N. Y. 52, 75 N. E. 963, it was held that the fact that the son of one of the judges was assistant district attorney did not disqualify the judge from sitting in the case.

Interest from Having Acted as Counsel.— *In re* Glass, 127 Iowa 646, 103 N. W. 1013; State *v.* Bradley, 194 Mo. 166, 92 S. W. 464; People *v.* Haas, 105 N. Y. App. Div. 119, 93 N. Y. Supp. 790; Kalklosh *v.* Bunting, (Tex. Civ. App. 1905) 88 S. W. 389; Johnson *v.* Johnson, (Tex. Civ. App. 1905) 89 S. W. 1102; State *v.* Dick, 125 Wis. 51, 103 N. W. 229.

27. 2. Bliss *v.* Tyler, 149 Mich. 601, 113 N. W. 317.

3. U. S. *v.* Bell, (C. C. A.) 135 Fed. 336, *affirming* 127 Fed. 1002; Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774.

A judge is liable if he fails to use ordinary care to acquaint himself with the solvency of sureties on a bond and accepts insufficient surety. Com. *v.* Lee, 120 Ky. 443, 89 S. W. 731. See the title JUDGE.

28. 6. *Ex p.* State, (Ala. 1907) 43 So. 490.

Records.—Newman *v.* State, (Ala. 1905) 39 So. 648; Atlanta, etc., Air-Line R. Co. *v.* McManus, 1 Ga. App. 302, 58 S. E. 258; Moody *v.* State, 1 Ga. App. 772, 58 S. E. 262; Bronville Nat. Bank *v.* Blakey, 166 Ind. 427, 76 N. E. 529; Christisen *v.* Bartlett, 73 Kan. 404, 84 Pac. 530, 85 Pac. 594; *In re* Tolman, 101 Me. 559, 64 Atl. 952; Warburton *v.* Gourse, 193 Mass. 203, 79 N. E. 270; York *v.* Stigall, 204 Mo. 407, 102 S. W. 987; Clark *v.* Hennessey Bank, 14 Okla. 572, 79 Pac. 217; *In re* McQuown, (Okla. 1907) 91 Pac. 689. See the title RECORDS.

To Suspend Operation of Its Rules.— Phillips *v.* Brill, 15 Wyo. 521, 90 Pac. 443.

29. 1. Waters-Pierce Oil Co. *v.* State, (Tex. 1907) 106 S. W. 331, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 28 [29].

5. Dille *v.* Rice, 120 Ill. App. 353; Conery *v.* His Creditors, 118 La. 864, 43 So. 530; Gardner *v.* Butler, 193 Mass. 96, 78 N. E. 885; State *v.* Donlan, 32 Mont. 256, 80 Pac. 244; Blair *v.* Ford China Co., 26 Pa. Super. Ct. 374; Phillips *v.* Brill, 15 Wyo. 521, 90 Pac. 443, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 29.

Construction of Rules. — An appellate court is bound by its rules and must construe them the same as it construes statutes. Florida Land Rock Phosphate Co. *v.* Anderson, 50 Fla. 501, 39 So. 392; Hoodless *v.* Jernigan, 51 Fla. 211, 41 So. 194; McRae *v.* Preston, (Fla. 1907) 44 So. 711.

Rules Have Force of Laws.— Johnson-Wynne Co. *v.* Wright, 28 App. Cas. (D. C.) 375; Hendry *v.* Cartwright, (N. Mex. 1907) 89 Pac. 309.

Rules of Court Cannot Be Waived by Stipulation of the parties without the consent of the court. Missouri, etc., R. Co. *v.* Kidd, 146 Fed. 499, *affirming* 6 Indian Ter. 29, 88 S. W. 308.

Rules Continue in Force until abrogated by the judge who established them or by his successor. Berthelot *v.* Hotard, 117 La. 524, 42 So. 90.

30. 1. Dille *v.* Rice, 120 Ill. App. 353; Twaddle *v.* Winters, (Nev. 1907) 89 Pac. 289; Rauchberger *v.* Interurban St. R. Co., 52 Misc. (N. Y.) 518, 102 N. Y. Supp. 561; Pina Maya-Sisal Co. *v.* George L. Squire Mfg. Co., 55 Misc. (N. Y.) 325, 105 N. Y. Supp. 482; Hunt *v.* State, 27 Ohio Cir. Ct. 16, *affirmed* 72 Ohio St. 643, 76 N. E. 1132; Johnson *v.* State, (Tex. Crim. 1906) 93 S. W. 735; Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 809; Phillips *v.* Brill, 15 Wyo. 521, 90 Pac. 443, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30.

31. 3. Phillips *v.* Brill, 15 Wyo. 521, 40 Pac. 443.

Rules Should Not Be Interfered with Except in Extreme Cases. — Neely Electric Constr., etc., Co. *v.* Browning, 25 App. Cas. (D. C.) 84.

Court May in Its Discretion Waive Its Own Rules. — Sargent *v.* Corbley, 28 Ohio Cir. Ct. 125.

5. Hand *v.* Stapleton, 145 Ala. 118, 39 So. 651; Halsey *v.* Superior Ct., (Cal. 1907) 91 Pac. 987; Glass *v.* Superior Ct., (Cal. 1907) 91 Pac. 994; Chicago, etc., Electric R. Co. *v.* Freeman, 125 Ill. App. 318; Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290; Wahoo *v.* Netheway, 73 Neb. 54, 102 N. W. 86.

Dictum. — Corn Exch. Bank *v.* Peabody, 111 N. Y. App. Div. 553, 98 N. Y. Supp. 78; American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387; Rodwell *v.* Rowland, 137 N. Car. 617, 50 S. E. 310.

Rule of Property. — Kuhn *v.* Fairmont Coal Co., 152 Fed. 1013; Schoonover *v.* Birnbaum, 148 Cal. 548, 83 Pac. 999; Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854; Union R. Co. *v.* Chickasaw Cooperage Co., 116 Tenn. 594, 95 S. W. 171.

A rule of property established by a state court will be followed by the Federal courts. East Central Eureka Min. Co. *v.* Central Eureka Min. Co., 204 U. S. 266, 27 U. S. Sup. Ct. 258; Paine *v.* Willson, (C. C. A.) 146 Fed. 488.

Former Decisions of Same Court. — Shernan *v.* Ward, 9 Ariz. 327, 83 Pac. 356; Prouty *v.* Adams, 1 Cal. App. xviii, 82 Pac. 1081; Hoodless *v.* Jernigan, 51 Fla. 211, 41 So. 194; Hart *v.* Atlanta Terminal Co., 128 Ga. 754, 58 S. E. 452; Heimann *v.* Wilke, 219 Ill. 310, 76 N. E. 378; Zuelly *v.* Casper, 37 Ind. App. 186, 76 N. E. 646; Preston *v.* Rice, (Ky. 1905) 85 S. W. 1183; Braucht *v.* Graves May Co., 96 Minn. 387, 104 N. W. 1089; Korff *v.* Bueker, (Neb. 1905) 105 N. W. 1099; People *v.* Snyder, 106 N. Y. App. Div. 48, 94 N. Y. Supp. 541; Prescott *v.* Puget Sound Bridge, etc., Co., 40 Wash. 354, 82 Pac. 606; Pautz *v.* Plankington Packing Co., 126 Wis. 37, 105 N. W. 482.

While the Maxim Stare Decises Is Not Imperative, the rule should not be departed from unless clearly wrong and unsupportable either upon reason or authority. Plattsmouth First Nat. Bank *v.* Gibson, (Neb. 1906) 105 N. W. 1081; State *v.* Ross, 43 Wash. 290, 86 Pac. 575. See the title STARE DECISIS.

If the Judges Are Equally Divided the appeal will be affirmed. Bardnard, etc., Mfg. Co. *v.* Smith, 77 Ark. 590, 92 S. W. 858; Mugge *v.* Tate, 53 Fla. 255, 41 So. 603; Macon, etc., R. Co. *v.* Stewart, 125 Ga. 88, 54 S. E. 197; Western, etc., R. Co. *v.* Tennessee Coal, etc., R. Co., 129 Ga. 49, 58 S. E. 452; Clark *v.* Wabash R. Co., 132 Iowa 11, 109 N. W. 309.

Effect of Decisions of Courts of Other States. — A statute of one state should receive the same construction in another state as is given it by the courts of its own state. Klages *v.* Kohl, 127 Ill. App. 70.

Effect upon State Courts of Federal Court Adjudications. — Decisions of the Federal courts upon Federal questions are binding upon the state courts. Merchants' Laclede Nat. Bank *v.* Troy Grocery Co., 144 Ala. 605, 39 So. 476; Spratlin *v.* St. Louis, etc., R. Co., 76 Ark. 82, 88 S. W. 836; Western Union Tel. Co. *v.* State, 165 Ind. 492, 6 Ann. Cas. 880, 76 N. E. 100; Louisville, etc., R. Co. *v.* Com., (Ky. 1907) 103 S. W. 349; State *v.* Intoxicating Liquors, 102 Me. 385, 67 Atl. 312; Hill *v.* State, 89 Miss. 23, 42 So. 380; State *v.* Cudahy Packing Co., 33 Mont. 179, 82 Pac. 833; Hamilton *v.* Smith, (Mont. 1907) 92 Pac. 32; State *v.* Ins. Co. of North America, 71 Neb. 320, 106 N. W. 767; Grant *v.* Cananea Consol. Copper Co., 117 N. Y. App. Div. 576, 102 N. Y. Supp. 642; Slaght *v.* Northern Pac. R. Co., 39 Wash. 576, 81 Pac. 1062; Hall *v.* Hall, 41 Wash. 186, 83 Pac. 108. See the title STARE DECISIS.

A decision of the United States Supreme Court regarding the constitutionality of a state statute will be followed by the courts of another state in construing a similar statute. Com. *v.* Atlantic Coast Line R. Co., 106 Va. 61, 55 S. E. 572.

In Mollhopf *v.* Chicago, etc., R. Co., 15 Okla. 540, 82 Pac. 733, it was held that upon general propositions of law, unaffected by legislative enactment, they would follow the law as enunciated by the Supreme Court of the United States.

To the same effect as Deans *v.* McLendon, 30 Miss. 343, stated in the original note, see Crocker *v.* Scott, 149 Cal. 575, 87 Pac. 102.

United States Circuit and District Courts will follow the decisions of the Circuit Court of Appeals of another district when not in conflict with their own appellate courts, unless there are exceptional reasons for refusing to do so. *In re* Baird, 154 Fed. 215.

Decisions of State Courts Construing State Statutes will be followed by the United States courts when no question of rights under the National Constitution are involved. Smiley *v.* Kansas, 196 U. S. 447, 25 U. S. Sup. Ct. 289, *affirming* 65 Kan. 240, 69 Pac. 199; Gatewood *v.* State, 203 U. S. 531, 27 U. S. Sup. Ct. 167, *affirming* 138 N. Car. 749, 51 S. E. 53; Montana *v.* Rice, 204 U. S. 291, 27 U. S. Sup. Ct. 281, *affirming* 33 Mont. 365, 83 Pac. 874; Stone

v. Southern Illinois, etc., Bridge Co., 206 U. S. 267, 27 U. S. Sup. Ct. 615; Hunter *v.* Pittsburg, 207 U. S. 161, 28 U. S. Sup. Ct. 40, *affirming* (Pa. 1907) 66 Atl. 348; *In re* Wood, 147 Fed. 877; Ramsden *v.* Knowles, 151 Fed. 718; Lyman *v.* Hilliard, (C. C. A.) 154 Fed. 339; Yocum *v.* Parker, (C. C. A.) 134 Fed. 205, *affirming* 130 Fed. 722; Louisville, etc., R. Co. *v.* Central Stockyards Co., (Ky. 1906) 97 S. W. 778.

But they are not bound to follow *obiter dicta*. *In re* Sullivan, (C. C. A.) 148 Fed. 815.

Contracts Made Before Decision by State Courts. — In cases where the obligation or contract was entered into before there had been a judicial construction of the statutes by the state courts, it is held that subsequent decisions by the state courts are not binding on the Federal courts. Wicomico County *v.* Bancroft, (C. C. A.) 135 Fed. 977; Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753.

Judges Who Sit in the Same Court should not attempt to overrule the decisions of each other, except for the most cogent reasons. Boatmen's Bank *v.* Fritzlen, (C. C. A.) 135 Fed. 650.

A Decision Concurred in by the Entire Bench will not be reversed upon review except by unanimous vote. Hart *v.* Atlanta Terminal Co., 128 Ga. 754, 58 S. E. 452.

Decisions of Inferior Courts are not binding upon the Supreme Court. Sedalia *v.* Donohue, 190 Mo. 407, 89 S. W. 386.

33. 1. Becker *v.* Superior Ct., 151 Cal. 313, 90 Pac. 689.

2. In Nebraska an opinion officially published is the opinion of the court whether prepared by a commissioner or a judge. Lancaster County *v.* McDonald, 73 Neb. 453, 103 N. W. 78.

4. Brun *v.* Mann, (C. C. A.) 151 Fed. 145; Williams *v.* Neely, (C. C. A.) 134 Fed. 1; Finch *v.* Smith, 146 Ala. 644, 41 So. 819; Kastor *v.* Elliott, 77 Ark. 148, 91 S. W. 8; Wells *v.* Montcalm Circuit Judge, 141 Mich. 58, 104 N. W. 318; Terry *v.* State, (Neb. 1906) 110 N. W. 733; Richman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 216, 100 N. Y. Supp. 81, *affirmed* 186 N. Y. 209, 78 N. E. 871; Kappes *v.* State, 26 Ohio Cir. Ct. 111; Goodnough Mercantile Co. *v.* Galloway, 48 Oregon 239, 84 Pac. 1049.

In Federal and State Courts.—Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 836.

8. Thomas *v.* Ohio State University, 195 U. S. 207, 25 U. S. Sup. Ct. 24; Merchants Laclede Nat. Bank *v.* Troy Grocery Co., 144 Ala. 605, 39 So. 476; Baggett *v.* Mason, 145 Ala. 664, 39 So. 728; Western Union Tel. Co. *v.* Cooper, 2 Ga. App. 376, 58 S. E. 517; Aurora *v.* Schoeberlein, 230 Ill. 496, 82 N. E. 860; Hull *v.* Hull, 149 Mich. 500, 112 N. W. 1126; Chosen Freeholders *v.* Central R. Co., (N. J. 1907) 65 Atl. 1117, 68 N. J. Eq. 500, 59 Atl. 303; Weinstein *v.* Douglass, 51 Misc. (N. Y.) 559, 101 N. Y. Supp. 251; Cincinnati, etc., Turnpike Co. *v.* Cincinnati, etc., Traction Co., 15 Ohio Dec. 118; Wong Sing *v.* Independence, 47 Oregon 231, 83 Pac. 387; Goodnough Mercantile Co. *v.* Galloway, 48 Oregon 239, 84 Pac. 1050; Anderson *v.* Halthusen Mercantile Co., 30 Utah 31, 83 Pac. 560; Myers *v.* East Bench Irrigation Co., (Utah 1907) 89 Pac. 1005.

34. 1. **Adjourned Terms.** — Where the adjournment was "subject to call," it was held to be an adjournment without day and ended the term. Myers *v.* East Bench Irrigation Co., (Utah 1907) 89 Pac. 1005.

Where the Record Recorded that the Court Adjourned, without naming any date, it was held to be a final adjournment of the term. Marengo Sav. Bank *v.* Byington, (Iowa 1907) 112 N. W. 192.

36. 1. Territory *v.* Armijo, (N. Mex. 1907) 89 Pac. 267; Cooper *v.* Granger, 129 Wis. 50, 108 N. W. 193.

Courts Have Inherent Power to Adjourn from Day to Day or to Distant Day. — Mann *v.* Mercer County Ct., 58 W. Va. 651, 52 S. E. 776.

6. A Board of County Commissioners is a court of record in *Indiana*. Brooks *v.* Morgan, 36 Ind. App. 672, 76 N. E. 331.

Courts Not of Record. — The Municipal Court of the city of New York is not a court of record. Taylor *v.* Bell, 121 N. Y. App. Div. 437, 106 N. Y. Supp. 273.

37. 2. **Inferior Courts** may only exercise the powers granted to them by statute. Sylvester *v.* Willson, 2 Alaska 325.

38. 6. Sylvester *v.* Willson, 2 Alaska 325, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 38.

Courts of general jurisdiction may have special statutory jurisdiction in certain matters, and in such cases their decisions are treated the same as the decisions of courts of special jurisdiction. Calkins *v.* Calkins, 229 Ill. 68, 82 N. E. 242.

Presumptions in Favor of Jurisdiction. — Cohen *v.* Portland Lodge No. 142, 144 Fed. 266; County Bank *v.* Jack, 148 Cal. 437, 83 Pac. 705; Welsh *v.* Koch, 4 Cal. App. 571, 88 Pac. 604; Christie *v.* Walker, 126 Ill. App. 424; Chicago, etc., R. Co. *v.* Grantham, 165 Ind. 279, 75 N. E. 265; Rudisell *v.* Jennings, 38 Ind. App. 403, 77 N. E. 959, 78 N. E. 263; McDevitt *v.* Connell, (N. J. 1906) 63 Atl. 504; New York Inst. for Deaf, etc., *v.* Crockett, 117 N. Y. App. Div. 269, 102 N. Y. Supp. 412; Settle *v.* Settle, 141 N. Car. 553, 54 S. E. 445.

Presumption of Jurisdiction Will Not Arise when the face of the record discloses a want of it. Old Wayne Mut. L. Assoc. *v.* McDonough, 204 U. S. 8, 27 U. S. Sup. Ct. 236, *reversing* 164 Ind. 321, 73 N. E. 703; Franklin County *v.* Crow, 128 Ga. 458, 57 S. E. 784; Western Union Tel. Co. *v.* Cooper, 2 Ga. App. 376, 58 S. E. 517.

Courts of Limited Jurisdiction — Must Proceed in Mode Prescribed by Statute. — Geduld *v.* Baltimore, etc., R. Co., 55 Misc. (N. Y.) 239, 105 N. Y. Supp. 110.

Jurisdiction to Appear on Record. — Commissioner's Ct. *v.* Johnson, 145 Ala. 553, 39 So. 910; Commissioners' Ct. *v.* Whitby, 145 Ala. 668, 39 So. 911; Brooks *v.* Morgan, 36 Ind. App. 672, 76 N. E. 331; Katz *v.* Schreckinger, 52 Misc. (N. Y.) 160, 101 N. Y. Supp. 743.

United States Courts. — Thomas *v.* Ohio State University, 195 U. S. 207, 25 U. S. Sup. Ct. 24,

Test of Inferiority. — Sylvester *v.* Willson, 2 Alaska 325.

A Court May Be One of General Jurisdiction although the amount of its jurisdiction is limited. McDevitt *v.* Connell, (N. J. 1906) 63 Atl. 504.

The Records of a Court of General Jurisdiction import absolute verity. York *v.* Stegall, 204 Mo. 407, 102 S. W. 987.

COVENANTS.

55. **1.** Sexauer *v.* Wilson, (Iowa 1907) 113 N. W. 941.

58. **1.** **"Grant, Bargain, and Sell."** — By statute in some states the words "grant, bargain, and sell," import a covenant against incumbrances by the grantor. Hood *v.* Clark, 141 Ala. 397, 37 So. 550; Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778; Crawford *v.* McDonald, 84 Ark. 415, 106 S. W. 206.

In *Missouri* by statute the words "grant, bargain, and sell," imply a covenant of indefeasible seizin. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696.

The words "granted, bargained, and sold" are the substantial equivalents of the statutory words "bargain, sell, and convey." Blood *v.* Sielert, 38 Wash. 643, 80 Pac. 799.

"Grant and Convey." — By statute in *Arizona* and *Texas*, the words "grant and convey" import a covenant against incumbrances. Sherman *v.* Goodwin, (Ariz. 1907) 89 Pac. 517; Bullitt *v.* Coryell, (Tex. Civ. App. 1905) 85 S. W. 482.

2. Georgia. — Allen *v.* Taylor, 121 Ga. 841, 49 S. E. 799.

North Carolina. — A covenant of general warranty includes a covenant of quiet enjoyment. Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 750.

3. Illinois Conveyance Act, § 11; King *v.* King, 215 Ill. 100, 74 N. E. 89; Allen *v.* Caffee, 85 Miss. 766, 38 So. 186, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 56, 57.

59. **3. Where There Was a Lease of Coal Mines on a Royalty** it was held that there was an implied covenant to mine with reasonable diligence. Wilmore Coal Co. *v.* Brown, 147 Fed. 931, *affirmed* (C. C. A.) 153 Fed. 143.

60. **1.** Minard *v.* Delaware, etc., R. Co., 139 Fed. 60, *affirmed* in (C. C. A.) 153 Fed. 578; Union Stockyards Co. *v.* Nashville Packing Co., (C. C. A.) 140 Fed. 701.

4. Minard *v.* Delaware, etc., R. Co., 139 Fed. 60, *affirmed* in (C. C. A.) 153 Fed. 578; Union Stockyards Co. *v.* Nashville Packing Co., (C. C. A.) 140 Fed. 701; Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701; McDonald *v.* Spang, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 332, 105 N. Y. Supp. 617; Monnett *v.* Columbus, etc., R. Co., 26 Ohio Cir. Ct. 469.

61. **1.** Minard *v.* Delaware, etc., R. Co., 139 Fed. 60, *affirmed* (C. C. A.) 153 Fed. 578; Union Stockyards Co. *v.* Nashville Packing Co., (C. C. A.) 140 Fed. 701; Hamel *v.* Minneapolis, etc., R. Co., 97 Minn. 334, 107 N. W. 139.

62. **3.** Brassell *v.* Fisk, (Ala. 1907) 45 So. 70; Corrough *v.* Hamill, 110 Mo. App. 53, 84 S. W. 96; Foster *v.* Byrd, 119 Mo. App. 168, 96 S. W. 224; Rich *v.* Scales, 116 Tenn. 57, 91 S. W. 50.

63. **1.** Larson *v.* Goettl, (Minn. 1908) 114 N. W. 840; Rich *v.* Scales, 116 Tenn. 57, 91 S. W. 50.

2. Talbert *v.* Mason, (Iowa 1907) 113 N. W. 918.

3. Herold *v.* Columbia Invest., etc., Co., (N. J. 1907) 67 Atl. 607.

64. **2.** Fulmer *v.* Bates, 118 Tenn. 731, 102 S. W. 900.

6. Sanitary Dist. *v.* Martin, 227 Ill. 260, 10 Ann. Cas. 227, 81 N. E. 417, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 64.

Contra. — Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701.

65. **1.** Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 65; Sexauer *v.* Wilson, (Iowa 1907) 113 N. W. 941.

3. Acceptance of Deed Poll Does Not Create Covenant. — Dawson *v.* Western Maryland R. Co., (Md. 1907) 68 Atl. 301, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 65.

67. **1. Covenants of Warranty Do Not Apply to Land Included by Mutual Mistake.** — Pinckard *v.* American Freehold Land Mortg. Co., 143 Ala. 568, 39 So. 350; Laufer *v.* Moppins, (Tex. Civ. App. 1906) 99 S. W. 109.

71. **2.** Fountain Square Theatre Co. *v.* Pendery, 27 Ohio Cir. Ct. 285.

74. **1. Rules of Construction — General and Limited Covenants.** — Campbell *v.* Watkins, 105 Va. 824, 54 S. E. 989.

2. Miller *v.* Bayless, 194 Mo. 630, 92 S. W. 482.

3. The General Rule for the Construction of Covenants is the intention of the parties. Miller *v.* Bayless, 194 Mo. 630, 92 S. W. 482; Silberman *v.* Mayer, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 468, 96 N. Y. Supp. 928.

75. **3.** Miller *v.* Bayless, 194 Mo. 630, 92 S. W. 482.

86. **4.** McCall *v.* Wilkes, 121 Ga. 722, 49 S. E. 722; Newburn *v.* Lucas, 126 Iowa 85, 101 N. W. 730; DeLong *v.* Spring Lake Beach Imp. Co., 72 N. J. L. 125, 59 Atl. 1034; Patterson *v.* Freihofer, 215 Pa. St. 47, 64 Atl. 326; Brown *v.* Taylor, 115 Tenn. 1, 88 S. W. 933.

87. **4.** DeLong *v.* Spring Lake Beach Imp. Co., 72 N. J. L. 125, 59 Atl. 1034.

88. **4.** Pierce *v.* Coryn, 126 Ill. App. 244.

90. **1. A Covenant that "I Hold Said Premises by Good and Perfect Title"** if untrue is broken when made. Webb *v.* Wheeler, (Neb. 1908) 114 N. W. 636, *distinguishing* and *reconciling* the *Nebraska* cases cited in the original note.

4. Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759.

5. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696.

91. **6.** Eames *v.* Armstrong, (N. Car. 1907) 59 S. E. 165.

92. **11.** King *v.* King, 215 Ill. 100, 74 N. E. 89.

93. **1.** Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759.

96. **2.** Jones *v.* Haseltine, 124 Mo. App.

634, 102 S. W. 40; Reinhalter *v.* Hutchins, 26 R. I. 586, 60 Atl. 234.

4. Hayden *v.* Patterson, 39 Colo. 15, 88 Pac. 437.

97. 7. Hayden *v.* Patterson, 39 Colo. 15, 88 Pac. 437; Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759; Cain *v.* Fisher, 57 W. Va. 492, 50 S. E. 752.

8. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696.

98. 4. Eames *v.* Armstrong, 142 N. Car. 506, 55 S. E. 405; Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759.

An Eviction from an Easement in an alleyway was held to be a breach of the covenant of warranty. Richstein *v.* Welch, (Mass. 1908) 83 N. E. 417.

6. Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778; Hubbard *v.* Stanaford, (Ky. 1907) 100 S. W. 232; Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 98; Fortescue *v.* Columbia Real Estate Co., (N. J. 1907) 67 Atl. 1024; Larkin *v.* Trammel, (Tex. Civ. App. 1907) 105 S. W. 552; Lennig *v.* Harrisonburg Land, etc., Co., 107 Va. 458, 59 S. E. 400.

99. 1. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696; Patterson *v.* Cappon, 125 Wis. 198, 102 N. W. 1083; Durbin *v.* Shenners, (Wis. 1907) 113 N. W. 421.

2. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99.

100. 2. Cain *v.* Fisher, 57 W. Va. 492, 50 S. E. 752; Durbin *v.* Shenners, (Wis. 1907) 113 N. W. 421.

4. See Mullen *v.* Clifford, 37 Ind. App. 435, 76 N. E. 1009.

Contra. — Pierse *v.* Bronnenberg, (Ind. App. 1907) 82 N. E. 126.

7. Allen *v.* Caffee, 85 Miss. 766, 38 So. 186, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 100, 101.

101. 4. Larkin *v.* Trammel, (Tex. Civ. App. 1907) 105 S. W. 552.

102. 4. Pabst Brewing Co. *v.* Thorley, (C. C. A.) 145 Fed. 117, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102; Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759.

103. 1. Cassada *v.* Stabel, 98 N. Y. App. Div. 600, 90 N. Y. Supp. 533, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 103.

3. Cassada *v.* Stabel, 98 N. Y. App. Div. 600, 90 N. Y. Supp. 533, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 103.

4. Cassada *v.* Stabel, 98 N. Y. App. Div. 600, 90 N. Y. Supp. 533, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 103.

105. 2. Morrow *v.* Baird, 114 Tenn. 552, 86 S. W. 1079.

106. 4. Fortescue *v.* Columbia Real Estate Co., (N. J. 1907) 67 Atl. 1024.

6. Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759; Bull *v.* Beiseker, (N. Dak. 1907) 113 N. W. 870.

107. 2. Grantor Bound to Place Grantee in Possession.— Smith *v.* Moore, (Ky. 1907) 104 S. W. 265.

4. Smith *v.* Moore, (Ky. 1907) 104 S. W. 265.

108. 1. Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778.

2. Cain *v.* Fisher, 57 W. Va. 492, 50 S. E. 752.

109. 1. Morgan *v.* Haley, 107 Va. 331, 58 S. E. 564, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 108.

111. 1. Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778.

2. Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778.

112. 1. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 112.

113. 2. Hubbard *v.* Stanaford, (Ky. 1907) 100 S. W. 232.

114. 7. Patterson *v.* Cappon, 125 Wis. 198, 102 N. W. 1083.

A tax sale is also a breach of the covenant of special warranty. Cain *v.* Fisher, 57 W. Va. 492, 50 S. E. 752.

118. 8. McCrillis *v.* Thomas, 110 Mo. App. 699, 85 S. W. 673.

120. 4. Weeks *v.* Grace, 194 Mass. 296, 80 N. E. 220.

121. 2. Pabst Brewing Co. *v.* Thorley, (C. C. A.) 145 Fed. 117, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 121.

122. 5. Maloy *v.* Holl, 190 Mass. 277, 76 N. E. 452; Bailey *v.* Agawam Nat. Bank, 190 Mass. 20, 76 N. E. 449.

9. Henderson *v.* H. L. Berry Co., 145 Ala. 404, 39 So. 662; Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778; Albin *v.* Parmele, 73 Neb. 663, 103 N. W. 304.

An Agreement by the Grantor to Give the City Five Feet of the Land if the city would widen the street within a year was held to be an incumbrance in a deed executed two years thereafter. Fleet *v.* Wait, (Vt. 1907) 66 Atl. 1031.

123. 1. An Easement Acquired by Eminent Domain is not a violation of the covenant against incumbrances. Weeks *v.* Grace, 194 Mass. 296, 80 N. E. 220.

124. 2. The Passage of an Order Laying Out a Highway is a breach of the covenant. Maloy *v.* Holl, 190 Mass. 277, 76 N. E. 452.

126. 3. Whipple *v.* Geddis, 25 App. Cas. (D. C.) 333; Pierse *v.* Bronnenberg, (Ind. App. 1907) 82 N. E. 126; White *v.* Gibson, 146 Mich. 547, 109 N. W. 1049, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 126; Bullitt *v.* Coryell, (Tex. Civ. App. 1905) 85 S. W. 482. *Compare* Hood *v.* Clark, 141 Ala. 397, 37 So. 550.

Penalties and Costs for failure to pay taxes are incumbrances. Carswell *v.* Habberzettle, (Tex. 1905) 86 S. W. 738.

A Covenant to Pay Taxes is not one of indemnity and the cause of action accrues on the failure to pay the taxes. Broadwell *v.* Banks, 134 Fed. 470.

4. White *v.* Gibson, 146 Mich. 547, 109 N. W. 1049.

5. Maloy *v.* Holl, 190 Mass. 277, 76 N. E. 452.

127. 1. Bowers *v.* Narragansett Real Estate Co., (R. I. 1907) 67 Atl. 521.

2. Pierse *v.* Bronnenberg, (Ind. App. 1907) 82 N. E. 126.

Must Be Valid Assessment.— Maloy *v.* Holl, 190 Mass. 277, 76 N. E. 452.

128. 1. Pierse *v.* Bronnenberg, (Ind. App. 1907) 81 N. E. 739, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 127, and reversing on other grounds (Ind. App. 1906) 79 N. E. 419.

129. 2. Talbott *v.* Donaldson, 71 Kan. 483, 80 Pac. 981.

4. Crawford *v.* McDonald, 84 Ark. 415, 106 S. W. 206, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 129; Albin *v.* Parmele, 73 Neb. 663, 103 N. W. 304.

7. Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778; Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759.

130. 2. Dieterlen *v.* Miller, 114 N. Y. App. Div. 40, 99 N. Y. Supp. 699.

132. 6. Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778; Hayden *v.* Patterson, 39 Colo. 15, 88 Pac. 437; Foster *v.* Lyrd, 119 Mo. App. 168, 96 S. W. 224; Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696; Eames *v.* Armstrong, 142 N. Car. 506, 55 S. E. 405.

133. 1. Hayden *v.* Patterson, 39 Colo. 15, 88 Pac. 437.

2. Crawford *v.* McDonald, 84 Ark. 415, 106 S. W. 206; Hayden *v.* Patterson, 39 Colo. 15, 88 Pac. 437.

4. Turner *v.* Lawson, 144 Ala. 432, 39 So. 755; Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778; *In re* Hanlin, (Wis. 1907) 113 N. W. 411.

137. 6. Contra. — Sexauer *v.* Wilson, (Iowa 1907) 113 N. W. 941.

138. 1. **A Covenant to Convey Water** to the plaintiff's residence does not relate to a thing not *in esse*. Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701.

2. **Covenant by Grantee to Build and Maintain Fences.** — Indianapolis Northern Traction Co. *v.* Harbaugh, 38 Ind. App. 115, 78 N. E. 80; Indianapolis Northern Traction Co. *v.* Spurgeon, 38 Ind. App. 702, 78 N. E. 1115; Sexauer *v.* Wilson, (Iowa 1907) 113 N. W. 941; Flege *v.* Covington, etc., El. R., etc., Co., (Ky. 1906) 91 S. W. 738.

Covenant to Extend Highway. — Jayne *v.* Cortland Water Works Co., 107 N. Y. App. Div. 517, 95 N. Y. Supp. 227.

A Covenant to Maintain a Levee and Ditch will run with the land. Brockmeyer *v.* Sanitary Dist., 118 Ill. App. 49.

A Covenant to Dig a Ditch to prevent the overflow of water on the covenantee's land was held to run with the land. Withers *v.* Wabash R. Co., 122 Mo. App. 282, 99 S. W. 34.

139. 1. Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 139; Muscogee Mfg. Co. *v.* Eagle, etc., Mills, 126 Ga. 210, 54 S. E. 1028.

Covenants to Pay for Improvements made during the term of a lease run with the land. Hollywood *v.* Brockton First Parish, 192 Mass. 269, 78 N. E. 124.

Covenants to Pay Rent on a lease renewable forever, run with the land. Broadwell *v.* Banks, 134 Fed. 470.

A Covenant to Furnish Water for Irrigation runs with the land. Farmers' High Line Canal, etc., Co. *v.* New Hampshire Real Estate Co., (Colo. 1907) 92 Pac. 290.

140. 2. **Building Restrictions.** — Boyden *v.* Roberts, 131 Wis. 659, 111 N. W. 701; Hime *v.* Lovegrove, 9 Ont. L. Rep. 607.

Covenant against Sale of Liquor. — An agreement not to permit the sale of intoxicating liquor on the premises for a period of ten years was held not to run with the land. Sjoblom *v.* Mark, (Minn. 1908) 114 N. W. 746.

3. Hunt *v.* Jones, 149 Cal. 297, 86 Pac. 686; Sanders *v.* Dixon, 114 Mo. App. 229, 89 S. W. 577; Atlantic City *v.* New Auditorium Pier Co., 67 N. J. Eq. 610, 59 Atl. 158; Boyden *v.* Roberts, 131 Wis. 659, 111 N. W. 701.

141. 1. **A Covenant for Access to a Building** through the stairways and halls of the covenantor's building will run with the land. Spencer *v.* Lighthouse, 114 N. Y. App. Div. 591, 99 N. Y. Supp. 1015.

3. **Covenant for Payment of Money.** — A covenant for the payment of money will not run with the land merely because the conveyance recites that it shall "run with the land" and inure to the benefit of the assigns. Jackson *v.* Aripeka Saw Mills, 53 Fla. 578, 43 So. 601.

A covenant to pay a note secured by a trust deed of land is not a covenant running with the land. Scholten *v.* Barber, 217 Ill. 148, 75 N. E. 460, *affirming* 119 Ill. App. 241.

A Covenant to Pay for a Party Wall may run with the land when expressly provided for in the covenant. Jebeles, etc., Confectionery Co. *v.* Brown, 147 Ala. 593, 41 So. 626.

A Covenant to Pay Part of the Cost of a Party Wall runs with the land for the benefit of the grantee of the covenantee. Rugg *v.* Lemley, 78 Ark. 65, 93 S. W. 570.

Covenants for the Payment of Taxes by the lessee of a perpetual lease run with the land. Broadwell *v.* Banks, 134 Fed. 470.

Covenants Restricting a Public Corporation from Exercising the Right of Eminent Domain do not run with the land. Morris, etc., R. Co. *v.* Hoboken, etc., R. Co., 68 N. J. Eq. 328, 59 Atl. 332.

142. 3. Deason *v.* Findley, 145 Ala. 407, 40 So. 220; Thompson *v.* Richmond, 102 Me. 335, 66 Atl. 649; Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696; Quick *v.* Walker, 125 Mo. App. 257, 102 S. W. 33; Morrow *v.* Baird, 114 Tenn. 552, 86 S. W. 1079.

143. 3. Deason *v.* Findley, 145 Ala. 407, 40 So. 220; Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696; Cassada *v.* Stabel, 98 N. Y. App. Div. 600, 90 N. Y. Supp. 533, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 143; Patterson *v.* Cappon, 125 Wis. 198, 102 N. W. 1082.

144. 1. There is no breach of such a covenant by eviction under a title paramount to that of the grantor. Dick *v.* McPherson, 72 N. J. L. 332, 62 Atl. 383.

2. Spencer *v.* Lighthouse, 114 N. Y. App. Div. 591, 99 N. Y. Supp. 1015.

145. 4. Sexauer *v.* Wilson, (Iowa 1907) 113 N. W. 941.

5. **Sale under Deed of Trust.** — Iowa L. & T. Co. *v.* Fullen, 114 Mo. App. 633, 91 S. W. 58.

146. 2. Iowa L. & T. Co. *v.* Fullen, 114 Mo. App. 633, 91 S. W. 58.

147. 1. Deason *v.* Findley, 145 Ala. 407, 40 So. 220, *quoting* 8 AM. AND ENG. ENCYC. OF

Law (2d ed.) 147; Iowa L. & T. Co. *v.* Fullen, 114 Mo. App. 633, 91 S. W. 58.

149. 2. Iowa L. & T. Co. *v.* Fullen, 114 Mo. App. 633, 91 S. W. 58; Bull *v.* Beiseker, (N. Dak. 1907) 113 N. W. 870, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 149.

152. 1. Turner *v.* Lawson, 144 Ala. 432, 39 So. 755; Thompson *v.* Richmond, 102 Me. 335, 66 Atl. 649; *In re* Hanlin, (Wis. 1907) 113 N. W. 411.

2. Thompson *v.* Richmond, 102 Me. 335, 66 Atl. 649; Eames *v.* Armstrong, 142 N. Car. 506, 55 S. E. 405; Eames *v.* Armstrong, (N. Car. 1907) 59 S. E. 165; Bull *v.* Beiseker, (N. Dak. 1907) 113 N. W. 870.

153. 3. **Missouri.**— Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696; Quick *v.* Walker, 125 Mo. App. 257, 102 S. W. 33; Jones *v.* Haseltine, 124 Mo. App. 674, 102 S. W. 40.

156. 1. Deason *v.* Findley, 145 Ala. 407, 40 So. 220; Thompson *v.* Richmond, 102 Me. 335, 66 Atl. 649; Quick *v.* Walker, 125 Mo. App. 257, 102 S. W. 33; Morrow *v.* Baird, 114 Tenn. 552, 86 S. W. 1079.

2. Pinckard *v.* American Freehold Land Mortg. Co., 143 Ala. 568, 39 So. 350; DeLong *v.* Spring Lake Beach Imp. Co., (N. J. 1907) 66 Atl. 591, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 149 [156]; Mandigo *v.* Conway, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 389, 90 N. Y. Supp. 324; Eames *v.* Armstrong, 142 N. Car. 506, 55 S. E. 405.

In Missouri a right of action for damages for a broken covenant passes by a warranty deed to a subsequent grantee. Iowa L. & T. Co. *v.* Fullen, 114 Mo. App. 633, 91 S. W. 58.

157. 2. Pecot *v.* Prevost, 117 La. 765, 42 So. 263; Thompson *v.* Richmond, 102 Me. 335, 66 Atl. 649; Morrow *v.* Baird, 114 Tenn. 552, 86 S. W. 1079.

158. 5. Mayer *v.* Wooten (Tex. Civ. App. 1907) 102 S. W. 423.

7. Thompson *v.* Richmond, 102 Me. 335, 66 Atl. 649.

160. 5. Baxter *v.* Camp, 126 Ga. 354, 54 S. E. 1036.

7. McIlvane *v.* Big Stony Lumber Co., 105 Va. 613, 54 S. E. 473.

162. 2. C. W. Zimmerman Mfg. Co. *v.* Wilson, 147 Ala. 275, 40 So. 515, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 162; Thompson *v.* Richmond, 102 Me. 335, 66 Atl. 649.

3. Deason *v.* Findley, 145 Ala. 407, 40 So. 220.

163. 1. **Contra.**— Bell *v.* Bair, (Ky. 1905) 89 S. W. 732.

2. Pochin *v.* Conley, 74 Neb. 429, 104 N. W. 878.

167. 4. Muscogee Mfg. Co. *v.* Eagle, etc., Mills, 126 Ga. 210, 54 S. E. 1028; Halstead *v.* Atterbury, 105 N. Y. App. Div. 527, 94 N. Y. Supp. 1023.

170. 5. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 170.

171. 1. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 171.

172. 2. Yazoo, etc., R. Co. *v.* Barrow, (Miss. 1906) 42 So. 345.

5. Chenault *v.* Thomas, (Ky. 1904) 83 S. W. 109; Morgan *v.* Haley, 107 Va. 331, 58 S. E. 564.

174. 3. Lemly *v.* Ellis, (N. Car. 1907) 59 S. E. 683; McBride *v.* Burns, (Tex. Civ. App. 1905) 88 S. W. 394; Mayer *v.* Wooten, (Tex. Civ. App. 1907) 102 S. W. 423; Larkin *v.* Trammel, (Tex. Civ. App. 1907) 105 S. W. 552.

176. 2. Lemly *v.* Ellis, (N. Car. 1907) 59 S. E. 683; King *v.* Sullivan, (Tex. Civ. App. 1906) 92 S. W. 51.

4. Quick *v.* Walker, 125 Mo. App. 257, 102 S. W. 33; Lemly *v.* Ellis, (N. Car. 1907) 59 S. E. 683.

177. 3. Eames *v.* Armstrong, 142 N. Car. 506, 55 S. E. 405; Patterson *v.* Cappon, 125 Wis. 198, 102 N. W. 1083.

179. 1. Brown *v.* Taylor, 115 Tenn. 1, 88 S. W. 933.

Where the incumbrance consisted in the right of another party to the growing crops it was held that the measure of damages was the value of the crops. Newburn *v.* Lucas, 126 Iowa 85, 101 N. W. 731.

3. Bailey *v.* Agawam Nat. Bank, 190 Mass. 20, 76 N. E. 449.

Grant of Right to Cut Timber on Part of Land. — Turner *v.* Lawson, 144 Ala. 432, 39 So. 755.

180. 1. Damages are fixed as of the date of the breach of the incumbrance. Bailey *v.* Agawam Nat. Bank, 190 Mass. 20, 76 N. E. 449.

4. Mandigo *v.* Conway, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 389, 90 N. Y. Supp. 324; D'Amelio *v.* Abraham, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 386, 105 N. Y. Supp. 1019; *In re* Hanlin, (Wis. 1907) 113 N. W. 411.

181. 1. **Inchoate Right of Dower.**— Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759.

2. Scoggin *v.* Hudgins, 78 Ark. 531, 94 S. W. 684, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 203 [181]; Newburn *v.* Lucas, 126 Iowa 85, 101 N. W. 731; Bailey *v.* Agawam Nat. Bank, 190 Mass. 20, 76 N. E. 449; McCrillis *v.* Thomas, 110 Mo. App. 699, 85 S. W. 673.

183. 2. Patterson *v.* Cappon, 125 Wis. 198, 102 N. W. 1083.

8. Eames *v.* Armstrong, 142 N. Car. 506, 55 S. E. 405; Eames *v.* Armstrong, (N. Car. 1907) 59 S. E. 165.

184. 4. **The Covenantor May Not Demand a Reconveyance of the Whole Tract** where there has been a failure of title to only a part of the land conveyed. Olmstead *v.* Rawson, 110 N. Y. App. Div. 809, 97 N. Y. Supp. 239.

186. 5. Castor *v.* Dufur, 133 Iowa 535, 111 N. W. 43.

187. 3. Eames *v.* Armstrong, (N. Car. 1907) 59 S. E. 165.

188. 5. Talbert *v.* Mason, (Iowa 1907) 113 N. W. 918.

Covenant to Fence Right of Way.— For breach of the covenant to fence the right of way, a railroad company is liable for killing cattle of subsequent grantees. Indianapolis Northern Traction Co. *v.* Harbaugh, 38 Ind. App. 115, 78 N. E. 80; Indianapolis Northern Traction Co. *v.* Spurgeon, 38 Ind. App. 702, 78 N. E. 1115.

190. 3. Olmstead *v.* Rawson, 110 N. Y. App. Div. 809, 97 N. Y. Supp. 239, *affirmed* 188 N. Y. 517, 81 N. E. 456.

4. Seitz *v.* People's Sav. Bank, 140 Mich. 106, 103 N. W. 545, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 190; Olmstead *v.* Rawson, 188 N. Y. 517, 81 N. E. 456; McBride *v.* Burns, (Tex. Civ. App. 1905) 88 S. W. 394; Morgan *v.* Haley, 107 Va. 331, 58 S. E. 564.

191. **1.** Seitz *v.* People's Sav. Bank, 140 Mich. 106, 103 N. W. 545, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191.

2. Citizens' Bank *v.* Jeansonne, (La. 1907) 45 So. 367; Brown *v.* Taylor, 115 Tenn. 1, 88 S. W. 933; Cates *v.* Field, (Tex. Civ. App. 1905) 85 S. W. 52; Shook *v.* Laufer, (Tex. Civ. App. 1907) 100 S. W. 1042; Morgan *v.* Haley, 107 Va. 331, 58 S. E. 564.

192. **4. Notice Is Not Essential** to the recovery of expenses if it is impossible by the exercise of reasonable care for the covenantee to notify the covenantor. Quick *v.* Walker, 125 Mo. App. 257, 102 S. W. 33.

8. Olmstead *v.* Rawson, 188 N. Y. 517, 81 N. E. 456.

196. **3.** Deaver *v.* Deaver, 137 N. Car. 240, 49 S. E. 113.

197. **5.** Eames *v.* Armstrong, 142 N. Car. 506, 55 S. E. 405.

198. **2.** Eames *v.* Armstrong, 142 N. Car. 506, 55 S. E. 405.

6. Proof of Adverse Possession at the time of the conveyance is sufficient without proof of the title of the party so holding. Prestwood *v.* McGowin, 148 Ala. 475, 41 So. 779.

199. **4.** McCall *v.* Wilkes, 121 Ga. 722, 49 S. E. 722; Pierse *v.* Bronnenberg, (Ind. App. 1907) 81 N. E. 739, *reversing* (Ind. App. 1906) 79 N. E. 419.

200. **2.** Newburn *v.* Lucas, 126 Iowa 85, 101 N. W. 731; Patterson *v.* Cappon, 125 Wis. 198, 102 N. W. 1083.

202. **2.** Mayer *v.* Wooten, (Tex. Civ. App. 1907) 102 S. W. 423; Larkin *v.* Trammel, (Tex. Civ. App. 1907) 105 S. W. 552.

6. Cates *v.* Field, (Tex. Civ. App. 1905) 85 S. W. 52.

203. **4.** Scoggin *v.* Hudgins, 78 Ark. 531, 94 S. W. 685, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203; Peterson *v.* Steinhoff, 44 Wash. 189, 87 Pac. 118, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203.

5. Baumgarten *v.* Chipman, 30 Utah 466, 86 Pac. 411.

7. Failure of Covenantor to Defend. — If the covenantor fails to defend after notice he is bound by the judgment. Olmstead *v.* Rawson, 110 N. Y. App. Div. 809, 97 N. Y. Supp. 239, *affirmed* 188 N. Y. 517, 81 N. E. 456.

205. **1.** Richstein *v.* Welch, (Mass. 1908) 83 N. E. 417.

2. Morgan *v.* Haley, 107 Va. 331, 58 S. E. 564.

206. **1.** Samson *v.* Zimmerman, 73 Kan. 654, 85 Pac. 757, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 206; Richstein *v.* Welch, (Mass. 1908) 83 N. E. 417; Peterson *v.* Steinhoff, 44 Wash. 189, 87 Pac. 118.

2. Samson *v.* Zimmerman, 73 Kan. 654, 85 Pac. 757, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 206.

207. **5.** McCrillis *v.* Thomas, 110 Mo. App. 699, 85 S. W. 673; Sachse *v.* Loeb, (Tex. Civ. App. 1907) 101 S. W. 450; Baumgarten *v.* Chipman, 30 Utah 466, 86 Pac. 411, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 207, 208.

210. **2.** Talbott *v.* Donaldson, 71 Kan. 483, 80 Pac. 981; Swinney *v.* Cockrell, 86 Miss. 318, 38 So. 353; Bullitt *v.* Coryell, (Tex. Civ. App. 1905) 85 S. W. 482.

212. **5.** Lennig *v.* Harrisonburg Land, etc., Co., 107 Va. 458, 59 S. E. 400.

218. **4.** Sanders *v.* Dixon, 114 Mo. App. 229, 89 S. W. 577; Scharer *v.* Pantler, 127 Mo. App. 433, 105 S. W. 668; Morrow *v.* Hasselman, 69 N. J. Eq. 612, 61 Atl. 369; Barton *v.* Slifer, (N. J. 1907) 66 Atl. 899; Leaver *v.* Gorman, (N. J. 1907) 67 Atl. 111; McNichol *v.* Townsend, (N. J. 1907) 67 Atl. 938; De Lima *v.* Mitchell, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 171, 98 N. Y. Supp. 811; Silberman *v.* Uhrlaub, 116 N. Y. App. Div. 869, 102 N. Y. Supp. 299, *affirming* (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 468, 96 N. Y. Supp. 928; Robinson *v.* Edgell, 57 W. Va. 157, 49 S. E. 1027.

Need Not Sue All Violators of Covenant. — Levy *v.* Halcyon Casino Hotel Co., (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 289, 92 N. Y. Supp. 231.

Covenants Restricting a Public Corporation from Exercising the Right of Eminent Domain will not be enforced by injunction. Morris, etc., R. Co. *v.* Hoboken, etc., R. Co., 68 N. J. Eq. 328, 59 Atl. 332.

Right to Injunction May Be Lost by Laches. — Island Heights Assoc. *v.* Island Heights Water Power, etc., Co., (N. J. 1906) 62 Atl. 773.

219. **1.** Herold *v.* Columbia Invest., etc., Co., (N. J. 1907) 67 Atl. 607.

220. **2.** Flege *v.* Covington, etc., El. R., etc., Co., (Ky. 1906) 91 S. W. 738.

221. **5.** Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10.

222. **2. Defects in Title Do Not Entitle Grantor to Rescission.** — Bibber *v.* Carville, 101 Me. 59, 63 Atl. 303, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 222.

223. **2.** Kytle *v.* Kytle, 128 Ga. 387, 57 S. E. 748.

Unsealed Covenants. — In *Georgia* it is held that a covenant need not be under seal and that if not sealed the statute regarding simple contracts applies. Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701.

224. **5.** To the same effect as the third paragraph of the original note, see Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224; Jones *v.* Haseltine, 124 Mo. App. 674, 102 S. W. 40.

8. Chenault *v.* Thomas, (Ky. 1904) 83 S. W. 109; Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224.

225. **4.** Scoggin *v.* Hudgins, 78 Ark. 531, 94 S. W. 684; *In re* Hanlin, (Wis. 1907) 113 N. W. 411.

CREATE.

228. **5.** *Ex p.* Heyman, 45 Tex. Crim. 540, 78 S. W. 349, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 228.

Create Corporation. — See Marion Trust Co. *v.* Bennett, (Ind. 1907) 82 N. E. 782.

CREDIT INSURANCE.

237. 2. **Agent's Authority.** — Where the application blank was simple in form and recited that it was a part of the contract and was made by the applicant or his agent, it was held that any knowledge of the agent as to inaccurate statements made in the application could not be imputed to the company. Baer *v.* American Credit-Indemnity Co., 116 N. Y. App. Div. 233, 101 N. Y. Supp. 672.

Waiver of Breach of Warranty. — Where the adjuster of the company made an offer of settlement without knowledge of a material breach of the warranty in the application, and which offer was not accepted, it was held not to constitute a waiver of the breach. Baer *v.* American Credit-Indemnity Co., 116 N. Y. App. Div. 233, 101 N. Y. Supp. 672.

CREDITOR.

240. 1. Calkins *v.* Howard, 2 Cal. App. 233, 83 Pac. 280.

Under the Massachusetts Statute the term *creditor* includes those who have acquired a lien either by a legal or equitable attachment, or by seizure and levy on execution. Hill *v.* Hill, (Mass. 1907) 82 N. E. 690.

243. 1. **Bankruptcy.** — An indorser or surety on the obligation of a bankrupt is a *creditor*. Kobusch *v.* Hand, (C. C. A.) 156 Fed. 660.

244. 1. Horstman *v.* Little, (Tex. Civ. App. 1905) 88 S. W. 286.

CRIME — CRIMINAL.

248. 3. Stone *v.* Paducah, 120 Ky. 322, 86 S. W. 531.

4. Statutory Definition of Crime. — Powers *v.* People, 114 Ill. App. 323.

250. 1. Baxter *v.* State, (Oregon 1907) 88 Pac. 677; Stone *v.* Paducah, 120 Ky. 322, 86 S. W. 531.

252. 1. **Criminal Case.** — State *v.* Cornwell, 14 Wyo. 526, 85 Pac. 977.

253. 3. See Baxter *v.* State, (Oregon 1907) 88 Pac. 677.

CRIMINAL CONVERSATION.

261. 3. Lewis *v.* Roby, 79 Vt. 487, 65 Atl. 524, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 261.

4. Lewis *v.* Roby, 79 Vt. 487, 65 Atl. 524, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 261.

262. 2. Dodge *v.* Rush, 28 App. Cas. (D. C.) 149, 8 Ann. Cas. 671.

5. Dodge *v.* Rush, 28 App. Cas. (D. C.) 149, 8 Ann. Cas. 671.

7. Dodge *v.* Rush, 28 App. Cas. (D. C.) 149, 8 Ann. Cas. 671.

263. 5. C. *v.* D., 12 Ont. L. Rep. 24.

Consent or Connivance Is Usually a Question of Fact, but where the undisputed evidence is such that a rational mind could draw no other conclusion therefrom, it then becomes a question of law for the court. Kohlhoss *v.* Mobley, 102 Md. 199, 5 Ann. Cas. 865, 62 Atl. 236.

265. 1. **By Statute in Canada** if the plaintiff dies during the action it may be continued by his personal representatives. C. *v.* D., 10 Ont. L. Rep. 641.

268. 2. Dodge *v.* Rush, 28 App. Cas. (D. C.) 149, 8 Ann. Cas. 671.

3. The Plaintiff or His Wife Is a Competent Witness to prove the marriage. Rust *v.* Oltmer, (N. J. 1907) 67 Atl. 337.

269. 1. Dodge *v.* Rush, 28 App. Cas. (D. C.) 149, 8 Ann. Cas. 671; Knickerbocker *v.* Worthing, 138 Mich. 235, 101 N. W. 540, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 269; Brunelle *v.* Ruell, 140 Mich. 256, 103 N. W. 602; Brown *v.* Evans, 149 Mich. 429, 112 N. W. 1079.

Plaintiff Not Competent Witness. — Rust *v.* Oltmer, (N. J. 1907) 67 Atl. 337.

Wife Not Competent Witness. — Rust *v.* Oltmer, (N. J. 1907) 67 Atl. 337.

Confessions of the Wife made in the absence of both the plaintiff and defendant are not binding on either of them. Kohlhoss *v.* Mobley, 102 Md. 199, 5 Ann. Cas. 865, 62 Atl. 236.

270. 2. **Condonation May Be Evidence in Mitigation of Damages.** — Smith *v.* Hockenberry, 146 Mich. 7, 10 Ann. Cas. 60, 109 N. W. 23.

271. 1. Smith *v.* Hockenberry, 146 Mich. 7, 10 Ann. Cas. 60, 109 N. W. 23.

2. Smith *v.* Hockenberry, 146 Mich. 7, 10 Ann. Cas. 60, 109 N. W. 23.

272. 1. Dodge *v.* Rush, 28 App. Cas. (D. C.) 149, 8 Ann. Cas. 671; Lewis *v.* Roby, 79 Vt. 487, 65 Atl. 524.

CRIMINAL LAW.

276. 1. Hamilton *v.* U. S., 26 App. Cas. (D. C.) 382.

2. Sopher *v.* State, (Ind. 1907) 81 N. E. 913.

4. Sopher *v.* State, (Ind. 1907) 81 N. E. 913.

279. 2. **The Act Must Fall Within the Definition of Either a Felony or Misdemeanor** to constitute an offense or crime under the statutes of *Iowa*. State *v.* Dailey, 127 Iowa 652, 103 N. W. 1008.

280. 5. State *v.* Wilson, (Vt. 1907) 67 Atl. 533.

281. 2. *Ex p.* Brown, 151 Fed. 710; Walden *v.* State, 50 Fla. 151, 39 So. 151; State *v.* Melies, 117 La. 655, 42 So. 199.

Where the Legislature Specifically Designated the Crime as a Misdemeanor it was held that the fact that the punishment was by imprisonment in the penitentiary did not make it a felony. State *v.* Foster, 187 Mo. 590, 86 S. W. 245.

3. Quillin *v.* Com., 105 Va. 883, 8 Ann. Cas. 818, 54 S. E. 333, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 281.

Infamous Crimes. — The definition of the text in regard to felonies applies to infamous crimes. U. S. *v.* Evans, 28 App. Cas. (D. C.) 264.

4. Du Cros *v.* Lambourne, (1907) 1 K. B. 40, 76 L. J. K. B. 50; State *v.* Melies, 117 La. 655, 42 So. 199, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 281; Com. *v.* Sherman, 191 Mass. 439, 78 N. E. 98.

282. 1. Long *v.* State, 127 Ga. 350, 56 S. E. 445.

Malice includes that general malignity and reckless disregard of human life which proceed from a heart devoid of a just sense of social duty and fatally bent on mischief. State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966;

State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Tilghman, (Del. 1906) 63 Atl. 772; State *v.* Johns, (Del. 1906) 65 Atl. 763; State *v.* Honey, (Del. 1906) 65 Atl. 764.

For Other Definitions see State *v.* Harmon, 4 Penn. (Del.) 580, 60 Atl. 866; State *v.* Welling, 129 Iowa 72, 105 N. W. 355; Mann *v.* State, 124 Ga. 760, 53 S. E. 324.

3. State *v.* Thompson, (S. Car. 1907) 56 S. E. 789.

283. 1. Brown *v.* State, 142 Ala. 287, 38 So. 268; Kennedy *v.* State, 147 Ala. 687, 40 So. 658; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Johns, (Del. 1906) 65 Atl. 763; State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Worley, 141 N. Car. 764, 53 S. E. 128; Mann *v.* State, 124 Ga. 760, 53 S. E. 324; Com. *v.* Gibson, 211 Pa. St. 546, 60 Atl. 1086; State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542; State *v.* Jones, 74 S. Car. 456, 54 S. E. 1017.

2. State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; Manning *v.* State, (Tex. Crim. 1906) 98 S. W. 251.

3. State *v.* Harmon, 4 Penn. (Del.) 580, 60 Atl. 866; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Willing, 129 Iowa 72, 105 N. W. 355; State *v.* Thompson, (S. Car. 1907) 56 S. E. 789; State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

Malice Is Presumed in Every Case of Homicide until the contrary appears from circumstances of alleviation, excuse, or justification. State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Johns, (Del. 1906) 65 Atl. 763; Campbell *v.* State, 124 Ga. 432, 52 S. E. 914; Mann *v.* State, 124 Ga. 760, 53 S. E. 324; Tolbirt *v.* State, 124 Ga. 767, 53 S. E. 327.

284. 4. People *v.* Moss, 187 N. Y. 410, 10 Ann. Cas. 309, 80 N. E. 383.

5. Russell *v.* State, (Ala. 1905) 38 So. 291.

285. 1. State *v.* Moore, 129 Iowa 514, 106 N. W. 16.

2. People *v.* Conrad, 102 N. Y. App. Div. 566, 92 N. Y. Supp. 606, *affirmed* 182 N. Y. 529, 74 N. E. 1122.

3. Hudson *v.* State, (Tex. Crim. 1905) 90 S. W. 177.

286. 1. State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147.

4. State *v.* Harmon, 4 Penn. (Del.) 580, 60 Atl. 866; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Tilghman, (Del. 1906) 63 Atl. 772; Long *v.* State, 127 Ga. 350, 56 S. E. 445; State *v.* Daniel, 139 N. Car. 549, 51 S. E. 858; State *v.* Briggs, 58 W. Va. 291, 52 S. E. 218.

5. State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Honey, (Del. 1906) 65 Atl. 764.

9. Brown *v.* State, 142 Ala. 287, 38 So. 268; State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790.

Person Chargeable with Notice of Legal Consequences of His Acts. — State *v.* Moore, 129 Iowa 514, 106 N. W. 16.

287. 1. Skeen *v.* Craig, 31 Utah 32, 86 Pac. 487, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 286 [287].

5. Skeen *v.* Craig, 31 Utah 32, 86 Pac. 487, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 287; Territory *v.* Baca, 11 N. Mex. 559, 71 Pac. 460, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 287.

288. 2. Territory *v.* Baca, 11 N. Mex. 559, 71 Pac. 460.

9. State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Thompson, (S. Car. 1907) 56 S. E. 789; State *v.* Briggs, 58 W. Va. 291, 52 S. E. 218.

290. 1. It Is Not Necessary to Prove a Motive for a crime in order to support a presumption of malice. Campbell *v.* State, 124 Ga. 432, 52 S. E. 914.

2. U. S. *v.* Doo-Noch-Keen, 2 Alaska 624, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 281 [290].

291. 3. Armour Packing Co. *v.* U. S., (C. C. A.) 153 Fed. 1.

It Is Within the Exclusive Province of the Legislature to declare what acts shall constitute a crime. State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 9 Ann. Cas. 634, 108 N. W. 935.

7. State *v.* Dehn, 126 Wis. 168, 105 N. W. 795.

292. 8. State *v.* Wilson, (Vt. 1907) 67 Atl. 533.

9. Still in Force in Vermont. — State *v.* Wilson, (Vt. 1907) 67 Atl. 533.

294. 3. Underwood *v.* State, (Tex. Crim. 1906) 91 S. W. 572.

10. Wooldridge *v.* State, 49 Fla. 137, 38 So. 3.

295. 3. State *v.* Moore, 129 Iowa 514, 106 N. W. 16.

4. People *v.* Conrad, 102 N. Y. App. Div. 566, 92 N. Y. Supp. 606, *affirmed* 182 N. Y. 529, 74 N. E. 1122.

296. 2. State *v.* Currie, 13 N. Dak. 655, 102 N. W. 875; Crowder *v.* State, (Tex. Crim. 1906) 96 S. W. 934.

297. 1. Conversely. — There can be no conviction for receiving stolen goods if they were, in fact, not stolen, although the accused may have believed that they were stolen. People *v.* Jaffe, 185 N. Y. 497, 78 N. E. 169, *reversing* 112 N. Y. App. Div. 516, 98 N. Y. Supp. 486.

2. Ellis *v.* U. S., 206 U. S. 246, 27 U. S. Sup. Ct. 600.

298. 1. State *v.* Bair, 71 Ohio St. 410, 73 N. E. 514; State *v.* Westmoreland, (S. Car. 1907) 56 S. E. 673.

299. 1. State *v.* Chenoweth, 163 Ind. 99, 71 N. E. 197, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 299.

4. Compulsion that Will Excuse a Criminal Act must be clear and conclusive and must arise without the negligence or fault of the person who insists upon it as a defense. Ross *v.* State, (Ind. 1907) 82 N. E. 781.

CROPS.

302. 1. State Mut. Ins. Co. *v.* Clevenger, 17 Okla. 49, 87 Pac. 583, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 302.

303. 1. Turpentine Crop Classed with Fructus Industriales. — Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69.

5. Allen *v.* Bryant, 4 Cal. App. 371, 88 Pac. 294.

6. Chancellor *v.* Teel, 141 Ala. 640, 37 So. 665, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 303.

304. 1. Homestead Entry. — Where a person made an agreement "on shares" with an entryman and sowed grain upon the homestead entry and the entryman afterwards relinquished his entry and another person filed an entry on the land, it was held that the last entryman acquired title to all the crops. Moore *v.* Linn, (Okla. 1907) 91 Pac. 910.

308. 1. Wendt *v.* Stewart, 74 Neb. 855, 105 N. W. 550.

2. Wendt *v.* Stewart, 74 Neb. 855, 105 N. W. 550.

3. Ripe Crops, Grown on an Exempt Homestead, are not for that reason exempt. *In re* Sullivan, (C. C. A.) 148 Fed. 815.

4. Hixon *v.* Callaway, 2 Ga. App. 678, 58 S. E. 1120.

310. 4. *In re* Ring, 132 Iowa 216, 109 N. W. 710; Gordon *v.* James, 86 Miss. 719, 39 So. 18.

Where the Homestead Passes to the Wife upon the death of the husband leaving no minor children, it is held that the growing crops pass with the homestead. Mahoney *v.* Nevins, 190 Mo. 360, 88 S. W. 731.

Where a Grantor Made a Deed in Escrow to be delivered upon her death, which deed conveyed certain land and "the rents, issues, and profits thereof," and the grantor afterwards leased the land for a share of the crops, it was held that upon the death of the grantor while the crops were growing the grantee was entitled to the share agreed upon as rent. Wilhoit *v.* Salmon, 146 Cal. 444, 80 Pac. 705.

Statutory Regulation. — In *Kentucky* by statute (Kentucky Stat. 1903, §§ 3862, 3863), it is provided that if a person dies between March 1st and December 31st the growing crops severed before the last-named day pass to the personal representatives, but if the death occurs between December 31st and March 1st the growing crops pass to the heirs or devisees. Devers *v.* May, (Ky. 1907) 99 S. W. 255.

311. 3. Demers *v.* Graham, (Mont. 1907) 93 Pac. 268, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 311.

312. 1. Delta Cotton Co. *v.* Arkansas Cotton Oil Co., 80 Ark. 431, 97 S. W. 440.

313. 5. Hall *v.* State, 2 Ga. App. 739, 59 S. E. 26.

Sufficient in Equity as between Parties. — Schermerhorn *v.* Gardenier, 107 N. Y. App. Div. 564, 95 N. Y. Supp. 494, *reversing* (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 280, 94 N. Y. Supp. 253.

315. 2. Read Phosphate Co. *v.* S. Weichselbaum Co., 1 Ga. App. 420, 58 S. E. 122.

5. McDavid *v.* Phillips, (Tex. Civ. App. 1906) 94 S. W. 1129.

Designation Sufficient to Bind Parties. — Read Phosphate Co. *v.* S. Weichselbaum Co., 1 Ga. App. 420, 58 S. E. 122.

316. 2. A mortgage on "twelve acres of cotton" was not sufficiently specific. Hampton *v.* State, 124 Ga. 3, 52 S. E. 19.

A Landlord, Who Has Released His Lien in Favor of a Mortgagee, is not such a stranger to the mortgage as to be entitled to take advantage of an insufficient description. Gaulding *v.* Masterson, (Tex. Civ. App. 1907) 101 S. W. 1017.

318. 1. Carmine *v.* Bowen, 104 Md. 198, 64 Atl. 932.

319. 3. *In re* Ring, 132 Iowa 216, 109 N. W. 710.

6. Hetfield *v.* Lawton, 108 N. Y. App. Div. 113, 95 N. Y. Supp. 451; Myer *v.* Roberts, (Oregon 1907) 89 Pac. 1051, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 319.

320. 2. Carmine *v.* Bowen, 104 Md. 198, 64 Atl. 932.

321. 1. Landlord's Interest Entitles Him to Sue for Destruction of Crop. — Gulf, etc., R. Co. *v.* Caldwell, (Tex. Civ. App. 1907) 102 S. W. 461.

Lien Valid against Crops of Sublessee. — Beck *v.* Minnesota, etc., Grain Co., 131 Iowa 62, 107 N. W. 1032.

Landlord Not Bound to Enforce Lien against any Particular Property. — Citizens' Sav. Bank *v.* Woods, 134 Iowa 232, 111 N. W. 929.

Estoppel. — Where the landlord represented to the plaintiffs that he had no claim against the crops of his tenant it was held that he was estopped from setting up any claim to the crops as against advances made by the plaintiffs to the tenant. Chancellor *v.* Law, 148 Ala. 511, 41 So. 514.

2. Waiver of Lien. — Where the evidence showed that the landlord had allowed the tenant to sell the crops and the landlord had received a part of the proceeds of each sale as rent, it was held to be a waiver of the landlord's lien in favor of the buyer. Planters' Compress Co. *v.* Howard, (Tex. Civ. App. 1906) 92 S. W. 44.

But permission to the tenant to sell a portion of the crop is not a waiver of the lien on the entire crop. Antone *v.* Miles, (Tex. Civ. App. 1907) 105 S. W. 39.

There is no waiver until the sale is made, and then only in favor of the purchaser. Sparks *v.* Ponder, (Tex. Civ. App. 1906) 94 S. W. 428.

Lien Does Not Cover Damages for Violation of Rental Contract. — Few *v.* Mitchell, 80 Ark. 243, 96 S. W. 983.

The Landlord's Lien Does Not Give Such a Right of Possession as will enable him to maintain a possessory action against an execution creditor. Evans *v.* Groesbeck, (Tex. Civ. App. 1906) 93 S. W. 1005, *overruling* Groesbeck *v.* Evans, (Tex. Civ. App. 1904) 83 S. W. 430.

Where the Lien Expires within a Certain Time after termination of the tenant's term, it is held that a delivery to the landlord of the tenant's interest in the crop has the effect of preserving the lien. Marquess *v.* Ladd, (Ky. 1907) 100 S. W. 305.

In Arizona the statute (Rev. Stat. Ariz. 1901, par. 2695) gives a lien only on crops grown on a homestead. Hoopes *v.* Brier, 9 Ariz. 154, 80 Pac. 327.

323. 2. Reynolds *v.* Taylor, 144 N. Car. 165, 56 S. E. 871.

3. Lessee Has Equitable Interest Which He Can Mortgage. — Lyon *v.* Phillips, (S. Dak. 1906) 108 N. W. 554.

324. 1. Wanamaker *v.* Buchanan, 33 Pa. Super. Ct. 138, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 324.

In Minnesota it was held that a contract, which authorized the landlord to dispose of enough of the tenant's crops to pay rent and costs, vested in the landlord the rights of a mortgagee only. Agne *v.* Skewis-Moen Co., 98 Minn. 32, 107 N. W. 415.

2. Lewis *v.* Owens, 124 Ga. 228, 52 S. E. 333; Garrick *v.* Jones, 2 Ga. App. 382, 58 S. E. 543.

325. 1. Bourland *v.* McKnight, 79 Ark. 427, 96 S. W. 179; Goodson *v.* Watson, 125 Ga. 413, 54 S. E. 84; Garrick *v.* Jones, 2 Ga. App. 382, 58 S. E. 543; Moore *v.* Linn, (Okla. 1907) 91 Pac. 910; Loveless *v.* Gilliam, 70 S. Car. 391, 50 S. E. 9; Morgan *v.* Tims, (Tex. Civ. App. 1906) 97 S. W. 832; Taylor *v.* Donahoe, 125 Wis. 513, 103 N. W. 1099, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 324, 325.

Cropper Has Not Such Interest as Is Liable to Execution. — Wanamaker *v.* Buchanan, 33 Pa. Super. Ct. 138.

2. Hendricks *v.* Clemmons, 147 Ala. 590, 41 So. 306; Jackson *v.* Savage, 79 Conn. 294, 64 Atl. 737; Rector *v.* Anderson, 96 Minn. 123, 104 N. W. 884; Wendt *v.* Stewart, 74 Neb. 855, 105 N. W. 550; Sparks *v.* Ponder, (Tex. Civ. App. 1906) 94 S. W. 428; Mead *v.* Owen, (Vt. 1907) 67 Atl. 722.

Tenant May Mortgage His Interest Before Division Is Had. — Denison *v.* Sawyer, 95 Minn. 417, 104 N. W. 305.

Whether the Landlord Has an Undivided Interest or Mere Lien depends upon the terms of the agreement. Antone *v.* Miles, (Tex. Civ. App. 1907) 105 S. W. 39; Miles *v.* Dorn, (Tex. Civ. App. 1905) 90 S. W. 707.

Where the Contract Provided for the Delivery of the Landlord's Share at a certain place it was held to be a sufficient authorization to the tenant to make the division. Hill *v.* Page, 108 N. Y. App. Div. 71, 95 N. Y. Supp. 465.

If the Tenant Abandons the Crop the landlord may harvest it and apply the proceeds to the indebtedness of the tenant. Cunningham *v.* Skinner, (Tex. Civ. App. 1906) 97 S. W. 500.

For the Distinction between a Tenancy in Common and a Partnership, see Beaumont Rice Mills *v.* Bridges, (Tex. Civ. App. 1907) 101 S. W. 511.

326. 1. **One Tenant in Common May Maintain an Action in Replevin** against the other for his share of the crop. Adams *v.* Thornton, 5 Cal. App. 455, 90 Pac. 713, *reversing* (Cal. App. 1905) 82 Pac. 215.

327. 3. **Advances Not Needed in Making Crop Not Secured by Lien.** — Bank of Commerce *v.* Sullivan, 117 La. 163, 41 So. 480.

Lien for Full Amount of Seed Furnished Whether All Seed Sown or Not. — Schlosser *v.* Moores, (N. Dak. 1907) 112 N. W. 78.

Lien Bond Assignable. — Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

Where the Advances Consisted of Two Kinds of Grain, and the contract recited the number of bushels and the price per bushel of each, but only one lien was filed indiscriminately upon both crops, it was held that the lien was divisible and should be construed as two separate liens, one upon each particular crop for the amount of seed furnished for that crop. Schlosser *v.* Moores, (N. Dak. 1907) 112 N. W. 78.

328. 1. **Other Debts.** — Brown *v.* State, 2 Ga. App. 657, 58 S. E. 1070.

329. 1. **The Lien Is for Advances to Be Made** and not for those already made. Bank of Commerce *v.* Sullivan, 117 La. 163, 41 So. 480.

2. Farrow *v.* Wooley, (Ala. 1907) 43 So. 144; Lewis *v.* Owens, 124 Ga. 228, 52 S. E. 333; Faircloth *v.* Webb, 125 Ga. 230, 53 S. E. 592; Beckstead *v.* Griffith, 11 Idaho 738, 83 Pac. 764; Amos *v.* Garvin, (Ala. 1905) 39 So. 990.

Lien Not Such Interest as Can Be Mortgaged. — Carleton *v.* Kimbrough, (Ala. 1907) 43 So. 817.

The Cropper Is Not Required to Wait until the Entire Crop Is Disposed Of before foreclosing his special laborer's lien. Garrick *v.* Jones, 2 Ga. App. 382, 58 S. E. 543.

3. Amos *v.* Garvin, (Ala. 1905) 39 So. 990; Shocks-Stephens Store Co. *v.* Richardson, 76 Ark. 282, 88 S. W. 983; Beckstead *v.* Griffith, 11 Idaho 738, 83 Pac. 764; Goodwin *v.* Mitchell, (Miss. 1905) 38 So. 657.

330. 1. Dennis *v.* Crocker-Huffman Land, etc., Co., (Cal. App. 1907) 91 Pac. 425.

Adverse Possession Sufficient to Give Title to Crops. — Cullen *v.* Bowen, 36 Wash. 665, 79 Pac. 305.

5. St. Louis, etc., R. Co. *v.* Hoshall, 82 Ark. 387, 102 S. W. 207; Little Rock, etc., R. Co. *v.* Wallis, 82 Ark. 447, 102 S. W. 390; Risse *v.* Collins, 12 Idaho 689, 87 Pac. 1006, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 330; Berard *v.* Atchison, etc., R. Co., (Neb. 1907) 113 N. W. 537; Suderman-Dolson Co. *v.* Rogers, (Tex. Civ. App. 1907) 104 S. W. 193.

Method of Arriving at Value of Crop at Time of Destruction. — Teller *v.* Bay, etc., Dredging Co., 151 Cal. 209, 90 Pac. 942, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 330; Hunt *v.* St. Louis, etc., R. Co., 126 Mo. App. 261, 103 S. W. 133, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 330; Thompson *v.* St. Louis, etc., R. Co., (Mo. App. 1907) 103 S. W. 135.

331. 1. **Where the Damages Were Caused by an Obstruction of the Water, Preventing Irrigation,** it was held that the measure of damages was the difference between the amount realized for the crop and the amount that would have been realized if water had been furnished, less the cost of harvesting. Tubbs *v.* Roberts, (Colo. 1907) 92 Pac. 220.

CROSSINGS.

338. 3. Atlantic, etc., R. Co. *v.* Atlantic Coast Line R. Co., 129 Ga. 44, 58 S. E. 465.

341. 1. **Railroad Commissions without Jurisdiction of Application for Crossing with Electric Road.** — Kansas City, etc., R. Co. *v.* Railroad Com'rs, 73 Kan. 168, 84 Pac. 755.

342. 4. Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

343. 1. Hydell *v.* Toledo, etc., R. Co., 74 Ohio St. 138, 77 N. E. 1066.

345. 3. **Injunction Dissolved for Want of Equity and because Crossing Needed.** — Suwannee, etc., R. Co. *v.* West Coast R. Co., 50 Fla. 609, [illegible].

346. 3. "In the absence of legislation, the courts cannot annex to the expropriation of a grade crossing the condition that the plaintiff shall, in the present or future, cross by means of an overhead bridge." Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

347. 1. **Pennsylvania Statute.** — The statute is not applicable where the parties have established a crossing and are using it; nor to grade crossings of railroads over ordinary streets and highways. Park Steel Co. *v.* Allegheny Valley R. Co., 213 Pa. St. 322, 62 Atl. 920.

3. *In re* Eastern Wisconsin R., etc., Co., 127 Wis. 641, 107 N. W. 496.

Determination by State Corporation Commission. — Norfolk, etc., R. Co. *v.* Tidewater R. Co., 105 Va. 129, 52 S. E. 852.

349. 2. Norfolk, etc., R. Co. *v.* Tidewater R. Co., 105 Va. 129, 52 S. E. 852.

Crossing at Grade Necessary. — New Castle, etc., R. Co. *v.* Delaware R. Co., 8 Del. Ch. 419, 68 Atl. 386.

353. 1. **Inconvenience and Liability to Accidents.** — Interruption or inconvenience in the transaction of business and increased liability to accidents do not constitute elements of damage. Kansas City, etc., R. Co. *v.* Louisiana Western R. Co., 116 La. 178, 7 Ann. Cas. 831, 40 So. 627.

2. Kansas City, etc., R. Co. *v.* Louisiana Western R. Co., 116 La. 178, 7 Ann. Cas. 831, 40 So. 627.

3. **An Order of the Railroad Commission** as to the construction and operation of an interlocking device at a grade crossing of railroads is not appealable. Grand Rapids, etc., R. Co. *v.* Railroad Commission, 167 Ind. 214, 78 N. E. 981.

354. 1. **Agreement Imposing Duty of Installing and Operating Interlocking System on One Company.** — Lennoxville Crossing Case, 6 Can. R. Cas. 77.

355. 1. **Right of Pedestrian to Rely on Stoppage or Warning.** — Cranch *v.* Brooklyn Heights R. Co., 107 N. Y. App. Div. 341, 95 N. Y. Supp. 169.

356. 1. Roy *v.* East St. Louis, etc., R. Co., 119 Ill. App. 313.

2. Cincinnati, etc., R. Co. *v.* Acrea, (Ind. App. 1907) 82 N. E. 1009.

357. 4. See Baltimore, etc., R. Co. *v.* Kleespies, 39 Ind. App. 151, 78 N. E. 252.

Accident Due to Negligence of Towerman — Road Furnishing Towerman Liable. — Hydell *v.* Toledo, etc., R. Co., 74 Ohio St. 138, 77 N. E. 1066.

Both Companies Liable. — Hamilton *v.* Metropolitan St. R. Co., 114 Mo. App. 504, 89 S. W. 893; Indianapolis Union R. Co. *v.* Waddington, (Ind. 1906) 82 N. E. 1030; Cincinnati, etc., R. Co. *v.* Acrea, (Ind. App. 1907) 82 N. E. 1009.

359. 2. Madera R. Co. *v.* Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27.

Consent of Local Authorities Necessary. — Chicago Terminal R. Co. *v.* Chicago, 220 Ill. 310, 77 N. E. 204; Chicago *v.* Chicago Terminal Transfer R. Co., 121 Ill. App. 197; Chester *v.* Baltimore, etc., R. Co., 217 Pa. St. 402, 66 Atl. 654.

Consent of Local Authorities Not Required. — *Re* Niagara, etc., R. Co., 6 Can. R. Cas. 145; Northern Coal, etc., Co. *v.* Wilkes-Barre, 218 Pa. St. 269, 67 Atl. 352.

361. 4. **The Pennsylvania Statute** prohibiting grade crossing except when allowed by court is not applicable to streets of a borough established about three years before the act went into effect. Ligonier Valley R. Co. *v.* Latrobe, 216 Pa. St. 221, 65 Atl. 548.

362. 2. **Injunction by Abutting Owners against Unauthorized Change by County Commissioners.** — Grinnell *v.* Portage County, 27 Ohio Cir. Ct. 118.

New Hampshire. — The highway may be changed but not discontinued. Blake *v.* Concord, etc., R. Co., 73 N. H. 597, 64 Atl. 202.

New Jersey. — See Metuchen *v.* Pennsylvania R. Co., (N. J. 1906) 64 Atl. 484.

Pennsylvania. — The new road must be of same width as old. Com. *v.* Delaware, etc., R. Co., 215 Pa. St. 149, 64 Atl. 417.

366. 3. **No Duty as to Street Proper Merely Raised in Approaching Viaduct at Crossing.** — State *v.* Northern Pac. R. Co., (Minn. 1907) 110 N. W. 975.

367. 1. Illinois Cent. R. Co. *v.* Davidson, 125 Ill. App. 420, 225 Ill. 618, *affirmed* 80 N. E. 250.

368. 1. Southern R. Co. *v.* Morris, (Ala. 1906) 42 So. 19.

2. **Width of Approaches** — *Abutments Not Allowed on Highway.* — Radnor Tp. *v.* Philadelphia, etc., R. Co., 214 Pa. St. 299, 63 Atl. 694; State *v.* Lehigh, etc., R. Co., 73 N. J. L. 347, 63 Atl. 857; Metuchen *v.* Pennsylvania R. Co., (N. J. 1906) 64 Atl. 484.

4. **Gates** — *Erection in Compliance with Valid Ordinance Not Negligence.* — Seibert *v.* Missouri Pac. R. Co., 188 Mo. 657, 87 S. W. 995.

369. 1. Western R. Co. *v.* Cleghorn, 143 Ala. 392, 39 So. 133; Southern R. Co. *v.* Morris, 143 Ala. 628, 42 So. 17; Louisville, etc., R. Co. *v.* Hubbard, 148 Ala. 45, 41 So. 814; Illinois Cent. R. Co. *v.* Stewart, 230 Ill. 204, 82 N. E. 590; Courtney *v.* Minneapolis, etc., R. Co., 100 Minn. 434, 111 N. W. 399.

Crossing under Bridge — *No Duty to Keep Highway in Repair.* — Metuchen *v.* Pennsylvania R. Co., (N. J. 1906) 64 Atl. 484.

Cannot Escape Duty by Contract. — Choctaw, etc., R. Co. *v.* Wilker, 16 Okla. 384, 84 Pac. 1086.

371. 1. Southern Indiana R. Co. *v.* Corps, 37 Ind. App. 586, 76 N. E. 902.

3. Atchison, etc., R. Co. *v.* Townsend, 71 Kan. 524, 81 Pac. 205; Durr *v.* New York Cent., etc., R. Co., 184 N. Y. 320, 77 N. E. 397.

372. 2. State *v.* Wabash R. Co., (Mo. 1907) 103 S. W. 1137.

374. 1. **Must Strengthen Overhead Bridge.** — Briden *v.* New York, etc., R. Co., 27 R. I. 569, 65 Atl. 315.

3. State *v.* Wabash R. Co., (Mo. 1907) 103 S. W. 1137.

5. Metuchen *v.* Pennsylvania R. Co., (N. J. 1906) 64 Atl. 484.

375. 1. Logan *v.* Lake Shore, etc., R. Co., 148 Mich. 603, 112 N. W. 506.

Defect Must Contribute Directly to Injury. — Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880.

Depot Obstructing View Not Negligence. — Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308.

Depression at Crossing — Negligence a Question for Jury. — Durr *v.* New York Cent., etc., R. Co., 184 N. Y. 320, 77 N. E. 397.

376. 2. McDermott *v.* Severe, 25 App. Cas. (D. C.) 276, *affirmed* 202 U. S. 600, 26 U. S. Sup. Ct. 709; Hopkins *v.* Grand Rapids, etc., R. Co., 147 Mich. 339, 110 N. W. 1064; Southern R. Co. *v.* Clarke, 106 Va. 496, 56 S. E. 274.

5. Piner *v.* Pennsylvania R. Co., (N. J. 1907) 67 Atl. 109.

377. 1. **Failure to Remove Trees Not of Itself Actionable Negligence.** — Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020, 1024.

4. Cincinnati, etc., R. Co. *v.* Morgan County, (C. C. A.) 143 Fed. 798, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 377; State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261.

378. 1. High River *v.* Canadian Pac. R. Co., 6 Can. R. Cas. 344.

379. 4. Cincinnati, etc., R. Co. *v.* Morgan County, (C. C. A.) 143 Fed. 798.

380. 1. State *v.* Northern Pac. R. Co., 98 Minn. 429, 108 N. W. 269; Missouri Pac. R. Co. *v.* Cass County, (Neb. 1906) 107 N. W. 773.

382. 3. State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261. See also DeLucca *v.* North Little Rock, 142 Fed. 597.

8. **Must Give Statutory Notice of Claim.** — Melenbacker *v.* Salamanca, 116 N. Y. App. Div. 691, 101 N. Y. Supp. 1073, *affirmed* 188 N. Y. 370, 80 N. E. 1090.

384. 4. Old Colony R. Co. *v.* Boston, 189 Mass. 116, 75 N. E. 134; Newark *v.* Erie R. Co., (N. J. 1907) 68 Atl. 413; Matter of Terminal R. Co., 122 N. Y. App. Div. 59, 106 N. Y. Supp. 655; Briden *v.* New York, etc., R. Co., 27 R. I. 569, 65 Atl. 315.

Removal in Discretion of Court. — Pittsburgh, etc., R. Co. *v.* Indianapolis, (Ind. 1907) 81 N. E. 487.

New Jersey — Removal Ordered by Chancery Court. — Newark *v.* Central R. Co., (N. J. 1907) 67 Atl. 1009.

385. 2. Spencer's Appeal, 78 Conn. 310, 61 Atl. 1010.

Order Making Impracticable Change Reversed. — An order of the commissioners that the highway be placed under the railroad will be reversed where it appears that the highway would be flooded and impassable part of the time. Matter of Delaware, etc., R. Co., 116 N. Y. App. Div. 62, 101 N. Y. Supp. 9.

386. 2. Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012.

387. 1. International, etc., R. Co. *v.* Glover, (Tex. Civ. App. 1905) 88 S. W. 515.

2. Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Queen Anne's R. Co. *v.* Reed, 5 Penn. (Del.) 226, 59 Atl. 860, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 387.

3. Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155.

388. 2. Southern R. Co. *v.* Carroll, (C. C. A.) 138 Fed. 638; Queen Anne's R. Co. *v.* Reed, 5 Penn. (Del.) 226, 59 Atl. 860; Southern R. Co. *v.* Clark, (Ky. 1907) 105 S. W. 384; Duffy *v.* Atlantic, etc., R. Co., (N. Car. 1907) 56 S. E. 557; Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141.

Train Standing at Crossing Has No Superior Right. — Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596.

Instruction that Train Had Precedence Over Travelers on Highway Held Properly Refused. — Texas, etc., R. Co. *v.* Huber, (Tex. Civ. App. 1906) 95 S. W. 568.

4. Ritter *v.* Chicago, etc., R. Co., 128 Wis. 276, 106 N. W. 1103.

390. 2. Queen Anne's R. Co. *v.* Reed, 5 Penn. (Del.) 226, 59 Atl. 860; Schwarz *v.* Delaware, etc., R. Co., 211 Pa. St. 625, 61 Atl. 255; Corrigan *v.* Pennsylvania R. Co., 218 Pa. St. 336, 67 Atl. 619.

Climbing over Cars at Crossing. — An injury to a person while climbing over cars standing at a crossing may be the proximate result of the negligent obstruction of the crossing. Atchison, etc., R. Co. *v.* Pitts, 123 Ill. App. 607.

Where a train had been unlawfully obstructing a crossing, and a person waiting to cross thought a signal for the train to move, given by waving the arm, was an invitation to him to climb over the cars, and in attempting to do so was injured when the train moved, it was held that the obstruction of the crossing was not the proximate cause of the injury. Corbin *v.* Grand Trunk R. Co., 78 Vt. 458, 63 Atl. 138.

Negligence in Blocking Crossing for Unreasonable Length of Time and Starting Cars Without Signal. — Walker *v.* Southern R. Co., 77 S. Car. 161, 57 S. E. 764; Southern R. Co. *v.* Mouchet, (Ga. App. 1907) 59 S. E. 927.

Greater Care Required During Storm. — Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1906) 97 S. W. 14.

3. Elgin, etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407; Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877.

391. 1. Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 989; Weaver *v.* Columbus, etc., R. Co., 76 Ohio St. 164, 81 N. E. 180; Hine *v.* Erie R. Co., 27 Ohio Cir. Ct. 155; Cleveland, etc., R. Co. *v.* Sivey, 27 Ohio Cir. Ct. 248; Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155.

Evidence — Photographs. — Photographs of the crossing may be admitted in evidence if they are shown to be correct reproductions of the surroundings at the time of the accident. New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804.

A photograph of a crossing taken nearly three years after the occurrence of the accident is not admissible to show that the view was obstructed, unless the conditions at the time of the accident are shown to have been the same. Columbia, etc., R. Co. *v.* State, 105 Md. 34, 65 Atl. 625.

392. 3. Illinois Cent. R. Co. *v.* Morris, (Ky. 1906) 90 S. W. 979.

393. 1. Bilton *v.* Southern Pac. R. Co., 148 Cal. 443, 83 Pac. 440.

3. Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167; Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624; Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279. See also Seaboard Air Line R. Co. *v.* Randolph, 126 Ga. 238, 55 S. E. 47.

Running with Locomotive Rear End Foremost, Preventing Lookout, Negligence. — Grand Trunk R. Co. *v.* Daoust, 14 Quebec K. B. 548.

4. Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883; Louisville, etc., R. Co. *v.* Davis, (Ky. 1908) 106 S. W. 304; Missouri, etc., R. Co. *v.* Nesbit, (Tex. Civ. App. 1906) 97 S. W. 825; Houston, etc., R. Co. *v.* Kauffmann, (Tex. Civ. App. 1907) 101 S. W. 817 (backing engine).

Proper Care Question for Jury. — Griffie *v.* St. Louis, etc., R. Co., 80 Ark. 186, 96 S. W. 750; Johnson *v.* Center, 4 Cal. App. 616, 88 Pac. 727; Baker *v.* Norfolk, etc., R. Co., 144 N. Car. 36, 56 S. E. 553; St. Louis Southwestern R. Co. *v.* Elledge, (Tex. Civ. App. 1906) 93 S. W. 499.

Lookout Required at Private Crossing. — San Antonio, etc., R. Co. *v.* Mertink, (Tex. Civ. App. 1907) 102 S. W. 153.

Lookout Only on Right of Engine Insufficient, There Being Curve to Left. — St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613.

Discharge of Regular Duties by Fireman, Causing Interruption of Lookout by Him, Not Negligence. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211.

Proper Effort Made to Stop Train — No Negligence Shown. — Hummer *v.* Lehigh Valley R. Co., (N. J. 1907) 67 Atl. 1061, former appeal (N. J. 1906) 65 Atl. 126; Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182; Kearns *v.* Southern R. Co., 139 N. Car. 470, 52 S. E. 131; Guilmont *v.* Central Vermont R. Co., 78 Vt. 185, 62 Atl. 54.

394. 1. Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844 (as to duty to avoid collision with runaway team); Rowe *v.* Southern California R. Co., 4 Cal. App. 1, 87 Pac. 220; Atlantic Coast Line R. Co. *v.* Miller, 53 Fla. 246, 44 So. 247; Cox *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 282; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136.

Same Rule Applied to Brakeman on Rear of Backing Train. — Matteson *v.* Southern Pac. R. Co., (Cal. App. 1907) 92 Pac. 101.

2. McDermott *v.* Severe, 25 App. Cas. (D. C.) 276, *affirmed* 202 U. S. 600, 26 U. S. Sup. Ct. 709; Ross *v.* Sibley, etc., R. Co., 116 La. 789, 41 So. 93; Sites *v.* Knott, 197 Mo. 684, 96 S. W. 206; Yeaton *v.* Boston, etc., R. Co., 73 N. H. 285, 61 Atl. 522; Missouri, etc., R. Co. *v.* Nesbit, (Tex. Civ. App. 1905) 88 S. W. 891; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Horton *v.* Houston, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 467. See also Pittsburgh, etc., R. Co. *v.* Ferrell, 39 Ind. App. 515, 78 N. E. 988, holding that the facts failed to show that injury was wilful.

Child Nine Years Old on Track. — Duggan *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 829.

5. Giacomo *v.* New York, etc., R. Co., (Mass. 1907) 81 N. E. 899.

Borough without Power to Require Gates. — *In re* Pennsylvania R. Co., 213 Pa. St. 373, 62 Atl. 986.

Gates Strong Enough to Withstand Runaway Team Not Required. — Brooks *v.* Boston, etc., R. Co., 188 Mass. 416, 74 N. E. 670.

395. 2. Bracken *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 22.

Formation of Ice May Be Excuse for Failure to Operate Gate. — Reckenwald *v.* Erie R. Co., 114 N. Y. App. Div. 490, 99 N. Y. Supp. 1094.

3. Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 100 S. W. 302; Messinger *v.* Pennsylvania R. Co., 215 Pa. St. 497, 64 Atl. 682; Schwarz *v.* Delaware, etc., R. Co., 211 Pa. St. 625, 61 Atl. 255. See also Rogers *v.* West Jersey, etc., R. Co., (N. J. 1907) 68 Atl. 148, holding that evidence as to the gates was admissible as showing the situation at the time of the accident.

"While open gates are an invitation to cross, they do not excuse a traveler approaching a railway crossing from looking or listening, or both, where either would be effective." Shafer *v.* Lehigh Valley R. Co., (N. J. 1907) 66 Atl. 1072.

4. Chicago, etc., R. Co. *v.* Averill, 224 Ill. 516, 79 N. E. 654, *affirming* 127 Ill. App. 275.

396. 1. **Absence of Lights Usually Attached to Gates, Negligence.** — Record *v.* Pennsylvania R. Co., (N. J. 1907) 67 Atl. 1040.

3. **Flagman Not Required in Addition to Gates.** — Brooks *v.* Boston, etc., R. Co., 188 Mass. 416, 74 N. E. 670; Chicago, etc., R. Co. *v.* Wright, 120 Ill. App. 218.

397. 1. Illinois Cent. R. Co. *v.* Coley, (Ky. 1905) 89 S. W. 234; Davis *v.* Pennsylvania R. Co., 34 Pa. Super. Ct. 388. See also Serano *v.* New York Cent., etc., R. Co., 188 N. Y. 156, 80 N. E. 1025.

2. Latham *v.* Staten Island R. Co., 150 Fed. 235.

398. 2. Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988.

4. Aurora, etc., R. Co. *v.* Gary, 123 Ill. App. 163; Barnum *v.* Grand Trunk Western R. Co., 148 Mich. 370, 111 N. W. 1036; Nelson *v.* Long Island R. Co., 109 N. Y. App. Div. 626, 96 N. Y. Supp. 246.

399. 1. Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397.

2. **Flagman Required at Crossing Where Two Tracks "Used for Switching Purposes Exclusively or Regularly."** — Grand Trunk Western R. Co. *v.* State, (Ind. App. 1907) 82 N. E. 1017, considering what crossings come within the terms of the statute.

3. **Unauthorized Ordinance.** — An ordinance requiring a flagman to be kept at a crossing at times when he is manifestly not needed is unreasonable and void. Southern Indiana R. Co. *v.* Bedford, 165 Ind. 272, 75 N. E. 268.

400. 1. Chicago, etc., R. Co. *v.* Wright, 120 Ill. App. 218; McNamara *v.* Chicago, etc., R. Co., 126 Mo. App. 152, 103 S. W. 1093.

But see Cincinnati, etc., R. Co. *v.* Levy, 28 Ohio Cir. Ct. 23.

Performance of Duty Question for Jury. — Southern R. Co. *v.* Stockdon, 106 Va. 693, 56 S. E. 713.

Warning Must Be in Time to Protect Horses from Fright at Train. — Louisville, etc., R. Co. *v.* Sights, (Ky. 1905) 89 S. W. 132.

2. Tiffin *v.* St. Louis, etc., R. Co., 78 Ark. 55, 93 S. W. 564; Chicago, etc., R. Co. *v.* Wright, 120 Ill. App. 218; Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 100 S. W. 302; Louisville, etc., R. Co. *v.* Kessee, (Ky. 1907) 103 S. W. 261.

Carelessness in Giving Signal. — Illinois Cent. R. Co. *v.* Bethea, 88 Miss. 119, 40 So. 813.

Traveler Instructed by Brakeman at Crossing to Pass Between Cars — Cars Negligently Moved. — Boyce *v.* Chicago, etc., R. Co., 122 Mo. App. 168, 96 S. W. 670.

401. 5. Florida Statute Not Applicable to Crossing in Town or City. — Seaboard Air Line R. Co. *v.* Smith, 53 Fla. 375, 43 So. 235.

402. 2. Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948; Toledo, etc., R. Co. *v.* Smart, 116 Ill. App. 523.

403. 2. Seaboard Air Line R. Co. *v.* Smith, 53 Fla. 375, 43 So. 235.

Excessive Rate of Speed During Snow Storm, Negligence. — Grand Trunk R. Co. *v.* Hainer, 36 Can. Sup. Ct. 180.

3. Lake Shore, etc., R. Co. *v.* Barnes, 166 Ind. 7, 76 N. E. 629; Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 219, 91 S. W. 685; Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880; Keiser *v.* Lehigh Valley R. Co., 212 Pa. St. 409, 61 Atl. 903.

Rate of Speed Not Negligence, but Factor to Be Considered on Question of Due Care. — Hartman *v.* Chicago G. W. R. Co., 132 Iowa 582, 110 N. W. 10.

404. 1. Wrightsville, etc., R. Co. *v.* Gornto, 129 Ga. 204, 58 S. E. 769; Harris *v.* Southern R. Co., 129 Ga. 388, 58 S. E. 873; Wamsley *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 82 N. E. 490; Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776. See also Andreas *v.* Canadian Pac. R. Co., 37 Can. Sup. Ct. 1. But see Quebec, etc., R. Co. *v.* Girard, 15 Quebec K. B. 48.

2. High Speed while Crossing Blocked by Train on Other Track — Negligence Question for Jury. — Mosten *v.* Lake Shore, etc., R. Co., 218 Pa. St. 392, 67 Atl. 740.

3. Bilton *v.* Southern Pac. R. Co., 148 Cal. 443, 83 Pac. 440; Toledo, etc., R. Co. *v.* Smart, 116 Ill. App. 523.

405. 1. Norris *v.* New York, etc., R. Co., 78 Conn. 314, 61 Atl. 1075; Schwarz *v.* Delaware, etc., R. Co., 218 Pa. St. 187, 67 Atl. 213; Salothe *v.* Delaware, etc., R. Co., 28 Pa. Super. Ct. 1.

2. Cincinnati, etc., R. Co. *v.* Com., (Ky. 1907) 104 S. W. 771.

3. Bracken *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 22.

Whether Speed Violates Ordinance a Question for Jury. — Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144.

406. 1. Cincinnati, etc., R. Co. *v.* Com., (Ky. 1907) 104 S. W. 771.

3. Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509.

Proximate Cause. — See Charleston, etc., R. Co. *v.* Camp, (Ga. App. 1907) 59 S. E. 710.

407. 1. Erie R. Co. *v.* Farrell, (C. C. A.) 147 Fed. 220; Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141.

Proximate Cause. — Illinois Cent. R. Co. *v.* Watson, (Miss. 1905) 39 So. 69.

Exceeding Speed Ordinance Not Wilful or Wanton Misconduct. — Louisville, etc., R. Co. *v.* Muscat, 147 Ala. 701, 41 So. 302.

Excessive Speed No Negligence as to Trespasser. — McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111.

2. Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776; Minot *v.* Boston, etc., R. Co., 73 N. H. 317, 61 Atl. 509; *In re* Pennsylvania R. Co., 213 Pa. St. 373, 62 Atl. 986; Bamberg *v.* Atlantic Coast Line R. Co., 72 S. Car. 389, 51 S. E. 988.

Warning Required of Hand Car to Avoid Striking Child Coasting on Street. — Burtch *v.* Canadian Pac. R. Co., 13 Ont. L. Rep. 632.

408. 1. *Compare* Hutson *v.* Southern California R. Co., 150 Cal. 701, 89 Pac. 1093.

2. Wabash R. Co. *v.* Misener, 38 Can. Sup. Ct. 94; Greenawaldt *v.* Lake Shore, etc., R. Co., 165 Ind. 219, 74 N. E. 1081; Chesapeake, etc., R. Co. *v.* Crews, 118 Tenn. 52, 99 S. W. 368.

Statute Applicable Only to Trains "Approaching" Crossing. — Houston, etc., R. Co. *v.* Garcia, (Tex. Civ. App. 1905) 90 S. W. 713.

409. 1. Signal Required Before Moving Train at Crossing Although Gates Are Maintained. — Weaver *v.* Southern R. Co., (S. Car. 1907) 56 S. E. 657.

410. 1. Georgia R., etc., Co. *v.* Williams, (Ga. App. 1907) 59 S. E. 846.

Duty Owing to Person Using Crossing Who Reached It by Coming Along Track. — Bowles *v.* Chesapeake, etc., R. Co., 61 W. Va. 272, 57 S. E. 131.

4. Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 56 S. E. 657.

6. Signals Required Only at Grade Crossings. — Lewis *v.* Southern R. Co., 143 Ala. 133, 38 So. 1023; Black *v.* Bessemer, etc., R. Co., 216 Pa. St. 173, 65 Atl. 405; Norfolk, etc., R. Co. *v.* Scruggs, 105 Va. 166, 52 S. E. 834.

Signals Required at Crossing Not at Grade. — Johnson *v.* Southern Pac. R. Co., 147 Cal. 624, 82 Pac. 306.

Arkansas Statute. — Signals are required at crossings of roads not laid out and maintained at the expense of the county. St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613.

Georgia Statute. — A "public road" within the statute requiring signals at crossings is one established by legislative act, an order of court, or created by dedication or prescription. Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508.

Evidence that Street Had Been Abandoned Competent. — Gulf, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 99 S. W. 162.

Continual Warnings When Running Along Street Not Required. — Keller *v.* Philadelphia, etc., R. Co., 214 Pa. St. 82, 63 Atl. 413.

111. 2. Elgin, etc., R. Co. *v.* Hoadley, 122 Ill. App. 165, *affirmed* 220 Ill. 462, 77 N. E. 151.

Kentucky Stat. 1903, § 786, requiring signals to be given at crossings outside incorporated towns, applies to a crossing within the corporate limits of a town but not in the settled part of the town, and practically a country crossing. Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 219, 91 S. W. 685.

Signals Must Be Given at a Signal Post Outside the City Limits, although the crossing is inside the city limits and the whistle is not required to be blown within the city. Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509.

112. 2. Smith *v.* Niagara, etc., R. Co., 9 Ont. L. Rep. 158.

3. Metzler *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 180.

4. Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 52 S. E. 932.

113. 1. St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613; Kahl *v.* Chicago, etc., R. Co., 125 Ill. App. 294; Walker *v.* Wabash R. Co., 193 Mo. 453, 92 S. W. 83; Missouri, etc., R. Co. *v.* Saunders, (Tex. Civ. App. 1907) 103 S. W. 457; Texas, etc., R. Co. *v.* Stoker, (Tex. Civ. App. 1907) 103 S. W. 1183.

Engine Standing Very Near Crossing Must Ring Bell Before Starting. — Atchison, etc., R. Co. *v.* Wilkie, (Kan. 1907) 90 Pac. 775.

2. Bickel *v.* Pennsylvania R. Co., 217 Pa. St. 456, 66 Atl. 756.

114. 4. Hatcher *v.* McDermott, 103 Md. 78, 63 Atl. 214.

5. Hoback *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 241; Annapolis, etc., R. Co. *v.* State, 104 Md. 659, 65 Atl. 434; Hartman *v.* Chicago G. W. R. Co., 132 Iowa 582, 110 N. W. 10, in which case it was held, however, that such precautions as the circumstances require must be taken, and that when the railway company had obstructed a public crossing and thereby diverted travel to a private crossing the latter crossing must be treated as public and the statutory signals given.

Question for Jury. — Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Ayres *v.* Wabash R. Co., 190 Mo. 228, 88 S. W. 608.

Person Using Private Crossing Entitled to Protection of Signals at Public Crossing. — Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810.

115. 1. Peart *v.* Grand Trunk R. Co., 10 Ont. L. Rep. 753; Southern R. Co. *v.* Douglas, 144 Ala. 351, 39 So. 268; Charleston, etc., R. Co. *v.* Camp, (Ga. App. 1907) 59 S. E. 710 (frightening and killing animal); Elgin, etc., R. Co. *v.* Hoadley, 220 Ill. 462, 77 N. E. 151 (injury to employee working at crossing); Louisville, etc., R. Co. *v.* Neltschi, (Ky. 1906) 97 S. W. 14; Kenny *v.* Boston, etc., R. Co., 188 Mass. 127, 74 N. E. 309; Corbs *v.* Michigan Cent. R. Co., 144 Mich. 73, 107 N. W. 892; Illinois Cent. R. Co. *v.* Bethea, 88 Miss. 119, 40 So. 813; Beach *v.* Pennsylvania R. Co., 212 Pa. St. 567, 61 Atl. 1106; Harbert *v.* Atlanta, etc., R. Co., (S. Car. 1907) 59 S. E. 644 (only gross negligence by traveler defeats action); Dougherty *v.* Chicago, etc., R. Co., (S. Dak. 1905) 104 N. W. 672.

116. 1. Illinois Cent. R. Co. *v.* Ackerman, (C. C. A.) 144 Fed. 959; Elgin, etc., R. Co. *v.* Hoadley, 122 Ill. App. 165, *affirmed* 220 Ill. 462, 77 N. E. 151; New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804; Louisville, etc., R. Co. *v.* Sanders, (Ky. 1906) 92 S. W. 937; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Black *v.* Bessemer, etc., R. Co., 216 Pa. St. 173, 65 Atl. 405; Drawdy *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 58 S. E. 980; Galveston, etc., R. Co. *v.* Vallrath, (Tex. Civ. App. 1905) 89 S. W. 279.

Negligence as to Railroad Employee. — Louisville, etc., R. Co. *v.* Martin, 113 Tenn. 266, 87 S. W. 418.

2. Giacomo *v.* New York, etc., R. Co., (Mass. 1907) 81 N. E. 899; Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509.

3. Gipson *v.* Southern R. Co., 140 Fed. 410; Martin *v.* Southern Pac. R. Co., 150 Cal. 124, 88 Pac. 701; Elgin, etc., R. Co. *v.* Hoadley, 122 Ill. App. 165, *affirmed* 220 Ill. 462, 77 N. E. 151; Missouri Pac. R. Co. *v.* Trahern, (Kan. 1907) 91 Pac. 48; Hamblin *v.* New York, etc., R. Co., 195 Mass. 555, 81 N. E. 258; Carlson *v.* Chicago, etc., R. Co., 96 Minn. 504, 105 N. W. 555; Green *v.* Missouri Pac. R. Co., 192 Mo. 131, 90 S. W. 805; Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 52 S. E. 932; Missouri, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 88 S. W. 406; Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 416.

Presumption that Failure to Give Signals Cause of Injury. — McNulty *v.* St. Louis, etc., R. Co., (Mo. 1907) 101 S. W. 1082.

The Fact that an Automatic Bell Does Not Ring does not make the company liable *per se.* Southern Indiana R. Co. *v.* Corps, 37 Ind. App. 586, 76 N. E. 902. See also Cleveland, etc., R. Co. *v.* Schneider, (Ind. App. 1907) 80 N. E. 985.

117. 1. *Arkansas.* — St. Louis, etc., R. Co. *v.* Evans, 80 Ark. 19, 96 S. W. 616.

Georgia. — Atlantic Coast Line R. Co. *v.* Taylor, 125 Ga. 454, 54 S. E. 622; Southern R. Co. *v.* Reynolds, 126 Ga. 657, 55 S. E. 1039.

Illinois. — Illinois Southern R. Co. *v.* Hamill, 226 Ill. 88, 80 N. E. 745.

Kentucky. — Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308.

Massachusetts. — Kelsall *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 674.

New York. — Nelson *v.* Long Island R. Co., 109 N. Y. App. Div. 626, 96 N. Y. Supp. 246.

Pennsylvania. — Meyers *v.* Central R. Co., 218 Pa. St. 305, 67 Atl. 620; Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877; Metzler *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 180; Davis *v.* Pennsylvania R. Co., 34 Pa. Super. Ct. 388.

South Carolina. — Osteen *v.* Southern R. Co., 76 S. Car. 368, 57 S. E. 196.

Texas. — Gulf, etc., R. Co. *v.* Melville, (Tex. Civ. App. 1905) 87 S. W. 863.

Virginia. — Massey *v.* Southern R. Co., 106 Va. 515, 56 S. E. 275.

Canada. — Champaigne *v.* Grand Trunk R. Co., 9 Ont. L. Rep. 589, 4 Can. R. Cas. 207; Sims *v.* Grand Trunk R. Co., 10 Ont. L. Rep. 330, *affirmed* 12 Ont. L. Rep. 39; Misener *v.* Wabash R. Co., 12 Ont. L. Rep. 71.

2. Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167; Bickel *v.* Pennsylvania R. Co., 217 Pa. St. 456, 66 Atl. [illegible].

118. 1. **Railroad Not Insurer of Safety of Traveler at Dangerous Crossing.** — Weaver *v.* Columbus, etc., R. Co., 76 Ohio St. 164, 81 N. E. 180.

2. Elgin, etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988.

119. 2. Pyne *v.* Delaware, etc., R. Co., 212 Pa. St. 143, 61 Atl. 817; Keiser *v.* Lehigh Valley R. Co., 212 Pa. St. 409, 61 Atl. 903. But see Chicago, etc., R. Co. *v.* Louderback, 125 Ill. App. 323.

Habit of Ringing — *Evidence Inadmissible.* — Texas, etc., R. Co. *v.* Frank, (Tex. Civ. App. 1905) 88 S. W. 383. See also Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810.

Electric Bell. — Evidence that an electric bell at a crossing was in the habit of ringing intermittently was competent. Metcalf *v.* Central Vermont R. Co., 78 Conn. 614, 63 Atl. 633.

Uncontradicted Negative Testimony Sufficient. — Rogers *v.* West Jersey, etc., R. Co., (N. J. 1907) 68 Atl. 148.

3. Southern R. Co. *v.* Carroll, (C. C. A.) 138 Fed. 638; Fitzhugh *v.* Boston, etc., R. Co., 195 Mass. 202, 80 N. E. 792; Line *v.* Grand Rapids, etc., R. Co., 143 Mich. 163, 106 N. W. 719; Goodwin *v.* Central R. Co., 73 N. J. L. 576, 64 Atl. 134; Kreamer *v.* Perkiomen R. Co., 214 Pa. St. 219, 63 Atl. 597; Unger *v.* Philadelphia, etc., R. Co., 217 Pa. 106, 66 Atl. 235; Winterbottom *v.* Philadelphia, etc., R. Co., 217 Pa. St. 574, 66 Atl. 864; Schwarz *v.* Delaware, etc., R. Co., 218 Pa. St. 187, 67 Atl. 213; E. Bradford Clark Co. *v.* Baltimore, etc., R. Co., 27 Pa. Super. Ct. 251; Salathe *v.* Delaware, etc., R. Co., 28 Pa. Super. Ct. 1; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88.

4. **Testimony that the Signals Were Especially Listened for** and were not sounded is not merely negative testimony. New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804.

6. London, etc., Trust Co. *v.* Lake Erie, etc., R. Co., 12 Ont. L. Rep. 28.

7. Chicago Terminal Transfer R. Co. *v.* Walton, 165 Ind. 642, 74 N. E. 988; Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012; Wilson *v.* Atlantic Coast Line R. Co., 142 N. Car. 333, 55 S. E. 257.

Not Necessarily Wantonness. — Southern R. Co. *v.* Haywood, (Ala. 1906) 41 So. 949.

120. 2. **Wilfulness of Injury Question for Jury.** — Lacey *v.* Louisville, etc., R. Co., (C. C. A.) 152 Fed. 134.

3. Jonesboro, etc., R. Co. *v.* Moody, (Ark. 1907) 102 S. W. 375; Illinois Cent. R. Co. *v.* Colly, (Ky. 1905) 89 S. W. 234; Hollins *v.* New Orleans, etc., R. Co., 119 La. 418, 44 So. 159; Gerringer *v.* North Carolina R. Co., (N. Car. 1907) 59 S. E. 152. See also Byron *v.* Central R. Co., 215 Pa. St. 82, 64 Atl. 328, where the tender without headlight was being pushed in front of engine.

Negligence to Strike Car and Back It Across Street Without Warning. — Davis *v.* Michigan Cent. R. Co., 142 Mich. 382, 105 N. W. 877.

Backing Engine Obscured by Cloud of Steam Caused by Defect in Engine — Negligence. — Harris *v.* Rex, 9 Can. Exch. 206.

Gross Negligence of Railroad Not Actionable Unless Proximate Cause of Injury. — Baker *v.* Tacoma Eastern R. Co., 44 Wash. 575, 87 Pac. 826.

Negligence a Question for Jury. — Unger *v.* Philadelphia, etc., R. Co., 217 Pa. St. 106, 66 Atl. 235.

4. Sites *v.* Knott, 197 Mo. 684, 96 S. W. 206; Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368; Reid *v.* Atlanta, etc., Air Line R. Co., 140 N. Car. 146, 52 S. E. 307; Bowles *v.* Chesapeake, etc., R. Co., 61 W. Va. 272, 57 S. E. 131.

Switchman with Lantern Near Middle of Top of Car Sufficient Precaution. — Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397.

Statutory Signals. — Whether statutory audible signals are required to be given by a train running backward, *quære.* Goodwin *v.* Central R. Co., 73 N. J. L. 576, 64 Atl. 134.

121. 1. Mulderig *v.* St. Louis, etc., R. Co., 116 Mo. App. 655, 94 S. W. 801.

2. Brunswick, etc., R. Co. *v.* Hoodenpyle, 129 Ga. 174, 58 S. E. 705; Berry *v.* Boston, etc., R. Co., 102 Me. 213, 66 Atl. 386; Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596; Powers *v.* Grand Trunk R. Co., 78 Vt. 436, 63 Atl. 139.

Regular Warning Not Negligence. — Lake Erie, etc., R. Co. *v.* Fike, 35 Ind. App. 554, 74 N. E. 636.

Noises Made in Repairing Track at Crossing Not Negligence. — Courtney *v.* Minneapolis, etc., R. Co., 97 Minn. 69, 106 N. W. 90.

3. Nashville, etc., R. Co. *v.* Reynolds, (Ala. 1906) 41 So. 1001.

Noise Made in Placing Hand Car on Track at Farm Crossing. — Houston, etc., R. Co. *v.* Beard, (Tex. Civ. App. 1906) 93 S. W. 532.

122. 2. Paris, etc., R. Co. *v.* Calvin, (Tex. Civ. App. 1907) 103 S. W. 428.

3. Brunswick, etc., R. Co. *v.* Hoodenpyle, 129 Ga. 174, 58 S. E. 705; Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596; Fay *v.* Minneapolis, etc., R. Co., 131 Wis. 630, 111 N. W. 683.

4. Louisville, etc., R. Co. *v.* Crominarity, 86 Miss. 464, 38 So. 633; Mitchell *v.* St. Louis, etc., R. Co., 122 Mo. App. 50, 97 S. W. 552.

Signal Necessary before Moving Engine Standing Near Crossing. — Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 113 N. W. 791.

123. 2. Baltimore, etc., R. Co. *v.* Slaughter, 167 Ind. 330, 79 N. E. 186 (farm crossing); Ft. Worth, etc., R. Co. *v.* Morris, (Tex. Civ. App. 1907) 101 S. W. 1038.

Must Appear that Object Has Natural Tendency to Frighten Horses. — Forsythe *v.* Canadian Pac. R. Co., 10 Ont. L. Rep. 73; Norfolk, etc., R. Co. *v.* Gee, 104 Va. 806, 52 S. E. 572.

Liable for Fright of Horse at Mail Crane. — Western R. Co. *v.* Cleghorn, 143 Ala. 392, 39 So. 133.

Dead Horse Near Crossing — Notice and Opportunity for Removal Essential to Liability. — Louisville, etc., R. Co. *v.* Armstrong, (Ky. 1907) 105 S. W. 473.

4. Burns *v.* Delaware, etc., Co., 110 N. Y. App. Div. 592, 96 N. Y. Supp. 509.

421. 1. Chicago, etc., R. Co. *v.* Harley, 74 Neb. 462, 104 N. W. 862.

2. Invitation to Use Crossing — Duty to Repair. — Cowans *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1116.

Must Keep up Crossing at "Mill and Church Road." — Goforth *v.* Southern R. Co., 144 N. Car. 569, 57 S. E. 209.

Not Required to Keep Private Crossing in Repair. — Morogne *v.* Charleston, etc., R. Co., 77 S. Car. 437, 58 S. E. 150.

No Duty to Repair Path Across Yards, though Habitually Used by Public. — Atchison, etc., R. Co. *v.* Fuller, 72 Kan. 527, 84 Pac. 140.

6. St. Louis Nat. Stock Yards *v.* Brennan, 126 Ill. App. 601; Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883; Davis *v.* Louisville, etc., R. Co., (Ky. 1906) 97 S. W. 1122; Sites *v.* Knott, 197 Mo. 684, 96 S. W. 206; Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563; Houston, etc., R. Co. *v.* Adams, (Tex. Civ. App. 1906) 98 S. W. 222.

426. 5. Shaw *v.* Georgia R. Co., 127 Ga. 8, 55 S. E. 960; Ruddell *v.* Seaboard Air Line R. Co., 75 S. Car. 290, 55 S. E. 528.

427. 2. Speer *v.* Erie R. Co., (N. J. 1907) 65 Atl. 1024.

428. 3. Herrstrom *v.* Newton, etc., R. Co., 129 Iowa 507, 105 N. W. 436; State *v.* Colorado Southern R. Co., (La. 1907) 44 So. 905; Gratz *v.* Lake Erie, etc., R. Co., 76 Ohio St. 230, 81 N. E. 239; Kendall *v.* Chicago, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 757.

In Mattice *v.* Chicago G. W. R. Co., 130 Iowa 749, 107 N. W. 949, it was held that a person owning land on both sides of a railroad was authorized, under the statute, to demand a private crossing, where, without such crossing, he had to travel a distance of 160 rods to get from one side to the other.

Farms on Opposite Sides of Track Acquired by One Owner — Crossing Required. — Quantock *v.* Missouri, etc., R. Co., 197 Mo. 93, 94 S. W. 978.

But in Wright *v.* Michigan Cent. R. Co., 6 Can. R. Cas. 133, it was held that no absolute right to a crossing exists in such a case.

The Duty Arises to Construct an Additional Crossing, where the farm is afterwards divided into smaller farms. Louisville, etc., R. Co. *v.* Emerson, (Ky. 1907) 100 S. W. 863.

No Duty to Tenant at Sufferance to Build Crossing. — Marsh *v.* Rutland R. Co., (Vt. 1907) 67 Atl. 1098.

No Duty to Maintain Crossing for General Public Use. — Johnson *v.* Chicago, etc., R. Co., 96 Minn. 316, 104 N. W. 961.

429. 4. Hartshorn *v.* Chicago G. W. R. Co., (Iowa 1907) 113 N. W. 840; Perkiomen R. Co. *v.* Bromer, 217 Pa. St. 263, 66 Atl. 359.

Only Necessary Crossings Required. — Johnson *v.* Ohio River R. Co., 61 W. Va. 41, 56 S. E. 200.

430. 1. Chicago, etc., R. Co. *v.* Wynkoop, 73 Kan. 590, 85 Pac. 595; Stone *v.* Missouri Pac. R. Co., 75 Kan. 600, 90 Pac. 251.

4. Purchaser of Railroad Bound. — Baltimore, etc., R. Co. *v.* Brubaker, 217 Ill. 462, 75 N. E. 523; McKenzie *v.* Grand Trunk R. Co., 14 Ont. L. Rep. 671.

431. 1. Measure of Damages Difference of Value of Farm With and Without Farm Crossing. — Brown *v.* Pittsburg, etc., R. Co., 29 Pa. Super. Ct. 131.

4. Damages Recoverable. — Chesapeake, etc., R. Co. *v.* Richardson, (Ky. 1907) 98 S. W. 1042; Kendall *v.* Chicago, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 757.

432. 1. State *v.* Wisconsin Cent. R. Co., 123 Wis. 551, 102 N. W. 16.

Mandatory Injunction. — Marsh *v.* Lehigh, etc., R. Co., 215 Pa. St. 141, 64 Atl. 366.

3. Hartshorn *v.* Chicago G. W. R. Co., (Iowa 1907) 113 N. W. 840; State *v.* Wisconsin Cent. R. Co., 123 Wis. 551, 102 N. W. 16.

4. State *v.* Wisconsin Cent. R. Co., 123 Wis. 551, 102 N. W. 16, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 432.

Overhead Crossing Required. — Herrstrom *v.* Newton, etc., R. Co., 129 Iowa 507, 105 N. W. 436.

CRUDE.

434. 5. Merck *v.* U. S., 143 Fed. 694.

CRUEL AND UNUSUAL PUNISHMENT.

437. 1. Constitutional Provision Refers to Laws, Not Sentences. — People *v.* Cook, 147 Mich. 127, 110 N. W. 514.

440. 2. Raymond *v.* U. S., 25 App. Cas. (D. C.) 555.

3. Punishments Not Cruel or Unusual — Larceny. — Two years at hard labor for stealing a calf. Clampitt *v.* U. S., 6 Indian Ter. 92, 89 S. W. 666.

Insanity. — Commitment to the county jail until the further order of the court, of a person acquitted of murder by reason of insanity. Matter of Brown, 39 Wash. 160, 4 Ann. Cas. 488, 81 Pac. 552.

Assault by Inmate of State Prison. — Punishment of death for assault committed with a deadly weapon by a person under sentence of life imprisonment. *In re* Finley, 1 Cal. App. 198, 81 Pac. 1041.

Assault with Intent to Kill. — Two years' imprisonment in the penitentiary for assault with intent to kill. State *v.* Spaugh, 199 Mo. 147, 97 S. W. 901.

Criminal Libel. — Five years' imprisonment at hard labor for criminal libel. Raymond *v.* U. S., 25 App. Cas. (D. C.) 555.

Husband Allowing Wife to Remain in House of Ill Fame. — Imprisonment for not more than ten years for allowing one's wife to remain in a house of prostitution. People *v.* Conness, 150 Cal. 114, 88 Pac. 821.

Mailing Obscene Matter. — A fine of not more than $5,000 or imprisonment for not more than

five years, or both, for depositing obscene matter in the mails. Rinker *v.* U. S., (C. C. A.) 151 Fed. 755.

Abandonment. — A punishment of not more than one year in state's prison or six months in a county jail, ten days of the latter being on a bread and water diet. Spencer *v.* State, (Wis. 1907) 112 N. W. 462.

Violation of Labor Laws. — An act imposing a penalty for working more than eight hours a day in a mine is not void as imposing cruel and unusual punishment. *Ex p.* Kair, 28 Nev. 425, 6 Ann. Cas. 893, 82 Pac. 453.

Violation of Liquor Laws. — Prohibiting a person twice convicted of violating a liquor law from engaging in the business of selling liquor for two years. Borck *v.* State, (Ala. 1905) 39 So. 580.

Two years' imprisonment for violating the law prohibiting the sale of spirituous liquors. State *v.* Dowdy, 145 N. Car. 432, 58 S. E. 1002; State *v.* Toler, (N. Car. 1907) 58 S. E. 1005. See also State *v.* Wyckoff, (Iowa 1906) 107 N. W. 420.

Where No Time Is Fixed by Statute, it is held that two years' imprisonment is not cruel or unusual. State *v.* Farrington, 141 N. Car. 844, 53 S. E. 954.

111. 1. Under a statute giving the board of county commissioners authority to release a person committed to the county jail for failure to pay a fine and costs, it was held that the refusal of the board to discharge a person who was found unable to pay the fine or costs would not make his imprisonment cruel or unusual punishment. *Ex p.* Ellis, (Kan. 1907) 91 Pac. 81.

An Indeterminate Sentence Law, requiring the court to fix the minimum and maximum punishment, is not void for inflicting cruel and unusual punishments. People *v.* Cook, 147 Mich. 127, 110 N. W. 514.

CRUELTY TO ANIMALS.

116. 1. **It Is within the Police Power of the State** to regulate the manner of killing animals. State *v.* Davis, 72 N. J. L. 345, 61 Atl. 2, *affirmed* 64 Atl. 1134; State *v.* Harned, 72 N. J. L. 353, 61 Atl. 5.

4. Hooker *v.* Gray, 96 L. T. N. S. 706, 23 Times L. Rep. 472.

6. **Shooting at a Dog** with the intention of injuring it, if necessary, to frighten it away, is not necessarily a cruel treatment of it, as the question depends on the degree of injury. Armstrong *v.* Mitchell, 88 L. T. N. S. 870.

117. 1. **Cruelly Working an Animal Unfit for Labor.** — State *v.* Browning, 70 S. Car. 466, 50 S. E. 185.

119. 7. **The Branding of Sheep on the Nose,** when necessary for identification, has been held not to be cruelty within the statute. Boyer *v.* Morgan, 95 L. T. N. S. 27.

150. 1. **Exposure to Savage Beasts.** — In Thielbar *v.* Craigen, 93 L. T. N. S. 600, it was held that there was sufficient evidence of *mens rea* to justify a conviction under the Cruelty to Animals Act (12 & 13 Vict., c. 92), where the defendant, a lion tamer, conducted performances with a pony in the lion's cage and during a performance one of the lions jumped out of its place and put its paws on the pony and sniffed at it, whereupon the defendant drove the lion back to its place, and later in the performance when the defendant's attention was diverted the lion again sprang upon the pony inflicting injuries of which it died.

151. 1. **"Wilfully and Wantonly."** — Where the evidence showed that the act was done with evil intent and without reasonable ground to believe it was lawful, it was a sufficient showing that it was "wilfully and wantonly" done. Allen *v.* State, (Tex. Crim. 1906) 96 S. W. 927.

152. 2. James *v.* State, 1 Ga. App. 779, 57 S. E. 959.

CULVERT.

160. 1. **Bridge and Culvert Not Synonymous Terms.** — Cleveland *v.* Washington, 79 Vt. 498, 65 Atl. 584.

CUMULATIVE EVIDENCE.

162. 1. *California.* — Patterson *v.* San Francisco, etc., Electric R. Co., 147 Cal. 178, 81 Pac. 531.

Iowa. — Hemmer *v.* Burger, 127 Iowa 614, 103 N. W. 957; Arenschield *v.* Chicago, etc., R. Co., 128 Iowa 677, 105 N. W. 200; Renshaw *v.* Dignan, 128 Iowa 722, 105 N. W. 209; Hanousek *v.* Marshalltown, 130 Iowa 550, 107 N. W. 603.

Kansas. — Bousman *v.* Stafford, 71 Kan. 648, 81 Pac. 184.

Kentucky. — Torian *v.* Terrell, 122 Ky. 745, 93 S. W. 10; Todd *v.* Com., (Ky. 1906) 93 S. W. 631. See also Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1907) 104 S. W. 320.

Missouri. — State *v.* Thurman, 121 Mo. App. 374, 98 S. W. 819.

Nebraska. — Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 113 N. W. 524, *affirming* (Neb. 1907) 111 N. W. 797.

New York. — People *v.* Way, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 488, 106 N. Y. Supp. 52.

South Dakota. — *In re* McClellan, (S. Dak. 1907) 111 N. W. 540, *reversing* 107 N. W. 540.

Texas. — Owens *v.* State, 46 Tex. Crim. 14, 89 S. W. 837.

West Virginia. — Stewart *v.* Doak, 58 W. Va. 172, 52 S. E. 95.

For Illustrations, see Illinois Cent. R. Co. *v.* Colly, (Ky. 1905) 86 S. W. 538; Flint *v.* Illinois Cent. R. Co., (Ky. 1906) 97 S. W. 736; State *v.* King, 194 Mo. 474, 92 S. W. 670.

Original Instruments and Copies. — Where the original contract was lost and a party was allowed to introduce a copy, it was held that a new trial could not be granted for newly discovered evidence which consisted of the original contract. Ray *v.* Baker, 165 Ind. 74, 74 N. E. 619.

164. 1. Foss *v.* Smith, 79 Vt. 434, 65 Atl. 553; Anderson *v.* Arpin Hardwood Lumber Co., 131 Wis. 34, 110 N. W. 788.

Opinions and Facts. — Evidence that a certain fact existed is not cumulative to an opinion

that such fact existed. Bousman *v.* Stafford, 71 Kan. 648, 81 Pac. 184.

4. Ogden *v.* Sovereign Camp, etc., (Neb. 1908) 113 N. W. 524, *affirming* 111 N. W. 797; *In re* McClellan, (S. Dak. 1907) 111 N. W. 540, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 464.

466. 2. Anderson *v.* Arpin Hardwood Lumber Co., 131 Wis. 34, 110 N. W. 788.

467. 3. Trometer *v.* District of Columbia, 24 App. Cas. (D. C.) 242, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 467; Austin *v.* Smith, (Iowa 1906) 109 N. W. 289; Burt-Brabb Lumber Co. *v.* Crawford, (Ky. 1905) 86 S. W. 702; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231.

469. 1. Com. *v.* Thomas, (Ky. 1907) 104 S. W. 326; State *v.* Rodriguez, 115 La. 1004, 40 So. 438.

472. 4. A Continuance will ordinarily not be granted for the purpose of enabling a party to secure evidence which is merely cumulative. Harper *v.* State, 79 Ark. 594, 96 S. W. 1003; Phœnix Ins. Co. *v.* Wintersmith, (Ky. 1907) 98 S. W. 987; White *v.* State, (Tex. Crim. 1906) 98 S. W. 264.

The rule does not apply when the evidence is cumulative of the defendant's own testimony. Gathright *v.* State, (Tex. Crim. 1905) 85 S. W. 1076.

473. 1. *Alabama.* — Smith *v.* Birmingham R., etc., Co., 147 Ala. 702, 41 So. 307; Geter *v.* Central Coal Co., (Ala. 1907) 43 So. 367.

Alaska. — Marks *v.* Shoop, 2 Alaska 66; Chase *v.* Alaska Fish, etc., Co., 2 Alaska 82.

Arkansas. — St. Louis Southwestern R. Co. *v.* Byrne, 73 Ark. 377, 84 S. W. 469; Arkadelphia Lumber Co. *v.* Posey, 74 Ark. 377, 85 S. W. 1127; Long *v.* McDaniel, 76 Ark. 292, 88 S. W. 964.

California. — Wood *v.* Moulton, 146 Cal. 317, 80 Pac. 92; Patterson *v.* San Francisco, etc., Electric R. Co., 147 Cal. 178, 81 Pac. 531; People *v.* Davis, 1 Cal. App. 8, 81 Pac. 716, 88 Pac. 1101; Kataoka *v.* Hanselman, 150 Cal. 673, 89 Pac. 1082.

Georgia. — McDuffie *v.* State, 121 Ga. 580, 49 S. E. 708; Andrew *v.* Carithers, 124 Ga. 515, 52 S. E. 653; Watkins *v.* State, 125 Ga. 143, 53 S. E. 1024; Walker *v.* State, 126 Ga. 588, 55 S. E. 483; Park *v.* State, 126 Ga. 575, 55 S. E. 489; Georgia R., etc., Banking Co. *v.* Adams, 127 Ga. 408, 56 S. E. 409; Crawford *v.* State, 128 Ga. 30, 57 S. E. 94; **Moody** *v.* State, 1 Ga. App. 772, 58 S. E. 262; Carter *v.* State, 2 Ga. App. 254, 58 S. E. 532; Thomas *v.* State, 129 Ga. 419, 59 S. E. 246; Rogers *v.* State, 129 Ga. 589, 59 S. L. 288.

Illinois. — Martinatis *v.* People, 223 Ill. 117, 79 N. E. 55; Pratt *v.* Davis, 118 Ill. App. 161; United Breweries Co. *v.* O'Donnell, 124 Ill. App. 24; Kuhn *v.* Williams, 124 Ill. App. 390.

Indiana. — Indianapolis, etc., Rapid Transit Co. *v.* Edwards, (Ind. App. 1905) 74 N. E. 533.

Iowa. — Hemmer *v.* Burger, 127 Iowa 614, 103 N. W. 957; State *v.* Stanley, (Iowa 1905) 104 N. W. 284; Arenschield *v.* Chicago, etc., R. Co., 128 Iowa 677, 105 N. W. 200; Hanousek *v.* Marshalltown, 130 Iowa 550, 107 N. W. 603.

Kansas. — State *v.* Lackey, 72 Kan. 95, 82 Pac. 527; State *v.* Nimerick, 74 Kan. 658, 87 Pac. 722; Strong *v.* Moore, 75 Kan. 437, 89 Pac. 895.

Kentucky. — Illinois Cent. R. Co. *v.* Colly, (Ky. 1905) 86 S. W. 538; Dayton *v.* Hirth, (Ky. 1905) 87 S. W. 1136; Slusher *v.* Hopkins, (Ky. 1905) 89 S. W. 244; Todd *v.* Com., (Ky. 1906) 93 S. W. 631; Hamilton *v.* Com., (Ky. 1906) 96 S. W. 833; Flint *v.* Illinois Cent. R. Co., (Ky. 1906) 97 S. W. 736; Phœnix Ins. Co. *v.* Wintersmith, (Ky. 1907) 98 S. W. 987; Cahill *v.* Mullins, (Ky. 1907) 101 S. W. 336; Metropolitan L. Ins. Co. *v.* Ford, (Ky. 1907) 102 S. W. 876; Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1907) 104 S. W. 320; Norman *v.* Com., (Ky. 1907) 104 S. W. 1024.

Louisiana. — State *v.* Ferguson, 114 La. 70, 38 So. 23; State *v.* Sims, 117 La. 1036, 42 So. 494.

Michigan. — Cummings *v.* Baker, 141 Mich. 536, 104 N. W. 979.

Minnesota. — Hanson *v.* Bailey, 96 Minn. 274, 104 N. W. 969.

Missouri. — State *v.* King, 194 Mo. 474, 92 S. W. 670; State *v.* Church, 199 Mo. 605, 98 S. W. 16; State *v.* Thurman, 121 Mo. App. 374, 98 S. W. 819.

Montana. — State *v.* O'Brien, 35 Mont. 482, 90 Pac. 514.

Nebraska. — Parkins *v.* Missouri Pac. R. Co., (Neb. 1907) 113 N. W. 265.

New York. — Cheever *v.* Scottish Union, etc., Ins. Co., 86 N. Y. App. Div. 331, 83 N. Y. Supp. 732, *affirmed* (N. Y. 1905) 73 N. E. 1121; O'Hara *v.* Brooklyn Heights R. Co., 102 N. Y. App. Div. 398, 92 N. Y. Supp. 777; People *v.* Bonifacio, 119 N. Y. App. Div. 719, 104 N. Y. Supp. 181; People *v.* Way, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 488, 106 N. Y. Supp. 52.

North Carolina. — State *v.* Lilliston, 141 N. Car. 857, 54 S. E. 427; Aden *v.* Doub, (N. Car. 1907) 59 S. E. 162.

Ohio. — Weaver *v.* Linneman, 16 Ohio Dec. 340.

Oklahoma. — Hurst *v.* Territory, 16 Okla. 600, 86 Pac. 280; Martin *v.* Territory, 18 Okla. 370, 90 Pac. 13.

Rhode Island. — Shepard *v.* New York, etc., R. Co., 27 R. I. 135, 61 Atl. 42.

South Dakota. — Hahn *v.* Dickinson, 19 S. Dak. 373, 103 N. W. 642.

Texas. — Owens *v.* State, 46 Tex. Crim. 14, 89 S. W. 837; St. Louis, etc., R. Co. *v.* Ross, (Tex. Civ. App. 1905) 89 S. W. 1105; White *v.* State, (Tex. Crim. 1906) 98 S. W. 264; Cain *v.* Corley, (Tex. Civ. App. 1906) 99 S. W. 168; Goen *v.* State, (Tex. Crim. 1907) 101 S. W. 232; Houston Lighting Power Co. *v.* Hooper, (Tex. Civ. App. 1907) 102 S. W. 133; Coffman *v.* State, (Tex. Crim. 1907) 103 S. W. 1128; Jones *v.* State, (Tex. Crim. 1907) 105 S. W. 349.

Washington. — Brennan *v.* Seattle, 39 Wash. 640, 81 Pac. 1092; Shannon *v.* Tacoma, 41 Wash. 220, 83 Pac. 186.

West Virginia. — Stewart *v.* Doak, 58 W. Va. 172, 52 S. E. 95.

476. 3. Slusher *v.* Hopkins, (Ky. 1905) 89 S. W. 244; Metropolitan L. Ins. Co. *v.* Ford, (Ky. 1907) 102 S. W. 876.

4. Metropolitan L. Ins. Co. *v.* Ford, (Ky. 1907) 102 S. W. 876.

6. Contra. — People *v.* O'Brien, 110 N. Y. App. Div. 26, 96 N. Y. Supp. 1045.

477. 3. Torian *v.* Terrell, (Ky. 1906) 93 S. W. 10, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 477.

4. Torian *v.* Terrell, (Ky. 1906) 93 S. W. 10, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 477.

5. Torian *v.* Terrell, (Ky. 1906) 93 S. W. 10, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 477; State *v.* Ferguson, 114 La. 70, 38 So. 23, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 477; Hanson *v.* Bailey, 96 Minn. 274, 104 N. W. 969; St. Paul Harvester Co. *v.* Faulhaber, (Neb. 1906) 109 N. W. 762; Schnitzler *v.* Oriental Metal Bed Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 356, 93 N. Y. Supp. 1119; James McCreery Realty Corp. *v.* Equitable Nat. Bank, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 508, 104 N. Y. Supp. 959, *affirming* (N. Y. City Ct. Tr. T.) 52 Misc. (N. Y.) 300, 102 N. Y. Supp. 975.

The Rule Should Not Be Applied where it will tend to defeat substantial justice. Brennan *v.* Seattle, 39 Wash. 640, 81 Pac. 1092.

CUMULATIVE PUNISHMENT.

481. 2. People *v.* Coleman, 145 Cal. 609, 79 Pac. 283.

482. 2. People *v.* Coleman, 145 Cal. 609, 79 Pac. 283.

3. Washington. — The laws of 1903, § 3, p. 126, provide for a life sentence on a third conviction of a felony. Under this law it was held that a life sentence was proper in the case of a person convicted of robbery as a third offense, although the code provides that the penalty for robbery should be not more than twenty years. State *v.* Bush, 41 Wash. 13, 82 Pac. 1024.

484. 2. It Is the Question of Conviction which is important, and not the question whether the sentence was served. State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

486. 3. People *v.* Coleman, 145 Cal. 609, 79 Pac. 283; State *v.* Smith, 129 Iowa 709, 6 Ann. Cas. 1023, 106 N. W. 187; State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

487. 3. State *v.* Vaughan, 199 Mo. 108, 97 S. W. 879; Mitchell *v.* State, (Tex. Crim. 1907) 106 S. W. 124.

Indefinite Record. — People *v.* Chadwick, (Cal. 1906) 87 Pac. 384.

5. Extrajudicial Statements of Prisoner Insufficient. — People *v.* Chadwick, (Cal. 1906) 87 Pac. 384.

488. 1. State *v.* Smith, 129 Iowa 709, 6 Ann. Cas. 1023, 106 N. W. 187.

2. State *v.* Smith, 129 Iowa 709, 6 Ann. Cas. 1023, 106 N. W. 187.

4. People *v.* Coleman, 145 Cal. 609, 79 Pac. 283.

489. 3. State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

CUMULATIVE VOTING.

495. 2. Cumulation Authorized by Statute. Cumulative voting for directors of manufacturing and business corporations is authorized by Rev. Stat. Mo. (1899), § 1320, as amended by Laws 1903, p. 124. Matter of P. B. Mathiason Mfg. Co., 122 Mo. App. 437, 99 S. W. 502.

496. 2. Method of Voting. — The stockholder should write on the ballot the names of the person or persons for whom he voted and the number of votes he wishes to cast for each individual voted for. Matter of P. B. Mathi ason Mfg. Co., 122 Mo. App. 437, 99 S. W. 502.

CURRENCY — CURRENT.

498. 2. Brittain *v.* State, (Tex. Crim. 1907) 105 S. W. 817.

499. 1. Vanier *v.* Montreal, 39 Can. Sup. Ct. 151.

CURTESY.

507. 1. Collins *v.* Russell, 184 N. Y. 74, 76 N. E. 731, *affirming* 96 N. Y. App. Div. 136, 89 N. Y. Supp. 414.

509. 1. Loyd *v.* Planters Mut. Ins. Co., 80 Ark. 486, 97 S. W. 658; Murdock *v.* Murdock, (N. H. 1906) 65 Atl. 392; Collins *v.* Russell, 184 N. Y. 74, 76 N. E. 731, *affirming* 96 N. Y. App. Div. 136, 89 N. Y. Supp. 414; Brandmeier *v.* Pond Creek Coal Co., (Pa. 1907) 67 Atl. 951.

2. Collins *v.* Russell, 184 N. Y. 74, 76 N. E. 731, *affirming* 96 N. Y. App. Div. 136, 89 N. Y. Supp. 414; Myers *v.* Hansbrough, 202 Mo. 495, 100 S. W. 1137.

510. 2. Myers *v.* Hansbrough, 202 Mo. 495, 100 S. W. 1137; *In re* Grandjean, (Neb. 1907) 110 N. W. 1108; Brandmeier *v.* Pond Creek Coal Co., (Pa. 1907) 67 Atl. 951.

3. Hunt *v.* Phillips, (Ky. 1907) 105 S. W. 445; Snyder *v.* Jones, 99 Md. 693, 59 Atl. 118; Collins *v.* Russell, 184 N. Y. 74, 76 N. E. 731, *affirming* 96 N. Y. App. Div. 136, 89 N. Y. Supp. 414; Brandmeier *v.* Pond Creek Coal Co., (Pa. 1907) 67 Atl. 951.

Estate of Wife Must Be Freehold. — *In re* Grandjean, (Neb. 1907) 110 N. W. 1108.

511. 2. Hunt *v.* Phillips, (Ky. 1907) 105 S. W. 445; Snyder *v.* Jones, 99 Md. 693, 59 Atl. 118; Collins *v.* Russell, 184 N. Y. 74, 76 N. E. 731, *affirming* 96 N. Y. App. Div. 136, 89 N. Y. Supp. 414.

512. 5. Brandmeier *v.* Pond Creek Coal Co., (Pa. 1907) 67 Atl. 951.

515. 2. Brandmeier *v.* Pond Creek Coal Co., (Pa. 1907) 67 Atl. 951.

516. 1. Is an Insurable Interest. — Loyd *v.* Planters Mut. Ins. Co., 80 Ark. 486, 97 S. W. 658.

3. Hall *v.* Moore, (Ky. 1907) 105 S. W. 414.

517. 1. Cannot Be Conveyed Separately from Wife's Estate. — Unger *v.* Nellinger, (Ind. App. 1906) 77 N. E. 814.

7. Cooke *v.* Doron, 215 Pa. St. 393, 64 Atl. 595, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d

518. 2. Not Subject to Debts of Wife Contracted During Coverture. — Weaver *v.* Gray, 37 Ind. App. 35, 76 N. E. 705; Myers *v.* Hansbrough, 202 Mo. 495, 100 S. W. 1137.

5. *In re* Grandjean, (Neb. 1907) 110 N. W.

520. 1. **Where Land Was Allotted to an Indian Woman,** although the legal title remained in the United States, it was held that the husband was entitled to an estate by curtesy. Parr *v.* U. S., 153 Fed. 462.

Where Lands Were Held by the Wife under Contract of Purchase, it was held that the husband did not have an estate by the curtesy. *In re* Grandjean, (Neb. 1907) 110 N. W. 1108.

521. 3. Weaver *v.* Gray, 37 Ind. App. 35, 76 N. E. 795.

4. Dake *v.* Sewell, 145 Ala. 581, 39 So. 819.

523. 2. *In re* Kaufmann, 142 Fed. 898.

524. 1. Unger *v.* Mellinger, (Ind. App. 1906) 77 N. E. 814.

In Oregon it is held that a contract between husband and wife for release of curtesy is void. McCrary *v.* Biggers, 46 Oregon 465, 81 Pac. 356.

2. Williams *v.* Coffman, (Ky. 1907) 101 S. W. 919.

525. 1. Bolster *v.* Cadick, 29 App. Cas. (D. C.) 405.

Pennsylvania. — Where the wife gave a life estate to two persons and remainder over to a third it was held that the failure of the husband to claim his estate by curtesy during the existence of the life estates was not a bar to such claim after the death of the life tenants. Davis *v.* Fenner, 30 Pa. Super. Ct. 389.

526. 2. Cooke *v.* Doron, 215 Pa. St. 393, 64 Atl. 595.

9. Snyder *v.* Jones, 99 Md. 693, 59 Atl. 118.

Kentucky. — By statute (Ky. Stat. 1903, § 2132), curtesy is abolished and the husband is given an estate for life in one-third of his deceased wife's real estate. Hall *v.* Moore, (Ky. 1907) 105 S. W. 414.

527. 1. Bolster *v.* Cadick, 29 App. Cas. (D. C.) 405; Hall *v.* Craft, (Ky. 1907) 100 S. W. 236.

2. Myers *v.* Hansbrough, 202 Mo. 495, 100 S. W. 1137; Collins *v.* Russell, 96 N. Y. App. Div. 131, 89 N. Y. Supp. 414, 184 N. Y. 74, *affirmed* 76 N. E. 731.

Arkansas. — The estate of curtesy initiate was abolished by constitution of 1874. Loyd *v.* Planters' Mut. Ins. Co., 80 Ark. 486, 97 S. W. 658.

CURTILAGE.

528. 1. Hutchings *v.* State, (Ga. App. 1907) 59 S. E. 848.

Fence — Burglary. — See Hutchings *v.* State, (Ga. App. 1907) 59 S. E. 848.

CYCLONE.

531. 6. **Cyclone Insurance.** — See Maryland Casualty Co. *v.* Finch, (C. C. A.) 147 Fed. 388, construing the word *cyclone* as used in a policy of casualty insurance.

CY-PRES.

535. 1. Cook *v.* Universalist Gen. Convention, 138 Mich. 157, 101 N. W. 217, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 534.

DAILY NEWSPAPER.

535. 4. **Paper Printed in Foreign Language Not Daily Newspaper.** — Bennett *v.* Baltimore, (Md. 1907) 68 Atl. 14.

DAMAGES.

542. 3. Comer *v.* Age-Herald Pub. Co., (Ala. 1907) 44 So. 673, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 542.

10. Irby *v.* Wilde, (Ala. 1907) 43 So. 574; Smith *v.* Whittlesey, 79 Conn. 189, 63 Atl. 1085; Thompson *v.* St. Louis, etc., R. Co., 111 Mo. App. 465, 86 S. W. 469, *quoting* 8 Am. and Eng. Encyc. of Law (2d ed.) 542; Epstein *v.* Berman, (S. Car. 1907) 58 S. E. 1013.

543. 1. Thompson *v.* St. Louis, etc., R. Co., 111 Mo. App. 476, 86 S. W. 465, *quoting* 8 Am. and Eng. Encyc. of Law (2d ed.) 543.

5. Jacksonville Electric Co. *v.* Batchis, (Fla. 1907) 44 So. 933; Louisville, etc., R. Co. *v.* Dickey, 104 S. W. 329, 31 Ky. L. Rep. 894; Thompson *v.* St. Louis, etc., R. Co., 111 Mo. App. 465, 86 S. W. 469, *quoting* 8 Am. and Eng. Encyc. of Law (2d ed.) 543; Lord *v.* Manchester St. R. Co., (N. H. 1907) 57 Atl. 639; Epstin *v.* Berman, (S. Car. 1907) 58 S. E. 1013.

544. 6. D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 153 Fed. 817.

549. 3. Texas, etc., R. Co. *v.* Pemberton, (Tex. Civ. App. 1906) 95 S. W. 1089.

551. 3. Swift *v.* Newport News, 105 Va. 121, 52 S. E. 821, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 551.

4. Blackburn *v.* Alabama G. S. R. Co., 143 Ala. 349, 39 So. 345, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 551.

553. 8. Sappington *v.* Atlanta, etc., R. Co., 127 Ga. 178, 56 S. E. 311; Milledgeville Water Co. *v.* Fowler, 129 Ga. 111, 58 S. E. 643; Grau *v.* Grau, (Ind. App. 1906) 77 N. E. 816; Clark *v.* American Express Co., 130 Iowa 254, 106 N. W. 642; Lampert *v.* Judge, etc., Drug Co., 119 Mo. App. 693, 100 S. W. 659; Dunnevant *v.* Mocksoud, 122 Mo. App. 428, 99 S. W. 515; American Structural Steel Co. *v.* Rush, (Supm. Ct. App. T.) 100 N. Y. Supp. 1019; Independent Trembowler Young Men's Benev. Assoc. *v.* Somach, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 538, 102 N. Y. Supp. 495; N. H. Kiblinger Co. *v.* Sauk Bank, 131 Wis. 595, 111 N. W. 709.

555. 1. Western Union Tel. Co. *v.* Totten, (C. C. A.) 141 Fed. 533; Davis *v.* Arkansas Southern R. Co., 117 La. 320, 41 So. 587.

556. 1. Sproul *v.* Huston, 42 Wash. 106, 84 Pac. 631; Hubenthal *v.* Spokane, etc., R. Co., 43 Wash. 677, 86 Pac. 955.

2. Pardee *v.* Douglas, 122 N. Y. App. Div. 395, 106 N. Y. Supp. 775.

557. 2. Coalgate Co. *v.* Isherwood, (Indian Ter. 1907) 104 S. W. 565.

560. 2. Blackburn *v.* Alabama G. S. R. Co., 143 Ala. 349, 39 So. 345, *quoting* 8 Am. and Eng. Encyc. of Law (2d ed.) 560.

3. Blackburn *v.* Alabama G. S. R. Co., 143 Ala. 349, 39 So. 345, *quoting* 8 Am. and Eng. Encyc. of Law (2d ed.) 560.

5. Blackburn *v.* Alabama G. S. R. Co., 143 Ala. 349, 39 So. 345, *quoting* 8 Am. and Eng. Encyc. of Law (2d ed.) 560.

561. 3. McDonald *v.* Kansas City Bolt, etc., Co., 149 Fed. 360, 79 C. C. A. 298; Vandiver *v.* Waller, 143 Ala. 411, 39 So. 136; Woodstock Iron Works *v.* Stockdale, 143 Ala. 553, 39 So. 335, *quoting* 8 Am. and Eng. Encyc.

OF LAW (2d ed.) 561; McRae *v.* Hill, 126 Ill. App. 349; Southern R. Co. *v.* Sittasen, 166 Ind. 257, 76 N. E. 973; Hedden *v.* Schneblin, 126 Mo. App. 478, 104 S. W. 887; Bahr *v.* Manke, (Neb. 1906) 110 N. W. 300; New York Market Gardeners' Assoc. *v.* Adams Dry Goods Co., 115 N. Y. App. Div. 42, 100 N. Y. Supp. 596; Mast *v.* Sapp. 140 N. Car. 533, 53 S. E. 350; Southwestern Cotton Seed Oil Co. *v.* Stribling, 18 Okla. 417, 89 Pac. 1129; Viles *v.* Barre, etc., Traction, etc., Co., 79 Vt. 311, 65 Atl. 104.

567. 10. Foley *v.* Forty-Second St., etc., R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 183, 101 N. Y. Supp. 780.

571. 2. **Erroneous Definition.** — An instruction that proximate cause is "the immediate, direct, actual, natural, efficient, and real cause," is inaccurate. Mastellar *v.* Great Northern R. Co., 100 Minn. 236, 110 N. W. 869.

572. 5. Fishburn *v.* Burlington, etc., R. Co., 127 Iowa 499, 103 N. W. 481, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 572.

576. 2. Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589.

581. 4. Champion Chemical Works *v.* Postal Tel.-Cable Co., 123 Ill. App. 25, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 581; Baltimore Belt R. Co. *v.* Sattler, 102 Md. 592, 62 Atl. 1125.

582. 1. Bennett *v.* Dyer, 102 Me. 361, 66 Atl. 725; Tillinghast-Styles Co. *v.* Providence Cotton Mills, 143 N. Car. 268, 55 S. E. 621.

584. 3. Hunt Bros. Co. *v.* San Lorenzo Water Co., 150 Cal. 51, 87 Pac. 1093; Morrison-Trammell Brick Co. *v.* McWilliams, 127 Ga. 159, 56 S. E. 306; American Express Co. *v.* Jennings, 86 Miss. 338, 38 So. 374, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; Hedden *v.* Schneblin, 126 Mo. App. 478, 104 S. W. 887; Hoye *v.* Pennsylvania R. Co., 114 N. Y. App. Div. 821, 100 N. Y. Supp. 190; New York Market Gardeners' Assoc. *v.* Adams Dry Goods Co., 115 N. Y. App. Div. 42, 100 N. Y. Supp. 596; Illinois Cent. R. Co. *v.* Johnson, 116 Tenn. 624, 94 S. W. 600; Western Union Tel. Co. *v.* Twaddell, (Tex. Civ. App. 1907) 103 S. W. 1120.

588. 8. Holloway *v.* White-Dunham Shoe Co., (C. C. A.) 151 Fed. 216; D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 153 Fed. 817; Gorham *v.* Dallas, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 551.

593. 4. Hooks Smelting Co. *v.* Planters' Compress Co., 72 Ark. 287, 79 S. W. 1052, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 593.

596. 5. Schaeffer Piano Mfg. Co. *v.* National Fire Extinguisher Co., 148 Fed. 159, 78 C. C. A. 293; Sargent *v.* Mason, 101 Minn. 319, 112 N. W. 255.

6. Spears *v.* Fields, 72 S. Car. 395, 52 S. E. 44.

605. 2. *United States.* — D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 153 Fed. 817.

Arkansas. — Ft. Smith Suburban R. Co. *v.* Maledon, 78 Ark. 366, 95 S. W. 472; St. Louis Southwestern R. Co. *v.* Reagan, 79 Ark. 484, 96 S. W. 168.

California. — Mabb *v.* Stewart, 147 Cal. 413, 81 Pac. 1073.

Illinois. — Chicago, etc., R. Co. *v.* Stroud, 129 Ill. App. 355, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

Indiana. — Cromer *v.* Logansport, (Ind. App. 1906) 78 N. E. 1045.

Iowa. — Mystic Milling Co. *v.* Chicago, etc., R. Co., 131 Iowa 10, 107 N. W. 943.

Kentucky. — Louisville, etc., R. Co. *v.* Moore, (Ky. 1907) 101 S. W. 934.

Maine. — Davis *v.* Poland, 102 Me. 192, 66 Atl. 380, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

Michigan. — Beattie *v.* Detroit, 137 Mich. 330, 100 N. W. 574, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

New York. — Napier *v.* Spielmann, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 96, 103 N. Y. Supp. 982; Peirce *v.* Cornell, 117 N. Y. App. Div. 66, 102 N. Y. Supp. 102.

North Carolina. — Tillinghast Styles Co. *v.* Providence Cotton Mills, 143 N. Car. 268, 55 S. E. 621.

Rhode Island. — O'Donnell *v.* Rhode Island Co., 28 R. I. 245, 66 Atl. 578.

South Carolina. — Willis *v.* Western Union Tel. Co., 73 S. Car. 385, 53 S. E. 639, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

South Dakota. — Gardner *v.* Welch, (S. Dak. 1906) 110 N. W. 110.

Texas. — Missouri, etc., R. Co. *v.* Hagan, (Tex. Civ. App. 1906) 93 S. W. 1014.

Wisconsin. — Davidor *v.* Bradford, 129 Wis. 524, 109 N. W. 576.

Canada. — Mawhinney *v.* Porteous, 17 Manitoba 188, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

606. 4. **Though the Damage Is Increased** by the attempts of an injured party to arrest it, the wrongdoer is liable for the full recovery of the damages claimed. Mogollon Gold, etc., Co. *v.* Stout, (N. Mex. 1907) 91 Pac. 724.

607. 1. Kendall *v.* Chicago, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 757.

6. Tradesman Co. *v.* Superior Mfg. Co., 147 Mich. 702, 14 Detroit Leg. N. 57, 111 N. W. 343; Huntington Easy Payment Co. *v.* Parsons, (W. Va. 1907) 57 S. E. 253.

608. 2. *United States.* — Crichfield *v.* Julia, (C. C. A.) 147 Fed. 65, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608; Hampton Stave Co. *v.* Gardner, (C. C. A.) 154 Fed. 805.

Alabama. — Byrne Mill Co. *v.* Robertson, (Ala. 1907) 42 So. 1008; Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613.

California. — Johnson *v.* Levy, 3 Cal. App. 591, 86 Pac. 810.

Georgia. — Handcock *v.* Massee, etc., Lumber Co., 127 Ga. 698, 56 S. E. 1021.

Indiana. — Connersville Wagon Co. *v.* McFarlan Carriage Co., 166 Ind. 123, 76 N. E. 294.

Kansas. — Atchison, etc., R. Co. *v.* Thomas, 70 Kan. 422, 78 Pac. 861, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608.

Louisiana. — Noyes *v.* Noullet, 118 La. 888, 43 So. 539; Currie *v.* Kansas City Southern R. Co., 116 La. 93, 40 So. 542.

Maine. — Chase *v.* Cochran, 102 Me. 431, 67 Atl. 320.

Maryland. — Western Union Tel. Co. *v.* Lehman, (Md. 1907) 67 Atl. 241.

New York. — Weir *v.* Union R. Co., 188 N. Y. 416, 81 N. E. 168.

Oklahoma. — Choctaw, etc., R. Co. *v.* Jacobs, 15 Okla. 493, 82 Pac. 502.

610. 5. Lum Ah Lee *v.* Ah Soong, 16 Hawaii 169, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 610.

611. 7. Hays *v.* Western Union Tel. Co., 70 S. Car. 30, 48 S. E. 608, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 611.

614. 4. Critchfield *v.* Julia, 147 Fed. 65, 77 C. C. A. 297, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 614.

5. Iowa-Minnesota Land Co. *v.* Conner, (Iowa 1907) 112 N. W. 820; Martin *v.* Seaboard Air Line R. Co., 70 S. Car. 13, 48 S. E. 616, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 614; Park *v.* Northport Smelting, etc., Co., (Wash. 1907) 92 Pac. 442.

616. 3. York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604; Shropshire *v.* Adams, (Tex. Civ. App. 1905) 89 S. W. 448.

618. 3. Curran *v.* Smith, 149 Fed. 945, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618, 620.

5. Atchison, etc., R. Co. *v.* Thomas, 70 Kan. 422, 78 Pac. 861, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; Weick *v.* Dougherty, 90 S. W. 966, 28 Ky. L. Rep. 930, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; Hays *v.* Western Union Tel. Co., 70 S. Car. 29, 48 S. E. 608, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618.

619. 1. Hays *v.* Western Union Tel. Co., 70 S. Car. 29, 48 S. E. 608, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 619; Zurif *v.* Great Northern Ins. Co., 29 Quebec Super. Ct. 467, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618 [619].

4. Callahan *v.* Chickasha Cotton Oil Co., 17 Okla. 544, 87 Pac. 331; Thompson *v.* Corbin, 41 Nova Scotia 394, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 619.

620. 4. Ramsey *v.* Meade, 37 Colo. 473, 86 Pac. 1018, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 620; Wilson *v.* Wernwag, 217 Pa. St. 82, 66 Atl. 242.

621. 4. Southern R. Co. *v.* Coleman, (Ala. 1907) 44 So. 837; McConnell *v.* Corona City Water Co., 149 Cal. 60, 85 Pac. 929; Emerson *v.* Pacific Coast, etc., Packing Co., 96 Minn. 1, 104 N. W. 573; Beckwith *v.* New York, 121 N. Y. App. Div. 462, 106 N. Y. Supp. 175; Smith *v.* Kaufman, 30 Pa. Super. Ct. 265.

Only Net Profits Recoverable. — Magnolia Metal Co. *v.* Gale, 189 Mass. 124, 75 N. E. 219.

622. 1. Beekman Lumber Co. *v.* Kittrell, 80 Ark. 228, 96 S. W. 988; Ramsay *v.* Meade, 37 Colo. 473, 86 Pac. 1018, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622; Hayes *v.* Wagner, 220 Ill. 256, 77 N. E. 211; Horn *v.* Carroll, 90 S. W. 559, 28 Ky. L. Rep. 839; Long *v.* O'Bryan, 91 S. W. 659, 28 Ky. L. Rep. 1062; Des Allemands Lumber Co. *v.* Morgan City Timber Co., 117 La. 1, 41 So. 332; Emerson *v.* Pacific Coast, etc., Packing Co., 96 Minn. 8, 104 N. W. 573, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622; Stumpf *v.* Merz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 543, 99 N. Y. Supp. 337; Federal Iron, etc., Bed Co. *v.* Hock, 42 Wash. 668, 85 Pac. 418.

623. 1. Rosenbloom *v.* Maas, (Supm. Ct. App. T.) 97 N. Y. Supp. 210; Belch *v.* Big Store Co., (Wash. 1907) 89 Pac. 174.

624. 1. Goodin *v.* Southern R. Co., 125 Ga. 632, 54 S. E. 720, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623 [624]; Atlas Portland Cement Co. *v.* Hopper, 116 N. Y. App. Div. 445, 101 N. Y. Supp. 948; Stecker *v.* Weaver Coal, etc., Co., 116 N. Y. App. Div. 772, 102 N. Y. Supp. 89; Winston Cigarette Mach. Co. *v.* Wells-Whitehead Tobacco Co., 141 N. Car. 284, 53 S. E. 885; Baker, etc., Mfg. Co. *v.* Clayton, (Tex. Civ. App. 1905) 90 S. W. 519; Madill Oil, etc., Co. *v.* Sanger, (Tex. Civ. App. 1906) 95 S. W. 36.

3. Tucker *v.* Horn, (Ky. 1907) 103 S. W. 717, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624; Weingrad *v.* Kletzky, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 129, 101 N. Y. Supp. 588.

625. 5. Gregory *v.* Slaughter, 99 S. W. 247, 30 Ky. L. Rep. 500; Bartow *v.* Erie R. Co., 73 N. J. L. 12, 62 Atl. 489; Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 574, 581, 53 S. E. 362, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 625; Kendall *v.* Chicago, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 757.

628. 4. **The Jury Must However Be Instructed** as to the criterion of damages. Lexington R. Co. *v.* Herring, (Ky. 1906) 97 S. W. 1127.

5. Scheu *v.* Pennsylvania R. Co., 141 Fed. 495; Reeve *v.* Culusa Gas, etc., Co., (Cal. 1907) 92 Pac. 89; Cincinnati, etc., R. Co. *v.* Champ, 104 S. W. 988, 31 Ky. L. Rep. 1054.

629. 2. Dover *v.* Gloucester Electric Co., 155 Fed. 256; Cleaver *v.* Louisville, etc., R. Co., (Ky. 1907) 100 S. W. 223; Goss *v.* Goss, 102 Minn. 346, 113 N. W. 690; Burke *v.* St. Louis Southwestern R. Co., 120 Mo. App. 683, 97 S. W. 981.

3. Foster *v.* Chicago, etc., R. Co., 134 Iowa 67, 111 N. W. 415; Keeton *v.* St. Louis, etc., R. Co., 116 Mo. App. 281, 92 S. W. 512; Reinhardt *v.* Central Lard Co., (N. J. 1906) 64 Atl. 990; Van De Bogart *v.* Marinette, etc., Paper Co., (Wis. 1907) 112 N. W. 443.

4. *Arkansas.* — St. Louis, etc., R. Co. *v.* Snell, (Ark. 1907) 100 S. W. 67.

California. — Wood *v.* Los Angeles Traction Co., 1 Cal. App. 474, 82 Pac. 547.

Connecticut. — Hull *v.* Douglass, 79 Conn. 266, 64 Atl. 351.

Georgia. — Alabama G. S. R. Co. *v.* Davis, 127 Ga. 89, 55 S. E. 1046.

Illinois. — Coal Belt Electric R. Co. *v.* Kays, 119 Ill. App. 23.

Indiana. — Evansville Electric R. Co. *v.* Lerch, (Ind. App. 1907) 81 N. E. 225.

Iowa. — Wright *v.* Davenport, (Iowa 1905) 104 N. W. 1022.

Kentucky. — Frankfort *v.* Chinn, 89 S. W. 188, 28 Ky. L. Rep. 257; Covington, etc., Bridge Co. *v.* Smith, 89 S. W. 674, 28 Ky. L. Rep. 529; Southern R. Co. *v.* Johnson, (Ky. 1907) 101 S. W. 929.

Maine. — Haynes *v.* Waterville, etc., St. R. Co., 101 Me. 335, 64 Atl. 614.

Minnesota. — McCord *v.* Minneapolis, etc., R. Co., 96 Minn. 517, 105 N. W. 190; Frigstad *v.* Great Northern R. Co., 101 Minn. 40, 111 N. W. 838; Murphy *v.* South St. Paul, 101

Minn. 341, 112 N. W. 259; Bahr *v.* Northern Pac. R. Co., 101 Minn. 314, 112 N. W. 267.

Missouri. — Devoy *v.* St. Louis Transit Co., 192 Mo. 197, 91 S. W. 140; Lindsay *v.* Kansas City, 195 Mo. 166, 93 S. W. 273; Phippin *v.* Missouri Pac. R. Co., 196 Mo. 321, 93 S. W. 410; O'Gara *v.* St. Louis Transit Co., (Mo. 1907) 103 S. W. 54; Mack *v.* Chicago, etc., R. Co., (Mo. App. 1907) 101 S. W. 142.

Montana. — Lewis *v.* Northern Pac. R. Co., (Mont. 1907) 92 Pac. 469.

Oregon. — Sorenson *v.* Oregon Power Co., 46 Oregon 24, 82 Pac. 10.

Texas. — Commercial Telephone Co. *v.* Davis, (Tex. Civ. App. 1906) 96 S. W. 939; Missouri, etc., R. Co. *v.* Nesbit, (Tex. Civ. App. 1906) 97 S. W. 825; St. Louis Southwestern R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 94 S. W. 162; Texas, etc., R. Co. *v.* Conway, (Tex. Civ. App. 1906) 98 S. W. 1070.

Virginia. — Lane *v.* Bott, 104 Va. 615, 52 S. E. 258.

Washington. — Jordan *v.* Seattle, etc., R. Co., (Wash. 1907) 92 Pac. 284; Adams *v.* Peterman Mfg. Co., (Wash. 1907) 92 Pac. 339.

630. **3.** Richardson *v.* Missouri Fire Brick Co., 122 Mo. App. 529, 99 S. W. 778; Byrd *v.* Texas Midland R. Co., (Tex. Civ. App. 1907) 99 S. W. 734.

631. **1. Damages Held Not Excessive.** — Southern R. Co. *v.* Burgess, 143 Ala. 364, 42 So. 35 ($850 for fractured arm and dislocated hip).

Dupuis *v.* Saginaw Valley Traction Co., 146 Mich. 151, 13 Detroit Leg. N. 767, 109 N. W. 413 ($17,000 where plaintiff was a physical and mental wreck and the amount was not in excess of the present worth of his earnings).

Missouri, etc., R. Co. *v.* Box, (Tex. Civ. App. 1906) 93 S. W. 134 ($8,416 for loss of hand).

Thompson *v.* Poplar Bluff, (Mo. App. 1907) 101 S. W. 709 ($500 for injured knee).

Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 369 ($27,500 for loss of both legs).

Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 809 ($8,500 for loss of leg).

Hocking *v.* Windsor Spring Co., 131 Wis. 532, 111 N. W. 685 ($5,000 for loss of eye).

Walker *v.* Simmons Mfg. Co., 131 Wis. 542, 111 N. W. 694 ($5,000 for hand left in practically useless condition).

Damage Held to Be Excessive. — Vester *v.* Rhode Island Co., (R. I. 1906) 67 Atl. 444 ($21,000 for miscarriage and aggravation of dislocated kidney).

635. **2.** Timmerman *v.* Stanley, 123 Ga. 853, 51 S. E. 760, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 632–635.

636. **3.** K. P. Mining Co. *v.* Jacobson, 30 Utah 120, 83 Pac. 728, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 636.

637. **6.** Harris *v.* Faris-Kesl Constr. Co., 13 Idaho 211, 89 Pac. 760; Shurter *v.* Butler, (Tex. Civ. App. 1906) 94 S. W. 1084, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637.

638. **1.** Taylor *v.* Spencer, 75 Kan. 152, 88 Pac. 544, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 638.

639. **5.** O'Meallie *v.* Moreau, 116 La. 1020, 41 So. 243; Magnolia Metal Co. *v.* Gale, 189 Mass. 124, 75 N. E. 219.

640. **3.** Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153; Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167; Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110; Paducah Traction Co. *v.* Burradell, 104 S. W. 709, 31 Ky. L. Rep. 1052; Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279.

642. **1.** St. Louis, etc., R. Co. *v.* Snell, 82 Ark. 62, 100 S. W. 67.

3. Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555; Wood *v.* Chicago, etc., R. Co., 119 Mo. App. 78, 95 S. W. 946; Boney *v.* Atlantic, etc., R. Co., 145 N. Car. 248, 58 S. E. 1082

The Elements of Compensatory Damages must be made known to the jury. Southern R. Co. *v.* Cothran, (Ala. 1906) 42 So. 100.

4. Platt *v.* Ottumwa, (Iowa 1907) 113 N. W. ..

643. **1.** *United States.* — The City of San Antonio, (C. C. A.) 143 Fed. 955.

Delaware. — Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369.

Georgia. — Southern R. Co. *v.* Clariday, 124 Ga. 958, 53 S. E. 461.

Illinois. — Jones, etc., Co. *v.* George, 227 Ill. 64, 10 Ann. Cas. 285, 81 N. E. 4; Chicago, etc., Electric R. Co. *v.* Patton, 122 Ill. App. 174; Field *v.* Winheim, 123 Ill. App. 227.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555; Bolen-Darnall Coal Co. *v.* Williams, (Indian Ter. 1907) 104 S. W. 867.

Iowa. — Vohs *v.* Shorthill, 130 Iowa 538, 107 N. W. 417; Platt *v.* Ottumwa, (Iowa 1907) 113 N. W. 831.

Kentucky. — Illinois Cent. R. Co. *v.* Coley, 89 S. W. 234, 28 Ky. L. Rep. 336; Owensboro City R. Co. *v.* Robertson, 104 S. W. 707, 31 Ky. L. Rep. 1047.

Missouri. — Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453.

North Dakota. — Shoemaker *v.* Sonju, 15 N. Dak. 518, 108 N. W. 42.

Texas. — Houston, etc., R. Co. *v.* Wilkins, (Tex. Civ. App. 1906) 98 S. W. 202; Galveston, etc., R. Co. *v.* Bean, (Tex. Civ. App. 1907) 99 S. W. 721; St. Louis, etc., R. Co. *v.* Andrews, (Tex. Civ. App. 1906) 99 S. W. 871; Texas, etc., R. Co. *v.* Walton, (Tex. Civ. App. 1907) 104 S. W. 415.

Washington. — Shaw *v.* Seattle, 39 Wash. 590, 81 Pac. 1057.

Wisconsin. — Parker *v.* Fairbanks-Morse Mfg. Co., 130 Wis. 525, 110 N. W. 409.

Future Physical Inconvenience is a subject of compensation. Costello *v.* St. Louis Transit Co., 119 Mo. App. 391, 96 S. W. 425.

2. Daigneau *v.* Grand Trunk R. Co., 153 Fed. 593; Tri-City R. Co. *v.* Wiedenhoeft, 118 Ill. App. 581; Louisville, etc., R. Co. *v.* Eaden, 122 Ky. 818, 93 S. W. 7; Steinmann *v.* St. Louis Transit Co., 116 Mo. App. 673, 94 S. W. 799; Goodloe *v.* Metropolitan St. Ry. Co., 129

Mo. 194, 96 S. W. 482; O'Keefe *v.* United R. Co., 124 Mo. App. 613, 101 S. W. 1144; Wilkerson *v.* Metropolitan St. R. Co., 126 Mo. App. 613, 105 S. W. 24; Green *v.* Catawba Power Co., 75 S. Car. 104, 9 Ann. Cas. 1050, 55 S. E. 125, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 643.

3. Purcell *v.* Duncan Co., 107 N. Y. App. Div. 501, 95 N. Y. Supp. 278; Southern R. Co. *v.* Simmons, 105 Va. 651, 55 S. E. 459.

4. Bahr *v.* Northern Pac. R. Co., 101 Minn. 314, 112 N. W. 267.

641. 1. For the Purpose of Showing the Labor Performed by a Married Woman, the plaintiff in the case, evidence of the size of her family is admissible. Latimer *v.* Metropolitan St. R. Co., (Mo. 1907) 103 S. W. 1102.

2. Southern R. Co. *v.* Cunningham, (Ala. 1907) 44 So. 658; McMahon *v.* Bangs, 5 Penn. (Del.) 178, 62 Atl. 1098; Pittsburgh, etc., R. Co. *v.* Ross, (Ind. 1907) 80 N. E. 845; Bettis *v.* Chicago, etc., R. Co., 131 Iowa 46, 108 N. W. 103; Illinois Cent. R. Co. *v.* Morris, 90 S. W. 979, 28 Ky. L. Rep. 956; Illinois Cent. R. Co. *v.* Houchins, 89 S. W. 530, 28 Ky. L. Rep. 499; Banks *v.* Braman, (Mass. 1907) 80 N. E. 799; St. Louis Southwestern R. Co. *v.* Groves, (Tex. Civ. App. 1906) 97 S. W. 1084; Hodd *v.* Tacoma, 45 Wash. 436, 88 Pac. 842; Brown *v.* Blaine, 41 Wash. 287, 83 Pac. 310.

Evidence of Life of Ancestors Admissible. — Haynes *v.* Waterville, etc., St. R. Co., 101 Me. 335, 64 Atl. 614; Sterling *v.* Union Carbide Co., 12 Detroit Leg. N. 712, 142 Mich. 284, 105 N. W. 755.

Party's Age and Physical Condition. — The jury may determine the probable duration of life from evidence as to the party's age and physical condition, without the use of mortality tables. Galveston, etc., R. Co. *v.* Paschall, (Tex. Civ. App. 1906) 92 S. W. 446.

3. But in the Case of Abnormal Individuals or persons suffering from incurable diseases life tables are not admissible. Colbert *v.* Rhode Island Co., (R. I. 1906) 67 Atl. 446.

645. 2. For the Purpose of Showing the Earning Capacity of the Plaintiff his moral character may be considered. Buffalo Creek Coal Min. Co. *v.* Hodges, (Ky. 1906) 98 S. W. 274.

3. Louisville, etc., R. Co. *v.* Daniel, 122 Ky. 256, 91 S. W. 691.

4. *United States.* — The Buffalo, 147 Fed. 301.

Alabama. — Birmingham R., etc., Co. *v.* Rutledge, 142 Ala. 195, 39 So. 338; Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844.

California. — Kline *v.* Santa Barbara Consol. R. Co., 150 Cal. 741, 90 Pac. 125.

Connecticut. — Hull *v.* Douglass, 79 Conn. 266, 64 Atl. 351.

Delaware. — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587.

Georgia. — Atlantic, etc., R. Co. *v.* Bowen, 125 Ga. 460, 54 S. E. 105.

Illinois. — Mattoon *v.* Faller, 117 Ill. App. 68; Chicago City R. Co. *v.* Henry, 218 Ill. 95, 75 N. E. 758, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645; Gibson *v.* Murray, 120 Ill. App. 296.

Iowa. — Vohs *v.* Shorthill, 130 Iowa 538, 107 N. W. 417; Platt *v.* Ottumwa, (Iowa 1907) 113 N. W. 831.

Kentucky. — Louisville, etc., R. Co. *v.* Sights, 89 S. W. 132, 28 Ky. L. Rep. 186; Louisville Gas Co. *v.* Fuller, 122 Ky. 614, 92 S. W. 566; Lexington R. Co. *v.* Herring, 96 S. W. 558, 29 Ky. L. Rep. 794; South Covington, etc., St. R. Co. *v.* Core, 96 S. W. 562, 29 Ky. L. Rep. 836.

Louisiana. — Bentz *v.* Page, 115 La. 560, 39 So. 599.

Massachusetts. — Sibley *v.* Nason, (Mass. 1907) 81 N. E. 887.

Missouri. — Bourke *v.* St. Louis Southwestern R. Co., 120 Mo. App. 683, 97 S. W. 981; Winfrey *v.* St. Louis Transit Co., 122 Mo. App. 388, 99 S. W. 458; Young *v.* Metropolitan St. R. Co., 126 Mo. App. 1, 103 S. W. 135.

New York. — De Yaulus *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 648, 97 N. Y. Supp. 995; Barry *v.* Kurshan, (Supm. Ct. App. T.) 103 N. Y. Supp. 120; Sparks *v.* North Tonawanda, (Supm. Ct. Tr. T.) 106 N. Y. Supp. 44.

South Dakota. — Davis *v.* Holy Terror Min. Co., (S. Dak. 1906) 107 N. W. 374.

Texas. — Green *v.* Houston Electric Co., (Tex. Civ. App. 1905) 89 S. W. 442; Missouri, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1907) 101 S. W. 506; Texas, etc., R. Co. *v.* Middleton, (Tex. Civ. App. 1907) 103 S. W. 203.

Washington. — Shaw *v.* Seattle, 39 Wash. 590, 81 Pac. 1057; Smith *v.* Dow, 43 Wash. 407, 86 Pac. 555; Norman *v.* Bellingham, (Wash. 1907) 89 Pac. 559.

Expenses Incurred for Nursing are proper items of damage although the services were rendered by the wife of the plaintiff who was untrained. Strand *v.* Grinnell Automobile Garage Co., (Iowa 1907) 113 N. W. 488.

646. 1. Louisville, etc., R. Co. *v.* Quinn, 145 Ala. 657, 39 So. 616; Chicago Union Traction Co. *v.* Brody, 123 Ill. App. 331; Andrews *v.* Chicago G. W. R. Co., 129 Iowa 162, 105 N. W. 404; Brinkman *v.* St. Landry Cotton Oil Co., 118 La. 835, 43 So. 458; Wood *v.* Maine Cent. R. Co., 101 Me. 469, 64 Atl. 833; Lange *v.* Missouri Pac. R. Co., 115 Mo. App. 582, 91 S. W. 989; Devine *v.* New York R. Co., (Supm. Ct. App. T.) 96 N. Y. Supp. 1058; Simone *v.* Rhode Island Co., 28 R. I. 186, 66 Atl. 202; Houston, etc., R. Co. *v.* Adams, (Tex. Civ. App. 1906) 98 S. W. 222; Johnson *v.* St. Paul, etc., Coal Co., 131 Wis. 627, 111 N. W. 722.

Where a Father Nurses His Injured Son he is entitled to recover, not the amount of his wages lost, but the value of his service while so nursing. Woodward Iron Co. *v.* Curl, (Ala. 1907) 44 So. 974.

4. Elzig *v.* Bales, (Iowa 1907) 112 N. W. 540; Louisville R. Co. *v.* Blum, 89 S. W. 186, 28 Ky. L. Rep. 253; Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Paducah Traction Co. *v.* Burradell, 104 S. W. 709, 31 Ky. L. Rep. 1052; Allen *v.* Durham Traction Co., 144 N. Car. 288, 56 S. E. 942; Ft. Worth, etc.,

R. Co. *v.* Morris, (Tex. Civ. App. 1907) 101 S. W. 1038.

5. Malone *v.* Sierra R. Co., (Cal. 1907) 91 Pac. 522; Storm *v.* Butte, 35 Mont. 385, 89 Pac. 726.

6. York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604; Metropolitan St. R. Co. *v.* Wishert, (Tex. Civ. App. 1905) 89 S. W. 460.

Amount Paid Evidence of Reasonable Value of Services. — Brown *v.* Blaine, 41 Wash. 287, 83 Pac. 310.

Only Sums "Necessarily" expended or incurred are recoverable. Mullen *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 1000.

7. St. Louis, etc., R. Co. *v.* Leamons, 82 Ark 504, 102 S. W. 363; Southern R. Co. *v.* Broughton, 128 Ga. 814, 58 S. E. 470; Gibler *v.* Terminal R. Assoc., (Mo. 1907) 101 S. W. 37; Schramm *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 96 N. Y. Supp. 176; Schmidt *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 255, 97 N. Y. Supp. 390; Houston, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1905) 89 S. W. 805; Dallas Consol. Electric St. R. Co. *v.* McAllister, (Tex. Civ. App. 1905) 90 S. W. 933; Gulf, etc., R. Co. *v.* Craft, (Tex. Civ. App. 1907) 102 S. W. 170.

But Want of Evidence of the Value of a Father's Services in Nursing His Boy will not prevent the jury from awarding damages, as jurors may well be presumed to be reasonably familiar with the value of such services. Drogmund *v.* Metropolitan St. R. Co., 122 Mo. App. 154, 98 S. W. 1091.

8. Houston, etc., R. Co. *v.* Garcia, (Tex. Civ. App. 1905) 90 S. W. 713.

617. 1. Chicago City R. Co. *v.* Henry, 218 Ill. 92, 75 N. E. 758; Northern Texas Traction Co. *v.* Mullins, (Tex. Civ. App. 1906) 99 S. W. 433; Webster *v.* Seattle, etc., R. Co., 42 Wash. 364, 85 Pac. 2.

2. Cole *v.* Seattle, etc., R. Co., 42 Wash. 462, 85 Pac. 3.

3. Stobier *v.* St. Louis Transit Co., (Mo. 1907) 102 S. W. 651.

618. 3. Tucker *v.* Buffalo Cotton Mills, 76 S. Car. 542, 57 S. E. 626, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 647 [648].

6. Indianapolis, etc., R. Co. *v.* Bennett, 39 Ind. App. 141, 79 N. E. 389; Lewark *v.* Parkinson, 73 Kan. 553, 85 Pac. 601.

9. Gibney *v.* St. Louis Transit Co., (Mo. 1907) 103 S. W. 43.

10. *United States.* — The Buffalo, 147 Fed. 204.

Connecticut. — Smith *v.* Whittlesey, 79 Conn. 189, 63 Atl. 1085.

Delaware. — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792; Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Graboski *v.* New Castle Leather Co., (Del. 1906) 64 Atl. 74; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Indiana. — Union Traction Co. *v.* Sullivan, 38 Ind. App. 513, 76 N. E. 116; Pittsburgh, etc., R. Co. *v.* Collins, (Ind. 1907) 80 N. E. 415.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Kentucky. — Louisville, etc., R. Co. *v.* Cleaver, 89 S. W. 494, 28 Ky. L. Rep. 497; Louisville, etc., R. Co. *v.* Sights, 89 S. W. 132, 28 Ky. L. Rep. 186; Louisville R. Co. *v.* Blum, 89 S. W. 186, 28 Ky. L. Rep. 253; Louisville Gas Co. *v.* Fuller, 122 Ky. 614, 92 S. W. 566; South Covington, etc., St. R. Co. *v.* Core, 96 S. W. 562, 29 Ky. L. Rep. 836; Lexington R. Co. *v.* Herring, 96 S. W. 558, 29 Ky. L. Rep. 794; Paducah Traction Co. *v.* Burradell, 104 S. W. 709, 31 Ky. L. Rep. 1052; Louisville, etc., R. Co. *v.* Barrickman, 104 S. W. 273, 31 Ky. L. Rep. 883; Louisville, etc., R. Co. *v.* Dickey, 104 S. W. 329, 31 Ky. L. Rep. 894.

Louisiana. — Bentz *v.* Page, 115 La. 560, 39 So. 599.

Massachusetts. — Sibley *v.* Nelson, (Mass. 1907) 81 N. E. 887.

Minnesota. — Campbell *v.* Railway Transfer Co., 95 Minn. 375, 104 N. W. 547.

Missouri. — Burke *v.* St. Louis-Southwestern R. Co., 120 Mo. App. 683, 97 S. W. 981; Mack *v.* Chicago, etc., R. Co., (Mo. App. 1907) 101 S. W. 142.

Montana. — Bourke *v.* Butte Electric, etc., Co., 33 Mont. 267, 83 Pac. 470.

New York. — Kronold *v.* New York, 186 N. Y. 40, 78 N. E. 572; Schmidt *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 255, 97 N. Y. Supp. 390; Barry *v.* Kurshan, (Supm. Ct. App. T.) 103 N. Y. Supp. 120.

South Dakota. — Davis *v.* Holy Terror Min. Co., (S. Dak. 1906) 107 N. W. 374.

Texas. — International, etc., R. Co. *v.* Wray, (Tex. Civ. App. 1906) 96 S. W. 74; St. Louis, etc., R. Co. *v.* Neely, (Tex. Civ. App. 1907) 101 S. W. 481; El Paso Southwestern R. Co. *v.* Barrett, (Tex. Civ. App. 1907) 101 S. W. 1025; Texas, etc., R. Co. *v.* Middleton, (Tex. Civ. App. 1907) 103 S. W. 203.

Washington. — Smith *v.* Dow, 43 Wash. 407, 86 Pac. 555; Comrade *v.* Atlas Lumber, etc., Co., 44 Wash. 470, 87 Pac. 517.

Recovery for Future Loss of Time. — Cutter *v.* Des Moines, (Iowa 1907) 113 N. W. 1081.

Recovery for Past, Present, and Prospective Loss of Time. — Abbott *v.* Detroit, 150 Mich. 245, 113 N. W. 1121.

Accident Insurance Will Not Go to Mitigate Defendant's Damages. — Corish *v.* North Jersey St. R. Co., 73 N. J. L. 273, 62 Atl. 1004.

Evidence of Wages Received is admissible as bearing upon the value of time lost on account of injuries, but in the absence of a definite contract of service, or facts from which it may be inferred that the wage was actually lost, no damages can be collected for loss of time. Anderson *v.* Young, 98 Minn. 355, 108 N. W.

Evidence Must Be Given showing a loss of time and its value to support an instruction to the jury to consider loss of time in fixing damages. Barron *v.* Northern Pac. R. Co., (N. Dak. 1907) 113 N. W. 102.

649. **1. Where Wages Are Paid During Disability — Contrary Rule.** — Illinois Cent. R. Co. *v.* Porter, (Tenn. 1906) 94 S. W. 666; Gulf, etc., R. Co. *v.* Wittnebert, (Tex. Civ. App. 1907) 104 S. W. 424.

650. **2. Evidence of Average Monthly Earnings Is Admissible.** — Chicago, etc., R. Co. *v.* Stubbs, 17 Okla. 97, 87 Pac. 293.

Evidence of Earnings Prior to the Injury is admissible. West Pratt Coal Co. *v.* Andrews, (Ala. 1907) 43 So. 348.

Expense of Employment of Assistants may be considered in determining the value of the lost time. Friedman *v.* Brooklyn Heights R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 477, 102 N. Y. Supp. 525.

Wages Earned in Committing a Crime cannot be considered in passing upon the value of the time lost. Murray *v.* Interurban St. R. Co., 118 N. Y. App. Div. 35, 102 N. Y. Supp. 1026.

651. **3.** Western Coal, etc., Co. *v.* Honaker, 79 Ark. 629, 96 S. W. 361; Richardson *v.* Nelson, 221 Ill. 254, 77 N. E. 583; Donk Bros. Coal, etc., Co. *v.* Retzloff, 229 Ill. 194, 82 N. E. 214; Chicago City R. Co. *v.* Schaefer, 121 Ill. App. 334; Wilder *v.* Great Western Cereal Co., 134 Iowa 451, 109 N. W. 789; Hayes *v.* Southern R. Co., 141 N. Car. 195, 53 S. E. 847; Comer *v.* Ritter Lumber Co., 59 W. Va. 690, 8 Ann. Cas. 1105, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 651; Schultz *v.* La Crosse City R. Co., (Wis. 1907) 113 N. W. 658.

Compare Hammer *v.* Caine, (Wash. 1907) 92 Pac. 441, wherein it was held that a minor prosecuting an action by his mother as guardian *ad litem* might recover for loss of time during minority, on the ground that the mother by suing as guardian *ad litem* was estopped from thereafter making any claim for loss of time.

4. Colorado Springs, etc., R. Co. *v.* Nichols, (Colo. 1907) 92 Pac. 691; Costello *v.* St. Louis Transit Co., 119 Mo. App. 391, 96 S. W. 425.

5. Platt *v.* Ottumwa, (Iowa 1907) 113 N. W. 831; Becker *v.* Lincoln Real Estate, etc., Co., 118 Mo. App. 74, 93 S. W. 291.

7. *United States.* — The Buffalo, 147 Fed. 304.

Alabama. — Elba *v.* Bullard, (Ala. 1907) 44 So. 412, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 651.

Colorado. — Union Pac. R. Co. *v.* Shovall, 39 Colo. 436, 89 Pac. 764.

Delaware. — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792; Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Graboski *v.* New Castle Leather Co., (Del. 1906) 64 Atl. 74; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Georgia. — Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110; Atlantic, etc., R. Co. *v.* Bowen, 125 Ga. 460, 54 S. E. 105; Central of Georgia R. Co. *v.* Forehand, 128 Ga. 547, 58 S. E. 44.

Illinois. — Coal Belt Electric R. Co. *v.* Kays, 119 Ill. App. 23; Chicago Consol. Traction Co. *v.* Schritter, 222 Ill. 364, 78 N. E. 820.

Indiana. — Pittsburgh, etc., R. Co. *v.* Collins, (Ind. 1907) 80 N. E. 415.

Kentucky. — Louisville, etc., R. Co. *v.* Sights, 89 S. W. 132, 28 Ky. L. Rep. 186; South Covington, etc., St. R. Co. *v.* Nelson, 89 S. W. 200, 28 Ky. L. Rep. 287; Louisville, etc., R. Co. *v.* Cleaver, 89 S. W. 494, 28 Ky. L. Rep. 497; Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Louisville Gas Co. *v.* Fuller, 122 Ky. 614, 92 S. W. 566; Lexington R. Co. *v.* Herring, 96 S. W. 558, 29 Ky. L. Rep. 794; South Covington, etc., St. R. Co. *v.* Core, 96 S. W. 562, 29 Ky. L. Rep. 836; Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216; Louisville, etc., R. Co. *v.* Barrickman, 104 S. W. 273, 31 Ky. L. Rep. 883; Paducah Traction Co. *v.* Burradell, 104 S. W. 709, 31 Ky. L. Rep. 1052.

Michigan. — Lewless *v.* Detroit United R. Co., 146 Mich. 531, 109 N. W. 1051.

Missouri. — Dean *v.* Kansas City, etc., R. Co., 199 Mo. 386, 97 S. W. 910; Spencer *v.* Bruner, 126 Mo. App. 94, 103 S. W. 578; Rittel *v.* E. E. Souther Iron Co., 127 Mo. App. 463, 105 S. W. 662.

South Carolina. — Montgomery *v.* Seaboard Air Line R., 73 S. Car. 503, 53 S. E. 987.

Texas. — Dallas Consol. Electric St. R. Co. *v.* Ely, (Tex. Civ. App. 1905) 91 S. W. 887; Galveston, etc., R. Co. *v.* Parish, (Tex. Civ. App. 1906) 93 S. W. 682; San Antonio, etc., R. Co. *v.* Kivlin, (Tex. Civ. App. 1906) 93 S. W. 709; International, etc., R. Co. *v.* Wray, (Tex. Civ. App. 1906) 96 S. W. 74; International, etc., R. Co. *v.* Cruseturner, (Tex. Civ. App. 1906) 98 S. W. 423; Texas, etc., R. Co. *v.* Middleton, (Tex. Civ. App. 1907) 103 S. W. 203; Chicago, etc., R. Co. *v.* Stillwell, (Tex. Civ. App. 1907) 104 S. W. 1071.

Washington. — Shaw *v.* Seattle, 39 Wash. 590, 81 Pac. 1057; Rowe *v.* Whatcom County R., etc., Co., 44 Wash. 658, 87 Pac. 921.

Injuries to Minor. — An infant may recover for future pecuniary loss occurring after majority. McDermott *v.* Severe, 25 App. Cas. (D. C.) 276; Andrews *v.* Chicago G. W. R. Co., 129 Iowa 162, 105 N. W. 404; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; Gulf, etc., R. Co. *v.* Archambault, (Tex. Civ. App. 1906) 94 S. W. 1108.

In Dealing with Infants of Tender Years the rule is that the question of damages for loss of future earning capacity is left to the sound judgment of the jury. Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509.

652. **1.** Elba *v.* Bullard, (Ala. 1907) 44 So. 412, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Chicago Union Traction Co. *v.* Brethauer, 223 Ill. 521, 79 N. E. 287; Missouri, etc., R. Co. *v.* Dickson, (Tex. Civ. App. 1905) 90 S. W. 507.

Evidence of Wages Received Shortly Before the Injury is admissible. Lewis *v.* Crane, 78 Vt. 216, 62 Atl. 60.

653. **1.** Elba *v.* Bullard, (Ala. 1907) 44 So. 412, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

3. Northern Pac. R. Co. *v.* Wendel, (C. C.

A.) 156 Fed. 336; Gambill *v.* Fuqua, (Ala. 1906) 42 So. 735; Burns *v.* Dunham, etc., Co., 148 Cal. 208, 82 Pac. 959; St. Louis, etc., R. Co. *v.* Knowles, (Tex. Civ. App. 1906) 99 S. W. 867.

Certainty Required. — The nature and character of plaintiff's business or employment must be shown with that degree of certainty of which the case is susceptible. St. Louis Southwestern R. Co. *v.* Acker, (Tex. Civ. App. 1906) 99 S. W. 121.

654. **3.** Mississippi Cent. R. Co. *v.* Hardy, 88 Miss. 732, 41 So. 505. *Compare* Williams *v.* Spokane Falls, etc., R. Co., 42 Wash. 597, 84 Pac. 1129, wherein it appearing that promotion was certain under civil service rules, evidence was admitted of that fact.

655. **1.** Bourke *v.* Butte Electric, etc., Co., 33 Mont. 267, 83 Pac. 470.

When Damages for Future Loss. — Macon R., etc., Co. *v.* Mason, 123 Ga. 773, 51 S. E. 569; Clark *v.* Cedar Rapids, 129 Iowa 358, 105 N. W. 651; Galveston, etc., R. Co. *v.* Paschall, (Tex. Civ. App. 1906) 92 S. W. 446.

2. Lewis *v.* Northern Pac. R. Co., (Mont. 1907) 92 Pac. 469.

4. *Alabama.* — Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822.

Arkansas. — Little Rock, etc., R. Co. *v.* Cross, 78 Ark. 220, 93 S. W. 981.

Colorado. — Colorado Springs, etc., R. Co. *v.* Petit, 37 Colo. 326, 86 Pac. 121.

Connecticut. — Smith *v.* Whittlesey, 79 Conn. 189, 63 Atl. 1085.

Delaware. — Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874; Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153; Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167.

Illinois. — Evanston *v.* Richards, 224 Ill. 444, 79 N. E. 673; Chicago, etc., R. Co. *v.* Walker, 118 Ill. App. 397; Coal Belt Electric R. Co. *v.* Kays, 119 Ill. App. 23.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555; Bolen-Darnall Coal Co. *v.* Williams, (Indian Ter. 1907) 104 S. W. 867.

Iowa. — Wright *v.* Davenport, (Iowa 1905) 104 N. W. 1022.

Kentucky. — Louisville, etc., R. Co. *v.* Sights, 89 S. W. 132, 28 Ky. L. Rep. 186; Louisville, etc., R. Co. *v.* Cleaver, 89 S. W. 494, 28 Ky. L. Rep. 497; Louisville, etc., R. Co. *v.* Helm, 89 S. W. 709, 28 Ky. L. Rep. 603; Mergenthaler-Horton Basket Co. *v.* Taylor, 90 S. W. 968, 28 Ky. L. Rep. 923; George T. Stagg Co. *v.* Brightwell, 92 S. W. 8, 28 Ky. L. Rep. 1220; Louisville Gas Co. *v.* Fuller, 122 Ky. 614, 92 S. W. 566; Lexington R. Co. *v.* Herring, 96 S. W. 558, 29 Ky. L. Rep. 794; Weiskopf *v.* Ritter, 97 S. W. 1120, 29 Ky. L. Rep. 1268; Louisville, etc., R. Co. *v.* Dickey, 104 S. W. 329, 31 Ky. L. Rep. 894; Owensboro City R. Co. *v.* Robertson, 104 S. W. 707, 31 Ky. L. Rep. 1047; Paducah Traction Co. *v.* Burradell, 104 S. W. 709, 31 Ky. L. Rep. 1052; Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216.

Missouri. — Goodloe *v.* Metropolitan St. R. Co., 120 Mo. App. 194, 96 S. W. 482; Mack *v.* Chicago, etc., R. Co., (Mo. App. 1907) 101 S. W. 142.

Montana. — Bourke *v.* Butte Electric, etc., Co., 33 Mont. 267, 83 Pac. 470; Kelly *v.* Butte, 34 Mont. 530, 87 Pac. 968.

New York. — De Yaulus *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 648, 97 N. Y. Supp. 995; Barry *v.* Kurshan, (Supm. Ct. App. T.) 103 N. Y. Supp. 120.

South Dakota. — Davis *v.* Holy Terror Min. Co., (S. Dak. 1906) 107 N. W. 374.

Texas. — Green *v.* Houston Electric Co., (Tex. Civ. App. 1905) 89 S. W. 442; St. Louis Southwestern R. Co. *v.* Dixon, (Tex. Civ. App. 1906) 91 S. W. 626; St. Louis Southwestern R. Co. *v.* Bryson, (Tex. Civ. App. 1905) 91 S. W. 829; Galveston, etc., R. Co. *v.* Cherry, (Tex. Civ. App. 1906) 98 S. W. 898; Ft. Worth, etc., R. Co. *v.* Travis, (Tex. Civ. App. 1907) 99 S. W. 1141; International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000; Dallas Consol. Electric St. R. Co. *v.* Pettit, (Tex. Civ. App. 1907) 105 S. W. 42.

Washington. — Shaw *v.* Seattle, 39 Wash. 590, 81 Pac. 1057.

For Physical Suffering Due to a Necessary Operation damages may be recovered. Missouri, etc., R. Co. *v.* Hagan, (Tex. Civ. App. 1906) 93 S. W. 1014.

656. **1.** *Delaware.* — Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931. Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Grabaski *v.* New Castle Leather Co., (Del. 1906) 64 Atl. 74; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Illinois. — Donk Bros. Coal, etc., Co. *v.* Thil, 228 Ill. 233, 81 N. E. 857.

Indiana. — Bloomington *v.* Woodworth, (Ind. App. 1907) 81 N. E. 611; Pittsburgh, etc., R. Co. *v.* Collins, (Ind. 1907) 80 N. E. 415.

Missouri. — Nelson *v.* Metropolitan St. R. Co., 113 Mo. App. 702, 88 S. W. 1119; Orendorff *v.* Terminal R. Assoc., 116 Mo. App. 348, 92 S. W. 148; Morgan *v.* C. Hager, etc., Hinge Mfg. Co., 120 Mo. App. 590, 97 S. W. 638.

Texas. — Missouri, etc., R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 89 S. W. 991; Galveston, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 93 S. W. 184, *affirmed* (Tex. 1906) 98 S. W. 240; International, etc., R. Co. *v.* Wray, (Tex. Civ. App. 1906) 96 S. W. 74; Texas, etc., R. Co. *v.* Middleton, (Tex. Civ. App. 1907) 103 S. W. 203.

2. *United States.* — Chicago, etc., R. Co. *v.* Lindeman, (C. C. A.) 143 Fed. 946; Chicago, etc., R. Co. *v.* Newsome, (C. C. A.) 154 Fed. 665.

California. — Cordiner *v.* Los Angeles Traction Co., 5 Cal. App. 400, 91 Pac. 436; Malone *v.* Sierra R. Co., (Cal. 1907) 91 Pac. 522.

Indiana. — Muncie Pulp Co. *v.* Hacker, 37 Ind. App. 194, 76 N. E. 770.

Kentucky. — South Covington, etc., St. R. Co. *v.* Core, 96 S. W. 562, 29 Ky. L. Rep. 836.
Missouri. — Robertson *v.* Hammond Packing Co., 115 Mo. App. 520, 91 S. W. 161; Halley *v.* St. Joseph R. Light, etc., Co., 115 Mo. App. 652, 91 S. W. 163; Dean *v.* Kansas City, etc., R. Co., 199 Mo. 386, 97 S. W. 910; O'Keefe *v.* United R. Co., 124 Mo. App. 613, 101 S. W. 1144.
Nebraska. — Nixon *v.* Omaha, etc., St. R. Co., (Neb. 1907) 113 N. W. 117.
South Carolina. — Green *v.* Catawba Power Co., 75 S. Car. 102, 55 S. E. 125.
Wisconsin. — Howard *v.* Beldenville Lumber Co., 129 Wis. 98, 108 N. W. 48.

Reasonable Probability of there being future physical pain has been held to be sufficient in one jurisdiction. Gulf, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 99 S. W. 162; Galveston, etc., R. Co. *v.* Paschall, (Tex. Civ. App. 1906) 92 S. W. 446.

657. 4. Goodwyn *v.* Central of Georgia R. Co., 2 Ga. App. 470, 58 S. E. 688; Cumberland Telephone, etc., Co. *v.* Harp, 90 S. W. 980, 28 Ky. L. Rep. 909; Louisville *v.* Hall, 91 S. W. 1133, 28 Ky. L. Rep. 1064; Bentz *v.* Page, 115 La. 560, 39 So. 599.

658. 1. Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110; Nichols *v.* Oregon Short Line R. Co., 28 Utah 329, 78 Pac. 866, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 658.

Reason and Common Sense must govern the jury. Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

2. *California.* — Malone *v.* Sierra R. Co., (Cal. 1907) 91 Pac. 522.
Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.
Iowa. — Ousley *v.* Hampe, 128 Iowa 675, 105 N. W. 122.
Kentucky. — Louisville, etc., R. Co. *v.* Cleaver, 89 S. W. 494, 28 Ky. L. Rep. 497; Louisville, etc., R. Co. *v.* Sights, 89 S. W. 132, 28 Ky. L. Rep. 186; Louisville, etc., R. Co. *v.* Helm, 89 S. W. 709, 28 Ky. L. Rep. 603; Louisville Gas Co. *v.* Fuller, 122 Ky. 614, 92 S. W. 566; Lexington R. Co. *v.* Herring, 96 S. W. 558, 29 Ky. L. Rep. 794; Wallace *v.* Bach, 97 S. W. 418, 30 Ky. L. Rep. 69; Louisville, etc., R. Co. *v.* Dickey, 104 S. W. 329, 31 Ky. L. Rep. 894; Owensboro City R. Co. *v.* Robertson, 104 S. W. 707, 31 Ky. L. Rep. 1047; Paducah Traction Co. *v.* Burradell, 104 S. W. 709, 31 Ky. L. Rep. 1052; Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216.
Minnesota. — Beaulieu *v.* Great Northern R. Co., (Minn. 1907) 114 N. W. 353, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 658.
Montana. — Bourke *v.* Butte Electric, etc., Co., 33 Mont. 267, 83 Pac. 470.
Ohio. — Cincinnati Traction Co. *v.* McKee, 27 Ohio Cir. Ct. 630.
South Dakota. — Davis *v.* Holy Terror Min. Co., (S. Dak. 1906) 107 N. W. 374.
Texas. — Green *v.* Houston Electric Co., (Tex. Civ. App. 1905) 89 S. W. 442; St. Louis Southwestern R. Co. *v.* Dixon, (Tex. Civ. App. 1906) 91 S. W. 626; International, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 595; Prewitt *v.* Southwestern Tel., etc., Co., (Tex. Civ. App. 1907), 101 S. W. 812

Mental Suffering May Be Inferred from great physical suffering. Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932; Galveston, etc., R. Co. *v.* Story, (Tex. Civ. App. 1906) 99 S. W. 135; Galveston, etc., R. Co. *v.* Parish, (Tex. Civ. App. 1907) 100 S. W. 1175.

A Child Only Four Years Old may recover damages for mental suffering. Gulf, etc., R. Co. *v.* Sauter, (Tex. Civ. App. 1907) 103 S. W. 201.

659. 1. Nichols *v.* Oregon Short Line R. Co., 28 Utah 329, 78 Pac. 865, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 658 [659].

660. 1. McDermott *v.* Severe, 202 U. S. 600, 50 U. S. (L. ed.) 1162, 26 U. S. Sup. Ct. 709; South Covington, etc., St. R. Co. *v.* Core, 96 S. W. 562, 29 Ky. L. Rep. 836; Green *v.* Catawba Power Co., 75 S. Car. 102, 55 S. E. 125; Galveston, etc., R. Co. *v.* Paschall, (Tex. Civ. App. 1906) 92 S. W. 446; Galveston, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 93 S. W. 184; International, etc., R. Co. *v.* Wray, (Tex. Civ. App. 1906) 96 S. W. 74; Texas, etc., R. Co. *v.* Middleton, (Tex. Civ. App. 1907) 103 S. W. 203.

Impairment of Future Enjoyment Considered. — Haynes *v.* Waterville, etc., St. R. Co., 101 Me. 335, 64 Atl. 614.

3. St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613; Cordiner *v.* Los Angeles Traction Co., 5 Cal. App. 400, 91 Pac. 436; Nichols *v.* Oregon Short Line R. Co., 28 Utah 330, 78 Pac. 866, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 660; Cole *v.* Seattle, etc., R. Co., 42 Wash. 462, 85 Pac. 3.

Recovery for Loss of Memory. — Young *v.* Metropolitan St. R. Co., 126 Mo. App. 1, 103 S. W. 135.

662. 3. Watson *v.* Augusta Brewing Co., 124 Ga. 121, 52 S. E. 152.

664. 1. St. Louis, etc., R. Co. *v.* Leamons, (Ark. 1907) 102 S. W. 363; St. Louis, etc., R. Co. *v.* Price, 83 Ark. 437, 104 S. W. 157; Frank Parmelee Co. *v.* Wheelock, 127 Ill. App. 500; Pittsburgh, etc., R. Co. *v.* Collins, (Ind. 1907) 80 N. E. 415; Bolen-Darnall Coal Co. *v.* Williams, (Indian Ter. 1907) 104 S. W. 867.

3. Hutchinson *v.* Stern, 115 N. Y. App. Div. 791, 101 N. Y. Supp. 145.

5. Brinkman *v.* St. Landry Cotton Oil Co., 118 La. 835, 43 So. 458.

665. 1. Woodstock Iron Works *v.* Stockdale, 143 Ala. 553, 39 So. 335, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 664–665 [665]; Sperier *v.* Ott, 116 La. 1089, 41 So. 323, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 664–665.

2. Williamson *v.* Central of Georgia R. Co., 127 Ga. 125, 56 S. E. 119; Elgin, etc., Traction Co. *v.* Wilson, 217 Ill. 55, 75 N. E. 436, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665; Porter *v.* Delaware, etc., R. Co., 73 N. J. L. 405, 63 Atl. 860; Taylor *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 59 S. E. 641; Geiger *v.* Grand Trunk R. Co., 10 Ont. L. Rep. 511.

Fright from Negligent Blasting. — Huston *v.* Freemansburg, 212 Pa. St. 548, 61 Atl. 1022.

666. 1. Rowan *v.* Western Union Tel. Co., 149 Fed. 550; Glenn *v.* Western Union Tel. Co., 1 Ga. App. 821, 58 S. E. 83; Georgia R., etc., Co. *v.* Baker, 1 Ga. App. 832, 58 S. E. 88; Indianapolis St. R. Co. *v.* Ray, 167 Ind. 978, 78 N. E. 978; Shellabarger *v.* Morris, 115 Mo. App. 566, 91 S. W. 1005.

667. 3. Dunn *v.* Western Union Tel. Co., 2 Ga. App. 845, 59 S. E. 189; Beaulieu *v.* Great Northern R. Co., (Minn. 1907) 114 N. W. 353, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 668 [667]; Harless *v.* Southwest Missouri Electric R. Co., 123 Mo. App. 22, 99 S. W. 793. *Compare* St. Louis, etc., R. Co. *v.* Taylor, 84 Ark. 42, 104 S. W. 551; Little Rock, etc., Electric Co. *v.* Putsche, (Ark. 1907) 104 S. W. 554.

668. 2. Kimberly *v.* Howland, 143 N. Car. 398, 55 S. E. 778; Simeone *v.* Rhode Island Co., 28 R. I. 186, 66 Atl. 202; Hendrix *v.* Texas, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 461.

669. 1. Tennessee Cent. R. Co. *v.* Brasher, 97 S. W. 349, 29 Ky. L. Rep. 1277; Smith *v.* Atchison, etc., R. Co., 122 Mo. App. 85, 97 S. W. 1007; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

2. Samuels *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 137, 101 N. Y. Supp. 534.

4. Lindsay *v.* Oregon Short Line R. Co., 13 Idaho 477, 90 Pac. 985, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 669.

671. 9. Owsley *v.* Fowler, (Ky. 1907) 104 S. W. 762; Eller *v.* Carolina, etc., R. Co., 140 N. Car. 140, 52 S. E. 305; Gates *v.* Bekins, 44 Wash. 422, 87 Pac. 505.

11. McClure *v.* Campbell, 42 Wash. 252, 84 Pac. 825, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671.

672. 3. Wright *v.* Beardsley, (Wash. 1907) 89 Pac. 172.

673. 4. White River, etc., R. Co. *v.* Star Ranch, etc., Co., 77 Ark. 128, 91 S. W. 14.

674. 3. Hubbard *v.* Gould, 74 N. H. 25, 64 Atl. 663.

677. 10. Fairbanks *v.* Smith, (Tex. Civ. App. 1907) 99 S. W. 707, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 677.

679. 2. Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687.

681. 5. Chicago *v.* Duffy, 117 Ill. App. 261.

682. 1. George D. Emery Co. *v.* Wells, (1906) A. C. 515.

684. 1. Williams *v.* Southern Pac. R. Co., 150 Cal. 624, 89 Pac. 599, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684; Rockford, etc., R. Co. *v.* Keyt, 117 Ill. App. 32; Virginia Hot Springs Co. *v.* McCray, 106 Va. 461, 56 S. E. 216, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684.

690. 5. Ramsey *v.* Perth Amboy Shipbuilding, etc., Co., (N. J. 1906) 65 Atl. 461.

692. 9. Variety Mfg. Co. *v.* Landaker, 227 Ill. 22, 81 N. E. 47; Glasgow *v.* Metropolitan St. R. Co., 191 Mo. 347, 89 S. W. 915.

DAMNUM ABSQUE INJURIA.

695. 4. Durham *v.* Lisbon Falls Fibre Co., 100 Me. 238, 61 Atl. 177; Thurmond *v.* Ash Grove White Lime Assoc., 125 Mo. App. 73, 102 S. W. 617; Davis *v.* Silverton, 47 Oregon 171, 82 Pac. 16; Norfolk, etc., R. Co. *v.* Gee, 104 Va. 806, 52 S. E. 572.

5. Fisher *v.* Feige, 137 Cal. 39, 69 Pac. 618; Jenkins *v.* Hanson, 101 Minn. 298, 112 N. W. 216; Filbert *v.* Dechert, 22 Pa. Super. Ct. 362; Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364.

696. 5. Hathorn *v.* Dr. Strong's Saratoga Springs Sanitarium, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 445, 106 N. Y. Supp. 553; Houston, etc., R. Co. *v.* East, 98 Tex. 146, 4 Ann. Cas. 827, 81 S. W. 279.

697. 3. Dewey *v.* Atlantic Coast Line R. Co., 142 N. Car. 392, 55 S. E. 292, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 697; Smith *v.* St. Paul, etc., R. Co., 39 Wash. 355, 81 Pac. 840.

698. 3. Griffin *v.* Fairmont Coal Co., 59 W. Va. 480, 53 S. E. 24, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 698.

DAMS.

700. 1. Penobscot Log Driving Co. *v.* West Branch Driving, etc., Dam Co., 102 Me. 271, 66 Atl. 542, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 700.

3. H. Remington, etc., Pulp, etc., Co. *v.* Water Com'rs, 111 N. Y. App. Div. 907, 96 N. Y. Supp. 975.

701. 1. Miller *v.* Belleville Bank, 148 Mich. 339, 111 N. W. 1062.

The Ordinary Flow, and not "low and medium" water, should govern the rights of the parties. H. Remington etc., Pulp, etc., Co. *v.* Water Com'rs, 111 N. Y. App. Div. 907, 96 N. Y. Supp. 975.

5. Manigault *v.* Springs, 123 Fed. 707, 199 U. S. 473, *affirmed* 26 U. S. Sup. Ct. 127.

703. 2. Manigault *v.* Springs, 199 U. S. 473, 26 U. S. Sup. Ct. 127, *affirming* 123 Fed. 707.

704. 3. Potlatch Lumber Co. *v.* Peterson, (Idaho 1906) 88 Pac. 426.

Dams May Be Constructed in Floatable Streams to facilitate their use. Kamm *v.* Normand, (Oregon 1907) 91 Pac. 448.

705. 2. Alabama Consol. Coal, etc., Co. *v.* Turner, 145 Ala. 639, 39 So. 603; Barker *v.* French, 102 Me. 407, 67 Atl. 308.

Upon the Question of What Is a Reasonable Use, see Brown *v.* Bathurst Electric, etc., Co., 3 N. Bruns. Eq. Rep. 543.

708. 1. Van Camp *v.* Emery, (Idaho 1907) [illegible].

4. **For Other Cases of Construction of Grants and Reservations,** see Forbes *v.* Byfield Woolen Co., 190 Mass. 432, 77 N. E. 51; Schlag *v.* Gooding-Coxe Co., 98 Minn. 261, 108 N. W. 11; Grothe *v.* Lane, (Neb. 1906) 110 N. W. 305; Flint *v.* Union Water Power Co., 73 N. H. 483, 62 Atl. 788; Brattain *v.* Conn, (Oregon 1907) 91 Pac. 458.

Where a Grant of Land Carried a Flowage Privilege it was held that a reconveyance of the land to the grantor extinguished the right. Forbes *v.* Byfield Woolen Co., 190 Mass. 432, 77 N. E. 51.

Where a Right to the Natural Flow Was Re-

served in a grant to upper owners to construct a dam it was held that all the grantor was entitled to was the natural flow of the stream over the spillway of the dam, and he was not entitled to have the flow increased by stored waters. Roe *v.* Redner, 46 Misc. (N. Y.) 25, 93 N. Y. Supp. 258.

710. 2. **Flowage Rights.** — Towaliga Falls Power Co. *v.* McElroy, 124 Ga. 1014, 53 S. E. 682.

711. 1. Durga *v.* Lincoln Creek Lumber Co., (Wash. 1907) 92 Pac. 343.

2. Illinois Cent. R. Co. *v.* Dennison, 116 Ill. App. 1.

712. 2. Brattain *v.* Conn, (Oregon 1907) 91 Pac. 458.

4. Brown *v.* Bathurst Electric, etc., Co., 3 N. Bruns. Eq. Rep. 543.

Use Must Have Caused Appreciable Damage. — Foster *v.* Sebago Imp. Co., 100 Me. 196, 60 Atl. 894.

Where the Dam Was Clandestinely Destroyed by the owner of the land against whom the prescription was running it was held to be no interruption of the adverse user. Brattain *v.* Conn, (Oregon 1907) 91 Pac. 458.

713. 1. Alabama Consol. Coal, etc., Co. *v.* Turner, 145 Ala. 639, 39 So. 603.

Burden of Establishing Prescriptive Right on Party Asserting It. — Dutton *v.* Stoughton, 79 Vt. 361, 65 Atl. 91.

Occupation Must Be Continuous But Not Necessarily Constant. — Reason *v.* Peters, 148 Mich. 532, 112 N. W. 117.

Balance of Injury Doctrine Applied. — Reason *v.* Peters, 148 Mich. 532, 112 N. W. 117.

4. Roe *v.* Redner, 46 Misc. (N. Y.) 25, 93 N. Y. Supp. 258.

Prescription Begins to Run from Time of Actual Injury. — Dutton *v.* Stoughton, 79 Vt. 361, 65 Atl. 91.

5. Miller *v.* Belleville Bank, 148 Mich. 339, 111 N. W. 1062.

A Prescriptive Right to Maintain a Dam does not give a right to increase the height. Cobia *v.* Ellis, (Ala. 1906) 42 So. 751.

714. 4. Allen *v.* Thornapple Electric Co., 144 Mich. 370, 108 N. W. 79.

Where the Operation of the Dam Renders the Flow Intermittent, the owner is liable for the damages caused to riparian owners lower down. Archambault *v.* Montreal Light, etc., Co., 29 Quebec Super. Ct. 356; Brome Lake Electric Power Co. *v.* Sherwood, 14 Quebec K. B. 507.

5. Allen *v.* Thornapple Electric Co., 144 Mich. 370, 108 N. W. 79.

6. Allen *v.* Thornapple Electric Co., 144 Mich. 370, 108 N. W. 79.

715. 1. Fitzgerald *v.* State, 122 N. Y. App. Div. 306, 106 N. Y. Supp. 620.

Obstructing Flood Channel of River. — Clark *v.* Patapsco Guano Co., 144 N. Car. 64, 56 S. E. 858.

2. **The Ordinary Flow of the Water** governs the rights of the parties. H. Remington, etc., Pulp, etc., Co. *v.* Water Com'rs, 111 N. Y. App. Div. 907, 96 N. Y. Supp. 975.

716. 3. Where the dam was properly constructed under authority of the Mill Act and was not negligently managed, it was held that injury to the neighboring highway by the deflected current was *damnum absque injuria.* Durham *v.* Lisbon Falls Fibre Co., 100 Me. 238, 61 Atl. 177.

5. Schwarzenbach *v.* Electric Water Power Co., 101 N. Y. App. Div. 345, 92 N. Y. Supp. 187, *affirmed* (1906) 76 N. E. 1108.

Where Lands of a Third Party Were between the Plaintiff's Land and the River, it was held there was no liability for damage caused by percolating waters so long as the defendants' use of the river was reasonable. Moore *v.* Berlin Mills Co., (N. H. 1907) 67 Atl. 578.

A Prescriptive Right to Maintain a Dam Is No Defense to an action for damages caused by percolating water where the damage is caused by a change in the method of using the water. Carrington *v.* Brooks, 121 Ga. 250, 48 S. E. 970.

717. 1. Barker *v.* French, 102 Me. 407, 67 Atl. 308; Kamm *v.* Normand, (Oregon 1907) 91 Pac. 448.

2. Where a riparian owner constructed a dam which had the effect of interfering with the plaintiff's established drainage system, it was held that he was liable. Thomas *v.* Bolsa Land Co., (Cal. 1905) 82 Pac. 207.

4. Alabama Consol. Coal, etc., Co. *v.* Turner, 145 Ala. 639, 39 So. 603; Scott *v.* Longwell, 139 Mich. 12, 102 N. W. 230.

720. 1. Cobia *v.* Ellis, (Ala. 1906) 42 So. 751; Allen *v.* Stowell, 145 Cal. 666, 79 Pac. 371; Warner *v.* Maxwell, 124 Ga. 518, 52 S. E. 809; Schwarzenbach *v.* Electric Water Power Co., 101 N. Y. App. Div. 345, 92 N. Y. Supp. 187, *affirmed* (1906) 76 N. E. 1108; Kane *v.* Littlefield, 48 Oregon 299, 86 Pac. 544; Gulf, etc., R. Co. *v.* Harbison, (Tex. Civ. App. 1905) 88 S. W. 452; Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888; Cloyes *v.* Middlebury Electric Co., (Vt. 1907) 66 Atl. 1039; Bryant *v.* Frank H. Lamb Timber Co., 37 Wash. 168, 79 Pac. 622; Durga *v.* Lincoln Creek Lumber Co., (Wash. 1907) 92 Pac. 343; Brown *v.* Bathurst Electric, etc., Co., 3 N. Bruns. Eq. Rep. 543.

Plaintiff's Acts May Estop Him from Obtaining Injunction. — Andrus *v.* Berkshire Power Co., 147 Fed. 76, *reversing* (C. C. A.) 145 Fed. 47.

2. If No Immediate Necessity Exists for the abatement the plaintiff should secure his right through a resort to equity. Kane *v.* Littlefield, 48 Oregon 299, 86 Pac. 544.

721. 1. James *v.* Rathbun Co., 11 Ont. L. Rep. 271.

3. As to the Necessity for Notice, see Seaboard, etc., R. Co. *v.* Ambrose, 122 Ga. 47, 49 S. E. 815.

722. 7. Chappin *v.* Fries Mfg., etc., Co., 137 N. Car. 95, 47 S. E. 226, 136 N. Car. 364, 48 S. E. 770.

723. 1. Keats *v.* Gas Co., 29 Pa. Super. Ct. 480.

725. 2. **Measure of Damages.** — Where the damage was caused by residuum from a quarry washing down against the dam, it was held that the measure of damage was the cost of removing the deposits plus compensation for the loss of use of the premises. Bricker *v.* Conemaugh Stone Co., 32 Pa. Super. Ct. 283.

DANGER - DANGEROUS.

725. **5. A Dog Is Dangerous** within the English Dogs' Act where it appears that it has attacked and killed sheep. Williams *v.* Richards, (1907) 2 K. B. 88, 76 L. J. K. B. 589, 96 L. T. N. S. 644, 71 J. P. 222, 23 Times L. Rep. 423.

DATE.

728. **8.** Vanderford *v.* Farmers', etc., Nat. Bank, 105 Md. 164, 66 Atl. 47.

Rule Applied to Bill of Lading.— Merchants' Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108.

730. **1.** Ranken *v.* Donovan, 115 N. Y. App. Div. 651, 100 N. Y. Supp. 1049.

735. **3.** See Warner *v.* Miner, 41 Wash. 98, 82 Pac. 1033.

DAY.

737. **1. Construction of Constitution — "Day" Means Twenty-four Hours.** — Carter *v.* Henry, 87 Miss. 411, 39 So. 690.

In the Sitting of a Court the astronomical day is referred to. Texas Tram, etc., Co. *v.* Hightower, (Tex. 1906) 96 S. W. 1071.

738. **3. Sundays and Holidays Included in Counting Number of "Days."** — Norman *v.* State, 147 Ala. 700, 41 So. 295; Jackson Brewing Co. *v.* Wagner, 117 La. 875, 42 So. 356 (holidays); Curtice *v.* Schmidt, 202 Mo. 703, 101 S. W. 61. See further the title TIME (COMPUTATION OF), **222.** 4. *et seq.*

4. U. S. *v.* Edwin S. Hartwell Lumber Co., (C. C. A.) 142 Fed. 432.

739. **1.** Buskey *v.* Canadian Pac. R. Co., 11 Ont. L. Rep. 1, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 739.

740. **1. Eight-hour Day Intended.** — Where it appears that the parties intended that a "day" should be eight hours' work and that the work should be continuous, there may be three "days" within the twenty-four hours. Collins *v.* Carlin, 121 N. Y. App. Div. 524, 106 N. Y. Supp. 235.

741. **4. Bills and Notes Not Payable at a Bank** are payable at any time of the last day. Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892.

742. **1.** United States *v.* Edwin S. Hartwell Lumber Co., (C. C. A.) 142 Fed. 432; *Ex p.* Schnapka, 149 Mich. 309, 112 N. W. 949.

Insurance Policies expire at noon when so worded. Matthews *v.* Continental Casualty Co., 78 Ark. 81, 93 S. W. 55.

743. **4. As Between Different Conveyances.** — New England Mortg. Security Co. *v.* Fry, 143 Ala. 637, 42 So. 57, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 743; Brady *v.* Gilman, 96 Minn. 234, 104 N. W. 897.

745. **1.** U. S. *v.* Edwin S. Hartwell Lumber Co., (C. C. A.) 142 Fed. 432.

DE FACTO CORPORATIONS.

747. **1.** Marshall *v.* Keach, 227 Ill. 35, 10 Ann. Cas. 164, 81 N. E. 29, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747. See also Central of Georgia R. Co. *v.* Union Springs, etc., R. Co., 144 Ala. 639, 39 So. 473.

748. **1. A Duly Organized Corporation** cannot assume the status of a *de facto* corporation for the purpose of exercising powers not permitted by its charter. Boca, etc., R. Co. *v.* Sierra Valleys R. Co., 2 Cal. App. 546, 84 Pac. 298.

2. Proof of De Facto Corporate Existence — *Charter and Exercise of Powers Sufficient.* — Leavengood *v.* McGee, (Oregon 1907) 91 Pac. 453.

Proof of De Facto Existence Nullifies Plea of Nul Tiel Corporation. — Marshall *v.* Keach, 227 Ill. 35, 10 Ann. Cas. 164, 81 N. E. 29, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 748; Smith *v.* Cleveland, etc., R. Co., (Ind. 1907) 81 N. E. 501.

3. Whipple *v.* Tuxworth, 81 Ark. 391, 99 S. W. 86; Marshall *v.* Keach, 227 Ill. 35, 10 Ann. Cas. 164, 81 N. E. 29; Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005; Clark *v.* American Cannel Coal Co., 165 Ind. 213, 73 N. E. 1083; Western Invest. Co. *v.* Davis, (Indian Ter. 1907) 104 S. W. 573; Marsters *v.* Umpqua Valley Oil Co., (Oregon 1907) 90 Pac. 151.

Proof of De Facto Organization and Existence. — Fields *v.* U. S., 27 App. Cas. (D. C.) 433.

750. **1.** Central of Georgia R. Co. *v.* Union Springs, etc., R. Co., 144 Ala. 639, 39 So. 473; Marshall *v.* Keach, 227 Ill. 35, 10 Ann. Cas. 164, 81 N. E. 29; Lafferty *v.* Evans, 17 Okla. 247, 87 Pac. 304; Whaley *v.* Bankers' Union of the World, (Tex. Civ. App. 1905) 88 S. W. 259.

Nonresident Corporation Acting Without Authority. — Thomas Mfg. Co. *v.* Knapp, 101 Minn. 432, 112 N. W. 989. *Contra,* Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545; Thompson *v.* National Mut. Bldg., etc., Assoc., 57 W. Va. 551, 50 S. E. 756.

In Absence of Law Permitting Corporation, There Is No Estoppel. — Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005; Finck *v.* Schneider Granite Co., 187 Mo. 244, 86 S. W. 213; Huber *v.* Martin, 127 Wis. 412, 7 Ann. Cas. 400, 105 N. W. 1031, 1135.

Where the Period of Existence Allotted to a Corporation Has Expired it is not even a *de facto* corporation. Clark *v.* American Cannel Coal Co., 165 Ind. 213, 73 N. E. 1083.

752. **1.** Whipple *v.* Tuxworth, 81 Ark. 391, 99 S. W. 86. See also Central of Georgia R. Co. *v.* Union Springs, etc., R. Co., 144 Ala. 639, 39 So. 473; Lincoln Butter Co. *v.* Edwards-Bradford Lumber Co., (Neb. 1906) 107 N. W. 797; State *v.* Toledo, etc., County Burial Assoc., 28 Ohio Cir. Ct. 397.

A Consolidation of Railroads results in the existence of a *de facto* corporation, where there has been at least a substantial compliance with the law and a user of the rights and privileges obtained for seventeen years. Smith *v.* Cleveland, etc., R. Co., (Ind. 1907) 81 N. E. 501.

753. **1. Cases Contra.** — Marshall *v.* Keach, 227 Ill. 35, 10 Ann. Cas. 164, 81 N. E. 29.

2. See Provident Bank, etc., Co. *v.* Saxon, 116 La. 408, 40 So. 778; Louisiana Nat. Bank *v.* Henderson, 116 La. 413, 40 So. 779.

754. **2.** Central of Georgia R. Co. *v.* Union Springs, etc., R. Co., 144 Ala. 639, 39 So. 473; Boca, etc., R. Co. *v.* Sierra Val-

leys R. Co., 2 Cal. App. 546, 84 Pac. 298; Robinson *v.* Blood, 151 Cal. 504, 91 Pac. 258; Eddleman *v.* Union County Traction, etc., Co., 217 Ill. 409, 75 N. E. 510; Marshall *v.* Keach, 227 Ill. 35, 10 Ann. Cas. 164, 81 N. E. 29; Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005; Western Invest. Co. *v.* Davis, (Indian Ter. 1907) 104 S. W. 573, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 754-756; Deadwood First Nat. Bank *v.* Rockefeller, 195 Mo. 15, 93 S. W. 761; Clifford Banking Co. *v.* Donovan Commission Co., 195 Mo. 262, 94 S. W. 527; Philadelphia, etc., Ferry Co. *v.* Intercity Link R. Co., 73 N. J. L. 86, 62 Atl. 184; Smith *v.* Havens Relief Fund Soc., 118 N. Y. App. Div. 678, 103 N. Y. Supp. 770, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 754; Marsters *v.* Umpqua Valley Oil Co., (Oregon 1907) 90 Pac. 151; Leavengood *v.* McGee, (Oregon 1907) 91 Pac. 453; Mitchell *v.* Jensen, 29 Utah 346, 81 Pac. 165.

Public Corporations and Quasi Corporations. — Ward *v.* Gradin, 15 N. Dak. 649, 109 N. W. 57.

757. 3. Western Invest. Co. *v.* Davis, (Indian Ter. 1907) 104 S. W. 573; Finck *v.* Schneider Granite Co., 187 Mo. 244, 86 S. W. 213; Deadwood First Nat. Bank *v.* Rockefeller, 195 Mo. 15, 93 S. W. 761; Webb *v.* Rockefeller, 195 Mo. 57, 93 S. W. 772.

759. 1. Diamond State Iron Co. *v.* Husbands, 8 Del. Ch. 205, 68 Atl. 240; Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

760. 3. De Facto Corporation Held Empowered to Bring Eminent Domain Proceeding. — Central of Georgia R. Co. *v.* Union Springs, etc., R. Co., 144 Ala. 639, 39 So. 473; Smith *v.* Cleveland, etc., R. Co., (Ind. 1907) 81 N. E. 501. See also Eddleman *v.* Union County Traction, etc., Co., 217 Ill. 409, 75 N. E. 510; Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005; Philadelphia, etc., Ferry Co. *v.* Intercity Link R. Co., 73 N. J. L. 86, 62 Atl. 184. But see, *dubitante*, Boca, etc., R. Co. *v.* Sierra Valleys R. Co., 2 Cal. App. 546, 84 Pac. 298.

4. Rannels *v.* Rowe, 145 Fed. 296, 74 C. C. A. 376; Iowa Lillooet Gold Min. Co. *v.* U. S. Fidelity, etc., Co., 146 Fed. 437; Callahan *v.* Chilcott Ditch Co., 37 Colo. 331, 86 Pac. 123; Young *v.* Plattner Implement Co., (Colo. 1907) 91 Pac. 1109; Spreyne *v.* Garfield Lodge No. 1, 117 Ill. App. 253; Western Invest. Co. *v.* Davis, (Indian Ter. 1907) 104 S. W. 573; Farmers' Mut. Telephone Co. *v.* Howell, 132 Iowa 22, 109 N. W. 294; Drake *v.* Herndon, 122 Ky. 206, 91 S. W. 674; Blanc *v.* Germania Nat. Bank, 114 La. 739, 38 So. 537; Hasbrouck *v.* Rich, 113 Mo. App. 389, 88 S. W. 131; Lincoln Butter Co. *v.* Edwards-Bradford Lumber Co., (Neb. 1906) 107 N. W. 797; Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319; Palatine Ins. Co. *v.* Santa Fé Mercantile Co., 13 N. Mex. 241, 82 Pac. 363; Pope *v.* Merchants' Trust Co., 118 Tenn. 506, 103 S. W. 792.

One Who Contracts with Several Corporations which use a common name merely for convenience is not estopped from denying that a *de facto* corporation existed as a result of this combination. Kanawha Dispatch *v.* Fish, 219 Ill. 236, 76 N. E. 352.

764. 1. Robinson *v.* Blood, 151 Cal. 504, 91 Pac. 258; Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224. But see Gay *v.* Kohlsaat, 223 Ill. 260, 79 N. E. 77. See further the title STOCK AND STOCKHOLDERS, **958.** 4.

765. 1. Responsibilities of De Facto Officer and De Jure Officer Identical. — Mutual L. Ins. Co. *v.* McCurdy, 118 N. Y. App. Div. 815, 103 N. Y. Supp. 829.

766. 1. McCarter *v.* Ketcham, (N. J. 1907) 67 Atl. 610.

Estoppel in Suit on Assessments. — Callahan *v.* Chilcott Ditch Co., 37 Colo. 331, 86 Pac. 123.

767. 2. *Compare* Farmers' Mut. Telephone Co. *v.* Howell, 132 Iowa 22, 109 N. W. 294, holding that a suit on a stock subscription may be brought where there is proof of a *de facto* corporation. See further the title STOCK AND STOCKHOLDERS, **938.** 9.

768. 2. Hasbrouck *v.* Rich, 113 Mo. App. 389, 88 S. W. 131; Leavengood *v.* McGee, (Oregon 1907) 91 Pac. 453.

769. 2. Whipple *v.* Tuxworth, 81 Ark. 391, 99 S. W. 86.

8. *In re* Naylor Mfg. Co., 135 Fed. 206; Marshall *v.* Keach, 227 Ill. 35, 10 Ann. Cas. 164, 81 N. E. 29; Chicago City R. Employees' Mut. Aid Assoc. *v.* Hogan, 124 Ill. App. 447; Pope *v.* Merchants' Trust Co., 118 Tenn. 506, 103 S. W. 792. But see Provident Bank, etc., Co. *v.* Saxon, 116 La. 408, 40 So. 778; Louisiana Nat. Bank *v.* Henderson, 116 La. 413, 40 So. 779.

770. 1. Members of De Facto Corporation Not Liable as Partners. — Western Invest. Co. *v.* Davis, (Indian Ter. 1907) 104 S. W. 573.

DE FACTO OFFICERS.

775. 3. Modstock Min. Co. *v.* Harris, 40 Nova Scotia 336, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 775.

4. Modstock Min. Co. *v.* Harris, 40 Nova Scotia 336, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 775.

5. Robinson *v.* Blood, 151 Cal. 504, 91 Pac. 268; Jones *v.* Bonanza Min., etc., Co., (Utah 1907) 91 Pac. 273; Modstock Min. Co. *v.* Harris, 40 Nova Scotia 336, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 775.

8. Modstock Min. Co. *v.* Harris, 40 Nova Scotia 336, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 775.

778. 3. Liability of Directors for Wages. — Macdonald *v.* Drake, 16 Manitoba 220, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 778.

5. Gleason *v.* Canterbury Mut. F. Ins. Co., 73 N. H. 583, 64 Atl. 187; Modstock Min. Co. *v.* Harris, 40 Nova Scotia 336, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 778.

780. 1. Modstock Min. Co. *v.* Harris, 40 Nova Scotia 336, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 780.

781. 5. State *v.* Ely, (N. Dak. 1907) 113 N. W. 711.

6. **Chief Justice Butler's Definition Was Cited with Approval** in the following cases: Briggs *v.* Voss, 73 Kan. 418, 85 Pac. 571; Lower Terrebonne Refining, etc., Co. *v.* Police Jury, 115 La. 1010, 40 So. 443, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 781; Usher *v.* Western Union Tel. Co., 122 Mo. App. 98, 98 S. W.

84; State *v.* Ely, (N. Dak. 1907) 113 N. W. 711; Heard *v.* Elliott, 116 Tenn. 150, 92 S. W. 764.

782. 1. Heard *v.* Elliott, 116 Tenn. 150, 92 S. W. 764.

2. *Ex p.* Tracey, (Tex. Crim. 1905) 93 S. W. 538 (to the same effect as Pierce *v.* Edington, 38 Ark. 150, cited in the original note).

Chicago *v.* Burke, 226 Ill. 191, 80 N. E. 720, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 783, 784.

785. 2. Buck *v.* Hawley, 129 Iowa 406, 105 N. W. 688, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 785; Briggs *v.* Voss, 73 Kan. 418, 85 Pac. 571; Davenport *v.* Davenport, 116 La. 1009, 41 So. 240, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771 [785]; *Ex p.* Tracey, (Tex. Crim. 1905) 93 S. W. 538, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 785.

786. 2. People *v.* McAdoo, 110 N. Y. App. Div. 432, 96 N. Y. Supp. 362.

10. Gregory *v.* Woodbery, 53 Fla. 566, 43 So. 504.

12. Ledbetter *v.* State, 2 Ga. App. 631, 58 S. E. 1106; Davenport *v.* Davenport, 116 La. 1009, 41 So. 240.

787. 1. Chicago *v.* Burke, 226 Ill. 191, 80 N. E. 720.

Bond for Less than Required Amount. — State *v.* Skagit County, 42 Wash. 491, 85 Pac. 264, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 786, 787.

4. Davenport *v.* Davenport, 116 La. 1009, 41 So. 240.

5. Murphy *v.* Lentz, 131 Iowa 328, 108 N. W. 530.

789. 4. U. S. *v.* Mitchell, 136 Fed. 906, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 788 [789].

790. 1. State *v.* Ely, (N. Dak. 1907) 113 N. W. 711, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 729 [790].

791. 3. Chicago *v.* Burke, 226 Ill. 191, 80 N. E. 720; School *v.* Bell, (Ky. 1907) 102 S. W. 248; Henry *v.* Com., (Ky. 1907) 103 S. W. 371; People *v.* Lister, 106 N. Y. App. Div. 61, 93 N. Y. Supp. 830.

4. Chicago *v.* Burke, 226 Ill. 191, 80 N. E. 720; Usher *v.* Western Union Tel. Co., 122 Mo. App. 98, 98 S. W. 84; State *v.* Cartwright, 122 Mo. App. 257, 99 S. W. 48; People *v.* Lister, 106 N. Y. App. Div. 61, 93 N. Y. Supp. 830.

793. 3. **Possession Pending Decision.** — One of two contestants for the office of school director who assumes the duties of the office and acts as such officer pursuant to an opinion of the state superintendent of public instruction as to the title of such office is while so acting a *de facto* officer. Bishop *v.* Fuller, (Neb. 1907) 110 N. W. 715.

5. State *v.* Judge, 142 Ala. 89, 38 So. 835, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 793; Butler *v.* Phillips, 38 Cal. 378, 88 Pac. 480; Thompson *v.* Couch, 144 Mich. 671, 108 N. W. 363; Dienstag *v.* Fagan, (N. J. 1907) 65 Atl. 1011; State *v.* Ely, (N. Dak. 1907) 113 N. W. 711, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 793.

796. 3. Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141.

799. 2. Dienstag *v.* Fagan, (N. J. 1907) 65 Atl. 1011.

8. Lower Terrebonne Refining, etc., Co. *v.* Police Jury, 115 La. 1019, 40 So. 443, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 799; People *v.* McAdoo, 110 N. Y. App. Div. 432, 96 N. Y. Supp. 362.

Can Be No De Facto Officer unless There Could Be a De Jure Officer. — People *v.* Welsh, 225 Ill. 364, 80 N. E. 313.

802. 2. State *v.* Ely, (N. Dak. 1907) 113 N. W. 711.

803. 1. **Right to Office until Judgment Rendered in Proceeding to Oust.** — Sanders *v.* Emmer, 115 La. 590, 39 So. 631. See also concurring opinion of Cullen, C. J., in *In re* Sherill, 188 N. Y. 185, 81 N. E. 124.

805. 5. Pack *v.* U. S., 41 Ct. Cl. 414.

810. 2. Chubbuck *v.* Wilson, 151 Cal. 162, 90 Pac. 525, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 810; Chicago *v.* Burke, 226 Ill. 191, 80 N. E. 720.

812. 4. Pack *v.* U. S., 41 Ct. Cl. 414; Cobb *v.* Hammock, 82 Ark. 584, 102 S. W. 382; Murphy *v.* Lentz, 131 Iowa 328, 108 N. W. 530; Eubank *v.* Montgomery County, (Ky. 1907) 105 S. W. 418, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 812.

814. 1. Tanner *v.* Edwards, 31 Utah 86, 86 Pac. 765; Samuels *v.* Harrington, 43 Wash. 603, 86 Pac. 1071, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 814.

815. 3. Samuels *v.* Harrington, 43 Wash. 603, 86 Pac. 1071.

816. 1. *United States.* — Pack *v.* U. S., 41 Ct. Cl. 414.

Alabama. — State *v.* Judge, 142 Ala. 89, 38 So. 835, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 816; Walker *v.* State, 142 Ala. 32, 38 So. 241; Walker *v.* State, 142 Ala. 7, 39 So. 242; Sellers *v.* Smith, 143 Ala. 566, 39 So. 356; Stephens *v.* Davis, (Ala. 1905) 39 So. 831.

California. — Butler *v.* Phillips, 38 Cal. 378, 88 Pac. 480, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 815 [816].

Florida. — Gregory *v.* Woodbery, 53 Fla. 566, 43 So. 504.

Georgia. — Ledbetter *v.* State, 2 Ga. App. 631, 58 S. E. 1106.

Illinois. — Chicago *v.* Burke, 226 Ill. 191, 80 N. E. 720.

Kansas. — Briggs *v.* Voss, 73 Kan. 418, 85 Pac. 571.

Louisiana. — Davenport *v.* Davenport, 116 La. 1009, 41 So. 240.

Mississippi. — Greene *v.* Rienzi, 87 Miss. 463, 40 So. 17.

Missouri. — Usher *v.* Western Union Tel. Co., 122 Mo. App. 98, 98 S. W. 84.

New Hampshire. — Gleason *v.* Canterbury Mut. F. Ins. Co., 73 N. H. 583, 64 Atl. 187.

New Jersey. — Dienstag *v.* Fagan, (N. J. 1907) 65 Atl. 1011.

New York. — People *v.* Lister, 106 N. Y. App. Div. 61, 93 N. Y. Supp. 830. See also concurring opinion of Cullen, C. J., in *In re* Sherill, 188 N. Y. 185, 81 N. E. 124.

Washington. — State *v.* Skagit County, 42 Wash. 491, 85 Pac. 264.

818. 2. Walker *v.* State, 142 Ala. 7, 39 So. 242; Sellers *v.* Smith, 143 Ala. [illegible] So.

356; Butler *v.* Phillips, 38 Cal. 378, 88 Pac. 480; Usher *v.* Western Union Tel. Co., 122 Mo. App. 98, 98 S. W. 84.

Acts of De Facto Judge Cannot Be Collaterally Attacked. — Briggs *v.* Voss, 73 Kan. 418, 85 Pac. 571.

3. State *v.* Judge, 142 Ala. 87, 38 So. 835.

Indictment by Grand Jury Organized by De Facto Judge Valid. — Walker *v.* State, 142 Ala. 32, 38 So. 241; State *v.* Judge, 142 Ala. 89, 38 So. 835, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818.

821. 2. Lower Terrebonne Refining, etc., Co. *v.* Police Jury, 115 La. 1019, 40 So. 443.

823. 3. Modstock Min. Co. *v.* Harris, 40 Nova Scotia 336; State *v.* Frentress, (Ind. App. 1906) 76 N. E. 821; Briggs *v.* Voss, 73 Kan. 418, 85 Pac. 571. See also concurring opinion of Cullen, C. J., in *In re* Sherill, 188 N. Y. 185, 81 N. E. 124.

DE MINIMIS NON CURAT LEX.

832. 1. Neal *v* Gray, 124 Ga. 510, 52 S. E. 622; Spunner *v.* Roney, 122 Ill. App. 19; Ellis *v.* National City Bank, (Tex. Civ. App. 1906) 94 S. W. 437; McKone *v.* Metropolitan L. Ins. Co., 131 Wis. 243, 110 N. W. 472.

DEAD BODY.

834. 1. Wilson *v.* Read, (N. H. 1907) 68 Atl. 37; Long *v.* Chicago, etc., R. Co., 15 Okla. 512, 86 Pac. 289.

In Georgia there is a *quasi* right of property in a dead body. Medical College *v.* Rushing, 1 Ga. App. 468, 57 S. E. 1083.

835. 1. Beaulieu *v.* Great Northern R. Co., (Minn. 1907) 114 N. W. 353, *per* Jaggard, J., *dissenting, citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 835; Wilson *v.* Read, (N. H. 1907) 68 Atl. 37; Jackson *v.* Savage, 109 N. Y. App. Div. 556, 96 N. Y. Supp. 366.

2. Louisville, etc., R. Co. *v.* Blackmon, (Ga. App. 1907) 59 S. E. 341, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 834 [835]; Medical College *v.* Rushing, 1 Ga. App. 468, 57 S. E. 1083; Meyers *v.* Clarke, (Ky. 1906) 90 S. W. 1049, rehearing denied (Ky. 1906) 93 S. W. 43; Beaulieu *v.* Great Northern R. Co., (Minn. 1907) 114 N. W. 353, *per* Jaggard, J., *dissenting, citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 835.

836. 1. Wishes of Testator Will Prevail. — Wilson *v.* Read, (N. H. 1907) 68 Atl. 37. *Compare* Herold *v.* Herold, 16 Ohio Dec. 303, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 836.

4. Herold *v.* Herold, 16 Ohio Dec. 303; McGann *v.* McGann, (R. I. 1907) 66 Atl. 52.

837. 1. Wilson *v.* Read, (N. H. 1907) 68 Atl. 37; Herold *v.* Herold, 16 Ohio Dec. 303, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 836 [837].

5. Wilson *v.* Read, (N. H. 1907) 68 Atl. 37.

A Court Has Power to Decree the Removal of an interred body, in a proper case, upon a proper application. Cohen *v.* Congregation Shearith Israel, 114 N. Y. App. Div. 117, 99 N. Y. Supp. 732.

6. After Burial, the Widow Has the Control of the body of her dead husband, and the executors do not. Mutual L. Ins. Co. *v.* Griesa, 156 Fed. 398.

DEAF AND DUMB PERSONS.

844. 3. Dobbins *v.* Little Rock R., etc., Co., 79 Ark. 85, 95 S. W. 794; State *v.* Smith, (Mo. 1907) 102 S. W. 526.

845. 1. Dobbins *v.* Little Rock R., etc., Co., 79 Ark. 85, 95 S. W. 794.

DEAL — DEALER.

846. 3. Wilson *v.* Delaney, (Iowa 1907) 113 N. W. 842; Guilder *v.* State, 26 Ohio Cir. Ct. 221.

4. Synonymous with Trader. — State *v.* Rosenbaum, (Conn. 1907) 68 Atl. 250.

One Selling Milk from his own cows is a *dealer* within a statute prohibiting sale of skimmed milk without labeling. Guilder *v.* State, 26 Ohio Cir. Ct. 221.

Taxation — Single Transaction. — See Florida Packing, etc., Co. *v.* Carney, 51 Fla. 190, 41 So. 190.

DEATH BY WRONGFUL ACT.

855. 1. Stewart *v.* United Electric Light, etc., Co., 104 Md. 332, 65 Atl. 53; Casey *v.* St. Louis Transit Co., 116 Mo. App. 241, 91 S. W. 419, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 855; Duncan *v.* St. Luke's Hospital, 113 N. Y. App. Div. 68, 98 N. Y. Supp. 867; Baltimore, etc., R. Co. *v.* Chambers, 73 Ohio St. 24, 76 N. E. 91, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 854 [855]; Shaw *v.* Charleston, 57 W. Va. 436, 50 S. E. 527, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 854 [855].

858. 2. Casey *v.* St. Louis Transit Co., 116 Mo. App. 242, 91 S. W. 419, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 858; Bolick *v.* Southern R. Co., 138 N. Car. 371, 50 S. E. 689, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 858; Baltimore, etc., R. Co. *v.* Chambers, 73 Ohio St. 24, 76 N. E. 91, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 858.

859. 2. Hoodmacher *v.* Lehigh Valley R. Co., 218 Pa. St. 21, 66 Atl. 975.

861. 1. Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; Carty *v.* Winooski, 78 Vt. 104, 62 Atl. 45.

862. 1. Harrison *v.* Kansas City Electric Light Co., 195 Mo. 606, 93 S. W. 951.

863. 1. *Compare* Galveston, etc., R. Co. *v.* Currie, (Tex. 1906) 96 S. W. 1073.

6. Howard *v.* Hunter, (Ky. 1907) 104 S. W. 723.

865. 1. Oulighan *v.* Butler, 189 Mass. 287, 75 N. E. 726.

867. 3. *United States.* — Mooney *v.* Carter, (C. C. A.) 152 Fed. 147; Rich *v.* Chicago, etc., R. Co., 149 Fed. 79, 78 C. C. A. 663.

California. — Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122.

Georgia. — McLarty *v.* Southern R. Co., 127 Ga. 161, 56 S. E. 297.

Illinois. — Shannon *v.* Chicago, etc., R. Co., 125 Ill. App. 537; O'Donnell *v.* Chicago, etc., R. Co., 127 Ill. App. 432.

Iowa. — Rietveld *v.* Wabash R. Co., 129 Iowa 249, 105 N. W. 515.

Massachusetts. — Adams *v.* Boston, etc., St. R. Co., 191 Mass. 486, 78 N. E. 117; Manning

v. Conway, 192 Mass. 122, 78 N. E. 401; McCarty *v.* Clinton Gaslight Co., 193 Mass. 76, 78 N. E. 739.

Nevada. — Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210.

New York. — Axelrod *v.* New York City R. Co., 109 N. Y. App. Div. 87, 95 N. Y. Supp. 1072; Causullo *v.* Lenox Constr. Co., 122 N. Y. App. Div. 672, 107 N. Y. Supp. 431.

Pennsylvania. — Davis *v.* Pennsylvania R. Co., 34 Pa. Super. Ct. 388.

Burden of Proof on Defendant. — Texas, etc., R. Co. *v.* Huber, (Tex. Civ. App. 1906) 95 S. W. 563.

868. 3. Illinois Cent. R. Co. *v.* Warriner, 229 Ill. 91, 82 N. E. 246; Mills *v.* Cavanaugh, 94 S. W. 651, 29 Ky. L. Rep. 685; Harton *v.* Forest City Telephone Co., 141 N. Car. 455, 54 S. E. 299; Vinnette *v.* Northern Pac. R. Co., (Wash. 1907) 91 Pac. 975.

869. 4. *Compare* McKeigue *v.* Chicago, etc., R. Co., 130 Wis. 543, 110 N. W. 384.

A Sole Beneficiary may of course compromise. McGurty *v.* New Amsterdam Gas Co., 115 N. Y. App. Div. 668, 101 N. Y. Supp. 235.

870. 1. Aho *v.* Jesmore, 101 Minn. 449, 112 N. W. 538.

3. Burns *v.* Welte, 126 Ill. App. 547, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 870; Strode *v.* St. Louis Transit Co., 197 Mo. 616, 95 S. W. 851, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 870.

876. 2. Louisville, etc., R. Co. *v.* Simrall, (Ky. 1907) 104 S. W. 1011; Altzheimer *v.* Central R. Co., (N. J. L. 1907) 67 Atl. 1051. *Compare* Crapo *v.* Syracuse, 183 N. Y. 395, 76 N. E. 465.

879. 1. Kansas City Southern R. Co. *v.* McGinty, 76 Ark. 356, 88 S. W. 1001; Denver, etc., R. Co. *v.* Warring, 37 Colo. 122, 86 Pac. 305; Atlanta, etc., R. Co. *v.* Smith, 1 Ga. App. 162, 58 S. E. 106; Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210; Free *v.* Southern R. Co., (S. Car. 1907) 58 S. E. 952.

2. Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715, 723.

In Ohio no action can be maintained upon a cause of action for wrongful death occurring in another state except where the person wrongfully killed was a citizen of the state of Ohio. Baltimore, etc., R. Co. *v.* Chambers, 73 Ohio St. 16, 76 N. E. 91.

880. 2. Raisor *v.* Chicago, etc., R. Co., 215 Ill. 47, 2 Ann. Cas. 802, 74 N. E. 69.

881. 1. Runt *v.* Illinois Cent. R. Co., 88 Miss. 575, 41 So. 1; Gurofsky *v.* Lehigh Valley R. Co., 121 N. Y. App. Div. 126, 105 N. Y. Supp. 514.

882. 2. Keep *v.* National Tube Co., 154 Fed. 121.

3. Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210.

884. 4. Malloy *v.* American Hide, etc., Co., 148 Fed. 482.

885. 2. Lee *v.* Missouri Pac. R. Co., 195 Mo. 400, 92 S. W. 614; Casey *v.* Hoover, 197 Mo. 62, 94 S. W. 982; La Bar *v.* New York, etc., R. Co., 218 Pa. St. 261, 67 Atl. 413; Hoodmacher *v.* Lehigh Valley R. Co., 218 Pa. St. 21, 66 Atl. 975. *Compare* Bussey *v.* Charleston, etc., R. Co., 73 S. Car. 215, 53 S. E. 165.

3. Denver, etc., R. Co. *v.* Warring, 37 Colo. 122, 86 Pac. 305; *In re* Coe, 130 Iowa 307, 106 N. W. 743; Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; Hall *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 870.

But the Amount of Damages which the plaintiff is entitled to recover is governed by the state where the suit is brought. Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210.

4. Cason *v.* Covington, etc., El. R., etc., Co., 98 S. W. 304, 30 Ky. L. Rep. 352.

All the Limitations and Burdens imposed by the statute of the state where the right of action was created must be observed. Swisher *v.* Atchison, etc., R. Co., (Kan. 1907) 90 Pac. 812.

886. 1. Keep *v.* National Tube Co., 154 Fed. 121; Swanson *v.* Atlantic, etc., Co., 156 Fed. 977.

887. 4. Salmon *v.* Rathjens, (Cal. 1907) 92 Pac. 733; Casey *v.* St. Louis Transit Co., 116 Mo. App. 258, 91 S. W. 419, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 887.

888. 2. Gottlieb *v.* North Jersey St. R. Co., 72 N. J. L. 480, 63 Atl. 339.

889. 1. Gottlieb *v.* North Jersey St. R. Co., 72 N. J. L. 480, 63 Atl. 339.

3. Hoodmacher *v.* Lehigh Valley R. Co., 218 Pa. St. 21, 66 Atl. 975.

In Oklahoma the widow may prosecute when no personal representative has been appointed. Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076.

Right to Sue Restricted to Lawful Widow. — Vaughan *v.* Dalton-Lard Lumber Co., 119 La. 61, 43 So. 926.

891. 3. Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144.

Having Consulted Counsel as to her right to a divorce does not prevent a widow from maintaining the action. Abel *v.* Northampton Traction Co., 212 Pa. St. 329, 61 Atl. 915.

4. **Pennsylvania.** — Gulla *v.* Lehigh Valley Coal Co., 28 Pa. Super. Ct. 11.

895. 3. **In Louisiana** the word "child" does not include an illegitimate child. Lynch *v.* Knoop, 118 La. 611, 43 So. 254, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 895.

896. 2. **Georgia.** — Griffith *v.* Griffith, 128 Ga. 371, 57 S. E. 698.

An adult child, however, cannot sue in Georgia. Western, etc., R. Co. *v.* Harris, 128 Ga. 394, 57 S. E. 722.

3. Beaumont Traction Co. *v.* Dilworth, (Tex. Civ. App. 1906) 94 S. W. 352.

898. 5. Woodstock Iron Works *v.* Kline, (Ala. 1906) 43 So. 362; Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 75 N. E. 832; Nemecek *v.* Filer, etc., Co., 126 Wis. 71, 105 N. W. 225.

901. 3. *In re* Lowham, 30 Utah 436, 85 Pac. 445.

902. 1. St. Louis Southwestern R. Co. *v.* Graham, 83 Ark. 61, 102 S. W. 700.

2. **Parents** are "next of kin" and entitled to sue. Gaska *v.* American Car, etc., Co., 127 Mo. App. 160, 105 S. W. 3.

A Sister is not a "next of kin." Rice *v.* In-

terurban St. R. Co., 121 N. Y. App. Div. 714, 106 N. Y. Supp. 463.

903. 5. Rhoades *v.* Chicago, etc., R. Co., 227 Ill. 328, 10 Ann. Cas. 111, 81 N. E. 371.

904. 1. Louisville, etc., R. Co. *v.* Jones, 50 Fla. 225, 39 So. 485.

Children Presumed to Be Dependents. — Standard Oil Co. *v.* Parkinson, (C. C. A.) 152 Fed. 681.

2. Omaha Water Co. *v.* Schamel, 147 Fed. 502, 78 C. C. A. 68; Mehan *v.* Lowell Electric Light Corp., 192 Mass. 53, 78 N. E. 385; Morena *v.* Winston, 194 Mass. 378, 80 N. E. 473.

4. Louisville, etc., R. Co. *v.* Jones, 50 Fla. 225, 39 So. 485.

905. 3. Patek *v.* American Emelting, etc., Co., (C. C. A.) 154 Fed. 190; Atchison, etc., R. Co. *v.* Fajardo, 74 Kan. 314, 86 Pac. 301; Gaska *v.* American Car, etc., Co., 127 Mo. App. 169, 105 S. W. 3; Pittsburg, etc., R. Co. *v.* Naylor, 73 Ohio St. 115, 76 N. E. 505; Low Moor Iron Co. *v.* La Bianca, 106 Va. 83, 55 S. E. 532.

In New York the administrator of a decedent whose next of kin are aliens may sue for the benefit of the next of kin. Alfson *v.* Bush Co., 182 N. Y. 393, 75 N. E. 230.

In North Carolina a nonresident administrator cannot sue for the wrongful death of a nonresident intestate occurring in North Carolina. Hall *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 879.

Under the Pennsylvania Statute (Act of April 20, 1855, Pub. Laws 309) a nonresident alien has no right of action. Zeiger *v.* Pennsylvania R. Co., 151 Fed. 348.

906. 1. *In re* Williams, 130 Iowa 553, 107 N. W. 608.

4. Hopper *v.* Denver, etc., Co., (C. C. A.) 155 Fed. 273; Bowden *v.* Jacksonville Electric Co., 51 Fla. 152, 41 So. 400; Martin *v.* Butte, 34 Mont. 281, 86 Pac. 264.

907. 3. *Compare* Anniston *v.* Ivey, (Ala. 1907) 44 So. 48.

908. 5. Mangan *v.* Hudson River Telephone Co., 100 N. Y. Supp. 539, (Supm. Ct. Sp. T.) 50 Misc. (N. Y.) 388.

909. 3. *United States.* — Ward *v.* Dampskibsselskabet Kjoebenhavn, 144 Fed. 524.

Alabama. — Central of Georgia R. Co. *v.* Alexander, 144 Ala. 257, 40 So. 424.

Arkansas. — St. Louis, etc., R. Co. *v.* Mathias, 76 Ark. 184, 91 S. W. 763.

California. — Ruppel *v.* United Railroads, 1 Cal. App. 666, 82 Pac. 1073; Evarts *v.* Santa Barbara Consol. R. Co., 3 Cal. App. 712, 86 Pac. 830; Sneed *v.* Marysville Gas, etc., Co., 149 Cal. 704, 87 Pac. 376.

Illinois. — Illinois Cent. R. Co. *v.* Johnson, 221 Ill. 42, 77 N. E. 592; Toledo, etc., R. Co. *v.* Smart, 116 Ill. App. 523; Illinois Cent. R. Co. *v.* Whitaker, 122 Ill. App. 333; Illinois Cent. R. Co. *v.* Hicks, 122 Ill. App. 349; Chicago, etc., R. Co. *v.* Louderback, 125 Ill. App. 323.

Indiana. — Consolidated Stone Co. *v.* Staggs, 164 Ind. 337, 73 N. E. 695, *quoting* 8 Am. and Eng. Encyc. of Law (2d ed.) 909; Louisville, etc., R. Co. *v.* Gollihur, (Ind. App. 1907) 82 N. E. 492, *quoting* 8 Am. and Eng. Encyc. of Law (2d ed.) 909; Indianapolis Traction, etc., Co. *v.* Romans, (Ind. App. 1907) 79 N. E. 1068.

Kentucky. — Louisville, etc., R. Co. *v.* Lucas, 98 S. W. 308, 30 Ky. L. Rep. 359.

Michigan. — King *v.* Ann Arbor R. Co., 144 Mich. 65, 13 Detroit Leg. N. 145, 107 N. W. 868.

New York. — Rice *v.* Interurban St. R. Co., 121 N. Y. App. Div. 714, 106 N. Y. Supp. 463.

Pennsylvania. — Palmer *v.* Philadelphia, etc., R. Co., 218 Pa. St. 114, 66 Atl. 1127.

Texas. — Houston, etc., R. Co. *v.* Rutland, (Tex. Civ. App. 1907) 101 S. W. 529.

In South Carolina, however, the damages are not limited to pecuniary injury. Barksdale *v.* Seaboard Air Line R. Co., 76 S. Car. 183, 56 S. E. 906.

910. 2. Matlock *v.* Williamsville, etc., R. Co., 198 Mo. 495, 95 S. W. 849.

4. Smith *v.* Birmingham R., etc., Co., 147 Ala. 702, 41 So. 307.

6. Missouri, etc., R. Co. *v.* McLaughlin, 73 Kan. 248, 84 Pac. 989.

911. 1. Hamner *v.* Janowitz, 131 Iowa 20, 108 N. W. 109; Davis *v.* Michigan Cent. R. Co., 147 Mich. 479, 111 N. W. 76, 13 Detroit Leg. N. 1119; Poe *v.* Raleigh, etc., Air Line R. Co., 141 N. Car. 525, 54 S. E. 406.

2. Reiter-Connolly Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280.

912. 1. Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210.

4. Wilmot *v.* McPadden, 79 Conn. 367, 65 Atl. 157; Stewart *v.* United Electric Light, etc., Co., 104 Md. 332, 65 Atl. 53.

913. 4. Ellis *v.* Republic Oil Co., 133 Iowa 11, 110 N. W. 20; Dobyns *v.* Yazoo, etc., R. Co., 119 La. 72, 43 So. 934.

916. 1. *Arkansas.* — St. Louis, etc., R. Co. *v.* Caraway, 77 Ark. 405, 91 S. W. 749; St. Louis, etc., R. Co. *v.* Mathias, 76 Ark. 184, 91 S. W. 763; St. Louis, etc., R. Co. *v.* Standifer, 81 Ark. 275, 99 S. W. 81.

California. — Salmon *v.* Rathjens, (Cal. 1907) 92 Pac. 733.

Illinois. — Goddard *v.* Enzler, 222 Ill. 462, 78 N. E. 805.

Indiana. — Indianapolis Traction, etc., Co. *v.* Romans, (Ind. App. 1907) 79 N. E. 1068.

Minnesota. — Johnson *v.* C. A. Smith Lumber Co., 99 Minn. 343, 109 N. W. 810, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 915 [916].

Missouri. — Gamache *v.* Johnston Tin Foil, etc., Co., 116 Mo. App. 596, 92 S. W. 918.

Rhode Island. — *Compare* McCabe *v.* Narragansett Electric Lighting Co., 27 R. I. 272, 61 Atl. 667.

Texas. — Beaumont Traction Co. *v.* Dilworth, (Tex. Civ. App. 1906) 94 S. W. 352; Houston, etc., R. Co. *v.* Rutland, (Tex. Civ. App. 1907) 101 S. W. 529; International, etc., R. Co. *v.* McVey, (Tex. Civ. App. 1907) 102 S. W. 172.

Loss of Mother's Nurture and Instruction a Pecuniary Injury. — Omaha Water Co. *v.* Schamel, 147 Fed. 502, 78 C. C. A. 68.

917. 4. Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 81, 102 S. W. 608; Taylor *v.* San Antonio Gas, etc., Co., (Tex. Civ. App. 1906) 93 S. W. 674.

A Contrary Rule prevails, however, where the wife was living apart from the husband in open adultery with another. Orendorf *v.* New York, etc., R. Co., 119 N. Y. App. Div. 638, 104 N. Y. Supp. 222.

918. 1. Philby *v.* Northern Pac. R. Co., (Wash. 1907) 89 Pac. 468; Collins *v.* St. John, 38 N. Bruns. 86.

The Husband May Give His Opinion of the value of the services. Chicago, etc., R. Co. *v.* Groner, (Tex. Civ. App. 1906) 95 S. W. 1118.

919. 2. Bodcaw Lumber Co. *v.* Ford, 82 Ark. 555, 102 S. W. 896; Savannah Electric Co. *v.* Bell, 124 Ga. 663, 53 S. E. 109; Black *v.* Michigan Cent. R. Co., 146 Mich. 568, 13 Detroit Leg. N. 863, 109 N. W. 1052; Calcaterra *v.* Iovaldi, 123 Mo. App. 347, 100 S. W. 675; Esher *v.* Mineral R., etc., Co., 28 Pa. Super. Ct. 393; Bracken *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 22; Clough *v.* Fabre, 9 Quebec Pr. 18.

920. 1. Hopper *v.* Denver, etc., R. Co., (C. C. A.) 155 Fed. 273; Illinois Cent. R. Co. *v.* Warriner, 229 Ill. 91, 82 N. E. 246; Cumberland Telephone, etc., Co. *v.* Anderson, 89 Miss. 732, 41 So. 263; Gulf, etc., R. Co. *v.* Hall, 34 Tex. Civ. App. 542, 80 S. W. 133, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 920; Missouri, etc., R. Co. *v.* Snowden, (Tex. Civ. App. 1906) 99 S. W. 865; Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075; Hayes *v.* Chicago, etc., R. Co., 131 Wis. 399, 111 N. W. 471.

921. 1. St. Louis, etc., R. Co. *v.* Garner, 76 Ark. 555, 89 S. W. 550.

922. 7. Scofield *v.* Pennsylvania Co., 149 Fed. 601; Huff *v.* Peoria, etc., R. Co., 127 Ill. App. 251, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922; Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922; Leque *v.* Madison Gas, etc., Co., (Wis. 1907) 113 N. W. 946.

8. Sneed *v.* Marysville Gas, etc., Co., 149 Cal. 704, 87 Pac. 376, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922.

923. 2. Kelley *v.* Ohio River R. Co., 58 W. Va. 216, 52 S. E. 520, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923.

925. 1. Otto Kuehne Preserving Co. *v.* Allen, 148 Fed. 666, 8 Ann. Cas. 746, 78 C. C. A. 418; St. Louis, etc., R. Co. *v.* Stamps, 84 Ark. 241, 104 S. W. 1114; Illinois Cent. R. Co. *v.* Sheegog, (Ky. 1907) 103 S. W. 323; Olsen *v.* Montana Ore Purchasing Co., 35 Mont. 400, 89 Pac. 731; Calcaterra *v.* Iovaldi, 123 Mo. App. 347, 100 S. W. 675; Brickman *v.* Southern R. Co., 74 S. Car. 306, 54 S. E. 553; Osteen *v.* Southern R. Co., 76 S. Car. 368, 57 S. E. 196.

926. 2. Falender *v.* Blackwell, 39 Ind. App. 121, 79 N. E. 393; Marshall *v.* Consolidated Jack Mines Co., 119 Mo. App. 270, 95 S. W. 972; Calcaterra *v.* Iovaldi, 123 Mo. App. 347, 100 S. W. 675; Dando *v.* Home Telephone Co., 126 Mo. App. 242, 103 S. W. 103; Byrd *v.* Southern Express Co., 139 N. Car. 273, 51 S. E. 851; Galveston, etc., R. Co. *v.* Heard, (Tex. Civ. App. 1905) 91 S. W. 371; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563; Texas, etc., R. Co. *v.* Green, (Tex. Civ. App. 1906) 95 S. W. 694; Quebec R., etc., Co. *v.* Poitras, 14 Quebec K. B. 429.

928. 1. Parker *v.* Crowell, etc., Lumber Co., 115 La. 463, 39 So. 445; Kelley *v.* Ohio River R. Co., 58 W. Va. 216, 52 S. E. 520.

2. Dobyns *v.* Yazoo, etc., R. Co., 119 La. 72, 43 So. 934; Brickman *v.* Southern R. Co., 74 S. Car. 306, 54 S. E. 553.

Damages Allowed for Loss of Husband's Society. — Evarts *v.* Santa Barbara Consol. R. Co., 3 Cal. App. 712, 86 Pac. 830.

929. 2. Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 81, 102 S. W. 608.

3. Central of Georgia R. Co. *v.* Alexander, 144 Ala. 257, 40 So. 424; Grace, etc., Co. *v.* Strong, 224 Ill. 630, 79 N. E. 967; Rhoades *v.* Chicago, etc., R. Co., 227 Ill. 328, 10 Ann. Cas. 111, 81 N. E. 371.

930. 1. Woodstock Iron Works *v.* Kline, (Ala. 1906) 43 So. 362.

931. 3. Casey *v.* St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 931.

935. 3. Seattle Electric Co. *v.* Hartless, (C. C. A.) 144 Fed. 379.

4. Evarts *v.* Santa Barbara Consol. R. Co., 3 Cal. App. 712, 86 Pac. 830.

7. Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075.

8. Sloss-Sheffield Steel, etc., Co. *v.* Hollaway, 144 Ala. 280, 40 So. 211.

936. 3. Nevers Lumber Co. *v.* Fields, (Ala. 1907) 44 So. 81.

937. 4. St. Louis, etc., R. Co. *v.* Cleere, 76 Ark. 377, 88 S. W. 995.

939. 3. Sneed *v.* Marysville Gas, etc., Co., 149 Cal. 704, 87 Pac. 376, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 939.

940. 2. George B. Swift Co. *v.* Gaylord, 229 Ill. 330, 82 N. E. 299.

944. 2. *United States.* — Ward *v.* Dampskibsselskabet Kjoebenhavn, 144 Fed. 524; Baker *v.* Philadelphia, etc., R. Co., 149 Fed. 882.

Alabama. — Central of Georgia R. Co. *v.* Alexander, 144 Ala. 257, 40 So. 424; Alabama Steel, etc., Co. *v.* Griffin, (Ala. 1907) 42 So. 1034; Woodstock Iron Works *v.* Kline, (Ala. 1906) 43 So. 362.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148.

Illinois. — Chicago, etc., R. Co. *v.* Weber, 121 Ill. App. 455.

Iowa. — Hamner *v.* Janowitz, 131 Iowa 20, 108 N. W. 109.

Missouri. — Hach *v.* St. Louis, etc., R. Co., (Mo. 1907) 106 S. W. 525.

North Carolina. — Carter *v.* North Carolina R. Co., 139 N. Car. 490, 52 S. E. 642.

Texas. — Beaumont Traction Co. *v.* Dilworth, (Tex. Civ. App. 1906) 94 S. W. 352; Houston, etc., R. Co. *v.* McHale, (Tex. Civ. App. 1907) 105 S. W. 1149.

946. 2. Central of Georgia R. Co. *v.* Ray, 120 Ga. 349, 58 S. E. 844.

947. 1. Valente *v.* Sierra R. Co., 151 Cal. 534, 91 Pac. 481; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; George

R. Swift Co. *v.* Gaylord, 229 Ill. 330, 82 N. E. 1; Hamner *v.* Janowitz, 131 Iowa 20, 108 N. W. 109; Austin *v.* Metropolitan St. R. Co., 108 N. Y. App. Div. 249, 95 N. Y. Supp. 740.

3. Calvert *v.* Springfield Electric Light, etc., Co., 231 Ill. 290, 83 N. E. 186, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 947.

918. 2. Ward *v.* Dampskibsselskabet Kjoebenhavn, 144 Fed. 524; Northern Alabama R. Co. *v.* Key, (Ala. 1907) 43 So. 794; Nevers Lumber Co. *v.* Fields, (Ala. 1907) 44 So. 81; Central of Georgia R. Co. *v.* Minor, 2 Ga. App. 804, 59 S. E. 81; Davis *v.* Michigan Cent. R. Co., 147 Mich. 479, 111 N. W. 76, 13 Detroit Leg. N. 1119; Goodes *v.* Lansing, etc., Traction Co., 14 Detroit Leg. N. 768, (Mich. 1907) 114 N. W. 338; Bussey *v.* Charleston, etc., R. Co., (S. Car. 1907) 58 S. E. 1015; Texas Mexican R. Co. *v.* Higgins, (Tex. Civ. App. 1906) 99 S. W. 200.

3. Louisville, etc., R. Co. *v.* Anderson, (Ala. 1907) 43 So. 566; Memphis St. R. Co. *v.* Berry, 118 Tenn. 581, 102 S. W. 85.

919. 7. Reiter-Connolly Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280; Central of Georgia R. Co. *v.* Alexander, 144 Ala. 257, 40 So. 424; Wrightsville, etc., R. Co. *v.* Gornto, 129 Ga. 204, 58 S. E. 769; Davis *v.* Michigan Cent. R. Co., 147 Mich. 479, 111 N. W. 76, 13 Detroit Leg. N. 1119.

Capacity to Earn Money is by a *New Hampshire* statute made an element of damage, and it is immaterial that the deceased never had earned money. See Dillon *v.* Hudson, etc., Electric R. Co., 73 N. H. 367, 62 Atl. 93.

950. 2. Central Foundry Co. *v.* Bennett, 144 Ala. 184, 39 So. 574.

4. St. Louis, etc., R. Co. *v.* Block, 79 Ark. 179, 95 S. W. 155; St. Louis, etc., R. Co. *v.* Stamps, 84 Ark. 241, 104 S. W. 1114; Evarts *v.* Santa Barbara Consol. R. Co., 3 Cal. App. 712, 86 Pac. 830; Davis *v.* Michigan Cent. R. Co., 147 Mich. 479, 111 N. W. 76, 13 Detroit Leg. N. 1119; Nemecek *v.* Filer, etc., Co., 126 Wis. 71, 105 N. W. 225.

951. 1. Paducah City R. Co. *v.* Alexander, (Ky. 1907) 104 S. W. 375; Louisville, etc., R. Co. *v.* Simrall, (Ky. 1907) 104 S. W. 1011.

953. 1. St. Louis, etc., R. Co. *v.* Stamps, 84 Ark. 241, 104 S. W. 1114. *Compare* Cumberland Telephone, etc., Co. *v.* Anderson, 89 Miss. 732, 41 So. 263.

5. Dean *v.* Oregon R., etc., Co., 44 Wash. 564, 87 Pac. 824; Philby *v.* Northern Pac. R. Co., (Wash. 1907) 89 Pac. 468.

English Rule Contra — No Recovery for Funeral Expenses. — Clark *v.* London General Omnibus Co., (1906) 2 K. B. 648, 6 Ann. Cas. 198.

954. 2. Salmon *v.* Rathjens, (Cal. 1907) 92 Pac. 733.

955. 6. Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408.

956. 2. The Arizona Statute provides that the amount recovered shall not be subject to the debts of the deceased. Southern Pac. Co. *v.* Wilson, (Ariz. 1906) 85 Pac. 401.

3. Neill *v.* Wilson, (N. Car. 1907) 59 S. E. 674.

958. 1. Administrator Recovers as Trustee for Beneficiaries. — Gottlieb *v.* North Jersey St. R. Co., 72 N. J. L. 480, 63 Atl. 339.

DEBENTURES.

963. 2. As to Authority to Issue Debenture Stock, see *In re* Southern Brazilian Rio Grande Do Sul R. Co., (1905) 2 Ch. 78.

964. 2. Pledge as Collateral Security — Reissuing. — Where the company deposited debentures, sealed in blank without name or date and unregistered, as security for a temporary loan, it was held that this was an issue of the debentures and that they could not be reissued after the loan was paid. *In re* Perth Electric Tramways, (1906) 2 Ch. 216.

965. 1. Where Debentures Have Been Issued to the Full Amount the company cannot reissue debentures that have been paid off unless it has express power so to do. *In re* Tasker, (1905) 2 Ch. 587.

967. 1. Extension of Time for Registration. — Under the Companies Act, 1900, it is held that the court will not necessarily, in every case of extension of time for registration, insert in the order a provision for the protection of the unsecured creditors. *In re* Cardiff Workmen's Cottage Co., (1906) 2 Ch. 627.

Under an order extending the time for registration, which contained the usual proviso that it was to be without prejudice to the rights which may have been acquired against the holders of the debentures in question, it was held that an ordinary unsecured creditor who had taken no steps to enforce his debt was not protected by the order. *In re* Ehrmann Bros., (1906) 2 Ch. 697.

970. 3. *In re* London Pressed Hinge Co., (1905) 1 Ch. 576; Geisse *v.* Taylor, (1905) 2 K. B. 658.

974. 5. An Assignee Is Subject to All the Equities existing against his assignor. *In re* Brown, 73 L. J. Ch. 430, (1904) 1 Ch. 627, *affirmed* 73 L. J. Ch. 770, (1904) 2 Ch. 448; *In re* Palmer's Decoration, etc., Co., (1904) 2 Ch. 743.

975. 1. Transfer Through the Company. — Where a part of a series of debentures was issued as security for a loan and when the loan was paid the debentures were returned to the company with blank transfers and the company subsequently filled in the blanks and delivered the debentures to other parties who paid for them in full, it was held that the holders were not entitled to rank with the holders of the other debentures of the series. *In re* Tasker, (1905) 2 Ch. 587.

978. 3. Debenture Holders Are Liable for the Debts of the Receiver properly incurred in the ordinary course of the business. Robinson Printing Co. *v.* Chic, (1905) 2 Ch. 123.

As to the Powers and Liabilities of Receivers and Managers, see Robinson Printing Co. *v.* Chic, (1905) 2 Ch. 123; *In re* British Power, etc., Co., (1906) 1 Ch. 497.

Receiver Agent of Debenture Holders. — Robinson Printing Co. *v.* Chic, (1905) 2 Ch. 123.

979. 1. *In re* London Pressed Hinge Co., (1905) 1 Ch. 576.

DEBT.

983. 1. Nathan *v.* St. John, 146 Ala. 596, 40 So. 970, *citing* 8 Am. and Eng. Encyc. of Law (2d ed.) 983.

986. 2. **A Judgment for Alimony** is a debt of record. Wagner *v.* Wagner, 26 R. I. 27, 57 Atl. 1058.

987. 2. See Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

Where B's liability was based on an agreement made with A to pay for property represented by an account, in the event of its destruction by fire while A's house was occupied by B's servant, it was held the contract was evidence of the debt, and recovery might be had in an "action of debt due on an account." Chapman *v.* Conwell, 1 Ga. App. 212, 58 S. E. 137.

991. 2. **The Taking of Usury** is not a tort, and an action to recover a statutory penalty therefor is one in the nature of debt. Waterman *v.* Empire Loan Co., (Tex. Civ. App. 1907) 101 S. W. 499.

3. **Insolvency.** — Brown *v.* United Button Co., 149 Fed. 48, 9 Ann. Cas. 445.

992. 1. State *v.* Morgan, 141 N. Car. 726, 53 S. E. 142, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 992.

995. 2. U. S. *v.* Chamberlin, (C. C. A.) 156 Fed. 881.

996. 2. **Customs Duties** due on imported goods, constitute a personal debt as well as a lien on the goods. U. S. *v.* Mexican International R. Co., 154 Fed. 519.

997. 2. See Wartman *v.* Empire Loan Co., (Tex. Civ. App. 1907) 101 S. W. 499.

3. State *v.* Morgan, 141 N. Car. 726, 53 S. E. 142.

999. 5. **In Rhode Island,** by statute, an allowance of alimony is declared to be so far a judgment for debt that suits may be brought or executions may issue thereon for amounts from time to time due and unpaid. Wagner *v.* Wagner, 26 R. I. 27, 57 Atl. 1058.

DEBTS OF DECEDENTS.

1007. 1. **Money Had and Received.** — *In re* Brown, 210 Pa. St. 499, 60 Atl. 149.

A wife cannot recover from her deceased husband's estate money which she intrusted to him for investment, where it appears that property purchased with said money was conveyed to her by the decedent during his lifetime. *In re* Watson, 115 N. Y. App. Div. 310, 100 N. Y. Supp. 993.

Goods Ordered. — *In re* Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176.

Money Loaned. — Pitthan *v.* Schnaitman, (Mo. 1907) 106 S. W. 103.

An Agreement to Support Certain Grantors, made by the decedent in part consideration for a conveyance to him, constitutes a valid claim against the decedent's estate. Calkins *v.* Calkins, 220 Ill. 111, 77 N. E. 102.

An Agreement to Obtain a Reduction of Assessments on real property is not affected by the decedent's death before the assessment was confirmed. U. S. Title Guaranty, etc., Co. *v.* Marks, 116 N. Y. App. Div. 341, 101 N. Y. Supp. 483.

Saloonkeeper's Bond. — An action to recover damages on a saloonkeeper's bond is an action on contract which survives. Garrigan *v.* Huntimer, (S. Dak. 1905) 105 N. W. 278.

An Action for the Recovery of Money may be maintained against the decedent's estate where the decedent during his lifetime promised the claimant a share in his business. Ott *v.* Boring, 131 Wis. 472, 110 N. W. 824.

1008. 4. **Supplies Furnished Voluntarily After the Death** cannot be recovered for as against the estate on the theory of a *quasi* contract. Mathie *v.* Hancock, 78 Vt. 414, 63 Atl. 143.

5. **An Executory Agreement Without Consideration** which could not have been enforced during the decedent's lifetime, cannot create a claim against her estate. Strevell *v.* Jones, (Surrogate Ct.) 92 N. Y. Supp. 719.

Antenuptial Debts of a Wife incurred without the decedent's knowledge or express promise to pay, cannot be charged against his estate. *In re* Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176.

1009. 3. Fisher *v.* Southern L. & T. Co., 138 N. Car. 90, 50 S. E. 592; Surghenor *v.* Taliaferro, (Tex. Civ. App. 1906) 98 S. W. 648.

1010. 1. Johnson *v.* Levy, 118 La. 447, 43 So. 46.

1011. 1. Latz *v.* Blumenthal, 50 Misc. (N. Y.) 407, 100 N. Y. Supp. 527.

1015. 4. Clevenger *v.* Matthews, (Ind. App. 1905) 75 N. E. 23; Comstock *v.* Keating, 115 Mo. App. 372, 91 S. W. 416; Colket's Estate, 217 Pa. St. 643, 66 Atl. 980.

The estate of the decedent, who was surety on a note of a third person, is liable for one-half the amount paid by a cosurety. Smart *v.* Panther, (Tex. Civ. App. 1906) 95 S. W. 679.

1017. 1. See *contra,* Ducker *v.* Kaelin, (Ky. 1906) 90 S. W. 959.

5. *In re* Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176.

6. Allen *v.* Bromberg, 147 Ala. 317, 41 So. 771; Brandes *v.* Brandes, 129 Iowa 351, 105 N. W. 499; Soper *v.* Galloway, 129 Iowa 145, 105 N. W. 399; Griffith *v.* Robertson, 73 Kan. 666, 85 Pac. 748.

An Agreement to Make a Codicil which will embody the terms of a contract is valid, and the decedent's estate is liable for a breach thereof. Mills *v.* Smith, (Mass. 1906) 78 N. E. 765.

1018. 2. Hanly *v.* Hanly, 105 N. Y. App. Div. 335, 93 N. Y. Supp. 864; Goodloe *v.* Goodloe, 116 Tenn. 252, 92 S. W. 767. But see Soper *v.* Galloway, 129 Iowa 145, 105 N. W. 399.

1019. 2. Chambers *v.* Boyd, 116 N. Y. App. Div. 208, 101 N. Y. Supp. 486; Goodloe *v.* Goodloe, 116 Tenn. 252, 92 S. W. 767.

3. Waters *v.* Cline, (Ky. 1905) 85 S. W. 209.

5. An agreement to render services to decedent until his death, in consideration of a devise of property, is entire and no recovery can be had for partial performance. Tussey *v.* Owen, 139 N. Car. 457, 52 S. E. 128.

1020. 5. Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Matter of Garnier, 147 Cal. 457, 82 Pac. 68.

6. Russell *v.* Jones, (C. C. A.) 135 Fed. 929; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667.

7 Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Russell *v.* Jones, (C. C. A.) 135 Fed. 929.

1021. 1. Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667.

3. Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667.

4. Luizzi *v.* Brady, 149 Mich. [illegible]; N. W. 574; Christianson *v.* McDermott, 123 Mo. App. 448, 100 S. W. 63; McMorrow *v.* Dowell, 116 Mo. App. 289, 90 S. W. 728; *In re* Bradbury, 105 N. Y. App. Div. 250, 93 N. Y. Supp. 418; *In re* Funk, 49 Misc. (N. Y.) 199, 98 N. Y. Supp. 934; Bossi *v.* Baehr, (Wis. 1907) 113 N. W. 433.

A Physician's Services rendered to the decedent's son, while a member of his household, in the absence of proof that he was not a minor, constitutes a valid claim against the decedent's estate. *In re* Milligan, 112 N. Y. App. Div. 373, 98 N. Y. Supp. 480.

A Contract for an Attorney's Services to be rendered to the decedent's brother may be enforced against his representatives. Barrett *v.* Towne, (Mass. 1907) 82 N. E. 698.

7. Carr *v.* Calvert, (Ky. 1907) 102 S. W. 282; Grossman *v.* Thunder, 212 Pa. St. 274, 61 Atl. 904; Piersol's Estate, 27 Pa. Super. Ct. 204.

A promise in writing to compensate one for her kindness, in an amount out of proportion to the services rendered, constitutes a valid claim against decedent's estate. *In re* Todd, 47 Misc. (N. Y.) 35, 95 N. Y. Supp. 211.

8. Hunt *v.* Osborn, (Ind. App. 1907) 82 N. E. 933; Schultz *v.* Carrard, 103 N. Y. App. Div. 609, 94 N. Y. Supp. 740.

1022. 1. Wirth *v.* Kuehn, 191 Mass. 51, 77 N. E. 641.

3. Appolonio *v.* Langley, 106 N. Y. App. Div. 40, 94 N. Y. Supp. 274.

4. Williams *v.* Walden, 82 Ark. 136, 100 S. W. 898; Henderson *v.* McLain, (N. Car. 1907) 59 S. E. 873; Hodge *v.* Hodge, (Wash. 1907) 91 Pac. 764.

Services Rendered by Child to Parent. — The law does not imply a promise that compensation will be made for services rendered by a child to a parent. Wallace *v.* Denny, (Ky. 1906) 90 S. W. 1046; Conway *v.* Cooney, 111 N. Y. App. Div. 864, 98 N. Y. Supp. 171; *In re* Milligan, 112 N. Y. App. Div. 373, 98 N. Y. Supp. 480.

The statement "I will fix that all right," made by a father to a daughter, is insufficient to establish a contract for services rendered, where the parties lived together. Foley *v.* Dillon, (Ky. 1907) 105 S. W. 461.

Persons in Loco Parentis. — McClure *v.* Lenz, (Ind. App. 1907) 80 N. E. 988; *In re* Taylor, (Wis. 1907) 111 N. W. 229.

Service by Daughter-in-Law. — The law will presume services rendered by a daughter-in-law in attending a sick mother-in-law as prompted by feelings of affection with no hope of compensation. Rock *v.* Rock, 105 N. Y. App. Div. 157, 93 N. Y. Supp. 646.

1023. 1. *Alabama.* — Butler *v.* Kent, (Ala. 1907) 44 So. 863, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1023; Patterson *v.* Carter, 147 Ala. 522, 41 So. 133.

Arkansas. — Lewis *v.* Lewis, 75 Ark. 191, 87 S. W. 134.

Connecticut. — Hoskins *v.* Saunders, (Conn. 1907) 66 Atl. 785.

Georgia. — Phinazee *v.* Bunn, 123 Ga. 230, 51 S. E. 300.

Iowa. — Sarchfield *v.* Hayes, (Iowa 1907) 112 N. W. 1100.

Kansas. — Griffith *v.* Robertson, 73 Kan. 666, 85 Pac. 748.

Missouri. — Fry *v.* Fry, 119 Mo. App. 476, 94 S. W. 990.

New York. — Tyndall *v.* Van Auken, 106 N. Y. App. Div. 238, 94 N. Y. Supp. 269; *In re* Funk, 49 Misc. (N. Y.) 199, 98 N. Y. Supp. 934.

North Carolina. — Dunn *v.* Currie, 141 N. Car. 123, 53 S. E. 533; Whitaker *v.* Whitaker, 138 N. Car. 205, 50 S. E. 630; Winkler *v.* Killian, 141 N. Car. 575, 54 S. E. 540.

Wisconsin. — *In re* Taylor, (Wis. 1907) 111 N. W. 229.

Services rendered the decedent by his sister in supporting and nursing him during his illness, there being no mutuality of benefit, but a positive detriment to the sister, are not presumed gratuitous. Mark *v.* Boardman, (Ky. 1905) 89 S. W. 481.

Payments Made by the Decedent to the claimant "on account of services" may be shown to rebut the presumption. Greenwood *v.* Judson, 109 N. Y. App. Div. 398, 96 N. Y. Supp. 147.

Rebuttal by Express or Implied Contract. — An agreement by a father to pay his daughter a stated sum weekly for her services as housekeeper was sufficient to establish a claim against the decedent's estate. *In re* Milligan, 112 N. Y. App. Div. 373, 98 N. Y. Supp. 480.

1024. 1. There is no presumption that services rendered to a father-in-law by a daughter-in-law are gratuitous. Koebel *v.* Beetson, 112 N. Y. App. Div. 639, 98 N. Y. Supp. 408.

2. Hoskins *v.* Saunders, (Conn. 1907) 66 Atl. 785; Foley *v.* Dillon, (Ky. 1907) 105 S. W. 461; Maisenhelder *v.* Crispell, 105 N. Y. App. Div. 219, 94 N. Y. Supp. 707.

3. Rice *v.* New York Cent., etc., R. Co., (Mass. 1907) 81 N. E. 285; Schneider *v.* Breier, 129 Wis. 446, 109 N. W. 99.

A Stranger Paying the Funeral Expenses at the request of the decedent's foster children may recover as on a *quasi* contract. Waters *v.* Register, (S. Car. 1907) 56 S. E. 849.

Extravagant Expenditures for a funeral, inconsistent with the decedent's station in life, cannot be charged against his estate. *In re* Primmer, 49 Misc. (N. Y.) 413, 99 N. Y. Supp. 830.

1025. 4. *In re* McDonald, 51 Misc. (N. Y.) 318, 101 N. Y. Supp. 275.

5. Money Expended for Flowers for the decedent's grave, does not constitute part of the funeral expenses. *In re* Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176.

1026. 2. Mourning Apparel. — *In re* Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176.

Wake. — McCullough *v.* McCready, 52 Misc. (N. Y.) 542, 102 N. Y. Supp. 633.

Vault — Allowance to Representative Therefor. — Knapp *v.* Jessup, 146 Mich. 348, 109 N. W. 666.

3. *In re* Koppikus, 1 Cal. App. 84, 81 Pac. 732; Hespen *v.* Hespen, (Ky. 1907) 105 S. W. 99.

1027. 2. Assault and Battery. — Mulligan *v.* O'Brien, 53 Misc. (N. Y.) 4, 102 N. Y. Supp. 911.

1029. 2. Jones *v.* Barmm, 217 Ill. 381, 75 N. E. 505.

1030. 4. See Mulligan *v.* O'Brien, 53 Misc. (N. Y.) 4, 102 N. Y. Supp. 911.

1032. 1. Wallace *v.* McPherson, 139 N. Car. 297, 51 S. E. 897.

2. Swift *v.* Johnson, (C. C. A.) 138 Fed. 867; Elson *v.* Waterford, 140 Fed. 800; Bolick *v.* Southern R. Co., 138 N. Car. 370, 50 S. E. 689; Harshman *v.* Northern Pac. R. Co., 14 N. Dak. 69, 103 N. W. 412; Nemecek *v.* Filer, etc., Co., 126 Wis. 71, 105 N. W. 225.

3. Howard *v.* Rutherford, (Ala. 1907) 43 So. 30; Penn *v.* Penn, 120 Ky. 557, 87 S. W. 306; Brown *v.* Brown, (N. J. 1907) 65 Atl. 739.

5. *In re* Dutard, 147 Cal. 253, 81 Pac. 519; Jarrett *v.* Johnson, 216 Ill. 212, 74 N. E. 756; Von Arnim *v.* American Tube Works, 188 Mass. 515, 74 N. E. 680.

Misconduct of Bank Director. — A cause of action for improperly investing the funds of a bank survives. Allen *v.* Luke, 141 Fed. 694.

1033. 1. Fisher *v.* Southern L. & T. Co., 1[illegible] N. Car. 90, 50 S. E. 592.

1038. 1. Insurance Premiums expended for the preservation of the property are entitled to a preference. Enscoe *v.* Fletcher, 1 Cal. App. 659, 82 Pac. 1075.

A Judgment for Funeral Expenses, obtained by an administrator against the decedent's husband, is not superior to judgments of original creditors in reaching exempt property of the husband. Weaver *v.* Gray, 37 Ind. App. 35, 76 N. E. 795.

Attorney's Fees. — Matson *v.* Pearson, 121 Mo. App. 120, 97 S. W. 983; Ferguson *v.* Woods, 124 Wis. 544, 102 N. W. 1094.

2. Wolfe *v.* Knapp, 127 Iowa 479, 103 N. W. 360.

4. Expenses Incurred in Upholding the Validity of a Will, even though the provision attacked be adjudged invalid, constitute an expense of administration for which the executor is entitled to be reimbursed from the estate. *In re* Title Guaranty, etc., Co., 114 N. Y. App. Div. 778, 100 N. Y. Supp. 243.

1037. 5. Nursing During Last Sickness. — Green *v.* Teutschmann, (Ky. 1906) 97 S. W. 7; Henderson *v.* McLain, (N. Car. 1907) 59 S. E. 873; Weiss *v.* Bader, 124 N. Y. App. Div. 495, 108 N. Y. Supp. 920.

1038. 1. The New Jersey Statute giving a preference to a judgment rendered against a decedent in his lifetime does not apply where execution was issued during the lifetime of the decedent. Wright *v.* Wright, 70 N. J. Eq. 407, 62 Atl. 487.

1046. 6. Pond *v.* Dougherty, (Cal. App. 1907) 92 Pac. 1035.

A creditor may be subrogated to the amount realized on the sale of mortgaged premises, where the administratrix has a vendor's lien, and the premises were sold for the creditor's benefit. Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

A surety on an administrator's bond is subrogated to the rights of the administrator against the distributees on making payment of a judgment against the administrator. Baldwin *v.* Alexander, 145 Ala. 186, 40 So. 391.

1053. 1. Harrah *v.* State, 38 Ind. App. 495, 76 N. E. 443.

1055. 3. Executor's Right of Preference — English Statute. — See *In re* Samson, (1906) 2 Ch. 584.

1060. 4. Claim of Wife Against Husband. — *In re* Ambler, (1905) 1 Ch. 697.

1061. 3. Administratrix of Sole Trustee Not Bound to Exercise Retainer for Cestui Que Trust. — *In re* Benett, (1906) 1 Ch. 216.

1062. 7. Morse *v.* Steele, 149 Cal. 303, 86 Pac. 693.

A Claim for Board furnished to decedent must be presented, and interest will be allowed only from the date of the presentation. Tyndall *v.* Van Auken, 106 N. Y. App. Div. 238, 94 N. Y. Supp. 269.

Breach of Covenant in Deed — Utah Statute. — — A claim founded on a breach of a covenant in a deed is one arising on contract which must be presented. Clayton *v.* Dinwoodey, (Utah 1908) 93 Pac. 723.

1063. 7. *Presentation to Representative Dispensed With.* — Moss *v.* Mosley, (Ala. 1906) 41 So. 1012.

1064. 5. Kauffman *v.* Foster, 3 Cal. App. 741, 86 Pac. 1108.

1065. 4. A contingent claim not presented within the time fixed by statute is forever barred. Schurmeier *v.* Connecticut Mut. L. Ins. Co., (C. C. A.) 137 Fed. 42.

5. Stakely *v.* Executive Committee, etc., 145 Ala. 379, 39 So. 653.

1068. 4. Pond *v.* Dougherty, (Cal. App. 1907) 92 Pac. 1035.

1069. 6. Planters' Mut. Ins. Co. *v.* Nelson, 80 Ark. 103, 96 S. W. 123.

1071. 1. Statutory Charge — California. — Heeser *v.* Taylor, 1 Cal. App. 619, 82 Pac. 977; Hibernia Sav., etc., Soc. *v.* Hinz, (Cal. App. 1906) 88 Pac. 730.

1072. 2. Weber *v.* McCleverty, 149 Ca' 316, 86 Pac. 706.

3. *In re* Ring, 132 Iowa 216, 109 N. W. 710

5. Presentation by Heir Valid. — Hunt *v.* Curtis, (Ala. 1907) 44 So. 54.

1073. 1. Gardner *v.* Pitcher, 109 N. Y. App. Div. 106, 95 N. Y. Supp. 678.

2. By Executor. — Presentation by an executor acting as the agent of the claimant is void. *In re* Hobson, (Colo. 1907) 91 Pac. 929.

1074. 6. Pratt *v.* Rhodes, 78 Conn. 310, 61 Atl. 1009.

7. Britian *v.* Fender, 116 Mo. App. 93, 92 S. W. 179.

1075. 2. The Presentation of An Agreement upon which a claim is founded is unnecessary. Altgelt *v.* Elmendorf, (Tex. Civ. App. 1905) 86 S. W. 41.

1076. 3. Hensley *v.* Pankan, 121 Mo. App. 695, 97 S. W. 645.

1077. 3. *In re* Hobson, (Colo. 1907) 91 Pac. 929.

5. Pollitz *v.* Wickersham, 150 Cal. 238, 88 Pac. 911; St. Joseph County Sav. Bank *v.* Randall, 37 Ind. App. 402, 76 N. E. 1012; Linden *v.* Thieriot, 105 N. Y. App. Div. 405, 94 N. Y. Supp. 246.

Claim for Services Rendered Decedent. — Hoskins *v* Saunders, (Conn. 1907) 66 Atl. 785.

A statement of a claim "to services rendered as per contract," the dates and amount, is sufficient. Smith *v.* Williams, 123 Mo. App. 479, 100 S. W. 55.

The Filing of the Original Instrument upon which a claim is founded is made imperative by statute, and the filing of a copy is insufficient. *In re* Hobson, (Colo. 1907) 91 Pac. 929.

A Claim for Money Expended and for a doubtful due bill against a succession must be supported by very strong proof. Richards *v.* McLain, 118 La. 424, 43 So. 38.

Presumption as to Time of Accrual. — Claims not appearing on their face to have accrued after the decedent's death constitute *prima facie* evidence of prior existence. Chapoton *v.* Prentis, 144 Mich. 283, 107 N. W. 879.

1078. 2. Claim Must be Signed by Creditor. — Walker *v.* Nelson, 87 Miss. 268, 39 So. 809.

8. Time Limited by Court. — Failure to present a claim within the time limited by the court will forever bar a recovery. Franklin *v.* Killilea, 126 Wis. 88, 104 N. W. 993.

9. Nebraska Wesleyan University *v.* Bowen, 73 Neb. 598, 103 N. W. 275.

1079. 1. Simons *v.* Forster, 73 N. J. L. 338, 63 Atl. 858.

6. Clevenger *v.* Matthews, (Ind. App. 1905) 75 N. E. 23; McNamara *v.* Michigan Trust Co., 148 Mich. 346, 111 N. W. 1066; Turk *v.* Ritchie, 104 Va. 587, 52 S. E. 339.

Contingent Claims. — Ott *v.* Boring, 131 Wis. 472, 110 N. W. 824.

7. Fraud. — Burling *v.* Allvord, (Neb. 1906) 110 N. W. 683, *quoting* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1079; Planters' Mut. Ins. Co. *v.* Nelson, 80 Ark. 103, 96 S. W. 123.

An Action by a Bank to recover the amount of an overdraft made by the decedent is barred notwithstanding the failure of the bank to discover the error. Laurence County Bank *v.* Arendt, 80 Ark. 523, 98 S. W. 356.

Failure to Appoint Administrator. — Brown *v.* Baxter, (Kan. 1908) 94 Pac. 155.

8. Boyle *v.* Boyle, 126 Iowa 167, 101 N. W. 748, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1079.

1081. 3. Seidemann *v.* Karstaedt, 130 Wis. 117, 109 N. W. 942.

1082. 3. May Be Signed by Attorney. — Meikle *v.* Cloquet, 44 Wash. 513, 87 Pac. 841.

1083. 1. Creditor Misled. — A creditor will not be relieved of his failure to present a claim by requesting and depending upon the attorney for the administrator to look after his interests. Meikle *v.* Cloquet, (Wash. 1906) 87 Pac. 841.

3. Mosher *v.* Goodale, 129 Iowa 719, 106 N. W. 195.

5. O'Reily *v.* McGuiggan, (Miss. 1907) 44 So. 986, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1083.

1084. 2. Wolfe *v.* Knapp, 127 Iowa 479, 103 N. W. 369.

3. Mosher *v.* Goodale, 129 Iowa 719, 106 N. W. 195.

5. **"Culpable Neglect" Defined.** — Holway *v.* Ames, 100 Me. 208, 60 Atl. 897.

8. Plummer *v.* Wells, 6 Indian Ter. 189, 90 S. W. 303.

1085. 2. Walker *v.* Nelson, 87 Miss. 268, 39 So. 809; Fitzpatrick *v.* Stevens, 114 Mo. App. 497, 89 S. W. 897.

An affidavit in a sworn answer complying with the statute is sufficient. Beddow *v.* Wilson, (Ky. 1906) 90 S. W. 228.

6. Waiver of Defect by Failure to Object. — Spradlen *v.* Stanley, (Ky. 1907) 99 S. W. 965.

1086. 1. A Judgment recovered against a decedent upon a note will not constitute a valid claim against decedent's estate, unless an affidavit be filed showing the claim to be free from usury. Owsley *v.* Boles, (Ky. 1907) 99 S. W. 1157.

5. Spradlin *v.* Stanley, (Ky. 1907) 99 S. W. 965.

1087. 6. Insufficient Affidavit. — Where the statute requires the affiant to state that there is "no offset or discount" to the claim, a statement of no "legal" offset or counterclaim is insufficient. Spradlin *v.* Stanley, (Ky. 1907) 99 S. W. 965.

7. An Insufficient Verification may be cured by amendment. Gillespie *v.* Campbell, (Ala. 1907) 43 So. 28.

The Use of "Claimant" Instead of "Affiant" will not render the affidavit insufficient. Dorais *v.* Doll, 33 Mont. 314, 83 Pac. 884.

1089. 1. An administrator is personally liable for paying a debt extinguished by the statute. Kenyon *v.* Probate Ct., 27 R. I. 566, 65 Atl. 267.

1090. 4. Fishburne *v.* Merchants' Bank, 42 Wash. 473, 85 Pac. 38.

1091. 2. Schurmeier *v.* Connecticut Mut. L. Ins. Co., (C. C. A.) 137 Fed. 42.

1094. 5. Morisey *v.* Hill, 142 N. Car. 355, 55 S. E. 193.

6. Brown *v.* Daly, 33 Mont. 523, 84 Pac. 883.

1095. 1. The Recovery on a Rejected Claim is limited to the cause of action as set forth in that claim. *In re* Dutard, 147 Cal. 253, 81 Pac. 519.

7. An Attorney May Not Reject, but he may indorse the claim "rejected" under the administrator's direction. Dorais *v.* Doll, 33 Mont. 314, 83 Pac. 884.

1096. 1. Notice to Attorney of Creditor. — Service of a notice of rejection on a firm of attorneys is sufficient notwithstanding a limitation of authority of said firm. Lockwood *v.* Dillenbeck, 104 N. Y. App. Div. 71, 93 N. Y. Supp. 321.

1097. 3. Baldwin *v.* Alexander, 145 Ala. 186, 40 So. 301; Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751.

5. See *In re* Kempster, (1906) 1 Ch. 446.

1098. 1. Crawford *v.* Turner, 58 W. Va. 600, 52 S. E. 716.

3. Clevenger *v.* Matthews, (Ind. 1906) 76 N. E. 542, *citing* 8 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1098.

DECISION.

2. 1. Equivalent to Special Finding. — Major *v.* Miller, 165 Ind. 275, 75 N. E. 159.

Distinguished from Judgment or Decree — Equivalent to Finding — New Trial. — Brubaker *v.* Brubaker, 74 Kan. 220, 86 Pac. 455.

DECKS.

4. 1. The Words "Deck Cargo" as used in the English Merchant Shipping Act include goods that are not freight earning as well as those that are. Cairn Line *v.* Trinity House Corporation, (1907) 1 K. B. 604, 76 L. J. K. B. 377, 96 L. T. N. S. 846, 12 Com. Cas. (Eng.) 244, 23 Times L. Rep. 341.

DECLARATIONS (IN EVIDENCE).

5. 2. *United States.* — Anderson *v.* U. S., 152 Fed. 87.

Alabama. — Rutherford *v.* Dyer, 146 Ala. 665, 40 So. 974; Pate *v.* State, (Ala. 1907) 43 So. 343.

Arkansas. — Littlejohn *v.* State, 76 Ark. 481, 89 S. W. 463.

California. — Yardi *v.* Yardi, (Cal. App. 1907) 91 Pac. 348; Hayden *v.* Collins, 1 Cal. App. 259, 81 Pac. 1120.

Colorado. — Lowe *v.* Donnelly, 36 Colo. 292, 85 Pac. 318.

Connecticut. — Nichols *v.* Nichols, 79 Conn. 644, 66 Atl. 161.

District of Columbia. — Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46; Samaha *v.* Mason, 27 App. Cas. (D. C.) 470. See also Robinson *v.* Duvall, 27 App. Cas. (D. C.) 535.

Florida. — Fields *v.* State, 46 Fla. 91, 35 So. 185, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 5; West *v.* State, 53 Fla. 82, 43 So. 445, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 5.

Georgia. — Williams *v.* State, 123 Ga. 138, 51 S. E. 322; Rountree *v.* Gaulden, 128 Ga. 737, 58 S. E. 346; Hightower *v.* Ansley, 126 Ga. 8, 54 S. E. 939.

Illinois. — Telford *v.* Howell, 220 Ill. 52, 77 N. E. 82, *affirming* 119 Ill. App. 83.

Indiana. — Falender *v.* Blackwell, 39 Ind. App. 121, 79 N. E. 393.

Iowa. — Austin *v.* Smith, (Iowa 1906) 109 N. W. 289; State *v.* Mitchell, 130 Iowa 697, 107 N. W. 804; Dean *v.* Carpenter, 134 Iowa 275, 111 N. W. 815; Clark *v.* Van Vleck, (Iowa 1907) 112 N. W. 648.

Kansas. — Haines *v.* Goodlander, 73 Kan. 183, 84 Pac. 986.

Kentucky. — Horine *v.* New York L. Ins. Co., (Ky. 1905) 87 S. W. 274; Graham *v.* Strawsburg, (Ky. 1906) 91 S. W. 737; Buffalo Coal Creek Min. Co. *v.* Troendle, 99 S. W. 622, 30 Ky. L. Rep. 740; Provident Sav. L. Assur. Soc. *v.* Whayne, (Ky. 1906) 93 S. W. 1049; Howard *v.* Maxwell, (Ky. 1907) 98 S. W. 1013.

Maine. — Damren *v.* Trask, 102 Me. 39, 65 Atl. 513.

Maryland. — Ryan *v.* Canton Nat. Bank, 103 Md. 449, 63 Atl. 1062, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 5.

Michigan. — Snyder *v.* Patton, etc., Co., 143 Mich. 350, 106 N. W. 1106.

Missouri. — State *v.* Long, 201 Mo. 664, 100 S. W. 587; Steltemeier *v.* Barrett, 115 Mo. App. 323, 91 S. W. 56.

Nebraska. — Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 113 N. W. 524.

New Hampshire. — White *v.* Poole, 74 N. H. 71, 65 Atl. 255.

New York. — Grant *v.* Pratt, 87 N. Y. App. Div. 490, 84 N. Y. Supp. 983; National City Bank *v.* Pacific Co., 117 N. Y. App. Div. 12, 101 N. Y. Supp. 1098; Gearty *v.* New York, 183 N. Y. 233, 76 N. E. 12; Riddell *v.* Jenkins, 109 N. Y. App. Div. 463, 95 N. Y. Supp. 702; Shall *v.* Old Forge Co., 109 N. Y. App. Div. 907, 96 N. Y. Supp. 75; Englander *v.* Fleck, 51 Misc. (N. Y.) 567, 101 N. Y. Supp. 125.

Oklahoma. — Sneed *v.* Territory, 16 Okla. 641, 86 Pac. 70.

Pennsylvania. — American Car, etc., Co. *v.* Alexandria Water Co., 218 Pa. St. 542, 67 Atl. 861.

South Carolina. — Wilson *v.* Gordon, 73 S. Car. 155, 53 S. E. 79; Leesville Mfg. Co. *v.* Morgan Wood, etc., Works, 75 S. Car. 342, 55 S. E. 768.

South Dakota. — *In re* McClellan, (S. Dak. 1906) 107 N. W. 681; Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

Texas. — Pool *v.* State, (Tex. Crim. 1905) 88 S. W. 350; Ellington *v.* State, (Tex. Crim. 1905) 88 S. W. 361; Jackson *v.* Poteet, (Tex. Civ. App. 1905) 89 S. W. 980; Seaborn *v.* State, (Tex. Crim. 1905) 90 S. W. 649; Opet *v.* Denzer, (Tex. Civ. App. 1906) 93 S. W. 527; Blair *v.* Baird, (Tex. Civ. App. 1906) 94 S. W. 116; Ross *v.* Moskowitz, (Tex. 1907) 100 S. W. 768; Cole *v.* State, (Tex. Crim. 1907) 101 S. W. 218; Rabb *v.* Goodrich, (Tex. Civ. App. 1907) 102 S. W. 910; Leuschner *v.* Patrick, (Tex. Civ. App. 1907) 103 S. W. 664. *Compare* San Antonio Traction Co. *v.* Parks, (Tex. Civ. App. 1906) 93 S. W. 130, (Tex. 1906) 94 S. W. 331.

Washington. — Conover *v.* Neher-Ross Co., 38 Wash. 172, 80 Pac. 281; Moritz *v.* Herskovitz, (Wash. 1907) 89 Pac. 560.

Wisconsin. — Chase *v.* Woodruff, (Wis. 1907) 113 N. W. 973; Glassner *v.* Johnston, (Wis. 1907) 113 N. W. 977.

6. 2. The San Rafael, (C. C. A.) 141 Fed. 270; Napier *v.* Elliott, 146 Ala. 213, 40 So. 752; Arnold's Estate, 147 Cal. 583, 82 Pac. 252; Dennie *v.* Clark, 3 Cal. App. 760, 87 Pac. 59; Central Trust Co. *v.* Culver, 35 Colo. 93, 83 Pac. 1064; Compher *v.* Browning, 219 Ill. 429, 76 N. E. 678; Vannest *v.* Murphy, (Iowa 1907) 112 N. W. 236; Hagar *v.* Norton, 188 Mass. 47, 73 N. E. 1073; Gurley *v.* Armentraut, 27 Ohio Cir. Ct. 199; Dean *v.* Oregon R., etc., Co., 44 Wash. 564, 87 Pac. 158.

3. *Alabama.* — Roberts *v.* Ringemann, 145 Ala. 678, 40 So. 81; Fowler *v.* Pritchard, 148 Ala. 261, 41 So. 667; Baker *v.* Drake, (Ala. 1906) 41 So. 845.

Arkansas. — Bailey *v.* Fritz, 75 Ark. 463, 88 S. W. 569.

California. — People *v.* Ah Lung, 2 Cal. App. 278, 83 Pac. 296.

Illinois. — Kozlowski *v.* Chicago, 113 Ill. App. 513.

Kentucky. — Reinhardt *v.* Marks, (Ky. 1906) 93 S. W. 32.

Missouri. — Vermillion *v.* Parsons, 118 Mo. App. 260, 94 S. W. 298.

New Jersey. — Kaufhold *v.* Roth, (N. J. 1906) 64 Atl. 1057.

Oregon. — Smith *v.* Leavenworth, 46 Oregon 463, 80 Pac. 1010.

South Carolina. — Providence Mach. Co. *v.* Browning, 72 S. Car. 424, 52 S. E. 117.

South Dakota. — McQueen *v.* Edgemont Bank, (S. Dak. 1906) 107 N. W. 208.

Texas. — Barton *v.* State, (Tex. Crim. 1905) 90 S. W. 877; Maffi *v.* Stephens, (Tex. Civ. App. 1906) 93 S. W. 158.

"The Declarations of a Municipal Officer are no more admissible to establish a municipal right than would be those of a private individual to establish a private right, against one adversely interested, when made in his absence." Dawson *v.* Orange, 78 Conn. 96, 61 Atl. 101.

8. 1 *England.* — Wills *v.* Palmer, 53 W. R. 169.

California. — Stoddard *v.* Newhall, 1 Cal. App. 111, 81 Pac. 666, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8.

Georgia. — Turner *v.* Turner, 123 Ga. 5, 50 S. E. 969, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8; American Surety Co. *v.* Wood, 2 Ga. App. 641, 58 S. E. 1116.

Indiana. — O'Brien *v.* Knotts, 165 Ind. 308, 75 N. E. 594.

Iowa. — Drefahl *v.* Security Sav. Bank, 132 Iowa 563, 107 N. W. 179.

Massachusetts. — Sharon First Baptist Ch. *v.* Harper, 191 Mass. 196, 77 N. E. 778.

Minnesota. — Taylor *v.* Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919.

Nebraska. — Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 113 N. W. 524.

New Jersey. — Wilson *v.* Terry, 70 N. J. Eq. 231, 62 Atl. 310.

New York. — McClellan *v.* Grant, 83 N. Y. App. Div. 599, 82 N. Y. Supp. 208, *affirmed* 181 N. Y. 581, 74 N. E. 1119; Tompkins *v.* Fonda Glove Lining Co., 188 N. Y. 261, 80 N. E. 933; New York Water Co. *v.* Crow, 110 N. Y. App. Div. 32, 96 N. Y. Supp. 899.

North Carolina. — Smith *v.* Moore, 142 N. Car. 288, 55 S. E. 275, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8; Ormond *v.* Connecticut Mut. L. Ins. Co., (N. Car. 1907) 58 S. E. 997. See also *In re* Murray, 141 N. Car. 588, 54 S. E. 435.

South Carolina. — Kean *v.* Landrum, 72 S. Car. 556, 52 S. E. 421; Wilson *v.* Gordon, 73 S. Car. 155, 53 S. E. 79.

Texas. — Chew *v.* Jackson, (Tex. Civ. App. 1907) 102 S. W. 427.

The Georgia Code. — Massee-Felton Lumber Co. *v.* Sirmans, 122 Ga. 297, 50 S. E. 92.

Massachusetts — Rule Declared by Statute. — Chaprit *v.* Haverhill, etc., R. Co., 194 Mass. 218, 80 N. E. 597.

If the Declaration or Entry Contains Statements Both in Favor of the Declarant and against His Interest, the statements are to be balanced, and if those in favor of interest equal or predominate over those against interest, the declaration is not admissible; otherwise it is. Massee-Felton Lumber Co. *v.* Sirmans, 122 Ga. 297, 50 S. E. 92.

Such declarations or entries, when admitted, are evidence as to any fact stated therein which was within the knowledge of the declarant, or which it was his duty to know. Massee-Felton Lumber Co. *v.* Sirmans, 122 Ga. 297, 50 S. E. 92.

3. Massee-Felton Lumber Co. *v.* Sirmans, 122 Ga. 297, 50 S. E. 92; Goyette *v.* Keenan, (Mass. 1907) 82 N. E. 426; Smith *v.* Moore, 142 N. Car. 288, 55 S. E. 275, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8–13.

9. 2. Smith *v.* Moore, 142 N. Car. 288, 55 S. E. 275, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8–13.

4. Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275. See also Putnam *v.* Harris, 193 Mass. 58, 78 N. E. 747.

5. Smith *v.* Moore, 142 N. Car. 288, 55 S. E. 275, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8–13.

12. 3. See Ives *v.* Atlantic, etc., R. Co., 142 N. Car. 131, 55 S. E. 74; Keystone Mills Co. *v.* Peach River Lumber Co., (Tex. Civ. App. 1906) 96 S. W. 64; Brewer *v.* Cochran, (Tex. Civ. App. 1907) 99 S. W 1033; Phillips *v.* Eggert, (Wis. 1907) 113 N. W. 686.

6. Johnson *v.* Amberson, 140 Ala. 347, 37 So. 273, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 12; Holman *v.* Clark 148 Ala. 286, 41 So. 765; Samaha *v.* Mason, 27 App. Cas. (D. C.) 470; Piedmont Sav. Bank *v.* Levy, 138 N. Car. 277, 50 S. E. 657, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 12.

Loss of Deed. — A declaration as to the loss of his deed, made by a person in possession, does not come within the rule stated in the text. Campbell *v.* Bates, 143 Ala. 338, 39 So. 144.

DECOY LETTERS.

15. 2. Ennis *v.* U. S., (C. C. A.) 154 Fed. 842; Byram *v.* U. S., 25 App. Cas. (D. C.) 546.

16. 1. A Decoy Letter Bearing the Pretended Postmark of a Fictitious Post Office is a letter intended to be conveyed by mail within the meaning of the statute, and a carrier is guilty of embezzlement who opens such a letter and steals its contents. Byram *v.* U. S., 25 App. Cas. (D. C.) 546.

DEDICATION.

23. 8. Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934.

Railroad Cannot Acquire Property by Dedication. — Scovell *v.* St. Louis Southwestern R. Co., 117 La. 462, 41 So. 723, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23.

26. 1, See Canton Co. *v.* Baltimore, (Md. 1907) 66 Atl. 679, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 25 [26].

29. 1. Hope *v.* Shiver, 77 Ark. 177, 90 S. W. 1003; Ingraham *v.* Brown, 231 Ill. 256, 83 N. E. 156.

Subsequent Ratification.—Acquiescence by the holder of a vendor's lien in the dedication of land is as effective against him as if made by himself. Ft. Worth *v.* Cetti, (Tex. Civ. App. 1905) 85 S. W. 826.

A Person Cannot Dedicate Lands Held in

Adverse Possession, to which he asserts title, by filing a plat of such lands and selling plots with reference thereto. Bruce *v.* Seaboard Air Line R. Co., 52 Fla. 461, 41 So. 883.

2. A Subsequently Acquired Legal Title renders a plat filed prior to its acquisition effective. Meacham *v.* Seattle, 45 Wash. 380, 88 Pac. 628.

30. 3. **Agents.**—A dedication by a duly authorized officer of a corporation is irrevocable so long as public use is maintained. West End *v.* Eaves, (Ala. 1907) 44 So. 588, *citing* 9 AM. [illegible]

31. 4. **An Administrator Merely Authorized to Sell Land for Debts** has not the power to dedi- [illegible] N. W. 896.

32. 2. **Persons under Disability.**—A married woman who acquiesces in the public use of her property for twenty-five years will be presumed to have ratified her husband's dedication of such property to the public. Dulaney *v.* Figg, (Ky. 1906) 94 S. W. 658.

33. 2. **Public Ever-existing Grantee.**—Nelson *v.* Randolph, 222 Ill. 531, 78 N. E. 914; Saucier *v.* New Orleans, 119 La. 179, 43 So. 991.

Grantee Need Not Be Incorporated.—Gordon County *v.* Calhoun, (La. 1907) 58 S. E. 360.

34. 1. See Wilson *v.* Lakeview Land Co., (Ala. 1905) 39 So. 303; West End *v.* Eaves, (Ala. 1907) 44 So. 588.

All that Seems Necessary Is that the Owner Shall Clearly Manifest an Intention.—See Stacy *v.* Glen Ellyn Hotel, etc., Co., 223 Ill. 546, 79 N. E. 133; Newton *v.* Dunkirk, 121 N. Y. App. Div. 295, 106 N. Y. Supp. 125.

Dedicated Land Need Not Lie within Municipal Limits.—Meridian *v.* Poole, 88 Miss. 108, 40 So. 543.

Granting to Purchasers of a Designated Plot the Use of Certain Streets does not constitute a dedication to the public. McLean *v.* Llewellyn Iron Works, 2 Cal. App. 346, 83 Pac. 1082.

35. 1. Watson *v.* Carver, 27 App. Cas. (D. C.) 555, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 35.

Compliance with Statute Essential.—Leadville *v.* Coronado Min. Co., 37 Colo. 234, 86 Pac. 1034, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 35.

36. 1. Leadville *v.* Coronado Min. Co., 37 Colo. 234, 86 Pac. 1034.

37. 1. Elliot *v.* Atlantic City, 149 Fed. 849, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36; Myers *v.* Oceanside, (Cal. App. 1907) 93 Pac. 686; McGourin *v.* DeFuniak Springs, 51 Fla. 211, 41 So. 555, 7 [illegible] Ann. Cas. [illegible] OF LAW (2d ed.) 1051; Healey *v.* Atlanta, 125 Ga. 736, 54 S. E. 749; [illegible] Mexico, [illegible] Ill. App. 171; Terrell *v.* Hart, (Ky. 1906) 90 S. W. 953; Milliken *v.* Denny, 141 N. Car. 224, 53 S. E. 867; West Point *v.* Bland, 106 Va. 792, 56 S. E. 802.

2. Wilson *v.* Lakeview Land Co., (Ala. 1905) 39 So. 303.

Intent Must Be Clearly and Positively Shown.—Elliot *v.* Atlantic City, 149 Fed. 849, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36 [35].

The Opening of Lands to the Public and setting them apart, constitute a dedication if accepted before revocation. Naylor *v.* Harrisonville, 207 Mo. 341, 105 S. W. 1074.

38. 1. Established by Deed from Owner to Private Person Recognizing Rights of Public.—Harper's Ferry *v.* Kaplon, 58 W. Va. 482, 52 S. E. 492, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33 [38].

2. Dickerman *v.* Marion, 122 Ill. App. 154; Alexander *v.* Thigpen, (La. 1907) 45 So. 253.

40. 1. Onslow Tp. *v.* McGough, 30 Quebec Super. Ct. 262, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40.

The Laying of a Sidewalk Before Premises at the owner's expense and with reference to a city ordinance, indicates a valid dedication. Jackson *v.* McHargue, (Ky. 1908) 106 S. W. [illegible]

41. 1. Nelson *v.* Randolph, 222 Ill. 531, 78 N. E. 914; Terrell *v.* Hart, (Ky. 1906) 90 S. W. 953; Tise *v.* Whitaker-Harvey Co., (N. Car. 1907) 59 S. E. 1012; Larson *v.* Chicago, etc., R. Co., 19 S. Dak. 284, 103 N. W. 35; Williams *v.* Hudson, 130 Wis. 297, 110 N. W. 239.

But the Unauthorized Occupation of Private Land by a city and the laying out of streets therein do not raise an estoppel against the owner to deny a dedication of such property. Fitzell *v.* Philadelphia, 211 Pa. St. 1, 60 Atl. 323.

42. 1. The Landowner May Testify that He Gave No Express Consent to dedication. Bethel *v.* Pruett, 215 Ill. 162, 74 N. E. 111.

2. Davis *v.* Oregon Short Line R. Co., 31 Utah 307, 88 Pac. 2.

Where Inclosure Is Not Inconsistent with Public Rights, the mere inclosure of land platted will not preclude acceptance. Parriott *v.* Hampton, 134 Iowa 157, 111 N. W. 440.

3. Where Lots Have Been Sold with reference to a plat, the payment of taxes is no evidence of lack of intent to dedicate. Sanborn *v.* Amarillo, (Tex. Civ. App. 1906) 93 S. W. 473.

4. Venice *v.* Madison County Ferry Co., 216 Ill. 345, 75 N. E. 105; Birge *v.* Centralia, 218 Ill. 503, 75 N. E. 1035; Alexandria *v.* Thigpen, (La. 1907) 45 So. 253.

43. 1. Mobile *v.* Fowler, 147 Ala. 403, 41 So. 468; McLean *v.* Llewellyn Iron Works, 2 Cal. App. 346, 83 Pac. 1082; Watson *v.* Carver, 27 App. Cas. (D. C.) 555; Bethel *v.* Pruett, 215 Ill. 162, 74 N. E. 111; Venice *v.* Madison County Ferry Co., 216 Ill. 345, 75 N. E. 105; Reichert Milling Co. *v.* Freeburg, 217 Ill. 384, 75 N. E. 544; Swedish Evangelist Lutheran Church *v.* Jackson, 229 Ill. 506, 82 N. E. 348; Ingraham *v.* Brown, 231 Ill. 256, 83 N. E. 156; Birge *v.* Centralia, 218 Ill. 503, 75 N. E. 1035; Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934; Parriott *v.* Hampton, 134 Iowa 157, 111 N. W. 440; Paducah *v.* Johnson, (Ky. 1906) 93 S. W. 1035; McGrath *v.* Nevada, 188 Mo. 102, 86 S. W. 236; Arnold *v.* Orange, (N. J. 1907) 66 Atl. 1052; Cincinnati, etc., R. Co. *v.* Roseville, 76 Ohio St. 108, 81 N. E. 178; Montgomery *v.* Somers, (Oregon 1907) 90 Pac. 674.

45. 1. Ray *v.* Nally, (Ky. 1905) 89 S. W. 486; Larson *v.* Chicago, etc., R. Co., 19 S.

Dak. 284, 103 N. W. 35, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 45.

2. Brewer *v.* Pine Bluff, 80 Ark. 489, 97 S. W. 1034; Myers *v.* Oceanside, (Cal. App. 1907) 93 Pac. 686; Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934; Cassidy *v.* Sullivan, 75 Neb. 847, 106 N. W. 1027; Palmer *v.* East River Gas Co., 115 N. Y. App. Div. 677, 101 N. Y. Supp. 347; Larson *v.* Chicago, etc., R. Co., 19 S. Dak. 284, 103 N. W. 35, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 45; Harper's Ferry *v.* Kaplon, 58 W. Va. 482, 52 S. E. 492.

But Acceptance Is Not Implied from the mere fact that a statutory tract is within the municipal limits. Reichert Milling Co. *v.* Freeburg, 217 Ill. 384, 75 N. E. 544.

17. 1. Acceptance by Municipal Authorities — County Courts. — Terry *v.* McClung, 104 Va. 599, 52 S. E. 355.

Approval by City Council — Statutory Formalities Essential. — Leadville *v.* Coronado Min. Co., 37 Colo. 234, 86 Pac. 1034.

Distinction between Streets and Roads. — In *Virginia,* in the case of a street, dedication may be shown by the acts of municipal officers; but the acceptance of a road must appear as matter of record, though a formal acceptance is unnecessary, and the mere laying out of a road into precincts or the appointment of an overseer is sufficient. Lynchburg Traction, etc., Co. *v.* Guill, 107 Va. 86, 57 S. E. 644.

The Acts of Proper Officials Are Necessary to consummate dedication. Cincinnati, etc., R. Co. *v.* Roseville, 76 Ohio St. 108, 81 N. E. 178.

Statutory Requirement of Acceptance by Ordinance Inapplicable. — See Burroughs *v.* Cherokee, 134 Iowa 429, 109 N. W. 876.

18. 1. Weiss *v.* Taylor, 144 Ala. 440, 39 So. 519; Americus *v.* Johnson, (Ga. 1907) 58 S. E. 518; Michigan Cent. R. Co. *v.* Hammond, etc., Electric R. Co., (Ind. App. 1908) 83 N. E. 650; People *v.* Wolverine Mfg. Co., 141 Mich. 455, 104 N. W. 725; Lyons *v.* Mullen, (Neb. 1907) 110 N. W. 743, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 47 [48]; Christian *v.* Eugene, (Oregon 1907) 89 Pac. 419; Weida *v.* Hanover Tp., 30 Pa. Super Ct. 424; Guinn *v.* Eaves, 117 Tenn. 524, 101 S. W. 1154; Sanborn *v.* Amarillo, (Tex. Civ. App. 1906) 93 S. W. 473; Glasgow *v.* Matthews, 106 Va. 14, 54 S. E. 991; Thonney *v.* Rice, 43 Wash. 708, 86 Pac. 713.

Constructing Sewers and Water Mains in Streets shows acceptance. Arnold *v.* Orange, (N. J. 1907) 66 Atl. 1052.

The Alteration of the Grade of Dedicated Streets, the maintenance of street lamps, and authorizing a gas company to lay its mains in such streets will constitute an acceptance. Palmer *v.* East River Gas Co., 115 N. Y. App. Div. 677, 101 N. Y. Supp. 347.

Improvements.—To effect an implied dedication it is not necessary to improve lands where they do not require it. Brandt *v.* Olson, (Neb. 1907) 113 N. W. 151.

Not Only Public User, but the assertion of some official right, is necessary to effect an implied dedication. Chapman *v.* Sault Ste. Marie, 146 Mich. 23, 109 N. W. 53.

The Mere Inclusion of a Proffered Plot within the limits of a municipality does not evidence an acceptance. Venice *v.* Madison County Ferry Co., 216 Ill. 345, 75 N. E. 105.

Mere Reference to a Street on the Books of a Corporation is not a sufficient acknowledgment of a dedication to bind the corporation where none of the corporate directors or officials had authorized the dedication. West Point *v.* Bland, 106 Va. 792, 56 S. E. 802.

Authorizing the Lighting of a Street has been held not to show an acceptance. Arnold *v.* Orange, (N. J. 1907) 66 Atl. 1052.

50. 2. Acceptance May Extend to Part Only. — Mobile *v.* Fowler, 147 Ala. 403, 41 So. 468, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50; Reichert Milling Co. *v.* Freeburg, 217 Ill. 384, 75 N. E. 544.

3. Venice *v.* Madison County Ferry Co., 216 Ill. 350, 75 N. E. 105, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50.

Illustrations. — Acceptance may be delayed until the growth of the city requires the use of the dedicated land. Meridian *v.* Poole, 88 Miss. 108, 40 So. 548.

A Statutory Requirement that a dedicated street which has not been opened and laid out within six years after its dedication shall cease to be a highway has no application to a highway established by general public use. Palmer *v.* East River Gas Co., 115 N. Y. App. Div. 677, 101 N. Y. Supp. 347.

Acceptance Several Years After Offer Held Sufficient. — Backman *v.* Oskaloosa, 130 Iowa 600, 104 N. W. 347 (ten years); Burroughs *v.* Cherokee, 134 Iowa 429, 109 N. W. 876 (fifteen years); Elliott *v.* Louisville, (Ky. 1906) 90 S. W. 990 (twenty-seven years); Krause *v.* El Paso, (Tex. Civ. App. 1907) 101 S. W. 828; Thonney *v.* Rice, 43 Wash. 708, 86 Pac. 713 (twenty-three years, where the owner was in occupancy under a reservation of that right).

A City Is Estopped to Accept a Tract for a street where it has acquiesced for nearly fifty years in the owner's user after platting. Reichert Milling Co. *v.* Freeburg, 217 Ill. 384, 75 N. E. 544.

51. 1. Myers *v.* Oceanside, (Cal. App. 1907) 93 Pac. 686.

Where There Can Be No Conditions. — No conditions can be annexed to the grant of a public easement in land merely. Gray *v.* Cambridge, 189 Mass. 405, 76 N. E. 195.

52. 1. Where a Statute Requires an Acceptance to Be Made in a Particular Way, an acceptance in any other way is not sufficient. Nelson *v.* Randolph, 222 Ill. 531, 78 N. E. 914; Birge *v.* Centralia, 218 Ill. 503, 75 N. E. 1035; Spalding *v.* Macomb, etc., R. Co., 225 Ill. 585, 80 N. E. 327; Backman *v.* Oskaloosa, 130 Iowa 600, 104 N. W. 347; Steinacker *v.* Gast, (Ky. 1905) 89 S. W. 481.

Land Without Corporate Limits. — A statutory requirement of acceptance by ordinance of all land lying within corporate limits has been held not to be applicable to land lying without such limits but subsequently included. Louisville *v.* Hall, (Ky. 1906) 91 S. W. 1133.

Acceptance by Common-law Methods has been held not to be precluded by a statutory requirement of acceptance by ordinance. Arnold *v.* Orange, (N. J. 1907) 66 Atl. 1052.

2. Gray's Appeal, (Conn. 1907) 67 Atl. 891; Bethel *v.* Pruett, 215 Ill. 162, 74 N. E. 111; Cheney *v.* Anderson, 72 Kan. 696, 84 Pac. 137; Terrell *v.* Hart, (Ky. 1906) 90 S. W. 953; Palen *v.* Ocean City, 72 N. J. L. 15, 62 Atl. 947; Riverside Tp. *v.* Pennsylvania R. Co., (N. J. 1907) 66 Atl. 433; Tise *v.* Whitaker-Harvey Co., (N. Car. 1907) 59 S. E. 1012; Ft. Worth *v.* Cetti, (Tex. Civ. App. 1905) 85 S. W. 826.

The Burden of Proof rests upon the town claiming the dedicating. West End *v.* Eaves, (Ala. 1907) 44 So. 588, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 52; Chapman *v.* Sault Ste. Marie, 146 Mich. 23, 109 N. W. 53; Darling *v.* Jersey City, (N. J. 1907) 67 Atl. 709.

53. 1. Cases Showing Dedication. — West End *v.* Eaves, (Ala. 1907) 44 So. 588, holding that the evidence was sufficient to show a dedication of a street, under the terms of which the expenses of improving it were assessed by the grantee; Loomis *v.* Connecticut R., etc., Co., 78 Conn. 156, 61 Atl. 539; Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934; Meridian *v.* Poole, 88 Miss. 108, 40 So. 548; Cassidy *v.* Sullivan, 75 Neb. 847, 106 N. W. 1027; Newton *v.* Dunkirk, 121 N. Y. App. Div. 296, 106 N. Y. Supp. 125.

Cases in Which Facts Were Held Insufficient to Show Dedication. — Wilson *v.* Lakeview Land Co., (Ala. 1905) 39 So. 303; Davies *v.* Epstein, 77 Ark. 221, 92 S. W. 19; Healey *v.* Atlanta, 125 Ga. 736, 54 S. E. 749; Stacy *v.* Glen Ellyn Hotel, etc., Co., 223 Ill. 546, 79 N. E. 133; Peoria *v.* Central Nat. Bank, 224 Ill. 43, 79 N. E. 296; Davis *v.* Bonaparte, (Iowa 1908) 114 N. W. 896; Canton Co. *v.* Baltimore, (Md. 1907) 66 Atl. 679; Canton Co. *v.* Baltimore, (Md. 1907) 67 Atl. 274; Chapman *v.* Sault Ste. Marie, 146 Mich. 23, 109 N. W. 53; Como *v.* Pointer, 37 Miss. 712, 40 So. 260; Milliken *v.* Denny, 141 N. Car. 224, 53 S. E. 867; Bosque County *v.* Alexander, (Tex. Civ. App. 1906) 93 S. W. 238.

Presumptions. — Where a plat has been properly filed and recorded, the inclusion of the lands dedicated within the town limits raises a presumption of the sufficiency of the record of such dedication, and of the divestiture of the original owner's title by compliance with a statute, without acceptance by the town. Bothwell *v.* Denver Union Stockyards Co., 39 Colo. 221, 90 Pac. 1127.

55. 1. The Legal Effect of a deed granting lands to the public is a question of law for the court. Oklahoma City, etc., R. Co. *v.* Dunham, (Tex. Civ. App. 1905) 88 S. W. 849.

A Deed Vacating a Plat is invalid where it purports to confer a greater title than the grantor has. Reichert Milling Co. *v.* Freeburg, 217 Ill. 384, 75 N. E. 544.

2. Barnes *v.* Philadelphia, etc., R. Co., 27 Pa. Super. Ct. 84.

Recognition of the Boundaries of a Tract set apart to a town in a deed by the owner has been held to constitute a dedication. Gordon County *v.* Calhoun, (Ga. 1907) 58 S. E. 360; Wiess *v.* Goodhue, (Tex. Civ. App. 1907) 102 S. W. 793; Harper's Ferry *v.* Kaplon, 58 W. Va. 482, 52 S. E. 492.

A Grantee Who Takes Land under a Deed Referring to a Plat dedicating lands, is estopped to dispute the limitations thereby imposed. Covington *v.* Hall, (Ky. 1906) 98 S. W. 317.

Deeds Relating to a Lot in the Same Section of the City, but not in any way adjoining the plat in question, are not evidence to show a dedication. San Antonio *v.* Rowley, (Tex. Civ. App. 1907) 106 S. W. 753.

Where in the Deed No Recognition of the Dedicated Strip Claimed Is Made, nothing that transpires between the parties subsequent thereto can establish such dedication. Milliken *v.* Denny, 141 N. Car. 224, 53 S. E. 867.

A Deed Recognizing a Certain Dedicated Strip, not attributable to the grantor and made long after his deed, is no evidence of a dedication. Milliken *v.* Denny, 141 N. Car. 224, 53 S. E. 867.

56. 1. Carroll *v.* Asbury, 28 Pa. Super. Ct. 354.

57. 1. *Alabama.* — Mobile *v.* Fowler, 147 Ala. 403, 41 So. 468.

Arizona. — Thorpe *v.* Clanton, (Ariz. 1906) 85 Pac. 1061.

Arkansas. — Hope *v.* Shiver, 77 Ark. 177, 90 S. W. 1003, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 57; Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21, holding that the mere making of a plat does not preclude revocation where the platted land has never been thrown open to the public; Brewer *v.* Pine Bluff, 80 Ark. 489, 97 S. W. 1034.

Connecticut. — Street *v.* Leete, 79 Conn. 352, 65 Atl. 373.

Delaware. — State *v.* Southard, (Del. Ch. 1907) 66 Atl. 372.

Florida. — Florida East Coast R. Co. *v.* Worley, 49 Fla. 297, 38 So. 618; McGowin *v.* De Funiak Springs, 51 Fla. 513, 41 So. 541, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 57.

Illinois. — Wilder *v.* Aurora, etc., Electric Traction Co., 216 Ill. 493, 75 N. E. 194; Nelson *v.* Randolph, 222 Ill. 531, 78 N. E. 914; Swedish Evangelist Lutheran Church *v.* Jackson, 229 Ill. 506, 82 N. E. 348.

Kentucky. — Williams *v.* Poole, (Ky. 1907) 103 S. W. 336; Harmison *v.* Prestonsburg, (Ky. 1908) 107 S. W. 337.

Louisiana. — Flournoy *v.* Breard, 116 La. 224, 40 So. 684.

New Jersey. — Keyport *v.* Freehold, etc., R. Co., (N. J. 1907) 65 Atl. 1035.

North Carolina. — Milliken *v.* Denny, 141 N. Car. 224, 53 S. E. 867.

Oregon. — Christian *v.* Eugene, (Oregon 1907) 89 Pac. 419; Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470.

Pennsylvania. — *In re* Southwestern State Normal School, 213 Pa. St. 244, 62 Atl. 908; Weida *v.* Hanover Tp., 30 Pa. Super. Ct. 424.

Texas. — Sanborn *v.* Amarillo, (Tex. Civ. App. 1906) 93 S. W. 473; Tyler *v.* Boyette, (Tex. Civ. App. 1906) 96 S. W. 935; San Antonio *v.* Rowley, (Tex. Civ. App. 1907) 106 S. W. 753.

Washington. — Meacham *v.* Seattle, 45 Wash. 380, 88 Pac. 628; La Bounty *v.* Seattle, (Wash. 1907) 89 Pac. 480.

Wisconsin. — Lins *v.* Seefeld, 126 Wis. 610, 105 N. W. 917.

59. 1. McGourin *v.* De Funiak Springs, 51 Fla. 513, 41 So. 541, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 59.

A Plat Certified to Have Been Laid Out by the Owner's Agent, instead of by the owner, has been held to be invalid as a statutory dedication of streets. Wilder *v.* Aurora, etc., Electric Traction Co., 216 Ill. 493, 75 N. E. 194.

2. Effect of Filing Plat. — A person purchasing the fee in streets dedicated to the public is estopped by the record of such dedication to claim the fee. King *v.* Dugan, 150 Cal. 258, 88 Pac. 905.

Where there Are Numerous Plats, the published plat alone is binding upon the dedicator. Krause *v.* El Paso, (Tex. Civ. App. 1907) 101 S. W. 828.

Defective Acknowledgment Cured by Lapse of Time After Recording. — Lins *v.* Seefeld, 126 Wis. 610, 105 N. W. 917.

Defective Acknowledgment Cured by Statute. — Parriott *v.* Hampton, 134 Iowa 157, 111 N. W. 440.

By Statute, the mere filing of a plat may constitute dedication. Burroughs *v.* Cherokee, 134 Iowa 429, 109 N. W. 876; Backman *v.* Oskaloosa, 130 Iowa 600, 104 N. W. 347; Van Duyne *v.* Knox Hat Mfg. Co., (N. J. 1906) 64 Atl. 149.

An Order of the County Commissioners Entered in the Plat Book may constitute an acceptance. Meacham *v.* Seattle, 45 Wash. 380, 88 Pac. 628.

60. 1. Interpretation Should Give Effect to All Lines. — Davies *v.* Epstein, 77 Ark. 221, 92 S. W. 19; Elliot *v.* Atlantic City, 149 Fed. 849; Flournoy *v.* Breard, 116 La. 224, 40 So. 684.

Plat Construed against Grantor and in Favor of Public. — Florida East Coast R. Co. *v.* Worley, 49 Fla. 297, 38 So. 618; Chicago *v.* Hogberg, 217 Ill. 180, 75 N. E. 542.

2. Effect of Statements and Certificates. — The unauthorized indorsement in a plat by the mayor and clerk of the city that a dedication had been adopted by three-fourths of the city council is of no effect. Leadville *v.* Coronado Min. Co., 37 Colo. 234, 86 Pac. 1034.

A written instrument attached to a plat dedicating a park and streets to the public cannot revoke the gift of the park by merely mentioning the dedication of streets. Florida East Coast R. Co. *v.* Worley, 49 Fla. 297, 38 So. 618.

But marginal statements control where they are not inconsistent with other writing. Ingraham *v.* Brown, 231 Ill. 256, 83 N. E. 156.

3. Purposes of Dedication Must Be Expressly Indicated. — Birge *v.* Centralia, 218 Ill. 503, 75 N. E. 1035.

Leaving Blank Space on Plat Does Not Show Dedication. — Birge *v.* Centralia, 218 Ill. 503, 75 N. E. 1035, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 60, text and note.

63. 1. See Hope *v.* Shiver, 77 Ark. 177, 90 S. W. 1003.

2. Fessler *v.* Union, 67 N. J. Eq. 14, 56 Atl. 272.

Rule Applied though Plat Not Recorded. — Gano *v.* Harbison-Walker Refractories Co., 212 Pa. St. 1, 61 Atl. 568.

Where a Subsequent Plat Corrects Defects in a prior plat granting land for a street, a purchaser acquiring title with reference to such subsequent plat, cannot claim an interest in the street on the ground of the defects in the original grant. Meacham *v.* Seattle, 45 Wash. 380, 88 Pac. 628.

66. 1. Mobile *v.* Fowler, 147 Ala. 403, 41 So. 468.

2. McClaskey *v.* McDaniel, 37 Ind. App. 59, 74 N. E. 1023; Eldridge *v.* Collins, (Neb. 1905) 105 N. W. 1085.

The Burden of Proving lack of intention to dedicate, after long user, is on the landowner. Canton Co. *v.* Baltimore, 104 Md. 582, 65 Atl. 324.

67. 1. Cochrane *v.* Purser, (Ala. 1907) 44 So. 579, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 66 *et seq.*; Bethel *v.* Pruett, 215 Ill. 162, 74 N. E. 111; Ray *v.* Nally, (Ky. 1905) 89 S. W. 486; Canton Co. *v.* Baltimore, 104 Md. 582, 65 Atl. 324; Gray *v.* Cambridge, 189 Mass. 405, 76 N. E. 195; Cassidy *v.* Sullivan, 75 Neb. 847, 106 N. W. 1027; Brandt *v.* Olson, (Neb. 1907) 113 N. W. 151; Dover Tp. *v.* Brackenridge, (N. J. 1907) 67 Atl. 689.

Mere User Is Not Alone Sufficient to Charge the Owner with Knowledge of the assertion of rights. Davis *v.* Bonaparte, (Iowa 1908) 114 N. W. 896.

Title by Dedication Is Distinguished from Title by Prescription in that the former is based upon intent in the owner, while the latter establishes rights after the lapse of prescribed periods of time irrespective of the owner's intent. Davis *v.* Bonaparte, (Iowa 1908) 114 N. W. 896.

2. McClaskey *v.* McDaniel, 37 Ind. App. 59, 74 N. E. 1023.

Vendor's Lien. — Where the vendee's dedication is silent as to a vendor's lien, the public may acquire prescriptive rights in the land dedicated superior to that lien. Ft. Worth *v.* Cetti, (Tex. Civ. App. 1905) 85 S. W. 826.

69. 1. Pitcairn *v.* Chester, 135 Fed. 587; Wilson *v.* Lakeview Land Co., (Ala. 1905) 39 So. 303; Healey *v.* Atlanta, 125 Ga. 736, 54 S. E. 749; Sioux City *v.* Chicago, etc., R. Co., 129 Iowa 694, 106 N. W. 183; West Point *v.* Bland, 106 Va. 802, 56 S. E. 802.

A Dedication Will Not Be Presumed against a Railroad Company where the public use is consistent with the exercise of railroad rights. Loomis *v.* Connecticut R., etc., Co., 78 Conn. 156, 61 Atl. 539.

70. 1. Opelow Tp. *v.* McGeoch, 52 Quebec Super. Ct. 262, 1 Que. Rep. 262, 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 59.

Dedication Distinguished from Private Way of Necessity. — See Como *v.* Pointer, 82 Miss. 712, 35 So. 260, and see generally the title PRIVATE WAYS.

2. Loomis *v.* Connecticut R., etc., Co., 78 Conn. 156, 61 Atl. 539.

3. Cincinnati, etc., R. Co. *v.* Roseville, 76 Ohio St. 108, 81 N. E. 178.

72. 2. Robbins *v.* White, 52 Fla. 613, 42 So. 841, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 82, 89 *et seq.*, as to subjection to public easement and reverter on discharge thereof; Fessler *v.* Union, 67 N. J. Eq. 14, 56 Atl. 272; Van Duyne *v.* Knox Hat Mfg. Co., (N. J. 1906) 64 Atl. 149.

Subsequent Grantee Takes Subject to Public Easement. — State *v.* Southard, (Del. Ch. 1907) 69 Atl. 372.

No Use Inconsistent with Public Rights allowed to the original owner after the acceptance of dedicated property. Buffalo *v.* Delaware, etc., R. Co., 190 N. Y. 84, 82 N. E. 513.

74. 2. **No Interest in Ores under the Street** is conferred by title under statutory dedication. Leadville *v.* Bohn Min. Co., 37 Colo. 248, 86 Pac. 1058.

Under a Defective Statutory Dedication the acts of the parties cannot be relied upon to raise an estoppel against the grantor and vest the fee in the city. Leadville *v.* Coronado Min. Co., 37 Colo. 234, 86 Pac. 1034.

75. 1. **Any Property Rights Not Inconsistent with the Use and Occupation** for the dedicated purposes may be reserved. Gordon County *v.* Calhoun, (Ga. 1907) 58 S. E. 360.

Right of Way May Be Reserved. — Lever *v.* Grant, 139 Mich. 273, 102 N. W. 848, 103 N. W. 843.

Power to Grant Railway Rights May Be Reserved. — Oklahoma City, etc., R. Co. *v.* Dunham, (Tex. Civ. App. 1905) 88 S. W. 849.

2. Jones *v.* Carter, (Tex. Civ. App. 1907) 101 S. W. 514, *quoting* 9 Am. and Eng. Encyc. of Law (2d ed.) 75.

A Restriction against Cutting Down Shade Trees on dedicated land adjoining a road is valid. Young *v.* Landis Tp., 73 N. J. L. 266, 62 Atl. 1133.

76. 1. Bethel *v.* Pruett, 215 Ill. 162, 74 N. E. 111.

2. Lins *v.* Seefeld, 126 Wis. 610, 105 N. W. 917.

77. 3. West End *v.* Eaves, (Ala. 1907) 44 So. 588; Brewer *v.* Pine Bluff, 80 Ark. 489, 97 S. W. 1034, *citing* 9 Am. and Eng. Encyc. of Law (2d ed.) 57 [77]; Michigan Cent. R. Co. *v.* Hammond, etc., Electric R. Co., (Ind. App. 1908) 83 N. E. 650; San Antonio *v.* Rowley, (Tex. Civ. App. 1907) 106 S. W. 753.

78. 1. Myers *v.* Oceanside, (Cal. App. 1907) 93 Pac. 686; Birge *v.* Centralia, 218 Ill. 503, 75 N. E. 1035.

A Tender of Streets on Platted Land Is Irrevocable, but until acceptance the fee of the property remains in the grantor. Darling *v.* Jersey City, (N. J. 1907) 67 Atl. 709.

Evidence of Revocation. — Either an act in denial of public rights or the mere abandonment of the proposed scheme is sufficient to revoke an unaccepted dedication. Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21.

2. **How Revocation May Be Effected.** — Revocation may be effected before acceptance by the filing of a plat indicating the true extent of lands dedicated and limiting the quantity of land inferred from other instruments. Myers *v.* Oceanside, (Cal. App. 1907) 93 Pac. 686.

A Revoked Offer Cannot Be Revived by the city by complying with the terms of the original offer. Myers *v.* Oceanside, (Cal. App. 1907) 93 Pac. 686.

79. 1. Nelson *v.* Randolph, 222 Ill. 531, 78 N. E. 914; Gayle *v.* Rigg, (Ky. 1905) 85 S. W. 1172; Georgetown *v.* Hambrick, (Ky. 1907) 104 S. W. 997; Gray *v.* Cambridge, 189 Mass. 405, 76 N. E. 195.

2. **Customary Use Contemplated.** — Michigan Cent. R. Co. *v.* Hammond, etc., Electric R. Co., (Ind. App. 1908) 83 N. E. 650.

Use for Railway Purposes. — Where the dedicator specifies that a certain strip shall remain open as a public highway, unless it be vacated with the consent of certain parties, such highway may be used for railway purposes the same as other highways. Bancroft *v.* Bancroft, (Del. Ch. 1905) 61 Atl. 689.

The mere fact that a street dedicated to the public is used for railroad purposes does not divest the public of rights in the street not conflicting with such purposes. Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 914.

80. 3. Scovel *v.* Detroit, 146 Mich. 96, 109 N. W. 20, *citing* 9 Am. and Eng. Encyc. of Law (2d ed.) 80. See Fessler *v.* Union, 67 N. J. Eq. 14, 56 Atl. 272; Christian *v.* Eugene, (Oregon 1907) 89 Pac. 419.

81. 1. **Legislature Cannot Alter Purposes of Original Dedication.** — Louisville, etc., R. Co. *v.* Cincinnati, 76 Ohio St. 481, 81 N. E. 983.

2. **Municipal Management and Control.** — Where a church moved back its wall six feet and dedicated the strip to the public, it was held that a vendee of the property, including the strip, could not complain if the city subsequently moved the street line back five feet, only permitting of such vendee's possession of one foot of the strip. Forsythe *v.* Philadelphia, 211 Pa. St. 147, 60 Atl. 578.

82. 2. **Release of Public Rights.** — Legislative power to vacate highways will not be construed so as to authorize a municipality to vacate a wharf dedicated to the public. Sterling *v.* Ives, 78 Conn. 498, 62 Atl. 948.

84 4. **Interruption of Use Does Not Constitute Abandonment.** — Nelson *v.* Randolph, 222 Ill. 531, 78 N. E. 914.

85. 3. Glasgow *v.* Mathews, 106 Va. 14, 54 S. E. 991.

4. Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21.

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91. 6. Robb *v.* Washington and Jefferson College, 103 N. Y. App. Div. 327, 93 N. Y. Supp. 92, *citing* 9 Am. and Eng. Encyc. of Law (2d ed.) 91.

92. 5. Lewis *v.* Tisdale, 75 Ark. 321, 88 S. W. 579; Kytle *v.* Kytle, 128 Ga. 387, 57 S. E. 748; Seaton *v.* Lee, 221 Ill. 282, 77 N. E. 446; Venters *v.* Wickens, 224 Ill. 569, 79 N. E. 946; Pentico *v.* Hays, 75 Kan. 76, 88 Pac. 738; Nolan *v.* Otney, (Kan. 1907) 89 Pac. 600; Nuckols *v.* Stone, 120 Ky. 631, 87 S. W. 799; Ecklar *v.* Robinson, (Ky. 1906) 96 S. W. 845; Thom *v.* Thom, 101 Md. 444, 61 Atl. 191.

6. Konser *v.* Konser, 219 Ill. 466, 76 N. E. 846; Leonard *v.* Leonard, 145 Mich. 563, 108 N. W. 985; Griffin *v.* Miller, 188 Mo. 327, 87 S. W. 455; Schlicher *v.* Kecler, 67 N. J. Eq. 635, 61 Atl. 434; Sappingfield *v.* King, (Oregon 1907) 89 Pac. 142.

102. 5. Redmond *v.* Cass, 226 Ill. 120, 80

N. E. 708, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

105. 2. Instances of Interests Conveyed by Quitclaim — Fee Simple. — Knight *v.* Dalton, 72 Kan. 131, 83 Pac. 124; Hosmon *v.* Willett, (Ky. 1908) 107 S. W. 334.

107. 3. County Clerk's Deed. — Pinkerton *v.* Fenelon, 131 Wis. 443, 111 N. W. 220, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107.

6. Brumby *v.* Jones, (C. C. A.) 141 Fed. 318, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) [illegible].

108. 2. Brumby *v.* Jones, (C. C. A.) 141 Fed. 318, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 108.

The Execution of a Deed by a Person Not Described in the Body of the Instrument is of no effect at law. Jason *v.* Johnson, (N. J. 1907) 67 Atl. 42, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 108.

3. Insurance Co. *v.* Waller, 116 Tenn. 1, 95 S. W. 811.

109. 1. Test of Capacity Is Full Understanding. — Church of Jesus Christ *v.* Watson, 30 Utah 126, 83 Pac. 731.

119. 3. Deed of Lunatic Binding unless Avoided After Restoration to Reason. — Spicer *v.* Holbrook, (Ky. 1906) 96 S. W. 571.

122. 1. Cases in Which Mental Weakness Was Held Ground of Avoidance — *Arkansas.* — West *v.* Whittle, 84 Ark. 490, 106 S. W. 955.

California. — Nobles *v.* Hutton, (Cal. App. 1907) 93 Pac. 289.

Illinois. — Peck *v.* Bartelme, 220 Ill. 199, 77 N. E. 216; Hill *v.* Fowler, 231 Ill. 205, 83 N. E. 151.

Indiana. — Studebaker *v.* Taylor, (Ind. App. 1907) 80 N. E. 861.

Iowa. — Long *v.* Garey Invest. Co., (Iowa 1906) 110 N. W. 26.

Kentucky. — Koger *v.* Koger, (Ky. 1906) 92 S. W. 961; Holt *v.* Holt, (Ky. 1908) 106 S. W. 811.

Michigan. — Benson *v.* Raymond, 142 Mich. 357, 105 N. W. 870.

Missouri. — Hurley *v.* Kennally, 206 Mo. 282, 103 S. W. 937.

New Jersey. — Bidwell *v.* Piercy, (N. J. 1906) 63 Atl. 261.

Utah. — Birdsall *v.* Leavitt, (Utah 1907) 89 Pac. 397.

Vermont. — Allen *v.* Allen, 79 Vt. 173, 64 Atl. 1110.

Cases in Which Mental Weakness Was Held Not a Ground of Avoidance — *Arkansas.* — Boggianna *v.* Anderson, 78 Ark. 420, 94 S. W. 51.

District of Columbia. — Critchfield *v.* Easterday, 26 App. Cas. (D. C.) 89.

Illinois. — Doan *v.* Hostetler, 215 Ill. 635, 74 N. E. 767; Bishop *v.* Hilliard, 227 Ill. 382, 81 N. E. 403; Sears *v.* Vaughan, 230 Ill. 572, 82 N. E. 881.

Iowa. — Reese *v.* Shutte, 133 Iowa 681, 108 N. W. 525; Altig *v.* Altig, (Iowa 1908) 114 N. W. 1056.

Kentucky. — McIntire *v.* Bullock, (Ky. 1906) 97 S. W. 1117; Akers *v.* Akers, (Ky. 1907) 101 S. W. 353; Dunaway *v.* Dunaway, (Ky. 1907) 105 S. W. 137.

Michigan. — Kamin *v.* Kamin, 145 Mich. 626, 108 N. W. 1077; Chase *v.* Spencer, 150 Mich. 99, 113 N. W. 378.

Missouri. — Bonsal *v.* Randall, 192 Mo. 525, 91 S. W. 475; Chadwell *v.* Reed, 198 Mo. 359, 95 S. W. 227.

Nebraska. — Ames *v.* Ames, 75 Neb. 473, 106 N. W. 584.

New Jersey. — Post *v.* Hagan, (N. J. 1905) 61 Atl. 566; Cowdrey *v.* Cowdrey, (N. J. 1906) 64 Atl. 98.

North Dakota. — Nelson *v.* Thompson, (N. Dak. 1907) 112 N. W. 1058.

Oregon. — Hamilton *v.* Holmes, 48 Oregon 453, 87 Pac. 154; Reeder *v.* Reeder, (Oregon 1907) 91 Pac. 1075.

West Virginia. — Teter *v.* Teter, 59 W. Va. 449, 53 S. E. 779.

Wisconsin. — Hermann *v.* Zachow, 126 Wis. 441, 105 N. W. 950; Boyle *v.* Robinson, 129 Wis. 567, 109 N. W. 623.

2. Degree of Mental Weakness — Question of Fact. — Bidwell *v.* Piercy, (N. J. 1906) 63 Atl. 261.

123. 4. Spoonheim *v.* Spoonheim, 14 N. Dak. 380, 104 N. W. 845.

124. 3. Ratification After Becoming Sober — Unexplained Delay of Seven Years. — Spoonheim *v.* Spoonheim, 14 N. Dak. 380, 104 N. W. 845.

5. A Father, old and feeble, making a deed to his son without consideration, raises the presumption that the donor may not have appreciated the character of his act. Post *v.* Hagan, (N. J. 1907) 65 Atl. 1026.

125. 1. Royal *v.* Goss, (Ala. 1907) 45 So. 231; McClelland *v.* Bullis, 34 Colo. 69, 81 Pac 771; Birdsall *v.* Leavitt, (Utah 1907) 89 Pac. 397.

2. Case in Which Circumstances Held Not Duress. — Hintz *v.* Hintz, 222 Ill. 248, 78 N. E. 565.

5. *Alabama.* — Leonard *v.* Roebuck, (Ala. 1907) 44 So. 390.

California. — Allen *v.* Bryant, 4 Cal. App. 371, 88 Pac. 294.

Illinois. — Vallenweider *v.* Vallenweider, 216 Ill. 197, 74 N. E. 795.

Indiana. — Studebaker *v.* Faylor, (Ind. App. 1907) 80 N. E. 861.

Maryland. — Horner *v.* Bell, 102 Md. 435, 62 Atl. 736.

Massachusetts. — Busiere *v.* Reilly, 189 Mass. 518, 75 N. E. 958.

Michigan. — Hopkins *v.* Ormsby, 149 Mich. 598, 113 N. W. 281; Russell *v.* Russell, (Mich. 1907) 114 N. W. 334.

Mississippi. — Johnson *v.* Hall, 87 Miss. 667, 40 So. 1.

Missouri. — Derby *v.* Donahoe, 208 Mo. 684, 106 S. W. 632.

New York. — Ring *v.* Ring, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 420, 105 N. Y. Supp. 498.

North Carolina. — Sprinkle *v.* Wellborn, 140 N. Car. 163, 52 S. E. 666.

Oregon. — Jennings *v.* Jennings, 48 Oregon 69, 85 Pac. 65; Groesbeck *v.* Groesbeck, (Oregon 1907) 88 Pac. 870.

Tennessee. — Tipton *v.* Tipton, 118 Tenn. 691, 104 S. W. 237.

Texas. — Schaeffer *v.* Blanc, (Tex. Civ. App. 1905) 87 S. W. 745.

Washington. — Cantwell *v.* Nunn, 45 Wash. 536, 88 Pac. 1023.

West Virginia. — Hale *v.* Hale, (W. Va. 1907) 59 S. E. 1056.

Wisconsin. — Kleimenhagen *v.* McConick, 126 Wis. 340, 105 N. W. 812.

Circumstances Held Not Fraudulent. — Martin *v.* Harsh, 231 Ill. 384, 83 N. E. 164; Saunders *v.* Wells, (Iowa 1907) 112 N. W. 205; Altig *v.* Altig, (Iowa 1908) 114 N. W. 1056; Weissenfels *v.* Cable, (Mo. 1907) 106 S. W. 1028; Kleckner *v.* Kleckner, 212 Pa. St. 515, 61 Atl. 1019; McClellan *v.* O'Connor, (Wash. 1907) 91 Pac. 562.

131. 4. Grantee Must Exist — Otherwise Deed Inoperative. — Rixford *v.* Zeigler, 150 Cal. 435, 88 Pac. 1092.

132. 8. Where the Name of the Grantee Is Left Blank, and the deed is delivered, it is a valid deed to the person whose name is inserted therein, by the one to whom delivered. Hall *v.* Kary, 133 Iowa 465, 110 N. W. 930.

9. Darden *v.* Timberlake, 139 N. Car. 181, 51 S. E. 895, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 132.

135. 2. A Vested Remainder may be conveyed. Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161.

138. 1. Shartenberg *v.* Ellbey, 27 R. I. 414, 62 Atl. 979.

139. 4. Beverlin *v.* Casto, (W. Va. 1907) 57 S. E. 411.

Deeds Untechnically Drawn must be construed liberally. Shartenberg *v.* Ellbey, 27 R. I. 414, 62 Atl. 979.

5. Whetstone *v.* Hunt, 78 Ark. 230, 93 S. W. 979; Kepler *v.* Larson, 131 Iowa 438, 108 N. W. 1033.

6. McCombs *v.* Stephenson, (Ala. 1907) 44 So. 867; Hamilton *v.* Cargile, 127 Ga. 762, 56 S. E. 1022; Pritchett *v.* Jackson, 103 Md. 696, 63 Atl. 965; Wilkins *v.* Norman, 139 N. Car. 40, 51 S. E. 797; Wolverton *v.* Hoffman, 104 Va. 605, 52 S. E. 176.

7. Carllee *v.* Ellsberry, 82 Ark. 209, 101 S. W. 407; Lamb *v.* Medsker, 35 Ind. App. 662, 74 N. E. 1012.

140. 1. Meacham *v.* Blaess, 141 Mich. 258, 104 N. W. 579.

141. 1. Martin *v.* Smith, 102 Me. 27, 65 Atl. 257.

144. 4. Ford *v.* Ford, 27 App. Cas. (D. C.) 401, 7 Ann. Cas. 245.

145. 9. Haviland *v.* Haviland, 130 Iowa 611, 105 N. W. 354, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 145.

146. 1. Seals Are a Relic of that period when men, as a rule, could not write. Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701.

147. 1. Burnette *v.* Young, 107 Va. 184, 57 S. E. 641; Holley *v.* Curry, 58 W. Va. 70, 51 S. E. 135.

In New Jersey, an unsealed deed has been given full force and effect, although it did not appear that the necessity of a seal had been abolished by statute. Cowdrey *v.* Cowdrey, (N. J. 1906) 64 Atl. 98.

Seal Unnecessary to Validity of Deed. — Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701.

149. 3. McCreary *v.* Jackson Lumber Co., 148 Ala. 247, 41 So. 822.

150. 2. Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 150.

5. *Arkansas.* — Russell *v.* May, 77 Ark. 89, 90 S. W. 617.

California. — Ostrom *v.* De Yoe, 4 Cal. App. 326, 87 Pac. 811; Daneri *v.* Gazzola, 2 Cal. App. 351, 83 Pac. 455; Drinkwater *v.* Hollar, (Cal. App. 1907) 91 Pac. 664.

Georgia. — Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701.

Illinois. — Henry *v.* Henry, 215 Ill. 205, 74 N. E. 126; Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151; Blake *v.* Ogden, 223 Ill. 204, 79 N. E. 68; Russell *v.* Mitchell, 223 Ill. 438, 79 N. E. 141; Elliott *v.* Murray, 225 Ill. 107, 80 N. E. 77.

Iowa. — Shelter *v.* Stewart, 133 Iowa 320, 107 N. W. 310; Richards *v.* Moran, (Iowa 1908) 114 N. W. 1035.

Kentucky. — Meisiger *v.* Mills, (Ky. 1906) 91 S. W. 689.

Missouri. — Williams *v.* Husky, 192 Mo. 533, 90 S. W. 425; Rausch *v.* Michel, 192 Mo. 293, 91 S. W. 99.

New Jersey. — Schlicher *v.* Keeler, 67 N. J. Eq. 635, 61 Atl. 434.

North Carolina. — Perry *v.* Hackney, 142 N. Car. 368, 55 S. E. 289.

Texas. — Burke-Mobray *v.* Ellis, (Tex. Civ. App. 1906) 97 S. W. 321; Walker *v.* Erwin. (Tex. Civ. App. 1907) 106 S. W. 164.

Utah. — Wilson *v.* Wilson, (Utah 1907) 89 Pac. 643.

Vermont. — Dunlevy *v.* Fenton, (Vt. 1908) 68 Atl. 651.

Washington. — Meikle *v.* Cloquet, 44 Wash. 513, 87 Pac. 841.

West Virginia. — Reel *v.* Reel, 59 W. Va. 106, 52 S. E. 1023; Garrett *v.* Goff, 61 W. Va. 221, 56 S. E. 351.

152. 1. Brumby *v.* Jones, (C. C. A.) 141 Fed. 318, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152; David *v.* Whitehead, 13 Wyo. 189, 79 Pac. 19, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152.

2. Daneri *v.* Gazzola, 2 Cal. App. 351, 83 Pac. 455; Crabtree *v.* Crabtree, (Iowa 1907) 113 N. W. 923; Ranken *v.* Donovan, 115 N. Y. App. Div. 651, 100 N. Y. Supp. 1049; Oehler *v.* Walsh, 28 Ohio Cir. Ct. 446; Kirby *v.* Cartwright, (Tex. Civ. App. 1907) 106 S. W. 742, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152.

153. 2. Daneri *v.* Gazzola, 2 Cal. App. 351, 83 Pac. 455.

3. Russell *v.* May, 77 Ark. 89, 90 S. W. 617; Interstate Invest. Co. *v.* Bailey, (Ky. 1906) 93 S. W. 578; Rausch *v.* Michel, 192 Mo. 293, 91 S. W. 99.

Fact of Delivery — Question for Jury. — Central Trust Co. *v.* Stoddard, 4 Cal. App. 647, 88 Pac. 806; Chase *v.* Clearfield Lumber Co., 213 Pa. St. 46, 62 Atl. 172; Garrett *v.* Goff, 61 W. Va. 221, 56 S. E. 351.

4. Russell *v.* Mitchell, 223 Ill. 438, 79 N. E. 141; Elliott *v.* Murray, 225 Ill. 107, 80 N. E. 77; Balin *v.* Osoba, (Kan. 1907) 91 Pac. 57, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153; Creeden *v.* Mahoney, 193 Mass. 402, 79 N. E. 776; Atkins *v.* Atkins, (Mass. 1907) 80

N. E. 806; Fryer *v.* Fryer, (Neb. 1906) 109 N. W. 175; Cowdrey *v.* Cowdrey, (N. J. 1906) 64 Atl. 98; Chew *v.* Jackson, (Tex. Civ. App. 1907) 102 S. W. 427; Walker *v.* Erwin, (Tex. Civ. App. 1907) 106 S. W. 164; Matson *v.* Johnson, (Wash. 1908) 93 Pac. 324.

154. 1. *United States.* — Brumby *v.* Jones, (C. C. A.) 141 Fed. 318, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 154.

Alabama. — Napier *v.* Elliott, 146 Ala. 213, 40 So. 752.

Arkansas. — Cribbs *v.* Walker, 74 Ark. 104, 85 S. W. 244, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 154; Russell *v.* May, 77 Ark. 89, 90 S. W. 617.

California. — Central Trust Co. *v.* Stoddard, 4 Cal. App. 647, 88 Pac. 806.

Idaho. — Whitney *v.* Dewey, 10 Idaho 633, 80 Pac. 1117, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 154.

Illinois. — Oswald *v.* Caldwell, 225 Ill. 224, 80 N. E. 131.

Iowa. — Foreman *v.* Archer, 130 Iowa 49, 106 N. W. 372.

Kansas. — Young *v.* McWilliams, 75 Kan. 243, 89 Pac. 12, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 154; Balin *v.* Osoba, (Kan. 1907) 91 Pac. 57, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 154.

New Jersey. — Schlicher *v.* Keeler, 67 N. J. Eq. 635, 61 Atl. 434.

Ohio. — Wissel *v.* Pierson, 28 Ohio Cir. Ct. 452.

Oregon. — Pierson *v.* Fisher, 48 Oregon 223, 85 Pac. 621; Sappingfield *v.* King, (Oregon 1907) 89 Pac. 142.

Washington. — Matson *v.* Johnson, (Wash. 1908) 93 Pac. 324.

155. 1. Holmes *v.* Salamanca Gold Min., etc., Co., (Cal. App. 1907) 91 Pac. 160; Burns *v.* Kennedy, (Oregon 1907) 90 Pac. 1102; Dunlevy *v.* Fenton, (Vt. 1908) 68 Atl. 651; Garrett *v.* Goff, 61 W. Va. 221, 56 S. E. 351, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 155.

2. Whitney *v.* Dewey, 10 Idaho 633, 80 Pac. 1117, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 155; Phelps *v.* Pratt, 225 Ill. 85, 80 N. E. 69.

3. *Alabama.* — Griswold *v.* Griswold, 148 Ala. 239, 42 So. 554; Strickland *v.* Griswold, (Ala. 1907) 43 So. 105.

California. — Keyes *v.* Meyers, 147 Cal. 702, 82 Pac. 304; Hayden *v.* Collins, 1 Cal. App. 259, 81 Pac. 1120; Drinkwater *v.* Hollar, (Cal. App. 1907) 91 Pac. 664.

Connecticut. — Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337.

Illinois. — Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151; Russell *v.* Mitchell, 223 Ill. 438, 79 N. E. 141; Phelps *v.* Pratt, 225 Ill. 85, 80 N. E. 69.

Kansas. — Young *v.* McWilliams, 75 Kan. 243, 89 Pac. 12.

Kentucky. — Nuckols *v.* Stone, 120 Ky. 631, 87 S. W. 799, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 155.

Michigan. — Cole *v.* Cole, 144 Mich. 676, 108 N. W. 101.

156. 1. Koger *v.* Koger, (Ky. 1906) 92 S. W. 961.

3. Coleman *v.* Coleman, 216 Ill. 261, 74 N. E. 701; Wicklund *v.* Lindquist, 102 Minn. 321, 113 N. W. 631; Martin *v.* Martin, (Neb. 1906) 107 N. W. 580; Elliott *v.* Morris, (Tex. Civ. App. 1905) 98 S. W. 220; Walker *v.* Erwin, (Tex. Civ. App. 1907) 106 S. W. 164.

157. 1. Wilson *v.* Wilson, (Utah 1907) 89 Pac. 643, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 157.

2. *Alabama.* — Griswold *v.* Griswold, 148 Ala. 239, 42 So. 554, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 157; Strickland *v.* Griswold, (Ala. 1907) 43 So. 105.

California. — Wilhoit *v.* Salmon, 146 Cal. 444, 80 Pac. 705.

Connecticut. — Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337.

Illinois. — Thompson *v.* Calhoun, 216 Ill. 161, 74 N. E. 775.

Iowa. — Foreman *v.* Archer, 130 Iowa 49, 106 N. W. 372; Schillinger *v.* Bawek, (Iowa 1907) 112 N. W. 210; Stewart *v.* Wills, (Iowa 1908) 114 N. W. 548.

Kansas. — Young *v.* McWilliams, 75 Kan. 243, 89 Pac. 12, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 157; Nolan *v.* Otney, (Kan. 1907) 89 Pac. 690.

Oregon. — Reeder *v.* Reeder, (Oregon 1907) 91 Pac. 1075.

Texas. — McCurry *v.* McCurry, (Tex. Civ. App. 1906) 95 S. W. 35.

Utah. — Wilson *v.* Wilson, (Utah 1907) 89 Pac. 643.

Wisconsin. — Wells *v.* Wells, (Wis. 1907) 111 N. W. 1111.

Deed Placed in Box — To Be Delivered after Grantor's Death — Delivery Valid. — Hutton *v.* Cramer, (Ariz. 1906) 85 Pac. 483.

A Valid Delivery Is Not Shown, where it appears that it was the grantor's intention that the delivery should relate to the date of his death. Schlicher *v.* Keeler, 67 N. J. Eq. 635, 61 Atl. 434.

158. 1. Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151.

2. Haviland *v.* Haviland, 130 Iowa 611, 105 N. W. 354, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 158.

159. 1. Webb *v.* Webb, 130 Iowa 457, 104 N. W. 438; Hild *v.* Hild, 129 Iowa 649, 106 N. W. 159.

2. Morton *v.* Morton, 82 Ark. 492, 102 S. W. 213; Central Trust Co. *v.* Stoddard, 4 Cal. App. 647, 88 Pac. 806; Towne *v.* Towne, (Cal. App. 1907) 92 Pac. 1050; Drinkwater *v.* Hollar, (Cal. App. 1907) 91 Pac. 664; Blake *v.* Ogden, 223 Ill. 204, 79 N. E. 68; McCarthy *v.* Colton, 134 Iowa 658, 108 N. W. 217; Wilbur *v.* Grover, 140 Mich. 187, 103 N. W. 583; Pierson *v.* Fisher, 48 Oregon 223, 85 Pac. 621; Dempwolf *v.* Greybill, 213 Pa. St. 163, 62 Atl. 645.

Where the Grantee of a Voluntary Deed Is in Possession of the Property Conveyed, a presumption of delivery as to the deed arises. Henry *v.* Henry, 215 Ill. 205, 74 N. E. 126.

3. Central Trust Co. *v.* Stoddard, 4 Cal. App. 647, 88 Pac. 806; Drinkwater *v.* Hollar, (Cal. App. 1907) 91 Pac. 664.

4. *United States.* — Brumby *v.* Jones, (C. C. A.) 141 Fed. 318, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 159.

Illinois. — Creighton *v.* Roe, 218 Ill. 619, 75 N. E. 1073, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 159; Konser *v.* Konser, 219 Ill. 466, 76 N. E. 846; Calkins *v.* Calkins, 220 Ill. 111, 77 N. E. 102; Blake *v.* Ogden, 223 Ill. 204, 79 N. E. 68.

Iowa. — Webb *v.* Webb, 130 Iowa 457, 104 N. W. 438; Drees *v.* Drees, (Iowa 1905) 104 N. W. 479; Davis *v.* Hall, 128 Iowa 647, 105 N. W. 122.

Kansas. — Balin *v.* Osoba, (Kan. 1907) 91 Pac. 57, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 159.

Kentucky. — Collings *v.* Collings, (Ky. 1906) 92 S. W. 577.

Massachusetts. — Creeden *v.* Mahoney, 193 Mass. 280, 79 N. E. 776.

Missouri. — McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997.

Nebraska. — Fryer *v.* Fryer, (Neb. 1906) 109 N. W. 175.

Wisconsin. — Whiting *v.* Hoglund, 127 Wis. 135, 106 N. W. 391.

Presumption of Delivery to Grantee Arises, where deed is delivered to the father of infant grantee and by the father recorded. Coleman *v.* Coleman, 216 Ill. 261, 74 N. E. 701.

Further Evidence Required to Effect Delivery. — Miller *v.* McCaleb, 208 Mo. 562, 106 S. W. 655.

160. 1. Napier *v.* Elliott, 146 Ala. 213, 40 So. 752; Creighton *v.* Roe, 218 Ill. 619, 75 N. E. 1073; Konser *v.* Konser, 219 Ill. 466, 76 N. E. 846; Abrams *v.* Beale, 224 Ill. 496, 79 N. E. 671; McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997.

161. 2. McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997; Miller *v.* McCaleb, 208 Mo. 562, 106 S. W. 655; Walker *v.* Erwin, (Tex. Civ. App. 1907) 106 S. W. 164; Reel *v.* Reel, 59 W. Va. 106, 52 S. E. 1023.

Acceptance on Grantee's Part Is Essential, so as to render covenants therein binding on him. Whitcomb *v.* Boston, 192 Mass. 211, 78 N. E. 407.

162. 1. Horner *v.* Lowe, 159 Ind. 406, 64 N. E. 218, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 161.

Agent of Grantee May Accept Deed. — Sawyer *v.* Vermont L. & T. Co., 41 Wash. 524, 84 Pac. 8.

2. Akers *v.* Shoemaker, (Ky. 1907) 102 S. W. 842.

4. Collings *v.* Collings, (Ky. 1906) 92 S. W. 577; Whiting *v.* Hoglund, 127 Wis. 135, 106 N. W. 391.

163. 2. **The Alteration or Destruction of a Deed After Full Execution,** although done by consent of parties, will not divest the original grantee of title, or revest such title in the grantors. Gibbs *v.* Potter, 166 Ind. 471, 9 Ann. Cas. 481, 77 N. E. 942, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163.

164. 1. Crossman *v.* Keister, 223 Ill. 69, 79 N. E. 58; Derby *v.* Donahoe, 208 Mo. 684, 106 S. W. 632.

3. Blackford *v.* Olmstead, 140 Mich. 583, 104 N. W. 47.

DEFAULT.

168. 1. State *v.* Justices Ct., 31 Mont. 258, 78 Pac. 498, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 168.

DEFENDANT.

174. 1. The word *defendant* as used in the *Nebraska* statute applies to the mortgagor or to persons in privity with him, and not to cross-petitioners seeking to enforce a lien upon the premises or to parties defendant having only a contingent or collateral interest in the property. Clock *v.* Pahl, [illegible] N. W. 420.

DEFRAUD.

180. 3. Distinction between "disturb, hinder, delay, or defraud." — "The word *defraud*, as used in the phrase 'disturb, hinder, delay, or *defraud*' creditors, is the most generic term of the four, and really includes all the others, since 'to disturb, hinder, or delay' a creditor in the collection of his debts are only different modes of defrauding him of his rights, and these words are used merely as more specific statements of various forms of fraud." Clayton *v.* Clark, (Kan. 1907) 92 Pac. 1117.

DELIBERATE — DELIBERATION.

189. 4. **Cool State of Blood — Missouri.** — State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55; State *v.* Barrington, 198 Mo. 23, 95 S. W. 235.

191. 1. Dunn *v.* State, 143 Ala. 67, 39 So. 147; Green *v.* State, 143 Ala. 2, 39 So. 362; Franklin *v.* State, 145 Ala. 669, 39 So. 979; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Daniel, 139 N. Car. 549, 51 S. E. 858.

DEMAND.

199. 1. Montgomery *v.* Leuwer, 94 Minn. 134, 102 N. W. 367, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 199.

5. *Ex p.* Howitz, 2 Cal. App. 752, 84 Pac. 229.

200. 4. Elliott *v.* Capital City State Bank, 128 Iowa 275, 103 N. W. 777; Clark *v.* Farmers' Nat. Bank, (Ky. 1907) 99 S. W. 674; Koelzer *v.* Whitewater First Nat. Bank, 125 Wis. 595, 104 N. W. 838.

In New York it seems that a demand is a condition precedent to the maintenance of an action against a bank to recover deposits. Kemble *v.* National Bank, 94 N. Y. App. Div. 544, 88 N. Y. Supp. 246.

202. 5. Newburn *v.* Hyde, 132 Iowa 88, 107 N. W. 604, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203.

203. 1. **Demand Necessary in Case of Contract to Deliver Goods as Ordered.** — Smokeless Fuel Co. *v.* Seaton, 105 Va. 170, 52 S. E. 829.

A Covenant to Deliver Oil in Such Quantities as Wanted — Demand Necessary to Suit for Nondelivery. — Gulf Refining Co. *v.* Vicksburg Waterworks Co., [illegible] So. 824.

205. 1. **To Maintain Action for Specific Performance,** it must appear that the plaintiff offered performance on his own part. Johnson *v.* Higgins, (Neb. 1906) 108 N. W. 168.

207. 1. Kokomo *v.* Harness, 35 Ind. App. 389, 74 N. E. 270, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 207.

2. Boonville Nat. Bank *v.* Blakey, 166 Ind. 427, 76 N. E. 529, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 207.

210. 2. Fay *v.* Fitzpatrick, 130 Iowa 279, 105 N. W. 398, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 210. See also Newburn *v.* Hyde, 132 Iowa 88, 107 N. W. 604, wherein the circumstances were held not to show that a demand would have been unavailing.

3. **Necessity of Demand for Conveyance Dispensed with by Inability of Vendor to Make Good Deed.** — Detroit United R. Co. *v.* Smith, 144 Mich. 235, 107 N. W. 922.

213. 2. See the dissenting opinion of Marshall, J., in Isenhour *v.* Barton County, 190 Mo. 163, 88 S. W. 759, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 213.

4. See the dissenting opinion of Marshall, J., in Isenhour *v.* Barton County, 190 Mo. 163, 88 S. W. 759, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 213.

214. 1. Newburn *v.* Hyde, 132 Iowa 88, 107 N. W. 604.

3. Freeman *v.* Ingerson, 143 Mich. 9, 106 N. W. 278, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 214.

DEMURRAGE.

221. 1. Rex *v.* Judge, (1907) 2 K. B. 664.

223. 2. Thomas Phillips Co. *v.* Erie R. Co., 27 Ohio Cir. Ct. 486.

226. 2. **Only Privies to Cesser Agreement Bound.** — West Hartlepool Steam Nav. Co. *v.* 450 Tons Kainit, 151 Fed. 886.

230. 4. Tweedie Trading Co. *v.* Pitch Pine Lumber Co., 156 Fed. 88.

231. 3. Tweedie Trading Co. *v.* Pitch Pine Lumber Co., 156 Fed. 88; *In re* 2,098 Tons Coal, (C. C. A.) 135 Fed. 317.

232. 3. **The Term "Upon Arrival,"** used to fix the time when the discharge shall begin, and unaccompanied by further explanation, does not qualify the general rule. Glasgow Steam Shipping Co. *v.* Tweedie Trading Co., 154 Fed. 84.

234. 3. **Premature Notice.** — The general rule is that notice of a ship's readiness to receive cargo can be properly given only after the ship is ready at her proper place for loading, and notice given before such time is premature and insufficient. L. N. Dantzler Lumber Co. *v.* Churchill, (C. C. A.) 136 Fed. 560.

235. 2. **Rainy and Stormy Days.** — Hughes *v.* J. S. Hoskins Lumber Co., 136 Fed. 435.

4. **Days and Running Days.** — Hughes *v.* J. S. Hoskins Lumber Co., 136 Fed. 435.

236. 5. Houlder *v.* Weir, (1905) 2 K. B. 267, 74 L. J. K. B. 729.

6. Whittall *v.* Rahtkens Shipping Co., (1907) 1 K. B. 783; Hughes *v.* J. S. Hoskins Lumber Co., 136 Fed. 435.

237. 1. Houlder *v.* Weir, (1905) 2 K. B. 267, 74 L. J. K. B. 729; Hughes *v.* J. S. Hoskins Lumber Co., 136 Fed. 435; Tweedie Trading Co. *v.* Pitch Pine Lumber Co., 156 Fed. 88, holding further that the holiday need not be one created by statute, if established by general observance.

Holidays Included. — A charter party provided: "Seven weather working days (Sundays and holidays excepted) to be allowed by owners to charterers for loading," and that for any time beyond these periods the charterers should pay to the owners demurrage at a certain rate per day. Loading took place on two holidays, but there was no evidence as to the terms upon which the parties worked. It was held that the inference to be drawn from the fact that the holidays were worked upon was that the parties had agreed to treat them as working days, and that therefore they should be included in the lay days. Nelson *v.* Nelson Line, (1907) 2 K. B. 705, 77 L. J. K. B. 97, 23 Times L. Rep. 656. See also Branckelow Steamship Co. *v.* Lamport, 76 L. J. K. B. 534, note, (1907) 1 K. B. 787, note.

3. **"As Fast as Vessel Can Deliver."** — See Tweedie Trading Co. *v.* Pitch Pine Lumber Co., 156 Fed. 88.

Customs of Port. — Harding *v.* Cargo of 4,698 Tons New Rivers Steam Coal, 147 Fed. 971.

As Fast as Vessel Can Receive. — See Atlantic, etc., Steamship Co. *v.* Guggenheim, (C. C. A.) 147 Fed. 103.

A Provision for "Discharge Continuously" means during the working hours customary in the port of discharge, Sundays and holidays excluded. Tweedie Trading Co. *v.* Pitch Pine Lumber Co., 156 Fed. 88.

"Continuously" means reasonably continuous, considering the time, place, circumstances, the nature of the cargo, and prevailing conditions generally. U. S. Shipping Co. *v.* U. S., 146 Fed. 914.

"Promptly." — A provision in a charter party, "vessel to be loaded promptly," means promptly in view of the weather conditions and the facilities of the port. Harding *v.* Cargo of 4,698 Tons New Rivers Steam Coal, 147 Fed. 971.

239. 7. W. K. Niver Coal Co. *v.* Cheronea Steamship Co., (C. C. A.) 142 Fed. 402; Harding *v.* Cargo of 4,698 Tons New Rivers Steam Coal, 147 Fed. 971.

241. 2. **Customs and Usages of Port.** — The customs of a port are not to be considered where they were not in contemplation of or known by the contracting parties, under a charter party providing: "Vessel to have turn in loading. Vessel to be loaded promptly." Harding *v.* Cargo of 4,698 Tons New Rivers Steam Coal, 147 Fed. 971.

242. 3. Arden Steamship Co. *v.* Weir, (1905) A. C. 501, 74 L. J. P. C. 143; W. K. Niver Coal Co. *v.* Cheronea Steamship Co., (C. C. A.) 142 Fed. 402; Leary *v.* Talbot, 151 Fed. 355.

244. 4. **Strikes, Civil Commotion, Riots, etc.** — To the same effect as The Village Belle, 30 L. T. N. S. 232, stated in the original note, see W. K. Niver Coal Co. *v.* Cheronea Steamship Co., (C. C. A.) 142 Fed. 402.

Under a charter party providing that the time during which the discharge of the ship is prevented or delayed by strikes, lockouts, or similar causes is not to be counted in reckoning the lay days the consignee is liable for de-

murrage if by his own delay the discharging has been thrown into the strike period, except to the extent that the discharge would have been prevented or delayed by such strike even had he not been in default. Elswick Steamship Co. *v.* Montaldi, (1907) 1 K. B. 626, 76 L. J. K. B. 672.

Restraints of Princes, Rulers, and People. — See Tweedie Trading Co. *v.* George D. Emery Co., 146 Fed. 618.

Detention in quarantine has been held to fall within this clause. Glasgow Steam Shipping Co. *v.* Tweedie Trading Co., 154 Fed. 84.

245. 1. Schooner Mahukona Co. *v.* 180,000 Feet Lumber, 142 Fed. 578.

246. 3. **Sundays and Holidays.** — Hughes *v.* J. S. Hoskins Lumber Co., 136 Fed. 435.

247. 1. Hughes *v.* J. S. Hoskins Lumber Co., 136 Fed. 435.

248. 2. **Position of Vessel.** — The shipowner cannot recover for delay which could have been avoided by moving to a different location. Murray *v.* George W. Jump Co., 148 Fed. 123.

Refusal of Shipowner to Discharge unless Secured. — A shipowner cannot recover demurrage for delay due to his refusal to finish unloading unless given security for freight. Murray *v.* George W. Jump Co., 148 Fed. 123.

4. **No Recovery for Delay Caused by Necessary Alteration of Vessel to Receive Cargo.** — Hughes *v.* J. S. Hoskins Lumber Co., 136 Fed. 435.

249. 1. 2,000 Tons Coal, etc., (C. C. A.) 135 Fed. 734.

Failure to Employ Stevedores, etc. — L. N. Dantzler Lumber Co. *v.* Churchill, (C. C. A.) 136 Fed. 560.

250. 8. **Change of Discharging Dock by Order of Shipowner's Agent — No Recovery.** — 2,000 Tons Coal, etc., (C. C. A.) 135 Fed. 734.

252. 1. Ardan Steamship Co. *v.* Weir, (1905) A. C. 501, 74 L. J. P. C. 143.

Agreement to Discharge as Fast as Vessel Can Deliver. — Tweedie Trading Co. *v.* Pitch Pine Lumber Co., 156 Fed. 88.

253. 4. **Failure to Furnish Cargo.** — Peck *v.* U. S., 152 Fed. 524.

254. 1. West Hartlepool Steam Nav. Co. *v.* 450 Tons Kainit, 151 Fed. 886.

256. 1. Furness *v.* Leyland Shipping Co., (C. C. A.) 134 Fed. 815; *In re* 2,098 Tons Coal, (C. C. A.) 135 Fed. 317; Schooner Mahukona Co. *v.* 180,000 Feet Lumber, 142 Fed. 578; U. S. Shipping Co. *v.* U. S., 146 Fed. 914.

Burden of Proof. — Benedict *v.* Cargo of 6,086 Railroad Ties, 151 Fed. 366.

4. U. S. Shipping Co. *v.* U. S., 146 Fed. 914; Plummer *v.* Two Hundred Tons Rails, 149 Fed. 887.

257. 2. **Failure to Provide Berth.** — Where the vessel is required by the charterer to unload portions of the cargo at several docks, some of which are found to be occupied by other vessels, thus causing delay, the charterer is liable for demurrage. Leary *v.* Talbot, 151 Fed. 355.

3. Plummer *v.* Two Hundred Tons Rails, 149 Fed. 887.

258. 4. *In re* 2,098 Tons Coal, (C. C. A.) 135 Fed. 317.

259. 1. **In United States.** — The adoption of special machinery for unloading coal, grain, ores, etc., has effected a modification of the general rule. W. K. Niver Coal Co. *v.* Cheronea Steamship Co., (C. C. A.) 142 Fed. 402.

3. Sewall *v.* Wood, (C. C. A.) 135 Fed. 12; Donaldson *v.* Severn River Glass Sand Co., 138 Fed. 691.

Where Moving to a Different Location in the same yard would have avoided delay, demurrage cannot be recovered. Murray *v.* George W. Jump Co., 148 Fed. 123.

A Consignee obliged to pay demurrage because another vessel occupying the dock delays excessively in unloading may recover the amount from the owner of the other vessel. The Heathdene, 155 Fed. 368.

261. 4. **Specific Notice to Shippers or Consignees Not Necessary.** — Baltimore, etc., R. Co. *v.* Gray's Ferry Abattoir Co., 27 Pa. Super. Ct. 511; Thomas Phillips Co. *v.* Erie R. Co., 27 Ohio Cir. Ct. 486.

262. 2. **A Charge of One Dollar per Day per Car,** after allowing ninety-six hours' free service, excluding Sundays and holidays, has been held to be reasonable under the prohibition in the Interstate Commerce Act against excessive charges for "delivering, storage, or handling," which phrase is broad enough to cover demurrage. Michie *v.* New York, etc., R. Co., 151 Fed. 694.

264. 8. The North Star, (C. C. A.) 151 Fed. 168.

265. 1. The North Star, (C. C. A.) 151 Fed. 168.

267. 1. U. S. Shipping Co. *v.* U. S., 146 Fed. 914.

270. 4. Nicolette Lumber Co. *v.* People's Coal Co., 213 Pa. St. 379, 62 Atl. 1060, *citing* 9 Am. and Eng. Encyc. of Law (2d ed.) 270; Wallace *v.* Baltimore, etc., R. Co., 216 Pa. St. 311, 65 Atl. 665.

272. 1. **No Libel Against United States.** — U. S. Shipping Co. *v.* U. S., 146 Fed. 914.

DEPENDENT.

277. 1. **Mutual Insurance.** — A woman living with a man as his mistress is not a ***dependent*** person within the by-laws of a mutual benefit society. Miller *v.* Prelle, 122 Ill. App. 380.

But an adopted daughter is a ***dependent***. Murphy *v.* Nowak, 223 Ill. 301, 79 N. E. 112.

Dependents — English Workmen's Compensation Act. — See Coulthard *v.* Consett Iron Co., (1905) 2 K. B. 869, 75 L. J. K. B. 60 (wife separated from husband held ***dependent***); Williams *v.* Ocean Coal Co., (1907) 2 K. B. 422, 76 L. J. K. B. 1073, 97 L. T. N. S. 150, 23 Times L. Rep. 584 (wife separated from husband held ***dependent***, also posthumous child); Varesick *v.* British Columbia Copper Co., 12 British Columbia 286 (father and mother separated from son held not ***dependent***).

DEPOSIT.

280. 1. **Where a Check Is Deposited in Aid of a Bond** and to strengthen the security, the transaction is a bailment. Haines *v.* Chero-Cola, 1 Ga. App. 480, 58 S. E. 220.

285. 6. Application of Deposit to Payment

Other than that Intended by Depositor Is Conversion. Haines *v.* Chappell, 1 Ga. App. 480, 58 S. E. 220.

286. 4. Colvin *v.* Fargo, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 642, 94 N. Y. Supp. 377; Abrahamovitz *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 539, 104 N. Y. Supp. 663.

287. 1. **Action May Be Maintained by Depositor.** — Abrahamovitz *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 539, 104 N. Y. Supp. 663.

2. Christian *v.* Deadwood First Nat. Bank, (C. C. A.) 155 Fed. 705.

A Depositary of Funds Whose Business It Is to Make Disbursements on the depositor's order, where it does not appear that there is any limitation on the method of making disbursements, is only required to use ordinary care and act in good faith to see that the money is applied to the proper purposes. Miller *v.* Dayton, 94 Minn. 340, 102 N. W. 862.

289. 3. **Not Liable for Loss by Fire — Depositary Without Fault.** — Whitlock *v.* Auburn Lumber Co., 145 N. Car. 120, 58 S. E. 909.

4. Depositary Not Liable for Loss by Burglary in Absence of Negligence. — Campbell *v.* Klein, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 123, 101 N. Y. Supp. 577.

291. 2. Miller *v.* Dayton, 94 Minn. 340, 102 N. W. 862.

DEPOSITIONS.

299. 5. **The Alabama Statute** relating to the filing of interrogatories is applicable to all civil suits, including actions in trover. Nashville, etc., R. Co. *v.* Karthaus, (Ala. 1907) 43 So. 791.

Louisiana. — The article of the Code of Practice of *Louisiana*, requiring an affidavit of materiality as a condition precedent to the granting of an order for a commission to take the testimony of nonresident witnesses, does not apply to the proceedings in the City Court of the city of New Orleans, which is governed by the rules of practice of justice of the peace courts. Wertheimer *v.* Favalora, 116 La. 490, 40 So. 848.

300. 1. Hughes *v.* Chicago, etc., R. Co., 122 Wis. 270, 99 N. W. 897, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 298–300.

301. 5. In *Nebraska* it was held that in the taking of depositions notaries public are not exercising judicial functions, and do not constitute a law court. Their powers are derived solely from the statute. *In re* Butler, (Neb. 1906) 107 N. W. 572.

302. 1. **Special Commissioner.** — Temby *v.* William Brunt Pottery Co., 229 Ill. 540, 82 N. E. 336.

3. United States Commissioner. — Where the order to take depositions stated that the person appointed was a notary public, the fact that he was not a notary public, but a United States commissioner, did not render the depositions inadmissible. Owings *v.* Turner, 48 Oregon, 462, 87 Pac. 160.

304. 6. German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068.

A commission to take testimony addressed to "any judge, justice of the peace, or *Louisiana* commissioner" cannot be executed by a notary public. De Renzes *v.* His Wife, 115 La. 675, 39 So. 805.

305. 3. Bledsoe *v.* Jones, 145 Ala. 685, 40 So. 111.

Attorneys and Counsel Disqualified. — The burden of showing the relationship of attorney and client between the notary public and either of the parties is on him who objects to the deposition for that reason. Rouse *v.* Sarratt, 74 S. Car. 575, 54 S. E. 757.

Attorney's Clerk Equally Disqualified. — Knickerbocker Ice Co. *v.* Gray, 165 Ind. 140, 72 N. E. 869, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 305.

306. 1. New *v.* Young, 144 Ala. 420, 39 So. 201.

307. 7. Missouri *v.* Illinois, 202 U. S. 598, 26 U. S. Sup. Ct. 713.

308. 1. Matter of Great Northern Constr. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 467, 100 N. Y. Supp. 564; Depue *v.* Depue, 115 N. Y. App. Div. 466, 101 N. Y. Supp. 412; Miners, etc., Bank *v.* Ardsley Hall Co., 113 N. Y. App. Div. 194, 99 N. Y. Supp. 98; Vincent *v.* Kilmer, 107 N. Y. App. Div. 499, 95 N. Y. Supp. 343; International Coal Min. Co. *v.* Pennsylvania R. Co., 214 Pa. St. 469, 63 Atl. 880.

Proof of the necessity of taking depositions to be used by the grand jury must be made before that body, and not before the justice holding the term. People *v.* Dundon, 113 N. Y. App. Div. 369, 98 N. Y. Supp. 1048.

2. In order to avail of a right to a *dedimus* there must be ground for apprehension of a failure or delay of justice, and the mere statement that the witness lives more than one hundred miles from the place of trial is insufficient. Magone *v.* Colorado Smelting, etc., Co., 135 Fed. 846.

309. 1. Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618; Oakes *v.* Riter, 118 N. Y. App. Div. 772, 103 N. Y. Supp. 849; Dambmann *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 165, 97 N. Y. Supp. 91.

3. Tirpak *v.* Hoe, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 529, 103 N. Y. Supp. 798.

Exact Place of Residence Need Not Be Stated. — Dambmann *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 165, 97 N. Y. Supp. 91.

4. Blood *v.* Morrin, 140 Fed. 918; Hartman *v.* Feenaughty, 139 Fed. 887; Doherty *v.* Healy, 36 Colo. 460, 86 Pac. 323.

5. Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423.

310. 4. *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695.

311. 1. **Same Rule as to Party.** — A woman in her eighty-fifth year was granted a commission to have her testimony taken in her own behalf. Wilds *v.* Wilds, 8 Del. Ch. 368, 68 Atl. 447.

2. Wood *v.* Flagg, 121 N. Y. App. Div. 636, 106 N. Y. Supp. 308.

4. *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695; Pergoli *v.* Lyman, (Supm. Ct. App. T.) 92 N. Y. Supp. 788; Calvet Rogniat *v.* Mercantile Trust Co., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 20, 93 N. Y. Supp. 241; Mercantile Trust Co. *v.* Calvet-Rogniat, (Supm. Ct. Spec. T.)

46 Misc. (N. Y.) 16, 93 N. Y. Supp. 238; *In re* Tweedie Trading Co., 105 N. Y. App. Div. 426, 94 N. Y. Supp. 167; Watt *v.* Feltman, 111 N. Y. App. Div. 314, 97 N. Y. Supp. 737; Goldmark *v.* U. S. Electro-Galvanizing Co., 111 N. Y. App. Div. 526, 97 N. Y. Supp. 1078; Davis *v.* William Rosenzweig Realty Operating Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 1, 102 N. Y. Supp. 1868.

In *Colorado* it was held that the affidavit showing the necessity for taking depositions is necessary only where the depositions are taken in, and not out of, the state. Stone *v.* Victor Electric Co., 36 Colo. 370, 85 Pac. 327.

313. 3. Gilroy *v.* Interborough-Metropolitan Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 32, 106 N. Y. Supp. 171; Hallenberg *v.* Greene, 120 N. Y. App. Div. 813, 105 N. Y. Supp. 664; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231.

In *Wisconsin* by statute the depositions of the officers of a corporation may be taken before trial by the adverse party and used as independent evidence at the trial even if the deponent is present in court. Hughes *v.* Chicago, etc., R. Co., 122 Wis. 258, 99 N. W. 897; Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048; Zoesch *v.* Flambeau Paper Co., (Wis. 1908) 114 N. W. 485. But the same rule does not apply to an employee of the corporation. Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077.

314. 3. Seamster *v.* State, 74 Ark. 579, 86 S. W. 434.

4. The Depositions Need Not Be in Writing where a prisoner has pleaded not guilty in a summary trial. King *v.* Weir, 8 Quebec Pr. 405.

315. 4. **Criminal Proceeding — What Is.** — In *Iowa*, proceedings to disbar an attorney are civil and not criminal, so that the defendant need not be confronted with the witnesses, but they may testify by deposition. State *v.* Mosher, 128 Iowa 82, 103 N. W. 106. And in *Florida* the same rule applies. State *v.* McRae, 49 Fla. 389, 38 So. 605.

316. 1. State *v.* Naud, 73 N. H. 531, 63 Atl. 673.

One under Indictment and Pleading Insanity. — Refusing to grant a commission to take the testimony of nonresident witnesses who would testify as to insanity in defendant's family was held to be a matter within the discretion of the court and could not be made a cause for reversal. State *v.* Wetter, 11 Idaho 433, 83 Pac. 341.

317. 1. **Power to Exclude to Be Used with Great Caution.** — Irving *v.* Royal Exch. Assur., 122 N. Y. App. Div. 56, 107 N. Y. Supp. 83 (to the same effect as Hemenway *v.* Knudson, (Supm. Ct. Gen. T.) 21 N. Y. Supp. 679, set out in original note).

318. 3. **And After Decree Pro Confesso.** — Johnson *v.* Porterfield, (Ala. 1907) 43 So. 228.

319. 1. In *New York*, if it is intended to authorize a commission wholly or partly upon oral questions, it must be so expressly provided in the order. Ordway *v.* Radigan, 114 N. Y. App. Div. 538, 100 N. Y. Supp. 121.

2. Deery *v.* Byrne, 120 N. Y. App. Div. 6, 104 N. Y. Supp. 836; Gardner *v.* Roycrofters, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 637; Matter of Sentell, (Surrogate Ct.) 53 Misc. (N. Y.) 165, 104 N. Y. Supp. 477; Ordway *v.* Radigan, 114 N. Y. App. Div. 538, 100 N. Y. Supp. 121; Mark *v.* Fox, (Supm. Ct. App. T.) 102 N. Y. Supp. 464.

Where the witness is a party to the action an open commission will not be issued. Stuart *v.* Spofford, 122 N. Y. App. Div. 47, 106 N. Y. Supp. 903.

320. 2. St. Louis Southwestern R. Co. *v.* Kennedy, (Tex. Civ. App. 1906) 96 S. W. 653.

321. 2. Lowther *v.* Sullivan, (Supm. Ct. App. T.) 107 N. Y. Supp. 198.

Affidavit. — Tirpak *v.* Hoe, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 529, 103 N. Y. Supp. 798 (to the same effect as Clark *v.* Sullivan, (Supm. Ct. Gen. T.) 8 N. Y. Supp. 565, set out in original note).

When the affidavit shows that the testimony is material and the witness not within the state, the commission must be issued as a matter of course unless bad faith be shown. Oakes *v.* Riter, 118 N. Y. App. Div. 772, 103 N. Y. Supp. 849.

An affidavit made by plaintiff's attorney, giving the source of his information, was held to be sufficient. Moriarta *v.* Raymond, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 271, 105 N. Y. Supp. 973.

Laches of Applicant. — In Davis *v.* William Rosenzweig Realty Operating Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 1, 102 N. Y. Supp. 868, it was held that though facts were known to the defendant for several months, but not communicated to the attorney, and application for a commission was made immediately on the attorney learning the facts, there was no laches on defendant's part.

When a motion for a commission to take depositions is made before the cause appears on the day calendar for trial, and there is nothing to indicate that the adverse party will be prejudiced, the motion should be granted. Tirpak *v.* Hoe, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 529, 103 N. Y. Supp. 798.

Application During Trial. — It was held to be within the discretion of the court to grant or refuse an application for a commission to take testimony, made towards the close of the trial, on account of the illness of the witness. Butler *v.* Rhode Island Co., (R. I. 1908) 68 Atl. 426.

322. 1. John B. Honor Co. *v.* Stevedores', etc., Benev. Assoc., 114 La. 361, 38 So. 271; Pergoli *v.* Lyman, (Supm. Ct. App. T.) 92 N. Y. Supp. 788.

In *Connecticut* it was held not necessary that the notice should state the nature or kind of evidence which the deponents were to be called on to give. McPhelemy *v.* McPhelemy, 78 Conn. 180, 61 Atl. 477.

It is not necessary that the notice should state the necessity for taking the depositions, such as nonresidence, infirmity, etc. Ferguson *v.* Central R. Co., 74 N. J. L. 691, 67 Atl. 602.

2. Edwards *v.* Edwards, 142 Ala. 267, 39 So. 82; State *v.* Omaha Elevator Co., 75 Neb. 654, 110 N. W. 874; A. C. Fulmer Coal Co. *v.* Morgantown, etc., R. Co., 57 W. Va. 470, 50 S. E. 606.

323. 4. Edwards *v.* Edwards, 142 Ala. 267,

39 So. 82; Hartman *v.* Thompson, 104 Md. 389, 65 Atl. 117.

5. Edwards *v.* Edwards, 142 Ala. 267, 39 So. 82.

324. 4. The notice to take depositions must state that if not completed in the day named, the taking will continue at the same place and between the same hours from day to day until completed. *Ex p.* Green, (Mo. App. 1907) 103 S. W. 503.

When interrogatories are attached to a commission and opportunity given to cross same, notice of the time of taking the deposition need not be given. De Renzes *v.* His Wife, 115 La. 675, 39 So. 805.

325. 1. When Interrogatories Are Crossed. — No notice need be given of the place of taking depositions when opportunity was had to file cross-interrogatories. De Renzes *v.* His Wife, 115 La. 675, 39 So. 805.

326. 1. Wright *v.* Sparks, 127 Ga. 365, 56 S. E. 442.

2. State *v.* Mosher, 128 Iowa 82, 103 N. W. 105; McCall Co. *v.* Jacobson, 139 Mich. 455, 102 N. W. 969; *In re* Tweedie Trading Co., 105 N. Y. App. Div. 426, 94 N. Y. Supp. 167; Lyle *v.* Sarvey, 104 Va. 229, 51 S. E. 228.

327. 1. Order Must State Good Reason for Shortening Time. — Osborn *v.* Barber, 105 N. Y. App. Div. 236, 93 N. Y. Supp. 833.

3. Wright *v.* Sparks, 127 Ga. 365, 56 S. E. 442.

Where there was no attorney of record, service of notice on one who was the principal party in interest was held sufficient although not really the party to the suit. *In re* Jones, 130 Iowa 177, 106 N. W. 610.

329. 1. In these cases personal service was considered to be necessary. Miles *v.* Caraker, 82 Ark. 198, 101 S. W. 174; Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

330. 1. Wright *v.* Sparks, 127 Ga. 365, 56 S. E. 442.

Waiver of notice on a party cannot be implied from the attorney's omission expressly to dissent to the service on himself. Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

3. Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 84 Pac. 321.

5. Gay *v.* Thorpe, 1 Cal. App. 312, 82 Pac. 221; *In re* Butler, (Neb. 1906) 107 N. W. 572.

331. 1. By Whom Administered. — The fact that though the witness was sworn by the notary the oath was dictated by the defendant in the suit, did not render the depositions inadmissible. Breeden *v.* Martens, (S. Dak. 1907) 112 N. W. 960.

332. 1. Federal Courts Following State Practice. — Carrara Paint Agency Co. *v.* Carrara Paint Co., 137 Fed. 319; Smith *v.* International Mercantile Co., 154 Fed. 786.

3. Deposition Taken Before Foreign Court. — Southern Pac. Co. *v.* Wilson, (Ariz. 1906) 85 Pac. 401.

333. 2. Answers to cross-interrogatories where no direct examination was made were properly excluded. Hosch Lumber Co. *v.* Weeks, 123 Ga. 336, 51 S. E. 439.

In *New Jersey* it was held that the attorney for the adverse party is not bound by the strict rules of cross-examination in propounding cross-interrogatories. Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295.

334. 1. New *v.* Young, 144 Ala. 420, 39 So. 201; Bishop *v.* Hilliard, 227 Ill. 382, 81 N. E. 403; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618; Real Estate Trust Co. *v.* Union Trust Co., 102 Md. 41, 61 Atl. 228; Paterson *v.* Chicago, etc., R. Co., 95 Minn. 57, 103 N. W. 621; Ivey *v.* Bessemer City Cotton Mills, 143 N. Car. 189, 55 S. E. 613.

The fact that the attorney of the appellant appeared and cross-examined the witness did not operate as a waiver of the incompetency of the notary. Knickerbocker Ice Co. *v.* Gray, 165 Ind. 140, 72 N. E. 869.

A party who appears and cross-examines a witness does not thereby waive his rights regarding a motion to vacate the order for examination which had previously been overruled. Osborn *v.* Barber, 105 N. Y. App. Div. 236, 93 N. Y. Supp. 833.

4. Dowagiac Mfg. Co. *v.* Lochren, (C. C. A.) 143 Fed. 211, 6 Ann. Cas. 573; Sparks *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 740.

Witness May Be Compelled to Answer unless Question Involves His Privilege. — Perry *v.* Rubber Tire Wheel Co., 138 Fed. 836; Cullinan *v.* Dwight, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 221, 100 N. Y. Supp. 896.

335. 1. *In re* Romine, 138 Fed. 837; Butte, etc., Consol. Min. Co. *v.* Montana Ore Purchasing Co., 139 Fed. 843; Dowagiac Mfg. Co. *v.* Lochren, (C. C. A.) 143 Fed. 211, 6 Ann. Cas. 573; Fenn *v.* Georgia R., etc., Co., 122 Ga. 280, 50 S. E. 103; Cullinan *v.* Dwight, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 221, 100 N. Y. Supp. 896; Central Texas Grocery Co. *v.* Globe Tobacco Co., (Tex. Civ. App. 1907) 99 S. W. 1144.

When a court had already decided that certain issues should be kept out of the case it was held that a commissioner taking depositions should not allow into the record testimony in support of those issues. Independent Baking Powder Co. *v.* Boorman, 137 Fed. 995.

Rule Not Adopted by Patent Office. — Lacroix *v.* Tyberg, 149 Fed. 782.

2. Western Union Tel. Co. *v.* Corso, (Ky. 1905) 89 S. W. 212; Ebersole *v.* Southern Bldg., etc., Assoc., 147 Ala. 177, 41 So. 150; American Bonding Co. *v.* Pulver, (Neb. 1906) 109 N. W. 156.

A stipulation that the answers must be written by the witness personally is sufficiently complied with if he dictates his answers to a stenographer and afterwards signs them when transcribed. Glenn *v.* Zenovitch, 128 Ga. 596, 58 S. E. 26.

The answers of the witness must be taken down in his own words, and it is not sufficient for the commissioner to take the examination in narrative form. Brennan Mfg. Co. *v.* Adams, (N. J. 1908) 68 Atl. 765.

336. 1. Ebersole *v.* Southern Bldg., etc., Assoc., 147 Ala. 177, 41 So. 150; Gallagher *v.* Cotton, (N. H. 1906) 64 Atl. 583; Tarlton *v.* Orr, (Tex. Civ. App. 1905) 90 S. W. 534.

In *Indiana* the clerk to the attorney of one of the parties is not a disinterested third person. Knickerbocker Ice Co. *v.* Gray, 165 Ind. 140, 72 N. E. 869.

Typewriting. Depositions in typewriting are admissible although the certificate does not state that they were written by the officer or by the witness. Edgefield Mfg. Co. *v.* Maryland Casualty Co., (S. Car. 1907) 58 S. E. 969.

2. Testimony May Be Taken Down in Shorthand. — Columbus R. Co. *v.* Patterson, (C. C. A.) 143 Fed. 245.

3. Identity. — A clerical error by the notary who was authorized to sign the witness's name to the depositions, in attaching the wrong name, does not render the deposition inadmissible. Columbus R. Co. *v.* Patterson, (C. C. A.) 143 Fed. 245.

Refusal to Sign. — The refusal of plaintiff to sign her deposition at the time of making was held to be immaterial, when she did sign it before trial and defendant made full use of it. Salchert *v.* Reinig, (Wis. 1908) 115 N. W. 132.

337. 1. Potomac Bottling Works *v.* Barber, 103 Md. 509, 63 Atl. 1068.

2. Referring to Letters, Books, etc., to Fix Date of Event. — Matter of Waterman, 110 N. Y. App. Div. 115, 97 N. Y. Supp. 169.

Refreshing Memory. — The facts the witness was able to recall as a result of consulting records must be specifically stated in the deposition. Matter of Tifft, 115 N. Y. App. Div. 915, 101 N. Y. Supp. 1072.

339. 2. Record to Show Cause of Continuance. — See concurring opinion of Nortoni, J., in *Ex p.* Green, (Mo. App. 1907) 103 S. W. 503, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 339.

340. 1. Gay *v.* Thorpe, 1 Cal. App. 312, 82 Pac. 221; Fenn *v.* Georgia R., etc., Co., 122 Ga. 280, 50 S. E. 103; *Ex p.* Schoepf, 27 Ohio Cir. Ct. 654.

Contempt. — The declaration by a witness of his intent not to answer any questions that might be put to him was not a refusal to answer a proper question and was not a contempt. *Ex p.* Green, (Mo. App. 1907) 103 S. W. 503.

A referee or commissioner appointed to take depositions has the right to and must determine judicially in the first place whether a contempt has been committed, and, if he thinks not, to refuse, no matter how strongly urged, to certify the matter for contempt proceedings. *In re* Romine, 138 Fed. 837.

3. Horner *v.* Bell, 102 Md. 435, 62 Atl. 736.

341. 1. Scheidegger *v.* Terrill, (Ala. 1904) 39 So. 172.

Impertinent Questions need not be answered. Fenn *v.* Georgia R., etc., Co., 122 Ga. 280, 50 S. E. 103.

342. 1. When a Commission Is Sent Abroad, the interrogatories should be framed in English and in the foreign language. Roth *v.* Mautner, 115 N. Y. App. Div. 148, 100 N. Y. Supp. 707.

344. 2. Missouri, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1906) 96 S. W. 1087.

346. 2. Short *v.* Frink, 151 Cal. 83, 90 Pac. 200; Baird *v.* Smith, 124 Ga. 251, 52 S. E. 655; Bishop *v.* Hilliard, 227 Ill. 382, 81 N. E. 403; *Ex p.* Green, (Mo. App. 1907) 103 S. W. 503; American Bonding Co. *v.* Pulver, (Neb. 1906) 109 N. W. 156; McFadden *v.* Sims, (Tex. Civ. App. 1906) 97 S. W. 335.

A statement in the notary's certificate that the party writing down the answers was a disinterested third person is not even *prima facie* evidence of the fact, as the notary is not authorized by law to certify to that fact. Knickerbocker Ice Co. *v.* Gray, 165 Ind. 140, 72 N. E. 869.

Official Seal. — Depositions are admissible if properly certified by a notary public although not under his official seal. Hanley *v.* West Virginia Cent., etc., R. Co., 59 W. Va. 419, 53 S. E. 625.

Attorney or Counsel. — It need not affirmatively appear in the certificate that the notary public who took depositions is not attorney or counsel for either party Rouse *v.* Sarratt, 74 S. Car. 575, 54 S. E. 757.

348. 1. Hagins *v.* Ætna L. Ins. Co., 72 S. Car. 216, 51 S. E. 683; Texas, etc., R. Co. *v.* Felker, (Tex. Civ. App. 1905) 90 S. W. 530; St. Louis Southwestern R. Co. *v.* Harkey, (Tex. Civ. App. 1905) 88 S. W. 506.

2. Sealing. — The indorsements on the envelope serve the purpose only of preserving the purity of the return of the deposition. Ft. Worth, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1907) 106 S. W. 400.

4. Party to Suit. — Depositions were held to be admissible that were through inadvertence mailed to one of the parties and delivered by him into court without his having opened or tampered with them. Roberts *v.* Consumers' Can Co., 102 Md. 362, 62 Atl. 585.

349. 1. It was immaterial that through mistake in issuing, the commission depositions were sent to the clerk of a District Court and by agreement transferred by him to the County Court where the suit was pending. Union Pac. R. Co. *v.* Thompson, 75 Neb. 464, 106 N. W. 598.

3. Ferguson *v.* Lederer, 128 Iowa 286, 103 N. W. 794; State *v.* Stepp, (W. Va. 1907) 59 S. E. 1068.

Depositions Used in Former Trial. — In *South Dakota* it was held that a deposition used in a former trial which was otherwise admissible under the statute need not be filed before the trial in the second suit. Edwards *v.* Chicago, etc., R. Co., (S. Dak. 1907) 110 N. W. 832.

350. 1. When Filing Presumed. — When depositions are taken pursuant to notice, and the adverse party was represented by counsel at the taking, it will be presumed that the depositions were filed and published. Oölitic Stone Co. *v.* Ridge, (Ind. App. 1907) 80 N. E. 441.

2. Objections to the Time or Manner of Filing should be made before trial, or all objections as to the informality will be deemed to be waived. Helm *v.* Lynchburg Trust, etc., Bank, 106 Va. 603, 56 S. E. 598.

A statute limiting the time in which formal objections may be made to depositions, to three days after the filing thereof, does not imply that depositions must be on file for three days before the trial. McCall Co. *v.* Jacobson, 139 Mich. 455, 102 N. W. 969.

3. Risley *v.* Harlow, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 277, 96 N. Y. Supp. 728.

How Effected. The depositions must be re-

turned to the commissioner taking them for correction or re-execution only upon order of the court. White *v.* Southern R. Co., 123 Ga. 333, 51 S. E. 411.

351. 4. Miller *v.* Canton, 123 Mo. App. 325, 100 S. W. 571.

352. 1. G. V. Gress Co. *v.* Berry, 2 Ga. App. 207, 58 S. E. 384; Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; Ivey *v.* Bessemer City Cotton Mills, 143 N. Car. 189, 55 S. E. 613; Sparks *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 740; Helm *v.* Lynchburg Trust, etc., Bank, 106 Va. 603, 56 S. E. 598; Whitehouse *v.* Jones, 60 W. Va. 680, 55 S. E. 730.

10. Hayes *v.* Brandt, 80 Ark. 592, 98 S. W. 368; Meres *v.* Emmons, 103 N. Y. App. Div. 381, 92 N. Y. Supp. 1099; Hanley *v.* West Virginia Cent., etc., R. Co., 59 W. Va. 419, 53 S. E. 625.

353. 1. Hughes *v.* Chicago, etc., R. Co., 122 Wis. 258, 99 N. W. 897; Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048; Zoesch *v.* Flambeau Paper Co., (Wis. 1908) 114 N. W. 485.

355. 1. **Other Grounds.** — If the absent witness be a physician or lawyer it only requires that he be engaged in professional duties at the time of the trial. Doyle *v.* St. Louis Transit Co., 124 Mo. App. 504, 101 S. W. 598.

356. 3. Madera R. Co. *v.* Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27; Morehead *v.* Anderson, (Ky. 1907) 100 S. W. 340; Keller *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 384; Sexton Rice, etc., Co. *v.* Sexton, (Tex. Civ. App. 1907) 106 S. W. 728.

Compulsory Deposition in Nature of Discovery. — Where a party to a suit took the depositions of the adverse party he was not concluded thereby, but might rebut it by other testimony. Sackstaeder *v.* Kast, (Ky. 1907) 105 S. W.

357. 2. Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637; Edwards *v.* Chicago, etc., R. Co., (S. Dak. 1907) 110 N. W. 832.

358. 2. Allen *v.* Farmers', etc., Nat. Bank, 129 Ga. 748, 59 S. E. 813; Miller *v.* Calumet Lumber, etc., Co., 121 Ill. App. 56.

Depositions of witnesses, taken after the alienation and before the alienee becomes a party, may be used against the alienee. Morris *v.* Linton, 74 Neb. 411, 104 N. W. 927.

5. Murphy *v.* Hoagland, (Ky. 1908) 107 S. W. 303.

6. **Cross-examination Necessary.** — Graham *v.* Frank, 1 W. L. R. 510; Matter of Great Northern Constr. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 467, 100 N. Y. Supp. 564.

359. 1. *In re* Edgerly, 92 Minn. 263, 99 N. W. 896; Roberts *v.* Powell, 210 Pa. St. 594, 60 Atl. 258; Parlin, etc., Co. *v.* Vawter, (Tex. Civ. App. 1905) 88 S. W. 407.

Complete Mutuality of Parties Not Necessary. — *In re* Durant, (Conn. 1907) 67 Atl. 497; Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; Brownlee *v.* Bunnell, (Ky. 1907) 103 S. W. 284.

361. 1. Wright *v.* Sparks, 127 Ga. 365, 56 S. E. 442.

2. Sizer *v.* Melton, 129 Ga. 143, 58 S. E. 1055.

363. 1. Talcott *v.* Freedman, 140 Mich. 32, 103 N. W. 535; Cumberland Telephone, etc., Co. *v.* Overfield, (Ky. 1907) 106 S. W. 242.

2. Rogers *v.* Tompkins, (Tex. Civ. App. 1905) 87 S. W. 379.

5. McPhelemy *v.* McPhelemy, 78 Conn. 180, 61 Atl. 477; Taylor *v.* Globe Refinery Co., 127 Ga. 138, 56 S. E. 292.

364. 1. West Pub. Co. *v.* Edward Thompson Co., 152 Fed. 1019; Griggs *v.* Corson, 71 Kan. 884, 81 Pac. 471; Dambmann *v.* Metropolitan St. R. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 60, 106 N. Y. Supp. 221, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 363, 364.

DEPOT.

366. 1. Acord *v.* St. Louis Southwestern R. Co., 113 Mo. App. 84, 87 S. W. 537.

DEPOT GROUNDS.

367. 2. Harvey *v.* Southern Pac. R. Co., 46 Oregon 514, 80 Pac. 1061, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 367.

The Depot or Station Grounds of a railway company is the place where passengers get on and off of the trains and where freight is loaded and unloaded, and includes all grounds reasonable, necessary, or convenient to that purpose, together with the necessary tracks, switches, and turnouts thereon or adjacent thereto for handling and making up trains at the station. Wilmot *v.* Oregon R. Co., 48 Oregon 499, 87 Pac. 528, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 367.

DEPUTY.

370. 1. **Deputy Sheriff May Draw Names of Jurors.** — State *v.* Aspara, 113 La. 946, 37 So. 883, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370.

372. 3. **Montana Statute — Necessity of Approval by County Commissioners.** — See Hogan *v.* Cascade County, (Mont. 1907) 92 Pac. 520.

373. 5. **De Facto Deputy.** — One may hold the office of deputy clerk *de facto* although he is not entitled to hold it *de jure* because of failure to take the oath. Ledbetter *v.* State, 2 Ga. App. 631, 58 S. E. 1106.

378. 4. Buck *v.* Hawley, 129 Iowa 406, 105 N. W. 688. See also Murphy *v.* Lentz, 131 Iowa 328, 108 N. W. 530.

Unnecessary to Prove Written Appointment. — Earl *v.* State, 124 Ga. 28, 52 S. E. 78.

379. 4. **If the Principal Is Disqualified** in a particular case, his deputy is likewise disqualified. State *v.* Barber, 13 Idaho 65, 88 Pac. 418.

382. 1. **Under the Georgia Statute** the deputy clerk of the Superior Court is not authorized to sign his principal's name without the addition of his own. Biggers *v.* Winkles, 124 Ga. 990, 53 S. E. 397.

2. Hord *v.* State, 167 Ind. 622, 79 N. E. 916, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 382.

3. Hord *v.* State, 167 Ind. 622, 79 N. E. 916.

383. 1. Hord *v.* State, 167 Ind. 622, 79 N. E. 916.

384. 1. **A Sheriff Cannot Recover** for the services of deputies where his fees are fixed by statute and no provision is made for the payment of deputies. Decatur County *v.* Leaman, 73 Kan. 785, 85 Pac. 590.

2. Power *v.* Douglas County, 75 Neb. 734, 106 N. W. 782.

390. 6. King *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 328.

392. 2. Brown *v.* Wallis, (Tex. Civ. App. 1906) 101 S. W. 1068; Brown *v.* Wallis, (Tex. 1907) 101 S. W. 1070.

DESCENT.

400. 1. **Tenancy by the Curtesy** held to be an estate by *descent*. Cooke *v.* Doron, 215 Pa. St. 393, 64 Atl. 595.

DESERTION.

403. 3. **Desertion — Poor and Poor Laws.** — Southwark Union *v.* City of London Union, (1906) 2 K. B. 112, 75 L. J. K. B. 559, *following* Reg. *v.* Maidstone Union, 5 Q. B. D. 33, set out in original.

DESIGNATE.

405. 2. People *v.* Dunning, 113 N. Y. App. Div. 40, 98 N. Y. Supp. 1067, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405; St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 468, 91 S. W. 968, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405; *Ex p.* Heyman, 45 Tex. Crim. 532, 78 S. W. 349, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405.

Designation of Beneficiary — Insurance. — St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 468, 91 S. W. 968.

DETECTIVES.

412. 2. State *v.* Bryant, 97 Minn. 8, 105 N. W. 974, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 412.

DEVIATION (IN MARINE INSURANCE).

422. 1. Alaska Banking, etc., Co. *v.* Maritime Ins. Co., 156 Fed. 710.

441. 4. **Natural or Statutory Boundary.** — In Fulton *v.* Insurance Co. of North America, (C. C. A.) 136 Fed. 182, the court refused to decide whether a policy limiting a vessel to certain waters intended the natural or the statutory boundary of the waters, since the evidence showed that the place where the loss occurred was within both classes of boundary.

442. 1. Simpson Steamship Co. *v.* Premier Underwriting Assoc., 92 L. T. N. S. 730, 21 Times L. Rep. 485.

443. 4. Under a time policy containing a warranty "not to proceed east of Singapore" a vessel was chartered to carry a cargo to Kiaochau, a place east of Singapore. On the voyage the vessel was totally lost off the coast of Tunis, west of Singapore. It was held that the warranty had not been broken, and that the loss was recoverable under the policy, since an intention to deviate did not itself constitute a breach. Simpson Steamship Co. *v.* Premier Underwriting Assoc., 92 L. T. N. S. 730.

447. 5. Alaska Banking, etc., Co. *v.* Maritime Ins. Co., 156 Fed. 710.

DEVICE.

448. 3. See Collins *v.* State, 38 Ind. App. 625, 78 N. E. 851.

DISBURSEMENT.

463. 4. **Bankruptcy.** — See *In re* Cambridge Lumber Co., 136 Fed. 983.

DISCOVERY.

472. 4. **Mines and Mining Claims.** — See Fox *v.* Myers, (Nev. 1906) 86 Pac. 793.

DISCRETION.

473. 2. Hubbard *v.* Hubbard, 77 Vt. 77, 2 Ann. Cas. 315, 58 Atl. 969, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 473.

DISFRANCHISEMENT.

480. 1. Del Ponte *v.* Societa Italiana, 27 R. I. 1, 60 Atl. 237.

8. Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597; Harris *v.* Detroit Typographical Union, 144 Mich. 422, 108 N. W. 362; Kelly *v.* Grand Circle, etc., 40 Wash. 691, 82 Pac. 1007.

A Member Binding Himself to obey the "existing laws and such as may be adopted" recognizes the right of the order to provide additional causes for disfranchisement. Head Camp, etc., *v.* Woods, 34 Colo. 1, 81 Pac. 261.

481. 9. See Del Ponte *v.* Societa Italiana, 27 R. I. 1, 60 Atl. 237.

482. 6. **By-laws of a Society Are Not Invalid** because adopted at sessions of the head camp held outside the state in which it was incorporated. Head Camp, etc., *v.* Woods, 34 Colo. 1, 81 Pac. 261.

8. People *v.* Board of Trade, 224 Ill. 370, 79 N. E. 611; Lavin *v.* Grand Lodge, etc., 112 Mo. App. 1, 86 S. W. 600; Delaney *v.* Kelly, 103 N. Y. App. Div. 409, 92 N. Y. Supp. 1021, *reversing* (Supm. Ct. Tr. T.) 45 Misc. (N. Y.) 286, 92 N. Y. Supp. 265; Beeman *v.* Supreme Lodge, etc., 215 Pa. St. 627, 64 Atl. 792.

483. 1. In Delaney *v.* Kelly, 103 N. Y. App. Div. 409, 92 N. Y. Supp. 1021, *reversing* (Supm. Ct. Tr. T.) 45 Misc. (N. Y.) 286, 92 N. Y. Supp. 265, it was held that a clause providing that "any member failing to pay," etc., "shall [illegible] from the organization, was self-executing.

2. **Similar Provisions** have been construed as being not self-executing. Brooks *v.* Conservative L. Ins. Co., 132 Iowa 377, 106 N. W. 91.

484. 1. **Fraudulent Conduct** by a member of a stock exchange with a customer is a valid ground for expulsion. Williamson *v.* Randolph,

(Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644.

2. Fictitious Sales. — Young *v.* Eames, 78 N. Y. App. Div. 229, 79 N. Y. Supp. 1068, *affirmed* 181 N. Y. 542, 73 N. E. 1134.

485. 3. Engaging in Liquor Business Valid Ground. — Pauley *v.* Modern Woodmen of America, 113 Mo. App. 473, 87 S. W. 990.

A By-law of an Organization, providing that no member shall engage in the sale of intoxicating liquors, does not apply to a member of the society so engaged at the time of the enactment of the by-law. Grand Lodge, etc., *v.* Haddock, 72 Kan. 35, 82 Pac. 583.

488. 3. Defamation of Members Sufficient Ground for Disfranchisement. — Del Ponte *v.* Societa Italiana, 27 R. I. 1, 60 Atl. 237.

491. 1, Kelly *v.* Grand Circle, etc., 40 Wash. 691, 82 Pac. 1007.

492. 1, Byrne *v.* Supreme Circle, etc., (N. J. 1907) 65 Atl. 839; Williamson *v.* Randolph, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644.

493. 6. Notice Must Disclose Nature of Charge Against Member. — Williamson *v.* Randolph, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644.

494. 1, Byrne *v.* Supreme Circle, etc., (N. J. 1907) 65 Atl. 839; Venezia *v.* Italian Mut. Benev. Soc., (N. J. 1907) 65 Atl. 898.

5, Williamson *v.* Randolph, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644.

7. Insufficiency of Charge May Be Waived. — Williamson *v.* Randolph, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644; Fritz *v.* Knaub, (Supm. Ct. Tr. T.) 103 N. Y. Supp. 1003.

8. Failure to Appear Cannot Vitalize Proceedings Void for Want of Jurisdiction. — Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597.

495. 3, Williamson *v.* Randolph, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 96, 96 N. Y. Supp. 644.

6, Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597; McGuiness *v.* Court Elm City, etc., 78 Conn. 43, 60 Atl. 1023; Harris *v.* Detroit Typographical Union, 144 Mich. 422, 108 N. W. 362; Beeman *v.* Supreme Lodge, etc., 215 Pa. St. 627, 64 Atl. 792.

Appeal to Board Without Jurisdiction to Act Not Prerequisite to Suit. — Moeller *v.* Machine Printers' Beneficial Assoc., 27 R. I. 22, 60 Atl. 591.

496. 2, Bachman *v.* Harrington, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 26, 102 N. Y. Supp. 406; Moeller *v.* Machine Printers' Beneficial Assoc., 27 R. I. 22, 60 Atl. 591.

Where No Remedy Is Provided, the aggrieved member may resort at once to the courts. Schneider *v.* Local Union, etc., 116 La. 270, 40 So. 700.

3, Fritz *v.* Knaub, (Supm. Ct. Tr. T.) 103 N. Y. Supp. 1003 (supporting the statement of the original text).

7, Thompson *v.* Grand International Brotherhood, etc., (Tex. Civ. App. 1905) 91 S. W. 834; Kelly *v.* Grand Circle, etc., 40 Wash. 691, 82 Pac. 1007.

497. 5, Moeller *v.* Machine Printers' Beneficial Assoc., 27 R. I. 22, 60 Atl. 591.

500. 2, Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597; United Brothers *v.* Williams, 126 Ga. 19, 54 S. E. 907; Byrne *v.* Supreme Circle, etc., (N. J. 1907) 65 Atl. 839; Venezia *v.* Italian Mut. Benev. Soc., (N. J. 1907) 65 Atl. 898.

501. 6. Mandamus Does Not Lie, of course, to unincorporated bodies. Mesisco *v.* Giuliano, 190 Mass. 352, 76 N. E. 907.

502. 7, Mesisco *v.* Giuliano, 190 Mass. 352, 76 N. E. 907, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 502.

503. 1, Bostedo *v.* Board of Trade, 227 Ill. 90, 81 N. E. 42.

9, Thompson *v.* Grand International Brotherhood, etc., (Tex. Civ. App. 1905) 91 S. W. 834.

504. 10. Where Plaintiff Could Have Avoided Litigation, costs will not be allowed him. Bachman *v.* Harrington, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 26, 102 N. Y. Supp. 406.

DISORDERLY CONDUCT.

507. 1. De Witt *v.* Lacotts, 76 Ark. 250, 88 S. W. 877 (drunkenness in a public place).

DISORDERLY HOUSES.

509. 1. Definition. — Mossman *v.* Ft. Collins, (Colo. 1907) 90 Pac. 605, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 509.

510. 3. A Place Where Usurious Interest Is Charged is a disorderly house under the *New Jersey* statutes, and those who maintain it are guilty of a misdemeanor. State *v.* Diamant, 73 N. J. L. 131, 62 Atl. 286.

511. 4. Alaska — Power Given to Municipalities Does Not Affect Jurisdiction of District Court. — Rosencranz *v.* U. S., (C. C. A.) 155 Fed. 38; Botts *v.* U. S., (C. C. A.) 155 Fed. 50; Hall *v.* U. S., (C. C. A.) 155 Fed. 52.

512. 3. Immaterial Whether Place Be Public or Private. — State *v.* Jones, 53 W. Va. 613, 45 S. E. 916.

8. Block of Flats Considered as Brothel. — See Durose *v.* Wilson, 96 L. T. N. S. 645.

513. 2. Injury to Public Essential. — Wilder *v.* State, (Ga. 1908) 60 S. E. 112.

515. 4, Mossman *v.* Ft. Collins, (Colo. 1907) 90 Pac. 605, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 515.

518. 7. Bawdy Houses. — Tedeschi *v.* Berger, (Ala. 1907) 43 So. 960, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 518.

520. 1, Rex *v.* Mannix, 10 Ont. L. Rep. 305, 10 Can. Crim. Cas. 150, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 518 *et seq.*; Rex *v.* Osberg, 15 Manitoba 147, 9 Can. Crim. Cas. 180.

521. 3, State *v.* Ingram, 118 Mo. App. 327, 94 S. W. 790, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 521, the whole text paragraph.

522. 1, State *v.* Ingram, 118 Mo. App. 327, 94 S. W. 790, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 522.

2. By Statute in New Jersey, since March 10, 1893, the offense of selling liquor unlawfully cannot be prosecuted under an indictment for keeping a disorderly house. State *v.* Goff, (N. J. 1907) 65 Atl. 854.

523. 2. Common Gaming Houses Indictable at Common Law. — Arenz *v.* Com., (Ky. 1907) 102 S. W. 238.

526. 1. Control and Management by Accused. — Oligschlager *v.* Oklahoma, (C. C. A.) 146 Fed. 131, *reversing* 15 Okla. 141, 79 Pac. 913.

7. Lucre or Gain Not Necessary—Bawdy Houses. — State *v.* Porter, 130 Iowa 690, 107 N. W. 923.

527. 2. Aiders and Abettors. — Rosencranz *v.* U. S., (C. C. A.) 155 Fed. 38; Mash *v.* People, 220 Ill. 86, 77 N. E. 92.

3. Renting for Purpose of Disorderly House. — Hall *v.* U. S., (C. C. A.) 155 Fed. 52; Botts *v.* U. S., (C. C. A.) 155 Fed. 50; Raymond *v.* People, 226 Ill. 433, 80 N. E. 996.

530. 3. Liability of Porter of Flats Used as Brothel. — Durose *v.* Wilson, 96 L. T. N. S. 64.

531. 3. Joint or Several Indictment. — State *v.* Cambron, (S. Dak. 1905) 105 N. W. 241.

4. No Presumption of Coercion by Husband. — People *v.* Wheeler, 142 Mich. 212, 105 N. W. 607; State *v.* Jones, 53 W. Va. 613, 45 S. E. 916.

6. Evidence of Reputation Held Admissible. — McConnell *v.* State, 2 Ga. App. 445, 58 S. E. 546; Jones *v.* State, 2 Ga. App. 433, 58 S. E. 559; People *v.* Wheeler, 142 Mich. 212, 105 N. W. 607; State *v.* Cambron, (S. Dak. 1905) 105 N. W. 241.

532. 1. Evidence of Reputation of House Not Competent. — Botts *v.* U. S., (C. C. A.) 155 Fed. 50; Hall *v.* U. S., (C. C. A.) 155 Fed. 52.

3. Statutes Declaring Evidence of Reputation Competent. — State *v.* Price, 115 Mo. App. 656, 92 S. W. 174.

533. 5. Character and Reputation of Inmates and Frequenters. — State *v.* Price, 115 Mo. App. 656, 92 S. W. 174.

6. Conduct and Conversation of Inmates and Frequenters. — State *v.* Cambron, (S. Dak. 1905) 105 N. W. 241.

535. 1. Admissible with Other Evidence. — *Compare* State *v.* Price, 115 Mo. App. 656, 92 S. W. 174, where evidence of the defendant's character was held to be admissible, though the case does not show that it was offered in connection with other evidence.

3. Confessions, particularly if implied, are not favored. Jones *v.* State, 2 Ga. App. 433, 58 S. E. 559.

536. 3. Evidence Covering Time Prior to Offense Charged. — See Majors *v.* People, (Colo. 1907) 88 Pac. 636.

5. Circumstantial Evidence Sufficient. — Botts *v.* U. S., (C. C. A.) 155 Fed. 50.

537. 2. Reputation of Bawdy House and Inmates Insufficient — Actual Proof of Act of Prostitution Necessary. — Rex *v.* Osberg, 15 Manitoba 147, 9 Can. Crim. Cas. 180.

6. Reputation Not Alone Sufficient. — Botts *v.* U. S., (C. C. A.) 155 Fed. 50; People *v.* Wheeler, 142 Mich. 212, 105 N. W. 607.

538. 1. The Question of Age is one of fact for the jury. Raymond *v.* People, 226 Ill. 433, 80 N. E. 996.

1*a*. Punishment. — Under a special statute applicable to Dutchess county, N. Y., a person convicted of keeping a bawdy house is not entitled as a matter of right to a discharge on giving bond, but it is in the discretion of the magistrate to send such person to prison. People *v.* Champlin, 120 N. Y. App. Div. 509, 105 N. Y. Supp. 349.

DISPOSE.

540. 3. Whitfield *v.* Thompson, 85 Miss. 762, 38 So. 113, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 540.

Intoxicating Liquors. — In any way *dispose* of, in an intoxicating-liquor ordinance, held to mean more than sell and to include giving away. Jerseyville *v.* Becker, 117 Ill. App. 86.

DISPUTE.

542. 3. The "Dispute" as to the Value of Goods Taken in Execution, referred to in section 156 of the County Courts Act, 1888, means a *dispute* between the claimant and the execution creditor. Miller *v.* Solomon, (1906) 2 K. B. 91, 75 L. J. K. B. 671.

DISSOLUTION OF CORPORATIONS.

546. 1. "A Corporation Can Only Cease to Exist by virtue of a surrender, forfeiture, or repeal of its charter." People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 114, 107 N. Y. Supp. 247.

553. 5. Instances of Statutory Provisions Held Self-executing — Corporation's "Existence and Power Shall Cease." — *In re* Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994.

556. 1. Murphy *v.* Wheatley, 102 Md. 508, 63 Atl. 62, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555 [556].

560. 1. Under the Washington Statute a corporation will be dissolved where the stockholders were unable to agree on the election of the second of two trustees required by the articles of incorporation. State *v.* Oudin, etc., Fire Clay Min., etc., Co., (Wash. 1908) 93 Pac. 219.

2. Com. *v.* Monongahela Bridge Co., 216 Pa. St. 108, 64 Atl. 909.

6. *In re* North American Coal, etc., Co., 99 Minn. 475, 109 N. W. 1116; People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 114, 107 N. Y. Supp. 247.

561. 3. *In re* North American Coal, etc., Co., 99 Minn. 475, 109 N. W. 1116.

562. 3. *In re* North American Coal, etc., Co., 99 Minn. 475, 109 N. W. 1116.

563. 1. State *v.* Chilhowee Woolen Mills, 115 Tenn. 266, 89 S. W. 741. *Compare In re* North American Coal, etc., Co., 99 Minn. 475, 109 N. W. 1116.

3. *In re* North American Coal, etc., Co., 99 Minn. 475, 109 N. W. 1116.

565. 4. Sale of Corporate Property under Decree of Court Held to Work Dissolution. — Latta *v.* Catawba Electric, etc., Co., (N. Car. 1907) 59 S. E. 1028. *Contra,* State *v.* U. S. Grant University, 115 Tenn. 238, 90 S. W. 294.

566. 5. People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 114, 107 N. Y. Supp. 247.

567. 2. See Latta *v.* Catawba Electric, etc., Co., (N. Car. 1907) 59 S. E. 1028.

569. 3. Clark *v.* American Cannel Coal Co., 35 Ind. App. 65, 73 N. E. 727.

4. Diamond State Iron Co. *v.* Husbands, 8 Del. Ch. 205, 68 Atl. 240.

570. 1. State *v.* Milwaukee Independent Telephone Co., (Wis. 1907) 114 N. W. 108.

4. Matter of Atty.-Gen., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407.

571. 1. Central Land Co. *v.* Sullivan, (Ala. 1907) 44 So. 644.

573. 3. State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 194, 86 S. W. 390.

574. 3. People *v.* Grand Rapids Sticky Fly Paper Co., 144 Mich. 221, 107 N. W. 1119. See also State *v.* Oudin, etc., Fire Clay Min., etc., Co., (Wash. 1908) 93 Pac. 219.

578. 2. State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 194, 86 S. W. 390.

579. 1. Com. *v.* Newport, etc., Turnpike Co., (Ky. 1906) 97 S. W. 375; State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185, 98 S. W. 539; Com. *v.* Monongahela Bridge Co., 216 Pa. St. 108, 64 Atl. 909.

582. 3. Kirch *v.* Louisville, (Ky. 1907) 101 S. W. 373; Murphy *v.* Wheatley, 102 Md. 508, 63 Atl. 62.

584. 2. Matter of Great Northern Constr. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 467, 100 N. Y. Supp. 564.

585. 2. See State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185, 98 S. W. 539.

586. 1. State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185, 98 S. W. 539; People *v.* Troy Chemical Co., 118 N. Y. App. Div. 437, 104 N. Y. Supp. 22; State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 194, 86 S. W. 390.

3. State *v.* French Lick Springs Hotel Co., (Ind. App. 1907) 82 N. E. 801.

588. 1. State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185.

2. But it has been held that "forfeiture is not to be favored when there are other remedies adequate to correct the evils." Com. *v.* Newport, etc., Turnpike Co., (Ky. 1906) 97 S. W. 375.

589. 1. State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185, 98 S. W. 539.

591. 4. Kirch *v.* Louisville, (Ky. 1907) 101 S. W. 373; Bridge St., etc., Co. *v.* Hogadone, 150 Mich. 638, 114 N. W. 917.

594. 1. Matter of Great Northern Constr. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 467, 100 N. Y. Supp. 564.

595. 2. McMullin *v.* McArthur Electric Mfg. Co., (N. J. 1907) 68 Atl. 97. See also State *v.* Milwaukee Independent Telephone Co., (Wis. 1907) 114 N. W. 108.

596. 2. State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

3. Burden of Establishing Charges Is on State. — Matter of Atty.-Gen., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407.

599. 4. Diamond State Iron Co. *v.* Husbands, 8 Del. Ch. 205, 68 Atl. 240.

601. 2. Conklin *v.* U. S. Shipbuilding Co, 140 Fed. 219; People *v.* District Ct., 33 Colo. 293, 80 Pac. 908.

603. 2. Crossman *v.* Vivienda Water Co., 150 Cal. 575, 89 Pac. 335.

5. Diamond State Iron Co. *v.* Husbands, 8 Del. Ch. 205, 68 Atl. 240; McRae *v.* Kansas City Piano Co., 69 Kan. 460, 77 Pac. 94, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 603.

The Rule Has Been Declared to Be Obsolete even without a relieving statute, Hopkins *v.* Crossley, 138 Mich. 565, 101 N. W. 822; except as to purely public corporations, Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031, 1135.

604. 1. *Compare* Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031.

606. 3. McRae *v.* Kansas City Piano Co., 69 Kan. 460, 77 Pac. 94, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 603 [606].

607. 2. McRae *v.* Kansas City Piano Co., 69 Kan. 460, 77 Pac. 94, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 603 [607].

608. 3. Common-law Doctrine — Harsh and Inequitable. — Hopkins *v.* Crossley, 138 Mich. 565, 101 N. W. 822, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608.

4. Black *v.* Sullivan Timber Co., 147 Ala. 327, 40 So. 667; Ross *v.* American Banana Co., (Ala. 1907) 43 So. 817; Crossman *v.* Vivienda Water Co., 150 Cal. 575, 89 Pac. 335; Diamond State Iron Co. *v.* Husbands, 8 Del. Ch. 205, 68 Atl. 240; Manufacturers Land, etc., Co. *v.* Cleary, (Ky. 1905) 89 S. W. 248; Lindemann *v.* Rusk, 125 Wis. 210, 104 N. W. 119.

609. 2. Black *v.* Sullivan Timber Co., 147 Ala. 327, 40 So. 667; Crossman *v.* Vivienda Water Co., 150 Cal. 575, 89 Pac. 335; Janeway *v.* Burn, 180 N. Y. 560, 73 N. E. 1125, *affirming* 91 N. Y. App. Div. 165, 86 N. Y. Supp. 628; Knickerbocker *v.* Groton Bridge, etc., Co., 111 N. Y. App. Div. 145, 97 N. Y. Supp. 595; General R. Signal Co. *v.* Cade, 122 N. Y. App. Div. 106, 106 N. Y. Supp. 729; Lindemann *v.* Rusk, 125 Wis. 119, 104 N. W. 119.

The Connecticut Statute provides that all corporations "shall be deemed to continue so far as to enable them to prosecute and defend suits by and against them." Metropolitan Rubber Co. *v.* Place, (C. C. A.) 147 Fed. 90.

Corporation Itself Not Continued in Existence. — Crossman *v.* Vivienda Water Co., 150 Cal. 575, 89 Pac. 335.

610. 1. Crossman *v.* Vivienda Water Co., 150 Cal. 575, 89 Pac. 335; Stannard *v.* Reid, 114 N. Y. App. Div. 135, 99 N. Y. Supp. 567.

612. 2. Crossman *v.* Vivienda Water Co., 150 Cal. 575, 89 Pac. 335; Lincoln Butter Co. *v.* Edwards-Bradford Lumber Co., (Neb. 1906) 107 N. W. 797; People *v.* Westchester Traction Co., 123 N. Y. App. Div. 689, 108 N. Y Supp. 59.

DISTINCT — DISTINCTIVE.

616. 1. Distinctive Mark — English Trade-mark Act. — See *In re* Apollinaris Trademark, (1907) 2 Ch. 178, 76 L. J. Ch. 437, 96 L. T. N. S. 877, 23 Times L. Rep. 515.

DISTRESS.

620. 1. Sims *v.* Price, 123 Ga. 97, 50 S. E. 961; Bates *v.* Hallinan, 220 Ill. 21, 77 N. E. 115.

622. 1. Bates *v.* Hallinan, 220 Ill. 21, 77 N. E. 115; Olden *v.* Mather, (N. J. Ch. 1907) 67 Atl. 435.

Rent for Both Land and Chattels. — Where a contract creating the relation of landlord and tenant embraces a sum to be paid as rent of land, and another sum as hire of animals to be

used on the rented premises, the whole sum due is rent, and may be collected by distress. Sapp *v.* Elkins, 125 Ga. 459, 54 S. E. 98.

624. 1. Smith *v.* Green, 128 Ga. 90, 57 S. E. 98.

2. Henley *v.* Brockman, 124 Ga. 1059, 53 S. E. 672.

3. Lord *v.* Johnson, 120 Ill. App. 55.

629. 3. Hilley *v.* Perrin, (Ga. App. 1907) 59 S. E. 342.

630. 4. Stephens *v.* Hooks, 122 Ga. 423, 50 S. E. 119.

631. 4. **A Distress Made in the Nighttime Is Legal** where goods of a tenant are being clandestinely removed by a furniture dealer who had sold them on instalment. Pickering *v.* Breen, 31 Pa. Super. Ct. 280.

636. 2. Clark *v.* Green, 37 N. Bruns. 525.

638. 2. **Crown Property,** even though the crown is not a tenant, is privileged from distress on premises leased to a subject. Secretary of State *v.* Wynne, (1905) 2 K. B. 845.

643. 3. **Cab Used by Cab Driver for Purposes of His Trade Held Exempt.** — Lavell *v.* Ritchings, (1906) 1 K. B. 480.

4. **Pictures Used for Exhibition in a Club** are not privileged from distress. Challoner *v.* Robinson, (1908) 1 Ch. 49.

645. 2. Challoner *v.* Robinson, (1908) 1 Ch. 49.

646. 4. **In Georgia** the distress warrant may be placed in the hands of the levying officer, and, upon a rule to distribute the funds, its lien may be asserted. Mulherin *v.* Porter, 1 Ga. App. 153, 58 S. E. 60.

656. 5. Ramsdell *v.* Seybert, 27 Pa. Super. Ct. 133.

657. 2. Lowe *v.* Dorling, (1905) 2 K. B. 501.

Constable Liable. — Oliver *v.* Wheeler, 26 Pa. Super. Ct. 5; Ramsdell *v.* Seybert, 27 Pa. Super. Ct. 133.

659. 1. Beckham *v.* Hickey, 38 Nova Scotia 55.

4. **Punitive Damages Only Where Warrant Was Wantonly or Recklessly Sued Out.** — Manchester Home Bldg., etc., Assoc. *v.* Porter, 106 Va. 528, 56 S. E. 337.

DISTRIBUTEE.

660. 2. Smith *v.* Lurty, 107 Va. 548, 59 S. E. 403.

Distributee and Legatee Distinguished. — Smith *v.* Lurty, 107 Va. 548, 59 S. E. 403.

DISTURBING MEETINGS.

668. 5. Folds *v.* State, 123 Ga. 167, 51 S. E. 305.

669. 3. **Congregation Protected Before Services Begun.** — Tanner *v.* State, 126 Ga. 77, 54 S. E. 914.

4. Disturbance may take place during intermission. — Folds *v.* State, 123 Ga. 167, 51 S. E. 305.

6. **A Riot Forty Feet from a Church,** by which the congregation was disturbed, has been held to render the participants guilty. State *v.* Jones, 77 S. Car. 385, 58 S. E. 8.

670. 3. See Stancliff *v.* U. S., 5 Indian Ter. 494, 82 S. W. 882, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 670.

671. 2. See Stancliff *v.* U. S., 5 Indian Ter. 494, 82 S. W. 882, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671.

A Man Seventy-five Feet from the Church Edifice is not a member of the congregation. Taylor *v.* State, 1 Ga. App. 539, 57 S. E. 1049.

5. **Illustration — Interruption of Preacher by Intoxicated Person.** — Shirley *v.* State, 1 Ga. App. 143, 57 S. E. 912.

Shooting a Pistol near a church has been held to be "indecently acting" within the meaning of the *Georgia* statute. Folds *v.* State, 123 Ga. 167, 51 S. E. 305.

673. 1. Taylor *v.* State, 1 Ga. App. 539, 57 S. E. 1049.

Meaning of "Wilful." — "Wilfully" embodies an element of maliciousness. State *v.* Dahlstrom, 90 Minn. 72, 95 N. W. 580.

2. **Riot Near Church — Intent to Disturb Presumed.** — State *v.* Jones, 77 S. Car. 385, 58 S. E. 8.

674. 2. **Disturbance of School — Pupil May Commit.** — State *v.* Packenham, 40 Wash. 403, 82 Pac. 597.

4. Denny *v.* State, (Tex. Crim. 1907) 105 S. W. 798.

DIVIDE — DIVISION.

678. 2. Stake *v.* Mobley, 102 Md. 413, 62 Atl. 963, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 678.

DIVIDENDS.

680. 1. Gardner Sav. Bank *v.* Taber-Prang Art Co., 189 Mass. 363, 75 N. E. 705; Adams *v.* Delta, etc., Land Co., (Miss. 1906) 42 So. 170; Berryman *v.* Bankers' L. Ins. Co., 117 N. Y. App. Div. 730, 102 N. Y. Supp. 695.

The word "dividend," when used in connection with corporate stock, means a proportionate part of the profits which have arisen from corporate transactions. They are payable out of profits alone. Columbus Trust Co. *v.* Moshier, (Supm. Ct.) 51 Misc. (N. Y.) 270, 100 N. Y. Supp. 1066.

681. 1. McLaran *v.* Crescent Planing Mill Co., 117 Mo. App. 45, 93 S. W. 819, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680 [681].

683. 1. Knapp *v.* S. Jarvis Adams Co., (C. C. A.) 135 Fed. 1008.

Right of Stockholders to Complain May Be Waived by Continued Acquiescence. — Raynolds *v.* Diamond Mills Paper Co., (N. J. Ch. 1905) 60 Atl. 941.

2. Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709.

3. Where directors under a policy authorizing the use of the profits for the purpose of expanding the business of the corporation, approved by the stockholders, vote to raise their salaries to an unreasonable amount, a court of equity will interfere in behalf of a stockholder. Raynolds *v.* Diamond Mills Paper Co., (N. J. Ch. 1905) 60 Atl. 941.

4. Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709; Zinn *v.* Germantown Farmers' Mut. Ins. Co., (Wis. 1907) 111 N. W. 1107.

681. 3. Stokes *v.* Continental Trust Co., 186 N. Y. 285, 78 N. E. 1090.

686. 6. Knapp *v.* S. Jarvis Adams Co., (C. C. A.) 135 Fed. 1008; Schell *v.* Alston Mfg. Co., 149 Fed. 439; Berryman *v.* Bankers' L. Ins. Co., 117 N. Y. App. Div. 730, 102 N. Y. Supp. 695; Bryan *v.* Sturgis Nat. Bank, (Tex. Civ. App. 1905) 90 S. W. 704.

687. 1. Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687.

2. Siegman *v.* Electric Vehicle Co., (N. J. 1907) 65 Atl. 910.

689. 1. Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687 [689]; Taber *v.* Breck, 192 Mass. 355, 78 N. E. 472.

6. McLaran *v.* Planing Mill Co., 117 Mo. App. 45, 93 S. W. 819, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689; Searles *v.* Gebbie, 115 N. Y. App. Div. 778, 101 N. Y. Supp. 199.

Stockholder's Right to Dividends Not Changed by Subsequent By-law Changing Mode of Declaring Dividends. — Gellerman *v.* Atlas Foundry, etc., Co., (Wash. 1906) 87 Pac. 1059.

690. 2. **Stockholder Creditor of Corporation.** — Searles *v.* Gebbie, 115 N. Y. App. Div. 778, 101 N. Y. Supp. 199, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 690.

3. Redhead *v.* Iowa Nat. Bank, 127 Iowa 572, 103 N. W. 796; McLaran *v.* Planing Mill Co., 117 Mo. App. 45, 93 S. W. 819, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 690; Roberts *v.* Roberts-Wicks Co., 102 N. Y. App. Div. 118, 92 N. Y. Supp. 387; Searles *v.* Gebbie, 115 N. Y. App. Div. 778, 101 N. Y. Supp. 199; Steel *v.* Island City Mercantile, etc., Co., 47 Oregon 293, 83 Pac. 783.

Stockholder Cannot Maintain Action to Recover Dividend Illegally Declared. — Berryman *v.* Bankers' L. Ins. Co., 117 N. Y. App. Div. 730, 102 N. Y. Supp. 695.

Right of Action Accrues Only After Dividend Declared. — Roberts *v.* Roberts-Wicks Co., 102 N. Y. App. Div. 118, 92 N. Y. Supp. 387; Corgan *v.* George F. Lee Coal Co., 218 Pa. St. 386, 67 Atl. 655; Bryan *v.* Sturgis Nat. Bank, (Tex. Civ. App. 1905) 90 S. W. 704.

691. 1. Redhead *v.* Iowa Nat. Bank, 127 Iowa 572, 103 N. W. 796.

Refusal to Pay Obviates Necessity for Demand. — Redhead *v.* Iowa Nat. Bank, 127 Iowa 572, 103 N. W. 796.

692. 2. McLaran *v.* Planing Mill Co., 117 Mo. App. 45, 93 S. W. 819, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692.

5. McLaran *v.* Planing Mill Co., 117 Mo. App. 45, 93 S. W. 819, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692; Robinson's Trust, 218 Pa. St. 481, 67 Atl. 775.

699. 3. Fidelity Trust Co. *v.* Lehigh Valley R. Co., 215 Pa. St. 610, 64 Atl. 829, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 699.

700. 1. Gardner Sav. Bank *v.* Taber-Prang Art Co., 189 Mass. 363, 75 N. E. 705; Fidelity Trust Co. *v.* Lehigh Valley R. Co., 215 Pa. St. 610, 64 Atl. 829; Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 701.

4. **The Approval of a Majority** of the stockholders does not validate the declaration of dividends out of capital. Siegman *v.* Electric Vehicle Co., (N. J. 1907) 65 Atl. 910.

No Dividends from Capital Except in Liquidation. — Robinson's Trust, 218 Pa. St. 481, 67 Atl. 775.

702. 1. Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542; Montgomery *v.* Whitehead, (Colo. 1907) 90 Pac. 509, in which case the court approved the general rule that creditors who become such after a dividend has been declared cannot question the right of the corporation to declare such dividend, but held that the rule had no application to the case at bar.

Nature of Liability — Statute of Limitations. — Where a stockholder has no notice that dividends received by him were paid out of capital, instead of profits, a receiver of the corporation can be entitled to their return, to pay corporate debts, only on the equitable doctrine that the money received, as dividends, was impressed with a trust; but the trust so raised belongs to the class of implied or constructive trusts, and as to such trusts the general rule is that in the absence of fraud, the statutes of limitations are applicable. Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542.

707. 3. Under the *New Jersey* statute providing that the directors shall be jointly and severally liable, it has been held that a director who, notwithstanding that he had knowledge that a dividend was to be paid out of capital, voted therefor, was liable to a stockholder, although a committee, chosen by a new board of directors and a majority of the stockholders, had decided not to proceed against the directors declaring the dividend. Siegman *v.* Kissel, (N. J. Ch. 1906) 62 Atl. 941.

For the Construction of the Massachusetts Statute, see Ellis *v.* French Canadian Co-Operative Assoc., 189 Mass. 566, 76 N. E. 207, 228.

708. 1. Ebelhar *v.* German American Security Co., (Ky. App. 1906) 91 S. W. 262; Ellis *v.* French-Canadian Co-Operative Assoc., 189 Mass. 566, 76 N. E. 207.

709. 5. Siegman *v.* Kessel, (N. J. Ch. 1906) 62 Atl. 941.

710. 2. Robinson's Trust, 218 Pa. St. 481, 67 Atl. 775.

4. Matter of Sprague, (Surrogate Ct.) 46 Misc. (N. Y.) 216, 94 N. Y. Supp. 84; Richmond *v.* Richmond, 123 N. Y. App. Div. 117, 108 N. Y. Supp. 298.

712. 1. Brown *v.* Brown, (N. J. Ch. 1907) 65 Atl. 739.

4. See Brown *v.* Brown, (N. J. Ch. 1907) 65 Atl. 739.

714. 6. Brown *v.* Brown, (N. J. Ch. 1905) 65 Atl. 739.

717. 2. Matter of Stevens, (Surrogate Ct.) 47 Misc. (N. Y.) 560, 95 N. Y. Supp. 1084; Stewart *v.* Phelps, 71 N. Y. App. Div. 91, 75 N. Y. Supp. 526, *affirmed* in mem., 173 N. Y. 621, 66 N. E. 117.

718. 1. Richmond *v.* Richmond, 123 N. Y. App. Div. 117, 108 N. Y. Supp. 298, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 717, 718.

719. 3. Bulkeley *v.* Worthington Ecclesiastical Soc., 78 Conn. 526, 63 Atl. 351; Brownell *v.* Anthony, 189 Mass. 442, 75 N. E. 746.

720. 4. Steel *v.* Island City Mercantile, etc., Co., 47 Oregon 293, 83 Pac. 783; Corgan *v.* George F. Lee Coal Co., 218 Pa. St. 386, 67 Atl. 655.

The specific legatee of shares of stock is entitled to all dividends which have accrued down to the death of the testator, as well as to those which subsequently accrue. Gordon *v.* James, 86 Miss. 719, 39 So. 18.

Option to Sell Does Not Carry Dividend Where Sale Is Effected Subsequent to Declaration. — Rowe *v.* White, 112 N. Y. App. Div. 688, 98 N. Y. Supp. 729.

721. 1. Redhead *v.* Iowa Nat. Bank, 127 Iowa 572, 103 N. W. 796; Gordon *v.* James, 86 Miss. 719, 39 So. 18.

Dividends Belong to Stockholders of Record. — Cogswell *v.* Second Nat. Bank, 78 Conn. 75, 60 Atl. 1059.

Dividend Belongs to Owner of Stock at Time Declared. — Zinn *v.* Germantown Farmers' Mut. Ins. Co., (Wis. 1907) 111 N. W. 1107.

DIVORCE.

729. 2. See the statement of the court in Patterson *v.* Patterson, 45 Wash. 296, 88 Pac. 196.

3. Grenzebach *v.* Grenzebach, 118 Mo. App. 280, 94 S. W. 567, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 729.

4. Gould *v.* Gould, 78 Conn. 242, 61 Atl. 604; Hayden *v.* Hayden, 74 Kan. 725, 88 Pac. 257; Adair *v.* Adair, (Ky. 1907) 104 S. W. 365; Griffiths *v.* Griffiths, 69 N. J. Eq. 689, 60 Atl. 1090; Gulland *v.* Gulland, (W. Va. 1907) 59 S. E. 612.

8. Griffiths *v.* Griffiths, 69 N. J. Eq. 689, 60 Atl. 1090.

10. Richards *v.* Meissner, 155 Fed. 135, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 729, as stating the true relation between the state and divorce proceedings, and applying the rule therein laid down, as applicable to divorce proceedings, to proceedings to compel the issuance of patents.

732. 5. **Residence Must Be Proved.** — Beekman *v.* Beekman, 53 Fla. 858, 43 So. 923.

734. 1. Dulin *v.* Dulin, 33 Pa. Super. Ct. 4.

735. 1. Terrill *v.* Terrill, 2 Alaska 475.

2. Coulter *v.* Coulter, 124 Mo. App. 149, 100 S. W. 1134, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 735; Mason *v.* Mason, 69 N. J. Eq. 292, 60 Atl. 337; Bok *v.* Bok, 14 Pa. Dist. 443, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 735.

3. Mason *v.* Mason, 69 N. J. Eq. 292, 60 Atl. 337.

736. 5. Adams *v.* Adams, 101 Md. 506, 61 Atl. 628; Ransom *v.* Ransom, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 410, 104 N. Y. Supp. 198; Reed *v.* Reed, 30 Pa. Super. Ct. 220.

737. 3. **Domicil of Deserted Wife Remains Where Desertion Occurred until She Changes.** — Hibbert *v.* Hibbert, (N. J. 1907) 65 Atl. 1028; State *v.* Morse, 31 Utah 213, 87 Pac. 705.

738. 3. Mason *v.* Mason, 69 N. J. Eq. 292, 60 Atl. 337.

5. Mason *v.* Mason, 69 N. J. Eq. 292, 60 Atl. 337.

739. 6. Duke *v.* Duke, 70 N. J. Eq. 135, 62 Atl. 466.

741. 1. Adams *v.* Adams, 101 Md. 506, 61 Atl. 628, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 741.

742. 1. **Compliance with Statutory Requirements in Respect to Residence Essential to Jurisdiction of State Court.** — Brashear *v.* Brashear, (Tex. Civ. App. 1906) 99 S. W. 568.

744. 1. Clark *v.* Clark, 191 Mass. 128, 77 N. E. 702, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744; Hammond *v.* Hammond, 103 N. Y. App. Div. 437, 93 N. Y. Supp. 1.

A Divorce Granted in One State against a non resident who did not appear, and was only constructively served, cannot be enforced in all other states under the full faith and credit clause of the Federal Constitution. Haddock *v.* Haddock, 201 U. S. 562, 26 U. S. Sup. Ct. 525.

745. 4. Proctor *v.* Proctor, 215 Ill. 275, 74 N. E. 145, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 745.

7. Proctor *v.* Proctor, 215 Ill. 275, 74 N. E. 145.

8. Proctor *v.* Proctor, 215 Ill. 275, 74 N. E. 145.

749. 2. Rasch *v.* Rasch, 105 Md. 504, 65 Atl. 499; Hutchinson *v.* Hutchinson, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 441, 104 N. Y. Supp. 1074; Taft *v.* Taft, (Vt. 1907) 67 Atl. 703.

3. **Evidence Must Be Clear and Convincing.** — Keville *v.* Keville, 122 N. Y. App. Div. 388, 106 N. Y. Supp. 993.

Improbable Evidence Insufficient. — De Marco *v.* De Marco, 116 N. Y. App. Div. 304, 101 N. Y. Supp. 600.

750. 1. Taft *v.* Taft, (Vt. 1907) 67 Atl. 703.

751. 2. Taft *v.* Taft, (Vt. 1907) 67 Atl. 703.

6. Hutchinson *v.* Hutchinson, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 441, 104 N. Y. Supp. 1074.

753. 8. **Proof of Adultery Committed After Commencement of Suit Is Admissible** to show a lustful disposition. Spurlock *v.* Spurlock, 80 Ark. 37, 96 S. W. 753.

9. Talley *v.* Talley, 215 Pa. St. 281, 64 Atl. 5[illegible].

755. 4. Farrow *v.* Farrow, 70 N. J. Eq. 777, 60 Atl. 1103.

757. 3. Taft *v.* Taft, (Vt. 1907) 67 Atl. 7[illegible].

759. 5. **Identification by Photograph Alone.** — Dawson *v.* Dawson, 23 Times L. Rep. 716.

762. 7. Delaney *v.* Delaney, 69 N. J. Eq. 602, 61 Atl. 266.

763. 4. Farrow *v.* Farrow, 70 N. J. Eq. 777, 60 Atl. 1103.

Testimony of Private Detective Entitled to Same Weight as That of Accomplice. — Taft *v.* Taft, (Vt. 1907) 67 Atl. 703.

764. 8. **Sodomy by Husband with Wife against Her Consent Matrimonial Offense.** — C. *v.* C., 22 Times L. Rep. 26.

9. **Conduct Constituting Cruelty.** — Crutcher *v.* Crutcher, 86 Miss. 231, 38 So. 337.

10. Olson *v.* Olson, 27 Pa. Super. Ct. 128.

766. 8. Stevens *v.* Stevens, (Ky. 1906) 96

S. W. 811; Foote *v.* Foote, (N. J. 1906) 65 Atl. [illegible].

9. Vercade *v.* Vercade, 147 Mich. 398, 110 N. W. 942.

767. 7. Klein *v.* Klein, (Ky. 1906) 96 S. W. 848; Franklin *v.* Franklin, 190 Mass. 349, 5 Ann. Cas. 851, 77 N. E. 48; Buell *v.* Buell, [illegible] Pac. 821.

768. 1. Klein *v.* Klein, (Ky. 1906) 96 S. W. 848; Franklin *v.* Franklin, 190 Mass. 349, 5 Ann. Cas. 851, 77 N. E. 48; Buell *v.* Buell, [illegible] Pac. 821.

769. 3. Graves *v.* Graves, 88 Miss. 677, 41 So. 384.

4. Pfannebecker *v.* Pfannebecker, 133 Iowa 425, 110 N. W. 618; Williams *v.* Williams, 121 Mo. App. 349, 99 S. W. 42.

770. 1. Desertion May Be Complete under Same Shelter.— Graves *v.* Graves, 88 Miss. 677, 41 So. 384.

2. Burnett *v.* State, 72 Ark. 398, 81 S. W. 382, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 770.

771. 1. Walton *v.* Walton, 114 Ill. App. 116; Gray *v.* Gray, (Tex. Civ. App. 1906) 95 S. W. 46.

772. 1. Patterson *v.* Patterson, 45 Wash. 296, 88 Pac. 196, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 772.

773. 5. Spille *v.* Spille, 68 N. J. Eq. 647, 61 Atl. 742; Grady *v.* Grady, (N. J. 1906) 64 Atl. 440.

774. 2. Sterling *v.* Sterling, (N. J. 1906) 63 Atl. 548.

775. 4. Corson *v.* Corson, 69 N. J. Eq 513, 61 Atl. 157; Sterling *v.* Sterling, (N. J. 1906) 63 Atl. 548; Olson *v.* Olson, 27 Pa. Super. Ct. 128.

Consent to Separation Not Proved by Agreement for Separate Maintenance of Wife.— Lemmert *v.* Lemmert, 103 Md. 57, 63 Atl. 380.

777. 1. Ojserkis *v.* Ojserkis, (N. J. 1905) 62 Atl. 113.

3. Daugherty *v.* Daugherty, 28 Pa. Super. Ct. 327.

778. 1. Edwards *v.* Edwards, 69 N. J. Eq. 522, 61 Atl. 531.

780. 2. Kupka *v.* Kupka, 132 Iowa 191, 109 N. W. 610; Ojserkis *v.* Ojeserkis, (N. J. 1905) 62 Atl. 113.

5. Wheeler *v.* Wheeler, 101 Md. 427, 61 Atl. 216.

781. 1. Presumption of Intention to Return Must Be Overcome.— Kendrick *v.* Kendrick, 188 Mass. 550, 75 N. E. 151; Corson *v.* Corson, 69 N. J. Eq. 513, 61 Atl. 157; Wood *v.* Wood, (N. J. 1905) 62 Atl. 429; Snedaker *v.* Snedaker, (N. J. 1906) 62 Atl. 942; Provost *v.* Provost, (N. J. 1906) 63 Atl. 619; Sharp *v.* Sharp, (N. J. 1906) 64 Atl. 985.

2. Olson *v.* Olson, 27 Pa. Super. Ct. 128.

4. Edwards *v.* Edwards, 69 N. J. Eq. 522, 61 Atl. 531.

7. Insufficient Evidence of Abandonment and Failure to Provide.— See Saillard *v.* Saillard, 2 Tenn. Ch. App. 396.

784. 1. What Constitutes Cruelty, Question of Law.— Brown *v.* Brown, 129 Ga. 246, 58 S. E. 825.

787. 5. Alabama.— May *v.* May, (Ala. 1905) 39 So. 679.

788. 3. Personal Violence Is Not Required in *Mississippi* in order to constitute such cruel and inhuman treatment as will authorize the granting of a divorce. Pierce *v.* Pierce, (Miss. 1905) 38 So. 46.

7. Williams *v.* Williams, 101 Minn. 400, 112 N. W. 528, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 788.

791. 3. Mills *v.* Mills, 47 Oregon 246, 83 Pac. 390.

792. 1. Simon *v.* Simon, 34 Pa. Super. Ct. 182.

794. 2. Harding *v.* Harding, 36 Colo. 106, 85 Pac. 423; Beekman *v.* Beekman, 53 Fla. 858, 43 So. 923; Massey *v.* Massey, (Ind. App. 1907) 80 N. E. 977; Craig *v.* Craig, 129 Iowa 192, 105 N. W. 446; Luick *v.* Luick, 132 Iowa 302, 109 N. W. 783; Hullinger *v.* Hullinger, 133 Iowa 269, 110 N. W. 470; Rader *v.* Rader, (Iowa 1907) 113 N. W. 817; Mosher *v.* Mosher, (N. Dak. 1907) 113 N. W. 99; Fay *v.* Fay, 27 Pa. Super. Ct. 327; Schulze *v.* Schulze, 33 Pa. Super. Ct. 325; Bush *v.* Bush, (Tex. Civ. App. 1907) 103 S. W. 217.

"Grievous Mental Suffering" is sufficient, although it does not impair the health. Avery *v.* Avery, 148 Cal. 239, 82 Pac. 967.

796. 2. Wald *v.* Wald, 119 Mo. App. 341, 96 S. W. 302; Wares *v.* Wares, 122 Mo. App. 129, 98 S. W. 91; Mitchell *v.* Mitchell, 39 Wash. 431, 81 Pac. 913.

797. 3. Charge of Infidelity Constitutes Cruelty. — Markowski *v.* Markowski, 44 Wash. 594, 87 Pac. 914; Guerin *v.* Guerin, 45 Wash. 486, 88 Pac. 928.

4. McNulty *v.* McNulty, 119 N. Y. App. Div. 150, 104 N. Y. Supp. 251.

798. 1. Hays *v.* Hays, 75 Neb. 728, 106 N. W. 773; Griffith *v.* Griffith, (Neb. 1906) 108 N. W. 981.

801. 5. Gray *v.* Gray, (Ark. 1906) 98 S. W. 975; Bush *v.* Bush, (Tex. Civ. App. 1907) 103 S. W. 217.

6. Boyle *v.* Boyle, (N. J. 1907) 67 Atl. 690.

7. Geisseman *v.* Geisseman, 34 Colo. 481, 83 Pac. 635; Olson *v.* Olson, 130 Iowa 353, 106 N. W. 758; Smith *v.* Smith, 146 Mich. 686, 110 N. W. 59, 111 N. W. 342; Haines *v.* Haines, (Neb. 1907) 113 N. W. 125.

804. 9. — Fay *v.* Fay, 27 Pa. Super. Ct.

806. 1. Campbell *v.* Campbell, 149 Mich. 147, 112 N. W. 481.

2. Schulze *v.* Schulze, 33 Pa. Super. Ct. 325.

809. 6. Proof of Whole Conduct of Parties Admissible. — Fay *v.* Fay, 27 Pa. Super. Ct. 328; Schulze *v.* Schulze, 33 Pa. Super. Ct. 325.

7. Sharp *v.* Sharp, 105 Md. 580, 66 Atl. 463.

810. 9. Boyle *v.* Boyle, (N. J. 1907) 67 Atl. 690.

811. 2. Hooe *v.* Hooe, 122 Ky. 590, 92 S. W. 317.

8. Saillard *v.* Saillard, 2 Tenn. Ch. App. 396.

812. 9. Fay *v.* Fay, 27 Pa. Super. Ct. 328.

10. Communication of Loathsome Disease by Husband to Wife Indignity within Statute. — Simon *v.* Simon, 34 Pa. Super. Ct. 182.

Neglect by Wife of Household and Family Duties and Refusal of Sexual Intercourse Not Indignity within Statute. — Johnson *v.* Johnson, 31 Pa. Super. Ct. 53.

813. 8. **In Nebraska,** a habitual but moderate use of intoxicating liquors is no ground for divorce. Bain *v.* Bain, (Neb. 1907) 113 N. W. 131.

In New Jersey, habitual drunkenness is not a ground for divorce. Foote *v.* Foote, (N. J. 1905) 61 Atl. 90.

814. 1. **Habitual Intemperance** is a cause for divorce in *Louisiana*. Schaub *v.* Schaub, 117 La. 727, 42 So. 249.

6. **A Habitual Drunkard** is one who has a fixed habit of frequently getting drunk. Page *v.* Page, 43 Wash. 293, 86 Pac. 582. See also the title HABITUAL DRUNKARDS.

9. McCarthy *v.* McCarthy, 117 Mo. App. 115, 93 S. W. 317 (to the same effect as Reynolds *v.* Reynolds, 44 Minn. 132, set out in the original note).

Occasional Drunkenness on the Part of the Wife does not permit a divorce by the husband on the ground of habitual drunkenness. Rapp *v.* Rapp, 149 Mich. 218, 112 N. W. 709.

815. 1. **Disqualification from Business Not Essential.** — Page *v.* Page, 43 Wash. 293, 86 Pac. 582.

Ordinary Beer Drinking does not constitute habitual intemperance. Schaub *v.* Schaub, 117 La. 727, 42 So. 249.

3. **Drunkenness and Failure to Support Are Good Grounds** for divorce in *Washington*. Page *v.* Page, 43 Wash. 293, 86 Pac. 582.

Contra in *Maryland*. Wheeler *v.* Wheeler, 101 Md. 427, 61 Atl. 216.

8. **Must Be for Crime Involving Moral Turpitude — Voluntary Manslaughter.** — Holloway *v.* Holloway, 126 Ga. 459, 55 S. E. 191.

10. **A Sentence for Three Years,** without reference to deductions for good conduct, constitutes a good ground for divorce. Sargood *v.* Sargood, 77 Vt. 498, 61 Atl. 472.

816. 5. **Hopeless Insanity Not Cause for Divorce in Pennsylvania.** — Baughman *v.* Baughman, 34 Pa. Super. Ct. 271.

6. **In Washington,** the mere fact that the parties can no longer live together is not a ground for granting a discretionary divorce. Wheeler *v.* Wheeler, 38 Wash. 491, 80 Pac. 762.

817. 1. Cupples *v.* Cupples, 33 Colo. 449, 80 Pac. 1039; Day *v.* Day, 71 Kan. 385, 80 Pac. 974.

2. Elliott *v.* Elliott, 34 Colo. 298, 83 Pac. 630; Stoneburner *v.* Stoneburner, 11 Idaho 603, 83 Pac. 938; Stiehr *v.* Stiehr, 145 Mich. 297, 108 N. W. 684.

Statutory Rule in England. — The guiding principle on which the court will exercise its discretion under section 31 of the Matrimonial Causes Act, 1857, in favor of a petitioner guilty of adultery, is that the court must have regard not only to the rights and liabilities of the matrimonial person wronged and the wrongdoer respectively, but also to the interests of society and public morality. It is insufficient to excuse the adultery of a petitioner that a separation prior to such adultery was brought about by the conduct of the respondent. Evans *v.* Evans, (1906) P. 125, 75 L. J. P. 27, 94 L. T. N. S. 616, 22 Times L. Rep. 322.

To enable the court to exercise its discretion in favor of a wife who is petitioning for a divorce and who has herself committed adultery, she must show that her adultery was the necessary and reasonable consequence of her husband's conduct. Tulk *v.* Tulk, 23 Times L. Rep. 120.

Where a wife left her husband and some years afterwards he committed adultery with another woman, the court, on the husband's petition for dissolution of marriage on the ground of his wife's adultery, in the exercise of its discretion in the circumstances of the case refused to make a decree, and dismissed the petition. Todd *v.* Todd, 23 Times L. Rep. 9.

The petitioner was an actress, and was at the time of her marriage sixteen years old and an orphan. The respondent seduced her and afterwards married her; he took her to various places and compelled her to obtain money by prostitution, he taking the money and ill-treating her. After about two years she ran away, and while away occasionally obtained money by prostitution, as she was destitute. The court held that the facts of the case justified it in pronouncing a decree in the petitioner's favor, notwithstanding her adultery. Dodson *v.* Dodson, 54 W. R. 220.

818. 3. Day *v.* Day, 71 Kan. 385, 80 Pac. 974; Cushman *v.* Cushman, (Mass. 1907) 79 N. E. 809.

819. 3. **Adultery on the Part of the Husband Condoned by His Wife** is not a bar in recrimination against the husband in a suit for divorce on account of the adultery of his wife. Storms *v.* Storms, (N. J. 1906) 64 Atl. 700; Talley *v.* Talley, 215 Pa. St. 281, 64 Atl. 523.

821. 1. Cushman *v.* Cushman, (Mass. 1907) 79 N. E. 809.

822. 1. Mattes *v.* Mattes, 121 Ill. App. 400; Wolverton *v.* Wolverton, 163 Ind. 34, 71 N. E. 123, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 822.

Condonation Is the Conditional Forgiveness [illegible] of divorce. Kusel *v.* Kusel, 147 Cal. 52, 81 Pac. 297; Andros *v.* Andros, 1 Cal. App. 309, 82 Pac. 90.

Condonation means the blotting out of the offense imputed. The term "forgiveness" does not express the meaning of condonation. Talley *v.* Talley, 215 Pa. St. 281, 64 Atl. 523.

2. **Mere Forgiveness Insufficient.** — Taber *v.* Taber, (N. J. 1904) 66 Atl. 1082.

823. 4. Andros *v.* Andros, 1 Cal. App. 309, 82 Pac. 90; Phelps *v.* Phelps, 28 App. Cas. (D. C.) 577, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 822, 824; Day *v.* Day, 71 Kan. 385, 80 Pac. 974.

824. 1. **Adultery.** — Hunter *v.* Hunter, [illegible] Ill. App. 380; McAninch *v.* McAninch, (Iowa 1906) 108 N. W. 232; Day *v.* Day, 71 Kan. 385, 80 Pac. 974; Bordeaux *v.* Bordeaux, 32 Mont. 159, 80 Pac. 6; Griffith *v.* Griffith, (Neb. 1906) 108 N. W. 981.

Venereal Diseases, Being Continuing Offenses, Cannot Be Condoned. — Hooe *v.* Hooe, 122 Ky. 590, 92 S. W. 317.

2. **Cruelty May Be Condoned** — Brown *v.* Brown, 120 Ga. 246, 58 S. E. 825.

Cohabitation for Single Night Not Condonation of Extreme Cruelty. — Wolverton *v.* Wolverton, 163 Ind. 34, 71 N. E. 123.

825. 4. Cupples *v.* Cupples, 33 Colo. 449,

80 Pac. 1039; Harding *v.* Harding, 36 Colo. 106, 85 Pac. 423; Craig *v.* Craig, 129 Iowa 192, 105 N. W. 446; Muir *v.* Muir, (Ky. 1906) 92 S. W. 314; Clark *v.* Clark, 191 Mass. 128, 77 N. E. 702; Ferguson *v.* Ferguson, 145 Mich. 290, 108 N. W. 682; Cochran *v.* Cochran, 93 Minn. 284, 101 N. W. 179, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 825; Viertel *v.* Viertel, 123 Mo. App. 63, 99 S. W. 759; Totten *v.* Totten, (N. J. 1905) 60 Atl. 1095; Mosher *v.* Mosher, (N. Dak. 1907) 113 N. W. 99; Edleman *v.* Edleman, 125 Wis. 270, 104 N. W. 56.

829. 1. Phelps *v.* Phelps, 28 App. Cas. (D. C.) 577.

Condonation Not Established Where Wife Occupied Separate Room and Denied Husband Cohabitation.— Mattes *v.* Mattes, 121 Ill. App. 400.

5. Noyes *v.* Noyes, (Mass. 1907) 79 N. E. 814.

Connivance at an Act of Adultery bars the plaintiff from divorce therefor. Delaney *v.* Delaney, (N. J. 1906) 65 Atl. 217.

830. 3. Tuck *v.* Tuck, 117 N. Y. App. Div. 421, 102 N. Y. Supp. 688.

832. 6. McBride *v.* Gould, 16 Ohio Dec. 241, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 832.

833. 1. Griffiths *v.* Griffiths, 69 N. J. Eq. 689, 60 Atl. 1090.

Agreement to Procure Separation. — See Olson *v.* Olson, 27 Pa. Super. Ct. 128.

3. McBride *v.* Gould, 16 Ohio Dec. 241, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 833.

4. Hunter *v.* Hunter, (1905) P. 217, 93 L. T. N. S. 451, 21 Times L. Rep. 602, *following* Alexandre *v.* Alexandre, L. R. 2 P. & D. 164, set out in the original note.

834. 1. Griffiths *v.* Griffiths, 69 N. J. Eq. 689, 60 Atl. 1090.

835. 3. Blum *v.* New York L. Ins. Co., 197 Mo. 526, 7 Ann Cas. 1021, 95 S. W. 317, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 835; Griffiths *v.* Griffiths, 69 N. J. Eq. 689, 60 Atl. 1090.

839. 1. See Fountain *v.* Fountain, 80 Ark. 481, 97 S. W. 656, wherein it was held that the proof established a marriage.

844. 2. **Statute Renders Confessions Insufficient but Not Inadmissible.** — Michalowicz *v.* Michalowicz, 25 App. Cas. (D. C.) 484.

4. May *v.* May, 71 Kan. 317, 80 Pac. 567.

845. 2. Grannis *v.* Superior Ct., 146 Cal. 252, 79 Pac. 891, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 845; Michalowicz *v.* Michalowicz, 25 App. Cas. (D. C.) 484; May *v.* May, 71 Kan. 317, 80 Pac. 567.

5. **When Uncorroborated Confession of Adultery Sufficient.**— Getty *v.* Getty, (1907) P. 334.

846. 8. Geisseman *v.* Geisseman, 34 Colo. 481, 83 Pac. 635; Patrick *v.* Patrick, (Ky. 1907) 101 S. W. 328.

11. **An Agreement for a Collusive Divorce** defeats the divorce. Branson *v.* Branson, (Neb. 1906) 107 N. W. 1011.

848. 1. Chappell *v.* Chappell, 83 Ark. 533, 104 S. W. 203; Foote *v.* Foote, (N. J. 1905) 61 Atl. 90; Kline *v.* Kline, (N. J. 1905) 61 Atl. 1060; Wood *v.* Wood, (N. J. 1905) 62 Atl. 429; Snedaker *v.* Snedaker, (N. J. 1906) 62 Atl. 942; Sterling *v.* Sterling, (N. J. 1906) 63 Atl. 548; Grady *v.* Grady, (N. J. 1906) 64 Atl. 440; Sharp *v.* Sharp, (N. J. 1906) 64 Atl. 985; Smith *v.* Smith, (N. J. 1907) 65 Atl. 986.

2. Avery *v.* Avery, 148 Cal. 239, 82 Pac. 967; Michalowicz *v.* Michalowicz, 25 App. Cas. (D. C.) 484.

3. Foote *v.* Foote, (N. J. 1906) 65 Atl. 205.

849. 4. **The Petitioner in a Divorce Suit May Testify** in her own behalf. Wood *v.* Wood, (N. J. 1905) 62 Atl. 429.

6. Barrow *v.* Barrow, (Tex. Civ. App. 1906) 97 S. W. 120.

850. 2. **In Tennessee** it has been held that there is no rule of public policy which could prevent a wife upon her application for divorce from testifying to the cruel and inhuman treatment, neglect to support and provide, and intolerable indignities of her husband to her, these being the statutory grounds for divorce in this state. E. W. M. *v.* J. C. M., 2 Tenn. Ch. App. 463.

4. **Contra.**— See E. W. M. *v.* J. C. M., 2 Tenn. Ch. App. 463.

855. 3. Wallace *v.* Mutual Ben. L. Ins. Co., 97 Minn. 27, 106 N. W. 84.

856. 2. **A Divorced Woman's Interest in Her Husband's Estate** is the same as upon his death. Linse *v.* Linse, 98 Minn. 243, 108 N. W. 8.

859. 2. Holland *v.* Zilliox, (Tex. Civ. App. 1905) 86 S. W. 36.

860. 8. Buttlar *v.* Buttlar, (N. J. 1906) 65 Atl. 485.

864. 2. **All Property Subject to Disposition by Court.** — Budlong *v.* Budlong, 43 Wash. 423, 86 Pac. 648.

865. 4. **All Community Property** may be awarded the wife, upon a decree of divorce by her for her husband's desertion. Miller *v.* Miller, 38 Wash. 605, 80 Pac. 816; Mitchell *v.* Mitchell, 39 Wash. 431, 81 Pac. 913; Markowski *v.* Markowski, 44 Wash. 594, 87 Pac. 914.

867. 1. People *v.* Lawson, 111 N. Y. App. Div. 473, 98 N. Y. Supp. 130.

3. People *v.* Lawson, 111 N. Y. App. Div. 473, 98 N. Y. Supp. 130.

6. **Children Awarded Mother Although Divorce Denied.** — Wheeler *v.* Wheeler, 101 Md. 427, [illegible] Atl. 216.

7. Horton *v.* Horton, 75 Ark. 22, 86 S. W. 824; Hoskins *v.* Hoskins, (Ky. 1905) 89 S. W. 478.

8. Black *v.* Black, 149 Cal. 224, 86 Pac. 505.

9. Barlow *v.* Barlow, (Ky. 1906) 90 S. W. 216, *rehearing denied* (Ky. 1906) 90 S. W. 1055.

The Court Cannot Award a Child to the Custody of Its Father with a Proviso that he keep it at the house of the wife's mother. McCabe *v.* McCabe, 126 Wis. 154, 105 N. W. 665.

868. 1. Black *v.* Black, 149 Cal. 224, 86 Pac. 505; Hayden *v.* Hayden, 74 Kan. 725, 88 Pac. 257; Collins *v.* Collins, (Kan. 1907) 90 Pac. 809; People *v.* Lawson, 111 N. Y. App. Div. 473, 98 N. Y. Supp. 130; Burritt *v.* Burritt, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 24, 102 N. Y. Supp. 475; Johnson *v.* Johnson, (Tex. Civ. App. 1907) 102 S. W. 943; Bush *v.* Bush, (Tex. Civ. App. 1907) 103 S. W. 217; Kane *v.* Miller, 40 Wash. 125, 82 Pac.

177, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 868; Curtis *v.* Curtis, (Wash. 1907) 91 Pac. 188; Dawson *v.* Dawson, 57 W. Va. 520, 50 S. E. 613, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 868.

2. Decree Modified to Promote Child's Best Interest. — Evidence as to the character of the mother is admissible on the hearing. Brown *v.* Brown, 71 Kan. 868, 81 Pac. 199.

3. De Reitmatter *v.* De Reitmatter, 75 Ark. 193, 87 S. W. 118; Schoop *v.* Schoop, 115 Ill. App. 343; Hoskins *v.* Hoskins, (Ky. 1905) 89 S. W. 478; Wares *v.* Wares, 122 Mo. App. 129, 98 S. W. 91; Guerin *v.* Guerin, 45 Wash. 486, 88 Pac. 928.

869. 1. Mother Preferred Where Child in Ill Health. — Barlow *v.* Barlow, (Ky. 1906) 90 S. W. 216, *rehearing denied* (Ky. 1906) 90 S. W. 1055.

2. M. *v.* M., 22 Times L. Rep. 325; Hullinger *v.* Hullinger, 133 Iowa 269, 110 N. W. 470; Mills *v.* Mills, 47 Oregon 246, 83 Pac. 390; Galigher *v.* Galigher, (Oregon 1907) 89 Pac. 146; Kane *v.* Miller, 40 Wash. 125, 82 Pac. 177; Seigmund *v.* Seigmund, (Wash. 1907) 90 Pac. 913.

3. Bush *v.* Bush, (Tex. Civ. App. 1907) 103 S. W. 217.

Age and Sex of Child Must Be Considered. — Taylor *v.* Taylor, 47 Oregon 47, 81 Pac. 367.

870. 3. Collins *v.* Collins, (Kan. 1907) 90 Pac. 809; State *v.* Wheeler, 43 Wash. 183, 86 Pac. 394.

4. Hullinger *v.* Hullinger, 133 Iowa 269, 110 N. W. 470; Burritt *v.* Burritt, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 24, 102 N. Y. Supp. 475; Johnson *v.* Johnson, (Tex. Civ. App. 1907) 102 S. W. 943; Kane *v.* Miller, 40 Wash. 125, 82 Pac. 177.

5. Van Horn *v.* Van Horn, 5 Cal. App. 719, 91 Pac. 260; Myers *v.* Myers, 143 Mich. 32, 106 N. W. 402; Chambers *v.* Chambers, 75 Neb. 850, 106 N. W. 993; Chappell *v.* Chappell, 45 Wash. 652, 89 Pac. 166; Curtis *v.* Curtis, (Wash. 1907) 91 Pac. 188.

7. De Reitmatter *v.* De Reitmatter, 75 Ark. 193, 87 S. W. 118; Hayden *v.* Hayden, 74 Kan. 725, 88 Pac. 257; Hoskins *v.* Hoskins, (Ky. 1905) 89 S. W. 478; Barlow *v.* Barlow, (Ky. 1906) 90 S. W. 216; *rehearing denied* (Ky. 1906) 90 S. W. 1055; Knoll *v.* Knoll, 114 La. 703, 38 So. 523.

8. Mills *v.* Mills, 47 Oregon 246, 83 Pac. 390.

871. 5. Graham *v.* Graham, 38 Colo. 453, 88 Pac. 852; Monroe County *v.* Abegglen, 129 Iowa 53, 105 N. W. 350; Ligon *v.* Ligon, (Tex. Civ. App. 1905) 87 S. W. 838.

6. Parkinson *v.* Parkinson, 116 Ill. App. 112; Denler *v.* Denler, 142 Mich. 316, 105 N. W. 770; Spencer *v.* Spencer, 97 Minn. 56, 105 N. W. 483, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 871.

8. Husband Liable After Divorce for His Fault. — Young *v.* Young, 28 Ohio Cir. Ct. 179, *following* the Ohio case set out in original note.

872. 2. Maintenance May Be Secured by Application to Different Court. — State *v.* Redmile, 5 Penn. (Del.) 520, 63 Atl. 575.

873. 1. Wife May Recover Cost of Child's Support from Husband in Action at Law. — Seely *v.* Seely, 116 Mo. App. 362, 91 S. W. 979; Spencer *v.* Spencer, 97 Minn. 56, 105 N. W. 483.

DO.

873. 6. "Do" Abbreviation for Ditto. — Duerr *v.* Snodgrass, 58 W. Va. 472, 52 S. E. 531.

DOCUMENTARY EVIDENCE.

881. 5. A City Ordinance may be proved by the introduction of the original record thereof properly identified. Johnson *v.* Glaspey, (N. Dak. 1907) 113 N. W. 602.

882. 4. Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374.

883. 1. Such Record Is Not Admissible where there is no statute authorizing the keeping of the record. *In re* Jones, 130 Iowa 177, 106 N. W. 610.

Records of the Weather Bureau are evidence of the state of the weather during the period involved. Anderson *v.* Hilker, 38 Wash. 632, 80 Pac. 848.

A School Teacher's Record, kept in strict conformity with the law, is evidence of the age of a pupil which it is the teacher's duty to record. Levels *v.* St. Louis, etc., R. Co., 196 Mo. 606, 94 S. W. 275.

2. Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155; Finer *v.* Nichols, 122 Mo. App. 497, 99 S. W. 808.

Entry in Baptismal Register. — Collins *v.* German-American Mut. L. Assoc., 112 Mo. App. 209, 86 S. W. 891.

3. McInerney *v.* U. S., (C. C. A.) 143 Fed. 729; Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155; Illinois Cent. R. Co. *v.* Holt, (Ky. 1906) 92 S. W. 540.

United States Census Reports. — Priddy *v.* Boice, 201 Mo. 309, 99 S. W. 1055, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 883.

Census List. — On the issue as to the age of a given person, a census list found in the clerk's office, in the absence of proof as to how it was made up, or the source of the information it purports to contain, is not admissible. Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201.

Vital Statistics. — On the issue of the age of a given person, foreign records of vital statistics are inadmissible, unless it appears that such records were kept pursuant to a custom of the church, or because of some statute enacted in that regard. Pirrung *v.* Supreme Council, etc., 104 N. Y. App. Div. 571, 93 N. Y. Supp. 575.

Foundation Must Be Laid. — No report will be received in evidence as an official one, unless it is first shown that it belongs to some public office or was required to be furnished by some officer whose signature is identified. Dorr Cattle Co. *v.* Chicago G. W. R. Co., 128 Iowa 359, 103 N. W. 1003.

884. 4. Jonesboro, etc., R. Co. *v.* Board of Directors, 80 Ark. 316, 97 S. W. 281; Tucker *v.* Helgren, 102 Minn. 382, 113 N. W. 912.

Certificate of Election Clerk Prima Facie Evidence. — Fleener *v.* Johnson, 38 Ind. App. 334, 77 N. E. 366.

The Certificate of the Secretary of State relating to the increase of the capital stock of a corporation organized under the laws of the state

must, by the *New Jersey* statute, be taken as evidence of such increase if it shall certify that the assent of the stockholders to the increase has been filed in his office. Person, etc., Co. *v.* Lipps, 219 Pa. St. 99, 67 Atl. 1081.

5. Nixon *v.* Goodwin, 3 Cal. App. 358, 85 Pac. 169.

8. "There being no statutory authority, a clerk cannot certify generally to the contents of a record. * * * He can only certify that the paper is a true copy of the record." Glos *v.* Dyche, 214 Ill. 417, 73 N. E. 757.

9. Ormond *v.* Shaw, 50 Fla. 445, 39 So. 108; Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49.

Book of City Ordinances.— Johnson *v.* Glaspey, (N. Dak. 1907) 113 N. W. 602.

885. 3. Tri-State Milling Co. *v.* Breisch, 145 Mich. 232, 108 N. W. 657.

4. Southern Pac. Co. *v.* Cavin, (C. C. A.) 144 Fed. 348.

886. 2. Allen *v.* Halsted, (Tex. Civ. App. 1905) 87 S. W. 754.

3. Allen *v.* Halsted, (Tex. Civ. App. 1905) 87 S. W. 754.

887. 2. Harper *v.* Weikel, (Ky. 1906) 89 S. W. 1125. But see Birmingham R., etc., Co. *v.* Moore, 148 Ala. 115, 42 So. 1024.

890. 3. McMahon *v.* Bangs, 5 Penn. (Del.) 178, 62 Atl. 1098; Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Croft *v.* Chicago, etc., R. Co., 134 Iowa 411, 109 N. W. 723; Illinois Cent. R. Co. *v.* Houchins, (Ky. 1905) 89 S. W. 530; Illinois Cent. R. Co. *v.* Cane, (Ky. 1906) 90 S. W. 1061; Horst *v.* Lewis, 71 Neb. 365, 103 N. W. 460; Sledge *v.* Weldon Lumber Co., 140 N. Car. 459, 53 S. E. 295; O'Clair *v.* Rhode Island Co., 27 R. I. 448, 63 Atl. 238; Norfolk, etc., R. Co. *v.* Spencer, 104 Va. 657, 52 S. E. 310.

891. 1. Records of Internal Revenue Collector. — Entries in the records of the office of the United States collector of internal revenue may be proved by examined copies made by persons not having the official custody of the records. State *v.* Schaeffer, 74 Kan. 390, 86 Pac. 477.

6. Chott *v.* Tivoli Amusement Co., 114 Ill. App. 178; Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778; State *v.* Superior Ct., 44 Wash. 108, 87 Pac. 40; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

Organization and Existence. — Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

893. 1. Jacobs *v.* Morgenthaler, 149 Mich 1, 112 N. W. 492. But see Meridian Oil Co. *v.* Dunham, 5 Cal. App. 367, 90 Pac. 469.

3. Lowry Nat. Bank *v.* Fickett, 122 Ga. 489, 50 S. E. 396; Plattdeutsche Grot Gilde *v.* Ross, 117 Ill. App. 247, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 893.

4. Lowry Nat. Bank *v.* Fickett, 122 Ga. 489, 50 S. E. 396; Moore *v.* Rohrbacker, 30 Pa. Super. Ct. 568.

895. 1. Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

5. Hurwitz *v.* Gross, 5 Cal. App. 614, 91 Pac. 109; Lowry Nat. Bank *v.* Fickett, 122 Ga. 489, 50 S. E. 396.

6. Lowry Nat. Bank *v.* Fickett, 122 Ga. 489, 50 S. E. 396.

Such Books Are Admissible as Memoranda in connection with the oral evidence of witnesses who testify from their personal knowledge as to such transactions. Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

896. 2. State *v.* Superior Ct., 44 Wash. 108, 87 Pac. 40; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

897. 2. Lowry Nat. Bank *v.* Fickett, 122 Ga. 489, 50 S. E. 396, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

Proof of Official Character of Officer Keeping Books. — Lowry Nat. Bank *v.* Fickett, 122 Ga. 489, 50 S. E. 396.

Stock Transfer Book. — A stock certificate book in which certificates when returned are pasted, cannot be regarded as a stock transfer book within the meaning of a statute making such a transfer book competent evidence. Geneva Mineral Springs Co. *v.* Steele, 111 N. Y. App. Div. 706, 97 N. Y. Supp. 996.

Books of a Corporation Which Has Been Adjudicated a Bankrupt under the Bankrupt Act of 1898, produced in court by the trustee, and appearing upon their face to be the books of such corporation and to be free from suspicion of fraud, are *prima facie* indentified as the books of the corporation, and are admissible in evidence in favor of one seeking to establish a right against it. Lowry Nat. Bank *v.* Fickett, 122 Ga. 489, 50 S. E. 396.

898. 1. Time Card. — On an issue as to whether the plaintiff could have caught a certain train if a telegram had been promptly delivered to him, a time card of the railroad, furnished by it to the public for its guidance with respect to the schedule of its trains, is admissible. Western Union Tel. Co. *v.* O'Fiel, (Tex. Civ. App. 1907) 104 S. W. 406.

3. Wefel *v.* Stillman, (Ala. 1907) 44 So. 203; Raleigh, etc., R. Co. *v.* Pullman Co., 122 Ga. 700, 50 S. E. 1008; Austin *v.* Long, 1 Ga. App. 258, 57 S. E. 964; Nichols-Shepard Co. *v.* Ringler, (Iowa 1907) 112 N. W. 543; Hubbard *v.* Cheney, (Kan. 1907) 91 Pac. 793; Gulliford *v.* McQuillen, 75 Kan. 454, 89 Pac. 927; Jewell *v.* Jewell, 139 Mich. 578, 102 N. W. 1059; Clemens *v.* Royal Neighbors of America, 14 N. Dak. 116, 103 N. W. 402; Barton *v.* Rose, 48 Oregon 235, 85 Pac. 1009; Wallace *v.* Dorris, 218 Pa. St. 534, 67 Atl. 858; State *v.* Dilley, 44 Wash. 207, 87 Pac. 133; Stern *v.* Daniel, (Wash. 1907) 91 Pac. 552.

Such writings must of course be properly authenticated. *In re* Ladue Tate Mfg. Co., 135 Fed. 910, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 898.

899. 8. State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Roberts, 28 Nev. 350, 82 Pac. 100.

9. Elzig *v.* Bales, (Iowa 1907) 112 N. W. 540.

900. 1. People *v.* Mahatch, 148 Cal. 200, 82 Pac. 779; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; New

York, etc., R Co. *v* Robbins, 38 Ind. App. 172, 76 N. E. 804; Grant Park *v.* Trah, 115 Ill. App. 291, *affirmed* 218 Ill 516, 75 N. E. 1040; Illinois Southern R. Co. *v.* Hayer, 225 Ill. 613, 80 N. E 316; Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 90; Miller *v.* New York, 104 N. Y. App. Div. 33, 93 N. Y. Supp. 227; Accousi *v.* G. A. Stowers Furniture Co., (Tex. Civ. App. 1905) 87 S. W 861; Smith *v.* Central Vermont R. Co., (Vt. 1907) 67 Atl. 535; Hupfer *v.* National Distilling Co., 127 Wis. 306, 106 N. W. 831.

"Photographs are admissible not merely as a diagram or map representing things to which the witness testifies from his independent observation, but as direct evidence of things which have not been directly described by a witness as having come within his observation." State *v.* Matheson, 130 Iowa 440, 103 N. W. 137.

"The right to introduce photographs in evidence is always dependent upon the making of preliminary proof of their accuracy." Huntington Light, etc., Co. *v.* Beaver, 37 Ind. App. 4, 73 N. E. 1002.

A Distorted Plot of the scene of an accident due to its representation of the horizontal and vertical distances on a different scale, is inadmissible in an action for personal injuries. White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931.

The Point from Which the Photograph Was Taken goes to its value as evidence in the particular case, but not to its admissibility. New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804.

901. 1. State *v.* Cummings, 189 Mo. 626, 88 S. W. 706.

2. Marcy *v.* Parker, 78 Vt. 73, 62 Atl. 19.

In a proceeding to condemn land for a railroad right of way a map shown to be accurate is admissible as illustrative of the testimony of the witness. Portland, etc., R. Co. *v.* Ladd, (Wash. 1907) 91 Pac. 573.

5. Colbert *v.* State, 125 Wis. 423, 104 N. W. 61.

902. 1. Knapp *v.* St. Louis Trust Co., 199 Mo. 640, 98 S. W. 70.

It was not reversible error to receive in evidence a list of personal property, containing several hundred different items, shown to be correct by the testimony of the party who made it, without formal and direct proof that he could not testify to the details independently of the list, it being obvious upon its face that he could not do so. Meyers *v.* McAllister, 91 Minn. 510, 103 N. W. 564.

Mere Memoranda and Entries in Regular Course of Business. — *Compare* Jewell *v.* Jewell, 139 Mich. 578, 102 N. W. 1059.

903. 1. Recognized as Part of Common Law. — Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

904. 2. Entries Against Interest Admissible. — Milhollen *v.* A. Y. McDonald, etc., Mfg. Co., (Iowa 1907) 112 N. W. 812.

3. **Alabama.**—McGrath *v.* Stein, 148 Ala. 370, 42 So. 454.

California.— Yick Wo *v.* Underhill, 5 Cal. App. 519, 90 Pac. 967.

Massachusetts. — Pettey *v.* Benoit, 193 Mass. 233, 79 N. E. 245.

New York. — Dugan *v.* Longstaff, (County Ct.) 52 Misc. (N. Y.) 288, 102 N. Y. Supp. 1120.

Texas. — Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

Wyoming.— Lewis *v.* England, 14 Wyo. 128, 82 Pac. 869.

910. 1. Kossuth County State Bank *v.* Richardson, 132 Iowa 370, 106 N. W. 923, 109 N. W. 809.

911. 1. **Books of Account Inadmissible Where Better Evidence Obtainable.** — Putnam *v.* Grant, 101 Me. 240, 63 Atl. 816.

913. 1. **For Cases Holding the Books Admissible,** see Richardson *v.* Benes, 115 Ill. App. 532; Bush *v.* Fourcher, (Ga. 1907) 59 S. E. 459; Hill *v.* Hill, 115 La. 490, 39 So. 503.

For Cases Holding the Books Inadmissible, see Temple *v.* Magruder, 36 Colo. 390, 85 Pac. 832; Kossuth County State Bank *v.* Richardson, 132 Iowa 370, 106 N. W. 923, 109 N. W. 809; Drumm-Flato Commission Co. *v.* Edmisson, 17 Okla. 344, 87 Pac. 311; Bazelon *v.* Lyon, 128 Wis. 337, 107 N. W. 337.

917. 1. Lewis *v.* England, 14 Wyo. 128, 82 Pac. 869.

2. Bush *v.* Fourcher, (Ga. 1907) 59 S. E. 459; Lewis *v.* England, 14 Wyo. 128, 82 Pac. 869.

3. Lewis *v.* England, 14 Wyo. 128, 82 Pac. 869, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 917.

The Diary of a Deceased Attorney is not admissible to prove his services in an action therefor. Burke *v.* Baker, 111 N. Y. App. Div. 422, 97 N. Y. Supp. 768.

918. 1. Lewis *v.* England, 14 Wyo. 128, 82 Pac. 869.

3. Idol *v.* San Francisco Constr. Co., 1 Cal. App. 92, 81 Pac. 665; Yick Wo *v.* Underhill, 5 Cal. App. 519, 90 Pac. 967; Bush *v.* Fourcher, (Ga. 1907) 59 S. E. 459; Richardson *v.* Benes, 115 Ill. App. 532; Union Pac. Lodge No. 17 *v.* Bankers' Surety Co., (Neb. 1907) 113 N. W. 263; Missouri, etc., R. Co. *v.* Morrison, (Tex. Civ. App. 1906) 94 S. W. 173.

4. Putnam *v.* Grant, 101 Me. 240, 63 Atl. 816; Lewis *v.* England, 14 Wyo. 128, 82 Pac. 869, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 918.

Other Temporary Memoranda. — Pettey *v.* Benoit, 193 Mass. 233, 79 N. E. 245; Union Pac. Lodge No. 17 *v.* Bankers' Surety Co., (Neb. 1907) 113 N. W. 263; Dugan *v.* Longstaff, (County Ct.) 52 Misc. (N. Y.) 288, 102 N. Y. Supp. 1120; Atchison, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1905) 86 S. W. 38.

Way Bills. — *Contra,* Idol *v.* San Francisco Constr. Co., 1 Cal. App. 92, 81 Pac. 665.

919. 1. Pettey *v.* Benoit, 193 Mass. 233, 79 N. E. 245; Fruit Dispatch Co. *v.* Sturges, 28 Ohio Cir. Ct. 65, *affirmed* 73 Ohio St. 351, 78 N. E. 1125; Atchison, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1905) 86 S. W. 38.

2. Murray *v.* Dickens, (Ala. 1906) 42 So. 1031; Pettey *v.* Benoit, 193 Mass. 233, 79 N. E. 245; Collins *v.* Carlin, 106 N. Y. App. Div. 204, 94 N. Y. Supp. 317. But see Atchison, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1905) 86 S. W. 38.

920. 1. Putnam *v.* Grant, 101 Me. 240, 63

Atl. 816; Fitch *v.* Martin, 74 Neb. 538, 104 N. W. 1072; Engelman *v.* Anderson, (Supm. Ct. App. T.) 92 N. Y. Supp. 376; Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

2. Merritt *v.* Bush, 122 Ill. App. 189, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 920.

921. 3. Richardson *v.* Benes, 115 Ill. App. 532; Hoogewerff *v.* Flack, 101 Md. 371, 61 Atl. 184.

4. Containing Entries of Debits Only. — A ledger is inadmissible as a book of original entry which contains entries of goods sold but none of payments concededly made. Dugan *v.* Longstaff, (County Ct.) 52 Misc. (N. Y.) 288, 102 N. Y. Supp. 1120, *affirmed* 119 N. Y. App. Div. 928, 105 N. Y. Supp. 1114.

A Ledger Containing Various Accounts is inadmissible, in the absence of preliminary proof that any particular account or items in it are relevant and competent, and of an offer to limit the introduction to such account or items. Armour Packing Co. *v.* Vietch-Young Produce Co., (Ala. 1903) 39 So. 680.

922. 2. Bush *v.* Fourcher, (Ga. 1907) 59 S. E. 459, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922.

3. Murray *v.* Dickens, (Ala. 1906) 42 So. 1031; Yick Wo *v.* Underhill, 5 Cal. App. 519, 90 Pac. 967; Remington Mach. Co. *v.* Wilmington Candy Co., (Del. 1907) 66 Atl. 465; Richardson *v.* Benes, 115 Ill. App. 532; Kossuth County State Bank *v.* Richardson, 132 Iowa 370, 106 N. W. 923, 109 N. W. 809; Bader *v.* Ferguson, 118 Mo. App. 34, 94 S. W. 836; Fruit Dispatch Co. *v.* Sturges, 28 Ohio Cir. Ct. 65, *affirmed* 73 Ohio St. 351, 78 N. E. 1125; Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

5. Murray *v.* Dickens, (Ala. 1906) 42 So. 1031; Yick Wo *v.* Underhill, 5 Cal. App. 519, 90 Pac. 967; Kossuth County State Bank *v.* Richardson, 132 Iowa 370, 106 N. W. 923, 109 N. W. 809; Bader *v.* Schult, 118 Mo. App. 22, 94 S. W. 834; Fruit Dispatch Co. *v.* Sturges, 28 Ohio Cir. Ct. 65, *affirmed* 73 Ohio St. 351, 78 N. E. 1125; Missouri, etc., R. Co. *v.* Morrison, (Tex. Civ. App. 1906) 94 S. W. 173.

923. 1. Murray *v.* Dickens, (Ala. 1906) 42 So. 1031.

924. 1. Yick Wo *v.* Underhill, 5 Cal. App. 519, 90 Pac. 967; Fruit Dispatch Co. *v.* Sturges, 28 Ohio Cir. Ct. 65, *affirmed* 73 Ohio St. 351, 78 N. E. 1125.

If one party testifies that he knew of the correctness of the item and gave it correctly to the other, and the other testifies that he entered it as it was given to him, this amounts to the same thing as if the party knew of the correctness of the item. Murray *v.* Dickens, (Ala. 1906) 42 So. 1031.

Without Preliminary Proof as to Who Kept It or that It Was Correctly Kept, a ledger is inadmissible. Lester-Whitney Shoe Co. *v.* Oliver Co., 1 Ga. App. 244, 58 S. E. 212.

925. 3. Murray *v.* Dickens, (Ala. 1906) 42 So. 1031; Wright *v.* Charbonneau, 122 Ill. App. 52.

926. 4. Richardson *v.* Benes, 115 Ill. Ap. 532.

927. 4. Putnam *v.* Grant, 101 Me. 240, 63 Atl. 816.

928. 3. Curry *v.* Lanning, 106 N. Y. App. Div. 615, 94 N. Y. Supp. 535.

5. Murray *v.* Dickens, (Ala. 1906) 42 So. 1031; Yick Wo *v.* Underhill, 5 Cal. App. 519, 90 Pac. 967.

929. 4. Conover *v.* Neher-Ross Co., 38 Wash. 177, 80 Pac. 281, *quoting* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 929.

930. 1. Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

Advancements. — Hill *v.* Hill, 122 Ky. 681, 92 S. W. 924.

2. To Show the Delivery of Goods under a Previous Express Contract books of account will not be received in evidence. Jacobs *v.* Morgenthaler, 149 Mich. 1, 112 N. W. 492.

931. 1. Yick Wo *v.* Underhill, 5 Cal. App. 519, 90 Pac. 967.

Cash Paid to Third Person. — Mings *v.* Griggsby Constr. Co., (Tex. Civ. App. 1907) 106 S. W. 192, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 931 (to the same effect as Prince *v.* Smith, 4 Mass. 455, in the original note).

2. Lewis *v.* England, 14 Wyo. 128, 82 Pac 869.

932. 2. Jacobs *v.* Morgenthaler, 149 Mich. 1, 112 N. W. 492.

933. 1. Drumm-Flato Commission Co. *v.* Edmisson, 17 Okla. 344, 87 Pac. 311; Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795; Eureka Hill Min. Co. *v.* Bullion Beck, etc., Min. Co., (Utah 1907) 90 Pac. 157.

Books of Account Containing a Statement against Interest have been held admissible to prove incidental facts involved in or knit up with the statement. Knapp *v.* St. Louis Trust Co., 199 Mo. 640, 98 S. W. 70.

4. Conover *v.* Neher-Ross Co., 38 Wash. 177, 80 Pac. 281.

935. 6. Welsh *v.* Shumway, 232 Ill. 71, 83 N. E. 540, *citing* 9 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933, 935; Pettey *v.* Benoit, 193 Mass. 233, 79 N. E. 245.

936. 2. Jewell *v.* Jewell, 139 Mich. 578, 102 N. W. 1059.

4. Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

938. 3. Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

4. Hagerthy *v.* Webber, 100 Me. 305, 61 Atl. 785.

939. 3. Remington Mach. Co. *v.* Wilmington Candy Co., (Del. 1907) 66 Atl. 465.

DOING BUSINESS.

1. 3. Bringing an action [illegible] *doing business* within the state. Western Nat. Bank *v.* Kelly, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 366, 95 N. Y. Supp. 574.

DOMESTIC.

4. 3. **A Buggy or Wagon** is not ***domestic*** machinery under a statute prohibiting the sale by peddlers without a license of all articles except articles of ***domestic*** machinery, etc. Territory *v.* Russell, 13 N. Mex. 558, 86 Pac. 551.

Cutting Timber for Domestic Purposes. — Cutting timber on the public lands to be sold for use in households, mines, and smelters, is allowable under the federal statute providing for cutting timber for ***domestic*** purposes. U. S. *v.* Edgar, 140 Fed. 655.

Domestic Purposes — Water.— Water used by a physician for washing a motor car is water supplied for ***domestic*** purposes. Harrogate Corp. *v.* Mackay, (1907) 2 K. B. 611, 76 L. J. K. B. 977, 71 J. P. 458, 5 Local Gov. Rep. 876, 23 Times L. Rep. 632.

DOMICIL.

8. 1. **Definitions.** — Schmoll *v.* Schenck, (Ind. App. 1907) 82 N. E. 805; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

Statutory Definition. — Civ. Code (Ga.), § 1824. Forlaw *v.* Augusta Naval Stores Co., 124 Ga. 261, 52 S. E. 898.

"'Domicil' is the actual or constructive presence of a person in a given place, coupled with the intention to remain there permanently." People *v.* Hendrickson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 337, 104 N. Y. Supp. 122.

"'Domicil,' strictly speaking, is the relation the law creates between an individual and a particular place or country, and each case is dependent upon its own particular facts. It is not in a legal sense synonymous with 'residence.'" Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

Domicil Means Home. — Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

2. Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

Distinction between "Inhabitant" and "Resident." — Schmoll *v.* Schenck, (Ind. App. 1907) 82 N. E. 805.

9. 1. *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

2. *In re* Franklin, 151 Fed. 642, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 9; Terrill *v.* Terrill, 2 Alaska 475; Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291; Duke *v.* Duke, 70 N. J. Eq. 135, 62 Atl. 466, *affirmed* (N. J. 1907) 65 Atl. 1117; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950.

3. *In re* Titterington, 130 Iowa 356, 106 N. W. 761; Millsaps *v.* Jackson, (Miss. 1906) 42 So. 234; Duke *v.* Duke, 70 N. J. Eq. 135, 62 Atl. 466, *affirmed* (N. J. 1907) 65 Atl. 1117; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

4. Citizenship Meaning Domicil. — See Gaddie *v.* Mann, 147 Fed. 955.

"Inhabitant" as used in section 8421, Burns's Ann Stat. (Ind.) 1901, as to taxation, connotes locality of domicil or fixed permanent home, and excludes the idea of a temporary residence. Schmoll *v.* Schenck, (Ind. App. 1907) 82 N. E. 805.

"A Permanent Abode." — See Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549.

Exception as to School Laws.— People *v.* Hendrickson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 337, 104 N. Y. Supp. 122.

10. 1. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549; *In re* Titterington, 130 Iowa 356, 106 N. W. 761; Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291; Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763; Brown *v.* Beckwith, 58 W. Va. 140, 51 S. E. 977.

2. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549; *In re* Titterington, 130 Iowa 356, 106 N. W. 761.

12. 1. Advocate *v.* Brown, (1907) Sc. Ct. of Sess. 333; Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

2. Final Abandonment Necessary. — Hibbert *v.* Hibbert, (N. J. 1907) 65 Atl. 1028.

3. See Donaldson *v.* State, 167 Ind. 553, 78 N. E. 182.

Presumption Based upon Abandonment. — "Before the law will artificially establish the place of birth as a domicil, based upon the abandonment of the last domicil without intentional adoption of a new one, the evidence should clearly establish the facts on which that unusual presumption is based." *Per* V. C. Leaming in Hibbert *v.* Hibbert, (N. J. 1907) 65 Atl. 1028.

14. 2. Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48; Duke *v.* Duke, 70 N. J. Eq. 135, 62 Atl. 466, *affirmed* (N. J. 1907) 65 Atl. 1117; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950.

"Every person *sui juris* and capable of controlling his personal movements may change his domicil at pleasure, but a change of domicil involves intention as the dominant factor." Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

4. Gaddie *v.* Mann, 147 Fed. 955; Schmoll *v.* Schenck, (Ind. App. 1907) 82 N. E. 805; *In re* Colton, 129 Iowa 542, 105 N. W. 1008; Cover *v.* Hatten, (Iowa 1907) 113 N. W. 470; Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 14; *In re* Bunting, 30 Utah 251, 84 Pac. 109, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 14. See also Donaldson *v.* State, 167 Ind. 553, 78 N. E. 182.

Exception. — See Percival *v.* Percival, 106 N. Y. App. Div. 111, 94 N. Y. Supp. 909.

15. 1. Gaddie *v.* Mann, 147 Fed. 955; Cover *v.* Hatten, (Iowa 1907) 113 N. W. 470; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 14.

2. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549; Whately *v.* Hatfield, (Mass. 1907) 82 N.

E. 48; Watkinson *v.* Watkinson, 68 N. J. Eq. 632, 60 Atl. 931, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 15; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

Old Domicil Continues in Itinere. — Brown *v.* Beckwith, 58 W. Va. 140, 51 S. E. 977.

16. 1. *United States.* — Gaddie *v.* Mann, 147 Fed. 955.

Florida. — Beekman *v.* Beekman, 53 Fla. 858, 43 So. 923.

Georgia. — Redfearn *v.* Hines, 123 Ga. 391, 51 S. E. 407.

Illinois. — Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549.

Iowa. — *In re* Titterington, 130 Iowa 356, 106 N. W. 761; Cover *v.* Hatten, (Iowa 1907) 113 N. W. 470.

Kentucky. — Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291.

New York. — *In re* Newcomb, (N. Y. 1908) 84 N. E. 950.

Oregon. — Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

Pennsylvania. — *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

Washington. — McCord *v.* Rosene, 39 Wash. 1, 80 Pac. 793.

West Virginia. — Brown *v.* Beckwith, 58 W. Va. 140, 51 S. E. 977.

17. 1. *In re* Newcomb, (N. Y. 1908) 84 N. E. 950.

"Residence alone, however long continued, will not effect a change of domicil." Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

18. 1. Beekman *v.* Beekman, 53 Fla. 858, 43 So. 923; Schmoll *v.* Schenck, (Ind. App. 1907) 82 N. E. 805; Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291. See Watkinson *v.* Watkinson, 68 N. J. Eq. 632, 60 Atl. 931; *In re* White, 116 N. Y. App. Div. 183, 101 N. Y. Supp. 551; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763. See also Milligan *v.* Fortson, 126 Ga. 15, 54 S. E. 915; *In re* Mulford, 217 Ill. 242, 75 N. E. 345.

2. See McCord *v.* Rosene, 39 Wash. 1, 80 Pac. 793.

3. Shirk *v.* Monmouth Tp. Board, (Iowa 1908) 114 N. W. 884; Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Barfield *v.* Coker, 73 S. Car. 181, 53 S. E. 170.

Domicil Is Determined by Act and Intention. — Redfearn *v.* Hines, 123 Ga. 391, 51 S. E. 407.

19. 2. *In re* Mulford, 217 Ill. 242, 75 N. E. 345.

3. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549; Schmoll *v.* Schenck, (Ind. App. 1907) 82 N. E. 805; *In re* Titterington, 130 Iowa 356, 106 N. W. 761.

20. 2. Ransom *v.* Ransom, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 410, 104 N. Y. Supp. 198.

4. Huntly *v.* Gaskell, (1906) A. C. 56; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

Essentials to Change. — "To constitute a change of domicil three things are essential: (1) Residence in another place; (2) an intention to abandon the old domicil, and (3) an intention of acquiring a new one; or as some writers express it, there must be an *animus non revertendi* and an *animus manendi*, or *animus et factum.*" *Per* Bean, C. J., in Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

5. Schmoll *v.* Schenck, (Ind. App. 1907) 82 N. E. 805; Duke *v.* Duke, 70 N. J. Eq. 135, 62 Atl. 466, *affirmed* (N. J. 1907) 65 Atl. 1117; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

Dwelling House Partly in Two Towns. — The legal status of a dwelling house is determined by the location of that part of the structure most closely connected with the primary purposes of a dwelling. East Montpelier *v.* Barre, 79 Vt. 542, 66 Atl. 100.

Questions of Fact. — Forlaw *v.* Augusta Naval Stores Co., 124 Ga. 261, 52 S. E. 898; Rockland *v.* Union, 100 Me. 67, 60 Atl. 705; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

Mixed Question of Law and Fact. — Quinn *v.* Nevills, (Cal. App. 1907) 93 Pac. 1055; Forlaw *v.* Augusta Naval Stores Co., 124 Ga. 261, 52 S. E. 898; Stallings *v.* Stallings, 127 Ga. 464, 56 S. E. 469.

23. 1. Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

2. Gaddie *v.* Mann, 147 Fed. 955.

Actual Residence and Intention Control, irrespective of the residence of a man's family. McCord *v.* Rosene, 39 Wash. 1, 80 Pac. 793.

24. 1. McCord *v.* Rosene, 39 Wash. 1, 80 Pac. 793.

Temporary Establishment. — Milligan *v.* Fortson, 126 Ga. 15, 54 S. E. 915.

3. See Donaldson *v.* State, 167 Ind. 553, 78 N. E. 182.

4. Duke *v.* Duke, 70 N. J. Eq. 135, 62 Atl. 466, *affirmed* (N. J. 1907) 65 Atl. 1117; *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

25. 1. Gaddie *v.* Mann, 147 Fed. 955, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 24; Quinn *v.* Nevills, (Cal. App. 1907) 93 Pac. 1055.

Conclusive as to Citizenship. — *Compare* Quinn *v.* Nevills, (Cal. App. 1907) 93 Pac. 1055, wherein the case of Shelton *v.* Tiffin, 6 How. (U. S.) 163, cited in the original note, is considered and questioned. The court said that the remark in this case, that the exercise of the right of suffrage is conclusive, was clearly *obiter.*

2. *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 551.

26. 1. Thorn *v.* Thorn, 28 App. Cas. (D. C.) 120; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

2. *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

Not Controlling When Contradicted by Other Facts and Circumstances. — *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

27. 2. *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763; Jericho *v.* Huntington, 79 Vt. 329, 65 Atl. 87. See also Kelson *v.* Detroit, etc., R. Co., 146 Mich. 563, 109 N. W. 1057.

3. Duke *v.* Duke, 70 N. J. Eq. 135, 62 Atl. 466, *affirmed* (N. J. 1907) 65 Atl. 1117; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

4. *In re* Newcomb, (N. Y. 1908) 84 N. E. 950; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

28. 1. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549; Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763; *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

2. Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763.

29. 3. Canadian Pac. R. Co. *v.* Wenham, 146 Fed. 207; Smith *v.* Spafford, (N. Dak. 1907) 112 N. W. 965.

5. Beckman *v.* Beekman, 53 Fla. 858, 43 So. 923; Lanning *v.* Gregory, (Tex. 1907) 99 S. W. 542; People *v.* Hendrickson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 337, 104 N. Y. Supp. 122; Lanning *v.* Gregory, (Tex. Civ. App. 1907) 101 S. W. 484; *In re* Bunting, 30 Utah 251, 84 Pac. 109, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 29.

Presumptions. — The domicil of the parents is presumably the residence of their minor children, but that presumption may be overcome by facts and circumstances showing a different condition. Wirsig *v.* Scott, (Neb. 1907) 112 N. W. 655.

30. 1. See Dixon *v.* Dixon, (N. J. 1907) 66 Atl. 597; Lanning *v.* Gregory, (Tex. 1907) 99 S. W. 542; Lanning *v.* Gregory, (Tex. Civ. App. 1907) 101 S. W. 484.

Judicial Separation. — The general rule is that the domicil of the child follows that of the father; but this rule does not hold when the parents are judicially separated and the custody of the child is awarded to the mother. Toledo Traction Co. *v.* Cameron, (C. C. A.) 137 Fed. 48.

2. Nunn *v.* Robertson, (Ark. 1906) 97 S. W. 293; Garth *v.* City Sav. Bank, 120 Ky. 280, 86 S. W. 520, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30; *In re* Bunting, 30 Utah 251, 84 Pac. 109, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30.

3. Garth *v.* City Sav. Bank, 120 Ky. 280, 86 S. W. 520, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30.

31. 2. Garth *v.* City Sav. Bank, 120 Ky. 280, 86 S. W. 520; People *v.* Hendrickson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 337, 104 N. Y. Supp. 122.

3. Beekman *v.* Beekman, 53 Fla. 858, 43 So. 923; People *v.* Hendrickson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 337, 104 N. Y. Supp. 122.

32. 1. Thompson *v.* Stalmann, 139 Fed. 93, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 32; Gordon *v.* Yost, 140 Fed. 79; Smith *v.* Smith, 35 Ind. App. 610, 74 N. E. 1008; State *v.* Wurdeman, (Mo. App. 1908) 108 S. W. 144; *In re* Newcomb, (N. Y. 1908) 84 N. E. 950. See Ensign *v.* Ensign, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 289, 291, 105 N. Y. Supp. 917. See also *In re* Hartman, 70 N. J. Eq. 664, 62 Atl. 560; Duke *v.* Duke, 70 N. J. Eq. 135, 62 Atl. 466, *affirmed* (N. J. 1907) 65 Atl. 1117.

Duty to Follow Husband. — Codoni *v.* Donati, (Cal. App. 1907) 91 Pac. 423; Birmingham *v.* O'Neil, 116 La. 1085, 41 So. 323; Price *v.* Price, 75 Neb. 552, 106 N. W. 657.

When Husband Becomes Insane, Wife May Change Residence. — McKnight *v.* Dudley, (C. C. A.) 148 Fed. 204.

Abandonment by Husband. — Where the husband abandons the wife and goes into another state, her domicil does not change with his, but remains in the domicil of matrimony. State *v.* Morse, 31 Utah 213, 87 Pac. 705.

Domicil Is Where Wife Has Right to Stay. — The domicil of the husband is that of the wife only when the husband has a domicil where the wife has a right to stay. Wilcox *v.* Nixon, 115 La. 47, 38 So. 890.

Wife Leaving Husband for Just Cause May Acquire a Separate Domicil. — Ransom *v.* Ransom, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 410, 104 N. Y. Supp. 198.

33. 3. Desertion by Husband will give right to wife to make a separate domicil. Gordon *v.* Yost, 140 Fed. 79.

The matrimonial domicil continues until the wife acquires a new domicil elsewhere. Hibbert *v.* Hibbert, (N. J. 1907) 65 Atl. 1028.

34. 1. Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763. See also State *v.* Wurdeman, (Mo. App. 1908) 108 S. W. 144.

2. Percival *v.* Percival, 106 N. Y. App. Div. 111, 94 N. Y. Supp. 909.

35. 1. Cecil *v.* Robertson, (Ky. 1907) 105 S. W. 926; Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48; State *v.* Wurdeman, (Mo. App. 1908) 108 S. W. 144.

4. Pickering *v.* Winch, 48 Oregon 500, 87 Pac. 763. See also Milligan *v.* Fortson, 126 Ga. 15, 54 S. E. 915.

8. Prisoners. — Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48.

Settlement of a Pauper Prisoner. — Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48.

DOMINION OF CANADA (CANADIAN CONSTITUTIONAL LAW).

48. 1. As to Construction of Apportionment Sections of B. N. A. Act, 1867, see Atty.-Gen. *v.* Atty.-Gen., (1905) A. C. 37.

63. 1. Hewson *v.* Ontario Power Co., 36 Can. Sup. Ct. 596.

72. 3. Grand Trunk R. Co. *v.* Atty.-Gen., (1907) A. C. 65.

77. 2. May Establish Extradition Courts. — Gaynor *v.* Lafontaine, 14 Quebec K. B. 99, *affirmed* 36 Can. Sup. Ct. 247.

79. 3. May Pass Act Providing for Deportation of Certain Aliens. — Atty.-Gen. *v.* Cain, (1906) A. C. 542.

Sunday Laws. — It is within the jurisdiction of the Dominion Parliament to prohibit on Sunday the performance of work, the transaction of business, the engaging in sport for gain, or the keeping of open places of entertainment. *In re* Sunday Observance, 35 Can. Sup. Ct. 581.

85. 8. Young *v.* Harnish, 37 Nova Scotia 213.

86. 2. Young *v.* Harnish, 37 Nova Scotia 213.

98. 4. *Ex p.* O'Neill, 28 Quebec Super. Ct. 301.

99. 1. *Ex p.* O'Neill, 28 Quebec Super. Ct. 304.

104. 4. **For Illustration of Powers Exercised under This Section,** see McGregor *v.* Esquimalt, etc., R. Co., (1907) A. C. 462, 9 Ann. Cas. 575, *reversing* 12 British Columbia 257.

105. 1. **Dominion Parliament Has Authority to Create Ferries.** — *In re* International, etc., Ferries, 36 Can. Sup. Ct. 206.

The Canadian Pacific Railway Act, 44 Vict., cap. 1, should be liberally construed in view of the object sought to be accomplished. Atty.-Gen. *v.* Canadian Pac. R. Co., 11 British Columbia 289, *affirmed* (1906) A. C. 204.

The Dominion Parliament May Incorporate Interprovincial Telephone Companies, and authorize them to use the streets of a municipality without the permission of the municipality. Toronto *v.* Bell Telephone Co., (1905) A. C. 52.

Provincial Public Lands May Be Appropriated for the purposes of an interprovincial railway. Atty.-Gen. *v.* Canadian Pac. R. Co., 11 British Columbia 289, *affirmed* (1906) A. C. 204.

Powers of Parliament over Dominion Railways. — It is within the jurisdiction of the Dominion Parliament to prohibit railway companies from exempting themselves from liability for injuries to their employees. *In re* Railway Act Amendment, 36 Can. Sup. Ct. 136, *affirmed* (1907) A. C. 65.

112. 3. *Ex p.* O'Neill, 28 Quebec Super. Ct. 304.

115. 1. **The Animal Contagious Diseases Act, 1903,** is *ultra vires* of the Dominion Parliament. Brooks *v.* Moore, 13 British Columbia 91.

DOWER.

125. 1. Barker *v.* Smiley, 218 Ill. 71, 75 N. E. 787, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 125; Griswold *v.* McGee, 102 Minn. 114, 112 N. W. 1020, 113 N. W. 382.

129. 2. Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090.

3. Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 909.

130. 1. Smith *v.* Fuller, (Iowa 1906) 108 N. W. 765; Bartee *v.* Edmunds, (Ky. 1906) 96 S. W. 535; Bechtel *v.* Barton, 147 Mich. 318, 110 N. W. 935.

131. 2. Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038; Case *v.* Collins, 37 Ind. App. 491, 76 N. E. 781; Cate *v.* Ganter, (Ky. 1907) 104 S. W. 296; Seaman *v.* Harmon, 192 Mass. 5, 78 N. E. 301; Johnson *v.* Johnson, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 314, 93 N. Y. Supp. 197; *In re* Faile, (Surrogate Ct.) 51 Misc. (N. Y.) 166, 100 N. Y. Supp. 856; Haire *v.* Haire, 141 N. Car. 88, 53 S. E. 340; Jenkins *v.* Rhodes, 106 Va. 564, 56 S. E. 332.

3. Putney *v.* Vinton, 145 Mich. 219, 108 N. W. 655; Meyer *v.* Barnett, 60 W. Va. 467, 56 S. E. 206.

132. 4. Barker *v.* Smiley, 218 Ill. 68, 75 N. E. 787 (in this case the *cestui que trust* was the wife); Allard *v.* Allard, (Ky. 1905) 86 S. W. 679; Wilson *v.* Wilson, (Utah 1907) 89 Pac. 643.

134. 1. Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422; Russell *v.* Wales, 119 N. Y. App. Div. 536, 104 N. Y. Supp. 143; Redding *v.* Vogt, 140 N. Car. 562, 53 S. E. 337; Gilmore *v.* Sellars, 145 N. Car. 283, 59 S. E. 73.

135. 1. Johnson *v.* Johnson, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 314, 93 N. Y. Supp. 197.

137. 2. Shakleford *v.* Morrill, 142 N. Car. 221, 55 S. E. 82.

3. Harrow *v.* Grogan, 219 Ill. 288, 76 N. E. 350; Libbey *v.* Tidden, 192 Mass. 175, 78 N. E. 313, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 137.

141. 2. Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896.

9. Staser *v.* Gaar, 168 Ind. 131, 79 N. E. 404; Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090.

142. 5. Britt *v.* Gordon, 132 Iowa 431, 108 N. W. 319; Hilton *v.* Thatcher, 31 Utah 360, 88 Pac. 20.

6. Griswold *v.* McGee, 102 Minn. 114, 112 N. W. 1020, 113 N. W. 382; Stitt *v.* Smith, 102 Minn. 253, 113 N. W. 632; Arnold *v.* Buffalo, etc., R. Co., 32 Pa. Super. Ct. 452.

144. 4. Lidster *v.* Poole, 122 Ill. App. 227, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 144.

Dower being an incumbrance on the land, the value of a widow's interest in her husband's lands will not be awarded out of his estate. Hilton *v.* Stewart, 31 Utah 255, 87 Pac. 900.

5. Saldutti *v.* Flynn, (N. J. 1906) 65 Atl. 246; Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759.

145. 2. Griswold *v.* McGee, 102 Minn. 114, 112 N. W. 1020, 113 N. W. 382; Hilton *v.* Thatcher, 31 Utah 360, 88 Pac. 20.

146. 1. Munsey *v.* Hanly, 102 Me. 423, 67 Atl. 217; Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759; Ullrich *v.* Ullrich, 123 Wis. 176, 101 N. W. 376.

May Enjoin Others from Cutting Trees Before Assignment. — Delaney *v.* Manshum, 146 Mich. 525, 109 N. W. 1051.

147. 2. Francis *v.* Sandlin, (Ala. 1907) 43 So. 829; Chicago, etc., R. Co. *v.* Kelly, 221 Ill. 498, 77 N. E. 916; Williams *v.* Merriam, 72 Kan. 312, 83 Pac. 976, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146 *et seq.*; Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

148. 1. Francis *v.* Sandlin, (Ala. 1907) 43 So. 829; Williams *v.* Merriam, 72 Kan. 312, 83 Pac. 976.

6. Griffin *v.* Dunn, 79 Ark. 408, 96 S. W. 190; Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 148.

151. 8. Chrisman *v.* Linderman, 202 Mo 605, 100 S. W. 1090; Fishel *v.* Browning, 145 N. Car. 71, 58 S. E. 759.

153. 4. Cain *v.* Kentucky, etc., Bridge, etc., Co., (Ky. 1907) 99 S. W. 297; Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497; Hilton *v.* Stewart, 31 Utah 255, 87 Pac. 900.

154. 2. Staser *v.* Gaar, 38 Ind. App. 696, 78 N. E. 987; Griswold *v.* McGee, 102 Minn. 114, 112 N. W. 1020, 113 N. W. 382.

155. 1. **Preference over Purchaser at Assignee's Sale.** — Where a husband during his lifetime conveyed property to an assignee for benefit of creditors, and the wife did not join in the assignment, she is entitled to dower as

against a purchaser of the property at assignee's sale. McFadden *v.* McFadden, 32 Pa. Super. Ct. 534.

2. Harris *v.* Powers, 129 Ga. 74, 58 S. E. [illegible].

158. 1. Delaney *v.* Manshum, 146 Mich. 525, 109 N. W. 1051.

In Alaska a wife has no inchoate or other dower right in an unpatented mining claim held in the name of her husband and conveyed by him during his lifetime. Bechtol *v.* Bech[illegible] Alaska 307.

159. 3. Chase *v.* Angell, 148 Mich. 1, 108 N. W. 1105.

161. 2. Midyette *v.* Grubbs, 145 N. Car. 85, 58 S. E. 795.

162. 1. Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 162.

2. Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 162; Hutchinson *v.* Olberding, (Iowa 1907) 112 N. W. 647; Radley *v.* Radley, 70 N. J. Eq. 248, 62 Atl. 195 (2 Gen. Stat., p. 1275, § 1, construed).

161. 9. Green *v.* Estabrook, 168 Ind. 123, 79 N. E. 373. See also Butler *v.* Farry, 68 N. J. Eq. 760, 63 Atl. 240.

The dower right is subject to every lien or incumbrance at law or in equity existing before it attaches. Wilson *v.* Wilson, (Utah 1907) 89 Pac. 643.

No Dower as against Vendor's Lien. — Matney *v.* Williams, (Ky. 1905) 89 S. W. 678.

165. 1. Lowe *v.* Walker, 77 Ark. 103, 91 S. W. 22; Anderson *v.* McNeeley, 120 N. Y. App. Div. 676, 105 N. Y. Supp. 278; Shakleford *v.* Morrill, 142 N. Car. 221, 55 S. E. [illegible].

168. 3. Dower in Land Conveyed as Security — Debt Being Paid. — In an action for dower, where it appeared that husband and wife conveyed land as security for a debt; that the debt was paid before the husband's death; that no reconveyance was ever had, but that by mesne conveyances the title had vested in the defendant, who, however, had notice that the first conveyance was made as security, it was held that the widow was entitled to dower. Wild *v.* Storz Brewing Co., (Neb. 1906) 108 N. W. 145.

5. Fraudulent Foreclosure Does Not Defeat Dower. — Turner *v.* Kuehlne, 70 N. J. Eq. 61, 62 Atl. 327.

169. 3. Green *v.* Estabrook, 168 Ind. 123, 79 N. E. 373.

170. 1. Hickey *v.* Conine, 27 Ohio Cir. Ct. 369.

172. 5. No Formal Order of Court Assigning Dower Necessary. — Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477.

175. 3. Assignment Where Lands Have Been Aliened. — Where a husband has sold and conveyed portions of his land for valuable consideration without the joinder of his wife, but retains lands, which descend to his heirs, of a kind and quantity which permit that dower be assigned out of the lands descended, the purchasers have a right to require that dower be allotted out of the lands descended, and their lands relieved of the widow's claim. Harrington *v.* Harrington, 142 N. Car. 517, 55 S. E. 400.

176. 4. Bloom *v.* Sawyer, (Ky. 1905) 89 S. W. 204, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 176.

177. 1. Under the *Kentucky* statute (Ky. Stat. 1903, § 2138) a widow is allowed one-third of the rents and profits of the real estate in which she is entitled to dower, from the death of the husband until dower is assigned. Redmond *v.* Redmond, (Ky. 1906) 91 S. W. 260; Cain *v.* Kentucky, etc., Bridge, etc., Co., (Ky. 1907) 99 S. W. 297.

181. 3. A widow cannot have a sale of the land of her husband on her petition in order to secure absolutely a certain part of the proceeds. She is only entitled to an allotment of dower for life. Shenwell *v.* Carper, (Ky. 1905) 87 S. W. 771.

187. 6. La Grange Mills *v.* Kener, 121 Ga. 435, 49 S. E. 302, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187; Turner *v.* Kuehnle, 70 N. J. Eq. 61, 62 Atl. 327; Hilton *v.* Thatcher, 31 Utah 360, 88 Pac. 20.

200. 3. Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090; Voke *v.* Platt, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 273, 96 N. Y. Supp. 725.

4. Stevens *v.* Wooderson, 38 Ind. App. 617, 78 N. E. 681.

5. Daniels *v.* Taylor, (C. C. A.) 7 Ann. Cas. 352, 145 Fed. 169; Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090; *Re* S., 14 Ont. L. Rep. 536.

In Nova Scotia the statute of Westminster has been impliedly repealed by statute and it would seem that dower is not barred by adultery, though the court declined to express an opinion whether the facts in the case constituted adultery. Nolan *v.* McAdam, 39 Nova Scotia 380.

201. 1. Hicks *v.* Hicks, 142 N. Car. 231, 55 S. E. 106.

2. *In re* Taylor, 5 Indian Ter. 219, 82 S. W. 727.

202. 8. Arnold *v.* Buffalo, etc., R. Co., 32 Pa. Super. Ct. 452.

203. 3. Higgins *v.* Higgins, 219 Ill. 146, 76 N. E. 86.

Unregistered Deed. — Haire *v.* Haire, 141 N. Car. 88, 53 S. E. 340.

4. Wilson *v.* Wilson, (Utah 1907) 89 Pac. 643; Goff *v.* Goff, 60 W. Va. 9, 53 S. E. 769.

204. 3. Stevens *v.* Wooderson, 38 Ind. App. 617, 78 N. E. 681; Staser *v.* Gaar, 38 Ind. App. 696, 78 N. E. 987; Hyatt *v.* O'Connell, 130 Iowa 567, 107 N. W. 599; Delaney *v.* Manshum, 146 Mich. 525, 109 N. W. 1051; *In re* Dowe, (N. J. 1904) 64 Atl. 803.

Under a statute which provided that trust deeds might be foreclosed in accordance with their terms, it was held that the foreclosure to a trust deed executed by the husband after marriage barred dower though the wife did not join in the deed. Pierce *v.* O'Neil, 132 Iowa 530, 109 N. W. 1082.

205. 2. Kahaleaahu *v.* Pereira, 15 Hawaii 284, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 205; Britt *v.* Gordon, 131 Iowa 431, 108 N. W. 319; Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090.

208. 1. . . Gordon, 131 Iowa 431, 108 . . .

Limitation Does Not Run until Allotment. — Partee *v.* Edmunds, (Ky. 1906) 96 S. W. 535.

Does Not Run until There Is Possession Adverse to Widow. — Kahaleaahu *v.* Pereira, 15 Hawaii 284, citing 10 AM. AND ENG. ENCYC. OF LAW . . .

4. Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090.

208. 1. **Must Be Expressed to Be in Lieu of Dower.** — Cowdrey *v.* Cowdrey, (N. J. 1907) . . .

209. 1. Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090.

For an antenuptial agreement held insufficient to bar dower, see Brown *v.* Brown, 117 N. Y. App. Div. 199, 102 N. Y. Supp. 291.

In Canada it has been held that the clause in a marriage contract executed before the Civil Code came into force, by which the husband gives to his wife the sum of $4,000 in anticipation of dower and barring future claim thereto, interpreted according to the former law, does not give the wife the property in this dower to the exclusion of her children, but only the usufruct, and the children, on their mother's death, could claim the ownership of such dower. Birks *v.* Kirkpatrick, 27 Quebec Super. Ct. 51.

211. 1. Under the *Illinois* statute, Hurd's Rev. Stat. 1903, c. 68, § 6, a wife may bar her dower by agreement after marriage. Carling *v.* Peebles, 215 Ill. 96, 74 N. E. 87.

Postnuptial Agreement Must Be Reasonable and Proper. — Radley *v.* Radley, 70 N. J. Eq. 248, 62 Atl. 195.

Agreement to Release as Consideration for Divorce Void. — Bell's Estate, 29 Utah 1, 80 Pac. . . .

Wife Cannot Bar Potential Right of Dower by Verbal Contract. — Shemwell *v.* Carper, (Ky. 1905) 87 S. W. 771.

2. Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090.

3. *In re* Taylor, 5 Indian Ter. 219, 82 S. W. 727; Bechtel *v.* Barton, 147 Mich, 318, 110 N. W. 935; La Plant *v.* Lester, 150 Mich. 336, 113 N. W. 1115; Schlesinger *v.* Klinger, 112 N. Y. App. Div. 853, 98 N. Y. Supp. 545.

4. Jack *v.* Hooker, 71 Kan. 652, 81 Pac. 203; *In re* Dowe, (N. J. 1904) 64 Atl. 803; Turner *v.* Kuehnle, 70 N. J. Eq. 61, 62 Atl. 327.

As to the Necessity for Acknowledgment, see Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090; Saldutti *v.* Flynn, (N. J. 1906) 65 Atl. 246.

Quitclaim Deed Sufficient to Bar Dower. — Dooley *v.* Greening, 201 Mo. 343, 100 S. W. 43.

A wife's quitclaim deed to the grantee of a deed from the husband, in which the wife did not join, was held sufficient to bar dower in Fowler *v.* Chadima, 134 Iowa 210, 111 N. W. . . .

Courts Will Relieve against Release Obtained by Fraud. — Bell's Estate, 29 Utah 1, 80 Pac. . . .

216. 2. See Griffin *v.* Dunn, 79 Ark. 408, 96 S. W. 190.

DRAINS AND SEWERS.

221. 1*a*. **Liability for Destroying Drain.** — In Kelsay *v.* Chicago, etc., R. Co., (Ind. App. 1907) 81 N. E. 522, it was held that a railroad company which destroyed a drain was liable to property owners whose lands were thereby rendered untillable.

2. **"Watercourse" and "Drain"** are used synonymously in the Ohio County Ditch Law, and the former does not include living streams. Greene County Com'rs *v.* Harbine, 74 Ohio St. 318, 78 N. E. 521.

4. **Several Drains Considered a Sewer** within the English statutes. Harvey *v.* Jaye, 97 L. T. N. S. 543.

222. 1. Ritter *v.* Drainage Dist. No. 1, 78 Ark. 580, 94 S. W. 711; Sudberry *v.* Graves, (Ark. 1907) 103 S. W. 728; Deslauries *v.* Soucie, 222 Ill. 522, 78 N. E. 799; People *v.* Munroe, 227 Ill. 604, 81 N. E. 704; State *v.* Monahan, 72 Kan. 492, 7 Ann. Cas. 661, 84 Pac. 130; Atty.-Gen. *v.* McClear, 146 Mich. 45, 109 N. W. 27; Porter *v.* Armstrong, 139 N. Car. 179, 51 S. E. 926; Taylor *v.* Crawford, 72 Ohio St. 560, 74 N. E. 1065; State *v.* Superior Ct., 42 Wash. 491, 85 Pac. 264.

Power to Construct Drains. — Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236.

No Right at Common Law to Construct Drain Over Lands of Others. — Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236.

County Commissioners are without authority to convert a living stream of water into a ditch, under Ohio Rev. Stat. 1906, tit. 6, c. 1. Greene County Com'rs *v.* Harbine, 74 Ohio St. 318, 78 N. E. 521.

Amending Act — Retroactive Effect. — Where proceedings for the construction of a drainage ditch were unconstitutional and an amendatory act was passed to cure such defects, it was held that the act had a retroactive effect and validated the proceedings begun under the unconstitutional act. Ross *v.* Wright County, 128 Iowa 427, 104 N. W. 506.

223. 1. **Drainage Act Held Unconstitutional** as unjustly discriminating between resident and nonresident owners of real estate. District of Columbia *v.* Brooke, 29 App. Cas. (D. C.) 563.

2. Taylor *v.* Crawford, 72 Ohio St. 560, 74 N. E. 1065.

3. Laguna Drainage Dist. *v.* Charles Martin Co., 5 Cal. App. 166, 89 Pac. 993; Waite *v.* Green River Special Drainage Dist., 226 Ill. 207, 80 N. E. 725; Sanitary Dist. *v.* Martin, 227 Ill. 260, 81 N. E. 417; Smith *v.* Claussen Park Drainage, etc., Dist., 229 Ill. 155, 82 N. E. 278; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

4. Ritter *v.* Drainage Dist. No. 1, 78 Ark. 580, 94 S. W. 711; Coffman *v.* St. Francis Drainage Dist., (Ark. 1907) 103 S. W. 179; Gutschow *v.* Washington County, 74 Neb. 794, 105 N. W. 548.

224. 1. Taylor *v.* Crawford, 72 Ohio St. 560, 74 N. E. 1065.

The Necessity Will Be Inquired into by the courts only where the quantity of land taken is manifestly excessive. Smith *v.* Claussen Park Drainage, etc., Dist., 220 Ill. 155, 82 N. E. 278.

225. 1. Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

2. Kramer *v.* Los Angeles, 147 Cal. 668, 82 Pac. 334; Boyce *v.* Tuhey, 163 Ind. 202, 70 N. E. 531, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 225; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

4. Kramer *v.* Los Angeles, 147 Cal. 668, 82 Pac. 334; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; O'Neill *v.* Hoboken, 72 N. J. L. 70, 60 Atl. 50, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 220 [225].

226. **1.** Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; State *v.* Superior Ct., 42 Wash. 491, 85 Pac. 264.

3. Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

228. **2.** *Arkansas.* — Ritter *v.* Drainage Dist. No. 1, 78 Ark. 580, 94 S. W. 711; Coffman *v.* St. Francis Drainage Dist., (Ark. 1907) 103 S. W. 179.

Illinois. — Stack *v.* People, 217 Ill. 220, 75 N. E. 347; People *v.* Prust, 219 Ill. 116, 76 N. E. 68; Iroquois, etc., Drainage Dist. *v.* Harroun, 222 Ill. 489, 78 N. E. 780; Carr *v.* People, 224 Ill. 160, 79 N. E. 648; Waite *v.* People, 228 Ill. 173, 81 N. E. 837; Smith *v.* Claussen Park Drainage, etc., Dist., 229 Ill. 155, 82 N. E. 278; People *v.* Carr, 231 Ill. 502, 83 N. E. 269.

Iowa. — Thompson *v.* Mitchell, 133 Iowa 527, 110 N. W. 901.

Michigan. — Murphy *v.* Dobben, 137 Mich. 565, 100 N. W. 891; Dean *v.* Clinton County Treasurer, 146 Mich. 645, 109 N. W. 1131; Hinkley *v.* Bishop, (Mich. 1908) 114 N. W. 676.

New Jersey. — East Orange *v.* Hussey, 72 N. J. L. 71, 59 Atl. 1060.

North Dakota. — State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191.

Ohio. — Crawford *v.* Taylor, 27 Ohio Cir. Ct. 245.

Washington. — State *v.* Superior Ct., 42 Wash. 491, 85 Pac. 264.

Wisconsin. — Fraser *v.* Mulany, 129 Wis. 377, 109 N. W. 139.

Canada. — Wicke *v.* Ellice Tp., 11 Ont. L. Rep. 422.

As to Assessments for Repairs. — Bromwell *v.* Flowers, 217 Ill. 174, 75 N. E. 466; Nash *v.* Kenyon, (Mich. 1908) 115 N. W. 45.

Assessment May Be Levied for Abandoned Construction of Ditch. — Espy Estate Co. *v.* Pacific County, 40 Wash. 67, 82 Pac. 129.

An Assessment for a County Ditch is not made until it is ordered to be placed on the duplicate against the lots or lands or corporations or railroads assessed as provided by statute. Cattell *v.* Putman, 73 Ohio St. 147, 76 N. E. 390.

Special Benefits Should Not Be Deducted from any damages accruing to the land not actually taken for the construction of the proposed improvement. Gutschow *v.* Washington County, 74 Neb. 794, 105 N. W. 548.

Option of Paying in Instalments. — The option to those who waive objections to the proceedings of paying their assessments in instalments is not violative of the Fourteenth Amendment to the U. S. Constitution. Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

A Village Waives No Rights by failing to object to a void assessment, or by failing to appeal from an action of the commissioners. Drainage Com'rs *v.* Cerro Gordo, 217 Ill. 488, 75 N. E. 517.

Lien of Assessment Attaches upon Filing of Commissioners' Report. — Pierse *v.* Brounenbergs, (Ind. App. 1907) 82 N. E. 126.

230. **1.** Michigan Cent. R. Co. *v.* Spring Creek Drainage Dist., 215 Ill. 501, 74 N. E. 696; Ross *v.* Wright County, 128 Iowa 427, 104 N. W. 506.

3. Small *v.* Buchanan, 165 Ind. 549, 76 N. E. 167; Wood *v.* Hall, (Iowa 1907) 110 N. W. 270; Thompson *v.* Mitchell, 133 Iowa 527, 110 N. W. 901; Mackay *v.* Hancock County, (Iowa 1908) 114 N. W. 552; Elliott *v.* Carter, 140 Mich. 303, 103 N. W. 600; Perry *v.* Davis, (Okla. 1907) 90 Pac. 865; Shaw *v.* Ward, 131 Wis. 646, 111 N. W. 671.

4. Joliet *v.* Spring Creek Drainage Dist., 222 Ill. 441, 78 N. E. 836; Hudlemyer *v.* Dickinson, 143 Mich. 250, 106 N. W. 885, 108 N. W. 1116.

Assessment on Land Not Benefited. — Zinser *v.* Buena Vista County, (Iowa 1907) 114 N. W. 51.

Tax May Be Levied Before Work Done. — Ross *v.* Wright County, 128 Iowa 427, 104 N. W. 506.

The Determination of the Board Is Conclusive as to benefits except in case of fraud. Alstad *v.* Sim, 15 N. Dak. 629, 109 N. W. 66.

Owner of Land on Higher Level Not Assessable for Drain on Lower Level. — Beauce County *v.* Breakey, 15 Quebec K. B. 520.

231. **2.** Gutschow *v.* Washington County, 74 Neb. 794, 107 N. W. 127.

232. **1.** Joliet *v.* Spring Creek Drainage Dist., 222 Ill. 441, 78 N. E. 836.

5. Sudberry *v.* Graves, (Ark. 1907) 103 S. W. 728; Frank *v.* Rogers, 220 Ill. 206, 77 N. E. 221; Fountain Head Drainage Dist. *v.* Wright, 228 Ill. 208, 81 N. E. 849.

233. **1.** Young *v.* Extension Ditch Co., 13 Idaho 174, 89 Pac. 296; Michigan Cent. R. Co. *v.* Spring Creek Drainage Dist., 215 Ill. 501, 74 N. E. 697; Hull *v.* Sangamon River Drainage Dist., 219 Ill. 454, 76 N. E. 701; Sanitary Dist. *v.* Martin, 227 Ill. 260, 81 N. E. 417; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; Gish *v.* Castner-Williams, etc., Drainage Dist., (Iowa 1907) 113 N. W. 757; Fraser *v.* Mulany, 129 Wis. 377, 109 N. W. 139; *In re* McClure, 11 Ont. L. Rep. 115.

Waiver of Right to Compensation. — Drainage Dist. No. 15 *v.* Armstrong, 44 Wash. 23, 87 Pac. 52.

Proceedings for the Establishment of a Drainage District Are Insufficient if they provide for the assessment of benefits without the assessment of damages. Joliet *v.* Spring Creek Drainage Dist., 222 Ill. 441, 78 N. E. 836.

Loss of Profits Cannot Be Recovered by landowners from the contractor and his bondsmen for failure to complete the drain on time. Grams *v.* Murphy, (Minn. 1908) 114 N. W. 753.

2. Drainage Dist. No. 15 *v.* Armstrong, 44 Wash. 23, 87 Pac. 52.

3. As to drainage districts, see the following cases: Ritter *v.* Drainage Dist. No. 1, 78

Ark. 580, 94 S. W. 711; Coffman *v.* St. Francis Drainage Dist., (Ark. 1907) 103 S. W. 179; Glide *v.* Superior Ct., 147 Cal. 21, 81 Pac. 225; Iroquois, etc., Drainage Dist. *v.* Harroun, 222 Ill. 489, 78 N. E. 780; Joliet *v.* Spring Creek Drainage Dist., 222 Ill. 441, 78 N. E. 836; Carr *v.* People, 224 Ill. 160, 79 N. E. 648; People *v.* Munroe, 227 Ill. 604, 81 N. E. 704; People *v.* Schafer, 228 Ill. 17, 81 N. E. 785; Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615; Patton *v.* People, 229 Ill. 512, 82 N. E. 386; Broadwell Special Drainage Dist. No. 1 *v.* Lawrence, 231 Ill. 86, 83 N. E. 104; Wood *v.* Hall, (Iowa 1907) 110 N. W. 270; Temple *v.* Hamilton County, 134 Iowa 706, 112 N. W. 174; Patterson *v.* Mead, 148 Mich. 659, 112 N. W. 742; Gugisberg *v.* Eckert, 101 Minn. 116, 111 N. W. 945; Barnes *v.* Minor, (Neb. 1907) 114 N. W. 146; Campbell *v.* Youngson, (Neb. 1907) 114 N. W. 415; *In re* Dancy Drainage Dist., 129 Wis. 129, 108 N. W. 202; *In re* Central Drainage Dist., (Wis. 1907) 113 N. W. 675.

Refusal to Organize a District is not an abuse of discretion where the burdens would exceed the benefits. Zinser *v.* Buena Vista County, (Iowa 1907) 114 N. W. 51.

A Proceeding to Incorporate a Drainage District Is a Civil Suit under the *Missouri* statutes. State *v.* Riley, 203 Mo. 175, 101 S. W. 567.

231. 1. State *v.* Chariton Drainage Dist. No. 1, 192 Mo. 517, 90 S. W. 722.

5. Hull *v.* Sangamon River Drainage Dist., 219 Ill. 454, 76 N. E. 701; Murphy *v.* Dobben, 137 Mich. 565, 100 N. W. 891; Clarence Tp. *v.* Dickenson, (Mich. 1908) 115 N. W. 57; Alstad *v.* Sim, 15 N. Dak. 629, 109 N. W. 66.

Extension Beyond Terminus Named in Petition Unauthorized. — Lager *v.* Sibley County, 100 Minn. 85, 110 N. W. 355.

Cannot Attach Streets and Alleys of Village. — Commissioners of a drainage district have no power to attach streets and alleys of a village to its district, and levy an assessment against the village on the theory that such ways are a part of the district. Drainage Com'rs *v.* Cerro Gordo, 217 Ill. 488, 75 N. E. 517.

Lands Benefited by the Work of a drainage district are subject to be attached thereto without regard to natural conditions. Spoon River Drainage Dist. *v.* Conner, 121 Ill. App. 450.

235. 1. Merritt Tp. *v.* Harp, 141 Mich. 233, 104 N. W. 587, 108 N. W. 746.

3. Shaw *v.* Ward, 131 Wis. 646, 111 N. W. 671.

4. Broadwell Special Drainage Dist. No. 1 *v.* Lawrence, 231 Ill. 86, 83 N. E. 104; Sheker *v.* Machovec, (Iowa 1907) 110 N. W. 1055; Plagge *v.* Mensing, 126 Iowa 737, 103 N. W. 152; Briscoe *v.* Parker, 145 N. Car. 14, 58 S. E. 443.

236. 1. Pickerill *v.* Louisville, (Ky. 1907) 100 S. W. 873; Page *v.* Huckins, 150 Mich. 103, 113 N. W. 577; Krupke *v.* Stockard, (Minn. 1908) 115 N. W. 175; Briscoe *v.* Parker, 145 N. Car. 14, 58 S. E. 443; Davis *v.* Fry, 14 Okla. 352, 78 Pac. 180 *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 236.

237. 1. Exley *v.* Southern Cotton Oil Co., 151 Fed. 101.

2. Sheker *v.* Machovec, (Iowa 1907) 110 N. W. 1055.

3. Kramer *v.* Los Angeles, 147 Cal. 674, 82 Pac. 334, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 237; McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Blackwell *v.* Cœur D'Alene, 13 Idaho 357, 90 Pac. 353; Silva *v.* Newport, (Ky. 1907) 104 S. W. 314; Googin *v.* Lewiston, (Me. 1907) 68 Atl. 694; Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86; Perry *v.* Davis, (Okla. 1907) 90 Pac. 865; Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115.

Construction an Exercise of Police Power. — Com. *v.* Emmers, 33 Pa. Super. Ct. 151.

See Generally as to the Establishment and Construction of Sewers and Drains, Gage *v.* Wilmette, 230 Ill. 428, 82 N. E. 656; Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615; Reed *v.* Cedar Rapids, (Iowa 1907) 111 N. W. 1013; Sanders *v.* St. Louis, etc., R. Co., 116 Mo. App. 614, 92 S. W. 736; *In re* McKenna, 13 Ont. L. Rep. 471; Burke *v.* Tilbury North Tp., 13 Ont. L. Rep. 225.

For Cases Construing the English Statutes Regulating the Establishment and Construction of Drains and Sewers, see Thames River *v.* Walton-upon-Thames, 96 L. T. N. S. 555; Horton *v.* Colwyn Bay, (1907) 1 K. B. 14; Wood Green Urban Dist. Council *v.* Joseph, (1907) 1 K. B. 182; Wood *v.* Ealing, (1907) 2 K. B. 390; Wilmslow Urban Council *v.* Sidebottom, 70 J. P. 537, 5 Local Gov. Rep. 80; Atty.-Gen. *v.* Ashby, 97 L. T. N. S. 479; Airey *v.* Smith, (1907) 2 K. B. 273; Jary *v.* Barnsley, (1907) 2 Ch. 600; Williamson *v.* Durham Rural Dist. Council, (1906) 2 K. B. 65; Thompson *v.* Eccles, (1905) 1 K. B. 110; Jackson *v.* Wimbledon Urban Dist. Council, (1905) 2 K. B. 27.

One Municipality Enjoined from Constructing Sewers under Streets of Another Municipality Without Consent. — Ahuntsic *v.* Montreal, 26 Quebec Super. Ct. 291.

239. 1. Boyce *v.* Tuhey, 163 Ind. 202, 70 N. E. 531.

3. Keeley *v.* Portland, 100 Me. 260, 61 Atl. 180.

5. Louisville *v.* Knighton, (Ky. 1907) 100 S. W. 228; Campbell *v.* Vanceburg, (Ky. 1907) 101 S. W. 343; McCook *v.* McAdams, (Neb. 1908) 114 N. W. 596; Ebbets *v.* New York, 111 N. Y. App. Div. 364, 97 N. Y. Supp. 833; Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928; Hart *v.* Neillsville, 125 Wis. 546, 104 N. W. 699.

240. 2. Kramer *v.* Los Angeles, 147 Cal. 674, 82 Pac. 334; Boyce *v.* Tuhey, 163 Ind. 202, 70 N. E. 531; Mayrant *v.* Columbia, 77 S. Car. 281, 57 S. E. 857; Van Metre *v.* Columbia, 77 S. Car. 288, 57 S. E. 859.

3. Robinson *v.* Everett, 191 Mass. 587, 77 N. E. 1151.

241. 2. Campbell *v.* Vanceburg, (Ky. 1907) 101 S. W. 343.

242. 1. Keeley *v.* Portland, 100 Me. 260, 61 Atl. 180; Davis *v.* Bangor, 101 Me. 311, 64 Atl. 617; Ebbets *v.* New York, 111 N. Y. App. Div. 364, 97 N. Y. Supp. 833; Herr *v.* Altoona, 31 Pa. Super. Ct. 375; Siegfried *v.* Bethlehem, 27 Pa. Super. Ct. 456; Hart *v.*

Neillsville, 125 Wis. 546, 104 N. W. 699; Lirette *v.* Moncton, 36 N. Bruns. 475.

Sewer Wholly Insufficient. — Louisville *v.* Knighton, (Ky. 1907) 100 S. W. 228.

2. Contrary Doctrine — South Carolina. — Van Metre *v.* Columbia, 77 S. Car. 288, 57 S. E. 859; Mayrant *v.* Columbia, 77 S. Car. 281, 57 S. E. 857.

A Plan Must Be Adopted to warrant the belief that legal discretion was exercised in the matter. Hart *v.* Neillsville, 125 Wis. 546, 104 N. W. 699.

243. 2. Ebbets *v.* New York, 111 N. Y. App. Div. 364, 97 N. Y. Supp. 833.

4. Fewell *v.* Meridian, (Miss. 1907) 43 So. 438; Hart *v.* Neillsville, 125 Wis. 554, 104 N. W. 699, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 243.

5. Valparaiso *v.* Spaeth, 166 Ind. 14, 76 N. E. 514; Campbell *v.* Vanceburg, (Ky. 1907) 101 S. W. 343; McCook *v.* McAdams, (Neb. 1906) 106 N. W. 988.

6. Alabama Consol. Coal, etc., Co. *v.* Turner, 145 Ala. 652, 39 So. 603, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 245 [243]; Valparaiso *v.* Spaeth, 166 Ind. 14, 76 N. E. 514; Campbell *v.* Vanceburg, (Ky. 1907) 101 S. W. 343; McCook *v.* McAdams, (Neb. 1907) 110 N. W. 1005; O'Donnell *v.* Syracuse, 184 N. Y. 1, 76 N. E. 738; Holzhausen *v.* New York, 116 N. Y. App. Div. 812, 102 N. Y. Supp. 145; Judas *v.* New York, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 259, 105 N. Y. Supp. 96; Siegfried *v.* South Bethlehem, 27 Pa. Super. Ct. 456.

244. 1. Kramer *v.* Los Angeles, 147 Cal. 674, 82 Pac. 334; Fewell *v.* Meridian, (Miss. 1907) 43 So. 438; Herron *v.* Duquesne, 34 Pa. Super. Ct. 231.

245. 1. Keeley *v.* Portland, 100 Me. 260, 61 Atl. 180; Googin *v.* Lewiston, (Me. 1907) 68 Atl. 694; Gravey *v.* New York, 117 N. Y. App. Div. 773, 102 N. Y. Supp. 1010; Quinlan *v.* City of New York, 118 N. Y. App. Div. 897, 102 N. Y. Supp. 1012; Herr *v.* Altoona, 31 Pa. Super. Ct. 375; Curless *v.* Grand Falls, 37 N. Bruns. 227.

Sewer Made from Running Stream. — The municipality is bound to keep the channel open and unobstructed. Dalton *v.* Towanda, 215 Pa. St. 402, 64 Atl. 547; **Glasgow** *v.* Altoona, 27 Pa. Super. Ct. 55.

Township Not Liable for Expense of Cleaning and Repairing Public Ditch. — Pomeroy *v.* Wimer, 167 Ind. 440, 78 N. E. 233, 79 N. E. 415.

246. 1. Kramer *v.* Los Angeles, 147 Cal. 681, 82 Pac. 334; Rife *v.* Middletown, 32 Pa. Super. Ct. 68.

2. Kramer *v.* Los Angeles, 147 Cal. 674, 82 Pac. 334; Gravey *v.* New York, 117 N. Y. App. Div. 773, 102 N. Y. Supp. 1010; Quinlan *v.* New York, 118 N. Y. App. Div. 897, 102 N. Y. Supp. 1012.

247. 2. Covington *v.* Berry, 120 Ky. 582, 87 S. W. 317; Madisonville *v.* Hardman, (Ky. 1906) 92 S. W. 930; Campbell *v.* Vanceburg, (Ky. 1907) 101 S. W. 343.

248. 1. Hart *v.* Scott, 168 Ind. 530, 81 N. E. 481; Connolly *v.* New York, 115 N. Y. App. Div. 81, 100 N. Y. Supp. 673; Penfield *v.* New York, 115 N. Y. App. Div. 502, 101 N. Y. Supp. 442.

2. Stevens *v.* Worcester, (Mass. 1907) 81 N. E. 907; Mansfield *v.* Brister, (Ohio 1907) 81 N. E. 631.

249. 2. Adjoining property owners cannot compel the township authorities to restrain surface water from flowing in its natural course. Tower *v.* Somerset Tp., 143 Mich. 195, 106 N. W. 874.

3. **Corporation Not Liable Providing It Causes No Unreasonable Damage.** — Daley *v.* Watertown, 192 Mass. 116, 78 N. E. 143.

250. 1. Valparaiso *v.* Spaeth, 166 Ind. 14, 76 N. E. 514; Monarch Mfg. Co. *v.* Omaha, etc., R. Co., 127 Iowa 511, 103 N. W. 493; Central Covington *v.* Beiser, 122 Ky. 715, 92 S. W. 973; Daley *v.* Watertown, 192 Mass. 116, 78 N. E. 143; Kehoe *v.* Rutherford, (N. J. 1907) 65 Atl. 1046; Mayrant *v.* Columbia, 77 S. Car. 281, 57 S. E. 857; Van Metre *v.* Columbia, 77 S. Car. 288, 57 S. E. 859; Houston *v.* Richardson, (Tex. Civ. App. 1906) 94 S. W. 454; Desbiens *v.* Jonquieres, 30 Quebec Super. Ct. 376.

251. 1. Daley *v.* Watertown, 192 Mass. 116, 78 N. E. 143.

252. 1. Madisonville *v.* Hardman, (Ky. 1906) 92 S. W. 930.

253. 1. Louisville *v.* Hess, (Ky. 1907) 99 S. W. 265.

3. Kramer *v.* Los Angeles, 147 Cal. 674, 82 Pac. 334; Monarch Mfg. Co. *v.* Omaha, etc., R. Co., 127 Iowa 511, 103 N. W. 493; Madisonville *v.* Hardman, (Ky. 1906) 92 S. W. 930; Central Covington *v.* Beiser, 122 Ky. 715, 92 S. W. 973; Pickerill *v.* Louisville, (Ky. 1907) 100 S. W. 873; Covington *v.* Berry, 120 Ky. 582, 87 S. W. 317; McCook *v.* McAdams, (Neb. 1906) 106 N. W. 988; Connolly *v.* New York, 115 N. Y. App. Div. 81, 100 N. Y. Supp. 673; Glasgow *v.* Altoona, 27 Pa. Super. Ct. 55; Herr *v.* Altoona, 31 Pa. Super. Ct. 375; Cairns *v.* Chester, 34 Pa. Super. Ct. 51; Virginia Hot Springs Co. *v.* McCray, 106 Va. 467, 56 S. E. 216, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 253.

6. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Blackwell *v.* Cœur D'Alene, 13 Idaho 357, 90 Pac. 353; Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615; Reed *v.* Cedar Rapids, (Iowa 1907) 111 N. W. 1013; Simmons *v.* Millville, (N. J. 1907) 66 Atl. 895; People *v.* Kingston, 189 N. Y. 66, 81 N. E. 557; Perry *v.* Davis, (Okla. 1907) 90 Pac. 865; Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115.

256. 1. Blackwell *v.* Cœur D'Alene, 13 Idaho 357, 90 Pac. 353; Simmons *v.* Millville, (N. J. 1907) 66 Atl. 895.

257. 1. Simmons *v.* Millville, (N. J. 1907) 66 Atl. 895.

Property Assessed for a Main Sewer May Be Further Assessed for a system of sewers to connect such property with the main sewer. Snydacker *v.* West Hammond, 225 Ill. 154, 80 N. E. 93.

4. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Blackwell *v.* Cœur D'Alene, 13 Idaho 357, 90 Pac. 353; Perry *v.* Davis, (Okla. 1907) 90 Pac. 865.

258. 2. Reed *v.* Cedar Rapids, (Iowa 1907) 111 N. W. 1013; Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115.

3. Blackwell *v.* Cœur D'Alene, 13 Idaho. 357, 90 Pac. 353.

259. 2. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348.

4. Cairns *v.* Chester, 34 Pa. Super. Ct. 51.

260. 2. Vicksburg *v.* Richardson, (Miss. 1906) 42 So. 234; Kinsey *v.* Kinston, 145 N. Car. 106, 58 S. E. 912.

DRESS.

263. 3. **Dressed Furs on the Skin — Revenue Laws.** — See Fleet *v.* U. S., 148 Fed. 335.

DRUGGIST.

267. 1. **Statutes Regulating the Business of Pharmacy** are as a rule constitutional, being within the police power of the state. State *v.* Kumpfert, 115 La. 950, 40 So. 365; State *v.* Hovorka, 100 Minn. 249, 110 N. W. 870, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 266 [267]; Minnesota State Pharmaceutical Assoc. *v.* State Board of Pharmacy, (Minn. 1907) 114 N. W. 245; State *v.* Evans, 130 Wis. 381, 110 N. W. 241.

But a statute which exempts from its provisions dealers in general merchandise who sell drugs is invalid because it unjustly discriminates in favor of a class. State *v.* Abraham, 78 Vt. 53, 61 Atl. 766.

New York — Public Health Law. — A statute prohibiting unlicensed employees or assistants from preparing or dispensing receipts or prescriptions except under the personal supervision of a licensed pharmacist is constitutional. State Board of Pharmacy *v.* Matthews, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 492, 102 N. Y. Supp. 507.

270. 3. Faulkner *v.* Birch, 120 Ill. App. 281; Knoefel *v.* Atkins, (Ind. App. 1907) 81 N. E. 600, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 270.

271. 1. Horst *v.* Walter, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 591, 103 N. Y. Supp. 750.

2. **Where the Person Injured is Not the Immediate Vendee of the Druggist.** — The unlawful sale of a poisonous drug to a minor eighteen years of age, a quantity of which was by said minor administered to another minor, to his injury, does not create a cause of action in favor of the father of the latter. McKibbin *v.* Bax, (Neb. 1907) 113 N. W. 158.

274. 2. **Only Nominal Damages** were recovered against a druggist who negligently left unlabeled poison where the plaintiff might take it by mistake for her own parcel, which she did, where the jury found that the plaintiff was negligent in taking it. Keating *v.* Hull, 78 Conn. 719, 62 Atl. 661.

DRUGS.

275. 1. **Cream of Tartar Is a Drug** within the New York Public Health Law defining ***drugs*** as all medicines for external and internal use. State Board of Pharmacy *v.* Gasau, 122 N. Y. App. Div. 803, 107 N. Y. Supp. 409.

Powders Used in Dyeing and Tanning are not ***drugs*** within the revenue laws. Leber *v.* U. S., 135 Fed. 243.

DUE CARE.

285. 1. **Distinguished from Negligence.** — Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602.

DUE PROCESS OF LAW.

290. 1. Pittsburg's Petition, 32 Pa. Super. Ct. 210, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 290; Gunn *v.* Union R. Co., 27 R. I. 320, 62 Atl. 118, *rehearing denied* 27 R. I. 432, 63 Atl. 239; State *v.* Stimpson, 78 Vt. 124, 62 Atl. 14.

291. 4. Flannery *v.* People, 225 Ill. 62, 80 N. E. 60.

5. Kennedy *v.* State Board of Registration, etc., 145 Mich. 241, 108 N. W. 730; Pittsburg's Petition, 217 Pa. St. 227, 66 Atl. 348.

293. 2. State *v.* Stimpson, 78 Vt. 124, 62 Atl. 14.

296. 3. Old Wayne Mut. L. Assoc. *v.* McDonough, 204 U. S. 8, 27 U. S. Sup. Ct. 236; Mason *v.* Gates, 82 Ark. 294, 102 S. W. 190; Jenks *v.* Stump, (Colo. 1907) 93 Pac. 17; Gage *v.* Chicago, 225 Ill. 218, 80 N. E. 127, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 299 [296]; Petite Anse Drainage Dist. *v.* Iberia, etc., R. Co., 117 La. 940, 42 So. 433; O'Connor *v.* Carpenter, 144 Mich. 240, 107 N. W. 913; Sloane *v.* Tiffany, 103 N. Y. App. Div. 540, 93 N. Y. Supp. 149; *In re* Grout, 105 N. Y. App. Div. 98, 93 N. Y. Supp. 711; Missouri, etc., R. Co. *v.* State, (Tex. 1907) 100 S. W. 766; Selden *v.* Kennedy, 104 Va. 826, 52 S. E. 635; Sterritt *v.* Young, 14 Wyo. 146, 82 Pac. 946.

4. National Exch. Bank *v.* Wiley, 195 U. S. 259, 25 U. S. Sup. Ct. 70; Cella Commission Co. *v.* Bohlinger, (C. C. A.) 147 Fed. 419; Consolidated Gas Co. *v.* Mayer, 146 Fed. 150; Meacham *v.* Bear Valley Irrigation Co., 145 Cal. 606, 79 Pac. 281; Dodd *v.* Hart, 8 Del. Ch. 448, 68 Atl. 397; People *v.* Flynn, 110 N. Y. App. Div. 279, 96 N. Y. Supp. 655; Larson *v.* Christianson, 14 N. Dak. 476, 106 N. W. 51, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 297 [296]; Gillett *v.* Romig, 17 Okla. 324, 87 Pac. 325.

298. 4. McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Lawrence *v.* Rutland R. Co., (Vt. 1907) 67 Atl. 1091.

299. 1. People *v.* Steele, 231 Ill. 340, 83 N. E. 236; *In re* Crosswell, (R. I. 1907) 66 Atl. 55.

2. **"Property" Does Not Include a "Slot Machine."** — Mullen *v.* Moseley, 13 Idaho 457, 90 Pac. 986.

4. Nielson *v.* Sponer, (Wash. 1907) 89 Pac. 155.

5. Chicago City R. Co. *v.* Chicago, 142 Fed. 844; Richmond *v.* Caruthers, 103 Va. 774, 50 S. E. 265; State *v.* Redmon, (Wis. 1907) 114 N. W. 137.

6. **Denying a Petition for Admission to Practice Law,** which is in effect a petition to obtain a right of property which petitioner does not at the time possess, when based on sufficient rea-

sons, is not a denial of due process of law. *In re* O'Brien, 79 Conn. 46, 63 Atl. 777.

300. 1. Corry *v.* Baltimore, 196 U. S. 466, 25 U. S. Sup. Ct. 297; Cunnius *v.* Reading School Dist., 198 U. S. 458, 25 U. S. Sup. Ct. 721; Ballard *v.* Hunter, 204 U. S. 241, 27 U. S. Sup. Ct. 261; Latimer *v.* McNeal, (C. C, A.) 142 Fed. 451; *In re* Francis, 136 Fed. 912; Nelson *v.* Chicago, etc., R. Co., 225 Ill. 197, 80 N. E. 109; Gage *v.* Chicago, 225 Ill. 218, 80 N. E. 127; McChesney *v.* Chicago, 226 Ill. 238, 80 N. E. 770; Ward Lumber Co. *v.* Henderson-White Mfg. Co., 107 Va. 626, 59 S. E. 476; Lisbon Ave. Land Co. *v.* Lake, (Wis. 1907) 113 N. W. 1099.

2. Goodrich *v.* Ferris, 145 Fed. 844; Clearwater Mercantile Co. *v.* Roberts, etc., Shoe Co., 51 Fla. 176, 40 So. 436; Groel *v.* United Electric Co., 69 N. J. Eq. 397, 60 Atl. 822.

3. Tracy *v.* Muir, (Cal. 1907) 90 Pac. 832.

4. Savings Bank *v.* Weeks, 103 Md. 601, 64 Atl. 295.

305. 3. Gunn *v.* Union R. Co., 27 R. I. 320, 62 Atl. 118, *rehearing denied* 27 R. I. 432, 63 Atl. 239.

306. 2. Regular Administration of Valid Laws Constitutes Due Process of Law — *United States.* — National Cotton Oil Co. *v.* Texas, 196 U. S. 115, 25 U. S. Sup. Ct. 379; New York *v.* State Board, 199 U. S. 48, 25 U. S. Sup. Ct. 713; Michigan *v.* Lowrey, 199 U. S. 233, 26 U. S. Sup. Ct. 27; Jack *v.* Kansas, 199 U. S. 372, 26 U. S. Sup. Ct. 73; Grainger *v.* Douglas Park Jockey Club, (C. C. A.) 8 Ann. Cas. 997, 148 Fed. 513, *reversing* 146 Fed. 414; Michigan R. Tax Cases, 138 Fed. 223.

California. — *In re* Bump, (Cal. 1907) 92 Pac. 643.

Georgia. — Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52.

Illinois. — Flannery *v.* People, 225 Ill. 62, 80 N. E. 60.

Indiana. — Dyer *v.* Woods, 166 Ind. 44, 76 N. E. 624; State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085.

Minnesota. — State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935.

Ohio. — State *v.* French, 71 Ohio St. 186, 73 N. E. 216.

Pennsylvania. — Pittsburg's Petition, 217 Pa. St. 227, 66 Atl. 348.

Rhode Island. — State *v.* McCrillis, (R. I. 1907) 66 Atl. 301.

Vermont. — *In re* Consolidated Rendering Co., (Vt. 1907) 66 Atl. 790.

3. Howard *v.* Com., 200 U. S. 164, 26 U. S. Sup. Ct. 189.

307. 2. *United States* — Ah Sin *v.* Wittman, 198 U. S. 500, 25 U. S. Sup. Ct. 756; California Reduction Co. *v.* Sanitary Reduction Works, 199 U. S. 306, 26 U. S. Sup. Ct. 100; Gardner *v.* Michigan, 199 U. S. 325, 26 U. S. Sup. Ct. 106; New York *v.* Van De Carr, 199 U. S. 552, 26 U. S. Sup. Ct. 144; North American Cold Storage Co. *v.* Chicago, 151 Fed. 120.

California. — *In re* Newell, 2 Cal. App. 767, 84 Pac. 226.

Connecticut. — Young *v.* Lemieux, 79 Conn. 434, 65 Atl. 436.

Delaware. — State *v.* Wickenhoeffer, (Del. 1906) 64 Atl. 273.

Illinois. — Christy *v.* Elliott, 216 Ill. 31, 74 N. E. 1035; Chicago *v.* Openheim, 229 Ill. 313, 82 N. E. 294.

Maine. — State *v.* Rabb, 100 Me. 180, 60 Atl. 874.

Maryland. — Clark *v.* Tower, 104 Md. 175, 65 Atl. 3.

Nebraska. — Halter *v.* State, 74 Neb. 757, 105 N. W. 298.

New Jersey. — Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689.

308. 1. Seattle *v.* Kelleher, 195 U. S. 351, 25 U. S. Sup. Ct. 44; Bergen, etc., R. Co. *v.* State Board of Assessors, (N. J. 1907) 67 Atl. 668; Central R. Co. *v.* State Board of Assessors, (N. J. 1907) 67 Atl. 672; State *v.* Wheeler, 141 N. Car. 773, 53 S. E. 358; Foster *v.* Rowe, 128 Wis. 326, 107 N. W. 635.

3. Notice Is Unnecessary, of an assessment or levy of a tax upon the sale of cigarettes, to a person actually carrying on that business, where there is no discretion as to the amount of the tax. Hodge *v.* Muscatine County, 196 U. S. 276, 25 U. S. Sup. Ct. 237.

4. Central of Georgia R. Co. *v.* Wright, 28 U. S. Sup. Ct. 47.

5. Scottish Union, etc., Ins. Co. *v.* Bowland, 196 U. S. 611, 25 U. S. Sup. Ct. 345; Toolan *v.* Longyear, 144 Mich. 55, 107 N. W. 699.

DULY.

316. 1. *Ex p.* Clary, 149 Cal. 732, 87 Pac. 580; Com. *v.* Sherman, 191 Mass. 439, 78 N. E. 98; Road in Hanover Tp., 14 Pa. Dist. 778, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 315, 316.

Duly Arraigned in open court means arraigned according to law. Clements *v.* State, 51 Fla. 6, 40 So. 432.

Duly Sworn — Jurors. — O'Donnell *v.* People, 224 Ill. 222, 79 N. E. 639, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 315, 316.

Duly Sworn — Road Viewers. — See Road in Hanover Tp., 14 Pa. Dist. 778.

DUPLICATE.

318. 4. Hayes *v.* Wagner, 220 Ill. 260, 77 N. E. 211, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 318.

DURESS.

321. 1. Duress in Georgia Defined. — See Bond *v.* Kidd, 1 Ga. App. 798, 57 S. E. 944.

3. Andrews *v.* Connolly, 145 Fed. 43; O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 321; Gray *v.* Freeman, 37 Tex. Civ. App. 556, 84 S. W. 1105.

5. Common-law Classification. — See Bailey *v.* Devine, 123 Ga. 653, 51 S. E. 603, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 321, 322.

322. 1. Bailey *v.* Devine, 123 Ga. 653, 51 S. E. 603; Bond *v.* Kidd, 1 Ga. App. 798, 57 S. E. 944; White *v.* Tifton, 1 Ga. App. 569, 57 S. E. 1038.

2. Legal Imprisonment. — Actual or threatened lawful imprisonment, if not used for illegal purposes, is not duress, and a fine paid to avoid the penalty of imprisonment is not paid under duress. White *v.* Tifton, 1 Ga. App. 569, 57 S. E. 1038.

323. 1. Imprisonment for an Illegal Purpose would be "unlawful" imprisonment. Bailey *v.* Devine, 123 Ga. 653, 51 S. E. 603. See further **339.** 5, *infra.*

324. 2. See Andrews *v.* Connolly, 145 Fed. 43.

325. 1. Langley *v.* Andrews, 142 Ala. 665, 38 So. 238.

4. Bond *v.* Kidd, 1 Ga. App. 798, 57 S. E. 944; Hintz *v.* Hintz, 222 Ill. 248, 78 N. E. 565; Gray *v.* Freeman, 37 Tex. Civ. App. 556, 84 S. W. 1105.

326. 1. Langley *v.* Andrews, 142 Ala. 665, 38 So. 238, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 326.

Courts Inclined to Leave Question to Jury. — See Wakley *v.* King, 112 N. Y. App. Div. 765, 98 N. Y. Supp. 957.

327. 1. Foote *v.* De Poy, 126 Iowa 366, 102 N. W. 112; Birdsall *v.* Leavitt, (Utah 1907) 89 Pac. 397; Gray *v.* Freeman, 37 Tex. Civ. App. 556, 84 S. W. 1105. See also Hunter *v.* McCammon, 119 N. Y. App. Div. 326, 104 N. Y. Supp. 402.

In Missouri it has been held that where a note was guaranteed by a mortgagee under threats of the loss of his property, this was a kind of moral duress, and the guaranty was not voluntary. Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614.

Illinois Rule. — "Where one is compelled to make payment of money which the party demanding has no legal right to receive, in order to prevent injury to his person, business, or property, such payment is, in law, made under duress, and may be recovered." Chicago *v.* Northwestern Mut. L. Ins. Co., 218 Ill. 40, 75 N. E. 803.

Recovery of Taxes. — One who pays, under protest, legal taxes, but illegally demanded, as a condition precedent to recording a deed to the property, may recover payments so made. Oakland Cemetery Assoc. *v.* Ramsey County, 98 Minn. 404, 108 N. W. 857, *affirmed* 109 N. W. 237.

329. 1. Medearis *v.* Granberry, (Tex. Civ. App. 1905) 84 S. W. 1070.

2. Delta County Bank *v.* McGranahan, 37 Wash. 307, 79 Pac. 796.

330. 1. Bailey *v.* Devine, 123 Ga. 653, 51 S. E. 603, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 330; Medearis *v.* Granberry, (Tex. Civ. App. 1905) 84 S. W. 1070, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 330; Gray *v.* Freeman, 37 Tex. Civ. App. 556, 84 S. W. 1105.

331. 1. A Note Given by a Sister to save her brother from threatened prosecution has been held in *Iowa* to be invalid. Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034.

334. 1. Langley *v.* Andrews, 142 Ala. 665, 38 So. 238, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 334; Harlan *v.* Gladding, (Cal. App. 1907) 93 Pac. 400; Marsh *v.* Whittington, 88 Miss. 400, 40 So. 326.

2. Royal *v.* Goss, (Ala. 1907) 45 So. 231, *quoting* with approval 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 334, but holding that where a woman was coerced by threats of her husband into executing a deed, the grantees being without notice of any duress, the deed was voidable only.

335. 1. Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034; Engle *v.* Hyman, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 251, 104 N. Y. Supp. 390.

336. 1. Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034.

337. 2. Andrews *v.* Connolly, 145 Fed. 43; Langley *v.* Andrews, 142 Ala. 665, 38 So. 238; Royal *v.* Goss, (Ala. 1907) 45 So. 231; Horn *v.* Beatty, 85 Miss. 504, 37 So. 833, *citing* 10 AM. AND ENG. ENCYC OF LAW (2d ed.) 337, 338, and *quoting* from the notes therein; Hunter *v.* McCammon, 119 N. Y. App. Div. 326, 104 N. Y. Supp. 402, *per* McLaughlin, J., *dissenting, citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 337; Buck *v.* Houghtaling, 110 N. Y. App. Div. 52, 96 N. Y. Supp. 1034; Lilienthal *v.* George Bechtel Brewing Co., 118 N. Y. App. Div. 205, 102 N. Y. Supp. 1051.

Illustrations. — Where the delivery of promissory notes was delayed for a few days by agreement, there was no ratification. Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034.

As Between Mother and Daughter it has been held that the same prompt action was not required as against a stranger. Hunter *v.* McCammon, 119 N. Y. App. Div. 326, 104 N. Y. Supp. 402.

339. 5. At Common Law the imprisonment must have been unlawful; but under the *Georgia* statute it is held that an imprisonment originally lawful may become unlawful. Bailey *v.* Devine, 123 Ga. 653, 51 S. E. 603. See further **323.** 1, *supra.*

6. Bailey *v.* Devine, 123 Ga. 653, 51 S. E. 603; Bond *v.* Kidd, 1 Ga. App. 798, 57 S. E. 944.

341. 2. Bond *v.* Kidd, 122 Ga. 812, 50 S. E. 934, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 341; Bond *v.* Kidd, 1 Ga. App. 798, 57 S. E. 944.

342. 1. Langley *v.* Andrews, 142 Ala. 665, 38 So. 238.

2. Bond *v.* Kidd, 1 Ga. App. 798, 57 S. E. 944.

3. Langley *v.* Andrews, 142 Ala. 665, 38 So. 238; Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034; Gray *v.* Freeman, 37 Tex. Civ. App. 556, 84 S. W. 1105.

343. 1. Thompson *v.* Hicks, (Tex. Civ. App. 1907) 100 S. W. 357, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342, 343.

345. 1. See Wilkenfeld *v.* Lynn, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 270, 105 N. Y. Supp. 71.

But where a valid tax was collected, after threat of levy, it was held to be a mere irregularity in the method of collecting and not duress. Godkin *v.* Doyle Tp., 143 Mich. 236, 106 N. W. 882.

2. Fuerst *v.* Musical Mut. Protective Union, (N. Y. City Ct. Tr. T.) 95 N. Y. Supp. 155.

But threats made to compel payments due under a lawful contract do not constitute du-

ress. See F. H. Mills Co. *v.* State, 110 N. Y. App. Div. 843, 97 N. Y. Supp. 676, *distinguishing* Horner *v.* State, 42 N. Y. App. Div. 430, 59 N. Y. Supp. 96.

Duress of Goods — Georgia Rule. — "Duress consists, not merely in the act of imprisonment or other hardship to which the party is subjected, but the state of mind produced by those circumstances." Whitt *v.* Blount, 124 Ga. 671, 53 S. E. 205.

346. 1. Justice Cooley's Statement Approved. — Foote *v.* De Poy, 126 Iowa 366, 102 N. W. 112; Sanborn *v.* Bush, (Tex. Civ. App. 1905) 91 S. W. 883.

DURING.

349. 1. The Words "During Any Year," in a statute providing a punishment for the second conviction of the same person ***during*** any year, mean the ensuing year from the first conviction. Paetz *v.* State, 129 Wis. 174, 107 N. W. 1090.

During This Year. — Where a letter of guaranty was dated August 1st, 1903, and recited that the writer would guarantee the payment of "any future purchases ***during*** this year," the guaranty should be construed as limited to the remainder of the year 1903. Whitehead *v.* American Lamp, etc., Co., 70 N. J. Eq. 581, 62 Atl. 554.

During Marriage means as long as the marriage relation exists. Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142.

DWELLING, DWELLING HOUSE, ETC.

353. 1. Com. *v.* Woolfolk, (Ky. 1905) 89 S. W. 110.

2. Unfinished Structure Not a Dwelling House within an arson statute. Davis *v.* State, (Ala. 1907) 44 So. 1018.

3. Burglary. — A corncrib without the curtilage held not a ***dwelling house***. Hutchings *v.* State, (Ga. App. 1907) 59 S. E. 848.

355. 1. Occupation — Fire Insurance. — A building used in part as a ***dwelling house*** and in part as a store is not a ***dwelling house*** for purposes of insurance. Bowditch *v.* Norwich Union F. Ins. Co., 193 Mass. 565, 79 N. E. 788.

Dwelling House — Usual Place of Abode. — Yerkes *v.* Stetson, 211 Pa. St. 556, 61 Atl. 113.

One Dwelling. — A double two-story building consisting of four flats is not one ***dwelling*** within the meaning of a restrictive covenant. Sanders *v.* Dixon, 114 Mo. App. 229, 89 S. W. 577.

358. 1. Com. *v.* Woolfolk, (Ky. 1905) 89 S. W. 110.

DYING DECLARATIONS.

361. 3. *Colorado.* — Zipperian *v.* People, 33 Colo. 134, 79 Pac. 1018; Brennan *v.* People, 37 Colo. 256, 86 Pac. 79.

Illinois. — Brom *v.* People, 216 Ill. 148, 74 N. E. 790.

Kentucky. — Farmer *v.* Com., (Ky. 1906) 91 S. W. 682; Keith *v.* Com., (Ky. 1906) 92 S. W. 599; Bricker *v.* Com., (Ky. 1907) 102 S. W. 1175.

Louisiana. — State *v.* Daniels, 115 La. 59, 38 So. 894.

Missouri. — State *v.* Kelleher, 201 Mo. 614, 100 S. W. 470.

North Carolina. — State *v.* Teachey, 138 N. Car. 587, 50 S. E. 232.

South Carolina. — State *v.* McCoomer, (S. Car. 1908) 60 S. E. 237; State *v.* Mills, (S. Car. 1908) 60 S. E. 664; State *v.* Gallman, (S. Car. 1908) 60 S. E. 682.

Texas. — Craven *v.* State, 49 Tex. Crim. 78, 90 S. W. 311.

362. 2. Brom *v.* People, 216 Ill. 148, 74 N. E. 790; State *v.* Doris, (Oregon 1908) 94 Pac. 44; Rice *v.* State, (Tex. Crim. 1906) 103 S. W. 1156.

3. Solomon *v.* State, 2 Ga. App. 92, 58 S. E. 381; State *v.* Monich, 74 N. J. L. 522, 64 Atl. 1016; Com. *v.* Spahr, 211 Pa. St. 542, 60 Atl. 1084; Rex *v.* Magyar, 12 Can. Crim. Cas. (N. W. Ter.) 114.

5. McEwen *v.* State, (Ala. 1907) 44 So. 619; People *v.* Brecht, 120 N. Y. App. Div. 769, 105 N. Y. Supp. 436.

364. 4. People *v.* Brecht, 119 N. Y. App. Div. 769, 105 N. Y. Supp. 436.

6. State *v.* Craig, 190 Mo. 332, 88 S. W. 641.

365. 1. *Alabama.* — Delaney *v.* State, (Ala. 1906) 42 So. 815.

Colorado. — Brennan *v.* People 37 Colo. 256, 86 Pac. 79.

Georgia. — Sutherland *v.* State, 121 Ga. 190, 48 S. E. 915.

Illinois. — Brom *v.* People, 216 Ill. 148, 74 N. E. 790.

Indiana. — Williams *v.* State, 168 Ind. 87, 79 N. E. 1079.

Kentucky. — Johnson *v.* Com., (Ky. 1908) 107 S. W. 768.

Missouri. — State *v.* Brown, 188 Mo. 451, 87 S. W. 519; State *v.* Zorn, 202 Mo. 12, 100 S. W. 591.

Nevada. — State *v.* Roberts, 28 Nev. 350, 82 Pac. 100.

New Jersey. — State *v.* Monich, 74 N. J. L. 522, 64 Atl. 1016.

Texas. — Lyles *v.* State, 48 Tex. Crim. 119, 86 S. W. 763; Willis *v.* State, 49 Tex. Crim. 139, 90 S. W. 1100.

366. 1. Brennan *v.* People, 37 Colo. 256, 86 Pac. 79; Johnson *v.* Com., (Ky. 1908) 107 S. W. 768; State *v.* Craig, 190 Mo. 332, 88 S. W. 641; People *v.* Brecht, 119 N. Y. App. Div. 769, 105 N. Y. Supp. 436; State *v.* McCoomer, (S. Car. 1908) 60 S. E. 237 (evidence held to show abandonment of hope); Craven *v.* State, 49 Tex. Crim. 78, 90 S. W. 311, *quoting* 10 Am. and Eng. Encyc. of Law (2d ed.) 366; Willis *v.* State, 49 Tex. Crim. 139, 90 S. W. 1100; Rex *v.* Magyar, 12 Can. Crim. Cas. (N. W. Ter.) 114.

Consent to Removal to Sanitarium. — The fact that the deceased consented to be removed to a sanitarium to satisfy his family was held not to be inconsistent with an abandonment of hope. State *v.* Howard, (La. 1907) 45 So. 260.

Taking Chance of Operation. — In State *v.* Thompson, (Oregon 1907) 88 Pac. 583, it was

held that the willingness of the deceased to take the only chance held out to him by the surgeon did not necessarily indicate that he expected to recover.

367. 1. State *v.* Daniels, 115 La. 59, 38 So. 894.

3. State *v.* Daniels, 115 La. 59, 38 So. 894; Craven *v.* State, 49 Tex. Crim. 78, 90 S. W. 311, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 367; Phillips *v.* State, (Tex. Crim. 1906) 94 S. W. 1051.

Requesting Services of Physician. — The mere fact that the deceased requested that a physician be called does not rebut his declaration that he was shot to death. State *v.* Bordelon, 113 La. 690, 37 So. 603.

Effect of Expression of Hope by Physician in Declarant's Presence. — People *v.* Stacy, 119 N. Y. App. Div. 743, 104 N. Y. Supp. 615.

368. 2. Coyle *v.* Com., (Ky. 1906) 93 S. W. 584; State *v.* Craig, 190 Mo. 332, 88 S. W. 641; Craven *v.* State, 49 Tex. Crim. 78, 90 S. W. 311, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 368.

369. 1. State *v.* Monich, 74 N. J. L. 522, 64 Atl. 1016, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 368 [369]. See Rose *v.* State, 144 Ala. 114, 42 So. 21.

4. Harper *v.* State, 129 Ga. 770, 59 S. E. 792; State *v.* Brown, 188 Mo. 451, 87 S. W. 519; Rex *v.* Magyar, 12 Can. Crim. Cas. (N. W. Ter.) 114.

6. **Form of Declaration Immaterial.** — State *v.* Brown, 188 Mo. 451, 87 S. W. 519; State *v.* Kelleher, 201 Mo. 614, 100 S. W. 470.

In State *v.* Bohanon, 142 N. Car. 695, 55 S. E. 797, the following declaration was held to be competent: "I do not know what my wife and children will do. I begged Frank [the prisoner] to go along and let me alone."

Narrative Form. — It is not an objection that the declaration is in narrative form and does not include the questions asked. State *v.* Williams, 28 Nev. 395, 82 Pac. 353; Rex *v.* Magyar, 12 Can. Crim. Cas. (N. W. Ter.) 114.

370. 1. Kirby *v.* State, (Ala. 1907) 44 So. 38.

4. *Compare* Cooper *v.* State, (Miss. 1907) 42 So. 666.

5*a*. **Interruption.** — Where an interruption took place before completion of the declaration, but a short time afterwards on the same day the statement was completed, it was held to be admissible in the absence of any showing that the bodily or mental condition of the deceased had changed in the interim. Park *v.* State, 126 Ga. 575, 55 S. E. 489.

6. Park *v.* State, 126 Ga. 575, 55 S. E. 489. See Rice *v.* State, (Tex. Crim. 1907) 103 S. W. 1156.

Contra. — Craven *v.* State, 49 Tex. Crim. 78, 90 S. W. 311.

Questions Which Are Not Leading. — Phillips *v.* State, (Tex. Crim. 1906) 98 S. W. 868.

371. 1. People *v.* Stison, 140 Mich. 216, 103 N. W. 542, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370 [371]; Arnwine *v.* State, (Tex. Crim. 1906) 96 S. W. 4.

372. 7. Edwards *v.* State, (Neb. 1907) 112 N. W. 611.

8. Yates *v.* Huntsville Hoop, etc., Co., (Ala. 1905) 39 So. 647.

373. 1. Arnwine *v.* State, (Tex. Crim. 1906) 96 S. W. 4.

374. 1. State *v.* Uzzo, (Del. 1907) 65 Atl. 775; Green *v.* State, (Miss. 1907) 42 So. 797.

3. Lyles *v.* State, 48 Tex. Crim. 119, 86 S. W. 763.

375. 1. State *v.* Hood, (W. Va. 1907) 59 S. E. 971.

5. State *v.* Hood, (W. Va. 1907) 59 S. E. 971.

The Use of Profane Language by the deceased both before and after making the declaration was held not to render it inadmissible. Kirby *v.* State, (Ala. 1907) 44 So. 38.

11. Fact of Declarant Being under the Influence of Narcotics. — Roberts *v.* State, 48 Tex. Crim. 378, 88 S. W. 221.

376. 6. Cleveland *v.* Com., (Ky. 1907) 101 S. W. 931; Hinton *v.* State, (Tex. Crim. 1907) 100 S. W. 772 (declaration held admissible).

377. 1. Baker *v.* State, (Ark. 1908) 107 S. W. 983; Cleveland *v.* Com., (Ky. 1907) 101 S. W. 931; Walton *v.* State, 87 Miss. 296, 39 So. 689.

Declaration by Deceased that Defendant Poisoned Her. — Where the deceased was poisoned by strychnine placed in a syringe with which she took an injection, it was held that her declaration was competent which charged the defendant with placing the strychnine in the syringe, for the reason that the charge was made in his presence and therefore he was called upon to answer it. Rice *v.* State, 49 Tex. Crim. 569, 94 S. W. 1024.

380. 2. Johnson *v.* Com., (Ky. 1908) 107 S. W. 768.

3. McMillan *v.* State, 128 Ga. 25, 57 S. E. 309, *following* Darby *v.* State, 79 Ga. 63, 3 S. E. 663, cited in the original note.

A statement by the deceased that the defendant "deliberately" shot her was held not to be objectionable as a mere conclusion. State *v.* Fielding, (Iowa 1907) 112 N. W. 539.

381. 1. **Entire Declaration Must Be Submitted.** — Arnwine *v.* State, (Tex. Crim. 1906) 96 S. W. 4.

2. State *v.* Mayo, 42 Wash. 540, 85 Pac. 251.

382. 2. Sanford *v.* State, 143 Ala. 78, 39 So. 370; Walker *v.* State, 146 Ala. 45, 41 So. 878 (declaration held relevant); Zipperian *v.* People, 33 Colo. 134, 79 Pac. 1018; Burroughs *v.* U. S., 6 Indian Ter. 164, 90 S. W. 8; State *v.* Kelleher, 201 Mo. 614, 100 S. W. 470; State *v.* Doris, (Oregon 1908) 94 Pac. 44; Craven *v.* State, 49 Tex. Crim. 78, 90 S. W. 311; Wilson *v.* State, 49 Tex. Crim. 50, 90 S. W. 312; Wakefield *v.* State, (Tex. Crim. 1906) 94 S. W. 1046; Richards *v.* Com., 107 Va. 881, 59 S. E. 1104.

3. Richards *v.* Com., 107 Va. 881, 59 S. E. 1104; State *v.* Spivey, 191 Mo. 87, 90 S. W. 81.

Where the Killing Was Admitted and the only defense was insanity, it was held that the admission of the dying declaration containing statements of prior threats was not reversible error. Com. *v.* Spahr, 211 Pa. St. 542, 60 Atl. 1084.

384. 2. Hall *v.* State, 124 Ga. 649, 52 S. E. 891, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 384.

5. Coyle *v.* Com., (Ky. 1906) 93 S. W. 584; State *v.* Mayo, 42 Wash. 540, 85 Pac. 251.

6. State *v.* Uzzo, (Del. 1907) 65 Atl. 775.

9. *Alabama.* — McEwen *v.* State, (Ala. 1907) 44 So. 619.

Arkansas. — Fogg *v.* State, 81 Ark. 417, 99 S. W. 537.

California. — People *v.* Thomson, 145 Cal. 717, 79 Pac. 435.

Colorado. — Brennan *v.* People, 37 Colo. 256, 86 Pac. 79.

Indiana. — Gipe *v.* State, 165 Ind. 433, 75 N. E. 881; Williams *v.* State, 168 Ind. 87, 79 N. E. 1079.

Kentucky. — Coyle *v.* Com., (Ky. 1906) 93 S. W. 584.

Missouri. — State *v.* Zorn, 202 Mo. 12, 100 S. W. 591.

New Jersey. — State *v.* Monich, 74 N. J. L. 522, 64 Atl. 1016.

New York. — People *v.* Brecht, 119 N. Y. App. Div. 769, 105 N. Y. Supp. 436; People *v.* Stacy, 119 N. Y. App. Div. 743, 104 N. Y. Supp. 615.

Oklahoma. — Willoughby *v.* Territory, 16 Okla. 577, 86 Pac. 56.

South Carolina. — State *v.* Gallman, (S. Car. 1908) 60 S. E. 682.

Decision Reviewable Only for Abuse of Discretion. — State *v.* Doris, (Oregon 1908) 94 Pac. 44; State *v.* McCoomer, (S. Car. 1908) 60 S. E. 237.

385. 1. Fogg *v.* State, 81 Ark. 417, 99 S. W. 537; People *v.* Thomson, 145 Cal. 717, 79 Pac. 435; Moody *v.* State, 1 Ga. App. 772, 58 S. E. 262; State *v.* Zorn, 202 Mo. 12, 100 S. W. 591; State *v.* Doris, (Oregon 1908) 94 Pac. 44.

2. Brown *v.* State, (Ala. 1907) 43 So. 194; Carter *v.* State, 2 Ga. App. 254, 58 S. E. 532.

3. State *v.* Fleetwood, (Del. 1906) 65 Atl. 772.

Dying Declarations Are on No Higher Plane than the testimony of an ordinary witness. People *v.* Thomson, 145 Cal. 717, 79 Pac. 435, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 385.

386. 1. State *v.* Horn, 204 Mo. 528, 103 S. W. 69.

2. State *v.* Doris, (Oregon 1908) 94 Pac. 44.

5. People *v.* Thomson, 145 Cal. 717, 79 Pac. 435, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 386.

387. 1. Wilson *v.* State, 49 Tex. Crim. 50, 90 S. W. 312.

Sufficiency of Predicate. — In the following cases the evidence was held to show a sufficient predicate for the admission of the dying declaration: Smith *v.* State, 145 Ala. 17, 40 So. 957; Walker *v.* State, 146 Ala. 45, 41 So. 878; State *v.* Fleetwood, (Del. 1906) 65 Atl. 772; Lee *v.* State, 2 Ga. App. 481, 58 S. E. 676; State *v.* Nowells, (Iowa 1906) 109 N. W. 1016; State *v.* Roberts, 28 Nev. 350, 82 Pac. 100; Hinton *v.* State, (Tex. Crim. 1907) 100 S. W. 772; Rice *v.* State, (Tex. Crim. 1907) 103 S. W. 1156; Jones *v.* State, (Tex. Crim. 1907) 106 S. W. 345; Rex *v.* Magyar, 12 Can. Crim. Cas. (N. W. Ter.) 114.

Where the Evidence Is Conflicting the sufficiency of the predicate is a question for the jury. McCorquodale *v.* State, (Tex. Crim. 1905) 98 S. W. 879.

Condition of Mind Is an Issue of Fact. — Anderson *v.* State, 122 Ga. 161, 50 S. E. 46; Findley *v.* State, 125 Ga. 579, 54 S. E. 106.

The Testimony of Two Witnesses that the deceased told them that he was going to die was held to be sufficient preliminary proof. Moore *v.* State, 146 Ala. 687, 40 So. 345; Logan *v.* State, (Ala. 1907) 43 So. 10.

2. Coyle *v.* Com., (Ky. 1906) 93 S. W. 584.

3. State *v.* Bordelon, 113 La. 690, 37 So. 603, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 387; State *v.* Zorn, 202 Mo. 12, 100 S. W. 591.

7. Findley *v.* State, 125 Ga. 579, 54 S. E. 106; State *v.* Doris, (Oregon 1908) 94 Pac. 44.

9. Brom *v.* People, 216 Ill. 148, 74 N. E. 790.

A Prima Facie Case is all that is necessary to carry dying declarations to the jury. Anderson *v.* State, 122 Ga. 161, 50 S. E. 46; Findley *v.* State, 125 Ga. 579, 54 S. E. 106; Park *v.* State, 126 Ga. 575, 55 S. E. 489; McMillan *v.* State, 128 Ga. 25, 57 S. E. 309; Carter *v.* State, 2 Ga. App. 254, 58 S. E. 532.

Slight Preliminary Proof will justify the judge in *prima facie* admitting the declarations for final submission to the jury. Moody *v.* State, 1 Ga. App. 772, 58 S. E. 262.

388. 1. Williams *v.* State, 168 Ind. 87, 79 N. E. 1079; Ashley *v.* State, (Miss. 1905) 37 So. 960 (evidence held insufficient).

The bare conclusion of a witness that the "deceased knew he was going to die" was held to be insufficient. Delaney *v.* State, (Ala. 1906) 42 So. 815.

2. *Alabama.* — Moore *v.* State, 146 Ala. 687, 40 So. 345; Gregory *v.* State, 148 Ala. 566, 42 So. 829; Logan *v.* State, (Ala. 1907) 43 So. 10; Brown *v.* State, (Ala. 1907) 43 So. 194; Pate *v.* State, (Ala. 1907) 43 So. 343; Heningburg *v.* State, (Ala. 1907) 43 So. 959, *affirmed* (Ala. 1907) 45 So. 246.

Colorado. — Zipperian *v.* People, 33 Colo. 134, 79 Pac. 1018; Brennan *v.* People, 37 Colo. 256, 86 Pac. 79.

Florida. — Newton *v.* State, 51 Fla. 82, 41 So. 19.

Mississippi. — Pryor *v.* State, (Miss. 1906) 39 So. 1012.

Missouri. — State *v.* Craig, 190 Mo. 332, 88 S. W. 641.

Nevada. — State *v.* Hennessy, (Nev. 1907) 90 Pac. 221.

Texas. — Roberts *v.* State, 48 Tex. Crim. 378, 88 S. W. 221; Lewis *v.* State, 48 Tex. Crim. 614, 89 S. W. 1073; Rice *v.* State, 49 Tex. Crim. 569, 94 S. W. 1024; Patterson *v.* State, 49 Tex. Crim. 613, 95 S. W. 129; Thomas *v.* State, 49 Tex. Crim. 633, 95 S. W. 1069.

Where a Statement Is Capable of Two Constructions the question should be left to the jury under proper instructions. Bird *v.* State, 128 Ga. 253, 57 S. E. 320.

3. Walker *v.* State, 146 Ala. 45, 41 So. 878; Ward *v.* State, (Ark. 1908) 107 S. W. 677; Anderson *v.* State, 122 Ga. 161, 50 S. E. 46.

389. 2. State *v.* Roberts, 28 Nev. 350, 82 Pac. 100.

3. Ward *v.* State, (Ark. 1908) 107 S. W.

677; Brennan *v.* People, 37 Colo. 256, 86 Pac. 70; Harper *v.* State, 129 Ga. 770, 59 S. E. 792.

4. Anderson *v.* State, 122 Ga. 161, 50 S. E. 46; Oliver *v.* State, 129 Ga. 777, 59 S. E. 900; State *v.* Roberts, 28 Nev. 350, 82 Pac. 100.

390. 2. McEwen *v.* State, (Ala. 1907) 44 So. 619; Fogg *v.* State, 81 Ark. 417, 99 S. W. 537; Gipe *v.* State, 165 Ind. 433, 75 N. E. 881; State *v.* Bonar, 71 Kan. 800, 81 Pac. 484; Asher *v.* Com., (Ky. 1906) 91 S. W. 662; Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348; Kennedy *v.* Com., (Ky. 1907) 100 S. W. 242; State *v.* Brown, 188 Mo. 451, 87 S. W. 519; State *v.* Kelleher, 201 Mo. 614, 100 S. W. 470; State *v.* Biango, (N. J. 1907) 68 Atl. 125; Long *v.* State, 48 Tex. Crim. 175, 88 S. W. 203.

3. State *v.* Thompson, (Oregon 1907) 88 Pac. 583; State *v.* Mayo, 42 Wash. 540, 85 Pac. 251.

4. People *v.* Stacy, 119 N. Y. App. Div. 743, 104 N. Y. Supp. 615.

391. 1. Heningburg *v.* State, (Ala. 1907) 45 So. 246, *affirming* (Ala. 1907) 43 So. 959.

3. Cleveland *v.* Com., (Ky. 1907) 101 S. W. 931.

4. Cleveland *v.* Com., (Ky. 1907) 101 S. W. 931; Long *v.* State, 48 Tex. Crim. 175, 88 S. W. 203; Phillips *v.* State, (Tex. Crim. 1906) 94 S. W. 1051.

5. Contra. — Kirby *v.* State, (Ala. 1907) 44 So. 38.

7. Where the Original Is Lost the declaration may be proved by parol although there is a copy of the original declaration obtainable. State *v.* Biango, (N. J. 1907) 68 Atl. 125.

8. Sailsberry *v.* Com., (Ky. 1908) 107 S. W. 774, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 391.

9. Sailsberry *v.* Com., (Ky. 1908) 107 S. W. 774, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 391.

Where a Witness Testifies to the Truth of the Memorandum it is competent evidence. Mitchell *v.* State, 82 Ark. 324, 101 S. W. 763.

11. Sailsberry *v.* Com., (Ky. 1908) 107 S. W. 774; State *v.* Teachey, 138 N. Car. 587, 50 S. E. 232.

12. Where the Writing Did Not Cover All that Was Said it was held proper to allow the witness who reduced the declaration to writing to testify as to the part of the declaration not in writing. Mitchell *v.* State, 82 Ark. 324, 101 S. W. 763.

392. 1. Pate *v.* State, (Ala. 1907) 43 So. 343; Zipperian *v.* People, 33 Colo. 134, 79 Pac. 1018; Long *v.* State, 48 Tex. Crim. 175, 88 S. W. 203.

Declarations Partly Oral and Partly Written Admitted. — State *v.* Doris, (Oregon 1908) 94 Pac. 44.

2. Park *v.* State, 126 Ga. 575, 55 S. E. 489.

EACH.

392. 10. State *v.* Thompson, 31 Utah 240, 87 Pac. 709, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 392.

EARLY.

394. 2. The Term "Early Spring" as used in an application for a patent means not earlier than March 1st and probably not so *early*. Richards *v.* Meissner, 24 App. Cas. (D. C.) 305.

EARNEST.

395. 3. See Smith *v.* Hussey, 119 La. 32, 43 So. 904, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 396.

EASEMENTS.

399. 5. See dissenting opinion of C. A. Smith, J., in Kansas, etc., R. Co. *v.* Burns, 70 Kan. 627, 79 Pac. 238, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399, note.

Easement Carries No Corporeal Interest in Servient Tenement. — See dissenting opinion of C. A. Smith, J., in Kansas, etc., R. Co. *v.* Burns, 70 Kan. 627, 79 Pac. 238 (to the same effect as Cook County *v.* Chicago, etc., R. Co., 35 Ill. 460), *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399, note.

403. 4. Sweetland *v.* Grants Pass Power Co., 46 Oregon 85, 79 Pac. 337, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 403.

405. 1. Jones *v.* Deardorff, 4 Cal. App. 18, 87 Pac. 213, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405; Thompson *v.* Germania L. Ins. Co., 97 Minn. 89, 106 N. W. 102; Standard Oil Co. *v.* Buchi, (N. J. 1907) 65 Atl. 427.

407. 5. McBride *v.* Bair, 134 Iowa 661, 112 N. W. 169; Wilkinson *v.* Hutzel, 142 Mich. 674, 106 N. W. 207.

409. 1. Hopper *v.* Herring, (N. J. 1907) 67 Atl. 714.

4. Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 409.

5. Belser *v.* Moore, 73 Ark. 296, 84 S. W. 219, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 409; Milliken *v.* Denny, 141 N. Car. 224, 53 S. E. 867.

410. 2. Baltimore, etc., R. Co. *v.* Brubaker, 217 Ill. 462, 75 N. E. 523.

411. 2. Express Grants Construed — *United States.* — Fox *v.* Miller, (C. C. A.) 150 Fed. 320.

Arkansas. — St. Francis Levee Dist. *v.* Bowen, 80 Ark. 80, 95 S. W. 993.

Georgia. — Towaliga Falls Power Co. *v.* McElroy, 124 Ga. 1014, 53 S. E. 682, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 411.

Illinois. — Walker *v.* Illinois Cent. R. Co., 215 Ill. 610, 74 N. E. 812.

Kentucky. — Levy *v.* Louisville Gunning System, (Ky. 1905) 89 S. W. 528; Bowling *v.* Rouse, (Ky. 1906) 90 S. W. 1073; Samples *v.* Smythe, (Ky. 1907) 105 S. W. 415.

Massachusetts. — Gray *v.* Kelley, 194 Mass 534, 80 N. E. 651.

Missouri. — Mullins *v.* Metropolitan St. R. Co., 126 Mo. App. 507, 104 S. W. 890; Kavanaugh *v.* St. Louis Traction Co., 127 Mo. App. 265, 105 S. W. 278.

New Jersey. — Perrine *v.* Pennsylvania R. Co., 72 N. J. L. 398, 61 Atl. 87; Lengyel *v.* Meyer, 70 N. J. Eq. 501, 62 Atl. 548; Sked *v.* Pennington Spring Water Co., (N. J. 1907) 65 Atl. 713; Standard Oil Co. *v.* Buchi, (N. J. 1907) 66 Atl. 427.

North Carolina. — Beasley *v.* Aberdeen, etc., R. Co., 145 N. Car. 272, 59 S. E. 60.

412. 1. Laesch *v.* Morton, 38 Colo. 171, 87 Pac. 1081; Jones *v.* Stover, 131 Iowa 119, 108 N. W. 112; Settle *v.* Cox, (Ky. 1905) 89 S. W. 534.

413. 1. Gyra *v.* Windler, (Colo. 1907) 91 Pac. 36; Homes *v.* Barmon, 11 Idaho 64, 81 Pac. 48, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 412 [413]; Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071.

Full Performance takes the case out of the statute of frauds. Jones *v.* Jones, (Ky. 1907) 101 S. W. 980.

414. 2. **Conveyance by Reference to Map Construed.** — New England Structural Co. *v.* Everett Distilling Co., 189 Mass. 145, 75 N. E. 85; Young *v.* Pennsylvania R. Co., 72 N. J. L. 94, 62 Atl. 529; *In re* West 214th St., 109 N. Y. App. Div. 575, 96 N. Y. Supp. 557; Oney *v.* West Buena Vista Land Co., 104 Va. 580, 52 S. E. 343.

415. 4. Chicago *v.* Hogberg, 217 Ill. 180, 75 N. E. 542; Reed *v.* Gasser, 130 Iowa 87, 106 N. W. 383; Big Sandy R. Co. *v.* Bays, (Ky. 1907) 102 S. W. 302; Bailey *v.* Agawam Nat. Bank, 190 Mass. 20, 76 N. E. 449; Steiner *v.* Peterman, (N. J. 1906) 63 Atl. 1102; Mitchell *v.* Reid, 118 N. Y. App. Div. 641, 103 N. Y. Supp. 805; Hale *v.* Jenkins, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 119, 106 N. Y. Supp. 282.

418. 3. *California.* — Pogue *v.* Collins, 146 Cal. 435, 80 Pac. 623.

Illinois. — Swedish Evangelist Lutheran Church *v.* Jackson, 229 Ill. 506, 82 N. E. 348.

Iowa. — Teachout *v.* Capital Lodge, etc., 128 Iowa 380, 104 N. W. 440; Reed *v.* Gasser, 130 Iowa 87, 106 N. W. 383.

Kentucky. — Ray *v.* Nally, (Ky. 1905) 89 S. W. 486.

Massachusetts. — Jeffrey *v.* Winter, 190 Mass. 90, 76 N. E. 282.

Missouri. — Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728; Hall *v.* Morton, 125 Mo. App. 315, 102 S. W. 570.

Montana. — Bullerdick *v.* Hermsmeyer, 32 Mont. 541, 81 Pac. 334.

Nebraska. — Agnew *v.* Pawnee City, (Neb. 1907) 113 N. W. 236.

New Jersey. — Hess *v.* Kenney, 69 N. J. Eq. 138, 61 Atl. 464.

New York. — Ennis *v.* Grover, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 66, 103 N. Y. Supp. 1088, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 418; Mitchell *v.* Reid, 118 N. Y. App. Div. 641, 103 N. Y. Supp. 805.

Oregon. — Brown *v.* Kemp, 46 Oregon 517, 81 Pac. 236.

West Virginia. — Proudfoot *v.* Saffle, (W. Va. 1907) 57 S. E. 256.

419. 2. Bliss *v.* Mayer, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 119, 103 N. Y. Supp. 1077.

3. **There Can Be No Easement Before Severance.** — Miller *v.* Hoeschler, 126 Wis. 263, 105 N. W. 790.

420. 1. **Easement by Implied Grant.** — Wilson *v.* Riggs, 27 App. Cas. (D. C.) 550.

2. Gaynor *v.* Bauer, 144 Ala. 448, 39 So. 749, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 420; Scott *v.* Baird, 145 Mich. 116, 108 N. W. 737, *per* Grant, J., *dissenting, citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 420.

421. 1. Wilson *v.* Riggs, 27 App. Cas. (D. C.) 550.

424. 3. **Necessity — Illustration.** — In Bentley *v.* Hampton, (Ky 1906) 91 S. W. 266, it was held that a purchaser of land, with no outlet to the public highway except over his vendor's land, takes a passway therein as a way of necessity.

425. 1. **Easement of Light.** — See Ray *v.* Hazeldine, (1904) 2 Ch. 17.

2. Winne *v.* Winne, (Supm. Ct. Tr. T.) 40 Misc. (N. Y.) 435, 82 N. Y. Supp. 647, *affirmed* 184 N. Y. 584, 77 N. E. 1198; Johnson *v.* Gould, 60 W. Va. 84, 53 S. E. 798, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 425.

426. 5. *Connecticut.* — Graham *v.* Walker, 78 Conn. 130, 61 Atl. 98.

Indiana. — Terre Haute, etc., R. Co. *v.* Zehner, 166 Ind. 149, 76 N. E. 169.

Kentucky. — Smoot *v.* Wainscott, (Ky. 1905) 89 S. W. 176; McPherson *v.* Thompson, (Ky. 1905) 89 S. W. 195; Ray *v.* Nally, (Ky. 1905) 89 S. W. 486; Settle *v.* Cox, (Ky. 1905) 89 S. W. 534; Crigler *v.* Newman, (Ky. 1906) 91 S. W. 706.

Michigan. — Toney *v.* Knapp, 142 Mich. 652, 106 N. W. 552.

Missouri. — Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

Nebraska. — Jensen *v.* Showalter, (Neb. 1907) 113 N. W. 202.

New York. — Winne *v.* Winne, (Supm. Ct. Tr. T.) 40 Misc. (N. Y.) 435, 82 N. Y. Supp. 647, *affirmed* 184 N. Y. 584, 77 N. E. 1198; Goldstrom *v.* Interborough Rapid Transit Co., 115 N. Y. App. Div. 323, 100 N. Y. Supp. 911.

A Parol Gift May Give Rise to a Prescriptive Right to an Easement. — Wells *v.* Parker, (N. H. 1907) 66 Atl. 121.

In Connecticut, an easement of light and air cannot be acquired by prescription. Puroto *v.* Chieppa, 78 Conn. 401, 62 Atl. 664.

427. 2. Scott *v.* Dishough, (Ark. 1907) 103 S. W. 1153, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 426; Clay *v.* Penzel, 79 Ark. 5, 94 S. W. 705; Roe *v.* Howard County, 75 Neb. 448, 106 N. W. 587; Agnew *v.* Pawnee City, (Neb. 1907) 113 N. W. 236.

Exchange of Easement Acquired by Prescription. — In Thompson *v.* Madsen, 29 Utah 326, 81 Pac. 160, it was held that where the owner of a right of way, acquired by prescription, consents to the closing of the said right of way in consideration of substituting and granting to him a new one, the right to the use of such new way at once attaches, and he is not required to use the new way for a period of time to give him title by prescription.

3. *Arkansas.* — Clay *v.* Penzel, 79 Ark. 5, 94 S. W. 705.

California. — Franz *v.* Mendouca, 146 Cal. 640, 80 Pac. 1078.

Connecticut. — Puroto *v.* Chieppa, 78 Conn. 401, 62 Atl. 664.

Illinois. — Falter *v.* Packard, 219 Ill. 356, 76 N. E. 495; Hofherr *v.* Mede, 226 Ill. 320, 80 N. E. 893.

Indiana. — Null *v.* Williamson, 166 Ind. 537, 78 N. E. 76.

Iowa. — McBride *v.* Bair, 134 Iowa 661, 112 N. W. 169.

Kansas. — Jobling *v.* Tuttle, 75 Kan. 351, 89 Pac. 699.

Kentucky. — McKinney *v.* Thompson, (Ky. 1905) 86 S. W. 543; Crabtree Coal Min. Co. *v.* Hamby, (Ky. 1906) 90 S. W. 226; Roberts *v.* Williams, (Ky. 1906) 90 S. W. 565; Bryars *v.* Rash, (Ky. 1907) 100 S. W. 306; Prewitt *v.* Hustonville Cemetery Co., (Ky. 1907) 101 S. W. 892; Cincinnati Southern R. Co. *v.* Slaughter, (Ky. 1907) 104 S. W. 291.

Massachusetts. — Gifford *v.* Westport, 190 Mass. 323, 76 N. E. 1042.

Michigan. — Lamb *v.* Pontiac, etc., R. Co., 150 Mich. 340, 113 N. W. 1110.

Mississippi. — Wills *v.* Reed, 86 Miss. 446, 38 So. 793; Frederic *v.* Mayers, 89 Miss. 127, 43 So. 677.

Missouri. — Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921.

New York. — Hey *v.* Collman, 78 N. Y. App. Div. 584, 79 N. Y. Supp. 778, *affirmed* 80 N. Y. 560, 73 N. E. 1125; Andrus *v.* National Sugar Refining Co., 93 N. Y. App. Div. 377, 87 N. Y. Supp. 671, *affirmed* 183 N. Y. 580, 76 N. E. 1088.

Pennsylvania. — Zerbey *v.* Allan, 215 Pa. St. 383, 64 Atl. 587.

Rhode Island. — Bullock *v.* Phelps, 27 R. I. 164, 61 Atl. 589.

Washington. — Lechman *v.* Mills, (Wash. 1907) 91 Pac. 11.

West Virginia. — Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

Wisconsin. — Kolpack *v.* Kolpack, 128 Wis. 169, 107 N. W. 457; Hensel *v.* Witt, (Wis. 1907) 113 N. W. 1093.

Easements upon Railway Rights of Way cannot be acquired by prescription, as the grant of such an easement by the railroad corporation upon its own easement would be incompatible with the powers and duties of the corporation. Louisville, etc., R. Co. *v.* Smith, (Ky. 1907) 101 S. W. 317.

Presumption that Use Is Adverse. — Fleming *v.* Howard, 150 Cal. 28, 87 Pac. 908; Smith *v.* Pennington, 122 Ky. 355, 91 S. W. 730; Lechman *v.* Mills, (Wash. 1907) 91 Pac. 11.

Presumption that Right Is in Person Enjoying Use. — McPherson *v.* Thompson, (Ky. 1905) 89 S. W. 195.

Use of Passway for Many Years Presumes a Grant. — Sparks *v.* Rogers, (Ky. 1906) 97 S. W. 11.

Question for Jury. — Seitz *v.* People's Sav. Bank, 140 Mich. 106, 103 N. W. 545.

6. Notice. — A purchaser of land who takes it with notice, actual or constructive, that it is burdened with an easement, takes it subject to such easement. Ray *v.* Nally, (Ky. 1905) 89 S. W. 486; Schwer *v.* Martin, (Ky. 1906) 97 S. W. 12; Tise *v.* Whitaker Harvey Co., 144 N. Car. 507, 57 S. E. 210; Brown *v.* Kemp, 46 Oregon 517, 81 Pac. 236; D. W. Alderman, etc., Co. *v.* Wilson, 71 S. Car. 64, 50 S. E. 643; Harman *v.* Southern R. Co., 72 S. Car. 228, 51 S. E. 689.

A Purchaser of a Servient Estate, charged with an easement which is discoverable on examination, takes his title subject to the easement. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071.

128. 6. Winslow *v.* Vallejo, 148 Cal. 723, 84 Pac. 191; Bell *v.* Louisville Water Co., (Ky. 1906) 96 S. W. 572; Thompson *v.* Germania L. Ins. Co., 97 Minn. 89, 106 N. W. 102; Kavanaugh *v.* St. Louis Traction Co., 127 Mo. App. 265, 105 S. W. 278, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428; Piro *v.* Shipley, 211 Pa. St. 36, 60 Atl. 325, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428.

7. Townsend *v.* New York Cent., etc., R. Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 253, 106 N. Y. Supp. 381; Oney *v.* West Buena Vista Land Co., 104 Va. 580, 52 S. E. 343.

129. 1. Owner of Servient Estate Can Maintain Gates at the termini of an easement or right of way passing over said estate. Berg *v.* Neal, (Ind. App. 1907) 82 N. E. 802; Watson *v.* Hoke, 73 S. Car. 361, 53 S. E. 537.

Owner of Servient Estate Can Erect Fence to Prevent Trespass on Servient Estate by Users of Easement. — Townsend *v.* New York Cent., etc., R. Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 253, 106 N. Y. Supp. 381.

2. Galletly *v.* Bockius, 1 Cal. App. 724, 82 Pac. 1109; Thompson *v.* Germania Ins. Co., 97 Minn. 89, 106 N. W. 102; Bachrach *v.* Seidenberg, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 59, 105 N. Y. Supp. 369; Hale *v.* Jenkins, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 119, 106 N. Y. Supp. 282.

3. Beasley *v.* Aberdeen, etc., R. Co., 145 N. Car. 272, 59 S. E. 60.

4. Owner of Easement May Remove Gates placed across the way by the owner of the servient estate. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071.

5. Bell *v.* Louisville Water Co., (Ky. 1906) 96 S. W. 572; Hale *v.* Jenkins, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 119, 106 N. Y. Supp. 282.

130. 1. Kavanaugh *v.* St. Louis Traction Co., 127 Mo. App. 265, 105 S. W. 278.

2. Owner of Dominant Estate May Make Reasonable Changes in His Use of Easement. — Townsend *v.* New York Cent., etc., R. Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 253, 106 N. Y. Supp. 381.

4. Duties upon Servient Owner Passive and Negative. — Lamontagne *v.* Leclerc, 30 Quebec Super. Ct. 418.

6. Kansas, etc., R. Co. *v.* Burns, 70 Kan. 627, 79 Pac. 238, *per* C. A. Smith, J., *dissenting, citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 430; Big Sandy R. Co. *v.* Bays, (Ky. 1907) 102 S. W. 302.

131. 2. *California.* — Winslow *v.* Vallejo, 148 Cal. 723, 84 Pac. 191.

Colorado. — Gyra *v.* Windler, (Colo. 1907) 91 Pac. 36.

Georgia. — Bale *v.* Todd, 123 Ga. 99, 50 S. E. 990.

Kentucky. — Bryars *v.* Rash, (Ky. 1907) 100 S. W. 306.

Massachusetts. — Bailey *v.* Agawam Nat. Bank, 190 Mass. 20, 76 N. E. 449.

Michigan. — Lamb *v.* Pontiac, etc., R. Co., 150 Mich. 340, 113 N. W. 1110.

Nebraska. — Agnew *v.* Pawnee City, (Neb. 1907) 113 N. W. 236.

New Jersey. — Hess *v.* Kenney, 69 N. J. Eq. 138, 61 Atl. 464; Lengyel *v.* Meyer, 70 N. J.

Eq. 501, 62 Atl. 548; Sked *v.* Pennington Spring Water Co., (N. J. 1907) 65 Atl. 713.

New York. — Bliss *v.* Mayer, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 119, 103 N. Y. Supp. 1077.

North Carolina. — Seaboard Air Line R. Co. *v.* Olive, 142 N. Car. 257, 55 S. E. 263.

Pennsylvania. — Piro *v.* Shipley, 211 Pa. St. 36, 60 Atl. 325; Schmoele *v.* Betz, 212 Pa. St. 32, 61 Atl. 525; Wilson *v.* Cather, 214 Pa. St. 3, 63 Atl. 190; Mershon *v.* Walker, 215 Pa. St. 41, 64 Atl. 403.

South Carolina. — D. W. Alderman, etc., Co. *v.* Wilson, 71 S. Car. 64, 50 S. E. 643.

Tennessee. — Tennessee Brewing Co. *v.* Union R. Co., 113 Tenn. 53, 85 S. W. 864.

West Virginia. — Hershman *v.* Stalnaker, 58 W. Va. 459, 52 S. E. 533; Flaherty *v.* Fleming, 58 W. Va. 669, 52 S. E. 857; Johnson *v.* Gould, 60 W. Va. 84, 53 S. E. 798.

Injunction Does Not Lie until Threatened Violation of Easement. — Forrester *v.* Island Heights Assoc., (N. J. 1906) 62 Atl. 775.

Petition for Injunction Must Show No Remedy at Law. — Gaynor *v.* Bauer, 144 Ala. 448, 39 So. 749.

Injunction Will Not Be Granted Where Title to Easement Is in Dispute. — Bernei *v.* Sappington, 102 Md. 185, 62 Atl. 365.

132. 2. Dunn *v.* Youmans, 224 Ill. 34, 79 N. E. 321, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 432.

3. Levine *v.* Carroll, 121 Ill. App. 105.

133. 2. Smith *v.* Smith, 120 N. Y. App. Div. 278, 104 N. Y. Supp. 1106; Zerbey *v.* Allan, 215 Pa. St. 383, 64 Atl. 587; McClellan *v.* Powassan Lumber Co., 15 Ont. L. Rep. 67.

134. 7. Chicago *v.* Hoge, 227 Ill. 1, 75 N. E. 542.

135. 1. An Abandonment May Be Presumed from acts incompatible with the nature of the easement. Oney *v.* West Buena Vista Land Co., 104 Va. 580, 52 S. E. 343, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 435.

136. 2. Teachout *v.* Capital Lodge, etc., 128 Iowa 380, 104 N. W. 440; New England Structural Co. *v.* Everett Distilling Co., 189 Mass. 145, 75 N. E. 85; Andrus *v.* National Sugar Refining Co., 93 N. Y. App. Div. 377, 87 N. Y. Supp. 671, *affirmed* 183 N. Y. 580, 76 N. E. 1088; Watts *v.* C. I. Johnson, etc., Real Estate Corp., 105 Va. 519, 54 S. E. 317.

Loss by Adverse Possession for Statutory Period. — Swedish Evangelist Lutheran Church *v.* Jackson, 229 Ill. 506, 82 N. E. 348; Canton Co. *v.* Baltimore, (Md. 1907) 67 Atl. 274, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436; Lewisohn *v.* Lansing Co., 119 N. Y. App. Div. 393, 104 N. Y. Supp. 543.

137. 2. Tudor Boiler Mfg. Co. *v.* I. & E. Greenwald Co., 26 Ohio Cir. Ct. 556.

3. Tudor Boiler Mfg. Co. *v.* I. & E. Greenwald Co., 26 Ohio Cir. Ct. 556; Fidler *v.* Rehmeyer, 34 Pa. Super. Ct. 275.

EAVESDROPPING.

140. 4. Pavesich *v.* New England L. Ins. Co., 122 Ga. 198, 50 S. E. 68, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 440.

5. Pavesich *v.* New England L. Ins. Co., 122 Ga. 198, 50 S. E. 68, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 440.

EFFECTS.

149. 2. **Equivalent to Property or Worldly Substance.** — Andrews *v.* Applegate, 223 Ill. 535, 7 Ann. Cas. 126, 79 N. E. 176.

154. 1. **Ejusdem Generis.** — Andrews *v.* Applegate, 223 Ill. 535, 7 Ann. Cas. 126, 79 N. E. 176.

158. 1. **Effects Confined to Personalty.** — Andrews *v.* Applegate, 223 Ill. 525, 7 Ann. Cas. 126, 79 N. E. 176.

EIGHT-HOUR LAWS.

162. 1. **Object of Statutes Is to Benefit Laborers.** — State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 9 Ann. Cas. 204, 87 Pac. 980.

2. **Unconstitutional. — Laws N. Y. 1897, c. 415, art. 8, § 110,** prohibiting the employment in bakeries of any employee for more than sixty hours a week or more than ten hours a day, is a violation of the Federal Constitution with regard to the freedom of contract, and not a proper exercise of the state police power. Lochner *v.* New York, 198 U. S. 45, 3 Ann. Cas. 1133, 25 U. S. Sup. Ct. 539, *reversing* 177 N. Y. 145, 69 N. E. 373.

Constitutionality. — Act Cong. Aug. 1, 1892, c. 352, relating to the hours of employees on the public works of the United States and of the District of Columbia, is valid. Ellis *v.* U. S., 206 U. S. 246, 27 U. S. Sup. Ct. 600.

Municipal or State Works. — The *Colorado* statute, making it a misdemeanor to employ a person more than eight hours a day upon any municipal work, has been held not to be a proper exercise of police power, but valid on the ground that the state may prescribe for its governmental branches the terms and conditions on which work of a public nature may be done. Keefe *v.* People, 37 Colo. 317, 87 Pac. 791.

The *Montana* statute providing that eight hours shall be a day's work on certain municipal work, and making a violation thereof a misdemeanor, has been held not to be invalid for failure to provide for a suspension of its operation in an emergency. Nor is the statute a violation of the police power or of the freedom to contract, nor does it deny the equal protection of the laws. State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 9 Ann. Cas. 204, 87 Pac. 980.

164. 2. **To Whom Applicable.** — A statute which makes it a misdemeanor for "every person" to violate the Eight-hour Law applies to the employee as well as the employer. State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 9 Ann. Cas. 204, 87 Pac. 980.

A statute limiting a day's work by all coal "miners and laborers" to eight hours, and providing that "any owner, lessee, or operator, his or its agent, employees, or servants," violating its provisions shall be liable to a fine or imprisonment, applies only to employees of the grade of "agent," and not to a miner. State *v.* Thompson, 15 Wyo. 136, 87 Pac. 433.

United States Statutes. — In construing Act Cong. Aug. 1, 1892, c. 352, it has been held that persons employed on tugs, dredges, and scows employed by a contractor in dredging a channel in Boston harbor are not "laborers and mechanics" or employed on "the public works" of the United States, within the meaning of the statute. Ellis *v.* U. S., 206 U. S. 246, 27 U. S. Sup. Ct. 600.

Exception to Statute. — Disappointment of a contractor with regard to obtaining some of his materials does not create an "extraordinary emergency" constituting an exception to the limit of hours of work prescribed by Act Cong. Aug. 1, 1892, c. 352. Ellis *v.* U. S., 206 U. S. 246, 27 U. S. Sup. Ct. 600.

Failure of a Laborer to Work Eight Hours in every working day cannot subject him to punishment under a statute passed for his benefit. State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 9 Ann. Cas. 204, 87 Pac. 980.

EJECTMENT.

470. 1. An action of ejectment involves both the right of possession and the right of property. Coles *v.* Meskimen, 48 Oregon 54, 85 Pac. 67.

472. 3. Wachstein *v.* Christopher, 128 Ga. 229, 57 S. E. 511, Butler *v.* Frontier Telephone Co., 186 N. Y. 486, 79 N. E. 716. See also the dissenting opinion of C. A. Smith, J., in Kansas, etc., R. Co. *v.* Burns, 70 Kan. 627, 79 Pac. 238, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 472.

473. 2. *Compare* Edwards *v.* Brusha, 18 Okla. 234, 90 Pac. 727.

475. 4. Riverside Tp. *v.* Pennsylvania R. Co., (N. J. 1907) 66 Atl. 433. See also Shumway *v.* Leturno, 225 Ill. 601, 80 N. E. 403; Seabright *v.* New Jersey Cent. R. Co., 72 N. J. L. 8, 60 Atl. 64.

Lands Dedicated to Public Use. — See Canton Co. *v.* Baltimore, (Md. 1907) 66 Atl. 679, wherein it was held that a municipality which did not have the legal title to a park could not maintain ejectment therefor.

476. 1. The fact that defendant's possession does not interfere with the operation of the road is no defense to an action of ejectment. Kansas, etc., R. Co. *v.* Burns, 70 Kan. 627, 79 Pac. 238.

477. 3. Moragne *v.* Doe, 143 Ala. 459, 39 So. 161; Davidson *v.* Fraser, 36 Colo. 1, 84 Pac. 695.

Mining Lease. — Brooks *v.* Gaffin, 192 Mo. 228, 90 S. W. 808; Brooks *v.* Gaffin, 196 Mo. 231, 95 S. W. 418.

4. Gordon *v.* Park, 202 Mo. 236, 100 S. W. 621.

6. Nicolai *v.* Baltimore, 100 Md. 579, 60 Atl. 627, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 477.

478. 3. Kelly *v.* Keys, 213 Pa. St. 295, 62 Atl. 911.

7. See Mallory *v.* Brademyer, 76 Ark. 538, 89 S. W. 551; Dowdle *v.* Wheeler, 76 Ark. 529, 89 S. W. 1002; Thomas *v.* Dowdle, 76 Ark. 615, 89 S. W. 1004; Bradshaw *v.* Edelen, 194 Mo. 640, 92 S. W. 691; Stoner *v.* Ryar, 200 Mo. 444, 98 S. W. 601.

10. Ditch and Water Rights. — See Dondero *v.* O'Hara, 3 Cal. App. 633, 86 Pac. 985.

479. 2. Providence *v.* Comstock, 27 R. I. 537, 65 Atl. 307.

4. Land Subject to License for Bridge Abutments. — The purchaser of a bridge at a mechanic's lien foreclosure sale cannot maintain ejectment for the land upon which the abutments were placed under a mere license. Nicolai *v.* Baltimore, 100 Md. 579, 60 Atl. 627.

481. 2. *United States* — Dunbar *v.* Green, 198 U. S. 166, 25 U. S. Sup. Ct. 620; McGuire *v.* Blount, 199 U. S. 142, 26 U. S. Sup. Ct. 1.

Alabama. — Mobile Dry-Docks Co. *v.* Mobile, 146 Ala. 198, 40 So. 205; Doe *v.* Hammond, 146 Ala. 687, 40 So. 343; Malone *v.* La Croix, 143 Ala. 657, 144 Ala. 648, 41 So. 724; McCreary *v.* Jackson Lumber Co., 148 Ala. 247, 41 So. 822; Carpenter *v.* Joiner, (Ala. 1907) 44 So. 424.

Arkansas. — Carpenter *v.* Jones, 76 Ark. 163, 88 S. W. 871; Beardsley *v.* Hill, 77 Ark. 244, 91 S. W. 757; Wilson *v.* Gaylord, 77 Ark. 477, 92 S. W. 26; Cook *v.* Ziff Colored Masonic Lodge, 80 Ark. 31, 96 S. W. 618; Cook *v.* Slay, 80 Ark. 617, 96 S. W. 620; Cook *v.* Hunter, 80 Ark. 617, 96 S. W. 620; Cook *v.* Williams, 80 Ark. 617, 96 S. W. 622; Beardsley *v.* Hill, (Ark. 1907) 106 S. W. 1169.

Colorado. — Bothwell *v.* Denver Union Stock Yards Co., 39 Colo. 221, 90 Pac. 1127.

Connecticut. — Moran *v.* Denison, 79 Conn. 325, 65 Atl. 291.

Delaware. — Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362.

Florida. — Ropes *v.* Minshew, 51 Fla. 295, 41 So. 538.

Illinois. — Terhune *v.* Porter, 212 Ill. 595, 72 N. E. 820; Krause *v.* Nolte, 217 Ill. 298, 75 N. E. 362.

Indiana. — Cline *v.* Hays, 37 Ind. App. 329, 76 N. E. 257.

Minnesota. — Minnesota Debenture Co. *v.* Johnson, 94 Minn. 150, 102 N. W. 381.

Nebraska. — Smith *v.* Curtice, 73 Neb. 167, 102 N. W. 241; Link *v.* Campbell, 72 Neb. 307, 104 N. W. 939; Runkle *v.* Welty, (Neb. 1907) 111 N. W. 463.

New Mexico. — Harrison *v.* Gallegos, 13 N. Mex. 1, 79 Pac. 300.

North Carolina. — Barker *v.* Southern R. Co., 137 N. Car. 206, 49 S. E. 115; Mitchell *v.* Garrett, 140 N. Car. 397, 53 S. E. 226; Rumbough *v.* Sackett, 141 N. Car. 495, 54 S. E. 421.

Oregon. — Coles *v.* Meskimen, 48 Oregon 54, 85 Pac. 67.

South Carolina. — Mitchell *v.* Cleveland, 76 S. Car. 432, 57 S. E. 33.

Utah. — Cottrell *v.* Pickering, (Utah 1907) 88 Pac. 696.

Virginia. — McMurray *v.* Dixon, 105 Va. 605, 54 S. E. 481; Merryman *v.* Hoover, 107 Va. 485, 59 S. E. 483.

Washington. — George *v.* Columbia, etc., R. Co., 38 Wash. 480, 80 Pac. 767; Helm *v.* Johnson, 40 Wash. 420, 82 Pac. 402.

West Virginia. — Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026; Pennington *v.* Underwood, 59 W. Va. 340, 53 S. E. 465.

Wisconsin. — Meyers *v.* Wisconsin Cent. R.

Co., (Wis. 1907) 112 N. W. 673; Dickinson *v.* Smith, (Wis. 1907) 114 N. W. 133.

3. *Alabama.* — Mobile Dry-Docks Co. *v.* Mobile, 146 Ala. 198, 40 So. 205. See also Hudson *v.* Vaughn, 147 Ala. 490, 40 So. 757.

Arkansas. — Mallory *v.* Brademyer, 76 Ark. 538, 39 S. W. 551; Dowdle *v.* Wheeler, 76 Ark. 529, 89 S. W. 1002; Thomas *v.* Dowdle, 76 Ark. 615, 89 S. W. 1004; Cook *v.* Ziff Colored Masonic Lodge, 80 Ark. 31, 96 S. W. 618; Cook *v.* Slay, 80 Ark. 617, 96 S. W. 620; Cook *v.* Hunter, 80 Ark. 617, 96 S. W. 620; Cook *v.* Williams, 80 Ark. 617, 96 S. W. 622.

California. — See Billings *v.* Pearson, (Cal. App. 1906) 86 Pac. 825.

Connecticut. — Thomas *v.* Young, 79 Conn. 493, 65 Atl. 955.

Georgia. — Hamilton *v.* Rogers, 126 Ga. 27, 54 S. E. 926.

Illinois. — See Phelps *v.* Nazworthy, 226 Ill. 254, 80 N. E. 756.

Kentucky. — Young *v.* Duggin, (Ky. 1907) 99 S. W. 655; Fuller *v.* Keesee, (Ky. 1907) 104 S. W. 700.

Minnesota. — Minnesota Debenture Co. *v.* Johnson, 102 Minn. 150, 102 N. W. 381.

Nevada. — See Adams *v.* Child, 28 Nev. 169, 88 Pac. 1087.

New Mexico. — Harrison *v.* Gallegos, 13 N. Mex. 1, 79 Pac. 300.

North Carolina. — Mitchell *v.* Garrett, 140 N. Car. 397, 53 S. E. 226.

Pennsylvania. — Perkiomen R. Co. *v.* Kremer, 218 Pa. St. 641, 67 Atl. 913.

Virginia. — Bugg *v.* Seay, 107 Va. 648, 60 S. E. 89.

West Virginia. — Pennington *v.* Underwood, 59 W. Va. 340, 53 S. E. 465.

In ejectment, the plaintiff must, if he claims under paper title, locate his exterior boundary so as to show that his title takes in the disputed land. Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026. See also Pennington *v.* Underwood, 59 W. Va. 340, 53 S. E. 465.

4. Morse *v.* Auditor-Gen., 143 Mich. 610, 107 N. W. 317, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 481; Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201; Mitchell *v.* Garrett, 140 N. Car. 397, 53 S. E. 226; Rumbough *v.* Sackett, 141 N. Car. 495, 54 S. E. 421; Love *v.* Turner, 71 S. Car. 322, 51 S. E. 101.

5. McGuire *v.* Blount, 199 U. S. 142, 26 U. S. Sup. Ct. 1; Doe *v.* Edmondson, 145 Ala. 557, 40 So. 505; Beardsley *v.* Hill, 77 Ark. 244, 91 S. W. 757; Love *v.* Turner, 71 S. Car. 322, 51 S. E. 101; Young *v.* McNeill, (S. Car. 1907) 59 S. E. 986; Merryman *v.* Hoover, 107 Va. 485, 59 S. E. 483. *Compare* Morse *v.* Auditor-Gen., 143 Mich. 610, 107 N. W. 317.

182. **1.** McBride *v.* Steinweden, 72 Kan. 508, 83 Pac. 822.

2. Krause *v.* Nolte, 217 Ill. 298, 75 N. E. 362; Sanborn *v.* Loud, 150 Mich. 154, 113 N. W. 309; Ables *v.* Webb, 186 Mo. 233, 85 S. W. 383; Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131; Martin *v.* Kitchen, 195 Mo. 477, 93 S. W. 780; Zion Evangelical Lutheran Church *v.* St. John's Evangelical Lutheran Church, 75 Neb. 774, 106 N. W. 1010; Pereles *v.* Gross, 126 Wis. 122, 105 N. W. 217.

183. **3.** Hinton *v.* Moore, 139 N. Car. 44, 51 S. E. 787. See also Perry *v.* Hackney, 142 N. Car. 368, 55 S. E. 289.

4. Oldfather *v.* Ericsson, (Neb. 1907) 112 N. W. 356.

184. **2.** Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362; Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201. See also Fuller *v.* Keesee, (Ky. 1907) 104 S. W. 700, wherein the evidence of title was held sufficient to be passed upon by the jury.

The plaintiff may recover by showing title in any one of the persons in whom a demise is laid. Doe *v.* Moog, (Ala. 1907) 43 So. 710.

A *prima facie* case is made out by one claiming by descent if he prove heirship, and that his ancestor was the last one seized of the property. Wilson *v.* Johnson, 51 Fla. 370, 41 So. 395.

Acknowledgment of Deed. — The onus is on a defendant seeking to overcome the legal effect of an acknowledgment to one of the plaintiff's title deeds. Loyd *v.* Oates, 143 Ala. 231, 38 So. 1022.

3. Krause *v.* Nolte, 217 Ill. 298, 75 N. E. 362, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 484; Chicago Terminal Transfer R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Fuller *v.* Keesee, (Ky. 1907) 104 S. W. 700; Runkle *v.* Welty, (Neb. 1907) 111 N. W. 463; Lee *v.* Livingston, 143 Mich. 203, 106 N. W. 713; Baxter *v.* Brown, 26 R. I. 381, 59 Atl. 73, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 484; Cottrell *v.* Pickering, (Utah 1907) 88 Pac. 696. See also Scott *v.* Herrell, 27 App. Cas. (D. C.) 395; Terhune *v.* Porter, 212 Ill. 595, 72 N. E. 820; Bugg *v.* Seay, 107 Va. 648, 60 S. E. 89; Ronk *v.* Higginbotham, 54 Va. 137, 46 S. E. 128.

185. **1.** Henry *v.* Brannan, (Ala. 1906) 42 So. 995; J. I. Porter Lumber Co. *v.* Hill, 72 Ark. 62, 77 S. W. 905, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 484; Runkle *v.* Welty, (Neb. 1907) 111 N. W. 463, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 484; Baxter *v.* Brown, 26 R. I. 381, 59 Atl. 73. See also Terhune *v.* Porter, 212 Ill. 595, 72 N. E. 820; Robertson *v.* Rock Island Lumber, etc., Co., 74 Kan. 117, 85 Pac. 799, 87 Pac. 1134; Helm *v.* Johnson, 40 Wash. 420, 82 Pac. 402.

Where the parties do not claim from a common source, the plaintiff must prove a prior possession in himself, or title or prior possession of some privy. Leech *v.* Karthaus, 141 Ala. 509, 37 So. 696.

A deed from one apparently a stranger to the paramount title, who does not appear to have ever been in possession, is insufficient to show title in the grantee. Nesmith *v.* Hand, 128 Ga. 508, 57 S. E. 763.

3. Baxter *v.* Brown, 26 R. I. 381, 59 Atl. 73, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485. See also Froman *v.* Madden, 13 Idaho 138, 88 Pac. 894.

186. **1.** Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362; Asher *v.* Howard, 122 Ky. 175, 91 S. W. 270; Beatty *v.* Lewis, (N. J. 1907) 68 Atl. 95; Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201; McMurray *v.* Dixon, 105 Va. 605, 54 S. E. 481. See also Harris *v.* Butler, 52 Fla. 253, 42 So. 186; Nicholson *v.* Hale,

73 Kan. 599, 85 Pac. 592; Farmers' Bank *v.* Barbee, 198 Mo. 465, 95 S. W. 225.

The plaintiff must show title by paper or adverse possession. Doe *v.* Edmondson, 145 Ala. 557, 40 So. 505; McCreary *v.* Jackson Lumber Co., 148 Ala. 247, 41 So. 822.

2. Penrose *v.* Cooper, 71 Kan. 720, 81 Pac. 489, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486.

3. Doe *v.* Edmondson, 145 Ala. 557, 40 So. 505, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486; McCreary *v.* Jackson Lumber Co., 148 Ala. 247, 41 So. 822; Rogers *v.* Keith, 148 Ala. 225, 42 So. 446; Dondero *v.* O'Hara, 3 Cal. App. 633, 86 Pac. 985, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486; Moss *v.* Chappell, 126 Ga. 196, 54 S. E. 968; Jackson *v.* Strickland, 127 Ga. 106, 56 S. E. 107; Tucker *v.* Duncan, 224 Ill. 453, 79 N. E. 613; Penrose *v.* Cooper, 71 Kan. 720, 81 Pac. 489, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486. See also Runkle *v.* Welty, (Neb. 1907) 111 N. W. 463.

Where defendant is in actual possession, the plaintiff must show title or prior actual possession and ouster. Winn *v.* Coggins, 53 Fla. 327, 42 So. 897. See also Harris *v.* Butler, 52 Fla. 253, 42 So. 186.

Prior Possession of Grantor. — See Priester *v.* Melton, 123 Ga. 375, 51 S. E. 330, to the effect that one may rely on the prior possession of a grantor.

Question of Priority of Possession for Jury. — Dorlan *v.* Westervitch, 140 Ala. 283, 37 So. 382.

Burden of Proof. — In McMurray *v.* Dixon, 105 Va. 605, 54 S. E. 481, it was held that the burden was on defendant in such case to show that he had title or entered by authority.

488. 1. McCreary *v.* Jackson Lumber Co., 148 Ala. 247, 41 So. 822, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487; Dondero *v.* O'Hara, 3 Cal. App. 633, 86 Pac. 985, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487. See also De Land *v.* Dixon Power, etc., Co., 225 Ill. 212, 80 N. E. 125.

3. McGuire *v.* Blount, 199 U. S. 142, 26 U. S. Sup. Ct. 1; Doe *v.* Edmondson, 145 Ala. 557, 40 So. 505, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486–488; McCreary *v.* Jackson Lumber Co., 148 Ala. 247, 41 So. 822, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488. See also Rogers *v.* Keith, 148 Ala. 225, 42 So. 446; McMurray *v.* Dixon, 105 Va. 605, 54 S. E. 481. *Compare* Moss *v.* Chappell, 126 Ga. 196, 54 S. E. 968.

489. 2. Jackson *v.* Strickland, 127 Ga. 106, 56 S. E. 107.

3. McCreary *v.* Jackson Lumber Co., 148 Ala. 247, 41 So. 822; Fletcher *v.* Riley, 148 Ala. 236, 42 So. 548.

4. See Fletcher *v.* Riley, 148 Ala. 236, 42 So. 548; Harris *v.* Butler, 52 Fla. 253, 42 So. 186.

Question of Actual Possession for Jury. — McCreary *v.* Jackson Lumber Co., 148 Ala. 247, 41 So. 822.

490. 1. *Compare* Dondero *v.* O'Hara, 3 Cal. App. 633, 86 Pac. 985.

2. Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362.

3. See Nevin *v.* Disharoon, (Del. 1907) 66 Atl. 362.

491. 4. Campbell *v.* Everhart, 139 N. Car. 503, 52 N. E. 201. See also De Land *v.* Dixon Power, etc., Co., 225 Ill. 212, 80 N. E. 125; Galbaugh *v.* Rouse, (Ky. 1907) 104 S. W. 959.

5. Brosnan *v.* White, (C. C. A.) 136 Fed. 74; Dondero *v.* O'Hara, 3 Cal. App. 633, 86 Pac. 985, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 491; Krause *v.* Nolte, 217 Ill. 298, 75 N. E. 362; Richards *v.* Lee, (Miss. 1908) 45 So. 570; Gordon *v.* Park, 202 Mo. 236, 100 S. W. 621; Harrison *v.* Gallegos, 13 N. Mex. 1, 79 Pac. 300; Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201; Cottrell *v.* Pickering, (Utah 1907) 88 Pac. 696; Marbach *v.* Holmes, 105 Va. 178, 52 S. E. 828. See also Scott *v.* Herrell, 27 App. Cas. (D. C.) 395; Birge *v.* Centralia, 218 Ill. 503, 75 N. E. 1035; Runkle *v.* Welty, (Neb. 1907) 111 N. W. 463; Love *v.* Turner, 71 S. Car. 322, 51 S. E. 101; Rucker *v.* Hyde, 118 Tenn. 358, 100 S. W. 739.

A nonsuit is properly refused where there is some evidence that the parties claim from a common source. Mitchell *v.* Cleveland, 76 N. Car. 432, 57 S. E. 33.

Proof of Title in Common Grantor Unnecessary. — Hamilton *v.* Rogers, 126 Ga. 27, 54 S. E. 926; Brinkley *v.* Bell, 126 Ga. 480, 55 S. E. 187; Deen *v.* Williams, 128 Ga. 265, 57 S. E. 427; Grace *v.* Means, 129 Ga. 638, 59 S. E. 811; Galbaugh *v.* Rouse, (Ky. 1907) 104 S. W. 959. See also Leech *v.* Karthaus, 141 Ala. 509, 37 So. 696; Salyer *v.* Johnson, (Ky. 1908) 107 S. W. 210.

Burden of Proof. — See Butt *v.* Mastin, 143 Ala. 321, 39 So. 217.

Defendant Claiming Title from Two Sources. — *Compare* Brinkley *v.* Bell, 126 Ga. 480, 55 S. E. 187.

Defendant Claiming Only Part of Land from Common Source. — A claim to a common source is not established by showing that defendant claims title to part of a subdivision, of which the land in controversy is a part, but is distinct from the portion claimed by the defendant; and it is immaterial that the common grantor took by a single conveyance title to the entire subdivision. Butt *v.* Mastin, 143 Ala. 321, 39 So. 217.

Defendant Estopped to Deny Title in Common Source. — Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784.

493. 1. Hamilton *v.* Rogers, 126 Ga. 27, 54 S. E. 926; Wall *v.* Wall, 142 N. Car. 387, 55 S. E. 283. See also Hoyle *v.* Mann, 144 Ala. 516, 41 So. 835.

4. See Hamilton *v.* Cargile, 127 Ga. 762, 56 S. E. 1022.

494. 2. Carter *v.* Smith, 142 Ala. 414, 38 So. 184; Rottenberry *v.* Brown, 142 Ala. 630, 38 So. 804; Carpenter *v.* Joiner, (Ala. 1907) 44 So. 424; Carpenter *v.* Jones, 76 Ark. 163, 88 S. W. 871; Hough *v.* Jasper County Light, etc., Co., 127 Mo. App. 570, 106 S. W. 547.

3. Deas *v.* Sammons, 126 Ga. 431, 55 S. E. 170; Merryman *v.* Hoover, 107 Va. 485, 59 S. E. 483. See also Carpenter *v.* Joiner, (Ala. 1907) 44 So. 424.

5. But see Sellers *v.* Farmer, (Ala. 1907) 43

So. 967; Burnett *v.* Lyman, 141 N. Car. 500, 54 S. E. 412; Rottenberry *v.* Brown, 142 Ala. 630, 38 So. 804, to the effect that plaintiff must have title on to the time of trial.

6. Scott *v.* Herrell, 27 App. Cas. (D. C.) 395; Froman *v.* Madden, 13 Idaho 138, 88 Pac. 894, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494; Hough *v.* Jasper County Light, etc., Co., 127 Mo. App. 570, 106 S. W. 547; Zion Evangelical Lutheran Church *v.* St. John's Evangelical Lutheran Church, 75 Neb. 774, 106 N. W. 1010; Bridenbaugh *v.* Bryant, (Neb. 1907) 112 N. W. 571; Butler *v.* Frontier Telephone Co., 186 N. Y. 486, 79 N. E. 716; Coles *v.* Meskimen, 48 Oregon 54, 85 Pac. 67.

7. Merryman *v.* Hoover, 107 Va. 485, 59 S. E. 483.

495. 2. Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131.

496. 1. Carter *v.* Smith, 142 Ala. 414, 38 So. 184. See also Carpenter *v.* Joiner, (Ala. 1907) 44 So. 424; Smith *v.* Ryan, 116 N. Y. App. Div. 397, 101 N. Y. Supp. 1011.

497. 2. Norris *v.* Billingsley, 48 Fla. 102, 37 So. 564; Grace *v.* Means, 129 Ga. 638, 59 S. E. 811; Coles *v.* Meskimen, 48 Oregon 54, 85 Pac. 67.

498. 1. See Lewis *v.* Yates, (W. Va. 1907) 59 S. E. 1073; Walters *v.* Chance, 73 Kan. 680, 85 Pac. 779.

502. 1. Purchaser at Execution Sale. — The execution purchaser of the equity of redemption cannot maintain ejectment against the mortgagee, although the mortgage was assigned after the commencement of the action. Carter *v.* Smith, 142 Ala. 414, 38 So. 184.

504. 6. Haggart *v.* Wilczinski, (C. C. A.) 143 Fed. 22.

506. 1. Abrams *v.* Abrams, 74 Kan. 888, 88 Pac. 70; Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20.

507. 4. *Compare* Smith *v.* Curtice, 73 Neb. 167, 102 N. W. 241.

508. 1. Blocker *v.* McClendon, 6 Indian Ter. 481, 98 S. W. 166. See also Jackson Brewing Co. *v.* Wagner, 116 La. 51, 40 So. 528.

2. See Jackson Brewing Co. *v.* Wagner, 116 La. 51, 40 So. 528.

The reservation to the lessor of a right of re-entry for breach of a covenant authorizes ejectment. Palmieri *v.* Antinozzi, (Supm, Ct. Spec. T.) 47 Misc. (N. Y.) 237, 95 N. Y. Supp. 865.

3. See Palmieri *v.* Antinozzi, (Supm. Ct. Spec., T.) 47 Misc. (N. Y.) 237, 95 N. Y. Supp. 865.

4. See Palmieri *v.* Antinozzi, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 237, 95 N. Y. Supp. 865.

When Demand Unnecessary. — Blocker *v.* McClendon, 6 Indian Ter. 481, 98 S. W. 166. See also Carlson *v.* Curran, [illegible] Cal.

510. 1. Wallace *v.* Ocean Grove Camp Meeting Assoc., etc., (C. C. A.) 148 Fed. 672.

511. 2. See Thomas *v.* Young, 79 Conn. 493, 65 Atl. 955.

512. 5. Williams *v.* Coal Creek Min., etc., Co., 115 Tenn. 578, 93 S. W. 573.

9. Dorlan *v.* Westervitch, 140 Ala. 283, 37 So. 382; Field *v.* Tanner, 32 Colo. 278, 75 Pac. 916, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 512; Horner *v.* Ellis, 75 Kan. 675, 90 Pac. 275.

Grantee of Cotenants. — A conveyance by cotenants good as to some of them gave the grantee a right to recover the whole possession in ejectment. Lamb *v.* Lamb, 139 Mich. 166, 102 N. W. 645.

513. 3. Davidson *v.* Fraser, 36 Colo. 1, 84 Pac. 695; Neher *v.* Armijo, 11 N. Mex. 67, 66 Pac. 517, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513.

4. Atlantic City R. Co. *v.* Johnson, (N. J. 1907) 65 Atl. 719. *Compare* Bucher *v.* Overlees, 6 Indian Ter. 144, 89 S. W. 1021.

515. 1. Action Not Maintainable after Expiration of Life Estate. — Furr *v.* Burns, 124 Ga. 742, 53 S. E. 201.

6. Land Conveyed to Defeat Dower. — The widow may maintain ejectment against one in possession under a fraudulent deed made by her husband to defeat dower. McKelvey *v.* McKelvey, 75 Kan. 325, 89 Pac. 663.

517. 4. Dake *v.* Sewell, 145 Ala. 581, 39 So. 819; Pryor *v.* Winter, 147 Cal. 554, 82 Pac. [illegible]

5. See Davis *v.* Dyer, (Ky. 1906) 93 S. W. 629.

6. See Brinkley *v.* Bell, 126 Ga. 480, 55 S. E. 187.

518. 3. See Wilson *v.* Johnson, 51 Fla. 370, 41 So. 395; Pierce *v.* Lee, 197 Mo. 480, 95 S. W. 426.

4. See Eldred *v.* Johnson, 75 Ark. 1, 86 S. W. 670; Doris *v.* Story, 122 Ga. 611, 50 S. E. 348.

519. 3. See Du Bignon *v.* Finch, 123 Ga. 616, 51 S. E. 574.

7. Moragne *v.* Doe, 143 Ala. 459, 39 So. 161; Doherty *v.* Courtney, 150 Cal. 606, 89 Pac. 434; Gibson *v.* Slater, 42 Wash. 347, 84 Pac. 648.

In Doris *v.* Story, 122 Ga. 611, 50 S. E. 348, it was held that a temporary administrator had no such title or interest as would support eject[illegible]

521. 1. Ward *v.* Sturdivant, 81 Ark. 73, 98 S. W. 690.

4. Menge *v.* Morris, etc., R. Co., (N. J. 1907) 67 Atl. 1029. See also Connellsville Gas Coal Co. *v.* Baltimore, etc., R. Co., 216 Pa. St. 309, 65 Atl. 669.

522. 2. See Wilson *v.* Gaylord, 77 Ark. 477, 92 S. W. 26.

3. Richardson *v.* Wymer, 104 Va. 236, 51 S. E. 219. See also Davis *v.* Dyer, (Ky. 1906) 93 S. W. 629.

4. See Armstead *v.* Jones, 71 Kan. 142, 80 Pac. 56, wherein it was held that misrecitals in a sheriff's deed would not defeat the execution purchaser's action of ejectment.

5. *Compare* Simmons *v.* Sharpe, 148 Ala. [illegible]

6. The plaintiff must show that the judgment defendant had an interest subject to levy and sale. Carter *v.* Smith, 142 Ala. 414, 38 So. 184.

7. See Carter *v.* Smith, 142 Ala. 414, 38 So. 184; Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66.

523. 1. See Smith *v.* Curtice, 73 Neb. 167, 102 N. W. 241.

524. 1. See Blocker *v.* McClendon, 6 Indian Ter. 481, 98 S. W. 166.

6. Hunter *v.* Wethington, 205 Mo. 284, 103 S. W. 543, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 524; Houghton *v.* Pierce, 203 Mo. 723, 102 S. W. 553; Kreamer *v.* Voneida, 213 Pa. St. 74, 62 Atl. 518; Heppenstall *v.* Leng, 217 Pa. St. 491, 66 Atl. 991.

Proof of Ouster. — The plaintiff must prove ouster. Butler *v.* Frontier Telephone Co., 186 N. Y. 486, 79 N. E. 716. See also Harris *v.* Butler, 52 Fla. 253, 42 So. 186; Winn *v.* Coggins, 53 Fla. 327, 42 So. 897.

7. A claim of adverse possession is not such an admission as is contemplated to relieve the plaintiff in ejectment of the necessity of proving defendant in possession. Hunter *v.* Wethington, 205 Mo. 284, 103 S. W. 543.

Evidence of Admission.—On the issue of possession by defendant it is error to admit an agreement for a continuance which contains no admissions with regard to possession. Ross *v.* Roy, (Ala. 1905) 39 So. 583.

525. 1. Hunter *v.* Wethington, 205 Mo. 284, 103 S. W. 543. See also Scharff *v.* McGaugh, 205 Mo. 344, 103 S. W. 550.

4. *Compare* Dennis *v.* Price, 148 Ala. 243, 41 So. 840.

5. Bridenbaugh *v.* Bryant, (Neb. 1907) 112 N. W. 571. See also Ross *v.* Roy, (Ala. 1905) 39 So. 583.

526. 1. See Butler *v.* Frontier Telephone Co., 186 N. Y. 486, 79 N. E. 716.

3. Butler *v.* Frontier Telephone Co., 186 N. Y. 486, 79 N. E. 716; Logan *v.* Ward, 58 W. Va. 366, 52 S. E. 398, *quoting* 1 [10] AM. AND ENG. ENCYC. OF LAW (2d ed.) 526.

4. Hunter *v.* Wethington, 205 Mo. 284, 103 S. W. 543.

And this is so where the landlord is a cotenant of the plaintiff. Llewellyn *v.* Llewellyn, 201 Mo. 303, 100 S. W. 40.

5. Bower *v.* Cohen, 126 Ga. 35, 54 S. E. 918.

6. Bower *v.* Cohen, 126 Ga. 35, 54 S. E. 918. See also Hunter *v.* Wethington, 205 Mo. 284, 103 S. W. 543.

Under the *Alabama* Code, § 1534, upon the motion of a tenant defendant, the landlord must be made a party. Dake *v.* Sewell, 145 Ala. 581, 39 So. 819.

7. See Llewellyn *v.* Llewellyn, 201 Mo. 303, 100 S. W. 40.

529. 9. Love *v.* Turner, 71 S. Car. 322, 51 S. E. 101.

530. 4. Bertrand *v.* Levesque, 28 Quebec Super. Ct. 460; Latourelle *v.* Darby, 28 Quebec Super. Ct. 97.

531. 1. **Ejectment Lies to Determine Title.** — Where the overflow is under a claim of perpetual right, ejectment lies to try the title. Reynolds *v.* Munch, 100 Minn. 114, 110 N. W. 368.

2. Wachstein *v.* Christopher, 128 Ga. 229, 57 S. E. 511, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 531, and holding that ejectment will lie for an encroachment below the surface of the soil. See also Huber *v.* Stark, 124 Wis. 359, 102 N. W. 12, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 531.

Telephone Wire. — Ejectment lies where a telephone wire is stretched across the plaintiff's property a few feet above the soil. Butler *v.* Frontier Telephone Co., 186 N. Y. 486, 79 N. E. 716.

Ejectment for Division Fence. — A party is entitled to relief by ejectment where a fence occupies a disproportionate share of his land. Rose *v.* Linderman, 147 Mich. 372, 110 N. W. 939.

4. Huber *v.* Stark, 124 Wis. 359, 102 N. W. 12.

532. 3. Minnesota Debenture Co. *v.* Johnson, 94 Minn. 150, 102 N. W. 381, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532; Altschul *v.* Casey, 45 Oregon 182, 76 Pac. 1083, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532. See also Mobile Dry-Docks Co. *v.* Mobile, 146 Ala. 198, 40 So. 205; Beardsley *v.* Hill, (Ark. 1907) 106 S. W. 1169.

The defendant may rely on the weakness of the title of his adversary. Dowdle *v.* Wheeler, 76 Ark. 529, 89 S. W. 1002.

5. Merryman *v.* Hoover, 107 Va. 485, 59 S. E. 483 (to the same effect as Parkersburg Industrial Co. *v.* Schultz, 43 W. Va. 470, set forth in the original note).

Deed to Plaintiff Suing in Grantor's Name. — An unrecorded deed from a grantor out of possession to the real plaintiff does not defeat ejectment brought in the name of such grantor. McRae *v.* Preston, (Fla. 1907) 44 So. 946.

Setting up Title in Vendor. — A vendee in a title bond may defeat ejectment by setting up title by adverse possession in his vendor. Lewis *v.* Yates, (W. Va. 1907) 59 S. E. 1077.

Title Acquired Subsequent to Suit. — The defendant may set up a title acquired subsequent to the commencement of the suit. McCauley *v.* Jones, 34 Mont. 375, 86 Pac. 422.

Adverse Possession is a defense to a suit in ejectment. Driver *v.* King, 145 Ala. 585, 40 So. 315.

When Plaintiff Makes Out Prima Facie Case, Burden on Defendant.—Warrior River Coal, etc., Co. *v.* Alabama State Land Co., (Ala. 1907) 45 So. 53; Du Bignon *v.* Finch, 123 Ga. 616, 51 S. E. 574; Sonnemann *v.* Mertz, 221 Ill. 362, 77 N. E. 550; May *v.* Dobbins, 166 Ind. 331, 77 N. E. 353; South Grand Rapids Imp. Co. *v.* Michigan Cent. R. Co., 142 Mich. 620, 105 N. W. 1121; Calatro *v.* Chabut, 72 N. J. L. 458, 63 Atl. 272.

Cases Holding Burden of Proof Does Not Shift from Plaintiff.—The burden of proof does not shift to defendant, though the burden of going forward with the evidence does, when plaintiff shows a *prima facie* title. Moore *v.* McClain, 141 N. Car. 473, 54 S. E. 382; Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

533. 1. Phelps *v.* Nazworthy, 226 Ill. 254, 80 N. E. 756. But see Bliss *v.* Slater, 144 Mich. 648, 108 N. W. 86 (wherein it was held that a perfect record title could not be attacked because of fraud as to the grantor's creditors); Loranger *v.* Carpenter, 148 Mich. 549, 112 N. W. 125; White *v.* Schroetter, (Mo. 1907) 106 S. W. 521.

Usury. — In an action of ejectment where the plaintiff relies on a deed coming from his own possession, the opposite party may, with-

out proof of its execution, rely on a memorandum on the back of the deed showing it to be void for usury. McBrayer *v.* Walker, 122 Ga. 245, 50 S. E. 95.

2. Dinkins *v.* Latham, (Ala. 1907) 45 So. 60; Putney *v.* Vinton, 145 Mich. 219, 108 N. W. 655; Rix *v.* Smith, 145 Mich. 203, 108 N. W. 691; Atlantic City R. Co. *v.* Johnson, (N. J. 1907) 65 Atl. 719; Mitchell *v.* Cleveland, 76 S. Car. 432, 57 S. E. 33.

4. Gates *v.* Gray, (Ark. 1907) 106 S. W. 947; Doherty *v.* Courtney, 150 Cal. 606, 89 Pac. 434; King *v.* Dugan, 150 Cal. 258, 88 Pac. 925; Smith *v.* Love, 49 Fla. 230, 38 So. 376; Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131; Martin *v.* Kitchen, 195 Mo. 477, 93 S. W. 780; Union Stock Yards Nat. Bank *v.* Day, (Neb. 1907) 113 N. W. 530; Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850. See also Dondero *v.* O'Hara, 3 Cal. App. 633, 86 Pac. 985; Leggett *v.* Peterson, 122 Ga. 182, 50 S. E. 51; Brooks *v.* Gaffin, 192 Mo. 228, 90 S. W. 808; Coles *v.* Meskimen, 48 Oregon 54, 85 Pac. 67.

535. 2. Milam *v.* Coley, 144 Ala. 535, 39 So. 511.

3. Laches. — In Rhodes *v.* Cissell, 82 Ark. 367, 101 S. W. 758, the plaintiff was held not to be barred by laches from maintaining ejectment.

4. Under Missouri Code of Civil Procedure. — Ming *v.* Olster, 195 Mo. 460, 92 S. W. 898.

6. See Henry *v.* Davis, (Ala. 1907) 43 So. 122.

Nature of Action. — Trespass and not assumpsit is the proper remedy to recover mesne profits. Reilly *v.* Crown Petroleum Co., 213 Pa. St. 595, 63 Atl. 253.

538. 1. See Ramey *v.* O'Byrne, 121 Ga. 516, 49 S. E. 595.

540. 3. Lee *v.* Humphries, 124 Ga. 539, 52 S. E. 1007.

The claimant under a voidable tax deed who has quieted title against the holder of an earlier voidable tax deed, upon being defeated in ejectment by the original owner is not entitled to recover the taxes paid by the grantee in such earlier tax deed. Lockwood *v.* Meade Land, etc., Co., 71 Kan. 739, 81 Pac. 496.

541. 3. Ore Lands. — A proper measure of damages in an action to recover mineral lands leased by the defendant to a company, is the amount of royalties paid and due under the lease. Moragne *v.* Doe, 143 Ala. 459, 39 So. 161.

543. 1. Dawkins *v.* Griffin, 195 Mo. 430, 94 S. W. 525.

2. Hicks *v.* Webb, 127 Ga. 170, 56 S. E. 307; Investment Co. *v.* Hambach, 37 Wash. 629, 80 Pac. 190. See also McRae *v.* Preston, (Fla. 1907) 44 So. 946.

Where not claimed in the answer, evidence of improvements is properly excluded. Carraway *v.* Moore, 75 Ark. 146, 86 S. W. 993.

Statute Not Retroactive. — Barton *v.* Wickizer, 41 Wash. 293, 83 Pac. 312.

The Burden Is on the Plaintiff to show when the improvements were made. Monk *v.* Duell, 41 Wash. 403, 83 Pac. 313.

3. New *v.* Young, 148 Ala. 253, 41 So. 523. See also Wakefield *v.* Van Tassell, 218 Ill. 572, 75 N. E. 1058; Dawkins *v.* Griffin, 195 Mo. 430, 94 S. W. 525.

Rents and Improvements, Presumed Equal. — Dixon *v.* Harris, (Ky. 1907) 105 S. W. 451.

544. 1. Dawkins *v.* Griffin, 195 Mo. 430, 94 S. W. 525. See also New *v.* Young, 148 Ala. 253, 41 So. 523; Hicks *v.* Webb, 127 Ga. 170, 56 S. E. 307; Wood *v.* Finsley, 138 N. Car. 507, 51 S. E. 59.

Improvements Made by Occupant's Grantor. — Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816.

Recovery in Ejectment by Former Defendant. — An unsuccessful defendant in ejectment may recover for improvements, though first claimed in his own subsequent ejectment suit. Neeld *v.* Cunningham, 216 Pa. St. 523, 65 Atl. 1095.

545. 1. Murray *v.* Barnes, 146 Ala. 688, 40 So. 348; Van Tassell *v.* Wakefield, 214 Ill. 205, 73 N. E. 340; Wakefield *v.* Van Tassell, 218 Ill. 572, 75 N. E. 1058.

Where the owners of a life estate made improvements under the belief that they owned the fee, they were held entitled to recover therefor. Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816.

2. Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816.

3. See Brown *v.* Grady, (Wyo. 1907) 92 Pac. 622.

In Illinois under the occupying claimant's law, there must be a showing, by one evicted, of "a plain, clear, and connected title in law or equity." Wakefield *v.* Van Tassell, 218 Ill. 572, 75 N. E. 1058.

In Michigan there must be a holding under color of title or six years' possession in good faith. Boucher *v.* Trembley, 140 Mich. 352, 103 N. W. 819.

5. See Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816.

546. 1. Lee *v.* Humphries, 124 Ga. 539, 52 S. E. 1007.

547. 2. Trotter *v.* Stayton, 45 Oregon 301, 77 Pac. 395, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 547.

548. 2. Henry *v.* Davis, (Ala. 1907) 43 So. 122.

ELECTIONS.

562. 1. Newton *v.* Ogden, (Ky. 1907) 102 S. W. 865, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 562.

3. Under a statute relating to the change, division, or consolidation of election precincts and providing that no change should be made within a certain time before any election, it was held that the word "election" meant an election held under a general law and not an election held under a special act of the legislature, establishing an independent school district, upon the question of consenting to the creation of such school district. Rader *v.* Board of Education, 57 W. Va. 220, 50 S. E. [illegible].

4. State *v.* State Board of Canvassers, (S. Car. 1907) 59 S. E. 145, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 562.

563. 1. Phillips *v.* Bynum, 145 Ala. 549, [illegible].

567. 2. Dismukes *v.* Jones, (Ala. 1907) 44 So. [illegible].

572. 1. State *v.* Webber, 96 Minn. 422,

[illegible] W. 400, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 572.

573. 4. People *v.* Board of Election Com'rs, 221 Ill. 9, 77 N. E. 321; Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109; State *v.* Monahan, 72 Kan. 492, 7 Ann. Cas. 661, 84 Pac. 130, *citing* 10 AM. AND ENG. ENCYC. OF [illegible]; State *v.* Drexel, 75 Neb. 751, 105 N. W. 174; Johnson *v.* Grand Forks County, (N. Dak. 1907) 113 N. W. 1071; Wright *v.* Board of Canvassers, 76 S. Car. 574, 57 S. E. 536, *citing* 10 AM. AND ENG. [illegible] (2d ed.) 573.

Legislature May Prescribe Reasonable Regulations for Primaries. — Rebstock *v.* San Francisco, 146 Cal. 308, 80 Pac. 65; Schostag *v.* Cator, 151 Cal. 600, 91 Pac. 502; Katz *v.* Fitzgerald, (Cal. 1907) 93 Pac. 112; Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177; Kenneweg *v.* Allegany County, 102 Md. 119, 62 Atl. 249.

574. 5. Wright *v.* Board of Canvassers, 76 S. Car. 574, 57 S. E. 536, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 573, 574.

575. 1. *Ex p.* Owens, 148 Ala. 402, 42 So. 676; People *v.* Board of Election Com'rs, 221 Ill. 9, 77 N. E. 321; People *v.* Edgar County, 223 Ill. 187, 79 N. E. 123; Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109; Hale *v.* Stimson, 198 Mo. 134, 95 S. W. 885; State *v.* Drexel, 75 Neb. 751, 105 N. W. 174; State *v.* Winnett, (Neb. 1907) 110 N. W. 1113; Opinion of Justices, 73 N. H. 618, 60 Atl. 847; *In re* Morgan, 114 N. Y. App. Div. 127, 99 N. Y. Supp. 783; People *v.* Ellenbogen, 114 N. Y. App. Div. 182, 99 N. Y. Supp. 897; Clark *v.* Hardison, (Tex. Civ. App. 1905) 90 S. W. 342; Arnold *v.* Anderson, (Tex. Civ. App. 1906) 93 S. W. 692.

2. Johnson *v.* Grand Forks County, (N. Dak. 1907) 113 N. W. 1071.

576. 2. State *v.* Scott, 99 Minn. 145, 108 N. W. 828.

4. State *v.* Monahan, 72 Kan. 492, 7 Ann. Cas. 661, 84 Pac. 130, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576; Livesley *v.* Litchfield, 47 Oregon 248, 83 Pac. 142, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576.

577. 1. State *v.* Monahan, 72 Kan. 492, 7 Ann. Cas. 661, 84 Pac. 130, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 577.

2. Livesley *v.* Litchfield, 47 Oregon 248, 83 Pac. 142.

The Legislature Has Plenary Power to Define the Qualifications of Voters at School Elections where the constitutional provisions defining the qualifications of voters do not apply to such elections. Livesley *v.* Litchfield, 47 Oregon 248, 83 Pac. 142; Setterlun *v.* Keene, 48 Oregon 520, 87 Pac. 763.

582. 1. Fairchild *v.* Smith, 15 Hawaii 265, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 581, as to the conflict of authorities and deciding in favor of sustaining such provisions.

583. 4. State *v.* Richardson, 48 Oregon 309, 85 Pac. 225, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583.

584. 3. State *v.* Richardson, 48 Oregon 309, 85 Pac. 225.

587. 3. *Ex p.* Owens, 148 Ala. 402, 42 So. 676; Oughton *v.* Black, 212 Pa. St. 1, 61 Atl. [illegible].

588. 6. Montgomery *v.* Henry, 144 Ala. 629, 39 So. 507; *Ex p.* Owens, 148 Ala. 402, 42 So. 676; People *v.* Edgar County, 223 Ill. 187, 79 N. E. 123; Peabody *v.* Burch, 75 Kan. 543, 89 Pac. 1016; Neely *v.* Rice, (Ky. 1906) 97 S. W. 737; Duff *v.* Crawford, (Ky. 1906) 97 S. W. 1124; Cramton *v.* Secretary of State, 144 Mich. 341, 107 N. W. 875; Koster *v.* Coyne, 184 N. Y. 494, 77 N. E. 983; *In re* Gulotta, 108 N. Y. App. Div. 278, 95 N. Y. Supp. 616; Columbus *v.* Cole, 16 Ohio Dec. 212; McClelland *v.* Erwin, 16 Okla. 612, 86 Pac. 283; *In re* Parrish, 214 Pa. St. 63, 63 Atl. 460; Com. *v.* Blankenburg, 218 Pa. St. 339, 67 Atl. 645; *In re* Wilcox, 27 R. I. 117, 60 Atl. 838; Clark *v.* Hardison, (Tex. Civ. App. 1905) 90 S. W. 342; Arnold *v.* Anderson, (Tex. Civ. App. 1906) 93 S. W. 692; Walker *v.* Mobley, (Tex. Civ. App. 1907) 105 S. W. 61.

589. 3. Remster *v.* Sullivan, 36 Ind. App. 385, 75 N. E. 860, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 589.

Statutes Governing Elections Construed Liberally. — State *v.* Hough, 193 Mo. 615, 91 S. W. 905; State *v.* McDonald, (Mo. 1906) 91 S. W. 916; State *v.* Ryan, (Mo. 1906) 91 S. W. 916; *In re* Bulger, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 584, 97 N. Y. Supp. 232; *In re* Nomination of Candidates, 186 N. Y. 266, 79 N. E. 708; *In re* Independence League, (Supm. Ct.) 51 Misc. (N. Y.) 486, 100 N. Y. Supp. 760.

Statutes Limiting Right of Suffrage Should Be Liberally Construed in Favor of Voter. — Montgomery *v.* Henry, 144 Ala. 629, 39 So. 507.

592. 2. See Hall *v.* Madison, 128 Wis. 132, 107 N. W. 31, construing Rev. Stat. Wis. 1898, § 4288a.

4. Constitution of *North Carolina*, art 6, § 4. Clark *v.* Statesville, 139 N. Car. 490, 52 S. E. 52.

593. 1. Frost *v.* State, (Ala. 1907) 45 So. 203; Com. *v.* Shrontz, 213 Pa. St. 327, 62 Atl. 910; Pace *v.* Raleigh, 140 N. Car. 65, 52 S. E. 277.

Payment of Poor Rate. — See Ash *v.* Nicholl, (1905) 1 K. B. 139.

594. 1. **Error in Assessment Does Not Disqualify Elector.** — Com. *v.* Shrontz, 213 Pa. St. 327, 62 Atl. 910.

595. 2. **Property Qualifications in England.** — Larcombe *v.* Simey, (1907) 1 K. B. 139; Laskey *v.* Michelmore, 24 Times L. Rep. 61; M'Daid *v.* Balmer, (1907) 2 Ir. R. 345; Kent *v.* Fittall, (1906) 1 K. B. 60; Douglas *v.* Smith, (1907) 2 K. B. 568; Rex *v.* Bell, 71 J. P. 542; Milne *v.* Murray, (1907) Sc. Ct. of Sess. 396; Bogie *v.* M'Gowan, (1907) Sc. Ct. of Sess. 391; Brooks *v.* Baker, (1906) 1 K. B. 11; Kirby *v.* Barber, 54 W. R. 119, 70 J. P. 20; Wolfe *v.* Surrey County Council, (1905) 1 K. B. 439; Jack *v.* Edie, Sc. Ct. of Sess. 8 F. 320.

598. 1. State *v.* Savre, 129 Iowa 122, 105 N. W. 387; State *v.* Lally, (Wis. 1908) 114 N. W. 447.

2. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 598.

4. Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291.

5. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 598; State *v.* Savre, 129 Iowa 122, 105 N. W. 387, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 598.

599. 2. Widmayer *v.* Davis, 231 Ill. 42, 83 N. E. 87; State *v.* Savre, 129 Iowa 122, 105 N. W. 387; State *v.* Lally, (Wis. 1908) 114 N. W. 447.

3. Right to Register and Vote Depends on Actual Residence. — People *v.* Ellenbogen, 114 N. Y. App. Div. 182, 99 N. Y. Supp. 897, *affirmed* in 186 N. Y. 603, 79 N. E. 1112.

601. 1. Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291.

602. 1. Widmayer *v.* Davis, 231 Ill. 42, 83 N. E. 88.

604. 3. If a student supports himself entirely by his own efforts, is not subject to parental control, regards the place where the college is situated as his home, even though he may at some future time intend to remove, has the intention of making it his present abiding place, and has no fixed and positive intention as to where he will locate when he leaves, he is entitled to vote. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549.

4. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549 (to the same effect as Dale *v.* Irwin, 78 Ill. 170, stated in the original note).

605. 3. Presumption Is Against Student's Right to Vote. — Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

607. 5. State *v.* Willett, 117 Tenn. 334, 97 S. W. 299, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 607.

608. 4. See Hale *v.* Stimson, 198 Mo. 134, 95 S. W. 885.

8. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549.

609. 8. Paroled Convict Cannot Vote. — Widmayer *v.* Davis, 231 Ill. 42, 83 N. E. 87.

611. 2. *In re* Morgan, 114 N. Y. App. Div. 45, 99 N. Y. Supp. 775.

613. 3. Under the *Maryland* statute Code 1904, art. 33, § 24, the registration board has original jurisdiction in registration matters and the appellate court is without power to review or correct any error committed by those officers, unless said officers have taken some action upon objections properly before them. Collier *v.* Carter, 100 Md. 381, 60 Atl. 104; Wilson *v.* Carter, 103 Md. 120, 63 Atl. 369; Smith *v.* McCormick, 105 Md. 224, 65 Atl. 929.

No Power to Revise List After Expiration of Statutory Period. — State *v.* Willett, 117 Tenn. 334, 97 S. W. 299, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 613.

614. 2. Higgins *v.* Lockwood, (N. J. 1906) 64 Atl. 184.

617. 1. Neither Voting nor Registration Conclusive on Question of Domicil. — Quinn *v.* Nevills, (Cal. App. 1907) 93 Pac. 1055.

3. Fairchild *v.* Smith, 15 Hawaii 265; De Haven *v.* Bowmer, (Ky. 1907) 102 S. W. 306; Clark *v.* Statesville, 139 N. Car. 490, 52 S. E. 52; *In re* Mulholland, 217 Pa. St. 631, 66 Atl. 1105.

622. 1. The Revising Barrister Has Power to correct a mistake in the omission of the second Christian name of a voter on the list of voters. Green *v.* Wanklyn, (1906) 1 K. B. 394.

624. 1. Conclusiveness of Voters' List. — *Re* Port Arthur, 13 Ont. L. Rep. 17, 14 Ont. L. Rep. 345.

3. Ellis *v.* Wheatly, 147 Cal. 372, 81 Pac. 1105; Marsden *v.* Harlocker, 48 Oregon 90, 85 Pac. 328.

Under a statute requiring notice of an election to be published for thirty days in the official journal of the parish, it has been held that a publication for five consecutive Saturdays is sufficient where the official journal is published only on Saturdays. Lower Terrebonne Refining, etc., Co. *v.* Police Jury, 115 La. 1019, 40 So. 443.

625. 4. Where a petition was required to be signed by at least twenty per cent. of the electors "as appears by the poll list," it was held that the names of twenty per cent. of the very electors appearing on that list were necessary. State *v.* Russell, 124 Wis. 548, 102 N. W. 1052.

Petition for Nomination of Candidates for Different Terms Must Designate Term of Each Candidate. — Remster *v.* Sullivan, 36 Ind. App. 385, 75 N. E. 860.

Petition Must Substantially Comply with Statute. — *In re* Cipperley, (County Ct.) 50 Misc. (N. Y.) 266, 100 N. Y. Supp. 473.

6. Wilson *v.* Pike County, 144 Ala. 397, 39 So. 370, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624.

626. 1. Wilson *v.* Pike County, 144 Ala. 397, 39 So. 370.

2. Commissioners Ct. *v.* State, (Ala. 1907) 44 So. 465.

In Bordwell *v.* State, 77 Ark. 161, 91 S. W. 555, it was held that an election held at a place other than that fixed by law was not void where no one was misled.

629. 2. Rodwell *v.* Rowland, 137 N. Car. 617, 50 S. E. 319.

3. Thomasville *v.* Thomasville Electric Light, etc., Co., 122 Ga. 399, 50 S. E. 169; People *v.* Voorhis, 187 N. Y. 196, 80 N. E. 196.

634. 1. *New York.* — One hundred signers are sufficient to nominate an alderman in New York city, and five hundred for a justice of the Municipal Court. *In re* Herman, 108 N. Y. App. Div. 335, 96 N. Y. Supp. 144.

635. 2. Need Not Be Registered. — *In re* Herman, 108 N. Y. App. Div. 335, 96 N. Y. Supp. 144. But see *In re* Horan, 108 N. Y. App. Div. 269, 95 N. Y. Supp. 607.

4. Katz *v.* Fitzgerald, (Cal. 1907) 93 Pac. 112, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635.

5. Not Disqualified by Voting at Primary. — *In re* Herman, 108 N. Y. App. Div. 335, 96 N. Y. Supp. 144.

636. 4. Separate Certificate Required for Each District. — *In re* Quimby, 116 N. Y. App. Div. 142, 102 N. Y. Supp. 201; *In re* Bennet, 116 N. Y. App. Div. 138, 102 N. Y. Supp. 352.

637. 1. Ditto Marks. — Under a statute requiring signers to a nomination paper to add

their business and residence to their signature, it has been held that the use of ditto marks is a sufficient compliance. State *v.* Bunnell, 131 Wis. 198, 110 N. W. 177.

5. Manseau *v.* Mercure, 30 Quebec Super. Ct. 156, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637.

638. 2. Manseau *v.* Mercure, 30 Quebec Super. Ct. 156, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637 [638].

Separate Sheets. — A certificate of nomination containing several sheets firmly bound together is only one sheet in law. *In re* Bulger, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 584, 97 N. Y. Supp. 232.

639. 1. Construction of Statutory Provision. — See State *v.* Dewey, 73 Neb. 396, 102 N. W. 1015.

640. 1. See Eversole *v.* Holliday, (Ky. 1906) 96 S. W. 590, construing Stat. Ky. 1903, § 1453.

641. 3. Right of Local Organization to Nominate. — A political party having only a local organization may nominate a ticket for city offices and have it placed upon the official ballot. Ogg *v.* Glover, 72 Kan. 247, 83 Pac. 1039; Owen *v.* Milhoan, 72 Kan. 701, 83 Pac. 1044; Pettyjohn *v.* Scott, 72 Kan. 700, 83 Pac. 1044.

642. 3. State *v.* Sheldon, (Neb. 1907) 113 N. W. 802.

4. *In re* Republican Nominations, 213 Pa. St. 64, 62 Atl. 258.

In the absence of controlling legislation, the composition of a nominating committee according to the usage of the party, with the sanction of the conventions of the party, will not be disturbed by the courts. Potter *v.* Deuel, 149 Mich. 393, 112 N. W. 1071.

649. 3. *In re* Halpin, 108 N. Y. App. Div. 271, 95 N. Y. Supp. 611.

On Nominee's Declination Convention May Not Reassemble and Nominate Another Candidate. — *In re* Greene, 121 N. Y. App. Div. 693, 106 N. Y. Supp. 425.

651. 4. Nominations must be made by a political party at a regularly called and properly conducted caucus or by a petition signed by the required number of electors. *In re* Freund, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 354, 103 N. Y. Supp. 420.

8. *In re* Freund, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 354, 103 N. Y. Supp. 420.

9. Court Will Not Entertain Contest of Primary Election. — Ramey *v.* Woodward, (Miss. 1907) 44 So. 769; State *v.* Reynolds, 190 Mo. 578, 89 S. W. 877; Atty.-Gen. *v.* Barry, (N. H. 1907) 68 Atl. 192.

Where Good Reason Exists Committee May Change Date of Primary. — Revell *v.* Holliday, 102 Md. 82, 61 Atl. 1081.

652. 1. Certificate Signed by Less Number of Electors than Required by Statute Void. — *In re* Official Ballot, 99 Minn. 517, 109 N. W. 1.

Must Contain All Statutory Requirements. — *In re* Darling, 121 N. Y. App. Div. 656, 106 N. Y. Supp. 430.

Electors Failing to State Their Residence Renders Certificate Void. — Harris *v.* King, (S. Dak. 1906) 109 N. W. 644.

3. Certificate Void Where Political Party Not Designated in Manner Provided by Statute. Partridge *v.* Devoto, 148 Cal. 167, 82 Pac. 765.

Failure to Sign Oath Required by Statute Renders Certificate Void. — Cowie *v.* Means, 39 Colo. 1, 88 Pac. 485.

653. 6. Provisions for Supplying Defects in Certificate of No Effect Where Provisions as to Time of Filing Not Followed. — *In re* Darling, 121 N. Y. App. Div. 656, 106 N. Y. Supp. 430.

654. 2. Where Sufficient Number of Signers Have Appended Their Residence Address, Fact that Others Have Not Immaterial. — *In re* Fitzgerald, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 491, 100 N. Y. Supp. 753.

Absence of City, Street and Number Being Given, Immaterial. — *In re* Farrell, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 493, 100 N. Y. Supp. 754.

5. [illegible] a statute requiring a certificate of nomination to be filed at least twenty days before the date of holding the election it was held that a certificate filed October 17th was insufficient time for an election to be held on November 6th. Cosgriff *v.* Board of Election Com'rs, 151 Cal. 407, 91 Pac. 98.

655. 1. *In re* Halpin, 108 N. Y. App. Div. 271, 95 N. Y. Supp. 611; People *v.* Dooling, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 116, 107 N. Y. Supp. 368; *In re* Darling, 121 N. Y. App. Div. 656, 106 N. Y. Supp. 430.

2. While an officer, whose duty it is to file a certificate of nomination, would not be required to keep his office open after the hours prescribed by law, yet if he does keep his office open after those hours, it is his duty to receive and file such document though presented after the lawful hours. Cosgriff *v.* Board of Election Com'rs, 151 Cal. 407, 91 Pac. 98.

658. 2. *New York.* — The New York Election Law, § 56, provides for the determination of the question whether one political party has assumed a name "the same or substantially the same" as that of another party, first, by the officer with whom the certificate is filed, whose determination is reviewable by a justice of the Supreme Court or a county judge. *In re* Social Democratic Party, 105 N. Y. App. Div. 243, 93 N. Y. Supp. 1023.

660. 5. Under the statutes in *New York*, relating to the subject, a citizen who wishes a review by the court, of a decision of the officer with whom a certificate of nomination has been filed, must have instituted the proceeding by filing objections with the secretary of state. *In re* Social Democratic Party, 182 N. Y. 442, 75 N. E. 415, *reversing* 105 N. Y. App. Div. 243, 93 N. Y. Supp. 1023.

661 2. A court is without power to review where no written objections have been filed with the election board. *In re* Walsh, (Supm. Ct. App. Div.) 96 N. Y. Supp. 147; *In re* Logan, 116 N. Y. App. Div. 146, 102 N. Y. Supp. 200.

3. Party Authorities Have Exclusive Jurisdiction to Determine Contests Over Party Nominations. — Com. *v.* Combs, 120 Ky. 368, 86 S. W. 697; Taylor *v.* Democratic Committee, 120 Ky. 672, 87 S. W. 786; Hill *v.* Holdam, 120 Ky. 660, 87 S. W. 805; Harris *v.* Bruce, 120 Ky. 682, 87 S. W. 1078; Lucas *v.* Avis, (Ky. 1905) 89 S. W. 1; Whitaker *v.* Swanner, (Ky. 1905) 89 S. W. 184.

Courts Will Not Interfere with Details of Party Management. — State *v.* Election Com'rs, 167 Ind. 276, 78 N. E. 1016; Hammond *v* General Committee, etc., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 302, 106 N. Y. Supp. 589.

662. 2. *In re* Social Democratic Party, 105 N. Y. App. Div. 243, 93 N. Y. Supp. 1023.

664. 1. *In re* Halpin, 108 N. Y. App. Div. 271, 95 N. Y. Supp. 611.

3. Com. *v.* Combs, 120 Ky. 368, 86 S. W. 697.

668. 3. State *v.* McIntosh, 95 Minn. 243, 103 N. W. 1016, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 668.

670. 1. **Ineligibility of Election Officers Does Not Render Election Void in Absence of Fraud.** — McCarthy *v.* Wilson, 146 Cal. 323, 82 Pac. 243.

2. Gilliam *v.* Green, 122 Ga. 322, 50 S. E. 137.

673. 3. See dissenting opinion of Dent, J., in Payne *v.* Staunton, 55 W. Va. 202, 46 S. E. 927, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 673.

It has been held in *Connecticut* that moderators at electors' meetings in rejecting ballots act as *quasi*-judicial officers and are not personally liable for errors or mistakes committed by them when so acting. Blake *v.* Brothers, 79 Conn. 676, 66 Atl. 501.

679. 1. Newton *v.* Ogden, (Ky. 1907) 102 S. W. 865; Columbus *v.* Cole, 16 Ohio Dec. 212, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679.

680. 3. State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

690. 2. Harvey *v.* Cook County, 221 Ill. 76, 77 N. E. 424, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 690.

3. Rice *v.* Mountz, (Ky. 1906) 96 S. W. 887; Childress *v.* Pinson, (Ky. 1907) 100 S. W. 278; Orr *v.* Kevil, (Ky. 1907) 100 S. W. 314; State *v.* Winnett, (Neb. 1907) 110 N. W. 1113.

4. Nelson *v.* Sneed, 112 Tenn. 36, 83 S. W. 786, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692 [690].

691. 4. **Vote Cast before Time for Opening Polls of No Effect.** — Lower Terrebonne Refining, etc., Co. *v.* Police Jury, 115 La. 1019, 40 So. 443.

693. 5. **One Vote Cast after Time Fixed for Closing Does Not Exclude Entire Vote.** — Gilliam *v.* Green, 122 Ga. 322, 50 S. E. 137.

696. 5. Commissioners Ct. *v.* State, (Ala. 1907) 44 So. 465, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 696

698. 2. **Voting Machines — Statutes Constitutional.** — Lynch *v.* Malley, 215 Ill. 574, 74 N. E. 723; Detroit *v.* Board of Inspectors, 139 Mich. 548, 102 N. W. 1029; Trumbull *v.* Board of Canvassers, 140 Mich. 529, 103 N. W. 993; Elwell *v.* Comstock, 99 Minn. 261, 109 N. W. 698; People *v.* Board of Canvassers, 105 N. Y. App. Div. 197, 94 N. Y. Supp. 996.

Voting Machine Cannot Be Used if Elector's Right to Vote Secret Ballot Violated. — Helme *v.* Board of Election Com'rs, 149 Mich. 390, 113 N. W. 6.

Statute Providing for Use of Voting Machines Held Unconstitutional. — Nickerson *v.* Morton, (Mass. 1907) 82 N. E. 50.

701. 1. Preston *v.* Price, (Ky. 1905) 85 S. W. 1183; Browning *v.* Lovett, (Ky. 1906) 94 S. W. 661.

702. 4. Preston *v.* Price, (Ky. 1905) 85 S. W. 1183.

704. 4. Preston *v.* Price, (Ky. 1905) 85 S. W. 1183.

705. 2. **Rejection of Votes in Absence of Certificate of Registration.** — De Haven *v.* Bowmer, (Ky. 1907) 102 S. W. 306.

706. 5. The question whether a marking of a ballot by a voter in such a manner as to indicate that the marks were made for the purpose of identifying the person who voted, should deprive an elector of his vote is not for the inspectors to determine; but by express provision of the Election Law, § 114, such ballots must be counted and indorsed "Protested as marked for identification." *In re* Houligan, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 5, 106 N. Y. Supp. 205.

In *New Jersey* the authority to adjudge whether a person registered is entitled to vote is vested in the Court of Common Pleas. *In re* Contempt of Gloucester Pleas, 73 N. J. L. 353, 64 Atl. 170.

Cannot Prevent Elector from Voting Because Another Had Voted in His Place. — People *v.* Doe, 109 N. Y. App. Div. 670, 96 N. Y. Supp. 389.

708. 3. Swigart *v.* Chicago, 223 Ill. 371, 79 N. E. 48.

709. 2. **No Right to Assume Name Substantially Same as That of Party with Right to Its Use Established.** — New York Election Law, § 56, c. 909, p. 922, Laws 1896. *In re* Social Democratic Party, 105 N. Y. App. Div. 243, 93 N. Y. Supp. 1023.

3. **Official Ballot Must Be Used Where Statute So Prescribes.** — Com. *v.* Combs, 120 Ky. 368, 86 S. W. 697.

710. 2. Ellis *v.* Wheatly, 147 Cal. 372, 81 Pac. 1105; State *v.* Election Com'rs, 167 Ind. 276, 78 N. E. 1016; Eversole *v.* Holliday, (Ky. 1906) 96 S. W. 590; Shines *v.* Hamilton, 87 Miss. 384, 39 So. 1008; *In re* Wise, 108 N. Y. App. Div. 52, 95 N. Y. Supp. 843; People *v.* Ham, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 112, 106 N. Y. Supp. 312; Johnson *v.* Grand Forks County, (N. Dak. 1907) 113 N. W. 1071; State *v.* Goff, 129 Wis. 668, 109 N. W. 628.

Provisions as to Time of Filing Nominations Mandatory. — People *v.* Dooling, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 116, 107 N. Y. Supp. 368.

712. 1. Com. *v.* Combs, 120 Ky. 368, 86 S. W. 697.

6. **Candidate of Two Parties Entitled to Have Name Placed on Both Ballots.** — State *v.* Junkin, (Neb. 1907) 113 N. W. 801.

713. 1. Helme *v.* Board of Election Com'rs, 149 Mich. 390, 113 N. W. 6.

714. 1. Ogg *v.* Glover, 72 Kan. 247, 83 Pac. 1039; Owen *v.* Milhoan, 72 Kan. 701, 83 Pac. 1044; Pettyjohn *v.* Scott, 72 Kan. 700, 83 Pac. 1044; Shines *v.* Hamilton, 87 Miss. 384, 39 So. 1008; *In re* Houligan, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 5, 106 N. Y. Supp. 205.

715. 1. **Failure to Indorse — Ballot Not Void.** — Orr *v.* Kevil, (Ky. 1907) 100 S. W. 314.

Indorsement Stamped Instead of Written — Ballot Rejected. — Berryman *v.* Megginson, 229 Ill. 238, 82 N. E. 256.

716. 2. Montgomery *v.* Henry, 144 Ala. 620, 39 So. 507, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 716.

3. See Montgomery *v.* Henry, 144 Ala. 629, 39 So. 507, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 716.

717. 2. Eversole *v.* Holliday, (Ky. 1906) 96 S. W. 590; *In re* Wise, 108 N. Y. App. Div. 52, 95 N. Y. Supp. 843.

4. **Where a Primary Election Ballot Contains No Names for Certain Offices,** an elector may fill in the blank with the name of any person for whose nomination he wishes to vote. State *v.* Yankee, 129 Wis. 662, 109 N. W. 550.

5. **Name Must Be Written in Proper Space.** — *In re* Houligan, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 5, 106 N. Y. Supp. 205.

7. Harvey *v.* Cook County, 221 Ill. 76, 77 N. E. 424.

Additional Marks — Ballot Void. — McCarthy *v.* Wilson, 146 Cal. 323, 82 Pac. 243; Strosnider *v.* Turner, (Nev. 1908) 93 Pac. 502; Cross *v.* Keathley, (Tenn. 1907) 105 S. W. 854.

Under the election law in *New York,* when a mark has been made in a voting circle and another in any voting space below the circle the latter mark is treated as surplusage. *In re* Hearst, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 453, 96 N. Y. Supp. 122; People *v.* Sniffin, 123 N. Y. App. Div. 730, 108 N. Y. Supp. 243.

720. 1. Smith *v.* Reid, 223 Ill. 493, 79 N. E. 148; Ogg *v.* Glover, 72 Kan. 247, 83 Pac. 1039; Owen *v.* Milhoan, 72 Kan. 701, 83 Pac. 1044; Pettyjohn *v.* Scott, 72 Kan. 700, 83 Pac. 1044; Strosnider *v.* Turner, (Nev. 1907) 90 Pac. 581; Strosnider *v.* Turner, (Nev. 1908) 93 Pac. 502; *In re* Hearst, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 453, 96 N. Y. Supp. 119; *In re* Houligan, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 5, 106 N. Y. Supp. 205; McClelland *v.* Erwin, 16 Okla. 612, 86 Pac. 283; Turner *v.* Hamilton, 13 Wyo. 408, 80 Pac. 664.

Intention of Voter Material, but Imperative Requirements of Law Must Be Complied with. — *In re* Wilcox, 27 R. I. 117, 60 Atl. 838.

721. 1. **Marking with Pencil Sufficient under Statute Requiring Cross to Be Stamped.** — McClelland *v.* Erwin, 16 Okla. 612, 86 Pac. 283.

3. **Ballot Void Where Cross Outside Circle.** — Smith *v.* Reid, 223 Ill. 493, 79 N. E. 148.

A Mark Placed Outside the Ruled Space will not vitiate a ballot, when the voter has so placed his mark as to make it clear for which candidate he intended to vote. Pontardawe Rural Dist. Council Election Petition, (1907) 2 K. B. [illegible].

722. 2. Peabody *v.* Burch, 75 Kan. 543, 80 Pac. 1016; Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291; Cope *v.* Cardwell, (Ky. 1906) 93 S. W. 3; People *v.* Board of Canvassers, 105 N. Y. App. Div. 197, 94 N. Y. Supp. 996; *In re* Merow, 112 N. Y. App. Div. 562, 99 N. Y. Supp. 9; Cross *v.* Keathley, (Tenn. 1907) 105 S. W. 854; Hanna *v.* State, 48 Tex. Crim. 269, 87 S. W. 712; Kulp *v.* Railey, 99 Tex. 310, 89 S. W. 957; State *v.* Bunnell, 131 Wis. 198, 110 N. W. 177.

725. 3. State *v.* Winnett, (Neb. 1907) 110 N. W. 1113.

Name of Proposition May Be Abbreviated. — Linn *v.* Omaha, (Neb. 1906) 107 N. W. 983.

726. 1. Remster *v.* Sullivan, 36 Ind. App. 385, 75 N. E. 860, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725, 726.

2. Winn *v.* Blackman, 229 Ill. 198, 82 N. E. 215; Strosnider *v.* Turner, (Nev. 1908) 93 Pac. 502.

Size of Ballot. — Ballots are not invalid because clipped subsequent to being voted. Cross *v.* Keathley, (Tenn. 1907) 105 S. W. 854.

728. 2. Winn *v.* Blackman, 229 Ill. 198, 82 N. E. 215; Ogg *v.* Glover, 72 Kan. 247, 83 Pac. 1039; Owen *v.* Milhoan, 72 Kan. 701, 83 Pac. 1044; Pettyjohn *v.* Scott, 72 Kan. 700, 83 Pac. 1044; Bingham *v.* Broadwell, 73 Neb. 605, 103 N. W. 323; Griffith *v.* Bonawitz, 73 Neb. 622, 103 N. W. 327; Strosnider *v.* Turner, (Nev. 1907) 90 Pac. 581; Strosnider *v.* Turner, (Nev. 1908) 93 Pac. 502; *In re* Hearst, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 453, 96 N. Y. Supp. 119; Turner *v.* Hamilton, 13 Wyo. 408, 80 Pac. 664.

729. 1. Winn *v.* Blackman, 229 Ill. 198, 82 N. E. 215, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 728 [729].

2. **Ballot So Marked as to Disclose Identity of Voter Void.** — Elwell *v.* Comstock, 99 Minn. 261, 109 N. W. 698.

4. Roberts *v.* Bope, 14 N. Dak. 311, 103 N. W. 935.

730. 1. Winn *v.* Blackman, 229 Ill. 198, 82 N. E. 215; *In re* Wilcox, 27 R. I. 117, 60 Atl. 838.

New York Statute. — *In re* Burrell, (County Ct.) 50 Misc. (N. Y.) 261, 100 N. Y. Supp. 470; *In re* Houligan, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 5, 106 N. Y. Supp. 205.

2. Smith *v.* Reid, 223 Ill. 493, 79 N. E. 148; Roberts *v.* Bope, 14 N. Dak. 311, 103 N. W. 935.

731. 3. **Cut Ballot Not Counted.** — Winn *v.* Blackman, 229 Ill. 198, 82 N. E. 215.

5. Widmayer *v.* Davis, 231 Ill. 42, 83 N. E. 87; Stegeman *v.* Cook, (Ky. 1907) 102 S. W. 872.

732. 3. State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147.

Courts Will Not Interfere with Custody of Ballot Boxes as Declared by Legislative Enactment. — People *v.* McClellan, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 614, 103 N. Y. Supp. 827.

734. 7. Preston *v.* Price, (Ky. 1905) 85 S. W. 1183; People *v.* Board of Canvassers, 105 N. Y. App. Div. 197, 94 N. Y. Supp. 996.

736. 2. **Officers May Correct Mistake in Count to Enable Them to Return True Statement.** — McEuen *v.* Cary, (Ky. 1906) 96 S. W. 850.

737. 3. Linn *v.* Omaha, (Neb. 1906) 107 N. W. 983; *In re* Burrell, (County Ct.) 50 Misc. (N. Y.) 261, 100 N. Y. Supp. 470.

4. Wright *v.* Board of Canvassers, 76 S. Car. 574, 57 S. E. 536, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 737.

739. 6. Dismukes *v.* Jones, (Ala. 1907) 44 So. 182, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 739, as to the conflict of authorities, but distinguishing the case at bar from those holding that returns should be rejected.

7. Wright *v.* Board of Canvassers, 76 S. Car. 574, 57 S. E. 536, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 739; Clark *v.* Hardison, (Tex. Civ. App. 1905) 90 S. W. 342; Ar-

nold *v.* Anderson, (Tex. Civ. App. 1906) 93 S. W. 692.

742. 3. People *v.* Board of Canvassers, 105 N. Y. App. Div. 197, 94 N. Y. Supp. 996.

743. 1. Carlson *v.* People, 118 Ill. App. 592, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 745 [743].

746. 3. Gibson *v.* Twaddle, 1 Cal. App. 126, 81 Pac. 727; Steadley *v.* Stuckey, 113 Mo. App. 582, 87 S. W. 1014; People *v.* Burns, 106 N. Y. App. Div. 36, 94 N. Y. Supp. 196.

748. 2. *In re* Webster, 108 N. Y. App. Div. 202, 92 N. Y. Supp. 658.

750. 5. Eldridge *v.* Chatham, 192 Mass. 409, 78 N. E. 461.

751. 1. **Duty of Board to Accept Committee's Report.** — Ward *v.* Culver, 144 Mich. 71, 107 N. W. 446.

Under the Michigan Statute, Pub. Acts 1897, No. 267, p. 401, which provides for a recount, upon petition, and further provides that the board of canvassers shall accept the report of the committee appointed to recount as correct, it has been held that mandamus will not lie to compel the board of canvassers to correct errors of the recount committee not shown on the face of the report. Atwood *v.* Sault Ste. Marie, 141 Mich. 295, 104 N. W. 649.

2. **Compliance with Statutory Provision — Preservation of Ballots.** — Under the *Michigan* statute a recount can be had only in cases where the recount board can find, from an inspection of the ballot box, that the statutory requirements for the preservation of the ballots as cast have been observed. Keith *v.* Wendt, 144 Mich. 49, 107 N. W. 443; Ward *v.* Culver, 144 Mich. 57, 107 N. W. 444.

754. 2. *Ex p.* Owens, 148 Ala. 402, 42 So. 676.

A Majority of the Electors Voting at an election must vote affirmatively for a constitutional amendment. A majority of those voting on the proposition is not sufficient. Rice *v.* Palmer, (Ark. 1906) 96 S. W. 396. But see dissenting opinion of Riddick, J., *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 754.

758. 1. Campbell *v.* Free, (Cal. App. 1907) 93 Pac. 1060; Dobbs *v.* Buford, 128 Ga. 483, 57 S. E. 777; State *v.* Bell, (Ind. 1907) 82 N. E. 69, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758; Shines *v.* Hamilton, 87 Miss. 384, 39 So. 1008.

2. Hoy *v.* State, 168 Ind. 506, 81 N. E. 509; State *v.* Bell, (Ind. 1907) 82 N. E. 69.

759. 1. State *v.* Bell, (Ind. 1907) 82 N. E. 69.

Where a candidate's disqualification is of such a nature that he can remove it, if elected, it will be presumed that electors in voting for such candidate assumed that he would remove the disability and it will not be presumed that they intended to waste their votes. Hoy *v.* State, 168 Ind. 506, 81 N. E. 509.

760. 6. **When Election Contested and Tie Made Apparent Court May Settle Vote by Lot, by Statute in Kentucky.** — Stegeman *v.* Cook, (Ky. 1907) 102 S. W. 872.

761. 3. Nelson *v.* Sneed, 112 Tenn. 36, 83 S. W. 786; State *v.* Rosenthal, 123 Wis. 442, 102 N. W. 49.

Rule Does Not Apply Where Certificates Are Issued to Two Persons for Same Office. — People *v.* Davidson, 2 Cal. App. 100, 83 Pac. 161.

762. 1. **No Material Difference in Effect Between Commission and Certificate.** — Wilson *v.* Fisher, 148 Cal. 13, 82 Pac. 421.

764. 6. **Power of Election Officers Limited to Certifying that Candidate Has Been Elected — No Power to Decide Disputed Term of Office.** — State *v.* Pattison, 73 Ohio St. 305, 76 N. E. 946.

766. 4. *Arkansas.* — Lovewell *v.* Bowen, 75 Ark. 452, 88 S. W. 570.

Iowa. — Murphy *v.* Lentz, 131 Iowa 328, 108 N. W. 530.

Kentucky. — Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291; Browning *v.* Lovett, (Ky. 1906) 94 S. W. 661; Childress *v.* Pinson, (Ky. 1907) 100 S. W. 278.

Louisiana. — Madere *v.* Sellers, (La. 1908) 45 So. 735.

Massachusetts. — Atty.-Gen. *v.* Campbell, 191 Mass. 497, 78 N. E. 133.

Montana. — Pledge *v.* Griffith, 33 Mont. 191, 83 Pac. 392; Pledge *v.* Tweedie, 33 Mont. 197, 83 Pac. 393; Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462.

Nebraska. — Bingham *v.* Broadwell, 73 Neb. 605, 103 N. W. 323.

New York. — Koster *v.* Coyne, 184 N. Y. 494, 77 N. E. 983.

Oklahoma. — McClelland *v.* Erwin, 16 Okla. 612, 86 Pac. 283.

South Carolina. — State *v.* State Board of Canvassers, (S. Car. 1907) 59 S. E. 145, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 766.

Tennessee. — Nelson *v.* Sneed, 112 Tenn. 36, 83 S. W. 786, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 766, and holding that in the case at bar the charges of fraud were sufficient, if true, to vitiate the election.

Texas. — Clark *v.* Hardison, (Tex. Civ. App. 1905) 90 S. W. 342; Bigham *v.* Clubb, (Tex. Civ. App. 1906) 95 S. W. 675.

West Virginia. — Williamson *v.* Musick, 60 W. Va. 59, 53 S. E. 706, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 766.

767. 1. Vigil *v.* Garcia, 36 Colo. 430, 87 Pac. 1113.

770. 7. **Reception of Illegal Votes Statutory Grounds for Contest.** — Coleman *v.* Kerr, 33 Mont. 198, 83 Pac. 393.

8. Stafford *v.* Board of Canvassers, 57 W. Va. 84, 50 S. E. 1016.

774. 2. People *v.* Davidson, 2 Cal. App. 100, 83 Pac. 161; People *v.* Tool, 35 Colo. 243, 86 Pac. 229; Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248; O'Neal *v.* Barth, (Ky. 1907) 102 S. W. 263; Childress *v.* Pinson, (Ky. 1907) 100 S. W. 278.

Legal Election Not Invalidated by Fraud if True Result Can Be Determined. — Williamson *v.* Musick, 60 W. Va. 59, 53 S. E. 706.

Must Show for Whom Illegal Votes Were Cast. — Where illegal votes are cast and counted, the candidate who undertakes to purge the ballots of these votes must show for whom they voted, and where he fails to adopt this method, the entire vote of the precinct will not be rejected for irregularities. Duff *v.* Crawford, (Ky. 1907) 97 S. W. 1124.

775. 3. Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248; O'Neal *v.* Barth, (Ky. 1907) 102 S.

W. 263; Browning *v.* Lovett, (Ky. 1906) 94 S. W. 661.

4. Duff *v.* Crawford, (Ky. 1906) 97 S. W. 1124.

776. 2. Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248.

780. 3. Orr *v.* Kevil, (Ky. 1907) 100 S. W. 314; Nelson *v.* Sneed, 112 Tenn. 36, 83 S. W. 780.

781. 2. State *v.* Bunnell, 131 Wis. 198, 110 N. W. 177.

796. 3. Hoy *v.* State, 168 Ind. 506, 81 N. E. 500.

803. 3. State *v.* Parish Democratic Committee, (Ala. 1908) 45 So. 526; People *v.* Burns, 106 N. Y. App. Div. 36, 94 N. Y. Supp. 196.

To Compel Placing of Name on Official Ballot. — State *v.* Golf, 129 Wis. 668, 109 N. W. 628.

805. 1. *In re* Republican Nominations, 213 Pa. St. 64, 62 Atl. 258.

2. People *v.* Edgar County, 223 Ill. 187, 79 N. E. 123.

3. Will Issue to Compel Board of Inspectors to Permit Elector to Vote. — People *v.* Doe, 109 N. Y. App. Div. 670, 96 N. Y. Supp. 389.

806. 4. Lehman *v.* Pettingill, 39 Colo. 258, 89 Pac. 48; Morris *v.* Glover, 121 Ga. 751, 49 S. E. 788; Carlson *v.* People, 118 Ill. App. 592; McEuen *v.* Cary, (Ky. 1906) 96 S. W. 850.

Mandamus will lie to compel a board of canvassers to do their duty, but they cannot be compelled to certify the result of their canvass by specifying any particular number of votes as cast for one party or the other. Metz *v.* Maddox, 189 N. Y. 460, 82 N. E. 507, *reversing* 121 N. Y. App. Div. 147, 105 N. Y. Supp. 702.

Will Lie to Compel Proper Officers to Make Up and Sign Statement of Primary Election. — Freeman *v.* Board of Registry, etc., (N. J. 1907) 67 Atl. 713.

807. 3. Will Not Lie to Compel Recanvass of Primary. — State *v.* Brown, (Miss. 1907) 44 So. 769.

Mandamus to Compel Recanvass of a Precinct will not lie where it appears that the vote of that precinct would not change the result. Gilliam *v.* Green, 122 Ga. 322, 50 S. E. 137.

After the Ballot Boxes Have Been Locked and Sealed and handed over to the proper custodian as prescribed by statute, mandamus will not lie to compel a recount. People *v.* Beam, 188 N. Y. 266, 80 N. E. 921.

Where the Correctness of the Canvass Is Unquestioned, mandamus will not lie to compel a recanvass on the ground that the original canvass was not made by legally authorized officers. *In re* Scofield, 102 N. Y. App. Div. 358, 92 N. Y. Supp. 672; *In re* Candidates, 108 N. Y. App. Div. 361, 95 N. Y. Supp. 616.

808. 1. Mandamus Will Not Lie to compel a board of supervisors of election to permit a *post factum* authentication of tally sheets. Gibson *v.* Twaddle, 1 Cal. App. 126, 81 Pac. 727.

2. In mandamus proceedings under the *New York* Election Law (Laws 1896, p. 966, c. 909, § 1141) for a judicial investigation of alleged void and protested ballots, the court having determined whether the ballots are valid or void, may go further and determine for whom they should be counted. *In re* Hearst, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 453, 96 N. Y. Supp. 119.

3. Morris *v.* Glover, 121 Ga. 751, 49 S. E. 788, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 808.

809. 1. *In re* Hearst, 183 N. Y. 274, 76 N. E. 28, 110 N. Y. App. Div. 346, *reversing* 96 N. Y. Supp. 341; Williams *v.* Board of Canvassers, 183 N. Y. 538, *affirming* 105 N. Y. App. Div. 197, 76 N. E. 1116, 94 N. Y. Supp. 996.

810. 5. To Compel Execution of Certificate of Nomination. — State *v.* Jones, 74 Ohio St. 418, 78 N. E. 505.

813. 1. *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404.

816. 3. Hester *v.* Bourland, 80 Ark. 145, 95 S. W. 992; Raney *v.* Hinkle, 80 Ark. 617, 95 S. W. 993; Ogburn *v.* Elmore, 121 Ga. 72, 48 S. E. 702; Native Lumber Co. *v.* Harrison County, 89 Miss. 171, 42 So. 665; Marsden *v.* Harlocker, 48 Oregon 90, 85 Pac. 328, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 816.

5. Ogburn *v.* Elmore, 121 Ga. 72, 48 S. E. 702, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 816, 817.

817. 1. Marsden *v.* Harlocker, 48 Oregon 90, 85 Pac. 328, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 816 [817].

2. Mann *v.* Mercer County Ct., 58 W. Va. 651, 52 S. E. 776, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 817.

828. 3. Privilege Personal to Witness. — People *v.* Wintermute, 122 N. Y. App. Div. 349, 106 N. Y. Supp. 1076.

4. Gibson *v.* Twaddle, 1 Cal. App. 126, 81 Pac. 727; Lucas *v.* Avis, (Ky. 1905) 89 S. W. 1; Browning *v.* Lovett, (Ky. 1906) 94 S. W. 661; McEuen *v.* Cary, (Ky. 1906) 96 S. W. 850; Schall *v.* Bell, (Ky. 1907) 102 S. W. 248; O'Neal *v.* Barth, (Ky. 1907) 102 S. W. 263; *In re* Slattery, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 212, 100 N. Y. Supp. 419; Stafford *v.* Board of Canvassers, 57 W. Va. 84, 50 S. E. 1016; Williamson *v.* Musick, 60 W. Va. 59, 53 S. E. 706.

Trial Judge Cannot Exclude Any Part of Election Record from Evidence. — Griffith *v.* Bonawitz, 73 Neb. 622, 103 N. W. 327.

829. 6. Doubtful Ballots Must be Marked and Sealed as Required by Statute to Be Admissible. — Neely *v.* Rice, (Ky. 1906) 97 S. W. 737; Duff *v.* Crawford, (Ky. 1906) 97 S. W. 1124; Childress *v.* Pinson, (Ky. 1907) 100 S. W. 278; Stafford *v.* Board of Canvassers, 57 W. Va. 84, 50 S. E. 1016.

10. Result of Election Cannot Be Established by Parol Proof. — Browning *v.* Lovett, (Ky. 1906) 94 S. W. 661; Neely *v.* Rice, (Ky. 1906) 97 S. W. 737; Childress *v.* Pinson, (Ky. 1907) 100 S. W. 278; Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248; O'Neal *v.* Barth, (Ky. 1907) 102 S. W. 263.

11. See Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248.

12. McEuen *v.* Cary, (Ky. 1906) 96 S. W. 850.

830. 2. Lucas *v.* Avis, (Ky. 1905) 89 S. W. 1; McEuen *v.* Cary, (Ky. 1906) 96 S. W. 850; Lester *v.* Fogarty, (Ky. 1907) 99 S. W. 910; Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248;

O'Neal *v.* Barth, (Ky. 1907) 102 S. W. 263; Trumbull *v.* Board of Canvassers, 140 Mich. 529, 103 N. W. 993. See also Williamson *v.* Musick, 60 W. Va. 59, 53 S. E. 706.

5. See People *v.* McClellan, 124 N. Y. App. Div. 215, 108 N. Y. Supp. 765.

7. *Arkansas.* — Lovewell *v.* Bowen, 75 Ark. 452, 88 S. W. 570.

California. — Chatham *v.* Mansfield, 1 Cal. App. 298, 82 Pac. 343.

Illinois. — Smith *v.* Reid, 223 Ill. 493, 79 N. E. 148; Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549.

Kansas. — Moorhead *v.* Arnold, 73 Kan. 132, 84 Pac. 742.

Kentucky. — Browning *v.* Lovett, (Ky. 1906) 94 S. W. 661; McEuen *v.* Cary, (Ky. 1906) 96 S. W. 850; Lester *v.* Fogarty, (Ky. 1907) 99 S. W. 910; Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248; O'Neal *v.* Barth, (Ky. 1907) 102 S. W. 263; Stegeman *v.* Cook, (Ky. 1907) 102 S. W. 872.

Michigan. — Keith *v.* Wendt, 144 Mich. 49, 107 N. W. 443.

New York. — *In re* Burrell, (County Ct.) 50 Misc. (N. Y.) 261, 100 N. Y. Supp. 470; People *v.* McClellan, 124 N. Y. App. Div. 215, 108 N. Y. Supp. 765.

West Virginia. — Stafford *v.* Board of Canvassers, 57 W. Va. 84, 50 S. E. 1016; Williamson *v.* Musick, 60 W. Va. 59, 53 S. E. 706.

831. 2. McEuen *v.* Cary, (Ky. 1906) 96 S. W. 850.

Ballots Produced by Election Officers After They Cease to Be Proper Custodians — No Presumption of Official Regularity. — Lovewell *v.* Bowen, 75 Ark. 452, 88 S. W. 570.

3. Ballots Inadmissible — Statutory Requirements Not Complied with. — Chatham *v.* Mansfield, 1 Cal. App. 298, 82 Pac. 343.

Tally Sheets Entitled to Slight Consideration as Evidence Unless Kept in Manner Provided by Law. — *In re* Slattery, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 212, 100 N. Y. Supp. 419.

4. Lovewell *v.* Bowen, 75 Ark. 452, 88 S. W. 570.

5. Keith *v.* Wendt, 144 Mich. 49, 107 N. W. 443.

832. 8. Ogg *v.* Glover, 72 Kan. 247, 83 Pac. 1039; Owen *v.* Milhoan, 72 Kan. 701, 83 Pac. 1044; Pettyjohn *v.* Scott, 72 Kan. 700, 83 Pac. 1044.

833. 1. Murphy *v.* Lentz, 131 Iowa 328, 108 N. W. 530.

834. 5. Registration Books Admissible. — Simpson County *v.* Buckley, 85 Miss. 713, 38 So. 104.

836. 2. State *v.* Keating, 202 Mo. 197, 100 S. W. 648.

837. 1. State *v.* Rosenthal, 123 Wis. 442, 102 N. W. 49.

838. 1. Widmayer *v.* Davis, 231 Ill. 42, 83 N. E. 87, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 838; Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549; Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248; O'Neal *v.* Barth, (Ky. 1907) 102 S. W. 263.

3. There is no absolute right to the reception of the declaration of voters as to how they voted, as evidence; the court may receive it or reject it according to the circumstances. As to the weight, "much depends upon the circumstances of the case as well as the circumstances of the admission." State *v.* Lally, (Wis. 1908) 114 N. W. 447.

5. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549; Duff *v.* Crawford, (Ky. 1906) 97 S. W. 1124; Browning *v.* Lovett, (Ky. 1906) 94 S. W. 661.

839. 1. Where it is shown that the certificate was false, it then devolves upon the defendant to establish his right (*i. e.*, the fact that he received the greater number of votes) by other evidence in order to prevent a judgment of ouster. State *v.* Rosenthal, 123 Wis. 442, 102 N. W. 49.

842. 1. Foltz *v.* People, 118 Ill. App. 557.

844. 2. Welch *v.* Shumway, 232 Ill. 54, 83 N. E. 549.

3. Rodwell *v.* Rowland, 137 N. Car. 617, 50 S. E. 319.

4. Parrish *v.* Powers, (Ky. 1907) 105 S. W. 871.

847. 1. Competency of Evidence of Conspiracy. — Com. *v.* Valverdi, 32 Pa. Super. Ct. 241.

848. 5. State *v.* Armstrong, 203 Mo. 554, 102 S. W. 503.

852. 1. Com. *v.* Brown, (Ky. 1906) 93 S. W. 605.

Wilful Erasures in Voters' List Indictable. — Rex *v.* Duggan, 16 Manitoba 448, 12 Can. Crim. Cas. 147.

853. 6. Other Offenses — Assisting Voter Not Physically Disabled Indictable Offense. — Com. *v.* Kaufman, (Ky. 1907) 104 S. W. 740; Com. *v.* Lazarus, (Ky. 1907) 104 S. W. 743.

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860. 1. Greene *v.* Rienzi, 87 Miss. 463, 40 So. 17; Hall *v.* Madison, 128 Wis. 132, 107 N. W. 31.

ELECTRIC-LIGHT COMPANIES.

868. 2. Electricity Personal Property. — Damages may be recovered for a failure to furnish electricity according to a contract agreement, under a complaint charging a failure to sell and deliver "personal property." Terrace Water Co. *v.* San Antonio Light, etc., Co., 1 Cal. App. 511, 82 Pac. 562.

6. Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780; Williams *v.* Old Colony St. R. Co., 193 Mass. 305, 79 N. E. 484.

A municipal ordinance requiring all overhead wires within a city transmitting a current of electricity of high voltage dangerous to life, to be thoroughly insulated, is reasonable and proper. Clements *v.* Potomac Electric Power Co., 26 App. Cas. (D. C.) 482.

865. 1. Fisher *v.* Newbern, 140 N. Car. 506, 53 S. E. 342.

Validity of Assignment by Local Authority to Corporation. — Southall-Lambeth Borough Council *v.* South London Electric Supply Corp., 96 L. T. N. S. 440, 23 Times L. Rep. 347; Sudbury *v.* Empire Electric Light, etc., Co., (1905) 2 Ch. [illegible].

2. Express Authority Is Essential in order to render a village furnishing electricity for private use liable for negligence to the same ex-

tent as an individual. Palestine *v.* Siler, 225 Ill. 630, 80 N. E. 345.

866. 3. Eaton *v.* Weiser, 12 Idaho 544, 86 Pac. 541; Thomas *v.* Somerset, (Ky. 1906) 97 S. W. 420; Yazoo City *v.* Birchett, (Miss. 1906) 42 So. 569; Fisher *v.* Newbern, 140 N. Car. 506, 53 S. E. 342.

867. 1. People *v.* Ellison, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 413, 101 N. Y. Supp. 444, *affirmed* 115 N. Y. App. Div. 254, 101 N. Y. Supp. 55.

An Electrical Company Does Not Acquire a Vested Right to the identical spot in which its poles were first located so as to prevent the municipality from relocating them. Merced Falls Gas, etc., Co. *v.* Turner, 2 Cal. App. 720, 84 Pac. 239.

2. Water, etc., Gas Co. *v.* Hutchinson, 144 Fed. 256.

868. 2. Abutting Owners May Enjoin the Erection of an Electric-lighting Plant in the Middle of the Street, upon the ground that it is an improper use of the street. McIlhinny *v.* Trenton, 148 Mich. 380, 111 N. W. 1083.

3. Compensation Must Be Paid When Reserved Right of Abutting Owner Appropriated. — Brown *v.* Asheville Electric Light Co., 138 N. Car. 533, 51 S. E. 62.

869. 1. Lighting Company May Shut Off Current for Cause, without Liability. — Benson *v.* American Illuminating Co., (County Ct.) 102 N. Y. Supp. 206.

For Breach of a Contract to Furnish Electricity damages are recoverable. Terrace Water Co. *v.* San Antonio Light, etc., Co., 1 Cal. App. 511, 82 Pac. 562.

3. Armour Packing Co. *v.* Edison Electric Illuminating Co., 115 N. Y. App. Div. 51, 100 N. Y. Supp. 605, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 869.

4. Ganster *v.* Metropolitan Electric Co., 214 Pa. St. 628, 64 Atl. 91.

5. Where the Evidence Is Conflicting upon the question whether the defendant company was the cause of a fire, the case should be submitted to the jury. Romano *v.* Vicksburg, etc., Light Co., (Miss. 1906) 39 So. 781.

7. Dawson *v.* Lawrence Gas Light Co., 188 Mass. 481, 74 N. E. 912.

Company Liable for Death Caused by Failure to Insulate Heavily Charged Wire in Power House. — North Shore Power Co. *v.* Duguay, 37 Can. Sup. Ct. 624, *affirming* L. R. 29 Quebec Super. Ct. 305.

870. 1. Eaton *v.* Weiser, 12 Idaho 544, 86 Pac. 541; Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613; Fisher *v.* Newbern, 140 N. Car. 506, 53 S. E. 342; Gloster *v.* Toronto Electric Light Co., 38 Can. Sup. Ct. 27, 6 Ann. Cas. 529.

Company Liable for Burn to Small Boy in Tree Top Through Which Wires Extend. — Temple *v.* McComb City Electric Light, etc., Co., 89 Miss. 1, 42 So. 874; Clements *v.* Potomac Electric Power Co., 26 App. Cas. (D. C.) 482.

An electric-light company authorized by law to string its wires either over or under the streets of a city is not responsible for an accident caused by one of its uninsulated overhead wires coming in contact with a derrick used in putting up a house, whereby a current of electricity was diverted to the street and a workman was killed. Montreal Light, etc., Co. *v.* Dumphy, 15 Quebec K. B. 11, *affirmed* (1907) A. C. 454, 9 Ann. Cas. 749.

871. 1. Dover *v.* Gloucester Electric Co., 155 Fed. 256; Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780; Mangan *v.* Louisville Electric Light Co., 122 Ky. 476, 91 S. W. 703; Simmons *v.* Shreveport Gas, etc., Co., 116 La. 1033, 41 So. 248; Yazoo City *v.* Birchett, (Miss. 1906) 42 So. 569; Horning *v.* Hudson River Telephone Co., 111 N. Y. App. Div. 122, 97 N. Y. Supp. 625, *affirmed* 186 N. Y. 552, 79 N. E. 1107; Greenville *v.* Pitts, (Tex. Civ. App. 1907) 102 S. W. 451; Bice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

Electric Company Liable for Injury to Employees of Other Electric Companies. — Morgan *v.* Westmoreland Electric Co., 213 Pa. St. 151, 62 Atl. 638.

For Injury to an Employee of a Telephone Company, caused by a defective insulation of an electric-light wire, the latter company is liable. Ziehm *v.* United Electric Light, etc., Co., 104 Md. 48, 64 Atl. 61.

For Injury to a Fireman by coming into contact with a telephone wire charged by a defectively insulated electric-light wire, the electric-lighting company is jointly liable. Horning *v.* Hudson River Telephone Co., 111 N. Y. App. Div. 122, 97 N. Y. Supp. 625.

An Electric-light Company and a Telephone Company are jointly liable, where each is negligent, for an injury to an employee of the latter. East Tennessee Telephone Co. *v.* Carmine, (Ky. 1906) 93 S. W. 903.

872. 1. Trespasser Cannot Recover for Injury. — Mangan *v.* Hudson River Telephone Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 388, 100 N. Y. Supp. 539; Graves *v.* Washington Water Power Co., 44 Wash. 675, 87 Pac. 936.

Defendant Company with Knowledge of Dangerous Condition of Wire Liable to Trespasser. — Connell *v.* Keokuk R., etc., Co., 131 Iowa 622, 109 N. W. 177; Guinn *v.* Delaware, etc., Telephone Co., 72 N. J. L. 276, 62 Atl. 412.

2. Thomas *v.* Somerset, (Ky. 1906) 97 S. W. 420; Ryan *v.* St. Louis Transit Co., 190 Mo. 621, 89 S. W. 865; Grimm *v.* Omaha Electric Light, etc., Co., (Neb. 1907) 112 N. W. 620; Houston Lighting Power Co. *v.* Hooper, (Tex. Civ. App. 1907) 102 S. W. 133.

Evidence of a General Custom of electric-lighting companies throughout the country to use uncovered circuit or primary wires of high voltage is inadmissible in contravention of the expressed prohibition of a municipal regulation. Clements *v.* Potomac Electric Power Co., 26 App. Cas. (D. C.) 482.

3. Memphis Consol. Gas, etc., Co. *v.* Letson, (C. C. A.) 135 Fed. 969; Louisville Lighting Co. *v.* Owens, (Ky. 1907) 105 S. W. 435; Harrison *v.* Kansas City Electric Light Co., 195 Mo. 606, 93 S. W. 951; Fish *v.* Waverly Electric Light, etc., Co., 189 N. Y. 336, 82 N. E. 150; Morhard *v.* Richmond Light, etc., Co., 111 N. Y. App. Div. 353, 98 N. Y. Supp. 124; Witmer *v.* Buffalo, etc., Electric Light, etc., Co., 112 N. Y. App. Div. 698, 98 N. Y. Supp.

781; San Antonio Gas, etc., Co. *v.* Badders, (Tex. Civ. App. 1907) 103 S. W. 229; Wilbert *v.* Sheboygan Light, etc., Co., 129 Wis. 1, 106 N. W. 1058.

873. 1. Colorado Springs Electric Co. *v.* Soper, 38 Colo. 126, 88 Pac. 161; Byron Telephone Co. *v.* Sheets, 122 Ill. App. 6, *citing* 10 [illegible] [1873]; Mangan *v.* Louisville Electric Light Co., 122 Ky. 476, 91 S. W. 703; Morhard *v.* Richmond Light, etc., Co., 111 N. Y. App. Div. 353, 98 N. Y. Supp. 124; Fisher *v.* Newbern, 140 N. Car. 506, 53 S. E. 342; Stark *v.* Lancaster Electric Light, etc., Co., 218 Pa. St. 575, 67 Atl. 909; Eagle Hose Co. *v.* Electric Light Co., 33 Pa. Super. Ct. 581; Graves *v.* Washington Water Power Co., 44 Wash. 675, 87 Pac. 956; Rice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

2. Wood *v.* Wilmington City R. Co., (Del. 1905) 64 Atl. 246; Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516; Eaton *v.* Weiser, 12 Idaho 544, 86 Pac. 541; Simmons *v.* Shreveport Gas, etc., Co., 116 La. 1033, 41 So. 248; Pourke *v.* Butte Electric, etc., Co., 33 Mont. 267, 83 Pac. 470; Witmer *v.* Buffalo, etc., Electric Light, etc., Co., 112 N. Y. App. Div. 698, 98 N. Y. Supp. 781; Carroll *v.* Grande Ronde Electric Co., 47 Oregon 424, 84 Pac. 389; Wilbert *v.* Sheboygan Light, etc., Co., 129 Wis. 1, 106 N. W. 1058.

3. Shade *v.* Bay Counties Power Co., (Cal. 1907) 92 Pac. 62; Martin *v.* Citizens' General Electric Co., (Ky. 1906) 92 S. W. 547; Citizens' Telephone Co. *v.* Westcott, (Ky. 1907) 99 S. W. 1153; Carroll *v.* Grande Ronde Electric Co., 47 Oregon 424, 84 Pac. 389.

6. Failure to Wear Rubber Gloves is not conclusively negligent on the part of an employee. Snyder *v.* Mutual Telephone Co., (Iowa 1907) 112 N. W. 776.

874. 4. *United States.* — Dover *v.* Gloucester Electric Co., 155 Fed. 256.

Colorado. — Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815.

Illinois. — Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780.

Iowa. — Snyder *v.* Mutual Telephone Co., (Iowa 1907) 112 N. W. 776.

Maryland. — Ziehm *v.* United Electric Light, etc., Co., 104 Md. 48, 64 Atl. 61.

Massachusetts. — Linton *v.* Weymouth Light, etc., Co., 188 Mass. 276, 74 N. E. 321; Mahan *v.* Newton, etc., R. Co., 189 Mass. 1, 75 N. E. 59.

Nebraska. — Grimm *v.* Omaha Electric Light, etc., Co., (Neb. 1907) 112 N. W. 620.

New Hampshire. — Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848.

New York. — Smith *v.* Manhattan R. Co., 112 N. Y. App. Div. 202, 98 N. Y. Supp. 1; Witmer *v.* Buffalo, etc., Electric Light, etc., Co., 112 N. Y. App. Div. 698, 98 N. Y. Supp. 781.

North Carolina. — Fisher *v.* Newbern, 140 N. Car. 506, 53 S. E. 342.

Pennsylvania. — Miller *v.* Lewistown Electric Light, etc., Co., 212 Pa. St. 593, 62 Atl. 32.

Texas. — Houston Lighting Power Co. *v.* Hooper, (Tex. Civ. App. 1907) 102 S. W. 133.

Vermont. — Drown *v.* New England Telephone, etc., Co., (Vt. 1907) 66 Atl. 801.

West Virginia. — Rice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

Wisconsin. — Leque *v.* Madison Gas, etc., Co., (Wis. 1907) 113 N. W. 946.

Contributory Negligence Question of Law When Facts Undisputed. — Shade *v.* Bay Counties Power Co., (Cal. 1907) 92 Pac. 62.

5. The Cause of Death May Be Inferred from the location of the body with relation to the dangers to which it was exposed. Morgan *v.* Westmoreland Electric Co., 213 Pa. St. 151, 62 Atl. 638.

6. Negligence of Company Presumed from Broken Wire. — O'Leary *v.* Glens Falls Gas, etc., Co., 107 N. Y. App. Div. 505, 95 N. Y. Supp. 232.

Negligence Is Presumed where a person is injured by a suspended electric light falling and hitting him. Louisville Lighting Co. *v.* Owens, (Ky. 1907) 105 S. W. 435.

875. 1. Eaton *v.* Weiser, 12 Idaho 544, 86 Pac. 541; Grimm *v.* Omaha Electric Light, etc., Co., (Neb. 1907) 112 N. W. 620.

2. Smith *v.* Missouri, etc., Telephone Co., 113 Mo. App. 429, 87 S. W. 71.

3. Previous Condition of Wires at Other Places Inadmissible. — United Electric Light, etc., Co. *v.* State, 100 Md. 634, 60 Atl. 248.

4. Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613.

Expert Testimony Based on Assumptions Not Proven Inadmissible. — United Electric Light, etc., Co. *v.* State, 100 Md. 634, 60 Atl. 248.

6. Ziehm *v.* United Electric Light, etc., Co., 104 Md. 48, 64 Atl. 61.

ELECTRIC RAILROADS.

878. 2. **Charter Determines Character of Railway — Commercial Railway.** — Wilder *v.* Aurora, etc., Traction Co., 216 Ill. 493, 75 N. E. 194.

5. Land May Be Condemned for Power Purposes by an electric railway corporation, under a general grant to condemn property for any corporate purpose. State *v.* Centralia-Chehalis Electric R., etc., Co., 42 Wash. 632, 85 Pac. 344.

881. 1. Belle *v.* Glenville, 27 Ohio Cir. Ct. 181.

882. 2. Nanticoke Suburban St. R. Co. *v.* People's St. R. Co., 212 Pa. St. 395, 61 Atl. 997; Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499.

883. 2. **In New York,** a street surface railroad cannot be built without the consent of one-half in value of the property bounded on that portion of the street on which the proposed line is to be built. Fox *v.* New York, etc., R. Co., 112 N. Y. App. Div. 832, 98 N. Y. Supp. 338, *reversing* (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 162, 95 N. Y. Supp. 251. See generally the title STREET RAILWAYS, **11.** 6, 14.

Property Owner Cannot Limit Consent to Particular Corporation or Individual. Forest City R. Co. *v.* Day, 73 Ohio St. 83, 76 N. E. 396.

3. Abutting Owner May Enjoin Construction of Railway. — Wilder *v.* Aurora, etc., Traction Co., 216 Ill. 493, 75 N. E. 194.

884. 1. Hester *v.* Durham Traction Co., 138 N. Car. 288, 50 S. E. 711.

888. 6. For Injury to an Employee of a Contractor employed by an electric company to paint the poles of its trolley system, sustained by reason of his arm coming in contact with a defectively insulated feed wire, the company is liable. Kennealy *v.* Westchester Electric R. Co., 86 N. Y. App. Div. 293, 83 N. Y. Supp. 823.

889. 1. Citizens' Electric R., etc., Co. *v.* Bell, 26 Ohio Cir. Ct. 691.

5. Company Bound to Exercise Highest Care to Protect Persons in Street. — Metropolitan St. R. Co. *v.* Gilbert, 70 Kan. 261, 78 Pac. 807, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 887 [889].

6. Metropolitan St. R. Co. *v.* Gilbert, 70 Kan. 261, 78 Pac. 807.

Suffering Electric-light Wire to Become Charged from Trolley Wire — Negligence. — Mahan *v.* Newton, etc., R. Co., 189 Mass. 1, 75 N. E. 59.

Company Liable for Killing Horse by Shock from Company's Rails. — Wood *v.* Wilmington City R. Co., (Del. 1905) 64 Atl. 246.

890. 1. Mahan *v.* Newton, etc., R. Co., 189 Mass. 1, 75 N. E. 59.

891. 1. See Hinman *v.* Winnipeg Electric St. R. Co., 16 Manitoba 16, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 889 [891].

2. The Railway Company Owes a Duty to Employees of Other Electrical Companies to adopt such precautions as are proper to prevent its own wires from coming in contact with the wires upon which such persons might be employed. Mahan *v.* Newton, etc., R. Co., 189 Mass. 1, 75 N. E. 59.

892. 1. North Amherst Home Telephone Co. *v.* Jackson, 26 Ohio Cir. Ct. 89.

ELECTRIC SUBWAYS.

893. 1. New York Statute Constitutional. — People *v.* Ellison, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 413, 101 N. Y. Supp. 444, *affirmed* 115 N. Y. App. Div. 254, 101 N. Y. Supp. 55.

3. The Right to Construct Electrical Subways Lapses, under the *New York* statute, when no effort is made for twenty years to commence the construction thereof. People *v.* Ellison, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 413, 101 N. Y. Supp. 55, 115 N. Y. App. Div. 254, *affirming* 101 N. Y. Supp. 444.

The Ohio Statute provides that any company organized under the laws of this or any other state and owning and operating a telephone exchange, or doing a telegraph business, in any city in this state, may construct and maintain underground wires and pipes or conduits, etc., with the consent of the city. In construing this statute the court held that a company had no right to construct and maintain underground wires in the city which neither owned nor operated a telephone exchange in that city. Queen City Telephone Co. *v.* Cincinnati, 27 Ohio Cir. Ct. 385.

Statutory Consent to an electrical company "to alter, inspect, and repair its system of distribution" authorizes a change from poles and wires to conduits. Allegheny County Light Co. *v.* Booth, 216 Pa. St. 564, 66 Atl. 72.

3*a*. Mandamus Lies against a Subway Company to compel it to accord space in its conduits for certain electrical conductors. *In re* Long Acre Electric Light, etc., Co., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 407, 101 N. Y. Supp. 460, *affirmed* 117 N. Y. App. Div. 80, 102 N. Y. Supp. 242.

An Electrical Company Can Lay Its Conduits under the Sidewalks, when it has the right to use the streets of a city, since sidewalks constitute a part of the streets. Allegheny County Light Co. *v.* Booth, 216 Pa. St. 564, 66 Atl. 72.

Electric Company Cannot Extend Conduits Through Private Walk. — Lent *v.* Tilyou, 106 N. Y. App. Div. 189, 94 N. Y. Supp. 479.

ELEVATED RAILROADS.

901. 8. The Term "Railroad Corporation," as used in the General Railroad Act Laws N. Y. 1890, p. 1083, includes elevated railroads, and such railroads have power under the act to acquire lands as may be necessary for their maintenance and accommodation. Manhattan R. Co. *v.* Astor, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 353, 107 N. Y. Supp. 666.

The Right to Condemn Property Will Be Denied where the proposed plan of erection does not meet legal requirements. Peabody Coal Co. *v.* North Western El. R. Co., 230 Ill. 214, 82 N. E. 573.

902. 4. Rothschild *v.* Chicago, 227 Ill. 205, 81 N. E. 407.

7. Other Cases. — Leffmann *v.* Long Island R. Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 169, 93 N. Y. Supp. 647; Rose *v.* New York, etc., R. Co., 108 N. Y. App. Div. 206, 95 N. Y. Supp. 711; Caldwell *v.* New York, etc., R. Co., 111 N. Y. App. Div. 164, 97 N. Y. Supp. 588.

907. 1. After Having Constructed a Third Track in front of the plaintiff's premises without legislative authority or municipal consent, the railroad company cannot institute valid condemnation proceedings to acquire the space for the track. Knoth *v.* Manhattan R. Co., 187 N. Y. 243, 79 N. E. 1015, *affirming* 109 N. Y. App. Div. 802, 96 N. Y. Supp. 844.

910. 2. Alternative Damages. — Leffmann *v.* Long Island R. Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 169, 93 N. Y. Supp. 647.

Injunction May Be Refused and Damages Awarded. — Knoth *v.* Manhattan R. Co., 187 N. Y. 243, 79 N. E. 1015, *affirming* 109 N. Y. App. Div. 802, 96 N. Y. Supp. 844.

912. 4. Leffmann *v.* Long Island R. Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 169, 93 N. Y. Supp. 647; Rose *v.* New York, etc., R. Co., 108 N. Y. App. Div. 206, 95 N. Y. Supp. 711; Caldwell *v.* New York, etc., R. Co., 111 N. Y. App. Div. 164, 97 N. Y. Supp. 588; *In re* Brooklyn Union El. R. Co., 113 N. Y. App. Div. 817, 99 N. Y. Supp. 222.

6. Wolf *v.* Manhattan R. Co., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 426, 101 N. Y. Supp. 402.

923. 1. Levenson *v.* Boston El. R. Co., 191 Mass. 75, 77 N. E. 625.

Diminution in Value of Property for Business Purposes — Evidence Admissible. — Peabody *v.* Boston El. R. Co., 191 Mass. 513, 78 N. E. 302.

5. Property Not on Line of Road — Evidence Held Inadmissible. — Rose *v.* New York, etc., R.

Co., 108 N. Y. App. Div. 206, 95 N. Y. Supp. 711.

925. 1. Rose *v.* New York, etc., R. Co., 108 N. Y. App. Div. 206, 95 N. Y. Supp. 711.

927. 4. Caldwell *v.* New York, etc., R. Co., 111 N. Y. App. Div. 164, 97 N. Y. Supp. 588.

929. 1. Cotton *v.* Boston El. R. Co., 191 Mass. 103, 77 N. E. 698; Peirson *v.* Boston El. R. Co., 191 Mass. 223, 77 N. E. 769.

932. 3. Rose *v.* New York, etc., R. Co., 108 N. Y. App. Div. 206, 95 N. Y. Supp. 711; Caldwell *v.* New York, etc., R. Co., 111 N. Y. App. Div. 164, 97 N. Y. Supp. 588.

Allowance of Interest on Rental Damages rests in the discretion of the court. Kerr *v.* New York El. R. Co., (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 331, 96 N. Y. Supp. 1021.

934. 2. **Benefits to Owner May Reduce Damage to Easement.** — Peabody *v.* Boston El. R. Co., 191 Mass. 513, 78 N. E. 392; Schmitz *v.* Brooklyn Union El. R. Co., 111 N. Y. App. Div. 308, 97 N. Y. Supp. 791; *In re* Brooklyn Union El. R. Co., 113 N. Y. App. Div. 817, 99 N. Y. Supp. 222.

940. 3. **Recovery May Be Had for Injury from Falling Sparks** where a railroad is guilty of negligence. Woodall *v.* Boston El. R. Co., 192 Mass. 308, 78 N. E. 446.

Negligence Question for Jury. — Walsh *v.* Boston El. R. Co., 192 Mass. 423, 78 N. E. 451.

942. 6. **The Question of Contributory Negligence** should be left to the jury, where a passenger was injured by running into a gate which a brakeman was closing. McGarry *v.* Boston El. R. Co., (Mass. 1907) 81 N. E. 194.

7. **To Permit Passengers to Pass from One Car to Another** while the train is at a standstill is not negligence, and there is no duty on the part of the company to warn passengers of the existence of a space between the cars under such circumstances. Hogan *v.* Boston El. R. Co., (Mass. 1907) 81 N. E. 198.

ELEVATORS.

945. 2. Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062.

946. 1. **Where a Freight Elevator** is customarily used by persons accompanying the freight, such persons are passengers, and while they assume the "usual hazards attending that mode of conveyance," they do not assume those arising from the negligence of the company. Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062.

3. Morgan *v.* Saks, 143 Ala. 141, 38 So. 848, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946; Belvedere Bldg. Co. *v.* Bryan, 103 Md. 536, 64 Atl. 44, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946; Ferguson *v.* Truax, (Wis. 1907) 110 N. W. 395, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946, *rehearing granted* and *judgment reversed* on question of fact 110 N. W. 513.

When Not Carrier of Passengers — Riding by Invitation on Freight Elevator. — Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062.

4. Belvedere Bldg. Co. *v.* Bryan, 103 Md. 536, 64 Atl. 44, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946.

5. Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; Morgan *v.* Saks, 143 Ala. 141, 38 So. 848, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946; Anderson Art Co. *v.* Greenburg, 118 Ill. App. 220; Belvedere Bldg. Co. *v.* Bryan, 103 Md. 536, 64 Atl. 44, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946; Hensler *v.* Stix, 113 Mo. App. 162, 88 S. W. 108; Becker *v.* Lincoln Real Estate, etc., Co., 118 Mo. App. 74, 93 S. W. 291.

948. 3. Anderson Art Co. *v.* Greenburg, 118 Ill. App. 220; National Biscuit Co. *v.* Wilson, (Ind. App. 1907) 80 N. E. 33, *rehearing denied*, 81 N. E. 947; Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062.

949. 2. Purcell *v.* Tennant Shoe Co., 187 Mo. 276, 86 S. W. 121.

Automatic Elevator. — The operation of an automatic, push-button, electrical passenger elevator is not negligence which is actionable by any passenger except a child of years so tender that he cannot know the danger and appreciate the risk of his contact with the door or side of the shaft when the car is moving, because a passenger of sufficient maturity and discretion to appreciate this danger and risk would be guilty of contributory negligence if he permitted himself to suffer from it. Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937.

3. See Belvedere Bldg. Co. *v.* Bryan, 103 Md. 536, 64 Atl. 44.

4. Hensler *v.* Stix, 113 Mo. App. 162, 88 S. W. 108.

The Operator Is "Bound to Hold the car a reasonable time for passengers to alight or indicate their intention to alight." Becker *v.* Lincoln Real Estate, etc., Co., 118 Mo. App. 74, 93 S. W. 291.

951. 1. Belvedere Bldg. Co. *v.* Bryan, 103 Md. 536, 64 Atl. 44; Gray *v.* Siegel-Cooper Co., 187 N. Y. 376, 80 N. E. 201, *affirming* 111 N. Y. App. Div. 926, 97 N. Y. Supp. 1135; Wilcox *v.* Rochester, 114 N. Y. App. Div. 734, 99 N. Y. Supp. 1020.

3. **Automatic Elevator.** — The operation of a push-button elevator without an operator in an apartment building where several children under ten years of age lived and used it, in a city in which the duty to employ an operator was imposed by ordinance, and the failure to discharge this duty was a misdemeanor, constitutes sufficient evidence of negligence actionable by a child between five and six years of age who was injured while running the elevator, to warrant the submission of the question of negligence to the jury. Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937.

952. 2. The servant does not assume a risk arising from the noncompliance of the master with a statutory regulation made for the servant's protection. Murphy *v.* Grand Rapids Veneer Works, 142 Mich. 677, 106 N. W. 211.

953. 2. National Biscuit Co. *v.* Wilson, (Ind. App. 1907) 80 N. E. 33, *rehearing denied*, 81 N. E. 947; Purcell *v.* Tennant Shoe Co., 187 Mo. 276, 86 S. W. 121; Lynch *v.* American Linseed Co., 122 N. Y. App. Div. 428, 107 N. Y. Supp. 458.

954. 1. **Omission to Supply Freight Elevator with Safety Catches Not Negligence.** — See Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90

S. W. 1158. *Compare* National Biscuit Co. *v.* Wilson, (Ind. App. 1907) 80 N. E. 33, *rehearing denied*, 81 N. E. 947.

955. 1. Lynch *v.* American Linseed Co., 122 N. Y. App. Div. 918, 107 N. Y. Supp. 458.

956. 1. National Biscuit Co. *v.* Wilson, (Ind. 1907) 82 N. E. 916.

Failure to Make Proper Inspection Evidence of Negligence.— Reinhardt *v.* Central Lard Co., (N. J. 1906) 64 Atl. 990.

957. 1. National Biscuit Co. *v.* Wilson, (Ind. 1906) 78 N. E. 251.

Applies Also to Freight Elevators. — National Biscuit Co. *v.* Wilson, (Ind. App. 1907) 80 N. E. 33, *rehearing denied*, 81 N. E. 947.

958. 2. Cullen *v.* Higgins, 216 Ill. 78, 74 N. E. 698.

959. 1. Obermeyer *v.* F. H. Logeman Chair Mfg. Co., 120 Mo. App. 59, 96 S. W. 673.

4. See B. Shoninger Co. *v.* Mann, 219 Ill. 242, 76 N. E. 354, *affirming* 121 Ill. App. 275.

960. 1. Hamilton *v.* Taylor, 195 Mass. 68, 80 N. E. 592.

961. 1. Morgan *v.* Saks, 143 Ala. 141, 38 So. 848.

962. 2. Braasch *v.* Michigan Stove Co., 147 Mich. 676, 111 N. W. 197; Gilfillan *v.* German Hospital, etc., 115 N. Y. App. Div. 48, 100 N. Y. Supp. 601. See also Hope *v.* Longley, 27 R. I. 579, 65 Atl. 300.

964. 1. Morgan *v.* Saks, 143 Ala. 141, 38 So. 848; Hamilton *v.* Taylor, 195 Mass. 68, 80 N. E. 592; Murphy *v.* Grand Rapids Veneer Works, 142 Mich. 677, 106 N. W. 211.

965. 1. Braasch *v.* Michigan Stove Co., 147 Mich. 676, 111 N. W. 197.

966. 1. Such statutes do not apply to an elevator temporarily used as a part of the ways, works, and machinery in the construction of a building. Rippucci *v.* Commonwealth Constr. Co., 190 Mass. 518, 77 N. E. 478.

3. Finnegan *v.* Samuel Winslow Skate Mfg. Co., 189 Mass. 580, 76 N. E. 192.

968. 1. See B. Shoninger Co. *v.* Mann, 219 Ill. 242, 76 N. E. 354, *affirming* 121 Ill. App. 275.

Where the landlord does not operate the elevator and there is no evidence tending to show a faulty condition, on the demise of the premises the landlord is not liable. Washington *v.* Episcopal Church, 111 N. Y. App. Div. 402, 97 N. Y. Supp. 1072.

969. 3. McDonald *v.* Dutton, 190 Mass. 391, 76 N. E. 1055; McGuirk *v.* Manhattan L. Ins. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 590, 99 N. Y. Supp. 536. *Compare* Gray *v.* Siegel-Cooper Co., 187 N. Y. 376, 80 N. E. 201, *affirming* 111 N. Y. App. Div. 926, 97 N. Y. Supp. 1135.

4. Negligent Operation — Degree of Care Owing When Employee Licensee. — Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158.

EMBEZZLEMENT.

978. 3. Knight *v.* State, (Ala. 1907) 44 So. 585; State *v.* Pellerin, 118 La. 547, 43 So. 159; State *v.* Browning, 47 Oregon 470, 82 Pac. 955; State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30.

989. 4. Vinnedge *v.* State, 167 Ind. 415, 79 N. E. 353; State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30.

5. Knight *v.* State, (Ala. 1907) 44 So. 585; Williams *v.* U. S. Fidelity, etc., Co., 105 Md. 490, 66 Atl. 495, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 979 *et seq.*; State *v.* Casey, 207 Mo. 1, 105 S. W. 645; State *v.* Browning, 47 Oregon 470, 82 Pac. 955; State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30.

Constructive Possession may be sufficient, in embezzlement. Higbee *v.* State, 74 Neb. 331, 104 N. W. 748.

981. 2. Knight *v.* State, (Ala. 1907) 44 So. 585.

3. Vinnedge *v.* State, 167 Ind. 415, 79 N. E. 353.

Under Statute May Be Broader Than Larceny and Include It. — State *v.* Pellerin, 118 La. 547, 43 So. 159.

5. State *v.* Browning, 47 Oregon 470, 82 Pac. 955; State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30.

982. 1. Vinnedge *v.* State, 167 Ind. 415, 79 N. E. 353.

983. 2. **Rule Changed by Statute.** — State *v.* Fields, 117 La. 929, 42 So. 428.

984. 1. People *v.* Hemple, 4 Cal. App. 120, 87 Pac. 227; State *v.* Browning, 47 Oregon 470, 82 Pac. 955; Forbish *v.* State, 49 Tex. Crim. 486, 93 S. W. 1029; Pearce *v.* State, (Tex. Crim. 1906) 98 S. W. 861.

2. People *v.* Hemple, 4 Cal. App. 120, 87 Pac. 227; State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30.

985. 2. **Conviction of Embezzling Goods** cannot be had upon indictment for embezzling money. Rex *v.* Clarke, 69 J. P. 150.

6. People *v.* Hemple, 4 Cal. App. 120, 87 Pac. 227.

7. **Commissions Due to the Defendant** out of funds collected by him are not such an interest in the funds as to make him a joint owner. Com. *v.* Jacobs, (Ky. 1907) 104 S. W. 345.

A solicitor who is required to turn over to his employer all collections before his commissions are allowed is not a joint owner. State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30.

987. 3. **A Person Assisting Another in Possession** to wrongfully convert property is guilty of embezzlement, not larceny. Pearce *v.* State, (Tex. Crim. 1906) 98 S. W. 861.

990. 1. As to the necessity for a relation of trust and confidence, see Knight *v.* State, (Ala. 1907) 44 So. 585; Vinnedge *v.* State, 167 Ind. 415, 79 N. E. 353; State *v.* Browning, 47 Oregon 470, 82 Pac. 905.

991. 1. People *v.* Hemple, 4 Cal. App. 120, 87 Pac. 227; Tipton *v.* State, 53 Fla. [illegible] 43 So. 684; State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30.

994. 2. Wilkinson *v.* State, 49 Tex. Crim. 304, 91 S. W. 580.

3. **Canceling an Indebtedness** of a third person to the master is sufficient conversion of a right in action. Higbee *v.* State, 74 Neb. 331, 104 N. W. 748.

995. 5. *Ex p.* Vice, 5 Cal. App. 153, 89 Pac. 983, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 995; Com. *v.* Kelly, (Ky. 1907) 101 S. W. 315; State *v.* Pellerin, 118 La. 547, 43 So. 159, *citing* 10 AM. AND ENG. ENCYC. OF

LAW (2d ed.) 995; State *v.* Blackley, 138 N. Car. 620, 50 S. E. 310, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 995.

996. 2. Knight *v.* State, (Ala. 1907) 44 So. 585; People *v.* Hemple, 4 Cal. App. 120, 87 Pac. 227; Farmer *v.* Com., (Ky. 1906) 91 S. W. 1129; National L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895; Higbee *v.* State, 74 Neb. 331, 104 N. W. 748; Busby *v.* State, (Tex. Crim. 1907) 103 S. W. 638.

Intention to Restore. — In *Texas* a person who pledged a borrowed diamond with the intention of redeeming it, but was prevented by losing his money at gaming, was held not guilty. Taylor *v.* State, (Tex. Crim. 1906) 97 S. W. 473.

997. 1. Eatman *v.* State, 48 Fla. 21, 37 So. 576, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 997.

3. State *v.* Pingel, 128 Iowa 515, 105 N. W. 58; State *v.* Pellerin, 118 La. 547, 43 So. 159; State *v.* Summers, 141 N. Car. 841, 53 S. E. 856; Busby *v.* State, (Tex. Crim. 1907) 103 S. W. 638; Robinson *v.* Com., 104 Va. 888, 52 S. E. 690.

Where a statute imposes a fine of double the amount of the money or property embezzled, a restitution of a part of such money or property does not operate to reduce the fine. Coffey *v.* Harlan County, 204 U. S. 659, 27 Sup. Ct. 305.

4. People *v.* Hemple, 4 Cal. App. 120, 87 Pac. 227; Sherrick *v.* State, 167 Ind. 345, 79 N. E. 193; State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30.

5. Sherrick *v.* State, 167 Ind. 345, 79 N. E. 193.

1002. 5. Tipton *v.* State, 53 Fla. 69, 43 So. 684, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1002.

1003. 2. Tipton *v.* State, 53 Fla. 69, 43 So. 684; People *v.* Messer, 148 Mich. 168, 111 N. W. 854.

An Express Messenger Intrusted with the Transmission of Money was held to be an "agent" under a statute using this term. Lamb *v.* State, 49 Tex. Crim. 442, 93 S. W. 734.

1004. 2. Tipton *v.* State, 53 Fla. 69, 43 So. 684.

7. **Under the District of Columbia Code** one may be convicted of embezzlement as a factor or commission merchant, although he has no store and his general business is that of a broker, provided he takes possession of goods and sells them as agent of the shipper. Green *v.* U. S., 25 App. Cas. (D. C.) 549.

Under the Pennsylvania Statute one may be convicted for embezzlement as a factor or consignee although not regularly engaged in the business or occupation of a factor or commission merchant. Commonwealth *v.* Spudis, 24 Pa. Super. Ct. 3.

1006. 4. Tipton *v.* State, 53 Fla. 69, 43 So. 684, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1006.

1007. 1. McCrary *v.* State, (Tex. Crim. 1907) 103 S. W. 926.

1008. 1. **As to Embezzlement by Bailees in General,** see State *v.* Roland, 11 Idaho 490, 83 Pac. 337; Stephens *v.* State, 49 Tex. Crim. 489, 93 S. W. 545.

A Person to Whom Goods Are Sent for Examination is a bailee. State *v.* Betz, 207 Mo. 589, 106 S. W. 64.

1010. 4. **A Vendor Is a Trustee** and guilty as such when he converts money placed in his hands by the vendee to satisfy an outstanding vendor's lien. Cowan *v.* State, 49 Tex. Crim. [illegible] S. W. [illegible].

1011. 5. As to embezzlement by officers of corporations generally, see Sherrick *v.* State, 167 Ind. 345, 79 N. E. 193; State *v.* Teasdale, 120 Mo. App. 692, 97 S. W. 995; State *v.* Davisson, (N. H. 1906) 64 Atl. 761.

1013. 2. Sherrick *v.* State, 167 Ind. 345, [illegible] E. 193.

5. Davis *v.* State, (Ark. 1906) 97 S. W. 54.

1020. 1. Davis *v.* State, (Ark. 1906) 97 S. W. 54.

1024. 5. **Postal Clerks.** — Ennis *v.* U. S., (C. C. A.) 154 Fed. 842.

1025. 5. Byram *v.* U. S., 25 App. Cas. (D. C.) 546.

6. Where money furnished in Virginia to purchase land in Kentucky, was embezzled, the offense was held to have been committed in the latter state. Hylton *v.* Com., (Ky. 1906) 91 S. W. 696.

The Place Where the Intent Was Formed may be a proper venue. Higbee *v.* State, 74 Neb. 331, 104 N. W. 748.

1028. 1. State *v.* Allen, (S. Dak. 1906) 110 N. W. 92.

1029. 2. Knight *v.* State, (Ala. 1907) 44 So. 585.

4. Taylor *v.* State, (Tex. Crim. 1906) 97 S. W. 473.

Evidence of the solvency of the defendant at the time of the alleged offense is admissible as bearing on the question of motive. State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30.

1032. 3. State *v.* Moyer, 58 W. Va. 146, 52 S. E. 30, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1032.

An Intent to Redeem a Chattel Wrongfully Pledged may be proved under a statute making intent permanently to deprive the owner of his property essential. Taylor *v.* State, (Tex. Crim. 1906) 97 S. W. 473.

1033. 2. People *v.* Robertson, (Cal. App. 1907) 92 Pac. 498; Com. *v.* Tilly, 33 Pa. Super. Ct. 35; Smith *v.* State, (Tex. Crim. 1908) 107 S. W. 844.

1034. 2. Bode *v.* State, (Neb. 1907) 113 N. W. 996.

1036. 7. Sherrick *v.* State, 167 Ind. 345, 79 N. E. 193.

1037. 1. People *v.* Hemple, 4 Cal. App. 120, 87 Pac. 227.

EMIGRANT — EMIGRATION.

1042. 1. **Emigrant Agent.** — A man who [illegible] is not an emigrant agent within a statute imposing a license tax on such agents. Kendrick *v.* State, 142 Ala. 43, 39 So. 203.

EMINENT DOMAIN.

1047. 1. Main County Water [illegible], Marin County, 145 Cal. 586, 79 Pac. 282; Cin-

cinnati, etc., R. Co. *v.* Connersville, (Ind. 1908) 83 N. E. 503; Cozad *v.* Kanawha Hardwood Co., 139 N. Car. 283, 51 S. E. 932; Wheeling, etc., R. Co. *v.* Toledo R., etc., Co., 72 Ohio St. 368, 74 N. E. 209.

1048. 4. Founded on Necessities of Sovereign Power. — Tanner *v.* Treasury Tunnel Min., etc., Co., 35 Colo. 593, 83 Pac. 464.

1049. 1. Contra Costa Water Co. *v.* Van Rensselaer, 155 Fed. 140; Potlatch Lumber Co. *v.* Peterson, 12 Idaho 769, 88 Pac. 426; Cincinnati, etc., R. Co. *v.* Connersville, (Ind. 1908) 83 N. E. 503; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; Warden *v.* Madisonville, etc., R. Co., (Ky. 1907) 101 S. W. 914.

3. Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005; Lazarus *v.* Morris, 212 Pa. St. 128, 61 Atl. 815, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1049.

1051. 1. *United States.* — Miocene Ditch Co. *v.* Lyng, (C. C. A.) 138 Fed. 544.

California. — Madera R. Co. *v.* Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27.

Georgia. — Jones *v.* North Georgia Electric Co., 125 Ga. 618, 54 S. E. 85.

Illinois. — Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005.

Iowa. — Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

Maine. — Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785.

Maryland. — Arnsperger *v.* Crawford, 101 Md. 247, 61 Atl. 413.

Mississippi. — Vinegar Bend Lumber Co. *v.* Oak Grove, etc., R. Co., 89 Miss. 84, 43 So. 292.

Montana. — Helena Power Transmission Co. *v.* Spratt, 35 Mont. 108, 88 Pac. 773.

New York. — Rome *v.* Whitestown Waterworks Co., 113 N. Y. App. Div. 547, 100 N. Y. Supp. 357.

Virginia. — Dice *v.* Sherman, 107 Va. 424, 59 S. E. 388.

Washington. — State *v.* White River Power Co., 39 Wash. 648, 82 Pac. 150.

West Virginia. — Hench *v.* Pritt, (W. Va. 1907) 57 S. E. 808.

2. Hayford *v.* Municipal Officers, 102 Me. 340, 66 Atl. 731; State *v.* Superior Ct., 45 Wash. 270, 88 Pac. 201.

"Necessary" Means "Reasonably Necessary." — Sayre *v.* Orange, (N. J. 1907) 67 Atl. 932.

6. McCarter *v.* Hudson County Water Co., (N. J. 1906) 65 Atl. 489, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1051.

8. Nahant *v.* U. S., (C. C. A.) 136 Fed. 273.

1052. 3. Riley *v.* Charleston Union Station Co., 71 S. Car. 457, 51 S. E. 485, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1052.

5. Jones *v.* North Georgia Electric Co., 125 Ga. 618, 54 S. E. 85; Potlatch Lumber Co. *v.* Peterson, 12 Idaho 769, 88 Pac. 426; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; Richardson *v.* Centerville, (Iowa 1908) 114 N. W. 1071; Helena Power Transmission Co. *v.* Spratt, 35 Mont. 108, 88 Pac. 773; South Omaha *v.* Omaha Bridge, etc., R. Co., (Neb. 1906) 107 N. W. 988; State *v.* Jones, 139 N. Car. 613, 52 S. E. 240; Durham *v.* Rigsbee, 141 N. Car. 128, 53 S. E. 531; Norfolk, etc., R. Co. *v.* Lynchburg Cotton Mills Co., 106 Va. 376, 56 S. E. 146; Norfolk, etc., R. Co *v.* Schein, 106 Va. 382, 56 S. E. 148.

One Legislature Cannot Grant Away the State's Right of Eminent Domain so as to bind future legislatures. Com. *v.* Broad St. Rapid Transit St. R. Co., 219 Pa. St. 11, 67 Atl. 958.

1054. 1. Stafford Springs St. R. Co. *v.* Middle River Mfg. Co., (Conn. 1907) 66 Atl. 775.

2. Miocene Ditch Co. *v.* Lyng, (C. C. A.) 138 Fed. 544; Stowe *v.* Newborn, 127 Ga. 421, 56 S. E. 516; Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005; Minnesota Canal, etc., Co. *v.* Koochiching Co., 97 Minn. 429, 107 N. W. 405; State *v.* Boone County, (Neb. 1907) 110 N. W. 629; Claremont R., etc., Co. *v.* Putney, 73 N. H. 431, 62 Atl. 727; Litchfield *v.* Pond, 186 N. Y. 66, 78 N. E. 719; *In re* South Western State Normal School, 213 Pa. St. 244, 62 Atl. 908.

3. Smith *v.* Claussen Park Drainage, etc., Dist., 229 Ill. 155, 82 N. E. 278; Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329; Claremont R., etc., Co. *v.* Putney, 73 N. H. 431, 62 Atl. 727; Metlar *v.* Middlesex, etc., Traction Co., 72 N. J. L. 524, 63 Atl. 497; Manda *v.* Orange, (N. J. 1907) 66 Atl. 917; Norfolk, etc., R. Co. *v.* Schein, 106 Va. 382, 56 S. E. 148; Norfolk, etc., R. Co. *v.* Lynchburg Cotton Mills Co., 106 Va. 376, 56 S. E. 146.

1055. 1. All Doubts Resolved in Favor of Landowner. — Minnesota Canal, etc., Co. *v.* Koochiching Co., 97 Minn. 429, 107 N. W. 405.

3. St. Louis, etc., R. Co. *v.* Fayetteville, 75 Ark. 534, 87 S. W. 1174; Stowe *v.* Newborn, 127 Ga. 421, 56 S. E. 516.

4. The Right of a Railroad Company to Condemn Land Operates for the Benefit of a Lessee to whom the company was authorized to lease its road. Snyder *v.* Baltimore, etc., R. Co., 210 Pa. St. 500, 60 Atl. 151.

6. Richmond School Tp. *v.* Overmyer, 164 Ind. 382, 73 N. E. 811; Metlar *v.* Middlesex, etc., Traction Co., 72 N. J. L. 524, 63 Atl. 497.

1056. 1. Richmond School Tp. *v.* Overmyer, 164 Ind. 382, 73 N. E. 811.

1057. 1. Smith *v.* Claussen Park Drainage, etc., Dist., 229 Ill. 155, 82 N. E. 278; Colorado Southern, etc., R. Co. *v.* Boagni, 118 La. 268, 42 So. 932; Hayford *v.* Municipal Officers, 102 Me. 340, 66 Atl. 731, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1057; Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785; American Telephone, etc., Co. *v.* St. Louis, etc., R. Co., 202 Mo. 656, 101 S. W. 576; State *v.* District Ct., 34 Mont. 535, 88 Pac. 44; Riley *v.* Charleston Union Station Co., 71 S. Car. 457, 51 S. E. 485, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1057.

Location Will Be Refused, where public necessity does not demand it and the rights of another railroad will be interfered with. State *v.* Superior Ct., 45 Wash. 270, 88 Pac. 201.

1058. 1. Richland School Tp. *v.* Overmyer, 164 Ind. 382, 73 N. E. 811.

6. Smith *v.* Cleveland, etc., R. Co., (Ind. 1907) 81 N. E. 501.

8. Boca, etc., R. Co. *v.* Sierra Valleys R. Co., 2 Cal. App. 546, 84 Pac. 298, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1058.

De Facto Corporation Can Exercise Right of Eminent Domain. — Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005; Smith *v.* Cleveland, etc., R. Co., (Ind. 1907) 81 N. E. 501.

1059. 2. Morrison *v.* Indianapolis, etc., R. Co., 166 Ind. 511, 76 N. E. 961, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059; Detroit, etc., R. Co. *v.* Campbell, 140 Mich. 384, 103 N. W. 856.

6. In Louisiana private individuals cannot exercise the power of eminent domain. Louisiana Nav., etc., Co. *v.* Doullut, 114 La. 906, 38 So. 613.

1060. 5. Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060.

8. Thom *v.* Georgia Mfg., etc., Co., 128 Ga. 187, 57 S. E. 75; State Board of Equalization *v.* People, 229 Ill. 430, 82 N. E. 324.

1061. 5. Public Use Defined. — Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785.

Term "Public Use" Is Flexible. — Riley *v.* Charleston Union Station Co., 71 S. Car. 457, 51 S. E. 485.

1062. 1. Chesapeake Stone Co. *v.* Moreland, (Ky. 1907) 104 S. W. 762; Dice *v.* Sherman, 107 Va. 424, 59 S. E. 388; Caretta R. Co. *v.* Virginia-Pocahontas Coal Co., (W. Va. 1907) 57 S. E. 401; Hench *v.* Pritt, (W. Va. 1907) 57 S. E. 808.

Public Must Be Entitled to Demand Use as of Right. — Shasta Power Co. *v.* Walker, 149 Fed. 568.

2. Madera R. Co. *v.* Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27; Potlatch Lumber Co. *v.* Peterson, 12 Idaho 769, 88 Pac. 426; State *v.* Superior Ct., 42 Wash. 675, 85 Pac. 669.

1063. 3. The Use Is Public When the Public May Exercise It independent of the will or caprice of the owner of the title. Minnesota Canal, etc., Co. *v.* Koochiching Co., 97 Minn. 429, 107 N. W. 405.

Use Public When Public Have Right to Services of Condemning Company. — State *v.* Superior Ct., (Wash. 1907) 92 Pac. 269.

4. Madera R. Co. *v.* Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; Chesapeake Stone Co. *v.* Moreland, (Ky. 1907) 104 S. W. 762; State *v.* Superior Ct., 42 Wash. 675, 85 Pac. 669; Caretta R. Co. *v.* Virginia-Pocahontas Coal Co., (W. Va. 1907) 57 S. E. 401.

1066. 1. Thom *v.* Georgia Mfg., etc., Co., 128 Ga. 187, 57 S. E. 75, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1065 [1066]; State *v.* Superior Ct., 42 Wash. 660, 85 Pac. 669.

A Corporation Organized for Both Public and Private Objects may exercise the right of eminent domain, when the same is necessary for its public purposes. State *v.* Centralia-Chehalis Electric R., etc., Co., 42 Wash. 632, 85 Pac. 341.

Authority to Condemn Will Be Denied where the purpose is part public and part private. Minnesota Canal, etc., Co. *v.* Koochiching Co., 97 Minn. 429, 107 N. W. 405.

2. *United States.* — Chicago, etc., R. Co. *v.* Williams, 148 Fed. 442; Shasta Power Co. *v.* Walker, 149 Fed. 568.

California. — Madera R. Co. *v.* Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27.

Colorado. — Ortiz *v.* Hansen, 35 Colo. 100, 83 Pac. 964.

Georgia. — Poulan *v.* Atlantic Coast Line R. Co., 123 Ga. 605, 51 S. E. 657.

Illinois. — Pittsburgh, etc., R. Co. *v.* Sanitary Dist., 218 Ill. 286, 75 N. E. 892; Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005.

Indiana. — Speck *v.* Kenoyer, 164 Ind. 431, 73 N. E. 896, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1066; Richland School Tp. *v.* Overmyer, 164 Ind. 382, 73 N. E. 811; Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657.

Maine. — Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785; Hayford *v.* Municipal Officers, 102 Me. 340, 66 Atl. 731.

New York. — *In re* Water Front, etc., 190 N. Y. 350, 83 N. E. 299.

Ohio. — Wheeling, etc., R. Co. *v.* Toledo R., etc., Co., 72 Ohio St. 368, 74 N. E. 209.

1068. 2. *In re* Water Front, etc., 190 N. Y. 350, 83 N. E. 299.

Province of Congress. — U. S. *v.* Certain Lands, etc., 145 Fed. 654.

1069. 1. Tanner *v.* Treasury Tunnel, etc., Co., 35 Colo. 593, 83 Pac. 464; Speck *v.* Kenoyer, 164 Ind. 431, 73 N. E. 896.

2. *United States.* — Shasta Power Co. *v.* Walker, 149 Fed. 568.

California. — Madera R. Co. *v.* Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27.

Colorado. — Ortiz *v.* Hansen, 35 Colo. 100, 83 Pac. 964.

Indiana. — Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657.

Maine. — Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785; Hayford *v.* Municipal Officers, 102 Me. 340, 66 Atl. 731.

Maryland. — Arnsperger *v.* Crawford, 101 Md. 247, 61 Atl. 413.

Minnesota. — Minnesota Canal, etc., Co. *v.* Koochiching Co., 97 Minn. 429, 107 N. W. 405.

Mississippi. — Vinegar Bend Lumber Co. *v.* Oak Grove, etc., R. Co., 89 Miss. 84, 43 So. 292.

Missouri. — *In re* Twenty-first St., 196 Mo. 498, 96 S. W. 201.

North Carolina. — Cozad *v.* Kanawha Hardwood Co., 139 N. Car. 283, 51 S. E. 932, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1069.

Ohio. — Wheeling, etc., R. Co. *v.* Toledo R., etc., Co., 72 Ohio St. 368, 74 N. E. 209.

Utah. — Highland Boy Gold Min. Co. *v.* Strickley, 28 Utah 215, 78 Pac. 296.

Virginia. — Dice *v.* Sherman, 107 Va. 424, 59 S. E. 388.

Washington. — State *v.* Superior Ct., 42 Wash. 521, 85 Pac. 264; State *v.* Superior Ct., (Wash. 1907) 89 Pac. 178.

West Virginia.—Hench *v.* Pritt, (W. Va. 1907) 57 S. E. 808.

1070. 1. Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; Cozad *v.* Kanawha Hardwood Co., 139 N. Car. 283, 51 S. E. 932; Highland Boy Gold Min. Co. *v.* Strickley, 28 Utah 215, 78 Pac. 296, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1070; Hench *v.* Pritt, (W. Va. 1907) 57 S. E. 808; Caretta R. Co. *v.* Virginia-Pocahontas Coal Co., (W. Va. 1907) 57 S. E. 401.

1072. 13. Speck *v.* Kenoyer, 164 Ind. 431, 73 N. E. 896, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072; State *v.* Superior Ct., 42 Wash. 521, 85 Pac. 256, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072.

14. State *v.* Superior Ct., 42 Wash. 521, 85 Pac. 256.

1074. 3. Kansas City Interurban R. Co. *v.* Nelson, 193 Mo. 297, 91 S. W. 1036.

1080. 2. **Delegation of Power of Eminent Domain to Electric-light Company** is for public purpose. Shasta Power Co. *v.* Walker, 149 Fed. 568; Jones *v.* North Georgia Electric Co., 125 Ga. 618, 54 S. E. 85; Minnesota Canal, etc., Co. *v.* Koochiching Co., 97 Minn. 429, 107 N. W. 405; Helena Power Transmission Co. *v.* Spratt, 35 Mont. 108, 88 Pac. 773; *In re* East Canada Creek Electric Light, etc., Co., (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 565, 99 N. Y. Supp. 109. But see Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785.

1084. 1. Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

5. Memphis *v.* Hastings, 113 Tenn. 142, 86 S. W. 609, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1084.

1085. 1. Memphis *v.* Hastings, 113 Tenn. 142, 86 S. W. 609, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1085.

4. Memphis State Line R. Co. *v.* Forest Hill Cemetery Co., 116 Tenn. 400, 94 S. W. 69, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1085.

1086. 5. Miocene Ditch Co. *v.* Jacobsen, (C. C. A.) 146 Fed. 680.

1087. 16. Richland School Tp. *v.* Overmyer, 164 Ind. 382, 73 N. E. 811.

Public Libraries.—Hayford *v.* Municipal Officers, 102 Me. 340, 66 Atl. 731.

1088. 3. Woodcliff Land Imp. Co. *v.* New Jersey Shore Line R. Co., 72 N. J. L. 137, 60 Atl. 44, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1088.

1090. 6. New York, etc., R. Co. *v.* Offield, 78 Conn. 1, 60 Atl. 740.

1093. 3. Marin County Water Co. *v.* Marin County, 145 Cal. 586, 79 Pac. 282; Pittsburgh, etc., R. Co. *v.* Sanitary Dist., 218 Ill. 286, 75 N. E. 892; American Telephone, etc., Co. *v.* St. Louis, etc., R. Co., 202 Mo. 656, 101 S. W. 576; State *v.* Superior Ct., 40 Wash. 380, 82 Pac. 417.

1094. 1. Atlanta, etc., R. Co. *v.* Atlanta, etc., R. Co., 124 Ga. 125, 52 S. E. 320; Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; Memphis, etc., R. Co. *v.* Union R. Co., 116 Tenn. 500, 95 S. W. 1019; State *v.* Superior Ct., 45 Wash. 316, 88 Pac. 332; North Coast R. Co. *v.* Northern Pac. R. Co., (Wash. 1908) 94 Pac. 112.

A Public Necessity Must Exist to authorize the application of the rule. Great Falls Power Co. *v.* Great Falls, etc., R. Co., 104 Va. 416, 52 S. E. 172.

2. Atlantic, etc., R. Co.'s Appeal, 100 Me. 430, 62 Atl. 141.

In New Jersey a city cannot lay out a street across the freight yard of a railroad company. Paterson, etc., R. Co. *v.* Paterson, 72 N. J. L. 112, 60 Atl. 47.

3. Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005.

5. **Railroad Cannot Condemn Land Used for Cemetery.**—Memphis State Line R. Co. *v.* Forest Hill Cemetery Co., 116 Tenn. 400, 94 S. W. 69.

6. Poulan *v.* Atlantic Coast Line R. Co., 123 Ga. 605, 51 S. E. 657; Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005; Memphis State Line R. Co. *v.* Forest Hill Cemetery Co., 116 Tenn. 400, 94 S. W. 69.

1095. 2. St. Louis, etc., R. Co. *v.* Fayetteville, 75 Ark. 534, 87 S. W. 1174.

4. *In re* South Western State Normal School, 213 Pa. St. 244, 62 Atl. 908.

5. Fayetteville St. R. Co. *v.* Aberdeen, etc., R. Co., 142 N. Car. 423, 55 S. E. 345, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95 [1095].

6. St. Louis, etc., R. Co. *v.* Fayetteville, 75 Ark. 534, 87 S. W. 1174.

1097. 1. South Dakota Cent. R. Co. *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 578.

2. **State Property Is Subject to Condemnation Proceedings by a Corporation** when made so by statute. California, etc., R. Co. *v.* State, 1 Cal. App. 142, 81 Pac. 971.

In New Jersey it is provided by statute that no railroad corporation shall condemn land belonging to the state. Shamberg *v.* New Jersey Shore Line R. Co., 72 N. J. L. 140, 60 Atl. 46, 73 N. J. L. 572, 64 Atl. 114.

Provincial Public Land may be appropriated by the parliament of Canada for the purpose of a railroad connecting two or more provinces. Atty.-Gen. *v.* Canadian Pac. R. Co., 11 British Columbia 289.

1099. 3. **In New Jersey** railroads are now authorized to condemn dwelling houses. Snyder *v.* Baltimore, etc., R. Co., 210 Pa. St. 500, 60 Atl. 151.

In Pennsylvania a railroad can condemn a dwelling house when necessary for the purpose of widening its right of way, but not otherwise. O'Leary *v.* Wabash, etc., R. Co., 210 Pa. St. 522, 60 Atl. 164.

4. **Curtilage Not Necessary to Reasonable Enjoyment of House Is Not Included.**—Sutton *v.* Pennsylvania R. Co., 211 Pa. St. 554, 60 Atl. 1099.

1110. 3. Smith *v.* St. Paul, etc., R. Co., 39 Wash. 355, 81 Pac. 840.

1113. 1. Scrutchfield *v.* Choctaw, etc., R. Co., 18 Okla. 308, 88 Pac. 1048.

2. Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819; Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540; Manning *v.* Shreveport, 119 La. 1044, 44 So. 882; Yazoo, etc., R. Co. *v.* Lefoldt, 87 Miss. 317, 39 So. 459; Stehr *v.*

Mason City, etc., R. Co., (Neb. 1906) 110 N. W. 701; Grossman *v.* Houston, etc., R. Co., 99 Tex. 641, 92 S. W. 836; Texas, etc., R. Co. *v.* Edrington, (Tex. 1907) 101 S. W. 441; Texas Short Line R. Co. *v.* Clifford, (Tex. Civ. App. 1906) 94 S. W. 168; Houston, etc., R. Co. *v.* Davis, (Tex. Civ. App. 1907) 100 S. W. 1013; Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18; Abbott *v.* Milwaukee Light, etc., Co., 126 Wis. 634, 106 N. W. 523.

1114. 1. Perrine *v.* Pennsylvania R. Co., 72 N. J. L. 398, 61 Atl. 87.

Acts Not Done on Lands Taken. — Where part of a claimant's land is taken under the powers of an act incorporating the Lands Clauses Act, 1845, and the claimant claims compensation for the injurious affection of his other land, it is not necessary, in order to entitle him to compensation, that the acts complained of should be done on the land which is taken from the claimant. *In re* London, etc., R. Co., 71 J. P. 150, 23 Times L. Rep. 279.

3. Rex *v.* Mountford, (1906) 2 K. B. 814; Burnt Dist. Case, 4 Can. R. Cas. 290.

Where a Landowner Has Been Compelled to Close His Business by reason of the construction of additional tracks by a railroad, thereby rendering it dangerous for customers to visit his place of business, he may recover damages. Foust *v.* Pennsylvania R. Co., 212 Pa. St. 213, 61 Atl. 829.

A Farmer Is Engaged in Business within the meaning of an act allowing a recovery of damages for injuries to business caused by the exercise of the right of eminent domain. Allen *v.* Com., 188 Mass. 59, 74 N. E. 287.

1115. 2. **License Value of Hotel Proper Subject of Allowance.** — *In re* Cavanagh, 14 Ont. L. Rep. 523.

1118. 1. St. Louis, etc., R. Co. *v.* Oliver, 17 Okla. 589, 87 Pac. 423.

1122. 2. **Vibration and Jarring.** — Ganster *v.* Metropolitan Electric Co., 214 Pa. St. 628, 64 Atl. 91.

Recovery May Be Had for Personal Annoyance caused by noise, smoke, and vibration. St. Louis, etc., R. Co. *v.* Shaw, (Tex. Civ. App. 1905) 88 S. W. 817.

Recovery May Be Had for Vibrations, Noises, and Smoke. — Novich *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 476.

Injury from Noise and Confusion. — Mason City, etc., R. Co. *v.* Wolf, (C. C. A.) 148 Fed. 961, following the Nebraska rule.

Injury from Noise. — Gossett *v.* Southern R. Co., 115 Tenn. 376, 89 S. W. 737.

No Recovery May Be Had for personal inconvenience caused by smoke and noise. Oklahoma City, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1906) 95 S. W. 1089.

1123. 2. **Where No Part of the Property Has Been Taken,** there can be no recovery for inconvenience in the owner's use of his property. Texas Short Line R. Co. *v.* Clifford, (Tex. Civ. App. 1906) 94 S. W. 168.

1125. 1. **A Municipal Corporation Is Liable** for the impairment of an easement of access to and from a lot abutting on a street, caused by a change in the grade of the street. Coyne *v.* Memphis, 118 Tenn. 651, 102 S. W. [illegible].

1127. 1. Sallden *v.* Little Falls, 102 Minn. 358, 113 N. W. 884; Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821.

1128. 1. *In re* Great Eastern R. Co., 71 J. P. 95, *affirmed* 72 J. P. 1; Atlantic, etc., R. Co. *v.* McKnight, 125 Ga. 328, 54 S. E. 148; Harrington *v.* Iowa Cent. R. Co., 126 Iowa 388, 102 N. W. 139; Camden Interstate R. Co. *v.* Stein, (Ky. 1906) 97 S. W. 394; Hyman *v.* Ann Arbor R. Co., 141 Mich. 84, 104 N. W. 375; Ranson *v.* Sault Ste. Marie, 143 Mich. 661, 107 N. W. 439; Mitchell *v.* St. Louis, etc., R. Co., 116 Mo. App. 81, 92 S. W. 111; Gillespie *v.* South Omaha, (Neb. 1907) 112 N. W. 582.

1130. 1. **A Pollution of Water Is a Taking** requiring compensation. Bigham *v.* Port Arthur Canal, etc., Co., (Tex. 1906) 97 S. W. 686.

1133. 1. Litchfield *v.* Pond, 186 N. Y. 66, 78 N. E. 719.

1136. 3. **In Iowa** property may be taken for public purposes when the compensation is secured. Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

1137. 1. *United States.* — Nahant *v.* U. S., (C. C. A.) 136 Fed. 273.

Illinois. — Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005.

Indiana. — Cincinnati, etc., R. Co. *v.* Connersville, (Ind. 1908) 83 N. E. 503.

Kentucky. — Beckham *v.* Slayden, (Ky. 1908) 107 S. W. 324.

Michigan. — Detroit Leather Specialty Co. *v.* Michigan Cent. R. Co., 149 Mich. 588, 113 N. W. 14.

Minnesota. — Minnesota Canal, etc., Co. *v.* Koochiching Co., 97 Minn. 429, 107 N. W. 405.

Nebraska. — State *v.* Missouri Pac. R. Co., 75 Neb. 4, 105 N. W. 983; Missouri Pac. R. Co. *v.* Cass County, (Neb. 1906) 107 N. W. 773; South Omaha *v.* Omaha Bridge, etc., R. Co., (Neb. 1906) 107 N. W. 988.

New York. — *In re* Water Front, etc., 190 N. Y. 350, 83 N. E. 299.

Oklahoma. — Blackwell, etc., R. Co. *v.* Bebout, (Okla. 1907) 91 Pac. 877.

Tennessee. — Memphis *v.* Hastings, 113 Tenn. 142, 86 S. W. 609.

Texas. — Getzendaner *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 102 S. W. 161; Meadows *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1908) 107 S. W. 83.

Utah. — Brigham City *v.* Chase, 30 Utah 410, 85 Pac. 436.

Virginia. — Tidewater R. Co. *v.* Shartzer, 107 Va. 562, 59 S. E. 407.

Washington. — State *v.* Superior Ct., 42 Wash. 521, 85 Pac. 256; Puyallup *v.* Lacey, 43 Wash. 110, 86 Pac. 215; Port Townsend Southern R. Co. *v.* Barbare, (Wash. 1907) 89 Pac. 710; Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

It Is Within the Province of the Legislature to determine the time and manner of payment. State *v.* Several Parcels of Land, (Neb. 1907) 112 N. W. 248.

1139. 2. State *v.* Jones, 139 N. Car. 613, 52 S. E. 240, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1139.

1145. 1. Oregon Short Line R. Co. *v.* Fox,

28 Utah 311, 78 Pac. 800, *citing* 10 Am. and Eng. Encyc. of Law (2d ed.) 1141.

1147. 1. Sanitary Dist. *v.* Chapin, 226 Ill. 503, 80 N. E. 1017, *citing* 10 Am. and Eng. Encyc. of Law (2d ed.) 146 [1147]; Dethample *v.* Lake Koen Navigation, etc., Co., 73 Kan. 54, 84 Pac. 544; Opelousas, etc., R. Co. *v.* St. Landry Cotton Oil Co., 118 La. 290, 42 So. 940; Stauffer *v.* East Stroudsburg, 215 Pa. St. 143, 64 Atl. 411; Chicago, etc., R. Co. *v.* Moggridge, 116 Tenn. 445, 92 S. W. 1114; Oregon Short Line R. Co. *v.* Jones, 29 Utah 147, 80 Pac. 732, *citing* 10 Am. and Eng. Encyc. of Law (2d ed.) 1147; Hunter *v.* Chesapeake, etc., R. Co., 107 Va. 158, 59 S. E. 415; Guyandotte Valley R. Co. *v.* Buskirk, 57 W. Va. 417, 50 S. E. 521.

1148. 1. Kansas City, etc., R. Co. *v.* Weidenmann, (Kan. 1908) 94 Pac. 146.

Date of Assessment Is Date of Appropriation. — St. Louis, etc., R. Co. *v.* Stewart, 201 Mo. 491, 100 S. W. 583.

2. Chicago, etc., R. Co. *v.* Mines, 221 Ill. 448, 77 N. E. 898; Freiberg *v.* South Side El. R. Co., 221 Ill. 508, 77 N. E. 920; Sanitary Dist. *v.* Chapin, 226 Ill. 499, 80 N. E. 1017; Moll *v.* Sanitary Dist., 228 Ill. 633, 81 N. E. 1147; New Jersey, etc., R. Co. *v.* Tutt, 168 Ind. 205, 80 N. E. 420; Louisiana R., etc., Co. *v.* Xavier Realty, 115 La. 328, 39 So. 6; Opelousas, etc., R. Co. *v.* Bradford, 118 La. 506, 43 So. 79.

Date of Filing of Bond to Pay Damage. — Schonhardt *v.* Pennsylvania R. Co., 216 Pa. St. 224, 65 Atl. 543.

1149. 3. Ranck *v.* Cedar Rapids, 134 Iowa 563, 111 N. W. 1027.

1151. 1. Southern Pac. R. Co. *v.* San Francisco Sav. Union, 146 Cal. 290, 79 Pac. 961; Dethample *v.* Lake Koen Navigation, etc., Co., 73 Kan. 54, 84 Pac. 544.

3. Creighton *v.* Charlotte, 143 N. Car. 171, 55 S. E. 511.

4. *California.* — Central Pac. R. Co. *v.* Feldman, (Cal. 1907) 92 Pac. 849.

Illinois. — Dowie *v.* Chicago, etc., R. Co., 214 Ill. 49, 73 N. E. 354; Prather *v.* Chicago Southern R. Co., 221 Ill. 190, 77 N. E. 430; Chicago, etc., R. Co. *v.* Staley, 221 Ill. 405, 77 N. E. 437.

Iowa. — Ranck *v.* Cedar Rapids, 134 Iowa 563, 111 N. W. 1027.

Kansas. — Dethample *v.* Lake Koen Navigation, etc., Co., 73 Kan. 54, 84 Pac. 544; Kansas City, etc., R. Co. *v.* Weidenmann, (Kan. 1908) 94 Pac. 146.

Kentucky. — Madisonville, etc., R. Co. *v.* Ross, (Ky. 1907) 103 S. W. 330, *quoting* 10 Am. and Eng. Encyc. of Law (2d ed.) 1151.

Massachusetts. — Sargent *v.* Merrimac, (Mass. 1907) 81 N. E. 970.

Missouri. — Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 392, 94 S. W. 860.

Pennsylvania. — Henkel *v.* Wabash Pittsburg Terminal R. Co., 213 Pa. St. 485, 62 Atl. 1085; Schonhardt *v.* Pennsylvania R. Co., 216 Pa. St. 224, 65 Atl. 543; McMillin Printing Co. *v.* Pittsburg, etc., R. Co., 216 Pa. St. 504, 65 Atl. 1091.

Texas. — El Paso *v.* Coffin, (Tex. Civ. App. 1905) 88 S. W. 502.

Virginia. — Hunter *v.* Chesapeake, etc., R. Co., 107 Va. 158, 59 S. E. 415.

Washington. — Port Townsend Southern R. Co. *v.* Barbare, (Wash. 1907) 89 Pac. 710; Chicago, etc., R. Co. *v.* Alexander, (Wash. 1907) 91 Pac. 626.

West Virginia. — Guyandotte Valley R. Co. *v.* Buskirk, 57 W. Va. 417, 50 S. E. 521.

Canada. — Dodge *v.* Rex, 38 Can. Sup. Ct. 149.

1152. 1. Opelousas, etc., R. Co. *v.* Bradford, 118 La. 506, 43 So. 79; Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 392, 94 S. W. 860, *citing* 10 Am. and Eng. Encyc. of Law (2d ed.) 1152; Brown *v.* W. T. Weaver Power Co., 140 N. Car. 333, 52 S. E. 954; Seaboard Air Line R. Co. *v.* Chamblin, (Va. 1907) 60 S. E. 727; Guyandotte Valley R. Co. *v.* Buskirk, 57 W. Va. 417, 50 S. E. 521.

2. Madisonville, etc., R. Co. *v.* Ross, (Ky. 1907) 103 S. W. 330, *quoting* 10 Am. and Eng. Encyc. of Law (2d ed.) 1151, 1152.

1153. 1. Central Pac. R. Co. *v.* Feldman, (Cal. 1907) 92 Pac. 849; El Paso *v.* Coffin, (Tex. Civ. App. 1905) 88 S. W. 502; Port Townsend Southern R. Co. *v.* Barbare, (Wash. 1907) 89 Pac. 710; *In re* Seattle, (Wash. 1907) 92 Pac. 423.

Amount of Rents Derived from Property Sought to Be Condemned Is Admissible, since rental value is evidence of market value. Levenson *v.* Boston El. R. Co., 191 Mass. 75, 77 N. E. 635.

2. St. Louis, etc., R. Co. *v.* Fayetteville, 75 Ark. 534, 87 S. W. 1174.

4. Central Pac. R. Co. *v.* Feldman, (Cal. 1907) 92 Pac. 849; Port Townsend Southern R. Co. *v.* Barbare, (Wash. 1907) 89 Pac. 710.

1154. 1. Offer of Owner to Sell at Named Price Admissible. — Kaufman *v.* Pittsburg, etc., R. Co., 210 Pa. St. 440, 60 Atl. 2.

An Attempted Sale made the day after the taking and without knowledge thereof was held admissible, the owner being allowed to explain why he was willing to take less than he claimed in the proceedings. Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 392, 94 S. W. 860, *citing* 10 Am. and Eng. Encyc. of Law (2d ed.) [1157] 1154.

2. An Offer Made by a Landowner for the Purpose of Agreeing upon the Compensation to Be Paid is not an admission which is admissible. Indianapolis Northern Traction Co. *v.* Dunn, 37 Ind. App. 248, 76 N. E. 269.

3. Louisiana R., etc., Co. *v.* Morere, 116 La. 997, 41 So. 236, *citing* 10 Am. and Eng. Encyc. of Law (2d ed.) 1154; *In re* Central R. Co., (N. J. 1907) 65 Atl. 905; Chicago, etc., R. Co. *v.* Alexander, (Wash. 1907) 91 Pac. 626.

Offers to Purchase by the Condemning Party are inadmissible. Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 392, 94 S. W. 860.

Circumstances under Which Offers Are Made. — Yellowstone Park R. Co. *v.* Bridger Coal Co., 34 Mont. 545, 9 Ann. Cas. 470, 87 Pac. 963; Blincoe *v.* Choctaw, etc., R. Co., 16 Okla. 286, 83 Pac. 903, *quoting* 10 Am. and Eng. Encyc. of Law (2d ed.) 1154.

4. Louisiana R., etc., Co. *v.* Morere, 116 La. 997, 41 So. 236; Lewis *v.* Englewood El. R. Co., 223 Ill. 223, 79 N. E. 44, *citing* 10 Am. and Eng. Encyc. of Law (2d ed.) 1154.

It Is Admissible on Cross-examination of the landowner's witness as to value, to test the value of his opinion. Central Pac. R. Co. *v.* Feldman, (Cal. 1907) 92 Pac. 849.

1155. **2.** Ranck *v.* Cedar Rapids, 134 Iowa 563, 111 N. W. 1027, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1155; Guyandotte Valley R. Co. *v.* Buskirk, 57 W. Va. 417, 50 S. E. 521.

Price Paid for Land May Be Brought Out on Cross-examination. — Indianapolis, etc., Traction Co. *v.* Shepherd, 35 Ind. App. 601, 74 N. E. 904.

3. Price Paid for Land Two Years Previous Not Proper Basis upon Which to Determine Present Value. — Dethample *v.* Lake Koen Navigation, etc., Co., 73 Kan. 54, 84 Pac. 544.

The Price Paid by the Owner Is Not Admissible, where the land was purchased seventeen years previous to the condemnation proceedings. Davis *v.* Pennsylvania R. Co., 215 Pa. St. 581, 64 Atl. 774.

4. Eldorado, etc., R. Co. *v.* Everett, 225 Ill. 529, 80 N. E. 281; Louisiana R., etc., Co. *v.* Morere, 116 La. 997, 41 So. 236; Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 392, 94 S. W. 860; Hadley *v.* Chosen Freeholders, 73 N. J. L. 197, 62 Atl. 1132; Union R. Co. *v.* Hunton, 114 Tenn. 609, 88 S. W. 182, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1155; Port Townsend Southern R. Co. *v.* Barbare, (Wash. 1907) 89 Pac. 710.

Admissible on Cross-examination of Witness on Value. — Kansas City, etc., R. Co. *v.* Weidenmann, (Kan. 1908) 94 Pac. 146.

Condemning Party Can Show that Particular Sales Were Made under Peculiar Circumstances, and that for this reason they do not represent the market price. Henkel *v.* Wabash Pittsburg Terminal R. Co., 213 Pa. St. 485, 62 Atl. 1085.

1156. **1.** Chicago, etc., R. Co. *v.* Kline, 220 Ill. 334, 77 N. E. 229; Chicago, etc., R. Co. *v.* Mines, 221 Ill. 448, 77 N. E. 898; Kirby *v.* Panhandle, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 281.

3. Newbold *v.* International, etc., R. Co., 34 Tex. Civ. App. 525, 78 S. W. 1079, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1155, as to the rule in other jurisdictions.

4. Eldorado, etc., R. Co. *v.* Everett, 225 Ill. 529, 80 N E. 281; Chicago, etc., R. Co. *v.* Scott, 225 Ill. 352, 80 N. E. 404; Simons *v.* Mason City, etc., R. Co., 128 Iowa 139, 103 N. W. 129; Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 392, 94 S. W. 860; Port Townsend Southern R. Co. *v.* Barbare, (Wash. 1907) 89 Pac. 710.

1157. **1. Evidence of Cost of Undivided Half Interest Held Admissible** to show the value of the remaining half interest. Seaboard Air Line R. Co. *v.* Chamblin, (Va. 1908) 60 S. E. 727.

5. Any Person Who Is Shown to Be Familiar with the Value of any particular piece of land may be permitted to testify as to the value of the tract. Sanitary Dist. *v.* Pittsburgh, etc., R. Co., 216 Ill. 575, 75 N. E. 248; Kansas City, etc., R. Co. *v.* Weidenmann, (Kan. 1908) 94 Pac. 146; Southern Missouri, etc., R. Co. *v.* Woodard, 193 Mo. 656, 92 S. W. 470; Hope *v.* Philadelphia, etc., R. Co., 211 Pa. St. 401, 60 Atl. 996; Sutton *v.* Pennsylvania R. Co., 214 Pa. St. 274, 63 Atl. 791; Stauffer *v.* East Stroudsburg, 215 Pa. St. 143, 64 Atl. 411; Markowitz *v.* Pittsburg, etc., R Co., 216 Pa. St. 535, 65 Atl. 1097; Markowitz *v.* Pittsburg, etc., R. Co., 216 Pa. St. 539, 65 Atl. 1099; Union R. Co. *v.* Hunton, 114 Tenn. 609, 88 S. W. 182; Guyandotte Valley R. Co. *v.* Buskirk, 57 W. Va. 417, 50 S. E. 521; Morrison *v.* Fairmont, etc., Traction Co., 60 W. Va. 441, 55 S. E. 669.

The Landowner May Give His Opinion as to the market value of his property. Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 392, 94 S. W. 860.

Where Clay Lands Used in Making Brick Are Sought to Be Condemned, brick manufacturers, although without knowledge as to the general value of land in the neighborhood, are competent to testify as to the value of the land for brick purposes. St. Louis, etc., R. Co. *v.* Continental Brick Co., 198 Mo. 698, 96 S. W. 1011.

1158. **1.** Hope *v.* Philadelphia, etc., R. Co., 211 Pa. St. 401, 60 Atl. 996; Markowitz *v.* Pittsburg, etc., R. Co., 216 Pa. St. 535, 65 Atl. 1097.

2. St. Louis Belt, etc., R. Co. *v.* Cartan Real Estate Co., 204 Mo. 565, 103 S. W. 519, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1158; Cole *v.* Ellwood Power Co., 216 Pa. St. 283, 65 Atl. 678.

4. Kansas City *v.* Napiecek, (Kan. 1907) 92 Pac. 827, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1158.

5. Inconvenience of Moving Home is not a proper element of damages in condemnation proceedings. Madisonville, etc., R. Co. *v.* Ross, (Ky. 1907) 103 S. W. 330.

1159. **6.** McClarren *v.* Jefferson School Tp., (Ind. 1907) 82 N. E. 73, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1159.

1161. **1.** *Illinois.* — Hartshorn *v.* Illinois Valley R. Co., 216 Ill. 392, 75 N. E. 122; Sanitary Dist. *v.* Pittsburgh, etc., R. Co., 216 Ill. 575, 75 N. E. 248; Chicago, etc., R. Co. *v.* Staley, 221 Ill. 405, 77 N. E. 437; Freiberg *v.* South Side El. R. Co., 221 Ill. 508, 77 N. E. 920.

Indiana. — New Jersey, etc., R. Co. *v.* Tutt, 168 Ind. 205, 80 N. E. 420.

Kansas. — Kansas City, etc., R. Co. *v.* Weidenmann, (Kan. 1908) 94 Pac. 146.

Louisiana. — Opelousas, etc., R. Co. *v.* Bradford, 118 La. 506, 43 So. 79.

Missouri. — Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 392, 94 S. W. 860.

North Carolina. — Brown *v.* W. T. Weaver Power Co., 140 N. Car. 333, 52 S. E. 954.

North Dakota. — Petersburg School Dist. *v.* Peterson, 14 N. Dak. 344, 103 N. W. 756.

Pennsylvania. — Brown *v.* Forest Water Co., 213 Pa. St. 440, 62 Atl. 1078; W. H. Moudy Mfg. Co. *v.* Pennsylvania R. Co., 215 Pa. St. 110, 64 Atl. 373; Cox *v.* Philadelphia, etc., R. Co., 215 Pa. St. 506, 64 Atl. 720.

Texas. — El Paso *v.* Coffin, (Tex. Civ. App. 1905) 88 S. W. 502.

Virginia. — Seaboard Air Line R. Co. *v.* Chamblin, (Va. 1908) 60 S. E. 727.

Washington. — Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18; Port Townsend Southern R. Co. *v.* Barbare, (Wash. 1907) 89 Pac. 710; Chicago, etc., R. Co. *v.* Alexander, (Wash. 1907) 91 Pac. 626.

West Virginia. — Guyandotte Valley R. Co. *v.* Buskirk, 57 W. Va. 417, 50 S. E. 521; Norfolk, etc., R. Co. *v.* Davis, 58 W. Va. 620, 52 S. E. 724.

2. Ranck *v.* Cedar Rapids, 134 Iowa 563, 111 N. W. 1027; St. Louis, etc., R. Co. *v.* Continental Brick Co., 198 Mo. 698, 96 S. W. 1011; American Telephone, etc., Co. *v.* St. Louis, etc., R. Co., 202 Mo. 656, 101 S. W. 576.

3. Yellowstone Park R. Co. *v.* Bridger Coal Co., 34 Mont. 545, 9 Ann. Cas. 470, 87 Pac. 963.

1162. 7. *In re* Central R. Co., (N. J. 1907) 65 Atl. 905.

1163. 7. Cole *v.* Ellwood Power Co., 216 Pa. St. 283, 65 Atl. 678.

1164. 4. *Arkansas.* — Little Rock, etc., R. Co. *v.* Greer, 77 Ark. 387, 96 S. W. 129.

California. — Southern Pac. R. Co. *v.* Hart, 3 Cal. App. 11, 84 Pac. 218.

Georgia. — Folsom *v.* Gate City Terminal Co., 128 Ga. 175, 57 S. E. 314.

Illinois. — Hartshorn *v.* Illinois Valley R. Co., 216 Ill. 392, 75 N. E. 122; Chicago Southern R. Co. *v.* Nolin, 221 Ill. 367, 77 N. E. 435; Chicago, etc., R. Co. *v.* Kelly, 221 Ill. 498, 77 N. E. 916; Peoria, etc., Traction Co. *v.* Vance, 225 Ill. 270, 80 N. E. 134.

Indiana. — Consolidated Traction Co. *v.* Jordan, 36 Ind. App. 156, 75 N. E. 301.

Iowa. — Watkins *v.* Wabash R. Co., (Iowa 1907) 113 N. W. 924; Richardson *v.* Centerville, (Iowa 1908) 114 N. W. 1071.

Kansas. — Kansas City Northwestern R. Co. *v.* Schwake, 70 Kan. 141, 3 Ann. Cas. 118, 78 Pac. 431.

Kentucky. — Big Sandy R. Co. *v.* Dils, 120 Ky. 563, 87 S. W. 310; Shirley *v.* Southern R. Co., (Ky. 1905) 89 S. W. 124; Warner *v.* Ford Lumber, etc., Co., (Ky. 1906) 93 S. W. 650.

Louisiana. — Opelousas, etc., R. Co. *v.* Bradford, 118 La. 506, 43 So. 79.

Missouri. — St. Louis Belt, etc., R. Co. *v.* Mendonsa, 193 Mo. 518, 91 S. W. 65; Southern Missouri, etc., R. Co. *v.* Woodard, 193 Mo. 656, 92 S. W. 470; St. Louis, etc., R. Co. *v.* Drummond Realty, etc., Co., 205 Mo. 167, 103 S. W. 977.

Oklahoma. — Arkansas Valley, etc., R. Co. *v.* Witt, (Okla. 1907) 91 Pac. 897.

Pennsylvania — Cox *v.* Philadelphia, etc., R. Co., 215 Pa. St. 506, 64 Atl. 729; *In re* South Twelfth St., 217 Pa. St. 362, 66 Atl. 568; Home *v.* Montgomery County, (Pa. 1907) 67 Atl. 209; William H. Moudy Mfg. Co. *v.* Pennsylvania R. Co., 215 Pa. St. 110, 64 Atl. 373.

Rhode Island. — Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 6.

Texas. — Kirby *v.* Panhandle, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 281; Panhandle, etc., R. Co. *v.* Kirby, (Tex. Civ. App. 1906) 94 S. W. 173; Wise County *v.* McClain, (Tex. Civ. App. 1907) 100 S. W. 802.

Virginia. — Tidewater R. Co. *v.* Cowan, 106 Va. 817, 56 S. E. 819.

Washington. — *In re* Seattle, (Wash. 1907) 92 Pac. 423.

West Virginia. — Morrison *v.* Fairmont, etc., Traction Co., 60 W. Va. 441, 55 S. E. 669.

Wisconsin. — Stamnes *v.* Milwaukee, etc., R. Co., 131 Wis. 85, 109 N. W. 100.

Amount of Compensation Judicial Question. — *In re* Water Front, etc., 190 N. Y. 350, 83 N. E. 299.

The Value of Land Appropriated for public use is not to be based upon its peculiar condition, brought about by the appropriator. Caruthers *v.* Johnson County, (Tex. Civ. App. 1906) 94 S. W. 912.

Where a Railroad Abandons Condemnation Proceedings, after having entered upon the land, the measure of damages is the rental value of the land taken for the time used, and the depreciation in value thereof by reason of the acts thereon. Pine Bluff, etc., R. Co. *v.* Keely, 78 Ark. 83, 93 S. W. 562.

1165. 1. Shirley *v.* Southern R. Co., (Ky. 1905) 89 S. W. 124.

2. Eutaw *v.* Botnick, (Ala. 1907) 43 So. 739, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1165; Lewis *v.* Englewood El. R. Co., 223 Ill. 223, 79 N. E. 44.

1166. 1. An Island in the Mississippi River is not a part of an entire tract adjacent thereto, although both are owned by the same person. St. Louis, etc., R. Co. *v.* Aubuchon, 199 Mo. 352, 97 S. W. 867.

1169. 5. Southern Missouri, etc., R. Co. *v.* Woodard, 193 Mo. 656, 92 S. W. 470; Cotts *v.* Wheeling, etc., R. Co., (W. Va. 1907) 59 S. E. 766, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1169.

1171. 1. Illinois, etc., R. Co. *v.* Ring, 219 Ill. 91, 76 N. E. 83; Eldorado, etc., R. Co. *v.* Everett, 225 Ill. 529, 80 N. E. 281.

2. Shirley *v.* Southern R. Co., (Ky. 1905) 89 S. W. 124.

1173. 3. Kansas City Northwestern R. Co. *v.* Schwake, 70 Kan. 141, 3 Ann. Cas. 118, 78 Pac. 431, *per* Mason, J., *dissenting, citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1173; Settegast *v.* Houston, etc., R. Co., (Tex. Civ. App. 1905) 87 S. W. 197; Cotts *v.* Wheeling, etc., R. Co., (W. Va. 1907) 59 S. E. 766, *quoting* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1173; Kearney *v.* Reg., 1 Can. Sup. Ct. Cas. 344.

4. Elbert County *v.* Swift, 2 Ga. App. 47, 58 S. E. 396; Indianapolis, etc., Traction Co. *v.* Larrabee, 168 Ind. 237, 80 N. E. 413; St. Louis Belt, etc., R. Co. *v.* Mendonsa, 193 Mo. 518, 91 S. W. 65; Robbins *v.* Scranton, 217 Pa. St. 577, 66 Atl. 977; Chicago, etc., R. Co. *v.* Alexander, (Wash. 1907) 91 Pac. 626.

1174. 1. *United States.* — Mason City, etc., R. Co. *v.* Wolf, (C. C. A.) 148 Fed. 961, *following* the *Nebraska* rule.

Alabama. — Birmingham R., etc., Co. *v.* Oden, 146 Ala. 495, 41 So. 129.

Georgia. — Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540.

Kentucky. — Big Sandy R. Co. *v.* Dils, 120 Ky. 563, 87 S. W. 310; Camden Interstate R. Co. *v.* Stein, (Ky. 1906) 97 S. W. 394.

Louisiana. — Marrine *v.* Shreveport, 119 La. 1044, 44 So. 882.

Minnesota. — Sallden *v.* Little Falls, 102 Minn. 358, 113 N. W. 881.

Mississippi. — Yazoo, etc., R. Co. *v.* Lefoldt, 87 Miss. 317, 39 So. 450.

Missouri — Mitchell *v.* St. Louis, etc., R. Co., 116 Mo. App. 81, 92 S. W. 111.

Nebraska. — Stehr *v.* Mason City, etc., R. Co., (Neb. 1906) 110 N. W. 701; Gillespie *v.* South Omaha, (Neb. 1907) 112 N. W. 582.

New York. — *In re* Brooklyn Union El. R. Co., 113 N. Y. App. Div. 817, 99 N. Y. Supp. 222.

Texas. — Settegast *v.* Houston, etc., R. Co., (Tex. Civ. App. 1905) 87 S. W. 197; Texas Short Line R. Co. *v.* Clifford, (Tex. Civ. App. 1906) 94 S. W. 168; Texas, etc., R. Co. *v.* Edrington, (Tex. 1907) 101 S. W 441; Novich *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 476; Burton Lumber Corp. *v.* Houston, (Tex. Civ. App. 1907) 101 S. W. 822.

Utah. — Kimball *v.* Salt Lake City, (Utah 1907) 90 Pac. 395; Hempstead *v.* Salt Lake City, (Utah 1907) 90 Pac. 397; Felt *v.* Salt Lake City, (Utah 1907) 90 Pac. 402.

Virginia. — Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821.

Wisconsin. — Abbott *v.* Milwaukee Light, etc., Co., 126 Wis. 634, 106 N. W. 523; Marsh *v.* Milwaukee Light, etc., Co., (Wis. 1908) 114 N. W. 804.

3. *Re* Cockerline, etc., R. Co., 5 Can. R. Cas. 313.

4. Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819.

1176. 1. Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

2. Illinois, etc., R. Co. *v.* Borms, 219 Ill. 179, 76 N. E. 149; Peoria, etc., Traction Co. *v.* Vance, 225 Ill. 270, 80 N. E. 134; Mantorville R., etc., Co. *v.* Slingerland, 101 Minn. 488, 112 N. W. 1033; Southern Illinois, etc., Bridge Co. *v.* Stone, 194 Mo. 175, 92 S. W. 475.

3. Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

1177. 1. Illinois, etc., R. Co. *v.* Borms, 219 Ill. 179, 76 N. E. 149; Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9; Williamson *v.* Read, 106 Va. 453, 56 S. E. 174; Morrison *v.* Fairmont, etc., Traction Co., 60 W. Va. 441, 55 S. E. 669.

1178. 1. *In re* Water Front, 120 N. Y. App. Div. 849, 105 N. Y. Supp. 750, *quoting* 10 Am. and Eng. Encyc. of Law (2d ed.) 1177.

2. St. Louis, etc., R. Co. *v.* Stewart, 201 Mo. 491, 100 S. W. 583; Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9; Tidewater R. Co. *v.* Cowan, 106 Va. 817, 56 S. E. 819; Morrison *v.* Fairmont, etc., Traction Co., 60 W. Va. 441, 55 S. E. 669.

1179. 1. Indianapolis Northern Traction Co. *v.* Dunn, 37 Ind. App. 248, 76 N. E. 269; Carrell *v.* Muncie, etc., R. Co., 38 Ind. App. 700, 78 N. E. 254; Union Traction Co. *v.* Pfeil, 39 Ind. App. 51, 78 N. E. 1052; Morrison *v.* Fairmont, etc., Traction Co., 60 W. Va. 441, 55 S. E. 669.

1180. 1. Heath *v.* Sheetz, 164 Ind. 665, 74 N. E. 505; Mantorville R., etc., Co. *v.* Slingerland, 101 Minn. 488, 112 N. W. 1033; Southern Illinois, etc., Bridge Co. *v.* Stone, 194 Mo. 175, 92 S. W. 475; Cox *v.* Philadelphia, etc., R. Co., 215 Pa. St. 506, 64 Atl. 729.

1182. 1. Mantorville R., etc., Co. *v.* Slingerland, 101 Minn. 488, 112 N. W. 1033.

1183. 1. Indianapolis Northern Traction Co. *v.* Ramer, 37 Ind. App. 264, 76 N. E. 808.

1184. 8. The Cost of Removing Machinery placed upon the premises by the tenant may be considered on the question of the value of the leasehold interest. McMillin Printing Co. *v.* Pittsburg, etc., R. Co., 216 Pa. St. 504, 65 Atl. 1091; Shipley *v.* Pittsburg, etc., R. Co., 216 Pa. St. 512, 65 Atl. 1094.

1185. 3. Guinn *v.* Iowa, etc., R. Co., 131 Iowa 680, 109 N. W. 209; *In re* Morris Ave., 118 N. Y. App. Div. 117, 103 N. Y. Supp. 180.

Landowner Entitled to Interest from Date of Order of Condemnation. — Snowden *v.* Shelby County, 118 Tenn. 725, 102 S. W. 90.

1186. 3. Oregon Short Line R. Co. *v.* Jones, 29 Utah 147, 80 Pac. 732, *citing* 10 Am. and Eng. Encyc. of Law (2d ed.) 1185.

1187. 1. St. Louis, etc., R. Co. *v.* Oliver, 17 Okla. 589, 87 Pac. 423.

1188. 4. Forbis *v.* Cannon, 35 Mont. 424, 90 Pac. 161; Hope *v.* Philadelphia, etc., R. Co., 211 Pa. St. 401, 60 Atl. 996; Wilbur Lumber Co. *v.* Milwaukee Light, etc., Co., (Wis. 1908) 114 N. W. 813.

Owner of Easement Entitled to Compensation. — Butterworth-Judson Co. *v.* Central R. Co., (N. J. 1907) 66 Atl. 198.

Person in Possession as Owner Has Prima Facie Right to Compensation. — Perry *v.* Clissold, (1907) A. C. 73.

1192. 1. Taber *v.* Boston, 190 Mass. 101, 76 N. E. 727.

The Award as to the Mortgagee must take the place of the land taken. Stamnes *v.* Milwaukee, etc., R. Co., 131 Wis. 85, 109 N. W. 100.

2. Lien of Mortgagee Not Divested. — Rieck *v.* Omaha, 73 Neb. 600, 103 N. W. 283.

1193. 1. Where Award Has Been Made, the mortgagee may file a bill in equity, making the mortgagee a party, to have his share of the damages set apart to him. Hagerstown *v.* Groh, 101 Md. 560, 61 Atl. 467.

1194. 2. Ft. Smith Suburban R. Co. *v.* Maledon, 78 Ark. 366, 95 S. W. 472; Douglas *v.* Indianapolis, etc., Traction Co., 37 Ind. App. 332, 76 N. E. 892; Baltimore *v.* Latrobe, 101 Md. 621, 61 Atl. 203; Cole *v.* Ellwood Power Co., 216 Pa. St. 283, 65 Atl. 678; McMillin Printing Co. *v.* Pittsburg, etc., R. Co., 216 Pa. St. 504, 65 Atl. 1091; Shipley *v.* Pittsburg, etc., R. Co., 216 Pa. St. 512, 65 Atl. 1094; Union R. Co. *v.* Chickasaw Cooperage Co., 116 Tenn. 594, 95 S. W. 171.

Measure of Damages to Lessee. — A lessee is entitled to the difference between the value of the annual use of the premises before the taking of the right of way and what it was worth afterwards. Wertham *v.* Mason City, etc., R. Co., 128 Iowa 135, 103 N. W. 135.

Compensation of Tenant at Will. — See Montreal *v.* Poulin, 26 Quebec Super. Ct. 367.

3. *Re* Grand Trunk R. Co., 4 Can. R. Cas. 277.

4. Where Lease Is Taken Pending Unauthorized Proceedings, the compensation to the tenant must be for the term as extended. McMillin Printing Co. *v.* Pittsburg, etc., R. Co., 216 Pa. St. 504, 65 Atl. 1091; Shipley *v.* Pittsburg, etc., R. Co., 216 Pa. St. 512, 65 Atl. 1094.

1196. 1. Payment of Award **Does Not Estop Corporation from Appealing.** — Cleveland, etc., R. Co. *v.* Hayes, 35 Ind. App. 539, 74 N. E. 531;

Cleveland, etc., R. Co. *v.* Garnier, 35 Ind. App. 708, 74 N. E. 631.

1197. 6. Eldorado, etc., R. Co. *v.* Sims, 228 Ill. 9, 81 N. E. 782; Dethample *v.* Lake Koen Navigation, etc., Co., 73 Kan. 54, 84 Pac. 544; Reed *v.* Park Com'rs, 100 Minn. 167, 110 N. W. 1119.

Landowner Cannot Regain His Title by Returning Award to Condemnor. — Brooks *v.* Yell County, 76 Ark. 67, 88 S. W. 590.

1198. 3. Folsom *v.* Gate City Terminal Co., 128 Ga. 175, 57 S. E. 314; Hall *v.* Wabash R. Co., 133 Iowa 714, 110 N. W. 1039; Chambers *v.* Great Northern Power Co., 100 Minn. 214, 110 N. W. 1128; Lazarus *v.* Morris, 212 Pa. St. 128, 61 Atl. 815.

5. *In re* Water Front, etc., 190 N. Y. 350, 83 N. E. 299.

1199. 2. Southern Pac. R. Co. *v.* San Francisco Sav. Union, 146 Cal. 290, 79 Pac. 961; Eldorado, etc., R. Co. *v.* Sims, 228 Ill. 9, 81 N. E. 782.

3. Folsom *v.* Gate City Terminal Co., 128 Ga. 175, 57 S. E. 314.

4. Hellen *v.* Medford, 188 Mass. 42, 73 N. E. 1070; Reed *v.* Park Com'rs, 100 Minn. 167, 110 N. W. 1119.

1200. 1. Georgia Granite R. Co. *v.* Venable, 129 Ga. 341, 58 S. E. 864.

2. *In re* Water Front, etc., 190 N. Y. 350, 83 N. E. 299.

3. Smith Canal, etc., Co. *v.* Colorado Ice, etc., Co., 34 Colo. 485, 82 Pac. 940; Georgia Granite R. Co. *v.* Venable, 129 Ga. 341, 58 S. E. 864; Newton *v.* Newton, 188 Mass. 226, 74 N. E. 346; Reed *v.* Park Com'rs, 100 Minn. 167, 110 N. W. 1119; Lazarus *v.* Morris, 212 Pa. St. 128, 61 Atl. 815.

1203. 3. Chambers *v.* Great Northern Power Co., 100 Minn. 214, 110 N. W. 1128, *citing* 10 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1197 [1203].

7. Corr *v.* Philadelphia, 212 Pa. St. 123, 61 Atl. 808.

Failure to Pay Award Within Reasonable Time Constitutes Abandonment. — Port Townsend Southern R. Co. *v.* Barbare, (Wash. 1907) 89 Pac. 710.

1204. 2. **Substitution of Another Railroad for One Vacated Is Not Abandonment** which would render the first company liable in damages to the landowner. Rockafeller *v.* Northern Cent. R. Co., 212 Pa. St. 485, 61 Atl. 960.

EMPLOY — EMPLOYEE — EMPLOYMENT.

3. 1. Weaver *v.* Ann Arbor R. Co., 139 Mich. 590, 102 N. W. 1037, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) *1.*

5. 2. Weaver *v.* Ann Arbor R. Co., 139 Mich. 590, 102 N. W. 1037.

3. A Student Brakeman working without compensation to learn the business, held to be an *employee* of the railroad company. Atchison, etc., R. Co. *v.* Fronk, 74 Kan. 519, 87 Pac. 698.

Employee and Laborer Not Synonymous. State *v.* Thompson, 15 Wyo. 136, 87 Pac. 433.

EMPLOYERS' LIABILITY INSURANCE.

10. 2. The Effect of Certain Provisions of employers' liability policies has been that the courts have construed them to constitute contracts of indemnity only. Kennedy *v.* Fidelity, etc., Co., 100 Minn. 1, 110 N. W. 97; Allen *v.* Ætna L. Ins. Co., (C. C. A.) 145 Fed. 881.

4. St. Louis Dressed Beef, etc., Co. *v.* Maryland Casualty Co., 201 U. S. 173, 26 U. S. Sup. Ct. 400; Allen *v.* Ætna L. Ins. Co., (C. C. A.) 145 Fed. 881; Munro *v.* Maryland Casualty Co., (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 183, 96 N. Y. Supp. 705.

7. Royle Min. Co. *v.* Fidelity, etc., Co., 126 Mo. App. 104, 103 S. W. 1098.

11. 9. Policy Liberally Construed in Favor of Insured, — East Carolina R. Co. *v.* Maryland Casualty Co., (N. Car. 1907) 58 S. E. 906.

Insurance Against "Contingent Liability." — A policy purporting to insure "against loss from common-law or statutory liability arising from the contingent liability of the assured," as owner of buildings, for the act or negligence of a contractor or subcontractor, imposes no liability on the insurer, since there is no such liability known to the law as that described in the policy. Sroka *v.* Frankfort American Ins. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 607, 94 N. Y. Supp. 501.

Alteration of Policy by Agent Waived by Receipt of Premiums, — See Holdsworth *v.* Lancashire, etc., Ins. Co., 23 Times L. Rep. 521.

12. 1. Fidelity, etc., Co. *v.* Southern R. News Co., (Ky. 1907) 101 S. W. 900; Royle Min. Co. *v.* Fidelity, etc., Co., 126 Mo. App. 104, 103 S. W. 1098; New Amsterdam Casualty Co. *v.* Mesker, (Mo. App. 1908) 106 S. W. 561; East Carolina R. Co. *v.* Maryland Casualty Co., (N. Car. 1907) 58 S. E. 906; National, etc., Worsted Mills *v.* Frankfort Marine Acc., etc., Ins. Co., (R. I. 1907) 66 Atl. 58; Edgefield Mfg. Co. *v.* Maryland Casualty Co., (S. Car. 1907) 58 S. E. 969.

3. St. Louis Dressed Beef, etc., Co. *v.* Maryland Casualty Co., 201 U. S. 173, 26 U. S. Sup. Ct. 400.

4. Liability Caused by Failure to Observe Statutes is sometimes excepted. Royle Min. Co. *v.* Fidelity, etc., Co., 126 Mo. App. 104, 103 S. W. 1098.

13. 1. Tozer *v.* Ocean Acc., etc., Corp., 94 Minn. 478, 103 N. W. 509; Royle Min. Co. *v.* Fidelity, etc., Co., 126 Mo. App. 104, 103 S. W. 1098, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 13; New Amsterdam Casualty Co. *v.* East Tennessee Telephone Co., (C. C. A.) 139 Fed. 602; Globe Navigation Co. *v.* Maryland Casualty Co., 39 Wash. 299, 81 Pac. 826; Employers' Liability Assur. Corp. *v.* Chicago, etc., Coal, etc., Co., (C. C. A.) 141 Fed. 962; Myton *v.* Fidelity, etc., Casualty Co., 117 Mo. App. 442, 453, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 13.

Failure of the Insurer to Defend and Advice to the Insured Not to Resist a Claim have been held to waive an objection that the claim was not one covered by the policy. Fidelity, etc., Co. *v.* Southern R. News Co., (Ky. 1907) 101 S. W. 900.

14. 1. Amount of Liability. — It has been held that where the insurer, under a policy giving it the right to settle claims, rejects a settlement offered, and a judgment for a larger amount is obtained by the insured, the insurer cannot be held for the difference. New Orleans, etc., R. Co. *v.* Maryland Casualty Co., 114 La. 153, 38 So. 89.

Where the insurer has contracted to defend actions for personal injuries brought against the insured by employees, the fact that elements of damages not insured against, as well as some that were, are alleged does not alter the insured's obligation for the expense of a defense. Globe Navigation Co. *v.* Maryland Casualty Co., 39 Wash. 299, 81 Pac. 826.

Valued Policies — Charges in Excess of Contract Limit. — Under a policy limiting the insurer's liability to a stipulated sum and giving to the insurer the right at its election to defend at its own expense proceedings against the insured, costs and interest paid by the insured in addition to a judgment against him of the full amount stipulated cannot be recovered from the insurer. Davison *v.* Maryland Casualty Co., (Mass. 1908) 83 N. E. Rep. 407 (interest); Munro *v.* Maryland Casualty Co., (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 183, 96 N. Y. Supp. 705 (costs). And the same has been held as to both costs and interest though the action was defended by the insurer. National, etc., Worsted Mills *v.* Frankfort Marine Acc., etc., Ins. Co., (R. I. 1907) 66 Atl. 58.

16. 7. A Suit by the Employee against the Insurer is not maintainable where the policy provides for liability only in suit by the insurer, after he has paid a judgment. Carter *v.* Ætna L. Ins. Co., (Kan. 1907) 91 Pac. 178.

Judgment Creditor. — Where the insurer is liable only after the insured has paid an adverse judgment, and before paying it the insured becomes insolvent, the judgment creditor cannot recover of the insurer. Beyer *v.* International Aluminum Co., 115 N. Y. App. Div. 853, 101 N. Y. Supp. 83.

An Assignee of the insured who pays the liability may recover of the insurer, although the policy stipulated that no action shall be brought except by the insured himself, after payment of a judgment. Maryland Casualty Co. *v.* Omaha Electric Light, etc., Co., (C. C. A.) 157 Fed. 511.

Parties. — Where a judgment has been obtained against the insured in an action defended by the insurer, and a receiver is subsequently appointed for the insured, the receiver is a neces-

sary party to a bill in equity to compel the insurer to pay the judgment. Moore *v.* Maryland Casualty Co., 73 N. H. 518, 63 Atl. 490.

17. 1. Where the Policy Bound the Insurer Only to Pay After Satisfaction of a judgment by the insured, it was held that the amount of a judgment against the insured cannot be obtained by garnishment against the insurer. Allen *v.* Ætna L. Ins. Co., (C. C. A.) 145 Fed. 881.

3. Carter *v.* Ætna L. Ins. Co., (Kan. 1907) 91 Pac. 178; U. S. Tube, etc., Co. *v.* Maryland Casualty Co., (Pa. 1908) 68 Atl. 1026; Edgefield Mfg. Co. *v.* Maryland Casualty Co., (S. Car. 1907) 58 S. E. 969.

4. A Provision Deferring Accrual of the Right of Action until the Loss Is "Paid" has been held to be satisfied by giving promissory notes for the amount of the judgment. Kennedy *v.* Fidelity, etc., Co., 100 Minn. 1, 110 N. W. 97.

5. The Policy Sometimes Defers Accrual of the Right of Action until a judgment against the insured is rendered and paid. Allen *v.* Ætna L. Ins. Co., (C. C. A.) 145 Fed. 881; Texas Short Line R. Co. *v.* Waymire, (Tex. Civ. App. 1905) 89 S. W. 452. And see generally other cases set out in this title, *passim.*

Under a policy providing for accrual of liability only after payment of a judgment obtained after trial of the issue, the insurer was held liable for the amount of a settlement made by the insured in good faith after notice to the insurer, who refused to offer advice or take part in the case. Bradley *v.* Standard L., etc., Ins. Co., (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 41, 93 N. Y. Supp. 245.

Waiver. — A provision that no action shall be commenced against the insurer until the insured has paid an adverse judgment is not waived by the insurer's denying liability before that time. Texas Short Line R. Co. *v.* Waymire, (Tex. Civ. App. 1905) 89 S. W. 452.

7. Sufficiency of Notice. — A notice full and accurate enough to apprise the insurer of the injury and the probable liability is sufficient, though not highly particularized and minutely accurate. Moran Bros. Co. *v.* Pacific Coast Casualty Co., (Wash. 1908) 94 Pac. 106.

Waiver. — A stipulation as to time of notification is not waived by the insurer's participating in the defense, having first notified the insured that the question of forfeiture was reserved. Edgefield Mfg. Co. *v.* Maryland Casualty Co., (S. Car. 1907) 58 S. E. 969.

18. 2. Where a policy was made subject to a condition that the employer should give immediate notice of any accident causing injury to a workman, and to a further condition that the observance and performance by the employer of the times and terms set out in the policy, so far as they contained anything to be done by the employer, were the essence of the contract, it was held that, in the absence of evidence that the employer either knew of, or had the opportunity of knowing of, the existence of the condition at the date of the accident, the condition was one with which it was impossible to comply; that, as regards a risk which resulted in a claim before the insured had knowledge of the condition, the true inference was that the insurers never imposed the condition on the employer, and that the latter was therefore entitled to recover on the policy. *In re* Coleman's Depositories, (1907) 2 K. B. 798.

3. Excusable Delay. — Where the officer in charge was ill when the accident happened, and subsequently died, and most of the office force were ill from an epidemic of smallpox, delay beyond the stipulated time for notice was held to be excusable. Edgefield Mfg. Co. *v.* Maryland Casualty Co., (S. Car. 1907) 58 S. E. 969.

19. 1. Provision Limiting Time for Bringing an Action to Thirty Days after payment of the loss has been held to be void as against public policy. Travelers' Ins. Co. *v.* Henderson Cotton Mills, (Ky. 1905) 85 S. W. 1090.

3. New Orleans, etc., R. Co. *v.* Maryland Casualty Co., 114 La. 38, 38 So. 89.

Costs. — Where the insurer, contrary to the policy, fails to defend an action, he becomes liable for costs, though the policy stipulates against such liability. Travelers' Ins. Co. *v.* Henderson Cotton Mills, (Ky. 1905) 85 S. W. 1090. And nonliability for costs may be waived by appearing in the action and consenting to a judgment for costs. Myton *v.* Fidelity, etc., Co., 117 Mo. App. 442, 92 S. W. 1149.

An agreement of the insurer to "defend at its own cost" actions brought against the insured, makes the insurer liable for all necessary expenses of defense, and does not mean court "costs" merely. Maryland Casualty Co. *v.* Omaha Electric Light, etc., Co., (C. C. A.) 157 Fed. 514.

Where a policy denies to the insured the right to compromise any claim without written authority, and binds the insurer only for money actually paid by the insured in satisfaction of a judgment, and by its terms the insurer is to defend all suits, the insurer is liable for the amount of a reasonable settlement made by the insured, after the insurer refuses to defend and denies all liability. St. Louis Dressed Beef, etc., Co. *v.* Maryland Casualty Co., 102 U. S. 173, 26 U. S. Sup. Ct. 400.

ENDOWMENT INSURANCE.

27. 3. Representations of a Prospectus cannot be made the basis of a suit to recover accumulated dividends to an amount that it is therein estimated will accrue to the insured. Langdon *v.* Northwestern Mut. L. Ins. Co., 116 N. Y. App. Div. 558, 101 N. Y. Supp. 914.

Waiver. — Payment of additional premiums after the accrual of the right to an endowment fund, when such payment is made upon representations by the company that they are necessary to keep the policy good, does not work a waiver of the right to the endowment fund. Hopkins *v.* Northwestern Nat. L. Ins. Co., 41 Wash. 592, 83 Pac. 1019.

28. 4. Rescission Must Be Made Within Reasonable Time. — Remmel *v.* Griffin, 81 Ark. 269, 99 S. W. 70.

ENGAGE.

33. 3. Engaged Chiefly in Farming — Bankruptcy. — *In re* Hoy, 137 Fed. 175.

Engaged in Manufacturing. — See *In re* Toledo Portland Cement Co., 156 Fed. 83.

Engaged in Operating Railroad. — See St Louis, etc., R Co. *v.* Smith, (Tex. Civ. App 1905) 90 S. W 926.

ENGINEER.

36. 1. The Term "Engineer" Confined to Locomotive Engineer and held not to include operator of stationary engine. Reinke *v.* Northern Pac. R. Co., 145 Fed. 988.

Engineering Work is defined in the English Workmen's Compensation Act as (among other things) any work of alteration of a railroad. Adams *v.* Shaddock, (1905) 2 K. B 859, 75 L. J. K. B. 7.

ENTER — ENTRY.

45. 1. Revenue Laws. — See Browne *v.* U. S., 30 Quebec Super. Ct. 373, 11 Can. Crim. Cas. 178, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 45; Ellison *v.* U. S., 136 Fed. 969, *affirmed* (C. C. A.) 142 Fed. 732; Cassel *v.* U. S., 146 Fed. 146.

Entry — Burglary. — See Jones *v.* State, 48 Tex. Crim. 336, 87 S. W. 1157.

ENTIRE, ENTIRELY, ETC.

48. 2. Entire Mining Property. — See Junction Min. Co. *v.* Springfield Junction Coal Co., 222 Ill. 600, 78 N. E. 902.

ENTIRETIES.

49. 1. West *v.* Aberdeen, etc., R. Co., 140 N. Car. 621, 53 S. E. 477, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 49.

ENUMERATE.

51. 2. Computation Distinguished from Enumeration. — McMinn County *v.* Allen, (Tenn. 1907) 105 S. W. 67.

EQUITABLE ELECTION.

59. 2. Edmonds *v.* Edmonds, (Ky. 1907) 102 S. W. 311, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 59.

60. 1. Grant *v.* Stimpson, 79 Conn. 617, 66 Atl. 166; Morath *v.* Weber, (Ky. 1906) 98 S. W. 321; Bonnie *v.* Haldeman, (Ky. 1907) 102 S. W. 308; Ellis *v.* Ellis, 119 Mo. App. 63, 96 S. W. 260; Beetson *v.* Stoops, 186 N. Y. 456, 79 N. E. 731, *affirming* 108 N. Y. App. Div. 366, 95 N. Y. Supp. 1114.

Election When Made Must Be Complete and Final. — Hoggard *v.* Jordan, 140 N. Car. 610, 53 S. E. 220.

61. 1. Beetson *v.* Stoops, 186 N. Y. 456, 79 N. E. 731, *affirming* 108 N. Y. App. Div. 366, 95 N. Y. Supp. 1114.

3. The doctrine of election, as applied to all instruments of donation, is based upon the broad principle of equity "that he who accepts a benefit under the instrument shall adopt the whole, conforming to all its provisions, and renouncing every right inconsistent with it." Chaplin *v.* Leapley, 35 Ind. App. 511, 74 N. E. 546.

64. 9. Hoggard *v.* Jordan, 140 N. Car. 610, 53 S. E. 220.

65. 5. See Parsons *v.* Teller, 111 N. Y. App. Div. 637, 97 N. Y. Supp. 808.

6. Paulus *v.* Besch, (Mo. App. 1907) 104 S. W. 1149; McLean *v.* Miller, 17 Ohio Dec. 637, *citing* 11 AM AND ENG. ENCYC. OF LAW (2d ed.) 65.

66. 2. Case *v.* Collins, 37 Ind. App. 491, 76 N. E. 781.

67. 2. *In re* Appleby, 100 Minn. 408, 111 N. W. 305; Walker *v.* Bobbitt, 114 Tenn. 700, 88 S. W. 327.

68. 1. Young *v.* Biehl, 166 Ind. 357, 77 N. E. 406; Bonnie *v.* Haldeman, (Ky. 1907) 102 S. W. 308; Paulus *v.* Besch, (Mo. App. 1907) 104 S. W. 1149; Beetson *v.* Stoops, 186 N. Y. 456, 79 N. E. 731, *affirming* 108 N. Y. App. Div. 366, 95 N. Y. Supp. 1114.

3. Cowdrey *v.* Cowdrey, (N. J. 1907) 67 Atl. 111; McLean *v.* Miller, 17 Ohio Dec. 637, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 68.

Intention to Dispose of Donee's Property Must Appear in Instrument Beyond Reasonable Doubt. — Young *v.* Biehl, 166 Ind. 357, 77 N. E. 406.

71. 8. *In re* Wright, (1906) 2 Ch. 288; *In re* Oliver, (1905) 1 Ch. 191, 74 L. J. Ch. 62; *In re* Beale's Settlement, (1905) 1 Ch. 256, 74 L. J. Ch. 67.

75. 1. Young *v.* Biehl, 166 Ind. 357, 77 N. E. 406; Walker *v.* Bobbitt, 114 Tenn. 700, 88 S. W. 327.

77. 8. Court May Elect for Infant. — Green *v.* Head, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 454, 104 N. Y. Supp. 383, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 77.

Where it is manifestly to an infant's interest to elect in a certain way the chancellor will, under proper proceedings, make the election for the infant. Bonnie *v.* Haldeman, (Ky. 1907) 102 S. W. 308.

80. 6. Where a bequest is left in payment of a debt the legatee may elect to waive the legacy and sue for the debt. Matthews *v.* Targarona, 104 Md. 442, 65 Atl. 60.

82. 2. Warner *v.* Hamill, 134 Iowa 279, 111 N. W. 939; Moore *v.* Herd, (Kan. 1907) 93 Pac. 157; Cowdrey *v.* Cowdrey, (N. J 1907) 67 Atl. 111; *In re* Johnson, (Surrogate Ct.) 50 Misc. (N. Y.) 99, 100 N. Y. Supp. 373; Casey *v.* McGowan, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 426, 100 N. Y. Supp. 538.

Intention to Exclude Dower May Be Implied. — Grant *v.* Stimpson, 79 Conn. 617, 66 Atl. 166.

Effect of Accepting Personalty. — A widow by accepting bequests of personalty in lieu of dower does not lose her right to other statutory allowances. Ellis *v.* Ellis, 119 Mo. App 63, 96 S. W. 260.

83. 3. Dower Barred by Creation of Trust for Widow's Benefit. — *In re* Johnson, (Surrogate Ct.) 50 Misc. (N. Y.) 99, 100 N. Y. Supp. 373.

84. 4. Walker *v.* Bobbitt, 114 Tenn. 700, 88 S. W. 327; Chamness *v.* Parrish, 118 Tenn. 739, 103 S. W. 822.

85. 1. Casey *v.* McGowan, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 426, 100 N. Y. Supp. 538, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 538.

3. Harmon *v.* Harmon, (Conn. 1907) 66 Atl. 771; Young *v.* Biehl, 166 Ind. 357, 77 N. E. 406; Hoffman *v.* Steubing, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 157, 98 N. Y. Supp. 706.

Where the will clearly indicates the intent that the devise shall be in lieu of the distributive share, the widow cannot take both. Parker *v.* Parker, 129 Iowa 600, 106 N. W. 8.

86. 1. Wilson *v.* Wilson, 120 N. Y. App. Div. 581, 105 N. Y. Supp. 151.

Same Rule Applied to Statutory Rights Other than Dower.—Bowman *v.* Olrick, 165 Ind. 478, 75 N. E. 820.

2. **Devise or Bequest of Greater Value than Dower.** — Casey *v.* McGowan, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 426, 100 N. Y. Supp. 538, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 80 [86].

96. 2. *In re* Dunphy, 147 Cal. 95, 81 Pac. 315.

4. Pickenbrock *v.* Knoer, (Iowa 1907) 114 N. W. 200; *In re* Fleming, 217 Pa. St. 610, 66 Atl. 874.

7. Parsons *v.* Teller, 111 N. Y. App. Div. 637, 97 N. Y. Supp. 808; Pence *v.* Life, 104 Va. 518, 52 S. E. 257.

97. 2. Hoggard *v.* Jordan, 140 N. Car. 610, 53 S. E. 220; Mellinger *v.* Mellinger, 73 Ohio St. 221, 76 N. E. 615.

3. Mellinger *v.* Mellinger, 73 Ohio St. 221, 76 N. E. 615.

99. 2. Hoggard *v.* Jordan, 140 N. Car. 610, 53 S. E. 220.

5. Sorenson *v.* Carey, 96 Minn. 202, 104 N. W. 958.

6. Pence *v.* Life, 104 Va. 518, 52 S. E. 257.

100. 5. Pence *v.* Life, 104 Va. 518, 52 S. E. 257.

103. 3. Hoggard *v.* Jordan, 140 N. Car. 610, 53 S. E. 220.

105. 2. Chaplin *v.* Leapley, 35 Ind. App. 511, 74 N. E. 546; Whitesell *v.* Strickler, 167 Ind. 602, 78 N. E. 845, *affirming* (Ind. 1905) 73 N. E. 153; Walker *v.* Bobbitt, 114 Tenn. 700, 88 S. W. 327.

3. Flynn *v.* McDermott, 183 N. Y. 931, 75 N. E. 931.

106. 1. *In re* Dunphy, 147 Cal. 95, 81 Pac. 315.

5. **Statutory Time of Election Applies to Husbands.** — Moore *v.* Herd, (Kan. 1907) 93 Pac. 157.

Where Statutory Requirements Not Strictly Followed, Right to Elect Barred. — Wash *v.* Wash, 189 Mo. 352, 87 S. W. 993.

107. 1. See Jaques *v.* Chandler, 73 N. H. 376, 62 Atl. 713.

2. **Must Elect Within One Year After Probate or Right Waived.** — Young *v.* Biehl, 166 Ind. 357, 77 N. E. 406; Chamness *v.* Parrish, 118 Tenn. 739, 103 S. W. 822.

3. **Twelve Months After Letters Granted.** — In *Missouri* election by a widow must be made within twelve months after the granting of letters testamentary, and the election must be made by declaration in writing duly acknowledged, and filed in the office of the clerk of the court in which the letters were issued. Wash *v.* Wash, 189 Mo. 352, 87 S. W. 993.

108. 2. Flynn *v.* McDermott, 183 N. Y. 931, 75 N. E. 931.

109. 2. *In re* Haskell, 212 Pa. St. 469, 61 Atl. 1018; Bowers *v.* McGavock, 114 Tenn. 438, 85 S. W. 893.

Right of Election Personal to Widow — Does Not Pass to Representatives or Heirs. — Bowers *v.* McGavock, 114 Tenn. 438, 85 S. W. 893, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 109.

110. 3. *In re* Bump, (Cal. 1907) 92 Pac. 643; Chaplin *v.* Leapley, 35 Ind. App. 511, 74 N. E. 546; Beetson *v.* Stoops, 186 N. Y. 456, 79 N. E. 731, 108 N. Y. App. Div. 366, *affirming* 95 N. Y. Supp. 1114; *In re* Church, (Vt. 1907) 67 Atl. 549.

Under a statute in *Wisconsin* providing that when land is devised to a woman or other provision made for her in the will of her husband, she shall elect whether she shall take under the will or under the law, but that she shall not have both unless such plainly appears by the will to have been the intent of the testator, it was held that where a widow failed to renounce the provision made for her in the will she was not entitled to a portion of the personal property undisposed of. Chapman *v.* Chapman, 128 Wis. 413, 107 N. W. 668.

112. 3. See Grant *v.* Stimpson, 79 Conn. 617, 66 Atl. 166.

116. 1. *In re* Booth, (1906) 2 Ch. 321.

117. 3. *In re* Bump, (Cal. 1907) 92 Pac. 643; Dillarou *v.* Dillarou, (Iowa 1905) 104 N. W. 432; Callicott *v.* Callicott, (Miss. 1907) 43 So. 616.

5. Toombs *v.* Spratlin, 127 Ga. 766, 57 S. E. 59.

Widow's Renunciation Does Not Make Remaining Property Left by Testator Intestate. — Lewis *v.* Sedgwick, 223 Ill. 213, 79 N. E. 14.

6. **Specific Legatees and Devisees Must Be First Satisfied.** — Lewis *v.* Sedgwick, 223 Ill. 213, 79 N. E. 14.

119. 1. *In re* Klenke, 210 Pa. St. 575, 60 Atl. 167.

EQUITABLE MORTGAGES.

123. 4. Earle *v.* Sunnyside Land Co., 150 Cal. 214, 88 Pac. 920; Rohde *v.* Rohn, 127 Ill. App. 579; Standorf *v.* Shockley, (N. Dak. 1907) 111 N. W. 622, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 123; Creech *v.* Long, 72 S. Car. 25, 51 S. E. 614; Marquam *v.* Ross, 47 Oregon 374, 78 Pac. 698, 83 Pac. 852; Holley *v.* Curry, 58 W. Va. 70, 51 S. E. 135. See also Smith *v.* R ney, 9 Ariz. 362, 83 Pac. 463, wherein the doctrine was stated but was held not to be applicable to the case at bar for want of the necessary intention to create a lien.

Debt Due or to Become Due Necessary. — Lewman *v.* Ogden, 143 Ala. 351, 42 So. 102.

124. 1. Bunn *v.* Braswell, 139 N. Car. 135, 51 S. E. 927.

125. 8. Foster Lumber Co. *v.* Harlan County Bank, 71 Kan. 180, 80 Pac. 49, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 125.

127. 5. Markham *v.* Wallace, 147 Ala. 243, 41 So. 304; Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368.

129. 7. Denison *v.* Sawyer, 95 Minn. 417, 104 N. W. 305, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 129.

130. 3. Denison *v.* Sawyer, 95 Minn 417, 104 N. W. 305, Standorf *v* Shockley, (N. Dak. 1907) 111 N W. 622, *quoting* 11 AM. AND ENG ENCYC. OF LAW (2d ed.) 130.

141. 5. Perham *v.* Kempster, (1907) 1 Ch. 373; Foster Lumber Co. *v.* Harlan County Bank, 71 Kan 180, 80 Pac. 49, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 141.

142. 7. Walker *v* Linom, (1907) 2 Ch. 104.

9. Capell *v.* Winter, (1907) 2 Ch 376.

EQUITY.

155. 5. Rensford *v.* Magnus, (Ala. 1907) 43 So. 853; Hutchinson *v* Dennis, 217 Pa. St. 290, 66 Atl. 524.

7. Acord *v.* Western Pocahontas Corp., 156 Fed. 989.

13. Sadlier *v.* New York, 185 N. Y. 408, 78 N. E. 272, *affirming* 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579.

157. 7. Ashe-Carson Co. *v.* Bonifay, 147 Ala. 376, 41 So. 816; Garbutt *v.* Mayo, 128 Ga. 269, 57 S. E. 495 (wherein the maxim was quoted and discussed, but was held to have no application to the case at bar); Wakefield *v.* Van Tassell, 218 Ill. 572, 75 N. E. 1058; Haydon *v.* St. Louis, etc., R. Co., 117 Mo. App. 76, 93 S. W. 833; Platte Valley Milling Co. *v.* Malmsten, (Neb. 1907) 113 N. W. 229; Union Stock Yards Nat. Bank *v.* Day, (Neb. 1907) 113 N. W. 530; Jayne *v.* Cortland Waterworks Co., 107 N. Y. App. Div. 517, 95 N. Y. Supp. 227; Ft. Pierre *v.* Hall, 19 S. Dak. 663, 104 N. W. 470.

159. 3. Platte Valley Milling Co. *v.* Malmsten, (Neb. 1907) 113 N. W. 229.

160. 3. Haydon *v.* St. Louis, etc., R. Co., 117 Mo. App. 76, 93 S. W. 833.

10. Henry *v.* Henry, 73 Neb. 746, 103 N. W. 441, 107 N. W. 789.

162. 3. Union Stock Yards Nat. Bank *v.* Day, (Neb. 1907) 113 N. W. 530.

8. Nugent *v.* Stofella, (Ariz. 1906) 84 Pac. 910.

11. Garbutt *v.* Mayo, 128 Ga. 269, 57 S. E. 495; Woods *v.* Campbell, 87 Miss. 782, 40 So. 874.

12. Jahn *v.* Champagne Lumber Co., 152 Fed. 669; Little *v.* Cunningham, 116 Mo. App. 545, 92 S. W. 734.

"He Who Does Iniquity, Shall Not Have Equity." — Ashe-Carson Co. *v.* Bonifay, 147 Ala. 376, 41 So. 816, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 162.

163. 2. *United States.* — Knapp *v.* S. Jarvis Adams Co., (C. C. A.) 135 Fed. 1008; Siegert *v.* Gandolfi, 139 Fed. 917; Camors-McConnell Co. *v.* McConnell, 140 Fed. 412, *affirmed* (C. C. A.) 140 Fed. 987; Moxie Nerve Food Co. *v.* Holland, 141 Fed. 202; Toledo Computing Scale Co. *v.* Computing Scale Co., (C. C. A.) 142 Fed. 919; Jahn *v.* Champagne Lumber Co., 152 Fed. 669.

Alabama. — Ashe-Carson Co. *v.* Bonifay, 147 Ala. 376, 41 So. 816, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163; Epperson *v.* Bluthenthal, (Ala. 1906) 42 So. 863.

Georgia. — Employing Printers' Club *v.* Doctor Blosser Co., 122 Ga. 509, 50 S. E. 353.

Illinois. — Pitzele *v.* Cohn, 217 Ill. 30, 75 N. E. 392, *affirming* 117 Ill. App. 342.

Iowa. — Sioux City *v.* Chicago, etc., R. Co. 129 Iowa 694, 106 N. W. 183.

Maryland. — Gruber Almanack Co. *v* Swingley 103 Md. 362, 63 Atl. 684.

Michigan — Baker *v.* Grand Rapids, 142 Mich. 687, 106 N. W. 208; Cuba Colony Co. *v.* Kirby, 149 Mich. 453, 112 N. W. 1133.

Missouri. — Little *v.* Cunningham, 116 Mo. App. 545, 92 S. W. 734; Hingston *v* Montgomery, 121 Mo App. 451, 97 S. W. 202.

Nebraska. — Regent Shoe Mfg Co. *v.* Haaker, 75 Neb. 426 106 N. W. 595.

New Jersey. — Vulcan Detinning Co. *v.* American Can Co., (N. J. 1907) 67 Atl. 339.

New York. — Jayne *v.* Cortland Waterworks Co., 107 N. Y. App. Div. 517, 95 N. Y. Supp. 227.

Pennsylvania. — Auman *v.* Cunfer, 30 Pa. Super. Ct. 368.

Texas. — Cobb *v.* Gooch, (Tex. Civ. App. 1905) 88 S. W. 401.

6. Little *v.* Cunningham, 116 Mo App. 545, 92 S. W. 734, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163

164. 1. Slater *v.* Gribbel, 41 Wash. 168, 83 Pac. 19.

3. The refusal by a court of equity of relief to those who come with unclean hands is not for the benefit of those whose hands are also unclean. Moxie Nerve Food Co. *v.* Holland, 141 Fed. 202.

4. Knapp *v.* S. Jarvis Adams Co., (C. C. A.) 135 Fed. 1008; Bossert *v.* S. Jarvis Adams Co., (C. C. A.) 135 Fed. 1015; Camors-McConnell Co. *v.* McConnell, 140 Fed. 412, *affirmed* (C. C. A.) 140 Fed. 987; Employing Printers' Club *v.* Doctor Blosser Co., 122 Ga. 509, 50 S. E. 353; Cohn *v.* Pitzele, 117 Ill. App. 342, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 164, *affirmed* 217 Ill. 30, 75 N. E. 392.

165. 1. For cases applying the maxim, see Frank *v.* Butler County, (C. C. A.) 139 Fed. 119; Kleinclaus *v.* Dutard, 147 Cal. 245, 81 Pac. 516; Bidder *v.* Carville, 101 Me. 59, 63 Atl. 303; Jayne *v.* Cortland Water Works Co., 107 N. Y. App. Div. 517, 95 N. Y. Supp. 227.

3. It has been universally declared that only conscience, good faith, and reasonable diligence can call a court of equity into activity, and that, entirely independent of any statutory period of limitations, stale demands will not be aided where the claimant has slept upon his rights for so long a time and under such circumstances as to make it inequitable to enter upon an inquiry as to the validity thereof. Kleinclaus *v.* Dutard, 147 Cal. 245, 81 Pac. 516. See also Frank *v.* Butler County, (C. C. A.) 139 Fed. 119; Stuart *v.* Pierce County, (Wash. 1905) 82 Pac. 270.

166. 5. **Circumstances May Excuse Delay.** — Holzer *v.* Thomas, 69 N. J. Eq. 515, 61 Atl. 151

10. Ripple *v.* Kuehne, 100 Md. 672, 60 Atl. 461.

167. 4. The maxim is quoted and applied in Fall *v.* Fall, (Neb. 1907) 113 N. W. 175.

5. Wilhite *v.* Skelton, (C. C. A.) 149 Fed. 67, *reversing* 5 Indian Ter. 621, 82 S. W. 932; Chicago, etc., R. Co. *v.* Wynkoop, 73 Kan. 590,

85 Pac. 595, McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W 997, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 167; Fall *v.* Fall, (Neb. 1907) 113 N. W. 175.

168. 6. Butterfield *v.* Nogales Copper Co., 9 Ariz. 212, 80 Pac. 345.

169. 1. Equity will not pass upon the question of the right of a municipality to acquire and hold lands outside of its territorial limits. Board of Health *v.* Trenton, (N. J. 1906) 63 Atl. 897.

173. 5. Chicago, etc., R. Co., *v* Wynkoop, 73 Kan. 590, 85 Pac. 595, *citing* 11 AM AND ENG. ENCYC OF LAW (2d ed.) 173.

174. 10. Ewing *v* Lamphere, 147 Mich. 659, 111 N. W. 187.

176. 5. Davisson *v.* Smith, 60 W. Va 413, 55 S. E 466.

177. 1. McKinley *v.* Coe, 66 N J. Eq. 70, 57 Atl. 1030, *citing* 11 AM AND ENG. ENCYC OF LAW (2d ed.) 177.

180. 11. That which should have been done may be regarded as having been done. Frank *v.* Butler County, (C C. A.) 139 Fed 119.

181. 12. Maxim quoted and applied to an agreement to give a mortgage in Foster Lumber Co. *v.* Harlan County Bank, 71 Kan. 180, 80 Pac. 49.

182. 7. Frank *v.* Butler County, (C. C. A.) 139 Fed, 119.

184. 6. Weckerly *v* Taylor, (Neb. 1906) 110 N. W. 738.

185. 2. Davisson *v.* Smith, 60 W. Va. 413, 55 S. E. 466.

5. Equity Will Not Enforce Penalties or Forfeitures. — Wallace *v.* Kelly, 148 Mich. 336, 111 N. W. 1049; Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498; Yeiser *v.* Portsmouth Sav. Bank, 75 Neb. 690, 106 N. W. 784; Miller *v.* Willett, 70 N. J. Eq. 396, 62 Atl. 178; Higinbotham *v.* Frock, 48 Oregon 129, 83 Pac. 536.

The rule is not absolute, and a forfeiture will be enforced when its enforcement is more consonant with the principles of right, justice, and morality, than to withhold equitable relief. Lindeke *v.* Associates Realty Co., (C. C. A.) 146 Fed. 630. See also Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va 487, 52 S. E. 499.

190. 1 Johnson *v.* Hayward, 74 Neb. 157, 103 N. W. 1058.

191. 5 Shoemaker *v.* Des Moines, 129 Iowa 244, 105 N. W. 520, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191; State *v.* Dunbar, 48 Oregon 109, 85 Pac. 337.

196. 1. **No Criminal Jurisdiction.** — State *v.* Dunbar, 48 Oregon 109, 85 Pac. 337.

197. 5. New Orleans Baseball, etc., Co. *v.* New Orleans, 118 La. 228, 42 So. 784.

198. 4. Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 198.

5. Houlton *v* Titcomb, 102 Me. 272, 66 Atl. 733; Thompson *v.* Tucker, 15 Okla. 486, 83 Pac. 413; State *v.* Dunbar, 48 Oregon 109, 85 Pac. 337.

199. 5. **Prosecutions for Violations of Municipal Ordinances Enjoined in Equity Where Property Rights Involved.** — Glucose Refining Co. *v.* Chicago, 138 Fed. 209.

200 1. *United States.* — Indian Land, etc., Co. *v.* Shoenfelt, (C. C. A.) 135 Fed. 484; South Penn Oil Co *v* Calf Creek Oil, etc., Co., 140 Fed 507; Toledo Computing Scale Co. *v* Computing Scale Co. (C. C. A.) 142 Fed. 919; Quigley *v* Spencer Stone Co., (C. C A.) 143 Fed 86; Percy Summer Club *v.* Astle, 145 Fed. 53; Onslow County *v.* Tollman, (C C. A.) 145 Fed. 753, *affirming* 140 Fed. 89; Marthinson *v.* King, (C C. A.) 150 Fed. 48; Godfrey *v.* McConnell, 151 Fed. 783; Martin *v.* Wilson, (C. C. A.) 155 Fed. 97; Jewett *v.* Chicago, etc., R. Co., 156 Fed. 160; U. S. *v.* Bitter Root Development Co., 200 U. S 451, 26 U S. Sup. Ct. 318; Southern Pac R. Co. *v.* U. S., 200 U. S. 341, 26 U S. Sup. Ct. 296

Alabama. — Evans *v.* Silvey, 144 Ala. 398, 42 So. 62; Yarbrough *v.* Thornton, 147 Ala. 221, 42 So. 402; Gulf Red Cedar Lumber Co *v.* Crenshaw, 148 Ala. 343, 42 So 564; Brock *v.* Oliver, (Ala. 1907) 43 So. 357.

Arkansas. — Crawford *v* St Francis Levee Dist., 79 Ark. 606, 96 S. W. 143.

California. — Sherwood *v.* Wallin, 1 Cal. App. 532, 82 Pac. 566; Flood *v.* Templeton, 148 Cal. 374, 83 Pac. 148.

Colorado. — Williams *v.* Routt County, 37 Colo. 55, 84 Pac. 1109

Delaware. — Virden *v.* Pilot Com'rs, 8 Del. Ch. 1, 67 Atl. 975

Florida. — Barnett *v.* Hickson, 52 Fla. 457, 41 So. 606.

Georgia. — Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388; Carstarphen Warehouse Co. *v* Fried, 124 Ga. 544, 52 S. E. 598.

Idaho. — School Dist. No. 25 *v.* Rice, 11 Idaho 99, 81 Pac. 155.

Illinois. — Builders' Painting, etc., Co. *v.* Advisory Board Bldg. Trades, 116 Ill. App. 264; West Side Hospital *v.* Steele, 124 Ill. App. 534; Shedd *v.* Seefeld, 126 Ill. App. 375; Livingston County Bldg., etc., Assoc. *v.* Keach, 219 Ill. 9, 76 N. E. 72.

Indiana. — Beck *v.* Indianapolis Light, etc., Co., 36 Ind. App. 600, 76 N. E. 312.

Maryland. — Carswell *v.* Swindell, 102 Md. 636, 62 Atl. 956.

Massachusetts. — Turners Falls Fire Dist. *v.* Millers Falls Water Supply Dist., 189 Mass. 263, 75 N. E. 630; Mesisco *v.* Giuliana, 190 Mass. 352, 76 N. E. 907.

Michigan. — Ruppert *v.* Patrons' Mut. F. Ins. Co., 145 Mich. 473, 108 N. W. 968; Ewing *v.* Lamphere, 147 Mich. 659, 110 N. W. 187.

Mississippi. — Sturges *v.* Jackson, 88 Miss. 508, 40 So. 547.

Missouri. — McWilliams *v.* Burns, 115 Mo. App. 6, 90 S. W. 735; Haydon *v.* St. Louis, etc., R Co., 117 Mo. App. 76, 93 S. W. 833.

Nebraska. — Mohat *v.* Hutt, 75 Neb. 732, 106 N. W. 659; Western Union Tel. Co. *v.* Douglas County, (Neb. 1906) 107 N. W. 985.

New Hampshire. — Williams *v.* Mathewson, 73 N. H. 242, 60 Atl. 687; Willson *v.* Legro, 73 N. H. 515, 63 Atl. 399.

New Jersey. — Hoagland *v.* Supreme Council, etc., 70 N. J. Eq. 607, 61 Atl. 982; Daab *v.* New York Cent., etc., R. Co., 70 N. J. Eq. 489, 62 Atl. 449; Myers *v.* Fridenberg, 70 N. J. Eq. 3, 62 Atl. 532; Standard Roller Bearing Co. *v.* Crucible Steel Co., (N. J. 1906)

63 Atl 546; Haskins *v.* Ryan, (N J. 1906) 64 Atl. 436; Dawson *v.* Leschzmer, (N. J. 1907) 65 Atl. 449; Myers *v* Friedenberg, (N. J 1907) 65 Atl 1118, *affirming* 70 N. J Eq 3, 62 Atl 532.

New York. — Butler *v.* Wright, 103 N. Y. App. Div. 463, 93 N. Y. Supp. 113; Irving *v.* Bruen, 110 N. Y. App. Div 558, 97 N Y. Supp 180, *affirmed* 186 N. Y. 605, 79 N. E. 1107

North Dakota. — Continental Hose Co. No. 1 *v.* Mitchell, 15 N. Dak 144, 105 N. W. 1108

Oklahoma. — Thompson *v.* Tucker, 15 Okla 486, 83 Pac. 413.

Oregon. — Hume *v.* Burns, (Oregon 1907) 90 Pac 1009.

Pennsylvania. — Hyde *v.* Baker, 212 Pa. St. 224, 61 Atl. 823; Owens *v.* Goldie, 213 Pa. St. 579, 62 Atl. 1117; Angle *v.* Stroudsburg, 29 Pa. Super. Ct. 601; Pennsylvania Coal, etc., Co. *v.* Jones, 30 Pa. Super. Ct. 358.

South Carolina. — Fludd *v.* Equitable L Assur. Soc., 75 S. Car. 315, 55 S. E. 762.

South Dakota. — Jewett *v.* Smail, (S. Dak. 1905) 105 N. W. 738.

Texas. — Lightfoot *v.* Murphy, (Tex. Civ. App. 1907) 104 S. W. 511.

Vermont. — Marsh *v.* Marsh, 78 Vt. 399, 63 Atl. 159; Clark *v.* Peck, 79 Vt. 275, 65 Atl. 14; Watkins *v.* Child, 79 Vt. 234, 65 Atl. 81; Wilkins *v.* Somerville, (Vt. 1907) 66 Atl. 893.

Virginia. — Strother *v.* Strother, 106 Va. 420, 56 S. E. 170.

West Virginia. — Crawford *v.* Turner, 58 W. Va. 600, 52 S. E. 716; Spies *v.* Arvondale, etc., R. Co., 60 W. Va. 389, 55 S. E. 464.

Wisconsin. — Barchent *v.* Snyder, 128 Wis. 423, 107 N. W. 329; Johnson *v.* Swanke, 128 Wis. 68, 107 N. W. 481.

Wyoming. — Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364.

2. In considering the question of what is an adequate remedy at law, the courts will take into consideration not only the question of multiplicity of suits, but also the pecuniary responsibility of the defendant. Christian Feigenspan *v.* Nizolek, (N. J. 1907) 65 Atl. 703.

3. *United States.* — McMullen Lumber Co. *v.* Strother, (C. C. A.) 136 Fed. 295; Big Six Development Co. *v.* Mitchell, (C. C. A.) 138 Fed. 279; Brewster *v.* Lanyon Zinc Co., (C. C. A.) 140 Fed. 801; Fidelity Deposit Co. *v.* Fidelity Trust Co., 143 Fed. 152; Castle Creek Water Co. *v.* Aspen, (C. C. A.) 146 Fed. 8, 8 Ann. Cas. 660; Farwell *v.* Colonial Trust Co., (C. C. A.) 147 Fed. 480; Wilhite *v.* Skelton, (C. C. A.) 149 Fed. 67; Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159; Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1; Balfour *v.* San Joaquin Valley Bank, 156 Fed. 500.

Alabama. — Brown *v.* E. Van Winkle Gin, etc., Works, 141 Ala. 580, 39 So. 243.

New Jersey. — Christian Feigenspan *v.* Nizolek, (N. J. 1907) 65 Atl. 703.

Pennsylvania. — Apollo Trust Co. *v.* Safe Deposit, etc., Co., 31 Pa. Super. Ct. 524; Corbe *v.* Burkert, 33 Pa. Super. Ct. 317.

Texas. — Lone Star Salt Co. *v.* Texas Short Line R. Co., (Tex. Civ. App. 1905) 86 S. W. 355.

Determination of Question Whether Court of Equity Should Enforce Primary Legal Rights Rests Largely in Its Discretion. — Daab *v.* New York Cent., etc., R. Co., 70 N. J. Eq. 489, 62 Atl 449.

201. 2. *United States.* — Glucose Refining Co. *v.* Chicago, 138 Fed. 209; Big Six Development Co. *v.* Mitchell, (C. C. A.) 138 Fed. 279; South Penn Oil Co. *v.* Calf Creek Oil, etc., Co., 140 Fed. 507; *In re* Blake, (C. C. A.) 150 Fed. 279.

Illinois. — Livingston County Bldg., etc., Assoc *v.* Keach, 219 Ill. 9, 76 N E. 72.

Kentucky. — Asher *v.* Uhl, (Ky. 1906) 93 S. W. 29.

Mississippi. — Blumer *v.* Ulmer, (Miss. 1907) 44 So. 161.

Missouri. — Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213; Desberger *v.* University Heights Realty, etc., Co., 126 Mo. App. 206, 102 S. W. 1060.

New Jersey. — Christian Feigenspan *v.* Nizolek, (N. J. 1907) 65 Atl. 703.

South Dakota. — Jewett *v.* Smail, (S. Dak. 1905) 105 N. W. 738.

Vermont. — Watkins *v.* Childs, 79 Vt. 234, 65 Atl. 81.

3. Rule Does Not Apply in Criminal Cases. — Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890.

Should Be Showing of Probability of Multiplicity of Suits. — Tudor Boiler Mfg. Co. *v.* I. & E. Greenwald Co., 26 Ohio Cir. Ct. 556.

4. Whitaker, etc., Co. *v.* Roberts, 155 Fed. 882; Illinois Steel Co. *v.* Schroeder, (Wis. 1907) 113 N. W. 51; Miller *v.* Willett, (N. J. 1907) 65 Atl. 981, *affirming* 70 N. J. Eq. 396, 62 Atl. 178; National Tube Co. *v.* Smith, 57 W. Va. 210, 50 S. E. 717; Deepwater R. Co. *v.* Motter, 60 W. Va. 55, 53 S. E. 705; Johnson *v.* Swanke, 128 Wis. 68, 107 N. W. 481.

5. *United States.* — McMullen Lumber Co. *v.* Strother, (C. C. A.) 136 Fed. 295; Big Six Development Co. *v.* Mitchell, (C. C. A.) 138 Fed. 279; *In re* Blake, (C. C. A.) 150 Fed. 279.

Alabama. — Gulf Red Cedar Lumber Co. *v.* Crenshaw, 148 Ala. 343, 42 So. 564; Nixon *v.* Clear Creek Lumber Co., (Ala. 1907) 43 So. 805.

Arkansas. — Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21. But see Robinson *v.* Black, 84 Ark. 92, 104 S. W. 554.

California. — Becker *v.* Superior Ct., 151 Cal. 313, 90 Pac. 689; Flood *v.* Templeton, (Cal. 1907) 92 Pac. 78.

Colorado. — Smith Canal, etc., Co. *v.* Colorado Ice, etc., Co., 34 Colo. 485, 82 Pac. 940.

Florida. — Williams *v.* Clyatt, 53 Fla. 987, 43 So. 441.

Georgia. — Belt *v.* Lazenby, 126 Ga. 767, 56 S. E. 81; Everett *v.* Tabor, 127 Ga. 103, 56 S. E. 123.

Illinois. — Baum *v.* Hartmann, 226 Ill. 160, 80 N. E. 711, *reversing* 122 Ill. App. 444; School Trustees *v.* School Inspectors, 115 Ill. App. 479; Commercial Union Assur. Co. *v.* Parker, 119 Ill. App. 126; Wehrheim *v.* Smith, 226 Ill. 346, 80 N. E. 908, *affirming* 126 Ill. App. 328.

Kentucky. — Asher *v.* Uhl, (Ky. 1906) 93 S. W. 29.

Michigan. Lothrop *v.* Duffield, 134 Mich. 485, 96 N. W. 577, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201; Taylor *v.* Roniger, 147 Mich. 99, 110 N. W. 503; Michigan Iron, etc., Co. *v.* Nester, 147 Mich. 599, 111 N. W. 177, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201.

Mississippi. — Enochs *v.* Mississippi Bank, etc., Co., 87 Miss. 325, 39 So. 529.

New Jersey. — Smith *v.* Krueger, (N. J. 1906) 63 Atl. 850; Dawson *v.* Leschziner, (N. J. 1907) 65 Atl. 449; Gillen *v.* Hadley, (N. J. 1907) 66 Atl. 1087.

New York. — Smith *v.* Irvin, 102 N. Y. App. Div. 614, 92 N. Y. Supp. 1146, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 262, *affirming* 92 N. Y. Supp. 170.

North Carolina. — State *v.* Settle, 141 N. Car. 553, 54 S. E. 445.

Texas. — Walker *v.* Woody, (Tex. Civ. App. 1905) 89 S. W. 789.

Washington. — Lawrence *v.* Halversen, 41 Wash. 534, 83 Pac. 889.

Rule Does Not Apply Where Bill Thrown Out for Want of Equity. — Roller *v.* Murray, (Va. 1907) 59 S. E. 421.

Rule Not Infallible. — The rule stated in the text is not infallible, and where the remedy at law is more appropriate or the verdict of a jury is indispensable to the relief sought, the jurisdiction will be declined, or if retained, will be subject to a trial at law. Deepwater R. Co. *v.* Motter, 60 W. Va. 55, 53 S. E. 705.

6. Everett *v.* Tabor, 127 Ga. 103, 56 S. E. 123; Michigan Iron, etc., Co. *v.* Nester, 147 Mich. 599, 111 N. W. 177, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201; Lowry *v.* Mitchell, 14 Okla. 241, 78 Pac. 379, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201.

202. 2. Manning *v.* Berdan, 135 Fed. 159; Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722; Hamilton *v.* American Hulled Bean Co., 143 Mich. 277, 106 N. W. 731; Smith *v.* Krueger, (N. J. 1906) 63 Atl. 850; Dawson *v.* Leschziner, (N. J. 1907) 65 Atl. 449; Mazzolla *v.* Wilkie, (N. J. 1907) 66 Atl. 584.

4. Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695.

5. Corbe *v.* Burkert, 33 Pa. Super. Ct. 317. See also Nittany Valley R. Co. *v.* Empire Steel, etc., Co., 218 Pa. St. 224, 67 Atl. 349.

EQUITY OF REDEMPTION.

206. 1. Williams *v.* Hoffman, 39 Ind. App. 315, 76 N. E. 440.

207. 1. Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20, *affirmed* 119 N. Y. App. Div. 56, 103 N. Y. Supp. 963; Bunn *v.* Braswell, 139 N. Car. 135, 51 S. E. 927.

Coal Underlying Land Is Real Estate and is subject to redemption after foreclosure. Traer *v.* Fowler, (C. C. A.) 144 Fed. 810.

3. Thomas *v.* Seattle Brewing, etc., Co., (Wash. 1908) 94 Pac. 116.

It has been held that a purchaser after condition broken, has the right to redeem by payment of the mortgage debt, of which he had record notice, even though the actual debt was larger. Burriss *v.* Owen, 76 S. Car. 481, 57 S. E. 542.

208. 3. Longino *v.* Ball-Warren Commission Co., 84 Ark. 521, 106 S. W. 682.

Such Statutes Are Remedial and should be liberally construed. Lightbody *v.* Lammers, 98 Minn. 203, 108 N. W. 846.

4. Form of Instrument — *Alabama.* - Gerson *v.* Davis, 143 Ala. 381, 39 So. 198; Smith *v.* Smith, (Ala. 1907) 45 So. 168.

California. — Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93.

Illinois. — Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

Indiana. — See Ferguson *v.* Boyd, (Ind. 1907) 81 N. E. 71, *affirming* (Ind. App. 1906) 79 N. E. 549.

Iowa. — Kinkead *v.* Peet, (Iowa 1908) 114 N. W. 616; Lindberg *v.* Thomas, (Iowa 1908) 114 N. W. 562.

Kentucky. — Crockett *v.* Waller, (Ky. 1906) 96 S. W. 860; Veach *v.* Smith, (Ky. 1908) 107 S. W. 234. See also Bean *v.* Venable, (Ky. 1905) 87 S. W. 262.

Maryland. — Day *v.* Davis, 101 Md. 259, 61 Atl. 576.

Michigan. — Leach *v.* Grube, 147 Mich. 348, 110 N. W. 1076; Cusick *v.* Spencer, 149 Mich. 434, 112 N. W. 1111.

Minnesota. — Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561; Dybdal *v.* Fagerberg, 102 Minn. 130, 112 N. W. 1018.

Missouri. — Gibbs *v.* Haughowout, 207 Mo. 384, 105 S. W. 1067; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

New York. — Shelley *v.* Cody, 187 N. Y. 166, 79 N. E. 994, *modifying* Faulkner *v.* Cody, 108 N. Y. App. Div. 360, 95 N. Y. Supp. 1128; Conover *v.* Palmer, 123 N. Y. App. Div. 817, 108 N. Y. Supp. 480.

North Carolina. — Bunn *v.* Braswell, 139 N. Car. 135, 51 S. E. 927.

North Dakota. — Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

Oregon. — Eldriedge *v.* Hoefer, (Oregon 1908) 93 Pac. 246.

Pennsylvania. — *In re* King, 215 Pa. St. 59, 64 Atl. 324.

South Carolina. — Francis *v.* Francis, (S. Car. 1907) 58 S. E. 804; Manigault *v.* Lofton, (S. Car. 1907) 59 S. E. 534.

South Dakota. — Krug *v.* Kautz, (S. Dak. 1907) 113 N. W. 623.

A Debt from the Grantor to the Grantee Must Exist in order for a deed absolute on its face to be declared a mortgage. Jones *v.* Hubbard, 193 Mo. 147, 90 S. W. 1137.

The Burden of Proof is upon the party alleging that a deed absolute on its face was intended only as a mortgage, which must be established by clear and convincing evidence. Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592.

A Grantee under a Deed Given as Indemnity will be compelled to reconvey on being reimbursed with interest. Morris *v.* Hulme, 71 Kan. 628, 81 Pac. 169.

The Wife of a Grantor under a Deed of Trust, who holds a subsequent deed from her husband, may redeem from a judgment sale to

which she was not made a party. Parks *v.* Worthington, (Tex. Civ. App. 1907) 104 S. W. 921.

A Contract to Sell has been held to give the vendees, after default, the right to redeem. Yarborough *v.* Hughes, 139 N. Car. 199, 51 S. E. 964.

In a Conditional Sale, as distinguished from a mortgage, there can be no equity of redemption. Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

209. 1. Ebelharr *v.* Tennelly, 118 Ky. 43, 80 S. W. 459, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209; Cady *v.* Burgess, 144 Mich. 523, 108 N. W. 414.

210. 6. Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 210.

8. Hays *v.* Cretin, 102 Md. 695, 62 Atl. 1028; Bunn *v.* Braswell, 139 N. Car. 135, 51 S. E. 927.

Dower Right in Georgia. — Although the wife has no inchoate interest in property conveyed by her husband, the law recognizes her right to redeem the land and then to claim dower in it. Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038.

211. 1. Ebelharr *v.* Tennelly, 118 Ky. 43, 80 S. W. 459, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211. See also Poole *v.* French, 71 Kan. 391, 80 Pac. 997.

2. Carter *v.* Smith, 142 Ala. 414, 38 So. 184; Ebelharr *v.* Tennelly, 118 Ky. 43, 80 S. W. 459, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211; Mayo *v.* Staton, 137 N. Car. 670, 50 S. E. 331; Bunn *v.* Braswell, 139 N. Car. 135, 51 S. E. 927. See also Poole *v.* French, 71 Kan. 391, 80 Pac. 997.

In Georgia it has been held that the equity of redemption is not subject to levy. Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038.

In Illinois it is held that the right of redemption of a corporation after foreclosure sale of its leasehold interest is not subject to levy and sale under execution. Commerce Vault Co. *v.* Barrett, 222 Ill. 169, 78 N. E. 47.

In Kansas real estate once sold is not liable to resale on an inferior judgment under which the holder of such lien has the right within the statutory period to redeem. Gille *v.* Enright, 73 Kan. 245, 84 Pac. 992.

Oregon. — Where, subsequent to a sale under foreclosure, a creditor obtained judgment against the mortgagor, he was allowed to sell under execution, before the time for redemption had expired, and thus defeated the title of the purchaser at the foreclosure sale. Kaston *v.* Storey, 47 Oregon 150, 80 Pac. 217.

212. 1. Ebelharr *v.* Tennelly, 118 Ky. 43, 80 S. W. 459, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211.

2. Ebelharr *v.* Tennelly, 118 Ky. 43, 80 S. W. 459, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211.

213. 1. Johns *v.* Anchors, (Ala. 1907) 45 So. 218; Ebelharr *v.* Tennelly, 118 Ky. 43, 80 S. W. 459, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 213; Logan County *v.* McKinley-Lanning L. & T. Co., 70 Neb. 399, 97 N. W. 642, 101 N. W. 991, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 213.

2. Ebelharr *v.* Tennelly, 118 Ky. 43, 80 S. W. 459, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 213.

3. **The Arkansas Statute**, giving the right of redemption from foreclosure sales under decrees of court, is, by its terms, excluded from operation as to mortgages executed prior thereto. Longino *v.* Ball-Warren Commission Co., 84 Ark. 521, 106 S. W. 682.

214. 4. **Good-faith Redemptioner.** — A junior mortgagee who seeks to redeem from the foreclosure of a prior mortgage is charged with notice if the land is in possession of a person other than the mortgagor. Niles *v.* Cooper, 98 Minn. 39, 107 N. W. 744.

Pennsylvania — Tenant for Years May Redeem. — See Wunderle *v.* Ellis, 212 Pa. St. 618, 62 Atl. 106.

216. 2. Lightbody *v.* Lammers, 98 Minn. 203, 108 N. W. 846.

Heirs May Redeem, notwithstanding the administrator has begun his efforts to accomplish statutory redemption. Francis *v.* Sheats, (Ala. 1907) 45 So. 241.

3. **Under the Oregon Statute** it has been held that redemption by a purchaser from the mortgagor ends further proceedings to enforce a decree of sale under foreclosure, defeats the inchoate title of the purchaser, and restores the property to its condition before the attempted sale. Kaston *v.* Storey, 47 Oregon 150, 80 Pac. 217.

217. 1. **Under the Alabama Statute**, which provides that redemption may be made from the purchaser at the sale or his vendee, it has been held that vendee does not mean the immediate vendee of the purchaser, but includes all derivative purchasers. Robbins *v.* Brown, (Ala. 1907) 44 So. 63.

4. Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93; Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850.

Where a Husband and Wife give a joint note to secure a mortgage, if the title to the premises is in the husband and the wife receives no part of the proceeds, she has no right to redeem. Robbins *v.* Brown, (Ala. 1907) 44 So. 63.

218. 4. Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93.

219. 1. Franklin *v.* Jamieson-Wohler, 15 N. Dak. 613, 109 N. W. 56.

Junior Mortgagee Not a Party to Foreclosure Proceedings. — Where a senior mortgage was foreclosed, the junior mortgagee not being made a party, and the successors of the mortgagor redeemed, it was held that the rights of the junior mortgagee as to the prior mortgage were unaffected and that the prior mortgage debt was canceled thereby. Wemple *v.* Yosemite Gold Min. Co., 4 Cal. App. 78, 87 Pac. 280.

Nature of Junior Mortgagee's Title. — Franklin *v.* Jamieson-Wohler, 15 N. Dak. 613, 109 N. W. 56.

A Trustee as Junior Mortgagee will be allowed to purchase the object of its trust, and the owner of the equity of redemption is barred from recovery on that ground. Marquam *v.* Ross, 47 Oregon 374, 78 Pac. 698, 83 Pac. 852.

In South Dakota if the redemption is made by a creditor or mortgagee having a subsequent

lien, subsequent creditors or mortgagees may redeem from him, but they are required to reimburse the redemptioner for his purchase and also to pay his lien, which thereby becomes extinguished, and the original debtor is credited *pro tanto*. Work *v.* Braun, 19 S. Dak. 437, 103 N. W. 764.

2. Work *v.* Braun, 19 S. Dak. 437, 103 N. W. 764.

Under the Alabama Statute it has been held that the legal effect of redemption by a junior mortgagee is to invest him with the indefeasible legal title to the property. Francis *v.* Sheats, (Ala. 1907) 45 So. 241.

221. 2. Johns *v.* Anchors, (Ala. 1907) 45 So. 218; Wehrheim *v.* Smith, 226 Ill. 346, 80 N. E. 908, *affirming* 126 Ill. App. 328; Kendig *v.* McCall, 133 Iowa 180, 110 N. W. 458.

On Redeeming from a Foreclosure Sale. — Jackson *v.* Grosser, 218 Ill. 494, 75 N. E. 1032; Traer *v.* Fowler, (C. C. A.) 144 Fed. 810.

A Judgment Creditor Is an Owner and Not a Lienholder and must redeem as such if the property has been sold under execution sale. Bagley *v.* McCarthy, 95 Minn. 286, 104 N. W. 7.

A Judgment Creditor Who Becomes an Execution Purchaser acquires all the rights of the debtor and can redeem the same as one who has taken title to the land by voluntary conveyance, and need not content himself with the right to redeem as a judgment creditor merely. Kendig *v.* McCall, 133 Iowa 180, 110 N. W. 458.

A judgment creditor who purchases at an execution sale thereby merges his judgment and, therefore, cannot redeem; but such a purchase at a judicial sale does not so operate, if the report of sale filed by the officer making it is not thereafter confirmed. McGraugh *v.* Deposit Bank, 147 Ala. 229, 40 So. 984.

The Owner of Two Judgments Concurrent in Lien cannot redeem from a subsequent foreclosure sale under a mortgage prior in lien, if one of the judgments has been satisfied by execution sale. Bagley *v.* McCarthy Bros. Co., 95 Minn. 286, 104 N. W. 7.

A Judgment Creditor who after foreclosure obtains judgment against an owner who was thereafter adjudged insane, will not be allowed to redeem. Morrison *v.* Steenstra, 45 Wash. 175, 88 Pac. 104.

222. 1. A judgment creditor who did not docket his judgment until after filing a notice of his intention, was held not entitled to redeem. Brady *v.* Gilman, 96 Minn. 234, 104 N. W. 897.

2. McGraugh *v.* Deposit Bank, 147 Ala. 229, 40 So. 984.

223. 2. Hays *v.* Cretin, 102 Md. 695, 62 Atl. 1028.

3. Hays *v.* Cretin, 102 Md. 695, 62 Atl. 1028.

Under the Alabama Statute a wife has no right of redemption in the real estate of her husband, alleged to be a homestead, and which was sold under a mortgage executed by the husband before marriage. Lacey *v.* Lacey, (Ala. 1905) 39 So. 922.

Under the Illinois Statute if the inchoate interest of the wife is not sold such interest becomes absolute and vests in her upon the death of her husband. If such interest be sold, her dower right is barred as against the mortgagee and his privies only. Green *v.* Estabrook, 168 Ind. 123, 79 N. E. 373.

The Widow May Not Speculate at the Expense of the Purchaser by waiting until the lands have materially increased in value. Mackenna *v.* Fidelity Trust Co., 184 N. Y. 411, 77 N. E. 721, *modifying* 90 N. Y. Supp. 493.

224. 5. Rieger *v.* Faber, 116 Mo. App. 123, 92 S. W. 183.

226. 2. *Alabama.* — Drum *v.* Bryan, 145 Ala. 686, 40 So. 131; McGraugh *v.* Deposit Bank, 147 Ala. 229, 40 So. 984.

Illinois. — Commerce Vault Co. *v.* Barrett, 222 Ill. 169, 78 N. E. 47; Wehrheim *v.* Smith, 226 Ill. 346, 80 N. E. 908, *affirming* 126 Ill. App. 328; Traer *v.* Fowler, (C. C. A.) 144 Fed. 810.

A mortgagee may by contract extend the period allowed by law for redemption, and this will be enforced by a court of equity. Taggart *v.* Blair, 215 Ill. 339, 74 N. E. 372.

Indiana. — Ætna L. Ins. Co. *v.* Stryker, 38 Ind. App. 327, 78 N. E. 245.

Iowa. — Kendig *v.* McCall, 133 Iowa 180, 110 N. W. 458.

A person claiming the right to redeem may, by filing an affidavit in connection with his tender of the amount necessary to make redemption, have the question determined in a summary way; but it has been held that this is not exclusive of the statutory right previously existing. Kendig *v.* McCall, 133 Iowa 180, 110 N. W. 458.

Michigan. — Redemption must now be made within six months from the time of sale, which has been held to mean when the sale is made, and not when it is confirmed. Trombley *v.* Klersy, 147 Mich. 370, 110 N. W. 940.

Minnesota. — See Brady *v.* Gilman, 96 Minn. 234, 104 N. W. 897.

Missouri. — Within twelve months after foreclosure sale. Sturgeon *v.* Mudd, 190 Mo. 200, 88 S. W. 630.

The grantor in a deed of trust to secure payment of a debt, when the land is sold by the trustee and purchased by the beneficiary, can redeem at any time within one year by giving a bond. Rieger *v.* Faber, 116 Mo. App. 123, 92 S. W. 183.

New Hampshire. — See Shute *v.* Bartlett, (N. H. 1907) 68 Atl. 536.

Oregon. — Within one year after confirmation of sale. Kaston *v.* Storey, 47 Oregon 150, 80 Pac. 217.

Washington. — Mann *v.* Provident L. & T. Co., 42 Wash. 581, 85 Pac. 56.

Wisconsin. — See Dickson *v.* Loehr, 126 Wis. 641, 106 N. W. 793.

The mortgagor may redeem at any time before the foreclosure sale has been confirmed by the court. Gerhardt *v.* Ellis, (Wis. 1908) 114 N. W. 495.

3. See Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760.

Under the Alabama Statute the debtor is required to tender to the mortgagee the amount of the debt with interest, penalty and costs only, and not such amount as he may have bid in excess of that sum at the foreclosure sale. Pean *v.* Pearce, (Ala. 1907) 44 So. 83.

The Amount Necessary to Be Paid in an action upon breach of an equitable mortgage may be determined by the court, and failing such payment the decree of the court will operate as a conveyance. Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561.

227. 3. Effect of Tender at Common Law and in Equity.— See Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850.

229. 2. Unangst *v.* Southwick, (Neb. 1907) 113 N. W. 989.

5. **Under the Alabama Statute** declaring usurious contracts void "except as to the principal," it has been held that the mortgagor may have relief without paying any interest. Barclift *v.* Fields, 145 Ala. 264, 41 So. 84.

230. 1. Barclift *v.* Fields, 145 Ala. 264, 41 So. 84.

4. Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 330 [230].

231. 4. In Maryland a Widow is not required to pay a second mortgage on property in which she claims an equity of redemption. Hays *v.* Cretin, 102 Md. 695, 62 Atl. 1028.

232. 6. A Junior Incumbrancer Is Not Entitled to Recover Costs incurred prior to an offer to pay the mortgage debt. Longino *v.* Ball-Warren Commission Co., 84 Ark. 521, 106 S. W. 682.

7. See Rodman *v.* Quick, 217 Ill. 162, 75 N. E. 465.

Reasonable Time. — Where an extension of time had been obtained but not fixed, it was held that five and one-half years was not a reasonable period for redemption. Mann *v.* Provident L. & T. Co., 42 Wash. 581, 85 Pac. 56.

8. Lacey *v.* Lacey, (Ala. 1905) 39 So. 922; Williams *v.* Hoffman, 39 Ind. App. 315, 76 N. E. 440.

A Certificate of Redemption, which is not filed within the time prescribed by the statute, is void as to a second redemption made in good faith by a junior lienholder. Coffman *v.* Christenson, 102 Minn. 460, 113 N. W. 1064.

The Decree Cannot Bar Redemption, if the statute authorizes it; that part which declares the sale shall be absolute will be regarded as inoperative. Logan County *v.* McKinley-Lanning L. & T. Co., 70 Neb. 399, 101 N. W. 991.

233. 1. A Mortgagee Who Is Not in Possession, it has been held, must account to the grantor in a deed absolute in form, to secure a debt, where a part of the land has been sold. Veach *v.* Smith, (Ky. 1908) 107 S. W. 234.

2. See Longino *v.* Ball-Warren Commission Co., 84 Ark. 521, 106 S. W. 682; Becker *v.* McCrea, 119 N. Y. App. Div. 56, 103 N. Y. Supp. 963, *affirming* (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20.

Beneficiaries under a Deed of Trust, who purchased at a foreclosure sale, have been held not to be mortgagees in possession. Merryman *v.* Blount, 79 Ark. 1, 94 S. W. 714.

234. 3. Under the Arkansas Statute a Junior Incumbrancer, not a party to the foreclosure of a prior mortgage, may, upon a proper tender, require the mortgagee who purchased at the sale to account for the rents and profits received while in possession. Longino *v.* Ball-Warren Commission Co., 84 Ark. 521, 106 S. W. 682.

4. De Bartlett *v.* De Wilson, 52 Fla. 497, 42 So. 189; Harris *v.* Powers, 129 Ga. 74, 58 S. E. 1038; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306; Eldriedge *v.* Hoefer, (Oregon 1908) 93 Pac. 246.

A Receiver Appointed in Foreclosure Sale holds the rents and profits for the benefit of the mortgagor. Traer *v.* Fowler, (C. C. A.) 144 Fed. 810.

Method of Accounting. — The sale by a mortgagee in possession of part of the mortgaged property does not of itself entitle the mortgagor to an account with a general rest of the rents and profits as well as of the proceeds of sale, as on the date of the receipt thereof. Wrigley *v.* Gill, (1905) 1 Ch. 241.

In a redemption action against a mortgagee in possession, who has from time to time sold parts of the mortgaged property, where a decree has been made directing the usual accounts and inquiries, but giving no directions as to rests, the mortgagor is not entitled to have rests made in the account of rents and profits even though there may have been sales from time to time. Ainsworth *v.* Wilding, (1905) 1 Ch. 435.

235. 2. Misconduct in not selling the land in accordance with the terms of a mortgage has been held to make the mortgagee accountable for the fair market value of the property. Manville Covering Co. *v.* Babcock, (R. I. 1907) 68 Atl. 421.

236. 1. Shelley *v.* Cody, 187 N. Y. 166, 79 N. E. 994.

4. The court will not direct an account to be made upon the principle of annual rests except under a state of facts which takes the case out of the general rule. Shelley *v.* Cody, 187 N. Y. 166, 79 N. E. 994.

237. 2. De Bartlett *v.* De Wilson, 52 Fla. 497, 42 So. 189; Cusick *v.* Spencer, 149 Mich. 434, 112 N. W. 1111; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

3. Where a trespasser who was in possession erected a barn on the premises, it was held to be in the discretion of the court to refuse a credit for such improvement. Shelley *v.* Cody, 187 N. Y. 166, 79 N. E. 994.

4. **Expense of Redeeming Prior Mortgage.** — Windt *v.* Covert, (Cal. 1907) 93 Pac. 67.

Costs of Sale to Mortgagee's Agent Allowable. — Patchell *v.* Colonial Invest., etc., Co., 3 N. Bruns. Eq. Rep. 429.

239. 2. Ferguson *v.* Boyd, (Ind. 1907) 81 N. E. 71, transferred from (Ind. App. 1906) 79 N. E. 549.

240. 2. Ætna L. Ins. Co. *v.* Stryker, 38 Ind. App. 327, 78 N. E. 245; Kelso *v.* Norton, 74 Kan. 442, 87 Pac. 184; Free *v.* Little, 31 Utah 449, 88 Pac. 407, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 240.

241. 2. Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93.

No Compensation to Mortgagee will be allowed where it appears none was contemplated by the parties. Chaffee *v.* Conway, 125 Wis. 77, 103 N. W. 269.

242. 3. See Hays *v.* Cretin, 102 Md. 695, 62 Atl. 1028; Standish *v.* Musgrove, 223 Ill. 500, 79 N. E. 161; Conover *v.* Palmer, 123 N.

Y. App. Div. 817, 108 N. Y. Supp. 480; Buchanan *v.* Harvie, 3 N. Bruns. Eq. Rep. 61.

Equity of Redemption Barred by Judgment. — Where after judgment of foreclosure, a warranty deed was given by the mortgagor to the mortgagee, and thereafter a subsequent grantee of the mortgagor sought to redeem, it was held that a judgment in a suit in which such grantee was ejected was a complete bar, being *res adjudicata*. Potter *v.* Ft. Madison L. & T. Bldg. Assoc., 133 Iowa 367, 110 N. W. 616.

4. King *v.* King, 215 Ill. 100, 74 N. E. 89.

211. 1. Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306; Gerhardt *v.* Ellis, (Wis. 1908) 114 N. W. 495.

A Sale under a Void Foreclosure operates as an equitable assignment of the mortgage; and the purchaser, after taking possession, is deemed a mortgagee in possession. Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792.

215. 1. Time Fixed by Decree Opening Foreclosure. — When a decree fixes the time within which a mortgagor may redeem, failing such redemption, unless there is waiver of forfeiture, his title is lost. Brown *v.* Webber, (Me. 1907) 68 Atl. 456.

Payment of the Decree after becoming absolute will operate to open the same, as between a junior mortgagee and the owners of the equity of redemption. Phelps *v.* Root, 78 Vt. 493, 63 Atl. 941.

3. Livingston *v.* New England Mortg. Security Co., 76 Ark. 379, 91 S. W. 752; Longino *v.* Ball-Warren Commission Co., 84 Ark. 521, 106 S. W. 682; Ætna L. Ins. Co. *v.* Stryker, 38 Ind. App. 327, 78 N. E. 245; Ætna L. Ins. Co. *v.* Stryker, (Ind. App. 1908) 83 N. E. 647; Unangst *v.* Southwick, (Neb. 1907) 113 N. W. 989; Lowenfeld *v.* Ditchett, 114 N. Y. App. Div. 56, 99 N. Y. Supp. 724; Gravelle *v.* Canadian, etc., Mortg., etc., Co., 42 Wash. 457, 85 Pac. 36.

Right of Purchasers to Be Made Parties. — One who has in good faith bought and assumed possession of mortgaged property prior to the foreclosure proceedings, to which he is not a party, may redeem from such foreclosure sale, although he did not record his deed until after a decree of sale. Licata *v.* De Conte, 50 Fla. 563, 39 So. 58.

In Illinois the court will, in its discretion, fix the time within which a second mortgagee, not a party to the foreclosure proceedings, may redeem from the sale. Rodman *v.* Quick, 217 Ill. 162, 75 N. E. 465.

Redemption by Judgment Creditor After Foreclosure Sale. — Wehrheim *v.* Smith, 226 Ill. 346, 80 N. E. 908, *affirming* 126 Ill. App. 328.

The Heirs of a Mortgagor who was not properly made a party to the foreclosure proceedings may redeem. Kelso *v.* Norton, 74 Kan. 442, 87 Pac. 184.

216. 2. Fountain *v.* Lewiston Nat. Bank, 11 Idaho 451, 83 Pac. 505.

217. 2. Shepard *v.* Vincent, 38 Wash. 493, 80 Pac. 777.

3. Francis *v.* Sheats, (Ala. 1907) 45 So. 241.

5. Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792.

In New York open and visible possession by consent of the mortgagor, and use of the land by the mortgagee for twenty-five years, although no sale under the foreclosing judgment was had, was held to bar a suit for redemption Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N Y. Supp. 20, *affirmed* 119 N. Y. App. Div. 56, 103 N. Y. Supp. 963.

6. Chace *v* Morse, 189 Mass. 559, 76 N. E. 142; Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20, *affirmed* 119 N. Y. App Div 56, 103 N. Y. Supp. 963; Messinger *v.* Foster, 115 N. Y. App. Div. 689, 101 N. Y. Supp. 387.

Absolute Deed Intended as Mortgage. — Lindberg *v.* Thomas, (Iowa 1908) 114 N. W. 562.

218. 1. Redemption and Foreclosure Reciprocal Rights. — Caraway *v.* Sly, 222 Ill 203, 78 N. E. 588.

249. 1. Phelps *v.* Root, 78 Vt. 493, 63 Atl. 941.

Time Not Fixed. — Where the facts indicated that an extension of time had been obtained but not fixed, it was held that a reasonable period for redemption would be granted, but that five and one-half years was not a reasonable period Mann *v.* Provident L. & T. Co., 42 Wash. 581, 85 Pac. 56.

250. 1. Clark *v.* Hannafeldt, (Neb. 1907) 113 N. W. 135; Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20, *affirmed* 119 N. Y. App. Div. 56, 103 N. Y. Supp. 963.

Entry under Color of Title has been held sufficient to initiate adverse possession. Fountain *v.* Lewiston Nat. Bank, 11 Idaho 451, 83 Pac. 505.

2. Hunter *v.* Coffman, 74 Kan. 308, 86 Pac. 451.

Adverse Possession cannot be maintained by the mortgagee where he is in possession under agreement with the mortgagor and has not made manifest any other claim. Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93.

Possession under Written Instruments supposed by vendor and vendee to pass both the legal and equitable title, but being only a mortgage, was held sufficient to initiate adverse possession, and after the statutory period to bar redemption. Fountain *v.* Lewiston Nat. Bank, 11 Idaho 451, 83 Pac. 505.

Possession by the Tenant of the Mortgagee, although such tenant afterwards became owner of the mortgage, is not sufficient to set the statute running. Clark *v.* Hannafeldt, (Neb. 1907) 113 N. W. 135.

Mortgagee Must Be Rightfully in Possession. — Becker *v.* McCrea, 119 N. Y. App. Div. 56, 103 N. Y. Supp. 963, *affirming* (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20.

4. *California.* — Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93.

Idaho. — Suits for redemption are barred by the adverse possession by the mortgagee for five years after breach of some condition of the mortgage. Fountain *v.* Lewiston Nat. Bank, 11 Idaho 451, 83 Pac. 505.

Nebraska. — Suits to redeem are barred by ten years' possession by the mortgagee after default. Clark *v.* Hannafeldt, (Neb. 1907) 113 N. W. 135.

New York. — Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp.

20, *affirmed* 119 N. Y. App. Div. 56, 103 N. Y. Supp. 963.

North Dakota. — An action to redeem must be commenced within ten years after the cause of action accrues. Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792.

251. 3. Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Ferguson *v.* Boyd, (Ind. 1907) 81 N. E. 71, transferred from (Ind. App. 1906) 79 N. E. 549; Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142.

In the Absence of Fraud it has been held that a bill to have a deed declared a mortgage and to redeem thereunder is not barred by laches when the bill is filed within ten years after the execution of the deed. Gerson *v.* Davis, 143 Ala. 381, 39 So. 198.

But where a request for information peculiarly within the knowledge of the mortgagee was ignored it was held that there had not been laches sufficient to defeat the right to redeem. Cusick *v.* Spencer, 149 Mich. 434, 112 N. W. 1111.

In Mississippi an action to redeem may be maintained after ten years, lacking one day, from the day of sale. Cox *v.* American Freehold, etc., Co., 88 Miss. 88, 40 So. 739.

4. Where the party having the right to redeem makes a sale and directs the holder of the legal title to convey, the purchaser will take the title divested of the condition of defeasance. Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592.

A Judgment Creditor Who Is the Wife of the Mortgagor is not estopped by reason of the fact that she joined with her husband in the execution of the notes and mortgage securing them. Johns *v.* Anchors, (Ala. 1907) 45 So. 218.

The Lapse of Sixty Years has been held to estop the heirs of a mortgagor to claim the right of redemption where an unauthorized sale had been had. Flack *v.* Braman, (Tex. Civ. App. 1907) 101 S. W. 537.

5. **Against Whom Redemption May Be Had.** — Redemption allowed by the statute from the purchaser at the foreclosure sale or his vendee may be made from all the derivative purchasers, and is not limited to the immediate vendee. Robbins *v.* Brown, (Ala. 1907) 44 So. 63. See also Johns *v.* Anchors, (Ala. 1907) 45 So. 218.

252. 2. Longino *v.* Ball-Warren Commission Co., 84 Ark. 521, 106 S. W. 682; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306; Eldriedge *v.* Hoefer, (Oregon 1908) 93 Pac. 246.

3. Longino *v.* Ball-Warren Commission Co., 84 Ark. 521, 106 S. W. 682; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

ESCAPE.

277. 1. Levy *v.* Melody, (County Ct.) 50 Misc. (N. Y.) 509, 99 N. Y. Supp. 153.

295. 5. **An Escape by One Confined for Violating an Ordinance** has been held to constitute a misdemeanor. Collins *v.* State, 120 Ga. 849, 48 S. E. 312.

6. McCaslin *v.* McCord, 116 Tenn. 690, 8 Ann. Cas. 245, 94 S. W. 79.

296. 1. **Sentence and Punishment.** — Where the indictment charges the offense in accordance with the terms of a certain section of the code, and specifies a conviction of larceny and an attempt to escape from lawful custody before the expiration of a sentence, the punishment prescribed by another section of the code cannot be approximately inflicted. Bradford *v.* State, (Ala. 1907) 42 So. 990.

2. **Convict "Trusty" — Arkansas.** — The principle laid down in the original note has been followed in *Georgia.* Johnson *v.* State, 122 Ga. 172, 50 S. E. 65, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 296.

3. **Mere Custody by a Jailer for Failure to Pay a Fine,** without a sentence of imprisonment, has been held not to be such lawful custody as to warrant a conviction for escape therefrom. Saylor *v.* Com., (Ky. 1906) 93 S. W. 48.

5. **Avoidance of Undeserved Punishment No Justification.** — Johnson *v.* State, 122 Ga. 172, 50 S. E. 65.

Subsequent Payment of Fine No Justification. — Johnson *v.* State, 122 Ga. 172, 50 S. E. 65.

304. 4. State *v.* King, 71 Kan. 287, 80 Pac. 606.

305 2. **The Mere Possession of Tools Is Insufficient,** without some preparatory act, to constitute an attempt at prison breach. State *v.* Hurley, 79 Vt. 28, 64 Atl. 78.

306. 1. **Guilt or Innocence of Those Escaping Immaterial.** — Fluty *v.* Com., (Ky. 1907) 105 S. W. 138.

3. **Lawful Custody Essential — Submission Immaterial.** — Adams *v.* State, 121 Ga. 163, 48 S. E. 910, holding further that where the original arrest was illegal, one who aids in the rescue of the prisoner does not subsequently become liable for the offense of rescue by refusing to yield him to an officer who thereafter appears with a warrant.

A Structure Used for the Confinement of Prisoners is a jail within the meaning of a statute punishing the rescue of prisoners from jail, even though such structure is built on private land, through a private subscription, and does not belong to the county. Irvington *v.* State, 45 Tex. Crim. 559, 78 S. W. 928.

307. 7. **A Sentence of Six Years in the Penitentiary,** the maximum penalty being ten years, has been held not to be unduly severe. State *v.* Johnson, (Iowa 1907) 113 N. W. 832.

308. 5. **In Iowa,** under the code, one who aids another to escape from prison is guilty without regard to the guilt or innocence of the prisoner. State *v.* Johnson, (Iowa 1907) 113 N. W. 832.

So the Fact that the Prisoner Has Been Acquitted has been held in *Arkansas* to be immaterial to the guilt of one charged with aiding such prisoner to escape. Maxey *v.* State, 76 Ark. 276, 88 S. W. 1009.

309. 1. **Evidence of Intent.** — The sending of a letter has been held to be sufficient evidence of intent, to justify a conviction for an attempt to aid an escape. People *v.* Buckley, 91 N. Y. App. Div. 586, 87 N. Y. Supp. 191.

The Failure of the Prisoner to Co-operate in the attempt, and the ultimate failure of the attempt, are immaterial as bearing upon the guilt of the defendant where he carried instruments to the prison with the intent of assisting a person confined to escape. Maxey *v.* State, 76 Ark. 276, 88 S. W. 1009.

2. **Instrument of Writing.** — Where a letter conveyed to the prisoner is itself insufficient to apprise him of means of escape, but refers to subsequent letters to be sent containing such information, the offense at most can only be that of an attempt to aid an escape. People *v.* Buckley, 91 N. Y. App. Div. 586, 87 N. Y. Supp. 161.

311. 3. **Where the Prisoner Has Fled to Another County,** an officer not in fresh pursuit of him has no right to break open the doors of a stranger's house to effect a recapture. McCaslin *v.* McCord, 116 Tenn. 690, 8 Ann. Cas. 245, 94 S. W. 79.

312. 7. **Where the Pursuit of the Escaped Prisoner Is Not Immediate,** it has been held that neither an officer nor a private citizen can arrest without a warrant in a county other than that of the commitment. McCaslin *v.* McCord, 116 Tenn. 690, 8 Ann. Cas. 245, 94 S. W. 79.

9. Moebus's Petition, 73 N. H. 352, 62 Atl. 170, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 313.

ESCHEAT.

319. 5. Com. *v.* Chicago, etc., R. Co. (Ky. 1907) 99 S. W. 596.

8. **The State May Make New Causes of Escheat,** as well as apply the power of escheat to new and different characters of estates and conditions. Com. *v.* Chicago, etc., R. Co., (Ky. 1907) 99 S. W. 596.

320. 2. **Death Intestate and Without Heirs Prerequisite to Escheat.** — Walker *v.* Caldwell, 8 Del. Ch. 91, 67 Atl. 1085.

A Will directing that the property shall be "disposed of as the law of the land directs" does not prevent escheat where the testator died without issue or relatives. State *v.* Goldberg, 113 Tenn. 298, 86 S. W. 717.

6. **Washington Doctrine.** — In Washington it has been held that during the life of an alien holder of realty, and before alienation by him, the state may, by an appropriate proceeding, declare an escheat; but that right is lost by the death of the alien. Abrams *v.* State, 45 Wash. 327, 88 Pac. 327.

322. 6. **Equity of Redemption May Escheat.** — Seitz *v.* Messerschmidtt, 117 N. Y. App. Div. 401, 102 N. Y. Supp. 732.

13. **Lands Granted to a Corporation** may escheat to the state. Com. *v.* Chicago, etc., R. Co., (Ky. 1907) 99 S. W. 596.

323. 7. **Contra,** following the English rule, Hopkins *v.* Crossley, 138 Mich. 561, 101 N. W. 822.

324. 6. State *v.* Miller, 149 Cal. 208, 85 Pac. 609.

7. State *v.* Miller, 149 Cal. 208, 85 Pac. 609; *In re* Pomeroy, 33 Mont. 69, 81 Pac. 629.

8. **For a Similar Holding in New York** to that of *Texas,* stated in the text, see Lowenfeld *v.* Ditchett, 114 N. Y. App. Div. 56, 99 N. Y. Supp. 724.

325. 2. Hopkins *v.* Crossley, 138 Mich. 561, 101 N. W. 822.

The State May Contest a Will, alleging fraud, for the purpose of recovering under escheat proceedings. State *v.* Lancaster, (Tenn. 1907) 105 S. W. 858.

326. 3. **An Administrator Holding the Proceeds of a Sale of the Property** has been held to be the proper defendant, rather than the purchaser of the property. State *v.* Lancaster, (Tenn. 1907) 105 S. W. 858.

Judgment Against an Administrator of the property in question has been held to be improper before the costs and expenses of administration have been paid and settlement of the estate. State *v.* Simmons, 46 Oregon 159, 79 Pac. 498.

6. State *v.* Knott, (Fla. 1907) 44 So. 744.

327. 2. State *v.* Goldberg, 113 Tenn. 298, 86 S. W. 717, holding, however, that the proof of want of relatives is necessarily of a negative character and need not be so strong as to be beyond peradventure.

Failure of Any Claimant to Appear, after the publication required by statute, is in *California* sufficient proof provisionally and for the purpose of authorizing a judgment of the fact that there are no heirs. State *v.* Miller, 149 Cal. 208, 85 Pac. 609.

328. 7. State *v.* Goldberg, 113 Tenn. 298, 86 S. W. 717, holding that the state was entitled to the rents and income of the estate from the death of the decedent.

331. 8. Com. *v.* Chicago, etc., R. Co., (Ky. 1907) 99 S. W. 596.

332. 1. See State *v.* Simmons, 46 Oregon 159, 79 Pac. 498, stated *ante,* this title, **326.** 3.

ESCROW.

334. 1. Anderson *v.* Goodwin, 125 Ga. 663, 54 S. E. 679; Guild *v.* Althouse, 71 Kan. 604, 81 Pac. 172; Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380.

"Escrow" Used to Denote Writing or Instrument. — Murphy *v.* Greybill, 34 Pa. Super. Ct. 339.

3. Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380.

4. Naylor *v.* Stene, 96 Minn. 57, 104 N. W. 685; Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380; Wells *v.* Wells, (Wis. 1907) 111 N. W. 1111.

Assignment of a Street-car Franchise Held to Constitute Escrow Contract. — Havana City R. Co. *v.* Ceballos, (C. C. A.) 139 Fed. 538.

335. 1. Matter of Cornelius, 151 Cal. 550, 91 Pac. 329; Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380.

3. Carter *v.* American Ginger Ale, etc., Co., 125 Ga. 819, 54 S. E. 755.

Concession Deliverable in Escrow. — Havana City R. Co. *v.* Ceballos, (C. C. A.) 139 Fed. 538.

Certificates of Mining Stock. — Christian *v.* Deadwood First Nat. Bank, (C. C. A.) 155 Fed. 705.

Promissory Notes. — Bither *v.* Christensen, 1 Cal. App. 90, 81 Pac. 670; Brinton *v.* Lewiston Nat. Bank, 11 Idaho 92, 81 Pac. 112.

Contract for Sale of Property. — Scott *v.* Sloan, 72 Kan. 545, 84 Pac. 117; Naylor *v.* Stene, 96 Minn. 57, 104 N. W. 685.

Consent to Discontinuance and General Release of Cause of Action. — Tucker *v.* Dudley, 113 N. Y. App. Div. 500, 99 N. Y. Supp. 339.

Money. — Harris *v.* Snyder, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 306, 105 N. Y. Supp. 502.

Bond. — Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262.

Capital Stock of Corporation. — Boyd *v.* American Sav. Bank, etc., Co., (Wash. 1905) 82 Pac. 904.

Release of Mortgage. — Franklin *v.* Killilea, 126 Wis. 88, 104 N. W. 993.

336. 3. Hayden *v.* Collins, 1 Cal. App. 259, 81 Pac. 1120; Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93; Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337; Anderson *v.* Goodwin, 125 Ga. 663, 54 S. E. 679.

5. Hutton *v.* Cramer, (Ariz. 1906) 85 Pac. 483; Hayden *v.* Collins, 1 Cal. App. 259, 81 Pac. 1120; Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151; Rendlen *v.* Edwards, 116 Mo. 390, 92 S. W. 731; Franklin *v.* Killilea, 126 Wis. 88, 104 N. W. 993; Wells *v.* Wells, (Wis. 1907) 111 N. W. 1111.

Where the vendor wrote to the vendee's representative the terms of sale and how they should be carried out, it was held that the letters evidenced an intention on the part of the vendor to surrender control over the deed. Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380.

Where the grantor left a deed with a notary public and told him to hold it until his death and then to "place it on record," it was held that the grantee should thereby be invested with the title. Thompson *v.* Calhoun, 216 Ill. 161, 74 N. E. 775.

6. Craddock *v.* Barnes, 142 N. Car. 89, 54 S. E. 1003, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 336–339.

337. 1. Whitney *v.* Dewey, 10 Idaho 633, 80 Pac. 1117; Clark *v.* Harper, 215 Ill. 24, 74 N. E. 61; Rendlen *v.* Edwards, 116 Mo. 390, 92 S. W. 731.

3. Clarke *v.* Harper, 215 Ill. 24, 74 N. E. 61; Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262.

Grantor Cannot Be Agent for Grantee. — Rendlen *v.* Edwards, 116 Mo. 390, 92 S. W. 731.

4. Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613; Whitney *v.* Dewey, 10 Idaho 633, 80 Pac. 1117; Clark *v.* Harper, 215 Ill. 24, 74 N. E. 61.

339. 3. Dorr Cattle Co. *v.* Des Moines Nat. Bank, 127 Iowa 156, 4 Ann. Cas. 519, 98 N. W. 918, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 339; Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 339.

340. 1. Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262.

342. 1. Where a deed is delivered in escrow and the depositary delivers to the grantee without notice of conditions, the grantee is not bound by any conditions; but if the grantee has notice of the conditions, he will take no interest until he complies with them. Virginia Passenger, etc., Co. *v.* Patterson, 104 Va. 189, 51 S. E. 157.

4. Nolan *v.* Otney, 72 Kan. 311, 89 Pac. 690.

Redelivery to Take Place on Grantor's Death. — Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342; Wells *v.* Wells, (Wis. 1907) 111 N. W. 1111.

344. 3. Bright *v.* Hanover F. Ins. Co., (Wash. 1907) 92 Pac. 779.

4. White *v.* Hanford Bank, 148 Cal. 552, 83 Pac. 698; Matter of Cornelius, 151 Cal. 550, 91 Pac. 329; Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337; Guild *v.* Althouse, 71 Kan. 604, 81 Pac. 172, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 344; Tompkins *v.* Thompson, (Supm. Ct. Spec. T.) 93 N. Y. Supp. 1070; Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380.

345. 2. **Effect of Default of One Party.** — Where three shares of mining stock were left with a bank to be surrendered to a purchaser upon his complying with certain conditions, and the purchaser defaulted, it was held that one of the co-owners of the stock could not compel the bank to divide the shares *pro rata* among the three depositors. Christian *v.* Deadwood First Nat. Bank, (C. C. A.) 155 Fed. 705.

3. Wilhoit *v.* Salmon, 146 Cal. 444, 80 Pac. 705; White *v.* Hanford Bank, 148 Cal. 552, 83 Pac. 698; Anderson *v.* Goodwin, 125 Ga. 663, 54 S. E. 679; Carter *v.* American Ginger Ale, etc., Co., 125 Ga. 819, 54 S. E. 755; Guild *v.* Althouse, 71 Kan. 604, 81 Pac. 172; Francis *v.* Francis, 143 Mich. 300, 106 N. W. 864, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 345; McIntyre *v.* McIntyre, 147 Mich. 365, 110 N. W. 960; Craddock *v.* Barnes, 142 N. Car. 89, 54 S. E. 1003, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 345; Schmidt *v.* Musson, (S. Dak. 1906) 107 N. W. 367. See also Brockway *v.* Reynolds, (Neb. 1906) 109 N. W. 154.

Title to the Fee Passes on Delivery, Subject to the Grantor's Life Estate, where a deed is left in escrow to be delivered at the death of the grantor. Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337; Hutton *v.* Cramer, (Ariz. 1906) 85 Pac. 483; Matter of Cornelius, 151 Cal. 550, 91 Pac. 329.

4. Scott *v.* Sloan, 72 Kan. 545, 84 Pac. 117; Wilkins *v.* Somerville, (Vt. 1907) 66 Atl. 893; Beach *v.* Bellwood, 104 Va. 170, 51 S. E. 184.

A Bill in Equity Will Not Lie where the grantee fails to comply with the conditions. White *v.* Hanford Bank, 148 Cal. 552, 83 Pac. 698.

An Action at Law to recover money held in escrow where redelivery is refused does not involve the exercise of equitable power. Harris *v.* Snyder, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 306, 105 N. Y. Supp. 502.

5. Tompkins *v.* Thompson, (Supm. Ct. Spec. T.) 93 N. Y. Supp. 1070; Boyd *v.* American Sav. Bank, etc., Co., (Wash. 1905) 82 Pac. 904.

346. 4. Nolan *v.* Otney, 75 Kan. 311, 89 Pac. 690, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 346; Craddock *v.* Barnes, 142 N. Car. 89, 54 S. E. 1003, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 345; Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380.

5. Tompkins *v.* Thompson, (Supm. Ct. Spec. T.) 93 N. Y. Supp. 1070; Van Tassel *v.* Burger, 119 N. Y. App. Div. 509, 104 N. Y. Supp. 273; Wells *v.* Wells, (Wis. 1907) 111 Wis. 1111.

Instance Where Doctrine of Relation Held Inapplicable to Instrument Deliverable on Grantor's Death. — McIntyre *v.* McIntyre, 147 Mich. 365, 110 N. W. 960.

347. 3. Scott *v.* Sloan, 72 Kan. 545, 84 Pac. 117; Van Tassel *v.* Burger, 119 N. Y. App. Div. 509, 104 N. Y. Supp. 273.

348. 3. Nolan *v.* Otney, 75 Kan. 311, 89 Pac. 690.

4. Whitmer *v.* Schenk, 11 Idaho 702, 83 Pac. 775.

349. 1. Knapp *v.* Nelson, (Colo. 1907) 92 Pac. 912; Naylor *v.* Stene, 96 Minn. 57, 104 N. W. 685; Bales *v.* Roberts, 189 Mo. 49, 87 S. W. 914, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 348, 349; Tucker *v.* Dudley, 113 N. Y. App. Div. 500, 99 N. Y. Supp. 339; Schmidt *v.* Musson, (S. Dak. 1906) 107 N. W. 367; Franklin *v.* Killilea, 126 Wis. 88, 104 N. W. 993.

352. 3. **Where Depositor Redelivers to Grantor** a deed over which control was surrendered, it does not affect grantee's rights. Matter of Cornelius, 151 Cal. 550, 91 Pac. 329.

ESTABLISH.

353. 5. Police Jury *v.* Robichaux, 116 La. 286, 40 So. 705.

6. **Establish Ferry.** — See Police Jury *v.* Robichaux, 116 La. 286, 40 So. 705.

ESTATE.

359. 1. West *v.* Hermann, (Tex. Civ. App. 1907) 104 S. W. 432, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 359.

ESTATES.

368. 1. Tygard *v.* Hartwell, 204 Mo. 200, 102 S. W. 989; Cowdrey *v.* Cowdrey, (N. J. 1906) 64 Atl. 98. See also Hill *v.* Terrell, 123 Ga. 49, 51 S. E. 81; Adams *v.* Fisher, 143 Mich. 673, 107 N. W. 705.

2. King *v.* King, 215 Ill. 100, 74 N. E. 89; Moran *v.* Moran, 143 Mich. 322, 106 N. W. 206; Huber *v.* Hamilton, 211 Pa. St. 289, 60 Atl. 789.

3. *In re* Reed, (Del. 1906) 64 Atl. 822; Hill *v.* Terrell, 123 Ga. 49, 51 S. E. 81; Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784; Conlin *v.* Sowards, 129 Wis. 320, 109 N. W. 91. See also Gruenewald *v.* Neu, 215 Ill. 132, 74 N. E. 101.

4. **Grant of Absolute Power of Disposition Carries Fee.** — Young *v.* Robinson, 122 Mo. App. 187, 99 S. W. 20; Bing *v.* Burrus, 106 Va. 478, 56 S. E. 222.

369. 1. Guyatt *v.* Kautz, 41 Wash. 115, 83 Pac. 9, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 368.

370. 1. U. S. *v.* Torrey Cedar Co., 154 Fed. 263, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 369.

371. 3. See Merrill *v.* American Baptist Missionary Union, 73 N. H. 414, 62 Atl. 647.

372. 1. Ackerman *v.* Ackerman, 34 Pa. Super. Ct. 162.

2. Rhodes *v.* Bouldry, 138 Mich. 144, 101 N. W. 206, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371.

3. Merrill *v.* American Baptist Missionary Union, 73 N. H. 414, 62 Atl. 647.

373. 1. **Dying Without Issue "Living at Time of Decease" Means Definite Failure.** — Beckley *v.* Riegert, 212 Pa. St. 91, 61 Atl. 641.

374. 1. Beckley *v.* Riegert, 212 Pa. St. 91, 61 Atl. 641.

376. 1. **Converted into Fee-simple Estate.** — Edins *v.* Murphree, 142 Ala. 617, 38 So. 639; Lamb *v.* Medsker, 35 Ind. App. 662, 74 N. E. 1012; Edwards *v.* Walesby, (Ky. 1906) 98 S. W. 306; Hall *v.* Moore, (Ky. 1907) 105 S. W. 414; Handy *v.* Harris, (Ky. 1907) 105 S. W. 378; Watkins *v.* Pfeiffer, (Ky. 1906) 92 S. W. 562; Young *v.* Amburgy, (Ky. 1905) 87 S. W. 802; Sessoms *v.* Sessoms, 144 N. Car. 121, 56 S. E. 687; Beckley *v.* Riegert, 212 Pa. St. 91, 61 Atl. 641; Hastings *v.* Engle, 217 Pa. St. 419, 66 Atl. 761; Speight *v.* Askins, 118 Tenn. 749, 102 S. W. 74. See also Adair *v.* Adair, (Ky. 1907) 99 S. W. 925; Jones *v.* Carlin, (Ky. 1906) 96 S. W. 885; Smith *v.* Courtnay, (Ky. 1905) 85 S. W. 1101.

Life Estate to First Donee and Fee Simple to Issue. — Wheelock *v.* Simons, 75 Ark. 19, 86 S. W. 830; Teel *v.* Dunnihoo, 221 Ill. 471, 77 N. E. 906. And see Gannon *v.* Pauk, 200 Mo. 75, 98 S. W. 471.

Fee Tail Estate Conflicts with Public Policy. — Merrill *v.* American Baptist Missionary Union, 73 N. H. 414, 62 Atl. 647.

Rhode Island Statute. — Under the *Rhode Island* statute, any person seized of an estate in fee tail, has the right to convey the same in fee simple. Paine *v.* Sackett, 27 R. I. 300, 61 Atl. 753.

377. 3. **Life Estate in Personalty.** — Webb *v.* Webb, 130 Iowa 457, 104 N. W. 438; Westminster College *v.* Dimmitt, 113 Mo. App. 41, 87 S. W. 536.

378. 5. Jones *v.* Carlin, (Ky. 1906) 96 S. W. 885.

6. **In Delaware,** prior to the enactment of the statute of 1849, a devise of real estate in a will, without words of limitation, carried a life estate. *In re* Reed, (Del. 1906) 64 Atl. 822.

379. 6. Weigel *v.* Green, 218 Ill. 227, 75 N. E. 913.

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387. 1 Fifer *v.* Rachels, 37 Ind. App. 275, 76 N. E. 186; Madson *v.* Spokane Valley Land, etc., Co., 40 Wash. 414, 82 Pac. 718.

388. 4. Doullut *v.* Smith, 117 La. 491, 41 So. 913, 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 388.

5. Clark *v.* Lyster, (C. C. A.) 155 Fed. 513; Haun *v.* Martin, 48 Oregon 304, 86 Pac. 371; Schwab *v.* Edge, 214 Pa. St. 602, 64 Atl. 80; J. C. Stevenson Co. *v.* Bethea, (S. Car. 1908) 61 S. E. 99; Berry *v.* Fishburne, 104 Va. 459, 51 S. E. 827.

The Burden of Proving estoppel is upon the person setting it up. Jos. Schlitz Brewing Co. *v.* Grimmon, 28 Nev. 235, 81 Pac. 43.

389. 1. **A Public Officer** is not estopped from disputing the verity of his own official act. Barber Asphalt Paving Co. *v.* O'Brien, (Mo. App. 1908) 107 S. W. 25.

390. 1. *England.* — Sanders *v.* Hamilton, 96 L. T. N. S. 679.

Canada. — Mumford *v.* Acadia Powder Co., 37 Nova Scotia 375.

United States. — South Penn Oil Co. *v.* Calf Creek Oil, etc., Co., 140 Fed. 507.

Connecticut. — Fair Haven, etc., R. Co. *v.* New Haven, 77 Conn. 667, 60 Atl. 651; Dime Sav. Bank *v.* McAlenney, 78 Conn. 208, 61 Atl. 476; Thomas *v.* Young, 79 Conn. 493, 65 Atl. 955.

Georgia. — Walden *v.* Walden, 128 Ga. 126, 57 S. E. 323.

Illinois. — Kennedy *v.* Afdal, 229 Ill. 295, 82 N. E. 291.

Iowa. — Mason *v.* Iowa Cent. R. Co., 131 Iowa 468, 109 N. W. 1; Barto *v.* Harrison, (Iowa 1908) 116 N. W. 317.

Kentucky. — Haddix *v.* Fairchild, (Ky. 1905) 89 S. W. 171.

Louisiana. — A compromise settles all points of dispute as effectually as a judgment and will operate as estoppel. Pharr *v.* Coudroy, 118 La. 499, 43 So. 76.

Missouri. — Ault *v.* Bradley, 191 Mo. 709, 90 S. W. 775; Haughawout *v.* Royse, 122 Mo. App. 72, 98 S. W. 101; St. Francis Mill Co. *v.* Sugg, 206 Mo. 148, 104 S. W. 45.

Nebraska. — State *v.* Several Parcels of Land, (Neb. 1908) 116 N. W. 40.

New Jersey. — Baltimore, etc., R. Co. *v.* Bouvier, 70 N. J. Eq. 158, 62 Atl. 868.

New York. — *In re* Froelich, 122 N. Y. App. Div. 440, 107 N. Y. Supp. 173; De Kohly *v.* Murrell, (Supm. Ct. Tr. T.) 58 Misc. (N. Y.) 24, 110 N. Y. Supp. 398.

Pennsylvania. — Long *v.* Lebanon Nat. Bank, 211 Pa. St. 165, 60 Atl. 556; Carpenter *v.* Lancaster, 212 Pa. St. 581, 61 Atl. 1113; *In re* Alexander, 214 Pa. St. 369, 63 Atl. 799; Camden Nat. Bank *v.* Fries Breslin Co., 214 Pa. St. 395, 63 Atl. 1022; *In re* Real Estate Invest. Co., 218 Pa. St. 292, 67 Atl. 457.

Rhode Island. — Stillman *v.* Gorman, (R. I. 1908) 69 Atl. 601.

Texas. — Townsend *v.* Scurlock, (Tex. Civ. App. 1906) 99 S. W. 123.

Vermont. — Belheumer *v.* Thomas, 78 Vt. 279, 62 Atl. 719.

Wisconsin. — Pereles *v.* Gross, 126 Wis. 122, 105 N. W. 217.

A Divorce Decree of Foreign Tribunal does not estop a party. Percival *v.* Percival, 106 N. Y. App. Div. 111, 94 N. Y. Supp. 909.

391. 4. Estoppel Does Not Lie Against Defunct Corporation. — Crossman *v.* Vivienda Water Co., 150 Cal. 575, 89 Pac. 335.

392. 3. *Alabama.* — Choate *v.* Southern R. Co., 143 Ala. 316, 39 So. 218.

Colorado. — Larsh *v.* Boyle, 36 Colo. 18, 86 Pac. 1000.

Georgia. — Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701.

Illinois. — Ingraham *v.* Brown, 231 Ill. 256, 83 N. E. 156.

Indiana. — Indiana Union Traction Co. *v.* Dick, (Ind. App. 1907) 81 N. E. 617.

Iowa. — Carrigg *v.* Mechanics' Sav. Bank, (Iowa 1907) 111 N. W. 329; Barringer *v.* Davis, (Iowa 1907) 112 N. W. 208; Savoie *v.* Savoie, 134 Iowa 672, 112 N. W. 162.

Kentucky. — Galbaugh *v.* Rouse, (Ky. 1907) 104 S. W. 959.

Maryland. — Lawson *v.* Mullinix, 104 Md. 156, 64 Atl. 938; Potomac Dredging Co. *v.* Smoot, (Md. 1908) 69 Atl. 507.

New York. — Goggin *v.* Manhattan R. Co., 124 N. Y. App. Div. 644, 109 N. Y. Supp. 83.

North Carolina. — Walker *v.* Taylor, 144 N. Car. 175, 56 S. E. 877.

Oregon. — Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286.

Washington. — Sylvester *v.* State, (Wash. 1907) 91 Pac. 15; Rohrer *v.* Rohrer, 40 Wash. 259, 82 Pac. 289.

West Virginia. — Williams *v.* Virginia-Pocahontas Coal Co., 60 W. Va. 239, 53 S. E. 923.

No Estoppel Created by Quitclaim Deed. — Bryan *v.* Eason, (N. Car. 1908) 61 S. E. 71.

4. Mascarel *v.* Mascarel, 3 Cal. App. 501, 86 Pac. 617; Estill *v.* Francis, (Ky. 1905) 89 S. W. 172; Cope *v.* Blount, 99 Tex. 431, 90 S. W. 868; Cope *v.* Blount, (Tex. Civ. App. 1905) 91 S. W. 615.

Contra. — See Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 320.

5. *Illinois.* — Coleman *v.* Coleman, 216 Ill. 261, 74 N. E. 701; Jolly *v.* Graham, 222 Ill. 550, 78 N. E. 919; Coal Belt Electric R. Co. *v.* Peabody Coal Co., 220 Ill. 164, 82 N. E. 627.

Indiana. — Hornet *v.* Dumbeck, 39 Ind. App. 482, 78 N. E. 691, holding that a person is not estopped by a deed under which he never claimed possession.

Kentucky. — Malone *v.* Lebus, (Ky. 1906) 96 S. W. 519.

Louisiana. — Cain *v.* Bauman, 118 La. 82, 42 So. 654. *Contra,* Frederick *v.* Goodbee, (La. 1908) 45 So. 606.

Missouri. — *Compare* Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

North Carolina. — Beaufort County Lumber Co. *v.* Price, 144 N. Car. 50, 56 S. E. 684; Eames *v.* Armstrong, (N. Car. 1907) 59 S. E. 165; Sutton *v.* Jenkins, (N. Car. 1908) 60 S. E. 643.

North Dakota. — Brynjolfson *v.* Dagner, 15 N. Dak. 332, 109 N. W. 320.

Texas. — Jones *v.* Neal, (Tex. Civ. App. 1906) 98 S. W. 417; Pinckney *v.* Young, (Tex. Civ. App. 1908) 107 S. W. 622.

Washington. — *Compare* Carroll *v.* Hill Tract Imp. Co., 44 Wash. 569, 87 Pac. 835.

A grantor is not estopped by his warranty deed from asserting his right to an easement. Empire Bridge Co. *v.* Larkin Soap Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 1062.

7. Chretien *v.* Giron, 115 La. 25, 38 So. 881, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 392; Ackerman *v.* Larner, 116 La. 101, 40 So. 581; Tappan *v.* Huntington, 97 Minn. 31, 106 N. W. 98; Schmidt *v.* Olympia Light, etc., Co., (Wash. 1907) 90 Pac. 212, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 392.

393. 4. See Tyler *v.* Currier, 147 Cal. 31, 81 Pac. 310.

394. 2. Goodwin *v.* Fall, 102 Me. 359, 66 Atl. 727, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 394.

3. Goodwin *v.* Fall, 102 Me. 353, 66 Atl. 727, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 394.

4. Reaves *v.* Meredeth, 120 Ga. 727, 48 S. E. 199.

5. *In re* Thompson, 140 Fed. 257, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 394.

8. De Laval Separator Co. *v.* Vermont Farm Mach. Co., (C. C. A.) 135 Fed. 772; Jolly *v.* Graham, 222 Ill. 550, 78 N. E. 919; Jones *v.* Jones, 119 La. 677, 44 So. 429; Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791; Featherston *v.* Merrimon, (N. Car. 1908) 61 S. E. 675; George *v.* Brandon, 214 Pa. St. 623, 64 Atl. 371; Pond *v.* Pond, 79 Vt. 352, 65 Atl. 97.

9. Spears *v.* Conley, (Ky. 1905) 87 S. W. 1072; Rash *v.* Hart, (Ky. 1905) 89 S. W. 192; Chevalley *v.* Pettit, 115 La. 407, 39 So. 113; Dee *v.* Nachbar, 207 Mo. 680, 106 S. W. 35; Mars *v.* Morris, (Tex. Civ. App. 1907) 106 S. W. 430.

The Obligation Created by Estoppel. — Smith *v.* Oregon Short Line R. Co., 30 Utah 246, 84 Pac. 108.

395. 2. Griffis *v.* Connersville First Nat. Bank, 168 Ind. 546, 81 N. E. 490.

396. 6. Salyer *v.* Johnson, (Ky. 1908) 107 S. W. 210.

8. Walker *v.* U. S., 139 Fed. 409.

Estoppel against Government or Municipality. — Little Rock R., etc., Co. *v.* North Little Rock, 76 Ark. 48, 88 S. W. 826; People *v.* Wieboldt, (Ill. 1908) 84 N. E. 647; Palmer *v.* Jones, 188 Mo. 163, 85 S. W. 1113; Missouri River Telephone Co. *v.* Mitchell, (S. Dak. 1908) 116 N. W. 67; Chicago, etc., R. Co. *v.* Douglas Co., (Wis. 1908) 114 N. W. 511.

397. 1. Park Com'rs *v.* Taylor, 133 Iowa 453, 108 N. W. 927; Com. *v.* Rosenfield, 118 Ky. 374, 80 S. W. 1178, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 397; State *v.* Johraus, 117 La. 286, 41 So. 575; Providence *v.* Comstock, 27 R. I. 537, 65 Atl. 307; State *v.* Coughran, 19 S. Dak. 271, 103 N. W. 31.

398. 4. C. W. Zimmerman Mfg. Co. *v.* Wilson, 147 Ala. 275, 40 So. 575.

400. 2. Schmitt *v.* Traphagen, (N. J. 1908) 69 Atl. 189.

3. McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988; Lyons *v.* Lawrence, 118 La. 461, 43 So. 51; Capen *v.* Sheldon, 78 Vt. 39, 61 Atl. 864.

4. Oregon Short Line R. Co. *v.* Quigley, 10 Idaho 784, 80 Pac. 401, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 400.

6. *Connecticut.* — Mueller *v.* Rhein, (Conn. 1907) 66 Atl. 770.

Georgia. — Hatton *v.* Brown, 1 Ga. App. 747, 57 S. E. 1044; U. S. Fidelity, etc., Co. *v.* Murphy, (Ga. App. 1908) 60 S. E. 831.

Illinois. — Van Dorn *v.* Anderson, 219 Ill. 32, 76 N. E. 53; Washington Park Club *v.* Chicago, 219 Ill. 323, 76 N. E. 383.

Indiana. — McAdams *v.* Bailey, (Ind. 1907) 82 N. E. 1057.

Iowa. — Doolittle *v.* Murray, 134 Iowa 536, 111 N. W. 999.

Minnesota. — Bradley Estate Co. *v.* Bradley, 97 Minn. 161, 106 N. W. 110; Bell *v.* Kirkland, (Minn. 1907) 113 N. W. 271.

Missouri. — McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997; Smith *v.* Rogers, 191 Mo. 334, 90 S. W. 1150.

Nebraska. — U. S. Fidelity, etc., Co. *v.* McLaughlin, (Neb. 1906) 109 N. W. 390.

New Jersey. — Hauser *v.* Ryan, 73 N. J. L. 274, 63 Atl. 4.

New York. — *In re* Robinson, (Surrogate Ct.) 53 Misc. (N. Y.) 205, 104 N. Y. Supp. 599; Altman *v.* McMillin, 115 N. Y. App. Div. 234, 100 N. Y. Supp. 970.

7. Chicago, etc., R. Co. *v.* Abbott, 215 Ill. 416, 74 N. E. 412.

No Estoppel as to Third Persons. — Weigel *v.* Green, 218 Ill. 227, 75 N. E. 913.

401. 1. Weigel *v.* Green, 218 Ill. 227, 75 N. E. 913.

402. 2. Swain *v.* Schonleben, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 223; Hoy *v.* Hubbell, 125 N. Y. App. Div. 60, 109 N. Y. Supp. 301; Corsicana *v.* Anderson, 33 Tex. Civ. App. 596, 78 S. W. 261, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 402.

3. Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371.

7. Reinhalter *v.* Hutchins, 26 R. I. 592, 60 Atl. 234, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 402.

403. 1. Reinhalter *v.* Hutchins, 26 R. I. 592, 60 Atl. 234, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 403.

2. Davis *v.* Denham, 145 Ala. 247, 40 So. 277; Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609; Tabler *v.* Peverill, 4 Cal. App. 671, 88 Pac. 994; McAdams *v.* Bailey, (Ind. 1907) 82 N. E. 1057; Whitley *v.* Johnson, (Iowa 1907) 113 N. W. 550; Tucker *v.* Tucker, 122 N. Y. App. Div. 308, 106 N. Y. Supp. 713; Weeks *v.* Wilkins, 139 N. Car. 215, 51 S. E. 909; Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286; George *v.* Brandon, 214 Pa. St. 623, 64 Atl. 371; Lowry *v.* Carter, (Tex. Civ. App. 1907) 102 S. W. 930; J. M. Guffey Petroleum Co. *v.* Hooks, (Tex. Civ. App. 1907) 106 S. W. 690.

Conveyance must be by warranty deed to affect after-acquired title. Pence *v.* Long, 38 Ind. App. 63, 77 N. E. 961.

3. Caldwell *v.* New York, etc., R. Co., 111 N. Y. App. Div. 164, 97 N. Y. Supp. 588.

405. 2. Cooper *v.* Burns, 133 Fed. 398; New England Mortg. Security Co. *v.* Fry, 143 Ala. 637, 42 So. 57; Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609; Broadway *v.* Sidway, 84 Ark. 527, 107 S. W. 163; Fox *v.* Three States Lumber Co., (Ark. 1908) 108 S. W. 1137; McAdams *v.* Bailey, (Ind. App. 1907) 80 N. E. 171; Wells *v.* Blackman, (La. 1908) 46 So. 437; Lowry *v.* Carter, (Tex. Civ. App. 1907) 102 S. W. 930; People's Sav. Bank *v.* Lewis, 37 Wash. 344, 79 Pac. 932; Blake *v.* O'Neal, (W. Va. 1908) 61 S. E. 410.

409. 2. Tabler *v.* Peverill, 4 Cal. App. 671, 88 Pac. 994; Mason *v.* Peaks, (Me. 1908) 69 Atl. 690; Olmstead *v.* Tracy, 145 Mich. 299, 108 N. W. 649; Beaufort County Lumber Co. *v.* Price, 144 N. Car. 50, 56 S. E. 684.

411. 1. New England Mortg. Security Co. *v.* Fry, 143 Ala. 637, 42 So. 57; Chapman *v.* Sault Ste. Marie, 146 Mich. 23, 109 N. W. 53; Bradley Estate Co. *v.* Bradley, 97 Minn. 161, 106 N. W. 110, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 410, 411; People's Sav. Bank *v.* Lewis, 37 Wash. 344, 79 Pac. 932.

3. Vendor in Conditional Sale Not Estopped

from Asserting Title. — Watts *v.* Ainsworth, 89 Miss. 40, 42 So. 672.

412. 4. Ross *v.* Guentherodt, 142 Mich. 634, 105 N. W. 1120; Lee *v.* Livingston, 143 Mich. 203, 106 N. W. 713.

413. 6. Bland *v.* Windsor, 187 Mo. 108, 86 S. W. 162.

414. 2. George *v.* Brandon, 214 Pa. St. 623, 64 Atl. 371.

418. 1. Broadway *v.* Sidway, 84 Ark. 527, 107 S. W. 163; Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609; Barringer *v.* Davis, (Iowa 1907) 112 N. W. 208; New Orleans *v.* Riddell, 113 La. 1051, 37 So. 966; Chapman *v.* Sault Ste. Marie, 146 Mich. 23, 109 N. W. 53; Dickson *v.* Sledge, (Miss. 1905) 38 So. 673; Buchanan *v.* Harrington, 141 N. Car. 39, 53 S. E. 478; Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286; Bernardy *v.* Colonial, etc., Mortg. Co., (S. Dak. 1905) 105 N. W. 737; Lowry *v.* Carter, (Tex. Civ. App. 1907) 102 S. W. 930; Yock *v.* Mann, 57 W. Va. 187, 49 S. E. 1019.

419. 1. Chevalley *v.* Pettit, 115 La. 407, 39 So. 113.

421. 2. Marine Iron Works *v.* Wiess, (C. C. A.) 148 Fed. 145.

Estoppel *in pais* has no application to the legal title to land in a court of law. Stodenmeyer *v.* Hart, (Ala. 1908) 46 So. 488.

4. *California.* — Niles *v.* Gonzales, 1 Cal. App. 324, 82 Pac. 212.

Connecticut. — Weidemann *v.* Springfield Breweries Co., 78 Conn. 660, 63 Atl. 162.

District of Columbia. — Dangerfield *v.* Williams, 26 App. Cas. (D. C.) 508.

Indiana. — Underwood *v.* Deckard, 34 Ind. App. 198, 70 N. E. 383, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 421.

Indian Territory. — Perry *v.* Farrimond, 5 Indian Ter. 59, 82 S. W. 674, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 421.

Kentucky. — Akers *v.* Shoemaker, (Ky. 1907) 102 S. W. 842.

Louisiana. — Lauve *v.* Wilson, 114 La. 699, 38 So. 522.

Montana. — Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 421.

Nebraska. — Walker *v.* Ehresman, (Neb. 1907) 113 N. W. 218.

New Mexico. — Dye *v.* Crary, 13 N. Mex. 439, 85 Pac. 1038.

New York. — Draper *v.* Oswego County Fire Relief Assoc., 190 N. Y. 12, 82 N. E. 755.

Texas. — Walker *v.* Erwin, (Tex. Civ. App. 1907) 106 S. W. 164.

Canada. — John Abell Co. *v.* Hornby, 15 Manitoba 450.

422. 1. Standard Sanitary Mfg. Co. *v.* Arrott, (C. C. A.) 135 Fed. 750; Clark *v.* Lyster, (C. C. A.) 155 Fed. 513; Bunnell *v.* Bronson, 78 Conn. 679, 63 Atl. 396; Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52; Beechley *v.* Beechley, 134 Iowa 75, 108 N. W. 762; Rihner *v.* Jacobs, (Neb. 1907) 113 N. W. 220; Draper *v.* Oswego County Fire Relief Assoc., 190 N. Y. 12, 82 N. E. 755; Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286; Hickox *v.* Eastman, (S. Dak. 1908) 114 N. W. 706; Kopke *v.* Votaw, (Tex. Civ. App. 1906) 95 S. W. 15; Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

The rule seems to be different as to personalty. Kershaw *v.* Merritt, 194 Mass. 113, 80 N. E. 213.

423. 2. Dutton *v.* Shaw, (Miss. 1905) 38 So. 638. See Young *v.* Droz, 38 Wash. 648, 80 Pac. 810.

424. 2. McCormick Harvesting Mach. Co. *v.* Perkins, (Iowa 1906) 110 N. W. 15; Haugen *v.* Skjervheim, 13 N. Dak. 622, 102 N. W. 311, 11 Am. and Eng. Encyc. of Law (2d ed.) 424.

Burden of Proof. — Howell *v.* Goss, 128 Iowa 569, 105 N. W. 61; Parkins *v.* Missouri Pac. R. Co., (Neb. 1906) 107 N. W. 260; Berry *v.* Fishburne, 104 Va. 459, 51 S. E. 827; Lellman *v.* Mills, 15 Wyo. 149, 87 Pac. 985.

4. Standard Sanitary Mfg. Co. *v.* Arrott, (C. C. A.) 135 Fed. 750; Crosthwaite *v.* Lebus, 146 Ala. 525, 41 So. 853; Pollock *v.* Pegues, 72 S. Car. 47, 51 S. E. 514, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 424 and three preceding paragraphs; Berry *v.* Fishburne, 104 Va. 459, 51 S. E. 827.

5. *Compare* Waldrop *v.* Vaught, 78 Ark. 603, 94 S. W. 53; Weidemann *v.* Springfield Breweries Co., 78 Conn. 660, 63 Atl. 162; Reaves *v.* Meredeth, 123 Ga. 444, 51 S. E. 391; Dechenbach *v.* Rima, 45 Oregon 505, 78 Pac. 666, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 424, 425.

425. 4. Weidemann *v.* Springfield Breweries Co., 78 Conn. 660, 63 Atl. 162; Dechenbach *v.* Rima, 45 Oregon 505, 78 Pac. 666, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 424, 425.

426. 2. Mason *v.* St. Albans Furniture Co., 149 Fed. 898; Whitesell *v.* Strickler, 167 Ind. 602, 78 N. E. 845.

427. 2. McClure *v.* King, (Ky. 1907) 104 S. W. 711.

6. Whittaker *v.* Whittaker, (Ky. 1908) 107 S. W. 284; Carr *v.* McColgan, 100 Md. 462, 60 Atl. 606; Livengood *v.* Stauffer, 31 Pa. Super. Ct. 495.

428. 1. *Compare* Coatsworth *v.* Lehigh Valley R. Co., 115 N. Y. App. Div. 7, 100 N. Y. Supp. 504.

3. *Illinois.* — Frier *v.* Lowe, 232 Ill. 622, 83 N. E. 1083.

Iowa. — Kitchen *v.* Chantland, 130 Iowa 618, 105 N. W. 367. *Compare* Smith *v.* Smith, 132 Iowa 700, 109 N. W. 194.

Kentucky. — Bates *v.* Polly, (Ky. 1906) 97 S. W. 340; Ball *v.* Loughridge, (Ky. 1907) 100 S. W. 275; Frankfort, etc., R. Co. *v.* State Nat. Bank, (Ky. 1907) 102 S. W. 243; Reid *v.* Singer Mfg. Co., (Ky. 1908) 107 S. W. 310.

Maryland. — William S. Wilkens Co. *v.* Baltimore, 103 Md. 293, 63 Atl. 562.

Massachusetts. — United Shoe Machinery Co. *v.* Bresnahan Shoe Machinery Co., (Mass. 1908) 83 N. E. 412; American Circular Loom Co. *v.* Wilson, (Mass. 1908) 84 N. E. 133.

Michigan. — *Compare* Carey *v.* Leonard, 141 Mich. 273, 104 N. W. 581.

Missouri. — Holzhausen *v.* Hoskins, 115 Mo. App. 261, 91 S. W. 410.

New York. — Jayne *v.* Cortland Water

Works Co., 107 N. Y. App. Div. 517, 95 N. Y. Supp. 227.

Rhode Island. — Tefft *v.* Lewis, (R. I. 1905) 60 Atl. 243.

Vermont. — Felton *v.* Chellis, (Vt. 1908) 69 Atl. 149.

429. 1. McKinley *v.* Wilson, (Tex. Civ. App. 1906) 96 S. W. 112; Wisconsin Oak Lumber Co. *v.* Laursen, 126 Wis. 484, 105 N. W. 906.

2. Virginia Iron, etc., Co. *v.* Campbell, (Ky. 1907) 105 S. W. 129; Haun *v.* Martin, 48 Oregon 304, 86 Pac. 371; Crafton *v.* Patrick, 77 S. Car. 420, 58 S. E. 1, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 427–429; Kempner *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 351.

430. 1. Sewell *v.* Norris, 128 Ga. 824, 58 S. E. 637; Haycraft *v.* Duvall, (Ky. 1905) 89 S. W. 543; Wisconsin Oak Lumber Co. *v.* Laursen, 126 Wis. 484, 105 N. W. 906; Huellmantel *v.* Tweddle, 150 Mich. 371, 114 N. W. 212.

2. Morency *v.* Floyd, 2 Alaska 194; Niece *v.* Percy, 29 Ohio Cir. Ct. 219.

3. Roberts *v.* Bodman-Pettit Lumber Co., 84 Ark. 227, 105 S. W. 258; Moore *v.* Scruggs, 131 Iowa 692, 109 N.W. 203; McCormick Harvesting Mach. Co. *v.* Perkins, (Iowa 1906) 110 N. W. 15. *Compare* Hagerty *v.* Goodlad, 70 Kan. 734, 79 Pac. 664; Kempner *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 351. See Rihner *v.* Jacobs, (Neb. 1907) 113 N. W. 220, for distinction between cases where the trust relation is between relatives and arises out of contract, and those where the relation is between strangers and the trust arises *ex maleficio*. *Contra*, Rinaker *v.* Dollar Sav. Fund, etc., Co., 219 Pa. St. 523, 69 Atl. 43.

431. 1. *In re* Dunphy, 147 Cal. 95, 81 Pac. 315; Niles *v.* Gonzales, 1 Cal. App. 324, 82 Pac. 212; Weidemann *v.* Springfield Breweries Co., 78 Conn. 660, 63 Atl. 162; Williams *v.* Ketcham, 37 Ind. App. 506, 77 N. E. 285; Walker *v.* Ehresman, (Neb. 1907) 113 N. W. 218.

2. Marine Iron Works *v.* Wiess, (C. C. A.) 148 Fed. 145; Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52; Rogers *v.* Portland, etc., R. Co., 100 Me. 93, 60 Atl. 713, *citing* 2 [11] Am. and Eng. Encyc. of Law (2d ed.) 431; Stubbs *v.* Franklin, etc., R. Co., 101 Me. 355, 64 Atl. 625; Goodwin *v.* Fall, 102 Me. 353, 66 Atl. 727; Slayton *v.* Horsey, (Tex. Civ. App. 1906) 91 S. W. 799; Webster *v.* State Mut. F. Ins. Co., (Vt. 1908) 69 Atl. 319; Globe Nav. Co. *v.* Maryland Casualty Co., 39 Wash. 299, 81 Pac. 826. *Contra*, Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

432. 1. Standard Sanitary Mfg. Co. *v.* Arrott, (C. C. A.) 135 Fed. 750.

433. 1. *United States.* — Clark *v.* Smallwood, 156 Fed. 409; Griffith *v.* Berkshire Power Co., 158 Fed. 219.

Alabama. — Langley *v.* Andrews, 142 Ala. 665, 38 So. 238; Kanjutzky *v.* Tennessee Coal, etc., Co., (Ala. 1908) 45 So. 676.

Arkansas. — Schenck *v.* Griffith, 74 Ark. 557, 86 S. W. 850.

California. — Baillarge *v.* Clark, 145 Cal. 589, 79 Pac. 268; Verdugo Canon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021.

Connecticut. — Fair Haven, etc., R. Co. *v.* New Haven, 77 Conn. 667, 60 Atl. 651.

Florida. — Mansfield *v.* Johnson, 51 Fla. 239, 40 So. 196.

Illinois. — School Trustees *v.* Wilson, 215 Ill. 352, 74 N. E. 375; Bruner *v.* Hicks, 230 Ill. 536, 82 N. E. 888; Frier *v.* Lowe, 232 Ill. 622, 83 N. E. 1083.

Iowa. — Vorhes *v.* Ackley, 127 Iowa 658, 103 N. W. 998; Lewis *v.* Sherman, 129 Iowa 682, 106 N. W. 183; Beechley *v.* Beechley, 134 Iowa 75, 108 N. W. 762; Wingert *v.* Snouffer, 134 Iowa 97, 108 N. W. 1035; Moore *v.* Scruggs, 131 Iowa 692, 109 N. W. 205; Blake *v.* Miller, (Iowa 1907) 112 N. W. 158.

Kentucky. — Skidmore *v.* Scobee, (Ky. 1905) 85 S. W. 1088; Spears *v.* Conley, (Ky. 1905) 87 S. W. 1072; Ball *v.* Loughridge, (Ky. 1907) 100 S. W. 275.

Louisiana. — Foote *v.* Lahaye, 115 La. 1089, 40 So. 468.

Maryland. — Carmine *v.* Bowen, 104 Md. 198, 64 Atl. 932.

Michigan. — Holmes *v.* Smith, 149 Mich. 327, 112 N. W. 912.

Missouri. — St. Louis Gunning Advertising Co. *v.* Wanamaker, 115 Mo. App. 270, 90 S. W. 737.

Montana. — Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

Nebraska. — Staats *v.* Wilson, (Neb. 1906) 107 N. W. 230.

New Jersey. — Brady *v.* Carteret Realty Co., 67 N. J. Eq. 641, 60 Atl. 938; Morris Canal, etc., Co. *v.* Diamond Mills Paper Co., (N. J. 1906) 64 Atl. 746.

New York. — House *v.* Brilliant, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 432, 92 N. Y. Supp. 325; Webster Realty Co. *v.* Thomas, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 139, 93 N. Y. Supp. 1077; Jackson *v.* Rowe, 106 N. Y. App. Div. 614, 94 N. Y. Supp. 574; Haines *v.* Barber, 113 N. Y. App. Div. 696, 100 N. Y. Supp. 75; Raved *v.* Kibbe, (Supm. Ct. App. T.) 102 N. Y. Supp. 490.

North Carolina. — Weeks *v.* Wilkins, 139 N. Car. 215, 51 S. E. 909; Corinthian Lodge No. 230 *v.* Smith, (N. Car. 1908) 61 S. E. 49.

North Dakota. — Johnson *v.* Erlandson, 14 N. Dak. 518, 105 N. W. 722.

Oregon. — Sharkey *v.* Candiani, 48 Oregon 112, 85 Pac. 219; Oliver *v.* Synhorst, 48 Oregon 292, 86 Pac. 376; Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286; Columbia Land Co. *v.* Van Dusen Invest. Co., (Oregon 1907) 91 Pac. 469.

Pennsylvania. — Pittsburg Valve, etc., Co. *v.* Klingelhofer, 210 Pa. St. 513, 60 Atl. 161; Garvey *v.* Harbison-Walker Refractories Co., 213 Pa. St. 177, 62 Atl. 778.

Rhode Island. — *Compare* Providence *v.* Comstock, 27 R. I. 537, 65 Atl. 307.

Texas. — Harmon *v.* Leberman, (Tex. Civ. App. 1905) 87 S. W. 203; Victoria *v.* Victoria County, (Tex. Civ. App. 1906) 94 S. W. 368; Guthrie *v.* Lyon, (Tex. Civ. App. 1906) 98 S. W. 432; Metcalfe *v.* Faucher, (Tex. Civ. App. 1907) 99 S. W. 1038.

Utah. — Smith *v.* Oregon Short Line R. Co., 30 Utah 246, 84 Pac. 108.

Vermont. — Pond *v.* Pond, 79 Vt. 352, 65

Atl. 97; Davenport *v.* Crowell, 79 Vt. 419, 65 Atl. 557.

Washington. — Washington L. & T. Co. *v.* Ritz, 37 Wash. 642, 80 Pac. 174; Globe Nav. Co. *v.* Maryland Casualty Co., 39 Wash. 299, 81 Pac. 826, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 433; McDonald *v.* White, (Wash. 1907) 89 Pac. 891.

West Virginia. — Stover *v.* Stover, 60 W. Va. 285, 54 S. E. 350; Ice *v.* Maxwell, (W. Va. 1906) 55 S. E. 899.

The State Will Be Estopped like individuals by its silence, and where for a number of years it has stood by and seen a corporation expend large sums on property it will not be allowed to oust it of its rights and franchises. State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

2. *Alabama.* — Austin *v.* Jones, (Ala. 1906) 41 So. 408; Crosthwaite *v.* Lebus, 146 Ala. 525, 41 So. 853.

Arkansas. — Black *v.* Baskins, 75 Ark. 382, 87 S. W. 647; Schenck *v.* Griffith, 74 Ark. 557, 86 S. W. 850.

California. — Tyler *v.* Currier, 147 Cal. 31, 81 Pac. 319.

Connecticut. — Weidemann *v.* Springfield Breweries Co., 78 Conn. 660, 63 Atl. 162.

Georgia. — Garbutt *v.* Mayo, 128 Ga. 269, 57 S. E. 495.

Illinois. — Clark *v.* Harper, 215 Ill. 24, 74 N. E. 61; Gallagher *v.* Northrup, 215 Ill. 563, 74 N. E. 711.

Indiana. — Zuelly *v.* Casper, 37 Ind. App. 186, 76 N. E. 646; Williams *v.* Ketcham, 37 Ind. App. 506, 77 N. E. 285; Clarke *v.* Darr, 168 Ind. 101, 80 N. E. 19.

Iowa. — Jordan *v.* Cathcart, 126 Iowa 600, 102 N. W. 510; Busby *v.* Busby, (Iowa 1908) 114 N. W. 559; Platner *v.* Kirby, (Iowa 1908) 115 N. W. 1032.

Kansas. — Comstock *v.* Robertson, 72 Kan. 465, 83 Pac. 1104; Detweiler *v.* Swartley, 74 Kan. 855, 86 Pac. 141.

Kentucky. — Fox *v.* Commercial Press Co., (Ky. 1905) 88 S. W. 1063; Sparks *v.* Howard, (Ky. 1906) 97 S. W. 1105.

Maine. — Chase *v.* Cochran, (Me. 1907) 67 Atl. 320.

Mississippi. — Dickson *v.* Sledge, (Miss. 1905) 38 So. 673; Ligon *v.* Barton, 88 Miss. 135, 40 So. 555.

Missouri. — Missouri Real Estate Syndicate *v.* Sims, 121 Mo. App. 156, 98 S. W. 783.

Nebraska. — Lincoln *v.* McLaughlin, (Neb. 1907) 112 N. W. 363; Walker *v.* Ehresman, (Neb. 1907) 113 N. W. 218.

New Jersey. — Mayer *v.* Kane, 69 N. J. Eq. 733, 61 Atl. 374.

New York. — Draper *v.* Oswego County Fire Relief Assoc., 190 N. Y. 12, 82 N. E. 755.

North Carolina. — Battery Park Bank *v.* Western Carolina Bank, 138 N. Car. 467, 50 S. E. 848.

Oregon. — Katz *v.* Obenchain, 48 Oregon 352, 85 Pac. 617.

Texas. — Walker *v.* Erwin, (Tex. Civ. App. 1907) 106 S. W. 164; Herman *v.* Dunman, (Tex. Civ. App. 1906) 95 S. W. 80.

Utah. — Smith *v.* Oregon Short Line R. Co., 30 Utah 246, 84 Pac. 108.

Vermont. — Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888.

Virginia. — Davis *v.* Owen, 107 Va. 283, 58 S. E. 581.

Washington. — Barto *v.* Davis, 37 Wash. 186, 79 Pac. 623.

West Virginia. — Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

Wyoming. — Demars *v.* Hickey, 13 Wyo. 371, 80 Pac. 521, 13 Wyo. 376, *affirmed on rehearing* 81 Pac. 705.

3. Hasty *v.* Hampton Stave Co., 80 Ark. 405, 97 S. W. 675; Rogers *v.* Portland, etc., R. Co., 100 Me. 86, 60 Atl. 713; Scottish-American Mortg. Co. *v.* Bunckley, 88 Miss. 641, 41 So. 502, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 433, 434; Globe Nav. Co. *v.* Maryland Casualty Co., 39 Wash. 307, 81 Pac. 826, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 433.

134. 3. Scottish-American Mortg. Co. *v.* Bunckley, 88 Miss. 641, 41 So. 502, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 433, 434.

4. Peyton *v.* Stephens, (Ga. 1908) 60 S. E. 563; Hier *v.* Harpster, (Kan. 1907) 90 Pac. 817, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 434; Wells *v.* Blackman, (La. 1908) 46 So. 437. *Contra,* Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

6. *United States.* — Clark *v.* Lyster, (C. C. A.) 155 Fed. 513.

California. — Verdugo Canon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021.

Georgia. — Summerford *v.* Davenport, 126 Ga. 153, 54 S. E. 1025; Sewell *v.* Norris, 128 Ga. 824, 58 S. E. 637; McSwain *v.* Ricketson, 129 Ga. 176, 58 S. E. 655.

Illinois. — Smith *v.* Hollenbeck, 231 Ill. 484, 83 N. E. 206.

Indiana. — Williams *v.* Ketcham, 37 Ind. App. 506, 77 N. E. 285.

Iowa. — Jordan *v.* Cathcart, 126 Iowa 600, 102 N. W. 510; De Laval Separator Co. *v.* Sharpless, 134 Iowa 28, 111 N. W. 438; Busby *v.* Busby, (Iowa 1908) 114 N. W. 559.

Maine. — Rogers *v.* Portland, etc., R. Co., 100 Me. 86, 60 Atl. 713.

Michigan. — Blount *v.* Eames, 150 Mich. 35, 113 N. W. 589.

Nebraska. — Walker *v.* Ehresman, (Neb. 1907) 113 N. W. 218.

New Jersey. — Adams *v.* Schmidtt, 68 N. J. L. 168, 60 Atl. 345.

New York. — People *v.* Voorhies, 114 N. Y. App. Div. 351, 99 N. Y. Supp. 918.

Oregon. — Sharkey *v.* Candiani, 48 Oregon 112, 85 Pac. 219.

Pennsylvania. — Hoyt *v.* Kingston Coal Co., 212 Pa. St. 205, 61 Atl. 885; Brandmeir *v.* Pond Creek Coal Co., 219 Pa. St. 19, 67 Atl. 951.

Washington. — Barto *v.* Davis, 37 Wash. 186, 79 Pac. 623.

West Virginia. — Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

135. 1. One who assumed dominion over land and put his vendee in possession of it is estopped to deny that he ever acquired possession of it himself. Broussard *v.* Guidry, 114 La. 913, '38 So. 616.

136. 1 Gulf Coal, etc., Co. *v.* Alabama Coal, etc., Co., 145 Ala. 228, 40 So. 397; Eastwood *v.* Standard Mines, etc., Co., 11 Idaho 202, 81 Pac. 382, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 435 [and 436]; Cornish *v.* Woolverton, 32 Mont. 456, 81 Pac. 4; Mausert *v.* Christian Feigenspan, (N. J. 1905) 64 Atl. 801; Tucker *v.* Tucker, 72 S. Car. 295, 51 S. E. 876; Crafton *v.* Patrick, 77 S. Car. 420, 58 S. E. 1.

4. Eastwood *v.* Standard Mines, etc., Co., 11 Idaho 202, 81 Pac. 382; Rogers *v.* Portland, etc., St. R. Co., 100 Me. 94, 60 Atl. 713, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436.

5. *United States.* — Cooper *v.* Brazelton, (C. C. A.) 135 Fed. 476; Clark *v.* Lyster, (C. C. A.) 155 Fed. 513; Marine Iron Works *v.* Wiess, (C. C. A.) 148 Fed. 145; Griffith *v.* Berkshire Power Co., 158 Fed. 219; Taber Lumber Co. *v.* O'Neal, (C. C. A.) 160 Fed. 596.

Alabama. — Alabama G. S. R. Co. *v.* Prouty, (Ala. 1906) 43 So. 352; Austin *v.* Jones, (Ala. 1906) 41 So. 408; Chandler *v.* Higgins, (Ala. 1905) 39 So. 576.

Arkansas. — Skillern *v.* Arkansas Woolen Mills, (Ark. 1905) 91 S. W. 303; Ames *v.* Ames, 80 Ark. 8, 96 S. W. 144; Rhodes *v.* Cissel, 82 Ark. 367, 101 S. W. 758; Moore *v.* Charles F. Luehrmann Hardwood Lumber Co., 82 Ark. 485, 102 S. W. 385; Dutch Creek Lumber Co. *v.* Damon, (Ark. 1907) 103 S. W. 183; Hyatt *v.* Bell, 83 Ark. 360, 103 S. W. 748; Woods *v.* Hayes, (Ark. 1908) 107 S. W. 387.

California. — Bashore *v.* Parker, 146 Cal. 525, 80 Pac. 707; *In re* Dunphy, 147 Cal. 95, 81 Pac. 315; Southside Imp. Co. *v.* Burson, 147 Cal. 401, 81 Pac. 1107; Kellam *v.* Brode, 1 Cal. App. 315, 82 Pac. 213; Russell-Vail Engineering Co. *v.* Kirby, 1 Cal. App. 707, 82 Pac. 1078; Gates *v.* Quong, 3 Cal. App. 443, 85 Pac. 662; Verdugo Canon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021.

Connecticut. — Newton *v.* Hamden, 79 Conn. 237, 64 Atl. 229.

Georgia. — Clark *v.* Havard, 122 Ga. 273, 50 S. E. 108; Walker *v.* Hillyer, 124 Ga. 857, 53 S. E. 313; Summerford *v.* Davenport, 126 Ga. 153, 54 S. E. 1025; Booker *v.* Bass, 127 Ga. 133, 56 S. E. 283.

Idaho. — Pennypacker *v.* Latimer, 10 Idaho 618, 81 Pac. 55; Eastwood *v.* Standard Mines, etc., Co., 11 Idaho 202, 81 Pac. 382; Froman *v.* Madden, 13 Idaho 138, 88 Pac. 894.

Illinois. — People *v.* Rhodes, 231 Ill. 270, 83 N. E. 176; People *v.* Wieboldt, (Ill. 1908) 84 N. E. 646; De Moss *v.* Thomas, 118 Ill. App. 467; Gallagher *v.* Northrup, 215 Ill. 563, 74 N. E. 711.

Indiana. — Fifer *v.* Rachels, 37 Ind. App. 275, 76 N. E. 186; Williams *v.* Ketcham, 37 Ind. App. 506, 77 N. E. 285; Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52.

Iowa. — Brown *v.* Armstrong, 127 Iowa 175, 102 N. W. 1047; Blake *v.* Miller, (Iowa 1907) 112 N. W. 158; Wallace *v.* Wallace, (Iowa 1908) 114 N. W. 913.

Kansas. — McKim *v.* Carre, 72 Kan. 461, 83 Pac. 1105; Dent *v.* Smith, (Kan. 1907) 92 Pac. 307, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436.

Kentucky. — Edmiston *v.* Hurley, (Ky. 1907) 99 S. W. 259; Lawson *v.* Fulton First Nat. Bank, (Ky. 1907) 102 S. W. 324; Akers *v.* Shoemaker, (Ky. 1907) 102 S. W. 842; Harris *v.* Ronk, (Ky. 1908) 107 S. W. 341.

Louisiana. — Des Allemands Lumber Co. *v.* Morgan City Timber Co., 117 La. 1, 41 So. 332.

Maine. — Putnam *v.* Grant, (Me. 1906) 63 Atl. 816.

Maryland. — Havre de Grace Real Estate, etc., Co. *v.* Havre de Grace, 102 Md. 33, 61 Atl. 662.

Massachusetts. — Huntress *v.* Hanley, (Mass. 1907) 80 N. E. 946; Rockwell *v.* Kelly, 190 Mass. 439, 77 N. E. 490.

Michigan. — Employers' Liability Assur. Corp. *v.* Grand Rapids Bridge Co., 139 Mich. 351, 102 N. W. 975; Fitzgerald *v.* Thompson Towing, etc., Assoc., 143 Mich. 171, 106 N. W. 853; Nagelspach *v.* Shaw, 146 Mich. 493, 109 N. W. 843; Carlisle *v.* Spain, 147 Mich. 158, 110 N. W. 532; International Text Book Co. *v.* Ohl, 150 Mich. 131, 111 N. W. 768; Major *v.* Brewster, 148 Mich. 623, 112 N. W. 490; Blount *v.* Eames, 150 Mich. 35, 113 N. W. 589; Huellmantel *v.* Tweddle, 150 Mich. 371, 114 N. W. 212.

Mississippi. — Vicksburg Waterworks Co. *v.* J. M. Guffy Petroleum Co., 86 Miss. 60, 38 So. 302.

Missouri. — Cobe *v.* Lovan, 193 Mo. 235, 92 S. W. 93; Martin *v.* Kitchen, 195 Mo. 477, 93 S. W. 780; Hudson *v.* Wright, 204 Mo. 412, 103 S. W. 8; Scharff *v.* McGaugh, 205 Mo. 344, 103 S. W. 550; Keeney *v.* McVoy, 206 Mo. 42, 103 S. W. 946.

Montana. — Finlen *v.* Heinze, 32 Mont. 354, 80 Pac. 918; Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

Nebraska. — Anthes *v.* Schroeder, 74 Neb. 172, 103 N. W. 1072; Home Sav. Bank *v.* Stewart, (Neb. 1907) 110 N. W. 947; Larson *v.* Anderson, 74 Neb. 361, 104 N. W. 925; Walker *v.* Ehresman, (Neb. 1907) 113 N. W. 218.

New Hampshire. — Gunnison *v.* Abbott, 73 N. H. 347, 61 Atl. 589.

New Jersey. — Strong *v.* Smith, 68 N. J. Eq. 686, 60 Atl. 66; General Proprietors, etc., *v.* Force, (N. J. 1906) 68 Atl. 914.

New York. — Riley *v.* Continuous Rail Joint Co., 110 N. Y. App. Div. 787, 97 N. Y. Supp. 283; *In re* Trust, etc., Co., 110 N. Y. App. Div. 529, 97 N. Y. Supp. 405; People *v.* Voorhies, 114 N. Y. App. Div. 351, 99 N. Y. Supp. 918; Dickinson *v.* Blake, 116 N. Y. App. Div. 545, 101 N. Y. Supp. 709; Hoey *v.* Fechtenberg, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 576, 106 N. Y. Supp. 1090.

North Carolina. — Beaufort County Lumber Co. *v.* Price, 144 N. Car. 50, 56 S. E. 684.

North Dakota. — Parsons *v.* McCumber, 14 N. Dak. 213, 103 N. W. 626.

Pennsylvania. — Strong *v.* MacArthur, 212 Pa. St. 477, 61 Atl. 1015; Brandmeir *v.* Pond Creek Coal Co., 219 Pa. St. 19, 67 Atl. 951; Maust *v.* Pennsylvania, etc., St. R. Co., (Pa. 1908) 69 Atl. 80.

South Dakota. — McQueen *v.* Edgemont Bank, (S. Dak. 1906) 107 N. W. 208; Missouri River Telephone Co. *v.* Mitchell, (S. Dak. 1908) 116 N. W. 67.

Texas. — Hughes *v.* Landrum, (Tex. Civ.

App. 1905) 89 S. W. 85; Slayton *v.* Horsey, (Tex. Civ. App. 1906) 91 S. W. 799; Ross *v.* Moskowitz, (Tex. Civ. App. 1906) 95 S. W. 86; Pye *v.* Commercial Nat. Bank, (Tex. Civ. App. 1906) 97 S. W. 127; Lodwick Lumber Co. *v.* Taylor, (Tex. Civ. App. 1906) 99 S. W. 192; Smith *v.* Landa, (Tex. Civ. App. 1907) 101 S. W. 470; Moore *v.* Price, (Tex. Civ. App. 1907) 103 S. W. 234; Thomason *v.* Oates, (Tex. Civ. App. 1907) 103 S. W. 1114; Mars *v.* Morris, (Tex. Civ. App. 1907) 106 S. W. 430.

Vermont. — Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888; North Troy Graded School Dist. *v.* Troy, (Vt. 1907) 66 Atl. 1033; Webster *v.* State Mut. F. Ins. Co., (Vt. 1908) 69 Atl. 319.

Virginia. — McMurray *v.* Dixon, 105 Va. 605, 54 S. E. 481.

Washington. — Mace *v.* Duffy, 39 Wash. 597, 81 Pac. 1053; Slaght *v.* Northern Pac. R. Co., 39 Wash. 576, 81 Pac. 1062; Hidden *v.* German Sav., etc., Soc., (Wash. 1908) 93 Pac. 668.

West Virginia. — Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

Wisconsin. — McDougald *v.* New Richmond Roller Mills Co., 125 Wis. 121, 103 N. W. 244; Pereles *v.* Gross, 126 Wis. 122, 105 N. W. 217.

No Estoppel Where Act Not Relied On. — Raved *v.* Kibbe, (Supm. Ct. App. T.) 102 N. Y. Supp. 490.

Prompt Acts of Reliance Necessary. — Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

438. **1.** *Alabama.* — Wefel *v.* Stillman, (Ala. 1907) 44 So. 203.

Arkansas. — Batesville Bank *v.* Maxey, 76 Ark. 472, 88 S. W. 968; Hasty *v.* Hampton Stave Co., 80 Ark. 405, 97 S. W. 675.

California. — Baillarge *v.* Clark, 145 Cal. 589, 79 Pac. 268.

Connecticut. — Waterman *v.* Buckingham, 79 Conn. 286, 64 Atl. 212.

Georgia. — Coker *v.* Atlanta, etc., R. Co., 123 Ga. 483, 51 S. E. 481.

Illinois. — Clark *v.* Harper, 215 Ill. 24, 74 N. E. 61; Chicago *v.* Illinois Steel Co., 229 Ill. 303, 82 N. E. 286.

Indiana. — Zuelly *v.* Casper, 37 Ind. App. 186, 76 N. E. 646.

Iowa. — *Compare* Vorhes *v.* Ackley, 127 Iowa 658, 103 N. W. 998; Kitchen *v.* Chantland, 130 Iowa 618, 105 N. W. 367; Lewis *v.* Sherman, 129 Iowa 682, 106 N. W. 183; Biglow *v.* Ritter, 131 Iowa 213, 108 N. W. 218.

Kansas. — Fraser *v.* Seeley, 71 Kan. 169, 79 Pac. 1081.

Kentucky. — Spears *v.* Conley, (Ky. 1905) 87 S. W. 1072; Aultman, etc., Co. *v.* Meade, (Ky. 1905) 89 S. W. 137; Smart *v.* Breckinridge Bank, (Ky. 1906) 90 S. W. 5.

Maine. — Rogers *v.* Portland, etc., R. Co., 100 Me. 86, 60 Atl. 713.

Massachusetts. — Rockwell *v.* Kelly, 190 Mass. 439, 77 N. E. 490.

Montana. — Cornish *v.* Woolverton, 32 Mont. 456, 81 Pac. 4.

New Jersey. — Stevens *v.* Headley, 69 N. J. Eq. 533, 62 Atl. 887; Bidwell *v.* Piercy, (N. J. 1906) 63 Atl. 261; Crane *v.* McMurtrie, (N. J. 1908) 68 Atl. 892.

New Mexico. — Dye *v.* Crary, 13 N. Mex. 439, 85 Pac. 1038.

New York. — Precht *v.* Howard, 110 N. Y. App. Div. 680, 97 N. Y. Supp. 462; Ferretti *v.* Prudential Ins. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 489, 97 N. Y. 1007; People *v.* Edgecomb, 112 N. Y. App. Div. 604, 98 N. Y. Supp. 965; Fagan *v.* McDonnell, 115 N. Y. App. Div. 89, 100 N. Y. Supp. 641.

North Dakota. — Haugen *v.* Skjervheim, 13 N. Dak. 622, 102 N. W. 311; Parsons *v.* McCumber, 14 N. Dak. 213, 103 N. W. 626.

Ohio. — Acklin *v.* Parker, 29 Ohio Cir. Ct. 625.

Oregon. — Oliver *v.* Synhorst, 48 Oregon 292, 86 Pac. 376.

Pennsylvania. — Schwab *v.* Edge, 214 Pa. St. 602, 64 Atl. 80.

Rhode Island. — Ward *v.* New England Southern Conference, 27 R. I. 262, 61 Atl. 651.

Texas. — Lewis *v.* Brown, (Tex. Civ. App. 1905) 87 S. W. 704; Terry *v.* Craft, (Tex. Civ. App. 1905) 87 S. W. 844; Davis *v.* Ragland, (Tex. Civ. App. 1906) 93 S. W. 1099; Lutcher *v.* Allen, (Tex. Civ. App. 1906) 95 S. W. 572; Blackburn *v.* Delta County, (Tex. Civ. App. 1908) 107 S. W. 80.

Utah. — Smith *v.* Oregon Short Line R. Co., 30 Utah 246, 84 Pac. 108.

Vermont. — Webster *v.* State Mut. F. Ins. Co., (Vt. 1908) 69 Atl. 321.

West Virginia. — Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

2. *United States.* — Clark *v.* Smallwood, 156 Fed. 409.

Alabama. — Langley *v.* Andrews, 142 Ala. 665, 38 So. 238; Kanjutzky *v.* Tennessee Coal, etc., Co., (Ala. 1908) 45 So. 676.

Arkansas. — Schenck *v.* Griffith, 74 Ark. 557, 86 S. W. 850; Love *v.* Peel, 79 Ark. 366, 95 S. W. 998.

California. — Baillarge *v.* Clark, 145 Cal. 589, 79 Pac. 268.

Florida. — Mansfield *v.* Johnson, 51 Fla. 239, 40 So. 196.

Illinois. — School Trustees *v.* Wilson, 215 Ill. 352, 74 N. E. 375.

Iowa. — Vorhes *v.* Ackley, 127 Iowa 658, 103 N. W. 998.

Kentucky. — Skidmore *v.* Scobee, (Ky. 1905) 85 S. W. 1088.

Louisiana. — Foote *v.* Lahaye, 115 La. 1089, 40 So. 468.

Maryland. — Carmine *v.* Bowen, 104 Md. 198, 64 Atl. 932.

Montana. — Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

Oregon. — Sharkey *v.* Candiani, 48 Oregon 112, 85 Pac. 219.

Pennsylvania. — Pittsburg Valve, etc., Co. *v.* Klingelhofer, 210 Pa. St. 513, 60 Atl. 161.

Texas. — Harmon *v.* Leberman, (Tex. Civ. App. 1905) 87 S. W. 203.

439. **1.** Dent *v.* Smith, (Kan. 1907) 92 Pac. 307, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 439.

3. Chicago *v.* Illinois Steel Co., 229 Ill. 303, 82 N. E. 286; Burgess *v.* Hixon, 75 Kan. 201, 88 Pac. 1076; Sheffield *v.* Hurst, (Ky. 1907) 104 S. W. 350; Frederic *v.* Mayers, 89 Miss. 127, 43 So. 677; Wheat *v.* Van Tine, 149 Mich. 314, 112 N. W. 933; Blackwell, etc., R. Co. *v.* Gist, 18 Okla. 516, 90 Pac. 889; Victoria *v.* Vic-

toria County, (Tex. Civ. App. 1906) 94 S. W. 368.

6. Western Union Tel. Co. *v.* Schriver, (C. C. A.) 141 Fed. 538; Garden City Stave, etc., Co. *v.* Sims, 84 Ark. 603, 106 S. W. 959; Deen *v.* Williams, 128 Ga. 265, 57 S. E. 427; Equitable Loan, etc., Co. *v.* Lewman, 124 Ga. 197, 52 S. E. 599, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 439; Schwer *v.* Martin, (Ky. 1906) 97 S. W. 12; Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

440. 2. Harle *v.* Texas Southern R. Co., (Tex. Civ. App. 1905) 86 S. W. 1048.

5. Walker *v.* Helms, 84 Ark. 614, 106 S. W. 1170; Oregon Short Line R. Co. *v.* Quigley, 10 Idaho 784, 80 Pac. 401, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 440; Holderman *v.* Holderman, (Ky. 1906) 98 S. W. 277; Lawson *v.* Mullinix, 104 Md. 156, 64 Atl. 938; Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286; Holland *v.* Couts, (Tex. 1906) 98 S. W. 236.

441. 2. North Chicago St. R. Co. *v.* Chicago Union Traction Co., 150 Fed. 612, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 441.

442. 5. Eames *v.* Armstrong, (N. Car. 1907) 59 S. E. 167, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 442.

443. 1. *United States.* — Wallace *v.* Ocean Grove Camp Meeting Assoc., (C. C. A.) 148 Fed. 672.

Alabama. — Sadler *v.* Jefferson, 143 Ala. 669, 39 So. 380; McWhorter *v.* Stein, (Ala. 1905) 39 So. 617; Johns *v.* Anchors, (Ala. 1907) 45 So. 218.

Arkansas. — Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21.

California. — Niles *v.* Gonzales, 1 Cal. App. 324, 82 Pac. 212; Teich *v.* Arms, 5 Cal. App. 475, 90 Pac. 962.

Colorado. — Houck *v.* Williams, 34 Colo. 138, 81 Pac. 800.

Connecticut. — Thomas *v.* Young, 79 Conn. 493, 65 Atl. 955.

District of Columbia. — McFarlane *v.* Kirby, 28 App. Cas. (D. C.) 391.

Florida. — Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687.

Georgia. — Bullard *v.* Hudson, 125 Ga. 393, 54 S. E. 132; Boyd *v.* Kinzy, 127 Ga. 358, 56 S. E. 420.

Indiana. — Caldwell *v.* Boone County, (Ind. App. 1908) 83 N. E. 355.

Iowa. — Beck *v.* Minnesota, etc., Grain Co., 131 Iowa 62, 107 N. W. 1032.

Kentucky. — Smith *v.* Hardwick, (Ky. 1905) 89 S. W. 731; Engle *v.* Tennis Coal Co., (Ky. 1907) 101 S. W. 309.

Louisiana. — Moulierre *v.* Coco, 116 La. 845, 41 So. 113; Campbell *v.* Hart, 118 La. 871, 43 So. 533.

Massachusetts. — Preston *v.* West Beach Corp., 195 Mass. 482, 81 N. E. 253.

Michigan. — Smith *v.* Smith, 144 Mich. 139, 107 N. W. 894.

Minnesota. — Trimble *v.* Lake Superior, etc., Co., 99 Minn. 11, 108 N. W. 867.

Mississippi. — Ladnier *v.* Stewart, (Miss. 1905) 38 So. 748.

Nebraska. — Gies *v.* Storz Brewing Co., 75 Neb. 698, 106 N. W. 775; Hackney *v.* McInnich, (Neb. 1907) 112 N. W. 296.

Nevada. — Jos. Schlitz Brewing Co. *v.* Grimmon, 28 Nev. 235, 81 Pac. 43.

New York. — Miller *v.* Warren, 182 N. Y. 539, 75 N. E. 1131; Gilsey *v.* Keen, 104 N. Y. App. Div. 427, 93 N. Y. Supp. 783; Moore *v.* Gair, 108 N. Y. App. Div. 23, 95 N. Y. Supp. 475; Steuber *v.* Huber, 107 N. Y. App. Div. 599, 95 N. Y. Supp. 348.

North Carolina. — Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201.

Oregon. — Nodine *v.* Richmond, 48 Oregon 527, 87 Pac. 775.

Pennsylvania. — Townsend *v.* Boyd, 217 Pa. St. 386, 66 Atl. 1099; Farmers' Deposit Nat. Bank *v.* Western Pennsylvania Fuel Co., 29 Pa. Super. Ct. 69.

South Carolina. — McCutchen *v.* McCutchen, 77 S. Car. 129, 57 S. E. 678.

Texas. — Cobb *v.* Robertson, 99 Tex. 143, 86 S. W. 746; Tips Foundry, etc., Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 686.

Utah. — Gill *v.* Malan, 29 Utah 431, 82 Pac. 471.

Rule as to Estoppel Against Landlord. — Blackburn *v.* Muskogee Land Co., 6 Indian Ter. 232, 91 S. W. 31.

444. 1. C. W. Zimmerman Mfg. Co. *v.* Dunn, (Ala. 1907) 44 So. 533.

3. Anderson *v.* Messenger, (C. C. A.) 158 Fed. 250; Simmons *v.* Rowe, 4 Cal. App. 752, 89 Pac. 621; Weidemann *v.* Springfield Breweries Co., 78 Conn. 660, 63 Atl. 162; Reinhalter *v.* Hutchins, 26 R. I. 592, 60 Atl. 234; Phelps *v.* Root, 78 Vt. 493, 63 Atl. 941.

7. Castor *v.* Dufur, 133 Iowa 535, 111 N. W. 43; Haycraft *v.* Duvall, (Ky. 1905) 89 S. W. 543; Keating *v.* Wilbert, 119 La. 461, 44 So. 265.

446. 2. Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

6. North Chicago St. R. Co. *v.* Chicago Union Traction Co., 150 Fed. 612; Austin *v.* Jones, (Ala. 1906) 41 So. 408; Steffens *v.* Nelson, 94 Minn. 365, 102 N. W. 871; Interurban Constr. Co. *v.* Hayes, 191 Mo. 248, 89 S. W. 927.

8. *United States.* — Kessler *v.* Ensley Co., 141 Fed. 130; North Chicago St. R. Co. *v.* Chicago Union Traction Co., 150 Fed. 612.

Alabama. — See Murray *v.* Barnes, 146 Ala. 688, 40 So. 348; Wefel *v.* Stillman, (Ala. 1907) 44 So. 203.

Arkansas. — James *v.* Mallory, 76 Ark. 509, 89 S. W. 472; Book *v.* Polk, 81 Ark. 244, 98 S. W. 1049.

Colorado. — Crosby *v.* Woodbury, 37 Colo. 1, 89 Pac. 34.

Georgia. — McSwain *v.* Ricketson, 129 Ga. 176, 58 S. E. 655.

Illinois. — School Trustees *v.* Wilson, 215 Ill. 352, 74 N. E. 375; Falter *v.* Packard, 219 Ill. 356, 76 N. E. 495; Lasher *v.* Colton, 225 Ill. 234, 80 N. E. 122; Sorg *v.* Crandall, (Ill. 1908) 84 N. E. 181.

Iowa. — Parriott *v.* Hampton, 134 Iowa 157, 111 N. W. 440; Knutson *v.* Vidders, 126 Iowa 511, 102 N. W. 433; Little *v.* Sturgis, 127 Iowa 298, 103 N. W. 205; Farmers' Milling Co. *v.* Mill Owners Mut. F. Ins. Co., 127 Iowa 314, 103 N. W. 207; Brown *v.* Pottawattamie County, 129 Iowa 533, 105 N. W. 1010.

Kentucky. — Rash *v.* Hart, (Ky. 1905) 89 S.

W. 192; Fitch *v.* Gentry, (Ky. 1906) 92 S. W. 586; Stine *v.* Goodman, (Ky. 1906) 92 S. W. 612; Sheffield *v.* Hurst, (Ky. 1907) 104 S. W. 350.

Louisiana. — Wood *v.* Noel, 116 La. 516, 40 So. 857.

Massachusetts. — Alexander *v.* Grover, 190 Mass. 462, 77 N. E. 487.

Michigan. — Great Western Smelting, etc., Co. *v.* Evening News Assoc., 139 Mich. 55, 102 N. W. 286; Driggs *v.* Bush, (Mich. 1908) 115 N. W. 985.

Minnesota. — Tozer *v.* Ocean Acc. Corp., 94 Minn. 485, 103 N. W. 509, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 446.

Missouri. — Hubbard *v.* Kansas City Stained Glass Works, etc., Co., 188 Mo. 18, 86 S. W. 82; Barber *v.* Stroub, 111 Mo. App. 57, 85 S. W. 915; Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131; Kansas City *v.* Schroeder, 196 Mo. 281, 93 S. W. 405; McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997.

Nebraska. — Overton First State Bank *v.* Stephens, (Neb. 1905) 105 N. W. 43; Burdick *v.* Sons, etc., of Protection, 75 Neb. 460, 106 N. W. 466; Peterson *v.* Ramsey, (Neb. 1907) 110 N. W. 728; Northup *v.* Bathrick, (Neb. 1907) 113 N. W. 808.

New Jersey. — Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241; General Proprietors, etc., *v.* Force, (N. J. 1906) 68 Atl. 914.

New York. — *In re* Skinner, 106 N. Y. App. Div. 217, 94 N. Y. Supp. 144; Consolidated Fruit Jar Co. *v.* Wisner, 110 N. Y. App. Div. 99, 97 N. Y. Supp. 52; McCoy *v.* McCarty, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 69, 104 N. Y. Supp. 80; *In re* Robinson, (Surrogate Ct.) 53 Misc. (N. Y.) 205, 104 N. Y. Supp. 599; National Metal Edge Box Co. *v.* Gotham, 125 N. Y. App. Div. 101, 109 N. Y. Supp. 450.

Oregon. — Multnomah County *v.* White, 48 Oregon 183, 85 Pac. 78.

South Dakota. — Jackson *v.* Prior Hill Min. Co., 19 S. Dak. 453, 104 N. W. 207.

Texas. — Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49; Murphy *v.* Sisters of the Incarnate Word, (Tex. Civ. App. 1906) 97 S. W. 135; Holland *v.* Couts, (Tex. 1906) 98 S. W. 236.

Washington. — Unzelman *v.* Snohomish, 40 Wash. 588, 82 Pac. 911; Waldron *v.* Snohomish, 41 Wash. 566, 83 Pac. 1106; Nisbet *v.* Great Northern Clay Co., 41 Wash. 107, 83 Pac. 15.

Accepting Benefits under Unconstitutional Statute. — *Compare* McKim *v.* Carre, 72 Kan. 461, 83 Pac. 1105.

447. 1. *England.* — See Bake *v.* French, (1907) 1 Ch. 428.

United States. — *In re* Spalding, 134 Fed. 507; Long *v.* Lockman, 135 Fed. 197.

Colorado. — Paxton *v.* Heron, (Colo. 1907) 92 Pac. 15.

Illinois. — American Car, etc., Co. *v.* Hill, 226 Ill. 227, 80 N. E. 784; Black *v.* Thomson, 120 Ill. App. 424.

Indiana. — State *v.* Clinton County, 166 Ind. 162, 76 N. E. 986; Providence Washington Ins. Co. *v.* Wolf, 168 Ind. 600, 80 N. E. 26.

Iowa. — Wills [illegible] 130 Iowa 525, 105 N. W. 1012; Sioux City *v.* Chicago, etc., R. Co., 129 Iowa 694, 106 N. W. 183; Galt *v.* Provan, 131 Iowa 277, 108 N. W. 760.

Kansas. — *Compare* McKim *v.* Carre, 72 Kan. 461, 83 Pac. 1105; Edwards *v.* Sourbeer, 73 Kan. 224, 84 Pac. 1033.

Kentucky. — Stine *v.* Goodman, (Ky. 1906) 92 S. W. 612.

Louisiana. — Noyes *v.* Noullet, 118 La. 888, 43 So. 539; Caldwell *v.* Morris, (La. 1908) 45 So. 927.

Michigan. — McCarthy *v.* Payne, 141 Mich. 571, 105 N. W. 981; *In re* Ward, (Mich. 1908) 116 N. W. 23.

Missouri. — Reiger *v.* Faber, 116 Mo. App. 123, 92 S. W. 183; Columbia Brewing Co. *v.* Miller, 124 Mo. App. 384, 101 S. W. 711.

Montana. — *In re* Tuohy, 33 Mont. [illegible] Pac. 486.

New Hampshire. — Ayers *v.* Laighton, 73 N. H. 487, 63 Atl. 43.

New York. — Chauvet *v.* Ives, 104 N. Y. App. Div. 303, 93 N. Y. Supp. 744; National Metal Edge Box Co. *v.* Gotham, 125 N. Y. App. Div. 101, 109 N. Y. Supp. 450.

South Dakota. — Everett *v.* Stokes, 19 S. Dak. 242, 103 N. W. 20; *In re* McClellan, (S. Dak. 1906) 107 N. W. 681; Bailey *v.* Wright, (S. Dak. 1907) 112 N. W. 853.

Texas. — Milby *v.* Hester, (Tex. Civ. App. 1906) 94 S. W. 178; Flack *v.* Braman, (Tex. Civ. App. 1907) 101 S. W. 537.

Virginia. — Davis *v.* Davis, 104 Va. 65, 51 S. E. 216.

Washington. — Wees *v.* Page, (Wash. 1907) 91 Pac. 766.

But one is not estopped by allegations unsuccessfully pleaded. Doullut *v.* Smith, 117 La. 491, 41 So. 913.

2. *United States.* — Canton Roll, etc., Co. *v.* Rolling Mill Co., 155 Fed. 321.

California. — Union Lumber Co. *v.* Simon, (Cal. App. 1906) 89 Pac. 1077; Fresno Canal, etc., Co. *v.* Hart, (Cal. 1907) 92 Pac. 1010.

Georgia. — Rich *v.* Fidelity, etc., Co., 126 Ga. 466, 55 S. E. 336.

Kentucky. — Layne *v.* Layne, (Ky. 1906) 90 S. W. 555.

Louisiana. — Ackerman *v.* Larner, 116 La. 101, 40 So. 581; State *v.* Thompson, 116 La. 102, 41 So. 367; Pharr *v.* Coudroy, 118 La. 499, 43 So. 76.

Michigan. — Rausch *v.* Briefer, 138 Mich. 287, 101 N. W. 523, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 447.

New York. — Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695; Prince *v.* Schlesinger, 116 N. Y. App. Div. 500, 101 N. Y. Supp. 1031.

Oregon. — Jennings *v.* Oregon Land Co., 48 Oregon 292, 86 Pac. 367, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 447.

Pennsylvania. — Fidelity Title, etc., Co. *v.* Illinois L. Ins. Co., 213 Pa. St. 415, 63 Atl. 51.

Tennessee. — Grier *v.* Canada, (Tenn. 1907) 107 S. W. 970.

Texas. — *Compare* Carlisle *v.* Gibbs, (Tex. Civ. App. 1906) 98 S. W. 192.

Washington. — Potvin *v.* Denny Hotel Co., 37 Wash. 322, 79 Pac. 940.

448. 1. Agreed Statement of Facts Withdrawn Before Decision Will Not Operate as

Estoppel. — Gentry *v* Poteet, 59 W Va. 408, 53 S. E. 787.

2. Arkadelphia Lumber Co *v.* Asman, 79 Ark. 284, 95 S. W. 134; Kent *v.* Williams, 146 Cal. 3, 79 Pac. 527; Hofacre *v.* Monticello, 128 Iowa 239, 103 N. W. 488; Zimmer *v.* Massie, 117 Mo. App. 344, 93 S. W. 859; Memphis Consol. Gas, etc., Co. *v.* Simpson, 118 Tenn. 532, 103 S. W. 788; Lamar County *v* Talley, (Tex. Civ. App. 1906) 94 S. W. 1069.

6. Union Lumber Co. *v.* Simon, (Cal App. 1906) 89 Pac. 1077; Harrington *v.* Gordon, 42 Wash. 692, 80 Pac. 187.

449. **1.** Statements made by counsel regarding the construction of a paper in arguing a case will not estop his client from contending for a different construction in subsequent litigation. Baker *v.* Davis, 127 Ga. 649, 57 S. E. 62.

2. Booth *v* Lennox, 45 Fla. 191, 34 So. 566, *citing* 11 AM. AND ENG ENCYC OF LAW (2d ed.) 449; Robb *v.* Robb, 134 Iowa 195, 111 N. W. 803; Place *v.* Place, 139 Mich. 509, 102 N W. 996; Latta *v* Catawba Electric, etc., Co., (N. Car 1907) 59 S. E. 1028.

450. **3.** Cleveland Electric R. Co. *v.* Cleveland, 137 Fed 111.

5. State *v.* German Sav. Bank, 103 Md. 196, 63 Atl. 481.

6. Doucette *v.* Baldwin, 194 Mass. 131, 80 N. E 444.

ET AL.

452 **1.** Garrigan *v.* Huntimer, (S. Dak. 1907) 111 N. W. 563.

EVENT.

454. **3. Event Distinguished from Issue.** — Vancouver, etc., R. Co. *v.* Sam Kee, 12 British Columbia 1.

EVICTION.

458. **4.** Delmar Invest. Co. *v.* Blumenfeld, 118 Mo. App. 317, 94 S. W. 823, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 458.

5. Delmar Invest. Co. *v.* Blumenfeld, 118 Mo. App. 317, 94 S. W. 823, *citing* 11 AM. AND ENG ENCYC. OF LAW (2d ed.) 458.

459. **7. A Married Woman Who Remains in Wrongful Possession** after her husband, who originally leased the premises, terminates the tenancy, cannot be evicted, never having had a right to the premises under the lease. Butler *v.* Smith, 121 N. Y. App. Div. 441, 106 N. Y. Supp. 46.

461. **1.** Delmar Invest. Co. *v.* Blumenfeld, 118 Mo. App. 317, 94 S. W. 823, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 461.

462. **1.** Isabella Gold Min. Co. *v.* Glenn, 37 Colo. 165, 86 Pac. 349.

463. **1.** Delmar Invest. Co. *v.* Blumenfeld, 118 Mo. App. 317, 94 S. W. 823, *citing* 11 AM AND ENG ENCYC. OF LAW (2d ed.) 463.

465. **3. Where the Occupation of Another Tenant Rendered the Premises Unfit** for the purpose for which they were leased, there was held to be an eviction despite the fact that the lease provided against any liability of the lessor for acts of cotenants or other occupants. Wade *v.* Herndl, 127 Wis. 544, 107 N. W. 4.

467. **2.** Osmers *v.* Furey, 32 Mont. 581, 81 Pac 345, in which case the facts showed an actual eviction as to part of the premises and a constructive eviction as to the rest.

3. The Erection of a Fence on leased premises and the exclusion of the lessee therefrom work an eviction which the landlord is estopped to deny. Arkley *v.* Union Sugar Co., 147 Cal. 195, 81 Pac. 509.

468. **4. No Eviction by Authorized Termination of Lease.** — Harrison *v.* Jordan, 194 Mass. 496, 80 N. E. 604.

469. **2. Even After the Tenancy Has Expired** there is an eviction under the *Kansas* doctrine where the old tenant is in peaceable possession and the new tenant enters by force. Whitney *v.* Brown, 75 Kan. 678, 90 Pac. 277. See generally the titles FORCIBLE ENTRY AND DETAINER, **756.** 4 *et seq.*; LANDLORD AND TENANT, **433** 3 *et seq.*

471. **6.** Isabella Gold Min. Co. *v.* Glenn, 37 Colo. 165, 86 Pac. 349; Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203; Delmar Invest. Co. *v.* Blumenfeld, 118 Mo. App. 308, 94 S. W. 823, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 471, and *quoting* the whole text paragraph.

472. **2. Failure to Use Proper Safeguards,** owing to which part of the building falls, because of an excavation on adjoining premises, is an eviction. Lindwall *v.* May, 111 N. Y. App. Div. 457, 97 N. Y. Supp. 821.

473. **1. Failure to Furnish Adequate Power for Machinery** used on the leased premises in accordance with an agreement, has been held to constitute a constructive eviction. Myers *v.* Bernstein, (Supm. Ct. App. T.) 104 N. Y. Supp. 348. *Compare, infra,* this title, **476.** 2.

Preventing the Renewal of a License to Sell Liquor on the leased premises by refusing to give written assent to such renewal, and by joining in a protest against the carrying on of the liquor business on adjoining premises, has been held not to be a constructive eviction. Kellogg *v.* Lowe, 38 Wash. 293, 80 Pac. 458.

The Admission of Transients to a Hotel has been held not to constitute an eviction of tenants under lease for a year. Bristol Hotel Co. *v.* Pegram, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 535, 98 N. Y. Supp. 512.

2. Wade *v.* Herndl, 127 Wis. 544, 107 N. W. 4.

474. **1.** Flannery *v.* Simons, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 123, 93 N. Y. Supp. 544; Donovan *v.* Koehler, 119 N. Y. App. Div. 51, 103 N. Y. Supp. 935 (maintenance of a bowling alley under an apartment).

2. Presence of Offensive Odors Not Eviction. — Flannery *v.* Simons, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 123, 93 N. Y. Supp. 544.

475. **3. Voluntary Abandonment by Tenant.** — Where a landlord served three days' written notice to quit, and the tenant moved out without protest before the expiration of his term, it was held not to be an eviction. Greenberg *v.* Murphy, 26 Ohio Cir. Ct. 359.

476. **1. Permitting Sewage and Noxious Gases** to back up into a tenant's bath tub has been

held to constitute an eviction. Krausi *v.* Fife, 120 N. Y. App. Div. 490, 105 N. Y. Supp. 384.

2. Failure to Perform a Covenant to Furnish Adequate Elevator Service has been held not to be an eviction where the tenant's use of the premises was only slightly hampered thereby. Delmar Invest. Co. *v.* Blumenfeld, 118 Mo. App. 317, 94 S. W. 823, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 476.

477. 4. Ernst *v.* Straus, 114 N. Y. App. Div. 19, 99 N. Y. Supp. 597.

Entry to Repair after Abandonment. — An entry by a landlord to make repair after the tenant has abandoned the premises is not an eviction. Smucker *v.* Grinberg, 27 Pa. Super. Ct. 531.

478. 7. November *v.* Wilson, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 533, 97 N. Y. Supp. 980.

479. 1. Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203.

3. Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203; Ernst *v.* Straus, 114 N. Y. App. Div. 19, 99 N. Y. Supp. 597; Kinney *v.* Libbey, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 595, 104 N. Y. Supp. 863.

480. 3. Ernst *v.* Wheatley, (Supm. Ct. App. T.) 93 N. Y. Supp. 1116, holding that remaining in possession for twenty days after damage by a storm amounted to a waiver.

Remaining in Possession Pending the Landlord's Attempts to Remedy the Defects in the premises does not bar the tenant's right of abandonment. Krausi *v.* Fife, 120 N. Y. App. Div. 490, 105 N. Y. Supp. 384.

481. 2. Eck *v.* Tate, (Ala. 1907) 44 So. 384; Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151.

482. 2. Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151.

3. Eck *v.* Tate, (Ala. 1907) 44 So. 384, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 482; Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151.

4. McHugh *v.* Regan, 28 Ohio Cir. Ct. 790, 18 Ohio Cir. Dec. 790, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 482.

EVIDENCE.

488. 2. Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435; Murphy *v.* People, 129 Ill. App. 533.

Either Party Has Right to Introduce Pleadings of Adversary as Evidence in His Favor. — Palmer Transfer Co. *v.* Eaves, (Ky. 1905) 85 S. W. 750.

489. 4. **Pleading Cannot Maintain Contradiction of Things Subject to Judicial Cognizance.** — Rome R., etc., Co. *v.* Keel, (Ga. App. 1908) 60 S. E. 468.

490. 6. Bowman *v.* Little, 101 Md. 273, 61 Atl. 223, 657, 1084.

491. 2. **Proof to Satisfaction of Jury Never Required in Civil Suits.** — Kelley *v.* Malhoit, 115 Ill. App. 23.

7. Hale *v.* Milliken, 5 Cal. App. 344, 90 Pac. 365.

9. *Alabama.* — Eagle Iron Co. *v.* Baugh, 147 Ala. 613, 41 So. 663.

California. — Bashore *v.* Mooney, 4 Cal. App. 276, 87 Pac. 553; McNeill *v.* Stitt, 2 Cal. App. 13, 82 Pac. 1121.

Delaware. — Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569; Reese *v.* Hoffecker, (Del. 1906) 65 Atl. 588; Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Staunton *v.* Smith, (Del. 1906) 65 Atl. 593; Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874.

Illinois. — Chicago Consol. Traction Co. *v.* Schritter, 222 Ill. 364, 78 N. E. 820; Chicago, etc., Electric R. Co. *v.* Patton, 122 Ill. App. 174; Devine *v.* Ryan, 115 Ill. App. 498; Elgin etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407; Fitzgerald *v.* Coleman, 114 Ill. App. 25; Hartzell *v.* Murray, 127 Ill. App. 608; Hayward *v.* Scott, 114 Ill. App. 531; Illinois Cent. R. Co. *v.* Becker, 119 Ill. App. 221; Joseph Taylor Coal Co. *v.* Dawes, 220 Ill. 145, 77 N. E. 131; Pankau *v.* Morrissey, 224 Ill. 177, 79 N. E. 643; Sattley Mfg. Co. *v.* Wendt, 116 Ill. App. 375; Slayden-Kirksey Woolen Mills *v.* Spring, 116 Ill. App. 27; Sonnemann *v.* Mertz, 221 Ill. 362, 77 N. E. 550.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Hutcheis *v.* Cedar Rapids, etc., R. Co., 128 Iowa 279, 103 N. W. 779; Inman Mfg. Co. *v.* American Cereal Co., 133 Iowa 71, 110 N. W. 287.

Kansas. — Griffith *v.* Robertson, 73 Kan. 666, 85 Pac. 748.

Kentucky. — Palmer Transfer Co. *v.* Eaves, (Ky. 1905) 85 S. W. 750.

Michigan. — Fitch *v.* Vatter, 143 Mich. 568, 107 N. W. 106.

Nebraska. — Bently *v.* Jun, (Neb. 1906) 107 N. W. 865.

Nevada. — Devencenzi *v.* Cassinelli, 28 Nev. 222, 81 Pac. 41.

North Carolina. — Davis *v.* Evans, 139 N. Car. 440, 51 S. E. 956.

North Dakota. — State *v.* Hazlett, (N. Dak. 1907) 113 N. W. 374.

South Carolina. — Brucke *v.* Hubbard, 74 S. Car. 144, 54 S. E. 249; Burns *v.* Goddard, 72 S. Car. 355, 51 S. E. 915.

Texas. — Austin *v.* Nuchols, (Tex. Civ. App. 1906) 94 S. W. 336; Houston, etc., R. Co. *v.* Anglin, 99 Tex. 349, 89 S. W. 966; McFaddin *v.* Sims, (Tex. Civ. App. 1906) 97 S. W. 335; O'Connell *v.* Storey, (Tex. Civ. App. 1907) 105 S. W. 1174.

Virginia. — Puckett *v.* Mullin, 106 Va. 248, 55 S. E. 676.

Evidence of prior unsafe condition of a mine is admissible as tending to show knowledge on the part of the mine owners. Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233.

Preponderance of Evidence Defined. — Scott *v.* Brown, 127 Ga. 88, 56 S. E. 130.

Fair Preponderance of Evidence Controlling. — Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 809.

492. 1. **Preponderance of Evidence Necessary**

to Convict in Bastardy Proceeding. — Alminowicz *v.* People, 117 Ill. App. 415.

193. 1. *United States.* — U. S. *v.* Dexter, 154 Fed. 890; U. S. *v.* Greene, 146 Fed. 803; U. S. *v.* Richards, 149 Fed. 443.

Alabama. — Bluett *v.* State, (Ala. 1907) 44 So. 84; Carter *v.* State, 145 Ala. 679, 40 So. 82; Davis *v.* State, (Ala. 1907) 44 So. 561; Harrison *v.* State, 144 Ala. 20, 40 So. 568; Howard *v.* State, (Ala. 1907) 44 So. 95; Mills *v.* State, 148 Ala. 633, 42 So. 816; Morris *v.* State, 146 Ala. 66, 41 So. 274; Thomas *v.* State, (Ala. 1907) 43 So. 371.

Arkansas. — Butt *v.* State, 81 Ark. 173, 98 S. W. 723; Duckworth *v.* State, 83 Ark. 192, 103 S. W. 601; Larimore *v.* State, 84 Ark. 606, 107 S. W. 165.

California. — People *v.* Maughs, 149 Cal. 253, 86 Pac. 187; People *v.* Weber, 149 Cal. 325, 86 Pac. 671; People *v.* Wong Sang Lung, 3 Cal. App. 221, 84 Pac. 843.

Connecticut. — State *v.* Bailey, 79 Conn. 589, 65 Atl. 951.

Delaware. — State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Fleetwood, (Del. 1906) 65 Atl. 772; State *v.* Harmon, 4 Penn. (Del.) 580, 60 Atl. 866; State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Johns, (Del. 1906) 65 Atl. 763; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790; State *v.* Uzzo, (Del. 1907) 65 Atl. 775; State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227.

District of Columbia. — Gassenheimer *v.* U. S., 26 App. Cas. (D. C.) 432.

Georgia. — Campbell *v.* State, 123 Ga. 533, 51 S. E. 644; Cole *v.* State, 125 Ga. 276, 53 S. E. 958.

Illinois. — Clefford *v.* People, 229 Ill. 633, 82 N. E. 343; People *v.* Sullivan, 217 Ill. 419, 75 N. E. 1005.

Indiana. — Eacock *v.* State, (Ind. 1907) 82 N. E. 1039.

Iowa. — State *v.* Blydenburg, (Iowa 1907) 112 N. W. 634; State *v.* Snyder, (Iowa 1908) 115 N. W. 225.

Kentucky. — Ball *v.* Com., (Ky. 1907) 101 S. W. 956; Gatliff *v.* Com., (Ky. 1908) 107 S. W. 739; Watkins *v.* Com., (Ky. 1906) 97 S. W. 740.

Massachusetts. — Com. *v.* Tucker, 189 Mass. 457, 76 N. E. 127.

Michigan. — People *v.* Albers, 137 Mich. 688, 100 N. W. 908.

Missouri. — State *v.* Bond, 191 Mo. 555, 90 S. W. 830; State *v.* Gordon, 196 Mo. 185, 95 S. W. 420; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 56; State *v.* Sykes, 191 Mo. 62, 89 S. W. 851; State *v.* Vaughan, 200 Mo. 1, 98 S. W. 2; State *v.* Wertz, 191 Mo. 569, 90 S. W. 838.

Montana. — State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

Nebraska. — Lucas *v.* State, 75 Neb. 11, 105 N. W. 976; Sweet *v.* State, 75 Neb. 263, 106 N. W. 31.

New Jersey. — State *v.* Mount, 72 N. J. L. 365, 61 Atl. 259.

New York. — People *v.* Weinseimer, 117 N. Y. App. Div. 603, 102 N. Y. Supp. 579.

North Carolina. — State *v.* Leachey, 138 N. Car. 587, 50 S. E. 232.

Pennsylvania. — Com. *v.* Miller, 31 Pa. Super. Ct. 309.

South Carolina. — State *v.* Reeder, 72 S. Car. 223, 51 S. E. 702; State *v.* Way, 76 S. Car. 91, 56 S. E. 653.

Texas. — Campos *v.* State, (Tex. Crim. 1906) 95 S. W. 1042; Hardin *v.* State, (Tex. Crim. 1907) 103 S. W. 401; Manning *v.* State, (Tex. Crim. 1906) 98 S. W. 251; Moore *v.* State, (Tex. Crim. 1908) 107 S. W. 355; Strong *v.* State, (Tex. Crim. 1907) 105 S. W. 785; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804; Watters *v.* State, (Tex. Crim. 1906) 94 S. W. 1038.

Utah. — State *v.* Hutchings, 30 Utah 319, 84 Pac. 893.

Vermont. — State *v.* Bean, 77 Vt. 384, 60 Atl. 807.

Washington. — State *v.* Mobley, 44 Wash. 549, 87 Pac. 815.

West Virginia. — State *v.* Cremeans, (W. Va. 1907) 57 S. E. 405.

Wyoming. — State *v.* Pressler, (Wyo. 1907) 92 Pac. 806.

194. 1. People *v.* Williamson, (Cal. App. 1907) 92 Pac. 313; Bentley *v.* Edwards, 100 Md. 652, 60 Atl. 283.

Court Instructs Jury on Law. — Rosenstein *v.* Fair Haven, etc., R. Co., 78 Conn. 29, 60 Atl. 1061.

195. 1. West *v.* A. F. Messick Grocery Co., 138 N. Car. 166, 50 S. E. 565.

2. Donner *v.* Alford, (C. C. A.) 136 Fed. 750; Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964; Brown *v.* St. John Trust Co., 71 Kan. 134, 80 Pac. 37; Licking Rolling Mill Co. *v.* Synder, (Ky. 1905) 89 S. W. 249; New York L. Ins. Co. *v.* Wolfson, 124 Mo. App. 286, 101 S. W. 162; Grueber Engineering Co. *v.* Waldron, (N. J. 1905) 60 Atl. 386; Reagan *v.* Bruff, (Tex. Civ. App. 1908) 108 S. W. 185; Ferguson *v.* Lumbermen's Ins. Co., 45 Wash. 209, 88 Pac. 129.

3. Construction of Letters Offered in Evidence for Court. — Clark *v.* Delaware, etc., R. Co., 138 N. Car. 25, 50 S. E. 446.

196. 2. Rex *v.* Knight, 69 J. P. 108, 20 Cox C. C. 711; State *v.* Bean, 77 Vt. 384, 60 Atl. 807; Rex *v.* Clarke, 38 N. Bruns. 11.

4. Dantzler *v.* Cox, 75 S. Car. 334, 55 S. E. 774.

197. 3. Anderson *v.* Seropian, 147 Cal. 201, 81 Pac. 521; People *v.* Quimby, (Cal. App. 1907) 92 Pac. 493; Goldstein *v.* People's R. Co., 5 Penn. (Del.) 306, 60 Atl. 975; Chicago City R. Co. *v.* McCaughna, 216 Ill. 202, 74 N. E. 819; Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310; Sanderson *v.* State, (Ind. 1907) 82 N. E. 525; Patton *v.* Sanborn, 133 Iowa 650, 110 N. W. 1032; Levels *v.* St. Louis, etc., R. Co., 196 Mo. 606, 94 S. W. 275; Cromley *v.* Pennsylvania R. Co., 211 Pa. St. 429, 60 Atl. 1007; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1907) 99 S. W. 144; Houston, etc., R. Co. *v.* O'Donnell, (Tex. Civ. App. 1905) 90 S. W. 886, *reversed* on another point, 99 Tex. 636, 92 S. W. 409.

198. 1. *United States.* Minahan *v.* Grand Trunk Western R. Co., (C. C. A.) 138 Fed. 37; Union Pac. R. Co. *v.* Lucas, (C. C. A.) 136 Fed. 374.

Colorado. — Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337.

Georgia. — Central Georgia R. Co. *v.* Gortatowsky, 123 Ga. 366, 51 S. E. 409; Hester *v.* Gairdner, 128 Ga. 531, 58 S. E. 165.

Illinois. — Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709.

Iowa. — Capital City Carriage Co. *v.* Moody, (Iowa 1907) 110 N. W. 903; Rothrock *v.* Cedar Rapids, 128 Iowa 252, 103 N. W. 475.

Michigan. — Barker *v.* Kalamazoo, 146 Mich. 257, 109 N. W. 427.

New Jersey. — Ferguson *v.* Central R. Co., 71 N. J. L. 647, 60 Atl. 382.

Oregon. — State *v.* Doris, (Oregon 1908) 94 Pac. 44.

Pennsylvania. — Pyne *v.* Delaware, etc., R. Co., 212 Pa. St. 143, 61 Atl. 817.

South Dakota. — Wheaton *v.* Liverpool, etc., Ins. Co., (S. Dak. 1905) 104 N. W. 850.

Texas. — Openshaw *v.* Rickmeyer, (Tex. Civ. App. 1907) 102 S. W. 467; St. Louis Southwestern R. Co. *v.* Demsey, (Tex. Civ. App. 1905) 89 S. W. 786.

2. *United States.* — Waters-Pierce Oil Co. *v.* Van Elderen, (C. C. A.) 137 Fed. 557.

Alabama. — Shelton *v.* State, 144 Ala. 106, 42 So. 30.

Arkansas. — Stapleton *v.* State, (Ark. 1906) 97 S. W. 296; Thomas *v.* State, (Ark. 1908) 108 S. W. 224.

California. — Bashore *v.* Mooney, 4 Cal. App. 276, 87 Pac. 553; People *v.* Soeder, 150 Cal. 12, 87 Pac. 1016.

Delaware. — Evans *v.* Barnett, (Del. 1906) 63 Atl. 770; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569; Reese *v.* Hoffecker, (Del. 1906) 65 Atl. 588; Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; Staunton *v.* Smith, (Del. 1906) 65 Atl. 593; Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874.

Florida. — West *v.* State, 53 Fla. 77, 43 So. 445.

Georgia. — Robinson *v.* State, 128 Ga. 254, 57 S. E. 315; Warrick *v.* State, 125 Ga. 134, 53 S. E. 1027.

Illinois. — Alminowicz *v.* People, 117 Ill App. 415; Bickerman *v.* Tarter, 115 Ill. App. 278; Chicago, etc., Electric R. Co. *v.* Patton, 122 Ill. App. 174; Chicago City R. Co. *v.* Foster, 128 Ill. App. 571; Elgin, etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407; Leek *v.* People, 118 Ill. App. 514; Springfield Consol. R. Co. *v.* Lane, 116 Ill. App. 517.

Indiana. — Eacock *v.* State, (Ind. 1907) 82 N. E. 1039.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; White *v.* Hatton, (Iowa 1907) 113 N. W. 830.

Kentucky. — Louisville, etc., R. Co. *v.* Hall, (Ky. 1906) 94 S. W. 26.

Maryland. — Western Maryland R. Co. *v.* Shivers, 101 Md. 391, 61 Atl. 618.

Minnesota. — State *v.* Halvorson, (Minn. 1908) 114 N. W. 957.

Missouri. — Gallatin *v.* Fannin, (Mo. App. 1908) 107 S. W. 479; State *v.* Bond, 191 Mo. 555, 90 S. W. 830; State *v.* Fogg, 206 Mo. 696, 105 S. W. 618; State *v.* Gordon, 196 Mo. 185, 95 S. W. 420; State *v.* Long, (Mo. 1908) 108 S. W. 35; State *v.* Vaughan, 200 Mo. 1, 98 S. W. 2.

Montana. — State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

Nebraska. — Hunt *v.* Van Burg, 75 Neb. 304, 106 N. W. 329; Shepherd *v.* Lincoln Traction Co., (Neb. 1907) 113 N. W. 627.

New York. — Sternaman *v.* Metropolitan L. Ins. Co., 94 N. Y. App. Div. 610, 87 N. Y. Supp. 904, *affirmed* 181 N. Y. 514, 73 N. E. 1133.

North Carolina. — Lehew *v.* Hewett, 138 N. Car. 6, 50 S. E. 459.

North Dakota. — State *v.* Hazlett, 14 N. Dak. 490, 105 N. W. 617.

Oklahoma. — Blincoe *v.* Choctaw, etc., R. Co., 16 Okla. 286, 83 Pac. 903.

Oregon. — State *v.* Doris, (Oregon 1908) 94 Pac. 44.

Pennsylvania. — E. Bradford Clarke Co. *v.* Baltimore, etc., R. Co., 27 Pa. Super. Ct. 251.

Texas. — Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1907) 99 S. W. 144; Gulf, etc., R. Co. *v.* Batte, (Tex. Civ. App. 1908) 107 S. W. 632.

Utah. — *In re* Miller, 31 Utah 415, 88 Pac. 338.

Washington. — State *v.* Mobley, 44 Wash. 549, 87 Pac. 815.

3. *Alabama.* — Carwile *v.* State, 148 Ala. 576, 39 So. 220; Davis *v.* State, (Ala. 1907) 44 So. 545; Davis *v.* State, (Ala. 1907) 44 So. 561; Hammond *v.* State, 147 Ala. 79, 41 So. 761; Morris *v.* State, 146 Ala. 66, 41 So. 274; Moss *v.* State, (Ala. 1907) 44 So. 598.

Arkansas. — Maurice *v.* Hunt, 80 Ark. 476, 97 S. W. 664; Thomas *v.* State, (Ark. 1908) 108 S. W. 224.

California. — Bashore *v.* Mooney, 4 Cal. App. 276, 87 Pac. 553; People *v.* Soeder, 150 Cal. 12, 87 Pac. 1016; People *v.* Weber, 149 Cal. 325, 86 Pac. 671; People *v.* Wong Sang Lung, 3 Cal. App. 221, 84 Pac. 843; Quint *v.* Dimond, 147 Cal. 707, 82 Pac. 310.

Delaware. — Evans *v.* Barnett, (Del. 1906) 63 Atl. 770; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569; Reese *v.* Hoffecker, (Del. 1906) 65 Atl. 588; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Johns, (Del. 1906) 65 Atl. 96; Staunton *v.* Smith, (Del. 1906) 65 Atl. 593.

Florida. — West *v.* State, 53 Fla. 77, 43 So. 445.

Georgia. — Southern R. Co. *v.* Brown, 126 Ga. 1, 54 S. E. 911.

Illinois. — Bickerman *v.* Tarter, 115 Ill. App. 278; Chicago Union Traction Co. *v.* Lowenrosen, 222 Ill. 506, 78 N. E. 813; Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310; Elgin, etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407; Elgin, etc., Traction Co. *v.* Wilson, 217 Ill. 47, 75 N. E. 436; Himrod Coal Co. *v.* Clingan, 114 Ill. App. 568; Hughes *v.* Ferriman, 119 Ill. App. 169; Illinois Southern R. Co. *v.* Hayer, 225 Ill. 613, 80 N. E. 316; Springfield Consol. R. Co. *v.* Lane, 116 Ill. App. 517.

Indiana. — Cleveland, etc., R. Co. *v.* Hayes, 167 Ind. 454, 79 N. E. 448; Eacock *v.* State, (Ind. 1907) 82 N. E. 1039.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Dale *v.* Colfax Consol. Coal Co., 131 Iowa 67, 107 N. W. 1096; Furlong *v.* American Cent. F. Ins. Co., (Iowa 1907) 113 N. W. 1087; McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; State *v.* Norman, (Iowa 1907) 113 N. W. 340; White *v.* Hatton, (Iowa 1907) 113 N. W. 830.

Maryland. — Bowman *v.* Little, 101 Md. 273, 61 Atl. 223, 657, 1084; Western Maryland R. Co. *v.* Shivers, 101 Md. 391, 61 Atl. 618.

Massachusetts. — Nagle *v.* Boston, etc., St. R. Co., 188 Mass. 38, 73 N. E. 1019.

Missouri. — Fields *v.* Missouri Pac. R. Co., 113 Mo. App. 642, 88 S. W. 134; State *v.* Bond, 191 Mo. 555, 90 S. W. 830; State *v.* Fogg, 206 Mo. 696, 105 S. W. 618; State *v.* Gordon, 196 Mo. 185, 95 S. W. 420; State *v.* Long, (Mo. 1908) 108 S. W. 35; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 56; State *v.* Toohey, 203 Mo. 674, 102 S. W. 530; State *v.* Vaughan, 200 Mo. 1, 98 S. W. 2.

Montana. — Doll *v.* Hennessy Mercantile Co., 33 Mont. 80, 81 Pac. 625; State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

Nebraska. — Hunt *v.* Van Burg, 75 Neb. 304, 106 N. W. 329.

Nevada. — *In re* Kelly, 28 Nev. 491, 83 Pac. 223.

North Carolina. — Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201; Lehew *v.* Hewett, 138 N. Car. 6, 50 S. E. 459; State *v.* Adams, 138 N. Car. 688, 50 S. E. 765.

North Dakota. — Higgs *v.* Minneapolis, etc., R. Co., (N. Dak. 1908) 114 N. W. 722; State *v.* Hazlett, 14 N. Dak. 490, 105 S. W. 617.

Ohio. — Pennsylvania R. Co. *v.* Loftis, 72 Ohio St. 288, 3 Ann. Cas. 3, 74 N. E. 179; Pennsylvania R. Co. *v.* Loftis, 72 Ohio St. 300, 74 N. E. 182.

Oklahoma. — Blincoe *v.* Choctaw, etc., R. Co., 16 Okla. 286, 83 Pac. 903.

Oregon. — State *v.* Doris, (Oregon 1908) 94 Pac. 44.

Pennsylvania. — E. Bradford Clarke Co. *v.* Baltimore, etc., R. Co., 27 Pa. Super. Ct. 251.

Texas. — Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1907) 99 S. W. 144; Gulf, etc., R. Co. *v.* Batte, (Tex. Civ. App. 1908) 107 S. W. 632; International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000; Tuttle *v.* Moody, (Tex. 1906) 97 S. W. 1037.

Utah. — *In re* Miller, 31 Utah 415, 88 Pac. 338.

Washington. — State *v.* Mobley, 44 Wash. 549, 87 Pac. 815.

Judge May Not Express Opinion. — Imboden *v.* St. Louis Union Trust Co., 111 Mo. App. 220, 86 S. W. 263.

499. 1. Ætna Indemnity Co. *v.* Ladd, (C. C. A.) 135 Fed. 636; Minahan *v.* Grand Trunk Western R. Co., (C. C. A.) 138 Fed. 37; Sovereign Camp, etc., *v.* Welch, 16 Okla. 188, 83 Pac. 547.

500. 1. Loper *v.* Somers, 71 N. J. L. 657, 61 Atl. 85; U. S. Fidelity, etc., Co. *v.* Donnelly, 72 N. J. L. 295, 61 Atl. 445.

2. Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; White *v.* Marquette, 140 Mich. 310, 103 N. W. 698; Niagara F. Ins. Co. *v.* Campbell Stores, 101 N. Y. App. Div. 400, 92 N. Y. Supp. 208; Cromley *v.* Pennsylvania R. Co., 211 Pa. St. 429, 60 Atl. 1007.

Conflicting Evidence. — News Pub. Co. *v.* Associated Press, 114 Ill. App. 241.

501. 2. Rosenstein *v.* Fair Haven, etc., R. Co., 78 Conn. 29, 60 Atl. 1061; United Electric Light, etc., Co. *v.* State, 100 Md. 634, 60 Atl. 248; Steltemeier *v.* Barrett, 115 Mo. App. 323, 91 S. W. 56; Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 583, 53 S. E. 362; Dallas, etc., R. Co. *v.* Langston, (Tex. Civ. App. 1906) 98 S. W. 425; Ware *v.* State, 49 Tex. Crim. 413, 92 S. W. 1093; State *v.* Bean, 77 Vt. 384, 60 Atl. 807.

Remote Evidence May Be Admitted if Relevant. — Page *v.* Hazelton, (N. H. 1907) 66 Atl. 1049.

502. 1. Alabama G. S. R. Co. *v.* Guest, 144 Ala. 373, 39 So. 654, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 502.

3. U. S. *v.* Greene, 146 Fed. 803; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; Buckler *v.* Kneezell, (Tex. Civ. App. 1905) 91 S. W. 367.

503. 1. Hammerschlag Mfg. Co. *v.* Struthers-Wells Co., (C. C. A.) 154 Fed. 326; Hollen *v.* Crim, (W. Va. 1907) 59 S. E. 172.

2. State *v.* Farr, (R. I. 1908) 69 Atl. 5.

504. 1. *United States.* — Choctaw, etc., R. Co. *v.* Newton, (C. C. A.) 140 Fed. 225; Murray *v.* Joseph, 146 Fed. 260; Robinson *v.* Union Cent. L. Ins. Co., 144 Fed. 1005; The Luckenbach, 144 Fed. 980.

District of Columbia. — Alexander *v.* Blackman, 26 App. Cas. (D. C.) 541.

Indiana. — Closson *v.* Bligh, (Ind. App. 1908) 83 N. E. 263; Western Union Tel. Co. *v.* McClelland, 38 Ind. App. 578, 78 N. E. 672.

Louisiana. — State *v.* Jahraus, 117 La. 286, 41 So. 575.

Mississippi. — Anderson *v.* Cumberland Telephone, etc., Co., 86 Miss. 341, 38 So. 786.

Texas. — Texas, etc., R. Co. *v.* Harrington, (Tex. Civ. App. 1906) 98 S. W. 653.

Virginia. — Aragon Coffee Co. *v.* Rogers, 105 Va. 51, 52 S. E. 843.

West Virginia. — Nichols *v.* Camden Interstate R. Co., (W. Va. 1908) 59 S. E. 968.

When the witness may be called equally well by either party, no unfavorable presumption arises from the failure of either party to call him. Johnson *v.* Frederick Leyland, (C. C. A.)

153 Fed. 572, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 504.

2. Franklin *v.* State, (Ala. 1906) 39 So. 979.

3. State *v.* Mathews, 202 Mo. 143, 100 S. W. 420.

4. U. S. *v.* Greene, 146 Fed. 803; Franklin *v.* State, (Ala. 1906) 39 So. 979; State *v.* Baird, 13 Idaho 29, 88 Pac. 233; State *v.* Nash, 115 La. 719, 39 So. 854; Dickey *v.* State, 86 Miss. 525, 38 So. 776; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55; State *v.* Paisley, (Mont. 1907) 92 Pac. 566; State *v.* Exum, 138 N. Car. 599, 50 S. E. 283; Taylor *v.* State, 49 Tex. Crim. 7, 90 S. W. 647.

5. Maxey *v.* State, 76 Ark. 276, 88 S. W. 1009; Isabella Gold Min. Co. *v.* Glenn, 37 Colo. 165, 86 Pac. 349; Wilson *v.* Griswold, 79 Conn. 18, 63 Atl. 659; Galveston, etc., R. Co. *v.* Young, (Tex. Civ. App. 1907) 100 S. W. 993.

505. 1. *Alabama.* — Bluett *v.* State, (Ala. 1907) 44 So. 84; Hammond *v.* State, 147 Ala. 79, 41 So. 761; Thomas *v.* State, (Ala. 1907) 43 So. 371.

Arkansas. — Burton *v.* State, 82 Ark. 595, 102 S. W. 362.

Colorado. — Warford *v.* People, (Colo. 1907) 92 Pac. 24.

Delaware. — State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966.

Georgia. — Warrick *v.* State, 125 Ga. 134, 53 S. E. 1027.

Iowa. — State *v.* Blee, 133 Iowa 725, 111 N. W. 19.

Kentucky. — Newton *v.* Com., (Ky. 1907) 102 S. W. 264.

Missouri. — State *v.* Birks, 199 Mo. 263, 97 S. W. 578.

New Jersey. — State *v.* Scaduto, 74 N. J. L. 289, 65 Atl. 908.

Oregon. — State *v.* Doris, (Oregon 1908) 94 Pac. 44.

2. Black *v.* State, 84 Ark. 121, 104 S. W. 1104; Warrick *v.* State, 125 Ga. 134, 53 S. E. 1027.

Threats Against One in Whose Defense Defendant Claims to Have Slain, Admissible. — State *v.* Hennessy, (Nev. 1907) 90 Pac. 221.

3. People *v.* Quimby, (Cal. App. 1907) 92 Pac. 493; Warrick *v.* State, 125 Ga. 134, 53 S. E. 1027; State *v.* Barber, 13 Idaho 65, 88 Pac. 418; State *v.* Scaduto, 74 N. J. L. 289, 65 Atl. 908, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 505; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804.

Uncommunicated Threats Sometimes Admissible. — State *v.* Birks, 199 Mo. 263, 97 S. W. 578; State *v.* Blee, 133 Iowa 725, 111 N. W. 19; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; Warford *v.* People, (Colo. 1907) 92 Pac. 24; State *v.* Edwards, 203 Mo. 528, 102 S. W. 520.

4. Franklin *v.* State, (Ala. 1906) 39 So. 979; Heninburg *v.* State, (Ala. 1907) 43 So. 959; Williams *v.* State, (Ala. 1906) 41 So. 992; Graham *v.* State, 125 Ga. 48, 53 S. E. 816; Esterline *v.* State, 105 Md. 629, 66 Atl. 269; State *v.* King, 203 Mo. 560, 102 S. W. 515; Manning *v.* State, (Tex. Crim. 1906) 98 S. W. 251; Owen *v.* State, (Tex. Crim. 1907) 105 S. W. 513.

506. 1. Gassenheimer *v.* U. S., 26 App. Cas. (D. C.) 432; Pittman *v.* State, 51 Fla. 94, 41 So. 385; Standard Mfg. Co. *v.* Brons, 118 Ill. App. 632; State *v.* Gibson, 132 Iowa 53, 106 N. W. 270; State *v.* Stark, 202 Mo. 210, 100 S. W. 642; State *v.* Murphy, (N. Dak. 1908) 115 N. W. 84; State *v.* Talley, 77 S. Car. 99, 57 S. E. 618.

2. Rex *v.* Smith, 92 L. T. N. S. 208, 69 J. P. 51.

4. *United States.* — Van Gesner *v.* U. S., (C. C. A.) 153 Fed. 46.

Alabama. — Nordan *v.* State, 143 Ala. 13, 39 So. 406.

California. — People *v.* Soeder, 150 Cal. 12, 87 Pac. 1016; People *v.* Weber, 149 Cal. 325, 86 Pac. 671.

Colorado. — Zipperian *v.* People, 33 Colo. 134, 79 Pac. 1018.

District of Columbia. — Ryan *v.* U. S., 26 App. Cas. (D. C.) 74, 6 Ann. Cas. 633.

Georgia. — Wall *v.* State, 126 Ga. 86, 54 S. E. 815.

Indiana. — Sanderson *v.* State, (Ind. 1907) 82 N. E. 525.

Kentucky. — Ball *v.* Com., (Ky. 1907) 101 S. W. 956; Carpenter *v.* Com., (Ky. 1906) 92 S. W. 553; Com. *v.* Everson, (Ky. 1906) 96 S. W. 460; Mathley *v.* Com., 120 Ky. 389, 86 S. W. 988; Powers *v.* Com., (Ky. 1906) 92 S. W. 975.

Missouri. — Gallatin *v.* Fannin, (Mo. App. 1908) 107 S. W. 479; State *v.* Bailey, 190 Mo. 257, 88 S. W. 733.

New York. — People *v.* Gillette, 191 N. Y. 107, 83 N. E. 680.

Ohio. — State *v.* Dickerson, 77 Ohio St. 34, 82 N. E. 969.

South Carolina. — State *v.* Thrailkill, 71 S. Car. 136, 50 S. E. 551.

Texas. — Gallegos *v.* State, 48 Tex. Crim. 58, 85 S. W. 1150; Menefee *v.* State, (Tex. Crim. 1906) 97 S. W. 486; Moore *v.* State, 49 Tex. Crim. 499, 96 S. W. 321.

Wisconsin. — Grabowski *v.* State, 126 Wis. 447, 105 N. W. 805.

507. 2. Dunbar *v.* Armstrong, 115 Ill. App. 549; Helm *v.* Anchor F. Ins. Co., 132 Iowa 177, 109 N. W. 605; Pratt *v.* State, (Tex. Crim. 1906) 96 S. W. 8.

3. Conklin *v.* Consolidated R. Co., (Mass. 1907) 82 N. E. 23.

4. Wood *v.* Etiwanda Water Co., 147 Cal. 234, 81 Pac. 512, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 507.

508. 2. State *v.* Howard, (La. 1908) 45 So. 260, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 508.

3. Conklin *v.* Consolidated R. Co., (Mass. 1907) 82 N. E. 23.

4. Rhomberg *v.* Avenarius, (Iowa 1907) 112 N. W. 548.

5. Carney *v.* Hennessey, 77 Conn. 577, 60 Atl. 129; Coruth *v.* Jones, 77 Vt. 441, 60 Atl. 814; Vagts *v.* Utman, 125 Wis. 265, 104 N. W. 88.

6. Lush *v.* Parkersburg, 127 Iowa 701, 104 N. W. 336.

7. Davis *v.* Davis, (Tex. Civ. App. 1906) 98 S. W. 198.

509. 3. *United States.* — Security Trust Co. *v.* Robb, (C. C. A.) 142 Fed. 78.

Alabama. — Frederick *v.* State, (Ala. 1905) 39 So. 915; Martin *v.* Jesse French Piano, etc., Co., (Ala. 1907) 44 So. 112.

Arkansas. — Foster *v.* Beidler, 79 Ark. 418, 96 S. W. 175.

California. — McLean *v.* Llewellyn Iron Works, 2 Cal. App. 346, 83 Pac. 1082, 1085; Moody *v.* Peirano, (Cal. App. 1906) 84 Pac. 783.

Iowa. — Elbert *v.* Mitchell, 131 Iowa 598, 109 N. W. 181.

Kentucky. — Horine *v.* New York L. Ins. Co., (Ky. 1905) 87 S. W. 274; Smith *v.* Sisters of Good Shepherd, (Ky. 1905) 87 S. W. 1083.

Maryland. — Di Giorgio Importing, etc., Co. *v.* Pennsylvania R. Co., 104 Md. 693, 65 Atl. 425; Dryden *v.* Barnes, 101 Md. 346, 61 Atl. 34[illegible].

Massachusetts. — Yore *v.* Newton, 194 Mass. 250, 80 N. E. 472.

Michigan. — Seitz *v.* Starks, 144 Mich. 448, 108 N. W. 354.

Missouri. — State *v.* Ethridge, 188 Mo. 352, 87 S. W. 495.

New York. — Kasower *v.* Sandler, (Supm. Ct. App. T.) 96 N. Y. Supp. 734; Shall *v.* Old Forge Co., 109 N. Y. App. Div. 907, 96 N. Y. Supp. 76.

North Carolina. — West *v.* A. F. Messick Grocery Co., 138 N. Car. 166, 50 S. E. 565.

South Carolina. — Burns *v.* Goddard, 72 S. Car. 355, 51 S. E. 915.

Texas. — International, etc., R. Co. *v.* Boykin, 99 Tex. 259, 89 S. W. 639; Lewis *v.* Crouch, (Tex. Civ. App. 1905) 85 S. W. 1009; Stockton *v.* Brown, (Tex. Civ. App. 1907) 106 S. W. 423.

Washington. — Spokane *v.* Costello, 42 Wash. 182, 84 Pac. 652.

Record of Former Judicial Proceeding Not Res Inter Alios Acta. — Becker *v.* Philadelphia, 217 Pa. St. 344, 66 Atl. 564.

510. 1. Stewart *v.* Wright, (C. C. A.) 147 Fed. 321; Fabian *v.* Traeger, 215 Ill. 220, 74 N. E. 131; Elbert *v.* Mitchell, 131 Iowa 598, 109 N. W. 181; McGuire *v.* Iowa County, 133 Iowa 636, 111 N. W. 34; Hobbs *v.* Boatright, 195 Mo. 693, 93 S. W. 934; People *v.* Weinseimer, 117 N. Y. App. Div. 603, 102 N. Y. Supp. 579; Compagnie Des Metaux Unital *v.* Victorio Mfg. Co., (Tex. Civ. App. 1908) 107 S. W. 651; Horstman *v.* Little, (Tex. Civ. App. 1905) 88 S. W. 286; Gilluly *v.* Hosford, 45 Wash. 504, 88 Pac. 1027; Yakima Valley Bank *v.* McAllister, 37 Wash. 566, 79 Pac. 1119. *Contra*, Hunt *v.* Van Burg, 75 Neb. 304, 106 N. W. 329.

2. Brucker *v.* Gainesboro Telephone Co., (Ky. 1907) 100 S. W. 240; Foss *v.* Portsmouth, etc., R. Co., 73 N. H. 246, 60 Atl. 747; Fleming *v.* Pullen, (Tex. Civ. App. 1906) 97 S. W. 109; Missouri, etc., R. Co. *v.* Parrott, (Tex. Civ. App. 1906) 96 S. W. 950; Sabine Valley Telephone Co. *v.* Oliver, (Tex. Civ. App. 1907) 102 S. W. 925.

3. Stair *v.* Kane, (C. C. A.) 156 Fed. 100; Central of Georgia R. Co. *v.* Keyton, (Ala. 1906) 41 So. 918; Joseph Taylor Coal Co. *v.* Dawes, 220 Ill. 145, 77 N. E. 131; Heinmiller *v.* Winston, 131 Iowa 32, 107 N. W. 1102; Barker *v.* Kalamazoo, 146 Mich. 257, 109 N. W. 427; Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; McGinnis *v.* R. M. Rigby Printing Co., 122 Mo. App. 227, 99 S. W. 4; Hanselman *v.* Broad, 113 N. Y. App. Div. 447, 99 N. Y. Supp. 404; Hadtke *v.* Grzyll, 130 Wis. 275, 110 N. W. 225.

In Proof of Notice. — Mayer *v.* Detroit, etc., R. Co., 142 Mich. 459, 105 N. W. 888; Leathers *v.* Blackwell Durham Tobacco Co., 144 N. Car. 330, 57 S. E. 11; Dallas *v.* McCullough, (Tex. Civ. App. 1906) 95 S. W. 1121.

Evidence of Subsequent Repair Not Admissible. — Aurora *v.* Plummer, 122 Ill. App. 143; Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 809.

Fires Set by Locomotives. — Toledo, etc., R. Co. *v.* Star Flouring Mills Co., (C. C. A.) 146 Fed. 953; McMahon *v.* Hetchhetchy, etc., R. Co., 2 Cal. App. 400, 84 Pac. 350; Hendricks *v.* Southern R. Co., 123 Ga. 342, 51 S. E. 415; Chesapeake, etc., R. Co. *v.* Richardson, (Ky. 1907) 99 S. W. 642; Jacobs *v.* New York Cent., etc., R. Co., 107 N. Y. App. Div. 134, 94 N. Y. Supp. 954; Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 583, 53 S. E. 362, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 512; Knott *v.* Cape Fear, etc., R. Co., 142 N. Car. 238, 55 S. E. 150; Shelly *v.* Philadelphia, etc., R. Co., 211 Pa. St. 160, 60 Atl. 581; Gorham Mfg. Co. *v.* New York, etc., R. Co., 27 R. I. 35, 60 Atl. 638. *Contra*, Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; Cleveland, etc., R. Co. *v.* Loos, 38 Ind. App. 1, 77 N. E. 948.

512. 1. Shirley *v.* State, 144 Ala. 35, 40 So. 269.

2. Rex *v.* Mean, 21 Times L. Rep. 172; Standard Oil Co. *v.* Parrish, (C. C. A.) 145 Fed. 829; Martin *v.* Logan, (Ky. 1907) 99 S. W. 648; Churchill *v.* Mace, 148 Mich. 456, 111 N. W. 1034; Johnson County Sav. Bank *v.* Rapp, (Wash. 1907) 91 Pac. 382.

3. *California.* — Dennis *v.* Crocker-Huffman Land, etc., Co., (Cal. App. 1907) 91 Pac. 425.

Connecticut. — Stillman *v.* Thompson, (Conn. 1907) 67 Atl. 528.

Georgia. — Columbus R. Co. *v.* Woolfolk, 128 Ga. 631, 58 S. E. 152.

Illinois. — Eldorado, etc., R. Co. *v.* Everett, 225 Ill. 529, 80 N. E. 281; Farson *v.* Gilbert, 114 Ill. App. 17.

Kentucky. — Nelson County *v.* Bardstown, etc., Turnpike Road Co., (Ky. 1907) 100 S. W. 1183; Nelson County *v.* Chaplin, etc., Turnpike Road Co., (Ky. 1907) 100 S. W. 1184.

Louisiana. — Louisiana R., etc., Co. *v.* Morere, 116 La. 997, 41 So. 236.

Missouri. — Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 392, 94 S. W. 860.

New Hampshire. — Kidd *v.* New Hampshire Traction Co., (N. H. 1907) 66 Atl. 127.

New Jersey. — Hadley *v.* Chosen Freeholders, 73 N. J. L. 197, 62 Atl. 1132.

Pennsylvania. — Laubaugh *v.* Pennsylvania R. Co., 28 Pa. Super. Ct. 247.

Vermont. — Grout *v.* Moulton, 79 Vt. 122, 64 Atl. 453.

Washington. — Collins *v.* Denny Clay Co., 41 Wash. 136, 82 Pac. 1012; Gilluly *v.* Hosford, 45 Wash. 504, 88 Pac. 1027.

Cost Evidence of Value. — Moss *v.* State, (Ala. 1905) 39 So. 830; Rosenstein *v.* Fair Haven,

etc., R. Co., 78 Conn. 29, 60 Atl. 1061; Nelson County *v.* Bardstown, etc., Turnpike Road Co., (Ky. 1907) 100 S. W. 1181; Farnsworth *v.* Miller, (N. J. 1905) 60 Atl. 1100; Galveston, etc., R. Co. *v.* Levy, (Tex. Civ. App. 1907) 100 S. W. 195. See also Motton *v.* Smith, 27 R. I. 62, 60 Atl. 681.

513. 1. *England.* — Rex *v.* Smith, 92 L. T. N. S. 208; Rex *v.* Bond, (1906) 2 K. B. 389.

United States. — Brown *v.* U. S., (C. C. A.) 142 Fed. 1; Chitwood *v.* U. S., (C. C. A.) 153 Fed. 551; Dillard *v.* U. S., (C. C. A.) 141 Fed. 303; Thomas *v.* U. S., (C. C. A.) 156 Fed. 897; U. S. *v.* Dexter, 154 Fed. 890.

Alabama. — Shirley *v.* State, 144 Ala. 35, 40 So. 269.

Arkansas. — Cook *v.* State, 80 Ark. 495, 97 S. W. 683; Renfroe *v.* State, 84 Ark. 16, 104 S. W. 542; Storms *v.* State, 81 Ark. 25, 98 S. W. 678; Woodard *v.* State, 84 Ark. 119, 104 S. W. 1109.

California. — People *v.* Manasse, (Cal. 1908) 94 Pac. 92; People *v.* Robertson, (Cal. App. 1907) 92 Pac. 498; People *v.* Woods, 147 Cal. 265, 81 Pac. 652.

Illinois. — Clark *v.* People, 224 Ill. 554, 79 N. E. 941; Juretich *v.* People, 223 Ill. 484, 79 N. E. 181; Lipsey *v.* People, 227 Ill. 364, 81 N. E. 348.

Indiana. — Eacock *v.* State, (Ind. 1907) 82 N. E. 1039.

Iowa. — State *v.* Johnson, 133 Iowa 38, 110 N. W. 170; State *v.* Levich, 128 Iowa 372, 104 N. W. 334; State *v.* Seligman, 127 Iowa 415, 103 N. W. 357.

Kansas. — State *v.* Calhoun, 75 Kan. 259, 88 Pac. 1079.

Kentucky. — Com. *v.* Everson, (Ky. 1906) 96 S. W. 460; Greenwell *v.* Com., (Ky. 1907) 100 S. W. 852.

Missouri. — State *v.* Bailey, 190 Mo. 257, 88 S. W. 733; State *v.* Palmberg, 199 Mo. 233, 97 S. W. 566; State *v.* Roberts, 201 Mo. 702, 100 S. W. 484; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55; State *v.* Stark, 202 Mo. 210, 100 S. W. 642.

Montana. — State *v.* Newman, 34 Mont. 434, 87 Pac. 462.

Nebraska. — Chamberlain *v.* State, (Neb. 1908) 115 N. W. 555; Clark *v.* State, (Neb. 1907) 113 N. W. 211.

New York. — People *v.* Dolan, 186 N. Y. 4, 78 N. E. 569; People *v.* Levin, 119 N. Y. App. Div. 233, 104 N. Y. Supp. 647; People *v.* Weinseimer, 117 N. Y. App. Div. 603, 102 N. Y. Supp. 579.

North Dakota. — State *v.* Murphy, (N. Dak. 1908) 115 N. W. 84.

Pennsylvania. — Com. *v.* Valverdi, 218 Pa. St. 7, 66 Atl. 877.

Texas. — Campos *v.* State, (Tex. Crim. 1906) 95 S. W. 1042; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100; Hammock *v.* State, 49 Tex. 471, 93 S. W. 549; Penrice *v.* State, (Tex. Crim. 1907) 105 S. W. 797; Weatherford *v.* State, (Tex. Crim. 1907) 103 S. W. 632.

Vermont. — State *v.* Costa, 78 Vt. 198, 62 Atl. 38; State *v.* Louanis, 74 Vt. 463, 65 Atl. 532; State *v.* Sargood, (Vt. 1907) 68 Atl. 51.

Virginia. — Haynes *v.* Com., 104 Va. 854, 52 S. E. 358.

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Wisconsin. — Grabowski *v.* State, 126 Wis. 447, 105 N. W. 805.

Other Crimes Cannot Be Shown *Georgia.* Alsobrook *v.* State, 126 Ga. 100, 54 S. E. 805; Nesbit *v.* State, 123 Ga. 51, 54 S. E. 195.

Illinois. — Brom *v.* People, 216 Ill. 148, 74 N. E. 790.

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Maryland. — Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

Massachusetts. — Com. *v.* Parsons, 195 Mass. 560, 81 N. E. 291.

Nebraska. — Nickolizack *v.* State, 75 Neb. 27, 105 N. W. 895.

New Jersey. — State *v.* Newman, 73 N. J. L. 202, 62 Atl. 1008.

New York. — *In re* Jones, 117 N. Y. App. Div. 775, 102 N. Y. Supp. 983; People *v.* Dixon, 118 N. Y. App. Div. 593, 103 N. Y. Supp. 186; People *v.* Dolan, 111 N. Y. App. Div. 600, 97 N. Y. Supp. 929; People *v.* Gibson, 114 N. Y. App. Div. 600, 99 N. Y. Supp. 1052; People *v.* Jones, 191 N. Y. 291, 84 N. E. 61; People *v.* Sekeson, 111 N. Y. App. Div. 490, 97 N. Y. Supp. 917.

North Dakota. — State *v.* Hazlett, (N. Dak. 1907) 113 N. W. 374.

Oklahoma. — Cecil *v.* Territory, 16 Okla. 197, 82 Pac. 654.

Texas. — Baughman *v.* State, 49 Tex. Crim. 33, 90 S. W. 166; Bink *v.* State, 48 Tex. Crim. 598, 89 S. W. 1075; Bink *v.* State, (Tex. Crim. 1905) 89 S. W. 1077; Bryan *v.* State, 49 Tex. Crim. 200, 91 S. W. 581; Davenport *v.* State, 49 Tex. Crim. 11, 89 S. W. 1077; Davenport *v.* State, (Tex. Crim. 1905) 89 S. W. 1078; Driver *v.* State, 48 Tex. Crim. 20, 85 S. W. 1056; Gillespie *v.* State, 49 Tex. Crim. 530, 93 S. W. 556; Harris *v.* State, (Tex. Crim. 1907) 100 S. W. 920; Herndon *v.* State, (Tex. Crim. 1907) 99 S. W. 558; Hinson *v.* State, (Tex. Crim. 1907) 100 S. W. 939; Johnson *v.* State, (Tex. Crim. 1906) 96 S. W. 45; Lightfoot *v.* State, (Tex. Crim. 1907) 106 S. W. 345; Reagan *v.* State, 49 Tex. Crim. 442, 93 S. W. 733; Roberts *v.* State, (Tex. Crim. 1907) 100 S. W. 150; Smith *v.* State, (Tex. Crim. 1907) 105 S. W. 501; Swalm *v.* State, 49 Tex. Crim. 241, 91 S. W. 575.

Utah. — State *v.* Shockley, 29 Utah 25, 80 Pac. 865.

Virginia. — Haynes *v.* Com., 104 Va. 854, 52 S. E. 358.

Washington. — State *v.* Marselle, 43 Wash. 273, 86 Pac. 586; State *v.* Oppenheimer, 41 Wash. 630, 84 Pac. 588.

Wisconsin. — Topolewski *v.* State, 130 Wis. 244, 109 N. W. 1037.

Incidental Proof of Other Crimes. — Thompson *v.* U. S., (C. C. A.) 144 Fed. 14, 7 Ann. Cas. 62; People *v.* Cook, 148 Cal. 334, 83 Pac. 43;

People v. Craig, (Cal. 1907) 91 Pac. 997; People v. McPherson, (Cal. App. 1907) 91 Pac. 1098; Ryan v. U. S., 26 App. Cas. (D. C.) 74, 6 Ann. Cas. 633, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513; Ray v. State, (Ga. App. 1908) 60 S. E. 816; State v. Roberts, 28 Nev. 350, 82 Pac. 100; State v. Adams, 138 N. Car. 688, 50 S. E. 765; State v. Rea, 46 Oregon 620, 81 Pac. 822; Com. v. Shanor, 29 Pa. Super. Ct. 358; Smith v. State, (Tex. Crim. 1907) 100 S. W. 924; State v. Willett, 78 Vt. 157, 62 Atl. 48; State v. Poole, 42 Wash. 192, 84 Pac. 727.

Later Crimes Cannot Be Shown. — Burge v. U. S., 26 App. Cas. (D. C.) 524.

Proof of Other Crimes Cannot Be Made by Accused. — Welch v. Com., (Ky. 1908) 108 S. W. 863.

Prior Attempts to Commit Crime Charged Admissible in Evidence. — State v. Bean, 77 Vt. 384, 60 Atl. 807.

2. Morris v. State, 146 Ala. 66, 41 So. 274; Sanderson v. State, (Ind. 1907) 82 N. E. 525; State v. High, 116 La. 79, 40 So. 538; State v. Deliso, (N. J. 1908) 69 Atl. 218; Owen v. State, (Tex. Crim. 1907) 105 S. W. 513.

514. 1. *England.* — Rex v. Wyatt, (1904) 1 K. B. 188, 73 L. J. K. B. 15; Rex v. Walford, 71 J. P. 215; Rex v. Bond, (1906) 2 K. B. 389.

United States. — Brown v. U. S., (C. C. A.) 142 Fed. 1; U. S. v. Milwaukee Refrigerator Transit Co., 142 Fed. 247.

Arkansas. — Adams v. State, 78 Ark. 16, 92 S. W. 1123; Storms v. State, 81 Ark. 25, 98 S. W. 678.

Georgia. — Lipham v. State, 125 Ga. 52, 53 S. E. 817.

Maryland. — Lawrence v. State, 103 Md. 17, 63 Atl. 96.

Minnesota. — State v. Peterson, 98 Minn. 210, 108 N. W. 6

Missouri. — Hobbs v. Boatright, 195 Mo. 693, 93 S. W. 934; State v. Toohey, 203 Mo. 674, 102 S. W. 530.

Montana. — State v. Newman, 34 Mont. 434, 87 Pac. 462.

New York. — See People v. Sekeson, 111 N. Y. App. Div. 499, 97 N. Y. Supp. 917.

Texas. — Gorman v. State, (Tex. Crim. 1907) 106 S. W. 384; Holland v. State, (Tex. Crim. 1907) 101 S. W. 1005; Walker v. State, 49 Tex. Crim. 345, 94 S. W. 230; Walters v. State, (Tex. Crim. 1906) 94 S. W. 1038.

Washington. — State v. Mobley, 44 Wash. 549, 87 Pac. 815.

Unless Acts Similar, Inadmissible to Show System. — Lane v. State, 49 Tex. Crim. 335, 92 S. W. 839.

2. *Alabama.* — Bradford v. State, 147 Ala. 95, 41 So. 462.

Arkansas. — Renfroe v. State, 84 Ark. 16, 104 S. W. 542; Stapleton v. State, (Ark. 1906) 97 S. W. 296; Vasser v. State, 75 Ark. 373, 87 S. W. 635.

California. — People v. McClure, 148 Cal. 418, 83 Pac. 437.

Illinois. — Wistrand v. People, 218 Ill. 323, 75 N. E. 891.

Indiana. — Cleveland, etc., R. Co. v. Hayes, 167 Ind. 454, 79 N. E. 448.

Kentucky. — Greenwell v. Com., (Ky. 1907) 100 S. W. 852.

Missouri. — State v. Sykes, 191 Mo. 62, 89 S. W. 851; State v. Vaughan, 200 Mo. 1, 98 S. W. 2.

Texas. — Carnes v. State, (Tex. Crim. 1907) 103 S. W. 403; Gray v. State, (Tex. Crim. 1905) 86 S. W. 764; Kampmann v. McCormick, (Tex. Civ. App. 1907) 99 S. W. 1147.

Utah. — State v. Shockley, 29 Utah 25, 80 Pac. 865.

Washington. — Smith v. Dow, 43 Wash. 407, 86 Pac. 555.

4. Pitman v. State, 148 Ala. 612, 42 So. 993; Smiley v. Hooper, 147 Ala. 646, 41 So. 660; Bashore v. Mooney, 4 Cal. App. 276, 87 Pac. 553; Atlantic Coast Line R. Co. v. Taylor, 125 Ga. 454, 54 S. E. 622; Hayward v. Scott, 114 Ill. App. 531; Jones v. Cooley Lake Club, 122 Mo. App. 113, 98 S. W. 82; Levels v. St. Louis, etc., R. Co., 196 Mo. 606, 94 S. W. 275; Hall v. New York, etc., R. Co., 27 R. I. 525, 65 Atl. 278; Wilson v. Moss, (S. Car. 1908) 60 S. E. 313.

519. 1. Posey v. U. S., 26 App. Cas. (D. C.) 302; Sweet v. State, 75 Neb. 263, 106 N. W. 31; People v. Van Gaasbeck, 189 N. Y. 408, 82 N. E. 718.

2. Weaver v. State, 83 Ark. 119, 102 S. W. 713; State v. Kelleher, 201 Mo. 614, 100 S. W. 470; State v. Richardson, 194 Mo. 326, 92 S. W. 649; State v. Grove, 61 W. Va. 697, 57 S. E. 296.

520. 2. People v. Albers, 137 Mich. 688, 100 N. W. 908, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 520.

521. 1. Pool v. Warren County, 123 Ga. 205, 51 S. E. 328; Sanders v. Central Georgia R. Co., 123 Ga. 763, 51 S. E. 728; Baumgartner v. Eigenbrot, 100 Md. 508, 60 Atl. 601; Dryden v. Barnes, 101 Md. 346, 61 Atl. 342; Maller v. Long Island R. Co., 122 N. Y. App. Div. 463, 106 N. Y. Supp. 784.

522. 11. *Alabama.* — Scheidegger v. Terrell, (Ala. 1906) 43 So. 26.

Illinois. — Champion v. McCarthy, 228 Ill. 87, 81 N. E. 808.

Kentucky. — Bryant v. McKinney, (Ky. 1906) 96 S. W. 809; Travelers' Ins. Co. v. Henderson Cotton Mills, 120 Ky. 218, 9 Ann. Cas. 162, 85 S. W. 1090.

Minnesota. — Taylor v. Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919.

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New Jersey. — Bernards Tp. v. Bedminster Tp., 74 N. J. L. 92, 64 Atl. 960.

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523. 1. *United States.* — Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397; Northern Pac. R. Co. *v.* Kempton, (C. C. A.) 138 Fed. 992.

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Arkansas. — Kansas City Southern R. Co. *v.* Morris, 80 Ark. 528, 98 S. W. 363; Little Rock R., etc., Co. *v.* Newman, 77 Ark. 599, 92 S. W. 864.

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Florida. — Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318; Marlow *v.* State, 49 Fla. 7, 38 So. 653.

Georgia. — Fuller *v.* State, 127 Ga. 47, 55 S. E. 1047; Grant *v.* State, 124 Ga. 757, 53 S. E. 334; Herrington *v.* State, (Ga. 1908) 60 S. E. 572; Pool *v.* Warren County, 123 Ga. 205, 51 S. E. 328; Southern R. Co. *v.* Brown, 126 Ga. 1, 54 S. E. 911; Warrick *v.* State, 125 Ga. 134, 53 S. E. 1027.

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Mississippi. — McCoy *v.* State, (Miss. 1907) 44 So. 814.

Missouri. — Mills *v.* Missouri Pac. R. Co., 199 Mo. 56, 94 S. W. 973; State *v.* Cavin, 199 Mo. 154, 97 S. W. 573; State *v.* Gordon, 196 Mo. 185, 95 S. W. 420; State *v.* Kennedy, (Mo. 1907) 106 S. W. 57; State *v.* Vaughan, 200 Mo. 1, 98 S. W. 2; State *v.* Woodward, 191 Mo. 617, 90 S. W. 90.

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Nevada. — State *v.* Roberts, 28 Nev. 350, 82 Pac. 100.

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Canada. — Gilbert *v.* Rex, 38 Can. Sup. Ct. 284, 12 Can. Crim. Cas. 127.

2. Nome Beach Lighterage, etc., Co. *v.* Standard Marine Ins. Co., 156 Fed. 484; U. S. *v.* Greene, 146 Fed. 796; Studabaker *v.* Faylor, (Ind. 1908) 83 N. E. 747; State *v.* Herlihy, 102 Me. 313, 66 Atl. 643, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 523; Keim *v.* Reading, 32 Pa. Super. Ct. 613.

525. 3. Morris *v.* State, 146 Ala. 66, 41 So. 274; People *v.* Pembroke, (Cal. App. 1907) 92 Pac. 668; Ozark *v.* State, (Tex. Crim. 1907) 100 S. W. 927.

Absence Alone Held Not Sufficient. — Allen *v.* State, 84 Ark. 178, 105 S. W. 70.

After Several Ineffectual Attempts to Subpœna a Witness his testimony taken at a former trial was received in evidence. Greenan *v.* Eggeling, 30 Pa. Super. Ct. 253. See also Cuff *v.* Frazee Storage, etc., Co., 14 Ont. L. Rep. 263, 8 Ann. Cas. 466.

526. 1. Hunter *v.* District Ct., 126 Iowa 361, 102 N. W. 156, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 526.

527. 1. *In re* Durant, (Conn. 1907) 67 Atl. 497; State *v.* Herlihy, 102 Me. 313, 66 Atl. 643, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 526.

2. State *v.* Herlihy, 102 Me. 310, 66 Atl. 643; Carp *v.* Queen Ins. Co., 203 Mo. 295, 101

S. W. 78; Keim *v.* Reading, 32 Pa. Super. Ct. 613.

531. 1. Sattley Mfg. Co. *v.* Wendt, 116 Ill. App. 375.

532. 2. **In Criminal Case Venue Need Not Be Proven in Express Terms.** — State *v.* Dickerson, 77 Ohio St. 34, 82 N. E. 969.

533. 1. Stevens *v.* Friedman, 58 W. Va. 78, 51 S. E. 132.

2. Sattley Mfg. Co. *v.* Wendt, 116 Ill. App. 375.

3. Central of Georgia R. Co. *v.* Simons, (Ala. 1907) 43 So. 731; Union Fertilizer Co. *v.* Johnson, (Ala. 1907) 43 So. 752; Walker *v.* Parry, 51 Fla. 344, 40 So. 69; State *v.* Lee, 33 Mont. 203, 83 Pac. 223; Buellesbach *v.* Sulka, (Supm. Ct. App. T.) 94 N. Y. Supp. 1; Hibberd *v.* Hubbard, 211 Pa. St. 331, 60 Atl. 911; Lee *v.* Unkefer, 77 S. Car. 460, 58 S. E. 342; McFaddin *v.* Sims, (Tex. Civ. App. 1906) 97 S. W. 335; Hartman *v.* Belden, 38 Wash. 655, 80 Pac. 806; Tacoma Mill Co. *v.* Perry, 40 Wash. 44, 82 Pac. 140.

Variance to Be Fatal Must Mislead. — Kirby Lumber Co. *v.* Poindexter, (Tex. Civ. App. 1907) 103 S. W. 439.

4. *Alabama.* — Frederick *v.* State, (Ala. 1905) 39 So. 915; Southern R. Co. *v.* Taylor, 148 Ala. 52, 42 So. 625.

Colorado. — Oligarchy Ditch Co. *v.* Farm Invest. Co., (Colo. 1906) 88 Pac. 443.

Illinois. — Chicago Union Traction Co. *v.* Brethauer, 223 Ill. 521, 79 N. E. 287; Mills *v.* Larrance, 217 Ill. 446, 75 N. E. 555; Postal Tel.-Cable Co. *v.* Likes, 225 Ill. 249, 80 N. E. 136; Sattley Mfg. Co. *v.* Wendt, 116 Ill. App. 375.

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West Virginia. — Stevens *v.* Friedman, 58 W. Va. 78, 51 S. E. 132.

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534. 1. Star Mill, etc., Co. *v.* Porter, 4 Cal. App. 470, 88 Pac. 497

2. Framke *v.* Hanly, 215 Ill. 216, 74 N. E. 130; Telford *v.* Howell, 220 Ill. 52, 77 N. E. 82; Rein *v.* Brooklyn Heights R. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 675, 94 N. Y. Supp. 636.

535. 2. Southern R. Co. *v.* Leard, 146 Ala. 349, 39 So. 449; Wilson *v.* State, (Ala. 1905) 39 So. 776; Allegany County *v.* Warfield, 100 Md. 516, 60 Atl. 599; Easton *v.* Cranmer, 19 S. Dak. 224, 102 N. W. 944; Vale *v.* Suiter, 58 W. Va. 353, 52 S. E. 313, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 535.

536. 1. Flynn *v.* Kelly, 12 Ont. L. Rep. 440.

2. People *v.* Weber, 149 Cal. 325, 86 Pac. 671; Hisler *v.* State, 52 Fla. 30, 42 So. 692; Chicago Folding Box Co. *v.* Schallawitz, 118 Ill. App. 9; Elgin, etc., Traction Co. *v.* Wilson, 120 Ill. App. 371; Merchants L. & T. Co. *v.* Boucher, 115 Ill. App. 101; State *v.* Nowells, (Iowa 1906) 109 N. W. 1016; Houston, etc., R. Co. *v.* Ramsey, (Tex. Civ. App. 1906) 97 S. W. 1067; Missouri, etc., R. Co. *v.* Lynch, (Tex. Civ. App. 1905) 90 S. W. 511.

Experiments Not Relevant When Performed under Dissimilar Conditions. — Spires *v.* State, 50 Fla. 121, 39 So. 181.

3. Pate *v.* State, (Ala. 1907) 43 So. 343; District of Columbia *v.* Duryee, 29 App. Cas. (D. C.) 327; McIlwain *v.* Gaebe, 128 Ill. App. 209; Spurlock *v.* Shreveport Traction Co., 118 La. 1, 42 So. 575; Benson *v.* Raymond, 142 Mich. 357, 105 N. W. 870, 108 N. W. 660; Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613; State *v.* Long, (Mo. 1908) 108 S. W. 35; People *v.* Gillette, 191 N. Y. 107, 83 N. E. 680; Gulf, etc., R. Co. *v.* Boyce, (Tex. Civ. App. 1905) 87 S. W. 395.

537. 1. Anderson *v.* Seropian, 147 Cal. 201, 81 Pac. 521; Chicago, etc., R. Co. *v.* Walker, 217 Ill. 605, 75 N. E. 520; Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609; Houston *v.* Chicago, etc., R. Co., 118 Mo. App. 464, 94 S. W. 560; Stephens *v.* Elliott, (Mont. 1907) 92 Pac. 45.

538. 1. Moss *v.* State, (Ala. 1907) 44 So. 598; People *v.* Weber, 149 Cal. 325, 86 Pac. 671; Clefford *v.* People, 229 Ill. 633, 82 N. E. 343; State *v.* Walker, 133 Iowa 489, 110 N. W. 925; State *v.* Gallman, (S. Car. 1908) 60 S. E. 682; Alarcon *v.* State, (Tex. Crim. 1905) 90 S. W. 179; Long *v.* State, 48 Tex. Crim. 175, 88 S. W. 203; Young *v.* State, 49 Tex. Crim. 207, 92 S. W. 841.

2. MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; State *v.* Roberts, 28 Nev. 350, 82 Pac. 100.

4. Shailer *v.* Bullock, 78 Conn. 65, 61 Atl. 65; State *v.* Danforth, 73 N. H. 215, 60 Atl. 839.

539. 1. Driver *v.* King, 145 Ala. 585, 40 So. 315; Dobbins *v.* Little Rock R., etc., Co., 79 Ark. 91, 9 Ann. Cas. 84, 95 S. W. 794, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 539; People *v.* Maughs, 149 Cal. 253, 86 Pac. 187; Hisler *v.* State, 52 Fla. 30, 42 So. 692; West *v.* State, 53 Fla. 77, 43 So. 445; Lenoir *v.* People's Bank, 87 Miss. 559, 40 So. 5; Territory *v.* Emilio, (N. Mex. 1907) 89 Pac. 239; *In re* Webster, 106 N. Y. App. Div. 360, 94 N. Y. Supp. 1050; State *v.* Remington, (Oregon 1907) 91 Pac. 473; Spokane *v.* Patterson, (Wash. 1907) 89 Pac. 402.

2. *United States.* — Porter *v.* Buckley, (C. C. A.) 147 Fed. 140 (limiting the application of the general rule).

Arkansas. — Kansas City Southern R. Co. *v.* Morris, 80 Ark. 528, 98 S. W. 363.

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District of Columbia. — Shaffer *v.* U. S., 24 App. Cas. (D. C.) 417.

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Indiana. — New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804.

Iowa. — State *v.* Matheson, 130 Iowa 440, 103 N. W. 137; State *v.* Rogers, 129 Iowa 229, 105 N. W. 455.

Kentucky. — Louisville, etc., R. Co. *v.* Brown, (Ky. 1908) 106 S. W. 795.

Maryland. — Columbia, etc., R. Co. *v.* State, 105 Md. 34, 65 Atl. 625.

Massachusetts. — Com. *v.* Tucker, 189 Mass. 457, 76 N. E. 127. And see McKarren *v.* Boston, etc., St. R. Co., 194 Mass. 179, 80 N. E. 477.

Missouri. — Pritchard *v.* Hooker, 114 Mo. App. 605, 90 S. W. 415.

Nevada. — State *v.* Roberts, 28 Nev. 350, 82 Pac. 100.

New York. — People *v.* Gillette, 191 N. Y. 107, 83 N. E. 680.

North Dakota. — Higgs *v.* Minneapolis, etc., R. Co., (N. Dak. 1908) 114 N. W. 722.

South Dakota. — *In re* McClellan, (S. Dak. 1906) 107 N. W. 681.

Texas. — Powell *v.* State, (Tex. Crim. 1907) 99 S. W. 1005; St. Louis Southwestern R. Co. *v.* Demsey, (Tex. Civ. App. 1905) 89 S. W. 786; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1908) 106 S. W. 910; Young *v.* State, 49 Tex. Crim. 207, 92 S. W. 841. And see Newcomb *v.* State, 49 Tex. Crim. 550, 95 S. W. 1048.

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540. 4. Cedartown *v.* Brooks, 2 Ga. App. 583, 59 S. E. 836; Orlando *v.* Syracuse Rapid Transit Co., 109 N. Y. App. Div. 356, 95 N. Y. Supp. 898; Houston, etc., R. Co. *v.* Anglin, 99 Tex. 349, 89 S. W. 966.

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Releases of Damages. — Allen *v.* Ruland, 79 Conn. 405, 8 Ann. Cas. 344, 65 Atl. 138; Budro *v.* Burgess, (Mass. 1907) 83 N. E. 318; Rapid Transit R. Co. *v.* Smith, 98 Tex. 553, 86 S. W. 322.

Insurance Policies — *United States.* — Connecticut F. Ins. Co. *v.* Buchanan, (C. C. A.) 141 Fed. 877; Kentucky Vermillion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695; Lefler *v.* New York L. Ins. Co., (C. C. A.) 143 Fed. 814.

Iowa. — Kelsey *v.* Continental Casualty Co., 131 Iowa 207, 108 N. W. 221.

Massachusetts. — Bowditch *v.* Norwich Union F. Ins. Co., 193 Mass. 565, 79 N. E. 788.

New Hampshire. — Lauze *v.* New York L. Ins. Co., (N. H. 1907) 68 Atl. 31.

Oklahoma. — Deming Invest. Co. *v.* Shawnee F. Ins. Co., 16 Okla. 1, 83 Pac. 918; Gish *v.* Insurance Co. of North America, 16 Okla. 159, 87 Pac. 869.

South Carolina. — Kentucky Wagon Mfg. Co. *v.* People's Supply Co., 77 S. Car. 92, 57 S. E. 676.

Tennessee. — Johnson *v.* Continental Ins. Co., (Tenn. 1907) 107 S. W. 678.

Texas. — Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057.

Virginia. — Metropolitan L. Ins. Co. *v.* Hall, 104 Va. 572, 52 S. E. 345.

Washington. — Ferguson *v.* Lumbermen's Ins. Co., 45 Wash. 200, 88 Pac. 128.

Wisconsin. — Rief *v.* Continental Casualty Co., 131 Wis. 368, 111 N. W. 502.

Indorsement of Negotiable Instruments. — Hester *v.* Gairdner, 128 Ga. 531, 58 S. E. 165; Harnett *v.* Holdrege, 73 Neb. 570, 103 N. W. 277; Hopkins *v.* Merrill, (N. J. 1907) 66

[illegible] Power Co. v. Ford, (Or. 1907) 93 Pac. 360.

Bonds. — Bieber *v.* Gans, 24 App. Cas. (D. C.) 517; McGuire *v.* Gerstley, 26 App. Cas. (D. C.) 193, *affirmed* 204 U. S. 489, 27 U. S. Sup. Ct. 332; Orion Knitting Mills *v.* U. S. Fidelity, etc., Co., 137 N. Car. 565, 50 S. E. [illegible] Co. v. Cochran, [illegible] Pa. Super. Ct. 459.

Assignments. — Wabash R. Co. *v.* Meyer, 119 Ill. App. 104; Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730.

Public Records. — Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72; People *v.* Carr, [illegible] Ill. 500, 3 N. E. 260; Howland *v.* Prentice, 143 Mich. 347, 106 N. W. 1105; Cox *v.* Mignery, 126 Mo. App. 669, 105 S. W. 675; Fogg *v.* Ocean City Sewer Co., (N. J. 1907) 66 Atl. 609; Paine *v.* Germantown Trust Co., (C. C. A.) 136 Fed. 527.

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Licenses. — Strong *v.* Carver Cotton Gin Co., (Mass. 1907) 83 N. E. 328.

Application for License. — People *v.* Griesbach, 127 Ill. App. 462.

Bills of Sale. — Townsend *v.* Southern Product Co., 127 Ga. 342, 56 S. E. 436.

Bills of Lading. — The Presque Isle, 140 Fed. 202.

Contracts for Sale of Personalty — *United States.* — Davis Calyx Drill Co. *v.* Mallory, (C. C. A.) 137 Fed. 332; Dunn *v.* Mayo Mills, (C. C. A.) 134 Fed. 804.

Alabama. — Brennard Mfg. Co. *v.* Citronelle Mercantile Co. (Ala. 1906) 41 So. 671; Main *v.* Radney, (Ala. 1905) 39 So. 981.

Arkansas. — Arden Lumber Co. *v.* Henderson Iron Works, etc., Co., 83 Ark. 240, 103 S. W. 185.

California. — Commercial, etc., Bank *v.* Pott, 150 Cal. 358, 89 Pac. 431; De Laval Dairy Supply Co. *v.* Steadman, (Cal. App. 1907) 92 Pac. 877; Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964; Hale *v.* Milliken, 5 Cal. App. 344, 90 Pac. 365; Leonhart *v.* California Wine Assoc., 5 Cal. App. 19, 89 Pac. 847.

Colorado. — Prowers *v.* Nowles, (Colo. 1908) 94 Pac. 347.

Georgia. — Biggers *v.* Equitable Mfg. Co., 124 Ga. 1045, 53 S. E. 674; Capps *v.* Edwards, (Ga. 1908) 60 S. E. 455.

Illinois. — Williams *v.* Gottschalk, 231 Ill. 175, 83 N. E. 141.

Iowa. — Doolittle *v.* Murray, 134 Iowa 536, 111 N. W. 999; Inman Mfg. Co. *v.* American Cereal Co., 133 Iowa 71, 110 N. W. 287.

Kentucky. — Covington *v.* Kanawha Coal, etc., Co., (Ky. 1906) 89 S. W. 1126; Licking Rolling Mill Co. *v.* Synder, (Ky. 1905) 89 S. W. 249.

Massachusetts. — Fullam *v.* Wright, etc., Wire Cloth Co., (Mass. 1907) 82 N. E. 711; Scholl *v.* Killorin, 190 Mass. 493, 77 N. E. 382.

Michigan. — Day Leather Co. *v.* Michigan Leather Co., 141 Mich. 533, 104 N. W. 797; Kibler *v.* Caplis, 140 Mich. 28, 103 N. W. 531; Superior Drill Co. *v.* Carpenter, 150 Mich. 262, 114 N. W. 67.

Minnesota. — McNaughton *v.* Wahl, 99 Minn. 92, 108 N. W. 467; Northwest Thresher Co. *v.* Hulburt, (Minn. 1908) 115 N. W. 159.

Mississippi. — Columbia Star Mill Co. *v.* A. G. Russell Co., (Miss. 1906) 42 So. 233; Patton-Worsham Drug Co. *v.* Planters' Mercantile Co., 86 Miss. 423, 38 So. 209.

Missouri. — Standard Mfg. Co. *v.* Hudson, 113 Mo. App. 344, 88 S. W. 137.

New Jersey. — Alexander *v.* Ferguson, 73 N. J. L. 479, 63 Atl. 998.

New York. — Williams *v.* Gridley, 110 N. Y. App. Div. 525, 96 N. Y. Supp. 978, *affirmed* 187 N. Y. 526, 79 N. E. 1119.

Ohio. — Toledo Paper Box. Co. *v.* American Roll Wrapping Paper Co., 26 Ohio Cir. Ct. 27; Watson *v.* Lamb, 75 Ohio St. 481, 79 N. E. 1075.

Vermont. — Grout *v.* Moulton, 79 Vt. 122, 64 Atl. 453.

Virginia. — Carlin *v.* Fraser, 105 Va. 216, 53 S. E. 145; Oriental Lumber Co. *v.* Blades Lumber Co., 103 Va. 730, 50 S. E. 270; Watkins *v.* Robertson, 105 Va. 269, 54 S. E. 33.

Washington. — Buckeye Buggy Co. *v.* Montana Stables, 43 Wash. 49, 85 Pac. 1077.

Wisconsin. — Midland Linseed Co. *v.* Remington Drug Co., 127 Wis. 242, 106 N. W. 115.

Contracts for Sale of Realty — *Arkansas.* — Lower *v.* Hickman, 80 Ark. 505, 97 S. W. 681.

California. — Pierce *v.* Edwards, 150 Cal. 650, 89 Pac. 600.

Connecticut. — Brosty *v.* Thompson, 79 Conn. 133, 64 Atl. 1.

Georgia. — Burton *v.* O'Neill Mfg. Co., 126 Ga. 805, 55 S. E. 933.

Louisiana. — Barfield *v.* Saunders, 116 La. 136, 40 So. 593.

Michigan. — Chicago, etc., R. Co. *v.* Lane, 150 Mich. 162, 113 N. W. 22; Yore *v.* Meshew, 146 Mich. 80, 109 N. W. 35.

Nebraska. — Apking *v.* Hoefer, 74 Neb. 325, 104 N. W. 177.

Texas. — Dillard *v.* Sanders, (Tex. Civ. App. 1906) 97 S. W. 108; Morrison *v.* Hazzard, (Tex. Civ. App. 1905) 88 S. W. 385; Morrison *v.* Hazzard, 99 Tex. 583, 92 S. W. 33.

Washington. — Newell *v.* Lamping, 45 Wash. 304, 88 Pac. 195.

Minutes of Board of Assessment. — Montana Ore Purchasing Co. *v.* Maher, 32 Mont. 480, 81 Pac. 13.

Resolutions of Board of Assessors. — Hewel *v.* Hogin, 3 Cal. App. 248, 84 Pac. 1002.

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Alabama. — Russell *v.* Broadus Cotton Mills, (Ala. 1905) 39 So. 712.

Arkansas. — Soudan Planting Co. *v.* Stevenson, 83 Ark. 163, 102 S. W. 1114; Tillar *v.* Wilson, 79 Ark. 256, 96 S. W. 381.

California. — Jersey Island Dredging Co. *v.* Whitney, (Cal. App. 1905) 86 Pac. 509.

Colorado. — Doyle *v.* Nesting, 37 Colo. 522, 88 Pac. 862.

Connecticut. — Dejon *v.* Street, 79 Conn. 333, 65 Atl. 145.

Georgia. — Branan *v.* Warfield, (Ga. App. 1908) 60 S. E. 325; Cobb *v.* Johnson, 126 Ga. 618, 55 S. E. 935; Crankshaw *v.* Schweizer Mfg. Co., 1 Ga. App. 363, 58 S. E. 222; Pennington *v.* Avera, 124 Ga. 147, 52 S. E. 324.

Illinois. — Boylan *v.* Cameron, 126 Ill. App. 442.

Indian Territory. — Farrington *v.* Stuckey, (Indian Ter. 1907) 104 S. W. 647; Hudson *v.* Stuckey, (Indian Ter. 1907) 104 S. W. 657.

Iowa. — Capital City Carriage Co. *v.* Moody, (Iowa 1907) 110 N. W. 903; Chariton Ice Co. *v.* Spring Lake Ice Co., 129 Iowa 523, 105 N. W. 1014; Houts *v.* Sioux City Brass Works, 134 Iowa 484, 110 N. W. 166; Long *v.* Furnas, 130 Iowa 504, 107 N. W. 432; Mosnat *v.* Uchytil, 129 Iowa 274, 105 N. W. 519; Spurrier *v.* Bullard, 131 Iowa 123, 107 N. W. 1036.

Kentucky. — Lanham *v.* Louisville, etc., R. Co., 120 Ky. 351, 86 S. W. 680.

Maryland. — Lemmert *v.* Lemmert, 103 Md. 57, 63 Atl. 380.

Massachusetts. — Farquhar *v.* Farquhar, 194 Mass. 400, 80 N. E. 654; McCusker *v.* Geiger, 195 Mass. 46, 80 N. E. 648; Toole *v.* Crafts, (Mass. 1907) 82 N. E. 22.

Michigan. — Haas *v.* Malto-Grapo Co., 148 Mich. 358, 111 N. W. 1059; Mail, etc., Co. *v.* Wood, 140 Mich. 505, 103 N. W. 864.

Minnesota. — Current *v.* Muir, 99 Minn. 1, 108 N. W. 870.

Missouri. — Dexter *v.* MacDonald, 196 Mo. 373, 95 S. W. 359; *In re* Evans, 117 Mo. App. 629, 93 S. W. 922; New York L. Ins. Co. *v.* Wolfson, 124 Mo. App. 286, 101 S. W. 162; Rowland *v.* St. Louis, etc., Co., 124 Mo. App. 605, 102 S. W. 19; Strother *v.* American Cooperage Co., 116 Mo. App. 518, 92 S. W. 758.

New Jersey. — Ramsey *v.* Perth Amboy Shipbuilding, etc., Co., (N. J. 1906) 65 Atl. 461.

New York. — David Belasco Co. *v.* Klaw, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 597, 97 N. Y. Supp. 712; Solomon *v.* Lighte, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 541, 99 N. Y. Supp. 540; Thomas W. Finucane Co. *v.* Board of Education, 190 N. Y. 76, 82 N. E. 737.

North Carolina. — Weddington *v.* Piedmont F. Ins. Co., 141 N. Car. 234, 54 S. E. 271; Western Carolina Bank *v.* Moore, 138 N. Car. 529, 51 S. E. 79.

North Dakota. — Houghton Implement Co. *v.* Doughty, 14 N. Dak. 331, 104 N. W. 516.

Oregon. — Chan Hi *v.* Bloomer, (Oregon 1907) 93 Pac. 141; Douglas County Bank *v.* Bloomer, (Oregon 1907) 93 Pac. 141; Sutherlin *v.* Bloomer, (Oregon 1907) 93 Pac. 135.

Pennsylvania. — Scientific American Compiling Dept. *v.* Creighton, 32 Pa. Super. Ct. 140.

South Dakota. — Gardner *v.* Welch, (S. Dak. 1906) 110 N. W. 110.

Texas. — Blake *v.* Lowry, (Tex. Civ. App. 1906) 93 S. W. 522; Gulf, etc., R. Co. *v.* Batte, (Tex. Civ. App. 1906) 94 S. W. 345; Teague *v.* Ricks, (Tex. Civ. App. 1907) 100 S. W. 794; Thompson *v.* Fitzgerald, (Tex. Civ. App. 1907) 105 S. W. 334; Williams *v.* Dallas, etc., R. Co., (Tex. Civ. App. 1906) 96 S. W. 1099; Wolf Cigar Stores Co. *v.* Kramer, (Tex. Civ. App. 1905) 89 S. W. 995, *reversed* on another point 99 Tex. 597, 91 S. W. 775.

Washington. — Buffalo Pitts Co. *v.* Shriner, 41 Wash. 146, 82 Pac. 1016; Pierson *v.* Pierce, 42 Wash. 164, 84 Pac. 731.

Rule Applies Only Between Parties to Contract and Their Privies. — *In re* Shields, 134 Iowa 559, 111 N. W. 963, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 548; Shreve *v.* Crosby, 72 N. J. L. 502, 63 Atl. 333, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 550; Good *v.* Central Coal, etc., Co., (Indian Ter. 1907) 104 S. W. 613; Aultman Engine, etc., Co. *v.* Greenlee, 134 Iowa 368, 111 N. W. 1007; International, etc., R. Co. *v.* Jones, (Tex. Civ. App. 1906) 91 S. W. 611; Bright *v.* Hanover F. Ins. Co., (Wash. 1907) 92 Pac. 779.

Rule Applies as Well to Implied as to Expressed Conditions.—U. S. *v.* Fidelity, etc., Co., (C. C. A.) 152 Fed. 596.

Rule Does Not Apply to Receipt. — House *v.* Holland, (Tex. Civ. App. 1906) 94 S. W. 153.

550. 4. Tift *v.* Southern R. Co., 138 Fed. 753.

EXCEPT — EXCEPTION.

555. 2. Moore *v.* Griffin, 72 Kan. 167, 83 Pac. 395, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555.

556. 2. Annans *v.* Sewell, 47 Oregon 372, 84 Pac. 395.

EXCHANGE AND RE-EXCHANGE.

565. 3. State Bank *v.* American Hardwood Lumber Co., 121 Mo. App. 324, 98 S. W. 786.

EXCHANGE OF PROPERTY.

569. 1. Lucas *v.* Cass County Recorder, 75 Neb. 351, 106 N. W. 217.

570. 1. Lucas *v.* Cass County Recorder, 75 Neb. 351, 106 N. W. 217.

2. Fagan *v.* Hook, 134 Iowa 381, 111 N. W. 981; Freeman *v.* Trummer, (Oregon 1907) 91 Pac. 1077; Steere *v.* Gingery, (S. Dak. 1907) 110 N. W. 774 (rule declared by statute).

571. 2. Blackledge *v.* Davis, 129 Iowa 591, 105 N. W. 1000.

6. Begley *v.* Treadway, (Ky. 1906) 93 S. W. 1045.

574. 2. Messer *v.* Hibernia Sav., etc., Soc., 149 Cal. 122, 84 Pac. 835; Cohen *v.* Parnass, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 98, 93 N. Y. Supp. 649.

Measure of Damages — Market Value Rather than That Fixed by Contract. — Fagan *v.* Hook, 134 Iowa 381, 111 N. W. 981.

An Abstract Showing a Perfect Record Title has been held to be a condition precedent to the right to recover liquidated damages. Denser *v.* Gunn, 74 Kan. 748, 87 Pac. 1132.

3. Messer *v.* Hibernia Sav., etc., Soc., 149 Cal. 122, 84 Pac. 835; Koch *v.* Streuter, 218 Ill. 546, 75 N. E. 1049; Clark *v.* Jackson, 222 Ill. 13, 78 N. E. 6; Marshall *v.* Keach, 227 Ill. 35, 81 N. E. 29; McKennan *v.* Mickelberry, 228 Ill. 460, 81 S. E. 1072; Flynn *v.* Finch,

(Iowa 1908) 114 N. W. 1058; Freedman *v.* Oppenheim, 187 N. Y. 101, 79 N. E. 841.

Rescission Proper on Failure to Convey Good Title. — Fagan *v.* Hook, 134 Iowa 381, 111 N. W. 981.

Danger of Eviction Necessary to Warrant Rescission. — Milby *v.* Hester, (Tex. Civ. App. 1906) 94 S. W. 178.

4. Spinks *v.* Clark, 147 Cal. 439, 82 Pac. 45; Crandall *v.* Parks, (Cal. 1908) 93 Pac. 1018; Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417; Chase *v.* Wolgamot, (Iowa 1908) 114 N. W. 614; Else *v.* Freeman, 72 Kan. 666, 83 Pac. 409; Bales *v.* Roberts, 189 Mo. 49, 87 S. W. 914; Troutman *v.* Eggleston, 19 S. Dak. 572, 104 N. W. 257.

Undue Delay Fatal to Right to Rescind. — DuBois *v.* Nugent, 69 N. J. Eq. 145, 60 Atl. 339.

Failure to Rescind While the Extent of Misrepresentation Is Unknown to the aggrieved party will not forfeit the right. Chase *v.* Wolgamot, (Iowa 1908) 114 N. W. 614.

A Statement of the Asking Price for property is not such a representation as to value that, if the real value be less, it will furnish a ground for rescission. McKenzie *v.* New York, 119 N. Y. App. Div. 60, 103 N. Y. Supp. 855.

6. Kerwin *v.* Friedman, (Mo. App. 1907) 105 S. W. 1102.

575. 1. **On Rescission of an Exchange of Land for Goods,** where the owner of the land has received and sold the personal property, he must repay its value as fixed by the contract of exchange. Fagan *v.* Hook, 134 Iowa 381, 105 N. W. 155.

2. **Misrepresentation as to Rentals** has been held not to furnish ground for the enforcement of a vendor's lien; rescission or an action at law for damages is the proper remedy. Ross *v.* Clark, 225 Ill. 326, 80 N. E. 275.

576. 6. Mason *v.* Bohannan, 79 Ark. 435, 96 S. W. 181.

577. 1. **Rescission for Delay in Performance** cannot be had when the delay beyond the agreed date is assented to or requested by the complaining party. Forbes *v.* Rogers, 143 Ala. 208, 38 So. 843.

578. 1. Hayes *v.* Woodham, 145 Ala. 597, 40 So. 511; Crawford *v.* Hurd, (Ky. 1908) 106 S. W. 849; Joyner *v.* Early, 139 N. Car. 49, 51 S. E. 778; Troutman *v.* Eggleston, 19 S. Dak. 572, 104 N. W. 257; Parker *v.* Anderson, (Tex. Civ. App. 1905) 85 S. W. 856; Miller *v.* Hackbarth, 126 Wis. 50, 105 N. W. 311.

6. **May Recover Value of Goods as Fixed by Contract.** — Niebels *v.* Howland, 97 Minn. 209, 106 N. W. 337; Joyner *v.* Early, 139 N. Car. 49, 51 S. E. 778.

7. Fox *v.* Wilkinson, (Wis. 1907) 113 N. W. 669.

EXECUTION AND PROOF OF DOCUMENTS.

584. 3. Tucker *v.* Helgren, (Minn. 1907) 113 N. W. 912.

585. 2. Bell *v.* Western, etc., R. Co., 125 Ga. 510, 54 S. E. 532; Dorr Cattle Co. *v.* Chicago, etc., R. Co., 128 Iowa 359, 103 N. W. 1003; Di Giorgio Importing, etc., Co. *v.* Pennsylvania R. Co., 104 Md. 693, 65 Atl. 425.

Proof of Agent's Authority Necessary. — McClung *v.* McPherson, 47 Oregon 73, 81 Pac. 567, 82 Pac. 13.

Proof of Authority from Corporation Necessary. — Bale *v.* Todd, 123 Ga. 99, 50 S. E. 990.

Presumption from Proof of Corporate Seal. — See Chicago, etc., R. Co. *v.* Weber, 219 Ill. 372, 76 N. E. 489.

Receipt Inadmissible Without Authentication. — Southern Express Co. *v.* Hill, 81 Ark. 1, 98 S. W. 371.

586. 1. **Where Party Producing Instrument Claims Thereunder Proof of Execution Unnecessary** — Maffi *v.* Stephens, (Tex. Civ. App. 1906) 93 S. W. 158.

Where the Plaintiff Relies on a Deed Coming from His Own Possession, the defendant may, without proof of its execution, rely upon an indorsement thereon. McBrayer *v.* Walker, 122 Ga. 245, 50 S. E. 95.

587. 3. Kauffman *v.* Baillie, (Wash. 1907) 89 Pac. 548.

4. Owsley *v.* Boles, (Ky. 1907) 99 S. W. 1157.

588. 2. Tucker *v.* Helgren, (Minn. 1907) 113 N. W. 912; Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624. See also Goodman *v.* Greenberg, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 581, 103 N. Y. Supp. 779.

589. 2. Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613.

5. Lewis *v.* Glass, (Ala. 1905) 39 So. 771; North Penn Iron Co. *v.* International Lithoid Co., 217 Pa. St. 538, 66 Atl. 860; Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624.

Instrument Must Be Signed in Presence of Witness to Render His Evidence Available. — Schaffer *v.* Emmons, 103 N. Y. App. Div. 399, 92 N. Y. Supp. 993.

592. 1. Lewis *v.* Glass, (Ala. 1905) 39 So. 771.

5. Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624.

593. 2. Lewis *v.* Glass, (Ala. 1905) 39 So. 771.

4. Mississippi Lumber, etc., Co. *v.* Kelly, 19 S. Dak. 577, 104 N. W. 265.

595. 2. Terry *v.* Broadhurst, 127 Ga. 212, 56 S. E. 282; Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624.

599. 1. State *v.* Waldrop, 73 S. Car. 60, 52 S. E. 793.

600. 2. Lewis *v.* Glass, (Ala. 1905) 39 So. 771; Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624.

601. 4. See International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93.

EXECUTIONS.

609. 1. Water Supply Co. *v.* Sarnow, 1 Cal. App. 479, 82 Pac. 689; Smith *v.* Rogers, 191 Mo. 334, 90 S. W. 1150.

"An Execution Is a Judicial Writ." — Hamant *v.* Creamer, 101 Me. 222, 63 Atl. 736.

"An Execution Is Not a Cause of Action. It pertains to the enforcement of the lien of a judgment." Weisbecker *v.* Cahn, 14 N. Dak. 390, 104 N. W. 513.

610. 1. Johnson *v.* Pickering, (1908) 1 K.

B. 1; Overton *v.* White, 126 Mo. App. 363, 103 S. W. 512; May *v.* Getty, 140 N. Car. 310, 53 S. E. 75; Collins *v.* Hines, (Tex. 1907) 99 S. W. 400.

2. Sink *v.* Oceana Circuit Judge, 146 Mich. 121, 109 N. W. 115; Weisbecker *v.* Cahn, 14 N. Dak. 390, 104 N. W. 513.

3. Roney *v.* McCall, 128 Ga. 249, 57 S. E. 503; Aultman, etc., Co. *v.* Meade, (Ky. 1905) 89 S. W. 137; Hamant *v.* Creamer, 101 Me. 222, 63 Atl. 736; Gulf, etc., R. Co. *v.* Flowers, 85 Miss. 633, 38 So. 37; State *v.* Leidy, 115 Mo. App. 62, 90 S. W. 759.

Judgment Need Not Award Execution. — Hartz *v.* Hausser, (Tex. Civ. App. 1905) 90 S. W. 63; Ryan *v.* Raley, (Tex. Civ. App. 1907) 106 S. W. 750.

Execution Cannot Issue on Default Judgment Which Has Been Set Aside. — State *v.* Thompson, 118 Tenn. 571, 102 S. W. 349.

Issuance of Attachment Does Not Preclude Issuance of Execution. — Water Supply Co. *v.* Sarnow, (Cal. App. 1907) 92 Pac. 667.

An Order that the Judgment Stand as Security, prevents the issuance of an execution. Wenham *v.* International Packing Co., 213 Ill. 397, 72 N. E. 1079, *reversing* 114 Ill. App. 121.

After a Supersedeas Is Issued, and during the pendency of an appeal, an execution canot issue. Louisville, etc., R. Co. *v.* Lucas, 120 Ky. 359, 86 S. W. 682.

Execution on Dormant Judgment Is Void. — Newhouse *v.* Heilbrun, 74 Kan. 282, 86 Pac. 145.

5. Jefferson County Sav. Bank *v.* Miller, 145 Ala. 237, 40 So. 513.

Clerical Error in Entry of Judgment Not Fatal. — Sheridan *v.* Forsee, 114 Mo. App. 588, 90 S. W. 120.

6. Dewey *v.* Dewey, (Mich. 1908) 115 N. W. 735.

Judgment Entered in Vacation Authorizes Writ. — Hereford *v.* Benton, 20 Colo. App. 500, 80 Pac. 499.

611. 3. Fox *v.* Helmuth, 27 Pa. Super. Ct. 81; Richardson *v.* Wymer, 104 Va. 236 51 S. E. 219; Robertson *v.* Miller, 3 N. Bruns. Eq. Rep. 78;

612. 1. Newhouse *v.* Heilbrun, 74 Kan. 282, 86 Pac. 145.

In Illinois the executor or administrator may cause his letters testamentary to be recorded in the court wherein the judgment was rendered, and execution may then issue in his name. Adams *v.* Connelly, 118 Ill. App. 441.

613. 1. Contra, on Execution Issued by Justice of Peace. — Lattimore *v.* Cowan, 2 Tenn. Ch. App. 459.

3. Leave of Court Unnecessary. — Tracy *v.* Strassel, 191 Mass. 187, 77 N. E. 700.

614. 1. Water Supply Co. *v.* Sarnow, (Cal. App. 1907) 92 Pac. 667.

2. Sloane *v.* Tiffany, 103 N. Y. App. Div. 540, 93 N. Y. Supp. 149.

3. Leave of Court Necessary After Lapse of Five Years from Entry of Judgment. — Schroeder *v.* Pehling, (S. Dak. 1906) 108 N. W. 252.

In New York leave of court is necessary when an execution against the income arising from a trust estate is sought. King *v.* Irving, 103 N. Y. App. Div. 420, 92 N. Y. Supp. 1094.

4. Notice Unnecessary. — Doehla *v.* Phillips, 151 Cal. 488, 91 Pac. 330.

A Trustee Is Entitled to Be Heard When It Is Sought to Subject Trust Income. — King *v.* Irving, 103 N. Y. App. Div. 420, 92 N. Y. Supp. 1094.

When an Execution against Trust Income Is Sought, both the trustee and the beneficiary are entitled to notice. Sloane *v.* Tiffany, 103 N. Y. App. Div. 540, 93 N. Y. Supp. 149.

5. Writ May Be Issued Out of Surrogate's Court. — *In re* Hirsch, 185 N. Y. 598, 78 N. E. 294.

Probate Court of Oklahoma Cannot Issue Execution. — Robertson *v.* Eldridge, 15 Okla. 599, 87 Pac. 659.

615. 4. Contra, in Absence of Express Statutory Authority. — Martin *v.* Craven, 126 Ga. 780, 55 S. E. 962.

5. Provisional Execution, pending appeal, is only permissible when otherwise irreparable injury will ensue. Carter *v.* Urquhart, 8 Quebec Pr. 210.

Where an Appeal Is Taken after the Sheriff Has Made a Seizure, the practice in Canada is for him to complete the sale and bring the money into court to be dealt with after the appeal is determined. Robertson *v.* Miller, 3 N. Bruns. Eq. Rep. 78.

6. Howard *v.* Deens, (Ala. 1907) 44 So. 550.

7. Requisites of Execution Issued by Justice. — Alfred *v.* Batson, (Miss. 1908) 45 So. 465; Holton *v.* Schmarback, 15 N. Dak. 38, 106 N. W. 36, supporting fourth paragraph of note.

Substantial Compliance Sufficient. — Scharff *v.* McGaugh, 205 Mo. 344, 103 S. W. 550; Bick *v.* Paris, 124 Mo. App. 341, 101 S. W. 716.

616. 2. Carnahan *v.* Carnahan, 143 Mich. 390, 107 N. W. 73.

3. See Smith *v.* Rogers, 191 Mo. 334, 90 S. W. 1150.

617. 4. Fish *v.* Hahn, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 449, 107 N. Y. Supp. 274; Deserres *v.* Atlantic, etc., R. Co., 7 Quebec Pr. 383.

Valid Assignment Is Necessary. — Reese *v.* Waller, (Ala. 1908) 45 So. 468.

Transfer of Execution Must Be in Writing. — Screws *v.* Anderson, 124 Ga. 361, 52 S. E. 429.

Assignee's Rights No Higher than Those of Assignor. — Kreamer *v.* Smith, 215 Pa. St. 330, 64 Atl. 542.

618. 1. Ryan *v.* Raley, (Tex. Civ. App. 1907) 106 S. W. 750.

Clerk Cannot Issue Writ, When Record Shows that Judgment Has Been Set Aside. — State *v.* Thompson, 118 Tenn. 571, 102 S. W. 349.

2. Mandamus Will Not Issue Where There Is No Subsisting Judgment. — State *v.* Thompson, 118 Tenn. 571, 102 S. W. 349.

5. In a Criminal Case, execution may issue against the prosecuting witness, after the acquittal of the defendant, when judgment is rendered against him for costs. State *v.* Leidy, 115 Mo. App. 62, 90 S. W. 759.

619. 2. Equitable Loan, etc., Co. *v.* Edwardsville, 143 Ala. 182, 38 So. 1016; Indianapolis *v.* City Bond Co., (Ind. App. 1908) 84 N. E. 20.

3. Beadles *v.* Fry, 15 Okla. 428, 82 Pac. 1041; Beadles *v.* Smyser, 17 Okla. 162, 87 Pac. 292.

620. 1. Woman's Christian Nat. Library Assoc. *v.* Fordyce, 73 Ark. 625, 86 S. W. 417; Margo *v.* Pennsylvania R. Co., 213 Pa. St. 468, 62 Atl. 1081.

2. Margo *v.* Pennsylvania R. Co., 213 Pa. St. 468, 62 Atl. 1081.

4. **By Statute in Pennsylvania** "any personal, mixed, or real property, franchises and rights" of a corporation may be levied upon and sold. International Coal Min. Co. *v.* Pennsylvania R. Co., 16 Pa. Dist. 529, 152 Fed. 554.

621. 1. Hartz *v.* Hausser, (Tex. Civ. App. 1905) 90 S. W. 63.

Same Rule Obtains in Massachusetts by Statute. — Dunbar *v.* Kelly, 189 Mass. 390, 75 N. E. 740; Tracy *v.* Strassel, 191 Mass. 187, 77 N. E. 700.

3. **By the New York Code of Civil Procedure.** — An order of the Surrogate's Court granting leave to issue an execution against an administrator is, except on appeal therefrom, conclusive evidence of assets applicable to the judgment. *In re* Weil, 110 N. Y. App. Div. 67, 96 N. Y. Supp. 1017.

6. **Money on Deposit in Bank Not Subject to Levy.** — National Bank of Republic *v.* Young, 125 Ill. App. 139.

Money Cannot Be Seized after Death of Judgment Debtor. — Johnson *v.* Pickering, (1908) 1 K. B. 1.

7. Johnson *v.* Pickering, (1908) 1 K. B. 1.

622. 2. **Money Raised by Legal Process Is Not Subject to Levy.** — Barkley *v.* May, (Ga. App. 1907) 59 S. E. 440.

3. **Levy Should Not Be Made until Crops Mature.** — Hixon *v.* Callaway, 2 Ga. App. 678, 58 S. E. 1120.

623. 1. Johnson *v.* Pickering, (1908) 1 K. B. 1; International Coal Min. Co. *v.* Pennsylvania R. Co., 16 Pa. Dist. 529, 152 Fed. 554, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623. See also Buck *v.* Beach, 206 U. S. 411, 27 U. S. Sup. Ct. 712, *per* Day, J., *dissenting*, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623.

4. Jobin-Marrin Co. *v.* Betts, 1 W. L. R. 369.

6. Johnson *v.* Pickering, (1908) 1 K. B. 1; Jobin-Marrin Co. *v.* Betts, 1 W. L. R. 369.

7. **The Indiana Statutes Authorize a Levy upon Shares of Stock.** — Boone *v.* Van Gorder, 164 Ind. 499, 74 N. E. 4.

624. 7. Hixon *v.* Callaway, 2 Ga. App. 678, 58 S. E. 1120.

625. 1. Mitchell *v.* McLeod, 127 Iowa 733, 104 N. W. 349.

2. Wilson *v.* Curry, (Ala. 1907) 42 So. 753; Deariso *v.* Lawrence, (Ga. App. 1908) 60 S. E. 330; Munger *v.* Sanford, 144 Mich. 323, 107 N. W. 914.

626. 5. Lemmon *v.* Beattie, (Colo. 1907) 91 Pac. 1105.

Undivided Interest in Chattels Not Subject to Execution. — McLendon *v.* Dunlap Hardware Co., (Ga. App. 1907) 59 S. E. 718.

627. 6. **Dissolution of Attachment Lien Does Not Suspend Levy.** — Dunbar *v.* Kelly, 189 Mass. 390, 75 N. E. 740.

628. 1. International Coal Min. Co. *v.* Pennsylvania R. Co., 16 Pa. Dist. 529, 152 Fed. 554.

629. 5. Mexican Nat. Coal, etc., Co. *v.* Frank, 154 Fed. 217.

7. Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928.

630. 3. **The Property Awarded to a Wife by a Divorce Decree** is not subject to an execution against her divorced husband. Holland *v.* Zilliox, (Tex. Civ. App. 1905) 86 S. W. 36.

631. 6. **Conditional Life Estate Not Subject to Levy.** — Harber *v.* Nash, 126 Ga. 777, 55 S. E. 928.

11. Gallagher *v.* Hicks, 216 Pa. St. 243, 65 Atl. 623.

12. Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Pedigo *v.* Botts, (Ky. 1905) 89 S. W. 164; Williams *v.* Lobban, 206 Mo. 399, 104 S. W. 58.

632. 1. See Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592.

3. Macfarlane *v.* Dorsey, 49 Fla. 341, 38 So. 512; Poole *v.* French, 71 Kan. 391, 80 Pac. 997; Holmes *v.* Wolfard, 47 Oregon 93, 81 Pac. 819.

4. Reed *v.* Munn, (C. C. A.) 148 Fed. 737; Poole *v.* French, 71 Kan. 391, 80 Pac. 997; Williams *v.* Lobban, 206 Mo. 399, 104 S. W. 58.

6. Tucker *v.* Denico, 27 R. I. 239, 61 Atl. 642. See also Bolland *v.* Young, (1904) 2 K. B. 824.

633. 1. Reed *v.* Munn, (C. C. A.) 148 Fed. 737; Sloane *v.* Tiffany, 103 N. Y. App. Div. 540, 93 N. Y. Supp. 149; Tucker *v.* Denico, 27 R. I. 239, 61 Atl. 642.

Trustee Must Be Made Party on Application to Subject Income. — King *v.* Irving, 103 N. Y. App. Div. 420, 92 N. Y. Supp. 1094.

New York Statute Does Not Apply to Trusts Created Prior to Passage of Act. — Ringe *v.* Mortimer, 116 N. Y. App. Div. 722, 101 N. Y. Supp. 1110.

2. Hill *v.* Fulmer, (Miss. 1905) 39 So. 53; Mayo *v.* Staton, 137 N. Car. 670, 50 S. E. 331. See also Pogue *v.* Simon, 47 Oregon 6, 81 Pac. 566.

Test of Liability. — Hopper *v.* Eastern Kentucky Lunatic Asylum, 85 S. W. 1187, 27 Ky. L. Rep. 649.

4. Mayo *v.* Staton, 137 N. Car. 670, 50 S. E. 331.

634. 1. Woman's Christian Nat. Library Assoc. *v.* Fordyce, 73 Ark. 625, 86 S. W. 417; Hudson *v.* Wright, 204 Mo. 412, 103 S. W. 8.

2. See Hickey *v.* Davidson, 129 Iowa 384, 105 N. W. 678.

Leave of Court Necessary Where Interest Is Uncertain. — Arkenburgh *v.* Arkenburgh, 114 N. Y. App. Div. 436, 99 N. Y. Supp. 1127.

3. Scharff *v.* McGaugh, 205 Mo. 344, 103 S. W. 550.

635. 5. Carter *v.* Smith, 142 Ala. 414, 38 So. 184; Simmons *v.* Sharpe, 148 Ala. 217, 42 So. 441; Armstead *v.* Jones, 71 Kan. 142, 80 Pac. 56; Mayo *v.* Staton, 137 N. Car. 670, 50 S. E. 331.

Tender or Payment to Mortgagee of Amount Due Him Is Necessary. — Burkhalter *v.* Durden, 122 Ga. 427, 50 S. E. 144.

636. 3. **After the Expiration of the Period of Redemption,** and before the execution of a sheriff's deed, the interest of the purchaser is

subject to execution. Pogue *v.* Simon, 47 Oregon 6, 81 Pac. 566.

637. 1. Texas. — See Rutherford *v.* Mothershed, (Tex. Civ. App. 1906) 92 S. W. 1021.

Execution Cannot Be Awarded against Land Previously Sold to Third Parties. — Rhodes *v.* Rhodes, 115 Ill. App. 335.

638. 2. Vendor Cannot Sue Out Execution against Equitable Interest of Vendee. — McPeters *v.* English, 141 N. Car. 491, 54 S. E. 417.

2. Thomassen *v.* De Goey, 133 Iowa 278, 110 N. W. 581.

Contra, When Purchase Money Has Not Been Paid. — Holmes *v.* Wolfard, 47 Oregon 93, 81 Pac. 569.

639. 2. Defendant Must Have Such Interest as He Can Sell, Before Levy Can Be Made. — Harber *v.* Nash, 126 Ga. 777, 55 S. E. 928.

3. Land Conveyed by Debtor of Defunct Corporation to a new corporation which has assumed the assets and liabilities of the old, is not leviable upon under an execution against the old corporation. Houston Ice, etc., Co. *v.* Stratton, (Tex. Civ. App. 1905) 89 S. W. 1111.

640. 8. *In re* Franklin Lumber Co., 147 Fed. 852; Barkley *v.* May, (Ga. App. 1907) 59 S. E. 440.

10. Baisden *v.* Holmes-Hartsfield Co., (Ga. App. 1908) 60 S. E. 1031.

641. 2. Campbell *v.* Kauffman Milling Co., (Mo. App. 1907) 105 S. W. 286.

But see Peeples *v.* Slayden-Kirksey Woolen Mills, (Tex. Civ. App. 1905) 90 S. W. 61.

3. See *contra,* Thompson *v.* Gooldsby, (Tex. Civ. App. 1907) 106 S. W. 936.

4. Chalmers *v.* Littlefield, (Me. 1907) 69 Atl. 100.

642. 1. *In re* Franklin Lumber Co., 147 Fed. 852; Chalmers *v.* Littlefield, (Me. 1907) 69 Atl. 100.

4. Pederson *v.* Lease, (Wash. 1908) 93 Pac. 439.

643. 1. Rucker *v.* Tabor, 126 Ga. 132, 54 S. E. 959; Jones *v.* Rogers, 85 Miss. 802, 38 So. 742; Guiterman *v.* Coutant, (N. Y. City Ct. Spec. T.) 58 Misc. (N. Y.) 359, 109 N. Y. Supp. 666; Thompson *v.* Gooldsby, (Tex. Civ. App. 1907) 106 S. W. 936.

By Statute in Georgia, an execution issued by a tax collector must recite that the lot against which the execution was issued was not returned for taxation. Bennett *v.* Southern Pine Co., 123 Ga. 618, 51 S. E. 654.

2. Simmons *v.* Sharpe, 148 Ala. 217, 42 So. 441; Overton *v.* White, 126 Mo. App. 363, 103 S. W. 512; Collins *v.* Hines, (Tex. 1907) 99 S. W. 400; Secord *v.* Mowat, 12 Ont. L. Rep. 511.

6. Execution May Be Both General and Special. — James *v.* Cooledge, 129 Ga. 860, 60 S. E. 185.

General Execution Follows General Judgment Based upon Personal Service. — Smith *v.* Rogers, 191 Mo. 334, 90 S. W. 1150.

7. A Special Execution is generally used where the defendant has not been brought into court by personal service of process, but his property has been seized. Smith *v.* Rogers, 191 Mo. 334, 90 S. W. 1150.

8. Guiterman *v.* Coutant, (N. Y. City Ct. Spec. T.) 58 Misc. (N. Y.) 359, 109 N. Y. Supp. 666. See also Smith *v.* Rogers, 191 Mo. 334, 90 S. W. 1150.

644. 2. Scharff *v.* McGaugh, 205 Mo. 344, 103 S. W. 550; Schroeder *v.* Pehling, (S. Dak. 1906) 108 N. W. 252.

645. 3. Overton *v.* White, 126 Mo. App. 363, 103 S. W. 512.

5. Rankin *v.* Porter Real Estate Co., 199 Mo. 345, 97 S. W. 877; Overton *v.* White, 126 Mo. App. 363, 103 S. W. 512; Fish *v.* Hahn, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 449, 107 N. Y. Supp. 274.

Where the Judgment Has Been Amended Nunc Pro Tunc, it is proper for the execution to recite the date of the original judgment as the date of the rendition of the judgment on which it was issued. Carter *v.* Smith, 142 Ala. 414, 38 So. 184.

8. Simmons *v.* Sharpe, 148 Ala. 217, 42 So. 441; Adams *v.* Connelly, 118 Ill. App. 441; Collins *v.* Hines, (Tex. 1907) 99 S. W. 400.

Omission of Name of Plaintiff a Mere Irregularity — Not Rendering Writ Void. — Collins *v.* Hines, (Tex. Civ. App. 1906) 100 S. W. 359.

9. Dieboldt Brewing Co. *v.* Grabski, 28 Ohio Cir. Ct. 91; Collins *v.* Hines, (Tex. 1907) 99 S. W. 400.

Idem Sonans — Mistake Not Fatal. — Pederson *v.* Lease, (Wash. 1908) 93 Pac. 439.

10. Doehla *v.* Phillips, 151 Cal. 488, 91 Pac. 330; Hamant *v.* Creamer, 101 Me. 222, 63 Atl. 736; Fish *v.* Hahn, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 449, 107 N. Y. Supp. 274; Weiskircher *v.* Volk, 29 Pa. Super. Ct. 611; Taylor *v.* Doom, (Tex. Civ. App. 1906) 95 S. W. 4.

11. Pederson *v.* Lease, (Wash. 1908) 93 Pac. 439; Secord *v.* Mowat, 12 Ont. L. Rep. 511.

646. 1. Seizure, and Not Entry of Record Constitutes Levy. — Ayers *v.* State, (Ga. App. 1907) 59 S. E. 924.

3. Hixon *v.* Callaway, 2 Ga. App. 678, 58 S. E. 1120.

647. 2. Rucker *v.* Tabor, 126 Ga. 132, 54 S. E. 959.

Estoppel.—The maker and sureties on a forthcoming bond are estopped to deny the authority of the officer making the levy, after they have derived the benefit arising from the release of the property. Smith *v.* Davis, (Ga. App. 1908) 60 S. E. 199.

3. Contra — May Levy in Any County in Which Property Is Found. — Booker *v.* Bass, 127 Ga. 132, 56 S. E. 283.

648. 1. Taylor *v.* Crowe, 122 Ill. App. 518.

649. 8. Taylor *v.* Crowe, 122 Ill. App. 518; Fortin *v.* Sedgwick, 133 Iowa 233, 110 N. W. 460. See also Jones *v.* Rogers, 85 Miss. 802, 38 So. 742.

650. 6. Hollinshed *v.* Woodard, 124 Ga. 721, 52 S. E. 815; Hudson *v.* Wright, 204 Mo. 412, 103 S. W. 8.

651. 1. Levy Is Not Invalidated by Levy on Property Other than That Selected by Debtor. — Hollinshed *v.* Woodard, 124 Ga. 721, 52 S. E. 815.

4. Hollinshed *v.* Woodard, 124 Ga. 721, 52 S. E. 815.

Payment or Tender to Mortgagee Preliminary Requisite. — Burkhalter *v.* Durden, 122 Ga. 427, 50 S. E. 144.

6. Excessive Levy Should Not Be Made. — Downs *v.* Dennis, 83 Ark. 71, 102 S. W. 699; Fortin *v.* Sedgwick, 133 Iowa 233, 110 N. W. 460.

A levy is not necessarily void because the value of the land levied on is more than the amount of the execution. Bridger *v.* Exchange Bank, 126 Ga. 821, 56 S. E. 97.

Grossly Excessive Levy Void. — Hollinshead *v.* Woodard, 128 Ga. 7, 57 S. E. 79.

652. 2. Appraisement Not Necessary in Kansas. — Armstead *v.* Jones, 71 Kan. 142, 80 Pac. 56.

654. 2. Palladino *v.* Hilpert, (N. J. 1907) 65 Atl. 723, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 654.

655. 4. Inventory Furnished by Debtor. — Avon-by-the-Sea Land, etc., Co. *v.* McDowell, (N. J. 1906) 62 Atl. 865.

Actual Seizure Necessary to Constitute Levy upon Money. — Johnson *v.* Pickering, (1908) 1 K. B. 1.

656. 2. Hereford *v.* Benton, 20 Colo. App. 500, 80 Pac. 499.

657. 1. Field *v.* Fletcher, 191 Mass. 494, 78 N. E. 107.

658. 1. Wilson *v.* Curry, (Ala. 1907) 42 So. 754, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 658.

Chattels in Debtor's Actual Possession. — Levy may be made upon a package of money which the debtor is counting. Richards *v.* Heger, 122 Mo. App. 512, 99 S. W. 802.

4. Dickinson *v.* Robertson, 11 British Columbia 155.

Contra, When Mortgagee Is in Possession and Only Constructive Seizure Can Be Made. — Avon-by-the-Sea Land, etc., Co. *v.* McDowell, (N. J. 1906) 62 Atl. 865.

5. Hereford *v.* Benton, 20 Colo. App. 500, 80 Pac. 499; Taylor *v.* Crowe, 122 Ill. App. 518; Dickinson *v.* Robertson, 11 British Columbia 155.

659. 1. Taylor *v.* Crowe, 122 Ill. App. 518.

Trespass Against Person Not Authorized. — Richards *v.* Heger, 122 Mo. App. 512, 99 S. W. 802.

2. Johnson *v.* Emery, 31 Utah 126, 86 Pac. 869.

660. 2. National Bank *v.* Duff, (Kan. 1908) 94 Pac. 260.

Officer Should Wait until Crops Mature Before Making Levy. — Hixon *v.* Callaway, 2 Ga. App. 678, 58 S. E. 1120.

3. Hereford *v.* Benton, 20 Colo. App. 500, 80 Pac. 499.

4. National Bank *v.* Duff, (Kan. 1908) 94 Pac. 260.

6. Notice Should Be Given Owner in Possession. — Hubert *v.* Hubert, (Tex. Civ. App. 1907) 102 S. W. 948.

7. Contra. — Hubert *v.* Hubert, (Tex. Civ. App. 1907) 102 S. W. 948.

663. 1. Hereford *v.* Benton, 20 Colo. App. 500, 80 Pac. 499.

Statutory Provisions. — Deariso *v.* Lawrence, (Ga. App. 1908) 60 S. E. 330; Joas *v.* Jordan, (S. Dak. 1907) 113 N. W. 73.

2. Hixon *v.* Callaway, 2 Ga. App. 678, 58 S. E. 1120; Munger *v.* Sanford, 144 Mich. 323, 107 N. W. 914.

Mortgagee in Possession — *Only Constructive Seizure Permitted.* — Avon-by-the-Sea Land, etc., Co. *v.* McDowell, (N. J. 1906) 62 Atl. 865.

3. Mitchell *v.* McLeod, 127 Iowa 733, 104 N. W. 349.

4. Levy Cannot Be Made upon Money Deposited in Bank. — National Bank of Republic *v.* Young, 125 Ill. App. 139.

5. Johnson *v.* Pickering, (1908) 1 K. B. 1.

Corporate Stock. — See Boone *v.* Van Gorder, 164 Ind. 499, 74 N. E. 4.

664. 1. Husband and Wife. — The property of the wife is not subject to levy under an execution against her divorced husband. Holland *v.* Zilliox, (Tex. Civ. App. 1905) 86 S. W. 36.

3. Where Executions Are Sued Out by Both Plaintiff and Defendant against each other and are placed in the hands of the same officer, he may set off one against the other. Caldwell *v.* Ryan, (Mo. App. 1908) 108 S. W. 533.

665. 1. Baisden *v.* Holmes-Hartsfield Co., (Ga. App. 1908) 60 S. E. 1031.

4. Description of Land in Indorsement. — See Walden *v.* Walden, 128 Ga. 126, 57 S. E. 323; Low *v.* Skaggs, (Ky. 1907) 105 S. W. 439.

Same Particularity Required as in Sheriff's Deed. — Veatch *v.* Gray, (Tex. Civ. App. 1905) 91 S. W. 324.

666. 2. Booker *v.* Bass, 127 Ga. 133, 56 S. E. 283.

Amendment of Indorsement. — See Roney *v.* McCall, 128 Ga. 249, 57 S. E. 503.

667. 3. Issuance of New Execution Is Abandonment of Levy Made under Former Execution. — Adams *v.* Connelly, 118 Ill. App. 441.

668. 2. Hamilton *v.* Rogers, 126 Ga. 27, 54 S. E. 926; Roney *v.* McCall, 128 Ga. 249, 57 S. E. 503; Duff, etc., Furniture Co. *v.* Read, 74 Kan. 730, 88 Pac. 263; Robertson *v.* Eldridge, 15 Okla. 599, 87 Pac. 659.

Order that Judgment Stand as Security Prevents Issuance of Execution. — Wenham *v.* International Packing Co., 213 Ill. 397, 72 N. E. 1079, *reversing* 114 Ill. App. 121.

3. Pedrick *v.* Kuemmell, 74 N. J. L. 379, 65 Atl. 846.

5. Ayers *v.* State, (Ga. App. 1907) 59 S. E. 924; Pedrick *v.* Kuemmell, 74 N. J. L. 379, 65 Atl. 846; Dickinson *v.* Oliver, 112 N. Y. App. Div. 806, 99 N. Y. Supp. 432.

669. 3. Rule Based upon Pure Fiction of Law. — Lattimore *v.* Cowan, 2 Tenn. Ch. App. 459.

4. Rule Does Not Apply to Executions Issued by Justice of Peace. — Lattimore *v.* Cowan, 2 Tenn. Ch. App. 459.

8. Johnson *v.* Pickering, (1908) 1 K. B. 1.

In the County Courts of England, where the registrar is ex-officio high bailiff and is charged with the enforcement of the writ of execution, the lien commences at the time of the delivery of the application for the writ to the registrar. Murgatroyd *v.* Wright, (1907) 2 K. B. 333.

9. Limoges *v.* Campbell, 2 N. W. Ter. 356.

670. 1. Boone *v.* Van Gorder, 164 Ind. 499, 74 N. E. 4; Low *v.* Skaggs, (Ky. 1907) 105 S. W. 439.

671. 4. Howard *v.* Deens, 143 Ala. 423, 39 So. 340.

Recording of Execution. — In *Kentucky* a *lis*

pendens notice must be filed. Low *v.* Skaggs, (Ky. 1907) 105 S. W. 439.

Lien Commences with Date of Levy. — Dunbar *v.* Kelly, 189 Mass. 390, 75 N. E. 740.

672. 3. Hickey *v.* Davidson, 129 Iowa 384, 105 N. W. 678; Bishop *v.* John H. Hibben Dry Goods Co., (Ky. 1907) 99 S. W. 644; Riggs *v.* Bair, 213 Pa. St. 402, 62 Atl. 1086. See also Donaldson *v.* Everett, 122 Ga. 318, 50 S. E. 94.

Notice of Title in Third Person Is for Benefit of Sheriff and Not Execution Plaintiff. — Mitchell *v.* McLeod, 127 Iowa 733, 104 N. W. 340.

Where the Judgment Creditor Has Notice of the Sale of Property [illegible] **levy upon it, even though the purchaser has not taken possession.** Cronin *v.* De Peyster, 118 Ill. App. 583.

674. 1. Hollinshed *v.* Woodard, 124 Ga. 721, 52 S. E. 815; Ward *v.* Kennesaw Fertilizer Co., 127 Ga. 106, 56 S. E. 123.

Property May Be Sold Pending Appeal and Before Issuance of Execution. — Austin *v.* Union Paving, etc., Co., 4 Cal. App. 610, 88 Pac. 731.

675. 3. King *v.* Davis, 137 Fed. 222.

676. 2. **Contra, Where Lien Has Become Void by Lapse of Time.** — Bliss *v.* Slater, 144 Mich. 648, 108 N. W. 86.

677. 3. Johnson *v.* Pickering, (1908) 1 K. B. 1.

678. 5. **Illinois.** — Rhodes *v.* Rhodes, 115 Ill. App. 335.

The lien of the judgment continues for seven years, but if execution is not issued thereon within one year from the time the same becomes a lien, it shall cease to be a lien after the expiration of that year. Wenham *v.* International Packing Co., 213 Ill. 397, 72 N. E. 1079, *reversing* 114 Ill. App. 121.

679. 2. **Michigan** — *Five Years.* — Bliss *v.* Slater, 144 Mich. 648, 108 N. W. 86.

680. 2. See Adams *v.* Connelly, 118 Ill. App. 441.

3. **Issuance of New Execution Does Not Preserve Lien of Old Execution.** — Adams *v.* Connelly, 118 Ill. App. 441.

Abandonment of Sale Does Not Render Execution Dormant. — *In re* Bruce, 158 Fed. 123.

4. **Sale Not Necessary to Preserve Lien.** — Low *v.* Skaggs, (Ky. 1907) 105 S. W. 439.

681. 4. Carlson *v.* Headline, 100 Minn. 327, 111 N. W. 259.

682. 4. **In Canada** priorities are not determined by the order in which the copies of execution with the accompanying memoranda are delivered by the sheriff to the registrar. Limoges *v.* Campbell, 2 N. W. Ter. 356.

683. 2. Miller *v.* Grady, 76 Ark. 270, 88 S. W. 963; Sitley *v.* Morris, (N. J. 1907) 67 Atl. 789.

684. 2. Miller *v.* Grady, 76 Ark. 270, 88 S. W. 963.

4. **Junior Judgment Creditor Gains Priority by Diligence in Levying Before Senior Creditor.** — Sitley *v.* Morris, (N. J. 1907) 67 Atl. 789.

6. Jefferson County Sav. Bank *v.* Miller, 145 Ala. 237, 40 So. 513; Eisenhower *v.* Shank, 31 Pa. Super. Ct. 23.

685. 1. Lippincott *v.* Smith, 69 N. J. Eq. 243, 60 Atl. 330.

2. See *contra*, Lippincott *v.* Smith, 69 N. J. Eq. 243, 60 Atl. 330.

3. Gille *v.* Enright, 73 Kan. 245, 84 Pac. 992.

687. 3. Lippincott *v.* Smith, 69 N. J. Eq. 243, 60 Atl. 330.

688. 4. Ward *v.* Kennesaw Fertilizer Co., 127 Ga. 106, 56 S. E. 123.

5. **Notice of Execution Sufficient to Give Priority.** — Lyons Nat. Bank *v.* Schuler, 115 N. Y. App. Div. 859, 101 N. Y. Supp. 62.

6. Howard *v.* Deens, 143 Ala. 423, 39 So. 346; Burkhalter *v.* Durden, 122 Ga. 427, 50 S. E. 144; Armstead *v.* Jones, 71 Kan. 142, 80 Pac. 56; Munger *v.* Sanford, 144 Mich. 323, 107 N. W. 914; Joas *v.* Jordan, (S. Dak. 1907) 113 N. W. 73.

Judgment Creditor Cannot Obtain Priority over Debenture Holder by Issuance of Execution. — *In re* London Pressed Hinge Co., (1905) 1 Ch. 576.

Invalid Foreclosure Proceedings Give Subsequent Execution Priority. — Webster *v.* Ypsilanti Canning Co., 149 Mich. 489, 113 N. W. 7.

689. 1. **Contra.** — In *Canada* an unregistered equitable mortgage takes priority over a subsequent writ of execution against lands. Sawyer, etc., Co. *v.* Waddell, 6 N. W. Ter. 45.

2. Barkley *v.* May, (Ga. App. 1907) 59 S. E. 440.

3. Mitchell *v.* McLeod, 127 Iowa 733, 104 N. W. 340.

5. Brooks *v.* Hibbard, (Tex. Civ. App. 1907) 99 S. W. 718; Whitaker *v.* Farris, (Tex. Civ. App. 1907) 101 S. W. 456.

690. 2. **Mortgages to Secure Purchase Price.** — A statute providing that mortgages given to secure supplies necessary to make and gather a crop shall be superior to older judgments does not cover a bill of sale given to secure such supplies. Hixon *v.* Callaway, 2 Ga. App. 678, 58 S. E. 1120.

3. Cochran *v.* Waits, 127 Ga. 93, 56 S. E. 241; Groesbeck *v.* Evans, (Tex. Civ. App. 1905) 88 S. W. 889.

Where There Are Several Executions and the proceeds of the sale are not sufficient to satisfy all, the landlord's claim for rent is to be reckoned up to the date of the levy made on the execution which was the last to participate in the fund. Wadas *v.* Sharp, 27 Pa. Super. Ct. 233.

5. **Contra.** — Baisden *v.* Holmes-Hartfield Co., (Ga. App. 1908) 60 S. E. 1031.

10. **Effect of Sale under Levy.** — Massey-Harris Co. *v.* Mollond, 15 Manitoba 364.

691. 3. See Sink *v.* Oceana Circuit Judge, 146 Mich. 121, 109 N. W. 115.

692. 1. Hereford *v.* Benton, 20 Colo. App. 500, 80 Pac. 499; Fidelity, etc., Co. *v.* B. F. Sturtevant Co., 86 Miss. 509, 38 So. 783.

A Waiver by One Incumbrancer of his rights under a levy merely nullifies the writ as far as he is concerned, and does not affect the rights of the other incumbrancers. Welsh *v.* Lawler, (N. J. 1907) 68 Atl. 218.

2. Welsh *v.* Lawler, (N. J. 1907) 68 Atl. 218.

5. Water Supply Co. *v.* Sarnow, (Cal. App. 1907) 92 Pac. 667.

693. 2. Wadas *v.* Sharp, 27 Pa. Super. Ct. 233.

694. 2. Wadas *v.* Sharp, 27 Pa. Super. Ct. 233. See also Field *v.* Fletcher, 191 Mass. 494, 78 N. E. 107.

696. 4. Wadas *v.* Sharp, 27 Pa. Super. Ct. 233.

698. 3. See Louisville, etc., R. Co. *v.* Lucas, 120 Ky. 359, 86 S. W. 682.

4. Thalheim *v.* Camp Phosphate Co., 48 Fla. 190, 5 Ann. Cas. 784, 37 So. 523, *citing* 11 AM. & ENG. ENCYC. OF LAW (2d ed.) 698.

699. 2. Kaminsky *v.* Horrigan, 2 Ga. App. 332, 58 S. E. 497.

Bond Executed to Others than Plaintiff Not Statutory Bond. — Burns *v.* George, (Ala. 1908) 45 So. 421.

Bond Should Not Be Payable to Plaintiff in Execution. — Mount *v.* Wall, 127 Ga. 211, 56 S. E. 298.

700. 4. Bishop *v.* John H. Hibben Dry Goods Co., (Ky. 1907) 99 S. W. 644.

Proper Notice Must Be Given to Levying Officer. — Shaw *v.* Tyrell, 129 Iowa 556, 105 N. W. 1016.

The Fact that Property, When Levied upon, Was in Debtor's House, is *prima facie* possession of ownership, and casts upon the claimant the burden of proving title. Bennett *v.* McKee, 144 Ala. 601, 38 So. 129.

6. **Claimant Must Show Title in Himself.** — Rowland *v.* Gregg, 122 Ga. 819, 50 S. E. 949.

701. 1. Austin *v.* Southern Home Bldg., etc., Assoc., 122 Ga. 439, 50 S. E. 382.

2. **Where the Indemnifying Bond Recites** the fact that the constable had levied the execution prior to the execution of the bond, the defendants are estopped from claiming there had been no levy. Smith *v.* Rogers, 191 Mo. 334, 90 S. W. 1150.

3. Baker *v.* Duddleson, 125 Ill. App. 483.

4. Dunbar *v.* Kelly, 189 Mass. 390, 75 N. E. 740; Tracy *v.* Strassel, 191 Mass. 187, 77 N. E. 700.

702. 2. Lattimore *v.* Cowan, 2 Tenn. Ch. App. 459.

3. Seymour *v.* Bruske, 140 Mich. 244, 103 N. W. 613, 104 N. W. 691.

Lien Attaches to Property in Hands of Heirs or Devisees, and Their Alienees. — Tracy *v.* Strassel, 191 Mass. 187, 77 N. E. 700.

703. 1. Ford *v.* Bigger, 80 Ark. 300, 97 S. W. 65.

2. Ford *v.* Bigger, 80 Ark. 300, 97 S. W. 65.

710. 1. Massey-Harris Co. *v.* Mollond, 15 Manitoba 364.

711. 6. Gille *v.* Enright, 73 Kan. 245, 84 Pac. 992.

712. 3. Richardson *v.* Wymer, 104 Va. 236, 51 S. E. 219.

714. 1. Cambers *v.* Butte First Nat. Bank, 144 Fed. 717, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 713, 714; Richardson *v.* Wymer, 104 Va. 236, 51 S. E. 219.

3. Gaar *v.* Reesor, (Ky. 1906) 91 S. W. 717.

715. 1. *In re* Bruce, 158 Fed. 123.

7. Acme Harvester Co. *v.* Magill, 15 N. Dak. 116, 106 N. W. 563.

8. **An Entry of Satisfaction Will Not Be Vacated** by reason of the fact that the defendant in execution recovered judgment against the sheriff for a wrongful sale of the property and the plaintiff paid the judgment, he not being legally obliged to do so. Allen *v.* Peterson, (S. Dak. 1907) 111 N. W. 538.

11. Pleshek *v.* McDonell, 130 Wis. 445, 110 N. W. 269.

In Georgia, Remedy Is by Affidavit of Illegality. — Roney *v.* McCall, 128 Ga. 249, 57 S. E. 503.

716. 3. Fox *v.* Helmuth, 27 Pa. Super. Ct. 81.

In Georgia, Payment May Be Set Up by Affidavit of Illegality. — Mathews *v.* Gelders, 129 Ga. 103, 58 S. E. 649.

7. State *v.* Leidy, 115 Mo. App. 62, 90 S. W. 759.

Clerical Error in Entry of Judgment Not Ground for Quashal. — Sheridan *v.* Forsee, 114 Mo. App. 588, 90 S. W. 120.

8. Harbert *v.* Durden, 116 Mo. App. 512, 92 S. W. 746.

A Misstatement of Fact by the appellate court in its opinion affirming a judgment is not ground for quashing an execution issued thereon. Overton *v.* White, 126 Mo. App. 363, 103 S. W. 512.

717. 1. Arkadelphia Lumber Co. *v.* Asman, 79 Ark. 284, 95 S. W. 134; Barnett *v.* Hickson, 52 Fla. 457, 41 So. 606; Roney *v.* McCall, 128 Ga. 249, 57 S. E. 503; Eisenhauer *v.* Quinn, (Mont. 1907) 93 Pac. 38; Minton *v.* Palmer, (Neb. 1907) 112 N. W. 610; Hearn *v.* Canning, 27 R. I. 217, 61 Atl. 602; Pleshek *v.* McDonell, 130 Wis. 445, 110 N. W. 269.

Injunction Will Not Lie, When Affidavit of Illegality Is Complete Remedy. — Mathews *v.* Gelders, 129 Ga. 103, 58 S. E. 649.

Injunction Will Not Lie, Where Appeal Might Have Been Taken. — Grossman *v.* Davis, 117 Ill. App. 354.

2. Austin *v.* Union Paving, etc., Co., 4 Cal. App. 610, 88 Pac. 731; Florida Packing, etc., Co. *v.* Carney, 49 Fla. 293, 38 So. 602; Kester *v.* Schuldt, 11 Idaho 663, 85 Pac. 974; Robinson *v.* Carlton, (Ky. 1906) 96 S. W. 549; Tootle *v.* Buckingham, 190 Mo. 183, 88 S. W. 619; Neeley *v.* Independence Bank, 114 Mo. App. 467, 89 S. W. 907; Jackson Milling Co. *v.* Scott, 130 Wis. 267, 110 N. W. 184.

Lack of Service Is Ground for Injunction. — Brown *v.* Gorman, (Indian Ter. 1907) 104 S. W. 1165.

Injunction Will Lie if Judgment Has Been Procured by Fraud. — Gulf, etc., R. Co. *v.* Flowers, 85 Miss. 633, 38 So. 37.

718. 5. **Vacation on Motion of Owner of Property.** — Holmes *v.* Wolfard, 47 Oregon 93, 81 Pac. 819.

Where an Execution Is General as well as special, an affidavit of illegality, alleging that the execution is special and was levied on other property of the defendant, will be dismissed. James *v.* Cooledge, 129 Ga. 860, 60 S. E. 182.

6. Downs *v.* Dennis, 83 Ark. 71, 102 S. W. 699.

EXECUTIVE.

719. 1. **A Police Officer** of a city is an *executive* officer within a statute punishing the bribery of *executive* officers. Haynes *v.* Com., 104 Va. 854, 52 S. E. 358.

EXECUTORS AND ADMINISTRATORS.

721. 2. **Not Agent of Intestate.** — Henry *v.* Henry, 73 Neb. 746, 103 N. W. 441, 107 N. W. 780.

5. Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769; Pullis *v.* Pullis, 127 Mo. App. 294, 105 S. W. 275; McBride *v.* Vance, (Ohio 1906) 76 N. E. 938.

Where Some of the Heirs Are Infants. — Trahan's Succession, 118 La. 762, 43 So. 400.

The Statutory Right of a Widow to Dispense with Administration as sole heir or her husband, by paying his debts, does not exist where the latter dies testate. Harrell *v.* Harrell, 123 Ga. 267, 51 S. E. 283.

And when she wishes to exercise the right she must strictly comply with the statute by [illegible] suing to recover a debt originally due to him. Jackson *v.* Green, 123 Ga. 254, 51 S. E. 284.

Where the Personalty of a Testator Has Been Exhausted for many years, administration is not necessary, so as to have a personal representative to an action between one claiming an annuity out of realty and the one in possession of such realty. Dixon *v.* Roessler, 76 S. Car. 415, 57 S. E. 203.

Waiver. — A claim that necessity for administration existed may be waived by delay in making it. Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219.

Appeal from Determination of Court. — Miguez *v.* Delcambre, 114 La. 1032, 38 So. 820.

742. 1. State *v.* Superior Ct., (Cal. 1907) 92 Pac. 942; Douglas *v.* Albrecht, 130 Iowa 132, 106 N. W. 354; Brown *v.* Baxter, (Kan. 1908) 94 Pac. 155, *quoting* 17 [11] AM. AND ENG. ENCYC. OF LAW (2d ed.) 742; Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769; Pullis *v.* Pullis, 127 Mo. App. 294, 105 S. W. 275; *In re* Losee, (Surrogate Ct.) 46 Misc. (N. Y.) 363, 94 N. Y. Supp. 1082. See Murphy *v.* Murphy, 42 Wash. 149, 84 Pac. 646.

Community Estates. — Administration is unnecessary and illegal where the entire estate of the decedent is in community. Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219. See also Glancey's Succession, 114 La. 766, 38 So. 554.

By the Georgia Statute a wife, as sole heir at law, may take possession of her husband's estate, and by paying his debts dispense with the necessity of administration. Demmons *v.* Booker, 128, Ga. 83, 57 S. E. 108.

2. Brown *v.* Baxter, (Kan. 1908) 94 Pac. 155, *quoting* 17 [11] AM. AND ENG. ENCYC. OF LAW (2d ed.) 742.

3. Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769; Murphy *v.* Murphy, 42 Wash. 149, 84 Pac. 646, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 742.

Presumption as to Existence of Debts. — Perkins *v.* Goddin, 111 Mo. App. 429, 85 S. W. 936.

That the Indebtedness Is Small does not deprive the Probate Court of jurisdiction to appoint an administrator. Rye *v.* J. M. Guffey Petroleum Co., (Tex. Civ. App. 1906) 95 S. W. 622.

Where a Partnership Debt is the only debt of the decedent which may be paid by the surviving partner in winding up the affairs of the partnership, no necessity for administration exists. Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219.

743. 1. Murphy *v.* Murphy, 42 Wash. 149, 84 Pac. 646, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 743. See Brown *v.* Baxter, (Kan. 1908) 94 Pac. 155.

2. Where an intestate succession owes no debts save those incurred in connection with the last illness and burial of the decedent, which are trifling compared with the assets, and the holders or creditors of which appear and disclaim any desire for an administration, and there are no minors, an administrator should not be ordered at the instance of one (of eight) of the major heirs, who applies to be appointed administrator, even though he claims the benefit of inventory. Weincke's Succession, 118 La. 206, 42 So. 776.

3. Vinton *v.* Sargent, 195 Mass. 133, 80 N. E. 826.

A Claim for Personal Injuries justifies administration. Reiter-Connolly Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280.

744. 1. Turner *v.* Campbell, 124 Mo. App. 133, 101 S. W. 119, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744.

3. Bowden *v.* Jacksonville Electric Co., 57 Fla. 155, 41 So. 400, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744.

5. Appeal to the Council of the Nation is the proper remedy where letters of administration have been issued by the Probate Court of the Seneca Nation on the estate of a member of the nation. Jimeson *v.* Lehley, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 352, 101 N. Y. Supp. 215.

6. Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455; Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048; Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258; *In re* Miller, 216 Pa. St. 247, 65 Atl. 681.

7. Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455; Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048; Tidd *v.* Bloch, 26 Ohio Cir. Ct. 113; *In re* Miller, 216 Pa. St. 247, 65 Atl. 681.

Letters Testamentary are merely evidence of appointment. Tidd *v.* Bloch, 26 Ohio Cir. Ct. 113.

8. *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974; *In re* Miller, 216 Pa. St. 247, 65 Atl. 681.

745. 1. Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 745. See *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974; *In re* Miller, 216 Pa. St. 247, 65 Atl. 681.

Nomination in Will Cannot Be Disregarded by Court Except for Cause. — *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974.

The executor's "appointment must ordinarily be made in accordance with the will of the testator, unless he is ineligible, or a statutory discretion, express or by implication, to refuse it is lodged with the court." Breen *v.* Kehoe, 142 Mich. 58, 105 N. W. 28.

2. Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 745; *In re* Miller, 216 Pa. St. 247, 65 Atl. 681.

3. Lavaggi *v.* Borella, (N. J. 1907) 67 Atl. 929.

National Lumber Co. *v.* Turner, 2 Ga. App.

750, 59 S. E. 15; Lavaggi *v.* Borella, (N. J. 1907) 67 Atl. 929.

747. 1. National Lumber Co. *v.* Turner, 2 Ga. App. 750, 59 S. E. 15.

750. 2. **Devolution Prohibited by Statute.** — State *v.* Mississippi Valley Trust Co., (Mo. 1908) 108 S. W. 97.

751. 1. Clark *v.* Patterson, 214 Ill. 533, 73 N. E. 806, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 751; Garitee *v.* Bond, 102 Md. 379, 62 Atl. 631.

Indebtedness to Estate Does Not Disqualify. — Breen *v.* Kehoe, 142 Mich. 58, 105 N. W. 28. See also Clark *v.* Patterson, 214 Ill. 533, 73 N. E. 806.

Sexual Immorality is not a ground of rejection. Clark *v.* Patterson, 214 Ill. 533, 73 N. E. 806.

Wyoming Statute. — See Rice *v.* Tilton, 13 Wyo. 420, 80 Pac. 828.

752. 2. **Infants Incompetent under Wyoming Statute.** — Rice *v.* Tilton, 13 Wyo. 420, 80 Pac. 828.

753. 1. *In re* Kilborn, 5 Cal. App. 161, 89 Pac. 985.

In Nebraska a corporation cannot act as executor or administrator. Continental Trust Co. *v.* Peterson, (Neb. 1906) 110 N. W. 316.

Where There Is a Merger of a Corporation having the right to act as executor, with one not having that right, the consolidated corporation does not succeed to the right to act as executor. *In re* Stikeman, (Surrogate Ct.) 48 Misc. (N. Y.) 156, 96 N. Y. Supp. 460.

Foreign Corporations, though created to act as fiduciaries, are impliedly prohibited from acting as executors, since the policy of the law is not to permit trust property to be taken out of the state. *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974.

3. *In re* Ackers, 70 N. J. Eq. 669, 62 Atl. 556; Hecht *v.* Carey, 13 Wyo. 161, 78 Pac. 705, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

Nonresidence in the State Where the Will Is Probated. — Stevens *v.* Cameron, (Tex. 1907) 101 S. W. 791.

In Rice *v.* Tilton, 13 Wyo. 420, 80 Pac. 828, it was held that "nonresidence did not disqualify one as executor if he came into the state and submitted himself to the jurisdiction of the court and personally conducted the affairs of the estate."

In Michigan a nonresident is not disqualified by statute. The court may exercise its discretion both in appointment and revocation. Breen *v.* Kehoe, 142 Mich. 58, 105 N. W. 28.

4. Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753; *In re* Berry, (N. J. 1906) 64 Atl. 136.

5. Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

754. 2. Oakeshott *v.* Smith, 104 N. Y. App. Div. 384, 93 N. Y. Supp. 659.

3. Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 754.

4. **Renunciation for Consideration.** — Oakeshott *v.* Smith, 104 N. Y. App. Div. 384, 93 N. Y. Supp. 659.

5. *In re* Miller, 216 Pa. St. 247, 65 Atl. 681; Stevens *v.* Cameron, (Tex. 1907) 101 S. W. 791.

7. **Agreement to Renounce for Consideration Void as against Public Policy.** — Oakeshott *v.* Smith, 104 N. Y. App. Div. 384, 93 N. Y. Supp. 659.

8. *In re* Miller, 216 Pa. St. 247, 65 Atl. 681.

The Time When It Becomes Imperative for an executor named to accept or renounce is when he is cited to do so. *In re* Miller, 216 Pa. St. 247, 65 Atl. 681.

755. 2. **Renunciation Implied from Neglect or Refusal to Qualify.** — Rice *v.* Tilton, 13 Wyo. 434, 80 Pac. 828, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 756.

758. 3. Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258.

759. 4. Fay *v.* Costa, 2 Cal. App. 241, 83 Pac. 275; Medlin *v.* Downing Lumber Co., 128 Ga. 115, 57 S. E. 232; Marks *v.* Emigrant Industrial Sav. Bank, 122 N. Y. App. Div. 661, 107 N. Y. Supp. 491; *In re* McClellan, (S. Dak. 1906) 107 N. W. 681.

Payment to appointed administratrix of a person not in fact dead, constitutes no defense against his intestate or his legal representatives. Marks *v.* Emigrant Industrial Sav. Bank, 122 N. Y. App. Div. 661, 107 N. Y. Supp. 491.

Letters Not Even Prima Facie Evidence of Death. — Marks *v.* Emigrant Industrial Sav. Bank, 122 N. Y. App. Div. 661, 107 N. Y. Supp. 491.

760. 2. Marks *v.* Emigrant Industrial Sav. Bank, 122 N. Y. App. Div. 661, 107 N. Y. Supp. 491.

Iowa Statute Governing Absentees. — New York L. Ins. Co. *v.* Chittenden, 134 Iowa 613, 112 N. W. 96.

Repelling Presumption of Death. — *In re* McClellan, (S. Dak. 1906) 107 N. W. 681.

761. 1. *In re* Bouyssou, 3 Cal. App. 39, 84 Pac. 460; Medlin *v.* Downing Lumber Co., 128 Ga. 115, 57 S. E. 232.

Where Letters of Administration Are Granted While a Will Appointing an Executor Is in Existence, and the will is subsequently proved and the letters of administration revoked, the grant of administration is void *ab initio;* and, generally speaking, dispositions of the assets by the supposed administrator are void also. (Abram *v.* Cunningham, 2 Lev. 182, *followed;* Graysbrook *v.* Fox, 1 Plowd. 282, *distinguished.*) Ellis *v.* Ellis, (1905) 1 Ch. 613, 74 L. J. Ch. 296, 92 L. T. N. S. 727, 53 W. R. 617.

762. 1. *In re* Davis, 149 Cal. 485, 87 Pac. 17; Medlin *v.* Downing Lumber Co., 128 Ga. 115, 57 S. E. 232; Fidelity Trust Co. *v.* Williams, (Ky. 1907) 105 S. W. 952.

2. Cooper *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 201.

3. Nickel *v.* Vogel, (Kan. 1907) 92 Pac. 1105; Logan *v.* Bean, (Ky. 1905) 87 S. W. 1110.

4. Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912; Vinton *v.* Sargent, 195 Mass. 133, 80 N. E. 826; Turner *v.* Campbell, 124 Mo. App. 140, 101 S. W. 119, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 762; *In re* Arnold, 114 N. Y. App. Div. 244, 99 N. Y. Supp. 740; Marks *v.*

Emigrant Industrial Sav. Bank, 122 N. Y. App. Div. 661, 107 N. Y. Supp. 491; Vance *v.* Southern R. Co., 138 N. Car. 460, 50 S. E. 861.

A Liability Which, as an Asset, Is Not Distributable to creditors, although within the court's jurisdiction, does not authorize the granting of administration. Cooper *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 201.

763. 1. *In re* Arnold, 114 N. Y. App. Div. 244, 99 N. Y. Supp. 740.

2. *In re* Davis, 149 Cal. 485, 87 Pac. 17.

Exclusive Jurisdiction Attaches on the Filing of the First Petition. — *In re* Davis, 149 Cal. 485, 87 Pac. 17.

One Appointed Administrator in One County Is Not a Person in Interest so as to entitle him to oppose proceedings for the appointment of an administrator in another county, which proceeding was instituted before the one for his own appointment. *In re* Davis, 149 Cal. 485, 87 Pac. 17.

3. Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912.

4. Turner *v.* Campbell, 124 Mo. App. 133, 101 S. W. 119.

Claim to a Trust Fund Created by Will. — Vinton *v.* Sargent, 195 Mass. 133, 80 N. E. 826.

764. 1. *Compare* Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912.

3. A Cause of Action for Wrongful Death. — Reiter-Connolly Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280; *In re* Lowham, 30 Utah 436, 85 Pac. 445.

4. Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 764.

Action for Death of Intestate. — Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912; Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210; Turner *v.* Campbell, 124 Mo. App. 133, 101 S. W. 119; *In re* Lowham, 30 Utah 436, 85 Pac. 445.

765. 1. *Compare* Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912.

Stock in Foreign Corporation. — Richardson *v.* Busch, 198 Mo. 174, 95 S. W. 894; *In re* Arnold, 114 N. Y. App. Div. 244, 99 N. Y. Supp. 740.

766. 2. *Compare* Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

3. *Compare* Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

767. 2. Williams *v.* Williams, 24 App. Cas. (D. C.) 214; Buckner *v.* Buckner, (Ky. 1905) 87 S. W. 776; Hollingsworth *v.* Jeffries, 121 Mo. App. 660, 97 S. W. 632; *In re* Greene, (Surrogate Ct.) 48 Misc. (N. Y.) 31, 96 N. Y. Supp. 98.

Right to Appeal. — Miguez *v.* Delcambre, 114 La. 1032, 38 So. 820.

768. 2. Buckner *v.* Buckner, (Ky. 1905) 87 S. W. 776.

769. 6. Williams *v.* Williams, 24 App. Cas. (D. C.) 214.

770. 1. Slay *v.* Beck, (Md. 1908) 68 Atl. 573; *In re* Wooten, 114 Tenn. 289, 85 S. W. 1105.

2. Smith *v.* Lurty, 107 Va. 548, 59 S. E. 403.

3. *In re* McGoughran, (Supm. Ct. App. Div.) 108 N. Y. Supp. 934.

Voidable Marriage. — But see *In re* Ward, (Surrogate Ct.) 50 Misc. (N. Y.) 483, 100 N. Y. Supp. 634.

771. 2. Raburn *v.* Bradshaw, 124 Ga. 552, 52 S. E. 922; Theriot's Succession, 116 La. 25, 40 So. 519; Farnsworth *v.* Whiting, 102 Me. 303, 66 Atl. 833; Slay *v.* Beck, (Md. 1908) 68 Atl. 573; Peck *v.* Greene, 27 R. I. 487, 63 Atl. 489; *In re* Randall, (R. I. 1904) 63 Atl. 806; *In re* Wooten, 114 Tenn. 289, 85 S. W. 1105.

Appointment of Stranger on Disagreement Among Next of Kin. — *In re* Scott, (Neb. 1906) 107 N. W. 1004.

772. 3. *In re* Bailey, 141 N. Car. 193, 53 S. E. 844; Peck *v.* Greene, 27 R. I. 487, 63 Atl. 489; *In re* Randall, (R. I. 1904) 63 Atl. 806.

5. McMeekin *v.* Saginaw Probate Judge, 150 Mich. 354, 114 N. W. 241.

An Officer of Creditor Corporation Not Entitled to Administration. — *In re* Owen, 30 Utah 351, 85 Pac. 277.

773. 2. *In re* Wooten, 114 Tenn. 289, 85 S. W. 1105.

3. *Ex p.* Conrad, (S. Car.) 54 S. E. 799.

774. 3. **A Stranger Cannot Be Preferred** to the next of kin without good cause. *In re* Rhoda, 105 N. Y. App. Div. 143, 93 N. Y. Supp. 973; *In re* Randall's Estate, (R. I. 1904) 63 Atl. 806.

775. 1. **Rule in United States as to Right of Guardian to Administer.** — *In re* Weeks, (Ind. App. 1907) 81 N. E. 107.

777. 2. **Right of Nomination Given by Statute.** — *In re* Aldrich, 147 Cal. 343, 81 Pac. 1011; Stevens *v.* Cameron, (Tex. 1907) 101 S. W. 791; Smith *v.* Lurty, 107 Va. 548, 59 S. E. 403.

Right of Nomination Not Allowed. — Slay *v.* Beck, (Md. 1908) 68 Atl. 573.

Georgia Statute. — Raburn *v.* Bradshaw, 124 Ga. 552, 52 S. E. 922.

The Nominee Should Be Appointed unless there are valid reasons against the appointment. *In re* Wooten, 114 Tenn. 289, 85 S. W. 1105.

778. 1. Spayd *v.* Brown, (Ky. 1907) 102 S. W. 823; Stevens *v.* Cameron, (Tex. Civ. App. 1906) 96 S. W. 1086.

A Nonresident Alien. — See *contra, In re* Owen, 30 Utah 351, 85 Pac. 277.

Person Not Entitled to Administration. — Smith *v.* Lurty, 107 Va. 548, 59 S. E. 403.

780. 2. *In re* Rhoda, 105 N. Y. App. Div. 143, 93 N. Y. Supp. 973; *In re* Owen, 30 Utah 351, 85 Pac. 277.

3. St. Louis, etc., R. Co. *v.* Cleere, 76 Ark. 377, 88 S. W. 995; *In re* Davis, (Surrogate Ct.) 48 Misc. (N. Y.) 489, 96 N. Y. Supp. 1106.

Married Woman Disqualified by Statute. — Rice *v.* Tilton, 13 Wyo. 434, 80 Pac. 828.

5. No Limitation in Georgia in an otherwise proper case. Medlin *v.* Downing Lumber Co., 128 Ga. 115, 57 S. E. 232.

7. Nonresidents Disqualified by Statute. — Spayd *v.* Brown, (Ky. 1907) 102 S. W. 823; *In re* Owen, 30 Utah 351, 85 Pac. 277; Rice *v.* Tilton, 13 Wyo. 434, 80 Pac. 828.

Implied Disqualification by Statute. — Stevens *v.* Cameron, (Tex. Civ. App. 1906) 96 S. W. 1086.

781. 6. *In re* Greene, (Surrogate Ct.) 46 Misc. (N. Y.) 31, 96 N. Y. Supp. 98.

10. *In re* Wooten, 114 Tenn. 289, 85 S. W. 1105.

11. *Contra,* Rice *v.* Tilton, 13 Wyo. 434, 80 Pac. 828.

782. 2. **New York.** Conviction for a misdemeanor not a disqualification. *In re* Greene, (Surrogate Ct.) 48 Misc. (N. Y.) 31, 96 N. Y. Supp. 98.

5. Theriot's Succession, 116 La. 25, 40 So. 519; *In re* Davis, (Surrogate Ct.) 48 Misc. (N. Y.) 489, 96 N. Y. Supp. 1106; Sargent *v.* Corbley, 28 Ohio Cir. Ct. 125.

Right Absolute. *In re* Davis, (Surrogate Ct.) 48 Misc. (N. Y.) 489, 96 N. Y. Supp. 1106.

6. *In re* Wooten, 114 Tenn. 289, 85 S. W. 1105. But see Sargent *v.* Corbley, 28 Ohio Cir. Ct. 125.

7. *In re* Davis, (Surrogate Ct.) 48 Misc. (N. Y.) 489, 96 N. Y. Supp. 1106.

784. 2. Nelson *v.* Bridge, 98 Tex. 523, 86 S. W. 7.

4. **In Texas** the limitation does apply to administrators with the will annexed. Nelson *v.* Bridge, 98 Tex. 523, 86 S. W. 7.

6. **By Ante-nuptial Contract** not to control or claim wife's property during her life or after her death, the husband waives his right to administer. *In re* Evans, 117 Mo. App. 629, 93 S. W. 922.

7. **By Failure to Apply for Letters** within thirty days after intestate's death, next of kin does not forfeit his right to administer. *In re* Randall, (R. I. 1904) 63 Atl. 806.

785. 1. Cooper *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 201.

2. Slay *v.* Beck, (Md. 1908) 68 Atl. 573.

4. **Irrevocable unless Executed and Filed under Mistake of Fact.** — Slay *v.* Beck, (Md. 1908) 68 Atl. 573.

6. *Alabama.* — Smith *v.* Alexander, 148 Ala. 554, 42 So. 29; Hickey *v.* Stallworth, 143 Ala. 535, 39 So. 267; Reiter-Connolly Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280.

Arkansas. — Lambert *v.* Tucker, 83 Ark. 416, 104 S. W. 131.

California. — Abrook *v.* Ellis, (Cal. App. 1907) 92 Pac. 396.

District of Columbia. — Consaul *v.* Cummings, 24 App. Cas. (D. C.) 36.

Illinois. — Thomas *v.* Waters, 122 Ill. App. 434.

Michigan. — Ackerman *v.* Pfent, 145 Mich. 710, 108 N. W. 1084.

Missouri. — Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769.

New York. — McCarthy *v.* Supreme Ct., 107 N. Y. App. Div. 185, 94 N. Y. Supp. 876; *In re* Schmid, 116 N. Y. App. Div. 706, 102 N. Y. Supp. 80.

North Carolina. — Vance *v.* Southern R. Co., 138 N. Car. 460, 50 S. E. 860, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 785; Plemmons *v.* Southern R. Co., 140 N. Car. 286, 52 S. E. 953.

Pennsylvania. — *In re* Miller, 216 Pa. St. 247, 65 Atl. 681.

South Dakota. — Blackman *v.* Mulhall, 19 S. Dak. 534, 104 N. W. 250.

Texas. — Rogers *v.* Tompkins, (Tex. Civ. App. 1905) 87 S. W. 379; Berryman *v.* Biddle, (Tex. Civ. App. 1908) 107 S. W. 922.

Washington. — McKenna *v.* Cosgrove, 41 Wash. 332, 83 Pac. 240; Meikle *v.* Cloquet, 44 Wash. 513, 87 Pac. 841.

Wisconsin. — Jordan *v.* Chicago, etc., R. Co., 125 Wis. 581, 104 N. W. 803, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 785; Steinberg *v.* Saltzman, 130 Wis. 419, 110 N. W. 198.

Wyoming. — Lethbridge *v.* Lauder, 13 Wyo. 18, 76 Pac. 682, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 785; Rice *v.* Tilton, 13 Wyo. 420, 82 Pac. 577.

When Appointment Is Void. — Hicky *v.* Stallworth, 143 Ala. 535, 39 So. 267; Sylvester *v.* Willson, 2 Alaska 325.

When Appointment Is Merely Voidable. — Buckner *v.* Louisville, etc., R. Co., (Ky. 1905) 87 S. W. 777.

Administration Granted More than Four Years after Death of Decedent — Texas Statute. — Nelson *v.* Bridge, 98 Tex. 523, 86 S. W. 7.

787. 3. Buckner *v.* Louisville, etc., R. Co., (Ky. 1905) 87 S. W. 777.

4. Ellis *v.* Ellis, (1905) 1 Ch. 613.

6. *In re* Ablowich, 118 N. Y. App. Div. 626, 103 N. Y. Supp. 702, *per* Ingraham, J. *dissenting, quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 787.

788. 1. *In re* Ablowich, 118 N. Y. App. Div. 626, 103 N. Y. Supp. 702, *per* Ingraham, J., *dissenting, quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 787 [788].

2. *In re* Ablowich, 118 N. Y. App. Div. 626, 103 N. Y. Supp. 702, *per* Ingraham, J., *dissenting, quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 787 [788].

789. 3. Fischer *v.* Giddings, (Tex. Civ. App. 1906) 95 S. W. 33.

5. Smith *v.* Lurty, 107 Va. 548, 59 S. E. 403.

6. Smith *v.* Lurty, 107 Va. 548, 59 S. E. 403.

Effect of Refusing to Admit Will to Probate. — *In re* Bouyssou, 3 Cal. App. 39, 84 Pac. 460.

790. 1. Smith *v.* Moore, 129 Ga. 644, 59 S. E. 915; McClelland *v.* McClelland, (Tex. Civ. App. 1907) 101 S. W. 1171.

4. Smith *v.* Moore, 129 Ga. 644, 59 S. E. 915.

5. *In re* Miller, 216 Pa. St. 247, 65 Atl. 681; Hardin *v.* Hassell, 118 Tenn. 143, 100 S. W. 720; Smith *v.* Lurty, 107 Va. 548, 59 S. E. 403.

6. **Removal of Executors from Office.** — Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159.

791. 2. *In re* Wiggins, 118 N. Y. App. Div. 488, 103 N. Y. Supp. 518.

3. Smith *v.* Lurty, 107 Va. 548, 59 S. E. 403.

5. But see Smith *v.* Moore, 129 Ga. 644, 59 S. E. 915.

793. 2. Prusa *v.* Everett, (Neb. 1907) 113 N. W. 571.

4. **After Discharging an Administrator de Bonis Non** the County Court cannot, after the expiration of the term, appoint another. Wallace *v.* Turner, (Tex. Civ. App. 1905) 89 S. W. 432, *affirmed* 99 Tex. 543, 92 S. W. 31.

5. Hicky *v.* Stallworth, 143 Ala. 535, 39 So. 267; *Ex p.* Jordan, 145 Ala. 658, 39 So. 618; Miguez *v.* Delcambre, 118 La. 1062, 43 So. 703.

Effect of Discharging Administrator Pursuant to Adjudication that Estate Has Been Finally Settled. — Hicky *v.* Stallworth, 143 Ala. 535, 39 So. 267.

794. 1. Miguez *v.* Delcambre, 118 La. 1062, 43 So. 703.

Administration Is Not Grantable Even When There Are Unadministered Assets, if there are

no unpaid debts and the assets can be distributed without resort to administration. Pullis *v.* Pullis, 127 Mo. App. 294, 105 S. W. 275.

An Order to Close the Estate determines that it has been fully administered, and is not subject to collateral attack. Wallace *v.* Turner, (Tex. Civ. App. 1905) 89 S. W. 432, 99 Tex. 543, *affirmed* 92 S. W. 31.

795. 3. *In re* Miller, 216 Pa. St. 247, 65 Atl. 681.

796. 6. Pullis *v.* Pullis, 127 Mo. App. 294, 105 S. W. 275.

Next of Kin of intestate preferred to next of kin of deceased administrator. Matter of Forester, 37 N. Bruns. 209.

797. 2. Smith *v.* Alexander, 148 Ala. 554, 42 So. 29; Peavy *v.* Griffin, (Ala. 1907) 44 So. 400; Miguez *v.* Delcambre, 118 La. 1062, 43 So. 703.

798. 2. **In California** the Superior Court, or a judge thereof, may appoint a special administrator at any time and without notice. Raine *v.* Lawlor, 1 Cal. App. 483, 82 Pac. 688.

3. Day *v.* Bullen, 226 Ill. 72, 80 N. E. 739; *In re* Ashmore, (Surrogate Ct.) 48 Misc. (N. Y.) 312, 96 N. Y. Supp. 772.

4. Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912; Foster *v.* Gordon, 96 Minn. 142, 104 N. W. 765; State *v.* District Ct., 34 Mont. 226, 85 Pac. 1022; Davenport *v.* Davenport, 68 N. J. Eq. 611, 60 Atl. 379; Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219.

799. 1. Davenport *v.* Davenport, 68 N. J. Eq. 611, 60 Atl. 379.

In New York the statute requires the court to give preference as in the case of a general administrator. State *v.* District Ct., 34 Mont. 226, 85 Pac. 1022.

2. **Contra.** — Hartley *v.* Lord, 38 Wash. 432, 80 Pac. 554.

Appointment of Public Administrator to the exclusion of the person nominated as executor violates the statute providing that the court shall give preference as in the case of general administration. State *v.* District Ct., 34 Mont. 226, 85 Pac. 1022.

4. Davenport *v.* Davenport, 68 N. J. Eq. 611, 60 Atl. 379. But see *In re* Ashmore, (Surrogate Ct.) 48 Misc. (N. Y.) 312, 96 N. Y. Supp. 772.

800. 2. Day *v.* Bullen, 226 Ill. 72, 80 N. E. 739.

By Setting Aside Order Approving Sale made by a temporary administrator and appointing a permanent administrator, the power of the temporary administrator ceases. Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219.

801. 6. Day *v.* Bullen, 226 Ill. 72, 80 N. E. 739; Davenport *v.* Davenport, 68 N. J. Eq. 611, 60 Atl. 379, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 801, 802.

803. 2. Davenport *v.* Davenport, 68 N. J. Eq. 611, 60 Atl. 379.

805. 2. **Removal Matter of Discretion with the Court.** — Guthrie *v.* Welch, 24 App. Cas. (D. C.) 562.

806. 4. **Appointment of Corporation Authorized by Kentucky Statute.** — Louisville, etc., R. Co. *v.* Herndon, (Ky. 1907) 104 S. W. 732.

5. Wootton *v.* Smith, (N. Car. 1907) 59 S. E. 649.

In Idaho the county treasurer is *ex officio* public administrator. *In re* Rice, 12 Idaho 305, 85 Pac. 1109.

807. 1. **In Missouri.** — Hollingsworth *v.* Jeffries, 121 Mo. App. 660, 97 S. W. 632.

3. **The Public Administrator** is preferred to the guardian of minor legatees in *Louisiana*. Bossu's Succession, 115 La. 13, 38 So. 878.

Vice-consul Preferred to Public Administrator under Treaty with Russia. *In re* Wyman, 191 Mass. 276, 77 N. E. 379.

808. 1. Los Angeles County *v.* Kellogg, 146 Cal. 590, 80 Pac. 861; Hollingsworth *v.* Jeffries, 121 Mo. App. 660, 97 S. W. 632.

2. Richardson *v.* Busch, 198 Mo. 174, 95 S. W. 894.

6. Hollingsworth *v.* Jeffries, 121 Mo. App. 660, 97 S. W. 632.

809. 2. See Lethbridge *v.* Lauder, 13 Wyo. [illegible]

4. **Oath of Office Not Required in Nebraska.** — Leahy *v.* Haworth, (C. C. A.) 141 Fed. 850.

810. 4. See Marfield *v.* McMurdy, 25 App. Cas. (D. C.) 342.

6. **Statutory Provision Does Not Limit Time, if No Final Settlement Is Had Before Its Expiration.** — Lindemann *v.* Rusk, 125 Wis. 210, 104 N. W. [illegible]

811. 2. McIntyre *v.* Proctor, 145 N. Car. 288, 59 S. E. 39.

812. 1. Broadway's Succession, 114 La. 492, 38 So. 430; Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258.

A Public Administrator who resigns may, by force of the statute, continue an estate committed to him until it is fully administered. Wootton *v.* Smith, (N. Car. 1907) 59 S. E. 649.

2. Broadway's Succession, 114 La. 492, 38 So. 430.

813. 5. **Trust Annexed to Office.**— The resignation of the office of executor carries with it the relinquishment of a trust annexed thereto. Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258.

6. Cushman *v.* Cushman, 116 N. Y. App. Div. 762, 102 N. Y. Supp. 258.

815. 1. Sylvester *v.* Willson, 2 Alaska 325; Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912; *In re* Burr, 118 N. Y. App. Div. 482, 104 N. Y. Supp. 29; *In re* Campbell, (Surrogate Ct.) 56 Misc. (N. Y.) 229, 107 N. Y. Supp. 591; Murphy *v.* Murphy, 42 Wash. 149, 84 Pac. 646.

In Gill *v.* Riley, (Ky. 1906) 90 S. W. 2, the court held that "while County Courts have very large discretion in their supervisory jurisdiction over personal representatives, yet the latter have such an interest in the execution of the trust as entitles them to protection from removal without just and [illegible] cause."

Power Should Be Exercised to Protect the Estate, and not to [illegible] the executor or administrator. *In re* Burr, 118 N. Y. App. Div. 482, 104 N. Y. Supp. 29.

2. Sylvester *v.* Willson, 2 Alaska 325; Guthrie *v.* Welch, 24 App. Cas. (D. C.) 562; *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974; *In re* Campbell, (Surrogate Ct.) 56 Misc. (N. Y.) 229, 107 N. Y. Supp. 591.

816. 1. Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912.

3. Guthrie *v.* Welch, 24 App. Cas. (D. C.) 562.

4. Guthrie *v.* Welch, 24 App. Cas. (D. C.) 502.

The Protection of the Estate and the Substantial Rights of the Interested Parties Is the Controlling Consideration. — *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974.

5. Sylvester *v.* Willson, 2 Alaska, 325; Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912; Trahan's Succession, 118 La. 762, 43 So. 400.

Creditors of Decedent. — Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912.

A Person Not a Creditor at the time the letters were issued is not entitled to object. *In re* Rhoda, 105 N. Y. App. Div. 143, 93 N. Y. Supp. 973.

An Executor may apply for the removal of his coexecutor. Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159.

818. 1. But see Sylvester *v.* Willson, 2 Alaska 325.

2. Raine *v.* Lawlor, 1 Cal. App. 483, 82 Pac. 688; *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974; Meikle *v.* Cloquet, 44 Wash. 513, 87 Pac. 841.

After the administrator has filed an account of his administration, it is too late to annul his appointment on the ground that an administration was unnecessary. Trahan's Succession, 118 La. 762, 43 So. 400.

Nonresident Decedent. — Young *v.* Louisville, etc., R. Co., (Ky. 1905) 89 S. W. 475.

Petition for Letters on Information and Belief. — *In re* Rhoda, 105 N. Y. App. Div. 143, 93 N. Y. Supp. 973.

Petition for Letters Not Averring Jurisdictional Facts. — *In re* Rhoda, 105 N. Y. App. Div. 143, 93 N. Y. Supp. 973.

That the Appellate Court Might Have Made a Different Selection constitutes, in the absence of proof of abuse of discretion, no ground for setting aside appointment. Sargent *v.* Corbley, 28 Ohio Cir. Ct. 125.

Under a Statute Dealing Only with Classes given priority, one claiming to be the decedent's widow is not entitled to the revocation of letters granted to the nominee of another, also claiming to be his widow. *In re* Aldrich, 147 Cal. 343, 81 Pac. 1011.

3. **Being Interested in the Estate Not Ground for Removal of Temporary Administrator.** — *In re* Ashmore, (Surrogate Ct.) 48 Misc. (N. Y.) 312, 96 N. Y. Supp. 772.

Giving His Testate Unsound Advice concerning the disposition of trust property does not afford a ground for removing an executor who is not an attorney. McGuinness *v.* Hughes, 188 Mass. 201, 74 N. E. 317.

819. 2. *In re* Hurst, 111 N. Y. App. Div. 460, 97 N. Y. Supp. 697; Shober *v.* Wheeler, 144 N. Car. 403, 57 S. E. 152; *In re* Kern, 212 Pa. St. 57, 61 Atl. 573; Stevens *v.* Cameron, (Tex. 1907) 101 S. W. 791.

Acts Done in Good Faith Before Revocation. — Shober *v.* Wheeler, 144 N. Car. 403, 57 S. E. 152.

3. Clark *v.* Patterson, 214 Ill. 533, 73 N. E. 806.

5. Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912; Scott *v.* Smith, (Ind. App. 1907) 82 N. E. 556; *In re* Rathyen, 115 N. Y. App. Div. 644, 101 N. Y. Supp. 289; *In re* Campbell, (Surrogate Ct.) 56 Misc. (N. Y.) 229, 107 N. Y. Supp. 591.

False Suggestion of the Marital Relation furnishes ground for revoking letters. *In re* Ward, (Surrogate Ct.) 50 Misc. (N. Y.) 483, 100 N. Y. Supp. 634.

6. Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912.

That an Executor Conceals a Will because it disposed of the estate the same as if there had been no will, does not disqualify him and afford ground for his removal. McGuinness *v.* Hughes, 188 Mass. 201, 74 N. E. 317.

7. *In re* Rhoda, 105 N. Y. App. Div. 143, 93 N. Y. Supp. 973.

8. Clark *v.* Patterson, 214 Ill. 533, 73 N. E. 806.

Making Investments Unauthorized by Law is not ground for removal when made in good faith and repaid in full. *In re* Burr, 118 N. Y. App. Div. 482, 104 N. Y. Supp. 29.

821. 3. Scott *v.* Smith, (Ind. App. 1907) 82 N. E. 556; *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225.

Unauthorized Investments as Ground for Removal. — *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974.

822. 2. *In re* Dietrich, 39 Wash. 520, 81 Pac. 1061.

823. 2. Sylvester *v.* Willson, 2 Alaska 325; Hecht *v.* Carey, 13 Wyo. 161, 78 Pac. 705.

3. Stevens *v.* Cameron, (Tex. 1907) 101 S. W. 791.

824. 1. Clark *v.* Patterson, 214 Ill. 533, 73 N. E. 806.

Unfriendly Relations with a Coexecutor. — *In re* Waterman, 112 N. Y. App. Div. 317, 98 N. Y. Supp. 583, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 824.

2. **Letters Not Revoked for Insolvency.** — *Compare* Gill *v.* Riley, (Ky. 1906) 90 S. W. 2.

825. 2. Clark *v.* Patterson, 214 Ill. 533, 73 N. E. 806.

For Cases Holding Not Incapacitated. — See *In re* Ireland, (Surrogate Ct.) 47 Misc. (N. Y.) 545, 95 N. Y. Supp. 1079.

3. McGuinness *v.* Hughes, 188 Mass. 201, 74 N. E. 317.

826. 1. Neal *v.* Boykin, 129 Ga. 676, 59 S. E. 912; Trahan's Succession, 118 La. 762, 43 So. 400; Scott *v.* Smith, (Ind. App. 1907) 82 N. E. 556.

5. Belden *v.* Belden, 118 N. Y. App. Div. 296, 103 N. Y. Supp. 346; *In re* Kern, 212 Pa. St. 57, 61 Atl. 573.

6. Sylvester *v.* Willson, 2 Alaska 325.

827. 1. Belden *v.* Belden, 118 N. Y. App. Div. 296, 103 N. Y. Supp. 346.

An Administrator Is Not Deprived of His Appeal by a judgment removing him. Williams *v.* Dougherty, 37 Ind. App. 449, 77 N. E. 305.

829. 1. *In re* Fleming, 217 Pa. St. 614, 66 Atl. 874, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 828 [820].

Property of Every Kind Is Assets. — *In re* Lowham, 30 Utah 441, 85 Pac. 445, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 828 [820].

Money Owing to His Intestate by the administrator is an asset of the estate. Kirby *v.* Moore, (Ky. 1907) 99 S. W. 1156.

830. 3. Lambert *v.* Tucker, 83 Ark. 416, 104 S. W. 131; Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751.

832. 3. Bryson *v.* Biggs, (Ky. 1907) 104 N. W. 982; Nicklas *v.* Parker, 69 N. J. Eq. 743, 61 Atl. 267.

833. 3. Adams *v.* Slattery, 36 Colo. 38, 85 Pac. 87, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 833; Mitchell *v.* St. Louis, etc., R. Co., 123 Mo. App. 545, 101 S. W. 127.

834. 1. Board of Education *v.* Day, 128 Ga. 156, 57 S. E. 359; McLemore *v.* Sebree Coal, etc., Co., (Ky. 1905) 88 S. W. 1062.

3. Reiter-Connolly Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280; Kirby *v.* Moore, (Ky. 1907) 99 S. W. 1156; *In re* Ablowich, 118 N. Y. App. Div. 626, 103 N. Y. Supp. 699, *quoting* 11 Am. and Eng. Encyc of Law (2d ed.) 834; Jones *v.* Willis, 72 Ohio St. 189, 74 N. E. 166.

835. 1. *In re* Ablowich, 118 N. Y. App. Div. 626, 103 N. Y. Supp. 699, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 834 [835].

2. Pierce *v.* Woodbury, 100 Me. 1, 60 Atl. 425, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 835; *In re* Pullen, (Surrogate Ct.) 52 Misc. (N. Y.) 77, 102 N. Y. Supp. 435, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 835.

836. 1. **Money Paid by Heirs to Prevent Sale of Land.** — Stewart *v.* Rogers, 71 Kan. 53, 80 Pac. 58.

"**A Contract** of the grantee to pay the debts of an estate in consideration of the heirs conveying to him a portion of the lands of the decedent, may be well said to be assets in the hands of the administrator." Stewart *v.* Rogers, 71 Kan. 53, 80 Pac. 58.

837. 1. American Surety Co. *v.* Wood, 2 Ga. App. 641, 58 S. E. 1116.

2. **After Liquidation** the right to recover his intestate's interest in a partnership is vested in the administrator. Stehn *v.* Hayssen, 124 Wis. 583, 102 N. W. 1074.

838. 2. Herron *v.* Comstock, (C. C. A.) 139 Fed. 370; Adams *v.* Slattery, 36 Colo. 38, 85 Pac. 87; Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751; Mansfield *v.* Holton, (N. H. 1907) 68 Atl. 541; Hogan *v.* Piggott, 60 W. Va. 541, 55 S. E. 189.

839. 1. Griffith *v.* Rudisill, 141 Ala. 205, 37 So. 83; Crawford *v.* Turner, 58 W. Va. 600, 52 S. E. 716.

3. *In re* Ring, 132 Iowa 216, 109 N. W. 710.

Estates Pur Autre Vie Are Personalty. — See Eversole *v.* Eastern Kentucky Insane Asylum, (Ky. 1907) 100 S. W. 300.

840. 2. Weir *v.* Bagby, 72 Kan. 67, 82 Pac. 585, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 840.

3. Wilson *v.* Rehm, 117 Ill. App. 473.

841. 2. Adams *v.* Slattery, 36 Colo. 38, 85 Pac. 87.

3. Herron *v.* Comstock, (C. C. A.) 139 Fed. 370, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 841; Owings *v.* Owings, 150 Mich. 609, 114 N. W. 393; Cleveland Co-operative Stove Co. *v.* Baldwin, 121 Mo. App. 397, 99 S. W. 47.

842. 1. In *Mississippi* the rents flowing from the lands of the testator, accruing during the year of his death, are assets. Gordon *v.* James, 86 Miss. 719, 39 So. 18.

New Hampshire Statute. — In case the estate is insolvent, rents shall be assets for purposes of administration. Ayers *v.* Laighton, 73 N. H. 487, 63 Atl. 43.

843. 2. Ayers *v.* Laighton, 73 N. H. 487, 63 Atl. 43.

4. Brackett *v.* Boreing, (Ky. 1905) 89 S. W. 496.

844. 7. Bush *v.* Bush, (Ind. App. 1908) 83 N. E. 386; *In re* Ring, 132 Iowa 216, 109 N. W. 710.

Mississippi. — "Crops remaining on the land at the date of his death, whether gathered or still in the field, matured or unmatured, are . . . assets of the decedent, whether testate or intestate." Gordon *v.* James, 86 Miss. 719, 39 So. 18.

846. 5. *In re* Thompson, 185 N. Y. 574, 78 N. E. 74, *reversing* 102 N. Y. App. Div. 617, 92 N. Y. Supp. 1147; Bramlett *v.* Mathis, 71 S. Car. 123, 50 S. E. 644.

847. 1. Burke *v.* Modern Woodmen of America, 2 Cal. App. 611, 84 Pac. 275; Hall *v.* Ayers, (Ky. 1907) 105 S. W. 911.

848. 1. Bigelow *v.* Sheehan, 150 Mich. 507, 114 N. W. 389.

849. 1. **Pensions.** — Pinson *v.* Sanders, (Ky. 1906) 96 S. W. 444.

2. **Moneys Intrusted to Another by the Decedent,** to be distributed after his death as directed by a private letter which he would leave, are not assets of which the executor is entitled to take possession. Morris *v.* Wucher, 115 N. Y. App. Div. 278, 100 N. Y. Supp. 878, *affirmed* 188 N. Y. 568, 80 N. E. 1114.

But When Property Subject to a Trust Deed, and owned by decedent, is in the possession of his executor, the latter may sue to enjoin sale under the trust deed. Taylor *v.* Williams, (Tex. Civ. App. 1907) 105 S. W. 837.

853. 1. **An Action for Waste** is not maintainable by an executor whose sole interest in the premises is a right to lease the same. Adams *v.* Slattery, 36 Colo. 38, 85 Pac. 87.

3. Foersch *v.* Schmitt, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 608, 106 N. Y. Supp. 935.

854. 1. Smart *v.* Panther, (Tex. Civ. App. 1906) 95 S. W. 679.

4. Hopkins's Appeal, 77 Conn. 644, 60 Atl. 657.

5. *Compare* Dant *v.* Cooper, (Ky. 1906) 96 S. W. 454.

855. 2. Lambert *v.* Tucker, 83 Ark. 416, 104 S. W. 131; Hopkins's Appeal, 77 Conn. 644, 60 Atl. 657.

856. 5. **Foreign Assets Must Be Inventoried.** — Hopkins's Appeal, 77 Conn. 644, 60 Atl. 657.

857. 2. *In re* Ablowich, 118 N. Y. App. Div. 626, 103 N. Y. Supp. 699; Jones *v.* Willis, 72 Ohio St. 189, 74 N. E. 166.

860. 1. Kranz's Succession, 115 La. 545, 39 So. 594.

861. 2. Atwood *v.* Buckingham, 78 Conn. 423, 62 Atl. 616.

863. 4. Simpson's Estate, 34 Pa. Super. Ct. 115.

5. Wood *v.* Stewart, 120 Ill. App. 34; McCann *v.* McCann, (Ky. 1906) 93 S. W. 1045; *In re* Wyman, 191 Mass. 276, 77 N. E. 379.

A Vice-consul appointed administrator of a citizen of the foreign country represented by him, is not exempt from giving bond. *In re* Wyman, 191 Mass. 276, 77 N. E. 379.

861. 3. Reed *v.* Reed, (Conn. 1908) 68 Atl. 852; Wood *v.* Stewart, 120 Ill. App. 34; McCann *v.* McCann, (Ky. 1906) 93 S. W. 1045. See Cronk *v.* Cronk, 148 Ala. 337, 42 So. 450.

5. Intrusting Unfit Person with Title and Management of Estate. — Reed *v.* Reed, (Conn. 1908) 68 Atl. 852.

Without Proof of Mismanagement an executor will not be required to give a bond. *In re* Fisher, 128 Iowa 626, 104 N. W. 1023.

All Circumstances showing it proper that a bond should be required are included in the discretion of the court. McCann *v.* McCann, (Ky. 1906) 93 S. W. 1045.

865. 1. McCann *v.* McCann, (Ky. 1906) 93 S. W. 1045; Simpson's Estate, 34 Pa. Super. Ct. 115.

867. 4. Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388.

The Sureties on a Special Bond given by a sheriff who is *ex officio* public administrator are primarily liable for any loss resulting from his acts as public administrator. Briggs *v.* Manning, 80 Ark. 304, 97 S. W. 289.

5. See Simpson's Estate, 34 Pa. Super. Ct. 115.

868. 1. Abrook *v.* Ellis, (Cal. App. 1907) 92 Pac. 396.

871. 1. Probate Ct. *v.* Adams, (R. I. 1905) 60 Atl. 769.

Additional Conditions. — Probate Ct. *v.* Adams, (R. I. 1905) 60 Atl. 769.

879. 3. State *v.* Crooke, (Mo. App. 1908) 107 S. W. 1104.

880. 6. Sureties on the Bond of a Public Administrator are not liable for his acts as administrator of any estate during his previous term. O'Rourke *v.* Harper, 35 Mont. 346, 89 Pac. 65.

882. 1. State *v.* Crooke, (Mo. App. 1908) 107 S. W. 1104.

3. State *v.* Crooke, (Mo. App. 1908) 107 S. W. 1104.

6. State *v.* Crooke, (Mo. App. 1908) 107 S. W. 1104; Fidelity, etc., Co. *v.* Texas Land, etc., Co., (Tex. Civ. App. 1905) 90 S. W. 197.

883. 3. Nickals *v.* Stanley, 146 Cal. 724, 81 Pac. 117; Coe *v.* Patterson, 122 N. Y. App. Div. 83, 106 N. Y. Supp. 659, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 883.

Surety Liable for Property of Third Person Taken by Executor or Administrator. — Hill *v.* Escort, (Tex. Civ. App. 1905) 86 S. W. 367.

884. 1. Coe *v.* Patterson, 122 N. Y. App. Div. 83, 106 N. Y. Supp. 659, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 883, 884.

887. 2. Sanders *v.* Dodge, 140 Mich. 236, 103 N. W. 597; Moseley *v.* Johnson, 144 N. Car. 277, 56 S. E. 922.

3. See Sanders *v.* Dodge, 140 Mich. 139, 103 N. W. 597.

890. 3. McIntyre *v.* Parker, 195 Mass. 155, 80 N. E. 798.

893. 4. Day *v.* Bullen, 226 Ill. 72, 80 N. E. 739.

In Rhode Island refusal to pay claims proved and allowed according to law authorizes an action on official bond. Williams *v.* Starkweather, (R. I. 1907) 66 Atl. 67.

The Assignee of a Judgment may sue in his own name. Bamberger *v.* American Surety Co., (Supm. Ct. App. Div.) 48 Misc. (N. Y.) 221, 96 N. Y. Supp. 665.

894. 2. McIntyre *v.* Parker, 195 Mass. 155, 80 N. E. 798; McAlpine *v.* Kratka, 98 Minn. 151, 107 N. W. 961.

Failure to Deliver Assets, after Demand, to His Successor is a breach of the bond of an administrator. Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388.

895. 1. Ferguson *v.* Carr, (Ark. 1908) 107 S. W. 1177; McDonald *v.* People, 222 Ill. 325, 78 N. E. 609; State *v.* Settle, 141 N. Car. 553, 54 S. E. 445.

4. Acquiescence of the Beneficiary in the Misapplication of Estate Funds releases both the executor and his bondsmen from liability to such beneficiary. *In re* Koehnken, 27 Ohio Cir. Ct. 840.

897. 2. State *v.* Crooke, (Mo. App. 1908) 107 S. W. 1104.

898. 4. Ferguson *v.* Carr, (Ark. 1908) 107 S. W. 1177; Ellyson *v.* Lord, 124 Iowa 125, 99 N. W. 582.

A Surviving Executor may sue sureties of a deceased executor for funds not accounted for by the latter. Hewlett *v.* Beede, 2 Cal. App. 561, 83 Pac. 1086.

899. 2. Ferguson *v.* Carr, (Ark. 1908) 107 S. W. 1177; Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388; McAlpine *v.* Kratka, 98 Minn. 151, 107 N. W. 961; *In re* McCauley, (Surrogate Ct.) 49 Misc. (N. Y.) 209, 99 N. Y. Supp. 238.

900. 1. Williams *v.* Starkweather, (R. I. 1907) 66 Atl. 67.

2. Graham *v.* Lybrand, (C. C. A.) 142 Fed. 109; Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388; McDonald *v.* People, 222 Ill. 325, 78 N. E. 609.

901. 2. Briggs *v.* Manning, 80 Ark. 304, 97 S. W. 289; Fincke *v.* Bundrick, 72 Kan. 187, 83 Pac. 403, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 901.

Sufficiency of Evidence. — Daniell *v.* Baldwin, 148 Ala. 292, 40 So. 421.

Admissions made by an administrator before the contract was entered into by which the surety was bound are inadmissible against the latter. Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388.

Admissions by Administrator after Revocation of Letters Not Admissible. — Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388.

902. 3. Fincke *v.* Bundrick, 72 Kan. 187, 83 Pac. 403, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 902.

903. 1. *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225.

Representation of Creditors. — Perkins *v.* Goddin, 111 Mo. App. 429, 85 S. W. 936.

No Duty of Executor to Disclose to Legatee Rights under Will. — *In re* Mackay, (1906) 1 Ch. 25.

904. 1. Holway *v.* Ames, 100 Me. 208, 60 Atl. 897.

Liability for Delay.—*In re* Cunningham, 212 Pa. St. 441, 61 Atl. 993.

3. Gelizalde *v.* Murphy, 4 Cal. App. 114, 87 Pac. 245; Christy *v.* Christy, 225 Ill. 547, 80 N. E. 242, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 904; *In re* Ring, 132 Iowa 216, 109 N. W. 710; *In re* Branch, 123 Mo. App. 573, 100 S. W. 516; *In re* New Jersey Trust, etc., Co., (N. J. 1908) 68 Atl. 811; Parks *v.* McDaniel, 75 S. Car. 7, 54 S. E. 801.

905. 3. Right of Next of Kin as Against Executor or Administrator. — Valin *v.* Mt. Royal Cemetery Co., 8 Quebec Pr. 379.

906. 1. See Rice *v.* New York Cent., etc., R. Co., 195 Mass. 507, 81 N. E. 285.

Traveling Expenses of Clergyman. — Nolde's Estate, 27 Pa. Super. Ct. 413.

3. Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455; *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974.

4. Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455.

5. Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455.

907. 1. Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455; Alderding *v.* Allison, (Ind. 1908) 83 N. E. 1006; *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974.

2. Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 907; Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048.

908. 1. James *v.* Nunley, 6 Indian Ter. 336, 97 S. W. 1028.

2. James *v.* Nunley, 6 Indian Ter. 336, 97 S. W. 1028; Archdeacon *v.* Cincinnati Gas, etc., Co., (Ohio 1907) 81 N. E. 152; Casto *v.* Murray, 47 Oregon 66, 81 Pac. 883, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 908.

3. James *v.* Nunley, 6 Indian Ter. 336, 97 S. W. 1028.

909. 1. Casto *v.* Murray, 47 Oregon 66, 81 Pac. 883, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 908 [909].

2. Casto *v.* Murray, 47 Oregon 66, 81 Pac. 883.

3. Foley *v.* O'Donaghue, 167 Ind. 138, 77 N. E. 352, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 909.

910. 1. Brown *v.* Brown, (N. J. 1907) 65 Atl. 739; *In re* Woods, (Surrogate Ct.) 55 Misc. (N. Y.) 181, 106 N. Y. Supp. 471.

6. Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048; *In re* Title Guarantee, etc., Co., 188 N. Y. 542, 80 N. E. 1121; Ackermann *v.* Ackermann, (Tex. Civ. App. 1907) 99 S. W. 889.

7. The Ohio Statute declares that an executor is not bound to assume the burden of the defense of a contest of the will by the heirs at law. Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317.

911. 2. Mosier *v.* Bowser, 226 Ill. 46, 80 N. E. 730; Delaneuville *v.* Duhe, 114 La. 62, 38 So. 20.

3. Hannen *v.* Harrod, (Ky. 1907) 99 S. W. 976; Parks *v.* McDaniel, 75 S. Car. 7, 54 S. E. 801, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 911.

4. Parks *v.* McDaniel, 75 S. Car. 7, 54 S. E. 801, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 911.

914. 6. Hayes *v.* Shirk, 167 Ind. 579, 78 N. E. 653, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 914.

7. Hayes *v.* Shirk, 167 Ind. 579, 78 N. E. 653, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 914.

915. 3. Original Undertaking.— See Reynolds-McGinness Co. *v.* Green, 78 Vt. 28, 61 Atl. 556.

918. 1. Morton *v.* Blades Lumber Co., 144 N. Car. 31, 56 S. E. 551. See Parks *v.* McDaniel, 75 S. Car. 7, 54 S. E. 801.

2. Smith *v.* Goethe, 147 Cal. 725, 82 Pac. 384, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 119 [918]. *Contra*, Morton *v.* Blades Lumber Co., 144 N. Car. 31, 56 S. E. 551.

920. 2. *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225; Clayton *v.* Dinwoodey, (Utah 1908) 93 Pac. 723.

921. 1. The Executors Should Enforce a clause in the will expressly waiving the statute of limitations, and directing them to pay all obligations notwithstanding such statute. Glassell *v.* Glassell, 147 Cal. 510, 82 Pac. 42.

2. Withers *v.* Withers, (Ky. 1907) 100 S. W. 253.

3. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

922. 2. Brantley *v.* Bittle, 72 S. Car. 179, 51 S. E. 561.

923. 1. Hamilton *v.* Wright, (Ky. 1905) 87 S. W. 1093, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923.

924. 2. Gardner *v.* Pitcher, 109 N. Y. App. Div. 106, 95 N. Y. Supp. 678.

926. 4. *In re* Houghton, (1904) 1 Ch. 622; Loveman *v.* Birmingham R., etc., Co., (Ala. 1906) 43 So. 411; Whitfield *v.* Thompson, 85 Miss. 749, 38 So. 113; Brown *v.* Brown, (N. J. 1907) 65 Atl. 739, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926.

928. 1. Loveman *v.* Birmingham R., etc., Co., (Ala. 1906) 43 So. 411; Hensley *v.* Pankau, 121 Mo. App. 695, 97 S. W. 645.

2. *In re* Houghton, (1904) 1 Ch. 622.

3. Van Dusen *v.* Topeka Woolen Mill Co., 74 Kan. 437, 87 Pac. 74.

5. Brown *v.* Brown, (N. J. 1907) 65 Atl. 739.

929. 1. Brown *v.* Brown, (N. J. 1907) 65 Atl. 739.

930. 1. Brown *v.* Brown, (N. J. 1907) 65 Atl. 739.

Claim of Coexecutor. — An executor acting in good faith may compromise a claim by his coexecutor against the estate. *In re* Houghton, (1904) 1 Ch. 622.

932. 1. *In re* Griffith, (Surrogate Ct.) 49 Misc. (N. Y.) 405, 100 N. Y. Supp. 215. *Compare* Rosengarten's Estate, 30 Pa. Super. Ct. 244.

5. Renwick *v.* Garland, 1 Cal. App. 237, 82 Pac. 89; *In re* Bender, 111 N. Y. App. Div. 23, 97 N. Y. Supp. 171; Farrelly *v.* Schaettler, 121 N. Y. App. Div. 678, 106 N. Y. Supp. 445; Reynolds-McGinness Co. *v.* Green, 78 Vt. 28, 61 Atl. 556.

933. 1. Carpenter *v.* Lindauer, 12 N. Mex. 396, 78 Pac. 57, *citing* 11 AM. AND ENG. ENCYC.

of Law (2d ed.) 933; Farrelly *v.* Schaettler, 121 N. Y. App. Div. 678, 106 N. Y. Supp. 445; Reynolds-McGinness Co. *v.* Green, 78 Vt. 28, 61 Atl. 556.

934. 1. Farrelly *v.* Schaettler, 121 N. Y. App. Div. 678, 106 N. Y. Supp. 445.

935. 1. Sherman *v.* Millard, 27 Ohio Cir. Ct. 175; Dean *v.* Lehberg, 17 Manitoba 64.

2. *In re* Scott, 1 Cal. App. 740, 83 Pac. 85; *In re* Dillon, 149 Cal. 683, 87 Pac. 379; Sullivan *v.* Lusk, (Cal. App. 1907) 94 Pac. 91; Matson *v.* Pearson, 121 Mo. App. 136, 97 S. W. 983.

936. 7. Packard *v.* Dunfee, 119 N. Y. App. Div. 599, 104 N. Y. Supp. 140. But see Ellis *v.* Littlefield, (Tex. Civ. App. 1906) 93 S. W. 171.

937. 2. *In re* Bender, 111 N. Y. App. Div. 23, 97 N. Y. Supp. 171.

938. 1. Matson *v.* Pearson, 121 Mo. App. 136, 97 S. W. 983.

939. 5. Kadish *v.* Lyon, 229 Ill. 35, 82 N. E. 194; Michigan Iron, etc., Co. *v.* Nester, 147 Mich. 599, 111 N. W. 177.

941. 6. Delaneuville *v.* Duhe, 114 La. 62, 38 So. 20.

7. Cope *v.* Blount, (Tex. Civ. App. 1905) 91 S. W. 615; Griggs Land Co. *v.* Smith, (Wash. 1907) 89 Pac. 477.

942. 5. Nickals *v.* Stanley, 146 Cal. 724, 81 Pac. 117.

943. 1. Newcomb *v.* Burbank, 146 Fed. 400, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 943.

2. Hill *v.* Escort, (Tex. Civ. App. 1905) 86 S. W. 367; Collins *v.* Denny Clay Co., 41 Wash. 136, 82 Pac. 1012.

3. Newcomb *v.* Burbank, 146 Fed. 400, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 943; Hill *v.* Escort, (Tex. Civ. App. 1905) 86 S. W. 367; Collins *v.* Denny Clay Co., 41 Wash. 136, 82 Pac. 1012.

944. 2. Scott *v.* Smith, (Ind. App. 1907) 82 N. E. 556; *In re* Fisher, 128 Iowa 626, 104 N. W. 1023, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 944; Bean *v.* Bean, (N. H. 1907) 68 Atl. 409; *In re* Ramsey, (N. J. 1907) 66 Atl. 410; *In re* Roach, (Oregon 1907) 92 Pac. 118, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 944.

945. 2. See Simpson's Estate, 34 Pa. Super. Ct. 115.

3. *Compare In re* Ramsey, (N. J. 1907) 66 Atl. 410.

946. 1. **An Executor Has No Authority to Insure Realty** in the possession of the husband by virtue of his curtesy estate. Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082.

2. Howard *v.* Rutherford, (Ala. 1907) 43 So. 30; Brown *v.* Brown, (N. J. 1907) 65 Atl. 739.

3. Brown *v.* Brown, (N. J. 1907) 65 Atl. 739, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946.

5. The administrator has power to redeem real estate which was sold to pay taxes, where it is required to pay debts. Hogan *v.* Piggott, 60 W. Va. 541, 56 S. E. 189.

947. 2. Penn *v.* Penn, (Ky. 1905) 87 S. W. 306.

7. See *In re* Locher, 219 Pa. St. 46, 67 Atl. 954.

949. 11. Knapp *v.* Jessup, 146 Mich. 348, 109 N. W. 666.

950. 1. Pope *v.* Waugh, 94 Minn. 502, 103 N. W. 500; Sommer *v.* Franklin Bank, 108 Mo. App. 490, 83 S. W. 1025. See Knapp *v.* Jessup, 146 Mich. 348, 109 N. W. 666.

2. **Under the Montana Statute** "there is no requirement that the administrator must keep the funds in his hands profitably invested." *In re* Davis, 35 Mont. 276, 88 Pac. 957.

951. 3. *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225.

953. 1. **Executor Liable for Loss Occurring by Taking a Second Real Estate Mortgage.** — *In re* Roach, (Oregon 1907) 92 Pac. 118.

3. Campbell *v.* Hughes, 144 Ala. 393, 42 So. 42; Germantown Trust Co. *v.* Whitney, 19 S. Dak. 108, 102 N. W. 304.

954. 1. See *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225.

6. *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225; *In re* Krisfeldt, (Surrogate Ct.) 49 Misc. (N. Y.) 26, 97 N. Y. Supp. 877.

955. 2. See Reed *v.* Reed, (Conn. 1908) 68 Atl. 849; *In re* Roach, (Oregon 1907) 92 Pac. 118.

958. 4. *In re* Roach, (Oregon 1907) 92 Pac. 118.

6. *In re* Roach, (Oregon 1907) 92 Pac. 118.

959. 1. Pabst *v.* Goodrich, (Wis. 1907) 113 N. W. 398.

962. 5. *In re* Roach, (Oregon 1907) 92 Pac. 118.

963. 1. Brown *v.* Brown, (N. J. 1907) 65 Atl. 739.

964. 1. *In re* Roach, (Oregon 1907) 92 Pac. 118.

2. **Investments in Foreign Countries** are not allowable, even where the will relieves the executor of responsibility for losses. Pabst *v.* Goodrich, (Wis. 1907) 113 N. W. 398.

965. 5. *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225.

968. 3. **Liability for Conversion by Co-executor.** — *In re* Ramsey, (N. J. 1907) 66 Atl. 410.

971. 1. **Payment of Debt to Redeem Collateral Known to Him to Be Worthless, When Estate Is Insolvent.** — *In re* Locher, (Pa. 1907) 67 Atl. 954.

3. Scott *v.* Smith, (Ind. App. 1907) 82 N. E. 556.

973. 7. Farmers', etc., Bank *v.* Sanford, (Ala. 1907) 43 So. 226.

9. Peterman *v.* U. S. Rubber Co., 221 Ill. 581, 77 N. E. 1108; Campbell *v.* Faxon, 73 Kan. 675, 85 Pac. 760; Rembold *v.* White, 28 Ohio Cir. Ct. 427.

Extent of Authority under Will. — Farrelly *v.* Schaettler, 121 N. Y. App. Div. 678, 106 N. Y. Supp. 445.

An Agreement to Carry on Decedent's Business, Not in the Interest of the Estate, or of the creditors thereof, is one which an executor has no power to make. Fidelity, etc., Co. *v.* Moshier, 151 Fed. 806.

Carried on by One Executor. — Where executors were authorized by will to continue business, an agreement between them that one executor should carry on business was upheld

by the court. *In re* Kempf, (Surrogate Ct.) 53 Misc. (N. Y.) 200, 104 N. Y. Supp. 585.

974. 2. *In re* Neasmith, (C. C. A.) 147 Fed. 160, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 974; Campbell *v.* Faxon, 73 Kan. 775, 85 Pac. 760, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 974; *In re* Haniman, (Surrogate Ct.) 50 Misc. (N. Y.) 245, 100 N. Y. Supp. 481; Farrelly *v.* Schaettler, 121 N. Y. App. Div. 678, 106 N. Y. Supp. 445.

977. 2. Altgelt *v.* Oliver, (Tex. Civ. App. 1905) 86 S. W. 28.

3. Altgelt *v.* Oliver, (Tex. Civ. App. 1905) 86 S. W. 28.

5. **Order of Court Gives Right to Indemnity Out of Estate.** — Altgelt *v.* Oliver, (Tex. Civ. App. 1905) 86 S. W. 28.

981. 4. Manhattan Oil Co. *v.* Gill, 118 N. Y. App. Div. 17, 103 N. Y. Supp. 364.

982. 2. Slater *v.* Slater, 114 N. Y. App. Div. 160, 99 N. Y. Supp. 564, 188 N. Y. 633, *affirmed* 81 N. E. 1176.

984. 1. Brown *v.* Baxter, (Kan. 1908) 94 Pac. 155; McLemore *v.* Sebree Coal, etc., Co., (Ky. 1905) 88 S. W. 1062; Wright *v.* Holmes, 100 Me. 508, 62 Atl. 507; Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751; Perkins *v.* Goddin, 111 Mo. App. 429, 85 S. W. 936; Darr *v.* Thomas, 127 Mo. App. 1, 106 S. W. 95; Palmer *v.* O'Rourke, 130 Wis. 507, 110 N. W. 389.

Choses in Action. — Nance *v.* Gray, 143 Ala. 234, 38 So. 916.

985. 1. **Rule under Idaho Statute.** — Reed *v.* Stewart, 12 Idaho 699, 87 Pac. 1002.

3. **Between the Death of Intestate and the Granting of Letters.** — Litz *v.* Exchange Bank, 15 Okla. 570, 83 Pac. 790, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985.

986. 1. *In re* Heeney, 3 Cal. App. 548, 86 Pac. 842; Darr *v.* Thomas, 127 Mo. App. 1, 106 S. W. 95.

2. *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974.

992. 3. Palmer *v.* O'Rourke, 130 Wis. 507, 110 N. W. 389.

Right of Administrator as against Equitable Owner. — Koslowski *v.* Newman, 74 Neb. 704, 105 N. W. 295.

4. Palmer *v.* O'Rourke, 130 Wis. 507, 110 N. W. 389.

5. Wright *v.* Holmes, 100 Me. 508, 62 Atl. 507.

993. 3. Eisentraut *v.* Cornelius, (Wis. 1908) 115 N. W. 142.

4. Richardson *v.* Daggett, 24 App. Cas. (D. C.) 440; Humbarger *v.* Humbarger, 72 Kan. 412, 83 Pac. 1095; State *v.* Silver Bow County, 35 Mont. 318, 89 Pac. 62; *In re* Haniman, (Surrogate Ct.) 50 Misc. (N. Y.) 245, 100 N. Y. Supp. 481; *In re* Packard, (Surrogate Ct.) 53 Misc. (N. Y.) 163, 104 N. Y. Supp. 474.

994. 1. **Compelling Delivery of Property.** — *In re* Haniman, (Surrogate Ct.) 50 Misc. (N. Y.) 245, 100 N. Y. Supp. 481.

2. Richardson *v.* Daggett, 24 App. Cas. (D. C.) 440; Humbarger *v.* Humbarger, 72 Kan. 412, 83 Pac. 1095.

3. Humbarger *v.* Humbarger, 72 Kan. 412, 83 Pac. 1095; *In re* Haniman, (Surrogate Ct.) 50 Misc. (N. Y.) 245, 100 N. Y. Supp. 481.

995. 1. Sumner *v.* Providence Sav. Inst., (R. I. 1907) 68 Atl. 319.

5. Sumner *v.* Providence Sav. Inst., (R. I. 1907) 68 Atl. 319.

996. 5. **Refusal of Personal Representative to Act.** — Buskirk *v.* Peck, 57 W. Va. 360, 50 S. E. 432.

999. 4. *In re* White, 119 N. Y. App. Div. 140, 103 N. Y. Supp. 868; Archdeacon *v.* Cincinnati Gas, etc., Co., (Ohio 1907) 81 N. E. 152.

5. Elizalde *v.* Murphy, 4 Cal. App. 114, 87 Pac. 245; *In re* New Jersey Trust, etc., Co., (N. J. 1908) 68 Atl. 811.

6. **Power of Sale Contained in Mortgage.** — Scott *v.* Blades Lumber Co., 144 N. Car. 44, 56 S. E. 548.

1002. 4. *In re* Joost, (Surrogate Ct.) 50 Misc. (N. Y.) 78, 100 N. Y. Supp. 378.

1003. 1. Rohn *v.* Rohn, 117 Ill. App. 512; Kauffeld's Estate, 28 Pa. Super. Ct. 162.

2. Rohn *v.* Rohn, 117 Ill. App. 512.

1004. 5. Rohn *v.* Rohn, 117 Ill. App. 512.

1005. 1. Mann *v.* Baker, 142 N. Car. 235, 55 S. E. 102.

1007. 1. **Community Debt.** — Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219.

4. Peavy *v.* Griffin, (Ala. 1907) 44 So. 400; Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219; Adams *v.* Terrell, (Tex. 1908) 107 S. W. 537.

1009. 2. Board of Education *v.* Day, 128 Ga. 156, 57 S. E. 359.

1011. 1. **Sale of Evidences of Debt.** — dell *v.* House, 144 N. Car. 647, 57 S. E. 395.

1013. 3. *In re* Ring, 132 Iowa 216, 109 N. W. 710.

1017. 9. Christy *v.* Christy, 225 Ill. 547, 80 N. E. 242; *In re* Branch, 123 Mo. App. 573, 100 S. W. 516.

10. Chappell *v.* Chappell, (Ky. 1907) 99 S. W. 959.

1019. 1. Peterman *v.* U. S. Rubber Co., 221 Ill. 581, 77 N. E. 1108; Wolfe *v.* Morgan, 61 W. Va. 287, 56 S. E. 504, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1019.

2. Peterman *v.* U. S. Rubber Co., 221 Ill. 581, 77 N. E. 1108; State *v.* Taylor, 112 Mo. App. 585, 87 S. W. 7; Wolfe *v.* Morgan, 61 W. Va. 287, 56 S. E. 504, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1019.

1021. 1. *In re* Robbins, 94 Minn. 433, 103 N. W. 217.

2. Montgomery *v.* Black, 75 Ark. 184, 86 S. W. 1006.

1023. 1. See Cornish *v.* Johns, 74 Ark. 231, 85 S. W. 764.

3. Montgomery *v.* Black, 75 Ark. 184, 86 S. W. 1006.

1028. 1. *In re* Johnson, (Cal. App. 1908) 94 Pac. 592; Christy *v.* Christy, 225 Ill. 547, 80 N. E. 242; Chappell *v.* Chappell, (Ky. 1907) 99 S. W. 959.

2. **Inadequate Price.** — Christy *v.* Christy, 225 Ill. 547, 80 N. E. 242.

1029. 3. Chappell *v.* Chappell, (Ky. 1907) 99 S. W. 959.

Approval by Probate Court Necessary to Pass Title. — Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219.

1032. 1. Farmers', etc., Bank *v.* Sanford, (Ala. 1907) 43 So. 226.

Pledge of Mortgagee in Ordinary Course of Administration Valid.—*In re* O'Donnell, (1905) 1 Ir. R. 406.

1033. 1. Farmers', etc., Bank *v.* Sanford, (Ala. 1907) 43 So. 226.

1035. 2. *In re* Noon, (Oregon 1907) 88 Pac. 673, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1035; Hinman *v.* Hinman, 126 Wis. 191, 105 N. W. 788.

Kansas. — The equitable title to the whole estate belonging to a decedent, real and personal, not exempt, descends directly to his heirs. Brown *v.* Baxter, (Kan. 1908) 94 Pac. 1.

1037. 4. *In re* Tuohy, 33 Mont. 230, 83 Pac. 486.

6. Griffith *v.* Rudisill, 141 Ala. 205, 37 So. 83; Craddock *v.* Kelly, 129 Ga. 818, 60 S. E. 193; Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751; Hinman *v.* Hinman, 126 Wis. 191, 105 N. W. 788.

1039. 1. Griffith *v.* Rudisill, 141 Ala. 205, 37 So. 83, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1039; Hinman *v.* Hinman, 126 Wis. 191, 105 N. W. 788.

1040. 3. Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929; Campbell *v.* Cole, (N. J. 1906) 64 Atl. 461.

4. *Iowa.* — Feaster *v.* Fagan, (Iowa 1907) 113 N. W. 479.

Kentucky. — Offutt *v.* Hall, (Ky. 1905) 87 S. W. 785; Kerr *v.* Long, (Ky. 1905) 88 S. W. 1068.

New Jersey. — Lembeck *v.* Lembeck, (N. J. 1907) 68 Atl. 337. See also Campbell *v.* Cole, (N. J. 1906) 64 Atl. 461.

New York. — Coann *v.* Culver, 188 N. Y. 9, 80 N. E. 362; Boehmcke *v.* McKeon, 119 N. Y. App. Div. 30, 103 N. Y. Supp. 930; Van Norden Trust Co. *v.* O'Donohue, 122 N. Y. App. Div. 51, 106 N. Y. Supp. 948; Weintraub *v.* Siegel, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 246, 109 N. Y. Supp. 215.

North Carolina. — Trogden *v.* Williams, 144 N. Car. 192, 56 S. E. 865.

Pennsylvania. — Brittain's Estate, 28 Pa. Super. Ct. 144.

Tennessee. — Hardin *v.* Hassell, 118 Tenn. 143, 100 S. W. 720.

Canada. — *Re* Roberts, 10 Ont. L. Rep. 395.

A Power of Sale Given by Will Devolves on the Court if executors are disqualified or fail to act. O'Donaghue *v.* Smith, 184 N. Y. 365, 77 N. E. 621.

Conveyance of Realty to Mortgagee Thereof as Valid Exercise of Power of Sale. — Clody *v.* Southard, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 242, 109 N. Y. Supp. 411.

An Express Power of Sale is not revoked by a final order settling an estate and discharging an executor. Starr *v.* Willoughby, 218 Ill. 485, 75 N. E. 1029.

1041. 1. Boehmcke *v.* McKeon, 119 N. Y. App. Div. 30, 103 N. Y. Supp. 930.

2. **Compelling Exercise of Discretionary Power of Sale.** — *In re* Severns, 211 Pa. St. 68, 60 Atl. 494.

Peremptory Power of Sale. — Feaster *v.* Fagan, (Iowa 1907) 113 N. W. 479.

1042. 6. *Compare* Van Norden Trust Co. *v.* O'Donohue, 122 N. Y. App. Div. 51, 106 N. Y. Supp. 948, holding that the naked right of an executor to sell realty and distribute the proceeds may be defeated by a conveyance of their interest by the devisees.

1043. 1. Carlisle *v.* Cooke, (1905) 1 Ir. R. 269; Smith *v.* Courtney, (Ky. 1905) 85 S. W. 1101; McLaughlin *v.* Greene, (Mass. 1908) 83 N. E. 1112; Harris *v.* Ingalls, (N. H. 1907) 68 Atl. 34, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1043.

2. Harris *v.* Ingalls, (N. H. 1907) 68 Atl. 34.

3. Leeds *v.* Sparks, 8 Del. Ch. 280, 68 Atl. 239.

5. Campbell *v.* Cole, (N. J. 1906) 64 Atl. 461.

1045. 3. Leeds *v.* Sparks, 8 Del. Ch. 280, 68 Atl. 239; McLaughlin *v.* Greene, (Mass. 1908) 83 N. E. 1112.

1046. 1. Cronan *v.* Adams, 189 Mass. 190, 75 N. E. 101.

1048. 3. *In re* Branch, 123 Mo. App. 573, 100 S. W. 516; Fredericks *v.* Kerr, 219 Pa. St. 368, 68 Atl. 835.

1049. 4. *Compare* White *v.* Crossman, 69 N. J. Eq. 528, 61 Atl. 529.

1051. 1. *In re* Branch, 123 Mo. App. 573, 100 S. W. 516.

1052. 2. In *Iowa* it is not necessary to report the sale and have it confirmed. Feaster *v.* Fagan, (Iowa 1907) 113 N. W. 479.

While Not Primarily Requiring Confirmation, a sale under a testamentary power is subject to the supervision and control of the court. Brittain's Estate, 28 Pa. Super. Ct. 144.

3. Weintraub *v.* Siegel, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 246, 109 N. Y. Supp. 215; Brittain's Estate, 28 Pa. Super. Ct. 144.

Purchase by Executor with the Consent of the Beneficiary. — Brittain's Estate, 28 Pa. Super. Ct. 144.

Where an Executor Is Authorized by the Will to purchase, the rule stated in the text does not apply. Curtis *v.* Brewer, 140 Mich. 139, 103 N. W. 579.

4. Brittain's Estate, 28 Pa. Super. Ct. 144.

Purchase by Executor Authorized by the Will. — Curtis *v.* Brewer, 140 Mich. 139, 103 N. W. 579.

1053. 1. Weintraub *v.* Siegel, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 246, 109 N. Y. Supp. 215.

Ratification by the Person Interested in the Estate Must Be Founded, if at all, on knowledge of the facts surrounding the voidable sale. Weintraub *v.* Siegel, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 246, 109 N. Y. Supp. 215.

3. **Effect of Sale on Lien of Judgment against Executor.** — Hollenshed *v.* Woodard, 124 Ga. 721, 52 S. E. 815.

1056. 1. Leeds *v.* Sparks, 8 Del. Ch. 280, 68 Atl. 239.

1057. 2. **Delay Due to Mistake of Judgment** — *In re* Cunningham, 212 Pa. St. 441, 61 Atl. 993.

1058. 2. Sengens *v.* Fennel, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 133, 103 N. Y. Supp. 510.

3. Griffith *v.* Rudisill, 141 Ala. 205, 37 So. 83.

1059. 4. **Power to Partition** is not included in power to mortgage, lease, or sell. Sengens

v. Fennel, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 133, 103 N. Y. Supp. 510.

Even if the Mortgage Was Not Authorized by the Terms of the Will, the estate, if it received the benefit of the money, ought in equity to repay it with interest. Thomas *v.* Provident Life, etc., Co., (C. C. A.) 138 Fed. 348.

1060. 3. Thomas *v.* Provident Life, etc., Co., (C. C. A.) 138 Fed. 348.

1061. 1. Thomas *v.* Provident Life, etc., Co., (C. C. A.) 138 Fed. 348.

1062. 1. **Presumption of Regularity on Collateral Attack.** — McKenna *v.* Cosgrove, 41 Wash. 332, 83 Pac. 240.

3. Hull *v.* Holmes, 78 Conn. 362, 62 Atl. 705.

1063. 5. **In Alabama.** — Griffith *v.* Rudisill, 141 Ala. 205, 37 So. 83.

1069. 4. Johnson *v.* Porterfield, (Ala. 1907) 43 So. 228; King *v.* Gilreath, (Ala. 1907) 45 So. 89; Pierce *v.* Vansell, 35 Ind. App. 525, 74 N. E. 554.

1070. 5. Robinson *v.* Cogswell, 192 Mass. 79, 78 N. E. 389; Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219; Matter of Welch, 36 N. Bruns. 628.

1071. 1. Tidd *v.* Bloch, 26 Ohio Cir. Ct. 115.

1072. 3. Johnson *v.* Porterfield, (Ala. 1907) 43 So. 228; Fisher *v.* Southern L. & T. Co., 138 N. Car. 90, 50 S. E. 592; State *v.* Settle, 141 N. Car. 553, 54 S. E. 445; Bashaw *v.* Temple, 115 Tenn. 596, 91 S. W. 202.

4. In Alabama the petition must be filed by the administrator of the estate of the deceased. Bolen *v.* Hoven, 143 Ala. 652, 39 So. 379.

1073. 4. *In re* Buffalo State Hospital, (Surrogate Ct.) 47 Misc. (N. Y.) 33, 95 N. Y. Supp. 209.

5. One Who Purchases the Interest of an Heir does not come within a statute authorizing a "person interested in the estate" to apply for a sale of a decedent's realty. Stark *v.* Kirchgiaber, 186 Mo. 633, 85 S. W. 868.

1074. 2. **If No Injury Results to Heirs of Decedent, Right to Order of Sale Not Lost.** — Robbins *v.* Boulware, 190 Mo. 33, 88 S. W. 674.

3. Mayo *v.* Mayo, 79 Ark. 570, 96 S. W. 165; Thomas *v.* Waters, 122 Ill. App. 434; Frier *v.* Lowe, 232 Ill. 622, 83 N. E. 1083; Milburn *v.* East, 128 Iowa 101, 102 N. W. 1116.

1075. 1. **In Illinois.** — Cruttenden *v.* Finlay, 123 Ill. App. 523.

In Iowa the application should be made within the time allowed for filing and allowance of claims. Milburn *v.* East, 128 Iowa 101, 102 N. W. 1116.

1079. 2. Bolen *v.* Hoven, 143 Ala. 652, 39 So. 379.

3. *In re* Hatch, 182 N. Y. 320, 75 N. E. 153. *Compare* Johnson *v.* Porterfield, (Ala. 1907) 43 So. 228.

4. *In re* Hatch, 182 N. Y. 320, 75 N. E. 153.

1080. 2. *In re* Hatch, 182 N. Y. 320, 75 N. E. 153.

1082. 1. **A Judgment Creditor in New York.** — See *In re* Catlin, (Surrogate Ct.) 57 Misc. (N. Y.) 269, 109 N. Y. Supp. 542.

3. Little *v.* Marx, 145 Ala. 620, 39 So. 517; Tabb *v.* Wortham, (Ky. 1905) 89 S. W. 191.

1084. 1. Milburn *v.* East, 128 Iowa 101, 102 N. W. 1116.

1085. 3. Little *v.* Marx, 145 Ala. 620, 39 So. 517; Davidson *v.* Marcum, (Ky. 1905) 89 S. W. 703; Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751; Gordon *v.* James, 86 Miss. 719, 39 So. 18; *In re* Catlin, (Surrogate Ct.) 57 Misc. (N. Y.) 269, 109 N. Y. Supp. 542; Bashaw *v.* Temple, 115 Tenn. 596, 91 S. W. 202; Miller *v.* Mitchell, 58 W. Va. 431, 52 S. E. 478; Matter of Welch, 36 N. Bruns. 628.

1088. 3. Matter of Welch, 36 N. Bruns. 628.

Disinterested Witnesses. — Little *v.* Marx, 144 Ala. 538, 39 So. 517.

A Single Witness. — But see Little *v.* Marx, 145 Ala. 620, 39 So. 517, holding that one witness is not sufficient.

4. In West Virginia. — See Miller *v.* Mitchell, 58 W. Va. 431, 52 S. E. 478.

1089. 1. Gordon *v.* James, 86 Miss. 719, 39 So. 18; *In re* Noon, (Oregon 1907) 88 Pac. 673.

1091. 4. Fitzgerald *v.* Turner, 223 Ill. 322, 79 N. E. 76; Foersch *v.* Schmitt, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 608, 106 N. Y. Supp. 935.

1092. 2. Griffin *v.* Dunn, 79 Ark. 408, 96 S. W. 190; Brandon *v.* Jensen, 74 Neb. 569, 104 N. W. 1054.

Homestead of Widow Subject to Sale During Her Lifetime for Payment of Husband's Debts. — Robbins *v.* Boulware, 190 Mo. 33, 88 S. W. 674.

Failure to Assert Right to Exemption estops one from collaterally questioning title of innocent purchaser on that ground. Smith *v.* Blood, 106 N. Y. App. Div. 317, 94 N. Y. Supp. 667.

4. Fitzgerald *v.* Turner, 222 Ill. 322, 79 N. E. 76.

1094. 8. Powers *v.* Scharling, (Kan. 1907) 92 Pac. 1099, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1094.

1096. 6. Galloway *v.* Galloway, 76 S. Car. 528, 57 S. E. 528, *per* Gary, J., *dissenting*, and *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1096.

1097. 4. Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751.

5. Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751.

1098. 3. **Executor Exempted from Giving Bond by Will.** — Wood *v.* Stewart, 120 Ill. App. 34.

1101. 5. King *v.* Gilreath, (Ala. 1907) 45 So. 89.

1103. 2. *In re* Bryant, 38 Wash. 337, 80 Pac. 555.

1107. 1. **Mississippi Statute.** — Shannon *v.* Summers, 86 Miss. 619, 38 So. 345.

3. Penn *v.* Rhoades, (Ky. 1907) 100 S. W. 288.

1108. 7. See Berryman *v.* Biddle, (Tex. Civ. App. 1908) 107 S. W. 922.

1109. 3. King *v.* Gilreath, (Ala. 1907) 45 So. 89.

1110. 4. Cruse *v.* O'Gwin, (Tex. Civ. App. 1907) 106 S. W. 757.

1111. 5. Matter of Long, 5 Cal. App. 684, 91 Pac. 169; Ryan *v.* Geigel, 39 Colo. 355, 89 Pac. 775; McGary *v.* McGary, (Ky. 1907) 105 S. W. 891; Podesta *v.* Binns, 69 N. J. Eq. 394, 60 Atl. 815, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1111.

1112. 1. Ryan *v.* Geigel, 39 Colo. 355, 89 Pac. 775; Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219; Cruse *v.* O'Gwin, (Tex. Civ. App. 1907) 106 S. W. 757.

2. Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219; Cruse *v.* O'Gwin, (Tex. Civ. App. 1907) 106 S. W. 757.

6. Ryan *v.* Geigel, 39 Colo. 355, 89 Pac. 775.

1113. 1. Biddison *v.* Aaron, 102 Md. 156, 62 Atl. 523.

3. Starr *v.* Willoughby, 218 Ill. 485, 75 N. E. 1029.

Nebraska Statute — Ten Per Cent. Advance Bid. — Rohlff *v.* Snyder, 73 Neb. 524, 103 N. W. 49.

4. Starr *v.* Willoughby, 218 Ill. 485, 75 N. E. 1029.

5. **Any Recognition of Sale.** — Cruse *v.* O'Gwin, (Tex. Civ. App. 1907) 106 S. W. 757; Berryman *v.* Biddle, (Tex. Civ. App. 1908) 107 S. W. 922.

1114. 2. Lake *v.* Hathaway, 75 Kan. 391, 89 Pac. 666.

1115. 1. Carraway *v.* Lassiter, 139 N. Car. 145, 51 S. E. 968.

4. Hicky *v.* Stallworth, 143 Ala. 535, 39 So. 267; Briggs *v.* Manning, 80 Ark. 304, 97 S. W. 289; Lake *v.* Hathaway, 75 Kan. 391, 89 Pac. 666; Stark *v.* Kirchgraber, 186 Mo. 633, 85 S. W. 868; Robbins *v.* Boulware, 190 Mo. 33, 88 S. W. 674; Smith *v.* Whaley, 27 R. I. 185, 61 Atl. 173; Wallace *v.* Turner, (Tex. Civ. App. 1905) 89 S. W. 432, *affirmed* 99 Tex. 543, 92 S. W. 31; McKenna *v.* Cosgrove, 41 Wash. 332, 83 Pac. 240; Lethbridge *v.* Lauder, 13 Wyo. 18, 76 Pac. 682.

1116. 1. **Want of Jurisdiction Apparent of Record.** — Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477.

1117. 1. Berryman *v.* Biddle, (Tex. Civ. App. 1908) 107 S. W. 922.

2. Little *v.* Marx, 145 Ala. 620, 39 So. 517; Tabb *v.* Wortham, (Ky. 1905) 89 S. W. 191; Stark *v.* Kirchgraber, 186 Mo. 633, 85 S. W. 868.

A Petition Not Verified as required by statute, is a mere irregularity which cannot be collaterally attacked. Robbins *v.* Boulware, 190 Mo. 33, 88 S. W. 674.

1118. 2. Texas Land, etc., Co. *v.* Dunovant, (Tex. Civ. App. 1905) 87 S. W. 208.

1119. 2. Robbins *v.* Boulware, 190 Mo. 33, 88 S. W. 674; Texas Land, etc., Co. *v.* Dunovant, (Tex. Civ. App. 1905) 87 S. W. 208.

2. Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477; Card *v.* Finch, 142 N. Car. 140, 54 S. E. 1009.

1120. 3. *Alabama.* — Haynes *v.* Simpson, 143 Ala. 554, 39 So. 352; King *v.* Gilreath, (Ala. 1907) 45 So. 89.

Georgia. — Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477.

Kansas. — Lake *v.* Hathaway, 75 Kan. 391, 89 Pac. 666.

Missouri. — Stark *v.* Kirchgraber, 186 Mo. 633, 85 S. W. 868.

South Dakota. — Blackman *v.* Mulhall, 19 S. Dak. 555, 104 N. W. 250.

Texas. — Dignowity *v.* Baumblatt, (Tex. Civ. App. 1905) 85 S. W. 834; Dutton *v.* Wright, (Tex. Civ. App. 1905) 85 S. W. 1025; Nelson *v.* Bridge, 98 Tex. 523, 86 S. W. 7; Nelson *v.* Bridge, (Tex. Civ. App. 1905) 87 S. W. 885; Wallace *v.* Turner, (Tex. Civ. App. 1905) 89 S. W. 432, *affirmed* 99 Tex. 543, 92 S. W. 31; Cruse *v.* O'Gwin, (Tex. Civ. App. 1907) 106 S. W. 757; Berryman *v.* McDonald, (Tex. Civ. App. 1908) 107 S. W. 944.

Washington. — McKenna *v.* Cosgrove, 41 Wash. 332, 83 Pac. 240.

Essentials of Valid Sale Not Appearing of Record. — Cater *v.* Steeves, 95 Minn. 225, 103 N. W. 885.

1122. 1. Hall *v.* Davis, 122 Ga. 252, 50 S. E. 106.

An Order Entered on the Minutes of the Probate Court, which is signed by the probate judge, suffices as to form. Floyd *v.* Ricketson, 129 Ga. 668, 59 S. E. 909.

1124. 1. **Nebraska.** — The provisions of Comp. Stat. 1907, § 117, c. 23, apply to irregular administrative sales, but not to sales that are absolutely void; and an action by an heir to quiet his title to the homestead of his ancestor may be maintained at any time within ten years after his right of action accrues, or the attainment of his majority. Holmes *v.* Mason, (Neb. 1908) 114 N. W. 606.

3. Board of Education *v.* Day, 128 Ga. 156, 57 S. E. 359; Podesta *v.* Binns, 69 N. J. Eq. 394, 60 Atl. 815, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1124.

4. Powers *v.* Scharling, (Kan. 1907) 92 Pac. 1099, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1124.

Suing Executor for Proceeds of Unauthorized Sale. — Board of Education *v.* Day, 128 Ga. 156, 57 S. E. 359.

1125. 4. Walker *v.* Walker, 127 Iowa 83, 102 N. W. 435.

1126. 2. Hamilton *v.* Cargile, 127 Ga. 762, 56 S. E. 1022; Penn *v.* Rhoades, (Ky. 1907) 100 S. W. 288.

5. **Tender of Indebtedness.** — A sale to pay decedent's debts is not impeached by proof of tender of part of the indebtedness, where notice of tender is not shown to have been given at the sale. Green *v.* Cannady, 71 S. Car. 317, 51 S. E. 92.

1127. 1. *In re* Reed, 3 Cal. App. 142, 85 Pac. 155.

1128. 1. Dorsey *v.* Connerly, 77 Ark. 516, 92 S. W. 771; Penn *v.* Rhoades, (Ky. 1907) 100 S. W. 288; Shannon *v.* Summers, 86 Miss. 619, 38 So. 345; McKenna *v.* Cosgrove, 41 Wash. 332, 83 Pac. 240; Wilson *v.* McMillan, (Wash. 1908) 93 Pac. 529.

Burden on Purchaser to Show Good Faith. — Shannon *v.* Summers, 86 Miss. 619, 38 So. 345.

Purchase by Surety. — Fincke *v.* Bundrick, 72 Kan. 182, 83 Pac. 403.

1129. 4. **Nor Can a Commissioner,** appointed to make the sale, become the purchaser. Penn *v.* Rhoades, (Ky. 1907) 100 S. W. 288.

5. Walker *v.* Walker, 127 Iowa 83, 102 N. W. 435, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1129.

6. **A Member of a Law Firm** representing the administrator becomes at his peril a purchaser of realty belonging to an estate sold by order of court. Railsback *v.* Leonard, 118 La. 916, 43 So. 548.

1130. 2. **The Mississippi Statute** now provides that the action must be brought within

two years instead of one. Shannon *v.* Summers, 86 Miss. 619, 38 So. 345.

1131. 4. Brittain's Estate, 28 Pa. Super. Ct. 144.

Resale for Failure of Bidder to Comply with Terms of Sale. — Matter of Long, 5 Cal. App. 684, 91 Pac. 169.

1132. 2. See *In re* Long, 5 Cal. App. 684, 91 Pac. 169.

1133. 4. Fitzgerald *v.* Turner, 222 Ill. 322, 79 N. E. 76.

1134. 8. Thomas's Succession, 114 La. 693, 38 So. 519; Carraway *v.* Lassiter, 139 N. Car. 145, 51 S. E. 968.

1135. 3. Carraway *v.* Lassiter, 139 N. Car. 145, 51 S. E. 968.

1136. 1. Hollinshed *v.* Woodard, 124 Ga. 721, 52 S. E. 815.

1137. 7. Mercer *v.* Sager, 129 Ga. 123, 58 S. E. 1037; Podesta *v.* Binns, 69 N. J. Eq. 394, 60 Atl. 815, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1137; Matson *v.* Johnson, (Wash. 1908) 93 Pac. 324.

8. Podesta *v.* Binns, 69 N. J. Eq. 394, 60 Atl. 815, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1137.

1138. 2. See Mercer *v.* Sager, 129 Ga. 123, 58 S. E. 1037.

1141. 2. Mercer *v.* Sager, 129 Ga. 123, 58 S. E. 1037.

6. Davidson *v.* Marcum, (Ky. 1905) 89 S. W. 703; Card *v.* Finch, 142 N. Car. 140, 54 S. E. 1009.

1142. 2. Davidson *v.* Marcum, (Ky. 1905) 89 S. W. 703.

3. Davidson *v.* Marcum, (Ky. 1905) 89 S. W. 703.

1144. 6. Brinkerhoff *v.* Brinkerhoff, 226 Ill. 550, 80 N. E. 1056; Walker *v.* Walker, 127 Iowa 83, 102 N. W. 435; Tucker *v.* Benedict, 114 La. 203, 38 So. 142; *In re* Frey, (N. J. 1907) 67 Atl. 192.

1145. 1. Brinkerhoff *v.* Brinkerhoff, 226 Ill. 550, 80 N. E. 1056; Walker *v.* Walker, 127 Iowa 83, 102 N. W. 435; Manning *v.* Mulrey, 192 Mass. 547, 78 N. E. 551; Shannon *v.* Summers, 86 Miss. 619, 38 So. 345; *In re* Frey, (N. J. 1907) 67 Atl. 192.

1147. 3. **In Pennsylvania.** — *In re* McPherran, 212 Pa. St. 425, 61 Atl. 954.

1148. 1. See Berryman *v.* Biddle, (Tex. Civ. App. 1908) 107 S. W. 922; Berryman *v.* McDonald, (Tex. Civ. App. 1908) 107 S. W. 922.

1149. 1. Phillips *v.* Collinsville Granite Co., 123 Ga. 830, 51 S. E. 666; Brinkerhoff *v.* Brinkerhoff, 226 Ill. 550, 80 N. E. 1056; McGary *v.* McGary, (Ky. 1907) 105 S. W. 891.

4. **The Heirs of a Party Who Requested the Executor** to purchase are estopped to question the validity of the sale. McGary *v.* McGary, (Ky. 1907) 105 S. W. 891.

1150. 1. **Mere Consent to the Discharge of the Administrator** as such, does not amount to a ratification of the administrator's sale. Tucker *v.* Benedict, 114 La. 203, 38 So. 142.

2. Brinkerhoff *v.* Brinkerhoff, 226 Ill. 550, 80 N. E. 1056.

3. Tucker *v.* Benedict, 114 La. 203, 38 So. 142; Manning *v.* Mulrey, 192 Mass. 547, 78 N. E. 551.

1151. 1. Phillips *v.* Collinsville Granite Co., 123 Ga. 830, 51 S. E. 666.

A judgment creditor of an heir cannot levy upon and sell land formerly belonging to the estate, but held by a voidable title, because of a purchase by the administratrix at her own sale. Williams *v.* J. P. Williams Co., 122 Ga. 178, 50 S. E. 52.

4. Tucker *v.* Benedict, 114 La. 203, 38 So. 142.

6. Walker *v.* Walker, 127 Iowa 83, 102 N. W. 435, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1151; Tucker *v.* Benedict, 114 La. 203, 38 So. 142.

1152. 1. Wicker *v.* Howard, 126 Ga. 119, 54 S. E. 821; Brinkerhoff *v.* Brinkerhoff, 226 Ill. 550, 80 N. E. 1056.

2. A Conveyance by the Purchaser to the Administrator shortly after the sale, coupled with the fact that no money was paid by either purchaser or administrator, suffices to show indirect purchase. Manning *v.* Mulrey, 192 Mass. 547, 78 N. E. 551.

1153. 5. See King *v.* Gilreath, (Ala. 1907) 45 So. 89.

6. Where "the approval of the sale contains evidence that the purchase money derived from the sale had been received by the administrator, * * * the sale was effective without any deed." Whitaker *v.* Thayer, (Tex. Civ. App. 1905) 86 S. W. 364.

1154. 6. Mallard *v.* Curran, 123 Ga. 872, 51 S. E. 712.

1155. 6. West *v.* Burgie, 75 Ark. 516, 88 S. W. 557, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1155.

1157. 1. Pierce *v.* Vansell, 35 Ind. App. 525, 74 N. E. 554.

8. Pierce *v.* Vansell, 35 Ind. App. 525, 74 N. E. 554; Evans *v.* Ashe, (Tex. Civ. App. 1908) 108 S. W. 398.

1158. 4. Pierce *v.* Vansell, 35 Ind. App. 525, 74 N. E. 554.

1159. 5. Floyd *v.* Ricketson, 129 Ga. 668, 59 S. E. 909.

6. Bolen *v.* Hoven, (Ala. 1907) 43 So. 736; Sherman *v.* Millard, 27 Ohio Cir. Ct. 175.

7. Sherman *v.* Millard, 27 Ohio Cir. Ct. 175.

1160. 1. Bolen *v.* Hoven, (Ala. 1907) 43 So. 736; Thompson *v.* Thompson, (Ky. 1907) 105 S. W. 1185; *In re* Hatch, 182 N. Y. 320, 75 N. E. 153; Sherman *v.* Millard, 27 Ohio Cir. Ct. 175.

2. Reed *v.* Reed, (Conn. 1908) 68 Atl. 852.

Amount of Legacy. — An inheritance tax is to be deducted from the amount payable by an executor to a legatee in satisfaction of his legacy. *In re* Chesney, 1 Cal. App. 30, 81 Pac. 670.

An Executor of a Deceased Administrator may not distribute the assets of the estate of which his testator was administrator. *In re* Collyer, 124 N. Y. App. Div. 16, 108 N. Y. Supp. 600.

1162. 1. *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225.

3. **In New York**, if the executors should turn over to the party having the life estate, articles which were bequeathed to such person, they should require from such legatee a written inventory setting forth his own interest in the

property of a known legatee that can be [illegible] it belongs to the person or persons designated [illegible]. *In re* Bates, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225.

1163. 1. **The Administrator Must Distribute the Residue** of the estate as directed by the court. Mefford *v.* Lamkin, 38 Ind. App. 33, 76 N. E. 1024, 77 N. E. 960.

1164. 3. Bryant *v.* McIntosh, 3 Cal. App. 65, 84 Pac. 440.

1165. 3. Stevens *v.* Meserve, 73 N. H. 293, 61 Atl. 420.

1169. 5. Stevens *v.* Meserve, 73 N. H. 293, 61 Atl. 420.

1170. 8. Wick *v.* Hickey, (Iowa 1905) 103 N. W. 469; Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751; *In re* Robinson, (Surrogate Ct.) 45 Misc. (N. Y.) 551, 92 N. Y. Supp. 967; Lambright *v.* Lambright, (Ohio 1906) 78 N. E. 265; Tobias *v.* Richardson, 26 Ohio Cir. Ct. 81.

1171. 3. Debts incurred after or before the death of the decedent may be retained. Lambright *v.* Lambright, (Ohio 1906) 78 N. E. 265.

1173. 3 Barnett *v.* Thomas, 36 Ind. App. 441, 75 N. E. 868.

4. Marvin *v.* Bowlby, 142 Mich. 245, 105 N. W. 751.

1174. 8. St. Mary's Hospital *v.* Perry, (Cal. 1907) 92 Pac. 864; Garrett *v.* Kerney, (Md. 1908) 68 Atl. 1051.

1177. 1. **It Is Discretionary with the Court** to grant an application for immediate payment of a legacy without requiring a refunding bond, if the executors have ample funds in their hands to pay all outstanding claims. *In re* Chesney, 1 Cal. App. 30, 81 Pac. 679.

3. **A Refunding Bond May Be Dispensed with.** — Carter *v.* Skillman, (Va. 1908) 60 S. E. 775.

1178. 5. **One Entitled to Receive a Legacy under a Distributive Devise Declaring a Trust** cannot be required to give a refunding bond. St. Mary's Hospital *v.* Perry, (Cal. 1907) 92 Pac. 864.

1179. 2. *In re* Kucielski, (Surrogate Ct.) 49 Misc. (N. Y.) 404, 99 N. Y. Supp. 828.

1180. 1. Clifton *v.* Clifton, (Fla. 1907) 45 So. 458.

1181. 1. Clifton *v.* Clifton, (Fla. 1907) 45 So. 458.

1182. 3. Salmon *v.* Wynn, (Ala. 1907) 45 So. 133; Clark *v.* Farmers' Nat. Bank, (Ky. 1907) 99 S. W. 674; Bushe *v.* Wright, 118 N. Y. App. Div. 320, 103 N. Y. Supp. 410; Volhard *v.* Volhard, 119 N. Y. App. Div. 266, 104 N. Y. Supp. 578; *In re* Collyer, 124 N. Y. App. Div. 16, 108 N. Y. Supp. 600.

1185. 1. Hanley *v.* Holton, 120 Mo. App. 393, 96 S. W. 691.

2. Middlecoff *v.* Superior Ct., 149 Cal. 97, 84 Pac. 764, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1185. *Compare* Dant *v.* Cooper, (Ky. 1906) 96 S. W. 454.

1186. 2. Reed *v.* Reed, (Conn. 1908) 68 Atl. 852.

3. See Dant *v.* Cooper, (Ky. 1906) 96 S. W. 454.

6. Hill *v.* Hill, 70 N. J. Eq. 107, 62 Atl. 385; *In re* Anderson, 122 N. Y. App. Div. 453, 106 N. Y. Supp. 818. *Compare* Huntington Nat. Bank *v.* Huntington Distilling Co., 152 Fed. 240.

1187. 1. Bushe *v.* Wright, 118 N. Y. App. Div. 320, 103 N. Y. Supp. 410; *In re* Lesser, 119 N. Y. App. Div. 507, 104 N. Y. Supp. 213.

2. *In re* Lesser, 119 N. Y. App. Div. 507, 104 N. Y. Supp. 213.

Statute Does Not Run until Trust Is Openly Repudiated. — *In re* Meyer, 98 N. Y. App. Div. 7, 90 N. Y. Supp. 185, *affirmed* 181 N. Y. 562, 74 N. E. 1120.

1188. 1. Salmon *v.* Wynn, (Ala. 1907) 45 So. 133; Hill *v.* Hill, 70 N. J. Eq. 107, 62 Atl. 385. See Huntington Nat. Bank *v.* Huntington Distilling Co., 152 Fed. 240.

1189. 1. Huntington Nat. Bank *v.* Huntington Distilling Co., 152 Fed. 240.

1190. 3. **When Title to Realty Is Involved** in the accounting, the Probate Court should dismiss the proceeding. *In re* Fogarty, 117 N. Y. App. Div. 583, 102 N. Y. Supp. 776.

5. Elizalde *v.* Murphy, 4 Cal. App. 114, 87 Pac. 245; Matson *v.* Pearson, 121 Mo. App. 136, 97 S. W. 983; Tidd *v.* Bloch, 26 Ohio Cir. Ct. 113; Brittain's Estate, 28 Pa. Super. Ct. 144; Harris *v.* Harris, 79 Vt. 22, 64 Atl. 75.

1191. 3. Rensford *v.* Magnus, (Ala. 1907) 43 So. 853, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1191; Salmon *v.* Wynn, (Ala. 1907) 45 So. 133; McGlave *v.* Fitzgerald, 67 Neb. 423, 93 N. W. 692, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1191; Citizens' Cent. Nat. Bank *v.* Toplitz, 113 N. Y. App. Div. 73, 98 N. Y. Supp. 826; *In re* Fogarty, 117 N. Y. App. Div. 583, 102 N. Y. Supp. 776; Bushe *v.* Wright, 118 N. Y. App. Div. 320, 103 N. Y. Supp. 410; *In re* Lesser, 119 N. Y. App. Div. 507, 104 N. Y. Supp. 213; Volhard *v.* Volhard, 119 N. Y. App. Div. 266, 104 N. Y. Supp. 578; Stehn *v.* Hayssen, 124 Wis. 583, 102 N. W. 1074.

4. McGlave *v.* Fitzgerald, 67 Neb. 423, 93 N. W. 692, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1191.

5. McGlave *v.* Fitzgerald, 67 Neb. 423, 93 N. W. 692, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1191.

1192. 3. Salmon *v.* Wynn, (Ala. 1907) 45 So. 133; Attwill *v.* Dole, (N. H. 1907) 67 Atl. 403; *In re* Bastedenbeck, (N. J. 1907) 67 Atl. 179; *In re* Meyer, 98 N. Y. App. Div. 7, 90 N. Y. Supp. 185, *affirmed* 181 N. Y. 562, 74 N. E. 1120; Citizens' Cent. Nat. Bank *v.* Toplitz, 113 N. Y. App. Div. 73, 98 N. Y. Supp. 826; Bushe *v.* Wright, 118 N. Y. App. Div. 320, 103 N. Y. Supp. 410. See also Dant *v.* Cooper, (Ky. 1906) 96 S. W. 454.

An Administrator De Bonis Non has, as such, no right to call for a full settlement, where there is no personalty. Withers *v.* Withers, (Ky. 1907) 100 S. W. 253.

A Proceeding Instituted by a Mere Volunteer may be entertained by the court, in its discretion, to compel an executor who is also a minor child of the decedent to render a final account. Wheeler *v.* Long, 128 Iowa 643, 105 N. W. 161. [illegible], Rensford *v.* Magnus, (Ala. 1907) 43 So. 853; Clark *v.* Scovill, 191 N. Y. 8, 83 N. E. 652; Stehn *v.* Hayssen, 124 Wis. 583, 102 N. W. 1074.

Guardian of Infant Creditor May Require

Accounting. — Beddow *v.* Wilson, (Ky. 1906) 90 S. W. 228.

2. *In re* Gill, 183 N. Y. 347, 76 N. E. 274, *reversing* 101 N. Y. App. Div. 607, 91 N. Y. Supp. 1095.

4. A Legatee may require an accounting. *In re* Bastedenbeck, (N. J. 1907) 67 Atl. 179.

The Assignee of a Legatee may require an accounting. Citizens' Cent. Nat. Bank *v.* Toplitz, 113 N. Y. App. Div. 73, 98 N. Y. Supp. 826.

6. *In re* Bastedenbeck, (N. J. 1907) 67 Atl. 179.

1195. 3. The Successor of a Deceased Administrator may compel the latter's representative to account. *In re* Lesser, 119 N. Y. App. Div. 507, 104 N. Y. Supp. 213.

4. *In re* McManus, 212 Pa. St. 267, 61 Atl. 892.

1196. 1. In Oregon an executor may be required to account semi-annually. *In re* Roach, (Oregon 1907) 92 Pac. 118.

1197. 2. Right to Credit for Office Rent and Attorney's Fees. — *In re* Roach, (Oregon 1907) 92 Pac. 118.

1201. 4. Reager *v.* Chappelear, 104 Va. 14, 51 S. E. 170.

1202. 1. Kauffeld's Estate, 28 Pa. Super. Ct. 162.

2. Kauffeld's Estate, 28 Pa. Super. Ct. 162.

1203. 5. Insolvent Administrator. — Sanders *v.* Dodge, 140 Mich. 236, 103 N. W. 597; *In re* Ablowich, 118 N. Y. App. Div. 626, 103 N. Y. Supp. 699, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1203; Moseley *v.* Johnson, 144 N. Car. 277, 56 S. E. 922; Jones *v.* Willis, 72 Ohio St. 189, 74 N. E. 166.

Debt of One, Joint Debt of All. — Where the administrators gave a joint bond, a debt of either of them to the estate becomes an asset thereof and must be treated as having come into their joint possession. Grinnell *v.* Portage County, 27 Ohio Cir. Ct. 123.

1204. 2. Chargeable with Amount Realized on Sale to Himself. — *In re* Robbins, 94 Minn. 4[illegible] N. W. 217.

1209. 3. *In re* Woods, (Surrogate Ct.) 55 Misc. (N. Y.) 181, 106 N. Y. Supp. 471.

1212. 2. *In re* Collyer, 124 N. Y. App. Div. 16, 108 N. Y. Supp. 600.

3. Tippin *v.* Perry, 122 Ga. 120, 50 S. E. 35; Albert *v.* Sanford, 201 Mo. 117, 99 S. W. 1068; *In re* Davis, 35 Mont. 273, 88 Pac. 957; *In re* Collyer, 124 N. Y. App. Div. 16, 108 N. Y. Supp. 600.

1213. 2. *In re* Collyer, 124 N. Y. App. Div. 16, 108 N. Y. Supp. 600.

1214. 1. Albert *v.* Sanford, 201 Mo. 117, 99 S. W. 1068; *In re* Davis, 35 Mont. 273, 88 Pac. 957.

2. Tippin *v.* Perry, 122 Ga. 120, 50 S. E. 35.

3. *In re* Davis, 35 Mont. 273, 88 Pac. 957, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1214; *In re* Collyer, 124 N. Y. App. Div. 16, 108 N. Y. Supp. 600.

4. Tippin *v.* Perry, 122 Ga. 120, 50 S. E. 35; *In re* Collyer, 124 N. Y. App. Div. 16, 108 N. Y. Supp. 600.

1215. 1. Tipin *v.* Perry, 122 Ga. 120, 50 S. E. 35. *Compare* Albert *v.* Sanford, 201 Mo. 117, 99 S. W. 1068.

On Moneys Improperly Used by them, executors will be surcharged with interest. *In re* Scott, 1 Cal. App. 740, 83 Pac. 85.

1217. 3. A Trust Company Cannot Be Surcharged with Interest, on the theory that it mingled trust funds, where it appears that it was one of three executors and accepted the estate funds on deposit in the course of its ordinary banking business, paying the ordinary rate of interest therefor. *In re* Moore, 211 Pa. St. 348, 60 Atl. 991.

1219 1. Funds Held Pending Litigation. — *In re* Davis, 35 Mont. 273, 88 Pac. 957.

1220. 6. McDonald *v.* People, 222 Ill. 325, 78 N. E. 609; German Pioneer Verein *v.* Meyer, 70 N. J. Eq. 192, 63 Atl. 835.

1222. 1. Hardin *v.* Hassell, 118 Tenn. 143, 100 S. W. 720.

1224. 2. *In re* Krisfeldt, (Surrogate Ct.) 49 Misc. (N. Y.) 26, 97 N. Y. Supp. 877.

1227. 2. In New York the executor is chargeable with interest at only three per cent. *In re* Krisfeldt, (Surrogate Ct.) 49 Misc. (N. Y.) 26, 97 N. Y. Supp. 877.

1230. 3. See *In re* Casner, 1 Cal. App. 145, 81 Pac. 991.

1232. 4. Shouldice *v.* McLeod, 145 Mich. 708, 108 N. W. 1083; Matson *v.* Pearson, 121 Mo. App. 136, 97 S. W. 983, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1232; Kelly *v.* Odum, 139 N. Car. 278, 51 S. E. 953.

1233. 1. *In re* Ring, 132 Iowa 216, 109 N. W. 710; *In re* Bender, 111 N. Y. App. Div. 23, 97 N. Y. Supp. 171; *In re* King, 122 N. Y. App. Div. 354, 106 N. Y. Supp. 1073; Rice *v.* Tilton, 13 Wyo. 420, 82 Pac. 577, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1233–1235.

2. Mackin *v.* Hobbs, 126 Wis. 216, 105 N. W. 305.

1234. 4. *In re* Ring, 132 Iowa 216, 109 N. W. 710.

1236. 3. Hays *v.* Johnson, (Ky. 1907) 99 S. W. 332.

In Wyoming, by statute, an executor or administrator may include as part of his expenses "such reasonable sum as may be paid to a company, authorized under the laws of this state to do so, for becoming surety upon his bond." Rice *v.* Tilton, 13 Wyo. 420, 82 Pac. 577.

4. For Services of Executor in Serving Citations in probate proceedings, no allowance will be made. *In re* Wick, (Surrogate Ct.) 53 Misc. (N. Y.) 211, 103 N. Y. Supp. 717.

1238. 4. *In re* Frey, (N. J. 1907) 67 Atl. 192; *In re* Arnton, 106 N. Y. App. Div. 326, 94 N. Y. Supp. 471.

1240. 1. *Alabama.* — See Howard *v.* Rutherford, (Ala. 1907) 43 So. 30.

California. — *In re* Heeney, 3 Cal. App. 548, 86 Pac. 830.

Kentucky. — Gardner *v.* Moss, (Ky. 1906) 96 S. W. 461.

Missouri. — Matson *v.* Pearson, 121 Mo. App. 136, 97 S. W. 983, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1240; Albert *v.* Sanford, 201 Mo. 117, 99 S. W. 1068.

Nebraska. — *In re* Rapp, (Neb. 1906) 110 N. W. 661.

New York. — *In re* Arnton, 106 N. Y. App. Div. 326, 94 N. Y. Supp. 471; *In re* Bender,

111 N. Y. App. Div. 30, 97 N. Y. Supp. 171, *citing* 11 Am. and Eng. Encyc. of Law (2d ed.) 1240; *In re* Caldwell, 188 N. Y. 115, 80 N. E. 663.

North Carolina. — Kelly *v.* Odum, 139 N. Car. 278, 51 S. E. 953, *quoting* 11 Am. and Eng. Encyc. of Law (2d ed.) 1240.

North Dakota. — Besancon *v.* Wegner, (N. Dak. 1907) 111 N. W. 665.

Texas. — Ackermann *v.* Ackermann, (Tex. Civ. App. 1907) 99 S. W. 889.

Wyoming. — Rice *v.* Tilton, 13 Wyo. 420, 82 Pac. 577.

No Credit for Fees Not Actually Paid. — *In re* Woods, (Surrogate Ct.) 55 Misc. (N. Y.) 181, 106 N. Y. Supp. 471.

An Administrator Who Is Also an Attorney is not entitled to an allowance for legal services, if the administration was not attended with any legal complications. Noble *v.* Whitten, 38 Wash. 262, 80 Pac. 451.

In Ohio the rule is that it is discretionary with the court to allow in the accounts of an administrator moneys paid for the services of an attorney employed by him. Sherman *v.* Millard, 27 Ohio Cir. Ct. 175.

Misconduct. — It is improper to allow counsel fees where the executor has so conducted himself as to forfeit his right to commissions. *In re* Frey, (N. J. 1907) 67 Atl. 192.

Waiver. — Failure to claim attorney's fees in prior accounts does not amount to a waiver. Elizalde *v.* Murphy, 4 Cal. App. 114, 87 Pac. 245.

1241. 1. *In re* Davis, 35 Mont. 273, 88 Pac. 957.

2. *In re* Pickett, (Oregon 1907) 89 Pac. 377.

3. *In re* Caldwell, 188 N. Y. 115, 80 N. E. 663.

5. Kelly *v.* Odum, 139 N. Car. 278, 51 S. E. 953.

1242. 2. **Unnecessarily Resisting Small Claim.** — *In re* Wick, (Surrogate Ct.) 53 Misc. (N. Y.) 211, 104 N. Y. Supp. 717.

1243. 3. Gardner *v.* Moss, (Ky. 1906) 96 S. W. 461; Morere's Succession, 118 La. 543, 42 So. 132; Decker *v.* Fahrenholtz, (Md. 1908) 68 Atl. 1048.

Successful Defense. — Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317.

If the Executor Is Also a Beneficiary. — See Weir *v.* Weir, 28 Ohio Cir. Ct. 199.

The Circumstances of Each Particular Case must determine whether the executor may charge the estate with the expense of a contest of the will which he has defeated. Weir *v.* Weir, 28 Ohio Cir. Ct. 199.

1244. 1. Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317; *In re* Alexander, 211 Pa. St. 124, 60 Atl. 511.

2. *In re* Dillon, 149 Cal. 683, 87 Pac. 379; Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317. See also *In re* Alexander, 211 Pa. St. 124, 60 Atl. 511.

4. **Petition Proceeding to Revoke Letters.** — See Rice *v.* Tilton, 13 Wyo. 420, 82 Pac. 577.

1245. 2. Hill *v.* Evans, 114 Mo. App. 715, 91 S. W. 1022; *In re* King, 122 N. Y. App. Div. 354, 106 N. Y. Supp. 1073; Rice *v.* Tilton, 13 Wyo. 420, 82 Pac. 577.

1246. 1. Ward *v.* Koenig, (Md. 1907) 67 Atl. 236; Hill *v.* Evans, 114 Mo. App. 715, 91 S. W. 1022; *In re* King, 122 N. Y. App. Div. 354, 106 N. Y. Supp. 1073.

Having Abandoned the Suit, the expense of the executors in a suit to recover property thought by them to belong to the estate is not allowable. *In re* Pease, 149 Cal. 167, 85 Pac. 149.

2. Shouldice *v.* McLeod, 145 Mich. 708, 108 N. W. 1083; *In re* Title Guarantee, etc., Co., 188 N. Y. 542, 81 N. E. 1120; Nolde's Estate, 27 Pa. Super. Ct. 413; Ackermann *v.* Ackermann, (Tex. Civ. App. 1907) 99 S. W. 889.

Counsel Fees Not Allowed for Unnecessarily Resisting Small Claim. — *In re* Wick, (Surrogate Ct.) 53 Misc. (N. Y.) 211, 104 N. Y. Supp. 717.

3. Reed *v.* Reed, (Conn. 1908) 68 Atl. 849.

1247. 2. Rice *v.* Tilton, 13 Wyo. 420, 82 Pac. 577.

3. Koenig *v.* Ward, 104 Md. 564, 65 Atl. 345; *In re* Peters, (Mo. App. 1908) 107 S. W. 406. See Bean *v.* Bean, (N. H. 1907) 68 Atl. 409.

1248. 1. *In re* Casner, 1 Cal. App. 145, 81 Pac. 991; Reed *v.* Reed, (Conn. 1908) 68 Atl. 849; Giger *v.* Bishop, 223 Ill. 472, 83 N. E. 289; *In re* Ramsey, (N. J. 1907) 66 Atl. 410; Kelly *v.* Odum, 139 N. Car. 278, 51 S. E. 953; *In re* McManus, 214 Pa. St. 634, 63 Atl. 1074.

Where an Executor Has Already Received Credit for a certain sum paid to an attorney for all services rendered and to be rendered by him in connection with the estate, no further allowance will be made for attorneys' fees for preparing and defending the final account. *In re* Peters, (Mo. App. 1908) 107 S. W. 406.

1249. 1. **Proceedings to Remove Coexecutor.** — An allowance for the services of an attorney, rendered in an unsuccessful attempt to remove a coexecutor, will not be allowed. *In re* Archer, (Surrogate Ct.) 51 Misc. (N. Y.) 260, 100 N. Y. Supp. 1095.

2. *In re* Archer, (Surrogate Ct.) 51 Misc. (N. Y.) 260, 100 N. Y. Supp. 1095.

1250. 2. *In re* Davis, 35 Mont. 273, 88 Pac. 957.

3. Giger *v.* Bishop, 223 Ill. 472, 83 N. E. 289; Ward *v.* Koenig, (Md. 1907) 67 Atl. 236; *In re* Rapp, (Neb. 1906) 110 N. W. 661; Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317; Ackermann *v.* Ackermann, (Tex. Civ. App. 1907) 99 S. W. 889.

An Attorney Is Not Concluded by the Amount of the Allowance by the Court, but, regardless of that amount, may recover from the executor the reasonable value of his services. *In re* Scott, 1 Cal. App. 740, 83 Pac. 85.

Allowance of Greater Sum to One Executor than to Another. — An executor who is compelled for his own protection to require his coexecutor to file an account, is entitled to an amount slightly in excess of that which was, without objection, allowed to the accounting executor for counsel fees. *In re* McManus, 214 Pa. St. 634, 63 Atl. 1074.

1251. 1. Giger *v.* Bishop, 223 Ill. 472, 83 N. E. 289; Ward *v.* Koenig, (Md. 1907) 67 Atl. 236; *In re* Davis, 35 Mont. 273, 88 Pac. 957.

Separate Counsel. — An executor who, honestly differing from the others, employs separate counsel, is entitled to an allowance therefor, although the statute provides that where

there are two or more executors the act of the majority is valid. *In re* Scott, 1 Cal. App. 740, 83 Pac. 85.

2. *In re* Shoenberger, 211 Pa. St. 99, 60 Atl. 502.

3. *In re* Scott, 1 Cal. App. 740, 83 Pac. 85; Giger *v.* Bishop, 223 Ill. 472, 83 N. E. 289; *In re* Shoenberger, 211 Pa. St. 99, 60 Atl. 502; Ackermann *v.* Ackermann, (Tex. Civ. App. 1907) 99 S. W. 889.

When the Statute Fixes the Exact Rate, however, the court has no discretion in the premises. *In re* Goodrich, (Cal. App. 1907) 93 Pac. 121.

1252. 3. See Howard *v.* Rutherford, (Ala. 1907) 43 So. 30.

4. *In re* Scott, 1 Cal. App. 740, 83 Pac. 85; Mayer *v.* Schneider, 122 Ill. App. 48; Gardner *v.* Moss, (Ky. 1906) 96 S. W. 461; *In re* Davis, 35 Mont. 273, 88 Pac. 957; *In re* Wick, (Surrogate Ct.) 53 Misc. (N. Y.) 211, 104 N. Y. Supp. 717; Nolde's Estate, 27 Pa. Super. Ct. 413; Crawford *v.* Hord, (Tex. Civ. App. 1905) 89 S. W. 1097; Ferguson *v.* Woods, 124 Wis. 544, 102 N. W. 1094

1254. 2. Mackin *v.* Hobbs, 126 Wis. 216, 105 N. W. 305.

1255. 1. Judgment by Default. — An executor should be allowed credit for the payment of a judgment taken by default against him, where it appears that he seasonably moved, on the ground of excusable neglect, to open the default and for leave to answer, but both motions were denied. Parks *v.* McDaniel, 75 S. Car. 7, 54 S. E. 801.

2. Pitthan *v.* Schnaitman, 127 Mo. App. 29, 106 S. W. 103; Henderson *v.* McLain, (N. Car. 1907) 59 S. E. 873.

1257. 3. Hannen *v.* Harrod, (Ky. 1907) 99 S. W. 976.

1258. 1. *In re* Heeney, 3 Cal. App. 548, 86 Pac. 842.

1260. 3. The Maintenance of the Decedent. — Shadle's Estate, 30 Pa. Super. Ct. 151.

Burden of Proof. — *In re* Cozine, 113 N. Y. App. Div. 22, 98 N. Y. Supp. 1041.

1265. 2. McCullough *v.* McCready, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 570, 102 N. Y. Supp. 633.

6. *In re* Koppikus 1 Cal. App. 84, 81 Pac. 732; Knapp *v.* Jessup, 146 Mich. 348, 109 N. W. 666.

1266. 1. Hespen *v.* Hespen, (Ky. 1907) 105 S. W. 99.

1267. 4. *In re* Woods, (Surrogate Ct.) 55 Misc. (N. Y.) 181, 106 N. Y. Supp. 471.

Improperly Permitting Interest to Accumulate. — An executor who unreasonably resists the payment of a legacy will not be given credit for interest accumulating during the litigation and paid by him. *In re* Peters, (Mo. App. 1908) 107 S. W. 406.

5. *In re* Carpenter, 146 Cal. 661, 80 Pac. 1072, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1267.

1268. 1. *In re* Carpenter, 146 Cal. 661, 80 Pac. 1072, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1267.

3. An Administrator Pendente Lite, paying a legacy which the character of his appointment does not authorize him to do, will nevertheless be allowed such payment in his accounting, provided it was paid to a party entitled and the estate was able to pay the same after all prior charges were provided for. Steelman *v.* Wheaton, (N. J. 1907) 66 Atl. 195.

1269. 1. Albert *v.* Sanford, 201 Mo. 117, 99 S. W. 1068.

1270. 1. Elizalde *v.* Murphy, 4 Cal. App. 114, 87 Pac. 245. *Compare* Knapp *v.* Jessup, 146 Mich. 348, 109 N. W. 666.

2. Howard *v.* Rutherford, (Ala. 1907) 43 So. 30; Elizalde *v.* Murphy, 4 Cal. App. 114, 87 Pac. 245; Albert *v.* Sanford, 201 Mo. 117, 99 S. W. 1068.

1272. 4. *In re* Ring, 132 Iowa 216, 109 N. W. 710.

1273. 3. *Compare* Howard *v.* Rutherford, (Ala. 1907) 43 So. 30, holding that state and county taxes assessed against the estate and paid by the administrator were properly allowed as a credit on his final accounting.

4. Howard *v.* Rutherford, (Ala. 1907) 43 So. 30; Brown *v.* Brown, (N. J. 1907) 65 Atl. 739.

1274. 3. Rice *v.* Tilton, 13 Wyo. 420, 82 Pac. 577.

The Executor Is Not Entitled to Credit for Proceeds of Land which has been sold to pay himself as mortgagee. McKenzie *v.* Matthews, (Ala. 1907) 44 So. 958.

1275. 1. *In re* Pease, 149 Cal. 167, 85 Pac. 149.

1276. 5. *In re* Joost, (Surrogate Ct.) 50 Misc. (N. Y.) 78, 100 N. Y. Supp. 378.

1277. 1. *In re* Sprague, (Surrogate Ct.) 46 Misc. (N. Y.) 216, 94 N. Y. Supp. 84.

1278. 3. Knapp *v.* Jessup, 146 Mich. 348, 109 N. W. 666.

An Executor Absent from the State at the time of accounting is not for that reason deprived of his right to commissions, where made a party to the account which involved the whole estate. *In re* Meyer, 95 N. Y. App. Div. 443, 88 N. Y. Supp. 798.

1279. 5. The Commissions Are Apportioned in *New York* between an executor who dies before the completion of his duties and the surviving executor. *In re* McCormick, (Surrogate Ct.) 46 Misc. (N. Y.) 386, 94 N. Y. Supp. 1071.

1280. 2. Oakeshott *v.* Smith, 104 N. Y. App. Div. 384, 93 N. Y. Supp. 659.

1281. 2. For Personal Services in Repairing and Painting Buildings on estate lands an executor is not entitled to compensation. *In re* Woods, (Surrogate Ct.) 55 Misc. (N. Y.) 181, 106 N. Y. Supp. 471.

3. Albert *v.* Sanford, 201 Mo. 117, 99 S. W. 1068.

1282. 3. *In re* Frey, (N. J. 1907) 67 Atl. 192; *In re* McCormick, (Surrogate Ct.) 46 Misc. (N. Y.) 386, 94 N. Y. Supp. 1071; *In re* Gall, 107 N. Y. App. Div. 310, 95 N. Y. Supp. 124; Kelly *v.* Odum, 139 N. Car. 278, 51 S. E. 953, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1281; *In re* Roach, (Oregon 1907) 92 Pac. 118, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1282; *In re* Locher, 219 Pa. St. 46, 67 Atl. 954; Wolfe *v.* Morgan, 61 W. Va. 287, 56 S. E. 504; Mackin *v.* Hobbs, 126 Wis. 216, 105 N. W. 305.

4. State *v.* Taylor, 112 Mo. App. 585, 87 S. W. 7.

Failure to Deposit Large Sums of Money in the Bank is sufficient ground for denying compensation to an executor. *In re* Locher, (Pa. 1907) 67 Atl. 954.

1283. 1. *In re* McCormick, (Surrogate Ct.) 46 Misc. (N. Y.) 386, 94 N. Y. Supp. 1071; *In re* Locher, (Pa. 1907) 67 Atl. 954.

1284. 3. *In re* Roach, (Oregon 1907) 92 Pac. 118; Wolfe *v.* Morgan, 61 W. Va. 287, 56 S. E. 504.

In Vermont an executor's right to compensation will not be denied, on the sole ground of failure to file his accounts as required by the statute. *In re* Lane, 79 Vt. 323, 65 Atl. 102.

1286. 1. Polk *v.* Johnson, 35 Ind. App. 485, 65 N. E. 536, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1286.

An Agreement to Administer the Estate for a Less Compensation than that allowed by law, made between an administrator and an heir, in consideration of the latter not making an objection to the former's appointment, is void. *In re* Callaway, 123 Mo. App. 508, 100 S. W. 565.

The Entry of an Order Settling the Estate does not deprive an executor of his right to compensation, if he asserts such right during the term at which the order was entered. Griswold *v.* Smith, 116 Ill. App. 223.

No Waiver Shown. — A statement previous to appointment, made to the intestate's husband, that he would protect the interests of the heirs as he had heretofore protected the interests of the intestate, does not show a waiver. Noble *v.* Whitten, 38 Wash. 262, 80 Pac. 451.

1287. 1. Morere's Succession, 118 La. 543, 42 So. 132; *In re* Hurst, 111 N. Y. App. Div. 462, 97 N. Y. Supp. 697, *quoting* 1. AM. AND ENG. ENCYC. OF LAW (2d ed.) 1287.

5. Peterman *v.* U. S. Rubber Co., 221 Ill. 581, 77 N. E. 1108; Pierce's Succession, 119 La. 727, 44 So. 446; *In re* McCormick, (Surrogate Ct.) 46 Misc. (N. Y.) 386, 94 N. Y. Supp. 1071; *In re* Krisfeldt, (Surrogate Ct.) 49 Misc. (N. Y.) 26, 97 N. Y. Supp. 877; *In re* Hallenbeck, 119 N. Y. App. Div. 757, 104 N. Y. Supp. 568; *In re* King, 122 N. Y. App. Div. 354, 106 N. Y. Supp. 1073; *In re* Froelich, 122 N. Y. App. Div. 440, 107 N. Y. Supp. 173; *In re* Popp, 122 N. Y. App. Div. 2, 107 N. Y. Supp. 277.

1288. 1. *California.* — *In re* Goodrich, (Cal. App. 1907) 93 Pac. 121.

Louisiana. — Pierce's Succession, 119 La. 727, 44 So. 446.

Missouri. — Matson *v.* Pearson, 121 Mo. App. 136, 97 S. W. 983.

New York. — *In re* Sprague, (Surrogate Ct.) 46 Misc. (N. Y.) 216, 94 N. Y. Supp. 84; *In re* Hunt, 121 N. Y. App. Div. 96, 105 N. Y. Supp. 696; *In re* Martin, (Supm. Ct. App. Div.) 109 N. Y. Supp. 217.

The Court Has No Discretion, and cannot increase or diminish the rate as fixed by statute. *In re* Goodrich, (Cal. App. 1907) 93 Pac. 121.

2. Hays *v.* Johnson, (Ky. 1907) 99 S. W. 332; *In re* King, 122 N. Y. App. Div. 354, 106 N. Y. Supp. 1073; Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317.

1289. 1. Giger *v.* Bishop, 231 Ill. 472, 83 N. E. 289.

3. Giger *v.* Bishop, 221 Ill. 472, 83 N. E. 289; *In re* Moore, 211 Pa. St. 343, 60 Atl. 989.

4. **Three Per Cent.** — *In re* Moore, 211 Pa. St. 343, 60 Atl. 989.

1290. 1. *In re* Gall, 107 N. Y. App. Div. 310, 95 N. Y. Supp. 124; *In re* Moore, 211 Pa. St. 338, 60 Atl. 987; *In re* Moore, 211 Pa. St. 343, 60 Atl. 989.

1291. 1. Pierce's Succession, 119 La. 727, 44 So. 446; *In re* McCormick, (Surrogate Ct.) 46 Misc. (N. Y.) 386, 94 N. Y. Supp. 1071; *In re* Hurst, 111 N. Y. App. Div. 460, 97 N. Y. Supp. 697; *In re* Hunt, 121 N. Y. App. Div. 96, 105 N. Y. Supp. 696; *In re* King, 122 N. Y. App. Div. 354, 106 N. Y. Supp. 1073; Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317; Noble *v.* Whitten, 38 Wash. 262, 80 Pac. 451.

Commissions on Property Removed from Jurisdiction cannot be deducted from another fund within the jurisdiction. Pierce's Succession, 119 La. 727, 44 So. 446.

On Unproductive Property requiring no care or attention on the part of executor, no commission is allowed. Pierce's Succession, 119 La. 727, 44 So. 446.

1292. 1. **That the Evidence of Title** did not come into the administrator's hands does not matter, so long as he received the property itself. *In re* King, 122 N. Y. App. Div. 354, 106 N. Y. Supp. 1073.

2. Matson *v.* Pearson, 121 Mo. App. 141, 97 S. W. 983, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1292; *In re* Hurst, 111 N. Y. App. Div. 460, 97 N. Y. Supp. 697. See Morrissey *v.* Rogers, 120 Ill. App. 37.

1293. 3. *In re* Peters, (Mo. App. 1908) 107 S. W. 406; *In re* McCormick, (Surrogate Ct.) 46 Misc. (N. Y.) 386, 94 N. Y. Supp. 1071.

1294. 2. The words "personal estate" are broad enough to include stocks, bonds, and other securities. Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317.

1295. 3. *In re* McCormick, (Surrogate Ct.) 46 Misc. (N. Y.) 386, 94 N. Y. Supp. 1071.

1296. 1. But see Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317.

On Property Delivered in Specie to an Executor by an administrator whose letters have been revoked by the probate of a will, no commissions are allowable. *In re* Hurst, 111 N. Y. App. Div. 460, 97 N. Y. Supp. 697.

In New York an executor is entitled to property delivered in specie to himself as trustee, as directed by the will. *In re* McCormick, (Surrogate Ct.) 46 Misc. (N. Y.) 386, 94 N. Y. Supp. 1071.

1297. 5. **Commissions Allowed on Rents Lawfully Collected.** — Lufkin *v.* Jakeman, 188 Mass. 528, 74 N. E. 933.

6 It Is Not Necessary, to Entitle Him to Commissions, that He Reduce to Cash property given by the will to one for life, with remainder over. *In re* Fleming, (Surrogate Ct.) 51 Misc. (N. Y.) 662, 102 N. Y. Supp. 204.

7. *In re* Pease, 149 Cal. 167, 85 Pac. 140; Matson *v.* Pearson, 121 Mo. App. 136, 97 S. W. 983; Union Sav. Bank, etc., Co. *v.* Smith, 26 Ohio Cir. Ct. 317.

1298. 2. *In re* Pease, 149 Cal. 167, 85 Pac. 149.

1299. 3. *In re* Moore, 211 Pa. St. 338, 60 Atl. 987; *In re* Moore, 211 Pa. St. 343, 60 Atl. 989, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1299; *In re* Harrison, 217 Pa. St. 213, 66 Atl. 354, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1299.

But if the incumbrance has been presented as a claim against the estate, commissions should be computed on the incumbrance. *In re* Pease, 149 Cal. 167, 85 Pac. 149.

1300. 3. **In New York** a *per diem* allowance for time consumed in preparing the account may, under the statute, be made in a proper case. *In re* Martin, (Supm. Ct. App. Div.) 109 N. Y. Supp. 217.

4. *In re* Sprague, (Surrogate Ct.) 46 Misc. (N. Y.) 216, 94 N. Y. Supp. 84.

1301. 1. *In re* Sprague, (Surrogate Ct.) 46 Misc. (N. Y.) 216, 94 N. Y. Supp. 84.

1303. 1. *In re* Callaway, 123 Mo. App. 508, 100 S. W. 565, *quoting* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1303.

2. **When Letters of Administration Are Revoked** by the probate of a will, it is not a case of successive administrations so as to deprive the administrator of his commissions. *In re* Hurst, 111 N. Y. App. Div. 460, 97 N. Y. Supp. 697.

1305. 1. *In re* Martin, (Supm. Ct. App. Div.) 109 N. Y. Supp. 217.

1306. 1. Hays *v.* Johnson, (Ky. 1907) 99 S. W. 332.

1307. 1. *In re* Sprague, (Surrogate Ct.) 46 Misc. (N. Y.) 216, 94 N. Y. Supp. 84; *In re* Froelich, 122 N. Y. App. Div 440, 107 N. Y. Supp. 173; *In re* Popp, 122 N. Y. App. Div. 2, 107 N. Y. Supp. 277.

2. Elizalde *v.* Murphy, 4 Cal. App. 114, 87 Pac. 245; Anderson *v.* Sabin, 132 Iowa 507, 109 N. W. 1080.

For Failure to Account Semiannually as required by law, the court may properly deny the special compensation allowed by statute. *In re* Roach, (Oregon 1907) 92 Pac. 118.

It Is Not Error to Allow a Further Sum as extra compensation to executors who have already been allowed three times their statutory commissions. Herron *v.* Comstock, (C. C. A.) 139 Fed. 370.

1309. 2. **Matters of Distribution.** — Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082. See Howard *v.* Rutherford, (Ala. 1907) 43 So. 30.

1310. 1. Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082.

4. Howard *v.* Rutherford, (Ala. 1907) 43 So. 30.

6. *In re* New Jersey Trust, etc., Co., (N. J. 1908) 68 Atl. 811.

1312. 1. Bacon *v.* Bacon, 150 Cal. 477, 89 Pac. 317; Lewis *v.* Woodrum, (Kan. 1907) 92 Pac. 306; Cleaveland *v.* Draper, 194 Mass. 118, 80 N. E. 227; Wyckoff *v.* O'Neil, (N. J. 1906) 63 Atl. 982; *In re* Schmid, 116 N. Y. App. Div. 706, 102 N. Y. Supp. 80.

1313. 1. Louisville, etc., R. Co. *v.* Hoskins, (Ky. 1908) 108 S. W. 305; Root *v.* Beymer, 146 Mich. 692, 110 N. W. 57.

1314. 1. *In re* Pease, 149 Cal. 167, 85 Pac. 149.

4. Wallace *v.* Turner, (Tex. Civ. App. 1905) 89 S. W. 432, *affirmed* (Tex. 1906) 92 S. W. 511.

1315. 1. Bacon *v.* Bacon, 150 Cal. 477, 89 Pac. 317.

1316. 1. **Where a Beneficiary Acquiesces in the Misapplication of a Fund** directed to be paid to him by the order of distribution, he cannot have the account opened for fraud or manifest error. *In re* Koehnken, 27 Ohio Cir. Ct. 840.

3. Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082.

4. Bacon *v.* Bacon, 150 Cal. 477, 89 Pac. 317.

1317. 1. *In re* Bodine, 119 N. Y. App. Div. 493, 104 N. Y. Supp. 138.

For Lack of Proper Notice to the Interested Parties, a decree of settlement may be opened and corrected. *In re* Hoes, 119 N. Y. App. Div. 288, 104 N. Y. Supp. 529.

1318. 2. *In re* Bodine, 119 N. Y. App. Div. 493, 104 N. Y. Supp. 138.

1319. 2. Bacon *v.* Bacon, 150 Cal. 477, 89 Pac. 317.

3. Wicker *v.* Howard, 126 Ga. 119, 54 S. E. 811.

5. Monroe *v.* Mather-Lovelace, 189 N. Y. 563, 82 N. E. 1129; Monroe *v.* Mather-Lovelace, 114 N. Y. App. Div. 634, 100 N. Y. Supp. 27.

1320. 4. **In Kansas** an administrator with the will annexed is charged by statute with execution of the trusts conferred by the will on the executor. Quinton *v.* Neville, (C. C. A.) 152 Fed. 879.

1321. 1. McGarry *v.* McMahon, 124 N. Y. App. Div. 607, 109 N. Y. Supp. 61.

2. McGarry *v.* McMahon, 124 N. Y. App. Div. 607, 109 N. Y. Supp. 61.

1322. 1. Coann *v.* Culver, 188 N. Y. 9, 80 N. E. 362; Hardin *v.* Hassell, 118 Tenn. 143, 100 S. W. 720.

1323. 2. McGarry *v.* McMahon, 124 N. Y. App. Div. 607, 109 N. Y. Supp. 61.

If the Power of Sale Is Discretionary. — Coann *v.* Culver, 188 N. Y. 9, 80 N. E. 362. See Hardin *v.* Hassell, 118 Tenn. 143, 100 S. W. 720.

3. McGarry *v.* McMahon, 124 N. Y. App. Div. 607, 109 N. Y. Supp. 61; Hardin *v.* Hassell, 118 Tenn. 143, 100 S. W. 720.

1325. 1. See Hardin *v.* Hassell, 118 Tenn. 143, 100 S. W. 720.

4. Frier *v.* Lowe, 232 Ill. 622, 83 N. E. 1083; Homans *v.* New York L. Ins. Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 574, 106 N. Y. Supp. 629.

1326. 2. Clark *v.* Farmers' Nat. Bank, (Ky. 1907) 99 S. W. 674.

1327. 1. Withers *v.* Withers, (Ky. 1907) 100 S. W. 253.

2. Clark *v.* Farmers' Nat. Bank, (Ky. 1907) 99 S. W. 674.

1329. 2. Clark *v.* Farmers' Nat. Bank, (Ky. 1907) 99 S. W. 674.

1332. 1. Mann *v.* Baker, 142 N. Car. 235, 55 S. E. 103.

1338. 1. **Not Aggrieved by Appointment of Permanent Administrator.**—McKenzie *v.* Minard, (N. J. 1907) 67 Atl. 936.

2. **Power to Sell Property of Estate.** — Cruse *v.* O'Gwin, (Tex. Civ. App. 1907) 106 S. W. 757.

A Conversion after the Appointment of a Special Administrator, and prior to the appointment of a regular administrator, is not a conversion

before the granting of letters within the meaning of a statute authorizing the assessment of double the value of the property converted as damages. Dixon *v.* Sheridan, 125 Wis. 60, 103 N. W. 239.

1339. 2. Davenport *v.* Davenport, 68 N. J. Eq. 611, 60 Atl. 379.

In *Canada* an administrator *pendente lite* may be appointed by a judge of the King's Bench sitting in chambers. Tellier *v.* Schilemans, 16 Manitoba 430.

1340. 3. Davenport *v.* Davenport, 68 N. J. Eq. 611, 60 Atl. 379.

1351. 2. **Liability for Loss Resulting to Estate.** — An executor *de son tort* is liable for the amount of securities lost through his negligence in failing to collect at maturity. Rohn *v.* Rohn, 117 Ill. App. 512.

1355. 1. Nance *v.* Gray, 143 Ala. 234, 38 So. 916, *citing* 11 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1355.

EXEMPLARY DAMAGES.

7. 4. Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255.

5. Chicago Consol. Traction Co. *v.* Mahoney, 230 Ill. 568, 82 N. E. 868, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 7.

8. 1. State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 937, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8.

4. In Washington punitive or exemplary damages cannot be recovered unless their recovery is especially provided for by statute. Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

12. 7. Waggoner *v.* Wyatt, (Tex. Civ. App. 1906) 94 S. W. 1076.

17. 2. Doerhoefer *v.* Shewmaker, 97 S. W. 7, 29 Ky. L. Rep. 1193; Baxter *v.* Magill, 127 Mo. App. 392, 105 S. W. 679; Stevens *v.* Friedman, 58 W. Va. 78, 51 S. E. 132.

19. 6. Munsey *v.* Hanly, 102 Me. 424, 67 Atl. 217, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 19.

20. 5. Welborn *v.* Dixon, 70 S. Car. 120, 49 S. E. 232, *citing* in dissenting opinion 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 20.

But Where Fraud accompanies a breach of contract punitive damages are recoverable. Prince *v.* State Mut. L. Ins. Co., 77 S. Car. 187, 57 S. E. 766.

6. Western Union Tel. Co. *v.* Rowell, (Ala. 1907) 45 So. 73, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 20.

22. 1. Snedecor *v.* Pope, 143 Ala. 275, 39 So. 318; Central of Georgia R. Co. *v.* Sowell, (Ga. App. 1907) 59 S. E. 323; Coal Belt Electric R. Co. *v.* Young, 126 Ill. App. 651; Hayes *v.* Southern R. Co., 141 N. Car. 195, 53 S. E. 847; Ladd *v.* Redle, 12 Wyo. 368, 75 Pac. 691, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 21 [22].

23. 6. Chicago Consol. Traction Co. *v.* Mahoney, 230 Ill. 567, 82 N. E. 868, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23.

7. Thomasson *v.* Southern R. Co., 72 S. Car. 1, 51 S. E. 443.

26. 3. Batman *v.* Cook, 120 Ill. App. 203.

7. Louisville, etc., R. Co. *v.* Eaden, 93 S. W. 7, 29 Ky. L. Rep. 365; Illinois Cent. R. Co. *v.* Lence, (Ky. 1907) 100 S. W. 215; South Covington, etc., R. Co. *v.* Cleveland, (Ky. 1907) 100 S. W. 283; Chesapeake, etc., R. Co. *v.* Satterfield, (Ky. 1907) 100 S. W. 844.

Simple Negligence does not authorize the granting of exemplary damages. Spencer *v.* San Francisco Brick Co., 5 Cal. App. 126, 89 Pac. 851; Henderson City R. Co. *v.* Lockett, (Ky. 1906) 98 S. W. 303.

28. 3. Atchison, etc., R. Co. *v.* Ringle, 71 Kan. 839, 80 Pac. 43; Gardner *v.* St. Louis, etc., R. Co., 117 Mo. App. 138, 93 S. W. 917.

29. 1. Arkansas, etc., R. Co. *v.* Stroude, 77 Ark. 109, 91 S. W. 18; Harris Lumber Co. *v.* Morris, 80 Ark. 260, 96 S. W. 1067.

5. Cole *v.* Gray, 70 Kan. 705, 79 Pac. 654; Stewart *v.* Smallwood, (Tex. Civ. App. 1907) 102 S. W. 159; Lightfoot *v.* Murphy, (Tex. Civ. App. 1907) 104 S. W. 511.

32. 1. Stewart *v.* Cary Lumber Co., (N. Car. 1907) 59 S. E. 553, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 32; Hayes *v.* Southern R. Co., 141 N. Car. 195, 53 S. E. 847.

34. 4. Walsh *v.* [illegible] etc., Amusement Co., 113 N. Y. App. Div. 42, 98 N. Y. Supp. 960; Mutual L. Ins. Co. *v.* Hargus, (Tex. Civ. App. 1907) 99 S. W. 580.

38. 7. Doeppenschmidt *v.* International, etc., R. Co., (Tex. Civ. App. 1907) 102 S. W. 950.

41. 1. Stewart *v.* Cary Lumber Co., (N. Car. 1907) 59 S. E. 547, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40 [41].

42. 1. Morris *v.* Duncan, 126 Ga. 467, 54 S. E. 1045, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 42.

47. 1. White *v.* White, (Kan. 1907) 90 Pac. 1087, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 47.

3. Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 325, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 47.

48. 2. Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 325, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 47 [48].

51. 4. Eupes *v.* Nephue, 120 N. Y. App. Div. 622, 105 N. Y. Supp. 542, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 51.

7. Louisville, etc., R. Co. *v.* Satterwhite, 112 Tenn. 185, 79 S. W. 106, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 51.

52. 7. **Whether There Is Any Evidence** in a given case to justify the assessment by the jury of exemplary damages is for the determination of the court. Southern R. Co. *v.* Goddard, 89 S. W. 675, 28 Ky. L. Rep. 523.

53. 1. Macon R., etc., Co. *v.* Mason, 123 Ga. 773, 51 S. E. 569; Louisville, etc., R. Co. *v.* Mount, (Ky. 1907) 101 S. W. 1182.

54. 7. Stevens *v.* Friedman, 58 W. Va. 78, 51 S. E. 132.

EXEMPTIONS (FROM EXECUTION).

74. 2. Myers *v.* Moran, 113 N. Y. App. Div. 427, 99 N. Y. Supp. 269.

76. 1. Phillips *v.* Phillips, (Ala. 1907) 44 So. 391; Holmes *v.* Marshall, 145 Cal. 777, 79 Pac. 534, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76; Gibson *v.* People, 122 Ill. App. 217; Miller *v.* Swhier, (Ind. App. 1907) 79 N. E. 1092; Voss *v.* Goss, 73 Kan. 120, 84 Pac. 564; Reeves *v.* Bascue, (Kan. 1907) 91 Pac. 77; Gulfport Bank *v.* O'Neal, 86 Miss. 45, 38 So. 630; Tishomingo Sav. Inst. *v.* Young, 87 Miss. 473, 40 So. 9; Goodwin *v.* Claytor, 137 N. Car. 224, 49 S. E. 173; Hart *v.* Cole, 73 Ohio St. 267, 76 N. E. 940; Bulla *v.* Kent, 15 Ohio Dec. 409; Neilson *v.* Oium, (S. Dak. 1908) 114 N. W. 611; Brown *v.* Beckwith, 58 W. Va. 140, 51 S. E. 977, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 75 [76].

77. 2. Miller *v.* Swhier, (Ind. App. 1907) 79 N. E. 1092.

78. 3. Stone *v.* Drake, 79 Ark. 384, 96 S. W. 197; Myers *v.* Moran, 113 N. Y. App. Div. 427, 99 N. Y. Supp. 269; Goodwin *v.* Claytor, 137 N. Car. 224, 49 S. E. 173; National Tube Co. *v.* Smith, 57 W. Va. 213, 50 S. E. 717.

4. Stone *v.* Drake, 79 Ark. 384, 96 S. W. 197; Goodwin *v.* Claytor, 137 N. Car. 224,

49 S. E. 173; Clark *v.* Eltinge, 38 Wash. 376, 80 Pac. 556.

6. Harvey *v.* Thompson, 2 Ga. App. 569, 60 S. E. 11; Wierse *v.* Thomas, 145 N. Car. 261, 59 S. E. 58; National Tube Co. *v.* Smith, 57 W. Va. 213, 50 S. E. 717, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 78.

80. 1. Goodwin *v.* Claytor, 137 N. Car. 224, 49 S. E. 173.

2. See National Tube Co. *v.* Smith, 57 W. Va. 213, 50 S. E. 717, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 80, but *disapproving* the rule.

Institution of Suit in Another State is *prima facie* evidence of evasion of exemption laws. Satterlee *v.* Columbus First Nat. Bank, (Neb. 1907) 114 N. W. 501.

81. 1. Fixed by Statute. — In *Georgia,* by statute, Acts of 1904, p. 100, it is declared that the *situs* of the debt in attachment proceedings is the residence of the garnishee, thus changing the previous rule in that state. Harvey *v.* Thompson, 2 Ga. App. 569, 60 S. E. 11.

2. The Situs of the Debt for the Purpose of Garnishment is not only the domicil of the debtor, but any state in which the garnishee may be found, provided the law of that state permits a debtor to be garnished. Stone *v.* Drake, 79 Ark. 384, 96 S. W. 197.

84. 2. Corliss *v.* Plano Mfg. Co., (Neb. 1907) 114 N. W. 413.

3. Harvey *v.* Thompson, 2 Ga. App. 569, 60 S. E. 11; Kelson *v.* Detroit, etc., R. Co., 146 Mich. 563, 109 N. W. 1057.

4. Goodwin *v.* Claytor, 137 N. Car. 224, 49 S. E. 173.

Persons Residing upon an Indian Reservation are entitled to the benefit of the exemption laws of the state in which the reservation is located. Coey *v.* Cleghorn, 10 Idaho 166, 79 Pac. 72.

85. 4. Wierse *v.* Thomas, 145 N. Car. 261, 59 S. E. 58.

86. 1. Brown *v.* Beckwith, 58 W. Va. 140, 51 S. E. 977.

88. 5. Feenstra *v.* Tanis, 145 Mich. 409, 108 N. W. 674.

89. 4. A family is a collection of individuals living by one fireside. Kraft *v.* Wolf, 15 Ohio Dec. 554.

90. 7. Garner *v.* Freeman, 118 La. 184, 42 So. 767.

93. 5. Garner *v.* Freeman, 118 La. 184, 42 So. 767.

94. 1. Garner *v.* Freeman, 118 La. 184, 42 So. 767.

2. See Galowitz *v.* Bumford, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 41, 104 N. Y. Supp. 492.

7. A Stepdaughter Is Not a "Daughter" under a statute allowing an exemption to a widower living with an unmarried daughter. Nor is such widower a person who "has a family." Kraft *v.* Wolf, 15 Ohio Dec. 554.

96. 1. Married Woman Head of Family. — Where the only property consisted of a small house and stock of goods used by the wife to carry on a small business by which the family was supported, it was held that she was entitled to the exemption. Ginsberg *v.* Groner, 117 La. 268, 41 So. 569.

97. 3. Minor Children May Claim Exemption. — Hoskins *v.* Fayetteville Grocery Co., 79 Ark. 399, 96 S. W. 195.

98. 4. Miller *v.* Swhier, (Ind. App. 1907) 79 N. E. 1092.

100. 5. Moultrie *v.* Crocker, 125 Ga. 82, 54 S. E. 197 (iron moulder working by the piece); Prather *v.* Pantone, 125 Ga. 808, 54 S. E. 663 (builder of cabs and pilots for locomotives); Schroeder *v.* Collins, 113 La. 778, 37 So. 722 (railroad switchman).

102. 2. Conversely. — The fact that a laborer is paid according to the amount and not the length of time of his work does not preclude him from claiming exemption. Prather *v.* Pantone, 125 Ga. 808, 54 S. E. 663.

104. 1. "Farmers." — Evidence held insufficient to show that the debtor was a farmer. Howell *v.* Boyd, 2 Cal. App. 486, 84 Pac. 315.

105. 2. Geise *v.* Pennsylvania F. Ins. Co., (Tex. Civ. App. 1908) 107 S. W. 555 (restaurateur).

106. 1. Geise *v.* Pennsylvania F. Ins. Co., (Tex. Civ. App. 1908) 107 S. W. 555.

An embalmer and undertaker, although licensed, is not a professional man. O'Reilly *v.* Erlanger, 108 N. Y. App. Div. 318, 95 N. Y. Supp. 760.

2. The head of a family whose principal business is the running of a threshing machine is included in the phrase "or other person," as used in Gen. Stat. *Kansas,* (1901), § 3018, subd. 8. Jackman *v.* Lambertson, 71 Kan. 138, 80 Pac. 55.

108. 4. Howell *v.* Boyd, 2 Cal. App. 486, 84 Pac. 315.

5. McCarthy *v.* Payne, 141 Mich. 571, 104 N. W. 981.

110. 1. Hoskins *v.* Fayetteville Grocery Co., 79 Ark. 399, 96 S. W. 195.

3. Dismissal of the Husband's Application does not estop the wife from making a subsequent application. Mozley *v.* Fontana, 124 Ga. 376, 52 S. E. 443.

111. 3. Smith *v.* Blood, 106 N. Y. App. Div. 317, 94 N. Y. Supp. 667; Stephens *v.* Toback, 26 Quebec Super. Ct. 41.

4. Lothrop Pub. Co. *v.* Lothrop, etc., Co., 191 Mass. 353, 77 N. E. 841.

Whether Property Is Exempt is to be determined as of the date of service of summons. Mahon *v.* Fansett, (N. Dak. 1907) 115 N. W. 79.

112. 2. See Galowitz *v.* Bumford, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 41, 104 N. Y. Supp. 492.

Piano Exempt. — Phillips *v.* Phillips, (Ala. 1907) 44 So. 391.

4. Phillips *v.* Phillips, (Ala. 1907) 44 So. 391 (silver card receiver).

115. 3. The Proper Question is whether the provisions were sufficient at the time of the levy. Rogers *v.* Allen, (Ky. 1907) 105 S. W. 96.

116. 1. Voss *v.* Goss, 73 Kan. 120, 84 Pac. 561.

4. Byrnes *v.* John Deere Plow Co., 74 Kan. 97, 85 Pac. 819.

117. 7. In Phillips *v.* Phillips, (Ala. 1907) 44 So. 391, it was held that rings were "wearing apparel."

Watches — Cases Allowing Exemption. — Phil-

lips *v.* Phillips, (Ala. 1907) 44 So. 391, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 117.

118. 4. Eckman *v.* Poor, 38 Colo. 200, 87 Pac. 1088 (portable engine and boiler, saw, and lumber carriage, with attachments); Jackman *v.* Lambertson, 71 Kan. 138, 80 Pac. 55 (traction engine, threshing separator, and appliances); Reeves *v.* Bascue, (Kan. 1907) 91 Pac. 77 (traction engine, saws, and appliances, for sawing logs into lumber); O'Reilly *v.* Erlanger, 108 N. Y. App. Div. 318, 95 N. Y. Supp. 760 (candelabra of an undertaker); Geise *v.* Pennsylvania F. Ins. Co., (Tex. Civ. App. 1908) 107 S. W. 555 (tables, silverware, linens, etc., of a restaurateur). See also Galowitz *v.* Bumford, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 41, 104 N. Y. Supp. 492.

Tools and Implements Are Usable Articles employed as a means to effect an end. Williams *v.* Vincent, 70 Kan. 595, 79 Pac. 121.

119. 3. Williams *v.* Vincent, 70 Kan. 595, 79 Pac. 121 (bowling alley).

123. 1. **The Words "Professional Instruments, Furniture, and Library,"** used in the Code of Civ. Pro. N. Y., § 1391, should be construed together and are intended for the benefit of the professional man and not the ordinary business man. O'Reilly *v.* Erlanger, 108 N. Y. App. Div. 318, 95 N. Y. Supp. 760.

124. 3. **Safe Not Furniture.** — O'Reilly *v.* Erlanger, 108 N. Y. App. Div. 318, 95 N. Y. Supp. 760.

126. 2. **Term "Work Horses" Includes Mules.** — McElveen *v.* Goings, 116 La. 977, 41 So. 229.

130. 3. Work horses do not include horses used by a business man to drive from his home to his place of business or used by his family for pleasure driving. Tishomingo Sav. Inst. *v.* Young, 87 Miss. 473, 40 So. 9.

134. 2. **School Teachers' Salaries Exempt.** — Flood *v.* Libby, 38 Wash. 366, 80 Pac. 533.

135. 2. **Amount.** — Wages to the amount of twenty dollars are exempt in *Massachusetts*. Leonard *v.* Weymouth, 193 Mass. 479, 79 N. E. [illegible].

143. 5. Alexander *v.* Gloversville, 110 N. Y. App. Div. 791, 97 N. Y. Supp. 198.

144. 1. Smyth *v.* Hall, 126 Iowa 627, 102 N. W. 520.

145. 1. **New York.** — Pension moneys are not subject to just claims for support, but the committee of an incompetent pensioner may be compelled to pay to the institution having charge of such incompetent a pension to apply on current expenses. *In re* Strohm, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 481, 101 N. Y. Supp. 688.

2. *In re* Stafford, 105 N. Y. App. Div. 46, 94 N. Y. Supp. 194.

After the Death of the Pensioner the property purchased with pension money is liable for his debts. Smith *v.* Blood, 106 N. Y. App. Div. 317, 94 N. Y. Supp. 667.

3. Smyth *v.* Hall, 126 Iowa 627, 102 N. W. 520.

Exemption Does Not Pass to Heirs. — Beatty *v.* Wardell, 130 Iowa 651, 105 N. W. 357.

149. 7. **Cemetery Lands.** — The statutes in some states exempt cemetery lands from sale on execution. Spear *v.* Locust Wood Cemetery Co., (N. J. 1907) 66 Atl. 1068.

150. 1. **May Invest Exempt Personal Property in Homestead.** — Van Hook *v.* Robinson, (Ky. 1907) 105 S. W. 129.

2. McLeod *v.* McLeod, (Ky. 1905) 89 S. W. 199.

Kentucky. — In Nicholson *v.* Nicholson, (Ky. 1907) 101 S. W. 985, it was held that where a debtor invested exempt personal property in a homestead the homestead became exempt.

152. 2. Langley *v.* Finnall, 2 Cal. App. 231, 83 Pac. 291, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152; Geise *v.* Pennsylvania F. Ins. Co., (Tex. Civ. App. 1908) 107 S. W. 555.

154. 1. Mozley *v.* Fontana, 124 Ga. 376, 52 S. E. 443.

161. 3. Neilson *v.* Oium, (S. Dak. 1908) 114 N. W. 691, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 161.

162. 1. Rogers *v.* Ayers, (Tenn. 1907) 104 S. W. 521.

165. 4. Myers *v.* Moran, 113 N. Y. App. Div. 427, 99 N. Y. Supp. 269. (In this case the court apparently failed to notice the decision of the United States Supreme Court in Edwards *v.* Kearzey, 96 U. S. 610, which holds a contrary doctrine.)

169. 4. Miller *v.* Minturn, 73 Ark. 183, 83 S. W. 918, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 169.

Commutation Money Judgment. — By statute in *Indiana* (Burns Ann. Stat. (1901), § 6825) property is not exempt from levy under a commutation money judgment. Hobbs *v.* Eaton, 34 Ind. App. 628, 78 N. E. 333.

5. Where the Statute Exempted the Homestead of the Family it was held that the exemption included judgments for torts of the husband. Cassady *v.* Morris, (Okla. 1907) 91 Pac. 888.

170. 1. Miller *v.* Minturn, 73 Ark. 183, 83 S. W. 918, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 170.

4. Miller *v.* Minturn, 73 Ark. 183, 83 S. W. 918.

171. 4. **Judgment for Breach of Marriage Promise** is one based solely on contract within the exemption laws. Keim *v.* Brumbaugh, 29 Pa. Super. Ct. 557.

172. 2. **Under a City Ordinance** allowing the marshal to impound certain animals found running at large and to collect a reasonable fee from their owners, it was held that the marshal might hold exempt animals until the fee was paid. Thomason *v.* Brownwood, (Tex. Civ. App. 1906) 98 S. W. 938.

3. Where the statute merely exempted certain property from "attachment and execution," it was held to be exempted from levy for fine and costs in a criminal action. Betterton *v.* O'Dwyer, 124 Mo. App. 306, 101 S. W. 628.

173. 1. Com. *v.* Savage, 30 Pa. Super. Ct. 364.

174. 1. Buckley *v.* Williams, 84 Ark. 187, 105 S. W. 95.

2. **Costs Recovered under the Ejectment Clause of a Lease** are subject to the exemption laws. Morris Run Coal Min. Co. *v.* Chrzon, 31 Pa. Super. Ct. 184.

3. **Where a Party Sold Land to a Cemetery Association** with full knowledge of the use to be made of it, it was held that the land was exempt from the foreclosure of the purchase

money mortgage. Spear *v.* Locust Wood Cemetery Co., (N. J. 1907) 66 Atl. 1068.

176. 7. On a Garnishment against a Creditor of a debt due for purchase money of exempt property, the garnishee defendant may not claim that the property is exempt. Liddell *v.* Jones, 76 Ark. 344, 88 S. W. 961.

8. **Professional Services.**— Services rendered by a surgeon to the defendant's wife do not come within the meaning of the Code of Civ. Pro. N. Y., § 1391. Taylor *v.* Barker, 108 N. Y. App. Div. 21, 95 N. Y. Supp. 474.

177. 3. **What Are "Necessaries."** — In Beard *v.* Covill, (County Ct.) 102 N. Y. Supp. 204, it was held that the term "necessaries sold" in the *New York* statute did not include rent.

Services of Physician Necessaries. — Kraft *v.* Wolf, 15 Ohio Dec. 554.

178. 1. Esman *v.* Roller, 27 Ohio Cir. Ct. 712.

2. A Claim for Necessaries Reduced to Judgment is no longer a claim for necessaries. Salisbury *v.* House, 15 Ohio Dec. 584.

185. 4. Goodwin *v.* Claytor, 137 N. Car. 224, 49 S. E. 173.

A Defendant in a Garnishee Action may not dispose of his property after service of summons, in order to make the property in the hands of the garnishee exempt from levy. Mahon *v.* Fansett, (N. Dak. 1907) 115 N. W. 70.

190. 2. **General Waiver.** — While the Constitution of *Georgia* allows a debtor to make a general waiver of his homestead right, he is not authorized to make such a waiver as will estop him from claiming as exempt wearing apparel, household furniture, etc., to be selected by himself and wife. Miller *v.* Almon, 123 Ga. 104, 50 S. E. 993.

Constitutionality of Statute. — A statute is constitutional as to contracts of waiver made after the statute was enacted. Richardson *v.* Kaufman, 143 Ala. 243, 39 So. 368.

Express Prohibition or Restriction. — In Slyfield *v.* Willard, 43 Wash. 179, 86 Pac. 392, it was held that article 19 of the *Washington* Constitution prohibited a waiver.

A Statute Prohibiting Garnishment of wages under a certain amount is not a violation of a constitutional provision allowing a waiver of exemptions. Richardson *v.* Kaufman, 143 Ala. 243, 39 So. 368.

191. 3. **Waiver Does Not Give Lien on Exempt Property.** — Teague *v.* Weeks, 89 Miss. 360, 42 So. 172.

192. 2. Teague *v.* Weeks, 89 Miss. 360, 42 So. 172.

4. Morris Box Board Co. *v.* Rossiter, 30 Pa. Super. Ct. 23.

5. Richardson *v.* Kaufman, 143 Ala. 243, 39 So. 368; Traders' Invest. Co. *v.* Macon R., etc., Co., (Ga. App. 1907) 59 S. E. 454.

193. 1. Traders' Invest. Co. *v.* Macon R., etc., Co., (Ga. App. 1907) 59 S. E. 454; Walker *v.* Swift Fertilizer Works, (Ga. App. 1907) 59 S. E. 850.

4. Exemptions Cannot Be Claimed in Assigned Wages. — Brooks Co. *v.* Tolman, 27 Ohio Cir. Ct. 321.

194. 5. Perry *v.* Britt-Carson Shoe Co., 129 Ga. 560, 59 S. E. 216.

195. 1. **Where a Note Containing a Waiver** was signed by one partner in the partnership name, it was held to be effectual against the party signing as to his individual property. Perry *v.* Britt-Carson Shoe Co., 129 Ga. 560, 59 S. E. 216.

202. 3. Coey *v.* Cleghorn, 10 Idaho 166, 79 Pac. 72; Gulfport Bank *v.* O'Neal, 86 Miss. 45, 38 So. 630.

203. 4. Rogers *v.* Ayers, (Tenn. 1907) 104 S. W. 521.

5. **The Right to Exemption Is Lost** by the abandonment of the profession or business to which the exemption applies. Stephens *v.* Toback, 26 Quebec Super. Ct. 41.

204. 2. **Exemption Lost by Abandonment of Trade.** — Cable *v.* Hoolihan, 98 Minn. 143, 107 N. W. 967.

8. Fraudulent Omission a Forfeiture. — Farris *v.* Gross, 75 Ark. 391, 87 S. W. 633.

205. 2. Smith *v.* Blood, 106 N. Y. App. Div. 317, 94 N. Y. Supp. 667.

3. McMahon *v.* Cook, 107 N. Y. App. Div. 150, 94 N. Y. Supp. 1018.

207. 1. Starke *v.* Lamb, 167 Ind. 642, 78 N. E. 668, 79 N. E. 895.

3. Rike *v.* Ryan, 147 Ala. 497, 41 So. 959; Hinkle *v.* Broadwater, 73 Ark. 489, 84 S. W. 510; Foreman *v.* Citizens' State Bank, 128 Iowa 661, 105 N. W. 163; Ehlers *v.* Blumer, 129 Iowa 168, 105 N. W. 406.

May Exchange One Kind of Exempt Property for Another Kind. — Berry *v.* Ewen, (Ky. 1905) 85 S. W. 227.

208. 4. Berry *v.* Ewen, (Ky. 1905) 85 S. W. 227; McLeod *v.* McLeod, (Ky. 1905) 89 S. W. 199; McClelland *v.* Barnard, 36 Tex. Civ. App. 120, 81 S. W. 591.

Where the Husband Gives His Earnings to His Wife and she uses them to buy real property it is exempt from the wife's debts. Ehlers *v.* Blumer, 129 Iowa 168, 105 N. W. 406.

5. Borodofski *v.* Feld, 88 Miss. 31, 40 So. 816.

209. 1. Smyth *v.* Hall, 126 Iowa 627, 102 N. W. 520.

213. 2. **In Kansas.** — Jackman *v.* Lambertson, 71 Kan. 138, 80 Pac. 55; Reeves *v.* Bascue, (Kan. 1907) 91 Pac. 77. But the wife's consent is not necessary if the mortgage is given to secure the purchase price. Boggs *v.* O. S. Kelly Mfg. Co., (Kan. 1907) 90 Pac. 765.

220. 8. Rike *v.* Ryan, 147 Ala. 497, 41 So. 959; Hinkle *v.* Broadwater, 73 Ark. 489, 84 S. W. 510; Hoskins *v.* Fayetteville Grocery Co., 79 Ark. 399, 96 S. W. 195; Starke *v.* Lamb, 167 Ind. 642, 78 N. E. 668, 79 N. E. 895; Berry *v.* Ewen, (Ky. 1905) 85 S. W. 227; Nicholson *v.* Nicholson, (Ky. 1907) 101 S. W. 985; McClelland *v.* Barnard, 36 Tex. Civ. App. 120, 81 S. W. 591.

222. 2. McClelland *v.* Barnard, 36 Tex. Civ. App. 120, 81 S. W. 591, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 222.

223. 2. Perry *v.* Kittleson, (Wis. 1907) 114 N. W. 125.

Where the Law Requires the Officer to Request the Debtor to Make a Selection and the officer fails to do so, the debtor does not forfeit his right to the exemption. Gulfport Bank *v.* O'Neal, 86 Miss. 45, 38 So. 630.

The Selection of Certain Property is not a bar to the selection of different property at another time on a second attempt to levy the execution. Hart *v.* Cole, 73 Ohio St. 267, 76 N. E. 940.

228. 2. Neilson *v.* Oium, (S. Dak. 1908) 114 N. W. 691.

229. 1. Gibson *v.* People, 122 Ill. App. 217; Gulfport Bank *v.* O'Neal, 86 Miss. 45, 38 So. 630.

230. 4. **Right to Claim Exemption Any Time Before Final Judgment.** — Madison County Bank *v.* Bird, 77 Ark. 611, 99 S. W. 692.

233. 5. Miller *v.* Almon, 123 Ga. 104, 50 S. E. 993 (personal property to be set apart in the same manner as homestead); Stinson *v.* Hirsch, 125 Ga. 149, 53 S. E. 1011. See also Minor *v.* Edwards, 6 Indian Ter. 438, 98 S. W. 151.

6. Brown *v.* Beckwith, 58 W. Va. 140, 51 S. E. 977.

236. 2. **Description of Property Must Be Definite.** — Harris *v.* Hill, 1 Ga. App. 425, 58 S. E. 124.

4. Harris *v.* Hill, 1 Ga. App. 425, 58 S. E. 124.

237. 3. **Substantial Compliance with Statute** — Where the statute required two lists, one of the entire property and one of the exempt property, it was held that one list was sufficient if all the property was exempt. Wiser *v.* Thomas, 39 Wash. 40, 80 Pac. 854.

245. 3. **When Selection Is Necessary.** — To the same effect as the first paragraph of the original note, is Feenstra *v.* Tanis, 145 Mich. 409, 108 N. W. 674.

5. **If the Notice Does Not Comply with the Statutory Requirements** it is an excuse for the failure of the debtor to present his schedule as required by statute. Gibson *v.* People, 122 Ill. App. 217.

246. 6. **Bonds Authorized by Statute.** — When the bond given did not conform to the statutory requirement it was the duty of the officer to return the property to the debtor even though it was not exempt. Williams *v.* Ragan, (Ala. 1907) 45 So. 185.

249. 5. Minor *v.* Edwards, 6 Indian Ter. 438, 98 S. W. 151.

250. 1. Faroux *v.* Cornwell, (Tex. Civ. App. 1905) 90 S. W. 537. See also Fultz *v.* Castleberry, 81 Ark. 271, 99 S. W. 71.

5. Faroux *v.* Cornwell, (Tex. Civ. App. 1905) 90 S. W. 537.

252. 1. **Only Liable for Actual Damages.** — Faroux *v.* Cornwell, (Tex. Civ. App. 1905) 90 S. W. 537.

253. 9. Neilson *v.* Oium, (S. Dak. 1908) 114 N. W. 691.

254. 5. By *West Virginia* Code 1906, §§ 1320, 1321, a debtor may recover from an officer who fails to release exempt property a penalty of five dollars a day for each day the property is withheld. State *v.* Ross, (W. Va. 1907) 57 S. E. 821. But the penalty ceases to accrue when the process has become *functus officio*, as the debtor then may invoke the ordinary legal remedies. State *v.* Ross, (W. Va. 1907) 57 S. E. 284.

257. 1. Wierse *v.* Thomas, 145 N. Car. 261, 59 S. E. 58, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256; National Tube Co. *v.* Smith, 57 W. Va. 213, 50 S. E. 717, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256.

Not an Interference with Courts of Other State. — Wierse *v.* Thomas, 145 N. Car. 261, 59 S. E. 58.

2. Wierse *v.* Thomas, 145 N. Car. 261, 59 S. E. 58, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256; National Tube Co. *v.* Smith, 57 W. Va. 213, 50 S. E. 717, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256.

3. Wierse *v.* Thomas, 145 N. Car. 261, 59 S. E. 58.

261. 6. **Right to Jury Trial.** — Cassady *v.* Morris, (Okla. 1907) 91 Pac. 888.

264. 1. Faroux *v.* Cornwell, (Tex. Civ. App. 1905) 90 S. W. 537.

2. Reeves *v.* Bascue, (Kan. 1907) 91 Pac. 77.

4. Reeves *v.* Bascue, (Kan. 1907) 91 Pac. 77.

EXEMPTIONS (FROM TAXATION).

272. 1. Sinnemahoning Iron, etc., Co. *v.* Shaffer, 14 Pa. Dist. 368.

2. William S. Wilkens Co. *v.* Baltimore, 103 Md. 293, 63 Atl. 562; Wallace *v.* Board of Equalization, 47 Oregon 584, 86 Pac. 365.

Power Extends to Territorial Legislatures. — Bennett *v.* Nichols, 9 Ariz. 138, 80 Pac. 392, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 272.

273. 3. William S. Wilkens Co. *v.* Baltimore, 103 Md. 293, 63 Atl. 562.

274. 1. Com. *v.* Hampton Normal, etc., Institute, 106 Va. 614, 56 S. E. 594.

After the Salary Has Been Paid to the Officer it is not exempt. Dyer *v.* Melrose, (Mass. 1908) 83 N. E. 6.

275. 2. **May Not Exempt a Town from County Taxes.** — Campbell *v.* Bryant, 104 Va. 509, 52 S. E. 638.

3. Baltimore *v.* Starr Methodist Protestant Church, (Md. 1907) 67 Atl. 261.

276. 1. Baltimore *v.* Starr Methodist Protestant Church, (Md. 1907) 67 Atl. 261; Daly Bank, etc., Co. *v.* Silver Bow County, 33 Mont. 101, 81 Pac. 950.

Contrary Doctrine in California. — Crocker *v.* Scott, 149 Cal. 575, 87 Pac. 102.

An Exemption Based on Personal Status is unconstitutional under the constitution of *New Jersey*, providing for the taxation of property according to its true value. Tippett *v.* McGrath, 71 N. J. L. 338, 59 Atl. 1118, *affirming* 70 N. J. L. 110, 56 Atl. 134.

277. 1. Supreme Lodge, etc., *v.* Board of Review, 223 Ill. 54, 79 N. E. 23.

4. **Exemptions Based upon Personal Status Are Void.** — Tippett *v.* McGrath, 71 N. J. L. 338, 59 Atl. 1118, *affirming* 70 N. J. L. 110, 56 Atl. 134.

278. 4. American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531.

5. Sinnemahoning Iron, etc., Co. *v.* Shaffer, 14 Pa. Dist. 368.

279. 1. Cook County *v.* Fairbank, 222 Ill. 578, 78 N. E. 895; Supreme Lodge, etc., *v.* Board of Review, 223 Ill. 54, 79 N. E. 23; Oak Hill Cemetery Co. *v.* Wells, 38 Ind. App. 479, 78 N. E. 350; Com. *v.* Walsh, (Ky. 1907) 106

S. W. 240; State Nat. Bank *v.* Memphis, (Tenn. 1906) 94 S. W. 606.

283. 2. Sinnemahoning Iron, etc., Co. *v.* Shaffer, 14 Pa. Dist. 368, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 283.

284. 2. Sinnemahoning Iron, etc., Co. *v.* Shaffer, 14 Pa. Dist. 368, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 284.

3. Havre de Grace Real Estate, etc., Co. *v.* Havre de Grace, 102 Md. 33, 61 Atl. 662.

A Municipality Has No Power to Grant Immunity from general taxes levied by the state. Nashville *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 607.

4. Portsmouth Shoe Co. *v.* Portsmouth, (N. H. 1907) 66 Atl. 1045.

285. 4. Wallace *v.* Board of Equalization, 47 Oregon 584, 86 Pac. 365.

5. Grosse *v.* People, 218 Ill. 342, 75 N. E. 978; William S. Wilkens Co. *v.* Baltimore, 103 Md. 293, 63 Atl. 562; Baltimore, etc., R. Co. *v.* Wicomico County, 103 Md. 277, 63 Atl. 678; McHenry Baptist Church *v.* McNeal, 86 Miss. 22, 38 So. 195; Portsmouth Shoe Co. *v.* Portsmouth, (N. H. 1907) 66 Atl. 1045; Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 98 N. Y. App. Div. 521, *reversing* on other grounds, 91 N. Y. Supp. 87; *In re* Deutsch, 107 N. Y. App. Div. 192, 95 N. Y. Supp. 65; Watterson *v.* Halliday, 77 Ohio St. 150, 82 N. E. 962; Sinnemahoning Iron, etc., Co. *v.* Shaffer, 14 Pa. Dist. 368.

288. 5. American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; Grosse *v.* People, 218 Ill. 342, 75 N. E. 978; Com. *v.* Walsh, (Ky. 1907) 106 S. W. 240; William S Wilkens Co. *v.* Baltimore, 103 Md. 293, 63 Atl. 562; Baltimore, etc., R. Co. *v.* Wicomico County, 103 Md. 277, 63 Atl. 678; Portsmouth Shoe Co. *v.* Portsmouth, (N. H. 1907) 66 Atl. 1045; Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 98 N. Y. App. Div. 521, *reversing* 91 N. Y. Supp. 87, on other grounds; Watterson *v.* Halliday, 77 Ohio St. 150, 82 N. E. 962; Scott *v.* Smith, 15 Ohio Dec. 590; Norfolk, etc., Co. *v.* Norfolk, 105 Va. 139, 52 S. E. 851.

292. 3. State *v.* New Orleans R., etc., Co., 116 La. 144, 40 So. 597; Rosedale Cemetery Assoc. *v.* Linden Tp., 73 N. J. L. 421, 63 Atl. 904; Wallace *v.* Board of Equalization, 47 Oregon 584, 86 Pac. 365; Galloway *v.* Memphis, (Tenn. 1906) 94 S. W. 75.

296. 1. **Contra.** — Baltimore, etc., R. Co. *v.* Wicomico County, 103 Md. 277, 63 Atl. 678.

2. Grosse *v.* People, 218 Ill. 342, 75 N. E. 978; Oak Hill Cemetery Co. *v.* Wells, 38 Ind. App. 479, 78 N. E. 350; Com. *v.* Walsh, (Ky. 1907) 106 S. W. 240; Sinnemahoning Iron, etc., Co. *v.* Shaffer, 14 Pa. Dist. 368, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 296; Pocono Pines Assembly *v.* Monroe County, 29 Pa. Super. Ct. 36; Com. *v.* Cover, 29 Pa. Super. Ct. 409.

298. 1. Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 98 N. Y. App. Div. 521, *reversing* 91 N. Y. Supp. 87.

Exemption from Taxation Is a Favor, and must be applied for in the manner designated in the statute. Union Waxed, etc., Paper Co. *v.* State Board of Assessors, 73 N. J. L. 374, 63 Atl. 1006.

2. Baltimore, etc., R. Co. *v.* Wicomico County, 103 Md. 277, 63 Atl. 678; Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 98 N. Y. App. Div. 521, *reversing* 91 N. Y. Supp. 87.

Contra. — Columbia Water Power Co. *v.* Campbell, 74 S. Car. 34, 54 S. E. 833.

299. 1. Columbia Water Power Co. *v.* Campbell, 74 S. Car. 34, 54 S. E. 833.

300. 2*a*. **Rule Recognized in South Carolina.** — Columbia Water Power Co. *v.* Campbell, 74 S. Car. 34, 54 S. E. 833.

6. Norfolk, etc., Co. *v.* Norfolk, 105 Va. 139, 52 S. E. 851.

301. 3. Moeller *v.* Gormley, 44 Wash. 465, 87 Pac. 507.

302. 1. Supreme Lodge, etc., *v.* Board of Review, 223 Ill. 54, 79 N. E. 23; Sanitary Dist. *v.* Hanberg, 226 Ill. 480, 80 N. E. 1012; Victoria Lumber Co. *v.* Rives, 115 La. 996, 40 So. 382; State *v.* New Orleans R., etc., Co., 116 La. 144, 40 So. 597; Rosedale Cemetery Assoc. *v.* Linden Tp., 73 N. J. L. 421, 63 Atl. 904; Sisters of Charity *v.* Corey, 73 N. J. L. 699, 65 Atl. 500, *reversing* 72 N. J. L. 426, 61 Atl. 387, and *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 302; *In re* Deutsch, 107 N. Y. App. Div. 192, 95 N. Y. Supp. 65; Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 98 N. Y. App. Div. 521, *reversing* 91 N. Y. Supp. 87, on other grounds; Gymnastic Assoc. *v.* Milwaukee, 129 Wis. 429, 109 N. W. 109.

307. 1. Moeller *v.* Gormley, 44 Wash. 465, 87 Pac. 507.

310. 2. Public Schools *v.* O'Connor, 143 Mich. 35, 108 N. W. 426; McHenry Baptist Church *v.* McNeal, 86 Miss. 22, 38 So. 195; Philadelphia *v.* Pennsylvania Inst., etc., 28 Pa. Super. Ct. 421.

3. Philadelphia *v.* Pennsylvania Co., etc., 214 Pa. St. 138, 6 Ann. Cas. 437, 63 Atl. 420, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 310.

317. 1. **What Property Included.** — Under a statute exempting "all buildings used exclusively for purposes considered charitable, * * * with the land whereon the same are erected and which may be necessary for the fair enjoyment thereof," it was held that there was a double limitation upon the amount of land exempt: First, the exemption is limited to the identical tract upon which the building is erected, and not after-acquired lands; and second, it is limited to so much of that particular tract as is necessary for the fair enjoyment of the building. Sisters of Charity *v.* Corey, 73 N. J. L. 699, 65 Atl. 500, *reversing* 72 N. J. L. 426, 61 Atl. 387.

318. 1. Whitman College *v.* Berryman, 156 Fed. 112. See Little *v.* United Presb. Theological Seminary, 72 Ohio St. 417, 74 N. E. 193.

Legislative Intent to Exempt All Property. — A provision, exempting "all the property of Tulane University * * * of whatsoever character," was held not to limit the exemption to property whereof the university had the actual corporeal possession. Tulane University *v.* Assessors, 115 La. 1025, 40 So. 445.

2. Com. *v.* Hampton Normal, etc., Institute, 106 Va. 614, 56 S. E. 594.

4. State *v.* Macgurn, 187 Mo. 238, 86 S. W. 138; Plattsmouth Lodge No. 6 *v.* Cass County,

(Neb. 1907) 113 N. W. 167; Gymnastic Assoc. *v.* Milwaukee, 129 Wis. 429, 109 N. W. 109.

320. 1. Gymnastic Assoc. *v.* Milwaukee, 129 Wis. 429, 109 N. W. 109.

322. 3. *In re* Godfrey, (N. J. 1906) 65 Atl. 202; *In re* United New Jersey R., etc., Co., (N. J. 1907) 68 Atl. 167, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 322.

323. 1. Perth Amboy *v.* Barker, 74 N. J. L. 127, 65 Atl. 201.

2. Rohrbaugh *v.* Douglas County, (Neb. 1906) 107 N. W. 1000; *In re* United New Jersey R., etc., Co., (N. J. 1907) 68 Atl. 167, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 323; Pocono Pines Assembly *v.* Monroe County, 29 Pa. Super. Ct. 36.

Contra. — Gymnastic Assoc. *v.* Milwaukee, 129 Wis. 429, 109 N. W. 109.

325. 1. State *v.* Macgurn, 187 Mo. 238, 86 S. W. 138.

3. Colorado Springs *v.* Freemont County, 36 Colo. 231, 84 Pac. 1113.

328. 2. **A Missionary Society Is Not Classed with Religious Corporations** under the *New York* statute. *In re* White, 118 N. Y. App. Div. 869, 103 N. Y. Supp. 688.

What Is a Religious Society. — See *In re* Jones, (N. J. 1907) 67 Atl. 1035.

4. **Religious Institutions Are Presumed to Be Exempt.** — Mattern *v.* Canevin, 213 Pa. St. 588, 63 Atl. 131.

6. Watterson *v.* Halliday, 15 Ohio Dec. 281, *overruled* on other grounds in 77 Ohio St. 150, 82 N. E. 962.

329. 6. People *v.* First Cong. Church, 232 Ill. 158, 83 N. E. 537.

330. 2. Watterson *v.* Halliday, 77 Ohio St. 150, 82 N. E. 962 (priest's house).

3. People *v.* First Cong. Church, 232 Ill. 158, 83 N. E. 537.

332. 5. Morgan *v.* Presbyterian Church, (Ky. 1907) 101 S. W. 338.

333. 2. **A Commercial College Is a School** within the meaning of the *Nebraska* statute. Rohrbaugh *v.* Douglas County, (Neb. 1906) 107 N. W. 1000.

4. **Where the Owners of a School Building Leased It** and applied the rental to educational purposes, it was held that the fact that the lessee made a profit did not forfeit the exemption. Com. *v.* Hamilton College, (Ky. 1907) 101 S. W. 405.

334. 2. **Renting of Property to Outside Parties Forfeits Exemption.** — Com. *v.* Hampton Normal, etc., Institute, 106 Va. 614, 56 S. E. 5[illegible].

Under the Illinois Constitution providing that "all lands * * * donated, granted, or received for schools, * * * and the proceeds thereof, shall be faithfully applied," etc., it was held that property received in exchange for property granted for school use, and also the rents of the property received, were "proceeds," and therefore exempt. People *v.* Chicago, 216 Ill. 537, 75 N. E. 239.

335. 1. Gymnastic Assoc. *v.* Milwaukee, 129 Wis. 429, 109 N. W. 109.

Renting of Part of Property Does Not Forfeit Exemption. — Vanderbilt University *v.* Cheney, (Tenn. 1906) 94 S. W. 90.

The Owner of Property Rented for School Purposes is not exempt from taxation on the property. Wathen *v.* Louisville, (Ky. 1905) 85 S. W. 1195.

336. 1. **Charitable Institutions Are Presumptively Exempt from Taxation.** — Mattern *v.* Canevin, 213 Pa. St. 588, 63 Atl. 131.

2. See Amherst College *v.* Assessors, 193 Mass. 168, 79 N. E. 248.

337. 4. **Whether an Institution Is a Public Charity** does not depend upon what class of physicians are permitted to practice there, so long as it is not conducted for the purpose of benefiting the physicians of that class. Sisters of St. Francis *v.* Board of Review, 231 Ill. 317 83 N. E. 272.

338. 1. Sisters of St. Francis *v.* Board of Review, 231 Ill. 317, 83 N. E. 272.

1*a*. **Institutions Held Exempt as Charities.** — Bishop, etc., of St. John's Cathedral *v.* Treasurer, 37 Colo. 378, 86 Pac. 1021 (home for consumptives); Franklin Square House *v.* Boston, 188 Mass. 409, 74 N. E. 675 (home for working girls); Plattsmouth Lodge No. 6 *v.* Cass County, (Neb. 1907) 113 N. W. 167 (Masonic lodge).

4. **Schools Charging Nominal Fee Held Exempt.** — Brewer *v.* American Missionary Assoc., 124 Ga. 490, 52 S. E. 804.

339. 7*a*. **Institutions Held Not Exempt as Charities.** — Supreme Lodge, etc., *v.* Board of Review, 223 Ill. 54, 79 N. E. 23 (fraternal benefit association); Royal Highlanders *v.* State, (Neb. 1906) 108 N. W. 183 (fraternal insurance society); Wallace *v.* Board of Equalization, 47 Oregon 584, 86 Pac. 365 (exemption of three hundred dollars' worth of personal property of a householder).

340. 1. **What Is Purely Public Charity.** — Morgan *v.* Presbyterian Church, (Ky. 1907) 101 S. W. 338 (free domestic science school); Widows', etc., Home *v.* Com., (Ky. 1907) 103 S. W. 354 (home for widows and orphans of deceased Odd Fellows); Little *v.* United Presb. Theological Seminary, 72 Ohio St. 417, 74 N. E. 193 (theological seminary, free and open to all on the same conditions).

"If the charity is completely, unqualifiedly, and entirely for the accomplishment of the public purpose, as distinguished from private or individual gain, then it is purely public charity." Evans, J., in Watterson *v.* Halliday, 15 Ohio Dec. 271, *overruled* on other grounds 77 Ohio St. 150, 82 N. E. 962.

What Not Purely Public Charity. — A school which is supported by its tuition charges, although no profit is made, is not a purely public charity. Harrisburg *v.* Harrisburg Academy, 26 Pa. Super. Ct. 252. *Compare* Pocono Pines Assembly *v.* Monroe County, 29 Pa. Super. Ct. 36.

The Roman Catholic Church is not an institution of "purely public charity." Watterson *v.* Halliday, 77 Ohio St. 150, 82 N. E. 962.

Change in By-laws. — Where a corporation was adjudged not to be a purely public charity, it was held that a subsequent change in the by-laws could not affect the taxes already levied. Philadelphia *v.* Masonic Home, 33 Pa. Super. Ct. 282.

Where a Charitable Organization Sold Its Real Property and took back a mortgage which was held by a trustee in trust for religious and

charitable purposes, it was held that the mortgage was exempt from taxation. Mattern *v.* Canevin, 213 Pa. St. 588, 63 Atl. 131.

Priests' Houses are not "buildings belonging to institutions of a purely public charity" within the meaning of the *Ohio* statute. Watterson *v.* Halliday, 77 Ohio St. 150, 82 N. E. 962.

4. Sisters of St. Francis *v.* Board of Review, 231 Ill. 317, 83 N. E. 272.

341. 3. Does Not Extend to Farm Not Within the Curtilage. — State *v.* St. Barnabas Hospital, 95 Minn. 489, 104 N. W. 551.

342. 2. Watterson *v.* Halliday, 15 Ohio Dec. 281, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342, *overruled* on other grounds 77 Ohio St. 150, 82 N. E. 962.

3. Watterson *v.* Halliday, 15 Ohio Dec. 281, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342, *overruled* on other grounds 77 Ohio St. 150, 82 N. E. 962.

4. Sisters of St. Francis *v.* Board of Review, 231 Ill. 317, 83 N. E. 272; Watterson *v.* Halliday, 15 Ohio Dec. 281, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342, *overruled* on other grounds 77 Ohio St. 150, 82 N. E. 962.

Receipt of Revenue Sufficient to Keep Institution in Operation. — Bishop, etc., of St. John's Cathedral *v.* Treasurer, 37 Colo. 378, 86 Pac. 1021.

343. 1. Widows', etc., Home *v.* Com., (Ky. 1907) 103 S. W. 354; Plattsmouth Lodge No. 6 *v.* Cass County, (Neb. 1907) 113 N. W. 167.

New York. — Under New York statute, Laws of 1879, c. 310, p. 397, providing for the exemption of lands used for cemetery purposes, and that whenever such lands shall cease to be used for such purposes any judgment, etc., which would have been levied but for the provisions of such act shall forthwith become a lien on said land, it was held that land used for cemetery purposes was immune from ascertainment of its share of the assessments for benefits, so that, even if it should ever cease to be used, it would not be subject to any charge for the improvement. *In re* White Plains Presb. Church, 112 N. Y. App. Div. 130, 98 N. Y. Supp. 63; *In re* Perry Ave., 118 N. Y. App. Div. 874, 103 N. Y. Supp. 1069.

3. Oak Hill Cemetery Co. *v.* Wells, 38 Ind. App. 479, 78 N. E. 350; People *v.* Stillwell, 190 N. Y. 284, 83 N. E. 56, 119 N. Y. App. Div. 913, *reversing* 104 N. Y. Supp. 1137 on other grounds. See Oakland Cemetery *v.* Yonkers, 63 N. Y. App. Div. 448, 71 N. Y. Supp. 783, 182 N. Y. 564, *affirmed* 75 N. E. 1132.

The Personal Property of Cemetery Associations, such as horses, hearses, tools, etc., are not exempt from taxation. Rosedale Cemetery Assoc. *v.* Linden Tp., 73 N. J. L. 421, 63 Atl. 904.

4. *In re* Perry Ave., 118 N. Y. App. Div. 874, 103 N. Y. Supp. 1069.

344. 1. People *v.* Stillwell, 190 N. Y. 284, 83 N. E. 56, 119 N. Y. App. Div. 913, *reversing* 104 N. Y. Supp. 1137.

When Tract of Land Is Platted into Lots for cemetery purposes it is within the exemption. Oak Hill Cemetery Co. *v.* Wells, 38 Ind. App. 479, 78 N. E. 350.

Exemption Continues until All Bodies Are Removed. — Watterson *v.* Halliday, 15 Ohio Dec. 281, *overruled* on other grounds 77 Ohio St. 150, 82 N. E. 962.

345. 1. The Receipt of Rent for the Temporary Use of a Portion of the Land does not bar the exemption. People *v.* Stillwell, 194 N. Y. 284, 83 N. E. 56, 119 N. Y. App. Div. 913, *reversing* 104 N. Y. Supp. 1137.

2. Where a Corporation Merely Buys Out Existing Plants it is not entitled to exemption under a law authorizing an exemption from taxes as an inducement to location in the city. Continental Tobacco Co. *v.* Louisville, (Ky. 1906) 94 S. W. 11.

3. Planters' Fertilizer, etc., Co. *v.* Assessors, 116 La. 667, 40 So. 1035 (supporting the text proposition).

346. 2*a*. What Are Manufactures. — Planters' Fertilizer, etc., Co. *v.* Assessors, 116 La. 667, 40 So. 1035 (making fertilizers and chemicals).

347. 1*a*. What Are Not Manufactures. — Shreveport Creosoting Co. *v.* Shreveport, 119 La. 637, 44 So. 325 (creosoting wood); Com. *v.* Cover, 29 Pa. Super. Ct. 409 (cutting leather into different sized pieces). See Planters' Fertilizer, etc., Co. *v.* Assessors, 116 La. 667, 40 So. 1035.

348. 3. See Buffalo Refrigerating Mach. Co. *v.* State Board of Assessors, 72 N. J. L. 127, 60 Atl. 65.

349. 1. Halsey Electric Generator Co. *v.* State Board of Assessors, 74 N. J. L. 321, 65 Atl. 837.

7. An Electric-light Company is not a "manufacturer" under the *Louisiana* statute. State *v.* New Orleans R., etc., Co., 116 La. 144, 40 So. 597.

352. 1. A Building Used Partly for the Storage of the Manufactured Articles and partly for storage of articles purchased for resale, has been held not to be within the exemption. Victoria Lumber Co. *v.* Rives, 115 La. 996, 40 So. 382.

2. Portsmouth Shoe Co. *v.* Portsmouth, (N. H. 1907) 66 Atl. 1045.

354. 8. The Exemption Applies Only to the Loaning of Money, and not to the carrying on of trade or business. People *v.* Raymond, 117 N. Y. App. Div. 62, 102 N. Y. Supp. 85, *affirmed* 188 N. Y. 551, 80 N. E. 1117.

356. 3. The Right of a Corporation to Exemption is determined by the statutory law and the certificate of incorporation, rather than by what it assumed to do thereunder. *In re* White, 118 N. Y. App. Div. 860, 103 N. Y. Supp. 688.

Exemption of Shares of Stock Where Corporation Taxed upon Its Capital Stock or Property. — To the same effect as the second paragraph of the original note. Com. *v.* Walsh, (Ky. 1907) 106 S. W. 240; Scott *v.* Smith, 15 Ohio Dec. 590.

357. 1. Scott *v.* Smith, 15 Ohio Dec. 590.

362. 1. The Taking of Property under the Right of Eminent Domain is not such an act of the state as to destroy a tax lien. State *v.* Missouri Pac. R. Co., 75 Neb. 4, 105 N. W. 983.

4. Logging Railroad. — Where the railroad ran regular freight and passenger trains, although it was owned by a limited company and its principal business was the carrying of logs to a mill, it was held to be within a statute ex-

empting "any railroad or part of such railroad." Amos Kent Lumber, etc., Co. *v.* Tax Assessors, 114 La. 862, 38 So. 587.

363. **5. Unreasonable Delay in Using Land May Forfeit Exemption.** — *In re* New York Bay R. Co., (N. J. 1907) 66 Atl. 916.

364. **4. Ferry Houses.** — *In re* United New Jersey R., etc., Co., (N. J. 1907) 68 Atl. 167.

5. Approach to Railroad Bridge. — State Board of Equalization *v.* People, 229 Ill. 430, 82 N. E. 324.

8. People *v.* Illinois Cent. R. Co., 231 Ill. 151, 83 N. E. 132 (quarry used to furnish ballast).

365. [illegible] Shops, Toilet Rooms, etc., Exempt. — *In re* United New Jersey R., etc., Co., (N. J. 1907) 68 Atl. 167.

366. **7.** *In re* United New Jersey R., etc., Co., (N. J. 1907) 68 Atl. 167.

367. **2.** Columbia Water Power Co. *v.* Campbell, 74 S. Car. 34, 54 S. E. 833.

11. Penick *v.* Foster, 129 Ga. 217, 58 S. E. 773, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 367.

369. **1.** Penick *v.* Foster, 129 Ga. 217, 58 S. E. 773, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 369.

370. **1.** Penick *v.* Foster, 129 Ga. 217, 58 S. E. 773, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370.

3. Sanitary Dist. *v.* Hanberg, 226 Ill. 480, 80 N. E. 1012; Chester County *v.* White, 70 S. Car. 433, 50 S. E. 28.

Bonds Received by the City from the Sale of a Municipal Gas Plant, and the income of which is devoted to the expense of lighting the streets, are used for a "public purpose." Frankfort *v.* Com., (Ky. 1906) 94 S. W. 648.

6*a*. **What Property of Municipalities Exempt.** — Sanitary Dist. *v.* Hanberg, 226 Ill. 480, 80 N. E. 1012 (lands and right of way of drainage canal used exclusively for drainage purposes).

7. Park Com'rs *v.* Prinz, (Ky. 1907) 105 S. W. 948; Herman *v.* Omaha, 75 Neb. 489, 106 N. W. 593.

371. **7.** *In re* Godfrey, (N. J. 1906) 65 Atl. 202. See Augusta *v.* Augusta Water Dist., 101 Me. 148, 63 Atl. 663.

9. The New York Statute allows the lands and structures thereon, used in connection with the waterworks system and located outside the municipality, to be assessed in the town in which they are located. *In re* New York, 183 N. Y. 245, 76 N. E. 18, 106 N. Y. App. Div. 262, *affirming* 94 N. Y. Supp. 1111; *In re* New York, 184 N. Y. 583, 77 N. E. 1183.

Exempting Extra-Territorial Lands Outside the Municipality. — Colorado Springs *v.* Freemont County, 36 Colo. 231, 84 Pac. 1113.

372. **1.** Penick *v.* Foster, 129 Ga. 217, 58 S. E. 773.

United States Bonds May Be Distrained for Taxes due on other property of the owner. Scottish Union, etc., Ins. Co. *v.* Bowland, 196 U. S. 611, 25 U. S. Sup. Ct. 345.

Where a Statute Laid a Tax on the Shares of Stock of a State Bank, to be paid by the bank instead of the individual stockholders, and in finding the taxable value of the shares no deduction was made of United States bonds owned by the bank, it was held that the statute was unconstitutional. Home Sav. Bank *v.* Des Moines, 205 U. S. 503, 27 U. S. Sup. Ct. 571, *reversing* (Iowa 1904) 101 N. W. 867.

District of Columbia Bonds may be exempted from state taxation by act of Congress. Com. *v.* Hearne, (Ky. 1907) 100 S. W. 820.

373. **1. Exemption Does Not Extend to United States Treasury Checks** or orders issued for interest on registered bonds and intended for immediate payment. Hibernia Sav., etc., Soc. *v.* San Francisco, 200 U. S. 310, 26 U. S. Sup. Ct. 265, *affirming* 72 Cal. 21.

2. The Exemption of Municipal Bonds Is Not Unconstitutional because it may increase the taxes of those who do not own the bonds. Buist *v.* Charleston, 77 S. Car. 260, 57 S. E. 862.

3. No Implied Exemption of State Bonds. — State Nat. Bank *v.* Memphis, (Tenn. 1906) 94 S. W. 606.

374. **2. "The Post Roads Act"** (Act of Congress of July 24, 1866) does not exempt telegraph and telephone companies from taxation of their properties in the different states, whether tangible or intangible. Western Union Tel. Co. *v.* Omaha, 73 Neb. 527, 103 N. W. 84.

4*a*. **A Bridge Company** whose stock was owned by the two cities which the bridge connected was held to be exempt. Com. *v.* Newport, etc., Bridge Co., (Ky. 1907) 105 S. W. 378.

375. **2.** Pittsburg *v.* Consolidated Gas Co., 34 Pa. Super. Ct. 234.

376. **2.** Scott *v.* Smith, 15 Ohio Dec. 590.

377. **3. Contra.** — Evangelical Baptist Benevolent, etc., Society *v.* Boston, 192 Mass. 412, 78 N. E. 407, *distinguishing* Hardy *v.* Waltham, 7 Pick. (Mass.) 108, and Harvard College *v.* Boston, 104 Mass. 470, *cited* in the original note.

381. **2.** Holthaus *v.* Adams County, 74 Neb. 861, 105 N. W. 632; Pocono Pines Assembly *v.* Monroe County, 29 Pa. Super. Ct. 36.

383. **3.** Monaghan *v.* Lewis, 5 Penn. (Del.) 218, 59 Atl. 948; Baltimore, etc., R. Co. *v.* Wicomico County, 103 Md. 277, 63 Atl. 678; Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 98 N. Y. App. Div. 521, *reversing* 91 N. Y. Supp. 87; Galloway *v.* Memphis, (Tenn. 1906) 94 S. W. 75. See Wicomico County *v.* Bancroft, 203 U. S. 112, 27 U. S. Sup. Ct. 21, *reversing* (C. C. A.) 135 Fed. 977.

385. **3.** Powers *v.* Detroit, etc., R. Co., 201 U. S. 543, 26 U. S. Sup. Ct. 556; Bennett *v.* Nichols, 9 Ariz. 138, 80 Pac. 392, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 385; Columbia Water Power Co. *v.* Campbell, 74 S. Car. 34, 54 S. E. 833.

4. Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 98 N. Y. App. Div. 521, *reversing* 91 N. Y. Supp. 87.

386. **1.** Detroit, etc., R. Co. *v.* Powers, 138 Fed. 264; Raquette Falls Land Co. *v.* Hoyt, 109 N. Y. App. Div. 119, 95 N. Y. Supp. 1029, 187 N. Y. 550, *affirmed* 80 N. E. 1119.

387. **1.** Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953, 98 N. Y. App. Div. 521, *reversing* 91 N. Y. Supp. 87; Pratt Institute *v.* New York, 183 N. Y. 151, 75 N. E. 1110, 99 N. Y. App. Div. 525, *affirming* 91 N. Y. Supp. 136; People *v.* Gass, 190 N. Y. 323, 83 N. E. 64, 119 N. Y. App. Div. 280, *reversing* 104 N. Y. Supp. 643.

2. Wallace *v.* Board of Equalization, 47 Oregon 584, 86 Pac. 365.

388. 3. Clearwater Timber Co. *v.* Nez Perce County, 155 Fed. 633.

EXISTENCE — EXISTING.

391. 1. **Existing Terms of Office.** — In construing an amendment to a state constitution providing that "the general assembly shall have power to so extend *existing* terms of office as to effect the purpose of section 1 of this article," the court said: "The phrase '*existing* terms of office' means the terms of office as defined in the constitution and the acts of the general assembly as *existing* at the time of the proposal and adoption of the amendment." State *v.* Pattison, 73 Ohio St. 305, 76 N. E. 946.

EXPERIMENTS (IN EVIDENCE).

400. 2. Spires *v.* State, 50 Fla. 121, 39 So. 181, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 400; Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Com. *v.* Tucker, 189 Mass. 457, 76 N. E. 127; Cotton *v.* Boston El. R. Co., 191 Mass. 103, 77 N. E. 698; Dow *v.* Bulfinch, 192 Mass. 281, 78 N. E. 416; Wilson *v.* Chippewa Valley Electric R. Co., (Wis. 1908) 114 N. W. 462.

4. State *v.* Howells, (Iowa 1906) 109 N. W. 1016; Dow *v.* Bulfinch, 192 Mass. 281, 78 N. E. 416.

403. 3. People *v.* Weber, 149 Cal. 325, 86 Pac. 671; Gallagher *v.* Hien, 25 App. Cas. (D. C.) 77; Tackman *v.* Brotherhood of American Yeoman, 132 Iowa 64, 106 N. W. 350.

404. 2. State *v.* Howells, (Iowa 1906) 109 N. W. 1016.

405. 2. **Evidence of a Subsequent Test** to show how long it would probably take an engineer to oil his engine before starting, is inadmissible. O'Dea *v.* Michigan Cent. R. Co., 142 Mich. 265, 105 N. W. 746.

407. 1. Hisler *v.* State, 52 Fla. 30, 42 So. 692; Atlanta, etc., R. Co. *v.* Hudson, 2 Ga. App. 352, 58 S. E. 500; Chicago Folding Box Co. *v.* Schallawitz, 118 Ill. App. 9, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 406 [407]; Louisville R. Co. *v.* Hoskins, (Ky. 1905) 88 S. W. 1087; Houston, etc., R. Co. *v.* Ramsey, (Tex. Civ. App. 1906) 97 S. W. 1067, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 406 [407]; Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715; State *v.* Bean, 77 Vt. 384, 60 Atl. 807; Wilson *v.* Chippewa Valley Electric R. Co., (Wis. 1908) 114 N. W. 462.

The Incapacity of a Boy three years old to fire a pistol may be demonstrated by experiment. State *v.* Woodrow, 58 W. Va. 527, 52 S. E. 515.

408. 2. Krens *v.* State, 75 Neb. 294, 106 N. W. 27.

409. 1. Spires *v.* State, 50 Fla. 121, 39 So. 181.

2. Spires *v.* State, 50 Fla. 121, 39 So. 181, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 409; Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Com. *v.* Tucker, 189 Mass. 457, 76 N. E. 127; Cotton *v.* Boston El. R. Co., 191 Mass. 103, 77 N. E. 698; Dow *v.* Bulfinch, 192 Mass. 281, 78 N. E. 416.

5. Com. *v.* Tucker, 189 Mass. 457, 76 N. E. 127.

412. 2. Spires *v.* State, 50 Fla. 121, 39 So. 181.

3. Smith *v.* State, 122 Ga. 156, 50 S. E. 62, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 412.

EXPERT AND OPINION EVIDENCE.

418. 1. **Definition.** — Expert testimony is the evidence of persons who are skilled in some art, science, profession, or business, which skill or knowledge is not common to their fellow men and which has come to such experts by reason of special study and experience in such art, science, profession, or business. State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224.

421. 4. Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421; Meyers *v.* Highland Boy Gold Min. Co., 28 Utah 96, 77 Pac. 347, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421.

5. *United States.* — Southern Pac. Co. *v.* Cavin, (C. C. A.) 144 Fed. 348; Love *v.* Scatcherd, (C. C. A.) 146 Fed. 1; Ball *v.* U. S., (C. C. A.) 147 Fed. 32; Detroit Southern R. Co. *v.* Lambert, (C. C. A.) 150 Fed. 555; Hitchner Wall Paper Co. *v.* Pennsylvania R. Co., 158 Fed. 1011.

Alabama. — Ryall *v.* Allen, 143 Ala. 222, 38 So. 851; Baker *v.* Cotney, 142 Ala. 566, 38 So. 131; Sloss-Sheffield Steel, etc., Co. *v.* Hutchinson, 144 Ala. 221, 40 So. 114; Mobile Light, etc., Co. *v.* Walsh, 146 Ala. 290, 40 So. 559; Richardson *v.* State, 145 Ala. 46, 41 So. 82; Forbes *v.* Davidson, 147 Ala. 702, 41 So. 312; Hammond *v.* State, 147 Ala. 79, 41 So. 761; Virginia Bridge, etc., Co. *v.* Jordan, 143 Ala. 603, 42 So. 73; Du Bose *v.* State, (Ala. 1906) 42 So. 862; Western Union Tel. Co. *v.* Heathcoat, (Ala. 1907) 43 So. 117; Southern R. Co. *v.* McGowan, (Ala. 1907) 43 So. 378; Robinson *v.* Greene, 148 Ala. 434, 43 So. 797; Anniston *v.* Ivey, (Ala. 1907) 44 So. 48; Hunt *v.* Curtis, (Ala. 1907) 44 So. 54; Gosdin *v.* Williams, (Ala. 1907) 44 So. 611.

Arkansas. — St. Louis Southwestern R. Co. *v.* Morris, 76 Ark. 542, 89 S. W. 846; Tiffin *v.* St. Louis, etc., R. Co., 78 Ark. 55, 93 S. W. 564; Scaggs *v.* State, (Ark. 1907) 99 S. W. 1104; Continental Casualty Co. *v.* Todd, 82 Ark. 214, 101 S. W. 168; Decker *v.* State, (Ark. 1908) 107 S. W. 182.

California. — Sampson *v.* Hughes, 147 Cal. 62, 81 Pac. 292; Spinks *v.* Clark, 147 Cal. 439, 82 Pac. 45; Carty *v.* Borsche-Dawe Co., 2 Cal. App. 646, 84 Pac. 267; O. L. Shafter Estate Co. *v.* Alvord, 2 Cal. App. 602, 84 Pac. 279; Bowen *v.* Sierra Lumber Co., 3 Cal. App. 312, 84 Pac. 1010; Doyle *v.* Eschen, 5 Cal. App. 55, 89 Pac. 836; Northwestern Packing Co. *v.* Whitney, 5 Cal. App. 105, 89 Pac. 981; Walters *v.* Mitchell, (Cal. App. 1907) 92 Pac. 315; Mabry *v.* Randolph, (Cal. App. 1908) 94 Pac. 403.

Colorado. — Smith *v.* Stevens, 33 Colo. 427, 81 Pac. 35.

Delaware. — State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224.

District of Columbia. — Bradford *v.* National Ben. Assoc., 26 App. Cas. (D. C.) 268.

Florida. — West *v.* State, 53 Fla. 77, 43 So. 445.

Georgia. — Macon *v.* Humphries, 122 Ga. 800, 50 S. E. 986; Phillips *v.* Collinsville Granite Co., 123 Ga. 830, 51 S. E. 667; Evans *v.* Josephine Mills, 124 Ga. 318, 52 S. E. 538; Hawes *v.* Elberton Bank, 124 Ga. 567, 52 S. E. 922; Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110; Worthy *v.* Battle, 125 Ga. 415, 54 S. E. 667; Atlanta Ice, etc., Co. *v.* Mixon, 126 Ga. 457, 55 S. E. 237; Shuler *v.* State, 126 Ga. 630, 55 S. E. 496; Proctor *v.* Pointer, 127 Ga. 134, 56 S. E. 111; Proctor *v.* Thompson, 127 Ga. 137, 56 S. E. 112; Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430; O'Neill Mfg. Co. *v.* Harris, 127 Ga. 640, 56 S. E. 739; Moore *v.* Dozier, 128 Ga. 90, 57 S. E. 110; Robinson *v.* State, 128 Ga. 254, 57 S. E. 315; Southern R. Co. *v.* Dean, 128 Ga. 366, 57 S. E. 702; Brunswick, etc., R. Co. *v.* Hoodenpyle, 129 Ga. 174, 58 S. E. 705.

Illinois. — Siegel *v.* Trcka, 218 Ill. 559, 75 N. E. 1053; Goddard *v.* Engler, 222 Ill. 462, 78 N. E. 805; Star Brewery Co. *v.* Hauck, 222 Ill. 348, 78 N. E. 827; Chicago, etc., R. Co. *v.* Steckman, 224 Ill. 500, 79 N. E. 602; Illinois Southern R. Co. *v.* Hayer, 225 Ill. 613, 80 N. E. 316; Illinois Cent. R. Co. *v.* Whiteaker, 122 Ill. App. 333; Aurora, etc., R. Co. *v.* Gary, 123 Ill. App. 163; Chicago *v.* O'Donnell, 124 Ill. App. 78; Riley *v.* American Steel, etc., Co., 129 Ill. App. 123.

Indiana. — Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755; Beery *v.* Driver, 167 Ind. 127, 76 N. E. 967; Huntington *v.* Stemeh, (Ind. App. 1906) 77 N. E. 407; Southern Indiana R. Co. *v.* Osborn, 39 Ind. App. 333, 78 N. E. 248, 79 N. E. 1067; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Chicago, etc., R. Co. *v.* Lawrence, (Ind. 1907) 82 N. E. 768; Grand Trunk Western R. Co. *v.* State, (Ind. App. 1907) 82 N. E. 1017; Delaware, etc., Counties Telephone Co. *v.* Fisk, (Ind. App. 1907) 81 N. E. 1100.

Iowa. — Hamilton *v.* Jos. Schlitz Brewing Co., 129 Iowa 172, 105 N. W. 438; Kuhlman *v.* Weiben, 129 Iowa 188, 105 N. W. 445; Rietneld *v.* Wabash R. Co., 129 Iowa 249, 105 N. W. 515; Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359; Kesselring *v.* Hummer, 130 Iowa 145, 106 N. W. 501; *In re* Jones, 130 Iowa 177, 106 N. W. 610; Wilder *v.* Great Western Cereal Co., 134 Iowa 451, 109 N. W. 789; Harriman *v.* New Nonpareil Co., 132 Iowa 616, 110 N. W. 33; Madden *v.* Saylor Coal Co., 133 Iowa 699, 111 N. W. 57; Wilson *v.* Big Joe Block Coal Co., 134 Iowa 594, 112 N. W. 89; Mikesell *v.* Wabash R. Co., 134 Iowa 736, 112 N. W. 201; Conway *v.* Murphy, (Iowa 1907) 112 N. W. 764; Schmitt *v.* Dubuque County, (Iowa 1907) 113 N. W. 820; Doty *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 522; Aughey *v.* Windrem, (Iowa 1908) 114 N. W. 1047; Blunck *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 1013.

Kansas. — Atchison, etc., R. Co. *v.* Watson, 71 Kan. 696, 81 Pac. 499.

Kentucky. — Louisville, etc., R. Co. *v.* Brown, (Ky. 1906) 90 S. W. 567; Perry *v.* Pore, (Ky. 1906) 90 S. W. 952; Louisville, etc., R. Co. *v.* Jolly, (Ky. 1906) 90 S. W. 977; South Covington, etc., R. Co. *v.* Core, (Ky. 1906) 96 S. W. 562.

Maine. — Damren *v.* Trask, (Me. 1907) 68 Atl. 818.

Massachusetts. — Wolfe *v.* New Bedford Cordage Co., 189 Mass. 591, 76 N. E. 222; Cotton *v.* Boston El. R. Co., 191 Mass. 103, 77 N. E. 698; Luce *v.* Parsons, 192 Mass. 8, 77 N. E. 1032; Rice *v.* James, 193 Mass. 458, 79 N. E. 807; Brunelle *v.* Lowell Electric Light Corp., 194 Mass. 407, 80 N. E. 466; Whalen *v.* Rosnosky, 195 Mass. 545, 81 N. E. 282; Com. *v.* Porn, 195 Mass. 443, 81 N. E. 305.

Michigan. — McCormick *v.* Detroit, etc., R. Co., 141 Mich. 17, 104 N. W. 390; Calvert *v.* Schultz, 143 Mich. 441, 106 N. W. 1123; Barker *v.* Kalamazoo, 146 Mich. 257, 109 N. W. 427; Michigan Shoe Co. *v.* Paul, 149 Mich. 695, 113 N. W. 310; Grand Rapids *v.* Coit, 149 Mich. 668, 113 N. W. 362.

Minnesota. — Whitehead *v.* Wisconsin Cent. R. Co., (Minn. 1907) 114 N. W. 254.

Missouri. — Widman Invest. Co. *v.* St. Joseph, 191 Mo. 459, 90 S. W. 763; McCaffery *v.* St. Louis, etc., R. Co., 192 Mo. 144, 90 S. W. 816; Boring *v.* Metropolitan St. R. Co., 194 Mo. 541, 92 S. W. 655; Dakan *v.* G. W. Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944; Spaulding *v.* Edina, 122 Mo. App. 65, 97 S. W. 545; Morgan *v.* Hager, etc., Hinge Mfg. Co., 120 Mo. App. 590, 97 S. W. 638; Masterson *v.* St. Louis Transit Co., (Mo. 1906) 98 S. W. 504; Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; Lutz *v.* Metropolitan St. R. Co., 123 Mo. App. 499, 100 S. W. 46; Thomas *v.* Metropolitan St. R. Co., 125 Mo. App. 131, 100 S. W. 1121; McGraw *v.* O'Neil, 123 Mo. App. 691, 101 N. W. 132; Thompson *v.* Poplar Bluff, 124 Mo. App. 439, 101 S. W. 709; Hedges *v.* Metropolitan St. R. Co., 125 Mo. App. 583, 102 S. W. 1086; Masterson *v.* St. Louis Transit Co., 204 Mo. 507, 103 S. W. 48; Brown *v.* Quincy, etc., R. Co., (Mo. 1907) 106 S. W. 551.

Nebraska. — McCook *v.* McAdams, (Neb. 1906) 106 N. W. 988; Iler *v.* Miller, (Neb. 1907) 111 N. W. 589; Heidelbaugh *v.* State, (Neb. 1907) 113 N. W. 145.

New Hampshire. — Flint *v.* Union Water Power Co., 73 N. H. 483, 62 Atl. 788; Lord *v.* Manchester St. R. Co., (N. H. 1907) 67 Atl. 630.

New York. — German-American Ins. Co. *v.* New York Gas, etc., Light, etc., Co., 103 N. Y. App. Div. 310, 93 N. Y. Supp. 46; Reid *v.* New York City R. Co., (Supm. Ct. App. T.) 93 N. Y. Supp. 533; Zuckerman *v.* Moser, (Supm. Ct. App. T.) 95 N. Y. Supp. 561; Stenger *v.* Buffalo Union Furnace Co., 109 N. Y. App. Div. 183, 95 N. Y. Supp. 793; People *v.* Brown, 110 N. Y. App. Div. 490, 96 N. Y. Supp. 957; Cabble *v.* Cabble, 111 N. Y. App. Div. 426, 97 N. Y. Supp. 776; Guyon *v.* Brooklyn Heights R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 514, 97 N. Y. Supp. 1038; O'Doherty *v.* Postal Tel. Cable Co., 113 N. Y. App. Div. 636, 99 N. Y. Supp. 351; Carr *v.* Prudential Ins. Co., 115 N. Y. App. Div. 755, 101 N. Y. Supp. 158;

Regan *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 705, 101 N. Y. Supp. 213; Ætna Indemnity Co. *v.* Ryan, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 614, 103 N. Y. Supp. 756; Moneyweight Scale Co. *v.* Deis, (Supm. Ct. App. T.) 104 N. Y. Supp. 456; White *v.* Prudential Ins. Co., 120 N. Y. App. Div. 260, 105 N. Y. Supp. [illegible] Carton *v.* Standard Refrigerator Co., [illegible] N. Y. App. Div. 296, 106 N. Y. Supp. 723; Burns *v.* Crow, 123 N. Y. App. Div. 251, 107 N. Y. Supp. 944.

North Carolina. — Gilliland *v.* Board of Education, 141 N. Car. 482, 54 S. E. 413.

North Dakota. — Raymond *v.* Edelbrock, 15 N. Dak. 231, 107 N. W. 194.

Ohio. — Cincinnati Traction Co. *v.* Stephens, 75 Ohio St. 171, 79 N. E. 235; Duhme Jewelry Co. *v.* Hazen, 27 Ohio Cir. Ct. 679.

Oregon. — Taylor *v.* Brown, (Oregon 1907) 90 Pac. 673; Montgomery *v.* Somers, (Oregon 1907) 90 Pac. 674; Trickey *v.* Clark, (Oregon 1908) 93 Pac. 457.

Pennsylvania. — McKim *v.* Philadelphia, 217 Pa. St. 243, 66 Atl. 340; Wood *v.* Praul, 217 Pa. St. 293, 66 Atl. 528.

Rhode Island. — Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

South Carolina. — Machen *v.* Western Union Tel. Co., 72 S. Car. 256, 51 S. E. 697; Wofford *v.* Clinton Cotton Mills, 72 S. Car. 346, 51 S. E. 918; Mauldin *v.* Seaboard Air Line R. Co., 73 S. Car. 9, 52 S. E. 677; Cain *v.* Atlantic Coast Line R. Co., 74 S. Car. 89, 54 S. E. 244; Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421; Entzminger *v.* Seaboard Air Line R. Co., (S. Car. 1908) 60 S. E. 441; Burress *v.* Atlantic Coast Line R. Co., (S. Car. 1908) 60 S. E. 692.

South Dakota. — Buchanan *v.* Randall, (S. Dak. 1906) 109 N. W. 513.

Texas. — Dunn *v.* Newberry, (Tex. Civ. App. 1905) 86 S. W. 626; Gulf, etc., R. Co. *v.* Boyce, (Tex. Civ. App. 1905) 87 S. W. 395; Texas, etc., R. Co. *v.* Felker, (Tex. Civ. App. 1905) 90 S. W. 530; Green *v.* State, 49 Tex. Crim. 238, 90 S. W. 1115; Bryan *v.* State, 49 Tex. Crim. 200, 91 S. W. 581; Ætna Ins. Co. *v.* Brannon, (Tex. Civ. App. 1906) 91 S. W. 614; Bell County *v.* Flint, (Tex. Civ. App. 1905) 91 S. W. 329; McNeely *v.* State, 49 Tex. Crim. 286, 92 S. W. 419; Texas, etc., R. Co. *v.* Warner, (Tex. Civ. App. 1906) 93 S. W. 489; Rea *v.* Schow, (Tex. Civ. App. 1906) 93 S. W. 706; Leatherman *v.* State, 49 Tex. Crim. 485, 95 S. W. 504; Gorham *v.* Dallas, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 551; El Campo Rice Milling Co. *v.* Montgomery, (Tex. Civ. App. 1906) 95 S. W. 1102; Dupree *v.* Texas, etc., R. Co., (Tex. Civ. App. 1906) 96 S. W. 647; Cobb *v.* Bryan, (Tex. Civ. App. 1906) 97 S. W. 513; Waggoner *v.* State, (Tex. Crim. 1906) 98 S. W. 255; Armstrong *v.* State, (Tex. Crim. 1906) 98 S. W. 844; San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863; Northern Texas Traction Co. *v.* Caldwell, (Tex. Civ. App. 1906) 99 S. W. 869; Elliston *v.* State, (Tex. Crim. 1907) 99 S. W. 999; International, etc., R. Co. *v.* Drought, (Tex. Civ. App. 1907) 100 S. W. 1011; Texas, etc., R. Co. *v.* Slator, (Tex. Civ. App. 1907) 102 S. W. 156; Hickey *v.* State, (Tex. Crim. 1906) 102 S. W. 417; United Oil, etc., Co. *v.* Grey, (Tex. Civ. App. 1907) 102 S. W. 934; Gulf, etc., R. Co. *v.* Harrison, (Tex. Civ. App. 1907) 104 S. W. 399; Gulf, etc., R. Co. *v.* Wittnebert, (Tex. Civ. App. 1907) 104 S. W. 424; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804; Earles *v.* State, (Tex. Crim. 1907) 106 S. W. 138; St. Louis Southwestern R. Co. *v.* Hall, (Tex. Civ. App. 1907) 106 S. W. 194; Missouri, etc., R. Co. *v.* Hollan, (Tex. Civ. App. 1908) 107 S. W. 642.

Utah. — Meyers *v.* Highland Boy Gold Min. Co., 28 Utah 96, 77 Pac. 347, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421; Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715; Smith *v.* Ogden, etc., R. Co., (Utah 1907) 93 Pac. 185.

Virginia. — Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731; Interstate Coal, etc., Co. *v.* Clintwood Coal, etc., Co., 105 Va. 574, 54 S. E. 593; Virginia-Carolina Chemical Co. *v.* Knight, 106 Va. 674, 56 S. E. 725; Douglas Land Co. *v.* T. W. Thayer Co., 107 Va. 292, 58 S. E. 1101; Blackwood Coal, etc., Co. *v.* James, 107 Va. 656, 60 S. E. 90.

Washington. — Sneed *v.* Marysville Gas, etc., Co., (Wash. 1906) 87 Pac. 376; Curtis *v.* Barber Asphalt Paving Co., 44 Wash. 334, 87 Pac. 376.

West Virginia. — Parks *v.* Morris, (W. Va. 1907) 59 S. E. 753.

Wisconsin. — Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077; Hamann *v.* Milwaukee Bridge Co., 127 Wis. 550, 106 N. W. 1081; McKone *v.* Metropolitan L. Ins. Co., 131 Wis. 243, 110 N. W. 472; Berge *v.* Kittleson, (Wis. 1907) 114 N. W. 125; Hein *v.* Mildebrandt, (Wis. 1908) 115 N. W. 121.

An Opinion by a Witness, not an expert, on facts given in testimony by other witnesses is not admissible. Gracy *v.* Atlantic Coast Line R. Co., 53 Fla. 350, 42 So. 903.

The Doctrine of "Res Ipsa Loquitur" Applied. — Illinois Cent. R. Co. *v.* Emerson, (Miss. 1907) 44 So. 928.

Evidence of Matters Which Are Incompetent as substantive evidence, for the purpose of fortifying the opinion of an expert, even though they are offered under the guise of the reason for his opinion, and even though they might properly have been admitted on cross-examination to test and diminish the weight to be given to his opinion, is not admissible. Peirson *v.* Boston El. R. Co., 191 Mass. 223, 77 N. E. 769.

Mental Conclusions as to disputed facts in a case are inadmissible. Zitske *v.* Grohn, 128 Wis. 159, 107 N. W. 20.

The Proximate Cause of an injury is ordinarily a question for the jury. It is not a question of science or legal knowledge. St. Louis, etc., R. Co. *v.* Hook, 83 Ark. 584, 104 S. W. 217.

An Engineer will not be permitted to state that he handled his engine carefully in passing a certain point. Birmingham R. Light, etc., Co. *v.* Martin, 148 Ala. 8, 42 So. 618.

That a Railroad Crossing Is Dangerous is not the subject of expert testimony, and witnesses are not allowed to express their opinion, but state the facts as to the crossing. Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 219, 91 S. W. 685.

Rules for Operating Trains. — The opinion of

a witness as to whether a rule of a railroad company relating to the flagging of trains was a safe one is inadmissible. Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29.

What Would Be a Reasonably Safe Rate of Speed for a street car, over a street, is not a subject of expert testimony. Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355.

An Opinion of a Physician as to what constitutes the practice of medicine, is inadmissible. State *v.* Heffernan, (R. I. 1906) 65 Atl. 284.

The opinion of a physician based on the declaration of the party to the physician, to enable him to testify as an expert, is inadmissible. Bates Mach. Co. *v.* Crowley, 115 Ill. App. 540.

An Opinion of an Attorney as to whether there could be a lien against personal property is not admissible. Hirsch *v.* Beverly, 125 Ga. 657, 54 S. E. 679.

Automobile. — A witness testifying that an automobile made no noise when approaching, heard by him, that when running at a high rate of speed it would make but little noise, and that when running at low speed it would make much more noise, does not thereby qualify himself to estimate the speed at which the automobile was running. Wright *v.* Crane, 142 Mich. 508, 106 N. W. 71.

In Ejectment a witness is incompetent to testify that he was in possession of the title. McCreary *v.* Jackson Lumber Co., (Ala. 1906) 41 So. 822.

Common Knowledge and General Reputation as to the ownership of property is inadmissible. Continental Ins. Co. *v.* Cummings, (Tex. Civ. App. 1906) 95 S. W. 48.

Adverse Possession. — A witness is incompetent to state an opinion that a person is in open and notorious possession of land. Driver *v.* King, 145 Ala. 585, 40 So. 315.

As to Land Covered by Deed. — A witness will not be permitted to give his opinion as to what land a deed covered. He should simply state the facts and leave the jury to form their own opinion. Ball *v.* Loughridge, (Ky. 1907) 100 S. W. 275.

6. Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 232, 54 S. E. 255, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421; Meyers *v.* Highland Boy Gold Min. Co., 28 Utah 96, 77 Pac. 347, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421.

7. Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421; Meyers *v.* Highland Boy Gold Min. Co., 28 Utah 96, 77 Pac. 347, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421.

The Incompetency of a Mine Boss is not a subject of opinion evidence. Purkey *v.* Southern Coal, etc., Co., 57 W. Va. 595, 50 S. E. 755.

122. **2.** *United States.* — Semet-Solway Co. *v.* Wilcox, (C. C. A.) 143 Fed. 839.

Alabama. — West Pratt Coal Co. *v.* Andrews, (Ala. 1907) 43 So. 348.

Georgia. — Green *v.* State, 125 Ga. 797, 54 S. E. 724.

Iowa. — Baker *v.* Oughton, 130 Iowa 35, 106 N. W. 272; Fritz *v.* Chicago Grain, etc., Co., (Iowa 1907) 114 N. W. 193.

Massachusetts. — Jeddrey *v.* Boston, etc., St. R. Co., (Mass. 1908) 84 N. E. 316.

Michigan. — McDonald *v.* City Electric R. Co., 144 Mich. 379, 108 N. W. 85.

Missouri. — Leavell *v.* Leavell, 114 Mo. App. 24, 89 S. W. 55; Kohr *v.* Metropolitan St. R. Co., 117 Mo. App. 302, 92 S. W. 1145; Standley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244.

New York. — Sturgis *v.* Fifth Ave. Coach Co., 122 N. Y. App. Div. 658, 107 N. Y. Supp. 270.

Ohio. — Palmer *v.* Cowie, 27 Ohio Cir. Ct. 619.

Oregon. — *In re* Roach, (Oregon 1907) 92 Pac. 118.

Texas. — Turner *v.* State, 48 Tex. Crim. 585, 89 S. W. 974; Citizens R. Co. *v.* Robertson, (Tex. Civ. App. 1906) 91 S. W. 609; Pullman Co. *v.* Norton, (Tex. Civ. App. 1905) 91 S. W. 841; Tuttle *v.* Moody, (Tex. Civ. App. 1906) 94 S. W. 134; Beaumont Traction Co. *v.* Dilworth, (Tex. Civ. App. 1906) 94 S. W. 352; Texas, etc., R. Co. *v.* Stewart, (Tex. Civ. App. 1906) 96 S. W. 106.

Virginia. — Richards *v.* Com., 107 Va. 881, 59 S. E. 1104.

Wisconsin. — Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 809.

Declarations of a Coexecutor, that a certain note had no value, are admissible as an expression of an opinion. Stone *v.* Stone, 191 Mass. 371, 77 N. E. 845.

Earning Capacity. — A plaintiff's testimony that his capacity for earning a livelihood by manual labor has been depreciated by reason of his injuries, about one-half, is admissible. Houston, etc., R. Co. *v.* Fanning, (Tex. Civ. App. 1905) 91 S. W. 344.

3. *United States.* — National Biscuit Co. *v.* Nolan, (C. C. A.) 138 Fed. 6; Brown *v.* U. S., (C. C. A.) 142 Fed. 1; Hostetter Co. *v.* Gallagher Stores, 142 Fed. 208; Shields *v.* Norton, (C. C. A.) 143 Fed. 802; U. S. *v.* Green, 146 Fed. 801.

Alabama. — Yates *v.* Huntsville Hoop, etc., Co., (Ala. 1905) 39 So. 647; Foley *v.* Pioneer Min., etc., Co., 144 Ala. 178, 40 So. 273; Reiter-Connolly Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280; Williamson Iron Co. *v.* McQueen, 144 Ala. 265, 40 So. 306; Echols *v.* State, 147 Ala. 700, 41 So. 298; Woodstock Iron Works *v.* Kline, (Ala. 1906) 43 So. 362.

Arkansas. — Covington *v.* St. Francis County, 77 Ark. 258, 91 S. W. 186; St. Louis, etc., R. Co. *v.* Dawson, 77 Ark. 434, 92 S. W. 27; St. Louis Southwestern R. Co. *v.* Plumlee, 78 Ark. 147, 95 S. W. 442; ... L. Halliday Milling Co. *v.* Louisiana, etc., R. Co., 80 Ark. 536, 98 S. W. 374.

California. — Southern Pac. R. Co. *v.* San Francisco Sav. Union, 146 Cal. 290, 79 Pac. 961; Camp *v.* Behlow, 2 Cal. App. 699, 84 Pac. 251; Bird *v.* Utica Gold Min. Co., 2 Cal. App. 674, 84 Pac. 256; Bundy *v.* Sierra Lumber Co., 149 Cal. 772, 87 Pac. 622.

Colorado. — Colorado, etc., R. Co. *v.* Webb, 36 Colo. 224, 85 Pac. 683.

Connecticut. — Gilmore *v.* American Tube, etc., Co., 79 Conn. 498, 66 Atl. 4.

Delaware. — State *v.* Collins, 5 Penn. (Del.)

..., 62 Atl. 224; McMahon *v.* Bangs, 5 Penn. ... 1; 8, 62 Atl. 1098.

Florida. — Jacksonville Electric Co. *v.* Sloan, ... Fla. 257, 42 So. 516; Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318.

Georgia. — Crawford *v.* Roney, 126 Ga. 457, 55 S. E. 499; Atlantic, etc., R. Co. *v.* Cordele, 128 Ga. 293, 57 S. E. 493; Crankshaw *v.* Schweiger Mfg. Co., 1 Ga. App. 363, 58 S. E. ...

Idaho. — American Bonding Co. *v.* State University, 11 Idaho 163, 81 Pac. 604.

Illinois. — Kellyville Coal Co. *v.* Strine, 217 Ill. 516, 75 N. E. 375; Hayes *v.* Wagner, 220 Ill. 256, 77 N. E. 211; Goddard *v.* Engler, 222 Ill. 462, 78 N. E. 805; Acme Harvester Co. *v.* Cluttick, 230 Ill. 558, 82 N. E. 647; McCarthy *v.* Spring Valley Coal Co., 232 Ill. 473, 83 N. E. 957.

Indiana. — New Jersey, etc., R. Co. *v.* Tutt, 168 Ind. 205, 80 N. E. 420; Cleveland, etc., R. Co. *v.* Hadley, (Ind. App. 1907) 82 N. E. 1025.

Iowa. — State *v.* Donovan, 128 Iowa 44, 102 N. W. 791; Hunter *v.* Davis, 128 Iowa 216, 103 N. W. 373; Rothrock *v.* Cedar Rapids, 128 Iowa 252, 103 N. W. 475; Lundvick *v.* National Union F. Ins. Co., 128 Iowa 347, 103 N. W. 970; Schroeder *v.* Chicago, etc., R. Co., 128 Iowa 365, 103 N. W. 985.

Kansas. — Remsberg *v.* Iola Portland Cement Co., 73 Kan. 66, 84 Pac. 548; Chicago, etc., R. Co. *v.* Mosher, (Kan. 1907) 92 Pac. 554.

Kentucky. — Fraternal Constr. Co. *v.* Jackson Foundry, etc., Co., (Ky. 1905) 89 S. W. 265; Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422.

Maryland. — Gossage *v.* Philadelphia, etc., R. Co., 101 Md. 698, 61 Atl. 692; Councilman *v.* Towson Nat. Bank, 103 Md. 469, 64 Atl. 358.

Massachusetts. — Klous *v.* Com., 188 Mass. 149, 74 N. E. 330; Erickson *v.* American Steel, etc., Co., 193 Mass. 119, 78 N. E. 761; Farrell *v.* B. F. Sturtevant Co., 194 Mass. 431, 80 N. E. 469; Beverley *v.* Boston El. R. Co., 194 Mass. 450, 80 N. E. 507; Partelow *v.* Newton, etc., St. R. Co., (Mass. 1907) 81 N. E. 894.

Michigan. — Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613; Garran *v.* Michigan Cent. R. Co., 144 Mich. 26, 107 N. W. 284.

Minnesota. — Scarlotta *v.* Ash, 95 Minn. 240, 103 N. W. 1025; Carlin *v.* Kennedy, 97 Minn. 141, 106 N. W. 340.

Missouri. — Fountain *v.* Wabash R. Co., 114 Mo. App. 676, 90 S. W. 393; Harris *v.* Quincy, etc., R. Co., 115 Mo. App. 527, 91 S. W. 1010; McGinnis *v.* R. M. Rigby Printing Co., 122 Mo. App. 227, 99 S. W. 4; Frick *v.* Kansas City, 117 Mo. App. 488, 93 S. W. 351; St. Louis, etc., R. Co. *v.* Continental Brick Co., 198 Mo. 698, 96 S. W. 1011; Smith *v.* Kansas City, 125 Mo. App. 150, 101 S. W. 1118; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496.

New Hampshire. — Flint *v.* Union Water Power Co., 73 N. H. 483, 62 Atl. 788.

New Jersey. — Crosby *v.* Wells, (N. J. 1907) 67 Atl. 295.

New York. — Kelly *v.* Home Sav. Bank, 103 N. Y. App. Div. 141, 92 N. Y. Supp. 578; McMullen *v.* New York, 104 N. Y. App. Div. 337, 93 N. Y. Supp. 772; Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 170.

North Carolina. — Horne *v.* Consolidated R., etc., Co., 144 N. Car. 375, 57 S. E. 19; Daniel *v.* Atlantic Coast Line R. Co., 145 N. Car. 51, 58 S. E. 601; Ives *v.* Newbern Lumber Co., (N. Car. 1908) 61 S. E. 70.

North Dakota. — Keeney *v.* Fargo, 14 N. Dak. 419, 105 N. W. 92.

Oregon. — Rice *v.* Wallowa County, 46 Oregon 574, 81 Pac. 358; Eaton *v.* Blackburn, (Oregon 1907) 88 Pac. 303.

Pennsylvania. — Boop *v.* Laurelton Lumber Co., 212 Pa. St. 523, 61 Atl. 1021; Com. *v.* Eyler, 217 Pa. St. 512, 66 Atl. 746; McDonald *v.* Sundstrom, 31 Pa. Super. Ct. 241; Dutton *v.* Philadelphia, etc., R. Co., 32 Pa. Super. Ct. 630.

South Carolina. — Biggers *v.* Catawba Power Co., 72 S. Car. 264, 51 S. E. 882; Jackson *v.* Southern R. Co., 73 S. Car. 557, 54 S. E. 231.

Texas. — Gulf, etc., R. Co. *v.* Harbison, (Tex. Civ. App. 1905) 88 S. W. 452; Texas Cent. R. Co. *v.* Miller, (Tex. Civ. App. 1905) 88 S. W. 499; Chicago, etc., R. Co. *v.* Seale, (Tex. Civ. App. 1905) 89 S. W. 997; St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 926; Sullivan *v.* Owens, (Tex. Civ. App. 1905) 90 S. W. 690; Gulf, etc., R. Co. *v.* Wynne, (Tex. Civ. App. 1905) 91 S. W. 823; Wall *v.* Melton, (Tex. Civ. App. 1906) 94 S. W. 358; St. Louis Southwestern R. Co. *v.* Terhune, (Tex. Civ. App. 1906) 94 S. W. 381; Rice *v.* State, 49 Tex. Crim. 569, 94 S. W. 1024; Kirby Lumber Co. *v.* Chambers, (Tex. Civ. App. 1906) 95 S. W. 607; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666; Texas, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1906) 95 S. W. 743; Peacock *v.* Coltrane, (Tex. Civ. App. 1906) 99 S. W. 107; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Morgan *v.* Barber, (Tex. Civ. App. 1907) 99 S. W. 730; Citizens' Telephone Co. *v.* Thomas, (Tex. Civ. App. 1907) 99 S. W. 879; Tankersley *v.* State, (Tex. Crim. 1907) 101 S. W. 234; United Oil, etc., Co. *v.* Grey, (Tex. Civ. App. 1907) 102 S. W. 934; Waters-Pierce Oil Co. *v.* Snell, (Tex. Civ. App. 1907) 106 S. W. 170; International, etc., R. Co. *v.* Nowaski, (Tex. Civ. App. 1907) 106 S. W. 437; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 910; El Paso, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1908) 108 S. W. 988.

Utah. — Meyers *v.* Highland Boy Gold Min. Co., 28 Utah 96, 77 Pac. 347, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422; State *v.* Winslow, 30 Utah 403, 85 Pac. 433.

Washington. — Jones *v.* Emerson, 41 Wash. 32, 82 Pac. 1017; Cook *v.* Stimson Mill Co., 41 Wash. 314, 83 Pac. 419.

Wisconsin. — Olwell *v.* Skobis, 126 Wis. 308, 105 N. W. 777; Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237; Hupfer *v.* National Distilling Co., 127 Wis. 306, 106 N. W. 831; Estey Organ Co. *v.* Lehman, (Wis. 1907) 111 N. W. 1097; Bloch *v.* American Ins. Co., (Wis. 1907) 112 N. W. 45.

A Conductor is competent to express an opinion as to how long it would take a passenger to get off a train at a certain station on his

line. Seaboard Air Line R. Co. *v.* Bradley, 125 Ga. 193, 54 S. E. 69.

Seeing. — Witnesses may testify whether or not a person could have seen a thing. Central of Georgia R. Co. *v.* Hyatt, (Ala. 1907) 43 So. 871.

423. **1.** Yates *v.* Garrett, (Okla. 1907) 92 Pac. 142.

3. Standley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244.

4. *Alabama.* — Southern R. Co. *v.* Taylor, 148 Ala. 52, 42 So. 625.

California. — Bowen *v.* Sierra Lumber Co., 3 Cal. App. 312, 84 Pac. 1010.

Delaware. — State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224.

Florida. — Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516.

Missouri. — Combs *v.* Rountree Constr. Co., 205 Mo. 367, 104 S. W. 77.

Nebraska. — Souchek *v.* Karr, (Neb. 1907) 111 N. W. 150.

Texas. — Commerce Milling, etc., Co. *v.* Gowan, (Tex. Civ. App. 1907) 104 S. W. 916.

Washington. — Cook *v.* Stimson Mill Co., 41 Wash. 314, 83 Pac. 419.

Wisconsin. — Nelson *v.* Chicago, etc., R. Co., 130 Wis. 214, 109 N. W. 933.

5. Chess, etc., Co. *v.* Gohagan, (Ky. 1907) 105 S. W. 890; Zarnik *v.* C. Reiss Coal Co., (Wis. 1907) 113 N. W. 752.

424. **1.** Castner Electrolytic Alkali Co. *v.* Davies, (C. C. A.) 154 Fed. 938; Smart *v.* Kansas City, 208 Mo. 162, 105 S. W. 709.

4. State *v.* Meyers, (La. 1907) 44 So. 1008.

5. *Alabama.* — Abercrombie *v.* Carpenter, (Ala. 1907) 43 So. 747, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 424.

Arkansas. — H. L. Halliday Milling Co. *v.* Louisiana, etc., R. Co., 80 Ark. 536, 98 S. W. 374.

Georgia. — Atlantic, etc., R. Co. *v.* Cordele, 128 Ga. 293, 57 S. E. 493.

Kansas. — Sun Ins. Office *v.* Western Woolen Mill Co., 72 Kan. 41, 82 Pac. 513.

Kentucky. — Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 424.

Oklahoma. — Yates *v.* Garrett, (Okla. 1907) 92 Pac. 142, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 424.

Wisconsin. — Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237.

6. State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; Macon R., etc., Co. *v.* Mason, 123 Ga. 773, 51 S. E. 569, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 424; Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 424.

425. **1.** *Alabama.* — Central of Georgia R. Co. *v.* Keyton, (Ala. 1906) 41 So. 918; Parham *v.* State, 147 Ala. 57, 42 So. 1; Dunn *v.* Gunn, (Ala. 1906) 42 So. 686; Southern Coal, etc., Co. *v.* Swinney, (Ala. 1907) 42 So. 808.

California. — Bowen *v.* Sierra Lumber Co., 3 Cal. App. 312, 84 Pac. 1010.

Florida. — Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29.

Georgia. — Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430.

Illinois. — Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23.

Iowa. — Hamner *v.* Janowitz, 131 Iowa 20, 108 N. W. 109; State *v.* Nowells, (Iowa 1906) 109 N. W. 1016.

Kansas. — Remsberg *v.* Iola Portland Cement Co., 73 Kan. 66, 84 Pac. 548.

Kentucky. — Louisville, etc., R. Co. *v.* Morton, (Ky. 1905) 89 S. W. 243; Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609.

Michigan. — Withey *v.* Pere Marquette R. Co., 141 Mich. 412, 104 N. W. 773.

Missouri. — Genesee Fruit Co. *v.* Clarksville Cider Co., 114 Mo. App. 422, 89 S. W. 914; McCormack *v.* Herboth, 115 Mo. App. 193, 91 S. W. 164; Combs *v.* Rountree Constr. Co., 205 Mo. 367, 104 S. W. 77.

Nebraska. — Souchek *v.* Karr, (Neb. 1907) 111 N. W. 150.

Texas. — Galveston, etc., R. Co. *v.* Holyfield, (Tex. Civ. App. 1905) 91 S. W. 353; Clark *v.* Wilson, (Tex. Civ. App. 1906) 91 S. W. 627; Houston, etc., R. Co. *v.* Schuttee, (Tex. Civ. App. 1906) 91 S. W. 806; International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93; United Oil, etc., Co. *v.* Grey, (Tex. Civ. App. 1907) 102 S. W. 934.

Washington. — Park *v.* Northport Smelting, etc., Co., (Wash. 1907) 92 Pac. 442.

Wisconsin. — Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237; Zarnik *v.* C. Reiss Coal Co., (Wis. 1907) 113 N. W. 752.

2. *Georgia.* — Macon R., etc., Co. *v.* Mason, 123 Ga. 773, 51 S. E. 569, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 425.

Illinois. — Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23.

Iowa. — State *v.* Donovan, 128 Iowa 44, 102 N. W. 791, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 425; Hamner *v.* Janowitz, 131 Iowa 20, 108 N. W. 109.

Kentucky. — Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609.

Nebraska. — Souchek *v.* Karr, (Neb. 1907) 111 N. W. 150.

Texas. — Rice *v.* State, 49 Tex. Crim. 569, 94 S. W. 1024.

Wisconsin. — Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237.

426. **3.** Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609.

4. Macon R., etc., Co. *v.* Mason, 123 Ga. 773, 51 S. E. 569, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 426; Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609.

5. Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609.

427. **1.** Grainger *v.* Still, 187 Mo. 197, 85 S. W. 1114.

428. **1.** Wheeler *v.* Anglim, 193 Mass. 600, 79 N. E. 810.

2. Meyers *v.* McAllister, 94 Minn. 510, 103 N. W. 564; Paterson *v.* Chicago R. Co., 95 Minn. 57, 103 N. W. 621.

3. A Conveyancer who has examined a title [illegible] to the title. Luce *v.* Parsons, 192 Mass. 8, 77 N. E. 1032.

6. Brown *v.* U. S., (C. C. A.) 142 Fed. 1; Mendel *v.* Boyd, 71 Neb. 657, 99 N. W. 492, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d

ed.) 428; Crawford *v.* Roney, 126 Ga. 457, 55 S. E. 499; Kannow *v.* Farmers Co-operative Shipping Assoc., (Neb. 1906) 107 N. W. 563.

7. Accountants cannot testify as to the net earnings of a railroad. State *v.* Nevada Cent. R. Co., 28 Nev. 186, 81 Pac. 99.

429. 1. Levy *v.* Tiger, (Supm. Ct. App. T.) 90 N. Y. Supp. 366; Drouin *v.* Wilson, (Vt. 1907) 67 Atl. 825.

15. Expert evidence is inadmissible to show the cost of a building, in an action by architects for drawing plans, where there is evidence of actual cost. Israel *v.* MacDonald, 123 N. Y. App. Div. 63, 107 N. Y. Supp. 826.

430. 10. Coe *v.* Van Why, 33 Colo. 315, 80 Pac. 894; Obermeyer *v.* Logeman Chair Mfg. Co., 120 Mo. App. 59, 96 S. W. 673.

431. 5. Dempfel *v.* Wilson, (Md. 1908) 68 Atl. 561, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 431.

432. 2. The Opinion of an Attorney as to what is the consensus of the opinion of the bench and bar of another state as to the construction of a statute of that state is inadmissible. Clark *v.* Eltinge, 38 Wash. 376, 80 Pac. 55.

434. 14. Gulf, etc., R. Co. *v.* Wynne, (Tex. Civ. App. 1905) 91 S. W. 823.

435. 12. Dutton *v.* Philadelphia, etc., R. Co., 32 Pa. Super. Ct. 630.

436. 1. Stewart *v.* Raleigh, etc., Air Line R. Co., 141 N. Car. 253, 53 S. E. 877, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436.

437. 7. Baker *v.* Cotney, 142 Ala. 566, 38 So. 131.

439. 11. Strength of Materials. — It is competent to offer the opinion of an experienced witness as to whether there are unusual risks in the use of cast iron in a particular place, and whether the accident complained of resulted from such use. Erickson *v.* American Steel, etc., Co., 193 Mass. 119, 78 N. E. 761.

440. 12. Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 440; McGinnis *v.* R. M. Rigby Printing Co., 122 Mo. App. 227, 99 S. W. 4.

13. Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 440.

442. 2. State *v.* Trueman, 34 Mont. 249, 85 Pac. 1024.

14. Kellyville Coal Co. *v.* Strine, 217 Ill. 516, 75 N. E. 375, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 442.

443. 1. Spencer *v.* Bruner, 126 Mo. App. 94, 103 S. W. 578.

A Miner's Testimony as to capabilities of a sprinkling machine to keep down the dust in a mine is admissible. Bolen-Darnall Coal Co. *v.* Williams, (Indian Ter. 1907) 104 S. W. 867.

3. Kellyville Coal Co. *v.* Strine, 217 Ill. 516, 75 N. E. 375, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 442 [443].

444. 5. In Abortion the opinion of a physician based solely upon the dying declarations of the deceased as to the cause of her ailment is incompetent. Stevens *v.* People, 215 Ill. 593, 74 N. E. 786.

6. Com. *v.* Sinclair, 195 Mass. 100, 80 N. E. 799.

9. Com. *v.* Sinclair, 195 Mass. 100, 80 N. E. 799.

12. Louisville R. Co. *v.* Oppenheimer, (Ky. 1907) 104 S. W. 720.

16. Opinion of a Woman who is a mother and states she knows the difference between a premature born and a full grown child is admissible as to whether a birth was premature. Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 627.

17. *Alabama.* — Foley *v.* Pioneer Min., etc., Co., 144 Ala. 178, 40 So. 273.

California. — People *v.* Clark, 151 Cal. 200, 90 Pac. 549.

Illinois. — Chicago *v.* Powers, 117 Ill. App. 453, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 444.

Iowa. — Dunn *v.* Chicago, etc., R. Co., 130 Iowa 580, 107 N. W. 616.

Louisiana. — State *v.* Voorhies, 115 La. 200, 38 So. 964, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 444.

Michigan. — Chadwick *v.* Phœnix Acc., etc., Assoc., 143 Mich. 481, 106 N. W. 1122.

Missouri. — State *v.* Spaugh, 199 Mo. 147, 97 S. W. 901; State *v.* Daly, (Mo. 1908) 109 S. W. 53.

New Mexico. — Miera *v.* Territory, 13 N. Mex. 192, 81 Pac. 586.

New York. — Kelly *v.* Wills, 116 N. Y. App. Div. 758, 102 N. Y. Supp. 223.

North Dakota. — Kinney *v.* Brotherhood of American Yeoman, 15 N. Dak. 21, 106 N. W. 44.

Oregon. — Hildebrand *v.* United Artisans, (Oregon 1907) 91 Pac. 542.

Pennsylvania. — Flaherty *v.* Scranton Gas, etc., Co., 30 Pa. Super. Ct. 446.

Texas. — Smith *v.* State, (Tex. Crim. 1906) 99 S. W. 100; Ozark *v.* State, (Tex. Crim. 1907) 100 S. W. 927; Houston, etc., R. Co. *v.* Rutland, (Tex. Civ. App. 1907) 101 S. W. 529.

Cause of Wounds. — A physician may testify as to the nature of the wounds on the decedent's body, but he cannot testify as to how they were caused. MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898.

An Undertaker with twenty years' experience, who has examined the body of a deceased, may testify as to the fatality of the wounds. Cecil *v.* State, (Tex. Crim. 1907) 100 S. W. 390.

445. 1. A Surveyor may testify that the descriptions in petition and deed examined by him are embraced within the same metes and bounds. Camp *v.* League, (Tex. Civ. App. 1906) 92 S. W. 1062.

10. In Monize *v.* Bogaso, 190 Mass. 87, 76 N. E. 460, a physician was permitted to testify that he was afraid a clot or something of that nature might form on the brain.

446. 3. Chicago Union Traction Co. *v.* Fritz, 230 Ill. 114, 82 N. E. 817.

4. Chicago City R. Co. *v.* Foster, 226 Ill. 288, 80 N. E. 762; Taylor *v.* Modern Woodmen of America, 42 Wash. 304, 84 Pac. 867.

11. State *v.* Daly, (Mo. 1908) 109 S. W. 53.

447. 1. Western Union Tel. Co. *v.* Rowell, (Ala. 1907) 45 So. 73.

2. Heningburg *v.* State, (Ala. 1907) 45 So. 246; Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23; Kehoe *v.* International R. Co., (Supm. Ct.

Tr. T.) 56 Misc. (N. Y.) 138, 106 N. Y. Supp. 10[illegible].

3. *California.* — Salmon *v.* Rathjens, (Cal. 1907) 92 Pac. 733.

Georgia. — Harper *v.* State, 129 Ga. 770, 59 S. E. 792.

Illinois. — Chicago City R. Co. *v.* Foster, 226 Ill. 288, 80 N. E. 762; Chicago *v.* Didier, 227 Ill. 571, 81 N. E. 698; Chicago Union Traction Co. *v.* Roberts, 229 Ill. 481, 82 N. E. 401; Illinois Cent. R. Co. *v.* McCollum, 122 Ill. App. 531; Chicago, etc., R. Co. *v.* Johnson, 128 Ill. App. 20; Chicago City R. Co. *v.* Mauger, 128 Ill. App. 512.

Indiana. — Indianapolis R. Co. *v.* Bennett, 39 Ind. App. 141, 79 N. E. 389; Indianapolis Traction, etc., Co. *v.* Formes, (Ind. App. 1907) 80 N. E. 872.

Iowa. — State *v.* Rutledge, (Iowa 1907) 113 N. W. 461.

Maryland. — Fletcher *v.* Dixon, (Md. 1908) 68 Atl. 875.

Michigan. — Boehm *v.* Detroit, 141 Mich. 277, 104 N. W. 626.

Missouri. — Mayes *v.* Metropolitan St. R. Co., 121 Mo. App. 614, 97 S. W. 612; Detrich *v.* Metropolitan St. R. Co., 125 Mo. App. 608, 102 S. W. 1044.

North Dakota. — Kerr *v.* Grand Forks, 15 N. Dak. 294, 107 N. W. 197.

Oregon. — State *v.* White, 48 Oregon 416, 87 Pac. 137.

Pennsylvania. — Com. *v.* Campbell, 31 Pa. Super. Ct. 9.

Texas. — Hickey *v.* Texas, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 763; Gulf, etc., R. Co. *v.* Booth, (Tex. Civ. App. 1906) 97 S. W. 128; Galveston, etc., R. Co. *v.* Cherry, (Tex. Civ. App. 1906) 98 S. W. 898; Galveston, etc., R. Co. *v.* Stoy, (Tex. Civ. App. 1906) 99 S. W. 135.

Washington. — Rowe *v.* Whatcom County R., etc., Co., 44 Wash. 658, 87 Pac. 921.

Wisconsin. — Nelson *v.* Chicago, etc., R. Co., 130 Wis. 214, 109 N. W. 933; Hocking *v.* Windsor Spring Co., 131 Wis. 532, 111 N. W. 685.

Extent of Injury. — Physicians may give their professional opinions as to the extent of an injury. Galveston, etc., R. Co. *v.* Alberti, (Tex. Civ. App. 1907) 103 S. W. 699.

A Physician may give his opinion based on statements of the patient in connection with an examination. Walters *v.* Rock, (N. Dak. 1908) 115 N. W. 511; Gibler *v.* Quincy, etc., R. Co., (Mo. 1908) 107 S. W. 1021.

5. Echels *v.* Muttschall, 230 Ill. 462, 82 N. E. 872; Goddard *v.* Enzler, 123 Ill. App. 108; Hunter *v.* Ithaca, 141 Mich. 539, 105 N. W. 9; McDonald *v.* City Electric R. Co., 144 Mich. 379, 108 N. W. 85; Franklin *v.* St. Louis, etc., R. Co., 188 Mo. 533, 87 S. W. 930; Smith *v.* Kansas City, 125 Mo. App. 150, 101 S. W. 1118; Bach *v.* Brooklyn, etc., R. Co., 109 N. Y. App. Div. 654, 96 N. Y. Supp. 321.

6. Southern R. Co. *v.* Weatherlow, (Ala. 1907) 44 So. [illegible] St. Louis, etc., R. Co., 192 Mo. 144, 90 S. W. 816; Dunn *v.* Chicago, etc., R. Co., 130 Iowa 580, 107 N. W. 616; Kavanagh *v.* New York Transp. Co., (Supm. Ct. App. T.) 95 N. Y. Supp. 567; Boland *v.* New York City R. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 523, 96 N. Y. Supp. 262; Mackey *v.* Interurban St. R. Co., 115 N. Y. App. Div. 467, 101 N. Y. Supp. 439.

A Physician, as an expert, will not be permitted to testify that the conditions named by him and shown by the evidence would produce pain. Western Union Tel. Co. *v.* Stubbs, (Tex. Civ. App. 1906) 94 S. W. 1083.

A Physician Testifying to Loss of Hearing should base his testimony upon actual knowledge and not upon the declarations of the plaintiff. Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232.

7. Western Electric Co. *v.* Prochasha, 129 Ill. App. 589.

448. 4. Raynor *v.* Metropolitan St. R. Co., 106 N. Y. App. Div. 449, 94 N. Y. Supp. 632.

6. Hardin *v.* State, (Tex. Crim. 1907) 103 S. W. 401.

8. People *v.* Weich, 121 N. Y. App. Div. 328, 107 N. Y. Supp. 968.

12. Clemons *v.* State, 48 Fla. 9, 37 So. 647, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 448.

13. Williams *v.* State, 147 Ala. 10, 41 So. 992.

449. 1. A Physician who never had any particular experience with firearms and never owned a pistol is incompetent to testify to the size and calibre of a ball. Ripley *v.* State, (Tex. Crim. 1907) 100 S. W. 943.

12. Kansas City, etc., R. Co. *v.* Butler, 143 Ala. 262, 38 So. 1024, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 449; Cumberland Telephone, etc., Co. *v.* Overfield, (Ky. 1907) 106 S. W. 242; Chicago City R. Co. *v.* Lowitz, 218 Ill. 24, 75 N. E. 775; Lindsay *v.* Kansas City, 195 Mo. 166, 93 S. W. 273; Poole *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 628, 97 N. Y. Supp. 395; Missouri, etc., R. Co. *v.* Lynch, (Tex. Civ. App. 1905) 90 S. W. 511; Chicago, etc., R. Co. *v.* Hiltibrand, (Tex. Civ. App. 1907) 99 S. W. 707.

450. 1. Illinois Cent. R. Co. *v.* McCollum, 130 Ill. App. 267, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 450; Elzig *v.* Bales, (Iowa 1907) 112 N. W. 540; Federal Betterment Co. *v.* Reeves, 73 Kan. 107, 84 Pac. 560; Leahy *v.* Gaylord, etc., Co., 117 N. Y. App. Div. 316, 102 N. Y. Supp. 78.

2. Fletcher *v.* Dixon, (Md. 1908) 68 Atl. 875; Young *v.* Metropolitan St. R. Co., 126 Mo. App. 1, 103 S. W. 135; Ellis *v.* Rhode Island Co., (R. I. 1907) 67 Atl. 428; Klingaman *v.* Fish, etc., Co., 19 S. Dak. 139, 102 N. W. 601, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 450.

3. Klingaman *v.* Fish, etc., Co., 19 S. Dak. 139, 102 N. W. 601, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 450; Faber *v.* C. Reiss Coal Co., 124 Wis. 554, 102 N. W. 1049.

4. Simone *v.* Rhode Island Co., (R. I. 1907) 66 Atl. 202; Klingaman *v.* Fish, etc., Co., 19 S. Dak. 139, 102 N. W. 601, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 450.

451. 6. A physician may testify as to the [illegible] to what effect the existing stiffness would have on the ability of the [illegible] Lewes *v.* Crane, 78 Vt. 216, 62 Atl. 60.

452. 2. *United States.* — U. S. *v.* Chisholm, 153 Fed. 808.

Alabama. — Braham *v.* State, 143 Ala. 28, 38 So. 919.

California. — People *v.* Lowell, 145 Cal. 292, 78 Pac. 717; People *v.* Griffith, 146 Cal. 339, 80 Pac. 68; People *v.* Willard, 150 Cal. 543, 89 Pac. 124.

District of Columbia. — Hamilton *v.* U. S., 26 App. Cas. (D. C.) 382.

Iowa. — Vohs *v.* Shorthill, 130 Iowa 538, 107 N. W. 417.

Maine. — Ireland *v.* White, 102 Me. 233, 66 Atl. 477.

Massachusetts. — Com. *v.* Johnson, 188 Mass. 382, 74 N. E. 939.

Missouri. — State *v.* Speyer, 194 Mo. 459, 91 S. W. 1075.

New York. — People *v.* Pekarz, 185 N. Y. 470, 78 N. E. 294; People *v.* Furlong, 187 N. Y. 198, 79 N. E. 978.

Ohio. — Moore *v.* Caldwell, 27 Ohio Cir. Ct. 419.

Texas. — Betts *v.* State, 48 Tex. Crim. 522, 89 S. W. 413.

Wisconsin. — Duthey *v.* State, 131 Wis. 178, 111 N. W. 222.

3. U. S. *v.* Chisholm, 149 Fed. 284; Beard *v.* Southern R. Co., 143 N. Car. 136, 55 S. E. 505.

7. *In re* Anderson, 79 Conn. 535, 66 Atl. 7; *In re* Wharton, 132 Iowa 714, 109 N. W. 492; Baugher *v.* Gesell, 103 Md. 450, 63 Atl. 1078; Kelly *v.* Kelly, 103 Md. 548, 63 Atl. 1082; King *v.* Gilson, 206 Mo. 264, 104 S. W. 52; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Bryne *v.* Bryne, 109 N. Y. App. Div. 476, 96 N. Y. Supp. 375; *In re* Brower, 112 N. Y. App. Div. 370, 98 N. Y. Supp. 438.

A Physician who testified that he attended the testatrix shortly before the execution of her will, when she was suffering from a certain disease, may state whether her mind was affected thereby. *In re* Jones, 130 Iowa 177, 106 N. W. 610.

When a Witness Is Testifying as an Expert on the subject of the testator's mental condition it is incompetent for him to state the relative merits of the testimony of other witnesses. Lancaster *v.* Lancaster, (Ky. 1905) 87 S. W. 1137.

Expert Testimony which does not differentiate between a medical unsound mind and a legal unsound mind is entitled to weight only when the other evidence shows that it applies to legal unsoundness, because a mind legally sound may be medically unsound. Illinois Cent. R. Co. *v.* Emerson, (Miss. 1907) 44 So. 928.

8. *Alabama.* — Hodge *v.* Rambow, (Ala. 1908) 45 So. 678.

California. — Huyck *v.* Rennie, 151 Cal. 411, 90 Pac. 929.

District of Columbia. — Turner *v.* American Security, etc., Co., 29 App. Cas. (D. C.) 460.

Georgia. — Brown *v.* McBride, 129 Ga. 92, 58 S. E. 702.

Iowa. — Smith *v.* Ryan, (Iowa 1907) 112 N. W. 8; Vannest *v.* Murphy, (Iowa 1907) 112 N. W. 236; *In re* Wharton, 132 Iowa 714, 109 N. W. 492.

Maryland. — Packham *v.* Ludwig, 103 Md. 416, 63 Atl. 1048; Robinson *v.* Jones, 105 Md. 62, 65 Atl. 814.

Michigan. — *In re* Dowell, (Mich. 1908) 115 N. W. 972.

Nebraska. — *In re* Isaac, (Neb. 1906) 107 N. W. 1016; *In re* Wilson, (Neb. 1907) 111 N. W. 788.

North Dakota. — Nelson *v.* Thompson, (N. Dak. 1907) 112 N. W. 1058.

9. Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69.

453. 1. Elizig *v.* Bales, (Iowa 1907) 112 N. W. 540; Sheldon *v.* Wright, (Vt. 1907) 67 Atl. 807.

10. State *v.* Winslow, 30 Utah 403, 85 Pac. 433.

454. 1. Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844; Patton *v.* Sanborn, 133 Iowa 650, 110 N. W. 1032; Barry *v.* Kurshan, (Supm. Ct. App. T.) 103 N. Y. Supp. 120; Western Union Tel. Co. *v.* Stubbs, (Tex. Civ. App. 1906) 94 S. W. 1083; San Antonio Traction Co. *v.* Flory, (Tex. Civ. App. 1907) 100 S. W. 200; St. Louis Southwestern R. Co. *v.* Schuler, (Tex. Civ. App. 1907) 102 S. W. 783; Runnells *v.* Pecos, etc., R. Co., (Tex. Civ. App. 1908) 107 S. W. 647.

5. Texas, etc., R. Co. *v.* Clippenger, (Tex. Civ. App. 1907) 106 S. W. 155.

455. 1. Chappell *v.* Roberts, (Ala. 1907) 43 So. 489; Brundred *v.* McLaughlin, 213 Pa. St. 115, 62 Atl. 565.

2. Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898.

4. A Surveyor's Opinion as to a certain supposed monument found by him, amounts to a mere conclusion, and is inadmissible. Clarke *v.* Case, 144 Mich. 148, 107 N. W. 893.

456. 7. Welch *v.* Fransioli, (Wash. 1907) 90 Pac. 644.

458. 4. Horsemen are permitted to testify that a steam shovel was calculated to frighten horses of ordinary gentleness. Heinmiller *v.* Winston, 131 Iowa 32, 107 N. W. 1102.

7. *United States.* — Shields *v.* Norton, (C. C. A.) 143 Fed. 802.

Arkansas. — H. L. Halliday Milling Co. *v.* Louisiana, etc., R. Co., 80 Ark. 536, 98 S. W. 374; Arkansas, etc., R. Co. *v.* Sanders, 81 Ark. 604, 99 S. W. 1109.

California. — Burdy *v.* Sierra Lumber Co., 149 Cal. 772, 87 Pac. 622.

Colorado. — Colorado Farm, etc., Co. *v.* York, 38 Colo. 239, 88 Pac. 181.

Georgia. — Atlantic, etc., R. Co. *v.* Cordele, 128 Ga. 293, 57 S. E. 493.

Illinois. — Ward *v.* Meredith, 220 Ill. 66, 77 N. E. 118; Walters *v.* Stacey, 122 Ill. App. 658; Goddard *v.* Enzler, 123 Ill. App. 108.

Iowa. — Hamner *v.* Janowitz, 131 Iowa 20, 108 N. W. 109; Croft *v.* Chicago, etc., R. Co., 134 Iowa 411, 109 N. W. 723; Patton *v.* Sanborn, 133 Iowa 650, 110 N. W. 1032.

Kansas. — Sun Ins. Office *v.* Western Woolen-Mill Co., 72 Kan. 41, 82 Pac. 513.

Kentucky. — Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609.

Missouri. — McGinnis *v.* R. M. Rigby Printing Co., 122 Mo. App. 227, 99 S. W. 4; Combs *v.* Rountree Constr. Co., 205 Mo. 367, 104 S. W. 77.

Nebraska. — Port Huron Machinery Co. *v.* Bragg, (Neb. 1906) 109 N. W. 398.

New Jersey. — Hollins *v.* American Union Electric Co., 66 N. J. Eq. 457, 60 Atl. 359; Crosby *v.* Wells, (N. J. 1907) 67 Atl. 295.

New York. — German-American Ins. Co. *v.* New York Gas, etc., Light, etc., Co., 103 N. Y. App. Div. 310, 93 N. Y. Supp. 46; Swartz *v.* R. M. Wilson Mfg. Co., 115 N. Y. App. Div. 739, 100 N. Y. Supp. 1054; Epstein *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 184, 101 N. Y. Supp. 793; Kilpatrick *v.* Whitmer, 118 N. Y. App. Div. 98, 103 N. Y. Supp. 75.

North Carolina. — Stewart *v.* Raleigh, etc., Air Line R. Co., 141 N. Car. 253, 53 S. E. 877; Ives *v.* Newberne Lumber Co., (N. Car. 1908) 61 S. E. 70.

Oregon. — Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 384.

Pennsylvania. — Bardsley *v.* Gill, 218 Pa. St. 56, 66 Atl. 1112.

South Carolina. — Fitzgerald *v.* Langley Mfg. Co., 74 S. Car. 232, 54 S. E. 373, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 458.

Texas. — Gulf, etc., R. Co. *v.* Tullis, (Tex. Civ. App. 1905) 91 S. W. 317; Wall *v.* Melton, (Tex. Civ. App. 1906) 94 S. W. 358; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; St. Louis, etc., R. Co. *v.* Gurter, (Tex. Civ. App. 1906) 99 S. W. 152; Meyer Bros. Drug Co. *v.* Madden, (Tex. Civ. App. 1907) 99 S. W. 723; St. Louis, etc., R. Co. *v.* Knowles, (Tex. Civ. App. 1906) 99 S. W. 867; Citizens' Telephone Co. *v.* Thomas, (Tex. Civ. App. 1907) 99 S. W. 879; Chicago, etc., R. Co. *v.* Denton, (Tex. Civ. App. 1907) 101 S. W. 452; Commerce Milling, etc., Co. *v.* Gowan, (Tex. Civ. App. 1907) 104 S. W. 916; El Paso, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1908) 108 S. W. 988.

Washington. — Smith *v.* Dow, 43 Wash. 407, 86 Pac. 555; Thomson *v.* Issaquah Shingle Co., 43 Wash. 253, 86 Pac. 588; Park *v.* Northport Smelting, etc., Co., (Wash. 1907) 92 Pac.

Rated Capacity of a Boiler. — U. S. Heater Co. *v.* Jenss, 128 Wis. 162, 107 N. W. 293.

Expectancy of Life. — A physician familiar with the mortality tables, may testify as to the expectancy of life. Kansas City Southern R. Co. *v.* Morris, 80 Ark. 528, 98 S. W. 363.

Whether an Electric Wire is properly insulated, is a subject of expert testimony. Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815.

Whether Shale Is a Mineral is a subject of expert testimony. McComb *v.* Stephenson, (Ala. 1907) 44 So. 867.

Atmospheric Conditions. — Witnesses will be permitted to give testimony tending to show the atmospheric conditions and the character of the light at the time of a collision. Chicago *v.* Hagenbach, 228 Ill. 290, 81 N. E. 1014.

A Farmer as an expert can give his opinion as to the amount of cotton produced on land. Baker *v.* Cotney, 142 Ala. 566, 38 So. 131.

Injury to Cotton. — Witnesses who were competent to testify as experts were qualified to testify that in their opinion cotton had been damaged by fresh water and not by sea water. Houston, etc., R. Co. *v.* Bath, (Tex. Civ. App. 1905) 90 S. W. 55.

Sound from Report of Firearms. — One who for many years has been familiar with the report of firearms may give an opinion whether a shot was fired from a pistol, rifle, or shotgun. State *v.* Graham, 116 La. 779, 41 So. 90.

The Plaintiff May Give an Opinion as to the amount of damages he has sustained, in an action for personal injuries. Rountree *v.* Charleston, etc., R. Co., 72 S. Car. 474, 52 S. E. 231.

Opinion Evidence on the question whether property has been enhanced or depreciated in value by public improvement is admissible. Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821.

How Far an Engineer Could See Cars on the track is a proper subject of expert evidence. Mitchell *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 622.

Effect of Fire upon Trees is a subject upon which a witness may be qualified as an expert witness. Chicago, etc., R. Co. *v.* Mosher, (Kan. 1907) 92 Pac. 554.

If a Contract refers to principles of science or art, or uses the technical phraseology of some occupation or common words in a technical sense, their exact meaning may be shown by the testimony of experts. Bowers Hydraulic Dredging Co. *v.* U. S., 41 Ct. Cl. 214.

459. 8. Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359.

10. Chicago *v.* Didier, 227 Ill. 571, 81 N. E. 698, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 459.

460. 4. St. Louis, etc., R. Co. *v.* Gunter, (Tex. Civ. App. 1906) 99 S. W. 152; Ft. Worth, etc., R. Co. *v.* Richards, (Tex. Civ. App. 1907) 105 S. W. 236.

13. Wiggins *v.* St. Louis, etc., R. Co., 119 Mo. App. 492, 95 S. W. 311.

14. Guinn *v.* Iowa, etc., R. Co., 131 Iowa 680, 109 N. W. 209; Raymond *v.* Edelbrock, 15 N. Dak. 231, 107 N. W. 194; Myers *v.* Charlotte, (N. Car. 1907) 59 S. E. 674; Byrne *v.* Cambria, etc., R. Co., 219 Pa. St. 217, 68 Atl. 672.

461. 2. Ft. Collins Development R. Co. *v.* France, (Colo. 1907) 92 Pac. 953; Richardson *v.* Sioux City, (Iowa 1907) 113 N. W. 928; Wade *v.* Carolina Telephone, etc., Co., (N. Car. 1908) 60 S. E. 987; Johnson *v.* Tacoma, 41 Wash. 51, 82 Pac. 1092, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 461.

Witnesses Cannot Testify to the Quantum of Damages Sustained. — They can state the injuries and the value before and after the injury, and the damages would ordinarily be the difference. Central of Georgia R. Co. *v.* Barnett, (Ala. 1907) 44 So. 392.

466. 2. Lambert *v.* La Conner Trading, etc., Co., 37 Wash. 113, 79 Pac. 608.

468. 4. Safety of Track. — A practical railroad man engaged in the construction and repairing of tracks, may testify to the common use of a certain device by the railroad company. Smith *v.* Fordyce, 190 Mo. 1, 88 S. W. 679.

469. 7. Huggins *v.* Southern R. Co., 148 Ala. 153, 41 So. 856.

470. 6. Train Crew. — Stewart *v.* Raleigh, etc., Air Line R. Co., 141 N. Car. 253, 53 S. E. 877.

7. Brakeman's Station. — St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 926.

12. Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 179.

A Brakeman of twelve years' experience is qualified to state that the force with which a coupling was made was not unusual. Mullen *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 1000.

171. 10. Inspectors may testify as to the method of controlling crowds on station platforms. Beverley *v.* Boston El. R. Co., 194 Mass. 450, 80 N. E. 507.

172. 1. Derailment of Car. — Place *v.* Grand Trunk R. Co., (Vt. 1907) 67 Atl. 545.

2. One Experienced in Examining a Railroad Wreck is competent to testify as to the cause of the wreck. Southern Kansas R. Co. *v.* Sage, (Tex. Civ. App. 1906) 94 S. W. 1074.

4. See Hitchner Wall Paper Co. *v.* Pennsylvania R. Co., 158 Fed. 1011; St. Louis, etc., R. Co. *v.* Dawson, 77 Ark. 434, 92 S. W. 27; Babbitt *v.* Erie R. Co., 108 N. Y. App. Div. 74, 95 N. Y. Supp. 429.

5. Underwood *v.* A. W. Stevens Co., 149 Mich. 39, 112 N. W. 487.

Sparks. — It is proper to allow witnesses to testify that they had seen an engine emit sparks "of unusual size or in unusual quantities." Birmingham R. Light, etc., Co. *v.* Martin, 148 Ala. 8, 42 So. 618.

Efficiency of Spark Arrester. — One qualified as an expert may give his opinion as to the efficiency of a spark arrester used on an engine. St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343.

6. Detroit Southern R. Co. *v.* Lambert, (C. C. A.) 150 Fed. 555; Colorado, etc., R. Co. *v.* Webb, 36 Colo. 224, 85 Pac. 683; Eckels *v.* Muttschall, 230 Ill. 462, 82 N. E. 872; Line *v.* Grand Rapids, etc., R. Co., 143 Mich. 163, 106 N. W. 719; Garran *v.* Michigan Cent. R. Co., 144 Mich. 26, 107 N. W. 284; Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509; Lynch *v.* Chicago, etc., R. Co., 208 Mo. 1, 106 S. W. 68; Coffey *v.* Omaha, etc., St. R. Co., (Neb. 1907) 112 N. W. 589; Columbus R. Co. *v.* Connor, 27 Ohio Cir. Ct. 229.

7. Chicago City R. Co. *v.* Rohe, 118 Ill. App. 322.

8. Goodwyn *v.* Central of Georgia R. Co., 2 Ga. App. 470, 58 S. E. 688; Galveston, etc., R. Co. *v.* Gillespie, (Tex. Civ. App. 1908) 106 S. W. 707.

The Speed at Which a Train Was Moving or within what distance it could be stopped are questions of actual fact, and expert testimony thereon can under no circumstances be introduced, unless based upon the operation of cars or engines of similar construction and equipment and under like conditions. Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731.

173. 6. Atchison, etc., R. Co. *v.* Holloway, [illegible]; Harvey *v.* Louisiana Western R. Co., 114 La. 1065, 38 So. 859.

Speed from Observation. — One who habitually observes the passage of railroad trains may give an estimate of their rate of speed, and such testimony is not confined to experts. Borneman *v.* Chicago, etc., R. Co., 19 S. Dak. 459, 104 N. W. 208.

174. 2. Little Rock Traction, etc., Co. *v.* Hicks, 79 Ark. 248, 96 S. W. 385; Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648.

5. Birmingham R., etc., Co. *v.* Randle, (Ala. 1906) 43 So. 355; Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032; Arkansas, etc., R. Co. *v.* Sanders, 81 Ark. 604, 99 S. W. 1109; Texas, etc., R. Co. *v.* Brannon, (Tex. Civ. App. 1906) 96 S. W. 1095; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Northern Texas Traction Co. *v.* Caldwell, (Tex. Civ. App. 1906) 99 S. W. 869; Wise Terminal Co. *v.* McCormick, 107 Va. 376, 58 S. E. 584.

6. Harris *v.* Nashville, etc., R. Co., (Ala. 1907) 44 So. 962.

7. Motorman. — Wallace *v.* North Alabama Traction Co., 145 Ala. 682, 40 So. 89.

175. 7. A Motorman, of several months' experience, can give his opinion as an expert that it was impossible to have stopped the car by the application of all the appliances at his command in time to prevent an injury. Wallace *v.* North Alabama Traction Co., 145 Ala. 682, 40 So. 89.

8. Kaufman *v.* Abrams, (Supm. Ct. App. T.) 90 N. Y. Supp. 1068; Rich *v.* Utah Commercial, etc., Bank, 30 Utah 334, 84 Pac. 1105.

10. Fountain *v.* Wabash R. Co., 114 Mo. App. 676, 90 S. W. 393; Vroom *v.* Sage, 100 N. Y. App. Div. 285, 91 N. Y. Supp. 456, *quoting* 12 Am. and Eng. Encyc. of Law (2d ed.) 475; El Campo Rice Milling Co. *v.* Montgomery, (Tex. Civ. App. 1906) 95 S. W. 1102.

11. St. Louis, etc., R. Co. *v.* Continental Brick Co., 198 Mo. 698, 96 S. W. 1011; Vroom *v.* Sage, 100 N. Y. App. Div. 285, 91 N. Y. Supp. 456, *quoting* 12 Am. and Eng. Encyc. of Law (2d ed.) 475; Texas, etc., R. Co. *v.* Wilson Hack Line, (Tex. Civ. App. 1907) 101 S. W. 1042.

12. Moss *v.* State, 146 Ala. 686, 40 So. 340; Slaton *v.* Fowler, 124 Ga. 955, 53 S. E. 567; Lundvick *v.* National Union F. Ins. Co., 128 Iowa 347, 103 N. W. 970; Pollock *v.* Talcott, 30 Pa. Super. Ct. 622; Missouri, etc., R. Co. *v.* Allen, (Tex. Civ. App. 1905) 87 S. W. 168; Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

An Owner of a Stock of Goods may testify as to their value, although not an expert. Union Pac. R. Co. *v.* Lucas, (C. C. A.) 136 Fed. 374.

13. Manhattan Delivery Co. *v.* Simon, (Supm. Ct. App. T.) 98 N. Y. Supp. 844; Glass *v.* Buttner, 29 Wash. 296, 81 Pac. 699.

14. *Alabama.* — Echols *v.* State, 147 Ala. 700, 41 So. 298.

California. — Southern Pac. R. Co. *v.* San Francisco Sav. Union, 146 Cal. 290, 79 Pac. 961.

Colorado. — Butsch *v.* Smith, (Colo. 1907) 90 Pac. 61.

Georgia. — Slaton *v.* Fowler, 124 Ga. 955, 53 S. E. 567.

Louisiana. — Louisiana R., etc., Co. *v.* Morere, 116 La. 997, 41 So. 236, *citing* 12 Am. and Eng. Encyc. of Law (2d ed.) 475; Louisiana R., etc., Co. *v.* Sarpy, 117 La. 156, 41 So. 477.

Maryland. Consolidated Gas Co. v. Baltimore, 105 Md. 43, 65 Atl. 628.

Minnesota. — Cleveland *v.* Rowe, 99 Minn. 444, 109 N. W. 817.

Missouri. — Wiggins *v.* St. Louis, etc., R. Co., 119 Mo. App. 492, 95 S. W. 311; St. Louis, etc., R. Co. *v.* Continental Brick Co., 198 Mo. 698, 96 S. W. 1011.

Montana. — Watson *v.* Colusa-Parrot Min., etc., Co., 31 Mont. 513, 79 Pac. 14.

New York. — Wallingford *v.* Kaiser, 110 N. Y. App. Div. 503, 96 N. Y. Supp. 981.

Pennsylvania. — McDonald *v.* Sundstrom, 31 Pa. Super. Ct. 241; Keim *v.* Reading, 32 Pa. Super. Ct. 613; Scott *v.* Central Valley R. Co., 33 Pa. Super. Ct. 574.

South Dakota. — Smith *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1907) 113 N. W. 94.

Texas. — Cluck *v.* Houston, etc., R. Co., 34 Tex. Civ. App. 452, 79 S. W. 80, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 475; Ft. Worth, etc., R. Co. *v.* Brown, (Tex. Civ. App. 1907) 101 S. W. 266; Texas, etc., R. Co. *v.* Wilson Hack Line, (Tex. Civ. App. 1907) 101 S. W. 1042; Texarkana, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1907) 101 S. W. 1167; Texas, etc., R. Co. *v.* Townsend, (Tex. Civ. App. 1907) 106 S. W. 760.

West Virginia. — Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

176. **4.** Harris *v.* Quincy, etc., R. Co., 115 Mo. App. 527, 91 S. W. 1010; Farmers Bank of Laddonia *v.* St. Louis, etc., R. Co., 119 Mo. App. 1, 95 S. W. 286; Texas, etc., R. Co. *v.* Sherrod, 99 Tex. 382, 89 S. W. 956; St. Louis, etc., R. Co. *v.* Dodson, (Tex. Civ. App. 1906) 97 S. W. 523; St. Louis, etc., R. Co. *v.* Gunter, (Tex. Civ. App. 1906) 99 S. W. 152; Texarkana, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1907) 101 S. W. 1167.

177. **4.** Rimmer *v.* Wilson, (Colo. 1908) 93 Pac. 1110; Vagts *v.* Utman, 125 Wis. 265, 104 N. W. 88; Palmer *v.* Goldberg, 128 Wis. 103, 107 N. W. 478.

6. Ft. Worth, etc., R. Co. *v.* Hickox, (Tex. Civ. App. 1907) 103 S. W. 202.

178. **9.** Withey *v.* Pere Marquette R. Co., 141 Mich. 412, 104 N. W. 773.

10. Chicago, etc., R. Co. *v.* Stroud, 129 Ill. App. 348.

179. **5.** Osmers *v.* Furey, 32 Mont. 581, 81 Pac. 345.

11. Abercrombie *v.* Carpenter, (Ala. 1907) 43 So. 747, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 479, note 11.

180. **2.** Kilpatrick *v.* Whitmer, 118 N. Y. App. Div. 98, 103 N. Y. Supp. 75.

181. **11. One Who Has Special Knowledge of Boats** and over twenty years' experience as a waterman, who priced a particular vessel, was competent to express his opinion of its value. Gossage *v.* Philadelphia, etc., R. Co., 101 Md. 698, 61 Atl. 692.

182. **2. Facts, Real or Hypothetical,** should be stated as the basis of an opinion to enable a witness to testify as to the value of stock. Eisenmayer *v.* Leonardt, 148 Cal. 596, 84 Pac. 18.

3. *Colorado.* — Butsch *v.* Smith, (Colo. 1907) 90 Pac. 61.

Georgia. — Americus *v.* Tower, (Ga. App. 1907) 59 S. E. 434.

Illinois. — Lewis *v.* Englewood El. R. Co., 223 Ill. 223, 79 N. E. 44.

Louisiana. — Louisiana, R., etc., Co. *v.* Kohn, 116 La. 159, 40 So. 602; Louisiana R., etc., Co. *v.* Morere, 116 La. 997, 41 So. 236, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 482; Louisiana R., etc., Co. *v.* Sarpy, 117 La. 156, 41 So. 477.

Maryland. — Horner *v.* Beasley, 105 Md. 193, 65 Atl. 820.

Massachusetts. — Klous *v.* Com., 188 Mass. 149, 74 N. E. 330; Hyde *v.* Fall River, (Mass. 1908) 83 N. E. 323.

New Jersey. — Walsh *v.* Board of Education, 73 N. J. L. 643, 64 Atl. 1088.

Pennsylvania. — McGroarty *v.* Lehigh Valley Coal Co., 212 Pa. St. 53, 61 Atl. 570; Sutton *v.* Pennsylvania R. Co., 214 Pa. St. 274, 63 Atl. 791; Stauffer *v.* East Stroudsburg, 215 Pa. St. 143, 64 Atl. 411; Davis *v.* Pennsylvania R. Co., 215 Pa. St. 581, 64 Atl. 774; Markowitz *v.* Pittsburg, etc., R. Co., 216 Pa. St. 539, 65 Atl. 1099; Neely *v.* Western Allegheny R. Co., 219 Pa. St. 349, 68 Atl. 829; Com. *v.* Tryon, 31 Pa. Super. Ct. 147; Scott *v.* Central Valley R. Co., 33 Pa. Super. Ct. 574.

Tennessee. — Union R. Co. *v.* Hunton, 114 Tenn. 609, 88 S. W. 182.

Texas. — St. Louis Southwestern R. Co. *v.* Terhune, (Tex. Civ. App. 1906) 94 S. W. 381.

Washington. — Port Townsend Southern R. Co. *v.* Nolan, (Wash. 1908) 93 Pac. 528.

West Virginia. — Guyandotte Valley R. Co. *v.* Buskirk, 57 W. Va. 417, 50 S. E. 521; Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

An Owner of Lands by reason of his purchase, his ownership, and his use of them, is qualified to give an estimate of their value. Union Pac. R. Co. *v.* Lucas, (C. C. A.) 136 Fed. 374.

Witnesses Are Competent to Testify as Experts although they did not know the market value by the square foot, or otherwise, of the property, but knew the value of the property as a freight terminal. Sanitary Dist. *v.* Pittsburgh, etc., R. Co., 216 Ill. 575, 75 N. E. 248.

The Value of Real Estate cannot be shown by proving the value of the several constituent elements of value, and then adding these together, taking the aggregate amount as the value of the whole. Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482.

Witnesses Are Not Competent to Testify to Rental Value without showing that they are qualified by experience in dealing with similar property or have actual knowledge of transactions in reference to renting such property. Keeney *v.* Fargo, 14 N. Dak. 419, 105 N. W. 92.

Depreciation of Value. — A witness may testify that property has depreciated in value although he is unable to state the amount. St. Louis, etc., R. Co. *v.* Payne, (Tex. Civ. App. 1907) 104 S. W. 1077.

183. **1.** New York, etc., R. Co. *v.* Hammond, (Ind. 1908) 83 N. E. 244; Louisiana R., etc., Co. *v.* Sarpy, 117 La. 156, 41 So. 477; Metropolitan St. R. Co. *v.* Walsh, 197 Mo. 302, 94 S. W. 860; Sutton *v.* Pennsylvania R. Co., 214 Pa. St. 274, 63 Atl. 791; Lally *v.* Central

Valley R. Co., 215 Pa. St. 436, 64 Atl. 633; Union R. Co. *v.* Hunton, 114 Tenn. 609, 88 S. W. 182.

2. Scott *v.* Central Valley R. Co., 33 Pa. Super. Ct. 574.

5. Markowitz *v.* Pittsburg, etc., R. Co., 216 Pa. St. 535, 539, 65 Atl. 1097, 1099.

A Witness from an Adjoining Township, three miles away from the land, and not familiar with its boundaries or acreage, or of sales in the neighborhood, is incompetent to testify to its value. Lawandoski *v.* Wilkes-Barre, etc., R. Co., 35 Pa. Super. Ct. 10.

11. Yore *v.* Meshew, 146 Mich. 80, 109 N. W. 35.

484. 1. Houses. — West Chicago Park Com'rs *v.* Boal, 232 Ill. 248, 83 N. E. 824.

7. Webb *v.* Daggett, (Tex. Civ. App. 1905) 87 S. W. 743.

12. Whether Land Is Mineral Land is not the subject of an expert opinion in an action for unlawfully cutting timber on the land on a question of the value of the land. Lynch *v.* U. S., (C. C. A.) 138 Fed. 535.

485. 1. McGroarty *v.* Lehigh Valley Coal Co., 212 Pa. St. 53, 61 Atl. 570.

3. Orange Groves. — Mabry *v.* Randolph, (Cal. App. 1908) 94 Pac. 403.

9. Stauffer *v.* East Stroudsburg, 215 Pa. St. 143, 64 Atl. 411.

486. 1. Cochran *v.* Lee, (Ky. 1905) 89 S. W. 145; Howard *v.* McCabe, (Neb. 1907) 112 N. W. 305; Croft *v.* Chicago, etc., R. Co., 134 Iowa 411, 109 N. W. 723; Schou *v.* Blum, 119 N. Y. App. Div. 825, 104 N. Y. Supp. 887.

5. Architects. — Wheeler *v.* Anglim, 193 Mass. 600, 79 N. E. 810.

11. Fuller *v.* Stevens, (Ala. 1905) 39 So. 623; Lee *v.* Lomax, 219 Ill. 218, 76 N. E. 377; Morehead *v.* Anderson, (Ky. 1907) 100 S. W. 340; Dinkelspiel *v.* Pons, 119 La. 236, 43 So. 1018.

488. 1. Rogers *v.* Mexico City Banking Co., (Tex. Civ. App. 1907) 103 S. W. 461.

2. Missouri, etc., R. Co. *v.* Craig, (Tex. Civ. App. 1906) 98 S. W. 907.

9. Alford *v.* State, 47 Fla. 1, 36 So. 436, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 448 [488]; Green *v.* State, 125 Ga. 742, 54 S. E. 724; State *v.* Turner, 143 N. Car. 641, 57 S. E. 158; Krueger *v.* Brenham Furniture Mfg. Co., (Tex. Civ. App. 1905) 85 S. W. 1156; McCabe *v.* San Antonio Traction Co., (Tex. Civ. App. 1905) 88 S. W. 387; Chicago, etc., R. Co. *v.* Jones, (Tex. Civ. App. 1905) 88 S. W. 445.

489. 1. Common Observers having special opportunity for observation, may testify to their opinions as to conclusions of fact, although they are not experts, if the subject-matter to which the testimony relates cannot be reproduced or described to the jury precisely as it appeared to the witness at the time, and their opinions are such as men in general are capable of forming, with reasonable correctness, in the facts observed. Hollins *v.* American Union Electric Co., 66 N. J. Eq. 457, 60 Atl. 359.

2. Value. — Southern R. Co. *v.* Morris, 143 Ala. 628, 42 So. 17; Illinois L. Ins. Co. *v.* De Lang, (Ky. 1907) 99 S. W. 616; Standley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244; Fulton *v.* Metropolitan St. R. Co., 125 Mo. App. 239, 102 S. W. 47; Taylor *v.* Security L., etc., Co., 145 N. Car. 383, 59 S. E. 139; Wells *v.* State, (Tex. Crim. 1906) 98 S. W. 851; Fleming *v.* Pullen, (Tex. Civ. App. 1906) 97 S. W. 109; Taylor *v.* Modern Woodmen of American, 42 Wash. 304, 84 Pac. 867.

A Nonexpert may testify that a gunshot wound is a penetrating one. Williams *v.* State, 147 Ala. 10, 41 So. 992.

A Nonexpert is competent to testify as to wounds in the body of a deceased person and state their location and appearance. Hill *v.* State, 146 Ala. 51, 41 So. 621.

490. 1. Nonexperts can give their opinion of value when acquainted or familiar with the thing to be valued. Hodge *v.* Rambow, (Ala. 1908) 45 So. 678.

2. Com. *v.* Eyler, 217 Pa. St. 512, 66 Atl. 746; Ferguson *v.* State, (Tex. Crim. 1906) 95 S. W. 111.

3. Barlow *v.* Hamilton, (Ala. 1907) 44 So. 657; State *v.* Matthews, 119 La. 665, 44 So. 336; Wightman *v.* Grand Lodge, etc., 121 Mo. App. 252, 98 S. W. 829; Fulton *v.* Metropolitan St. R. Co., 125 Mo. App. 239, 102 S. W. 47; Taylor *v.* Security L., etc., Co., 145 N. Car. 383, 59 S. E. 139; Holder *v.* State, (Tenn. 1907) 104 S. W. 225; Watson *v.* State, (Tex. Crim. 1907) 105 S. W. 509; Horn *v.* State, 12 Wyo. 80, 73 Pac. 705, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 490.

4. Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23; State *v.* Trueman, 34 Mont. 249, 85 Pac. 1024; Fulton *v.* Metropolitan St. R. Co., 125 Mo. App. 239, 102 S. W. 47; Com. *v.* Eyler, 217 Pa. St. 512, 66 Atl. 746; St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 926; Henderson *v.* State, 49 Tex. Crim. 269, 91 S. W. 569.

Testimony as to the Probable Effect of Liquor is inadmissible. Young *v.* Beveridge, (Neb. 1908) 115 N. W. 766.

5. Walker *v.* State, 146 Ala. 45, 41 So. 879.

6. White *v.* White, (Kan. 1907) 90 Pac. 1087; Fulton *v.* Metropolitan St. R. Co., 125 Mo. App. 239, 102 S. W. 47; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100.

7. Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23; Fulton *v.* Metropolitan St. R. Co., 125 Mo. App. 239, 102 S. W. 47.

8. State *v.* Turner, 143 N. Car. 641, 57 S. E. 158.

A Witness May Give His Opinion as to the state of feeling between parties, as friendly or unfriendly. Gabler *v.* State, 49 Tex. Crim. 623, 95 S. W. 521.

491. 2. McIlwain *v.* Gaebe, 128 Ill. App. 209; Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23; Federal Betterment Co. *v.* Reeves, (Kan. 1908) 93 Pac. 627; Illinois L. Ins. Co. *v.* De Lang, (Ky. 1907) 99 S. W. 616; Fulton *v.* Metropolitan St. R. Co., 125 Mo. App. 239, 102 S. W. 47; Young *v.* Beveridge, (Neb. 1908) 115 N. W. 766; St. Louis, etc., R. Co. *v.* Boyer, (Tex. Civ. App. 1906) 97 S. W. 1070; G. A. Duerler Mfg. Co. *v.* Eichhorn, (Tex. Civ. App. 1907) 99 S. W. 715; Cole *v.* State, (Tex. Crim. 1907) 101 S. W. 218; Davis *v.*

Oregon Short Line R. Co., 31 Utah 307, 88 Pac. 2.

3. Chicago, etc., R. Co. *v.* Johnson, 128 Ill. App. 20.

5. St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 926.

A Nonexpert Is Incapable of establishing the nature of a disease. Bardstown *v.* Nelson County, (Ky. 1906) 90 S. W. 246.

8. St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 926.

Testimony of a Nonexpert, that relatives of an insured had died of consumption, was held to be competent. Krapp *v.* Metropolitan L. Ins. Co., 143 Mich. 369, 106 N. W. 1107.

9. Williams *v.* State, (Ala. 1907) 43 So. 720; People *v.* Gray, 148 Cal. 507, 83 Pac. 707; People *v.* Weber, 149 Cal. 325, 86 Pac. 671; State *v.* James, 194 Mo. 268, 92 S. W. 679; Com. *v.* Eyler, 217 Pa. St. 512, 66 Atl. 746; Pool *v.* State, 48 Tex. Crim. 478, 88 S. W. 350; St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 926; Coffman *v.* State, (Tex. Crim. 1907) 103 S. W. 1128.

Identification by the Voice is not a mere statement of opinion, but is the statement of a conclusion reached directly and primarily from an operation of the sense of hearing, and is admissible. Mack *v.* State, (Fla. 1907) 44 So. 706.

492. 1. People *v.* Pekarz, 185 N. Y. 470, 78 N. E. 294; Franklin *v.* Boone, (Tex. Civ. App. 1905) 88 S. W. 262.

2. *United States.* — U. S. *v.* Chisholm, 153 Fed. 808.

Arkansas. — Byrd *v.* State, 76 Ark. 286, 88 S. W. 974.

California. — *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695; Dogherty *v.* Courtney, 150 Cal. 606, 89 Pac. 434; Arellanes *v.* Arellanes, 151 Cal. 443, 90 Pac. 1059; Nobles *v.* Hutton, (Cal. App. 1908) 93 Pac. 289; Huyck *v.* Rennie, 151 Cal. 411, 90 Pac. 929.

District of Columbia. — Turner *v.* American Security, etc., Co., 29 App. Cas. (D. C.) 460.

Georgia. — Proctor *v.* Pointer, 127 Ga. 134, 56 S. E. 111; Proctor *v.* Thompson, 127 Ga. 137, 56 S. E. 112; Brown *v.* McBride, 129 Ga. 92, 58 S. E. 702.

Idaho. — Weber *v.* Della Mountain Min. Co., (Idaho 1908) 94 Pac. 441.

Illinois. — Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23.

Iowa. — Lucas *v.* McDonald, 126 Iowa 678, 102 N. W. 532; State *v.* Hayden, 131 Iowa 1, 107 N. W. 929; Smith *v.* Ryan, (Iowa 1907) 112 N. W. 8.

Kansas. — Howard *v.* Carter, 71 Kan. 85, 80 Pac. 61; Kempf *v.* Koppa, 74 Kan. 153, 85 Pac. 806; United Commercial Travelers *v.* Barnes, 75 Kan. 720, 90 Pac. 293.

Kentucky. — Stafford *v.* Tarter, (Ky. 1906) 96 S. W. 1127.

Louisiana. — State *v.* Hogan, 117 La. 863, 42 So. 352.

Maryland. — Packham *v.* Ludwig, 103 Md. 416, 63 Atl. 1048.

Massachusetts. — Gorham *v.* Moor, (Mass. 1908) 84 N. E. 436.

Michigan. — Hibbard *v.* Baker, 141 Mich. 124, 104 N. W. 399; Blackman *v.* Andrews, 150 Mich. 322, 114 N. W. 218.

Missouri. — State *v.* Speyer, 194 Mo. 459, 91 S. W. 1075.

Montana. — State *v.* Penna, 35 Mont. 535, 90 Pac. 787.

Nebraska. — Reed *v.* State, 75 Neb. 509, 106 N. W. 649; *In re* Isaac, (Neb. 1906) 107 N. W. 1016; *In re* Wilson, (Neb. 1907) 111 N. W. 788.

New York. — People *v.* Silverman, 181 N. Y. 235, 73 N. E. 980; Schoenberg *v.* Ulman, (N. Y. City Ct. Spec. T.) 51 Misc. (N. Y.) 83, 99 N. Y. Supp. 650; Schoenberg *v.* City Trust Safe Deposit, etc., Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 104, 101 N. Y. Supp. 798; People *v.* Koerner, 117 N. Y. App. Div. 40, 102 N. Y. Supp. 93; *In re* Small, 118 N. Y. App. Div. 502, 103 N. Y. Supp. 705.

North Carolina. — Beard *v.* Southern R. Co., 143 N. Car. 136, 55 S. E. 505.

North Dakota. — Nelson *v.* Thompson, (N. Dak. 1907) 112 N. W. 1058.

Oregon. — Lassas *v.* McCarty, 47 Oregon 474, 84 Pac. 76.

Pennsylvania. — Com. *v.* Eyler, 217 Pa. St. 512, 66 Atl. 746.

Tennessee. — Atkins *v.* State, (Tenn. 1907) 105 S. W. 353.

Texas. — Wells *v.* State, (Tex. Crim. 1906) 98 S. W. 851; Fults *v.* State, (Tex. Crim. 1906) 98 S. W. 1057; Davis *v.* State, (Tex. Crim. 1905) 90 S. W. 646; St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 926; Henderson *v.* State, (Tex. Crim. 1906) 93 S. W. 550; Sims *v.* State, (Tex. Crim. 1907) 99 S. W. 555; Burton *v.* State, (Tex. Crim. 1907) 101 S. W. 226; Young *v.* State, (Tex. Crim. 1907) 102 S. W. 1144.

Washington. — State *v.* Constantine, (Wash. 1908) 93 Pac. 317.

Wisconsin. — Duthey *v.* State, 131 Wis. 178, 111 N. W. 222; Till *v.* State, (Wis. 1907) 111 N. W. 1109.

A Witness May Give an Opinion upon the question of a person's sanity after stating the facts upon which he bases it, but he may not give an opinion as to the degree of his mental capacity. Denver, etc., R. Co. *v.* Scott, 34 Colo. 99, 81 Pac. 763.

493. 3. Donaldson *v.* Missouri Pac. R. Co., (Mo. 1908) 107 S. W. 36.

5. Porter *v.* Buckley, (C. C. A.) 147 Fed. 140; Hall *v.* St. Louis, etc., R. Co., 124 Mo. App. 661, 101 S. W. 1137.

11. Burnett *v.* Freeman, 125 Mo. App. 683, 103 S. W. 121; Farley *v.* McBride, 74 Neb. 49, 103 N. W. 1036.

494. 2. Schofield *v.* Little, 2 Ga. App. 286, 58 S. E. 666.

3. **Fees of Expert Witnesses** are recoverable from the adverse party. Décarie *v.* Montreal-Ouest, 26 Quebec Super. Ct. 16.

8. Burnett *v.* Freeman, 125 Mo. App. 683, 103 S. W. 121.

495. 1. Décarie *v.* Montreal-Ouest, 26 Quebec Super. Ct. 16.

7. See Butler *v.* Toronto Mutoscope Co., 11 Ont. L. Rep. 12, 5 Ann. Cas. 992.

497. 1. Butler *v.* Toronto Mutoscope Co., 11 Ont. L. Rep. 12, 5 Ann. Cas. 992.

4. Farley *v.* McBride, 74 Neb. 49, 103 N. W. 1036.

EXPLOSIONS AND EXPLOSIVES.

500. 1. Brown *v.* Thomas Blackwell Coal, etc., Co., (Ky. 1907) 99 S. W. 299; Davis *v.* Charleston, etc., R. Co., 72 S. Car. 112, 51 S. E. 552

The Highest Degree of Care Is Required and every reasonable precaution must be taken to prevent explosions. Sowers *v.* McManus, 214 Pa. St. 244, 63 Atl. 601.

501. 1. Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730.

3. Moore *v.* Lanier, (Fla. 1906) 42 So. 462.

Liability for Servant's Negligence — Signal Torpedoes. — To the same effect as the first paragraph of the original note, see Merschel *v.* Louisville, etc., R. Co., (Ky. 1905) 85 S. W. 710.

Where an employee of the company placed a torpedo on the track within the prohibited distance from a public highway and a pedestrian on the highway was injured by the explosion of the torpedo, it was held that the railway company was liable. Illinois Cent. R. Co. *v.* Schultz, 87 Miss. 321, 39 So. 1005.

Electrical Explosions. — A street railway company is liable for injuries to a passenger caused by leaping from a car where an electrical explosion had occurred, the company being negligent in allowing the passenger to sit near a faulty controller. Williamson *v.* St. Louis Transit Co., 202 Mo. 345, 100 S. W. 1072.

Handling Gasoline. — An oil company is required to use ordinary care in transferring gasoline from one receptacle to another. Waters-Pierce Oil Co. *v.* Knisel, 79 Ark. 608, 96 S. W. 342.

If a Person Leaves Explosives in a Public Highway he is liable for any injury caused thereby. Wells *v.* Gallagher, 144 Ala. 363, 39 So. 747.

Evidence of Negligence Held Sufficient. — See Oulighan *v.* Butler, 189 Mass. 287, 75 N. E. 726; Mattson *v.* Minnesota, etc., R. Co., 95 Minn. 477, 104 N. W. 443; Hobbs *v.* Geo. W. Blanchard, etc., Co., (N. H. 1906) 65 Atl. 382.

4. Central Coal, etc., Co. *v.* Wilson, 83 Ark. 428, 104 S. W. 174; Brown *v.* Thomas Blackwell Coal, etc., Co., (Ky. 1907) 99 S. W. 299.

Where There Was No Witness to the Explosion which caused the death of the plaintiff's intestate it was held that there was a presumption that she exercised due care. Ellis *v.* Republic Oil Co., 133 Iowa 11, 110 N. W. 20; Nelson *v.* Republic Oil Co., (Iowa 1906) 110 N. W. 24.

The Use of Kerosene to Kindle Fires is not contributory negligence as a matter of law. Ellis *v.* Republic Oil Co., 133 Iowa 11, 110 N. W. 20; Nelson *v.* Republic Oil Co., (Iowa 1906) 110 N. W. 24.

Question for Jury. — Smith *v.* Pittsburg, etc., R. Co., 210 Pa. St. 345, 59 Atl. 1077; Morrison *v.* Pittsburg, etc., R. Co., 26 Pa. Super. Ct. 338.

Evidence Held Insufficient. — Hobbs *v.* Geo. W. Blanchard, etc., Co., (N. H. 1906) 65 Atl. 382.

502. 2. Gould *v.* Winona Gas Co., 100 Minn. 258, 111 N. W. 254; Sowers *v.* McManus, 214 Pa. St. 244, 63 Atl. 601.

Burden of Proving Negligence on Plaintiff. — Waters-Pierce Oil Co. *v.* Knisel, 79 Ark. 608, 96 S. W. 342; Beebe *v.* St. Louis Transit Co., 206 Mo. 419, 103 S. W. 1019 (electrical explosion on street car).

504. 2. Ultima Thule, etc., R. Co. *v.* Calhoun, 83 Ark. 318, 103 S. W. 726.

505. 2. Ultima Thule, etc., R. Co. *v.* Calhoun, 83 Ark. 318, 103 S. W. 726.

5. McMahon *v.* Bangs, 5 Penn. (Del.) 178, 62 Atl. 1098.

506. 1. Kerbaugh *v.* Caldwell, (C. C. A.) 151 Fed. 194, 10 Ann. Cas. 453; Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730; Whaley *v.* Citizens' Nat. Bank, 28 Pa. Super. Ct. 531.

2. Moeckel *v.* Cross, 190 Mass. 280, 76 N. E. 447; Waters-Pierce Oil Co. *v.* Deselms, 18 Okla. 107, 89 Pac. 212.

Violation of Ordinance Negligence Per Se. — Smith *v.* Mine, etc., Supply Co., (Utah 1907) 88 Pac. 683.

Under a Statute requiring oils to be inspected and making it an offense to sell oils that have not been inspected, it was held that a person who sold oil in violation of this act was liable to the purchaser for any damages caused by the use of such oils. Stowell *v.* Standard Oil Co., 139 Mich. 18, 102 N. W. 227.

3. O'Hara *v.* Nelson, (N. J. 1906) 63 Atl. 836.

What Constitutes Nuisance Usually Question of Fact. — Kerbaugh *v.* Caldwell, (C. C. A.) 151 Fed. 194, 10 Ann. Cas. 453.

5. Kerbaugh *v.* Caldwell, (C. C. A.) 151 Fed. 194, 10 Ann. Cas. 453; Chambers *v.* Milner Coal, etc., Co., 143 Ala. 255, 39 So. 170; Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 731; O'Hara *v.* Nelson, (N. J. 1906) 63 Atl. 836.

Highest Degree of Care Required. — Mattson *v.* Minnesota, etc., R. Co., 95 Minn. 477, 104 N. W. 443.

507. 2. Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730.

3. Chambers *v.* Milner Coal, etc., Co., 143 Ala. 255, 39 So. 170.

4. **Injunction May Issue to Restrain Further Continuance.** — Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730.

6. Spiegler *v.* Chicago, 216 Ill. 114, 74 N. E. 718; Crowley *v.* Ellsworth, 114 La. 308, 38 So. 199.

6*a*. **State Regulations.** — Under statute, Conn. Gen. Stat. (1902), § 4579, providing a penalty for keeping for sale any fluids for illuminating purposes inflammable at a less temperature than 110 degrees Fahrenheit, it was held that one who keeps such fluids as the agent of another is liable. State *v.* Boylan, 79 Conn. 463, 65 Atl. 595.

May Prohibit Transportation of Explosives Through Streets. — Walter *v.* Bowling Green, 26 Ohio Cir. Ct. 756.

An Ordinance Making It Unlawful to "Have or Keep" explosives except in places approved by the city was held not to apply to explosives taken out for immediate use and kept in places along the line of work. Hall *v.* New York, etc., R. Co., 121 N. Y. App. Div. 488, 106 N. Y. Supp. 106.

508. 1. Crowley *v.* Ellsworth, 114 La. 308, 38 So. 199.

2. O'Neill *v.* James, 138 Mich. 567, 101 N. W. 828, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 508.

Sale of Gasoline as Kerosene.— Ellis *v.* Republic Oil Co., 133 Iowa 11, 110 N. W. 20; Nelson *v.* Republic Oil Co., (Iowa 1906) 110 N. W. 24.

It Is Necessary to Prove the Seller's Knowledge of the dangerous character of the article, except in the case of articles essentially dangerous. Bruckel *v.* Milhau, 116 N. Y. App. Div. 832, 102 N. Y. Supp. 395.

4. Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 627, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 508; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 631; Langshorne *v.* Wilson, (Ky. 1906) 91 S. W. 254; Gould *v.* Winona Gas Co., 100 Minn. 258, 111 N. W. 254, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 508; Thurmond *v.* Ash Grove White Lime Assoc., 125 Mo. App. 73, 102 S. W. 617, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 508; Hoffman *v.* Walsh, 117 Mo. App. 278, 93 S. W. 853; Page *v.* Dempsey, 184 N. Y. 245, 77 N. E. 9, *reversing* 99 N. Y. App. Div. 152, 90 N. Y. Supp. 1019; Forrester *v.* O'Rourke Engineering Constr. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 390, 95 N. Y. Supp. 600; Richter *v.* Solomon, (Supm. Ct. App. T.) 104 N. Y. Supp. 405 (injury to person of plaintiff).

509. 1. Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 627, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 509; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 631.

That the Use of Dynamite in the Construction of a Tunnel under a city is inherently dangerous is a matter of judicial notice. Chicago *v.* Murdoch, 113 Ill. App. 656, *affirmed* 212 Ill. 9, 72 N. E. 46.

2. Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 627, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 509; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 631; Hoffman *v.* Walsh, 117 Mo. App. 278, 93 S. W. 853; Thurmond *v.* Ash Grove White Lime Assoc., 125 Mo. App. 73, 102 S. W. 617; Page *v.* Dempsey, 184 N. Y. 245, 77 N. E. 9, *reversing* 99 N. Y. App. Div. 152, 90 N. Y. Supp. 1019; Forrester *v.* O'Rourke Engineering Constr. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 390, 95 N. Y. Supp. 600.

510. 1. Page *v.* Dempsey, 184 N. Y. 245, 77 N. E. 9, *reversing* 99 N. Y. App. Div. 152, 90 N. Y. Supp. 1019.

Evidence of Negligence Held Sufficient to Go to Jury. — Kimberly *v.* Howland, 143 N. Car. 398, 55 S. E. 778.

7. Kimberly *v.* Howland, 143 N. Car. 398, 55 S. E. 778.

512. 1. Evidence of Negligence Sufficient to Go to Jury. — Davis *v.* Charleston, etc., R. Co., 72 S. Car. 112, 51 S. E. 552.

3. The Rule Does Not Apply to a public work performed in a manner inherently dangerous, nor where an individual has work done pursuant to a special franchise or charter power. Chicago *v.* Murdoch, 113 Ill. App. 656, *affirmed* 212 Ill. 9, 72 N. E. 46.

4. Hall *v.* New York, etc., R. Co., 121 N. Y. App. Div. 488, 106 N. Y. Supp. 106.

7. Davis *v.* Charleston, etc., R. Co., 72 S. Car. 112, 51 S. E. 552.

513. 1. Ultima Thule, etc., R. Co. *v.* Calhoun, 83 Ark. 318, 103 S. W. 726.

514. 3. Moore *v.* Lanier, (Fla. 1906) 42 So. 462.

Evidence of Negligence Sufficient to Go to Jury. — Olive Stone Works *v.* Ft. Pitt Gas Co., 210 Pa. St. 141, 59 Atl. 819.

5. Gould *v.* Winona Gas Co., 100 Minn. 258, 111 N. W. 254.

High Degree of Care Required. — Morgan *v.* United Gas Imp. Co., 214 Pa. St. 109, 63 Atl. 417; Shirey *v.* Consumers' Gas Co., 215 Pa. St. 399, 64 Atl. 541.

515. 1. Shirey *v.* Consumers' Gas Co., 215 Pa. St. 399, 64 Atl. 541.

516. 1. Moore *v.* Lanier, (Fla. 1906) 42 So. 462.

3. Central Coal, etc., Co. *v.* Wilson, 83 Ark. 428, 104 S. W. 174.

518. 2. Walker *v.* New York, 107 N. Y. App. Div. 351, 95 N. Y. Supp. 121.

4. Mattson *v.* Minnesota, etc., R. Co., 95 Minn. 477, 104 N. W. 443.

EX POST FACTO LAWS.

525. 1. Other Definitions. — Meffert *v.* Packer, 195 U. S. 625, 25 U. S. Sup. Ct. 790, *affirming* 66 Kan. 710, 72 Pac. 247.

526. 1. Meffert *v.* Packer, 195 U. S. 625, 25 U. S. Sup. Ct. 790, *affirming* 66 Kan. 710, 72 Pac. 247; American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033.

Illustrations.— A law providing for the revocation of a physician's license, procured by fraud before the passage of the law, is not *ex post facto*. State *v.* Schaeffer, 129 Wis. 459, 109 N. W. 522.

An act requiring property owners to list for assessment in the year following the passage of the act all property not listed during the preceding five years was held not to be *ex post facto*. Eastern Kentucky Coal Lands Corp. *v.* Com., (Ky. 1907) 106 S. W. 260.

529. 4. Examples of Laws Mitigating. — A statute enlarging the time between sentence and execution is not *ex post facto*. Rooney *v.* State, 196 U. S. 319, 25 U. S. Sup. Ct. 264, *affirming* 12 N. Dak. 144, 95 N. W. 513.

530. 1. A Statute Changing the Place of Execution of a convicted murderer from the county jail to the state penitentiary, is not *ex post facto*. Rooney *v.* State, 196 U. S. 319, 25 U. S. Sup. Ct. 264, *affirming* 12 N. Dak. 144, 95 N. W. 513.

531. 1. Goode *v.* State, 50 Fla. 45, 39 So. 461.

2. Wester *v.* State, 142 Ala. 56, 38 So. 1010.

3. See State *v.* Texas, etc., R. Co., (Tex. Civ. App. 1906) 103 S. W. 653.

Qualifications for Doctor. — A statute prescribing the qualifications for practicing medicine is not *ex post facto*. Com. *v.* Densten, 30 Pa. Super. Ct. 631. See also Meffert *v.* Packer, 195 U. S. 625, 25 U. S. Sup. Ct. 790, *affirming* 66 Kan. 710, 72 Pac. 247; Czarra *v.* Medical Sup'rs, 25 App. Cas. (D. C.) 443.

An Act for the Taxing of Omitted Property and providing a penalty for failure to pay the

taxes is *ex post facto* in so far as the penalty is [illegible]. Shuman v. Bardstown, [illegible] Ky. [illegible], 87 S. W. 1096.

533. 1. Ashenfelter *v.* Carpenter, 37 Colo. 534, 87 Pac. 800; Gutschall *v.* Carpenter, 37 Colo. 536, 87 Pac. 801.

Calling Special Term for Purpose of Passing Sentence. — *Ex p.* Boyd, (Tex. Crim. 1906) 96 S. W. 1079, *quoting* 12 Am. and Eng. Encyc. of Law (2d ed.) 533.

534. 2. *Ex p.* Boyd, (Tex. Crim. 1906) 96 S. W. 1079, *quoting* 12 Am. and Eng. Encyc. of Law (2d ed.) 534.

3. *Ex p.* Boyd, (Tex. Crim. 1906) 96 S. W. 1079, *quoting* 12 Am. and Eng. Encyc. of Law (2d ed.) 534.

EXPOSURE OF PERSON.

539. 1. **A Grocery Store** with large plate glass windows and glass doors is a public place. State *v.* Goldstein, 72 N. J. L. 336, 62 Atl. 1006, *affirmed* 65 Atl. 1119.

EXPRESS.

541. 2. **Express Malice Aforethought** is where one person kills another with a deliberate mind and former design. State *v.* Johns, (Del. 1906) 65 Atl. 763.

EXPRESS COMPANIES.

543. 1. Platt *v.* Le Cocq, 150 Fed. 391, *citing* 12 Am. and Eng. Encyc. of Law (2d ed.) 543; Dulaney *v.* United R., etc., Co., 104 Md. 423, 65 Atl. 45, *citing* 12 Am. and Eng. Encyc. of Law (2d ed.) 543.

Courts Will Take Judicial Notice of the nature and business of express companies. Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458.

2. Dulaney *v.* United R., etc., Co., 104 Md. 423, 65 Atl. 45.

545. 4. Crescent Liquor Co. *v.* Platt, 148 Fed. 894; Bates *v.* Weir, 121 N. Y. App. Div. 275, 105 N. Y. Supp. 785.

Time. — A rule of the company, that all money packages must be received by the company before 7:45 A. M. of the day of shipment, is unreasonable. Platt *v.* Le Cocq, 150 Fed. [illegible].

Mandamus Will Lie to Compel the Company to Carry the Goods. — Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185.

546. 1. **Intoxicating Liquor.** — As to constitutionality of state statutes which prohibit express companies from carrying intoxicating liquors, see Crescent Liquor Co. *v.* Platt, 148 Fed. 894.

An Invalid City Ordinance which required all common carriers to pay a license fee before delivering any packages containing intoxicating liquors to parties in the city was held to be no excuse for the refusal of an express company to transport intoxicating liquors to that city. Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185.

3. Hayes *v.* Adams Express Co., 73 N. J. L. 105, 62 Atl. 284, *affirmed* (N. J. 1907) 65 Atl. 1044; Allen *v.* Wells, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 610, 95 N. Y. Supp. 597; Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949, *citing* 12 Am. and Eng. Encyc. of Law (2d ed.) 546; Bochrer *v.* Juergens, etc., Co., (Wis. 1907) 113 N. W. 657, *citing* 12 Am. and Eng. Encyc. of Law (2d ed.) 546.

The Act of God, which excuses an express company from liability, must be the proximate cause of the damage. Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949.

Shipper May Insist that Company Assume Its Common-law Liability. — Murphy *v.* Wells, 99 Minn. 230, 108 N. W. 1070.

If the Proximate Cause of the Loss was the negligence of the shipper in marking or packing, the company is not liable. Broadwood *v.* Southern Express Co., 148 Ala. 17, 41 So. 769.

Perishable Commodities. — If an express company undertakes to carry perishable articles in refrigerator cars it is its duty to provide a supply of ice ample for the purpose, and nothing will serve to excuse except an act of God. C. C. Taft Co. *v.* American Express Co., 133 Iowa 522, 110 N. W. 897.

548. 1. Jacoby *v.* Platt, (Supm. Ct. App. T.) 94 N. Y. Supp. 435 (evidence of negligence sufficient).

2. C. C. Taft Co. *v.* American Express Co., 133 Iowa 522, 110 N. W. 897.

Care and Diligence Required. — The carrier must, even when a valid contract limiting liability exists, exercise such care as prudent persons would ordinarily use for the safety of the thing shipped. Southern Express Co. *v.* Owens, 146 Ala. 412, 41 So. 752.

Transportation of Animals. — It is not negligence for an express company to fail to provide an attendant for a horse shipped by express, where it is not shown that such an attendant is reasonably necessary. Ames *v.* Fargo, 114 N. Y. App. Div. 666, 99 N. Y. Supp. 994.

4. Reasonable Time Is Usually a Question of Fact. — Dressner *v.* Manhattan Delivery Co., (Supm. Ct. App. T.) 92 N. Y. Supp. 800.

Perishable Goods. — An express company which carries perishable goods is liable for failure to furnish safe and rapid transit for the whole distance. E. T. James Co. *v.* Dominion Express Co., 13 Ont. L. Rep. 211.

549. 1. **Carrier Relieved from Liability by Fraud of Shipper as to Value.** — Southern Express Co. *v.* Owens, 146 Ala. 412, 41 So. 752.

2. **Effect of Shipper's Failure to State Value.** — To the same effect as Texas Express Co. *v.* Scott, 2 Tex. App. Civ. Cas., § 72, cited in the original note, see Southern Express Co. *v.* Owens, 146 Ala. 412, 41 So. 752.

3. C. C. Taft Co. *v.* American Express Co., 133 Iowa 522, 110 N. W. 897; Fockens *v.* U. S. Express Co., 99 Minn. 404, 109 N. W. 834.

550. 2. Ames *v.* Fargo, 114 N. Y. App. Div. 666, 99 N. Y. Supp. 994.

Question of Delivery Is for the Jury. — Wells *v.* Hanson, (Tex. Civ. App. 1905) 91 S. W. 321.

Where an Express Company by Its Course of Dealing holds out persons who wear its uniform and drive wagons marked with its name, as having authority to receive goods, and a shipper delivers goods to such a person, it is proper to infer, in the absence of contrary evidence, that such person is an agent of the company. Reel *v.* Adams Express Co., 27 Pa. Super. Ct. 77.

4. State *v.* Intoxicating Liquors, 101 Me. 430, 64 Atl. 812, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 550; Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 550.

551. 1. Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 551.

3. Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949. See also Smith *v.* Canadian Express Co., 12 Ont. L. Rep. 84.

553. 1. American Standard Jewelry Co. *v.* Witherington, 81 Ark. 134, 98 S. W. 695; Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949.

State Regulation of Place of Delivery. — A statute requiring express companies to deliver express matter to all persons to whom the same are directed, living in cities of certain population, is not an interference with interstate commerce nor a deprivation of property without due process of law. U. S. Express Co. *v.* State, 164 Ind. 196, 73 N. E. 101.

2. Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949.

3. Rogers *v.* Fargo, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 155, 93 N. Y. Supp. 550 (evidence of constructive delivery by notice was held insufficient); Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 553.

The Company Is Not Liable for Failure to Give Notice where the package is not addressed to the consignee's usual shipping point. American Standard Jewelry Co. *v.* Witherington, 81 Ark. 134, 98 S. W. 695.

6. **In Small Places** where delivery is made at the office of the company, the consignee is entitled to a reasonable time for removal of the goods after notice has been given, and the company's responsibility as an insurer does not terminate until such time has expired. Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949.

7. Danciger *v.* Wells, 154 Fed. 379, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 553, and *explaining* Crescent Liquor Co. *v.* Platt, 148 Fed. 894.

Contra. — Crescent Liquor Co. *v.* Platt, 148 Fed. 894, holding that a carrier cannot refuse to accept C. O. D. packages of particular commodities.

Where the Shipper Agrees that the Company May Return the Property and that he will pay the express charges both ways, it is held that there is an implied condition that the property will be returned in good order. Freeman *v.* Weir, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 681, 94 N. Y. Supp. 327.

C. O. D. Contract Cannot Be Proven by Showing Usage. — Danciger *v.* Wells, 154 Fed. 379.

555. 4. Smith *v.* Canadian Express Co., 12 Ont. L. Rep. 84.

556. 5. Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949.

557. 3. Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949.

558. 1 Presumption That Consignee Is the **Owner.** — Dressner *v.* Manhattan Delivery Co., (Supm. Ct. App. T.) 92 N. Y. Supp. 800.

2. Pratt *v.* Northern Pac. Express Co., 13 Idaho 373, 90 Pac. 341, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 558; Irwin Pank *v.* American Express Co., 127 Iowa 1, 102 N. W. 107; Oppenheimer *v.* Wells, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 385, 106 N. Y. Supp. 547.

560. 2. **Evidence of Agency.** — Pacific Express Co. *v.* Needham, (Tex. Civ. App. 1906) 94 S. W. 1070.

561. 3. Southern Express Co. *v.* Owens, 146 Ala. 412, 41 So. 752; Adams Express Co. *v.* Adams, 29 App. Cas. (D. C.) 250; Gerry *v.* American Express Co., 100 Me. 519, 62 Atl. 498; De Wolff *v.* Adams Express Co., (Md. 1907) 67 Atl. 1099; Murphy *v.* Wells, 99 Minn. 230, 108 N. W. 1070; Norton *v.* Adams Express Co., 123 Mo. App. 233, 100 S. W. 502; Colvin *v.* Fargo, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 642, 94 N. Y. Supp. 377; Ames *v.* Fargo, 114 N. Y. App. Div. 666, 99 N. Y. Supp. 994.

Express Company May Not Stipulate against the Negligence of the Railroad Company. — Southern Express Co. *v.* Rothenberg, 87 Miss. 656, 40 So. 65.

There Must Be a Consideration for the Contract. —Southern Express Co. *v.* Hill, 81 Ark. 1, 98 S. W. 371.

Mere Knowledge by Shipper that a company's rates are based upon the value of the goods shipped will not lessen the liability of the carrier to answer for the value of the goods, in the absence of the shipper's assent to such restriction. Hayes *v.* Adams Express Co., 73 N. J. L. 105, 62 Atl. 284, *affirmed* (N. J. 1907) 65 Atl. 1044.

563. 2. Macfarlane *v.* Adams Express Co., 137 Fed. 982; De Wolff *v.* Adams Express Co., (Md. 1907) 67 Atl. 1099; Ames *v.* Fargo, 114 N. Y. App. Div. 666, 99 N. Y. Supp. 994; Coggswell *v.* Weir, (Supm. Ct. App. T.) 101 N. Y. Supp. 188 (evidence of acceptance held sufficient for the jury).

Receipt Made Out by Shipper. — Gerry *v.* American Express Co., 100 Me. 519, 62 Atl. 498; Fried *v.* Wells, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 669, 100 N. Y. Supp. 1007.

564. 2. Hayes *v.* Adams Express Co., 73 N. J. L. 105, 62 Atl. 284, *affirmed* (N. J. 1907) 65 Atl. 1044.

Burden of Proof on Company to Show Limitation of Liability. — Adams Express Co. *v.* Adams, 29 App. Cas. (D. C.) 250.

Assent a Question of Fact in "Baggage Cases." — Colvin *v.* Fargo, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 642, 94 N. Y. Supp. 377.

Georgia Statute. — Southern Express Co. *v.* Briggs, 1 Ga. App. 294, 57 S. E. 1066.

565. 1. Bates *v.* Weir, 121 N. Y. App. Div. 275, 105 N. Y. Supp. 785.

2. **What Law Governs.** — In the federal courts it is held that the defendant's liability under a receipt or bill of lading is to be determined by the general commercial law, and that therefore the federal courts are not bound by the decisions of the courts in which the contract was made. Macfarlane *v.* Adams Express Co., 137 Fed. 982.

3. Hayes *v.* Adams Express Co., 73 N. J. L. 105, 62 Atl. 284, *affirmed* (N. J. 1907) 65 Atl.

5. Southern Express Co. *v.* Owens, 146

Ala. 412, 41 So. 752; Gerry *v.* American Express Co., 100 Me. 519, 62 Atl. 498; Southern Express Co. *v.* Stevenson, 89 Miss. 233, 42 So. 670; Norton *v.* Adams Express Co., 123 Mo. App. 233, 100 S. W. 502.

Contra. — Southern Express Co. *v.* Rothenberg, 87 Miss. 656, 40 So. 65, holding that a stipulation that the liability of the company shall be a certain sum, no matter how great the value of the package lost, is against public policy. See also Murphy *v.* Wells, 99 Minn. 230, 108 N. W. 1070.

566. 1. Macfarlane *v.* Adams Express Co., 137 Fed. 982; De Wolff *v.* Adams Express Co., (Md. 1907) 67 Atl. 1099; Colvin *v.* Fargo, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 642, 94 N. Y. Supp. 377; Royal Costume Co. *v.* Weir, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 376, 95 N. Y. Supp. 575.

Shipper Is Estopped from Claiming Higher Valuation. — Bates *v.* Weir, 121 N. Y. App. Div. 275, 105 N. Y. Supp. 785.

2. Southern Express Co. *v.* Owens, 146 Ala. 412, 41 So. 752; Broadwood *v.* Southern Express Co., 148 Ala. 17, 41 So. 769.

567. 1. **Ninety Days Held a Reasonable Time.** — Broadwood *v.* Southern Express Co., 148 Ala. 17, 41 So. 769.

Question of Reasonableness Is for the Jury. — Adams Express Co. *v.* Gordon, 27 Ohio Cir. Ct. 243.

A Verbal Notice of Loss, followed by a written demand after the agent had reported that he could not find the package, was held to be a sufficient notice. Southern Express Co. *v.* Stevenson, 89 Miss. 233, 42 So. 670.

568. 1. **Amount of Recovery for Delay.** — Clark *v.* American Express Co., 130 Iowa 254, 106 N. W. 642; Southern Express Co. *v.* Briggs, 1 Ga. App. 294, 57 S. E. 1066; Block *v.* U. S. Express Co., (N. J. 1907) 68 Atl. 173; Lambert-Murray Co. *v.* Southern Express Co., (N. Car. 1907) 59 S. E. 991.

Where the plaintiff's trunk was lost for a considerable time it was held that the measure of damages was the damage occasioned to the plaintiff by the delay, and not the full value of the trunk and contents. Wells *v.* Hanson, (Tex. Civ. App. 1905) 91 S. W. 321.

569. 1. **Where the Article Has No Market Value** the rule of damages is its value to the plaintiff, and to find this value inquiry must be made into the constituent elements of the cost to the plaintiff in producing it. Southern Express Co. *v.* Owens, 146 Ala. 412, 41 So. 752.

3. **Double Damages.** — By statute in some states the company is liable for double damages if the discrimination is intentional. American Express Co. *v.* Crawley, 88 Miss. 525, 41 So. 261.

EXTORTION.

576. 1. State *v.* Coleman, 99 Minn. 487, 110 N. W. 5; *In re* McCabe, 29 Mont. 28, 73 Pac. 1106, holding that deprivation of the right to work is not deprivation of property within the statutory definition; People *v.* Weinseimer, 117 N. Y. App. Div. 603, 102 N. Y. Supp. 579; Com. *v.* Wilson, 30 Pa. Super. Ct. 26; State *v.* Louanis, 79 Vt. 463, 65 Atl. 532.

577. 1. Com. *v.* Wilson, 30 Pa. Super. Ct. 26.

Distinguished from Bribery. — See Com. *v.* Wilson, 30 Pa. Super. Ct. 26.

3. **Constables.** — See Hanley *v.* State, 125 Wis. 396, 104 N. W. 57, wherein a constable was convicted.

A Captain of Police may be guilty of common-law extortion. Com. *v.* Wilson, 30 Pa. Super. Ct. 26.

578. 1. **A Special Agent of the Land Department** of the United States has been held not to be an officer of the United States within Rev. Stat. U. S., § 5481, directed against extortion. U. S. *v.* Schlierholz, 137 Fed. 616.

580. 2. U. S. *v.* Schlierholz, 137 Fed. 616.

4. See People *v.* Weinseimer, 117 N. Y. App. Div. 603, 102 N. Y. Supp. 579.

5. **Minnesota Statute — Obtaining of Money, Not Intent, Is Gist of Offense.** — State *v.* Coleman, 99 Minn. 487, 110 N. W. 5, a case of statutory extortion by one not a public officer.

581. 6. Mitchell *v.* Wheeler, 20 Colo. App. 159, 77 Pac. 361; Plyley *v.* Allison, 113 Tenn. 500, 82 S. W. 475.

582. 6. Com. *v.* Wilson, 30 Pa. Super. Ct. 26.

584. 4. Mitchell *v.* Wheeler, 20 Colo. App. 159, 77 Pac. 361.

587. 2. Marlatte *v.* Weickgenant, 147 Mich. 266, 110 N. W. 1061.

4. Mitchell *v.* Wheeler, 20 Colo. App. 159, 77 Pac. 361.

EXTRADITION.

592. 1. Greene *v.* U. S., (C. C. A.) 154 Fed. 401, *affirming* 146 Fed. 803.

3*a*. **Foreign Extradition Treaties Construed.** — *Ex p.* Calberla, (1907) 2 K. B. 861 (English Extradition Treaty with Germany); *Ex p.* Van der Auwera, (1907) 2 K. B. 157 (English Extradition Treaty with Belgium); *Ex p.* Percival, (1907) 1 K. B. 696 (Crimes Act [Victoria] 1890, Extradition between England and Victoria).

593. 4. **The Crime Need Not Have the Same Name in Both Countries.** — *Re* Martin, 8 Can. Crim. Cas. (N. W. Ter.) 326.

Crime against What Jurisdiction. — In extradition from a foreign country to the United States it is sufficient if the crime charged is a crime in one of the states, where that state is in reality the demanding party. *In re* Collins, 11 British Columbia 436; *Re* Lorenz, 9 Can. Crim. Cas. (Quebec) 158.

Extraditable Offenses under Treaty with Canada — A conspiracy to defraud is not extraditable. U. S. *v.* Gaynor, 9 Can. Crim. Cas. 205.

"Grand larceny" is an extraditable offense. *Re* Lewis, 9 Can. Crim. Cas. (N. W. Ter.) 233.

Where the Demand for Extradition Was Based on an Indictment for Conspiracy, which was not an extraditable offense, it was held that the demanding country was not estopped from treating the acts of conspiracy as independent acts of larceny for the purposes of extradition. U. S. *v.* Gaynor, 9 Can. Crim. Cas. 205.

595. 1. Greene *v.* U. S., (C. C. A.) 154 Fed. 401, *affirming* 146 Fed. 803.

597. 2. Rutledge *v.* Krauss, 73 N. J. L. 397, 63 Atl. 988, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 597.

Rule Not Applicable to Crimes Committed Subsequent to Extradition. — *Ex p.* Collins, 151 Cal. 340, 90 Pac. 827.

Imprisonment on Previous Conviction. — A prisoner cannot be extradited for one crime and then be seized and imprisoned for another offense of which he was convicted before leaving the country. *Ex p.* Browne, 148 Fed. 68, *affirmed* 205 U. S. 309, 27 U. S. Sup. Ct. 539.

It Is Not Necessary that the Crime Have the Same Name in both countries if the extradition and indictment are for the same criminal acts. Greene *v.* U. S., (C. C. A.) 154 Fed. 401, *affirming* 146 Fed. 803.

Where the Indictment Was Quashed it was held not to be a violation of the prisoner's rights to hold him until a new indictment could be returned on the same facts. *Ex p.* Fischl, (Tex. Crim. 1907) 100 S. W. 773.

598. 3. Greene *v.* U. S., (C. C. A.) 154 Fed. 401, *affirming* 146 Fed. 803.

4. *Ex p.* Collins, 151 Cal. 340, 90 Pac. 827.

600. 1. **Provisions of the Act Must Be Strictly Complied with.** — *Ex p.* Cheatham, (Tex. Crim. 1906) 95 S. W. 1077.

5. *Ex p.* Dennison, 72 Neb. 703, 101 N. W. 1045, *affirmed* 196 U. S. 637, 25 U. S. Sup. Ct. 795.

8. **Porto Rico.** — The Act of Congress, Rev. Stat. U. S., § 5278, applies to Porto Rico. *In re* Kopel, 148 Fed. 505; People *v.* Bingham, 189 N. Y. 124, 81 N. E. 773, *affirming* 117 N. Y. App. Div. 411, 102 N. Y. Supp. 878.

Extradition to and from Alaska. — Gillis *v.* Leekley, 38 Wash. 156, 80 Pac. 300.

601. 6. *Ex p.* Pierce, 155 Fed. 663; *In re* Waterman, (Nev. 1907) 89 Pac. 291.

An Unsatisfied Judgment of Conviction constitutes a "charge" within the meaning of the constitution. Hughes *v.* Pflanz, (C. C. A.) 138 Fed. 980.

A Person Is "Charged" with Crime if a complaint has been filed against him before a committing magistrate. *In re* Strauss, 197 U. S. 324, 25 U. S. Sup. Ct. 535.

Whether a Person Is Charged with Crime is a question of law. Depoilly *v.* Palmer, 28 App. Cas. (D. C.) 324.

7. Pettibone *v.* Nichols, 203 U. S. 192, 27 U. S. Sup. Ct. 111; Moyer *v.* Nichols, 203 U. S. 221, 27 U. S. Sup. Ct. 121; *Ex p.* Pierce, 155 Fed. 663; Farrell *v.* Hawley, 78 Conn. 150, 61 Atl. 502; State *v.* Bates, 101 Minn. 303, 112 N. W. 260; *In re* Waterman, (Nev. 1907) 89 Pac. 291; *Ex p.* Dennison, 72 Neb. 703, 101 N. W. 1045, *affirmed* 196 U. S. 637, 25 U. S. Sup. Ct. 795; Regan *v.* Jessup, 34 Tex. Civ. App. 74, 77 S. W. 972.

Whether a Person Is a Fugitive from Justice is a question of fact. Depoilly *v.* Palmer, 28 App. Cas. (D. C.) 324.

The Defense that the Prisoner Is Not a Fugitive from Justice must be raised before he is taken from the state. *Ex p.* Moyer, 12 Idaho 250, 85 Pac. 897; *Ex p.* Pettibone, 12 Idaho 264, 85 Pac. 902; *Ex p.* Haywood, 12 Idaho 264, 85 Pac. 902.

602. 2. Appleyard *v.* Com., 203 U. S. 222, 27 U. S. Sup. Ct. 122; Hughes *v.* Pflanz, (C. C. A.) 138 Fed. 980.

3. Depoilly *v.* Palmer, 28 App. Cas. (D. C.) 324; *Ex p.* Edwards, (Miss. 1907) 44 So. 827.

603. 1. **Contra.** — Appleyard *v.* Com., 203 U. S. 222, 27 U. S. Sup. Ct. 122, holding that it is no defense that the prisoner, when he left the state, had no belief that he had violated any of its criminal laws.

2. *Ex p.* Dennison, 72 Neb. 703, 101 N. W. 1045, *affirmed* 196 U. S. 637, 25 U. S. Sup. Ct. 795.

3. Farrell *v.* Hawley, 78 Conn. 150, 61 Atl. 502; Regan *v.* Jessup, 34 Tex. Civ. App. 74, 77 S. W. 972.

604. 4. Farrell *v.* Hawley, 78 Conn. 150, 61 Atl. 502.

Governor Not Obliged to Demand Proof Beyond Evidence of Requisition Papers. — Pettibone *v.* Nichols, 203 U. S. 192, 27 U. S. Sup. Ct. 111; Moyer *v.* Nichols, 203 U. S. 221, 27 U. S. Sup. Ct. 121.

The Finding by the Governor that the Prisoner Is a Fugitive is *prima facie* conclusive. *Ex p.* Dennison, 72 Neb. 703, 101 N. W. 1045, *affirmed* 196 U. S. 637, 25 U. S. Sup. Ct. 795.

605. 2. *Ex p.* Denning, (Tex. Crim. 1907) 100 S. W. 401.

606. 1. Pettibone *v.* Nichols, 203 U. S. 192, 27 U. S. Sup. Ct. 111; Moyer *v.* Nichols, 203 U. S. 221, 27 U. S. Sup. Ct. 121.

2. Pettibone *v.* Nichols, 203 U. S. 192, 27 U. S. Sup. Ct. 111; Moyer *v.* Nichols, 203 U. S. 221, 27 U. S. Sup. Ct. 121; *Ex p.* Cheatham, (Tex. Crim. 1906) 95 S. W. 1077.

Executive Action Is Not Reviewable by the courts of the demanding state. *Ex p.* Moyer, 12 Idaho 250, 85 Pac. 897; *Ex p.* Pettibone, 12 Idaho 264, 85 Pac. 902; *Ex p.* Haywood, 12 Idaho 264, 85 Pac. 902.

4. Knox *v.* State, 164 Ind. 226, 73 N. E. 255; Taylor *v.* Com., (Ky. 1906) 96 S. W. 440; Rutledge *v.* Krauss, 73 N. J. L. 397, 63 Atl. 988.

607. 1. Rutledge *v.* Krauss, 73 N. J. L. 397, 63 Atl. 988.

3. Rutledge *v.* Krauss, 73 N. J. L. 397, 63 Atl. 988.

5. *Compare* Rutledge *v.* Krauss, 73 N. J. L. 397, 63 Atl. 988.

7. Pettibone *v.* Nichols, 203 U. S. 192, 27 U. S. Sup. Ct. 111; Moyer *v.* Nichols, 203 U. S. 221, 27 U. S. Sup. Ct. 121; *Ex p.* Moyer, 12 Idaho 250, 85 Pac. 897, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 607; *Ex p.* Pettibone, 12 Idaho 264, 85 Pac. 902; *Ex p.* Haywood, 12 Idaho 264, 85 Pac. 902.

608. 4. Regan *v.* Jessup, 34 Tex. Civ. App. 74, 77 S. W. 972, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608.

EXTRAORDINARY.

609. 3. **Extraordinary Emergency — Eight Hours Law.** — See U. S. *v.* Sheridan-Kirk Contract Co., 149 Fed. 809.

FACE.

611. 2. **"The Face Value or Prima Facie Value** of a promissory note at any point of time is the principal and interest then accrued." Robertson *v.* Moses, 15 N. Dak. 351, 108 N. W. 788.

FACTORS' ACTS.

615. 1. The Owner may Redeem at any time before the pledgee sells the goods, whether the advancement was made under the Factors' Law or the Lien Law. Beken *v.* Kingsbury, 113 N. Y. App. Div. 555, 100 N. Y. Supp. 323.

617. 1. Akron Cereal Co. *v.* San Francisco First Nat. Bank, 3 Cal. App. 198, 84 Pac. 778; Schwab *v.* Oatman, 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741.

621. 1. **Intent to Steal Goods.** — Where possession was obtained by the consent of the owner, it is immaterial as regards the title to the goods, that the agent intended to steal them. Oppenheimer *v.* Frazer, (1907) 1 K. B. 540, *reversed* in part on another point in (1907) 2 K. B. 50.

622. 1. Akron Cereal Co. *v.* San Francisco First Nat. Bank, 3 Cal. App. 198, 84 Pac. 778.

Where There Was Bad Faith on the Part of One Joint Purchaser the fact that the other joint purchaser acted in good faith does not bring him within the protection of the act. Oppenheimer *v.* Frazer, (1907) 2 K. B. 50, *reversing* (1907) 1 K. B. 519 in part.

Effect of Custom. — The protection is not restricted by the existence in a particular trade of a custom not to allow mercantile agents authority to pledge goods. Oppenheimer *v.* Attenborough, (1907) 1 K. B. 510.

624. 1. **Transactions Not in Ordinary Course of Business.** — Where the plaintiffs consigned goods to an agent to be sold for cash or on the hire system, and the agent sent the goods to auctioneers to be sold at auction, and secured an advance upon them, it was held that the transaction was not a sale or pledge "in the ordinary course of business." Waddington *v.* Neale, 96 L. T. N. S. 786.

Goods Pledged with Pawnbroker. — Taking diamonds to a pawnbroker and pledging them to secure an advance for the principal is within the ordinary course of business of a diamond broker. Oppenheimer *v.* Attenborough, (1907) 1 K. B. 510, *distinguishing* Hasting *v.* Pearson, (1893) 1 Q. B. 62, cited in the original note.

Where a broker who was intrusted with diamonds for sale asked a friend to pledge them, and the friend pledged them with the defendants, it was held not the ordinary course of business for a broker to ask a friend to pledge goods for him, and therefore the defendants were not protected. De Gorter *v.* Attenborough, 21 Times L. Rep. 19.

FACTORS OR COMMISSION MERCHANTS.

628. 1. Robinson *v.* Corsicana Cotton Factory, (Ky. 1907) 99 S. W. 306, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 628; Hall *v.* Fay, 15 Pa. Dist. 208, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 628.

Factor Distinguished from Broker. — Greene *v.* U. S., 25 App. Cas. (D. C.) 549; Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Where a number of cranberry producers formed a union for the purpose of selling their crops, and the agreement was that each member was to retain control of his own crop and sell it himself or permit the union to sell it, and if the union sold the crop the owner was to receive the net proceeds, it was held that the union in selling the crops of its members was acting as a factor. Briere *v.* Searls, 126 Wis. 347, 105 N. W. 817.

Consignment Distinguished from Sale. — Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1.

Evidence Held to Show Consignment, Not Sale. — B. F. Sturtevant Co. *v.* Cumberland, (Md. 1907) 68 Atl. 355; Dowler *v.* Swift, 113 N. Y. App. Div. 260, 98 N. Y. Supp. 983.

631. 1. Coates *v.* Metcalf, 29 Utah 209, 81 Pac. 900 (evidence sufficient to show appointment).

3. Liebhardt *v.* Wilson, 38 Colo. 1, 88 Pac. 173; Hall *v.* Fay, 15 Pa. Dist. 208.

4. **Constructive Possession.** — Greene *v.* U. S., 25 App. Cas. (D. C.) 549.

5. Hall *v.* Fay, 15 Pa. Dist. 208, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 631.

632. 5. Poels *v.* Brown, (Neb. 1907) 111 N. W. 798.

7. Liebhardt *v.* Wilson, 38 Colo. 1, 88 Pac. 173.

633. 2. Robinson *v.* Corsicana Cotton Factory, (Ky. 1907) 99 S. W. 305.

634. 4. Liebhardt *v.* Wilson, 38 Colo. 1, 88 Pac. 173.

635. 1. Liebhardt *v.* Wilson, 38 Colo. 1, 88 Pac. 173.

636. 1. Citizens Ins. Co. *v.* Herpolsheimer, (Neb. 1906) 109 N. W. 160.

2. Weidner *v.* Olivit, 108 N. Y. App. Div. 122, 96 N. Y. Supp. 37, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 636, *affirmed* 188 N. Y. 66, 81 N. E. 1178.

3. Robinson *v.* Corsicana Cotton Factory, (Ky. 1907) 99 S. W. 305, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 636.

638. 5. Akron Cereal Co. *v.* San Francisco First Nat. Bank, 3 Cal. App. 198, 84 Pac. 778; Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247.

639. 4. Akron Cereal Co. *v.* San Francisco First Nat. Bank, 3 Cal. App. 198, 84 Pac. 778.

642. 9. Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247 (evidence insufficient to show ratification).

644. 1. Wynne *v.* Schnabaum, 78 Ark. 402, 94 S. W. 50.

2. State *v.* Edwards, 94 Minn. 225, 102 N. W. 697.

645. 1. State *v.* Edwards, 94 Minn. 225, 102 N. W. 697.

646. 5. B. F. Sturtevant Co. *v.* Cumberland, (Md. 1907) 68 Atl. 351, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 643 [646].

7. B. F. Sturtevant Co. *v.* Cumberland, (Md. 1907) 68 Atl. 351, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 646.

648. 3. Plummer Mercantile Co. *v.* Henderson, 37 Colo. 93, 86 Pac. 108.

653. 2. Allen *v.* McAllister, 39 Wash. 440, 81 Pac. 927, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653; McIntosh *v.* Merchant, 40 Wash. 477, 82 Pac. 753, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

654. 1. **The Burden of Proving Ratification** is on the party who seeks to bind the principal.

Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247.

655. 1. Hunter *v.* Davis, 128 Iowa 216, 103 N. W. 373; Knowles *v.* Savage, 140 N. Car. 372, 52 S. E. 930 (evidence of want of care sufficient).

2. Dowler *v.* Swift, 113 N. Y. App. Div. 260, 98 N. Y. Supp. 983 (evidence sufficient for the jury on the question of negligence).

656. 4. B. F. Sturtevant Co. *v.* Cumberland, (Md. 1907) 68 Atl. 351.

5. B. F. Sturtevant Co. *v.* Cumberland, (Md. 1907) 68 Atl. 351.

7. B. F. Sturtevant Co. *v.* Cumberland, (Md. 1907) 68 Atl. 355, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650 [656].

657. 6. Wynne *v.* Schnabaum, 78 Ark. 402, 94 S. W. 50.

Mode of Sale. — The factor cannot be expected to depart from his usual and customary method of conducting his business. Poels *v.* Brown, (Neb. 1907) 111 N. W. 798.

659. 1. Wynne *v.* Schnabaum, 78 Ark. 402, 94 S. W. 50; Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

666. 8. Mathieu *v.* Goldberg, 156 Fed. 541.

667. 1. Bouldin *v.* Atlantic Ricemills Co., (Tex. Civ. App. 1905) 86 S. W. 795.

669. 6. **Goods Destroyed.** — **Where the Goods Were Destroyed by Fire** and the insurance company exercised its option and took the goods at their appraised value before the fire, it was held that the factor was not entitled to commissions. Wertheimer *v.* Talcott, 118 N. Y. App. Div. 840, 103 N. Y. Supp. 692.

672. 6. **Expenses for Services of Insurance Adjuster Allowed.** — Wertheimer *v.* Talcott, 118 N. Y. App. Div. 840, 103 N. Y. Supp. 692.

Counsel Fees. — Where a commission merchant brought suit to protect his rights as pledgee against persons who claimed to own the goods, it was held that he could not deduct counsel fees from the balance in his hands after the debt had been paid. Smith *v.* Equitable Trust Co., 215 Pa. St. 413, 64 Atl. 591.

674. 4. *In re* Joseph P. Murphy Co.'s Estate, 214 Pa. St. 258, 63 Atl. 745.

676. 3. Plattner Implement Co. *v.* International Harvester Co., (C. C. A.) 133 Fed. 376; Kempner *v.* Patrick, (Tex. Civ. App. 1906) 95 S. W. 51.

678. 4. Plattner Implement Co. *v.* International Harvester Co., (C. C. A.) 133 Fed. 376.

688. 6. Kempner *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 351, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

691. 4. **Contra.** — Greer *v.* Newland, 70 Kan. 315, 78 Pac. 835, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 691, as holding the contrary doctrine, and *reversing* 70 Kan. 310, 77 Pac. 98.

692. 1. **Constructive Notice by Recorded Mortgage Not Sufficient.** — Greer *v.* Newland, 70 Kan. 315, 78 Pac. 835, *reversing* 70 Kan. 310, 77 Pac. 98.

695. 6. Greer *v.* Newland, 70 Kan. 310, 77 Pac. 98, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 695, *reversed* on another point in 78 Pac. 835; Federal Chemical Co. *v.* Green, (Ky. 1906) 97 S. W. 803.

8. Corzine *v.* Brents, 123 Ill. App. 613.

696. 1. Greer *v.* Newland, 70 Kan. 310, 77 Pac. 98, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 696, *reversed* on another point in 78 Pac. 835.

697. 1. *In re* Taft, (C. C. A.) 133 Fed. 511.

3. Beken *v.* Kingsbury, 113 N. Y. App. Div. 555, 100 N. Y. Supp. 323 (evidence sufficient to impute notice).

Contra. — Kempner *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 351.

702. 4. Weidner *v.* Olivit, 108 N. Y. App. Div. 122, 96 N. Y. Supp. 37, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 702, *affirmed* 188 N. Y. 66, 81 N. E. 1178.

704. 4. Mathieu *v.* Goldberg, 156 Fed. 541.

705. 4. **Report of Sales — Penal Statute.** — A statute requiring commission merchants to make a report to the consignor within twenty-four hours after making a sale is not unconstitutional as an interference with interstate commerce. State *v.* Edwards, 94 Minn. 225, 102 N. W. 697.

FACTORY — MANUFACTORY.

706. 1. **Number of Buildings and Extent of Ground Covered by Term.** — See Spacey *v.* Dowlais Gas, etc., Co., (1905) 2 K. B. 879, 75 L. J. K. B. 5; Handford *v.* Clark, (1907) 2 K. B. 409, 97 L. T. 124, 76 L. J. K. B. 958.

FAIL — FAILURE.

708. 3. **Failure of Oil Wells.** — Under a contract providing for its termination upon the *failure* of oil wells, the term *failure* of oil wells means a substantial *failure*, a cessation or deficiency of supply. San Jacinto Oil Co. *v.* Ft. Worth Light, etc., Co., (Tex. Civ. App. 1906) 93 S. W. 173.

Failure to Provide Suitable School Facilities. — "We do not think that the *failure* of the board of education to provide transportation for children living remote from the schoolhouse was a *failure* to provide suitable school facilities and accommodations for all children residing in the district desiring to attend the public schools therein within the meaning of section 126." Board of Education *v.* Atwood, 73 N. J. L. 315, 62 Atl. 1130.

FAIR — FAIRLY.

710. 2. **"By the Term 'Fair Market Value,'** as used in these instructions, is meant the price which property will bring when it is offered for sale by one who is willing or desires to purchase, but is not compelled to do so. It does not mean the price which the property would bring under a forced sale, or where the party selling is compelled or under the necessity of selling, but what it would *fairly* bring in the hands of a prudent seller at liberty to fix the time and conditions of sale." Metropolitan St. R. Co. *v.* Walsh, 107 Mo. 392, 94 S. W. 860.

FALSE — FALSELY.

715. 1. **False Entry — Custom Duties.** — U. S. *v.* Ninety-nine Diamonds (C. C. A.) 139 Fed. 961.

717. 1. **False Trade Description.** — See Fowler *v.* Cripps, (1906) 1 K. B. 16, 75 L. J. K. B. 72.

FALSE IMPRISONMENT.

721. 1. Bernheimer *v.* Becker, 102 Md. 250, 62 Atl. 526.

2. **Other Definitions.** — False imprisonment is the interference with the personal liberty of the plaintiff in a way which is absolutely unlawful and without authority. Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860. For further illustrations see Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865; Tracy *v.* Coffey, 28 Ohio Cir. Ct. 579.

An Illegal Subjection to the Will of Another Without Legal Authority. — Robinson *v.* Greene, 148 Ala. 434, 43 So. 797, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721.

722. 6. Smyth *v.* State, (Tex. Crim. 1907) 103 S. W. 899, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 722.

7. Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291.

8. Hebrew *v.* Pulis, 73 N. J. L. 621, 64 Atl. 121; Schultz *v.* Greenwood Cemetery, 190 N. Y. 276, 83 N. E. 41.

723. 1. Barfield *v.* Coker, 73 S. Car. 181, 53 S. E. 170.

4. **Contra.** — Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 723, and *explaining* the case cited in the original note; Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865.

A Discharge on Habeas Corpus is not conclusive of the wrongfulness of the arrest. Losaw *v.* Smith, 109 N. Y. App. Div. 754, 96 N. Y. Supp. 191.

5. Sanders *v.* Davis, (Ala. 1907) 44 So. 979.

724. 1. Mikelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906.

2. Clark *v.* Tilton, (N. H. 1907) 68 Atl. 336, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 724.

3. Schultz *v.* Greenwood Cemetery, 190 N. Y. 276, 83 N. E. 41.

6. Sanders *v.* Davis, (Ala. 1907) 44 So. 979; Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860; Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865; Snyder *v.* Thompson, 134 Iowa 725, 112 N. W. 239; Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733; East *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 683, 101 N. Y. Supp. 364.

725. 1. Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725.

2. Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725; Sanders *v.* Davis, (Ala. 1907) 44 So. 979; East *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 683, 101 N. Y. Supp. 364.

726. 2. Atchison, etc., R. Co. *v.* Hinsdell, (Kan. 1907) 90 Pac. 800, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 726.

4. Wood *v.* Olson, 117 Ill. App. 128; Pandjiris *v.* Hartman, 196 Mo. 539, 94 S. W. 270; O'Malley *v.* Whitaker, 118 La. 906, 43 So. 545; Sachs *v.* Skeen, 15 Ohio Dec. 612; Mikelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 726. See *Ex p.* Morton, (Mass. 1907) 81 N. E. 869.

Contra. — Steinbergen *v.* Miller, (Ky. 1906) 96 S. W. 1101.

727. 1. Oates *v.* McGlaun, 145 Ala. 656, 39 So. 607.

Good Faith May Be Shown in Mitigation of Damages. — Klien *v.* Pollard, 149 Mich. 200, 112 N. W. 717.

2. Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860; Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865; Heath *v.* Hagan, (Iowa 1907) 113 N. W. 343, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 727.

728. 1. Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860; Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865; Wood *v.* Olson, 117 Ill. App. 128; O'Malley *v.* Whitaker, 118 La. 906, 43 So. 545; Pandjiris *v.* Hartman, 196 Mo. 539, 94 S. W. 270; Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015.

Contra. — Steinbergen *v.* Miller, (Ky. 1906) 96 S. W. 1101.

729. 6*a*. **Statute of Limitations Runs from Time of Release.** — Gordon *v.* West, 129 Ga. 532, 59 S. E. 232; Hackler *v.* Miller, (Neb. 1907) 112 N. W. 303.

730. 2. Sanders *v.* Davis, (Ala. 1907) 44 So. 979.

731. 4. Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 730 [731]; Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865.

6. **Distinctions between the Two Actions Stated.** — Hackler *v.* Miller, (Neb. 1907) 112 N. W. 303, to the same effect as Herzog *v.* Graham, 9 Lea (Tenn.) 152, cited in the original note.

Action for False Imprisonment in Trespass — Malicious Prosecution Case. — Hackler *v.* Miller, (Neb. 1907) 112 N. W. 303, to the same effect as Turpin *v.* Remy, 3 Blackf. (Ind.) 210, cited in the original note.

733. 5. Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733; Parker *v.* Murphy, (Wash. 1907) 92 Pac. 371 (evidence held to sustain direction of verdict for defendant).

Question of Fact. — Where the conductor of a train partially filled with school children placed all the children in one car and locked the doors, it was held to be a question for the jury whether the high degree of care required of him authorized him to lock the doors. Peck *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1905) 91 S. W. 323.

6. Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733.

7. McAleer *v.* Good, 216 Pa. St. 473, 65 Atl. 934.

Threats Are Sufficient. — Hebrew *v.* Pulis, 73 N. J. L. 621, 64 Atl. 121.

Any Physical Detention Is an Imprisonment. — Egleston *v.* Scheibel, 113 N. Y. App. Div. 798, 99 N. Y. Supp. 969.

734. 1. Robinson *v.* Greene, 148 Ala. 434, 43 So. 797, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 734.

2. Robinson *v.* Greene, 148 Ala. 434, 43 So. 797, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 734.

3. Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291.

5. **Imprisonment Begins at Moment of Arrest.** — Egleston *v.* Scheibel, 113 N. Y. App. Div. 798, 99 N. Y. Supp. 969.

6. Gunderson *v.* Struebing, 125 Wis. 173, 104 N. W. 149.

735. 6. Hebrew *v.* Pulis, 73 N. J. L. 621, 64 Atl. 121; McAleer *v.* Good, 216 Pa. St. 473, 65 Atl. 934; Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291.

8. Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291.

10. Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291.

736. 2. Gunderson *v.* Struebing, 125 Wis. 173, 104 N. W. 149.

4. Wood *v.* Cummings, (Mass. 1908) 83 N. E. 318; Cramer *v.* Harmon, 126 Mo. App. 54, 103 S. W. 1086; Gunderson *v.* Struebing, 125 Wis. 173, 104 N. W. 149.

737. 1. Bates *v.* Reynolds, 195 Mass. 548, 81 N. E. 260.

Question of Consent for the Jury. — Hebrew *v.* Pulis, 73 N. J. L. 621, 64 Atl. 121; Badewitz *v.* West Jersey, etc., R. Co., (N. J. 1907) 67 Atl. 1067 (evidence held sufficient to go to the jury on the question of consent).

6. Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291.

6*a*. **Imprisonment in Wrong Jail.** — Where the statute required that persons arrested on mesne process in civil actions should be confined in the county jail of the county where the arrest was made, it was held that if the officer making the arrest confined the plaintiff in the jail of another county, he was liable for false imprisonment. Gibson *v.* Holmes, 78 Vt. 110, 62 Atl. 11.

739. 3. Blocker *v.* Clark, 126 Ga. 484, 54 S. E. 1022; Gordon *v.* West, 129 Ga. 532, 59 S. E. 232; Gilbert *v.* Satterlee, 101 N. Y. App. Div. 313, 91 N. Y. Supp. 960, *affirming* (Supm. Ct. Tr. T.) 43 Misc. (N. Y.) 292, 88 N. Y. Supp. 871; Ring *v.* Mitchell, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 493, 92 N. Y. Supp. 749, *affirmed* 100 N. Y. App. Div. 515, 91 N. Y. Supp. 1110; Barfield *v.* Coker, 73 S. Car. 181, 53 S. E. 170. See Williams *v.* Sewell, 121 Ga. 665, 49 S. E. 732.

740. 2. **Contra.** — Clark *v.* Tilton, (N. H. 1907) 68 Atl. 336.

4. Janes *v.* Wilson, 119 La. 491, 44 So. 275; Moss *v.* Judge, 16 Pa. Dist. 1021, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 710.

5. Atchison, etc., R. Co. *v.* Hinsdell, (Kan. 1907) 90 Pac. 800; Johnson *v.* Collins, (Ky. 1905) 89 S. W. 253; Cook *v.* Hastings, 150 Mich. 289, 114 N. W. 72; Schultz *v.* Greenwood Cemetery, 190 N. Y. 276, 83 N. E. 41; Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291; Tracy *v.* Coffey, 28 Ohio Cir. Ct. 579; Hubbard *v.* Montreal, 28 Quebec Super. Ct. 221.

741. 1. Cook *v.* Hastings, 150 Mich. 289, 114 N. W. 72.

Even Though a Misdemeanor Has Been Committed. — Gambill *v.* Cargo, (Ala. 1907) 43 So. 866.

4. Grand Rapids, etc., R. Co. *v.* King, (Ind. App. 1908) 83 N. E. 778; Southern R. Co. *v.* Shirley, (Ky. 1906) 90 S. W. 597.

Private Individual May Arrest Only When Crime Committed in His Presence. — Enright *v.* Gibson, 219 Ill. 550, 76 N. E. 689, *affirming* 119 Ill. App. 411; Martin *v.* Houck, 141 N. Car. 317, 54 S. E. 291.

6. Johnson *v.* Collins, (Ky. 1905) 89 S. W. 253; O'Malley *v.* Whitaker, 118 La. 906, 43 So. 545.

Want of Probable Cause Cannot Be Inferred by reason of the abandonment of the prosecution. Sanders *v.* Davis, (Ala. 1907) 44 So. 979.

742. 1. Oates *v.* McGlaun, 145 Ala. 656, 39 So. 607.

2. An Officer Making an Arrest on the Authority of a Telegram from a private person is liable for false imprisonment. Janes *v.* Wilson, 119 La. 491, 44 So. 275.

7. Gambill *v.* Cargo, (Ala. 1907) 43 So. 866; Snyder *v.* Thompson, 134 Iowa 725, 112 N. W. 239; Robinson *v.* Van Auken, 190 Mass. 161, 76 N. E. 601; Tubbs *v.* Haessig, 149 Mich. 185, 112 N. W. 750; Mikelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906; Smith *v.* Macomber, (R. I. 1907) 66 Atl. 570.

8. Mikelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906.

743. 1. Schultz *v.* Greenwood Cemetery, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 299, 93 N. Y. Supp. 180.

Contra. — The burden is on the person making an arrest without a warrant to show probable cause. Snyder *v.* Thompson, 134 Iowa 725, 112 N. W. 239; Tubbs *v.* Haessig, 149 Mich. 185, 112 N. W. 750; Schultz *v.* Greenwood Cemetery, 190 N. Y. 276, 83 N. E. 41; Tracy *v.* Coffey, 28 Ohio Cir. Ct. 579; Mickelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906; Smith *v.* Macomber, (R. I. 1907) 66 Atl. 570.

3. Steinbergen *v.* Miller, (Ky. 1906) 96 S. W. 1101.

8. Tracy *v.* Coffey, 28 Ohio Cir. Ct. 579.

9. Tracy *v.* Coffey, 28 Ohio Cir. Ct. 579.

745. 6. Atchison, etc., R. Co. *v.* Hinsdell, (Kan. 1907) 90 Pac. 800, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 745.

746. 1. Atchison, etc., R. Co. *v.* Hinsdell, (Kan. 1907) 90 Pac. 800, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746.

2. Atchison, etc., R. Co. *v.* Hinsdell, (Kan. 1907) 90 Pac. 800, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746; Newhall *v.* Egan, (R. I. 1908) 68 Atl. 472; Wright *v.* Templeton, (Vt. 1907) 67 Atl. 817.

Reasonableness of Delay Question for Jury. — Wood *v.* Olson, 117 Ill. App. 128.

747. 7. **Contra.** — Atchison, etc., R. Co. *v.* Hinsdell, (Kan. 1907) 90 Pac. 800, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747, but holding a different rule and *explaining* the cases cited in the original note.

748. 1. Tracy *v.* Coffey, 28 Ohio Cir. Ct. 579.

4. Wright *v.* Templeton, (Vt. 1907) 67 Atl. 817.

751. 2. McAleer *v.* Good, 216 Pa. St. 473, [illegible]

752. 1. Moss *v.* Judge, 16 Pa. Dist. 1021, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 752.

754. 4. Roberts *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 388.

755. 4. Love *v.* Halladay, 139 Mich. 575, 102 N. W. 1027.

756. 1. Bohri *v.* Barnett, (C. C. A.) 144 Fed. 389.

2. Love *v.* Halladay, 139 Mich. 575, 102 N. W.

3. Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774.

757. 2. Janes *v.* Wilson, 119 La. 491, 44 So. 275; Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774. See Schcurrmann *v.* Vaccaro, 118 La. 67, 42 So. 648.

758. 6. Wefel *v.* Stillman, (Ala. 1907) 44 So. 203, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758; Gilbert *v.* Satterlee, 101 N. Y. App. Div. 313, 91 N. Y. Supp. 960, *affirming* (Supm. Ct. Tr. T.) 43 Misc. (N. Y.) 292, 88 N. Y. Supp. 871.

Judges of Inferior Courts invested by law with jurisdiction of the general subject-matter of an alleged offense are not liable for false imprisonment, although they have no jurisdiction over the particular offense of which complaint was made. Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774.

759. 1. **Must Be Acting Within His Authority.** — Smyth *v.* State, (Tex. Crim. 1907) 103 S. W. 899 (presiding judge of school election).

2. Wefel *v.* Stillman, (Ala. 1907) 44 So. 203, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 759.

760. 1. Bohri *v.* Barnett, (C. C. A.) 144 Fed. 389; Gilbert *v.* Satterlee, 101 N. Y. App. Div. 313, 91 N. Y. Supp. 960, *affirming* (Supm. Ct. Tr. T.) 43 Misc. (N. Y.) 292, 88 N. Y. Supp. 871.

5. Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774; McCarg *v.* Burr, 186 N. Y. 467, 79 N. E. 715, *affirming* 106 N. Y. App. Div. 275, 94 N. Y. Supp. 675; Melanson *v.* Lavigne, 37 N. Bruns. 539.

761. 3. **Presumption that Magistrate Acted on Proper Information.** — Read *v.* Shipley, (Ky. 1907) 104 S. W. 1001.

4. Washer *v.* Iler, 29 Ohio Cir. Ct. 319, *affirmed* 75 Ohio St. 638, 80 N. E. 1134.

762. 6. **Officers of State Agricultural Society.** — In *Minnesota* it was held that the State Agricultural Society was a department of the state government, and therefore its officers and board of directors were exempt from liability for false imprisonment. Berman *v.* Cosgrove, 95 Minn. 353, 104 N. W. 534.

7. Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774; Sneed *v.* McFatridge, (Tex. Civ. App. 1906) 97 S. W. 113.

763. 1. Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774.

2. Smyth *v.* State, (Tex. Crim. 1907) 103 S. W. 899, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 763.

4. Sneed *v.* McFatridge, (Tex. Civ. App. 1906) 97 S. W. 113.

Contra. — Roberts *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 388.

764. 1. Bohri *v.* Barnett, (C. C. A.) 144 Fed. 389; Rowe *v.* Reneer, (Ky. 1907) 99 S. W. 250; Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774.

765. 2. Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774.

767. 5. Blocker *v.* Clark, 126 Ga. 484, 54 S. E. 1022.

768. 1. Vice *v.* Holley, 88 Miss. 572, 41 So. 7, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 768.

2. Blocker *v.* Clark, 126 Ga. 484, 54 S. E. 1022.

3. Blocker *v.* Clark, 126 Ga. 484, 54 S. E. 1022.

770. 7. Gambill *v.* Cargo, (Ala. 1907) 43 So. 866; Grand Rapids, etc., R. Co. *v.* King, (Ind. App. 1908) 83 N. E. 778; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495; Johnston *v.* Chicago, etc., R. Co., 130 Wis. 492, 110 N. W. 424.

The Principal Is Liable Even Though the Act Is Wilful and Deliberate, provided it is committed in the course of the employment. Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015.

771. 1. Robinson *v.* Greene, 148 Ala. 434, 43 So. 797, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771.

2. Robinson *v.* Greene, 148 Ala. 434, 43 So. 797, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771.

3. Robinson *v.* Greene, 148 Ala. 434, 43 So. 797, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771.

A Common Carrier of Passengers is liable for the false imprisonment of a passenger, even though the employee was acting outside the scope of his authority. Texas Midland R. Co. *v.* Dean, 98 Tex. 517, 85 S. W. 1135, *reversing* (Tex. Civ. App. 1904) 82 S. W. 524.

This rule applies even though the person arrested is a trespasser instead of a passenger. Davis *v.* Chesapeake, etc., R. Co., 61 W. Va. 246, 56 S. E. 400. *Contra,* Dobbins *v.* Little Rock R., etc., Co., 79 Ark. 85, 95 S. W. 794.

772. 2. Grand Rapids, etc., R. Co. *v.* King, (Ind. App. 1908) 83 N. E. 778.

Where Agent Violates Instructions. — Schmidt *v.* New Orleans R. Co., 116 La. 311, 40 So. 714.

773. 3. Gambill *v.* Fuqua, 148 Ala. 448, 42 So. 735.

6. Grand Rapids, etc., R. Co. *v.* King, (Ind. App. 1908) 83 N. E. 778; Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015.

Where There Is No Evidence of Prior Authority or subsequent ratification it is error to leave it to the jury to say whether or not there was authority or ratification. Gambill *v.* Fuqua, 148 Ala. 448, 42 So. 735.

8. **Cases Held Not Within Scope of Authority.** — Where the defendant employed a detective agency to find out who committed a robbery and report, it was held that the defendant was not liable for an arrest made by an employee of the detective agency, as that was not within the scope of the authority conferred. Milton *v.* Missouri Pac. R. Co., 193 Mo. 46, 91 S. W. 949.

A Clerk Employed to Run a Commissary Store and collect amounts due by laborers, was held to have no authority to cause the arrest of persons on the charge of violating their labor contract. Vara *v.* R. M. Quigley Constr. Co., 114 La. 261, 38 So. 162.

The Manager of One Department of a Store has no implied authority to arrest and search customers suspected of theft. Bernheimer *v.* Becker, 102 Md. 250, 62 Atl. 526.

Where the Defendant's Deputy Had Been Arresting People for Years, with the defendant's knowledge and by his direction, it was held that the deputy in making an arrest was acting within the apparent scope of his authority and that the defendant was liable for his acts. Gambill *v.* Cargo, (Ala. 1907) 43 So. 866.

A Street Railway Conductor has implied authority to police his car, and to make an arrest, and when so acting the company is responsible. Mikelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906.

774. 2. Gambill *v.* Fuqua, 148 Ala. 448, 42 So. 735; Bernheimer *v.* Becker, 102 Md. 250, 62 Atl. 526.

775. 1. Gambill *v.* Fuqua, 148 Ala. 448, 42 So. 735.

2. Vara *v.* R. M. Quigley Constr. Co., 114 La. 261, 38 So. 162.

3. Baltimore, etc., R. Co. *v.* Twilley, (Md. 1907) 67 Atl. 265.

4. Samuel *v.* Wanamaker, 107 N. Y. App. Div. 433, 95 N. Y. Supp. 270.

776. 1. Gibson *v.* Holmes, 78 Vt. 110, 62 Atl. 11.

4. Grand Rapids, etc., R. Co. *v.* King, (Ind. App. 1908) 83 N. E. 778.

5. Woodforde *v.* Chatham, 37 N. Bruns. 21.

Contra. — Bourget *v.* Sherbrooke, 27 Quebec Super. Ct. 78.

777. 2. **Arrest as Means of Abating Nuisance.** — The officers of a municipality were held not to be justified in arresting the motorman of a street car as a means of preventing the operation of a street railway which had been declared by the common council to be a public nuisance. Mumford *v.* Starmont, 139 Mich. 488, 102 N. W. 662.

3. Egleston *v.* Scheibel, 113 N. Y. App. Div. 708, 99 N. Y. Supp. 969; Washer *v.* Iler, 29 Ohio Cir. Ct. 319, *affirmed* 75 Ohio St. 638, 80 N. E. 1134.

If an Arrest by a Constable Is in Its Inception Wrongful. — Cook *v.* Hastings, 150 Mich. 289, 114 N. W. 72, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 777.

5. Allen *v.* Ruland, 79 Conn. 405, 65 Atl. 138.

779. 3. Clark *v.* Tilton, (N. H. 1907) 68 Atl. 336.

Proving Damages. — Where the imprisonment was proved to be illegal, it was held to be sufficient to carry damages without proof of actual damage. Roberts *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 388.

4. **Allowance Discretionary with the Jury.** — Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

Punitive Damages Not Awarded against Officer's Surety. — Scott *v.* Com., (Ky. 1906) 93 S. W. 668.

780. 2. Bernheimer *v.* Becker, 102 Md. 250, 62 Atl. 526; Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015; Davis *v.* Chesapeake, etc., R. Co., 61 W. Va. 246, 56 S. E. 400.

3. Klien *v.* Pollard, 149 Mich. 200, 112 N. W. 717.

781. 4. Fuqua *v.* Gambill, 140 Ala. 464, 37 So. 235; Gambill *v.* Cargo, (Ala. 1907) 43 So. 866.

5. **Contra.** — East *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 683, 101 N. Y. Supp. 364.

782. 1. Pandjiris *v.* Hartman, 196 Mo. 539, 94 S. W. 270; Tidey *v.* Erie R. Co., 71 N. J. L. 677, 60 Atl. 954; Baker *v.* Tyler, (R. I. 1907) 67 Atl. 430.

2. Davis *v.* Chesapeake, etc., R. Co., 61 W. Va. 246, 56 S. E. 400.

7. **Damages Held Not Excessive.** — For illustrations, see Scott *v.* Com., (Ky. 1906) 93 S. W. 668; Illinois Cent. R. Co. *v.* Wilson, (Ky. 1907) 103 S. W. 364 (detention until searched); Smith *v.* Macomber, (R. I. 1907) 66 Atl. 570 ($2,500 for several hours' imprisonment, where the defendant's acts were wilful and malicious); Davis *v.* Chesapeake, etc., R. Co., 61 W. Va. 246, 56 S. E. 400 ($900 for imprisonment for one and one-half days).

783. 1. Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 783; Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865.

2. Shannon *v.* Simms, 146 Ala. 673, 40 So. 574; Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 783; Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865.

3. Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 783; Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865; Carmody *v.* St. Louis Transit Co., 122 Mo. App. 338, 99 S. W. 495.

Evidence of the Plaintiff's Character Is Admissible where damage is claimed for mental suffering. Texas Midland R. Co. *v.* Dean, 98 Tex. 517, 85 S. W. 1135, *reversing* (Tex. Civ. App. 1904) 82 S. W. 524.

784. 1. Melanson *v.* Lavigne, 37 N. Bruns. 530.

Expenses Incurred after Release from Arrest are not recoverable. Worden *v.* Davis, 123 N. Y. App. Div. 193, 108 N. Y. Supp. 221.

3. Neves *v.* Costa, 5 Cal. App. 111, 89 Pac. 860, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 784; Neves *v.* Costa, (Cal. App. 1907) 89 Pac. 865.

FALSE PRETENSES AND CHEATS.

801. 1. Glenn *v.* State, 123 Ga. 585, 51 S. E. 605; Bates *v.* State, 124 Wis. 612, 103 N. W. Rep. 1251.

804. 1. **False Pretense Defined.** — State *v.* Seligman, 127 Iowa 415, 103 N. W. 357, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 804; Goddard *v.* State, 2 Ga. App. 154, 58 S. E. 304; State *v.* Hollingsworth, 132 Iowa 471, 109 N. W. 1003; State *v.* Miller, 47 Oregon 56[illegible] 85 Pac. 71.

806. 1. State *v.* Copeman, 186 Mo. 108, 84 S. W. 942, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 805; People *v.* Proctor, 1

Cal. App. 521, 82 Pac. 551; Welch *v.* State, 126 Ga. 495, 55 S. E. 183; Towns *v.* State, 167 Ind. 315, 78 N. E. 1012; Beckwith *v.* Galice Mines Co., (Oregon 1908) 93 Pac. 453; Bink *v.* State, (Tex. Crim. 1906) 98 S. W. 863; Price *v.* State, (Tex. Crim. 1905) 91 S. W. 571; Braxton *v.* State, (Tex. Crim. 1907) 99 S. W. 994.

808. 4. *Texas.* — Price *v.* State, (Tex. Crim. 1905) 91 S. W. 571.

810. 1. State *v.* Briscoe, (Del. 1907) 67 Atl. 154; Biddle *v.* U. S., (C. C. A.) 156 Fed. 759.

Elements of Offense.—Goddard *v.* State, 2 Ga. App. 154, 58 S. E. 304.

4. False Pretense of Past Fact Sufficient to Support Conviction. — Bates *v.* State, 124 Wis. 612, 103 N. W. 251.

5. Future Event. — Brown *v.* State, 166 Ind. 85, 76 N. E. 881, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 810, 811; State *v.* Hollingsworth, 132 Iowa 471, 109 N. W. 1003; Baxter *v.* State, (Tex. Crim. 1907) 105 S. W. 195; Campbell *v.* State, (Tex. Crim. 1907) 106 S. W. 130; Biddle *v.* U. S., (C. C. A.) 156 Fed. 759.

811. 2. State *v.* Hollingsworth, 132 Iowa 471, 109 N. W. 1003.

Pretense that the Money Could and Would Be Used to Procure Dismissal of Prosecution against the defrauded person, is sufficient. Lovell *v.* State, 48 Tex. Crim. 85, 86 S. W. 758; Underwood *v.* State, (Tex. Crim. 1906) 91 S. W. 572.

3. Morris *v.* State, (Fla. 1907) 45 So. 456; State *v.* Hollingsworth, 132 Iowa 471, 109 N. W. 1003; Franklin *v.* State, 2 Ga. App. 385, 58 S. E. 491.

The Georgia Statute making it a false pretense to obtain credit on the faith of a contract to perform services, and then fail to carry out the contract, is not unconstitutional. Banks *v.* State, 124 Ga. 15, 52 S. E. 74; Townsend *v.* State, 124 Ga. 69, 52 S. E. 293.

821. 3. State *v.* Seligman, 127 Iowa 417, 103 N. W. 357, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 812; Morris *v.* State, (Fla. 1907) 45 So. 456; State *v.* Briggs, 74 Kan. 377, 86 Pac. 447.

813. 3. **False Pretense Amounting Only to an Opinion Not Indictable.** — Bates *v.* State, 124 Wis. 612, 103 N. W. 251.

Cost or Value. — Doe *v.* State, 16 Ohio Dec. 529, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 812.

814. 1. **Remote Pretense.**—People *v.* White, (Cal. App. 1907) 93 Pac. 683.

816. 5. State *v.* Briscoe, (Del. 1907) 67 Atl. 154.

817. 1. State *v.* Jackson, 128 Iowa 543, 105 N. W. 51.

3. Bowman *v.* State, (Fla. 1907) 45 So. 308; Brown *v.* State, (Tex. Crim. 1905) 88 S. W. 811; State *v.* Phelps, 41 Wash. 476, 84 Pac. 24.

819. 2. Hunter *v.* State, 46 Tex. Crim. 498, 81 S. W. 730, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 819; People *v.* White, (Cal. App. 1907) 93 Pac. 683; State *v.* Dines, 206 Mo. 649, 105 S. W. 722; State *v.* Miller, 47 Oregon 562, 85 Pac. 81.

820. 3. State *v.* Miller, 47 Oregon 562, 85 Pac. 81, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 820.

5. State *v.* Jackson, 128 Iowa 543, 105 N. W. 51; People *v.* Klock, (County Ct.) 55 Misc. (N. Y.) 46, 106 N. Y. Supp. 267; State *v.* Miller, 47 Oregon 562, 85 Pac. 81.

Contra in South Carolina. — State *v.* Talley, 77 S. Car. 99, 57 S. E. 618.

822. 3. Griggs *v.* U. S., (C. C. A.) 158 Fed. 572.

4. People *v.* Eaton, 122 N. Y. App. Div. 706, 107 N. Y. Supp. 849.

6. State *v.* Briscoe, (Del. 1907) 67 Atl. 154; Speer *v.* State, (Tex. Crim. 1906) 97 S. W. 469.

823. 1. Where the pretense was made in writing and the accused verbally affirmed its truth at a later date, the offense is complete. People *v.* Levin, 119 N. Y. App. Div. 233, 104 N. Y. Supp. 647.

824. 3. State *v.* Briscoe, (Del. 1907) 67 Atl. 154; Ager *v.* State, 2 Ga. App. 158, 58 S. E. 374; State *v.* Hicks, 77 S. Car. 289, 57 S. E. 842, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 824 *et seq.*; Price *v.* State, (Tex. Crim. 1905) 91 S. W. 571.

826. 1. State *v.* Hicks, 77 S. Car. 289, 57 S. E. 842.

3. The fact that a check was payable to the accused for the use of another, is not conclusive that it was not obtained for his benefit. State *v.* Wilson, 73 Kan. 334, 80 Pac. 639.

Where Indictment Alleges Obtaining Money, it is insufficient to prove that accused was given credit at a bank against which he drew checks in favor of third persons. Maxey *v.* State, (Ark. 1908) 108 S. W. 1105.

827. 4. Clawson *v.* State, 129 Wis. 650, 109 N. W. 578.

828. 2. Millinder *v.* State, 124 Ga. 452, 52 S. E. 760.

In Texas, by statute, injury to prosecutor need not be shown. Baxter *v.* State, (Tex. Crim. 1907) 105 S. W. 195.

833. 4. "Other valuable thing." Clawson *v.* State, 129 Wis. 650, 109 N. W. 578.

834. 1. Geist *v.* U. S., 26 App. Cas. (D. C.) 594; State *v.* Phelps, 41 Wash. 470, 84 Pac. 24.

2. State *v.* Phelps, 41 Wash. 476, 84 Pac. 24, *dissenting* opinion of Rudkin, J., *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 834.

835. 5. **Offense Complete When Property Obtained.** — Bates *v.* State, 124 Wis. 612, 103 N. W. 251.

Not Complete So Long as Defrauded Party Controls the Property Alleged to Have Been Obtained. — Bates *v.* State, 124 Wis. 612, 103 N. W. 251.

836. 2. Vinson *v.* State, 124 Ga. 19, 52 S. E. 79; Neal *v.* State, (Tex. Crim. 1906) 101 S. W. 212.

3. A Cropper, Who Is Himself to Perform Services, may be guilty under the *Georgia* statute. Vinson *v.* State, 124 Ga. 19, 52 S. E. 79.

5. **Having a Contract to Render Services by Which He Will Be Able to Repay.** — Martin *v.* Com., (Ky. 1907) 102 S. W. 273.

6. Pretense as to Owning Property. — Fredericks *v.* State, (Ala. 1905) 39 So. 915.

Giving a Mortgage. — Morris *v.* State, (Fla. 1907) 45 So. 456.

837. 6. State *v.* Wilson, 73 Kan. 334, 80 Pac. 639.

Giving Second Mortgage Without Any Representation as to Existence of Prior Mortgage Not Sufficient. — Griffith *v.* State, (Ga. App. 1908) 63 S. E. 277.

838. 2. People *v.* Huggins, 110 N. Y. App. Div. 613, 97 N. Y. Supp. 187.

No Offense Where Payee Knows that Drawer Has No Funds on Deposit. — State *v.* Miller, 47 [illegible] 502, 85 Pac. 81.

Giving Post-dated and Post-payable Check Insufficient to Support Indictment. — Brown *v.* State, 166 Ind. 85, 76 N. E. 881.

3. Maxey *v.* State, (Ark. 1908) 108 S. W. [illegible].

839. 1. Bink *v.* State, (Tex. Crim. 1906) 98 S. W. 863.

840. 4. Presenting False Voucher against United States. — Bridgeman *v.* U. S., (C. C. A.) 140 Fed. 577.

Presenting **False Claims against a City to Its Comptroller.** — People *v.* Miles, 123 N. Y. App. Div. 862, 108 N. Y. Supp. 510.

Insurance Solicitor Obtaining Advances by Representing the Validity of an Application for Insurance. — State *v.* Seligman, 127 Iowa 415, 103 N. W. 357.

False Pay-roll. — People *v.* Eaton, 122 N. Y. App. Div. 706, 107 N. Y. Supp. 849.

841. 1. **Doing Business on His Own Capital.** — State *v.* Briggs, 74 Kan. 377, 86 Pac. 447.

2. People *v.* Snyder, 110 N. Y. App. Div. 699, 97 N. Y. Supp. 469.

Such Representations Need Not Be in Writing. — People *v.* Snyder, 110 N. Y. App. Div. 699, 97 N. Y. Supp. 469.

4. **Entering into Partnership Agreement** may constitute the offense. Chilson *v.* People, 224 Ill. 535, 79 N. E. 934.

5. *Compare* Curtis *v.* State, (Tex. Crim. 1905) 88 S. W. 236.

A pretense that accused has arranged to engage in business in future, is sufficient. State *v.* Hollingsworth, 132 Iowa 471, 109 N. W. [illegible].

7. **Quality of Land.** — Williams *v.* State, 77 Ohio St. 468, 83 N. E. 802.

842. 5. Curtis *v.* State, (Tex. Crim. 1905) 88 S. W. 236.

845. 2. **Obtaining a Loan by False Representations** of necessitous condition, and ability to repay, constitute the offense. Bink *v.* State, (Tex. Crim. 1906) 98 S. W. 863.

847. 1. State *v.* Keyes, 196 Mo. 136, 93 S. W. 801.

5. State *v.* Jackson, 128 Iowa 543, 105 N. W. 51; Bates *v.* State, 124 Wis. 612, 103 N. W. 251.

In Iowa where the pretense was made in one county and the money was obtained in another, the court of either county has jurisdiction. State *v.* Gibson, 132 Iowa 53, 106 N. W. 270. *Compare* State *v.* Loser, 132 Iowa 419, 104 N. W. 337.

6. Bates *v.* State, 124 Wis. 612, 103 N. W. 251.

849. 3. Where Offense Punishable under Federal Statutes, Prosecution May Be Maintained in State Where False Representation Is Made. — Bridgeman *v.* U. S., (C. C. A.) 140 Fed. 577.

United States Court for China Has Jurisdiction of the offense committed by a citizen of the United States in China. Biddle *v.* U. S., (C. C. A.) 156 Fed. 759.

5. Schaumloeffel *v.* State, 102 Md. 470, 62 Atl. 803.

6. **In Missouri** it is a felony. State *v.* McNerney, 118 Mo. App. 60, 94 S. W. 740.

In New York It Is a Misdemeanor When of **Same Grade as Petty Larceny,** and the Court of Special Sessions has jurisdiction. People *v.* Huggins, 110 N. Y. App. Div. 613, 97 N. Y. Supp. 187.

7. **In Florida** the offense is not graded by the amount or value of the property obtained. Bowan *v.* State, (Fla. 1907) 45 So. 308.

851. 2. Griggs *v.* U. S., (C. C. A.) 158 Fed. 572.

852. 5. Griggs *v.* U. S., (C. C. A.) 158 Fed. 572.

853. 2. **In Pennsylvania** it is essential that the complainant shall acknowledge satisfaction, for the court to permit settlement of prosecution. Com. *v.* Carr, 28 Pa. Super. Ct. 122.

3. Hughes *v.* People, 223 Ill. 417, 79 N. E. 137; Juretich *v.* People, 223 Ill. 484, 79 N. E. 181.

854. 2. **Comptroller of City of Greater New York** is an officer within the meaning of the statute. People *v.* Miles, 123 N. Y. App. Div. 862, 108 N. Y. Supp. 510.

3. **Preparation and Use of Fraudulent Claim against a Municipality.** — People *v.* Miles, 123 N. Y. App. Div. 862, 108 N. Y. Supp. 510.

What Evidence Insufficient to Convict. — Dorr *v.* People, 228 Ill. 216, 81 N. E. 851; Lory *v.* People, 229 Ill. 268, 82 N. E. 261.

855. 2. People *v.* Koller, 116 N. Y. App. Div. 173, 101 N. Y. Supp. 518.

4. Abbott *v.* State, (Tex. Crim. 1906) 97 S. W. 488.

5. People *v.* Reiss, 114 N. Y. App. Div. 431, 99 N. Y. Supp. 1002.

An attempt by a seller to substitute an inferior thing for that sold will not avail him to secure credit for the thing tendered, and thus reduce the grade of his crime from felony to misdemeanor. Neal *v.* State, (Tex. Crim. 1907) 101 S. W. 212.

6*a*. The weak credulity of the injured party is no defense. People *v.* Smith, 3 Cal. App. 62, 84 Pac. 449.

Nor is it a defense that the injured party failed to investigate. People *v.* Smith, 3 Cal. App. 62, 84 Pac. 449.

It is no defense that the defendant was acting as counsel for the injured party. People *v.* Colmey, 117 N. Y. App. Div. 462, 102 N. Y. Supp. 714, *affirmed* 188 N. Y. 573, 80 N. E. [illegible], or that he reported the [illegible] of his crime to another, Speer *v.* State, (Tex. Crim. 1906) 97 S. W. 469; or that usury entered into the transaction, People *v.* Koller, 116 N. Y. App. Div. 173, 101 N. Y. Supp. 518, *affirmed* 187 N. Y. 572, 80 N. E. 1116; or that other like agents committed like acts, Bridgeman *v.* U. S., (C. C. A.) 140 Fed. 577.

Honest Mistake May Be Shown as Defense. — State *v.* Mason, (Iowa 1907) 114 N. W. 30.

Defendant May Show that He Acted on Advice of Counsel. — State *v.* Oppenheimer, 41 Wash. 630, 84 Pac. 588

856. 3. Lovell *v.* State, 48 Tex. Crim. 85, 86 S. W. 758. *Contra,* People *v.* Tompkins, 186 N. Y. 413, 79 N. E. 326.

Selling Mortgaged Property. — It is a sufficient defense to show that the mortgage was void as against public policy. State *v.* Wilson, 73 Kan. 334, 84 Pac. 737.

5. State *v.* Jackson, 128 Iowa 543, 105 N. W. 51.

6. Evidence that similar statements were made to others at or about the same time is competent. People *v.* Ward, (Cal. App. 1907) 89 Pac. 874.

7. Swift *v.* State, 126 Ga. 590, 55 S. E. 478; Kinard *v.* State, (Ga. App. 1907) 58 S. E. 263; Carlisle *v.* State, 2 Ga. App. 651, 58 S. E. 1068; State *v.* Dines, 206 Mo. 649, 105 S. W. 722.

Uncorroborated Testimony of Accomplice May Support Conviction. — Juretich *v.* People, 223 Ill. 484, 79 N. E. 181.

857. 1. Semler *v.* State, 27 Ohio Cir. Ct. 581; Williams *v.* State, 124 Ga. 136, 52 S. E. 156; Chapple *v.* State, 126 Ga. 638, 55 S. E. 471.

Obtaining Credit under Contract to Perform Services. — The prosecution must prove a definite contract, and that the defendant failed to comply therewith. Glenn *v.* State, 123 Ga. 585, 51 S. E. 605; Wilson *v.* State, 124 Ga. 22, 52 S. E. 82.

2. Davis *v.* State, (Wis. 1908) 115 N. W. 150.

3. **Where the Pretense Related to the Title to Land,** the testimony of the owner and his abstract of title are competent to show that the party represented to be the owner never had any interest in the land. People *v.* Langley, 114 N. Y. App. Div. 427, 100 N. Y. Supp. 123.

4. Fredericks *v.* State, (Ala. 1905) 39 So. 915; People *v.* Smith, 3 Cal. App. 62, 84 Pac. 449; People *v.* Ward, (Cal. App. 1907) 89 Pac. 874; State *v.* Hollingsworth, 132 Iowa 471, 109 N. W. 1003; State *v.* Keyes, 196 Mo. 136, 93 S. W. 801; Baxter *v.* State, (Tex. Crim. 1907) 105 S. W. 195.

4*a*. **Proof of Other Minor False Representations Made at the Time Are Competent.** — People *v.* Colmey, 117 N. Y. App. Div. 462, 102 N. Y. Supp. 714.

858. 1. **Secondary Evidence Admissible** where original in possession of defendant. Kinard *v.* State, (Ga. App. 1907) 58 S. E. 263.

2. **Evidence of Pretense that Certain Property Was Not Covered by a Mortgage** is competent without producing the mortgage. State *v.* Jackson, 128 Iowa 543, 105 N. W. 51.

4. **Slight Variance between the Amount of the Mortgage as Alleged and Proved, Not Material.** — State *v.* Wilson, 73 Kan. 334, 80 Pac. 639.

5. **Contract for Services Admissible.** — Campbell *v.* State, (Ala. 1907) 43 So. 743.

Deed Made by Accomplice Admissible. — Brown *v.* State, (Tex. Crim. 1905) 88 S. W. 811.

7. **Involuntary Admissions Incompetent.** — Campbell *v.* State, (Ala. 1907) 43 So. 743.

859. 1. **Not Necessary for Prosecution to Show that Defrauded Person Has Been Involuntarily Dispossessed.** — Brown *v.* State, (Tex. Crim. 1905) 88 S. W. 811.

860. 3. Under the *Georgia* statute, where money was obtained on a written instrument, it must be shown that it was made in some other person's name or a fictitious name. Sessions *v.* State, (Ga. App. 1907) 59 S. E. 196.

862. 1. *United States.* — Griggs *v.* U. S., (C. C. A.) 158 Fed. 572.

Arizona. — Thomas *v.* Territory, (Ariz. 1907) 89 Pac. 591.

California. — People *v.* Harben, (Cal. App. 1907) 91 Pac. 398.

Illinois. — Juretich *v.* People, 223 Ill. 484, 79 N. E. 181.

Iowa. — State *v.* Seligman, 127 Iowa 415, 103 N. W. 357; State *v.* Gibson, 132 Iowa 53, 106 N. W. 270.

Kansas. — State *v.* Briggs, 74 Kan. 377, 86 Pac. 447.

Louisiana. — State *v.* Farrier, 114 La. 579, 30 So. 460.

Missouri. — State *v.* Roberts, 201 Mo. 702, 100 S. W. 484.

Nebraska. — State *v.* Sparks, (Neb. 1907) 113 N. W. 154.

New York. — People *v.* Noblett, 96 N. Y. App. Div. 293, 89 N. Y. Supp. 181, *affirmed* 184 N. Y. 612, 77 N. E. 1193; People *v.* Levin, 119 N. Y. App. Div. 233, 104 N. Y. Supp. 647.

South Carolina. — State *v.* Talley, 77 S. Car. 99, 57 S. E. 618.

Contra. — State *v.* Oppenheimer, 41 Wash. 630, 84 Pac. 588.

Time within Which Similar Transaction Must Have Taken Place. — Davis *v.* State, (Wis. 1908) 115 N. W. 150.

Evidence of Subsequent Transactions Admissible — Rex *v.* Smith, 92 L. T. N. S. 208, 69 J. P. 51.

2. State *v.* Briscoe, (Del. 1907) 67 Atl. 154.

Intent May Be Inferred. — State *v.* Briscoe, (Del. 1907) 67 Atl. 154; Speer *v.* State, (Tex. Crim. 1906) 97 S. W. 469.

863. 3. **Acts and Conduct of Accused Before the Crime, Admissible on Question of Intent.** — People *v.* Ward, (Cal. App. 1907) 89 Pac. 874; Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

864. 3. **Proof that Some Definite Portion of Goods Obtained Sufficient.** — State *v.* Briscoe, (Del. 1907) 67 Atl. 154; Bowman *v.* State, (Fla. 1907) 45 So. 308; Thomas *v.* State, 126 Ga. 90, 54 S. E. 813; Abrams *v.* State, 126 Ga. 591, 55 S. E. 497; Juretich *v.* People, 223 Ill. 484, 79 N. E. 181; State *v.* Gibson, 132 Iowa 53, 106 N. W. 270. See also Banks *v.* State, 124 Ga. 15, 52 S. E. 74; State *v.* McWhirter, 141 N. Car. 809, 53 S. E. 734.

Allegations and Proof as to Property Obtained must correspond. Braxton *v.* State, (Tex. Crim. 1907) 99 S. W. 994.

Charge of Obtaining Money Not Supported by Proof of Obtaining Check. — Lory *v.* People, 220 Ill. 268, 82 N. E. 261.

Where the indictment alleges money was obtained it is sufficient to show that it was obtained on the prosecutor's check. McCoy *v.* State, 124 Ga. 218, 52 S. E. 434; Schaumloeffel *v.* State, 102 Md. 470, 62 Atl. 803.

4. **Evidence Admissible as Part of Res Gestæ.** — People *v.* Colmey, 117 N. Y. App. Div. 462, 102 N. Y. Supp. 714, *affirmed* 188 N. Y. 573, 80 N. E. 1115.

5. **Evidence as to Obtaining Signature to Written Instrument.** — On a charge of obtaining money, it is sufficient to show that the money was obtained on a check. People *v.* Hoffman, 142 Mich. 531, 105 N. W. 838, 12 Detroit Leg. N. 805; State *v.* Gibson, 132 Iowa 53, 106 N. W. 270.

Allegation and Proof of the Instrument Must Correspond. — State *v.* McNerney, 118 Mo. App. 60, 94 S. W. 740.

FALSE SWEARING.

865. 4. See State *v.* Coleman, 117 La. 973, 42 So. 471.

FAMILY.

866. 1. Perkins *v.* Morgan, 36 Colo. 360, 85 Pac. 640, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 866; Farlaw *v.* Augusta Naval Stores Co., 124 Ga. 261, 52 S. E. 898, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 866.

Synonymous with Kindred or Relations. — Jacobs *v.* Prescott, 102 Me. 63, 65 Atl. 761.

868. 2. Farlaw *v.* Augusta Naval Stores Co., 124 Ga. 261, 52 S. E. 898.

3. Farlaw *v.* Augusta Naval Stores Co., 124 Ga. 261, 52 S. E. 898.

869. 1. Perkins *v.* Morgan, 36 Colo. 360, 85 Pac. 640.

871. 1. Fulghum *v.* Strickland, 123 Ga. 258, 51 S. E. 294, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 870; Harkness *v.* Harkness, 9 Ont. L. Rep. 705.

FAMILY AGREEMENTS OR SETTLEMENTS.

877. 5. Young *v.* McWilliams, 75 Kan. 243, 89 Pac. 12, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 877.

Children Not Parties to a Deed of partition which it is attempted to establish as a family settlement displacing a will, are not affected by the deed, it appearing that they are entitled to take under the will and are not parties to the settlement. Parrott *v.* Barrett, 70 S. Car. 195, 49 S. E. 563.

878. 1. **Specific Performance Granted of Parol Settlement.** — Clawson *v.* Brewer, 67 N. J. Eq. 201, 58 Atl. 598, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 878.

FAULT.

886. 4. **Fault Equivalent of Negligence.** — Garland *v.* Hewes, 101 Me. 551, 64 Atl. 914, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 886.

Fault and Negligence — Ordinary Care. — Sorensen *v.* J. I. Case Threshing Mach. Co., 129 Wis. 366, 109 N. W. 84.

FELLOW SERVANTS.

898. 4. *United States.* — Westinghouse *v.* Callaghan, (C. C. A.) 155 Fed. 397.

Alabama. — Tennessee Coal, etc., R. Co. *v.* Bridges, 144 Ala. 229, 39 So. 902.

Arkansas. — Central Coal, etc., Co. *v.* Gregory, 78 Ark. 43, 93 S. W. 56.

Connecticut. — Peterson *v.* New York, etc., R. Co., 77 Conn. 351, 59 Atl. 502.

Georgia. — Riverside Mills *v.* Jones, 121 Ga. 33, 48 S. E. 700; Chenall *v.* Palmer Brick Co., 125 Ga. 671, 54 S. E. 663; Turner *v.* Seville Gin, etc., Co., 127 Ga. 555, 56 S. E. 739; Moore *v.* Dublin Cotton Mills, 127 Ga. 609, 56 S. E. 839.

Illinois. — Gardner-Wilmington Coal Co. *v.* Knott, 115 Ill. App. 515; Chicago, etc., R. Co. *v.* Walker, 127 Ill. App. 212.

Indiana. — Southern R. Co. *v.* Elliott, (Ind. 1907) 82 N. E. 1051; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Collingwood *v.* Illinois, etc., Fuel Co., 125 Iowa 537, 101 N. W. 283.

Kentucky. — Louisville, etc., R. Co. *v.* Wyatt, 93 S. W. 601, 29 Ky. L. Rep. 437; Pitts *v.* Centers, (Ky. 1906) 98 S. W. 300; Louisville, etc., R. Co. *v.* Brown, (Ky. 1908) 106 S. W. 795.

Louisiana. — Weaver *v.* W. L. Goulden Logging Co., 116 La. 468, 40 So. 798.

Massachusetts. — Higgins *v.* Higgins, 188 Mass. 113, 74 N. E. 471; Lapre *v.* Woronoco St. R. Co., (Mass. 1907) 82 N. E. 9.

Missouri. — Chrismer *v.* Bell Telephone Co., 194 Mo. 189, 92 S. W. 378.

Montana. — McIntosh *v.* Jones, (Mont. 1908) 93 Pac. 557.

New York. — Karch *v.* Kipp, (Supm. Ct. App. T.) 90 N. Y. Supp. 404; Tydeman *v.* Prince Line, 102 N. Y. App. Div. 279, 92 N. Y. Supp. 446; Barsalou *v.* Pierce, 109 N. Y. App. Div. 506, 96 N. Y. Supp. 538; King *v.* Ford, 121 N. Y. App. Div. 404, 106 N. Y. Supp. 50; Higbie *v.* Board of Education, 122 N. Y. App. Div. 483, 107 N. Y. Supp. 163.

North Carolina. — Avery *v.* Oliver, 137 N. Car. 130, 49 S. E. 91.

Oklahoma. — Mollhoff *v.* Chicago, etc., R. Co., 15 Okla. 540, 82 Pac. 733.

Pennsylvania. — Hartenstine *v.* United Telephone, etc., Co., 219 Pa. St. 95, 67 Atl. 989.

South Carolina. — Charping *v.* Toxaway Mills, 70 S. Car. 470, 50 S. E. 186; Pagan *v.* Southern R. Co., 78 S. Car. 413, 59 S. E. 32.

Texas. — Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. App. 1906) 98 S. W. 802 (announcing the law of Arizona); Vilter Mfg. Co. *v.* Kent, (Tex. Civ. App. 1907) 105 S. W. 525.

902. 2. Southern Pac. R. Co. *v.* Hetzer, 135 Fed. 272, 68 C. C. A. 36.

903. 1. *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225.

3. Louisville, etc., R. Co. *v.* Vincent, 116 Tenn. 317, 95 S. W. 179.

905. 2. Rice *v.* New York Cent., etc., R. Co., 195 Mass. 507, 81 N. E. 285.

5. The Luckenbach, 144 Fed. 980.

7. *United States.* — Shugart *v.* Atlanta, etc., R. Co., (C. C. A.) 133 Fed. 505; The Hamilton, (C. C. A.) 146 Fed. 724; Pennsylvania R. Co. *v.* Garcia, 152 Fed. 104, 81 C. C. A. 322; J. W. Bishop Co. *v.* Dodson, 152 Fed. 128, 81 C. C. A. 346.

Arizona. — Gila Valley, etc., R. Co. *v.* Lyon, [illegible]

Colorado. — Daniels *v.* Johnston, 39 Colo. 177, 89 Pac. 811.

Connecticut. — Farrell *v.* Eastern Machinery R. Co., 77 Conn. 484, 59 Atl. 611.

Georgia. — Mosely *v.* J. S. Schofield's Sons Co., 123 Ga. 197, 51 S. E. 309.

Illinois. — Shickle-Harrison, etc., Iron Co. *v.* Beck, 212 Ill. 268, 72 N. E. 423; Hansell-Elcock Foundry Co. *v.* Clark, 214 Ill. 399, 73 N. E. 787; Chicago Union Traction Co. *v.* Sawusch, 218 Ill. 130, 75 N. E. 797; Siegel *v.* Trcka, 218 Ill. 567, 75 N. E. 1053, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905; Chicago, etc., R. Co. *v.* Kimmell, 221 Ill. 547, 77 N. E. 936; Deering *v.* Barzak, 227 Ill. 71, 81 N. E. 1; Schillinger Bros. Co. *v.* Smith, 225 Ill. 74, 80 N. E. 65; Chicago City R. Co. *v.* Enroth, 113 Ill. App. 285; Kraft *v.* Neunkirchen, 119 Ill. App. 369.

Indiana. — Espenlaub *v.* Ellis, 34 Ind. App. 163, 72 N. E. 527; Ft. Wayne, etc., Traction Co. *v.* Crosbie, (Ind. 1907) 81 N. E. 474; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Klaffke *v.* Bettendorf Axle Co., 125 Iowa 223, 100 N. W. 1116; Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Madden *v.* Saylor Coal Co., 133 Iowa 699, 111 N. W. 57.

Kansas. — Schwarzschild, etc., Co. *v.* Weeks, 72 Kan. 190, 83 Pac. 406.

Louisiana. — Fuller *v.* Tremont Lumber Co., 114 La. 271, 38 So. 164, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905; Payne *v.* Georgetown Lumber Co., 117 La. 983, 42 So. 475.

Massachusetts. — Butler *v.* New England Structural Co., 191 Mass. 397, 77 N. E. 764; Doe *v.* Boston, etc., R. Co., 195 Mass. 168, 80 N. E. 814.

Minnesota. — Swanson *v.* Oakes, 93 Minn. 404, 101 N. W. 949.

Missouri. — Day *v.* Emery-Bird-Thayer Dry Goods Co., 114 Mo. App. 479, 89 S. W. 903; Rigsby *v.* Oil Well Supply Co., 115 Mo. App. 297, 91 S. W. 460, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905; Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621; Moore *v.* Royal Lead, etc., Co., 125 Mo. App. 393, 102 S. W. 616; Chandler *v.* St. Louis, etc., R. Co., 127 Mo. App. 34, 106 S. W. 553; Kirby *v.* Manufacturers' Coal, etc., Co., 127 Mo. App. 588, 106 S. W. 1069.

New Hampshire. — Hamel *v.* Newmarket Mfg. Co., 73 N. H. 386, 62 Atl. 592; Sirois *v.* Henry, 73 N. H. 148, 59 Atl. 936.

New Jersey. — Hardy *v.* Sulphur Mining Co., (N. J. 1907) 67 Atl. 177.

New York. — Kremer *v.* New York Edison Co., 102 N. Y. App. Div. 433, 92 N. Y. Supp. 883; O'Keefe *v.* Great Northern Elevator Co., 105 N. Y. App. Div. 8, 93 N. Y. Supp. 407; Pluckham *v.* American Bridge Co., 104 N. Y. App. Div. 404, 93 N. Y. Supp. 748; Berthelson *v.* Gabler, 111 N. Y. App. Div. 142, 97 N. Y. Supp. 421; Cadigan *v.* Glens Falls, etc., Co., 112 N. Y. App. Div. 751, 98 N. Y. Supp. 954; Ryan *v.* Delaware, etc., Co., 114 N. Y. App. Div. 268, 99 N. Y. Supp. 794.

North Carolina. — Britt *v.* Carolina Northern R. Co., 144 N. Car. 242, 56 S. E. 910.

Oregon. — Trickey *v.* Clark, (Oregon 1908) 93 Pac. 457.

Pennsylvania. — Wallace *v.* Henderson, 211 Pa. St. 146, 60 Atl. 574, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905–908.

Rhode Island. — Venbuvr *v.* Lafayette Worsted Mills, 27 R. I. 89, 60 Atl. 770, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905.

Tennessee. — Louisville, etc., R. Co. *v.* Vincent, 116 Tenn. 317, 95 S. W. 179.

Texas. — Bonn *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1904) 82 S. W. 808; Ray *v.* Pecos, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 466; Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29; Galveston, etc., R. Co. *v.* Bonn, (Tex. Civ. App. 1907) 99 S. W. 413; G. A. Duerler Mfg. Co. *v.* Eichhorn, (Tex. Civ. App. 1907) 99 S. W. 715; Suderman *v.* Woodruff, (Tex. Civ. App. 1907) 105 S. W. 217; Southern Pac. Co. *v.* Allen, (Tex. Civ. App. 1907) 106 S. W. 441; Missouri, etc., R. Co. *v.* Wise, (Tex. Civ. App. 1907) 106 S. W. 465.

Utah. — Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85; Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715, 723.

Virginia. — Virginia, etc., R. Co. *v.* Bailey, 103 Va. 205, 49 S. E. 33; Pocahontas Collieries Co. *v.* Williams, 105 Va. 708, 54 S. E. 868.

Washington. — Conine *v.* Olympia Logging Co., 36 Wash. 345, 78 Pac. 932; Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323; Schwaninger *v.* McNeeley, 44 Wash. 447, 87 Pac. 514; Olson *v.* Humbird Lumber Co., (Wash. 1907) 92 Pac. 897.

Wisconsin. — Hamann *v.* Milwaukee Bridge Co., 127 Wis. 550, 106 N. W. 1081; Polaski *v.* Pittsburgh Coal Dock Co., (Wis. 1908) 114 N. W. 437.

Where the negligence of the principal is that of a vice-principal, combined with the latter's negligence as a fellow servant, the master is liable. Roebling Constr. Co. *v.* Thompson, 229 Ill. 42, 82 N. E. 196.

908. 1. St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1905) 97 S. W. 534.

2. Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158; Lyon *v.* Charleston, etc., R. Co., 77 S. Car. 328, 58 S. E. 12.

909. 1. Higgins *v.* Higgins, 188 Mass. 113, 74 N. E. 471; Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. App. 1906) 98 S. W. 892.

910. 2. Southern Pac. R. Co. *v.* Hetzer, (C. C. A.) 135 Fed. 272; James Ramage Paper Co. *v.* Bulduzzi, (C. C. A.) 147 Fed. 151; Carter *v.* McDermott, 29 App. Cas. (D. C.) 145; Staunton Coal Co. *v.* Bub, 119 Ill. App. 278; Baldwin *v.* American Writing Paper Co., (Mass. 1907) 82 N. E. 1; Tucker *v.* American Car, etc., Co., 218 Pa. St. 323, 67 Atl. 616; Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29; Galveston, etc., R. Co. *v.* Bonn, (Tex. Civ. App. 1907) 99 S. W. 413.

To render a master liable on the ground of negligence in employing an incompetent servant, the act of the servant must be one due to his incompetency as a servant. Famularo *v.* Oil Well Supply Co., (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 75, 105 N. Y. Supp. 1063.

912. 1. Woodward Iron Co. *v.* Curl, (Ala. 1907) 44 So. 960; Gillen *v.* McAllister, 97 N. Y. App. Div. 310, 89 N. Y. Supp. 953.

2. Louisville, etc., R. Co. *v.* Wyatt, 93 S. W. 601, *29* Ky. L. Rep. 437.

The master is not required to exercise as high a degree of care in ascertaining whether a servant continues to be competent as he is required to exercise in the first selection, because careful and skilful men as a rule become more careful and skilful with the practice of their occupation, and the legal presumption is that competent servants continue to be so. Southern Pac. R. Co. *v.* Hetzer, (C. C. A.) 135 Fed. *272.*

3. Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822; McDermott *v.* Daniell, 121 N. Y. App. Div. 736, 106 N. Y. Supp. 496; Jackson *v.* Southern R. Co., 77 S. Car. 550, 58 S. E. 605; Louisville, etc., R. Co. *v.* Dillard, 114 Tenn. 240, 86 S. W. 315; El Paso, etc., R. Co. *v.* Keeley, 99 Tex. 87, 87 S. W. 660; Grams *v.* C. Reiss Coal Co., 125 Wis. 1, 102 N. W. 586.

913. 1. Staunton Coal Co. *v.* Bub, 119 Ill. App. 278; Scott *v.* Iowa Telephone Co., 126 Iowa 524, 102 N. W. 432 (employee handling live electric wires).

915. 2. Southern Pac. R. Co. *v.* Hetzer, 135 Fed. *272*, 68 C. C. A. *26*; Staunton Coal Co. *v.* Bub, 119 Ill. App. *278*.

4. Curtis *v.* Laconia Car Co. Works, 74 N. H. 516, 63 Atl. 400; Kamp *v.* Coxe, 122 Wis. *217*, 99 N. W. 366.

916. 1. Cooney *v.* Commonwealth Ave. St. R. Co., (Mass. 1907) 81 N. E. 905; Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048; Young *v.* Milwaukee Gaslight Co., (Wis. 1907) 113 N. W. 59.

917. 3. Cooney *v.* Commonwealth Ave. St. R. Co., (Mass. 1907) 81 N. E. 905; Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048.

918. 1. Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822; Southwestern Development Co. *v.* Boyd, (Indian Ter. 1907) 104 S. W. 1174; McIntosh *v.* Jones, (Mont. 1908) 93 Pac. 557; Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048; Hamann *v.* Milwaukee Bridge Co., 127 Wis. 550, 106 N. W. 1081.

The burden of proving the incompetency of the fellow servant is upon the party alleging it. Wilkinson Co-operative Glass Co. *v.* Dickinson, 35 Ind. App. 230, 73 N. E. 957.

2. Cooney *v.* Commonwealth Ave. St. R. Co., (Mass. 1907) 81 N. E. 905.

The fact that the incompetent servant was negligent does not relieve the master from liability. Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29.

What Constitutes Incompetency. An instruction that "incompetency in the law of negligence means want of ability suitable to the task, either as regards natural qualities or experience, or deficiency of disposition, or want of disposition to use one's experience and abilities properly — incompetency may exist not alone in physical or mental attributes, but in the disposition with which a person performs his duties, and though he may be physically and mentally able to do all that is required of him, his disposition towards his work, and towards his employer, and towards his fellow servants, may make him an incompetent man," is not erroneous. Young *v.* Milwaukee Gaslight Co., (Wis. 1907) 113 N. W. 60.

919. 3. Southern Pac. R. Co. *v.* Hetzer, 135 Fed. *272*, 68 C. C. A. *26*; Wilkinson Co-operative Glass Co. *v.* Dickinson, 35 Ind. App. *230*, 73 N. E. 957.

920. 2. Kamp *v.* Coxe, 122 Wis. *206*, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 920.

3. Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822.

923. 1. Kane *v.* Erie R. Co., 133 Fed. 681, 67 C. C. A. 653 (announcing *Ohio* rule); Lake Shore, etc., R. Co. *v.* Burtscher, 28 Ohio Cir. Ct. 309; Interurban R., etc., Co. *v.* Treuheit, 29 Ohio Cir. Ct. 407.

Where one servant is injured through the negligence of another with whom he is working, in order to hold the master liable under the superior servant doctrine, the injured servant must show that the other servant was placed in control over him. J. B. Foote Foundry Co. *v.* Young, 29 Ohio Cir. Ct. 420.

To render one a vice-principal under the superior servant rule, he must have been intrusted by the master with authority over other servants working with him. Zarembski *v.* Cincinnati, etc., R. Co., 29 Ohio Cir. Ct. 644.

The mere fact that one servant gives directions to another when to do certain acts does not prevent him from being a fellow servant. Charles Boldt Glass Co. *v.* Harris, 27 Ohio Cir. Ct. 590.

924. 1. *Illinois.* — Chicago, etc., R. Co. *v.* Kimmel, 221 Ill. 547, 77 N. E. 936; Postal Tel. Cable Co. *v.* Likes, 225 Ill. 249, 80 N. E. 136; East St. Louis Connecting R. Co. *v.* Meeker, 229 Ill. 98, 82 N. E. 202; Chicago Terminal Transfer Co. *v.* Reddick, 230 Ill. 105, 82 N. E. 598; Marquette Cement Mfg. Co. *v.* Williams, 230 Ill. 26, 82 N. E. 424; Illinois Southern R. Co. *v.* Marshall, 112 Ill. App. 514; Cleveland, etc., R. Co. *v.* Sturrells, 115 Ill. App. 615; Leighton, etc., Steel Co. *v.* Snell, 119 Ill. App. 199 (moulders and helpers); Chicago, etc., R. Co. *v.* Rathneau, 124 Ill. App. 427, *affirmed* 225 Ill. 278, 80 N. E. 119; Chicago, etc., R. Co. *v.* Strong, 129 Ill. App. 196, *judgment affirmed* 228 Ill. 281, 81 N. E. 1011.

Tennessee. — Alabama G. S. R. Co. *v.* Baldwin, 113 Tenn. 409, 82 S. W. 487.

Utah. — Morrison *v.* San Pedro, etc., R. Co., (Utah 1907) 88 Pac. 998.

926. 2. Pitts *v.* Wells, 31 Ky. L. Rep. 208, 101 S. W. 1192.

4. Howard *v.* Chesapeake, etc., R. Co., (Ky. 1906) 90 S. W. 950; Cincinnati, etc., R. Co. *v.* Reynolds, (Ky. 1907) 102 S. W. 888; Louisville, etc., R. Co. *v.* Brown, (Ky. 1908) 106 S. W. 795; Avery *v.* Cottrill, (Ky. 1908) 107 S. W. 332.

927. 1. Illinois Cent. R. Co. *v.* Elliott, (Ky. 1904) 82 S. W. 374.

2. El Paso, etc., R. Co. *v.* Kelly, 37 Tex. Civ. App. 156, 83 S. W. 855; Galveston, etc., R. Co. *v.* Roth, 37 Tex. Civ. App. 610, 84 S. W. 1112; Abilene Cotton Oil Co. *v.* Anderson, (Tex. Civ. App. 1906) 91 S. W. 607; Galveston, etc., R. Co. *v.* Bonn, (Tex. Civ. App. 1907) 99 S. W. 413; Texas, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 99 S. W. 738; McCracken *v.* Lantry-Sharpe Contracting, etc., Co., (Tex. Civ. App.

1907) 101 S. W. 520; International, etc., R. Co. *v.* Tisdale, (Tex. Civ. App. 1905) 87 S. W. 1063; Galveston, etc., R. Co. *v.* Mohrmann, (Tex. Civ. App. 1906) 93 S. W. 1090.

928. 3. Turrentine *v.* Wellington, 136 N. Car. 308, 48 S. E. 739.

4. Harris *v.* Balfour Quarry Co., 137 N. Car. 204, 49 S. E. 95; Chesson *v.* Walker, (N. Car. 1908) 60 S. E. 422.

929. 2. *Alabama.* — Louisville, etc., R. Co. *v.* Lile, (Ala. 1908) 45 So. 699.

Arkansas. — Stecher Cooperage Works *v.* Steadman, 78 Ark. 381, 94 S. W. 41; Archer-Foster Constr. Co. *v.* Vaughn, 79 Ark. 20, 94 S. W. 717.

Florida. — Atlantic Coast Line R. Co. *v.* Beazley, (Fla. 1907) 45 So. 761.

Georgia. — Moore *v.* C. L. King Mfg. Co., 124 Ga. 576, 53 S. E. 107.

Idaho. — Larsen *v.* Le Doux, 11 Idaho 49, 81 Pac. 600.

Kansas. — Higgins *v.* Atchison, etc., R. Co., 70 Kan. 814, 79 Pac. 679; Christ *v.* Wichita Gas, etc., Co., 72 Kan. 135, 83 Pac. 199; Missouri, etc., R. Co. *v.* Quinlan, (Kan. 1908) 93 Pac. 632.

Missouri. — Bien *v.* St. Louis Transit Co., 108 Mo. App. 399, 83 S. W. 986; Depuy *v.* Chicago, etc., R. Co., 110 Mo. App. 110, 84 S. W. 103; Neves *v.* Green, 111 Mo. App. 634, 86 S. W. 508; Hollweg *v.* Bell Telephone Co., 195 Mo. 149, 93 S. W. 262; Smith *v.* American Car, etc., Co., 122 Mo. App. 610, 99 S. W. 790; Mack *v.* Chicago, etc., R. Co., 123 Mo. App. 531, 101 S. W. 142; Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 90.

South Carolina. — Bryant *v.* Gaffney Mfg. Co., 75 S. Car. 487, 56 S. E. 9; Lyon *v.* Charleston, etc., R. Co., (S. Car. 1906) 56 S. E. 18.

Washington. — Sandquist *v.* Independent Telephone Co., 38 Wash. 313, 80 Pac. 539; O'Brien *v.* Page Lumber Co., 39 Wash. 537, 82 Pac. 114; Jancko *v.* West Coast Mfg., etc., Co., 40 Wash. 230, 82 Pac. 284; Dossett *v.* St. Paul, etc., Lumber Co., 40 Wash. 276, 82 Pac. 273; Creamer *v.* Moran Bros. Co., 41 Wash. 636, 84 Pac. 592; Eidner *v.* Three Lakes Lumber Co., (Wash. 1907) 88 Pac. 326; Cook *v.* Chehalis River Lumber Co., (Wash. 1908) 94 Pac. 180.

Responsibility of contractors for injury received by workmen rests upon their freedom of action in respect to selection of, and to superintendence over the latter. When the individual workmen, instead of allowing matters to take their usual shape and course, make it a condition of their accepting service that the contractor will yield in their favor this right of freedom of action, they absolve him from the responsibility which otherwise would be thrown upon him and look to that of their own selected agencies. Farmer *v.* Kearney, 115 La. 722, 39 So. 967.

928. 2. *England.* — Cribb *v.* Kynoch, (1907) 2 K. B. 548, 76 L. J. K. B. 948.

United States. — Lach *v.* Burnham, 134 Fed. 688; Baltimore, etc., R. Co. *v.* Brown, (C. C. A.) 146 Fed. 24; Safety Insulated Wire, etc., Co. *v.* Matthews, 151 Fed. 761, 81 C. C. A. 385; Kinnear Mfg. Co. *v.* Carlisle, (C. C. A.) 152 Fed. 933; Reed *v.* Moore, 153 Fed. 358, 82 C. C. A. 434; Westinghouse *v.* Callaghan, (C. C. A.) 155 Fed. 397; Vilter Mfg. Co. *v.* Otte, (C. C. A.) 157 Fed. 230.

California. — Leishman *v.* Union Iron Works, 148 Cal. 274, 83 Pac. 30; Schwind *v.* Floriston Pulp, etc., Co., 5 Cal. App. 197, 89 Pac. 1066.

Colorado. — Cripple Creek Min. Co. *v.* Brabant, 37 Colo. 423, 87 Pac. 794.

Georgia. — Moore *v.* Dublin Cotton Mills, 127 Ga. 623, 56 S. E. 839, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933.

Indiana. — Dill *v.* Marmon, 164 Ind. 507, 73 N. E. 67; Chicago, etc., R. Co. *v.* Lain, (Ind. App. 1906) 79 N. E. 547.

Iowa. — See, however, Struble *v.* Burlington, etc., R. Co., 128 Iowa 158, 103 N. W. 142 (brakeman in charge of making up train); Meier *v.* Way, (Iowa 1907) 111 N. W. 420.

Massachusetts. — Jordan *v.* New England Structural Co., (Mass. 1908) 83 N. E. 332.

Michigan. — McClure *v.* Detroit Southern R. Co., 146 Mich. 457, 109 N. W. 847; Guest *v.* Edison Illuminating Co., 150 Mich. 438, 114 N. W. 226; Younggren *v.* I. Stephenson Co., 150 Mich. 488, 114 N. W. 341; Amoe *v.* Great Lakes Engineering Works, (Mich. 1908) 114 N. W. 1010.

Minnesota. — Jemming *v.* Great Northern R. Co., 96 Minn. 302, 104 N. W. 1079; Doerr *v.* Daily News Pub. Co., 97 Minn. 248, 106 N. W. 1044.

Missouri. — Chandler *v.* St. Louis, etc., R. Co., 127 Mo. App. 34, 106 S. W. 553 (announcing rule of federal courts).

New Hampshire. — Hilton *v.* Fitchburg R. Co., 73 N. H. 116, 59 Atl. 625; Tilley *v.* Rockingham County Light, etc., Co., (N. H. 1907) 67 Atl. 946.

New Jersey. — Ricker *v.* Central R. Co., 73 N. J. L. 751, 64 Atl. 1068; Rocco *v.* F. A. Gillespie Co., 73 N. J. L. 591, 64 Atl. 117.

New York. — Vogel *v.* American Bridge Co., 180 N. Y. 373, 73 N. E. 1; Riola *v.* New York Cent., etc., R. Co., 97 N. Y. App. Div. 252, 89 N. Y. Supp. 945; Anglin *v.* American Constr., etc., Co., 109 N. Y. App. Div. 237, 96 N. Y. Supp. 49; McDonald *v.* Simpson-Crawford Co., 114 N. Y. App. Div. 859, 100 N. Y. Supp. 269; Chisholm *v.* Manhattan R. Co., 116 N. Y. App. Div. 320, 101 N. Y. Supp. 622.

Oklahoma. — Ruemmeli-Braun Co. *v.* Cahill, 14 Okla. 422, 79 Pac. 260.

South Carolina. — Brabham *v.* American Telephone, etc., Co., 71 S. Car. 53, 50 S. E. 716; Tucker *v.* Buffalo Cotton Mills, 76 S. Car. 539, 57 S. E. 626; Lyon *v.* Charleston, etc., R. Co., 77 S. Car. 328, 58 S. E. 12; Pagan *v.* Southern R. Co., 78 S. Car. 413, 59 S. E. 32.

Utah. — Morrison *v.* San Pedro, etc., R. Co., (Utah 1907) 88 Pac. 998, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933.

Virginia. — Lane *v.* Bauserman, 103 Va. 146, 48 S. E. 857.

Wisconsin. — Hamann *v.* Milwaukee Bridge Co., 127 Wis. 550, 106 N. W. 1081; Gereg *v.* Milwaukee Gas Light Co., 128 Wis. 35, 107 N. W. 289.

941. 3. **Missouri Statute Recognizing Rule** as regards railway employees. McGuire *v.*

Quincy, etc., R. Co., 128 Mo. App. 677, 107 S. W. 411.

943. **1.** *Alabama.* — Sloss-Sheffield Steel, etc., Co. *v.* Holloway, 144 Ala. 280, 40 So. 211; Williamson Iron Co. *v.* McQueen, 144 Ala. 265, 40 So. 306; Creola Lumber Co. *v.* Mills, (Ala. 1906) 42 So. 1019; Woodward Iron Co. *v.* Curl, (Ala. 1907) 44 So. 969.

Arkansas. — Choctaw, etc., R. Co. *v.* Doughty, 77 Ark. 1, 91 S. W. 768 (railway employees).

Mississippi. — Yazoo, etc., R. Co. *v.* Washington, (Miss. 1908) 45 So. 614.

New York. — McLoughlin *v.* Interurban St. R. Co., 101 N. Y. App. Div. 134, 91 N. Y. Supp. 883 (street car conductor not within statute); McBride *v.* New York Tunnel Co., 101 N. Y. App. Div. 448, 92 N. Y. Supp. 282; Braunberg *v.* Solomon, 102 N. Y. App. Div. 330, 92 N. Y. Supp. 506; Quinlan *v.* Lackawanna Steel Co., 107 N. Y. App. Div. 176, 94 N. Y. Supp. 942; Faith *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 222, 95 N. Y. Supp. 774; Miller *v.* Solvay Process Co., 109 N. Y. App. Div. 135, 95 N. Y. Supp. 1020; Berthelson *v.* Gabler, 111 N. Y. App. Div. 142, 97 N. Y. Supp. 421; Bannon *v.* New York, etc., R. Co., 112 N. Y. App. Div. 552, 98 N. Y. Supp. 770; Cadigan *v.* Glens Falls, etc., Co., 112 N. Y. App. Div. 751, 98 N. Y. Supp. 954; Carlson *v.* United Engineering, etc., Co., 113 N. Y. App. Div. 371, 98 N. Y. Supp. 1036; Guilmartin *v.* Solvay Process Co., 115 N. Y. App. Div. 794, 101 N. Y. Supp. 118; Mikos *v.* New York Cent., etc., R. Co., 118 N. Y. App. Div. 536, 102 N. Y. Supp. 995; Graham *v.* Van Hauten, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 641, 103 N. Y. Supp. 111; Hope *v.* Scranton, etc., Coal Co., 120 N. Y. App. Div. 595, 105 N. Y. Supp. 372; Heffron *v.* Lackawanna Steel Co., 121 N. Y. App. Div. 35, 105 N. Y. Supp. 429; Lowery *v.* Huntington Light, etc., Co., 121 N. Y. App. Div. 245, 105 N. Y. Supp. 852; Ozogar *v.* Pierce, etc., Mfg. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 579, 105 N. Y. Supp. 1087; Onesti *v.* Central New England R. Co., 121 N. Y. App. Div. 554, 106 N. Y. Supp. 233; Williams *v.* Citizens' Steamboat Co., 122 N. Y. App. Div. 188, 106 N. Y. Supp. 975; Bovi *v.* Hess, 123 N. Y. App. Div. 389, 107 N. Y. Supp. 1001; McHugh *v.* Manhattan R. Co., 179 N. Y. 378, 72 N. E. 312; Castner Electrolytic Alkali Co. *v.* Davies, (C. C. A.) 154 Fed. 938 (New York statute); Hayward *v.* Key, (C. C. A.) 138 Fed. 34 (New York statute).

Oregon. — Sorenson *v.* Oregon Power Co., 47 Oregon 24, 82 Pac. 10 (Railroad Employees' Act 1893).

Texas. — Missouri, etc., R. Co. *v.* Dean, (Tex. Civ. App. 1905) 89 S. W. 797 (railway employees); Sherman *v.* Texas, etc., R. Co., (Tex. Civ. App. 1906) 91 S. W. 561.

Canada. — Shea *v.* John Inglis Co., 12 Ont. L. Rep. 80.

Statutory Notice of Injury. — Chisholm *v.* Manhattan R. Co., 116 N. Y. App. Div. 320, 101 N. Y. Supp. 622.

Under the Texas Statute, which abrogates the relation of fellow servant as regards railway employees where one has superintendency over another, the one having the superintendency may recover against the railway company for injuries caused by the negligence of another subject to his orders. Galveston, etc., R. Co. *v.* Perry, 38 Tex. Civ. App. 81, 85 S. W. 62.

The Massachusetts Statute (Rev. Laws, c. 106, §§ 71–73) providing as regards injury to a servant through the negligence of one exercising superintendence, that "the employee or his legal representatives shall . . . have the same rights to compensation and of action against the employer as if he had not been an employee," etc., confers merely a right of action in favor of an employee, and does not entitle the father of a minor to recover for injuries to the minor caused by the negligence of a fellow servant exercising superintendence. Jordan *v.* New England Structural Co., (Mass. 1908) 83 N. E. 332.

The *Massachusetts* statute does not authorize a recovery by the representatives of a railway employee whose death is caused by the negligence of a fellow servant exercising superintendence. Piermarini *v.* New York Cent., etc., R. Co., 191 Mass. 9, 77 N. E. 306.

2. Edgar *v.* New York, etc., R. Co., 188 Mass. 420, 74 N. E. 911; Reardon *v.* Byrne, 195 Mass. 146, 80 N. E. 827; Abrahamson *v.* General Supply, etc., Co., 112 N. Y. App. Div. 318, 98 N. Y. Supp. 596; Droge *v.* John N. Robins Co., 123 N. Y. App. Div. 537, 108 N. Y. Supp. 457 (person in employ of a third person); Falk *v.* Havemeyer, 123 N. Y. App. Div. 657, 108 N. Y. Supp. 140 (one merely giving directions when to proceed with work not a superintendent).

Mere incidental authority to exercise a minor supervision does not constitute the servant a superintendent within the meaning of the *New York* Laws 1902. Bovi *v.* Hess, 123 N. Y. App. Div. 389, 107 N. Y. Supp. 1001.

944. **1.** Smith *v.* Pioneer Min., etc., Co., 146 Ala. 234, 41 So. 475; Hoffman *v.* Holt, 186 Mass. 572, 72 N. E. 87; Gallagher *v.* Newman, 190 N. Y. 444, 83 N. E. 480; Kujava *v.* Irving, 122 N. Y. App. Div. 375, 106 N. Y. Supp. 837; La Duke *v.* Hudson River Tel. Co., 124 N. Y. App. Div. 106, 108 N. Y. Supp. 189; Droge *v.* John N. Robins Co., 123 N. Y. App. Div. 537, 108 N. Y. Supp. 457.

What Constitutes an Act of Superintendence. — Solari *v.* Clark, 187 Mass. 229, 72 N. E. 958 (inspection of a newly erected scaffolding is an act of superintendence); Meagher *v.* Crawford Laundry Machinery Co., 187 Mass. 586, 73 N. E. 853; McPhee *v.* New England Structural Co., 188 Mass. 141, 74 N. E. 303; Byrne *v.* Learnard, 191 Mass. 260, 77 N. E. 316; Hourigan *v.* Boston El. R. Co., 193 Mass. 495, 79 N. E. 738; Guilmartin *v.* Solvay Process Co., 189 N. Y. 490, 82 N. E. 725; McHugh *v.* Manhattan R. Co., 179 N. Y. 378, 72 N. E. 312.

Negligence of Superintendent While Engaged in Manual Labor. — Lowry *v.* Huntington, etc., Co., 121 N. Y. App. Div. 245, 105 N. Y. Supp. 852; Ozogar *v.* Pierce, etc., Mfg. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 579, 105 N. Y. Supp. 1087; Missouri, etc., R. Co. *v.* Dean, (Tex. Civ. App. 1905) 89 S. W. 797 (railway foreman).

3. Hooe *v.* Boston, etc., R. Co., 187 Mass. 67, 72 N. E. 341; McConnell *v.* Morse Iron Works, etc., Co., 187 N. Y. 341, 80 N. E. 190; Crosby

v. Lehigh Valley R. Co., (C. C. A.) 137 Fed. 765 (negligence of conductor of train — *New York* statute).

915. **1.** New England Telephone, etc., Co. *v.* Butler, (C. C. A.) 156 Fed. 321 (*Massachusetts* statute).

2. Munroe *v.* Ley, (C. C. A.) 156 Fed. 468 (*Massachusetts* statute); Murphy *v.* New York, etc., R. Co., 187 Mass. 18, 72 N. E. 330; Sampson *v.* Holbrook, 192 Mass. 421, 78 N. E. 127; Hourigan *v.* Boston El. R. Co., 193 Mass. 495, 79 N. E. 738; Coates *v.* Soley, 194 Mass. 386, 80 N. E. 464; Farrell *v.* B. F. Sturtevant Co., 194 Mass. 431, 80 N. E. 469; Doe *v.* Boston, etc., St. R. Co., 195 Mass. 168, 80 N. E. 814.

The Burden of Proving that the person through whom the plaintiff was injured was intrusted with superintendence is upon the plaintiff. Reardon *v.* Byrne, 195 Mass. 146, 80 N. E. 827.

4. Indiana Statute. — Acme Bedford Stone Co. *v.* McPhetridge, 35 Ind. App. 79, 73 N. E. 838; Clear Creek Stone Co. *v.* Carmichael, 37 Ind. App. 413, 73 N. E. 935, 76 N. E. 320; Indianapolis St. R. Co. *v.* Kane, (Ind. 1907) 80 N. E. 841.

916. **1.** Sandusky Portland Cement Co. *v.* Rice, (Ind. App. 1907) 81 N. E. 213.

2. Rainbow Coal, etc., Co. *v.* Martin, 35 Ind. App. 658, 74 N. E. 902; Chicago, etc., R. Co. *v.* Lain, (Ind. App. 1906) 79 N. E. 547.

3. Toledo, etc., R. Co. *v.* Pavey, 39 Ind. App. 284, 79 N. E. 529.

6. *England.* — Bett *v.* Dalmeny Oil Co., Sc. Ct. of Sess. 7 F. 787; Burr *v.* Theatre Royal, (1907) 1 K. B. 544, 76 L. J. K. B. 459; Cribb *v.* Kynoch, (1907) 2 K. B. 548, 76 L. J. K. B. 948.

Illinois. — Baier *v.* Selke, 211 Ill. 512, 71 N. E. 1074; Rogers *v.* Cleveland, etc., R. Co., 211 Ill. 126, 71 N. E. 850, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946.

Indiana. — Sandusky Portland Cement Co. *v.* Rice, (Ind. App. 1907) 82 N. E. 1007.

Massachusetts. — Lammi *v.* Milford Pink Granite Quarries, (Mass. 1907) 82 N. E. 26.

Minnesota. — Hjelm *v.* Western Granite Contracting Co., 94 Minn. 169, 102 N. W. 384.

Ohio. — Lake Shore, etc., R. Co. *v.* Burtscher, 28 Ohio Cir. Ct. 314, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946.

Wisconsin. — Williams *v.* North Wisconsin Lumber Co., 124 Wis. 328, 102 N. W. 589.

918. **1. Negligence of Vice-principal Necessary to Charge Master with Liability.** — King *v.* Iowa Cent. R. Co., (Iowa 1907) 114 N. W. 177; Hall *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 275; Veit *v.* Ann Arbor R. Co., 150 Mich. 358, 114 N. W. 233; Shaw *v.* Chicago, etc., R. Co., (Minn. 1907) 114 N. W. 85.

Vice-principal Must Have Been Acting within the Scope of His Authority to impose liability on master. Chicago Terminal Transfer R. Co. *v.* Schiavone, 216 Ill. 275, 74 N. E. 1048, *reversing* 116 Ill. App. 335; Hasty *v.* Cincinnati, etc., R. Co., (Ky. 1906) 97 S. W. 432; Younkin *v.* Rocheford, (Neb. 1906) 107 N. W. 852.

What Constitutes Act of Vice-principal within Scope of Authority. — Compher *v.* Missouri, etc., Telephone Co., 127 Mo. App. 553, 106 S. W. 536.

A crew of six or seven men, including respondent, were engaged in repairing a railway track, and appellant provided hand cars for the purpose of going to and from their work. At the time of the accident the other members of the crew propelled the car at such a high rate of speed that respondent lost his hold on the handle bars and fell from the car. There was no necessity for running the car so rapidly, and it was done thoughtlessly, in the spirit of fun, and for their own amusement, although respondent had asked them not to go so fast. It was held that in thus negligently overspeeding the car the men were engaged in the performance of their duty to the master, and were not acting without the scope of their authority. Soderlund *v.* Chicago, etc., R. Co., 102 Minn. 240, 113 N. W. 449.

2. *District of Columbia.* — Carter *v.* McDermott, 29 App. Cas. (D. C.) 145.

Georgia. — Moore *v.* Dublin Cotton Mills, 127 Ga. 614, 56 S. E. 839, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 948; Dennis *v.* Schofield's Sons Co., 1 Ga. App. 489, 57 S. E. 925.

Idaho. — Larsen *v.* Le Doux, 11 Idaho 49, 81 Pac. 600.

Illinois. — Schillinger Bros. Co. *v.* Smith, 225 Ill. 80, 80 N. E. 65, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 948.

Indiana. — Antioch Coal Co. *v.* Rockey, (Ind. 1907) 82 N. E. 76.

Kansas. — Christ *v.* Wichita Gas, etc., Co., 72 Kan. 135, 83 Pac. 199; Harper *v.* Iola Portland Cement Co., (Kan. 1907) 93 Pac. 179.

Missouri. — Hollweg *v.* Bell Telephone Co., 195 Mo. 156, 93 S. W. 262, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 948; Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 90.

Oklahoma. — Mollhoff *v.* Chicago, etc., R. Co., 15 Okla. 540, 82 Pac. 733.

Pennsylvania. — Vant *v.* Roelofs, 217 Pa. St. 535, 66 Atl. 749; Mapes *v.* Pittsburg Provision, etc., Co., 31 Pa. Super. Ct. 453; Clegg *v.* Seaboard Steel Casting Co., 34 Pa. Super. Ct. 63.

Utah. — Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85; Morrison *v.* San Pedro, etc., R. Co., (Utah 1907) 88 Pac. 998.

Washington. — Ball *v.* Megrath, 43 Wash. 107, 86 Pac. 382.

A servant designated by the vice-principal to perform a particular service which had been delegated to him by his master in turn becomes a vice-principal. Cleveland, etc., R. Co. *v.* Austin, 127 Ill. App. 281.

919. **1.** Lake Shore, etc., R. Co. *v.* Burtscher, 28 Ohio Cir. Ct. 315, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 948, 949.

2. *United States.* — Lach *v.* Burnham, 134 Fed. 688; Peters *v.* George, 154 Fed. 634, 83 C. C. A. 408.

Arkansas. — Western Coal, etc., Co. *v.* Buchanan, 82 Ark. 499, 102 S. W. 694.

Connecticut. — Gilmore *v.* American Tube, etc., Co., 79 Conn. 498, 66 Atl. 4.

Georgia. — Moore *v.* C. L. King Mfg. Co., 124 Ga. 576, 53 S. E. 107; Moore *v.* Dublin Cotton Mills, 127 Ga. 609, 56 S. E. 839; Dennis *v.* Schofield's Sons Co., 1 Ga. App. 489, 57 S. E. 925.

Idaho. — Larsen *v.* Le Doux, 11 Idaho 49, 81 Pac. 600.

Illinois. — Donk Bros. Coal, etc., Co. *v.* Thil, 228 Ill. 233, 81 N. E. 857.

Indiana. — Chicago, etc., R. Co. *v.* Barker, (Ind. 1908) 83 N. E. 369.

Iowa. — McGuire *v.* Waterloo, etc., Union Mill Co., (Iowa 1907) 113 N. W. 850.

Kansas. — Christ *v.* Wichita Gas, etc., Co., 72 Kan. 135, 83 Pac. 199; Schwarzschild, etc., Co. *v.* Weeks, 72 Kan. 190, 83 Pac. 406.

Kentucky. — Cincinnati, etc., R. Co. *v.* Hill, (Ky. 1905) 89 S. W. 523.

Mississippi. — Bradford *v.* Taylor, 85 Miss. 409, 37 So. 812.

Missouri. — Depuy *v.* Chicago, etc., R. Co., 110 Mo. App. 110, 84 S. W. 103; Neves *v.* Green, 111 Mo. App. 634, 86 S. W. 508.

New Hampshire. — Tilley *v.* Rockingham County Light, etc., Co., (N. H. 1907) 67 Atl. 946.

New Jersey. — Kane *v.* Babcock, etc., Co., (N. J. 1907) 67 Atl. 1014.

New York. — Date *v.* New York Glucose Co., 104 N. Y. App. Div. 207, 93 N. Y. Supp. 249.

North Carolina. — Chesson *v.* Walker, (N. Car. 1908) 60 S. E. 422.

South Carolina. — Pagan *v.* Southern R. Co., 78 S. Car. 413, 59 S. E. 32.

Texas. — St. Louis, etc., R. Co. *v.* Arnett, 37 Tex. Civ. App. 523, 84 S. W. 599 (announcing the law of *Indian Territory*).

Utah. — Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85; Morrison *v.* San Pedro, etc., R. Co., (Utah 1907) 88 Pac. 998.

Wisconsin. — Horne *v.* La Crosse Box Co., 123 Wis. 399, 101 N. W. 935.

3. *Alabama.* — Smith *v.* Pioneer Min., etc., Co., 146 Ala. 234, 41 So. 475.

Arkansas. — Archer-Foster Constr. Co. *v.* Vaughn, 79 Ark. 20, 94 S. W. 717.

Georgia. — Van Dyke *v.* Menlo Fruit Co., 129 Ga. 532, 59 S. E. 215.

Illinois. — Baier *v.* Selke, 211 Ill. 512, 71 N. E. 1074; Anderson *v.* Higgins, 122 Ill. App. 454. See, however, Roebling Constr. Co. *v.* Thompson, 129 Ill. App. 20, *judgment affirmed* 229 Ill. 42, 82 N. E. 196.

Iowa. — Collingwood *v.* Illinois, etc., Fuel Co., 125 Iowa 537, 101 N. W. 283; Freebourn *v.* Chamberlain Medicine Co., (Iowa 1907) 113 N. W. 918.

Massachusetts. — Hoffman *v.* Holt, 186 Mass. 572, 72 N. E. 87; Hooe *v.* Boston, etc., R. Co., 187 Mass. 67, 72 N. E. 341.

Michigan. — Page *v.* Battle Creek Pure Food Co., 142 Mich. 17, 105 N. W. 72.

Minnesota. — Berneche *v.* Hilliard, 101 Minn. 366, 112 N. W. 392.

Missouri. — Stevens *v.* Deatherage Lumber Co., 110 Mo. App. 398, 86 S. W. 481; Rigsby *v.* Oil Well Supply Co., 115 Mo. App. 297, 91 S. W. 460; Bokamp *v.* Chicago, etc., R. Co., 123 Mo. App. 270, 100 S. W. 689 (announcing law of *Illinois*).

New York. — Wooton *v.* Flatbush Gas Co., 102 N. Y. App. Div. 294, 92 N. Y. Supp. 380; Quinlan *v.* Lackawanna Steel Co., 107 N. Y. App. Div. 176, 94 N. Y. Supp. 942; Korber *v.* J. Ottman Lithographing Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 462, 97 N. Y. Supp. 1044; Bannon *v.* New York, etc., R. Co., 112 N. Y. App. Div. 552, 98 N. Y. Supp. 770; Guilmartin *v.* Solvay Process Co., 115 N. Y. App. Div. 794, 101 N. Y. Supp. 118; Connolly *v.* Hall, etc., Constr. Co., 117 N. Y. App. Div. 387, 102 N. Y. Supp. 599; Curran *v.* Manhattan R. Co., 118 N. Y. App. Div. 347, 103 N. Y. Supp. 351; Lowery *v.* Huntington Light, etc., Co., 121 N. Y. App. Div. 245, 105 N. Y. Supp. 852.

Pennsylvania. — Miller *v.* American Bridge Co., 216 Pa. St. 559, 65 Atl. 1109.

Washington. — See, however, Creamer *v.* Moran Bros. Co., 41 Wash. 636, 84 Pac. 592; Sullivan *v.* Wood, 43 Wash. 259, 86 Pac. 629.

Wisconsin. — Williams *v.* North Wisconsin Lumber Co., 124 Wis. 328, 102 N. W. 589.

A vice-principal who orders a workman into a place of danger and then, knowing that he is there and without warning, negligently starts machinery into operation by an act which under ordinary circumstances would have been performed by him in the capacity of a fellow servant, must be held to have acted as a vice-principal in starting the machine, as well as in the previous act which placed the employee in the dangerous situation. Cody *v.* Longyear, (Minn. 1908) 114 N. W. 735.

951. **1.** *United States.* — Maxfield *v.* Graveson, 131 Fed. 841, 65 C. C. A. 595; The Elton, 142 Fed. 367, 73 C. C. A. 467; American Car, etc., Co. *v.* Brinkman, (C. C. A.) 146 Fed. 712.

District of Columbia. — Butler *v.* Frazee, 25 App. Cas. (D. C.) 392; Carter *v.* McDermott, 29 App. Cas. (D. C.) 145.

Georgia. — Moore *v.* Dublin Cotton Mills, 127 Ga. 609, 56 S. E. 839.

Illinois. — Schillinger Bros. Co. *v.* Smith, 225 Ill. 74, 80 N. E. 65; Chicago Union Traction Co. *v.* Sawusch, 119 Ill. App. 349.

Iowa. — Wilder *v.* Great Western Cereal Co., 134 Iowa 451, 109 N. W. 789.

Kentucky. — Pitts *v.* Wells, 101 S. W. 1192, 31 Ky. L. Rep. 208.

Louisiana. — Ingham *v.* John B. Honor Co., 113 La. 1040, 37 So. 963.

New York. — Pluckham *v.* American Bridge Co., 104 N. Y. App. Div. 404, 93 N. Y. Supp. 748 (New York statute as to what constitutes a "mechanical contrivance"); McManus *v.* St. Regis Paper Co., 107 N. Y. App. Div. 29, 94 N. Y. Supp. 932 (removal of guards required by statute on machinery); Pinsdorf *v.* Kellogg, 108 N. Y. App. Div. 209, 95 N. Y. Supp. 517 (New York statute as to guards on machinery — temporary removal of guards); Hazzard *v.* State, 108 N. Y. App. Div. 119, 95 N. Y. Supp. 1103 (liability of state); Haggblad *v.* Brooklyn Heights R. Co., 117 N. Y. App. Div. 838, 102 N. Y. Supp. 1030 (statute); Hohl *v.* Hewitt Motor Co., (Supm. Ct. App. T.) 103 N. Y. Supp. 755, *reversed* 121 N. Y. App. Div. 866, 106 N. Y. Supp. 881 (statute).

Pennsylvania. — Liptrap *v.* Westinghouse Air Brake Co., 210 Pa. St. 62, 59 Atl. 430.

Texas. — American Cotton Co. *v.* Simmons, (Tex. Civ. App. 1905) 87 S. W. 842.

Washington. — Barclay *v.* Puget Sound Lumber Co., (Wash. 1908) 93 Pac. 430.

952. **2.** Baltimore, etc., R. Co. *v.* Brown, (C. C. A.) 146 Fed. 24.

3. Maxfield *v.* Graveson, 131 Fed. 841, 65 C. C. A. 505.

953. **2.** *California.* — Towne *v.* United

Electric Car, etc., Co., 140 Cal. 760, 74 Pac. 304.

Connecticut. — See, however, Farrell *v.* Eastern Machinery R. Co., 77 Conn. 484, 59 Atl. 611 (selection of unsuitable plank for staging).

Idaho. — Larsen *v.* Le Doux, 11 Idaho 49, 81 Pac. 600.

Kansas. — See, however, Missouri, etc., R. Co. *v.* Green, 75 Kan. 504, 89 Pac. 1042 (*Kansas* statute as to railroad employees).

Missouri. — Forbes *v.* Dunnavant, 198 Mo. 193, 95 S. W. 934; Reeder *v.* Crystal Carbonate Lime Co., (Mo. App. 1908) 107 S. W. 1016.

New Hampshire. — Hilton *v.* Fitchburg R. Co., 73 N. H. 116, 59 Atl. 625.

New York. — Vogel *v.* American Bridge Co., 180 N. Y. 373, 73 N. E. 1; McConnell *v.* Morse Iron Works, etc., Co., 187 N. Y. 341, 80 N. E. 190; Weizinger *v.* Erie R. Co., 106 N. Y. App. Div. 411, 94 N. Y. Supp. 869.

Wisconsin. — Hoveland *v.* National Blower Works, (Wis. 1908) 114 N. W. 795.

If the fellow servant selecting the appliance was not negligent the rule does not apply. Cushing *v.* G. W. & F. Smith Iron Co., 194 Mass. 310, 80 N. E. 596.

4. Tillson *v.* Maine Cent. R. Co., 102 Me. 463, 67 Atl. 407; Stevick *v.* Northern Pac. R. Co., 39 Wash. 501, 81 Pac. 999.

954. 1. Standard Pottery Co. *v.* Moudy, 35 Ind. App. 435, 73 N. E. 188, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 953, 954; Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510.

3. *United States.* — Lach *v.* Burnham, 134 Fed. 688; The Elton, 142 Fed. 367, 73 C. C. A. 467; Kinnear Mfg. Co. *v.* Carlisle, (C. C. A.) 152 Fed. 933.

Illinois. — Schillinger Bros. Co. *v.* Smith, 225 Ill. 74, 80 N. E. 65.

Iowa. — Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Hendrickson *v.* U. S. Gypsum Co., 133 Iowa 89, 110 N. W. 322; Schminkey *v.* Sinclair, (Iowa 1908) 114 N. W. 612.

Kansas. — Atchison, etc., Bridge Co. *v.* Miller, 71 Kan. 37, 80 Pac. 18.

Kentucky. — Cumberland Telephone, etc., Co. *v.* Graves, (Ky. 1907) 104 S. W. 356.

Maryland. — Philadelphia, etc., R. Co. *v.* Devers, 101 Md. 341, 61 Atl. 418.

Massachusetts. — Keeley *v.* Boston El. R. Co., 192 Mass. 481, 78 N. E. 490.

Minnesota. — Peterson *v.* Van Dusen, 101 Minn. 50, 111 N. W. 839.

Missouri. — Day *v.* Emery, etc., Dry Goods Co., 114 Mo. App. 479, 89 S. W. 903; Dakan *v.* G. W. Chase, etc., Co., 197 Mo. 238, 94 S. W. 944; Bokamp *v.* Chicago, etc., R. Co., 123 Mo. App. 270, 100 S. W. 689; Haynie *v.* Hammond Packing Co., 126 Mo. App. 88, 103 S. W. 581; Combs *v.* Rountree Constr. Co., 205 Mo. 367, 104 S. W. 77; Koerner *v.* St. Louis Car Co., (Mo. 1907) 107 S. W. 481; Wilson *v.* Kansas City Southern R. Co., 122 Mo. App. 667, 99 S. W. 465.

New Jersey. — Burns *v.* Delaware, etc., Tel., etc., Co., 70 N. J. L. 745, 59 Atl. 220.

New York. — Johnson *v.* Terry, etc., Co., 113 N. Y. App. Div. 762, 99 N. Y. Supp. 375.

Pennsylvania. — Lininger *v.* Westinghouse Air Brake Co., 210 Pa. St. 62, 59 Atl. 430; Mapes *v.* Pittsburg Provision, etc., Co., 31 Pa. Super. Ct. 453; Clegg *v.* Seaboard Steel Casting Co., 34 Pa. Super. Ct. 63.

Texas. — St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1906) 97 S. W. 534; G. A. Duerler Mfg. Co. *v.* Eichhorn, (Tex. Civ. App. 1907) 99 S. W. 715.

Virginia. — Lane *v.* Bauserman, 103 Va. 146, 48 S. E. 857; Low Moor Iron Co. *v.* La Bianca, 106 Va. 83, 55 S. E. 532; Black *v.* Virginia Portland Cement Co., 106 Va. 121, 55 S. E. 587.

Washington. — Mullin *v.* Northern Pac. R. Co., 38 Wash. 550, 80 Pac. 814; Ball *v.* Mcgrath, 43 Wash. 107, 86 Pac. 382; Comrade *v.* Atlas Lumber, etc., Co., 44 Wash. 470, 87 Pac. 517.

Signaling Approaching Danger. — Where the position of a servant is not necessarily dangerous, but becomes so by the putting in motion of a force or machine, the duty to notify the servant of the approaching danger is a personal duty of the master, and one intrusted by the master with the giving of such signal is a vice-principal and not a fellow servant. Haun *v.* Cincinnati, etc., R. Co., 28 Ohio Cir. Ct. 422.

955. 3. Strong *v.* Rutland R. Co., 121 N. Y. App. Div. 391, 106 N. Y. Supp. 85.

956. 1. Thompson-Starrett Co. *v.* Fitzgerald, (C. C. A.) 149 Fed. 721; Schillinger Bros. Co. *v.* Smith, 225 Ill. 74, 80 N. E. 65; George Weidemann Brewing Co. *v.* Wood, 87 S. W. 772, 27 Ky. L. Rep. 1012; Herman *v.* George Weidemann Brewing Co., 87 S. W. 775, 27 Ky. L. Rep. 1016; McCarthy *v.* Claflin, 99 Me. 290, 59 Atl. 293; Neves *v.* Green, 111 Mo. App. 634, 86 S. W. 508; Shore *v.* American Bridge Co., 111 Mo. App. 278, 86 S. W. 905.

New York Statute. — Madden *v.* Hughes, 104 N. Y. App. Div. 101, 93 N. Y. Supp. 324; Berthelson *v.* Gabler, 111 N. Y. App. Div. 142, 97 N. Y. Supp. 421.

A scaffolding or platform or horses used daily by the janitor of a building to wash walls, etc., is not a scaffold within the meaning of the *New York* Labor Laws 1897, c. 415. Stokes *v.* New York L. Ins. Co., 112 N. Y. App. Div. 121, 98 N. Y. Supp. 135.

2. McCarthy *v.* Claflin, 99 Me. 290, 59 Atl. 293; Forbes *v.* Dunnavant, 198 Mo. 193, 95 S. W. 934; Hoveland *v.* National Blower Works, (Wis. 1908) 114 N. W. 795; Anderson *v.* Milliken Bros., 123 N. Y. App. Div. 614, 108 N. Y. Supp. 61 (statute). But see Holloway *v.* McWilliams, 97 N. Y. App. Div. 360, 89 N. Y. Supp. 1074 (statutory modification — Laws 1897, c. 415).

957. 2. Baier *v.* Selke, 211 Ill. 512, 71 N. E. 1074; McGuire *v.* Waterloo, etc., Union Mill Co., (Iowa 1907) 113 N. W. 850; Cody *v.* Longyear, (Minn. 1908) 114 N. W. 735; Dizonno *v.* Great Northern R. Co., (Minn. 1908) 114 N. W. 736; Garard *v.* Manufacturers' Coal, etc., Co., 207 Mo. 242, 105 S. W. 767; Citrone *v.* O'Rourke Engineering Constr. Co., 188 N. Y. 339, 80 N. E. 1092; Commerce Milling, etc., Co. *v.* Gowan, (Tex. Civ. App. 1907) 104 S. W. 916.

5. *United States.* — Florence, etc., R. Co. *v.* Whipps, (C. C. A.) 138 Fed. 13; Westinghouse *v.* Callaghan, (C. C. A.) 155 Fed. 397.

Colorado. — Poorman Silver Min. Co. *v.* Devling, 34 Colo. 37, 81 Pac. 252; Maloney *v.* Florence, etc., R. Co., 39 Colo. 384, 89 Pac. 649 (clearing landslide from railway track).

Illinois. — Montgomery *v.* Robertson, 229 Ill. 466, 82 N. E. 396.

Indiana. — Dill *v.* Marmon, 164 Ind. 507, 73 N. E. 67.

Michigan. — Livingstone *v.* Saginaw Plate Glass Co., 146 Mich. 236, 109 N. W. 431.

New York. — Russell *v.* Lehigh Valley R. Co., 188 N. Y. 344, 81 N. E. 122.

Texas. — Armour *v.* Dumas, (Tex. Civ. App. 1906) 95 S. W. 710.

If it is necessary, in order to conduct the work in a safe manner, for the master to employ servants to give notice of danger during the progress thereof to other servants, and injury results from failure to do so, the master is liable for damages; but when the master employs competent servants, to give notice of danger to the other servants, they are fellow servants, and he is not responsible for their negligence in failing to give notice of danger arising from the operation of the appliances, as this is one of the risks assumed by the servant. Biggers *v.* Catawba Power Co., 72 S. Car. 264, 51 S. E. 882.

If the place may become dangerous by reason of perils not arising from the particular work, it is the master's duty to give such warning as will enable the servant in the exercise of reasonable care to avoid and guard against such additional dangers. Johnson *v.* Terry, etc., Co., 113 N. Y. App. Div. 78, 99 N. Y. Supp. 375.

A person intrusted with duty of giving warning of approaching danger is not a fellow servant. Germanus *v.* Lehigh Valley R. Co., 74 N. J. L. 662, 67 Atl. 79 (workmen of railway track).

A foreman intrusted with duty of warning servant working on track of approaching train is not a fellow servant of the latter as regards such duty. D'Agostino *v.* Pennsylvania R. Co., 72 N. J. L. 358, 60 Atl. 1113.

Where a working place is constantly rendered dangerous by blasting, it is a duty of the master to warn the servants of intended blasts, and he cannot, by delegating this duty to a third person, escape liability for injuries to his servants caused by the negligence of the person to whom he has intrusted the duty of giving warning of blasts. Hendrickson *v.* U. S. Gypsum Co., 132 Iowa 89, 110 N. W. 322.

958. 1. *United States.* — McDonnell *v.* Oceanic Steam Nav. Co., (C. C. A.) 143 Fed. 480; Moit *v.* Illinois Cent. R. Co., 153 Fed. 354, 82 C. C. A. 430.

Colorado. — Colorado-Philadelphia Reduction Co. *v.* Fretz, 34 Colo. 472, 83 Pac. 631.

Connecticut. — Peterson *v.* New York, etc., R. Co., 77 Conn. 351, 59 Atl. 502.

Indiana. — Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 6[illegible].

Iowa. — Ailes *v.* Illinois Cent. R. Co., (Iowa 1[illegible] N. W. [illegible]; Freeman [illegible] lain Medicine Co., (Iowa 1907) 113 N. W. 918.

Massachusetts. — McRea *v.* Hood Rubber Co., 187 Mass. 326, 72 N. E. 1015 (spilling of material rendering floor slippery); Horrigan *v.* Boston El. R. Co., 190 Mass. 577, 77 N. E. 634; Falardeau *v.* Hoar, 192 Mass. 263, 78 N. E. 456; McTiernan *v.* American Woolen Co., (Mass. 1908) 83 N. E. 673 (floor rendered slippery).

Michigan. — McClure *v.* Detroit Southern R. Co., 146 Mich. 457, 109 N. W. 847; Henry *v.* Ann Arbor R. Co., 140 Mich. 446, 103 N. W. 846; Jurkiewicz *v.* American Car, etc., Co., 147 Mich. 622, 111 N. W. 183, 14 Detroit Leg. N. 11; Dixon *v.* Grand Trunk Western R. Co., 147 Mich. 667, 111 N. W. 200, 14 Detroit Leg. N. 62; Amoe *v.* Great Lakes Engineering Works, (Mich. 1908) 114 N. W. 1010.

[illegible] County Light, etc., Co., (N. H. 1907) 67 Atl. 946.

New Jersey. — Blonski *v.* American Enameled Brick, etc., Co., (N. J. 1906) 63 Atl. 909.

New York. — Foster *v.* International Paper Co., 183 N. Y. 45, 75 N. E. 933; Belt *v.* Henry Du Bois' Sons Co., 97 N. Y. App. Div. 392, 89 N. Y. Supp. 1072; Williams *v.* Citizens' Steamboat Co., 122 N. Y. App. Div. 188, 106 N. Y. Supp. 975; Earle *v.* Clyde S. S. Co., 103 N. Y. App. Div. 21, 93 N. Y. Supp. 839; Fallon *v.* Mertz, 110 N. Y. App. Div. 755, 97 N. Y. Supp. 417; Brust *v.* J. E. Perkins Co., 113 N. Y. App. Div. 633, 99 N. Y. Supp. 212; McDonough *v.* Clonbrock Steam Boiler Co., 113 N. Y. App. Div. 432, 99 N. Y. Supp. 263.

Pennsylvania. — Miller *v.* American Bridge Co., 216 Pa. St. 559, 65 Atl. 1109.

Rhode Island. — Venbuvr *v.* Lafayette Worsted Mills, 27 R. I. 89, 60 Atl. 770.

Wisconsin. — Miller *v.* Centralia Pulp, etc., Co., (Wis. 1907) 113 N. W. 954 (failure of fellow servant to light lights).

It is otherwise if the master has notice that the place has been rendered unsafe and neglects to render it safe. Deering *v.* Barzak, 227 Ill. 71, 81 N. E. 1.

3. Odin Coal Co. *v.* Tadlock, 216 Ill. 624, 75 N. E. 332.

959. 2. Tutwiler Coal, etc., Co. *v.* Farrington, 144 Ala. 157, 39 So. 898; Canada Woollen Mills *v.* Traplin, 35 Can. Sup. Ct. 424. But see Cushing *v.* G. W. & F. Smith Iron Co., 194 [illegible] Valley St. R. Co., (Mass. 1907) 82 N. E. 1085.

In Hooe *v.* Boston, etc., R. Co., 187 Mass. 67, 72 N. E. 341, it was held that a person making an inspection after blasting for the purpose of ascertaining whether any part of the blast had failed to explode, represented the master, as he is performing a part of the master's duty to secure to the workmen a safe place to work, and occupied the position of a vice-principal, and therefore the master was liable for injuries through his negligence.

960. 1. *Arkansas.* — Western Coal, etc., Co. *v.* Buchanan, 82 Ark. 499, 102 S. W. 694.

California. — Shea *v.* Pacific Power Co., 145 Cal. 680, 79 Pac. 373; Fogarty *v.* Southern Pac. Co., 151 Cal. 785, 91 Pac. 650; Brunger *v.* Pioneer Roll Paper Co., (Cal. App. 1907) 92 Pac. 1043.

Connecticut. — Rincicotti *v.* John J. O'Brien Contracting Co., 77 Conn. 617, 60 Atl. 115; Gilmore *v.* American Tube, etc., Co., 79 Conn. 498, 66 Atl. 4.

Georgia. — Moore *v.* Dublin Cotton Mills, 127 Ga. 609, 56 S. E. 839.

Illinois. — Rogers *v.* Cleveland, etc., R. Co., 211 Ill. 126, 71 N. E. 850; Odin Coal Co. *v.* Tadlock, 216 Ill. 624, 75 N. E. 332; Chicago Union Traction Co. *v.* Sawusch, 218 Ill. 130, 75 N. E. 797; Illinois Steel Co. *v.* Ziemkowski, 220 Ill. 324, 77 N. E. 190; Schillinger Bros. Co. *v.* Smith, 225 Ill. 74, 80 N. E. 65; Wilmington, etc., Coal Co. *v.* Sloan, 225 Ill. 467, 80 N. E. 265; Donk Bros. Coal, etc., Co. *v.* Thil, 228 Ill. 233, 81 N. E. 857; Davis *v.* Illinois Collieries Co., 232 Ill. 284, 83 N. E. 836; Chicago Union Traction Co. *v.* Sawusch, 119 Ill. App. 349.

Indiana. — Antioch Coal Co. *v.* Rockey, (Ind. 1907) 82 N. E. 76.

Indian Territory. — Missouri, etc., R. Co. *v.* Wilhoit, 6 Indian Ter. 534, 98 S. W. 341.

Kentucky. — Cincinnati, etc., R. Co. *v.* Curd, (Ky. 1905) 89 S. W. 140; Illinois Cent. R. Co. *v.* Quirey, (Ky. 1905) 89 S. W. 217.

Maryland. — Crawford *v.* United R., etc., Co., 101 Md. 417, 61 Atl. 287, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 959; Maryland Steel Co. *v.* Engleman, 101 Md. 661, 61 Atl. 314.

Michigan. — Livingway *v.* Houghton County St. R. Co., 145 Mich. 86, 108 N. W. 662, 13 Detroit Leg. N. 534.

Minnesota. — Peterson *v.* Van Dusen, 101 Minn. 50, 111 N. W. 839; Carlson *v.* James Forrestal Co., 101 Minn. 446, 112 N. W. 626.

New Hampshire. — Hatch *v.* Pike Mfg. Co., 73 N. H. 521, 63 Atl. 306.

New Jersey. — Kane *v.* Babcock, etc., Co., (N. J. 1907) 67 Atl. 1014.

New York. — Koehler *v.* New York Steam Co., 183 N. Y. 1, 75 N. E. 538.

South Carolina. — Tucker *v.* Buffalo Cotton Mills, 76 S. Car. 539, 57 S. E. 626.

Texas. — Missouri, etc., R. Co. *v.* Keefe, 37 Tex. Civ. App. 588, 84 S. W. 679 (announcing law of *Indian Territory*); Missouri, etc., R. Co. *v.* Wise, (Tex. Civ. App. 1907) 106 S. W. 465.

Virginia. — Black *v.* Virginia Portland Cement Co., 106 Va. 121, 55 S. E. 587.

961. 2. Sage *v.* Baltimore, etc., R. Co., 219 Pa. St. 129, 67 Atl. 985.

962. 1. Missouri, etc., R. Co. *v.* Wise, (Tex. Civ. App. 1907) 106 S. W. 465; Kiley *v.* Rutland R. Co., 80 Vt. 536, 68 Atl. 713.

963. 2. Missouri, etc., R. Co. *v.* Wise, (Tex. Civ. App. 1907) 106 S. W. 465.

3. Chicago, etc., R. Co. *v.* Birk, (Tex. Civ. App. 1907) 99 S. W. 753.

964. 5. Helling *v.* Schindler, 145 Cal. 303, 78 Pac. 710; Towne *v.* United Electric Gas, etc., Co., 146 Cal. 766, 81 Pac. 124; Leishman *v.* Union Iron Works, 148 Cal. 274, 83 Pac. 30; Loughlin *v.* Brassil, 187 N. Y. 128, 79 N. E. 854; Grams *v.* C. Reiss Coal Co., 125 Wis. 1, 102 N. W. 586; Williams *v.* North Wisconsin Lumber Co., 124 Wis. 328, 102 N. W. 580.

965. 5. New York, etc., R. Co. *v.* Hamlin, (Ind. 1908) 83 N. E. 343.

966. 2. Alabama G. S. R. Co. *v.* Vail, 142 Ala. 134, 38 So. 124; Collingwood *v.* Illinois, etc., Fuel Co., 135 Iowa 537, 101 N. W. 283; Atchison, etc., Bridge Co. *v.* Miller, 71 Kan. 13, 80 Pac. 18; Clegg *v.* Seaboard Steel Casting Co., 34 Pa. Super. Ct. 63; Galveston, etc., R. Co. *v.* Bonn, (Tex. Civ. App. 1907) 99 S. W. 413; Kamp *v.* Coxe, 122 Wis. 206, 99 N. W. 366.

967. 1. Moore *v.* Dublin Cotton Mills, 127 Ga. 609, 56 S. E. 839; Northern Alabama R. Co. *v.* Key, (Ala. 1907) 43 So. 794; Smith *v.* Rock Island, etc., R. Co., 119 La. 537, 44 So. 290; Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85; Morrison *v.* San Pedro, etc., R. Co., (Utah 1907) 88 Pac. 998.

2. Ryan *v.* Delaware, etc., Co., 114 N. Y. App. Div. 268, 99 N. Y. Supp. 794; Turrentine *v.* Wellington, 136 N. Car. 308, 48 S. E. 739.

3. State *v.* South Baltimore Car Works, 99 Md. 471, 58 Atl. 447, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 967.

5. Santa Fe Pac. R. Co. *v.* Holmes, 136 Fed. 66, 68 C. C. A. 634; Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 95, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 968 [967]; Ricker *v.* Central R. Co., 73 N. J. L. 751, 64 Atl. 1068; Morrison *v.* San Pedro, etc., R. Co., (Utah 1907) 88 Pac. 1001, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 967, 968.

968. 6. Northern Pac. R. Co. *v.* Dixon, (C. C. A.) 139 Fed. 737; Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 97, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 968.

969. 2. *United States.* — Peters *v.* George, 154 Fed. 634, 83 C. C. A. 408.

Arkansas. — Burrows *v.* Ozark White Lime Co., 82 Ark. 342, 101 S. W. 744.

Illinois. — Shickle-Harrison, etc., Iron Co. *v.* Beck, 212 Ill. 268, 72 N. E. 423; Postal Tel. Cable Co. *v.* Likes, 225 Ill. 249, 80 N. E. 136; Donk Bros. Coal, etc., Co. *v.* Thil, 128 Ill. App. 249, judgment *affirmed* 228 Ill. 233, 81 N. E. 857.

Indiana. — Flickner *v.* Lambert, 36 Ind. App. 524, 74 N. E. 263.

Iowa. — Schminkey *v.* Sinclair, (Iowa 1908) 114 N. W. 612.

Massachusetts. — Morena *v.* Winston, 194 Mass. 378, 80 N. E. 473.

Michigan. — Brockmiller *v.* Industrial Works, 148 Mich. 642, 112 N. W. 688, 14 Detroit Leg. N. 336.

New York. — Tivnan *v.* Keahon, 117 N. Y. App. Div. 50, 101 N. Y. Supp. 1076.

Texas. — McCracken *v.* Lantry-Sharpe Contracting Co., (Tex. Civ. App. 1907) 101 S. W. 520.

Washington. — Dossett *v.* St. Paul, etc., Lumber Co., 40 Wash. 276, 82 Pac. 273.

Wisconsin. — Gussart *v.* Greenleaf Stone Co., (Wis. 1908) 114 N. W. 700.

4. Arkadelphia Lumber Co. *v.* Henderson, 84 Ark. 382, 105 S. W. 882; Chess, etc., Co. *v.* Gohagen, (Ky. 1907) 105 S. W. 890; Staddon *v.* Chapman Mineral Co., 33 Pa. Super. Ct. 475.

970. 1. Moore *v.* C. L. King Mfg. Co., 124 Ga. 576, 53 S. E. 107.

4. *United States.* — Pennsylvania R. Co. *v.* Hartell (C. C. A.) 157 Fed. 667.

Iowa. — Meier *v.* Way, (Iowa 1907) 111 N. W. 420.

Michigan. — Milbourne *v.* Arnold Electric Power Station Co., 140 Mich. 316, 103 N. W. 821, 12 Detroit Leg. N. 177.

Minnesota. — Barrett *v.* Reardon, 95 Minn. 425, 104 N. W. 309; Bailey *v.* Swallow, 98 Minn. 104, 107 N. W. 727.

Montana. — Allen *v.* Bell, 32 Mont. 69, 79 Pac. 582.

Oklahoma. — Ruemmeli-Braun Co. *v.* Cahill, 14 Okla. 422, 79 Pac. 260.

Pennsylvania. — Green *v.* Washington Oil Co., 216 Pa. St. 35, 64 Atl. 877; New *v.* Milligan, 27 Pa. Super. Ct. 516.

Wisconsin. — Horn *v.* La Crosse Box Co., 123 Wis. 399, 101 N. W. 935; Zentner *v.* Oshkosh Gas Light Co., 126 Wis. 196, 105 N. W. 911; Hamann *v.* Milwaukee Bridge Co., 127 Wis. 550, 106 N. W. 1081.

Canada. — But see Woods *v.* Toronto Bolt, etc., Co., 11 Ont. L. Rep. 216.

971. 4. *Illinois.* — Indiana, etc., R. Co. *v.* Otstot, 212 Ill. 429, 72 N. E. 387; Illinois Steel Co. *v.* Ziemkowski, 220 Ill. 324, 77 N. E. 190; Spring Valley Coal Co. *v.* Patting, 112 Ill. App. 4; Chicago, etc., R. Co. *v.* Mikesell, 113 Ill. App. 146; Illinois Third Vein Coal Co. *v.* Cioni, 115 Ill. App. 455, *affirmed* 215 Ill. 583, 74 N. E. 751; Gathman *v.* Chicago, 127 Ill. App. 150.

Kentucky. — Louisville, etc., R. Co. *v.* Clark, (Ky. 1908) 106 S. W. 1184; Illinois Cent. R. Co. *v.* Tandy, (Ky. 1908) 107 S. W. 715.

Louisiana. — Levins *v.* Bancroft, 114 La. 105, 38 So. 72.

Missouri. — Lanning *v.* Chicago G. W. R. Co., 196 Mo. 647, 94 S. W. 491; Koerner *v.* St. Louis Car Co., (Mo. 1907) 107 S. W. 481.

Tennessee. — Louisville, etc., R. Co. *v.* Martin, 113 Tenn. 266, 87 S. W. 418.

Washington. — Mullin *v.* Northern Pac. R. Co., 38 Wash. 550, 80 Pac. 814.

Ohio Statute. — Kane *v.* Erie R. Co., 142 Fed. 682, 73 C. C. A. 672.

Arkansas Statute Adopting Different-department Rule as to Railway Employees. — St. Louis, etc., R. Co. *v.* Dupree, 84 Ark. 377, 105 S. W. 878.

Texas Statute Adopting Different-department Rule as Regards Railway Employees. — International, etc., R. Co. *v.* Still, (Tex. Civ. App. 1905) 88 S. W. 257.

What Constitutes Different Department. — Dana *v.* Blackburn, (Ky. 1907) 90 S. W. 237 (co-laborers about an elevator).

The fact that one servant has general control of a force of workmen in the performance of a particular job does not necessarily erect such particular job into a distinct department so as to render him a vice-principal. Vilter Mfg. Co. *v.* Otte, (C. C. A.) 157 Fed. 230.

Though railway employees are under the control of different foremen they are not necessarily employed in different departments. International, etc., R. Co. *v.* Still, (Tex. 1907) 101 S. W. 442, *reversing* (Tex. Civ. App. 1905) 88 S. W. 257.

973. 2. Indiana, etc., R. Co. *v.* Otstot, 212 Ill. 429, 72 N. E. 387; Illinois Steel Co. *v.* Ziemkowski, 220 Ill. 324, 77 N. E. 190; Spring Valley Coal Co. *v.* Buzis, 115 Ill. App. 196, *affirmed* 213 Ill. 341, 72 N. E. 1060; Schneider *v.* Carlin, 120 Ill. App. 538; Payne *v.* Georgetown Lumber Co., 117 La. 983, 42 So. 475; Conine *v.* Olympia Logging Co., 36 Wash. 345, 78 Pac. 932.

Where a servant is ordered by the master to do work outside of his regular employment, and which is different in character from that embraced in his regular contract of hiring, and brings him into association with a different class of employees, he does not by obeying such orders necessarily become a fellow servant with such different class of employees. Cleveland, etc., R. Co. *v.* Surrells, 115 Ill. App. 615.

3. Chicago, etc., R. Co. *v.* Brooks, 115 Ill. App. 5; Dolese, etc., Co. *v.* Johnson, 116 Ill. App. 206; Chicago, etc., R. Co. *v.* Kimmel, 123 Ill. App. 382, *affirmed* 221 Ill. 547, 77 N. E. 936; Chicago, etc., R. Co. *v.* Henderson, 126 Ill. App. 530; Illinois Terminal R. Co. *v.* Chapin, 128 Ill. App. 170, judgment *affirmed* 227 Ill. 166, 81 N. E. 15.

4. The homogeneous business of a master cannot be divided into distinct and separate departments under the rule in Railway *v.* Baugh, 149 U. S. 368, by the testimony to that effect of his servants, and such testimony is incompetent for this purpose; the nature of the business alone can separate it into departments. Westinghouse *v.* Callaghan, (C. C. A.) 155 Fed. 397.

An engine foreman and a car inspector are engaged in different departments within the meaning of Kirby's Ark. Digest, §§ 6658–60, relating to the liability of railway companies for injuries to their employees. St. Louis, etc., R. Co. *v.* Dupree, 84 Ark. 377, 105 S. W. 878.

974. 1. The doctrine should not be restricted to railroads alone. Koerner *v.* St. Louis Car Co., (Mo. 1907) 107 S. W. 481.

976. 2. Atchison, etc., Bridge Co. *v.* Miller, 71 Kan. 37, 80 Pac. 18, *citing* 12 Am. and Eng. Encyc. of Law (2d ed.) 975, 976; Ricker *v.* Central R. Co., 73 N. J. L. 751, 64 Atl. 1068; Belt *v.* Henry Du Bois' Sons Co., 97 N. Y. App. Div. 392, 89 N. Y. Supp. 1072; Fouquet *v.* New York Cent., etc., R. Co., (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 121, 103 N. Y. Supp. 1105; Shaw *v.* Highland Park Mfg. Co., (N. Car. 1907) 59 S. E. 676; Wilson *v.* Virginia-Carolina Chemical Co., 78 S. Car. 381, 58 S. E. 1019; St. Louis, etc., R. Co. *v.* Arnett, 37 Tex. Civ. App. 523, 84 S. W. 599 (announcing the law of *Indian Territory*).

3. New York Employers' Liability Act of 1902. — Sienbida *v.* Tonawanda Board, etc., Co., 121 N. Y. App. Div. 70, 105 N. Y. Supp. 513.

Notice to Master of Injury. — Anderson *v.* Milliken Bros., 123 N. Y. App. Div. 614, 108 N. Y. Supp. 61.

The notice of injury required by the statute must be given the employer to enable the servant to recover under the Employers' Liability Act. Hope *v.* Scranton, etc., Coal Co., 120 N. Y. App. Div. 596, 105 N. Y. Supp. 376; Finnigan *v.* New York Contracting Co., 122 N. Y. App. Div. 712, 107 N. Y. Supp. 855

(notice held insufficient); Bovi *v.* Hess, 123 N. Y. App. Div. 389, 107 N. Y. Supp. 1001 (notice held insufficient).

Sufficiency of Notice of Injury as Designating Place of Injury. — Heffron *v.* Lackawanna Steel Co., 121 N. Y. App. Div. 351, 105 N. Y. Supp. 4[illegible]9.

5. The right of action given by the New York Employers' Liability Act is not in exclusion or abrogation of any common-law right of action, but merely confers additional rights upon the servant. Kleps *v.* Bristol Mfg. Co., 189 N. Y. 516, 81 N. E. 765.

Liberal Construction of Statutes. Cleveland, etc., R. Co. *v.* Austin, 127 Ill. App. 281.

977. 1. Rule Abrogated or Modified as to Railway Employees. *Georgia.* Collins *v.* Southern R. Co., 124 Ga. 853, 53 S. E. 388.

Idaho. — The person injured must himself have been at the time in the employ of the railway company to entitle him to the benefit of the Idaho statute. Russell *v.* Oregon Short Line R. Co., (C. C. A.) 155 Fed. 22.

Indiana. — Southern Indiana R. Co. *v.* Baker, 37 Ind. App. 405, 77 N. E. 64; Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Pittsburgh, etc., R. Co. *v.* Collins, 168 Ind. 467, 80 N. E. 415 (conductor injured through negligence of engineer); Chicago, etc., R. Co. *v.* Lain, (Ind. 1908) 83 N. E. 632.

Contributory negligence is a defense under the Indiana statute. Baltimore, etc., R. Co. *v.* Clapp, 35 Ind. App. 403, 74 N. E. 267.

Kansas. — Missouri, etc., R. Co. *v.* Kellerman, (Tex. Civ. App. 1905) 87 S. W. 401, (applying Kansas statute).

Missouri. — Orendorff *v.* Terminal R. Assoc., 116 Mo. App. 348, 92 S. W. 148 (truckman carting freight from warehouse to car is engaged in operating railroad); Overton *v.* Chicago, etc., R. Co., 111 Mo. App. 613, 86 S. W. 503 (trackman injured while riding on hand car is entitled to protection of the Missouri statute); Huston *v.* Quincy, etc., R. Co., (Mo. App. 1908) 107 S. W. 1045 (bridge repairer held engaged in operating road); Phippin *v.* Missouri Pac. R. Co., 196 Mo. 321, 93 S. W. 410; Brady *v.* Kansas City, etc., R. Co., 206 Mo. 509, 102 S. W. 978.

Montana. — Under Montana Act of 1903, March 5th (Laws 1903, p. 156, c. 83), which reads as follows: "Every railroad corporation * * * shall be liable for all damages sustained by an employee * * * when such damage is caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman," * * * the term "engineer" applies only to engineers of railroad engines and not to the engineer of a stationary engine used for unloading construction cars. Reinke *v.* Northern Pac. R. Co., 145 Fed. 988.

New York. — Where employee was required to work over statutory hours, the railway company was held liable. Pelin *v.* New York Cent., etc., R. Co., 102 N. Y. App. Div. 71, 92 N. Y. Supp. 468.

North Carolina. — Mabry *v.* North Carolina R. Co., 139 N. Car. 388, 52 S. E. 124; Fitzgerald *v.* Southern R. Co., 141 N. Car. 530, 54 S. E. 391; Britt *v.* Carolina Northern R. Co., 144 N. Car. 242, 56 S. E. 910; Daniel *v.* Atlantic Coast Line R. Co., 145 N. Car. 51, 58 S. E. 601; Horton *v.* Seaboard Air Line R. Co., 145 N. Car. 132, 58 S. E. 993; Jones *v.* East Carolina R. Co., 142 N. Car. 207, 55 S. E. 147.

North Dakota. — The statute applies only to employees engaged in operating the railroad, and so exposed to the peculiar dangers of that business. Beleal *v.* Northern Pac. R. Co., 15 N. Dak. 318, 108 N. W. 33.

South Carolina. — Jackson *v.* Southern R. Co., 73 S. Car. 557, 54 S. E. 231; Betchman *v.* Seaboard Air Line R. Co., 75 S. Car. 68, 55 S. E. 140; Bussey *v.* Charleston, etc., R. Co., 78 S. Car. 352, 58 S. E. 1015.

Texas. — San Antonio, etc., R. Co. *v.* Stevens, 37 Tex. Civ. App. 80, 83 S. W. 235 (operation of hand car); Galveston, etc., R. Co. *v.* McAdams, 37 Tex. Civ. App. 575, 84 S. W. 1076; Texas, etc., R. Co. *v.* Hervey, (Tex. Civ. App. 1905) 89 S. W. 1095 (person removing hand car from track is engaged in operation of a car); St. Louis, etc., R. Co. *v.* Bussong, (Tex. Civ. App. 1905) 90 S. W. 73 (fireman standing beside his engine is engaged in operating the railroad); St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 926 (brakeman lighting lamps in caboose, which is on way to be attached to train, is engaged in operating the railroad); Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1907) 99 S. W. 743; Galveston, etc., R. Co. *v.* Henefy, (Tex. Civ. App. 1907) 99 S. W. 884; Lodwick Lumber Co. *v.* Mounce, (Tex. Civ. App. 1907) 102 S. W. 142; Texas, etc., R. Co. *v.* Walton, (Tex. Civ. App. 1907) 104 S. W. 415 (engineer of switching engine while engaged in oiling engine, and fireman while filling water tank, are engaged in operating the engine); Gulf, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 103 S. W. 447 (laborer engaged in carrying rails for new track is not engaged in operating cars); St. Louis Southwestern R. Co. *v.* Thornton, (Tex. Civ. App. 1907) 103 S. W. 437 (employee unloading ties for distributing car is engaged in operating cars); Texas, etc., R. Co. *v.* McCraw, (Tex. Civ. App. 1906) 95 S. W. 82 (trackmen while placing their hand car on track are engaged in operating car within the meaning of the Texas statute); Mounce *v.* Lodwick Lumber Co. (Tex. Civ. App. 1906) 91 S. W. 240 (laborer carrying telephone pole beside track held engaged in operating car by which he was injured).

The Texas statute abrogating the fellow-servant rule as regards railroad employees is applicable to trains engaged in interstate traffic. Missouri, etc., R. Co. *v.* Nelson, (Tex. Civ. App. 1905) 87 S. W. 706.

Virginia. — Constitutional provision abrogating fellow-servant rule [illegible] railway employees. Southern R. Co. *v.* Smith, 107 Va. 553, 59 S. E. 37[illegible].

2. Pittsburgh, etc., R. Co. *v.* Ross, (Ind. 1907) 80 N. E. 845, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 977; Wagner *v.* Boston El. R. Co., 188 Mass. 437, 74 N. E. 919; Wilson *v.* Southern R. Co., 73 S. Car. 481, 53 S. E. 968.

978. 3. Reinke *v.* Northern Pac. R. Co.,

145 Fed. 988; Hall *v.* Chicago, etc., R. Co., 130 Fed. [illegible]

4. Iarussi *v.* Missouri Pac. R. Co., 155 Fed. 654 (*Kansas* statute); Reed *v.* Southern R. Co., 75 S. Car. 162, 55 S. E. 218.

5. Kibbe *v.* Stevenson Iron Min. Co., (C. C. A.) 136 Fed. 147; Kane *v.* Erie R. Co., (C. C. A.) 133 Fed. 681, (C. C. A.) 142 Fed. 682 (*Ohio* statute); International, etc., R. Co. *v.* Still, (Tex. Civ. App. 1905) 88 S. W. 257.

The statute abrogating the fellow-servant rule as regards the employees of all corporations, and not affecting the rule as regards individuals engaged in similar business, is unconstitutional as denying corporations the equal protection of the law. Bradford Constr. Co. *v.* Heflin, 88 Miss. 314, 42 So. 174.

979. 1. Erie R. Co. *v.* Kane, (C. C. A.) 155 Fed. 118 (*Ohio* statute); Bradford Constr. Co. *v.* Heflin, 88 Miss. 314, 42 So. 174; Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1907) 99 S. W. 943.

6. A construction company though authorized by its charter to own a railroad, but not authorized to operate one, is not a "railroad corporation," within the meaning of *Mississippi* constitution. Bradford Constr. Co. *v.* Heflin, 88 Miss. 314, 42 So. 174.

980. 1. **A Railway Construction Company** operating dump cars on temporary track in construction of a railway track is engaged in operating a railway within the meaning of the *Iowa* statute. Mace *v.* Boedker, 127 Iowa 721, 104 N. W. 475.

2. McKivergan *v.* Alexander, etc., Lumber Co., 124 Wis. 60, 102 N. W. 332 (lumber company operating private railway). But see Kibbe *v.* Stevenson Iron Min. Co., 136 Fed. 147, 69 C. C. A. 145 (construing *Minnesota* statute — mining company); Bird *v.* U. S. Leather Co., 143 N. Car. 283, 55 S. E. 727; Hairston *v.* U. S. Leather Co., 143 N. Car. 512, 55 S. E. 847; Lodwick Lumber Co. *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 358; Mounce *v.* Lodwick Lumber Co., (Tex. Civ. App. 1906) 91 S. W. 240.

Sugar Refinery Company operating private railway track held within the *Texas* statute. Cunningham *v.* Neal, (Tex. 1908) 107 S. W. 539.

3. **Indiana Statute** (Act March 4, 1893) does not include electric street railways. Indianapolis, etc., R. Co. *v.* Andis, 33 Ind. App. 625, 72 N. E. 145.

Iowa Statute does not apply to an interurban electric street railway. McLeod *v.* Chicago, etc., R. Co., 125 Iowa 270, 101 N. W. 77.

Missouri Statute. — In Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 95, an electric railway operating between a number of different towns, with a trackage of about thirty-five miles, was held to be within the statute abolishing the fellow-servant rule with regard to railway employees.

981. 2. Dunn *v.* Chicago, etc., R. Co., 130 Iowa 580, 107 N. W. 616 (coemployees of track repair gang); Depuy *v.* Chicago, etc., R. Co., 110 Mo. App. 110, 84 S. W. 103 (announcing the law under *Iowa* statute).

982. 4. See Fitzgerald *v.* Southern R. Co., 141 N. Car. 530, 54 S. E. 391 (shoveler of coal from car to engine).

5. **Alabama Statute.**—Alabama Steel, etc., Co. *v.* Griffin, (Ala. 1907) 42 So. 1034; Woodward Iron Co. *v.* Curl, (Ala. 1907) 44 So. 969.

North Carolina Statute. — A servant engaged in constructing an extension of the railway at a point far distant from the completed track is not entitled to recover for injuries caused by the negligence of a fellow servant under the North Carolina statute providing for the recovery by the servant of any "railroad company operating," for injuries through the negligence of a fellow servant. Nicholson *v.* Transylvania R. Co., 138 N. Car. 516, 51 S. E. 40.

983. 2. Larussi *v.* Missouri Pac. R. Co., 155 Fed. 654.

4. Pope *v.* Great Northern R. Co., 94 Minn. 429, 103 N. W. 331; Swartz *v.* Great Northern R. Co., 93 Minn. 339, 101 N. W. 504 (track repairer injured by refuse of coal thrown from engine by fireman); Jemming *v.* Great Northern R. Co., 96 Minn. 302, 104 N. W. 1079 (gang excavating gravel from gravel pit).

Employee of a Union Depot Company aiding in taking out train is a *quasi* servant of the railway company so as to render the statute applicable to injuries through his negligence. Floody *v.* Gt. Northern R. Co., 102 Minn. 81, 112 N. W. 875.

984. 2. **Section Hand Removing Hand Car from Track,** which was used by the gang of which he was a member, is within the protection of the *Wisconsin* statute. Hardt *v.* Chicago, etc., R. Co., 130 Wis. 512, 110 N. W. 427.

Sufficiency of Notice of Injury Required by Wisconsin Statute. — Bell *v.* Rocheford, (Neb. 1907) 110 N. W. 646.

985. 1. Crosby *v.* Lehigh Valley R. Co., (C. C. A.) 137 Fed. 765 (*New York* statute); Moore *v.* Illinois Cent. R. Co., 135 Fed. 67, 67 C. C. A. 541; Tennessee Coal, etc., R. Co. *v.* Bridges, 144 Ala. 320, 39 So. 902; Alabama Steel, etc., Co. *v.* Griffin, (Ala. 1907) 42 So. 1034; Woodward Iron Co. *v.* Curl, (Ala. 1907) 44 So. 969; Denver, etc., R. Co. *v.* Vitello, 34 Colo. 50, 81 Pac. 766.

Effect of statute cannot be varied by placing a dummy in general charge of a train. Kane *v.* Erie R. Co., (C. C. A.) 133 Fed. 681 (*Ohio* statute).

986. 1. Cogbill *v.* Louisville, etc., R. Co., (Ala. 1907) 44 So. 683.

Switch Targets Are Not "Signals." — Chicago, etc., R. Co. *v.* Barker, (Ind. 1908) 83 N. E. 360.

987. 7. Biddle *v.* Hart, (1907) 1 K. B. 640, 76 L. J. K. B. 418; Markle *v.* Donaldson, 8 Ont. L. Rep. 682; Canada Woollen Mills *v.* Traplin, 35 Can. Sup. Ct. 424; Dominion Iron, etc., Co. *v.* Oliver, 35 Can. Sup. Ct. 517; McGowan *v.* Smith, (1907) Sc. Ct. Sess. 548; Droge *v.* John N. Robbins Co., 123 N. Y. App. Div. 537, 108 N. Y. Supp. 457.

Temporary Scaffolding is a part of the "plant" within the *Indiana* statute. Cleveland, etc., R. Co. *v.* Austin, 127 Ill. App. 281.

Rules of Canon [illegible] warehouse are not "ways, works, or machinery." Cahill *v.* Bos- [illegible] Mass. [illegible], 82 N. E. [illegible].

988. 4. Lunnie *v.* Glasgow, etc., R. Co., Sc. Ct. of Sess., 8 F. 546; Tucker *v.* Buffalo

Cotton Mills, 76 S. Car. 539, 57 S. E. 626; Jackson *v.* Southern R. Co., 77 S. Car. 550, 58 S. E. 605.

Where the servant of one master has an interest in the work in any proper capacity, and at the request or with the consent of another's servants undertakes to assist in the work, he does not do so at his own risk; and if he is injured by their carelessness, their master is responsible in tort. Kelly *v.* Tyra, (Minn. 1908) 114 N. W. 750.

989. 2. Wilder *v.* Miller, 128 Ga. 139, 57 S. E. 309.

Action by Parent. — Where a minor is employed without the consent of his parent the latter may recover for an injury to the minor through the negligence of a fellow servant of the minor. But if the parent consented to the minor's employment by the master, the rule is otherwise. Texas, etc., R. Co. *v.* Hervey, (Tex. Civ. App. 1905) 89 S. W. 1095.

989. 3. **Pauper Inmates of Work House.** — Tozeland *v.* Guardians of Poor, (1907) 1 K. B. 920.

4. Livingstone *v.* Saginaw Plate Glass Co., 146 Mich. 236, 109 N. W. 431; Beleal *v.* Northern Pac. R. Co., 15 N. Dak. 318, 108 N. W. 33.

990. 2. **A Mine Superintendent Required by the Tennessee Statute** (Acts 1903, c. 237) is not a servant of the mine owner so as to render the mine owner liable for injuries to its mining employees through the negligence of the mine superintendent. Sale Creek Coal, etc., Co. *v.* Priddy, 117 Tenn. 168, 96 S. W. 610.

After Working Hours. — A servant after working hours and while not engaged in the performance of his duty to his master is not to be regarded as a fellow servant of other servants of the master. Pigeon *v.* Lane, (Conn. 1907) 67 Atl. 886.

Employee after day's work, but while going to a building of his employer to get his dinner pail, held still in the relation of servant to his master as regards injuries received through the negligence of another servant. Taylor *v.* Bush, 5 Penn. (Del.) 378, 61 Atl. 236.

Employees of a common master remain fellow servants while going to and from their work on the premises of the master. Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1[illegible].

6. Kenefick-Hammond Co. *v.* Rohr, 77 Ark. 290, 91 S. W. 179; Peterson *v.* New York, etc., R. Co., 77 Conn. 351, 59 Atl. 502; Crane Co. *v.* Hogan, 228 Ill. 338, 81 N. E. 1032; Wilkinson Co-operative Glass Co. *v.* Dickinson, 35 Ind. App. 230, 73 N. E. 957; Pitts *v.* Centers, (Ky. 1906) 98 S. W. 300; Hollweg *v.* Bell Telephone Co., 195 Mo. 156, 93 S. W. 262, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990; Zilver *v.* Robert Graves Co., 106 N. Y. App. Div. 582, 94 N. Y. Supp. 714; Vilter Mfg. Co. *v.* Kent, (Tex. Civ. App. 1907) 105 S. W. 525.

991. 1. Gardner-Wilmington Coal Co. *v.* Knott, 115 Ill. App. 515; Aurora Boiler Works *v.* Colligan, 115 Ill. App. 527.

992. 3. *United States.* — The City of San Antonio, 135 Fed. 879; Standard Oil Co. *v.* Anderson, 152 Fed. 166, 81 C. C. A. 399 (employee of stevedore and winchman); Otis Steel Co. *v.* Wingle, 152 Fed. 914, 82 C. C. A. 62.

Alabama. — Holmes *v.* Birmingham Southern R. Co., 140 Ala. 208, 37 So. 338; Lookout Mountain Iron Co. *v.* Lea, 144 Ala. 169, 39 So. 1017.

Maryland. — Bently *v.* Edwards, 100 Md. 652, 60 Atl. 283.

Minnesota. — Kelly *v.* Tyra, (Minn. 1908) 114 N. W. 750.

Missouri. — Dale *v.* Hill-O'Meara Constr. Co., 108 Mo. App. 90, 82 S. W. 1092.

New Jersey. — Norman *v.* Middlesex, etc., Traction Co., 71 N. J. L. 652, 60 Atl. 936; Fisher *v.* Minegaux, 73 N. J. L. 424, 63 Atl. 902; Ferguson *v.* Central R. Co., 74 N. J. L. 691, 67 Atl. 602.

New York. — Ford *v.* Arbuckle, 107 N. Y. App. Div. 221, 94 N. Y. Supp. 1097; McDonough *v.* Pelham, etc., Elevating Co., 111 N. Y. App. Div. 585, 98 N. Y. Supp. 90.

North Carolina. — Avery *v.* Oliver, 137 N. Car. 130, 59 S. E. 91; Britt *v.* Carolina Northern R. Co., 144 N. Car. 242, 56 S. E. 910.

Washington. — Carlson *v.* White Star Steamship Co., 39 Wash. 394, 81 Pac. 838.

Pennsylvania Statute as to Persons Engaged in Work About Railroads places them on footing of fellow servants of railroad employees, Smallwood *v.* Baltimore, etc., R. Co., 215 Pa. St. 540, 7 Ann. Cas. 525, 64 Atl. 732; Laporte *v.* Pittsburg, etc., R. Co., 209 Pa. St. 469, 58 Atl. 860 (car shifted in yard of coal company and switching crew of railroad company); Miller *v.* Northern Cent. R. Co., 216 Pa. St. 105, 64 Atl. 924 (employee of coal company and employees of railroad).

993. 2. A flagman employed by one railway company at a crossing of two railways is not a fellow servant of trainmen of the other railway company, nor is this rule changed by the Pennsylvania Act of 1868. Ferguson *v.* Central R. Co., 74 N. J. L. 691, 67 Atl. 602; Louisville, etc., R. Co. *v.* Martin, 113 Tenn. 266, 87 S. W. 418 (flagman at crossing of two railroads).

3. Baker *v.* Philadelphia, etc., R. Co., 149 Fed. 882; Looney *v.* Metropolitan R. Co., 24 App. Cas. (D. C.) 510; Pittsburgh, etc., R. Co. *v.* Bovard, 223 Ill. 176, 79 N. E. 128; Chicago Terminal Transfer R. Co. *v.* Vandenberg, 164 Ind. 470, 73 N. E. 990.

An arrangement between two railroad companies, whereby both use the tracks owned by one of them, the train employees of both, when running on the tracks, being subject to the train and signal rules and orders of the company owning the tracks, does not make the employees of the owner and licensee fellow servants, so as to bring them under the rule of law applicable to such relation. Jennings *v.* Philadelphia, etc., R. Co., 29 App. Cas. (D. C.) 210.

994. 1. Jennings *v.* Philadelphia, etc., R. Co., 29 App. Cas. (D. C.) 210.

4. Looney *v.* Metropolitan R. Co., 24 App. Cas. (D. C.) 510.

995. 2. Otis Steel Co. *v.* Wingle, 152 Fed. 914, 82 C. C. A. 62; Lookout Mountain Iron Co. *v.* Lea, 144 Ala. 177, 39 So. 1017, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 995;

Wagner *v.* Boston El. R. Co., 188 Mass. 437, 74 N. E. 919; Kelly *v.* Tyra, (Minn. 1908) 114 N. W. 750.

996. 3. Dale *v.* Hill-O'Meara Constr. Co., 108 Mo. App. 90, 82 S. W. 1092.

5. The Elton, 142 Fed. 367, 73 C. C. A. 467; McMahon *v.* Bangs, 5 Penn. (Del.) 178, 62 Atl. 1098; Pioneer Fire-Proofing Co. *v.* Clifford, 125 Ill. App. 352, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 996; Quinn *v.* National Sugar Refining Co., 102 N. Y. App. Div. 47, 92 N. Y. Supp. 95; Hoveland *v.* National Blower Works, (Wis. 1908) 114 N. W. 795.

998. 3. Weisser *v.* Southern Pac. R. Co., 148 Cal. 426, 83 Pac. 439 (apprentice working without compensation); Pullman Co. *v.* Woodfolk, 121 Ill. App. 321 (Pullman car conductor and porter); Burrman *v.* Grand Trunk Western R. Co., 143 Mich. 689, 107 N. W. 709, 13 Detroit Leg. N. 111.

Brakeman on Same Train. — Louisville, etc., R. Co. *v.* Vincent, 116 Tenn. 317, 95 S. W. 179.

Fireman and Brakeman on Same Train. — Johnson *v.* Boston, etc., R. Co., 78 Vt. 344, 62 Atl. 1021.

Construction Train. — A shoveler of dirt between cars of a construction train removed from the cars by a plow operated from the engine is a fellow servant of the engineer. Bradford Constr. Co. *v.* Heflin, 88 Miss. 314, 42 So. 174.

999. 2. Carman *v.* Illinois Cent. R. Co., (Ky. 1906) 92 S. W. 954 (announcing rule in *Tennessee*).

3. Sanks *v.* Chicago, etc., R. Co., 112 Ill. App. 385 (engineer and fireman).

4. Shugart *v.* Atlanta, etc., R. Co., (C. C. A.) 133 Fed. 505 (fireman and engineer); Crosby *v.* Lehigh Valley R. Co., 137 Fed. 765; Southern R. Co. *v.* Elliott, (Ind. 1907) 82 N. E. 1051; Tillson *v.* Maine Cent. R. Co., 102 Me. 463, 67 Atl. 407; Pearsall *v.* New York Cent., etc., R. Co., 189 N. Y. 474, 82 N. E. 752; Healy *v.* Buffalo, etc., R. Co., 111 N. Y. App. Div. 618, 97 N. Y. Supp. 801; Lyon *v.* Charleston, etc., R. Co., 77 S. Car. 328, 58 S. E. 12; Lyon *v.* Charleston, etc., R. Co., (S. Car. 1906) 56 S. E. 18; Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. App. 1906) 98 S. W. 892 (announcing the law of *Arizona*).

1001. 1. Choctaw, etc., R. Co. *v.* Doughty, 77 Ark. 1, 91 S. W. 768 (statute); Atlantic Coast Line R. Co. *v.* Beazley, (Fla. 1907) 45 So. 761; Interurban R., etc., Co. *v.* Treuheit, 29 Ohio Cir. Ct. 407; Alabama G. S. R. Co. *v.* Baldwin, 113 Tenn. 400, 82 S. W. 487; Virginia, etc., R. Co. *v.* Bailey, 103 Va. 205, 49 S. E. 33. But see Driver *v.* Southern R. Co., 103 Va. 650, 49 S. E. 1000.

2. Rogers *v.* Cleveland, etc., R. Co., 211 Ill. 126, 71 N. E. 850; Houts *v.* St. Louis Transit Co., 108 Mo. App. 686, 84 S. W. 161 (motorman and conductor held fellow servants); Hayes *v.* New York, etc., R. Co., 121 N. Y. App. Div. 198, 105 N. Y. Supp. 502.

1002. 1. Indianapolis, etc., Rapid Transit Co. *v.* Andis, 33 Ind. App. 625, 72 N. E. 145; Baltimore, etc., R. Co. *v.* Clapp, 35 Ind. App. 403, 74 N. E. 267; Kilduff *v.* Boston El. R. Co., 195 Mass. 307, 81 N. E. 191; McLaughlin *v.* Interurban St. R. Co., 101 N. Y. App. Div. 134, 91 N. Y. Supp. 883; De Santes *v.* New York, etc., R. Co., 119 N. Y. App. Div. 95, 103 N. Y. Supp. 849; Spangler *v.* Baltimore, etc., R. Co., 213 Pa. St. 320, 62 Atl. 919.

Where a servant outside of working hours is riding upon the train of his employer, on his own business, though permitted to do so by the employer, he is a licensee and not a servant of the employer, and therefore the trainmen on the train upon which he is riding are not his fellow servants. Pigeon *v.* Lane, (Conn. 1907) 67 Atl. 886.

Physician, under contract to attend injured employees of the railway company, held not fellow servant of the train crew while crossing track of the railway company in approaching station to take train. Tingley *v.* Long Island R. Co., 109 N. Y. App. Div. 793, 96 N. Y. Supp. 865.

1004. 1. Illinois Cent. R. Co. *v.* Tandy, (Ky. 1908) 107 S. W. 715.

2. Rosney *v.* Erie R. Co., (C. C. A.) 135 Fed. 311; Crosby *v.* Lehigh Valley R. Co., (C. C. A.) 137 Fed. 765; Wabash R. Co. *v.* Hassett, (Ind. 1908) 83 N. E. 705; McAuley *v.* New York Cent., etc., R. Co., 111 N. Y. App. Div. 117, 112 N. Y. App. Div. 906, 97 N. Y. Supp. 631; Louisville, etc., R. Co. *v.* Dillard, 114 Tenn. 240, 86 S. W. 313; Grim *v.* Olympia Light, etc., Co., 42 Wash. 119, 84 Pac. 635; Berg *v.* Seattle, etc., R. Co., 44 Wash. 14, 87 Pac. 34 (street railway).

1005. 1. Illinois Cent. R. Co. *v.* Ring, 119 Ill. App. 294; Illinois, etc., R. Co. *v.* Chapin, 128 Ill. App. 170, *affirmed* 227 Ill. 166, 81 N. E. 15 (members of separate switching crews in same yard); Cincinnati, etc., R. Co. *v.* Curd, (Ky. 1905) 89 S. W. 140 (announcing the rule in *Tennessee*).

Members of a train crew and those of a switching crew are not, as a matter of law, fellow servants. Chicago, etc., R. Co. *v.* Strong, 228 Ill. 281, 81 N. E. 1011.

2. Kane *v.* Erie R. Co., (C. C. A.) 142 Fed. 682 (*Ohio* statute); Cincinnati, etc., R. Co. *v.* Hill, (Ky. 1905) 89 S. W. 523; Louisville, etc., R. Co. *v.* Brown, (Ky. 1908) 106 S. W. 795.

3. O'Connor *v.* Atchison, etc., R. Co., (C. C. A.) 137 Fed. 503; Neagle *v.* Syracuse, etc., R. Co., 185 N. Y. 270, 77 N. E. 1064; Keating *v.* Manhattan R. Co., 110 N. Y. App. Div. 108, 97 N. Y. Supp. 137.

1006. 1. Oliver *v.* Roach, 102 S. W. 274, 31 Ky. L. Rep. 284; Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1005, 1006; Galveston, etc., R. Co. *v.* McAdams, 37 Tex. Civ. App. 575, 84 S. W. 1076.

Flagman at crossing and trainmen held not to be fellow servants. Louisville, etc., R. Co. *v.* Martin, 113 Tenn. 266, 87 S. W. 418.

Superintendent of Wrecking Crew and Engineer of Train Used in the Work held fellow servants. McDaniel *v.* Charleston, etc., R. Co., 70 S. Car. 95, 49 S. E. 2.

1007. 1. Indiana, etc., R. Co. *v.* Otstot, 212 Ill. 429, 72 N. E. 387; Chicago, etc., R. Co. *v.* Mikesell, 113 Ill. App. 146.

Trackmen and Crew of Construction Engine held fellow servants. Chicago, etc., R. Co. *v.*

Kimmel, 123 Ill. App. 382, *affirmed* 221 Ill. 547, 77 N. E. 936.

2. Chicago, etc., R. Co. *v.* Barker, (Ind. 1908) 83 N. E. 369; Tillson *v.* Maine Cent. R. Co., 102 Me. 463, 67 Atl. 407; Pearsall *v.* New York, etc., R. Co., 189 N. Y. 474, 82 N. E. 752; Stevick *v.* Northern Pac. R. Co., 39 Wash. 501, 81 Pac. 999. But see Howard *v.* Chesapeake, etc., R. Co., (Ky. 1906) 90 S. W. 950.

1008. 4. **Car Repairer Injured through Negligence of Brakeman or Switchman.** — See Snellen *v.* Kansas City Southern R. Co., 82 Ark. 334, 102 S. W. 193 (announcing law of *Indian Territory*).

1009. 1. **Checkman** whose duty it was to look after freight held a fellow servant of the trainmaster of an interurban electric railway. Indiana Union Traction Co. *v.* Pring, (Ind. App. 1908) 83 N. E. 733.

Roadmaster and Trackmen held fellow servants. Florence, etc., R. Co. *v.* Whipps, (C. C. A.) 138 Fed. 13.

Yardmaster, Conductor, and Car Inspector held fellow servants. Shuster *v.* Philadelphia, etc., R. Co., (Del. 1906) 62 Atl. 689.

Superintendent of Division is not the fellow servant of a conductor, yardmaster, or car inspector. Shuster *v.* Philadelphia, etc., R. Co., (Del. 1906) 62 Atl. 689.

Switchman and Crossing Tender held fellow servants when latter was injured by reason of a switch being left open. Dixon *v.* Grand Trunk Western R. Co., 147 Mich. 667, 111 N. W. 200.

Station Agent and Conductor of Freight Train Held Fellow Servants. — Henry *v.* Ann Arbor R. Co., 140 Mich. 446, 103 N. W. 846, 12 Detroit Leg. N. 232.

Engineer and Dockman are not fellow servants. Lanning *v.* Chicago G. W. R. Co., 196 Mo. 647, 94 S. W. 491.

Locomotive Wiper Assisting Mechanic Repairing Engine is his fellow servant. Schneider *v.* Missouri Pac. R. Co., 117 Mo. App. 129, 94 S. W. 730.

Car Starter and Conductor held fellow servants. Shaw *v.* Manchester St. R. Co., 73 N. H. 65, 58 Atl. 1073.

Tower Signalman and Train Crew. — Lake Shore, etc., R. Co. *v.* Burtscher, 28 Ohio Cir. Ct. 309.

Station Workman and Passenger Train Porter are not fellow servants. Texas, etc., R. Co. *v.* Nichols, (Tex. Civ. App. 1906) 92 S. W. 411.

1010. 4. But see Louisville, etc., R. Co. *v.* Clark, (Ky. 1908) 106 S. W. 1184 (brakeman and loader of coal on tender are not fellow servants).

6. Atchison, etc., R. Co. *v.* Dickens, (Indian Ter. 1907) 103 S. W. 750; Cloyd *v.* Galveston, etc., R. Co., 37 Tex. Civ. App. 506, 84 S. W. 408.

7. Peterson *v.* New York, etc., R. Co., 77 Conn. 351, 59 Atl. 502.

Engineer and Engine Cleaner held to be fellow servants. Sage *v.* Baltimore, etc., R. Co., 219 Pa. St. 129, 67 Atl. 985.

1011. 4. **Kitchenboy and Ship's Carpenter.** — The Esperanza, 133 Fed. 1015.

Engineer and Oiler in Engine Room. — McCarron *v.* Dominion Atlantic R. Co., 134 Fed. 762.

5. Smith *v.* Lehigh Valley R. Co., 141 Fed. 192 (mate and floatman).

1012. 1. The Westport, 135 Fed. 391, 69 C. C. A. 235.

2. Woods *v.* Globe Nav. Co., 40 Wash. 376, 82 Pac. 401.

5. The Hamilton, (C. C. A.) 146 Fed. 724.

6. Griffin *v.* Curran, 194 Mass. 359, 80 N. E. 509; Tydeman *v.* Prince Line, 102 N. Y. App. Div. 279, 92 N. Y. Supp. 446.

1013. 3. Hendrickson *v.* U. S. Gypsum Co., (Iowa 1905) 105 N. W. 503.

In Quarries a blaster is a fellow servant of a wagon driver. McMahon *v.* Bangs, 5 Penn. (Del.) 178, 62 Atl. 1098.

5. See Spring Valley Coal Co. *v.* Patting, 112 Ill. App. 4; Spring Valley Coal Co. *v.* Buzis, 115 Ill. App. 196.

Miners and Persons in Charge of the Elevator Cage held not to be fellow servants. Illinois Third Vein Coal Co. *v.* Cioni, 215 Ill. 583, 74 N. E. 751, *affirming* 115 Ill. App. 455.

6. Cavanaugh *v.* Centreville Block Coal Co., 131 Iowa 700, 109 N. W. 303.

7. **Ground Foreman and Miner.** — United Zinc Cos. *v.* Wright, (C. C. A.) 156 Fed. 571.

Pumpman at Bottom of Shaft and Brakeman in Charge of Hoisting Cage held fellow servants. Williams *v.* Verona Min. Co., 149 Mich. 45, 112 N. W. 496, 14 Detroit Leg. N. 292.

1014. 1. **Mine Manager**, who by statute is required to be licensed, is not a fellow servant of a miner. Donk Bros. Coal, etc., Co. *v.* Lucas, 127 Ill. App. 61, *judgment affirmed* 226 Ill. 23, 80 N. E. 560.

The Mine Boss, whom mine operators are required by the *Indiana* statute (Burns's Annot. Stat. 1901, § 742, etc.) to employ to see that the mine is in proper condition, is not a fellow servant of the miners. Antioch Coal Co. *v.* Rockey, (Ind. 1907) 82 N. E. 76.

2. Safety Insulated Wire, etc., Co. *v.* Matthews, 151 Fed. 761, 81 C. C. A. 385; Church *v.* Winchester Repeating Arms Co., 78 Conn. 720, 63 Atl. 510; Jurkiewicz *v.* American Car, etc., Co., 147 Mich. 622, 111 N. W. 183; Dickey *v.* Dickey, 111 Mo. App. 304, 86 S. W. 909 (roustabout and machinist); Ruemmeli-Braun Co. *v.* Cahill, 14 Okla. 422, 79 Pac. 260; Duff *v.* Willamette Iron, etc., Works, 45 Oregon 479, 78 Pac. 363; Venbuvr *v.* Lafayette Worsted Mills, 27 R. I. 89, 60 Atl. 770; Millett *v.* Puget Sound Iron, etc., Works, 37 Wash. 438, 79 Pac. 980.

1015. 2. Kenefick-Hammond Co. *v.* Rohr, 77 Ark. 290, 91 S. W. 179 (employees in railroad construction); Atchison, etc., Bridge Co. *v.* Miller, 71 Kan. 13, 80 Pac. 18; Martin *v.* Mason-Hoge Co., 91 S. W. 1146, 28 Ky. L. Rep. 1333; Cooper *v.* Oscar Daniels Co., (Ky. 1906) 96 S. W. 1100; McCarthy *v.* Claflin, 99 Me. 290, 59 Atl. 293; Marshall *v.* Norcross, 191 Mass. 568, 77 N. E. 1151; Willis *v.* Thompson-Starrett Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 238, 104 N. Y. Supp. 668; Armour *v.* Dumas, (Tex. Civ. App. 1906) 95 S. W. 710.

1016. 4. **Draftsman in Office and Operator of Elevator** in master's building held fellow servants. Fouquet *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 804, 108 N. Y. Supp. 525, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 121, 103 N. Y. Supp. 1105.

1018. 1. *Indiana.* — Lail *v.* Marmon, 164 Ind. 507, 73 N. E. 67.

New Hampshire. — Tilley *v.* Rockingham County Light, etc., Co., (N. H. 1907) 67 Atl. 946.

New Jersey. — Rocco *v.* F. A. Gillespie Co., 73 N. J. L. 591, 64 Atl. 117; Hayes *v.* Jersey City, etc., R. Co., 73 N. J. L. 639, 64 Atl. 119.

New York. — Vogel *v.* American Bridge Co., 180 N. Y. 373, 73 N. E. 1.

Pennsylvania. — Vito *v.* West Chester, etc., R. Co., 217 Pa. St. 398, 66 Atl. 659; Peterson *v.* Philadelphia, etc., R. Co., 217 Pa. St. 401, 66 Atl. 660.

South Carolina. — Brabham *v.* American Telephone, etc., Co., 71 S. Car. 53, 50 S. E. 716.

Wisconsin. — Gereg *v.* Milwaukee Gas Light Co., 128 Wis. 35, 107 N. W. 289.

Foreman in Charge of Derrick, and Other Servants. — Berneehe *v.* Hilliard, 101 Minn. 366, 112 N. W. 392.

3. Morrison *v.* San Pedro, etc., R. Co., (Utah 1907) 88 Pac. 998.

4. Wabash R. Co. *v.* Hassett, (Ind. 1908) 83 N. E. 705 (action by representative of servant killed by the negligent act of a fellow servant, given by *Illinois* statute, held not maintainable in *Indiana*).

1019. 1. Missouri, etc., R. Co. *v.* Kellerman, (Tex. Civ. App. 1905) 87 S. W. 401.

2. Southern R. Co. *v.* Elliott, (Ind. 1907) 82 N. E. 1051; Chandler *v.* St. Louis, etc., R. Co., 127 Mo. App. 34, 106 S. W. 553; Missouri, etc., R. Co. *v.* Keefe, 37 Tex. Civ. App. 588, 84 S. W. 679; Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. App. 1906) 98 S. W. 892; Missouri, etc., R. Co. *v.* Wise, (Tex. Civ. App. 1907) 106 S. W. 465.

To entitle a servant to avail himself in another state of the statutory liability for injuries by a fellow servant, the notice required by the statute must have been given by the servant to his master. Pullman Co. *v.* Woodfolk, 121 Ill. App. 321.

3. Kinnear Mfg. Co. *v.* Carlisle, 152 Fed. 933, 82 C. C. A. 81.

5. Spring Valley Coal Co. *v.* Patting, 112 Ill. App. 4; Chandler *v.* St. Louis, etc., R. Co., 127 Mo. App. 34, 106 S. W. 553.

6. Hayward *v.* Key, (C. C. A.) 138 Fed. 34; Reinke *v.* Northern Pac. R. Co., 145 Fed. 988.

7. *Illinois.* — Illinois Steel Co. *v.* Ziemkowski, 220 Ill. 324, 77 N. E. 190; East St. Louis Connecting R. Co. *v.* Meeker, 229 Ill. 98, 82 N. E. 202; Superior Coal, etc., Co. *v.* Kaiser, 229 Ill. 29, 82 N. E. 239; Chicago, etc., R. Co. *v.* Mikesell, 113 Ill. App. 146; Cleveland, etc., R. Co. *v.* Sturrells, 115 Ill. App. 615; Chicago Union Traction Co. *v.* Sawusch, 119 Ill. App. 349; Gathman *v.* Chicago, 127 Ill. App. 150; Chicago, etc., R. Co. *v.* Strong, 129 Ill. App. 196, *judgment affirmed* 228 Ill. 281, 81 N. E. 1011; Marquette Cement Mfg. Co. *v.* Williams, 230 Ill. 26, 82 N. E. 424.

Indiana. — Sandusky Portland Cement Co. *v.* Rice, (Ind. App. 1907) 82 N. E. 1007.

1020. 1. Chicago Terminal Transfer R. Co. *v.* Reddick, 230 Ill. 105, 82 N. E. 598; Illinois Southern R. Co. *v.* Marshall, 112 Ill. App. 514; Aurora Boiler Works *v.* Colligan, 115 Ill. App. 527; Illinois Cent. R. Co. *v.* Ring, 119 Ill. App. 294; Illinois Terminal R. Co. *v.* Chapin, 128 Ill. App. 170, *judgment affirmed* 227 Ill. 166, 81 N. E. 15; Vant *v.* Roelofs, 217 Pa. St. 535, 66 Atl. 749.

1021. 2. Chicago, etc., R. Co. *v.* Mikesell, 113 Ill. App. 146; Spring Valley Coal Co. *v.* Buzis, 115 Ill. App. 196, *affirmed* 213 Ill. 341, 72 N. E. 1060.

The law presumes that all persons engaged in the common employment of the same master, though different in rank, are fellow servants, and the burden is on him who claims damages for an injury caused by the negligence of one employed by the same master to show that his coemployee is a vice-principal and stands in the place of the master. Mollhoff *v.* Chicago, etc., R. Co., 15 Okla. 540, 82 Pac. 733.

1022. 1. Chicago, etc., R. Co. *v.* O'Brien, 132 Fed. 593, 67 C. C. A. 421 (wreck of train).

2. Hilton *v.* Fitchburg R. Co., 73 N. H. 116, 59 Atl. 625.

3. McDermott *v.* Daniell, 121 N. Y. App. Div. 736, 106 N. Y. Supp. 496.

4. Southern Pac. R. Co. *v.* Hetzer, 135 Fed. 272, 68 C. C. A. 26; McDermott *v.* Daniell, 121 N. Y. App. Div. 736, 106 N. Y. Supp. 496.

1024. 1. Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29; Dossett *v.* St. Paul, etc., Lumber Co., 40 Wash. 276, 82 Pac. 273.

2. Southern Pac. R. Co. *v.* Hetzer, 135 Fed. 272, 68 C. C. A. 26; Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822; Date *v.* New York Glucose Co., 104 N. Y. App. Div. 207, 93 N. Y. Supp. 249.

3. Cooney *v.* Commonwealth Ave. St. R. Co., (Mass. 1907) 81 N. E. 905.

1025. 1. Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822; Young *v.* Milwaukee Gaslight Co., (Wis. 1907) 113 N. W. 59.

3. Southern Pac. R. Co. *v.* Hetzer, 135 Fed. 272, 68 C. C. A. 26. See Cooney *v.* Commonwealth Ave. St. R. Co., (Mass. 1907) 81 N. E. 905.

6. Southern Pac. R. Co. *v.* Hetzer, 135 Fed. 272, 68 C. C. A. 26.

Evidence that the master knew that the incompetent servant (a brakeman) had been discharged by another master for incompetency is admissible to show notice to the master of such servant's incompetency. Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29.

1026. 1. Southern Pac. R. Co. *v.* Hetzer, 135 Fed. 272, 68 C. C. A. 26.

4. Curtis *v.* Laconia Car Co. Works, 74 N. H. 516, 63 Atl. 400.

1027. 7. Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822.

1028. 4. The Elton, 142 Fed. 367, 73 C. C. A. 467.

FELONIOUS — FELONIOUSLY.

1029. 3. **Feloniously Includes Maliciously.** — State *v.* Smith, (Tenn. 1907) 105 S. W. 68.

Feloniously Means with Deliberate Intent to Commit Wrongful Act. — State *v.* Smith, (Tenn. 1907) 105 S. W. 68.

FELONY.

1032. 2. Walden *v.* State, 50 Fla. 151, 39 So. 151; State *v.* Foster, 187 Mo. 590, 86 S. W. 245.

Alternative Punishment. — State *v.* Foster, 187 Mo. 590, 86 S. W. 245.

FENCES.

1038. 1. **A Sufficient Fence** is such a one as an ordinarily prudent person would maintain for the purposes for which it is intended. Kittredge *v.* Cincinnati, 28 Ohio Cir. Dec. 100.

2. Hubbard *v.* Gould, (N. H. 1906) 64 Atl. 668.

1039. 1. Hubbard *v.* Gould, (N. H. 1906) 64 Atl. 668.

2. Baltimore, etc., R. Co. *v.* Seitzinger, 116 Ill. App. 55.

Under Stat. Ky. 1903, § 1784, barbed wire may not be used as a division fence without the consent of both parties. McKinney *v.* Thompson, (Ky. 1905) 86 S. W. 543.

4. Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859.

1040. 3. Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859.

5. **Indiana.** — Campbell *v.* Indianapolis, etc., Traction Co., 39 Ind. App. 66, 79 N. E. 223.

Kansas — *Statutes.* — Missouri Pac. R. Co. *v.* Olden, 72 Kan. 110, 83 Pac. 25.

New York. — Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859.

1042. 1. **Alabama.** — Clear Creek Lumber Co. *v.* Gossom, (Ala. 1907) 44 So. 404; Clear Creek Lumber Co. *v.* Duncan, (Ala. 1907) 44 So. 404.

Colorado. — Bell *v.* Gonzales, 35 Colo. 138, 83 Pac. 639; Richards *v.* Sanderson, 39 Colo. 270, 89 Pac. 769.

Idaho. — The landowner is not required to fence against sheep or hogs. Spencer *v.* Morgan, 10 Idaho 542, 79 Pac. 459.

Missouri. — Woods *v.* Carty, 110 Mo. App. 416, 85 S. W. 124.

The Exception to the Common-law Rule does not apply to lands of adjoining proprietors that are inclosed by continuous outside fences. McLean *v.* Berkabile, 123 Mo. App. 647, 100 S. W. 1109.

Wyoming. — Martin *v.* Chicago, etc., R. Co., 15 Wyo. 493, 89 Pac. 1025.

1044. 1. **Reasons for Not Adopting.** — McLean *v.* Berkabile, 123 Mo. App. 647, 100 S. W. 1109; Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859.

1045. 1. Bell *v.* Gonzales, 35 Colo. 138, 83 Pac. 639, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1045; Swanson *v.* Groat, 12 Idaho 148, 85 Pac. 384, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1045; Musselshell Cattle Co. *v.* Woolfolk, 34 Mont. 126, 85 Pac. 874, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1045.

2. Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859.

1046. 2. **Under a Statute Requiring the Owner to Fence against Animals,** it was held that a person upon whose land animals escaped by reason of his failure to maintain a lawful fence would be liable for any damages inflicted in driving them off even though due care was used. Woods *v.* Carty, 110 Mo. App. 416, 85 S. W. 124.

1047. 1. Russell *v.* Maine Cent. R. Co., 100 Me. 406, 61 Atl. 899.

3. **Statutes Constitutional.** — Tomlinson *v.* Bainaka, 163 Ind. 112, 70 N. E. 155, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1047.

4. Hubbard *v.* Gould, (N. H. 1906) 64 Atl. 668.

Specific Performance of the Covenant May Be Enforced by mandatory injunction. Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200.

1048. 4. De Mers *v.* Rohan, 126 Iowa 488, 102 N. W. 413. See also Hammond *v.* Tuttle, 139 Mich. 699, 103 N. W. 178.

1049. 2. Sexauer *v.* Wilson, (Iowa 1907) 113 N. W. 941; Satterly *v.* Erie R. Co., 113 N. Y. App. Div. 462, 99 N. Y. Supp. 309.

4. Grantee in Deed Poll Bound by Stipulation to Fence. — Sexauer *v.* Wilson, (Iowa 1907) 113 N. W. 941.

1051. 1. Pitman *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 693.

2. Letting Lands Lie in Common. — Bouchereau *v.* Guilne, 116 La. 534, 40 So. 863.

Where Impossible to Build on Division Line. — Foster *v.* Bussey, 132 Iowa 640, 109 N. W. 1105, sustaining the second paragraph of the original note.

1052. 3. Rose *v.* Linderman, 147 Mich. 372, 110 N. W. 939, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1052.

4. Rose *v.* Linderman, 147 Mich. 372, 110 N. W. 939.

5. **Worm Fences.** — Rose *v.* Linderman, 147 Mich. 372, 110 N. W. 939.

Stump Fences, built according to the common practice of the country, are lawful. Rose *v.* Linderman, 147 Mich. 372, 110 N. W. 939.

1053. 2. De Mers *v.* Rohan, 126 Iowa 488, 102 N. W. 413.

1055. 1. **Statutes Are Constitutional.** — Hill *v.* Tohill, 225 Ill. 384, 80 N. E. 253.

1056. 2. Collins *v.* Cochran, 121 Ga. 785, 49 S. E. 771.

3. De Mers *v.* Rohan, 126 Iowa 488, 102 N. W. 413; Peterson *v.* Johnson, (Wis. 1907) 111 N. W. 659.

1057. 1. Collins *v.* Cochran, 121 Ga. 785, 49 S. E. 771; Engle *v.* Ferrell, 126 Mo. App. 577, 105 S. W. 23.

1058. 1. Koblegard *v.* Hale, 60 W. Va. 57, 53 S. E. 793, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1058; Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364. See also Metz *v.* Tierney, 13 N. Mex. 363, 83 Pac. 788.

4. **A High Fence Is a "Building"** under the covenants of a deed providing against the erection of buildings shutting off light and air. MacGregor *v.* Linney, 27 Ohio Cir. Dec. 490.

6. Russell *v.* Maine Cent. R. Co., 100 Me. 406, 61 Atl. 899; Reed *v.* Chicago, etc., R. Co., 112 Mo. App. 575, 87 S. W. 65; Carpenter *v.* Chicago, etc., R. Co., 119 Mo. App. 204, 95 S. W. 985; Flint *v.* Boston, etc., R. Co., 73 N. H. 141, 59 Atl. 938; Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859.

7. **When Lawfully on Highway.** — Flint *v.* Boston, etc., R. Co., 73 N. H. 141, 59 Atl. 938.

1059. 1 **Permission to Cross the Land** is not a permission to occupy and gives no right against a railroad company for failure to maintain a fence. Carpenter *v.* Chicago, etc., R. Co., 119 Mo. App. 204, 95 S. W. 985.

1060. 4. Parties by agreement may provide for a division fence, one-half of which shall be built on the land of each party and each will be entitled to treat the fence as part of his inclosure, and either party may have a right of action against the other for damages caused by breach of the agreement to keep in repair. McLean *v.* Berkabile, 123 Mo. App. 64, [illegible] S. W. 1100.

5. After Assignment by Fence Viewers. — The part of the fence assigned to one owner is his property, so far, at least, that the removal for the purpose of replacing it with another of a different kind will not make him a trespasser. Hill *v.* Tohill, 225 Ill. 384, 80 N. E. 253.

6. Removal of Division Fence under Statutes. — One owner may move his part of the fence if he does not separate it from the adjoining fence. Camp *v.* State, 49 Tex. Crim. 396, 92 S. W. 845.

Criminal Liability. — There is no liability if the fences were connected without the consent of the defendant. McNeely *v.* State, (Tex. Crim. 1906) 96 S. W. 1083.

Or where one of the cotenants of the other tract gave consent to the removal, or the defendant believed from all the circumstances that he had authority to make the removal. Bailey *v.* State, (Tex. Crim. 1905) 87 S. W. 700.

Or if the act was done in good faith under a claim of ownership. Shrouder *v.* State, 121 Ga. 615, 49 S. E. 702.

As to criminal liability under *Missouri* statute, see State *v.* Hays, 110 Mo. App. 440, 85 S. W. 127.

1061. 4. Bear *v.* Chicago G. W. R. Co., (C. C. A.) 141 Fed. 25; St. Louis, etc., R. Co. *v.* Busick, 74 Ark. 589, 86 S. W. 674; Wabash R. Co. *v.* Gaull, 116 Ill. App. 443; Mangold *v.* St. Louis, etc., R. Co., 116 Mo. App. 606, 92 S. W. 753; Martin *v.* Chicago, etc., R. Co., 15 Wyo. 493, 89 Pac. 1025.

1063. 2. It is only against the owners or custodians of animals rightfully on the adjoining land or highway that railroads are obliged to maintain fences or cattle guards. Flint *v.* Boston, etc., R. Co., 73 N. H. 141, 59 Atl. 938.

Statutes Apply to Interurban Electric Roads. — Campbell *v.* Indianapolis, etc., Traction Co., 39 Ind. App. 66, 79 N. E. 223.

Statutory Duty to Fence Is Absolute. — Coe *v.* Northern Pac. R. Co., 101 Minn. 12, 111 N. W. 651.

The Intent of the Statute is to compel a complete inclosure of the track so as to prevent access at all points except public crossings and station grounds. Chicago, etc., R. Co. *v.* Sevcek, (Neb. 1906) 110 N. W. 630.

Statutes Strictly Construed. — Central of Georgia R. Co. *v.* Sturgis, (Ala. 1907) 43 So. 96.

Contra. — Illinois Cent. R. Co. *v.* Davidson, 225 Ill. 618, 80 N. E. 250, *affirming* 125 Ill. App. 420.

1064. 1. Terre Haute, etc., R. Co. *v.* Salmon, 34 Ind. App. 564, 73 N. E. 268; Terre Haute, etc., R. Co. *v.* Salisbury, 38 Ind. App. 100, 77 N. E. 1097; Vandalia R. Co. *v.* Stephens, 39 Ind. App. 11, 78 N. E. 1055.

2. May Compel Specific Performance by Mandatory Injunction. — Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200.

Owner's Failure to Repair for a Long Time after Notice to the company is not a defense to the recovery of the cost of the repairs eventually made by him. Terre Haute, etc., R. Co. *v.* Earhart, 35 Ind. App. 56, 73 N. E. 711.

1065. 1. Chicago, etc., R. Co. *v.* Irons, 38 Ind. App. 196, 78 N. E. 207; Yazoo, etc., R. Co. *v.* Harrington, 85 Miss. 366, 37 So. 1016.

1066. 4. **Statutes for Benefit of Adjoining Owner.** — Gerry *v.* New York, etc., R. Co., 194 Mass. 35, 79 N. E. 783.

Where the Statute Fixes a Minimum and Maximum Penalty it has been held that the value of the stock cannot be recovered in an action for violation of the statute. St. Louis, etc., R. Co. *v.* Busick, 74 Ark. 589, 86 S. W. 674.

5. Illinois Cent. R. Co. *v.* Davidson, 125 Ill. App. 420, *affirmed* 225 Ill. 618, 80 N. E. 250; Yazoo, etc., R. Co. *v.* Harrington, 85 Miss. 366, 37 So. 1016; Reed *v.* Chicago, etc., R. Co., 112 Mo. App. 575, 87 S. W. 65; Oyler *v.* Quincy, etc., R. Co., 113 Mo. App. 375, 88 S. W. 162; Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14; Rinehart *v.* Kansas City Southern R. Co., 204 Mo. 269, 102 S. W. 958; Texas, etc., R. Co. *v.* Langham, (Tex. Civ. App. 1906) 95 S. W. 686.

It Is Not a Defense that the Cattle Were Unlawfully on Adjoining Land. — Smith *v.* Chicago, etc., R. Co., 127 Mo. App. 160, 105 S. W. 10; Rinehart *v.* Kansas City Southern R. Co., 204 Mo. 269, 102 S. W. 958, *overruling* Ferris *v.* St. Louis, etc., R. Co., 30 Mo. App. 124.

Injury by Runaway Team. — Where the injury was caused by the team running upon the embankment of an unfenced right of way and tipping the wagon over, it was held that there was no liability under the fence statute. Wabash R. Co. *v.* Gaull, 116 Ill. App. 443.

1069. 2. Reed *v.* Chicago, etc., R. Co., 112 Mo. App. 575, 87 S. W. 65; Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14.

1070. 1. **Statute Requiring Fencing Within Six Months After Road in Operation.** — Under such a statute it was held that the time began to run when the company commenced to run its trains for construction or otherwise. St. Louis, etc., R. Co. *v.* Smith, 216 Ill. 339, 74 N. E. 1063.

1071. 2. Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14.

1072. 1. Reed *v.* Chicago, etc., R. Co., 112 Mo. App. 575, 87 S. W. 65; Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14; Rinehart *v.* Kansas City Southern R. Co., 204 Mo. 269, 102 S. W. 958.

2. Satterly *v.* Erie R. Co., 113 N. Y. App. Div. 162, 99 N. Y. Supp. 300.

1073. 1. **Inability to Raise Crops** because of the unfenced condition of the land does not render the company liable. Mangold *v.* St. Louis, etc., R. Co., 116 Mo. App. 606, 92 S. W. 753.

4. Chicago, etc., R. Co. *v.* Hand, 113 Ill. App. 144; Claus *v.* Chicago G. W. R. Co., (Iowa 1907) 111 N. W. 15; Iola Electric R. Co. *v.* Jackson, 70 Kan. 791, 79 Pac. 662; Galveston, etc., R. Co. *v.* Kropp, (Tex. Civ. App. 1906) 91 S. W. 819.

Failure to Fence Must Occasion Injury. — Toledo, etc., R. Co. *v.* Delliplane, 119 Ill. App. 122.

Where the animals entered through the fence of one railroad and from there wandered on to the unfenced right of way of a second road and were killed, it was held that the first road was not liable. Bear *v.* Chicago G. W. R. Co., (C. C. A.) 141 Fed. 25.

Animals Injured by Fright. — Mikesell *v.* Wabash R. Co., 134 Iowa 736, 112 N. W. 201; Hobbs *v.* St. Louis, etc., R. Co., 113 Mo. App. 126, 87 S. W. 525.

A recovery was allowed where the injury was caused by the animal running along the hard substance of the roadbed to escape an approaching train. Oyler *v.* Quincy, etc., R. Co., 113 Mo. App. 375, 88 S. W. 162.

The Point of Entry and Not the Place of Killing determines the liability or nonliability of the company. Acord *v.* St. Louis, etc., R. Co., 113 Mo. App. 84, 87 S. W. 537; Hobbs *v.* St. Louis, etc., R. Co., 113 Mo. App. 126, 87 S. W. 525.

Actual Collision with Animal Necessary. — Campbell *v.* Indianapolis, etc., Traction Co., 39 Ind. App. 66, 79 N. E. 223; Wabash R. Co. *v.* Gaull, 116 Ill. App. 443; Logan *v.* St. Louis, etc., R. Co., 111 Mo. App. 674, 86 S. W. 565.

If There Is a Lawful Intervening Fence between the land of the plaintiff and the railroad there can be no recovery although the railroad fence may be defective. Litton *v.* Chicago, etc., R. Co., 111 Mo. App. 140, 85 S. W. 978.

There Is No Contributory Negligence on the Part of the Owner in turning cattle into a field where the railroad fence is in poor repair. Baltimore, etc., R. Co. *v.* Seitzinger, 116 Ill. App. 55.

Liability Is Not a Penalty. — Chicago, etc., R. Co. *v.* King, (Neb. 1906) 107 N. W. 981.

Failure to Fence Is Only Prima Facie Evidence of Negligence. — Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827.

1074. 1. Isley *v.* Wabash R. Co., 27 Ohio Cir. Ct. 785; Missouri, etc., R. Co. *v.* Tolbert, (Tex. 1907) 101 S. W. 206; Missouri, etc., R. Co. *v.* Dunnaway, (Tex. Civ. App. 1906) 95 S. W. 760; Missouri, etc., R. Co. *v.* Armstrong, (Tex. Civ. App. 1907) 99 S. W. 431; Ft. Worth, etc., R. Co. *v.* Hickox, (Tex. Civ. App. 1907) 102 S. W. 202.

The Duty to Maintain Is Not Absolute, but is governed by the rule of ordinary care and prudence. Coe *v.* Northern Pac. R. Co., 101 Minn. 12, 111 N. W. 651.

When Repairs Are Insufficient the owner may repair and recover cost from the company. Chicago, etc., R. Co. *v.* Irons, 38 Ind. App. 196, 78 N. E. 207.

1075. 1. Illinois Cent. R. Co. *v.* Davidson, 225 Ill. 618, 80 N. E. 250; Claus *v.* Chicago G. W. R. Co., (Iowa 1907) 111 N. W. 15; Shepard *v.* Suffolk, etc., R. Co., 140 N. Car. 391, 53 S. E. 137.

Contra. — Missouri, etc., R. Co. *v.* Tolbert, (Tex. Civ. App. 1905) 90 S. W. 508; Galveston, etc., R. Co. *v.* Kropp, (Tex. Civ. App. 1906) 91 S. W. 819; Houston, etc., R. Co. *v.* Nussbaum, (Tex. Civ. App. 1906) 94 S. W. 1101; Missouri, etc., R. Co. *v.* Scofield, (Tex. Civ. App. 1906) 98 S. W. 435.

2. Right of Way Across Another Railroad Need Not Be Fenced. — Illinois Cent. R. Co. *v.* Davidson, 225 Ill. 618, 80 N. E. 250, *affirming* 125 Ill. App. 420.

1076. 1. Duncan *v.* St. Louis, etc., R. Co., 111 Mo. App. 193, 85 S. W. 661.

2. Chicago, etc., R. Co. *v.* Campbell, 34 Colo. 380, 83 Pac. 138; Acord *v.* St. Louis, etc., R. Co., 113 Mo. App. 84, 87 S. W. 537; McGuire *v.* St. Louis, etc., R. Co., 113 Mo. App. 79, 87 S. W. 564; Wilmot *v.* Oregon R. Co., 48 Oregon 494, 87 Pac. 528; Texas, etc., R. Co. *v.* Langham, (Tex. Civ. App. 1906) 95 S. W. 686.

Not Required to Fence Yard. — Katzinski *v.* Grand Trunk R. Co., 141 Mich. 75, 104 N. W. 409.

Contra. — A railroad company must fence its side tracks and repair yards, if practicable, this being a question for the jury. Mattes *v.* Great Northern R. Co., 95 Minn. 386, 104 N. W. 234; Mattes *v.* Great Northern R. Co., 100 Minn. 34, 110 N. W. 98.

As to What Constitutes a Railroad Yard, see Bird *v.* Michigan Cent. R. Co., 145 Mich. 706, 108 N. W. 1100.

Platting Town Lots. — Where the ground had been platted, but still remained a pasture and no lots had been sold and no streets opened, it was held that the company was not relieved from building a fence along the right of way. Iola Electric R. Co. *v.* Jackson, 70 Kan. 791, 79 Pac. 662.

Where There Was Only a Switch to a Private Quarry and trains seldom stopped to take on or discharge passengers or freight, it was held not to be a station. Foster *v.* Kansas City, etc., R. Co., 112 Mo. App. 67, 87 S. W. 57.

Depot. — If it is not a regular stopping place for trains for any purpose, especially for taking on and discharging either freight or passengers, it is neither a station nor depot. Pecos Valley, etc., R. Co. *v.* Cazier, 13 N. Mex. 131, 79 Pac. 714.

1077. 1. Wilmot *v.* Oregon R. Co., 48 Oregon 494, 87 Pac. 528.

1078. 1. McGuire *v.* St. Louis, etc., R. Co., 113 Mo. App. 79, 87 S. W. 564; Acord *v.* St. Louis, etc., R. Co., 113 Mo. App. 84, 87 S. W. 537; Wilmot *v.* Oregon R. Co., 48 Oregon 494, 87 Pac. 528.

2. Iola Electric R. Co. *v.* Jackson, 70 Kan. 791, 79 Pac. 662; Shepard *v.* Suffolk, etc., R. Co., 140 N. Car. 391, 53 S. E. 137.

In Missouri. — Acord *v.* St. Louis, etc., R. Co., 113 Mo. App. 84, 87 S. W. 537.

1079. 3. Highway Crossings. — Acord *v.* St. Louis, etc., R. Co., 113 Mo. App. 84, 87 S. W. 537.

De Facto Highways. — Chicago, etc., R. Co. *v.* Dowhower, 74 Neb. 600, 104 N. W. 1070; Dow *v.* Kansas City Southern R. Co., 116 Mo. App. 555, 92 S. W. 744; Berry *v.* St. Louis, etc., R. Co., 124 Mo. App. 436, 101 S. W. 714.

1081. 5. Barbed-wire Fence Not a Nuisance

Per Se. — Baltimore, etc., R. Co. *v.* Seitzinger, 116 Ill. App. 55.

6. Baltimore, etc., R. Co. *v.* Seitzinger, 116 Ill. App. 55.

7. Claus *v.* Chicago G. W. R. Co., (Iowa 1907) 111 N. W. 15; Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14.

Acquiescence of the Owner in Construction of a Non-statutory Gate. — Francis *v.* Quincy, etc., R. Co., 118 Mo. App. 435, 93 S. W. 876.

8. Cole *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1906) 94 S. W. 1128; Texas, etc., R. Co. *v.* Middleton, (Tex. Civ. App. 1907) 103 S. W. 203.

Gates must be of the same strength and efficiency as the fence. Claus *v.* Chicago G. W. R. Co., (Iowa 1907) 111 N. W. 15.

1082. 2. Duty to Keep Gate Closed. — Chicago, etc., R. Co. *v.* Ramsey, 168 Ind. 390, 81 N. E. 79; Claus *v.* Chicago G. W. R. Co., (Iowa 1907) 111 N. W. 15; Whaley *v.* Erie R. Co., 181 N. Y. 448, 74 N. E. 417, *reversing* 88 N. Y. App. Div. 621, 84 N. Y. Supp. 1150; Cole *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1906) 94 S. W. 1128.

3. Cattle Guards Part of Fence. — Stewart *v.* Grand Rapids, etc., R. Co., 147 Mich. 48, 110 N. W. 126.

Penalty for Failure to Erect Cattle Guards. — Yazoo, etc., R. Co. *v.* Sallis, 89 Miss. 636, 42 So. 202.

1083. 1. Iola Electric R. Co. *v.* Jackson, 70 Kan. 791, 79 Pac. 662; Parrish *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 690.

Cattle Guards and Wing Fences at Intersection of Railroads. — Illinois Cent. R. Co. *v.* Davidson, 225 Ill. 618, 80 N. E. 250, *affirming* 125 Ill. App. 420.

Under a Statute Requiring a Railroad Company to Construct Cattle Guards where its track passes through inclosed land it was held that in order for the plaintiff to recover he must have his land inclosed with a substantial fence. Yazoo, etc., R. Co. *v.* Sallis, 89 Miss. 636, 42 So. 202; Louisville, etc., R. Co. *v.* Timmons, 116 Tenn. 29, 91 S. W. 1116.

Under the Above Statute it is only necessary to erect the cattle guards where the road enters and leaves the lot. Gulf, etc., R. Co. *v.* Ellis, 85 Miss. 586, 38 So. 210.

The erection of guards on either side of a private crossing connecting the two parts of the plaintiff's land is not a sufficient compliance with the statute. Southwestern Tel., etc., Co. *v.* Krause, (Tex. Civ. App. 1906) 92 S. W. 431.

2. Stewart *v.* Grand Rapids, etc., R. Co., 147 Mich. 48, 110 N. W. 126.

Public Convenience may be a sufficient excuse for failure to erect cattle guards near depot crossings. Norfolk, etc., R. Co. *v.* Vallery, 27 Ohio Cir. Ct. 658.

Cattle Guards Not Required Where They Would Endanger Lives of Employees. — Gilpin *v.* Missouri, etc., R. Co., 197 Mo. 319, 94 S. W. 860.

5. Oyler *v.* Quincy, etc., R. Co., 113 Mo. App. 175, 88 S. W. 162.

It is not sufficient to show that the guard is the same kind as used on first-class railroads. St. Louis, etc., R. Co. *v.* Busick, 74 Ark. 589, 86 S. W. 674; Pennsylvania Co. *v.* Newby, 164 Ind. 109, 72 N. E. 1043; Pittsburg, etc., R. Co. *v.* Newsom, 35 Ind. App. 299, 74 N. E. 21.

The Proper Cattle Guard is one that is reasonably effective against stock and reasonably preservative of the safety of the public. Yazoo, etc., R. Co. *v.* Harrington, 85 Miss. 366, 37 So. 1016.

A Cattle Guard Which Leaves an Unguarded Space is insufficient even though it be of standard size. Johnson *v.* Detroit, etc., R. Co., 139 Mich. 287, 102 N. W. 744.

Sufficiency of a Cattle Guard a Question for Jury. — St. Louis, etc., R. Co. *v.* Busick, 74 Ark. 589, 86 S. W. 674; Pittsburg, etc., R. Co. *v.* Newsom, 35 Ind. App. 299, 74 N. E. 21.

1084. 2. Animals Railroads Must Fence Against. — Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 859, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1084.

1085. 1. Infants Injured on Account of Failure to Fence. — Mattes *v.* Great Northern R. Co., 100 Minn. 34, 110 N. W. 98, *following* Rosse *v.* St. Paul, etc., R. Co., 68 Minn. 216, 71 N. W. 20.

FERRIES.

1087. 3. Warner *v.* Ford Lumber, etc., Co., (Ky. 1906) 93 S. W. 650.

1088. 2. Parker *v.* Fenwick, 138 N. Car. 209, 50 S. E. 627.

1089. 4. Blanchard *v.* Abraham, 115 La. 989, 40 So. 379.

1090. 2. Power May Be Exercised Through Subordinate Bodies. — *In re* Spease Ferry, 138 N. Car. 220, 50 S. E. 625, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1090.

1091. 2. Power of Canadian Parliament to Establish Interprovincial and International Ferries. — *In re* International, etc., Ferries, 36 Can. Sup. Ct. 206.

1092. 4. Franchise May Be Granted by Special Statute. — *In re* Spease Ferry, 138 N. Car. 220, 50 S. E. 625, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1092.

10. Delegation by Parliament of Canada to Governor General in Council. — *In re* International, etc., Ferries, 36 Can. Sup. Ct. 206.

1093. 3. Parker *v.* Fenwick, 138 N. Car. 209, 50 S. E. 627, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1093.

The Governor General in Council of Canada may under authority of Canadian Parliament grant exclusive ferry privilege either between provinces or between a province and foreign country. *In re* International, etc., Ferries, 36 Can. Sup. Ct. 206.

4. Several Ferries at Same Place. — When the power of licensing is delegated to the courts, their discretion governs all questions as to number, location, and necessity. Guinn *v.* Eaves, 117 Tenn. 524, 101 S. W. 1154.

1094. 3. Hatten *v.* Turman, (Ky. 1906) 97 S. W. 770.

1095. 3. Guinn *v.* Eaves, 117 Tenn. 524, 101 S. W. 1154.

1096. 1. Peru *v.* Barrett, 108 Me. 213, 60 Atl. 968.

2. Exclusive Rights Given to Persons Owning Land on Both Sides of Stream. — Covington *v.* St. Francis County, 77 Ark. 258, 91 S. W. 186.

1098. 4. Evans *v.* Kroutinger, 9 Idaho 153,

72 Pac. 882, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1098.

1099. 8. Evans *v.* Kroutinger, 9 Idaho 153, 72 Pac. 882, *citing* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1099.

1100. 1. Hatten *v.* Turman, (Ky. 1906) 97 S. W. 770; Blanchard *v.* Abraham, 115 La. 989, 40 So. 379, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1099; Peru *v.* Barrett, 100 Me. 213, 60 Atl. 968.

A Free Bridge constructed with a license is not a disturbance of a ferry owner's rights, even though he loses all income from ferry tolls. Dibden *v.* Skirrow, (1907) 1 Ch. 437.

3. Cowes Urban Dist. Council *v.* Southampton, etc., Royal Mail Steam Packet Co., (1905) 2 K. B. 287.

1101. 1. **Private Bridge — What Constitutes.** — Blanchard *v.* Abraham, 115 La. 989, 40 So. 379, *quoting* 12 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1101.

4. Blanchard *v.* Abraham, 115 La. 989, 40 So. 379.

1103. 3. Green *v.* Ivey, 45 Fla. 338, 33 So. 711.

1104. 3. Hatten *v.* Turman, (Ky. 1906) 97 S. W. 770.

7. Green *v.* Ivey, 45 Fla. 338, 33 So. 711; Police Jury *v.* Robichaux, 116 La. 286, 40 So. 705.

1107. 2. Burke *v.* St. Louis Southwestern R. Co., 120 Mo. App. 683, 97 S. W. 981; Wilson *v.* Alexander, 115 Tenn. 125, 88 S. W. 935.

1109. 2. Bauer *v.* Verona Ferry Co., 33 Pa. Super. Ct. 607.

3. Bauer *v.* Verona Ferry Co., 33 Pa. Super. Ct. 607.

Liability for Failure to Maintain Safe Landing Place. — Bauer *v.* Verona Ferry Co., 33 Pa. Super. Ct. 607.

1112. 1. Gassert *v.* Central R. Co., 74 N. J. L. 11, 64 Atl. 1014.

1113. 6. New York Cent., etc., R. Co. *v.* Chosen Freeholders, 74 N. J. L. 367, 65 Atl. 860.

FICTITIOUS.

2. 2. Fictitious Payee. — See Macbeth *v.* North & South Wales Bank, (1906) 2 K. B. 718, 75 L. J. K. B. 1026; Vinden *v.* Hughes, (1905) 1 K. B. 795.

FIDELITY AND GUARANTY INSURANCE.

3. 1. Guaranty Insurance Distinguished from Indemnity Insurance. — Equitable Trust Co. *v.* National Surety Co., 214 Pa. St. 159, 6 Ann. Cas. 465. See generally the title INDEMNITY CONTRACTS.

4. 1. Guaranty against Dishonesty Not Limited to Criminal Acts. — U. S. Fidelity, etc., Co. *v.* Egg Shippers' Strawboard, etc., Co., (C. C. A.) 148 Fed. 353.

Under a policy insuring the honesty of brokers, the fact that the brokers failed to turn over or restore the proceeds of property has been held not in itself sufficient to show such dishonesty as would render the insurer liable. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Costs of Prosecuting Dishonest Servant Deducted from Value of Property Recovered. — See Hatch *v.* Weingott, 22 Times L. Rep. 366.

5. 1. Supreme Ruling, etc., *v.* National Surety Co., 114 N. Y. App. Div. 689, 99 N. Y. Supp. 1033.

Stipulation as to Examination of Accounts. — An agreement to make a quarterly examination of an employee's accounts has been held not to be sufficiently complied with by examining the employee's bank book and cash, without ascertaining that the amount shown by the book was actually in the bank. U. S. Fidelity, etc., Co. *v.* Downey, 38 Colo. 414, 88 Pac. 451.

A promissory warranty that an employee's accounts will be examined each month does not require an examination on any particular day of the month. American Bonding Co. *v.* Morrow, 80 Ark. 49, 96 S. W. 613.

Acts Concerning Which Notice Unnecessary. — The insured has been held to be under no duty to give notice of one instance of drunkenness on the part of his employee, during which he had been robbed of money supposed by the employer to belong to the employee, nor of the fact that permission was given to such employee to overdraw his account. Long Bros. Grocery Co. *v.* U. S. Fidelity Co., (Mo. App. 1908) 110 S. W. 29.

6. 4. American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692; U. S. Fidelity, etc., Co. *v.* Downey, 38 Colo. 414, 88 Pac. 451; U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670; Max J. Winkler Brokerage Co. *v.* Fidelity, etc., Co., 119 La. 735, 44 So. 449; Glidden *v.* U. S. Fidelity, etc., Co., (Mass. 1908) 84 N. E. 143; Livingston *v.* Fidelity, etc., Co., 76 Ohio St. 253, 81 N. E. 330; Willoughby *v.* Fidelity, etc., Co., 16 Okla. 546, 8 Ann. Cas. 603; Fidelity, etc., Co. *v.* Guthrie Nat. Bank, 17 Okla. 397, 87 Pac. 300; Elgin Loan, etc., Co. *v.* London Guarantee, etc., Co., 11 Ont. L. Rep. 330.

A Warranty that a Bank Cashier Was Engaged in No Other Business has been held not to be broken by the fact that he was an officer in a building association and sometimes wrote insurance. American Bonding Co. *v.* Morrow, 80 Ark. 49, 96 S. W. 613.

Under the Kentucky Statute, the representations, in order to forfeit the bond, must be material to the risk or made with intent to deceive. Fidelity, etc., Co. *v.* Western Bank, (Ky. 1906) 94 S. W. 3.

7. 1. A Misdescription of an Agent's Duties, written in the policy by the insurer, with knowledge on its part of the real nature of the employment, will not avoid the policy. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

2. Statement Made After Delivery of Bond. — Where a bond was delivered, and thereafter the insured furnished a statement which provided that it should be the basis of the contract, it was held that it should be considered as the inducement to the execution of the bond, and representations therein were material. American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692.

8. 1. U. S. Fidelity, etc., Co. *v.* Fultz, 76 Ark. 410, 89 S. W. 93; Glidden *v.* U. S. Fidelity Co., (Mass. 1908) 84 N. E. 143.

For Money Collected Before and Misappropriated After the Execution of the Bond the insurer has been held not to be liable. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

9. 1. Provision for Renewals. — Where a policy, providing that it should continue in force if renewed at certain periods, stipulated that in case of renewals there should be no cumulative liability, it was held that the amount of the bond was the limit of the insurer's liability for the period covered by the bond and all renewals. American Bonding Co. *v.* Morrow, 80 Ark. 49, 96 S. W. 613. To similar effect, see U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670.

10. 1. U. S. Fidelity, etc., Co. *v.* Woodson County, (C. C. A.) 145 Fed. 144; Williams *v.* U. S. Fidelity, etc., Co., 105 Md. 490, 66 Atl. 495; Livingston *v.* Fidelity, etc., Co., 76 Ohio St. 253, 81 N. E. 330; Equitable Trust Co. *v.* National Surety Co., 214 Pa. St. 159, 6 Ann. Cas. 465.

The Term "Money or Other Property," in a policy of fidelity and guaranty insurance, held not to include real estate, the rule of *ejusdem generis* applying. London Guarantee, etc., Co. *v.* George, 16 Manitoba 132.

2. American Bonding Co. *v.* Morrow, 80 Ark. 49, 96 S. W. 613; U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670; Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; Roark *v.* City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1; Long Bros. Grocery Co. *v.* U. S. Fidelity, etc., Co., (Mo. App. 1908) 110 S. W. 29; Bryant *v.* American Bonding Co., 77 Ohio St. 90, 82 N. E. 960.

Statements Construed as Representations unless Made Warranties by Express Terms. — American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692.

FIDUCIARY.

11. 1. Bishop *v.* Hilliard, 227 Ill. 387, 81 N. E. 403, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 10.

Agent. — Fricker *v.* Americus Mfg., etc., Co., 124 Ga. 175, 52 S. E. 65, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 10.

FILE.

13. 2. **Filed Equivalent to Made.** — Cole *v.* State, (Ind. 1907) 82 N. E. 796.

FINAL — FINALLY.

19. 5. **Final Decision.** — See Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32.

Final Settlement. — See Palace Shipping Co. *v.* Caine, (1907) A. C. 386, 9 Ann. Cas. 526.

FINAL JUDGMENTS AND DECREES.

24. 1. **A Final Judgment** is one which completely determines the rights of the parties in the pending proceeding. Morrison *v.* Burnette, (C. C. A.) 154 Fed. 617.

"Final Decision" Is Equivalent to "Final Decree" or "Final Judgment." — Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32; Cassatt *v.* Pennsylvania Coal, etc., Co., (C. C. A.) 150 Fed. 48; Cassatt *v.* Webster Coal, etc., Co., (C. C. A.) 150 Fed. 48.

25. 1. *United States.* — Morris *v.* Dunbar, (C. C. A.) 149 Fed. 406.

Arkansas. — Moody *v.* Jonesboro, etc., R. Co., 83 Ark. 371, 103 S. W. 1134.

California. — Wood *v.* Missouri Pac. R. Co., (Cal. 1907) 92 Pac. 868.

Illinois. — Chicago Portrait Co. *v.* Chicago Crayon Co., 217 Ill. 200, 75 N. E. 473.

Nebraska. — *In re* Larson, (Neb. 1906) 109 N. W. 752.

New Mexico. — Cutler, etc., Paint Color Co. *v.* Hinman, (N. Mex. 1907) 89 Pac. 267.

New York. — Brown *v.* Reiter, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 646, 99 N. Y. Supp. 861.

North Carolina. — Bernard *v.* Shemwell, 139 N. Car. 446, 52 S. E. 64.

Pennsylvania. — Arnold *v.* Russell Car, etc., Co., 212 Pa. St. 303, 61 Atl. 914; *In re* Fleming, 217 Pa. St. 279, 66 Atl. 361.

Washington. — Belding *v.* Washington Cornice Co., 36 Wash. 549, 79 Pac. 37; State *v.* Fleming, 37 Wash. 531, 79 Pac. 1115.

Wyoming. — Greenawalt *v.* Natrona Imp. Co., (Wyo. 1907) 92 Pac. 1008.

An Order Overruling a Demurrer to an Entire Bill of Complaint is in the nature of a final decree, and is appealable. Hyattsville *v.* Smith, 105 Md. 318, 66 Atl. 44; Darcey *v.* Bayne, 105 Md. 365, 66 Atl. 434.

5. Rule at Common Law Obtains in Indiana. — Bozarth *v.* McIntyre, 36 Ind. App. 567, 76 N. E. 317.

No Appeal Can Be Taken from an Interlocutory Order. — Barney *v.* Elkhart County Trust Co., 167 Ind. 505, 79 N. E. 492.

26. 2. *United States.* — Library Bureau *v.* Yawman, etc., Mfg. Co., (C. C. A.) 147 Fed. 245; Morris *v.* Dunbar, (C. C. A.) 149 Fed. 406; Norris Safe, etc., Co. *v.* Manganese Steel Safe Co., (C. C. A.) 150 Fed. 577.

California. — Grey *v.* Brennan, 147 Cal. 355, 81 Pac. 1014; Stebbins *v.* Larson, 4 Cal. App. 482, 88 Pac. 505; Wood *v.* Missouri Pac. R. Co., (Cal. 1907) 92 Pac. 868.

Illinois. — Chicago Portrait Co. *v.* Chicago Crayon Co., 217 Ill. 200, 75 N. E. 473.

Indiana. — State *v.* Lung, (Ind. App. 1906) 77 N. E. 860; Neyens *v.* Flesher, 39 Ind. App. 399, 79 N. E. 1087; Mak-Saw-Ba Club *v.* Coffin, (Ind. 1907) 82 N. E. 461; Barnes *v.* Wagener, (Ind. 1907) 82 N. E. 1037.

Maryland. — Stern *v.* Bennington, 100 Md. 344, 60 Atl. 17; Sharp *v.* Bates, 102 Md. 344, 62 Atl. 747; Boggs *v.* Inter-American Min., etc., Co., 105 Md. 371, 66 Atl. 259.

New Jersey. — *In re* Doland, (N. J. 1906) 64 Atl. 1091.

Pennsylvania. — Gabler *v.* Black, 210 Pa. St. 541, 60 Atl. 257; Arnold *v.* Russell Car, etc., Co., 212 Pa. St. 303, 61 Atl. 914; International Coal Min. Co. *v.* Pennsylvania R. Co., 214 Pa. St. 474, 63 Atl. 882; Caflisch *v.* Logue, 216 Pa. St. 146, 65 Atl. 31; Keystone Brewing Co. *v.* Canavan, 218 Pa. St. 161, 67 Atl. 48.

Utah. — Felt *v.* Cook, 31 Utah 299, 87 Pac. 1092.

Washington. — Vaktaren Pub. Co. *v.* Pacific Tribune Pub. Co., 41 Wash. 355, 83 Pac. 426.

Record Failing to Disclose Final Judgment, appeal will be dismissed. Bozarth *v.* McIntyre, 36 Ind. App. 567, 76 N. E. 317.

27. 2. *California.* — Dollenmayer *v.* Pryor, 150 Cal. 1, 87 Pac. 616.

Colorado. — Marean *v.* Stanley, 34 Colo. 91, 81 Pac. 759; Eckman *v.* Poor, 38 Colo. 200, 87 Pac. 1088.

Illinois. — Gray *v.* Ames, 220 Ill. 251, 77 N. E. 219, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 27; Stahl *v.* Stahl, 220 Ill. 188, 77 N. E. 67; Iroquois, etc., Drainage Dist. *v.* Harroun, 222 Ill. 489, 78 N. E. 780.

Indiana. — Barnett *v.* Thomas, 36 Ind. App. 441, 75 N. E. 868; Starkey *v.* Starkey, 166 Ind. 140, 76 N. E. 876; Carr *v.* Duhme, 167 Ind. 76, 78 N. E. 322; Barnes *v.* Wagener, (Ind. 1907) 82 N. E. 1037.

Kansas. — White *v.* Atchison, etc., R. Co., 74 Kan. 778, 88 Pac. 54.

Massachusetts. — Corbett *v.* Craven, 193 Mass. 30, 78 N. E. 748.

Nebraska. — Continental Trust Co. *v.* Peterson, (Neb. 1906) 110 N. W. 316.

New Jersey. — Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq. 570, 61 Atl. 26.

New York. — Potter *v.* Rossiter, 109 N. Y. App. Div. 35, 95 N. Y. Supp. 1036.

Utah. — Winnovich *v.* Emery, (Utah 1908) 93 Pac. 988.

West Virginia. — Barbour *v.* Tompkins, 58 W. Va. 572, 52 S. E. 707; Willson *v.* Shawinigan Carbide Co., 37 Can. Sup. Ct. 538, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23 [27].

An Order Confirming or Setting Aside a Sale is a final order. Barnes *v.* Henshaw, 226 Ill. 605, 80 N. E. 1076.

29. 1. Robert *v.* Rousseau, (R. I. 1907) 67 Atl. 330.

5. Stahl *v.* Stahl, 220 Ill. 188, 77 N. E. 67;

Gray *v.* Ames, 220 Ill. 251, 77 N. E. 219, recognizing the general rule, but holding it not applicable to the facts of the present case; Robert *v.* Rousseau, (R. I. 1907) 67 Atl. 330.

30. 1. *Ex p.* National Enameling, etc., Co., 201 U. S. 156, 26 U. S. Sup. Ct. 404; *Ex p.* Automatic Switch Co., 201 U. S. 166, 26 U. S. Sup. Ct. 407; Hargus *v.* Hayes, 83 Ark. 186, 103 S. W. 163; Gray *v.* Ames, 220 Ill. 251, 77 N. E. 219, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30.

31. 2. Clark *v.* Roller, 199 U. S. 541, 26 U. S. Sup. Ct. 141; Library Bureau *v.* Yawman, etc., Mfg. Co., (C. C. A.) 147 Fed. 245; Gray *v.* Ames, 220 Ill. 251, 77 N. E. 219, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 31; Freund *v.* Freund, (N. J. 1906) 63 Atl. 756.

32. 3. Crockett *v.* Crockett, 132 Iowa 388, 106 N. W. 944; State *v.* Washington Dredging, etc., Co., 43 Wash. 508, 86 Pac. 936.

34. 3. Childs *v.* Blethen, 40 Wash. 340, 82 Pac. 405.

4. Dexter *v.* Seaboard Air Line R. Co., 52 Fla. 250, 42 So. 695; State *v.* Lung, (Ind. App. 1906) 77 N. E. 860, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34; Miller *v.* McKean, 38 Ind. App. 695, 78 N. E. 1049; Neyens *v.* Flesher, 39 Ind. App. 399, 79 N. E. 1087; Ritchie County Bank *v.* Bee, 60 W. Va. 386, 55 S. E. 380.

An Order Is Not Rendered Final Merely Because Embracing an Order for Costs. — Mak-Saw-Ba Club *v.* Coffin, (Ind. 1907) 82 N. E. 461.

A Judgment for Costs upon Sustaining a Demurrer to the Evidence is a final judgment. White *v.* Atchison, etc., R. Co., 74 Kan. 778, 88 Pac. 54.

5. Wright *v.* Gorman-Wright Co., (C. C. A.) 152 Fed. 408.

36. 4. State *v.* Lung, 168 Ind. 553, 80 N. E. 541; Martindale *v.* Battey, 73 Kan. 92, 84 Pac. 527; Corbett *v.* Craven, 193 Mass. 30, 78 N. E. 748; Lakin *v.* Lawrence, 195 Mass. 27, 80 N. E. 578; Carpenter *v.* Auditor-Gen., 144 Mich. 251, 107 N. W. 878; Continental L. Ins., etc., Co. *v.* Jones, 31 Utah 403, 88 Pac. 229.

Order Denying Intervention — Final Order. — Dollenmayer *v.* Pryor, 150 Cal. 1, 87 Pac. 616.

Dismissal of Petition for Bankruptcy Final Judgment. — Stevens *v.* Nave-McCord Mercantile Co., (C. C. A.) 150 Fed. 71.

Dismissal of Petition for Admission to the Bar Is Final Judgment. — *In re* O'Brien, 79 Conn. 46, 63 Atl. 777.

An Order Striking a Complaint from the Files, on the ground that it contains several causes of action not separately stated, is not a final decree. Vaktaren Pub. Co. *v.* Pacific Tribune Pub. Co., 41 Wash. 355, 83 Pac. 426.

40. 6. Ruggles *v.* Patton, (C. C. A.) 143 Fed. 312; Schmelzer *v.* Bartlett Illuminating Co., 142 Mich. 133, 105 N. W. 120.

An Interlocutory Judgment in a Partition Suit is reviewable without a final judgment. Joyce *v.* Dyer, 180 Mass. 64, 75 N. E. 81.

42. 2. Everett *v.* Jones, (Utah 1907) 91 Pac. 360.

4. Albin *v.* Seattle Electric Co., (Wash. 1907) 90 Pac. 435.

43. 1. Stern *v.* Bennington, 100 Md. 344, 60 Atl. 17; Whitcomb *v.* Mason, 102 Md. 275, 62 Atl. 749; Pomeroy First Nat. Bank *v.* McCullough, (Oregon 1908) 93 Pac. 366; Everett *v.* Jones, (Utah 1907) 91 Pac. 360.

Order Denying New Trial Appealable. — Brady *v.* Carteret Realty Co., 70 N. J. Eq. 748, 64 Atl. 1078.

45. 5. **Cause Remanded for Further Proceedings** not inconsistent with the opinion of the appellate court is not a final judgment for purposes of appeal to the Supreme Court of the United States. Clark *v.* Roller, 199 U. S. 541, 26 U. S. Sup. Ct. 141.

6. Warner *v.* Grayson, 200 U. S. 257, 26 U. S. Sup. Ct. 240.

47. 2. Sharp *v.* Bates, 102 Md. 344, 62 Atl. 747.

3. Sharp *v.* Bates, 102 Md. 344, 62 Atl. 747.

FINES AND PENALTIES.

53. 1. **Term "Fine" May Include Forfeiture or Penalty.** — State *v.* Addington, 143 N. Car. 683, 57 S. E. 398, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 53.

2. **Definition of Fine.** — State *v.* Addington, 143 N. Car. 685, 57 S. E. 398, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 53.

54. 1. State *v.* Addington, 143 N. Car. 683, 57 S. E. 398, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 53.

Penalty Distinguished from Liquidated Damages. — Clydebank Engineering, etc., Co. *v.* Yzquierdo y Castaneda, (1905) A. C. 6; Public Works Comr. *v.* Hills, (1906) A. C. 368; Diestal *v.* Stevenson, (1906) 2 K. B. 345; Pye *v.* British Automobile Syndicate, (1906) 1 K. B. 425.

5. State *v.* Addington, 143 N. Car. 683, 57 S. E. 398, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 53.

7. Casey *v.* St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 54.

55. 5. *In re* Mitchell, 1 Cal. App. 396, 82 Pac. 347; Morin *v.* Newbury, 79 Conn. 338, 65 Atl. 156; Atchison, etc., R. Co. *v.* People, 227 Ill. 270, 81 N. E. 342; Clark *v.* American Express Co., 130 Iowa 254, 106 N. W. 642; Conrad *v.* State, 75 Ohio St. 52, 8 Ann. Cas. 966, 78 N. E. 957; Dawson *v.* Shaw, 28 Pa. Super. Ct. 563; State *v.* Wallace, 102 Me. 229, 66 Atl. 476; Pollard *v.* Missouri, etc., Tel. Co., 114 Mo. App. 533, 90 S. W. 121; Casey *v.* St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419; State *v.* Dailey, (Neb. 1906) 107 N. W. 1094; Burton *v.* State, (Tex. Crim. 1907) 101 S. W. 226.

57. 1. U. S. *v.* Baltimore, etc., R. Co., 26 App. Cas. (D. C.) 581.

2. State *v.* Kiley, 36 Ind. App. 513, 76 N. E. 184.

58. 6. **Defendants Jointly Indicted.** — Perry *v.* State, (Ala. 1907) 43 So. 18.

59. 1. McConathy *v.* Deck, 34 Colo. 467, 83 Pac. 135, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 58 [59].

2. McConathy *v.* Deck, 34 Colo. 467, 83 Pac. 135, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 58 [59].

3. McConathy *v.* Deck, 34 Colo. 467, 83 Pac. [illegible] 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 501.

60. 3. Fine of Five Thousand Dollars Held Not Excessive within the Purview of the Bill of Rights. — French *v.* Com., (Ky. 1906) 97 S. W. 427; Feltner *v.* Com., (Ky. 1906) 97 S. W. 43.

6. State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

61. 1. Chicago, etc., R. Co. *v.* People, 217 Ill. 173, 75 N. E. 368, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 61.

2. Chicago, etc., R. Co. *v.* People, 217 Ill. 173, 75 N. E. 368, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 61.

Fines Held Not Excessive — Violation of Liquor Laws. — Fletcher *v.* Com., 106 Va. 840, 56 S. E. 149; Rose *v.* Com., 106 Va. 850, 56 S. E. 151; Western Union Tel. Co. *v.* State, 82 Ark. 309, 101 S. W. 748, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 62.

62. 2. State *v.* Richeson, 36 Ind. App. 373, 75 N. E. 846.

63. 5. U. S. Condensed Milk Co. *v.* Smith, 116 N. Y. App. Div. 15, 101 N. Y. Supp. 129.

The Institution of an Action for a Penalty Is a Waiver of All Previous Penalties. — Stevenson *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 641, 104 N. Y. Supp. 866.

6. Wilson *v.* Com., 119 Ky. 769, 82 S. W. 427, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 63.

64. 3. Weiss-Chapman Drug Co. *v.* People, 39 Colo. 374, 89 Pac. 778; State *v.* Warner, 197 Mo. 650, 94 S. W. 962; State *v.* Gallagher, 126 Mo. App. 729, 106 S. W. 111; State *v.* Maultsby, 139 N. Car. 583, 51 S. E. 956; New York *v.* Williams, (Municipal Ct.) 48 Misc. (N. Y.) 77, 96 N. Y. Supp. 237.

Plaintiff Must Be Held to Strict Proof. — Stevenson *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 641, 104 N. Y. Supp. 866; Engel *v.* New York City R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 203, 105 N. Y. Supp. 80.

4. Pollard *v.* Missouri, etc., Tel. Co., 114 Mo. App. 533, 90 S. W. 121.

65. 5. Lyons *v.* Collier, 125 Ga. 231, 54 S. E. 183.

66. 1. Perry *v.* State, (Ala. 1907) 43 So. 18; Dasey *v.* State, 5 Penn. (Del.) 457, 62 Atl. 300; Kettles *v.* People, 221 Ill. 221, 77 N. E. 472; Carnahan *v.* Carnahan, 143 Mich. 390, 107 N. W. 73; State *v.* Addington, 143 N. Car. 683, 57 S. E. 398.

Notary Not Authorized by Statute to Commit a Witness for Nonpayment of a Fine. — *In re* Butler, (Neb. 1906) 107 N. W. 572.

2. *Ex p.* Barclay, 153 Fed. 669.

3. Perry *v.* Pernet, 165 Ind. 67, 74 N. E. 609; Saylor *v.* Com., 122 Ky. 776, 93 S. W. 48.

67. 1. *Ex p.* Spears, 49 Tex. Crim. 231, 90 S. W. 1011.

2. *Ex p.* Spears, 49 Tex. Crim. 231, 90 S. W. 1011.

3. Peed *v.* Brewster, 168 Ind. 51, 79 N. E. 1039; *Ex p.* Clayton, (Tex. Crim. 1907) 103 S. W. 630.

68. 2. Weinard *v.* State, (Ala. 1906) 42 So. 991; *Ex p.* Krouse, 148 Cal. 232, 82 Pac. 1043; Lyons *v.* Collier, 125 Ga. 231, 54 S. E. 183; Stone *v.* Paducah, 120 Ky. 322, 86 S. W. 531; Bartlett *v.* Paducah, (Ky. 1906) 91 S. W. 264; Murray *v.* Paducah, (Ky. 1906) 91 S. W. 265; Saylor *v.* Com., 122 Ky. 776, 93 S. W. 48; *Ex p.* Patterson, (Nev. 1906) 87 Pac. 2.

69. 2. Marysville *v.* Yuba County, (Cal. 1905) 82 Pac. 975; Mt. Vernon *v.* Mochwart, 75 Ohio St. 529, 80 N. E. 185; Chapin *v.* Seward County, 75 Neb. 745, 106 N. W. 778; School Directors *v.* Asheville, 137 N. Car. 503, 50 S. E. 279; Howth *v.* Greer, (Tex. Civ. App. 1905) 90 S. W. 211.

3. State *v.* Warner, 197 Mo. 650, 94 S. W. 962; School Directors *v.* Asheville, 137 N. Car. 503, 50 S. E. 279; State *v.* Maultsby, 139 N. Car. 583, 51 S. E. 956; Emerson *v.* Huss, 127 Wis. 215, 106 N. W. 518.

FINISH.

72. 1. The Phrase "Finish Sound," in a warranty of certain hollow metallic cylinders called "shells," means that the shells shall when *finished* (nickel-plated and polished) be sound. H. H. Franklin Mfg. Co. *v.* Lamson, etc., Mfg. Co., 189 Mass. 344, 75 N. E. 624.

FIRE DEPARTMENT.

74. 2. San Antonio *v.* Tobin, (Tex. Civ. App. 1907) 101 S. W. 269.

A Classification of the Position of Chief in the city fire department, made by the fire commissioners, will not be disturbed by the courts. People *v.* McWilliams, 185 N. Y. 92, 77 N. E. 785.

75. 1. An Order of Removal, after a hearing on charges containing several counts, need not state whether the fireman has been found guilty on all of the counts. People *v.* Sturgis, 96 N. Y. App. Div. 620, 88 N. Y. Supp. 631, *affirmed* 76 N. E. 1105.

2. Fireman upon Trial Entitled to Presumption of Innocence. — People *v.* Sturgis, 110 N. Y. App. Div. 1, 96 N. Y. Supp. 1046.

Proof of Charges against a fireman is unnecessary, where the charges are admitted. Ryan *v.* Handley, 43 Wash. 232, 86 Pac. 398.

76. 2. Fireman Wrongfully Discharged Will Be Reinstated by Court. — People *v.* Sturgis, 110 N. Y. App. Div. 1, 96 N. Y. Supp. 1046.

4. Successors in Office Have No Right to Review the action of fire commissioners in disbanding a company. Ultecht *v.* Allen, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 390, 103 N. Y. Supp. 384.

77. 7. Ramsay *v.* Hayes, 112 N. Y. App. Div. 442, 98 N. Y. Supp. 394.

Insurance of the members of the city fire department is provided for by the charter of the city of New York. Reidy *v.* New York, 185 N. Y. 141, 77 N. E. 1011.

78. 1. When the Control of the Property of a Fire Department Is Vested in the Village, the fire department goes out of existence and has no capacity to sue. Fulton Fire Department *v.* Fulton, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 242, 100 N. Y. Supp. 816.

4. Hazel *v.* Owensboro, (Ky. 1907) 99 S. W. 315; Brink *v.* Grand Rapids, 143 Mich. 472,

108 N. W. 430; Cunningham v. Seattle, 40 Wash. 59, 82 Pac. 143.

79. 3. Hazel *v.* Owensboro, (Ky. 1907) 99 S. W. 315.

FIRE ESCAPES.

82. 1. Yall *v.* Snow, 201 Mo. 511, 100 S. W. 1.

Where a Building Is Peculiarly Exposed to Fire, because of its construction, the common law requires the owner to provide [illegible] sufficient for the egress of the occupants in case of fire. Dakan *v.* Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944.

2. Fire Escapes Required for Factory. — Dakan *v.* Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944.

Fire Escapes Required for Hotel. — Yall *v.* Snow, 201 Mo. 511, 100 S. W. 1; Johnson *v.* Snow, 201 Mo. 450, 100 S. W. 5.

Fire Escapes Required for Educational Institutions. — Abston *v.* Waldon Academy, 118 Tenn. 24, 102 S. W. 351.

Fire Escapes Required for Building [illegible] Stories in Height. — Seattle *v.* Hinckley, 40 Wash. 468, 82 Pac. 747.

83. 1. Seattle *v.* Hinckley, 40 Wash. 468, 82 Pac. 747.

2. Compliance with Statutory Requirement Does Not Relieve Owner of Common-law Obligation. — Dakan *v.* Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944.

85. 1. Owner and Not Agent Liable for Failure to Comply with Statute. — State *v.* Dailey, (Neb. 1906) 107 N. W. 1094.

Owner and Not Lessee Primarily Liable for Failure to Comply with Statute. — Yall *v.* Snow, 201 Mo. 511, 100 S. W. 1.

The Owner of a Factory Within the Meaning of the English Factory and Workshop Act, who, in compliance with the requirements of a sanitary authority, incurs expenses in providing means of escape in case of fire, must apply to the County Court in order to recover the expenses or any part thereof from the occupier. His only remedy against the occupier is in that court, and he cannot sue in the High Court even when the occupier has expressly covenanted with him to pay all outgoings in respect of the premises constituting the factory. Horner *v.* Franklin, (1905) 1 K. B. 479, 74 L. J. K. B. 291, 92 L. T. N. S. 178, 69 J. P. 117, 3 L. G. R. 423, 21 Times L. Rep. 225.

3. Yall *v.* Snow, 201 Mo. 511, 100 S. W. 1.

Charitable Institution Not Liable for Failure to Provide Fire Escape. — Abston *v.* Waldon Academy, 118 Tenn. 24, 102 S. W. 351.

FIRE INSURANCE.

101. 2. North British, etc., Ins. Co. *v.* Tye, 1 Ga. App. 380, 58 S. E. 110; Cutting *v.* Atlas Mut. Ins. Co., (Mass. 1908) 85 N. E. 1[illegible].

5. False Warranty of Value Defeats Recovery, Although Immaterial. — Capital F. Ins. Co. *v.* King, 82 Ark. 400, 102 S. W. 194.

102. 3. Georgia Co-operative F. Assoc. *v.* Lanier, 1 Ga. App. 186, 57 S. E. 910.

4. Georgia Co-operative F. Assoc. *v.* Lanier, 1 Ga. App. 186, 57 S. E. 910.

103. 2. A policy providing for the payment of a sum not to exceed a certain amount in case of a total loss, and in case of a partial loss, payment of a certain sum a month until the house could be made tenantable, was held to be a valued policy as to a total loss, and an open policy as to a partial loss. Lite *v.* Firemen's Ins. Co., 119 N. Y. App. Div. 410, 104 N. Y. Supp. 434.

5. Moore *v.* Sun Ins. Office, 100 Minn. 374, 111 N. W. 260; Moore *v.* Phœnix Ins. Co., 100 Minn. 393, 111 N. W. 263; Stevens *v.* Norwich Union F. Ins. Co., 120 Mo. App. 88, 96 S. W. 684; Bright *v.* Hanover F. Ins. Co., (Wash. 1907) 92 Pac. 779.

8. Phœnix Ins. Co. *v.* Wintersmith, (Ky. 1907) 98 S. W. 987.

104. 3. Melancon *v.* Phœnix Ins. Co., 116 La. 324, 40 So. 718; Bright *v.* Hanover F. Ins. Co., (Wash. 1907) 92 Pac. 779.

Statutes Apply to Builder's Policy. — King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892.

5. Moore *v.* Sun Ins. Office, 100 Minn. 374, 111 N. W. 260.

7. Mississippi Home Ins. Co. *v.* Barron, (Miss. 1908) 45 So. 875.

8. Phœnix Ins. Co. *v.* Wintersmith, (Ky. 1907) 98 S. W. 987.

106. 4. An actual loss of rent must be shown before indemnity therefor may be recovered. Insurance of rents does not cover expenses for repairs made necessary by the fire. Hartford F. Ins. Co. *v.* Northern Trust Co., 127 Ill. App. 355.

108. 6. **Portion of Building Detached After Policy Issues.** — Where a kitchen was removed from an insured building to a distance of 100 feet, and the owners were uncertain whether or not it would be reattached to the main building, it was held not to be covered by the policy at the time of loss. Evanston Golf Club *v.* Home Ins. Co., 119 Mo. App. 175, 95 S. W. 980.

112. 1. **A Boiler Room** connected with a laundry by a steam pipe and an overhead arch was held to be included in the term "additions." Guthrie Laundry Co. *v.* Northern Assur. Co., 17 Okla. 571, 87 Pac. 649.

A Planing Mill was held to be an addition to a sawmill, where the two buildings were eighteen inches apart and a belt which operated the machinery in the planing mill extended from the sawmill. Ferguson *v.* Lumbermen's Ins. Co., 45 Wash. 209, 88 Pac. 128.

3. Where a policy insured a building with its additions "adjoining and communicating," it was held not to include a building 150 ft. away occupied by domestic servants and connected with the main building by call bells. North British, etc., Ins. Co. *v.* Tye, 1 Ga. App. 380, 58 S. E. 110.

Buildings Connected by Platform. — Bickford *v.* Ætna Ins. Co., 101 Me. 124, 63 Atl. 552.

113. 5. A policy covering dry goods and all "such other goods as is usually kept for sale in a dry goods store" was held to include pictures and patterns, although pictures and patterns were specifically excepted by the terms of the policy. Furlong *v.* North British, etc., Ins. Co., (Iowa 1907) 113 N. W. 1084.

115. 3. Where a policy covered furniture

in a building [illegible] erected on leased ground, it [illegible] held to include [illegible] attached to the building. Tubbs v. Mechanics' Ins. Co., 131 Iowa 217, 108 N. W. 324.

10. Boiler, Pipes, and Fittings. — Tubbs *v.* Mechanics' Ins. Co., 131 Iowa 217, 108 N. W.

14. A policy upon "crops" includes growing cotton. State Mut. Ins. Co. *v.* Clevenger, 17 Okla. 49, 87 Pac. 583; State Mut. Ins. Co. *v.* Roark, 17 Okla. 48, 87 Pac. 584.

117. 12. Where a policy was to take effect two months after its date, it was held that a provision that it was to cover all sugar "deposited" in a manufactory on a plantation applied to sugar manufactured from a growing crop after the date of the policy. Royal Ins. Co. *v.* Miller, 199 U. S. 353, 26 U. S. Sup. Ct. 46.

118. 5. A policy on buildings shown on a plan of a factory does not cover a building not included in the plan, although it was a part of the plant insured at the time of issuing the policy. Arlington Co. *v.* Empire City F. Ins. Co., 116 N. Y. App. Div. 458, 101 N. Y. Supp. 772.

119. 5. Where an application stated that a building was a frame dwelling and rooming house with twenty-four rooms, it was held that there was no representation that the building was an ordinary dwelling house. Arkansas Mut. F. Ins. Co. *v.* Claiborne, 82 Ark. 150, 100 S. W. 751.

7. Where two stories of an insured building were used for stores and one story for dwelling purposes, it was not properly described as a dwelling. Bowditch *v.* Norwich Union F. Ins. Co., 193 Mass. 565, 79 N. E. 788.

120. 12. Shackelford *v.* Indemnity F. Ins. Co., 75 Neb. 680, 106 N. W. 771; Walsh *v.* Queen Ins. Co., 27 Ohio Cir. Ct. 313.

122. 1. Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057.

Policy Not Forfeited Ipso Facto by Removal. — McIntyre *v.* Liverpool, etc., Ins. Co., (Mo. App. 1908) 110 S. W. 604.

123. 7. A policy covering live stock and farm implements was held not to include the utensils and fixtures contained in a slaughter house on the premises. Geraghty *v.* Washtenaw Mut. F. Ins. Co., 145 Mich. 635, 108 N. W. 1102.

9. Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057.

124. 5. Philadelphia F. Assoc. *v.* Taylor, (Kan. 1907) 91 Pac. 1070.

125. 3. A policy upon lumber contained in a yard covers lumber in a shed within the yard. American Ins. Co. *v.* Meyers, 118 Ill. App.

126. 1. Continental Ins. Co. *v.* Buchanan, (Ky. 1908) 108 S. W. 355.

Where the insurer's agent consented to the removal of goods and promised to transfer the policy, the insurer was held to be bound, although the premium rate was higher at the new location and the increased rate was not paid for the reason that the agent neglected to inform the insured of such rate. Cooper *v.* German-American Ins. Co., 96 Minn. 81, 104 N. W. 687.

Waiver by Retention of Unearned Premium. — McIntyre *v.* Liverpool, etc., Ins. Co., (Mo. App. 1908) 110 S. W. 604.

2. Insurer Bound by Agent's Oral Consent to Removal. — Continental Ins. Co. *v.* Buchanan, (Ky. 1908) 108 S. W. 355.

Insurer Bound by Agent's Knowledge of Removal. — McIntyre *v.* Liverpool, etc., Ins. Co., (Mo. App. 1908) 110 S. W. 604.

6. See Western Woolen Mill Co. *v.* Northern Assur. Co., (C. C. A.) 139 Fed. 637.

127. 6. No recovery can be had for damage caused by spontaneous combustion that does not produce visible heat or light, as the ordinary meaning of the word "fire" necessarily includes those terms. Western Woolen Mill Co. *v.* Northern Assur. Co., (C. C. A.) 139 Fed. 637.

9. Where a policy covering an automobile exempted the insurer from liability for fire originating "within the vehicle," it was held that a fire caused by the ignition of gasoline vapor by the lamps of the automobile, after an accident which caused the gasoline to escape, was not a fire originating within the vehicle. Preston *v.* Ætna Ins. Co., 118 N. Y. App. Div. 784, 103 N. Y. Supp. 638; Preston *v.* Union Assur. Soc., 118 N. Y. App. Div. 788, 103 N. Y. Supp. 640.

11. Russell *v.* German F. Ins. Co., 100 Minn. 528, 111 N. W. 400.

Application of Maxim Depends on Special Facts. — See Baker *v.* Williamsburgh City F. Ins. Co., 157 Fed. 280, where a clause exempting the company from liability for loss caused "directly or indirectly by invasion, * * * or for loss or damage occasioned by or through * * * earthquake," was held to exempt the insurer from liability in the case of an earthquake, only where the earthquake was the immediate cause of the fire, the words "directly or indirectly" not applying to the earthquake clause.

Proximate Cause Not Always Nearest. — Richmond Coal Co. *v.* Commercial Assur. Co., 159 Fed. 985.

Earthquake. — As to a succession of fires caused by an earthquake, where the policy exempted the insurer from liability for loss "occasioned by or through earthquake," see Henry Hilp Tailoring Co. *v.* Williamsburgh City F. Ins. Co., 157 Fed. 285.

129. 6. Foster *v.* Home Ins. Co., (C. C. A.) 143 Fed. 307.

130. 3. German Ins. Co. *v.* Goodfriend, (Ky. 1906) 97 S. W. 1008; Bindell *v.* Kenton County Assessment F. Ins. Co., (Ky. 1908) 108 S. W. 325.

7. Gross Negligence Question for Jury. — Moss *v.* Home Ins. Co., (Ky. 1907) 99 S. W. 308.

131. 2. Loss Caused by Fraudulent Agreement among Stockholders of Corporation. — Meily Co. *v.* London, etc., F. Ins. Co., 142 Fed. 873.

5. Bindell *v.* Kenton County Assessment F. Ins. Co., (Ky. 1908) 108 S. W. 325.

6. Bindell *v.* Kenton County Assessment F. Ins. Co., (Ky. 1908) 108 S. W. 325.

133. 4. Hall *v.* National F. Ins. Co., 115 Tenn. 513, 92 S. W. 402.

5. Home Lodge Assoc. *v.* Queen Ins. Co., (S. Dak. 1907) 110 N. W. 778; Hall *v.* Na-

tional F. Ins. Co., 115 Tenn. 513, 92 S. W. 402.

7. Company Liable for Entire Loss When Explosion Incident of Fire. — Hall *v.* National F. Ins. Co., 115 Tenn. 513, 92 S. W. 402.

8. Where it is claimed that an explosion followed a fire, it must be shown that the fire was of the kind commonly intended by insurance policies, and not, for instance, the lighting of a gas jet or a match. German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27.

134. 6. An insurance policy is valid where it is issued in a trade name, although portions of the property are in the sole ownership of different individuals, provided such individuals have insurable interests. The fact that the insurer did not know of the several ownerships of the property when the policy was issued does not affect its validity. New Hampshire F. Ins. Co. *v.* Wall, 36 Ind. App. 238, 75 N. E. 668.

135. 3. Wasem *v.* Gray, (Colo. 1908) 95 Pac. 557.

136. 3. Prospect Dye Works *v.* Federal Ins. Co., 33 Pa. Super. Ct. 223.

142. 4. Fox *v.* Queen Ins. Co., 124 Ga. 948, 53 S. E. 271.

143. 1. **In Georgia** a husband or parent may insure the property of his wife or child in his representative capacity, although he has no interest whatever in the property. Fox *v.* Queen Ins. Co., 124 Ga. 948, 53 S. E. 271.

2. **Effect of Judgment Declaring Building Nuisance.** — A judgment declaring a building a nuisance and ordering its removal does not extinguish the owner's insurable interest before the execution of such judgment. Irwin *v.* Westchester F. Ins. Co., (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 441, 109 N. Y. Supp. 612.

144. 5. Fox *v.* Queen Ins. Co., 124 Ga. 948, 53 S. E. 271.

Policy Payable to Insured's Estate Valid. — Norwich Union F. Ins. Co. *v.* Prude, 145 Ala. 297, 8 Ann. Cas. 121; Loring *v.* Dutchess Ins. Co., 1 Cal. App. 186, 81 Pac. 1025.

146. 3. Brunswick-Balke-Collender Co. *v.* Northern Assur. Co., 142 Mich. 29, 105 N. W. 76.

5. Canadian Pac. R. Co. *v.* Ottawa F. Ins. Co., 11 Ont. L. Rep. 465, 6 Ann. Cas. 567.

147. 3. Where a mortgagee to whom a policy was payable as his interest might appear assigned the mortgage with a guaranty of payment, it was held that the mortgagee still retained an insurable interest in the property because of the guaranty. Mahoney *v.* State Ins. Co., 133 Iowa 570, 110 N. W. 1041.

4. Canadian Pac. R. Co. *v.* Ottawa F. Ins. Co., 11 Ont. L. Rep. 465, 6 Ann. Cas. 567. *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 147.

148. 7. Vancouver Nat. Bank *v.* Law Union, etc., Ins. Co., 153 Fed. 440.

152. 3. American Cereal Co. *v.* Western Assur. Co., 148 Fed. 77.

153. 9. Western Assur. Co. *v.* Chesapeake Lighterage, etc., Co., 105 Md. 232, 65 Atl. 637.

10. Western Assur. Co. *v.* Chesapeake Lighterage, etc., Co., 105 Md. 232, 65 Atl. 637.

154. 8. Western Assur. Co. *v.* Chesapeake Lighterage, etc., Co., 105 Md. 232, 65 Atl. 637.

158. 3. **In Georgia** the husband need have no interest in the property, but if he insures the same the policy must be taken out in his representative capacity as trustee for his wife. Fox *v.* Queen Ins. Co., 124 Ga. 948, 53 S. E. 271.

4. Lenagh *v.* Commercial Union Assur. Co., (Neb. 1906) 110 N. W. 740.

10. Loyd *v.* Planters' Mut. Ins. Co., 80 Ark. 486, 97 S. W. 658.

159. 7. A surety on a bond given to secure the payment of a mortgage on property purchased in his wife's name, was held to have no insurable interest where it appeared that he had never acquired any lien upon or control over the property to secure his liability. Loyd *v.* Planters' Mut. Ins. Co., 80 Ark. 486, 97 S. W. 658.

162. 9. American Cereal Co. *v.* Western Assur. Co., 148 Fed. 77.

164. 1. King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892.

165. 6. American Cereal Co. *v.* Western Assur. Co., 148 Fed. 77; Loring *v.* Dutchess Ins. Co., 1 Cal. App. 186, 81 Pac. 1025.

9. Dalton *v.* Milwaukee Mechanics' Ins. Co., 126 Iowa 377, 102 N. W. 120.

167. 9. Gillespie *v.* Scottish Union, etc., Ins. Co., 61 W. Va. 169, 56 S. E. 213.

168. 3. Although one who held a chattel mortgage on a stock of goods as security, had received an amount equaling the debt, his interest was not divested where it appeared that he had used a portion of the amount in replenishing the stock. Dalton *v.* Milwaukee Mechanics' Ins. Co., 126 Iowa 377, 102 N. W. 120.

7. Nugent *v.* Rensselaer County Mut. F. Ins. Co., 106 N. Y. App. Div. 308, 94 N. Y. Supp. 605, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 168.

171. 1. Where a policy provided that the loss "on buildings" should be payable to the mortgagee as his interest might appear, it was held that he was not entitled to the insurance money on machinery contained in the buildings, although such machinery was included in the mortgage and was covered by the same policy of insurance. Miller *v.* Gibbs, 108 N. Y. App. Div. 103, 95 N. Y. Supp. 385.

3. American Cereal Co. *v.* Western Assur. Co., 148 Fed. 77.

172. 1. Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908.

3. Miller *v.* Gibbs, 108 N. Y. App. Div. 103, 95 N. Y. Supp. 385.

8. Where a mortgagee took out a policy under authority given by the mortgagor, and paid the premiums thereon, the policy containing a mortgage clause, it was held that the payment of the mortgage did not affect the policy as to the mortgagor. New *v.* Germania F. Ins. Co., (Ind. App. 1907) 82 N. E. 1005.

177. 4. American Cent. Ins. Co. *v.* Leake, (Ky. 1907) 104 S. W. 373.

5. Remainderman Entitled to Excess over Value of Life Estate. — Grant *v.* Buchanan, 36 Tex. Civ. App. 334, 81 S. W. 820.

8. Grant *v.* Buchanan, 36 Tex. Civ. App. 334, 81 S. W. 820, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177.

9. Dalton *v.* Milwaukee Mechanics' Ins. Co., 126 Iowa 377, 102 N. W. 120, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 217; Dalton *v.* Liverpool, etc., Ins. Co., (S. Dak. 1905) 104 N. W. 850.

178. 6. Zenor *v.* Hayes, 228 Ill. 626, 81 N. E. 1144.

179. 7. **Parol Contract Without Possession Does Not Constitute Insurable Interest.** — Prospect Dye Works *v.* Federal Ins. Co., 33 Pa. Super. Ct. 223.

180. 1. Quackenbush *v.* Citizens' Ins. Co., 150 Mich. 555, 114 N. W. 388.

186. 4. Pennsylvania F. Ins. Co. *v.* Waggener, (Tex. Civ. App. 1906) 97 S. W. 541.

187. 2. Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 10 Ann. Cas. 328, 88 Pac. 245; Scottish-Union, etc., Ins. Co. *v.* Andrews, (Tex. Civ. App. 1905) 89 S. W. 419.

10. Gordon *v.* Mechanics', etc., Ins. Co., (La. 1907) 45 So. 384, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187.

189. 8. *Compare* Gragg *v.* Home Ins. Co., (Ky. 1906) 90 S. W. 1045.

11. Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321; Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719.

13. Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321; Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719.

191. 4. Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719.

11. Limitation of Agent's Authority Not Binding on Insured unless Known to Him. — Continental F. Ins. Co. *v.* Stuntson, (Ky. 1907) 100 S. W. 338.

12. Waiver by Retention of Unearned Premium. — Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719.

192. 7. Wilder *v.* Watts, 138 Fed. 426.

198. 3. **Rights of Pledgee as against Subsequent Assignee.** — German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068.

200. 1. Wasem *v.* Gray, (Colo. 1908) 95 Pac. 557.

3. G. Ober, etc., Co. *v.* Phillips-Burttoff Mfg. Co., 145 Ala. 625, 40 So. 278; Georgia Co-operative F. Assoc. *v.* Borchardt, 123 Ga. 181, 51 S. E. 429.

7. Georgia Co-operative F. Assoc. *v.* Borchardt, 123 Ga. 181, 51 S. E. 429.

9. G. Ober, etc., Co. *v.* Phillips-Burttoff Mfg. Co., 145 Ala. 625, 40 So. 278.

201. 3. G. Ober, etc., Co. *v.* Phillips-Burttoff Mfg. Co., 143 Ala. 625, 40 So. 278.

4. Georgia Co-operative F. Assoc. *v.* Borchardt, 123 Ga. 181, 51 S. E. 429.

6. German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201.

202. 2. G. Ober, etc., Co. *v.* Phillips-Burttoff Mfg. Co., 145 Ala. 625, 40 So. 278; Kaufman *v.* State Savings Bank, (Mich. 1908) 114 N. W. 863.

203. 1. Brecht *v.* Law, etc., Ins. Co., (C. C. A.) 160 Fed. 399.

2. Brecht *v.* Law, etc., Ins. Co., (C. C. A.) 160 Fed. 399.

4. Brecht *v.* Law, etc., Ins. Co., (C. C. A.) 160 Fed. 399.

204. 2. Brecht *v.* Law, etc., Ins. Co., (C. C. A.) 160 Fed. 399.

206. 1. If the company, by mistake, makes payment to the mortgagor, this does not relieve it from liability to the mortgagee. Ebensburg Bldg., etc., Assoc. *v.* Westchester F. Ins. Co., 28 Pa. Super. Ct. 341.

3. Ebensburg Bldg., etc., Assoc. *v.* Westchester F. Ins. Co., 28 Pa. Super. Ct. 341.

208. 2. Vancouver Nat. Bank *v.* Law Union, etc., Ins. Co., 153 Fed. 440.

210. 7. Vancouver Nat. Bank *v.* Law Union, etc., Ins. Co., 153 Fed. 440.

211. 8. Vancouver Nat. Bank *v.* Law Union, etc., Ins. Co., 153 Fed. 440.

217. 2. Dalton *v.* Milwaukee Mechanics' Ins. Co., 126 Iowa 377, 102 N. W. 120, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 217.

218. 5. Posey County F. Assoc. *v.* Hogan, 37 Ind. App. 573, 77 N. E. 670; Mattingly *v.* Springfield F. & M. Ins. Co., 120 Ky. 768, 83 S. W. 577; American Cent. Ins. Co. *v.* Leake, (Ky. 1907) 104 S. W. 373; King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892; Whitman *v.* Milwaukee F. Ins. Co., 128 Wis. 124, 107 N. W. 291.

220. 1. Mattingly *v.* Springfield F. & M. Ins. Co., 120 Ky. 768, 83 S. W. 577; American Cent. Ins. Co. *v.* Leake, (Ky. 1907) 104 S. W. 373.

2. American Cent. Ins. Co. *v.* Leake, (Ky. 1907) 104 S. W. 373.

3. Delaware Ins. Co. *v.* Pennsylvania F. Ins. Co., 126 Ga. 380, 55 S. E. 330.

6. Provision Requiring Signature of Officer Does Not Prevent Oral Contract. — King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892.

221. 1. Hartford F. Ins. Co. *v.* Whitman, 75 Ohio St. 312, 9 Ann. Cas. 218, 79 N. E. 459; Whitman *v.* Milwaukee F. Ins. Co., 128 Wis. 124, 107 N. W. 291.

2. Hartford F. Ins. Co. *v.* Whitman, 75 Ohio St. 312, 9 Ann. Cas. 218, 79 N. E. 459; Whitman *v.* Milwaukee F. Ins. Co., 128 Wis. 124, 107 N. W. 291.

3. Hartford F. Ins. Co. *v.* Whitman, 75 Ohio St. 312, 9 Ann. Cas. 218, 79 N. E. 459.

4. King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892.

222. 3. Wheaton *v.* Liverpool, etc., Ins Co., (S. Dak. 1905) 104 N. W. 850, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 218 [222]; King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892.

5. Posey County F. Assoc. *v.* Hogan, 37 Ind. App. 573, 77 N. E. 670.

223. 3. **No Warranty Can Be Added.** — Wild Rice Lumber Co. *v.* Royal Ins. Co., 99 Minn. 190, 108 N. W. 871.

4. May Be Used for Both Real and Personal Property. — Fries-Breslin Co. *v.* Star F. Ins. Co., (C. C. A.) 154 Fed. 35.

9. Walsh *v.* Queen Ins. Co., 27 Ohio Cir. Ct. 313.

224. 5. Connecticut F. Ins. Co. *v.* Manning, (C. C. A.) 160 Fed. 382; Deming Invest. Co. *v.* Shawnee F. Ins. Co., 16 Okla. 1, 83 Pac. 918.

6. Westchester F. Ins. Co. *v.* Ocean View Pleasure Pier Co., 106 Va. 633, 56 S. E. 584, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d

ed.) 224; Fries Breslin Co. *v.* Star F. Ins. Co., 150 Fed. 611; Fries-Breslin Co. *v.* Star F. Ins. Co., (C. C. A.) 154 Fed. 35; Wyandotte Brewing Co. *v.* Hartford F. Ins. Co., 144 Mich. 440, 108 N. W. 393; Beddall *v.* Citizens Ins. Co., 28 Pa. Super. Ct. 600.

225. **1.** Where a wife, in her own name, insured personal property belonging to her husband, the policy was avoided. Chaney *v.* Farmers' F. Ins. Co., 32 Pa. Super. Ct. 479.

226. **5.** Brunswick-Balke-Collender Co. *v.* Northern Assur. Co., 142 Mich. 29, 105 N. W. 76.

6. Glens Falls Ins. Co. *v.* Michael, 167 Ind. 659, 74 N. E. 964, 79 N. E. 905; New Hampshire F. Ins. Co. *v.* Wall, 36 Ind. App. 238, 75 N. E. 668; Brunswick-Balke-Collender Co. *v.* Northern Assur. Co., 142 Mich. 29, 105 N. W. 76; Porter *v.* Insurance Co. of North America, 29 Pa. Super. Ct. 75; Neher *v.* Western Assur. Co., 40 Wash. 157, 82 Pac. 166.

7. Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681; Brunswick-Balke-Collender Co. *v.* Northern Assur. Co., 142 Mich. 29, 105 N. W. 76.

227. **3.** Prussian Nat. Ins. Co. *v.* Empire Catering Co., 113 Ill. App. 67; Continental Ins. Co. *v.* Cummings, (Tex. Civ. App. 1906) 95 S. W. 48.

Where a company issued two policies, one upon a building and the other upon its contents, it was held that false statements in one policy did not avoid the other. Williams *v.* Virginia State Ins. Co., 106 Va. 259, 55 S. E. 680.

228. **1.** Johnson *v.* Sun F. Ins. Co., 3 Ga. App. 430, 60 S. E. 118; Wyandotte Brewing Co. *v.* Hartford F. Ins. Co., 144 Mich. 440, 108 N. W. 393; Meech *v.* Citizens' Ins. Co., 147 Mich. 343, 110 N. W. 1078; Parsons *v.* Lane, 97 Minn. 98, 7 Ann. Cas. 1144; American Cent. Ins. Co. *v.* Antram, 86 Miss. 224, 38 So. 626; Continental Ins. Co. *v.* Cummings, (Tex. Civ. App. 1906) 95 S. W. 48; Virginia F. & M. Ins. Co. *v.* J. I. Case Threshing Mach. Co., 107 Va. 588, 59 S. E. 369. But see Brunswick-Balke-Collender Co. *v.* Northern Assur. Co., 142 Mich. 29, 105 N. W. 76.

Policy Held to Be Merely Voidable. — Glens Falls Ins. Co. *v.* Michael, 167 Ind. 659, 74 N. E. 964, 79 N. E. 905, Gillett, J., dissenting, and *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 228.

2. People's F. Ins. Co. *v.* Goyne, 79 Ark. 315, 9 Ann. Cas. 373, 96 S. W. 365; Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393; Capital F. Ins. Co. *v.* Montgomery, 81 Ark. 508, 99 S. W. 687; Johnson *v.* Ætna Ins. Co., 123 Ga. 404, 51 S. E. 339; Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 10 Ann. Cas. 328, 88 Pac. 245; American Ins. Co. *v.* Egyptian Lodge No. 802, 128 Ill. App. 161; Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908; Baumler *v.* Farmers Northern Mut. F. Ins. Co., 148 Mich. 430, 111 N. W. 1069; Quackenbush *v.* Citizens' Ins. Co., 150 Mich. 555, 114 N. W. 388; Deming Invest. Co. *v.* Shawnee F. Ins. Co., 16 Okla. 1, 83 Pac. 918; Bushnell *v.* Farmers' Mut. Ins. Co., 110 Mo. App. 223, 85 S. W. 103; Coleman *v.* Caldwell County Mut. F. Ins. Co., 120 Mo. App. 643, 103 S. W. 150; Smith *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1907) 113 N. W. 94; Neher *v.* Western Assur. Co., 40 Wash. 157, 82 Pac. 166.

229. **1.** Security Mut. Ins. Co. *v.* Woodson, 79 Ark. 266, 95 S. W. 481; Johnson *v.* Ætna Ins. Co., 123 Ga. 404, 51 S. E. 339; Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 10 Ann. Cas. 328, 88 Pac. 245; Dalton *v.* Milwaukee Mechanics' Ins. Co., 126 Iowa 377, 102 N. W. 120; Dalton *v.* Providence-Washington Ins. Co., (Iowa 1905) 102 N. W. 126; Dalton *v.* Westchester F. Ins. Co., (Iowa 1905) 102 N. W. 125; Dalton *v.* Germania F. Ins. Co., (Iowa 1905) 102 N. W. 127; Roloff *v.* Farmers' Home Mut. Ins. Co., 130 Wis. 402, 110 N. W. 261.

2. Ætna Ins. Co. *v.* Johnson, 127 Ga. 491, 56 S. E. 643; Wisotzkey *v.* Niagara F. Ins. Co., 112 N. Y. App. Div. 599, 98 N. Y. Supp. 760; Irwin *v.* Westchester F. Ins. Co., (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 441, 109 N. Y. Supp. 612; Porter *v.* Insurance Co. of North America, 29 Pa. Super. Ct. 75; St. Paul F. & M. Ins. Co. *v.* Stogner, (Tex. Civ. App. 1906) 98 S. W. 218; Westchester F. Ins. Co. *v.* Ocean View Pleasure Pier Co., 106 Va. 633, 56 S. E. 584; Metcalf *v.* Mutual F. Ins. Co., 132 Wis. 67, 112 N. W. 22. *Contra,* Virginia F. & M. Ins. Co. *v.* J. I. Case Threshing Mach. Co., 107 Va. 588, 59 S. E. 369.

General Reputation of Ownership Admissible to Show Agent's Knowledge. — Continental Ins. Co. *v.* Cummings, (Tex. Civ. App. 1906) 95 S. W. 48.

2. Parsons *v.* Lane, 97 Minn. 98, 7 Ann. Cas. 1144.

230. **1.** Loring *v.* Dutchess Ins. Co., 1 Cal. App. 186, 81 Pac. 1025.

2. Rhea *v.* Planters' Mut. Ins. Co., 77 Ark. 57, 90 S. W. 850.

3. People's F. Ins. Co. *v.* Goyne, 79 Ark. 315, 9 Ann. Cas. 373, 96 S. W. 365; Capital F. Ins. Co. *v.* Montgomery, 81 Ark. 508, 99 S. W. 687; Johnson *v.* Ætna Ins. Co., 123 Ga. 404, 51 S. E. 339.

5. King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892.

6. Donee under Parol Gift Properly Described as Owner. — Maas *v.* Anchor F. Ins. Co., 148 Mich. 432, 111 N. W. 1044.

231. **12.** Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797.

232. **2. A Life Estate,** created by a devise to the insured "for his natural life, and at his death to go to his heirs," was held not to comply with this provision. Johnson *v.* Sun F. Ins. Co., 3 Ga. App. 430, 60 S. E. 118.

7. Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797.

13. Entire Policy Avoided by False Statement of Title to Realty. — Goorberg *v.* Western Assur. Co., 150 Cal. 510, 89 Pac. 130.

233. **1.** Insurance Co. of North America *v.* Frickson, 50 Fla. 410, 39 So. 405.

3. Downs *v.* German Alliance Ins. Co. (Del. 1906) 67 Atl. 146, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 233; Parsons *v.* Lane, 97 Minn. 98, 7 Ann. Cas. 1144; Rochester German Ins. Co. *v.* Monumental Sav. Assoc., 107 Va. 701, 60 S. E. 93.

4. Homestead on Government Land — Policy

Valid.— Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 10 Ann. Cas. 328, 88 Pac. 245, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 231–233.

10. Tennessee Ins. Co. *v.* Waller, 116 Tenn. 1, 95 S. W. 811.

15. Downs *v.* German Alliance Ins. Co., (Del. 1906) 67 Atl. 146; Prussian Nat. Ins. Co. *v.* Empire Catering Co., 113 Ill. App. 67; Parsons *v.* Lane, 97 Minn. 98, 7 Ann. Cas. 1144.

234. 2. Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797.

Where a third party held a deed to property as collateral security for insured's debt to another, the insured was held not to be the sole and unconditional owner of the property. O'Connor *v.* Decker, 30 Pa. Super. Ct. 579.

10. Insurance Co. of North America *v.* Pitts, 88 Miss. 587, 41 So. 5.

A vendee under an absolute contract of purchase is the sole and unconditional owner, although the vendor remains in possession of the property. Insurance Co. of North America *v.* Erickson, 50 Fla. 419, 39 So. 495.

Parol Contract to Purchase Does Not Constitute Sole Ownership.— Prospect Dye Works *v.* Federal Ins. Co., 33 Pa. Super. Ct. 223.

235. 1. Insurance Co. of North America *v.* Pitts, 88 Miss. 587, 41 So. 5.

2. Cole *v.* Niagara F. Ins. Co., 126 Mo. App. 134, 103 S. W. 569.

3. Cole *v.* Niagara F. Ins. Co., 126 Mo. App. 163, 103 S. W. 569.

5. A vendor is not the sole and unconditional owner where he has executed a bond for a deed, although he retains possession of the property. Insurance Co. of North America *v.* Erickson, 50 Fla. 419, 39 So. 495.

236. 2. Insurance Co. of North America *v.* Pitts, 88 Miss. 587, 41 So. 5.

4. Planters' Mut. Ins. Co. *v.* Hamilton, 77 Ark. 27, 90 S. W. 283; Insurance Co. of North America *v.* Pitts, 88 Miss. 587, 41 So. 5.

5. *Compare* Brecht *v.* Law Union, etc., Ins. Co., 153 Fed. 452.

10. Brecht *v.* Law Union, etc., Ins. Co., 153 Fed. 452.

11. The vendor's interest under a conditional sale is not affected by his taking a mortgage on the vendee's interest. Brunswick-Balke-Collender Co. *v.* Northern Assur. Co., 150 Mich. 311, 113 N. W. 1113.

237. 5. Swingle *v.* Sun Ins. Office, 33 Pa. Super. Ct. 261.

7. Swingle *v.* Sun Ins. Office, 33 Pa. Super. Ct. 261.

12. Downs *v.* German Alliance Ins. Co., (Del. 1906) 67 Atl. 146; Parsons *v.* Lane, 97 Minn. 98, 7 Ann. Cas. 1144.

238. 6. Connecticut F. Ins. Co. *v.* Manning, (C. C. A.) 160 Fed. 382.

7. Possession under Parol Gift Sufficient. — Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797.

11. Beddall *v.* Citizens Ins. Co., 28 Pa. Super. Ct. 600.

239. 3. Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797; Scottish-Union, etc., Ins. Co. *v.* Andrews, (Tex. Civ. App. 1905) 89 S. W. 419; Welch *v.* British-American Assur. Co., (Cal. 1905) 82 Pac. 964 (to the same effect as Griffey *v.* New York Cent. Ins. Co., 100 N. Y. 417, 3 N. E. 309, 53 Am. Rep. 202, cited in the original note).

240. 5. Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321; Kompa *v.* Franklin F. Ins. Co., 28 Pa. Super. Ct. 425.

241. 3. Pennsylvania F. Ins. Co. *v.* Waggener, (Tex. Civ. App. 1906) 97 S. W. 541.

242. 2. Gordon *v.* Mechanics', etc., Ins. Co., (La. 1907) 45 So. 384, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 242.

244. 3. In Kansas it is held that a provision that a policy shall become void in case of any change in the interest, title, or possession of the property, applies only to one who owns less than the title, and does not affect one who owns the title to the property insured. Garner *v.* Milwaukee Mechanics' Ins. Co., 73 Kan. 127, 84 Pac. 717.

5. Kompa *v.* Franklin F. Ins. Co., 28 Pa. Super. Ct. 425; Chulek *v.* U. S. Fire Ins. Co., 30 Pa. Super. Ct. 435.

6. Jump *v.* North British, etc., Ins. Co., 44 Wash. 596, 87 Pac. 928, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 241–244.

245. 4. Rochester German Ins. Co. *v.* Monumental Sav. Assoc., 107 Va. 701, 60 S. E. 93.

5. *Compare* O'Connor *v.* Decker, 30 Pa. Super. Ct. 579; Bushnell *v.* Farmers' Mut. Ins. Co., 110 Mo. App. 223, 85 S. W. 103, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 24 [242]–246.

247. 1. Pennsylvania F. Ins. Co. *v.* Waggener, (Tex. Civ. App. 1906) 97 S. W. 541.

The giving of a trust deed was held to be a forfeiture of a policy providing that it should be void if the interest of insured should be or become other than sole and unconditional ownership. Brecht *v.* Law Union, etc., Ins. Co., 153 Fed. 452; Ohio Farmers' Ins. Co. *v.* Black, 27 Ohio Cir. Ct. 86.

5. Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102; National F. Ins. Co. *v.* Three States Lumber Co., 217 Ill. 115, 75 N. E. 450.

An executory contract of sale is not a change of interest where the insured retains possession, although the purchase money has been fully paid. Garner *v.* Milwaukee Mechanics' Ins. Co., 73 Kan. 127, 84 Pac. 717.

248. 1. Vancouver Nat. Bank *v.* Law Union, etc., Ins. Co., 153 Fed. 440; Finkbohner *v.* Glens Falls Ins. Co., (Cal. App. 1907) 92 Pac. 318; Manning *v.* North British, etc., Ins. Co., 123 Mo. App. 456, 99 S. W. 1095; Grunauer *v.* Westchester F. Ins. Co., 72 N. J. L. 289, 62 Atl. 418; Brighton Beach Racing Assoc. *v.* Home Ins. Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 177, 93 N. Y. Supp. 654; Brighton Beach Racing Assoc. *v.* Home Ins. Co., 113 N. Y. App. Div. 728, 99 N. Y. Supp. 219.

3. The insurer is liable for a loss occurring after the filing of a voluntary petition in bankruptcy and after an adjudication thereon, but before the appointment and qualification of a trustee. Gordon *v.* Mechanics', etc., Ins. Co., (La. 1907) 45 So. 384.

251. 1. Brecht *v.* Law, etc., Ins. Co., (C. C. A.) 160 Fed. 399; Hartford F. Ins. Co. *v.* Liddell Co., (Ga. 1908) 60 S. E. 104.

6. Welch *v.* British-American Assur. Co., (Cal. 1905) 82 Pac. 964.

252. 5. Provision Applies to Both Equitable and Legal Titles. — Finkbohner *v.* Glens Falls Ins. Co., (Cal. App. 1907) 92 Pac. 318.

6. Rochester German Ins. Co. *v.* Monumental Sav. Assoc., 107 Va. 701, 60 S. E. 93.

A contract to convey, under which possession has been given and a partial payment made, is a breach of this condition. Finkbohner *v.* Glens Falls Ins. Co., (Cal. App. 1907) 92 Pac. 318.

14. Rochester German Ins. Co. *v.* Monumental Sav. Assoc., 107 Va. 701, 60 S. E. 93.

253. 11. The granting of an option to purchase property with the right to take possession for the purpose of making experiments is not a change of possession, where the owner retains the right of access to and management of the premises. Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102.

14. **Forfeiture by Dispossess Proceedings.** — Hupfel *v.* Boston F. Ins. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 125, 104 N. Y. Supp. 650.

256. 3. Woodard *v.* German-American Ins. Co., 128 Wis. 1, 106 N. W. 681.

257. 1. Mulrooney *v.* Royal Ins. Co., 157 Fed. 598; Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321; Woodard *v.* German-American Ins. Co., 128 Wis. 1, 106 N. W. 681.

Neglect to Declare Forfeiture No Waiver. — Rundell *v.* Anchor F. Ins. Co., 128 Iowa 575, 105 N. W. 112.

2. Kompa *v.* Franklin F. Ins. Co., 28 Pa. Super. Ct. 425; Roloff *v.* Farmers' Home Mut. Ins. Co., 130 Wis. 402, 110 N. W. 261.

3. Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393; Arkansas Ins. Co. *v.* Cooper-Cryer Co., 81 Ark. 160, 98 S. W. 694; Capital F. Ins. Co. *v.* Johnson, 82 Ark. 90, 100 S. W. 749; New Hampshire F. Ins. Co. *v.* Wall, 36 Ind. App. 238, 75 N. E. 668; Mattingly *v.* Springfield F. & M. Ins. Co., 120 Ky. 768, 83 S. W. 577; Continental Ins. Co. *v.* Buchanan, (Ky. 1908) 108 S. W. 355; Bushnell *v.* Farmers' Mut. Ins. Co., 110 Mo. App. 223, 85 S. W. 103; Nugent *v.* Rensselaer County Mut. F. Ins. Co., 106 N. Y. App. Div. 308, 94 N. Y. Supp. 605; German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068.

Affirmative Action Not Necessary. — Woodard *v.* German-American Ins. Co., 128 Wis. 1, 106 N. W. 681.

4. Springfield F. & M. Ins. Co. *v.* Mattingly, (Ky. 1906) 90 S. W. 577; Continental F. Ins. Co. *v.* Stunston, (Ky. 1907) 100 S. W. 338.

Where a company indorsed its consent to an assignment of the interest of the owner of personal property in the policy, the assignment failing to show the interest of the assignee, it was held that the giving of a bill of sale by the owner to the assignee was not waived, although orally consented to by the company's agent. Mulrooney *v.* Royal Ins. Co., 157 Fed. 598.

5. Coleman *v.* Caldwell County Mut. F. Ins. Co., 120 Mo. App. 643, 103 S. W. 150. See also Pearlstine *v.* Westchester F. Ins. Co., 70 S. Car. 75, 49 S. E. 4.

Retention of Premium after Denial of Liability No Waiver. — Goorberg *v.* Western Assur. Co., 150 Cal. 510, 89 Pac. 130.

258. 3. Arkansas Ins. Co. *v.* Cooper-Cryer Co., 81 Ark. 160, 98 S. W. 694; Mattingly *v.* Springfield F. & M. Ins. Co., 120 Ky. 768, 83 S. W. 577; Springfield F. & M. Ins. Co. *v.* Mattingley, (Ky. 1906) 90 S. W. 577; Continental F. Ins. Co. *v.* Stun ton, (Ky. 1907) 100 S. W. 338; Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321; Adams *v.* Farmers' Mut. F. Ins. Co., 115 Mo. App. 21, 90 S. W. 747.

Agent's Oral Consent. In what Cases Requires Written Consent. — Beddall *v.* Citizens Ins. Co., 28 Pa. Super. Ct. 600.

4. Mulrooney *v.* Royal Ins. Co., 157 Fed. 598; Sullivan *v.* Mercantile Town Mut. Ins. Co., (Okla. 1908) 94 Pac. 676.

5. **The Promise of Clerks** of a local agent to indorse a notice on the policy was held insufficient to constitute an estoppel. Kompa *v.* Franklin F. Ins. Co., 28 Pa. Super. Ct. 425.

6. **Notice to Directors Waived.** — Bushnell *v.* Farmers' Mut. Ins. Co., 110 Mo. App. 223, 85 S. W. 103.

8. Mulrooney *v.* Royal Ins. Co., 157 Fed. 598; Weddington *v.* Piedmont F. Ins. Co., 141 N. Car. 234, 54 S. E. 271; Lount *v.* London Mut. F. Ins. Co., 9 Ont. L. Rep. 549.

9. Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 10 Ann. Cas. 328, 88 Pac. 245, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 258.

259. 1. Fries-Breslin Co. *v.* Star F. Ins. Co., (C. C. A.) 154 Fed. 35; Mulrooney *v.* Royal Ins. Co., 157 Fed. 598; Weddington *v.* Piedmont F. Ins. Co., 141 N. Car. 234, 54 S. E. 271.

2. Fries Breslin Co. *v.* Star F. Ins. Co., 150 Fed. 611; Virginia F. & M. Ins. Co. *v.* J. I. Case Threshing Mach. Co., 107 Va. 588, 59 S. E. 369.

260. 1. Sullivan *v.* Mercantile Town Mut. Ins. Co., (Okla. 1908) 94 Pac. 676.

Undisclosed chattel mortgages on personal property were held to avoid a policy covering both real estate and personalty. Fries Breslin Co. *v.* Star F. Ins. Co., 150 Fed. 611.

2. Where a chattel mortgage was given as security for a note, the giving of a renewal note did not discharge the mortgage, in the absence of any agreement, so as to permit a recovery in an insurance policy. Meech *v.* Citizens Ins. Co., 147 Mich. 343, 110 N. W. 1078.

262. 2. Authority of Agent. Bushnell *v.* Farmers' Mut. Ins. Co., 110 Mo. App. 223, 85 S. W. 103.

267. 7. **The Word "Premises"** was held to mean a farm in a policy insuring certain buildings on a farm and containing a provision that it should be void if the "premises" should become unoccupied, where it appeared that a building destroyed was unoccupied when the policy was issued. Home Ins. Co. *v.* Gagen, 38 Ind. App. 680, 76 N. E. 927.

269. 1. Knowlton *v.* Patrons' Androscoggin F. Ins. Co., 100 Me. 481, 62 Atl. 289.

2. Hardiman *v.* Philadelphia F. Assoc., 212 Pa. St. 383, 61 Atl. 990.

5. New York Mut. Sav., etc., Assoc. *v.* Westchester F. Ins. Co., 110 N. Y. App. Div. 760, 97 N. Y. Supp. 436.

270. 8. **Failure to Obtain Indorsement Held**

to Avoid Policy. — Kentucky Vermillion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695.

272. 12. Knowlton *v.* Patrons' Androscoggin F. Ins. Co., 100 Me. 481, 62 Atl. 289.

273. 3. Knowlton *v.* Patrons' Androscoggin F. Ins. Co., 100 Me. 481, 62 Atl. 289; Germania F. Ins. Co. *v.* Werner, 76 Ohio St. 543, 81 N. E. 980.

No Forfeiture Where Premises Are Reoccupied at Time of Fire. — Insurance Co. of North America *v.* Pitts, 88 Miss. 587, 41 So. 5.

Policy Forfeited Although Premises Reoccupied at Time of Fire. — Hardiman *v.* Philadelphia F. Assoc., 212 Pa. St. 383, 61 Atl. 990.

Where the fire occurred after the reoccupancy, no forfeiture having been declared, it was held that the policy was merely suspended during the vacancy and became effective again upon the reoccupancy of the building. Athens Mut. Ins. Co. *v.* Toney, 1 Ga. App. 492, 57 S. E. 1013.

4. *Contra.* — Germania F. Ins. Co. *v.* Werner, 76 Ohio St. 543, 81 N. E. 980 (*overruling* Moody *v.* Amazon Ins. Co., 52 Ohio St. 12, cited in the original note).

274. 2. Chismore *v.* Anchor F. Ins. Co., 131 Iowa 180, 108 N. W. 230.

6. Knowlton *v.* Patrons' Androscoggin F. Ins. Co., 100 Me. 481, 62 Atl. 289; Hardiman *v.* Philadelphia F. Assoc., 212 Pa. St. 383, 61 Atl. 990.

275. 1. Hardiman *v.* Philadelphia F. Assoc., 212 Pa. St. 383, 61 Atl. 990.

Knowlton *v.* Patrons' Androscoggin F. Ins. Co., 100 Me. 481, 62 Atl. 289.

7. **A School House** is unoccupied where the school has been indefinitely suspended, although it contains books and household effects belonging to the teacher, who occasionally visited the building. Connecticut F. Ins. Co. *v.* Buchanan, (C. C. A.) 141 Fed. 877.

8. Mutual F. Ins. Co. *v.* Mercier, 14 Quebec K. B. 227.

276. 5. Ohio Farmers Ins. Co. *v.* Vogel, 166 Ind. 239, 9 Ann. Cas. 91, 76 N. E. 977.

278. 6. Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493.

279. 5. New York Mut. Sav., etc., Assoc. *v.* Westchester F. Ins. Co., 110 N. Y. App. Div. 760, 97 N. Y. Supp. 436.

Knowledge as Waiver of Occupancy by Tenant. — Ohio Farmers Ins. Co. *v.* Vogel, 166 Ind. 239, 9 Ann. Cas. 91, 76 N. E. 977.

The fact that an application showed that the deed to the property which had been purchased at a sheriff's sale, could not be delivered for some time after the policy should issue, was held not to constitute a waiver of the vacancy provision. Chismore *v.* Anchor F. Ins. Co., 131 Iowa 180, 108 N. W. 230.

280. 4. Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493.

5. Kentucky Vermillion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695.

6. Foreman *v.* German Alliance Ins. Assoc., 104 Va. 694, 52 S. E. 337.

Acceptance of Premium No Waiver. — Knowlton *v.* Patrons' Androscoggin F. Ins. Co., 100 Me. 481, 62 Atl. 289.

9. **Insured Bound by Limitations of Agent's Authority.** — Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493.

10. Mississippi F. Assoc. *v.* Stein, 88 Miss. 499, 41 So. 66.

11. Foreman *v.* German Alliance Ins. Assoc., 104 Va. 694, 52 S. E. 337.

281. 1. Permission for mechanics to work upon an unfinished building for thirty days will prevent a forfeiture for vacancy within that time, although they leave the building before the expiration of the period stipulated. Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493.

4. Farmers', etc., Ins. Co. *v.* Bodge, (Neb. 1906) 106 N. W. 1004. To a similar effect, see Athens Mut. Ins. Co. *v.* Toney, 1 Ga. App. 492, 57 S. E. 1013.

Doctrine Applied to Prohibition against Occupancy by Tenant. — Ohio Farmers Ins. Co. *v.* Vogel, 166 Ind. 239, 9 Ann. Cas. 91, 76 N. E. 977.

6. **Whether Vacancy Increases Risk, for Jury.** — Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493.

282. 1. Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102.

2. Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681.

4. Waukau Milling Co. *v.* Citizens' Mut. F. Ins. Co., 130 Wis. 47, 109 N. W. 937.

283. 4. The operation of a furnace in a small building near the insured building was held to be a sufficient operation of an insured smelter, although the furnace was not among those insured. Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102.

6. Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681; Waukau Milling Co. *v.* Citizens' Mut. F. Ins. Co., 130 Wis. 47, 109 N. W. 937.

284. 1. Kentucky Vermillion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695.

5. Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102; Mackintosh *v.* American F. Ins. Co., 150 Cal. 453, 89 Pac. 107.

13. **Misrepresentation as to Use of Building Inducing Lower Rate of Premium Avoids Policy.** — Moss *v.* Home Ins. Co., (Ky. 1907) 99 S. W. 308.

286. 1. Krell *v.* Chickasaw Farmers' Mut. F. Ins. Co., 127 Iowa 748, 104 N. W. 364; Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812.

3. Where the increased risk ended before the fire, which was the result of another cause, it was held not to avoid the policy. Sumter Tobacco Warehouse Co. *v.* Phœnix Ins. Co., 76 S. Car. 76, 56 S. E. 654.

5. German Ins. Co. *v.* Goodfriend, (Ky. 1906) 97 S. W. 1098.

7. McCurdy *v.* Orient Ins. Co., 30 Pa. Super. Ct. 77.

287. 10. **Judgment Ordering Removal of House as Nuisance Does Not Increase Risk.** — Irwin *v.* Westchester F. Ins. Co., (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 441, 109 N. Y. Supp. 612.

288. 5. German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27; Mississippi Home Ins. Co. *v.* Stevens, (Miss. 1908) 46 So. 245.

Oral Consent of Agent Binding on Insured. Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102.

11. Alterations Not Increasing Risk Valid. — Bachand *v.* La Compagnie, etc., 27 Quebec Super. Ct. 500.

290. 9. In an action upon a standard policy, where the loss was caused by the act of a painter in burning off old paint from the building, it was held that the policy was not forfeited, the loss having occurred within the time allowed by the contract for the presence of mechanics. Garrebrant *v.* Continental Ins. Co., (N. J. 1907) 67 Atl. 90.

10. Knowledge on the part of an agent who canceled a policy that a risk had been increased by the erection of a grist mill at or about the time of the issuance of the policy was held not to bind the company, the policy requiring consent to increase of risk to be indorsed in writing upon the contract. Ruffner *v.* Dutchess Ins. Co., 59 W. Va. 432, 53 S. E. 641.

A provision relating to the presence of mechanics in the insured building was held to be waived as to an addition made to the building, by the insurer amending the policy to include such addition. Arkansas Mut. F. Ins. Co. *v.* Claiborne, 82 Ark. 150, 100 S. W. 751.

291. 3. Kenefick *v.* Norwich Union F. Ins. Soc., 205 Mo. 294, 103 S. W. 957.

292. 9. Kenefick *v.* Norwich Union F. Ins. Soc., 205 Mo. 294, 103 S. W. 957.

13. Szymkus *v.* Eureka F. & M. Ins. Co., 114 Ill. App. 401.

Provision Violated by Taking Fireworks on Premises for Exhibition. — Westchester F. Ins. Co. *v.* Ocean View Pleasure Pier Co., 106 Va. 633, 56 S. E. 584.

14. Arnold *v.* American Ins. Co., 148 Cal. 660, 84 Pac. 182.

293. 10. Arnold *v.* American Ins. Co., 148 Cal. 660, 84 Pac. 182.

This clause, relating to explosives, was held to be broken, although the keeping of the prohibited articles was temporary and they were removed before an explosion occurred. Kenefick *v.* Norwich Union F. Ins. Soc., 205 Mo. 294, 103 S. W. 957.

13. Szymkus *v.* Eureka F. & M. Ins. Co., 114 Ill. App. 401, *quoting* 13 AM. AND ENG. [illegible].

296. 9. The keeping of benzine for the purpose of cleaning clocks in a retail jewelry store, was held not to avoid a policy containing this prohibition. Szymkus *v.* Eureka F. & M. Ins. Co., 114 Ill. App. 401.

297. 12. Edwards *v.* Farmers' Mut. Ins. Assoc., 128 Ga. 353, 57 S. E. 707; McCurdy *v.* Orient Ins. Co., 30 Pa. Super. Ct. 77.

13. German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27.

298. 3. Arnold *v.* American Ins. Co., 148 Cal. 660, 84 Pac. 182.

4. St. Paul F. & M. Ins. Co. *v.* Penman, (C. C. A.) 151 Fed. 961.

5. Arnold *v.* American Ins. Co., 148 Cal. 660, 84 Pac. 182; German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. [illegible].

6. St. Paul F. & M. Ins. Co. *v.* Penman, (C. C. A.) 151 Fed. 961.

10. Conithan *v.* Royal Ins. Co., (Miss. 1908) 45 So. 361.

12. Edwards *v.* Farmers' Mut. Ins. Co., 128 Ga. 353, 57 S. E. 707; Westchester F. Ins. Co. *v.* Ocean View Pleasure Pier Co., 106 Va. 633, 56 S. E. 584.

13. Where permission was given to a tenant by the insurer's agent without the owner's knowledge, it was held that the owner was not precluded from recovering on the policy. German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27.

300. 1. A policy is *ipso facto* forfeited by the building of a fire within fifty feet of an insured building contrary to the terms of the policy, where the fire caused the loss, as it was held that the forfeiture was not subject to waiver. Draper *v.* Oswego County F. Relief Assoc., 115 N. Y. App. Div. 807, 101 N. Y. Supp. 168.

13. Johnson *v.* Sun F. Ins. Co., 3 Ga. App. 430, 60 S. E. 118; Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397.

301. 10. Johnson *v.* Sun F. Ins. Co., 3 Ga. App. 430, 60 S. E. 118; Imperial Bank *v.* Royal Ins. Co., 12 Ont. L. Rep. 519.

302. 1. Invalid Other Insurance Need Not Be Disclosed. — Nabors *v.* Dixie Mut. F. Ins. Co., 84 Ark. 184, 105 S. W. 92.

Rule Applies Where Notice Waived. — Hartford F. Ins. Co. *v.* Redding, 47 Fla. 228, 37 So. 62.

2. Pennsylvania F. Ins. Co. *v.* Waggener, (Tex. Civ. App. 1906) 97 S. W. 541.

7. Requirement Valid under Valued Policy Statute. — Simon *v.* Queen Ins. Co., (La. 1907) 45 So. 396.

8. Where other insurance is permitted to a certain amount, it was held that the taking of additional insurance in excess of the amount permitted, upon an overvaluation of the property, did not avoid the policy, there being no warranty as to value and no fraud. Pennsylvania F. Ins. Co. *v.* Waggener, (Tex. Civ. App. 1906) 97 S. W. 541.

304. 1. Nabors *v.* Dixie Mut. F. Ins. Co., 84 Ark. 184, 105 S. W. 92.

306. 1. See Equitable Fire, etc., Office *v.* Ching Wo Hong, (1907) A. C. 96; Nabors *v.* Dixie Mut. F. Ins. Co., 84 Ark. 184, 105 S. W. 92.

3. Lake Superior Produce, etc., Co. *v.* Concordia F. Ins. Co., 95 Minn. 492, 104 N. W. 560; Molaka *v.* American F. Ins. Co., 29 Pa. Super. Ct. [illegible].

307. 2. Monk *v.* Penn Tp. Mut. F. Ins. Assoc., 27 Pa. Super. Ct. 449.

308. 1. Yanko *v.* Standard F. Ins. Co., 31 Pa. Super. Ct. 1.

312. 6. Partners. — Where the property of a partnership was insured by a single policy, and one of the parties subsequently insured his separate interest by several other policies, it was held that this did not constitute double insurance. Yanko *v.* Standard F. Ins. Co., 31 Pa. Super. Ct. 1.

315. 7. Smith *v.* West Branch Mut. F. Ins. Co., 31 Pa. Super. Ct. 29. See also Imperial Bank *v.* Royal Ins. Co., 12 Ont. L. Rep. [illegible].

9. Where the consent read "$1,500 total con-

current insurance permitted, including this policy," it was held that the total amount of insurance was limited to $1,500, and that the permission did not extend to that amount of additional insurance. Home Ins. Co. *v.* Morrow, 145 Ala. 284, 39 So. 587.

A directly opposite construction, however, was placed upon the same phrase in Western Assur. Co. *v.* Ferrell, (Miss. 1906) 40 So. 8.

316. 4. Johnson *v.* Sun F. Ins. Co., 3 Ga. App. 430, 60 S. E. 118.

5. Smith *v.* West Branch Mut. F. Ins. Co., 31 Pa. Super. Ct. 29.

7. Parol Consent of Secretary Held Insufficient. — Monk *v.* Penn Tp. Mut. F. Ins. Assoc., 27 Pa. Super. Ct. 449.

317. 3. Monk *v.* Penn Tp. Mut. F. Ins. Assoc., 27 Pa. Super. Ct. 449; Smith *v.* West Branch. Mut. F. Ins. Co., 31 Pa. Super. Ct. 29.

4. Thompson *v.* Piedmont Mut. Ins. Co., 77 S. Car. 486, 58 S. E. 341.

318. 3. Arkansas Mut. F. Ins. Co. *v.* Claiborne, 82 Ark 150, 100 S. W. 751; Insurance Co. of North America *v.* De Loach, 3 Ga. App. 807, 61 S. E. 406; Continental Ins. Co. *v.* Reynolds, (Md. 1907) 68 Atl. 277; Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Hearsh *v.* German F. Ins. Co., (Mo. App. 1908) 110 S. W. 23.

4. Phenix Ins. Co. *v.* Grove, 215 Ill. 299, 74 N. E. 141.

5. Clements *v.* German Ins. Co., 153 Fed. 237; Monk *v.* Penn Tp. Mut. F. Ins. Assoc., 27 Pa. Super. Ct. 449; Smith *v.* West Branch Mut. F. Ins. Co., 31 Pa. Super. Ct. 29.

6 Mattingly *v.* Springfield F. & M. Ins. Co., 120 Ky. 768, 83 S. W. 577, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 318; Hartford F. Ins. Co. *v.* Redding, 47 Fla. 228, 37 So. 62; Phenix Ins. Co. *v.* Grove, 215 Ill. 299, 74 N. E. 141; Continental Ins. Co. *v.* Reynolds, (Md. 1907) 68 Atl. 277; Gorton *v.* Milwaukee Mechanics' Ins. Co., 115 Mo. App. 69, 90 S. W. 747.

7. Clemments *v.* German Ins. Co., 153 Fed. 237; Traders' Ins. Co. *v.* Letcher, 143 Ala. 400, 39 So. 271; Smith *v.* West Branch Mut. F. Ins. Co., 31 Pa. Super. Ct. 29.

Subsequent Other Insurance Not Waived by Knowledge of Prior Other Insurance. — Kelly *v.* Liverpool, etc., Ins. Co., 102 Minn. 178, 111 N. W. 395, 112 N. W. 870, 1019.

8. Where a policy required the insured to obtain insurance to the extent of eighty per centum of the value of his property, and also provided that the policy should be void if additional insurance was obtained without consent, it was held that the provisions were not so inconsistent as to constitute a waiver, and the policy became void upon the obtaining of other insurance in excess of the required amount. Woolford *v.* Phenix Ins. Co., 190 Mass. 233, 76 N. E. 722.

319. 1. **Prior Other Insurance Waived by Subsequent Alteration of Policy by Agent.** — Continental Ins. Co. *v.* Reynolds, (Md. 1907) 68 Atl. 277; Insurance Co. of North America *v.* De Loach, 3 Ga. App. 807, 61 S. E. 406; Kelly *v.* Citizens' Mut. F. Assoc., 96 Minn. 477, 105 N. W. 675; Hearsh *v.* German F. Ins. Co., (Mo. App. 1908) 110 S. W. 23; Thompson *v.* Piedmont Mut. Ins. Co., 77 S. Car. 486, 58 S. E. 341; Hartford F. Ins. Co. *v.* Redding, 47 Fla. 228, 37 So. 62.

Knowledge of Broker No Waiver. — Romano *v.* Concordia F. Ins. Co., 121 N. Y. App. Div. 489, 106 N. Y. Supp. 63.

320. 2. Dalton *v.* Milwaukee Mechanics' Ins. Co., 126 Iowa 377, 102 N. W. 120; Dalton *v.* Westchester F. Ins. Co., (Iowa 1905) 102 N. W. 125; Dalton *v.* Germania F. Ins. Co., (Iowa 1905) 102 N. W. 127; Wensel *v.* Property Mut. Ins. Assoc., 129 Iowa 295, 105 N. W. 522. But see Traders' Ins. Co. *v.* Letcher, 143 Ala. 400, 39 So. 271, where it was held that the knowledge acquired by the agent in obtaining the other insurance was acquired in transacting the business of another company or of the insured, and that therefore the first insurer was not bound by such knowledge.

6. Dalton *v.* Milwaukee Mechanics' Ins. Co., 126 Iowa 377, 102 N. W. 120; Dalton *v.* Westchester F. Ins. Co., (Iowa 1905) 102 N. W. 125; Dalton *v.* Germania F. Ins. Co., (Iowa 1905) 102 N. W. 127.

7. Gorton *v.* Milwaukee Mechanics' Ins. Co., 115 Mo. App. 69, 90 S. W. 747. *Contra,* Monk *v.* Penn Tp. Mut. F. Ins. Assoc., 27 Pa. Super. Ct. 449.

321. 1. Arkansas Mut. F. Ins. Co. *v.* Claiborne, 82 Ark. 150, 100 S. W. 751; Phenix Ins. Co. *v.* Grove, 215 Ill. 299, 74 N. E. 141; Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397.

322. 1. Traders' Ins. Co. *v.* Letcher, 143 Ala. 400, 39 So. 271; Huff *v.* Century F. Ins. Co., (Iowa 1907) 113 N. W. 1078.

5. Rule Does Not Apply to Negligence Causing Fire. — Beavers *v.* Security Mut. Ins. Co., 76 Ark. 595, 90 S. W. 13.

7. Beavers *v.* Security Mut. Ins. Co., 76 Ark. 595, 90 S. W. 13.

323. 5. Stevens *v.* Norwich Union F. Ins. Co., 120 Mo. App. 88, 96 S. W. 684, *citing* 12 [13] AM. AND ENG. ENCYC. OF LAW (2d ed.) 323.

327. 2. American Cereal Co. *v.* Western Assur. Co., 148 Fed. 77; Arkansas Mut. F. Ins. *v.* Clark, 84 Ark. 224, 105 S. W. 257; Downs *v.* German Alliance Ins. Co., (Del. 1906) 67 Atl. 146; Union Sav. Inst. *v.* Phœnix Ins. Co., (Mass. 1907) 81 N. E. 994; Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 568; Hottner *v.* Aachen, etc., F. Ins. Co., 31 Pa. Super. Ct. 461; Dunn *v.* Farmers' F. Ins. Co., 34 Pa. Super. Ct. 245; Davis *v.* Northwestern Mut. F. Assoc., (Wash. 1907) 92 Pac. 881; Munson *v.* German-American F. Ins. Co., 55 W. Va. 423, 47 S. E. 160.

Proofs May Be Sufficient Notice. — Hartford F. Ins. Co. *v.* Redding, 47 Fla. 228, 37 So. 62.

6. Necessity of Giving — Effect of Mortgage Clause. — Union Sav. Inst. *v.* Phœnix Ins. Co., (Mass. 1907) 81 N. E. 994.

328. 7. San Francisco Sav. Union *v.* Western Assur. Co., 157 Fed. 695; Arkansas Mut. F. Ins. Co. *v.* Clark, 84 Ark. 224, 105 S. W. 257; Downs *v.* German Alliance Ins. Co., (Del. 1906) 67 Atl. 146; Glazer *v.* Home Ins. Co., 113 N. Y. App. Div. 235, 98 N. Y. Supp. 979; Billings *v.* National Ins. Co., 27 Ohio Cir. Ct. 552; Hottner *v.* Aachen, etc., F. Ins. Co., 31

Pa. Super. Ct. 461; Dunn *v.* Farmers' F. Ins. Co., 34 Pa. Super. Ct. 245; Davis *v.* Pioneer Mut. Ins. Assoc., 44 Wash. 532, 87 Pac. 829; Davis *v.* Northwestern Mut. F. Assoc., (Wash. 1907) 92 Pac. 881.

329. 2. Munson *v.* German-American F. Ins. Co., 55 W. Va. 423, 47 S. E. 160, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 329; Hartford F. Ins. Co. *v.* Redding, 47 Fla. 228, 37 So. 62; Gragg *v.* Home Ins. Co., (Ky. 1906) 90 S. W. 1045.

3. North British, etc., Ins. Co. *v.* Edmundson, 104 Va. 486, 52 S. E. 350, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 329.

5. San Francisco Sav. Union *v.* Western Assur. Co., 157 Fed. 695; Arkansas Mut. F. Ins. Co. *v.* Clark, 84 Ark. 224, 105 S. W. 257; Billings *v.* National Ins. Co., 27 Ohio Cir. Ct. 552; Davis *v.* Pioneer Mut. Ins. Assoc., 44 Wash. 532, 87 Pac. 829.

7. San Francisco Sav. Union *v.* Western Assur. Co., 157 Fed. 695; Davis *v.* Northwestern Mut. F. Assoc., (Wash. 1907) 92 Pac. 881.

330. 3. Munson *v.* German-American F. Ins. Co., 55 W. Va. 423, 47 S. E. 160.

Downs *v.* German Alliance Ins. Co., (Del. 1906) 67 Atl. 146.

331. 6. The statement of a local agent to the effect that he would do all things necessary was held not to excuse the insured from furnishing proofs within the required time. Hottner *v.* Aachen, etc., F. Ins. Co., 31 Pa. Super. Ct. 461.

8. Waiver of Time — Admission of Liability as to Part of Loss Waives Time for Proofs as to Balance. — Melancon *v.* Phœnix Ins. Co., 116 La. 324, 40 So. 718.

Loss of Policy No Excuse for Delay. — Munson *v.* German-American F. Ins. Co., 55 W. Va. 423, 47 S. E. 160.

332. 2. Pearlstine *v.* Westchester F. Ins. Co., 70 S. Car. 75, 49 S. E. 4, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 332; Brunswick-Balke-Collender Co. *v.* Northern Assur. Co., 142 Mich. 29, 105 N. W. 76; Evans *v.* Crawford County Farmers' Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

333. 1. Evans *v.* Crawford County Farmers' Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

10. Union Sav. Inst. *v.* Phœnix Ins. Co., (Mass. 1907) 81 N. E. 994.

11. Adams *v.* Farmers' Mut. F. Ins. Co., 115 Mo. App. 21, 90 S. W. 747. See also Union Sav. Inst. *v.* Phœnix Ins. Co., (Mass. 1907) 81 N. E. 994.

334. 5. Downs *v.* German Alliance Ins. Co., (Del. 1906) 67 Atl. 146.

335. 1. **Waiver.** — Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66.

2. Delivery to Soliciting Agent Insufficient Where Policy Requires Service on Company. — Arkansas Mut. F. Ins. Co. *v.* Clark, 84 Ark. 224, 105 S. W. 257.

Where a local agent has apparent authority to receive proofs of loss, restrictions upon his power, uncommunicated to the insured, will not bind the latter. Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66.

3. Glazer *v.* Home Ins. Co., 113 N. Y. App. Div. 235, 98 N. Y. Supp. 979.

5. Gleason *v.* Canterbury Mut. F. Ins. Co., 73 N. H. 583, 64 Atl. 187.

336. 1. Hartford F. Ins. Co. *v.* Redding, 47 Fla. 228, 37 So. 62, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 336; Pearce Mfg. Co. *v.* Lebanon Mut. Ins. Co., 216 Pa. St. 265, 65 Atl. 663; Gartsee *v.* Citizens Ins. Co., 30 Pa. Super. Ct. 602; Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812.

Under the *Iowa* statute written notice of the loss is sufficient, and other provisions in the policy relating to the contents of proofs are ineffective. American Cereal Co. *v.* Western Assur. Co., 148 Fed. 77.

Provision Requiring Proofs Liberally Construed in Favor of Insured. — Glazer *v.* Home Ins. Co., 190 N. Y. 6, 82 N. E. 727.

2. Where several owners had property in a carrier's warehouse, proofs furnished by the insured, containing a list of owners who were entitled to recover and another list of those who might be insured, were held sufficient. Kellner *v.* Philadelphia F. Assoc., 128 Wis. 233, 106 N. W. 1060.

3. Downs *v.* German Alliance Ins. Co., (Del. 1906) 67 Atl. 146.

337. 2. Frick *v.* United Firemen's Ins. Co., 218 Pa. St. 409, 67 Atl. 743; Frick *v.* Svea F., etc., Ins. Co., 218 Pa. St. 420, 67 Atl. 747.

6. Frick *v.* United Firemen's Ins. Co., 218 Pa. St. 409, 67 Atl. 743; Frick *v.* Svea F., etc., Ins. Co., 218 Pa. St. 420, 67 Atl. 747.

9. Davis *v.* Pioneer Mut. Ins. Assoc., 44 Wash. 532, 87 Pac. 829.

338. 1. Pearce Mfg. Co. *v.* Lebanon Mut. Ins. Co., 216 Pa. St. 265, 65 Atl. 663.

339. 3. Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

10. Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681; Home Ins. Co. *v.* Schiff, 103 Md. 648, 64 Atl. 63; Glazer *v.* Home Ins. Co., 190 N. Y. 6, 82 N. E. 727; Sidebotham *v.* Merchants' F. Assoc., 41 Wash. 436, 83 Pac. 1028.

Proofs Waived by Admission of Total Loss. — Melancon *v.* Phœnix Ins. Co., 116 La. 324, 40 So. 718.

340. 1. Pearce Mfg. Co. *v.* Lebanon Mut. Ins. Co., 216 Pa. St. 265, 65 Atl. 663.

2. Spring Garden Ins. Co. *v.* Whayland, 103 Md. 699, 64 Atl. 925.

341. 1. Sidebotham *v.* Merchants' F. Assoc., 41 Wash. 436, 83 Pac. 1028.

342. 1. Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681; Sidebotham *v.* Merchants' F. Assoc., 41 Wash. 436, 83 Pac. 1028.

2. Planters' Mut. Ins. Co. *v.* Hamilton, 77 Ark. 27, 90 S. W. 283.

343. 1. Miller *v.* Fireman's Fund Ins. Co., (Cal. App. 1907) 92 Pac. 332; Dalton *v.* Milwaukee Mechanics' Ins. Co., 126 Iowa 377, 102 N. W. 120; Helm *v.* Anchor F. Ins. Co., 132 Iowa 177, 109 N. W. 605; Swift *v.* Teutonia Ins. Co., 28 Pa. Super. Ct. 253; Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8.

2. Miller *v.* Fireman's Fund Ins. Co., (Cal. App. 1907) 92 Pac. 332; Swift *v.* Teutonia Ins. Co., 28 Pa. Super. Ct. 253; Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8.

3. Miller *v.* Fireman's Fund Ins. Co. (Cal. App. 1907) 92 Pac. 332.

4. Nugent *v.* Rensselaer County Mut. F. Ins. Co., 106 N. Y. App. Div. 308, 94 N. Y. Supp. 605, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342.

6. Walker *v.* Western Underwriters' Assoc., 142 Mich. 162, 105 N. W. 597.

344. 2. Phœnix Ins. Co. *v.* Wintersmith, (Ky. 1907) 98 S. W. 987.

4. Contra, Meyer *v.* Home Ins. Co., 127 Wis. 293, 106 N. W. 1087.

5. Jensen *v.* Palatine Ins. Co., (Neb. 1908) 119 N. W. 780.

345. 3. Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8; Evans *v.* Crawford County Farmers' Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

346. 1. Providence Washington Ins. Co. *v.* Wolf, 168 Ind. 690, 80 N. E. 26, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 345 [346]; Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393; Western Underwriters Assoc. *v.* Hankins, 221 Ill. 304, 77 N. E. 447; Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66; Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 568; Mount Royal Ins. Co. *v.* Benoit, 15 Quebec K. B. 90.

Preparation of partial proofs by an agent of the insurer. Lake Superior Produce, etc., Co. *v.* Concordia F. Ins. Co., 95 Minn. 492, 104 N. W. 560.

3. Gragg *v.* Home Ins. Co. (Ky. 1906) 90 S. W. 1045.

347. 1. Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134; Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569; Western Underwriters' Assoc. *v.* Hankins, 221 Ill. 304, 77 N. E. 447; Providence Washington Ins. Co. *v.* Wolf, 168 Ind. 690, 80 N. E. 26; Home Ins. Co. *v.* Schiff, 103 Md. 648, 64 Atl. 63; Ball *v.* Royal Ins. Co., (Mo. App. 1908) 107 S. W. 1097; Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393.

Instances.—Commercial Union Assur. Co. *v.* Parker, 119 Ill. App. 126 (to the same effect as Carroll *v.* Girard F. Ins. Co., 72 Cal. 297, and other cases cited in the original note).

Formal Proofs Not Waived by Silence after Receiving Notice of Loss. — Glaser *v.* Home Ins. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 515, 96 N. Y. Supp. 136, *affirmed* 113 N. Y. App. Div. 235, 98 N. Y. Supp. 979.

2. Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 345 [347].

4. Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 10 Ann. Cas. 328, 88 Pac. 245, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 344; Continental Ins. Co. *v.* Parkes, 142 Ala. 650, 39 So. 204; Planters' Mut. Ins. Co. *v.* Hamilton, 77 Ark 27, 90 S. W. 283; Phœnix Assur. Co. *v.* Boyett, 77 Ark. 41, 90 S. W. 284; Security Mut. Ins. Co. *v.* Woodson, 79 Ark. 266, 95 S. W. 481; Arkansas Mut. F. Ins. Co. *v.* Witham, 82 Ark. 226, 101 S. W. 721; Yates *v.* Thomason, 83 Ark. 126, 102 S. W. 1112; National Mut. F. Ins. Co. *v.* Sprague, (Colo. 1907) 92 Pac. 227; Hartford F. Ins. Co. *v.* Hammond, (Colo. 1907) 92 Pac. 686; Ohio Farmers Ins. Co. *v.* Vogel, 166 Ind. 239, 9 Ann. Cas. 91, 76 N. E. 977; Gragg *v.* Home Ins. Co., (Ky. 1906) 90 S. W. 1045; Continental Ins. Co. *v.* Buchanan, (Ky. 1908) 108 S. W. 355; Spring Garden Ins. Co. *v.* Whayland, 103 Md. 699, 64 Atl. 925; Parker *v.* Continental Ins. Co., 143 N. Car. 339, 55 S. E. 717; Orient Ins. Co. *v.* Wingfield, (Tex. Civ. App. 1908) 108 S. W. 788; North British, etc., Ins. Co. *v.* Edmundson, 104 Va. 486, 52 S. E. 350.

349. 1. Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681; Munson *v.* German F. Ins. Co., 33 Pa. Super. Ct. 551; Thompson *v.* Germania F. Ins. Co., 45 Wash 482, 88 Pac. 930.

4. Kness *v.* Anchor F. Ins. Co., 31 Pa. Super. Ct. 521.

Proof of Loss Waived by Claim that Insured Burned Property. — Planters' Mut. Ins. Co. *v.* Hamilton, 77 Ark. 27, 90 S. W. 283.

5. Offer of Compromise, When Refused, No Waiver. — Glazer *v.* Home Ins. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 515, 96 N. Y. Supp. 136, *affirmed* 113 N. Y. App. Div. 235, 98 N. Y. Supp. 979.

350. 1. Dunn *v.* Farmers' F. Ins. Co., 34 Pa. Super. Ct. 245.

Proofs of loss are not waived by the examination of the insured under oath in accordance with the provisions of the policy. Lancashire Ins. Co. *v.* Lyon, 124 Ill. App. 491.

Requirements Not Waived by Offer of Settlement Which Is Declined. — Glazer *v.* Home Ins. Co., 113 N. Y. App. Div. 235, 98 N. Y. Supp. 979.

2. Arkansas Mut. F. Ins. Co. *v.* Witham, 82 Ark. 226, 101 S. W. 721; Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134; Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569; Ohio Farmers Ins. Co. *v.* Vogel, 166 Ind. 239, 9 Ann. Cas. 91, 76 N. E. 977; Hottner *v.* Aachen, etc., F. Ins. Co., 31 Pa. Super. Ct. 461; Kness *v.* Anchor F. Ins. Co., 31 Pa. Super. Ct. 521.

Contra. — The provision was strictly construed with respect to the acts of a general agent, in Billings *v.* National Ins. Co., 27 Ohio Cir. Ct. 552.

4. Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569.

5. Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134; Ball *v.* Royal Ins. Co., (Mo. App. 1908) 107 S. W. 1097.

6. Arkansas Mut. F. Ins. Co. *v.* Witham, 82 Ark. 226, 101 S. W. 721; Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569; Western Underwriters Assoc. *v.* Hankins, 221 Ill. 304, 77 N. E. 447; Ohio Farmers Ins. Co. *v.* Vogel, 166 Ind. 239, 9 Ann. Cas. 91, 76 N. E. 977. *Contra,* Emanuel *v.* Maryland Casualty Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 378, 94 N. Y. Supp. 36.

351. 2. Continental Ins. Co. *v.* Parkes, 142 Ala. 650, 39 So. 204.

3. Hottner *v.* Aachen, etc., F. Ins. Co., 31 Pa. Super. Ct. 461; Kness *v.* Anchor F. Ins. Co., 31 Pa. Super. Ct. 521; Dunn *v.* Farmers' F. Ins. Co., 34 Pa. Super. Ct. 245.

352. 2. Glazer *v.* Home Ins. Co., 113 N. Y. App. Div. 235, 98 N. Y. Supp. 979.

3. Egan *v.* Merchants' F. Assoc., 40 Wash. 513, 82 Pac. 898.

4. Egan *v.* Merchants' F. Assoc., 40 Wash. 513, 82 Pac. 898.

7. Compliance Condition Precedent. — Egan *v.* Merchants' F. Assoc., 40 Wash. 513, 82 Pac. 898.

8. Home Ins. Co. *v.* Schiff, 103 Md. 648, 64 Atl. 63.

354. 1. Not Binding under Policy Covering Household Goods. — Traders' Ins. Co. *v.* Letcher, 143 Ala. 490, 39 So. 271.

3. Provision Does Not Necessitate Keeping of Invoices in Fireproof Safe. — Arkansas Mut. F. Ins. Co. *v.* Stuckey, 85 Ark. 33, 106 S. W. 203.

4. Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

7. Seibel *v.* Firemen's Ins. Co., 212 Pa. St. 604, 62 Atl. 101.

9. Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

355. 2. Seibel *v.* Firemen's Ins. Co., 212 Pa. St. 604, 62 Atl. 101; Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812; Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 301, 51 S. E. 86.

3. Downs *v.* German Alliance Ins. Co., (Del. [illegible]

5. Colonial Mut. F. Ins. Co. *v.* Ellinger, 112 Ill. App. 302.

7. Beavers *v.* Security Mut. Ins. Co., 76 Ark. 595, 90 S. W. 13.

12. Reynolds *v.* German American Ins. Co., (Md. 1907) 68 Atl. 262, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 355; Johnson *v.* Mercantile Town Mut. F. Ins. Co., 120 Mo. App. 80, 96 S. W. 697, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 355; Coggins *v.* Ætna Ins. Co., 144 N. Car. 7, 56 S. E. 506; Johnson *v.* Sun F. Ins. Co., 3 Ga. App. 430, 60 S. E. 118; Powell *v.* Commonwealth Ins. Co., 3 Ga. App. 436, 60 S. E. 120; Shawnee F. Ins. Co. *v.* Knerr, 72 Kan. 385, 83 Pac. 611; Gish *v.* Insurance Co. of North America, (Okla. 1905) 87 Pac. 869.

356. 1. Ætna Ins. Co. *v.* Johnson, 127 Ga. 491, 56 S. E. 643; Ætna Ins. Co. *v.* Lipsitz, (Ga. 1908) 60 S. E. 531; Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147; Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

Preserving Slips from Cash Register Insufficient. — Henry *v.* Queen Ins. Co., (Tex. Civ. App. 1907) 103 S. W. 836.

2. Security Mut. Ins. Co. *v.* Woodson, 79 Ark. 266, 95 S. W. 481; People's F. Ins. Assoc. *v.* Gorham, 79 Ark. 160, 95 S. W. 152; Security Mut. Ins. Co. *v.* Berry, 81 Ark. 92, 98 S. W. 693; Arkansas Mut. F. Ins. Co. *v.* Woolverton, 82 Ark. 476, 102 S. W. 226; Yates *v.* Thomason, 83 Ark. 126, 102 S. W. 1112; Arkansas Mut. F. Ins. Co. *v.* Stuckey, 85 Ark. 33, 106 S. W. 203; Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797; Ætna Ins. Co. *v.* Johnson, 127 Ga. 491, 56 S. E. 643; Ætna Ins. Co. *v* Lipsitz, (Ga. 1908) 60 S. E. 531; German Ins. Co. *v.* Kistner, 26 Ohio Cir. Ct. 569; McMillan *v.* Insurance Co. of North America, 78 S. Car. 433, 58 S. E. 1020; Scottish-Union, etc., Ins. Co. *v.* Andrews, (Tex. Civ. App. 1905) 89 S. W. 419; North British, etc., Ins. Co. *v.* Edmundson, 104 Va. 486, 52 S. E. 350; Ruffner *v.* Dutchess Ins. Co., 59 W. Va. 432, 53 S. E. 943; Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

Failure Substantially to Comply with this clause prevents recovery, but does not avoid the policy. Johnson *v.* Mercantile Town Mut. F. Ins. Co., 120 Mo. App. 80, 96 S. W. 697.

4. Taking Inventory after Time Provided by Policy Insufficient. — Reynolds *v.* German-American Ins. Co., (Md. 1907) 68 Atl. 262.

Where the Insured Adopted a New System of Bookkeeping, carrying forward the total amounts in his old books, but failed to keep the old books in his safe and they were destroyed by fire, it was held that he had not complied with the provision. Ætna Ins. Co. *v.* Mount, (Miss. 1907) 44 So. 162.

Where a Policy Required Insured to Take an Inventory within thirty days and also required him to keep a complete set of books, it was held that the provision relating to the keeping of the books required books to be kept from the issuance of the policy and not from the taking of the inventory. Carp *v.* Queen Ins. Co., 116 Mo. App. 528, 92 S. W. 1137.

Records Made from Cash Register Slips Not Sufficient. — Monger *v.* Queen Ins. Co., (Tex. Civ. App. 1907) 99 S. W. 887.

6. Yates *v.* Thomason, 83 Ark. 126, 102 S. W.

8. Security Mut. Ins. Co. *v.* Woodson, 79 Ark. 266, 95 S. W. 481; Arkansas Mut. F. Ins. Co. *v.* Woolverton, 82 Ark. 476, 102 S. W. 226.

Accounts showing the goods purchased and cash sales, so that by deducting the sales from the purchases the loss could be determined, were held sufficient. Peoples F. Ins. Assoc. *v.* Gorham, 79 Ark. 160, 95 S. W. 152.

The fact that the cash and credit sales were entered in gross each day and were not itemized as required by the policy was held to show a sufficient compliance with the provision. Arkansas Mut. F. Ins. Co. *v.* Stuckey, 85 Ark. 33, 106 S. W. 203; Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797.

Evidence of Custom of Preserving Cash Register Slips Instead of Books Inadmissible. — Henry *v.* Queen Ins. Co., (Tex. Civ. App. 1907) 103 S. W. 836.

9. Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797; Ætna Ins. Co. *v.* Lipsitz, (Ga. 1908) 60 S. E. 531; German Ins. Co. *v.* Kistner, 26 Ohio Cir. Ct. 569; Scottish Union, etc., Ins. Co. *v.* Andrews, (Tex. Civ. App. 1905) 89 S. W. 419; Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812; North British, etc., Ins. Co. *v.* Edmundson, 104 Va. 486, 52 S. E. 350; Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

Where the aggregate daily sales were entered from cash slips each day, and it was shown that all goods were sold at a profit of from twenty-five to fifty per cent., it was held that it could not be said as a matter of law that the clause was not sufficiently complied with. Ætna Ins. Co. *v.* Johnson, 127 Ga. 491, 56 S. E. 643.

10. German Ins. Co. *v.* Kistner, 26 Ohio Cir. Ct. 569.

Where the policy provides that an inventory shall be taken within a certain time from the date of the policy, and the property is destroyed within that time, the insurer is liable, although

the inventory had not been taken, as the insured is under no obligation to comply with the requirement at once. Bray *v.* Virginia F. & M. Co., 139 N. Car. 390, 51 S. E. 922.

357. 1. Coggins *v.* Ætna Ins. Co., 144 N. Car. 7, 56 S. E. 506; Ætna Ins. Co. *v.* Johnson, 127 Ga. 491, 56 S. E. 643; Johnson *v.* Sun F. Ins. Co., 3 Ga. App. 430, 60 S. E. 118.

Invoice Held Sufficient.—Ruffner *v.* Dutchess Ins. Co., 59 W. Va. 432, 53 S. E. 943.

A Summary of the Inventory entered upon a ledger is not sufficient. Arkansas Ins. Co. *v.* Luther, 85 Ark. 579, 109 S. W. 1022.

Keeping Bills of Goods Purchased Held Sufficient. — Carp *v.* National Assur. Co., (Mo. App. 1907) 99 S. W. 523.

Time for Taking Inventory. — Where a policy, containing an iron-safe clause, allowed thirty days to insured for taking an inventory, and a fire occurred within the thirty days but before the taking of an inventory, there was no breach of the provision requiring an inventory and books to be kept in an iron safe. Parker *v.* Continental Ins. Co., 143 N. Car. 339, 55 S. E. 717.

3. People's F. Ins. Assoc. *v.* Gorham, 79 Ark. 160, 95 S. W. 152; McMillan *v.* Insurance Co. of North America, 78 S. Car. 433, 58 S. E. 1020.

4. **Bill Book and Cash Book Destroyed.** — German Ins. Co. *v.* Kistner, 26 Ohio Cir. Ct. [illegible].

6. Yates *v.* Thomason, 83 Ark. 126, 102 S. W. 1112; Ætna Ins. Co. *v.* Johnson, 127 Ga. 491, 56 S. E. 643; McMillan *v.* Insurance Co. of North America, 78 S. Car. 433, 58 S. E. 1020.

12. Gish *v.* Insurance Co. of North America, (Okla. 1905) 87 Pac. 869; McMillan *v.* Insurance Co. of North America, 78 S. Car. 433, 58 S. E. 1020.

Waiver by Requiring Proofs of Loss. — Rundell *v.* Anchor F. Ins. Co., 128 Iowa 575, 105 N. W. 112.

A Stipulation entered into before any trouble or expense has been incurred by the insured, to the effect that the request for other evidence will not be a waiver of the provision, is binding. Shawnee F. Ins. Co. *v.* Knerr, 72 Kan. 385, 83 Pac. 611.

Where such a stipulation is made, the question of the insurer's liability is not affected by the fact that, prior to its being signed, an agent stated in the course of oral negotiations that the loss would be paid if the books and documents were furnished by the insured after signing the agreement. Phenix Ins. Co. *v.* Stahl, 72 Kan. 578, 83 Pac. 614.

Waiver by Denial of Liability for Other Breach. — Carp *v.* Queen Ins. Co., 116 Mo. App. 528, 92 S. W. 1137.

13. Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147; Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237; Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286.

14. **Retention of Premiums after Knowledge No Waiver.** — Ætna Ins. Co. *v.* Mount, (Miss. 1907) 44 So. 162.

15. Gish *v.* Insurance Co. of North America, (Okla. 1905) 87 Pac. 869.

358. 2. See Shawnee F. Ins. Co. *v.* Knerr, 72 Kan. 385, 83 Pac. 611; Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147.

Agent's Knowledge Held to Constitute Waiver. — Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286.

6. Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286.

359. 1. A provision that the insurer shall be liable only for the amount fixed by arbitrators is valid. Leu *v.* Commercial Mut. F. Ins. Co., 15 N. Dak. 360, 107 N. W. 59.

3. Stevens *v.* Norwich Union F. Ins. Co., 120 Mo. App. 88, 96 S. W. 684; Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117; Grady *v.* Home F. & M. Ins. Co., 27 R. I. 435, 63 Atl. 173.

6. Leu *v.* Commercial Mut. F. Ins. Co., 15 N. Dak. 360, 107 N. W. 59; Stevens *v.* Norwich Union F. Ins. Co., 120 Mo. App. 88, 96 S. W. 684; Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117; Grady *v.* Home F. & M. Ins. Co., 27 R. I. 435, 63 Atl. 173.

360. 1. Baumgarth *v.* Firemen's Fund Ins. Co., (Mich. 1908) 116 N. W. 449; Graham *v.* German American Ins. Co., 75 Ohio St. 374, 9 Ann. Cas. 79, 79 N. E. 930.

If the arbitration fails without the fault of either party, the unsuccessful attempt to arbitrate does not satisfy the condition. Grady *v.* Home F. & M. Ins. Co., 27 R. I. 435, 63 Atl. 173.

3. Concordia F. Ins. Co. *v.* Bowen, 121 Ill. App. 35.

4. Baumgarth *v.* Firemen's Fund Ins. Co., (Mich. 1908) 116 N. W. 449; Stevens *v.* Norwich Union F. Ins. Co., 120 Mo. App. 88, 96 S. W. 684; Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117; Graham *v.* German American Ins. Co., 75 Ohio St. 374, 9 Ann. Cas. 79, 79 N. E. 930. *Compare* German Ins. Co. *v.* Kistner, 26 Ohio Cir. Ct. 569.

Where a policy provided that the loss should be payable sixty days after receipt of proofs of loss, including an award by appraisers, arbitration was held to be a condition precedent under another clause stipulating that no action should be brought until all provisions of the policy had been complied with. Grady *v.* Home F. & M. Ins. Co., 27 R. I. 435, 63 Atl. 173.

5. Ball *v.* Royal Ins. Co., (Mo. App. 1908) 107 S. W. 1097. *Compare* Grady *v.* Home F. & M. Ins. Co., 27 R. I. 435, 63 Atl. 173.

If the appraisers first appointed disagree, it is not necessary for the insured to try to bring about another appraisement. Lancashire Ins. Co. *v.* Lyon, 124 Ill. App. 491.

6. Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117.

361. 7. German Ins. Co. *v.* Kistner, 26 Ohio Cir. Ct. 569.

8. Concordia F. Ins. Co. *v.* Bowen, 121 Ill. App. 35.

9. Graham *v.* German American Ins. Co., 75 Ohio St. 374, 9 Ann. Cas. 79, 79 N. E. 930.

362. 2. **Insurer Must Comply within Reasonable Time.** — Providence Washington Ins. Co. *v.* Wolf, 168 Ind. 690, 80 N. E. 26.

5. Hartford F. Ins. Co. *v.* Asher, (Ky. 1907) 100 S. W. 233, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 362.

8. Young *v.* Ætna Ins. Co., 101 Me. 294, 64 Atl. 584.

363. 1. Young *v.* Ætna Ins. Co., 101 Me. 294, 64 Atl. 584.

2. Hartford F. Ins. Co. *v.* Asher, (Ky. 1907) 100 S. W. 233, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 362–365.

4. Carlston *v.* St. Paul F. & M. Ins. Co., (Mont. 1908) 94 Pac. 756; Beauharnois *v.* Liverpool, etc., Assur. Co., 28 Quebec Super. Ct. 68.

5. **Refusal to Examine Insurer's Books No Ground for Setting Aside Award.** — Tyblewski *v.* Svea F., etc., Assur. Co., 220 Ill. 436, 77 N. E. 196.

6. German Ins. Co. *v.* Hazard Bank, (Ky. 1907) 104 S. W. 725.

9. Seibert *v.* Germania F. Ins. Co., 132 Iowa 158, 106 N. W. 507.

Where one appraiser withdrew before the investigation was finished, it was held that an appraisal made by the umpire and the other appraiser was valid. Niagara F. Ins. Co. *v.* Boon, 76 Ark. 153, 88 S. W. 915.

An award by one appraiser and the umpire was held to be valid where it was made after the withdrawal of the other appraiser upon his suspecting collusion. Garrebrant *v.* Continental Ins. Co., (N. J. 1907) 67 Atl. 90.

12. Harth Bros. Grain Co. *v.* Continental Ins. Co., (Ky. 1907) 102 S. W. 242; Carlston *v.* St. Paul F. & M. Ins. Co., (Mont. 1908) 94 Pac. 756.

364. 1. Palatine Ins. Co. *v.* O'Brien, (C. C. A.) 152 Fed. 922.

7. Niagara F. Ins. Co. *v.* Boon, 76 Ark. 153, 88 S. W. 915; Mayer *v.* Home Ins. Co., 124 N. Y. App. Div. 241, 108 N. Y. Supp. 711.

An award made by the umpire and one appraiser in the other's absence is valid. German Ins. Co. *v.* Hazard Bank, (Ky. 1907) 104 S. W. 725.

8. An unreasonable refusal, by the appraiser selected by the insurer, to agree upon an umpire in the vicinity of the fire, was held to be sufficient evidence of bias to avoid the arbitration. Young *v.* Ætna Ins. Co., 101 Me. 294, 64 Atl. 584.

11. **Appraisers and Umpire May Act Jointly.** — Tyblewski *v.* Svea F., etc., Assur. Co., 220 Ill. 436, 77 N. E. 196.

12. Niagara F. Ins. Co. *v.* Boon, 76 Ark. 153, 88 S. W. 915.

Fraud. — Where several insurers are parties to an appraisement and some are guilty of fraud, the award is invalid as to an insurer who had no part in the fraud. Mayer *v.* Home Ins. Co., 124 N. Y. App. Div. 241, 108 N. Y. Supp. 711.

Second Appraisement. — Philadelphia F. Assoc. *v.* Appel, 76 Ohio St. 1, 80 N. E. 952.

Misconduct of the Umpire cannot be entertained in an action at law upon a standard form of policy. Garrebrant *v.* Continental Ins. Co., (N. J. 1907) 67 Atl. 90.

365. 1. Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134; Moore *v.* Sun Ins. Office, 100 Minn. 374, 111 N. W. 260; Ball *v.* Royal Ins. Co., (Mo. App. 1908) 107 S. W. 1097.

Other Acts of Waiver. — Refusal of the arbitrator chosen by the insurer to co-operate with the other arbitrators is a waiver of the right to arbitration, if the act is sanctioned by the insurer. O'Rourke *v.* German Ins. Co., 96 Minn. 154, 104 N. W. 900.

2. O'Rourke *v.* German Ins. Co., 99 Minn. 293, 109 N. W. 401; Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117; Nerger *v.* Equitable F. Assoc., (S. Dak. 1906) 107 N. W. 531.

Waiver by Failure to Appoint New Appraiser after Default of One Selected by Insurer. — Philadelphia F. Assoc. *v.* Appel, 76 Ohio St. 1, 80 N. E. 952.

3. **Offer of Compromise after Suit No Waiver.** — Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117.

5. **Other Acts of Waiver — Refusal to Accept Umpire.** — Hartford F. Ins. Co. *v.* Asher, (Ky. 1907) 100 S. W. 233, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365.

Proceeding with Irregular Appraisement. — Western Underwriters Assoc. *v.* Hankins, 221 Ill. 304, 77 N. E. 447.

Any act of bad faith calculated to defeat the object of the arbitration constitutes a waiver of the requirement. Providence Washington Ins. Co. *v.* Wolf, 168 Ind. 690, 80 N. E. 26.

Failure to request an appraisal was held to be a waiver of the provision in a Lloyd's policy. McLean *v.* Tobin, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 528, 109 N. Y. Supp. 926.

Miscellaneous Cases on Arbitration or Appraisement. — Whether compliance with the provision was made unnecessary by acts of the parties calculated to prevent an appraisement, is a question for the jury. Carp *v.* National Assur. Co., (Mo. App. 1907) 99 S. W. 523.

366. 7. Georgia Co-operative F. Assoc. *v.* Lanier, 1 Ga. App. 186, 57 S. E. 910; Frick *v.* United Firemen's Ins. Co., 218 Pa. St. 409, 67 Atl. 743; Frick *v.* Svea F., etc., Ins. Co., 218 Pa. St. 420, 67 Atl. 747.

367. 1. McIntyre *v.* Liverpool, etc., Ins. Co., (Mo. App. 1908) 110 S. W. 604.

6. McIntyre *v.* Liverpool, etc., Ins. Co., (Mo. App. 1908) 110 S. W. 604.

368. 1. Klotz Tailoring Co. *v.* Eastern F. Ins. Co., 116 N. Y. App. Div. 723, 102 N. Y. Supp. 82.

369. 1. Fireman's Fund Ins. Co. *v.* Palatine Ins. Co., (Cal. 1907) 88 Pac. 907.

7. Fireman's Fund Ins. Co. *v.* Palatine Ins. Co., (Cal. 1907) 88 Pac. 907; Cutting *v.* Atlas Mut. Ins. Co., (Mass. 1908) 85 N. E. 174.

8. **Floating Policy Not Part of "Whole Insurance."** — A floating policy, which provided that it should not cover goods on which specific insurance was carried, was held not to be a part of the whole insurance in an action upon a policy containing the *pro rata* clause. Klotz Tailoring Co. *v.* Eastern F. Ins. Co., 116 N. Y. App. Div. 723, 102 N. Y. Supp. 82.

370. 9. Gray *v.* Merchants' Ins. Co., 125 Ill. App. 370.

371. 7. Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66.

15. Wensel *v.* Property Mut. Ins. Assoc., 129 Iowa 295, 105 N. W. 522.

372. 1. Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393.

6. Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134; Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286; Orient Ins. Co. *v.* Wingfield, (Tex. Civ. App. 1908) 108 S. W. 788.

7. Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569.

13. Where the property is burned after foreclosure proceedings which leave a deficiency, the insured is entitled to the proceeds of the policy during the period of redemption. Rawson *v.* Bethesda Baptist Church, 221 Ill. 216, 77 N. E. 560.

373. 3. A mortgagee, insured as his interest may appear, in a policy taken out without his knowledge by the mortgagor, may recover on the policy, where it appears that, by a provision of the mortgage, the mortgagor was required to keep the property insured. Union Sav. Inst. *v.* Phœnix Ins. Co., (Mass. 1907) 81 N. E. 994.

4. Payment to the mortgagor by mistake does not prevent recovery by the mortgagee. Ebensburg Bldg. Assoc. *v.* Westchester F. Ins. Co., 28 Pa. Super. Ct. 341.

6. Transfer of Equity of Redemption by Mortgagor Does Not Defeat Mortgagee's Right to Recover. — Union Sav. Inst. *v.* Phœnix Ins. Co., (Mass. 1907) 81 N. E. 994.

9. Evans *v.* Crawford County Farmers' Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

A vendee, although he has not paid the entire purchase price, the balance not being due at the time of loss, is entitled to the insurance, and this notwithstanding the insolvency of such vendee. Zenor *v.* Hayes, 228 Ill. 626, 81 N. E. 1141.

374. 1. **Consignee Entitled to Proceeds of Policy on Goods in Carrier's Warehouse.** — Kellner *v.* Philadelphia F. Assoc., 128 Wis. 233, 106 N. W. 1060.

3. **Administrator.** — Where the policy is payable to insured's estate, the personal representative of deceased is entitled to recover. Norwich Union F. Ins. Co. *v.* Prude, 145 Ala. 297, 8 Ann. Cas. 121, 40 So. 322.

375. 6. Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286.

376. 1. Arkansas Mut. F. Ins. Co. *v.* Woolverton, 82 Ark. 476, 102 S. W. 226.

7. **Constitutionality Affirmed in Arkansas.** — Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797.

8. **Statute Not Applicable to Policy Issued Before Its Enactment.** — Arkansas Mut. F. Ins. Co. *v.* Woolverton, 82 Ark. 476, 102 S. W. 226; Arkansas Mut. F. Ins. Co. *v.* Stuckey, 85 Ark. 33, 106 S. W. 203.

379. 8. German Ins. Co. *v.* Hazard Bank, (Ky. 1907) 104 S. W. 725.

12. German Ins. Co. *v.* Hazard Bank, (Ky. 1907) 104 S. W. 725, *quoting* 13 Am. and Eng. Encyc. of Law (2d ed.) 379, 380.

13. German Ins. Co. *v.* Hazard Bank, (Ky. 1907) 104 S. W. 725, *quoting* 13 Am. and Eng. Encyc. of Law (2d ed.) 379, 380.

380. 2. German Ins. Co. *v.* Hazard Bank, (Ky. 1907) 104 S. W. 725, *quoting* 13 Am. and Eng. Encyc. of Law (2d ed.) 379, 380.

381. 6. Murray *v.* Royal Ins. Co., 11 British Columbia 212.

383. 6. Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 326 [383]; German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068.

11. Phœnix Assur. Co. *v.* Spooner, (1905) 2 K. B. 753; Svea Ins. Co. *v.* Vicksburg, etc., R. Co., 153 Fed. 774; Sea Ins. Co. *v.* Vicksburg, etc., R. Co., (C. C. A.) 159 Fed. 676; Cunningham *v.* Seaboard Air Line R. Co., 139 N. Car. 427, 51 S. E. 1029; Ætna Ins. Co. *v.* Charleston, etc., R. Co., 76 S. Car. 101, 56 S. E. 788.

The fact that the insurer is a member of a trust in violation of an anti-trust statute does not affect its right to subrogation. Freed *v.* American F. Ins. Co., (Miss. 1907) 43 So. 947.

The insured cannot recover on a policy containing such a provision when he releases the party causing the loss from liability. Downs Farmers' Warehouse Assoc. *v.* Pioneer Mut. Ins. Assoc., 41 Wash. 372, 83 Pac. 423.

384. 2. Molaka *v.* American F. Ins. Co., 29 Pa. Super. Ct. 149; Baker *v.* Monumental Sav., etc., Assoc., 58 W. Va. 408, 52 S. E. 403; Gillespie *v.* Scottish Union, etc., Ins. Co., 61 W. Va. 169, 56 S. E. 213; Imperial F. Ins. Co. *v.* Bull, 1 Can. Sup. Ct. Cas. 1, 18 Can. Sup. Ct. 697.

Insurer Not Entitled to Subrogation as against Mortgagor. — See Rockwood First Nat. Bank *v.* Teutonia Ins. Co., 2 Tenn. Ch. App. 90.

3. The fact that insured has settled with the one causing the loss for a portion only of such loss will not prevent his bringing an action on the policy. Farmers' Alliance Mut. F. Ins. Co. *v.* Vallie, 35 Colo. 72, 83 Pac. 962.

385. 4. When the time of payment is fixed at a certain time after proofs of loss have been furnished, the time does not run from the furnishing of a magistrate's certificate. Egan *v.* Merchants' F. Assoc., 40 Wash. 513, 82 Pac. 898.

7. Potomac Ins. Co. *v.* Atwood, 118 Ill. App. 349; Continental Ins. Co. *v.* Reynolds, (Md. 1907) 68 Atl. 277; Springfield F. & M. Ins. Co. *v.* Reynolds, (Md. 1907) 68 Atl. 281; Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286.

386. 1. Dolan *v.* Royal Neighbors, 123 Mo. App. 147, 100 S. W. 498, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 385 [386]; Williams *v.* Philadelphia F. Assoc., 119 N. Y. App. Div. 573, 104 N. Y. Supp. 100; Appel *v.* Cooper Ins. Co., 76 Ohio St. 52, 80 N. E. 955.

Provision Does Not Apply to Filing Writ of Error. — Helbig *v.* Citizens' Ins. Co., (Ill. 1908) 84 N. E. 897.

387. 2. Dolan *v.* Royal Neighbors, 123 Mo. App. 147, 100 S. W. 498, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 387.

6. Bellinger *v.* German Ins. Co., 113 N. Y. App. Div. 424, 100 N. Y. Supp. 924.

390. 2. Downs *v.* German Alliance Ins. Co., (Del. 1906) 67 Atl. 146; Williams *v.* Philadelphia F. Assoc., 119 N. Y. App. Div. 573, 104 N. Y. Supp. 100; Appel *v.* Cooper Ins. Co., 76 Ohio St. 52, 80 N. E. 955.

Time Runs from Date of Commencement of Fire. — Western Coal, etc., Co. *v.* Traders Ins. Co., 122 Ill. App. 138.

6. Dolan *v.* Royal Neighbors, 123 Mo. App. 147, 100 S. W. 498, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 390.

391. 6. McArdle *v.* German Alliance Ins. Co., 183 N. Y. 368, 76 N. E. 337.

7. McArdle *v.* German Alliance Ins. Co., 183 N. Y. 368, 76 N. E. 337.

8. McArdle *v.* German Alliance Ins. Co., 183 N. Y. 368, 76 N. E. 337.

FIRE LIMITS.

396. 1. *In re* Newell, 2 Cal. App. 767, 84 Pac. 226; Houlton *v.* Titcomb, 102 Me. 272, 66 Atl. 733.

Right of Municipality to Fix Fire Limits Impliedly Recognized. — Micks *v.* Mason, 145 Mich. 212, 108 N. W. 707; Concord *v.* Morgan, (N. H. 1906) 64 Atl. 725.

Statutory Authority. — Ironside *v.* Vinita, 6 Indian Ter. 485, 98 S. W. 167.

397. 1. Municipality Has No Inherent Power of Control over State Property. — Kentucky Blind Inst. *v.* Louisville, (Ky. 1906) 97 S. W. 402.

2. *In re* Newell, 2 Cal. App. 767, 84 Pac. 226.

398. 1. Houlton *v.* Titcomb, 102 Me. 272, 66 Atl. 733; New York *v.* A. T. Stewart Realty Co., 109 N. Y. App. Div. 702, 96 N. Y. Supp. 513.

Prior Construction by the Municipal Officers may be shown in aid of the construction of an ordinance that is not clear. Sylvania *v.* Hilton, 123 Ga. 754, 51 S. E. 744.

400. 1. Sylvania *v.* Hilton, 123 Ga. 754, 51 S. E. 744, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 400; Micks *v.* Mason, 145 Mich. 212, 108 N. W. 707.

401. 1. Houlton *v.* Titcomb, 102 Me. 272, 66 Atl. 733, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 401.

Erroneous to Enjoin City from Enforcing Ordinance. — Sylvania *v.* Hilton, 123 Ga. 754, 51 S. E. 744.

FIRES.

409. 3. Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528.

410. 6. Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528.

411. 1. Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893.

2. Denver *v.* Porter, (C. C. A.) 126 Fed. 288; McFarland *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 450; Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893.

413. 4. Hitchcock *v.* Riley, (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 260, 89 N. Y. Supp. 890.

5. Toledo, etc., R. Co. *v.* Star Flouring Mills Co., (C. C. A.) 146 Fed. 953.

415. 1. Clark *v.* Kansas City, etc., R. Co., (C. C. A.) 129 Fed. 341; Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621; Simpson *v.* Enfield Lumber Co., 131 N. Car. 518, 42 S. E. 939; St. Louis Southwestern R. Co. *v.* Connally, (Tex. Civ. App. 1906) 93 S. W. 206; Rylander *v.* Laursen, 124 Wis. 2, 102 N. W. 341.

It Is Error to Charge that the plaintiff must show gross negligence in the defendant, in order to recover, where a defendant is, under a code provision, required to exercise reasonable care. Brown Store Co. *v.* Chattahoochee Lumber Co., 121 Ga. 809, 49 S. E. 839, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 414.

416. 3. The Use of a Steam Thresher requires the same degree of care as that exacted of railroad companies in the operation of cars. Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324.

417. 1. Hayes *v.* Brandt, 80 Ark. 592, 98 S. W. 368; Gracy *v.* Atlantic Coast Line R. Co., 53 Fla. 350, 42 So. 903; Lake Erie, etc., R. Co. *v.* McFall, (Ind. 1904) 72 N. E. 552; Lake Erie, etc., R. Co. *v.* Ford, 167 Ind. 205, 78 N. E. 969, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 416; Continental Ins. Co. *v.* Chicago, etc., R. Co., 97 Minn. 467, 107 N. W. 548.

418. 2. Sampson *v.* Hughes, 147 Cal. 62, 81 Pac. 292.

In the Absence of Circumstances Favorable to the Spread of Fire a railroad company owes no duty to diminish the customary speed of trains while passing stray buildings on dry and windy days. Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577.

419. 5. Gorham Mfg. Co. *v.* New York, etc., R. Co., 27 R. I. 35, 60 Atl. 638.

423. 10. Blue *v.* Red Mountain R. Co., 6 Can. R. Cas. 219, 12 British Columbia 460.

424. 4. James Quirk Milling Co. *v.* Minneapolis, etc., R. Co., 98 Minn. 22, 107 N. W. 742.

426. 5. Cincinnati, etc., R. Co. *v.* Saulsbury, 115 Tenn. 402, 90 S. W. 624.

427. 5. Mann *v.* Pere Marquette R. Co., 135 Mich. 210, 97 N. W. 721; James Quirk Milling Co. *v.* Minneapolis, etc., R. Co., 98 Minn. 22, 107 N. W. 742; Mansfield Mut. Ins. Co. *v.* Cleveland, etc., R. Co., 74 Ohio St. 30, 6 Ann. Cas. 782, 77 N. E. 269.

Liability to Third Persons. — A railroad company, though exempt from liability to a warehouse corporation lessee for injury due to fire, cannot escape liability to the owners of goods lost, even though they be stockholders in such corporation. Orient Ins. Co. *v.* Northern Pac. R. Co., 31 Mont. 502, 78 Pac. 1036.

A Railroad Company, Exempt from Liability for injury to property on leased premises by contract, may be liable for the destruction of goods adjoining the leased premises, through fire communicated therefrom. Kansas City, etc., R. Co. *v.* Blaker, 68 Kan. 244, 75 Pac. 71.

Gross Negligence Necessary to Recovery. — Under a contract exempting the defendant company from all losses due to its negligence, gross negligence must be proven in order to entitle the plaintiff to recover for the destruction of property. Blitch *v.* Central of Georgia R. Co., 122 Ga. 711, 50 S. E. 945.

Construction of Contracts of Exemption. — Property situated from forty to four hundred feet back from the railroad is, as a matter of law, in the vicinity of such railroad, within the terms of a contract exempting the railroad from

liability for injury to buildings in the vicinity. Mann *v.* Pere Marquette R. Co., 135 Mich. 210, 97 N. W. 721.

An Instruction omitting to state the railroad's exemption from liability for negligence under the terms of such a contract constitutes error. Mann *v.* Pere Marquette R. Co., 135 Mich. 210, 97 N. W. 721.

6. Grant *v.* Canadian Pac. R. Co., 36 N. Bruns. 528.

429. 6. Prairie Fire Ordinance Held Valid. — See Rex *v.* Canadian Pac. R. Co., 6 West. L. Rep. (Can.) 126, 6 Can. R. Cas. 421.

430. 2. Ordinary Acts of Husbandry may be performed at any time, irrespective of statutory restrictions upon the time within which fires may be started. Acree *v.* State, 122 Ga. 144, 50 S. E. 180, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 429 *et seq.*

5. Grant *v.* Canadian Pac. R. Co., 36 N. Bruns. 528.

431. 5. The Illinois Statute was passed with reference to conditions then existing and does not apply to a fire kindled in the rear of the defendant's property in a village. McNemar *v.* Cohn, 115 Ill. App. 31.

432. 1. Atlantic Coast Line R. Co. *v.* Baker, 118 Ga. 809, 45 S. E. 673; Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893.

3. An Instruction charging that the plaintiff cannot recover for any wood destroyed that has not been measured, within the terms of a contract under which the plaintiff only acquires title upon the measuring of wood, has been held to be correct. Wick *v.* Tacoma Eastern R. Co., 40 Wash. 408, 82 Pac. 711.

435. 1. Where a Tenant Testified in an Action by His Landlord for the burning of a crop, and made no claim of ownership, it was held that the defendant could not assert that title was in the tenant. Toledo, etc., R. Co. *v.* Farris, 117 Ill. App. 108.

436. 4. The Rule Applies where the defendant does not deny the plaintiff's title to the goods destroyed, but denies his title to the freehold. Brown Store Co. *v.* Chattahoochee Lumber Co., 121 Ga. 809, 49 S. E. 839.

7. A Plaintiff in Possession of leased premises in violation of the terms of such lease may recover for goods negligently destroyed thereon of the defendant lessor. England *v.* Wabash R. Co., 114 Mo. App. 546, 90 S. W. 111.

437. 1. Hayes *v.* Brandt, 80 Ark. 592, 98 S. W. 368; Talmadge *v.* Central of Georgia R. Co., 125 Ga. 400, 54 S. E. 128; Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893.

438. 2. But a Railroad Company May Exempt Itself from liability for fire, in a lease of part of its right of way for a coalhouse; and the exemption will be binding as against an assignee of the lease, though not against a subtenant. Wooldridge *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1905) 86 S. W. 942.

439. 3. Chicago, etc., R. Co. *v.* Neilson, [illegible].

440. 2. Missouri, etc., R. Co. *v.* Fithian, 73 Kan. 784, 85 Pac. 594; Gibson *v.* W. C. Wood Lumber Co., (Miss. 1908) 45 So. 834, holding that evidence that the defendant's servant was engaged in his line of duty is relevant and admissible.

442. 4. Alabama G. S. R. Co. *v.* Sanders, 145 Ala. 449, 40 So. 402; T. B. Bonner Co. *v.* New Orleans, etc., R. Co., (Miss. 1906) 40 So. 65.

Where Evidence Conflicting, Charge Favoring Either Party Erroneous. — Louisville, etc., R. Co. *v.* Sullivan Timber Co., 138 Ala. 379, 35 So. 327.

443. 6. Lake Erie, etc., R. Co. *v.* McFall, (Ind. 1904) 72 N. E. 552.

444. 2. Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 444.

446. 4. See Northern Counties Invest. Trust *v.* Canadian Pac. R. Co., 13 British Columbia 130.

447. 3. Black *v.* Minneapolis, etc., R. Co., 122 Iowa 32, 96 N. W. 984.

448. 1. Brown Store Co. *v.* Chattahoochee Lumber Co., 121 Ga. 809, 49 S. E. 839.

450. 5. Phillips *v.* Durham, etc., R. Co., 138 N. Car. 12, 50 S. E. 462, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 450–454.

451. 3. Phillips *v.* Durham, etc., R. Co., 138 N. Car. 12, 50 S. E. 462, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 450–454.

458. 3. Black *v.* Minneapolis, etc., R. Co., 122 Iowa 32, 96 N. W. 984.

459. 1. Instruction Ignoring Unusual Wind. — An instruction which charges a defendant company with liability for defective apparatus in case sparks were thrown a specified distance, and which ignores the agency of a strong wind, has been held to be erroneous. Louisville, etc., R. Co. *v.* Sullivan Timber Co., 138 Ala. 379, 35 So. 327.

2. Hitchcock *v.* Riley, (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 260, 89 N. Y. Supp. 890; Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 459.

A Mere Change in the Direction of the Wind, facilitating the communication of fire, will not of itself exempt the defendant from liability, unless it is of extraordinary and unexpected force. Florida East Coast R. Co. *v.* Welch, 53 Fla. 145, 44 So. 250.

460. 2. Blue *v.* Red Mountain R. Co., 6 Can. R. Cas. 219, 12 British Columbia 460.

462. 1. Dyer *v.* Maine Cent. R. Co., 99 Me. 195, 58 Atl. 994.

2. Missouri, etc., R. Co. *v.* Keahy, 37 Tex. Civ. App. 330, 83 S. W. 1102.

7. Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528; Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577.

464. 3. Clark *v.* Kansas City, etc., R. Co., (C. C. A.) 129 Fed. 341, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 464; Rylander *v.* Laursen, 124 Wis. 2, 102 N. W. 341; Grant *v.* Canadian Pac. R. Co., 36 N. Bruns. 528.

Defendant Cannot Be Required to Stop Flames at All Hazards. — Baird *v.* Chambers, 15 N. Dak. 618, 109 N. W. 61.

An Instruction that, if the defendant used proper care to prevent the spread of fire to the plaintiff's land, he would not be liable, has been held to be erroneous where the complaint alleges negligence in originally setting out the

fire. Sampson *v.* Hughes, 147 Cal. 62, 81 Pac. 292.

466. 4. Baltimore, etc., R. Co. *v.* O'Brien, 38 Ind. App. 143, 77 N. E. 1131; Atlantic Coast Line R. Co. *v.* Watkins, 104 Va. 154, 51 S. E. 172; Knickel *v.* Chicago, etc., R. Co., 123 Wis. 327, 101 N. W. 690.

The Rule Applies to private railroad companies as well as to public companies. Simpson *v.* Enfield Lumber Co., 133 N. Car. 95, 45 S. E. 469.

467. 1. Knott *v.* Cape Fear, etc., R. Co., 142 N. Car. 238, 55 S. E. 150.

2. Williams *v.* Atlantic Coast Line R. Co., 140 N. Car. 623, 53 S. E. 448; St. Louis Southwestern R. Co. *v.* Connally, (Tex. Civ. App. 1906) 93 S. W. 206.

The Accumulation of Combustibles on the Defendant's Right of Way has been held to render such company liable for loss by fire, irrespective of whether the engines of a railroad company are properly equipped. McMahon *v.* Hetch-Hetchy, etc., Valleys R. Co., 2 Cal. App. 400, 84 Pac. 350.

469. 1. Knickel *v.* Chicago, etc., R. Co., 123 Wis. 327, 101 N. W. 690.

2. Where a Fire Originates because of the condition of a right of way adjoining the railroad company, it is liable irrespective of whether its engines are properly equipped or not. North Fork Lumber Co. *v.* Southern R. Co., 143 N. Car. 324, 55 S. E. 781.

5. Where the Defendant's Negligence is clearly shown from its failure to prove the proper equipment of its engines, the question whether the fire originated in or outside of the right of way is immaterial. Rollins *v.* Atlantic City R. Co., 73 N. J. L. 64, 62 Atl. 929.

It Is Immaterial whether the fire originated on or off the right of way where sparks have been communicated through a defective spark arrester. North Fork Lumber Co. *v.* Southern R. Co., 143 N. Car. 324, 55 S. E. 781.

6. Liability of Railroad Company Not Relieved by Lease of Right of Way. — Sprague *v.* Atchison, etc., R. Co., 70 Kan. 359, 78 Pac. 828.

But Where under the Terms of a Contract the plaintiff agreed to keep the right of way free from combustibles, he cannot recover where he has failed to do so. Mann *v.* Pere Marquette R. Co., 135 Mich. 210, 97 N. W. 721.

470. 2. Atchison, etc., P Co. *v.* Sprague, 74 Kan. 574, 87 Pac. 733.

471. 3. The Mere Failure to properly equip an engine does not subject a company to liability for fire unless the fire can be ascribed to it. Cheek *v.* Oak Grove Lumber Co., 134 N. Car. 225, 46 S. E. 488.

472. 2. Shipman *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 535; Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324.

Instruction Must Charge Responsibility for Proper Equipments as Well as Careful Operation. — Alabama G. S. R. Co. *v.* Clarke, 145 Ala. 459, 39 So. 816.

473. 2. St. Louis, etc., R. Co. *v.* Dawson, 77 Ark. 434, 92 S. W. 27.

474. 1. Only Ordinary Care in the equipment of engines is required. Houston, etc., R. Co. *v.* Laforge, (Tex. Civ. App. 1905) 84 S. W. 1072; St. Louis, etc., R. Co. *v.* Thompson-Hailey Co., 79 Ark. 12, 94 S. W. 707; Bottoms *v.* Seaboard Air Line R. Co., 136 N. Car. 472, 49 S. E. 348.

2. Louisville, etc., R. Co. *v.* Sullivan Timber Co., 138 Ala. 379, 35 So. 327; Gracy *v.* Atlantic Coast Line R. Co., 53 Fla. 350, 42 So. 903; Vallaster *v.* Atlantic City R. Co., 72 N. J. L. 334, 62 Atl. 993; Williams *v.* Atlantic Coast Line R. Co., 140 N. Car. 623, 53 S. E. 448; Atlantic Coast Line R. Co. *v.* Watkins, 104 Va. 154, 51 S. E. 172.

3. Bottoms *v.* Seaboard Air Line R. Co., 136 N. Car. 472, 49 S. E. 348.

Failure to Provide Adequate Appliances has been held to be negligence *per se.* Dodd *v.* Read, 81 Ark. 13, 98 S. W. 703.

475. 2. St. Louis, etc., R. Co. *v.* Coombs, 76 Ark. 132, 88 S. W. 595; Mills *v.* Louisville, etc., R. Co., 116 Ky. 309, 76 S. W. 29.

476. 3. St. Louis Southwestern R. Co. *v.* Moss, 37 Tex. Civ. App. 461, 84 S. W. 281.

477. 1. Mills *v.* Louisville, etc., R. Co., 116 Ky. 309 76 S. W. 29.

Apparatus Should Be Properly Inspected. — Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324; Cleveland, etc., R. Co. *v.* Hayes, 167 Ind. 454 79 N. E. 448.

3. See Chesapeake, etc., R. Co. *v.* Richardson, (Ky. 1907) 99 S. W. 642.

478. 4. Toledo, etc., R. Co. *v.* Star Flouring Mills Co., (C. C. A.) 146 Fed. 953.

6. A Railroad Company's Duty to provide proper spark arresters is not discharged by proof of the mere employment of competent servants for that purpose. Cleveland, etc., R. Co. *v.* Hayes, 167 Ind. 454, 79 N. E. 448.

479. 1. Evidence as to the Hurried Movements of a train is admissible. Alabama G. S. R. Co. *v.* Clarke, 145 Ala. 459, 39 So. 816.

Evidence of the Speed of a Train two miles distant from the scene of the fire has been held inadmissible. Norfolk, etc., R. Co. *v.* Briggs, 103 Va. 105, 48 S. E. 522.

An Instruction charging responsibility for fire if the defendant's engines were found to be worked too hard and going too fast, does not assume negligence, and is therefore unobjectionable. Norwich Ins. Co. *v.* Oregon R. Co., 46 Oregon 123, 78 Pac. 1025.

3. Instruction as to Negligence. — A request to instruct the jury that defendant company was under no obligation to provide coal instead of wood as fuel was properly refused as abstract where the only issue was whether the fire was caused by the negligent operation of defendant's engine. Monte Ne R. Co. *v.* Phillips, 80 Ark. 292, 96 S. W. 1060.

481. 4. The Plaintiff Is Not Bound to Suppress the Fire on the defendant's premises after it has negligently arisen through the defendant's act. Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893.

482. 5. Alabama G. S. R. Co. *v.* Planters' Warehouse, etc., Co., (Ala. 1907) 45 So. 82; Florida East Coast R. Co. *v.* Welch, 53 Fla. 145, 44 So. 250; Cincinnati, etc., R. Co. *v.* Cecil, (Ky. 1906) 90 S. W. 585; Phillips *v.* Durham, etc., R. Co., 138 N. Car. 12, 50 S. E. 462; Louisville, etc., R. Co. *v.* Short, 110 Tenn. 713, 77 S. W. 936, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 480–491.

484. 2. Gray v. Atlantic Coast Line R. Co., 53 Fla. 350, 42 So. 903.

Opening a Door facing a fire has been held to be contributory negligence. Brown *v.* Oregon R., etc., Co., 41 Wash. 688, 84 Pac. 400.

3. Under the Terms of a Sale of Part of the Timber on lands through which a railroad runs, the plaintiff should have provided against fire affecting his timber. Simpson *v.* Enfield Lumber Co., 131 N. Car. 518, 42 S. E. 939.

485. 3. Alabama, etc., R. Co. *v.* Ætna Ins. Co., 82 Miss. 770, 35 So. 304.

487. 2 **The Failure to Clear the Intervening Space** between a building and the railroad of inflammable material, in violation of a city ordinance, is not such contributory negligence as will prevent a recovery for fire ensuing. Louisville, etc., R. Co. *v.* Sullivan Timber Co., 138 Ala. 379, 35 So. 327.

4. Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528; Alabama G. S. R. Co. *v.* Planters' Warehouse, etc., Co., (Ala. 1907) 45 So. 82, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487, 488; Alabama G. S. R. Co. *v.* Clarke, 145 Ala. 459, 39 So. 816; Kansas City, etc., R. Co. *v.* Blaker, 68 Kan. 244, 75 Pac. 71, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487.

But Where the Premises Are Used for a Dumping Ground by the city, the defendant company will not be liable for fire originating thereon, even though having often assisted in filling in, and in suppressing the flames. Denver *v.* Porter, (C. C. A.) 126 Fed. 288.

488. 1. **Presence of Property on Defendant's Premises Raises No Presumption against Plaintiff.** — Southern R. Co. *v.* Wilson, 138 Ala. 510, 35 So. 561.

489. 3. Clark *v.* Kansas City, etc., R. Co., (C. C. A.) 129 Fed. 341.

5. What Constitutes Contributory Negligence is a question for the court, but the question whether the facts warrant the imputation of contributory negligence is one for the jury. Alabama, etc., R. Co. *v.* Ætna Ins. Co., 82 Miss. 770, 35 So. 304.

491. 3. Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893; Talmadge *v.* Central of Georgia R. Co., 125 Ga. 400, 54 S. E. 128; Cincinnati, etc., R. Co. *v.* Cecil, (Ky. 1906) 90 S. W. 585; Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324; St. Louis Southwestern R. Co. *v.* Connally, (Tex. Civ. App. 1906) 93 S. W. 206.

493. 7. Williams *v.* Atlantic Coast Line R. Co., 140 N. Car. 623, 53 S. E. 448.

494. 6. Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621; Blue *v.* Red Mountain R. Co., 6 Can. R. Cas. 219, 12 British Columbia 460.

495. 2. See McFarland *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 450.

496. 1. **The Maintenance of an Oil Warehouse** within a few inches of a railroad is not negligence as a matter of law, especially when its destruction is due to the defendant company's negligent operation of the road. Southern R. Co. *v.* Patterson, 105 Va. 6, 52 S. E. 694.

8. Williams *v.* Atlantic Coast Line R. Co., 140 N. Car. 623, 53 S. E. 448.

Motion for Nonsuit Denied Where Facts Conflicting. — Welch *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 60 S. E. 648.

497. 1. **But No Conflict Arises,** after proof by the defendant of the proper equipment of its engines, from the mere fact that the defendant's engines have during a number of years emitted a great many sparks and occasioned other fires. Farley *v.* Mobile, etc., R. Co., (Ala. 1907) 42 So. 747.

498. 4. Dyer *v.* Maine Cent. R. Co., 99 Me. 195, 58 Atl. 994; Big River Lead Co. *v.* St. Louis, etc., R. Co., 123 Mo. App. 394, 101 S. W. 636; Shipman *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 535; North Fork Lumber Co. *v.* Southern R. Co., 143 N. Car. 324, 55 S. E. 781, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 498; Texas, etc., R. Co. *v.* Prude, (Tex. Civ. App. 1905) 86 S. W. 1046. See also Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528.

500. 1. Florida East Coast R. Co. *v.* Welch, 53 Fla. 145, 44 So. 250.

501. 1. Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577; Cincinnati, etc., R. Co. *v.* Falconer, (Ky. 1906) 97 S. W. 727; Continental Ins. Co. *v.* Chicago, etc., R. Co., 97 Minn. 467, 107 N. W. 548.

502. 4. Southern R. Co. *v.* Johnson, 141 Ala. 575, 37 So. 919; Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; St. Louis, etc., R. Co. *v.* Lawrence, 4 Indian Ter. 611, 76 S. W. 254. See Atchison, etc., R. Co. *v.* Geiser, 68 Kan. 281, 75 Pac. 68; Phillips *v.* Durham, etc., R. Co., 138 N. Car. 12, 50 S. E. 462.

503. 1. **Preponderance of Evidence Not Necessary to Rebut.** — Toledo, etc., R. Co. *v.* Star Flouring Mills Co., (C. C. A.) 146 Fed. 953.

Rule Held Not to Apply. — Alabama G. S. R. Co. *v.* Sanders, 145 Ala. 449, 40 So. 402.

3. St. Louis, etc., R. Co. *v.* Coombs, 76 Ark. 132, 88 S. W. 595.

504. 1. St. Louis, etc., R. Co. *v.* Coombs, 76 Ark. 132, 88 S. W. 595.

2. Continental Ins. Co. *v.* Chicago, etc., R. Co., 97 Minn. 467, 107 N. W. 548; Gulf, etc., R. Co. *v.* Blakeney-Stevens-Jackson Co., (Tex. Civ. App. 1908) 106 S. W. 1140.

4. **Question Whether Plaintiff's Prima Facie Case Overcomes One for Jury.** — Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833.

5. Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577; Texas, etc., R. Co. *v.* Prude, (Tex. Civ. App. 1905) 86 S. W. 1046; Gulf, etc., R. Co. *v.* Blakeney-Stevens-Jackson Co., (Tex. Civ. App. 1908) 106 S. W. 1140.

The Mere Opinion of a Witness, unconfirmed by facts, that the defendant's engines were properly equipped, does not rebut the presumption of negligence arising from the mere communication of fire. Southern R. Co. *v.* Puckett, 121 Ga. 322, 48 S. E. 968.

505. 1. Chicago, etc., R. Co. *v.* Neilson, 118 Ill. App. 343.

2. Evidence of the ordinary cautiousness of the engineer is of no avail in the face of facts showing the communication of fire by sparks. McFarland *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 450.

3. **Where by Statute the Mere Happening of Fire** through the operation of a railroad raises a

presumption of negligence, the company is not liable unless the injury is due to the running of the company's cars, and by some person in its employment. Talmadge *v.* Central of Georgia R. Co., 125 Ga. 400, 54 S. E. 128.

506. 1. **Where the Defendant's Rebuttal Is Not Convincing,** the question is one for the jury. Continental Ins. Co. *v.* Chicago, etc., R. Co., 97 Minn. 467, 107 N. W. 548.

2. Gulf, etc., R. Co. *v.* Blakeney-Stevens-Jackson Co., (Tex. Civ. App. 1908) 106 S. W. [illegible].

The Exclusion of Contradictory Evidence as to the size of the sparks emitted by the defendant's engine has been held to be error. Cincinnati, etc., R. Co. *v.* Cecil, (Ky. 1906) 90 S. W. 585.

3. Atchison, etc., R. Co. *v.* Geiser, 68 Kan. 281, 75 Pac. 68.

Evidence Held Insufficient to Rebut. — St. Louis, etc., R. Co. *v.* Coombs, 76 Ark. 132, 88 S. W. 595.

507. 3. Baltimore, etc., R. Co. *v.* O'Brien, 38 Ind. App. 143, 77 N. E. 1131; Babbitt *v.* Erie R. Co., 108 N. Y. App. Div. 74, 95 N. Y. Supp. 429.

508. 2. Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 507, 508; Polacsek *v.* Manhattan R. Co., (Supm. Ct. App. T.) 84 N. Y. Supp. 140.

Judicial Notice. — White *v.* New York Cent. etc., R. Co., 90 N. Y. App. Div. 356, 85 N. Y. Supp. 497.

3. Toledo, etc., R. Co. *v.* Parks, 163 Ind. 592, 72 N. E. 636; White *v.* New York Cent., etc., R. Co., 90 N. Y. App. Div. 356, 85 N. Y. Supp. 497.

4. Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528.

510. 4. Baltimore, etc., R. Co. *v.* O'Brien, 38 Ind. App. 143, 77 N. E. 1131; Cleveland, etc., R. Co. *v.* Hayes, 167 Ind. 454, 79 N. E. 448; Kansas City, etc., R. Co. *v.* Blaker, 68 Kan. 244, 75 Pac. 71; Gibbs *v.* St. Louis, etc., R. Co., 104 Mo. App. 276, 78 S. W. 835; Big River Lead Co. *v.* St. Louis, etc., R. Co., 123 Mo. App. 394, 101 S. W. 636; Tapley *v.* St. Louis, etc., R. Co., (Mo. App. 1908) 107 S. W. 470; Kearney County *v.* Chicago, etc., R. Co., (Neb. 1906) 108 N. W. 131; Babbitt *v.* Erie R. Co., 108 N. Y. App. Div. 74, 95 N. Y. Supp. 429, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 510; Lake Shore, etc., R. Co. *v.* Anderson, 27 Ohio Cir. Ct. 577. See also Trexler *v.* Baltimore, etc., R. Co., 28 Pa. Super. Ct. 198.

In Alabama G. S. R. Co. *v.* Sanders, 145 Ala. 449, 40 So. 402, it was held that proof of an unusual shower of sparks and a defective spark arrester established the plaintiff's *prima facie* case.

Evidence of the Finding of Cinders on the roof of the destroyed building the day before the fire is admissible to establish the railroad company's liability. Gorham Mfg. Co. *v.* New York, etc., R. Co., 27 R. I. 35, 60 Atl. 638.

511. 1. Babbitt *v.* Erie R. Co., 108 N. Y. App. Div. 74, 95 N. Y. Supp. 429; Texas, etc., R. Co. *v.* Prude, (Tex. Civ. App. 1905) 86 S. W. 1046, holding the evidence to be sufficient to show that the fire was due to a defective engine.

512. 2. See Tait *v.* Canadian Pac. R. Co., 16 Manitoba 391, 6 Can. R. Cas. 417.

6. Union Pac. R. Co. *v.* Fickenscher, 74 Neb. 497, 105 N. W. 39, 110 N. W. 561.

513. 1. Monte Ne R. Co. *v.* Phillips, 80 Ark. 292, 96 S. W. 1060; Big River Lead Co. *v.* St. Louis, etc., R. Co., 123 Mo. App. 394, 101 S. W. 636, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513.

2. Alabama G. S. R. Co. *v.* Clarke, 145 Ala. 459, 39 So. 816.

3. **Dispatcher's Train Sheets** when kept in the ordinary course of business are admissible to show what time trains had passed in the vicinity of the property destroyed. Big River Lead Co. *v.* St. Louis, etc., R. Co., 123 Mo. App. 394, 101 S. W. 636.

4. *Alabama.* — Southern R. Co. *v.* Johnson, 141 Ala. 575, 37 So. 919.

Arkansas. — St. Louis, etc., R. Co. *v.* Dawson, 77 Ark. 434, 92 S. W. 27.

California. — Clark *v.* San Francisco, etc., R. Co., 142 Cal. 614, 76 Pac. 507.

Indiana. — Toledo, etc., R. Co. *v.* Fenstermaker, 163 Ind. 534, 72 N. E. 561; Toledo, etc., R. Co. *v.* Parks, 163 Ind. 592, 72 N. E. 636.

Iowa. — Black *v.* Minneapolis, etc., R. Co., 122 Iowa 32, 96 N. W. 984.

Maine. — Dyer *v.* Maine Cent. R. Co., 99 Me. 195, 58 Atl. 994, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513.

Missouri. — Gibbs *v.* St. Louis, etc., R. Co., 104 Mo. App. 276, 78 S. W. 835; England *v.* Wabash R. Co., 114 Mo. App. 546, 90 S. W. 111.

Nebraska. — Union Pac. R. Co. *v.* Fickenscher, 74 Neb. 497, 105 N. W. 39, 110 N. W. 561; Union Pac. R. Co. *v.* Murphy, (Neb. 1906) 107 N. W. 757; Kearney County *v.* Chicago, etc., R. Co., (Neb. 1906) 108 N. W. 131.

New York. — Jacobs *v.* New York Cent., etc., R. Co., 107 N. Y. App. Div. 134, 94 N. Y. Supp. 954.

North Carolina. — Simpson *v.* Enfield Lumber Co., 133 N. Car. 95, 45 S. E. 469; Whitehurst *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 60 S. E. 648.

Texas. — Gulf, etc., R. Co. *v.* Blakeney-Stevens-Jackson Co., (Tex. Civ. App. 1908) 106 S. W. 1140, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513; Missouri, etc., R. Co. *v.* Keahy, 37 Tex. Civ. App. 330, 83 S. W. 1102; Fleming *v.* Pullen, (Tex. Civ. App. 1906) 97 S. W. 109.

Evidence Sufficient to Submit Case to Jury. — Colorado Midland R. Co. *v.* Snider, 38 Colo. 351, 88 Pac. 453.

Evidence Insufficient to Submit Case to Jury. — Atlantic Coast Line R. Co. *v.* Watkins, 104 Va. 154, 51 S. E. 172.

514. 2. Lake Erie, etc., R. Co. *v.* McFall, (Ind. 1904) 72 N. E. 552; Baltimore, etc., R. Co. *v.* O'Brien, 38 Ind. App. 143, 77 N. E. 1131.

3. **Evidence of the Communication of Fire** to cotton attached to the train, but not of the transmission of fire to places remote from the train, is inadmissible to prove the defendant

company liable for the loss of property situated near its road. Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 574, 53 S. E. 362.

Subsequent Fires.—Evidence of fire caused by the same engine a year after the fire in question, has been held inadmissible. Cheek *v.* Oak Grove Lumber Co., 134 N. Car. 225, 46 S. E. 488.

4. Barker *v.* Collins, (Del. 1906) 63 Atl. 686.

5. Whitehurst *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 60 S. E. 648; Shelly *v.* Philadelphia, etc., R. Co., 211 Pa. St. 160, 60 Atl. 581.

Evidence of the Emission of Sparks the day after the fire, is admissible. Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 574, 53 S. E. 362.

Use of Too Much Steam.—Where the negligence alleged consisted in the use of too much steam, some connection between the use of too much steam and the emission of sparks must be shown, other than mere evidence of other fires of the same engine. Louisville, etc., R. Co. *v.* Vinyard, 39 Ind. App. 628, 79 N. E. 384.

515. 2. Rule Does Not Apply to Trains of Another Company.— Norfolk, etc., R. Co. *v.* Briggs, 103 Va. 105, 48 S. E. 521.

3. *Iowa.* — Black *v.* **Minneapolis, etc., R. Co.,** 122 Iowa 32, 96 N. W. 984.

Kentucky. — Mills *v.* Louisville, etc., R. Co., 116 Ky. 309, 76 S. W. 29, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 515.

Missouri. — Gibbs *v.* St. Louis, etc., R. Co., 104 Mo. App. 276, 78 S. W. 835; Big River Lead Co. *v.* St. Louis, etc., R. Co., 123 Mo. App. 394, 101 S. W. 636; Tapley *v.* St. Louis, etc., R. Co., (Mo. App. 1908) 107 S. W. 470.

Montana. — Orient Ins. Co. *v.* Northern Pac. R. Co., 31 Mont. 502, 78 Pac. 1036.

New York. — Jacobs *v.* New York Cent., etc., R. Co., 107 N. Y. App. Div. 134, 94 N. Y. Supp. 954.

North Carolina. — Whitehurst *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 60 S. E. 648.

The Jury Should Determine whether it is a physical possibility that fire can be transmitted certain distances. Cincinnati, etc., R. Co. *v.* Cecil, (Ky. 1906) 90 S. W. 585.

516. 1. Whitehurst *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 60 S. E. 648.

4. Sprague *v.* Atchison, etc., R. Co., 70 Kan. 359, 78 Pac. 828; McFarland *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 450; Norfolk, etc., R. Co. *v.* Briggs, 103 Va. 105, 48 S. E. 521.

517. 3. Birmingham R., etc., Co. *v.* Hinton, 141 Ala. 606, 37 So. 635; Alabama G. S. R. Co. *v.* Sanders, 145 Ala. 449, 40 So. 402; St. Louis, etc., R. Co. *v.* Dawson, 77 Ark. 434, 92 S. W. 27; St. Louis, etc., R. Co. *v.* Thompson-Hailey Co., 79 Ark. 12, 94 S. W. 707; Cincinnati, etc., R. Co. *v.* Falconer, (Ky. 1906) 97 S. W. 727; Babbitt *v.* Erie R. Co., 108 N. Y. App. Div. 74, 95 N. Y. Supp. 429; Knott *v.* Cape Fear, etc., R. Co., 142 N. Car. 238, 55 S. E. 150; Gulf, etc., R. Co. *v.* Blakeney-Stevens-Jackson Co., (Tex. Civ. App. 1908) 106 S. W. 1140; Southern R. Co. *v.* Patterson, 105 Va. 6, 52 S. E. 694.

518. 3. Toledo, etc., R. Co. *v.* Star Flouring Mills Co., (C. C. A.) 146 Fed. 953; Cleveland, etc., R. Co. *v.* Loos, 38 Ind. App. 1, 77 N. E. 948; Jacobs *v.* New York Cent., etc., R. Co., 107 N. Y. App. Div. 134, 94 N. Y. Supp. 954; Babbitt *v.* Erie R. Co., 108 N. Y. App. Div. 74, 95 N. Y. Supp. 429.

Evidence of the Condition of Spark Arresters at various times during the month preceding the fire has been admitted. Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577.

520. 3. *California.* — McMahon *v.* Hetch-Hetchy, etc., Valleys R. Co., 2 Cal. App. 400, 84 Pac. 350.

Florida. — Florida East Coast R. Co. *v.* Welch, 53 Fla. 145, 44 So. 250.

Indian Territory. — St. Louis, etc., R. Co. *v.* Lawrence, 4 Indian Ter. 611, 76 S. W. 254.

Kentucky. — Chesapeake, etc., R. Co. *v.* Richardson, (Ky. 1907) 99 S. W. 642.

Mississippi. — Alabama, etc., R. Co. *v.* Ætna Ins. Co., 82 Miss. 770, 35 So. 304.

New York. — White *v.* New York Cent., etc., R. Co., 90 N. Y. App. Div. 356, 85 N. Y. Supp. 497.

Tennessee. — Louisville, etc., R. Co. *v.* Short, 110 Tenn. 713, 77 S. W. 936.

522. 4. Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; Cleveland, etc., R. Co. *v.* Loos, 38 Ind. App. 1, 77 N. E. 948; Manchester Assur. Co. *v.* Oregon R. Co., 46 Oregon 162, 79 Pac. 60; Shelly *v.* Philadelphia, etc., R. Co., 211 Pa. St. 160, 60 Atl. 581, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 520, 522; Fleming *v.* Pullen, (Tex. Civ. App. 1906) 97 S. W. 109.

Where the Loss Has Been Ascribed to Defects in a Particular Engine, evidence as to defects in other engines has been held to be irrelevant. Shelly *v.* Philadelphia, etc., R. Co., 211 Pa. St. 160, 60 Atl. 581.

524. 3. **Expert Testimony Is Admissible** to establish whether or not the fact that sparks were emitted a certain distance is evidence of defective appliances. Babbitt *v.* Erie R. Co., 108 N. Y. App. Div. 74, 95 N. Y. Supp. 429.

4. **Opinion as to Origin of Fire Admissible.** — See Alabama G. S. R. Co. *v.* Sanders, 145 Ala. 449, 40 So. 402.

An Opinion Not Based upon Facts, as to the origin of the fire, is inadmissible. Fleming *v.* Pullen, (Tex. Civ. App. 1906) 97 S. W. 109.

Distance of Communication of Sparks. — Evidence of an engineer as to whether a properly equipped engine could have communicated fire a certain distance is admissible. Kansas City, etc., R. Co. *v.* Blaker, 68 Kan. 244, 75 Pac. 71.

Impeachment of Witness. — A witness testifying to facts tending to exempt the defendant company from liability may be impeached by proof of other allegations inconsistent therewith. Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 574, 53 S. E. 362.

525. 2. An engineer may testify to what would constitute usual care in preventing fire while passing near combustibles. St. Louis, etc., R. Co. *v.* Dawson, 77 Ark. 434, 92 S. W. 27.

3. Toledo, etc., R. Co. *v.* Fenstermaker, 163 Ind. 534, 72 N. E. 561; Union Pac. R. Co. *v.* Murphy, (Neb. 1906) 107 N. W. 757; Ry-

lander *v.* Laursen, 124 Wis. 2, 102 N. W. 341. See also Clark *v.* San Francisco, etc., R. Co., 142 Cal. 614, 76 Pac. 507.

A Witness Cannot Testify to the Amount of Damages, but he may testify to the value of the property before and after buying. Baltimore Belt R. Co. *v.* Sattler, 102 Md. 595, 62 Atl. 1125.

526. 1. Norfolk, etc., R. Co. *v.* Briggs, 103 Va. 105, 48 S. E. 521.

Statement of Facts on Which Opinion Based Necessary.—Baltimore Belt R. Co. *v.* Sattler, 102 Md. 595, 62 Atl. 1125.

527. 1. St. Louis, etc., R. Co. *v.* Coombs, 76 Ark. 132, 88 S. W. 595.

528. 2. **Appliances Used by Other Railroads.** — An instruction charging a railroad company with responsibility only for the use of those appliances generally maintained by similar railroads, is erroneous. Rylander *v.* Laursen, 124 Wis. 2, 102 N. W. 341.

Evidence of Customary Negligence of Company's Employees Admissible to Prove Lack of Due Care. — Norwich Ins. Co. *v.* Oregon R. Co., 46 Oregon 133, 78 Pac. 1025.

529. 1. Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577.

Memoranda of Inspections Admissible. — Manchester Assur. Co. *v.* Oregon R. Co., 46 Oregon 162, 79 Pac. 60.

Rules of the Railroad Company are inadmissible to show warning to employees to avoid all risks. Continental Ins. Co. *v.* Chicago, etc., R. Co., 97 Minn. 467, 107 N. W 548.

2. **An Admission by the Plaintiff** that he was injured to an extent less than the amount he thereafter sues for, may be explained as intended for a compromise. Castner *v.* Chicago, etc., R. Co., 126 Iowa 581, 102 N. W. 499.

4. Big River Lead Co. *v.* St. Louis, etc., R. Co., 123 Mo. App. 394, 101 S. W. 636.

Instruction on Burden of Proof. — The court should not instruct on the burden of proof, but so frame the instructions as to indicate on whom it lies. Mills *v.* Louisville, etc., R. Co., 116 Ky. 309, 76 S. W. 29.

6. Atlantic Coast Line R. Co. *v.* Watkins, 104 Va. 154, 51 S. E. 172.

530. 1. Toledo, etc., R. Co. *v.* Fenstermaker, 163 Ind. 534, 72 N. E. 561; White *v.* New York Cent., etc., R. Co., 90 N. Y. App. Div. 356, 85 N. Y. Supp. 497; Chesapeake, etc., R. Co. *v.* Heath, 103 Va. 64, 48 S. E. 508.

2. North Fork Lumber Co. *v.* Southern R. Co., 143 N. Car. 324, 55 S. E. 781; Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324; St. Louis Southwestern R. Co. *v.* Connally, (Tex. Civ. App. 1906) 93 S. W. 206; St. Louis, etc., R. Co. *v.* Hooser, (Tex. Civ. App. 1906) 97 S. W. 708; Gulf, etc., R. Co. *v.* Blakeney-Stevens-Jackson Co., (Tex. Civ. App. 1908) 106 S. W. 1140.

The Burden of Proceeding, not the burden of proof, shifts after the plaintiff has established the defendant's negligence. St. Louis Southwestern R. Co. *v.* Moss, 37 Tex. Civ. App. 461, 84 S. W. 281.

The Fact that Proof of the Defendant's Negligence with respect to the operation of its railroad is insufficient, does not of itself relieve such defendant of responsibility. St. Louis, etc., R. Co. *v.* Lawrence, 4 Indian Ter. 611, 76 S. W. 254.

An Instruction that the defendant, after proof of its negligent originating of the fire, must show by a preponderance of evidence the exercise of due care, is erroneous. St. Louis, etc., R. Co. *v.* Hooser, (Tex. Civ. App. 1906) 97 S. W. 708.

3. Clark *v.* Kansas City, etc., R. Co., (C. C. A.) 129 Fed. 341; Southern R. Co. *v.* Patterson, 105 Va. 6, 52 S. E. 694.

531. 5. Monte Ne R. Co. *v.* Phillips, 80 Ark. 292, 96 S. W. 1060; Union Pac. R. Co. *v.* Fickenscher, (Neb. 1906) 110 N. W. 561; Chesapeake, etc., R. Co. *v.* Heath, 103 Va. 64, 48 S. E. 508; Atlantic Coast Line R. Co. *v.* Watkins, 104 Va. 154, 51 S. E. 172.

6. Chesapeake, etc., R. Co. *v.* Heath, 103 Va. 64, 48 S. E. 508.

532. 1. Gracy *v.* Atlantic Coast Line R. Co., 53 Fla. 350, 42 So. 903.

2. **Affirmative Instruction for Defendant Unsustainable, Where Facts Bear Out Defendant's Negligence.**—Birmingham R., etc., Co. *v.* Hinton, 141 Ala. 606, 37 So. 635.

Where the Evidence Is Evenly Balanced it is error to instruct the jury that they should find for the plaintiff. Shipman *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 535.

3. Brown Store Co. *v.* Chattahoochee Lumber Co., 121 Ga. 809, 49 S. E. 839; Big River Lead Co. *v.* St. Louis, etc., R. Co., 123 Mo. App. 394, 101 S. W. 636.

Reasonable Certainty Only Required.— Wick *v.* Tacoma Eastern R. Co., 40 Wash. 408, 82 Pac. 711.

533. 1. Baltimore Belt R. Co. *v.* Sattler, 102 Md. 595, 62 Atl. 1125.

Where a tenant whose meadow has been burned by a railroad company's engine, is adequately compensated by the company, the lessor of the premises who has been duly paid by the tenant cannot recover for such fire, no evidence appearing that the lands have been rendered unsalable. Meyn *v.* Chicago G. W. R. Co., (Iowa 1906) 109 N. W. 1096.

Evidence of the Total Stock and the returns from annual sales is admissible to determine the amount recoverable as damages for the loss of merchandise. Norfolk, etc., R. Co. *v.* Briggs, 103 Va. 105, 48 S. E. 521.

Where Exemplary Damages cannot be recovered, the ordinary rule of recovery applies. Clark *v.* San Francisco, etc., R. Co., 142 Cal. 614, 76 Pac. 507.

Prospective Profits.— Evidence of contracts may be given as an element entering into damages recoverable for the destruction of a factory. Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 574, 53 S. E. 362.

Extent of Damages Question for Jury.— Baltimore Belt R. Co. *v.* Sattler, 102 Md. 595, 62 Atl. 1125.

2. Carter *v.* Wabash R. Co., (Mo. App. 1907) 106 S. W. 611, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 533.

An Instruction which charges the jury to assess the value of the property at the time of loss is not bad because not referring to specific items of property. Big River Lead Co. *v.* St.

Louis, etc., R. Co., 123 Mo. App. 394, 101 S. W. 630.

535. 1. Quint *v.* Dimond, 147 Cal. 707, 82 Pac. 310; Texas, etc., R. Co. *v.* Prude, (Tex. Civ. App. 1905) 86 S. W. 1046.

Destruction of Crops. — The damages recoverable for the destruction of crops should be the market value of such crops less the cost of harvesting. Fleming *v.* Pullen, (Tex. Civ. App. 1906) 97 S. W. 109.

2. **Question for Jury.** — The jury may decide the grade of cotton destroyed in assessing damages, where the grade is unknown but the market value of the various grades is known. Alabama G. S. R. Co. *v.* Clarke, 145 Ala. 459, 39 So. 816.

538. 1. Cincinnati, etc., R. Co. *v.* Falconer, (Ky. 1906) 97 S. W. 727.

2. St. Louis Southwestern R. Co. *v.* Moss, 37 Tex. Civ. App. 461, 84 S. W. 281.

The value of household goods at the time they were destroyed, in connection with the length of time they were used, is the measure of damages for their loss. Colorado Midland R. Co. *v.* Snider, 38 Colo. 351, 88 Pac. 455.

3. Dodd *v.* Read, 81 Ark. 13, 98 S. W. 703; Louisville, etc., R. Co. *v.* Kohlruss, 124 Ga. 250, 52 S. E. 166; Carter *v.* Wabash R. Co., (Mo. App. 1907) 106 S. W. 611; Jackson *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1904) 78 S. W. 724; Texas, etc., R. Co. *v.* Prude, (Tex. Civ. App. 1905) 86 S. W. 1046.

539. 3. Black *v.* Minneapolis, etc., R. Co., 122 Iowa 32, 96 N. W. 984.

Rental value has been held to be ascertainable from the value of portions of the land not injured for rental purposes, and not from the rental value of similar lands in the vicinity. Black *v.* Minneapolis, etc., R. Co., 122 Iowa 32, 96 N. W. 984.

Injury to Meadow. — Knight *v.* Chicago, etc., R. Co., 122 Mo. App. 38, 98 S. W. 81.

Evidence showing that no injury resulted from the burning of another meadow at about the same time as the one in question, has been held admissible to show that no damages were sustained by fire. Castner *v.* Chicago, etc., R. Co., 126 Iowa 581, 102 N. W. 499.

4. **Rule Applies to Growing Crops.** — Carter *v.* Wabash R. Co., (Mo. App. 1907) 106 S. W. 611.

540. 2. The plaintiff may recover the market value of the property in its detached form, or he may recover for its value as part of the realty, in which case the measure of damages is the difference between the value of the land before and after the fire. Atchison, etc., R. Co. *v.* Geiser, 68 Kan. 281, 75 Pac. 68.

541. 1. Where growing trees have been partially destroyed, the measure of damages is the difference between their value before and after injury, with reference to their attachment to the land. Union Pac. R. Co. *v.* Murphy, (Neb. 1906) 107 N. W. 757.

542. 1. Kansas City, etc., R. Co. *v.* Blaker, 68 Kan. 244, 75 Pac. 71.

Maine. — Where a statute broadened the defendant's liability for fires so as to create a liability irrespective of its negligence, such company is not entitled to subrogation to the right of the insured against the company in cases of statutory liability, and not in cases where the defendant has become liable through its negligence. Dyer *v.* Maine Cent. R. Co., 99 Me. 195, 58 Atl. 994.

543. 7. Louisville, etc., R. Co. *v.* Sullivan Timber Co., 138 Ala. 379, 35 So. 327; Knight *v.* Chicago, etc., R. Co., 122 Mo. App. 38, 98 S. W. 81.

546. 3. Knight *v.* Chicago, etc., R. Co., 122 Mo. App. 38, 98 S. W. 81.

4. Blue *v.* Red Mountain R. Co., 6 Can. R. Cas. 219, 12 British Columbia 460.

Where the verdict is for a sum clearly in excess of the proven worth of the property destroyed, it cannot be sustained. Dodd *v.* Read, 81 Ark. 13, 98 S. W. 703.

5. **In California, Treble Damages Are Allowed** for a negligent setting out of fire and permitting it to escape. Clark *v.* San Francisco, etc., R. Co., 142 Cal. 614, 76 Pac. 507.

548. 2. Black *v.* Minneapolis, etc., R. Co., 122 Iowa 32, 96 N. W. 984.

549. 2. **Where the Complaint Omits to Demand Interest** the jury may grant it upon the amount of damages assessed for the destruction of the plaintiff's property. St. Louis, etc., R. Co. *v.* Hooser, (Tex. Civ. App. 1906) 97 S. W. 708.

FISH AND FISHERIES.

556. 1. Percy Summer Club *v.* Astle, 145 Fed. 53; Vroom *v.* Tilly, 184 N. Y. 168, 77 N. E. 24.

3. Hartman *v.* Tresise, 36 Colo. 146, 84 Pac. 685; Sherwood *v.* Stephens, 13 Idaho 399, 90 Pac. 345; Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; Windsor *v.* State, 103 Md. 611, 64 Atl. 288; *Ex p.* Fritz, 86 Miss. 210, 38 So. 722; Raymond *v.* Kibbe, (Tex. Civ. App. 1906) 95 S. W. 727, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 556.

4. Percy Summer Club *v.* Astle, 145 Fed. 53; Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; Windsor *v.* State, 103 Md. 611, 64 Atl. 288; *Ex p.* Fritz, 86 Miss. 210, 38 So. 722.

Title Incomplete until Tax Imposed by Law Paid. — Raymond *v.* Kibbe, (Tex. Civ. App. 1906) 95 S. W. 727.

5. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; Vroom *v.* Tilly, 184 N. Y. 168, 77 N. E. 24.

6. State *v.* Sutton, 139 N. Car. 574, 51 S. E. 1012.

558. 2. "**A Right to Employ Within a Particular Stretch of Water** lawful means for the taking of fish which may be found there." Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065, holding further that the right of fishery is a *profit à prendre*, and distinguishing "fishery" from "fishing place."

559. 2. Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

560. 6. See Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; Burns *v.* Crescent Gun, etc., Club, 116 La. 1038, 41 So. 240.

In Canada it has been held that a grant from the French king, of fishing along the frontage of the seashore, did not pass to the grantee the exclusive right of fishing on the foreshore,

Cabot *v.* Atty.-Gen. (1907) A. C. 511, *affirming* 15 Quebec K. B. 124.

563. 1. Percy Summer Club *v.* Astle, 145 Fed. 53; Cain *v.* Simonson, (Ala. 1905) 39 So. 571; Newport News Shipbuilding, etc., Co. *v.* Jones, 105 Va. 503, 54 S. E. 314.

564. 1. Vroom *v.* Tilly, 184 N. Y. 168, 77 N. E. 24; Newport News Shipbuilding, etc., Co. *v.* Jones, 105 Va. 503, 54 S. E. 314.

2. Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065; Newport News Shipbuilding, etc., Co. *v.* Jones, 105 Va. 503, 54 S. E. 314.

4. Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

565. 1. Hartman *v.* Tresise, 36 Colo. 146, 84 Pac. 685, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 565; Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

2. Whitehead *v.* Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306; Newport News Shipbuilding, etc., Co. *v.* Jones, 105 Va. 503, 54 S. E. 314.

3. Whitehead *v.* Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306.

566. 5. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

6. Cain *v.* Simonson, (Ala. 1905) 39 So. 571; Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065; Newport News Shipbuilding, etc., Co. *v.* Jones, 105 Va. 503, 54 S. E. 314.

567. 1. Vroom *v.* Tilly, 184 N. Y. 168, 77 N. E. 24; Whitehead *v.* Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306.

3. Vroom *v.* Tilly, 184 N. Y. 168, 77 N. E. 24.

Misdemeanor to Take Oysters from Private Bed Without Owner's Consent. — Houston *v.* State, 124 Ga. 417, 52 S. E. 757.

5. Cain *v.* Simonson, (Ala. 1905) 39 So. 571; State *v.* The Greyhound, 79 Conn. 697, 66 Atl. 511; Windsor *v.* State, 103 Md. 611, 64 Atl. 288; Vroom *v.* Tilly, 184 N. Y. 168, 77 N. E. 24; Whitehead *v.* Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306; Newport News Shipbuilding, etc., Co. *v.* Jones, 105 Va. 503, 54 S. E. 314.

568. 2. State *v.* The Greyhound, 79 Conn. 697, 66 Atl. 511.

5. Vroom *v.* Tilly, 184 N. Y. 168, 77 N. E. 24.

569. 1. Hartman *v.* Tresise, 36 Colo. 146, 84 Pac. 685, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 569; Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783.

570. 3. Cain *v.* Simonson, (Ala. 1905) 39 So. 571; Sherwood *v.* Stephens, 13 Idaho 399, 90 Pac. 345.

4. Sherwood *v.* Stephens, 13 Idaho 399, 90 Pac. 345, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 570; State *v.* Sutton, 139 N. Car. 574, 51 S. E. 1012.

6. Sherwood *v.* Stephens, 13 Idaho 399, 90 Pac. 345, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 570; Windsor *v.* State, 103 Md. 611, 64 Atl. 288; Daniels *v.* Homer, 139 N. Car. 219, 51 S. E. 992.

7. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; **Burns *v.* Crescent Gun, etc., Club, 116** La. 1038, 41 So. 249; Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

572. 4. Sherrill *v.* State, 84 Ark. 470, 106 S. W. 967; Hartman *v.* Tresise, 36 Colo. 146, 84 Pac. 685; Sherwood *v.* Stephens, 13 Idaho 399, 90 Pac. 345; Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; State *v.* Denhardt, 129 Iowa 135, 105 N. W. 385; Windsor *v.* State, 103 Md. 611, 64 Atl. 288; People *v.* Lassen, 142 Mich. 597, 106 N. W. 143; State *v.* Tower Lumber Co., 100 Minn. 38, 110 N. W. 254; Daniels *v.* Homer, 139 N. Car. 219, 51 S. E. 992; State *v.* Sutton, 139 N. Car. 574, 51 S. E. 1012; Raymond *v.* Kibbe, (Tex. Civ. App. 1906) 95 S. W. 727; State *v.* Lewis, 45 Wash. 475, 88 Pac. 940.

573. 1. Sherwood *v.* Stephens, 13 Idaho 399, 90 Pac. 345; Windsor *v.* State, 103 Md. 611, 64 Atl. 288; State *v.* Sutton, 139 N. Car. 576, 51 S. E. 1012, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 573.

2. Sherrill *v.* State, 84 Ark. 470, 106 S. W. 967; Windsor *v.* State, 103 Md. 611, 64 Atl. 288; State *v.* Tower Lumber Co., 100 Minn. 38, 110 N. W. 254; Daniels *v.* Homer, 139 N. Car. 219, 51 S. E. 992; State *v.* Sutton, 139 N. Car. 574, 51 S. E. 1012; Raymond *v.* Kibbe, (Tex. Civ. App. 1906) 95 S. W. 727; Whitehead *v.* Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306.

3. State *v.* The Greyhound, 79 Conn. 697, 66 Atl. 511, holding, however, that the statute does not authorize seizure of a vessel for dredging on private grounds.

574. 1. Daniels *v.* Homer, 139 N. Car. 219, 51 S. E. 992, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 573 [574].

4. Com. *v.* Sisson, 189 Mass. 247, 75 N. E. 619; *Ex p.* Fritz, 86 Miss. 210, 38 So. 722; State *v.* Sheehan, (R. I. 1907) 66 Atl. 66.

Restricting the Use of a Stream does not deprive of property without due process of law. State *v.* Tower Lumber Co., 100 Minn. 38, 110 N. W. 254.

7. Windsor *v.* State, 103 Md. 611, 64 Atl. 288; People *v.* Lassen, 142 Mich. 597, 106 N. W. 143; *Ex p.* Fritz, 86 Miss. 210, 38 So. 722; State *v.* Nergaard, 124 Wis. 414, 102 N. W. 899.

575. 3. Sherwood *v.* Stephens, 13 Idaho 399, 90 Pac. 345; State *v.* Wallace, 102 Me. 229, 66 Atl. 476; Daniels *v.* Homer, 139 N. Car. 219, 51 S. E. 992.

5. Com. *v.* Sisson, 189 Mass. 247, 75 N. E. 619; *Ex p.* Fritz, 86 Miss. 210, 38 So. 722; Clayton *v.* Peirse, (1904) 1 K. B. 424.

As to the Formation of a Fishery District under the English Salmon Fishery Acts, see Moses *v.* Iggo, (1906) 1 K. B. 516.

6. People *v.* Worden, 187 N. Y. 322, 79 N. E. 1[illegible]

7. State *v.* Wallace, 102 Me. 229, 66 Atl. 476.

576. 2. Sherwood *v.* Stephens, 13 Idaho 399, 90 Pac. 345; *Ex p.* Fritz, 86 Miss. 210, 38 So. 722; State *v.* Sutton, 139 N. Car. 576, 51 S. E. 1012, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576.

3. Percy Summer Club *v.* Astle, 145 Fed. 53; Sherrill *v.* State, 84 Ark. 470, 106 S. W. 967; Hartman *v.* Tresise, 36 Colo. 146, 84 Pac. 85;

State v. Shaw, 11 Idaho [illegible] Pac. 630; Sherwood v. Stephens, 13 Idaho 399, 90 Pac. 345; Weber v. State, 103 Md. 611, 64 Atl. 288; People v. Lassen, 142 Mich. 597, 106 N. W. 143; *Ex p.* Fritz, 86 Miss. 210, 38 So. 722; People v. Worden, 187 N. Y. 322, 79 N. E. 1013; People v. Booth, 105 N. Y. App. Div. 184, 93 N. Y. Supp. 425; People v. Wolf, 112 N. Y. App. Div. 449, 98 N. Y. Supp. 381; State v. Sutton, 139 N. Car. 574, 51 S. E. 1012, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576; Daniels v. Homer, 139 N. Car. 219, 51 S. E. 992; State v. Lewis, 45 Wash. 475, 88 Pac. 940; State v. Nergaard, 124 Wis. 414, 102 N. W. 899; Raymond v. Kibbe, (Tex. Civ. App. 1906) 95 S. W. 727.

For the Construction of the Peculiar Provisions of Certain Statutes, see Prosser v. Cadogan, 94 L. T. N. S. 777; Com. v. Beilstein, 29 Pa. Super. Ct.

Meadow Stream Tributary of River — English Salmon Fishery Act.—See Moses v. Iggo, (1906) 1 K. B. 516.

Fishing with a Rod and a Hand Line at the same time is not a violation of the *Pennsylvania* statute forbidding fishing for game fish except with rod or with hand line. Com. v. Bercaw, 30 Pa. Super. Ct. 335.

577. 1. Richardson v. State, 77 Ark. 321, 91 S. W. 758; Rowe v. State, (Ark. 1902) 103 S. W. 613; State v. Denhardt, 129 Iowa 135, 105 N. W. 385; People v. Neal, 143 Mich. 271, 106 N. W. 857.

578. 3. Owners of Fixed Engines — English Statutes. — See Phyn v. Kenyon, Sc. Ct. of Just. 7 F. 47.

4. Hall v. State, (Tex. Crim. 1907) 106 S. W. 149.

579. 1. State v. Dolan, 11 Idaho 256, 81 Pac. 640; Sherwood v. Stephens, 13 Idaho 399, 90 Pac. 345; People v. Lassen, 142 Mich. 597, 106 N. W. 143; State v. Sutton, 139 N. Car. 576, 51 S. E. 1012, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579; People v. Booth, 105 N. Y. App. Div. 184, 93 N. Y. Supp. 425; People v. Wolf, 112 N. Y. App. Div. 449, 98 N. Y. Supp. 381; State v. Nergaard, 124 Wis. 414, 102 N. W. 899.

2. State v. Nergaard, 124 Wis. 414, 102 N. W. 899.

3. Sherrill v. State, 84 Ark. 470, 106 S. W. 967; Windsor v. State, 103 Md. 611, 64 Atl. 288; State v. Nergaard, 124 Wis. 414, 102 N. W. 899.

8. For the Construction of Various Grants, see Carter v. Hawaii, 200 U. S. 255, 26 U. S. Sup. Ct. 248; Vroom v. Tilly, 184 N. Y. 168, 77 N. E. 24; Hume v. Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

580. 7. Vroom v. Tilly, 184 N. Y. 168, 77 N. E. 24.

581. 1. Prescriptive Right to Pollute Oyster Beds Not Acquirable. — Foster v. Warblington Urban Council, 69 J. P. 42, 21 Times L. Rep. [illegible]

3. Carter v. Hawaii, 200 U. S. 255, 26 U. S. Sup. Ct. 248; Hume v. Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

582. 2. Schulte v. Warren, 218 Ill. 108, 75 N. E. 783.

3. A Prescriptive Right to Discharge Sawdust into a Stream cannot be acquired when it is injurious to the fish therein. Com. v. Sisson, 189 Mass. 247, 75 N. E. 619.

583. 1. U. S. v. Winans, 198 U. S. 371, 25 U. S. Sup. Ct. 662; State v. Lewis, 45 Wash. 475, 88 Pac. 940.

3. Hume v. Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583.

584. 1. Hume v. Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583.

2. Hume v. Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584.

3. Hartman v. Tresise, 36 Colo. 146, 84 Pac. 685; Schulte v. Warren, 218 Ill. 108, 75 N. E. 783.

4. See Whittaker v. Stangvick, 100 Minn. 389, 111 N. W. 295, *obiter, citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584.

5. Cain v. Simonson, (Ala. 1905) 39 So. 571; State v. The Greyhound, 79 Conn. 697, 66 Atl. 511; Vroom v. Tilly, 184 N. Y. 168, 77 N. E. 24.

585. 1. Hilborn v. Smith, 148 Mich. 474, 111 N. W. 1082.

4. Pollution of Oyster Beds by Sewage Actionable. — See Foster v. Urban Dist. Council, (1906) 1 K. B. 648.

5. Whitehead v. Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306.

7. State v. Nergaard, 124 Wis. 414, 102 N. W. 899.

8. Cain v. Simonson, (Ala. 1905) 39 So. 571; Schulte v. Warren, 218 Ill. 108, 75 N. E. 783; Burns v. Crescent Gun, etc., Club, 116 La. 1038, 41 So. 249; Johansen v. Mulligan, 41 Wash. 379, 83 Pac. 417.

9. Percy Summer Club v. Astle, 145 Fed. 53.

586. 1. Com v. Sisson, 189 Mass. 247, 75 N. E. 619.

4. Daniels v. Homer, 139 N. Car. 219, 51 S. E. 992.

10. People v. Morrison, 124 N. Y. App. Div. 10, 108 N. Y. Supp. 262.

12. *Alaska.* — U. S. v. Doo-Noch-Keen, 2 Alaska 624.

Arkansas. — Richardson v. State, 77 Ark. 321, 91 S. W. 758; Rowe v. State, (Ark. 1902) 103 S. W. 613; Sherrill v. State, 84 Ark. 470, 106 S. W. 967.

Connecticut. — State v. The Greyhound, 79 Conn. 697, 66 Atl. 511.

Georgia. — Houston v. State, 124 Ga. 417, 52 S. E. 757; Williams v. State, 2 Ga. App. 629, 58 S. E. 1071.

Iowa. — State v. Denhardt, 129 Iowa 135, 105 N. W. 385.

Maine. — State v. Wallace, 102 Me. 229, 66 Atl. 476.

Maryland. — Windsor v. State, 103 Md. 611, 64 Atl. 288.

Michigan. — People v. Neal, 143 Mich. 271, 106 N. W. 857.

New York. — People v. Worden, 187 N. Y. 322, 79 N. E. 1013; People v. Warner, 116 N. Y. App. Div. 863, 102 N. Y. Supp. 362; People v. Morrison, 124 N. Y. App. Div. 10, 108 N. Y. Supp. 262.

North Carolina. — Daniels v. Homer, 139 N.

Car. 219, 51 S. E. 992; State *v.* Sutton, 139 N. Car. 574, 51 S. E. 1012.

Oregon. — *Ex p.* Desjeiro, 152 Fed. 1004.

Texas. — Raymond *v.* Kibbe, (Tex. Civ. App. 1906) 95 S. W. 727; Hall *v.* State, (Tex. Crim. 1907) 106 S. W. 149.

Virginia. — Jernigan *v.* Com., 104 Va. 850, 52 S. E. 361; Whitehead *v.* Cape Henry Syndicate, 105 Va. 463, 54 S. E. 306.

A Gill Net is a species of trap net within the *Michigan* statute prohibiting the setting of trap nets on another's fishing ground. Hilborn *v.* Smith, 148 Mich. 474, 111 N. W. 1082.

Floating Logs Where the Fish C[illegible] Were Gathering Spawn has been held to be unlawful. State *v.* Tower Lumber Co., 100 Minn. 38, 110 N. W. 254.

588. **1. Idaho — Misdemeanor.** State *v.* Dolan, 11 Idaho 256, 81 Pac. 640.

2. "Angling" Not Larceny within the Statute. — Barnard *v.* Roberts, 96 L. T. N. S. 648.

3. See Com. *v.* Sisson, 189 Mass. 247, 75 N. E. 619; Minard *v.* Dover, etc., Gas Co., (N. J. 1908) 68 Atl. 910.

Maliciously Placing Lime in Salmon Stream — English Statute. — See Rex *v.* Vasey, (1905) 2 K. B. 748.

4. Jernigan *v.* Com., 104 Va. 850, 52 S. E. [illegible]

589. **1.** State *v.* Sheehan, (R. I. 1907) 66 Atl. 66; State *v.* Nergaard, 124 Wis. 414, 102 N. W. 899.

Selling, Transporting, or Having in Possession fish during the close season is a penal offense in *New York*, even though the fish is brought from without the state. People *v.* Booth, 105 N. Y. App. Div. 184, 93 N. Y. Supp. 425.

2. Windsor *v.* State, 103 Md. 611, 64 Atl. 288.

6. State *v.* Giles, 101 Me. 349, 64 Atl. 619; State *v.* Brewer, 102 Me. 293, 66 Atl. 642.

Similar Statute in Rhode Island. — State *v.* Sheehan, (R. I. 1907) 66 Atl. 66.

FIXTURES.

596. **1.** Blue *v.* Gunn, 114 Tenn. 414, 87 S. W. 408, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 596.

Fixtures Stand upon the Boundary Line between Real and Personal Property. — Baringer *v.* Evenson, 127 Wis. 36, 106 N. W. 801.

597. **2.** *In re* Rodgers, 143 Fed. 594; Humes *v.* Higman, 145 Ala. 215, 40 So. 128; State Security Bank *v.* Hoskins, 130 Iowa 339, 106 N. W. 764; First Commercial, etc., Bank *v.* Trenton Milling Co., 144 Mich. 188, 107 N. W. 1107; Dehring *v.* Beck, 146 Mich. 706, 110 N. W. 56; Frank Adam Electric Co. *v.* Gottlieb, 112 Mo. App. 226, 86 S. W. 901; McLain Invest. Co. *v.* Cunningham, 113 Mo. App. 519, 87 S. W. 605; Lynn *v.* Waldron, 38 Wash. 82, 80 Pac. 292; Filley *v.* Christopher, 39 Wash. 22, 80 Pac. 834; E. M. Fish Co. *v.* Young, 127 Wis. 149, 106 N. W. 795; Baringer *v.* Evenson, 127 Wis. 36, 106 N. W. 801.

Mere Intention Insufficient to Make Chattel Part of Freehold. — State *v.* Martin, 141 N. Car. 832, 53 S. E. 874.

599. **1.** *In re* Rodgers, 143 Fed. 594; State Security Bank *v.* Hoskins, 130 Iowa 339, 106 N. W. 764.

600. **2.** State *v.* Martin, 141 N. Car. 832, 53 S. E. 874; Blue *v.* Gunn, 114 Tenn. 414, 87 S. W. 408, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 600; Filley *v.* Christopher, 39 Wash. 22, 80 Pac. 834; Baringer *v.* Evenson, 127 Wis. 36, 106 N. W. 801.

602. **2.** Byrne *v.* Werner, 138 Mich. 328, 101 N. W. 555, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 602.

3. State *v.* Martin, 141 N. Car. 832, 53 S. E. 874.

603. **1.** Liscombe Falls Gold Min. Co. *v.* Bishop, 35 Can. Sup. Ct. 539, 2 Ann. Cas. 735.

604. **1.** Eisenhauer *v.* Quinn, (Mont. 1907) 93 Pac. 38, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 604.

605. **2.** Blue *v.* Gunn, 114 Tenn. 414, 87 S. W. 408, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

607. **2.** State Security Bank *v.* Hoskins, 130 Iowa 339, 106 N. W. 764; McLain Invest. Co. *v.* Cunningham, 113 Mo. App. 519, 87 S. W. 605; E. M. Fish Co. *v.* Young, 127 Wis. 149, 106 N. W. 795.

3. Parker *v.* Blount County, 148 Ala. 275, 41 So. 923.

608. **1.** Anne Arundel County *v.* Baltimore Sugar Refining Co., 99 Md. 481, 58 Atl. 211, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608.

609. **2.** Humes *v.* Higman, 145 Ala. 215, 40 So. 128; State *v.* Martin, 141 N. Car. 832, 53 S. E. 874; Filley *v.* Christopher, 39 Wash. 22, 80 Pac. 834; Baringer *v.* Evenson, 127 Wis. 36, 106 N. W. 801.

612. **1.** McLain Invest. Co. *v.* Cunningham, 113 Mo. App. 519, 87 S. W. 605.

614. **3.** Anne Arundel County *v.* Baltimore Sugar Refining Co., 99 Md. 481, 58 Atl. 211, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 614.

616. **2.** Manson *v.* Dayton, (C. C. A.) 153 Fed. 258, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 616.

622. **1.** *In re* Rodgers, 143 Fed. 594.

624. **2.** Ozark *v.* Adams, 73 Ark. 227, 83 S. W. 920, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624.

628. **1.** *In re* Allen, (1907) 1 Ch. 575; Union Bank, etc., Co. *v.* Fred. W. Wolf Co., 114 Tenn. 255, 86 S. W. 310, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 628.

635. **1.** Best Mfg. Co. *v.* Cohn, (Cal. App. 1906) 86 Pac. 829.

638. **1.** *In re* Hulse, (1905) 1 Ch. 406, 2 Ann. Cas. 404.

639. **4.** McLain Invest. Co. *v.* Cunningham, 113 Mo. App. 519, 87 S. W. 605.

642. **2.** O. L. Shafter Estate Co. *v.* Alvord, 2 Cal. App. 602, 84 Pac. 279; Bush *v.* Havird, 12 Idaho 352, 86 Pac. 529, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 642.

643. **1.** Bergh *v.* Herring-Hall-Marvin Safe Co., (C. C. A.) 136 Fed. 368, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 643; O. L. Shafter Estate Co. *v.* Alvord, 2 Cal. App. 602, 84 Pac. 279; Bush *v.* Havird, 12 Idaho 352, 86 Pac. 529.

647. **1. Electric Chandelier Is Domestic Fixture and [illegible] removable by tenant.** Raymond *v.* Strickland, 124 Ga. 504, 52 S. E. 619.

Steam Boiler Placed in Dwelling for Heating Purposes Not Fixture. — McLain Invest. Co. *v.* Cunningham, 113 Mo. App. 519, 87 S. W. 605.

648. 1. O. L. Shafter Estate Co. *v.* Alvord, 2 Cal. App. 602, 84 Pac. 279; Raymond *v.* Strickland, 124 Ga. 504, 52 S. E. 619; Bush *v.* Havird, 12 Idaho 352, 86 Pac. 529.

649. 1. A Tenant Holding Over with His **Landlord's Consent** has the right to remove his fixtures. Crandall Invest. Co. *v.* Ulyatt, (Colo. 1907) 90 Pac. 59.

651. 3. **Tenant's Right Not Lost Where Removal Prevented by Landlord.** — Raymond *v.* Strickland, 124 Ga. 504, 52 S. E. 619.

4. Wadman *v.* Burke, 147 Cal. 351, 81 Pac. 1082.

Renewal of Lease Does Not Terminate Right of Removal. — Bergh *v.* Herring-Hall-Marvin Safe Co., (C. C. A.) 136 Fed. 368.

653. 1. Lynn *v.* Waldron, 38 Wash. 82, 80 Pac. 292.

3. **Mortgagee's Rights No Greater than Tenant's.** — Bush *v.* Havird, 12 Idaho 352, 86 Pac. 529, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

656. 1. Churchill *v.* More, 4 Cal. App. 219, 88 Pac. 290.

662. 4. Young *v.* Chandler, 102 Me. 251, 66 Atl. 539.

663. 1. Wolff *v.* Sampson, 123 Ga. 400, 51 S. E. 335, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 662 [663]; Brigham *v.* Overstreet, 128 Ga. 447, 57 S. E. 484; Bullard *v.* Hopkins, 128 Iowa 703, 105 N. W. 197; Byrne *v.* Werner, 138 Mich. 328, 101 N. W. 555.

4. Reynolds *v.* Ashby, (1904) A. C. 466; Prudential Ins. Co. *v.* Guild, (N. J. 1906) 64 Atl. 694.

664. 3. **A Mortgage of a Brewery** is a mortgage on all the machinery therein. Dehring *v.* Beck, 146 Mich. 706, 110 N. W. 56.

A Sawmill and Machinery Are Fixtures. — Humes *v.* Higman, 145 Ala. 215, 40 So. 128.

666. 1. **A Sugar-cane Mill Becomes a Fixture.** — Brigham *v.* Overstreet, 128 Ga. 447, 57 S. E. 484.

Gasoline Engine on a Farm for the purpose of grinding feed is a fixture. State Security Bank *v.* Hoskins, 130 Iowa 339, 106 N. W. 764.

2. **Gas Ranges** are so of kin to fixtures that they may be treated by agreement as of realty. Wynne *v.* Friedman, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 616, 96 N. Y. Supp. 838.

667. 3. Kirk *v.* Crystal, 118 N. Y. App. Div. 32, 103 N. Y. Supp. 17.

6. **Timber Cut and Piled on Land** does not pass on a sale of the land. Longino *v.* Wester, (Tex. Civ. App. 1905) 88 S. W. 445.

Finishing Material Stored in a Mortgaged Building does not pass as a part of the realty to a purchaser of the property on foreclosure. Blue *v.* Gunn, 114 Tenn. 414, 87 S. W. 408.

669. 3. **Deed May Contain Reservation of Iron Safe.** — Parker *v.* Blount County, 148 Ala. 275, 41 So. 923.

4. Brunswick Constr. Co. *v.* Burden, 116 N. Y. App. Div. 468, 101 N. Y. Supp. 716.

672. 1. Union Invest. Co. *v.* McKinney, 35 Ind. App. 594, 74 N. E. 1001, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 672.

675. 3. **Mining Machinery** for testing mining ores, which may be removed without injury to the freehold, is a trade fixture and subject to seizure and sale under an execution. Liscombe Falls Gold Min. Co. *v.* Bishop, 35 Can. Sup. Ct. 539, 2 Ann. Cas. 735.

681. 1. Eisenbauer *v.* Quinn, (Mont. 1907) 93 Pac. 38, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 681.

3. Bollinger *v.* McMinn, (Tex. Civ. App. 1907) 104 S. W. 1079.

FLAT.

682. 3. **Flat — Tenement.** — In Lignot *v.* Jaekle, (N. J. 1906) 65 Atl. 221, the court in passing upon the term ***flat***, as used in a building restriction, said: "A ***flat***, etymologically, is a floor in a building. Later the use of the word became restricted to a floor completely equipped for housekeeping purposes. A building containing such floors so equipped, each of which is called a ***flat***, is itself termed a ***flat***, but, more properly speaking, should be termed a '***flat*** house.'"

FLEE.

682. 6. **Extradition.** — See *In re* Bruce, 132 Fed. 390, *affirmed* 136 Fed. 1022, 69 C. C. A. 342.

FLOODS.

687. 3. Cederburg *v.* Dutra, 3 Cal. App. 572, 86 Pac. 839; St. Louis Merchants' Bridge Terminal R. Assoc. *v.* Schultz, 226 Ill. 409, 80 N. E. 879; New Jersey, etc., R. Co. *v.* Tutt, 168 Ind. 205, 80 N. E. 420; Hull *v.* Harker, 130 Iowa 190, 106 N. W. 629; Stimson *v.* Brookline, (Mass. 1908) 83 N. E. 893; Webb *v.* Carter, 121 Mo. App. 147, 98 S. W. 776; Chicago, etc., R. Co. *v.* Groves, (Okla. 1908) 93 Pac. 755.

5. Brinegar *v.* Copass, (Neb. 1906) 109 N. W. 173; Clark *v.* Patapsco Guano Co., 144 N. Car. 64, 56 S. E. 858, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687; Price *v.* Oregon R. Co., 47 Oregon 350, 83 Pac. 843.

Flood Water Considered Part of Surface Water. — Cole *v.* Missouri, etc., R. Co., (Okla. 1908) 94 Pac. 540.

Contra. — Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166.

688. 1. St. Louis, etc., R. Co. *v.* Saunders, (Ark. 1908) 107 S. W. 194.

2. Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166.

The obstruction of a watercourse causing injury is actionable, no matter how carefully the obstruction was constructed. Webb *v.* Carter, 121 Mo. App. 147, 98 S. W. 776.

3. **Duty to Study Habits of Stream.** — Perrine *v.* Pennsylvania R. Co., 71 N. J. L. 644, 62 Atl. 702; Fairbury Brick Co. *v.* Chicago, etc., R. Co., (Neb. 1907) 113 N. W. 535.

4. Missouri, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1906) 93 S. W. 198.

689. 1. **Dams.** — Allen *v.* Thornapple Electric Co., 144 Mich. 370, 108 N. W. 79; Neumeister *v.* Goddard, (Wis. 1907) 113 N. W. 733.

690. 2. *Alabama.* — Southern R. Co. *v.* Leard, 146 Ala. 340, 39 So. 449.

Iowa. — Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958.

Kansas. — Atchison, etc., R. Co. *v.* Herman, 74 Kan. 77, 85 Pac. 817.

Kentucky. — Wallingford *v.* Maysville, etc., R. Co., (Ky. 1908) 107 S. W. 781.

Missouri. — Johnson *v.* Gray's Point Terminal R. Co., 111 Mo. App. 378, 85 S. W. 941.

New York. — Cooper *v.* New York, etc., R. Co., 122 N. Y. App. Div. 128, 106 N. Y. Supp. 611.

Oregon. — Price *v.* Oregon R. Co., 47 Oregon 355, 83 Pac. 843, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 690.

South Carolina. — Lampley *v.* Atlantic Coast Line R. Co., 71 S. Car. 156, 50 S. E. 773.

Texas. — Baugh *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 958; Gulf, etc., R. Co. *v.* Harbison, (Tex. Civ. App. 1905) 88 S. W. 452; Gulf, etc., R. Co. *v.* Oates, (Tex. Civ. App. 1905) 88 S. W. 457; Gulf, etc., R. Co. *v.* Wetherly, (Tex. Civ. App. 1905) 88 S. W. 456; International, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1906) 97 S. W. 1081; Missouri, etc., R. Co. *v.* Crow, (Tex. Civ. App. 1906) 95 S. W. 743; Moss *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 221; San Antonio, etc., R. Co. *v.* Dickson, (Tex. Civ. App. 1906) 93 S. W. 481; San Antonio, etc., R. Co. *v.* Kiersey, 98 Tex. 590, 86 S. W. 744.

Texas Statute Renders Railroad Liable for Overflow Although Not Negligent. — St. Louis Southwestern R. Co. *v.* Baer, (Tex. Civ. App. 1905) 86 S. W. 653; Siewerssen *v.* Harris County, (Tex. Civ. App. 1905) 91 S. W. 333.

691. 1. Graham *v.* Chicago, etc., R. Co., 39 Ind. App. 294, 77 N. E. 57; Branson *v.* New York Cent., etc., R. Co., 111 N. Y. App. Div. 737, 97 N. Y. Supp. 788.

4. Prime *v.* Yonkers, 116 N. Y. App. Div. 699, 102 N. Y. Supp. 118.

692. 1. Ft. Smith Light, etc., Co. *v.* Soard, 79 Ark. 388, 96 S. W. 1021; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1907) 103 S. W. 709.

694. 2. Lindsey *v.* Southern R. Co., (Ala. 1907) 43 So. 139; Louisville, etc., R. Co. *v.* Whitsell, (Ky. 1907) 101 S. W. 334; Cook *v.* Seaboard Air Line R. Co., 107 Va. 32, 57 S. E. 564.

A railroad company constructing its road under authority of law is not liable for consequential damages. Gordon *v.* Ellensville, etc., R. Co., 119 N. Y. App. Div. 797, 104 N. Y. Supp. 702.

No liability if damage caused by extraordinary rains and high water which could not have been prevented by ordinary care and prudence. Eastern Texas R. Co. *v.* Moore, (Tex. Civ. App. 1906) 94 S. W. 394.

695. 2. Keck *v.* Venghause, 127 Iowa 529, 103 N. W. 773; Smith *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 755; Clark *v.* Patapsco Guano Co., 144 N. Car. 64, 56 S. E. 858; Morton *v.* Oregon Short Line R. Co., 48 Oregon 444, 87 Pac. 151.

Statutory Provisions — Liability Not Dependent on Negligence. — Missouri, etc., R. Co. *v.* Dubose, (Tex. Civ. App. 1906) 95 S. W. 588.

3. San Antonio, etc., R. Co. *v.* Kiersey, 98 Tex. 590, 86 S. W. 744.

696. 1. **Dams.**—Palmyra *v.* Waverly Woolen Co., 102 Me. 317, 66 Atl. 646; Chicago, etc., R. Co. *v.* Buel, (Neb. 1906) 107 N. W. 590; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1907) 103 S. W. 709; American Locomotive Co. *v.* Hoffman, 105 Va. 343, 54 S. E. 25.

2. Alabama Consol. Coal, etc., Co. *v.* Turner, 145 Ala. 639, 39 So. 603.

3. Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166; Price *v.* Oregon R. Co., 47 Oregon 350, 83 Pac. 843; San Antonio, etc., R. Co. *v.* Kiersey, 98 Tex. 590, 86 S. W. 744.

697. 1. **When Defendant Is Also Negligent.** — Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958.

698. 4. **Tennessee Follows Minnesota Rule.** — Tyrus *v.* Kansas City, etc., R. Co., 114 Tenn. 579, 86 S. W. 1074.

699. 1. Righter *v.* Jersey City Water Supply Co., 73 N. J. L. 298, 63 Atl. 6; Galveston, etc., R. Co. *v.* Riggs, (Tex. Civ. App. 1908) 107 S. W. 589.

It has been held, however, that "if the defendant was negligent in the construction of its roadbed, and such negligence concurred with the acts of others or with the act of God in causing the overflow, and consequent damage to plaintiff's crop, the defendant would be liable for such damages." St. Louis Southwestern R. Co. *v.* Jenkins, (Tex. Civ. App. 1905) 89 S. W. 1106.

2. Barker *v.* French, 102 Me. 407, 67 Atl. 308.

700. 1. Central of Georgia R. Co. *v.* Keyton, (Ala. 1906) 41 So. 918; Bacon *v.* Kearney Vineyard Syndicate, 1 Cal. App. 275, 82 Pac. 84; Cox *v.* Odell, 1 Cal. App. 682, 82 Pac. 1086; Gebhardt *v.* St. Louis, etc., R. Co., 122 Mo. App. 503, 99 S. W. 773; Barstow Irrigation Co. *v.* Black, (Tex. Civ. App. 1905) 86 S. W. 1036.

5. Moore *v.* Berlin Mills Co., (N. H. 1907) 67 Atl. 578; International, etc., R. Co. *v.* Slusher, (Tex. Civ. App. 1906) 95 S. W. 717; Howell *v.* Big Horn Basin Colonization Co., 14 Wyo. 14, 81 Pac. 785.

The liability for seepage from an irrigation ditch rests on negligence. Fleming *v.* Lockwood, (Mont. 1907) 92 Pac. 962.

701. 2. Roe *v.* Howard County, 75 Neb. 448, 106 N. W. 587.

The Right of a Municipality to Discharge Surface Water on Land of Another Is No Greater than That of an Individual. — Elser *v.* Gross Point, 223 Ill. 230, 79 N. E. 27.

3. Nye *v.* Swift, 190 Mass. 143, 76 N. E. 652.

702. 1. Barstow Irrigation Co. *v.* Black, (Tex. Civ. App. 1905) 86 S. W. 1036.

5. St. Louis Southwestern R. Co. *v.* Morris, 76 Ark. 542, 89 S. W. 846; Barnett *v.* St. Francis Levee Dist., 125 Mo. App. 61, 102 S. W. 583; Chicago, etc., R. Co. *v.* Mitchell, 74 Neb. 563, 104 N. W. 1144.

6. Illinois Cent. R. Co. *v.* Taylor, (Ky. 1905) 89 S. W. 121.

703. 1. Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958; Tyrus *v.* Kansas City, etc., R. Co., 114 Tenn. 579, 86 S. W. 1074.

2. Gulf, etc., R. Co. *v.* Moseley, 6 Indian Ter. 369, 98 S. W. 129; Harvey *v.* Mason City, etc., R. Co., 120 Iowa 465, 105 N. W. 958; International, etc., R. Co. *v.* Kyle, (Tex. Civ. App. 1907) 101 S. W. 272.

4. Texas Cent. R. Co. *v.* Brown, (Tex. Civ. App. 1905) 86 S. W. 659.

701. 2. A Lessee May Recover for Loss to Growing Crops. — Chicago, etc., R. Co. *v.* Ely, (Tex. Civ. App. 1906) 100 S. W. 530.

3. Landlord May Recover When Land Rented Out on Shares. — Chicago, etc., R. Co. *v.* Seale, (Tex. Civ. App. 1905) 89 S. W. 997.

5. Ft. Smith Light, etc., Co. *v.* Soard, 79 Ark. 388, 96 S. W. 121; Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166; Tetherington *v.* St. Louis, etc., R. Co., 226 Ill. 129, 80 N. E. 697; Graham *v.* Chicago, etc., R. Co., 39 Ind. App. 294, 77 N. E. 57.

705. 4. Campbell Turnpike Road Co. *v.* Maxfield, (Ky. 1906) 91 S. W. 1135.

5. Young *v.* Extension Ditch Co., 13 Idaho 174, 89 Pac. 296; Wallingford *v.* Maysville, etc., R. Co., (Ky. 1908) 107 S. W. 781; Eastern Texas R. Co. *v.* Moore, (Tex. Civ. App. 1906) 94 S. W. 394; Gulf, etc., R. Co. *v.* Harbison, (Tex. Civ. App. 1905) 88 S. W. 452; Gulf, etc., R. Co. *v.* Oates, (Tex. Civ. App. 1905) 88 S. W. 457; Gulf, etc., R. Co. *v.* Wetherly, (Tex Civ. App. 1905) 88 S. W. 456.

Punitive Damages may be awarded where the defendant was guilty of gross negligence. Central of Georgia R. Co. *v.* Keyton, (Ala. 1906) 41 So. 918.

Any Proximate Result of the Overflow Is an Element of the Amount of Damages. — Central of Georgia R. Co. *v.* Keyton, (Ala. 1906) 41 So. 918.

The Proper Measure of Damages "is the difference in the market value of the land before and after the injury complained of." Louisville, etc., R. Co. *v.* Ponder, (Ky. 1907) 104 S. W. 279.

Johnson Grass. — The cost of removing cannot be recovered when not shown that cost was necessary or reasonable. Chicago, etc., R. Co. *v.* Seale, (Tex. Civ. App. 1905) 89 S. W. 997; Gulf, etc., R. Co. *v.* Ondrej, (Tex. Civ. App. 1907) 99 S. W. 176; Missouri, etc., R. Co. *v.* Merritt, (Tex. Civ. App. 1907) 102 S. W. 151.

Separate Findings of Damage to land and to growing crops harmless error. San Antonio, etc., R. Co. *v.* Dickson, (Tex. Civ. App. 1906) 93 S. W. 481.

707. 1. Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958.

2. Texas Cent. R. Co. *v.* Brown, (Tex. Civ. App. 1905) 86 S. W. 659.

3. Texas Cent. R. Co. *v.* Brown, (Tex. Civ. App. 1905) 86 S. W. 659.

4. Pickerill *v.* Louisville, (Ky. 1907) 100 S. W. 873.

Mode of Computation — Injury to Land. — Cooper *v.* New York, etc., R. Co., 122 N. Y. App. Div. 128, 106 N. Y. Supp. 611.

It is error to refuse to instruct the jury to say in their verdict if the damages allowed were for permanent or temporary injury. Louisville, etc., R. Co. *v.* Whitsell. (Ky 1907) 101 S. W. 334.

708. 1. Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958; Missouri, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1906) 93 S. W. 198; St. Louis Southwestern R. Co. *v.* Terhune, (Tex. Civ. App. 1906) 94 S. W. 381; San Antonio, etc., R. Co. *v.* Kiersey, 98 Tex. 590, 86 S. W. 744.

When Injury to Land Is Permanent. — Gebhardt *v.* St. Louis, etc., R. Co., 122 Mo. App. 503, 99 S. W. 773; Missouri, etc., R. Co. *v.* Green, (Tex. Civ. App. 1907) 99 S. W. 573.

The Measure of Damages for Detaining and Discharging Surface Waters is the cost of restoring the land to its former condition and loss sustained by being deprived of its use. Cox *v.* Odell, 1 Cal. App. 682, 82 Pac. 1086.

Interest at six per cent. is recoverable from the date of the damage. Gulf, etc., R. Co. *v.* Moseley, 6 Indian Ter. 369, 98 S. W. 129.

2. Hutchison *v.* Maysville, (Ky. 1907) 100 S. W. 331; Chicago, etc., R. Co. *v.* Seale, (Tex. Civ. App. 1905) 89 S. W. 997.

709. 1. Little Rock, etc., R. Co. *v.* Wallis, 82 Ark. 447, 102 S. W. 390; Cincinnati, etc., R. Co. *v.* Ward, 120 Ill. App. 212; Chicago, etc., R. Co. *v.* Mitchell, 74 Neb. 563, 104 N. W. 1144; Smith *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 755; Colorado Canal Co. *v.* Sims, (Tex. Civ. App. 1906) 94 S. W. 365; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1907) 103 S. W. 709; San Antonio, etc., R. Co. *v.* Kiersey, 98 Tex. 590, 86 S. W. 744; St. Louis, etc., R. Co. *v.* Hoshall, 82 Ark. 387, 102 S. W. 207; St. Louis Southwestern R. Co. *v.* Baer, (Tex. Civ. App. 1905) 86 S. W. 653.

2. St. Louis, etc., R. Co. *v.* Saunders, (Ark. 1908) 107 S. W. 194; Houston, etc., R. Co. *v.* Darwin, (Tex. Civ. App. 1907) 105 S. W. 825; St. Louis Southwestern R. Co. *v.* Jenkins, (Tex. Civ. App. 1905) 89 S. W. 1106.

3. St. Louis Southwestern R. Co. *v.* Morris, 76 Ark. 542, 89 S. W. 846; Dennis *v.* Crocker-Huffman Land, etc., Co., (Cal. App. 1907) 91 Pac. 425; St. Louis Merchants' Bridge Terminal R. Assoc. *v.* Schultz, 226 Ill. 409, 80 N. E. 879; Harvey *v.* Mason City, etc., R. Co., 129 Iowa 481, 105 N. W. 958 (*obiter*), *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 709; Paris *v.* Tucker, (Tex. Civ. App. 1906) 93 S. W. 233.

"The measure of damages recoverable by plaintiffs against defendant would be the reasonable market value of each crop so destroyed at the time it was destroyed, not to exceed for any one crop the amount claimed in the plaintiffs' petition." International, etc., R. Co. *v.* Foster, (Tex. Civ. App. 1907) 100 S. W. 1017.

710. 2. Wills *v.* Babb, 222 Ill. 95, 78 N. E. 42; Matteson *v.* Tucker, 131 Iowa 511, 107 N. W. 600; Foster *v.* Sebago Imp. Co., 100 Me. 196, 60 Atl. 894; Reason *v.* Peters, 148 Mich. 532, 112 N. W. 117; Roe *v.* Howard County, 75 Neb. 448, 106 N. W. 587; Dutton *v.* Stoughton, 79 Vt. 361, 65 Atl. 91.

3. Stadler *v.* Missouri River Power Co., (C. C. A.) 139 Fed. 305.

711. 1. Schlag *v.* Gooding-Coxe Co., 98 Minn. 261, 108 N. W. 11; Colonial Woolen Co. *v.* Trenton Water Power Co., 73 N. J. L. 184, 63 Atl. 759.

712. 4. Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958.

7. Stack *v.* Seaboard Air Line R. Co., 139 N. Car. 366, 51 S. E. 1024.

714. 3. **Contra.** — McLellan *v.* Brownsville Land, etc., Co., (Tex. Civ. App. 1907) 103 S. W. 206.

715. 1. McLellan *v.* Brownsville Land, etc., Co., (Tex. Civ. App. 1907) 103 S. W. 206.

5. A witness familiar with the facts may testify as to the physical facts and give his opinion as to the causes. Standley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244.

717. 1. Flint *v.* Union Water Power Co., 73 N. H. 483, 62 Atl. 788; Gulf, etc., R. Co. *v.* Wynne, (Tex. Civ. App. 1906) 91 S. W. 823.

2. St. Louis Southwestern R. Co. *v.* Morris, 76 Ark. 542, 89 S. W. 846; Gulf, etc., R. Co. *v.* Harbison, (Tex. Civ. App. 1905) 88 S. W. 452; Gulf, etc., R. Co. *v.* Oates, (Tex. Civ. App. 1905) 88 S. W. 457; Gulf, etc., R. Co. *v.* Wetherly, (Tex. Civ. App. 1905) 88 S. W. 456.

3. Proof of Other Injuries from Same Flood. — Missouri, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1906) 93 S. W. 198.

718. 2. Opinion as to Probable Yield of Crop Inadmissible. — Standley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244.

3. Chicago, etc., R. Co. *v.* Seale, (Tex. Civ. App. 1905) 89 S. W. 997.

721. 3. Southern Pac. Co. *v.* Schuyler, (C. C. A.) 135 Fed. 1015.

722. 1. Moffatt Commission Co. *v.* Union Pac. R. Co., 113 Mo. App. 544, 88 S. W. 117.

3. Green-Wheeler Shoe Co. *v.* Chicago, etc., R. Co., 130 Iowa 123, 106 N. W. 498; Gratiot St. Warehouse Co. *v.* Missouri, etc., R. Co., 124 Mo. App. 545, 102 S. W. 11; Wabash R. Co. *v.* Sharpe, (Neb. 1906) 107 N. W. 758; Atchison, etc., R. Co. *v.* Madden, (Tex. Civ. App. 1907) 103 S. W. 1193.

4. Empire State Cattle Co. *v.* Atchison, etc., R. Co., 135 Fed. 135; Lightfoot *v.* St. Louis, etc., R. Co., 126 Mo. App. 532, 104 S. W. 482.

F. O. B.

726. 3. Olson *v.* Wabash Coal Co., 126 Ill. App. 256, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 726; Hunter Bros. Milling Co. *v.* Kramer, 71 Kan. 468, 80 Pac. 963.

Judicial Notice. — Kilmer *v.* Moneyweight Scale Co., 36 Ind. App. 568, 76 N. E. 271.

The Term "F. O. B. Cars," when used in a contract between a buyer and seller of commercial commodities, where the use of a common carrier is necessary, means that the seller will secure the cars, load them, and do whatever may be required to accomplish the shipment and consignment of the goods to the buyer, free of expense to him. Hurst *v.* Altamont Mfg. Co., 73 Kan. 422, 85 Pac. 551.

FORCIBLE ENTRY AND DETAINER.

743. 1. Statutory Definitions — *Alabama.* — Barnwell *v.* Stephens, 142 Ala. 609, 38 So. 662; Sprouse *v.* Story, 144 Ala. 542, 42 So. 23.

Colorado. — Mackenzie *v.* Porter, (Colo. 1907) 91 Pac. 916.

Kentucky. — Hord *v.* Sartain, (Ky. 1905) 86 S. W. 692; Haase *v.* Schickner, (Ky. 1906) 92 S. W. 949.

Missouri. — Redman *v.* Perkins, 122 Mo. App. 164, 98 S. W. 1097.

Tennessee. — Shepperson *v.* Burnette, 116 Tenn. 117, 92 So. 762.

2. Wilson *v.* Campbell, 75 Kan. 159, 88 Pac. 548; Redman *v.* Perkins, 122 Mo. App. 164, 98 S. W. 1097; Oyster Bay *v.* Jacob, 109 N. Y. App. Div. 613, 96 N. Y. Supp. 620.

744. 1. Oyster Bay *v.* Jacob, 109 N. Y. App. Div. 613, 96 N. Y. Supp. 620.

745. 5. Barnwell *v.* Stephens, 142 Ala. 609, 38 So. 662; Watson *v.* Scarborough, 147 Ala. 689, 40 So. 672; Knowles *v.* Crocker Estate Co., 149 Cal. 278, 85 Pac. 715; Rockhold *v.* Doering, 122 Ill. App. 194; Hord *v.* Sartain, (Ky. 1905) 86 S. W. 692; Check *v.* Reiter, (Ky. 1907) 102 S. W. 287; Childers *v.* Hieronymus, (Ky. 1907) 105 S. W. 979; Holzhausen *v.* Hoskins, 115 Mo. App. 261, 91 S. W. 410; Metz *v.* Schneider, 120 Mo. App. 453, 97 S. W. 187; Anderson *v.* Chicago, etc., R. Co., (Mo. App. 1908) 107 S. W. 456; Stockley *v.* Cissna, (Tenn. 1907) 104 S. W. 792.

748. 1. Oyster Bay *v.* Jacob, 109 N. Y. App. Div. 613, 96 N. Y. Supp. 620, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 748.

Easement. — Moye *v.* Thurber, 40 Ala. 180, 40 So. 822, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 748.

Use of the premises in dispute by the plaintiff, up to a year before commencement of the action, and occasionally inspecting same after the doors on the premises were locked and nailed, constituted sufficient possession. Lorah *v.* Emerson, (Ala. 1907) 45 So. 228.

The landlord of a building, the cellar and first floor of which are leased, and having an outside wall which the owner shored up during an excavation of an adjoining building, has sufficient possession to maintain an action of forcible entry against one who cut away a part of the wall. Holzhausen *v.* Hoskins, 115 Mo. App. 261, 91 S. W. 410.

A Person Who Happens to Be on the Premises at the time of service of notice, as a lodger, has not sufficient possession to maintain forcible detainer. Baragiano *v.* Villani, 117 Ill. App. 372.

749. 1. Brown *v.* French, (Ala. 1906) 42 So. 409; Knowles *v.* Crocker Estate Co., 149 Cal. 278, 86 Pac. 715; Check *v.* Reiter, (Ky. 1907) 102 S. W. 287.

750. 1. Lieberman *v.* Clark, 114 Tenn. 117, 85 S. W. 258, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 750.

2. Knowles *v.* Crocker Estate Co., 149 Cal. 278, 86 Pac. 715.

4. Lieberman *v.* Clark, 114 Tenn. 117, 85 S. W. 258, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 750; Stockley *v.* Cissna, (Tenn. 1907) 104 S. W. 792.

751. 2. *Kentucky.* — McCormick *v.* McDowell, (Ky. 1906) 90 S. W. 541; Check *v.* Reiter, (Ky. 1907) 102 S. W. 287.

752. 4. Chezum *v.* Campbell, 42 Wash. 560, 85 Pac. 48, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 752.

5. Chezum *v.* Campbell, 42 Wash. 560, 85 Pac. 48, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 752.

753. 1. Ellis *v.* State, 124 Ga. 91, 52 S. E. 147.

4. Teich *v.* Arms, (Cal. App. 1907) 90 Pac. 962; Thomason *v.* McLaughlin, (Indian Ter. 1907) 103 S. W. 595; Marks *v.* McGookin, 127 Iowa 716, 104 N. W. 373.

6. *Alabama.* — Watson *v.* Scarborough, 147 Ala. 680, 40 So. 672; Moye *v.* Thurber, 146 Ala. 180, 40 So. 822.

California. Montijo *v.* Sherer, (Cal. 1907) 91 Pac. 512.

Illinois. — Rockhold *v.* Doering, 122 Ill. App. 194.

Indian Territory. — Folsom *v.* Hunter, 6 Indian Ter. 453, 98 S. W. 156.

Iowa. — Chambers *v.* Irish, 132 Iowa 319, 109 N. W. 787.

Kentucky. — McCormick *v.* McDowell, (Ky. 1906) 90 S. W. 541; Hendrickson *v.* Linville, (Ky. 1907) 104 S. W. 688; Childers *v.* Hieronymus, (Ky. 1907) 105 S. W. 979.

Mississippi. — Clark *v.* Bourgeois, 86 Miss. 1, 38 So. 187.

Missouri. — Moore *v.* Shoup, 123 Mo. App. 409, 100 S. W. 53.

Montana. — Spellman *v.* Rhode, 33 Mont. 21, 81 Pac. 395.

Tennessee. — Stockley *v.* Cissna, (Tenn. 1907) 104 S. W. 792.

Canada. — Rex *v.* Walker, 12 Can. Crim. Cas. 197.

Surveys and proof of occupation are admissible to show locations, no question of title being involved. Paden *v.* Gibbs, 88 Miss. 274, 40 So. 871.

756. 1. West *v.* Comeaux, 73 Kan. 271, 85 Pac. 138, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 756; Childers *v.* Hieronymus, (Ky. 1907) 105 S. W. 979; Moore *v.* Shoup, 123 Mo. App. 409, 100 S. W. 53.

3. Paden *v.* Gibbs, 88 Miss. 274, 40 So. 871.

4. Moye *v.* Thurber, 146 Ala. 180, 40 So. 822; McCormick *v.* McDowell, (Ky. 1906) 90 S. W. 541; Spellman *v.* Rhode, 33 Mont. 21, 81 Pac. 395; Oyster Bay *v.* Jacob, 109 N. Y. App. Div. 613, 96 N. Y. Supp. 620.

757. 1. Engle *v.* Tennis Coal Co., (Ky. 1907) 101 S. W. 309.

The Right to Present Possession, and not the rights of the parties in the property sued for, is involved in an action of forcible entry and detainer. Washington *v.* Moore, (Ark. 1907) 105 S. W. 253.

4. Oyster Bay *v.* Jacob, 109 N. Y. App. Div. 613, 96 N. Y. Supp. 620.

Actual Assault Is Unnecessary to constitute a forcible detainer, but circumstances reasonably calculated to inspire fear of personal violence are sufficient. Ellis *v.* State, 124 Ga. 91, 52 S. E. 147.

Degree of Force. — No great degree of force or personal violence is required to be used or threatened to constitute a forcible entry. Wilson *v.* Campbell, 75 Kan. 159, 88 Pac. 548.

759. 4. A gratuitous depositary or bailee of goods under an agreement is not liable for forcible entry and detainer, there being no evidence of force or threats used in keeping possession. Amos *v.* Cohn, (Cal. App. 1908) 94 Pac. 590.

760. 1. Oyster Bay *v.* Jacob, 109 N. Y. App. Div. 613, 96 N. Y. Supp. 620.

2. Rex *v.* Walker, 12 Can. Crim. Cas. 197.

761. 3. **The Mere Breaking of a Gate to get** into possession is not sufficient to constitute a forcible entry. Fowler *v.* Prichard, (Ala. 1906) 41 So. 667, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 761.

4. Knowles *v.* Crocker Estate, 149 Cal. 278, 86 Pac. 715; Rex *v.* Walker, 12 Can. Crim. Cas. 197.

762. 1. Highland Park Oil Co. *v.* Western Mineral Co., 1 Cal. App. 340, 82 Pac. 228.

763. 2. Winchester *v.* Becker, (Cal. App. 1906) 88 Pac. 296.

Entry in the Absence of the Occupant, and a refusal to deliver possession on demand, constitute a forcible entry and detainer. Lorah *v.* Emerson, (Ala. 1907) 45 So. 228; Fowler *v.* Ohnick, (Wash. 1906) 87 Pac. 1050.

3. Paden *v.* Gibbs, 88 Miss. 274, 40 So. 871; Redman *v.* Perkins, 122 Mo. App. 164, 98 S. W. 1097; School Dist. No. 1 *v.* Holt, 126 Mo. App. 571, 105 S. W. 32.

766. 1. Ahlers *v.* Barrett, (Cal. App. 1906) 87 Pac. 232; Folsom *v.* Hunter, 6 Indian Ter. 453, 98 S. W. 156; Chambers *v.* Irish, 136 Iowa 319, 109 N. W. 787; Sodini *v.* Gaber, 101 Minn. 155, 111 N. W. 962; Gies *v.* Storz Brewing Co., (Neb. 1906) 106 N. W. 775; Stahl Brewing, etc., Co. *v.* Van Buren, 45 Wash. 451, 88 Pac. 837; Maxham *v.* Stewart, (Wis. 1907) 113 N. W. 972.

3. An Action against the Grantee of a Tenant by Curtesy, for forcible entry and detainer, will not lie under the *Tennessee* statute (Shannon's Code, § 5093). Shepperson *v.* Burnett, 116 Tenn. 117, 92 S. W. 762.

767. 5. Marks *v.* McGookin, 127 Iowa 716, 104 N. W. 373.

Noncompliance with the Terms of the Contract by the Vendee, under contract to purchase, will not give her such an equitable title as would bar an action. Bennett *v.* Farkas, 126 Ga. 228, 54 S. E. 942.

769. 4. Columbia, etc., R. Co. *v.* Moss, 44 Wash. 589, 87 Pac. 951.

5. Craig *v.* Gray, 1 Cal. App. 598, 82 Pac. 699; Millington *v.* O'Dell, 35 Ind. App. 225, 73 N. E. 949; Union Scale Company *v.* Iowa Machinery, etc., Co., (Iowa 1907) 113 N. W. 762; Ray *v.* Blackman, 120 Mo. App. 497, 97 S. W. 212, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 769; Campbell *v.* Johnson, (Mo. App. 1908) 107 S. W. 1020.

6. Mageon *v.* Alkire, (Colo. 1907) 92 Pac. 720.

A Tenant by Sufferance is entitled to three days' notice to quit by statute. Clark *v.* Tukey Land Co., (Neb. 1905) 106 N. W. 328.

A Tenant from Year to Year is entitled to notice to quit (Hurd's Rev. Stat. 1905, c. 80, § 5). Streit *v.* Fay, 230 Ill. 319, 82 N. E. 648.

770. 1. **In Illinois** five days' notice is required by statute. Kenyon *v.* Manley, 125 Ill. App. 615.

2. No Demand upon Failure to Pay Taxes — *Contra.* — Iroquois Realty Co. *v.* Iroquois Hotel, etc., Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 748.

5 Buhman *v.* Mikels, 1 Cal. App. 266, 82 Pac. 85; Kenyon *v.* Manley, 125 Ill. App. 615; Dietz *v.* Barnard, (Ky. 1908) 107 S. W. 767; Arcade Invest. Co. *v.* Gieriet, 99 Minn. 277, 109 N. W. 250.

771. 4. Martin *v.* Hartshorne, 17 Okla. 586, 87 Pac. 854.

A notice in writing need not specify the ground upon which the tenant is asked to surrender possession. McLain *v.* Nurnberg, (N. Dak. 1907) 112 N. W. 243.

A notice showing who claims possession of the premises and who makes the demand for same is sufficient. Best *v.* Frazier, 16 Okla. 523, 85 Pac. 1118.

5. Barnwell *v.* Stephens, 142 Ala. 609, 38 So. 662; Arcade Invest. Co. *v.* Gieriet, 99 Minn. 277, 109 N. W. 250; Iler *v.* Miller, (Neb. 1907) 111 N. W. 590; Smith *v.* Travel, (Okla. 1908) 94 Pac. 529.

Notice by the Vendee is proper, where the lessee agreed to vacate a reasonable time after the sale of the property. Cooper *v.* Gambill, 146 Ala. 184, 40 So. 827.

6. Mageon *v.* Alkire, (Colo. 1907) 92 Pac. 720; Streit *v.* Fay, 230 Ill. 319, 82 N. E. 648; Iler *v.* Miller, (Neb. 1907) 111 N. W. 590; McLain *v.* Nurnberg, (N. Dak. 1907) 112 N. W. 243; Martin *v.* Hartshorne, 17 Okla. 586, 87 Pac. 854; Columbia, etc., R. Co. *v.* Moss, 44 Wash. 589, 87 Pac. 951.

7. Peddicord *v.* Berk, 74 Kan. 236, 86 Pac. 465; Iler *v.* Miller, (Neb. 1907) 111 N. W. 590; Martin *v.* Hartshorne, 17 Okla. 586, 87 Pac. 854.

Proof of Service cannot be shown by the affidavit of the party who made the service, but should be proved by legitimate testimony. Smith *v.* Travel, (Okla. 1908) 94 Pac. 529.

772. 2. Restitution Waived by Surrender of Estate. — Owen *v.* Herzihoff, 3 Cal. App. 622, 84 Pac. 274.

773. 1. Fisk *v.* Arnold, (Indian Ter. 1907) 104 S. W. 824; Stevens *v.* Jones, 40 Wash. 484, 82 Pac. 754.

2. Under the *West Virginia* statutes damages may be recovered for the detention of property in an action brought before a justice of the peace, but not otherwise. Montgomery *v.* Economy Fuel Company, 61 W. Va. 620, 57 S. E. 137.

3. Wilson *v.* Smith, 6 Indian Ter. 108, 89 S. W. 1009; Salmon *v.* M. E. Blasier Mfg. Co., (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 36, 103 N. Y. Supp. 1031.

5. Millington *v.* O'Dell, 35 Ind. App. 225, 73 N. E. 949; Caldwell *v.* McVean, 119 Ky. 30, 82 S. W. 992, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 773.

Rent. — A plaintiff, if he recovers, is entitled to the rent of the premises pending an appeal. Sprouse *v.* Story, 144 Ala. 542, 42 So. 23.

Rental Value as an Element of Damage may be considered in an action on a supersedeas bond, but rents as such cannot be recovered. Ellis *v.* Cross, 6 Indian Ter. 268, 97 S. W. 1030.

774. 2. Hinckley *v.* Casey, (Wash. 1907) 88 Pac. 753.

Buhman *v.* Nickels, 1 Cal. App. 266, 82 Pac. 85; Mackenzie *v.* Porter, (Colo. 1907) 91 Pac. 916.

7. Three Years. — An entry made under a deed by a grantor under disability protects the grantee during the period of disability and for three years thereafter. Fowler *v.* Prichard, (Ala. 1906) 41 So. 667.

The Statute of Limitations is not available in an action for unlawful detainer, where the defendant attorned to the plaintiff within three years. Barnwell *v.* Stephens, 142 Ala. 609, 38 So. 662.

Two Years. — Hord *v.* Sartain, (Ky. 1905) 86 S. W. 692; Karnes *v.* Johnston, 58 W. Va. 598, 52 S. E. 658.

One Year. — The statute of limitations barring actions not brought within one year is effective against a grantee of real property from a grantor against whom the statute has run. Weatherford *v.* Union Pac. R. Co., (Neb. 1904) 98 N. W. 1089; Weatherford *v.* Union Pac. R. Co., (Neb. 1905) 104 N. W. 183.

The Statute of Limitations will not bar an action brought immediately after a final disposition of the contest between the parties. Best *v.* Frazier, 16 Okla. 523, 85 Pac. 1118.

Tenant by Sufferance. — The statute of limitations, for forcible entry and detainer against a tenant by sufferance, does not begin to run until notice to quit has been served. Clark *v.* Tukey Land Co., (Neb. 1905) 106 N. W. 328.

FORECLOSURE OF MORTGAGES.

781. 1. Marquam *v* Ross, 47 Oregon 374, 83 Pac. 852.

2. Evans *v.* Wilmer, 210 Pa. St. 624, 60 Atl. 12.

784. 5. McCague *v.* Eller, (Neb. 1906) 110 N. W. 318.

6. Bailey *v.* Butler, 138 Ala. 153, 35 So. 111; State Finance Co. *v.* Halstenson, (N. Dak. 1908) 114 N. W. 724; *In re* Piper, 208 Pa. St. 636, 57 Atl. 1118; Brownell *v.* Oviatt, 215 Pa. St. 514, 64 Atl. 670.

785. 4. *Ten Years.* — Livingston *v.* New England Mortg. Security Co., 77 Ark. 379, 91 S. W. 752; Clark *v.* Beck, 14 N. Dak. 287, 103 N. W. 755; Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915; Paine *v.* Dodds, 14 N. Dak. 181, 103 N. W. 931; Bruce *v.* Wanzer, (S. Dak. 1905) 105 N. W. 282; Philip *v.* Stearns, (S. Dak. 1905) 105 N. W. 467.

Fifteen Years. — Brown *v.* Hayes, 146 Mich. 474, 109 N. W. 845.

Twenty Years. — Chace *v.* Morse, (Mass. 1905) 76 N. E. 142; Lyles *v.* Lyles, 71 S. Car. 391, 51 S. E. 113; Sprague *v.* Lovett, (S. Dak. 1906) 106 N. W. 134.

Laches. — An unexplained delay of nine years has been held in equity to take away the right of heirs to foreclose an unrecorded mortgage of their father. Sturdivant *v.* Cook, (Ark. 1906) 98 S. W. 964.

786. 1. Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915; Colonial, etc., Mortg. Co. *v.* Flemington, 14 N. Dak. 181, 103 N. W. 929; Lyles *v.* Lyles, 71 S. Car. 391, 51 S. E. 113; Bruce *v.* Wanzer, (S. Dak. 1905) 105 N. W. 282; Philip *v.* Stearns, (S. Dak. 1905) 105 N. W. 467; Sprague *v.* Lovett, (S. Dak. 1906) 106 N. W. 134; Emmons *v.* Hawk, (W. Va. 1907) 59 S. E. 519; Wells *v.* Scanlan, 124 Wis. 229, 102 N. W. 571; Hughes *v.* Thomas, 131 Wis. 315, 111 N. W. 474.

Foreclosure Barred before Debt. — It has been held that foreclosure may be barred before the action on the debt. Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915; Colonial, etc., Mortg. Co. *v.* Flemington, 14 N. Dak. 181, 103 N. W. 929.

787. 3. See Sturdivant *v.* McCorley, 83 Ark. 278, 103 S. W. 732.

788. 1. Scott *v.* District Ct., 15 N. Dak. 259, 107 N. W. 61. But see House *v.* Carr, 185 N. Y. 453, 78 N. E. 171; Clark *v.* Beck, 14 N. Dak. 287, 103 N. W. 755.

Statutes. — A statute subjecting foreclosure under a power to the statute of limitations is prospective only. Clark *v.* Beck, 14 N. Dak. 287, 103 N. W. 755.

In Colorado a proceeding to foreclose under a power in a trust deed is not an "action" barred by limitations, and this although the beneficiary's remedy by another method may be barred. Foot *v.* Burr, (Colo. 1907) 92 Pac.

5. Pochin *v.* Conley, 74 Neb. 429, 104 N. W. 878; Emmons *v.* Hawk, (W. Va. 1907) 59 S. E.

789. 7. Haggart *v.* Wilczinski, (C. C. A.) 143 Fed. 22; Iowa L. & T. Co. *v.* McMurray, 129 Iowa 65, 105 N. W. 361; Spesard *v.* Spesard, 75 Kan. 87, 88 Pac. 576; McCormick *v.* Perry, (Ky. 1906) 93 S. W. 607; Martin *v.* Teasdale, 115 Mo. App. 245, 92 S. W. 133; New York L. Ins. Co. *v.* Kansas City Nat. Bank, 121 Mo. App. 479, 97 S. W. 195; Stone *v.* McGregor, (Tex. 1905) 87 S. W. 334; Brown *v.* Cates, (Tex. 1905) 87 S. W. 1149; Thornely *v.* Andrews, (Wash. 1905) 82 Pac. 899; Ingersoll *v.* Davis, 14 Wyo. 120, 82 Pac. 867. See also Sturdivant *v.* McCorley, 83 Ark. 278, 103 S. W. 732; Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616; Medina *v.* Phelps, 39 Colo. 92, 88 Pac. 848; Bumgardner *v.* Wealand, 197 Mo. 433, 95 S. W. 211; Williams *v.* Armistead, (Tex. Civ. App. 1905) 90 S. W. 925.

790. 1. Williams *v.* Armistead, (Tex. Civ. App. 1905) 90 S. W. 925.

Rule Applicable to Equitable Mortgage. — But see Sturdivant *v.* McCorley, 83 Ark. 278, 103 S. W. 732.

4. London, etc., Bank *v.* Horton, (C. C. A.) 126 Fed. 593; Pinckney *v.* Young, (Tex. Civ. App. 1908) 107 S. W. 622.

792. 5. *Compare* Thornely *v.* Andrews, (Wash. 1905) 82 Pac. 899.

6. Livingston *v.* New England Mortg. Security Co., 77 Ark. 379, 91 S. W. 752; Trudeau *v.* Germann, 101 Minn. 387, 112 N. W. 281; Thornely *v.* Andrews, (Wash. 1905) 82 Pac. 899; Ingersoll *v.* Davis, 14 Wyo. 120, 82 Pac. 867.

793. 1. Greeley First Nat. Bank *v.* Park, (Colo. 1906) 86 Pac. 106, *quoting* 13 Am. and Eng. Encyc. of Law (2d ed.) 793; Quackenbush *v.* Mapes, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 124, 105 N. Y. Supp. 654, *affirmed* 123 N. Y. App. Div. 242, 107 N. Y. Supp. 1047.

Contrary Authorities. — Greeley First Nat. Bank *v.* Park, (Colo. 1906) 86 Pac. 106; Spesard *v.* Spesard, 75 Kan. 87, 88 Pac. 576.

2. *Compare* Snyder *v.* Miller, 71 Kan. 410, 80 Pac. 970.

3. Sturdivant *v.* McCorley, 83 Ark. 278, 103 S. W. 732.

4. Fox *v.* Bernard, (Nev. 1906) 85 Pac. 351.

794. 5. Iowa L. & T. Co. *v.* McMurray, 129 Iowa 65, 105 N. W. 361; Trudeau *v.* Germann, 101 Minn. 387, 112 N. W. 281. See also Fox *v.* Bernard, (Nev. 1906) 85 Pac. 351.

6. Limitation of Action for Deficiency. — Pochin *v.* Conley, 74 Neb. 429, 104 N. W. 878. *Compare* California Title Ins., etc., Co. *v.* Miller, 3 Cal. App. 54, 84 Pac. 453.

The action for a deficiency does not accrue until the coming in of the report of sale. Parratt *v.* Hartsuff, 75 Neb. 706, 106 N. W. 966.

7. Bailey *v.* Butler, 138 Ala. 153, 35 So. 111; McLaughlin *v.* Senne, (Neb. 1907) 111 N. W. 377; Bonhoff *v.* Wiehorst, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 456, 108 N. Y. Supp. 437; Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915; Omlie *v.* O'Toole, (N. Dak. 1907) 112 N. W. 677; Hughes *v.* Thomas, 131 Wis. 315, 111 N. W. 474, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 794.

8. Grantee. — Where a purchaser of mortgaged land, who did not assume payment of the mortgage, paid the taxes, the mortgagor's failure to do which accelerated the maturity of the debt, limitations were not suspended and such purchaser was not estopped to plead the same. Snyder *v.* Miller, 71 Kan. 410, 80 Pac. 970.

One of Two Joint Mortgagors or the principal debtor may toll the statute as to all by part payment. Brown *v.* Hayes, 146 Mich. 474, 109 N. W. 845.

795. 3. **In New York** payment by a life tenant has been held to toll the statute. Bonhoff *v.* Wiehorst, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 456, 108 N. Y. Supp. 437.

6. Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616; Medina *v.* Phelps, 39 Colo. 92, 88 Pac. 848; McCormick *v.* Perry, (Ky. 1906) 93 S. W. 607; Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915.

Subsequent Liens Revived. — A new promise has been held to remove the bar as against subsequent liens taken before the mortgage was barred, and not foreclosed until after the mortgage was barred. Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932.

796. 8. **In California** such acknowledgment must be in writing. Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616.

In Iowa to revive a barred action the acknowledgment must be in writing. Iowa L. & T. Co. *v.* McMurray, 129 Iowa 65, 105 N. W. 361.

9. *Compare* Omlie *v.* O'Toole, (N. Dak. 1907) 112 N. W. 677.

797. 2. Iowa L. & T. Co. *v.* McMurray, 129 Iowa 65, 105 N. W. 361.

3. **In California** a statute suspending the statute of limitations for a year after the death of the mortgagor has been held not applicable as against his grantee, but only against his representative. California Title Ins., etc., Co. *v.* Miller, 3 Cal. App. 54, 84 Pac. 453.

In Georgia, limitations are suspended for a period not longer than five years, until the appointment of an administrator. Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62.

In Washington it has been held that death did not suspend limitations. Fuhrman *v.* Power, 43 Wash. 539, 86 Pac. 940.

4. Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915; Paine *v.* Dodds, 14 N. Dak. 181, 103 N. W. 931; Ingersoll *v.* Davis, 14 Wyo. 120, 82 Pac. 867.

Statute Not Retrospective. — Adams, etc., Co. *v.* Kenoyer, (N. Dak. 1908) 116 N. W. 98.

Effect on Grantee's Rights. — The mortgagor's grantee may plead limitations, although the mortgagor has been absent from the state. California Title Ins., etc., Co. *v.* Miller, 3 Cal. App. 54, 84 Pac. 453; Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915.

Heirs of Mortgagor. — The absence of the mortgagor's heirs tolls the statute. Colonial, etc., Mortg. Co. *v.* Flemington, 14 N. Dak. 181, 103 N. W. 929.

Nonresidents. — A mortgage by nonresidents accrues within the state, and limitations with regard to actions accruing without the state have no application. Wells *v.* Scanlan, 124 Wis. 229, 102 N. W. 571.

6. Boyer *v.* Price, 45 Wash. 667, 88 Pac. 1106.

7. Less *v.* English, 75 Ark. 288, 87 S. W. 447; Livingston *v.* New England Mortg. Security Co., 77 Ark. 379, 91 S. W. 752.

798. 1. California Title Ins., etc., Co. *v.* Miller, 3 Cal. App. 54, 84 Pac. 453; Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915. See also Livingston *v.* New England Mortg. Security Co., 77 Ark. 379, 91 S. W. 752.

The defendant may plead limitations, although the property passed to his grantor subject to the mortgage. Colonial, etc., Mortg. Co. *v.* Flemington, 14 N. Dak. 181, 103 N. W. 929; Paine *v.* Dodds, 14 N. Dak. 189, 103 N. W. 931.

Personal Representatives or Heirs. — Limitations run in favor of heirs, although an administrator was not appointed. Colonial, etc., Mortg. Co. *v.* Flemington, 14 N. Dak. 181, 103 N. W. 929.

Grantee's Heirs. — Taylor *v.* Williams, (Tex. Civ. App. 1907) 105 S. W. 837.

4. Haggart *v.* Wilczinski, (C. C. A.) 143 Fed. 22; Burns *v.* Hiatt, 149 Cal. 616, 87 Pac. 196; Gillett *v.* Romig, 17 Okla. 324, 87 Pac. 325; Sawyer *v.* Vermont L. & T. Co., 41 Wash. 524, 84 Pac. 8.

5. Haggart *v.* Wilczinski, (C. C. A.) 143 Fed. 22; Investment Securities Co. *v.* Adams, 37 Wash. 211, 79 Pac. 625; Sawyer *v.* Vermont L. & T. Co., 41 Wash. 524, 84 Pac. 8.

799. 1. Prahl *v.* Rogers, 127 Wis. 353, 106 N. W. 287. See also Jackson *v.* Grosser, 218 Ill. 494, 75 N. E. 1032.

8. London, etc., Bank *v.* Horton, (C. C. A.) 126 Fed. 593.

801. 9. Prahl *v.* Rogers, 127 Wis. 353, 106 N. W. 287.

802. 4. See American Guild *v.* Damon, 107 N. Y. App. Div. 140, 94 N. Y. Supp. 985.

804. 2. In California cross-demands must be of such a nature that they are mutually compensated at their inception. Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616.

805. 5. Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616; Aultman, etc., Co. *v.* Meade, (Ky. 1905) 89 S. W. 137.

8. Tracy *v.* Scott, 13 N. Dak. 577, 101 N. W. 905.

806. 1. Cook *v.* Weigley, (N. J. 1904) 57 Atl. 805; Philip *v.* Stearns, (S. Dak. 1905) 105 N. W. 467.

807. 10. Otis *v.* McCaskill, 51 Fla. 516, 41 So. 458; Bergman *v.* Fortescue, (N. J. 1908) 69 Atl. 474. *Compare* Cook *v.* Weigley, (N. J. 1904) 57 Atl. 805.

808. 6. Whittle *v.* Jones, (S. Car. 1908) 60 S. E. 522.

809. 3. American Guild *v.* Damon, 107 N. Y. App. Div. 140, 94 N. Y. Supp. 985.

810. 12. Barry *v.* Stover, (S. Dak. 1906) 107 N. W. 672. See also Wright *v.* Stone Harbor Imp. Co., (N. J. 1906) 66 Atl. 417.

811. 2. Lauf *v.* Cahill, 231 Ill. 220, 83 N. E. 155; American Guild *v.* Damon, 107 N. Y. App. Div. 140, 94 N. Y. Supp. 985.

7. Action on Note Not Barred [illegible] Simultaneous Action of Foreclosure in Another State. — London, etc., Bank *v.* Horton, (C. C. A.) 126 Fed. 593.

812. 3. Braxton *v.* Liddon, 49 Fla. 280, 38 So. 717; Otis *v.* McCaskill, 51 Fla. 516, 41 So. 458; Towanda First Nat. Bank *v.* Robinson, 105 N. Y. App. Div. 193, 94 N. Y. Supp. 767; Alton-Dawson Mercantile Co. *v.* Staten, (Okla. 1907) 91 Pac. 892. See also Hubbard *v.* Mulligan, 34 Colo. 236, 82 Pac. 783; Winston *v.* Armstrong, (Neb. 1905) 104 N. W. 941; McDonald *v.* Kamper, 89 Miss. 221, 42 So. 877.

Want of Benefit to the mortgagor is no defense. State Mut. Builders, etc., Assoc. *v.* Batterson, 65 N. J. Eq. 610, 56 Atl. 703.

Consideration Presumed from Seal. — Quackenbush *v.* Mapes, 123 N. Y. App. Div. 242, 250, 107 N. Y. Supp. 1047, 1052.

Proof of Failure. — Quackenbush *v.* Mapes, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 124, 105 N. Y. Supp. 654.

Failure of consideration, to be a defense, must be unequivocally averred, to throw the burden of proof on the complainant. Mayo *v.* Hughes, 51 Fla. 495, 40 So. 499.

Proper averment of partial failure of consideration throws the burden on the complainant. Otis *v.* McCaskill, 51 Fla. 516, 41 So. 458.

The onus is on the plaintiff to overcome a *prima facie* showing of want of consideration. Towanda First Nat. Bank *v.* Robinson, 105 N. Y. App. Div. 193, 94 N. Y. Supp. 767.

7. Cassada *v.* Stabel, 98 N. Y. App. Div. 600, 90 N. Y. Supp. 533.

814. 7. Omission of Seal. — See Philip *v.* Stearns, (S. Dak. 1905) 105 N. W. 467.

815. 1. Moyer *v.* Dodson, 212 Pa. St. 344, 61 Atl. 937.

Where the mortgagor persuaded the plaintiff to take an assignment of his mortgage he cannot set up duress in an action to foreclose. Langley *v.* Andrews, 142 Ala. 665, 38 So. 238.

2. See Moyer *v.* Dodson, 212 Pa. St. 344, 61 Atl. 937.

816. 5. Bosworth *v.* Sandlin, 46 Fla. 532, 35 So. 66; Alton-Dawson Mercantile Co. *v.* Staten, (Okla. 1907) 91 Pac. 892. See also Cunningham *v.* McCready, 219 Pa. St. 594, 69 Atl. 82; McGaughey *v.* American Nat. Bank, (Tex. Civ. App. 1905) 92 S. W. 1003.

The Burden of Proving Fraud is on the party alleging it. Jobert *v.* Wagner, 147 Mich. 409, 110 N. W. 942.

Defense to Redemption. — To defeat a suit to redeem from an equitable mortgage on the ground that the deed was given in fraud of creditors, such intention must be clearly proved.

Faulkner *v.* Cody, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 64, 91 N. Y. Supp. 633.

9. *Compare* Waterbury *v.* McKinnon, (C. C. A.) 140 Fed. 737.

§17. 1. The fact that the consideration for an assignment was illegal is not available as a defense in an action against the mortgagor by the assignee. Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307.

3. Goerz *v.* Barstow, (C. C. A.) 148 Fed. 562; Team *v.* Bryant, 71 S. Car. 331, 51 S. E. 148.

4. Goerz *v.* Barstow, (C. C. A.) 148 Fed. 562.

8. A mistake as to the recitals in a trust deed will not vitiate it where not mutual. McGaughey *v.* American Nat. Bank, (Tex. Civ. App. 1905) 92 S. W. 1003.

§18. 1. Simonson *v.* Lauck, 105 N. Y. App. Div. 82, 93 N. Y. Supp. 965; White *v.* Rovall, 121 N. Y. App. Div. 12, 105 N. Y. Supp. 624; Brownell *v.* Oviatt, 215 Pa. St. 514, 64 Atl. 670.

Burden of Proving Payment on Defendant. — Tisdale *v.* Mallett, 73 Ark. 431, 84 S. W. 481.

5. A tender has been held to render a subsequent sale invalid. Wittmeier *v.* Tidwell, 147 Ala. 354, 40 So. 963.

Tender Must Include Interest. — Tidwell *v.* Wittmeier, (Ala. 1907) 43 So. 782.

§19. 1. Barry *v.* Stover, (S. Dak. 1906) 107 N. W. 672.

3. Darden *v.* Schuessler, (Ala. 1907) 45 So. 130.

4. Hamilton *v.* Stephenson, 106 Va. 77, 55 S. E. 577.

6. Usury Personal Defense. — Skinner *v.* Southern Home Bldg., etc., Assoc., 46 Fla. 547, 35 So. 67; Biedler *v.* Malcolm, 121 N. Y. App. Div. 145, 105 N. Y. Supp. 642.

§21. 1. Usury is not available as a defense against *bona fide* purchasers of corporate bonds. Weed *v.* Gainesville, etc., R. Co., 119 Ga. 576, 46 S. E. 885.

5. Bennett *v.* Edgar, (County Ct.) 46 Misc. (N. Y.) 231, 93 N. Y. Supp. 203.

8. State Mut. Builders, etc., Assoc. *v.* Batterson, 65 N. J. Eq. 610, 56 Atl. 703; Townsend *v.* Boyd, 217 Pa. St. 386, 66 Atl. 1099.

Laches in Setting Up Defense. — Burns *v.* Cooper, (C. C. A.) 140 Fed. 273.

14. Vance *v.* Lane, (Ky. 1904) 82 S. W. 297.

§22. 1. Emmons *v.* Hawk, (W. Va. 1907) 59 S. E. 519.

4. Union Trust Co. *v.* Scott, (Ind. App. 1908) 83 N. E. 1031; Damman *v.* Vollenweider, 126 Iowa 327, 101 N. W. 1130. See also Jobert *v.* Wagner, 147 Mich. 409, 110 N. W. 942; Gilman *v.* Crossman, (Neb. 1906) 106 N. W. 769; Merager *v.* Madson, 19 S. Dak. 400, 103 N. W. 650.

5. See Ullman *v.* Devereux, (Tex. Civ. App. 1907) 102 S. W. 1163.

7. Provision Covering Future Advances Not Defeasible by Parol. — Davis *v.* Carlisle, (C. C. A.) 142 Fed. 106.

Not Admissible to Excuse Interest. — Parol evidence is not admissible to show that the mortgagee agreed to "knock off" the first year's interest on the note secured. Tisdale *v.* Mallett, 73 Ark. 431, 84 S. W. 481.

8. Ryan *v.* Shaneyfelt, 146 Ala. 683, 40 So. 223.

10. Montague *v.* Best, 69 S. Car. 280, 48 S. E. 248.

Pleading and Proof. — Parsons *v.* Ramsey, 53 Fla. 1055, 43 So. 503.

11. Chambers *v.* Powell, (Ala. 1905) 39 So. 919; International Kaolin Co. *v.* Vause, (Fla. 1908) 46 So. 3; Gilman *v.* Crossman, (Neb. 1906) 106 N. W. 769.

The introduction of a trust deed raises the presumption that it has not been discharged. Murto *v.* Lemon, 19 Colo. App. 314, 75 Pac. 160.

The affidavit of the original mortgagor that he executed the mortgage of which a certified copy was shown him is *prima facie* proof of its execution. See Bruce *v.* Wanzer, (S. Dak. 1905) 105 N. W. 282.

Production of a note by a holder not the payee raises the presumption of ownership for value. Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

Recitals in Mortgage Conclusive as between Parties. — Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616.

Admission of the ownership of the note and mortgage has been held to relate back to the time of filing the petition. Wood *v.* Speck, (Neb. 1907) 110 N. W. 1001.

Findings in Former Suit. — The findings in a prior proceeding to foreclose a mortgage are not competent as proof of the existence and validity of the liens in a second action made necessary by failure to join the mortgagor's grantee in the first. Stough *v.* Badger Lumber Co., 70 Kan. 713, 79 Pac. 737.

12. In a second action brought against the mortgagor's grantee not made a party to the first, the plaintiff must prove the existence and validity of the liens. Stough *v.* Badger Lumber Co., 70 Kan. 713, 79 Pac. 737.

§23. 1. Bailey *v.* Butler, 138 Ala. 153, 35 So. 111; Langley *v.* Andrews, 142 Ala. 665, 38 So. 238; Winkleman *v.* White, (Ala. 1906) 42 So. 411; Thrasher *v.* Moran, 146 Cal. 683, 81 Pac. 32; Corson *v.* McDonald, 3 Cal. App. 412, 85 Pac. 861; Skinner *v.* Southern Home Bldg., etc., Assoc., 46 Fla. 547, 35 So. 67. See also Hardy *v.* Pecot, 113 La. 350, 36 So. 992; Robson *v.* Beasley, 118 La. 738, 43 So. 391.

Where a decree *pro confesso* was entered against a mortgagor, but a codefendant contested the action, an allowance of stipulated attorney's fees was held proper. Peacock, etc., Co. *v.* Thaggard, 128 Fed. 1005.

2. Pitzele *v.* Cohn, 217 Ill. 30, 75 N. E. 392; Oman *v.* American Nat. Bank, (Ky. 1907) 106 S. W. 277; Armijo *v.* Henry, (N. Mex. 1907) 89 Pac. 305.

Sale under Power. — Continental Bldg., etc., Assoc. *v.* Light, (Cal. App. 1907) 92 Pac. 1034.

§24. 1. In Langley *v.* Andrews, 142 Ala. 665, 38 So. 238, it was held unnecessary to prove the necessity of bringing an equitable foreclosure to warrant the allowance of stipulated attorney's fees.

2. See Robson *v.* Beasley, 118 La. 738, 43 So. 391.

7. Langley *v.* Andrews, 142 Ala. 665, 38 So. 238; Armijo *v.* Henry, (N. Mex. 1907) 89 Pac. [illegible]

§25. 1. Corson *v.* McDonald, 3 Cal. App.

412, 85 Pac. 861; Rohrhof *v.* Schmidt, 218 Ill. 585, 75 N. E. 1062; Wright *v.* Conservative Invest. Co., (Oregon 1907) 89 Pac. 387.

2. Fifty dollars on a principal amount of $8,000 has been held proper. Cunningham *v.* McCready, 219 Pa. St. 594, 69 Atl. 82. See Winkleman *v.* White, (Ala. 1906) 42 So. 411, where an allowance of $500 was not disturbed on a bill of review.

826. 7. Daniels *v.* Mutual Ben. Ins. Co., 73 Neb. 257, 102 N. W. 459; Blumle *v.* Kramer, 14 Okla. 366, 79 Pac. 215; Blumle *v.* Kramer, 14 Okla. 373, 79 Pac. 1134, applying the law of *Nebraska*.

827. 3. Blumle *v.* Kramer, 14 Okla. 366, 79 Pac. 215; Blumle *v.* Kramer, 14 Okla. 373, 79 Pac. 1134, applying the law of *Nebraska*.

4. Daniels *v.* Mutual Ben. Ins. Co., 73 Neb. 257, 102 N. W. 458.

828. 4. Equitable Mortgage. — The mortgagee in an equitable mortgage cannot maintain ejectment until foreclosure. Faulkner *v.* Cody, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 64, 91 N. Y. Supp. 633.

829. 6. Barry *v.* Harnesberger, (C. C. A.) 148 Fed. 346; Marshall *v.* U. S. Trust Co., 93 N. Y. App. Div. 252, 87 N. Y. Supp. 747. See also Stewart *v.* Wilson, 141 Ala. 405, 37 So. 550; Lincoln *v.* Lincoln St. R. Co., 75 Neb. 523, 106 N. W. 317.

Bond Not Discharged. — Foreclosure is not a discharge of the obligation of a bond secured by mortgage unless the debt itself is satisfied. Stricker *v.* McDonnell, 213 Pa. St. 108, 62 Atl. 520.

Merger. — By a foreclosure sale the trust deed is merged in the decree. Schaeppi *v.* Bartholomae, 217 Ill. 105, 75 N. E. 447.

The lien is merged in the judgment, and an action on the debt or for a second foreclosure is barred. Dumont *v.* Taylor, 67 Kan. 727, 74 Pac. 234.

8. Dever *v.* Selz, (Tex. Civ. App. 1905) 87 S. W. 891; Investment Securities Co. *v.* Adams, 37 Wash. 211, 79 Pac. 625.

A sale under a void foreclosure where the full amount of the debt was paid operates as an equitable assignment of the mortgage. Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792.

Decree Denying Foreclosure. — A decree denying foreclosure has been held not to affect the priority of a mortgage with regard to other liens. Westminster College *v.* Fry, 192 Mo. 552, 91 S. W. 472.

830. 2. Lembeck, etc., Brewing Co. *v.* Sexton, 184 N. Y. 185, 77 N. E. 38.

FOREIGN.

830. 9. Foreign Port — Tonnage Duties. — The Alta, 136 Fed. 513, 69 C. C. A. 289.

FOREIGN CORPORATIONS.

837. 2. Old Wayne Mut. L. Assoc *v.* McDonough, 164 Ind. 321, 73 N. E. 703, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 837; Equitable L. Assur. Soc. *v.* Host, 124 Wis. 657, 102 N. W. 579, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 837.

4. Ladd Metals Co. *v.* American Min. Co., 152 Fed. 1008; Armour Packing Co. *v.* Vinegar Bend Lumber Co., (Ala. 1906) 42 So. 866; Jameson *v.* Simonds Saw Co., 2 Cal. App. 582, 84 Pac. 289; Olender *v.* Crystalline Min. Co., 149 Cal. 482, 86 Pac. 1082; Old Wayne Mut. L. Assoc. *v.* McDonough, 164 Ind. 321, 73 N. E. 703, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 837; New York Mortg. Co. *v.* Secretary of State, 150 Mich. 197, 114 N. W. 82; Walker *v.* Rein, 14 N. Dak. 608, 106 N. W. 405; State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 194, 86 S. W. 390.

838. 2. Mason *v.* Edward Thompson Co., 94 Minn. 472, 103 N. W. 507; Helena Power Transmission Co. *v.* Spratt, 35 Mont. 108, 88 Pac. 773; Blackwell's Durham Tobacco Co. *v.* American Tobacco Co., (N. Car. 1907) 59 S. E. 123; State *v.* Robb-Lawrence Co., 15 N. Dak. 55, 106 N. W. 406.

839. 2. Presbyterian Ministers' Fund *v.* Thomas, 126 Wis. 281, 105 N. W. 801.

3. Walker *v.* Rein, 14 N. Dak. 608, 106 N. W. 405.

840. 3. Restrictions as to Usury. — It has been held that a corporation, if not prohibited by the laws of the domestic state, may plead usury, although by the laws of the state of creation this defense cannot be pleaded. Stack *v.* Detour Lumber, etc., Co., (Mich. 1908) 114 N. W. 876.

842. 6. State *v.* Virginia-Carolina Chemical Co., 71 S. Car. 544, 51 S. E. 455.

7. Ladd Metals Co. *v.* American Min. Co., 152 Fed. 1008; McLean *v.* State, 81 Ark. 304, 98 S. W. 729; Olender *v.* Crystalline Min. Co., 149 Cal. 482, 86 Pac. 1082; Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873; Scollard *v.* American Felt Co., 194 Mass. 127, 80 N. E. 233; State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 194, 86 S. W. 390.

The Grant of a Permit to Do Business. — State *v.* Minneapolis, etc., Elevator Co., (N. Dak. 1908) 114 N. W. 482.

Police Power. — A corporation, whatever the nature of its business, and whether granted a permit to do business or not, is subject always to the police power of the domestic state. State *v.* Western Union Tel. Co., 75 Kan. 609, 90 Pac. 299.

843. 1. J. A. Holshouser Co. *v.* Gold Hill Copper Co., 138 N. Car. 248, 50 S. E. 650.

2. The rule is different in the absence of any by-laws or statute to the contrary. Boatmen's Bank *v.* Gillespie, (Mo. 1907) 108 S. W. 74.

845. 1. Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168; Merchants' Nat. Bank *v.* Ford, (Ky. 1907) 99 S. W. 260; Atty.-Gen. *v.* Electric Storage Battery Co., 188 Mass. 239, 74 N. E. 467; *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974.

2. American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531.

3. American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 844.

846. 6. Texas, etc., R. Co. *v.* Weatherby, (Tex. Civ. App. 1906) 92 S. W. 58.

860. 2. State *v.* Standard Oil Co., 194 Mo. 124, 91 S. W. 1062.

Power to Revoke Authority to Do Business and Exclude from Doing Further Business. — Lewis *v.* Northern Pac. R. Co., (Mont. 1907) 92 Pac. 409.

This power may be limited, when once exercised in favor of admission of a corporation, by the acquisition by the latter of vested rights. Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Hill *v.* Empire State-Idaho Min., etc., Co., 156 Fed. 797.

3. *United States.* — Tennis Bros. Co. *v.* Wetzel, etc., R. Co., 140 Fed. 193; Hill *v.* Empire State-Idaho Min., etc., Co., 156 Fed. 797.

Colorado. — American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 860; International Trust Co. *v.* Leschen, etc., Rope Co., (Colo. 1907) 92 Pac. 727.

Louisiana. — Metropolitan L. Ins. Co. *v.* Assessors, 115 La. 698, 39 So. 846.

Massachusetts. — Atty.-Gen. *v.* Electric Storage Battery Co., 188 Mass. 239, 74 N. E. 467.

Michigan. — New York Mortg. Co. *v.* Secretary of State, 150 Mich. 197, 114 N. W. 82.

Minnesota. — Wold *v.* J. B. Colt Co., 102 Minn. 386, 114 N. W. 243.

New York. — *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 860.

North Carolina. — Williams *v.* Mutual Reserve Fund L. Assoc., 145 N. Car. 128, 58 S. E. 802.

Wisconsin. — Equitable L. Assur. Soc. *v.* Host, 124 Wis. 657, 102 N. W. 579; Presbyterian Ministers' Fund *v.* Thomas, 126 Wis. 281, 105 N. W. 801.

Restrictions Imposed Not Retroactive. — Edward Malley Co. *v.* Londoner, (Colo. 1908) 93 Pac. 488.

861. **1.** McLean *v.* State, 81 Ark. 304, 98 S. W. 729; Olender *v.* Crystalline Min. Co., 149 Cal. 482, 86 Pac. 1082.

6. Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1; International Trust Co. *v.* A. Leschen, etc., Rope Co., (Colo. 1907) 92 Pac. 727; Belle City Mfg. Co. *v.* Frizzell, 11 Idaho 1, 81 Pac. 58; State *v.* Virginia-Carolina Chemical Co., 71 S. Car. 544, 51 S. E. 455; French *v.* Hicks, (Tex. Civ. App. 1906) 92 S. W. 1034.

A statute may constitutionally impose restrictions upon a corporation doing both interstate and intra-state business. State *v.* Western Union Tel. Co., 75 Kan. 609, 90 Pac. 299.

8. Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1; Haskins *v.* Kelly, (Kan. 1908) 93 Pac. 605.

Where a corporation is engaged in both governmental and non-governmental business within the state, it is subject to state regulations. State *v.* Western Union Tel. Co., 75 Kan. 609, 90 Pac. 299.

862. **2.** Armour Packing Co. *v.* Vinegar Bend Lumber Co., (Ala. 1906) 42 So. 866.

863. **3.** Scollard *v.* American Felt Co., 194 Mass. 127, 80 N. E. 233.

867. **1.** Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783.

2. Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783.

4. Security Mut. L. Ins. Co. *v.* Prewitt, 202 U. S. 246, 26 U. S. Sup. Ct. 619; Prewitt *v.* Security Mut. L. Ins. Co., 119 Ky. 321, 83 S. W. 611, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 867.

869. **2.** Lathrop-Shea, etc., Co. *v.* Interior Constr., etc., Co., 150 Fed. 666; Alley *v.* Bowen-Merrill Co., 76 Ark. 4, 88 S. W. 838; Mason *v.* Edward Thompson Co., 94 Minn. 472, 103 N. W. 507; Swing *v.* Brister, 87 Miss. 516, 40 So. 146; Western Nat. Bank *v.* Kelly, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 366, 95 N. Y. Supp. 574; Booth *v.* Weigand, 30 Utah 135, 83 Pac. 734.

The execution and filing of an appeal bond is not doing business. McCarthy *v.* Alphons Custodis Chimney Constr. Co., 219 Ill. 616, 76 N. E. 850.

3. Ammons *v.* Brunswick-Balke-Collender Co., (C. C. A.) 141 Fed. 570; Kirven *v.* Virginia-Carolina Chemical Co., (C. C. A.) 145 Fed. 288, 7 Ann. Cas. 219; Ladd Metals Co. *v.* American Min. Co., 152 Fed. 1008; Jamison *v.* Simonds Saw Co., 2 Cal. App. 582, 84 Pac. 289; Roseberry *v.* Valley Bldg., etc., Assoc., 35 Colo. 132, 83 Pac. 637; Poole *v.* Peoria Cordage Co., 6 Indian Ter. 298, 97 S. W. 1015; John Deere Plow Co. *v.* Wyland, 60 Kan. 255, 76 Pac. 863, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 869; Ozark Cooperage Co. *v.* Quaker City Cooperage Co., 112 N. Y. App. Div. 62, 98 N. Y. Supp. 113; Penn Collieries Co. *v.* McKeever, 183 N. Y. 98, 75 N. E. 935; State *v.* Robb-Lawrence Co., 15 N. Dak. 55, 106 N. W. 406; Booth *v.* Weigand, 30 Utah 135, 83 Pac. 734; Catlin, etc., Co. *v.* Schuppert, 130 Wis. 642, 110 N. W. 818; Halifax Hotel Co. *v.* Canadian Fire Engine Co., 41 Nova Scotia 97.

870. **1.** Belle City Mfg. Co. *v.* Frizzell, 11 Idaho 1, 81 Pac. 58; Bruner *v.* Kansas Moline Plow Co., (Indian Ter. 1907) 104 S. W. 816; Rock Island Plow Co. *v.* Peterson, 93 Minn. 356, 101 N. W. 616, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 870.

Maintenance of an office room and salaried sales agent within the state, to take orders to be approved by the home office without the state, is not doing business. Case *v.* Smith, 152 Fed. 730.

2. New York Architectural Terra Cotta Co. *v.* Williams, 102 N. Y. App. Div. 1, 92 N. Y. Supp. 808.

3. International Trust Co. *v.* A. Leschen, etc., Rope Co., (Colo. 1907) 92 Pac. 727; Vio Chemical Co. *v.* Studholme, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 470, 103 N. Y. Supp. 463; Novelty Tufting Mach. Co. *v.* Hutkoff, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 522, 107 N. Y. Supp. 88; Underwood Typewriter Co. *v.* Piggott, 60 W. Va. 532, 55 S. E. 664.

871. **1.** Goepfert *v.* Compagnie Generale, etc., 156 Fed. 106; Alfred J. Brown Seed Co. *v.* Richardson, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 517, 103 N. Y. Supp. 242.

2. Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1.

3. Agreement to Furnish Implements, etc., the **Consignee to Pay for Them on Specified Terms, the**

Corporation to Take Back Unsold Goods. — Three States Buggy, etc., Co. *v.* Com., (Ky. 1907) 105 S. W. 971.

5. Catlin, etc., Co. *v.* Schuppert, 130 Wis. 642, 110 N. W. 818.

8. Thach *v.* Continental Travelers' Mut. Acc. Assoc., 114 Tenn. 271, 87 S. W. 255.

872. 3. South Bay Co. *v.* Howey, 113 N. Y. App. Div. 382, 98 [illegible] Y. Supp. 909.

5. Prudential Ins. Co. *v.* Cushman, 130 Iowa 378, 106 N. W. 934.

6. Green *v.* Chicago, etc., R. Co., 205 U. S. 530, 27 U. S. Sup. Ct. 595, *affirming* 147 Fed. 767.

Soliciting Freight or Passenger Traffic through an agent, with no powers to bind the corporation by contract, is not doing business. Abraham *v.* Southern R. Co., (Ala. 1906) 42 So. 837; Berger *v.* Pennsylvania R. Co., 27 R. I. 583, 65 Atl. 261.

7. The Appointment of an Agent and Taking Bond from Him is not doing business. Wilson *v.* Farmers Ins. Co., 164 Ind. 462, 73 N. E. 892.

The mere appointment of a sales agent, without having made any sales, is not doing business. Com. *v.* Chattanooga Implement, etc., Co., (Ky. 1907) 104 S. W. 389.

Attending the Taking of Depositions within the state by an officer of a foreign corporation is not doing business. Ladd Metals Co. *v.* American Min. Co., 152 Fed. 1008.

Public Accountants Performing Services for Clients are held not to be doing business, within a statute placing limitations on foreign corporations. Haskins *v.* Kelly, (Kan. 1908) 93 Pac. 605.

9. Other Loans. — Brown *v.* Guarantee Sav. Loan, etc., Co., (Tex. Civ. App. 1907) 102 S. W. 138.

873. 3. Accepting Notes is not doing business. Norton *v.* W. H. Thomas, etc., Co., (Tex. Civ. App. 1906) 93 S. W. 711.

Accepting Notes from Resident of Domestic State — Norton *v.* W. H. Thomas, etc., Co., (Tex. Civ. App. 1906) 93 S. W. 711.

4. Sale of Cotton to a resident of a state by a foreign corporation, for foreign shipment, has been held not to be doing business in said state. McBath *v.* Jones Cotton Co., (C. C. A.) 149 Fed. 383.

5. Sale of Securities. — Catlin, etc., Co. *v.* Schuppert, 130 Wis. 642, 110 N. W. 818.

10. Com. *v.* Chattanooga Implement, etc., Co., (Ky. 1907) 104 S. W. 389.

Ownership of the Controlling Interest in a **Domestic Corporation,** where the local business is conducted independently by the domestic corporation, is not doing business within the state by the foreign corporation. Peterson *v.* Chicago, etc., R. Co., 205 U. S. 364, 27 U. S. Sup. Ct. 513.

874. 1. Furnishing and Installing Elevators for Office Building is doing business. Portland Co. *v.* Hall, etc., Constr. Co., 121 N. Y. App. Div. 779, 106 N. Y. Supp. 649.

3. British American Mortg. Co. *v.* Jones, (S. Car. 1907) 56 S. E. 983; British-American Mortg. Co. *v.* Jones, (S. Car. 1907) 58 S. E. 417.

5. Organizing and Controlling a Domestic Corporation, and Guaranteeing Its Bonds. — Groel *v.* United Electric Co., (N. J. 1905) 60 Atl. 822.

Miscellaneous Acts Held to Constitute Doing Business — *Correspondence School Soliciting Business through Agents.* — International Text-Book Co. *v.* Pigg, (Kan. 1907) 91 Pac. 74.

Establishing Branch Office or Agency for Sale of Goods. — Neyens *v.* Worthington, 150 Mich. 580, 114 N. W. 404; Thomas Mfg. Co. *v.* Knapp, 101 Minn. 432, 112 N. W. 939.

Sale of Goods through Agents. — O'Horne *v.* Shilling, 74 Kan. 675, 88 Pac. 258; Wilson-Moline Buggy Co. *v.* Priebe, 123 Mo. App. 521, 100 S. W. 558; Milburn Wagon Co. *v.* Com., (Ky. 1907) 104 S. W. 323; Barnhard *v.* Morrison, (Tex. Civ. App. 1905) 87 S. W. 376.

Furnishing Materials and Labor for the Equipment of a Factory. — Hastings Industrial Co. *v.* Moran, 143 Mich. 679, 107 N. W. 706; St. Louis Expanded Metal Fireproofing Co. *v.* Beilharz, (Tex. Civ. App. 1905) 88 S. W. 512; People *v.* Wells, 183 N. Y. 264, 76 N. E. 24.

9*a*. Sale Through Local Agent with Reservation of Title until Payment of Price. — Elliott *v.* Parlin, etc., Co., 71 Kan. 665, 81 Pac. 500.

875. 1. Pittsburgh Constr. Co. *v.* West Side Belt R. Co., 151 Fed. 125; Pittsburgh Constr. Co. *v.* West Side Belt R. Co., (C. C. A.) 154 Fed. 929; United Lead Co. *v.* J. W. Reedy Elevator Mfg. Co., 222 Ill. 199, 78 N. E. 567; Tri-State Amusement Co. *v.* Forest Park Highlands Amusement Co., 192 Mo. 404, 90 S. W. 1020; First Nat. Bank *v.* Leeper, 121 Mo. App. 688, 97 S. W. 636; Wilson-Moline Buggy Co. *v.* Priebe, 123 Mo. App. 521, 100 S. W. 558; American Copying Co. *v.* Eureka Bazaar, (S. Dak. 1906) 108 N. W. 15; Allen *v.* Milwaukee, 128 Wis. 678, 106 N. W. 1099.

As to innocent third persons some of these statutes are interpreted as not making such contracts void. Handlan-Buck Mfg. Co. *v.* Wendelkin Constr. Co., 124 Mo. App. 349, 101 S. W. 702.

2. Chicago Mill, etc., Co. *v.* Sims, 197 Mo. 507, 95 S. W. 344; Handlan-Buck Mfg. Co. *v.* Wendelkin Constr. Co., 124 Mo. App. 349, 101 S. W. 702.

3. Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545; Northwest Thresher Co. *v.* Riggs, 75 Kan. 518, 89 Pac. 921; Gallettey *v.* Strickland, 74 S. Car. 394, 54 S. E. 576; Horrell *v.* California, etc., Homebuilders' Assoc., 40 Wash. 531, 82 Pac. 889; Thompson *v.* National Mut. Bldg., etc., Assoc., 57 W. Va. 551, 50 S. E. 756; De Laval Separator Co. *v.* Walworth, 13 British Columbia 74.

876. 1. Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545; Horrell *v.* California, etc., Homebuilders' Assoc., 40 Wash. 531, 82 Pac. 889; Thompson *v.* National Mut. Bldg., etc., Assoc., 57 W. Va. 551, 50 S. E. 756.

2. Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545; Thompson *v.* National Mut. Bldg., etc., Assoc., 57 W. Va. 551, 50 S. E. 756.

Where a statute prohibits foreign corporations from doing business in the state without complying with statutory provisions, the federal courts, in the absence of construction by the state courts, will hold contracts by non-complying corporations enforceable. Groton Bridge, etc., Co. *v.* American Bridge Co., 151 Fed. 871.

3. Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545.

4. Ireland *v.* Andrews, 6 N. W. Ter. 66.

877. 2. Armour Packing Co. *v.* Vinegar Bend Lumber Co., (Ala. 1906) 42 So. 866.

4. Kirven *v.* Virginia-Carolina Chemical Co., (C. C. A.) 145 Fed. 288, 7 Ann. Cas. 219; Woolfort *v.* Dixie Cotton Oil Co., 77 Ark. 203, 91 S. W. 306; Ward Land, etc., Co. *v.* Mapes, 147 Cal. 747, 82 Pac. 426; Black *v.* Vermont Marble Co., 1 Cal. App. 718, 82 Pac. 1060; Ryan Live Stock, etc., Co. *v.* Kelly, 71 Kan. 874, 81 Pac. 470; Boggs *v.* O. S. Kelly Mfg. Co., (Kan. 1907) 90 Pac. 765; National Fertilizer Co. *v.* Fall River Five Cents Sav. Bank, (Mass. 1907) 82 N. E. 671; Hastings Industrial Co. *v.* Moran, 143 Mich. 679, 107 N. W. 706; Swift *v.* Little, (R. I. 1907) 65 Atl. 615; Iowa Falls Mfg. Co. *v.* Farrar, 19 S. Dak. 632, 104 N. W. 449; Bishop, etc., Co. *v.* Schleuning, (S. Dak. 1905) 104 N. W. 854.

878. 1. Compliance Subsequent to Commencement of Action. — International Trust Co. *v.* A. Leschen, etc., Rope Co., (Colo. 1907) 92 Pac. 727.

It has been held that compliance after service of the complaint and before service of the answer is too late to sustain the action already started. Halsey *v.* Henry Jewett Dramatic Co., 114 N. Y. App. Div. 420, 99 N. Y. Supp. 1122.

4. Blackwell's Durham Tobacco Co. *v.* American Tobacco Co., (N. Car. 1907) 59 S. E. 123; State *v.* Superior Ct., 42 Wash. 675, 85 Pac. 669.

6. *In re* Naylor Mfg. Co., 135 Fed. 206.

879. 1. Contra. — St. Louis Expanded Metal Fireproofing Co. *v.* Beilharz, (Tex. Civ. App. 1905) 88 S. W. 512.

880. 1. Iowa Lillooet Gold Min. Co. *v.* U. S. Fidelity, etc., Co., 146 Fed. 437; A. J. Cranor Co. *v.* Miller, 147 Ala. 268, 41 So. 678; Prudential Ins. Co. *v.* Cushman, 130 Iowa 378, 106 N. W. 934; Thomas Mfg. Co. *v.* Knapp, 101 Minn. 432, 112 N. W. 989; Wood *v.* Ball, 190 N. Y. 217, 83 N. E. 21; Booth *v.* Weigand, 30 Utah 135, 83 Pac. 734; Horrell *v.* California, etc., Homebuilders' Assoc., 40 Wash. 531, 82 Pac. 889.

It has been held that knowledge on the part of the other party that the plaintiff was a foreign corporation did not work such an estoppel. Osborne *v.* Shilling, 74 Kan. 675, 88 Pac. 258.

3. Hardison *v.* Plummer, (Ala. 1907) 44 So. 591; Handlan-Buck Mfg. Co. *v.* Wendelkin Constr. Co., 124 Mo. App. 349, 101 S. W. 702; Booth *v.* Weigand, 30 Utah 135, 83 Pac. 734.

5. Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873; United Lead Co. *v.* J. W. Reedy Elevator Mfg. Co., 222 Ill. 199, 78 N. E. 567; Swing *v.* Weston Lumber Co., 140 Mich. 344, 103 N. W. 816; Tri-State Amusement Co. *v.* Forest Park Highlands Amusement Co., 192 Mo. 404, 90 S. W. 1020; Wilson-Moline Buggy Co. *v.* Priebe, 123 Mo. App. 521, 100 S. W. 558; F. J. Emmerich Co. *v.* Sloane, 108 N. Y. App. Div. 330, 95 N. Y. Supp. 39; Halsey *v.* Henry Jewett Dramatic Co., 100 N. Y. 231, 83 N. E. 25; South Bay Co. *v.* Howey, 190 N. Y. 240, 83 N. E. 26; Portland Company *v.* Hall, etc., Constr. Co., 121 N. Y. App. Div. 779, 106 N. Y. Supp. 649; American Copying Co. *v.* Eureka Bazaar, (S. Dak. 1906) 108 N. W. 15; Bessemer Gas Engine Co. *v.* Mills, 8 Ont. L. Rep. 647.

A foreign corporation that has complied with the requirements of the statute may sue, as assignee, on the contracts of a noncomplying foreign corporation, though suit by the latter is prohibited, where the statute does not specifically declare such contracts to be void. Northwest Thresher Co. *v.* Riggs, 75 Kan. 518, 89 Pac. 921.

This prohibition embraces all transferees of commercial paper received by a corporation in the illegal pursuit of business in the domestic state, except *bona fide* purchasers for value. Neyens *v.* Worthington, 150 Mich. 580, 114 N. W. 404.

Constitutionality.—Where such statutes attempt to prohibit suit in the federal courts of the state they are unconstitutional. Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783.

Such statutes do not limit the right of a foreign corporation to sue in the federal courts. Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545; Vitagraph Co. *v.* Twentieth Century Optiscope Co., 157 Fed. 699.

Some statutes prohibiting suits by noncomplying corporations are construed as merely giving the other party a right, as to plead in abatement, which he may take advantage of or waive, as he desires. Wetzel, etc., R. Co. *v.* Tennis Bros. Co., (C. C. A.) 145 Fed. 458, 7 Ann. Cas. 426.

6. After the Imposition of Regulations. — A corporation having previously done business within the domestic state, must nevertheless comply with such regulations in order to continue business. State *v.* Western Union Tel. Co., 75 Kan. 609, 90 Pac. 299.

881. 3. Kirven *v.* Virginia-Carolina Chemical Co., (C. C. A.) 145 Fed. 288, 7 Ann. Cas. 219; Robinson *v.* American Linseed Co., 147 Fed. 885; Old Wayne Mut. L. Assoc. *v.* McDonough 204 U. S. 8, 27 U. S. Sup. Ct. 236, *reversing* 164 Ind. 321, 73 N. E. 703; Mason *v.* Edward Thompson Co., 94 Minn. 472, 103 N. W. 507; New York Architectural Terra Cotta Co. *v.* Williams, 102 N. Y. App. Div. 1, 92 N. Y. Supp. 808; Onderdonk *v.* Peale, 103 N. Y. App. Div. 195, 93 N. Y. Supp. 505; South Bay Co. *v.* Howey, 113 N. Y. App. Div. 382, 98 N. Y. Supp. 909; Western Supply, etc., Co. *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1906) 92 S. W. 986; Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797.

882. 1. Northwest Thresher Co. *v.* Riggs, 75 Kan. 518, 89 Pac. 921.

2. Indorsee of Note of Unlicensed Company Has No Right of Action. — Ireland *v.* Andrews, 6 N. W. Ter. 66.

883. 3. Quo Warranto the Proper Remedy. — Atty.-Gen. *v.* Booth, 143 Mich. 89, 106 N. W. 868.

4. State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 104, 86 S. W. 390.

When the statute declares an act to work a forfeiture, the courts are obliged to oust a foreign corporation committing such act, if demanded by the state, even if such act was

due to misapprehension or mistake. State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 194, 86 S. W. 390.

884. 3. Albright *v.* United Clay Production Co., 5 Penn. (Del.) 198, 62 Atl. 726.

885. 1. Carolina Coal, etc., Co. *v.* Southern R. Co., (N. Car. 1907) 57 S. E. 444.

888. 1. It has been held that compliance even after suit has been begun is timely. Boggs *v.* O. S. Kelly Mfg. Co., (Kan. 1907) 90 Pac. 765.

889. 4. Wasley *v.* Chicago, etc., R. Co., 147 Fed. 608.

891. 1. *United States.* — New York Cotton Exch. *v.* Hunt, 144 Fed. 511; Robinson *v.* American Linseed Co., 147 Fed. 885.

Colorado. — Craig *v.* A. Leschen, etc., Rope Co., 38 Colo. 115, 87 Pac. 1143.

Massachusetts. — Tulane University *v.* O'Connor, 192 Mass. 428, 78 N. E. 494.

New York. — South Bay Co. *v.* Howey, 113 N. Y. App. Div. 382, 98 N. Y. Supp. 909; Matter of Rosenblatt, (Surrogate Ct.) 52 Misc. (N. Y.) 659, 103 N. Y. Supp. 1016; Portland Co. *v.* Hall, etc., Constr. Co., 121 N. Y. App. Div. 779, 106 N. Y. Supp. 649.

Texas. — Commercial Telephone Co. *v.* Territorial Bank, etc., Co., (Tex. Civ. App. 1905) 86 S. W. 66; King *v.* Monitor Drill Co., (Tex. Civ. App. 1906) 92 S. W. 1046.

West Virginia. — Underwood Typewriter Co. *v.* Piggott, 60 W. Va. 532, 55 S. E. 664.

Wisconsin. — Catlin, etc., Co. *v.* Schuppert, 130 Wis. 642, 110 N. W. 818.

It has been held that a corporation, disqualified to sue in the domestic state because of failure to comply with statutory provisions, may, after withdrawal from the state, sue on contracts made during such disability. Boggs *v.* O. S. Kelly Mfg. Co., (Kan. 1907) 90 Pac. 765.

893. 1. *United States.* — New Mexico *v.* Baker, 196 U. S. 432, 25 U. S. Sup. Ct. 375; Remington *v.* Central Pac. R. Co., 198 U. S. 95, 25 U. S. Sup. Ct. 577; Kendall *v.* American Automatic Loom Co., 198 U. S. 477, 25 U. S. Sup. Ct. 768; Cooper *v.* Brazelton, (C. C. A.) 135 Fed. 476; Buffalo Sandstone Brick Co. *v.* American Brick Machinery Co., 141 Fed. 211; Donovan *v.* Dixieland Amusement Co., 152 Fed. 661; Case *v.* Smith, 152 Fed. 730; Ladd Metals Co. *v.* American Min. Co., 152 Fed. 1008; McGuire *v.* Great Northern R. Co., 155 Fed. 230

California. — Jameson *v.* Simonds Saw Co., 2 Cal. App. 582, 84 Pac. 289.

Louisiana. — Southern Sawmill Co. *v.* American Hardwood Lumber Co., 115 La. 237, 38 So. 977.

Minnesota. — Wold *v.* J. B. Colt Co., 102 Minn. 386, 114 N. W. 243.

New York. — Kinsey *v.* American Hardwood Mfg. Co., (Supm. Ct. App. T.) 94 N. Y. Supp. 455; Grant *v.* Cananea Consol. Copper Co., 117 N. Y. App. Div. 576, 102 N. Y. Supp. 642.

Oregon. — Knapp *v.* Wallace, (Oregon 1907) 92 Pac. 1054.

Utah. — Honerine Min., etc., Co. *v.* Tallerday Steel Pipe, etc., Co., 31 Utah 326, 88 Pac. 9.

Where a corporation had formerly done business within the state, it has been held that it could be sued on a contract made while doing business, and process could be served on a resident director. Boggs *v.* Inter-American Min., etc., Co., 105 Md. 371, 66 Atl. 259.

Service on Officer Temporarily in State. — Brush Creek Coal, etc., Co. *v.* Morgan-Gardner Electric Co., 136 Fed. 505; Rudd *v.* McLean Arms, etc., Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 49, 105 N. Y. Supp. 387; Cameron *v.* Jones, (Tex. Civ. App. 1905) 90 S. W. 1129.

2. But see Rudd *v.* McLean Arms, etc., Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 49, 105 N. Y. Supp. 387.

894. 2. Jameson *v.* Simonds Saw Co., 2 Cal. App. 582, 84 Pac. 289; Bell *v.* New Orleans, etc., R. Co., 2 Ga. App. 812, 59 S. E. 102.

4. Hill *v.* Empire State-Idaho Min., etc., Co., 156 Fed. 797; Olender *v.* Crystalline Min. Co., 149 Cal. 482, 86 Pac. 1082.

5. *United States.* — Toledo Computing Scale Co. *v.* Computing Scale Co., (C. C. A.) 142 Fed. 919.

Colorado. — Venner *v.* Denver Union Water Co., (Colo. 1907) 90 Pac. 623.

Florida. — Putnam Lumber Co. *v.* Ellis-Young Co., 50 Fla. 251, 39 So. 193; Ellis-Young Co. *v.* Putnam Lumber Co., 50 Fla. 217, 39 So. 198.

Georgia. — Bell *v.* New Orleans, etc., R. Co., 2 Ga. App. 812, 59 S. E. 102.

Kansas. — Federal Betterment Co. *v.* Reeves, 73 Kan. 107, 84 Pac. 560.

Louisiana. — *In re* Curtis, 115 La. 918, 40 So. 334.

Maryland. — Boggs *v.* Inter-American Min., etc., Co., 105 Md. 371, 66 Atl. 259.

Nebraska. — Ord Hardware Co. *v.* J. I. Case Threshing Mach. Co., (Neb. 1906) 110 N. W. 551.

New Jersey. — Groel *v.* United Electric Co., (N. J. 1905) 60 Atl. 822.

New York. — Grant *v.* Cananea Consol. Copper Co., 189 N. Y. 241, 82 N. E. 191; Malich *v.* Josephson, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 315, 98 N. Y. Supp. 671; Epstein *v.* S. Weisberger Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 572, 102 N. Y. Supp. 488.

North Carolina. — Kelly *v.* Lefaiver Co., 144 N. Car. 4, 56 S. E. 510.

Oregon. — Riddle *v.* Order of Pendo, (Oregon 1907) 89 Pac. 640.

South Carolina. — Jenkins *v.* Penn Bridge Co., 73 S. Car. 526, 53 S. E. 991; Sellers *v.* Home Fertilizer Chemical Works, (S. Car. 1907) 56 S. E. 978.

Washington. — Tatum *v.* Niagara F. Ins. Co., 43 Wash. 373, 86 Pac. 660.

Examples of Insufficient Service under These and Similar Statutory Provisions — *United States.* — Peterson *v.* Chicago, etc., R. Co., 205 U. S. 364, 27 U. S. Sup. Ct. 513; Lathrop-Shea, etc., Co. *v.* Interior Constr., etc., Co., 150 Fed. 666; Allen *v.* Yellowstone Park Transp. Co., 154 Fed. 504; McGuire *v.* Great Northern R. Co., 155 Fed. 230.

Arkansas. — Albie *v.* Jones, 82 Ark. 414, 102 S. W. 222.

Michigan. — Spiker *v.* American Relief Soc., 140 Mich. 225, 103 N. W. 611, 104 N. W. 670.

Missouri. — Painter *v.* Colorado Springs, etc., R. Co., 127 Mo. App. 248, 104 S. W. 1139.

New York. — Hunter *v.* Mutual Reserve L. Ins. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 26, 99 N. Y. Supp. 888; Frankel *v.* Dover Mfg. Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 459.

Oklahoma. — Bes Line Constr. Co. *v.* Schmidt, 16 Okla. 429, 85 Pac. 711.

Texas. — National Cereal Co. *v.* Earnest, (Tex. Civ. App. 1905) 87 S. W. 734; Bay City Iron Works *v.* Reeves, (Tex. Civ. App. 1906) 95 S. W. 739.

Constitutionality. — A statutory provision that service of process upon the state auditor shall be sufficient against all foreign corporations is void, being violative of the Fourteenth Amendment. Cella Commission Co. *v.* Bohlinger, (C. C. A.) 147 Fed. 419.

895. 2. Hill *v.* Empire State-Idaho Min., etc., Co., 156 Fed. 797; Scollard *v.* American Felt Co., 194 Mass. 127, 80 N. E. 233; Wold *v.* J. B. Colt Co., 102 Minn. 386, 114 N. W. 243; State *v.* Standard Oil Co., 194 Mo. 124, 91 S. W. 1062; Best *v.* Seaboard Air Line R. Co., 72 S. Car. 479, 52 S. E. 223, *per* Gary, A. J., *dissenting*, and *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 895; *In re* Consolidated Rendering Co., (Vt. 1907) 66 Atl. 790; Tatum *v.* Niagara F. Ins. Co., 43 Wash. 373, 86 Pac. 660.

Under a statute providing that in suits relating to business transacted within the state by a foreign insurance corporation, service of process on the state insurance commissioner should be deemed sufficient, in a suit by a resident of the state on a contract made outside the state, such service is not sufficient. Old Wayne Mut. L. Assoc. *v.* McDonough, 204 U. S. 8, 27 U. S. Sup. Ct. 236, *reversing* 164 Ind. 321, 73 N. E. 703.

3. Best *v.* Seaboard Air Line R. Co., 72 S. Car. 479, 52 S. E. 223, *per* Gary, A. J., *dissenting*, and *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 895.

Subsequent Withdrawal from the Domestic State will not invalidate such service in a cause of action arising while doing business in the domestic state. Groel *v.* United Electric Co., (N. J. 1905) 60 Atl. 822.

896. 5. **Contracts Made within the State.** — Castagnino *v.* Mutual Reserve Fund L. Assoc., (C. C. A.) 157 Fed. 29.

6. A corporation may be sued in a transitory cause of action in any place where it is present and doing business through agents, whether the contract was made without or within the domestic state. Deatrick *v.* State L. Ins. Co., (Va. 1907) 59 S. E. 489.

897. 5. Deatrick *v.* State L. Ins. Co., (Va. 1907) 59 S. E. 489.

902. 1. Anglo-Californian Bank *v.* Field, 146 Cal. 644, 80 Pac. 1080.

903. 4. Fikes *v.* State, 87 Miss. 251, 39 So. [illegible]

8. **Compliance Is Presumed until Disproved**, whether it is alleged or not. Old Wayne Mut. L. Assoc. *v.* McDonough, 164 Ind. 321, 73 N. E. 703; T. H. Rogers Lumber Co. *v.* McRea, (Indian Ter. 1907) 104 S. W. 803; Leonard *v.* American Steel, etc., Co., 73 Kan. 79, 84 Pac. 553; Kirk-Christy Co. *v.* American Assoc., (Ky. 1908) 108 S. W. 232; South Bay Co. *v.* Howey, 113 N. Y. App. Div. 382, 98 N. Y. Supp. 909; State *v.* Robb-Lawrence Co., 15 N. Dak. 55, 106 N. W. 406; Hanson *v.* Lindstrom, 15 N. Dak. 584, 108 N. W. 798; Gulf, etc., R. Co. *v.* Western Coal Selling Co., (Tex. Civ. App. 1907) 105 S. W. 64; Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797; Kiblinger Co. *v.* Sauk Bank, 131 Wis. 595, 111 N. W. 709.

In *New York* it has been held that failure to allege compliance with the domestic statutes is a failure to state facts sufficient to constitute a cause of action, and that this is ground for nonsuit. F. J. Emmerich Co. *v.* Sloane, 108 N. Y. App. Div. 330, 95 N. Y. Supp. 39; South Bay Co. *v.* Howey, 113 N. Y. App. Div. 382, 98 N. Y. Supp. 909; Halsey *v.* Henry Jewett Dramatic Co., 114 N. Y. App. Div. 420, 99 N. Y. Supp. 1122; Wood *v.* Ball, 114 N. Y. App. Div. 743, 100 N. Y. Supp. 119; Matter of Rosenblatt, (Surrogate Ct.) 52 Misc. (N. Y.) 659, 103 N. Y. Supp. 1016; Portland Co. *v.* Hall, etc., Constr. Co., 121 N. Y. App. Div. 779, 106 N. Y. Supp. 649; Novelty Tufting Mach. Co. *v.* Hutkoff, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 522, 107 N. Y. Supp. 88; Wood *v.* Ball, 190 N. Y. 217, 83 N. E. 21.

The same has been held in *Idaho*. Valley Lumber, etc., Co. *v.* Nickerson, 13 Idaho 682, 93 Pac. 24; Valley Lumber, etc., Co. *v.* Driessel, (Idaho 1907) 93 Pac. 765.

904. 4. Black *v.* Vermont Marble Co., 1 Cal. App. 718, 82 Pac. 1060; Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915.

905. 2. Noncompliance has been held to be a bar to pleading domestic statutes of limitation in some instances. Black *v.* Vermont Marble Co., 1 Cal. App. 718, 82 Pac. 1060.

906. 1. In *Georgia* they are liable to attachment though not doing business within the state. Cincinnati, etc., R. Co. *v.* Pless, (Ga. App. 1908) 60 S. E. 8.

2. In *Ohio* it has been held that mere voluntary compliance with state statutes exempting foreign corporations from attachment, by a corporation doing interstate business, will not bring it within the benefit of the statute. Bigalow Fruit Co. *v.* Armour Car Lines, 74 Ohio 168, 78 N. E. 267. *Compare* Armour Car Lines *v.* Bigalow Fruit Co., 26 Ohio Cir. Ct. 496.

909. 2. Acken *v.* Coughlin, 103 N. Y. App. Div. 1, 92 N. Y. Supp. 700; Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1907) 105 S. W. 851.

4. Culver Lumber Co. *v.* Culver, 81 Ark. 102, 99 S. W. 391.

8. Acken *v.* Coughlin, 103 N. Y. App. Div. 1, 92 N. Y. Supp. 700.

910. 4. Bay State Gas Co. *v.* Rogers, 147 Fed. 557.

911. 3. Choctaw Coal, etc., Co. *v.* Williams-Echols Dry Goods Co., 75 Ark. 365, 87 S. W. 632.

4. Choctaw Coal, etc., Co. *v.* Williams-Echols Dry Goods Co., 75 Ark. 365, 87 S. W. 632.

5. Choctaw Coal, etc., Co. *v.* Williams-Echols Dry Goods Co., 75 Ark. 365, 87 S. W. 632.

912. 2. Choctaw Coal, etc., Co. *v.* Williams-Echols Dry Goods Co., 75 Ark. 365, 87 S. W. 632; Clark *v.* Supreme Council, etc., 146 Cal. 598, 80 Pac. 931.

FOREIGN EXECUTORS AND ADMINISTRATORS.

916. 3. Babbitt *v.* Fidelity Trust Co., 70 N. J. Eq. 655, 63 Atl. 18, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 916.

918. 5. Scott *v.* Blades Lumber Co., 144 N. Car. 44, 56 S. E. 548, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 918.

919. 4. Hopkins's Appeal, 77 Conn. 644, 60 Atl. 657.

921. 5. Spratt *v.* Syms, 104 N. Y. App. Div. 232, 93 N. Y. Supp. 728.

922. 1. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

2. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

923. 3. Spratt *v.* Syms, 104 N. Y. App. Div. 232, 93 N. Y. Supp. 728.

6. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

924. 1. Spratt *v.* Syms, 104 N. Y. App. Div. 232, 93 N. Y. Supp. 728.

4. Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 924. *Compare* Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

5. *Compare* Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

925. 3. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

932. 2. *In re* Williams, 130 Iowa 562, 107 N. W. 608, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 932; Babbitt *v.* Fidelity Trust Co., 70 N. J. Eq. 655, 63 Atl. 18, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 932.

944. 4. Scott *v.* Blades Lumber Co., 144 N. Car. 44, 56 S. E. 548.

Validity of Sale Made Before Probate. — Scott *v.* Blades Lumber Co., 144 N. Car. 44, 56 S. E. 548.

945. 4. *United States.* — Moore *v.* Petty, (C. C. A.) 135 Fed. 668; Courtney *v.* Pradt, 135 Fed. 818; Leahy *v.* Haworth, (C. C. A.) 141 Fed. 850; Graham *v.* Lybrand, (C. C. A.) 142 Fed. 109; Beaumont *v.* Beaumont, 144 Fed. 288; Brooks *v.* Southern Pac. Co., 148 Fed. 986.

Alabama. — Campbell *v.* Hughes, 144 Ala. 393, 42 So. 42.

Georgia. — Taylor *v.* McKee, 121 Ga. 223, 48 S. E. 943, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 945.

Kentucky. — Palms *v.* Howard, (Ky. 1907) 102 S. W. 267. See also McClellan *v.* Troendle, (Ky. 1907) 99 S. W. 329.

Missouri. — Sommer *v.* Franklin Bank, 108 Mo. App. 490, 83 S. W. 1025; Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

New Jersey. — Babbitt *v.* Fidelity Trust Co., 70 N. J. Eq. 655, 63 Atl. 18, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 945.

New York. — Newton *v.* Jay, 107 N. Y. App. Div. 457, 95 N. Y. Supp. 413; Downey *v.* Owen, 98 N. Y. App. Div. 411, 90 N. Y. Supp. 280.

947. 1. Babbitt *v.* Fidelity Trust Co., 70 N. J. Eq. 655, 63 Atl. 18.

4. Moore *v.* Petty, (C. C. A.) 135 Fed. 668.

948. 4. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 948.

5. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 948.

6. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 948; Connor *v.* New York, etc., R. Co., (R. I. 1908) 68 Atl. 481, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 948.

950. 1. Palms *v.* Howard, (Ky. 1907) 102 S. W. 267; Pope *v.* Waugh, 94 Minn. 502, 103 N. W. 500; Sommer *v.* Franklin Bank, 108 Mo. App. 490, 83 S. W. 1025.

951. 1. Moore *v.* Petty, (C. C. A.) 135 Fed. 668; Graham *v.* Lybrand, (C. C. A.) 142 Fed. 109, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 951; Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210; Morse *v.* King, 73 N. J. L. 549, 63 Atl. 986, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 950, 951.

4. Morse *v.* King, 73 N. J. L. 549, 63 Atl. 986.

6. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

952. 3. Newton *v.* Jay, 107 N. Y. App. Div. 457, 95 N. Y. Supp. 413.

But on a judgment recovered by his decedent the administrator cannot sue either personally or in his representative character in a foreign jurisdiction. Miller *v.* Hoover, 121 Mo. App. 568, 97 S. W. 210.

953. 2. Connor *v.* New York, etc., R. Co., (R. I. 1908) 68 Atl. 481.

5. Campbell *v.* Hughes, 144 Ala. 393, 42 So. 42; St. Louis, etc., R. Co. *v.* Cleere, 76 Ark. 377, 88 S. W. 995; Chicago Transit Co. *v.* Campbell, 110 Ill. App. 366.

954. 1. Leahy *v.* Haworth, (C. C. A.) 141 Fed. 850; St. Louis, etc., R. Co. *v.* Cleere, 76 Ark. 377, 88 S. W. 995; Chicago Transit Co. *v.* Campbell, 110 Ill. App. 366.

A South Dakota Statute provides that a foreign executor or administrator can sue "in like manner and under the same restrictions as are applicable to nonresidents;" and this includes a corporation acting as administrator. Germantown Trust Co. *v.* Whitney, 19 S. Dak. 108, 102 N. W. 304.

955. 1. Beaumont *v.* Beaumont, 144 Fed. 288. See also Morse *v.* King, 73 N. J. L. 549, 63 Atl. 986.

2. Campbell *v.* Hughes, 144 Ala. 393, 42 So. 42.

3. Campbell *v.* Hughes, 144 Ala. 393, 42 So. 42.

4. Campbell *v.* Hughes, 144 Ala. 393, 42 So. 42; Taylor *v.* McKee, 121 Ga. 223, 48 S. E. 943.

5. *Georgia.* — Before a foreign administrator can institute a suit in this state it must appear that his intestate at the time of his death was domiciled in the state where the letters of administration were granted, and that no administration has been granted in this state. Taylor *v.* McKee, 121 Ga. 223, 48 S. E. 943.

957. 7. Courtney *v.* Pradt, 135 Fed. 818, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 957; McClellan *v.* Troendle, (Ky. 1907) 99 S. W. 329, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 957; Holzer *v.* Thomas, 60 N. J. Eq. 515, 61 Atl. 154; Babbitt *v.* Fidelity Trust Co., 70 N. J. Eq. 651, 63 Atl. 18, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 957.

Counterclaim. "When it was determined that the administrator had no capacity to sue, it necessarily followed that the counterclaim against him must fail." McClellan *v.* Troendle, (Ky. 1907) 99 S. W. 329.

959. 4. Babbitt *v.* Fidelity Trust Co., 70 N. J. Eq. 655, 63 Atl. 18, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 959.

960. 1. **In Kentucky.** — Courtney *v.* Pradt, 135 Fed. 818.

961. 3. Babbitt *v.* Fidelity Trust Co., 70 N. J. Eq. 655, 63 Atl. 18, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961.

4. Palms *v.* Howard, (Ky. 1907) 102 S. W. 267, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961; Babbitt *v.* Fidelity Trust Co., 70 N. J. Eq. 655, 63 Atl. 18, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961.

963. 4. Babbitt *v.* Fidelity Trust Co., 70 N. J. Eq. 655, 63 Atl. 18, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 963.

FOREIGN GUARDIANS.

965. 2. *In re* Crosswell, (R. I. 1907) 66 Atl. 55.

967. 6. *In re* Crosswell, (R. I. 1907) 66 Atl. 55.

968. 3. **By Statute in Arkansas** the court of probate where any part of the property is situated will appoint a guardian. Nunn *v.* Robertson, 80 Ark. 350, 97 S. W. 293.

4. See *In re* Crosswell, (R. I. 1907) 66 Atl. 55.

In *Quebec* a second guardian will not be appointed for the custody of movable property in the Province of Quebec, of a minor domiciled in Ontario who already has a guardian under the laws of the latter province. *Ex p.* Charette, 8 Quebec P. R. 353.

FOREIGN JUDGMENTS.

977. 2. Israel *v.* Israel, (C. C. A.) 148 Fed. 576, 8 Ann. Cas. 697; Roberts *v.* Leutzke, 39 Ind. App. 577, 78 N. E. 635; Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq. 570, 61 Atl. 26.

984. 1. *United States.* — Jaster *v.* Currie, 198 U. S. 144, 25 U. S. Sup. Ct. 614; Harris *v.* Balk, 198 U. S. 215, 25 U. S. Sup. Ct. 625; Harding *v.* Harding, 198 U. S. 317, 25 U. S. Sup. Ct. 679; Israel *v.* Israel, (C. C. A.) 148 Fed. 576, 8 Ann. Cas. 697.

California. — *In re* Culp, 2 Cal. App. 70, 83 Pac. 89, *per* McLaughlin, J., *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983 [984].

Indiana. — Roberts *v.* Leutzke, 39 Ind. App. 577, 78 N. E. 635; Baltimore, etc., R. Co. *v.* Freeze, (Ind. 1906) 82 N. E. 761.

Iowa. — Cuykendall *v.* Doe, 129 Iowa 453, 105 N. W. 698.

Kansas. — Bleakley *v.* Barclay, 75 Kan. 462, 89 Pac. 906.

Minnesota. — Tillinghast *v.* U. S. Saving, etc., Co., 99 Minn. 62, 108 N. W. 472.

Mississippi. — Weyburn *v.* Watkins, (Miss. 1907) 44 So. 145.

Missouri. — Tootle *v.* Buckingham, 190 Mo. 183, 88 S. W. 619; Vennum *v.* Mertens, 119 Mo. App. 461, 95 S. W. 292.

Nebraska. — Fall *v.* Fall, 75 Neb. 104, 106 N. W. 412, 113 N. W. 175.

New Jersey. — Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq. 570, 61 Atl. 26; Freund *v.* Freund, (N. J. 1906) 63 Atl. 756; Swing *v.* Consolidated Fruit Jar Co., 74 N. J. L. 145, 63 Atl. 899.

New York. — Gleason *v.* Northwestern Mut. L. Ins. Co., 189 N. Y. 100, 81 N. E. 777; Olmsted *v.* Olmsted, 190 N. Y. 458, 83 N. E. 569; Johnston *v.* Mutual Reserve L. Ins. Co., 104 N. Y. App. Div. 544, 93 N. Y. Supp. 1048; Geduld *v.* Baltimore, etc., R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 239, 105 N. Y. Supp. 110; Strauss *v.* Strauss, 122 N. Y. App. Div. 729, 107 N. Y. Supp. 842.

North Carolina. — Levin *v.* Gladstein, 142 N. Car. 482, 55 S. E. 371.

Pennsylvania. — Stilwell *v.* Smith, 219 Pa. St. 36, 67 Atl. 910.

Texas. — St. Louis Expanded Metal Fireproofing Co. *v.* Beilharz, (Tex. Civ. App. 1905) 88 S. W. 512.

986. 3. *In re* Culp, 2 Cal. App. 70, 83 Pac. 89, *per* McLaughlin, J., *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 986.

987. 1. Israel *v.* Israel, (C. C. A.) 148 Fed. 576, 8 Ann. Cas. 697.

988. 3. *United States.* — National Exch. Bank *v.* Wiley, 195 U. S. 257, 25 U. S. Sup. Ct. 70; Harris *v.* Balk, 198 U. S. 215, 25 U. S. Sup. Ct. 625; Haddock *v.* Haddock, 201 U. S. 562, 26 U. S. Sup. Ct. 525; Old Wayne Mut. L. Assoc. *v.* McDonough, 204 U. S. 8, 27 U. S. Sup. Ct. 236.

California. — *In re* Culp, 2 Cal. App. 70, 83 Pac. 89.

Illinois. — Forrest *v.* Fey, 218 Ill. 165, 75 N. E. 789; Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028; Coe *v.* Garvey, 130 Ill. App. 221, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 988.

Iowa. — Horton Bank *v.* Knox, 133 Iowa 443, 109 N. W. 201.

Kentucky. — Downs *v.* Downs, (Ky. 1906) 96 S. W. 536.

Nebraska. — Fall *v.* Fall, 75 Neb. 104, 113 N. W. 175.

New York. — Olmsted *v.* Olmsted, 190 N. Y. 458, 83 N. E. 569; Grider *v.* Corbin, 116 N. Y. App. Div. 818, 102 N. Y. Supp. 181; Geduld *v.* Baltimore, etc., R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 239, 105 N. Y. Supp. 110.

991. 1. Haddock *v.* Haddock, 201 U. S. 562, 26 U. S. Sup. Ct. 525; Wetmore *v.* Karrick, 205 U. S. 141, 27 U. S. Sup. Ct. 434.

6. Olmsted *v.* Olmsted, 190 N. Y. 458, 83 N. E. 569.

992. 2. Haddock *v.* Haddock, 201 U. S. 562, 26 U. S. Sup. Ct. 525; Old Wayne Mut. L. Assoc. *v.* McDonough, 204 U. S. 8, 27 U. S. Sup. Ct. 236; Wetmore *v.* Karrick, 205 U. S. 141, 27 U. S. Sup. Ct. 434; Cooper *v.* Brazelton, (C. C. A.) 135 Fed. 476; Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028; Spiker *v.* American Relief Soc., 140 Mich. 225, 103 N. W. 611; Fall *v.* Fall, 75 Neb. 104, 113 N. W. 175; Olmsted *v.* Olmsted, 190 N. Y. 458, 83 N. E. 569; Grider *v.* Corbin, 116 N. Y. App. Div. 818, 102 N. Y. Supp. 181.

The Character of the Original Cause of Action, and the plaintiff's right to maintain the action in the courts of the sister state, may be inquired into. St. Louis Expanded Metal Fireproofing Co. *v.* Beilharz, (Tex. Civ. App. 1905) 88 S. W. 512.

993. 2. Cooper *v.* Brazelton, (C. C. A.) 135 Fed. 476; *In re* Culp, 2 Cal. App. 70, 83 Pac. 89; Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028.

A Recital of Jurisdictional Facts in a Decree may be contradicted by the record. Forrest *v.* Fey, 218 Ill. 165, 75 N. E. 789.

Record Showing Jurisdiction May Be Attacked in Collateral Proceedings. — Cohen *v.* Portland Lodge No. 142, 140 Fed. 774.

994. 3. Forrest *v.* Fey, 218 Ill. 165, 75 N. E. 789; Hodge *v.* International Registry Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 442, 105 N. Y. Supp. 1067.

995. 3. Old Wayne Mut. L. Assoc. *v.* McDonough, 164 Ind. 321, 73 N. E. 703; Roberts *v.* Leutzke, 39 Ind. App. 577, 78 N. E. 635; Woodworth *v.* McKee, 126 Iowa 714, 102 N. W. 777; Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq. 570, 61 Atl. 26; Hodge *v.* International Registry Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 442, 105 N. Y. Supp. 1067.

996. 1. Geduld *v.* Baltimore, etc., R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 239, 105 N. Y. Supp. 110.

997. 1. **Jurisdiction Not Presumed Where Pleadings Affirmatively Show Lack of Jurisdiction.** — Old Wayne Mut. L. Assoc. *v.* McDonough, 204 U. S. 8, 27 U. S. Sup. Ct. 236.

2. Old Wayne Mut. L. Assoc. *v.* McDonough, 164 Ind. 321, 73 N. E. 703; Roberts *v.* Leutzke, 39 Ind. App. 577, 78 N. E. 635; State *v.* Webber, 96 Minn. 422, 105 N. W. 490, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 997.

999. 4. Strauss *v.* Strauss, 122 N. Y. App. Div. 729, 107 N. Y. Supp. 842.

1001. 3. Israel *v.* Israel, (C. C. A.) 148 Fed. 576, 8 Ann. Cas. 697; Sistare *v.* Sistare, (Conn. 1907) 66 Atl. 772; Page *v.* Page, 189 Mass. 85, 75 N. E. 92.

1002. 1. Israel *v.* Israel, (C. C. A.) 148 Fed. 576, 8 Ann. Cas. 697; Sistare *v.* Sistare, (Conn. 1907) 66 Atl. 772; Page *v.* Page, 189 Mass. 85, 75 N. E. 92; Freund *v.* Freund, (N. J. 1906) 63 Atl. 756.

1006. 5. Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028; Cuykendall *v.* Doe, 129 Iowa 453, 105 N. W. 698; Vennum *v.* Mertens, 119 Mo. App. 461, 95 S. W. 292.

1008. 4. S. Jarvis Adams Co. *v.* Knapp, 213 Pa. St. 567, 62 Atl. 1112.

1009. 1. Harris *v.* Balk, 198 U. S. 215, 25 U. S. Sup. Ct. 625; Haddock *v.* Haddock, 201 U. S. 562, 26 U. S. Sup. Ct. 525.

The Judgment of a Court of a Sister State will be given the same effect as a judgment of a court of the state in which the same is asserted. Tootle *v.* Buckingham, 190 Mo. 183, 88 S. W. 619.

1018. 1. Northern Assur. Co. *v.* Grand View Bldg. Assoc., 203 U. S. 106, 27 U. S. Sup. Ct. 27.

1019. 4. Geduld *v.* Baltimore, etc., R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 239, 105 N. Y. Supp. 110.

5. Baltimore, etc., R. Co. *v.* Freeze, (Ind. 1906) 82 N. E. 761.

1021. 1. Bater *v.* Bater, (1906) P. 209, 4 Ann. Cas. 854; Harding *v.* Harding, 198 U. S. 317, 25 U. S. Sup. Ct. 679; Field *v.* Field, 117 Ill. App. 307 (*citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021), *affirmed* 215 Ill. 496; Strauss *v.* Strauss, 122 N. Y. App. Div. 729, 107 N. Y. Supp. 842.

Decree as to Custody of Children Binding upon Parties. — Hardin *v.* Hardin, 168 Ind. 352, 81 N. E. 60.

1022. 2. Bleakley *v.* Barclay, 75 Kan. 462, 89 Pac. 906.

1027. 1. Morrison Mfg. Co. *v.* Rimerman, 127 Iowa 719, 104 N. W. 279; Tillinghast *v.* U. S. Saving, etc., Co., 99 Minn. 62, 108 N. W. 472.

Canada Statutes Establishing Different Rule. — See Hickey *v.* Legresley, 15 Manitoba 304.

2. Stilwell *v.* Smith, 219 Pa. St. 36, 67 Atl. 1106.

1028. 3. Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028; Horton Bank *v.* Knox, 133 Iowa 443, 109 N. W. 201; Vezina *v.* Newsome Co., 14 Ont. L. Rep. 658.

1030. 1. Anthony *v.* Wilson, 74 N. J. L. 630, 65 Atl. 988, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029; Hodge *v.* International Registry Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 442, 105 N. Y. Supp. 1067.

2. Mahoney *v.* State Ins. Co., 133 Iowa 570, 110 N. W. 1041.

3. Levin *v.* Gladstein, 142 N. Car. 482, 55 S. E. 371.

1031. 1. El Capitan Land, etc., Co. *v.* Lees, 13 N. Mex. 407, 86 Pac. 924.

7. Blumle *v.* Kramer, 14 Okla. 366, 79 Pac. 215.

1032. 5. **Pendency of Suit to Set Judgment Aside a Ground for Stay of Proceedings.** — Parker *v.* Bowman, 83 Ark. 508, 104 S. W. 158.

1033. 5. *Compare* Mahoney *v.* State Ins. Co., 133 Iowa 570, 110 N. W. 1041.

1034. 7. **In Minnesota,** an action on a foreign judgment must be commenced within ten years from the rendition thereof. Gaines *v.* Grunewald, 102 Minn. 245, 113 N. W. 450.

1035. 2. **The Identity of Name of Debtor** and his pleading in confession and avoidance constitute *prima facie* identity. Stephen *v.* Olsen, 1 W. L. R. 572.

1036. 2. Conly *v.* Scanlin, (Iowa 1906) 109 N. W. 300.

3. **Set-off May Be Allowed as Defense to Action on Foreign Judgment.** — Leathe *v.* Thomas, 218 Ill. 246, 75 N. E. 810.

1037. 1. Cuykendall *v.* Doe, 129 Iowa 453, 105 N. W. 698.

1038. 2. **Presumption that Seal Affixed by Clerk Is Seal of Court.** — Beebe *v.* Tanner, 6 N. W. Ter. 13.

1041. 1. Santa Clara Valley Mill, etc., Co. *v.* Prescott, 127 Ill. App. 644.

1046. 1. Santa Clara Valley Mill, etc., Co. *v.* Prescott, 127 Ill. App. 644, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1047 [1-3, 6].

Entire Record Need Not Be Produced. — Roberts *v.* Leutzke, 39 Ind. App. 577, 78 N. E. 635.

1048. 2. Levin *v.* Gladstein, 142 N. Car. 482, 55 S. E. 371.

FOREIGN LAWS.

1054. 1. State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294, *quoting* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1053.

1057. 3. Schneider *v.* Schneider, 125 Iowa

... N. W. 130, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1057.

1058. 4. *Alabama.* — Southern Express Co. *v.* Owens, 146 Ala. 412, 41 So. 752.

Illinois. — Leathe *v.* Thomas, 218 Ill. 246, 75 N. E. 810, *affirming* 109 Ill. App. 434; Clark *v.* Assets Realization Co., 115 Ill. App. 150; Crane *v.* Blackman, 126 Ill. App. 631; Christiansen *v.* William Graver Tank Works, 223 Ill. 142, 79 N. E. 97.

Louisiana. — Cumberland Telephone, etc., Co. *v.* St. Louis, etc., R. Co., 117 La. 199, 41 So. 492.

Missouri. — Snuffer *v.* Karr, 197 Mo. 182, 94 S. W. 983; Smith *v.* Aultman, 120 Mo. App. 462, 96 S. W. 1034, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1058.

Montana. — McKnight *v.* Oregon Short Line R. Co., 33 Mont. 40, 82 Pac. 661.

South Carolina. — Frasier *v.* Charleston, etc., R. Co., 73 S. Car. 140, 52 S. E. 964.

Texas. — White *v.* Richeson, (Tex. Civ. App. 1906) 94 S. W. 202.

Virginia. — App *v.* App, 106 Va. 253, 55 S. E. 672; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

1060. 1. *California.* — *In re* Dunphy, 147 Cal. 95, 81 Pac. 315.

Iowa. — Banco De Sonora *v.* Banker's Mut. Casualty Co., 124 Iowa 576, 100 N. W. 532; Campbell *v.* Campbell, 129 Iowa 317, 105 N. W. 583.

Kansas. — St. Louis, etc., R. Co. *v.* Johnson, 74 Kan. 83, 86 Pac. 156.

Massachusetts. — Demelman *v.* Brazier, 193 Mass. 588, 79 N. E. 812.

Missouri. — Lee *v.* Missouri Pac. R. Co., 195 Mo. 400, 92 S. W. 614; McManus *v.* Oregon Short Line R. Co., 118 Mo. App. 152, 94 S. W. 743.

Nebraska. — Bannard *v.* Duncan, (Neb. 1907) 112 N. W. 353.

New York. — Fallon *v.* Mertz, 110 N. Y. App. Div. 755, 97 N. Y. Supp. 417; Spencer *v.* Busch, 50 Misc. (N. Y.) 284, 98 N. Y. Supp. 690; Robb *v.* Washington, etc., College, 185 N. Y. 485, 78 N. E. 359.

South Dakota. — Iowa L. & T. Co. *v.* Schnose, 19 S. Dak. 248, 103 N. W. 22.

Texas. — Southern Kansas R. Co. *v.* J. W. Burgess Co., (Tex. Civ. App. 1905) 90 S. W. 189; White *v.* Richeson, (Tex. Civ. App. 1906) 94 S. W. 202; Southern Kansas R. Co. *v.* Curtis, (Tex. Civ. App. 1907) 99 S. W. 566.

Virginia. — Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

Washington. — Clark *v.* Eltinge, 38 Wash. 376, 80 Pac. 556.

Wisconsin. — Edleman *v.* Edleman, 125 Wis. 270, 104 N. W. 56.

No Presumption Where Foreign Law Pleaded. — P. J. Bowlin Liquor Co. *v.* Brandenburg, 130 Iowa 220, 106 N. W. 497.

Presumption Does Not Obtain to Impose Penalty or Work Forfeiture. — Weidemeier *v.* Habinck, 131 Iowa 643, 109 N. W. 189.

1061. 2. Demelman *v.* Brazier, 193 Mass. 588, 79 N. E. 812; Wilcox *v.* Bergman, 96 Minn. 219, 104 N. W. 955; Eckles *v.* Missouri Pac. R. Co., 112 Mo. App. 240, 87 S. W. 99; Robb *v.* Washington, etc., College, 185 N. Y. 485, 78 N. E. 359.

1062. 1. Windhorst *v.* Bergendahl, (S. Dak. 1907) 111 N. W. 544.

3. Watford *v.* Alabama, etc., Lumber Co., (Ala. 1907) 44 So. 567, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063 [1062]; Southern R. Co. *v.* Cunningham, 123 Ga. 90, 50 S. E. 979; Bailey *v.* Devine, 123 Ga. 653, 51 S. E. 603; Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77; Ellington *v.* Harris, 127 Ga. 85, 56 S. E. 134; Scholten *v.* Barber, 217 Ill. 148, 75 N. E. 460, *affirming* 119 Ill. App. 241; Crane *v.* Blackman, 126 Ill. App. 631; Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52; Frank *v.* Gump, 104 Va. 306, 51 S. E. 358.

1063. 2. Watford *v.* Alabama, etc., Lumber Co., (Ala. 1907) 44 So. 567, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063.

Presumption cannot be indulged that the common law of England is in force in a state which was never subject to the laws of England. McManus *v.* Oregon Short Line R. Co., 118 Mo. App. 152, 94 S. W. 743.

3. Banco de Sonora *v.* Bankers' Mut. Casualty Co., 124 Iowa 576, 100 N. W. 532, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1065 [1063].

1064. 2. Cook *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 718; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

3. Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114.

1066. 6. Cook *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 718; People *v.* Rosenzweig, 47 Misc. (N. Y.) 584, 96 N. Y. Supp. 103.

1069. 6. Cook *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 718.

7. Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

1070. 4. Banco De Sonora *v.* Bankers' Mut. Casualty Co., 124 Iowa 576, 100 N. W. 532; Massucco *v.* Tomassi, 78 Vt. 188, 62 Atl. 57.

6. Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

1071. 7. Christiansen *v.* William Graver Tank Works, 223 Ill. 142, 79 N. E. 97, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1071.

Where reports of judicial decisions are received to prove the common law, it is the province of the jury to determine whether or not the adjudications have been made, but it is the duty of the court to construe them. Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

9. Frasier *v.* Charleston, etc., R. Co., 73 S. Car. 140, 52 S. E. 964.

FORFEIT — FORFEITURE.

1074. 2. **Other Definitions.** — See Meyers *v.* State, (Tex. Civ. App. 1907) 105 S. W. 48.

1077. 1. Casey *v.* St. Louis Transit Co., 116 Mo. App. 247, 91 S. W. 419, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1074–1077.

FORGERY.

1082. 1. Goodman *v.* People, 228 Ill. 154, 81 N. E. 830; State *v.* Floyd, (Ind. 1907) 81 N. E. 1153; Com. *v.* Tabor, (Ky. 1907) 104 S. W. 261, *citing* 13 AM. AND ENG. ENCYC. OF

Law (2d ed.) 1082; State *v.* Cordray, 200 Mo. 29, 98 S. W. 1, *quoting* 13 Am. and Eng. Encyc. of Law (2d ed.) 1082.

2. Purpose of Forgery Statutes. — State *v.* Cordray, 200 Mo. 29, 98 S. W. 1.

3. People *v.* McPherson, (Cal. App. 1907) 91 Pac. 1098; Goodman *v.* State, 228 Ill. 154, 81 N. E. 830; State *v.* Kelliher, (Oregon 1907) 88 Pac. 866.

4. Wooldridge *v.* State, 49 Fla. 137, 38 So. 3, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 1082; Scott *v.* State, (Miss. 1907) 44 So. 803.

1083. 4. Shelton *v.* State, 143 Ala. 98, 39 So. 377; People *v.* McPherson, (Cal. App. 1907) 91 Pac. 1098; Goodman *v.* State, 228 Ill. 154, 81 N. E. 830; State *v.* Cordray, 200 Mo. 29, 98 S. W. 1; People *v.* Hegeman, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 295, 107 N. Y. Supp. 261; State *v.* Kelliher, (Oregon 1907) 88 Pac. 867; State *v.* Zimmerman, (S. Car. 1908) 60 S. E. 680.

Intent to Profit by Forgery has been held not to be a necessary element of the offense. State *v.* Laborde, (La. 1907) 45 So. 38.

Failure to require the jury to find the defendant guilty of intent to defraud is reversible error. State *v.* Tyree, 201 Mo. 574, 100 S. W. 645.

1085. 4. People *v.* McPherson, (Cal. App. 1907) 91 Pac. 1098.

5. Goodman *v.* People, 228 Ill. 154, 81 N. E. 830.

1086. 5. Typewriting. — State *v.* Bradley, 116 Tenn. 711, 8 Ann. Cas. 86, 94 S. W. 605.

This is limited to a particular style of printing by the statute of *Texas.* Heath *v.* State, 49 Tex. Crim. 49, 89 S. W. 1063.

1087. 3. Biddeford Nat. Bank *v.* Hill, 102 Me. 346, 66 Atl. 721, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 1087.

1088. 2. People *v.* Browne, 118 N. Y. App. Div. 793, 103 N. Y. Supp. 903, *affirmed* 189 N. Y. 528, 82 N. E. 1130; State *v.* Kelliher, (Oregon 1907) 88 Pac. 867.

3. State *v.* Hazzard, 168 Ind. 163, 80 N. E. 149, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 1088.

1089. 3. Murphy *v.* State, 49 Tex. Crim. 488, 93 S. W. 543; Edwards *v.* State, (Tex. Crim. 1908) 108 S. W. 673, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 1089.

1091. 11. Harmless Alteration of Draft. — Wilson *v.* State, 85 Miss. 687, 38 So. 46.

1092. 4. People *v.* Herzog, (County Ct.) 47 Misc. (N. Y.) 50, 93 N. Y. Supp. 357; People *v.* Hegeman, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 295, 107 N. Y. Supp. 261.

False Entry in Books of Public Office. State *v.* Zimmerman, (S. Car. 1908) 60 S. E. 680.

1093. 3. The writing must be capable of legal effect, real or apparent. State *v.* Cordray, 200 Mo. 29, 98 S. W. 1.

4. Tracy *v.* State, 49 Tex. Crim. 39, 90 S. W. 308; Miller *v.* State, (Tex. Crim. 1907) 100 S. W. 380.

5. Wooldridge *v.* State, 49 Fla. 137, 38 So. 3.

6. White *v.* State, 83 Ark. 36, 102 S. W. 715; Goodwin *v.* People, 228 Ill. 154, 81 N. E. 830; State *v.* Hazzard, 168 Ind. 163, 80 N. E. 149; McGuire *v.* State, (Miss. 1907) 44 So. 802; Tracy *v.* State, 49 Tex. Crim. 39, 90 S. W. 308.

7. Tracy *v.* State, 49 Tex. Crim. 39, 90 S. W. 308; Norton *v.* State, 129 Wis. 659, 109 N. W. 531.

8. Goodman *v.* People, 228 Ill. 154, 81 N. E. 830; State *v.* Hazzard, 168 Ind. 163, 80 N. E. 149; State *v.* Floyd, (Ind. 1907) 81 N. E. 1153; State *v.* Cordray, 200 Mo. 29, 98 S. W. 1; *Ex p.* Farrell, (Mont. 1907) 92 Pac. 785; State *v.* McManus, 78 Vt. 433, 62 Atl. 1013; Norton *v.* State, 129 Wis. 659, 109 N. W. 531.

1094. 1. State *v.* Cordray, 200 Mo. 29, 98 S. W. 1.

4. State *v.* Shaw, 72 Kan. 81, 82 Pac. 587.

These may be such as appear from the face of the writing, or such as established by averment and proof. Russell *v.* State, 51 Fla. 124, 40 So. 625.

1097. 8. Way Bills. — *Ex p.* Fischl, (Tex. Crim. 1907) 100 S. W. 773.

1098. 1. State *v.* Kelliher, (Oregon 1907) 88 Pac. 867.

Agreements to Convey Land. — McLean *v.* State, (Ga. App. 1908) 60 S. E. 332.

Bills of Sale. — Gaut *v.* State, 49 Tex. Crim. 493, 94 S. W. 1034.

15. State *v.* Zimmerman, (S. Car. 1908) 60 S. E. 680.

1100. 2. Subscription for Books. — State *v.* Hazzard, 168 Ind. 163, 80 N. E. 149.

6. People *v.* Abeel, 182 N. Y. 415, 75 N. E. 307, *affirming* 100 N. Y. App. Div. 516, 91 N. Y. Supp. 1107.

1101. 4. Writings of No Legal Effect. — A mere gratuitous request or order for goods has been held not subject to forgery. West *v.* State, 45 Fla. 118, 33 So. 854.

1102. 7. Walker *v.* State, 127 Ga. 48, 56 S. E. 113; People *v.* Mingey, 118 N. Y. App. Div. 652, 103 N. Y. Supp. 627.

1103. 2. State *v.* Fisk, (Ind. 1908) 83 N. E. 995.

5. State *v.* Murray, 72 S. Car. 508, 52 S. E. 580.

6. Possession by the payee is, presumptively, with knowledge; but this presumption does not accompany possession of an instrument payable to a third person. State *v.* Waterbury, 133 Iowa 135, 110 N. W. 328; State *v.* Calhoun, 75 Kan. 259, 88 Pac. 1079, *quoting* 13 Am. and Eng. Encyc. of Law (2d ed.) 1103.

7. State *v.* Calhoun, 75 Kan. 259, 88 Pac. 1079, *quoting* 13 Am. and Eng. Encyc. of Law (2d ed.) 1103.

8. Com. *v.* Burgess, (Ky. 1906) 91 S. W. 266; State *v.* Murray, 72 S. Car. 508, 52 S. E. 580.

1104. 1. Walker *v.* State, 127 Ga. 48, 56 S. E. 113; Com. *v.* Bond, 188 Mass. 91, 74 N. E. 293.

4. Rose *v.* State, 80 Ark. 222, 96 S. W. 996; Spears *v.* People, 220 Ill. 72, 77 N. E. 112; State *v.* Calhoun, 75 Kan. 259, 88 Pac. 1079.

It is not essential to the offense that the person intended to be defrauded was misled. Com. *v.* Bond, 188 Mass. 91, 74 N. E. 293.

7. Jordan *v.* State, 127 Ga. 278, 56 S. E. 422, *citing* 13 Am. and Eng. Encyc. of Law (2d ed.) 1104.

1106. 2. Bank of Montreal *v.* Rex, 38 Can. Sup. Ct. 258.

1108. 7. Proof of Preparation for Flight has been held to be admissible. Bolton *v.* State, 146 Ala. 691, 40 So. 409; Snow *v.* State, (Ark. 1908) 107 S. W. 980; Wooldridge *v.* State, 49 Fla. 137, 38 So. 3; People *v.* Gaffey, 182 N. Y. 257, 74 N. E. 836; People *v.* Browne, 118 N. Y. App. Div. 793, 103 N. Y. Supp. 903, *affirmed* 189 N. Y. 528, 82 N. E. 1130.

1109. 4. Dillard *v.* U. S., (C. C. A.) 141 Fed. 303; People *v.* Harben, 5 Cal. App. 29, 91 Pac. 398; State *v.* Newman, 34 Mont. 434, 87 Pac. 462; State *v.* Murphy, (N. Dak. 1908) 115 N. W. 84; Lingafelter *v.* State, 28 Ohio Cir. Ct. 800; State *v.* Kelliher, (Oregon 1907) 88 Pac. 867.

1110. 4. State *v.* Calhoun, 75 Kan. 259, 88 Pac. 1079; State *v.* Stark, 202 Mo. 210, 100 S. W. 642.

6. State *v.* Mitten, (Mont. 1907) 92 Pac 969.

1112. 9. Walker *v.* State, 127 Ga. 48, 56 S. E. 113.

10. Jordan *v.* State, 127 Ga. 278, 56 S. E. 423.

1114. 6. **Corroborative Evidence Requisite.** — Houle *v.* Rex, 15 Quebec K. B. 170, 12 Can. Crim. Cas. 56.

FORNICATION.

1119. 4. **Not Common-law Offense in United States.** — State *v.* Sharp, (N. J. L. 1907) 66 Atl. 926.

5. **Georgia Statute.** — Sutton *v.* State, 124 Ga. 815, 53 S. E. 381.

Incestuous Fornication, punishable as a distinct crime under Pen. Code Ga. (1895), § 381, is not defined, but the word "incestuous" is construed under Civ. Code Ga. (1895), § 2413, declaring the marriage of a man with his stepdaughter incestuous. Lipham *v.* State, 125 Ga. 52, 53 S. E. 817.

1122. 2. **Offense Is Adultery under Washington Statute.** — State *v.* Keith, (Wash. 1907) 92 Pac. 893.

7. **In Georgia Offense Designated as "Incestuous Fornication."** — Lipham *v.* State, 125 Ga. 52, 53 S. E. 817.

1123. 1. Washington *v.* State, 124 Ga. 423, 52 S. E. 910.

1124. 4. **Living Together in Fornication.** — The question whether the acts were of sufficient frequency to constitute the "habitual carnal intercourse" within the inhibition of the statute should be left to the jury. State *v.* Sauls, 70 S. Car. 393, 50 S. E. 17.

1125. 1. **Character of Woman.** — See Guinn *v.* State, (Tex. Crim. App. 1901) 65 S. W. 376.

In *Georgia* a conviction has been sustained although the court, after receiving evidence of opportunity, permitted evidence as to the general character of the woman and of the house in which she lived. Sutton *v.* State, 124 Ga. 815, 53 S. E. 381.

2. Lipham *v.* State, 125 Ga. 52, 53 S. E. 817.

1126. 3. Guinn *v.* State, (Tex. Crim. App. 1901) 65 S. W. 376. *Compare* Sutton *v.* State, 124 Ga. 815, 53 S. E. 381, wherein evidence of reputation was held to be admissible after evidence of opportunity had been adduced.

4. Seats *v.* State, 122 Ga. 173, 50 S. E. 65; Sutton *v.* State, 124 Ga. 815, 53 S. E. 381; Lightner *v.* State, 126 Ga. 563, 55 S. E. 471; Hofer *v.* State, 130 Wis. 576, 110 N. W. 391.

Sufficiency of Evidence Question for Jury. — State *v.* Sauls, 70 S. Car. 393, 50 S. E. 17.

6. **Admissions or Confessions of Defendant.** — Voluntary and unnecessary acknowledgments by a testator of concubinage with a legatee, made in the presence of such legatee, are sufficient to establish the openness of the concubinage. Landry's Succession, 114 La. 829, 38 So. 575.

Confessions Must Be Plenary, and if incomplete must be connected and corroborated. McAllister *v.* State, 2 Ga. App. 654, 58 S. E. 1110.

1127. 7. **Under Particular Statutes.** — In *Georgia* a verdict convicting the accused of adultery and fornication is not supported by evidence from which it does not appear that either party was married. Elliott *v.* State, 125 Ga. 31, 53 S. E. 809.

FORTHCOMING AND DELIVERY BONDS.

1135. 7. D. C. Wise Coal Co. *v.* Columbia Lead, etc., Co., 123 Mo. App. 249, 100 S. W. 680.

1139. 5. Wilson *v.* White, 82 Ark. 407, 102 S. W. 201, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1139.

If the Obligors Receive the Property from the levying officer they will be liable in the event that the condition is not complied with, though the bond is not a good statutory bond. Mount *v.* Wall, 127 Ga. 211, 56 S. E. 298.

1140. 4. **Estoppel to Deny Validity of Bond.** — Hatton *v.* Brown, 1 Ga. App. 747, 57 S. E. 1044.

6. O'Neill Mfg. Co. *v.* Harris, 127 Ga. 640, 56 S. E. 739.

1141. 3. **Question Whether Property Levied upon Is Subject to Execution Not Involved in Action on Bond.** — Oliver *v.* Warren, 124 Ga. 549, 53 S. E. 100; O'Neill Mfg. Co. *v.* Harris, 127 Ga. 640, 56 S. E. 739.

1142. 3. Moshell *v.* Reed, (Ky. 1906) 97 S. W. 372.

By Statute in Missouri the court, on approval of the bond, will make an order dissolving the attachment, and an order on the sheriff to release the attached property to the defendant. D. C. Wise Coal Co. *v.* Columbia Lead, etc., Co., 123 Mo. App. 249, 100 S. W. 680.

1149. 3. Fidelity, etc., Co. *v.* B. F. Sturtevant Co., 86 Miss. 509, 38 So. 783.

1154. 2. **Issues Involved.** — In a suit on the bond, where its execution is not denied, the question is whether there has been a breach; neither the legality of the levy nor the authority of the officer to make it is an issuable fact. Oliver *v.* Warren, 124 Ga. 549, 53 S. E. 100.

1156. 1. **Under the Georgia Statute** the amount due to the plaintiff in execution, with interest and costs, may be recovered. Hatton *v.* Brown, 1 Ga. App. 747, 57 S. E. 1044.

3. **A Tender of the Property** by a surety discharges his liability on the bond, and the obligee cannot avoid taking the property simply because the tender was made by the surety in-

stead of the principal. Rider *v.* Thomas Crow Machinery Co., (Colo. 1906) 85 Pac. 696.

FORTHWITH.

1158. 1. Walker *v.* Detroit, 138 Mich. 540, 101 N. W. 809, *citing* 13 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1157.

FORWARDERS.

1169. 1. Forwarding Carrier Defined. — Brunk *v.* Ohio, etc., R. Co., (Ky. 1907) 105 S. W. 443.

1170. 3. Cincinnati R. Co. *v.* Pendleton, (Ky. 1906) 96 S. W. 434.

1171. 5. Cincinnati R. Co. *v.* Pendleton, (Ky. 1906) 96 S. W. 434.

FOUND.

1. 3. **Found in County.** — Willard *v.* Zehr, 215 Ill. 148, 74 N. E. 107.

FRANCHISES.

1. 3. Lowther *v.* Bridgeman, 57 W. Va. 307, 50 S. E. 410, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 4.

FRAUD AND DECEIT.

19. 1. Derby *v.* Donahoe, 208 Mo. 684, 106 S. W. 632.

21. 1. Knight *v.* Rawlings, 205 Mo. 412, 104 S. W. 42. See also Parsons *v.* Balson, 129 Wis. 311, 109 N. W. 136.

2. See Parsons *v.* Balson, 129 Wis. 311, 109 N. W. 136.

5. Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8. See also Wann *v.* Scullin, (Mo. 1908) 109 S. W. 688.

Legal Fraud under the Georgia Statute. — Turner *v.* Ware, 2 Ga. App. 57, 58 S. E. 310.

6. See Lyon *v.* James, 97 N. Y. App. Div. 385, 90 N. Y. Supp. 28, *affirmed* without opinion 181 N. Y. 512, 73 N. E. 1126.

7. Lyon *v.* James, 97 N. Y. App. Div. 385, 90 N. Y. Supp. 28, *affirmed* without opinion 181 N. Y. 512, 73 N. E. 1126.

9. Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888; Pittsburgh L., etc., Co. *v.* Northern Cent. L. Ins. Co., 148 Fed. 674, 78 C. C. A. 408, *affirming* 140 Fed. 888; Donnelly *v.* Baltimore Trust, etc., Co., 102 Md. 1, 61 Atl. 301.

22. 1. Keeler *v.* Seaman, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 292, 95 N. Y. Supp. 920.

2. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811.

23. 1. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22, 23.

3. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23; Cash Register Co. *v.* Townsend, 137 N. Car. 652, 50 S. E. 306.

4. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23; Cash Register Co. *v.* Townsend, 137 N. Car. 652, 50 S. E. 306.

5. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231.

6. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23; Cash Register Co. *v.* Townsend, 137 N. Car. 652, 50 S. E. 306. See also L. D. Garrett Co. *v.* Appleton, 101 N. Y. App. Div. 507, 92 N. Y. Supp. 136, *affirmed* without opinion 184 N. Y. 557, 76 N. E. 1099.

7. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23; Cash Register Co. *v.* Townsend, 137 N. Car. 652, 50 S. E. 306; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231.

8. See Kell *v.* Trenchard (C. C. A.) 142 Fed. 16 *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23.

9. Kuelling *v.* Roderick Lean Mfg. Co., 183 N. Y. 78, 75 N. E. 1098, *reversing* 94 N. Y. App. Div. 613, 88 N. Y. Supp. 1105; Griffin *v.* Roanoke R., etc., Co., 140 N. Car. 514, 53 S. E. 307. See also Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23; Palmer *v.* Goldberg, 128 Wis. 103, 107 N. W. 478.

10. French, etc., Importing Co. *v.* Belleville Drug Co., 75 Ark. 95, 86 S. W. 836.

11. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23.

24. 6. Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 24.

25. 2. See Knight *v.* Rawlings, 205 Mo. 412, 104 S. W. 42, *disapproving* Pasley *v.* Freeman, 3 T. R. 51.

27. 11. Dieterle *v.* Ann Arbor Paint, etc., Co., 143 Mich. 416, 107 N. W. 79; Brolaski *v.* Carr, 127 Mo. App. 279, 105 S. W. 284. See also Coats *v.* Crossland, 20 Times L. Rep. 800; Hinkley *v.* Sac Oil, etc., Line Co., 132 Iowa 396, 107 N. W. 629.

Sale of Unissued Stock. — Manning *v.* Berdan, 135 Fed. 159; Tinker *v.* Kier, 195 Mo. 183, 94 S. W. 501.

A purchase of stock made upon the faith of false statements as to payment of dividends, and as to the financial condition of the corporation, will sustain an action for damages. Keeler *v.* Seaman, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 292, 95 N. Y. Supp. 920.

False Representations by Officer in Corporation Ground for Rescission. — Drake *v.* Holbrook, 92 S. W. 297, 28 Ky. L. Rep. 1319; Hines *v.* Royce, 127 Mo. App. 718, 106 S. W. 1091; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666.

A Subscriber to Stock Cannot Rescind if others, acting upon the faith of such subscription, have become creditors of the corporation and it has become insolvent. Marion Trust Co. *v.* Blish, (Ind. App. 1906) 79 N. E. 415.

Actual Knowledge and Intent to Deceive must be shown. Nash *v.* Rosesteel, (Cal. App. 1908) 94 Pac. 850.

28. 1. **Condition of a National Bank.** — *Compare* Mason *v.* Moore, 73 Ohio St. 275, 76 N. E. 932.

4. Blaul *v.* Wandel, (Iowa 1908) 114 N. W. 899.

29. 2. Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077. See also Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159; Wann *v.* Scullin, (Mo. 1908) 109 S. W. 688.

5. U. S. Gypsum Co. *v.* Shields, (Tex. Civ. App. 1907) 106 S. W. 724. See also Ray *v.* Baker, 165 Ind. 74, 74 N. E. 619.

31. 6. Lenoir *v.* Lenoir, 24 App. Cas. (D. C.) 160.

32. 2. See Knight *v.* Rawlings, 205 Mo. 412, 104 S. W. 42, *disapproving* Pasley *v.* Freeman, 3 T. R. 51.

3. Missouri Statute of Frauds. — Knight *v.* Rawlings, 205 Mo. 412, 104 S. W. 42.

33. 1. Knight *v.* Rawlings, 205 Mo. 412, 104 S. W. 42, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33.

2. Knight *v.* Rawlins, [illegible] W. 42, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33. See also Smith *v.* Smith, (Ala. 1907) 45 So. 168.

5. *United States.* — L. J. Mueller Furnace Co. *v.* Cascade Foundry Co., (C. C. A.) 145 Fed. 596, *reversing* 140 Fed. 791; Farwell *v.* Colonial Trust Co., 147 Fed. 480, 78 C. C. A. 22.

Illinois. — See Hughes *v.* Lockington, 221 Ill. 571, 77 N. E. 1105; Chambers *v.* Mitchell, 123 Ill. App. 505.

Indiana. — See Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94; Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417. See also Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595.

Iowa. — Blaul *v.* Wandel, (Iowa 1908) 114 N. W. 899.

Maryland. — Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609.

Missouri. — Bretzfelder *v.* Waddle, 122 Mo. App. 462, 99 S. W. 806.

Nebraska. — See Cerny *v.* Paxton, etc., Co., (Neb. 1907) 110 N. W. 882.

New York. — See Motley *v.* Mercantile Trust Co., 114 N. Y. App. Div. 904, 100 N. Y. Supp. 281; Damers *v.* Sternberger, (Supm. Ct. App. T.) 102 N. Y. Supp. 739.

Pennsylvania. — Standard Interlock Elevator Co. *v.* Wilson, 218 Pa. St. 280, 67 Atl. 463.

Wisconsin. — Urwan *v.* Northwestern Nat. L. Ins. Co., 125 Wis. 349, 103 N. W. 1102; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231; Bowe *v.* Gage, 127 Wis. 245, 106 N. W. 1074.

Action Must Be Predicated on Existing Facts. — Kimber *v.* Young, (C. C. A.) 157 Fed. 199.

Representation that a Purchaser Purposes to Continue Business at the "old stand" does not constitute actionable fraud. James Music Co. *v.* Bridge, (Wis. 1908) 114 N. W. 1108.

6. See J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231.

34. 1. *United States.* — Stratton's Independence *v.* Dines, 126 Fed. 968; Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888.

Indiana. — See Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94; Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595.

Iowa. — Gaar *v.* Halverson, 128 Iowa 603, 105 N. W. 108; Garrett *v.* Slavens, 129 Iowa 107, 105 N. W. 369.

Kansas. — See Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

Maryland. — Donnelly *v.* Baltimore Trust, etc., Co., 102 Md. 1, 61 Atl. 301.

Missouri. — Brown *v.* South Joplin Lead, etc., Min. Co., 194 Mo. 681, 92 S. W. 699; Bretzfelder *v.* Waddle, 122 Mo. App. 462, 99 S. W. 806.

North Carolina. — Cash Register Co *v.* Townsend, 137 N. Car. 652, 50 S. E. 306, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34.

Washington. — See Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

Wisconsin. — J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34.

2. Garrett *v.* Slavens, 129 Iowa 107, 105 N. W. 369; Valley *v.* Boston, etc., R. Co., (Me. 1907) 68 Atl. 635; Cash Register Co. *v.* Townsend, 137 N. Car. 652, 50 S. E. 306, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34.

35. 1. Church *v.* Marsh, 133 Iowa 51, 110 N. W. 161.

2. International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 35; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34. See also Garrett *v.* Finch, 107 Va. 25, 57 S. E. 604.

36. 1. Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 35; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34. See also Damers *v.* Sternberger, (Supm. Ct. App. T.) 95 N. Y. Supp. 532; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189.

2. Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048; Atlas Shoe Co. *v.* Bechard, 102 Me. 203, 66 Atl. 390; Goodwin *v.* Fall, 102 Me. 353, 66 Atl. 727; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 35.

3. International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36.

4. Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36.

5. Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94; Scott *v.* Burnight, 131 Iowa 507, 107 N. W. 422; Mattauch *v.* Walsh, (Iowa 1907) 113 N. W. 818; Gurney *v.* Tenney, (Mass. 1908) 84 N. E. 428; Steen *v.* Weisten, (Oregon 1908) 94 Pac. 834; International, etc., R. Co. *v.* Schuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36. See also Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109; Reilly *v.* Gottleb, 43 Wash. 9, 85 Pac. 675.

37. 1. International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 37.

3. Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 37; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

5. Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 37. See also Oneal *v.* Weisman, (Tex. Civ. App. 1905) 88 S. W. 290.

38. 2. **Value of Land.** — Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94; Garr *v.* Allen, 139 Mich. 440, 102 N. W. 950, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 38.

3. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159.

Dealings between Cousins involve a fiduciary relationship in which an incomplete statement of material facts will amount to a misrepresentation of facts. Ricketts *v.* Tompkins, (N. J. 1908) 68 Atl. 1075; International, etc., R.

Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 38; Schaeffer *v.* Blanc, (Tex. Civ. App. 1905) 87 S. W. 745; Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000. See also Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94; Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

39. 2. Pinch *v.* Hotaling, 142 Mich. 521, 106 N. W. 69; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 39; Reilly *v.* Gottleb, 43 Wash. 9, 85 Pac. 675. See also Kerwin *v.* Friedman, 127 Mo. App. 519, 105 S. W. 1102.

3. See Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16; Brackett *v.* Martens, 4 Cal. App. 249, 87 Pac. 410; Allen *v.* Hass, 27 Ohio Cir. Ct. 727.

4. Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 39.

Statements that the Character of a Certain Neighborhood Would Change have been held to be statements of fact. Garrett *v.* Finch, 107 Va. 25, 57 S. E. 604.

40. 6. **Formation of Trust.** — It has been held that a statement that a combination or trust was about to be formed which would enhance the price of the subject-matter of the sale was one of fact. Standard Interlock Elevator Co. *v.* Wilson, 218 Pa. St. 280, 67 Atl. 463.

41. 2. Benedict *v.* Guardian Trust Co., 91 N. Y. App. Div. 103, 86 N. Y. Supp. 370, *affirmed* without opinion 180 N. Y. 558, 73 N. E. 1120.

3. Kimber *v.* Young, (C. C. A.) 137 Fed. 744; Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94; Church *v.* Marsh, 133 Iowa 51, 110 N. W. 161; Bosley *v.* Monahan, (Iowa 1907) 112 N. W. 1102; Else *v.* Freeman, 72 Kan. 666, 83 Pac. 409; Brown *v.* South Joplin Lead, etc., Min. Co., 194 Mo. 681, 92 S. W. 699. See also Cash Register Co. *v.* Townsend, 137 N. Car. 652, 50 S. E. 306; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 41. *Compare* Pinch *v.* Hotaling, 142 Mich. 521, 106 N. W. 69.

42. 6. Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94; Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159; Scott *v.* Burnight, 131 Iowa 507, 107 N. W. 422; Pinch *v.* Hotaling, 142 Mich. 521, 106 N. W. 69; Lyon *v.* Lindblad, 145 Mich. 588, 108 N. W. 969; American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814.

Value of Mining Stock. — Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000. See also Crandall *v.* Parks, (Cal. 1908) 93 Pac. 1018; Troutman *v.* Eggleston, 19 S. Dak. 572, 104 N. W. 257; Gilluly *v.* Hosford, 45 Wash. 594, 88 Pac. 1027.

43. 1. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 150; Lyon *v.* Lindblad, 145 Mich. 588, 108 N. W. 969. See also Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000.

2. Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

44. 2. See Van Horn *v.* O'Connor, 42 Wash. 513, 85 Pac. 260.

4. See Brown *v.* South Joplin Lead, etc., Min. Co., 194 Mo. 681, 92 S. W. 699.

5. *Compare* Kincaid *v.* Price, 82 Ark. 20, 100 S. W. 76.

Representations as to Amount of Wood and Timber held to be fraudulent. Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

Quantity of Timber on Certain Boundary. — Statements not a ground of action for fraud. Frey *v.* Middle Creek Lumber Co., 144 N. Car. 759, 57 S. E. 464, *distinguishing* May *v.* Loomis, 140 N. Car. 350, 52 N. E. 728. See also Hulet *v.* Achey, 39 Wash. 91, 80 Pac. 1105.

8. Mather *v.* Barnes, 146 Fed. 1000; Crandall *v.* Parks, (Cal. 1908) 93 Pac. 1018; Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; May *v.* Loomis, 140 N. Car., 350, 52 S. E. 728. See also Goodwin *v.* Fall, 102 Me. 353, 66 Atl. 727; Garr *v.* Alden, 139 Mich. 440, 102 N. W. 950; Lunscheon *v.* Wocknitz, (S. Dak. 1907) 111 N. W. 632; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

9. Age and Condition of Machinery. — May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728. *Compare* McCabe *v.* Desnoyers, (S. Dak. 1906) 108 N. W. 341.

45. 2. Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 45.

3. Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 45.

4. *United States.* — See Walker *v.* Walbridge, 136 Fed. 19, 68 C. C. A. 569; Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16.

Indiana. — Petrie *v.* Ludwig, (Ind. App. 1908) 83 N. E. 770.

Kentucky. — See Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 101.

Minnesota. — See Stearns *v.* Kennedy, 94 Minn. 439, 103 N. W. 212.

Missouri. — Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, *affirming* 110 Mo. App. 292, 85 S. W. 920; White *v.* Reitz, (Mo. App. 1908) 108 S. W. 601. See also Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558, *disapproving* Mires *v.* Summerville, 85 Mo. App. 183, and *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 45.

New Hampshire. — Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

Oregon. — See Kabat *v.* Moore, 48 Oregon 191, 85 Pac. 506.

Washington. — See Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

Wisconsin. — See Mannel *v.* Shafer, (Wis. 1908) 115 N. W. 801.

Representations as to Boundaries of Land Are Statements of Fact. — Freeman *v.* Gloyd, 43 Wash. 607, 86 Pac. 1051.

46. 2. Kerwin *v.* Friedman, 127 Mo. App. 519, 105 S. W. 1102; White *v.* Reitz, (Mo. App. 1908) 108 S. W. 601. See also Smith *v.* Hoffman, 122 Ill. App. 198; Hahl *v.* Brooks, 213 Ill. 134, 72 N. E. 727, *affirming* 114 Ill. App. 644; Howerton *v.* Augustine, 130 Iowa 389, 106 N.

W. 941; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

3. Pitman *v.* Erskine, (Wash. 1908) 94 Pac. 921.

4. Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417.

5. See Bretzfelder *v.* Waddle, 122 Mo. App. 462, 99 S. W. 806; Continental Nat. Bank *v.* First Nat. Bank, 1 Tenn. Ch. App. 449.

47. 3. *Compare* Omaha Feed Co. *v.* Rushforth, 75 Neb. 340, 106 N. W. 25.

4. See Phillips *v.* Hebden, 28 R. I. 1, 65 Atl. 266; Katzenstein *v.* Reid, (Tex. Civ. App. 1905) 91 S. W. 360.

5. *United States.* — See Farwell *v.* Colonial Trust Co., 147 Fed. 480, 78 C. C. A. 22.

Illinois. — McConnell *v.* Pierce, 116 Ill. App. 103; Love *v.* McElroy, 118 Ill. App. 412. See also Chambers *v.* Mitchell, 123 Ill. App. 595.

Iowa. — Blaul *v.* Wandel, (Iowa 1908) 114 N. W. 899. See also City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893.

Maryland. — Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609.

Massachusetts. — McCusker *v.* Geiger, 195 Mass. 46, 80 N. E. 648.

Nebraska. — Cerny *v.* Paxton, etc., Co., (Neb. 1907) 110 N. W. 882.

New Jersey. — See Schrafft *v.* Fidelity Trust Co., 73 N. J. L. 57, 62 Atl. 933.

Washington. — See Pitman *v.* Erskine, (Wash. 1908) 94 Pac. 921.

Wisconsin. — Urwan *v.* Northwestern Nat. L. Ins. Co., 125 Wis. 349, 103 N. W. 1102; Bowe *v.* Gage, 127 Wis. 245, 106 N. W. 1074.

51. 3. Rogers *v.* Virginia-Carolina Chemical Co., 149 Fed. 1, 78 C. C. A. 615; Matteson *v.* Wagoner, 147 Cal. 739, 82 Pac. 436; City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893; Cerny *v.* Paxton, etc., Co., (Neb. 1907) 110 N. W. 882.

4. Rogers *v.* Virginia-Carolina Chemical Co., 149 Fed. 1, 78 C. C. A. 615; Tamlyn *v.* Peterson, 15 N. Dak. 488, 107 N. W. 1081. See also Cerny *v.* Paxton, etc., Co., (Neb. 1907) 110 N. W. 882.

5. Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29; City Deposit Bank *v.* Green, (Iowa 1908) 115 N. W. 893; Atlas Shoe Co. *v.* Bechard, 102 Me. 203, 66 Atl. 390; McCusker *v.* Geiger, 195 Mass. 46, 80 N. E. 648; Ayers *v.* Farwell, (Mass. 1907) 82 N. E. 35. See also Pelham *v.* Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12; Schrafft *v.* Fidelity Trust Co., 73 N. J. L. 57, 62 Atl. 933.

52. 3. Cerny *v.* Paxton, etc., Co., (Neb. 1907) 110 N. W. 882.

53. 4. Love *v.* McElroy, 118 Ill. App. 412; Weigand *v.* Cannon, 118 Ill. App. 635; Chambers *v.* Mitchell, 123 Ill. App. 595. See also Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609.

54. 7. Sears *v.* Wegner, 150 Mich. 388, 114 N. W. 224.

55. 1. Burk *v.* Johnson, 146 Fed. 209, 76 C. C. A. 567; Hooker *v.* Midland Steel Co., 215 Ill. 444, 74 N. E. 445, *affirming* 117 Ill. App. 441; Gipe *v.* Pittsburgh, etc., R. Co., (Ind. App. 1907) 82 N. E. 471; Valley *v.* Boston, etc., R. Co., (Me. 1907) 68 Atl. 635. See also Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629.

3. *Compare* Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159. See also Burk *v.* Johnson, 146 Fed. 209, 76 C. C. A. 567.

56. 3. **Illustration.** — A statement by a claim agent of a railroad that a release signed by a claimant was a receipt, was simply a statement of an opinion on a question of law, which could not be relied upon. Valley *v.* Boston, etc., R. Co., (Me. 1907) 68 Atl. 635.

4. Gipe *v.* Pittsburgh, etc., R. Co., (Ind. App. 1907) 82 N. E. 471; Busiere *v.* Reilly, 189 Mass. 518, 75 N. E. 958.

5. *Compare* Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

57. 7. Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811.

8. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159; Bridgewater *v.* Byassee, 93 S. W. 35, 29 Ky. L. Rep. 377; May *v.* May, 96 S. W. 840, 29 Ky. L. Rep. 1033; Busiere *v.* Reilly, 189 Mass. 518, 75 N. E. 958; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811.

58. 2. **A Representation as to the Ownership of a Patent Device** is one of fact. Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011.

7. See Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198; Busiere *v.* Reilly, 189 Mass. 518, 75 N. E. 958.

59. 1. **Representation as to a Life Estate in a Foreign Country** is not a mere statement of a legal proposition. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159.

3. *United States.* — Kimber *v.* Young, (C. C. A.) 137 Fed. 744; Chemical Bank *v.* Lyons, 137 Fed. 976; Farwell *v.* Colonial Trust Co., 147 Fed. 480, 78 C. C. A. 22. See also Chamberlayne *v.* American Law Book Co., 148 Fed. 316.

Alabama. — See Brennard Mfg. Co. *v.* Citronelle Mercantile Co., (Ala. 1906) 41 So. 671.

Georgia. — See Turner *v.* Ware, 2 Ga. App. 57, 58 S. E. 310.

Indiana. — See Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417.

Maryland. — Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609.

Minnesota. — Wellington First Nat. Bank *v.* Person, 101 Minn. 30, 111 N. W. 730.

Missouri. — Tinker *v.* Kier, 195 Mo. 183, 94 S. W. 501.

Nebraska. — See Moyer *v.* Richardson Drug Co., 70 Neb. 190, 97 N. W. 244; Jakway *v.* Proudfit, (Neb. 1906) 106 N. W. 1039.

New Hampshire. — Connelly *v.* Brown, 73 N. H. 193, 60 Atl. 750.

North Carolina. — Cash Register Co. *v.* Townsend, 137 N. Car. 652, 50 S. E. 306.

West Virginia. — Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

60. 6. Brenard Mfg. Co. *v.* Citronelle Mercantile Co., 140 Ala. 602, 37 So. 509. See also French, etc., Importing Co. *v.* Belleville Drug Co., 75 Ark. 95, 86 S. W. 836; Brown *v.* Search, 131 Wis. 109, 111 N. W. 210; Cox *v.* Adams, 35 Can. Sup. Ct. 393.

61. 5. Chemical Bank *v.* Lyons, 137 Fed. 976; Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538; Continental Nat. Bank *v.* First Nat. Bank, 1 Tenn. Ch. App. 502, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) [61].

But Representations Acted upon constitute fraud. American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814.

Representations Must Be Material Inducement. — Long *v.* Davis, (Iowa 1907) 114 N. W. 197.

62. 7. Brenard Mfg. Co. *v.* Citronelle Mercantile Co., 140 Ala. 602, 37 So. 509.

63. 1. Tinker *v.* Kier, 195 Mo. 183, 94 S. W. 501; Keeler *v.* Seaman, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 292, 95 N. Y. Supp. 920; Buchall *v.* Higgins, 109 N. Y. App. Div. 607, 96 N. Y. Supp. 241; Palmer *v.* Goldberg, 128 Wis. 103, 107 N. W. 478. See also Rose *v.* Merchants' Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946; Motley *v.* Mercantile Trust Co., 114 N. Y. App. Div. 904, 100 N. Y. Supp. 281.

64. 4. Ricketts *v.* Tompkins, (N. J. 1908) 68 Atl. 1075.

66. 2. Atlas Shoe Co. *v.* Bechard, 102 Me. 203, 66 Atl. 390.

Disclosure Is Not Necessary if the subject-matter, with respect to which there is a change of purpose, is not material. Brown *v.* Honiss, 74 N. J. L. 501, 68 Atl. 150.

4. Watertown Sav. Bank *v.* Mattoon, 78 Conn. 388, 62 Atl. 622, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 66; Rutherford *v.* Irby, 1 Ga. App. 499, 57 S. E. 927; Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 66; Wann *v.* Scullin, (Mo. 1908) 109 S. W. 688; Moyer *v.* Richardson Drug Co., 70 Neb. 190, 97 N. W. 244, *citing* and *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 66. *Contra*, Marietta Fertilizer Co. *v.* Beckwith, (Ga. 1908) 61 S. E. 149. See Seddon *v.* North Eastern Salt Co., (1905) 1 Ch. 326, 1 Ann. Cas. 514, 91 L. T. N. S. 793.

5. In Indiana it has been held that it is the duty of the vendor to disclose all defects in personal property. See Boyer *v.* State, (Ind. 1908) 83 N. E. 350.

67. 2. Fraud and Mistake. — Where vendor was mistaken as to the quantity of her interest, which was known to vendee, who did not apprise her of her mistake, it was held that the conveyance could be set aside. Faxon *v.* Baldwin, (Iowa 1907) 114 N. W. 40. See also Rose *v.* Merchants' Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946.

3. See Cook *v.* Bagnell Timber Co., 78 Ark. 47, 8 Ann. Cas. 251, 94 S. W. 695.

68. 3. Under the Connecticut Statute it has been held that the directors of a bank are under no duty to disclose the prior defalcations of their treasurer, upon the giving of a bond by the treasurer's sureties. Watertown Sav. Bank *v.* Mattoon, 78 Conn. 388, 62 Atl. 622; Marietta Fertilizer Co. *v.* Beckwith, (Ga. 1908) 61 S. E. 149; Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287; Ricketts *v.* Tompkins, (N. J. 1908) 68 Atl. 1075.

4. Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287; Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722.

69. 2. See Boyer *v.* State, (Ind. 1908) 83 N. E. 350; Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287.

3. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159; Old Dominion Copper Min., etc., Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 653; American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814; Ricketts *v.* Tompkins, (N. J. 1908) 68 Atl. 1075; Dolan *v.* Cummings, 116 N. Y. App. Div. 787, 102 N. Y. Supp. 91; Paddock *v.* Bray, (Tex. Civ. App. 1905) 88 S. W. 419; Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000.

A Joint Purchaser stands in a fiduciary relationship to his associates, and the law requires that he should not conceal from them any material facts. Walker *v.* Pike County Land Co., (C. C. A.) 139 Fed. 609. See also Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189.

70. 2. See Mabry *v.* Randolph, (Cal. App. 1908) 94 Pac. 403.

3. *California.* — See Mabry *v.* Randolph, (Cal. App. 1908) 94 Pac. 403.

Georgia. — See Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372.

Kansas. — Brakefield *v.* Shelton, (Kan. 1907) 92 Pac. 709.

Michigan. — See Barrett *v.* Miller, 144 Mich. 454, 108 N. W. 396.

Minnesota. — Kingsley *v.* Wheeler, 95 Minn. 360, 104 N. W. 543.

Missouri. — Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077; Wann *v.* Scullin, (Mo. 1908) 109 S. W. 688.

New York. — See Guidetti *v.* Tuoti, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 657, 102 N. Y. Supp. 499.

Virginia. — Lee *v.* Patillo, 105 Va. 10, 52 S. E. 696.

Washington. — Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000; Hanna *v.* Haynes, 42 Wash. 284, 84 Pac. 861; Cantwell *v.* Nunn, 45 Wash. 536, 88 Pac. 1023.

4. Derby *v.* Donahoe, 208 Mo. 684, 106 S. W. 632; Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000.

5. See International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189.

71. 1. Goldsmith *v.* Koopman, (C. C. A.) 152 Fed. 173; Burgess *v.* Deierling, 113 Mo. App. 383, 88 S. W. 770; Douglass *v.* Richards, 116 N. Y. App. Div. 27, 101 N. Y. Supp. 299; Finn *v.* Young, 46 Wash. 74, 89 Pac. 400.

2. Joint Purchasers Must Disclose All Material Facts. — Vennum *v.* Palmer, 123 Ill. App. 619; Paddock *v.* Bray, (Tex. Civ. App. 1905) 88 S. W. 419.

3. See Dolan *v.* Cummings, 116 N. Y. App. Div. 787, 102 N. Y. Supp. 91.

72. 1. See May *v.* May, 96 S. W. 840, 29 Ky. L. Rep. 1033; Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 72.

2. See Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 72.

4. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159.

If It Is Known by the Vendor that the Vendee Relies upon the vendor's knowledge of value, it is his duty to disclose truthfully his knowledge of the entire matter. Evans *v.* Palmer, (Iowa 1908) 114 N. W. 912. See also Derby *v.* Donahoe, 208 Mo. 684, 106 S. W. 632.

5. Files *v.* Rankin, (C. C. A.) 153 Fed. 537,

affirming Files *v.* Brown, 124 Fed. 133, 59 C. C. A. 403; Cook *v.* Bagnell Timber Co., 78 Ark. 251, 8 Ann. Cas. 251, 94 S. W. 695; Marietta Fertilizer Co. *v.* Beckwith, (Ga. 1908) 61 S. E. 149; Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287. See also Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

73. 1. Thompson *v.* Newell, 118 Mo. App. 405, 94 S. W. 557.

2. Marietta Fertilizer Co. *v.* Beckwith, (Ga. 1908) 61 S. E. 149. See also Boyer *v.* State, (Ind. 1908) 83 N. E. 350; Smith *v.* Woodson, 92 S. W. 980, 29 Ky. L. Rep. 316; Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287; American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814; Derby *v.* Donahoe, 208 Mo. 684, 106 S. W. 632; Ricketts *v.* Tompkins, (N. J. 1908) 68 Atl. 1075.

74. 2. Marietta Fertilizer Co. *v.* Beckwith, (Ga. 1908) 61 S. E. 149; Derby *v.* Donahoe, 208 Mo. 684, 106 S. W. 632.

76. 1. Burrows *v.* Fitch, (W. Va. 1907) 57 S. E. 283; Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483. See also Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10; Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287.

3. Files *v.* Rankin, (C. C. A.) 153 Fed. 537, *affirming* Files *v.* Brown, 124 Fed. 133, 59 C. C. A. 403; Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287; Ricketts *v.* Tompkins, (N. J. 1908) 68 Atl. 1075.

4. See International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189.

5. Blumenfeld *v.* Stine, (Supm. Ct. Spec. T.) 42 Misc. (N. Y.) 411, 87 N. Y. Supp. 81.

6. Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

Wrong Boundary Lines Pointed Out — Action for Rescission Will Lie. — Petrie *v.* Ludwig, (Ind. App. 1908) 83 N. E. 770.

The Rule of Caveat Emptor does not apply in cases of actual fraud. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16. See also Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

7. Location of Boundary Line. — Concealment of the fact that land did not abut upon any highway, and thereby rendering it valueless as a homestead, was held to be a fraud in itself. See Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10.

8. Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558. See also Cook *v.* Bagnell Timber Co., 78 Ark. 47, 8 Ann. Cas. 251, 94 S. W. 695.

77. 1. Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287.

Representations of Value by Purchaser. Where the vendors were ignorant deaf mutes, mentally weak, it has been held that representations as to value of land rendered the contract voidable. Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94.

Misrepresentations by the Purchaser as to quantity and value, if artifice be employed to prevent investigation, will entitle vendors to a rescission of the contract. Garr *v.* Alden, 139 Mich. 440, 102 N. W. 950.

But the Purchaser Must Disclose the Facts if the seller makes inquiry of him. See Burrows *v.* Fitch, (W. Va. 1907) 57 S. E. 283.

7. Dealer Bound to Disclose Character of Sham Antiques. — Patterson *v.* Landsberg, Sc. Ct. of Sess. 7 F. 675.

78. 1. Wann *v.* Scullin, (Mo. 1908) 109 S. W. 688. See also Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287.

3. Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; Old Dominion Copper Min., etc., Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 653. See also Coats *v.* Crossland, 20 Times L. Rep. 800; Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722; Hall *v.* Grayson County Nat. Bank, 36 Tex. Civ. App. 317, 81 S. W. 702.

79. 2. **Contract of Life Insurance.** — Moore *v.* Mutual Reserve Fund L. Assoc., 121 N. Y. App. Div. 335, 106 N. Y. Supp. 255.

3. Wright *v.* German Brewing Co., 103 Md. 377, 63 Atl. 807.

4. See Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483, *distinguishing* Graves *v.* Lebanon Nat. Bank, 10 Bush (Ky.) 23.

81. 6. See Omaha Feed Co. *v.* Rushforth, 75 Neb. 340, 106 N. W. 25.

82. 1. Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287.

2. Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287.

Activity Misleading the Vendor, when the vendee might have remained silent, will afford a ground for rescission. Files *v.* Rankin, (C. C. A.) 153 Fed. 537, *affirming* Files *v.* Brown, 124 Fed. 133, 59 C. C. A. 403.

3. Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287.

83. 1. Marietta Fertilizer Co. *v.* Beckwith, (Ga. 1908) 61 S. E. 149.

2. Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595.

85. 3. Bartles *v.* Courtney, 6 Indian Ter. 379, 98 S. W. 133; Wellington First Nat. Bank *v.* Person, 101 Minn. 30, 111 N. W. 730; Knight *v.* Rawlings, 205 Mo. 412, 104 S. W. 42; Lyon *v.* James, 97 N. Y. App. Div. 385, 90 N. Y. Supp. 28, *affirmed* without opinion 181 N. Y. 512, 73 N. E. 1126; Duryea *v.* Zimmerman, 121 N. Y. App. Div. 560, 106 N. Y. Supp. 237; Mason *v.* Moore, 73 Ohio St. 275, 76 N. E. 932. *Compare* Krause *v.* Cook, 144 Mich. 365, 108 N. W. 81. See Palo Alto Stock Farm *v.* Brooker, 131 Iowa 229, 108 N. W. 307; Stevens *v.* Meyers, 14 N. Dak. 398, 104 N. W. 529.

The Quo Animo Becomes an Inference of Law when an act understandingly done is necessarily injurious to the rights of another. See Mills *v.* Brill, 105 N. Y. App. Div. 389, 94 N. Y. Supp. 163.

4. See Duffy *v.* Meyer, 122 N. Y. App. Div. 838, 107 N. Y. Supp. 672.

5. See Duffy *v.* Meyer, 122 N. Y. App. Div. 838, 107 N. Y. Supp. 672.

6. Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811. See also Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666.

8. Maine *v.* Midland Invest. Co., 132 Iowa 272, 109 N. W. 801; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666; Shaw *v.* O'Neill, 45 Wash 98, 88 Pac. 111. See also Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595; Lyon *v.* James, 97 N. Y. App. Div. 385, 90 N. Y. Supp. 28, *affirmed* without opinion 181 N. Y. 512, 73 N. E. 1126.

86. 4. Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888; Selby *v.* Matson, (Iowa 1908) 114 N. W. 609; Boulden *v.*

Stilwell, 100 Md. 543, 60 Atl. 609; Wellington First Nat. Bank *v.* Person, 101 Minn. 30, 111 N. W. 730; Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810; Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180. See also Lewis *v.* Bradford, 148 Fed. 413; Mills *v.* Brill, 105 N. Y. App. Div. 389, 94 N. Y. Supp. 163.

5. Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

6. See Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810.

7. *United States.* — Kimber *v.* Young, (C. C. A.) 137 Fed. 744; Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888; Pittsburgh L., etc., Co. *v.* Northern Cent. L. Ins. Co., 148 Fed. 674, 78 C. C. A. 408.

California. — Nash *v.* Rosesteel, (Cal. App. 1908) 94 Pac. 850.

Florida. — Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29.

Iowa. — John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741.

Maryland. — Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609; Donnelly *v.* Baltimore Trust, etc., Co., 102 Md. 1, 61 Atl. 301.

Missouri. — Woods *v.* Letton, 111 Mo. App. 51, 85 S. W. 919; Western Cattle Brokerage Co. *v.* Yates, 190 Mo. 391, 89 S. W. 382; Knight *v.* Rawlings, 205 Mo. 412, 104 S. W. 42.

New Hampshire. — Shackett *v.* Bickford, 74 N. H. 57, 65 Atl. 252.

New Jersey. — Du Bois *v.* Nugent, 69 N. J. Eq. 145, 60 Atl. 339.

New York. — Keeler *v.* Seaman, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 292, 95 N. Y. Supp. 920; Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538; Lyon *v.* James, 97 N. Y. App. Div. 385, 90 N. Y. Supp. 28, *affirmed* without opinion 181 N. Y. 512, 73 N. E. 1126. See also Motley *v.* Mercantile Trust Co., 114 N. Y. App. Div. 904, 100 N. Y. Supp. 281; Duryea *v.* Zimmerman, 121 N. Y. App. Div. 560, 106 N. Y. Supp. 237. And see *dissenting* opinion by McLean, J., in Williams *v.* Goldberg, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 210, 109 N. Y. Supp. 15.

Ohio. — Mason *v.* Moore, 73 Ohio St. 275, 76 N. E. 932.

South Dakota. — See McCabe *v.* Desnoyers, (S. Dak. 1906) 108 N. W. 341.

Texas. — See Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666.

88. 3. Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88.

89. 3. See Mills *v.* Brill, 105 N. Y. App. Div. 389, 94 N. Y. Supp. 163.

Knowledge that Statements Were False Shown. — Katzenstein *v.* Reid, (Tex. Civ. App. 1905) 91 S. W. 360.

4. Donnelly *v.* Baltimore Trust, etc., Co., 102 Md. 1, 61 Atl. 301; Brolaski *v.* Carr, 127 Mo. App. 279, 105 S. W. 284.

Representations by One Stockholder to Another. Such stockholder will be liable as for fraud. Vogt *v.* Vogt, 119 N. Y. App. Div. 518, 104 N. Y. Supp. 164.

90 1. **Representations by Directors as to the Condition of a Bank** will render them liable for fraud. Mason *v.* Moore, 73 Ohio St. 275, 76 N. E. 932. See also Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538.

2. Salvesen *v.* Rederi Aktiebolaget Nordstjernan, (1905) A. C. 302, 92 L. T. N. S. 575.

5. Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011; Gardner *v.* Mann, 36 Ind. 694, 76 N. E. 417; Krause *v.* Cook, 144 Mich. 365, 108 N. W. 81. See also Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29; Evans *v.* Palmer, (Iowa 1908) 114 N. W. 912; Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810; Leach *v.* Bond, (Mo. App. 1908) 108 S. W. 596; Oneal *v.* Weisman, (Tex. Civ. App. 1905) 88 S. W. 290.

91. 1. Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810; American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 91. See also Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

92. 3. **In Iowa** it has been held that innocent misrepresentation as to acreage will afford ground for a rescission of a contract of sale, and that proof of *scienter* will not be exacted. Flynn *v.* Finch, (Iowa 1908) 114 N. W. 1058.

93. 1. *Compare* Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666.

94. 1. Maine *v.* Midland Invest. Co., 132 Iowa 272, 109 N. W. 801; Du Bois *v.* Nugent, 69 N. J. Eq. 145, 60 Atl. 339; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811. See also Dunham *v.* Smith, 15 Okla. 283, 81 Pac. 427.

95. 1. See Pyne *v.* Knight, 130 Iowa 113, 106 N. W. 505.

3. Misrepresentations Made with Knowledge of Falsity, to Defeat Specific Performance. — Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

4. U. S. *v.* Bradford, 148 Fed. 413, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95; Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810. See also U. S. Gypsum Co. *v.* Shields, (Tex. Civ. App. 1907) 106 S. W. 724.

96. 2. *Compare* Nash *v.* Rosesteel, (Cal. App. 1908) 94 Pac. 850. See also Donnelly *v.* Baltimore Trust, etc., Co., 102 Md. 1, 61 Atl. 301; Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 501.

3. Statements by Directors of Bank. — *Compare* Mason *v.* Moore, 73 Ohio St. 275, 76 N. E. 932. See also Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538.

4. Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811.

Rescission or Cancellation of Contract or Conveyance. — U. S. Gypsum Co. *v.* Shields, (Tex. Civ. App. 1907) 106 S. W. 724. See also U. S. *v.* Bradford, 148 Fed. 413, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 96; Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29.

97. 1. U. S. *v.* Bradford, 148 Fed. 413, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 97; Evans *v.* Palmer, (Iowa 1908) 114 N. W. 912; Goodwin *v.* Fall, 102 Me. 353, 66 Atl. 727;

Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609; Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810; Leach *v.* Bond, (Mo. App. 1908) 108 S. W. 596; Modlin *v.* Roanoke R., etc., Co., 145 N. Car. 218, 58 S. E. 1075; U. S. Gpysum Co. *v.* Shields, (Tex. Civ. App. 1907) 106 S. W. 724. See also Lambert *v.* Elmendorf, (Supm. Ct. App. Div.) 109 N. Y. Supp. 574.

2. Kimber *v.* Young, (C. C. A.) 137 Fed. 744; Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888; Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29; Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595; Kerwin *v.* Friedman, 127 Mo. App. 519, 105 S. W. 1102; Shackett *v.* Bickford, 74 N. H. 57, 65 Atl. 252; Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538. See also Smith *v.* Hoffman, 122 Ill. App. 198.

3. Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811. See also U. S. Gpysum Co. *v.* Shields, (Tex. Civ. App. 1907) 106 S. W. 724.

99. 1. *United States.* — Walker *v.* Walbridge, 136 Fed. 19, 68 C. C. A. 569. See also Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888; U. S. *v.* Bradford, 148 Fed. 413, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99.

Florida. — Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29.

Illinois. — See Smith *v.* Hoffman, 122 Ill. App. 198.

Indiana. — See Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417; Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595.

Iowa. — John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741.

Missouri. — Western Cattle Brokerage Co. *v.* Gates, 190 Mo. 391, 89 S. W. 382; Leach *v.* Bond, (Mo. App. 1908) 108 S. W. 596; White *v.* Reitz, (Mo. App. 1908) 108 S. W. 601.

New Hampshire. — Shackett *v.* Bickford, 74 N. H. 57, 65 Atl. 252.

New Jersey. — Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295.

New York. — See L. D. Garrett Co. *v.* Appleton, 101 N. Y. App. Div. 507, 92 N. Y. Supp. 136, *affirmed* without opinion 184 N. Y. 557, 76 N. E. 1099; Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538; Lambert *v.* Elmendorf, (Supm. Ct. App. Div.) 109 N. Y. Supp. 574.

Rhode Island. — Farmer *v.* Lynch, (R. I. 1907) 67 Atl. 449.

South Dakota. — McCabe *v.* Desnoyers, (S. Dak. 1906) 108 N. W. 341.

Texas. — Caplen *v.* Cox, (Tex. Civ. App. 1906) 92 S. W. 1048.

Wisconsin. — Palmer *v.* Goldberg, 128 Wis. 103, 107 N. W. 478.

2. Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99. See also Walker *v.* Walbridge, 136 Fed. 19, 68 C. C. A. 569.

3. *Florida.* — Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29.

Illinois. — Smith *v.* Hoffman, 122 Ill. App. 198.

Massachusetts. — Gurney *v.* Tenney, (Mass. 1908) 84 N. E. 428.

Missouri. — See Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99; Kerwin *v.* Friedman, 127 Mo. App. 519, 105 S. W. 1102. See also Leach *v.* Bond, (Mo. App. 1908) 108 S. W. 596; White *v.* Reitz, (Mo. App. 1908) 108 S. W. 601.

New Hampshire. — See Connelly *v.* Brown, 73 N. H. 193, 60 Atl. 750.

New York. — Booth *v.* Englert, 105 N. Y. App. Div. 284, 94 N. Y. Supp. 700; Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538; Lambert *v.* Elmendorf, (Supm. Ct. App. Div.) 109 N. Y. Supp. 574.

Rhode Island. — See Farmer *v.* Lynch, (R. I. 1907) 67 Atl. 449.

Texas. — Brewer *v.* Cochran, (Tex. Civ. App. 1907) 99 S. W. 1033, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99; U. S. Gypsum Co. *v.* Shields, (Tex. Civ. App. 1907) 106 S. W. 724.

101. 1. Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 100; Lambert *v.* Elmendorf, (Supm. Ct. App. Div.) 109 N. Y. Supp. 574; McCabe *v.* Desnoyers, (S. Dak. 1906) 108 N. W. 341. See also Krause *v.* Cook, 144 Mich. 365, 108 N. W. 81.

2. U. S. *v.* Bradford, 148 Fed. 413, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 101; Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29. See also Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16.

3. Walker *v.* Walbridge, 136 Fed. 19, 68 C. C. A. 569; Brewer *v.* Cochran, (Tex. Civ. App. 1907) 99 S. W. 1033, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 100.

102. 1. Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504; Krause *v.* Cook, 144 Mich. 365, 108 N. W. 81.

2. Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

5. Brown *v.* Honiss, 74 N. J. L. 501, 68 Atl. 150, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

6. Heath *v.* Schroer, 119 Mo. App. 93, 96 S. W. 313.

A Deed Procured by the Agent of the Vendee, if such agent be corrupted by the vendee, is voidable although no fraud was practiced. Mastin *v.* Noble, (C. C. A.) 157 Fed. 506.

But Collusion between an Agent and a Party Claiming Benefit, to deceive or defraud the principal, will destroy the imputation of knowledge. Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322.

Fraudulent Representations of an Agent will preclude the principal, although not a party to such representations, from taking any benefit. Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558. See also Wickham *v.* Evans, 133 Iowa 552, 110 N. W. 1046; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

In New Hampshire it has been held that the principal is not charged with knowledge when the agent is engaged in committing an independent fraudulent act on his own account. Brookhouse *v.* Union Pub. Co., 73 N. H. 368, 62 Atl. 219.

An Agent's Knowledge Is Not Imputable to His Principal unless the former is acting within the scope of his employment. Warren *v.* Hayes, (N. H. 1907) 68 Atl. 193. See also Armstrong *v.* Ashley, 204 U. S. 272, 27 U. S. Sup. Ct. 270, *affirming* 22 App. Cas. (D. C.) 368.

8. *United States.* — Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888.

Arkansas. — See Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048.

Florida. — *Compare* Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29.

Indiana. — Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595.

Iowa. — Mattauch *v.* Walsh, (Iowa 1907) 113 N. W. 818.

Kansas. — Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

Michigan. — See Walker *v.* Western Underwriters' Assoc., 142 Mich. 162, 105 N. W. 597.

Minnesota. — Wellington First Nat. Bank *v.* Person, 101 Minn. 30, 111 N. W. 730.

Missouri. — Woods *v.* Letton, 111 Mo. App. 51, 85 S. W. 919.

New Jersey. — Du Bois *v.* Nugent, 69 N. J. Eq. 145, 60 Atl. 339.

New York. — Buchall *v.* Higgins, 109 N. Y. App. Div. 607, 96 N. Y. Supp. 241. See also Motley *v.* Mercantile Trust Co., 114 N. Y. App. Div. 904, 100 N. Y. Supp. 281; Duryea *v.* Zimmerman, 121 N. Y. App. Div. 560, 106 N. Y. Supp. 237.

Washington. — See Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

102. 7. Mills *v.* Brill, 105 N. Y. App. Div. 389, 94 N. Y. Supp. 163. See also Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29.

104. 2. Shackett *v.* Bickford, 74 N. H. 57, 65 Atl. 252; Mills *v.* Brill, 105 N. Y. App. Div. 389, 94 N. Y. Supp. 163, *citing* and *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 104.

106. 8. *United States.* — Kimber *v.* Young, (C. C. A.) 137 Fed. 744; Chemical Bank *v.* Lyons, 137 Fed. 976, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 406 [106]; Smith *v.* Curran, 138 Fed. 150; Farwell *v.* Colonial Trust Co., 147 Fed. 480, 78 C. C. A. 22.

Arkansas. — See Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048; Kincaid *v.* Price, 82 Ark. 20, 100 S. W. 76.

California. — Spinks *v.* Clark, 147 Cal. 439, 82 Pac. 45; Hutchason *v.* Spinks, 3 Cal. App. 291, 85 Pac. 132; De Laval Dairy Supply Co. *v.* Steadman, (Cal. App. 1907) 92 Pac. 877.

Illinois. — Eckman *v.* Webb, 116 Ill. App. 467; Standard Mfg. Co. *v.* Brons, 118 Ill. App. 632; Hooker *v.* Midland Steel Co., 215 Ill. 444, 74 N. E. 445, *affirming* 117 Ill. App. 441.

Indiana. — See Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417.

Iowa. — Dahlman *v.* Antes, (Iowa 1906) 109 N. W. 784; Long *v.* Davis, (Iowa 1907) 114 N. W. 197.

Kansas. — Youle *v.* Fosha, (Kan. 1906) 90 Pac. 1090, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 106; Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

Maryland. — Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609.

Massachusetts. — See Bilafsky *v.* Conveyancers' Title Ins. Co., 192 Mass. 504, 78 N. E. 534; Peabody *v.* Whitcomb, 195 Mass. 330, 81 N. E. 193.

Michigan. — See Barron *v.* Myers, 146 Mich 510, 109 N. W. 862.

Minnesota. — See Roebuck *v.* Wick, 98 Minn. 130, 107 N. W. 1054.

Missouri. — Woods *v.* Letton, 111 Mo. App. 51, 85 S. W. 919; Tinker *v.* Kier, 195 Mo. 183, 94 S. W. 501.

New Hampshire. — Connelly *v.* Brown, 73 N. H. 193, 60 Atl. 750.

New York. — Sinclair *v.* Higgins, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 136, 93 N. Y. Supp. 195; Keeler *v.* Seaman, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 292, 95 N. Y. Supp. 920; Buchall *v.* Higgins, 109 N. Y. App. Div. 607, 96 N. Y. Supp. 241. See also Motley *v.* Mercantile Trust Co., 114 N. Y. App. Div. 904, 100 N. Y. Supp. 281.

Pennsylvania. — Sulkin *v.* Gilbert, 218 Pa. St. 255, 67 Atl. 415.

Texas. — See Milby *v.* Hester, (Tex. Civ. App. 1906) 94 S. W. 178; George *v.* Hesse, (Tex. Civ. App. 1906) 94 S. W. 1122; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666.

West Virginia. — Cleavinger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593; Crotty *v.* Effler, 60 W. Va. 258, 9 Ann. Cas. 770, 54 S. E. 345.

Wisconsin. — J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231; Bowe *v.* Gage, 127 Wis. 245, 106 N. W. 1074; Palmer *v.* Goldberg, 128 Wis. 103, 107 N. W. 478.

109. 2. **Representations by a Person as to Other Purchases,** if not relied on by a vendor, are immaterial. Blaul *v.* Wandel, (Iowa 1908) 114 N. W. 899.

5. Griffin *v.* Griffin, (Ga. 1908) 61 S. E. 16; Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; Ransier *v.* Dwyer, 149 Mich. 487, 112 N. W. 1120; Woods *v.* Letton, 111 Mo. App. 51, 85 S. W. 919.

111. 2. Long *v.* Davis, (Iowa 1907) 114 N. W. 197.

4. Armstrong *v.* Ashley, 204 U. S. 272, 27 U. S. Sup. Ct. 270, *affirming* 22 App. Cas. (D. C.) 368. See also Ætna L. Ins. Co. *v.* Bocking, 39 Ind. App. 586, 79 N. E. 524.

If the Agent Wrongfully Accepts Money from those with whom he is authorized to deal, his knowledge will not be imputable to his principal. Barnsdall *v.* O'Day, 134 Fed. 828, 67 C. C. A. 278.

A Fraudulent Statement of the Husband as Agent of His Wife, and without knowledge of the facts or investigation by her, will not amount to fraud on her part. Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8.

5. *United States.* — Chemical Bank *v.* Lyons, 137 Fed. 976; Smith *v.* Curran, 138 Fed. 150; Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888; Mather *v.* Barnes, 146 Fed. 1000; Curran *v.* Smith, (C. C. A.) 149 Fed. 945.

Alabama. — Graybill *v.* Drennan, (Ala. 1907) 43 So. 568.

Iowa. — Long *v.* Davis, (Iowa 1907) 114 N. W. 197.

Kentucky. — Drake *v.* Holbrook, 92 S. W. 297, 28 Ky. L. Rep. 1310.

Missouri. — See Brown *v.* South Joplin Lead, etc., Min. Co., 194 Mo. 681, 92 S. W. 699.

Montana. — Grindrod *v.* Anglo-American Bond Co., 34 Mont. 169, 85 Pac. 891.
Nebraska. — Morrow *v.* Laverty, (Neb. 1906) 109 N. W. 150.
North Carolina. — Cash Register Co. *v.* Townsend, 137 N. Car. 652, 50 S. E. 306.
Texas. — See George *v.* Hesse, (Tex. Civ. App. 1906) 94 S. W. 1122.
Washington. — Irby *v.* Tilsley, 41 Wash. 211, 83 Pac. 97.

112. 1. Long *v.* Davis, (Iowa 1907) 114 N. W. 197.
3. See Kincaid *v.* Price, 82 Ark. 20, 100 S. W. 76; Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964; Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.
5. Barron *v.* Myers, 146 Mich. 510, 109 N. W. 862; Krisch *v.* Interstate Fisheries Co., 39 Wash. 381, 81 Pac. 855. See also Mather *v.* Barnes, 146 Fed. 1000; Garr *v.* Alden, 139 Mich. 440, 102 N. W. 950; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189.

113. 3. Wann *v.* Scullin, (Mo. 1908) 109 S. W. 688, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 113. See also Christy *v.* Campbell, 36 Colo. 261, 87 Pac. 548; Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629.
5. Chemical Bank *v.* Lyons, 137 Fed. 976; Long *v.* Davis, (Iowa 1907) 114 N. W. 197; Baker *v.* Mathew, (Iowa 1908) 115 N. W. 15; American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814; Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538; Continental Nat. Bank *v.* First Nat. Bank, 1 Tenn. Ch. App. 449; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189. See also Damers *v.* Sternberger, (Supm. Ct. App. T.) 102 N. Y. Supp. 739.

114. 1. See Long *v.* Davis, (Iowa 1907) 114 N. W. 197.
2. Baker *v.* Mathew, (Iowa 1908) 115 N. W. 15; Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964.
5. See Getchell *v.* Dusenbury, 145 Mich. 197, 108 N. W. 723.

115. 1. Long *v.* Davis, (Iowa 1907) 114 N. W. 197; McNealy *v.* Bartlett, 123 Mo. App. 58, 99 S. W. 767. See also Brassell *v.* Fisk, (Ala. 1907) 45 So. 70; Spinks *v.* Clark, 147 Cal. 439, 82 Pac. 45; Blaul *v.* Wandel, (Iowa 1908) 114 N. W. 899; Baker *v.* Mathew, (Iowa 1908) 115 N. W. 15; Wann *v.* Scullin, (Mo. 1908) 109 S. W. 688.
3. Chamberlayne *v.* American Law Book Co., 148 Fed. 316.
4. See Long *v.* Davis, (Iowa 1907) 114 N. W. 197.
5. See Long *v.* Davis, (Iowa 1907) 114 N. W. 197.
6. Baker *v.* Mathew, (Iowa 1908) 115 N. W. 15. See also Long *v.* Davis, (Iowa 1907) 114 N. W. 197.
7. Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609; Sinclair *v.* Higgins, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 136, 93 N. Y. Supp. 195. See also Christy *v.* Campbell, 36 Colo. 261, 87 Pac. 548; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.
8. *United States.* — Smith *v.* Curran, 138 Fed. 150; Burk *v.* Johnson, 146 Fed. 209, 76 C. C. A. 567; Mather *v.* Barnes, 146 Fed. 1000; Heck *v.* Missouri Pac. R. Co., 147 Fed. 775, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 115; Curran *v.* Smith, (C. C. A.) 149 Fed. 945; Files *v.* Rankin, (C. C. A.) 153 Fed. 537, *affirming* Files *v.* Brown, 124 Fed. 133, 59 C. C. A. 403.
Alabama. — See Graybill *v.* Drennan, (Ala. 1907) 43 So. 568.
California. — De Laval Dairy Supply Co. *v.* Steadman, (Cal. App. 1907) 92 Pac. 877.
Georgia. — Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372.
Missouri. — See Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; Austin *v.* St. Louis Transit Co., 115 Mo. App. 146, 91 S. W. 450.
Montana. — Grindrod *v.* Anglo-American Bond Co., 34 Mont. 169, 85 Pac. 891.
North Carolina. — Griffin *v.* Roanoke R., etc., Co., 140 N. Car. 514, 53 S. E. 307.
Oklahoma. — Long *v.* Kendall, 17 Okla. 70, 87 Pac. 670.
Oregon. — Powers *v.* Powers, 46 Oregon 479, 80 Pac. 1058.
Washington. — Pigott *v.* Graham, (Wash. 1908) 93 Pac. 435.
Wisconsin. — J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231.

116. 1. *United States.* — Smith *v.* Curran, 138 Fed. 150; Burk *v.* Johnson, 146 Fed. 209, 76 C. C. A. 567; Mather *v.* Barnes, 146 Fed. 1000; Heck *v.* Missouri Pac. R. Co., 147 Fed. 775; Curran *v.* Smith, (C. C. A.) 149 Fed. [illegible].
Alabama. — Mai[illegible] *v.* Radney, (Ala. 1905) 39 So. 981.
District of Columbia. — Toledo Computing Scale Co. *v.* Garrison, 28 App. Cas. (D. C.) 213.
Iowa. — Garrett *v.* Slavens, 129 Iowa 107, 105 N. W. 369. See also Scott *v.* Burnight, 131 Iowa 507, 107 N. W. 422; Chambers *v.* Irish, 132 Iowa 319, 109 N. W. 787.
Kansas. — Shook *v.* Puritan Mfg. Co., 75 Kan. 301, 89 Pac. 653.
Louisiana. — See Fontenette *v.* Kling, 118 La. 152, 42 So. 756.
Maine. — See Valley *v.* Boston, etc., R. Co., (Me. 1907) 68 Atl. 635.
Missouri. — Vette *v.* Evans, 111 Mo. App. 588, 86 S. W. 504; Robertson *v.* Covenant Mut. L. Ins. Co., 123 Mo. App. 238, 100 S. W. 686; Hines *v.* Royce, 127 Mo. App. 718, 106 S. W. 1091. See also Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.
Montana. — Grindrod *v.* Anglo-American Bond Co., 34 Mont. 169, 85 Pac. 891.
South Dakota. — Farlow *v.* Chambers, (S. Dak. 1907) 110 N. W. 94.
Texas. — See Gilbert *v.* Cooper, (Tex. Civ. App. 1906) 95 S. W. 753.
Washington. — Hulet *v.* Achey, 39 Wash. 91, 80 Pac. 1105; Irby *v.* Tilsley, 41 Wash. 211, 83 Pac. 97; Hubenthal *v.* Spokane, etc., R. Co., 43 Wash. 677, 86 Pac. 955; Jones *v.* Reynolds, 45 Wash. 371, 88 Pac. 577; Pigott *v.* Graham, [illegible] Mul-holland *v.* Washington Match Co., 35 Wash. 315, 77 Pac. 497. See also Danice *v.* Buttner,

38 Wash. 556, 80 Pac. 811, *distinguishing* Washington Cent. Imp. Co. *v.* Newlands, 11 Wash. 212. *Compare* McMullen *v.* Rousseau, 40 Wash. 497, 82 Pac. 883.

117. 4. Representations as to Quantity of Land Avowedly an Approximation. — Kafka *v.* Grant, 73 N. J. L. 451, 63 Atl. 900. See also Kincaid *v.* Price, 82 Ark. 20, 100 S. W. 76; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

b. See Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

118. 4 Crosby *v.* Emerson, (C. C. A.) 142 Fed. 713; Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888; Mather *v.* Barnes, 146 Fed. 1000; Kincaid *v.* Price, 82 Ark. 20, 100 S. W. 76; Gaar *v.* Halverson, 128 Iowa 603, 105 N. W. 108; Bosley *v.* Monahan, (Iowa 1907) 112 N. W. 1102; Cash Register Co. *v.* Townsend, 137 N. Car. 652, 50 S. E. 306; Frey *v.* Middle Creek Lumber Co., 144 N. Car. 759, 57 S. E. 464, *distinguishing* May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728; Long *v.* Kendall, 17 Okla. 70, 87 Pac. 670; Oneal *v.* Weisman, (Tex. Civ. App. 1905) 88 S. W. 290; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

But Commending or Puffing Goods has been held to have no application to false representations of material facts calculated to deceive and made with intent to deceive. Harris *v.* Rosenberger, (C. C. A.) 145 Fed. 449, *reversing* Rosenberger *v.* Harris, 136 Fed. 1001.

119. 3. *Contra,* Harris *v.* Rosenberger, (C. C. A.) 145 Fed. 449, *reversing* Rosenberger *v.* Harris, 136 Fed. 1001.

120. 1. Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048; Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 119; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 119; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 120; George *v.* Hesse, (Tex. Civ. App. 1906) 94 S. W. 1122. See also Lloyd *v.* Hulick, 69 N. J. Eq. 784, 63 Atl. 616; McMullen *v.* Rousseau, 40 Wash. 497, 82 Pac. 883.

No Obligation to Use Diligence to discover fraud, it has been held in *Michigan.* See Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964.

Negligence of the Injured Party cannot be urged as a defense by the one who has deceived. Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

2. See Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

3. *United States.* — See Dorsey *v.* Watkins, 151 Fed. 340.

Arkansas. — Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 120.

California. — Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011.

Idaho. — Watson *v.* Molden, 10 Idaho 570, 79 Pac. 503, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 120.

Illinois. — See Vennum *v.* Palmer, 123 Ill. App. 611.

Iowa. — Evans *v.* Palmer, (Iowa 1908) 114 N. W. 912.

Kansas. — See Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

Massachusetts. — Lyons Burial Vault Co. *v.* Taylor, (Mass. 1908) 84 N. E. 320.

Michigan. — Lyon *v.* Lindblad, 145 Mich. 588, 108 N. W. 969.

Minnesota. — Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909.

Missouri. — Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810; American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814; Brolaski *v.* Carr, 127 Mo. 279, 105 S. W. 284.

New Hampshire. — Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

North Carolina. — May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

Oregon. — See Steen *v.* Weisten, (Oregon 1908) 94 Pac. 834.

Texas. — Caplen *v.* Cox, (Tex. Civ. App. 1906) 92 S. W. 1048; Goodwin *v.* Daniel, (Tex. Civ. App. 1906) 93 S. W. 534. See also Hall *v.* Grayson County Nat. Bank, 36 Tex. Civ. App. 317, 81 S. W. 762.

Washington. — Daniel *v.* Buttner, 38 Wash. 556, 80 Pac. 811; Gilluly *v.* Hosford, 45 Wash. 594, 88 Pac. 1027. See also McMullen *v.* Rousseau, 40 Wash. 497, 82 Pac. 883.

West Virginia. — See Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

Wisconsin. — See Mannel *v.* Shafer, (Wis. 1908) 115 N. W. 801.

121. 1. International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 121. See also Hall *v.* Grayson County Nat. Bank, 36 Tex. Civ. App. 317, 81 S. W. 762.

Representations as to Distant Property may be relied upon without investigation. Farley *v.* Wiess, (Neb. 1906) 107 N. W. 561.

2. Compagnie Des Metaux Unital *v.* Victoria Mfg. Co., (Tex. Civ. App. 1908) 107 S. W. 651. See also Watson *v.* Molden, 10 Idaho 570, 79 Pac. 503; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; Kerwin *v.* Friedman, 127 Mo. App. 519, 105 S. W. 1102; Electrical Audit, etc., Co. *v.* Greenberg, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 514, 107 N. Y. Supp. 110; Hall *v.* Grayson County Nat. Bank, 36 Tex. Civ. App. 317, 81 S. W. 762; U. S. Gypsum Co. *v.* Shields, (Tex. Civ. App. 1907) 106 S. W. 724.

3. Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

Employment of Expert to Make Examination. — Chase *v.* Wolgamot, (Iowa 1908) 114 N. W. 614.

122. 2. *Arkansas.* — Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048.

California. — Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011.

Idaho. — Watson *v.* Molden, 10 Idaho 570, 79 Pac. 503, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122.

Minnesota. — See Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909.

Missouri. — Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; Brolaski *v.* Carr, 127 Mo. App. 279, 105 S. W. 284; Kerwin *v.* Friedman,

127 Mo. App. 519, 105 S. W. 1102. See also Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810.

Nebraska. — Farley *v.* Wiess, (Neb. 1906) 107 N. W. 561.

New York. — Electrical Audit, etc., Co. *v.* Greenberg, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 514, 107 N. Y. Supp. 110.

North Carolina. — Griffin *v.* Roanoke R., etc., Co., 140 N. Car. 514, 53 S. E. 307.

Texas. — Hall *v.* Grayson County Nat. Bank, 36 Tex. Civ. App. 317, 81 S. W. 762, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189; Compagnie Des Metaux Unital *v.* Victoria Mfg. Co., (Tex. Civ. App. 1908) 107 S. W. 651.

Washington. — See McMullen *v.* Rousseau, 40 Wash. 497, 82 Pac. 883.

3. Watson *v.* Molden, 10 Idaho 570, 79 Pac. 503, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122.

4. Watson *v.* Molden, 10 Idaho 570, 79 Pac. 503, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122.

5. Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372; Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159; Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122. See also Thompson *v.* Randall, (Ky. 1906) 90 S. W. 251; Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275; Oneal *v.* Weisman, (Tex. Civ. App. 1905) 88 S. W. 290.

Trust and Confidence Reposed. — Where a shrewd business man induced an ignorant woman to convey land to him for an inadequate price, misrepresenting that a mortgage on the property was to be foreclosed, it was held that the deed should be canceled. Schaeffer *v.* Blanc, (Tex. Civ. App. 1905) 87 S. W. 745.

6. See Barrett *v.* Miller, 144 Mich. 454, 108 N. W. 396.

7. See De Leonis *v.* Hammel, 1 Cal. App. 390, 82 Pac. 349; Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372.

8. See Vennum *v.* Palmer, 123 Ill. App. 619.

123. 1. See Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000.

4. Hunter *v.* McCammon, 119 N. Y. App. Div. 326, 104 N. Y. Supp. 402. See also May *v.* May, 96 S. W. 840, 29 Ky. L. Rep. 1033; Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082.

5. See Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082.

6. Ray *v.* Baker, 165 Ind. 74, 74 N. E. 619, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 123; Lindley *v.* Kemp, 38 Ind. App. 355, 76 N. E. 798; Evans *v.* Palmer, (Iowa 1908) 114 N. W. 912; American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814; Derby *v.* Donahoe, 208 Mo. 684, 106 S. W. 632. See also Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94; Johnson *v.* Savage, (Oregon 1907) 91 Pac. 1082; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189; Gulf, etc., R. Co. *v.* Huyett, (Tex. Civ. App. 1908) 108 S. W. 502.

An Option to Convey Land Obtained by Misrepresentations and threats from the owner, a weak and crippled woman, was held to be unenforceable. Grand Rapids, etc., R. Co. *v.* Stevens, 143 Mich. 646, 107 N. W. 436.

7. Holtzman *v.* Lintor, 27 App. Cas. (D. C.) 241; Clark *v.* O'Toole, (Okla. 1908) 94 Pac. 547. See also Ricketts *v.* Tompkins, (N. J. 1908) 68 Atl. 1075; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189.

8. *United States.* — See Files *v.* Rankin, (C. C. A.) 153 Fed. 537, *affirming* Files *v.* Brown, 124 Fed. 133, 59 C. C. A. 403.

Arkansas. — Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 123.

Georgia. — Maricetta Fertilizer Co. *v.* Beckwith, (Ga. 1908) 61 S. E. 149.

Iowa. — Evans *v.* Palmer, (Iowa 1908) 114 N. W. 912. See also Mattauch *v.* Walsh, (Iowa 1907) 113 N. W. 818.

Michigan. — Garr *v.* Alden, 139 Mich. 440, 102 N. W. 950; Lyon *v.* Lindblad, 145 Mich. 588, 108 N. W. 969; Barron *v.* Myers, 146 Mich. 510, 109 N. W. 862.

Minnesota. — Roebuck *v.* Wick, 98 Minn. 130, 107 N. W. 1054.

Missouri. — Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, 110 Mo. App. 292, 85 S. W. 920.

North Carolina. — May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 123.

Texas. — International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189.

Washington. — Krisch *v.* Interstate Fisheries Co., 39 Wash. 381, 81 Pac. 855.

West Virginia. — See Acme Food Co. *v.* Older, (W. Va. 1908) 61 S. E. 235.

124. 1. **Representations by Third Person — Conspiracy.** — See International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189.

5. Stratton's Independence *v.* Dines, 126 Fed. 968. See also Burk *v.* Johnson, 146 Fed. 209, 76 C. C. A. 567.

6. Flynn *v.* Finch, (Iowa 1908) 114 N. W. 1058.

7. Else *v.* Freeman, 72 Kan. 666, 83 Pac. 409; Long *v.* Kendall, 17 Okla. 70, 87 Pac. 670; Jones *v.* Reynolds, 45 Wash. 371, 88 Pac. 577. *Compare* Krause *v.* Cook, 144 Mich. 365, 108 N. W. 81. See also Pinch *v.* Hotaling, 142 Mich. 521, 106 N. W. 69.

125. 1. Kincaid *v.* Price, 82 Ark. 20, 100 S. W. 76.

2. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159. See also Long *v.* Owen, 98 S. W. 1010, 30 Ky. L. Rep. 495.

3. *Arkansas.* — See Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048.

Indiana. — See Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94.

Iowa. — Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159; Evans *v.* Palmer, (Iowa 1908) 114 N. W. 912.

Kentucky. — Prater *v.* Peters, (Ky. 1907) 105 S. W. 102.

Michigan. — Pinch *v.* Hotaling, 142 Mich. 521, 106 N. W. 69, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 125.

Missouri. — American Hardwood Lumber Co.

v. Dent, 121 Mo. App. 108, 98 S. W. 814; Hines *v.* Royce, 127 Mo. App. 718, 106 S. W. 1091.

New Jersey. — Ricketts *v.* Tompkins, (N. J. 1908) 68 Atl. 1075.

New York. — Dolan *v.* Cummings, 116 N. Y. App. Div. 787, 102 N. Y. Supp. 91.

Texas. — See Oneal *v.* Weisman, (Tex. Civ. App. 1905) 88 S. W. 290.

Washington. — See Gilluly *v.* Hosford, 45 Wash. 594, 88 Pac. 1027.

Statements as to Price for Which Land Sold Are Fraud. — Troutman *v.* Eggleston, 19 S. Dak. 572, 104 N. W. 257.

126. 1. Van Horn *v.* O'Connor, 42 Wash. 513, 85 Pac. 260. See also American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814; Reilly *v.* Gottleb, 43 Wash. 9, 85 Pac. 675.

Representations as to the Value of an Immature Corn Crop have been held to be fraud. Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

Representations as to Value on an Exchange of Properties May Be Relied on. — Pinch *v.* Hotaling, 142 Mich. 521, 106 N. W. 69.

2. Scott *v.* Burnight, 131 Iowa 507, 107 N. W. 422; Pinch *v.* Hotaling, 142 Mich. 521, 106 N. W. 69. See also Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, 110 Mo. App. 292, 85 S. W. 920; Farley *v.* Weiss, (Neb. 1906) 107 N. W. 561.

3. Garr *v.* Alden, 139 Mich. 440, 102 N. W. 950; Roebuck *v.* Wick, 98 Minn. 130, 107 N. W. 1054; Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, 110 Mo. App. 292, 85 S. W. 920; Krisch *v.* Interstate Fisheries Co., 39 Wash. 381, 81 Pac. 855; Acme Food Co. *v.* Older, (W. Va. 1908) 61 S. E. 235. See also Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048; Marietta Fertilizer Co. *v.* Beckwith, (Ga. 1908) 61 S. E. 149.

4. See Oneal *v.* Weisman, (Tex. Civ. App. 1905) 88 S. W. 290.

127. 1. Beare *v.* Wright, 14 N. Dak. 26, 103 N. W. 632.

Confidential Relation.—And the rule does not apply where there is a confidential relation between the parties. Walker *v.* Pike County Land Co., (C. C. A.) 139 Fed. 609.

2. Grinnell *v.* Hill, 1 Cal. App. 492, 82 Pac. 445; Bosley *v.* Monahan, (Iowa 1907) 112 N. W. 1102. See also Walker *v.* Pike County Land Co., (C. C. A.) 139 Fed. 609; Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048; Thompson *v.* Newell, 118 Mo. App. 405, 94 S. W. 557.

128. 1. Marietta Fertilizer Co. *v.* Beckwith, (Ga. 1908) 61 S. E. 149; Frey *v.* Middle Creek Lumber Co., 144 N. Car. 759, 57 S. E. 464, *distinguishing* May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728; Van Horn *v.* O'Connor, 42 Wash. 513, 85 Pac. 260. See also Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593. And see dissenting opinion by MacLean, J., in Williams *v.* Goldberg, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 210, 109 N. Y. Supp. 15.

2. Pinch *v.* Hotaling, 142 Mich. 521, 106 N. W. 69; Ritko *v.* Grove, 102 Minn. 312, 113 N. W. 629; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; Lunscheon *v.* Wocknitz, (S. Dak. 1907) 111 N. W. 632. See also Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417; Van Horn *v.* O'Connor, 42 Wash. 513, 85 Pac. 260; Reilly *v.* Gottleb, 43 Wash. 9, 85 Pac. 675; Mannel *v.* Shafer, (Wis. 1908) 115 N. W. 801.

129. 1. Garr *v.* Alden, 139 Mich. 440, 102 N. W. 950.

3. Graybill *v.* Drennen, (Ala. 1907) 43 So. 568; May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

4. May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

6. Crandall *v.* Parks, (Cal. 1908) 93 Pac. 1018; Scott *v.* Burnight, 131 Iowa 507, 107 N. W. 422; Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504; Pinch *v.* Hotaling, 142 Mich. 521, 106 N. W. 69; Troutman *v.* Eggleston, 19 S. Dak. 572, 104 N. W. 257; Reilly *v.* Gottleb, 43 Wash. 9, 85 Pac. 675. See also Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, 110 Mo. App. 292, 85 S. W. 920; Kerwin *v.* Friedman, 127 Mo. App. 519, 105 S. W. 1102; Farley *v.* Weiss, (Neb. 1906) 107 N. W. 561; Clark *v.* O'Toole, (Okla. 1908) 94 Pac. 547; Steen *v.* Weisten, (Oregon 1908) 94 Pac. 834; Parker *v.* Anderson, (Tex. Civ. App. 1905) 85 S. W. 856.

Representations in Indiana as to Land in Kansas were held to conclude the vendor. Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417.

130. 1. Blumenfeld *v.* Stine, (Supm. Ct. Spec. T.) 42 Misc. (N. Y.) 411, 87 N. Y. Supp. 81; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

2. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159; John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741; Murray *v.* Davies, (Kan. 1908) 94 Pac. 283; Kerwin *v.* Friedman, 127 Mo. App. 519, 105 S. W. 1102. See also Hahl *v.* Brooks, 213 Ill. 134, 72 N. E. 727, *affirming* 114 Ill. App. 644; Smith *v.* Hoffman, 122 Ill. App. 198; Howerton *v.* Augustine, 130 Iowa 389, 106 N. W. 941; Vernam *v.* Wilson, 31 Pa. Super. Ct. 257.

3. Crandall *v.* Parks, (Cal. 1908) 93 Pac. 1018; Rahm *v.* Bunger, (Ky. 1906) 90 S. W. 257; Steen *v.* Weisten, (Oregon 1908) 94 Pac. 834; Miller *v.* Hackbarth, 126 Wis. 50, 105 N. W. 311.

131. 1. Selby *v.* Matson, (Iowa 1908) 114 N. W. 609; Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10; Kabat *v.* Moore, 48 Oregon 191, 85 Pac. 506; Freeman *v.* Gloyd, 43 Wash. 607, 86 Pac. 1051. See also Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16; Petrie *v.* Ludwig, (Ind. App. 1908) 83 N. E. 770; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; White *v.* Reitz, (Mo. App. 1908) 108 S. W. 601; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180; Mannel *v.* Shafer, (Wis. 1908) 115 N. W. 801.

Location of Farm Land. — Where land was represented to be four miles from a city, whereas it in fact was eleven miles, it was held that the vendee was entitled to a rescission of the contract. Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417.

2. Morrow *v.* Laverty, (Neb. 1906) 109 N. W. 150. See also Smith *v.* Curran, 138 Fed. 150; Kafka *v.* Grant, 73 N. J. L. 451, 63 Atl.

900; Sulkin *v.* Gilbert, 218 Pa. St. 255, 67 Atl. 41.

3. Walker *v.* Walbridge, 136 Fed. 19, 68 C. C. A. 569; Petrie *v.* Ludwig, (Ind. App. 1908) 83 N. E. 770; Garr *v.* Alden, 139 Mich. 440, 102 N. W. 950; Stearns *v.* Kennedy, 94 Minn. 439, 103 N. W. 212; Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, 110 Mo. App. 292, 85 S. W. 920; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558, *disapproving* Mires *v.* Summerville, 85 Mo. App. 183; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962. See also Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16; Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

Liability for Misrepresentation the Same Where Land is in Gross as by the Acre. — Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, 110 Mo. App. 292, 85 S. W. 920.

Representations as to Quantity of Standing Timber May Be Relied on. — May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

§ 132. 2. Maine *v.* Midland Invest. Co., 132 Iowa 272, 109 N. W. 801; Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909; Vernam *v.* Wilson, 31 Pa. Super. Ct. 257; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593. See also Hahl *v.* Brooks, 213 Ill. 134, 72 N. E. 727, *affirming* 114 Ill. App. 644; Kerwin *v.* Friedman, 127 Mo. App. 519, 105 S. W. 1102; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

3. Miller *v.* Hackbarth, 126 Wis. 50, 105 N. W. 311.

§ 133. 2. Hines *v.* Royce, 127 Mo. 718, 106 S. W. 1091.

§ 134. 1. Plaul *v.* Wandel, (Iowa 1908) 114 N. W. 899; Omaha Feed Co. *v.* Rushforth, 75 Neb. 340, 106 N. W. 25.

3. Pacific Mut. L. Ins. Co. *v.* Webb, (C. C. A.) 157 Fed. 155; Hale *v.* Hale, (W. Va. 1908) 59 S. E. 1056; Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, 110 Mo. App. 292, 85 S. W. 920; Williams *v.* Leisen, 72 N. J. L. 410, 60 Atl. 1096; Baldwin *v.* Postal Tel. Cable Co., 78 S. Car. 419, 59 S. E. 67; Compagnie Des Metaux Unital *v.* Victoria Mfg. Co., (Tex. Civ. App. 1908) 107 S. W. 651; Acme Food Co. *v.* Older, (W. Va. 1908) 61 S. E. 235. See also Smith *v.* Smith, (Ala. 1907) 45 So. 168; Valley *v.* Boston, etc., R. Co., (Me. 1907) 68 Atl. 635.

4. Ray *v.* Baker, 165 Ind. 74, 74 N. E. 619, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 134; Creshkoff *v.* Schwartz, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 576, 103 N. Y. Supp. 782; Modlin *v.* Roanoke R., etc., Co., 145 N. Car. 218, 58 S. E. 1075. See also Smith *v.* Smith, (Ala. 1907) 45 So. 168; Wolford *v.* Steele, (Ky. 1905) 84 S. W. 327.

§ 135. 1. Heck *v.* Missouri Pac. R. Co., 147 Fed. 775; Mower Harwood Creamery, etc., Co. *v.* Hill, (Iowa 1907) 113 N. W. 466; First Nat. Bank *v.* Hall, (Mo. App. 1908) 108 S. W. 623; Farlow *v.* Chambers, (S. Dak. 1907) 110 N. W. 94; Hubenthal *v.* Spokane, etc., R. Co., 43 Wash. 677, 86 Pac. 055.

[illegible] — [illegible] (Ala. 1907) 44 So. 300.

Arkansas. — American Standard Jewelry Co. *v.* Witherington, 81 Ark. 134, 98 S. W. 695. See also St. Louis, etc., R. Co. *v.* Smith, 82 Ark. 105, 100 S. W. 884.

Indiana. — See Gipe *v.* Pittsburgh, etc., R. Co., (Ind. App. 1907) 82 N. E. 471.

Iowa. — Wickham *v.* Evans, 133 Iowa 552, 110 N. W. 1046.

Kansas. — Shook *v.* Puritan Mfg. Co., 75 Kan. 301, 89 Pac. 653.

Kentucky. — Morgan *v.* Combs, (Ky. 1908) 108 S. W. 272; Louisville Veneer Mills Co. *v.* Clemonts, (Ky. 1908) 109 S. W. 308.

Minnesota. — Eggleston *v.* Advance Thresher Co., 96 Minn. 241, 104 N. W. 891.

Missouri. — Robertson *v.* George A. Fuller Constr. Co., 115 Mo. App. 456, 92 S. W. 130.

New York. — Electrical Audit, etc., Co. *v.* Greenberg, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 514, 107 N. Y. Supp. 110.

Ohio. — Monnett *v.* Columbus, etc., R. Co., 26 Ohio Cir. Ct. 469.

South Carolina. — Baldwin *v.* Postal Tel. Cable Co., 78 S. Car. 419, 59 S. E. 67. See also Mason *v.* Postal Tel. Cable Co., 71 S. Car. 150, 50 S. E. 781.

West Virginia. — Hale *v.* Hale, (W. Va. 1908) 59 S. E. 1056. See also Taylor *v.* Godfrey, (W. Va. 1907) 59 S. E. 631.

Instrument Involved and Contents Misrepresented. — It may be avoided in such a case. Lilienthal *v.* Herran, 42 Wash. 209, 84 Pac. 829.

A Deed Which Purports to Be in Accordance with the Contract, it has been held may be reformed even though the vendee failed to read it. Lloyd *v.* Hulick, 69 N. J. Eq. 784, 63 Atl. 616.

Want of Reasonable Opportunity to Read; to Read will afford ground for relief. Hahl *v.* Brooks, 213 Ill. 134, 72 N. E. 727, *affirming* 114 Ill. App. 644.

Under the Wisconsin Statute, fraudulent representation as to the character of a negotiable instrument renders the title absolutely void as to the signer if he could not have obtained knowledge by the use of ordinary care. Aukland *v.* Arnold, 131 Wis. 64, 111 N. W. 212.

3. American Standard Jewelry Co. *v.* Witherington, 81 Ark. 134, 98 S. W. 695; Ray *v.* Baker, 165 Ind. 74, 74 N. E. 619; Johnson *v.* Hall, 87 Miss. 667, 40 So. 1; Austin *v.* St. Louis Transit Co., 115 Mo. App. 146, 91 S. W. 450; Monnett *v.* Columbus, etc., R. Co., 26 Ohio Cir. Ct. 469. See also Creshkoff *v.* Schwartz, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 576, 103 N. Y. Supp. 782; Butler *v.* Anderson, (Tex. Civ. App. 1908) 107 S. W. 656.

§ 136. 1. See Skajewski *v.* Skaya, (Minn. 1907) 114 N. W. 247.

3. **Inquiry as to Contents of Instrument Foiled by Fraud.** — Where a person signed a contract hastily, upon representations that it contained provisions agreed upon, the vendor stating that he wished to catch a train and the vendee being unable to read without his spectacles, which were not at hand, it was held that such a contract could not be enforced. Shook *v.* Puritan Mfg. Co., 75 Kan. 301, 89 Pac. 653; Griffin *v.* Roanoke R., etc., Co., 140 N. Car. 514, 53 S. E. 307; Acme Food Co. *v.* Older, (W. Va. 1908) 61 S. E. 235; Standard Mfg. Co. *v.* Stallmann, 128 Wis. 375, 107 N. W. 662. See also Robertson *v.* Covenant Mut. L. Ins. Co., 123 Mo. App. 238, 100 S. W. 686.

4. Hahl *v.* Brooks, 213 Ill. 134, 72 N. E. 725, *affirming* 114 Ill. App. 641; Knoepker *v.* Redel, 116 Mo. App. 62, 92 S. W. 171; Griffin *v.* Roanoke R., etc., Co., 140 N. Car. 514, 53 S. E. 307; Hayes *v.* Atlanta, etc., Air-Line R. Co., 143 N. Car. 125, 55 S. E. 437.

Reading Part of an Instrument will avoid it. [illegible] Coal Co. *v.* Older, (W. Va. 1908) 61 S. E. 235.

137. 1. Yakima Valley Bank *v.* McAllister, 37 Wash. 566, 79 Pac. 1119. See also Bilafsky *v.* Conveyancers' Title Ins. Co., 192 Mass. 504, 78 N. E. 534; Robertson *v.* Covenant Mut. L. Ins. Co., 123 Mo. App. 238, 100 S. W. 686.

3. Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374; Kelly *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 536; Owings *v.* Turner, 48 Oregon 462, 87 Pac. 160. See also International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189.

4. Shook *v.* Puritan Mfg. Co., 75 Kan. 301, 89 Pac. 653; Biddeford Nat. Bank *v.* Hill, 102 Me. 346, 66 Atl. 721; Clifford Banking Co. *v.* Donovan Commission Co., 195 Mo. 262, 94 S. W. 527; First Nat. Bank *v.* Hall, (Mo. App. 1908) 108 S. W. 633. See also Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192.

Party Not Guilty of Negligence. — If a signature to a negotiable instrument is procured by fraudulent practice in substituting one different from that intended to be signed, it has been held that such an instrument can be avoided by the maker. Home Nat. Bank *v.* Hill, 165 Ind. 226, 74 N. E. 1086.

5. Stratton's Independence *v.* Dines, 135 Fed. 449, 68 C. C. A. 161, *affirming* 126 Fed. 968; Farwell *v.* Colonial Trust Co., 147 Fed. 480, 78 C. C. A. 22; Brassell *v.* Fisk, (Ala. 1907) 45 So. 70; Bowen *v.* Waxelbaum, 2 Ga. App. 521, 58 S. E. 784; Howard County *v.* Garrigus, 164 Ind. 589, 73 N. E. 82 (*citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 137), 74 N. E. 249; Mahoney *v.* State Ins. Co., 133 Iowa 570, 110 N. W. 1041; Boulden *v.* Stilwell, 100 Md. 543, 60 Atl. 609; Tinker *v.* Kier, 195 Mo. 183, 94 S. W. 501; Connelly *v.* Brown, 73 N. H. 193, 60 Atl. 750; Keeler *v.* Seaman, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 292, 95 N. Y. Supp. 920; Buchall *v.* Higgins, 109 N. Y. App. Div. 607, 96 N. Y. Supp. 241; Badger *v.* Pond, 120 N. Y. App. Div. 619, 105 N. Y. Supp. 546; Farmer *v.* Lynch, (R. I. 1907) 67 Atl. 449.

6. Stratton's Independence *v.* Dines, 135 Fed. 449, 68 C. C. A. 161, *affirming* 126 Fed. 968; Howard County *v.* Garrigus, 164 Ind. 589, 73 N. E. 82, 74 N. E. 249; Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026. See also Jakway *v.* Proudfit, (Neb. 1906) 106 N. W. 1030, *affirmed* on rehearing (Neb. 1906) 109 N. W. [illegible]

7. See Stockton Sav., etc., Soc. *v.* Saddlemire, 3 Cal. App. 525, 86 Pac. 723.

8. Stratton's Independence *v.* Dines, 135 Fed. 449, 68 C. C. A. 161, *affirming* 126 Fed. 968; Kessler *v.* Ensley Co., 141 Fed. 130; Donnelly *v.* Baltimore Trust, etc., Co., 102 Md. 1, 61 Atl. 307; Lewis *v.* Corbin, 195 Mass. 520, 81 N. E. 248; Wellington First Nat. Bank *v.* Person, 101 Minn. 30, 111 N. W. 730; Thompson *v.* Newell, 118 Mo. App. 405, 94 S. W. 557; Jakway *v.* Proudfit, (Neb. 1906) 109 N. W. 388, *affirming* (Neb. 1906) 106 N. W. 1039; Tregner *v.* Hazen, 116 N. Y. App. Div. 829, 102 N. Y. Supp. 139; Marshall-McCartney Co. *v.* Halloran, 15 N. Dak. 71, 106 N. W. 293; Palmer *v.* Goldberg, [illegible] Wis. 103, 10[illegible] N. W. 17[illegible]. See also Mason *v.* Thornton, 74 Ark. 46, 84 S. W. 1048; Motley *v.* Mercantile Trust Co., 114 N. Y. App. Div. 904, 100 N. Y. Supp. 281.

138. 1. Stratton's Independence *v.* Dines, 135 Fed. 449, 68 C. C. A. 161, *affirming* 126 Fed. 968; Polhemus *v.* Polhemus, 114 N. Y. App. Div. 781, 100 N. Y. Supp. 263; Lyon *v.* James, 97 N. Y. App. Div. 385, 90 N. Y. Supp. 28, *affirmed* without opinion 181 N. Y. 512, 73 N. E. 1126.

North Dakota Statute. — Actual fraud with damage is a good cause of action. Beare *v.* Wright, 14 N. Dak. 26, 103 N. W. 632.

2. See Bowen *v.* Waxelbaum, 2 Ga. App. 521, 58 S. E. 784.

139. 1. Kessler *v.* Ensley Co., 141 Fed. 130.

2. Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 139. See also Blair *v.* Baird, (Tex. Civ. App. 1906) 94 S. W. 116.

3. Wolford *v.* Steele, (Ky. 1905) 84 S. W. 327. See also Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

140. 3. Jakway *v.* Proudfit, (Neb. 1906) 106 N. W. 1039 (*affirmed* on rehearing (Neb. 1906) 109 N. W. 388), *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140; Marquise *v.* Tri-State Land Co., (Neb. 1906) 109 N. W. 397. See also Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011.

4. Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011; Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

6. See Hughes *v.* Lockington, 221 Ill. 571, 77 N. E. 1105. *Compare* Jakway *v.* Proudfit, (Neb. 1906) 106 N. W. 1039; Greiling *v.* Watermolen, 128 Wis. 440, 107 N. W. 339.

7. Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140.

Rescission of Sale of Bonds. — One who has purchased a bond of a corporation which was not what it was represented to be, may rescind without showing any other damage. Rose *v.* Merchants Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946.

144. 4. Harris *v.* Rosenberger, (C. C. A.) 145 Fed. 449, *reversing* Rosenberger *v.* Harris, 136 Fed. 1001; Mather *v.* Barnes, 146 Fed. 1000; Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011; Selby *v.* Matson, (Iowa 1908) 114 N. W. 609; Jakway *v.* Proudfit, (Neb. 1906) 109 N. W. 388, *affirming* (Neb. 1906) 106 N. W. 1039. See also International Harvester Co. *v.* Smith, 105 Va. 683, 54 S. E. 859.

In a Representation that a Farm Was Located Four Miles from a city, whereas it was in fact eleven miles, it was held that the vendee was entitled to a rescission of his contract, notwithstanding the land was worth as much in one

case as in the other. Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 47.

Representations as to Interest Due on Mortgage. — Where a mortgage was foreclosed by reason of nonpayment of interest, the due date of which was misrepresented, it has been held that special damages could not be recovered. Russell *v.* Stoops, (Md. 1907) 66 Atl. 698.

A Purchase of a Tract of Land for Timber was set aside upon proof that the wood thereon was suitable only for piling. Steen *v.* Weisten, (Oregon 1906) 91 Pac. 834.

Representations as to the Cost of Property must be accurate. Douglass *v.* Richards, 116 N. Y. App. Div. 27, 101 N. Y. Supp. 299.

145. **6. Protection against Liens Provided for in Contract** will be sufficient to defeat an action for fraud. Blair *v.* Baird, (Tex. Civ. App. 1906) 94 S. W. 116.

8. Representations as to Quantity by the Purchaser will amount to fraud, if the vendor's investigation was prevented by artifice. Garr *v.* Alden, 139 Mich. 440, 102 N. W. 950.

149. **4.** Keeler *v.* Seaman, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 292, 95 N. Y. Supp. 920. See also Kuelling *v.* Roderick Lean Mfg. Co., 183 N. Y. 78, 75 N. E. 1098, *reversing* 94 N. Y. App. Div. 613, 88 N. Y. Supp. 1105.

150. **4.** Kuelling *v.* Roderick Lean Mfg. Co., 183 N. Y. 78, 75 N. E. 1098, *reversing* 94 N. Y. App. Div. 613, 88 N. Y. Supp. 1105.

151. **1.** Kuelling *v.* Roderick Lean Mfg. Co., 183 N. Y. 78, 75 N. E. 1098, *reversing* 94 N. Y. App. Div. 613, 88 N. Y. Supp. 1105.

4. Keeler *v.* Seaman, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 292, 95 N. Y. Supp. 920; Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 501, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 151. See also Coats *v.* Crossland, 20 Times L. Rep. 800; Dresser *v.* Mercantile Trust Co., 124 N. Y. App. Div. 891, 108 N. Y. Supp. 577; Hall *v.* Grayson County Nat. Bank, 36 Tex. Civ. App. 317, 81 S. W. 762.

If the Directors of a National Bank Sign a False Statement which is relied upon by a purchaser of some of its stock, it has been held that such directors are not liable unless in the exercise of ordinary care and prudence they would have known that the statement was false. Mason *v.* Moore, 73 Ohio St. 275, 76 N. E. 932.

152. **1.** Katzenstein *v.* Reid, (Tex. Civ. App. 1905) 91 S. W. 360. See also Mills *v.* Brill, 105 N. Y. App. Div. 389, 94 N. Y. Supp. 163.

4. Haven *v.* Tartar, 124 Mo. App. 691, 102 S. W. 21, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152.

153. **1.** Goldsmith *v.* Koopman, 140 Fed. 616; Pittsburgh L., etc., Co. *v.* Northern Cent. L. Ins. Co., 148 Fed. 674, 78 C. C. A. 408, *affirming* 110 Fed. 888; Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504; Kuelling *v.* Roderick Lean Mfg. Co., 183 N. Y. 78, 75 N. E. 1098, *reversing* 94 N. Y. App. Div. 613, 88 N. Y. Supp. 1105; Williams *v.* Goldberg, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 210, 109 N. Y. Supp. 15; Cleghon *v.* Barstow Irrigation Co., (Tex. Civ. App. 1906) 93 S. W. 1020; Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 501.

2. Goldsmith *v.* Koopman, 140 Fed. 616.

An Action Rests upon the fact that an injury has been suffered, resulting in damages to the party seeking redress. Williams *v.* Goldberg, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 210, 109 N. Y. Supp. 15.

If the Person Deceived Has Suffered a Detriment resulting in a loss, this is sufficient. Williams *v.* Goldberg, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 210, 109 N. Y. Supp. 15.

154. **5.** Haven *v.* Tartar, 124 Mo. App. 691, 102 S. W. 21, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 155; Cason *v.* Cason, 116 Tenn. 173, 93 S. W. 89.

7. Cason *v.* Cason, 116 Tenn. 173, 93 S. W. 89.

156. **1.** *United States.* — Mather *v.* Barnes, 146 Fed. 1000.

Alabama. — See Kendrick *v.* Colyar, 143 Ala. 597, 42 So. 110.

Illinois. — Hahl *v.* Brooks, 213 Ill. 134, 72 N. E. 727 (*affirming* 114 Ill. App. 644), *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 156.

Iowa. — John Gund Brewing Co. *v.* Peterson, 130 Iowa 301, 106 N. W. 741.

Kentucky. — Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10.

Missouri. — Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558; Heath *v.* Schroer, 119 Mo. App. 93, 96 S. W. 313; Robertson *v.* Covenant Mut L. Ins. Co., 123 Mo. App. 238, 100 S. W. 686.

New Hampshire. — See Bookhouse *v.* Union Pub. Co., 73 N. H. 368, 62 Atl. 219.

New York. — Cramsey *v.* Sterling, 111 N. Y. App. Div. 568, 97 N. Y. Supp. 1082; Birkett *v.* Postal Tel.-Cable Co., 107 N. Y. App. Div. 115, 94 N. Y. Supp. 918, *affirmed* without opinion 186 N. Y. 591, 79 N. E. 1101; Williams *v.* Goldberg, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 210, 109 N. Y. Supp. 15. See also Keeler *v.* Seaman, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 292, 95 N. Y. Supp. 920.

Texas. — Cleghon *v.* Barstow Irrigation Co., (Tex. Civ. App. 1906) 93 S. W. 1020. See also Gulf, etc., R. Co. *v.* Huyett, 99 Tex. 631, 92 S. W. 454, *reversing* 89 S. W. 1118.

5. Krolik *v.* Curry, 148 Mich. 214, 111 N. W. 761; Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

6. Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811.

Under the Georgia Statute "fraud voids all contracts." House *v.* Martin, 125 Ga. 642, 54 S. E. 755.

7. Eldorado Jewelry Co. *v.* Darnell, (Iowa 1907) 113 N. W. 344.

8. Hooker *v.* Midland Steel Co., 215 Ill. 444, 74 N. E. 445, *affirming* 117 Ill. App. 441; Eldorado Jewelry Co. *v.* Darnell, (Iowa 1907) 113 N. W. 344; Smith *v.* Ryan, (N. Y. 1908) 84 N. E. 402. See also Beare *v.* Wright, 14 N. Dak. 26, 103 N. W. 632; Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 156; Luetzke *v.* Roberts, 130 Wis. 97, 109 N. W. 940.

But Fraud Renders the Contract Absolutely Void as to the Guilty Party. — Sass *v.* Thomas, (Indian Ter. 1906) 89 S. W. 656.

157. **3.** Eldorado Jewelry Co. *v.* Darnell,

(Iowa 1907) 113 N. W. 344, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 158.

Buying Property [illegible]. Where the contract described houses different from those shown to the proposed purchaser, it was held that it should be annulled. Silverman *v.* Minsky, 109 N. Y. App. Div. 1, 95 N. Y. Supp. 611.

4. Eldorado Jewelry Co. *v.* Darnell, (Iowa 1907) 113 N. W. 344.

5. **Estoppel by Acts.** — Dunfee *v.* Childs, 59 W. Va. 248, 53 S. E. 209.

158. 1. Ritko *v.* Grove, 102 Minn. 312, 113 N. W. 629; May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728; Modlin *v.* Roanoke R., etc., Co., 145 N. Car. 218, 58 S. E. 1075; Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46. See also Moyer *v.* Richardson Drug Co., 70 Neb. 190, 97 N. W. 244; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 960.

2. Neibuhr *v.* Gage, 99 Minn. 149, 108 N. W. 884, *affirmed* without opinion 109 N. W. 1. See also Eldorado Jewelry Co. *v.* Darnell, (Iowa 1907) 113 N. W. 344.

Rescission of Agreement to Sell. — Tender in open court of all writings, and waiver of claim, are sufficient. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159.

4. **Contra.** — Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1020, Fisk, J., *dissenting*, and *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 158.

5. *Compare* Sass *v.* Thomas, 6 Indian Ter. 60, 89 S. W. 656.

159. 2. See Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1020.

4. St. Louis, etc., R. Co. *v.* Smith, 82 Ark. 105, 100 S. W. 884; Rockwell *v.* Capital Traction Co., 25 App. Cas. (D. C.) 98; Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198; Kelly *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 536; Austin *v.* St. Louis Transit Co., 115 Mo. App. 146, 91 S. W. 450; Robertson *v.* George A. Fuller Constr. Co., 115 Mo. App. 456, 92 S. W. 130. See also Kilmartin *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 522; McNicholas *v.* Prudential Ins. Co., (Mass. 1907) 82 N. E. 692; Monnett *v.* Columbus, etc., R. Co., 26 Ohio Cir. Ct. 469; Gulf, etc., R. Co. *v.* Huyett, (Tex. Civ. App. 1908) 108 S. W. 502.

Avoidance of Release of Liability under Life Insurance Policy. — [illegible] will be afforded if this was procured by misrepresentation. Farmers', etc., L. Assoc. *v.* Caine, 123 Ill. App. 419, *affirmed* 224 Ill. 599, 79 N. E. 956.

5. Miller *v.* Browning, (Ky. 1905) 89 S. W. 3; Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964; Gallagher *v.* O'Neill, (Neb. 1907) 111 N. W. 582; Du Bois *v.* Nugent, 69 N. J. Eq. 145, 60 Atl. 339; Kranz *v.* Lewis, 115 N. Y. App. Div. 106, 100 N. Y. Supp. 674; Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026; Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46; Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 501.

Rescinding Dividends and Voting on Stock have been held [illegible] on the right to rescind. Landis *v.* Wintermute, 40 Wash. 672, [illegible].

Refusal to [illegible] has been held to be sufficient notice of rescission. Brown *v.* Search, 131 Wis. 109, 111 N. W. 210.

6. Burk *v.* Johnson, 146 Fed. 209, 76 C. C. A. 567; Richardson *v.* Lowe, 149 Fed. 625, 79 C. C. A. 317; Old Colony Zinc, etc., Co. *v.* Carrick, (C. C. A.) 153 Fed. 173; Graybill *v.* Drennan, (Ala. 1907) 43 So. 568; Drovers' Live-Stock Commission Co. *v.* Charles Wolff Packing Co., 74 Kan. 330, 86 Pac. 128 (*citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 159), 89 Pac. 465; Gallagher *v.* O'Neill, (Neb. 1907) 111 N. W. 582; Bennett *v.* Glaspell, 15 N. Dak. 239, 107 N. W. 45. See also Matteson *v.* Wagoner, 147 Cal. 739, 82 Pac. 436; Miller *v.* Browning, (Ky. 1905) 89 S. W. 3; Du Bois *v.* Nugent, 69 N. J. Eq. 145, 60 Atl. 339; Dunfee *v.* Childs, 59 W. Va. 248, 53 S. E. 209.

Dealing with Property as One's Own, after discovery of the fraud, will deprive him of the right to rescind. Rose *v.* Merchants' Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946.

Working a Horse as One's Own, after discovery of the fraud, has been held to be a waiver of the right to rescind. Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46.

Bringing Suit for Damages Affirmance. — Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026.

160. 2. Rose *v.* Merchants' Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946.

Dealing with the Property as One's Own, after discovery of the fraud, will bar rescission. Graybill *v.* Drennan, (Ala. 1907) 43 So. 568.

6. Venable *v.* Burton, 129 Ga. 537, 59 S. E. 253; Murray *v.* Davies, (Kan. 1908) 94 Pac. 283; Shevlin *v.* Shevlin, 96 Minn. 398, 105 N. W. 257; Wagg *v.* Herbert, (Okla. 1907) 92 Pac. 250. See also Krisch *v.* Interstate Fisheries Co., 39 Wash. 381, 81 Pac. 855.

161. 1. Venable *v.* Burton, 129 Ga. 537, 59 S. E. 253; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666. See also Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; Barron *v.* Myers, 146 Mich. 510, 109 N. W. 862; Hale *v.* Hale, (W. Va. 1907) 59 S. E. 1056.

A Delay of Three and a Half Years on the part of an insurance company has been held sufficient to bar rescission. See Flanigan *v.* Federal L. Ins. Co., 231 Ill. 399, 83 N. E. 178.

2. *England.* — Seddon *v.* North Eastern Salt Co., (1905) 1 Ch. 326, 1 Ann. Cas. 514, 91 L. T. N. S. 793.

United States. — Kessler *v.* Ensley Co., 141 Fed. 130; Burk *v.* Johnson, 146 Fed. 209, 76 C. C. A. 567; Richardson *v.* Lowe, 149 Fed. 625, 79 C. C. A. 317; Old Colony Zinc, etc., Co. *v.* Carrick, (C. C. A.) 153 Fed. 173.

Alabama. — Graybill *v.* Drennen, (Ala. 1907) 43 So. 568.

California. — Matteson *v.* Wagoner, 147 Cal. 739, 82 Pac. 436.

District of Columbia. — Samaha *v.* Mason, 27 App. Cas. (D. C.) 470.

Illinois. — McConnell *v.* Pierce, 116 Ill. App. 103.

Kansas. — Drovers' Live Stock Commission Co. *v.* Charles Wolff Packing Co., 74 Kan. 330, 86 Pac. 128 (*citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 161), 89 Pac. 465.

Kentucky. — Miller *v.* Browning, (Ky. 1905) 89 S. W. 3.

Michigan. — See Barron *v.* Myers, 146 Mich. 510, 109 N. W. 862.

Missouri. — Rogers *v.* Mercantile Adjuster Pub. Co., 118 Mo. App. 1, 93 S. W. 328.

Nebraska. — Gallagher *v.* O'Neill, (Neb. 1907) 111 N. W. 582.

New Jersey. — Du Bois *v.* Nugent, 69 N. J. Eq. 145, 60 Atl. 339.

New York. — Rose *v.* Merchants' Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946; Moore *v.* Mutual Reserve Fund L. Assoc., 121 N. Y. App. Div. 335, 106 N. Y. Supp. 255. See also Trott *v.* Schmitt, 119 N. Y. App. Div. 474, 104 N. Y. Supp. 98.

North Carolina. — May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

Oklahoma. — Wagg *v.* Herbert, (Okla. 1907) 92 Pac. 250.

Vermont. — Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46.

West Virginia. — Dunfee *v.* Childs, 59 W. Va. 248, 53 S. E. 209. See also Hale *v.* Hale, (W. Va. 1907) 59 S. E. 1056.

Wisconsin. — Brown *v.* Search, 131 Wis. 109, 111 N. W. 210.

Delay Not a Bar under Certain Circumstances. — Where the relations were that of mother and daughter it has been held that such prompt action would not be required as in case of strangers. Hunter *v.* McCammon, 119 N. Y. App. Div. 326, 104 N. Y. Supp. 402.

A Delay of a Year, it has been held, would not constitute laches provided no harm could result to the defendants. Richards *v.* Farmers', etc., Bank, (Cal. App. 1908) 94 Pac. 393.

Where Suspicions Were Temporarily Allayed, it has been held that delay in bringing an action will not amount to a waiver of right to rescind. Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000.

Action to Rescind Must Be Prosecuted with Diligence. — Streicher *v.* Murray, (Mont. 1907) 92 Pac. 36.

Whether the Right to Disaffirm Has Been Lost is a question of fact. Garrett *v.* Finch, 107 Va. 25, 57 S. E. 604.

3. Heck *v.* Missouri Pac. R. Co., 147 Fed. 775; Moore *v.* Mutual Reserve Fund L. Assoc., 121 N. Y. App. Div. 335, 106 N. Y. Supp. 255; May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728; Beare *v.* Wright, 14 N. Dak. 26, 103 N. W. 632.

4. *United States.* — Heck *v.* Missouri Pac. R. Co., 147 Fed. 775.

Alabama. — See Royal *v.* Goss, (Ala. 1907) 45 So. 231.

California. — Richards *v.* Farmers', etc., Bank, (Cal. App. 1908) 94 Pac. 393.

Indiana. — Supreme Council, etc., *v.* Apman, (Ind. App. 1907) 80 N. E. 640.

Iowa. — Stapleton *v.* Haight, (Iowa 1907) 113 N. W. 351.

Kansas. — Drovers' Live Stock Commission Co. *v.* Charles Wolff Packing Co., 74 Kan. 330, 86 Pac. 128 (*citing* 14 Am. and Eng. Encyc. of Law (2d ed.) 161); 89 Pac. 465.

Massachusetts. — Old Dominion Copper Min., etc., Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 653.

Michigan. — Hinchman *v.* Matheson Motor Car Co., (Mich. 1908) 115 N. W. 48.

Minnesota. — Neibuhr *v.* Gage, 99 Minn. 149, 108 N. W. 884, *affirmed* without opinion 109 N. W. 1.

Missouri. — Robertson *v.* George A. Fuller Constr. Co., 115 Mo. App. 456, 92 S. W. 130; Rogers *v.* Mercantile Adjuster Pub. Co., 118 Mo. App. 1, 93 S. W. 328.

Nebraska. — See Gallagher *v.* O'Neill, (Neb. 1907) 111 N. W. 582.

New Hampshire. — See Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

New Jersey. — Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295.

New York. — Rose *v.* Merchants' Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946; Tregner *v.* Hazen, 116 N. Y. App. Div. 829, 102 N. Y. Supp. 139; Pritz *v.* Jones, 117 N. Y. App. Div. 643, 102 N. Y. Supp. 549; Moore *v.* Mutual Reserve Fund L. Assoc., 121 N. Y. App. Div. 335, 106 N. Y. Supp. 255; Smith *v.* Ryan, (N. Y. 1908) 84 N. E. 402.

North Carolina. — May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

Washington. — Hanna *v.* Haynes, 42 Wash. 284, 84 Pac. 861.

Wisconsin. — James Music Co. *v.* Bridge, (Wis. 1908) 114 N. W. 1108. See also Brown *v.* Search, 131 Wis. 109, 111 N. W. 210.

A Substantial Restoration, it has been held, is in any event all that is required. Mather *v.* Barnes, 146 Fed. 1000.

Restoration Is Not Required of property which in any event one is entitled to retain. Matteson *v.* Wagoner, 147 Cal. 739, 82 Pac. 436, *overruling* Marten *v.* Paul O. Burns Wine Co., 99 Cal. 356, 33 Pac. 1107.

Offer to Return May Be Made after Institution of Suit. — Rockwell *v.* Capital Traction Co., 25 App. Cas. (D. C.) 98, 4 Ann. Cas. 648.

An Offer to Restore the Sixty One made in the petition, is sufficient in an equity action. Maine *v.* Midland Invest. Co., 132 Iowa 272, 109 N. W. 801.

Failure to Return an Insurance Policy will not defeat the right to rescind. Chase *v.* Wolgamot, (Iowa 1908) 114 N. W. 614.

An Offer to Apply Money Paid on a Contract, on account of a satisfaction of a judgment, if any to be obtained, has been held sufficient. Bowe *v.* Gage, 127 Wis. 245, 106 N. W. 1074.

Under the California Statute it is only necessary that the rescinding party shall restore everything of value which he has received. Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011.

In Minnesota a Suit for Rescission in Equity does not require a restoration of property. Ritko *v.* Grove, 102 Minn. 312, 113 N. W. 629.

In Oklahoma it has been held that in a court of equity it will be considered sufficient if there is in the complaint an offer to restore. Clark *v.* O'Toole, (Okla. 1908) 94 Pac. 547.

162. 1. Richards *v.* Farmers', etc., Bank, (Cal. App. 1908) 94 Pac. 393.

Release Fraudulently Obtained.—Where money is paid for a release executed by a person incapable of making a contract, and who is induced to sign an instrument by fraud, it has been held that money so paid need not be refunded or tendered back. St. Louis, etc., R. Co. *v.* Smith, 82 Ark. 105, 100 S. W. 884.

3. Creveling *v.* Banta, (Iowa 1908) 115 N. W.

598; Ring *v.* Ring, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 224, 105 N. Y. Supp. 498; Moore *v.* Mutual Reserve Fund L. Assoc., 121 N. Y. App. Div. 335, 106 N. Y. Supp. 255.

4. Barron *v.* Myers, 146 Mich. 510, 109 N. W. 862.

5. Douglass *v.* Richards, 116 N. Y. App. Div. 27, 101 N. Y. Supp. 299. See also Chase *v.* Wolgamot, (Iowa 1908) 114 N. W. 614; Lyon *v.* Lindblad, 145 Mich. 588, 108 N. W. 969.

An Offer in Writing and Orally is sufficient notice and offer to return. Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295.

6. See Mather *v.* Barnes, 146 Fed. 1000; Speckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. [illegible].

Deterioration in Property, arising from fault of the plaintiff after discovery of the fraud, coupled with delay in bringing suit, will bar rescission. Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

163. 1. Singer Mfg. Co. *v.* Summers, 143 N. Car. 102, 55 S. E. 522. See also St. Paul Gaslight Co. *v.* Kenny, 97 Minn. 152, 106 N. W. 344.

2. Pelham *v.* Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12; Chaffe *v.* Minden Lumber Co., 118 La. 753, 43 So. 397; St. Paul Gaslight Co. *v.* Kenny, 97 Minn. 152, 106 N. W. 344, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163; Dunfee *v.* Childs, 59 W. Va. 248, 53 S. E. 209, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163. See also May *v.* May, 96 S. W. 840, 29 Ky. L. Rep. 1033; Fillebrown *v.* Hayward, 190 Mass. 472, 77 N. E. 45.

After Final Judgment and Before Proceedings in Error, a *bona fide* purchaser is not affected by a subsequent reversal of the judgment. Dunfee *v.* Childs, 59 W. Va. 248, 53 S. E. 209.

164. 5. May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728. See also Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964; Whittle *v.* Jones, (S. Car. 1908) 60 S. E. 522.

Fraud as Defense. — Where discovery of the fraud was so late that rescission was rendered very difficult and not required, it was held that the defense of fraud could be interposed in an action on a note given in the transaction. Douglass *v.* Richards, 116 N. Y. App. Div. 27, 101 N. Y. Supp. 299.

165. 2. Neibuhr *v.* Gage, 99 Minn. 149, 108 N. W. 884, *affirmed* without opinion 109 N. W. 1.

3. Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46.

4. Smith *v.* Ryan, (N. Y. 1908) 84 N. E. 402; Parlin, etc., Co. *v.* Glover, (Tex. Civ. App. 1907) 99 S. W. 592.

6. Atlas Shoe Co. *v.* Bechard, 102 Me. 203, 66 Atl. 390, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 165. See also *dissenting* opinion by Fisk, J., in Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 165.

7. See *dissenting* opinion by Fisk, J., in Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1020, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 165.

9. See Ritko *v.* Grove, 102 Minn. 312, 113 N. W. 629.

166. 3. Heck *v.* Missouri Pac. R. Co., 147 Fed. 775; Pacific Mut. L. Ins. Co. *v.* Webb, (C. C. A.) 157 Fed. 155; House *v.* Martin, 125 Ga. 642, 54 S. E. 735, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 166; Connolly *v.* Dammann, 232 Ill. 175, 83 N. E. 531; Jackson *v.* Security Mut. L. Ins. Co., (Ill. 1908) 84 N. E. 198; Smith *v.* Ryan, (N. Y. 1908) 84 N. E. 402. See also Capps *v.* Edwards, (Ga. 1908) 60 S. E. 455.

4. Heck *v.* Missouri Pac. R. Co., 147 Fed. 775; House *v.* Martin, 125 Ga. 642, 54 S. E. 735, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 166; Jackson *v.* Security Mut. L. Ins. Co., (Ill. 1908) 84 N. E. 198; Smith *v.* Ryan, (N. Y. 1908) 84 N. E. 402.

6. Griffin *v.* Roanoke R., etc., Co., 140 N. Car. 514, 53 S. E. 307.

7. Kuelling *v.* Roderick Lean Mfg. Co., 183 N. Y. 78, 75 N. E. 1098, *reversing* 94 N. Y. App. Div. 613, 88 N. Y. Supp. 1105; May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728. See also Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026.

167. 1. See May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

168. 1. *United States.* — Walker *v.* Walbridge, 136 Fed. 19, 68 C. C. A. 569; Richardson *v.* Lowe, 149 Fed. 625, 79 C. C. A. 317.

Massachusetts. — Farquhar *v.* Farquhar, 194 Mass. 400, 80 N. E. 654.

Minnesota. — Stearns *v.* Kennedy, 94 Minn. 439, 103 N. W. 212; Neibuhr *v.* Gage, 99 Minn. 149, 108 N. W. 884, *affirmed* without opinion 109 N. W. 1; Ritko *v.* Grove, 102 Minn. 312, 113 N. W. 629.

New York. — Rose *v.* Merchants' Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946; Douglass *v.* Richards, 116 N. Y. App. Div. 27, 101 N. Y. Supp. 299.

North Carolina. — Joyner *v.* Early, 139 N. Car. 49, 51 S. E. 778; May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

North Dakota. — Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026. See also Beare *v.* Wright, 14 N. Dak. 26, 103 N. W. 632.

Vermont. — See Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46.

Wisconsin. — Palmer *v.* Goldberg, 128 Wis. 103, 107 N. W. 478; James Music Co. *v.* Bridge, (Wis. 1908) 114 N. W. 1108.

2. Neibuhr *v.* Gage, 99 Minn. 149, 108 N. W. 884, *affirmed* without opinion 109 N. W. 1; Modlin *v.* Roanoke R., etc., Co., 145 N. Car. 218, 58 S. E. 1075; Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026.

Retention of Real Property. — Where the relief sought is merely to avoid further payments on a note given without consideration for land, it is not necessary to tender a reconveyance of the land. Morris *v.* Brown, 38 Tex. Civ. App. 266, 85 S. W. 1015.

4. Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, 110 Mo. App. 292, 85 S. W. 920.

In Minnesota it has been held that even in a suit for rescission it is not necessary to restore the property if the suit is in equity. Ritko *v.* Grove, 102 Minn. 312, 113 N. W. 629.

169. 1. Covenants of Warranty in a Deed will not prevent rescission by the grantee where the fraud consists in misrepresentation as to

boundaries. Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10.

A Vendee under a Quitclaim Deed, with covenant of special warranty, is a *bona fide* purchaser. Dunfee *v.* Childs, 59 W. Va. 248, 53 S. E. 209.

2. Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964; May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728. See also Douglass *v.* Richards, 116 N. Y. App. Div. 27, 101 N. Y. Supp. 299.

3. May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

170. 5. Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46.

6. Palmer *v.* Goldberg, 128 Wis. 103, 107 N. W. 478. *Compare* McDonough *v.* Williams, 77 Ark. 261, 92 S. W. 783.

9. Execution of the Contract after Discovery of the Fraud, it has been held, will defeat an action for damages. McDonough *v.* Williams, 77 Ark. 261, 92 S. W. 783.

172. 1. Richards *v.* Farmers', etc., Bank, (Cal. App. 1908) 94 Pac. 393; Morgan *v.* Combs, (Ky. 1908) 108 S. W. 272; Shevlin *v.* Shevlin, 96 Minn. 398, 105 N. W. 257; Neibuhr *v.* Gage, 99 Minn. 149, 108 N. W. 884, *affirmed* without opinion 109 N. W. 1; Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 501; Hale *v.* Hale, (W. Va. 1907) 59 S. E. 1056. See also Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722; Figge *v.* Bergenthal, 130 Wis. 594, 109 N. W. 581, *rehearing* denied 130 Wis. 626, 110 N. W. 798.

Notice of the Fraud. — Under the *North Carolina* statute, it has been held that the registration of a deed by which the fraud was accomplished was not of itself sufficient notice. Modlin *v.* Roanoke R., etc., Co., 145 N. Car. 218, 58 S. E. 1075.

In Texas the Statute of Limitations, it has been held, will not begin to run, in the absence of negligence, until discovery of the fraud. Western Cottage Piano, etc., Co. *v.* Griffin, (Tex. Civ. App. 1905) 90 S. W. 884.

Delay for More than Six Years Not Waiver. — Smith *v.* Linder, 77 S. Car. 535, 58 S. E. 610.

2. Murray *v.* Davies, (Kan. 1908) 94 Pac. 283.

3. Phelps *v.* Nazworthy, 226 Ill. 254, 80 N. E. 756; Sass *v.* Thomas, 6 Indian Ter. 60, 89 S. W. 656; Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722; Van Raalte *v.* Epstein, 202 Mo. 173, 99 S. W. 1077; Mazzalla *v.* Wilkie, (N. J. 1907) 66 Atl. 584; Johnson *v.* Sheridan Lumber Co., (Oregon 1908) 93 Pac. 470; Wagner *v.* Fehr, 211 Pa. St. 435, 3 Ann. Cas. 608, 60 Atl. 1043. See also Manning *v.* Berdan, 135 Fed. 159; Old Dominion Copper Min., etc., Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 653; Garrett *v.* Finch, 107 Va. 25, 57 S. E. 604.

5. Kincaid *v.* Price, 82 Ark. 20, 100 S. W. 76.

6. See Daab *v.* New York Cent., etc., R. Co., 70 N. J. Eq. 489, 62 Atl. 449.

7. Manning *v.* Berdan, 135 Fed. 159; Farwell *v.* Colonial Trust Co., 147 Fed. 480, 78 C. C. A. 22; Wagner *v.* Fehr, 211 Pa. St. 435, 3 Ann. Cas. 608, 60 Atl. 1043.

173. 2. Contra. — Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 501.

4. See Wagner *v.* Fehr, 211 Pa. St. 435, 3 Ann. Cas. 608, 60 Atl. 1043.

174. 4. Contra. — Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 501.

6. See Robertson *v.* Covenant Mut. L. Ins. Co., 123 Mo. App. 238, 100 S. W. 686.

A Court of Equity Has Ample Jurisdiction to Prevent the consummation of a fraud. Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240.

8. Manning *v.* Berdan, 135 Fed. 159; Farwell *v.* Colonial Trust Co., 147 Fed. 480, 78 C. C. A. 22. See also Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964; Robertson *v.* Covenant Mut. L. Ins. Co., 123 Mo. App. 238, 100 S. W. 686; Garrett *v.* Finch, 107 Va. 25, 57 S. E. 604.

Rescission of Contracts Subject of Equitable Cognizance. — Pacific Mut. L. Ins. Co. *v.* Webb, (C. C. A.) 157 Fed. 155.

In **Michigan** it has been held that the jurisdiction of equity does not in all cases depend on an absence of a legal remedy. Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722.

175. 2. Griffin *v.* Société, etc., 53 Fla. 801, 44 So. 342.

4. See Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

5. Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593. See also Bridgewater *v.* Byassee, 93 S. W. 35, 29 Ky. L. Rep. 377.

176. 1. Turner *v.* Kuehnle, 70 N. J. Eq. 61, 62 Atl. 327; Wilson *v.* Anthony, (N. J. 1907) 66 Atl. 907. See also Ranch *v.* Werley, 152 Fed. 509; Steinmetz *v.* G. H. Hammond Co., 167 Ind. 153, 78 N. E. 628.

2. See Arnout *v.* Chadwick, 74 Neb. 620, 104 N. W. 942.

3. See Smith *v.* Smith, (Ala. 1907) 45 So. 168.

An Executor Is Trustee for a Legatee, and a fraudulent disposition of the trust property by him may be annulled. Agne *v.* Schwab, 123 N. Y. App. Div. 746, 108 N. Y. Supp. 487.

177. 2. See Phillips *v.* Hebden, 28 R. I. 1, 65 Atl. 266.

178. 3. Thompson *v.* Newell, 118 Mo. App. 405, 94 S. W. 557.

6. Where an Agent or Broker deceives the purchaser of a mortgage and note as to their value, the measure of damages is the deficiency in the value of the property. Barnes *v.* Whipple, (R. I. 1907) 68 Atl. 430.

179. 5. Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595; Beare *v.* Wright, 14 N. Dak. 26, 103 N. W. 632.

180. 3. Mather *v.* Barnes, 146 Fed. 1000. See also Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16.

4. Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10; Vernam *v.* Wilson, 31 Pa. Super. Ct. 257.

181. 9. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16; Curran *v.* Smith, (C. C. A.) 149 Fed. 945. See also Salvesen *v.* Rederi Aktiebolaget Nordstjernan, (1905) A. C. 302, 92 L. T. N. S. 525.

Speculative and Doubtful Profits Not Recoverable. — Smith *v.* Curran, 138 Fed. 150.

182. 1. Stratton's Independence *v.* Dines, 135 Fed. 440, 68 C. C. A. 161, *affirming* 126 Fed. 968; Pittsburg L., etc., Co. *v.* Northern Cent. L. Ins. Co., 140 Fed. 888; Richardson *v.* Lowe, 149 Fed. 625, 79 C. C. A. 317; Boulden

v. Stilwell, 100 Md. 543, 60 Atl. 609; Ritko *v.* Grove, 102 Minn. 312, 113 N. W. 629; George *v.* Hesse, (Tex. Civ. App. 1906) 94 S. W. 1122. See also Mattauch *v.* Walsh, (Iowa 1907) 113 N. W. 818; Lunscheon *v.* Wocknitz, (S. Dak. 1907) 111 N. W. 632.

2. *United States.* — Walker *v.* Walbridge, 136 Fed. 19, 68 C. C. A. 569, *distinguishing* Smith *v.* Bolles, 132 U. S. 125.

California. — Spreckels *v.* Gorrill, (Cal. 1907) 92 Pac. 1011.

Iowa. — Talbert *v.* Mason, (Iowa 1907) 113 N. W. 918; Long *v.* Davis, (Iowa 1907) 114 N. W. 197. See also Howerton *v.* Augustine, 130 Iowa 389, 106 N. W. 941.

Kentucky. — Drake *v.* Holbrook, 92 S. W. 297, 28 Ky. L. Rep. 1319.

Michigan. — Aldrich *v.* Scribner, 146 Mich. 609, 109 N. W. 1121; Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964.

Missouri. — Narr *v.* Norman, 113 Mo. App. 533, 88 S. W. 122.

Nebraska. — McKibbin *v.* Day, 74 Neb. 424, 104 N. W. 752; Farley *v.* Wiess, (Neb. 1906) 107 N. W. 561. See also Cerny *v.* Paxton, etc., Co., (Neb. 1907) 110 N. W. 882.

New Jersey. — Batura *v.* McBride, (N. J. 1907) 68 Atl. 113.

New York. — Benedict *v.* Guardian Trust Co., 91 N. Y. App. Div. 103, 86 N. Y. Supp. 370, *affirmed* without opinion 180 N. Y. 558, 73 N. E. 1120; Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538; Ettlinger *v.* Weil, 184 N. Y. 179, 77 N. E. 31, *reversing* 94 N. Y. App. Div. 291, 87 N. Y. Supp. 1049.

North Dakota. — Beare *v.* Wright, 14 N. Dak. 26, 103 N. W. 632.

South Dakota. — McCabe *v.* Desnoyers, (S. Dak. 1906) 108 N. W. 341.

Rule in Case of Lease. — Brown *v.* Morrill, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 224, 105 N. Y. Supp. 191.

184. **1.** See Thompson *v.* Newell, 118 Mo. App. 405, 94 S. W. 557.

185. **1. In Case of Rescission of the Sale,** the amount paid, with interest, can be recovered. Lambert *v.* Elmendorf, (Supm. Ct. App. Div.) 109 N. Y. Supp. 514.

3. Taylor *v.* Thomas, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 411, 106 N. Y. Supp. 538.

Rule Where Representations as to Value Are Made by Purchaser. — McDonough *v.* Williams, 77 Ark. 261, 92 S. W. 783.

6. Thompson *v.* Newell, 118 Mo. App. 405, 94 S. W. 557, *citing* and *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185.

9. Hahl *v.* Brooks, 213 Ill. 134, 72 N. E. 727, *affirming* 114 Ill. App. 644, and *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185.

186. **7.** Jones *v.* Weir, 217 Pa. St. 321, 10 Ann. Cas. 692, 66 Atl. 550.

187. **2.** See Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629.

188. **7. The Value of Land Sold to Third Parties** at the time it was conveyed has been held to be the measure of damages in that case. Butler *v.* Anderson, (Tex. Civ. App. 1908) 107 S. W. 656.

190. **1.** Johnson *v.* Rex, (1904) A. C. 817.

3. *United States.* — Chemical Bank *v.* Lyons, 137 Fed. 976; Kessler *v.* Ensley Co., 141 Fed. 130. See also Farwell *v.* Colonial Trust Co., 147 Fed. 480, 78 C. C. A. 22.

Arkansas. — Crenshaw *v.* A. F. Shapleigh Hardware Co., 82 Ark. 182, 100 S. W. 882.

California. — See De Laval Dairy Supply Co. *v.* Steadman, (Cal. App. 1907) 92 Pac. 877.

Delaware. — Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374.

Illinois. — Fabian *v.* Traeger, 215 Ill. 220, 74 N. E. 131, *affirming* 117 Ill. App. 176.

Indiana. — Gipe *v.* Pittsburgh, etc., R. Co., (Ind. App. 1907) 82 N. E. 471.

Iowa. — Church *v.* Marsh, 133 Iowa 51, 110 N. W. 161; Nesmith *v.* Platt, (Iowa 1908) 114 N. W. 1053; Baker *v.* Mathew, (Iowa 1908) 115 N. W. 15.

Louisiana. — Breaux *v.* Broussard, 116 La. 215, 40 So. 639.

Massachusetts. — Ayers *v.* Farwell, (Mass. 1907) 82 N. E. 35.

Michigan. — Raymond *v.* McKenna, 147 Mich. 35, 110 N. W. 121.

Mississippi. — Christian *v.* Green, (Miss. 1908) 45 So. 425.

New Jersey. — Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295.

New York. — Bellettiere *v.* Lawlor, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 161, 93 N. Y. Supp. 471; Buchall *v.* Higgins, 109 N. Y. App. Div. 607, 96 N. Y. Supp. 241; Polhemus *v.* Polhemus, 114 N. Y. App. Div. 781, 100 N. Y. Supp. 263; Duryea *v.* Zimmerman, 121 N. Y. App. Div. 560, 106 N. Y. Supp. 237; Duffy *v.* Meyer, 122 N. Y. App. Div. 838, 107 N. Y. Supp. 672.

Texas. — Brewer *v.* Cochran, (Tex. Civ. App. 1907) 99 S. W. 1033.

Vermont. — Colston *v.* Bean, 78 Vt. 283, 62 Atl. 1015.

Virginia. — Redwood *v.* Rogers, 105 Va. 155, 53 S. E. 6; Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8.

West Virginia. — Deepwater Council No. 40 *v.* Renick, 59 W. Va. 343, 53 S. E. 552; Sansom *v.* Wolford, 60 W. Va. 380, 55 S. E. 1020; Burrows *v.* Fitch, (W. Va. 1907) 57 S. E. 283.

Wisconsin. — Harrigan *v.* Gilchrist, 121 Wis. 127, 99 N. W. 909, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 190; Devereux *v.* Peterson, 126 Wis. 558, 106 N. W. 249.

Proof Must Be by Trustworthy Evidence. — Valley *v.* Boston, etc., R. Co., (Me. 1907) 68 Atl. 635.

191. **1.** Fabian *v.* Traeger, 215 Ill. 220, 74 N. E. 131, *affirming* 117 Ill. App. 176. See also Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374; Cedar Rapids First Cong. Church *v.* Terry, 130 Iowa 513, 107 N. W. 305; Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295.

192. **1.** See Standard Mfg. Co. *v.* Brons, 118 Ill. App. 612.

2. See Kincaid *v.* Price, 82 Ark. 20, 100 S. W. 76.

193. **1. In West Virginia** it has been held that the burden of removing the presumption that one has relied and acted upon misrepresentations is on the party who made them. Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

2. Morrow *v.* Laverty, (Neb. 1906) 109 N. W. 150.

4. Leicher *v.* Keeney, 98 Mo. App. 394, 72 S. W. 145, 110 Mo. App. 292, 85 S. W. 920. See also Home Nat. Bank *v.* Hill, 165 Ind. 226, 74 N. E. 1086; Austin *v.* St. Louis Transit Co., 115 Mo. App. 146, 91 S. W. 450; Farlow *v.* Chambers, (S. Dak. 1907) 110 N. W. 94.

9. Cook *v.* Bagnell Timber Co., 78 Ark. 47, 8 Ann. Cas. 251, 94 S. W. 695; Powers *v.* Powers, 46 Oregon 479, 80 Pac. 1058. See also Crotty *v.* Effler, 60 W. Va. 258, 9 Ann. Cas. 770, 54 S. E. 345.

194. 3. See Judd *v.* Walker, 114 Mo. App. 128, 89 S. W. 558.

8. Couch *v.* Couch, 148 Ala. 332, 42 So. 624; Schneider *v.* Schneider, 125 Iowa 1, 98 N. W. 159, *citing* and *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 194; Shevlin *v.* Shevlin, 96 Minn. 398, 105 N. W. 257; Dolan *v.* Cummings, 116 N. Y. App. Div. 787, 102 N. Y. Supp. 91; Hunter *v.* McCammon, 119 N. Y. App. Div. 326, 104 N. Y. Supp. 402; Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275; Moseley *v.* Johnson, 144 N. Car. 257, 274, 56 S. E. 922; Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 194; Hanna *v.* Haynes, 42 Wash. 284, 84 Pac. 861. See also Lindley *v.* Kemp, 38 Ind. App. 355, 76 N. E. 798; Cedar Rapids First Cong. Church *v.* Terry, 130 Iowa 513, 107 N. W. 305; International, etc., R. Co. *v.* Shuford, 36 Tex. Civ. App. 251, 81 S. W. 1189; De Leonis *v.* Hammel, 1 Cal. App. 390, 82 Pac. 349.

Mere Blood Relationship Will Not Raise Presumption of Fraud. — Russell *v.* Phillips, 145 Mich. 268, 108 N. W. 718.

Relationship of Mother and Son Would Not Raise Presumption of Fraud. — Powers *v.* Powers, 46 Oregon 479, 80 Pac. 1058.

195. 1. Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275.

Cousins. — It has been held that under certain circumstances dealings between cousins will necessarily create a trust relationship. Ricketts *v.* Tompkins, (N. J. 1908) 68 Atl. 1075.

2. Metcalf *v.* Miller, (C. C. A.) 107 Fed. 223, *citing* and *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 195; Weigand *v.* Cannon, 118 Ill. App. 635; Brakefield *v.* Shelton, (Kan. 1907) 92 Pac. 709; McKibbin *v.* Day, 74 Neb. 424, 104 N. W. 752; Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275; Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666. See also Fabian *v.* Traeger, 215 Ill. 220, 74 N. E. 131, *affirming* 117 Ill. App. 176; Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8; Yakima Valley Bank *v.* McAllister, 37 Wash. 566, 79 Pac. 1119.

196. 1. Metcalf *v.* Miller, (C. C. A.) 107 Fed. 223, *citing* and *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196. See also Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666.

2. Metcalf *v.* Miller, (C. C. A.) 107 Fed. 223, *citing* and *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196.

3. Burns *v.* Goddard, 72 S. Car. 355, 51 S. E. 915, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196.

6. Johnson *v.* Rex, (1904) A. C. 817; Standard Mfg. Co. *v.* Brons, 118 Ill. App. 632; Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595, *distinguishing* Bischof *v.* Coffelt, 6 Ind. 23; Packham *v.* Glendmeyer, 103 Md. 416, 63 Atl. 1048, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196; Thompson *v.* Newland, 144 Mich. 595, 108 N. W. 93, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196; Compagnie Des Metaux Unital *v.* Victoria Mfg. Co., (Tex. Civ. App. 1908) 107 S. W. 651; Yakima Valley Bank *v.* McAllister, 37 Wash. 566, 79 Pac. 1119, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196; J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231. *Compare* Hunt *v.* Van Burg, 75 Neb. 304, 106 N. W. 329.

197. 2. Stewart *v.* Wright, 147 Fed. 321, 77 C. C. A. 499, *affirming* Wright *v.* Stewart, 130 Fed. 905; Standard Mfg. Co. *v.* Brons, 118 Ill. App. 632; Elbert *v.* Mitchell, 131 Iowa 598, 109 N. W. 181; Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295; Rochford *v.* Barrett, (S. Dak. 1908) 115 N. W. 522; Compagnie Des Metaux Unital *v.* Victoria Mfg. Co., (Tex. Civ. App. 1908) 107 S. W. 651; Yakima Valley Bank *v.* McAllister, 37 Wash. 566, 79 Pac. 1119, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 197.

198. 1. Yakima Valley Bank *v.* McAllister, 37 Wash. 566, 79 Pac. 1119, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 197.

2. Negotiations May Be Traced to Their Inception. — Hauptman *v.* Pike, (Neb. 1906) 108 N. W. 163, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 198.

4. Standard Mfg. Co. *v.* Brons, 118 Ill. App. 632.

199. 4. *United States.* — See Walker *v.* Walbridge, 136 Fed. 19, 68 C. C. A. 569.

Alabama. — See Smith *v.* Smith, (Ala. 1907) 45 So. 168.

Georgia. — Crooker *v.* Hamilton, 3 Ga. App. 190, 59 S. E. 722; Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372.

Indian Territory. — Sass *v.* Thomas, 6 Indian Ter. 60, 89 S. W. 656.

Iowa. — Bonewell *v.* Jacobson, 130 Iowa 170, 106 N. W. 614; Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629.

Kansas. — Deming Invest. Co. *v.* Wallace, 73 Kan. 291, 85 Pac. 139; State L. Ins. Co. *v.* Johnson, 73 Kan. 567, 85 Pac. 597; Shook *v.* Puritan Mfg. Co., 75 Kan. 301, 89 Pac. 653.

Louisiana. — Barrow *v.* Grant, 116 La. 952, 41 So. 220; Lyons *v.* Lawrence, 118 La. 461, 43 So. 51, *distinguishing* Hoffmann *v.* Ackermann, 110 La. 1070, 35 So. 293.

Massachusetts. — McCusker *v.* Geiger, 195 Mass. 46, 80 N. E. 648.

Michigan. — *Compare* Tradesman Co. *v.* Superior Mfg. Co., 147 Mich. 702, 111 N. W. 343, 112 N. W. 708.

Missouri. — Elgin Jewelry Co. *v.* Withaup, 118 Mo. App. 126, 94 S. W. 572, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 199.

New Jersey. — Sheldon Co. *v.* Harleigh Cemetery Assoc., 73 N. J. L. 115, 62 Atl. 189.

New York. — Alexander *v.* Vidootsky (Supm. Ct. App. T.) 49 Misc. (N. Y.) 471, 97 N. Y. Supp. 992; Electrical Audit, etc., Co. *v.* Greenberg, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 514, 107 N. Y. Supp. 110.

North Carolina. — See Modlin *v.* Roanoke R., etc., Co., 145 N. Car. 218, 58 S. E. 1075.

Ohio. — Metzger *v.* Roberts, 26 Ohio Cir. Ct. 675.

Oklahoma. — See Wagg *v.* Herbert, (Okla. 1907) 91 Pac. 250.

South Carolina. — Mason *v.* Postal Tel. Cable Co., 71 S. Car. 150, 50 S. E. 781.

South Dakota. — Rochford *v.* Barrett, (S. Dak. 1908) 115 N. W. 522.

Texas. — McCarthy *v.* Woods, (Tex. Civ. App. 1905) 87 S. W. 405; Karner *v.* Ross, (Tex. Civ. App. 1906) 95 S. W. 46; U. S. Gypsum Co. *v.* Shields, (Tex. Civ. App. 1907) 106 S. W. 724.

Washington. — Nethercutt *v.* Hopkins, 38 Wash. 577, 80 Pac. 798; Lilienthal *v.* Herren, 42 Wash. 209, 84 Pac. 829, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 199; Price *v.* Stanbra, 45 Wash. 143, 88 Pac. 115. See also Buffalo Pitts Co. *v.* Shriner, 41 Wash. 146, 82 Pac. 1016.

Wisconsin. — Corbett *v.* Joannes, 125 Wis. 370, 104 N. W. 69.

Parol Evidence Is Admissible to show that a contract is free from fraudulent intent. Duffy *v.* Meyer, 122 N. Y. App. Div. 838, 107 N. Y. Supp. 672.

But Oral Statements to a Third Party Are Not Admissible when representations are alleged to be in writing. Kimber *v.* Young, (C. C. A.) 157 Fed. 199.

Under the Nebraska Statute, parol evidence is admissible to show fraud, not for the purpose of contradicting or varying a written contract, but to destroy its legal effect. Minneapolis Threshing Mach. Co. *v.* Otis, (Neb. 1907) 110 N. W. 550.

200. 1. Bonewell *v.* Jacobson, 130 Iowa 170, 106 N. W. 614; U. S. Gypsum Co. *v.* Shields, (Tex. Civ. App. 1907) 106 S. W. 724. *Compare* Grindrod *v.* Anglo-American Bond Co., 34 Mont. 169, 85 Pac. 891; Buffalo Pitts Co. *v.* Shriner, 41 Wash. 146, 82 Pac. 1016.

3. Metcalf *v.* Miller, (C. C. A.) 107 Fed. 223; Cedar Rapids First Cong. Church *v.* Terry, 130 Iowa 513, 107 N. W. 305; Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008; Rochford *v.* Barrett, (S. Dak. 1908) 115 N. W. 522; Redwood *v.* Rogers, 105 Va. 155, 53 S. E. 6; Deepwater Council No. 40 *v.* Renick, 59 W. Va. 343, 53 S. E. 552; Burrows *v.* Fitch, (W. Va. 1907) 57 S. E. 283. See also Kabat *v.* Moore, 48 Oregon 191, 85 Pac. 506; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666; Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8.

Circumstantial Evidence to Prove Conspiracy Admissible. — People *v.* Miles, 123 N. Y. App. Div. 862, 108 N. Y. Supp. 510.

201. 1. Hartford L. Ins. Co. *v.* Hope, (Ind. App. 1907) 81 N. E. 595. See also Crotty *v.* Effler, 60 W. Va. 258, 9 Ann. Cas. 770, 54 S. E. 345.

2. Sulkin *v.* Gilbert, 218 Pa. St. 255, 67 Atl. 415. See also Johnson *v.* Conner, (Wash. 1908) 93 Pac. 914; Paulus *v.* O'Neill, 131 Wis. 69, 111 N. W. 333.

Evidence to Set Aside a Written Instrument must be clear, unequivocal, and convincing. Mastin *v.* Noble, (C. C. A.) 157 Fed. 506.

Clear and Satisfactory Proof Defined. — Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8.

6. Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008; Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201; Bowe *v.* Gage, 127 Wis. 245, 106 N. W. 1074.

7. Walsh *v.* Taitt, 142 Mich. 127, 105 N. W. 544; Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008; Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201; Deepwater Council No. 40 *v.* Renick, 59 W. Va. 343, 53 S. E. 552. See also Crenshaw *v.* A. F. Shapleigh Hardware Co., 82 Ark. 182, 100 S. W. 882; McKibbin *v.* Day, 74 Neb. 424, 104 N. W. 752; Bowe *v.* Gage, 127 Wis. 245, 106 N. W. 1074.

But a Mere Preponderance of Evidence has been held insufficient to set aside a deed. Weissenfels *v.* Cable, (Mo. 1907) 106 S. W. 1028.

202. 1. Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008; Redwood *v.* Rogers, 105 Va. 155, 53 S. E. 6; Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201; Bowe *v.* Gage, 127 Wis. 245, 106 N. W. 1074. See also Collier *v.* Parish, 147 Ala. 526, 41 So. 772.

Evidence of Guilt Must Be Clear Enough to Exclude All Reasonable Hypotheses of Good Faith. — State Sav. Bank *v.* Emge, (Iowa 1906) 108 N. W. 530.

Proof of One or More of the Misstatements by Preponderance of Evidence Sufficient. — Long *v.* Davis, (Iowa 1907) 114 N. W. 197.

2. Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008; Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201.

The Existence of Fraud Is to Be Determined, not by the number of witnesses, but from the entire testimony. Kabat *v.* Moore, 48 Oregon 191, 85 Pac. 506.

3. **Inference of Fraud Will Not Be Drawn Merely from Suspicious Circumstances.** — State Sav. Bank *v.* Emge, (Iowa 1906) 108 N. W. 530; Burrows *v.* Fitch, (W. Va. 1907) 57 S. E. 283.

203. 2. Hughes *v.* Lockington, 221 Ill. 571, 77 N. E. 1105.

Where the Circumstances Cannot Be Reconciled with a reasonable theory of good faith, the transaction will be deemed fraudulent. Cedar Rapids First Cong. Church *v.* Terry, 130 Iowa 513, 107 N. W. 305.

3. See Kessler *v.* Ensley Co., 141 Fed. 130. See also Long *v.* Garey Invest. Co., (Iowa 1906) 110 N. W. 26.

204. 1. Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 204.

4. Deepwater Council No. 40 *v.* Renick, 59 W. Va. 343, 53 S. E. 552.

5. Cook *v.* Bagnell Timber Co., 78 Ark. 47, 8 Ann. Cas. 251, 94 S. W. 695. See also Crotty *v.* Effler, 60 W. Va. 258, 9 Ann. Cas. 770, 54 S. E. 345.

6. See Bridgewater *v.* Byassee, 93 S. W. 35, 29 Ky. L. Rep. 377.

205. 3. *United States.* — Metcalf *v.* Miller, (C. C. A.) 107 Fed. 223.

Arkansas. — McDonough *v.* Williams, 77 Ark. 261, 92 S. W. 783.

Indiana. — Gipe *v.* Pittsburgh, etc., R. Co., (Ind. App. 1907) 82 N. E. 471.

Iowa. — Scott *v.* Burnight, 131 Iowa 507, 107 N. W. 422; Evans *v.* Palmer, (Iowa 1908) 114 N. W. 912. See also Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

Massachusetts. — See McNicholas *v.* Prudential Ins. Co., (Mass. 1907) 82 N. E. 692; Lyons Burial Vault Co. *v.* Taylor, (Mass. 1908) 84 N. E. 320.

New York. — Duffy *v.* Meyer, 122 N. Y. App. Div. 838, 107 N. Y. Supp. 672; Shepard *v.* Morgan, 123 N. Y. App. Div. 128, 108 N. Y. Supp. 379. See also Moneyweight Scale Co. *v.* Lowenstein, (Supm. Ct. App. T.) 103 N. Y. Supp. 80.

North Carolina. — Universal Metal Co. *v.* Durham, etc., R. Co., (N. Car. 1907) 59 S. E. 50.

Pennsylvania. — See York County *v.* Thompson, 212 Pa. St. 561, 61 Atl. 1024.

Wisconsin. — J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231; Paulus *v.* O'Neill, 131 Wis. 69, 111 N. W. 333.

The Question of Fraud is peculiarly within the province of the trial court or jury. Tyler *v.* Davis, 37 Ind. App. 557, 75 N. E. 3.

206. **1.** Brown *v.* Search, 131 Wis. 109, 111 N. W. 210. See also J. H. Clark Co. *v.* Rice, 127 Wis. 451, 106 N. W. 231.

2. Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

3. Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109.

5. Culley *v.* Jones, 164 Ind. 168, 73 N. E. 94, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 206; Duffy *v.* Meyer, 122 N. Y. App. Div. 838, 107 N. Y. Supp. 672, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 206. See also Gurney *v.* Tenney, (Mass. 1908) 84 N. E. 428; Hawley *v.* Wicker, 117 N. Y. App. Div. 638, 102 N. Y. Supp. 711.

207. **2.** See Hawley *v.* Wicker, 117 N. Y. App. Div. 638, 102 N. Y. Supp. 711.

4. L. J. Mueller Furnace Co. *v.* Cascade Foundry Co., (C. C. A.) 145 Fed. 596, *reversing* Cascade Foundry Co. *v.* L. J. Mueller Furnace Co., 140 Fed. 791; Pittsburgh L., etc., Co. *v.* Northern Cent. L. Ins. Co., 148 Fed. 674, 78 C. C. A. 408; Samaha *v.* Mason, 27 App. Cas. (D. C.) 470; Krause *v.* Cook, 144 Mich. 365, 108 N. W. 81; Serrano *v.* Miller, etc., Commission Co., 117 Mo. App. 185, 93 S. W. 810.

6. State L. Ins. Co. *v.* Johnson, 73 Kan. 567, 85 Pac. 597; Abmeyer *v.* Horton First Nat. Bank, (Kan. 1907) 92 Pac. 1109; Kobat *v.* Moore, 48 Oregon 191, 85 Pac. 506; Oneal *v.* Weisman, (Tex. Civ. App. 1905) 88 S. W. 290; Collins *v.* Chipman, (Tex. Civ. App. 1906) 95 S. W. 666. See also Wickham *v.* Roberts, 112 N. Y. App. Div. 742, 98 N. Y. Supp. 1092; Duffy *v.* Meyer, 122 N. Y. App. Div. 838, 107 N. Y. Supp. 672; Baldwin *v.* Postal Tel. Cable Co., 78 S. Car. 419, 59 S. E. 67.

208. **2.** Baldwin *v.* Postal Tel. Cable Co., 78 S. Car. 419, 59 S. E. 67. See also Home Nat. Bank *v.* Hill, 165 Ind. 226, 74 N. E. 1086; Biddeford Nat. Bank *v.* Hill, 102 Me. 346, 66 Atl. 721.

FRAUDULENT SALES AND CONVEYANCES.

224. **4.** Rike *v.* Ryan, 147 Ala. 497, 41 So. 959; Pippin *v.* Tapia, 148 Ala. 353, 42 So. 545, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 204 [224]; Valdosta Mercantile Co. *v.* White, 52 Fla. 453, 42 So. 633; Pritz *v.* Jones, 117 N. Y. App. Div. 643, 102 N. Y. Supp. 549.

225. **1.** Pettit *v.* Coachman, 51 Fla. 521, 41 So. 401; Potter *v.* Potter, (Ky. 1907) 101 S. W. 905.

2. Hessian *v.* Patten, (C. C. A.) 154 Fed. 829; Schaefer Brewing Co. *v.* Moebs, 187 Mass. 571, 73 N. E. 858.

226. **4.** Weaver *v.* Neal, 61 W. Va. 57, 55 S. E. 909.

227. **1.** Imperial Woolen Co. *v.* Longbottom, (C. C. A.) 143 Fed. 483; German-American Nat. Bank *v.* Hoffman, 120 Ill. App. 363; Sly *v.* Bell, 131 Iowa 184, 108 N. W. 227; Kingsbury *v.* Smith Center First Nat. Bank, 71 Kan. 572, 81 Pac. 187, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 226, 227; Gust *v.* Hoppe, 201 Mo. 293, 100 S. W. 34; Whitman *v.* O'Brien, 29 Pa. Super. Ct. 208; Gardner *v.* Haines, 19 S. Dak. 514, 104 N. W. 244; Peterson *v.* Doak, 43 Wash. 251, 86 Pac. 663.

228. **1.** Thompson *v.* Newland, 144 Mich. 595, 13 Detroit Leg. N. 320, 108 N. W. 93.

229. **4.** Ober, etc., Co. *v.* Phillips-Burtorff Mfg. Co., 145 Ala. 625, 40 So. 278; Sparks *v.* Ponder, (Tex. Civ. App. 1906) 94 S. W. 428.

230. **1.** Borden *v.* Lynch, 34 Mont. 503, 87 Pac. 609.

232. **3.** Indianola First Nat. Bank *v.* Brubaker, 128 Iowa 587, 105 N. W. 116; Lowther *v.* Rader, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 929; Weldon's Estate, 31 Pa. Super. Ct. 47; Baird *v.* Slipp, 3 N. Bruns. Eq. Rep. 258.

Preference of Father by Son. — White *v.* Million, 114 Mo. App. 70, 89 S. W. 599.

233. **1.** Waters *v.* Merrit Pants Co., 76 Ark. 252, 88 S. W. 879; Schreeder *v.* Werry, 35 Ind. App. 84, 73 N. E. 832; Mahaska County *v.* Whitsel, 133 Iowa 335, 110 N. W. 614; Aultman Engine, etc., Co. *v.* Greenlee, 134 Iowa 368, 111 N. W. 1007; Ilfeld *v.* De Baca, (N. Mex. 1907) 89 Pac. 244; Tanner *v.* Eckhardt, 107 N. Y. App. Div. 79, 94 N. Y. Supp. 1013; Sawyer *v.* Metters, (Wis. 1907) 113 N. W. 682. *Compare* Long *v.* Deposit Bank, 90 S. W. 961, 28 Ky. L. Rep. 913.

236. **3.** McAvoy *v.* Jennings, 44 Wash. 79, 87 Pac. 53.

238. **8.** Blake *v.* Sargent, 152 Fed. 263, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 238, 239.

240. **4.** Nixon *v.* Goodwin, 3 Cal. App. 358, 85 Pac. 169; Mowen *v.* Nitsch, 103 Md. 685, 62 Atl. 582.

241. **1.** Van Slyck *v.* Woodruff, 118 N. Y. App. Div. 47, 103 N. Y. Supp. 130.

241. **2.** Clayton *v.* Clark, (Kan. 1907) 92 Pac. 1118. *See* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 244; Wood *v.* Eldredge, 147 Mich. 554, 14 Detroit Leg. N. 40, 111 N. W. 168, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 244.

246. 2. Hessian *v.* Patten, (C. C. A.) 154 Fed. 520.

247. 1. McLeod *v.* McLeod, 89 S. W. 199, 28 Ky. L. Rep. 284; Williams *v.* Kemper, 99 Minn. 301, 109 N. W. 242; Kronson *v.* Lipschitz, 68 N. J. Eq. 367, 60 Atl. 819; Nolan *v.* Nolan, 218 Pa. St. 135, 67 Atl. 52.

2. Tissier *v.* Wailes, (Ala. 1905) 39 So. 924; Gillum *v.* Kirksey, 93 S. W. 591, 29 Ky. L. Rep. 422; Blahnik *v.* Barta, 130 Wis. 121, 109 N. W. 980.

249. 4. Youd *v.* German Sav., etc., Soc., 3 Cal. App. 706, 86 Pac. 991; Boldrick *v.* Mills, 96 S. W. 524, 29 Ky. L. Rep. 852; Reece *v.* Goldstein, (Ky. 1907) 104 S. W. 963; Mishler *v.* Finch, 104 Md. 183, 64 Atl. 945; Leavengood *v.* McGee, (Oregon 1907) 91 Pac. 453.

250. 1. Williams *v.* Kemper, 99 Minn. 301, 109 N. W. 242.

251. 2. Ullman *v.* Lockhart, 51 Fla. 602, 41 So. 452; Klauber *v.* Schloss, 198 Mo. 502, 95 S. W. 930.

4. **A Mortgagee** is a creditor, although the payment of the debt due him is secured by a lien on specific property. Calkins *v.* Howard, 2 Cal. App. 233, 83 Pac. 280.

252. 1. Creighton *v.* Roe, 218 Ill. 619, 75 N. E. 1073; Higgins *v.* Higgins, 219 Ill. 152, 76 N. E. 86, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 252.

253. 1. Cochran *v.* Cochran, 96 Minn. 523, 105 N. W. 183; Goff *v.* Goff, 60 W. Va. 25, 53 S. E. 769, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 252 [253].

2. Stearns *v.* Wollenberg, (Oregon 1907) 92 Pac. 1079.

254. 1. Seed *v.* Jennings, 47 Oregon 464, 83 Pac. 872.

255. 2. Stark *v.* Lamb, 167 Ind. 642, 78 N. E. 668, 79 N. E. 895; Hobson *v.* Noel, 97 S. W. 388, 30 Ky. L. Rep. 1; Nunn-Weldon Dry Goods Co. *v.* Haden, (Tex. Civ. App. 1906) 95 S. W. 73.

4. Gehres *v.* Wallace, 38 Wash. 101, 80 Pac. 273.

256. 1. Campbell *v.* Campbell, 129 Iowa 317, 105 N. W. 583.

3. Foreman *v.* Citizens' State Bank, 128 Iowa 661, 105 N. W. 163, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256.

6. *England.* — Meunier *v.* Doray, 2 W. L. R. 231.

United States. — McCarty *v.* Coffin, (C. C. A.) 150 Fed. 312, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256.

Alabama. — New *v.* Young, 144 Ala. 420, 39 So. 201; Brunson *v.* Rosenheim, (Ala. 1907) 43 So. 31.

Arkansas. — Pullen *v.* Simpson, 74 Ark. 592, 86 S. W. 801; Gibson *v.* Barrett, 75 Ark. 205, 87 S. W. 435; Isbell *v.* Jones, 75 Ark. 501, 88 S. W. 593; South Omaha Nat. Bank *v.* Boyd, 79 Ark. 215, 97 S. W. 288.

California. — Yardley *v.* San Joaquin Valley Bank, 3 Cal. App. 651, 86 Pac. 978; Nicholson *v.* Nesbitt, 4 Cal. App. 585, 88 Pac. 725.

Iowa. — Citizens' Sav. Bank *v.* Glick, 134 Iowa 322, 111 N. W. 970; Piekenbrock *v.* Kroer, (Iowa 1907) 114 N. W. 200.

Kentucky. — Dewees *v.* Dewees, 90 S. W. 256, 28 Ky. L. Rep. 726; Porter *v.* Hart County Deposit Bank, etc., Co., 96 S. W. 832, 29 Ky. L. Rep. 1041; Hobson *v.* Noel, 97 S. W. 388, 30 Ky. L. Rep. 1; Walters *v.* Akers, (Ky. 1907) 101 S. W. 1179.

Michigan. — Gasser *v.* Crittenden, 140 Mich. 301, 103 N. W. 601, 12 Detroit Leg. N. 168.

Missouri. — Reed *v.* Nicholson, 189 Mo. 396, 88 S. W. 71; Welch *v.* Mann, 193 Mo. 304, 92 S. W. 98.

South Dakota. — Commercial State Bank *v.* Kendall, (S. Dak. 1906) 106 N. W. 53.

Texas. — Jolly *v.* Diehl, 39 Tex. Civ. App. 549, 86 S. W. 965; Nunn-Weldon Dry Goods Co. *v.* Haden, (Tex. Civ. App. 1906) 95 S. W. 73; Thompson *v.* International, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 197.

Wisconsin. — Bartle *v.* Bartle, 132 Wis. 392, 112 N. W. 471.

257. 1. Schwarz *v.* Barley, 142 Ala. 439, 38 So. 119; Rike *v.* Ryan, 147 Ala. 497, 41 So. 959; Hoskins *v.* Fayetteville Grocery Co., 79 Ark. 399, 96 S. W. 195; Foreman *v.* Citizens' State Bank, 128 Iowa 661, 105 N. W. 163.

Wages and Earnings. — Ehlers *v.* Blumer, 129 Iowa 168, 105 N. W. 406.

258. 1. Hunt *v.* Doyal, 128 Ga. 416, 57 S. E. 489.

259. 1. Matador Land, etc., Co. *v.* Cooper, (Tex. Civ. App. 1905) 87 S. W. 235.

260. 4. Hall *v.* Alabama Terminal, etc., Co., 143 Ala. 464, 39 So. 285.

261. 2. Bodkin *v.* Kerr, 97 Minn. 301, 107 N. W. 137.

4. Merrill *v.* Hussey, 101 Me. 439, 64 Atl. 810.

5. Fink *v.* McCue, 123 Mo. App. 313, 100 S. W. 549.

264. 3. Lewis *v.* Palmer, 106 Va. 522, 56 S. E. 341.

6. Mann *v.* Brazie, 61 W. Va. 613, 57 S. E. 43.

265. 4. Scott *v.* Thomas, 104 Va. 330, 51 S. E. 829.

266. 1. Kingsbury *v.* Smith Center First Nat. Bank, 71 Kan. 572, 81 Pac. 187, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 266; Handlin-Buck Mfg. Co. *v.* Wendelkin Constr. Co., 124 Mo. App. 349, 101 S. W. 709. *Compare* Barber *v.* Coit, (C. C. A.) 144 Fed. 381.

267. 1. Edmunds *v.* Edmunds, (1904) P. 362, 73 L. J. P. 97, 91 L. T. N. S. 568; Higgins *v.* Higgins, 219 Ill. 146, 76 N. E. 86; Clayton *v.* Clark, (Kan. 1907) 92 Pac. 1117.

3. Wahlheimer *v.* Truslow, 106 N. Y. App. Div. 73, 94 N. Y. Supp. 137.

Prima Facie Evidence. — Evidence of an intent to defraud existing creditors is sufficient *prima facie* evidence of fraud against subsequent creditors. Hemenway *v.* Thaxter, 150 Cal. 737, 90 Pac. 116.

270. 4. *Alabama.* — Pippin *v.* Tapia, 148 Ala. 353, 42 So. 545.

Arkansas. — Hoskins *v.* Fayetteville Grocery Co., 79 Ark. 399, 96 S. W. 195.

Colorado. — Denver First Nat. Bank *v.* Follett, 20 Colo. App. 372, 80 Pac. 147.

Illinois. — German-American Nat. Bank *v.* Hoffman, 120 Ill. App. 363; Adams *v.* Wallace, 122 Ill. App. 550.

Indian Territory. — Purcell Wholesale Gro-

cery Co. *v.* Bryant, 6 Indian Ter. 78, 89 S. W. 602.

Iowa. — Atkinson *v.* McNider, 130 Iowa 281, 105 N. W. 504.

Maryland. — McCauley *v.* Shockey, 105 Md. 641, 66 Atl. 626, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 270.

Massachusetts. — Pierce *v.* O'Brien, 189 Mass. 58, 75 N. E. 61.

Missouri. — St. Francis Mill Co. *v.* Sugg, 206 Mo. 148, 104 S. W. 45.

New York. — Buongierno *v.* Schiller, 112 N. Y. App. Div. 916, 98 N. Y. Supp. 464; Pritz *v.* Jones, 117 N. Y. App. Div. 643, 102 N. Y. Supp. 549.

Oregon. — Jennings *v.* Frazier, 46 Oregon 470, 80 Pac. 1011.

Texas. — Sparks *v.* Ponder, (Tex. Civ. App. 1906) 94 S. W. 428.

271. 2. Higgins *v.* Higgins, 219 Ill. 146, 76 N. E. 86; Ahlering *v.* Speckman, 99 S. W. 973, 30 Ky. L. Rep. 940; Clark *v.* Bell, (Tex. Civ. App. 1905) 89 S. W. 38.

273. 2. *United States.* — Lefmann *v.* Brill, 142 Fed. 44, 73 C. C. A. 230, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 272 [273].

Alabama. — Phillips *v.* Bradford, 147 Ala. 346, 41 So. 657.

Arkansas. — Hutchinson *v.* Park, 72 Ark 512, 82 S. W. 843, *citing* 14 AM. AND ENG. ENCYC OF LAW (2d ed.) 273; Matlock *v.* Bledsoe, 77 Ark. 60, 90 S. W. 848.

Connecticut. — Bouton *v.* Beers, 78 Conn. 414, 3 Ann. Cas. 941, 62 Atl. 619.

Georgia. — Moore *v.* Mobley, 123 Ga. 424, 51 S. E. 351.

Illinois. — Cochonour *v.* Ratcliff, 223 Ill. 274, 79 N. E. 83.

Massachusetts. — Lufkin *v.* Jakeman, 188 Mass. 528, 74 N. E. 933.

Missouri. — Knapp *v.* Knapp, 118 Mo. App. 685, 96 S. W. 295; Miller *v.* Miller, 206 Mo. 341, 103 S. W. 962.

Nebraska. — Martin *v.* Shears, (Neb. 1907) 110 N. W. 1010.

South Carolina. — Mitchell *v.* Cleveland, 76 S. Car. 432, 57 S. E. 33.

South Dakota. — Jones *v.* Jones, (S. Dak. 1906) 108 N. W. 23.

Texas. — Davis *v.* Davis, (Tex. Civ. App. 1906) 98 S. W. 198.

275. 2. Creighton *v.* Roe, 218 Ill. 619, 75 N. E. 1073; Southwood *v.* Southwood, 98 S. W. 304, 30 Ky. L. Rep. 307.

3. Carson *v.* Beliles, 89 S. W. 208, 28 Ky. L. Rep. 272; Monahan *v.* Monahan, 77 Vt. 155, 59 Atl. 169, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 275.

277. 4. Lufkin *v.* Jakeman, 188 Mass. 532, 74 N. E. 933, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 277.

278. 2. Lefmann *v.* Brill, (C. C. A.) 142 Fed. 44.

6. Monahan *v.* Monahan, 77 Vt. 141, 59 Atl. 169, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 278.

279. 1. Phillips *v.* Bradford, 147 Ala. 350, 41 So. 657, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 279; Hutchinson *v.* Park, 72 Ark. 512, 82 S. W. 843, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 279; McColgan *v.* Muirland, 2 Cal. App. 10, 82 Pac. 1113, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 279; Ingersoll *v.* Weld, 103 N. Y. App. Div. 554, 93 N. Y. Supp. 291.

281. 1. Brasie *v.* Minneapolis Brewing Co., 87 Minn. 461, 92 N. W. 340, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 280 [281]; Rutherford *v.* Carr, 99 Tex. 101, 87 S. W. 815, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 28 [281]; Tudor *v.* Tudor, 80 Vt. 220, 67 Atl. 539.

6. Mitchell *v.* Mitchell, 212 Pa. St. 62, 61 Atl. 570.

282. 5. State Bank *v.* Chatten, 69 Kan. 439, 77 Pac. 96, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 282.

284. 1. Spence *v.* Morrow, (Ga. 1907) 58 S. E. 356; Shive *v.* Merritt, (Ky. 1907) 104 S. W. 368.

285. 5. South Omaha Nat. Bank *v.* Boyd, 79 Ark. 215, 97 S. W. 288; Long *v.* Garey Invest. Co., (Iowa 1907) 112 N. W. 550; Osborn *v.* McCallum, (Miss. 1905) 38 So. 609.

286. 2. Starr *v.* Dow, (Neb. 1906) 108 N. W. 1065.

287. 3. Dent *v.* Pickens, 59 W. Va. 274, 53 S. E. 154.

5. Jackson *v.* Citizens Bank, etc., Co., 53 Fla. 285, 44 So. 516; Wiggington *v.* Minter, 88 S. W. 1082, 28 Ky. L. Rep. 79; Klauber *v.* Schloss, 198 Mo. 502, 95 S. W. 930.

288. 1. Shive *v.* Merritt, (Ky. 1907) 104 S. W. 368.

289. 3. Jordan *v.* Rice, (Ala. 1907) 44 So. 93; Williams *v.* Finlayson, 49 Fla. 268, 38 So. 50, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 289; Valdosta Mercantile Co. *v.* White, 52 Fla. 453, 42 So. 633; Levering *v.* Miller, 127 Ill. App. 235; Brite *v.* Guy, 88 S. W. 1069, 28 Ky. L. Rep. 57; Walters *v.* Akers, (Ky. 1907) 101 S. W. 1179; Pierce *v.* O'Brien, 189 Mass. 58, 75 N. E. 61; Gust *v.* Hoppe, 201 Mo. 293, 100 S. W. 34; Rusho *v.* Richardson, (Neb. 1906) 109 N. W. 394; Hall *v.* Frith, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 600, 101 N. Y. Supp. 31; Sutton *v.* Christie, 60 W. Va. 1, 53 S. E. 602.

290. 3. Allen *v.* McMannes, 156 Fed. 615; Brunson *v.* Rosenheim, (Ala. 1907) 43 So. 31; Morimura *v.* Samaha, 25 App. Cas. (D. C.) 189; Williams *v.* Finlayson, 49 Fla. 268, 38 So. 50, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 290; Jackson *v.* Citizens' Bank, etc., Co., 53 Fla. 285, 44 So. 516; Nelson *v.* Spence, 129 Ga. 35, 58 S. E. 697; Phillips *v.* Rule, 124 Mo. App. 525, 102 S. W. 32; Sjoberg *v.* Field, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 412, 100 N. Y. Supp. 531; Baze *v.* Island City Mfg. Co., (Tex. Civ. App. 1906) 94 S. W. 460.

291. 1. Jackson *v.* Citizens' Bank, etc., Co., 53 Fla. 285, 44 So. 516, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 291.

292. 2. Clarke *v.* Black, 78 Conn. 467, 62 Atl. 757.

4. Marriage a Valuable Consideration. Huntress *v.* Hanley, 195 Mass. 236, 80 N. E. 946.

295. 2. Jackson *v.* Citizens' Bank, etc., Co., 53 Fla. 285, 44 So. 516; Atkinson *v.* McNider, 130 Iowa 281, 105 N. W. 504.

296. 1. Clark *v.* Harper, 215 Ill. 24, 74 N. E. 61.

298. 1. Jackson *v.* Citizens' Bank, etc., Co., 53 Fla. 285, 44 So. 516, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 298.

2. Redd *v.* Wallace, 145 Ala. 209, 40 So. 407.

3. **A Conveyance Made for a Mere Nominal Consideration,** when attacked as fraudulent, will be subjected to the same rules applicable to voluntary transfers. California Consol. Min. Co. *v.* Manley, 10 Idaho 570, 81 Pac. 50.

299. 3. *Compare* Rosenheimer *v.* Krenn, 126 Wis. 617, 106 N. W. 20.

300. 1. Cramer *v.* Senger, 107 Va. 400, 59 S. E. 375.

301. 1. Welch *v.* Mann, 193 Mo. 304, 92 S. W. 98, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 301; McMunnigal *v.* Aylor, 204 Mo. 30, 102 S. W. 486, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 301, 302.

2. Hessian *v.* Patten, (C. C. A.) 154 Fed. 829; Lewis *v.* Herrera, (Ariz. 1906) 85 Pac. 245; James *v.* Mallory, 76 Ark. 509, 89 S. W. 472; Nixon *v.* Goodwin, 3 Cal. App. 358, 85 Pac. 169; Hawley *v.* Harrington, (Cal. 1907) 92 Pac. 177; Richardson *v.* Richardson, 134 Iowa 242, 111 N. W. 934; Scharff *v.* McGaugh, 205 Mo. 344, 103 S. W. 550; Parks *v.* Worthington, (Tex. Civ. App. 1907) 104 S. W. 921; Ansell *v.* Cox, 57 W. Va. 561, 50 S. E. 806; Wadleigh *v.* Wadleigh, 111 N. Y. App. Div. 367, 97 N. Y. Supp. 1063.

302. 1. Hemenway *v.* Thaxter, 150 Cal. 737, 90 Pac. 116; Campbell *v.* Campbell, 129 Iowa 317, 105 N. W. 583; Crary *v.* Kurtz, 132 Iowa 105, 105 N. W. 590.

303. 1. Folmar *v.* Lehman-Durr Co., 147 Ala. 472, 41 So. 750; Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855.

Revised Statutes of Kentucky. — Standifer *v.* Baker, (Ky. 1907) 101 S. W. 365.

306. 1. Ritchey *v.* McKay, 36 Ind. App. 539, 75 N. E. 161; Dorwin *v.* Patton, 101 Minn. 344, 112 N. W. 266; McMunnigal *v.* Aylor, 204 Mo. 30, 102 S. W. 486, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 301 [306]; Harvey *v.* Godding, (Neb. 1906) 109 N. W. 220; Wadleigh *v.* Wadleigh, 111 N. Y. App. Div. 367, 97 N. Y. Supp. 1063; Pearsall *v.* Stewart, 112 N. Y. App. Div. 366, 98 N. Y. Supp. 467.

307. 1. Vandeventer *v.* Goss, 116 Mo. App. 316, 91 S. W. 958, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 307.

308. 5. Stark *v.* Lamb, 167 Ind. 642, 78 N. E. 668, 79 N. E. 895; Campbell *v.* Campbell, 129 Iowa 317, 105 N. W. 583; Crary *v.* Kurtz, 132 Iowa 105, 105 N. W. 590; Long *v.* Garey Invest. Co., (Iowa 1907) 112 N. W. 550; Vandeventer *v.* Goss, 116 Mo. App. 316, 91 S. W. 958; Scharff *v.* McGaugh, 205 Mo. 344, 103 S. W. 550; Zuckerman *v.* Munz, (Tex. Civ. App. 1908) 107 S. W. 78. *Compare* Wadleigh *v.* Wadleigh, 111 N. Y. App. Div. 367, 97 N. Y. Supp. 1063.

309. 1. Hessian *v.* Patten, (C. C. A.) 154 Fed. 829; Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855; State Bank *v.* Chatten, 69 Kan. 430, 77 Pac. 96, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 309; Frazer *v.* Frisbie Furniture Co., 86 S. W. 539, 27 Ky. L. Rep. 688; Hunt *v.* Nance, 92 S. W. 6, 28 Ky. L. Rep. 1188; Peyton *v.* Webb, 96 S. W. 839, 29 Ky. L. Rep. 1151; Weckerly *v.* Taylor, 74 Neb. 84, 103 N. W. 1065; Farr *v.* Hauenstein, 69 N. J. Eq. 740, 61 Atl. 147; Vreeland *v.* Rogers, (N. J. 1905) 61 Atl. 486; Seed *v.* Jennings, 47 Oregon 468, 83 Pac. 872, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 309.

311. 6. Welch *v.* Mann, 193 Mo. 304, 92 S. W. 98; Wood *v.* Fisk, 45 Oregon 276, 77 Pac. 128, 738; Rutherford *v.* Carr, 99 Tex. 101, 87 S. W. 815.

312. 1. Bekins *v.* Dieterle, 5 Cal. App. 690, 91 Pac. 173.

2. Wood *v.* Fisk, 45 Oregon 279, 77 Pac. 128, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 312.

3. Guyton *v.* Chasen, (Tex. Civ. App. 1907) 101 S. W. 291, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 312.

4. Ward *v.* Sturdivant, 81 Ark. 78, 98 S. W. 690, *citing* and *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 310, 312; Brasie *v.* Minneapolis Brewing Co., 87 Minn. 456, 92 N. W. 340; Carroll *v.* Salisbury, 28 R. I. 16, 65 Atl. 274.

313. 2. State Bank *v.* Bienfang, (Wis. 1907) 113 N. W. 726.

314. 3. Rutherford *v.* Carr, 99 Tex. 101, 87 S. W. 815.

315. 1. Canton Roll, etc., Co. *v.* Rolling Mill Co., 155 Fed. 321; Hatch *v.* Daugherty, 145 Mich. 569, 13 Detroit Leg. N. 657, 108 N. W. 986; Irish *v.* Daniels, 100 Minn. 189, 110 N. W. 968; Ainsworth *v.* Roubal, 74 Neb. 723, 105 N. W. 248; Seed *v.* Jennings, 47 Oregon 464, 83 Pac. 872; Stearns *v.* Wollenberg, (Oregon 1907) 92 Pac. 1079; O'Day *v.* Ambaum, (Wash. 1907) 92 Pac. 421.

318. 5. **In New York** a statute permits a creditor of a deceased debtor having a claim of demand exceeding one hundred dollars against such deceased, to maintain an action without having first obtained a judgment. Mertens *v.* Mertens, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 235, 96 N. Y. Supp. 785.

319. 1. **The National Bankruptcy Act.** — Shreck *v.* Hanlon, 74 Neb. 264, 104 N. W. 193.

2. Hall *v.* Alabama Terminal, etc., Co., 143 Ala. 464, 39 So. 285; West Point Min., etc., Co. *v.* Allen, 143 Ala. 547, 39 So. 351.

321. 3. McDevitt *v.* Connell, (N. J. 1906) 63 Atl. 504.

322. 1. *Compare* Jenner *v.* Murphy, (Cal. App. 1907) 92 Pac. 405.

324. 1. Irish *v.* Daniels, 100 Minn. 189, 110 N. W. 968.

2. Smith *v.* Ellison, 80 Ark. 447, 97 S. W. 666; Rothchild *v.* Trewella, 36 Wash. 683, 79 Pac. 480, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 324.

328. 1. Bainbridge *v.* Allen, 70 N. J. Eq. 355, 61 Atl. 706; Seed *v.* Jennings, 47 Oregon 464, 83 Pac. 872.

329. 1. Tippenhauer *v.* Newport Rolling Mill Co., (Ky. 1907) 105 S. W. 440; State *v.* Goggin, 191 Mo. 482, 90 S. W. 370.

2. Dawson *v.* Paris First Nat. Bank, 228 Ill. 577, 81 N. E. 1128; Paris First Nat. Bank *v.*

Dawson, 127 Ill. App. [illegible] v. Kemper, 99 Minn. 301, 109 N. W. 242.

331. 1. Calkins *v.* Howard, 2 Cal. App. 237, 83 Pac. 280, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 331.

332. 1. McAvoy *v.* Jennings, 44 Wash. 79, 87 Pac. 53.

2. Tissier *v.* Wailes, (Ala. 1905) 39 So. 924.

335. 1. Shreck *v.* Hanlon, 74 Neb. 264, 104 N. W. 193.

336. 6. Wood *v.* Fisk, 45 Oregon 276, 77 Pac. 128, 738.

340. 1. Delia *v.* Caprio, 79 Conn. 284, 64 Atl. 340.

342. 1. Plattsmouth First Nat. Bank *v.* Gibson, 74 Neb. 236, 105 N. W. 1081.

344. 5. Tissier *v.* Wailes, (Ala. 1905) 39 So. 924.

347. 4. Thompson *v.* Williamson, 67 N. J. Eq. 224, 58 Atl. 602, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347.

350. 1. Willett *v.* Froelich, 90 S. W. 572, 28 Ky. L. Rep. 798.

6. Porter *v.* Hart County Deposit Bank, etc., Co., 96 S. W. 832, 29 Ky. L. Rep. 1041.

351. 5. Rothchild *v.* Trewella, 36 Wash. 681, 79 Pac. 480, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351.

354. 1. Watt *v.* Morrow, 19 S. Dak. 317, 103 N. W. 45.

2. Gordon *v.* Anderson, 90 Miss. 677, 44 So. 67; Weckerly *v.* Taylor, 74 Neb. 84, 103 N. W. 1065.

Statute Does Not Run When There Has Been No Change of Possession. — Baldwin *v.* Williams, 74 Ark. 316, 86 S. W. 423.

The Death of the Fraudulent Grantor does not toll the statutory period in which actions to set aside fraudulent conveyances must be brought. Lesieur *v.* Simon, 73 Neb. 645, 103 N. W. 302.

357. 2. Calkins *v.* Howard, 2 Cal. App. 233, 83 Pac. 280; Lovejoy *v.* Raymond, 127 Ill. App. 519; Ettien *v.* Drum, 32 Mont. 311, 80 Pac. 369; Johnson *v.* Emery, 31 Utah 126, 86 Pac. 869.

360. 7. **Subsequent Creditors and Purchasers.** — Farmer *v.* Hughes, (Colo. 1906) 88 Pac. 191.

361. 4 Degginger *v.* Seattle Brewing, etc., Co., 41 Wash. 385, 83 Pac. 808.

5. Tuttle *v.* Hayes, (Supm. Ct. App. T.) 107 N. Y. Supp. 22.

365. 6. Neeley *v.* Trautwein, (Neb. 1907) 113 N. W. 141.

367. 8. Griswold *v.* Nichols, 126 Wis. 401, 105 N. W. 815.

369. 6. *Compare* Rike *v.* Ryan, 147 Ala. 497, 41 So. 959.

371. 1. Bartles *v.* Dodd, 56 W. Va. 391, 49 S. E. 414, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371.

3. Bartles *v.* Dodd, 56 W. Va. 391, 49 S. E. 414, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371.

372. 3. Rosenberg *v.* Ross, (Cal. App. 1907) 93 Pac. 284.

378. 3. *Compare* Russell *v.* Haltom, 76 Ark. 506, 89 S. W. 471.

5. Israel *v.* Day, (Colo. 1907) 92 Pac. 668; State *v.* Stone, 111 Mo. App. 364, 85 S. W. 950.

380. 1. Webster *v.* Sherman, 33 Mont. 448, 84 Pac. 878.

385. 3. Bowling *v.* Davidson, 107 Va. 389, 59 S. E. 368.

457. 2. McAvoy *v.* Jennings, 39 Wash. 109, 81 Pac. 77.

459. 5. Bowling *v.* Davidson, 107 Va. 389, 59 S. E. 368.

466. 6. Bernardy *v.* Colonial, etc., Mortg. Co., 17 S. Dak. 643, 98 N. W. 166, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 466.

471. 5. Welch *v.* Mann, 193 Mo. 304, 92 S. W. 98.

478. 10. Gilcreast *v.* Bartlett, 74 N. H. 29, 64 Atl. 767.

486. 3. Rike *v.* Ryan, 147 Ala. 497, 41 So. 959; Denver First Nat. Bank *v.* Follett, 20 Colo. App. 372, 80 Pac. 147; Morimura *v.* Samaha, 25 App. Cas. (D. C.) 189; Williams *v.* Finlayson, 49 Fla. 267, 38 So. 50, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487; German-American Nat. Bank *v.* Hoffman, 120 Ill. App. 363; McCauley *v.* Shockey, 105 Md. 641, 66 Atl. 625; Wilson *v.* Parke, 119 Mo. App. 25, 96 S. W. 244; Vreeland *v.* Rogers, (N. J. 1905) 61 Atl. 486; German Nat. Bank *v.* Young, 27 Ohio Cir. Ct. 333; North Penn Iron Co. *v.* International Lithoid Co., 217 Pa. St. 538, 66 Atl. 860.

A Subsequent Creditor has the burden of showing fraud. Willett *v.* Froelich, 90 S. W. 572, 28 Ky. L. Rep. 798.

6. Sawyer *v.* Metters, (Wis. 1907) 113 N. W. 682.

487. 7. Horner-Gaylord Co. *v.* Miller, 147 Fed. 295; Wiggington *v.* Minter, 88 S. W. 1082, 28 Ky. L. Rep. 79; Seeley *v.* Ritchey, (Neb. 1906) 107 N. W. 769; Seeley *v.* Ritchey, (Neb. 1907) 110 N. W. 1105; Flint *v.* Chaloupka, (Neb. 1907) 111 N. W. 465; Livesley *v.* Heise, 48 Oregon 147, 85 Pac. 509; Stubling *v.* Wilson, (Oregon 1907) 90 Pac. 1011.

488. 1. Martin *v.* Shears, (Neb. 1907) 110 N. W. 1010; Knickerbocker Trust Co. *v.* Carhart, (N. J. 1906) 64 Atl. 756; Carroll *v.* Salisbury, 28 R. I. 16, 65 Atl. 274.

2. Russell *v.* Phillips, 145 Mich. 268, 13 Detroit Leg. N. 462, 108 N. W. 718.

3. Joseph Speidel Grocery Co. *v.* Stark, (W. Va. 1907) 59 S. E. 498.

489. 1. Morimura *v.* Samaha, 25 App. Cas. (D. C.) 189.

2. Borden *v.* Lynch, 34 Mont. 503, 87 Pac. 609.

5. Brunson *v.* Rosenheim, (Ala. 1907) 43 So. 31.

7. Bennett *v.* Boshold, 123 Ill. App. 311; Vashon *v.* Barrett, 105 Va. 490, 54 S. E. 705.

490. 1. Southern Lumber, etc., Co. *v.* Verdier, 51 Fla. 570, 40 So. 676; Wiggington *v.* Minter, 88 S. W. 1082, 28 Ky. L. Rep. 79; Tanner *v.* Eckhardt, 107 N. Y. App. Div. 79, 94 N. Y. Supp. 1013.

2. Flint *v.* Chaloupka, (Neb. 1907) 111 N. W. 465.

491. 1. Lawrence *v.* Heylman, 111 N. Y. App. Div. 848, 98 N. Y. Supp. 121.

492. 3. Shive *v.* Merritt, (Ky. 1907) 104 S. W. 368.

4. California Consol. Min. Co. *v.* Manley, 10 Idaho 786, 81 Pac. 50.

493. 2. Fabian *v.* Traeger, 215 Ill. 220, 74 N. E. 131, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 493; Smith *v.* Birge, 126 Ill. App. 596; King *v.* Grannis, 29 Pa. Super. Ct. 367.

3. Volusia County Bank *v.* Bigelow, 45 Fla. 648, 33 So. 704, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 493; Fabian *v.* Traeger, 117 Ill. App. 182, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 493.

495. 4. Borden *v.* Lynch, 34 Mont. 503, 87 Pac. 609.

496. 1. Perry *v.* Pore, 90 S. W. 952, 28 Ky. L. Rep. 897.

497. 1. Piedmont Sav. Bank *v.* Levy, 138 N. Car. 278, 3 Ann. Cas. 785, 50 S. E. 657, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 497; Moore *v.* Tearney, (W. Va. 1907) 57 S. E. 267, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 497.

498. 1. Wiggington *v.* Minter, 88 S. W. 1082, 28 Ky. L. Rep. 79; Klauber *v.* Schloss, 198 Mo. 502, 95 S. W. 930; St. Francis Mill Co. *v.* Sugg, 206 Mo. 148, 104 S. W. 45.

501. 2. **That the Grantor Was Solvent** when the conveyance was made is an important item of evidence on the question whether the deed was fraudulent. Quinn *v.* Minneapolis Threshing Mach. Co., 102 Minn. 256 113 N. W. 689.

507. 2. Clarke *v.* Black, 78 Conn. 467, 62 Atl. 757.

508. 1. Tanner *v.* Eckhardt, 107 N. Y. App. Div. 79, 94 N. Y. Supp. 1013; Stevens *v.* Meyers, 14 N. Dak. 398, 104 N. W. 529.

509. 1. Wood *v.* Eldredge, 147 Mich. 554, 111 N. W. 168.

3. Smith *v.* Birge, 126 Ill. App. 596; Guyton *v.* Chasen, (Tex. Civ. App. 1907) 101 S. W. 290.

512. 2. William J. Lenys Brewing Co. *v.* Guion, 17 Okla. 131, 87 Pac. 584; Harrisonburg Harness Co. *v.* National Furniture Co., 106 Va. 302, 55 S. E. 679.

515. 2. *Compare* Hasbrouck *v.* Rich, 113 Mo. App. 389, 88 S. W. 131.

516. 1. Phillips *v.* Rule, 124 Mo. App. 525, 102 S. W. 32; McNeal *v.* Hayes Mach. Co., 118 N. Y. App. Div. 130, 103 N. Y. Supp. 212.

Conclusive Badge of Fraud by Virtue of Statute. — Calkins *v.* Howard, 2 Cal. App. 233, 83 Pac. 280.

7. McCuin *v.* Merchants' Grocery Co., 78 Ark. 63, 93 S. W. 563; Bishop *v.* John H. Hibben Dry Goods Co., 99 S. W. 644, 30 Ky. L. Rep. 725; Southern Bank *v.* Nichols, 202 Mo. 309, 100 S. W. 613.

517. 1. Schaefer Brewing Co. *v.* Moebs, 187 Mass. 571, 73 N. E. 858.

2. Deepwater Council *v.* Renick, 59 W. Va. 351, 53 S. E. 552, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 516 [517].

518. 1. Stitt *v.* Stone, (Tex. Civ. App. 1907) 103 S. W. 1192.

519. 4. *Compare* Strop *v.* Hughes, 123 Mo. App. 544, 547, 101 S. W. 146, 149.

522. Samaha *v.* Mason, 27 App. Cas. (D. C.) 470; Wahlheimer *v.* Truslow, 106 N. Y. App. Div. 73, 94 N. Y. Supp. 137; McNeal *v.* Hayes Mach. Co., 118 N. Y. App. Div. 130, 103 N. Y. Supp. 312; Clark *v.* Bell, (Tex. Civ. App. 1905) 89 S. W. 38.

523. 1. Mercantile Exch. Bank *v.* Taylor, 51 Fla. 473, 41 So. 22.

Mortgage Not Per Se Void. — The taking of a mortgage upon property worth much more than the amount of the debt secured does not of itself render the mortgage void. Ward *v.* Parker, 128 Iowa 124, 103 N. W. 104.

524. 1. Waters *v.* Merrit Pants Co., 76 Ark. 252, 88 S. W. 879; McCuin *v.* Merchants' Grocery Co., 78 Ark. 63, 93 S. W. 563; Clark *v.* Harper, 215 Ill. 24, 74 N. E. 61; Eberhart *v.* Greenberg, 231 Ill. 79, 83 N. E. 101; Bennett *v.* Boshold, 123 Ill. App. 311; Jones *v.* Lossiter, 93 S. W. 657, 29 Ky. L. Rep. 514; Dallas Brewery *v.* Holzner, 116 La. 719, 41 So. 48; Gage *v.* Burns, (Neb. 1907) 111 N. W. 791.

2. Clark *v.* Harper, 215 Ill. 24, 74 N. E. 61.

525. 1. McCormick Harvester Mach. Co. *v.* Caldwell, 15 N. Dak. 132, 106 N. W. 122.

526. 1. Rogers *v.* Page, (C. C. A.) 140 Fed. 606, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 526; Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855; Pettit *v.* Coachman, 51 Fla. 521, 41 So. 401; Ward *v.* Parker, 128 Iowa 124, 103 N. W. 104; Jones *v.* Levering, 116 Mo. App. 377, 91 S. W. 980.

2. Robertson *v.* Columbus Ins., etc., Co., 85 Miss. 234, 38 So. 100.

FREEHOLD — FREEHOLDER.

530. 2. **Remainderman Not Freeholder.** — Mountville Borough, 31 Pa. Super. Ct. 18.

FREIGHT.

546. 4. **Freighting** signifies a loading with goods or other commodities for transportation. It is a word of covenant and not of demise. Grimberg *v.* Columbia Packers' Assoc., 47 Oregon 257, 83 Pac. 194.

Freight Pending and Freight for Voyage represent the earnings of the voyage, whether from the carriage of passengers or merchandise. La Bourgogne, (C. C. A.) 139 Fed. 433.

FROM.

556. 1. **From Day to Day.** — See Harris *v.* Nixon, 27 App. Cas. (D. C.) 94.

FRONT.

558. 1. **The Front of a Car** within the Canadian statute providing for fenders on the front of each electric street car is that end of it which when the car is in motion is the furthest forward, that is to say, furthest forward in the sense that it would first meet a person or an object moving in the opposite direction; and the defendants operating a car for a distance of twelve hundred feet with the fender at the back instead of the front, as so defined, were liable to the penalty prescribed by the statute. Toronto *v.* Toronto R. Co., 10 Ont. L. Rep. 730.

FULL — FULLY.

560. 8. **Full Benefit and Enjoyment.** — An engagement by one person to give to another the *full* benefit and enjoyment of all his inventions or improvements, imports and confers only a shop right or mere license to use an invention. Hildreth *v.* Duff, 143 Fed. 139.

GALLON.

575. 2. **Standard Gallon.** — Ceballos *v.* U. S., (C. C. A.) 146 Fed. 380 (gauge adopted in revenue case).

GAMBLING CONTRACTS.

588. 2. Motlow *v.* Johnson, 145 Ala. 373, 39 So. 710.

589. 3. Gibney *v.* Olivette, (Mass. 1907) 82 N. E. 41; Beers *v.* Wardwell, (Mass. 1908) 84 N. E. 306.

4. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

591. 4. State *v.* Clayton, 138 N. Car. 732, 50 S. E. 866.

593. 7. **Settlement of Dealings in Futures under Board of Trade Rules Valid, and Payment Thereon May Constitute Act of Bankruptcy.** — Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346.

Claim of Customer against Broker for Profits Disallowed. — *In re* Baxter, (C. C. A.) 152 Fed. 137.

595. 1. Where action is not to enforce an illegal contract, but is based upon a showing independent of an anterior illegal transaction, it has been held that equity will lend its aid. Crenshaw *v.* Columbian Min. Co., 110 Mo. App. 355, 86 S. W. 260.

In *New Jersey* it has been held that equity will not aid the recovery of stocks given as security in a gambling transaction, the proper remedy being by an action of trover and conversion. Myers *v.* Fridenberg, 70 N. J. Eq. 3, 62 Atl. 532, *affirmed* (N. J. 1907) 65 Atl. 1118.

2. **Equity Will Not Set Aside a Deed** made by the keeper of a saloon in payment of a gambling debt contracted by him to one of his customers. McGinley *v.* Cleary, 2 Alaska 269.

3. **No Injunction against Prosecution.** — Under an *Arkansas* statute prohibiting telegraph companies from knowingly receiving for transmission messages relating to futures, or furnishing leased wires for that purpose, it has been held that no injunction lies against legal interference with such telegraph business. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570.

Perpetual Injunction Allowed. — See Levy *v.* Kansas City, 74 Kan. 861, 86 Pac. 149.

Act Authorizing Injunction against Using Premises as Gaming House Constitutional. — *Ex p.* Allison, 48 Tex. Crim. 634, 90 S. W. 492; *Ex p.* Allison, (Tex. 1906) 90 S. W. 870. See Cain *v.* State, (Tex. Civ. App. 1907) 106 S. W. 770.

Injunction under Texas Statute Restrains Person in Control Only. — *Ex p.* Garza, (Tex. Crim. 1906) 95 S. W. 1059.

No Jurisdiction to Enjoin Prosecution. — Littleton *v.* Burgess, 14 Wyo. 173, 82 Pac. 864.

596. 3. **Charging on Foot Race.** — Stewart *v.* Wright, (C. C. A.) 147 Fed. 321.

5. Lockman *v.* Cobb, 77 Ark. 279, 91 S. W. 546; Hobbs *v.* Boatright, 195 Mo. 693, 93 S. W. 934. See Bynum *v.* Brady, 82 Ark. 603, 100 S. W. 66.

8. **Losses to Licensed "Bucket Shop" Not Recoverable.** — Miller *v.* Shropshire, 124 Ga. 829, 53 S. E. 335. See also Anderson *v.* State, 2 Ga. App. 1, 58 S. E. 401 (Tax Act repealed *pro tanto* by Boykin Act [Laws Ga. 1906, p. 95]).

597. 4. Motlow *v.* Johnson, 145 Ala. 373, 39 So. 710.

598. 2. Motlow *v.* Johnson, 145 Ala. 373, 39 So. 710.

599. 1. Chapman *v.* Franklin, 21 Times L. Rep. 515.

600. 1. **Statutory Definition** — § 6576, Gen. Stat. U. S. 1894, and Act Cong. March 2, 1895. — "A lottery is a scheme for the distribution of property by chance, among persons who have paid, or agreed to pay, a valuable consideration for the chance, whether called a lottery, raffle, or gift enterprise, or by some other name." State *v.* U. S. Express Co., 95 Minn. 442, 104 N. W. 556.

Tontine Investment Held Lottery. — Bowen *v.* Lynn, 73 Neb. 215, 102 N. W. 460.

Contract to Pay Fifty Per Cent. on Investment Dependent on Chance, in Effect Lottery. — Fidelity Funding Co. *v.* Vaughn, 18 Okla. 13, 90 Pac. 34.

602. 1. Waite *v.* Press Pub. Assoc., (C. C. A.) 155 Fed. 58.

Prize Dependent upon Fitting Parts Inclosed in Separate Packages of Merchandise into Complete Design Held Lottery. — U. S. *v.* McKenna, 149 Fed. 252.

"Trading Stamps" Not Gift Enterprise — No Element of Chance. — *Ex p.* Drexel, 147 Cal. 763, 82 Pac. 429; *Ex p.* West, 147 Cal. 774, 82 Pac. 434; Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 1[illegible].

Element of Chance Essential. — United Jewelers' Mfg. Co. *v.* Keckley, (Kan. 1907) 90 Pac. [illegible].

603. 1. Waite *v.* Press Pub. Assoc., (C. C. A.) 155 Fed. 58.

Recovery Allowed Investor under Contract in Effect Lottery. — Fidelity Funding Co. *v.* Vaughn, 18 Okla. 13, 90 Pac. 34.

605. 7. Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624 (decided under *Illinois* statute).

8. Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624 (decided under *Illinois* statute).

9. Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624 (decided under *Illinois* statute).

606. 1. Carson *v.* Milwaukee Produce Co., (Wis. 1907) 113 N. W. 393.

"Set-off." — Setting off contracts to buy a certain amount of a commodity at a certain time against contracts to sell a like amount at the same time and paying the difference in cash at the end of the business day. Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346.

2. Winston *v.* Longshore, 116 La. 21, 40 So. 517; Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. [illegible].

Stock Deposited as Collateral Security Constitutes Margin. — Pollitz *v.* Wickersham, 150 Cal. 238, 88 Pac. 911.

3. **"Ringing Off" Same Transaction.** — Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346.

5. It has been held that contracts for future delivery, made with the intention of settling them by "set-off" or by "ringing off" and by payment of differences, and to receive and deliver only the portion unsettled in accordance with Board of Trade rules and practice, are valid and enforceable. Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346.

"Hedging" — Sale of Commodity to Arrive or for Future Delivery Equaling in Amount Same Commodity Purchased. — Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346; John Miller Co. *v.* Klovstad, 14 N. Dak. 435, 105 N. W. 164.

607. 1. *United States.* — Berry *v.* Chase, (C. C. A.) 146 Fed. 625; *In re* Baxter, (C. C. A.) 152 Fed. 137; Whittmore *v.* Malcomson, 155 Fed. 503.

Alabama. — Hooper *v.* Nuckles, (Ala. 1905) 39 So. 711; Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855; Allen *v.* Pierce, (Ala. 1906) 42 So. 858.

Georgia. — Watson *v.* Hazlehurst, 127 Ga. 298, 56 S. E. 459.

Missouri. — Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202; Saunders *v.* Baker, 122 Mo. App. 294, 99 S. W. 51.

New York. — Hurd *v.* Taylor, 181 N. Y. 231, 73 N. E. 977.

North Carolina. — State *v.* McGinnis, 138 N. Car. 724, 51 S. E. 50; State *v.* Gatewood, 138 N. Car. 749, 51 S. E. 53.

North Daktoa. — John Miller Co. *v.* Klovstad, 14 N. Dak. 435, 105 N. W. 164.

Oregon. — Overbeck, etc., Co. *v.* Roberts, (Oregon 1906) 87 Pac. 158.

2. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; Pollitz *v.* Wickersham, 150 Cal. 238, 88 Pac. 911; Isaacs *v.* Silverberg, 87 Miss. 185, 39 So. 420; Hallet *v.* Aggergaard, (S. Dak. 1908) 114 N. W. 696.

South Carolina. — Code of Laws S. Car. (1902), § 2310, requires one suing on contract for future delivery to show (1) that party making contract was then owner or assignee; or (2) that seller was then authorized by owner, assignee, or duly authorized agent to sell; or (3) that it was the *bona fide* intention of both parties to actually receive and deliver in kind at future date. Barr *v.* Satcher, 72 S. Car. 35, 51 S. E. 530.

Georgia Statute Excepts Cases Where Skilled Labor or Expense Enters into Consideration. — Anderson *v.* Holbrook, 128 Ga. 233, 57 S. E. 500; Anderson *v.* State, 2 Ga. App. 1, 58 S. E. 401.

608. 1. Hooper *v.* Nuckles, (Ala. 1905) 39 So. 711; Jennings *v.* Morris, 211 Pa. St. 600, 61 Atl. 115; Morris *v.* Jennings, 211 Pa. St. 606, 61 Atl. 117.

Margins Illegal. — Lancaster *v.* [illegible] (Md. 1907) 68 Atl. 533.

2. Stilwell *v.* Cutter, 146 Cal. 657, 80 Pac. 1071; Pollitz *v.* Wickersham, 150 Cal. 238, 88 Pac. 911.

3. Whitehead *v.* Ballinger, 38 Colo. 66, 88 Pac. 160, *citing* 14 Am. and Eng. Encyc. of Law (2d ed.) 608; Nes *v.* Union Trust Co., 104 Md. 15, 64 Atl. 310.

Option to Deliver Before Maturity Immaterial. — Allen *v.* Caldwell, 149 Ala. [illegible] So. 855; Allen *v.* Pierce, (Ala. 1906) 42 So. 858.

Option to Deliver Minimum to Maximum Quantity, Part of Legitimate Transaction, Not Void as Gambling. — Consolidated Coal Co. *v.* Jones, etc., Co., 232 Ill. 326, 83 N. E. 851.

4. Pratt *v.* Ashmore, 224 Ill. 587, 79 N. E. 952; Dunbar *v.* Armstrong, 115 Ill. App. 549; Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624 (decided under *Illinois* statute).

Valid Options. — An agreement to purchase stock of corporation at fixed value five years thereafter, reserving option to stockholders to retain certain shares, has been held not to violate *Illinois* statute. Kantzler *v.* Benzinger, 214 Ill. 589, 73 N. E. 874. See also Consolidated Coal Co. *v.* Jones, etc., Co., 120 Ill. App. 139.

Statute against Options Remedial and Liberally Construed. — Bates *v.* Woods, 225 Ill. 126, 80 N. E. 84.

609. 1. Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346.

2. Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346; Saunders *v.* Baker, 122 Mo. App. 294, 99 S. W. 51.

Settling on Agreed Amount Legal. — Fuller *v.* Municipal Tel., etc., Co., 117 N. Y. App. Div. 352, 102 N. Y. Supp. 154.

Under *North Carolina* statute, purchase for future delivery upon margin by manufacturers or wholesale merchants, of "necessary commodities required in the course of their ordinary business," constitutes a valid contract where there is no intention that there shall be no delivery. State *v.* Clayton, 138 N. Car. 732, 50 S. E. 866.

3. "Ringing Off" Same as Ringing Out. — Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346.

4. *United States.* — Berry *v.* Chase, (C. C. A.) 146 Fed. 625; Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346; *In re* Baxter, (C. C. A.) 152 Fed. 137.

Alabama. — Hooper *v.* Nuckles, (Ala. 1905) 39 So. 711; Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855; Allen *v.* Pierce, (Ala. 1906) 42 So. 858.

Georgia. — Rankin *v.* Mitchem, 141 N. Car. 277, 53 S. E. 854; Watson *v.* Hazlehurst, 127 Ga. 298, 56 S. E. 459; Anderson *v.* Holbrook, 128 Ga. 233, 57 S. E. 500; Anderson *v.* Holbrook, 128 Ga. 230, 57 S. E. 502. See Anderson *v.* State, 2 Ga. App. 1, 58 S. E. 401.

Illinois. — Pratt *v.* Ashmore, 224 Ill. 587, 79 N. E. 952.

Indiana. — Western Union Tel. Co. *v.* State, 165 Ind. 492, 76 N. E. 100.

Maryland. — Dryden *v.* Zell, 104 Md. 345, 65 Atl. 33. See Nes *v.* Union Trust Co., 104 Md. 15, 64 Atl. 310.

Massachusetts. — Gibney *v.* Olivette, (Mass. 1907) 82 N. E. 41; Beers *v.* Wardwell, (Mass. 1908) 84 N. E. 306.

Mississippi. — Isaacs *v.* Silverberg, 87 Miss. 185, 39 So. 420.

Missouri. — Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202.

New York. — Hurd *v.* Taylor, 181 N. Y. 231, 73 N. E. 977; Zeller *v.* Leiter, 180 N. Y. 361, 82 N. E. 158, and Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624 (decided under *Illinois* statute). See McCarthy *v.* Meaney, 183 N. Y. 190, 76 N. E. 36.

North Carolina. — State *v.* Clayton, 138 N. Car. 732, 50 S. E. 866; State *v.* McGinnis, 138 N. Car. 724, 51 S. E. 50; State *v.* Gatewood, 138 N. Car. 749, 51 S. E. 53.

North Dakota. — Beidler, etc., Lumber Co. *v.* Coe Commission Co., 13 N. Dak. 639, 102 N. W. 880; John Miller Co. *v.* Klovstad, 14 N. Dak. 435, 105 N. W. 164.

Pennsylvania. — Jennings *v.* Morris, 211 Pa. St. 600, 61 Atl. 115; Morris *v.* Jennings, 211 Pa. St. 606, 61 Atl. 117.

South Dakota. — Hallet *v.* Aggergaard, (S. Dak. 1908) 114 N. W. 696.

Texas. — Norris *v.* Logan, (Tex. Civ. App. 1906) 94 S. W. 123, *affirmed* (Tex. 1906) 97 S. W. 820; Smith *v.* Bowen, (Tex. Civ. App. 1907) 100 S. W. 796; Dunman *v.* Murphey, (Tex. Civ. App. 1908) 107 S. W. 70.

Intent of Broker and Principal, Not of Brokers, Material. — Carson *v.* Milwaukee Produce Co., (Wis. 1907) 113 N. W. 393.

611. 1. Brosseau *v.* Bergevin, 27 Quebec Super. Ct. 510.

Loser's Intention to Gamble and Winner's Reasonable Cause to Believe that Intention Authorizes Recovery in Massachusetts. — Anderson *v.* Metropolitan Stock Exch., 191 Mass. 117, 77 N. E. 706.

2. Farnum *v.* Whitman, 187 Mass. 381, 73 N. E. 473; Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624 (decided under *Illinois* statute). See Hooper *v.* Nuckles, (Ala. 1905) 39 So. 711; Hocomb *v.* Kempner, 214 Ill. 458, 73 N. E. 740.

Question for Jury. — It has been held that in an action by a broker, testimony of *bona fide* intention of parties, or even of himself, to deliver would have taken case to jury and avoided nonsuit. Snider *v.* Harvey, 215 Pa. St. 538, 64 Atl. 687.

Broker's Commissions and Expenses Recoverable — Hallet *v.* Aggergaard, (S. Dak. 1908) 114 N. W. 696.

3. Missouri Cases. —Under Missouri statute (Rev. Stat. 1889, §§ 2337–2342, inc.) it has been held that obligations arising out of option transactions are void in the hands of a party, it being the purpose of one party not to deliver or receive the property, and the other party acting in ignorance of intention. Stewart *v.* Hutchinson, 120 Mo. App. 32, 96 S. W. 253.

617. 3. Question for Jury Where Plaintiff Uncorroborated. — Mendoza *v.* Levy, 111 N. Y. App. Div. 449, 97 N. Y. Supp. 753.

Variance as to Game Immaterial unless Objection Taken. — Clark *v.* Slaughter, 129 Wis. 642, 109 N. W. 556.

4. Transactions of Intelligent Business Man with Bucket Shop Presumptively Gambling. — *In re* Baxter, (C. C. A.) 152 Fed. 137.

5. Pratt *v.* Ashmore, 224 Ill. 587, 79 N. E. 952; Farnum *v.* Whitman, 187 Mass. 381, 73 N. E. 473; Zeller *v.* Leiter, 189 N. Y. 361, 82 N. E. 158 (construing *Illinois* statute); Overbeck, etc., Co. *v.* Roberts, (Oregon 1906) 87 Pac. 158. See Hallet *v.* Aggergaard, (S. Dak. 1908) 114 N. W. 696; Smith *v.* Bowen, (Tex. Civ. App. 1907) 100 S. W. 796; Dunman *v.* Murphey, (Tex. Civ. App. 1908) 107 S. W. 70; Carson *v.* Milwaukee Produce Co., (Wis. 1907) 113 N. W. 393.

Written Contract for Futures Empowering Delivery Not Conclusive. — Saunders *v.* Baker, 122 Mo. App. 294, 99 S. W. 51.

618. 2. Rankin *v.* Mitchem, 141 N. Car. 277, 53 S. E. 854; Semler Milling Co. *v.* Fyffe, 127 Ill. App. 514; Saunders *v.* Baker, 122 Mo. App. 294, 99 S. W. 51; Snider *v.* Harvey, 215 Pa. St. 538, 64 Atl. 687; Appling *v.* Watts, (Tex. Civ. App. 1906) 98 S. W. 935; Dunman *v.* Murphey, (Tex. Civ. App. 1908) 107 S. W. 70; Clark *v.* Slaughter, 129 Wis. 642, 109 N. W. 556; Carson *v.* Milwaukee Produce Co., (Wis. 1907) 113 N. W. 393.

3. *United States.* — Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346; Springs *v.* Carpenter, (C. C. A.) 154 Fed. 487.

Alabama. — Hooper *v.* Nuckles, (Ala. 1905) 39 So. 711; Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855; Allen *v.* Pierce, (Ala. 1906) 42 So. 858.

Maryland. — Dryden *v.* Zell, 104 Md. 345, 65 Atl. 33; King *v.* Zell, 105 Md. 435, 66 Atl. 279.

New York. — Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624.

North Dakota. — John Miller Co. *v.* Klovstad, 14 N. Dak. 435, 105 N. W. 164.

Oregon. — Overbeck, etc., Co. *v.* Roberts, (Oregon 1906) 87 Pac. 158.

Pennsylvania. — Jennings *v.* Morris, 211 Pa. St. 600, 61 Atl. 115; Morris *v.* Jennings, 211 Pa. St. 606, 61 Atl. 117.

South Dakota. — Hallet *v.* Aggergaard, (S. Dak. 1908) 114 N. W. 696.

Texas. — Smith *v.* Bowen, (Tex. Civ. App. 1907) 100 S. W. 796.

Illegality Matter of Defense. — Watson *v.* Hazlehurst, 127 Ga. 298, 56 S. E. 459.

Burden of Proof Immaterial. — In *Missouri* it has been held that where the evidence of a party seeking recovery presents facts admitting no other reasonable conclusion than that the debt arose in a gambling transaction, it is immaterial where burden lies. Saunders *v.* Baker, 122 Mo. App. 294, 99 S. W. 51.

619. 4. State *v.* Clayton, 138 N. Car. 732, 50 S. E. 866; State *v.* McGinnis, 138 N. Car. 724, 51 S. E. 50; State *v.* Gatewood, 138 N. Car. 749, 51 S. E. 53, *affirmed* 203 U. S. 531, 27 U. S. Sup. Ct. 167.

620. 1. Evidence of Conversation Outside Period of Statutory Limitation Admissible. — Bartlett *v.* Slusher, 215 Ill. 348, 74 N. E. 370.

Intent Shown by Course of Dealing. — Semler Milling Co. *v.* Fyffe, 127 Ill. App. 514; Jennings *v.* Morris, 211 Pa. St. 600, 61 Atl. 115; Morris *v.* Jennings, 211 Pa. St. 606, 61 Atl. 117.

5. Bartlett *v.* Slusher, 215 Ill. 348, 74 N. E. 370; Beidler, etc., Lumber Co. *v.* Coe Commission Co., 13 N. Dak. 639, 102 N. W. 880.

621. 1. Evidence of Former Dealings Held Admissible. — It has been held that after proof of no delivery in other transactions, and that settlement of differences was the rule, the person claiming rights under the trade should show intent to deliver. Beidler, etc., Lumber Co. *v.* Coe Commission Co., 13 N. Dak. 639, 102 N. W. 880.

Evidence Having Been Admitted Constitutes Ground for Submission to Jury. — Carson *v.* Milwaukee Produce Co., (Wis. 1907) 113 N. W. 393.

2. Farnum *v.* Whitman, 187 Mass. 381, 73 N. E. 473; Anderson *v.* Metropolitan Stock Exch., 191 Mass. 117, 77 N. E. 706; McCarthy *v.* Meaney, 183 N. Y. 190, 76 N. E. 36.

Evidence Held Admissible. — It has been held that evidence of similar transactions to defraud is admissible. Hobbs *v.* Boatright, 195 Mo. 693, 93 S. W. 934.

Evidence of System and Method of Party Admissible. — Smith *v.* Bowen, (Tex. Civ. App. 1907) 100 S. W. 796.

624. 2. Chapman *v.* Franklin, 21 Times L. Rep. [illegible].

623. 1. Motlow *v.* Johnson, 145 Ala. 373, 39 So. 710; Motlow *v.* Johnson, (Ala. 1907) 44 So. 42.

In Massachusetts Contract Must Be Illegal. — Gibney *v.* Olivette, (Mass. 1907) 82 N. E. 41.

624. 1. Vogt *v.* Mortimer, 22 Times L. Rep. 763; Motlow *v.* Johnson, 145 Ala. 373, 39 So. 710; Bynum *v.* Brady, 82 Ark. 603, 100 S. W. 66; Bartlett *v.* Slusher, 215 Ill. 348, 74 N. E. 370; Crenshaw *v.* Columbian Min. Co., 110 Mo. App. 355, 86 S. W. 260; Bowen *v.* Lynn, 73 Neb. 215, 102 N. W. 460; McCarthy *v.* Meaney, 183 N. Y. 190, 76 N. E. 36; Clark *v.* Slaughter, 129 Wis. 642, 109 N. W. 556.

Wife of Loser. — It has been held that after judgment in favor of the state for the benefit of the wife of the loser, the wife can sue to set aside fraudulent conveyance. Tyler *v.* Davis, 37 Ind. App. 557, 75 N. E. 3.

Release under Seal. — In *Massachusetts* it has been held that a release under seal would be a defense in the absence of creditors, but that voluntary conveyances of property are fraudulent as against creditors. Anderson *v.* Metropolitan Stock Exch., 191 Mass. 117, 77 N. E. 706.

No Demand Is Necessary before bringing suit. Mendoza *v.* Rose, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 614, 92 N. Y. Supp. 791.

Ohio Statute Constitutional. — Marvin *v.* Trout, 199 U. S. 212, 26 U. S. Sup. Ct. 31.

No Abatement of Action at Death of Loser — Motlow *v.* Johnson, (Ala. 1907) 44 So. 42; Anderson *v.* Metropolitan Stock Exch., 191 Mass. 117, 77 N. E. 706.

Losses to Licensed Bucket Shop Not Recoverable under Georgia Statute. — Miller *v.* Shropshire, 124 Ga. 829, 53 S. E. 335.

Under Mississippi Statute, Operation in Futures Not Wager Authorizing Recovery against Broker. — Isaacs *v.* Silverberg, 87 Miss. 185, 39 So. 420.

625. 1. **Interest Recoverable.** — It has been held that interest is recoverable under the *Alabama* statute, which is not penal. Motlow *v.* Johnson, (Ala. 1907) 44 So. 42.

In *Massachusetts* it has been held that the action survives to a legal representative under Rev. Laws Mass., c. 99, § 4. Anderson *v.* Metropolitan Stock Exch., 191 Mass. 117, 77 N. E. 706.

626. 7. **Complaint Held Sufficient.** — Parsons *v.* Wilson, 94 Minn. 416, 103 N. W. 163.

627. 1. **Where Severally Liable.** — The object being to place the parties *in statu quo*, liability should be limited to several winnings *pro tanto*. Motlow *v.* Johnson, 145 Ala. 373, 39 So. 710.

628. 2. Ware *v.* Dumont, 123 Ill. App. 1.

629. 2. Joslyn *v.* Downing, (C. C. A.) 150 Fed. 317; Ramirez *v.* Main, (Ariz. 1907) 89 Pac. 508; Lacey *v.* Bentley, 39 Colo. 449, 89 Pac. 789. See Beidler, etc., Lumber Co. *v.* Coe Commission Co., 13 N. Dak. 639, 102 N. W. 880.

Recovery by Corporation against Officers Gambling Corporate Funds. — Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202.

5. Crutchfield *v.* Rambo, 38 Tex. Civ. App. 579, 86 S. W. 950.

631. 3. Himmelman *v.* Pecaut, 133 Iowa 503, 110 N. W. 919.

633. 1. Falkenberg *v.* Allen, 18 Okla. 210, 90 Pac. 415.

2. Himmelman *v.* Pecaut, 133 Iowa 503, 110 N. W. 919.

634. 1. Himmelman *v.* Pecaut, 133 Iowa 503, 110 N. W. 919.

635. 1. See Himmelman *v.* Pecaut, 133 Iowa 503, 110 N. W. 919.

639. 2. See Whittmore *v.* Malcomson, 155 Fed. 503.

640. 1. Bartlett *v.* Slusher, 215 Ill. 348, 74 N. E. 370.

Broker Held as Vendor. — Stilwell *v.* Cutter, 146 Cal. 657, 80 Pac. 1071.

Recovery Allowed Customer, Broker Operating by Book Account. — Haight *v.* Haight, etc., Co., 112 N. Y. App. Div. 475, 98 N. Y. Supp. 471.

2. Isaacs *v.* Silverberg, 87 Miss. 185, 39 So. 420.

No Recovery as Set-off. — It has been held that although a broker charged a client with commissions on gambling contracts amounting to more than a sum paid to it by mistake, no evidence of such contracts can be given in an action to recover the sum so paid. Adler *v.* Searles, 86 Miss. 406, 38 So. 209.

No Right of Recovery from Brokers of Profits and Margins. — Norris *v.* Logan, (Tex. Civ. App. 1906) 94 S. W. 123, *affirmed* (Tex. 1906) 97 S. W. 820.

No Recovery against Broker after Payment of Advances and Receipt of Stock Certificates by Customer. — Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307.

4. Anderson *v.* Holbrook, 128 Ga. 233, 57 S. E. 500; Anderson *v.* Holbrook, 128 Ga. 239, 57 S. E. 502; Beers *v.* Wardwell, (Mass. 1908) 84 N. E. 306; Saunders *v.* Baker, 122 Mo. App. 294, 99 S. W. 51; Hurd *v.* Taylor, 181 N. Y. 231, 73 N. E. 977, *reversing* 92 N. Y. App. Div. 605, 87 N. Y. Supp. 1137; Fuller *v.* Municipal Tel., etc., Co., 117 N. Y. App. Div. 352, 102 N. Y. Supp. 154; Jennings *v.* Morris, 211 Pa. St. 600, 61 Atl. 115; Morris *v.* Jennings, 211 Pa. St. 606, 61 Atl. 117; Snider *v.* Harvey, 215 Pa. St. 538, 64 Atl. 687; Norris *v.* Logan, (Tex. Civ. App. 1906) 94 S. W. 123, *affirmed* (Tex. 1906) 97 S. W. 820. See also Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307.

641. 1. Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855; Allen *v.* Pierce, (Ala. 1906) 42 So. 858.

2. Cleveland *v.* Taylor, (Tex. Civ. App. 1908) 108 S. W. 1037.

642. 1. Lancaster *v.* Ames, (Me. 1907) 68 Atl. 533; Gibney *v.* Olivette, (Mass. 1907) 82 N. E. 41. See Cooley *v.* Allen, (Ky. 1906) 90 S. W. 1048.

2. Saunders *v.* Baker, 122 Mo. App. 294, 99 S. W. 51.

3. Saunders *v.* Baker, 122 Mo. App. 294, 99 S. W. 51, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 642.

643. 1. See Cooley *v.* Allen, (Ky. 1906) 90 S. W. 1048.

644. 1. Britt *v.* Davis, 118 La. 597, 43 So. 248.

Contract for Collection of Gambling Claims Void. — Delahunty *v.* Canfield, 118 N. Y. App. Div. 883, 103 N. Y. Supp. 939 (concurring opinion).

3. "Bucket Shop" Cannot Compel Telegraph Service. — Western Union Tel. Co. *v.* State, 165 Ind. 492, 76 N. E. 100.

4. Contract Enforceable. — Himmelman *v.* Pecaut, 133 Iowa 503, 110 N. W. 919.

645. 1. Part of Consideration. — In *Wyoming* it has been held that a mortgage upon consideration of legal and illegal transactions may be upheld where such transactions are separable. Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307.

It has been held that a note given for a balance by a customer to brokers, upon a statement covering legal and illegal transactions, is not invalid because of the illegal items, in the absence of proof that such items changed the balance in favor of the customer. Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624 (decided under *Illinois* statute).

Nonnegotiable Promissory Notes. — In *California* it has been held that no recovery lies in favor of any person upon a nonnegotiable promissory note made upon a gambling consideration, or upon such a note renewing the same upon other consideration. Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708.

Promissory Notes, Mortgages, Securities, and Conveyances on Gambling Consideration Void in Illinois. — Pratt *v.* Ashmore, 224 Ill. 587, 79 N. E. 952.

3. When Maker Gives Note on Gambling Consideration, but Payee Takes It on Lawful Consideration, Note Is Valid. — Cooley *v.* Allen, (Ky. 1906) 90 S. W. 1048.

In *Missouri* it has been held that although obligations arising upon options are void in the hands of a party, a note given by one partner to another upon the latter's assuming payment of partnership obligations to a bank is upon a new consideration and enforceable. Stewart *v.* Hutchinson, 120 Mo. App. 32, 96 S. W. 253.

Recovery Allowed on Debt to Brokers Evidenced by Note. — Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855; Allen *v.* Pierce, (Ala. 1906) 42 So. 858.

4. Recovery Allowed Assignee after Maturity. — In *Colorado* it has been held that an assignee, after maturity of a promissory note given as collateral security, can recover where broker (payee) bought and held stocks subject to maker's order. Whitehead *v.* Ballinger, 38 Colo. 66, 88 Pac. 169.

646. 1. Myers *v.* Kessler, (C. C. A.) 142 Fed. 730; Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708.

2. Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708.

3. Alexander *v.* Hazelrigg, (Ky. 1906) 97 S. W. [illegible] Pappas *v.* Pittman, (Sup. Ct. App. T.) 48 Misc. (N. Y.) 641, 96 N. Y. Supp. 263.

648. 2. Morton *v.* Provident Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 189 (decided under *Missouri* statute).

6. Pratt *v.* Ashmore, 224 Ill. 587, 79 N. E. 952.

7. Myers *v.* Fridenberg, 70 N. J. Eq. 3, 62 Atl. 532.

651. 1. Union Collection Co. *v.* Buckman, 150 Cal. 159, 88 Pac. 708.

2. Himmelman *v.* Pecaut, 133 Iowa 503, 110 N. W. 919; Stewart *v.* Hutchinson, 120 Mo. App. 32, 96 S. W. 253.

652. 2. Moulis *v.* Owen, 95 L. T. N. S. 460, 22 Times L. Rep. 770; Zeller *v.* Leiter, 189 N. Y. 361, 82 N. E. 158; Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624; Morton *v.* Provident Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 189; Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307. See Saunders *v.* Baker, 122 Mo. App. 294, 99 S. W. 51.

Law of State Where Stock Sold Controls. — Berry *v.* Chase, (C. C. A.) 146 Fed. 625.

3. States Not of Common Origin. — It has been held in *Alabama* that in absence of proof of *Louisiana* statutes, the states not being of common origin, the common law is not applicable, and statutory law of *Alabama* is applicable where contract is to be performed in *Louisiana*. Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855; Allen *v.* Pierce, (Ala. 1906) 42 So. 858.

653. 1. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; State *v.* Clayton, 138 N. Car. 732, 50 S. E. 866.

GAME AND GAME LAWS.

654. 1. Dietrich *v.* Fargo, 119 N. Y. App. Div. 321, 104 N. Y. Supp. 334, *per* Lambert, J., *dissenting, quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 654.

655. 1. United States. — To the same effect as Magner *v.* People, 97 Ill. 320, stated in the original note, see Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; State *v.* Shattuck, 96 Minn. 45, 104 N. W. 719; State *v.* Weber, 205 Mo. 36, 102 S. W. 955 (rule declared by statute); State *v.* Heger, 194 Mo. 707, 93 S. W. 252; State *v.* Niles, 78 Vt. 266, 62 Atl. 795. See also People *v.* Waldorf Astoria Hotel Co., 118 N. Y. App. Div. 723, 103 N. Y. Supp. 434.

2. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783.

656. 1. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783.

4. An Easement does not give the right to fish and hunt. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783.

658. 3. U. S. *v.* Thompson, 147 Fed. 637; People *v.* Johnson, 38 Colo. 76, 88 Pac. 184; Crosby *v.* State, 121 Ga. 198, 48 S. E. 913; Kyle *v.* People, 226 Ill. 619, 80 N. E. 1081; State *v.* Weber, 205 Mo. 36, 102 S. W. 955; Conner *v.* Fogg, (N. J. 1907) 67 Atl. 338; People *v.* Hesterberg, 109 N. Y. App. Div. 295, 96 N. Y. Supp. 286; People *v.* Weinstock, 117 N. Y. App. Div. 168, 102 N. Y. Supp. 349; People *v.* Waldorf Astoria Hotel Co., 118 N. Y. App. Div. 723, 103 N. Y. Supp. 434; People *v.* White, 124 N. Y. App. Div. 79, 108 N. Y. Supp. 212; State *v.* Burns, 79 Vt. 272, 64 Atl. 1129.

4. Crosby *v.* State, 121 Ga. 198, 48 S. E. 913;

Conner *v.* Fogg, (N. J. 1907) 67 Atl. 338; People *v.* Weinstock, 117 N. Y. App. Div. 168, 102 N. Y. Supp. 349; People *v.* White, 124 N. Y. App. Div. 79, 108 N. Y. Supp. 212; State *v.* Burns, 79 Vt. 272, 64 Atl. 1129.

In Computing the Time of the Open Season the first day is omitted and the last day included. State *v.* Elson, 77 Ohio 489, 83 N. E. 904.

659. 1. Crosby *v.* State, 121 Ga. 198, 48 S. E. 913; State *v.* Heger, 194 Mo. 707, 93 S. W. 252; State *v.* Weber, 205 Mo. 36, 102 S. W. 955; People *v.* Hesterberg, 109 N. Y. App. Div. 295, 96 N. Y. Supp. 286; People *v.* Stillman, 117 N. Y. App. Div. 170, 102 N. Y. Supp. 351 (without bond); People *v.* Snedecor, 117 N. Y. App. Div. 284, 102 N. Y. Supp. 352; People *v.* Waldorf Astoria Hotel Co., 118 N. Y. App. Div. 723, 103 N. Y. Supp. 434; Dietrich *v.* Fargo, 119 N. Y. App. Div. 315, 104 N. Y. Supp. 334; State *v.* Niles, 78 Vt. 266, 62 Atl. 795.

Possession Prima Facie Evidence of Guilt. — People *v.* Johnson, 38 Colo. 76, 88 Pac. 184.

Skins Taken from Animals Lawfully Killed in the open season may be sold and transported during the close season. Allbright *v.* Northern Pac. R. Co., 96 Minn. 135, 104 N. W. 827.

660. 1. State *v.* Shattuck, 96 Minn. 45, 104 N. W. 719; State *v.* Heger, 194 Mo. 707, 93 S. W. 252; People *v.* Hesterberg, 184 N. Y. 126, 76 N. E. 1032, *reversing* 109 N. Y. App. Div. 295, 96 N. Y. Supp. 286; People *v.* Weinstock, 117 N. Y. App. Div. 168, 102 N. Y. Supp. 349; People *v.* Waldorf Astoria Hotel Co., 118 N. Y. App. Div. 723, 103 N. Y. Supp. 434; U. S. *v.* Thompson, 147 Fed. 637 (a case arising under the *North Dakota* statute).

Selling as Agent for a Nonresident will not relieve from liability. People *v.* Stillman, 117 N. Y. App. Div. 170, 102 N. Y. Supp. 351.

3. State *v.* Heger, 194 Mo. 707, 93 S. W. 252; People *v.* Weinstock, 117 N. Y. App. Div. 168, 102 N. Y. Supp. 349.

661. 1. People *v.* Weinstock, 117 N. Y. App. Div. 168, 102 N. Y. Supp. 349.

2. Statutes Prohibiting Transportation During Close Season. — See U. S. *v.* Thompson, 147 Fed. 637, a case arising under the *North Dakota* statute; Allbright *v.* Northern Pac. R. Co., 96 Minn. 135, 104 N. W. 827; State *v.* Niles, 78 Vt. 266, 62 Atl. 795.

Domesticated Deer Held to Be within Statute against Transportation. — Dietrich *v.* Fargo, 119 N. Y. App. Div. 315, 104 N. Y. Supp. 334.

3. Kyle *v.* People, 226 Ill. 619, 80 N. E. 1081; State *v.* Shattuck, 96 Minn. 45, 104 N. W. 719; State *v.* Heger, 194 Mo. 707, 93 S. W. 252; State *v.* Weber, 205 Mo. 36, 102 S. W. 955; People *v.* Waldorf Astoria Hotel Co., 118 N. Y. App. Div. 723, 103 N. Y. Supp. 434; State *v.* Niles, 78 Vt. 266, 62 Atl. 795.

662. 1. State *v.* Shattuck, 96 Minn. 45, 104 N. W. 719; State *v.* Heger, 194 Mo. 707, 93 S. W. 252; People *v.* Hesterberg, 184 N. Y. 126, 76 N. E. 1032, *reversing* 109 N. Y. App. Div. 295, 96 N. Y. Supp. 286; People *v.* Waldorf Astoria Hotel Co., 118 N. Y. App. Div. 723, 103 N. Y. Supp. 434; Dietrich *v.* Fargo, 119 N. Y. App. Div. 315, 104 N. Y. Supp. 334; U. S. *v.* Thompson, 147 Fed. 637 (*North Dakota* statute); U. S. *v.* Spear, 147 Fed. 640 (*North Dakota* statute).

4. State *v.* Snyder, (N. J. 1907) 67 Atl. 934.

663. 2. **An Action for the Value or Possession** of the game may be brought by the commissioner of game under the *Colorado* statute. See People *v.* Johnson, 38 Colo. 76, 88 Pac. 184.

GAMING.

665. 1. Judge Cooley's Definition Quoted. — *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

666. 1. Fleming *v.* State, 125 Ga. 17, 53 S. E. 579.

2. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 666.

3. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

4. State *v.* Carrick, 78 Vt. 1, 61 Atl. 35.

6. English Statutes Common Law of New Hampshire. — *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

8. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570.

667. 1. Blodgett *v.* McVey, 131 Iowa 552, 108 N. W. 239; Ruston *v.* Perkins, 114 La. 851, 38 So. 583; Lake Charles *v.* Roy, 115 La. 939, 40 So. 362; Shreveport *v.* Bowen, 116 La. 522, 40 So. 859. See State *v.* Hoyle, 98 Minn. 254, 107 N. W. 1130.

Implied Authority. — It has been held that a charter giving the power to pass ordinances generally for the good of the district authorizes an ordinance against gaming. Ferrell *v.* Opelika, 144 Ala. 135, 39 So. 249.

Greater New York Charter, § 318, empowering entry into a house on report of two householders, has been held unconstitutional, and section 315 thereof, empowering inspection and restraint of gambling houses, does not authorize entry without warrant. Phelps *v.* McAdoo, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 524, 94 N. Y. Supp. 265.

Under Greater New York Charter, § 315, empowering inspection and restraint of gambling houses, no house may be entered without warrant unless in immediate pursuit of a fleeing criminal or on call of danger from within. Devlin *v.* McAdoo, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 57, 96 N. Y. Supp. 425.

Where a city ordinance under authority of charter punishes gaming, it has been held that a subsequent state law punishing the same offenses as felonies does not supersede the ordinance. Seattle *v.* MacDonald, (Wash. 1907) 91 Pac. 952.

Jurisdiction Not Exclusive unless Expressly or Impliedly Surrendered. — Hornstein *v.* U. S., (C. C. A.) 155 Fed. 48.

Conviction under City Ordinance Bars Prosecution under State Law. — White *v.* Com., 122 Ky. 408, 92 S. W. 285.

Power to Regulate Does Not Authorize Prohibition. — State *v.* McMonies, 75 Neb. 443, 106 N. W. 454; *Ex p.* McMonies, 75 Neb. 702, 106 N. W. 456.

Power to Prevent and Suppress Not Authorization to Legalize by License. — State *v.* Nease, 46 Oregon 433, 80 Pac. 897.

3. Legislative Intent.— Under the *California* statute it has been held that conducting a slot machine for cigars and tobacco is not an offense, those articles not constituting "money, checks, credits, or other representatives of value." *Ex p.* Williams, (Cal. App. 1906) 87 Pac. 565.

4. State *v.* Maloney, 115 La. 498, 39 So. 539.

5. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505; Gallegos *v.* State, (Tex. Crim. 1906) 95 S. W. 123, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665-667.

Setting Up and Keeping a Gambling Device Not Gaming.— Mexico *v.* Harris, 115 Mo. App. 707, 92 S. W. 505.

668. 2. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

"Game" Distinguished from "Race."— State *v.* Hayes, 116 Tenn. 40, 93 S. W. 98.

6. Groves *v.* State, 123 Ga. 570, 51 S. E. 627.

7. Forte *v.* Dewar, Sc. Ct. Just. 7 F. 82; Matter of Cullinan, 114 N. Y. App. Div. 654, 99 N. Y. Supp. 1097.

In *New Hampshire* it has been held immaterial whether the game be one of skill, chance, or a sport. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

669. 1. Barker *v.* State, 127 Ga. 276, 56 S. E. 419; Com. *v.* Davis, (Ky. 1907) 102 S. W. 327. See Fleming *v.* State, 125 Ga. 17, 53 S. E. 579.

4. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505; Rainbolt *v.* State, (Tex. Crim. 1907) 101 S. W. 217.

5. The Receipt of an Article of Some Value, irrespective of success or failure by the player, but of less value than the sum paid for playing a penny-in-the-slot machine, will not prevent a conviction of gaming. Forte *v.* Dewar, Sc. Ct. Just. 7 F. 82.

670. 2. Cigars and Tobacco Not "Representatives of Value" under California Statute.— *Ex p.* Williams, (Cal. App. 1906) 87 Pac. 565.

671. 3. Hopkins *v.* State, 122 Ga. 583, 50 S. E. 351, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 670.

4. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

Statutory Exception in Massachusetts.— Com. *v.* Rosenthal, 195 Mass. 116, 80 N. E. 814.

672. 1. Com. *v.* Davis, (Ky. 1907) 102 S. W. 327.

Betting without Playing Sufficient.— Groves *v.* State, 123 Ga. 570, 51 S. E. 627.

Operation of Slot Machine by Public Officer to Secure Evidence Not Gambling.— Clement *v.* Belanger, 120 N. Y. App. Div. 304, 105 N. Y. Supp. 537.

2. Rainbolt *v.* State, (Tex. Crim. 1907) 101 S. W. 217.

3. Sending Out Circulars Inviting Persons to Bet, which contain an address to which communications may be sent, is within the Betting Act, and it is not necessary that the circular should invite persons to resort to the address for the purpose of betting, or that the bets should be accepted at the address. Stott *v.* Renton, (1907) Sc. Ct. Just. 88.

4. Fallwell *v.* State, 48 Tex. Crim. 35, 85 S. W. 1060.

5. Under a *Texas* statute it has been held not an offense to play cards for amusement at a house occupied by a family, unless accompanied by a bet or wager and the house is a common resort for gaming. Waggoner *v.* State, 49 Tex. Crim. 260, 92 S. W. 38; Gallegos *v.* State, (Tex. Crim. 1906) 95 S. W. 123; Lamar *v.* State, 49 Tex. Crim. 563, 95 S. W. 509.

It has been held in *Texas* that the fact that a private residence was commonly resorted to for the purpose of gaming (craps) would not deprive it of its character as a private residence. Thompson *v.* State, (Tex. Crim. 1906) 96 S. W. 1085.

In *Texas* it has been held that a game of craps played within ten feet of the door of a private residence is "at a private residence" and not punishable. Young *v.* State, (Tex. Crim. 1906) 97 S. W. 90.

It has been held that it makes no difference that people resorted to a private residence for gaming purposes, where the "old-time original game of craps" was played. Marks *v.* State, (Tex. Crim. 1907) 101 S. W. 805.

An Offense When Accompanied by Betting and Common Resort for Gaming.— Gallegos *v.* State, (Tex. Crim. 1906) 95 S. W. 123.

Punishable if Common Resort for Gaming.— Herrin *v.* State, (Tex. Crim. 1906) 97 S. W. 88.

The Texas Statute (Acts 1907, c. 49) punishes betting at cards, dice, or dominoes anywhere, and exemption from indictment for playing dominoes or cards at a private residence occupied by a family does not exculpate betting thereat. Purvis *v.* State, (Tex. Crim. 1908) 107 S. W. 55.

6. Private Residence Bedroom.— Barton *v.* State, (Tex. Crim. 1906) 95 S. W. 110.

Private Room.— It has been held that a room occupied for living by a married man alone, is not a private residence occupied by a family. Beard *v.* State, (Tex. Crim. 1907) 101 S. W. 796.

Schoolhouse Not Private Residence.— Inman *v.* State, 47 Tex. Crim. 609, 85 S. W. 796; Mapes *v.* State, (Tex. Crim. 1905) 85 S. W. 707.

Occupation by Family Unnecessary.— Williams *v.* State, 48 Tex. Crim. 325, 87 S. W. 1155.

Tent Private Residence.— Spencer *v.* State, 49 Tex. Crim. 382, 92 S. W. 847.

It has been held that a tent ten or fifteen steps from a saloon, occupied by an employee only, in absence of testimony that it was a public place is a private residence. Hooper *v.* State, (Tex. Crim. 1907) 105 S. W. 816.

673. 1. Herr *v.* Com., (Ky. 1906) 91 S. W. 666.

It has been held that the yard of a boarding house is not a public place, in the absence of evidence as to other games played there. Walker *v.* State, 147 Ala. 699, 41 So. 176.

Boarding House Not Inn.— Winston *v.* State, 145 Ala. 91, 41 So. 174.

So held in absence of evidence showing such character. Walker *v.* State, 147 Ala. 699, 41 So. 176.

6. Under the *Texas* statute it has been held unnecessary to show that a private room of a building not a private residence occupied by a

family was frequented for the purposes of gaming. Fallwell *v.* State, 48 Tex. Crim. 35, 85 S. W. 1069.

675. **5. In Kentucky Conviction Forfeits License.** — Herr *v.* Com., (Ky. 1906) 91 S. W. 666.

Forbidden by New York Statute. — Matter of Cullinan, 114 N. Y. App. Div. 654, 99 N. Y. Supp. 1097; Matter of Clement, 119 N. Y. App. Div. 622, 104 N. Y. Supp. 25; Clement *v.* Belanger, 120 N. Y. App. Div. 304, 105 N. Y. Supp. 537.

676. **1.** Brogden *v.* State, (Ala. 1907) 44 So. 403.

678. **4. Questions of Law or Fact.** — Ferrell *v.* Opelika, 144 Ala. 135, 39 So. 249.

5. Boarding House Not Per Se Public Place. — Winston *v.* State, 145 Ala. 91, 41 So. 174; Walker *v.* State, 147 Ala. 699, 41 So. 176.

679. **1. Question of Fact for Jury.** — Ferrell *v.* Opelika, 144 Ala. 135, 39 So. 249.

Private Residence — Common Resort for Gambling. — It has been held that proof of three or four games played by five or six persons at a private residence constitutes it a common resort for gambling. Herrin *v.* State, (Tex. Crim. 1906) 97 S. W. 88.

680. **3.** Brannon *v.* State, (Ala. 1905) 39 So. 983.

4. Playing Must Be in View of Public. — Davis *v.* State, 147 Ala. 117, 41 So. 404.

It has been held that a private yard which could not be seen from the public road is not a public place in the absence of evidence of any other game played there. Walker *v.* State, 147 Ala. 699, 41 So. 176.

Secluded Outdoor Places. — It has been held that playing at night, in woods one hundred fifty yards from a church and from a road, the place not being frequented for gaming, was not in a public place. Bradford *v.* State, 147 Ala. 118, 41 So. 1024.

681. **3. Shooting Matches.** — It has been held that engaging in a match is not a violation of *Kentucky* statute punishing engaging "in any hazard or game on which money or property is bet, won, or lost." Com *v.* Davis, (Ky. 1907) 102 S. W. 327.

Throwing Balls at Dummy Figures, Game of Skill and Chance, Not Wrong Per Se. — Bunnell *v.* Com., (Ky. 1907) 99 S. W. 237.

"Poker" Played for Money — Gaming. — Ford *v.* State, 86 Miss. 123, 38 So. 229.

"Pool Selling" and "Book Making" Gambling. — *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

Judicial Notice — Poker Gambling Game. — Shreveport *v.* Bowen, 116 La. 522, 40 So. 859.

682. **1.** State *v.* Vaughan, 81 Ark. 117, 98 S. W. 685. See Com. *v.* Davis, (Ky. 1907) 102 S. W. 327.

2. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

Bucket Shops for Bet Statutory Offense in Massachusetts. — Com. *v.* Rosenthal, 195 Mass. 116, 80 N. E. 814.

4. A Penny-in-the-slot Machine is a game of chance. Thompson *v.* Mason, 20 Cox C. C. 611, 99 L. T. N. S. 649.

5. **2. Judicial Notice Taken as** [illegible] v. State, 1 Ga. App. 776, 57 S. E. 1029.

"Twenty-six" — Game of Chance. — Seattle *v.* MacDonald, (Wash. 1907) 91 Pac. 952.

3. Game Played with Dice Distinct from Banking Game. — Evidence showing that the game was a banking game has been held insufficient to sustain a conviction for permitting a game with dice. Waggoner *v.* State, 49 Tex. Crim. 260, 92 S. W. 38.

4. Slot Machine Banking Game. — *Ex p.* Williams, (Cal. App. 1906) 87 Pac. 565.

Slot Machine Classed with Banking Games in Texas Statute. — Lytle *v.* State, (Tex. Crim. 1907) 100 S. W. 1160.

684. **1.** Coleman *v.* State, 48 Tex. Crim. 202, 87 S. W. 152.

Pool Table May Be Gaming Table. — Berry *v.* State, 49 Tex. Crim. 376, 92 S. W. 1081.

2. Slot Machine Banking Game. — *Ex p.* Williams, (Cal. App. 1906) 87 Pac. 565.

3. Selling Pools on Horse Races Not Gambling Device. — State *v.* Ayers, (Oregon 1907) 88 Pac. 653.

4. Floor of Occupied Dwelling Not Device. — State *v.* Hamilton, (Del. 1907) 67 Atl. 836.

"Crap Table" — Gaming Device Per Se. — Garboe *v.* Com., (Ky. 1908) 107 S. W. 227.

Slot Machine Gambling Device within Inhibition of Liquor-tax Law. — Matter of Cullinan, 114 N. Y. App. Div. 654, 99 N. Y. Supp. 1097; Matter of Clement, 119 N. Y. App. Div. 622, 104 N. Y. Supp. 25; Clement *v.* Belanger, 120 N. Y. App. Div. 304, 105 N. Y. Supp. 537.

A Penny-in-the-slot Machine held to be an implement used for gaming. Forte *v.* Dewar, Sc. Ct. Just. 7 F. 82.

685. **2. Slot Machine May Be Gaming Device.** — State *v.* Vasquez, 49 Fla. 126, 38 So. 830.

4. Dice — Gambling Device. — White *v.* State, 37 Ind. App. 95, 76 N. E. 554.

Chuck-a-luck Table and Crap Table within Rule Ejusdem Generis. — State *v.* Rosenblatt, 185 Mo. 114, 83 S. W. 975.

Crap Table within Rule Ejusdem Generis. — State *v.* Locket, 188 Mo. 415, 87 S. W. 470.

Poker Table — Crap Table. — In *Missouri* it has been held that proof of play at poker and craps shows that the tables were "adapted and designed" as gaming tables. State *v.* Mathis, 206 Mo. 604, 105 S. W. 604.

686. **3.** Barnes *v.* State, 73 Ark. 124, 91 S. W. 10; Anderson *v.* State, 2 Ga. App. 1, 58 S. E. 401; De Lam *v.* State, (Tex. Crim. 1906) 95 S. W. 532. See Bates *v.* Woods, 225 Ill. 126, 80 N. E. 84; Norris *v.* Logan, (Tex. Civ. App. 1906) 94 S. W. 123.

North Carolina Statute excepts purchase for future delivery upon margin by manufacturers and wholesale merchants of necessary commodities required in the ordinary course of their business. State *v.* Clayton, 138 N. Car. 732, 50 S. E. 866; State *v.* McGinnis, 138 N. Car. 724, 51 S. E. 50; State *v.* Gatewood, 138 N. Car. 749, 51 S. E. 53.

4. The *Arkansas* act of April 11, 1907, prohibiting dealings in futures on margin and conducting a place for such dealings has been held constitutional as not depriving any person of property without due process of law, not impairing contract obligations, and not interfering unjustifiably with interstate commerce. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570.

North Carolina Statute Constitutional. — Gate-

wood *v.* North Carolina, 203 U. S. 531, 27 U. S. Sup. Ct. 167, *affirming* State *v.* Gatewood, 138 N. Car. 749, 51 S. E. 53.

5. In Georgia it has been held that the licensing of a pool or billiard table under a state tax does not authorize betting thereat. Hopkins *v.* State, 122 Ga. 583, 50 S. E. 351.

688. 5. Person Gambling for Living Vagrant. — Shreveport *v.* Bowen, 116 La. 522, 40 So. 859.

689. 5. Fallwell *v.* State, 48 Tex. Crim. 35, 85 S. W. 1069.

6. Williams *v.* State, 48 Tex. Crim. 325, 87 S. W. 1155.

7. In *Texas* it has been held that evidence that a game of poker was played was sufficient to support an indictment for playing cards. Inman *v.* State, 47 Tex. Crim. 609, 85 S. W. 796.

Judicial Notice — Poker Gambling Game. — Shreveport *v.* Bowen, 116 La. 522, 40 So. 859.

8. "Pool Room" — Judicially Noticed. — State *v.* Maloney, 115 La. 498, 39 So. 539; State *v.* Rabb, 115 La. 733, 39 So. 971.

690. 3. Proof of Other Acts Inadmissible. — See Handy *v.* State, 49 Tex. Crim. 381, 92 S. W. 848.

To Prove Place Public. — It has been held that proof of other acts of gaming is proper to show that a boarding house was a public place. Winston *v.* State, 145 Ala. 91, 41 So. 174.

6. Bradford *v.* State, 147 Ala. 118, 41 So. 1024; Fleming *v.* State, 125 Ga. 17, 53 S. E. 579; Barker *v.* State, 127 Ga. 276, 56 S. E. 419; Reno *v.* State, 88 Miss. 583, 41 So. 7; Fallwell *v.* State, 48 Tex. Crim. 35, 85 S. W. 1069; Hale *v.* State, 49 Tex. Crim. 105, 90 S. W. 654; Ables *v.* State, 49 Tex. Crim. 292, 92 S. W. 414.

It has been held that proof of playing and betting at cards is sufficient to sustain conviction under indictment for playing and betting at a game played with cards, dice, or balls. Hubbard *v.* State, 123 Ga. 17, 51 S. E. 11.

It has been held that mere presence, or flight to avoid arrest, or both together, are not inconsistent with innocence, and proof thereof is insufficient to sustain conviction. Griffin *v.* State, 2 Ga. App. 534, 58 S. E. 781.

In *Texas* it has been held that an indictment charging the playing of craps not at a private residence is not sustained by evidence showing that the game was played within ten feet of the front door of a private residence. Young *v.* State, (Tex. Crim. 1906) 97 S. W. 90.

It has been held that although the evidence supports the charge, it will not support a conviction upon an instruction to convict upon another phase of the statute not included in the count proceeded upon. Chancellor *v.* State, (Tex. Crim. 1908) 107 S. W. 823.

Evidence Not Proving Venue Insufficient. — Walker *v.* State, 147 Ala. 699, 41 So. 176.

Illegal Arrest No Defense. — Mitchell *v.* State, 126 Ga. 84, 54 S. E. 931.

Private Residence Commonly Resorted to for Gaming. — Evidence held insufficient. Spencer *v.* State, 49 Tex. Crim. 382, 92 S. W. 847; Handy *v.* State, 49 Tex. Crim. 381, 92 S. W. 848.

Futures — Evidence Held Sufficient. — Barnes *v.* State, 77 Ark. 124, 91 S. W. 10; De Lam *v.* State, (Tex. Crim. 1906) 95 S. W. 532.

Evidence Held Sufficient. — Groves *v.* State, 123 Ga. 570, 51 S. E. 627; Sims *v.* State, 1 Ga. App. 776, 57 S. E. 1029; Butler *v.* State, 2 Ga. App. 623, 58 S. E. 1114; Barber *v.* State, 3 Ga. App. 598, 60 S. E. 285; Coffee *v.* State, (Tex. Crim. 1905) 87 S. W. 820; Williams *v.* State, 48 Tex. Crim. 325, 87 S. W. 1155; Herrin *v.* State, (Tex. Crim. 1906) 97 S. W. 88. See Goslin *v.* Com., (Ky. 1906) 90 S. W. 223.

691. 1. Davis *v.* State, 123 Ga. 502, 51 S. E. 501.

4. *In re* Burgess, 12 Idaho 143, 84 Pac. 1059; Mullen *v.* Moseley, 13 Idaho 457, 90 Pac. 986; Blodgett *v.* McVey, 131 Iowa 552, 108 N. W. 239; Purvis *v.* State, (Tex. Crim. 1908) 107 S. W. 55.

7. See Ferrell *v.* Opelika, 144 Ala. 135, 39 So. 249.

10. See Herr *v.* Com., (Ky. 1906) 91 S. W. 666.

GAMING HOUSES.

694. 3. It has been held in *California* that conducting a slot machine for cigars and tobacco is not an offense, those articles not constituting "money, checks, credits, or other representatives of value." *Ex p.* Williams, 4 Cal. App. xiii, 87 Pac. 565.

Oregon Nuisance Statute, stating the character of the act and specifying the facts evidencing its commission, has been held sufficiently definite to sustain an information charging pool selling, although not defining the crime. State *v.* Ayers, (Oregon 1907) 88 Pac. 653.

4. White *v.* State, 37 Ind. App. 95, 76 N. E. 554.

6. See State *v.* Carrick, 78 Vt. 1, 61 Atl. 35.

695. 3. Burlingame *v.* Thompson, 74 Kan. 393, 86 Pac. 449; Ruston *v.* Perkins, 114 La. 851, 38 So. 583; Mexico *v.* Harris, 115 Mo. App. 707, 92 S. W. 505. See State *v.* Hoyle, 98 Minn. 254, 107 N. W. 1130; State *v.* McMonies, 75 Neb. 443, 106 N. W. 454; State *v.* Ayers, (Oregon 1907) 88 Pac. 653.

Ordinance Prohibiting Exhibition of Gambling Implements in Protected Place and Resorting Thereto Constitutional. — Ah Sin *v.* Wittman, 198 U. S. 500, 25 U. S. Sup. Ct. 756.

In Georgia it has been held that an ordinance may not prohibit keeping a gaming house, where the offense is penal under a state statute, unless by express and specific legislative authority. Thrower *v.* Atlanta, 124 Ga. 1, 52 S. E. 76.

Ordinance Vesting Police Commissioners with Discretion as to License Valid. — Goytino *v.* McAleer, 4 Cal. App. 655, 88 Pac. 991.

Ordinance Prohibiting Keeping Card Table or Permitting Card Playing in Place of Business or Public Resort Void. — *Ex p.* Sapp, (Neb. 1907) 113 N. W. 261.

Power to Prevent and Suppress, Not Authorization to Legalize by License. — State *v.* Nease, 46 Oregon 433, 80 Pac. 897.

4. Hornstein *v.* U. S., (C. C. A.) 155 Fed. 48; State *v.* Ayers, (Oregon 1907) 88 Pac. 653, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 695.

it has been held that a municipal ordinance making the operation of a pool table unlawful is void as destroying a property right, under state laws licensing such operation and granting municipalities power to regulate, suppress, and tax the same, the operation not having become a nuisance. Crittenden *v.* Booneville, (Miss. 1908) 45 So. 723.

Greater New York Charter, § 318, empowering entry into house on report of two householders, has been held unconstitutional; and section 315 thereof, empowering inspection and restraint of gambling houses, does not authorize entry without warrant. Phelps *v.* McAdoo, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 524, 94 N. Y. Supp. 265.

Under Greater New York Charter, requiring inspection of gambling houses by the police, it has been held that no right of entry exists without warrant. Devlin *v.* McAdoo, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 57, 96 N. Y. Supp. 425.

Where a city ordinance under charter authority punishes gaming, etc., it has been held that a subsequent state law punishing the same offenses does not supersede the ordinance. Seattle *v.* MacDonald, (Wash. 1907) 91 Pac. 952.

Ordinance Void as to Part Providing Different Punishment from State Statute. — Clearwater *v.* Bowman, 72 Kan. 92, 82 Pac. 526.

State Law Controls unless Ordinance Based on Common Law. — Crittenden *v.* Booneville, (Miss. 1908) 45 So. 723.

5. Conviction under City Ordinance Not Bar. — Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

Conviction under City Ordinance Bar to Prosecution under General Law. — Mexico *v.* Harris, 115 Mo. App. 707, 92 S. W. 505.

7. Power to Regulate Does Not Authorize Prohibition. — State *v.* McMonies, 75 Neb. 443, 106 N. W. 454; *In re* McMonies, 75 Neb. 702, 106 N. W. 456.

Equity Will Not Enjoin Prosecution. — Littleton *v.* Burgess, 14 Wyo. 173, 82 Pac. 864.

696. 3. State Law Controls. — It has been held that a municipality cannot by ordinance suppress a pool room duly licensed, unless upon the ground that it is a nuisance. Crittenden *v.* Booneville, (Miss. 1908) 45 So. 723.

Statute Punishing Keeping of Bucket Shop Repeals Pro Tanto Tax Law Sanctioning Dealing in Futures. — Anderson *v.* State, 2 Ga. App. 1, 58 S. E. 401.

Pool Selling and Book Making Legalized by Charter, State Having Received Moneys Therefrom. — State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185.

7. Unauthorized License Not Ground for Injunction. — Levy *v.* Kansas City, 74 Kan. 861, 86 Pac. 149.

Pool Room — Prosecution Not Barred. State *v.* Nease, 46 Oregon 433, 80 Pac. 897.

Conflict between State Law and Ordinance. — It has been held that where a license has been granted by ordinance, authorized by charter, a court of equity will not enjoin prosecution under subsequent state law prohibiting gambling. Littleton *v.* Burgess, 14 Wyo. 173, 82 Pac.

8. Pool Room Common Gaming House. — Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

697. 1. Lane *v.* Springfield, 120 Ill. App. 5; Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289; State *v.* Nease, 46 Oregon 433, 80 Pac. 897; State *v.* Ayers, (Oregon 1907) 88 Pac. 653; State *v.* Carrick, 78 Vt. 1, 61 Atl. 35. See Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; State *v.* Vaughan, 81 Ark. 117, 98 S. W. 685.

In *Nebraska* it has been held that billiard and pool rooms are not nuisances *per se*. State *v.* McMonies, 75 Neb. 443, 106 N. W. 454.

Pool Room Not Nuisance Per Se. — State *v.* Scott, (Conn. 1907) 68 Atl. 258.

Pool Room Common Nuisance. — Respass *v.* Com., (Ky. 1907) 102 S. W. 331, 332; Gormley *v.* Com., (Ky. 1907) 102 S. W. 332.

To Charge Woman with Keeping Gambling Room Actionable Per Se. — Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299.

Habitual Use of House for Gaming Constitutes Disorderly House and Nuisance. — State *v.* Moore, (N. J. 1907) 68 Atl. 165.

3. Arenz *v.* Com., (Ky. 1907) 102 S. W. 238; Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289. See State *v.* Vaughan, 81 Ark. 117, 98 S. W. 685.

4. Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

698. 5. It has been held in *Texas* that a tent is a private residence within the exemption of the law, if not shown to have been commonly resorted to for gambling. Spencer *v.* State, 49 Tex. Crim. 382, 92 S. W. 847.

699. 1. It has been held under the *Missouri* statute that a platform and booth under a grand stand are within the designation of "building" or "room." State *v.* Oldham, 200 Mo. 538, 98 S. W. 497.

2. A Movable Bathing Booth on a Racecourse is an office or place within the *Canadian* statute. Rex *v.* Saunders, 12 Ont. L. Rep. 615, 7 Ann. Cas. 232.

5. Herr *v.* Com., (Ky. 1906) 91 S. W. 666; *In re* Cullinan, 114 N. Y. App. Div. 654, 99 N. Y. Supp. 1097; *In re* Clement, 119 N. Y. App. Div. 622, 104 N. Y. Supp. 25; Clement *v.* Belanger, 120 N. Y. App. Div. 662, 105 N. Y. Supp. 537. See State *v.* Yoe, 76 S. Car. 46, 56 S. E. 542.

Permitting Minors in Saloons Where Intoxicating Liquors Sold or Gambling Carried on, Punishable in New Mexico. — Church *v.* Territory, (N. Mex. 1907) 91 Pac. 721.

700. 3. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

701. 3. See *Ex p.* Meyers, (Cal. App. 1908) 94 Pac. 870.

Billiard and Pool Rooms Not Nuisances Per Se. — State *v.* McMonies, 75 Neb. 443, 106 N. W. 454.

5. "Pool Table" Embraced by Term "Billiard Table." — Clearwater *v.* Bowman, 72 Kan. 92, 82 Pac. 526.

6. Purlingame *v.* Thompson, [illegible], 86 Pac. 449.

8. *Ex p.* Meyers, (Cal. App. 1908) 94 Pac. 870; Com. *v.* Wills, (Ky. 1905) 80 S. W. 144; State *v.* Bell, 115 Mo. App. 13, 90 S. W. 757; Rhodes *v.* State, 118 Tenn. 761, 102 S. W.

899; Rainbolt *v.* State, 49 Tex. Crim. 427, 93 S. W. 737. See Burlingame *v.* Thompson, 74 Kan. 393, 86 Pac. 449; State *v.* McMonies, 75 Neb. 443, 106 N. W. 454.

9. State *v.* Nease, 46 Oregon 433, 80 Pac. 897; State *v.* Ayers, (Oregon 1907) 88 Pac. 653.

Pool Room Common-law Nuisance.— State *v.* Vaughan, 81 Ark. 117, 98 S. W. 685.

10. State *v.* Scott, (Conn. 1907) 68 Atl. 258.

In *Louisiana* it has been held that a statute not defining the offense, but punishing the operation of pool rooms, is constitutional. State *v.* Maloney, 115 La. 498, 39 So. 539; State *v.* Rabb, 115 La. 733, 39 So. 971; State *v.* Rhodes, 115 La. 737, 39 So. 972, *following* State *v.* Maloney, 115 La. 498, 39 So. 539.

It has been held in *Missouri* that the state is estopped from forfeiting the franchise of a corporation under a statute prohibiting pool selling and book making, where such corporation was authorized to perform such acts by charter granted prior to the statute, and the state had received and appropriated money from such sources. State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185.

Sale of Pools to and Registration of Bets with Minors Misdemeanor.— State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185.

702. 1. Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289. See State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185.

2. State *v.* Maloney, 115 La. 498, 39 So. [illegible].

3. Statute Applies When Bets Made Out of State. — State *v.* Oldham, 200 Mo. 538, 98 S. W. 497.

703. 2. Arenz *v.* Com., (Ky. 1907) 102 S. W. 238.

3. State *v.* McGinnis, 138 N. Car. 724, 51 S. E. 50; State *v.* Gatewood, 138 N. Car. 749, 51 S. E. 53. See Logan *v.* Postal Tel., etc., Co., 157 Fed. 570.

Telegraph to Another State.— It has been held that a person conducting an office where futures are bought and sold can be convicted of keeping a gaming house whether contracts are telegraphed out of state or not. Anderson *v.* State, 2 Ga. App. 1, 58 S. E. 401.

North Carolina Statute Constitutional.— Gatewood *v.* North Carolina, 203 U. S. 531, 27 U. S. Sup. Ct. 167, *affirming* State *v.* Gatewood, 138 N. Car. 749, 51 S. E. 53.

704. 2. See Bunnell *v.* Com., (Ky. 1907) 99 S. W. 237.

705. 8. Slot Machine Banking Game. — *Ex p.* Williams, 4 Cal. App. xiii, 87 Pac. 565.

Slot Machine Classed with Banking Games in Texas Statute. — Lytle *v.* State, (Tex. Crim. 1907) 100 S. W. 1160.

706. 1. Irvin *v.* State, 52 Fla. 51, 41 So. [illegible].

3. Judicial Notice — Crap Table Gambling Device Per Se. — Jarboe *v.* Com., (Ky. 1908) 107 S. W. 227.

707. 1. Taylor *v.* State, (Tex. Crim. 1906) 95 S. W. 119; Rainbolt *v.* State, (Tex. Crim. 1907) 101 S. W. 217.

10. Berry *v.* State, 49 Tex. Crim. 376, 92 S. W. 1081.

708. 2. State *v.* Ayers, (Oregon 1907) 88 Pac. 653.

709. 3. In *Missouri* it has been held that a [illegible], and pencil, a blackboard and numbered tickets, do not constitute a book, instrument, or device for the purpose of recording or registering bets or selling pools. State *v.* Oldham, 200 Mo. 538, 98 S. W. 497.

Selling Pools on Horse Races Not Gambling Device. — State *v.* Ayers, (Oregon 1907) 88 Pac. 653.

5. Forte *v.* Dewar, Sc. Ct. Just. 7 F. 82.

In *New York* it has been held that a slot machine is a gambling device within the inhibition of the liquor-tax law. *In re* Cullinan, 114 N. Y. App. Div. 654, 99 N. Y. Supp. 1097. See *In re* Clement, 119 N. Y. App. Div. 622, 104 N. Y. Supp. 25; Clement *v.* Belanger, 120 N. Y. App. Div. 662, 105 N. Y. Supp. 537.

New York Statute — Slot Machine.— It has been held that operation of a slot machine by an officer to secure evidence of violation of liquor-tax law is not gambling so far as agents are concerned. Clement *v.* Belanger, 120 N. Y. App. Div. 662, 105 N. Y. Supp. 537.

7. Slot Machine — Gaming Apparatus. — State *v.* Vasquez, 49 Fla. 126, 38 So. 830.

Penny-in-the-slot Machine Implement of Gaming — English Statute. — Fort *v.* Dewar, Sc. Ct. Just. 7 F. 82.

710. 2. "Ticker" — Devices for Buying and Selling Pools.— State *v.* Scott, (Conn. 1907) 68 Atl. 258.

5. State *v.* Locket, 188 Mo. 415, 87 S. W. 470; State *v.* Mathis, 206 Mo. 604, 105 S. W. 604.

Floor of Occupied Dwelling Not Device. — State *v.* Hamilton, (Del. 1907) 67 Atl. 836.

Chuck-a-luck Table and Crap Table within Rule Ejusdem Generis.— State *v.* Rosenblatt, 185 Mo. 114, 83 S. W. 975.

6. Under the *Indiana* statute it has been held that "dice" is a "gambling device." White *v.* State, 37 Ind. App. 95, 76 N. E. 554.

711. 1. Proprietor, Manager, Person in Control or Running Public Gaming House Liable under Texas Statute. — Strong *v.* State, (Tex. Crim. 1907) 105 S. W. 785.

3. Poker Table — Crap Table.— State *v.* Mathis, 206 Mo. 604, 105 S. W. 604.

5. Coffee *v.* State, (Tex. Crim. 1905) 87 S. W. 820; Rainbolt *v.* State, (Tex. Crim. 1907) 101 S. W. 217.

712. 4. Huber *v.* Com., (Ky. 1907) 102 S. W. 291; Ford *v.* State, 86 Miss. 123, 38 So. 229.

8. Flynn *v.* People, 123 Ill. App. 591; Berry *v.* State, 49 Tex. Crim. 376, 92 S. W. 1081; Brown *v.* State, 49 Tex. Crim. 419, 93 S. W. 723. See Ford *v.* State, 86 Miss. 123, 38 So. 229.

Knowledge Question for Jury. — Herr *v.* Com., (Ky. 1906) 91 S. W. 666.

Permitting Games — Knowledge of Betting. — It has been held in *Kentucky* that where the game is not wrong *per se*, "suffer" and "permit" mean with knowledge of betting, or the evidence must show facts from which knowledge can be inferred. Bunnell *v.* Com., (Ky. 1907) 99 S. W. 237.

Knowledge Presumed after Proof of Setting Up of Gambling Device Per Se under Kentucky Statute. — Jarboe *v.* Com., (Ky. 1908) 107 S. W. 227.

713. 2. Pool Room — Common Nuisance. — [illegible] all who set up, operate, or promote a common gaming house maintain the nuisance. Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

3. **Permitting Gaming — Ownership Not Necessary.** [illegible] Mo. App. 707.

Permitting Gambling Device to Be Set Up or Used — Possession and Control of Premises Necessary. — Nelson *v.* U. S., 28 App. Cas. (D. C.)

4. Under the *Mississippi* statute it is necessary that defendant be interested in the loss or gain of the gaming table. Brazele *v.* State, 86 Miss. 286, 38 So. 314.

714. 4. *Ex p.* Williams, 4 Cal. App. xiii, [illegible] Pac. 565.

715. 4. **Permitting Gaming.** — Under *Kentucky* statute it has been held that compensation, percentage, or commission is not necessary element. Herr *v.* Com., (Ky. 1906) 91 S. W. 666.

5. Proctor *v.* Territory, 18 Okla. 378, 92 Pac. 389. See Herr *v.* Com., (Ky. 1906) 91 S. W. 666.

Cigars Not Embraced in "Other Representatives of Value" under California Statute. — *Ex p.* Williams, 4 Cal. App. xiii, 87 Pac. 565.

716. 2. See Com. *v.* Charlie Joe, 193 Mass. 383, 79 N. E. 737.

Permitting Use of Gambling Device Once Supports Conviction. — Nelson *v.* U. S., 28 App. Cas. (D. C.) 32.

718. 3. Groves *v.* State, 123 Ga. 571, 51 S. E. 627; White *v.* State, 127 Ga. 273, 56 S. E. 425; Mexico *v.* Harris, 115 Mo. App. 707, 92 S. W. 505. See Rosenthal *v.* State, 126 Ga. 558, 55 S. E. 497.

Bettors. — It has been held that a player cannot be guilty of keeping and maintaining a gaming house. White *v.* State, 127 Ga. 273, 56 S. E. 425.

Furnishing Machine for Betting. — It has been held that furnishing a "ticker" and telegraph service, with knowledge of intended use, constitutes assistance in maintaining a pool room. State *v.* Scott, (Conn. 1907) 68 Atl. 258.

"Accessory" Not Punishable in Texas. — Strong *v.* State, (Tex. Crim. 1907) 105 S. W. 785.

720. 1. But see Rex *v.* Hendrie, 11 Ont. L. Rep. 202, 10 Can. Crim. Cas. 298.

4. Bashinski *v.* State, 122 Ga. 164, 50 S. E. 54.

5. **Actual Knowledge on Part of Lessor** that premises leased were to be used for gambling purposes, necessary to conviction under the *Illinois* statute. Flynn *v.* People, 123 Ill. App. [illegible]

7. *In re* Clement, 119 N. Y. App. Div. 622, 104 N. Y. Supp. 25.

8. See Com. *v.* Charlie Joe, 193 Mass. 383, 79 N. E. 737.

721. 1. Bunnell *v.* Com., (Ky. 1907) 99 S. W. 237.

It has been held in *Kentucky* that a crap table is a gambling device *per se*, and knowledge is presumed after proof of setting up unless the contrary is clearly established. Jarboe *v.* Com., (Ky. 1908) 107 S. W. 227.

5. Ford *v.* State, 86 Miss. 123, 38 So. 229.

9. **A Common Passage** leading to a common stair is not a house, building, room, or place, within the meaning of the statute. Wright *v.* Smith, Sc. Ct. Just. 6 F. 18.

A shop where a penny-in-the-slot machine was kept, held to be within the gaming houses act. Thompson *v.* Mason, 20 Cox. C. C. 641, 90 L. T. N. S. 649.

722. 2. **A Place Inclosed but Not Roofed in** is within a police act of Scotland empowering a police constable to enter a place kept or used as a gaming house. Flannagan *v.* Hill, Sc. Ct. Just. 7 F. 26.

3. See Clark *v.* Dykes, Sc. Ct. Just. 8 F. 13.

6. See Vallance *v.* Campbell, Sc. Ct. Just. 8 F. 62.

Sufficiency of Evidence of "Resorting" and "User" of Place for Betting. — Rex *v.* Russell, 69 J. P. 247.

A Conviction for Frequenting and Using a Road or Public Place for betting is justified where it appeared that a bookmaker transacted a betting business with various persons about such a place for twenty minutes. Davies *v.* Jeans, Sc. Ct. Just. 6 F. 37.

723. 2. **A Person Acting as Banker at a Club** in a game of chance is "assisting in conducting the business" within the statute. Derby *v.* Bloomfield, 20 Cox C. C. 674, 91 L. T. N. S. 99.

7. But see Hawke *v.* Hulton, 22 Times L. Rep. 169.

9. **Invitation to Bet by Circulars Held "Resorting."** — Stott *v.* Renton, (1907) Sc. Ct. Just. 88.

724. 8. Porter *v.* State, (Tex. Crim. 1905) 86 S. W. 1018.

It has been held that subsequent conversation of defendant, showing attempt to spirit away witness, is admissible as tending to prove guilt. State *v.* Hamilton, (Del. 1907) 67 Atl. 836.

Defendant's Control of Premises. — It has been held competent to show control by testimony of owner that he leased to the defendant. Bashinski *v.* State, 123 Ga. 508, 51 S. E. 499.

Proof Limited to Description in Indictment. — See State *v.* Scott, (Conn. 1907) 68 Atl. 258.

Charging as to Evidence — Joint Defendants. — It has been held that it is not error, where evidence is direct as to one defendant and circumstantial as to the other, to refuse to charge the law of circumstantial evidence as to the one and to charge it as to the other. Rosenthal *v.* State, 126 Ga. 558, 55 S. E. 497.

Pool Room — Common Nuisance. — It has been said that it is not competent for the defendant to show that no noise or boisterous conduct occurred or that care was taken to regulate attendance. See Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

It has been held that evidence that there was no disturbance of the peace in the house or annoyance to the neighborhood is immaterial, not being charged, and verdict of acquittal upon such evidence should be reversed. Com. *v.* Huber, (Ky. 1907) 104 S. W. 345.

Second Offense. — It has been held that defendant can show facts of a transaction under

which he has been convicted when again prosecuted under other allegations. Taylor *v.* State, (Tex. Crim. 1906) 98 S. W. 839.

725. **1.** State *v.* Hoyle, 98 Minn. 254, 107 N. W. 1130.

4. State *v.* Hoyle, 98 Minn. 254, 107 N. W. 1130.

5. Bashinski *v.* State, 122 Ga. 164, 50 S. E. 54.

7. Bashinski *v.* State, 122 Ga. 164, 50 S. E. 54; State *v.* Hoyle, 98 Minn. 254, 107 N. W. 1130.

Reputation of Frequenters Admissible under Indictment Charging Renting for Gaming.— Bashinski *v.* State, 123 Ga. 508, 51 S. E. 499.

726. **4. Plea of Guilty on Prior Prosecution.** — Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

5. It has been held that where it is uncertain whether acts testified to were committed before or after indictment the evidence may be admitted and the jury instructed to disregard it if the acts are found to have been committed subsequent to indictment. Levan *v.* State, 125 Ga. 278, 54 S. E. 173.

It has been held that a charge limiting the period to the year in which the information was filed, and preceding such filing, cannot be complained of by the defendant. State *v.* Holden, 203 Mo. 581, 102 S. W. 490; State *v.* Davis, 203 Mo. 616, 102 S. W. 528.

7. Bashinski *v.* State, 122 Ga. 164, 50 S. E. 54; Bashinski *v.* State, 123 Ga. 508, 51 S. E. 499.

It has been held competent to show that the defendant, on the trial of a different gaming case, was identified as the person who kept and maintained the gaming house under investigation at the time. White *v.* State, 127 Ga. 273, 56 S. E. 425.

It has been held that evidence of other facts to show knowledge and intent is not admissible in the absence of explanatory proof. People *v.* Ebel, 98 N. Y. App. Div. 270, 90 N. Y. Supp. 628.

8. Ford *v.* State, 86 Miss. 123, 38 So. 229; Mexico *v.* Harris, 115 Mo. App. 707, 92 S. W. 505; Strong *v.* State, (Tex. Crim. 1907) 105 S. W. 785. See Bashinski *v.* State, 122 Ga. 164, 50 S. E. 54; Com. *v.* Charlie Joe, 193 Mass. 383, 79 N. E. 737; State *v.* Hoyle, 98 Minn. 254, 107 N. W. 1130.

It has been held in *Georgia* that an indictment charging the keeping and maintenance of a gambling house is sustained by proof of guilt of either prohibited act. Bryan *v.* State, 120 Ga. 201, 47 S. E. 574.

Evidence Held Sufficient. — Davis *v.* State, 123 Ga. 502, 51 S. E. 501; Groves *v.* State, 123 Ga. 571, 51 S. E. 627; Hicks *v.* State, 1 Ga. App. 722, 57 S. E. 958; Anderson *v.* State, 2 Ga. App. 1, 58 S. E. 401; Jarboe *v.* Com., (Ky. 1908) 107 S. W. 227; State *v.* Holden, 203 Mo. 581, 102 S. W. 490; Stetter *v.* State, (Neb. 1906) 110 N. W. 761; Moore *v.* State, 49 Tex. Crim. 378, 92 S. W. 1083; Rainbolt *v.* State, (Tex. Crim. 1907) 101 S. W. 217.

Evidence Held Insufficient.— Brown *v.* State, 49 Tex. Crim. 419, 93 S. W. 723.

9. Bashinski *v.* State, 123 Ga. 508, 51 S. E. 499; Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289; Ford *v.* State, 86 Miss. 123, 38 So. 229.

727. **1.** Coffee *v.* State, (Tex. Crim. 1905) 87 S. W. 820.

Where Evidence Is Direct, Refusal to Charge Law of Circumstantial Evidence Not Erroneous. — Rosenthal *v.* State, 126 Ga. 558, 55 S. E. 497.

2. Moore *v.* State, 49 Tex. Crim. 378, 92 S. W. 1083.

3. See *Ex p.* Garza, (Tex. Crim. 1906) 95 S. W. 1059.

4. Ford *v.* State, 86 Miss. 123, 38 So. 229.

It has been held in *Texas* that where the state fails to prove authorization or permission, and defendant's testimony excludes the idea of knowledge, a conviction will not be sustained. Brown *v.* State, 49 Tex. Crim. 419, 93 S. W. 723.

Question for Jury.— Herr *v.* Com., (Ky. 1906) 91 S. W. 666.

Circumstantial Evidence of Knowledge Held Sufficient. — Huber *v.* Com., (Ky. 1907) 102 S. W. 291.

Permitting Minor to Play Pool. — Rainbolt *v.* State, 49 Tex. Crim. 427, 93 S. W. 737.

7. Groves *v.* State, 123 Ga. 571, 51 S. E. 627.

728. **2. Plea in Abatement Submits Questions of Law for Court Alone.**— Stetter *v.* State, (Neb. 1906) 110 N. W. 761.

7. Bashinski *v.* State, 123 Ga. 508, 51 S. E. 499.

10. Herr *v.* Com., (Ky. 1906) 91 S. W. 666.

Statutory Provisions. — Under the *Indiana* statute an action lies to dissolve a corporation conducting an hotel and health resort, for abuse of franchise by conducting a gambling place. State *v.* French Lick Springs Hotel Co., (Ind. App. 1907) 82 N. E. 801.

Pool Selling and Acts Connected Therewith. — State *v.* Oldham, 200 Mo. 538, 98 S. W. 497.

Improper Cumulation of Penalties. — Lane *v.* Springfield, 120 Ill. App. 5.

729. **2.** Huber *v.* Com., (Ky. 1907) 102 S. W. 291; Respass *v.* Com., (Ky. 1907) 102 S. W. 331. See State *v.* Vaughan, 81 Ark. 117, 98 S. W. 685.

Judgment of Abatement Operates upon Person and Property.— It has been held that such judgment is enforceable by contempt proceedings and by writ against property. Ehrlich *v.* Com., (Ky. 1907) 102 S. W. 289; Enright *v.* Com., (Ky. 1907) 102 S. W. 799.

Act Authorizing Injunction against Using Premises as Gaming House Constitutional. — *Ex p.* Allison, 48 Tex. Crim. 634, 90 S. W. 492; *Ex p.* Allison, 99 Tex. 455, 90 S. W. 870. See Cain *v.* State, (Tex. Civ. App. 1907) 106 S. W. 770.

GARBAGE.

729. **6. Municipal Ordinance — Constitutionality.** — See Bauer *v.* Casey, 26 Ohio Cir. Ct. 598.

GARNISHMENT.

738. **1.** Davis *v.* Choctaw, etc., R. Co., 73 Ark. 124, 3 Ann. Cas. 658, 83 S. W. 318, [illegible] 11 Am. and Eng. [illegible] of Law (2d ed.) 1.

739. **1.** Davis *v.* Choctaw, etc., R. Co., 73 Ark. 124, 3 Ann. Cas. 658, 83 S. W. 318.

3. The garnishee summons confers no more than an inchoate lien. Pitzl *v.* Winter, 96 Minn. 499, 105 N. W. 673.

11. W. L. Murdock Brokerage Co. *v.* Collins, 146 Ala. 604, 40 So. 96; Chicago, etc., R. Co. *v.* Moore, 117 Ill. App. 147; Howard Co. *v.* Miller, 123 Ill. App. 483; Gilbert Book Co. *v.* Pye, (Tex. Civ. App. 1906) 95 S. W. 8; State *v.* Pauli, 126 Wis. 65, 104 N. W. 1007.

710. 5. Baltimore, etc., R. Co. *v.* Allen, 58 W. Va. 388, 52 S. E. 465.

711. 1. Heller *v.* Peoples' Sav. Bank, 138 Mich. 192, 101 N. W. 226; Chicago Herald Co. *v.* Bryan, 195 Mo. 590, 92 S. W. 906; Thatcher *v.* Jeffries, (Tex. Civ. App. 1905) 91 S. W. 1091; State *v.* Superior Ct., 40 Wash. 443, 82 Pac. 875; Tatum *v.* Geist, 40 Wash. 575, 82 Pac. 902.

But where the affidavit and bond have been filed and the summons issued, the garnishment becomes a proceeding entirely distinct from the main action. Warlick *v.* Neal Loan, etc., Co., 120 Ga. 1070, 48 S. E. 402.

712. 1. Allen *v.* Ætna L. Ins. Co., (C. C. A.) 145 Fed. 881.

2. A suit in equity in the nature of an equitable trustee process to procure a decree in the nature of a judgment *in rem* will lie in *Massachusetts* against a domestic corporation upon a life insurance policy held by a citizen and resident of another state, as the liability is property within the state. Biggert *v.* Straub, 193 Mass. 77, 78 N. E. 770.

3. Veeder Mfg. Co. *v.* Marshall-Sanders Co., 79 Conn. 15, 63 Atl. 641.

5. Veeder Mfg. Co. *v.* Marshall-Sanders Co., 79 Conn. 15, 63 Atl. 641; Gilbert Book Co. *v.* Pye, (Tex. Civ. App. 1906) 95 S. W. 8. See also Bacon *v.* Towers, (Minn. 1908) 115 N. W. 205; Meek *v.* Houston Ice, etc., Co., (Tex. Civ. App. 1906) 96 S. W. 937.

713. 1. McShane *v.* Knox, (Minn. 1908) 114 N. W. 955.

2. Veeder Mfg. Co. *v.* Marshall-Sanders Co., 79 Conn. 15, 63 Atl. 641.

714. 2. The legislature may lawfully abolish the remedy at any time before judgment against the garnishee. Lears *v.* Seaboard Air Line R. Co., (Ga. App. 1908) 60 S. E. 343, wherein the garnishee had answered before the change in the law.

5. Norton *v.* Yates, (1906) 1 K. B. 112; Cairney *v.* Back, (1906) 2 K. B. 746.

7. Morris Box Board Co. *v.* Rossiter, 30 Pa. Super. Ct. 23.

9. Veeder Mfg. Co. *v.* Marshall-Sanders Co., 79 Conn. 15, 63 Atl. 641; Baltimore, etc., R. Co. *v.* Allen, 58 W. Va. 388, 52 S. E. 465.

No jurisdiction will be obtained of a debt due from a nonresident served by publication unless the complaint or affidavit, on which the order of publication was based, describes such property. Disconto Gesellschaft *v.* Terlinden, 127 Wis. 673, 106 N. W. 821.

715. 1. Montgomery *v.* Whitehead, 40 Colo. 320, 90 Pac. 509.

2. Allen *v.* Ætna L. Ins. Co., (C. C. A.) 145 Fed. 881; Norton *v.* Yates, (1906) 1 K. B. 112, *approving In re* Combined Weighing, etc., Mach. Co., 43 Ch. D. 99, cited in the original note, and *distinguishing Ex p.* Joselyne, 8 Ch. D. 327, referred to in that note; Cairney *v.* Back, (1906) 2 K. B. 746.

3. "A garnishment proceeding is neither more nor less than an action by the defendant against the garnishee for the use of the plaintiff." State *v.* Superior Ct., 40 Wash. 443, 82 Pac. 875.

716. 1. See Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455; Bennett *v.* Hebbard, (N. H. 1907) 68 Atl. 537.

3. W. L. Murdock Brokerage Co. *v.* Collins, 146 Ala. 604, 40 So. 96; Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455. See also Richardson *v.* Kaufman, 143 Ala. 243, 39 So. 368.

Contracts to waive exemptions will not give the court jurisdiction to issue process in respect thereto. Walker *v.* Swift Fertilizer Works, (Ga. App. 1907) 59 S. E. 850; Traders' Invest. Co. *v.* Macon R., etc., Co., 3 Ga. App. 125, 59 S. E. 454.

4. Clyne *v.* Easton, 148 Cal. 287, 83 Pac. 36; King *v.* Harrigan, 145 Mich. 436, 108 N. W. 748; Gilbert Book Co. *v.* Pye, (Tex. Civ. App. 1906) 95 S. W. 8.

Liberal Construction in Favor of Garnishee. — Marshall *v.* McCormick, 27 R. I. 357, 62 Atl. 312.

717. 1. Illinois Cent. R. Co. *v.* Cowles, 127 Ill. App. 456, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747. See also Bennett *v.* Hebbard, (N. H. 1907) 68 Atl. 537.

4. Chicago Herald Co. *v.* Bryan, 195 Mo. 590, 92 S. W. 906; Thatcher *v.* Jeffries, (Tex. Civ. App. 1905) 91 S. W. 1091.

In Aid of Wife's Periodical Alimony. — Edmunds *v.* Edmunds, (1904) P. 362, 91 L. T. N. S. 568.

Not in Aid of a Satisfied Judgment. — Masterson *v.* Keller, (Tex. Civ. App. 1905) 89 S. W. 803.

5. American Book Co. *v.* Baker, 119 Mo. App. 275, 95 S. W. 957.

Not upon a Dormant Judgment. — Ingram *v.* Jackson Mercantile Co., 2 Ga. App. 218, 58 S. E. 372. See also Morgan First Nat. Bank *v.* Brown, (Tex. Civ. App. 1906) 92 S. W. 1052.

But the presumption is that the judgment is not dormant. Baze *v.* Island City Mfg. Co., (Tex. Civ. App. 1906) 94 S. W. 460.

A Reversal of the Judgment in the principal action makes the garnishment void. Chicago Herald Co. *v.* Bryan, 195 Mo. 590, 92 S. W. 906.

Proving Judgment. — When the garnishing affidavit set forth that the indebtedness of the defendant to the plaintiff was on a judgment, and an issue was formed by the answer of the garnishee and the plaintiff's traverse thereto, the plaintiff must prove the judgment. Fagan *v.* Jackson, 1 Ga. App. 24, 57 S. E. 1052.

718. 2. But Not upon a Dormant Judgment Itself. — See cases cited *supra*, **717.** 5.

719. 2. Welch *v.* Renfro, (Tex. Civ. App. 1906) 94 S. W. 107.

3. Actions for Money. — Under the *Minnesota* statute (§ 5306, Gen. Stat. 1804) providing that garnishee summons may issue "in any action in a court of record or justice court, for the recovery of money," garnishment proceedings are authorized in actions in tort. Cummings *v.* St. Paul Nat. Bank, (Minn. 1906) 106 N. W. 304.

750. 1. **Illustrations.**— In *California*, where a judgment creditor must obtain an order authorizing an action against the garnishee, if the garnishee brings a bill of interpleader against the judgment creditor and the judgment debtor, and the latter appears, the court will have jurisdiction to determine the case, although the judgment creditor's right to proceed against the garnishee is incomplete. Water Supply Co. *v.* Sarnow, 1 Cal. App. 479, 82 Pac. 689.

The Supreme Court of *Wisconsin* has held that the courts of that state will not entertain jurisdiction of an action in tort by one nonresident alien against another served within the state, where the effect of garnishment proceedings in aid of such action will be prejudicial to a resident creditor of the defendant, particularly in case the foreign plaintiff is really a mere agent for the foreign trustee in bankruptcy of the defendant. Disconto Gesellschaft *v.* Terlinden, 127 Wis. 673, 106 N. W. 821.

2. Leffler *v.* Union Compress Co., 126 Ga. 662, 55 S. E. 927.

6. Howard Co. *v.* Miller, 123 Ill. App. 483.

751. 3. **In Indiana** there may be a garnishee summons and judgment without a writ of attachment. Malott *v.* Johnson, 37 Ind. App. 678, 77 N. E. 866.

752. 4. Disconto Gesellschaft *v.* Terlinden, 127 Wis. 673, 106 N. W. 821, *per* the *dissenting* opinion of Cassoday, C. J., *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 752.

753. 3. Clyne *v.* Easton, 148 Cal. 287, 83 Pac. 36.

4. Morgan First Nat. Bank *v.* Brown, (Tex. Civ. App. 1906) 92 S. W. 1052.

The Affidavit Is Sufficient Application. — Burge *v.* Beaumont Carriage Co., (Tex. Civ. App. 1907) 105 S. W. 232.

The application and affidavit for garnishment may be combined with the petition in the principal suit in one instrument, or if the instruments, though separate, are attached to each other, the petition will be considered as a part of the application and affidavit. Trabue *v.* Whitney, (Tex. Civ. App. 1906) 94 S. W. 186.

754. 1. Morrison *v.* Hilburn, 126 Ga. 114, 54 S. E. 938; Skinner Mfg. Co. *v.* Vineberg, 8 Quebec Pr. 201.

3. See Morrison *v.* Hilburn, 126 Ga. 114, 54 S. E. 938; Trabue *v.* Whitney, (Tex. Civ. App. 1906) 94 S. W. 186; Le Tulle Mercantile Co. *v.* Markham Rice Milling Co., (Tex. Civ. App. 1906) 94 S. W. 416; Burge *v.* Beaumont Carriage Co., (Tex. Civ. App. 1907) 105 S. W. 232. See, as illustrating when clerical error may be disregarded, Morgan First Nat. Bank *v.* Brown, (Tex. Civ. App. 1906) 92 S. W. 1052.

Not to Be Traversed by Defendant. — Cohen *v.* Goodrum Tobacco Co., 1 Ga. App. 38, 57 S. E. 974.

4. U. S. Fidelity, etc., Co. *v.* Warnell, (Tex. Civ. App. 1906) 103 S. W. 690; Orlopp *v.* Schueller, 26 Ohio Cir. Ct. 127.

Where the amount stated in the affidavit is less than that in the petition, it is not a fatal variance, and the petition can be looked to in aid of the statement as to the amount due made in the affidavit. Burge *v.* Beaumont Carriage Co., (Tex. Civ. App. 1907) 105 S. W. 232.

5. Rumley *v.* Saxauer, 6 N. W. Ter. 63.

6. Rumley *v.* Saxauer, 6 N. W. Ter. 63.

7. Where a garnishment bond runs to two defendants jointly, either or both of them may sue upon it. Harrington *v.* Gordon, 42 Wash. 692, 80 Pac. 187.

755. 4. State *v.* Superior Ct., 40 Wash. 443, 82 Pac. 875.

Where a justice of the peace has jurisdiction of the principal suit it is immaterial that the indebtedness of the garnishee to the defendant is greater than the limit of the justice's jurisdiction, as only enough of the debt to satisfy the plaintiff's claim is sought by the garnishment. Davis *v.* Choctaw, etc., R. Co., 73 Ark. 124, 3 Ann. Cas. 658, 83 S. W. 318.

Justice's Judgments. — In *Arkansas* where a judgment recovered before a justice of the peace has been docketed in the office of the clerk of the Circuit Court of the same county, a writ of garnishment thereon may issue to the sheriff of another county; the judgment in effect becomes one of the Circuit Court. St. Louis, etc., R. Co. *v.* Bowman, 76 Ark. 32, 88 S. W. 1033.

In *Minnesota*, after the principal action has been removed by appeal from a justice's court into the District Court, garnishment proceedings may be commenced in the District Court. Hopkins *v.* McCusker, (Minn. 1908) 114 N. W. 468.

6. Gilbert Book Co. *v.* Pye, (Tex. Civ. App. 1906) 95 S. W. 8; Rumley *v.* Saxauer, 6 N. W. Ter. 63.

What Errors Are Not Jurisdictional.— Webster Mfg. Co. *v.* Penrod, (Minn. 1907) 114 N. W. 257.

8. It has been held in *Kentucky* that a mistake in the name of the defendant, both in the principal suit and in the garnishment, will not protect the garnishee in paying his debt to the real defendant if he had reason to suppose that the proceedings were intended to be against his creditor. Citizens' Sav. Bank *v.* Boswell, (Ky. 1907) 104 S. W. 1014.

Nature and Place of Defendant's Occupation Must Be Stated. — Mason *v.* Armstrong, 8 Quebec Pr. 351.

756. 4. Lachapelle *v.* Gagne, 8 Quebec Pr. 163; Chartier *v.* Larivière, 8 Quebec Pr. 131; William Skinner Mfg. Co. *v.* Vineberg, 8 Quebec Pr. 107.

5. See Commercial Real Estate, etc., Co. *v.* Riemann, 116 Mo. App. 640, 93 S. W. 305; Heffner *v.* Rice, (Mo. App. 1908) 108 S. W. 590.

6. Wright *v.* Southern R. Co., 141 N. Car. 164, 53 S. E. 831. See also Harvey *v.* Thompson, 128 Ga. 147, 57 S. E. 104.

7. Harvey *v.* Thompson, 128 Ga. 147, 57 S. E. 104.

Garnishee May Have Defendant Brought in. — Eastham *v.* Blanchette, (Tex. Civ. App. 1906) 94 S. W. 441.

8. Service by Publication in the Principal Action Necessary. — Scudder *v.* Marker, (Iowa 1907) 114 N. W. 43.

9. Veeder Mfg. Co. *v.* Marshall-Sanders Co., 79 Conn. 15, 63 Atl. 641; Webster Mfg. Co. *v.* Penrod, (Minn. 1907) 114 N. W. 257; State *v.* Pauli, 106 Wis. 600, 82 N. W. 1007.

757. 1. See Richardson *v.* Kaufman, 143 Ala. 242, 39 So. 268.

2. See Edmunds *v.* Edmunds, (1904) P. 362, 91 L. T. N. S. 568; Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14.

"Only such demands as lie in contract, and which the defendant can enforce in an action at law, can be reached by garnishment." Klipstein *v.* Allen-Miles Co., (C. C. A.) 136 Fed. 385.

Contents of a Safe-deposit Box.— Washington L. & T. Co. *v.* Susquehanna Coal Co., 26 App. Cas. (D. C.) 149.

A Draft is subject to garnishment under the *Washington* statute. Washington Brick, etc., Co. *v.* Traders' Nat. Bank, 46 Wash. 23, 89 Pac. 157.

3. Heimbuecher *v.* Goff, 119 Ill. App. 373. See also Nathan *v.* St. John, 146 Ala. 596, 40 So. 970.

Must Be Such a Liability as Would Support an Action at Law by Defendant.— Boylan *v.* Hines, (W. Va. 1907) 59 S. E. 503.

Garnishment Will Not Lie on a Verdict Before Judgment, as there is no present right of action upon it. Cappelli *v.* Wood, 27 R. I. 411, 62 Atl. 978.

758. 4. Ryan *v.* Kimberly, 118 Ill. App. 361.

5. See Smith *v.* Marker, (C. C. A.) 154 Fed. 838, 6 Indian Ter. 213, 90 S. W. 611.

759. 3. Smith *v.* Marker, (C. C. A.) 154 Fed. 838, 6 Indian Ter. 213, 90 S. W. 611.

760. 5. Where, under a contract to gather oil on shares, the garnishee was to hold a certain part of the defendant's share as security for the completion of the contract, and the garnishee before service of the writ had terminated the contract without cause, the defendant's share of oil in the garnishee's hands was subject to the writ. J. M. Guffey Petroleum Co. *v.* Nearn, (Tex. Civ. App. 1907) 100 S. W. 967.

761. 5. Under the *Alabama* Code, § 764, in an equitable action a trustee of the defendant may be summoned as garnishee, the interest of the *cestui que trust* being in gross. Riordan *v.* Schlicher, 146 Ala. 615, 41 So. 842.

762. 2. Income in the hands of the trustee, where the trust was created by the *cestui que trust,* is, it seems, subject to garnishment by the latter's creditor. Egbert *v.* De Solms, 218 Pa. St. 207, 67 Atl. 212.

763. 2. See Holmes *v.* Pope, 1 Ga. App. 338, 58 S. E. 281.

764. 2. The amount agreed to be paid in settlement of an action in tort is subject to garnishment in the hands of the tort feasor. Lee *v.* Louisville, etc., R. Co., 2 Ga. App. 337, 58 S. E. 520.

4. Meek *v.* Houston Ice, etc., Co., (Tex. Civ. App. 1906) 96 S. W. 937.

5. It seems that in *Kentucky,* where the defendant has abandoned a contract with the garnishee but may recover something under a *quantum meruit,* that this is a garnishable claim. Buckwalter *v.* Bradley, (Tex. Civ. App. 1907) 104 S. W. 970.

765. 3. Bacon *v.* Towers, (Minn. 1908) 115 N. W. 205.

766. 1. Corsiglia *v.* Burnham, 180 Mass. 347, 75 N. E. 253; Bacon *v.* Towers, (Minn. 1908) 115 N. W. 205; H. A. Grimwood Co. *v.* Capitol Hill Bldg., etc., Co., (R. I. 1906) 65 Atl. 304. See also Wheelock *v.* Globe Constr. Co., 195 Mass. 456, 81 N. E. 276.

So as to payments not due on instalment contracts. Simmons Hardware Co. *v.* Baker, 140 Mich. 123, 103 N. W. 529.

2. Money earned under a contract is garnishable although it may not be payable until a certain specified period after it is earned. Edmunds *v.* Edmunds, (1904) P. 362, 91 L. T. N. S. 568.

767. 1. Allen *v.* Ætna L. Ins. Co., (C. C. A.) 145 Fed. 881.

7. The interest of defendant contingent on his surviving his wife, in the surrender value of a life insurance policy, may be reached by a suit in the nature of an equitable trustee process. Biggert *v.* Straub, 193 Mass. 77, 78 N. E. 770.

In Rayford *v.* Faulk, (Ala. 1908) 45 So. 714, it was held that the *Alabama* statute of 1897, exempting from creditors of the assured or beneficiary the amount coming due under life insurance policies for the benefit of the assured's estate, wife, husband, or children, was constitutional, and that such a creditor could not summon the insurance company as garnishee.

769. 4. **Certificate of Third Person.**— Edmunds *v.* Edmunds, (1904) P. 362, 91 L. T. N. S. 568. See also McMillan *v.* Schneider, 147 Mich. 258, 110 N. W. 961.

770. 3. Brown *v.* Fisher, 35 Ind. App. 549, 74 N. E. 632.

771. 2. The funds to meet the defendant's check certified by the garnishee are subject to garnishment unless the check has passed into the hands of a *bona fide* holder for value. Boswell *v.* Citizens' Sav. Bank, (Ky. 1906) 96 S. W. 797.

772. 1. Brown *v.* Fisher, 35 Ind. App. 549, 74 N. E. 632.

2. **Bona Fide Holder Protected.**— Brown *v.* Fisher, 35 Ind. App. 549, 74 N. E. 632.

774. 2. See Patterson Produce, etc., Co. *v.* Wilkes, 1 Ga. App. 430, 57 S. E. 1047.

775. 3. Cappelli *v.* Wood, 27 R. I. 411, 62 Atl. 978.

776. 1. **Garnishment Must Be Pleaded.**— Collier *v.* Allen, 128 Ga. 442, 57 S. E. 691.

777. 3. Nathan *v.* St. John, 146 Ala. 596, 40 So. 970.

5. A decree of the Court of Chancery may be the subject of garnishment in a common-law court. Nathan *v.* St. John, 146 Ala. 596, 40 So. 970.

779. 2. Chott *v.* Tivoli Amusement Co., 114 Ill. App. 178.

781. 2. The *Illinois* statute providing that administrators and executors may be garnisheed in certain cases does not render them subject to garnishment by a creditor of a creditor of their decedent. Equitable Trust Co. *v.* Clark, 110 Ill. App. 341.

3. **Funds Due to a Devisee.**— Geiger *v.* Gaige, (Iowa 1906) 105 N. W. 1007.

782. 1. Pitzl *v.* Winter, 96 Minn. 499, 105 N. W. 673.

786. 1. See Simmons Hardware Co. *v.* Baker, 140 Mich. 123, 103 N. W. 529.

787. 1. Mahon *v.* Fansett, (N. Dak. 1908) 115 N. W. 79.

2. Singer Sewing Mach. Co. *v.* Southern

Grocery Co., 2 Ga. App. 545, 59 S. E. 473; Mutual Reserve L. Ins. Co. *v.* Fowler, 2 Ga. App. 537, 59 S. E. 469.

In Lee *v.* Louisville, etc., R. Co., 2 Ga. App. 337, 58 S. E. 520, it appeared that a garnishee, after service of the summons, agreed with the defendant to settle an action in tort which he had brought against it, and in pursuance of such agreement it gave him a sight draft for the agreed amount, which it afterwards paid before its answer in garnishment was made, and it was held that by its agreement the garnishee became indebted to the defendant in the garnishment suit before its answer in garnishment, and that this debt was subject to the garnishment.

3. Choses in Action Generally Subject to Garnishment. — Holmes *v.* Pope, 1 Ga. App. 338, 58 S. E. 281.

Interstate Commerce. — Accounts payable to a foreign railroad corporation arising out of the conduct of interstate commerce are garnishable. Johnson *v.* Union Pac. R. Co., 145 Fed. 249; Johnson *v.* Union Pac. R. Co., (R. I. 1908) 69 Atl. 298. See also Southern Flour, etc., Co. *v.* Northern Pac. R. Co., 127 Ga. 630, 56 S. E. 742. *Contra*, Davis *v.* Cleveland, etc., R. Co., 146 Fed. 403.

790. 3. Edmunds *v.* Edmunds, (1904) P. 362, 91 L. T. N. S. 568; Morimura *v.* Samaha, 25 App. Cas. (D. C.) 189; Dodge *v.* Knapp, 112 Mo. App. 513, 87 S. W. 47. See also McDaniel *v.* Bryan, 123 Mo. App. 640, 100 S. W. 1103.

Where the apparent title to the garnishee's debt is in a third person, he may be brought in as claimant and his claim set aside as in fraud of the defendant's creditors, if the facts so warrant. Baze *v.* Island City Mfg. Co., (Tex. Civ. App. 1906) 94 S. W. 460.

792. 2. Morimura *v.* Samaha, 25 App. Cas. (D. C.) 189.

3. Eau Claire Nat. Bank *v.* Chippewa Valley Bank, 124 Wis. 520, 102 N. W. 1068.

5. Eau Claire Nat. Bank *v.* Chippewa Valley Bank, 124 Wis. 520, 102 N. W. 1068.

The *Michigan* statute (Pub. Acts 1905, p. 322) providing that purchasers, etc., of goods in bulk shall in certain cases be liable as receivers for the benefit of the seller's creditors, may be enforced by garnishment proceedings. Musselman Grocery Co. *v.* Kidd, etc., Co., (Mich. 1908) 115 N. W. 409.

793. 6. The Surplus in pledged collaterals is subject to the writ. Cooley *v.* Janes, 71 Kan. 297, 80 Pac. 596.

Where the garnishee is in possession of rolling stock of a nonresident defendant under an agreement giving the garnishee the right to use such rolling stock for the purpose of making shipments out of the state, such rolling stock is not garnishable. Johnson *v.* Union Pac. R. Co., 145 Fed. 249; Johnson *v.* Union Pac. R. Co., (R. I. 1908) 69 Atl. 298; Southern Flour, etc., Co. *v.* Northern Pac. R. Co., 127 Ga. 630, 56 S. E. 742, *citing* 14 Am. and Eng. Encyc. of Law (2d ed.) 793.

794. 1. See Groesbeck *v.* Evans, (Tex. Civ. App. 1905) 88 S. W. 880.

Where the garnishee held shares of stock in a corporation as security for a debt of the defendant to him, and after the service of the writ the corporation sold its property and divided the proceeds as a dividend, the part of such dividend received by the garnishee over the amount of his claim was subject to the writ. Cooley *v.* Janes, 71 Kan. 297, 80 Pac. 596.

It seems that on proper pleadings, if the court has equitable jurisdiction, affirmative equitable relief may be granted in case of property subject to liens or rights of others. Southern Flour, etc., Co. *v.* Northern Pac. R. Co., 127 Ga. 630, 56 S. E. 742.

2. Barkley *v.* May, (Ga. App. 1907) 59 S. E. 440; Clark *v.* Williams, 190 Mass. 219, 76 N. E. 723; American Book Co. *v.* Baker, 119 Mo. App. 275, 95 S. W. 957; Thatcher *v.* Jeffries, (Tex. Civ. App. 1905) 91 S. W. 1091.

The unpaid purchase money of property on which there was an unrecorded chattel mortgage is subject to garnishment by a creditor of the mortgagor. Sachs *v.* Norn, 139 Mich. 357, 102 N. W. 983.

795. 3. See Jenness *v.* Shrieves, 188 Mass. 70, 74 N. E. 312.

Leased Chattels. — Clark *v.* Williams, 190 Mass. 219, 76 N. E. 723.

796. 3. Morgan First Nat. Bank *v.* Brown, (Tex. Civ. App. 1906) 92 S. W. 1052. See also Boswell *v.* Citizens' Sav. Bank, (Ky. 1906) 96 S. W. 797.

Special allegations in the affidavit are necessary to require an answer on this subject. Le Tulle Mercantile Co. *v.* Markham Rice Milling Co., (Tex. Civ. App. 1906) 94 S. W. 416.

798. 4. Ryan *v.* Kimberly, 118 Ill. App. 561.

5. Where the captain of a fishing schooner had entire charge of the vessel and of the sale of the catch, and was to retain a certain percentage of the proceeds for himself and the crew and pay the balance to the owners, it was held that the unpaid purchase price of the catch was subject to trustee process in the hands of the purchasers, at the suit of a creditor of the captain. Adams *v.* Augustine, 195 Mass. 280, 81 N. E. 192.

801. 2. Baltimore, etc., R. Co. *v.* Allen, 58 W. Va. 388, 52 S. E. 465, reviewing the authorities.

The rule stated in the text applies even though all the parties are nonresidents. McShane *v.* Knox, (Minn. 1907) 114 N. W. 955.

5. As adverting to the conflict of authority, see Davis *v.* Cleveland, etc., R. Co., 146 Fed. 403.

Georgia. — The intent of the statute (Ga. Acts of 1904, p. 109) was to declare "that in proceedings by garnishment the *situs* of a debt should be at the residence of the garnishee." Harvey *v.* Thompson, (Ga. App. 1907) 60 S. E. 11.

This statute is constitutional. Harvey *v.* Thompson, 128 Ga. 147, 57 S. E. 104.

Prior to the statute the *situs* was at the domicil of the creditor unless payable elsewhere. Padrosa *v.* High, 122 Ga. 264, 50 S. E. 97.

In an action against a nonresident a summons of garnishment against a domestic corporation may be served upon any agent in any county in which the corporation has an agent and a place of business. The statute fixing the *situs* of the debt at the residence of the garnishee

does [illegible] shall only be required to answer in the county in which its principal place of business is located. Central of Georgia R. Co. *v.* Collum, (Ga. 1908) 60 S. E. 1060.

The statute of 1904 was amended in 1906 (Acts 1906, p. 120) by exempting from attachment "wages of persons who reside out of the state, and which have been earned wholly without the state." Lears *v.* Seaboard Air Line R. Co., (Ga. App. 1908) 60 S. E. 343.

802. 1. Harvey *v.* Thompson, 128 Ga. 14, 57 S. E. 104; Central of Georgia R. Co. *v.* Collum, (Ga. 1908) 60 S. E. 1060; Ryan *v.* Kimberly, 118 Ill. App. 361; Baltimore, etc., R. Co. *v.* Freeze, (Ind. 1906) 82 N. E. 761; Biggert *v.* Straub, 193 Mass. 77, 78 N. E. 770. See also Gilbert Book Co. *v.* Pye, (Tex. Civ. App. 1906) 95 S. W. 8.

See as illustrating the hardship of this doctrine, Slattery *v.* Stevens, 125 Ill. App. 67.

A foreign corporation having a place of business in the state will be treated as a resident debtor for purposes of garnishment. Krafve *v.* Roy, 98 Minn. 141, 107 N. W. 966.

803. 2. Martin *v.* Nadel, (1906) 2 K. B. 26. See also Krafve *v.* Roy, 98 Minn. 141, 107 N. W. 966.

3. Drake *v.* De Silva, 124 N. Y. App. Div. 95, 108 N. Y. Supp. 1039. See also Harvey *v.* Thompson, 128 Ga. 147, 57 S. E. 104.

Debts Owing to Nonresidents from Corporations doing business within the state are garnishable. Louisville, etc., R. Co. *v.* Deer, 200 U. S. 176, 26 U. S. Sup. Ct. 207.

804. 3. Harvey *v.* Thompson, 128 Ga. 14, 57 S. E. 104, (Ga. App. 1907) 60 S. E. 11; Ryan *v.* Kimberly, 118 Ill. App. 361; Johnson *v.* Union Pac. R. Co., (R. I. 1908) 69 Atl. 298; Baltimore, etc., R. Co. *v.* Allen, 58 W. Va. 388, 52 S. E. 465. See also Krafve *v.* Roy, 98 Minn. 141, 107 N. W. 966.

The place of payment is not material where the garnishee makes no claim in that respect, and both the garnishee and the principal defendant have been personally served. McShane *v.* Knox, (Minn. 1908) 114 N. W. 955.

805. 1. Stone *v.* Drake, 79 Ark. 384, 96 S. W. 197; Harvey *v.* Thompson, 128 Ga. 147, 57 S. E. 104; Wright *v.* Southern R. Co., 141 N. Car. 164, 53 S. E. 831; Krafve *v.* Roy, 98 Minn. 141, 107 N. W. 966.

As adverting to the conflict of authority, see McShane *v.* Knox, (Minn. 1908) 114 N. W. 955.

2. See Martin *v.* Nadel, (1906) 2 K. B. 26.

3. See Brenizer *v.* Supreme Council, etc., 141 N. Car. 409, 53 S. E. 835.

Purchase by Garnishee from Defendant. — As illustrating when the title has passed so as to create a debt for the purchase price and when not, see Ryan *v.* Kimberly, 118 Ill. App. 361.

807. 4. State *v.* Pauli, 126 Wis. 65, 104 N. W. 1007.

Purchase Price of Homestead Intended to Be Invested in New Homestead, Exempt. — Becher *v.* Shaw, 44 Wash. 166, 87 Pac. 71.

808. 2. Washington L. & T. Co. *v.* Susquehanna Coal Co., 26 App. Cas. (D. C.) 140.

The plaintiff may summon as garnishee one intrusted by the defendant with funds to pay the plaintiff's claim. Lingenfelter *v.* Iowa Telephone Co., 132 Iowa 211, 109 N. W. 722.

809. 3. Where the plaintiff, who had summoned himself as garnishee, was afterwards sued by his creditor, he may not have a stay of execution of the creditor's judgment pending the result of the garnishment proceedings unless he pays the amount of the judgment into court or offers to do so. Hanscom *v.* Chapin, 27 Pa. Super. Ct. 546.

810. 1. **Defendant as Garnishee in a Representative Capacity** may be charged where a third person in such capacity could be charged. National Lumber Co. *v.* Turner, 2 Ga. App. 750, 59 S. E. 15.

The defendant's claim for services as administrator is subject to garnishment by his creditor. Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14, *disapproving* Shepherd *v.* Bridenstine, 80 Iowa 225, cited in the original note.

4. **Indiana.** — The *Missouri* rule is followed in Indiana. Malott *v.* Johnson, 37 Ind. App. 678, 77 N. E. 866.

812. 2. Moscow Hardware Co. *v.* Colson, 158 Fed. 199, *citing* 14 Am. and Eng. Encyc. of Law (2d ed.) 811, 812.

813. 2. **"The Regents of the University of Idaho."** — Moscow Hardware Co. *v.* Colson, 158 Fed. 199.

814. 5. Mitchell *v.* Miller, 95 Minn. 62, 103 N. W. 716.

The *Illinois* statute (Laws 1905, p. 285) subjecting the salary and wages of officers and employees of certain classes of municipal corporations to attachment and garnishment is unconstitutional, as depriving the custodian of the funds of the corporation of his property without due process of law, and as not applying to all municipal corporations, and is further in violation of section 13, article 4, of the Illinois Constitution, providing the method of amending statutes. Badenoch *v.* Chicago, 222 Ill. 71, 78 N. E. 31.

6. See Erkson *v.* Parker, 3 Cal. App. 98, 84 Pac. 437.

815. 1. Under the *Texas* statute as to mutual insurance companies the property of such a corporation in the hands of the state treasurer is made subject to garnishment in aid of a judgment against it. Robbins *v.* Midkiff, (Tex. Civ. App. 1907) 102 S. W. 430.

816. 2. See McShane *v.* Knox, (Minn. 1908) 114 N. W. 955.

Under the *New Hampshire* statute, providing that "a person doing business in this state * * * may be summoned upon trustee process," a nonresident debtor of the defendant owning a farm in the state may be summoned as trustee by service upon the manager of the farm. Bennett *v.* Hebbard, (N. H. 1907) 68 Atl. 537.

817. 1. Harvey *v.* Thompson, (Ga. App. 1907) 60 S. E. 11; Rockland Sav. Bank *v.* Alden, (Me. 1907) 68 Atl. 863; Tatum *v.* Niagara F. Ins. Co., 43 Wash. 373, 86 Pac. 660.

And it is not necessary to show affirmatively that the foreign corporation has complied with the statutes as to doing business within the state. Krafve *v.* Roy, 98 Minn. 141, 107 N. W. 966.

Service on Soliciting Agent of Foreign Insurance Company Sufficient. — Tatum *v.* Niagara F. Ins. Co., 43 Wash. 373, 86 Pac. 660.

2. Johnson *v.* Union Pac. R. Co., 145 Fed. 249; Johnson *v.* Union Pac. R. Co., (R. I. 1908) 69 Atl. 298; Baltimore, etc., R. Co. *v.* Allen, 58 W. Va. 388, 52 S. E. 465.

4. See Boylan *v.* Hines, (W. Va. 1907) 59 S. E. 503.

Property in Custodia Legis Not Subject Except by Statute. — Pugh *v.* Jones, 134 Iowa 746, 112 N. W. 225.

818. 2. Under the *Arkansas* statute funds in court are subject to garnishment. Green *v.* Robertson, 80 Ark. 1, 96 S. W. 138.

819. 1. A guardian cannot be summoned during his ward's life, nor can a creditor of the ward's heirs summon him after the ward's death, as he must transfer the property to the personal representatives of the ward. Pugh *v.* Jones, 134 Iowa 746, 112 N. W. 225.

820. 4. *Contra,* under the *Arkansas* statute. Green *v.* Robertson, 80 Ark. 1, 96 S. W. 138.

After Decree. — Commissioners are liable to garnishment after a decree has been made directing the payment of the funds in their hands to a judgment debtor. Boylan *v.* Hines, (W. Va. 1907) 59 S. E. 503.

823. 2. **Trustee in Bankruptcy.** — A dividend in the hands of a trustee in bankruptcy payable to the defendant is not subject to trustee process, although the dividend check is drawn and countersigned. Rockland Sav. Bank *v.* Alden, (Me. 1907) 68 Atl. 863.

825. 3. A levying and collecting officer can be garnished; if he answers that the property is *in custodia legis* and it is so found, the court will instruct him as to the disposition of the fund. He can in that case proceed and sell, but the proceeds must await the final decision on the garnishment. But if his possession be personal, or if he erroneously decides that the property is not subject to the garnishment and disposes of it, he is liable to the garnishor. Barkley *v.* May, (Ga. App. 1907) 59 S. E. 440.

828. 3. **Money Deposited in Lieu of Bail.** — It seems that after the dismissal of an indictment cash deposited with the clerk in lieu of bail may be reached by garnishment proceedings. See Wright *v.* Dougherty, (Iowa 1908) 115 N. W. 908.

829. 2. Thorsen *v.* Hooper, (Oregon 1908) 93 Pac. 361; Orlopp *v.* Schueller, 72 Ohio St. 41, 73 N. E. 1012, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 829, and approving the general theory of the text on the subject.

3. **Exception.** — It is intimated in Gittings *v.* Russell, 114 N. Y. App. Div. 405, 99 N. Y. Supp. 1064 (*affirmed* on opinion below (N. Y. 1907) 80 N. E. 1110), that funds on deposit to the credit of the estate of a deceased wife, of which her husband was administrator, were attachable in the hands of the depositary in a suit brought against the husband by his creditor, the wife having died intestate and without issue and the husband therefore having title *jure mariti.*

830. 2. Kiernan *v.* Robertson, 116 Mo. App. 56, 92 S. W. 138. See also Orlopp *v.* Schueller, [illegible] N. E. 1012.

3. Pitzl *v.* Winter, 96 Minn. 499, 105 N. W. 673. See also Pugh *v.* Jones, 134 Iowa 746, 112 N. W. 225.

And in such case the Probate Court cannot, on application of an administrator, order payment to a distributee or legatee whose rights have passed by the judgment of a court of competent jurisdiction to a third person not a party to the order of distribution. Geiger *v.* Gaige, (Iowa 1906) 105 N. W. 1007.

Such statutes being exceptions to the general rule must be strictly complied with. National Lumber Co. *v.* Turner, 2 Ga. App. 750, 59 S. E. 15.

Ohio. — An administrator or executor is an "officer" under Rev. Stat. Ohio, § 5531, and therefore an undetermined legacy in his hands may be garnisheed. Orlopp *v.* Schueller, 26 Ohio Cir. Ct. 127.

831. 4. *Contra,* under the *Illinois* statute. Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455.

6. **The Court May Order an Oral Examination.** — Washington L. & T. Co. *v.* Susquehanna Coal Co., 26 App. Cas. (D. C.) 149.

Discharge by Probate Court. — Where the garnishee had procured his discharge as administrator from the Probate Court without notice to the plaintiff in garnishment, the latter will not be barred of an action against the garnishee for damages, by a refusal of the Probate Court to set aside the discharge on the plaintiff's application. Geiger *v.* Gaige, 134 Iowa 197, 111 N. W. 804.

7. Fidelity Funding Co. *v.* Vaughn, 18 Okla. 13, 90 Pac. 34. See also Washington Brick, etc., Co. *v.* Traders' Nat. Bank, 46 Wash. 23, 89 Pac. 157.

The collecting agent of an assignee of the defendant in possession of property assigned to defraud creditors, or of the proceeds thereof, may be summoned as garnishee. Eau Claire Nat. Bank *v.* Chippewa Valley Bank, 124 Wis. 520, 102 N. W. 1068.

832. 2. The process in such case is to be construed as an attachment rather than as a garnishment. Brenizer *v.* Supreme Council, etc., 141 N. Car. 400, 53 S. E. 835.

4. *Compare* Washington Brick, etc., Co. *v.* Traders' Nat. Bank, 46 Wash. 23, 89 Pac. [illegible].

833. 2. Allen *v.* Ætna L. Ins. Co., (C. C. A.) 145 Fed. 881; Garrett *v.* Mayfield Woolen Mills, (Ala. 1907) 44 So. 1026; Holmes *v.* Pope, 1 Ga. App. 338, 58 S. E. 281; Singer Sewing Mach. Co. *v.* Southern Grocery Co., 2 Ga. App. 545, 59 S. E. 473; Evans-Montague Commission Co. *v.* Spaulding, 229 Ill. 405, 82 N. E. 404; Murphy *v.* Whitesides, (Ky. 1906) 92 S. W. 5; Bacon *v.* Towers, (Minn. 1908) 115 N. W. 205; Melton Hardware Co. *v.* Heidelberg, (Miss. 1907) 44 So. 857, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 833; Schuler *v.* Murphy, (Miss. 1907) 44 So. 810; H. A. Grimwood Co. *v.* Capitol Hill Bldg., etc., Co., (R. I. 1906) 65 Atl. 304.

834. 1. Johnson *v.* Union Pac. R. Co., 145 Fed. 249; Holmes *v.* Pope, 1 Ga. App. 338, 58 S. E. 281; Mutual Reserve L. Ins. Co. *v.* Fowler, 2 Ga. App. 537, 59 S. E. 469; Singer Sewing Mach. Co. *v.* Southern Grocery Co., 2 Ga. App. 545, 59 S. E. 473; Bacon *v.* Towers, (Minn. 1908) 115 N. W. 205.

Garnishment cannot prevent the garnishee

from carrying out a contract for purchase. Ryan *v.* Kimberly, 113 Ill. App. 361.

835. 1. See Wheelock *v.* Globe Constr. Co., 195 Mass. 456, 81 N. E. 276.

This is the rule under the *Kentucky* Code except as to the defendant's shares of stock in a corporation summoned as garnishee. Boswell *v.* Citizens' Sav. Bank, (Ky. 1906) 96 S. W. 797.

Garnishee Not Affected until Service of the Writ. — Gilbert Book Co. *v.* Pye, (Tex. Civ. App. 1906) 95 S. W. 8.

2. The garnishee is not liable for instalments on uncompleted contracts, not due at the time of service. Simmons Hardware Co. *v.* Baker, 140 Mich. 123, 103 N. W. 529.

3. Lee *v.* Louisville, etc., R. Co., 2 Ga. App. 337, 58 S. E. 520; Singer Sewing Mach. Co. *v.* Southern Grocery Co., 2 Ga. App. 545, 59 S. E. 473; Howard Co. *v.* Miller, 123 Ill. App. 483. See also Wheeler *v.* Chicago Title, etc., Co., 217 Ill. 128, 75 N. E. 455; Tatum *v.* Geist, 40 Wash. 575, 82 Pac. 902.

But this rule cannot interfere with the garnishee's lien on any property of the defendant coming into his hands necessary to pay a debt due to him from the defendant, at the time the summons was served. Mutual Reserve L. Ins. Co. *v.* Fowler, 2 Ga. App. 537, 59 S. E. 469.

836. 2. Patek *v.* Chicago, etc., R. Co., 147 Mich. 377, 110 N. W. 1059.

Checks. — The garnishee is not required to stop payment of a check mailed to the defendant before service of the garnishment, and the amount thereof is not subject to garnishment. Parker-Fain Grocery Co. *v.* Orr, 1 Ga. App. 628, 57 S. E. 1074; Larsen *v.* Allan Line Steamship Co., 45 Wash. 406, 88 Pac. 753.

But it has been held that where a check mailed to the defendant by the garnishee was, at the time of the service of the garnishment summons, still in the sending post office, and under the regulations subject to the garnishee's recall, the garnishee's debt was not paid so as to relieve him from garnishment. Watt-Harley-Holmes Hardware Co. *v.* Day, 1 Ga. App. 646, 57 S. E. 1033.

838. 3. **Interest.** — In cases where interest would be recoverable by the defendant only as damages for breach of contract, he may not recover interest of the garnishee for the period of the pendency of the garnishment proceedings. Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66.

In such case interest will not begin to run until the entry of judgment in the principal suit. Eau Claire Nat. Bank *v.* Chippewa Valley Bank, 124 Wis. 520, 102 N. W. 1068.

842. 4. Nathan *v.* St. John, 146 Ala. 596, 40 So. 970.

5. Nathan *v.* St. John, 146 Ala. 596, 40 So. 970.

845. 1. Davis *v.* Lilly, 17 Okla. 579, 87 Pac. 302; State *v.* Superior Ct., 40 Wash. 443, 82 Pac. 875.

3. Tabor *v.* Leadville Bank, 35 Colo. 9, 83 Pac. 1060, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 845 *et seq.*; Holmes *v.* Pope, 1 Ga. App. 338, 58 S. E. 281; Mutual Reserve L. Ins. Co. *v.* Fowler, 2 Ga. App. 537, 59 S. E. 469. See also Frank *v.* Dungan, 76 Ark. 599, 90 S. W. 17.

Set-off Need Not Be Specially Pleaded. — Melton Hardware Co. *v.* Heidelberg, (Miss. 1907) 44 So. 857, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846, note 3, to the contrary, but stating that the fundamental principle, as to the limit of the garnishee's liability, given at page 833 of the text, was controlling.

847. 3. **Set-off under Georgia Statute.** — Holmes *v.* Pope, 1 Ga. App. 338, 58 S. E. 281.

849. 6. Tabor *v.* Leadville Bank, 35 Colo. 9, 83 Pac. 1060.

850. 1. See Howard Co. *v.* Miller, 123 Ill. App. 483.

3. Tabor *v.* Leadville Bank, 35 Colo. 9, 83 Pac. 1060; Murphy *v.* Whitesides, (Ky. 1906) 92 S. W. 5; Eastham *v.* Blanchette, (Tex. Civ. App. 1906) 94 S. W. 441. See also Garrett *v.* Mayfield Woolen Mills, (Ala. 1907) 44 So. 1026.

851. 1. Continental Compressed Air Co. *v.* Franklyn, (N. J. 1907) 66 Atl. 897.

4. In *California* the service of garnishing attachment does not stop the running of the statute of limitations on the garnishee's debt, where the garnishee's answer to the sheriff denies or disputes liability. Clyne *v.* Easton, 148 Cal. 287, 83 Pac. 36.

852. 2. Tabor *v.* Leadville Bank, 35 Colo. 9, 83 Pac. 1060; Nashville, etc., R. Co. *v.* Brown, (Ga. App. 1908) 60 S. E. 319; Schaller *v.* Marker, (Iowa 1907) 114 N. W. 43; Alexander *v.* Segee, 101 Me. 561, 64 Atl. 1049.

No acceptance of an invalid service or other act by the garnishee can give the court jurisdiction of the property of a defendant who has not been served in the principal suit. Gilbert Book Co. *v.* Pye, (Tex. Civ. App. 1906) 95 S. W. 8.

In *North Dakota* the garnishee cannot, for the first time, on an appeal from a judgment against him, object that no judgment had been entered against the defendant in the principal action. Mahon *v.* Fansett, (N. Dak. 1908) 115 N. W. 79.

853. 2. **Satisfaction of Judgment.** — Where the plaintiff recovered a judgment against the defendant, the docket of which was duly marked "satisfied," the satisfaction must be set aside before a valid garnishment writ can issue under such judgment. Masterson *v.* Keller, (Tex. Civ. App. 1905) 89 S. W. 803.

854. 3. Ralls *v.* Alabama Steel, etc., Co., 143 Ala. 620, 39 So. 369; Southern R. Co. *v.* Fulford, 125 Ga. 103, 54 S. E. 68; National Lumber Co. *v.* Turner, 2 Ga. App. 750, 59 S. E. 15.

The exemption must exist at the time of the service of the garnishee summons. Mahon *v.* Fansett, (N. Dak. 1908) 115 N. W. 79.

Waiver of Exemption — Wages. — Richardson *v.* Kaufman, 143 Ala. 243, 39 So. 368; Walker *v.* Swift Fertilizer Works, (Ga. App. 1907) 59 S. E. 850.

In *Mississippi* it seems that if the defendant fails to appear and claim that garnished wages are exempt he will lose the exemption. Sturges *v.* Jackson, 88 Miss. 508, 40 So. 547.

Wisconsin. — Under the Wisconsin statute the plaintiff must establish that the indebtedness of the garnishee is not exempt from execution. State *v.* Pauli, 126 Wis. 65, 104 N. W. 1007.

855. 3. Baltimore, etc., R. Co. *v.* Freeze, (Ind. 1906) 82 N. E. 761.

4. See Minneapolis, etc., R. Co. *v.* Pierce, (Minn. 1908) 115 N. W. 649.

Right of Garnishee to Defend Principal Action. — State *v.* Pauli, 126 Wis. 65, 104 N. W. 1007.

6. Chicago, etc., R. Co. *v.* Moore, 117 Ill. App. 147.

Even though the defendant was served in the principal suit. Southern R. Co. *v.* Fulford, 125 Ga. 103, 54 S. E. 68.

In *Illinois,* where an employee files with his employer an affidavit in the statutory form to exempt his wages from garnishment to the extent of fifteen dollars a week, the employer is protected in paying that weekly amount to the employee although the affidavit is false. Illinois Cent. R. Co. *v.* Cowles, 127 Ill. App. 450.

857. 1. Stone *v.* Drake, 79 Ark. 384, 96 S. W. 197; Harvey *v.* Thompson, (Ga. App. 1907) 60 S. E. 11; National Tube Co. *v.* Smith, 57 W. Va. 210, 50 S. E. 717.

But the payment of a judgment against the garnishee will bar an action against him by the defendant in the state of the latter's residence, although in that state the debt of the garnishee was not subject to garnishment. Hadacheck *v.* Chicago, etc., R. Co., 74 Neb. 385, 104 N. W. 878.

2. Under the *Nebraska* statute, where the holder of a claim against a certain class of employees assigns the same for the purpose of evading the exemption laws, he is liable to the person injured for the amount of the debt and costs, etc. Gordon *v.* Wageman, (Neb. 1906) 108 N. W. 1067.

But an employee is not entitled to the benefit of this statute unless he is a resident of *Nebraska.* McCormack *v.* Fincher, (Neb. 1906) 110 N. W. 547.

3. Washington L. & T. Co. *v.* Susquehanna Coal Co., 26 App. Cas. (D. C.) 149; Gray *v.* Bever, 122 Ill. App. 1; Anderson *v.* McGraw, 124 Ill. App. 457; Pugh *v.* Jones, 134 Iowa 746, 112 N. W. 225; Mace *v.* Richardson, 100 Me. 70, 60 Atl. 701; Welch *v.* Renfro, (Tex. Civ. App. 1906) 94 S. W. 107. See also Jordan *v.* Rice, (Ala. 1907) 44 So. 93; Shannon Mfg. Co. *v.* McCaulley, etc., Co., 214 Pa. St. 377, 63 Atl. [illegible]

The same, of course, is true as to an assignment subsequent to an invalid writ. Masterson *v.* Keller, (Tex. Civ. App. 1905) 89 S. W. 803.

Checks of the defendant, delivered in payment of debts before service of garnishment on the [illegible] over the garnishment. Kuhnes *v.* Cahill, 128 Iowa 594, 104 N. W. 1025.

858. 1. [illegible] (Ala. [illegible] So. 93; Green *v.* Robertson, 80 Ark. 1, 96 S. W. 138. See also Montgomery *v.* Whitehead, 40 Colo. 320, 90 Pac. 500.

859. 1. Mace *v.* Richardson, 100 Me. 70, 60 Atl. 701.

Assignment of Fire Insurance as Security. — G. Oberg, etc., Co. *v.* Phillips Buttorff Mfg. Co., 145 Ala. 625, 40 So. 278.

4. Mace *v.* Richardson, 100 Me. 70, 60 Atl. 701.

6. But a mere statement that the defendant had assigned her attachable property to the trustee for the benefit of her creditors, will not discharge the trustee from the process. Thompson *v.* Dyer, 100 Me. 421, 62 Atl. 76.

7. **Debt Due Bankrupt Not Subject of Garnishment.** — Starr *v.* Whitcomb, (Mich. 1907) 114 N. W. 345.

861. 1. Dodge *v.* Knaft, 112 Mo. App. 513, 87 S. W. 47.

6. See Kuhnes *v.* Cahill, 128 Iowa 594, 104 N. W. 1025.

In *Ohio,* where the order of a justice can only be enforced against the garnishee by an action, a garnishee will not be protected in obeying an order of a justice of the peace requiring him to pay money into court, when after the order, but before the payment, he receives notice that the debt was assigned before the garnishment. Milligan *v.* Plymouth State Bank, 26 Ohio Cir. Ct. 136.

862. 1. See Welch *v.* Renfro, (Tex. Civ. App. 1906) 94 S. W. 107.

864. 2. Whitehouse *v.* Nelson, 43 Wash. 174, 86 Pac. 174.

865. 2. **Disclaimer by Alleged Assignee.** — See Chott *v.* Tivoli Amusement Co., 114 Ill. App. 178.

England. — It seems that in England an assignment by way of mortgage delivered in escrow before the garnishment, but not accepted by the mortgagee till afterwards, is prior to the garnishment if not fraudulent. Edmunds *v.* Edmunds, (1904) P. 362, 91 L. T. N. S. 568.

3. Under the *Illinois* statute an assignment by an heir, legatee, or devisee, of property in the hands of the executor or administrator, takes effect as against a garnishor only from the time of filing the assignment in the office of the clerk of the County Court out of which the letters testamentary or of administration were issued. Rhodes *v.* Rhodes, 115 Ill. App. 335.

And a deed by a devisee of property over which the executor has power of sale must be so filed, or the property or its proceeds will be subject to garnishment in the hands of the executor. Staaland *v.* Thompson, 122 Ill. App. [illegible]

866. 2. Fry *v.* Radzinski, 219 Ill. 526, 76 N. E. 694, *quoting* 14 Am. and Eng. Encyc. of Law (2d ed.) 866.

3. See, as illustrating the practice in such case, Southern R. Co. *v.* Funke, (Ala. 1907) 44 So. 397.

867. 1. **Assignee Precluded by His Default.** — Southern R. Co. *v.* Funke, (Ala. 1907) 44 So. [illegible]

2. Fry *v.* Radzinski, 219 Ill. 526, 76 N. E. 694, *citing* 14 Am. and Eng. Encyc. of Law (2d ed.) 866, 867.

3. **A Bank Check** delivered is an assignment of the funds it calls for. Paepcke-Leicht Lumber Co. *v.* Becker, 124 Ill. App. 311.

Rights of Debenture Holders. — A receiver of a corporation, appointed in a suit by its debenture holders, is entitled to a debt due the corporation as against its judgment creditor who had served a garnishee order on the corporation's debtor before the appointment of the receiver. Norton *v.* Yates, (1906) 1 K. B. 112.

[illegible] order was made absolute before the appointment

of such a receiver. Cairney *v.* Back, (1906) 2 K. B. 746.

Purchase Price of Mortgaged Chattels. — In *California* a garnishment of the purchase price of a delivered crop will be superior to a prior chattel mortgage, as the lien of the mortgage is lost when the crop is taken from the land. Gates *v.* Quong, 3 Cal. 443, 85 Pac. 662.

The Writ Takes Effect When Served. — Gilbert Book Co. *v.* Pye, (Tex. Civ. App. 1906) 95 S. W. 8.

4. Disconto Gesellschaft *v.* Terlinden, 127 Wis. 673, 106 N. W. 821, *per* the *dissenting* opinion of Cassoday, C. J., *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 867.

868. 2. H. A. Grimwood Co. *v.* Capitol Hill Bldg., etc., Co., (R. I. 1906) 65 Atl. 304.

870. 4. Where the garnishees, subsequent to the service of the writ, paid to the sheriff the amount of their debt, it was held that the plaintiff had no further claim against them by virtue of the writ, although they directed the sheriff to apply the money upon a prior garnishment, as their direction to the sheriff was of no legal effect on him. Kruse *v.* Wilson, 3 Cal. App. 91, 84 Pac. 442.

871. 2. See Thatcher *v.* Jeffries, (Tex. Civ. App. 1905) 91 S. W. 1091, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 871, and note. *Compare* Mahon *v.* Fansett, (N. Dak. 1908) 115 N. W. 79. *Compare* also, under the *Georgia* statute, National Surety Co. *v.* Medlock, 2 Ga. App. 665, 58 S. E. 1131; Mutual Reserve L. Ins. Co. *v.* Fowler, 2 Ga. App. 537, 59 S. E. 469; Lears *v.* Seaboard Air Line R. Co., (Ga. App. 1908) 60 S. E. 343.

4. Dodge *v.* Knapp, 112 Mo. App. 513, 87 S. W. 47. See also Pitzl *v.* Winter, 96 Minn. 499, 105 N. W. 673.

872. 3. By the Plaintiff. — Under the *Kentucky* Code the plaintiff may bring an action against the garnishee for not truly making disclosure of its indebtedness in the garnishment answer. Boswell *v.* Citizens' Sav. Bank, (Ky. 1906) 96 S. W. 797.

6. Stay of Proceedings. — American Hardwood Lumber Co. *v.* Joannin-Hansen Co., 99 Minn. 307, 109 N. W. 403, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 872, on the general rule.

Compare, as illustrating the effect of a subsequent suit in chancery fixing the amount of the garnishee's debt to the defendant, McMillan *v.* Schneider, 147 Mich. 258, 110 N. W. 961.

874. 6. An Injunction will not lie to restrain the defendant from collecting a judgment against the garnishee, when the latter might have pleaded the garnishment but omitted to do so. Collier *v.* Allen, 128 Ga. 442, 57 S. E. 691.

875. 2. See Young *v.* Steim, 29 Pa. Super. Ct. 205.

4. Wright *v.* Southern R. Co., 141 N. Car. 164, 53 S. E. 831; Lamb *v.* Zundell, 78 Vt. 232, 62 Atl. 33.

Nonresident Defendant. — Baltimore, etc., R. Co. *v.* Freeze, (Ind. 1906) 82 N. E. 761.

876. 1. See Norton *v.* Yates, (1906) 1 K. B. 112.

3. It seems that in *England* the payment under a foreign garnishment would be no defense to an action against the garnishee by his creditor, and for this reason a debt due from one nonresident to another nonresident is not subject to garnishment. Martin *v.* Nadel, (1906) 2 K. B. 26.

877. 1. Hadacheck *v.* Chicago, etc., R. Co., 74 Neb. 385, 104 N. W. 878; Drake *v.* De Silva, 124 N. Y. App. Div. 95, 108 N. Y. Supp. 1039; Wright *v.* Southern R. Co., 141 N. Car. 164, 53 S. E. 831. *Contra*, Baltimore, etc., R. Co. *v.* Freeze, (Ind. 1906) 82 N. E. 761.

Justice's Judgments. — See Geduld *v.* Baltimore, etc., R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 239, 105 N. Y. Supp. 110.

879. 1. The Payment is to be credited on the judgment against the defendant. Robbins *v.* Midkiff, (Tex. Civ. App. 1907) 102 S. W. 430; Wright *v.* Southern R. Co., 141 N. Car. 164, 53 S. E. 831.

2. See Milligan *v.* Plymouth State Bank, 26 Ohio Cir. Ct. 136.

Void Judgment. — Geduld *v.* Baltimore, etc., R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 239, 105 N. Y. Supp. 110.

882. 1. Norton *v.* Yates, (1906) 1 K. B. 112.

884. 2. Roberts *v.* Hicko y Camp Coal, etc., Co., 58 W. Va. 276, 52 S. E. 182.

A Valid Existing Judgment against the Defendant is a condition precedent to a valid judgment against the garnishee. Ingram *v.* Jackson Mercantile Co., 2 Ga. App. 218, 58 S. E. 372.

885. 5. Erwin *v.* Southern R. Co., 71 S. Car. 225, 50 S. E. 778; Roberts *v.* Hickory Camp Coal, etc., Co., 58 W. Va. 276, 52 S. E. 182. *Compare*, as to the jurisdiction of the principal suit, Frank *v.* Dungan, 76 Ark. 599, 90 S. W. 17.

887. 2. Mere neglect of accuracy by the garnishee is not such an accident or mistake as will permit him to correct his statement. People's L. & T. Co. *v.* McMurray, 27 R. I. 516, 63 Atl. 803.

889. 1. Boswell *v.* Citizens' Sav. Bank, (Ky. 1906) 96 S. W. 797; Schnellmann *v.* Southern Commercial, etc., Bank, 123 Mo. App. 188, 100 S. W. 575. See also Couch *v.* Hice, 126 Ga. 62, 54 S. E. 813.

3. See Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14.

Where the statute permits an undetermined legacy to be garnisheed in the hands of an executor, the court issuing the attachment has no authority to require the executor to pay any money into that court nor to give bond therefor, until the settlement of his accounts in the proper tribunal. Orlopp *v.* Schneller, 26 Ohio Cir. Ct. 127.

7. Defendant May Move to Discharge the Garnishee. — Recor *v.* Recor, 142 Mich. 479, 106 N. W. 82; Krafve *v.* Roy, 98 Minn. 141, 107 N. W. 966. See also Dolan *v.* Simmons, (Iowa 1908) 115 N. W. 479.

890. 1. Reversal on Appeal of Judgment against Defendant. — Chicago Herald Co. *v.* Bryan, 105 Mo. 590, 92 S. W. 906.

892. 6. Morimura *v.* Samaha, 25 App. Cas. (D. C.) 189; National Surety Co. *v.* Medlock, 2 Ga. App. 665, 58 S. E. 1131; W. S. Danby Millinery Co. *v.* Dogan, (Tex. Civ. App. 1907) 105 S. W. 337.

"for the use of" A. B. will not make A. B. a party to the proceedings to claim, nor make the bond a claimant's bond. Drought *v.* Poage, (Ga. App. 1907) 59 S. E. 728.

893. 4. For the Payment of the Judgment that Shall Be Rendered on Such Garnishment. — National Surety Co. *v.* Medlock, 2 Ga. App. 665, 58 S. E. 1131.

7. **Georgia.** — A bond describing the cause as in another county from that in which it is pending and approved by the clerk of the first-[illegible] judgment cannot be entered therein summarily. Roney *v.* McCall, 128 Ga. 249, 57 S. E. 503.

894. 3. Under the *Texas* statute, when the defendant gives the bond he may make any defense which the garnishee could have made. Fleming *v.* Pye, (Tex. Civ. App. 1906) 95 S. W. [illegible]

7. A judgment against the defendant, and a judgment against the money or property garnisheed, should both be had. National Surety Co. *v.* Medlock, 2 Ga. App. 665, 58 S. E. 1131.

8. See also Drought *v.* Poage, (Ga. App. 1907) 59 S. E. 728; Smith *v.* Kennedy, 125 Ga. 830, 54 S. E. 731; W. S. Danby Millinery Co. *v.* Dogan, (Tex. Civ. App. 1907) 105 S. W. 337.

895. 1. The defendant's discharge in bankruptcy will not prevent the entry of a judgment against it on a claim not released by the discharge, and the sureties on the bond dissolving the garnishment in aid of such a claim must fulfil its condition, if the bond was made four months before the bankruptcy. National Surety Co. *v.* Medlock, 2 Ga. App. 665, 58 S. E. 1131.

896. 2. Eau Claire Nat. Bank *v.* Chippewa Valley Bank, 124 Wis. 529, 102 N. W. 1068.

2*a*. Where a trustee defaults, the costs of scire facias should be charged against him. Leonard *v.* Weymouth, 193 Mass. 479, 79 N. E. 787.

And in general, costs arising after his default. Thompson *v.* Dyer, 100 Me. 421, 62 Atl. 76.

897. 1. **On Paying into Court.** — Schnellmann *v.* Southern Commercial, etc., Bank, 123 Mo. App. 188, 100 S. W. 575.

3. U. S. Fidelity, etc., Co. *v.* Warnell, (Tex. Civ. App. 1907) 103 S. W. 690; Webb *v.* Texas Christian University, (Tex. Civ. App. 1908) 107 S. W. 86.

4. Whitehouse *v.* Nelson, 43 Wash. 174, 86 Pac. 174.

899. 1. Morimura *v.* Samaha, 25 App. Cas. (D. C.) 189; Eastham *v.* Blanchette, (Tex. Civ. App. 1906) 94 S. W. 441; U. S. Fidelity, etc., Co. *v.* Warnell, (Tex. Civ. App. 1907) 103 S. W. 690; Whitehouse *v.* Nelson, 43 Wash. 174, 86 Pac. 174.

900. 1. Eastham *v.* Blanchette, (Tex. Civ. App. 1906) 94 S. W. 441; U. S. Fidelity, etc., Co. *v.* Warnell, (Tex. Civ. App. 1906) 103 S. W. 690; Webb *v.* Texas Christian University, (Tex. Civ. App. 1908) 107 S. W. 86.

But not in Georgia where the [illegible] ceeds in the principal action. Brunswick Bank, etc., Co. *v.* Delegal, 121 Ga. 189, 49 S. E. 44.

901. 3. **Garnishment Held to Be a "Proceeding."** — Tatum *v.* Geist, 40 Wash. 575, 82 Pac. 902.

b. Cummings *v.* Edwards, 95 Minn. 118, 103 N. W. 709; Boylan *v.* Hines, (W. Va. 1907) 59 S. E. 503.

7. Compare, as showing circumstances in which the defendant may appeal, McGeary *v.* Huff, 31 Pa. Super. Ct. 401.

902. 2. Mutual Reserve Fund L. Ins. Co. *v.* Fowler, 2 Ga. App. 357, 59 S. E. 469; Schaller *v.* Marker, (Iowa 1907) 114 N. W. 43; H. A. Grimwood Co. *v.* Capitol Hill Bldg., etc., Co., (R. I. 1906) 65 Atl. 304.

As illustrating the complications which may arise when a garnishee has given a supersedeas bond on appeal, and the plaintiff has begun new garnishment proceedings in aid of its judgment against the original garnishee, see Garrett *v.* Mayfield Woolen Mills, (Ala. 1907) 44 So. 1026.

3. Mutual Reserve L. Ins. Co. *v.* Fowler, 2 Ga. App. 537, 59 S. E. 469; Schaller *v.* Marker, (Iowa 1907) 114 N. W. 43; Davis *v.* Lilly, 17 Okla. 579, 87 Pac. 302; H. A. Grimwood Co. *v.* Capitol Hill Bldg., etc., Co., (R. I. 1906) 65 Atl. 304.

Arrest of Judgment. — A garnisheee may not, on a motion in arrest of judgment, take advantage of errors in the record of the principal action. Union Compress Co. *v.* Leffler, 122 Ga. 640, 50 S. E. 483.

But if it appears, on the face of the garnishment record, that the proceedings in garnishment were void, the judgment should be arrested. Leffler *v.* Union Compress Co., 126 Ga. 662, 55 S. E. 927.

4. The garnishees have no legal right to appear on the plaintiff's appeal in the main action. Sudden *v.* Morse, (Wash. 1907) 92 Pac. 901.

903. 5. Cummings *v.* Edwards, 95 Minn. 118, 103 N. W. 709.

The plaintiff may sue out a writ of error to review the decision of the court below in overruling his demurrer to a motion by the garnishee to set aside the judgment and permit him to answer anew. Patterson Produce, etc., Co. *v.* Wilkes, 1 Ga. App. 430, 57 S. E. 1047.

6. Davis *v.* Lilly, 17 Okla. 579, 87 Pac. 302. See also cases cited, *supra*, **902.** 3.

904. 1. A refusal to direct the garnishee to pay money into court *pendente lite* is not appealable. Hawarden State Bank *v.* Hessler, 131 Iowa 691, 109 N. W. 210.

3. But where such motion challenges the jurisdiction of the court to proceed further in the action, it is appealable. Krafve *v.* Roy, 98 Minn. 141, 107 N. W. 966.

4. **Contra.** — See McShane *v.* Knox, (Minn. 1907) 114 N. W. 955.

Order Quashing Service of the Writ, Held Appealable. — Tatum *v.* Geist, 40 Wash. 575, 82 Pac. 902.

905. 5. A trifling deficiency in the amount of the garnishment bond will not be considered on the appeal where the question was not raised in the court below and is not specifically assigned as error. Burge *v.* Beaumont Carriage Co., (Tex. Civ. App. 1907) 105 S. W. 232.

Question of Jurisdiction Available. — Schaller *v.* Marker, (Iowa 1907) 114 N. W. 43.

906. 4. See Southern R. Co. *v.* Funke, (Ala. 1907) 44 So. 397.

907. 3. Fry *v.* Radzinski, 219 Ill. 526, 76 N. E. 694; Callaway *v.* Maxwell, 123 Ga. 208, 51 S. E. 320; Hubbard *v.* Lamburn, 189 Mass. 296, 75 N. E. 707; Schnellmann *v.* Southern Commercial, etc., Bank, 123 Mo. App. 188, 100 S. W. 575. See also Kuhnes *v.* Cahill, 128 Iowa 594, 104 N. W. 1025.

4. A claimant may not intervene after judgment and payment thereof by the surety on the dissolution bond. Drought *v.* Poage, (Ga. App. 1907) 59 S. E. 728.

909. 3. Gross *v.* Strzyzowski, 124 Ill. App. 300; Taylor *v.* Donahoe, 125 Wis. 513, 103 N. W. 1099. See also Southern R. Co. *v.* Funke, (Ala. 1907) 44 So. 397; Toner *v.* Toner, (Mich. 1908) 115 N. W. 712.

Bill in Equity by the Garnishee. — Cleveland *v.* Insurance Co. of North America, (Ala. 1907) 44 So. 37.

5. It seems that under the *Illinois* statute, where the claimant does not appear voluntarily he is to be cited in, in such manner as the court directs. Fry *v.* Radzinski, 219 Ill. 526, 76 N. E. 694, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 906–909.

910. 1. Toner *v.* Toner, (Mich. 1908) 115 N. W. 712.

The plaintiff may demur to the claimant's pleading. Wright *v.* Dougherty, (Iowa 1908) 115 N. W. 908.

6. But there can be no judgment in favor of the plaintiff when there is nothing to show that the garnishee is indebted to the defendant or has any property belonging to him. Groesbeck *v.* T. H. Thompson Milling Co., (Tex. Civ. App. 1905) 86 S. W. 33.

911. 1. Munson *v.* Mabon, (Iowa 1907) 112 N. W. 775; Wright *v.* Dougherty, (Iowa 1908) 115 N. W. 908; Mace *v.* Richardson, 100 Me. 70, 60 Atl. 701.

The claimant may have such an equitable interest in the fund as will protect it from garnishment. Schnellmann *v.* Southern Commercial, etc., Bank, 123 Mo. App. 188, 100 S. W. 575.

2. Hubbard *v.* Lamburn, 189 Mass. 296, 75 N. E. 707.

4. Jordan *v.* Rice, (Ala. 1907) 44 So. 93.

An estoppel against the defendant is good against the plaintiff. Munson *v.* Mabon, (Iowa 1907) 112 N. W. 775.

Where the garnishment is in aid of a judgment rendered in the same court, it is not necessary to introduce the judgment in evidence, as the court will take judicial notice of it. Baze *v.* Island City Mfg. Co., (Tex. Civ. App. 1906) 94 S. W. 460.

912. 1. *Compare* Schuler *v.* Murphy, (Miss. 1907) 44 So. 810.

913. 1. See G. Ober, etc., Co. *v.* Phillips Buttorff Mfg. Co., 145 Ala. 625, 40 So. 278.

See as to a judgment in favor of intervenors, Kuhnes *v.* Cahill, 128 Iowa 594, 104 N. W. 1025.

2. Crawford *v.* J. E. Dunson, etc., Co., 1 Ga. App. 319, 57 S. E. 1057.

3. Baze *v.* Island City Mfg. Co., (Tex. Civ. App. 1906) 94 S. W. 460.

Or charging the goods if they are in court. Toner *v.* Toner, (Mich. 1908) 115 N. W. 712.

4. Mace *v.* Richardson, 100 Me. 70, 60 Atl. 701; U. S. Fidelity, etc., Co. *v.* Warnell, (Tex. Civ. App. 1907) 103 S. W. 690.

5. See, as taxing the plaintiff's costs upon the goods in court, Toner *v.* Toner, (Mich. 1908) 115 N. W. 712.

7. Southern R. Co. *v.* Funke, (Ala. 1907) 44 So. 397.

914. 1. See generally, Baxley *v.* Laster, 81 Ark. 236, 101 S. W. 755; Lightfoot *v.* Murphy, (Tex. Civ. App. 1906) 104 S. W. 511.

GAS COMPANIES.

917. 1. Quinby *v.* Consumers' Gas Trust Co., 140 Fed. 362; La Harpe *v.* Elm Tp. Gas, etc., Co., 69 Kan. 100, 76 Pac. 448, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 916; State *v.* Withnell, (Neb. 1907) 110 N. W. 680; Charleston Natural Gas Co. *v.* Kanawha Natural Gas, etc., Co., 58 W. Va. 22, 50 S. E. 876; Madison *v.* Madison Gas, etc., Co., 129 Wis. 249, 108 N. W. 65.

A Gas Company Is a Manufacturer within the provision of the Louisiana constitution exempting manufacturers from license taxation. State *v.* New Orleans Lighting Co., 118 La. 440, 43 So. 44.

2. Quinby *v.* Consumers' Gas Trust Co., 140 Fed. 362; State *v.* Kansas Natural Gas, etc., Co., 71 Kan. 508, 80 Pac. 962; Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17.

4. Indianapolis *v.* Consumers' Gas Co., (C. C. A.) 144 Fed. 640; Water, etc., Co. *v.* Hutchinson, 144 Fed. 256.

No Inherent Right to Engage in Private Gas Enterprise.—Hyatt *v.* Williams, 148 Cal. 585, 84 Pac. 41.

Under the New York Statute, Laws 1905, c. 737, municipalities may not operate lighting systems for other than "municipal purposes" except by the authority of the state gas commission. Potsdam Electric Light, etc., Co. *v.* Potsdam, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 18, 97 N. Y. Supp. 190.

7. Compton *v.* People's Gas Co., 75 Kan. 572, 89 Pac. 1039.

918. 2. Motter *v.* Kennett Tp. Electric Co., 212 Pa. St. 613, 62 Atl. 104.

5. Effect of Subdividing Township. — Where the township in which a company holds a franchise, is subdivided into smaller townships, obliterating the original township, the company's rights are not thereby impaired. Public service Corp. *v.* De Grote, 70 N. J. Eq. 454, 62 Atl. 65.

919. 3. **Regulation Must Be Reasonable.** — State *v.* Withnell, (Neb. 1907) 110 N. W. 680; *In re* Smith, 143 Cal. 368, 77 Pac. 180.

4. Edgewood *v.* Scott, 29 Pa. Super. Ct. 156; Scranton Gas, etc., Co. *v.* Scranton, 214 Pa. St. 586, 64 Atl. 84.

In the exercise of the police power a city may compel a gas company to change the location of its pipes. New Orleans Gaslight Co. *v.* Drainage Commission, 197 U. S. 453, 25 U. S. Supm. Ct. 471, *affirming* 111 La. 838, 35 So. 929.

6. A County Cannot Prohibit the Manufacture of Gas where the state constitution gives gas com-

panies the right to use the streets, etc. *In re* Smith, 143 Cal. 368, 77 Pac. 180.

920. 1. Quinby *v.* Consumers' Gas Trust Co., 140 Fed. 362.

5. La Harpe *v.* Elm Tp. Gas, etc., Co., 69 Kan. 100, 76 Pac. 448; Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17; Hardman *v.* Cabot, 60 W. Va. 664, 55 S. E. 756. But see State *v.* Kansas Natural Gas, etc., Co., 71 Kan. 508, 80 Pac. 962.

921. 2. La Harpe *v.* Elm Tp. Gas, etc., Co., 69 Kan. 100, 76 Pac. 448; Baltimore County Water, etc., Co. *v.* Dubreuil, 105 Md. 424, 66 Atl. 439, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921.

3. Baltimore County Water, etc., Co. *v.* Dubreuil, 105 Md. 424, 66 Atl. 439, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921.

Contra. — Hardman *v.* Cabot, 60 W. Va. 664, 55 S. E. 756.

4. Baltimore County Water, etc., Co. *v.* Dubreuil, 105 Md. 424, 66 Atl. 439.

Contra. — Hardman *v.* Cabot, 60 W. Va. 664, 55 S. E. 756.

922. 1. **Acceptance Essential.** — Richmond *v.* Richmond Natural Gas Co., 168 Ind. 82, 79 N. E. 1031.

Duration of Franchise. — Where the franchise to supply a city with light for twenty years from the date of the bid is sold at auction, and the successful bidder is not required to begin to furnish gas for a period of two years, the franchise runs from the date of the contract and not from the date of the furnishing of gas, and is therefore valid within a constitutional provision forbidding the granting of franchises for longer than twenty years. Truesdale *v.* Newport, (Ky. 1906) 90 S. W. 589.

2. Rushville *v.* Rushville Natural Gas Co., 164 Ind. 162, 73 N. E. 87.

Actual Occupancy of Streets Constitutes an Easement, and Is Taxable as Such. — Consolidated Gas Co. *v.* Baltimore, 101 Md. 541, 61 Atl. 5[illegible].

923. 8. **Contract against Public Policy.** — The courts will not enforce a contract between two companies, entered into for the purpose of destroying competition. Charleston Natural Gas Co. *v.* Kanawha Natural Gas, etc., Co., 58 W. Va. 22, 50 S. E. 876.

9. Quinby *v.* Consumers' Gas Trust Co., 140 Fed. 362.

924. 2. **Construction of Contract.** — A pressure of one pound is a sufficient compliance with the terms of a contract to supply gas, where there was no provision in the contract as to the required pressure, and one pound was the standard pressure and the pressure at which gas had been supplied for a number of years. Flaccus *v.* West Penn Gas Co., 213 Pa. St. 561, [illegible] Atl. 1111.

Where a company agreed to furnish gas in consideration of the grant of a right of way so long as the pipe-line should be operated, its obligation to furnish gas ceased upon the abandonment of the line for any reason, and the company could not be restrained from removing its pipes. Connersville Natural Gas Co. *v.* Moffett, 164 Ind. 585, 73 N. E. 894.

3. **A Gas Company May Transfer Its Property to a City,** where the city has reserved the right to purchase after a certain time in the ordinance granting the franchise. Indianapolis *v.* Consumers' Gas Co., (C. C. A.) 144 Fed. 640.

Construction of Contract for Sale of Mains, Pipe, etc., of Gas Company to District Council. — See Atty.-Gen. *v.* Ashton Gas Co., (1904) 2 Ch. 621.

925. 5. **Natural Gas Companies** may be formed under a provision authorizing the creation of companies for "the manufacture and supply of gas, or the supply of light or heat to the public *by any other means.*" Compton *v.* People's Gas Co., 75 Kan. 572, 89 Pac. 1039.

The Power to Regulate the Erection of Gas and Electric Lights, vested in a city, does not authorize the city to engage in the business of supplying light to its inhabitants. Hyatt *v.* Williams, 148 Cal. 585, 84 Pac. 41.

Laying Pipes on Bridge Carrying Street Over Railway. — See Taff Vale R. Co. *v.* Cardiff Gas, etc., Co., 23 Times L. Rep. 528.

Other Cases of the Construction of Statutes. — People *v.* Los Angeles Independent Gas Co., 150 Cal. 557, 89 Pac. 108; Millville Gas Light Co. *v.* Vineland Light, etc., Co., (N. J. 1906) 65 Atl. 504; Matter of Consolidated Gas Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407.

The Word "Town," as used in a statute authorizing the incorporation of gas companies, includes townships. Millville Imp. Co. *v.* Pitman, etc., Gas Co., (N. J. 1907) 67 Atl. 1005; Com. *v.* Consumers' Gas Co., 214 Pa. St. 72, 63 Atl. 463.

Other Examples of the Construction of the Peculiar Provisions of the Charters. — Quinby *v.* Consumers' Gas Trust Co., 140 Fed. 362; Landis Tp. *v.* Millville Gaslight Co., (N. J. 1907) 65 Atl. 716.

926. 1. Millville Gas Light Co. *v.* Vineland Light, etc., Co., (N. J. 1906) 65 Atl. 504; Com. *v.* Consumers' Gas Co., 214 Pa. St. 72, 63 Atl. 463, dissenting opinion of Potter, J., *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926.

2. Com. *v.* Consumers' Gas Co., 214 Pa. St. 72, 63 Atl. 463, dissenting opinion of Potter, J., *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926.

3. Millville Gas Light Co. *v.* Vineland Light, etc., Co., (N. J. 1906) 65 Atl. 504; Com. *v.* Consumers' Gas Co., 214 Pa. St. 72, 63 Atl. 463, dissenting opinion of Potter, J., *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926.

4. Columbus *v.* Columbus Gas Co., (Ohio 1907) 81 N. E. 440.

927. 1. Consolidated Gas Co. *v.* Mayer, 146 Fed. 150; Denninger *v.* Recorder's Ct., 145 Cal. 629, 79 Pac. 360; Richman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 216, 100 N. Y. Supp. 81; Brooklyn Union Gas Co. *v.* New York, 115 N. Y. App. Div. 69, 100 N. Y. Supp. 625, *affirmed* 188 N. Y. 334, 81 N. E. 141; Madison *v.* Madison Gas, etc., Co., 129 Wis. 240, 108 N. W. 65.

Power May Be Delegated by Legislature — Saratoga Springs *v.* Saratoga Gas, etc., Co., 122 N. Y. App. Div. 203, 107 N. Y. Supp. 341.

2. **Where an Ordinance Granting a Franchise Prescribes No Rate,** and reserves no right to [illegible]

late, and the company has expended large sums of money in the construction of its works, the municipality may not afterwards fix a rate without the company's knowledge or consent. Rushville *v.* Rushville Natural Gas Co., 164 Ind. 162, 73 N. E. 87; Richmond *v.* Richmond Natural Gas Co., 168 Ind. 82, 79 N. E. 1031.

928. 1. Brooklyn Union Gas Co. *v.* New York, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 450, 100 N. Y. Supp. 570.

A Rate Claimed to Be Excessively High Cannot Be Lowered by the Courts. — Brooklyn Union Gas Co. *v.* New York, 115 N. Y. App. Div. 69, 100 N. Y. Supp. 625, *affirmed* 188 N. Y. 334, 81 N. E. 141.

4. Consolidated Gas Co. *v.* New York, 157 Fed. 849; Brooklyn Union Gas Co. *v.* New York, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 450, 100 N. Y. Supp. 570; Consolidated Gas Co. *v.* Mayer, 146 Fed. 150.

5. Richman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 216, 100 N. Y. Supp. 81.

6. Brooklyn Union Gas Co. *v.* New York, 115 N. Y. App. Div. 69, 100 N. Y. Supp. 625, *affirmed* 188 N. Y. 334, 81 N. E. 141; Madison *v.* Madison Gas, etc., Co., 129 Wis. 249, 108 N. W. 65.

929. 2. Greenfield Gas Co. *v.* Trees, 165 Ind. 209, 75 N. E. 2.

A Gas Company May Refuse to supply gas to one not having the right to authorize the company's agents to enter the premises. Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17.

930. 3. Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17.

931. 1. Pollitz *v.* Consolidated Gas Co., 118 N. Y. App. Div. 92, 102 N. Y. Supp. 1017; Hewsey *v.* Queens Borough Gas, etc., Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 375, 93 N. Y. Supp. 1114.

2. **Under the New York Statute** the company may shut off the supply of gas for a failure to pay the amount due, although the deposit provided for in the statute has not been used up by charges for gas. Hewsey *v.* Queens Borough Gas, etc., Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 375, 93 N. Y. Supp. 1114.

3. **Cannot Refuse to Supply Married Woman Because of Husband's Indebtedness.** — Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17.

Arrears Created by Former Occupant. — Hoch *v.* Brooklyn Borough Gas Co., 117 N. Y. App. Div. 882, 103 N. Y. Supp. 370.

932. 3. Where a company supplies gas on an oral application therefor and discontinues the supply because of a dispute over a bill, the consumer is not entitled to recover the penalty (Laws N. Y. 1890, c. 566, § 65) for a refusal to furnish gas after a written application. Shelley *v.* Westchester Lighting Co., 119 N. Y. App. Div. 61, 103 N. Y. Supp. 951.

Under the same statute, where gas had been furnished on a written application and the supply had been cut off without cause, it was held that it was necessary for the consumer to make a new written application before he could be entitled to the penalty. Shelley *v.* Westchester Lighting Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 105, 105 N. Y. Supp. 133.

933. 1. Columbus *v.* Columbus Gas Co., (Ohio 1907) 81 N. E. 440.

934. 3. See Rock *v.* Acker Process Co., 112 N. Y. App. Div. 695, 98 N. Y. Supp. 977.

Operation of Gas Plant Not a Nuisance Per Se. — Bradbury Marble Co. *v.* Laclede Gaslight Co., 128 Mo. App. 96, 106 S. W. 594.

935. 4. Where a gas company opened a street it was held not to be liable for injuries caused by the negligent filling in of the street by the local authority. Cressy *v.* South Metropolitan Gas Co., 94 L. T. N. S. 790.

936. 4. Laclede Gaslight Co. *v.* Cottone, (C. C. A.) 152 Fed. 629; Huntington Light, etc., Co. *v.* Beaver, 37 Ind. App. 4, 73 N. E. 1002; Gould *v.* Winona Gas Co., 100 Minn. 258, 111 N. W. 254, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 936.

5. Gould *v.* Winona Gas Co., 100 Minn. 258, 111 N. W. 254; Marshall Window Glass Co. *v.* Cameron Oil, etc., Co., (W. Va. 1907) 59 S. E. 959.

High Degree of Care Required. — Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608.

6. Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 936.

7. Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 936.

8. Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 936.

937. 1. See Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608.

The Rule of Res Ipsa Loquitur Does Not Apply where it is merely shown that a gas regulator exploded, and it appears that the regulator had worked properly up to the time of the explosion. Marshall Window Glass Co. *v.* Cameron Oil, etc., Co., (W. Va. 1907) 59 S. E. 959.

2. Hammerschmidt *v.* Municipal Gas Co., 114 N. Y. App. Div. 290, 99 N. Y. Supp. 890.

938. 1. Huntington Light, etc., Co. *v.* Beaver, 37 Ind. App. 4, 73 N. E. 1002; Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608; Hammerschmidt *v.* Municipal Gas Co., 114 N. Y. App. Div. 290, 99 N. Y. Supp. 890.

The company is not liable for a fire resulting from an unusual flow of gas, where such flow was not strong enough to destroy the valve by which the flow of gas is regulated. Hollon *v.* Campton Fuel, etc., Co., (Ky. 1907) 105 S. W. 426.

5. Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 938; Marshall Window Glass Co. *v.* Cameron Oil, etc., Co., (W. Va. 1907) 59 S. E. 959.

6. Laclede Gaslight Co. *v.* Cottone, (C. C. A.) 152 Fed. 629; Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 938; Shirey *v.* Consumers' Gas Co., 215 Pa. St. 209, 64 Atl. 541.

939. 1. Hammerschmidt *v.* Municipal Gas Co., 114 N. Y. App. Div. 290, 99 N. Y. Supp. 890; Morgan *v.* United Gas Imp. Co., 214 Pa. St. 109, 63 Atl. 417.

940. 1. Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 940.

2. Duty to Repair Leaks. — Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 940.

3. Huntington Light, etc., Co. *v.* Beaver, 37 Ind. App. 4, 73 N. E. 1002.

Injuries to Trees and Plants. — Gould *v.* Winona Gas Co., 100 Minn. 258, 111 N. W. 254.

941. 4. **Mere Leaving of Earth in Street Not Negligence.** — Stevens *v.* Citizens' Gas, etc., Co., 132 Iowa 597, 109 N. W. 1090.

5. Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 92, 102 S. W. 608.

6. Louisville Gas Co. *v.* Hammer, (Ky. 1908) 106 S. W. 826.

944. 2. **Trespasser.** — Where one company wrongfully enters the land of another, drills a gas well and markets gas therefrom, it is bound to make full compensation, and where the exact quantity taken is indeterminable, every doubt will be resolved against the trespassing company. Great Southern Gas, etc., Co. *v.* Logan Natural Gas, etc., Co., (C. C. A.) 155 Fed. 114.

945. 1. **Where the Maximum Rate Is Fixed by Statute** such maximum rate may be recovered in the absence of a contract fixing the price. Brooklyn Union Gas Co. *v.* New York, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 450, 100 N. Y. Supp. 570.

5. See Richman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 216, 100 N. Y. Supp. 81.

946. 1. **Liability for Carelessly Damaging Public Lamp.** — Ashton *v.* Eccles Corp., 71 J. P. 55.

4. **Right of Company to Remove Meter Forcibly.** — Where the consumer agrees in his application that the company's agent may enter his premises to remove the meter upon the nonpayment of bills due for gas supplied, the company is not liable if, upon nonpayment, its agent forces the outer cellar door and removes the meter, causing thereby no disturbance to any person. Hitchcock *v.* Essex, etc., Gas Co., 71 N. J. L. 565, 61 Atl. 397, *affirming* 70 N. J. L. 492, 57 Atl. 135.

5. Woods *v.* People, 222 Ill. 293, 78 N. E. 607.

Gas Is Personal Property and Subject to Conversion. — Crystal Ice, etc., Co. *v.* Marion Gas Co., 35 Ind. App. 295, 74 N. E. 15.

6. Woods *v.* People, 222 Ill. 293, 78 N. E. 607.

GENERAL.

948. 5. **General Assembly** does not include the governor of a state. Warfield *v.* Vandiver, 101 Md. 78, 60 Atl. 538.

GENERAL AVERAGE.

955. 1. Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714.

956. 4. Minneapolis, etc., Steamship Co. *v.* Manistee Transit Co., 156 Fed. 424.

957. 3. Minneapolis, etc., Steamship Co. *v.* Manistee Transit Co., 156 Fed. 424.

961. 1. Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714.

2. Tarabochia *v.* American Sugar Refining Co., 135 Fed. 424; Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714.

Effect of the Harter Act. — To the same effect as The Irrawaddy, 171 U. S. 187, 18 U. S. Sup. Ct. 831, stated in the original note, see New York, etc., Mail Steamship Co. *v.* Ansonia Clock Co., 139 Fed. 894.

997. 4. The Santa Ana, (C. C. A.) 154 Fed. 800, admitting, however, the principle that the parties may by clearly expressed terms either enlarge or limit the carrier's liability.

1000. 2. Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714.

1001. 1. The Santa Ana, (C. C. A.) 154 Fed. 800.

GERMANE.

1004. 4. Murphy *v.* Salem, (Oregon 1906) 87 Pac. 532, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1004.

GIFTS.

1008. 1. Beebe *v.* Coffin, (Cal. 1908) 94 Pac. 766; McNevins *v.* Prudential Ins. Co., (Supm. Ct. App. T.) 57 Misc. (N. Y.) 608, 108 N. Y. Supp. 745. See also Puff *v.* Puff, (Ky. 1907) 104 S. W. 332.

A conveyance of household goods and chattels not under seal was treated as a gift in Taylor *v.* Vail, (Vt. 1907) 66 Atl. 820.

Gift or Loan. — Stewart *v.* Whittemore, 3 Cal. App. 213, 84 Pac. 841; Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435; Jenning *v.* Rohde, 99 Minn. 335, 109 N. W. 597.

An obligation to return or repay a thing is irreconcilably in conflict with the theory of a gift. Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435.

1009. 4. Hall *v.* Hall, 76 Kan. 806, 93 Pac. 177; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Turnbull *v.* Turnbull, 118 N. Y. App. Div. 449, 103 N. Y. Supp. 499.

A **Voluntary Trust** is simply a device by which the donor effectuates a gift either of property or of its beneficial use and enjoyment to a designated donee. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

9. Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Hall *v.* Hall, 76 Kan. 806, 93 Pac. 177; Chase *v.* Spencer, 150 Mich. 99, 113 N. W. 578; James *v.* Aller, 68 N. J. Eq. 666, 62 Atl. 427, *reversing* 66 N. J. Eq. 52, 57 Atl. 476.

Every person who is *sui juris* and under no legal disability has an unquestionable right of disposition of his property, whether by gift or otherwise. McLeod *v.* McLeod, 145 Ala. 269, 40 So. 414.

The law concedes to a person of sound mind the right to dispose of his property in any manner he may deem proper not inconsistent with its policy. Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625.

Corporations. — A corporation cannot make a gift of its property in derogation of stockholders' rights. Tillis *v.* Brown, (Ala. 1908) 45 So. 589.

Gift by Wife. — Under the *Texas* statute

(Rev. Stat. 1895, art. 2967), a married woman cannot dispose of her property by gift *inter vivos* or *causa mortis*, without the consent of her husband. Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142.

Gift by Husband. — The wife's assent is not essential to the validity of a gift made by a father to his children, of his unexempt personalty during his lifetime. Trabbic *v.* Trabbic, 142 Mich. 387, 105 N. W. 876.

Donation between Persons Living in Concubinage. — Jahraus's Succession, 114 La. 456, 38 So. 417.

Gifts to Concubine and Illegitimate Issue. — Williams *v.* Halford, 73 S. Car. 119, 53 S. E. 88.

1010. 1. **The Validity of a Gift** does not depend on the magnitude of the donor's title. Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561.

2. **The Gift of an Estray** may be made by the finder, and the donee's title will be superior to that of every one except the true owner. Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561.

3. See Crumlish *v.* Security Trust, etc., Co., 8 Del. Ch. 375, 68 Atl. 388.

5. Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480; Dean *v.* Dean, 131 Iowa 487, 108 N. W. 1051; Post *v.* Hagan, (N. J. 1907) 65 Atl. 1026, *reversing* (N. J. 1905) 61 Atl. 566; Woodville *v.* Woodville, (W. Va. 1908) 60 S. E. 140.

7. Woodville *v.* Woodville, (W. Va. 1908) 60 S. E. 140. See also Chase *v.* Spencer, 150 Iowa 99, 113 N. W. 578.

1011. 2. Hudson *v.* Hudson, 144 N. Car. 449, 57 S. E. 162.

3. Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374; Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480; McCord *v.* McCord, (Iowa 1907) 113 N. W. 552; Liebert *v.* Hoffman (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 108, 105 N. Y. Supp. 337.

5. Couch *v.* Couch, 148 Ala. 332, 42 So. 624; Nobles *v.* Hutton, (Cal. App. 1907) 93 Pac. 289; Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769.

6. Morgan *v.* Owens, 228 Ill. 598, 81 N. E. 1135; Platt *v.* Elias, 108 N. Y. App. Div. 365, 95 N. Y. Supp. 710, *affirmed* 186 N. Y. 374, 79 N. E. 1; Anderson *v.* Fry, 123 N. Y. App. Div. 46, 107 N. Y. Supp. 916.

7. Baur *v.* Cron, (N. J. 1907) 66 Atl. 585.

8. Dean *v.* Dean, 131 Iowa 487, 108 N. W. 1051; Cole *v.* Sweet, 112 N. Y. App. Div. 777, 98 N. Y. Supp. 625; Balthrop *v.* Todd, 145 N. Car. 112, 58 S. E. 996; Vaughn *v.* Vaughn, 217 Pa. St. 496, 66 Atl. 745.

9. *Alabama.* — Hutcheson *v.* Bibb, 142 Ala. 586, 38 So. 754; McLeod *v.* McLeod, 145 Ala. 269, 40 So. 414; Couch *v.* Couch, 148 Ala. 332, 42 So. 624; Dolberry *v.* Dolberry, (Ala. 1907) 44 So. 1018.

California. — Arellanes *v.* Arellanes, 151 Cal. 443, 90 Pac. 1059; Yordi *v.* Yordi, (Cal. App. 1907) 91 Pac. 348; Nobles *v.* Hutton, (Cal. App. 1907) 93 Pac. 289.

Connecticut. — See Meriden Sav. Bank *v.* McCormack, 70 Conn. 260, 64 Atl. 338.

Delaware. — See Crumlish *v.* Security Trust, etc., Co., 8 Del. Ch. 375, 68 Atl. 388.

Illinois. — Morgan *v.* Owens, 228 Ill. 598, 81 N. E. 1135.

Maryland. — Reed *v.* Reed, 101 Md. 138, 60 Atl. 621.

Minnesota. — *In re* Sperl, 94 Minn. 421, 103 N. W. 502.

Missouri. — Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769.

New Jersey. — Post *v.* Hagan, (N. J. 1907) 65 Atl. 1026, *reversing* (N. J. 1905) 61 Atl. 566. See also Baur *v.* Cron, (N. J. 1907) 66 Atl. 585.

New York. — Liebert *v.* Hoffman, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 108, 105 N. Y. Supp. 337.

North Carolina. — Balthrop *v.* Todd, 145 N. Car. 112, 58 S. E. 996.

Rhode Island. — Schuyler *v.* Stephens, (R. I. 1907) 68 Atl. 311.

Wisconsin. — Quinn *v.* Quinn, 130 Wis. 548, 110 N. W. 488.

"Where no relation of trust and confidence exists between the donor and donee, or where, when such relation does exist, the donor, and not the donee, occupies the dominant position, the rule has no application, and a gift absolute in its terms, made voluntarily and with a full understanding of its effect, cannot be revoked by the donor either by his own act alone or with the aid of a judicial tribunal." James *v.* Aller, 68 N. J. Eq. 666, 62 Atl. 427, *reversing* 66 N. J. Eq. 52, 57 Atl. 476.

1012. 1. **English Rule Adopted in United States.** — Yordi *v.* Yordi, (Cal. App. 1907) 91 Pac. 348; Nobles *v.* Hutton, (Cal. App. 1907) 93 Pac. 289; Post *v.* Hagan, (N. J. 1907) 65 Atl. 1026, *reversing* (N. J. 1905) 61 Atl. 566.

2. Hutcheson *v.* Bibb, 142 Ala. 586, 38 So. 754; Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625.

Gift from Parent to Child Held Valid. — McLeod *v.* McLeod, 145 Ala. 269, 40 So. 414.

3. Couch *v.* Couch, 148 Ala. 332, 42 So. 624; Arellanes *v.* Arellanes, 151 Cal. 443, 90 Pac. 1059; Nobles *v.* Hutton, (Cal. App. 1907) 93 Pac. 289; Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625; Post *v.* Hagan, (N. J. 1907) 65 Atl. 1026, *reversing* (N. J. 1905) 61 Atl. 566; Baur *v.* Cron, (N. J. 1907) 66 Atl. 585.

Burden of Proof of undue influence is on the parent to set aside a deed to a child. McLeod *v.* McLeod, 145 Ala. 269, 40 So. 414.

Sufficiency of Evidence to Sustain Gift to Trusted Advisor. — Taylor *v.* Vail, (Vt. 1907) 66 Atl. 820.

4. Couch *v.* Couch, 148 Ala. 332, 42 So. 624, approving the doctrine laid down in the original note.

5. **Donation from Parent to Child,** alone and of itself, raises no presumption of undue influence, since in the absence of evidence to the contrary the parent is presumably the dominant party. McLeod *v.* McLeod, 145 Ala. 269, 40 So. 414.

1013. 3. See Schuyler *v.* Stephens, (R. I. 1907) 68 Atl. 311.

6. **Gifts to Spiritualistic Mediums.** — Williams *v.* Johnston, 84 Ark. 109, 104 S. W. 789, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1013, but upholding the gift in question under the circumstances of the case.

1014. **1.** James *v.* Aller, 68 N. J. Eq. 666, 62 Atl. 427; Matter of Palmer, 117 N. Y. App. Div. 360, 102 N. Y. Supp. 236.

3. Burnes *v.* Burnes, 132 Fed. 485, *affirmed* (C. C. A.) 137 Fed. 781; Crockett *v.* Sibley, 73 N. H. 322, 61 Atl. 469; Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844; Anderson *v.* Fry, 123 N. Y. App. Div. 46, 107 N. Y. Supp. 916.

An unequal division of property by the donor among his children raises no presumption of undue influence, where the donor lived with his favorite child. Meyer *v.* Arends, 126 Wis. 603, 106 N. W. 675.

5. Cole *v.* Sweet, 112 N. Y. App. Div. 777, 98 N. Y. Supp. 625.

6. Three Kinds of Donations Inter Vivos in Louisiana. — See Ackerman *v.* Larner, 116 La. 101, 40 So. 581.

7. Robertson *v.* Robertson, 147 Ala. 311, 40 So. 104, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1014; Hall *v.* Hall, 76 Kan. 806, 93 Pac. 177.

1015. **1.** Robertson *v.* Robertson, 147 Ala. 311, 40 So. 104, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015. See also Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435.

2. Elements of Valid Gift Inter Vivos. — Fisher *v.* Ludwig, (Cal. App. 1907) 91 Pac. 658; Fritz *v.* Fernandez, 45 Fla. 318, 34 So. 315, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015; Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480; Mahoney *v.* Martin, 72 Kan. 406, 83 Pac. 982, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015; Davis *v.* Kuck, 93 Minn. 262, 101 N. W. 165, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108; Gick *v.* Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109; Schneider *v.* Schneider, 122 N. Y. App. Div. 774, 107 N. Y. Supp. 792; Reese *v.* Philadelphia Trust, etc., Co., 218 Pa. St. 150, 67 Atl. 124; Combest *v.* Wall, (Tex. Civ. App. 1907) 102 S. W. 147, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015.

The Delivery of an Inventory of the donor's assets, with an assignment thereof, is sufficient delivery to complete the gift. Matter of Palmer, 117 N. Y. App. Div. 360, 102 N. Y. Supp. 236.

3. Muir *v.* Gregory, 158 Fed. 122; Beebe *v.* Coffin, (Cal. 1908) 94 Pac. 766; Oliver *v.* Perry, 131 Iowa 654, 109 N. W. 183; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108; Combest *v.* Wall, (Tex. Civ. App. 1907) 102 S. W. 147, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015.

A promissory note payable after the maker's death is not enforceable as a gift. *In re* Stitt, 127 Wis. 379, 106 N. W. 114.

4. Noble *v.* Learned, (Cal. App. 1906) 87 Pac. 402; Beebe *v.* Coffin, (Cal. 1908) 94 Pac. 766; Trombly *v.* Klersy, 141 Mich. 73, 104 N. W. 419; Cole *v.* Cole, 144 Mich. 676, 108 N. W. 101; Bowron *v.* De Selding, 105 N. Y. App. Div. 500, 94 N. Y. Supp. 292.

1016. **1.** Turnbull *v.* Turnbull, 118 N. Y. App. Div. 449, 103 N. Y. Supp. 499.

2. Robertson *v.* Robertson, 147 Ala. 311, 40 So. 104.

3. *In re* Podhajsky, (Iowa 1908) 115 N. W. [illegible].

4. Switzer *v.* Gertenbach, 122 Ill. App. 26; Oliver *v.* Perry, 131 Iowa 654, 109 N. W. 183.

Execution of Gifts — Louisiana. — Ackerman *v.* Larner, 116 La. 101, 40 So. 581. See also Prosser *v.* Wall, [illegible] 116 La. [illegible] 40 So. 10[illegible]; *In re* Lahaye, 115 La. 1089, 40 So. 468; Didlake *v.* Cappel, 116 La. 844, 41 So. 112.

1017. **2.** Taylor *v.* Vail, (Vt. 1907) 66 Atl. [illegible].

5. Oliver *v.* Perry, 131 Iowa 654, 109 N. W. 183; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929.

6. Northwestern Mut. L. Ins. Co. *v.* Collamore, 100 Me. 578, 62 Atl. 652. *Compare* Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Nicklas *v.* Parker, 69 N. J. Eq. 743, 61 Atl. 267.

7. *Alabama.* — Thomas *v.* Tilley, 147 Ala. 189, 41 So. 854.

Arkansas. — Wilson *v.* Edwards, 79 Ark. 69, 94 S. W. 927; Williams *v.* Johnston, 84 Ark. 109, 104 S. W. 789.

Colorado. — Wittman *v.* Pickens, 33 Colo. 484, 81 Pac. 299, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1017.

Georgia. — Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750.

Illinois. — Millard *v.* Millard, 221 Ill. 86, 77 N. E. 595.

Iowa. — McCord *v.* McCord, (Iowa 1907) 113 N. W. 552.

Kentucky. — Thogmorton *v.* Grigsby, (Ky. 1907) 99 S. W. 650.

Massachusetts. — Bone *v.* Holmes, 195 Mass. 495, 81 N. E. 290.

Michigan. — State Bank *v.* Johnston, (Mich. 1908) 115 N. W. 464.

Missouri. — Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629.

New York. — Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929; Matter of King, 115 N. Y. App. Div. 751, 100 N. Y. Supp. 1089; Matter of Palmer, 117 N. Y. App. Div. 360, 102 N. Y. Supp. 236.

Virginia. — Ingersoll *v.* Pond, (Va. 1908) [illegible] S. E. 738.

Wisconsin. — *In re* Stitt, 127 Wis. 379, 106 N. W. 114.

1019. **2.** Barnes *v.* Banks, 223 Ill. 352, 79 N. E. 117, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1019.

5. West *v.* McCullough, 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493. See also Farrelly *v.* Emigrant Industrial Sav. Bank, 92 N. Y. App. Div. 529, 87 N. Y. Supp. 54.

6. *United States.* — Beaumont *v.* Beaumont, (C. C. A.) 152 Fed. 55; Muir *v.* Gregory, 158 Fed. 122.

California. — Beebe *v.* Coffin, (Cal. 1908) 94 Pac. 766, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1019.

Georgia. — Hall *v.* Simmons, 125 Ga. 801, 54 S. E. 751.

Illinois. — Millard *v.* Millard, 123 Ill. App. 279 (*quoting* 14 AM. AND ENG. ENCYC. OF LAW

(2d ed.) 1019), *affirmed* 221 Ill. 86, 77 N. E. 595; Noble v. Upton, 210 Ill. 187, 76 N. E. 1; *Iowa.* — Oliver v. Perry, 131 Iowa 649, 109 N. W. 183.

Kansas. — Hall v. Hall, 76 Kan. 806, 93 Pac. 177.

Kentucky. — McCoy v. McCoy, (Ky. 1907) 104 S. W. 1031.

Michigan. — State Bank v. Johnston, (Mich. 1908) 115 N. W. 464.

Missouri. — Harris Banking Co. v. Miller, 190 Mo. 640, 89 S. W. 629.

New York. — Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929; Kelly v. Albany Trust Co., 124 N. Y. App. Div. 99, 108 N. Y. Supp. 214; Kelly v. National Sav. Bank, 124 N. Y. App. Div. 103, 108 N. Y. Supp. 179.

1020. **1. Evidence of Intent.** — While no one is presumed to give, the intention to give may be inferred from the relations of the parties and from all the facts and circumstances of the case. Zacharie's Succession, 119 La. 150, 43 So. 988.

2. *United States.* — Beaumont v. Beaumont, (C. C. A.) 152 Fed. 55.

Arkansas. — Wilson v. Edwards, 79 Ark. 69, 94 S. W. 927.

California. — Beebe v. Coffin, (Cal. 1908) 94 Pac. 766.

Georgia. — Donaldson v. Everett, 122 Ga. 318, 50 S. E. 94.

Illinois. — Millard v. Millard, 221 Ill. 86, 77 N. E. 595.

Kansas. — Hall v. Hall, 76 Kan. 806, 93 Pac. 177.

Kentucky. — Wedding v. Wedding, (Ky. 1905) 87 S. W. 313.

Maine. — Northwestern Mut. L. Ins. Co. v. Collamore, 100 Me. 578, 62 Atl. 652.

Massachusetts. — Bone v. Holmes, 195 Mass. 495, 81 N. E. 290.

Michigan. — State Bank v. Johnston, (Mich. 1908) 115 N. W. 464.

Missouri. — Harris Banking Co. v. Miller, 190 Mo. 640, 89 S. W. 629; Godard v. Conrad, 125 Mo. App. 165, 101 S. W. 1108.

New York. — Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929; Matter of Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176, *affirmed* 186 N. Y. 537, 78 N. E. 1112.

Vermont. — Taylor v. Vail, (Vt. 1907) 66 Atl. 820.

An Act of Sale is not to be taken as a donation, where it is evident that it was not the intention to donate. Lyons v. Lawrence, 118 La. 461, 43 So. 51.

Intent May Be Either Express or Implied. — Clark v. Gurley, (Tex. Civ. App. 1907) 106 S. W. 394.

3. Townsend v. Sullivan, 3 Cal. App. 115, 84 Pac. 435; Bowron v. De Selding, 105 N. Y. App. Div. 500, 94 N. Y. Supp. 292.

4. There must be some word or act to transfer title from donor to donee. Donaldson v. Everett, 122 Ga. 318, 50 S. E. 94.

5. Hall v. Simmons, 125 Ga. 801, 54 S. E. 751.

What Is Not a Sufficient Delivery. — Taylor v. Vail, (Vt. 1907) 66 Atl. 820.

1021. **1.** Coke v. Ikard, (Tex. Civ. App. 1905) 87 S. W. 869.

2. Branding Cattle. — Coke v. Ikard, (Tex. Civ. App. 1905) 87 S. W. 869, *following* Hillebrant v. Brewer, 6 Tex. 45.

Cattle. — In *Texas,* under Rev. Stat. (Tex.) 1895, art. 2546, cattle running at large must be delivered, either by actual or constructive possession. Eldridge v. McDow, (Tex. Civ. App. 1907) 102 S. W. 435.

3. See Fisher v. Ludwig, (Cal. App. 1907) 91 Pac. 658.

The Manual Gift, that is, the giving of corporeal movable effects, accompanied by a real delivery, is not subject to any formality. Zacharie's Succession, 119 La. 150, 43 So. 988.

4. Rawlinson v. Mort, 93 L. T. N. S. 555, 21 Times L. Rep. 774; Hall v. Simmons, 125 Ga. 801, 54 S. E. 751.

6. Hall v. Simmons, 125 Ga. 801, 54 S. E. 751; McCoy v. McCoy, (Ky. 1907) 104 S. W. 1031, *citing* 14 Am. and Eng. Encyc. of Law (2d ed.) 1021; Gick v. Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109.

Delivery of Key of Safety-deposit Box. — Millard v. Millard, 221 Ill. 86, 77 N. E. 595.

1022. **1.** Gick v. Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109.

3. Fisher v. Ludwig, (Cal. App. 1907) 91 Pac. 658; Andrews v. Nichols, 116 N. Y. App. Div. 645, 101 N. Y. Supp. 977.

4. *Compare* Wedding v. Wedding, (Ky. 1905) 87 S. W. 313; Bone v. Holmes, 195 Mass. 495, 81 N. E. 290; Trabbic v. Trabbic, 142 Mich. 387, 105 N. W. 876; Bently v. Jun, (Neb. 1906) 107 N. W. 865; Clark v. Gurley, (Tex. Civ. App. 1907) 106 S. W. 394.

Transfer of Notes. — An instruction using the word "transferred" instead of "delivered" is not erroneous, as the transfer of an instrument conveys the idea of a delivery. Crawford v. Hord, (Tex. Civ. App. 1905) 89 S. W. 1097.

1023. **1. Gift of Life Insurance Policy.** — Littlefield v. Perkins, 100 Me. 96, 60 Atl. 707; McNevins v. Prudential Ins. Co., (Supm. Ct. App. T.) 57 Misc. (N. Y.) 608, 108 N. Y. Supp. 745.

The delivery of a passbook showing payments of assessments is not sufficient to consummate a gift of the policy. Ingersoll v. Pond, (Va. 1908) 60 S. E. 738.

To constitute a valid gift *inter vivos* of an insurance policy from a wife to her husband, the necessary change of beneficiary must be made during her lifetime. Littlefield v. Perkins, 100 Me. 96, 60 Atl. 707.

Inclosing the policy in a sealed envelope and handing the package to another, with instructions to keep but not to open until after the death of the depositor, is not sufficient to constitute a gift *inter vivos* or *causa mortis.* Northwestern Mut. L. Ins. Co. v. Collamore, 100 Me. 578, 62 Atl. 652.

4. Beaumont v. Beaumont, (C. C. A.) 152 Fed. 55.

6. Bone v. Holmes, 195 Mass. 495, 81 N. E. 290; Matter of King, 115 N. Y. App. Div. 751, 100 N. Y. Supp. 1089, *affirmed* 188 N. Y. 626, 81 N. E. 1167; Reese v. Philadelphia Trust, etc., Co., 218 Pa. St. 150, 67 Atl. 124.

Donor Must Part with Control. — Noble *v.* Learned, (Cal. App. 1906) 87 Pac. 402.

Reserving the Income or dividends by the donor during his lifetime does not affect the validity of the gift. Matter of King, 115 N. Y. App. Div. 751, 100 N. Y. Supp. 1089.

Purchase of Stock by Agent in His Own Name for Principal's Benefit. — Bowron *v.* De Selding, 105 N. Y. App. Div. 500, 94 N. Y. Supp. 292.

7. *Compare* Wedding *v.* Wedding, (Ky. 1905) 87 S. W. 313.

1021. 1. Matter of Palmer, 117 N. Y. App. Div. 360, 102 N. Y. Supp. 236.

2. Delivery of an Order for Payment after donor's death is insufficient to support a gift *inter vivos*. Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

4. See Matter of Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176, *affirmed* 186 N. Y. 537, 78 N. E. 1112.

5. See Matter of Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176, *affirmed* 186 N. Y. 537, 78 N. E. 1112.

Gift by Husband to Wife, when made in good faith and consummated by delivery and acceptance, cannot be defeated by a sale made by the husband. Smith *v.* Sheppard, (Ga. App. 1907) 58 S. E. 303.

1025. 4. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

6. Wittman *v.* Pickens, 33 Colo. 484, 81 Pac. 209.

1026. 1. Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151.

2. Robertson *v.* Robertson, 147 Ala. 311, 40 So. 104; Larimer *v.* Beardsley, 130 Iowa 706, 107 N. W. 935; Hall *v.* Hall, 76 Kan. 806, 93 Pac. 177.

3. Robertson *v.* Robertson, 147 Ala. 311, 40 So. 104; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

4. Wilson *v.* Edwards, 79 Ark. 69, 94 S. W. 927; Bowron *v.* De Selding, 105 N. Y. App. Div. 500, 94 N. Y. Supp. 292; Matter of King, 115 N. Y. App. Div. 751, 100 N. Y. Supp. 1089, *affirmed* 188 N. Y. 626, 81 N. E. 1167.

5. Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629.

7. Beaumont *v.* Beaumont, (C. C. A.) 152 Fed. 55; Bone *v.* Holmes, 195 Mass. 495, 81 N. E. 290.

1027. 3. Louisiana Law of Acceptance. — *In re* Lahaye, 115 La. 1089, 40 So. 468; Ackerman *v.* Larner, 116 La. 101, 40 So. 581; Lyons *v.* Lawrence, 118 La. 461, 43 So. 51.

If the donation has been executed by delivery, it has full effect though not accepted in express terms. Zacharie's Succession, 119 La. 150, 43 So. 988.

4. Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750; Mahoney *v.* Martin, 72 Kan. 406, 83 Pac. 982; Bangs *v.* Browne, 149 Mich. 478, 112 N. W. 1107; Hulet *v.* Gates, 14 N. Dak. 209, 103 N. W. 628; Thompson *v.* Griggs, 31 Pa. Super. Ct. 608.

A Donee of Unsound Mind will be presumed to accept. Malone *v.* Lebus, (Ky. 1906) 96 S. W. 510.

1028. 1. Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750; Mullins *v.* Mullins, 120 Ky. 643, 87 S. W. 764.

The actual manual possession of the instrument (deed) by the grantee is not necessary or important. Hulet *v.* Gates, 14 N. Dak. 209, 103 N. W. 628.

2. Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1028; Hulet *v.* Gates, 14 N. Dak. 209, 103 N. W. 628.

4. Mahoney *v.* Martin, 72 Kan. 406, 83 Pac. 982. See also *In re* Lahaye, 115 La. 1089, 40 So. 468.

5. Any Kind of Personal Property may be the subject of a gift. Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480.

Easement by Prescription may arise by parol gift. Wells *v.* Parker, (N. H. 1907) 66 Atl. 121.

1029. 1. Ackerman *v.* Larner, 116 La. 101, 40 So. 581, 119 La. 744, 44 So. 452.

2. A Life Insurance Policy may be the subject of a gift. McNevins *v.* Prudential Ins. Co., (Supm. Ct. App. T.) 57 Misc. (N. Y.) 608, 108 N. Y. Supp. 745.

4. Andrews *v.* Nichols, 116 N. Y. App. Div. 645, 101 N. Y. Supp. 977.

5. Trabbic *v.* Trabbic, 142 Mich. 387, 105 N. W. 876; Andrews *v.* Nichols, 116 N. Y. App. Div. 645, 101 N. Y. Supp. 977; Heilig *v.* Heilig, 28 Pa. Super. Ct. 396.

A gift of a mortgaged chattel is subject to the mortgage as long as the same remains unsatisfied, whether in the hands of the mortgagee or his transferee. Speakman *v.* Vest, (Ala. 1907) 44 So. 1021.

7. Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480; State Bank *v.* Johnston, (Mich. 1908) 115 N. W. 464; Foster *v.* Murphy, (Neb. 1906) 107 N. W. 843. *Compare* Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214, in which evidence was held not sufficient to constitute a gift.

8. Fisher *v.* Ludwig, (Cal. App. 1907) 91 Pac. 658; Meriden Sav. Bank *v.* McCormack, 79 Conn. 260, 64 Atl. 338; McCoy *v.* McCoy, (Ky. 1907) 104 S. W. 1017; Bone *v.* Holmes, 195 Mass. 495, 81 N. E. 290; Bryant *v.* Abington Sav. Bank, (Mass. 1907) 81 N. E. 997; McGuire *v.* Murphy, 107 N. Y. App. Div. 104, 94 N. Y. Supp. 1005, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029; Hill *v.* Escort, 38 Tex. Civ. App. 487, 86 S. W. 367.

1030. 1. Bryant *v.* Abington Sav. Bank, (Mass. 1907) 81 N. E. 997.

4. Switzer *v.* Gertenbach, 122 Ill. App. 26; Sullivan *v.* Sullivan, 122 Ky. 707, 92 S. W. 976; *In re* Stitt, 127 Wis. 379, 106 N. W. 114.

5. Strevell *v.* Jones, (Surrogate Ct.) 92 N. Y. Supp. 719, *affirmed* 94 N. Y. Supp. 627, 106 N. Y. App. Div. 334.

7. Thogmorton *v.* Grigsby, (Ky. 1907) 99 S. W. 650; Pennell *v.* Ennis, 126 Mo. App. 355, 103 S. W. 147. *Compare* Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480.

A Check Placed to the Credit of the Donee, and a passbook issued to the donee and kept by the bank without the donee's knowledge, but subject to his call, constitute a gift, and acceptance will be presumed. Bangs *v.* Browne, 149 Mich. 478, 112 N. W. 1107.

1031. 4. Quirk *v.* Quirk, 155 Fed. 199,

[illegible] 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1031.

5. Quirk *v.* Quirk, 155 Fed. 199, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1031.

6. Quirk *v.* Quirk, 155 Fed. 199, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1031.

7. Percival-Porter Co. *v.* Oaks, 130 Iowa 212, 106 N. W. 626.

1032. 4. It is well settled that, while a creditor may make a gift of the debt to his debtor, yet nothing less than a delivery of the note, or a receipt, as the case may be, is sufficient to support the gift. Quirk *v.* Quirk, 155 Fed. 199.

5. Farrow *v.* Farrow, (N. J. 1907) 65 Atl. 1009; West *v.* McCullough, 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493.

6. See Pelletier *v.* State Nat. Bank, 117 La. 335, 41 So. 640.

7. See Farrow *v.* Farrow, (N. J. 1907) 65 Atl. 1009.

1033. 1. Bronson *v.* Brady, 28 App. Cas. (D. C.) 250; Smith *v.* Sheppard, (Ga. App. 1907) 58 S. E. 303; Dean *v.* Dean, 131 Iowa 487, 108 N. W. 1051. See also Cowdrey *v.* Cowdrey, (N. J. 1906) 64 Atl. 98; West *v.* McCullough, 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493; Zuckerman *v.* Munz, (Tex. Civ. App. 1908) 107 S. W. 78; Sawyer *v.* Metters, (Wis. 1907) 113 N. W. 682.

Gift from Husband to Wife, executed when former was solvent and not made in contemplation of insolvency or of engaging in some hazardous enterprise, will be upheld if not excessive, considering the husband's circumstances at the time the gift was made. Harvey *v.* Godding, (Neb. 1906) 109 N. W. 220.

In *Utah* a plural wife may accept a gift from her husband. Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908.

Gifts between Married Persons in Louisiana. — Hurst *v.* Thompson, 118 La. 57, 42 So. 645.

4. O'Hair *v.* O'Hair, 76 Ark. 389, 88 S. W. 945; Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 764; Van Etten *v.* Passumpsic Sav. Bank, (Neb. 1907) 113 N. W. 163; Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751; Johnson *v.* Ludwick, 58 W. Va. 464, 52 S. E. 489; Evans *v.* Evans, 3 N. Bruns. Eq. Rep. 216. See also Watt *v.* Morrow, 19 S. Dak. 317, 103 N. W. 45.

If a husband buys and pays for land and takes a deed in his wife's name, a presumption arises of a gift to her; but this presumption is rebuttable. Jackson *v.* Williams, 129 Ga. 716, 59 S. E. 776.

5. Joint Earnings Used in Purchase of Land. — Where a husband causes a deed to be made to his wife, the law will presume a gift to her. Jentzsch *v.* Jentzsch, 84 Ark. 322, 105 S. W. 871.

7. Farrow *v.* Farrow, (N. J. 1907) 65 Atl. 1009, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1033; Matter of Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176.

Mere possession is not sufficient to establish a gift. Wilson *v.* Edwards, 79 Ark. 69, 94 S. W. 927.

A gift is not proved by a husband giving his wife authority to draw on his bank account. Crane *v.* Brewer, (N. J. 1907) 68 Atl. 78.

1034. 1 [illegible] Ark. 615, 88 S. W. 976; Naler *v.* Ballew, 81 Ark. 328, 99 S. W. 72; Fritz *v.* Fernandez, 45 Fla. 318, 34 So. 318, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1034; Morrison *v.* Dickey, 122 Ga. 353, 50 S. E. 175; Gick *v.* Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109.

Evidence Held Insufficient to Sustain a Gift. — Gittings *v.* Winter, 101 Md. 194, 60 Atl. 630.

A voluntary appropriation by a wife of her money to the improvement of the husband's property indicates a gift, but it is upon condition, or rather in expectation, that she will be entitled to occupy it during their joint lives. Knickerbocker Trust Co. *v.* Carhart, (N. J. 1906) 64 Atl. 756.

2. While, in a gift from a father to minor children, the law will dispense with some of the formalities of delivery, yet a mere promise to give is not the equivalent of a gift itself. Donaldson *v.* Everett, 122 Ga. 318, 50 S. E. 94.

Where land belonging to a wife was sold and the purchase-money notes were made payable to the husband and wife, this fact cannot create a presumption of a gift to the husband of the proceeds, or otherwise change the character of the property. Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751.

Mere Possession of the property by the husband is not sufficient to show a gift, and the burden of proof is upon him to show the same. Title Ins., etc., Co. *v.* Ingersoll, (Cal. 1908) 94 Pac. 94.

In *Pennsylvania* it is held that a husband becomes his wife's debtor when he receives her money, and the burden of proof is on him to show that it was not a loan; even her silence at the time he gets it is insufficient to raise the presumption of a gift to him. *In re* Kreider, 212 Pa. St. 587, 61 Atl. 1115.

In Wyatt *v.* Scott, 84 Ark. 355, 105 S. W. 871, it was held that under Kirby's Dig., § 5227, it is unnecessary for proof to show a formal gift to overcome the statutory presumption, but that a gift will be inferred when proof shows money was received by the husband and used with the knowledge and consent of the wife in such a manner as to preclude the idea or inference that she expected him to account for the same to her as agent or trustee; Fritz *v.* Fernandez, 45 Fla. 318, 34 So. 315, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1034.

3. McLeod *v.* McLeod, 145 Ala. 269, 40 So. 414; Barnes *v.* Banks, 223 Ill. 352, 79 N. E. 117, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1034; Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625; Trabbic *v.* Trabbic, 142 Mich. 387, 105 N. W. 876; Schmitt *v.* Schmitt, 94 Minn. 414, 103 N. W. 214; Hulet *v.* Gates, 14 N. Dak. 209, 103 N. W. 628.

1035. 1. Barnes *v.* Banks, 223 Ill. 352, 79 N. E. 117, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1034.

2. White *v.* Willard, 232 Ill. 464, 83 N. E. 954.

3. Jenning *v.* Rohde, 99 Minn. 335, 109 N. W. 597; Bently *v.* Jun, (Neb. 1906) 107 N. W. 865.

Money Voluntarily Paid by a parent to a child will be presumed a gift, unless procured by fraud or undue influence. Jenning *v.* Rohde, 99 Minn. 335, 109 N. W. 597.

Presumption of a Gift to one child cannot be used as a presumption of a gift to another child, as it is a fundamental rule that a legal presumption always must rest immediately on a fact and not on another presumption. Stephens *v.* Smith, 127 Mo. App. 18, 106 S. W. 533.

4. Vaughn *v.* Vaughn, 217 Pa. St. 496, 66 Atl. 745.

Voluntary Payment of Loan by Parent Presumed to Be Gift.— In the absence of fraud or undue influence a voluntary payment of money by a parent to his children will be presumed to be a gift. Jenning *v.* Rohde, 99 Minn. 335, 109 N. W. 597.

5. Crafton *v.* Inge, (Ky. 1906) 98 S. W. 325; Stephens *v.* Smith, 127 Mo. App. 18, 106 S. W. 533; Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844; White *v.* White, (W. Va. 1908) 60 S. E. 885.

Gift Presumed to Be Advancement.— Morrison *v.* Morrison, (Tex. Civ. App. 1906) 96 S. W. 100.

6. McLeod *v.* McLeod, 145 Ala. 269, 40 So. 414; Stephens *v.* Smith, 127 Mo. App. 18, 106 S. W. 533.

1036. 2. Arellanes *v.* Arellanes, 151 Cal. 443, 90 Pac. 1059; Nobles *v.* Hutton, (Cal. App. 1907) 93 Pac. 289; Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374; Post *v.* Hagan, (N. J. 1907) 65 Atl. 1026, *reversing* (N. J. 1905) 61 Atl. 566. See also Becker *v.* Schwerdtle, (Cal. App. 1907) 92 Pac. 398; Baur *v.* Cron, (N. J. 1907) 66 Atl. 585.

3. Dolberry *v.* Dolberry, (Ala. 1907) 44 So. 1018; Sanders *v.* Gurley, (Ala. 1907) 44 So. 1022; Woodville *v.* Woodville, (W. Va. 1908) 60 S. E. 140.

4. Where a stepdaughter shortly after coming of age gave her property to her stepmother, who occupied the dominant position, and the donor made the deed without reserving a power of revocation and without having competent and independent advice as to its effect, it was held that the gift should be set aside. Albert *v.* Haeberly, 68 N. J. Eq. 664, 61 Atl. 380.

1037. 1. Nicklas *v.* Parker, 69 N. J. Eq. 743, 61 Atl. 267; West *v.* McCullough, 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493.

3. Wilson *v.* Edwards, 79 Ark. 69, 94 S. W. 927.

4. Montgomery First Nat. Bank *v.* Taylor, 142 Ala. 459, 37 So. 695, *citing* 14 Am. and Eng. Encyc. of Law (2d ed.) 1037; Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750; Gick *v.* Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109; West *v.* McCullough, 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493.

Where a husband deposits money in a savings bank in the name of his wife, and never asserts any right to the money, and the wife makes additional deposits, the presumption is that he intended it as a gift to her. *In re* Klenke, 210 Pa. St. 572, 60 Atl. 166.

The right of a person named as payee in a deposit *trust* to have the fund on deposit must rest upon one of two theories: *i. e.*, that it was a gift *inter vivos* by the depositor to her, or that it was a valid trust now enforceable by her. In either event the intention must be clearly proven, and such intention must be shown to have been carried into effect by the donor or settlor. Nicklas *v.* Parker, 69 N. J. Eq. 743, 61 Atl. 267.

5. Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929; Gick *v.* Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109; Kelly *v.* Albany Trust Co., 124 N. Y. App. Div. 99, 108 N. Y. Supp. 214; Kelly *v.* National Sav. Bank, 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216; West *v.* McCullough, 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493.

1038. 1. Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750; Wipfler *v.* Detroit Pattern Works, 140 Mich. 677, 104 N. W. 545; Matter of Davis, 119 N. Y. App. Div. 35, 103 N. Y. Supp. 946.

2. Kelly *v.* Albany Trust Co., 124 N. Y. App. Div. 99, 108 N. Y. Supp. 214; Kelly *v.* National Sav. Bank, 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216; West *v.* McCullough, 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493; *In re* Klenke, 210 Pa. St. 572, 60 Atl. 166.

3. Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731; Nicklas *v.* Parker, 69 N. J. Eq. 743, 61 Atl. 267; Schippers *v.* Kempkes, (N. J. 1907) 67 Atl. 1042; Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929; Schneider *v.* Schneider, 122 N. Y. App. Div. 774, 107 N. Y. Supp. 792.

Where a deposited fund is the money of A, the mere issuing by a savings bank, at the direction of A, of a passbook to "A or B, either to draw," or "in account with A or B," will not constitute a present gift of the fund, evidenced by the passbook, to B. Schippers *v.* Kempkes, (N. J. 1907) 67 Atl. 74.

4. Schippers *v.* Kempkes, (N. J. 1907) 67 Atl. 74; Turnbull *v.* Turnbull, 118 N. Y. App. Div. 449, 103 N. Y. Supp. 499.

1039. 1. Nicklas *v.* Parker, 69 N. J. Eq. 743, 61 Atl. 267; Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929; Kelly *v.* Albany Trust Co., 124 N. Y. App. Div. 99, 108 N. Y. Supp. 214; Kelly *v.* National Sav. Bank, 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216; West *v.* McCullough, 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493.

Transfer on Books of Bank Unnecessary.— Fisher *v.* Ludwig, (Cal. App. 1907) 91 Pac. 658.

2. Meriden Sav. Bank *v.* McCormack, 79 Conn. 260, 64 Atl. 338; Nogga *v.* Savings Bank, 79 Conn. 425, 65 Atl. 129; McCoy *v.* McCoy, (Ky. 1907) 104 S. W. 1031; Magee *v.* Knight, 194 Mass. 546, 80 N. E. 620; Nicklas *v.* Parker, 69 N. J. Eq. 743, 61 Atl. 267; Crane *v.* Brewer, (N. J. 1907) 68 Atl. 78; Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929; Schneider *v.* Schneider, 122 N. Y. App. Div. 774, 107 N. Y. Supp. 792; Kelly *v.* Albany Trust Co., 124 N. Y. App. Div. 99, 108 N. Y. Supp. 214; Kelly *v.* National Sav. Bank, 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216.

3. Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731; Bailey *v.* New Bedford Sav. Inst., 192 Mass. 564, 78 N. E. 648; Magee *v.* Knight, 194 Mass. 546, 80 N. E. 620; Turnbull *v.* Turnbull, 118 N. Y. App. Div. 449, 103 N. Y. Supp. 499. See also Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929; Kelly *v.* Albany Trust Co., 124 N. Y. App. Div. 99, 108 N. Y. Supp. 214; Kelly *v.* National Sav.

Bank, 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216.

4. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Bone *v.* Holmes, 195 Mass. 495, 81 N. E. 290; Hill *v.* Escort, 38 Tex. Civ. App. 487, 86 S. W. 367.

5. Montgomery First Nat. Bank *v.* Taylor, 142 Ala. 459, 37 So. 695, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1039; Bailey *v.* New Bedford Sav. Inst., 192 Mass. 564, 78 N. E. 648; Kelly *v.* Albany Trust Co., 124 N. Y. App. Div. 99, 108 N. Y. Supp. 214; Kelly *v.* National Sav. Bank, 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216.

Delivery of Passbook. — It is well established that the delivery of a savings-bank passbook, with an order for the payment of the whole deposit, for the purpose of transferring the money to the donee, is a valid gift, and is effectual although the book and order are not presented to the bank until the donor's death. Hill *v.* Escort, 38 Tex. Civ. App. 487, 86 S. W. 367.

6. Wilson *v.* Edwards, 79 Ark. 69, 94 S. W. 927; Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1039; Zacharie's Succession, 119 La. 150, 43 So. 988.

7. McMahon *v.* Lawler, 190 Mass. 343, 77 N. E. 489.

8. McMahon *v.* Lawler, 190 Mass. 343, 77 N. E. 489.

9. Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731; Bailey *v.* New Bedford Sav. Inst., 192 Mass. 564, 78 N. E. 648.

1040. 2. Zacharie's Succession, 119 La. 150, 43 So. 988.

3. Malone *v.* Lebus, (Ky. 1906) 96 S. W. 519.

1041. 2. *United States.* — Logue *v.* Langan, (C. C. A.) 151 Fed. 455.

Arkansas. — Carter *v.* Reeves, 76 Ark. 615, 88 S. W. 976.

Iowa. — Bevington *v.* Bevington, 133 Iowa 351, 110 N. W. 840, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041; Sires *v.* Melvin, (Iowa 1907) 113 N. W. 106.

Michigan. — Maas *v.* Anchor F. Ins. Co., 148 Mich. 432, 111 N. W. 1044.

Minnesota. — Schmitt *v.* Schmitt, 94 Minn. 414, 103 N. W. 214.

Nebraska. — Merriman *v.* Merriman, 75 Neb. 222, 106 N. W. 174.

Texas. — Tannery *v.* McMinn, (Tex. Civ. App. 1905) 86 S. W. 640; Field *v.* Field, (Tex. Civ. App. 1905) 87 S. W. 726; Hammond *v.* Hammond, (Tex. Civ. App. 1906) 94 S. W. 1067; Hutcheson *v.* Chandler, (Tex. Civ. App. 1907) 104 S. W. 434; Hammond *v.* Hammond, (Tex. Civ. App. 1908) 108 S. W. 1024.

Utah. — Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041; Karren *v.* Rainey, 30 Utah 7, 83 Pac. 333.

West Virginia. — White *v.* White, (W. Va. 1908) 60 S. E. 885.

In *Texas* it is held that mere possession under a parol gift of land, whatever may be the rule of law elsewhere, does not entitle the [illegible] of title out of the donor. Possession and the making of permanent improvements are required in such cases. West *v.* Webster, (Tex. Civ. App. 1905) 87 S. W. 196.

3. Logue *v.* Langan, (C. C. A.) 151 Fed. 455.

4. Improvements must be made during the lifetime of the donor. Hutcheson *v.* Chandler, (Tex. Civ. App. 1907) 104 S. W. 434; Hammond *v.* Hammond, (Tex. Civ. App. 1908) 108 S. W. 1024.

1042. 1. Logue *v.* Langan, (C. C. A.) 151 Fed. 455; Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1042.

2. Logue *v.* Langan, (C. C. A.) 151 Fed. 455; Young *v.* Crawford, 82 Ark. 33, 100 S. W. 87; West *v.* Webster, (Tex. Civ. App. 1905) 87 S. W. 196; Wallis *v.* Turner, (Tex. Civ. App. 1906) 95 S. W. 61; Hutcheson *v.* Chandler, (Tex. Civ. App. 1907) 104 S. W. 434, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1042; Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1042.

3. A *feme covert* cannot bind herself by a parol gift of land. Tannery *v.* McMinn, (Tex. Civ. App. 1905) 86 S. W. 640.

4. West *v.* Webster, (Tex. Civ. App. 1905) 87 S. W. 196.

A parol gift, perfected by possession and improvements of the land for more than seven years, was held sufficient to give the plaintiff a legal title. Brown *v.* Norvell, 74 Ark. 484, 86 S. W. 306.

It is well settled that a parol gift of lands, accompanied by delivery of possession and followed by valuable improvements by the donee on the faith of the gift, will be upheld. The rule is generally based upon the doctrine of estoppel, by means of which the statute of frauds, requiring conveyances of land to be in writing, is avoided. Tannery *v.* McMinn, (Tex. Civ. App. 1905) 86 S. W. 640.

5. Carter *v.* Reeves, 76 Ark. 615, 88 S. W. 976; Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984; Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1042; White *v.* White, (W. Va. 1908) 60 S. E. 885.

This rule does not mean that proof in support of the gift must be undisputed. Bevington *v.* Bevington, 133 Iowa 351, 110 N. W. 840.

For Evidence Held Insufficient to Show Such Gift, see Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108; Wallis *v.* Turner, (Tex. Civ. App. 1906) 95 S. W. 61; Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984; Combest *v.* Wall, (Tex. Civ. App. 1907) 102 S. W. 147.

1043. 2. Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1043.

3. Gillespie *v.* Gillespie, 149 Ala. 184, 43 So. 12; Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1043. See also Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984; White *v.* White, (W. Va. 1908) 60 S. E. 885.

4. Gillespie *v.* Gillespie, 149 Ala. 184, 43 So. 12; Sires *v.* Melvin, (Iowa 1907) 113 N. W. 106; Irvine *v.* Irvine, (Ky. 1905) 89 S. W. 103.

6. Bevington *v.* Bevington, 133 Iowa 351, 110 N. W. 840; Weltsch *v.* Straub, 74 Kan. 292, 86

Pac. 148. See also Coté *v.* Coté, 29 Quebec Super. Ct. 388.

The Donor May Attach a Condition to a gift *in præsenti,* if that condition be not inconsistent with the possession or control by the donee of the thing given. Beaumont *v.* Beaumont, (C. C. A.) 152 Fed. 55.

1044. 1. Spann *v.* Hellen, 114 La. 336, 38 So. 248.

6. Bone *v.* Holmes, 195 Mass. 495, 81 N. E. 290.

1045. 1. Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844. See also Hutton *v.* Cramer, (Ariz. 1906) 85 Pac. 483.

4. Spann *v.* Hellen, 114 La. 336, 38 So. 248.

5. *Compare* Hosmer *v.* Tiffany, 115 N. Y. App. Div. 303, 100 N. Y. Supp. 797.

6. Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337; Barnes *v.* Banks, 223 Ill. 352, 79 N. E. 117; Foreman *v.* Archer, 130 Iowa 49, 106 N. W. 372; Mullins *v.* Mullins, 120 Ky. 643, 87 S. W. 764; Reed *v.* Reed, 101 Md. 138, 60 Atl. 621; Bently *v.* Jun, (Neb. 1906) 107 N. W. 865; Cowdrey *v.* Cowdrey, (N. J. 1906) 64 Atl. 98; Chase *v.* Clearfield Lumber Co., 213 Pa. St. 46, 62 Atl. 172; Jost *v.* Wolf, 130 Wis. 37, 110 N. W. 232.

Donee Must Accept Deed. — Preslar *v.* Walker, 116 La. 661, 40 So. 1033.

Donation Deed. — Two years' open, continuous, exclusive, and adverse possession under a donation deed gives title. Sibly *v.* Gomillion, 76 Ark. 442, 91 S. W. 22.

In *Louisiana* it is held that a donation of land under a private signature is a nullity. *In re* Lahaye, 115 La. 1089, 40 So. 468.

7. Griswold *v.* Griswold, 148 Ala. 239, 42 So. 554; Russell *v.* Mitchell, 223 Ill. 438, 79 N. E. 141; Preslar *v.* Walker, 116 La. 661, 40 So. 1033; Leonard *v.* Leonard, 145 Mich. 563, 108 N. W. 985.

Delivery in Escrow Held Sufficient. — Strickland *v.* Griswold, (Ala. 1907) 43 So. 105; Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337.

Delivery in Escrow. — Placing a deed in a bank box, though a conditional delivery, is held sufficient to vest title in the grantee after the grantor's death. Hutton *v.* Cramer, (Ariz. 1906) 85 Pac. 483.

Presumption of Delivery from Relationship of Parties. — White *v.* Willard, 232 Ill. 464, 83 N. E. 954.

Evidence Held Insufficient to Show Delivery. — Noble *v.* Tipton, 219 Ill. 132, 76 N. E. 151; Connor *v.* Rivard, 144 Mich. 177, 107 N. W. 807.

Evidence of Delivery. — Where the father, intending to make a gift to his daughter of a tract of land, bought and paid for the same and caused his vendor to execute and deliver to him a deed thereof, naming his daughter as grantee, such delivery was sufficient to pass title to the daughter immediately upon the delivery of the deed to the father, even though the deed remained unrecorded in his custody until produced at the trial. Hulet *v.* Gates, 14 N. Dak. 209, 103 N. W. 628.

1046. 2. **Setting Aside Deed.** — Baltlrop *v.* Todd, 145 N. Car. 112, 58 S. E. 996.

Mere inadequacy of consideration is not sufficient ground to set aside a deed made from parent to child. McLeod *v.* McLeod, 145 Ala. 269, 40 So. 414.

3. Crumlish *v.* Security Trust, etc., Co., 8 Del. Ch. 375, 68 Atl. 388. *Compare* James *v.* Aller, 68 N. J. Eq. 666, 62 Atl. 427, *reversing* 66 N. J. Eq. 52, 57 Atl. 476.

4. Crumlish *v.* Security Trust, etc., Co., 8 Del. Ch. 375, 68 Atl. 388; Foreman *v.* Archer, 130 Iowa 49, 106 N. W. 372.

1047. 1. Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337.

2. Beaumont *v.* Beaumont, (C. C. A.) 152 Fed. 55; Williams *v.* Johnston, 84 Ark. 109, 104 S. W. 789; Grilley *v.* Atkins, 78 Conn. 380, 62 Atl. 337; Zacharie's Succession, 119 La. 150, 43 So. 988; James *v.* Aller, 68 N. J. Eq. 666, 62 Atl. 427, *reversing* 66 N. J. Eq. 52, 57 Atl. 476; Matter of King, 115 N. Y. App. Div. 751, 100 N. Y. Supp. 1089; Matter of Davis, 119 N. Y. App. Div. 35, 103 N. Y. Supp. 946; Gick *v.* Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109

4. A donor cannot by a will indicate another intention, so as to affect a transaction which has already taken place. Kelly *v.* National Sav. Bank, 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216.

6. In *Canada* an action of revocation will lie for breach of conditions of a deed of donation from parent to child. Coté *v.* Coté, 29 Quebec Super. Ct. 388.

1048. 1. Donations made by one of the spouses to the other before marriage fall within article 1753, Civ. Code La., according to which the spouse who marries a second time forfeits to the children of the first marriage all property acquired by donation from the deceased spouse. Didlake *v.* Cappel, 116 La. 844, 41 So. 112.

2. Hurst *v.* Thompson, 118 La. 57, 42 So. 645.

4. Campbell *v.* Campbell, 129 Iowa 317, 105 N. W. 583; Crary *v.* Kurtz, 132 Iowa 105, 105 N. W. 590; Knickerbocker Trust Co. *v.* Carhart, (N. J. 1906) 64 Atl. 756.

A Gift by a Husband to His Wife, to the [illegible] of his creditors, is invalid. Vandeventer *v.* Goss, 116 Mo. App. 316, 91 S. W. 958.

The husband, when free from debt, may convey to his wife property without consideration, if such conveyance is not in contemplation of the contracting of future indebtedness and to place the same beyond the reach of his creditors. Clark *v.* Else, (S. Dak. 1906) 110 N. W. 88.

The Burden of Proof is on the creditor to show insolvency of the donor at the time of the gift. Zuckerman *v.* Munz, (Tex. Civ. App. 1908) 107 S. W. 78.

6. See McMunnigal *v.* Aylor, 204 Mo. 19, 102 S. W. 486.

1049. 1. **Purchasers Holding Title from Donor.** — An obscure clause in an act of sale will be construed against the vendor, but the rule is different as to uncertainty in an act of donation as between the donee and the donor and the parties holding title under the latter. Bettison *v.* Avoyelles Land, etc., Co., (La. 1908) 45 So. 403.

2. A wife must show the *bona fides* of a gift from her husband. Smith *v.* Sheppard, (Ga. App. 1907) 58 S. E. 303.

4. McCoy *v.* McCoy, (Ky. 1907) 104 S. W.

1031; Gick *v.* Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109; Matter of Seigler, (Surrogate Ct.) 49 Misc. (N. Y.) 189, 98 N. Y. Supp. 929; Matter of Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176, *affirmed* 186 N. Y. 537, 78 N. E. 1112; Kelly *v.* Albany Trust Co., 124 N. Y. App. Div. 99, 108 N. Y. Supp. 214; Kelly *v.* National Sav. Bank, 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216; Raleigh *v.* Wells, 29 Utah 217, 81 Pac. 908, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1049; Thomas *v.* Tilley, 147 Ala. 189, 41 So. 854, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1049, note 4, to the point "that where the claim is not asserted until after the death of the donor the evidence must be as clear, strong, and convincing as in a gift *causa mortis*."

When a gift *inter vivos* is not asserted until after the death of the alleged donor, the evidence must be as cogent as in the case of a gift *causa mortis*, and so it must be clear, convincing, strong, and satisfactory. Matter of Wright, 121 N. Y. App. Div. 581, 106 N. Y. Supp. 369.

5. Thomas *v.* Tilley, 147 Ala. 189, 41 So. 854, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1049; Millard *v.* Millard, 221 Ill. 86, 77 N. E. 595.

Evidence Is Admissible to show that a gift was contemplated by an intended donor, where the gift was consummated by a donor. Demmons *v.* Booker, 128 Ga. 83, 57 S. E. 108.

Evidence Sufficient to Establish Gift.— Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750; Poppleton *v.* Poppleton, 143 Mich. 208, 106 N. W. 703; Foster *v.* Murphy, (Neb. 1906) 107 N. W. 843; Andrews *v.* Nichols, 116 N. Y. App. Div. 645, 101 N. Y. Supp. 977; Gick *v.* Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109.

Evidence Held Insufficient to Show Gift.— Millard *v.* Millard, 221 Ill. 86, 77 N. E. 595; Gittings *v.* Winter, 101 Md. 194, 60 Atl. 630; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; *In re* Ferdon, 69 N. J. Eq. 762, 62 Atl. 551; Matter of Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176, *affirmed* 186 N. Y. 537, 78 N. E. 1112; Schneider *v.* Schneider, 122 N. Y. App. Div. 774, 107 N. Y. Supp. 792; Ingersoll *v.* Pond, (Va. 1908) 60 S. E. 738.

1050. 1. Zacharie's Succession, 119 La. 150, 43 So. 988; Andrews *v.* Nichols, 116 N. Y. App. Div. 645, 101 N. Y. Supp. 977.

2. Matter of Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176.

The Husband of a Donee, as Witness, is incompetent to show what occurred at the time of the alleged gift. Wedding *v.* Wedding, (Ky. 1905) 87 S. W. 313.

3. Thomas *v.* Tilley, 147 Ala. 189, 41 So. 854; Hecht *v.* Shaffer, 15 Wyo. 34, 85 Pac. 1056, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1050.

5. McIntosh *v.* Fisher, 125 Ill. App. 511; Zacharie's Succession, 119 La. 150, 43 So. 988; Wolf *v.* King, (Tex. Civ. App. 1908) 107 S. W. [illegible]

1051. 3. Gick *v.* Stumpf, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 83, 103 N. Y. Supp. 1109.

See Crawford *v.* Hord, (Tex. Civ. App. 1905) 89 S. W. 1097.

6. Thomas *v.* Tilley, 147 Ala. 189, 41 So. 854, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1051.

7. Thomas *v.* Tilley, 147 Ala. 189, 41 So. 854; Millard *v.* Millard, 221 Ill. 86, 77 N. E. 595; Merchants L. & T. Co. *v.* Egan, 222 Ill. 494, 78 N. E. 800; Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769; Matter of Schroeder, 113 N. Y. App. Div. 204, 99 N. Y. Supp. 176; Liebert *v.* Hoffman, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 108, 105 N. Y. Supp. 337; Schneider *v.* Schneider, 122 N. Y. App. Div. 774, 107 N. Y. Supp. 792.

8. Parke *v.* Nixon, 141 Mich. 267, 104 N. W. 597; Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769.

Whether or not there has been a delivery is a question of fact for the jury. Strickland *v.* Griswold, 149 Ala. 325, 43 So. 105; Chase *v.* Clearfield Lumber Co., 213 Pa. St. 46, 62 Atl. 172; Lavelle *v.* Melley, 27 Pa. Super. Ct. 69.

1052. 1. Thomas *v.* Tilley, 147 Ala. 189, 41 So. 854; Wilson *v.* Edwards, 79 Ark. 69, 94 S. W. 927; Crafton *v.* Inge, (Ky. 1906) 98 S. W. 325; Gerting *v.* Wells, 103 Md. 624, 64 Atl. 298; Van Wagenen *v.* Bonnot, (N. J. 1906) 65 Atl. 239; Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824; Lavelle *v.* Melley, 27 Pa. Super. Ct. 69; Wolf *v.* King, (Tex. Civ. App. 1908) 107 S. W. 617; Quinn *v.* Quinn, 130 Wis. 548, 110 N. W. 488; Hecht *v.* Shaffer, 15 Wyo. 34, 85 Pac. 1056.

Evidence Held Admissible.— Cole *v.* Sweet, 112 N. Y. App. Div. 777, 98 N. Y. Supp. 625. See also Matter of King, 115 N. Y. App. Div. 751, 100 N. Y. Supp. 1089; Hammond *v.* Hammond, (Tex. Civ. App. 1906) 94 S. W. 1067.

A Donee's Mother is competent to testify as to facts showing a gift *inter vivos*. Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750.

The Donee's Wife is competent to testify as to facts showing a gift *inter vivos*, there being no suspicious circumstances. Andrews *v.* Nichols, 116 N. Y. App. Div. 645, 101 N. Y. Supp. 977.

In Nebraska it is held that the statute applies only to those having a direct legal interest, and not to those whose interest is indirect or remote, and that therefore the wife of the donee is competent to testify. Foster *v.* Murphy, (Neb. 1906) 107 N. W. 843.

2. Other Definitions.— Beebe *v.* Coffin, (Cal. 1908) 94 Pac. 766; McCoy *v.* McCoy, (Ky. 1907) 104 S. W. 1031.

1054. 4. Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480; Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

5. Beebe *v.* Coffin, (Cal. 1908) 94 Pac. 766; Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480; Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

6. Varley *v.* Sims, 100 Minn. 331, 111 N. W. 269; Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108; Parker *v.* Copeland, 70 N. J. Eq. 685, 64 Atl. 120; Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824; Hecht *v.* Shaffer, 15 Wyo. 34, 85 Pac. 1056.

1055. 1. *In re* Podhaisky, (Iowa 1908) 115 N. W. 590.

2. Wilson *v.* Edwards, 79 Ark. 69, 94 S. W.

927; Nogga *v.* Savings Bank, 79 Conn. 425, 65 Atl. 129; Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824; Conaghan *v.* German Sav. Bank, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 582, 104 N. Y. Supp. 829; Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

3. Contemplated Surgical Operation. — Gift upheld in Varley *v.* Sims, 100 Minn. 331, 111 N. W. 269. See also Stewart *v.* Whittemore, 3 Cal. App. 213, 84 Pac. 841.

1056. 3. Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824.

6. Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108; Schippers *v.* Kempkes, (N. J. 1907) 67 Atl. 74; Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

7. Beebe *v.* Coffin, (Cal. 1908) 94 Pac. 766; Wittman *v.* Pickens, 33 Colo. 484, 81 Pac. 299, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1056; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Northwestern Mut. L. Ins. Co. *v.* Collamore, 100 Me. 578, 62 Atl. 652; Day *v.* Richards, (Mass. 1908) 83 N. E. 324; Foster *v.* Murphy, (Neb. 1906) 107 N. W. 843; Parker *v.* Copland, 70 N. J. Eq. 685, 64 Atl. 129; Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824; Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142; Davie *v.* Davie, (Wash. 1907) 91 Pac. 950; Hecht *v.* Shaffer, 15 Wyo. 34, 85 Pac. 1056.

1057. 1. Hecht *v.* Shaffer, 15 Wyo. 34, 85 Pac. 1056.

1058. 2. Beebe *v.* Coffin, (Cal. 1908) 94 Pac. 766; Northwestern Mut. L. Ins. Co. *v.* Collamore, 100 Me. 578, 62 Atl. 652; Day *v.* Richards, (Mass. 1908) 83 N. E. 324; State Bank *v.* Johnston, (Mich. 1908) 115 N. W. 464; Parker *v.* Copland, 70 N. J. Eq. 685, 64 Atl. 129; Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1058; Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214; Hecht *v.* Shaffer, 15 Wyo. 34, 85 Pac. 1056.

The Retention of the Key of a box containing shore certificates and jewelry which had been handed over was held not to constitute a valid gift *causa mortis*. *Re* Johnson, 92 L. T. N. S. 357.

3. Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108.

5. Davie *v.* Davie, (Wash. 1907) 91 Pac. 950.

1059. 4. Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480. *Compare* Kimball *v.* Green, 148 Mich. 298, 111 N. W. 761.

1060. 1. Kimball *v.* Green, 148 Mich. 298, 111 N. W. 761. See also Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

2. Contra.— McCoy *v.* McCoy, (Ky. 1907) 104 S. W. 1031, *overruling* Ashbrook *v.* Ryon, 2 Bush (Ky.) 228, cited in the original note.

3. Nogga *v.* Savings Bank, 79 Conn. 425, 65 Atl. 129; McCoy *v.* McCoy, (Ky. 1907) 104 S. W. 1031; Bryant *v.* Abington Sav. Bank, (Mass. 1907) 81 N. E. 997; Van Wagenen *v.* Bonnot, (N. J. 1906) 65 Atl. 239. *Compare* Schippers *v.* Kempkes, (N. J. 1907) 67 Atl. 74.

Merely informing a donee where the donor's bank book may be found is not sufficient delivery. Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824.

Donor Must Part with dominion and control over the same to make a valid gift. Parker *v.* Copland, 70 N. J. Eq. 685, 64 Atl. 129.

Evidence Insufficient to Show Delivery.— Day *v.* Richards, (Mass. 1908) 83 N. E. 324.

6. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

1061. 1. Wittman *v.* Pickens, 33 Colo. 484, 81 Pac. 299; Varley *v.* Sims, 100 Minn. 331, 111 N. W. 269.

2. Varley *v.* Sims, 100 Minn. 331, 111 N. W. 269, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1061.

3. Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1061.

4. Varley *v.* Sims, 100 Minn. 331, 111 N. W. 269.

5. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Varley *v.* Sims, 100 Minn. 331, 111 N. W. 269, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1061.

1062. 2. Davie *v.* Davie, (Wash. 1907) 91 Pac. 950.

8. State Bank *v.* Johnston, (Mich. 1908) 115 N. W. 464; Foster *v.* Murphy, (Neb. 1906) 107 N. W. 843. See also Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

A delivery of a certificate of deposit as a gift constitutes an equitable assignment of the money for which it calls. Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480.

1063. 1. Matter of Dittrich, (Surrogate Ct.) 53 Misc. (N. Y.) 511, 105 N. Y. Supp. 301; Hill *v.* Escort, 38 Tex. Civ. App. 487, 86 S. W. 367.

Savings-bank books are proper subjects of donation *causa mortis*. Van Wagenen *v.* Bonnot, (N. J. 1906) 65 Atl. 239.

3. *In re* Stitt, 127 Wis. 379, 106 N. W. 114.

4. Pennell *v.* Ennis, 126 Mo. App. 355, 103 S. W. 147. *Compare* Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480; Varley *v.* Sims, 100 Minn. 331, 111 N. W. 269.

9. Mascarel *v.* Mascarel, 3 Cal. App. 501, 86 Pac. 617.

10. See *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Davie *v.* Davie, (Wash. 1907) 91 Pac. 950, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063. See also *In re* Cornelius, 151 Cal. 550, 91 Pac. 320; Le Brun *v.* Le Brun, (Oregon 1907) 90 Pac. 584.

1064. 8. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590. See also Davie *v.* Davie, (Wash. 1907) 91 Pac. 950.

1065. 1. Van Wagenen *v.* Bonnot, (N. J. 1906) 65 Atl. 239.

In Louisiana a gift *causa mortis*, made by will, in favor of the giver's concubine, must, at the instance of the testator's heirs, be reduced to one-tenth of the value of the estate, payable from the movables. Landry's Succession, 114 La. 829, 38 So. 575. See generally the title LEGACIES AND DEVISES, **736.** 7.

Gift by Married Woman.— Under Rev. Stat. 1895, art. 2067, a married woman cannot make a gift without consent of her husband. Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 111.

4. Repossession by the Donor is *ipso facto* a revocation. Van Wagenen *v.* Bonnot, (N. J. 1906) 65 Atl. 239.

1066. 3. De Blum *v.* De Blum, (Oregon 1907) 90 Pac. 584.

1067. 2. Matter of Bailey, 111 N. Y. App. Div. 909, 98 N. Y. Supp. 725; Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824; Schuyler *v.* Stephens, (R. I. 1907) 68 Atl. 311.

5. McCoy *v.* McCoy, (Ky. 1907) 104 S. W. 1031.

Evidence Held Sufficient to Establish Gift Causa Mortis. — Philpot *v.* Temple Banking Co., 3 Ga. App. 742, 60 S. E. 480; State Bank *v.* Johnston, (Mich. 1908) 115 N. W. 464; Van Wagenen *v.* Bonnot, (N. J. 1906) 65 Atl. 239; Davie *v.* Davie, (Wash. 1907) 91 Pac. 950.

Evidence Held Insufficient to Establish Gift Causa Mortis. — Beebe *v.* Coffin, (Cal. 1908) 94 Pac. 766; Day *v.* Richards, (Mass. 1908) 83 N. E. 324; Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108; Matter of Bailey, 111 N. Y. App. Div. 909, 98 N. Y. Supp. 725; Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824; Conaghan *v.* German Sav. Bank, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 582, 104 N. Y. Supp. 829; Matter of Dittrich, (Surrogate Ct.) 53 Misc. (N. Y.) 511, 105 N. Y. Supp. 301; Schuyler *v.* Stephens, (R. I. 1907) 68 Atl. 311.

1068. 5. Van Wagenen *v.* Bonnot, (N. J. 1906) 65 Atl. 239.

6. Evidence as to who were the relatives of the deceased and the amount of money he left is inadmissible. Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 841.

8. Matter of Bailey, 111 N. Y. App. Div. 909, 98 N. Y. Supp. 725.

Evidence of Donor's Intention to make a gift is admissible. McCoy *v.* McCoy, (Ky. 1907) 104 S. W. 1031; Davie *v.* Davie, (Wash. 1907) 91 Pac. 950, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1068.

10. Nogga *v.* Savings Bank, 79 Conn. 425, 65 Atl. 129.

11. McCoy *v.* McCoy, (Ky. 1907) 104 S. W. 1031.

GOOD.

1073. 4. **Good Cause — Costs.** — See Morley *v.* Bevington, 93 L. T. N. S. 768, 22 Times L. Rep. 28.

Good Title equivalent to marketable title. Fagan *v.* Hook, (Iowa 1905) 105 N. W. 155.

GOOD WILL.

1085. 1. Bradford *v.* Montgomery Furniture Co., 115 Tenn. 610, 92 S. W. 1104.

Lord Eldon's Definition Quoted. — White *v.* Trowbridge, 216 Pa. St. 11, 64 Atl. 862.

Other Definitions. — Matter of Silkman, 21 N. Y. App. Div. 202, 105 N. Y. Supp. 872; *In re* Case, 122 N. Y. App. Div. 343, 106 N. Y. Supp. 1086. See also Acker, etc., Co. *v.* McGaw, 144 Fed. 864; White *v.* Trowbridge, 216 Pa. St. 11, 64 Atl. 862.

1086. 2. **Connection with Business Premises.** — It has been held that a partner who purchased the personal property from a receiver upon dissolution and took exclusive possession of the real property acquired the good will as though under order of the court and was chargeable with the value thereof. Griffith *v.* Kirley, 189 Mass. 522, 76 N. E. 201.

6. George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89; Bradford *v.* Montgomery Furniture Co., 115 Tenn. 610, 92 S. W. 1104.

1087. 1. Matter of Silkman, 121 N. Y. App. Div. 202, 105 N. Y. Supp. 872.

It has been held in *New York* that no good will exists as an asset of the estate of an insurance broker whose contracts with employers had terminated prior to his decease. *In re* Case, 122 N. Y. App. Div. 343, 106 N. Y. Supp. 1086.

Subscription List of Newspaper. — Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883.

3. **Good Will of Brokers on London Stock Exchange.** — Hill *v.* Fearis, (1905) 1 Ch. 466; Griffith *v.* Kirley, 189 Mass. 522, 76 N. E. 201.

1088. 2. **Illustrations of Valuation.** — In *New York* it has been held that no rigid rule exists, but that the value may be fairly reached by multiplying the average net profits by a suitable and proper number of years to be determined by the jury upon consideration of the nature and character of the business. Von Au *v.* Magenheimer, 115 N. Y. App. Div. 84, 100 N. Y. Supp. 659.

Inventory and Appraisal are but *prima facie* evidence of the value of the good will of a decedent's business. Matter of Silkman, 121 N. Y. App. Div. 202, 105 N. Y. Supp. 872, *affirmed* (N. Y. 1908) 83 N. E. 1131.

4. See Griffith *v.* Kirley, 189 Mass. 522, 76 N. E. 201.

5. International Register Co. *v.* Recording Fare Register Co., 139 Fed. 785.

One Partner has no power, under the *North Dakota* statute, to transfer the good will. Kelly *v.* Pierce, (N. Dak. 1907) 112 N. W. 995.

1089. 3. See Bowers *v.* Ocean Acc., etc., Corp., 110 N. Y. App. Div. 691, 97 N. Y. Supp. 485, *affirmed* 187 N. Y. 561, 80 N. E. 1105.

5. **Appointment of Receiver.** — See Bowers *v.* Ocean Acc., etc., Corp., 110 N. Y. App. Div. 691, 97 N. Y. Supp. 485, *affirmed* 187 N. Y. 561, 80 N. E. 1105.

It has been held in *Massachusetts* that good will attached to realty does not pass to a receiver, but a partner retaining exclusive possession and purchasing the personalty is chargeable with its value. Griffith *v.* Kirley, 189 Mass. 522, 76 N. E. 201.

6. Shafer *v.* Sloan, 3 Cal. App. 335, 85 Pac. 162.

1090. 2. Bradford *v.* Montgomery Furniture Co., 115 Tenn. 610, 92 S. W. 1104.

In Maryland it has been held that the vendor may not do business or perform any act in derogation of the good will transferred. Acker, etc., Co. *v.* McGaw, 144 Fed. 864.

In Massachusetts it is held that the voluntary sale of a good will precludes the vendor from establishing a competing business. The question of derogation is one of fact. Old Corner Book Store *v.* Upham, 194 Mass. 101, 80 N. E. 228.

Vendor's Employees Enjoined from Using Property. — International Register Co. *v.* Recording Fare Register Co., 139 Fed. 785, *reversed* on the facts (C. C. A.) 151 Fed. 199.

Assignment Transfers Restricted Covenants Not Enumerated. — American Ice Co *v.* Meckel, 109 N. Y. App. Div. 93, 95 N. Y. Supp. 1060.

3. White *v.* Trowbridge, 216 Pa. St. 11, 64 Atl. 852.

4. See Griffith *v.* Kirley, 189 Mass. 522, 76 N. E. 201.

1091. 3. See White *v.* Trowbridge, 216 Pa. St. 11, 64 Atl. 862.

Personal Solicitation Enjoined. — Acker, etc., Co. *v.* McGaw, 144 Fed. 864; Old Corner Book Store *v.* Upham, 194 Mass. 101, 80 N. E. ..

7. Foss *v.* Roby, 195 Mass. 292, 81 N. E. 199; Read *v.* Mackay, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 435, 95 N. Y. Supp. 935.

1092. 1. **The Name of a Firm of Bankers** may be deemed a part of the good will which may be the subject of agreement but cannot be the subject of a compulsory sale. Read *v.* Mackay, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 435, 95 N. Y. Supp. 935.

4. **A Dentist** may be enjoined, under the *Massachusetts* doctrine, from practicing within a city under the implied covenant arising from the sale of the good will of his business. Foss *v.* Roby, 195 Mass. 292, 81 N. E. 199.

GOVERNOR.

1097. 11. State *v.* Stobie, 194 Mo. 14, 92 S. W. 191, *per* Marshall, J., *dissenting, quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097.

1099. 11. **A Governor Removing Public Officers** will be presumed to have done so in the manner prescribed by the constitution. State *v.* Bryan, 50 Fla. 293, 39 So. 929.

1100. 2. **Contra,** Henry *v.* State, 87 Miss. 1, 39 So. 856, denying the inherent right of the governor to sue on behalf of the state. But see a strong dissenting opinion by Whitfield, J., in this case, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1100, and approving the text on that page to which notes 2, 3, 4, 9, 10, and 11 are appended.

1101. 1. **After a Proclamation for an Extra Session of the Legislature Has Been Issued** by the governor, he may issue another proclamation designating other subjects to be acted upon in addition to those first designated, fixing the same time for all. *In re* Pittsburg, 217 Pa. St. 227, 66 Atl. 348.

2. *In re* Pittsburg, 217 Pa. St. 227, 66 Atl. 348.

7. State *v.* Junkin, (Neb. 1907) 113 N. W. 256.

8. **As Long as Bills Remain under His Control,** the governor may approve or reject them within the time limited by the constitution. State *v.* Junkin, (Neb. 1907) 113 N. W. 256.

1104. 14. **Governor's Decision Final as to Whether Insurrection Exists.** *In re* Moyer, 35 Colo. 159, 85 Pac. 190; Haley *v.* Cochran, (Ky. 1907) 102 S. W. 852.

1106. 3. **New York — Governor May Appoint Extraordinary Terms of Supreme Court.** — People *v.* Neff, 122 N. Y. App. Div. 385, 106 N. Y. Supp. 747.

6. **Mandamus Lies to Compel Exercise of Ministerial Function Defined by Statute.** — Elliott *v.* Pardee, (Cal. 1906) 86 Pac. 1087; State *v.* Brooks, 14 Wyo. 303, 84 Pac. 488. See also State *v.* Ansel, 76 S. Car. 395, 57 S. E. 185, which recognizes the conflict of authority and cites numerous cases in support of the propositions that mandamus will and will not issue against the governor.

Cannot Be Compelled by Mandamus to Perform Acts Which Devolve upon Him as Governor. — State *v.* Frazier, 114 Tenn. 516, 86 S. W. 319.

7. State *v.* Ansel, 76 S. Car. 395, 57 S. E. 185, seems to distinguish injunctions issuing from the federal courts from those issuing from state courts, and cites cases supporting the proposition that governors of states have been subjected to injunctive process from the federal courts.

8. State *v.* Ansel, 76 S. Car. 395, 57 S. E. 185, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1106.

1108. 1. People *v.* Cornforth, 34 Colo. 107, 81 Pac. 871, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1108, as to notes 1, 2, 3, 4.

GRADE.

1108. 7. Hawkins *v.* U. S., 40 Ct. Cl. 110.

9. Hyland *v.* Ossining, 57 Misc. (N. Y.) 220, 107 N. Y. Supp. 225, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1108.

GRANDCHILD.

1110. 3. Grandchildren cannot take under a bequest in a will to children as a class. Lyon *v.* Baker, 122 Ga. 189, 50 S. E. 44; Fulghum *v.* Strickland, 123 Ga. 258, 51 S. E. 294.

GRANT.

1111. 3. **Equivalent to Convey.** — Germer *v.* Gas and Oil Co., 60 W. Va. 152, 54 S. E. 509, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1111; Blood *v.* Siebert, 38 Wash. 643, 80 Pac. 799.

1114. 5. **Covenant against Incumbrances.** — Crawford *v.* McDonald, 84 Ark. 415, 106 S. W. 206.

General Warranty — Only against Grantor's Own Acts. — Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778.

GRANTOR — GRANTEE.

1115. 1. Brunette *v.* Norber, 130 Wis. 632, 110 N. W. 785.

2. Brunette *v.* Norber, 130 Wis. 632, 110 N. W. 785.

GROUND OF ACTION.

1120. 3. **Ground for Defense Synonymous with Cause of Defense.** — Durbin *v.* Northwestern Scraper Co., 36 Ind. App. 123, 73 N. E. 297, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1120.

GROUND RENTS.

1122. 2. Brannstein *v.* Black, 5 Penn. (Del.) 300, 62 Atl. 1091.

1123. 2. Frank *v.* Guarantee Trust, etc., Co., 216 Pa. St. 40, 64 Atl. 894.

3. Where the Two Estates Are United in a **Single Individual,** his act in conveying the title in fee is a declaration of his intention to extinguish the rents. Frank *v.* Guarantee Trust, etc., Co., 216 Pa. St. 40, 64 Atl. 894.

1124. 4. Separate Leases Irredeemable. — Where it is within the contemplation of the parties to change the character of the rent, and the new lease may be regarded as a new and independent transaction, the rents reserved thereby are redeemable. Maulsby *v.* Page, (Md. 1907) 65 Atl. 818.

7. **A Tender** not kept good does not relieve the lessee from rent accruing after the date of tender. Maulsby *v.* Page, (Md. 1907) 65 Atl. 818.

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1126. 3. Grubstake Contract. — See Marks *v.* Gates, 2 Alaska 519.

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1128. 1. Western Maryland R. Co. *v.* Blue Ridge Hotel Co., 102 Md. 307, 324, 62 Atl. 351, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1128; Ruberg *v.* Brown, 71 S. Car. 287, 51 S. E. 96, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1128.

1129. 5. Johnson *v.* Charles D. Norton Co., (C. C. A.) 159 Fed. 361; A. B. Small Co. *v.* Claxton, 1 Ga. App. 83, 57 S. E. 977; Cones *v.* Gibson, (Kan. 1908) 94 Pac. 998; Jewett *v.* Griesheimer, 100 N. Y. App. Div. 210, 91 N. Y. Supp. 654; Blanding *v.* Cohen, 101 N. Y. App. Div. 442, 92 N. Y. Supp. 93; Moss *v.* Blythe, (Supm. Ct. App. T.) 92 N. Y. Supp. 294; Schroeder *v.* Helms, (Supm. Ct. App. T.) 98 N. Y. Supp. 214; Heffron *v.* Treber, (S. Dak. 1907) 110 N. W. 781; Mitchell, etc., Co. *v.* Beeson, (Wash. 1907) 92 Pac. 426.

10. *In re* S. P. Smith Lumber Co., 132 Fed. 620; McKone *v.* Metropolitan L. Ins. Co., 131 Wis. 243, 110 N. W. 472.

1130. 3. Fields *v.* Willis, 123 Ga. 272, 51 S. E. 280; Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70; Evans *v.* Schiff, (N. Y. City Ct. Tr. T.) 54 Misc. (N. Y.) 319, 105 N. Y. Supp. 1037; Grimsrud Shoe Co. *v.* Jackson, (S. Dak. 1908) 115 N. W. 656.

9. Undertaking Held to Be Contract of Suretyship. — American Radiator Co. *v.* Hoffman, 26 Pa. Super. Ct. 177.

1131. 4. Johnson *v.* Charles D. Norton Co., (C. C. A.) 159 Fed. 361; Callender, etc., Co. *v.* Flint, 187 Mass. 104, 72 N. E. 345; Irving Nat. Bank *v.* Ellis, 74 N. J. L. 42, 64 Atl. 1071.

1132. 7. Corporations. — *In re* S. P. Smith Lumber Co., 132 Fed. 620.

Agents. — McLeod *v.* Despain, (Oregon 1907) 92 Pac. 1088.

1133. 1. Lagomarino *v.* Giannini, 146 Cal. 545, 80 Pac. 698; Peabody *v.* Munson, 211 Ill. 324, 71 N. E. 1006; Brush, etc., Co. *v.* Ross, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 44, 99 N. Y. Supp. 796; Hughes *v.* Peper Tobacco Warehouse Co., 139 N. Car. 158, 51 S. E. 793.

3. Peters *v.* Merchants', etc., Bank, (C. C. A.) 149 Fed. 373; Helios-Upton Co. *v.* Thomas, 96 N. Y. App. Div. 401, 89 N. Y. Supp. 222; Warder, etc., Co. *v.* Johnson, 114 Mo. App. 571, 90 S. W. 392; Grimsrud Shoe Co. *v.* Jackson, (S. Dak. 1908) 115 N. W. 656; Miami County Nat. Bank *v.* Goldberg, (Wis. 1907) 113 N. W. 391.

5. Klosterman *v.* United Electric Light, etc., Co., 101 Md. 29, 60 Atl. 251.

1134. 1. *In re* S. P. Smith Lumber Co., 132 Fed. 620.

3. De Reszke *v.* Duss, 99 N. Y. App. Div. 353, 91 N. Y. Supp. 221.

1135. 1. White *v.* Western State Bank, 119 Ill. App. 354.

2. American Iron, etc., Mfg. Co. *v.* Beall, 101 Md. 423, 61 Atl. 629; Hedden *v.* Schneblin, 126 Mo. App. 478, 104 S. W. 887; Kalispell Liquor, etc., Co. *v.* McGovern, 33 Mont. 394, 84 Pac. 709; Standard Supply Co. *v.* Finch, (N. Car. 1908) 60 S. E. 904; Whitehead *v.* American Lamp, etc., Co., 70 N. J. Eq. 581, 62 Atl. 554; Peck *v.* Peck, 124 Wis. 550, 103 N. W. 5.

A Promise by the Creditor to Make Additional Advances to the Debtor is a sufficient consideration to support the promise of payment by guarantor. Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613.

1136. 1. Agreement to Forbear Suit. — Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613; Mudge *v.* Varner, (N. Car. 1907) 59 S. E. 540; Providence Mach. Co. *v.* Browning, 70 S. Car. 148, 49 S. E. 325.

1138. 8. Wing, etc., Co. *v.* U. S. Fidelity, etc., Co., 150 Fed. 672; Knickerbocker Trust Co. *v.* Garden, 113 N. Y. App. Div. 825, 99 N. Y. Supp. 620; Nachod *v.* Hindley, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 232, 101 N. Y. Supp. 840; Guardian Trust Co. *v.* Peabody, 122 N. Y. App. Div. 648, 107 N. Y. Supp. 515.

9. Levy *v.* Cohen, 103 N. Y. App. Div. 195, 92 N. Y. Supp. 1074.

1139. 2. Callender, etc., Co. *v.* Flint, 187 Mass. 104, 72 N. E. 345; Rundle *v.* Scully, 144 Mich. 62, 107 N. W. 694; Paskusz *v.* Bodner, (N. J. 1907) 67 Atl. 1040; Lamport *v.* Greenberg, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 513, 96 N. Y. Supp. 143; Schinasi *v.* Lane, 118 N. Y. App. Div. 76, 103 N. Y. Supp. 127.

3. American Exch. Nat. Bank *v.* Seaverns, 121 Ill. App. 480; Bridgeport Malleable Iron Co. *v.* Iowa Cutlery Works, 130 Iowa 736, 107 N. W. 937.

4. Guarantor Liable for Amount Specified, Even Though Debtor Contracted Larger Amount. — Frost *v.* Standard Metal Co., 215 Ill. 240, 74 N. E. 139.

1140. 3. Helena First Nat. Bank *v.* Waddell, 74 Ark. 241, 4 Ann. Cas. 818, 85 S. W. 417, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1140; Frost *v.* Standard Metal Co., 116 Ill. App. 642, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1140, *affirmed* 215 Ill. 240, 74 N. E. 139; American Exch. Nat. Bank *v.* Seaverns, 121 Ill. App. 480.

Several Guarantors May Bind Themselves for Different Amounts for Same Debt. — Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613.

4. Frost *v.* Standard Metal Co., 215 Ill. 240, 74 N. E. 139, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1140.

5. What Are Not Continuing Guaranties within Rule. — See Borgfield *v.* La Banque d'Hochelaga, 28 Quebec Super. Ct. 344.

1141. 1. Ruberg *v.* Brown, 71 S. Car. 287, 51 S. E. 96, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1141.

2. Ruberg *v.* Brown, 71 S. Car. 287, 51 S. E. 96, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1142.

5. A. B. Small Co. *v.* Claxton, 1 Ga. App. 83, 57 S. E. 977; Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1141.

1142. 1. Stewart *v.* Knight, etc., Co., 166 Ind. 498, 76 N. E. 743, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1141; McDermott *v.* Mahoney, (Iowa 1908) 115 N. W. 32; Blanding *v.* Cohen, 101 N. Y. App. Div. 442, 92 N. Y. Supp. 93.

2. Johnson *v.* Charles D. Norton Co., (C. C. A.) 159 Fed. 361; Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613; Walter A. Wood Reaping, etc., Mach. Co. *v.* Ascher, 103 Md. 133, 62 Atl. 1023, *quoting* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1142; Miller *v.* McLaughlin, 144 Mich. 425, 104 N. W. 777; Manchester Bldg., etc., Assoc. *v.* Shuart, 74 N. J. L. 563, 65 Atl. 985; Loverin, etc., Co. *v.* Bumgarner, 59 W. Va. 46, 52 S. E. 1000; Elgin City Banking Co. *v.* Hall, (Tenn. 1907) 108 S. W. 1068; Loverin, etc., Co. *v.* Travis, (Wis. 1908) 115 N. W. 829.

Acceptance by Mail. — Where conditions of contract are complete, acceptance by mail is sufficient to bind guarantor, even though lost. Irving Nat. Bank *v.* Ellis, 74 N. J. L. 42, 64 Atl. 1071.

Estoppel to Set Up Ultra Vires as a Defense. — Whitehead *v.* American Lamp, etc., Co., 70 N. J. Eq. 581, 62 Atl. 554.

3. Manatee County State Bank *v.* Weatherly, 144 Ala. 655, 39 So. 988; Equitable Mfg. Co. *v.* J. B. Davis Co., (Ga. 1908) 60 S. E. 262; Binz *v.* Hyatt, 200 Mo. 299, 98 S. W. 637; Schroeder *v.* Helms, (Supm. Ct. App. T.) 98 N. Y. Supp. 214; Oneida Steel Pulley Co. *v.* New York Leather Belting Co., 120 N. Y. App. Div. 625, 105 N. Y. Supp. 534; McCague *v.* Irey, 73 Neb. 602, 103 N. W. 281; Loomis *v.* MacFarlane, (Oregon 1907) 91 Pac. 466; Miami County Nat. Bank *v.* Goldberg, (Wis. 1907) 113 N. W. 391.

Guaranty of Payment as Distinguished from Guaranty of Collection. — Loos *v.* McCormack, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 144, 93 N. Y. Supp. 1088.

1143. 1. Phœnix Mfg. Co. *v.* Bogardus, 231 Ill. 528, 83 N. E. 284; Stewart *v.* Knight, etc., Co., 166 Ind. 498, 76 N. E. 743; Staple *v.* Vicksburg Waterworks Co., 90 Miss. 848, 44 So. 766; Whitehead *v.* American Lamp, etc., Co., 70 N. J. Eq. 581, 62 Atl. 554; Marcus *v.* Liebovitz, (Supm. Ct. App. T.) 107 N. Y. Supp. 597; Jewett *v.* Griesheimer, 100 N. Y. App. Div. 210, 91 N. Y. Supp. 654; New Jersey *v.* Limburg, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 404, 105 N. Y. Supp. 1016; Hughes *v.* Peper Tobacco Warehouse Co., 139 N. Car. 158, 51 S. E. 793.

Guarantor Not Released of Liability in Case of Misuse of Goods by Purchaser. — Helios-Upton Co. *v.* Thomas, 96 N. Y. App. Div. 401, 89 N. Y. Supp. 222.

2. A. B. Small Co. *v.* Claxton, 1 Ga. App. 83, 57 S. E. 977; Loomis *v.* MacFarlane, (Oregon 1907) 91 Pac. 466.

A Contract Drawn by the Parties to Be Beneficial is to be liberally construed in favor of guarantor. Peck *v.* Peck, 124 Wis. 550, 103 N. W. 5.

Construction against Guarantor. — Bridgeport Malleable Iron Co. *v.* Iowa Cutlery Works, 130 Iowa 736, 107 N. W. 937.

4. Wanamaker *v.* Powers, 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19; American Fruit Product Co. *v.* Ward, 113 N. Y. App. Div. 319, 99 N. Y. Supp. 717; Oneida Steel Pulley Co. *v.* New York Leather Belting Co., 120 N. Y. App. Div. 625, 105 N. Y. Supp. 534; Evans *v.* Schiff, (N. Y. City Ct. Tr. T.) 54 Misc. (N. Y.) 319, 105 N. Y. Supp. 1037; Scheindelman *v.* Colyer, 122 N. Y. App. Div. 379, 106 N. Y. Supp. 762; Miami County Nat. Bank *v.* Goldberg, (Wis. 1907) 113 N. W. 391.

5. Bassford *v.* Fitzgerald, 138 Fed. 958; Delaware County Nat. Bank *v.* King, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 447, 95 N. Y. Supp. 954.

6. *United States.* — Peters *v.* Merchants', etc., Bank, 149 Fed. 373.

Alabama. — Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613.

Arkansas. — Miller *v.* Sloan, 80 Ark. 617, 98 S. W. 994.

Connecticut. — Chelsea Sav. Bank *v.* Slater, 78 Conn. 137, 61 Atl. 69.

Illinois. — Sinnickson *v.* Perkins, 231 Ill. 492, 83 N. E. 194; U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670.

Iowa. — Bridgeport Malleable Iron Co. *v.* Iowa Cutlery Works, 130 Iowa 736, 107 N. W. 937.

Kentucky. — Shell *v.* Asher, (Ky. 1907) 102 S. W. 879.

Massachusetts. — Callender, etc., Co. *v.* Flint, 187 Mass. 104, 72 N. E. 345.

Michigan. — Rundle *v.* Scully, 144 Mich. 62, 107 N. W. 694.

Missouri. — Binz *v.* Hyatt, 200 Mo. 299, 98 S. W. 637; Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894.

New Jersey. — Paskusz *v.* Bodner, (N. J. 1907) 67 Atl. 1040.

New York. — Jackson *v.* Swart, 182 N. Y. 373, 75 N. E. 226; De Reszke *v.* Duss, 99 N. Y. App. Div. 353, 91 N. Y. Supp. 221; Long Island Bank *v.* Young, 101 N. Y. App. Div. 88, 91 N. Y. Supp. 849; Knickerbocker Trust Co. *v.* Garden, 113 N. Y. App. Div. 825, 99 N. Y. Supp. 620.

Pennsylvania. — American Bridge Co. *v.* Colonial Trust Co., 215 Pa. St. 305, 64 Atl. 532.

South Dakota. — Heffron *v.* Treber, (S. Dak. 1907) 110 N. W. 781.

Washington. — Mitchell, etc., Co. *v.* Beeson, (Wash. 1907) 92 Pac. 426.

1141. 2. U. S. Heater Co. *v.* Jenss, 128 Wis. 162, 107 N. W. 293.

3. Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894.

Where Terms of Guaranty Are Certain, Parol Evidence Is Inadmissible. — Shinickson *v.* Per- [illegible] N. Y. 104, Mudge *v.* Varner, (N. Car. 1907) 59 S. E. 540.

4. Schinasi *v.* Lane, 118 N. Y. App. Div. 76, 103 N. Y. Supp. 127; Murphy *v.* Hart, 122 N. Y. App. Div. 548, 107 N. Y. Supp. 452.

5. Bridgeport Malleable Iron Co. *v.* Iowa Cutlery Works, 130 Iowa 736, 107 N. W. 937, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d [illegible]) 1141.

6. Manatee County State Bank *v.* Weatherly, 144 Ala. 653, 39 So. 988, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1144; Wood *v.* Stewart, 81 Ark. 41, 98 S. W. 711; Punta Gorda Bank *v.* State Bank, 52 Fla. 399, 42 So. 946, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1144; Iowa Nat. Bank *v.* Cooper, (Iowa 1904) 101 N. W. 459; Woods *v.* Broder, (Supm. Ct. App. T.) 109 N. Y. Supp. 908; McAfee *v.* Wyckoff, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 380, 89 N. Y. Supp. 996; Guardian Trust Co. *v.* Peabody, 122 N. Y. App. Div. 648, 107 N. Y. Supp. 515. See also Doyle *v.* Nesting, 37 Colo. 522, 88 Pac. 862.

Guarantor Held to Specific Terms of Contract. — Klosterman *v.* United Electric Light, etc., Co., 101 Md. 29, 60 Atl. 251.

1145. 1. The Pledgee of a Chose in Action is not obliged to realize on such collateral before bringing suit against guarantor. Knickerbocker Trust Co. *v.* Coyle, 139 Fed. 792; American Exch. Nat. Bank *v.* Seaverns, 121 Ill. App. 480, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1145; Frost *v.* Standard Metal Co., 215 Ill. 240, 74 N. E. 139, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1145; Stewart *v.* Knight, etc., Co., 166 Ind. 498, 76 N. E. 743, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1145; Drucker *v.* Heyl-Dia, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 142, 101 N. Y. Supp. 796; Murphy *v.* Hart, 122 N. Y. App. Div. 548, 107 N. Y. Supp. 452.

Acceptance by Mail. — Irving Nat. Bank *v.* Ellis, 74 N. J. L. 42, 64 Atl. 1071.

1146. 1. See Greer Machinery Co. *v.* Sears, 119 Ky. 697, 66 S. W. 521, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1146.

5. Failure to Defend Suit. — Blanding *v.* Cohen, 101 N. Y. App. Div. 442, 92 N. Y. Supp. 93.

Guarantor Not Obliged to Disclose Indebtedness to Guarantee. — Wanamaker *v.* Powers, 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19.

When No Further Notice to Guarantor Necessary. — Newman *v.* Scarborough, 115 La. 860, 40 So. 248.

7. Rejection of Original Offer. — Where a new guaranty was accepted, the parties to the original guaranty are released. Bridgeport Malleable Iron Co. *v.* Iowa Cutlery Co., 130 Iowa 736, 107 N. W. 937.

8. Greer Machinery Co. *v.* Sears, 119 Ky. 697, 66 S. W. 521, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1146; Deering *v.* Mortell, (S. Dak. 1906) 110 N. W. 86, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1146; A. B. Kuhlman Co. *v.* Cave, (Wis. 1908) 115 N. W. 793.

Written Offer of Guaranty Must Be Delivered and Accepted Before It Is Effectual. — Irving Nat. Bank *v.* Ellis, 74 N. J. L. 42, 64 Atl. 1071.

Guarantor May Revoke Offer Before Acceptance. — Bardsley *v.* Rich, (Supm. Ct. App. T.) [illegible] N. Y. Supp. 839.

1148. 6. Greer Machinery Co. *v.* Sears, 119 Ky. 697, 66 S. W. 521, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1148.

7. Frost *v.* Standard Metal Co., 215 Ill. 240, 74 N. E. 139.

1149. 4. American Radiator Co. *v.* Hoffman, 26 Pa. Super. Ct. 177.

6. Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613; Stewart *v.* Knight, etc., Co., 166 Ind. 498, 76 N. E. 743; Goff *v.* Janeway, (Ky. 1907) 99 S. W. 602; Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1149; Ruberg *v.* Brown, 71 S. Car. 287, 51 S. E. 96; Elgin City Banking Co. *v.* Hall, (Tenn. 1907) 108 S. W. 1068; Lovering, etc., Co. *v.* Bumgarner, 59 W. Va. 46, 52 S. E. 1000.

1151. 2. Trenton Iron Co. *v.* Tassi, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 659, 107 N. Y. Supp. 580.

1153. 6. Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423.

8. Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1153; Mudge *v.* Varner, (N. Car. 1907) 59 S. E. 540.

1154. 1. Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423; Mudge *v.* Varner, (N. Car. 1907) 59 S. E. 540.

2. Jackson *v.* Swart, 182 N. Y. 373, 75 N. E. 226; Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423.

1155. 4. Nachod *v.* Hindley, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 232, 101 N. Y. Supp. 840, *citing* 14 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1155.

Where the Guaranty Is Absolute, a lack of diligence on the part of the payee in attempting to collect a note does not release the guarantor. Warder, etc., Co. *v.* Johnson, 114 Mo. App. 571, 90 S. W. 392.

1156. 3. Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423.

8. Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423.

1157. 3. Levy *v.* Cohen, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 95, 91 N. Y. Supp. 504.

1158. 2. On an Oral Guaranty of a Note the guarantor is liable on his own obligation, independent of the note itself. Larenson *v.* Stoltz, 36 Wash. 318, 78 Pac. 999.

5. Cunningham *v.* McDonald, 98 Tex. 316, 83 S. W. 372.

1160. 10. Doyle *v.* Nesting, 37 Colo. 522, 88 Pac. 862; Delaware National Bank *v.* King, 109 N. Y. App. Div. 553, 95 N. Y. Supp. 956; New Jersey *v.* Limburg, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 404, 105 N. Y. Supp. 1016.

1161. 2. Delaware County Nat. Bank *v.* King, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 447, 95 N. Y. Supp. 954.

1162. 2 Invalidity of Principal Obligation.

— Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614; Rochford *v.* School Dist. No. 6, 19 S. Dak. 435, 103 N. W. 763.

3. Wanamaker *v.* Powers, 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19.

5. Wing, etc., Co. *v.* U. S. Fidelity, etc., Co., 156 Fed. 672; Stewart *v.* Knight, etc., Co., 166 Ind. 498, 76 N. E. 743; Stafford *v.* Christian, (Tex. Civ. App. 1907) 101 S. W. 876.

Failure of Guarantee to Fulfil Specific Obligations Releases Guarantor. — Swift *v.* Jones, 135 Fed. 437.

6. Swift *v.* Jones, 135 Fed. 437; Jones *v.* Barry, 158 Fed. 208; Trenton Iron Co. *v.* Lassi, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 659, 107 N. Y. Supp. 580; Gansevoort Bank *v.* Empire State Surety Co., 123 N. Y. App. Div. 331, 107 N. Y. Supp. 998; White Castle Lumber, etc., Co. *v.* Le Blanc, 114 La. 425, 38 So. 407; Milwaukee First Nat. Bank *v.* Buetow, 123 Wis. 285, 101 N. W. 927; Lyon *v.* Plum, (N. J. 1908) 69 Atl. 209; Coan *v.* Patridge, (Supm. Ct. Tr. T.) 98 N. Y. Supp. 570.

By Substitution of Another Tenant under a Lease. — Fleck *v.* Feldman, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 228, 104 N. Y. Supp. 366.

Changing the Terms of the Contract Without the Guarantor's Consent releases him even though the indebtedness accrued to the guarantee before the alteration. John A. Tolman Co. *v.* Hunter, 113 Mo. App. 671, 88 S. W. 636.

What Is Not an Alteration of the Contract. — Marcus *v.* Liebovitz, (Supm. Ct. App. T.) 107 N. Y. Supp. 597.

Mistake as to Substance of Contract. — Newman *v.* Scarborough, 115 La. 860, 40 So. 248.

1163. 7. Guaranty of an Individual Does Not Extend to Future Partner. — Coan *v.* Patridge, (Supm. Ct. Tr. T.) 98 N. Y. Supp. 570.

1164. 9. Failure of Debtor to Apply Payments. — Wanamaker *v.* Powers, 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19.

Appropriation by Creditor of Money of Guarantor to Other Purposes than That Covered by Contract. — Bayer *v.* Lugar, 106 N. Y. App. Div. 522, 94 N. Y. Supp. 802.

11. Ætna Indemnity Co. *v.* Auto-Traction Co., (C. C. A.) 147 Fed. 95; New Jersey *v.* Limburg, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 404, 105 N. Y. Supp. 1016; Spier *v.* McNaught, 121 N. Y. App. Div. 330, 105 N. Y. Supp. 1060.

Guarantor Not Released by Acceptance of Portion of Claim by Creditor. — Marx *v.* Ely, (Ala. 1906) 41 So. 411.

Guarantor Not Released by Failure to Include Itemized Account in a Suit against a Debtor. — Goff *v.* Janeway, (Ky. 1904) 82 S. W. 267.

An Agreement for [illegible] and the Guarantee is not such an alteration as will release guarantor. Bothfeld *v.* Gordon, 190 Mass. 567, 77 N. E. 639.

Refusal of A[illegible] Not Release [illegible] yer, 122 N. Y. App. Div. 379, 106 N. Y. Supp. 762.

Guarantor Not Discharged Where the Giving of Notes Was Simply Additional Security. — Providence Mach. Co. *v.* Browning, 70 S. Car. 148, 49 S. E. 325.

Where There Is No Acceptance by the Guarantee, subsequent delivery of notes by the debtor does not estop the guarantor from denying liability. Deering *v.* Mortell, (S. Dak. 1906) 110 N. W. 86.

1165. 1. Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423; Schulman *v.* Buchler, (Supm. Ct. App. T.) 59 Misc. (N. Y.) 339, 98 N. Y. Supp. 651; Marcus *v.* Liebovitz, (Supm. Ct. App. T.) 107 N. Y. Supp. 597.

A Mere Silence of the Guarantor Is Not a Ratification of extension of time to the original debtor and does not bind the guarantor. American Iron, etc., Mfg. Co. *v.* Beall, 101 Md. 423, 61 Atl. 629.

2. Goff *v.* Janeway, (Ky. 1907) 99 S. W. 602; Bothfeld *v.* Gordon, 190 Mass. 567, 77 N. E. [illegible].

5. Manchester Bldg., etc., Assoc. *v.* Shuart, 74 N. J. L. 563, 65 Atl. 985; Providence Mach. Co. *v.* Browning, 70 S. Car. 148, 49 S. E. 325.

1166. 4. Fraser *v.* Douglas, 16 Manitoba 484.

10. U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670; Drovers' Live Stock Commission Co. *v.* Charles Wolf Packing Co., 74 Kan. 330, 86 Pac. 128; Machin *v.* Prudential Trust Co., 210 Pa. St. 253, 59 Atl. 1073.

1167. 3. Where a Guarantor After Knowledge of False Representations [illegible] he cannot allege fraud as a defense in an action on the guaranty. Emerson-Newton Implement Co. *v.* Cupps, 15 N. Dak. 606, 108 N. W. 706.

5. Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614.

1168. 7. Guarantor Released by Creditor's Negligence. — Field *v.* Sutherland, (Iowa 1907) 113 N. W. 770.

GUARDIAN AD LITEM.

3. 2. Byrnes *v.* Byrnes, 109 N. Y. App. Div. 855, 96 N. Y. Supp. 300; Mitchell *v.* Cleveland, 76 S. Car. 432, 57 S. E. 33; Hiers *v.* Atlantic Coast Line R. Co., 75 S. Car. 311, 55 S. E. 457.

4. 1. Edwards *v.* Edwards, 142 Ala. 267, 39 So. 82; Shehane *v.* Caraway, (Ala. 1908) 45 So. 469; Maryland Casualty Co. *v.* Lanham, 124 Ga. 859, 53 S. E. 395; Crane *v.* Stafford, 217 Ill. 21, 75 N. E. 424; Siler *v.* Archer, (Ky. 1904) 82 S. W. 256; Gates *v.* Patterson Bank, 116 La. 539, 40 So. 891; Wilson *v.* Wilson, 95 Minn. 464, 104 N. W. 300; State *v.* Gawronski, 110 Mo. App. 414, 85 S. W. 126; Kuhrtz *v.* Eisenstein, 123 Mo. App. 288, 100 S. W. 574; Carraway *v.* Lassiter, 139 N. Car. 145, 51 S. E. 968; Langston *v.* Bassette, 104 Va. 47, 51 S. E. 218; Weaver *v.* Glenn, 104 Va. 443, 51 S. E. 835. See also Rankert *v.* Rankert, 105 N. Y. App. Div. 37, 93 N. Y. Supp. 399.

5. 1. **In Proceedings by an Executor to Sell Realty** it is necessary to appoint a guardian *ad litem* to represent an infant devisee. Carraway *v.* Lassiter, 139 N. Car. 145, 51 S. E. 968.

2. **In Partition Proceedings.**— Crane *v.* Stafford, 217 Ill. 21, 75 N. E. 424; Becnel's Succession, 117 La. 744, 42 So. 256.

In a Proceeding to Sell an Infant's Land for Reinvestment, brought in the name of his statutory guardian, a guardian *ad litem* should be appointed. Siler *v.* Archer, (Ky. 1904) 82 S. W. 256.

3. Sears *v.* Duling, 77 Vt. 496, 61 Atl. 518.

6. 1. Downing *v.* Thompson, (Ky. 1906) 92 S. W. 290. See also Carraway *v.* Lassiter, 139 N. Car. 145, 51 S. E. 968.

2. Maryland Casualty Co. *v.* Lanham, 124 Ga. 859, 53 S. E. 395; Gibbs *v.* Potter, 166 Ind. 471, 77 N. E. 942; Kuhrtz *v.* Eisenstein, 123 Mo. App. 288, 100 S. W. 574; State *v.* District Ct., 34 Mont. 306, 87 Pac. 615.

4. Downing *v.* Thompson, (Ky. 1906) 92 S. W. 290.

6. Statutory Time Must Elapse.— The time in which an infant may apply to have a guardian *ad litem* appointed for him must elapse before the court can appoint on its own motion. Kuhrtz *v.* Eisenstein, 123 Mo. App. 288, 100 S. W. 574.

In Louisiana, where it is represented to a district judge that executory proceedings have been taken out against minors' property, and they are being carried on contradictorily with their mother as tutrix when she has not qualified as such, and that the undertutor has not qualified to protect their interests, and that the proceedings are being carried on by collusion between the seizing creditor and the mother, which, if [illegible] would result in injury to the minors, [illegible] a tutor *ad hoc* to investigate matters, and authorized to take legal steps in the interest of the minors. Gates *v.* Patterson Bank, 116 La. 539, 40 So. 891.

7. 1. Maryland Casualty Co. *v.* Lanham, 124 Ga. 859, 53 S. E. 395; McMurtry *v.* Fairley, 194 Mo. 502, 91 S. W. 902; Wright *v.* Hink, 193 Mo. 130, 91 S. W. 933; Van Williams *v.* Elias, 106 N. Y. App. Div. 208, 94 N. Y. Supp. 611.

[illegible] Interested Another Should Be Appointed.— See Owens *v.* Gunther, 75 Ark. 37, 86 S. W. 851.

9. 4. Johnston *v.* Southern Pac. Co., 150 Cal. 535, 89 Pac. 348; Cook *v.* Keith, 5 Indian Ter. 595, 82 S. W. 918; Reints *v.* Engle, 130 Iowa 726, 107 N. W. 947; Rye *v.* J. M. Guffey Petroleum Co., (Tex. Civ. App. 1906) 95 S. W. 622. See also Davidson *v.* Marcum, (Ky. 1905) 89 S. W. 703; Downing *v.* Thompson, (Ky. 1906) 92 S. W. 290; State *v.* Gawronski, 110 Mo. App. 414, 85 S. W. 126.

"For mere irregularity in the appointment of the guardian *ad litem* the court will not in such case set aside the decree without proof that the infant defendant suffered substantial injustice, especially where * * * the interests of subsequent purchasers have become involved." Middleton *v.* Stokes, 71 S. Car. 17, 50 S. E. 539.

The Omission to Make a Formal Order of Appointment is not necessarily fatal, since the appointment can be established by recitals in other portions of the record. Crane *v.* Stafford, 217 Ill. 21, 75 N. E. 424.

Curing Irregularity. — Service of process on the infant defendant and the guardian *ad litem,* followed by the filing of an answer by the latter on behalf of the former, cures any irregularity in the order of appointment growing out of a failure to serve process on the infant. Carraway *v.* Lassiter, 139 N. Car. 145, 51 S. E. 968.

"**The Omission to Appoint a Guardian ad Litem** for an infant defendant is reversible error in all cases, unless it appears that the judgment or decree is for the infant and not to his prejudice." Weaver *v.* Glenn, 104 Va. 443, 51 S. E. 835; Langston *v.* Bassette, 104 Va. 47, 51 S. E. 218.

7. Enforcement of Such Judgment Not Restrained by Injunction.— Cook *v.* Keith, 5 Indian Ter. 595, 82 S. W. 918.

Suit for Tort.— Where a suit was brought against a minor for a tort alleged to have been committed by him, and personal service was made upon him, but no guardian *ad litem* was appointed, under Civ. Code 1895, § 4987, the suit was not in proper condition to proceed to judgment by default against the minor; and where a judgment was thus rendered it was properly set aside on motion duly made therefor. Maryland Casualty Co. *v.* Lanham, 124 Ga. 859, 53 S. E. 395.

10. 4. Parken *v.* Safford, 48 Fla. 290, 37 So. 567; Gibbs *v.* Potter, 166 Ind. 471, 77 N. E. 942; Gates *v.* Patterson Bank, 116 La. 539, 40 So. 891.

5. Gibbs *v.* Potter, 166 Ind. 471, 77 N. E. 942.

11. 1. Gibbs *v.* Potter, 166 Ind. 471, 77 N. E. 942.

4. Ziegler *v.* Ziegler, 39 Ind. App. 21, 78 N. E. 1066.

12. 2. Mote *v.* Morton, 52 Fla. 548, 41 So. 607.

Answer Does Not Operate as an Appearance.— An answer filed by a guardian appointed before service of process on the infant was complete, does not operate against the infant as an appearance. Laflin *v.* Gato, 52 Fla. 529, 42 So. 387.

4. Guardian ad Litem Cannot Submit Claim against Ward to Arbitration.— Millsaps *v.* Estes, 137 N. Car. 535, 50 S. E. 227; State *v.* Ballinger, 41 Wash. 23, 82 Pac. 1018.

13. 2. Mote *v.* Morton, 52 Fla. 548, 41 So.

607; Holderby *v.* Hagan, 57 W. Va. 341, 50 S. E. 437.

6. Johnson *v.* Johnson, 38 Tex. Civ. App. 385, 85 S. W. 1023.

7. Johnson *v.* Johnson, 38 Tex. Civ. App. 385, 85 S. W. 1023.

A Decree Is Not Void for the Failure of the Guardian to Interpose a Defense where there were sufficient facts admitted to show that the plaintiff was entitled to the decree, and the case is free from suspicion of fraud or collusion. Gravelle *v.* Canadian, etc., Mortg., etc., Co., 42 Wash. 457, 85 Pac. 36.

14. 1. Johnson *v.* Johnson, 38 Tex. Civ. App. 385, 85 S. W. 1023.

5. Court May Make Guardian's Compensation Lien on Property Protected. — Stephenson *v.* Norris, 128 Wis. 242, 107 N. W. 343. *Compare* Owens *v.* Gunther, 75 Ark. 37, 86 S. W. 851.

Necessary Costs on Appeal. — If a guardian *ad litem* had reasonable grounds to take an appeal, he will be allowed his necessary costs thereon. Gardner *v.* Moss, (Ky. 1906) 96 S. W. 461.

By What Court Allowance Made. — The rule is that the allowance to the guardian *ad litem* must be made by the court appointing him. Gardner *v.* Moss, (Ky. 1906) 96 S. W. 461.

Fees Will Not Be Allowed the Guardian ad Litem in the absence of estate or a fund in court to be administered. Pritchard *v.* Pritchard, 2 Tenn. Ch. App. 294.

15. 4. Staggenborg *v.* Bailey, 118 Ky. 304, 80 S. W. 1109, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 15; Easy Property Payment Co. *v.* Vonderheide, (Ky. 1906) 93 S. W. 911; Gardner *v.* Moss, (Ky. 1906) 96 S. W. 461.

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21. 7. *In re* Wright, (Neb. 1907) 112 N. W. 311.

8. *In re* Wright, (Neb. 1907) 112 N. W. 311.

22. 5. *In re* Galleher, 2 Cal. App. 364, 84 Pac. 352; Hudson *v.* Von Weise, (Indian Ter. 1907) 104 S. W. 602; Gill *v.* Riley, (Ky. 1906) 90 S. W. 2; Alexander *v.* Hillebrand, 140 Mich. 490, 103 N. W. 849; Wirsig *v.* Scott, (Neb. 1907) 112 N. W. 655.

Father Cannot Transfer Custody of Infant. — Holmes *v.* Derrig, 127 Iowa 625, 103 N. W. 973; *In re* Wright, (Neb. 1907) 112 N. W. 311.

23. 1. *In re* Wright, (Neb. 1907) 112 N. W. 311; *In re* Tank, 129 Wis. 629, 109 N. W. [illegible]

Abandonment by Mother Equitably Estops Her from Asserting Her Legal Rights. — Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787.

The Parent Is Entitled to the Guardianship of His Minor Child when he is competent to transact his own business, and not otherwise unsuitable as guardian. Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787.

Parents May Voluntarily Surrender Custody and Control of Their Children to Suitable Guardian. — Wirsig *v.* Scott, (Neb. 1907) 112 N. W. 655.

24. 1. *In re* Schuler, (Surrogate Ct.) 46 Misc. (N. Y.) 373, 94 N. Y. Supp. 1063.

3. Holmes *v.* Derrig, 127 Iowa 625, 103 N. W. 973; *In re* Brown, (La. 1907) 44 So. 919.

25. 3. Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787; Cottrell *v.* Booth, 166 Ind. 469, 76 N. E. 546.

4. Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787; Hamerick *v.* People, 126 Ill. App. 491; *In re* Wright, (Neb. 1907) 112 N. W. 311.

The American Cases — See *In re* Tank, 129 Wis. 629, 109 N. W. 565; *In re* Galleher, 2 Cal. App. 364, 84 Pac. 352.

27. 7. *In re* Burdick, (Surrogate Ct.) 47 Misc. (N. Y.) 28, 95 N. Y. Supp. 206.

8. *In re* Burdick, (Surrogate Ct.) 47 Misc. (N. Y.) 28, 95 N. Y. Supp. 206.

10. Hernandez *v.* Thomas, 50 Fla. 522, 39 So. [illegible]

11. Hernandez *v.* Thomas, 50 Fla. 522, 39 So. [illegible]

28. 8. New York Legislation. — *In re* Schuler, (Surrogate Ct.) 46 Misc. (N. Y.) 373, 94 N. Y. Supp. 1063; *In re* Burdick, (Surrogate Ct.) 47 Misc. (N. Y.) 28, 95 N. Y. Supp. 206; Kellogg *v.* Burdick, 110 N. Y. App. Div. 472, 96 N. Y. Supp. 965.

Where the mother obtains an absolute divorce from her husband and custody of the children, upon her death the father is entitled to his statutory rights subject to the control of the court. *In re* Waring, (Surrogate Ct.) 46 Misc. (N. Y.) 222, 94 N. Y. Supp. 82.

30. 2. The Words "Custody and Tuition" have more than ordinary signification, for they include not only the person but the care and management of the personal estate, and also the profits of the real estate of the minor; that is, the guardianship of the person includes the guardianship of the estate. *In re* Burdick, (Surrogate Ct.) 47 Misc. (N. Y.) 28, 95 N. Y. Supp. 206.

31. 2. Kellogg *v.* Burdick, 110 N. Y. App. Div. 472, 96 N. Y. Supp. 965.

Power to Vest in Different Individuals [illegible] control of the estate and the person resides exclusively in the court. *In re* Burdick, (Surrogate Ct.) 47 Misc. (N. Y.) 28, 95 N. Y. Supp. 206.

3. *In re* Burdick, (Surrogate Ct.) 47 Misc. (N. Y.) 28, 95 N. Y. Supp. 206.

32. 2. *In re* Ross, (Cal. App. 1907) 92 Pac. 671, *citing* 15 AM. AND ENG. ENCYC. OF LAW [illegible]

33. 1. Schlieder *v.* Wells, 114 N. Y. App. Div. 417, 99 N. Y. Supp. 1000.

What Will Bind His Estate. — Moughon *v.* Maudlin, 142 Ala. 424, 38 So. 849.

Question of Appointment First Submitted to Probate Court. — *In re* Dunlap, 100 Me. 397, 61 Atl. 704.

5. Hayslip *v.* Gillis, 120 Ga. 263, 51 S. E. 325; State *v.* Parsons, 131 Wis. 606, 111 N. W. 710.

34. 1. Nunn *v.* Robertson, 80 Ark. 250, 97 S. W. 202; *In re* Murray, 28 Ohio Cir. Ct. 652. [illegible] the residence of the guardian is not the residence of the ward [illegible] make it his residence. Dickerson *v.* Bowen, 128 Ga. [illegible]

The Ward Is Entitled to Live with Parents [illegible] showing a different condition. Wirsig *v.* Scott, (Neb. 1907) 112 N. W. 655.

2. Nunn *v.* Robertson, 80 Ark. 350, 97 S. W. 103.

Where the Father Died a Resident of Indian Territory and an uncle from Texas removed the child to that state, it was held that the Texas court had jurisdiction to appoint a guardian. Hagan *v.* Snider, (Tex. Civ. App. 1906) 98 S. W. 213.

35. 2. Hagan *v.* Snider, (Tex. Civ. App. 1906) 98 S. W. 213.

36. 5. *In re* Dunlap, 100 Me. 397, 61 Atl. 704.

6. Dickerson *v.* Bowen, 128 Ga. 122, 57 S. E. 326.

A Special Guardian cannot be appointed under the *Wisconsin* statute pending an appeal from an order appointing a guardian. State *v.* Parsons, 131 Wis. 606, 111 N. W. 710.

37. 4. Devereaux *v.* Janes, 141 Mich. 265, 104 N. W. 579.

5. Smith *v.* Haas, 132 Iowa 493, 109 N. W. 1075; Brown *v.* Probate Ct., (R. I. 1907) 67 Atl. 527.

Where minor children over the age of fourteen years apply for, and with the consent of their parents procure the appointment of, a guardian of their persons and property, the proceeding is not open to collateral attack on the ground that the parents are the natural guardians of their children. Wirsig *v.* Scott, (Neb. 1907) 112 N. W. 655.

38. 1. Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787; Wright *v.* Boswell, (Ky. 1907) 103 S. W. 314; *In re* Guardianship of Tully Infants, (Surrogate Ct.) 54 Misc. (N. Y.) 184, 105 N. Y. Supp. 858.

2. *In re* Dellow, 1 Cal. App. 529, 82 Pac. 558; Hernandez *v.* Thomas, 50 Fla. 522, 39 So. 641; Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787; Holmes *v.* Derrig, 127 Iowa 625, 103 N. W. 973; Smiley *v.* McIntosh, 129 Iowa 337, 105 N. W. 577; Smith *v.* Haas, 132 Iowa 493, 109 N. W. 1075; *In re* Dunlap, 100 Me. 397, 61 Atl. 704; *In re* Tank, 129 Wis. 629, 109 N. W. 565.

A Lawsuit against a Person under no obligations to a minor will not disqualify him for appointment as guardian. Davis *v.* Hammack, (Tex. Civ. App. 1908) 107 S. W. 112.

4. Holmes *v.* Derrig, 127 Iowa 625, 103 N. W. 973; *In re* Crickard, (Surrogate Ct.) 52 Misc. (N. Y.) 63, 102 N. Y. Supp. 440; *In re* Tank, 129 Wis. 629, 109 N. W. 565.

39. 1. Hernandez *v.* Thomas, 50 Fla. 522, 39 So. 641; Holmes *v.* Derrig, 127 Iowa 625, 103 N. W. 973; Gill *v.* Riley, (Ky. 1906) 90 S. W. 2; *In re* Guardianship of Tully Infants, (Surrogate Ct.) 54 Misc. (N. Y.) 184, 105 N. Y. Supp. 858.

Mother Must Be Adjudged Incompetent Before Another Can Be Appointed. — Hudson *v.* Von Weise, (Indian Ter. 1907) 104 S. W. 602.

2. **Mother May Forfeit Right by Consenting to Adoption.** — *In re* Masterson, 45 Wash. 48, 87 Pac. 1047.

Immoral Conduct Not Ground for Refusing Her Petition. — *In re* Tank, 129 Wis. 629, 109 N. W. 565.

3. Holmes *v.* Derrig, 127 Iowa 625, 103 N. W. 973.

Grandparent Preferred to Aunt. — *In re* Brown, (La. 1907) 44 So. 919; *In re* Crickard, (Surrogate Ct.) 52 Misc. (N. Y.) 63, 102 N. Y. Supp. 440.

Grandparent's Rights Are Cut Off by a Decree of Adoption consented to by the mother. *In re* Masterson, 45 Wash. 48, 87 Pac. 1047.

5. **An Interest in Preventing the Ward from** marrying is not ground for refusing the appointment. *In re* Masterson, 45 Wash. 48, 87 Pac. 1047.

41. 7. **That Child Should Not Be Subjected to Contempt and Derision.** — *In re* Tank, 129 Wis. 629, 109 N. W. 565.

42. 1. State *v.* Reynolds, 121 Mo. App. 699, 97 S. W. 650; Wirsig *v.* Scott, (Neb. 1907) 112 N. W. 655.

2. Dickerson *v.* Bowen, 128 Ga. 122, 57 S. E. 326.

3. Dickerson *v.* Bowen, 128 Ga. 122, 57 S. E. 326; Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787; *In re* Guardianship of Tully Infants, (Surrogate Ct.) 54 Misc. (N. Y.) 184, 105 N. Y. Supp. 858.

Court Has No Discretion When Satisfied with Person Chosen. — State *v.* Reynolds, 121 Mo. App. 699, 97 S. W. 650.

4. Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787.

6. Hix *v.* Duncan, (Tex. Civ. App. 1907) 99 S. W. 422.

Special Guardianship Ceases upon Appointment of General Guardian. — State *v.* Parsons, 131 Wis. 606, 111 N. W. 710.

45. 3. Wescott *v.* Upham, 127 Wis. 590, 107 N. W. 2.

47. 6. After a guardian has resigned and his successor has been appointed, but has not qualified, it does not operate to reinstate the former guardian. Smiley *v.* McIntosh, 129 Iowa 337, 105 N. W. 577.

A Tutrix Cannot Resign after she has remarried and been retained in the tutorship with her husband as co-tutor. *In re* Long, 118 La. 689, 43 So. 279.

8. Hamerick *v.* People, 126 Ill. App. 491.

48. 2. Smith *v.* Haas, 132 Iowa 493, 109 N. W. 1075; *In re* Padgett, 114 Mo. App. 307, 89 S. W. 886.

4. **Letters Issued Ex Parte Subject to Revocation.** — *In re* Crickard, (Surrogate Ct.) 52 Misc. (N. Y.) 63, 102 N. Y. Supp. 440.

5. *In re* Crickard, (Surrogate Ct.) 52 Misc. (N. Y.) 63, 102 N. Y. Supp. 440.

49. 1. Cottrell *v.* Booth, 166 Ind. 469, 76 N. E. 546; *In re* Crickard, (Surrogate Ct.) 52 Misc. (N. Y.) 63, 102 N. Y. Supp. 440.

Evidence Held Insufficient to Authorize Removal. — Gill *v.* Riley, (Ky. 1906) 90 S. W. 2.

3. *In re* Padgett, 114 Mo. App. 307, 89 S. W. 886.

4. *In re* Padgett, 114 Mo. App. 307, 89 S. W. 886.

8. *In re* Padgett, 114 Mo. App. 307, 89 S. W. 886; *In re* Edmonson, (Neb. 1907) 110 N. W. 540.

12. *In re* Padgett, 114 Mo. App. 307, 89 S. W. 886.

Extravagant Expenditures — Clay *v.* Clay, (Ky. 1905) 89 S. W. 500.

50. 1. Clay *v.* Clay, (Ky. 1905) 89 S. W 500; *In re* Padgett, 114 Mo. App. 307, 89 S. W. 886.

Knowledge of [illegible] Attorney Essential to Cause Removal. — Burrell's Succession, 118 La. 1076, 43 So. 882.

2. *In re* Padgett, 114 Mo. App. 307, 89 S. W. 886.

Failure to File [illegible] Bond Is Not Cause for Removal until he has been given an opportunity to secure one and fails. Gill *v.* Riley, (Ky. 1906) 90 S. W. 2.

4. *In re* Crickard, (Surrogate Ct.) 52 Misc. (N. Y.) 63, 102 N. Y. Supp. 440.

5. *In re* Burns, (Surrogate Ct.) 51 Misc. (N. Y.) 662, 102 N. Y. Supp. 203.

6. **The Guardian Is Entitled to Letters of Administration in Place of the Ward,** where the ward if of full age would be entitled to them. *In re* Weeks, (Ind. 1907) 81 N. E. 107.

51. 1. Cottrell *v.* Booth, 166 Ind. 469, 76 N. E. 546.

2. Smiley *v.* McIntosh, 129 Iowa 337, 105 N. W. 577.

52. 3. Where an incompetent has lived in a city for fifteen years the court in appointing a guardian should direct that he be not removed from the city and caused unnecessary injury. Matter of Cooper, 105 N. Y. App. Div. 449, 94 N. Y. Supp. 270.

53. 3. Burke *v.* Mackenzie, 124 Ga. 248, 52 S. E. 653; *In re* Manning, 134 Iowa 165, 111 N. W. 409; Stevens *v.* Meserve, 73 N. H. 293, 61 Atl. 420.

54. 3. *In re* Manning, 134 Iowa 165, 111 N. W. 409.

4. **A Mother Who Is the Surviving Parent Is Not Entitled to Possession or Control** of the property of the children, as she is not their guardian within the purview of Code Civ. Pro. N. Y., § 2746. *In re* Schuler, (Surrogate Ct.) 46 Misc. (N. Y.) 373, 94 N. Y. Supp. 1063.

55. 1. Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851; Phœnix Acc., etc., Ben. Assoc. *v.* Lathrop, (Ind. 1907) 81 N. E. 227; Abrams *v.* U. S. Fidelity, etc., Co., 127 Wis. 579, 106 N. W. 1091.

3. **Cannot Mortgage Land to Obtain Money to Pay Off Incumbrances.** — Capen *v.* Garrison, 193 Mo. 335, 92 S. W. 368.

4. Stevens *v.* Meserve, 73 N. H. 293, 61 Atl. 420; Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710.

56. 1. Social Benev. Soc. No. 1 *v.* Holmes, 127 Ga. 586, 56 S. E. 775; Carrollton Land, etc., Co. *v.* Eureka Homestead Soc., 119 La. 692, 44 So. 434; Gallon *v.* Mandell, 150 Mich. 621, 114 N. W. 392; Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 56; Schlieder *v.* Wells, 114 N. Y. App. Div. 417, 99 N. Y. Supp. 1000; Binmore *v.* Sovereign Bank, 7 Quebec Pr. 171.

A Prosecution of Suit by a Guardian Who **Failed to File His Bond** is not void where the wards received the benefit and ratified the guardian's acts. Havens *v.* Ahlering, (Ky. 1906) 97 S. W. 344.

3. Forbes *v.* Reynard, 113 N. Y. App. Div. 308, 98 N. Y. Supp. 710, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 56; Abrams *v.* U. S. Fidelity, etc., Co., 127 Wis. 579, 106 N. W. 1091.

4. **In an Action in Forma Pauperis** in a federal court the compensation of an attorney retained by the guardian of the infant plaintiff is determined by the court without regard to any contract. Matter of Tyndall, 117 N. Y. App. Div. 294, 102 N. Y. Supp. 211.

5. Harrison *v.* Western Constr. Co., (Ind. 1908) 83 N. E. 256.

6. Gardner *v.* Beacon Trust Co., 190 Mass. 27, 76 N. E. 455; Cabble *v* Cabble, 111 N. Y. App. Div. 426, 97 N. Y. Supp. 773.

57. 2. Ayer, etc., Tie Co. *v.* Witherspoon, (Ky. 1907) 100 S. W. 259; Gault Lumber Co. *v.* Pyles, (Okla. 1907) 92 Pac. 175; Rippy *v.* Harlow, (Tex. Civ. App. 1907) 101 S. W. 851.

Evidence of Valid Sale Held Insufficient to Warrant Ejectment on Guardian's Deed. — Phelps *v.* Nazworthy, 226 Ill. 254, 80 N. E. 756.

3. Ayer, etc., Tie Co. *v.* Witherspoon, (Ky. 1907) 100 S. W. 259; Gault Lumber Co. *v.* Pyles, (Okla. 1907) 92 Pac. 175.

58. 2. Alcon *v.* Koons, (Ind. 1907) 82 N. E. 92.

6. Hagerman *v.* Meeks, 13 N. Mex. 565, 86 Pac. 801.

59. 1. Beachy *v.* Shomber, 73 Kan. 62, 84 Pac. 547; *In re* Wyckoff, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 190, 100 N. Y. Supp. 417.

For [illegible] and Support of Ward. — Campbell *v.* Goodin, (Ky. 1908) 108 S. W. 248.

Reasons [illegible] rum *v.* Clark, (Ky. 1907) 102 S. W. 271.

Referee's Report [illegible] Not Binding on Court. — *In re* Wyckoff, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 190, 100 N. Y. Supp. 417.

Louisiana — Presumption of Correctness. — Where an act of sale of minor's property, passed before the clerk and *ex officio* custodian of the records of the court, recites that the sale is made in pursuance of the recommendations of a family meeting held before the clerk himself, and duly homologated by a judgment of which a copy is annexed to the act, these recitals will be taken for true where no evidence is adduced to the contrary and the records have been lost. Wood *v.* Frickie, (La. 1907) 45 So. 9[illegible].

60. 2. Higginbotham *v.* Daigle, (La. 1907) 45 So. 392.

Sufficient Compliance. — Mortgage Trust Co. *v.* Redd, 38 Colo. 458, 88 Pac. 473.

4. Alcon *v.* Koons, (Ind. 1907) 82 N. E. 92; Campbell *v.* Goodin, (Ky. 1908) 108 S. W. 248.

61. 1. Phillips *v.* Spalding, (Ky. 1907) 102 S. W. 1193.

Kentucky Statute — Sale of Land Owned Jointly. — Louisville Trust Co. *v.* Kidd, (Ky. 1906) 93 S. W. 38.

62. 1. **Failure to Take Oath Cured by Statute.** — Fuller *v.* Hager, 47 Oregon 242, 83 Pac. 782.

2. Rippy *v.* Harlow, (Tex. Civ. App. 1907) 101 S. W. 851.

Entry of Order Essential. — Teague *v.* Swasey, (Tex. Civ. App. 1907) 102 S. W. 458.

4. Rippy *v.* Harlow, (Tex. Civ. App. 1907) 101 S. W. 851.

In Louisiana a private sale by a tutor, of the ward's realty, is void. Touchy *v.* Gulf Land Co., [illegible]

Confirmation by the Court Is Discretionary where the sale is private and without compe-

tition. *In re* Berryhill, (Indian Ter. 1907) 104 S. W. 847, 850.

63. 2. Beachy *v.* Shomber, 73 Kan. 63, 84 Pac. 547, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 63.

Minors under Fourteen Years Need Not Be Served. — Furr *v.* Burns, 124 Ga. 742, 53 S. E. 201.

3. Beachy *v.* Shomber, 73 Kan. 63, 84 Pac. 547, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 63.

4. Mortgage Trust Co. *v.* Redd, 38 Colo. 458, 88 Pac. 473; Beachy *v.* Shomber, 73 Kan. 62, 84 Pac. 547; Hyerman *v.* Meeks, 13 N. Mex. 565, 86 Pac. 801; Teague *v.* Swasey, (Tex. Civ. App. 1907) 102 S. W. 458.

64. 1. Cutter *v.* Burroughs, 100 Me. 394, 61 Atl. 767, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 64; Headley *v.* Hoopengarner, 60 W. Va. 626, 55 S. E. 745.

2. Touchy *v.* Gulf Land Co., (La. 1908) 45 So. 434; Cutter *v.* Burroughs, 100 Me. 394, 61 Atl. 767, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 64.

3. **In Louisiana** where the tutor and the undertutor of the minor concurred in opinion with the family meeting and the court approved and homologated the proceedings and ordered the sale, the purchaser was protected by the proceedings had. Carrollton Land, etc., Co. *v.* Eureka Homestead Soc., 119 La. 692, 44 So. 434.

4. **Mortgagor Not Bound to See that Proper Application Made of Money Paid.** — Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710.

65. 2. See Headley *v.* Hoopengarner, 60 W. Va. 626, 55 S. E. 744.

4. **Ratification Not Implied unless Ward Fully Informed of Facts.** — Touchy *v.* Gulf Land Co., (La. 1908) 45 So. 434.

5. **Acquiescence Cannot Be Imputed to Infants until of Age.** — Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

66. 1. **A Ward Executing a Mortgage for Money Expended by the Guardian** during his minority did not constitute a ratification. Fidelity Trust Co. *v.* Butler, (Ky. 1906) 91 S. W. 676.

Suit During Infant's Minority by His Guardian Is a Disaffirmance of Sale. — Ayer, etc., Tie Co. *v.* Witherspoon, (Ky. 1907) 100 S. W. 259.

2. Cooper *v.* Burns, 133 Fed. 398; Burns *v.* Cooper, (C. C. A.) 140 Fed. 273; Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497; Tanner's Estate, 218 Pa. St. 361, 67 Atl. 646; Werber *v.* Cain, 71 S. Car. 346, 51 S. E. 123; Hix *v.* Armstrong, (Tex. 1908) 106 S. W. 317.

Where the Debts of Both Guardian and Ward are secured by a deed of trust, the guardian may bid the property in to protect himself as well as the ward. Bunel *v.* Nester, 203 Mo. 429, 101 S. W. 69; Bunel *v.* Springfield Sav. Bank, (Mo. 1907) 101 S. W. 78.

3. Tanner's Estate, 218 Pa. St. 361, 67 Atl. 646.

67. 1. **Mortgagee of Guardian Not Innocent Purchaser.** — Cooper *v.* Burns, 133 Fed. 398; Burns *v.* Cooper, (C. C. A.) 140 Fed. 273.

2. **If the Ward Lets the Conveyance Remain Unimpeached** the guardian gets an absolute title. Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

3. Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

68. 5. Fidelity Trust Co. *v.* Rudtloff, (Ky. 1905) 89 S. W. 119; Cumberland Pipe Line Co. *v.* Howard, (Ky. 1907) 100 S. W. 270; Globe Soap Co. *v.* Louisville, etc., R. Co., 27 Ohio Cir. Ct. 759; Norton *v.* Stroud State Bank, 17 Okla. 295, 87 Pac. 848.

Must Act under Supervision of Court. — Pilgrim *v.* McIntosh, (Indian Ter. 1907) 104 S. W. 858.

69. 1. Cumberland Pipe Line Co. *v.* Howard, (Ky. 1907) 100 S. W. 270.

5. Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710.

70. 1. **Guardian's Mortgage Lien on Ward's Interest.** — Ure *v.* Ure, 223 Ill. 454, 79 N. E. 153.

2. Hughes *v.* Kershow, (Colo. 1908) 93 Pac. 1116; Burke *v.* Mackenzie, 124 Ga. 248, 52 S. E. 653; Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851; Higginbotham *v.* Daigle, (La. 1907) 45 So. 392; Matter of Tyndall, 117 N. Y. App. Div. 294, 102 N. Y. Supp. 211; Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69.

71. 1. Stevens *v.* Meserve, 73 N. H. 293, 61 Atl. 420.

5. **Release of an Unpaid Mortgage** by the guardian displaces the lien as against a subsequent mortgagee. Werber *v.* Cain, 71 S. Car. 346, 51 S. E. 123.

72. 6. Griffin *v.* Collins, 125 Ga. 159, 53 S. E. 1004; Skidmore *v.* Cumberland Valley Land Co., (Ky. 1907) 104 S. W. 390.

Rule in Louisiana. — Holliday *v.* Hammond State Bank, 118 La. 1000, 43 So. 656.

Settlement of Claim for Damages Subject to Control of Court. — Picciano *v.* Duluth, etc., R. Co., 102 Minn. 21, 112 N. W. 885.

73. 4. **Ward's Maturity Pending Suit.** — Shattuck *v.* Wolf, 72 Kan. 366, 83 Pac. 1093.

5. *In re* Boyes, 151 Cal. 143, 90 Pac. 458; Alcon *v.* Koons, (Ind. 1907) 82 N. E. 92; Goff *v.* Goff, (Ky. 1906) 93 S. W. 625; Stevens *v.* Meserve, 73 N. H. 293, 61 Atl. 420; Werber *v.* Cain, 71 S. Car. 346, 51 S. E. 123; Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69.

74. 1. Abrams *v.* U. S. Fidelity, etc., Co., 127 Wis. 579, 106 N. W. 1091.

A Deposit in a Bank, on an agreement that it shall not be withdrawn without the joint check of the guardian and the surety, is contrary to public policy. Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851.

3. Goff *v.* Goff, (Ky. 1906) 93 S. W. 625; Stevens *v.* Meserve, 73 N. H. 293, 61 Atl. 420; Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69.

75. 3. **Guardian Cannot Deal with Ward in His Own Interests Without Placing Ward on Equal Footing.** — Scoville *v.* Brock, 79 Vt. 449, 65 Atl. 577.

4. Tanner's Estate, 218 Pa. St. 361, 67 Atl. 646.

5. State *v.* Petersen, 36 Ind. App. 260, 75 N. E. 602; Hall *v.* Turner, 78 Vt. 62, 61 Atl. 762.

76. 1. May *v.* May, 189 Mo. 485, 88 S. W. 75; Schlieder *v.* Wells, 114 N. Y. App. Div. 417, 99 N. Y. Supp. 1000.

77. 1. Havens *v.* Ahlering, (Ky. 1906) 97 S. W. 544.

79. 2. Probate Ct. *v.* Carr, 27 R. I. 184, 61 Atl. 171.

3. Probate Ct. *v.* Carr, 27 R. I. 184, 61 Atl. 171.

4. Fidelity Trust Co. *v.* Rudtloff, (Ky. 1905) 89 S. W. 119.

On the Death of the Ward, Intestate, the guardian becomes administrator of his estate. National Lumber Co. *v.* Turner, 2 Ga. App. 750, 59 S. E. 15.

80. 2. Zeideman *v.* Molasky, 118 Mo. App. 106, 94 S. W. 754; Hix *v.* Duncan, (Tex. Civ. App. 1907) 99 S. W. 422.

3. *Contra.* — Hix *v.* Duncan, (Tex. Civ. App. 1907) 99 S. W. 422.

4. Phœnix Acc., etc., Ben. Assoc. *v.* Lathrop, (Ind. 1907) 81 N. E. 226; *In re* Padgett, 114 Mo. App. 314, 89 S. W. 886, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 80.

5. Phœnix Acc., etc., Ben. Assoc. *v.* Lathrop, (Ind. 1907) 81 N. E. 226; *In re* Padgett, 114 Mo. App. 314, 89 S. W. 886, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 80.

Conversion Without Fraudulent Intent Not Embezzlement. — State *v.* Disbrow, 130 Iowa 19, 106 N. W. 263.

81. 1. Moyers *v.* Kinnick, 1 Tenn. Ch. 65.

82. 1. Stevenson *v.* Markley, (N. J. 1907) 66 Atl. 185, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 82; Rahm's Estate, 219 Pa. St. 201, 68 Atl. 186.

2. **The Statute of Limitations Does Not Begin to Run against the Ward** until the influence of the confidential relation has ceased, or until something has occurred to raise a doubt in the ward's mind as to the conduct of the guardian. Scoville *v.* Brock, 79 Vt. 449, 65 Atl. 577.

83. 1. **Fraudulent Conveyance by Guardian Set Aside.** — Coley *v.* Tallman, 107 N. Y. App. Div. 445, 95 N. Y. Supp. 339, *affirming* (Supm. Ct. Spec. T.) 43 Misc. (N. Y.) 280, 88 N. Y. Supp. 896.

2. **Sale of Securities by Guardian Without Authority to Innocent Purchaser Passes No Title.** — Merchants, etc., Sav. Bank Co. *v.* Schirk, 27 Ohio Cir. Ct. 125.

4. Schlieder *v.* Wells, 114 N. Y. App. Div. 417, 99 N. Y. Supp. 1000.

84. 7. Hudson *v.* Newton, 83 Ark. 223, 103 S. W. 170.

8. Fidelity Trust Co. *v.* Butler, (Ky. 1906) 91 S. W. 676; Wilson *v.* Fidelity Trust Co., (Ky. 1906) 97 S. W. 753; Hall *v.* Turner, 78 Vt. 62, 61 Atl. 763.

9. Rahm's Estate, 219 Pa. St. 201, 68 Atl. 186.

85. 3. *In re* Boyce, 151 Cal. 143, 90 Pac. 454.

5. Headley *v.* Hoopengarner, 60 W. Va. 626, 55 S. E. 744.

Liability of Ward for Money Borrowed. — If a guardian borrows money from a bank, even though not necessary, the ward's estate is liable for the actual amount used for its benefit. *In re* Manning, 134 Iowa 165, 111 N. W. 400.

9. Fidelity Trust Co. *v.* Butler, (Ky. 1906) 91 S. W. 676.

86. 1. Hall *v.* Turner, 78 Vt. 62, 61 Atl. 763, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 86.

Relationship Continues as Long as Estate in Hands of Guardian. — Baum *v.* Hartmann, 226 Ill. 160, 80 N. E. 711.

2. Baum *v.* Hartmann, 226 Ill. 160, 80 N. E. 711; Hall *v.* Turner, 78 Vt. 63, 61 Atl. 763, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 86.

3. Baum *v.* Hartmann, 226 Ill. 160, 80 N. E. 711; Scoville *v.* Brock, 79 Vt. 449, 65 Atl. 577.

87. 3. Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710.

4. Fidelity Trust Co. *v.* Butler, (Ky. 1906) 91 S. W. 676, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 87; Hall *v.* Turner, 78 Vt. 62, 61 Atl. 763, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 87.

88. 1. Fidelity Trust Co. *v.* Butler, (Ky. 1906) 91 S. W. 676, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88; Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710; Hall *v.* Turner, 78 Vt. 62, 61 Atl. 763, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88.

Burden on Guardian to Prove Settlement. — Robb *v.* Robb, 134 Iowa 195, 111 N. W. 803.

Settlement Made with Ward While in Jail and in Distress Cannot Be Approved. — Wilson *v.* Fidelity Trust Co., (Ky. 1906) 97 S. W. 753.

2. **When Delay No Ratification.** — Hall *v.* Turner, 78 Vt. 62, 61 Atl. 763.

Ratification Obtained under Questionable Circumstances Not Binding. — Wilson *v.* Fidelity Trust Co., (Ky. 1906) 97 S. W. 753.

89. 3. **Guardian Not Bound to Account in Court for Property of Ward.** — Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710.

90. 1. Stevenson *v.* Markley, (N. J. 1907) 66 Atl. 185.

4. Mase *v.* Martin, (Iowa 1906) 106 N. W. 3; *In re* Lindsay, 132 Iowa 119, 109 N. W. 473; *In re* Burns, (Surrogate Ct.) 51 Misc. (N. Y.) 662, 102 N. Y. Supp. 203.

The Failure of a Guardian to Render Biennial Accounts makes him liable to a ten per cent. penalty and deprives him of his allowance. Alcon *v.* Koons, (Ind. 1907) 82 N. E. 92.

91. 1. Hall *v.* Turner, 78 Vt. 62, 61 Atl. 763.

2. Where a guardian died and his administrator was not appointed until twenty-three years thereafter, a suit begun the following year for an accounting was not barred by the statute of limitations. Murphy *v.* Cady, 145 Mich. 33, 108 N. W. 403.

The Relation of Guardian and Ward Is a Continuing Trust and until the guardian settles with the ward or the ward's representatives the statute of limitations does not begin to run. Stevenson *v.* Markley, (N. J. 1907) 66 Atl. 185.

3. Murphy *v.* Cady, 145 Mich. 33, 108 N. W. 403.

After a Lapse of Twenty-five Years the remedy was held to be barred. Rahm's Estate, 219 Pa. St. 201, 68 Atl. 186.

4. State *v.* Petersen, 36 Ind. App. 269, 75 N. E. 602; Phœnix Acc., etc., Ben. Assoc. *v.* Lathrop, (Ind. 1907) 81 N. E. 226; State *v.* Disbrow, 130 Iowa 10, 106 N. W. 263; Potter *v.* Redmon, (Ky. 1906) 96 S. W. 520; Ohlmann *v.* Wirth, (Ky. 1906) 97 S. W. 760; Gillum *v.* Parker, (Ky. 1907) 100 S. W. 820; *In re* Ward,

(Surrogate Ct.) 49 Misc. (N. Y.) 181, 98 N. Y. Supp. 923.

Evidence Held Insufficient to Prove Guardian Had Not Accounted for All Assets. — Bramlett *v.* Mathis, 71 S. Car. 123, 50 S. E. 644.

The Purpose of an Accounting is to obtain in permanent and reliable form from time to time [illegible] to the guardian's management. Meon *v.* Koons, (Ind. 1907) 82 N. E. 92.

98. 1. Liable for Making Unauthorized Loan. — *In re* O'Brien, (Neb. 1907) 113 N. W. 1001.

Personal Direction of the Judge in Making the Loan is not equivalent to an order of the court. *In re* O'Brien, (Neb. 1907) 113 N. W. 1001.

Guardian Not Liable if He Exercises Due Diligence in Management of Ward's Funds. — Scoville *v.* Brock, 79 Vt. 449, 65 Atl. 577.

2. Phœnix Acc., etc., Ben. Assoc. *v.* Lathrop, (Ind. 1907) 81 N. E. 226; *In re* Ward, (Surrogate Ct.) 49 Misc. (N. Y.) 181, 98 N. Y. Supp. 923.

Debts Due by the Guardian to the Ward Have no Preference on the bankruptcy of the guardian under the *Michigan* statute. *In re* Jones, 151 Fed. 108.

Where One Who Was Both Executrix and Guardian gave herself as guardian a receipt to herself as administratrix, without any payment of money, she did not discharge herself and her sureties as administratrix and impose a liability on herself and her sureties as guardian. *In re* Switzer, 201 Mo. 66, 98 S. W. 461.

94. 1. Schlieder *v.* Wells, 114 N. Y. App. Div. 417, 99 N. Y. Supp. 1000.

3. Guardian Liable for Funds Turned over to Ward Instead of Paying Judgment. — Probate Ct. *v.* Carr, 27 R. I. 184, 61 Atl. 171.

95. 2. Glassell *v.* Glassell, 147 Cal. 510, 82 Pac. 42; Goff *v.* Goff, (Ky. 1906) 93 S. W. 625.

3. Goff *v.* Goff, (Ky. 1906) 93 S. W. 625.

4. Merritt *v.* Wallace, 76 Ark. 217, 88 S. W. 876; Glassell *v.* Glassell, 147 Cal. 510, 82 Pac. 42; Griffin *v.* Collins, 125 Ga. 159, 53 S. E. 1004; Goff *v.* Goff, (Ky. 1906) 93 S. W. 625; Logan *v.* Gay, (Tex. Civ. App. 1905) 87 S. W. 852; Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69; Abrams *v.* U. S. Fidelity, etc., Co., 127 Wis. 579, 106 N. W. 1091.

96. 1. *In re* Ward, (Surrogate Ct.) 49 Misc. (N. Y.) 181, 98 N. Y. Supp. 923.

Guardian Chargeable with Higher Rate if Ward Can Show It Was Obtainable. — Merritt *v.* Wallace, 76 Ark. 217, 88 S. W. 876.

Guardian Must Pay the Rate Made. — Griffin *v.* Collins, 125 Ga. 159, 53 S. E. 1004.

The Guardian Is Chargeable with the greatest income he can secure by using reasonable diligence and good faith. Goff *v.* Goff, (Ky. 1906) 93 S. W. 625.

The Guardian Will Be Charged with the Interest the Sum Would Have Earned if deposited [illegible] funds from the time of appointment. *In re* Ward, (Surrogate Ct.) 49 Misc. (N. Y.) 181, 98 N. Y. Supp. 923.

Where Guardian Mismanaged Estate, Ten Per Cent. Interest Charged. — Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69.

Liable for Highest Legal Rate. — Logan *v.* [illegible] (Tex. Civ. App. 1905) 87 S. W. 852.

2. Merritt *v.* Wallace, 76 Ark. 217, 88 S. W. 876; Corcoran *v.* Renehan, 24 App. Cas. (D. C.) 411; Goff *v.* Goff, (Ky. 1906) 93 S. W. 625; Logan *v.* Gay, (Tex. Civ. App. 1905) 87 S. W. 852; Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69.

Interest from Time Guardian Received Fund. — *In re* Ward, (Surrogate Ct.) 49 Misc. (N. Y.) 181, 98 N. Y. Supp. 923.

3. One Year Allowed for Investment unless Interest Earned. — Griffin *v.* Collins, 125 Ga. 159, 53 S. E. 1004.

5. It Is Only During the Term of Guardianship that funds are required to be invested, and the guardian will not be charged with interest for moneys not loaned or invested thereafter. Logan *v.* Gay, (Tex. Civ. App. 1905) 87 S. W. 852.

Allowance of Period for Investment Held Discretionary with Court. — Abrams *v.* U. S. Fidelity, etc., Co., 127 Wis. 579, 106 N. W. 1091.

6. Glassell *v.* Glassell, 147 Cal. 510, 82 Pac. 42; Griffin *v.* Collins, 125 Ga. 159, 53 S. E. 1004.

98. 2. *In re* Boyes, 151 Cal. 143, 90 Pac. 454.

Guardian Credited with Amounts Returned by His Attorney in Fact, Not Amounts Given to Him. — Griffin *v.* Collins, 125 Ga. 159, 53 S. E. 1004.

5. Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710; Abrams *v.* U. S. Fidelity, etc., Co., 127 Wis. 579, 106 N. W. 1091.

Counsel Fees Not Allowed Where Attorney Employed Before Guardian's Appointment. — *In re* Tyndall, (Surrogate Ct.) 48 Misc. (N. Y.) 39, 96 N. Y. Supp. 222.

Action in Forma Pauperis — Contract Not Enforceable. — Matter of Tyndall, 117 N. Y. App. Div. 294, 102 N. Y. Supp. 211.

99. 1. Orders Employing Counsel Must Be Approved and Made of Record. — *In re* Manning, 134 Iowa 165, 111 N. W. 409.

3. Fidelity Trust Co. *v.* Rudtloff, (Ky. 1905) 89 S. W. 119; Alexander *v.* Hillebrand, 140 Mich. 490, 103 N. W. 849; *In re* Ward, (Surrogate Ct.) 49 Misc. (N. Y.) 181, 98 N. Y. Supp. 923.

Income and Expenses Must Run Concurrently to entitle a guardian to a credit for the expenses of maintaining the infant. Logan *v.* Gay, (Tex. Civ. App. 1905) 87 S. W. 852.

Allowance Disallowed Where Permission of Court Not Obtained. — Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69.

100. 1. Hudson *v.* Newton, 83 Ark. 223, 103 S. W. 170; U. S. Fidelity, etc., Co. *v.* Davis, 2 Ga. App. 525, 58 S. E. 777; Fidelity Trust Co. *v.* Butler, (Ky. 1906) 91 S. W. 676; Wilson *v.* Fidelity Trust Co., (Ky. 1906) 97 S. W. 753; Campbell *v.* Goodin, (Ky. 1908) 108 S. W. 248; Logan *v.* Gay, (Tex. Civ. App. 1905) 87 S. W. 852.

In a Controversy between the Heirs of the Ward it will be presumed that the guardian applied the personal estate to the expenses of the infant, the real estate not being available. McDonald *v.* Weisiger, (Ky. 1907) 100 S. W. 832.

103. 1. *In re* Boyes, 151 Cal. 143, 90 Pac. 454; *In re* Ward, (Surrogate Ct.) 49 Misc. (N. Y.) 181, 98 N. Y. Supp. 923.

2. *In re* Boyes, 151 Cal. 143, 90 Pac. [illegible]; Gaspard *v.* Coco, 116 La. 1006, 41 So. 226; *In re* Switzer, 201 Mo. 66, 98 S. W. 461; *In re*

Wyckoff, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 190, 100 N. Y. Supp. 417.

104. 1. Spidle *v.* Blakeney, (Ala. 1907) 44 So. 62; Hudson *v.* Newton, 83 Ark. 223, 103 S. W. 170.

2. *In re* Ross, (Cal. App. 1907) 92 Pac. 671; Alexander *v.* Hillebrand, 140 Mich. 490, 103 N. W. 849.

4. Abrams *v.* U. S. Fidelity, etc., Co., 127 Wis. 579, 106 N. W. 1091.

105. 1. **Brother.** — Alexander *v.* Hillebrand, 140 Mich. 490, 103 N. W. 849; *In re* Ward, (Surrogate Ct.) 49 Misc. (N. Y.) 181, 98 N. Y. Supp. 923.

106. 2. Gaspard *v.* Coco, 116 La. 1096, 41 So. 326; Bramlett *v.* Mathis, 71 S. Car. 123, 50 S. E. 644.

3. Burke *v.* Mackenzie, 124 Ga. 248, 52 S. E. 653; Ohlmann *v.* Wirth, (Ky. 1906) 97 S. W. 760; Gaspard *v.* Coco, 116 La. 1096, 41 So. 326; Bramlett *v.* Mathis, 71 S. Car. 123, 50 S. E. 644.

107. 1. Henderson *v.* Lightner, (Ky. 1906) 92 S. W. 945; Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W.

2. Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69.

108. 2. Stevens *v.* Meserve, 73 N. H. 293, 61 Atl. 420; Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69.

109. 5. **When Commissions Will Be Credited.** — Ohlmann *v.* Wirth, (Ky. 1906) 97 S. W. 760.

Where Compensation Was Promised by the executors of the guardian it was proper to order it to be paid out of the fund set apart for the ward's support and education. Elizabeth Speers Memorial Hospital *v.* Makibben, (Ky. 1907) 102 S. W. 820.

6. **Guardians Entitled to Ten Per Cent. Interest on Interest Returned to Corpus of Estate.** — Griffin *v.* Collins, 125 Ga. 159, 53 S. E. 1004.

110. 1. Griffin *v.* Collins, 125 Ga. 159, 53 S. E. 1004; *In re* Switzer, 201 Mo. 66, 98 S. W. 461.

In a Controversy Between Heirs of the Ward it was held that commissions should be charged to the interest rather than to the principal fund. McDonald *v.* Weisiger, (Ky. 1907) 100 S. W. 332.

2. Griffin *v.* Collins, 125 Ga. 159, 53 S. E. 1004; *In re* Ward, (Surrogate Ct.) 49 Misc. (N. Y.) 181, 98 N. Y. Supp. 923.

111. 1. **Such Interest Should Be Computed with Annual Rests.** — Abrams *v.* U. S. Fidelity, etc., Co., 127 Wis. 579, 106 N. W. 1091.

3. A guardian cannot set up a contract made with the heirs of the ward allowing him property for the support of the ward as an excuse for an accounting; such an issue would have to be tried. Mase *v.* Martin, (Iowa 1906) 106 N. W. 3; *In re* Lindsay, 132 Iowa 119, 109 N. W. 473.

7. *In re* Tyndall, (Surrogate Ct.) 48 Misc. (N. Y.) 39, 96 N. Y. Supp. 222.

11. Ohlmann *v.* Wirth, (Ky. 1906) 97 S. W. 760.

112. 1. *In re* Boyes, 151 Cal. 143, 90 Pac. 454.

4. Corcoran *v.* Renehan, 24 App. Cas. (D. C.) 411.

5. Corcoran *v.* Renehan, 24 App. Cas. (D. C.) 411.

10. **Order for Delivery of Trust Fund to Administrator Not Final.** — Mase *v.* Martin, (Iowa 1906) 106 N. W. 3.

114. 4. State *v.* Petersen, 36 Ind. App. 269, 75 N. E. 602.

On a Final Accounting, Where No Exhibit Is Made or Notice Filed, it is of the same effect as an annual settlement. May *v.* May, 189 Mo. 485, 88 S. W. 75.

The Approval by the County Court without notice to those interested, of the usual annual reports of a guardian, wherein he reports loans of his ward's funds without an order of the court, is not equivalent to an order of the court authorizing the guardian to make such loans. *In re* O'Brien, (Neb. 1907) 113 N. W. 1001.

Where a Guardian Settles His Accounts Before a Successor Is Chosen, such accounting is not conclusive. *In re* Tyndall, (Surrogate Ct.) 48 Misc. (N. Y.) 39, 96 N. Y. Supp. 222.

115. 1. State *v.* Petersen, 36 Ind. App. 269, 75 N. E. 602.

2. State *v.* Petersen, 36 Ind. App. 269, 75 N. E. 602; May *v.* May, 189 Mo. 485, 88 S. W. 75.

116. 1. State *v.* Petersen, 36 Ind. App. 269, 75 N. E. 602.

117. 1. Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

The Test of Sufficiency of a Guardian's Bond is whether the surety, being a resident of the state, has enough property liable for debts to pay the liability assumed to the ward in addition to the surety's other liabilities. Com. *v.* Lee, 120 Ky. 443, 89 S. W. 731.

The Policy of the Law as to Bonds of Guardians, administrators, and like trustees is to disregard mere formalities, and to require only substantial compliance to secure all statutory remedies to persons injured by their breach. U. S. Fidelity, etc., Co. *v.* Davis, 2 Ga. App. 525, 58 S. E. 777.

The Liability of the County Judge is measured by the degree of care used in accepting surety. Com. *v.* Lee, 120 Ky. 443, 89 S. W. 731.

2. U. S. Fidelity, etc., Co. *v.* Davis, 2 Ga. App. 525, 58 S. E. 777; Phœnix Acc., etc., Ben. Assoc. *v.* Lathrop, (Ind. 1907) 81 N. E. 226; Potter *v.* Redmon, (Ky. 1906) 96 S. W. 529; Gillum *v.* Parker, (Ky. 1907) 100 S. W. 820; Rouse *v.* Payne, 120 N. Y. App. Div. 667, 105 N. Y. Supp. 549; Murph *v.* McCullough, (Tex. Civ. App. 1905) 90 S. W. 69.

3. Baum *v.* Hartmann, 226 Ill. 160, 80 N. E. 711; Gillum *v.* Parker, (Ky. 1907) 100 S. W. 820.

Sureties Are Not Liable for Defaults prior to the execution of their bond, unless made so by its terms. Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

The Sureties Should Only Be Required to Account for that part of the estate that came into the hands of the present guardian. *In re* Switzer, 201 Mo. 66, 98 S. W. 461.

A Reduction of a Guardian's Bond to a sum much less than the value of the ward's property being null and void, an order discharging the sureties is of no force and effect. Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

5. Com. *v.* American Bonding Co., 212 Pa. St. 193, 61 Atl. 890; Com. *v.* American Bonding Co., 25 Pa. Super. Ct. 145.

118. 2. Kaspar *v.* People, 230 Ill. 342, 82 N. E. 816.

3. Kaspar *v.* People, 230 Ill. 342, 82 N. E. 816.

4. Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

119. 1. Kaspar *v.* People, 230 Ill. 342, 82 N. E. 816.

4. Matthews *v.* Mauldin, 142 Ala. 438, 38 So. 849, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 119; Brehm *v.* U. S. Fidelity, etc., Co., 124 Wis. 350, 102 N. W. 36, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 119.

6. See Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

7. **Sureties on Different Bonds** are liable to contribution though they, without knowledge of each other, became sureties at different times. Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

120. 5. Rouse *v.* Payne, 120 N. Y. App. Div. 667, 105 N. Y. Supp. 549; Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665.

Consent of the Probate Court Is a Necessary Prerequisite to maintaining an action against sureties upon a guardian's bond. Eaton *v.* Gale, 96 Minn. 161, 104 N. W. 833.

6. Parker *v.* Dominick, 105 N. Y. App. Div. 440, 94 N. Y. Supp. 249.

121. 2. **After the Guardian's Death** suit may be brought on the bond against the sureties alone. U. S. Fidelity, etc., Co. *v.* Davis, 2 Ga. App. 525, 58 S. E. 777.

The Surety on a Guardian's Bond is only *prima facie* bound by a judgment against the estate of the ward, to which he was not a party. Rich *v.* Fidelity, etc., Co., 126 Ga. 466, 55 S. E. 336.

3. U. S. Fidelity, etc., Co. *v.* Davis, 2 Ga. App. 525, 58 S. E. 777.

122. 1. Murphy *v.* Cady, 145 Mich. 33, 108 N. W. 493; Wescott *v.* Upham, 127 Wis. 590, 107 N. W. 2.

2. **Death of Ward Does Not Constitute Discharge.** — Donaher *v.* Flint, 188 Mass. 525, 74 N. E. 677.

3. **Agreement between Guardian and Ward Releases Surety.** — Broomall's Estate, 27 Pa. Super. Ct. 475.

8. See Kaspar *v.* People, 230 Ill. 342, 82 N. E. 816.

123. 2. Zeideman *v.* Molasky, 118 Mo. App. 106, 94 S. W. 754.

3. See Alexander *v.* Hillebrand, 140 Mich. 490, 103 N. W. 849.

GUN.

124. 1. **The Term "Gunshot Wounds"** in an instruction for homicide is broad enough to include wounds made by a pistol. State *v.* Barrington, 198 Mo. 23, 95 S. W. 235.

HABEAS CORPUS.

128. 1. The writ of habeas corpus is a summary one to secure personal liberty. People *v.* Duryee, 188 N. Y. 440, 81 N. E. 313.

The common-law writ of habeas corpus was a writ in behalf of liberty, and its purpose was to deliver a prisoner from unjust imprisonment and illegal restraint. People *v.* Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787.

133. 5. *In re* Richard, 38 Can. Sup. Ct. 394, 12 Can. Crim. Cas. 204; *Ex p.* Goldsberry, 27 Quebec Super. Ct. 430, 10 Can. Crim. Cas. 392.

In Quebec no appeal lies to the Court of Review in habeas corpus *ad subjiciendum*. Lorenz *v.* Lorenz, 7 Quebec Pr. 149.

136. 2. **The Federal Courts Have Jurisdiction** to test, on habeas corpus, the legality of the detention, under the Chinese Exclusion laws, of adopted children of a Chinese merchant domiciled in this country. *Ex p.* Fong Yim, 134 Fed. 938.

137. 3. Hunter *v.* Wood, 28 U. S. Sup. Ct. 472; U. S. *v.* Lipsett, 156 Fed. 65.

138. 1. **Soldier Imprisoned for Violation of Municipal Ordinance Discharged by Federal Court.** — *Ex p.* Schlaffer, 154 Fed. 921.

2. Brown *v.* Urquhart, 139 Fed. 846, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 138; Pettibone *v.* Nichols, 203 U. S. 192, 7 Ann. Cas. 1047, 27 U. S. Sup. Ct. 111; *Ex p.* Collins, 149 Fed. 573.

139. 1. Brown *v.* Urquhart, 139 Fed. 846, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 139.

2. **Adjudication by State Court that Person Not Imprisoned Without Due Process of Law Not Conclusive on Federal Courts.** — Brown *v.* Urquhart, 139 Fed. 846.

141. 2. *Ex p.* Munn, 140 Fed. 782; Carfer *v.* Caldwell, 200 U. S. 293, 26 U. S. Sup. Ct. 264, *reversing* 138 Fed. 487.

Where a Prisoner Is in State Custody a federal court will not, on habeas corpus, decide whether the detention is a violation of the state constitution. *Ex p.* Brown, 140 Fed. 461.

A Federal Court Will Not on habeas corpus decide a mere question of identity of a prisoner in state custody, where no controversy between citizens of different states is involved. *Ex p.* Moebus, 148 Fed. 39.

142. 1. Brown *v.* Urquhart, 139 Fed. 846; *Ex p.* Collins, 149 Fed. 573; U. S. *v.* Lewis, 200 U. S. 1, 26 U. S. Sup. Ct. 229, *affirming* 129 Fed. 823; *In re* Lincoln, 202 U. S. 178, 26 U. S. Sup. Ct. 602; Pettibone *v.* Nichols, 203 U. S. 192, 7 Ann. Cas. 1047, 27 U. S. Sup. Ct. 111; Urquhart *v.* Brown, 205 U. S. 179, 27 U. S. Sup. Ct. 459.

Discretion as to Time and Mode to Adopt to Determine Whether Proper to Grant Writ. — *Ex p.* Collins, 154 Fed. 980.

143. 3. Whitney *v.* Dick, 202 U. S. 132, 26 U. S. Sup. Ct. 584; *Ex p.* Collins, 149 Fed. 573.

7. *Ex p.* Moran, (C. C. A.) 144 Fed. 594.

8. See Whitney *v.* Dick, 202 U. S. 132, 26 U. S. Sup. Ct. 584, *reversing* 141 Fed. 5, and holding that the Circuit Court of Appeals may issue the writ only when necessary to the complete exercise of its appellate jurisdiction.

144. 1. *Ex p.* Moran, (C. C. A.) 144 Fed. 594.

145. 6. Brown *v.* Goto, 16 Hawaii 265, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 145.

8. *Alabama.* — The authority to grant the writ is conferred on the probate judge, and not on the probate court. Code Ala. 1896, § 3372. Carwile *v.* State, (Rla. 1905) 39 So. 1024.

Hawaii. — Circuit Courts are only authorized to issue the writ in cases in which it is not demandable of right; original jurisdiction in habeas corpus cases is confined to the Supreme Court, its justices and the circuit judges, to the exclusion of the Circuit Courts as such. Brown *v.* Goto, 16 Hawaii 265.

Kentucky. — The Supreme Court does not have jurisdiction either originally or by appeal, of proceedings under the writ of habeas corpus. *In re* Channels, (Ky. 1907) 100 S. W. .

Montana. — Under the statute in Montana judges of the District Courts may issue the writ only in behalf of persons held in custody in their respective districts. State *v.* District Ct., (Mont. 1907) 88 Pac. 564.

Oklahoma. — Under the statute in Oklahoma jurisdiction to grant the writ of habeas corpus is expressly declared to be possessed by and vested in the Supreme and District Courts, and the Probate Courts are not authorized to issue such writs. Starkweather *v.* Kemp, 18 Okla. 28, 88 Pac. 1045.

West Virginia. — The constitution gives the Supreme Court original jurisdiction in habeas corpus, concurrent with the Circuit Court, and a rule of practice requiring one asking the writ to first apply to a Circuit Court is invalid and unenforceable. *Ex p.* Doyle, (W. Va. 1907) 57 S. E. 824.

Wyoming. — Under the constitution of Wyoming the Supreme Court has original jurisdiction in habeas corpus proceedings and each of its judges "has power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and make such writs returnable before himself, or before the Supreme Court, or before any District Court or any judge thereof." And the District Courts and their judges have power to issue the writ in their respective districts. Tytler *v.* Tytler, 15 Wyo. 319, 89 Pac. 1.

149. **2.** State *v.* Kiernan, 116 La. 741, 41 So. .

153. **3. Federal Courts Declined to Interfere** with state authority in the following cases: U. S. *v.* Lewis, 200 U. S. 1, 26 U. S. Sup. Ct. 229, *affirming* 129 Fed. 823; Felts *v.* Murphy, 201 U. S. 123, 26 U. S. Sup. Ct. 366; Valentina *v.* Mercer, 201 U. S. 131, 26 U. S. Sup. Ct. 368; Rogers *v.* Peck, 199 U. S. 425, 26 U. S. Sup. Ct. 87, *affirming* 138 Fed. 961; Urquhart *v.* Brown, 205 U. S. 179, 27 U. S. Sup. Ct. 450; Connella *v.* Haskell, (C. C. A.) [illegible].

154. **4.** *In re* Scott, (C. C. A.) 144 Fed. 79; *Ex p.* Collins, 154 Fed. 980; *Ex p.* State, (Ala. 1907) 43 So. 499; Martin *v.* District Ct., 37 Colo. 110, 86 Pac. 82; Martin *v.* District Ct., [illegible] v. [illegible], 115 La. 456, 39 So. 442; Terry *v.* State, (Neb. 1906) 110 N. W. 733.

155. **1.** People *v.* Strassheim, (Ill. 1907) 81 N. E. 1129.

2. U. S. *v.* Peckham, 143 Fed. 625; *In re* Moyer, 35 Colo. 159, 85 Pac. 190; People *v.* Heider, 225 Ill. 347, 80 N. E. 291.

The purpose of the writ is not only to secure the right of personal liberty to one who has been illegally deprived thereof, but also to insure a speedy hearing and determination of the questions involved and as to the right of the petitioner to be released from imprisonment. Stewart *v.* Smith, 101 Me. 397, 64 Atl. .

156. **1.** People *v.* Heider, 225 Ill. 347, 80 N. E. 291, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 155.

2. Andrino *v.* Yates, 12 Idaho 61[illegible], 87 Pac. 787; People *v.* Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787; *In re* Parker, (N. Car. 1907) 56 S. E. 879, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 156.

6. *In re* Parker, (N. Car. 1907) 56 S. E. 879, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 156.

157. **3.** U. S. *v.* Ju Toy, 198 U. S. 253, 25 U. S. Sup. Ct. 644; *Ex p.* Collins, 151 Fed. 358; *Ex p.* Wright, (Kan. 1907) 89 Pac. 678. [illegible] and is sometimes issued on very informal application. Crooms *v.* Schad, 51 Fla. 168, 40 So. .

4. Martin *v.* District Ct., 37 Colo. 110, 86 Pac. 82, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 157; *In re* Jewett, 69 Kan. 830, 77 Pac. 567; State *v.* Nast, (Mo. 1908) 108 S. W. 563; Garfinkle *v.* Sullivan, 37 Wash. 650, 80 Pac. 188.

158. **1.** Martin *v.* District Ct., 37 Colo. 110, 86 Pac. 82, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 157 [158].

2. See Ossie *v.* State, 147 Ala. 152, 41 So. [illegible].

159. **2.** [illegible] Co., 80 Vt. 55, 66 Atl. 709.

A Merely Nominal Restraint, voluntarily submitted to for the purpose of making out a case, affords no ground for the writ. *Ex p.* Schmitz, (Cal. 1907) 89 Pac. 438.

3. U. S. *v.* Peckham, 143 Fed. 625, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 159. *Compare* Mackenzie *v.* Barrett, 141 Fed. 964, 5 Ann. Cas. 551.

4. Mackenzie *v.* Barrett, 141 Fed. 964, 5 Ann. Cas. 551.

160. **3.** *Ex p.* Winford, (Tex. Crim. 1905) 85 S. W. 1146.

161. **3.** People *v.* Moss, 187 N. Y. 410, 80 N. E. 382; Hill *v.* Smith, (Va. 1907) 59 S. E. 475.

Where a Person Conditionally Pardoned has been rearrested he is entitled to the writ to test the validity of his arrest and detention for an alleged violation of the conditions of his pardon. *Ex p.* Alvarez, 50 Fla. 24, 39 So. 481.

162. **5.** *Ex p.* Rice, 4 Cal. App. 535, 88 Pac. 590.

163. **9.** Matter of Moran, 203 U. S. 96, 27 U. S. Sup. Ct. 25; *Ex p.* Moran, (C. C. A.) 144 Fed. 594; Connella *v.* Haskell, (C. C. A.) [illegible] Fed. [illegible] Phillips *v.* Brown, 122 Ga. 571, 50 S. E. 361.

164. **1.** *Ex p.* Farrell, (Mont. 1907) 92 Pac. 785.

2. *Ex p.* Childs, 1 Cal. App. 39, 81 Pac. 667; *Ex p.* Bunkers, 1 Cal. App. 61, 81 Pac. 748; *In re* Myrtle, 2 Cal. App. 383, 84 Pac. 335; State *v.* Shrader, (Neb. 1905) 103 N. W. 276; People *v.* Flaherty, 119 N. Y. App. Div. 462, 104 N. Y. Supp. 173; *Ex p.* Williford, (Tex. Crim. 1906) 100 S. W. 919.

5. Question Whether Person Entitled to Release by Reason of Detention for More Than Four Terms Not Triable by Habeas Corpus. — People *v.* Strassheim, (Ill. 1907) 81 N. E. 1129.

165. 7. *Ex p.* Collins, (Cal. 1907) 90 Pac. 827.

166. 3. **The Writ Lies** to avoid a second trial of a person acquitted in a court of competent jurisdiction. *Ex p.* Davis, 48 Tex. Crim. 644, 89 S. W. 978.

4. *Ex p.* Simon, 28 U. S. Sup. Ct. 238; Towery *v.* State, 143 Ala. 59, 39 So. 310; *In re* Myrtle, 2 Cal. App. 383, 84 Pac. 335; *Ex p.* Upson, (Cal. App. 1908) 94 Pac. 855; People *v.* District Ct., 33 Colo. 328, 80 Pac. 888; Townsend *v.* State, 124 Ga. 69, 52 S. E. 293; Bass *v.* Lawrence, 124 Ga. 75, 52 S. E. 296; Flagg *v.* Sisson, 125 Ga. 277, 54 S. E. 171; Lyons *v.* Collier, 125 Ga. 231, 54 S. E. 183; Shuler *v.* Willis, 126 Ga. 73, 54 S. E. 965; *In re* Wallace, 75 Kan. 432, 89 Pac. 687; Stanfeal *v.* State, (Ohio 1908) 84 N. E. 419; *Ex p.* Morey, (R. I. 1907) 66 Atl. 575; *Ex p.* Stephens, (Tex. 1906) 94 S. W. 327; *Ex p.* White, (Tex. Crim. 1908) 107 S. W. 839; Matter of Russell, 40 Wash. 244, 82 Pac. 290. See also People *v.* Pitts, 118 N. Y. App. Div. 457, 103 N. Y. Supp. 258.

A Person Convicted and Sentenced at a term of a court held by a *de facto* judge is not entitled to release on habeas corpus. State *v.* Ely, (N. Dak. 1907) 113 N. W. 711.

The Entries Contained in the Record Proper of a Trial Court import verity and they cannot be questioned on habeas corpus. Hanley *v.* State, 50 Fla. 82, 39 So. 149.

5. *Ex p.* Narvaez, (Cal. App. 1907) 89 Pac. 857; *Ex p.* Knight, 52 Fla. 144, 41 So. 786; Schwarzschild *v.* Goldstein, 121 Ill. App. 1; Tuttle *v.* Lang, 100 Me. 123, 60 Atl. 892; *Ex p.* Allen, 139 Mich. 712, 103 N. W. 200; *Ex p.* Burden, (Miss. 1907) 45 So. 1; *Ex p.* Farrell, (Mont. 1907) 92 Pac. 785; *Ex p.* Marlow, (N. J. 1907) 68 Atl. 171; Ledford *v.* Emerson, 143 N. Car. 527, 55 S. E. 960; Mylius *v.* McDonald, (W. Va. 1907) 56 S. E. 602.

Judgment Must Be Wholly Void, Not Merely Irregular or Erroneous. — Martin *v.* District Ct., 37 Colo. 110, 86 Pac. 82.

168. 3. Entitled to Discharge after Serving Valid Judgment. — *Ex p.* Narvaez, (Cal. App. 1907) 89 Pac. 857.

169. 6. *Ex p.* Kair, 28 Nev. 127, 80 Pac. 463; *Ex p.* Hollman, (S. Car. 1908) 60 S. E. 19, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 169.

Constitutionality of Statute Cannot Be Determined on Habeas Corpus. — People *v.* District Ct., 33 Colo. 328, 333, 80 Pac. 888, 890.

7. Writ Lies to Relieve from Arrest and Detention for Violation of Void Municipal Ordinance. — *In re* McMonies, 75 Neb. 702, 106 N. W. 456.

170. 1. *Ex p.* Goldman, (Cal. App. 1906) 88 Pac. 819.

4. Gordon *v.* Johnson, 126 Ga. 584, 55 S. E. 489; *Ex p.* Burden, (Miss. 1907) 45 So. 1, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 270 [170].

172. 1. Woodward *v.* Bridges, 144 Fed. 156; U. S. *v.* Carpenter, (C. C. A.) 151 Fed. 214, 10 Ann. Cas. 509; U. S. *v.* Peeke, (C. C. A.) 153 Fed. 166, *affirming* 144 Fed. 1016; Connella *v.* Haskell, (C. C. A.) 158 Fed. 285; *Ex p.* Johnson, (Cal. App. 1907) 93 Pac. 199; Martin *v.* District Ct., 37 Colo. 110, 86 Pac. 82, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 171 [172]; Harris *v.* Lang, 27 App. Cas. (D. C.) 84, 7 Ann. Cas. 141; *Ex p.* Richards, 150 Mich. 421, 114 N. W. 348; *Ex p.* Burden, (Miss. 1907) 45 So. 1, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 171 [172].

5. *United States.* — Riggins *v.* U. S., 199 U. S. 547, 26 U. S. Sup. Ct. 147, *reversing* 134 Fed. 404; Felts *v.* Murphy, 201 U. S. 123, 26 U. S. Sup. Ct. 366; Valentina *v.* Mercer, 201 U. S. 131, 26 U. S. Sup. Ct. 368; Whitney *v.* Dick, 202 U. S. 132, 26 U. S. Sup. Ct. 584; Matter of Moran, 203 U. S. 96, 27 U. S. Sup. Ct. 25; *In re* Herskovitz, 136 Fed. 713; *Ex p.* Moran, (C. C. A.) 144 Fed. 594; *In re* Terrill, (C. C. A.) 144 Fed. 616; Connella *v.* Haskell, (C. C. A.) 158 Fed. 285.

Alabama. — Selma *v.* Till, (Ala. 1906) 42 So. 405.

Alaska. — *In re* Burkell, 2 Alaska 108.

Arizona. — *Ex p.* Ramirez, (Ariz. 1907) 90 Pac. 323.

California. — *Ex p.* Goldman, (Cal. App. 1906) 88 Pac. 819; *Ex p.* Fowler, (Cal. App. 1907) 90 Pac. 958; *Ex p.* Bargagliotti, (Cal. App. 1907) 92 Pac. 96.

Colorado. — *Ex p.* Stidger, 37 Colo. 407, 86 Pac. 219.

District of Columbia. — Harris *v.* Lang, 27 App. Cas. (D. C.) 84, 7 Ann. Cas. 141; Harris *v.* Nixon, 27 App. Cas. (D. C.) 94.

Florida. — *Ex p.* Knight, 52 Fla. 144, 41 So. 786.

Georgia. — Young *v.* Fain, 121 Ga. 737, 49 S. E. 731, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 171.

Illinois. — People *v.* Heider, 225 Ill. 347, 80 N. E. 291.

Indiana. — Perry *v.* Pernet, 165 Ind. 67, 74 N. E. 609; Welty *v.* Ward, 164 Ind. 457, 3 Ann. Cas. 556, 73 N. E. 889, *affirming* (Ind. 1904) 72 N. E. 596; Ryan *v.* Rhodes, 167 Ind. 121, 76 N. E. 249.

Iowa. — Busse *v.* Barr, 132 Iowa 463, 109 N. W. 920.

Kansas. — *Ex p.* Terry, 71 Kan. 362, 80 Pac. 586.

Maine. — Tuttle *v.* Lang, 100 Me. 123, 60 Atl. 892.

Michigan. — Manaca *v.* Ionia Circuit Judge, 146 Mich. 697, 110 N. W. 75.

Montana. — *In re* Downey, 31 Mont. 441, 78 Pac. 772, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 172; State *v.* District Ct., (Mont. 1907) 89 Pac. 63.

New Jersey. — *Ex p.* Marlow, (N. J. 1907) 68 Atl. 171.

New York. — People *v.* Hayes, 108 N. Y. App. Div. 6, 95 N. Y. Supp. 471; People *v.* Feenaughty, (Supm. Ct. Spec. T.) 51 Misc.

(N. Y.) 468, 101 N. Y. Supp. 700; People *v.* City Prison, 117 N. Y. App. Div. 154, 102 N. Y. Supp. 374.

Pennsylvania. — Com. *v.* Seechrist, 27 Pa. Super. Ct. 423.

South Dakota. — State *v.* Pratt, (S. Dak. 1906) 107 N. W. 538.

Texas. — *Ex p.* Parker, (Tex. Crim. 1905) 88 S. W. 230; *Ex p.* White, (Tex. Crim. 1906) 98 S. W. 850; *Ex p.* Davis, (Tex. Crim. 1907) 103 S. W. 891; *Ex p.* Testard, (Tex. 1908) 106 S. W. 319.

Utah. — *In re* Clark, 28 Utah 268, 78 Pac. 475.

Wisconsin. — *In re* Shinski, 125 Wis. 280, 104 N. W. 86.

Canada. — *Ex p.* Goldsberry, 27 Quebec Super. Ct. 430, 10 Can. Crim. Cas. 392.

175. 2. Where the Facts Alleged Constitute an Offense, no matter how defectively or inartificially they may be stated, the writ will not lie. *Ex p.* Johnson, (Cal. App. 1907) 93 Pac. 10[illegible].

Irregularity of Procedure Not Reviewed by Habeas Corpus. — Young *v.* Fain, 121 Ga. 737, 49 S. E. 731, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 175.

Where the Irregularity of an Arrest of a Foreign Seaman was subject to inquiry in the general jurisdiction of the court, habeas corpus was held not to lie. Dallemagne *v.* Moisan, 197 U. S. 169, 25 U. S. Sup. Ct. 422.

3. Misjoinder of Offenses Not Ground for Discharge. — *Ex p.* Johnson, (Cal. App. 1907) 93 Pac. 199, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 175.

4. Sufficiency of Evidence Not Inquired into. — Young *v.* Fain, 121 Ga. 737, 49 S. E. 731, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) [illegible].

176. 4. Writ Cannot Be Used as Writ of Error. — Martin *v.* District Ct., 37 Colo. 110, 86 Pac. 82.

8. Jurisdiction Not Presumed — Must Clearly Appear. — Hamilton *v.* McClaughry, 136 Fed. 445, holding further that judgments of courts martial may be collaterally impeached.

177. 2. *In re* Clark, 126 Mo. App. 391, 103 S. W. 1105; *Ex p.* Kruegel, 47 Tex. Crim. 607, 86 S. W. 1020; *Ex p.* Reid, (Tex. 1905) 89 S. W. 956.

3. *Ex p.* Stephens, (Tex. 1906) 94 S. W. 327.

178. 1. *In re* Jewett, 69 Kan. 830, 77 Pac. 567, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 178; *Ex p.* Morris, 28 Ohio Cir. Ct. [illegible].

3. *Ex p.* Morris, 28 Ohio Cir. Ct. 611.

180. 5. U. S. *v.* Ju Toy, 198 U. S. 253, 25 U. S. Sup. Ct. 644.

181. 2. See Chin Yow *v.* U. S., 28 U. S. Sup. Ct. 201, holding that, where the petitioner alleges that he was denied such a hearing and such an opportunity to prove his right to enter the country as the Exclusion Act meant that he should have, the writ would issue.

5. *Ex p.* Chace, 26 R. I. 351, 58 Atl. 978, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 181.

182. 3. State *v.* Wheeler, 43 Wash. 183, 86 Pac. 394.

Where Child of Tender Age Father May Apply for Writ Without Privity of Child. — See concurring opinion of Hoke, J., in *In re* Parker, (N. Car. 1907) 56 S. E. 879.

Parents May Obtain Custody of Minor Son Enlisted in Military Service Without Consent. — *Ex p.* Lisk, 145 Fed. 860; *Ex p.* Bakley, 148 Fed. 56, *affirmed* without opinion (C. C. A.) 152 Fed. 1022.

4. Kennedy *v.* Meara, 127 Ga. 68, 56 S. E. [illegible].

5. Where a Father and Mother Were Separated and the children had been in the custody of the mother, it was held a writ of habeas corpus by the father to gain the custody of the children would be dismissed, no reason for changing the custody appearing. People *v.* Duryee, 109 N. Y. App. Div. 533, 96 N. Y. Supp. 371.

New York Statute. — An Indian woman, a ward of the United States government, living on their Indian reservation separate from her husband, may maintain habeas corpus in the Supreme Court, to determine the right to the custody of her child. People *v.* Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787.

183. 2. Hesselman *v.* Haas, (N. J. 1906) 64 Atl. 165; *Ex p.* Reynolds, 73 S. Car. 296, 53 S. E. 490.

3. *Ex p.* Maris, (Del. 1906) 63 Atl. 197; Robertson *v.* Bass, 52 Fla. 420, 42 So. 243; Workman *v.* Watts, 74 S. Car. 546, 54 S. E. 775.

Right Lost by Long Acquiescence in Assertion of Control by Another. — People *v.* Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787.

184. 2. Right of Guardianship Cannot Be Tried on Habeas Corpus. — *In re* Parker, (N. Car. 1907) 56 S. E. 879, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 184. See also **156.** 2.

185. 5. Harrist *v.* Harrist, (Ala. 1907) 43 So. 962; Morris *v.* Wardell, (N. J. 1906) 67 Atl. 850; People *v.* Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787; People *v.* Bishop, 117 N. Y. App. Div. 445, 102 N. Y. Supp. 592. See also concurring opinion of Hoke, J., in *In re* Parker, (N. Car. 1907) 56 S. E. 879, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185, as to the general rule and also as to the jurisdiction of the court to award the custody of infants where the child is without the necessary discretion to choose for itself.

Jurisdiction to Award Custody of Infants. — A state court will award a father the custody of an infant child though he intends to take it to his home in another state. *Ex p.* Davidge, 72 S. Car. 16, 51 S. E. 269.

Infant's Wishes Considered. — Walker *v.* Jones, (Ga. 1907) 57 S. E. 903; Workman *v.* Watts, 74 S. Car. 546, 54 S. E. 775.

186. 1. *Ex p.* Reynolds, 73 S. Car. 296, 53 S. E. 490.

Discretion for Trial Judge. — Weatherby *v.* Jordan, 124 Ga. 68, 52 S. E. 83.

Question of Custody of Minor Child, under Writ of Habeas Corpus, Within Discretion of Court. — Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787.

3. *In re* Parker, (N. Car. 1907) 56 S. E. 870; Tytler *v.* Tytler, 15 Wyo. 319, 89 Pac. 1, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186.

5. *Ex p.* Davidge, 72 S. Car. 16, 51 S. E. 269, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185 [186].

187. 1. Kirkland *v.* Canty, 122 Ga. 261, 50 S. E. 90; Morris *v.* Wardell, (N. J. 1906) 67 Atl. 850.

2. *Alabama.* — Harrist *v.* Harrist, (Ala. 1907) 43 So. 962.

Delaware. — *Ex p.* Maris, (Del. 1906) 63 Atl. 197.

Florida. — Maddox *v.* Barr, 49 Fla. 182, 38 So. 766.

Georgia. — Weathersby *v.* Jordan, 124 Ga. 68, 52 S. E. 83; Pinnebad *v.* Pinnebad, 128 Ga. 73, 57 S. E. 89; Hollenbeck *v.* Glover, 128 Ga. 52, 57 S. E. 108; Walker *v.* Jones, (Ga. 1907) 57 S. E. 903; Richards *v.* McHan, (Ga. 1907) 58 S. E. 839.

Idaho. — Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787.

Illinois. — Mahon *v.* People, 218 Ill. 171, 75 N. E. 768.

Michigan. — *In re* Smith, (Mich. 1907) 114 N. W. 229.

Mississippi. — Glidewell *v.* Morris, 89 Miss. 82, 42 So. 537.

Nebraska. — State *v.* Porter, (Neb. 1907) 112 N. W. 286.

New Jersey. — Hesselman *v.* Haas, (N. J. 1906) 64 Atl. 165.

New York. — People *v.* Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787.

South Carolina. — *Ex p.* Davidge, 72 S. Car. 16, 51 S. E. 269; *Ex p.* Cannon, 75 S. Car. 214, 55 S. E. 325.

Texas. — White *v.* Richeson, (Tex. Civ. App. 1906) 94 S. W. 202; Pittman *v.* Byars, (Tex. Civ. App. 1907) 99 S. W. 1032.

Washington. — State *v.* Poindexter, 45 Wash. 37, 87 Pac. 1069.

Wyoming. — Tytler *v.* Tytler, 15 Wyo. 319, 89 Pac. 1, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187.

3. Robertson *v.* Bass, 52 Fla. 420, 42 So. 243; *In re* Smith, (Mich. 1907) 114 N. W. 229; People *v.* Bishop, 117 N. Y. App. Div. 445, 102 N. Y. Supp. 592; *Ex p.* Davidge, 72 S. Car. 16, 51 S. E. 269.

188. 1. *In re* Walton, 11 Ont. L. Rep. 94, 10 Can. Crim. Cas. 269.

189. 5. Packenham *v.* Reed, 37 Wash. 258, 79 Pac. 786, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 189.

191. 5. Rigor *v.* State, 101 Md. 465, 61 Atl. 631, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191.

8. Rigor *v.* State, 101 Md. 465, 61 Atl. 631, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191.

192. 7. **Wife May Apply on Behalf of Husband.** — *Ex p.* Chace, 26 R. I. 351, 58 Atl. 978, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 192.

194. 5. *Ex p.* Collins, (Cal. 1907) 90 Pac. 827.

197. 9. Harrist *v.* Harrist, (Ala. 1907) 43 So. 962; Kennedy *v.* Metzger, (Ind. 1907) 81 N. E. 663; Morris *v.* Wardell, (N. J. 1906) 67 Atl. 850; *In re* Depue, 185 N. Y. 60, 77 N. E. 803.

198. 2. **The Decision Should Be Made upon the Actual Status of the Case at the Time of the Decision** and not according to the state of things when the writ was allowed, and the court must receive proofs of status at the time of the decision, though it may involve a change of the original status. Ossie *v.* State, 147 Ala. 152, 41 So. 945.

5. People *v.* Moss, 187 N. Y. 410, 80 N. E. 383, *affirming* 113 N. Y. App. Div. 329, 99 N. Y. Supp. 138.

199. 2. *Ex p.* Morton, (Mass. 1907) 81 N. E. 869; Burns *v.* Tarbox, 76 Ohio St. 520, 81 N. E. 761.

3. People *v.* Moss, 187 N. Y. 410, 80 N. E. 383, *affirming* 113 N. Y. App. Div. 329, 99 N. Y. Supp. 138.

6. *Ex p.* Ramirez, (Ariz. 1907) 90 Pac. 323.

200. 1. *In re* Myrtle, 2 Cal. App. 383, 84 Pac. 335; *Ex p.* Vandiveer, 4 Cal. App. 650, 88 Pac. 993; People *v.* Moss, 187 N. Y. 410, 80 N. E. 383, *affirming* 113 N. Y. App. Div. 329, 99 N. Y. Supp. 138.

The Use of the Writ to Test the Sufficiency of the Evidence upon which an information may have been based is disapproved. State *v.* Vasquez, 49 Fla. 126, 38 So. 830.

3. **If an Indictment Shows No Offense** there is nothing of which the court can take jurisdiction and the accused will be discharged on habeas corpus. State *v.* Johns, 142 Ala. 61, 38 So. 755, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 200.

6. *Ex p.* Goldman, (Cal. App. 1906) 88 Pac. 819; *Ex p.* Johnson, (Cal. App. 1907) 93 Pac. 199.

Where an Indictment Purports or Attempts to State an Offense of a kind of which the court assuming to proceed has jurisdiction, the question whether the facts charged are sufficient to constitute an offense of that kind will not be examined into on habeas corpus. *Ex p.* Ruef, (Cal. 1907) 89 Pac. 605.

201. 1. Hyde *v.* Shine, 199 U. S. 62, 25 U. S. Sup. Ct. 760; Dimond *v.* Shine, 199 U. S. 88, 25 U. S. Sup. Ct. 766; Riggins *v.* U. S., 199 U. S. 547, 26 U. S. Sup. Ct. 147, *reversing* 134 Fed. 404; *Ex p.* Ruef, (Cal. 1907) 89 Pac. 605; *Ex p.* Morgensen, (Cal. App. 1907) 90 Pac. 1063; *Ex p.* Upson, (Cal. App. 1908) 94 Pac. 855; Burns *v.* Tarbox, 76 Ohio St. 520, 81 N. E. 761.

3. U. S. *v.* Lewis, 200 U. S. 1, 26 U. S. Sup. Ct. 229, *affirming* 129 Fed. 823; *Ex p.* Vandiveer, 4 Cal. App. 650, 88 Pac. 993; Blackwell *v.* Jennings, (Ga. 1907) 57 S. E. 484; *Ex p.* Adams, (Tex. Crim. 1905) 90 S. W. 24; *Ex p.* Kent, 49 Tex. Crim. 12, 90 S. W. 168.

The Merits of the Case as to whether certain acts constituted the crime charged cannot be inquired into. *Ex p.* Brumbaugh, (Tex. Crim. 1907) 105 S. W. 180.

6. *In re* Terrill, (C. C. A.) 144 Fed. 616; Selma *v.* Till, (Ala. 1906) 42 So. 405; *Ex p.* Pettibone, 12 Idaho 264, 85 Pac. 902; *Ex p.* Mayer, 12 Idaho 764, 85 Pac. 805; *Ex p.* Haywood, 12 Idaho 764, 85 Pac. 805; *Ex p.* Terry, 71 Kan. 362, 80 Pac. 586; *Ex p.* Knudtson, 10 Idaho 676, 79 Pac. 641, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201; Ryan *v.* Rhodes, (Ind. 1906) 78 N. E. 249; *In re* Wal-

lace, 75 Kan. 432, 89 Pac. 687; *In re* Depue, 185 N. Y. 60, 77 N. E. 798, *reversing* 108 N. Y. App. Div. 58, 95 N. Y. Supp. 1017; People *v.* Menschang, 187 N. Y. 8, 79 N. E. 884, *affirming* 115 N. Y. App. D[illegible]. 893, 101 N. Y. Supp. 1138; People *v.* Feenaughty, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 468, 101 N. Y. Supp. 700; State *v.* Pratt, (S. Dak. 1906) 107 N. W. 538; *In re* Clark, 28 Utah 268, 78 Pac. [illegible].

When Question of Jurisdiction Depends on Questions of Fact It Will Not Be Reviewed. — *Ex p.* Columbia George, 144 Fed. 985.

202. 1. *Ex p.* Knudtson, 10 Idaho 676, 79 Pac. 641, *quoting* 15 AM. AND ENG. ENCYC. OF [illegible].

2. Hyde *v.* Shine, 199 U. S. 62, 25 U. S. Sup. Ct. 760; Dimond *v.* Shine, 199 U. S. 88, 25 U. S. Sup. Ct. 766; Young *v.* Fain, 121 Ga. 737, 49 S. E. 731; *Ex p.* Knudtson, 10 Idaho 676, 79 Pac. 641, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201 [202].

204. 1. *Ex p.* Shortridge, (Cal. App. 1907) 90 Pac. 478; *Ex p.* Stidger, 37 Colo. 407, 86 Pac. 219.

6. *Ex p.* Knight, 52 Fla. 144, 41 So. 786; *Ex p.* Hollman, (S. Car. 1908) 60 S. E. 19. See also *Ex p.* Brumbaugh, (Tex. Crim. 1907) 105 S. W. 180, in which case it was held that the writ would not apply to test the constitutionality of the seizure act, under a charge of aggravated assault in resisting an officer attempting to enter a club for the purpose of seizing liquors.

Inquiry into Reasonableness of City Ordinance Imposing Tax on Liquor Dealers. — Lachman *v.* Walker, 52 Fla. 297, 42 So. 461.

205. 2. Barriere *v.* State, 142 Ala. 72, 39 So. 55; Singleton *v.* State, 144 Ala. 104, 42 So. 23; *In re* Waterman, (Nev. 1907) 89 Pac. [illegible].

3. *Ex p.* Ramirez, (Ariz. 1907) 90 Pac. 323.

5. **No Inquiry as to Merits.** — Singleton *v.* State, 144 Ala. 104, 42 So. 23; Compton *v.* State, (Ala. 1907) 44 So. 685.

7. Singleton *v.* State, 144 Ala. 104, 42 So. [illegible].

Where Prisoner Is Within the Jurisdiction of the Demanding State he cannot raise the question as to whether he has been a fugitive from the justice of the state within the meaning of the Federal Constitution. *Ex p.* Moyer, 12 Idaho 250, 85 Pac. 897; *Ex p.* Haywood, 12 Idaho 264, 85 Pac. 902; *Ex p.* Pettibone, 12 Idaho 264, 85 Pac. 902.

Will Not Inquire into Methods Used to Bring Prisoner into State. — Pettibone *v.* Nichols, 203 U. S. 192, 7 Ann. Cas. 1047, 27 U. S. Sup. Ct. 111; Moyer *v.* Nichols, 203 U. S. 221, 27 U. S. Sup. Ct. 121.

206. 1. *Ex p.* Edwards, (Miss. 1907) 44 So. 827; State *v.* Schlachter, (S. Dak. 1907) 111 N. W. 566; *Ex p.* Denning, (Tex. Crim. 1907) 100 S. W. 401.

Matters of Defense Not Considered. — Depoilly *v.* Palmer, 28 App. Cas. (D. C.) 324.

209. 4. **When Not Entitled to Discharge — Remanded to Proper Custody.** — Ossie *v.* State, 147 Ala. 152, 41 So. 945.

A Prisoner Set at Liberty by Habeas Corpus may, upon reversal of the order on appeal, be remanded to the custody from which he was freed. State *v.* Shrader, (Neb. 1905) 103 N. W. 276.

The Infliction of the Penalty of Whipping upon a convicted person remanded into custody after the date of the sentence of flogging, is unauthorized at the time of quashing a writ of habeas corpus. Rex *v.* Goldsberry, 11 Can. Crim. Cas. (Quebec) 159.

211. 1. State *v.* Miesen, 98 Minn. 19, 108 N. W. 513, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211.

2. *In re* Kopel, 148 Fed. 505.

The Rule Is Practically Otherwise in those jurisdictions where statutory rights of appeal, or writs of error, have been granted with reference to such proceedings, and there, either as a rule of law or as a practical rule of administration, no judge will allow a writ when some other judge has refused it; but any subsequent judge will remit the applicant to his remedy by appeal, or writ of error, unless some substantial change in the circumstances has intervened. *Ex p.* Moebus, 148 Fed. 39.

212. 3. Stewart *v.* Smith, 101 Me. 397, 64 Atl. 663.

213. 6. Kirkland *v.* Canty, 122 Ga. 261, 50 S. E. 90; Mahon *v.* People, 218 Ill. 171, 75 N. E. 768; Willis *v.* Willis, 165 Ind. 332, 75 N. E. 655; Brown *v.* Robertson, (S. Car. 1907) 56 S. E. 786; *In re* Clifford, 37 Wash. 469, 79 Pac. 1001; Dawson *v.* Dawson, 57 W. Va. 520, 50 S. E. 613. See also Bleakley *v.* Smart, 74 Kan. 476, 87 Pac. 76, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 213, which holds that the determination of the custody of a minor child is appealable.

Finding of Lower Court as to Facts of Same Effect as Verdict of Jury. — Smiley *v.* McIntosh, 129 Iowa 337, 105 N. W. 577.

7. Brown *v.* Robertson, (S. Car. 1907) 56 S. E. 786.

216. 7. "The 'suspension' of the writ which is prohibited" by the Constitution of Alabama "means the denial to the citizen of the right to demand an investigation into the cause of his detention. When this right is accorded to him, all that he has a right to demand is that his case be investigated according to the usual mode of procedure in courts of justice." State *v.* Towery, 143 Ala. 48, 39 So. 309.

HABITUAL.

220. 4. **Adultery.** — See Boswell *v.* State, 48 Tex. Crim. 47, 85 S. W. 1076.

Habitual Habitually Distinguished from Habit. — Marks *v.* Herren, 47 Oregon 603, 83 Pac. [illegible].

HABITUAL DRUNKARDS.

227. 2. Dewitt *v.* La Cotts, 76 Ark. 250, 88 S. W. 877.

3. See Johnson *v.* State, 1 Ga. App. 195, 58 S. E. 265.

229. 4. See Brown *v.* Probate Ct., (R. I. 1907) 67 Atl. 527.

5. *Ex p.* Schwarting, (Neb. 1906) 108 N. W. 125.

232. 1. **Testamentary Capacity.** — In *In re* Tifft, (Surrogate Ct.) 55 Misc. (N. Y.) 151,

108 N. W. Supp. 1, as will by one who had been admitted to be a habitual drunkard was upheld, the verdict in the incompetency proceeding having been set aside for irregularity.

212. 3. The Nebraska Statute of 1905 has been held to be unconstitutional in so far as it attempted to impose restraints on inebriates after their cure, but not otherwise. This statute is *in pari materia* with the statutes relating to insane persons generally and is to be construed in connection with those statutes. *Ex p.* Schwarting, (Neb. 1906) 108 N. W. 125.

The statute must be strictly pursued, by the filing of an application in the nature of an information, a hearing, and a finding that the information is true, with a formal record of the proceedings. *Ex p.* Simmons, (Neb. 1906) 107 N. W. 863.

HANDWRITING.

253. 4. Wooldridge *v.* State, 49 Fla. 147, 38 So. 3.

254. 3. Washington *v.* State, 143 Ala. 64, 39 So. 388, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 254.

4. Frank *v.* Berry, 128 Iowa 223, 103 N. W. 358.

5. Griffin *v.* Working Woman's Home Assoc., (Ala. 1906) 44 So. 605.

255. 2. Pittman *v.* State, 51 Fla. 94, 41 So. 385; Hopkins *v.* State, 52 Fla. 39, 42 So. 52; State *v.* Branton, (Oregon 1906) 87 Pac. 535.

4. Frank *v.* Berry, 128 Iowa 223, 103 N. W. 358; State *v.* Freshwater, 30 Utah 442, 85 Pac. 447.

256. 3. Shaffer *v.* U. S., 24 App. Cas. (D. C.) 417; Ray *v.* Hunter, 122 Ill. App. 466.

6. Shaffer *v.* U. S., 24 App. Cas. (D. C.) 417.

257. 3. State *v.* McBride, 30 Utah 425, 8 Ann. Cas. 1030, 85 Pac. 440, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 257.

4. Griffin *v.* Working Woman's Home Assoc., (Ala. 1906) 44 So. 605; Huber Mfg. Co. *v.* Claudel, 71 Kan. 441, 80 Pac. 960.

Typewritten Signature.— It is possible that a typewritten letter signed in the same manner may have about it such peculiarities as shall enable one who has received several such letters, which he knows came from the one whose typewritten signature is attached thereto, to identify such letter. Huber Mfg. Co. *v.* Claudel, 71 Kan. 441, 80 Pac. 960.

258. 1. Shaffer *v.* U. S., 24 App. Cas. (D. C.) 417.

6. Wooldridge *v.* State, 49 Fla. 147, 38 So. 3, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 258.

259. 3. Wooldridge *v.* State, 49 Fla. 147, 38 So. 3, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 259; Pittman *v.* State, 51 Fla. 94, 41 So. 385.

262. 4. Ray *v.* Hunter, 122 Ill. App. 466.

5. Frank *v.* Berry, 128 Iowa 223, 103 N. W. 358.

263. 2. Colbert *v.* State, 125 Wis. 423, 104 N. W. 61.

5. State *v.* McBride, 30 Utah 432, 8 Ann. Cas. 1030, 85 Pac. 440, *per* Straup, J., *dissenting, citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 263.

264. 6. See State *v.* Branton, (Oregon 1906) 87 Pac. 535; Mississippi Lumber, etc., Co. *v.* Kelly, 19 S. Dak. 581, 9 Ann. Cas. 449, 104 N. W. 265.

266. 1. Griffin *v.* Working Woman's Home Assoc., (Ala. 1906) 44 So. 605; Castor *v.* Bernstein, 2 Cal. App. 703, 84 Pac. 244; State *v.* Seymour, 10 Idaho 722, 79 Pac. 825; Pulliam *v.* Sells, (Ky. 1907) 99 S. W. 289; State *v.* Coleman, 17 S. Dak. 608, 98 N. W. 175.

2. Frank *v.* Berry, 128 Iowa 223, 103 N. W. 358; Mississippi Lumber, etc., Co. *v.* Kelly, 19 S. Dak. 581, 9 Ann. Cas. 449, 104 N. W. 265.

267. 3. State *v.* Branton, (Oregon 1906) 87 Pac. 535, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 267; State *v.* McBride, 30 Utah 425, 8 Ann. Cas. 1030, 85 Pac. 440. See also Mississippi Lumber, etc., Co. *v.* Kelly, 19 S. Dak. 581, 9 Ann. Cas. 449, 104 N. W. 265.

4. Washington *v.* State, 143 Ala. 64, 39 So. 388; Bolton *v.* State, 146 Ala. 691, 40 So. 409; Griffin *v.* Working Woman's Home Assoc., (Ala. 1906) 44 So. 605.

268. 1. State *v.* Seymour, 10 Idaho 722, 79 Pac. 825, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 268.

2. Idaho. — State *v.* Seymour, 10 Idaho 722, 79 Pac. 825.

269. 6*a*. Rule Recognized in South Dakota. — State *v.* Coleman, 17 S. Dak. 608, 98 N. W. 175, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 269.

The Tendency of the Recent Decisions is to a relaxation of the earlier rule, and to the admission of irrelevant papers for the purpose of comparison. Mississippi Lumber, etc., Co. *v.* Kelly, 19 S. Dak. 581, 9 Ann. Cas. 449, 104 N. W. 265, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 269.

8. See Mississippi Lumber, etc., Co. *v.* Kelly, 19 S. Dak. 581, 9 Ann. Cas. 449, 104 N. W. 265.

270. 2. See dissenting opinion of Sullivan, J., in State *v.* Seymour, 10 Idaho 722, 79 Pac. 825, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 270.

5. McCreary *v.* Coggeshall, 74 S. Car. 42, 53 S. E. 978.

8. Castor *v.* Bernstein, 2 Cal. App. 703, 84 Pac. 244.

271. 2. Pulliam *v.* Sells, (Ky. 1907) 99 S. W. 289.

13. In Florida, Rev. Stat. 1892, § 1121, providing for a comparison of handwriting, applies as well to criminal as civil cases, and its provisions cover, for the purpose of comparison, not only the genuine writings of the party whose signature is alleged to be forged, but the genuine writings of the alleged forger. Wooldridge *v.* State, 49 Fla. 147, 38 So. 3.

272. 3. Pulliam *v.* Sells, (Ky. 1907) 99 S. W. 289; State *v.* Branton, (Oregon 1906) 87 Pac. 535, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 272.

The Fact that a Signature Was Made After the time when the one in dispute purports to have been made does not render it inadmissible as a standard for comparison, unless it is shown that it was manufactured since the controversy arose for the purpose of comparison by one having a motive to fabricate. Greenwald *v.* Ford, (S. Dak. 1906) 109 N. W. 516.

272. 1. **For Cases Holding the Evidence Insufficient,** see Mississippi Lumber, etc., Co. *v.* Kelly, 19 S. Dak. 581, 9 Ann. Cas. 449, 104 N. W. 265; Jordt *v.* State, (Tex. Crim. 1906) 95 S. W. 514; State *v.* McBride, 30 Utah 425, 8 Ann. Cas. 1030, 85 Pac. 440.

2. Com. *v.* Tucker, 189 Mass. 472, 76 N. E. 127, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 252 [273].

3. Shaffer *v.* U. S., 24 App. Cas. (D. C.) 417.

5. *Contra,* Com. *v.* Tucker, 189 Mass. 472, 76 N. E. 127.

274. 5. Com. *v.* Tucker, 189 Mass. 472, 76 N. E. 127.

7. Daniel *v.* Lance, 29 Pa. Super. Ct. 454, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 274.

275. 2. **It Is Not Necessary to Introduce in Evidence** as a standard for comparison a paper containing a signature admitted to be genuine. Abernethy *v.* Yount, 138 N. Car. 337, 50 S. E. 696.

276. 1. Griffin *v.* Working Woman's Home Assoc., (Ala. 1906) 44 So. 605; Castor *v.* Bernstein, 2 Cal. App. 703, 84 Pac. 244.

9. Jordt *v.* State, (Tex. Crim. 1906) 95 S. W. 514.

12. Municipal Ct. *v.* Kirby, (R. I. 1907) 67 Atl. 8; Whitaker *v.* Thayer, 38 Tex. Civ. App. 537, 86 S. W. 364.

277. 3. Griffin *v.* Working Woman's Home Assoc., (Ala. 1906) 44 So. 605.

10. Abernethy *v.* Yount, 138 N. Car. 337, 50 S. E. 696.

278. 1. Bivings *v.* Gosnell, 141 N. Car. 341, 53 S. E. 861.

4. Griffin *v.* Working Woman's Home Assoc., (Ala. 1906) 44 So. 605; Com. *v.* Tucker, 189 Mass. 472, 76 N. E. 127; Municipal Ct. *v.* Kirby, (R. I. 1907) 67 Atl. 8.

279. 2. McGarry *v.* Healey, 78 Conn. 365, 62 Atl. 671.

Peculiarities. — It is pertinent to show by a handwriting expert, where disputed writings have been declared to be disguised, that attempts at disguise do not, as shown by experience, eradicate from the product those peculiarities which to the initiated especially indicate the producer. McGarry *v.* Healey, 78 Conn. 365, 62 Atl. 671.

281. 8. Griffin *v.* Working Woman's Home Assoc., (Ala. 1906) 44 So. 605; Municipal Ct. *v.* Kirby, (R. I. 1907) 67 Atl. 8.

282. 1. Colbert *v.* State, 125 Wis. 423, 104 N. W. 61.

283. 2. Hopkins *v.* State, 52 Fla. 39, 42 So. 52.

HARBOR.

285. 3. Baumgartner *v.* Eigenbrot, 100 Md. 513, 60 Atl. 601, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 285.

HAWKERS AND PEDDLERS.

291. 1. State *v.* Bristow, 131 Iowa 664, 109 N. W. 199; Alma *v.* Clow, 146 Mich. 443, 109 N. W. 853; St. Louis *v.* Meyer, 185 Mo. 595, 84 S. W. 914, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 291; State *v.* Looney, (Mo. 1906) 97 S. W. 934; State *v.* Ivey, 73 S. Car. 287, 53 S. E. 428, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 291, and approving the distinctions there stated between hawkers and peddlers on the one side and commercial travelers or itinerant vendors on the other.

3. Com. *v.* Standard Oil Co., (Ky. 1906) 93 S. W. 613.

4. An Employee Soliciting Orders and Delivering Them is not a peddler within the meaning of an ordinance declaring that "peddlers with packs" shall pay a license fee. State *v.* Smithart, 128 Iowa 631, 105 N. W. 128.

292. 3. Fallis *v.* Gas City, (Ind. 1907) 82 N. E. 1056; State *v.* Looney, (Mo. 1906) 97 S. W. 434; State *v.* Ivey, 73 S. Car. 282, 53 S. E. 428.

Authority to Maintain a Lunch Wagon in the street is not conferred by a license to hawk and peddle. Com. *v.* Morrison, (Mass. 1908) 83 N. E. 415.

Goods Are Exposed for Sale, within the meaning of the *Massachusetts* statute, if they are carried by the peddler and referred to in a conversation wherein he solicits their purchase, though they are concealed from view by the receptacle which contains them. Com. *v.* Hana, 195 Mass. 262, 81 N. E. 149.

293. 6. Philpott *v.* Allright, 94 L. T. N. S. 540.

294. 2. St. Louis *v.* Meyer, 185 Mo. 595, 84 S. W. 914.

295. 3. **"Domestic Machinery,"** the sale of which is exempted by the *New Mexico* statute from the requirement of a license, does not include a buggy or wagon for use at the purchaser's home. Territory *v.* Russell, 13 N. Mex. 558, 86 Pac. 551.

6. Garfinkle *v.* Sullivan, 37 Wash. 650, 80 Pac. 188.

296. 4. *Ex p.* Hull, 153 Fed. 459; State *v.* Ivey, 73 S. Car. 282, 53 S. E. 428. See also People *v.* Smith, 147 Mich. 391, 110 N. W. 1102; Bacon *v.* Locke, 42 Wash. 215, 7 Ann. Cas. 589, 83 Pac. 721.

What Constitutes Interstate Commerce. — One engaged in the sale of articles by a house-to-house canvass is not engaged in interstate commerce by reason of the fact that the articles were shipped from without the state. Muskegon *v.* Hanes, 149 Mich. 460, 112 N. W. 1077.

A Contract for the Sale of a Picture and giving to the purchaser an option on the frame, both to be shipped from a foreign state, has been decided in *Missouri* to be governed by the Interstate Commerce Law as to the picture, but not as to the frame. State *v.* Looney, (Mo. 1906) 97 S. W. 934. But in *Georgia,* on a similar state of facts, the federal court has arrived at the opposite conclusion. Chicago Portrait Co. *v.* Macon, 147 Fed. 967.

297. 1. See Territory *v.* Russell, 13 N. Mex. 558, 86 Pac. 551.

5. Discrimination against Products of Other Countries Invalid. — Com. *v.* Caldwell, 190 Mass. 355, 76 N. E. 955.

298. 1. Com. *v.* Hana, 195 Mass. 262, 81 N. E. 149.

2. Rosenbloom *v.* State, 64 Neb. 342, 89 N. W. 1053; Garfinkle *v.* Sullivan, 37 Wash. 650, 80 Pac. 188.

4. Needham *v.* State, (Tex. Crim. 1907) 103

S. W. 857. See also Territory *v.* Russell, 13 N. Mex. 558, 86 Pac. 551, wherein, however, the statute in question was held to be invalid as class legislation.

A General and Substantial Distinction between classes of hawkers and peddlers justifies the taxation of one and the exemption of the other; but the classification, to be valid, must rest on some reason of public policy. Rosenbloom *v.* State, 64 Neb. 342, 89 N. W. 1053.

5. See Garfinkle *v.* Sullivan, 37 Wash. 650, 80 Pac. 188, wherein, however, the ordinance in question was held not to discriminate in favor of special interests.

6. *Ex p.* Deeds, 75 Ark. 542, 87 S. W. 1030.

7. Discrimination in Favor of Soldiers and Sailors Deemed Unconstitutional. — See Com. *v.* Hana, 195 Mass. 262, 81 N. E. 149 (*obiter*).

299. 1. Discrimination in Favor of Aged Persons Unconstitutional. — Com. *v.* Hana, 195 Mass. 262, 81 N. E. 149.

7. Garfinkle *v.* Sullivan, 37 Wash. 650, 80 Pac. 188, holding further that the fact that some eighty persons were engaged in the business showed conclusively that the tax was not invalid as prohibitive.

309. 2. Alma *v.* Clow, 146 Mich. 443, 109 N. W. 853.

"Power to provide for the licensing of hawkers and peddlers necessarily implies power of prescribing the amount of the license." State *v.* Cederaski, (Conn. 1908) 69 Atl. 19.

3. Denial of License to Aliens. — A statute limiting the right to a peddler's license to citizens of the United States or to persons who have declared their intention to become citizens has been sustained. Com. *v.* Hana, 195 Mass. 262, 81 N. E. 149.

7. New Orleans *v.* Fargot, 116 La. 369, 40 So. 735; Shreveport *v.* Dantes, 118 La. 113, 42 So. 716; Buffalo *v.* Linsman, 113 N. Y. App. Div. 584, 98 N. Y. Supp. 737.

8. *Ex p.* Henson, 49 Tex. Crim. 177, 90 S. W. 824.

301. 2. Lambertsville *v.* Applegate, 73 N. J. L. 110, 62 Atl. 270.

3. An Ordinance Giving to the City Council Arbitrary Power to grant or withhold a license to peddle is void. La Junta *v.* Heath, 38 Colo. 372, [illegible] 150.

5. Municipality May Regulate, but Cannot Prohibit. — *Ex p.* Camp, 38 Wash. 393, 80 Pac. 547.

HEAD OF A FAMILY.

305. 2. Wife Head of Family — Homestead Law. — Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

HEARING.

308. 1. Hearing in Equity Equivalent to Trial at Law. — McArthur Bros. Co. *v.* Com., (Mass. 1908) 83 N. E. 334.

HEARSAY EVIDENCE.

309. 2. *United States.* — Rosenthal *v.* McGraw, (C. C. A.) 138 Fed. 721; Salem News Pub. Co. *v.* Caliga, (C. C. A.) 144 Fed. 965.

Alabama. — Wilson *v.* State, (Ala. 1905) 39 So. 776; Morris *v.* State, 144 Ala. 81, 39 So. 973; Stallworth *v.* State, 146 Ala. 8, 41 So. 184; Dunn *v.* Gunn, 149 Ala. 583, 42 So. 686; Andrews *v.* State, (Ala. 1907) 44 So. 696.

Arkansas. — Sutherland *v.* State, 87 Ark. 487, 89 S. W. 462; Weatherford *v.* State, 78 Ark. 36, 93 S. W. 61; Little Rock, etc., R. Co. *v.* Cross, 78 Ark. 220, 93 S. W. 981; Lovell *v.* Sneed, 79 Ark. 204, 95 S. W. 157; Bispham *v.* Turner, 83 Ark. 331, 103 S. W. 1135.

California. — Clark *v.* Dalziel, 3 Cal. App. 121, 84 Pac. 429; People *v.* Smith, 3 Cal. App. 62, 84 Pac. 449; People *v.* Hemple, 4 Cal. App. 120, 87 Pac. 227; Huyck *v.* Rennie, 151 Cal. 411, 90 Pac. 929; People *v.* Long, (Cal. App. 1907) 93 Pac. 387.

Georgia. — Kemp *v.* Central of Georgia R. Co., 122 Ga. 559, 50 S. E. 465; Sanders *v.* Central of Georgia R. Co., 123 Ga. 763, 51 S. E. 728; Cody *v.* State, 124 Ga. 446, 52 S. E. 750; Tison *v.* State, 125 Ga. 7, 53 S. E. 809; Colman *v.* State, 127 Ga. 282, 56 S. E. 417; Cornelia Planing Mill Co. *v.* Wilcox, 129 Ga. 522, 59 S. E. 223.

Illinois. — Home Bldg., etc., Assoc. *v.* McKay, 217 Ill. 551, 75 N. E. 569; Chicago City R. Co. *v.* Shaw, 220 Ill. 532, 77 N. E. 139.

Indiana. — Pichon *v.* Martin, 35 Ind. App. 167, 73 N. E. 1009.

Indian Territory. — James *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

Iowa. — Bryce *v.* Chicago, etc., R. Co., 129 Iowa 342, 105 N. W. 497; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463.

Kentucky. — Horine *v.* New York L. Ins. Co., (Ky. 1905) 87 S. W. 274; Lancaster *v.* Lancaster, (Ky. 1905) 87 S. W. 1137; Provident Sav. L. Assur. Soc. *v.* Whayne, (Ky. 1906) 93 S. W. 1049.

Louisiana. — State *v.* Caron, 118 La. 349, 42 So. 960.

Massachusetts. — Com. *v.* Sinclair, 195 Mass. 100, 80 N. E. 790.

Michigan. — Byers *v.* Anderson, 143 Mich. 178, 106 N. W. 734; Greenman *v.* O'Riley, 144 Mich. 534, 108 N. W. 421; Brown *v.* Evans, 149 Mich. 429, 112 N. W. 1079; Coleman *v.* McGowan, 149 Mich. 624, 113 N. W. 17; Grand Rapids *v.* Coit, 149 Mich. 668, 113 N. W. 362.

Missouri. — Sedalia Third Nat. Bank *v.* Fults, 115 Mo. App. 42, 90 S. W. 755; State *v.* Kelleher, 201 Mo. 614, 100 S. W. 470; Marshall Medicine Co. *v.* Chicago, etc., R. Co., 126 Mo. App. 455, 104 S. W. 478; Henderson *v.* Wabash R. Co., 126 Mo. App. 610, 105 S. W. 13; Lynch *v.* Chicago, etc., R. Co., 208 Mo. 1, 106 S. W. 68.

Montana. — Yellowstone Park R. Co. *v.* Bridger Coal Co., 34 Mont. 545, 9 Ann. Cas. 470, 87 Pac. 963; State *v.* Penna, 35 Mont. 535, 90 Pac. 787.

Nebraska. — Reed *v.* State, (Neb. 1906) 106 N. W. 649.

New Jersey. — Hirshberg *v.* Robinson, (N. J. 1907) 66 Atl. 925.

New York. — Donovan *v.* Twist, 105 N. Y. App. Div. 171, 93 N. Y. Supp. 990; Kann *v.* Weir, (Supm. Ct. App. T.) 95 N. Y. Supp. 584; People *v.* Ferone, 120 N. Y. App. Div. 323, 105 N. Y. Supp. 448; Scott *v.* Metropolitan L. Ins. Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 545, 107 N. Y. Supp. 124.

North Carolina. — Bland *v.* Beasley, 140 N. Car. 628, 53 S. E. 443.

North Dakota. — State *v.* Hazlett, (N. Dak. 1907) 113 N. W. 374.

Texas. — Texas, etc., R. Co. *v.* Crowley, (Tex. Civ. App. 1905) 86 S. W. 342; St. Louis, etc., R. Co. *v.* Gunter, (Tex. Civ. App. 1905) 86 S. W. 938; Texas, etc., R. Co. *v.* Scott, (Tex. Civ. App. 1905) 86 S. W. 1065; Kirby Lumber Co. *v.* Cummings, (Tex. Civ. App. 1905) 87 S. W. 231; Texas, etc., R. Co. *v.* Arnett, (Tex. Civ. App. 1905) 88 S. W. 448; Stephens *v.* Herron, (Tex. Civ. App. 1905) 88 S. W. 849; Western Union Tel. Co. *v.* Bell, (Tex. Civ. App. 1905) 90 S. W. 714; Sovereign Camp, etc., *v.* Carrington, (Tex. Civ. App. 1905) 90 S. W. 921; Sweeney *v.* Taylor, (Tex. Civ. App. 1906) 92 S. W. 442; International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93; Missouri, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1906) 96 S. W. 1087; Texas, etc., R. Co. *v.* Harrington, (Tex. Civ. App. 1906) 98 S. W. 653; Texas, etc., R. Co. *v.* Leggett, (Tex. Civ. App. 1906) 99 S. W. 176; Skeen *v.* State, (Tex. Crim. 1907) 100 S. W. 770; Gulf, etc., R. Co. *v.* Craft, (Tex. Civ. App. 1907) 102 S. W. 170; Southern Kansas R. Co. *v.* Cox, (Tex. Civ. App. 1907) 103 S. W. 1122; Elsworth *v.* State, (Tex. Crim. 1907) 104 S. W. 903; Whitfield *v.* Diffie, (Tex. Civ. App. 1907) 105 S. W. 324; International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560; Gorman *v.* State, (Tex. Crim. 1907) 106 S. W. 384; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 910; Caddell *v.* State, 49 Tex. Crim. 133, 90 S. W. 1013; Chancey *v.* State, (Tex. Crim. 1906) 96 S. W. 12.

Wisconsin. — Vagts *v.* Utman, 125 Wis. 265, 104 N. W. 88; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

"When a witness gives testimony of his own knowledge and upon cross-examination it develops that it was mere hearsay, it should be excluded, if the motion to exclude relates only to the hearsay evidence." Davis *v.* Arnold, 143 Ala. 228, 39 So. 141.

Evidence as to True Name. — It is not the best evidence of the true name of a person to show the name by which he was known, and yet it is not hearsay. People *v.* Way, 119 N. Y. App. Div. 344, 104 N. Y. Supp. 277.

310. 1. *United States.* — Security Trust Co. *v.* Robb, (C. C. A.) 142 Fed. 78.

Arizona. — Matko *v.* Daley, (Ariz. 1906) 85 Pac. 721.

Connecticut. — British American Ins. Co. *v.* Wilson, 77 Conn. 559, 60 Atl. 293; Johnson County Sav. Bank *v.* Walker, (Conn. 1908) 69 Atl. 15.

Iowa. — State *v.* Rocker, 130 Iowa 239, 106 N. W. 645; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463.

Minnesota. — Kipp *v.* Clinger, 97 Minn. 135, 106 N. W. 108.

Missouri. — State *v.* Sublett, 191 Mo. 162, 90 S. W. 374; Hammer *v.* Crawford, (Mo. App. 1906) 93 S. W. 348; Pritchard *v.* Hooker, 114 Mo. App. 605, 90 S. W. 415.

New York. — Roche *v.* Nason, 105 N. Y. App. Div. 256, 93 N. Y. Supp. 565; Twaddell *v.* Weidler, 109 N. Y. App. Div. 444, 96 N. Y. Supp. 90; Lowenfeld *v.* Ditchett, 114 N. Y. App. Div. 56, 99 N. Y. Supp. 724; Central Bureau of Engraving *v.* Schmidt-Wilckes Electric Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 219.

North Carolina. — Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201.

Texas. — Ft. Worth, etc., R. Co. *v.* Cauble, (Tex. Civ. App. 1906) 91 S. W. 244; Western Union Tel. Co. *v.* Bradford, (Tex. Civ. App. 1906) 91 S. W. 818.

Virginia. — Norfolk, etc., R. Co. *v.* Bell, 104 Va. 836, 52 S. E. 700; Bugg *v.* Seay, 107 Va. 648, 60 S. E. 89.

Washington. — State *v.* Bringgold, 40 Wash. 12, 5 Ann. Cas. 716, 82 Pac. 132.

Wisconsin. — Hamachek *v.* Duvall, (Wis. 1908) 115 N. W. 634.

3. *Alabama.* — Rutherford *v.* Dyer, 146 Ala. 665, 40 So. 974.

California. — Meyer *v.* Foster, 147 Cal. 116, 81 Pac. 402.

Colorado. — Lowe *v.* Donnelly, 36 Colo. 292, 85 Pac. 318.

Florida. — West *v.* State, 53 Fla. 77, 43 So. 445.

Georgia. — Cole *v.* State, 125 Ga. 276, 53 S. E. 958; Park *v.* State, 126 Ga. 575, 55 S. E. 489; Lupo *v.* Frazier, (Ga. 1908) 60 S. E. 1003.

Illinois. — Telford *v.* Howell, 220 Ill. 52, 77 N. E. 82.

Indiana. — Vannice *v.* Dungan, (Ind. App. 1908) 83 N. E. 250.

Iowa. — Christopherson *v.* Chicago, etc., R. Co., (Iowa 1906) 109 N. W. 1077.

Kansas. — Haines *v.* Goodlander, 73 Kan. 183, 84 Pac. 986.

Kentucky. — Graham *v.* Strawsburg, (Ky. 1906) 91 S. W. 737; Shelbyville Water, etc., Co. *v.* McDade, 122 Ky. 639, 92 S. W. 568; Provident Sav. L. Assur. Soc. *v.* Whayne, (Ky. 1906) 93 S. W. 1049.

Louisiana. — State *v.* Baudoin, 115 La. 837, 40 So. 239.

Maine. — Lazarovich *v.* Tatilbum, (Me. 1907) 69 Atl. 275.

Michigan. — Snyder *v.* Patton, etc., Co., 143 Mich. 350, 106 N. W. 1106.

Missouri. — Steltemeier *v.* Barrett, 115 Mo. App. 323, 91 S. W. 56; State *v.* Long, 201 Mo. 664, 100 S. W. 587.

Montana. — Spellman *v.* Rhode, 33 Mont. 21, 81 Pac. 395.

New Hampshire. — Robinson *v.* Stahl, (N. H. 1907) 67 Atl. 577.

New York. — Gearty *v.* New York, 183 N. Y. 233, 76 N. E. 12; Riddell *v.* Jenkins, 109 N. Y. App. Div. 462, 95 N. Y. Supp. 702; Shall *v.* Old Forge Co., 109 N. Y. App. Div. 907, 96 N. Y. Supp. 75; Geneva Mineral Springs Co. *v.* Steele, 111 N. Y. App. Div. 706, 97 N. Y. Supp. 996; Dike *v.* Haight, (Supm. Ct. App. T.) 108 N. Y. Supp. 1066. But see Englander *v.* Fleck, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 567, 101 N. Y. Supp. 125.

North Carolina. — Joyner *v.* Early, 139 N. Car. 49, 51 S. E. 778; Kirkman *v.* Holland, 139 N. Car. 185, 51 S. E. 856.

Oklahoma. — Sneed *v.* Territory, 16 Okla. 641, 86 Pac. 70.

South Dakota. — *In re* McClellan, (S. Dak. 1906) 107 N. W. 681.

Texas. — Hardin *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 88 S. W. 440; Jackson *v.* Poteet, (Tex. Civ. App. 1905) 89 S. W. 980; Blair *v.* Baird, (Tex. Civ. App. 1906) 94 S. W. 116; Allen *v.* Anderson, (Tex. Civ. App. 1906) 96 S. W. 54; International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000; Paris, etc., R. Co. *v.* Calvin, (Tex. 1908) 106 S. W. 879; Horwitz *v.* La Roche, (Tex. Civ. App. 1908) 107 S. W. 1148; Davis *v.* Lisk, (Tex. Civ. App. 1908) 108 S. W. 472; Hall *v.* State, (Tex. Crim. 1905) 90 S. W. 176; Welch *v.* State, (Tex. Crim. 1906) 95 S. W. 1035.

Virginia. — Watkins *v.* Robertson, 105 Va. 269, 54 S. E. 33.

Washington. — Dean *v.* Oregon R., etc., Co., 44 Wash. 564, 87 Pac. 824.

West Virginia. — Vale *v.* Suiter, 58 W. Va. 353, 52 S. E. 313.

Self-serving Declarations by Agent. — Willis *v.* Western Union Tel. Co., 73 S. Car. 379, 53 S. E. 639.

Error in Admitting Hearsay Evidence Is Not Cured by evidence to the same effect which was given by a witness who spoke of his own knowledge. Bryce *v.* Chicago, etc., R. Co., 129 Iowa 342, 105 N. W. 497.

312. 2. *United States.* — Salem News Pub. Co. *v.* Caliga, (C. C. A.) 144 Fed. 965.

Alabama. — Dooly *v.* Pinson, (Ala. 1905) 39 So. 664; Ross *v.* Roy, (Ala. 1905) 39 So. 583; Roberts *v.* Ringemann, 145 Ala. 678, 40 So. 81; Smiley *v.* Hooper, 147 Ala. 646, 41 So. 660; Green *v.* Brady, (Ala. 1907) 44 So. 408.

Arkansas. — Terry *v.* Clark, 76 Ark. 435, 88 S. W. 987; Weatherford *v.* State, 78 Ark. 36, 93 S. W. 61; Lee *v.* State, 78 Ark. 77, 93 S. W. 754.

California. — Humphrey *v.* Pope, 1 Cal. App. 374, 82 Pac. 223; Nabb *v.* Stewart, 147 Cal. 413, 81 Pac. 1073; People *v.* Turner, 1 Cal. App. 420, 82 Pac. 397; People *v.* Weber, 149 Cal. 325, 86 Pac. 671; Miner *v.* Rickey, 5 Cal. App. 451, 90 Pac. 718; Central Pac. R. Co. *v.* Feldman, (Cal. 1907) 92 Pac. 849; People *v.* Long, (Cal. App. 1907) 93 Pac. 387.

Colorado. — Farmer *v.* Hughes, 38 Colo. 318, 88 Pac. 191.

Georgia. — Bishop *v.* State, 125 Ga. 29, 53 S. E. 807; Bundrick *v.* State, 125 Ga. 753, 54 S. E. 683; Martin *v.* Gainesville, 126 Ga. 577, 55 S. E. 499; Gray *v.* Joiner, 127 Ga. 544, 56 S. E. 752.

Idaho. — State *v.* Fowler, 13 Idaho 317, 89 Pac. 757.

Illinois. — Chicago, etc., R. Co. *v.* Jennings, 217 Ill. 494, 75 N. E. 560.

Iowa. — Heinze *v.* Interurban R. Co., (Iowa 1908) 114 N. W. 534; *In re* Jones, 130 Iowa 177, 106 N. W. 610; Lewis *v.* Susmilch, 130 Iowa 203, 106 N. W. 624; State *v.* Mitchell, 130 Iowa 697, 107 N. W. 804; State *v.* Blee, 133 Iowa 725, 111 N. W. 19; State *v.* Hoover, 134 Iowa 17, 111 N. W. 323.

Kentucky. — Horine *v.* New York L. Ins. Co., (Ky. 1905) 87 S. W. 274; Illinois Cent. R. Co. *v.* Holt, (Ky. 1906) 92 S. W. 540; Buffalo Coal Creek Min. Co. *v.* Troendle, (Ky. 1907) 99 S. W. 622; Bacigalupi *v.* Com., (Ky. 1907) 101 S. W. 311.

Maryland. — Baumgartner *v.* Eigenbrot, 100 Md. 508, 60 Atl. 601; Kelly *v.* Kelly, 103 Md. 548, 63 Atl. 1082.

Massachusetts. — Pennsylvania Iron Works Co. *v.* Mackenzie, 190 Mass. 61, 76 N. E. 228; Rice *v.* James, 193 Mass. 458, 79 N. E. 807.

Michigan. — People *v.* Colbath, 141 Mich. 189, 104 N. W. 633; Byers *v.* Anderson, 143 Mich. 178, 106 N. W. 734; Coston *v.* Coston, 145 Mich. 390, 108 N. W. 736; Duvall *v.* Ferwerda, 146 Mich. 13, 108 N. W. 1115; Rouston *v.* Detroit United R. Co., (Mich. 1908) 115 N. W. 62; Obenauer *v.* Solomon, (Mich. 1908) 115 N. W. 696.

Mississippi. — Barclay *v.* Smith, (Miss. 1904) 36 So. 449.

Missouri. — State *v.* Woodward, 191 Mo. 617, 90 S. W. 90; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307; Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363; Dunphy *v.* St. Joseph Stockyards Co., 118 Mo. App. 506, 95 S. W. 301; State *v.* Church, 199 Mo. 605, 98 S. W. 16; State *v.* Walsh, 203 Mo. 605, 102 S. W. 513; Beeler *v.* Perry, (Mo. App. 1908) 107 S. W. 1008; Fountain *v.* Wabash R. Co., 114 Mo. App. 676, 90 S. W. 393; Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247. See also State *v.* Edwards, 203 Mo. 528, 102 S. W. 520.

Montana. — State *v.* Trueman, 34 Mont. 249, 85 Pac. 1024; Erbes *v.* Smith, 35 Mont. 38, 88 Pac. 568.

New Jersey. — State *v.* Newman, 73 N. J. L. 202, 62 Atl. 1008; Hirshberg *v.* Robinson, (N. J. 1907) 66 Atl. 925; Hill *v.* Adams Express Co., 74 N. J. L. 338, 68 Atl. 94; Topfer *v.* Topfer, (N. J. 1907) 68 Atl. 1071.

New Mexico. — Palatine Ins. Co. *v.* Santa Fé Mercantile Co., 13 N. Mex. 241, 82 Pac. 363.

New York. — German American Ins. Co. *v.* New York Gas, etc., Co., 103 N. Y. App. Div. 310, 93 N. Y. Supp. 46, *affirmed* 185 N. Y. 581, 78 N. E. 1103; Roche *v.* Nason, 105 N. Y. App. Div. 256, 93 N. Y. Supp. 565; Twaddell *v.* Weidler, 109 N. Y. App. Div. 444, 96 N. Y. Supp. 90, *affirmed* 186 N. Y. 601, 79 N. E. 1117; People *v.* Alderdice, 120 N. Y. App. Div. 368, 105 N. Y. Supp. 395; People *v.* Soloman, (County Ct.) 57 Misc. (N. Y.) 288, 106 N. Y. Supp. 1110; Central Bureau of Engraving *v.* Schmidt-Wilckes Electric Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 219; Steinmetz *v.* Cosmopolitan Range Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 611, 94 N. Y. Supp. 456.

North Carolina. — Pegram *v.* Seaboard Air Line R. Co., 139 N. Car. 303, 51 S. E. 975; Whitten *v.* Western Union Tel. Co., 141 N. Car. 361, 54 S. E. 289.

Rhode Island. — Motton *v.* Smith, 27 R. I. 57, 62, 8 Ann. Cas. 831, 60 Atl. 681.

South Carolina. — Willis *v.* Western Union Tel. Co., 73 S. Car. 379, 53 S. E. 639.

Texas. — Thompson *v.* Chaffee, (Tex. Civ. App. 1905) 89 S. W. 285; St. Louis Southwestern R. Co. *v.* Irvine, (Tex. Civ. App. 1905) 89 S. W. 428; Gulf, etc., R. Co. *v.* Jackson, 99 Tex. 343, 89 S. W. 968, *reversing* (Tex. Civ. App. 1905) 86 S. W. 47; Jackson *v.* Poteet, (Tex. Civ. App. 1905) 89 S. W. 080; Ft. Worth, etc., R. Co. *v.* Snyder, (Tex. Civ. App. 1905)

89 S. W. 1119; Gulf, etc., R. Co. *v.* McMurrough, (Tex. Civ. App. 1905) 91 S. W. 320; Missouri, etc., R. Co. *v.* Sproles, (Tex. Civ. App. 1906) 92 S. W. 40; Ross *v.* Moskowitz, (Tex. Civ. App. 1906) 95 S. W. 86; Houston, etc., R. Co. *v.* Mayes, (Tex. Civ. App. 1906) 97 S. W. 318; Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496; Carlisle *v.* Gibbs, (Tex. Civ. App. 1906) 98 S. W. 192; Walker *v.* Dickey, (Tex. Civ. App. 1906) 98 S. W. 658; Gulf, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 99 S. W. 162; Texas, etc., R. Co. *v.* Felker, (Tex. Civ. App. 1906) 99 S. W. 439; Ellington *v.* State, (Tex. Crim. 1907) 99 S. W. 997; O'Neal *v.* State, (Tex. Crim. 1907) 100 S. W. 919; Grand Lodge, etc., *v.* Mackey, (Tex. Civ. App. 1907) 104 S. W. 907; Trinkle *v.* State, (Tex. Crim. 1907) 105 S. W. 201; Cervantes *v.* State, (Tex. Crim. 1907) 105 S. W. 499; Reinhard *v.* State, (Tex. Crim. 1907) 106 S. W. 128; Walker *v.* Erwin, (Tex. Civ. App. 1907) 106 S. W. 164; Choice *v.* State, (Tex. Crim. 1907) 106 S. W. 387; McKeon *v.* Roan, (Tex. Civ. App. 1907) 106 S. W. 404; Holmes *v.* State, (Tex. Crim. 1908) 106 S. W. 1160; Cooper *v.* State, 48 Tex. Crim. 608, 89 S. W. 816; Lara *v.* State, 48 Tex. Crim. 568, 89 S. W. 840; Stevison *v.* State, 48 Tex. Crim. 601, 89 S. W. 1072; Barton *v.* State, 49 Tex. Crim. 121, 90 S. W. 877; Marks *v.* State, 49 Tex. Crim. 274, 92 S. W. 414; Young *v.* State, 49 Tex. Crim. 207, 92 S. W. 841; Chambless *v.* State, 49 Tex. Crim. 354, 94 S. W. 220; Hirsch *v.* State, (Tex. Crim. 1906) 95 S. W. 513; Brundige *v.* State, (Tex. Crim. 1906) 95 S. W. 527. See also Stanley *v.* State, 48 Tex. Crim. 537, 89 S. W. 643.

Vermont. — H. C. Jaquith Co. *v.* Shumway, 80 Vt. 556, 69 Atl. 157.

Washington. — Larson *v.* Centennial Mill Co., (Wash. 1905) 82 Pac. 294; State *v.* McLain, 43 Wash. 267, 86 Pac. 390.

Wisconsin. — Grabowski *v.* State, 126 Wis. 447, 105 N. W. 805; Salchert *v.* Reinig, (Wis. 1908) 115 N. W. 133.

Statements as to Sanity or Insanity. — State *v.* Heidelberg, (La. 1908) 45 So. 256; Robinson *v.* Jones, 105 Md. 62, 65 Atl. 814; State *v.* Penna, 35 Mont. 535, 90 Pac. 787.

314. 1. Dawson *v.* Dawson, 22 Times L. Rep. 52; Barnett *v.* State, (Ala. 1905) 39 So. 778; Young *v.* State, 49 Tex. Crim. 207, 92 S. W. 841.

10. McCrum *v.* McCrum, 36 Ind. App. 636, 76 N. E. 415; Thompson *v.* State, (Tex. Crim. 1905) 89 S. W. 1081.

Statement of Third Persons Admitted to Fix Date. — Alford *v.* State, 47 Fla. 1, 36 So. 436, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 314.

11. Dick *v.* State, (Md. 1907) 68 Atl. 286; Allen *v.* Halsted, (Tex. Civ. App. 1905) 87 S. W. 754.

Proof of the Names of the Members of a Foreign Partnership may be made by proof of reputation. Vincendeau *v.* People, 119 Ill. App. 603.

315. 1. Fountain *v.* Wabash R. Co., 114 Mo. App. 676, 90 S. W. 393; St. Louis, etc., R. Co. *v.* Gunter, (Tex. Civ. App. 1905) 86 S. W. 938; Texas, etc., R. Co. *v.* Scott, (Tex. Civ. App. 1905) 86 S. W. 1065; Red River, etc., R. Co. *v.* Eastin, (Tex. Civ. App. 1905) 88 S. W. 530. See also Bunte *v.* Schumann, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 593, 92 N. Y. Supp. 806.

United States. — Armour *v.* Skene, (C. C. A.) 153 Fed. 241.

Alabama. — Kansas City, etc., R. Co. *v.* Butler, 143 Ala. 262, 38 So. 1024; Birmingham R., etc., Co. *v.* Enslen, 144 Ala. 343, 39 So. 74; Birmingham R., etc., Co. *v.* Moore, (Ala. 1907) 43 So. 841.

Connecticut. — Gilmore *v.* American Tube, etc., Co., 79 Conn. 498, 66 Atl. 4.

District of Columbia. — Patterson *v.* Ocean Accident, etc., Corp., 25 App. Cas. (D. C.) 46.

Georgia. — Cedartown *v.* Brooks, 2 Ga. App. 583, 59 S. E. 836. See also Goodwyn *v.* Central of Georgia R. Co., 2 Ga. App. 470, 58 S. E. 688.

Illinois. — Aurora *v.* Plummer, 122 Ill. App. 143; Chicago, etc., R. Co. *v.* Johnson, 128 Ill. App. 20; Chicago *v.* McNally, 128 Ill. App. 375; Chicago City R. Co. *v.* Mauger, 128 Ill. App. 512.

Indiana. — Indianapolis St. R. Co. *v.* Haverstick, 35 Ind. App. 281, 74 N. E. 34.

Iowa. — Patton *v.* Sanborn, 133 Iowa 650, 110 N. W. 1032.

Kansas. — St. Louis, etc., R. Co. *v.* Chaney, (Kan. 1908) 94 Pac. 126.

Maryland. — Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202.

Michigan. — McCormick *v.* Detroit, etc., R. Co., 141 Mich. 17, 104 N. W. 390; Judd *v.* Caledonia Tp., 150 Mich. 480, 114 N. W. 346.

Missouri. — McHugh *v.* St. Louis Transit Co., 190 Mo. 85, 88 S. W. 853.

Nebraska. — Western Travelers' Acc. Assoc. *v.* Munson, 73 Neb. 858, 103 N. W. 688.

Texas. — Texas Cent. R. Co. *v.* Powell, 38 Tex. Civ. App. 157, 86 S. W. 21; St. Louis Southwestern R. Co. *v.* Haynes, (Tex. Civ. App. 1905) 86 S. W. 934; Hardin *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 88 S. W. 440; St. Louis, etc., R. Co. *v.* Boyer, (Tex. Civ. App. 1906) 97 S. W. 1070; Dublin Gas, etc., Co. *v.* Frazier, (Tex. Civ. App. 1907) 103 S. W. 197; St. Louis Southwestern R. Co. *v.* Coats, (Tex. Civ. App. 1907) 103 S. W. 662; Runnells *v.* Pecos, etc., R. Co., (Tex. Civ. App. 1908) 107 S. W. 647; St. Louis Southwestern R. Co. *v.* Garber, (Tex. Civ. App. 1908) 108 S. W. 742.

Vermont. — Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807; Graves *v.* Waitsfield, (Vt. 1908) 69 Atl. 137.

West Virginia. — Stevens *v.* Friedman, 58 W. Va. 78, 51 S. E. 132.

Wisconsin. — Price *v.* Grzyll, (Wis. 1907) 114 N. W. 100.

8. Scheidegger *v.* Terrell, 149 Ala. 338, 43 So. 26; Drawdy *v.* Hesters, (Ga. 1908) 60 S. E. 1[illegible] 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 315; Champion *v.* McCarthy, 228 Ill. 87, 81 N. E. 808; Travelers' Ins. Co. *v.* Henderson Cotton Mills, 120 Ky. 218, 85 S. W. 1090; Bernards Tp. *v.* Bedminster Tp., 74 N. J. L. 92, 64 Atl. 960; Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72; Matter of Fail, (Surrogate Ct.) 56 Misc. (N. Y.) 217, 107 N. Y. Supp. 224; State *v.* Hazlett, 14 N. Dak. 490, 105 N. W. 617; *In re* McClellan, (S. Dak.

1906) 107 N. W. 681; Kirby *v.* Boaz, (Tex. Civ. App. 1905) 91 S. W. 642; Overby *v.* Johnston, (Tex. Civ. App. 1906) 94 S. W. 131; Curry *v.* State, (Tex. Crim. 1906) 94 S. W. 1058; Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665; Kirby *v.* Hayden, (Tex. Civ. App. 1906) 99 S. W. 746.

An Attorney Who Is Not Related to the Family, and knows but one member thereof, cannot testify as to the pedigree of such family. Scott *v.* Herrell, 27 App. Cas. (D. C.) 395.

The Declarations of a Person Living are inadmissible on the issue of pedigree. Champion *v.* McCarthy, 228 Ill. 87, 81 N. E. 808.

The Declarations of Third Persons are incompetent on the issue of pedigree. Champion *v.* McCarthy, 228 Ill. 87, 81 N. E. 808.

Source of Money. — When the source of money is to be proved, it must be proved like any other fact, and not by hearsay evidence. The [illegible]ce rule does not apply. Bispham *v.* Turner, 83 Ark. 331, 103 S. W. 1135.

316. 9. Robinson *v.* Duvall, 27 App. Cas. (D. C.) 535.

10. Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 90.

HEIR, HEIRS, AND THE LIKE.

318. 1. Morin *v.* Holliday, 39 Ind. App. 207, 77 N. E. 861, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 318.

320. 2. Gerard *v.* Ives, 78 Conn. 485, 62 Atl. 607; Morin *v.* Holliday, 39 Ind. App. 207, 77 N. E. 861, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 320; Lee *v.* Scott, 26 Ohio Cir. Ct. 799.

322. 3. Ortmayer *v.* Elcock, 225 Ill. 342, 80 N. E. 339.

4. Boston Safe Deposit, etc., Co. *v.* Parker, 197 Mass. 70, 83 N. E. 307; Coffin *v.* Jernegan, 189 Mass. 503, 75 N. E. 958.

323. 2. **In Pennsylvania** when the word "heirs" is used as a word of purchase, it means "statutory heirs" — those persons designated by the Intestate Act to take the estate not disposed of by last will and testament. Ackerman *v.* Ackerman, 34 Pa. Super. Ct. 162.

324. 1. Kalbach *v.* Clark, 133 Iowa 215, 110 N. W. 599; Coleman *v.* Coleman, 69 Kan. 41, 76 Pac. 439, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 324; Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201; Roberson *v.* Wampler, 104 Va. 380, 51 S. E. 835.

326. 4. Morin *v.* Holliday, 39 Ind. App. 207, 77 N. E. 861, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 326.

5. Harris *v.* Ingalls, (N. H. 1907) 68 Atl. 34.

327. 4. Hess *v.* Zahn, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 515, 107 N. Y. Supp. 951; Train *v.* Davis, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 162, 98 N. Y. Supp. 816; *In re* West, 214 Pa. St. 35, 63 Atl. 407.

328. 1. Vogt *v.* Vogt, 26 App. Cas. (D. C.) 46; Jacobs *v.* Prescott, 102 Me. 63, 65 Atl. 761.

HEREAFTER — HERETOFORE.

336. 4. Hathaway *v.* Washington Milling Co., 139 Mich. 708, 103 N. W. 164.

HEREBY.

337. 2. **Will — Whole or Section.** — Williams *v.* Dearborn, 101 Me. 506, 64 Atl. 851.

HEREIN.

339. 6. *In re* Berkowitz, 143 Fed. 598.

HIGHWAYS.

350. 1. Dunn *v.* Gunn, 149 Ala. 583, 42 So. 686; Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 350; Lawrence *v.* Ewert, (S. Dak. 1908) 114 S. W. 709, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 350.

2. **Turnpike as Highway.** — Derry Tp. Road, 30 Pa. Super. Ct. 538.

7. Cavender *v.* Charleston, (W. Va. 1907) 59 S. E. 732.

351. 1. Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508.

3. Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 350.

Distinction between "Road" and "Highway." — Johnson *v.* State, 1 Ga. App. 195, 58 S. E. 265.

4. Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 351; Griffin *v.* Sanborn, 127 Ga. 17, 56 S. E. 71; Lawrence *v.* Ewert, (S. Dak. 1908) 114 N. W. 709.

5. Johnson County *v.* Minnear, 72 Kan. 326, 83 Pac. 828.

7. Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508.

352. 6. Cowley County *v.* Johnson, 76 Kan. 65, 90 Pac. 805, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 352.

353. 4. Harriman *v.* Moore, (N. H. 1907) 67 Atl. 225.

A vote of a town directing the selectmen to repair a highway is evidence of the existence of the highway. Paulsen *v.* Wilton, 78 Conn. 58, 61 Atl. 61.

12. Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508.

Where a statute declares all section lines to be highways it has been held that they are not thereby opened to the public without the necessity of opening by the road overseers as provided by the general statutes. Hanselman *v.* Born, 71 Kan. 573, 81 Pac. 192; Van Wanning *v.* Deeter, (Neb. 1907) 112 N. W. 902.

354. 2. Johnson *v.* State, 1 Ga. App. 195, 58 S. E. 265.

10. Speck *v.* Kenoyer, 164 Ind. 431, 73 N. E. 896; Heath *v.* Sheetz, 164 Ind. 665, 74 N. E. 505.

11. Speck *v.* Kenoyer, 164 Ind. 431, 73 N. E. 896.

355. 5. Heath *v.* Sheetz, 164 Ind. 665, 74 N. E. 505.

9. **Indemnity Agreement Does Not Invalidate Proceedings.** — East Whiteland Tp. Road, 30 Pa. Super. Ct. 211; Smith *v.* Ernest, (Tex. Civ. App. 1907) 102 S. W. 129.

356. 1. In *Wisconsin* an order made upon the execution of a bond by an interested party to cover the expense of building a road has

been held to be void, notwithstanding the testimony of the commissioners that the order would have been made anyway. State *v.* Ryan, 127 Wis. 599, 106 N. W. 1093.

2. Turnpike May Be Terminus. — Derry Tp. Road, 30 Pa. Super. Ct. 538.

9. Derry Tp. Road, 30 Pa. Super. Ct. 538.

11. Rudnyai *v.* Harwinton, 79 Conn. 91, 63 Atl. 948; Speck *v.* Kenoyer, 164 Ind. 431, 73 N. E. 896; State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121; Strahan *v.* Attala County, (Miss. 1907) 44 So. 857; State *v.* Schenkel, (Mo. App. 1908) 108 S. W. 635; Enders *v.* Friday, (Neb. 1907) 111 N. W. 140; Otto *v.* Conroy, (Neb. 1906) 107 N. W. 753; Smith *v.* Ernest, (Tex. Civ. App. 1907) 102 S. W. 129.

357. 1. State *v.* Boone County, (Neb. 1907) 110 N. W. 629.

3. Highway Com'rs *v.* Ludwick, (Mich. 1908) 115 N. W. 419, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 357.

359. 7. Cushing *v.* Webb, 102 Me. 157, 66 Atl. 719.

11. Kemp *v.* Goodnight, 168 Ind. 174, 80 N. E. 160; Johnson *v.* Clontarf, 98 Minn. 281, 108 N. W. 521.

361. 1. Defective Signing Not Fatal.— Where the petitioners sign, some of them by their Christian names and some by their initials, the defective signing has been held not to be fatal; a motion to have the names properly entered of record being the proper remedy. Cooper *v.* Harmon, (Ind. 1908) 83 N. E. 704.

3. Cushing *v.* Webb, 102 Me. 157, 66 Atl. 719.

The Use of the Word "Private" in describing a proposed road has been held not to render the petition and other papers insufficient. Johnson County *v.* Minnear, 72 Kan. 326, 83 Pac. 828.

4. Fancher *v.* Coffin, (Ind. App. 1908) 84 N. E. 354; Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205; Chelan County *v.* Navarre, 38 Wash. 684, 80 Pac. 845.

"Reasonable Precision" Sufficient.— *In re* Lee, 4 Penn. (Del.) 576, 60 Atl. 862.

A Description in the Caption, if clear, has been held to supply a deficiency in the body of the petition. Quemahoning Tp. Road, 27 Pa. Super. Ct. 150.

5. Hab *v.* Georgetown, 46 Wash. 642, 91 Pac. 10.

362. 2. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205; Hab *v.* Georgetown, 46 Wash. 642, 91 Pac. 10.

5. Mulligan *v.* Martin, 125 Mo. App. 630, 102 S. W. 59; Navin *v.* Martin, (Mo. App. 1907) 102 S. W. 61.

Signatures of Petitioners. — Under a statute requiring the signatures of the petitioners, who must be landowners, the absence of them is fatal. Arnold *v.* Chosen Freeholders, 72 N. J. L. 448, 60 Atl. 1132.

6. It has been held that the petition need not allege that the benefits will warrant the cost and that it will be a public utility. Cooper *v.* Harmon, (Ind. 1908) 83 N. E. 704.

363. 3. Chelan County *v.* Navarre, 38 Wash. 684, 80 Pac. 845.

5. Chelan County *v.* Navarre, 38 Wash. 684, 80 Pac. 845.

364. 6. Objection Waived Unless Taken in Time. — Fancher *v.* Coffin, (Ind. App. 1908) 84 N. E. 354.

365. 1. Audubon *v.* Hand, 231 Ill. 334, 83 N. E. 196.

2. Tyrone *v.* Burns, (Minn. 1907) 113 N. W. 695.

3. Chrisman *v.* Brandes, (Iowa 1907) 112 N. W. 833; Tyrone *v.* Burns, (Minn. 1907) 113 N. W. 695.

4. Audubon *v.* Hand, 231 Ill. 334, 83 N. E. 196; Highway Com'rs *v.* Smith, 217 Ill. 250, 75 N. E. 396; Krenik *v.* Cordova, 95 Minn. 372, 104 N. W. 130; State *v.* Clyde, 130 Wis. 159, 109 N. W. 985.

It has been held that, where there are many different owners to be served, failure to give notice to some of them will not render the proceedings invalid. Tyrone *v.* Burns, (Minn. 1907) 113 N. W. 695.

366. 1. Chrisman *v.* Brandes, (Iowa 1907) 112 N. W. 833; Kothe *v.* Berlin Tp., 19 S. Dak. 427, 103 N. W. 657.

The rule of waiver by participation in the proceedings has been held in *New York* to apply to a highway commissioner entitled, by statute, to notice. *In re* Wood, 111 N. Y. App. Div. 781, 97 N. Y. Supp. 871, *affirming* 107 N. Y. App. Div. 514, 95 N. Y. Supp. 260.

2. By Statute in Illinois the posting of notices of adjourned meetings is required. Highway Com'rs *v.* Smith, 217 Ill. 250, 75 N. E. 396.

5. In New York it has been held that only the day from which the reckoning is made should be excluded. *In re* Niel, (County Ct.) 55 Misc. (N. Y.) 317, 106 N. Y. Supp. 479.

367. 5. Audubon *v.* Hand, 231 Ill. 334, 83 N. E. 196; State *v.* Clyde, 130 Wis. 159, 109 N. W. 985.

368. 6. Variance Must Be Material. — Riggs *v.* Winterode, 100 Md. 439, 59 Atl. 762.

9. When Provided for by Statute, it has been held that unless the provision defines the nature of the service it is sufficient if served by reading the original notice to the person to be served, or leaving a copy with him. Damon *v.* Baldwin, 101 Minn. 414, 112 N. W. 536.

369. 3. Berger *v.* Tracy, (Iowa 1907) 113 N. W. 465.

6. Where two persons were in fact tenants in common, but by inaccuracy of the county records title appeared in only one of them, failure to serve the other has been held not to vitiate the proceedings, where the statute provided for notice to the persons appearing as owners on said records. Berger *v.* Tracy, (Iowa 1907) 113 N. W. 465.

370. 3. Lutgen *v.* Stearns County, 99 Minn. 499, 110 N. W. 1.

Place of Posting — "Public" Place. — Williams *v.* Routt County, 37 Colo. 55, 84 Pac. 1109.

371. 1. Sufficiency of Affidavit. — Lutgen *v.* Stearns County, 99 Minn. 499, 110 N. W. 1.

4. Cushing *v.* Webb, 102 Me. 157, 66 Atl. 719.

372. 1. Recital Prima Facie Evidence. — Cushing *v.* Webb, 102 Me. 157, 66 Atl. 719.

2. Lutgen *v.* Stearns County, 99 Minn. 499, 110 N. W. 1.

3. Troxell *v.* Dick, 216 Ill. 98, 74 N. E. 694; Highway Com'rs *v.* Smith, 217 Ill. 250, 75 N. E. 396.

Mere Recital of Notice Not Conclusive on Direct Attack. — Williams *v.* Routt County, 37 Colo. 55, 84 Pac. 1109.

373. 5. Road Com'rs *v.* Board of Auditors, 148 Mich. 255, 111 N. W. 901.

10. *In re* Conant, 102 Me. 477, 67 Atl. 565.

374. 10. Bogue *v.* De Long, 147 Mich. 63, 110 N. W. 119.

375. 2. **"Suitable Persons."** — Where the statute provides that road jurors shall be suitable persons, it has been held that such a provision does not necessitate their being freeholders. *In re* Lee, 4 Penn. (Del.) 576, 60 Atl. 862.

7. Bogue *v.* De Long, 147 Mich. 63, 110 N. W. 119; Union Tp. Road, 29 Pa. Super. Ct. 573.

9. **Prosecuting an Appeal** to final hearing before a legally qualified board of appeal has been held to cure the disqualification of the officer whose opinion is appealed from. Bogue *v.* De Long, 147 Mich. 63, 110 N. W. 119.

376. 3. Pike Tp. Road, 30 Pa. Super. Ct. 644.

380. 6. Greenwood Tp. Road, 27 Pa. Super. Ct. 549.

13. Green *v.* Road Board, 126 Ga. 693, 56 S. E. 59; Isham *v.* State, (Tex. Crim. 1906) 92 S. W. 808.

381. 2. Union Tp. Road, 29 Pa. Super. Ct. 179.

5. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205.

6. Sisson *v.* Carithers, 35 Ind. App. 164, 73 N. E. 924; Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205.

Reference to Petition Sufficient. — *In re* Redmond, (County Ct.) 105 N. Y. Supp. 936.

8. Ludlam *v.* Swain, 73 N. J. L. 162, 62 Atl. 192; Union Tp. Road, 29 Pa. Super. Ct. 179.

15. Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620.

382. 3. Under a statute requiring a majority to sign, it has been held that a report so signed is not vitiated by the rest signing on the return day. Greenwood Tp. Road, 27 Pa. Super. Ct. 549; Union Tp. Road, 29 Pa. Super. Ct. 573.

7. Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620.

383. 1. New London *v.* Davis, (N. H. 1906) 65 Atl. 107; Union Tp. Road, 29 Pa. Super. Ct. 573.

Making a claim for damages has been held to waive irregularities in the return. Hoye *v.* Diehls, (Neb. 1907) 110 N. W. 714.

It has been held that an agreement by abutting owners to donate land and waive all claims for damages precludes their attacking the jurisdiction of the commissioners. Patterson *v.* Hill County, (Tex. Civ. App. 1906) 95 S. W. 39.

2. Miller *v.* Union County, 48 Oregon 266, 86 Pac. 3.

3. Miller *v.* Union County, 48 Oregon 266, 86 Pac. 3.

10. Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620.

384. 2. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205.

3. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205.

5. Sisson *v.* Carithers, 35 Ind. App. 164, 73 N. E. 924.

13. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205.

385. 4. Pike Tp. Road, 30 Pa. Super. Ct. 644.

16. Ross *v.* Becker, (Ind. 1907) 81 N. E. 478; Bogue *v.* De Long, 147 Mich. 63, 110 N. W. 119; Evans *v.* Sharkey County, 89 Miss. 302, 42 So. 173; Mayes *v.* Palmer, 206 Mo. 293, 103 S. W. 1140; Cook *v.* Vickers, 141 N. Car. 101, 53 S. E. 740; Pierce *v.* Union County, 48 Oregon 622, 86 Pac. 5; Miller *v.* Union County, 48 Oregon 266, 86 Pac. 3.

386. 1. **Liberal Construction in Favor of Appeal.** — Cook *v.* Vickers, 141 N. Car. 101, 53 S. E. 740.

5. Mayes *v.* Palmer, 206 Mo. 293, 103 S. W. 1140.

387. 2. Atlanta, etc., R. Co. *v.* Redwine, 123 Ga. 736, 51 S. E. 724; Ludlam *v.* Swain, 73 N. J. L. 162, 62 Atl. 192.

It has been held that, though persons are freeholders and taxpayers of a town, they are not entitled to the writ of certiorari, unless the highway crosses their land. Sampson *v.* Highway Com'rs, 115 Ill. App. 443.

11. Todd *v.* Crail, 167 Ind. 48, 77 N. E. 402; State *v.* Miller, 110 Mo. App. 542, 85 S. W. 912; Central R. Co. *v.* Seabright, 73 N. J. L. 625, 64 Atl. 131; State *v.* Pierce County, (Wash. 1907) 91 Pac. 241.

388. 1. Brumley *v.* State, 83 Ark. 236, 103 S. W. 615.

3. Cushing *v.* Webb, 102 Me. 157, 66 Atl. 719.

5. **Petitioners for a Highway Are Not Estopped** to deny the legality of the subsequent location. Chase *v.* Cochran, 102 Me. 431, 67 Atl. 320.

A property owner who is a petitioner has been held not to be estopped from questioning the validity of the proceeding. Hoy *v.* Hubbell, 125 N. Y. App. Div. 60, 109 N. Y. Supp. 301.

6. Letherman *v.* Hauser, (Neb. 1906) 110 N. W. 745.

389. 2. Brumley *v.* State, 83 Ark. 236, 103 S. W. 615; Todd *v.* Crail, 167 Ind. 48, 77 N. E. 402; Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205; Bigelow *v.* Ritter, 131 Iowa 213, 108 N. W. 218; Cushing *v.* Webb, 102 Me. 157, 66 Atl. 719; State *v.* Miller, 110 Mo. App. 542, 85 S. W. 912; Smith *v.* Ernest, (Tex. Civ. App. 1907) 102 S. W. 129.

9. State *v.* Cipra, 71 Kan. 714, 81 Pac. 488, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 380.

390. 11. **Reasonable Variation Held Permissible.** — State *v.* Clyde, 130 Wis. 159, 109 N. W. 985.

391. 10. Johnson *v.* Clontarf, 98 Minn. 281, 108 N. W. 521.

13. Peotone *v.* Illinois Cent. R. Co., 224 Ill. 101, 79 N. E. 678; New London *v.* Davis, (N. H. 1906) 65 Atl. 107.

392. 6. Council Grove Tp. *v.* Bowman, 76 Kan. 563, 92 Pac. 550.

9. Council Grove Tp. *v.* Bowman, 76 Kan. 563, 92 Pac. 550.

11. Rogers *v.* Attica, 113 N. Y. App. Div. 603, 98 N. Y. Supp. 665, *quoting* 15 AM. AND

ENG. ENCYC. OF LAW (2d ed.) 392, 393, and approving notes 1, 2, 3, 4, on the latter page.

393. 6. **Reason for Alteration.** — Under the statutes of some states the offer of indemnity by interested parties is allowed as an inducement. Highway Com'rs *v.* Bear, 224 Ill. 259, 79 N. E. 581.

11. Hawkins *v.* Pittsburg, (Pa. 1908) 69 Atl. 283.

394. 2. **Addition or Withdrawal of Names** will not be permitted after the commissioners have passed on the petition. Highway Com'rs *v.* Bear, 224 Ill. 259, 79 N. E. 581.

3. Wisner *v.* Barber County, 73 Kan. 324, 85 Pac. 288.

395. 4. **Sufficiency of Order — Surplusage.** — Where the county commissioners had improperly collected indemnity from interested parties and the order, otherwise sufficient, embodied a recital thereof, the recital was held to be mere surplusage which did not vitiate the order. Highway Com'rs *v.* Bear, 224 Ill. 259, 79 N. E. 581.

7. Howe *v.* Callaway, 119 Mo. App. 251, 95 S. W. 974.

399. 2. Greist *v.* Amrhyn, (Conn. 1907) 68 Atl. 521; Big Sandy R. Co. *v.* Floyd County, (Ky. 1907) 101 S. W. 354; Letherman *v.* Hauser, (Neb. 1906) 110 N. W. 745.

3. **Parol Agreement Insufficient.** — Big Sandy R. Co. *v.* Floyd County, (Ky. 1907) 101 S. W. 354.

6. Letherman *v.* Hauser, (Neb. 1906) 110 N. W. 745.

10. Morris *v.* Edwards, 132 Wis. 91, 112 N. W. 248.

Failure to Serve Notice on an Owner of a Life Estate who lives on the land together with a tenant renders the proceedings fatally defective. Hatt *v.* Napoleon Tp., 144 Mich. 266, 107 N. W. 1058.

400. 6. **Failure to Object,** by a person entitled to notice but not given notice, has been held not to constitute a waiver. Hatt *v.* Napoleon Tp., 144 Mich. 266, 107 N. W. 1058.

8. Williamson *v.* Hauser, (Ind. 1907) 82 N. E. 771; Houpt *v.* Dutton, (Ind. 1908) 83 N. E. 634.

401. 2. **Jurisdictional Facts Must Affirmatively Appear in Record of Proceedings.** — Letherman *v.* Hauser, (Neb. 1906) 110 N. W. 745.

3. **In Nebraska** it has been held that the decision of the body having the power of determining the necessity for abandonment is exclusive and not subject to judicial review. Otto *v.* Conroy, (Neb. 1906) 107 N. W. 753.

6. Williamson *v.* Hauser, (Ind. 1907) 82 N. E. 771.

402. 7. Riggs *v.* Winterode, 100 Md. 439, 59 Atl. 762, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 402; Letherman *v.* Hauser, (Neb. 1906) 110 N. W. 745.

A Person Living Within Five Miles of a Road which is his best and most available route to his market town and county seat has such a special interest as to entitle him to bring injunction proceeding to prohibit its vacation. Letherman *v.* Hauser, (Neb. 1906) 110 N. W. 745.

9. Nocton *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 555; Howell *v.* Morrisville, 212 Pa. St. 349, 61 Atl. 932.

404. 4. Greist *v.* Amrhyn, (Conn. 1907) 68 Atl. 521; Carter *v.* Barkley, (Iowa 1908) 115 N. W. 21; Heller *v.* Cahill, (Iowa 1908) 115 N. W. 1009; *In re* Jerome Ave., 120 N. Y. App. Div. 297, 105 N. Y. Supp. 319.

405. 2. Perry *v.* Staple, (Neb. 1906) 110 N. W. 652; *In re* Jerome Ave., 120 N. Y. App. Div. 297, 105 N. Y. Supp. 319.

4. Carter *v.* Barkley, (Iowa 1908) 115 N. W. 21.

Seventeen Years. — Heller *v.* Cahill, (Iowa 1908) 115 N. W. 1009.

5. Greist *v.* Amrhyn, (Conn. 1907) 68 Atl. 521; Riverside Tp. *v.* Pennsylvania R. Co., 74 N. J. L. 476, 66 Atl. 433.

6. **Twenty Years' Adverse User by Public.** — Riverside Tp. *v.* Pennsylvania R. Co., 74 N. J. L. 476, 66 Atl. 433.

8. **Same Rule in Nebraska.** — Perry *v.* Staple, (Neb. 1906) 110 N. W. 652.

406. 1. Cowley County *v.* Johnson, 76 Kan. 65, 90 Pac. 805; Murphy *v.* King County, 45 Wash. 587, 88 Pac. 1115.

408. 2. Where the width of public roads is fixed by statute it has been held that an abutting owner who maintains a hedge encroaching thereon for a period of more than twenty years does not acquire title against the public by estoppel. Bigelow *v.* Ritter, 131 Iowa 213, 108 N. W. 218.

3. Heller *v.* Cahill, (Iowa 1908) 115 N. W. 1009.

409. 1. Kemp *v.* Goodnight, 168 Ind. 174, 80 N. E. 160.

5. Dean *v.* Highway Com'rs, (Mich. 1908) 115 N. W. 739; Hopper *v.* Douglas County, 75 Neb. 329, 106 N. W. 330.

Culvert. — Dennis *v.* Osborn, 75 Kan. 557, 89 Pac. 925.

6. Rudnyai *v.* Harwinton, 79 Conn. 91, 63 Atl. 948.

410. 3. See Allison *v.* Cumberland County Council, 97 L. T. N. S. 187; Scott *v.* Towyn Rural Council, 5 Local Gov. Rep. 1050.

11. Gurnsey *v.* Northern California Power Co., (Cal. App. 1908) 94 Pac. 858; Harrison County *v.* Ogden, 133 Iowa 0, 110 N. W. 32; *In re* Niland, 113 N. Y. App. Div. 661, 99 N. Y. Supp. 914; Terry *v.* McClung, 104 Va. 599, 52 S. E. 355; State *v.* Monroe, 40 Wash. 545, 82 Pac. 888.

12. Central R. Co. *v.* Seabright, 73 N. J. L. 625, 64 Atl. 131; State *v.* Monroe, 40 Wash. 545, 82 Pac. 888.

411. 1. Acme Road Machinery Co. *v.* Bridgewater, 185 N. Y. 1, 77 N. E. 879; *In re* Niland, 114 N. Y. App. Div. 661, 99 N. Y. Supp. 914.

4. Hopper *v.* Douglas County, 75 Neb. 329, 106 N. W. 330.

412. 2. Garrett County Com'rs *v.* Blackburn, (Md. 1907) 66 Atl. 31.

3. Maguire *v.* Liverpool Corp., (1905) 1 K. B. 767; Holloway *v.* Birmingham Corp., 3 Local Gov. Rep. 878; Smith *v.* Williams County, 29 Ohio Cir. Ct. 610.

8. Neville *v.* Viner, 115 Ill. App. 364.

Exercise of Discretion — Injunction will not lie to prevent the reasonable exercise of discretion by highway officers. Dennis *v.* Osborn, 75 Kan. 557, 89 Pac. 925.

113. 5. Labo *v.* Asam, 143 Mich. 24, 106 N. W. 281.

114. 10. Savell *v.* State, (Ala. 1907) 43 So. 201.

115. 5. Gurnsey *v.* Northern California Power Co., (Cal. App. 1908) 94 Pac. 858; Ingraham *v.* Brown, 231 Ill. 256, 83 N. E. 156; Western Union Tel. Co. *v.* Krueger, 36 Ind. App. 348, 74 N. E. 25; Com. *v.* Morrison, (Mass. 1908) 83 N. E. 415; Sikes *v.* St. Louis, etc., R. Co., 127 Mo. App. 326, 105 S. W. 702, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 415.

116. 1. See Northam Bridge Co. *v.* South Stoneham Rural Council, 23 Times L. Rep. 476.

4. King *v.* Norcross, (Mass. 1907) 82 N. E. 17; Com. *v.* Morrison, (Mass. 1908) 83 N. E. 415; Snively *v.* Washington Tp., (Pa. 1907) 67 Atl. 465.

12. The right to maintain trees by an abutting owner has been held to be subject to the right of the legislature to provide for their removal in improving the highway, and the reasonable discretion of highway officers acting thereunder. Sherman *v.* Butcher, 72 N. J. L. 53, 60 Atl. 336.

117. 5. Donahue *v.* Keystone Gas Co., 181 N. Y. 313, 73 N. E. 1108.

119. 2. **Removal of Lateral Support** by the owner of the fee makes him liable to the municipality. Chosen Freeholders *v.* Woodcliffe Land Imp. Co., 74 N. J. L. 355, 65 Atl. 844.

4. Gurnsey *v.* Northern California Power Co., (Cal. App. 1908) 94 Pac. 858.

5. **May Remove Obstruction.** — Greist *v.* Amrhyn. (Conn. 1907) 68 Atl. 521.

6. Foudry *v.* St. Louis, etc., R. Co., (Mo. App. 1908) 109 S. W. 80.

Injunction will not be granted at the suit of an abutting owner to protect merely public interests, or for injuries suffered by the public generally. Ruthstrom *v.* Peterson, 72 Kan. 679, 83 Pac. 825.

120. 1. Barnes *v.* Philadelphia, etc., R. Co., 27 Pa. Super. Ct. 84.

3. Mitchell *v.* Einstein, 105 N. Y. App. Div. 413, 94 N. Y. Supp. 210.

4. Bessemer *v.* Carroll, (Ala. 1908) 45 So. 419; Krause *v.* Juneau, 2 Alaska 633; Coffey *v.* Carthage, 200 Mo. 616, 98 S. W. 562; Halifax *v.* Walker, 1 Can. Sup. Ct. Cas. 569.

122. 1. Wilson *v.* Wapello County, 129 Iowa 77, 105 N. W. 363.

3. James *v.* Wellston Tp., (Okla. 1907) 90 Pac. 100.

4. Varner *v.* Turner, 83 Ark. 131, 102 S. W. 1111; Miller *v.* Stuart, (Md. 1907) 68 Atl. 273; Dougherty *v.* Dougherty, 204 Mo. 228, 102 S. W. 1099; Redding *v.* Badger Lumber Co., 127 Mo. App. 625, 106 S. W. 557.

124. 7. Chicago *v.* Hannon, 115 Ill. App. 183; Paducah *v.* Johnson, (Ky. 1906) 93 S. W. 1035; Newport News *v.* Scott, 103 Va. 794, 50 S. E. 266; Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416.

8. Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518; Garrett County Com'rs *v.* Blackburn, (Md. 1907) 66 Atl. 31; Dinsmore *v.* St. Louis, 192 Mo. 255, 91 S. W. 95; Conner *v.* Nevada, 188 Mo. 148, 86 S. W. 256; Campbell *v.* Elkins, 58 W. Va. 308, 52 S. E. 220.

Evidence that the city had caused the removal of a pile of manure from a highway has been held insufficient to establish assumption of control or adoption by the city. Topeka *v.* Cook, 72 Kan. 595, 84 Pac. 376.

125. 3. McKnight *v.* Seattle, 39 Wash. 516, 81 Pac. 998.

6. Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518; Garrett County Com'rs *v.* Blackburn, (Md. 1907) 66 Atl. 31; Campbell *v.* Elkins, 58 W. Va. 308, 52 S. E. 220.

126. 1. Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518; McCook *v.* Parsons, (Neb. 1906) 108 N. W. 167; Birch *v.* New York, 190 N. Y. 397, 83 N. E. 51, *reversing* 121 N. Y. App. Div. 395, 106 N. Y. Supp. 104.

2. Cady *v.* Seattle, 42 Wash. 402, 85 Pac. 19.

It has been held in *New York* that a city permitting the public to use a pier acquired by the city is liable for failure to keep it in a reasonably safe condition, and failure to make any repairs thereon after its acquisition can furnish no excuse or release it from its obligation to the public. Birch *v.* New York, 121 N. Y. App. Div. 395, 106 N. Y. Supp. 104.

3. Louisville *v.* Hall, (Ky. 1906) 91 S. W. 1133; Foster *v.* Kansas City, 114 Mo. App. 728, 90 S. W. 751; Chambers *v.* Braddock, 34 Pa. Super. Ct. 407.

4. Chambers *v.* Braddock, 34 Pa. Super. Ct. 407.

11. Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 630.

12. *United States.* — Grand Forks *v.* Allman, (C. C. A.) 153 Fed. 532.

Alabama. — Mobile *v.* Shaw, (Ala. 1907) 43 So. 94; Montgomery *v.* Reese, 146 Ala. 410, 40 So. 760.

California. — Carty *v.* Boeseke-Dawe Co., 2 Cal. App. 646, 84 Pac. 267.

Colorado. — Denver *v.* Utzler, 38 Colo. 300, 88 Pac. 143.

Connecticut. — Clark *v.* Torrington, 79 Conn. 42, 63 Atl. 657.

Delaware. — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792; Stidham *v.* Delaware City, (Del. 1907) 67 Atl. 175.

District of Columbia. — O'Dwyer *v.* Northern Market Co., 24 App. Cas. (D. C.) 81; Ward *v.* District of Columbia, 24 App. Cas. (D. C.) 524.

Florida. — Daytona *v.* Edson, 46 Fla. 463, 34 So. 954.

Georgia. — Herrington *v.* Macon, 125 Ga. 58, 54 S. E. 71; Cedartown *v.* Brooks, 2 Ga. App. 583, 59 S. E. 836; Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518; Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709.

Idaho. — Eaton *v.* Weiser, 12 Idaho 544, 86 Pac. 541.

Illinois. — Evanston *v.* Richards, 224 Ill. 444, 79 N. E. 673; Gibson *v.* Murray, 216 Ill. 589, 75 N. E. 319; Chicago *v.* Norton, 116 Ill. App. 570; Chicago *v.* Boston, 117 Ill. App. 430; Aurora *v.* Plummer, 122 Ill. App. 142; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387; Purcell *v.* Chicago, 231 Ill. 164, 83 N. E. 137; Rock Island *v.* Littig, 118 Ill. App. 643; White

v. Chicago, 120 Ill. App. 607; Chicago *v.* McKenna, 114 Ill. App. 270; Lockport *v.* Licht, 221 Ill. 35, 77 N. E. 581; Rock Island *v.* Gingles, 217 Ill. 185, 75 N. E. 468.

Indiana. — Mitchell *v.* Tell City, (Ind. App. 1907) 81 N. E. 594; Teague *v.* Bloomington, (Ind. App. 1907) 81 N. E. 103; Muncie *v.* Hey, 164 Ind. 570, 74 N. E. 250; Huntington *v.* Stuver, (Ind. App. 1908) 83 N. E. 518; La Porte *v.* Henry, (Ind. App. 1908) 83 N. E. 655; Vincennes *v.* Spees, 35 Ind. App. 389, 74 N. E. 277, *reversing* (Ind. App. 1904) 72 N. E. 534.

Iowa. — Anders *v.* West Union, 131 Iowa 192, 108 N. W. 226; Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933.

Kentucky. — Henderson *v.* Sizemore, (Ky. 1907) 104 S. W. 722; Louisville *v.* Romer, (Ky. 1906) 97 S. W. 348; Hazel *v.* Owensboro, (Ky. 1907) 99 S. W. 315; Hoffman *v.* Maysville, (Ky. 1906) 97 S. W. 360; Webster *v.* Chesapeake, etc., R. Co., (Ky. 1907) 105 S. W. 945; Covington *v.* Lee, (Ky. 1905) 89 S. W. 493.

Maryland. — Harford County Com'rs *v.* Hause, (Md. 1907) 67 Atl. 273.

Massachusetts. — Mason *v.* Winthrop, (Mass. 1907) 81 N. E. 644; McCarthy *v.* Dedham, 188 Mass. 204, 74 N. E. 319.

Michigan. — Bennett *v.* St. Joseph, 146 Mich. 382, 109 N. W. 604.

Minnesota. — Svendsen *v.* Alden, 101 Minn. 158, 112 N. W. 10; Sumner *v.* Northfield, 96 Minn. 107, 104 N. W. 686.

Mississippi. — Pascagoula *v.* Kirkwood, 86 Miss. 630, 38 So. 547.

Missouri. — Haxton *v.* Kansas City, 190 Mo. 53, 88 S. W. 714; Carthage *v.* Garner, 209 Mo. 688, 108 S. W. 521; Deland *v.* Cameron, 112 Mo. App. 704, 87 S. W. 597; Elliott *v.* Kansas City, 198 Mo. 593, 96 S. W. 1023.

Montana. — Martin *v.* Butte, 34 Mont. 281, 86 Pac. 264.

Nebraska. — Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182.

New York. — Corson *v.* New York, 113 N. Y. App. Div. 679, 99 N. Y. Supp. 921; McKone *v.* Warsaw, 187 N. Y. 336, 80 N. E. 212, *reversing* (Supm. Ct. App. Div.) 84 N. Y. Supp. 1134; Scofield *v.* Poughkeepsie, 122 N. Y. App. Div. 868, 107 N. Y. Supp. 767; Birch *v.* New York, 121 N. Y. App. Div. 395, 106 N. Y. Supp. 104; Van Gorder *v.* Seneca Falls, (Supm. Ct. Tr. T.) 104 N. Y. Supp. 299; Finkle *v.* Valatie, 114 N. Y. App. Div. 251, 99 N. Y. Supp. 715; Farrell *v.* New York, 113 N. Y. App. Div. 687, 99 N. Y. Supp. 947; Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928; McDonald *v.* Degnon-McLean Contracting Co., 124 N. Y. App. Div. 824, 109 N. Y. Supp. 519; Ibbeken *v.* New York, (Supm. Ct. App. T.) 94 N. Y. Supp. 568; Stratton *v.* New York, 190 N. Y. 294, 83 N. E. 40; Butler *v.* Oxford, 186 N. Y. 444, 79 N. E. 712, *reversing* 101 N. Y. App. Div. 611, 92 N. Y. Supp. 1118.

North Carolina. — Fitzgerald *v.* Concord, 140 N. Car. 110, 52 S. E. 309; White *v.* Newberne, (N. Car. 1907) 59 S. E. 902; Kinsey *v.* Kinston, 145 N. Car. 106, 58 S. E. 912.

Ohio. — Toledo *v.* Fuller, 27 Ohio Cir. Ct. 729; Dayton *v.* Glaser, 76 Ohio St. 471, 81

Oklahoma. — Stillwater *v.* Swisher, 16 Okla. 585, 85 Pac. 1110.

Pennsylvania. — Reed *v.* Tarentum, 213 Pa. St. 357, 62 Atl. 928; Ackley *v.* Bradford Tp., 32 Pa. Super. Ct. 487; Scheafer *v.* Iron City Sand Co., 31 Pa. Super. Ct. 476; Clifton *v.* Philadelphia, 217 Pa. St. 102, 66 Atl. 159; Gillard *v.* Chester, 212 Pa. St. 338, 61 Atl. 929; Brader *v.* Lehman Tp., 34 Pa. Super. Ct. 125; Bucher *v.* Sunbury, 216 Pa. St. 89, 64 Atl. 906.

Texas. — San Antonio *v.* Wildenstein, (Tex. Civ. App. 1908) 109 S. W. 231; Rockwall *v.* Heath, (Tex. Civ. App. 1905) 90 S. W. 514.

Washington. — Dignan *v.* Spokane County, 43 Wash. 419, 86 Pac. 649; Larsen *v.* Sedro-Woolley, (Wash. 1908) 94 Pac. 938; Peterson *v.* Seattle, 40 Wash. 33, 5 Ann. Cas. 735, 82 Pac. 141; Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924.

West Virginia. — Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416.

Wisconsin. — Johnson *v.* Highland, 124 Wis. 597, 102 N. W. 1085.

Generally Quæry *v.* Jury (Ga. 1908) Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518.

Illinois. — Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387.

Iowa. — Garnetz *v.* Carroll, (Iowa 1907) 114 N. W. 57.

Kentucky. — Downing *v.* Thompson, (Ky. 1906) 92 S. W. 290; Latonia *v.* Hall, (Ky. 1907) 103 S. W. 354.

Massachusetts. — Gallagher *v.* Watertown, (Mass. 1908) 83 N. E. 1104; Harrigan *v.* Worcester, (Mass. 1908) 84 N. E. 467; Moynihan *v.* Holyoke, 193 Mass. 26, 78 N. E. 742; Adams *v.* Stoneham, 193 Mass. 597, 79 N. E. 881.

Michigan. — Warn *v.* Flint, 140 Mich. 573, 104 N. W. 37; Wedderburn *v.* Detroit, 144 Mich. 684, 108 N. W. 102; Bowen *v.* Detroit, (Mich. 1907) 114 N. W. 344.

Minnesota. — Svendsen *v.* Alden, 101 Minn. 158, 112 N. W. 10; Murphy *v.* South St. Paul, 101 Minn. 341, 112 N. W. 259.

Missouri. — Ahlfeldt *v.* Mexico, (Mo. App. 1908) 108 S. W. 122; Strange *v.* St. Joseph, 112 Mo. App. 629, 87 S. W. 2; Muncy *v.* Bevier, 124 Mo. App. 10, 101 S. W. 157; Fischer *v.* St. Louis, 189 Mo. 567, 88 S. W. 82.

Montana. — Storm *v.* Butte, 35 Mont. 385, 89 Pac. 726.

Nebraska. — Forbes *v.* Omaha, (Neb. 1907) 112 N. W. 326.

New York. — Stratton *v.* New York, 117 N. Y. App. Div. 887, 103 N. Y. Supp. 358; Ladrick *v.* Green Island, 103 N. Y. App. Div. 71, 92 N. Y. Supp. 622; Parks *v.* New York, 111 N. Y. App. Div. 836, 98 N. Y. Supp. 94; Wallace *v.* New Albion, 121 N. Y. App. Div. 66, 105 N. Y. Supp. 524, *affirming* 107 N. Y. App. Div. 172, 94 N. Y. Supp. 793; Corr *v.* New York, 121 N. Y. App. Div. 578, 106 N. Y. Supp. 280; Dickerman *v.* Weeks, 108 N. Y. App. Div. 257, 95 N. Y. Supp. 714; Fox *v.* Manchester, 183 N. Y. 141, 75 N. E. 1116, *reversing* 100 N. Y. App. Div. 512, 91 N. Y. Supp. 1094; Birch *v.* New York, 121 N. Y. App. Div. 395, 106 N. Y. Supp. 104.

North Dakota. Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243.

Ohio. — Norwalk *v.* Jacobs, 27 Ohio Cir. Ct. 691.

Pennsylvania. — Gillard *v.* Chester, 212 Pa. St. 338, 61 Atl. 929; Moore *v.* Wilkes-Barre, (Pa. 1907) 67 Atl. 619; McKim *v.* Philadelphia, 217 Pa. St. 243, 66 Atl. 340; Harvey *v.* Chester, 211 Pa. St. 563, 61 Atl. 118; Ackley *v.* Bradford Tp., 32 Pa. Super. Ct. 487.

Rhode Island. — Foley *v.* Ray, 27 R. I. 127, 61 Atl. 50.

Washington. — Peterson *v.* Seattle, 40 Wash. 33, 5 Ann. Cas. 735, 82 Pac. 141; Bull *v.* Spokane, 46 Wash. 237, 89 Pac. 555; Larsen *v.* Sedro-Woolley, (Wash. 1908) 94 Pac. 938; Bull *v.* Spokane, 46 Wash. 237, 89 Pac. 555.

When Question of Law. — When the municipality's neglect is so palpable that reasonable minds could not differ on the question, such neglect may be determined by the court as a question of law. Brown *v.* Durham, 141 N. Car. 249, 53 S. E. 513.

The Doctrine of Res Ipsa Loquitur has been held to apply in the case of a traveler stepping into an improperly filled water main, the same not being caused by anything beyond the defendant's control. Cunningham *v.* Dady, 119 N. Y. App. Div. 89, 103 N. Y. Supp. 852.

427. **1.** Campbell *v.* Elkins, 58 W. Va. 308, 52 S. E. 220.

2. *Connecticut.* — Campbell *v.* New Haven, 78 Conn. 394, 62 Atl. 665.

Delaware. — Stidham *v.* Delaware City, (Del. 1907) 67 Atl. 175.

District of Columbia. — Scott *v.* District of Columbia, 27 App. Cas. (D. C.) 413.

Illinois. — Chicago *v.* Hutchinson, 129 Ill. App. 239; Rock Island *v.* Littig, 118 Ill. App. 643; White *v.* Chicago, 120 Ill. App. 607; Chicago *v.* Boston, 117 Ill. App. 430; Lockport *v.* Licht, 221 Ill. 35, 77 N. E. 581.

Indiana. — Mitchell *v.* Tell City, (Ind. App. 1907) 81 N. E. 594; Vincennes *v.* Spees, 35 Ind. App. 389, 74 N. E. 277, *reversing* (Ind. App. 1904) 72 N. E. 531.

Montana. — Martin *v.* Butte, 34 Mont. 281, 86 Pac. 264.

New York. — McKone *v.* Warsaw, 187 N. Y. 336, 80 N. E. 212, *reversing* (Supm. Ct. App. Div.) 84 N. Y. Supp. 1134; Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928; Stratton *v.* New York, 190 N. Y. 294, 83 N. E. 40; Butler *v.* Oxford, 186 N. Y. 444, 79 N. E. 712, *reversing* 101 N. Y. App. Div. 611, 92 N. Y. Supp. 1118.

North Carolina. — Fitzgerald *v.* Concord, 140 N. Car. 110, 52 S. E. 309; White *v.* Newberne, (N. Car. 1907) 59 S. E. 992.

Ohio. — Dayton *v.* Glaser, 76 Ohio St. 471, 81 N. E. 991.

Pennsylvania. — Brader *v.* Lehman Tp., 34 Pa. Super. Ct. 125.

Washington. — Dignan *v.* Spokane County, 43 Wash. 419, 86 Pac. 649.

West Virginia. — Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416.

3. Powers *v.* New York, 121 N. Y. App. Div. 433, 106 N. Y. Supp. 166; Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928; Scofield *v.* Poughkeepsie, 122 N. Y. App. Div. 868, 107 N. Y. Supp. 767; Rodrigues *v.* Ossining, 111 N. Y. App. Div. 297, 97 N. Y. Supp. 742; Butler *v.* Oxford, 186 N. Y. 444, 79 N. E. 712, *reversing* 101 N. Y. App. Div. 611, 92 N. Y. Supp. 1118; Norwalk *v.* Jacobs, 29 Ohio Cir. Ct. 123.

An obstruction from three to six inches higher than the surface of a sidewalk and in the usually traveled part, and which existed for about four months, has been held not to belong within that class of defects from which injuries to pedestrians could not be reasonably anticipated. Corr *v.* New York, 121 N. Y. App. Div. 578, 106 N. Y. Supp. 280.

4. Kittredge *v.* Cincinnati, 28 Ohio Cir. Ct. 100.

5. Doherty *v.* Ayer, (Mass. 1908) 83 N. E. 677; Newman *v.* Bullskin Tp., 28 Pa. Super. Ct. 170; Dignan *v.* Spokane County, 43 Wash. 419, 86 Pac. 649.

The Congregation of Crowds on a Sidewalk is not such use as will make the municipality liable for injuries caused by the sidewalk giving way, where the sidewalk is reasonably safe for ordinary travel. Zipkie *v.* Chicago, 117 Ill. App. 418.

6. The use of a bicycle as a conveyance does not prevent the maintenance of an action for injuries if the traveler was proceeding with ordinary care. Clinton *v.* Revere, 195 Mass. 151, 80 N. E. 813.

428. **3.** Lorf *v.* Detroit, 145 Mich. 265, 108 N. W. 661.

429. **3.** Farrel *v.* New York, 113 N. Y. App. Div. 687, 99 N. Y. Supp. 947.

430. **2.** Heath *v.* Manson, 147 Cal. 694, 82 Pac. 331.

13. Statutory Provisions Making Municipality Liable. — See Biggar *v.* Crowland Tp., 13 Ont. L. Rep. 164; Couch *v.* Municipality, 16 Manitoba 656; Curle *v.* Brandon, 15 Manitoba 122.

431. **1.** Denver *v.* Utzler, 38 Colo. 300, 88 Pac. 143; Chicago *v.* Loebel, 228 Ill. 52, 81 N. E. 796; Chicago *v.* Jarvis, 226 Ill. 614, 80 N. E. 1079; Vincennes *v.* Spees, 35 Ind. App. 389, 74 N. E. 277, *reversing* (Ind. App. 1904) 72 N. E. 531; Pace *v.* Webster City, (Iowa 1908) 115 N. W. 888; Cutter *v.* Des Moines, (Iowa 1907) 113 N. W. 1081; Handy *v.* Barber Asphalt Co., 117 La. 637, 42 So. 193; Davis *v.* Adrian, 147 Mich. 300, 110 N. W. 1084; Drake *v.* Kansas City, 190 Mo. 370, 88 S. W. 689; Wells *v.* Interborough Rapid Transit Co., 124 N. Y. App. Div. 631, 109 N. Y. Supp. 231; Meyers *v.* Philadelphia, 217 Pa. St. 159, 66 Atl. 251; Lamb *v.* Pike Tp., 215 Pa. St. 516, 64 Atl. 671; McKim *v.* Philadelphia, 217 Pa. St. 243, 66 Atl. 340.

432. **1.** Chicago *v.* Loebel, 228 Ill. 52, 81 N. E. 796.

6. Cammett *v.* Haverhill, (Mass. 1908) 83 N. E. 331.

7. Cammett *v.* Haverhill, (Mass. 1908) 83 N. E. 331.

433. **1.** *Alabama.* — Dunn *v.* Gunn, 149 Ala. 583, 42 So. 686.

California. — Bowley *v.* Mangrum, 3 Cal. App. 229, 84 Pac. 996; Evarts *v.* Santa Barbara Consol. R. Co., 3 Cal. App. 712, 86 Pac. 830.

District of Columbia. — O'Dwyer *v.* Northern Market Co., 24 App. Cas. (D. C.) 81.

Indiana. — Southern Indiana R. Co. *v.* Norman, 165 Ind. 126, 74 N. E. 896.

Iowa. — Fling *v.* Bal[illegible] N. W. 540; Ryan *v.* Foster, (Iowa 1906) 109 N. W. 1108.

Kentucky. — Cumberland [illegible] Co. *v.* Drexilius, 120 Ky. 493, 87 S. W. 266; Mitchell *v.* Brady, (Ky. 1907) 99 S. W. 266; Louisville Home Telephone Co. *v.* Gasper, (Ky. 1906) 93 S. W. 1057.

Louisiana. — Mayronne *v.* Keegan, 117 La. 661, 42 So. 212.

Massachusetts. — Dahlin *v.* Walsh, 192 Mass. 163, 77 N. E. 830.

New Hampshire. — Harriman *v.* Moore, (N. H. 1907) 67 Atl. 225.

New York. — Hart *v.* McKenna, 106 N. Y. App. Div. 219, 94 N. Y. Supp. 216; Sweet *v.* Perkins, 115 N. Y. App. Div. 784, 101 N. Y. Supp. 163; Reynolds *v.* Strong, (Supm. Ct. App. T.) 103 N. Y. Supp. 106; Mullins *v.* Siegel-Cooper Co., 183 N. Y. 129, 75 N. E. 1112, *affirming* 95 N. Y. App. Div. 234, 88 N. Y. Supp. 737.

Pennsylvania. — Whaley *v.* Citizens' Nat. Bank, 28 Pa. Super. Ct. 531.

Texas. — Kampmann *v.* Rothwell, (Tex. Civ. App. 1908) 107 S. W. 120.

Utah. — Davis *v.* Oregon Short Line R. Co., 31 Utah 307, 88 Pac. 2.

An Individual's Negligence Is a Question for the Jury when negligence is an element and the liability is not based on the creation or maintenance of a nuisance. Downing *v.* Thompson, (Ky. 1906) 92 S. W. 290; Humphrey *v.* Leonard, 151 Cal. 375, 90 Pac. 705; Huntington *v.* Stuver, (Ind. App. 1908) 83 N. E. 518; Chesapeake, etc., Telephone Co. *v.* Lysher, (Md. 1908) 68 Atl. 619; Smith *v.* Edison Electric Illuminating Co., (Mass. 1908) 84 N. E. 434; Owens *v.* Harvard Brewing Co., 194 Mass. 498, 80 N. E. 509; French *v.* Boston Coal Co., 195 Mass. 234, 81 N. E. 265; Cammett *v.* Haverhill, (Mass. 1908) 83 N. E. 331; Lattimore *v.* Union Electric Light, etc., Co., (Mo. App. 1907) 106 S. W. 543; Hart *v.* McKenna, 106 N. Y. App. Div. 219, 94 N. Y. Supp. 216; Shane *v.* National Biscuit Co., 102 N. Y. App. Div. 188, 92 N. Y. Supp. 637; Towner *v.* Public Ledger Co., 215 Pa. St. 624, 64 Atl.

Negligence as Matter of Law. — An act in violation of an express provision of law is negligence as a matter of law. William Bensel Constr. Co. *v.* Homer, 2 Ga. App. 369, 58 S. E. 489; Vanderveer *v.* Moran, (Neb. 1907) 112 N. W. 581.

Leaving open and unguarded at night a cellar door extending over more than two-thirds the width of a sidewalk is negligence as a matter of law. Central Consumers Co. *v.* Booher, (Ky. 1908) 107 S. W. 198.

2. A judgment may be obtained against either the municipality or the individual causing the obstruction, or both, according to the facts. Diamond Rubber Co. *v.* Harryman, (Colo. 1907) 92 Pac. 922.

4. Hynes *v.* Brewer, 194 Mass. 435, 80 N. E. 503; Berger *v.* Content, (Supm. Ct. App. T.) 94 N. Y. Supp. 12; Whaley *v.* Citizens' Nat. Bank, 28 Pa. Super. Ct. 531.

5. Berger *v.* Content, (Supm. Ct. App. T.) 94 N. Y. Supp. 12.

134. 4. Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606; Bennett *v.* Everett, 191 Mass. 364, 77 N. E. 886; Lamb *v.* Pike Tp., 215 Pa. St. 516, 64 Atl. 671; Warren Bros. Co. *v.* Taylor, (R. I. 1908) 69 Atl. 303.

5. Lamb *v.* Pike Tp., 215 Pa. St. 516, 64 Atl. 671.

135. 2. Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606; Bennett *v.* Everett, 191 Mass. 364, 77 N. E. 886; Godfrey *v.* New York, 104 N. Y. App. Div. 357, 93 N. Y. Supp. 899; Kinsey *v.* Kinston, 145 N. Car. 106, 58 S. E. 912.

5. Exemption from Liability Based on Nuisance. — Sanford *v.* White, (C. C. A.) 150 Fed. 724.

6. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Perry *v.* People's Gas Light, etc., Co., 119 Ill. App. 389; Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606; Smith *v.* Edison Electric Illuminating Co., (Mass. 1908) 84 N. E. 434.

7. Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606.

136. 4. Liability on the part of abutting owners will be charged only when the statute plainly fixes such a duty upon them. Hay *v.* Baraboo, 127 Wis. 1, 105 N. W. 654.

137. 7. Augusta *v.* Dozier, 126 Ga. 524, 55 S. E. 234, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437.

139. 4. Mitchell *v.* Brady, (Ky. 1907) 99 S. W. 266.

140. 1. *Alabama.* — Anniston *v.* Ivey, (Ala. 1907) 44 So. 48.

District of Columbia. — District of Columbia *v.* Duryee, 29 App. Cas. (D. C.) 327, 10 Ann. Cas. 675.

Georgia. — Harrell *v.* Macon, 1 Ga. App. 413, 58 S. E. 124, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 440.

Iowa. — Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555; Rea *v.* Sioux City, 127 Iowa 615, 103 N. W. 940.

Massachusetts. — Cammett *v.* Haverhill, (Mass. 1908) 83 N. E. 331; Thompson *v.* Bolton, (Mass. 1908) 83 N. E. 1089; Mason *v.* Winthrop, (Mass. 1907) 81 N. E. 644; Bennett *v.* Everett, 191 Mass. 364, 77 N. E. 886.

Michigan. — Barker *v.* Kalamazoo, 146 Mich. 257, 109 N. W. 427.

Minnesota. — Sumner *v.* Northfield, 96 Minn. 107, 104 N. W. 686.

Missouri. — Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96.

Nebraska. — Omaha *v.* Lewis, 74 Neb. 184, 103 N. W. 1041.

New York. — Stratton *v.* New York, 117 N. Y. App. Div. 887, 103 N. Y. Supp. 358; Morroney *v.* New York, (Supm. Ct. Tr. T.) 49 Misc. (N. Y.) 307, 97 N. Y. Supp. 642.

Ohio. — Norwalk *v.* Jacobs, 27 Ohio Cir. Ct. 691.

Pennsylvania. — Stock *v.* Allegheny, 213 Pa. St. 573, 63 Atl. 1115; Wertz *v.* Girardville, 30 Pa. Super. Ct. 260.

Washington. — Larsen *v.* Sedro-Woolley, (Wash. 1908) 94 Pac. 938; Harris *v.* Mt. Vernon, 41 Wash. 444, 83 Pac. 1023.

Wisconsin.—Carlon *v.* Greenfield, 130 Wis. 342, 110 N. W. 208; Johnson *v.* Highland, 124 Wis. 597, 102 N. W. 1085.

When the existence of the defect is clearly proven by the evidence, the question whether it is such as to render the municipality liable becomes a question of law for the court. Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416.

2. Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416.

3. Handy *v.* Barber Asphalt Co., 117 La. 637, 42 So. 193; Elliott *v.* Kansas City, 198 Mo. 593, 96 S. W. 1023; Hayes *v.* Seattle, 43 Wash. 500, 86 Pac. 852; Burns *v.* Toronto, 13 Ont. L. Rep. 109.

441. 2. Elliott *v.* Kansas City, 198 Mo. 593, 96 S. W. 1023.

3. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 756; Weber *v.* Union Development, etc., Co., 118 La. 77, 42 So. 652; Manney *v.* Curtis, 113 N. Y. App. Div. 421, 99 N. Y. Supp. 288.

4. Daytona *v.* Edson, 46 Fla. 463, 34 So. 954, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 441; Mitchell *v.* Tell City, (Ind. App. 1907) 81 N. E. 594; Vincennes *v.* Spees, 35 Ind. App. 389, 74 N. E. 277, *reversing* (Ind. App. 1904) 72 N. E. 531; Hazelrigg *v.* Frankfort, (Ky. 1906) 92 S. W. 584; White *v.* Newberne, (N. Car. 1907) 59 S. E. 992.

442. 2. Carty *v.* Boeseke-Dawe Co., 2 Cal. App. 646, 84 Pac. 267; La Porte *v.* Henry, (Ind. App. 1908) 83 N. E. 655; Sellersburg *v.* Ford, 39 Ind. App. 94, 79 N. E. 220; Garnetz *v.* Carroll, (Iowa 1907) 114 N. W. 57; Stevens *v.* Citizens' Gas, etc., Co., 132 Iowa 597, 109 N. W. 1090; Ahlfeldt *v.* Mexico, (Mo. App. 1908) 108 S. W. 122; Lindsay *v.* Kansas City, 195 Mo. 166, 93 S. W. 273; Corcoran *v.* New York, 188 N. Y. 131, 80 N. E. 660, *reversing* 114 N. Y. App. Div. 910, 99 N. Y. Supp. 1136.

It has been held that the municipality is not liable for failure to place guards about an obviously dangerous excavation in the daytime. Rock Island *v.* Gingles, 217 Ill. 185, 75 N. E. 468.

3. Evarts *v.* Santa Barbara Consol. R. Co., 3 Cal. App. 712, 86 Pac. 830; Rock *v.* American Constr. Co., (La. 1908) 45 So. 741; Weber *v.* Union Development, etc., Co., 118 La. 77, 42 So. 652; Wakefield *v.* Boston Coal Co., (Mass. 1908) 83 N. E. 1116; French *v.* Boston Coal Co., 195 Mass. 334, 81 N. E. 265; Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141; Kampmann *v.* Rothwell, (Tex. Civ. App. 1908) 107 S. W. 120.

443. 4. Citizens' Gas, etc., Co. *v.* Nicholson, (C. C. A.) 152 Fed. 389.

5. Citizens' Gas, etc., Co. *v.* Nicholson, (C. C. A.) 152 Fed. 389; Garnetz *v.* Carroll, (Iowa 1907) 114 N. W. 57; McMahon *v.* Boston, 190 Mass. 388, 76 N. E. 957; Ahlfeldt *v.* Mexico, (Mo. App. 1908) 108 S. W. 122; Keithley *v.* Independence, 120 Mo. App. 255, 96 S. W. 733; Godfrey *v.* New York, 104 N. Y. App. Div. 357, 93 N. Y. Supp. 899.

6. Garnetz *v.* Carroll, (Iowa 1907) 114 N. W. 57; Gedroice *v.* New York, 109 N. Y. App. Div.

444. 2. Ledge of Rocks.—Dralle *v.* Reedsburg, 130 Wis. 347, 110 N. W. 210.

3. Biggar *v.* Crowland Tp., 13 Ont. L. Rep. 104.

10. Kelly *v.* Whitchurch Tp., 11 Ont. L. Rep. 155, *affirmed* 12 Ont. L. Rep. 83.

445. 2. Royal Center *v.* Bingaman, (Ind. App. 1906) 77 N. E. 811; Cutter *v.* Des Moines, (Iowa 1907) 113 N. W. 1081; Carlon *v.* Greenfield, 130 Wis. 342, 110 N. W. 208.

446. 2. Hadwell *v.* Righton, (1907) 2 K. B. 345; Smith *v.* Illinois Cent. R. Co., (Ky. 1907) 105 S. W. 96; Forsythe *v.* Canadian Pac. R. Co., 10 Ont. L. Rep. 73.

6. Royal Center *v.* Bingaman, (Ind. App. 1906) 77 N. E. 811; Carlon *v.* Greenfield, 130 Wis. 342, 110 N. W. 208; Forsythe *v.* Canadian Pac. R. Co., 10 Ont. L. Rep. 73.

7. Carlon *v.* Greenfield, 130 Wis. 342, 110 N. W. 208.

447. 5. Tobin *v.* Waterloo, 131 Iowa 75, 107 N. W. 1031; Bull *v.* Spokane, 46 Wash. 237, 89 Pac. 555.

6. Chicago *v.* Hutchinson, 129 Ill. App. 239; Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555; Evans *v.* Concordia, 74 Kan. 70, 85 Pac. 813; Kopper *v.* Yonkers, 110 N. Y. App. Div. 747, 97 N. Y. Supp. 425.

7. Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555; Kopper *v.* Yonkers, 110 N. Y. App. Div. 747, 97 N. Y. Supp. 425.

448. 1. East Dubuque *v.* Brugger, 118 Ill. App. 421; Chicago *v.* Hutchinson, 129 Ill. App. 239; Tobin *v.* Waterloo, 131 Iowa 75, 107 N. W. 1031; Evans *v.* Concordia, 74 Kan. 70, 85 Pac. 813; Zunz *v.* New York, (Supm. Ct. App. T.) 103 N. Y. Supp. 222; Brennan *v.* New York, 117 N. Y. App. Div. 849, 103 N. Y. Supp. 266; Rodrigues *v.* Ossining, 111 N. Y. App. Div. 297, 97 N. Y. Supp. 742; Norwalk *v.* Tuttle, 73 Ohio St. 242, 76 N. E. 617; Blaine *v.* Philadelphia, 33 Pa. Super. Ct. 177; Garland *v.* Wilkes-Barre, 212 Pa. St. 151, 61 Atl. 820.

2. Tobin *v.* Waterloo, 131 Iowa 75, 107 N. W. 1031; Storm *v.* Butte, 35 Mont. 385, 89 Pac. 726; Kopper *v.* Yonkers, 110 N. Y. App. Div. 747, 97 N. Y. Supp. 425; Moore *v.* Philadelphia, 33 Pa. Super. Ct. 194; Bull *v.* Spokane, 46 Wash. 237, 89 Pac. 555.

449. 6. Walsh *v.* New York, 109 N. Y. App. Div. 541, 96 N. Y. Supp. 540; Pymm *v.* New York, 111 N. Y. App. Div. 330, 97 N. Y. Supp. 1108.

7. Powers *v.* Moravia, 121 N. Y. App. Div. 191, 108 N. Y. Supp. 159.

9. Muncie *v.* Hey, 164 Ind. 570, 74 N. E. 250; Hofacre *v.* Monticello, 128 Iowa 239, 103 N. W. 488.

450. 6. Kopper *v.* Yonkers, 110 N. Y. App. Div. 747, 97 N. Y. Supp. 425.

7. Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555.

8. Bull *v.* Spokane, 46 Wash. 237, 89 Pac. 555.

451. 4. Greenlaw *v.* Milliken, 100 Me. 440, 62 Atl. 145.

6. Mitchell *v.* Tell City, (Ind. App. 1907) 81 N. E. 594; Doherty *v.* Ayer, (Mass. 1908) 83 N. E. 677; Ruppenthal *v.* St. Louis, 190 Mo. 213, 88 S. W. 612; Nelson *v.* Spokane, 45 Wash. 31, 87 Pac. 1048.

152. 4. Mobile *v.* Shaw, (Ala. 1907) 43 So. 94; Chambers *v.* Braddock, 34 Pa. Super. Ct. 407.

153. 1. Rea *v.* Sioux City, 127 Iowa 615, 103 N. W. 949.

2. Larsen *v.* Sedro-Woolley, (Wash. 1908) 94 Pac. 938.

154. 1. Coppins *v.* Jefferson, 126 Wis. 578, 105 N. W. 1078.

2. Larsen *v.* Sedro-Woolley, (Wash. 1908) 94 Pac. 938.

3. Schimberg *v.* Cutler, (C. C. A.) 142 Fed. 701; Nelson *v.* Spokane, 45 Wash. 31, 87 Pac. 1048.

4. Schimberg *v.* Cutler, (C. C. A.) 142 Fed. 7[illegible].

155. 3. Vincennes *v.* Spees, 35 Ind. App. 389, 74 N. E. 277, *reversing* (Ind. App. 1904) 72 N. E. 531; Cutting *v.* Shelburne, 193 Mass. 1, 78 N. E. 752; Wallace *v.* New Albion, 121 N. Y. App. Div. 66, 105 N. Y. Supp. 524, *affirming* 107 N. Y. App. Div. 172, 94 N. Y. Supp. 793; Schell *v.* German Flats, 123 N. Y. App. Div. 197, 108 N. Y. Supp. 219, *affirming* (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 110.

Invisible Dangers, such as rotted wooden drain pipes, rendering the earth above them unstable, need not be guarded against by barriers. Hoffman *v.* Maysville, (Ky. 1906) 97 S. W. 360.

Temporary Walk. — It has been held that a municipality is not liable for failure to place railings at the sides of a temporary walk erected by the city on private premises at the request of the owners to give them access to the roadway during improvements to the highway. Chicago *v.* McKenna, 114 Ill. App. 270.

156. 1. A Bardy Area is not such a danger as must be guarded by barriers. Doherty *v.* Ayer, (Mass. 1908) 83 N. E. 677.

157. 7. Wheeler *v.* Ft. Dodge, 131 Iowa 566, 108 N. W. 1057.

158. 1. Wheeler *v.* Ft. Dodge, 131 Iowa 566, 108 N. W. 1057; Mansfield *v.* New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386.

6. Farrell *v.* Dubuque, 129 Iowa 447, 105 N. W. 696.

9. McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

159. 1. **Slippery Asphalt — Liability Not Matter of Course.** — Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928.

7. Denver *v.* Utzler, 38 Colo. 300, 88 Pac. 143; Crawfordsville *v.* Van Cleave, 39 Ind. App. 574, 77 N. E. 1149; Royal Center *v.* Bingaman, (Ind. App. 1906) 77 N. E. 811; Hazel *v.* Owensboro, (Ky. 1907) 99 S. W. 315; Briggs *v.* Pine River Tp., (Mich. 1907) 114 N. W. 221; Brink *v.* Grand Rapids, 144 Mich. 472, 108 N. W. 430; Newman *v.* Bullskin Tp., 28 Pa. Super. Ct. 170; Elseeck *v.* Capwell, (R. I. 1907) 67 Atl. 421.

160. 2. Janes *v.* Tampa, 52 Fla. 292, 42 So. 720; Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933; Emporia *v.* White, 74 Kan. 864, 86 Pac. 295; Covington *v.* Billiter, (Ky. 1907) 99 S. W. 318; Louisville Home Telephone Co. *v.* Gasper, (Ky. 1906) 93 S. W. 1057; Clinton *v.* Revere, 195 Mass. 151, 80 N. E. 813; Dallas *v.* McCullough, (Tex. Civ. App. 1906) 95 S. W. 1121; Peterson *v.* Seattle, 40 Wash. 33, 5 Ann. Cas. 735, 82 Pac. 141; Short *v.* Spokane, 41 Wash. 257, 83 Pac. 183.

161. 2. Denver *v.* Utzler, 38 Colo. 300, 88 Pac. 143; Norwalk *v.* Jacobs, 29 Ohio Cir. Ct. 123.

3. Denver *v.* Utzler, 38 Colo. 300, 88 Pac. 143; Janes *v.* Tampa, 52 Fla. 292, 42 So. 729; Thomas *v.* North Norwich Tp., 9 Ont. L. Rep. 666.

164. 7. Covington Saw Mill, etc., Co. *v.* Drexilius, 120 Ky. 493, 87 S. W. 266; Compty *v.* C. H. Starke Dredge, etc., Co., 129 Wis. 622, 109 N. W. 650.

165. 7. Buchl[illegible] 27, 105 N. W. 336.

10. *Iowa.* — Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933; Ryan *v.* Foster, (Iowa 1906) 109 N. W. 1108.

Kentucky. — Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337; Louisville *v.* Romer, (Ky. 1906) 97 S. W. 348.

Louisiana. — Weber *v.* Union Development, etc., Co., 118 La. 77, 42 So. 652, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 465.

Massachusetts. — MacFarlane *v.* Boston El. R. Co., 194 Mass. 183, 80 N. E. 447.

Missouri. — Deland *v.* Cameron, 112 Mo. App. 704, 87 S. W. 597; Diamond *v.* Kansas City, 120 Mo. App. 185, 96 S. W. 492; Heberling *v.* Warrensburg, 204 Mo. 604, 103 S. W. 36; Elliott *v.* Kansas City, 198 Mo. 593, 96 S. W. 1023.

Nebraska. — Nicholson *v.* South Omaha, (Neb. 1906) 110 N. W. 558.

Pennsylvania. — Dougherty *v.* Philadelphia, 210 Pa. St. 591, 60 Atl. 261.

West Virginia. — Parrish *v.* Huntington, 57 W. Va. 286, 50 S. E. 416.

Wisconsin. — Pumorlo *v.* Merrill, 125 Wis. 102, 103 N. W. 464.

166. 1. *Alabama.* — Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Montgomery *v.* Reese, 146 Ala. 410, 40 So. 760.

California. — Carty *v.* Boeseke-Dawe Co., 2 Cal. App. 646, 84 Pac. 267.

Delaware. — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792; Stidham *v.* Delaware City, (Del. 1907) 67 Atl. 175.

District of Columbia. — Ward *v.* District of Columbia, 24 App. Cas. (D. C.) 524.

Illinois. — Perry *v.* People's Gas Light, etc., Co., 119 Ill. App. 389; Palestine *v.* Siler, 225 Ill. 630, 80 N. E. 345.

Indiana. — Valparaiso *v.* Schwerdt, (Ind. App. 1907) 82 N. E. 923; Muncie *v.* Hey, 164 Ind. 570, 74 N. E. 250.

Iowa. — Machacek *v.* Hall, 131 Iowa 412, 105 N. W. 690; Ryan *v.* Foster, (Iowa 1906) 109 N. W. 1108.

Kentucky. — Central Consumers Co. *v.* Booher, (Ky. 1908) 107 S. W. 198.

Louisiana. — Weber *v.* Union Development, etc., Co., 118 La. 77, 42 So. 652; Rock *v.* American Constr. Co., (La. 1908) 45 So. 741.

Massachusetts. — Owens *v.* Harvard Brewing Co., 194 Mass. 498, 80 N. E. 509; Keith *v.* Worcester, etc., St. R. Co., (Mass. 1907) 82 N. E. 680; Moret *v.* George A. Fuller Co., 195 Mass. 118, 80 N. E. 789; Campbell *v.* Boston, 189 Mass. 7, 75 N. E. 96.

Missouri. — Ahlfeldt *v.* Mexico, (Mo. App.

1908) 108 S. W. 122; Heberling *v.* Warrensburg, 204 Mo. 604, 103 S. W. 36; Dinsmore *v.* St. Louis, 192 Mo. 255, 91 S. W. 95; Stout *v.* Columbia, 118 Mo. App. 439, 94 S. W. 307; Haxton *v.* Kansas City, 190 Mo. 53, 88 S. W. 714; Conner *v.* Nevada, 188 Mo. 148, 86 S. W. 256; Elliott *v.* Kansas City, 198 Mo. 593, 96 S. W. 1023; Cassaday *v.* Kansas City, 119 Mo. App. 116, 95 S. W. 948.

New York. — Stratton *v.* New York, 117 N. Y. App. Div. 887, 103 N. Y. Supp. 358; Godfrey *v.* New York, 104 N. Y. App. Div. 357, 93 N. Y. Supp. 899; Manney *v.* Curtis, 113 N. Y. App. Div. 421, 99 N. Y. Supp. 288.

North Dakota. — Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359; Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243.

Oklahoma. — Stillwater *v.* Swisher, 16 Okla. 585, 85 Pac. 1110; Oklahoma City *v.* Reed, 17 Okla. 518, 87 Pac. 645.

Pennsylvania. — Gillard *v.* Chester, 212 Pa. St. 338, 61 Atl. 929; Fetterman *v.* Rush Tp., 28 Pa. Super. Ct. 77; Becker *v.* Philadelphia, 212 Pa. St. 379, 61 Atl. 942.

Texas. — Dallas *v.* McCullough, (Tex. Civ. App. 1906) 95 S. W. 1121.

Washington. — Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924; Lemman *v.* Spokane, 38 Wash. 98, 80 Pac. 280.

Wisconsin. — Pecor *v.* Oconto, 125 Wis. 335, 104 N. W. 88.

A traveler has the right to assume that, after the lapse of sufficient time in which to make repairs, defects previously noticed have been remedied. Deland *v.* Cameron, 112 Mo. App. 704, 87 S. W. 597.

2. Perry *v.* People's Gas Light, etc., Co., 119 Ill. App. 389; Valparaiso *v.* Schwerdt, (Ind. App. 1907) 82 N. E. 923; Weber *v.* Union Development, etc., Co., 118 La. 77, 42 So. 652; Barker *v.* Kalamazoo, 146 Mich. 257, 109 N. W. 427; Lattimore *v.* Union Electric Light, etc., Co., (Mo. App. 1907) 106 S. W. 543.

3. Coffey *v.* Carthage, 200 Mo. 616, 98 S. W. 562.

467. 2. Dwyer *v.* Port Allegheny, 216 Pa. St. 22, 64 Atl. 854.

3. Lalond *v.* Toledo, 27 Ohio Cir. Ct. 220.

4. *United States.* — Guild *v.* Pringle, (C. C. A.) 145 Fed. 312.

California. — Wile *v.* Los Angeles Ice, etc., Co., 2 Cal. App. 190, 83 Pac. 271.

Colorado. — Ft. Collins *v.* Yetter, 38 Colo. 87, 89 Pac. 777.

Delaware. — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792.

District of Columbia. — Ward *v.* District of Columbia, 24 App. Cas. (D. C.) 524.

Georgia. — Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518; William Bensel Constr. Co. *v.* Homer, 2 Ga. App. 369, 58 S. E. 489.

Illinois. — Purcell *v.* Chicago, 231 Ill. 164, 83 N. E. 137; Chicago *v.* Bork, 227 Ill. 60, 81 N. E. 27; Wallace *v.* Farmington, 231 Ill. 232, 83 N. E. 180; Gardner *v.* Paulson, 117 Ill. App. 17; Perry *v.* People's Gas Light, etc., Co., 119 Ill. App. 389; Chicago *v.* Norton, 116 Ill. App. 570; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387.

Indiana. — Terre Haute *v.* Bloomington, (Ind. App. 1907) 81 N. E. 103; Valparaiso *v.* Schwerdt, (Ind. App. 1907) 82 N. E. 923; Indianapolis *v.* Mullally, 38 Ind. App. 125, 77 N. E. 1132.

Iowa. — Machacek *v.* Hall, 131 Iowa 412, 105 N. W. 690; Arnold *v.* Waterloo, 128 Iowa 410, 104 N. W. 442; Wheeler *v.* Ft. Dodge, 131 Iowa 566, 108 N. W. 1057; Rea *v.* Sioux City, 127 Iowa 615, 103 N. W. 949; Cook *v.* Hedrick, (Iowa 1907) 112 N. W. 157; Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933; Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555; Ryan *v.* Foster, (Iowa 1906) 109 N. W. 1108.

Kentucky. — Covington *v.* Billiter, (Ky. 1907) 99 S. W. 318; Brownsville *v.* Arbuckle, (Ky. 1907) 99 S. W. 239; Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337.

Maryland. — Harford County Com'rs *v.* Hause, (Md. 1907) 67 Atl. 273; Chesapeake, etc., Telephone Co. *v.* Lysher, (Md. 1908) 68 Atl. 619.

Massachusetts. — Owens *v.* Harvard Brewing Co., 194 Mass. 498, 80 N. E. 509; French *v.* Boston Coal Co., 195 Mass. 334, 81 N. E. 265; Clinton *v.* Revere, 195 Mass. 151, 80 N. E. 813; McMahon *v.* Boston, 190 Mass. 388, 76 N. E. 957; Campbell *v.* Boston, 189 Mass. 7, 75 N. E. 96; Bennett *v.* Everett, 191 Mass. 364, 77 N. E. 886; Torphy *v.* Fall River, 188 Mass. 310, 74 N. E. 465; Thompson *v.* Bolton, (Mass. 1908) 83 N. E. 1089; Gallagher *v.* Watertown, (Mass. 1908) 83 N. E. 1104; Cutting *v.* Shelburne, 193 Mass. 1, 78 N. E. 752; Adams *v.* Stoneham, 193 Mass. 597, 79 N. E. 881.

Michigan. — Vander Velde *v.* Leroy, 140 Mich. 359, 103 N. W. 812; Judd *v.* Caledonia Tp., (Mich. 1907) 114 N. W. 346; Hendershott *v.* Grand Rapids, 142 Mich. 140, 105 N. W. 140; Warn *v.* Flint, 140 Mich. 573, 104 N. W. 37; Davis *v.* Adrian, 147 Mich. 300, 110 N. W. 1084; Barker *v.* Kalamazoo, 146 Mich. 257, 109 N. W. 427; Lewis *v.* Marshall, 146 Mich. 389, 109 N. W. 663.

Minnesota. — Murphy *v.* South St. Paul, 101 Minn. 341, 112 N. W. 259.

Missouri. — Heberling *v.* Warrensburg, 204 Mo. 604, 103 S. W. 36; Lattimore *v.* Union Electric Light, etc., Co., (Mo. App. 1907) 106 S. W. 543; Haxton *v.* Kansas City, 190 Mo. 53, 88 S. W. 714; Fischer *v.* St. Louis, 189 Mo. 567, 88 S. W. 82; Deland *v.* Cameron, 112 Mo. App. 704, 87 S. W. 597; Coffey *v.* Carthage, 200 Mo. 616, 98 S. W. 562; Muncy *v.* Bevier, 124 Mo. App. 10, 101 S. W. 157; Heether *v.* Huntsville, 121 Mo. App. 495, 97 S. W. 239; Keithley *v.* Independence, 120 Mo. App. 255, 96 S. W. 733.

Nebraska. — Lexington *v.* Kreitz, 73 Neb. 770, 103 N. W. 444; Jacobsen *v.* Omaha, (Neb. 1907) 113 N. W. 792; Beatrice *v.* Forbes, 74 Neb. 125, 103 N. W. 1069; Nicholson *v.* South Omaha, (Neb. 1906) 110 N. W. 558.

New York. — Walsh *v.* New York, 109 N. Y. App. Div. 541, 96 N. Y. Supp. 540; Stratton *v.* New York, 117 N. Y. App. Div. 887, 103 N. Y. Supp. 358; Ryan *v.* Brown, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 67, 99 N. Y. Supp. 868; Penna *v.* New York, 111 N. Y. App. Div. 330, 97 N. Y. Supp. 1108; Nicols *v.* New Rochelle, 105 N. Y. App. Div. 77, 93 N. Y. Supp. 796; Dickerman *v.* Weeks, 108 N. Y. App. Div. 257, 95 N. Y. Supp. [illegible] Cox *v.* Manchester, 185 N. Y. 141, 75 N. E.

1116, *reversing* 100 N. Y. App. Div. 512, 91 N. Y. Supp. 1094; Shane *v.* National Biscuit Co., 102 N. Y. App. Div. 188, 92 N. Y. Supp. 637; Ladrick *v.* Green Island, 103 N. Y. App. Div. 71, 92 N. Y. Supp. 622; Rodrigues *v.* Ossining, 111 N. Y. App. Div. 297, 97 N. Y. Supp. 742.

North Carolina. — Brown *v.* Durham, 141 N. Car. 249, 53 S. E. 513.

North Dakota. — Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243, Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359.

Ohio. — Lalond *v.* Toledo, 27 Ohio Cir. Ct. 220; Toledo *v.* Fuller, 27 Ohio Cir. Ct. 729.

Pennsylvania. — Ackley *v.* Bradford Tp., 32 Pa. Super. Ct. 487; Jordan *v.* Philadelphia, 29 Pa. Super. Ct. 502; Dougherty *v.* Philadelphia, 210 Pa. St. 591, 60 Atl. 261; Fetterman *v.* Rush Tp., 28 Pa. Super. Ct. 77; Becker *v.* Philadelphia, 212 Pa. St. 379, 61 Atl. 942; Moore *v.* Wilkes-Barre, (Pa. 1907) 67 Atl. 619; Steck *v.* Allegheny, 213 Pa. St. 573, 62 Atl. 1115; Bucher *v.* Sunbury, 216 Pa. St. 89, 64 Atl. 906.

South Carolina. — Kennedy *v.* Greenville, 78 S. Car. 124, 58 S. E. 989.

Texas. — Alice, etc., Telephone Co. *v.* Billingsley, 33 Tex. Civ. App. 452, 77 S. W. 255.

Virginia. — Newport News *v.* Scott, 103 Va. 794, 50 S. E. 266.

Washington. — Lemman *v.* Spokane, 38 Wash. 98, 80 Pac. 280; Larsen *v.* Sedro-Woolley, (Wash. 1908) 94 Pac. 938; Cady *v.* Seattle, 42 Wash. 402, 85 Pac. 19; Austin *v.* Bellingham, 45 Wash. 460, 88 Pac. 834; Peterson *v.* Seattle, 40 Wash. 33, 5 Ann. Cas. 735, 82 Pac. 141; Shannon *v.* Tacoma, 41 Wash. 220, 83 Pac. 186.

Wisconsin. — Johnson *v.* Highland, 124 Wis. 597, 102 N. W. 1085; Pecor *v.* Oconto, 125 Wis. 335, 104 N. W. 88; Compty *v.* C. H. Starke Dredge, etc., Co., 129 Wis. 622, 109 N. W. 650; Coppins *v.* Jefferson, 126 Wis. 578, 105 N. W. 1078.

468. **1.** Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359.

6. *Connecticut.* — Clark *v.* Torrington, 79 Conn. 42, 63 Atl. 657.

Georgia. — Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518; Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709.

Illinois. — Highland Park *v.* Gerkin, 122 Ill. App. 149; Wallace *v.* Farmington, 231 Ill. 232, 83 N. E. 180; Gardner *v.* Paulson, 117 Ill. App. 17; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387.

Iowa. — Cook *v.* Hedrick, (Iowa 1907) 112 N. W. 157; Arnold *v.* Waterloo, 128 Iowa 410, 104 N. W. 442.

Kansas. — Ottawa *v.* Green, 72 Kan. 214, 83 Pac. 616.

Kentucky. — Brownsville *v.* Arbuckle, (Ky. 1907) 99 S. W. 239; Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606.

Massachusetts. — Wakefield *v.* Boston Coal Co., (Mass. 1908) 83 N. E. 1116; Thompson *v.* Bolton, (Mass. 1908) 83 N. E. 1089; Owens *v.* Harvard Brewing Co., 194 Mass. 498, 80 N. E. 509; Hynes *v.* Brewer, 194 Mass. 435, 80 N. E. 511; Campbell *v.* Boston, 194 Mass. [illegible] N. E. 96; McMahon *v.* Boston, 190 Mass. 388, 76 N. E. 957; Torphy *v.* Fall River, 188 Mass. 310, 74 N. E. 465; Cutting *v.* Shelburne, 193 Mass. 1, 78 N. E. 752.

Michigan. — Vander Velde *v.* Leroy, 140 Mich. 359, 103 N. W. 812; Hodge *v.* St. Louis, 146 Mich. 173, 109 N. W. 427.

Minnesota. — Murphy *v.* South St. Paul, 101 Minn. 341, 112 N. W. 259.

Mississippi. — Natchez *v.* Lewis, 90 Miss. 310, 43 So. 471.

Missouri. — Heberling *v.* Warrensburg, 204 Mo. 604, 103 S. W. 36.

Nebraska. — Nicholson *v.* South Omaha, (Neb. 1906) 110 N. W. 558.

New York. — Mayhood *v.* New York, 119 N. Y. App. Div. 100, 103 N. Y. Supp. 856.

North Dakota. — Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359.

Pennsylvania. — Steck *v.* Allegheny, 213 Pa. St. 573, 62 Atl. 1115, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 468; Chambers *v.* Braddock, 34 Pa. Super. Ct. 407.

South Carolina. — Kennedy *v.* Greenville, 78 S. Car. 124, 58 S. E. 989.

Texas. — Alice, etc., Telephone Co. *v.* Billingsley, 33 Tex. Civ. App. 452, 77 S. W. 255, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 468.

Knowledge of Defective Condition Raises Rebuttable Presumption of Negligence. — Highland Park *v.* Gerkin, 122 Ill. App. 149.

469. **1.** McHugh *v.* Inter-State Paving Co., 121 N. Y. App. Div. 517, 106 N. Y. Supp. 165.

4. Clark *v.* Torrington, 79 Conn. 42, 63 Atl. 657; Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387; Lockport *v.* Licht, 221 Ill. 35, 77 N. E. 581; Cutting *v.* Shelburne, 193 Mass. 1, 78 N. E. 752; Campbell *v.* Boston, 189 Mass. 7, 75 N. E. 96; Lemman *v.* Spokane, 38 Wash. 98, 80 Pac. 280.

470. **2. Care Commensurate with Known Danger Required** — *Delaware.* — Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792.

Georgia. — Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518; Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709.

Illinois. — Highland Park *v.* Gerkin, 122 Ill. App. 149; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387.

Indiana. — Muncie *v.* Hey, 164 Ind. 570, 74 N. E. 250; Indianapolis *v.* Mullally, 38 Ind. App. 125, 77 N. E. 1132.

Iowa. — Stevens *v.* Carroll, 131 Iowa 170, 105 N. W. 653.

Kansas. — Garnett *v.* Smith, 72 Kan. 664, 83 Pac. 615; Missouri, etc., Telephone Co. *v.* Vandervort, 71 Kan. 101, 79 Pac. 1068; Erie Tp. *v.* Beamer, 71 Kan. 182, 79 Pac. 1070; Ottawa *v.* Green, 72 Kan. 214, 83 Pac. 616.

Massachusetts. — Cutting *v.* Shelburne, 193 Mass. 1, 78 N. E. 752.

Mississippi. — Pascagoula *v.* Kirkwood, 86 Miss. 630, 38 So. 547.

Missouri. — Deland *v.* Cameron, 112 Mo. App. 704, 87 S. W. 597.

Ohio. — Peat *v.* Norwalk, 26 Ohio Cir. Ct. 161; Toledo *v.* Fuller, 27 Ohio Cir. Ct. 729.

Pennsylvania. — Steck *v.* Allegheny, 213 Pa. St. 573, 62 Atl. 1115.

Utah. — Bowman *v.* Ogden City, (Utah 1908) 93 Pac. 561.

[illegible] Cady v. Seattle, 42 Wash. 402, 85 Pac. 19; Shannon v. Tacoma, 41 Wash. 220, 83 Pac. 186.

In New York it has been held that knowledge of the defect imposes a duty to use "more than ordinary care" to avoid an accident. Henry v. New York, 113 N. Y. App. Div. 132, 104 N. Y. Supp. 440.

It has been held reversible error to refuse a charge that a traveler on a street known to him to be defective must use "unusual care." McDonald v. Holbrook, etc., Contracting Co., 105 N. Y. App. Div. 90, 93 N. Y. Supp. 920; McHugh v. Inter-State Paving Co., 121 N. Y. App. Div. 517, 106 N. Y. Supp. 165.

3. *Alabama.* — Mobile v. Shaw, (Ala. 1907) 43 So. 94.

Connecticut. — Clark v. Torrington, 79 Conn. 42, 63 Atl. 657.

Georgia. — Harrell v. Macon, 1 Ga. App. 413, 58 S. E. 124.

Illinois. — Mattoon v. Faller, 217 Ill. 273, 75 N. E. 387.

Indiana. — Muncie v. Hey, 164 Ind. 570, 74 N. E. 250; Indianapolis v. Mullally, 38 Ind. App. 125, 77 N. E. 1132.

Iowa. — Stevens v. Carroll, 131 Iowa 170, 105 N. W. 652; Cook v. Hedrick, (Iowa 1907) 112 N. W. 157; Van Camp v. Keokuk, 130 Iowa 716, 107 N. W. 933.

Kansas. — Missouri, etc., Telephone Co. v. Vandervort, 71 Kan. 101, 79 Pac. 1068; Garnett v. Smith, 72 Kan. 664, 83 Pac. 615; Ottawa v. Green, 72 Kan. 214, 83 Pac. 616.

Missouri. — Heberling v. Warrensburg, 204 Mo. 604, 103 S. W. 36; Diamond v. Kansas City, 120 Mo. App. 185, 96 S. W. 492.

Nebraska. — Beatrice v. Forbes, 74 Neb. 125, 103 N. W. 1069.

North Dakota. — Pyke v. Jamestown, 15 N. Dak. 157, 107 N. W. 359.

Pennsylvania. — Steck v. Allegheny, 213 Pa. St. 573, 62 Atl. 1115.

Washington. — Cady v. Seattle, 42 Wash. 402, 85 Pac. 19.

4. William Bensel Constr. Co. v. Homer, 2 Ga. App. 369, 58 S. E. 489; Chicago v. France, 124 Ill. App. 648; Pascagoula v. Kirkwood, 86 Miss. 630, 38 So. 547; Toledo v. Fuller, 27 Ohio Cir. Ct. 729.

7. Chambers v. Braddock, 34 Pa. Super. Ct. 407; Idlett v. Atlanta, 123 Ga. 821, 51 S. E. 709; White v. Chicago, 120 Ill. App. 607; Chicago v. France, 124 Ill. App. 648; Cook v. Hedrick, (Iowa 1907) 112 N. W. 157; Hodge v. St. Louis, 146 Mich. 173, 109 N. W. 427; Diamond v. Kansas City, 120 Mo. App. 185, 96 S. W. 492; Dwyer v. Port Allegheny, 216 Pa. St. 22, 64 Atl. 854; Steck v. Allegheny, 213 Pa. St. 573, 62 Atl. 1115; Cleburne v. Elder, (Tex. Civ. App. 1907) 102 S. W. 464; Bowman v. Ogden City, (Utah 1908) 93 Pac. 561; Shannon v. Tacoma, 41 Wash. 220, 83 Pac. 186.

171. 3. White v. Chicago, 120 Ill. App. 607; Chicago v. France, 124 Ill. App. 648; Missouri, etc., Telephone Co. v. Vandervort, 71 Kan. 101, 79 Pac. 1068.

172. 1. Bowman v. Ogden City, (Utah 1908) 93 Pac. 561; Coppins v. Jefferson, 126 Wis. 578, 105 N. W. 1078.

6. Citizens' Gas, etc., Co. v. Nicholson, (C. C. A.) 152 Fed. 389; Kokomo R., etc., Co. v. Studebaker, (Ind. App. 1908) 83 N. E. 260; Corcoran v. New York, 188 N. Y. 131, 80 N. E. 660, *reversing* 114 N. Y. App. Div. 910, 99 N. Y. Supp. 1136; Godfrey v. New York, 104 N. Y. App. Div. 357, 93 N. Y. Supp. 899; Ashley v. Aberdeen, 46 Wash. 385, 90 Pac. 210.

173. 1. Diamond v. Kansas City, 120 Mo. App. 185, 96 S. W. 492.

2. Harrell v. Macon, 1 Ga. App. 413, 58 S. E. 124.

3. Citizens' Gas, etc., Co. v. Nicholson, (C. C. A.) 152 Fed. 389; William Bensel Constr. Co. v. Homer, 2 Ga. App. 369, 58 S. E. 489; Harrell v. Macon, 1 Ga. App. 413, 58 S. E. 124; Kokomo R., etc., Co. v. Studebaker, (Ind. App. 1908) 83 N. E. 260; La Porte v. Henry, (Ind. App. 1908) 83 N. E. 655; Rea v. Sioux City, 127 Iowa 615, 103 N. W. 949; Ahlfeldt v. Mexico, (Mo. App. 1908) 108 S. W. 122; Godfrey v. New York, 104 N. Y. App. Div. 357, 93 N. Y. Supp. 899; Chambers v. Braddock, 34 Pa. Super. Ct. 407.

Using a Bicycle on a Highway at Night as a means of conveyance is not negligence as a matter of law. Kokomo R., etc., Co. v. Studebaker, (Ind. App. 1908) 83 N. E. 260.

5. Keithley v. Independence, 120 Mo. App. 255, 96 S. W. 733.

6. Weber v. Union Development, etc., Co., 118 La. 77, 42 So. 652.

7. Harrell v. Macon, 1 Ga. Appp. 413, 58 S. E. 124; Rea v. Sioux City, 127 Iowa 615, 103 N. W. 949; Ottawa v. Green, 72 Kan. 214, 83 Pac. 616; Lorenz v. New Orleans, 114 La. 802, 38 So. 566; Pascagoula v. Kirkwood, 86 Miss. 630, 38 So. 547; Deland v. Cameron, 112 Mo. App. 704, 87 S. W. 597; Bowman v. Ogden City, (Utah 1908) 93 Pac. 561.

It has been held that a person who, with knowledge of the dangerous condition of the highway, leaves the sidewalk and goes thereon at night knowing that the same is not lighted, assumes the risk incident to the venture. Mitchell v. Tell City, (Ind. App. 1908) 81 N. E. 594.

8. William Bensel Constr. Co. v. Homer, 2 Ga. App. 369, 58 S. E. 489; Mayronne v. Keegan, 117 La. 661, 42 So. 212; Weber v. Union Development, etc., Co., 118 La. 77, 42 So. 652; Keith v. Worcester, etc., St. R. Co., (Mass. 1907) 82 N. E. 680; Johnson v. Fargo, 15 N. Dak. 525, 108 N. W. 243.

A traveler who leaves the sidewalk merely because it is muddy, and walks in the gutter and is injured, is guilty of contributory negligence. Mitchel v. Richmond, 107 Va. 193, 57 S. E. 570.

9. Rea v. Sioux City, 127 Iowa 615, 103 N. W. 949; Covington v. Whitney, (Ky. 1907) 99 S. W. 337; Mayronne v. Keegan, 117 La. 661, 42 So. 212; Weber v. Union Development, etc., Co., 118 La. 77, 42 So. 652; Keith v. Worcester, etc., St. R. Co., (Mass. 1907) 82 N. E. 680; Christman v. Meierhoffer, 116 Mo. App. 46, 92 S. W. 141; Fox v. Manchester, 183 N. Y. 141, 75 N. E. 1116, *reversing* 100 N. Y. App. Div. 512, 91 N. Y. Supp. 1094; McIlhenney v. Philadelphia, 214 Pa. St. 44, 63 Atl. 368.

174. 1. Keith v. Worcester, etc., St. R. Co., (Mass. 1907) 82 N. E. 680.

2. Chesapeake, etc., Telephone Co. *v.* Lysher, (Md. 1908) 68 Atl. 619.

6. Covington *v.* Lee, (Ky. 1905) 89 S. W. 493; Epelett *v.* Sault Ste. Marie, 144 Mich. 392, 108 N. W. 360; Stout *v.* Columbia, 118 Mo. App. 439, 94 S. W. 307.

7. Plant *v.* Normanby Tp., 10 Ont. L. Rep. 16.

475. 2. Cutting *v.* Shelburne, 193 Mass. 1, 78 N. E. 752.

8. *Florida.* — Datona *v.* Edson, 46 Fla. 463, 34 So. 954.

Illinois. — Chicago *v.* Hutchinson, 129 Ill. App. 239; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387.

Indiana. — Royal Center *v.* Bingaman, (Ind. App. 1906) 77 N. E. 811.

Kansas. — La Harpe *v.* Greer, 74 Kan. 74, 85 Pac. 1015.

Kentucky. — Mitchell *v.* Brady, (Ky. 1907) 99 S. W. 266.

Michigan. — Hunter *v.* Ithaca, 141 Mich. 539, 105 N. W. 9.

Missouri. — Ballard *v.* Kansas City, 126 Mo. App. 541, 104 S. W. 1126; Elliott *v.* Kansas City, 198 Mo. 593, 96 S. W. 1023.

Nebraska. — Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182.

New York. — McDonald *v.* Degnon-McLean Contracting Co., 124 N. Y. App. Div. 824, 109 N. Y. Supp. 519; Fox *v.* Manchester, 183 N. Y. 141, 75 N. E. 1116, *reversing* 100 N. Y. App. Div. 512, 91 N. Y. Supp. 1094; Kleyle *v.* Oswego, 109 N. Y. App. Div. 330, 95 N. Y. Supp. 879; Farrel *v.* New York, 113 N. Y. App. Div. 687, 99 N. Y. Supp. 947.

North Carolina. — White *v.* Newberne, (N. Car. 1907) 59 S. E. 992.

Ohio. — Norwalk *v.* Jacobs, 27 Ohio Cir. Ct. 691; Columbus *v.* Penrod, 73 Ohio St. 209, 76 N. E. 826.

Pennsylvania. — Brader *v.* Lehman Tp., 34 Pa. Super. Ct. 125.

Washington. — Short *v.* Spokane, 41 Wash. 257, 83 Pac. 183.

476. 3. Heberling *v.* Warrensburg, 204 Mo. 604, 103 S. W. 36.

477. 6. Sellersburg *v.* Ford, 39 Ind. App. 94, 79 N. E. 220; Farrell *v.* Dubuque, 129 Iowa 447, 105 N. W. 696; Erie Tp. *v.* Beamer, 71 Kan. 182, 79 Pac. 1070; Weitzel *v.* Fowler, 143 Mich. 700, 107 N. W. 451; Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Cleveland *v.* Payne, 72 Ohio St. 347, 74 N. E. 177.

7. Shinnick *v.* Marshalltown, (Iowa 1908) 114 N. W. 542.

10. Wheeler *v.* Ft. Dodge, 131 Iowa 566, 108 N. W. 1057; Keithley *v.* Independence, 120 Mo. App. 255, 96 S. W. 733.

478. 4. Mason *v.* Winthrop, (Mass. 1907) 81 N. E. 644.

9. Cleveland *v.* Payne, 72 Ohio St. 347, 74 N. E. 177.

479. 3. Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709; Huntington *v.* Stuver, (Ind. App. 1908) 83 N. E. 518; Vincennes *v.* Spees, 35 Ind. App. 389, 74 N. E. 277, *reversing* (Ind. App. 1904) 72 N. E. 531; Hofacre *v.* Monticello, 128 Iowa 239, 103 N. W. 488; Pfeffer *v.* Cedar Rapids, (Iowa 1906) 108 N. W. 312; Bowling Green *v.* Duncan, 122 Ky. 244, 91 S. W. 268; Louisville *v.* Romer, (Ky. 1906) 97 S. W. 348; Campbell *v.* Boston, 189 Mass. 7, 75 N. E. 96; Hunter *v.* Ithaca, 141 Mich. 539, 105 N. W. 9; Dinsmore *v.* St. Louis, 192 Mo. 255, 91 S. W. 95; Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Smart *v.* Kansas City, 208 Mo. 162, 105 S. W. 709; York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604; Fitzgerald *v.* Concord, 140 N. Car. 110, 52 S. E. 309; Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243.

4. Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924.

5. *Georgia.* — Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709.

Illinois. — Gardner *v.* Paulson, 117 Ill. App. 17; Wallace *v.* Farmington, 231 Ill. 232, 83 N. E. 180; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387.

Indiana. — Sellersburg *v.* Ford, 39 Ind. App. 94, 79 N. E. 220.

Iowa. — Hanousek *v.* Marshalltown, 130 Iowa 550, 107 N. W. 603; Pace *v.* Webster City, (Iowa 1908) 115 N. W. 888; Pfeffer *v.* Cedar Rapids, (Iowa 1906) 108 N. W. 313.

Kentucky. — Hazelrigg *v.* Frankfort, (Ky. 1906) 92 S. W. 584.

Michigan. — Abbott *v.* Detroit, 150 Mich. 245, 113 N. W. 1112; Epelett *v.* Sault Ste. Marie, 144 Mich. 392, 108 N. W. 360.

Minnesota. — Dory *v.* Duluth, (Minn. 1908) 114 N. W. 465.

Missouri. — Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Drake *v.* Kansas City, 190 Mo. 370, 88 S. W. 689; York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604.

Nebraska. — Lexington *v.* Fleharty, 74 Neb. 626, 104 N. W. 1056; Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182.

New York. — Fox *v.* Manchester, 183 N. Y. 141, 75 N. E. 1116, *reversing* 100 N. Y. App. Div. 512, 91 N. Y. Supp. 1094.

North Dakota. — Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243.

Pennsylvania. — Brader *v.* Lehman Tp., 34 Pa. Super. Ct. 125; Munley *v.* Sugar Notch, 215 Pa. St. 228, 64 Atl. 377.

Washington. — Short *v.* Spokane, 41 Wash. 257, 83 Pac. 183; Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924.

Where an Obstruction Is Maintained by a Series of Acts, as the unloading at short intervals separate loads of stone at the same place, the obstruction will be deemed continuous; and in considering the time of its existence in connection with the question of implied notice the time will be reckoned from the first act of the series. Vance *v.* Kansas City, 123 Mo. App. 633, 100 S. W. 1101.

480. 1. Epelett *v.* Sault Ste. Marie, 141 Mich. 392, 108 N. W. 360; Murphy *v.* South St. Paul, 101 Minn. 341, 112 N. W. 259; Mansfield *v.* New York, 119 N. Y. App. Div. 100, 104 N. Y. Supp. 386; White *v.* Newberne, (N. Car. 1907) 59 S. E. 992; Meachem *v.* Coraopolis, 31 Pa. Super. Ct. 150.

2. Lorenz *v.* New Orleans, 114 La. 802, 38 So. 566; Dory *v.* Duluth, (Minn. 1908) 114 N. W. 465; Natchez *v.* Lewis, 90 Miss. 210, 43 So. 471; Knight *v.* Kansas City, 113 Mo. App. 501, 88 S. W. [illegible]; Hempstead *v.* Long Island, 103 N. Y. App. Div. 71, 92 N. Y. Supp. 622; Couch *v.* Municipality, 16 Manitoba 656.

3. Grand Forks *v.* Allman, (C. C. A.) 153 Fed. 532; Brown *v.* Durham, 141 N. Car. 249, 53 S. E. 513.

4. The Existence of an Obstruction for Three Hours has been held insufficient to charge the municipality with constructive notice. Hazelrigg *v.* Frankfort, (Ky. 1906) 92 S. W. 584.

Defect Existing Not [illegible] held not to impute notice. McNiroy *v.* Bracebridge, 10 Ont. L. Rep. 360.

5. Yeager *v.* Berwick, (Pa. 1907) 67 Atl. 347.

481. 2. Miller *v.* Canton, 112 Mo. App. [illegible], 87 S. W. 96; Chambers *v.* Braddock, 34 Pa. Super. Ct. 407; Foley *v.* Ray, 27 R. I. 127, 61 Atl. 50; Jones *v.* Ogden City, (Utah 1907) 89 Pac. 1006; McNiroy *v.* Bracebridge, 10 Ont. L. Rep. 360.

3. Bennett *v.* Everett, 191 Mass. 364, 77 N. E. 886; Jones *v.* Ogden City, (Utah 1907) 89 Pac. 1006; Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924.

4. Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182; Yeager *v.* Berwick, (Pa. 1907) 67 Atl. 347; Murdaugh *v.* Oxford, 214 Pa. St. 384, 63 Atl. 696. See also McNiroy *v.* Bracebridge, 10 Ont. L. Rep. 360.

6. Murphy *v.* South St. Paul, 101 Minn. 341, 112 N. W. 259; Ritschdorf *v.* St. Paul, 95 Minn. 370, 104 N. W. 129; Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924.

482. 2. Byrne *v.* Philadelphia, 211 Pa. St. 598, 61 Atl. 80; Austin *v.* Bellingham, 45 Wash. 460, 88 Pac. 834.

3. Goff *v.* Philadelphia, 214 Pa. St. 172, 63 Atl. 431.

4. Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Fitzgerald *v.* Concord, 140 N. Car. 110, 52 S. E. 309; Short *v.* Spokane, 41 Wash. 257, 83 Pac. 183.

5. Heath *v.* Manson, 147 Cal. 694, 82 Pac. 331; Farrell *v.* Dubuque, 129 Iowa 447, 105 N. W. 696; Hunter *v.* Ithaca, 141 Mich. 539, 105 N. W. 79; Weitzel *v.* Fowler, 143 Mich. 700, 107 N. W. 451; Lexington *v.* Fleharty, 74 Neb. 626, 104 N. W. 1056; Roswell *v.* Davenport, (N. Mex. 1907) 89 Pac. 256, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 482; Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924.

9. Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182.

483. 1. *United States.* — Grand Forks *v.* Allman, (C. C. A.) 153 Fed. 532.

Colorado. — Diamond Rubber Co. *v.* Harryman, (Colo. 1907) 92 Pac. 922.

District of Columbia. — O'Dwyer *v.* Northern Market Co., 24 App. Cas. (D. C.) 81.

Georgia. — Harrell *v.* Macon, 1 Ga. App. 413, 58 S. E. 124.

Illinois. — Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387; Palestine *v.* Siler, 225 Ill. 630, 80 N. E. 345.

Iowa. — Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555; Cutter *v.* Des Moines, (Iowa 1907) 113 N. W. 1081.

Kentucky. — Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337.

Maryland. — Harford County Com'rs *v.* Hause, (Md. 1907) 67 Atl. 273.

Massachusetts. — McCarthy *v.* Dedham, 188 Mass. 204, 74 N. E. 319; Thompson *v.* Bolton. (Mass. 1908) 83 N. E. 1089; Campbell *v.* Boston, 189 Mass. 7, 75 N. E. 96.

Michigan. — Ness *v.* Escanaba, 142 Mich. 404, 105 N. W. 879; Allen *v.* West Bay City, 140 Mich. 111, 103 N. W. 514; Hendershott *v.* Grand Rapids, 142 Mich. 140, 105 N. W. 140; Davis *v.* Adrian, 147 Mich. 300, 110 N. W. 1084.

Missouri. — Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604.

New York. — Dickerman *v.* Weeks, 108 N. Y. App. Div. 257, 95 N. Y. Supp. 714; Dobson *v.* Oneida, 106 N. Y. App. Div. 377, 94 N. Y. Supp. 958; Fox *v.* Manchester, 183 N. Y. 141, 75 N. E. 1116, *reversing* 100 N. Y. App. Div. 512, 91 N. Y. Supp. 1094.

North Carolina. — Kinsey *v.* Kinston, 145 N. Car. 106, 58 S. E. 912; Brewster *v.* Elizabeth City, 142 N. Car. 9, 54 S. E. 784; Fitzgerald *v.* Concord, 140 N. Car. 110, 52 S. E. 309.

North Dakota. — Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243.

Pennsylvania. — Meachem *v.* Coraopolis, 31 Pa. Super. Ct. 150; Goff *v.* Philadelphia, 214 Pa. St. 172, 63 Atl. 431; Meyers *v.* Philadelphia, 217 Pa. St. 159, 66 Atl. 251; Moore *v.* Wilkes-Barre, (Pa. 1907) 67 Atl. 619.

South Dakota. — Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 630.

Utah. — Jones *v.* Ogden City, (Utah 1907) 89 Pac. 1006.

Washington. — Harris *v.* Mt. Vernon, 41 Wash. 444, 83 Pac. 1023; Austin *v.* Bellingham, 45 Wash. 460, 88 Pac. 834.

Wisconsin. — Kortendick *v.* Waterford, (Wis. 1908) 115 N. W. 331.

3. Lexington *v.* Fleharty, 74 Neb. 626, 104 N. W. 1056.

4. **Evidence of Other Defects** in the immediate vicinity is competent on the question of notice. Rockwall *v.* Heath, (Tex. Civ. App. 1905) 90 S. W. 514.

5. District of Columbia *v.* Duryee, 29 App. Cas. (D. C.) 327, 10 Ann. Cas. 675; Chicago *v.* Jarvis, 226 Ill. 614, 80 N. E. 1079; Corson *v.* New York, 113 N. Y. App. Div. 679, 99 N. Y. Supp. 921; Dallas *v.* McCullough, (Tex. Civ. App. 1906) 95 S. W. 1121.

Subsequent Accident to Another Person at Same Place Admissible under certain circumstances. Perry *v.* Potsdam, 106 N. Y. App. Div. 297, 94 N. Y. Supp. 683.

6. Evidence of the condition of a walk as shown when it was torn up soon after the injury has been held admissible for the purpose of showing that it must of necessity have been in such condition for such length of time as would charge the city with notice thereof in time to have obviated the defects prior to the accident. Patton *v.* Sanborn, 133 Iowa 650, 110 N. W. 1032. See also Williams *v.* Lansing, (Mich. 1908) 115 N. W. 961; Miller *v.* Canton, 123 Mo. App. 325, 100 S. W. 571.

Evidence of Condition of Sidewalk in Immediate Vicinity Admissible on Question of Notice. — Nestle *v.* Flint, 141 Mich. 153, 104 N. W. 406; Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Thompson *v.* Poplar Bluff, 124 Mo. App. 439, 101 S. W. 709; Harris *v.* Mt. Vernon, 41 Wash. 444, 83 Pac. 1023; Pumorlo *v.* Merrill, 125 Wis. 102, 103 N. W. 464.

7. Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 483; Hay *v.* Baraboo, 127 Wis. 1, 105 N. W. 654; O'Connor *v.* Hamilton, 10 Ont. L. Rep. 529.

Substantial Compliance, as the service of a carbon copy of the notice instead of the original, which does not prejudice the defense, has been held sufficient. Scheer *v.* Perry, 119 N. Y. App. Div. 606, 103 N. Y. Supp. 1048.

Statute Should Be Liberally Construed. — Iveson *v.* Winnipeg, 16 Manitoba 352.

484. 1. Morlan *v.* Marcellus, (Mich. 1907) 114 N. W. 236.

In *New York* it has been held that a thorough examination of the person injured, by the city, after the receipt of a notice not served within the time fixed by the statute, worked a waiver of objections to the delay. Winter *v.* Niagara Falls, 119 N. Y. App. Div. 586, 104 N. Y. Supp. 30.

Another *New York* case has held that an oral examination of the injured person does not waive defects in the notice of injuries. Forsyth *v.* Oswego, 191 N. Y. 441, 84 N. E. 392. See also Hungerford *v.* Waverly, 125 N. Y. App. Div. 311, 109 N. Y. Supp. 438.

Under the statute of *Utah* providing that if the notice is deemed insufficient the person giving it shall be notified of the objections to it, if this is not done the irregularities are deemed to be waived. Bowman *v.* Ogden City, (Utah 1908) 93 Pac. 561.

2. High *v.* Jacksonville, 51 Fla. 207, 40 So. 1032; Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374; MacMullen *v.* Middleton, 187 N. Y. 37, 79 N. E. 863, *reversing* 112 N. Y. App. Div. 81, 98 N. Y. Supp. 145.

Giving Required Notice Condition Precedent to Bringing Suit. — Forseyth *v.* Oswego, 107 N. Y. App. Div. 187, 95 N. Y. Supp. 33; Batchelder *v.* White, (R. I. 1907) 68 Atl. 320.

10. **Minnesota — Not Applicable to Municipal Employees.** — Kelly *v.* Faribault, 95 Minn. 293, 104 N. W. 231.

12. **Notice Need Not Be Signed by the Claimant Personally** or show that the claim was in the capacity of personal representative. Curle *v.* Brandon, 15 Manitoba 122.

13. It has been held that a notice is not fatally defective because the date of the month is incorrectly stated in one part, when the correct date is stated in another part. Canter *v.* St. Joseph, 126 Mo. App. 629, 105 S. W. 1.

Surplusage Disregarded. — Jacobsen *v.* Omaha, (Neb. 1907) 113 N. W. 792.

15. Forseyth *v.* Oswego, 107 N. Y. App. Div. 187, 95 N. Y. Supp. 33.

16. **Statement of Impossible Date Fatal Defect.** — Batchelder *v.* White, (R. I. 1907) 68 Atl. 320.

485. 1. A notice of injury "at corner of Howard and Twenty-first street" has been held insufficient for not designating which corner. Barribeau *v.* Detroit, 147 Mich. 119, 110 N. W. 512.

2. Waterford *v.* Elson, (C. C. A.) 149 Fed. 91; Cook *v.* Topeka, 75 Kan. 534, 90 Pac. 244; Beyer *v.* North Tonawanda, 183 N. Y. 338, 76 N. E. 214, *reversing* 94 N. Y. App. Div. 614, 88 N. Y. Supp. 1092; Elson *v.* Waterford, 138 Fed. 1004; Ellis *v.* Seattle, (Wash. 1907) 92 Pac. 431; Hammock *v.* Tacoma, 40 Wash. 539, 82 Pac. 893; Mulligan *v.* Seattle, 42 Wash. 264, 84 Pac. 721.

4. Forseyth *v.* Oswego, 107 N. Y. App. Div. 187, 95 N. Y. Supp. 33.

5. Waterford *v.* Elson, (C. C. A.) 149 Fed. 91; Nestle *v.* Flint, 141 Mich. 153, 104 N. W. 406; Blount *v.* Troy, 110 N. Y. App. Div. 609, 97 N. Y. Supp. 182.

6. Nestle *v.* Flint, 141 Mich. 153, 104 N. W. 406; Burnette *v.* St. Joseph, 112 Mo. App. 668, 87 S. W. 589.

7. Waterford *v.* Elson, (C. C. A.) 149 Fed. 91.

9. Lyons *v.* St. Joseph, 112 Mo. App. 681, 87 S. W. 588; Beyer *v.* North Tonawanda, 183 N. Y. 338, 76 N. E. 214, *reversing* 94 N. Y. App. Div. 614, 88 N. Y. Supp. 1092; Blount *v.* Troy, 110 N. Y. App. Div. 609, 97 N. Y. Supp. 182; Mulligan *v.* Seattle, 42 Wash. 264, 84 Pac. 721.

Reasonable Certainty Sufficient. — Elson *v.* Waterford, 138 Fed. 1004.

486. 1. Damages can be recovered only for the injuries specified in the notice. Diamond Rubber Co. *v.* Harryman, (Colo. 1907) 92 Pac. 922.

A statement that the plaintiff "sustained personal injuries" has been held insufficient. Miller *v.* Birmingham, 145 Mich. 470, 108 N. W. 1015.

A statement that the party giving notice "sustained great injuries" has been held insufficient. Jacobs *v.* St. Joseph, 127 Mo. App. 669, 106 S. W. 1072.

7. Iveson *v.* Winnipeg, 16 Manitoba 352.

In *Iowa* it has been held that, though the statement of damages claimed does not preclude suit for a greater amount, yet no more than the amount stated can be recovered. Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933.

9. Cook *v.* Topeka, 75 Kan. 534, 90 Pac. 244; Williams *v.* Lansing, (Mich. 1908) 115 N. W. 961; Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243; Hammock *v.* Tacoma, 40 Wash. 539, 82 Pac. 893; Mulligan *v.* Seattle, 42 Wash. 264, 84 Pac. 721; Ellis *v.* Seattle, (Wash. 1907) 92 Pac. 431; Pecor *v.* Oconto, 125 Wis. 335, 104 N. W. 88.

487. 1. McCarthy *v.* Dedham, 188 Mass. 204, 74 N. E. 319; Bernreither *v.* New York, 123 N. Y. App. Div. 291, 107 N. Y. Supp. 1006; Ehrhardt *v.* Seattle, 40 Wash. 221, 82 Pac. 296.

It has been held that bringing suit within the time fixed by statute for the service of notice of injuries is not a sufficient notice to constitute compliance with the statute. Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374.

When the time fixed by a general statute differs from that fixed by the municipal charter subsequently adopted, compliance with the latter has been held sufficient. Peterson *v.* Red Wing, 101 Minn. 62, 111 N. W. 840.

2. Ehrhardt *v.* Seattle, 40 Wash. 221, 82 Pac. 296.

In *Nebraska*, in the absence of a statute extending the time for notice in case of disability, it has been held that physical disability will not excuse noncompliance. Ellis *v.* Kearney, (Neb. 1907) 113 N. W. 803.

In *New York*, though the statute does not provide for an extension of time in case of physical incapacity, the courts have so construed it as to grant such an extension. Hungerford *v.* Waverley, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 186, 107 N. Y. Supp. 291; Winter *v.* Niagara Falls, 119 N. Y. App. Div. 586, 104 N. Y. Supp. 39; Forsyth *v.* Oswego, 114 N. Y. App. Div. 616, 99 N. Y. Supp. 1022; Hungerford *v.* Waverly, 125 N. Y. App. Div. 311, 109 N. Y. Supp. 438; Forsyth *v.* Oswego, 191 N. Y. 441, 84 N. E. 392.

Confinement in Hospital for Three Weeks as result of accident is a reasonable excuse for not giving notice in seven days. Morrison *v.* Toronto, 12 Ont. L. Rep. 333.

The Fact of the Accident by Itself, unaccompanied by some disabling circumstance, is not a reasonable excuse for not giving the notice. O'Connor *v.* Hamilton, 10 Ont. L. Rep. 529, *reversing* 8 Ont. L. Rep. 391.

3. Grand Forks *v.* Allman, (C. C. A.) 153 Fed. 532; McCarthy *v.* Dedham, 188 Mass. 204, 74 N. E. 319; Blount *v.* Troy, 110 N. Y. App. Div. 609, 97 N. Y. Supp. 182; Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359.

It has been held that under a charter providing that notice of injuries shall be served on the president or board of trustees, service upon the village clerk who was also clerk of the board of trustees is sufficient. Dobson *v.* Oneida, 106 N. Y. App. Div. 377, 94 N. Y. Supp. 958.

Under the *Michigan* statute requiring notice to be served on the corporation counsel or his assistant, service on a clerk has been held insufficient, unless it is proved that it reached the corporation counsel or his assistant. McAuliff *v.* Detroit, 150 Mich. 346, 113 N. W. 1112.

Receipt of Notice a Question for Jury. — McAuliff *v.* Detroit, 150 Mich. 346, 113 N. W. 1112; Abbott *v.* Detroit, 150 Mich. 245, 113 N. W. 1121.

Waiver. — Where the provision for notice is in a city charter it has been held that the council waives the provision by an oral examination which elicits the facts. Forsyth *v.* Oswego, 114 N. Y. App. Div. 616, 99 N. Y. Supp. 1022.

4. Austin *v.* Bellingham, 45 Wash. 460, 88 Pac. 834.

488. 8. York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604.

491. 5. Culbertson *v.* Alexander, 17 Okla. 370, 87 Pac. 863, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 491.

7. Bolo Tp. *v.* Liszewski, 116 Ill. App. 135; Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337; Horr *v.* New York, etc., R. Co., 193 Mass. 100, 78 N. E. 776; Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243.

494. 14. Section Lines declared by statute to be highways have been held to be of such a character that an obstruction thereof may be illegal. Lawrence *v.* Ewert, (S. Dak. 1908) 114 N. W. 709.

497. 4. Wells *v.* Interborough Rapid Transit Co., 124 N. Y. App. Div. 631, 109 N. Y. Supp. 231; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

5. Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141; Friedman *v.* Snare, etc., Co., 71 N. J. L. 605, 61 Atl. 401; Culbertson *v.* Alexander, 17 Okla. 370, 87 Pac. 863.

9. Elzig *v.* Bales, (Iowa 1907) 112 N. W. 540; Ryan *v.* Foster, (Iowa 1906) 109 N. W. 1108; Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141; Friedman *v.* Snare, etc., Co., 71 N. J. L. 605, 61 Atl. 401; Culbertson *v.* Alexander, 17 Okla. 370, 87 Pac. 863; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

498. 3. Stationary Engine. — Smith *v.* Illinois Cent. R. Co., (Ky. 1907) 105 S. W. 96.

5. State *v.* Southard, (Del. 1907) 66 Atl. 372; Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205; Council Grove Tp. *v.* Bowman, 76 Kan. 563, 92 Pac. 550.

500. 6. Hinde *v.* Evans, 70 J. P. 548, 4 Local Gov. Rep. 1152; Com. *v.* Morrison, (Mass. 1908) 83 N. E. 415.

9. Measure of Damages for Subsidence of Highway Caused by Working Mine. — Wednesbury *v.* Lodge Holes Colliery Co., (1905) 2 K. B. 823.

501. 3. Bangor Tp. *v.* Bay City Traction, etc., Co., 147 Mich. 165, 110 N. W. 490.

It has been held that a railroad company could not be held liable for injury from a traveler's colliding with the boxes inclosing machinery for the operation of crossing gates, required by the city to be maintained on the highway. Klein *v.* Missouri Pac. R. Co., 114 Mo. App. 89, 89 S. W. 75.

6. Com. *v.* Illinois Cent. R. Co., (Ky. 1906) 92 S. W. 944.

502. 3. Central of Georgia R. Co. *v.* State, 145 Ala. 99, 40 So. 991; Isham *v.* State, (Tex. Crim. 1906) 92 S. W. 808.

9. Lovington Tp. *v.* Adkins, 232 Ill. 510, 83 N. E. 1043; Interstate Independent Telephone, etc., Co. *v.* Towanda, 221 Ill. 299, 77 N. E. 456; Hughes *v.* Holbrook, (Ky. 1908) 108 S. W. 225.

503. 3. Injunction may lie in certain cases. Lawrence *v.* Ewert, (S. Dak. 1908) 114 N. W. 709; Williams *v.* Riley, (Neb. 1907) 113 N. W. 136.

A Municipality May Bring Ejectment against a person encroaching upon a highway. Riverside Tp. *v.* Pennsylvania R. Co., 74 N. J. L. 476, 66 Atl. 433.

5. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205.

504. 1. Bangor Tp. *v.* Bay City Traction, etc., Co., 147 Mich. 165, 110 N. W. 490.

2. Bangor Tp. *v.* Bay City Traction, etc., Co., 147 Mich. 165, 110 N. W. 490.

5. Nelson *v.* Randolph, 222 Ill. 531, 78 N. E. 914.

HOLDER.

509. 8. Mayers *v.* McRimmon, 140 N. Car. 640, 53 S. E. 447; Welch *v.* Kinney, 46 Ore. 130, 80 Pac. 648, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 500.

9. Holder in Due Course is one without notice of any infirmity in the instrument and defect in the title of the person negotiating it. Schlesinger *v.* Lehmaier, 50 Misc. (N. Y.) 610, 99 N. Y. Supp. 389.

HOLIDAY.

512. 2. State *v.* Shelton, 38 Ind. App. 87, 77 N. E. 1052, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 512.

Intoxicating Liquors — Labor Day a Holiday. State *v.* Shelton, 38 Ind. App. 87, 77 N. E. [illegible]

HOMESTEAD.

525. 2. See *In re* Owings, 140 Fed. 739.

3. See Palmer *v.* Sawyer, 74 Neb. 108, 103 [illegible]

526. 3. *In re* Clavo, (Cal. App. 1907) 93 Pac. 295; Ginsberg *v.* Groner, 117 La. 268, 41 So. 569; Johnson *v.* Agurs, 116 La. 634, 40 So. 923; Grace *v.* Grace, 96 Minn. 294, 104 N. W. 969; Moody *v.* Moody, 86 Miss. 323, 38 So. 322; Palmer *v.* Sawyer, 74 Neb. 108, 103 N. W. 1088; Calmer *v.* Calmer, 15 N. Dak. 120, 106 N. W. 684; Christensen *v.* Beebe, (Utah 1907) 91 Pac. 129; Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

4. Jones *v.* Gunn, 149 Cal. 687, 87 Pac. 577; Leppel *v.* Kus, 38 Colo. 292, 88 Pac. 448; Taylor *v.* Taylor, 223 Ill. 423, 79 N. E. 139; Reilly *v.* Reilly, (Iowa 1907) 110 N. W. 445; Turner *v.* Browning, (Ky. 1908) 107 S. W. 318; Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090; Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66; Holmes *v.* Mason, (Neb. 1908) 114 N. W. 606. See also *In re* Sullivan, 142 Fed. 620.

7. Perkins *v.* Perkins, 122 Ill. App. 370; Taylor *v.* Taylor, 223 Ill. 423, 79 N. E. 139.

527. 2. Mott *v.* Hopper, 116 La. 629, 40 So. 921.

3. Calmer *v.* Calmer, 15 N. Dak. 120, 106 N. W. 684.

6. *In re* Sale, (C. C. A.) 143 Fed. 310; Turner *v.* Browning, (Ky. 1908) 107 S. W. 318; Moseley *v.* Larson, 86 Miss. 288, 38 So. 234.

Homestead a Mere Protected Possession. — Kennedy *v.* Kennedy, 74 S. Car. 541, 54 S. E. [illegible]

528. 1. Bailey *v.* Wood, 71 S. Car. 36, 50 S. E. 631.

4. Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

529. 2. Holmes *v.* Mason, (Neb. 1908) 114 N. W. 606.

6. Saxon *v.* Rawls, 51 Fla. 555, 41 So. 504.

530. 2. Thomas *v.* Williamson, 51 Fla. 232, 40 So. 831; Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

7. **Legislature Cannot Extend Constitutional Exemption.** — See Bartle *v.* Bartle, 132 Wis. [illegible]

531. 1. Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

5. Gaar *v.* Collin, 15 N. Dak. 622, 110 N. W. 81.

533. 5. *United States.* — Duncan *v.* Ferguson-McKinney Dry Goods Co., (C. C. A.) 150 Fed. 269; *In re* Barrett, 140 Fed. 569; *In re* Kaufmann, 142 Fed. 898; *In re* Thompson, 140 Fed. 257.

Arkansas. — Shell *v.* Young, 78 Ark. 479, 95 S. W. 798.

California. — Harlan *v.* Schulze, (Cal. App. 1908) 94 Pac. 379; Jones *v.* Gunn, 149 Cal. 687, 87 Pac. 577.

Colorado. — Leppel *v.* Kus, 38 Colo. 292, 88 Pac. 448.

Georgia. — See Jones *v.* McCrary, 123 Ga. 282, 51 S. E. 349.

Illinois. — Perkins *v.* Perkins, 122 Ill. App. [illegible]

Kansas. — Elliott *v.* Parlin, etc., Co., 71 Kan. 665, 81 Pac. 500; Weaver *v.* Chicago First Nat. Bank, 76 Kan. 540, 94 Pac. 273.

Kentucky. — Gaar *v.* Reesor, (Ky. 1906) 91 S. W. 717; Green *v.* Pennington, (Ky. 1906) 97 S. W. 766.

Minnesota. — Fred *v.* Bramen, [illegible] 107 N. W. 159.

Mississippi. — Moody *v.* Moody, 86 Miss. 323, 38 So. 322; Moseley *v.* Larson, 86 Miss. 288, 38 So. 234.

Missouri. — Sharp *v.* Stewart, 185 Mo. 529, 84 S. W. 963.

Nebraska. — Palmer *v.* Sawyer, 74 Neb. 108, 103 N. W. 1088.

North Dakota. — Bremseth *v.* Olson, (N. Dak. 1907) 112 N. W. 1056.

Ohio. — Bretz *v.* Moore, 26 Ohio Cir. Ct. 66; Hart *v.* Cole, (Ohio 1906) 76 N. E. 941.

Texas. — Johnson *v.* Burton, (Tex. Civ. App. 1908) 87 S. W. 181.

Utah. — Christensen *v.* Beebe, (Utah 1907) 91 Pac. 129.

Washington. — North Pac. L. & T. Co. *v.* Bennett, (Wash. 1908) 94 Pac. 664, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 533; Becher *v.* Shaw, 44 Wash. 168, 87 Pac. 71.

Wisconsin. — Bartle *v.* Bartle, 132 Wis. 392, 112 N. W. 471.

534. 1. Brun *v.* Mann, (C. C. A.) 151 Fed. 145; Fred *v.* Bramen, 97 Minn. 484, 107 N. W. 159. And see Jones *v.* Gunn, 149 Cal. 687, 87 Pac. 577.

535. 1. See Platt *v.* Platt, 50 Fla. 594, 39 So. 536.

4. *Arkansas.* — Cowley *v.* Spradlin, 77 Ark. 190, 91 S. W. 550; Montgomery *v.* Dane, 81 Ark. 154, 98 S. W. 715.

California. — Harlan *v.* Schulze, (Cal. App. 1908) 94 Pac. 379.

Iowa. — Cedar Rapids First Cong. Church *v.* Terry, 130 Iowa 513, 107 N. W. 305; Reilly *v.* Reilly, (Iowa 1907) 110 N. W. 445.

Kansas. — Withers *v.* Love, 72 Kan. 140, 83 Pac. 204.

Kentucky. — Green *v.* Pennington, (Ky. 1906) 97 S. W. 766.

Mississippi. — McDonald *v.* Stafford, 87 Miss. 640, 41 So. 360; Moody *v.* Moody, 86 Miss. 323, 38 So. 322.

Nebraska. — Holmes *v.* Mason, (Neb. 1908) 114 N. W. 606.

North Dakota. — Bremseth *v.* Olson, (N. Dak. 1907) 112 N. W. 1056.

Ohio. — Hart *v.* Cole, (Ohio 1906) 76 N. E. [illegible]

5. *In re* Clavo, (Cal. App. 1907) 93 Pac. [illegible] Hazlethorn *v.* Eddy, 128 Iowa 401, 104 N. W. 485; Sheeby *v.* Scott, 128 Iowa 551, 104 N. W. 1139; Weaver *v.* Chicago First Nat. Bank, 76 Kan. 540, 94 Pac. [illegible] Bush *v.* Adair, 72 Kan. 558, 84 Pac. 122; Moody *v.* Moody,

So. Miss. [illegible] So. 322; Palmer *v.* Sawyer, 74 Neb. 108, 103 N. W. 1088.

Prerogative of "Head of Family" to Designate Homestead. — Holland *v.* Zilliox, 38 Tex. Civ. App. 416, 86 S. W. 36; Pickett *v.* Gleed, (Tex. Civ. App. 1905) 86 S. W. 946.

537. 1. Sheeby *v.* Scott, 128 Iowa 551, 104 N. W. 1139; Wilkins *v.* Briggs, (Tex. Civ. App. 1908) 107 S. W. 135.

2. Sheeby *v.* Scott, 128 Iowa 551, 104 N. W. 1139; Ginsberg *v.* Groner, 117 La. 268, 41 So. 569.

5. Sheeby *v.* Scott, 128 Iowa 551, 104 N. W. 1139. And see Weaver *v.* Chicago First Nat. Bank, 76 Kan. 540, 94 Pac. 273.

538. 1. See Rutherford *v.* Mothershed, (Tex. Civ. App. 1906) 92 S. W. 1021.

3. See Ramsey *v.* Ferguson, (Ky. 1908) 107 S. W. 779.

539. 1. Garner *v.* Freeman, 118 La. 184, 42 So. 767; Ginsberg *v.* Groner, 117 La. 268, 41 So. 569.

4. Sheeby *v.* Scott, 128 Iowa 551, 104 N. W. 1139; Drought *v.* Stallworth, (Tex. Civ. App. 1907) 100 S. W. 188.

540. 8. See Garner *v.* Freeman, 118 La. 184, 42 So. 767.

541. 4. Rutherford *v.* Mothershed, (Tex. Civ. App. 1906) 92 S. W. 1021.

542. 3. **In Husband's Absence Wife Head of Family.** — Gibbs *v.* Adams, 76 Ark. 575, 89 S. W. 1008.

543. 4. **Unmarried Man Cannot Claim Homestead.** — Hostetler *v.* Eddy, 128 Iowa 401, 104 N. W. 485.

545. 4. Weaver *v.* Chicago First Nat. Bank, 76 Kan. 540, 94 Pac. 273; Rothwell *v.* Rothwell, (Ky. 1907) 104 S. W. 276; Palmer *v.* Sawyer, 74 Neb. 108, 103 N. W. 1088.

5. Deweese *v.* Deweese, (Ky. 1906) 90 S. W. 256.

546. 2. Rothwell *v.* Rothwell, (Ky. 1907) 104 S. W. 276.

4. Jones *v.* McCrary, 123 Ga. 282, 51 S. E. 349.

5. Holland *v.* Zilliox, 38 Tex. Civ. App. 416, 86 S. W. 36.

Husband "Head of Family." — Taylor *v.* Taylor, 223 Ill. 423, 79 N. E. 139; Bremseth *v.* Olson. (N. Dak. 1907) 112 N. W. 1056.

6. **Husband Cannot Take Homestead in Land of Wife.** — Jackson *v.* Williams, 129 Ga. 716, 59 S. E. 776.

547. 1. Pullen *v.* Simpson, 74 Ark. 592, 86 S. W. 801 (to the same effect as Thompson *v.* King, 54 Ark. 9, 14 S. W. 925, cited in the original note).

Wife Entitled to Homestead in Her Separate Property. — Gibson *v.* Barrett, 75 Ark. 205, 87 S. W. 435.

In Utah the phrase "head of a family," as used in the homestead statute, includes the husband or wife. Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

2. Ginsberg *v.* Groner, 117 La. 268, 41 So. 569.

3. Abandoned Wife May Convey Homestead in Separate Property. Mabry *v.* Citizens' Lumber Co., (Tex. Civ. App. 1907) 105 S. W. 1156.

4. See Montgomery *v.* Dane, 81 Ark. 154, 98 S. W. 715.

548. 1. Taylor *v.* Taylor, 223 Ill. 423, 79 N. E. 139.

2. Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896.

4. Montgomery *v.* Dane, 81 Ark. 154, 98 S. W. 715; Metz *v.* Schneider, 120 Mo. App. 453, 97 S. W. 187; Ryther *v.* Blackwell, 113 Tenn. 182, 87 S. W. 260. And see Taylor *v.* Taylor, 223 Ill. 423, 79 N. E. 139.

6. Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896.

550. 2. Grace *v.* Grace, 96 Minn. 294, 104 N. W. 969; Dugat *v.* Means, (Tex. Civ. App. 1905) 91 S. W. 363; Mann *v.* Wilson, (Tex. Civ. App. 1905) 86 S. W. 1061.

3. *In re* Murphy, 46 Wash. 574, 90 Pac. 916.

Rule Not Applicable Where Wife Involuntarily Absent. — Curry *v.* Wilson, 45 Wash. 19, 87 Pac. 1065.

5. See Holland *v.* Zilliox, 38 Tex. Civ. App. 416, 86 S. W. 36.

7. The *Tennessee* statute provides that "when the debtor absconds, or leaves his family, the exempted property shall be set apart for the use of the wife and family, and shall be exempt in the hands of the wife or children." Ryther *v.* Blackwell, 113 Tenn. 182, 87 S. W. 260.

553. 4. Towne *v.* Towne, (Cal. App. 1907) 92 Pac. 1050.

554. 2. Lyons *v.* Adams, (Ky. 1907) 99 S. W. 900; Bailey *v.* Wood, 71 S. Car. 36, 50 S. E. 631.

4. Campbell *v.* Bennington, 26 Ohio Cir. Ct. 239.

555. 3. People's Independent Rice Mill Co. *v.* Benoit, 117 La. 999, 42 So. 480.

Homestead Lost by Removal from State. — Bailey *v.* Wood, 71 S. Car. 36, 50 S. E. 631.

556. 2. Grier *v.* Canada, (Tenn. 1907) 107 S. W. 970; Mabry *v.* Kennedy, (Tex. Civ. App. 1908) 108 S. W. 176.

4. Sharp *v.* Stewart, 185 Mo. 529, 84 S. W. 963.

11. Daughters *v.* Christy, 223 Ill. 612, 79 N. E. 292.

557. 1. **Legal Right of Occupancy Essential.** — *In re* Sale, (C. C. A.) 143 Fed. 310.

2. *In re* Sale, (C. C. A.) 143 Fed. 310, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 557.

558. 7. Sharp *v.* Stewart, 185 Mo. 529, 84 S. W. 963.

559. 3. *In re* Kaufmann, 142 Fed. 898. And see Pullen *v.* Simpson, 74 Ark. 592, 86 S. W. 801.

6. *In re* Ring, 132 Iowa 216, 109 N. W. 710. And see Pullen *v.* Simpson, 74 Ark. 592, 86 S. W. 801.

560. 11. Stowell *v.* Kerr, 72 Kan. 330, 83 Pac. 827; Tracy *v.* Harbin, (Tex. Civ. App. 1905) 89 S. W. 999.

564. 7. Pullen *v.* Simpson, 74 Ark. 592, 86 S. W. 801.

566. 3. *Contra.* — Duncan *v.* Hand, (Tex. Civ. App. 1905) 87 S. W. 233.

567. 6. McGaughey *v.* American Nat. Bank, (Tex. Civ. App. 1905) 92 S. W. 1003.

10. Schoonover *v.* Birnbaum, 148 Cal. 548, 83 Pac. 999.

568. 5. Gannon *v.* Moore, 83 Ark. 196, 104

S. W. 139; Grace *v.* Grace, 96 Minn. 294, 104 [illegible] (Tex. Civ. App. 1905) 88 S. W. 493.

569. 7. Sims *v.* Sims, 122 Ga. 777, 50 S. E. 937.

570. 4. See Griffin *v.* Harris, (Tex. Civ. App. 1905) 88 S. W. 493.

574. 6. Moody *v.* Moody, 86 Miss. 323, 38 So. 322.

Homestead Can Only Be Claimed in Lands within State. — *In re* Owings, 140 Fed. 739.

[illegible] Cannot Be Held at Same Time. — Johnson *v.* Callaway, (Tex. Civ. App. 1905) 87 S. W. 178.

[illegible] Question for Jury. — Dignowity *v.* Baumblatt, 38 Tex. Civ. App. 363, 85 S. W. 834.

575. 2. *In re* Owings, 140 Fed. 739; Shell *v.* Young, 78 Ark. 479, 95 S. W. 798; Payne *v.* Cummings, 146 Cal. 426, 80 Pac. 620; Bush *v.* Adams, 72 Kan. 558, 84 Pac. 122; Smith *v.* Spafford, (N. Dak. 1907) 112 N. W. 965.

[illegible] Homestead. — Cushman *v.* Davis, 79 Vt. 111, 64 Atl. [illegible]

[illegible]. 6. Shell *v.* Young, 78 Ark. 479, 95 S. W. 798.

578. 2. Stowell *v.* Kerr, 72 Kan. 332, 83 Pac. 827, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 578; Bush *v.* Adams, 72 Kan. 558, 84 Pac. 122, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 578; Gaar *v.* Reesor, (Ky. 1906) 91 S. W. 717; Hair *v.* Davenport, 74 Neb. 117, 103 N. W. 1042; Holland *v.* Zilliox, 38 Tex. Civ. App. 416, 86 S. W. 36; Steves *v.* Smith, (Tex. Civ. App. 1908) 107 S. W. 141.

579. 1. Hair *v.* Davenport, 74 Neb. 117, 103 N. W. 1042.

4. Gebhart *v.* Merchant, 84 Ark. 359, 105 S. W. 1034; Johnson *v.* Burton, (Tex. Civ. App. 1905) 87 S. W. 181.

5. Gebhart *v.* Merchant, 84 Ark. 359, 105 S. W. 1034; Home Bldg., etc., Assoc. *v.* McKay, 217 Ill. 556, 75 N. E. 569, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579; Johnson *v.* Burton, (Tex. Civ. App. 1905) 87 S. W. 181; Steves *v.* Smith, (Tex. Civ. App. 1908) 107 S. W. 141.

580. 2. **Mere Lapse of Considerable Time Before Occupancy Does Not Prevent Exemption.** — Stowell *v.* Kerr, 72 Kan. 330, 83 Pac. [illegible]

Homestead Character Impressed Where Possession Taken within Reasonable Time. — Hair *v.* Davenport, 74 Neb. 117, 103 N. W. 1042.

6. Gebhart *v.* Merchant, 84 Ark. 359, 105 S. W. 1034; Johnson *v.* Burton, (Tex. Civ. App. 1905) 87 S. W. 181; Steves *v.* Smith, (Tex. Civ. App. 1908) 107 S. W. 141. And see U. S. *v.* Richards, 149 Fed. 443.

581. 7. [illegible] Mo. 520, 84 S. W. 963, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 581.

582. 1. Bush *v.* Adams, 72 Kan. 558, 84 Pac. 122.

583. 2. Green *v.* Pennington, (Ky. 1906) [illegible] S. W. 766.

585. 1. Payne *v.* Cummings, 146 Cal. 426, [illegible]

2. Payne *v.* Cummings, 146 Cal. 426, 80 Pac. 620; Holder *v.* Holder, 120 Ky. 802, 87 S. [illegible]

Where a house [illegible] two adjoining lots, a homestead may be claimed in both of the lots. Barkume *v.* Phelps, 141 Mich. 545, 104 N. W. 980.

6. Carroll *v.* Jeffries, (Tex. Civ. App. 1905) 87 S. W. 1050.

Use for Homestead Purposes Must Be Principal Use. — Levy *v.* Lacour, (Tex. Civ. App. 1906) 94 S. W. 380.

586. 2. Gulf, etc., R. Co. *v.* Lewis, (Tex. Civ. App. 1905) 85 S. W. 817.

10. Gaar *v.* Reesor, (Ky. 1906) 91 S. W. 717; Tindall *v.* Peterson, 71 Neb. 160, 98 N. W. 688 (*citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 586, 587), 99 N. W. 659; Autry *v.* Reasor, (Tex. 1908) 108 S. W. 1162; Jolly *v.* Diehl, 38 Tex. Civ. App. 549, 86 S. W. 965; Levy *v.* Lacour, (Tex. Civ. App. 1905) 94 S. W. 380.

[illegible] Cannot Be Party Partly Rural, Partly Urban. — Parker *v.* Moody, (Tex. Civ. App. 1906) 96 S. W. 650.

[illegible]. 2. [illegible] Minn. 347, 112 N. W. 273. *distinguishing* Kresin *v.* Mau, 15 Minn. 116, cited in the original note.

4. Gibbs *v.* Adams, 76 Ark. 575, 89 S. W. 1008.

8 *In re* Murphy, 46 Wash. 574, 90 Pac. 916.

588. 4. Green *v.* Pennington, (Ky. 1906) 97 S. W. 766; Gulf, etc., R. Co. *v.* Lewis, (Tex. Civ. App. 1905) 85 S. W. 817.

Building Appurtenant to [illegible] Exempt when it is essential to the convenient use of the family in the occupancy of the premises. Shaffer *v.* Chernyk, 130 Iowa 686, 107 N. W. 801.

591. 10. Schmick *v.* Simmons, (Tex. Civ. App. 1908) 107 S. W. 568.

14. Schmick *v.* Simmons, (Tex. Civ. App. 1908) 107 S. W. 568.

593. 6. Mahoney *v.* Nevins, 190 Mo. 360, 88 S. W. 731; Nunn-Weldon Dry Goods Co. *v.* Haden, (Tex. Civ. App. 1906) 95 S. W. 73. But see *In re* Sullivan, 142 Fed. 620.

Homestead Exemption Does Not Extend to Grass Plant [illegible] Death of Owner. — *In re* Hine, 132 Iowa 216, 109 N. W. 710.

594. 1. Fred *v.* Bramen, 97 Minn. 484, 107 N. W. 150; Becher *v.* Shaw, 44 Wash. 168, 87 Pac. 71, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 594.

2. Becher *v.* Shaw, 44 Wash. 168, 87 Pac. 71, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 594.

3. **Proceeds Exempt Only for Reasonable Time.** — Campbell *v.* Campbell, 129 Iowa 217, 105 N. W. 583.

In *Texas*, the proceeds of a sale of homestead are exempt for six months. Lewis *v.* Goldthwaite Nat. Bank, 36 Tex. Civ. App. 441, 81 S. W. 707.

595. 2. Campbell *v.* Campbell, 129 Iowa 217, 105 N. W. 583.

596. 2. Johnson *v.* Agurs, 116 La. 634, 40 So. [illegible] 15 AM. AND ENG. ENCYC. OF [illegible]

597. 1. Johnson *v.* Agurs, 116 La. 634, 40 So. 923, *quoting* 15 AM. AND ENG. ENCYC. OF

[illegible] Cypress Co. v. Christen, 116 La. 53, 40 So. 529.

599. 3. Shaffer *v.* Chernyk, 130 Iowa 686, 107 N. W. 801; Turner *v.* Browning, (Ky. 1908) 107 S. W. 318.

New Homestead May Be Established After Sale of Old One.—Gibbs *v.* Adams, 76 Ark. 575, 89 S. W. 1008.

4. Collins *v.* Collins, (Ky. 1907) 99 S. W. 653; Green *v.* Pennington, (Ky. 1906) 97 S. W. 766.

600. 4. See Christensen *v.* Beebe, (Utah [illegible] Pac. 129).

602. 2. La Plant *v.* Lester, 150 Mich. 336, 113 N. W. 1115; Dignowity *v.* Baumblatt, 38 Tex. Civ. App. 363, 85 S. W. 834; Johnson *v.* Callaway, (Tex. Civ. App. 1905) 87 S. W. 178; Tracy *v.* Harbin, (Tex. Civ. App. 1905) 89 S. W. 999. And see *In re* Clavo, (Cal. App. 1907) 93 Pac. 295.

603. 2. Moody *v.* Moody, 86 Miss. 323, 38 So. 322; France *v.* Hohnbaum, 73 Neb. 70, 102 N. W. 75, 104 N. W. 865.

In Towns and Villages Homestead Measured by Value. — Stevens *v.* Wilbourn, 88 Miss. 514, 41 So. 66.

4. Cowley *v.* Spradlin, 77 Ark. 190, 91 S. W. 550. And see Calmer *v.* Calmer, 15 N. Dak. 120, 106 N. W. 684.

604. 2. **Homestead Cannot Be Partly Rural and Partly Urban.**—Parker *v.* Moody, (Tex. Civ. App. 1906) 96 S. W. 650.

605. 2. Gibbs *v.* Adams, 76 Ark. 575, 89 S. W. 1008.

6. Marx *v.* Haley, (Miss. 1908) 45 So. 612; Moody *v.* Moody, 86 Miss. 323, 38 So. 322. And see Reed *v.* Nicholson, 189 Mo. 396, 88 S. W. 71; Calmer *v.* Calmer, 15 N. Dak. 120, 106 N. W. 684.

Right to Reach Excess Available Only Before Homestead Disposed of. — Meikle *v.* Cloquet, 44 Wash. 513, 87 Pac. 841.

606. 6. See Shaffer *v.* Chernyk, 130 Iowa 686, 107 N. W. 801.

615. 4. Isbell *v.* Jones, 75 Ark. 591, 88 S. W. 593.

Homestead Cannot Be Taken for Tort of Husband and Father.— Cassady *v.* Morris, (Okla. 1907) 91 Pac. 888.

617. 1. *In re* Letson, (C. C. A.) 157 Fed. 78; *In re* Thompson, 140 Fed. 257; *In re* Wood, 147 Fed. 877; McConnell *v.* Wolcott, 70 Kan. 283, 78 Pac. 848, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 617; Lewis *v.* Goldthwaite Nat. Bank, 36 Tex. Civ. App. 441, 81 S. W. 797, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 617; Brown *v.* Rash, (Tex. Civ. App. 1905) 89 S. W. 438.

618. 1. Foster Lumber Co. *v.* Harlan County Bank, 71 Kan. 158, 6 Ann. Cas. 44, 80 Pac. 49; Porter *v.* Hart County Deposit Bank, etc., Co., (Ky. 1906) 96 S. W. 832.

2. Bush *v.* Adams, 72 Kan. 558, 84 Pac. 122. But see Cooper *v.* Brazelton, (C. C. A.) 135 Fed. 476.

619. 1. **Judgment Liens Cannot Take Precedence of Homestead Rights.** — Stowell *v.* Kerr, 72 Kan. 330, 83 Pac. 827.

622. 1. See Sweet *v.* Lyon, (Tex. Civ. App. 1905) 88 S. W. 384.

Grantee of Homestead Takes Free from Judgment Lien. — Howard *v.* Mayher, (Tex. Civ. App. 1905) 88 S. W. 409.

626. 6. Clifton Land Co. *v.* Davenport, 130 Iowa 94, 106 N. W. 365; Foster Lumber Co. *v.* Harlan County Bank, 71 Kan. 158, 6 Ann. Cas. 44, 80 Pac. 49; Hensley *v.* Webb, (Ky. 1907) 101 S. W. 375; Matney *v.* Williams, (Ky. 1905) 89 S. W. 678; Smith *v.* Owen, (Tex. Civ. App. 1908) 107 S. W. 929.

628. 1. Platt *v.* Platt, 50 Fla. 594, 39 So. 536; Johnson *v.* Agurs, 116 La. 634, 40 So. 923; Wilkins *v.* Briggs, (Tex. Civ. App. 1908) 107 S. W. 135.

633. 2. Bayless *v.* Standard Sav., etc., Assoc., (Tex. Civ. App. 1905) 87 S. W. 872.

638. 3. See Iberia Cypress Co. *v.* Christen, 116 La. 53, 40 So. 529.

4. Iberia Cypress Co. *v.* Christen, 116 La. 53, 40 So. 529.

Where a Mortgage Purports to Convey the Entire Estate, and is executed by both the husband and wife, it operates as a waiver of the homestead exemption. Long *v.* Branham, (Ky. 1907) 99 S. W. 271.

639. 2. Grace *v.* Grace, 96 Minn. 294, 104 N. W. 969.

3. Carroll *v.* Magee, (La. 1908) 45 So. 528; Iberia Cypress Co. *v.* Christen, 116 La. 53, 40 So. 529.

640. 3. New *v.* Young, 144 Ala. 420, 39 So. 201; McGregor *v.* Kellum, 50 Fla. 581, 39 So. 697; Swift *v.* Kleckner, 146 Mich. 91, 109 N. W. 34; Smith *v.* Spafford, (N. Dak. 1907) 112 N. W. 965; Grier *v.* Canada, (Tenn. 1907) 107 S. W. 970; Cushman *v.* Davis, 79 Vt. 111, 64 Atl. 456. And see Ferris *v.* Jensen, (N. Dak. 1907) 114 N. W. 372.

Husband's Confinement in Jail and Removal of Children Not Abandonment. — Withers *v.* Love, 72 Kan. 140, 83 Pac. 204.

641. 1. *In re* Schulz, 135 Fed. 228; Gazzola *v.* Savage, 80 Ark. 249, 96 S. W. 981; Montgomery *v.* Dane, 81 Ark. 154, 98 S. W. 715; Lutz *v.* Ristine, (Iowa 1907) 112 N. W. 818; Elliott *v.* Parlin, etc., Co., 71 Kan. 665, 81 Pac. 500; Deweese *v.* Deweese, (Ky. 1906) 90 S. W. 256; Gaar *v.* Reesor, (Ky. 1906) 91 S. W. 717; Victor *v.* Grimmer, 118 Mo. App. 592, 95 S. W. 274; Bartle *v.* Bartle, 132 Wis. 392, 112 N. W. 471. And see Ungers *v.* Chapman, 146 Mich. 643, 109 N. W. 1124; Smith *v.* Spafford, (N. Dak. 1907) 112 N. W. 965.

Imprisonment Does Not Operate as Abandonment. — Garner *v.* Freeman, 118 La. 184, 42 So. 767.

642. 2. Duncan *v.* Ferguson-McKinney Dry Goods Co., (C. C. A.) 150 Fed. 269.

3. Bartle *v.* Bartle, 132 Wis. 392, 112 N. W. 471.

4. *In re* Thompson, 140 Fed. 257.

5. McCarty *v.* Coffin, (C. C. A.) 150 Fed. 307; La Plant *v.* Lester, 150 Mich. 336, 113 N. W. 1115; Lawson *v.* Hammond, 119 Mo. App. 480, 94 S. W. 313.

643. 2. New *v.* Young, 144 Ala. 420, 39 So. 201; McGregor *v.* Kellum, 50 Fla. 581, 39 So. 607; Withers *v.* Love, 72 Kan. 140, 83 Pac. 204; Lawson *v.* Hammond, 119 Mo. App. 480, 94 S. W. 313; Victor *v.* Grimmer, 118 Mo. App. 592, 95 S. W. 274; Smith *v.* Spafford, (N. Dak. 1907) 112 N. W. 965; Cushman *v.*

Davis, 79 Vt. 111, 64 Atl. 456. And see Gazzola *v.* Savage, 80 Ark. 249, 96 S. W. 981.

3. Lynch *v.* McGown, (Tex. Civ. App. 1905) 88 S. W. 894.

614. 4. Swift *v.* Kleckner, 146 Mich. 91, 109 N. W. 34.

5. Bradley *v.* Janssen, (Tex. Civ. App. 1906) 93 S. W. 506.

615. 1. Hostetler *v.* Eddy, 128 Iowa 401, 104 N. W. 485.

5. Ungers *v.* Chapman, 146 Mich. 643, 109 N. W. 1124; Lawson *v.* Hammond, 119 Mo. App. 480, 94 S. W. 313; Drought *v.* Stallworth, (Tex. Civ. App. 1907) 100 S. W. 188; Lynch *v.* McGown, (Tex. Civ. App. 1905) 88 S. W. 894.

7. Smith *v.* Spafford, (N. Dak. 1907) 112 N. W. 965.

616. 5. Ungers *v.* Chapman, 146 Mich. 643, 109 N. W. 1124; Smith *v.* Spafford, (N. Dak. 1907) 112 N. W. 965. And see Swift *v.* Kleckner, 146 Mich. 91, 109 N. W. 34.

7. Hollins *v.* Cropper, 115 La. 989, 40 So. 378, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 646.

617. 1. Elliott *v.* Parlin, etc., Co., 71 Kan. 665, 81 Pac. 500.

3. Acquisition of New Residence Evidence of Abandonment. — Cushman *v.* Davis, 79 Vt. 111, 64 Atl. 456.

5. Tracy *v.* Harbin, (Tex. Civ. App. 1905) 89 S. W. 999.

7. People's Independent Rice Mill Co. *v.* Benoit, 117 La. 999, 42 So. 480.

618. 3. See Martin *v.* Smith, (Ky. 1907) 104 S. W. 310.

4. Smith *v.* Spafford, (N. Dak. 1907) 112 N. W. 965.

650. 1. Removal from Homestead Day Before Its Sale Not Abandonment. — Hobson *v.* Noel, (Ky. 1906) 97 S. W. 388.

2. Morris *v.* Morris, (Tex. Civ. App. 1907) 99 S. W. 872.

651. 1. Duncan *v.* Ferguson-McKinney Dry Goods Co., (C. C. A.) 150 Fed. 269; Drought *v.* Stallworth, (Tex. Civ. App. 1907) 100 S. W. 188.

652. 7. See Smith *v.* Ferry, 43 Wash. 460, 86 Pac. 658.

654. 2. Payne *v.* Cummings, 146 Cal. 426, 80 Pac. 620.

3. Loomis *v.* Loomis, 148 Cal. 149, 82 Pac. 679.

655. 4. *In re* Thompson, 140 Fed. 257. And see Pullen *v.* Simpson, 74 Ark. 592, 86 S. W. 801.

656. 2. See Pullen *v.* Simpson, 74 Ark. 592, 86 S. W. 801.

657. 6. Loomis *v.* Loomis, 148 Cal. 149, 82 Pac. 679. And see Harlan *v.* Schulze, (Cal. App. 1908) 94 Pac. 379.

7. Husband Cannot Abandon Homestead in Fraud of Wife. — Gray *v.* Fussell, (Tex. Civ. App. 1907) 106 S. W. 454.

Wife and Husband and Minor Abandon by Separate Acts. — Cushman *v.* Davis, 79 Vt. 111, 64 Atl. [illegible]

658. 4. Montgomery *v.* Dane, 81 Ark. 454, 98 S. W. 715.

659. 2. Bloch *v.* Tarrent, 122 Ky. 138, 91 S. W. 275.

Homestead Right in Widow Absolute — Cannot Be Abandoned. — Tindall *v.* Peterson, 71 Neb. 160, 98 N. W. 688, 99 N. W. 659.

3. Bloch *v.* Tarrent, 122 Ky. 138, 91 S. W. [illegible]

5. Remarriage and Permanent Removal Operates as Abandonment. — Bloch *v.* Tarrent, 122 Ky. 138, 91 S. W. 275.

660. 4. Hollins *v.* Cropper, 115 La. 989, 40 So. 378, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 660.

662. 1. *In re* Paramore, 156 Fed. 208, 211; Waters *v.* Waters, 124 Ga. 349, 52 S. E. 435; Compton *v.* People's Gas Co., 75 Kan. 572, 89 Pac. 1039; Rothwell *v.* Rothwell, (Ky. 1907) 104 S. W. 276; Gasser *v.* Crittenden, 140 Mich. 301, 103 N. W. 601; Johnston *v.* Fraser, (Tex. Civ. App. 1906) 92 S. W. [illegible]

3. *In re* Paramore, 156 Fed. 208.

By Statute in Colorado Homestead May Be Mortgaged. — Patrick *v.* Morrow, 33 Colo. 509, 81 Pac. 242.

664. 4. *United States.* — Nicholdson *v.* Nesbitt, 4 Cal. App. 585, 88 Pac. 725, *quoting* 15 Am. and Eng. Encyc. of Law (2d ed.) 664; McCarty *v.* Coffin, (C. C. A.) 150 Fed. 307.

Alabama. — Brunson *v.* Rosenheim, (Ala. 1907) 43 So. 31.

Arkansas. — Gibson *v.* Barrett, 75 Ark. 205, 87 S. W. 435; Isbell *v.* Jones, 75 Ark. 591, 88 S. W. 593; South Omaha Nat. Bank *v.* Boyd, 79 Ark. 215, 97 S. W. 288.

Iowa. — Citizens' Sav. Bank *v.* Glick, 134 Iowa 323, 111 N. W. 970.

Kansas. — McConnell *v.* Wolcott, 70 Kan. 383, 78 Pac. 848; Withers *v.* Love, 72 Kan. 140, 83 Pac. 204.

Kentucky. — Collins *v.* Collins, (Ky. 1907) 99 S. W. 653; Deweese *v.* Deweese, (Ky. 1906) 90 S. W. 256; Hobson *v.* Noel, (Ky. 1906) 97 S. W. 388; Rothwell *v.* Rothwell, (Ky. 1907) 104 S. W. 276.

Missouri. — Guinan *v.* Donnell, 201 Mo. 173, 98 S. W. 478; Reed *v.* Nicholson, 189 Mo. 396, 88 S. W. 71.

Texas. — Jolly *v.* Diehl, 38 Tex. Civ. App. 549, 86 S. W. 965; Lewis *v.* Goldthwaite Nat. Bank, 36 Tex. Civ. App. 441, 81 S. W. 797; Nunn-Weldon Dry Goods Co. *v.* Haden, (Tex. Civ. App. 1906) 95 S. W. 73; Rutherford *v.* Mothershed, (Tex. Civ. App. 1906) 92 S. W. 1021.

Washington. — Meikle *v.* Cloquet, 44 Wash. 513, 87 Pac. 841.

Wisconsin. — Bartle *v.* Bartle, 132 Wis. 392, 112 N. W. 471.

665. 1. Nicholdson *v.* Nesbitt, 4 Cal. App. 585, 88 Pac. 725, *quoting* 15 Am. and Eng. Encyc. of Law (2d ed.) 665.

2. Gibson *v.* Barrett, 75 Ark. 205, 87 S. W. 435; Isbell *v.* Jones, 75 Ark. 591, 88 S. W. 593; Nicholdson *v.* Nesbitt, 4 Cal. App. 585, 88 Pac. 725; Hobson *v.* Noel, (Ky. 1906) 97 S. W. 388; Rothwell *v.* Rothwell, (Ky. 1907) 104 S. W. 276; Guinan *v.* Donnell, 201 Mo. 173, 98 S. W. 478; Jolly *v.* Diehl, 38 Tex. Civ. App. 549, 86 S. W. 965; Nunn-Weldon Dry Goods Co. *v.* Haden, (Tex. Civ. App. 1906) 95 S. W. 73.

3. **Under the Canadian Homestead Law** an agreement by a homesteader before the issue of the patent, to assign an interest in the homestead to another, is void though made in good faith and for an adequate consideration. Cumming *v.* Cumming, 15 Manitoba 640.

4. *Arkansas.* — Montgomery *v.* Dane, 81 Ark. 154, 98 S. W. 715.

California. — Loomis *v.* Loomis, 148 Cal. 149, 82 Pac. 679. And see Rosenberg *v.* Ross, (Cal. App. 1907) 93 Pac. 284.

Iowa. — Hostetler *v.* Eddy, 128 Iowa 401, 104 N. W. 485; Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257. And see Kettering *v.* Eastlack, 130 Iowa 498, 107 N. W. 177.

Kentucky. — Bates *v.* Frazier, (Ky. 1905) 85 S. W. 757; Potter *v.* Potter, (Ky. 1907) 101 S. W. 905; Stafford *v.* Tarter, (Ky. 1906) 96 S. W. 1127.

Michigan. — Holliday *v.* Mathewson, 146 Mich. 336, 109 N. W. 669; Lott *v.* Lott, 146 Mich. 580, 109 N. W. 1126.

Minnesota. — Grace *v.* Grace, 96 Minn. 294, 104 N. W. 969; Murphy *v.* Renner, 99 Minn. 348, 109 N. W. 593.

Mississippi. — McDonald *v.* Sanford, 88 Miss. 640, 41 So. 369; Moseley *v.* Larson, 86 Miss. 288, 38 So. 234; Woods *v.* Campbell, 87 Miss. 782, 40 So. 874.

Missouri. — Metz *v.* Schneider, 120 Mo. App. 453, 97 S. W. 187.

Nebraska. — Kloke *v.* Wolff, (Neb. 1907) 111 N. W. 134; Lichty *v.* Beale, 75 Neb. 770, 106 N. W. 1018; Palmer *v.* Sawyer, 74 Neb. 108, 103 N. W. 1088; Weatherington *v.* Smith, (Neb. 1907) 112 N. W. 566.

North Dakota. — Gaar *v.* Collin, 15 N. Dak. 622, 110 N. W. 81; Silander *v.* Gronna, 15 N. Dak. 552, 108 N. W. 544.

Texas. — Dever *v.* Selz, (Tex. Civ. App. 1905) 87 S. W. 891; Haile *v.* Haile, (Tex. Civ. App. 1906) 93 S. W. 435; Walker *v.* Woody, (Tex. Civ. App. 1905) 89 S. W. 789.

Utah. — See Nielson *v.* Peterson, 30 Utah 396, 85 Pac. 429, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665, 666.

Vermont. — Cushman *v.* Davis, 79 Vt. 111, [illegible]

Washington. — Curry *v.* Wilson, 45 Wash. 19, 87 Pac. 1065.

667. 1. Nielson *v.* Peterson, 30 Utah 396, 85 Pac. 429, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665, 666.

668. 3. Nielson *v.* Peterson, 30 Utah 396, 85 Pac. 429, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 668.

670. 1. Mundy *v.* Shellaberger, 153 Fed. 219, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 670; Hostetler *v.* Eddy, 128 Iowa 401, 104 N. W. 485; Wheelock *v.* Countryman, 133 Iowa 289, 110 N. W. 598; Lichty *v.* Beale, 75 Neb. 770, 106 N. W. 1018; Silander *v.* Gronna, 15 N. Dak. 552, 108 N. W. 544.

Specific Performance Decreed Where Wife Subsequently Joins in Contract. — Kettering *v.* Eastlack, 130 Iowa 498, 107 N. W. 177.

2. Hostetler *v.* Eddy, 128 Iowa 401, 104 N. W. 485; Wheelock *v.* Countryman, 133 Iowa 289, 110 N. W. 598; Lichty *v.* Beale, 75 Neb. 770, 106 N. W. 1018.

Contract Made by One Spouse to Convey Void. — Silander *v.* Gronna, 15 N. Dak. 552, 108 N. W. 544.

672. 2. Withers *v.* Love, 72 Kan. 140, 83 Pac. 204; Weatherington *v.* Smith, (Neb. 1907) 112 N. W. 566.

Prior to the enactment of the *Washington* statute of 1895, a husband could not encumber the homestead though his wife was insane. Curry *v.* Wilson, 45 Wash. 19, 87 Pac. 1065.

3. Stafford *v.* Tarter, (Ky. 1906) 96 S. W. 1127.

6. Murphy *v.* Renner, 99 Minn. 348, 109 N. W. 593; Dever *v.* Selz, (Tex. Civ. App. 1905) 87 S. W. 891.

674. 5. Haile *v.* Haile, (Tex. Civ. App. 1906) 93 S. W. 435.

676. 5. Reilly *v.* Reilly, (Iowa 1907) 110 N. W. 445.

677. 2. Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257.

678. 6. **Husband May Convey Where Wife Has Abandoned Homestead.** — Mann *v.* Wilson, (Tex. Civ. App. 1905) 86 S. W. 1061.

679. 4. Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257; Cushman *v.* Davis, 79 Vt. 111, 64 Atl. 456.

7. Lott *v.* Lott, 146 Mich. 580, 109 N. W. 1126. And see Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257.

9. See Holliday *v.* Mathewson, 146 Mich. 336, 109 N. W. 669.

680. 1. Columbian Bldg., etc., Assoc. *v.* Leeds, 128 Ill. App. 196; Myers *v.* Henderson, 129 Ill. App. 644.

681. 6. Davis *v.* Miller Brent Lumber Co., (Ala. 1907) 44 So. 639; Loomis *v.* Loomis, 148 Cal. 149, 82 Pac. 679; Haile *v.* Haile, (Tex. Civ. App. 1906) 93 S. W. 435.

682. 6. Bastin *v.* Schafer, 15 Okla. 611, 85 Pac. 349, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682.

7. Bastin *v.* Schafer, 15 Okla. 611, 85 Pac. 349, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682.

9. Scoggin *v.* Mason, (Tex. Civ. App. 1907) 103 S. W. 831.

683. 3. Mundy *v.* Shellaberger, 153 Fed. 219; Murphy *v.* Renner, 99 Minn. 348, 109 N. W. 593; McDonald *v.* Sanford, 88 Miss. 640, 41 So. 369, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683; Lichty *v.* Beale, 75 Neb. 770, 106 N. W. 1018; Cushman *v.* Davis, 79 Vt. 111, 64 Atl. 456.

685. 1. Lott *v.* Lott, 146 Mich. 580, 109 N. W. 1126; Kloke *v.* Wolff, (Neb. 1907) 111 N. W. 134; Gaar *v.* Collin, 15 N. Dak. 622, 110 N. W. 81.

687. 2. See Shay *v.* Bevis Rock Salt Co., 72 Kan. 208, 83 Pac. 202.

8. See McDaniels *v.* Sammons, 75 Ark. 139, 86 S. W. 997.

692. 1. *In re* Barrett, 140 Fed. 569, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692.

2. *In re* Barrett, 140 Fed. 569, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692.

3. **Debtor Has Right to Dispose of Homestead by Will.** — Rothwell *v.* Rothwell, (Ky. 1907) 101 S. W. 276.

693. 1. **A Homestead Declared upon Community Property,** under the *California* statute,

on the death of either spouse vests absolutely in the survivor. *In re* McCarthy, (Cal. App. 1907) 93 Pac. 1047.

2. Piekenbrock *v.* Knoer, (Iowa 1907) 114 N. W. 200; Brichacek *v.* Brichacek, 75 Neb. 417, 106 N. W. 473; Cox *v.* Oliver, (Tex. Civ. App. 1906) 95 S. W. 596.

By the California Code of Civil Procedure. — Payne *v.* Cummings, 146 Cal. 426, 80 Pac. 620; Rosenberg *v.* Ross, (Cal. App. 1907) 93 Pac. 284.

3. Fisher *v.* Bartholomew, 4 Cal. App. 581, 85 Pac. 608; Holder *v.* Holder, 120 Ky. 802, 87 S. W. 1100. And see Palmer *v.* Sawyer, 74 Neb. 108, 103 N. W. 1088.

694. 2. Brichacek *v.* Brichacek, 75 Neb. 417, 106 N. W. 473.

6. Piekenbrock *v.* Knoer, (Iowa 1907) 114 N. W. 200.

8. Payne *v.* Cummings, 146 Cal. 420, 80 Pac. 620.

Widower's Right Exists So Long as His Occupancy Continues. — Holder *v.* Holder, 120 Ky. 802, 87 S. W. 1100.

9. *California.* — *In re* Clavo, (Cal. App. 1907) 93 Pac. 295.

Iowa. — *In re* Ring, 132 Iowa 216, 109 N. W. 710.

Kentucky. — Bloch *v.* Tarrent, 122 Ky. 138, 91 S. W. 275; Cate *v.* Ganter, (Ky. 1907) 104 S. W. 296; Davidson *v.* Marcum, (Ky. 1905) 89 S. W. 703.

Michigan. — *In re* Emmons, 142 Mich. 299, 105 N. W. 758.

Mississippi. — Moody *v.* Moody, 86 Miss. 323, 38 So. 322.

Missouri. — Coleman *v.* Coleman, 122 Mo. App. 715, 99 S. W. 459; Mahoney *v.* Nevins, 190 Mo. 360, 88 S. W. 731.

Nebraska. — Holmes *v.* Mason, (Neb. 1908) 114 N. W. 606.

New Jersey. — Lloyd *v.* Turner, 70 N. J. Eq. 425, 62 Atl. 771.

Texas. — Cox *v.* Oliver, (Tex. Civ. App. 1906) 95 S. W. 596; Wilkins *v.* Briggs, (Tex. Civ. App. 1908) 107 S. W. 135.

Washington. — *In re* McKeever, (Wash. 1908) 93 Pac. 916.

695. 1. Saxon *v.* Rawls, 51 Fla. 555, 41 So. 594; Thomas *v.* Williamson, 51 Fla. 332, 40 So. 831.

696. 1. *In re* Emmons, 142 Mich. 299, 105 N. W. 758.

Right to Growing Crops. — Mahoney *v.* Nevins, 190 Mo. 360, 88 S. W. 731.

2. *In re* McVay, (Idaho 1907) 93 Pac. 28.

3. *In re* Emmons, 142 Mich. 299, 105 N. W. 758.

697. 2. Widow Cannot Have Homestead in Lands of Both First and Second Husbands. — Bloch *v.* Tarrent, 122 Ky. 138, 91 S. W. 275.

9. Henion *v.* Vavrik, 126 Ill. App. 292; Coleman *v.* Coleman, 122 Mo. App. 715, 99 S. W. 459; Tindall *v.* Peterson, 71 Neb. 160, 98 N. W. 688, 99 N. W. 659. And see Calmer *v.* Calmer, 15 N. Dak. 120, 106 N. W. 684.

Where the Husband's Estate Is Not Declared Insolvent the Widow and Children take only rights of occupancy and the perception of rents, incomes, and profits. Hosea *v.* Davis, 142 Ala. 211, 39 So. 315.

Under the Alabama Code a surviving widow takes a life estate in the homestead subject to be enlarged into a fee upon the ascertainment of the insolvency of the estate. O'Daniel *v.* Gaynor, (Ala. 1907) 43 So. 205.

698. 1. Under Statute in California. — Hibernia Sav., etc., Soc. *v.* Hinz, (Cal. App. 1906) 88 Pac. 730; *In re* McCarthy, (Cal. App. 1907) 93 Pac. 1047; Loomis *v.* Loomis, 148 Cal. 149, 82 Pac. 679.

Where No Children, Entire Estate to Widow. — Bullerdick *v.* Hermsmeyer, 32 Mont. 541, 81 Pac. 334.

2. Griffin *v.* Dunn, 79 Ark. 408, 96 S. W. 190; Tindall *v.* Peterson, 71 Neb. 160, 98 N. W. 688, 99 N. W. 659.

Widow May Either Occupy or Elect Homestead. — Lloyd *v.* Turner, 70 N. J. Eq. 425, 62 Atl. 771.

699. 2. See Chicago, etc., R. Co. *v.* Kelly, 221 Ill. 498, 77 N. E. 916.

4. Stevens *v.* Wilbourn, 88 Miss. 514, 41 So. 6.

700. 6. Weaver *v.* Chicago First Nat. Bank, 76 Kan. 540, 94 Pac. 273; Tindall *v.* Peterson, 71 Neb. 160, 98 N. W. 688, 99 N. W. 659.

701. 3. Robbins *v.* Boulware, 190 Mo. 33, 88 S. W. 674.

5. Weaver *v.* Chicago First Nat. Bank, 76 Kan. 540, 94 Pac. 273.

702. 5. *In re* McVay, (Idaho 1907) 93 Pac. 28.

7. Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 514.

703. 2. *In re* McVay, (Idaho 1907) 93 Pac. 28.

4. Davidson *v.* Marcum, (Ky. 1905) 89 S. W. 703.

704. 2. Griffin *v.* Dunn, 79 Ark. 408, 96 S. W. 190.

705. 2. Bloch *v.* Tarrent, 122 Ky. 138, 91 S. W. 275; Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090; Coleman *v.* Coleman, 122 Mo. App. 715, 99 S. W. 459. And see *In re* Emmons, 142 Mich. 299, 105 N. W. 758.

Widow's Remarriage Vests Her Interest in Homestead in Children During Minority. — Walton *v.* Henderson, (Ga. App. 1908) 61 S. E. 28.

8. See Griffin *v.* Dunn, 79 Ark. 408, 96 S. W. 190; Cox *v.* Oliver, (Tex. Civ. App. 1906) 95 S. W. 596.

Widow May Claim Homestead in Family Residence and Dower in Other Lands. — Potter *v.* Potter, (Ky. 1907) 101 S. W. 905.

706. 1. Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090.

Widow Entitled to One-Third Residuary Estate After Deducting Homestead. — Perkins *v.* Perkins, 122 Ill. App. 370.

2. See Kennedy *v.* Kennedy, 74 S. Car. 541, 54 S. E. 773.

6. Saxon *v.* Rawls, 51 Fla. 555, 41 So. 594; Thomas *v.* Williamson, 51 Fla. 332, 40 So. 831; McDonald *v.* Sanford, 88 Miss. 640, 41 So. 369.

708. 8. Stubbs *v.* Pitts, 84 Ark. 160, 104 S. W. 1185; Potter *v.* Redmon, (Ky. 1906) 96 S. W. 529; Thompson *v.* Thompson, (Ky. 1907) 105 S. W. 1185; Warren *v.* Warren, (Ky. 1907) 104 S. W. 754; Garner *v.* Freeman, 118 La. 184, 42 So. 767; Chrisman *v.* Linderman, 202 Mo. 605, 100 S. W. 1090.

709. 1. Cowley *v.* Spradlin, 77 Ark. 190, 91 S. W. 550.

3. See Woods *v.* Campbell, 87 Miss. 782, 40 So. 874.

In Nebraska. — Tindall *v.* Peterson, 71 Neb. 109, 98 N. W. 688, 99 N. W. 659.

Effect of Remarriage. — If after the death of his wife the husband again marries and with his wife occupies said land as a home, he thereby acquires no homestead right to said land which will prevent the grandchildren from maintaining an action for partition. Oliver *v.* Semple, 72 Kan. 582, 84 Pac. 138.

710. 5. Under the *Minnesota* statute, where there are no children or surviving issue of any deceased child by a second marriage, the family homestead descends to the husband for life, with remainder to the children of testatrix by a prior marriage. *In re* Poseng, 95 Minn. 343, 104 N. W. 137.

711. 7. Randolph *v.* White, 135 Fed. 875.

712. 4. **Surviving Husband May Sell Community Homestead to Pay Community Debts.** — Dever *v.* Selz, (Tex. Civ. App. 1905) 87 S. W. 861.

5. *In re* Pohlmann, 2 Cal. App. 360, 84 Pac. 351.

6. Rice *v.* Burkhart, 130 Iowa 520, 107 N. W. 308.

713. 5. **Where Parent Dies Without Making Selection, Right Cast upon Minor Children.** — Cowley *v.* Spradlin, 77 Ark. 190, 91 S. W. 550; Cowley *v.* Thompson, 77 Ark. 186, 91 S. W. 562.

714. 4. **In Kentucky,** the children have a joint right with the widow to the occupancy of the homestead. Thompson *v.* Thompson, (Ky. 1907) 105 S. W. 1185.

6. Henion *v.* Vavrik, 126 Ill. App. 292; Davidson *v.* Marcum, (Ky. 1905) 89 S. W. 703.

715. 3. **In Utah,** the homestead, on the death of either spouse, vests absolutely in the survivor. Fisher *v.* Bartholomew, 4 Cal. App. 581, 88 Pac. 608.

716. 3. See Rice *v.* Burkhart, 130 Iowa 520, 107 N. W. 308.

4. Davidson *v.* Marcum, (Ky. 1905) 89 S. W. 703.

8. Quail *v.* Lomas, 200 Mo. 674, 98 S. W. 617.

717. 2. Cox *v.* Oliver, (Tex. Civ. App. 1906) 95 S. W. 596; Williams *v.* Jones, (Tex. Civ. App. 1907) 106 S. W. 755.

3. Bloch *v.* Tarrent, 122 Ky. 138, 91 S. W. 1.

719. 3. Bullerdick *v.* Hermsmeyer, 32 Mont. 541, 81 Pac. 334.

720. 2. See Randolph *v.* White, 135 Fed. 875.

721. 1. James *v.* James, 72 Ark. 329, 80 S. W. 148, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721.

Homestead Not Subject to Administration. — Dignowity *v.* Baumblatt, 38 Tex. Civ. App. 363, 85 S. W. 824.

Probate Court Without Power to Order Sale by Administrator. — Griffin *v.* Dunn, 79 Ark. 408, 96 S. W. 190.

4. Hostetler *v.* Eddy, 128 Iowa 401, 104 N. W. 460. Holsman *v.* Huxtable, (Neb. 1907) 112 N. W. 658.

722. 1. Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66.

3. **Owner Has Right to Select Homestead.** — McGaughey *v.* American Nat. Bank, (Tex. Civ. App. 1905) 92 S. W. 1003.

723. 2. Dake *v.* Sewell, (Ala. 1905) 39 So. 919.

3. **Question as to Whether Land Has Been Dedicated One of Fact.** — Gray *v.* Fussell, (Tex. Civ. App. 1907) 106 S. W. 454.

725. 1. Jones *v.* Gunn, 149 Cal. 687, 87 Pac. 577; Leppel *v.* Kus, 38 Colo. 292, 88 Pac. 448.

5. Jones *v.* Gunn, 149 Cal. 687, 87 Pac. 577.

726. 3. See Jones *v.* Gunn, 149 Cal. 687, 87 Pac. 577.

4. Jones *v.* Gunn, 149 Cal. 687, 87 Pac. 577.

5. Jones *v.* Gunn, 149 Cal. 687, 87 Pac. 577.

10. **Description Must Show What Lands Are Claimed.** — Jones *v.* Gunn, 149 Cal. 687, 87 Pac. 577.

727. 10. See Cowley *v.* Spradlin, 77 Ark. 190, 91 S. W. 550.

Owner May Not Exclude from Exemption Mansion House and Appurtenances. — McGaughey *v.* American Nat. Bank, (Tex. Civ. App. 1905) 92 S. W. 1003.

728. 3. **Claim Barred if Not Made Before Judgment Decreeing Sale.** — Hallman *v.* George, 70 S. Car. 403, 50 S. E. 24.

729. 1. **Sale Made under General Execution Absolutely Void.** — Waldron *v.* Kineth, 41 Wash. 459, 84 Pac. 16.

Execution Sale Void Where Requirements of Statute Not Observed. — Misener *v.* Glasbrenner, 221 Ill. 384, 77 N. E. 467.

733. 3. Waldron *v.* Kineth, 41 Wash. 459, 84 Pac. 16.

HONEST.

744. 1. **Honest Belief — Self-defense.** — See Robinson *v.* Territory, 16 Okla. 241, 85 Pac. 451.

HORSE RACING.

746. 1. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505. But see State *v.* Vaughan, 81 Ark. 117, 98 S. W. 685.

HOSPITALS AND ASYLUMS.

759. 2. Noble *v.* Hahnemann Hospital, 112 N. Y. App. Div. 663, 98 N. Y. Supp. 605; *In re* Roche, (Surrogate Ct.) 53 Misc. (N. Y.) 187, 104 N. Y. Supp. 601.

4. Illinois Cent. R. Co. *v.* Buchanan, (Ky. 1905) 88 S. W. 312.

760. 4. **The Certificate of Incorporation** of a hospital is not rendered defective, under the *New York* Membership Corporation Law, so as to prevent it from receiving legacies, by the fact that one of the objects stated in such certificate is the maintenance of a dispensary as well as a hospital. *In re* Roche, (Surrogate Ct.) 53 Misc. (N. Y.) 187, 104 N. Y. Supp. 601.

761. 1. **Iowa — County Liable for Expense of Providing Detention Hospital.** — L. H. Kurtz Co. *v.* Polk County, (Iowa 1906) 109 N. W. 612.

762. 1. As illustrative by inference the disposition of the courts to sustain the action of the governing board in the exercise of its dis-

cretion, see Stearns *v.* Newport Hospital, 27 R. I. 309, 62 Atl. 132.

4. Palmer *v.* Zeigler, 76 Ohio St. 210, 81 N. E. 234.

763. 1. Noble *v.* Hahnemann Hospital, 112 N. Y. App. Div. 663, 98 N. Y. Supp. 605.

The State is not liable for injuries resulting from the careless management of a hospital car. Martin *v.* State, 120 N. Y. App. Div. 633, 105 N. Y. Supp. 540.

A City has been held not to be liable for the negligence of its hospital employees, although it had no authority to maintain a hospital for revenue. Tollefson *v.* Ottawa, 228 Ill. 134, 81 N. E. 823.

Rule Applied to Railroad Hospital. Illinois Cent. R. Co. *v.* Buchanan, (Ky. 1905) 88 S. W. [illegible].

A Noncharitable Hospital is liable in tort for the negligence of its employees. Louisville University *v.* Hammock, (Ky. 1907) 106 S. W. 219; Hogan *v.* Clarksburg Hospital Co., (W. Va. 1907) 59 S. E. 943.

Where a hospital is a corporation organized for pecuniary profit, and it receives a private patient under a definite contract for compensation, it is liable for the negligence of its officers and servants. Gitzhoffen *v.* Sisters of Holy Cross Hospital Assoc., (Utah 1907) 88 Pac. 691.

Where the Relationship of Master and Servant Exists the usual rules of that relation apply. Hewett *v.* Woman's Hospital Aid Assoc., 73 N. H. 556, 64 Atl. 190.

764. 1. State *v.* Trenton, (N. J. 1906) 63 [illegible].

5. Barry *v.* Smith, 191 Mass. 78, 77 N. E. 1099, holding that a loss of rents from the location of a smallpox hospital on land leased therefor, where the hospital is properly conducted, is *damnum absque injuria*, but that acts of misfeasance, as distinguished from nonfeasance, may constitute the hospital a nuisance.

HOSTILE.

765. 3. Taylor *v.* Hover, (Neb. 1906) 108 N. W. 149.

HOTEL.

766. 5. Holstein *v.* Phillips, (N. Car. 1907) 59 S. E. 1037.

A Family Hotel arranged in apartments held not to be a ***hotel*** under a civil rights statute. Alsberg *v.* Lucerne Hotel Co., 46 Misc. (N. Y.) 617, 92 N. Y. Supp. 851.

Intoxicating Liquors. — See Cullinan *v.* Clark, 46 Misc. (N. Y.) 188, 93 N. Y. Supp. 256; Matter of Clement, 117 N. Y. App. Div. 5, 102 N. Y. Supp. 37.

HOUSE.

767. 2. A Shed for a buggy containing no door and entirely planked up is a ***house*** within a burglary statute. Crow *v.* State, 48 Tex. Crim. 25, 85 S. W. 1057.

House Equivalent to Dwelling House. — Lewin *v.* End, (1906) A. C. 299, 75 L. J. K. B. 473.

House or Trade Refuse. — As to what constitutes ***house*** or trade refuse within the Public Health (London) Act, see Westminster *v.* Gordon Hotels, (1906) 2 K. B. 39.

HOUSEHOLD.

773. 4. Household Effects Taxable. An automobile which had been repaired and reupholstered held not admissible free of duty as ***household*** effects actually used abroad for more than one year within the Tariff Act. Hillhouse *v.* U. S., 142 Fed. 303.

Household Goods. — Piano held to be ***household*** goods within a statute providing for liens on conditional sales. Lamb *v.* King, 73 N. H. 400, 62 Atl. 493.

Household Furniture. — Linoleum held ***household*** furniture within statute providing that contracts of conditional sale of ***household*** furniture must be in writing. Boston Furniture Co. *v.* Thoms, 78 Conn. 273, 61 Atl. 949.

HOUSES OF REFUGE AND CORRECTION.

778. 4. The Industrial School in Nebraska is a place of education and reformation, and not a place of punishment. Leiby *v.* State, (Neb. 1907) 113 N. W. 125.

780. 1. Notice to Parents. — Under the *Illinois* statute the commitment of a child to the House of Correction is void unless reasonable notice of the proceedings was given to the parents. People *v.* Lynch, 223 Ill. 346, 79 N. E. 70.

781. 1. Welfare of Offender Chief Consideration. — Kennedy *v.* Meara, 127 Ga. 68, 56 S. E. [illegible].

2. Age When Convicted. — The presumption is that the court has satisfied itself as to the age of the delinquent. Leiby *v.* State, (Neb. 1907) 113 N. W. 125.

782. 1. By Statute in Nebraska an inmate of an industrial school, upon reaching his majority, if not already released, must be discharged, and such discharge is a complete release from all penalties incurred by the conviction. Leiby *v.* State, (Neb. 1907) 113 N. W. 125.

HUSBAND AND WIFE.

790. 1. Kellar *v.* James, (W. Va. 1907) 59 S. E. 939; Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

5. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285; Forsyth *v.* Barnes, 228 Ill. 326, 10 Ann. Cas. 710, 81 N. E. 1028, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 790; Thompson *v.* Minnich, 227 Ill. 430, 81 N. E. 336.

791. 2. Gilbert *v.* Brown, (Ky. 1906) 97 S. W. 40.

4. Lyttle *v.* Goldberg, 131 Wis. 613, 111 N. W. 718.

5. Pape *v.* Ludeman, (N. J. 1904) 59 Atl. 9; Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285; Thompson *v.* Minnich, 227 Ill. 430, 81 N. E. 336; Bland *v.* Windsor, 187 Mo. 108, 86 S. W. 162.

6. By statute in *Wisconsin* a married woman's obligation to secure the debt of her husband will be enforced in equity. Goll *v.* Febr, 131 Wis. 141, 111 N. W. 235.

792. 1. Patrick *v.* Morrow, 33 Colo. 509, 81 Pac. 242; Zimpleman *v.* Portwood, (Tex.

Civ. App. 1908) 107 S. W. 584; Kimmey *v.* Abney, (Tex. Civ. App. 1908) 107 S. W. 885.

2. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285; Gilbert *v.* Brown, (Ky. 1906) 97 S. W. 40; Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 410.

3. *United States.* — Burns *v.* Cooper, (C. C. A.) 140 Fed. 273.

Alabama. — Sample *v.* Guyer, 143 Ala. 613, 42 So. 106; Harper *v.* T. N. Hays Co., (Ala. 1907) 42 So. 300.

Connecticut. — Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

Florida. — Rice *v.* Cummings, 51 Fla. 535, 40 So. 889; Mercantile Exch. Bank *v.* Taylor, 51 Fla. 473, 41 So. 22; Taylor *v.* Mathews, 53 Fla. 776, 44 So. 146; Micou *v.* McDonald, (Fla. 1908) 46 So. 291.

Georgia. — Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62; Gross *v.* Whitely, 128 Ga. 79, 57 S. E. 94.

Idaho. — Bank of Commerce *v.* Baldwin, (Idaho 1908) 93 Pac. 504; Booth Mercantile Co. *v.* Murphy, (Idaho 1908) 93 Pac. 777.

Illinois. — Thompson *v.* Minnich, 227 Ill. 430, 81 N. E. 336.

Indiana. — Scott *v.* Collier, 166 Ind. 644, 78 N. E. 184; Wredman *v.* Falls City Sav., etc., Assoc., (Ind. App. 1907) 82 N. E. 476.

Kentucky. — Black *v.* McCarley, (Ky. 1907) 104 S. W. 987.

Louisiana. — Clark *v.* Whitaker, 117 La. 298, 41 So. 580; Keating *v.* Wilbert, 119 La. 461, 44 So. 265.

Missouri. — Bland *v.* Windsor, 187 Mo. 108, 86 S. W. 162.

Nebraska. — T. G. Northwall *v.* Osgood, (Neb. 1908) 115 N. W. 308; Parratt *v.* Hartsuff, 75 Neb. 706, 106 N. W. 966.

New Jersey. — Pape *v.* Ludeman, (N. J. 1904) 59 Atl. 9.

North Carolina. — Vandiford *v.* Humphrey, 139 N. Car. 65, 51 S. E. 893.

Texas. — Western Bank, etc., Co. *v.* Gibbs, (Tex. Civ. App. 1906) 96 S. W. 947; Adams *v.* Bartell, (Tex. Civ. App. 1907) 102 S. W. 770; Lane *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 211.

West Virginia. — Duty *v.* Sprinkle, (W. Va. 1908) 60 S. E. 882.

But in *Georgia* a married woman's promissory note, payable to her husband and delivered by him as collateral security for his debt, to an innocent holder, without notice and before maturity, is valid. Farmers', etc., Bank *v.* Eubanks, 2 Ga. App. 839, 59 S. E. 193.

By statute in *North Carolina* a married woman cannot make a contract to affect her estate except for necessary expenses, without the written consent of her husband. State *v.* Robinson, 143 N. Car. 620, 56 S. E. 918.

A note given by a married woman for the debt of her husband, to carry out an agreement between herself and a creditor and thereby obtain a conveyance to herself of real estate, is enforceable. Hamilton *v.* Parent, (Mich. 1908) 116 N. W. 367.

In *Wisconsin* a married woman may bind her separate property for her husband's debt, but no deficiency judgment can be rendered against her. Goll *v.* Fehr, 131 Wis. 141, 111 N. W. 205.

793. **1.** Johnson *v.* A. Leffler Co., 122 Ga. 670, 50 S. E. 488; Indianapolis Brewing Co. *v.* Lehnke, (Ind. App. 1907) 81 N. E. 119; Townsend *v.* Huntzinger, (Ind. App. 1908) 83 N. E. 619; Eberhardt *v.* Wahl, (Ky. 1906) 98 S. W. 994; Fitts *v.* A. F. Messick Grocery Co., 144 N. Car. 463, 57 S. E. 164; Sibley *v.* Robertson, 212 Pa. St. 24, 61 Atl. 426.

Surety for Husband — Contra in Arkansas. — Hannaford *v.* Dowdle, 75 Ark. 127, 86 S. W. 818.

Suretyship is to be determined from the inquiry as to whether a married woman received in person or in benefit to her separate estate the consideration upon which the contract depends, not upon the form of the contract itself. Harbaugh *v.* Tanner, 163 Ind. 574, 71 N. E. 145; Keating *v.* Wilbert, 119 La. 461, 44 So. 265; Italo-French Produce Co. *v.* Thomas, 31 Pa. Super. Ct. 503.

But by statute in *Massachusetts* the indorsement by a married woman of a promissory note payable to her husband, and indorsed by him, renders her liable as an accommodation indorser. Middleborough Nat. Bank *v.* Cole, 191 Mass. 168, 77 N. E. 781.

2. Gilbert *v.* Brown, (Ky. 1906) 97 S. W. 40.

Discoverture will not validate contracts of a married woman, made during coverture, under statutes prohibiting married women to contract. Bland *v.* Windsor, 187 Mo. 108, 86 S. W. 162.

3. Bland *v.* Windsor, 187 Mo. 108, 86 S. W. 162.

794. **7.** Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17.

A married woman who joins with her husband in a deed may sue alone to recover the money due under the contract of sale. Lyttle *v.* Goldberg, 131 Wis. 613, 111 N. W. 718.

9. Harrington *v.* Lowe, 73 Kan. 1, 84 Pac. 570.

795. **2.** Kampfer *v.* East Side Syndicate, 95 Minn. 309, 104 N. W. 290.

9. Mercantile Exch. Bank *v.* Taylor, 51 Fla. 473, 41 So. 22; Kennedy *v.* Swisher, 34 Ind. App. 676, 73 N. E. 724; Isphording *v.* Wolf, 36 Ind. App. 250, 75 N. E. 598; Anderson *v.* Citizens' Nat. Bank, 38 Ind. App. 190, 76 N. E. 811; Good Land Co. *v.* Cole, 131 Wis. 467, 110 N. W. 895; Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17; Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657; People's Nat. Bank *v.* Schepflin, 73 N. J. L. 29, 62 Atl. 333; Stevens *v.* Cunningham, 75 N. Y. App. Div. 125, 77 N. Y. Supp. 364; Stevens *v.* Cunningham, 181 N. Y. 454, 74 N. E. 434; Weakley *v.* Woodward, 2 Tenn. Ch. App. 586.

796. **1.** Kennedy *v.* Swisher, 34 Ind. App. 676, 73 N. E. 724; Anderson *v.* Citizens' Nat. Bank, 38 Ind. App. 190, 76 N. E. 811.

2. Mercantile Exch. Bank *v.* Taylor, 51 Fla. 473, 41 So. 22; Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797.

3. Isphording *v.* Wolf, 36 Ind. App. 250, 75 N. E. 508; Stevens *v.* Cunningham, 181 N. Y. 454, 74 N. E. 434.

6. Isphording *v.* Wolf, 36 Ind. App. 250, 75 N. E. 508; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651.

8. Vandiford *v.* Humphrey, 139 N. Car. 65, 51 S. E. 893; Pardon *v.* Paschall, 142 N. Car. 538, 55 S. E. 365; Witty *v.* Barham, (N. Car. 1908) 61 S. E. 372; Schmelzer *v.* Chester Traction Co., 218 Pa. St. 29, 66 Atl. 1005.

797. 3. Allen *v.* Clarke, 190 Mass. 566, 77 N. E. 691.

By statute in *Massachusetts* failure to file a certificate renders the wife's separate property liable for her husband's debts while it is employed in the business. Allen *v.* Clark, 190 Mass. 556, 77 N. E. 691.

7. Booth Mercantile Co. *v.* Murphy, (Idaho 1908) 93 Pac. 777; Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 410.

798. 2. Farming Is Not Carrying on a "Trade." — *In re* Long, (1905) 2 Ir. R. 343.

7. Tennessee Ins. Co. *v.* Waller, 116 Tenn. 1, 95 S. W. 811.

799. 4. Burns *v.* Cooper, (C. C. A.) 140 Fed. 273.

6. Burns *v.* Cooper, (C. C. A.) 140 Fed. 273.

9. Bankston *v.* Owl Bayou Cypress Co., 117 La. 1053, 42 So. 500; Huntress *v.* Hanley, 195 Mass. 236, 80 N. E. 946; Huot *v.* Reeder Bros. Shoe Co., 140 Mich. 162, 103 N. W. 569; Mertens *v.* Schlemme, 68 N. J. Eq. 544, 59 Atl. 808; Mayer *v.* Kane, 69 N. J. Eq. 733, 61 Atl. 374; People's Nat. Bank *v.* Schepflin, 73 N. J. L. 29, 62 Atl. 333; Indianapolis Brewing Co. *v.* Behnke, (Ind. App. 1907) 81 N. E. 119; Tannery *v.* McMinn, (Tex. Civ. App. 1905) 86 S. W. 640; Harle *v.* Texas Southern R. Co., (Tex. Civ. App. 1905) 86 S. W. 1048; Hughes *v.* Landrum, (Tex. Civ. App. 1905) 89 S. W. 85; Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

10. Indianapolis Brewing Co. *v.* Behnke, (Ind. App. 1907) 81 N. E. 119; Tannery *v.* McMinn, (Tex. Civ. App. 1905) 86 S. W. 640.

800. 6. Davis *v.* Yonge, 74 Ark. 161, 85 S. W. 90; Ackerman *v.* Larner, 116 La. 101, 40 So. 581; Hardwick *v.* Salzi, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 1, 93 N. Y. Supp. 265.

801. 2. Gilbert *v.* Brown, (Ky. 1906) 97 S. W. 40.

4. Ludlow *v.* Colt, (Ind. App. 1908) 83 N. E. 643; People's Nat. Bank *v.* Schepflin, 73 N. J. L. 29, 62 Atl. 333.

5. Clark *v.* Whitaker, 117 La. 298, 41 So. 580; Chemical Nat. Bank *v.* Kellogg, 183 N. Y. 92, 75 N. E. 1103.

Burden of Proof. — Where a note and mortgage were signed by both husband and wife, the burden is on the wife to show that the debt was her husband's, and she signed the instruments as surety. Gibson *v.* Wallace, 147 Ala. 322, 41 So. 960.

6 See Higgins *v.* Deering Harvester Co., 181 Mo. 300, 79 S. W. 950; People's Nat. Bank *v.* Schepflin, 73 N. J. L. 29, 62 Atl. 333.

It makes no difference that the wife becomes [illegible] surety and pays for it with her promissory notes. If the husband is the actual purchaser she will be held to be a surety for him. Byerley *v.* Walker, 118 [illegible]

802. 1. Anderson *v.* Citizens Nat. Bank, 38 Ind. App. 109, 76 N. E. 811.

3. In *Kansas* it has been held that a married woman who knowingly and without objection permits improvements to be made upon community property leased by her husband, she not joining in the lease, cannot after the completion of the improvements avoid the lease. Shay *v.* Levis Rock Salt Co., 72 Kan. 208, 83 Pac. 202.

804. 5. Mertens *v.* Schlemme, 68 N. J. Eq. 544, 59 Atl. 808.

6. Where a married woman placed her money in her husband's hands to conduct business in his name and he incurred liabilities and afterwards incorporated the business, she taking forty-eight of the fifty shares, her shares may be subjected to such liability. Story, etc., Piano Co. *v.* Kropsch, 231 Ill. 419, 83 N. E. 190.

8. Moore *v.* Rawlings, (Iowa 1908) 114 N. W. 1040.

809. 1. In *Texas* the refusal of a husband to join in a suit with his wife, which is necessary to the preservation of her separate estate, is sufficient to warrant her bringing suit therefor. Western Bank, etc., Co. *v.* Gibbs, (Tex. Civ. App. 1906) 96 S. W. 947.

811. 3. In *Alabama* a married woman whose husband is insane may convey her real estate as if she were sole. Royal *v.* Goss, (Ala. 1907) 45 So. 231.

8. Kessler *v.* Kessler, 2 Cal. App. 509, 83 Pac. 257.

812. 6. Kessler *v.* Kessler, 2 Cal. App. 509, 83 Pac. 257; Codoni *v.* Donati, (Cal. App. 1907) 91 Pac. 423; Klein *v.* Klein, (Ky. 1906) 96 S. W. 848; Birmingham *v.* O'Neil, 116 La. 1085, 41 So. 323; Price *v.* Price, 75 Neb. 552, 106 N. W. 657; People *v.* Flewellyn, (County Ct.) 111 N. Y. Supp. 621.

11. Van Etten *v.* Passumpsic Sav. Bank, (Neb. 1907) 113 N. W. 163; Bond *v.* Bond, 45 Wash. 511, 88 Pac. 943.

813. 3. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

7. Birmingham Southern R. Co. *v.* Lintner, 141 Ala. 420, 38 So. 363.

11. McGann *v.* McGann, (R. I. 1907) 66 Atl. 52.

814. 5. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285; Price *v.* Price, 75 Neb. 552, 106 N. W. 657.

6. Behrle *v.* Behrle, 120 Mo. App. 677, 97 S. W. 1005, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 814.

9. Brady *v.* Brady, 144 Ala. 414, 39 So. 237; Lathrop *v.* Lathrop, 78 Conn. 650, 63 Atl. 514; Breen *v.* Breen, (Ky. 1906) 91 S. W. 251; Taylor *v.* Taylor, (Md. 1908) 69 Atl. 632; Nolin *v.* Pearson, 191 Mass. 283, 77 N. E. 890; Stephen *v.* Stephen, 102 Minn. 301, 113 N. W. 913; Kurz *v.* Kurz, 110 Mo. App. 53, 96 S. W. 242; Chapman *v.* Chapman, (Neb. 1905) 104 N. W. 880; Price *v.* Price, 75 Neb. 552, 106 N. W. 657; Brewer *v.* Brewer, (Neb. 1907) 113 N. W. 161; Rhoades *v.* Rhoades, (Neb. 1907) 111 N. W. 122; Sample *v.* Sample, (Neb. 1908) 116 N. W. 953; Harris *v.* Harris, 70 N. J. Eq. 586, 62 Atl. 703; Cureton *v.* Cureton, 117 Tenn. 103, 96 S. W. 608; Bond *v.* Bond, 45 Wash. 511, 88 Pac. 943.

By statute in *California* a gross sum will not be allowed in suits for maintenance. Kusel *v.* Kusel, 147 Cal. 57, 81 Pac. 295; Hiner *v.* Hiner, (Cal. 1908) 94 Pac. 1044.

815. 1. Jones *v.* People, 119 Ill. App. 49; Virtue *v.* People, 122 Ill. App. 223; *In re* Baurens, 117 La. 136, 41 So. 442.

By statute in *New Jersey* it must be proven that the wife was or might become a charge upon the city. Eckerson *v.* Mitchell, (N. J. [illegible]) [illegible] Atl. [illegible].

Under the *New York* Code wilful desertion must be proven to constitute abandonment. People *v.* Demos, 115 N. Y. App. Div. 410, 100 N. Y. Supp. 968.

5. Faller *v.* Faller, 146 Mich. 84, 109 N. W. 47.

816. 1. Faller *v.* Faller, 146 Mich. 84, 109 N. W. 47.

817. 1. McGann *v.* McGann, (R. I. 1907) 66 Atl. 52.

5. De Hatre *v.* Edmonds, 200 Mo. 246, 98 S. W. 744; Chilton *v.* Hannah, 107 Va. 661, 60 S. E. 87.

6. Winestine *v.* Ziglatzki-Marks Co., 77 Conn. 404, 59 Atl. 496; Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285; De Hatre *v.* Edmonds, 200 Mo. 246, 98 S. W. 744.

818. 1. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

2. Effect of Void Marriage. — Brown *v.* Brown, 90 Miss. 410, 43 So. 178.

6. De Hatre *v.* Edmonds, 200 Mo. 246, 98 S. W. 744.

819. 1. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

2. Frazer *v.* Andrews, 134 Iowa 621, 112 N. W. 92; Green *v.* Forney, 134 Iowa 316, 111 N. W. 976; Johnson *v.* Johnson, 122 Ky. 13, 90 S. W. 964; Eberhardt *v.* Wahl, (Ky. 1907) 98 S. W. 994; Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751; Chilton *v.* Hannah, 107 Va. 661, 60 S. E. 87.

In *California* "neither spouse has any interest in the property of the other." Kessler *v.* Kessler, 2 Cal. App. 509, 83 Pac. 257.

In *Texas* a husband, during marriage, has the management and control of his wife's separate property. Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142.

In *Virginia* it has been held that the Married Woman's Act, exempting the wife's property from liability for husband's debt, affected not only the property thereafter acquired, but also the property then owned by her. Chilton *v.* Hannah, 107 Va. 661, 60 S. E. 87.

820. 5. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

Effect of Antenuptial Agreement on Husband's Rights in Wife's Personalty. — Unger *v.* Mellinger, 37 Ind. App. 639, 77 N. E. 814; Johnson *v.* Johnson, 122 Ky. 13, 90 S. W. 964.

6. Ellington *v.* Harris, 127 Ga. 85, 56 S. E. 134; Witherill *v.* Fraunfelter, 46 Wash. 699, 91 Pac. 1086.

822. 6. Smith *v.* Little, (Mo. App. 1908) 107 S. W. 430.

7. [illegible] *v.* Harris, 127 Ga. 85, 56 S. E. 134; Johnson *v.* Johnson, 122 Ky. 13, 90 S. W. 964; Baldrick *v.* Mills, (Ky. 1906) 96 S. W. [illegible].

824. 1. Effect of Separation. See Michael *v.* Rabe, (Tex. Civ. App. 1908) 109 S. W. 939.

2. Allen *v.* Allen, (Tex. Civ. App. 1907) 105 S. W. 53.

825. 2. Johnson *v.* Johnson, 122 Ky. 13, 90 S. W. 964.

829. 2. Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544.

830. 2. Ellington *v.* Harris, 127 Ga. 85, 56 S. E. 134; Ahlering *v.* Speckman, (Ky. 1907) 99 S. W. 973.

832. 3. Monahan *v.* Monahan, 77 Vt. 133, 59 Atl. 169; Fretz *v.* Roth, 68 N. J. Eq. 516, 59 Atl. 676; Small *v.* Pryor, 69 N. J. Eq. 606, 61 Atl. 564; Standen *v.* Pennsylvania R. C. 214 Pa. St. 189, 63 Atl. 467; Michael *v.* Rabe (Tex. Civ. App. 1908) 109 S. W. 939.

In equity the same rule holds unless the husband divests himself of his wife's earnings by some distinct act. Small *v.* Pryor, 69 N. J. Eq. 606, 61 Atl. 564.

833. 1. Small *v.* Pryor, 69 N. J. Eq. 606, 61 Atl. 564.

4. Small *v.* Pryor, 69 N. J. Eq. 606, 61 Atl. 564.

834. 6. Robertson *v.* Robertson, 147 Ala. 311, 40 So. 104; Trabbic *v.* Trabbic, 142 Mich. 387, 105 N. W. 876.

7. Robertson *v.* Robertson, 147 Ala. 311, 40 So. 104, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 834.

9. Robertson *v.* Robertson, 147 Ala. 311, 40 So. 104, *quoting* whole text paragraph 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 834.

835. 3. **In Texas** it has been held that money saved by a married woman out of her allowance is a gift. Zuckerman *v.* Munz, (Tex. Civ. App. 1908) 107 S. W. 78.

836. 1. See also Jenkins *v.* Maier, 118 La. 139, 42 So. 722.

5. Farrow *v.* Farrow, (N. J. 1907) 65 Atl. 1009.

10. Sangpiel's Succession, 114 La. 767, 38 So. 574.

837. 2. Farrow *v.* Farrow, (N. J. 1907) 65 Atl. 1009.

5. Farr *v.* Hauenstein, (N. J. 1907) 67 Atl. 377, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 837.

846. 6. Naler *v.* Ballew, 81 Ark. 328, 99 S. W. 72; Kunz *v.* Kurtz, 8 Del. Ch. 404, 68 Atl. 450; Boland *v.* McKowen, 189 Mass. 563, 76 N. E. 206; Wilson *v.* Frost, 186 Mo. 311, 85 S. W. 375; Hough *v.* Jasper County Light, etc., Co., 127 Mo. App. 570, 106 S. W. 547; Hayes *v.* Horton, 46 Oregon 597, 81 Pac. 386.

847. 1. Green *v.* Cannaday, 77 S. Car. 103, 57 S. E. 832; Campbell *v.* Asher, (Ky. 1905) 88 S. W. 1067; Boland *v.* McKowen, 189 Mass. 563, 76 N. E. 206; Booth *v.* Fordham, 100 N. Y. App. Div. 115, 91 N. Y. Supp. 406; Bassler *v.* Rewodlinski, 130 Wis. 26, 109 N. W. 1032.

2. Alles *v.* Lyon, 216 Pa. St. 604, 66 Atl. 81.

3. Kunz *v.* Kurtz, 8 Del. Ch. 404, 68 Atl. 450; Young *v.* Biehl, 166 Ind. 357, 77 N. E. 406, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847; Gregory *v.* Copeland, (Ky. [illegible]) [illegible] S. W. [illegible]; Jordan *v.* Reynolds [illegible] Me. [illegible] Atl. 37; Hough *v.* Jasper County Light, etc., Co., 127 Mo. App. 570, 106 S. W. [illegible]; Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828; Hardwick *v.* Salzi, (Supm. Ct. Spec. T.) [illegible] (N. Y.) [illegible] N. Y. Supp. [illegible]; Opinion *v.* Monsees, 121 N. Y. App. Div. 110, 105 N. Y. Supp. 167; West *v.* Aberdeen, etc., R. Co., 140

N. Car. 620, 53 S. E. 477; Hayes *v.* Horton, 46 Oregon 597, 81 Pac. 386; Bassler *v.* Rewodlinski, 130 Wis. 26, 109 N. W. 1032.

Death of One Tenant by Felonious Act of the Other. — Since the survivor takes title by reason of the conveyance rather than by inheritance, his rights are not impaired by his illegal act in causing the death of the cotenant. Beddingfield *v.* Estill, 118 Tenn. 39, 100 S. W. 108.

849. 1. Hough *v.* Jasper County Light, etc., Co., 127 Mo. App. 570, 106 S. W. 547.

2. West *v.* Aberdeen, etc., R. Co., 140 N. Car. 620, 53 S. E. 477, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 849; Bynum *v.* Wicker, 141 N. Car. 95, 53 S. E. 478.

Husband's Right to Usufruct — Contra in Missouri. — Cox *v.* St. Louis, etc., R. Co., 123 Mo. App. 356, 100 S. W. 1096.

Right of Wife to Sue. — It has been held that where an injury has been done to property owned by husband and wife as tenants by the entirety, which affects the inheritance, the wife may sue in her own right. Holmes *v.* Kansas City, (Mo. 1907) 108 S. W. 9.

3. Effect of Divorce a Vinculo. — Hayes *v.* Horton, 46 Oregon 597, 81 Pac. 386.

850. 2. Boland *v.* McKowen, 189 Mass. 563, 76 N. E. 206.

3. Boland *v.* McKowen, 189 Mass. 563, 76 N. E. 206.

4. Roach *v.* Richardson, 84 Ark. 37, 104 S. W. 538; Kunz *v.* Kurtz, 8 Del. Ch. 404, 68 Atl. 450; Young *v.* Biehl, 166 Ind. 357, 77 N. E. 406; Hough *v.* Jasper County Light, etc., Co., 127 Mo. App. 570, 106 S. W. 547; Jordan *v.* Reynolds, 105 Md. 288, 66 Atl. 37; Kegan *v.* Haslett, 128 Mo. App. 286, 107 S. W. 17; Holmes *v.* Kansas City, (Mo. 1907) 108 S. W. 9; Wilson *v.* Frost, 186 Mo. 311, 85 S. W. 375; Frost *v.* Frost, 200 Mo. 474, 98 S. W. 527; Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828; Bynum *v.* Wicker, 141 N. Car. 95, 53 S. E. 478; Hayes *v.* Horton, 46 Oregon 597, 81 Pac. 386; Oliver *v.* Wright, 47 Oregon 322 83 Pac. 870; Hetzel *v.* Lincoln, 216 Pa. St. 60, 64 Atl. 866; Alles *v.* Lyon, 216 Pa. St. 604, 66 Atl. 81; Beddingfield *v.* Estill, 118 Tenn. 39, 100 S. W. 108.

Where a husband purchases realty with his own funds, and takes in the names of himself and wife, a tenancy by entirety is created. Hayes *v.* Horton, 46 Oregon 597, 81 Pac. 386.

In *Michigan* it has been held that land conveyed to two persons living together as husband and wife, but really not husband and wife, created in them a joint tenancy. Wright *v.* Kayner, 150 Mich. 7, 113 N. W. 779.

851. 1. McLaughlin *v.* Rice, 185 Mass. 212, 70 N. E. 52.

3. Boland *v.* McKowen, 189 Mass. 563, 76 N. E. 206; Aubry *v.* Schneider, 69 N. J. Eq. 620, 60 Atl. 929; West *v.* McCullough, 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493; *In re* Klenke, 210 Pa. St. 572, 60 Atl. 166.

4. West *v.* Aberdeen, etc., R. Co., 140 N. Car. 620, 53 S. E. 477, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 851.

852. 2. Matter of Baum, 121 N. Y. App. Div. 496, 106 N. Y. Supp. 113.

10. Pierce *v.* Vansell, 35 Ind. App. 525, 74 N. E. 554.

11. [illegible] 63; Unger *v.* Mellinger, 37 Ind. App. 639, 77 N. E. 814; Welch *v.* Mann, 193 Mo. 394, 92 S. W. 98; Hosmer *v.* Tiffany, 115 N. Y. App. Div. 303, 100 N. Y. Supp. 797.

14. Winter *v.* Winter, 191 N. Y. 462, 84 N. E. 382.

853. 1. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

4. Hardwick *v.* Salzi, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 1, 93 N. Y. Supp. 265.

7. Brown *v.* Clark, (Conn. 1908) 68 Atl. 1001; Swiger *v.* Swiger, 58 W. Va. 119, 52 S. [illegible].

854. 3. Muller *v.* Witte, 78 Conn. 492, 62 Atl. 756; Clarke *v.* Black, 78 Conn. 467, 62 Atl. 757; Mathewson *v.* Mathewson, 79 Conn. [illegible], 63 Atl. 285; Bronson *v.* Brady, 28 App. Cas. (D. C.) 250; Anderson *v.* Citizens' Nat. Bank, 38 Ind. App. 190, 76 N. E. 811; Townsend *v.* Huntzinger, (Ind. App. 1908) 83 N. E. 619; Branch *v.* Branch, (Ky. 1906) 98 S. W. 1004; Noel *v.* Fitzpatrick, (Ky. 1907) 100 S. W. 321; Siddens *v.* Siddens, (Ky. 1907) 101 S. W. 377; Bodkin *v.* Kerr, 97 Minn. 301, 107 N. W. 137; O'Day *v.* Meadows, 194 Mo. 588, 92 S. W. 637; Hiett *v.* Hiett, 74 Neb. 96, 103 N. W. 1051; Pedrick *v.* Kuemmell, (N. J. 1907) 65 Atl. 906; Winter *v.* Winter, 191 N. Y. 462, 84 N. E. 382; Hardwick *v.* Salzi, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 1, 93 N. Y. Supp. 265; Sparks *v.* Taylor, 99 Tex. 411, 90 S. W. 485.

In *Kentucky* a married woman may enforce a contract with her husband even after divorce. Siddens *v.* Siddens, (Ky. 1907) 101 S. W. 377.

By statute in *Kentucky* agreements between husband and wife by which property passes from one to the other are void as to third persons unless in writing, acknowledged, and recorded. Eberhardt *v.* Wahl, (Ky. 1906) 98 S. W. 994.

4. Spurlock *v.* Spurlock, 80 Ark. 37, 96 S. W. 753; Norwood *v.* Francis, 25 App. Cas. (D. C.) 463; Caldwell *v.* Nash, 190 Mass. 507, 77 N. E. 515.

6. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

In *Indiana* a parol agreement between husband and wife, binding the wife to hold land purchased by him but conveyed to her, does not create a resulting trust in favor of the husband. Shipley *v.* Shipley, 38 Ind. App. 48, 77 N. E. 965.

In *Massachusetts* a promissory note given by a married man to his wife is not provable against his estate in insolvency. Caldwell *v.* Nash, 190 Mass. 507, 77 N. E. 515.

In *Delaware* it has been held that a married woman cannot execute a bond under seal to her husband for borrowed money. Masten *v.* Herring, (Del. 1907) 66 Atl. 368.

Contract Renouncing Marital Rights Is Void. — Hill *v.* Hill, (N. H. 1907) 67 Atl. 406.

Contract for Support of Wife. — A contract whereby a husband agrees to pay a certain amount to a trustee for the support of his wife, and the wife and trustee agree to save him harmless from any liability for further support, is legal. Reardon *v.* Woerner, 111 N. Y. App. Div. 259, 97 N. Y. Supp. 747.

Separation as Consideration. — A contract between husband and wife, the entire or partial consideration of which is to live separately, no separation at the time existing, is illegal. Winter *v.* Winter, 191 N. Y. 462, 84 N. E. 382. See also Gray *v.* Butler, 116 N. Y. App. Div. 816, 102 N. Y. Supp. 106.

Support During Coverture. — An obligation of a married woman to bequeath to her husband all her estate in consideration for his supporting her during coverture is illegal. *In re* Ryan, (Wis. 1908) 114 N. W. 820.

855. 1. Miller *v.* Jones, (Ky. 1908) 107 S. W. 783; Thomas *v.* Equitable Bldg., etc., Assoc., 215 Pa. St. 259, 64 Atl. 531.

2. Pinkston *v.* Cedar Hill Nursery, etc., Co., 123 Ga. 302, 51 S. E. 387; Skinner *v.* Braswell, 126 Ga. 761, 55 S. E. 914; Brosseau *v.* Loury, 209 Ill. 405, 70 N. E. 901; Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435; Simons *v.* Wittmann, 113 Mo. App. 357, 88 S. W. 791; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Black *v.* McQuaid, (N. J. 1907) 68 Atl. 102; Douglas *v.* New York Cent., etc., R. Co., 105 N. Y. App. Div. 65, 93 N. Y. Supp. 723; Lesser *v.* Steindler, 110 N. Y. App. Div. 262, 97 N. Y. Supp 255; Sparks *v.* Taylor, 99 Tex. 411, 90 S. W. 485; Stevens *v.* Kittredge, 44 Wash. 347, 87 Pac. 484.

Under the *California* Code a husband cannot act as his wife's agent unless authorized in writing to do so. Shanks *v.* Michael, 4 Cal. App. 553, 88 Pac. 596.

So, too, in *New York*, in respect to the wife's realty. Milstein *v.* Mosher, (Supm. Ct. App. Div.) 110 N. Y. Supp. 568.

In *Iowa* a married woman cannot constitute her husband her attorney in fact to convey her interest in his property. Swartz *v.* Andrews, (Iowa 1908) 114 N. W. 888.

3. *Colorado.* — Steele *v.* Gold Fissure Gold Min. Co., (Colo. 1908) 95 Pac. 349.

District of Columbia. — Rheam *v.* Martin, 26 App. Cas. (D. C.) 181.

Georgia. — Porter *v.* Terrell, 2 Ga. App. 269, 58 S. E. 493; Cornelia Planing Mill Co. *v.* Wilcox, 129 Ga. 522, 59 S. E. 223.

Idaho. — Larson *v.* Carter, (Idaho 1908) 94 Pac. 825.

Iowa. — Brown *v.* Honeyfield, (Iowa 1908) 116 N. W. 731.

Kentucky. — Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10.

Louisiana. — Bianchi *v.* Del Valle, 117 La. 587, 42 So. 148; Langpiel's Succession, 114 La. 767, 38 So. 554.

Massachusetts. — Kershaw *v.* Merritt, 194 Mass. 113, 80 N. E. 213.

Michigan. — Reelman *v.* Grosfend, 140 Mich. 681, 104 N. W. 331; Lindsley *v.* Smith, 150 Mich. 543, 114 N. W. 340.

Missouri. — Cox *v.* St. Louis, etc., R. Co., 111 Mo. App. 394, 85 S. W. 089; Berkmeier *v.* Peters, 111 Mo. App. 717, 86 S. W. 598.

New Jersey. — Black *v.* McQuaid, (N. J. 1907) 68 Atl. 102.

New York. — Nugent *v.* New York, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 453, 111 N. Y. Supp. 438.

Oregon. — Marks *v.* Herren, 47 Oregon 603, 83 Pac. 385.

South Carolina. — Du Bose *v.* Gladden, 75 S. Car. 78, 55 S. E. 152.

South Dakota. — Barry *v.* Stover, (S. Dak. 1906) 107 N. W. 672.

Texas. — De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476.

Wisconsin. — Neumeister *v.* Goddard, 125 Wis. 82, 103 N. W. 241.

By statute in *Idaho* a husband is his wife's agent in managing his wife's separate property. Sencerbox *v.* Idaho First Nat. Bank, (Idaho 1908) 93 Pac. 369.

Ratification of Husband's Agency. — Evidence of prior acts of a similar nature is admissible. Hawkins *v.* Windhorst, (Kan. 1908) 96 Pac. 48.

Ratification by the Wife of Her Husband's Contract. — *In re* Berkebile, 144 Fed. 572.

856. 1. Sanders *v.* Brown, 145 Ala. 665, 39 So. 732.

2. Trawick *v.* Trussell, 122 Ga. 320, 50 S. E. 86; Lawrie *v.* Lininger, etc., Co., (Neb. 1906) 107 N. W. 259.

3. Lichtenstein Millinery Co. *v.* Peck, (Supm. Ct. App. T.) 110 N. Y. Supp. 410.

5. Stevens *v.* Kittredge, 44 Wash. 347, 87 Pac. 484.

8. Bonwit *v.* Lovett, (Supm. Ct. App. T.) 102 N. Y. Supp. 800.

9. Howell *v.* Blesh, (Okla. 1907) 91 Pac. 893.

858. 7. Birmingham Southern R. Co. *v.* Lintner, 141 Ala. 420, 38 So. 363.

Competency of Husband's Testimony. — Martin *v.* Derenbecker, 116 La. 495, 40 So. 849.

860. 1. *United States.* — Times-Democrat Pub. Co. *v.* Mozee, (C. C. A.) 136 Fed. 761; Long *v.* Pennsylvania R. Co., 149 Fed. 598.

Alabama. — Engle *v.* Simmons, (Ala. 1906) 41 So. 1023; Elba *v.* Bullard, (Ala. 1907) 44 So. 412.

Colorado. — Colorado Springs, etc., R. Co. *v.* Nichols, (Colo. 1907) 92 Pac. 691.

Iowa. — Farrell *v.* Dubuque, 129 Iowa 447, 105 N. W. 696; McGovern *v.* Interurban R. Co., (Iowa 1907) 111 N. W. 412.

Louisiana. — Martin *v.* Derenbecker, 116 La. 495, 40 So. 849.

Massachusetts. — Duffee *v.* Boston El. R. Co., 191 Mass. 563, 77 N. E. 1036; Hey *v.* Prime, (Mass. 1908) 84 N. E. 141.

Minnesota. — Mawson *v.* Great Northern R. Co., (Minn. 1908) 115 N. W. 651, 916.

Missouri. — Elliott *v.* Kansas City, (Mo. 1908) 109 S. W. 627.

Texas. — See *contra*, San Antonio *v.* Wildenstein, (Tex. Civ. App. 1908) 109 S. W. 221.

Virginia. — Norfolk R., etc., Co. *v.* Williar, 104 Va. 679, 52 S. E. 380.

A married woman may bring an action in her own name to recover for personal injuries due to trespass on the community property. Lesser *v.* Great Northern R. Co., Minn., 106 N. W. 955.

Under Married Women's Acts. — In jurisdictions where the statute permits a married woman to contract for necessaries and bind her separate estate therefor, in an action for personal injuries she may recover for medicines and medical attendance regardless of her husband's liability. Ashley *v.* Flaherty, etc., Gravel Road Co., 111 Mo. App. 79, 85 S. W. 957; Indianapolis

Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347.

In *Missouri* a married woman may recover damages for loss of earnings, past or future, in an action to recover for personal injury. Hendricks *v.* St. Louis Transit Co., 124 Mo. App. [illegible] S. W. 675.

4. Gomez *v.* Scanlan, 2 Cal. App. 579, 84 Pac. 50; Lindsay *v.* Oregon Short Line R. Co., 13 Idaho 477, 90 Pac. 984; Martin *v.* Derenbecker, 116 La. 495, 40 So. 849; Ligon *v.* Ligon, (Tex. Civ App. 1905) 87 S. W. 838; Feille *v.* San Antonio Traction Co., (Tex. Civ. App. 1908) 107 S. W. 367.

Desertion by the Husband qualifies the wife to sue alone. Duncan *v.* Duncan, (Cal. App. 1907) 92 Pac. 310.

In *Texas* a husband may recover for damages sustained by his wife through the negligent failure of a telegraph company to deliver his message to her. Western Union Tel. Co. *v.* Bell, (Tex. Civ. App. 1908) 107 S. W. 570.

Measure of Damages. — In an action by a husband for injuries to his wife he cannot recover in addition to "damages alleged and proven, * * * compensation for physical and mental suffering." Fort Worth, etc., R. Co. *v.* Spear, (Tex. Civ. App. 1908) 107 S. W. 613.

861. **1.** Duncan *v.* Duncan, (Cal. App. 1907) 92 Pac. 310.

In *Pennsylvania* a deserted wife may sue in her own name for injuries to her earning powers in the future. Schmelzer *v.* Chester Traction Co., 218 Pa. St. 29, 66 Atl. 1005.

2. Birmingham Southern R. Co. *v.* Lintner, 141 Ala. 420, 38 So. 363, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 861.

United States. — Garside *v.* New York Transp. Co., 146 Fed. 588.

Colorado. — Colorado Springs, etc., R. Co. *v.* Nichols, (Colo. 1907) 92 Pac. 691.

Georgia. — Georgia R., etc., Co. *v.* Tice, 124 Ga. 459, 52 S. E. 916.

Illinois. — Chicago Electric R. Co. *v.* Krempel, 116 Ill. App. 253.

Indiana. — Indiana Union Traction Co. *v.* McKinney, 39 Ind. App. 86, 78 N. E. 203.

Massachusetts. — Hey *v.* Prime, (Mass. 1908) 84 N. E. 141.

Michigan. — Lorf *v.* Detroit, 145 Mich. 265, 108 N. W. 661.

Minnesota. — Mageau *v.* Great Northern R. Co., (Minn. 1908) 115 N. W. 651.

Missouri. — Kirkpatrick *v.* Metropolitan St. R. Co., (Mo. App. 1908) 107 S. W. 1025; Elliott *v.* Kansas City, (Mo. 1908) 109 S. W. 627.

Nebraska. — Wright *v.* Omaha, (Neb. 1907) 110 N. W. 754.

New Hampshire. — Booth *v.* Manchester St. R. Co., 73 N. H. 529, 63 Atl. 578.

New Jersey. — Mead *v.* Baum, (N. J. 1908) 69 Atl. 962.

New York. — Lyons *v.* New York City R. Co., (Supm. Ct. App. T.) 40 Misc. (N. Y.) 517, 97 N. Y. Supp. 1033.

North Carolina. — Kimberly *v.* Howland, 143 N. Car. 398, 55 S. E. 778, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 861.

Pennsylvania. — But see *contra*. Standen *v.* Pennsylvania R. Co., 214 Pa. St. 189, 63 Atl. 467.

A judgment for the defendant in an action by the wife is not *res judicata* in an action by the husband for consequential damages. Duffee *v.* Boston El. R. Co., 191 Mass. 563, 77 N. E. 1036.

In *Texas* it has been held that a husband may bring an action in his own name for injury to the feelings of himself and wife on account of the negligent handling by a railroad company of the corpse of their infant child. Missouri, etc., R. Co. *v.* Hawkins, (Tex. Civ. App. 1908) 109 S. W. 221.

The Value of a Wife's Services, in an action by a husband for consequential damages, may be inferred by the jury from the surrounding circumstances. San Antonio, etc., R. Co. *v.* Drake, (Tex. Civ. App. 1905) 85 S. W. 447.

3. Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450; Elliott *v.* Kansas City, (Mo. 1908) 109 S. W. 627; Keenan *v.* Metropolitan St. R. Co., 118 N. Y. App. Div. 56, 103 N. Y. Supp. 61; Norfolk R., etc., Co. *v.* Williar, 104 Va. 679, 52 S. E. 380.

4. Georgia R., etc., Co. *v.* Tice, 124 Ga. 459, 52 S. E. 916; Booth *v.* Manchester St. R. Co., 73 N. H. 529, 63 Atl. 578.

862. **1.** Elliott *v.* Kansas City, (Mo. 1908) 109 S. W. 627.

2. Mageau *v.* Great Northern R. Co., (Minn. 1908) 115 N. W. 651.

4. Frank *v.* Berry, 128 Iowa 223, 103 N. W. 358; Lewis *v.* Roby, 79 Vt. 487, 65 Atl. 524.

6. Gregg *v.* Gregg, 37 Ind. App. 210, 75 N. E. 674.

7. Lewis *v.* Roby, 79 Vt. 487, 65 Atl. 524.

8. Morris *v.* Warwick, 42 Wash. 480, 85 Pac. 42, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 862.

863. **2.** Ireland *v.* Ward, (Oregon 1908) 93 Pac. 932.

4. Husband's Knowledge of Wife's Misconduct. — The fact that a husband is cognizant of his wife's misconduct, but does not approve of it, is not a mitigating circumstance. Frank *v.* Berry, 128 Iowa 223, 103 N. W. 358.

8. Korby *v.* Chesser, 98 Minn. 509, 108 N. W. 520.

10. Humphrey *v.* Pope, 1 Cal. App. 374, 82 Pac. 223; Allen *v.* Besecker, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 366, 105 N. Y. Supp. 416; Lewis *v.* Robey, 79 Vt. 487, 65 Atl. 524; Morris *v.* Warwick, 42 Wash. 480, 85 Pac. 42.

864. **2. Financial Condition of Husband.** — The financial condition of the husband at the time of his marriage, and at the time of the acts complained of, may be [illegible] as tending to show the manner in which he supported his wife. Frank *v.* Berry, 128 Iowa 223, 103 N. W. 25.

4. Cochran *v.* Cochran, (Supm. Ct. App. Div.) 111 N. Y. Supp. 588.

5. Noxon *v.* Remington, 78 Conn. 296, 61 Atl. 963; Keen *v.* Keen, (Oregon 1907) 90 Pac. [illegible]

865. **3.** Smith *v.* Gillam, 122 Ill. App. [illegible]; Gregg *v.* Gregg, 37 Ind. App. 210, 75 N. E. 674; Nolin *v.* Pearson, 191 Mass. 283, 77 N. E. 890.

4. Dodge *v.* Rush, 8 Ann. Cas. 671, 28 App. Cas. (D. C.) 140.

5. Hardwick *v.* Hardwick, 130 Iowa 230, 106 N. W. 639.

Physician's Opinion of Marriage Not Necessary. — Cochran *v.* Cochran, (Supm. Ct. App. Div.) 111 N. Y. Supp. 588.

7. Gregg *v.* Gregg, 37 Ind. App. 210, 75 N. E. 674; Klein *v.* Klein, (Ky. 1907) 101 S. W. 382; Multer *v.* Knibbs, 193 Mass. 556, 9 Ann. Cas. 958, 79 N. E. 762; Barton *v.* Barton, 119 Mo. 507, 94 S. W. 574; Leavell *v.* Leavell, 122 Mo. App. 654, 99 S. W. 460; Miller *v.* Miller, 122 Mo. App. 693, 99 S. W. 757; Hardwick *v.* Hardwick, 130 Iowa 230, 106 N. W. 639.

8. Cochran *v.* Cochran, (Supm. Ct. App. Div.) 111 N. Y. Supp. 588.

Malice. — See also Multer *v.* Knibbs, 193 Mass. 556, 9 Ann. Cas. 958, 79 N. E. 762.

866. 2. Hillers *v.* Taylor, (Md. 1908) 69 Atl. 715.

4. Noxon *v.* Remington, 78 Conn. 296, 61 Atl. 963; Harvey *v.* Harvey, 75 Neb. 557, 106 N. W. 660.

Measure of Damages in General. — Humphrey *v.* Pope, 1 Cal. App. 374, 82 Pac. 223.

Financial Ability of Defendant. — Where exemplary damages are permissible, the financial ability of the defendant becomes material. White *v.* White, 76 Kan. 82, 90 Pac. 1087.

5. Noxon *v.* Remington, 78 Conn. 296, 61 Atl. 963; Klein *v.* Klein, (Ky. 1907) 101 S. W. 382; Nolin *v.* Pearson, 191 Mass. 283, 77 N. E. 890.

6. Gregg *v.* Gregg, 37 Ind. App. 210, 75 N. E. 674; Klein *v.* Klein, (Ky. 1907) 101 S. W. 382; Leavell *v.* Leavell, 114 Mo. App. 24, 89 S. W. 55; Cochran *v.* Cochran, (Supm. Ct. App. Div.) 111 N. Y. Supp. 588; Tillinghast *v.* Sawyer, (R. I. 1905) 68 Atl. 478.

7. Gregg *v.* Gregg, 37 Ind. App. 210, 75 N. E. 674.

8. Hardwick *v.* Hardwick, 130 Iowa 230, 106 N. W. 639.

9. Moore *v.* Rose, (Mo. App. 1908) 108 S. W. 1105; Tillinghast *v.* Sawyer, (R. I. 1905) 68 Atl. 478.

11. Park *v.* Park, (Colo. 1907) 91 Pac. 830; Keen *v.* Keen, (Oregon 1907) 90 Pac. 147.

868. 4. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

871. 1. Zimpleman *v.* Portwood, (Tex. Civ. App. 1908) 107 S. W. 584.

2. Richburg *v.* Sherwood, (Tex. 1907) 102 S. W. 905, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 871.

8. Richburg *v.* Sherwood, (Tex. 1907) 102 S. W. 905.

872. 2 Bonwit *v.* Lovett, (Supm. Ct. App. T.) 102 N. Y. Supp. 800.

3. Richardson *v.* Stuesser, 125 Wis. 66, 103 N. W. 261.

4. Evans *v.* Crawford County Farmers' Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

6. Evans *v.* Crawford County Farmers' Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

873. 2. Bonwit *v.* Lovett, (Supm. Ct. App. T.) 102 N. Y. Supp. 800; Shuman *v.* Steinel, 129 Wis. 422, 109 N. W. 74.

3. Landgrof *v.* Tanner, (Ala. 1907) 44 So. 207. See also Shuman *v.* Steinel, 129 Wis. 422, 109 N. W. 74.

7. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285; Caldwell *v.* Blanchard, 191 Mass. 489, 77 N. E. 1036; Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17; Bollinger *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 293, 98 N. Y. Supp. 641; Wuertz *v.* Braun, 113 N. Y. App. Div. 459, 99 N. Y. Supp. 340; Shuman *v.* Steinel, 129 Wis. 422, 109 N. W. 74.

874. 4. McKee *v.* Cunningham, 2 Cal. App. 684, 84 Pac. 260.

Demand on Husband for Payment. — In an action against a married woman, the fact that the plaintiff demanded payment from her husband is a circumstance to be considered in determining to whom credit was given. Blendermann *v.* Mann-Wray, (Supm. Ct. App. T.) 108 N. Y. Supp. 700.

9. Tuition of Child. — A note given by a married woman, in the absence of her husband in a foreign country, for the tuition of their child, was held binding upon her husband. Haas *v.* American Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 439.

875. 1. Evans *v.* Crawford County Farmers' Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

6. Ponder *v.* Morris, (Ala. 1907) 44 So. 651; Edminston *v.* Smith, 13 Idaho 645, 92 Pac. 842; Feiner *v.* Boynton, 73 N. J. L. 136, 62 Atl. 420; Fischer *v.* Brady, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 401, 94 N. Y. Supp. 25; Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797; Breed *v.* Breed, 125 Wis. 100, 103 N. W. 271.

876. 1. Hoey *v.* Hechtman, 2 Cal. App. 120, 83 Pac. 85; Baker *v.* Oughton, 130 Iowa 35, 106 N. W. 272; Van Horn *v.* Arantes, 116 La. 130, 40 So. 592; Clothier *v.* Sigle, 73 N. J. L. 419, 63 Atl. 865; Sloane *v.* Boyer, (Supm. Ct. App. T.) 95 N. Y. Supp. 531; Richburg *v.* Sherwood, (Tex. 1907) 102 S. W. 905.

3. Howell *v.* Blesh, (Okla. 1907) 91 Pac. 893.

4. Fitzmaurice *v.* Buck, 77 Conn. 390, 59 Atl. 415; Moore *v.* Rose, (Mo. App. 1908) 108 S. W. 1105; Feiner *v.* Boynton, 73 N. J. L. 136, 62 Atl. 420; Clothier *v.* Sigle, 73 N. J. L. 419, 63 Atl. 865; Ball *v.* Lovett, (Supm. Ct. App. T.) 98 N. Y. Supp. 815; Valois *v.* Gardner, 122 N. Y. App. Div. 245, 106 N. Y. Supp. 808.

6. Edminston *v.* Smith, 13 Idaho 645, 92 Pac. 842.

Distinction between Common-law and Statutory Liability. — Fitzmaurice *v.* Buck, 77 Conn. 390, 59 Atl. 415.

8. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285; Edminston *v.* Smith, 13 Idaho 645, 92 Pac. 842; Feiner *v.* Boynton, 73 N. J. L. 136, 62 Atl. 420; Matter of Stadtmuller, 110 N. Y. App. Div. 76, 96 N. Y. Supp. 1101; Morgenroth *v.* Spencer, 124 Wis. 564, 102 N. W. 1086.

The fact that a husband and wife lived together in a house in which she remained after desertion by him, is prima facie evidence that it was suitable. Sultan *v.* Misrahi, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 655, 95 N. Y. Supp. 510.

877. 1. Fischer *v.* Brady, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 401, 94 N. Y. Supp. 25; Sultan *v.* Misrahi, (Supm. Ct. App. T.) 47

Misc. (N. Y.) 655, 94 N. Y. Supp. 519; Ball *v.* Lovett, (Supm. Ct. App. T.) 98 N. Y. Supp. 815.

Flowers for Wife's Funeral. — Matter of Stadtmuller, 110 N. Y. App. Div. 76, 96 N. Y. Supp. 1101.

Suitable Education of Children. — Haas *v.* American Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 439.

2. Weingreen *v.* Beckton, (Supm. Ct. App. T.) 102 N. Y. Supp. 520.

4. Perkins *v.* Morgan, 36 Colo. 360, 85 Pac. 640; Woods *v.* Kauffman, 115 Mo. App. 398, 91 S. W. 399.

5. Matter of Stadtmuller, 110 N. Y. App. Div. 76, 96 N. Y. Supp. 1101.

878. 6. Legal Services in Prosecuting Appeal from Judgment Denying Wife Separate Maintenance. — Behrle *v.* Behrle, 120 Mo. App. 677, 97 S. W. 1005.

879. 2. Zent *v.* Sullivan, (Wash. 1907) 91 Pac. 1088.

880. 6. Contra. — Schneider *v.* Breier, 129 Wis. 446, 109 N. W. 99.

7. Contra. — Matter of Stadtmuller, 110 N. Y. App. Div. 76, 96 N. Y. Supp. 1101.

10. Shuman *v.* Steinel, 129 Wis. 422, 109 N. W. 74.

881. 2. Levison *v.* Davis, 212 Pa. St. 148, 61 Atl. 819; Haas *v.* American Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 439.

5. Shuman *v.* Steinel, 129 Wis. 422, 109 N. W. 74.

882. 4. Steinfield *v.* Girrard, (Me. 1907) 68 Atl. 630.

5. Oatman *v.* Watrous, 120 N. Y. App. Div. 66, 105 N. Y. Supp. 174; Lichtenstein Millinery Co. *v.* Peck, (Supm. Ct. App. T.) 110 N. Y. Supp. 410.

6. Fitzmaurice *v.* Buck, 77 Conn. 390, 59 Atl. 415.

883. 5. McKee *v.* Cunningham, 2 Cal. App. 684, 84 Pac. 260; Baker *v.* Oughton, 130 Iowa 35, 106 N. W. 272; Steinfield *v.* Girrard, (Me. 1907) 68 Atl. 630; Buxbaum *v.* Mason, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 396, 95 N. Y. Supp. 530; Pickhardt *v.* Pratt, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 231, 105 N. Y. Supp. 236; Morgenroth *v.* Spencer, 124 Wis. 564, 102 N. W. 1086.

884. 1. Steinfield *v.* Girrard, (Me. 1907) [illegible]

2. Morgan *v.* Vibert, 15 Quebec K. B. 407.

885. 1. Pickhardt *v.* Pratt, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 231, 105 N. Y. Supp. 236.

886. 7. Baker *v.* Oughton, 130 Iowa 35, 106 N. W. 272.

8. Middlebrook *v.* Slocum, (Mich. 1908) 116 N. W. 422.

9. Baker *v.* Oughton, 130 Iowa 35, 106 N. W. 272.

888. 3. Kessler *v.* Kessler, 2 Cal. App. 509, 83 Pac. 257; Steinfield *v.* Girrard, (Me. 1907) 68 Atl. 630.

4. Steinfield *v.* Girrard, (Me. 1907) 68 Atl. 630.

891. 3. Education of [illegible] Adopted, but Considered [illegible] Family. — Haas *v.* American Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 439.

4. Baker *v.* Oughton, 130 Iowa 35, 106 N. W. 272; Howell *v.* Blesh, (Okla. 1907) 91 Pac. 893; Haas *v.* American Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 439; Ball *v.* Lovett, (Supm. Ct. App. T.) 98 N. Y. Supp. 815.

892. 4. Pickhardt *v.* Pratt, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 231, 105 N. Y. Supp. 236.

5. See Edminston *v.* Smith, 13 Idaho 645, 92 Pac. 842.

By statute in *Connecticut*, in the absence of notice to the contrary, purchases made by husband or wife, for the support of the family, shall be chargeable on the separate estate of the one making the purchase. Mathewson *v.* Mathewson, 79 Conn. 23, 63 Atl. 285.

893. 2. Right of Wife to Give Husband's Negotiable Notes for Necessaries — Contra as to Education of Children. — Haas *v.* American Nat. Bank, (Tex. Civ. App. 1906) 94 S. W. 439.

7. District of Columbia Statute Expressly Provides Against Release of Wife. — Dobbins *v.* Thomas, 26 App. Cas. (D. C.) 157.

8. Stoutenborough *v.* Rammel, 123 Ill. App. 487; Ross *v.* Johnson, 125 Ill. App. 65.

894. 5. Emmons *v.* Stevane, 73 N. J. L. 349, 64 Atl. 1014.

895. 6. In Tennessee, a husband is liable for his wife's torts, but only in so far as the damages recovered are compensatory. Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864.

896. 3. Ackerman *v.* Larner, 116 La. 101, 40 So. 581.

6. McNemar *v.* Cohn, 115 Ill. App. 31; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651.

8. In New Jersey the common-law rule still prevails. Emmons *v.* Stevane, 73 N. J. L. 349, 64 Atl. 1014.

899. 2. Kellar *v.* James, (W. Va. 1907) 59 S. E. 939.

6. Kellar *v.* James, (W. Va. 1907) 59 S. E. [illegible]

8. Schuler *v.* Henry, (Colo. 1908) 94 Pac. 360; Nolin *v.* Pearson, 191 Mass. 283, 77 N. E. 890.

Knowledge of Husband. — The fact that the husband had knowledge of his wife's intention will not render him liable. Sweezy *v.* Fisher, 142 Mich. 258, 105 N. W. 749.

900. 1. Kellar *v.* James, (W. Va. 1907) 59 S. E. 939.

903. 5. State *v.* Harvey, 130 Iowa 394, 106 N. W. 938.

ICE.

908. 2. Ice on State Canals. — See Green Island Ice Co. *v.* Norton, 189 N. Y. 529, 82 N. E. 1126, *affirming* (Supm. Ct. Spec. T.) 42 Misc. (N. Y.) 238.

909. 6. Carville *v.* Com., 192 Mass. 570, 78 N. E. 735.

910. 4. Fuller *v.* Cole, 33 Pa. Super. Ct. [illegible]

911. 3. Park Com'rs *v.* Diamond Ice Co., [illegible] Iowa 603, 105 N. W. 203.

4. Park Com'rs *v.* Diamond Ice Co., 130 Iowa [illegible], 105 N. W. 203.

912. 2. *Compare*, in *New York*, Green Island Ice Co. *v.* Norton, 189 N. Y. 529, 82 N. E. 1126, *affirming* (Supm. Ct. Spec. T.) 42 Misc. (N. Y.) 238.

6. Park Com'rs *v.* Diamond Ice Co., 130 Iowa 603, 105 N. W. 203.

7. In Park Com'rs *v.* Diamond Ice Co., 130 Iowa 603, 105 N. W. 203, it was held that if riparian ownership carries with it no right to the ice formed on public waters, there can be no vested right to such ice because of the improvements on the land or because of the length of time the riparian owner has harvested ice therefrom.

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917. 1. State *v.* Johnson, 70 Kan. 867, 79 Pac. 732, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 916.

IDENTITY.

918. 2. State *v.* Smith, 129 Iowa 718, 6 Ann. Cas. 1023, 106 N. W. 187, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 918.

919. 1. Shuler *v.* State, 125 Ga. 782, 54 S. E. 689, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 918, 919; Bowman *v.* Little, 101 Md. 292, 61 Atl. 223, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 918, 919.

2. **The Charter of a Corporation** does not prove the corporate existence of its subordinate branches. Spreyne *v.* Garfield Lodge No. 1, 117 Ill. App. 253.

4. See dissenting opinion of Deemer, J., in State *v.* Smith, 129 Iowa 717, 6 Ann. Cas. 1023, 106 N. W. 187.

921. 2. Stephens *v.* Olsen, 1 W. L. R. 572.

922. 1. State *v.* Smith, 129 Iowa 709, 6 Ann. Cas. 1023, 106 N. W. 187.

3. **Witnesses May Describe Clothes Worn by Accused** at a particular time and place as tending to identify him. People *v.* Weber, 149 Cal. 325, 86 Pac. 671.

Accused May Properly Be Required to Stand Up in Court for the purpose of identification. State *v.* Ruck, 194 Mo. 416, 92 S. W. 706.

Improper to Require Accused to Put on Articles of Clothing for such purpose. Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533.

4. Sims *v.* State, 146 Ala. 109, 41 So. 413; State *v.* Walker, 133 Iowa 489, 110 N. W. 925; Bull *v.* Com., 96 S. W. 817, 29 Ky. L. Rep. 949; Turner *v.* State, 48 Tex. Crim. 585, 89 S. W. 975; Stevens *v.* State, (Tex. Crim. 1906) 95 S. W. 505.

Clothing Worn at or About the Time of the Crime may be offered on the question of identity. Boyd *v.* State, (Tex. Crim. 1906) 94 S. W. 1053.

Where Accused Is an Alien the report of the officer commanding the ship on which he arrived, made to the immigration officers, is competent to show identity. McInerney *v.* U. S., (C. C. A.) 143 Fed. 729.

923. 1. State *v.* Barnes, 47 Oregon 592, 85 Pac. 998; Delmont *v.* State, 15 Wyo. 271, [illegible]

2. Hargrove *v.* State, 147 Ala. 97, 41 So. [illegible] State, 148 Ala. 560, [illegible] So. 862; State *v.* Arthur, (Iowa 1906) 109 N. W. [illegible] S. W. 650; State *v.* Fuller, 34 Mont. 12, 85 Pac. 369; Krenz *v.* State, 75 Neb. 294, 106 N. W. 27; State *v.* Hunter, 143 N. Car. 607, 56 S. E. 547; Turner *v.* State, 48 Tex. Crim. 585, 89 S. W. 975; Boyd *v.* State, (Tex. Crim. 1906) 94 S. W. 1053.

The Conduct of Bloodhounds in Trailing a Criminal may be shown for the purpose of identifying the accused, where there is preliminary proof that they have been trained to follow human beings by their tracks and scent, and have been tested as to their accuracy. Hargrove *v.* State, 147 Ala. 97, 41 So. 972; State *v.* Hunter, 143 N. Car. 607, 56 S. E. 547; Baum *v.* State, 27 Ohio Cir. Ct. 569.

But the preliminary proof of training and accuracy is necessary. Little *v.* State, 145 Ala. 662, 39 So. 674.

Comparison of Hand with Bloody Imprint of Hand on Wall.— State *v.* Miller, 71 N. J. L. 527, 60 Atl. 202.

3. Where acquaintance is slight and recent, and nothing peculiar about the voice, identification thereby will not support conviction. Walker *v.* State, (Tex. Crim. 1906) 96 S. W. 35.

4. For other cases involving the identity of the body in homicide cases, see Bull *v.* Com., 96 S. W. 817, 29 Ky. L. Rep. 949; State *v.* Barnes, 47 Oregon 592, 85 Pac. 998.

924. 1. Williams *v.* State, 149 Ala. 4, 43 So. 720; Jordan *v.* State, 50 Fla. 94, 39 So. 155; People *v.* Mullen, (County Ct.) 49 Misc. (N. Y.) 297, 99 N. Y. Supp. 227, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 924; Gulf, etc., R. Co. *v.* Matthews, 99 Tex. 160, 88 S. W. 192; Roszczyniala *v.* State, 125 Wis. 417, 104 N. W. 113, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 924.

Opinion Must Be Based on Personal Knowledge, and not description given by another. People *v.* Gray, 148 Cal. 507, 83 Pac. 707.

In Support of Opinion witness may testify as to the facts and circumstances under which he had met the accused, and the means by which he identifies him. State *v.* Walker, 194 Mo. 253, 92 S. W. 659.

IF.

924. 5. **The Term "If His Address Is Known"** in a statute requiring a warehouseman in such case to give notice of the sale of goods for storage, means *if* known or could be ascertained by reasonable inquiry. Ward *v.* Morr Transfer, etc., Co., 119 Mo. App. 83, 95 S. W. 964.

ILLEGAL CONTRACTS.

933. 2. Delaware, etc., R. Co. *v.* Kutter, 147 Fed. 51, 77 C. C. A. 315.

Taking a Mortgage in the Name of a Nonresident to Escape Local Taxation does not render the mortgage invalid as against public policy. McKinnon *v.* Waterbury, 136 Fed. 480.

4. Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 632, 63 Atl. 70, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933.

5. Hazelton *v.* Sheckells, 202 U. S. 71, 6 Ann. Cas. 217, 26 U. S. Sup. Ct. Rep. 567, [illegible] U. S. (L. ed.) 930; Paninem *v.* White, 117 Ill. App. 51; National Surety Co. *v.* Kansas City Hydraulic Press Brick Co., [illegible] Kan. 106, 84 Pac. 1034; Baltimore Humane Impartial Soc., etc., *v.* Pierce, 100 Md. 520, 60 Atl. 277;

Warren *v.* Pim, 66 N. J. Eq. 353, 59 Atl. 773; Delahunty *v.* Canfield, 118 N. Y. App. Div. 883, 103 N. Y. Supp. 939; Riggs *v.* Ryan, 121 N. Y. App. Div. 301, 106 N. Y. Supp. 39; Enid Right of Way, etc., Co. *v.* Lile, 15 Okla. 317, 82 Pac. 810; Heintz *v.* Sawyer, 27 Ohio Cir. Ct. 10; Jackson *v.* Baker, 48 Oregon 155, 85 Pac. 512; Crutchfield *v.* Rambo, 38 Tex. Civ. App. 579, 86 S. W. 950; Grover *v.* Zook, 44 Wash. 502, 87 Pac. 638, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933; Giblin *v.* North Wisconsin Lumber Co., 131 Wis. 261, 111 N. W. 499.

Limitation of Bidders for Public Contract to Particular Class Void. — People *v.* Edgcomb, 112 N. Y. App. Div. 604, 98 N. Y. Supp. 965.

6. "To limit the term 'public policy' within the bounds of a fixed definition would be to render evasion of the law in that respect a matter of easy invention." Lipscomb *v.* Adams, 193 Mo. 530, 91 S. W. 1046.

7. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; Brush *v.* Carbondale, 229 Ill. 144, 82 N. E. 252.

934. 1. Woodson *v.* Hopkins, 85 Miss. 181, 37 So. 1000, 38 So. 298, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933.

2. Picket Pub. Co. *v.* Carbon County, 36 Mont. 188, 92 Pac. 524.

5. *England.* — Fitzroy *v.* Cave, (1905) 2 K. B. 364, 74 L. J. K. B. 829, 93 L. T. N. S. 499, 54 W. R. 17, 21 Times L. Rep. 612.

United States. — Sperry, etc., Co. *v.* Temple, 137 Fed. 992; Wright *v.* Vocalion Organ Co., 148 Fed. 209, 79 C. C. A. 183, *reversing* 137 Fed. 313.

Georgia. — Virginia Bridge, etc., Co. *v.* Crafts, 2 Ga. App. 126, 58 S. E. 322.

Indian Territory. — Farrington *v.* Stucky, (Indian Ter. 1907) 104 S. W. 647.

Minnesota. — James Quirk Milling Co. *v.* Minneapolis, etc., R. Co., 98 Minn. 22, 107 N. W. 742.

New York. — Jacobs *v.* Cohen, 183 N. Y. 207, 76 N. E. 5, *reversing* 99 N. Y. App. Div. 481, 90 N. Y. Supp. 854; Electric Fireproofing Co. *v.* Smith, 113 N. Y. App. Div. 615, 99 N. Y. Supp. 37; *In re* American Fidelity Co., (County Ct.) 54 Misc. (N. Y.) 357, 104 N. Y. Supp. 711.

Ohio. — Mansfield Mut. Ins. Co. *v.* Cleveland, etc., R. Co., 74 Ohio St. 30, 77 N. E. 269; Bowers *v.* Detroit Southern R. Co., 26 Ohio Cir. Ct. 518; Richter *v.* Phœnix Bldg., etc., Co., 27 Ohio Cir. Ct. 793.

Oklahoma. — Guss *v.* Federal Trust Co., (Okla. 1907) 91 Pac. 1045.

Texas. — Williams *v.* Finley, 99 Tex. 468, 90 S. W. 1087.

Vermont. — Osgood *v.* Central Vermont R. Co., 77 Vt. 334, 60 Atl. 137.

Wisconsin. — Thomas *v.* Covert, 126 Wis. 593, 105 N. W. 922.

Stipulation Requiring Employment of Union Laborers Not against Public Policy. — Birmingham Paint, etc., Co. *v.* Crampton, (Ala. 1905) 39 So. 1020.

9. Brush *v.* Carbondale, 229 Ill. 144, 150, 82 N. E. 252, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934.

10. People's Sav. Bank *v.* Big Rock Stone, etc., Co., 81 Ark. 603, 99 S. W. 836, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934; Woodson *v.* Hopkins, 85 Miss. 185, 37 So. 1000, 38 So. 298, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934; Edwards *v.* Goldsboro, 141 N. Car. 71, 8 Ann. Cas. 479, 53 N. E. 652, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934; State *v.* Virginia-Carolina Chemical Co., 71 S. Car. 570, 51 S. E. 455, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934; Walter A. Wood Mowing, etc., Co. *v.* Greenwood Hardware Co., 75 S. Car. 388, 9 Ann. Cas. 902, 55 S. E. 973, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934; Madison County *v.* Alexander, 116 Tenn. 689, 94 S. W. 604, *citing* 12 [15] AM. AND ENG. ENCYC. OF LAW (2d ed.) 933, 934, 935. See also McGuffin *v.* Coyle, 16 Okla. 648, 85 Pac. 954, 86 Pac. 962.

Intention of Parties the Test. — Drake *v.* Lauer, 93 N. Y. App. Div. 86, 86 N. Y. Supp. 986, *affirmed* 182 N. Y. 533, 75 N. E. 1129.

935. 1. Moorshead *v.* United R. Co., 119 Mo. App. 609, 96 S. W. 261, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934; Picket Pub. Co. *v.* Carbon County, 36 Mont. 188, 92 Pac. 524; Tyler *v.* St. Louis Southwestern R. Co., 99 Tex. 491, 91 S. W. 1, *affirmed* on rehearing (Tex. 1906) 93 S. W. 997.

6. *England.* — Victorian Daylesford Syndicate *v.* Dott, (1905) 2 Ch. 624, 74 L. J. Ch. 673, 93 L. T. N. S. 627, 21 Times L. Rep. 742.

Arkansas. — Woods *v.* Carl, 75 Ark. 328, 87 S. W. 621.

Illinois. — Thomas *v.* Belleville First Nat. Bank, 116 Ill. App. 20, *affirmed* 213 Ill. 261, 72 N. E. 801.

Kentucky. — Bugg *v.* Holt, 97 S. W. 29, 29 Ky. L. Rep. 1208.

Missouri. — Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614; Stevens *v.* Norwich Union F. Ins. Co., 120 Mo. App. 88, 96 S. W. 684.

New York. — People *v.* Mercantile Co-operative Bank, 104 N. Y. App. Div. 219, 93 N. Y. Supp. 521; Hallen *v.* Thompson, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 642, 96 N. Y. Supp. 142.

Ohio. — Stevens *v.* Cincinnati Times-Star Co., 72 Ohio St. 112, 73 N. E. 1058.

Oklahoma. — Atchison, etc., R. Co. *v.* Holmes, 18 Okla. 92, 90 Pac. 22.

Texas. — St. Louis, etc., R. Co. *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 1176.

Washington. — Deaton *v.* Lawson, 40 Wash. 486, 82 Pac. 879.

936. 4. Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 617, 63 Atl. 70, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 936.

937. 1. Harriman *v.* Northern Securities Co., 197 U. S. 244, 25 U. S. Sup. Ct. Rep. 493, 49 U. S. (L. ed.) 739.

8. Beilin *v.* Wein, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 505, 101 N. Y. Supp. 38; Haynes *v.* Abramson, (Supm. Ct. App. T.) 97 N. Y. Supp. 371.

938. 4. Contract Valid Where Made Will Not Be Enforced in Another Jurisdiction Where Violative of Positive Statute or Public Policy. — Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131

5. Schnaier *v.* Navarre Hotel, etc., Co., 182 N. Y. 91, 74 N. E. 561.

939. 2. Standard Lumber Co. *v.* Butler Ice Co., 146 Fed. 359, 76 C. C. A. 639; Pittsburgh Constr. Co. *v.* West Side Belt R. Co., 151 Fed. 125; State *v.* Wilson, 73 Kan. 343, 84 Pac. 737, *reversing* on rehearing 73 Kan. 334, 80 Pac. 639; Church *v.* Knowles, 101 Me. 264, 63 Atl. 1042; Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614.

Violation of Statute Made a Felony. — Webb *v.* Tarver, 2 Tenn. Ch. App. 366.

Unconstitutional Statute Cannot Affect Legality of Contract. — Schnaier *v.* Navarre Hotel, etc., Co., 182 N. Y. 83, 74 N. E. 561.

3. Eastern Expanded Metal Co. *v.* Webb Granite, etc., Co., 195 Mass. 356, 81 N. E. 251.

5. Victorian Daylesford Syndicate *v.* Dott, (1905) 2 Ch. 624; Bonnard *v.* Dott, (1906) 1 Ch. 740; Woodson *v.* Hopkins, 85 Miss. 181, 37 So. 1000, 38 So. 298, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 939.

940. 2. Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545.

941. 2. People *v.* Board of Supervisors, 122 Ill. App. 40; State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500; Ackerman *v.* Larner, 116 La. 101, 40 So. 581; Arnett *v.* Wright, 18 Okla. 337, 89 Pac. 1116.

5. Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545; People's Trust Co. *v.* Pabst, 113 N. Y. App. Div. 375, 98 N. Y. Supp. 1045.

942. 1. Schnaier *v.* Navarre Hotel, etc., Co., 182 N. Y. 83, 74 N. E. 561.

Where Party Prohibited from Doing Business in State until Compliance with Statute, Contract Made Before Compliance Not Illegal. — Fitzhugh *v.* Mason, 2 Cal. App. 220, 83 Pac. 282.

3. Beilin *v.* Wein, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 595, 101 N. Y. Supp. 38.

943. 3. Houston Ice, etc., Co. *v.* Keenan, 99 Tex. 79, 88 S. W. 197.

4. American Mercantile Exch. *v.* Blunt, 102 Me. 128, 66 Atl. 212.

5. Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70; Warren *v.* Pim, 66 N. J. Eq. 353, 397, 59 Atl. 773, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 943; Pape *v.* Standard Oil Co., 27 Ohio Cir. Ct. 111; Twentieth Century Co. *v.* Quilling, 130 Wis. 318, 110 N. W. 174.

944. 3. Apthorp *v.* Neville, 23 Times L. Rep. 575.

945. 2. Haswell *v.* Blake, (Tex. Civ. App. 1905) 90 S. W. 1126, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 945.

3. Bolton *v.* Amsler, (Supm. Ct. App. T.) 95 N. Y. Supp. 481, 482.

946. 3. Condon *v.* Callahan, 115 Tenn. 285, 89 S. W. 400.

947. 3. **Injury Must Be Alleged** where employer accepted and used the purchased articles. Sirkin *v.* Fourteenth St. Store, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 135, 105 N. Y. Supp. 638.

4. Stanton *v.* Sturgis, 140 Fed. 789; Standard Lumber Co. *v.* Butler Ice Co., 146 Fed. 359, 76 C. C. A. 639; McGuffin *v.* Coyle, 16 Okla. 648, 85 Pac. 954, 86 Pac. 962; Lasell *v.* Hannah, 37 Can. Supp. Ct. 324.

948. 5. Warren *v.* Pim, 66 N. J. Eq. 353, 59 Atl. 773; McGuffin *v.* Coyle, 16 Okla. 648, 85 Pac. 954, 86 Pac. 962.

6. Kantzler *v.* Benzinger, 214 Ill. 589, 73 N. E. 874.

Contract to Purchase All Stock of Corporation Not Illegal. — Borland *v.* Prindle, 144 Fed. 713.

950. 1. Henderson *v.* Henrie, 61 W. Va. 183, 56 S. E. 369.

Banks Bidding for Use of County Funds. — A contract between banks by which competition in the bidding for use of county money is suppressed is illegal. *In re* Salmon, 145 Fed. 649; *In re* Blake, (C. C. A.) 150 Fed. 279; Henry County *v.* Citizens' Bank, 208 Mo. 209, 106 S. W. 622.

951. 3. Venner *v.* Denver Union Water Co., 40 Colo. 212, 90 Pac. 633, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 951; Mallon *v.* Buster, 89 S. W. 257, 28 Ky. L. Rep. 318; Satterfield *v.* Kindley, 144 N. Car. 455, 57 S. E. 145; Henderson *v.* Henrie, 61 W. Va. 183, 56 S. E. 369.

953. 2. Virginia Bridge, etc., Co. *v.* Crafts, 2 Ga. App. 126, 58 S. E. 322, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 953.

Contract Illegal Where Government Limits Competition. — National Surety Co. *v.* Kansas City Hydraulic Press Brick Co., 73 Kan. 196, 84 Pac. 1034.

Rule Applies Also to Letting of Private Contracts. — Pittsburgh Dredging, etc., Co. *v.* Monongahela, etc., Dredging Co., 139 Fed. 780.

4. Virginia Bridge, etc., Co. *v.* Crafts, 2 Ga. App. 126, 58 S. E. 322, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 953.

954. 2. *In re* Salmon, 145 Fed. 649.

3. *In re* Appleby, 100 Minn. 408, 111 N. W. 305; Crowder-Jones *v.* Sullivan, 9 Ont. L. Rep. 27, 4 Ann. Cas. 729.

5. Hermann *v.* Charlesworth, (1905) 2 K. B. 123, 1 Ann. Cas. 691, 74 L. J. K. B. 620, 93 L. T. N. S. 284, 54 W. R. 22, 21 Times L. Rep. 368.

955. 4. Hiett *v.* Hiett, 74 Neb. 96, 103 N. W. 1051; Effray *v.* Effray, 110 N. Y. App. Div. 545, 97 N. Y. Supp. 286.

956. 2. Barngrover *v.* Pettigrew, 128 Iowa 535, 104 N. W. 904, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 956; Davis *v.* Hinman, 73 Neb. 850, 103 N. W. 668; *In re* Bell, 29 Utah 1, 80 Pac. 615.

Presumption in Favor of Legality of Contract. — Trust Co. of America *v.* Nash, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 295, 98 N. Y. Supp. 734.

Contract by Wife to Pay Attorney Percentage of Alimony Allowed for Prosecuting Suit for Separation, Void. — *In re* Brackett, 114 N. Y. App. Div. 257, 99 N. Y. Supp. 802, *affirmed* 189 N. Y. 502, 81 N. E. 1160.

3. Johnson *v.* Johnson, 122 Ky. 13, 90 S. W. 964.

959. 1. **No Compensation Allowed Cotenant for Collecting Rents of Joint Property Let for Immoral Purposes.** — Ballerino *v.* Ballerino, 147 Cal. 544, 82 Pac. 199.

960. 2. McLane *v.* Dixon, 90 S. W. 601, 30 Ky. L. Rep. 683.

961. 2. Burton *v.* Belvin, 142 N. Car. 151, 55 S. E. 71.

4. Woodson *v.* Hopkins, 85 Miss. 188, 37 So. 1000, 38 So. 298, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 961.

962. 1. *In re* Isaacson, 21 Times L. Rep. 89.

2. *In re* Isaacson, 21 Times L. Rep. 89.

963. 1. Kessler *v.* Pearson, 126 Ga. 725, 55 S. E. 963; McDonald *v.* Born, 135 Mich. 177, 97 N. W. 693; Anderson *v.* Freeman, (Tex. Civ. App. 1907) 100 S. W. 350.

5. Benson *v.* Bawden, 149 Mich. 584, 113 N. W. 20; Edwards *v.* Goldsboro, 141 N. Car. 60, 8 Ann. Cas. 479, 53 S. E. 652; Enid Right of Way, etc., Co. *v.* Lile, 15 Okla. 317, 82 Pac. 810.

964. 4. Dull *v.* Mammoth Min. Co., 28 Utah 477, 79 Pac. 1050, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 964, 965.

Receiver. — Hall *v.* Stulb, 126 Ga. 523, 55 S. E. 172, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 964.

965. 8. *In re* Callaway, 123 Mo. App. 508, 100 S. W. 565; Abbott *v.* Hayes County, (Neb. 1907) 111 N. W. 780.

An Agreement to Apply Part of Income to Particular Debts, in consideration of persons liable therefor becoming sureties, is illegal. Serrill *v.* Wilder, 77 Ohio St. 343, 83 N. E. 486.

967. 2. Schneider *v.* Local Union No. 60, 116 La. 270, 7 Ann. Cas. 868, 40 So. 700; *In re* Callaway, 123 Mo. App. 508, 100 S. W. 565.

3. Currier *v.* Clark, 19 Colo. App. 256, 75 Pac. 927, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 967.

Contracts by Which Executor Induced to Renounce Right to Act, Illegal. — Oakeshott *v.* Smith, 104 N. Y. App. Div. 384, 93 N. Y. Supp. 659, *affirmed* 185 N. Y. 583, 78 N. E. [illegible].

5. Schneider *v.* Local Union No. 60, 116 La. 270, 7 Ann. Cas. 868, 40 So. 700.

969. 3. Hazelton *v.* Sheckells, 202 U. S. 71, 6 Ann. Cas. 217, 26 U. S. Sup. Ct. Rep. 567, 50 U. S. (L. ed.) 939; Le Tourneux *v.* Gilliss, 1 Cal. App. 546, 82 Pac. 627.

4. Sussman *v.* Porter, 137 Fed. 161.

970. 3. Stroemer *v.* Van Orsdel, 74 Neb. 132, 103 N. W. 1053, *affirmed* on rehearing 74 Neb. 143, 107 N. W. 125.

971. 1. Sussman *v.* Porter, 137 Fed. 161. *Contra,* Stroemer *v.* Van Orsdel, 74 Neb. 132, 103 N. W. 1053, *affirmed* on rehearing 74 Neb. 143, 107 N. W. 125.

6. People's Sav. Bank *v.* Big Rock Stone, etc., Co., 81 Ark. 604, 99 S. W. 836, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 971.

972. 4. Allen *v.* O'Bryan, 118 N. Y. App. Div. 213, 103 N. Y. Supp. 125.

974. 1. Drake *v.* Lauer, 93 N. Y. App. Div. 86, 86 N. Y. Supp. 986, *affirmed* 182 N. Y. 533, 75 N. E. 1129.

5. Hazelton *v.* Sheckells, 202 U. S. 71, 6 Ann. Cas. 217, 26 U. S. Sup. Ct. Rep. 567, 50 U. S. (L. ed.) 939.

6. Kerr *v.* American Pneumatic Service Co., 188 Mass. 27, 73 N. E. 857; Drake *v.* Lauer, 93 N. Y. App. Div. 86, 86 N. Y. Supp. 986, *affirmed* 182 N. Y. 533, 75 N. E. 1129.

975. 2. Hazelton *v.* Sheckells, 202 U. S. 71, 6 Ann. Cas. 217, 26 U. S. Sup. Ct. Rep. 567, 50 U. S. (L. ed.) 939.

Allowing [illegible] Business done with the government does not make the contract illegal. Kerr *v.* American Pneumatic Service Co., 188 Mass. 27, 73 N. E. 857.

6. Bay *v.* Davidson, 133 Iowa 688, 111 N. [illegible]

976. 2. Com. *v.* Miller, 31 Pa. Super. Ct. 309; Madison County *v.* Alexander, 116 Tenn. [illegible] 94 S. W. 604.

[illegible] Assignment of Contract. — People's Sav. Bank *v.* Big Rock Stone, etc., Co., 81 Ark. 603, 99 S. W. 837, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 976.

977. 6. Hughes *v.* Mullins, 36 Mont. 267, 92 Pac. 758; Simmons *v.* Kelsey, (Neb. 1906) 107 N. W. 122; Roy *v.* Harney Peak Tin Min., etc., Mfg. Co., (S. Dak. 1906) 110 N. W. 106.

[illegible] Costs Not Within the Rule. — Prince *v.* Haworth, (1905) 2 K. B. 768, 75 L. J. K. B. 92, 92 L. T. N. S. 773, 54 W. R. 249, 21 Times L. Rep. 402.

978. 3. Expert Witnesses. — Lincoln Mountain Gold Min. Co. *v.* Williams, 37 Colo. 193, 85 Pac. 844. But see Burnett *v.* Freeman, 125 Mo. App. 683, 103 S. W. 121, where the authorities are discussed.

979. 1. Singer Mfg. Co. *v.* City Nat. Bank, 145 N. Car. 319, 59 S. E. 72. *Compare* Hughes *v.* Mullins, 36 Mont. 267, 92 Pac. 758.

981. 4. Contracts for Procurement of "Straw" Bail Illegal.—Way *v.* Greer, (Mass. 1907) 81 N. E. 1002.

6. Agreement Prohibiting Either Party from Resorting to Courts Invalid. — Hager *v.* Shuck, 120 Ky. 574, 87 S. W. 300.

7. Brush *v.* Carbondale, 229 Ill. 144, 82 N. E. 252; Weller *v.* Jersey City, etc., R. Co., 68 N. J. Eq. 659, 61 Atl. 459; Jackson *v.* Stearns, 48 Oregon 25, 84 Pac. 798. *Contra,* Lipscomb *v.* Adams, 193 Mo. 530, 91 S. W. [illegible]

Maintenance Contracts Illegal. — Phelps *v.* Manicko, 119 Mo. App. 139, 96 S. W. 221.

983. 2. Atkin *v.* Wyandotte Coal, etc., Co., 73 Kan. 768, 84 Pac. 1040.

Buying Consent of Property Owners to Establishment of Saloon in Residential Section of City. — Riggs *v.* Ryan, 121 N. Y. App. Div. 301, 106 N. Y. Supp. 39.

986. 6. Weischelbaum *v.* Hayslip, 127 Ga. 617, 56 S. E. 413; Grey *v.* Callan, 133 Iowa 500, 110 N. W. 909; Hale *v.* Harris, 91 S. W. 660, 28 Ky. L. Rep. 1172.

987. 2. Luhrig Coal Co. *v.* Jones, etc., Co., 141 Fed. 617, 72 C. C. A. 311; Hollenberg Music Co. *v.* Berry, 85 Ark. 9, 106 S. W. 1172; Kessler *v.* Pearson, 126 Ga. 725, 55 S. E. 963; Erpelding *v.* McKearnan, 143 Mich. 409, 107 N. W. 107, 13 Detroit Leg. N. 4; Washington Liquor Co. *v.* Shaw, 38 Wash. 398, 3 Ann. Cas. 153, 80 Pac. 536.

3. Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131; Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70.

4. Kessler *v.* Pearson, 126 Ga. 725, 55 S. E. 963; Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131; Moise *v.* Weymuller, (Neb. 1907) 110 N. W. 551; Anderson *v.* Freeman, (Tex. Civ. App. 1907) 100 S. W. 350.

988. 4. Currier *v.* Clark, 19 Colo. App.

251, 75 Pac. 927, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 988; Walter A. Wood Mowing, etc., Co. *v.* Greenwood Hardware Co., 75 S. Car. 389, 9 Ann. Cas. 902, 55 S. E. 973, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 988; Hazelton *v.* Sheckells, 202 U. S. 71, 6 Ann. Cas. 217, 26 U. S. Sup. Ct. 567, 50 U. S. (L. ed.) 939; Sussman *v.* Porter, 137 Fed. 161; Beal, etc., Dry Goods Co. *v.* Barton, 80 Ark. 326, 97 S. W. 58; Evans *v.* American Strawboard Co., 114 Ill. App. 450; State *v.* Wilson, 73 Kan. 343, 84 Pac. 737, *reversing* on rehearing 73 Kan. 334, 80 Pac. 639; McLane *v.* Dixon, 99 S. W. 601, 30 Ky. L. Rep. 683; Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614; *In re* Brackett, 114 N. Y. App. Div. 257, 99 N. Y. Supp. 802, *affirmed* 189 N. Y. 502, 81 N. E. 1160.

989. 1. Hazelton *v.* Sheckells, 202 U. S. 71, 6 Ann. Cas. 217, 26 U. S. Sup. Ct. Rep. 567, 50 U. S. (L. ed.) 939; Standard Lumber Co. *v.* Butler Ice Co., 146 Fed. 359, 76 C. C. A. 639; Bugg *v.* Holt, 97 S. W. 29, 29 Ky. L. Rep. 1208; Hughes *v.* Mullins, 36 Mont. 267, 92 Pac. 758; Arnett *v.* Wright, 18 Okla. 337, 89 Pac. 1116; McNeese *v.* Carver, (Tex. Civ. App. 1905) 89 S. W. 430.

990. 2. Murphy *v.* Wells-Fargo, etc., Co., 99 Minn. 232, 108 N. W. 1070, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990; Haswell *v.* Blake, (Tex. Civ. App. 1905) 90 S. W. 1125, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990; Borland *v.* Prindle, 144 Fed. 713; Glucose Sugar Refining Co. *v.* Marshalltown, 153 Fed. 620; Granat *v.* Kruse, 114 Ill. App. 488, writ of error dismissed, 213 Ill. 328, 72 N. E. 744.

3. Osgood *v.* Central Vermont R. Co., 77 Vt. 334, 60 Atl. 137; Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307, 82 Pac. 2.

991. 1. Alabama Nat. Bank *v.* Parker, 146 Ala. 513, 40 So. 987.

2. Osgood *v.* Central Vermont R. Co., 77 Vt. 334, 60 Atl. 137.

4. Hughes *v.* Mullins, 36 Mont. 267, 92 Pac. 758.

992. 3. McDonald *v.* Born, 135 Mich. 177, 181, 97 N. W. 693, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 992, 997.

4. Stanton *v.* Sturgis, 140 Fed. 789.

993. 2. Phelps *v.* Manicko, 119 Mo. App. 139, 96 S. W. 221.

3. National Surety Co. *v.* Kansas City Hydraulic Press Brick Co., 73 Kan. 196, 84 Pac. 1034; Benson *v.* Bawden, 149 Mich. 584, 113 N. W. 20; Webb *v.* Tarver, 2 Tenn. Ch. App. 266.

994. 1. Packard *v.* Byrd, 73 S. Car. 1, 51 S. E. 678 (where the general rule and exceptions are clearly stated); Haswell *v.* Blake, (Tex. Civ. App. 1905) 90 S. W. 1125; Southern Kansas R. Co. *v.* Cox, (Tex. Civ. App. 1906) 95 S. W. 1124.

4. National Surety Co. *v.* Kansas City Hydraulic Press Brick Co., 73 Kan. 196, 84 Pac. 1034; Delahunty *v.* Canfield, 118 N. Y. App. Div. 883, 103 N. Y. Supp. 939.

995. 2. Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614.

996. 1. Hager *v.* Shuck, 120 Ky. 574, 87 S. W. 300.

5. Dierkes *v.* Wideman, 143 Mich. 181, 106 N. W. 735, 12 Detroit Leg. N. 921; Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614.

997. 1. *Florida.* — Burton *v.* McMillan, 52 Fla. 245, 42 So. 884, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 997.

Illinois. — Blake *v.* Ogden, 223 Ill. 204, 79 N. E. 68.

Iowa. — State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500.

Kentucky. — Howe *v.* Griffin, (Ky. 1907) 103 S. W. 714.

Louisiana. — Ackerman *v.* Larner, 116 La. 101, 40 So. 581.

Maine. — Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131.

Massachusetts. — Eastern Expanded Metal Co. *v.* Webb Granite, etc., Co., 195 Mass. 356, 81 N. E. 251.

Michigan. — Rhoades *v.* Malta Vita Pure Food Co., 149 Mich. 235, 112 N. W. 940, 14 Detroit Leg. N. 434; Benson *v.* Bawden, 149 Mich. 584, 113 N. W. 20; Grand Lodge, etc., *v.* Beath, 150 Mich. 658, 114 N. W. 662, 14 Detroit Leg. N. 829.

Missouri. — Phelps *v.* Manicko, 119 Mo. App. 139, 96 S. W. 221.

North Carolina. — Edwards *v.* Goldsboro, 141 N. Car. 72, 8 Ann. Cas. 479, 53 S. E. 656, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 997.

Ohio. — Stevens *v.* Cincinnati Times-Star Co., 72 Ohio St. 112, 73 N. E. 1058; Heintz *v.* Sawyer, 27 Ohio Cir. Ct. 10.

Oklahoma. — Atchison, etc., R. Co. *v.* Holmes, 18 Okla. 92, 90 Pac. 22.

South Dakota. — Johnson *v.* Berry, 20 S. Dak. 133, 104 N. W. 1114.

Texas. — Houts *v.* Scharbauer, (Tex. Civ. App. 1907) 103 S. W. 679.

Washington. — Cox *v.* Cameron Lumber Co., 39 Wash. 562, 82 Pac. 116.

998. 1. Burton *v.* McMillan, 52 Fla. 245, 42 So. 884, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 997; Thomas *v.* Belleville First Nat. Bank, 213 Ill. 261, 72 N. E. 801, *affirming* 116 Ill. App. 20; Edwards *v.* Goldsboro, 141 N. Car. 60, 8 Ann. Cas. 479, 53 S. E. 652; Pape *v.* Standard Oil Co., 27 Ohio Cir. Ct. 111.

2. Jackson *v.* Baker, 48 Oregon 155, 85 Pac. 512.

3. Eastern Expanded Metal Co. *v.* Webb Granite, etc., Co., 195 Mass. 356, 81 N. E. 251.

Award Made by Arbitrators Acting under a Stipulation of the Contract Will Not Be Enforced. — Pittsburgh Constr. Co. *v.* West Side Belt R. Co., 151 Fed. 125; Tandy *v.* Elmore-Cooper Live Stock Commission Co., 113 Mo. App. 409, 87 S. W. 614.

4. Woodson *v.* Hopkins, 85 Miss. 187, 37 So. 1000, 38 So. 298, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 998, 999, 1001; Pittsburgh Constr. Co. *v.* West Side Belt R. Co., 151 Fed. 125; Drake *v.* Lauer, 93 N. Y. App. Div. 86, 86 N. Y. Supp. 986, *affirmed* 182 N. Y. 533, 75 N. E. 1129; Pape *v.* Standard Oil Co., 27 Ohio Cir. Ct. 111; Johnson *v.* Berry, 20 S. Dak. 133, 104 N. W. 1114. See also Edwards *v.*

Goldsboro, 141 N. Car. 60, 8 Ann. Cas. 479, 53 S. E. 652.

999. 1. Baringrover *v.* Pettigrew, 128 Iowa 533, 104 N. W. 904. See also Delahunty *v.* Canfield, 118 N. Y. App. Div. 883, 103 N. Y. Supp. 939.

2. Bay *v.* Davidson, 133 Iowa 693, 111 N. W. 25, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 999; Harriman *v.* Northern Securities Co., 197 U. S. 244, 25 U. S. Sup. Ct. Rep. 493, 49 U. S. (L. ed.) 739; Hilton *v.* Hilton, (Me. 1907) 68 Atl. 595; Davis *v.* Hinman, 73 Neb. 850, 103 N. W. 668; Richter *v.* Phœnix Bldg., etc., Co., 27 Ohio Cir. Ct. 793; Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307, 82 Pac. 2.

1000. 2. Rudolf *v.* Costa, 119 La. 781, 44 So. 477; Roy *v.* Harney Peak Tin Min., etc., Mfg. Co., (S. Dak. 1906) 110 N. W. 106.

1001. 1. Chapman *v.* Haley, 117 Ky. 1012, 80 S. W. 190, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1001; Walhier *v.* Weber, 142 Mich. 322, 105 N. W. 772, 12 Detroit Leg. N. 728; Benson *v.* Bawden, 149 Mich. 584, 113 N. W. 20; Edwards *v.* Goldsboro, 141 N. Car. 60, 8 Ann. Cas. 479, 53 S. E. 652; Atchison, etc., R. Co. *v.* Holmes, 18 Okla. 92, 90 Pac. 22; Jackson *v.* Baker, 48 Oregon 155, 85 Pac. 512.

3. Burton *v.* McMillan, 52 Fla. 245, 42 So. 883, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1001.

1002. 3. Corbett *v.* Clute, 137 N. Car. 546, 50 S. E. 216.

1004. 2. Knapp *v.* Knapp, 118 Mo. App. 685, 96 S. W. 295.

3. Edwards *v.* Goldsboro, 141 N. Car. 73, 8 Ann. Cas. 479, 53 S. E. 656, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1004; Stewart *v.* Wright, 147 Fed. 321, 77 C. C. A. 499; McColgan *v.* Muirland, 2 Cal. App. 6, 82 Pac. 1113.

A landowner who participated in negotiations resulting in a second conveyance of his land by his grantor, which is made to a third party for an illegal consideration, is not precluded from asserting his title against the second grantee. Deen *v.* Williams, 128 Ga. 265, 57 S. E. 427.

1005. 1. Latham Mercantile, etc., Co. *v.* Harrod, 71 Kan. 568, 81 Pac. 214, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1004.

2. Thomas *v.* Cowin, 147 Ala. 478, 39 So. 898; Deaton *v.* Lawson, 40 Wash. 486, 82 Pac. 879.

3. Where both parties act under the belief that the contract is not illegal, the doctrine of *in pari delicto* applies and neither will be granted relief. Harriman *v.* Northern Securities Co., 197 U. S. 244, 25 U. S. Sup. Ct. Rep. 493, 49 U. S. (L. ed.) 739.

1006. 1. Stewart *v.* Wright, 147 Fed. 321, 77 C. C. A. 499.

Fraud in Procuring a Note for a Valid Debt will not impair the right to sue on the original debt. Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855.

3. Burton *v.* McMillan, 52 Fla. 469, 42 So. 849.

1007. 1. Knapp *v.* Knapp, 118 Mo. App. 705, 96 S. W. 205, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1007; Ware *v.* Spinney, 76 Kan. 289, 91 Pac. 78; Eastern Expanded Metal Co. *v.* Webb Granite, etc., Co., 195 Mass. 356, 81 N. E. 251; White Star Line *v.* Star Line, 141 Mich. 604, 105 N. W. 135, 12 Detroit Leg. N. 586; Falkenberg *v.* Allen, 18 Okla. 210, 90 Pac. 415.

3. Edwards *v.* Goldsboro, 141 N. Car. 74, 8 Ann. Cas. 479, 53 S. E. 656, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1007.

4. Seattle Electric Co. *v.* Snoqualmie Falls Power Co., 40 Wash. 380, 82 Pac. 713; Hermann *v.* Charlesworth, (1905) 2 K. B. 123, 1 Ann. Cas. 691, 74 L. J. K. B. 620, 93 L. T. N. S. 284, 54 W. R. 22, 21 Times L. Rep. 533.

1008. 1. Woodson *v.* Hopkins, 85 Miss. 188, 37 So. 1000, 38 So. 298, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1007.

3. Woodson *v.* Hopkins, 85 Miss. 191, 37 So. 1000, 38 So. 298, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1008, 1011; Erpelding *v.* McKearnan, 143 Mich. 409, 107 N. W. 107, 13 Detroit Leg. N. 4; Volney *v.* Nixon, 68 N. J. L. 605, 60 Atl. 189; Crutchfield *v.* Rambo, 38 Tex. Civ. App. 579, 86 S. W. 950.

1009. 2. Ware *v.* Spinney, 76 Kan. 289, 91 Pac. 789, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1009; Cheuvront *v.* Horner, (W. Va. 1907) 59 S. E. 967, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1009; Allen *v.* O'Bryan, 118 N. Y. App. Div. 213, 103 N. Y. Supp. 125.

3. Cheuvront *v.* Horner, (W. Va. 1907) 59 S. E. 964.

1010. 1. *Compare* Haswell *v.* Blake, (Tex. Civ. App. 1905) 90 S. W. 1125.

2. Houts *v.* Scharbauer, (Tex. Civ. App. 1907) 103 S. W. 679.

3. Woodson *v.* Hopkins, 85 Miss. 191, 37 So. 1000, 38 So. 298, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1010.

1011. 1. *Compare* Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855.

3. Williams *v.* Kendrick, 105 Va. 791, 54 S. E. 865.

5. Woodson *v.* Hopkins, 85 Miss. 183, 37 So. 1000, 38 So. 298, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1011.

1012. 4. Woodson *v.* Hopkins, 85 Miss. 191, 37 So. 1000, 38 So. 298, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1012.

5. Sussman *v.* Porter, 137 Fed. 161; Thomas *v.* Belleville First Nat. Bank, 213 Ill. 261, 72 N. E. 801, *affirming* 116 Ill. App. 20; Benson *v.* Bawden, 149 Mich. 584, 113 N. W. 20.

A Grantee May Assert the Illegality of His Grantor's Contract Relating to the Land. — Roller *v.* Murray, 107 Va. 527, 59 S. E. 421.

7. Illegality of a Contract between Assignor and Assignee is no defense against enforcement of a valid contract assigned as security for its performance. Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307, 82 Pac. 2.

1013. 1. **A Note Given for Purchase of Fertilizers Not Tagged.** — Alabama Nat. Bank *v.* Parker, 146 Ala. 513, 40 So. 987.

Note Given for Patent Right Which Fails So to State. — Webb *v.* Tarver, 2 Tenn. Ch. App. 366.

2. W. T. Joyce Co. *v.* Rohan, 134 Iowa 12, 111 N. W. 319.

Burden on Transferee to Show He Acquired in Good Faith. — Le Tourneux *v.* Gilliss, 1 Cal. App. 546, 82 Pac. 627.

3. Standard Lumber Co. *v.* Butler Ice Co., 146 Fed. 359, 76 C. C. A. 639; Ackerman *v.* Larner, 116 La. 101, 40 So. 581.

Stranger Cannot Assert Illegality of Contract. Henry County *v.* Citizens' Bank, 208 Mo. 209, 106 S. W. 622; Johns *v.* Reed, (Neb. 1906) 109 N. W. 738.

1014. 1. Braxton *v.* Liddon, 49 Fla. 289, 38 So. 717, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1014; Jackson *v.* Baker, 48 Oregon 155, 85 Pac. 512.

2. Dierkes *v.* Wideman, 143 Mich. 181, 106 N. W. 735, 12 Detroit Leg. N. 921; McGuffin *v.* Coyle, 16 Okla. 648, 85 Pac. 954, dissenting opinion of Burwell, J., 86 Pac. 962; Drake *v.* Lauer, 93 N. Y. App. Div. 86, 86 N. Y. Supp. 986, *affirmed* 182 N. Y. 533, 75 N. E. 1129. *Contra*, Mitchell *v.* Branham, 119 Mo. App. 643, 95 S. W. 939; Margolys *v.* Goldstein, (Supm. Ct. App. T.) 96 N. Y. Supp. 185; Haynes *v.* Abramson, (Supm. Ct. App. T.) 97 N. Y. Supp. 371.

1015. 1. Jackson *v.* Baker, 48 Oregon 155, 85 Pac. 512; Rogers *v.* Gladiator Gold Min., etc., Co., (S. Dak. 1907) 113 N. W. 86. *Compare* Cox *v.* Cameron Lumber Co., 39 Wash. 562, 82 Pac. 116.

Stranger May Rely on Illegality of Contract Where It Appears from Adversary's Pleading. — Roller *v.* Murray, 107 Va. 527, 59 S. E. 421.

2. Pittsburgh Constr. Co. *v.* West Side Belt R. Co., 151 Fed. 125; Deen *v.* Williams, 128 Ga. 265, 57 S. E. 427; Ackerman *v.* Larner, 116 La. 101, 40 So. 581; Drake *v.* Lauer, 93 N. Y. App. Div. 86, 86 N. Y. Supp. 986, *affirmed* 182 N. Y. 533, 75 N. E. 1129; Grover *v.* Zook, 44 Wash. 489, 87 Pac. 638.

One Seeking to Enforce a Contract Is Not Estopped to Set Up the Illegality of a Stipulation Therein, by which he is sought to be precluded. People *v.* Edgcomb, 112 N. Y. App. Div. 604, 98 N. Y. Supp. 965.

Corporate Seal on a Contract Does Not Estop the Corporation from Pleading Its Illegality. — Standard Lumber Co. *v.* Butter Ice Co., 146 Fed. 359, 76 C. C. A. 639.

5. Way *v.* Greer, (Mass. 1907) 81 N. E. 1002; Twentieth Century Co. *v.* Quilling, 130 Wis. 318, 110 N. W. 174. *Compare* Farrington *v.* Stuckey, (Indian Ter. 1907) 104 S. W. 647.

1016. 1. Alabama Nat. Bank *v.* Parker, 146 Ala. 513, 40 So. 987, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1016.

2. Alabama Nat. Bank *v.* Parker, 146 Ala. 513, 40 So. 987; Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855; Weischelbaum *v.* Hayslip, 127 Ga. 417, 56 S. E. 413; Yowell *v.* Walker, 118 La. 28, 42 So. 635; Merriman *v.* Cover, 104 Va. 428, 51 S. E. 817.

ILLEGAL, ILLEGALITY, ILLEGALLY.

1016. 4. Illegality. — See Alabama Nat. Bank *v.* Parker, 146 Ala. 516, 40 So. 987, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1016.

ILLNESS.

1018. 3. Illness — Temporary Indisposition — Life Insurance. — Schofield *v.* Metropolitan L. Ins. Co., 79 Vt. 161, 64 Atl. 1107.

IMBECILE — IMBECILITY.

1019. 3. Barnes *v.* Waterman, 54 Misc. (N. Y.) 401, 104 N. Y. Supp. 685, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1019; McGown *v.* Underhill, 115 N. Y. App. Div. 642, 101 N. Y. Supp. 313, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1019.

IMMEDIATE — IMMEDIATELY.

1022. 1. Claus-Shear Co. *v.* E. Lee Hardware House, 140 N. Car. 552, 53 S. E. 433.

Health Insurance. — *Immediate* written notice of disease or illness held to require notice within reasonable time. Reynolds *v.* Maryland Casualty Co., 30 Pa. Super. Ct. 456.

In Accident Insurance. — Lady *v.* Fidelity, etc., Co., (Wis. 1907) 113 N. W. 967.

Same — Proximately or Presently. — Order of United Commercial Travelers *v.* Barnes, 72 Kan. 293, 80 Pac. 1020.

IMMIGRATION.

1025. 2. Pearson *v.* Williams, 202 U. S. 281, 26 U. S. Sup. Ct. 608.

Right to Exclude or Deport Aliens Vested in Political Department. — U. S. *v.* Ngum Lun May, 153 Fed. 209.

1026. 1. **Who Is Alien Immigrant.** — After an alien has once become a resident he is no longer amenable to the provisions of the Immigration Law. *In re* Buchsbaum, 141 Fed. 221.

No Regulation Debarring Entry of Alien without Passport from His Government. — U. S. *v.* Hemet, 156 Fed. 285.

1027. 1. Wong Sang *v.* U. S., (C. C. A.) 144 Fed. 968. And see generally the title HABEAS CORPUS, **181.** 2.

Right to Trial by Jury Does Not Exist. — U. S. *v.* Ngum Lun May, 153 Fed. 209.

Congress Has Right to Refuse Clearance to Vessels Carrying Diseased Aliens. — International Mercantile Marine Co. *v.* Stranahan, 155 Fed. 428.

Under the Canadian Statute the court may examine into the legality of the detention of an immigrant upon a proper application. Ikezoya *v.* Canadian Pac. R. Co., 12 British Columbia 454.

1028. 2. **Unlawful Detention as Well as Importation Must Be Shown.** — U. S. *v.* Giuliani, 147 Fed. 594.

The Words "Other Immoral Purpose," in the Immigration Act of 1907, making it a felony to import women for the purpose of prostitution, or for "any other immoral purpose," do not include concubinage. U. S. *v.* Bitty, 155 Fed. 938.

IMPAIRMENT OF OBLIGATION OF CONTRACTS.

1032. 5. Wilmington *v.* Bryan, 141 N. Car. 666, 54 S. E. 543; Hanover Tp. *v.* Camp Meeting Assoc., (N. J. 1908) 68 Atl. 753; Omaha Water Co. *v.* Omaha, (C. C. A.) 147 Fed. 1, 8 Ann. Cas. 614.

An Unauthorized Contract by a Public Officer is not within the protection of the constitutional provision against the impairment of contracts. Hord *v.* State, 167 Ind. 622, 79 N. E. 916.

1033. 2. **A Contract Which Cannot Be Enforced**

is not within the constitutional provision. Wheelright *v.* Boston, 188 Mass. 521, 74 N. E. 937.

3. Omaha Water Co. *v.* Omaha, (C. C. A.) 147 Fed. 1, 8 Ann. Cas. 614; Bornstein *v.* District Grand Lodge, etc., 2 Cal. App. 624, 84 Pac. 271; Sedalia *v.* Donohue, 190 Mo. 407, 89 S. W. 386; Thomas *v.* State, 76 Ohio St. 341, 81 N. E. 437.

7. Knoxville Water Co. *v.* Knoxville, 200 U. S. 22, 26 U. S. Sup. Ct. 224; National Council, etc., *v.* State Council, etc., 203 U. S. 151, 27 U. S. Sup. Ct. 46.

Exemption from Jury Duty Is Revocable. State *v.* Cantwell, 142 N. Car. 604, 55 S. E. 820.

1034. 2. Farmers' L. & T. Co. *v.* Meridian Waterworks Co., 139 Fed. 661; State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

4. Vicksburg *v.* Vicksburg Waterworks Co., 202 U. S. 453, 26 U. S. Sup. Ct. 660; Missouri, etc., R. Co. *v.* Olathe, 156 Fed. 624; St. John *v.* Iowa Business Men's Bldg., etc., Assoc., (Iowa 1907) 113 N. W. 863; State *v.* Great Northern R. Co., 100 Minn. 445, 111 N. W. 289; People *v.* Geneva, 112 N. Y. App. Div. 581, 98 N. Y. Supp. 719; Boswell *v.* Security Mut. L. Ins. Co., 119 N. Y. App. Div. 723, 104 N. Y. Supp. 130; State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594; State *v.* Irvine, 14 Wyo. 318, 84 Pac. 90.

7. Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Chicago, etc., R. Co. *v.* Ludwig, 156 Fed. 152.

1035. 4. State *v.* Pullman Co., 75 Kan. 664, 90 Pac. 319; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811; National Council, etc., *v.* State Council, etc., 104 Va. 197, 51 S. E. 166.

Laws Allowing and Regulating Voluntary Dissolution of corporations are not prohibited by the constitutional provision against the impairing of contractual obligations, the debts of the corporation remaining unaffected. Crossman *v.* Vivienda Water Co., 150 Cal. 575, 89 Pac. 335.

1036. 6. Polk *v.* Mutual Reserve Fund L. Assoc., 207 U. S. 310, 28 U. S. Sup. Ct. 65; State *v.* Great Northern R. Co., 100 Minn. 445, 111 N. W. 289; Garey *v.* St. Joe Min. Co., (Utah 1907) 91 Pac. 369; Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031.

1037. 4. Perry County *v.* Lindemann, 165 Ind. 186, 73 N. E. 912, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1037.

1038. 2. State *v.* Corron, 73 N. H. 434, 62 Atl. 1014; People *v.* Flynn, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 159, 96 N. Y. Supp. 652, *reversed* 110 N. Y. App. Div. 279, 96 N. Y. Supp. 685, on other grounds; Portland *v.* Cook, 48 Oregon 550, 87 Pac. 772; Littleton *v.* Burgess, 11 Wyo. 193, 93 Pac. 564.

4. Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884.

1039. 3. Usurious Interest Rates are not entitled to protection. Parcliff *v.* Fields, 115 Ala. 611, 22 So. 81.

1040. 2. Des Moines City R. Co. *v.* Des Moines, 151 Fed. 62.

3. Iversen *v.* Minnesota Mut. L. Ins. Co., 127 Fed. 268; Polk *v.* Mutual Reserve Fund L. Assoc., 137 Fed. 273; Gamble *v.* Rural Independent School Dist., (C. C. A.) 146 Fed. 113, *reversing* 137 Fed. 513.

1042. 2. Columbia Water Power Co. *v.* Campbell, 74 S. Car. 34, 54 S. E. 833.

4. *United States.* — Manigault *v.* Springs, 199 U. S. 473, 26 U. S. Sup. Ct. 127, *affirming* 123 Fed. 707; West Chicago St. R. Co. *v.* Illinois, 201 U. S. 506, 26 U. S. Sup. Ct. 518, *affirming* 214 Ill. 9, 73 N. E. 393; Fair Haven, etc., R. Co. *v.* New Haven, 203 U. S. 379, 27 U. S. Sup. Ct. 74, *affirming* 75 Conn. 442, 53 Atl. 960.

Arkansas. — Union Sawmill Co. *v.* Felsenthal, 85 Ark. 346, 108 S. W. 217.

California. — *Ex p.* Meyers, (Cal. App. 1908) 94 Pac. 870.

Indiana. — Marion *v.* Forrest, 168 Ind. 94, 78 N. E. 187; Pittsburgh, etc., R. Co. *v.* Leightheiser, 168 Ind. 438, 78 N. E. 1033.

Michigan. — Rice *v.* Ionia Probate Judge, 141 Mich. 692, 105 N. W. 17.

New York. — Richman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 216, 100 N. Y. Supp. 81; People *v.* Ellison, 188 N. Y. 523, 81 N. E. 447, *affirming* (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 413, 101 N. Y. Supp. 444; Jemison *v.* Bell Telephone Co., 186 N. Y. 493, 79 N. E. 728.

Oregon. — State *v.* Bollam, 47 Oregon 639, 84 Pac. 479.

Texas. — State *v.* Missouri, etc., R. Co., 99 Tex. 516, 91 S. W. 214; El Paso, etc., R. Co. *v.* Foth, (Tex. Civ. App. 1907) 100 S. W. 171.

The Convenience and Comfort of the Public are sufficient cause for the proper exercise of police powers. Williams *v.* State, 85 Ark. 464, 108 S. W. 838.

Railroad Rates May Be Regulated. — Houston, etc., R. Co. *v.* Storey, 149 Fed. 499.

Freight Rates Adjusted. — Southern R. Co. *v.* Hunt, (Ind. App. 1908) 83 N. E. 721.

Rates of Street Railway Companies Fixed. — San Antonio Traction Co. *v.* Altgelt, 200 U. S. 304, 26 U. S. Sup. Ct. 261.

Telephone Charges Are Within the Police Powers. — Home Telephone, etc., Co. *v.* Los Angeles, 155 Fed. 554.

The Legislature May Delegate Its Power of rate regulation to the other branches of the government. Saratoga Springs *v.* Saratoga Gas, etc., Co., 191 N. Y. 123, 83 N. E. 693.

The Manner in Which Railroad Tickets can be sold may be defined. State *v.* Thompson, 47 Oregon 492, 84 Pac. 476.

Theatres May Be Regulated and Taxed. — People *v.* Steele, 231 Ill. 340, 83 N. E. 236.

Private Detectives Are Subject to Police Regulations. — Fox *v.* Smith, 123 N. Y. App. Div. 360, 108 N. Y. Supp. 181.

Hours of Employment for Women May Be Fixed. — Muller *v.* Oregon, 208 U. S. 412, 28 U. S. Sup. Ct. 324.

Gambling May Be Prohibited. — Logan *v.* Postal Tel., etc., Co., 157 Fed. 570.

Sale of Game Prohibited. — State *v.* Heger, 104 Mo. 707, 92 S. W. 252.

Real Estate Brokers may be required to have written contracts with persons for whom they act. Keith *v.* Smith, 46 Wash. 121, 89 Pac. 472; Ross *v.* Kaufman, (Wash. 1908) 94 Pac. 641.

5. *United States.* — New York *v.* Tax Com'rs,

199 U. S. 1, 25 U. S. Sup. Ct. 705, *affirming* 174 N. Y. 417, 67 N. E. 69, and *reversing* 79 N. Y. App. Div. 183, 80 N. Y. Supp. 85; Chanler *v.* Kelsey, 205 U. S. 466, 27 U. S. Sup. Ct. 550, *affirming* 176 N. Y. 486, 68 N. E. 871; Kentucky Bank *v.* Com., 207 U. S. 258, 28 U. S. Sup. Ct. 82, *affirming* 94 S. W. 620, 29 Ky. L. [illegible] 943.

Colorado. — American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531.

Iowa. — Marshalltown Light, etc., Co. *v.* Marshalltown, 127 Iowa 637, 103 N. W. 1005.

Louisiana. — Rousset *v.* New Orleans, 115 La. 551, 39 So. 596.

Maryland. — Baltimore, etc., R. Co. *v.* Wicomico County, 103 Md. 277, 63 Atl. 678.

Mississippi. — Gulf, etc., R. Co. *v.* Adams, 90 Miss. 559, 45 So. 91.

Missouri. — Sedalia *v.* Donohue, 190 Mo. 407, 89 S. W. 386; Western *v.* Supreme Lodge, etc., 196 Mo. 670, 94 S. W. 470.

New York. — Pratt Institute *v.* New York, 183 N. Y. 151, 75 N. E. 1119.

South Carolina. — **British** American Mortg. Co. *v.* Jones, 77 S. Car. 443, 56 S. E. 983; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811.

South Dakota. — Fremont, etc., R. Co. *v.* Pennington County, (S. Dak. 1905) 105 N. W. 929.

Wisconsin. — State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

Gratuitous Exemption from Taxation may be repealed. Hanover Tp. *v.* Camp Meeting Assoc., (N. J. 1908) 68 Atl. 753.

Statutory Exemption from Taxation Does Not Pass to New Corporations succeeding by consolidation or purchase to the property and ordinary franchise of the first grantee, without express statutory direction or its equivalent. Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953.

Legislature May Annul Obligations Due Public. — Cortelyou *v.* Anderson, 73 N. J. L. 427, 63 Atl. 1095.

Diminishing the Security of a Mortgagee by taxing the land for a local assessment does not impair the obligation of the contract. Olyphant *v.* Egreski, 29 Pa. Super. Ct. 116.

1043. 3. U. S. *v.* Vacuum Oil Co., 158 Fed. 536; Smeltzer *v.* St. Louis, etc., R. Co., 158 Fed. 649.

4. Owen County Burley Tobacco Soc. *v.* Brumback, (Ky. 1908) 107 S. W. 710; Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131.

1046. 2. Frank L. Fisher Co. *v.* Woods, (N. Y. 1907) 79 N. E. 836; National Bank of Commerce *v.* Jones, 18 Okla. 555, 91 Pac. 191; Fremont, etc., R. Co. *v.* Pennington County, (S. Dak. 1905) 105 N. W. 929; Austin *v.* Cahill, 99 Tex. 172, 88 S. W. 542.

3. Omaha Water Co. *v.* Omaha, (C. C. A.) 147 Fed. 1, 8 Ann. Cas. 614; Des Moines City R. Co. *v.* Des Moines, 151 Fed. 854.

3. Sinclair *v.* Brightman, (Mass. 1908) 84 N. [illegible]

4. *Contra.* — Swanson *v.* Ottumwa, 131 Iowa 540, 106 N. W. 9; King *v.* Phœnix Ins. Co., 195 Mo. 299, 92 S. W. 892.

1047. 2. Des Moines City R. Co. *v.* Des [illegible]

3. American Smelting, etc., Co. *v.* Colorado, 204 U. S. 103, 27 U. S. Sup. Ct. 198, *reversing* 34 Colo. 240, 82 Pac. 531; Gulf, etc., R. Co. *v.* Adams, 90 Miss. 559, 45 So. 91.

1048. 10. Graham *v.* Folsom, 200 U. S. 248, 26 U. S. Sup. Ct. 245, *affirming* 131 Fed. 496.

1049. 2. State *v.* Bryan, 50 Fla. 203, 39 So. 929.

5. Galloway *v.* Memphis, 116 Tenn. 736, 94 S. W. 75.

7. Des Moines City R. Co. *v.* Des Moines, 151 Fed. 854; Baltimore, etc., R. Co. *v.* Waters, 105 Md. 396, 66 Atl. 685; Gulf, etc., R. Co. *v.* Adams, 90 Miss. 559, 45 So. 91.

8. Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783.

1052. 1. Folsom *v.* Greenwood County, (C. C. A.) 137 Fed. 449, *reversing* 130 Fed. 730; Myers *v.* Knickerbocker Trust Co., (C. C. A.) 139 Fed. 111; Knickerbocker Trust Co. *v.* Cremen, 140 Fed. 973; Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783; Opinion of Justices, 190 Mass. 605, 77 N. E. 1038.

2. Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343; Orvik *v.* Casselman, 15 N. Dak. 34, 105 N. W. 1105; Scott *v.* District Ct., 15 N. Dak. 259, 107 N. W. 61.

1053. 2. Serralles *v.* Esbri, 200 U. S. 103, 26 U. S. Sup. Ct. 176.

3. Bernheimer *v.* Converse, 206 U. S. 516, 27 U. S. Sup. Ct. 755; Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368; Tipton *v.* Smythe, 78 Ark. 392, 94 S. W. 678; Boggs *v.* Ganeard, 148 Cal. 711, 84 Pac. 195; Converse *v.* Ætna Nat. Bank, 79 Conn. 163, 64 Atl. 341; Sullivan *v.* State, (Tex. Civ. App. 1905) 95 S. W. 645.

1055. 1. *Contra.* — Myers *v.* Moran, 113 N. Y. App. Div. 427, 99 N. Y. Supp. 269.

3. Howard *v.* Ross, 38 Wash. 627, 80 Pac. 819; Fischer *v.* Kittinger, 39 Wash. 174, 81 Pac. 551; Williams *v.* Packard, 39 Wash. 217, 81 Pac. 710; Gaffney *v.* Jones, 39 Wash. 587, 81 Pac. 1058.

1057. 6. **Usurious Interest Rates** are not entitled to protection. Barclift *v.* Fields, 145 Ala. 264, 41 So. 84.

1058. 2. Blakemore *v.* Cooper, 15 N. Dak. 5, 106 N. W. 566.

3. Kelly *v.* Gwatkin, (Va. 1908) 60 S. E. 749.

6. Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368.

7. Arbuckle *v.* Kelley, 144 Fed. 276; Doehla *v.* Phillips, 151 Cal. 488, 91 Pac. 330; Mulvey *v.* Boston, (Mass. 1908) 83 N. E. 402; Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884.

The Legislature Cannot Impose a Special Limitation in a Particular Case. — Milton *v.* Bangor R., etc., Co., (Me. 1907) 68 Atl. 826.

1059. 2. Des Moines City R. Co. *v.* Des Moines, 151 Fed. 854; Missouri, etc., R. Co. *v.* Olathe, 156 Fed. 624; Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783; Kelly *v.* Gwatkin, (Va. 1908) 60 S. E. 749.

3. Atwood *v.* Buckingham, 78 Conn. 423, 62 Atl. 616; St. George *v.* Hardie, (N. Car. 1908) 60 S. E. 920.

IMPEACHMENT.

1065. 8. **State Superintendent of Water District Not State Officer.** — State *v.* Grant, 14 Wyo. 41, 81 Pac. 795, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 1065.

9. See State *v.* Grant, 14 Wyo. 41, 81 Pac. 795, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1065.

IMPEDE — IMPEDIMENT.

1073. 5. **The Word "Impediment"** in a statute prohibiting the obstruction of a public road by a fence or other *impediment*, means an obstruction of a non-temporary nature, like a fence, bar, or gate. Central of Georgia R. Co. *v.* State, 145 Ala. 99, 40 So. 991.

IMPLEMENT.

1074. 2. Eckman *v.* Poor, 38 Colo. 200, 87 Pac. 1088.

A Portable Engine Boiler and Attachments held *implements* of trade of a lumberman within an exemption from execution statute. Eckman *v.* Poor, 38 Colo. 200, 87 Pac. 1088.

IMPLIED OR QUASI CONTRACTS.

1078. 1. Turner *v.* Owen, 122 Ill. App. 501; Cleveland, etc., R. Co. *v.* Patterson, 37 Ind. App. 624, 75 N. E. 857, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1078.

7. Kokomo *v.* Harness, 35 Ind. App. 389, 74 N. E. 270, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1078.

9. Story *v.* McCormick, 70 Kan. 327, 78 Pac. 819, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1078.

10. Hartman *v.* U. S., 40 Ct. Cl. 133; Ptacek *v.* Pisa, 231 Ill. 522, 83 N. E. 221; Wilmington *v.* Bryan, 141 N. Car. 666, 54 S. E. 543; Reams *v.* Wilson, (N. Car. 1908) 60 S. E. 1124.

1079. 1. Streator Independent Telephone Co. *v.* Continental Telephone Constr. Co., 217 Ill. 577, 75 N. E. 546, *affirming* 118 Ill. App. 11; Walker *v.* Dickey, (Tex. Civ. App. 1906) 98 S. W. 658.

4. Hilton *v.* Hanson, 101 Me. 21, 62 Atl. 797.

5. Carbon Hill Co. *v.* Cunningham, (Ala. 1907) 44 So. 1016; Concord Apartment House Co. *v.* O'Brien, 228 Ill. 360, 81 N. E. 1038; Burke *v.* Coyne, 188 Mass. 401, 74 N. E. 942; Shropshire *v.* Adams, (Tex. Civ. App. 1905) 89 S. W. 448.

7. Hunt *v.* Osborn, (Ind. App. 1907) 82 N. E. 934, *citing* 6 [15] AM. AND ENG. ENCYC. OF LAW (2d ed.) 1079; Smith *v.* Sisters of Good Shepherd, (Ky. 1906) 96 S. W. 549.

1080. 1. Dallman *v.* Frank, 1 Cal. App. 541, 82 Pac. 564; Koebel *v.* Beetson, 112 N. Y. App. Div. 639, 98 N. Y. Supp. 408.

2. Hazard *v.* Coyle, 26 R. I. 363, 58 Atl. 987, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1079; Dodge *v.* Lansing, etc., Traction Co., (Mich. 1908) 115 N. W. 1004.

3. Franck *v.* McGilvray, 144 Mich. 318, 107 N. W. 886; Klug *v.* Sheriffs, 129 Wis. 468, 109 N. W. 656.

1081. 2. **Medical Aid Necessarily Rendered** by reason of a railroad accident to a poor person may be recovered for from the county. Sheridan County *v.* Denebrink, 15 Wyo. 342, 89 Pac. 7, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1081.

4. Close *v.* Browne, 230 Ill. 228, 82 N. E. 629; Snowden *v.* Snowden, (Ky. 1906) 96 S. W. 922; Harms *v.* Sheppard, (Ky. 1907) 98 S. W. 1012; Weimer *v.* Smith, (Ky. 1907) 101 S. W. 327; Babcock *v.* Anson, 122 N. Y. App. Div. 73, 106 N. Y. Supp. 642; Brown *v.* Ricketts, 27 Ohio Cir. Ct. 271, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1081; Buckler *v.* Kneezell, (Tex. Civ. App. 1905) 91 S. W. 367.

1082. 1. Brown *v.* Crown Gold Milling Co., 150 Cal. 376, 89 Pac. 86; Donegan *v.* Houston, 5 Cal. App. 626, 90 Pac. 1073; Tebo *v.* Mitchell, 5 Penn. (Del.) 356, 63 Atl. 327; Richards *v.* Richman, 5 Penn. (Del.) 558, 64 Atl. 238; Hall *v.* Luckman, 133 Iowa 518, 110 N. W. 916; McGrew *v.* O'Donnell, (Ky. 1906) 92 S. W. 301; Stout *v.* Royston, (Ky. 1908) 107 S. W. 784; Cozad *v.* Elam, 115 Mo. App. 136, 91 S. W. 434; Bradner *v.* Rockdale Powder Co., 115 Mo. App. 102, 91 S. W. 997; Moriarty *v.* Board of Education, 112 N. Y. App. Div. 837, 98 N. Y. Supp. 251; Lockhart *v.* Hamlin, 190 N. Y. 132, 82 N. E. 1094, *reversing* 116 N. Y. App. Div. 921, 101 N. Y. Supp. 1129; Bluemner *v.* Garvin, 120 N. Y. App. Div. 29, 104 N. Y. Supp. 1009; Buck *v.* Pond, 126 Wis. 382, 105 N. W. 909.

A Waiver of the Express Contract will warrant a recovery on a *quantum meruit*. Hilton *v.* Hanson, 101 Me. 21, 62 Atl. 797.

1083. 1. *California.* — Dallman *v.* Frank, 1 Cal. App. 541, 82 Pac. 564.

Delaware. — Schuchler *v.* Cooper, 5 Penn. (Del.) 42, 62 Atl. 261.

Illinois. — Rogers *v.* Daniels, 116 Ill. App. 515.

Massachusetts. — Burke *v.* Coyne, 188 Mass. 401, 74 N. E. 942; Taber *v.* Breck, 192 Mass. 355, 78 N. E. 472.

Michigan. — Dodge *v.* Lansing, etc., Traction Co., (Mich. 1908) 115 N. W. 1004.

Mississippi. — Jenks *v.* Terry, 88 Miss. 364, 40 So. 641.

Missouri. — Henderson *v.* Koenig, 102 Mo. 690, 91 S. W. 88; Christianson *v.* McDermott, 123 Mo. App. 448, 100 S. W. 63; Silver *v.* Missouri, etc., R. Co., 125 Mo. App. 402, 102 S. W. 621.

New York. — Gillan *v.* O'Leary, 124 N. Y. App. Div. 498, 108 N. Y. Supp. 1024.

North Carolina. — Morrison *v.* New Haven, etc., Min. Co., 143 N. Car. 256, 55 S. E. 611, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1083.

Pennsylvania. — McCullough *v.* Ford Natural Gas Co., 213 Pa. St. 110, 62 Atl. 521.

South Carolina. — Blowers *v.* Southern R. Co., 74 S. Car. 221, 54 S. E. 368.

3. **Statutory Requirements Must Be Complied with.** — Kelley *v.* Torrington, (Conn. 1908) 68 Atl. 855.

1084. 1. *In re* Bishop, 130 Iowa 150, 106 N. W. 637; Page *v.* Page, 73 N. H. 305, 61 Atl. 356; Haberman *v.* Kaufer, 70 N. J. Eq. 381, 61 Atl. 976; Heinz *v.* Jacobi, (N. J. 1908) 68 Atl. 1069; Matter of Milligan, 112 N. Y. App. Div. 373, 98 N. Y. Supp. 480; Voss *v.* Voss, (Wis. 1907) 113 N. W. 1097.

2. Begin *v.* Begin, 98 Minn. 122, 107 N. W. 149.

5. Key *v.* Harris, 116 Tenn. 171, 92 S. W. 235, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1084; Butler *v.* Kent, (Ala. 1907) 44

So. 863; Finch *v.* Green, 225 Ill. 304, 80 N. E. [illegible] Hoyt, (Iowa 1908) [illegible] N. W. [illegible]; Deatley *v.* Tolle, (Ky. 1906) 96 S. W. 920; Eisiminger *v.* Stanton, (Mo. App. 1907) 107 S. W. 460; Gomm *v.* Gomm, (N. J. 1908) 69 Atl. 108; Brown *v.* Cummings, 27 R. I. 369, 62 Atl. 378.

1085. 1. Weiss *v.* Bader, 124 N. Y. App. Div. 495, 108 N. Y. Supp. 920.

2. McClure *v.* Lenz, (Ind. App. 1907) 80 N. E. 988; Waechter *v.* Walters, (Ind. App. 1908) 84 N. E. 22.

6. Cochran *v.* Zachery, (Iowa 1908) 115 N. W. 486.

7. Lodge *v.* Fraim, 5 Penn. (Del.) 352, 63 Atl. 233.

1087. 1. Carbon Hill Coal Co. *v.* Cunningham, (Ala. 1907) 44 So. 1016; Ptacek *v.* Pisa, 231 Ill. 522, 83 N. E. 221; Miller *v.* Mason City, etc., R. Co., 132 Iowa 412, 108 N. W. 302; Douglas *v.* Lowell, 194 **Mass.** 268, 80 N. E. 510; Neblett *v.* McGraw, (Tex. Civ. App. 1905) 91 S. W. 309; American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387.

1089. 6. Finkelstein *v.* Miller, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 555, 104 N. Y. Supp. 880.

1090. 1. **Performance Prevented by Municipal Authority** will not warrant a recovery on a *quantum meruit* where the defendant is not benefited by the work done. Binz *v.* National Supply Co., (Tex. Civ. App. 1907) 105 S. W. 543.

4. *Contra.* — Louisville Foundry, etc., Co. *v.* Patterson, (Ky. 1906) 93 S. W. 22; American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387.

7. Brown *v.* Crown Gold Milling Co., 150 Cal. 376, 89 Pac. 86; Bailey *v.* Marden, 193 Mass. 277, 79 N. E. 257; Jenks *v.* Terry, 88 Miss. 364, 40 So. 641; Stephen *v.* Camden, etc., Soap Co., (N. J. 1907) 68 Atl. 69; Limerick *v.* Lee, 17 Okla. 165, 87 Pac. 859; Davis *v.* Brown County Coal Co., (S. Dak. 1906) 110 N. W. 113; Buck *v.* Pond, 126 Wis. 382, 105 N. W. 909.

If an Injunction Prevents the complete performance of a contract, recovery may be had on a *quantum meruit*. Harrison *v.* Franklin, 126 Mo. App. 366, 103 S. W. 585.

Prevention of Performance must be by an authorized person or ratification shown. Prevention by threats of one not in authority is an insufficient excuse for nonperformance. Roberts *v.* E. H. Stanton Co., (Wash. 1908) 94 Pac. 647.

1091. 1. Carbon Hill Coal Co. *v.* Cunningham, (Ala., 1907) 44 So. 1016; Fitzpatrick Square Bale Ginning Co. *v.* McLaney, (Ala. 1907) 44 So. 1023; Cannon *v.* McKenzie, 3 Cal. App. 286, 85 Pac. 130; Lossing *v.* Cushman, (Supm. Ct. App. Div.) 108 N. Y. Supp. 368; Reams *v.* Wilson, (N. Car. 1908) 60 S. E. 1124.

5. Weil *v.* Fineran, 78 Ark. 87, 93 S. W. 568; Walker *v.* Dickey, (Tex. Civ. App. 1906) 98 S. W. 658.

7. Butler *v.* Kent, (Ala. 1907) 44 So. 863; Stout *v.* Royston, (Ky. 1908) 107 S. W. 784; Cozad *v.* Elam, 115 Mo. App. 136, 91 S. W. 434; Goodloe *v.* Goodloe, 116 Tenn. 252, 92 S. W. 767.

Contra by Reason of Connecticut Statute. — Ballantine *v.* Yung Wing, 146 Fed. 621.

1092. 2. Barngrover *v.* Pettigrew, 128 Iowa 533, 104 N. W. 904; Carson *v.* Calhoun, 101 Me. 456, 64 Atl. 838.

4. Henderson-Boyd Lumber Co. *v.* Cook, 149 Ala. 226, 42 So. 838.

7. State Board of Agriculture *v.* Meyers, 20 Colo. App. 140, 77 Pac. 372, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1092.

1093. 3. Henderson-Boyd Lumber Co. *v.* Cook, 149 Ala. 226, 42 So. 838; Simpson Constr. Co. *v.* Stenberg, 124 Ill. App. 322; Burke *v.* Coyne, 188 Mass. 401, 74 N. E. 942.

Substantial Performance of a Building Contract, in good faith, is sufficient; a literal compliance with the specifications is unnecessary to a recovery by the contractor. Concord Apartment House Co. *v.* O'Brien, 228 Ill. 360, 81 N. E. 1038.

1094. 1. Higgins Mfg. Co. *v.* Pearson, 146 Ala. 528, 40 So. 579; Douglas *v.* Lowell, 194 Mass. 268, 80 N. E. 510; Stroeh *v.* McClintock, 128 Mo. App. 368, 107 S. W. 416; Stone *v.* Goodstein, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 482, 97 N. Y. Supp. 1035; Horgan *v.* New York, 114 N. Y. App. Div. 555, 100 N. Y. Supp. 68.

Statutory Requirements Must Be Complied with. — Kelley *v.* Torrington, (Conn. 1908) 68 Atl. 855.

A Sufficient Excuse Must Be Averred and Proven in order to recover upon a contract where the conditions have not been strictly complied with. Performance must not be averred. Hart *v.* Carsley Mfg. Co., 221 Ill. 444, 77 N. E. 897.

Time Being of the Essence of a Voluntary Contract, performance within the time stipulated is necessary to a recovery. Barber Asphalt Paving Co. *v.* Loughlin, (Tex. Civ. App. 1906) 98 S. W. 948.

5. Stephens *v.* Phœnix Bridge Co., (C. C. A.) 139 Fed. 248.

7. Sullivan *v.* Tolin, (Supm. Ct. App. T.) 97 N. Y. Supp. 964.

8. Lucas *v.* Boss, 110 N. Y. App. Div. 220, 97 N. Y. Supp. 112.

Knowledge of and Acquiescence in the performance of extra work will warrant an implied promise to pay for it. New York Metal Ceiling Co. *v.* Leonard, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 500, 96 N. Y. Supp. 187.

1095. 1. Henderson-Boyd Lumber Co. *v.* Cook, 149 Ala. 226, 42 So. 838; Close *v.* Browne, 230 Ill. 228, 82 N. E. 629; Steele *v.* Ely, 96 Minn. 25, 104 N. W. 566.

1096. 4. Lossing *v.* Cushman, (Supm. Ct. App. Div.) 108 N. Y. Supp. 368.

1097. 1. *Alabama.* — Shreve *v.* McGowin, 143 Ala. 665, 42 So. 94; Young *v.* Garber, 149 Ala. 196, 42 So. 867.

Arkansas. — Shackleford *v.* Williams, 79 Ark. 629, 96 S. W. 350.

California. — Smith *v.* Farmers', etc., Bank, 2 Cal. App. 377, 84 Pac. 348; Archibald *v.* Matteson, 5 Cal. App. 441, 90 Pac. 723.

Colorado. — Bales *v.* Cannon, (Colo. 1908) 94 Pac. 21.

District of Columbia. — Harr *v.* Roome, 28 App. Cas. (D. C.) 214.

Georgia. — A. G. Rhodes, etc., Furniture Co.

v. Jenkins, 2 Ga. App. 475, 58 S. E. 897; Butts County *v.* Jackson Banking Co., (Ga. 1908) 60 S. E. 149.

Illinois. — Foresters' Bldg., etc., Assoc. *v.* Quinn, 119 Ill. App. 572; McGee *v.* McGee, 125 Ill. App. 436.

Indiana. — Madill First Nat. Bank *v.* Pickens, (Indian Ter. 1907) 104 S. W. 947.

Kentucky. — Swafford *v.* Asher, (Ky. 1907) 105 S. W. 164.

Minnesota. — Parks *v.* Fogleman, 97 Minn. 157, 105 N. W. 560.

Missouri. — Cornet *v.* Boyle, 116 Mo. App. 430, 92 S. W. 725; Clifford Banking Co. *v.* Donovan Commission Co., 195 Mo. 262, 94 S. W. 527; Locher *v.* Kuechenmiester, 120 Mo. App. 701, 98 S. W. 92; Crigler *v.* Duncan, 121 Mo. App. 381, 99 S. W. 61; Stuyvaert *v.* Arnold, 122 Mo. App. 421, 99 S. W. 529.

New Jersey. — Brady *v.* Franklin Sav. Inst., 73 N. J. L. 152, 62 Atl. 277; Manning *v.* Fallon, (N. J. 1907) 66 Atl. 903.

New York. — Ambrose *v.* Reilly, (N. Y. City Ct. Tr. T.) 55 Misc. (N. Y.) 503, 105 N. Y. Supp. 1036, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1096; Bier *v.* Bash, 186 N. Y. 565, 79 N. E. 1101, *affirming* 107 N. Y. App. Div. 429, 95 N. Y. Supp. 281; Miller *v.* Harris, 117 N. Y. App. Div. 395, 102 N. Y. Supp 604; Commercial Nat. Bank *v.* Sloman, 121 N. Y. App. Div. 874, 106 N. Y. Supp. 508; Harrington *v.* Green, (Supm. Ct. App. T.) 107 N. Y. Supp. 4[illegible].

Pennsylvania. — McAvoy *v.* Commonwealth Title Ins., etc., Co., 27 Pa. Super. Ct. 271, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1096 [1097].

Rhode Island. — Simmoneli *v.* White Star Line, (R. I. 1906) 66 Atl. 836.

South Dakota. — Guillaume *v.* Flannery, (S. Dak. 1906) 108 N. W. 255.

1098. 1. Porter *v.* Roseman, 165 Ind. 255, 74 N. E. 1105, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1098; Wagner *v.* Wedell, 3 Cal. App. 274, 85 Pac. 126; Greer *v.* Newland, 70 Kan. 311, 77 Pac. 98; Citizens' Cent. Nat. Bank *v.* Munn, 115 N. Y. App. Div. 471, 101 N. Y. Supp. 435, *reversing* (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 319, 99 N. Y. Supp. 191.

A Wife Sued by Her Husband for Money Received can show in defense that she necessarily used the money for support and maintenance during desertion by her husband. Whittle *v.* Whittle, 5 Cal. App. 696, 91 Pac. 170.

Undue Influence exercised over a mentally incompetent person in obtaining money will support an action for its recovery. Harty *v.* Teagan, (Mich. 1907) 113 N. W. 594.

Scheming to Defraud Plaintiff by putting money into the hands of a third person will not constitute a defense. Owens *v.* Goldie, 213 Pa. St. 579, 62 Atl. 1117.

2. *Ex p.* Horwitz, 2 Cal. App. 752, 84 Pac. 220; Earle *v.* Whiting, (Mass. 1907) 82 N. E. 32.

5. Illinois L. Ins. Co. *v.* Jaffe, 145 Ala. 676, 40 So. 47.

9. Fottori *v.* Vesella, 27 R. I. 177, 61 Atl. 11[illegible].

1099. 2. Craig *v.* Dowie, 4 Cal. App. 176, 87 Pac. 250; Redlands First Nat. Bank *v.* Goldsmith, (Ind. App. 1907) 82 N. E. 799; Donovan-McCormick Co. *v.* Sparr, 34 Mont. 237, 85 Pac. 1029; Menasha Wooden Ware Co. *v.* Nelson, 45 Wash. 543, 88 Pac. 1018.

A Contrivance Inducing one to pay the debt of another will operate as a request. Shreve *v.* McGowin, 143 Ala. 665, 42 So. 94.

3. Citizens' Bank *v.* Rudisill, (Ga. App. 1908) 60 S. E. 818; Bateson *v.* Phelps, 145 Mich. 605, 108 N. W. 1079; Sire *v.* Long Acre Square Bldg. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 29, 100 N. Y. Supp. 307.

Payment on a Void Warrant by a county may be recovered back. McDonald *v.* Franklin County, (Ky. 1907) 100 S. W. 861. *Compare* Butts County *v.* Jackson Banking Co., (Ga. 1908) 60 S. E. 149.

1100. 2. Kahn *v.* Herold, 147 Fed. 575.

1101. 1. Cox *v.* Cameron Lumber Co., 39 Wash. 562, 82 Pac. 116.

5. Mitchell *v.* Danielson, 38 Colo. 63, 89 Pac. 823; Bateson *v.* Phelps, 145 Mich. 605, 108 N. W. 1079; Sire *v.* Long Acre Square Bldg. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 29, 100 N. Y. Supp. 307; Friedlander *v.* Lehman, (Supm. Ct. App. T.) 101 N. Y. Supp. 252; Mings *v.* Griggsby Constr. Co., (Tex. Civ. App. 1907) 106 S. W. 192.

6. March *v.* Bricklayers', etc., Union No. 1, 79 Conn. 7, 63 Atl. 291.

1102. 3. Southern Mut. Aid Assoc. *v.* Watson, (Ala. 1908) 45 So. 649, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1102; Scott *v.* Ford, 45 Oregon 544, 78 Pac. 742, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1102.

1103. 7. La Fayette *v.* Merchants' Bank, 73 Ark. 566, 84 S. W. 700, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1103, as to the general rule, but inapplicable to that case; Kahn *v.* Herold, 147 Fed. 575; Morrison *v.* Morrison, 101 Me. 131, 63 Atl. 392; Commercial Nat. Bank *v.* Sloman, 121 N. Y. App. Div. 874, 106 N. Y. Supp. 508.

1105. 2. Citizens' Bank *v.* Rudisill, (Ga. App. 1908) 60 S. E. 818.

8. Henderson *v.* Koenig, 192 Mo. 690, 91 S. W. 88.

1106. 1. Citizens' Bank *v.* Rudisill, (Ga. App. 1908) 60 S. E. 818.

1107. 6. Gubbins *v.* Ashley, 146 Mich. 453, 109 N. W. 841; Clifford Banking Co. *v.* Donovan Commission Co., 195 Mo. 262, 94 S. W. 527.

1108. 1. Schiffer *v.* Anderson, (C. C. A.) 146 Fed. 457; Cornet *v.* Boyle, 116 Mo. App. 430, 92 S. W. 725; Locher *v.* Kuechenmiester, 120 Mo. App. 701, 98 S. W. 92; Bier *v.* Bash, 186 N. Y. 565, 79 N. E. 1101, *affirming* 107 N. Y. App. Div. 429, 95 N. Y. Supp. 281; Manning *v.* Fallon, (N. J. 1907) 66 Atl. 903; Tomlinson *v.* Bennett, 145 N. Car. 279, 59 S. E. 37; Richards *v.* Holford, (Tex. Civ. App. 1906) 94 S. W. 911.

4. Southwestern Tel., etc., Co. *v.* Krause, (Tex. Civ. App. 1906) 92 S. W. 431.

1110. 6. Himmelman *v.* Pecaut, 133 Iowa 503, 110 N. W. 910.

7. Lancaster *v.* Ames, (Me. 1907) 68 Atl. 533.

8. Brush *v.* Carbondale, 229 Ill. 144, 82 N. E. 252; Dusopole *v.* Manos, 194 Mass. 355, 80 N. E. 481.

9. Cairbre *v.* McQuillan, (Mich. 1908) 115 N. W. 737.

1111. 3. Carrigg *v.* Mechanics' Sav. Bank, (Iowa 1907) 111 N. W. 329; Cole *v.* Thompson, 134 Iowa 685, 112 N. W. 178; Rosenberg *v.* Sprecher, 74 Neb. 176, 103 N. W. 1045, 105 N. W. 293.

5. Remington *v.* State, 116 N. Y. App. Div. 522, 101 N. Y. Supp. 952.

6. Schwoebel *v.* Fugina, 14 N. Dak. 375, 104 N. W. 848.

Intention to Charge Rent is material where a family relationship exists. Story *v.* McCormick, 70 Kan. 323, 78 Pac. 819.

1112. 1. Mackel *v.* Rochester, 135 Fed. 904, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1111; De Loach Mill Mfg. Co. *v.* Standard Sawmill Co., 125 Ga. 377, 54 S. E. 157; A. G. Rhodes, etc., Furniture Co. *v.* Freeman, 2 Ga. App. 473, 58 S. E. 696; A. G. Rhodes, etc., Furniture Co. *v.* Jenkins, 2 Ga. App. 475, 58 S. E. 897; New York Market Gardeners' Assoc. *v.* Adams Dry Goods Co., 115 N. Y. App. Div. 42, 100 N. Y. Supp. 596; Tidewater Quarry Co. *v.* Scott, 105 Va. 160, 52 S. E. 835.

3. Blowers *v.* Canadian Pac. R. Co., 155 Fed. 935, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1112; Henderson *v.* Koenig, 192 Mo. 690, 91 S. W. 88; Starin *v.* Fonda, 107 N. Y. App. Div. 539, 95 N. Y. Supp. 379.

Demand for Payment of Amount Realized from sale of converted property is not a waiver of the right to sue in tort. Baker *v.* Hutchinson, 147 Ala. 636, 41 So. 809.

An Unmaintainable Action in Assumpsit will not preclude a recovery in tort for conversion. Southern R. Co. *v.* Attalla, 147 Ala. 653, 41 So. 664.

1113. 7. Blowers *v.* Canadian Pac. R. Co., 155 Fed. 935, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1113; Kleinbohe *v.* Hoffman House, (Supm. Ct. Tr. T.) 50 Misc. (N. Y.) 127, 97 N. Y. Supp. 1122.

1114. 1. Fountain *v.* Sacramento, 1 Cal. App. 461, 82 Pac. 637; Greer *v.* Newland, 70 Kan. 311, 77 Pac. 98.

1115. 3. Greer *v.* Newland, 70 Kan. 311, 77 Pac. 98, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1115, as to the general rule, but inapplicable to the facts in that case.

1118. 1. Carrigg *v.* Mechanics' Sav. Bank, (Iowa 1907) 111 N. W. 329; Cole *v.* Thompson, 134 Iowa 685, 112 N. W. 178.

IMPLIED TRUSTS.

1123. 1. Ames *v.* Howes, 13 Idaho 756, 93 Pac. 35; Newman *v.* Newman, 60 W. Va. 376, 55 S. E. 377, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1123.

2. Smith *v.* Goethe, 147 Cal. 725, 82 Pac. 384; Modesto First Nat. Bank *v.* Wakefield, 148 Cal. 558, 83 Pac. 1076; Newman *v.* Newman, 60 W. Va. 376, 55 S. E. 377, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1123.

1124. 3. Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Birmingham, etc., R. Co. *v.* Louisville, etc., R. Co., (Ala. 1907) 44 So. 679; Bunel *v.* Nester, 203 Mo. 429, 101 S. W. 69; Bunel *v.* Springfield Sav. Bank, (Mo. 1907) 101 S. W. 78; Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240. See also Jolly *v.* Graham, 222 Ill. 550, 78 N. E. 919.

4. Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Huffman *v.* Huffman, 35 Ind. App. 643, 73 N. E. 1096; Bunel *v.* Nester, 203 Mo. 429, 101 S. W. 69; Bunel *v.* Springfield Sav. Bank, (Mo. 1907) 101 S. W. 78.

5. Huffman *v.* Huffman, 35 Ind. App. 643, 73 N. E. 1096.

7. Holton *v.* Holton, (N. J. 1906) 65 Atl. 481.

1125. 1. Campbell *v.* Noble, 145 Ala. 233, 41 So. 745. See also Brooks *v.* Brooks, (Ky. 1907) 104 S. W. 392.

2. See Jacoby *v.* Funkhouser, 147 Ala. 254, 40 So. 291; Holton *v.* Holton, (N. J. 1906) 65 Atl. 481.

1126. 4. Couch *v.* Harp, 201 Mo. 457, 100 S. W. 9, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1126.

Where the Grantor Was Insane at the time of the conveyance no presumption arises that the grantor was to take the beneficial interest. Couch *v.* Harp, 201 Mo. 457, 100 S. W. 9.

5. Couch *v.* Harp, 201 Mo. 457, 100 S. W. 9, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1126.

1127. 1. Couch *v.* Harp, 201 Mo. 457, 100 S. W. 9, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1127.

2. In a Conveyance in Fraud of Creditors, taken in the name of another, the one for whose benefit it was taken cannot enforce the trust. Layne *v.* Layne, (Ky. 1906) 90 S. W. 555.

4. Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561.

5. Wilson *v.* Rehm, 117 Ill. App. 473. See also *In re* Andrew, (1905) 2 Ch. 48.

1130. 4. Minot *v.* Parker, 189 Mass. 176, 75 N. E. 149.

1131. 6. Bryan *v.* Bigelow, 77 Conn. 604, 60 Atl. 266.

Parol Evidence to Rebut Resulting Trust. — Bryan *v.* Bigelow, 77 Conn. 604, 60 Atl. 266.

1132. 6. *United States.* — *In re* Henderson, 142 Fed. 568, *reversed* on other grounds Henrie *v.* Henderson, (C. C. A.) 145 Fed. 316; Freeman *v.* Freeman, (C. C. A.) 153 Fed. 337.

Alabama. — Long *v.* Mechem, 142 Ala. 405, 38 So. 262; Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Birmingham, etc., R. Co. *v.* Louisville, etc., R. Co., (Ala. 1907) 44 So. 679.

Arkansas. — Crosby *v.* Henry, 76 Ark. 615, 88 S. W. 949.

California. — Heinrich *v.* Heinrich, 2 Cal. App. 479, 84 Pac. 326.

Iowa. — City Nat. Bank *v.* Crahan, (Iowa 1907) 112 N. W. 703.

Kentucky. — Locheim *v.* Eversole, (Ky. 1906) 93 S. W. 52; Noel *v.* Fitzpatrick, (Ky. 1907) 100 S. W. 321.

Maine. — Merrill *v.* Hussey, 101 Me. 445, 64 Atl. 810.

Massachusetts. — Lufkin *v.* Jakeman, 188 Mass. 528, 74 N. E. 933.

Minnesota. — Dougan *v.* Bemis, 95 Minn. 220, 103 N. W. 882.

Missouri. — Stevenson *v.* Smith, 198 Mo. 417, 88 S. W. 86; Couch *v.* Harp, 201 Mo. 457, 100 S. W. 9.

Montana. — Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240.

Nebraska. — Norton *v.* Brink, 75 Neb. 566,

106 N. W. 668, *reversed* on other grounds 75 Neb. 575, 110 N. W. 669.

New York. — See Leary *v.* Corvin, 181 N. Y. 222, 73 N. E. 984, *modifying* 92 N. Y. App. Div. 544, 88 N. Y. Supp. 109.

North Dakota. — Carter *v.* Carter, 14 N. Dak. 66, 103 N. W. 425.

Oregon. — Hayes *v.* Horton, 46 Oregon 597, 81 Pac. 386; De Roboam *v.* Schmidtlin, (Oregon 1907) 92 Pac. 1082.

Pennsylvania. — Casciola *v.* Donatelli, 218 Pa. St. 630, 67 Atl. 901.

South Dakota. — Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

Texas. — Scranton *v.* Campbell, (Tex. Civ. App. 1907) 101 S. W. 285; Pearce *v.* Dyess, (Tex. Civ. App. 1907) 101 S. W. 549.

Virginia. — Coons *v.* Coons, 106 Va. 572, 56 S. E. 576.

Intention to hold the equitable title for the party furnishing the purchase money is not necessary to the creation of the resulting trust. Pearce *v.* Dyess, (Tex. Civ. App. 1907) 101 S. W. 549.

1135. 5. Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240.

1136. 1. Merrill *v.* Hussey, 101 Me. 445, 64 Atl. 819.

2. Merrill *v.* Hussey, 101 Me. 445, 64 Atl. 819, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1136; De Roboam *v.* Schmidtlin, (Oregon 1907) 92 Pac. 1082.

1138. 3. Pansing *v.* Warner, 43 Wash. 531, 86 Pac. 667.

5. Smith *v.* Smith, 132 Iowa 700, 109 N. W. 194; Dougan *v.* Bemis, 95 Minn. 220, 103 N. W. 882; Pansing *v.* Warner, 43 Wash. 531, 86 Pac. 667.

1139. 2. Scribner *v.* Meade, (Ariz. 1906) 85 Pac. 477; Dougan *v.* Bemis, 95 Minn. 220, 103 N. W. 882.

4. See Dougan *v.* Bemis, 95 Minn. 220, 103 N. W. 882.

5. **Equitable Title to Property** is a sufficient title to enable a court of equity to declare a resulting trust. Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240.

1140. 2. A mortgage of real estate is not a conveyance, within the meaning of section 6 of the statute of trusts and powers (§ 7880, Gen. Stat. 1901), which provides that, when a conveyance is made to one person upon a consideration paid by another, no use or trust shall result in favor of the latter, but the title shall vest in the former. Hanrion *v.* Hanrion, 73 Kan. 25, 84 Pac. 381.

4. Wilson *v.* Edwards, 79 Ark. 69, 94 S. W. 927.

1141. 1. Smith *v.* Goethe, 147 Cal. 725, 82 Pac. 384; Carr *v.* Graham, 128 Ga. 622, 57 S. E. 875; Openshaw *v.* Rickmeyer, (Tex. Civ. App. 1907) 102 S. W. 467; Haywood *v.* Scarborough, (Tex. Civ. App. 1907) 102 S. W. 469.

6. Copper River Min. Co. *v.* McClellan, 2 Alaska 134; Stewart *v.* Douglass, 148 Cal. 511, 83 Pac. 600. See also Morrow *v.* Matthew, 10 Idaho 137, 76 Pac. 166.

1142. 1. Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240.

2. **Exchange of Land** — See Siling *v.* Hendrickson, 193 Mo. 365, 92 S. W. 105.

4. Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Scribner *v.* Meade, (Ariz. 1906) 85 Pac. 477; Mattern *v.* Canavan, 3 Cal. App. 493, 86 Pac. 618; Long *v.* Scott, 24 App. Cas. (D. C.) 1; Whitmer *v.* Schenk, 11 Idaho 702, 83 Pac. 775; Norton *v.* Brink, 75 Neb. 566, 106 N. W. 668, *reversed* on other grounds 75 Neb. 575, 110 N. W. 669; Currie *v.* Look, 14 N. Dak. 482, 106 N. W. 131; Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310; Crawford *v.* Crawford, 77 S. Car. 205, 57 S. E. 837; Pearce *v.* Dyess, (Tex. Civ. App. 1907) 101 S. W. 549.

1143. 1. See Norton *v.* Brink, 75 Neb. 566, 106 N. W. 668, *reversed* on other grounds 75 Neb. 575, 110 N. W. 669.

1144. 1. *In re* Henderson, 142 Fed. 568, *reversed* on other grounds Henrie *v.* Henderson, (C. C. A.) 145 Fed. 316; Scribner *v.* Meade, (Ariz. 1906) 85 Pac. 477; Butterfield *v.* Butterfield, 79 Ark. 164, 95 S. W. 146; Merrill *v.* Hussey, 101 Me. 445, 64 Atl. 819, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1143; Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240; Norton *v.* Brink, 75 Neb. 566, 106 N. W. 668, *reversed* on other grounds 75 Neb. 575, 110 N. W. 669; De Roboam *v.* Schmidtlin, (Oregon 1907) 92 Pac. 1082; Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310; Pearce *v.* Dyess, (Tex. Civ. App. 1907) 101 S. W. 549; Coons *v.* Coons, 106 Va. 572, 56 S. E. 576.

1145. 3. Merrill *v.* Hussey, 101 Me. 445, 64 Atl. 819.

4. Scribner *v.* Meade, (Ariz. 1906) 85 Pac. 477; Casciola Donatelli, 218 Pa. St. 630, 67 Atl. 901, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1145.

1146. 4. Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310.

6. Pearce *v.* Dyess, (Tex. Civ. App. 1907) 101 S. W. 549.

1147. 5. Dooly *v.* Pinson, 145 Ala. 659, 39 So. 664; Carter *v.* Dotson, (Ky. 1906) 92 S. W. 600; Miller *v.* Miller, 101 Md. 600, 61 Atl. 210.

1149. 3. Dooly *v.* Pinson, 145 Ala. 659, 39 So. 664.

5. Dooly *v.* Pinson, 145 Ala. 659, 39 So. 664; Fike *v.* Ott, (Neb. 1906) 107 N. W. 774.

1151. 1. Mattern *v.* Canavan, 3 Cal. App. 493, 86 Pac. 618; Stevenson *v.* Smith, 180 Mo. 447, 88 S. W. 86; Bunel *v.* Nester, 203 Mo. 429, 101 S. W. 69; Bunel *v.* Springfield Sav. Bank, (Mo. 1907) 101 S. W. 78; Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310.

1152. 1. Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310.

1153. 3. Long *v.* Scott, 24 App. Cas. (D. C.) 1; Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240; Leary *v.* Corvin, 181 N. Y. 222, 73 N. E. 984, *modifying* 92 N. Y. App. Div. 544, 88 N. Y. Supp. 109.

1154. 1. Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310; Pickens *v.* Wood, 57 W. Va. 480, 50 S. E. 818.

5. Crosby *v.* Henry, 76 Ark. 615, 88 S. W. 940.

1155. 2. Butts *v.* Cooper, (Ala. 1907) 44 So. 616. See also Cella *v.* Brown, (C. C. A.) 144 Fed. 742.

4. De Roboam *v.* Schmidtlin, (Oregon 1907) 92 Pac. 1082. See also Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625.

Where a man purchased property in the name of a woman to whom he was engaged to be married when his wife got a divorce, such a relation will not take the case out of the ordinary rule that creates a resulting trust in favor of the one who pays the purchase money. Lufkin *v.* Jakeman, 188 Mass. 528, 74 N. E. 933.

5. Lufkin *v.* Jakeman, 188 Mass. 528, 74 N. E. 933; De Roboam *v.* Schmidtlin, (Oregon 1907) 92 Pac. 1082.

1156. 1. Rowe *v.* Johnson, 33 Colo. 469, 81 Pac. 268; Foster *v.* Berrier, 39 Colo. 398, 89 Pac. 787; Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 794; Siling *v.* Hendrickson, 193 Mo. 365, 92 S. W. 105; Williams *v.* Williams, 107 N. Y. App. Div. 621, 94 N. Y. Supp. 1128; Currie *v.* Look, 14 N. Dak. 482, 106 N. W. 131; Hayes *v.* Horton, 46 Oregon 597, 81 Pac. 386; De Roboam *v.* Schmidtlin, (Oregon 1907) 92 Pac. 1082; Casciola *v.* Donatelli, 218 Pa. St. 630, 67 Atl. 901; Johnson *v.* Ludwick, 58 W. Va. 464, 52 S. E. 489.

2. Currie *v.* Look, 14 N. Dak. 482, 106 N. W. 131; De Roboam *v.* Schmidtlin, (Oregon 1907) 92 Pac. 1082; Casciola *v.* Donatelli, 218 Pa. St. 630, 67 Atl. 901; Johnson *v.* Ludwick, 58 W. Va. 464, 52 S. E. 489. See also Foster *v.* Berrier, 39 Colo. 398, 89 Pac. 787.

1157. 2. Johnson *v.* Ludwick, 58 W. Va. 464, 52 S. E. 489. *Compare* Shipley *v.* Shipley, 38 Ind. App. 48, 77 N. E. 965.

1158. 3. Johnson *v.* Ludwick, 58 W. Va. 464, 52 S. E. 489.

Evidence Held Sufficient to Rebut Presumption. — Casciola *v.* Donatelli, 218 Pa. St. 630, 67 Atl. 901.

4. Holloway *v.* Wilkerson, (Ala. 1907) 43 So. 731; Heinrich *v.* Heinrich, 2 Cal. App. 479, 84 Pac. 326.

1159. 8. Reed *v.* Sperry, 193 Mo. 167, 91 S. W. 62; Siling *v.* Hendrickson, 193 Mo. 365, 92 S. W. 105; Mayer *v.* Kane, 69 N. J. Eq. 733, 61 Atl. 374; Matador Land, etc., Co. *v.* Cooper, (Tex. Civ. App. 1905) 87 S. W. 235.

1160. 1. Gittings *v.* Winter, 101 Md. 194, 60 Atl. 630; Sparks *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 740.

4. Mayor *v.* Kane, 69 N. J. Eq. 733, 61 Atl. 374.

1161. 5. Reed *v.* Sperry, 193 Mo. 167, 91 S. W. 62; Matador Land, etc., Co. *v.* Cooper, (Tex. Civ. App. 1905) 87 S. W. 235; Pickens *v.* Wood, 57 W. Va. 480, 50 S. E. 818.

6. Pickens *v.* Wood, 57 W. Va. 480, 50 S. E. 818.

1162. 1. Moore *v.* Scruggs, 131 Iowa 692, 109 N. W. 205; Wolters *v.* Shraft, (N. J. 1905) 66 Atl. 398; Hayes *v.* Horton, 46 Oregon 597, 81 Pac. 386.

Where the Child Takes Title Without the Parent's Consent the presumption of advancement is not indulged. Moore *v.* Scruggs, 131 Iowa 692, 109 N. W. 205.

Where a Father Purchases Land in His Son's Name, Falsely Representing It to Be His Own, and using his own funds for the purchase, no resulting trust is created in favor of the son. Chapman *v.* Tyson, 39 Wash. 523, 81 Pac. 1066.

1163. 3. See Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625.

1164. 9. *Compare* Irvine *v.* Irvine, (Ky. 1905) 89 S. W. 193.

1166. 1. State Bank *v.* Chatten, 69 Kan. 438, 77 Pac. 96, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1166; Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 794; McConnell *v.* Gentry, (Ky. 1907) 99 S. W. 278; Leary *v.* Corvin, 181 N. Y. 222, 73 N. E. 984, *modifying* 92 N. Y. App. Div. 544, 88 N. Y. Supp. 109; Fagan *v.* McDonnell, 115 N. Y. App. Div. 89, 100 N. Y. Supp. 641.

2. State Bank *v.* Chatten, 69 Kan. 438, 77 Pac. 96.

Kansas Statute Includes Subsequent Creditors, "if there be sufficient evidence of fraudulent intent." State Bank *v.* Chatten, 69 Kan. 438, 77 Pac. 96.

1167. 1. Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 794; Leary *v.* Corvin, 181 N. Y. 222, 73 N. E. 984, *modifying* 92 N. Y. App. Div. 544, 88 N. Y. Supp. 109; Fagan *v.* McDonnell, 115 N. Y. App. Div. 89, 100 N. Y. Supp. 641.

2. Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 794; Leary *v.* Corvin, 181 N. Y. 222, 73 N. E. 984, *modifying* 92 N. Y. App. Div. 544, 88 N. Y. Supp. 109; Fagan *v.* McDonnell, 115 N. Y. App. Div. 89, 100 N. Y. Supp. 641.

3. Fagan *v.* McDonnell, 115 N. Y. App. Div. 89, 100 N. Y. Supp. 641.

1170. 3. Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

4. Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

1171. 1. Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240.

4. *In re* Henderson, 142 Fed. 568, *reversed* on other grounds Henrie *v.* Henderson, (C. C. A.) 145 Fed. 316; Long *v.* Mechem, 142 Ala. 405, 38 So. 262; Crosby *v.* Henry, 76 Ark. 615, 88 S. W. 949; Mason *v.* Harkins, 82 Ark. 569, 102 S. W. 228; City Nat. Bank *v.* Crahan, (Iowa 1907) 112 N. W. 793; Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 794; Bunel *v.* Nester, 203 Mo. 429, 101 S. W. 69; Bunel *v.* Springfield Sav. Bank, (Mo. 1907) 101 S. W. 78; De Roboam *v.* Schmidtlin, (Oregon 1907) 92 Pac. 1082; Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310; Coons *v.* Coons, 106 Va. 572, 56 S. E. 576.

1172. 6. Matador Land, etc., Co. *v.* Cooper, (Tex. Civ. App. 1905) 87 S. W. 235. See also Gittings *v.* Winter, 101 Md. 194, 60 Atl. 630; Miller *v.* Miller, 101 Md. 600, 61 Atl. 210; Casciola *v.* Donatelli, 218 Pa. St. 630, 67 Atl. 901.

1173. 4. See Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

6. Humphrey *v.* Pope, 1 Cal. App. 374, 82 Pac. 223.

1174. 2. Morrow *v.* Matthew, 10 Idaho 437, 79 Pac. 196; Webb *v.* Webb, 130 Iowa 457, 104 N. W. 438; Joerger *v.* Joerger, 193 Mo. 133, 91 S. W. 918.

3. *United States.* — *In re* Henderson, 142 Fed. 568, *reversed* on other grounds Henrie *v.* Henderson, (C. C. A.) 145 Fed. 316.

Alabama. — Dooly *v.* Pinson, 145 Ala. 650, 39 So. 664; Butts *v.* Cooper, (Ala. 1907) 44 So. 616.

Arkansas. — Tillar *v.* Henry, 75 Ark. 446, 88 S. W. 573; Crosby *v.* Henry, 76 Ark. 615, 88

S. W. 949; Foster *v.* Beidler, 79 Ark. 418, 96 S. W. 175; Mason *v.* Harkins, 82 Ark. 569, 102 S. W. 228.

California. — De Galindo *v.* De Galindo, 147 Cal. 77, 81 Pac. 279.

Kentucky. — Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 794.

Maryland. — Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625.

Minnesota. — See Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561.

Missouri. — Reed *v.* Sperry, 193 Mo. 167, 91 S. W. 62; Joerger *v.* Joerger, 193 Mo. 133, 91 S. W. 918; Smith *v.* Smith, 201 Mo. 533, 100 S. W. 579; Bunel *v.* Nester, 203 Mo. 429, 101 S. W. 69; Bunel *v.* Springfield Sav. Bank, (Mo. 1907) 101 S. W. 78.

North Dakota. — Carter *v.* Carter, 14 N. Dak. 66, 103 N. W. 425.

Oregon. — De Roboam *v.* Schmidtlin, (Oregon 1907) 92 Pac. 1082.

South Carolina. — Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310.

Virginia. — Coons *v.* Coons, 106 Va. 572, 56 S. E. 577.

West Virginia. — Johnson *v.* Ludwick, 58 W. Va. 464, 52 S. E. 489.

The rule which has been adopted and followed by courts of equity, requiring a plaintiff who seeks to establish a trust in real property contrary to the express terms of the deed, which vested title in another, to make out his case "clearly and satisfactorily, beyond a reasonable doubt," does not find the same reason for its application in a case where a party to a grubstake agreement invokes the aid of a court of equity in establishing a trust in mining claims located on the public domain by one of the parties to such agreement. Morrow *v.* Matthew, 10 Idaho 437, 79 Pac. 196.

The Following Are Some of the Expressions Used by the Courts: Full, Clear, and Convincing. — Tillar *v.* Henry, 75 Ark. 446, 88 S. W. 573.

1176. 4. *Alabama.* — Dooly *v.* Pinson, 145 Ala. 659, 39 So. 664; Jacoby *v.* Funkhouser, 147 Ala. 254, 40 So. 291.

Arkansas. — Tillar *v.* Henry, 75 Ark. 446, 88 S. W. 573; Foster *v.* Beidler, 79 Ark. 418, 96 S. W. 175.

Kentucky. — Creech *v.* Creech, (Ky. 1905) 89 S. W. 720.

Maryland. — Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625.

Michigan. — Barrett *v.* Miller, 144 Mich. 454, 108 N. W. 396.

Missouri. — Stevenson *v.* Smith, 189 Mo. 447, 88 S. W. 86; Reed *v.* Sperry, 193 Mo. 167, 91 S. W. 62; Joerger *v.* Joerger, 193 Mo. 133, 91 S. W. 918.

New York. — Mackall *v.* Olcott, 93 N. Y. App. Div. 282, 87 N. Y. Supp. 757, *affirmed* 183 N. Y. 580, 76 N. E. 1100; Williams *v.* Williams, 107 N. Y. App. Div. 621, 94 N. Y. Supp. 1128.

Utah. — Holstrom *v.* Rodes, 30 Utah 122, 83 Pac. 730; Rutan *v.* Huck, 30 Utah 217, 83 Pac. 830.

West Virginia. — Pickens *v.* Wood, 57 W. Va. 280, 50 S. E. 818.

5. McNutt *v.* McNutt, 76 Ark. 14, 88 S. W. 589; Crosby *v.* Henry, 76 Ark. 615, 88 S. W. 949; Bendy *v.* Nudford, 76 Ark. 615, 88 S. W. 999; Morrow *v.* Matthew, 10 Idaho 437, 79 Pac. 196; Verble *v.* Dillow, 218 Ill. 537, 75 N. E. 1046; Gittings *v.* Winter, 101 Md. 194, 60 Atl. 630; Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561; Casciola *v.* Donatelli, 218 Pa. St. 630, 67 Atl. 901; Pansing *v.* Warner, 43 Wash. 531, 86 Pac. 667.

6. Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310.

1177. 10. Wilson *v.* Edwards, 79 Ark. 69, 94 S. W. 927; Beloate *v.* Hennessee, 81 Ark. 478, 99 S. W. 681; Smith *v.* Goethe, 147 Cal. 725, 82 Pac. 384; Heinrich *v.* Heinrich, 2 Cal. App. 479, 84 Pac. 326; Deaner *v.* O'Hara, 36 Colo. 476, 85 Pac. 1123; Waterman *v.* Buckingham, 79 Conn. 286, 64 Atl. 212; Verble *v.* Dillow, 218 Ill. 537, 75 N. E. 1046. See also Jones *v.* Jones, 80 Ark. 379, 97 S. W. 451.

1179. 1. Loomis *v.* Loomis, 148 Cal. 149, 82 Pac. 679.

1180. 1. See Huffman *v.* Huffman, 35 Ind. App. 643, 73 N. E. 1096.

4. Lang *v.* Metzger, 101 Ill. App. 380, *affirmed* 206 Ill. 475, 69 N. E. 493; Prewitt *v.* Prewitt, 188 Mo. 675, 87 S. W. 1000.

1181. 5. Huffman *v.* Huffman, 35 Ind. App. 643, 73 N. E. 1096.

1182. 8. Waterman *v.* Buckingham, 79 Conn. 286, 64 Atl. 212.

1184. 4. Holloway *v.* Wilkerson, (Ala. 1907) 43 So. 731; Deaner *v.* O'Hara, 36 Colo. 476, 85 Pac. 1123; Lang *v.* Metzger, 101 Ill. App. 380 (*affirmed* 206 Ill. 475), 69 N. E. 493, *citing* 16 [15] AM. AND ENG. ENCYC. OF LAW (2d ed.) 1181 [1184]; Weib *v.* Webb, 130 Iowa 457, 104 N. W. 438; Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 794; Bunel *v.* Nester, 203 Mo. 429, 101 S. W. 69; Bunel *v.* Springfield Sav. Bank, (Mo. 1907) 101 S. W. 78. See also Brookhouse *v.* Union Pub. Co., 73 N. H. 368, 62 Atl. 219.

5. *United States.* — Freeman *v.* Freeman, (C. C. A.) 153 Fed. 337.

Alabama. — Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Smith *v.* Smith, (Ala. 1907) 45 So. 168.

Arizona. — Butterfield *v.* Nogales Copper Co., 9 Ariz. 212, 80 Pac. 345.

California. — De Leonis *v.* Hammel, 1 Cal. App. 390, 82 Pac. 349; Heinrich *v.* Heinrich, 2 Cal. App. 479, 84 Pac. 326; Crabtree *v.* Potter, 150 Cal. 710, 89 Pac. 971.

Georgia. — Carr *v.* Graham, 128 Ga. 622, 57 S. E. 875.

Idaho. — White *v.* Whitcomb, 13 Idaho 490, 90 Pac. 1080.

Illinois. — Crossman *v.* Keister, 223 Ill. 69, 79 N. E. 58. See also Chapman *v.* Ferns, 118 Ill. App. 116.

Indiana. — Huffman *v.* Huffman, 35 Ind. App. 643, 73 N. E. 1096.

Kansas. — Jenson *v.* Jenson, 76 Kan. 347, 91 Pac. 86; Gemmel *v.* Fletcher, 76 Kan. 577, 92 Pac. 713.

Missouri. — Clifford Banking Co. *v.* Donovan Commission Co., 195 Mo. 262, 94 S. W. 527.

New Jersey. — Holton *v.* Holton, (N. J. 1906) 65 Atl. 481.

North Carolina. — Norcum *v.* Savage, 140 N. Car. 472, 53 S. E. 289.

North Dakota. — Currie *v.* Look, 14 N. Dak. 482, 106 N. W. 131; Gates *v.* Kelley, 15 N. Dak. 639, 110 N. W. 770.

Oregon. — Scott *v.* White, (Oregon 1907) 91 Pac. 487.

Texas. — Openshaw *v.* Rickmeyer, (Tex. Civ. App. 1907) 102 S. W. 467.

Virginia. — Virginia Pocahontas Coal Co. *v.* Lambert, 107 Va. 368, 58 S. E. 561.

West Virginia. — Reel *v.* Reel, 59 W. Va. 106, 52 S. E. 1023; Gentry *v.* Poteet, 59 W. Va. 408, 53 S. E. 787.

Wisconsin. — Tyler *v.* Stitt, 132 Wis. 656, [illegible] N. W. 1091.

The Statute of Frauds, making an express trust created by parol invalid, has no application to constructive trusts. Crossman *v.* Keister, 223 Ill. 69, 79 N. E. 58.

A Husband's Deed to His Wife, of His Interest in the Homestead, which after his death does not increase her interest in the homestead, does not create a trust *ex maleficio,* even if the deed was made on the promise of the wife to hold the property for another after her death. Loomis *v.* Loomis, 148 Cal. 149, 82 Pac. 679.

Pleading and Evidence. — Fraud necessary to create the trust must be averred with precision and established by clear and convincing proof. Smith *v.* Smith, (Ala. 1907) 45 So. 168.

1185. 2. Modesto First Nat. Bank *v.* Wakefield, 148 Cal. 558, 83 Pac. 1076; Heinrich *v.* Heinrich, 2 Cal. App. 479, 84 Pac. 326; Currie *v.* Look, 14 N. Dak. 482, 106 N. W. 131.

3. U. S. *v.* Bitter Root Development Co., 200 U. S. 451, 26 U. S. Sup. Ct. 318; Smith *v.* Smith, (Ala. 1907) 45 So. 168; Carr *v.* Graham, 128 Ga. 622, 57 S. E. 875; Gemmel *v.* Fletcher, 76 Kan. 577, 92 Pac. 713; Virginia Pocahontas Coal Co. *v.* Lambert, 107 Va. 368, 58 S. E. 561.

4. Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Smith *v.* Smith, (Ala. 1907) 45 So. 168; Copper River Min. Co. *v.* McClellan, 2 Alaska 134; Scribner *v.* Meade, (Ariz. 1906) 85 Pac. 477; Huffman *v.* Huffman, 35 Ind. App. 643, 73 N. E. 1096; Holton *v.* Holton, (N. J. 1906) 65 Atl. 481; Mackall *v.* Olcott, 93 N. Y. App. Div. 282, 87 N. Y. Supp. 757, *affirmed* 183 N. Y. 580, 76 N. E. 1100; Gates *v.* Kelley, 15 N. Dak. 639, 110 N. W. 770; Davis *v.* Davis, 216 Pa. St. 228, 65 Atl. 622; Newman *v.* Newman, 60 W. Va. 376, 55 S. E. 377, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 1185.

Burden of Proof. — To establish the existence of a constructive trust in case of fraud, the burden of proof rests with the party who alleges it. Copper River Min. Co. *v.* McClellan, 2 Alaska 134.

Quantum of Proof. — A constructive trust in case of fraud must be established by full, clear, and satisfactory evidence. Copper River Min. Co. *v.* McClellan, 2 Alaska 134.

1186. 1. Gates *v.* Kelley, 15 N. Dak. 639, 110 N. W. 770.

However, Fraud Is Much More Readily Inferred where the parties occupy a confidential or fiduciary relation toward each other. Crossman *v.* Keister, 223 Ill. 69, 79 N. E. 58.

8. Modesto First Nat. Bank *v.* Wakefield, 148 Cal. 558, 83 Pac. 1076.

Money Paid under a Mistake of Fact becomes impressed with a trust and may be followed into the hands of the trustee in bankruptcy of the person to whom the money was paid. *In re* Berry, (C. C. A.) 147 Fed. 208.

10. Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Smith *v.* Smith, (Ala. 1907) 45 So. 168; Gemmel *v.* Fletcher, 76 Kan. 577, 92 Pac. 713.

1187. 1. Barrow *v.* Grant, 116 La. 952, 41 So. 220; Camden Land Co. *v.* Lewis, 101 Me. 94, 63 Atl. 523, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 1187.

2. Griffin *v.* Schlenk, (Ky. 1907) 102 S. W. 837. See also Carr *v.* Graham, 128 Ga. 622, 57 S. E. 875.

4. See Carr *v.* Graham, 128 Ga. 622, 57 S. E. 875.

1188. 3. Virginia Pocahontas Coal Co. *v.* Lambert, 107 Va. 368, 58 S. E. 561, *quoting* 15 Am. and Eng. Encyc. of Law (2d ed.) 1188.

6. Moore *v.* Scruggs, 131 Iowa 692, 109 N. W. 205.

7. Carr *v.* Graham, 128 Ga. 622, 57 S. E. 875.

1189. 3. Patrick *v.* Kirkland, 53 Fla. 774, 43 So. 969.

4. Patrick *v.* Kirkland, 53 Fla. 774, 43 So. 969.

5. Patrick *v.* Kirkland, 53 Fla. 774, 43 So. 969, *citing* 15 Am. and Eng. Encyc. of Law (2d ed.) 1189; Mackall *v.* Olcott, 93 N. Y. App. Div. 282, 87 N. Y. Supp. 757, *affirmed* 183 N. Y. 580, 76 N. E. 1100.

1190. 1. Parker *v.* Catron, 120 Ky. 145, 85 S. W. 740; Bracken *v.* Nicol, (Ky. 1907) 99 S. W. 920; Griffin *v.* Schlenk, (Ky. 1907) 102 S. W. 837; Haywood *v.* Scarborough, (Tex. Civ. App. 1907) 102 S. W. 469; Frost *v.* Perfield, 44 Wash. 185, 87 Pac. 117.

2. Tillar *v.* Henry, 75 Ark. 446, 88 S. W. 573.

3. Tillar *v.* Henry, 75 Ark. 446, 88 S. W. 573.

5. But see Eisert *v.* Bowen, 117 N. Y. App. Div. 488, 102 N. Y. Supp. 707.

1191. 4. Tillar *v.* Henry, 75 Ark. 446, 88 S. W. 573.

6. Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288.

1192. 2. Bryan *v.* Bigelow, 77 Conn. 604, 60 Atl. 266.

1193. 3. Smullin *v.* Wharton, 73 Neb. 667, 106 N. W. 577.

1195. 6. McNutt *v.* McNutt, 76 Ark. 14, 88 S. W. 589; Rogers *v.* Tompkins, (Tex. Civ. App. 1905) 87 S. W. 379.

1196. 5. Huffman *v.* Huffman, 35 Ind. App. 643, 73 N. E. 1096; Bonham *v.* Doyle, 30 Ind. App. 438, 77 N. E. 859.

6. State *v.* State Journal Co., 75 Neb. 275, 106 N. W. 434.

1197. 1. Bunel *v.* Nester, 203 Mo. 429, 101 S. W. 69; Bunel *v.* Springfield Sav. Bank, (Mo. 1907) 101 S. W. 78; Hix *v.* Armstrong, (Tex. 1908) 106 S. W. 317.

The Guardian May Protect Himself as well as his ward, by bidding in the property sold under a deed of trust taken by him to secure both his debt and the debt of the ward. Bunel *v.* Nester, 203 Mo. 429, 101 S. W. 69; Bunel *v.*

Springfield Sav. Bank, (Mo. 1907) 101 S. W. [illegible].

4. Hix *v.* Armstrong, (Tex. 1908) 106 S. W. 317.

5. Husband and Wife. — See Huffman *v.* Huffman, 35 Ind. App. 643, 73 N. E. 1096.

1199. 8. Hix *v.* Armstrong, (Tex. 1908) 106 S. W. 317.

9. Griffith *v.* Owen, (1907) 1 Ch. 195.

1200. 4. Birmingham, etc., R. Co. *v.* Louisville, etc., R. Co., (Ala. 1907) 44 So. 679; Bass *v.* Wheless, 2 Tenn. Ch. 531.

1201. 1. *In re* Berry, (C. C. A.) 147 Fed. 208; Pope *v.* Prince, 105 Va. 209, 52 S. E. [illegible].

1202. 1. Waterman *v.* Buckingham, 79 Conn. 286, 64 Atl. 212.

3. See Mayer *v.* Kane, 69 N. J. Eq. 733, 61 Atl. 374.

1203. 6. Vulcan Detinning Co. *v.* American Can Co., 70 N. J. Eq. 588, 62 Atl. 881. *Compare* Kyle *v.* Carpenter, 130 Wis. 310, 110 N. W. 187.

1204. 4. Rogers *v.* Penobscot Min. Co., (C. C. A.) 154 Fed. 606; Butterfield *v.* Nogales Copper Co., 9 Ariz. 212, 80 Pac. 345; White *v.* Whitcomb, 13 Idaho 490, 90 Pac. 1080; Crossman *v.* Keister, 223 Ill. 69, 79 N. E. 58; Noel *v.* Fitzpatrick, (Ky. 1907) 100 S. W. 321; Sanborn *v.* Loud, 150 Mich. 154, 113 N. W. 309; Prewitt *v.* Prewitt, 188 Mo. 675, 87 S. W. 1000; Pearce *v.* Dyess, (Tex. Civ. App. 1907) 101 S. W. 549; Frost *v.* Perfield, 44 Wash. 185, 87 Pac. 117; Borchert *v.* Borchert, 132 Wis. 593, 113 N. W. 35.

Defenses. — In an action to enforce a resulting trust arising from the alleged use to purchase realty of the funds of the community of the plaintiff's father and mother, by the plaintiff's stepfather, that the community property had been exhausted by the payment of debts is a matter of defense. Pearce *v.* Dyess, (Tex. Civ. App. 1907) 101 S. W. 549.

5. Sanborn *v.* Loud, 150 Mich. 154, 113 N. W. 309.

6. Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

1205. 3. See Fox *v.* Fox, (Neb. 1906) 110 N. W. 304.

4. Scranton *v.* Campbell, (Tex. Civ. App. 1907) 101 S. W. 285.

5. De Galindo *v.* De Galindo, 147 Cal. 77, 81 Pac. 279; Hamilton *v.* Hamilton, 231 Ill. 128, 83 N. E. 125; Smith *v.* Smith, 132 Iowa 700, 109 N. W. 205; Stevenson *v.* Smith, 189 Mo. 447, 88 S. W. 86; Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310; Newman *v.* Newman, 60 W. Va. 376, 55 S. E. 377.

Until Repudiation of the Trust by the trustee, laches cannot be urged against its enforcement. Pearce *v.* Dyess, (Tex. Civ. App. 1907) 101 S. W. 549.

If There Has Been No Settlement between the trustee and the beneficiary, the doctrine of laches does not apply. Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310.

6. Chapman *v.* Ferns, 118 Ill. App. 116; Smith *v.* Smith, 132 Iowa 700, 109 N. W. 194; Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310.

Until Repudiation of the Trust by the trustee, limitations do not run. Smith *v.* Smith, 132 Iowa 700, 109 N. W. 194; Pearce *v.* Dyess, (Tex. Civ. App. 1907) 101 S. W. 549.

1206. 2. Lufkin *v.* Lakeman, 188 Mass. 528, 74 N. E. 933; Smith *v.* Smith, 207 Mo. 533, 100 S. W. 579; Newman *v.* Newman, 60 W. Va. 376, 55 S. E. 377.

3. Ames *v.* Howes, 13 Idaho 756, 93 Pac. 35.

1207. 2. Prewitt *v.* Prewitt, 188 Mo. [illegible], 87 S. W. 1000.

4. Hamilton *v.* Hamilton, 231 Ill. 128, 83 N. E. 125; Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310.

5. Combs *v.* Combs, (Ky. 1907) 99 S. W. 919.

1208. 1. Morrow *v.* Matthew, 10 Idaho 437, 79 Pac. 196, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1208.

4. Birmingham, etc., R. Co. *v.* Louisville, etc., R. Co., (Ala. 1907) 44 So. 679.

1209. 3. Attachment. — Lyons *v.* Urgalones, 189 Mass. 424, 75 N. E. 950.

IMPLIED WARRANTIES.

1213. 3. Elgin Jewelry Co. *v.* Estes, 122 Ga. 807, 50 S. E. 939.

8. Livingston *v.* Anderson, 2 Ga. App. 274, 58 S. E. 505.

9. Livingston *v.* Anderson, 2 Ga. App. 274, 58 S. E. 505.

1216. 1. Mason *v.* Bohannan, 79 Ark. 435, 96 S. W. 181.

1218. 9. Howard Iron Works *v.* Buffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163.

11. Dorsey *v.* Watkins, 151 Fed. 340; Pascal *v.* Goldstein, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 629, 100 N. Y. Supp. 1025.

1219. 5. Thomas *v.* Thomas, 146 Ala. 533, 41 So. 141.

1220. 4. Ordinary, Not Expert, Inspection Required. Marbury Lumber Co. *v.* Stearns Mfg. Co., (Ky. 1908) 107 S. W. 200.

5. De Loach Mill Mfg. Co. *v.* Tutweiler Coal, etc., Co., 2 Ga. App. 493, 58 S. E. 790. See also Hirsh *v.* Duval Co., (Supm. Ct. App. T.) 101 N. Y. Supp. 35.

Questions of Neglect and Opportunity Are for Jury. — Pewett *v.* Richardson, 79 Ark. 66, 95 S. W. 787; Kronman *v.* Roush Produce Co., (Ga. App. 1907) 59 S. E. 320.

1223. 2. The Nimrod, 141 Fed. 215, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1223.

Where Defects Are Concealed by the Method of Shipment of the goods, as in the case of fruit shipped in closed kegs, acceptance of the goods does not necessarily amount to a waiver of the latent defects. Kronman *v.* Roush Produce Co., (Ga. App. 1907) 59 S. E. 320.

4. Patrick *v.* Norfolk Lumber Co., (Neb. 1908) 115 N. W. 780.

5. Puritan Mfg. Co. *v.* Westermire, 47 Oregon 557, 84 Pac. 797; Bostock *v.* Nicholson, (1904) 1 K. B. 725.

1224. 1. Warranty Survives Acceptance. — Where the purchaser is ignorant of the identity of the article, an implied warranty survives the acceptance of a different article. Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 105 N. Y. Supp. 390. See also Atkins Bros. Co. *v.* Landa, 110 Mo. App. 119, 95 S. W. 949.

2 Puritan Mfg. Co. *v.* Westermire, 47 Oregon 557, 84 Pac. 797.

1225. 3. Truschel *v.* Dean, 77 Ark. 546, 92 S. W. 781; Carolina Portland Cement Co. *v.* Turpin, 126 Ga. 677, 55 S. E. 595.

1226. 1. **Sale by Sample and Description — Variation.** — Where, through a mutual error, the sample was of a better quality than required by the description, it was held that the purchaser, who thereafter became aware of the error, could recover damages only for a breach of the qualities called for by the description. Davis *v.* Reisinger, 120 N. Y. App. Div. 766, 105 N. Y. Supp. 603.

3. Keller *v.* Paulus Mfg. Co., (Tex. Civ. App. 1906) 96 S. W. 1097.

4. Keeler *v.* Paulus Mfg. Co., (Tex. Civ. App. 1906) 96 S. W. 1097.

6. Columbia River Packers' Assoc. *v.* Springfield Grocer Co., (Mo. App. 1908) 108 S. W. 113.

"**The Buyer Is Not Obliged to Select** the goods he ordered from others shipped in the same package without being ordered." Keeler *v.* Paulus Mfg. Co., (Tex. Civ. App. 1906) 96 S. W. 1097.

7. See Attleboro Mfg. Co. *v.* Calhoun, 1 Tenn. Ch. App. 42, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1226.

1227. 1. Carolina Portland Cement Co. *v.* Turpin, 126 Ga. 677, 55 S. E. 925; Attleboro Mfg. Co. *v.* Calhoun, 1 Tenn. Ch. App. 42.

8. Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 454.

10. Pascal *v.* Goldstein, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 629, 100 N. Y. Supp. 1025.

Sale by Specimen and Description. — See Cox *v.* Anderson, 194 Mass. 136, 80 N. E. 236, wherein it was held that the evidence adduced failed to show a sale by sample.

1228. 1. E. T. Burrowes Co. *v.* Rapid Filter Safety Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 539, 97 N. Y. Supp. 1048.

A Sale of a By-product of a Mill during a stipulated period is not rendered a sale by sample with warranty by the mere fact that a sample was exhibited at the time of the contract, where fluctuation of the quality of the by-product is well known to be inevitable. Listman Mill Co. *v.* Miller, 131 Wis. 393, 111 N. W. 496.

7. Columbia River Packers' Assoc. *v.* Springfield Grocer Co., (Mo. App. 1908) 108 S. W. 113.

1229. 2. Glasgow Milling Co. *v.* Burgher, 122 Mo. App. 14, 97 S. W. 950; Williamson *v.* Macpherson, Sc. Ct. Sess. 6 F. 863. See also Hooven, etc., Co. *v.* Wirtz, 15 N. Dak. 477, 107 N. W. 1078.

4. Elgin Jewelry Co. *v.* Estes, 122 Ga. 807, 50 S. E. 939; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682; E. T. Burrowes Co. *v.* Rapid Safety Filter Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 539, 97 N. Y. Supp. 1048; Howard Iron Works *v.* Buffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163.

1230. 5. Truschel *v.* Dean, 77 Ark. 546, 92 S. W. 781; Atkins Bros. Co. *v.* Landa, 119 Mo. App. 119, 95 S. W. 949.

8. After Accentance by Buyer. — Patrick *v.* Norfolk Lumber Co., (Neb. 1908) 115 N. W. 780.

The Word "Vendor" in the Original Text is a misprint for "vendee."

1231. 2. Howard Iron Works *v.* Buffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163. See also Attleboro Mfg. Co. *v.* Calhoun, 1 Tenn. Ch. App. 42.

3. Strongitharm *v.* North Lonsdale Iron, etc., Co., 21 Times L. Rep. 357; The Nimrod, 141 Fed. 215, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1231; Bagley *v.* General Fire Extinguisher Co., (C. C. A.) 150 Fed. 284; Glucose Sugar Refining Co. *v.* Climax Coffee, etc., Co., (Ind. 1907) 81 N. E. 589; Oil Well Supply Co. *v.* Watson, (Ind. 1907) 80 N. E. 157; Make-Man Tablet Co. *v.* Chapman, 119 Mo. App. 437, 95 S. W. 282, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1231; Atkins Bros. Co. *v.* Landa, 119 Mo. App. 119, 95 S. W. 949; Ferguson Implement Co. *v.* Parmer, (Mo. 1908) 107 S. W. 469; Howard Iron Works *v.* Buffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163; McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342; Mine Supply Co. *v.* Columbia Mining Co., 48 Oregon 391, 84 Pac. 789; New Hamburg Mfg. Co. *v.* Shields, 16 Manitoba 212.

1232. 1. **When Article in Stock, Manufacturer Regarded as Dealer.** — Ehrsman *v.* Brown, (Kan. 1907) 91 Pac. 179.

1233. 1. Howard Iron Works *v.* Buffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163; Hooven, etc., Co. *v.* Wirtz, 15 N. Dak. 477, 107 N. W. 1078.

2. Howard Iron Works *v.* Puffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163.

4. **Manufacturer Not Liable.** — Howard Iron Works *v.* Buffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163.

1234. 3. Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963.

11. Hawley Down Draft Furnace Co. *v.* E. Van Winkle Gin, etc., Works, (Ga. App. 1908) 60 S. E. 1008; Williamson *v.* Macpherson, Sc. Ct. Sess. 6 F. 863; New Hamburg Mfg. Co. *v.* Shields, 16 Manitoba 212.

18. J. A. Fay, etc., Co. *v.* Dudley, 129 Ga. 314, 58 S. E. 826; Ehrsam *v.* Brown, (Kan. 1907) 91 Pac. 179, holding that in such case the manufacturer is to be regarded as a dealer; Lombard Water-Wheel Governor Co. *v.* Great Northern Paper Co., 101 Me. 114, 63 Atl. 555; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682; Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20; Cleveland Punch, etc., Co. *v.* Consumers' Carbon Co., 75 Ohio St. 153, 78 N. E. 1009; Mine Supply Co. *v.* Columbia Mining Co., 48 Oregon 391, 84 Pac. 789; Beggs *v.* James Hanley Brewing Co., 27 R. I. 385, 62 Atl. 373; La Crosse Plow Co. *v.* Helgeson, 127 Wis. 622, 106 N. W. 1094.

1235. 2. H. McCormick Lumber Co. *v.* Winans, 126 Wis. 649, 105 N. W. 945.

3. Lombard Water-Wheel Governor Co. *v.* Great Northern Paper Co., 101 Me. 114, 63 Atl. 555.

4. Reynolds *v.* General Electric Co., (C. C. A.) 141 Fed. 551; Buick Motor Co. *v.* Reid Mfg. Co., 150 Mich. 118, 113 N. W. 591; Havnor Mfg. Co. *v.* Davis, (N. Car. 1908) 61 S. E. 51.

5. Pascal *v.* Goldstein, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 629, 100 N. Y. Supp. 1025.

Quarrier Regarding Manufacturer. — Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963.

6. Oil Well Supply Co. *v.* Priddy, (Ind. 1908) 83 N. E. 623; Williamson *v.* Macpherson, Sc. Ct. Sess. 6 F. 863.

1236. 1. See Ehrsam *v.* Brown, (Kan. 1907) 91 Pac. 179, *distinguishing* Smith *v.* McNair, 19 Kan. 332, and Shaw *v.* Smith, 45 Kan. 334, 25 Pac. 286, cited in the preceding note in 15 AM. AND ENG. ENCYC. OF LAW (2d ed.), and holding that where a known, described, and specified article is sold by a dealer under a contract to be executed by delivery of the specified article, which is actually supplied to the buyer, there is no implied warranty of fitness for the particular purpose, though such purpose was communicated to the dealer beforehand.

3. Young *v.* Plattner Implement Co., (Colo. 1907) 91 Pac. 1109, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1235, 1236.

1237. 1. Reynolds *v.* General Electric Co., (C. C. A.) 141 Fed. 551; Ehrsam *v.* Brown, (Kan. 1907) 91 Pac. 179, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1236, 1237. See also Howard Iron Works *v.* Buffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163.

2. *Compare* Howard Iron Works *v.* Buffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163.

1238. 1. Nelson *v.* Armour Packing Co., 76 Ark. 352, 90 S. W. 288; Tomlinson *v.* Armour, (N. J. 1907) 65 Atl. 883, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1237 [1238], and repudiating Blackstone's doctrine, stated on the former page.

2. **Warranty Applies to Latent Undiscovered Defects.** — Frost *v.* Aylesbury Dairy Co., (1905) 1 K. B. 608.

4. Tomlinson *v.* Armour, (N. J. 1907) 65 Atl. 883.

1239. 1. Fuchs *v.* Eichenlaub, 16 Pa. Dist. 932, *quoting* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1239. *Compare* Honk *v.* Berg, (Tex. Civ. App. 1907) 105 S. W. 1176, wherein, on a sale of impure bran by a miller to a dealer and by the dealer to a consumer, the consumer was allowed to recover from the dealer, but the dealer was held not to be entitled to recover from the miller, the court applying the rules in the case of sales of food for human beings.

9. Ehrsam *v.* Brown, (Kan. 1907) 91 Pac. 179, *citing* 15 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1239.

1240. 7. Morley *v.* Consolidated Mfg. Co., (Mass. 1907) 81 N. E. 993.

Implied Warranty that Article Is New. — A contract for the purchase of a machine implies a new machine, not a second-hand one. International Harvester Co. *v.* Smith, 105 Va. 683, 54 S. E. 850.

1241. 2. Oriental Bank *v.* Gallo, 112 N. Y. App. Div. 360, 90 N. Y. Supp. 561.

3. **Warranty of Title.** — See Seaboard Nat. Bank *v.* Bank of America, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 103, 100 N. Y. Supp. 740.

Warranty of Genuineness of Signature. See Farmers', etc., Bank *v.* Rutherford Bank, 115 Tenn. 64, 88 S. W. 939.

No Implied Warranty Survives an Alteration of a negotiable instrument. Brooklyn First Nat. Bank *v.* Gridley, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

1242. 5. **Status of Corporation.** — There is an implied warranty that the charter of the corporation has not expired. Brooks *v.* Camak, (Ga. 1908) 60 S. E. 456.

1243. 4. Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53; Sullivan Machinery Co. *v.* Breeden, (Ind. App. 1907) 82 N. E. 107; Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009.

5. Dorsey *v.* Watkins, 151 Fed. 340. See also Hooven, etc., Co. *v.* Wirtz, 15 N. Dak. 477, 107 N. W. 1078.

6. Reynolds *v.* General Electric Co., (C. C. A.) 141 Fed. 551; Bagley *v.* General Fire Extinguisher Co., (C. C. A.) 150 Fed. 284; Thomas *v.* Thomas, 146 Ala. 533, 41 So. 141; De Loach Mill Mfg. Co. *v.* Tutweiler Coal, etc., Co., 2 Ga. App. 493, 58 S. E. 790; Lombard Water-Wheel Governor Co. *v.* Great Northern Paper Co., 101 Me. 114, 63 Atl. 555; La Crosse Plow Co. *v.* Helgeson, 127 Wis. 622, 106 N. W. 1094.

An Express Warranty that a Machine Will Do Made Like the Sample excludes an implied warranty of fitness. Monroe *v.* Hickox, etc., Co., 144 Mich. 30, 107 N. W. 719.

1250. 8. E. T. Burrowes Co. *v.* Rapid Safety Filter Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 539, 97 N. Y. Supp. 1048.

1251. 3. Hawley Down Draft Furnace Co. *v.* E. Van Winkle Gin, etc., Works, (Ga. App. 1908) 60 S. E. 1008.

5. Martin Commission Co. *v.* Pelt, 76 Ark. 177, 88 S. W. 939; Monroe *v.* Hickox, etc., Co., 144 Mich. 30, 107 N. W. 719.

1255. 4. Pewett *v.* Richardson, 79 Ark. 66, 95 S. W. 787.

1256. 1. Buick Motor Co. *v.* Reid Mfg. Co., 150 Mich. 118, 113 N. W. 591. *Compare* Ehrsam *v.* Brown, (Kan. 1907) 91 Pac. 179.

Where the Contract Provided for Return a warranty does not survive the retention of an article, although the vendor was notified of a defect. J. A. Fay, etc., Co. *v.* Dudley, 129 Ga. 314, 58 S. E. 826. See also Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009.

2. **Where Notice Is Required by the Contract,** failure to comply constitutes a waiver of the warranty. Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451.

3. **Payment** is to be regarded as no more than an acceptance, and does not constitute a waiver. Atkins Bros. Co. *v.* Landa, 119 Mo. App. 119, 95 S. W. 949.

After the Vendor's Acceptance of Returned Goods he cannot recover from the vendee. Glasgow Milling Co. *v.* Burgher, 122 Mo. App. 14, 97 S. W. 950.

1257. 1. Buick Motor Co. *v.* Reid Mfg. Co., 150 Mich. 118, 113 N. W. 591.

3. Oil Well Supply Co. *v.* Watson, (Ind. 1907) 80 N. E. 157.

4. H. McCormick Lumber Co. *v.* Winans, 126 Wis. 640, 105 N. W. 945.

9. The Nimrod, 141 Fed. 215; Marbury Lumber Co. *v.* Stearns Mfg. Co., (Ky. 1908) 107 S. W. 200; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682; Ferguson Implement Co. *v.* Parmer, (Mo. App. 1908) 107 S. W. 469.

Difference between Actual Value and Contract Price. — Hooven, etc., Co. *v.* Wirtz, 15 N. Dak. 477, 107 N. W. 1078.

Difference between Contract Price and Price of Nearest Substitute Procurable. — Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963.

In the Absence of Proven Damages there can be no recovery for a breach of warranty. Brooks *v.* Camak, (Ga. 1908) 60 S. E. 456; Glucose Sugar Refining Co. *v.* Climax Coffee, etc., Co., (Ind. 1907) 81 N. E. 589; Oil Well Supply Co. *v.* Priddy, (Ind. 1908) 83 N. E. 623; McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342.

1259. 5. **On a Breach of an Implied Warranty of Seed,** the measure of damage has been held to be the difference in value between the crop actually grown from the defective seed and that which would have been produced had the seed complied with the warranty. Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 28, 105 N. Y. Supp. 390.

1260. 2. Bostock *v.* Nicholson, (1904) 1 K. B. 725; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682.

IMPOUNDING.

4. 3. Arkansas Statute Construed. — Acts of April 20, 1895, and of May 23, 1901 (Kirby's Dig., §§ 5451, 5450), construed together, present a complete system for impounding the animals named. Benton *v.* Willis, 76 Ark. 443, 88 S. W. 1000.

Exempt Property may be impounded under a city ordinance providing that the city marshal shall impound animals found at large within the city limits. Thomason *v.* Brownwood, (Tex. Civ. App. 1906) 98 S. W. 938.

Animals, at Large Without Fault of the Owner, may be impounded under a city ordinance. Evans *v.* Holman, 202 Mo. 284, 100 S. W. 624.

7. 1. Written Notice — When Excused. — In order that a constable, impounding property, may excuse himself from giving written notice, as required by statute, he must make it appear at the trial that the parties could not agree on the amount of damages. Gates *v.* Crandall, 123 Mo. App. 414, 100 S. W. 51.

4. Payment of Expenses Is Condition Precedent to obtaining possession of the impounded stock under the *Arkansas* statutes (§ 5451, Kirby's Dig.). White *v.* Clarksville, 75 Ark. 340, 87 S. W. 630.

Exempt Property may be held for reasonable charges. Thomason *v.* Brownwood, (Tex. Civ. App. 1906) 98 S. W. 938.

5. Shook *v.* Sexton, 37 Wash. 509, 79 Pac. 1093.

8. 5. Possessory Warrant will lie against one who in a stock-law county impounds trespassing live stock and fails within due time to give the statutory notice. Goodwill *v.* Peeples, 2 Ga. App. 673, 58 S. E. 1115.

IMPRISONMENT FOR DEBT AND IN CIVIL ACTIONS.

14. 6. Fraud Must Be Found by Jury. Ledford *v.* Emerson, 143 N. Car. 527, 55 S. E. 969.

15. 6. General Statutes Have Like Effect. — See Rev. Stat. U. S., §§ 716, 916; U. S. Comp. Stat. 1901, pp. 580, 684; Johnson *v.* Crawford, 154 Fed. 761.

16. 1. May Be Arrest under Bankruptcy Act. — Barrett *v.* Prince, (C. C. A.) 143 Fed. 302; *In re* Wenham, 153 Fed. 910; Johnson *v.* Crawford, 154 Fed. 761.

6. People *v.* Monaco, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 25, 105 N. Y. Supp. 401.

7. Everett *v.* Holcomb, (Ga. App. 1907) 58 S. E. 287.

8. Townsend *v.* State, 124 Ga. 69, 52 S. E. [illegible]

17. 4. In Illinois it is only where malice is the gist of the tort that the defendant may be detained. Kellar *v.* Norton, 228 Ill. 356, 81 N. E. [illegible] Mallie *v.* Mansfield, 135 Ill. App. 511; Salomon *v.* Buechele, 127 Ill. App. 420.

18. 2. Haggerty *v.* Badkin, (N. J. 1907) 66 Atl. 420.

20. 7. Cole *v.* Gore, 121 N. Y. App. Div. 632, 106 N. Y. Supp. 306.

9. Diab *v.* Shibley, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 315, 99 N. Y. Supp. 188, *affirmed* 113 N. Y. App. Div. 903, 98 N. Y. Supp. 1100.

22. 3. Wilson *v.* Collins, 119 N. Y. App. Div. 88, 103 N. Y. Supp. 1038.

23. 1. *Ex p.* Howtiz, 2 Cal. App. 752, 84 Pac. 229; Banks *v.* State, 124 Ga. 15, 52 S. E. 74; Townsend *v.* State, 124 Ga. 69, 52 S. E. 293; State *v.* Murray, 116 La. 655, 40 So. 930; Voorhees Rubber Co. *v.* McEwen, 111 N. Y. App. Div. 541, 97 N. Y. Supp. 942.

25. 6. Statute May Authorize Arrest for Changing Name. — Morris *v.* State, 144 Ala. 81, 39 So. 973.

26. 4. The Payment of a Bona Fide Debt is not such a fraudulent disposition of property as to justify an arrest. Rex *v.* Forbes, 36 N. Bruns. 580.

27. 5. A Nonresident Debtor Coming Temporarily into a State. — Paine *v.* Kelley, (Mass. 1907) 83 N. E. 8.

28. 3. Everett *v.* Holcomb, (Ga. App. 1907) 58 S. E. 287; Haggerty *v.* Badkin, (N. J. 1907) 66 Atl. 420.

Bankrupt. — Barrett *v.* Prince, (C. C. A.) 143 Fed. 302.

30. 9. See Robinson *v.* Branch Circuit Judge, 142 Mich. 70, 105 N. W. 25.

31. 3. Samel *v.* Dodd, 142 Fed. 68, 73 C. C. A. 254; *In re* Fritz, 152 Fed. 562; Meeks *v.* State, 80 Ark. 579, 98 S. W. 378; Carnahan *v.* Carnahan, 143 Mich. 390, 107 N. W. 73.

4. Samel *v.* Dodd, 142 Fed. 68, 73 C. C. A. 254.

5. Carnahan *v.* Carnahan, 143 Mich. 390, 107 N. W. 73.

6. Land *v.* State, 84 Ark. 199, 105 S. W. 90; State *v.* Morgan, 141 N. Car. 726, 53 S. E. 142.

33. 3. *Ex p.* Howtiz, 2 Cal. App. 752, 84 Pac. 229; Paine *v.* Kelley, (Mass. 1907) 83 N. E. 8.

4. Davis *v.* Reynolds, 77 S. Car. 255 57 S. E. 850.

6. Kettles *v.* People, 221 Ill. 221, 77 N. E. 472; Saylor *v.* Com., 122 Ky. 776, 93 S. W. 48; *Ex p.* Dig, 86 Miss. 597, 38 So. 730; State *v.* Morgan, 141 N. Car. 726, 53 S. E. 142. See also Rowe *v.* Reneer, 99 S. W. 250, 30 Ky. L. Rep. 545.

It Is a Violation of the Right of Personal Liberty to impose imprisonment on a failure to pay a fine for a failure to label a shipment of fruit with the locality where it is grown. *Ex p.* Hayden, 147 Cal. 649, 82 Pac. 315.

34. 1. Bartlett *v.* Paducah, 91 S. W. 264, 28 Ky. L. Rep. 1174; Rowe *v.* Reneer, 99 S. W. 250, 30 Ky. L. Rep. 545; *Ex p.* Spears, 49 Tex. Crim. 231, 90 S. W. 1011.

In Alabama the statute (Code of 1896, § 4532) requires the sentence to show the exact time required to work out the costs. Bolton *v.* State, 146 Ala. 691, 40 So. 409.

3. Perry *v.* Martin, 73 N. J. L. 310, 62 Atl. 1001.

4. Saylor *v.* Com., 122 Ky. 776, 93 S. W. 48; *Ex p.* Dig, 86 Miss. 597, 38 So. 730, *citing* 16 Am. and Eng. Encyc. of Law (2d ed.) 34; State *v.* Morgan, 141 N. Car. 726, 53 S. E. 142.

35. 3. Losaw *v.* Smith, 109 N. Y. App. Div. 754, 96 N. Y. Supp. 101.

5. Paine *v.* Kelley, (Mass. 1907) 83 N. E. 8.

36. 1. Samel *v.* Dodd, 142 Fed. 68, 73 C. C. A. 254; Diab *v.* Shibley, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 315, 99 N. Y. Supp. 188,

affirmed 113 N. Y. App. Div. 903, 98 N. Y. Supp. 1100.

2. Voorhees Rubber Co. *v.* McEwen, 111 N. Y. App. Div. 541, 97 N. Y. Supp. 942.

3. Land *v.* State, 84 Ark. 199, 105 S. W. 90.

4. Everett *v.* Holcomb, (Ga. App. 1907) 58 S. E. 287.

37. 3. *In re* Bourne, (1906) 1 Ch. 697, 75 L. J. Ch. 474, 94 L. T. N. S. 750.

38. 3. *In re* Bourne, (1906) 1 Ch. 697, 75 L. J. Ch. 474, 94 L. T. N. S. 750.

41. 2. *In re* Wenham, 153 Fed. 910; Goldsmith *v.* Haskell, 120 N. Y. App. Div. 403, 105 N. Y. Supp. 327. See also Gibson *v.* Holmes, 78 Vt. 110, 62 Atl. 11.

4. Goldsmith *v.* Haskell, 120 N. Y. App. Div. 403, 105 N. Y. Supp. 327.

42. 5. Underwood *v.* Fosha, 73 Kan. 408, 85 Pac. 564, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 42.

48. 6. **Violation of the Game Law** under the statute of *New York* (Laws 1900, p. 57, c. 20) may be punished by execution against the person. People *v.* Monaco, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 25, 105 N. Y. Supp. 401.

7. **Trespass to Land.**—Losaw *v.* Smith, 109 N. Y. App. Div. 754, 96 N. Y. Supp. 191.

8. **"Wilful and Malicious Injuries to the Person."** — Flanders *v.* Mullin, 80 Vt. 124, 66 Atl. 789.

49. 2. Ledford *v.* Emerson, 140 N. Car. 288, 52 S. E. 641; Ledford *v.* Emerson, 143 N. Car. 527, 55 S. E. 969.

5. Banning *v.* Roy, 47 Oregon 119, 82 Pac. 708.

51. 1. Wilson *v.* Collins, 119 N. Y. App. Div. 88, 103 N. Y. Supp. 1038.

The Existence of a Good Defense against the suit in which the arrest is made is not a ground for discharge on habeas corpus. *Ex p.* Morton, (Mass. 1907) 81 N. E. 869.

9. **The Failure of the Affidavit to Show Evidential Facts** is ground for the defendant's discharge. Conrad *v.* Van Buren Circuit Judge, 144 Mich. 492, 108 N. W. 347; Diab *v.* Shibley, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 315, 99 N. Y. Supp. 188, *affirmed* 113 N. Y. App. Div. 903, 98 N. Y. Supp. 1100; Dadirrian *v.* Whitson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 54, 105 N. Y. Supp. 458; Cole *v.* Gore, 121 N. Y. App. Div. 632, 106 N. Y. Supp. 306.

52. 5. **The Defendant May Prove the Want of a Ground** for arrest, in an independent suit for false imprisonment. Paine *v.* Kelley, (Mass. 1907) 83 N. E. 8.

55. 4. *Ex p.* Morton, (Mass. 1907) 81 N. E. 869.

56. 9. **Simultaneous Remedies against Person and Property Not Permitted.** — Sink *v.* Oceana Circuit Judge, 146 Mich. 121, 109 N. W. 115.

IMPROVE — IMPROVEMENT.

58. 1. **Improved Land.** — Wood land in connection with cultivated land held "*improved* land" within *Georgia* statute providing for right of way through ***improved*** lands. Hopkins *v.* Roach, 127 Ga. 153, 56 S. E. 303.

IMPROVEMENTS.

66. 1. Peters *v.* Stone, 193 Mass. 179, 79 N. E. 336; Smith *v.* Detroit, etc., Gold Min. Co., 17 S. Dak. 413, 97 N. W. 17, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 66.

10. See McCullers *v.* Johnson, (Tex. Civ. App. 1907) 104 S. W. 502.

67. 1. Voiers *v.* Atkins, 113 La. 303, 36 So. 974, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 66; Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

2. View that Occupant Is Trespasser Not Entitled to Compensation in the absence of statute. Investment Co. *v.* Hambach, 37 Wash. 629, 80 Pac. 190; Monk *v.* Duell, 41 Wash. 403, 83 Pac. 313.

4. Voiers *v.* Atkins, 113 La. 303, 36 So. 974, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 66.

5. Bryan *v.* Councilman, (Md. 1907) 67 Atl. 279, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 67.

6. Wakefield *v.* Van Tassell, 218 Ill. 572, 75 N. E. 1058; Bryan *v.* Councilman, (Md. 1907) 67 Atl. 279, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 67; Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

68. 1. Dawkins *v.* Griffin, 195 Mo. 430, 94 S. W. 525.

69. 1. Bartley *v.* Sallier, 118 La. 93, 42 So. 657.

72. 1. *Contra.* — Investment Co. *v.* Hambach, 37 Wash. 629, 80 Pac. 190; Monk *v.* Duell, 41 Wash. 403, 83 Pac. 313.

74. 2. **Oil Well Not an Improvement.** — Dangerfield *v.* Caldwell, (C. C. A.) 151 Fed. 554.

3. **An Escapement Shaft of a Mine** may be an improvement. Junction Min. Co. *v.* Springfield Junction Coal Co., 222 Ill. 600, 78 N. E. 902, *affirming* 122 Ill. App. 574.

4. **An Engine House for an Engine to Supply Electric Light** is not an improvement. *In re* Leconfield, (1907) 2 Ch. 340, 76 L. J. Ch. 562, 97 L. T. N. S. 163.

5. **By Statute.** — *In re* Leveson-Gower, (1905) 2 Ch. 95, 74 L. J. Ch. 540, 92 L. T. N. S. 836, 53 W. R. 524.

75. 2. *In re* Dunham Massey, 22 Times L. Rep. 595; *In re* Leconfield, (1907) 2 Ch. 340, 76 L. J. Ch. 562, 97 L. T. N. S. 163.

10. *In re* Dunham Massey, 22 Times L. Rep. 595.

Repairs Ordered by Health Authorities Held to Be Improvements. — *In re* Farnham, (1904) 2 Ch. 561, 91 L. T. N. S. 780, 73 L. J. Ch. 667.

76. 2. Mather *v.* Barnes, 146 Fed. 1000, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 75; Lytle *v.* Scottish-American Mortg. Co., 122 Ga. 458, 50 S. E. 402.

The Amount of the Enhancement of value must be shown with a degree of certainty. Faure *v.* Faure, 117 La. 204, 41 So. 494; Veeder *v.* Gilmer, (Tex. Civ. App. 1907) 105 S. W. 331.

77. 1. Bell *v.* Bair, 89 S. W. 732, 28 Ky. L. Rep. 614.

78. 1. **Improvements Made under Authority of an Interlocutory Decree** should be compensated through those made at other times are not. Schink *v.* Haynie, 2 Tenn. Ch. App. 571.

79. 2. **Contrary View.**— White *v.* Smith, 70 N. J. Eq. 418, 62 Atl. 560.

80. 1. Bryan *v.* Councilman, (Md. 1907) 67 Atl. 279, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 80; Boucher *v.* Trembley, 140 Mich. 352, 103 N. W. 819.

3. Shelley *v.* Cody, 187 N. Y. 166, 79 N. E. 994, *modifying* 108 N. Y. App. Div. 360, 95 N. Y. Supp. 1128. *Compare* St. Johnsville *v.* Smith, 184 N. Y. 341, 77 N. E. 617, *reversing* 90 N. Y. App. Div. 618, 85 N. Y. Supp. 1149.

82. 8. Bryan *v.* Councilman, (Md. 1907) 67 Atl. 279, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 82; Overton *v.* Meggs, (Tex. Civ. App. 1907) 105 S. W. 208.

84. 2. Hicks *v.* Webb, 127 Ga. 170, 56 S. E. 307; Bartley *v.* Sallier, 118 La. 93, 42 So. 657; Bryan *v.* Councilman, (Md. 1907) 67 Atl. 279, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 84; Boucher *v.* Trembley, 140 Mich. 352, 103 N. W. 819; Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816; Schink *v.* Haynie, 2 Tenn. Ch. App. 571; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698; Campbell *v.* McCaleb, (Tex. Civ. App. 1907) 99 S. W. 129; Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984; Texas Southern R. Co. *v.* Harle, (Tex. Civ. App. 1907) 101 S. W. 878; Fellers *v.* McFatter, (Tex. Civ. App. 1907) 101 S. W. 1065; Overton *v.* Meggs, (Tex. Civ. App. 1907) 105 S. W. 208; Monk *v.* Duell, 41 Wash. 403, 83 Pac. 313; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

85. 1. Bryan *v.* Councilman, (Md. 1907) 67 Atl. 279, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 85; Fellers *v.* McFatter, (Tex. Civ. App. 1907) 101 S. W. 1065; Veeder *v.* Gilmer, (Tex. Civ. App. 1907) 105 S. W. 331.

86. 1. Bryan *v.* Councilman, (Md. 1907) 67 Atl. 279, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 86; Wood *v.* Tinsley, 138 N. Car. 507, 51 S. E. 59.

7. Murray *v.* Barnes, 146 Ala. 688, 40 So. 348.

Notice of Condition Subsequent Bars Recovery. — Wakefield *v.* Van Tassell, 218 Ill. 572, 75 N. E. 1058.

87. 2. Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017.

Rule Does Not Apply to Improvements Which Owner May Remove.— Voiers *v.* Atkins, 113 La. 703, 36 So. 974.

89. 1. Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816.

90. 5. Wakefield *v.* Van Tassell, 218 Ill. 572, 75 N. E. 1058; Dawkins *v.* Griffin, 195 Mo. 430, 94 S. W. 525; Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816.

91. 2. **In Wyoming** a similar statute is in vogue. Brown *v.* Grady, (Wyo. 1907) 92 Pac. 622.

6. Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

7. Boucher *v.* Trembley, 140 Mich. 352, 103 N. W. 819.

93. 5. Fitch *v.* Douglass, (Kan. 1907) 90 Pac. 769; Boucher *v.* Trembley, 140 Mich. 352, 103 N. W. 819; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698.

The Tax Title Must Be Set Aside before question of improvements can be tried. Lee *v.* Livingston, 143 Mich. 203, 106 N. W. 713.

95. 1. Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816.

5*a*. **A Parol Vendee Cannot Remain in Possession** until compensated, as against a purchaser under a properly executed deed. Wood *v.* Tinsley, 138 N. Car. 507, 51 S. E. 59.

96. 2. **This Rule Applies Where a Married Woman's Contract** is not properly executed. Texas Southern R. Co. *v.* Harle, (Tex. Civ. App. 1907) 101 S. W. 878.

After the Rescission of a Contract for the fraud of the vendor the vendee may recover for the improvements he has made in an action for damages. Vernam *v.* Wilson, 31 Pa. Super. Ct. 257.

4. See Edwards *v.* Lechleiter, 149 Cal. 677, 87 Pac. 194.

5. Bell *v.* Bair, 89 S. W. 732, 28 Ky. L. Rep. 614.

97. 2. See Hartman *v.* Powell, 68 N. J. Eq. 293, 59 Atl. 628, *affirmed* 68 N. J. Eq. 800, 64 Atl. 1134.

4. Alvey *v.* Alvey, 97 S. W. 1106, 30 Ky. L. Rep. 234.

100. 3. Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816.

102. 2. Spears *v.* Conley, 87 S. W. 1072, 27 Ky. L. Rep. 1169; Smith *v.* Oregon Short Line R. Co., 30 Utah 246, 84 Pac. 108; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

No Estoppel Where Land Subject to Condemnation. — Slaght *v.* Northern Pac. R. Co., 39 Wash. 576, 81 Pac. 1062.

The Rule Does Not Apply to the Entrant of a Homestead to which the patent has not been issued. Atkinson *v.* Washington Irrigation Co., 44 Wash. 75, 86 Pac. 1123; Baker *v.* Washington Irrigation Co., 44 Wash. 697, 86 Pac. 1125.

5. New *v.* Young, 148 Ala. 253, 41 So. 523; Wakefield *v.* Van Tassel, 218 Ill. 572, 75 N. E. 1058.

Must Be Averment of Improvements in Answer. — Carraway *v.* Moore, 75 Ark. 146, 86 S. W. 993.

103. 1. Wakefield *v.* Van Tassell, 218 Ill. 572, 75 N. E. 1058.

2. Murray *v.* Barnes, 146 Ala. 688, 40 So. 348; New *v.* Young, 148 Ala. 253, 41 So. 523; Boucher *v.* Trembley, 140 Mich. 352, 103 N. W. 819; Dawkins *v.* Griffin, 195 Mo. 430, 94 S. W. 525; Neeld *v.* Cunningham, 216 Pa. St. [illegible] Atl. [illegible]

3. Fowler *v.* Agnew, (Tex. Civ. App. 1906) 95 S. W. 36; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698; Campbell *v.* McCaleb, (Tex. Civ. App. 1907) 99 S. W. 129; Overton *v.* Meggs, (Tex. Civ. App. 1907) 105 S. W. 208.

7. **Compensation May Be Recovered in an Action for Damages,** brought after the rescission of a contract for the sale of land, void because of the fraud of the vendor. Vernam *v.* Wilson, 31 Pa. Super. Ct. 257.

105. 1. Burks *v.* Lane Lumber Co., 89 S. W. 686, 28 Ky. L. Rep. 545.

2. **Rule Changed by Statute.** — Wood *v.* Tinsley, 138 N. Car. 507, 51 S. E. 59.

107. 3. Lytle *v.* Scottish-American Mortg. Co., 122 Ga. 458, 50 S. E. 402, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107.

108. 3. Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497; Dawkins *v.* Griffin, 195 Mo. 430, 94 S. W. 525; Card *v.* Finch, 142 N. Car. 140, 54 S. E. 1009; Ingram *v.* Winters, (Tex. Civ. App. 1907) 102 S. W. 432; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

Improvements Deemed to Have Equaled Rents. — Dixon *v.* Harris, (Ky. 1907) 105 S. W. 451.

Judgment May Be Rendered for Excess of improvements. — Hicks *v.* Webb, 127 Ga. 170, 56 S. E. 307.

4. Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

110. 8. Diederich *v.* Rose, 228 Ill. 610, 81 N. E. 1140; Lincoln Trust Co. *v.* Nathan, 122 Mo. App. 319, 99 S. W. 484; West Shore R. Co. *v.* Wenner, (N. J. 1907) 68 Atl. 225; Critcher *v.* Watson, (N. Car. 1907) 59 S. E. 544; Isman *v.* Hanscom, 217 Pa. St. 133, 66 Atl. 320.

When the Lease Is Unenforceable under the Statute of Frauds, the lessee may recover for improvements made in good faith. Poole *v.* Johnson, (Ky. 1907) 101 S. W. 955.

111. 2. See Minder *v.* Mottaz, 37 Wash. 474, 79 Pac. 996.

113. 1. Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151.

An Oil Well Is Not an Improvement belonging to a portion of the land within this rule. Dangerfield *v.* Caldwell, (C. C. A.) 151 Fed. 554.

115. 1. Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151; Lyons Nat. Bank *v.* Schuler, 115 N. Y. App. Div. 859, 101 N. Y. Supp. 62.

3. German Sav., etc., Soc. *v.* Tull, 136 Fed. 1, 69 C. C. A. 1.

116. 1. White *v.* Smith, 70 N. J. Eq. 418, 62 Atl. 560.

117. 3. Heidelberg *v.* Behrens, (Tex. Civ. App. 1905) 85 S. W. 1029. See also *In re* Egmont, (1906) 2 Ch. 151, 95 L. T. N. S. 187, 75 L. J. Ch. 649.

118. 1. **Tenant Who Purchases Tax Title Is Entitled to Compensation for Improvements.** — Fitch *v.* Douglass, (Kan. 1907) 90 Pac. 769.

2. Gray *v.* Soden, 120 Ky. 277, 86 S. W. 515.

9. Gallenkamp *v.* Westmeyer, 116 Mo. App. 680, 93 S. W. 816; Corbett *v.* Corbett, 12 Ont. L. Rep. 268.

120. 3. **A Purchaser on Foreclosure Is Entitled** to compensation for reasonable improvements in a suit to redeem. Cusick *v.* Spencer, 149 Mich. 434, 112 N. W. 1111.

122. 5. **A Wife Is Not Entitled to Compensation** for improvements placed on the land of her husband. Bryan *v.* Councilman, (Md. 1907) 67 Atl. 279.

123. 1. Collins *v.* Bryan, (Tex. Civ. App. 1905) 88 S. W. 432.

3. **A Husband's Trustee in Bankruptcy** may recover community funds expended in improving wife's estate. Collins *v.* Bryan, (Tex. Civ. App. 1905) 88 S. W. 432.

IN.

123. 7. Board of Freeholders *v.* Central R. Co., 68 N. J. Eq. 510, 59 Atl. 303, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 123.

125. 3. **In the Act of Killing** construed to mean about to kill in an instruction for homicide. Mabry *v.* State, 80 Ark. 345, 97 S. W. 285.

The Expression "In the Course of His Employment" means, in contemplation of law, "while engaged in the service of the master," and nothing more. It is not synonymous with "during the period covered by his employment." Slater *v.* Advance Thresher Co., 97 Minn. 305, 107 N. W. 133.

INCEST.

134. 2. Lipham *v.* State, 125 Ga. 52, 53 S. E. 817.

The fact that the female with whom the intercourse was had had not reached the age of puberty is immaterial. Dixon *v.* State, 147 Ala. 91, 41 So. 734.

Incest being the creature of statutory law in *Louisiana,* the subsequent prohibition of marriage between first cousins did not *per se* bring this new class of persons within the grasp of the criminal statute. State *v.* Couvillion, 117 La. 935, 42 So. 431.

135. 1. *Ex p.* Hart, 157 Fed. 130, (incest between Indians in Indian Territory not punishable); State *v.* Judd, 132 Iowa 296, 109 N. W. 892; State *v.* Couvillion, 117 La. 935, 42 So. 431; State *v.* Freddy, 117 La. 121, 41 So. 436.

2. **Offense Sufficiently Described in Statute.** — State *v.* Spurling, 115 La. 789, 40 So. 167; Cordson *v.* State, (Neb. 1906) 109 N. W. 764.

3. Whidby *v.* State, 121 Ga. 588, 49 S. E. 811. See also People *v.* Block, 120 N. Y. App. Div. 364, 105 N. Y. Supp. 275.

Acquittal of the Charge of Rape is no defense to a subsequent prosecution for the crime of incest, both charges involving the same act of intercourse. State *v.* Learned, 73 Kan. 328, 85 Pac. 293, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 135.

Female under Age of Consent. — State *v.* Learned, 73 Kan. 328, 85 Pac. 293, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 135.

4. **Dismissal of Prosecution against Female.** — The man may be convicted though the prosecution against the female has been dismissed. State *v.* Learned, 73 Kan. 328, 85 Pac. 293, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 135, and *disapproving* State *v.* Hook, 4 Kan. App. 451.

5. State *v.* Rennick, 127 Iowa 294, 103 N. W. 159; Straub *v.* State, 27 Ohio Cir. Ct. 50, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 135, for collection of authorities on both sides; State *v.* James, (Utah 1907) 89 Pac. 460.

State *v.* Freddy, 117 La. 121, 41 So. 436 (*citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 135), where the statute provided that "Whoever shall hereafter knowingly intermarry, or cohabit without marriage, being within the degrees of consanguinity within which marriage is prohibited by articles 94 and 95 of the Revised Civil Code of the state of

Louisiana, shall be deemed guilty of the crime of incest."

State *v.* Winslow, 30 Utah 403, 85 Pac. 433. In this case the court said: "If the female be not guilty because of a want of consent to the act it does not change the character of the act so far as the defendant is concerned, if, on his part, it was willingly and knowingly done. He must be held to answer for the consequences of his own act done with his knowledge and consent. When the defendant, with full knowledge of the relationship between himself and the female, willingly, on his part, has sexual intercourse with the female, the crime of incest, so far as he is concerned, is complete. His own guilt is not made to depend upon the mental condition of the female. The defendant's guilt here is measured by his knowledge and intent, and not by the knowledge and intent of his daughter on whom he committed the offense."

Female under Age of Consent. — Straub *v.* State, 27 Ohio Cir. Ct. 50.

6. Conspiracy on Part of Female. — The fact that the female entered into a conspiracy with a third person, whereby the defendant was induced to have intercourse with her, is immaterial. State *v.* Renneck, 127 Iowa 294, 103 N. W. 159.

136. 1. State *v.* Spurling, 115 La. 789, 40 So. 167.

2. Penetration May Be Inferred from circumstances. State *v.* Judd, 132 Iowa 296, 109 N. W. 892.

3. *Contra.* — State *v.* Judd, 132 Iowa 296, 109 N. W. 892.

4. Marriage Not Essential. — State *v.* Spurling, 115 La. 789, 40 So. 167.

137. 2. State *v.* James, (Utah 1907) 89 Pac. 460.

4. It is otherwise in *Louisiana* as to first cousins. State *v.* Couvillion, 117 La. 935, 42 So. 431.

5. Tagert *v.* State, 143 Ala. 88, 39 So. 293.

A man Who Marries the Mother of an Illegitimate daughter becomes the stepfather of such daughter, so that his intercourse with her will be deemed incestuous. Lipham *v.* State, 125 Ga. 52, 53 S. E. 817.

7. In Tagert *v.* State, 143 Ala. 88, 39 So. 293, the court while recognizing that intercourse between a stepfather and his stepdaughter after the death of the latter's mother would not as a general rule be incestuous, still it was held otherwise where at the time of the intercourse, issue of the marriage was living.

138. 1. State *v.* Rennick, 127 Iowa 294, 103 N. W. 159.

2. It has been held, however, in *Iowa* that proof of the knowledge of the relationship is not necessary though the indictment uses the word "feloniously" in charging the offense. State *v.* Judd, 132 Iowa 296, 109 N. W. 892, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 138.

4. Testimony of a witness that he "believed" the defendant committed the offense is inadmissible where he had no personal knowledge of whether the defendant had intercourse with the female. State *v.* James, (Utah 1907) 89 Pac. 460.

The female with whom the accused is charged with having intercourse is a competent witness, and she and not the defendant is the one to raise the privilege against giving self-incriminating testimony. State *v.* Mungeon, (S. Dak. [illegible]

The female with whom the defendant is accused of having sexual intercourse may testify that the defendant had "sexual intercourse" with her. This is not permitting her to state a mere conclusion without stating the facts. Straub *v.* State, 27 Ohio Cir. Ct. 50.

Declarations or Complaints of Female [illegible] dence that the female told other persons that the defendant had sexual intercourse with her is not admissible against the defendant. Gillespie *v.* State, 49 Tex. Crim. 530, 93 S. W. 556.

In State *v.* Winslow, 30 Utah 403, 85 Pac. 433, it was held that where the female, a child of tender years under the age of consent, was a witness, evidence of complaint by her of the fact that the defendant had intercourse with her was admissible.

Testimony of Medical Experts. — Testimony of physician as to condition of female's sexual organ held admissible. State *v.* Winslow, 30 Utah 403, 85 Pac. 433.

Ill-treatment. — Evidence that the defendant administered severe whippings to the female (his child), the cause of which is not shown, nor its connection with the act of intercourse, is inadmissible. Whidby *v.* State, 121 Ga. 588, 49 S. E. 811.

5. Bridges *v.* State, (Neb. 1907) 113 N. W. 1048 (flight).

Evidence that the defendant did not show surprise or anger when informed that the female, with whom he was charged with having intercourse, was pregnant, is admissible. Tagert *v.* State, 143 Ala. 88, 39 So. 293.

139. 1. State *v.* Judd, 132 Iowa 296, 109 N. W. 892; State *v.* Pruitt, 202 Mo. 49, 100 S. W. 431, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 139.

2. State *v.* Judd, 132 Iowa 296, 109 N. W. 892; People *v.* Block, 120 N. Y. App. Div. 364, 105 N. Y. Supp. 275.

3. Lipham *v.* State, 125 Ga. 52, 53 S. E. 817; State *v.* Pruitt, 202 Mo. 49, 100 S. W. 431. See also Straub *v.* State, 27 Ohio Cir. Ct. 50.

4. See Gillespie *v.* State, 49 Tex. Crim. 530, 93 S. W. 556.

7. See Straub *v.* State, 27 Ohio Cir. Ct. 50.

140. 2. That the relationship between the defendant and the man was that of niece and uncle may be inferred from the fact of long residence on the part of defendant with another whom she addressed as mother and that she frequently addressed the man as uncle, and the mother in the defendant's presence addressed him as brother. State *v.* Judd, 132 Iowa 296, 109 N. W. 892.

5. State *v.* Judd, 132 Iowa 296, 109 N. W. 892.

141. 1. State *v.* Rennick, 127 Iowa 294, 103 N. W. 159; State *v.* Perry, (Iowa 1905) 105 N. W. 507; Hardin *v.* Com., 99 S. W. 328, 30 Ky. L. Rep. 697 (evidence held insufficient — acts of familiarity between father and

daughter); Bridges *v.* State, (Neb. 1907) 113 N. W. 1048 (evidence held sufficient); Straub *v.* State, 27 Ohio Cir. Ct. 50 (evidence held sufficient); Cude *v.* State, (Tex. Crim. 1906) 97 S. W. 485 (evidence held insufficient to support conviction — impressions on ground).

3. State *v.* Rennick, 127 Iowa 294, 103 N. W. 159; Bridges *v.* State, (Neb. 1907) 113 N. W. 1048.

4. Whidby *v.* State, 121 Ga. 588, 49 S. E. 811; Bridges *v.* State, (Neb. 1907) 113 N. W. 1048; Straub *v.* State, 27 Ohio Cir. Ct. 50; Pate *v.* State, (Tex. Crim. 1906) 93 S. W. 556; Gillespie *v.* State, 49 Tex. Crim. 530, 93 S. W. 556; State *v.* James, (Utah 1907) 89 Pac. 460.

Corroborative Evidence Held Sufficient. — People *v.* Block, 120 N. Y. App. Div. 364, 105 N. Y. Supp. 275; State *v.* Mungeon, (S. Dak. 1906) 108 N. W. 552.

5. State *v.* Perry, (Iowa 1905) 105 N. W. 507.

142. 1. State *v.* Winslow, 30 Utah 403, 85 Pac. 433, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 141.

INCLUDE — INCLUSIVE.

146. 1. **The Word "Including,"** as used in a Tariff Act provision "logs and round unmanufactured timber, *including* pulp wood," held to be equivalent to "also." U. S. *v.* Pierce, (C. C. A.) 147 Fed. 199.

INCOME.

147. 2. **Dividends, Issues, and Profits** synonymous with *income*, in settlement of trust estate. *In re* Stevens, 46 Misc. (N. Y.) 623, 95 N. Y. Supp. 297.

A Dividend Payable in the Stock of a Corporation held to be *income* for trust purposes. Safe Deposit, etc., Co. *v.* White, (Md. 1905) 61 Atl. 295.

Alimony. — See Jackson *v.* Burns, 116 La. [illegible].

Annuity. — Dulaney *v.* Dulaney, 105 Va. 433, 54 S. E. 40, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 147.

INCOMPETENCY — INCOMPETENT.

[illegible]. 1. Master and Servant — See Hamann *v.* Milwaukee Bridge Co., 127 Wis. 550, 106 N. W. 1081.

INCORPORATE — INCORPORATION.

155. 1. **"Incorporated Towns,"** within the meaning of the dispensary act for Lee county (Acts 1902, p. 222), includes a city located in that county, and, moreover, embraces every *incorporated* town or city within the county. Smithville *v.* Dispensary Com'rs, 125 Ga. 559, 54 S. E. 539.

INCUMBRANCE — INCUMBER.

158. 1. **Deed of Trust** of a homestead held **not an *incumbrance.*** Weber *v.* McCleverty, 149 Cal. 316, 86 Pac. 706.

Dower. — Seldon *v.* Dudley E. Jones Co., 74 Ark. 348, 85 S. W. 778.

Unrecorded Mortgage held an *incumbrance* within a fire insurance policy. Rhea *v.* Planters' Mut. Ins. Co., 77 Ark. 57, 90 S. W. 850.

An Outstanding Lease for a term of years is an *incumbrance.* La Rue *v.* Parmele, 73 Neb. 663, 103 N. W. 304.

INDECENT.

165. 1. **Indecently Acting.** — Folds *v.* State, 123 Ga. 167, 51 S. E. 305.

INDEMNITY CONTRACTS.

169. 2. Peterson *v.* Creason, 47 Oregon 69, 81 Pac. 574, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 169; McKnight *v.* Milford Gin Co., (Tex. Civ. App. 1907) 99 S. W. 198.

171. 1. *Compare* Himmelman *v.* Pecaut, 133 Iowa 503, 110 N. W. 919.

3. Whinnery *v.* Wiley, 38 Colo. 203, 88 Pac. 173, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 171.

172. 4. Waas *v.* Anderson, 78 Conn. 718, 61 Atl. 433; Harvey *v.* Bonta, (Ky. 1907) 100 S. W. 846; Western Assur. Co. *v.* Walden, 117 Mo. App. 438, 94 S. W. 725.

173. 1. Ausplund *v.* Ætna Indemnity Co., 47 Oregon 10, 81 Pac. 577.

7. McKinnon *v.* Higgins, 47 Oregon 44, 81 Pac. 581; West *v.* Higgins, 48 Oregon 619, 81 Pac. 582; Youghiogheny River Coal Co. *v.* Allegheny Nat. Bank, 211 Pa. St. 319, 60 Atl. 924; Wood *v.* U. S. Fidelity, etc., Co., 143 Fed. 424; American Bonding, etc., Co. *v.* New Amsterdam Casualty Co., 125 Ill. App. 33; Mettlar *v.* Conover, (N. J. 1907) 65 Atl. 464; James *v.* Libby, 103 N. Y. App. Div. 256, 92 N. Y. Supp. 1047.

174. 1. Orion Knitting Mills *v.* U. S. Fidelity, etc., Co., 137 N. Car. 565, 50 S. E. 304; Perry *v.* Payne, 217 Pa. St. 252, 66 Atl. 553.

176. 6. Simons *v.* Gregory, 120 Ky. 116, 85 S. W. 751.

9. Peterson *v.* Creason, 47 Oregon 69, 81 Pac. 574.

177. 1. Funk *v.* Church, 132 Iowa 1, 109 N. W. 286.

2. Collins *v.* Savannah, etc., R. Co., 122 Ga. 655, 50 S. E. 477.

178. 5. Smith *v.* Curran, 138 Fed. 150; Burr *v.* Union Surety, etc., Co., 107 N. Y. App. Div. 315, 95 N. Y. Supp. 114; Henderson *v.* Maryland Casualty Co., 29 Pa. Super. Ct. 403, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 178.

179. 1. Hay *v.* Cudaback, (C. C. A.) 139 Fed. 369.

2. Oriental Lumber Co. *v.* Blades Lumber Co., 103 Va. 730, 50 S. E. 270, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 179.

180. 4. Lake Drummond Canal, etc., Co. *v.* West End Trust, etc., Co., 142 Fed. 41, 73 C. C. A. 227.

5. Busell Trimmer Co. *v.* Coburn, 188 Mass. 254, 74 N. E. 334.

181. 5. Union Trust Co. *v.* Preston Nat. Bank, 144 Mich. 106, 107 N. W. 1109, 13 Detroit Leg. N. 194.

182. 2. *Compare* Ogilby *v.* Munro, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 170, 101 N. Y. Supp. 753.

INDEPENDENT CONTRACTORS.

187. 1. *Alabama.* — Massey *v.* Oates, 143 Ala. 248, 39 So. 142.

Arkansas. — St. Louis, etc., R. Co. *v.* Gillihan, 77 Ark. 551, 92 S. W. 793.

California. — Green *v.* Soule, 145 Cal. 96, 78 Pac. 337, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187; Johnson *v.* Helbing, (Cal. App. 1907) 92 Pac. 360.

Iowa. — Parrott *v.* Chicago G. W. R. Co., 127 Iowa 419, 103 N. W. 352.

Tennessee. — McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

Texas. — Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 496, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187; White *v.* Green, (Tex. Civ. App. 1904) 82 S. W. 329 (architect may be an independent contractor for drawing plans).

Virginia. — Veitch *v.* Jenkins, (Va. 1907) 57 S. E. 574.

Washington. — Engler *v.* Seattle, 40 Wash. 72, 82 Pac. 136, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187; Larson *v.* American Bridge Co., 40 Wash. 224, 82 Pac. 294, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187.

West Virginia. — Anderson *v.* Tug River Coal, etc., Co., 59 W. Va. 301, 53 S. E. 713, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.)

The provision in the contract that the contractor shall save the employer from all liability to third persons for injuries resulting in the doing of the work will not necessarily prevent the contractor from being an independent contractor. Good *v.* Johnson, (Colo. 1907) 88 Pac. 439.

That the employer is to furnish necessary appliances for the work (railroad construction) will not prevent the contractor from being an independent contractor. Good *v.* Johnson, (Colo. 1907) 88 Pac. 439.

2. Brown *v.* Rockwell City Canning Co., 132 Iowa 631, 110 N. W. 12.

3. Good *v.* Johnson, (Colo. 1907) 88 Pac. 439; Miller *v.* Moran Bros. Co., 39 Wash. 631, 81 Pac. 1089.

5. Francis *v.* Johnson, 127 Iowa 391, 101 N. W. 878.

6. *California.* — Green *v.* Soule, 145 Cal. 96, 78 Pac. 337, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187; Johnson *v.* Helbing, (Cal. App. 1907) 92 Pac. 360.

Colorado. — Good *v.* Johnson, (Colo. 1907) 88 Pac. 439.

Illinois. — Galatia Coal Co. *v.* Harris, 116 Ill. App. 70.

Kansas. — Kansas City, etc., R. Co. *v.* Loos[illegible] 76 Kan. [illegible] Pac. [illegible]; Robideaux *v.* Hulett, 118 La. [illegible] So. 887, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187.

Maine. — Keyes *v.* Second Baptist Church, 99 Me. 308, 59 Atl. 446.

Tennessee. — McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. [illegible].

Texas. — Southwestern Tel., etc., Co. *v.* Paris, (Tex. Civ. App. 1905) 87 S. W. 724; Kampmann *v.* Rothwell, (Tex. Civ. App. 1908) 107 S. W. 120.

Washington. — Barclay *v.* Puget Sound Lumber Co., (Wash. 1908) 93 Pac. 430.

Canada. — Patton *v.* Alberta R., etc., Co., 2 N. W. Ter. 438.

188. 2. St. Louis, etc., R. Co. *v.* Madden, (Kan. 1908) 93 Pac. 586; Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 495, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 188.

3. Keyes *v.* Second Baptist Church, 99 Me. 308, 59 Atl. 446.

4. Chicago *v.* Murdock, 212 Ill. 9, 72 N. E. 46.

5. In Johnson *v.* Helbing, (Cal. App. 1907) 92 Pac. 360, it was held that a contractor for the masonry work of a building might occupy an independent relation to the owner of the building, though the owner was himself doing the work on the building as it progressed.

6. *California.* — Johnson *v.* Helbing, (Cal. App. 1907) 92 Pac. 360, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 188.

Illinois. — Boyd *v.* Chicago, etc., R. Co., 217 Ill. 332, 75 N. E. 496, *affirming* 118 Ill. App. 433.

New York. — [illegible] N. Y. App. Div. 576, 94 N. Y. Supp. 872; Antes *v.* Watkins, 112 N. Y. App. Div. 860, 98 N. Y. Supp. 519.

Pennsylvania. — Miller *v.* Merritt, 211 Pa. St. 127, 60 Atl. 508.

Tennessee. — Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 188.

Texas. — Southwestern Tel., etc., Co. *v.* Paris, (Tex. Civ. App. 1905) 87 S. W. 724; Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 495, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 188.

Washington. — Miller *v.* Moran Bros. Co., 39 Wash. 631, 81 Pac. 1089; Engler *v.* Seattle, 40 Wash. [illegible] AND ENG. ENCYC. OF LAW (2d ed.) 188; Larson *v.* American Bridge Co., 40 Wash. 224, 82 Pac. 294, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 188.

West Virginia. — Anderson *v.* Tug River Coal, etc., Co., 59 W. Va. 301, 53 S. E. 713, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 188.

189. 1. Green *v.* Soule, 145 Cal. 96, 78 Pac. 337, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 189.

2. Good *v.* Johnson, (Colo. 1907) 88 Pac. 439; Brown *v.* Rockwell City Canning Co., 132 Iowa 631, 110 N. W. 12.

3. Green *v.* Soule, 145 Cal. 96, 78 Pac. 337, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 189 (right to alter plans of work); Teller *v.* Bay, etc., Dredging Co., 151 Cal. 209, 90 Pac. [illegible] Chicago Underpinning Co. *v.* Priel Co., 222 Ill. App. [illegible] Lackawanna Steel Co., 100 N. Y. App. Div. 334, 95 N. Y. Supp. 833; Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902.

Reservation of right to direct where railroad construction work shall be [illegible] will not prevent the contractor from being an independent contractor. Good *v.* Johnson, (Colo. [illegible] Pac. 439.

4. The fact that the contract reserves to the

employer the right to pay moneys due on the contract to employees of the contractor in order to save the employer from liability for mechanics' lien will not prevent the contractor from being an independent contractor. Good *v.* Johnson, (Colo. 1907) 88 Pac. 439.

The fact that the workmen employed by the contractor are paid directly by check by the employer does not prevent the contractor from being an independent contractor. Houghton *v.* Loma Prieta Lumber Co., (Cal. 1907) 93 Pac. [illegible].

190. 3. Kirby *v.* Lackawanna Steel Co., 109 N. Y. App. Div. 334, 95 N. Y. Supp. 833; Beckman *v.* Meadville, etc., St. R. Co., 219 Pa. St. 26, 67 Atl. 983; Veitch *v.* Jenkins, (Va. 1907) 57 S. E. 574.

4. Galatia Coal Co. *v.* Harris, 116 Ill. App. 70.

6. Teller *v.* Bay, etc., Dredging Co., 151 Cal. 209, 90 Pac. 942; Good *v.* Johnson, (Colo. 1907) 88 Pac. 439.

7. Good *v.* Johnson, (Colo. 1907) 88 Pac. 439; Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902; Engler *v.* Seattle, 40 Wash. 72, 82 Pac. 136.

8. Chicago *v.* Murdock, 212 Ill. 9, 72 N. E. 46; Keyes *v.* Second Baptist Church, 99 Me. 308, 59 Atl. 446.

191. 1. Good *v.* Johnson, (Colo. 1907) 88 Pac. 439; Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902.

3. Green *v.* Soule, 145 Cal. 96, 78 Pac. 337; Mullich *v.* Brocker, 119 Mo. App. 332, 97 S. W. 549 (boy breaking horse).

6. Declarations of an alleged independent contractor are not admissible against his principal to prove that he was not an independent contractor. Larson *v.* American Bridge Co., 40 Wash. 224, 82 Pac. 294.

192. 1. Houghton *v.* Loma Prieta Lumber Co., (Cal. 1907) 93 Pac. 377; Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 495; Anderson *v.* Tug River Coal, etc., Co., 59 W. Va. 301, 53 S. E. 713.

2. *California.* — Green *v.* Soule, 145 Cal. 96, 78 Pac. 337.

Colorado. — Good *v.* Johnson, (Colo. 1907) 88 Pac. 439.

Massachusetts. — Sullivan *v.* New Bedford Gas, etc., Co., 190 Mass. 288, 76 N. E. 1048.

Virginia. — Veitch *v.* Jenkins, (Va. 1907) 57 S. E. 574.

Washington. — Miller *v.* Moran Bros. Co., 39 Wash. 631, 81 Pac. 1089; Larson *v.* American Bridge Co., 40 Wash. 224, 82 Pac. 294.

5. *United States.* — Carlson *v.* Comeric Co., 140 Fed. 109; Huntt *v.* McNamee, (C. C. A.) 141 Fed. 262.

Alabama. — Massey *v.* Oates, 143 Ala. 248, 39 So. 142.

California. — Teller *v.* Bay, etc., Dredging Co., 151 Cal. 209, 90 Pac. 942; Johnson *v.* Helbing, (Cal. App. 1907) 92 Pac. 360; Houghton *v.* Loma Prieta Lumber Co., (Cal. 1907) 93 Pac. 82, 377.

District of Columbia. — Swart *v.* Justh, 24 App. Cas. (D. C.) 506.

Illinois. — Galatia Coal Co. *v.* Harris, 116 Ill. App. 70.

Iowa. — Francis *v.* Johnson, 127 Iowa 391, 101 N. W. 878 (painting).

Kansas. — St. Louis, etc., R. Co. *v.* Madden, (Kan. 1908) 93 Pac. 586.

Louisiana. — La Groue *v.* New Orleans, 114 La. 253, 38 So. 160; Robideaux *v.* Hebert, 118 La. 1089, 43 So. 887; Metzinger *v.* New Orleans Board of Trade, (La. 1907) 44 So. 1007 (janitor).

Maryland. — Symons *v.* Road Directors, 105 Md. 254, 65 Atl. 1067.

New York. — Kelly *v.* New York, 106 N. Y. App. Div. 576, 94 N. Y. Supp. 872; Cohen *v.* Western Electric Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 660, 99 N. Y. Supp. 525.

Pennsylvania. — Noggle *v.* Carlisle, etc., R. Co., 215 Pa. St. 357, 64 Atl. 547 (fireworks display).

Tennessee. — McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

Texas. — Kampmann *v.* Rothwell, (Tex. Civ. App. 1908) 107 S. W. 120.

Washington. — Miller *v.* Moran Bros. Co., 39 Wash. 631, 81 Pac. 1089; Larson *v.* American Bridge Co., 40 Wash. 224, 82 Pac. 294.

West Virginia. — Anderson *v.* Tug River Coal, etc., Co., 59 W. Va. 301, 53 S. E. 713.

Canada. — Patton *v.* Alberta R., etc., Co., 2 N. W. Ter. 438.

The fact that the independent contractor agrees to save the employer from all liability for injuries to third persons does not extend the employer's liability to such third persons. Kirby *v.* Lackawanna Steel Co., 109 N. Y. App. Div. 334, 95 N. Y. Supp. 833.

New York Employers' Liability Act for Protection of Persons Employed on Buildings in Cities. — Rooney *v.* Brogan Constr. Co., 107 N. Y. App. Div. 258, 95 N. Y. Supp. 1; Antes *v.* Watkins, 112 N. Y. App. Div. 860, 98 N. Y. Supp. 519.

194. 2. Houghton *v.* Loma Prieta Lumber Co., (Cal. 1907) 93 Pac. 82 (road making).

3. Chicago Hydraulic Press Brick Co. *v.* Campbell, 116 Ill. App. 322; Cohen *v.* Western Electric Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 660, 99 N. Y. Supp. 525.

7. Carlson *v.* Comeric Co., 140 Fed. 109; The Charles Tiberghien, 143 Fed. 676; West *v.* Brakelow Steamship Co., 124 Ga. 658, 52 S. E. 888.

13. Wilmot *v.* McPadden, 78 Conn. 276, 61 Atl. 1069 (removal of building); Wilmot *v.* McPadden, 79 Conn. 367, 65 Atl. 157 (demolition and removal of building); Symons *v.* Road Directors, 105 Md. 254, 65 Atl. 1067.

14. Green *v.* Soule, 145 Cal. 96, 78 Pac. 337, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 194; Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 495, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191.

195. 1. Carlson *v.* Comeric Co., 140 Fed. 109; Boyd *v.* Chicago, etc., R. Co., 231 Ill. 332, 75 N. E. 406, *affirming* 118 Ill. App. 433; Metzinger *v.* New Orleans Board of Trade, (La. 1907) 44 So. 1007.

2. Wettje *v.* Silverman, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 567, 102 N. Y. Supp. 783.

3. Boucher *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 15.

196. 2. *Alabama.* — Massey *v.* Oates, 143 Ala. 248, 39 So. 142.

Arkansas. — White River R. Co. *v.* Batesville, etc., Telephone Co., 81 Ark. 195, 98 S. W. 721.

Illinois. — Chicago Bridge, etc., Co. *v.* La Mantia, 112 Ill. App. 43.

Missouri. — Loth *v.* Columbia Theatre Co., 197 Mo. 354, 94 S. W. 847, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196.

New York. — Mullins *v.* Siegel-Cooper Co., 183 N. Y. 129, 75 N. E. 1112, *affirming* 95 N. Y. App. Div. 234, 88 N. Y. Supp. 737.

Tennessee. — McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

197. 3. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Boyd *v.* Chicago, etc., R. Co., 217 Ill. 332, 75 N. E. 496, *affirming* 118 Ill. App. 433; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700; Kampmann *v.* Rothwell, (Tex. Civ. App. 1908) 107 S. W. 120.

4. Koontz *v.* District of Columbia, 24 App. Cas. (D. C.) 59; Chicago *v.* Murdock, 212 Ill. 9, 72 N. E. 46; Frankfort *v.* Allen, 82 S. W. 292, 26 Ky. L. Rep. 581; Godfrey *v.* New York, 104 N. Y. App. Div. 357, 93 N. Y. Supp. 899; Kinsey *v.* Kinston, 145 N. Car. 106, 58 S. E. 912, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 197.

198. 1. Godfrey *v.* New York, 104 N. Y. App. Div. 357, 93 N. Y. Supp. 899.

2. Koontz *v.* District of Columbia, 24 App. Cas. (D. C.) 59; Symons *v.* Road Directors, 105 Md. 254, 65 Atl. 1067; Wright *v.* Muskegon, 140 Mich. 215, 103 N. W. 558, 12 Detroit Leg. N. 122; Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 495.

Where the city of New Orleans, through a board of commissioners, made a contract with an arboriculturist for the furnishing and planting of a large number of trees upon the neutral ground in St. Charles avenue, the city having no choice in the selection of workmen and no control over the manner of doing the work, and where the work of planting the trees did not necessarily constitute an obstruction or defect in the street, rendering it unsafe or dangerous for the purposes of public travel, it was held that the city was not liable with the contractor for personal injuries occasioned by plaintiff falling at night into one of the holes carelessly left open by the contractor. La Groue *v.* New Orleans, 114 La. 253, 38 So. 160.

199. 3. Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902 (excavation in [illegible]).

5. Clearing Right of Way of Grass, etc. — St. Louis, etc., R. Co. *v.* Madden, (Kan. 1908) 93 Pac. 586.

9. Foster *v.* National Steel Co., 216 Pa. St. [illegible] 67 Atl. 718.

200. 8. Honnemeyer *v.* Fischer, 27 Ohio Cir. Ct. 8; Bancroft *v.* Godwin, 41 Wash. 253, 83 Pac. 189.

201. 1. Casey *v.* Wrought Iron Bridge Co., 114 Mo. App. 47, 89 S. W. 330 (bridge).

3. *Alabama.* — Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757.

Illinois. — Chicago *v.* Murdock, 212 Ill. [illegible] N. E. 46, *affirming* 113 Ill. App. 656, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201; Chicago *v.* Rust, 117 Ill. App. 427 (tunnel in city).

Indiana. — Falender *v.* Blackwell, 39 Ind. App. 121, 79 N. E. 393, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201.

Kansas. — St. Louis, etc., R. Co. *v.* Madden, (Kan. 1908) 93 Pac. 586.

Kentucky. — Young *v.* Trapp, 118 Ky. 813, 82 S. W. 429.

Maine. — Keyes *v.* Second Baptist Church, 99 Me. 308, 59 Atl. 446.

New York. — Mullins *v.* Siegel-Cooper Co., 183 N. Y. 129, 75 N. E. 1112, *affirming* 95 N. Y. App. Div. 234, 88 N. Y. Supp. 737.

Ohio. — American Contracting Co. *v.* Sammon, 27 Ohio Cir. Ct. 337.

Tennessee. — McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

Texas. — Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 495.

202. 1. See Huntt *v.* McNamee, (C. C. A.) 141 Fed. 293 (injuries to persons from blasting in excavations on city lot).

2. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Chicago *v.* Murdock, 212 Ill. 9, 72 N. E. 46; Chicago Bridge, etc., Co. *v.* La Mantia, 112 Ill. App. 43; Loth *v.* Columbia Theatre Co., 197 Mo. 328, 94 S. W. 847; Scheller *v.* Silbermintz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 175, 98 N. Y. Supp. 230; Monahan *v.* Empire City Subway Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 566, 102 N. Y. Supp. 774; Macdonald *v.* O'Reilly, 45 Oregon 589, 78 Pac. 753; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700. But see Massey *v.* Oates, 143 Ala. 248, 39 So. 142 (permit to construct sidewalk).

203. 1. McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

4. Boyd *v.* Chicago, etc., R. Co., 217 Ill. 332, 75 N. E. 496, *affirming* 118 Ill. App. 433.

8. Camblin *v.* Philadelphia, etc., R. Co., (Pa. 1907) 66 Atl. 977.

The cleaning and repairing of the cars by a street railway company is no part of its charter duties so as to prevent it from delegating the same to an independent contractor and thereby being relieved from injuries caused by the negligence of the independent contractor. Beckman *v.* Meadville, etc., St. R. Co., 219 Pa. St. 26, 67 Atl. 983.

205. 1. Proof of Incompetency. — Until the contractor is shown to have been incompetent, evidence that he was reputed to be incompetent is inadmissible. Huntt *v.* McNamee, (C. C. A.) 141 Fed. 293.

If an independent contractor who is employed to do a certain job is in fact a skilful and experienced man for the undertaking, it is of no consequence whether his employer did or did not exercise due care in his selection. Wilmot *v.* McPadden, 79 Conn. 367, 65 Atl. 157.

4. Mullich *v.* Brocker, 119 Mo. App. 332, 97 S. W. 549.

5. Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848; Cameron *v.* Realmuto, (Tex. Civ. App. 1907) 100 S. W. 104. But see Munroe *v.* Ley, (C. C. A.) 156 Fed. 468.

Knowledge on the part of the independent contractor of the defective conditions of the premises does not relieve the owner from lia-

bility to servants of such independent contractor. Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848.

One who contracts with a boss painter for the painting of his house, and does not undertake to control or direct him or his employees with respect to the manner of doing the work, is not liable for injuries to a workman employed by the contractor, resulting from the failure of an ornament upon the cornice to sustain his weight, whilst he is engaged in painting. Metzinger *v.* New Orleans Board of Trade, (La. 1907) 44 So. 1007.

6. If a property owner employs a competent architect to draw, as an independent contractor, plans for the construction of a building, he is not liable to an adjoining property owner for injuries caused by the fall of the building due to defective plans. White *v.* Green, (Tex. Civ. App. 1904) 82 S. W. 329.

7. Sullivan *v.* New Bedford Gas, etc., Co., 190 Mass. 288, 76 N. E. 1048; McMullen *v.* New York, 104 N. Y. App. Div. 337, 93 N. Y. Supp. 772 (degree of care required).

While an owner who makes a contract to have work done for him by an independent contractor, with his (the owner's) apparatus, owes a duty to the employees of the contractor, still the duty of such owner to the employees of the contractor is merely the duty owed by the employer to his own employee; the owner is not liable for an injury to the employee of the contractor caused by an obvious imperfection in the apparatus, if it is not out of repair. Sullivan *v.* New Bedford Gas, etc., Co., 190 Mass. 288, 76 N. E. 1048.

206. 1. Carlson *v.* Comeric Co., 140 Fed. 109; West *v.* Brakelow Steamship Co., 124 Ga. 658, 52 S. E. 888.

It is of course otherwise if the appliances were not defective and the injury arose from their improper use — such as overloading tackle. Carlson *v.* Comeric Co., 140 Fed. 109.

4. Robideaux *v.* Hebert, 118 La. 1089, 43 So. 882.

5. St. Louis, etc., R. Co. *v.* Madden, (Kan. 1908) 93 Pac. 586; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

6. Goff *v.* Philadelphia, 214 Pa. St. 172, 63 Atl. 431; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

207. 4. Kampmann *v.* Rothwell, (Tex. Civ. App. 1908) 107 S. W. 120.

208. 3. Green *v.* Soule, 145 Cal. 96, 78 Pac. 337; Goldstein *v.* Wolkenberg, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 545, 104 N. Y. Supp. [illegible].

4. In Massey *v.* Oates, 143 Ala. 248, 39 So. 142, it was held that an abutting property owner who contracts with the independent contractor for the construction of a sidewalk which involves the construction of a temporary sidewalk was not liable for injuries resulting from the defective construction of the temporary sidewalk.

6. Louisville, etc., Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902 (excavation).

8. Boyd *v.* Chicago, etc., R. Co., 217 Ill. 332, 75 N. E. 496, *affirming* 118 Ill. App. 433.

9. St. Louis, etc., R. Co. *v.* Gillihan, 77 Ark. 551, 92 S. W. 793.

12. Kansas City, etc., R. Co. *v.* Loosley, 76 Kan. 103, 90 Pac. 990.

14. St. Louis, etc., R. Co. *v.* Gillihan, 77 Ark. 551, 92 S. W. 793; Parrott *v.* Chicago G. W. R. Co., 127 Iowa 419, 103 N. W. 352.

209. 4. Teller *v.* Bay, etc., Dredging Co., 151 Cal. 209, 90 Pac. 942; Casey *v.* Wrought Iron Bridge Co., 114 Mo. App. 47, 89 S. W. 330.

8. Young *v.* Smith, etc., Co., 124 Ga. 475, 52 S. E. 765, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209; Simons *v.* Gregory, 85 S. W. 751, 27 Ky. L. Rep. 509 (elevator).

210. 1. Young *v.* Smith, 124 Ga. 475, 52 S. E. 765, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209.

INDIANS.

213. 1. Jimeson *v.* Lehley, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 352, 101 N. Y. Supp. 215.

The Recognized Relation between the government and the Indians is that of a superior and an inferior, whereby the latter is placed under the care and control of the former. Matter of Heff, 197 U. S. 488, 25 U. S. Sup. Ct. 506.

As to Former Status, see U. S. *v.* Cardish, 145 Fed. 242.

2. U. S. *v.* Hitchcock, 205 U. S. 80, 27 U. S. Sup. Ct. 423, *affirming* 26 App. Cas. (D. C.) 290; Hollister *v.* U. S., (C. C. A.) 145 Fed. 773; U. S. *v.* Conrad Invest. Co., 156 Fed. 123; New York Indians *v.* U. S., 40 Ct. Cl. 448; U. S. *v.* Berrigan, 2 Alaska 442; Naganab *v.* Hitchcock, 25 App. Cas. (D. C.) 200; Peano *v.* Brennan, (S. Dak. 1906) 106 N. W. 409; Jackson *v.* Thompson, 38 Wash. 282, 80 Pac. 454; Nelson *v.* John, 43 Wash. 483, 86 Pac. 933.

The Government Is under No Constitutional Obligation to perpetually continue the relationship of guardian and ward. Matter of Heff, 197 U. S. 488, 25 U. S. Sup. Ct. 506.

3. Alaska Indians. — *In re* Minook, 2 Alaska 200; Johnson *v.* Pacific Coast Steamship Co., 2 Alaska 224.

Pueblo Indians. — U. S. *v.* Mares, (N. Mex. 1907) 88 Pac. 1128.

New York Indians. — New York Indians *v.* U. S., 40 Ct. Cl. 448.

214. 1. Jimeson *v.* Lehley, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 352, 101 N. Y. Supp. 215.

Indian Marriages. — Moore *v.* Wa-me-go, 72 Kan. 169, 83 Pac. 400 (supporting first and third paragraphs of original note); Ortley *v.* Ross, (Neb. 1907) 110 N. W. 682; People *v.* Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787.

State Court of Probate Has No Jurisdiction. — *In re* Jack, (Surrogate Ct.) 52 Misc. (N. Y.) 424, 102 N. Y. Supp. 383. *Contra,* where there is no appropriate judicial tribunal within the tribe. *In re* Printup, 121 N. Y. App. Div. 222, 106 N. Y. Supp. 74.

Federal Courts Have Superseded the Indian courts since January 1, 1898. Wallace *v.* Adams, (C. C. A.) 143 Fed. 716.

3. Elliott *v.* Garvin, (Indian Ter. 1907) 104 S. W. 878; Guyatt *v.* Kautz, 41 Wash. 115, 83 Pac. 9.

215. 1. **Cherokee Nation.** — U. S. *v.* Cherokee Nation, 202 U. S. 101, 26 U. S. Sup. Ct. 588.

Creek Nation. — Buster *v.* Wright, (C. C. A.) 135 Fed. 947.

Right of Indian Nation to Require Permits to Reside Therein. — The Choctaw legislature has provided for the confiscation of improvements made by noncitizens who have failed to sell them within a specified time. Walker *v.* McLoud, 204 U. S. 302, 27 U. S. Sup. Ct. 293, *affirming* (C. C. A.) 138 Fed. 394.

2. Cherokee Intermarriage Cases, 203 U. S. 76, 27 U. S. Sup. Ct. 29.

Continuance of Tribal Existence. — By joint resolution of March 2, 1906, Congress provided that the tribal existence and governments of the Five Civilized Nations are continued in full force until all property of such tribes is distributed among the individual members of such tribes. U. S. *v.* Cherokee Nation, 202 U. S. 101, 26 U. S. Sup. Ct. 588.

4. Cherokee Intermarriage Cases, 203 U. S. 76, 27 U. S. Sup. Ct. 29.

Indian Territory Now Allotted to Individuals. — Matter of Heff, 197 U. S. 488, 25 U. S. Sup. Ct. 506.

Under Dawes Commission, Tribal Title to Indian Territory Is Extinguished and Allotments Made. — Wallace *v.* Adams, 204 U. S. 415, 27 U. S. Sup. Ct. 363, *affirming* 143 Fed. 716.

5. See Blocker *v.* McLendon, 6 Indian Ter. 481, 98 S. W. 166.

An Indian cannot convey lands to a United States citizen, nor can the citizen take title from an Indian. Capitol Townsite Co. *v.* Fox, 6 Indian Ter. 223, 90 S. W. 614.

Cannot Purchase at All Before Allotment. — Kelly *v.* Harper, (Indian Ter. 1907) 104 S. W. 820.

6. Adoption Must Be Approved by Department of Interior to Be Valid. — U. S. *v.* Hitchcock, 205 U. S. 80, 27 U. S. Sup. Ct. 423, *affirming* 26 App. Cas. (D. C.) 290.

7. Indian Tribes possess a general right of adoption of mixed bloods, who have lived upon the reservation and married members of the tribe, and such persons when adopted become wards of the nation and are entitled to all the rights of a tribal Indian. U. S. *v.* Heyfron, 138 Fed. 964.

216. 2. Smith *v.* Bonifer, 154 Fed. 883.

4. Cherokee Intermarriage Cases, 203 U. S. 76, 27 U. S. Sup. Ct. 29.

The Marriage of an Indian Woman to a white person does not operate as a renunciation of her community rights in and to reservation lands. Smith *v.* Bonifer, 154 Fed. 883.

6. Dawes Bill Declaring Indians to Be Citizens. — Matter of Heff, 197 U. S. 488, 25 U. S. Sup. Ct. 506 (supporting second and third paragraphs of note).

The provisions of this act are applicable to the Indians in Alaska. *In re* Minook, 2 Alaska 200.

One of the results of this act is to subject the property of the Indian to state taxation. Goudy *v.* Meath, 203 U. S. 146, 27 U. S. Sup. Ct. 48.

After receiving a patent, the Indian becomes a citizen of the state in which he resides and subject to the laws thereof, including the laws of marriage and divorce. Moore *v.* Wa-me-go, 72 [illegible] 82 Pac. 46.

Indians Who Have Become Citizens Not Released from Government Control. — Tompkins *v.* Campbell, 129 Wis. 93, 108 N. W. 216.

Power of Congress over Citizenship in Indian Tribes Plenary. — Wallace *v.* Adams, 204 U. S. 415, 27 U. S. Sup. Ct. 363, *affirming* 143 Fed. 716, 6 Indian Ter. 32, 88 S. W. 308.

7. Johnson *v.* Pacific Coast Steamship Co., 2 Alaska 224.

Indian May Sue to Maintain Right to Allotment. — Waldron *v.* U. S., 143 Fed. 413.

In Canada the right of an Indian to sue is guaranteed by statute. Henry *v.* Rex, 9 Can. Exch. 417.

8. Peters *v.* Tallchief, 121 N. Y. App. Div. 309, 106 N. Y. Supp. 64. See also U. S. *v.* Auger, 153 Fed. 671.

May Sue to Recover Wrong Committed Outside of Limits of Reservation. — Ain-dus-oke-shig *v.* Beaulieu, 98 Minn. 98, 107 N. W. 820.

In New York an Indian may sue in the state courts, when the tribe or nation to which he belongs has no judicial tribunal in which the controversy may be litigated. *In re* Printup, 121 N. Y. App. Div. 322, 106 N. Y. Supp. 74.

217. 3. McDonald *v.* White, (Wash. 1907) 89 [illegible] 811.

8. Waldron *v.* U. S., 143 Fed. 413 (supporting second paragraph of note).

Within the Meaning of the Washington Game Laws, the word "Indian" includes such only as have not become citizens. State *v.* Lewis, 45 Wash. 475, 88 Pac. 940.

10. Smith *v.* Bonifer, 154 Fed. 883.

218. 1. "Presumptively a person apparently [illegible] drawing rations, and upon the rolls as an Indian, is in fact an Indian." Waldron *v.* U. S., 143 Fed. 413.

An Adopted Half-breed or quarter-breed is entitled to all the rights of a tribal Indian. U. S. [illegible]

Treaty Stipulations apply to half-breeds as well as full-bloods, unless otherwise specially provided in the treaty. Smith *v.* Bonifer, 154 Fed. 883.

3. U. S. *v.* Cardish, 145 Fed. 242.

Indian Claims under Treaties. — As to claims of Indians in Montana, see Winters *v.* U. S., (C. C. A.) 138 Fed. 684.

As to claims of New York Indians, see New York Indians *v.* U. S., 40 Ct. Cl. 448.

Treaty of 1855 with Indians in Oregon. See Smith *v.* Bonifer, 154 Fed. 883.

4. Matter of Heff, 197 U. S. 488, 25 U. S. Sup. Ct. 506; U. S. *v.* Cardish, 145 Fed. 242.

5. Buster *v.* Wright, (C. C. A.) 135 Fed. 947; Wadsworth *v.* Boysen, (C. C. A.) 148 Fed. 771; Conway *v.* U. S., 149 Fed. 261.

7. Wadsworth *v.* Boysen, (C. C. A.) 148 Fed. 771 (supporting second paragraph of note). See also *In re* Minook, 2 Alaska 200.

219. 2. Winters *v.* U. S., (C. C. A.) 143 Fed. 740; Conway *v.* U. S., 149 Fed. 261; U. S. *v.* Moore, 154 Fed. 712.

Treaty Must Be Construed in Sense It Was Understood by Indians. — Waldron *v.* U. S., 143 Fed. 413.

The Intent of the parties to an Indian treaty should be ascertained by applying the established rules for the interpretation of treaties, and those rules permit the relation between the Indians and the United States to be taken into

consideration. Winters *v.* U. S., (C. C. A.) 148 Fed. 684.

3. These Sections Were Modified by Act March 1, 1889, 25 Stat. at L. 784, c. 333, which repealed all laws theretofore enacted to prevent Indian nations from lawfully making leases for mining coal for a period not exceeding ten years. McBride *v.* Farrington, (C. C. A.) 149 Fed. 114.

Chickasaw Nation Has Right to Employ Attorney to Collect Its Claims. — Love *v.* Peel, 79 Ark. 366, 95 S. W. 998.

6. Sayer *v.* Brown, (Indian Ter. 1907) 104 S. W. 877.

220. 2. Smith *v.* Bonifer, 154 Fed. 883.

3. Wheeler *v.* Petite, 153 Fed. 471.

4. Brown *v.* U. S., (C. C. A.) 146 Fed. 975.

Indian Reservation Is Public Property. — U. S. *v.* Conrad Invest. Co., 156 Fed. 123.

State Court Will Judicially Notice Indian Reservation. — Peano *v.* Brennan, (S. Dak. 1906) 106 N. W. 409.

221. 2. Peano *v.* Brennan, (S. Dak. 1906) 106 N. W. 409.

Indian Has No Right of Expatriation. — New York Indians *v.* U. S., 40 Ct. Cl. 448.

Under an Act of Congress giving the Circuit Courts of the United States jurisdiction to try and determine any action involving the rights of Indians to allotments of land, such courts have power to appoint a receiver in any such action or proceeding. Smith *v.* U. S., 142 Fed. 225.

Canada. — Under the British North America Act, 1867, the Parliament of Canada was given authority to make laws for the peace and good government of Canada in relation to "Indians and lands reserved for Indians." Henry *v.* Rex, 9 Can. Exch. 417.

3. Buster *v.* Wright, (C. C. A.) 135 Fed. 947.

4. Naganab *v.* Hitchcock, 25 App. Cas. (D. C.) 200.

Power of Congress to Deal with Indians Is of Most Sweeping Character. — U. S. *v.* Hitchcock, 26 App. Cas. (D. C.) 290, *affirmed* 205 U. S. 80, 27 U. S. Sup. Ct. 423.

222. 2. U. S. Fidelity, etc., Co. *v.* U. S., (C. C. A.) 150 Fed. 550. See also Smith *v.* U. S., 142 Fed. 225.

3. Federal Courts, under the act June 7, 1897, 30 U. S. Stat. at L. 83, c. 3, now have original and exclusive jurisdiction of all civil causes in law and equity. Wallace *v.* Adams, (C. C. A.) 143 Fed. 716.

Probate Courts. — The United States courts in the Indian Territory have the power of courts of probate. Morrison *v.* Burnette, (C. C. A.) 151 Fed. 617.

From the date of the enactment of the Curtis Bill (Act June 28, 1898, 30 U. S. Stat. at L. 495, c. 517) to the enactment of the Act of April 28, 1904, 33 U. S. Stat. at L. 573, c. 1824, which latter act took from the Indian tribes all jurisdiction, the Chickasaw and Choctaw courts had exclusive jurisdiction of all probate matters as to Indians and their estates. *In re* Poff, (Indian Ter. 1907) 103 S. W. 765; Hayes *v.* Barringer, (Indian Ter. 1907) 104 S. W. 937.

Dawes Commission. — The legislation authorizing the "Dawes Commission" to determine citizenship in the Five Civilized Tribes, and excluding review by the courts, is constitutional. Dick *v.* Ross, 6 Indian Ter. 85, 89 S. W. 664.

4. Thomason *v.* McLaughlin, (Indian Ter. 1907) 103 S. W. 595.

5. People *v.* Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787.

Seneca Indians. — "The state of New York exercises the exclusive sovereignty and jurisdiction over the Seneca Nation of Indians." Jemison *v.* Bell Telephone Co., 186 N. Y. 493, 79 N. E. 728.

Act of 1894. — The Act of August 15, 1894, c. 290, 28 Stat. at L. 286, which delegated to the United States courts the power to determine controversies involving a determination of the title, and incidentally of the right to the possession of Indian allotments while the same were held in trust by the United States, cannot be construed as having conferred upon the state courts authority to pass upon federal questions over which, prior to the Act of 1894, no court had any authority. McKay *v.* Kalyton, 204 U. S. 458, 27 U. S. Sup. Ct. 346.

6. Peano *v.* Brennan, (S. Dak. 1906) 106 N. W. 409.

223. 1. Matter of Heff, 197 U. S. 488, 25 U. S. Sup. Ct. 506; Goudy *v.* Meath, 203 U. S. 146, 27 U. S. Sup. Ct. 48; Moore *v.* Wa-me-go, 72 Kan. 169, 83 Pac. 400; Ain-dus-oke-shig *v.* Beaulieu, 98 Minn. 98, 107 N. W. 820; State *v.* Wolf, (N. Car. 1907) 59 S. E. 40.

Game Laws. — Under the *Washington* Game Laws an Indian may take salmon or other fish for the use of himself or family. The word "Indian," in this statute, includes such only as have not assumed the duties and obligations of citizenship. State *v.* Lewis, 45 Wash. 475, 88 Pac. 940.

3. *In re* Minook, 2 Alaska 200; Brown *v.* U. S., (C. C. A.) 146 Fed. 975 (supporting third paragraph of note).

This Statute Repeals by implication Rev. Stat., § 2143, which makes a distinction between Indians and white persons in respect to the crime of arson committed upon the reservation. U. S. *v.* Cardish, 145 Fed. 242.

224. 3. State *v.* Johnny, (Nev. 1906) 87 Pac. 3.

4. South Dakota, in 1901, relinquished to the United States exclusive jurisdiction over offenses committed upon any Indian reservation in that state. Hollister *v.* U. S., (C. C. A.) 145 Fed. 773.

5. The General Laws of the United States as to the punishment of crimes committed in any place within the exclusive jurisdiction of the United States extends to the Indian country (U. S. Rev. Stat., § 2145). Brown *v.* U. S., (C. C. A.) 146 Fed. 975.

South Dakota. — Act Feb. 2, 1903, c. 351, 32 Stat. at L. 793 (U. S. Comp. Stat. Supp. 1905, p. 719), which conferred jurisdiction on the Circuit and District Courts of the District of South Dakota to try cases, among others, of larceny committed by any person upon any Indian reservation of that state, was valid in the power of Congress. Hollister *v.* U. S., (C. C. A.) 145 Fed. 773.

When the Crime Was Committed in Indian Ter-

ritory, the offender may be arrested in whatever state he may be found. Roberts *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 388.

6. Matter of Heff, 197 U. S. 488, 25 U. S. Sup. Ct. 506.

8. State *v.* Johnny, (Nev. 1906) 87 Pac. 3.

225. 3. **Where There Is Any Conflict** between the *Arkansas* and *United States* statutes the latter governs. Glover *v.* U. S., 6 Indian Ter. 262, 91 S. W. 41, *reversed* on other grounds (C. C. A.) 147 Fed. 426, 8 Ann. Cas. 1184.

4. U. S. *v.* Hitchcock, 205 U. S. 80, 27 U. S. Sup. Ct. 423, *affirming* 26 App. Cas. (D. C.) 290; U. S. *v.* Thurston County, (C. C. A.) 143 Fed. 287; Hollister *v.* U. S., (C. C. A.) 145 Fed. 773; U. S. *v.* Torrey Cedar Co., 154 Fed. 263; U. S. *v.* Berrigan, 2 Alaska 442.

226. 2. U. S. *v.* Dooley, 151 Fed. 697.

Contra, Where Trust Relation Has Ceased to Exist. — U. S. *v.* Auger, 153 Fed. 671.

May Maintain Suit on Indian Agent's Bond. — U. S. Fidelity, etc., Co. *v.* U. S., (C. C. A.) 150 Fed. 550.

4. **Settling on Pueblo Lands.** — U. S. *v.* Mares, (N. Mex. 1907) 88 Pac. 1128.

6. Sayer *v.* Brown, (Indian Ter. 1907) 104 S. W. 877; Phillips *v.* Reynolds, (Neb. 1907) 113 N. W. 234.

United States Exercises Supervisory Power over Allotted Lands. — McKay *v.* Kalyton, 204 U. S. 458, 27 U. S. Sup. Ct. 346.

227. 2. **Contra, When Land Is Held in Trust by United States for Allottees.** — U. S. *v.* Paine Lumber Co., 206 U. S. 467, 27 U. S. Sup. Ct. 697.

Contra, Where Allottee Has Equitable Title Pending Issuance of Patent. — U. S. *v.* Torrey Cedar Co., 154 Fed. 263.

228. 4. Buster *v.* Wright, (C. C. A.) 135 Fed. 947.

6. Red Bird *v.* U. S., 203 U. S. 76, 27 U. S. Sup. Ct. 29.

Contra. — The Act of May 27, 1902 (c. 888, 32 Stat. at L. 259), prohibits the removal of any person from the Indian Territory who is in lawful possession of any lot in a town site in any town or city in that territory. Buster *v.* Wright, (C. C. A.) 135 Fed. 947.

229. 3. State *v.* Wolf, (N. Car. 1907) 59 S. E. 40, supporting second and fourth paragraphs of note, and holding that the state legislature may require Indian children to attend school.

230. 1. Parr *v.* U. S., 153 Fed. 462.

New York Indians. — Allotment of tribal lands is now permitted. Peters *v.* Tallchief, 121 N. Y. App. Div. 309, 106 N. Y. Supp. 64

Indian Right of Occupancy Held Sacred. — Johnson *v.* Pacific Coast Steamship Co., 2 Alaska 224; U. S. *v.* Berrigan, 2 Alaska 442.

Power of Congress to Deal with Tribal Property Is Political and Administrative. — Naganab *v.* Hitchcock, 25 App. Cas. (D. C.) 200.

Indian's Right of Occupancy Is Not Subject to Disposition by Will. — Peters *v.* Tallchief, 121 N. Y. App. Div. 309, 102 N. Y. Supp. 972.

2. Parr *v.* U. S., 153 Fed. 462.

231. 2. Choctaw, etc., R. Co. *v.* Bond, 6 Indian Ter. 515, 98 S. W. 335.

3. Buster *v.* Wright, (C. C. A.) 135 Fed. 947.

5. Winters *v.* U. S., (C. C. A.) 143 Fed. 740; Wadsworth *v.* Boysen, (C. C. A.) 148 Fed. 771; Stewart *v.* U. S., 39 Ct. Cl. 321.

232. 2. Buster *v.* Wright, (C. C. A.) 135 Fed. 947; Winters *v.* U. S., (C. C. A.) 148 Fed. 684; U. S. *v.* Auger, 153 Fed. 671.

5. Francis *v.* Francis, 203 U. S. 233, 27 U. S. Sup. Ct. 129.

233. 1. **Dawes Bill of 1887.** — National Bank of Commerce *v.* Anderson, (C. C. A.) 147 Fed. 87; *In re* Minook, 2 Alaska 200.

This statute was re-enacted June 10, 1896. See 29 Stat. at L. 321–340. Smith *v.* U. S., 142 Fed. 225.

Umatilla Indians — Oregon. — Parr *v.* U. S., 153 Fed. 462.

Selection Prior in Time Confers Better and Superior Right to Allotment. — Guyett *v.* McWhirk, 153 Fed. 784.

Contra, Hayes *v.* Barringer, (Indian Ter. 1907) 104 S. W. 937.

5. **Before Allotment,** and the expiration of restriction upon alienation, a person who is not a citizen of an Indian tribe has no authority to purchase or sell Indian lands. Kelly *v.* Harper, (Indian Ter. 1907) 104 S. W. 829.

Pending the Issuance of a Patent, the allottee has an equitable title, with fee-simple rights, and may lawfully cut timber for sale. U. S. *v.* Torrey Cedar Co., 154 Fed. 263.

6. Jackson *v.* Thompson, 38 Wash. 282, 80 Pac. 454; Nelson *v.* John, 43 Wash. 483, 86 Pac. 933; Prichard *v.* Jacobs, (Wash. 1907) 90 Pac. 922.

Without Authority of Congress, the President cannot impose a restriction on alienation in a patent. Francis *v.* Francis, 203 U. S. 233, 27 U. S. Sup. Ct. 129.

Removal of Restriction. — The Act of April 21, 1904, removed all restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes who were not of Indian blood, except minors Alfrey *v.* Colbert, (Indian Ter. 1907) 104 S. W. 638; Harris *v.* Hardridge, (Indian Ter. 1907) 104 S. W. 826.

234. 2. Alfrey *v.* Colbert, (Indian Ter. 1907) 104 S. W. 633; Sayer *v.* Brown, (Indian Ter. 1907) 104 S. W. 877; Phillips *v.* Reynolds, (Neb. 1907) 113 N. W. 234; Nelson *v.* John, 43 Wash. 483, 86 Pac. 933. See also Meeker *v.* Winyer, (Wash. 1907) 92 Pac. 883.

Act of 1887. — Smith *v.* U. S., 142 Fed. 225.

The United States may enforce the provision of this act by an appropriate suit. U. S. *v.* Dooley, 151 Fed. 697.

Where lands were allotted under the Act of 1887 and were sold by the heirs of the deceased allottees under the Act of May 27, 1902 (32 Stat. at L. 275, c. 888), the proceeds are not payable to the heir, but are still subject to the trust and are recoverable by the secretary of the interior. National Bank of Commerce *v.* Anderson, (C. C. A.) 147 Fed. 87; U. S. *v.* Thurston County, (C. C. A.) 143 Fed. 287.

Lease for Grazing or Mining Purposes. — Morrison *v.* Burnette, (C. C. A.) 154 Fed. 617.

The allottee must be incapacitated by reason of age or disability so that he cannot personally cultivate the land before a lease is authorized. Williams *v.* Steinmetz, 16 Okla. [illegible] Pac. 986.

In Indian Territory a sublease of lands for

grazing purposes is void. Muskogee Land Co. *v.* Mullins, (Indian Ter. 1907) 104 S. W. 586.

Creek citizens may rent their lands for grazing or agricultural, but not for mineral, purposes. Blackburn *v.* Muskogee Land Co., 6 Indian Ter. 232, 91 S. W. 31.

Patents to Heirs of Deceased Allottees — Conveyance by Heirs Before Patent. — This statute does not permit land inherited from an allottee to be sold on execution during the period in which alienation is restricted. Beall *v.* Graham, 75 Kan. 98, 88 Pac. 543.

Restriction Applies to Heir of Deceased Allottee. — Goodrum *v.* Buffalo, (Indian Ter. 1907) 104 S. W. 942.

Devise Is Alienation Within Meaning of Rule. — Hayes *v.* Barringer, (Indian Ter. 1907) 104 S. W. 937; Jackson *v.* Thompson, 38 Wash. 282, 80 Pac. 454.

Restraint upon Alienation Is Not Restraint upon Sale of Timber. — U. S. *v.* Paine Lumber Co., 206 U. S. 467, 27 U. S. Sup. Ct. 697.

Sublease, Made Without Consent of Secretary of Interior, Is Void. — Reeves *v.* Sheets, 16 Okla. 342, 82 Pac. 487.

Contract to Convey Is Void. — Harris *v.* Hardridge, (Indian Ter. 1907) 104 S. W. 826.

Ninety-nine Year Lease Cannot Be Questioned After Lapse of Twenty Years. — McDonald *v.* White, (Wash. 1907) 89 Pac. 891.

235. 1. National Bank of Commerce *v.* Anderson, (C. C. A.) 147 Fed. 87; U. S. *v.* Dooley, 151 Fed. 697; Williams *v.* Steinmetz, 16 Okla. 104, 82 Pac. 986; Tomkins *v.* Campbell, 129 Wis. 93, 108 N. W. 216. See also U. S. *v.* Torrey Cedar Co., 154 Fed. 263.

2. U. S. *v.* Moore, 154 Fed. 712.

Restriction in Patent, Unauthorized by Treaty or Statute, Is Invalid. — U. S. *v.* Auger, 153 Fed. 671.

Written Consent of Allottee to Alienation Is Not Revocable by Death of Allottee. — Prichard *v.* Jacobs, (Wash. 1907) 90 Pac. 922.

3. **Contra.** — Beall *v.* Graham, 75 Kan. 98, 88 Pac. 543.

4. See Hayes *v.* Barringer, (Indian Ter. 1907) 104 S. W. 937.

5. **Federal Courts Have Exclusive Jurisdiction While Lands Are Still Held in Trust by United States.** — McKay *v.* Kalyton, 204 U. S. 458, 27 U. S. Sup. Ct. 346.

6. **The Arkansas Statute of Limitations** applies when both of the parties are Indians and the possession merely is claimed. Gooding *v.* Watkins, (C. C. A.) 142 Fed. 112.

Improvements Made by Noncitizens May Be Confiscated under the laws of the Choctaw nation. Walker *v.* McLoud, 204 U. S. 302, 27 U. S. Sup. Ct. 293, *affirming* (C. C. A.) 138 Fed. [illegible].

7. Francis *v.* Francis, 203 U. S. 233, 27 U. S. Sup. Ct. 129. See also McDonald *v.* White, (Wash. 1907) 89 Pac. 891.

236. 1. Peters *v.* Tallchief, (County Ct.) 52 Misc. (N. Y.) 617, 102 N. Y. Supp. 972. See also *In re* Jack, (Surrogate Ct.) 52 Misc. (N. Y.) 424, 102 N. Y. Supp. 383.

2. Reese *v.* Harlan, (Neb. 1906) 109 N. W. 762; Guyatt *v.* Kautz, 41 Wash. 115, 83 Pac. 9.

Wife of Allottee Is Entitled to Dower. — Wheeler *v.* Petite, 153 Fed. 471.

Husband of Allottee Is Entitled to Curtesy. — Beam *v.* U. S., 153 Fed. 474.

While the Allotted Lands Are Still Held in Trust by the United States, the state courts have no jurisdiction to determine questions of heirship. Parr *v.* U. S., 153 Fed. 462.

3. U. S. *v.* Heyfron, 138 Fed. 964; Hayes *v.* Barringer, (Indian Ter. 1907) 104 S. W. 937.

While the Lands Are Still Held in Trust by the United States, neither the lands nor the proceeds arising from a sale thereof by the heirs of the allottees are subject to state taxation. U. S. *v.* Thurston County, (C. C. A.) 143 Fed. 287.

4. Goudy *v.* Meath, 203 U. S. 146, 27 U. S. Sup. Ct. 48; Goudy *v.* Meath, 38 Wash. 126, 80 Pac. 295.

7. Buster *v.* Wright, (C. C. A.) 135 Fed. 947.

Under a Statute requiring the approval of the secretary of the interior to leases of allotted lands, leases of allotments of Indian minors are not subject to his approval or disapproval, as the trial courts of Indian Territory have full and complete jurisdiction. Morrison *v.* Burnette, (C. C. A.) 154 Fed. 617.

237. 1. **Commissioner of Indian Affairs Has Management of All Indian Affairs.** — U. S. *v.* Hitchcock, 205 U. S. 80, 27 U. S. Sup. Ct. 423, *affirming* 26 App. Cas. (D. C.) 290.

A Clerk in the office of the commissioner of the Five Civilized Tribes is an officer of the United States. Martin *v.* U. S., (Indian Ter. 1907) 104 S. W. 678.

In Canada, the superintendent general of Indian affairs has, under the governor in council, the management and control of Indian lands, property, and funds. Henry *v.* Rex, 9 Can. Exch. 417.

7. U. S. *v.* Pierson, (C. C. A.) 145 Fed. 814, supporting third paragraph of note.

Control of President over Bond. — The President and the secretary of the interior have authority to determine the character of the bond, both as to its penalty and the nature and condition of its obligation. U. S. Fidelity, etc., Co. *v.* U. S., (C. C. A.) 150 Fed. 550.

9. Buster *v.* Wright, (C. C. A.) 135 Fed. 947.

Indian Agent Acts for Government in Official Capacity. — Peano *v.* Brennan, (S. Dak. 1906) 106 N. W. 409.

In Distributing an Annuity between two different bands of Ute Indians, an Indian agent has no power of discretion, but his duty is to disburse the funds in accordance with the law and the rules of the department. U. S. *v.* Pierson, (C. C. A.) 145 Fed. 814.

11. See Sisseton, etc., Bands *v.* U. S., 39 Ct. Cl. [illegible].

Judgment against United States Alone. — Vincent *v.* U. S., 39 Ct. Cl. 456.

238. 1. Bell *v.* U. S., etc., 39 Ct. Cl. 350.

INDICATE.

239. 1. **The Word "Indication"** as used in an instruction regarding the discovery of a mining claim means that which merely points to or tends to prove. Charlton *v.* [illegible] Alaska 532.

INDISPENSABLE PARTIES.

240. 4. Landram *v.* Jordan, 25 App. Cas. (D. C.) 291.

INDIVIDUAL.

240. 6. **Individual Includes Corporation.** — *In re* United Button Co., 137 Fed. 668.

241. 1. **Individual Banker.** — See *Ex p.* Wisner, (Mont. 1907) 92 Pac. 958.

INEVITABLE ACCIDENT OR CASUALTY.

242. 7. **Navigation.** — The Jumna, (C. C. A.) 149 Fed. 171, *affirming* 140 Fed. 743.

INFAMOUS.

244. 1. **Infamous Conduct in Professional Respect.** — Hill *v.* Clifford, (1907) 2 Ch. 236, 76 L. J. Ch. 627; *Re* Crichton, 13 Ont. L. Rep. 271; *In re* Telford, 11 British Columbia 355.

INFAMY AND INFAMOUS CRIMES.

245. 2. **Other Definitions.** — See Garitee *v.* Bond, 102 Md. 379, 62 Atl. 631.

246. 1. **Same Meaning Attaches under New York Statutes.** — Matter of Greene, (Surrogate Ct.) 48 Misc. (N. Y.) 31, 96 N. Y. Supp. 98.

2. **Not All Crimes Were Infamous at Common Law.** — McLain *v.* Chicago, 127 Ill. App. 489.

4. Fuller *v.* State, 147 Ala. 35, 41 So. 774, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1245 *et seq.*; Gulf, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1905) 86 S. W. 34.

Petit Larceny. — McLain *v.* Chicago, 127 Ill. App. 489, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 246.

Felony, but Not Misdemeanor, Disqualifies. — Wells *v.* Com., (Ky. 1907) 99 S. W. 218.

Conviction of Aggravated Assault, Coupled with Nonpayment of Fine, Is Disqualification. — Watson *v.* State, (Tex. Crim. 1905) 89 S. W. 270.

Playing or Betting in Game of Craps Not Infamous Crime. — Mitchell *v.* State, (Ala. 1907) 42 So. 1014.

Violation of Excise Law Not Infamous Crime. — Matter of Greene, (Surrogate Ct.) 48 Misc. (N. Y.) 31, 98 N. Y. Supp. 98.

Fighting is not an offense involving moral turpitude, and evidence of a conviction cannot be used to impeach a witness. Pollok *v.* State, (Tex. Crim. 1907) 101 S. W. 231.

247. 1. Garitee *v.* Bond, 102 Md. 379, 62 Atl. 631, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 247.

Under the Alabama Statute, where the conviction is for a felony, the question as to whether the offense is of the nature of the *crimen falsi* is impertinent and unimportant, as that question can only arise where the conviction is for a misdemeanor. Fuller *v.* State, 147 Ala. 35, 41 So. 774.

10. See Garitee *v.* Bond, 102 Md. 379, 62 Atl. 631, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 247.

13. Making an Overcharge for services in prosecuting a claim for a pension does not involve the requisite degree of moral turpitude to make it an infamous crime. Garitee *v.* Bond, 102 Md. 379, 62 Atl. 631.

14. McLain *v.* Chicago, 127 Ill. App. 489.

In Virginia, Infamy Attaches Only to Felonies. — Quillin *v.* Com., 105 Va. 874, 54 S. E. 333.

15. In New York, whenever the term "infamous crime" is used in any statute, it is construed as including every offense punishable with death, or by imprisonment in a state prison, and no other. Matter of Greene, (Surrogate Ct.) 48 Misc. (N. Y.) 31, 96 N. Y. Supp. 98.

248. 1. Pioneer Fire-Proofing Co. *v.* Clifford, 125 Ill. App. 352; McLain *v.* Chicago, 127 Ill. App. 489; Garitee *v.* Bond, 102 Md. 379, 62 Atl. 631.

4. Rice *v.* State, (Tex. Crim. 1907) 100 S. W. 771.

Delaware — Infamy Held to Attach on Conviction. — See State *v.* Stewart, (Del. 1907) 67 Atl. 786.

249. 1. **Admission of False Swearing.** — State *v.* Pearson, 37 Wash. 405, 79 Pac. 985.

2. O'Donnell *v.* People, 224 Ill. 218, 79 N. E. 639; James *v.* U. S., (Indian Ter. 1907) 104 S. W. 607; Com. *v.* Walsh, (Mass. 1907) 82 N. E. 16.

Indictment Is Properly Part of Judgment Roll to Prove Former Conviction. — Ball *v.* U. S., (C. C. A.) 147 Fed. 32.

4. O'Donnell *v.* People, 224 Ill. 218, 79 N. E. 639.

250. 1. Ball *v.* U. S., (C. C. A.) 147 Fed. 32; Henderson *v.* Com., (Ky. 1906) 91 S. W. 1141; State *v.* Clark, 117 La. 920, 42 So. 425. But see Rex *v.* Bridgewater, (1905) 1 K. B. 131; Com. *v.* Walsh, (Mass. 1907) 82 N. E. 19; Pollok *v.* State, (Tex. Crim. 1907) 101 S. W. 231.

In Civil Cases Only. — McLain *v.* Chicago, 127 Ill. App. 489.

Witness Compelled to Answer Concerning Conviction of Misdemeanor. — State *v.* Heusack, 189 Mo. 295, 88 S. W. 21; Wells *v.* Com., (Ky. 1907) 99 S. W. 218.

3. **Conviction in Another State Provable to Affect Credibility.** — Ball *v.* U. S., (C. C. A.) 147 Fed. 32.

Disqualification in Federal Courts Does Not Necessarily Disqualify in State Court. — Garitee *v.* Bond, 102 Md. 379, 62 Atl. 631.

4. Quillin *v.* Com., 105 Va. 874, 54 S. E. 333. See also State *v.* Pearson, 37 Wash. 405, 79 Pac. 985.

251. 4. **The Virginia and Washington Statutes** provide that a person convicted of perjury shall not be a witness, although pardoned or punished. Quillin *v.* Com., 105 Va. 874, 54 S. E. 333; State *v.* Pearson, 37 Wash. 405, 79 Pac. 985.

252. 5. **Incompetency Attaches** to a witness who has been convicted of an aggravated assault and who has not paid the fine and costs, although a promise to pay them has been made by a third person. Watson *v.* State, (Tex. Crim. 1905) 89 S. W. 270.

6. Quillin *v.* Com., 105 Va. 874, 54 S. E. 333.

7. Farmer *v.* Com., (Ky. 1906) 91 S. W. 682; State *v.* Barrington, 198 Mo. 23, 95 S. W. 235. See also State *v.* Clark, 117 La. 920, 42 So. 425; Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 522.

Whether Other than Infamous Crimes Affect Credibility. — Williams *v.* State, 144 Ala. 14, 40 So. 405; Pioneer Fire-Proofing Co. *v.* Clifford, 125 Ill. App. 352; McLain *v.* Chicago, 127 Ill. App. 489.

In *Missouri* conviction of a misdemeanor may be shown. State *v.* Heusach, 189 Mo. 295, 88 S. W. 21.

In *Washington* the disqualification is abolished by statute as to all crimes except perjury. State *v.* Pearson, 37 Wash. 405, 79 Pac. 985.

Under the Alabama Statute, providing that a person convicted of any infamous crime, except perjury or subornation of perjury, is a competent witness, a conviction for a felony, made so by statute, which was not a crime at common law, may be shown to affect his credibility as a witness. Fuller *v.* State, 147 Ala. 35, 41 So. 774.

Gaming is not such an infamous crime as may be shown in evidence to discredit the testimony of a witness. Mitchell *v.* State, (Ala. 1907) 42 So. 1014.

Impeachment Evidence is confined to charges of felonies and of such misdemeanors as impute moral turpitude. Gray *v.* State, (Tex. Crim. 1905) 86 S. W. 764.

Conviction Only, and Not Indictment, Can Be Shown. — Starling *v.* State, 89 Miss. 368, 42 So. 798.

252. 6. See Garitee *v.* Bond, 102 Md. 379, 62 Atl. 631.

INFANTS.

262. 1. See dicta in Kirk *v.* Middlebrook, 201 Mo. 286, 100 S. W. 450, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 261.

2. Beekman *v.* Beekman, 53 Fla. 858, 43 So. 923.

4. Jones *v.* Pond, etc., Mfg. Co., 79 Ark. 194, 96 S. W. 756; *Ex p.* Wood, 5 Cal. App. 471, 90 Pac. 961.

6. *Ex p.* Wood, 5 Cal. App. 471, 90 Pac. 961.

263. 10. Sokel *v.* People, 212 Ill. 238, 72 N. E. 382.

264. 7. The marriage in a foreign country of a boy fourteen years of age will be presumed to be valid. Sokel *v.* People, 212 Ill. 238, 72 N. E. 382.

266. 2. **Appraiser.** — An infant may act as appraiser of land levied on under execution. White *v.* Laurel Land Co., 82 S. W. 571, 26 Ky. L. Rep. 775.

267. 7. Clinton *v.* State, 53 Fla. 98, 43 So. 312.

9. Clinton *v.* State, 53 Fla. 98, 43 So. 312, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 267; People *v.* Donohue, 114 N. Y. App. Div. 830, 100 N. Y. Supp. 202.

268. 6. Clark *v.* Finnegan, 127 Iowa 644, 103 N. W. 970; State *v.* Labriola, (N. J. 1907) 67 Atl. 386; State *v.* Tolla, 72 N. J. L. 515, 62 Atl. 675; State *v.* Werner, (N. Dak. 1907) 112 N. W. 60; Com. *v.* Furman, 211 Pa. St. 549, 60 Atl. 1089.

Immunity from Punishment for Perjury. — In Texas it has been held that an infant who could not be punished for perjury because of its tender age was not a competent witness in a prosecution involving life or liberty. Freasier *v.* State, (Tex. Crim. 1904) 84 S. W. 360.

7. Landthrift *v.* State, 140 Ala. 114, 37 So. 287 (eleven years of age); Clinton *v.* State, 53 Fla. 98, 43 So. 312, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 268; Sokel *v.* People, 212 Ill. 238, 72 N. E. 382; State *v.* Werner, (N. Dak. 1907) 112 N. W. 60.

Examples of Infants Held to Be Competent. — Gordon *v.* State, 147 Ala. 42, 41 So. 847 (twelve years); Sokel *v.* People, 212 Ill. 238, 72 N. E. 382 (nine years); Clark *v.* Finnegan, 127 Iowa 644, 103 N. W. 970 (seven years); State *v.* Meyer, (Iowa 1907) 113 N. W. 322 (six years); State *v.* Tolla, 72 N. J. L. 515, 62 Atl. 675 (six years); State *v.* Werner, (N. Dak. 1907) 112 N. W. 60 (eight years); Com. *v.* Furman, 211 Pa. St. 549, 60 Atl. 1089 (eight years); Freasier *v.* State, (Tex. Crim. 1904) 84 S. W. 360 (seven years); Gabler *v.* State, 49 Tex. Crim. 623, 95 S. W. 521 (twelve years); Rex *v.* Armstrong, 15 Ont. L. Rep. 47 (under fourteen years).

269. 5. Jones *v.* State, 145 Ala. 51, 40 So. 947; Olson *v.* Olson, 130 Iowa 353, 106 N. W. 758.

In Clarke *v.* Finnegan, 127 Iowa 644, 103 N. W. 970, it was held that if a child has the necessary intelligence and appreciates the moral duty to tell the truth, he need not fully understand the nature of an oath or have any particular religious belief or training to qualify him as a witness.

In State *v.* Meyer, (Iowa 1907) 113 N. W. 322, it was held that to render an infant competent as a witness it is not necessary that it should appear that she understood that the obligation to speak the truth on the witness stand was greater than at other places.

Examples of Incompetent Infants. — North Texas Constr. Co. *v.* Bostick, 98 Tex. 239, 83 S. W. 12.

270. 4. Clinton *v.* State, 53 Fla. 98, 43 So. 312, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 270.

6. Clinton *v.* State, 53 Fla. 98, 43 So. 312, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 270; State *v.* Meyer, (Iowa 1907) 113 N. W. 322; State *v.* Tolla, 72 N. J. L. 515, 62 Atl. 675; State *v.* Werner, (N. Dak. 1907) 112 N. W. 60; Com. *v.* Furman, 211 Pa. St. 549, 60 Atl. 1089; Freasier *v.* State, (Tex. Crim. 1904) 84 S. W. 360; Gabler *v.* State, 49 Tex. Crim. 623, 95 S. W. 521.

271. 1. Clinton *v.* State, 53 Fla. 98, 43 So. 312, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 270; State *v.* Meyer, (Iowa 1907) 113 N. W. 322; State *v.* Labriola, (N. J. 1907) 67 Atl. 386; State *v.* Werner, (N. Dak. 1907) 112 N. W. 60.

3. North Texas Constr. Co. *v.* Bostick, 98 Tex. 239, 83 S. W. 12, *reversing* (Tex. Civ. App. 1904) 80 S. W. 109.

4. Sokel *v.* People, 212 Ill. 238, 72 N. E. 382; State *v.* Labriola, (N. J. 1907) 67 Atl. 386.

5. People *v.* Donohue, 114 N. Y. App. Div. 830, 100 N. Y. Supp. 202.

6. Neustadt *v.* New York City R. Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 735; Moore *v.* State, 49 Tex. Crim. 440, 96 S. W. 327.

7 **Estoppel.** — While the doctrine of estoppel *in pais* may apply to infants of years of discretion for intentional fraudulent conduct in favor of one who is misled thereby, yet estoppel by contract and from mere silence does not apply to them. Headley *v.* Hoopengarner, 60 W. Va. 626, 55 S. E. 744.

Minors are not estopped by their conduct, un-

less their conduct has been intentional and fraudulent. Harper *v.* Utsey, (Tex. Civ. App. 1906) 97 S. W. 508.

272. 5. *In re* Huntenberg, 153 Fed. 768; Parsons *v.* Teller, 111 N. Y. App. Div. 644, 97 N. Y. Supp. 808, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) [illegible]

274. 1. Burton *v.* Anthony, 46 Oregon 50, 79 Pac. 185, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 273.

276. 2. Callahan *v.* Bessemer, etc., R. Co., 17 Pa. Dist. 133, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 276.

In Wallin *v.* Highland Park Co., 127 Iowa 131, 102 N. W. 839, the court said: "The great weight of authority, and the reason of the rule certainly sustains it, is that an infant is not bound by the terms of an express contract for necessaries, and that in no event can a recovery be had for more than their reasonable value."

277. 7. Wallace *v.* Leroy, 57 W. Va. 263, 50 S. E. 243, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 277.

278. 2. **Buggy held not to be a necessary.** Heffington *v.* Jackson, (Tex. Civ. App. 1906) 96 S. W. 108.

9. International Text-book Co. *v.* Doran, (Conn. 1907) 68 Atl. 255 (education); Wallin *v.* Highland Park Co., 127 Iowa 131, 102 N. W. 839 (education).

In order to determine the question whether or not the contract of an infant for a course in stenography was a contract for necessaries, in the sense in which the term "necessaries" is used to render the contract binding upon such infant, the evidence in the case should show the state, degree, and condition in life in which the infant is whose contract is under consideration; and it should also affirmatively appear that the parents or guardian of such infant failed or refused to furnish the alleged necessary. Mauldin *v.* Southern Shorthand, etc., University, 126 Ga. 681, 55 S. E. 922.

279. 6. Mauldin *v.* Southern Shorthand, etc., University, 126 Ga. 681, 55 S. E. 922; Wallace *v.* Leroy, 57 W. Va. 263, 50 S. E. [illegible]

10. Meyers *v.* Blackburn, 38 Nova Scotia 50 (horse held under the circumstances not to have been a necessary).

280. 1. Mauldin *v.* Southern Shorthand, etc., University, 126 Ga. 681, 55 S. E. 922.

2. Smith *v.* Getz, 29 Ohio Cir. Ct. 216, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 280.

282. 2. Ison *v.* Cornett, 116 Ky. 92, 75 S. W. 204; Hiles *v.* Hiles, 82 S. W. 580, 26 Ky. L. Rep. 824; Damron *v.* Ratliff, 97 S. W. 401, 30 Ky. L. Rep. 67; McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997.

5. Georgia Statute. — An infant engaged as a "linter" in an oil mill is not engaged in a profession, trade, or business within the meaning of the Georgia statute which provides that an infant who by permission of his parent or guardian or by permission of the law practices a profession or trade or engages in any business as an adult is bound by all the contracts connected with the occupation in which he is engaged. Southern Cotton Oil Co. *v.* Dukes, 121 Ga. 787, 49 S. E. 788.

6. Lawder *v.* Larkin, (Tex. Civ. App. 1906) 94 S. W. 171 (deed of trust).

7. Slater *v.* Rudderforth, 25 App. Cas. (D. C.) 497; Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131; Robinson *v.* Allison, 192 Mo. 366, 91 S. W. 115.

283. 1. Riley *v.* Dillon, 148 Ala. 283, 41 So. 768.

2. Watson *v.* Ruderman, 79 Conn. 687, 66 Atl. 515; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

Loan to Minor to Redeem from Sale. — A minor is under no legal obligation to redeem property from a mortgage foreclosure sale, and a loan to a minor of money to enable him to redeem his property so sold is not binding on him so as to give the lender a lien for the money loaned. Burton *v.* Anthony, 46 Oregon 47, 79 Pac. 185.

284. 1. Ordinarily a lease may be avoided by the tenant on the ground of infancy, but while in possession thereunder the plea of infancy is not available in a suit brought to restrain him from making use of his possession to inflict irreparable injuries upon his landlord. Cole *v.* Manners, (Neb. 1906) 107 N. W. 777. In this case the court said: "The law permits infancy to be used as a shield, but not as a sword; the infant defendant, with his codefendant, is in possession by virtue of the lease. His infancy may protect him from the terms of the contract, but it certainly is not a license to use the advantages he obtained by virtue of his contract to commit torts and inflict injuries upon the plaintiff for which the law affords no adequate remedy. The decree does not undertake to bind him by the terms of the contract; it merely enjoins him from the doing of certain acts which would be wrongful if the contract were binding and in force and *a fortiori* wrongful, if he be regarded as a mere trespasser instead of a tenant under a valid lease."

2. **Marriage Settlements** involving real estate by an infant are voidable at her election. Smith *v.* Smith, 107 Va. 112, 57 S. E. 577.

6. Heffington *v.* Jackson, (Tex. Civ. App. 1906) 96 S. W. 108.

285. 8. Under the *South Dakota* statute which provides that a minor over the age of eighteen years may make a contract beneficial to himself which is voidable only by disaffirmance either before his majority or within one year thereafter upon restoring what he receives or paying its equivalent with interest — a minor may avoid a contract of suretyship by merely disaffirming the same within the statutory time. Helland *v.* Colton State Bank, (S. Dak. 1906) 106 N. W. 60.

13. See Verrier *v.* Mulvena, 7 Quebec Pr. 414.

286. 2. Millsaps *v.* Estes, 137 N. Car. 535, 50 S. E. 227.

3. Southern Cotton Oil Co. *v.* Dukes, 121 Ga. 787, 49 S. E. 788; Chicago Telephone Co. *v.* Schulz, 121 Ill. App. 5 [illegible] Lansing *v.* Michigan Cent. R. Co., 143 Mich. 48, 106 N. W. 602, 12 Detroit Leg. N. 912; Worthy *v.* Jonesville Oil Mill, 77 S. Car. 69, 57 S. E. 634.

5. Worthy *v.* Jonesville Oil Mill, 77 S. Car. 69, 57 S. E. 634.

287. 3. Gordon *v.* Miller, 111 Mo. App. 342, 85 S. W. 943.

6. Heffington *v.* Jackson, (Tex. Civ. App. 1906) 96 S. W. 108, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 287.

7. Ison *v.* Cornett, 116 Ky. 92, 75 S. W. 204, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 287.

8. Braucht *v.* Graves-May Co., 92 Minn. 116, 99 N. W. 417.

Contract for Necessaries. — An infant may revoke his executory contract for necessaries in so far as it has not been performed by the other party and escape any further liability thereon. Callahan *v.* Bessemer, etc., R. Co., 17 Pa. Dist. 133.

An infant may disaffirm an unexecuted contract for necessaries, and the *Iowa* statutory provision that a minor is bound by a contract for necessaries does not affect the rule, and though a contract by a minor for education may be for necessaries he may disaffirm the contract in so far as it has been unperformed and recover the unearned portion of remuneration paid. Wallin *v.* Highland Park Co., 127 Iowa 131, 102 N. W. 839.

288. 1. Seeley *v.* Seeley-Howe-Le Van Co., 128 Iowa 294, 103 N. W. 961.

2. Meyers *v.* Blackburn, 38 Nova Scotia 50; Slater *v.* Rudderforth, 25 App. Cas. (D. C.) 497; Ison *v.* Cornett, 116 Ky. 92, 75 S. W. 204, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 288.

289. 1. Shreeves *v.* Caldwell, 135 Mich. 323, 97 N. W. 764, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 288, 289.

3. Slater *v.* Rudderforth, 25 App. Cas. (D. C.) 497.

5. Ison *v.* Cornett, 116 Ky. 92, 75 S. W. 204; Gaskins *v.* Allen, 137 N. Car. 426, 49 S. E. 919; Allen *v.* Anderson, (Tex. Civ. App. 1906) 96 S. W. 54.

The fact that the second grantee has knowledge of the execution of the prior conveyance by his grantor during the latter's minority does not affect his rights. Ison *v.* Cornett, 116 Ky. 92, 75 S. W. 204.

290. 3. Shreeves *v.* Caldwell, 135 Mich. 323, 97 N. W. 764, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 290.

292. 1. International Text-Book Co. *v.* Doran, (Conn. 1907) 68 Atl. 255; Matlock *v.* Williamsville, etc., R. Co., 198 Mo. 495, 95 S. W. 849, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 292.

But in Commander *v.* Brazil, 88 Miss. 668, 41 So. 497, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 292, it was held that when a minor has reached that stage of maturity which indicates that he is of full age, and enters into a contract falsely representing himself to be of age, accepting the benefits of the contract, he will be estopped to deny that he was not of age when the obligation of the contract is sought to be enforced against him.

293. 2. Ison *v.* Cornett, 116 Ky. 92, 75 S. W. 204, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 293.

3. The execution of a quitclaim deed by an infant after reaching majority is not a disaffirmance of a mortgage executed by her during her minority. Shreeves *v.* Caldwell, 135 Mich. 323, 97 N. W. 764.

6. Prudential L. Ins. Co. *v.* Fuller, 29 Ohio Cir. Ct. 415, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 293.

8. Southern Cotton Oil Co. *v.* Dukes, 121 Ga. 787, 49 S. E. 788; White *v.* Sykes, 129 Ga. 508, 59 S. E. 228; Braucht *v.* Graves-May Co., 92 Minn. 116, 99 N. W. 417.

294. 5. *In re* Huntenberg, 153 Fed. 708; Southern Cotton Oil Co. *v.* Dukes, 121 Ga. 787, 49 S. E. 788; Sallier's Succession, 115 La. 97, 38 So. 929; Braucht *v.* Graves-May Co., 92 Minn. 116, 99 N. W. 417; Gordon *v.* Miller, 111 Mo. App. 342, 85 S. W. 943.

Formal Tender Waived. — Though an infant who seeks to disaffirm a contract must return so much of the consideration received by him as remains in his possession at the time of such election, still a formal and actual tender of the property by the infant is not required as a condition precedent when it is known in advance that such tender will be refused; but restoration should be made on the trial as a condition of the judgment. Starr *v.* Watkins, (Neb. 1907) 111 N. W. 363.

6. Louden Mfg. Co. *v.* Milmine, 15 Ont. L. Rep. 53.

Where the infant purchases property on credit he may avail himself of the defense of infancy in an action to recover the purchase money, without returning such part of the property purchased as he may have in his hands at the time. Wallace *v.* Leroy, 57 W. Va. 263, 50 S. E. 246.

295. 1. Wallace *v.* Leroy, 57 W. Va. 263, 50 S. E. 243, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 294.

6. In Mutual Milk, etc., Co. *v.* Prigge, 112 N. Y. App. Div. 652, 98 N. Y. Supp. 458, it was held that where a minor nineteen years of age entering into employment to deliver milk and cream contracts that he will not solicit business from the customers of his employer for three years after leaving the employer's employ, and the minor does leave the employ of his employer and enters the employment of another, he will be enjoined from soliciting the business of his first employer's custom.

In Braucht *v.* Graves-May Co., 92 Minn. 116, 99 N. W. 417, it was held that where the benefits received by the minor are of such a nature that he cannot restore them, he may rescind, and recover what he parted with under the contract, unless the other party shows that the contract was a fair, reasonable, and provident one, free from fraud or overreaching on his part. This case involved the purchase by a commission merchant of grain on a margin.

By repudiating his contract of life insurance and surrendering to the insurance company his policy therefor, the infant may recover the whole amount of premiums paid by him thereon. Prudential L. Ins. Co. *v.* Fuller, 29 Ohio Cir. Ct. 415.

Where an infant uses money received for the purpose of securing an education, the rule requiring the consideration received by the infant to be returned if in his possession, or any substantial part of the same, or property which is procured with such consideration in order to entitle him to rescind the contract, does not

apply. White *v.* Sykes, 129 Ga. 508, 59 S. E. 228. See also International Text-Book Co. *v.* Doran, (Conn. 1907) 68 Atl. 255.

296. 6. Chapman *v.* Duffey, 20 Colo. App. 471, 79 Pac. 746.

297. 1. Riley *v.* Dillon, 148 Ala. 283, 41 So. 768; Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131.

Where an infant executed a mortgage upon her realty a conveyance of the realty by her guardian does not pass to the grantee the right to disaffirm the mortgage. Shreeves *v.* Caldwell, 135 Mich. 323, 97 N. W. 764.

298. 5. Watson *v.* Ruderman, 79 Conn. 687, 66 Atl. 515; Shreeves *v.* Caldwell, 135 Mich. 323, 97 N. W. 764.

8. Starr *v.* Watkins, (Neb. 1907) 111 N. W. 363.

299. 2. Chicago Telephone Co. *v.* Schulz, 121 Ill. App. 573 (release of damages for torts).

6. Robinson *v.* Allison, 192 Mo. 366, 91 S. W. 115.

301. 6. Tillery *v.* Land, 136 N. Car. 537, 48 S. E. 824.

9. After Majority Authorizing a Banker or Agent to Pay. — Parsons *v.* Teller, 111 N. Y. App. Div. 637, 97 N. Y. Supp. 808.

No New Consideration Is Necessary to the validity of a ratification of a contract to pay for services rendered to the infant during her minority. Parsons *v.* Teller, 111 N. Y. App. Div. 637, 97 N. Y. Supp. 808.

302. 1. Parsons *v.* Teller, 188 N. Y. 318, 80 N. E. 930.

4. Lamkin *v.* LeDoux, 101 Me. 581, 64 Atl. 1048; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

Estoppel to Take Advantage of Statute. — Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

5. Ison *v.* Cornett, 116 Ky. 92, 75 S. W. 204.

304. 4. Louden Mfg. Co. *v.* Milmine, 15 Ont. L. Rep. 53.

5. But see Lamkin *v.* LeDoux, 101 Me. 581, 64 Atl. 1048 (statute).

305. 1. In case of a conveyance by the infant his acceptance of purchase money after reaching majority is a ratification of the conveyance. Damron *v.* Ratliff, (Ky. 1906) 97 S. W. 401.

306. 2. Robinson *v.* Allison, 192 Mo. 366, 91 S. W. 115.

Where an infant grantor was married at the time of the conveyance ratification of the conveyance will not arise from long acquiescence therein after reaching her majority, where the disability of coverture continued. Gaskins *v.* Allen, 137 N. Car. 426, 49 S. E. 919.

5. Where the statute requires the ratification of an infant's contract after reaching majority to be evidenced by writing, this applies to a mortgage executed by the infant, and while the infant may by his conduct be prevented from availing himself of the statute under the doctrine of equitable estoppel, such estoppel will not arise where the evidence does not show that the mortgagee has been induced by the representations, conduct, or silence of the mortgagor to change his position or do any act to his detriment. Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

307. 4. Maryland Casualty Co. *v.* **Lanham,** 124 Ga. 859, 53 S. E. 395.

308. 6. Brooks *v.* Sawyer, 191 Mass. 151, 76 N. E. 953; Stone *v.* Rabinowitz, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 405, 90 N. Y. Supp. 301 (failure to return article bailed in pursuance of agreement); Kirkham *v.* Wheeler-Osgood Co., 39 Wash. 424, 4 Ann. Cas. 532, 81 Pac. 869, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 307.

311. 1. Brooks *v.* Sawyer, 191 Mass. 151, 76 N. E. 953.

4. Coercion by Parent. — Coercion by the parent is no defense to the commission of a homicide by a boy between seventeen and eighteen years old. State *v.* Thrailkill, 73 S. Car. 314, 53 S. E. 482.

Fraudulent Pretenses. — An infant may be convicted under the *Georgia* statute making it illegal for any person to procure money or other thing of value under a contract to perform services with intent to defraud. Vinson *v.* State, 124 Ga. 19, 52 S. E. 79; Anthony *v.* State, 126 Ga. 632, 55 S. E. 479.

Seduction under Promise of Marriage. — Infant may be guilty. State *v.* Brock, 186 Mo. 457, 85 S. W. 595.

5. Brown *v.* State, 47 Tex. Crim. 326, 83 S. W. 378 (child sixteen years of age convicted of illegal sale of liquors).

Sense of Moral Guilt Only. — Price *v.* State, (Tex. Crim. 1906) 94 S. W. 901; Simmons *v.* State, (Tex. Crim. 1906) 97 S. W. 1052.

312. 2. State *v.* Fisk, 15 N. Dak. 589, 108 N. W. 485 (same under *North Dakota* statute).

7. Swindling. — An infant under twenty-one may be guilty of the crime of swindling. Neal *v.* State, (Tex. Crim. 1907) 101 S. W. 212.

314. 1. People *v.* Domenico, (County Ct.) 45 Misc. (N. Y.) 309, 92 N. Y. Supp. 390; State *v.* Fisk, 15 N. Dak. 589, 108 N. W. 485.

2. Under Texas Statute. — Simmons *v.* State, (Tex. Crim. 1906) 97 S. W. 1052.

315. 4. To sustain the conviction of a child under twelve years of age, up to which time he is by virtue of the statute presumed to be incapable of committing crime, there must be some direct proof of his capacity to understand the wrongful character of the act complained of, and the presumption of his incapacity will not be overcome by a plea of guilty; nor should a conviction be sustained merely because the trial court, from his appearance and conversation with him and his parents, was convinced that he had capacity to understand the wrongful character of his act. People *v.* Domenico, (County Ct.) 45 Misc. (N. Y.) 309, 92 N. Y. Supp. 390.

6. Assault with Intent to Commit Rape. — An infant physically incompetent to commit the crime of rape cannot be convicted of an assault with intent to commit rape. State *v.* Fisk, 15 N. Dak. 589, 108 N. W. 485.

7. State *v.* Fisk, 15 N. Dak. 589, 108 N. W. 485 (statute).

316. 2. Leiby *v.* State, (Neb. 1907) 113 N. W. 125; People *v.* O'Neill, 117 N. Y. App. Div. 844, 102 N. Y. Supp. 988.

Juvenile Courts. — People *v.* Lynch, 223 Ill. 346, 79 N. E. 70; *In re* Parker, 118 La. 471, 43 So. 54; Hunt *v.* Wayne Circuit Judges, 142

Mich. [illegible], 109 N. W. 531, 12 Detroit Leg. N. 673 (act held constitutional).

Utah statute 1905 creating juvenile courts and providing for custody of delinquent children is constitutional. Mill *v.* Brown, 31 Utah 473, 88 Pac. 609.

Commitment of Child to State School for Juvenile Offenders. — *In re* Lewis, 3 Cal. App. 738, 86 Pac. 996.

Commitment of Infant to Industrial School for Girls. — *In re* Gassaway, 70 Kan. 695, 79 Pac. 113 (act held constitutional).

Under the Kentucky Statute providing that it shall be lawful for the court in its discretion to commit an infant to a reformatory upon conviction of crime, it is within the discretion of the court to send an infant fifteen years old to the penitentiary rather than to the reformatory. Davis *v.* Com., (Ky. 1907) 101 S. W. 352.

4. Commitment of Children to Benevolent Institution. — Kennedy *v.* Meara, 127 Ga. 68, 56 S. E. 243.

6. A girl fourteen years of age is a child within the meaning of section 708 of the *Georgia* Penal Code 1895, punishing persons for cruelty to children. Stone *v.* State, 1 Ga. App. 292, 57 S. E. 992.

8. Miller *v.* National Enameling, etc., Co., 116 Ill. App. 99 (extra-hazardous employment); Struthers *v.* People, 116 Ill. App. 481 (coal mine); Swift *v.* Rennard, 119 Ill. App. 173; Jefferson Theatre Program Co. *v.* Crejczyk, 125 Ill. App. 1; State *v.* Deck, 108 Mo. App. 292, 83 S. W. 314; Bryant *v.* Mandel, (N. J. 1907) 65 Atl. 867 (affidavit of infant's parent as to age as a defense); State *v.* Shorey, 48 Oregon 396, 86 Pac. 881 (statute prohibiting employment of children for over ten hours per day held constitutional); Kirkham *v.* Wheeler-Osgood Co., 39 Wash. 415, 4 Ann. Cas. 532, 81 Pac. 869.

317. 2. Com. *v.* Wills, 82 S. W. 236, 26 Ky. L. Rep. 515 (permitting minor to play in billiard rooms — indictment held sufficient); Com. *v.* Wills, 89 S. W. 144, 28 Ky. L. Rep. 77 (ignorance of infant's age held a defense); Rhodes *v.* State, 118 Tenn. 761, 102 S. W. 899 (permission of parent covers only continuous play at one time); Rainbolt *v.* State, 49 Tex. Crim. 427, 93 S. W. 737.

Booking Bets and Selling Pools to Infants. — Under the *Kentucky* statute punishing the booking of bets or the selling of pools to infants (Rev. Stat. 1899, § 2193), ignorance on the part of the defendant as to the age of the infant constitutes no defense. State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185.

Ticket Taker. — The *New York* statute punishing any one who admits to particular places where intoxicating liquor is sold any child under the age of sixteen does not subject to punishment a mere ticket taker at such a place. People *v.* Kings County, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 8, 105 N. Y. Supp. 387.

3. Prohibition against Purchase by Junk Dealer from Infants. — People *v.* McGuire, 113 N. Y. App. Div. 621, 99 N. Y. Supp. 91.

5. People *v.* Zabor, 183 N. Y. 242, 76 N. E. 17, *reversing* 103 N. Y. App. Div. 594, 92 N. Y. Supp. 1129 (selling to infant acting as agent of an adult is not prohibited by the statute).

INFORMERS.

324. 4. Illegal Sale of Liquor. — A county is not liable, under the provisions of section 23, chapter 50, of the Comp. Stat. of 1903, to a complaining witness for an amount equal to one-fourth of the sum collected as fines and paid over to the school fund, where the complaint is for selling liquor without a license. Chapin *v.* Seward County, 75 Neb. 745, 106 N. W. 778.

INHABIT — INHABITANT.

328. 5. Divorce. — See Terrill *v.* Terrill, 2 Alaska 475.

Inhabited Dwelling. — Under a burglary statute a dwelling is not *inhabited* which is temporarily unoccupied, the owner and family being absent in Europe and the servants in charge temporarily away. Mason *v.* State, 27 Ohio Cir. Ct. 526.

Temporary Residence. — Terrill *v.* Terrill, 2 Alaska 475.

Inhabitant and Resident. — Schmoll *v.* Schenck, (Ind. 1907) 82 N. E. 805.

INHERIT — INHERITOR.

335. 2. The word *inherit* as used in a will is indicative of a line of succession. Field's Estate, 34 Pa. Co. Ct. 529.

INHERITANCE.

336. 2. Inheritance in Broad Sense. — The title of the act of March 6, 1901 (Laws 1901, p. 67, c. 55), "An act relating to the taxation of inheritances and providing for the disposition of the same," is not limited to the strict technical meaning of the word *inheritances*, but is broad enough to sustain the provision imposing a tax on property which passes by a will or otherwise than by operation of law. *In re* White, 42 Wash. 360, 84 Pac. 831.

INJUNCTIONS.

342. 2. *Alabama.* — Gadsden *v.* Mitchell, 145 Ala. 137, 40 So. 557, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342.

California. — McRae *v.* Blakeley, 3 Cal. App. 171, 84 Pac. 679; Chittenden *v.* Blakeley, (Cal. App. 1906) 84 Pac. 681.

Connecticut. — Dewire *v.* Hanley, 79 Conn. 454, 65 Atl. 573.

Illinois. — Burrall *v.* American Telephone, etc., Co., 234 Ill. 266, 79 N. E. 705.

Kansas. — Atchison, etc., R. Co. *v.* Billings, (Kan., 1908) 93 Pac. 590.

Kentucky. — Owensboro Waterworks Co. *v.* Owensboro, (Ky. 1906) 96 S. W. 867; Cumberland Telephone, etc., Co. *v.* Barnes, (Ky. 1907) 101 S. W. 301.

Maryland. — Northern Cent. R. Co. *v.* Canton Co., 104 Md. 682, 65 Atl. 337.

Michigan. — Gates *v.* Detroit, etc., R. Co., (Mich. 1908) 115 N. W. 420.

New Jersey. — Morrow *v.* Hasselman, 62 N. J. Eq. 612, 61 Atl. 369; O'Hara *v.* Nelson, (N. J. 1906) 63 Atl. 836; Woodbridge Tp. *v.* Middlesex Water Co., (N. J. 1907) 68 Atl. 464.

New York. — Bishop *v.* Hughes, 117 N. Y.

App. Div. 425, 102 N. Y. Supp. 595; Close *v.* Witbeck, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 224, 102 N. Y. Supp. 904; Schmitt *v.* Edison Electric Illuminating Co., (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 19, 110 N. Y. Supp. 44.

Pennsylvania. — Pressed Steel Car Co. *v.* Standard Steel Car Co., 210 Pa. St. 464, 60 Atl. 4; Chester-Telford Road Co. *v.* Chester, etc., R. Co., 217 Pa. St. 272, 66 Atl. 358.

Washington. — White *v.* Codd, 39 Wash. 14, 80 Pac. 836; Hart *v.* Seattle, 45 Wash. 300, 88 Pac. 205, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342.

West Virginia. — Hershman *v.* Stafford, 58 W. Va. 459, 52 S. E. 533; Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257.

Issuance by Judge in Vacation. — While a circuit judge may issue mandatory writs of injunction in vacation, the exigency must be extreme, the threatened danger practically certain, and the consequent irremediable injury equally imminent, before the writ should be so employed. Hager *v.* New South Brewing Co., (Ky. 1906) 90 S. W. 608, in which case it was held that no such exigency was shown to exist.

343. **1.** Colorado Springs *v.* Colorado, etc., R. Co., (Colo. 1906) 89 Pac. 820; Dunn *v.* Youmans, 224 Ill. 34, 79 N. E. 321, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342 [343]; Jacquelin *v.* Erie R. Co., 69 N. J. Eq. 432, 61 Atl. 18; Savage *v.* Port Reading R. Co., (N. J. 1907) 67 Atl. 436; Smith *v.* Jerome, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 22, 93 N. Y. Supp. 202; Colgate *v.* New York Cent., etc., R. Co., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 503, 100 N. Y. Supp. 650; Chamberlain *v.* Childs' Unique Dairy Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 56, 105 N. Y. Supp. 370; McClane *v.* McClane, 213 Pa. St. 286, 62 Atl. 861; Lanham *v.* Wenatchee Canal Co., (Wash. 1908) 93 Pac. 522; Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257.

Mandatory Injunctions Prohibited by Statute in Georgia. — Beacham *v.* Wrightsville, etc., R. Co., 125 Ga. 362, 54 S. E. 157.

3. Hart *v.* Seattle, 45 Wash. 300, 88 Pac. 205, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342 [343].

4. Petite Anse Drainage Dist. *v.* Iberia, etc., R. Co., 117 La. 940, 42 So. 433; Williams *v.* Robert M. Silverman Constr. Co., 111 N. Y. App. Div. 679, 97 N. Y. Supp. 945.

344. **5.** Oppenheim *v.* Thanasoulis, 123 N. Y. App. Div. 494, 108 N. Y. Supp. 505.

7. Clancy *v.* Geb, 126 Wis. 286, 104 N. W. 746, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 344.

Where a perpetual injunction would accomplish all that a decree for specific performance could effect, it will not be granted when the performance has become impossible or the decree would be inequitable under all the circumstances of the case. Whalen *v.* Baltimore, etc., R. Co., (Md. 1906) 60 Atl. 300.

345. **3.** *United States.* — Hoy *v.* Altoona Midway Oil Co., 136 Fed. 483; Railroad Commission *v.* Texas, etc., R. Co., 144 Fed. 68; Miocene Ditch Co. *v.* Jacobsen, (C. C. A.) 146 Fed. 680; Bunzier *v.* Strickhausen, 154 Fed. 151; Perkins *v.* Northern Pac. R. Co., 155 Fed. 445.

Arkansas. — Johnson *v.* Gillenwater, 75 Ark. 114, 87 S. W. 430; Union Sawmill Co. *v.* Felsenthal Land, etc., Co., 84 Ark. 494, 106 S. W. 676.

California. — Enright *v.* Cohen, 5 Cal. App. 290, 90 Pac. 145, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 345; Humphry *v.* Luena Vista Water Co., 2 Cal. App. 540, 84 Pac. 296.

Florida. — Suwannee, etc., R. Co. *v.* West Coast R. Co., 50 Fla. 609, 39 So. 538.

Georgia. — Massee-Felton Lumber Co. *v.* Sirmans, 122 Ga. 297, 50 S. E. 92; McMaster *v.* Waynesboro, 122 Ga. 231, 50 S. E. 122; Thomas *v.* Herrington, 129 Ga. 271, 58 S. E. 831.

Illinois. — Swift *v.* McCormick, 121 Ill. App. 511.

Louisiana. — Josephson *v.* Powers, (La. 1908) 46 So. 44.

Maryland. — Bernei *v.* Sappington, 102 Md. 185, 62 Atl. 365.

Michigan. — State Road Bridge Co. *v.* Gage, 143 Mich. 337, 106 N. W. 394; Cromwell *v.* Hughes, 144 Mich. 3, 107 N. W. 323; Gates *v.* Detroit, etc., R. Co., (Mich. 1908) 115 N. W. 420.

Nebraska. — Heaton *v.* Wireman, 74 Neb. 817, 105 N. W. 634.

New Jersey. — Brady *v.* Carteret Realty Co., 67 N. J. Eq. 64, 60 Atl. 938; Jackson *v.* Miller, 68 N. J. Eq. 182, 60 Atl. 1019; Washington *v.* Washington Water Co., 70 N. J. Eq. 254, 62 Atl. 390; McDowell *v.* Avon-by-the-Sea Land, etc., Co., (N. J. 1906) 63 Atl. 13; Northeastern Telephone, etc., Co. *v.* Hepburn, (N. J. 1907) 65 Atl. 747; Mitchell *v.* United Box Board, etc., Co., (N. J. 1907) 66 Atl. 938; North Jersey St. R. Co. *v.* Newark, (N. J. 1907) 67 Atl. 691.

New York. — Woolf *v.* Barnes, 104 N. Y. App. Div. 620, 93 N. Y. Supp. 961; Interborough Rapid Transit Co. *v.* New York, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 221, 95 N. Y. Supp. 886; Farrelly *v.* New York L. Ins. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 202, 102 N. Y. Supp. 726.

North Carolina. — Singer Mfg. Co. *v.* Summers, 143 N. Car. 102, 55 S. E. 522; Caldwell Land, etc., Co. *v.* Smith, (N. Car. 1907) 59 S. E. 653.

North Dakota. — Zimmerman *v.* McCurdy, 15 N. Dak. 79, 106 N. W. 125.

Pennsylvania. — Ohio River Junction R. Co. *v.* Pennsylvania Co., 216 Pa. St. 316, 66 Atl. 61.

Texas. — Chancey *v.* Allison, (Tex. Civ. App. 1908) 107 S. W. 605.

Vermont. — Wilkins *v.* Somerville, (Vt. 1907) 66 Atl. 893.

West Virginia. — Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257.

4. Colorado Eastern R. Co. *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 808.

7. Mathis *v.* Strunk, 73 Kan. 595, 85 Pac. 590.

8. *United States.* — Lehman *v.* Graham, (C. C. A.) [illegible] Fed. [illegible] Connors McC[illegible] Mountain Co. *v.* U. S., (C. C. A.) 142 Fed. 625; Hammond Elevator Co. *v.* Board of Trade, (C. C. A.)

143 Fed. 292; Railroad Commission *v.* Texas, etc., R. Co., 134 Fed. 68; Vose *v.* Watson, (C. C. A.) 146 Fed. 949; Continuous Glass Press Co. *v.* Schmertz Wire Glass Co., (C. C. A.) 153 Fed. 577; Bush *v.* Pioneer Min. Co., (C. C. A.) 154 Fed. 480; Richards *v.* [illegible] 158 Fed. [illegible]

California. — Williams *v.* Los Angeles R. Co., 150 Cal. [illegible] 89 Pac. [illegible]

Connecticut. — Phœnix Ins. Co. *v.* Carey, (Conn. 1908) 68 Atl. 993.

Florida. — Suwannee, etc., R. Co. *v.* West Coast R. Co., 50 Fla. 609, 39 So. 538; Simms *v.* Patterson, 53 Fla. 984, 43 So. 421; McNair, etc., Land Co. *v.* Jackson, 53 Fla. 853, 44 So. 341; Shaw *v.* Palmer, (Fla. 1907) 44 So. 953.

Georgia. — Warner *v.* Maxwell, 124 Ga. 518, 52 S. E. 809; Kirkland *v.* Atlantic, etc., R. Co., 126 Ga. 246, 55 S. E. 23; Green *v.* Freeman, 126 Ga. 274, 55 S. E. 45; Foster *v.* Case, 126 Ga. 714, 55 S. E. 921; Hasbrouck *v.* Bondurant, 127 Ga. 220, 56 S. E. 241; Sellers *v.* Page, 127 Ga. 633, 56 S. E. 1011.

Idaho. — Weber *v.* Della Mountain Min. Co., 11 Idaho 264, 81 Pac. 931.

Illinois. — Rabinovich *v.* Reith, 120 Ill. App. 409.

Indiana. — Laporte *v.* Scott, (Ind. 1906) 76 N. E. 878, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 345.

Kansas. — Hurd *v.* Atchison, etc., R. Co., 73 Kan. 83, 84 Pac. 553.

Massachusetts. — American Circular Loom Co. *v.* Wilson, (Mass. 1908) 84 N. E. 133.

Michigan. — Fidelity Mut. L. Ins. Co. *v.* Blain, 144 Mich. 218, 107 N. W. 877.

Minnesota. — Meyer *v.* Petersburg, 96 Minn. 314, 104 N. W. 899.

New York. — Cranshaw *v.* McAdoo, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 420, 94 N. Y. Supp. 386; Grimm *v.* Krahmer, 112 N. Y. App. Div. 489, 98 N. Y. Supp. 523.

Washington. — State *v.* Nicoll, 40 Wash. 517, 82 Pac. 895; State *v.* Superior Ct., 43 Wash. 34, 85 Pac. 989; Seymour *v.* La Furgey, (Wash. 1907) 92 Pac. 267.

Wisconsin. — Kradwell *v.* Thiesen, 131 Wis. 97, 111 N. W. 233.

Canada. — Reynolds *v.* Urquhart, 5 N. W. Ter. 413.

By Statute in South Carolina it is provided that the Supreme Court shall review upon appeal an interlocutory order or decree in the Court of Common Pleas granting, or construing, or modifying, or refusing an injunction (Code Civ. Pro. 1902, § 11). Lamar *v.* Croft, 73 S. Car. 407, 53 S. E. 540.

346. 2. Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574; Donnelly *v.* Smith, 128 Iowa 257, 103 N. W. 776.

Abuse of Discretion Reviewed on Appeal. — Savage *v.* Parker, 53 Fla. 1002, 43 So. 507.

3. Miocene Ditch Co. *v.* Jacobsen, (C. C. A.) 146 Fed. 680.

347. 2. Xavier Realty *v.* Louisiana R., etc., Co., 114 La. 967, 38 So. 695; Lewis *v.* D'Albor, 116 La. 679, 41 So. 31; Standard Import Co. *v.* New Orleans Import Co., 117 La. 633, 42 So. 192; Murat *v.* New Orleans, 119 La. 505, 44 So. 279. See also Beasley *v.* Jenkins, 117 La. 577, 42 So. 145, in which case it was held that under the supervisory powers granted by the constitution mandamus lies to compel the issuance of an injunction, but that it would not be under the facts of this case; Beasley *v.* Robson, 117 La. 584, 42 So. 147.

3. *Compare* Gallon *v.* Mandell, (Mich. 1908) 114 N. W. 392.

In River Rouge *v.* Hosmer, 147 Mich. 204, 110 N. W. 622, the several objections to the bill were held insufficient to call for mandamus to compel dissolution. See also Blain *v.* Chippewa Circuit Judge, 145 Mich. 59, 108 N. W. 440.

4. Lucas *v.* Milliken, 139 Fed. 816, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347; Lindeberg *v.* Doverspike, 2 Alaska 177; Northwestern Traveling Men's Assoc. *v.* Raphael, 121 Ill. App. 540; Laporte *v.* Scott, (Ind. 1906) 76 N. E. 878, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347; Ellis *v.* Ellis, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 34, 106 N. Y. Supp. 217; Searle Mfg. Co. *v.* Terry, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 265, 106 N. Y. Supp. 438.

Injunction Not Ground Where Granting Would Be Unconscionable. — Parsons *v.* Ohio Pail Co., 27 Ohio Cir. Ct. 162.

7. International Register Co. *v.* Recording Fare Register Co., (C. C. A.) 151 Fed. 199; Weir *v.* Winnett, 155 Fed. 824.

348. 3. **Special Injunction Defined.** — "A special injunction is one granted for the prevention of irreparable injury, when the preventive aid of the court is the ultimate and only relief sought and the primary equity involved in the suit." Beasley *v.* Jenkins, 117 La. 577, 42 So. 145.

9. Webster *v.* De Bardeleben, 147 Ala. 280, 41 So. 831.

349. 2. New York, etc., R. Co. *v.* O'Brien, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 13, 100 N. Y. Supp. 316; Milwaukee *v.* Gumbel, 130 Wis. 31, 110 N. W. 7.

3. Tise *v.* Whitaker Harvey Co., 144 N. Car. 507, 57 S. E. 210.

350. 1. Randolph *v.* Abbott, 84 Ark. 341, 105 S. W. 576.

In New York a court of equity has no inherent absolute power to grant interlocutory injunctions, but authority therefor must be found in the Code of Civil Procedure. Bachman *v.* Harrington, 184 N. Y. 458, 77 N. E. 657.

3. Dockstader *v.* Reed, 121 N. Y. App. Div. 846, 106 N. Y. Supp. 795.

4. **In Texas** a district court judge in vacation may grant an injunction. Thorne *v.* Moore, (Tex. 1907) 105 S. W. 985.

5. **Power of Referee in Bankruptcy.** — While the right of a referee to award an injunction cannot be regarded as finally settled if the parties submit the question at issue between them to the referee for disposition, and if it is a matter which the court might have referred to him in the first instance, his order must be regarded as an equivalent, by which they are bound. *In re* Benjamin, 140 Fed. 320. But see *In re* Berkowitz, 143 Fed. 508.

351. 3. **In Colorado** the Supreme Court has constitutional authority to issue injunctions. People *v.* District Ct., 37 Colo. 443, 86 Pac. 87.

7. **Under the Statute in Iowa** a judge in vaca-

tion may temporarily enjoin a liquor nuisance. Young *v.* Preston, 131 Iowa 292, 108 N. W. 463.

8. Board of Trade *v.* Cella Commission Co., (C. C. A.) 145 Fed. 28; Board of Trade *v.* Donovan Commission Co., (C. C. A.) 145 Fed. 31; Rocky Mountain Bell Telephone Co. *v.* Federation, 156 Fed. 809.

352. 1. Amount Limited by Statute. — Bartlett *v.* Austin, etc., Co., 147 Mich. 58, 110 N. W. 123.

Remedy by Action for Damages. — Butterick Pub. Co. *v.* Boynton, 191 Mass. 175, 77 N. E. 778.

In Maryland there is a statutory provision to the effect that courts of equity shall not grant relief in any cause where the amount does not amount to twenty dollars. Kenneweg *v.* Allegany County, 102 Md. 119, 62 Atl. 249.

4. *England.* — Riley *v.* Halifax, 97 L. T. N. S. 278.

Canada. — Hamilton Powder Co. *v.* Johnson, 28 Quebec Super. Ct. 450.

United States. — Indian Land, etc., Co. *v.* Shoenfelt, (C. C. A.) 135 Fed. 484; Illinois L. Ins. Co. *v.* Newman, 141 Fed. 449; Mountain Copper Co. *v.* U. S., (C. C. A.) 142 Fed. 625; General Electric Co. *v.* Westinghouse Electric, etc., Co., 144 Fed. 458.

Alabama. — Yellow Pine Export Co. *v.* Sutherland-Innes Co., 141 Ala. 664, 37 So. 922, *citing* 16 Am. and Eng. Encyc. of Law (2d ed.) 352; Wilson *v.* Miller, 143 Ala. 264, 39 So. 178; Wilson *v.* Meyer, 144 Ala. 402, 39 So. 317; Gaynor *v.* Bauer, 144 Ala. 448, 39 So. 749; Ensley *v.* McWilliams, 145 Ala. 159, 41 So. 296; Hobbs *v.* Long Distance Telephone, etc., Co., 147 Ala. 393, 41 So. 1003; Richardson *v.* Long Distance Telephone, etc., Co., (Ala. 1906) 41 So. 1006; Horton *v.* Long Distance Telephone, etc., Co., (Ala. 1906) 41 So. 1006.

Alaska. — Lindeberg *v.* Doverspike, 2 Alaska 177; Karl *v.* Pilkington, 2 Alaska 191.

Arkansas. — Moody *v.* Lowrimore, 74 Ark. 421, 86 S. W. 400; McCarty *v.* Wilson, 81 Ark. 115, 98 S. W. 682; State *v.* Vaughan, 81 Ark. 117, 98 S. W. 685; Cooper *v.* De Vall, 81 Ark. 314, 98 S. W. 976; Knight *v.* Creswell, 82 Ark. 330, 101 S. W. 754; Lucas *v.* Futrall, 84 Ark. 540, 106 S. W. 667; Rider *v.* Leatherman, (Ark. 1908) 107 S. W. 996.

Colorado. — Lawson *v.* Hays, 39 Colo. 250, 89 Pac. 968.

Florida. — Cowan *v.* Skinner, 52 Fla. 486, 42 So. 730; H. W. Metcalf Co. *v.* Martin, (Fla. 1907) 45 So. 463; Simms *v.* Burnette, (Fla. 1908) 46 So. 90.

Georgia. — Booth *v.* Mohr, 122 Ga. 333, 50 S. E. 173; Atlanta, etc., R. Co. *v.* Redwine, 123 Ga. 736, 51 S. E. 724; Sylvania *v.* Hilton, 123 Ga. 754, 51 S. E. 744; Carstarphen Warehouse Co. *v.* Fried, 124 Ga. 544, 52 S. E. 598; McCaskill *v.* Bower, 126 Ga. 341, 54 S. E. 942; Norton *v.* Graham, (Ga. 1908) 60 S. E. 1011.

Illinois. — Lindblad *v.* Board of Education, 221 Ill. 261, 77 N. E. 450; Christian Hospital *v.* People, 223 Ill. 244, 79 N. E. 72; Carlson *v.* Koerner, 226 Ill. 15, 80 N. E. 562; Allen *v.* Chicago Undertakers' Assoc., 232 Ill. 458, 83 N. E. 952; Builder's Painting, etc., Co. *v.* Advisory Board Bldg. Trades, 116 Ill. App. 264; Mitchell *v.* Hannah, 121 Ill. App. 597; Chicago *v.* O'Hare, 124 Ill. App. 290.

Indiana. — Fowler Utilities Co. *v.* Gray, (Ind. 1907) 79 N. E. 897; Hatfield *v.* Mahoney, (Ind. App. 1907) 79 N. E. 1086; American Steel Bridge Works *v.* Putnam County, (Ind. 1907) 82 N. E. 995.

Indian Territory. — Lafayette *v.* Hood, (Indian Ter. 1907) 104 S. W. 853.

Iowa. — H. W. Gossard Co. *v.* Crosby, 132 Iowa 155, 109 N. W. 483; Kinney *v.* Howard, 133 Iowa 94, 110 N. W. 282.

Kentucky. — Louisville, etc., R. Co. *v.* Smith, 117 Ky. 364, 78 S. W. 160; Hill *v.* Anderson, (Ky. 1906) 90 S. W. 1071; Turner *v.* Hampton, (Ky. 1906) 97 S. W. 761.

Maine. — Whitmore *v.* Brown, 102 Me. 47, 65 Atl. 516.

Maryland. — Carswell *v.* Swindell, 102 Md. 636, 62 Atl. 956; Jeffers *v.* Annapolis, (Md. 1907) 68 Atl. 361.

Michigan. — Walker *v.* Marion, 143 Mich. 27, 106 N. W. 400; Hardy *v.* Allegan Circuit Judge, 147 Mich. 594, 111 N. W. 166; Howard *v.* Bellows, 148 Mich. 410, 111 N. W. 1047; Osius *v.* Hinchman, (Mich. 1908) 114 N. W. 402.

Missouri. — McWilliams *v.* Burnes, 115 Mo. App. 6, 90 S. W. 735; Tinsley *v.* Caruthersville, 121 Mo. App. 142, 98 S. W. 800.

Nebraska. — Mohat *v.* Hutt, 75 Neb. 732, 106 N. W. 659; School Dist. No. 77 *v.* Cowgill, (Neb. 1906) 107 N. W. 584.

New Hampshire. — Cox *v.* Jones, 73 N. H. 504, 63 Atl. 178.

New Jersey. — Sperry, etc., Co. *v.* Hertzberg, 69 N. J. Eq. 264, 60 Atl. 368; Jacquelin *v.* Erie R. Co., 69 N. J. Eq. 432, 61 Atl. 18; Fox *v.* Lynch, (N. J. 1906) 64 Atl. 439; Burrell *v.* Middleton, (N. J. 1907) 65 Atl. 978; Continental Compressed Air Co. *v.* Franklyn, (N. J. 1907) 66 Atl. 897; Georke Co. *v.* Wadsworth, (N. J. 1907) 68 Atl. 71.

New Mexico. — Hubbell *v.* Armijo, (N. Mex. 1906) 85 Pac. 1046.

New York. — McClure *v.* Leaycraft, 183 N. Y. 36, 75 N. E. 961; Delaney *v.* Flood, 183 N. Y. 323, 76 N. E. 209; Fox *v.* Fitzpatrick, 190 N. Y. 259, 82 N. E. 1103; Litchfield *v.* Bond, 105 N. Y. App. Div. 229, 93 N. Y. Supp. 1016; Turl *v.* New York Contracting Co., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 164, 93 N. Y. Supp. 1103; Ehrich *v.* Grant, 111 N. Y. App. Div. 196, 97 N. Y. Supp. 600; Babcock *v.* Leonard, 111 N. Y. App. Div. 294, 97 N. Y. Supp. 861; Stevens *v.* McAdoo, 112 N. Y. App. Div. 458, 98 N. Y. Supp. 553; Mt. Morris Bank *v.* New York, etc., R. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 417, 100 N. Y. Supp. 544; American Ice Co. *v.* New York, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 114, 100 N. Y. Supp. 748; Ringler *v.* Mohl, 115 N. Y. App. Div. 549, 101 N. Y. Supp. 154; Locker *v.* American Tobacco Co., 121 N. Y. App. Div. 443, 106 N. Y. Supp. 115; Floyd-Jones *v.* United Electric Light Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 529, 106 N. Y. Supp. 648; Hess *v.* Roberts, 124 N. Y. App. Div. 328, 108 N. Y. Supp. 894; Moore *v.* Owen, (Supm. Ct.

Spec. T.) 58 Misc. (N. Y.) 332, 109 N. Y. Supp. 585.

North Carolina. — East Lake Lumber Co. *v.* East Coast Cedar Co., 142 N. Car. 412, 55 S. E. 304.

North Dakota. — Martinson *v.* Marzolf, 14 N. Dak. 301, 103 N. W. 937; Continental Hose Co. No. 1 *v.* Mitchell, 15 N. Dak. 144, 105 N. W. 1108.

Ohio. — Schmidt *v.* Brennan, 16 Ohio Dec. 623; New York, etc., Co. *v.* Hermann, 27 Ohio Cir. Ct. 694.

Oklahoma. — Thompson *v.* Tucker, 15 Okla. 486, 83 Pac. 413.

Oregon. — Davis *v.* Silverton, (Oregon 1905) 82 Pac. 16; Mann *v.* Parker, 48 Oregon 321, 86 Pac. 598; Hume *v.* Burns, (Oregon 1907) 90 Pac. 1009; Wolfer *v.* Hurst, (Oregon 1907) 91 Pac. 366.

Pennsylvania. — Wallace *v.* Baltimore, etc., R. Co., 216 Pa. St. 311, 65 Atl. 665; Berkey *v.* Berwind-White Coal Min. Co., (Pa. 1908) 69 Atl. 329.

Rhode Island. — Barnes *v.* Roy, 27 R. I 534, 65 Atl. 277.

South Carolina. — Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762; Parler *v.* Fogle, (S. Car. 1907) 59 S. E. 707.

Texas. — Stephens *v.* Texas, etc., R. Co., (Tex. 1906) 97 S. W. 309; Galveston *v.* Mistrot, (Tex. Civ. App. 1907) 104 S. W. 417; Lightfoot *v.* Murphy, (Tex. Civ. App. 1907) 104 S. W. 511.

Vermont. — Watkins *v.* Childs, 79 Vt. 234, 65 Atl. 81; Royce *v.* Carpenter, (Vt. 1907) 66 Atl. 888.

Virginia. — South, etc., R. Co. *v.* Virginia, etc., R. Co., 104 Va. 323, 51 S. E. 843.

West Virginia. — Curtin *v.* Stout, 59 W. Va. 271, 50 S. E. 810; Deepwater R. Co. *v.* Motler, 60 W. Va. 55, 53 S. E. 705; Connell *v.* Yost, (W. Va. 1907) 57 S. E. 209.

Wisconsin. — Clancy *v.* Geb, 126 Wis. 286, 104 N. W. 746; Harley *v.* Lindemann, 129 Wis. 514, 109 N. W. 570; Jacobs *v.* Lakeside Lumber Co., (Wis. 1908) 114 N. W. 443; A. H. Strange Co. *v.* Merrill, (Wis. 1908) 115 N. W. 115; Lewis *v.* Eagle, (Wis. 1908) 115 N. W. 361.

Wyoming. — Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364.

In Considering the Question of What Is an Adequate Remedy at Law, the courts will take into consideration not only the question of multiplicity of suits, but also the pecuniary responsibilities of the defendant. Feigenspan *v.* Nivolek, (N. J. 1907) 65 Atl. 703.

Collection of Taxes Alleged to Have Been Erroneously Assessed Not Enjoined. — Crewdson *v.* Nefsy Co., (Wyo. 1905) 82 Pac. 1.

354. 1. Where an Injunction Is Sought to Protect Purely Equitable Rights the question whether the remedy at law is adequate does not arise. Carmine *v.* Bowen, 104 Md. 198, 64 Atl. 932.

3. Arkadelphia Lumber Co. *v.* Asman, 79 Ark. 284, 95 S. W. 134; Wood *v.* Stewart, 81 Ark. 41, 98 S. W. 711; Vickery *v.* Wilson, (Colo. 1907) 90 Pac. 1034; La Porte County *v.* Wolff, 166 Ind. 325, 76 N. E. 247; Brock *v.* Whittaker, (Ky. 1906) 93 S. W. 623; Smiser *v.* Cynthiana, (Ky. 1906) 97 S. W. 35; Grandchamp *v.* McCormick, (Mich. 1907) 114 N. W. 80; Schumacher *v.* Wright County, 97 Minn. 74, 105 N. W. 1125; Delaney *v.* Flood, 183 N. Y. 323, 76 N. E. 209; Bachman *v.* Harrington, 184 N. Y. 458, 77 N. E. 657; Stevens *v.* McAdoo, 112 N. Y. App. Div. 458, 98 N. Y. Supp. 553; Kendall *v.* Columbia, 74 S. Car. 539, 54 S. E. 777; Fleming *v.* Power, 77 S. Car. 528, 58 S. E. 430; Johnson *v.* Hampton Normal, etc., Institute, 105 Va. 319, 54 S. E. 31.

355. 1. *United States.* — U. S. *v.* Luce, 141 Fed. 385; U. S. *v.* Brown, 141 Fed. 423; Pennsylvania Co. *v.* Bay, 150 Fed. 770; General Electric Co. *v.* Westinghouse Electric Co., 151 Fed. 664.

Arkansas. — Hall *v.* Wellman Lumber Co., 78 Ark. 408, 94 S. W. 43.

California. — Morton *v.* Morton, 148 Cal. 142, 82 Pac. 664.

Illinois. — Kenilworth Sanitarium *v.* Kenilworth, 220 Ill. 264, 77 N. E. 226; Wente *v.* Commonwealth Fuel Co., 232 Ill. 526, 83 N. E. 1049; Mahler *v.* Sanche, 121 Ill. App. 247.

Indiana. — Beck *v.* Indianapolis Light, etc., Co., 36 Ind. App. 600, 76 N. E. 312.

Iowa. — Semones *v.* Needles, (Iowa 1908) 114 N. W. 904.

Kentucky. — Palestine Bldg. Assoc. *v.* Minor, (Ky. 1905) 86 S. W. 695; Anderson *v.* Mt. Sterling Telephone Co., (Ky. 1905) 86 S. W. 1119; Drake *v.* Black Diamond Coal, etc., Co., (Ky. 1905) 89 S. W. 545.

Massachusetts. — Beekman *v.* Marsters, (Mass. 1907) 80 N. E. 817.

Michigan. — Starr *v.* Shepard, 145 Mich. 302, 108 N. W. 709.

Missouri. — Strother *v.* American Cooperage Co., 116 Mo. App. 518, 92 S. W. 758; State *v.* Riley, 127 Mo. App. 469, 105 S. W. 696; Laclede Gas Light Co. *v.* Gas Consumer's Assoc., 127 Mo. App. 442, 106 S. W. 91; Aimee Realty Co. *v.* Haller, (Mo. App. 1907) 106 S. W. 588.

New Jersey. — Jackson *v.* Miller, 69 N. J. Eq. 182, 60 Atl. 1019; Hoboken, etc., R. Co. *v.* Jersey City, etc., R. Co., 70 N. J. Eq. 122, 62 Atl. 539; King *v.* Muller, (N. J. 1907) 67 Atl. 380; Herold *v.* Columbia Invest., etc., Co., (N. J. 1907) 67 Atl. 607.

New York. — Stevens *v.* Taylor, 111 N. Y. App. Div. 561, 97 N. Y. Supp. 925; Royle *v.* Dillingham, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 383, 104 N. Y. Supp. 783.

North Carolina. — Fayetteville St. R. Co. *v.* Aberdeen, etc., R. Co., 142 N. Car. 423, 55 S. E. 345.

Ohio. — Palmer *v.* Zeigler, 76 Ohio St. 210, 81 N. E. 234.

Pennsylvania. — Piro *v.* Shipley, 211 Pa. St. 36, 60 Atl. 325; Wetherill *v.* Gallagher, 211 Pa. St. 306, 60 Atl. 905; Morrow *v.* Highland Grove Traction Co., (Pa. 1908) 69 Atl. 41; Angle *v.* Stroudsburg, 29 Pa. Super. Ct. 601.

Vermont. — Clark *v.* Peck, 79 Vt. 275, 65 Atl. 14.

Washington. — Grantham *v.* Gibson, 41 Wash. 125, 83 Pac. 14.

West Virginia. — Harvey *v.* Ryan, 50 W. Va. 134, 53 S. E. 7; Atkinson *v.* Cain, (W. Va. 1907) 56 S. E. 519; Jackson *v.* Big Sandy, etc., R. Co., (W. Va. 1907) 59 S. E. 749.

Fraudulently Elected Corporate Officers Enjoined from Taking Possession of Corporate Property. — Schmidt *v.* Pritchard, (Iowa 1907) 112 N. W. 801.

Where a Street Railroad Is So Operated and Constructed as to destroy the practical usefulness of a street, abutting owners may enjoin such use, remedy at law in such case being inadequate. Swinhart *v.* St. Louis, etc., R. Co., 207 Mo. 423, 105 S. W. 1043.

Irrespective of Other Damage, an Injunction Will Be Granted to prohibit the continuance of action that obstructs one in the free use and enjoyment of his land, where such action, if continued, will ripen into an easement. Vestal *v.* Young, 147 Cal. 715, 82 Pac. 381.

2. Equity Will Enjoin Breach of Contract though Contract Provides for Liquidated Damages. Harris *v.* Theus, (Ala. 1907) 43 So. 131.

The Breach of a Contract whereby an attorney agrees not to engage in practice within a certain territory will be enjoined though the contract provides for liquidated damages in case of a breach. Heinz *v.* Roberts, (Iowa 1907) 110 N. W. 1034.

Continuing Trespasses Enjoined — *United States.* — Big Six Development Co. *v.* Mitchell, (C. C. A.) 138 Fed. 279.

Alabama. — Nixon *v.* Bolling, 145 Ala. 277, 40 So. 210; Central Iron, etc., Co. *v.* Vanderheurk, 147 Ala. 546, 41 So. 145.

Alaska. — Heine *v.* Roth, 2 Alaska 416.

California. — Winslow *v.* Vallejo, 148 Cal. 723, 84 Pac. 191; Hatton *v.* Gregg, 4 Cal. App. 542, 88 Pac. 594.

Georgia. — Martin *v.* Patillo, 126 Ga. 436, 55 S. E. 240; Camp *v.* A. G. Garbutt Lumber Co., 129 Ga. 411, 58 S. E. 870.

Illinois. — Burrall *v.* American Telephone, etc., Co., 234 Ill. 266, 79 N. E. 705.

Indiana. — Syracuse *v.* Weyrick, 37 Ind. App. 56, 76 N. E. 559; Cromer *v.* Logansport, (Ind. App. 1906) 78 N. E. 1045.

Iowa. — Keil *v.* Wright, (Iowa 1907) 112 N. W. 633.

Kentucky. — Cumberland Telephone, etc., Co. *v.* Barnes, (Ky. 1907) 101 S. W. 301.

Massachusetts. — O'Brien *v.* Murphy, 189 Mass. 353, 75 N. E. 700.

Minnesota. — Whittaker *v.* Stangvick, 100 Minn. 386, 111 N. W. 295.

Missouri. — Graden *v.* Parkville, 114 Mo. App. 527, 90 S. W. 115.

Montana. — Musselshell Cattle Co. *v.* Woolfolk, 34 Mont. 126, 85 Pac. 874.

Nebraska. — Hornung *v.* Herring, 74 Neb. 637, 104 N. W. 1071; Sillasen *v.* Winterer, (Neb. 1906) 107 N. W. 124; Hackney *v.* McQuinch, (Neb. 1907) 112 N. W. 296; Munger *v.* Yeiser, (Neb. 1907) 114 N. W. 166.

Nevada. — Phenix *v.* Frampton, (Nev. 1907) 90 Pac. 2.

New Jersey. — Feigenspan *v.* Nizolek, (N. J. 1907) 65 Atl. 703.

New York. — Sadlier *v.* New York, 185 N. Y. 408, 78 N. E. 272; Duclos *v.* Kelley, 122 N. Y. App. Div. 329, 106 N. Y. Supp. 1058.

Oregon. — Roots *v.* Boring Junction Lumber Co., (Oregon 1907) 92 Pac. 811.

Pennsylvania. — McConahy *v.* Western Allegheny R. Co., 31 Pa. Super. Ct. 215.

3. Ozark-Bell Telephone Co. *v.* Springfield, 140 Fed. 666; Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159; Sailors' Union *v.* Hammond Lumber Co., (C. C. A.) 156 Fed. 450; Consolidated Gas Co. *v.* New York, 157 Fed. 849; Cobia *v.* Ellis, (Ala. 1906) 42 So. 751; Watkins *v.* Tallassee Falls Mfg. Co., (Ala. 1905) 38 So. 756; Dunker *v.* Field, etc., Club, (Cal. App. 1907) 92 Pac. 502; Bolsa Land Co. *v.* Burdick, 151 Cal. 254, 90 Pac. 532; Gray Lumber Co. *v.* Gaskin, 122 Ga. 342, 50 S. E. 164; Huxford *v.* Southern Pine Co., 124 Ga. 181, 52 S. E. 439; American Plate Glass Co. *v.* Nicoson, 34 Ind. App. 643, 73 N. E. 625; Hatfield *v.* Mahoney, (Ind. App. 1907) 79 N. E. 1086; Mendenhall *v.* School Dist. No. 83, (Kan. 1907) 90 Pac. 773; Bilsborrow *v.* Pierce, 101 Minn. 271, 112 N. W. 274; State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 352–355; Currie *v.* Jones, 138 N. Car. 189, 50 S. E. 560; Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138; Heath *v.* Capital Sav. Bank, etc., Co., 79 Vt. 301, 64 Atl. 1127.

Negative Covenant in Lease Enforced by Injunction. — Waldorf-Astoria Segar Co. *v.* Salomon, 109 N. Y. App. Div. 65, 95 N. Y. Supp. 1053.

4. Injunction Granted Where No Other Adequate Relief Available. — Turner *v.* Hampton, (Ky. 1906) 97 S. W. 761.

5. U. S. *v.* Luce, 141 Fed. 385; U. S. *v.* Brown, 141 Fed. 423; Acker, etc., Co. *v.* McGaw, 144 Fed. 864; General Electric Co. *v.* Westinghouse Electric Co., 151 Fed. 664; Sailors' Union *v.* Hammond Lumber Co., (C. C. A.) 156 Fed. 450; Christian Church *v.* Sommers, (Ala. 1907) 43 So. 8; Bessemer *v.* Bessemer Waterworks, (Ala. 1907) 44 So. 663; Coleman *v.* Elliott, 147 Ala. 689, 40 So. 666; Hart *v.* Lewis, 126 Ga. 439, 55 S. E. 189; Rice *v.* O'Neal, 120 Ill. App. 259; Drake *v.* Black Diamond Coal, etc., Co., (Ky. 1905) 89 S. W. 545; Hamby *v.* Dawson Springs, (Ky. 1907) 104 S. W. 259; Owen County Burley Tobacco Society *v.* Brumback, (Ky. 1908) 107 S. W. 710; Turners Falls Fire Dist. *v.* Millers Falls Water Supply Dist., 189 Mass. 263, 75 N. E. 630; Whittaker *v.* Stangrick, 100 Minn. 386, 111 N. W. 295; Musselshell Cattle Co. *v.* Woolfolk, 34 Mont. 126, 85 Pac. 874; Letherman *v.* Hauser, (Neb. 1906) 110 N. W. 745; Interborough Rapid Transit Co. *v.* New York, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 221, 95 N. Y. Supp. 886; Galveston, etc., R. Co. *v.* Miller, (Tex. Civ. App. 1906) 93 S. W. 177; Buchanan *v.* Wilburn, (Tex. Civ. App. 1907) 105 S. W. 841.

Injunction Lies to Restrain Enlargement of Easement. — Winslow *v.* Vallejo, 148 Cal. 723, 84 Pac. 191.

256. 5. Barton *v.* Slifer, (N. J. 1907) 66 Atl. 890.

6. Levi *v.* Worcester Consol. St. R. Co., 193 Mass. 116, 78 N. E. 853; Leaver *v.* Gorman, (N. J. 1907) 67 Atl. 111; Wolford *v.* Fisher, 48 Oregon 470, 84 Pac. 850, 87 Pac. 530; Ft. Pierre *v.* Hall, 19 S. Dak. 663, 104 N. W. 470.

7. Beers *v.* Chicago, etc., R. Co., (C. C. A.) 111 [illegible] (C. C. A.) 147 Fed. 76; Adams *v.* Birmingham

Realty Co., (Ala. 1908) 45 So. 891; Elberton *v.* Pearle Cotton Mills, 123 Ga. 1, 50 S. E. 977; Atlantic, etc., R. Co. *v.* Kirkland, 129 Ga. 552, 59 S. E. 220; Louisville, etc., R. Co. *v.* Smith, 117 Ky. 364, 78 S. W. 160, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 356; Bernei *v.* Sappington, 102 Md. 185, 62 Atl. 365; McKee *v.* Grand Rapids, 137 Mich. 200, 100 N. W. 580, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 356; Atlantic City Gas, etc., Co. *v.* Consumers' Gas, etc., Co., 70 N. J. Eq. 536, 61 Atl. 750; Taylor *v.* Erie City Pass R. Co., 212 Pa. St. 487, 61 Atl. 992; Island Heights Assoc. *v.* Island Heights Water Power, etc., Co., (N. J. 1906) 62 Atl. 773; McClane *v.* McClane, 213 Pa. St. 286, 62 Atl. 861; Maust *v.* Pennsylvania, etc., St. R. Co., (Pa. 1908) 69 Atl. 80; Woodard *v.* West Side Mill Co., 43 Wash. 308, 86 Pac. 579.

Estoppel by Consent. — Beckerle *v.* Danbury, (Conn. 1907) 67 Atl. 371.

357. 2. Nittany Valley R. Co. *v.* Empire Steel, etc., Co., 218 Pa. St. 224, 67 Atl. 349.

6. McKee *v.* Grand Rapids, 137 Mich. 200, 100 N. W. 580, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 357.

8. Laches No Bar as to Enjoining Continuing Wrong — Damages for Such Wrong May Be Barred. — Mahler *v.* Sanche, 121 Ill. App. 247.

358. 1. Cobia *v.* Ellis, (Ala. 1906) 42 So. 751.

3. Laird *v.* Atlantic Coast Sanitary Co., (N. J. 1907) 67 Atl. 387.

7. *United States.* — American Mutoscope, etc., Co. *v.* Edison Mfg. Co., 137 Fed. 262; Littleton *v.* Fischer, 137 Fed. 684; Star Co. *v.* Colver Pub. House, 141 Fed. 129; Bristol Oil, etc., Co. *v.* Beacom, 143 Fed. 550; Andrus *v.* Berkshire Power Co., (C. C. A.) 147 Fed. 76; McCarthy *v.* Bunker Hill, etc., Min., etc., Co., 147 Fed. 981; Empire Circuit Co. *v.* Jermoon, 147 Fed. 532; Warren Featherbone Co. *v.* Landauer, 151 Fed. 130; Hall Signal Co. *v.* General R. Signal Co., (C. C. A.) 153 Fed. 907; Tacoma R., etc., Co. *v.* Pacific Traction Co., 155 Fed. 259; Stationary Engineer Pub. Co. *v.* Comerford, 155 Fed. 667; Richards *v.* Meissner, 158 Fed. 109.

Alabama. — Bessemer *v.* Bessemer Waterworks, (Ala. 1907) 44 So. 663.

Georgia. — Lanier *v.* Hebard, 123 Ga. 626, 51 S. E. 632.

Illinois. — Cleveland *v.* Martin, 218 Ill. 73, 75 N. E. 772.

Indiana. — Fowler Utilities Co. *v.* Gray, (Ind. 1907) 79 N. E. 897.

Iowa. — Calahan *v.* Handsaker, 133 Iowa 622, 111 N. W. 22.

Louisiana. — Ponchatoula *v.* Police Jury, (La. 1908) 46 So. 16.

Maine. — Whitmore *v.* Brown, 102 Me. 47, 65 Atl. 516.

Maryland. — Callaway *v.* Baltimore, 99 Md. 315, 57 Atl. 661, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 358.

Michigan. — Simmons *v.* Day, (Mich. 1908) 114 N. W. 853.

Nebraska. — Platte County Independent Telephone Co. *v.* Leigh Independent Telephone Co., (Neb. 1908) 116 N. W. 511.

New Jersey. — Millville Gas Light Co. *v.* Vineland Light, etc., Co., (N. J. 1906) 65 Atl. 504; Burrell *v.* Middleton, (N. J. 1907) 65 Atl. 978; McCarter *v.* Vineland Light, etc., Co., (N. J. 1907) 65 Atl. 1041; Campbell *v.* Hough, (N. J. 1908) 68 Atl. 759.

New York. — Cranshaw *v.* McAdoo, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 420, 94 N. Y. Supp. 386; Brighton Athletic Club *v.* McAdoo, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 432, 94 N. Y. Supp. 391; Stockton *v.* Buffalo, 108 N. Y. App. Div. 170, 95 N. Y. Supp. 509; Henderson Estate Co. *v.* Carroll Electric Co., 113 N. Y. App. Div. 775, 99 N. Y. Supp. 365; Butterick Pub. Co. *v.* Typographical Union, No. 6, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 1, 100 N. Y. Supp. 292; Farrelly *v.* New York L. Ins. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 202, 102 N. Y. Supp. 726; Tolman *v.* Mulcahy, 119 N. Y. App. Div. 42, 103 N. Y. Supp. 936; Lawrence *v.* Dixey, 119 N. Y. App. Div. 295, 104 N. Y. Supp. 516; Harry Angelo Co. *v.* Improved Property Holding Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 328, 105 N. Y. Supp. 590; Russell *v.* Stampers, etc., Union, No. 23, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 96, 107 N. Y. Supp. 303.

North Carolina. — Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; East Lake Lumber Co. *v.* East Coast Cedar Co., 142 N. Car. 412, 55 S. E. 304; Blackwell's Durham Tobacco Co. *v.* American Tobacco Co., (N. Car. 1907) 59 S. E. 123; Seaboard Air Line R. Co. *v.* Olive, 142 N. Car. 257, 55 S. E. 263.

Ohio. — Ross *v.* Cincinnati, etc., R. Co., 27 Ohio Cir. Ct. 135.

Oklahoma. — Brown *v.* Donnelly, (Okla. 1907) 91 Pac. 859.

Oregon. — Pacific States Telephone Co. *v.* Salem, (Oregon 1907) 89 Pac. 145.

Pennsylvania. — Piro *v.* Shipley, 211 Pa. St. 36, 60 Atl. 325; New Idea Pattern Co. *v.* Whitner, 215 Pa. St. 193, 64 Atl. 518; Myersdale, etc., St. R. Co. *v.* Pennsylvania, etc., St. R. Co., (Pa. 1908) 69 Atl. 92; Andel *v.* Duquesne St. R. Co., (Pa. 1908) 69 Atl. 278.

Washington. — Lanham *v.* Wenatchee Canal Co., (Wash. 1908) 93 Pac. 522.

Injunction Will Not Lie to prevent a municipality from removing an obstruction in a street in favor of a person who had no right to maintain the obstruction. Brewer *v.* Pine Bluff, 80 Ark. 489, 97 S. W. 1034.

Breach of Void Contract Not Enjoined. — Platte County Independent Telephone Co. *v.* Leigh Independent Telephone Co., (Neb. 1907) 113 N. W. 799.

Apprentice Not Enjoined from Performing Similar Services for Others than His Master. — Thomas *v.* Baird, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 412, 94 N. Y. Supp. 47.

Stockgrower Not Entitled to Enjoin Others from Pasturing Their Stock on Public Lands. Healy *v.* Smith, 14 Wyo. 263, 83 Pac. 583.

359. 1. Beacham *v.* Wrightsville, etc., R. Co., 125 Ga. 362, 54 S. E. 157; Turner *v.* Hampton, (Ky. 1906) 97 S. W. 761; Whitmore *v.* Brown, 102 Me. 47, 65 Atl. 516; Stewart *v.* Stewart, (Md. 1907) 66 Atl. 16; Sperry, etc., Co. *v.* Hertzberg, 60 N. J. Eq. 264, 60 Atl. 368; Brighton Athletic Club *v.* McAdoo, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 432, 94 N. Y. Supp.

391; Schmidt *v.* Brennan, 16 Ohio Dec. 623; Ross *v.* Cincinnati R. Co., 27 Ohio Cir. Ct. 135; Curtin *v.* Stout, 57 W. Va. 271, 50 S. E. 810.

Must Have Proceeded Sufficiently Far in Law Court to Have Disclosed Necessity for Chancery Relief. — Clark *v.* Peck, 79 Vt. 275, 65 Atl. 14.

Exception to Rule. — Where a right has been enjoyed by complainant without interruption for a long period of years, its violation will be enjoined without the right being first established at law. Williams *v.* Riley, (Neb. 1907) 113 N. W. 136.

2. Lucas *v.* Milliken, 139 Fed. 816; Dampskibsaktieselskabet Habil *v.* U. S. Fidelity, etc., Co., 142 Ala. 363, 39 So. 54; Hudson *v.* Jackson, 144 Ala. 410, 39 So. 227; Jetton-Dekle Lumber Co. *v.* Mather, 53 Fla. 969, 43 So. 590; Bernei *v.* Sappington, 102 Md. 185, 62 Atl. 365; Fox *v.* Lynch, (N. J. 1906) 64 Atl. 439.

360. 1. Bishop *v.* Owens, 5 Cal. App. 83, 89 Pac. 844; Piro *v.* Shipley, 211 Pa. St. 36, 60 Atl. 325.

2. Lucas *v.* Milliken, 139 Fed. 816, *quoting* 16 Am. and Eng. Encyc. of Law (2d ed.) 350.

4. *Alaska.* — Lindeberg *v.* Doverspike, 2 Alaska 177.

Arkansas. — Hope *v.* Shiver, 77 Ark. 177, 90 S. W. 1003; Davis *v.* Howell, 84 Ark. 29, 104 S. W. 550.

California. — Williams *v.* Los Angeles R. Co., 150 Cal. 592, 89 Pac. 330.

Delaware. — Bancroft *v.* Bancroft, (Del. Ch. 1905) 61 Atl. 689.

Illinois. — Cleveland *v.* Martin, 218 Ill. 73, 75 N. E. 772, *quoting* 16 Am. and Eng. Encyc. of Law (2d ed.) 360; Dunn *v.* Youmans, 224 Ill. 34, 79 N. E. 321, *citing* 16 Am. and Eng. Encyc. of Law (2d ed.) 360.

Indiana. — American Plate Glass Co. *v.* Nicoson, 34 Ind. App. 643, 73 N. E. 625.

Iowa. — Plagge *v.* Mensing, 126 Iowa 737, 103 N. W. 152.

Kentucky. — Hyden *v.* Terry, (Ky. 1908) 108 S. W. 241.

Michigan. — Lappan *v.* Glunz, 140 Mich. 609, 104 N. W. 26; Baker *v.* Grand Rapids, 142 Mich. 687, 106 N. W. 208.

New Jersey. — Cape May First M. E. Church *v.* Cape May Grain, etc., Co., (N. J. 1907) 67 Atl. 613.

New York. — Turl *v.* New York Contracting Co., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 164, 93 N. Y. Supp. 1103; Bentley *v.* Empire Portland Cement Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 457, 96 N. Y. Supp. 831; Wright *v.* Glen Telephone Co., 112 N. Y. App. Div. 745, 99 N. Y. Supp. 85; Butterick Pub. Co. *v.* Typographical Union, No. 6, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 1, 100 N. Y. Supp. 292; Close *v.* Witbeck, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 224, 102 N. Y. Supp. 904; Chamberlain *v.* Childs' Unique Dairy Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 371, 104 N. Y. Supp. 912; Gannett *v.* Independent Telephone Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 555, 106 N. Y. Supp. 3; Saal *v.* South Brooklyn R. Co., 122 N. Y. App. Div. 364, 106 N. Y. Supp. 996.

North Carolina. — Blue Mill Durham Tobacco Co. *v.* American Tobacco Co., (N. Car. 1907) 59 S. E. 123.

Pennsylvania. — Radnor Tp. *v.* Philadelphia, etc., R. Co., 214 Pa. St. 299, 63 Atl. 694; Austin *v.* Converse, (Pa. 1907) 67 Atl. 921.

Wyoming. — Healey *v.* Smith, 14 Wyo. 263, 83 Pac. 583.

A Public Officer, either *de jure* or *de facto,* in possession of an office, is entitled to an injunction to restrain one who disputes his right to it, or any one else, from interfering with him in the discharge of his official duties. Callaghan *v.* McGown, (Tex. Civ. App. 1905) 90 S. W. 219.

Taking Private Property Before Condemnation Enjoined. — Syracuse *v.* Weyrick, 37 Ind. App. 56, 76 N. E. 559; Hamby *v.* Dawson Springs, (Ky. 1907) 104 S. W. 259; Johnson *v.* Cloutarf, 98 Minn. 281, 108 N. W. 521; Menge *v.* Morris, etc., R. Co., (N. J. 1907) 67 Atl. 1028; Nelson *v.* New Jersey Short Line R. Co., (N. J. 1907) 67 Atl. 1032; Plowman *v.* Dallas County, (Tex. Civ. App. 1905) 88 S. W. 252.

Publication of Innocent Person's Photograph in Rogues' Gallery Ground for Injunction. — Itzkovitch *v.* Whitaker, 115 La. 479, 39 So. 499; Schulman *v.* Whitaker, 115 La. 628, 39 So. 737.

Injunction Will Lie to Restrain Use of Person's Name and Picture in Advertising a Patent Medicine. — Edison *v.* Edison Polyform Mfg. Co., (N. J. 1907) 67 Atl. 392.

A Grantor of Real Property, "for the sole use and behoof of a public park," is entitled to the intervention of a court of equity to enjoin a violation of the terms of the grant, irrespective of any question of damage. Bayard *v.* Bancroft, (Del. 1905) 62 Atl. 6. See also Thorpe *v.* Clanton, (Ariz. 1906) 85 Pac. 1061.

Continuing Trespass Enjoined Though Damages Merely Nominal. — Whittaker *v.* Stangvick, 100 Minn. 386, 111 N. W. 295.

Wife Not Entitled to Enjoin Husband from Cohabiting with Another During Pendency of Action for Separation. — Ellis *v.* Ellis, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 34, 106 N. Y. Supp. 217.

5. *United States.* — Delaware, etc., R. Co. *v.* Interstate Commerce Commission, 155 Fed. 512; Lucas *v.* Milliken, 139 Fed. 816, *quoting* 16 Am. and Eng. Encyc. of Law (2d ed.) 360; Napier *v.* Westerhoff, 138 Fed. 420; Montgomery Amusement Co. *v.* Montgomery Traction Co., 139 Fed. 353; Cincinnati, etc., R. Co. *v.* Morgan County, (C. C. A.) 143 Fed. 798; Weir *v.* Winnett, 155 Fed. 824.

Arkansas. — Haggart *v.* Chapman, etc., Land Co., 77 Ark. 527, 92 S. W. 792.

Connecticut. — Beckerle *v.* Danbury, (Conn. 1907) 67 Atl. 371.

Florida. — Hall *v.* Horne, 52 Fla. 510, 42 So. 383; Savage *v.* Parker, 53 Fla. 1002, 43 So. 507; H. W. Metcalf Co. *v.* Martin, (Fla. 1907) 45 So. 463.

Georgia. — Gray Lumber Co. *v.* Gaskin, 122 Ga. 342, 50 S. E. 164.

Illinois. — Cleveland *v.* Martin, 218 Ill. 73, 75 N. E. 772, *quoting* 16 Am. and Eng. Encyc. of Law (2d ed.) 360; Correll *v.* Smith, 221 Ill. 140, 77 N. E. 440; Carlson *v.* Koerner, 226 Ill. 15, 80 N. E. 562; Rabinovich *v.* Reith, 120 Ill. App. 409.

Indiana. — American Plate Glass Co. *v.* Nicoson, 34 Ind. App. 643, 73 N. E. 625; Spurgeon *v.* Rhodes, (Ind. 1906) 78 N. E. 228.

[illegible] Dixon v. Pence, (Ky. 1908) 106 S. W. 818.

Louisiana. — Marshall *v.* Marksville, 116 La. 746, 41 So. 57.

Maryland. — Bernei *v.* Sappington, 102 Md. 185, 62 Atl. 365; Syfer *v.* Spence, 103 Md. 66, 63 Atl. 256.

Michigan. — Osius *v.* Hinchman, (Mich. 1908) 114 N. W. 402.

New Jersey. — Becker *v.* Gilbert, (N. J. 1905) 60 Atl. 29; Atlantic City Gas, etc., Co. *v.* Consumers' Gas, etc., Co., 70 N. J. Eq. 536, 61 Atl. 750; Taylor Iron, etc., Co. *v.* Nichols, 70 N. J. Eq. 541, 61 Atl. 946.

New York. — Sponenburg *v.* Gloversville, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 290, 94 N. Y. Supp. 264; Cranshaw *v.* McAdoo, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 420, 94 N. Y. Supp. 386; Goldman *v.* Corn, 111 N. Y. App. Div. 674, 97 N. Y. Supp. 926; Dolan *v.* Conlon, 114 N. Y. App. Div. 570, 99 N. Y. Supp. 1090.

North Carolina. — Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; East Lake Lumber Co. *v.* East Coast Cedar Co., 142 N. Car. 412, 55 S. E. 304; Washington, etc., R. Co. *v.* Raleigh, etc., R. Co., (N. Car. 1907) 56 S. E. 480.

Ohio. — Salem Iron Co. *v.* Hyland, 74 Ohio St. 160, 77 N. E. 751.

Oregon. — Hume *v.* Burns, (Oregon 1907) 90 Pac. 1009; Wolfer *v.* Hurst, (Oregon 1907) 91 Pac. 366.

Pennsylvania. — Llewellyn *v.* Cauffiel, 215 Pa. St. 23, 64 Atl. 388; Myersdale, etc., St. R. Co. *v.* Pennsylvania, etc., St. R. Co., (Pa. 1908) 69 Atl. 92; Berkley *v.* Berwind-White Coal Min. Co., (Pa. 1908) 69 Atl. 329.

South Carolina. — Parler *v.* Fogle, (S. Car. 1907) 59 S. E. 707.

South Dakota. — Bailey *v.* Sioux Falls, 19 S. Dak. 231, 103 N. W. 16.

West Virginia. — Curtin *v.* Stout, 59 W. Va. 271, 50 S. E. 810.

Wisconsin. — Clancy *v.* Geb, 126 Wis. 286, 104 N. W. 746; Eau Claire Water Co. *v.* Eau Claire, 127 Wis. 154, 106 N. W. 679; Jacobs *v.* Lakeside Lumber Co., (Wis. 1908) 114 N. W. 443.

Wyoming. — Healy *v.* Smith, 14 Wyo. 263, 83 Pac. 583.

An Abutting Property Owner may enjoin a municipality from changing the grade of a street, without making compensation, irrespective of irreparable injury or defendant's insolvency. New Decatur *v.* Scharfenberg, 147 Ala. 367, 41 So. 1025.

In an Action to Restrain the Breach of Conditions in a Lease the fact that there is an adequate remedy at law or that no irreparable damage would ensue is immaterial. Jos. Schlitz Brewing Co. *v.* Nielsen, (Neb. 1906) 110 N. W. 746.

361. 1. *United States.* — Acker, etc., Co. *v.* McGaw, 144 Fed. 864; Trade Dollar Consol. Min. Co. *v.* Fraser, 148 Fed. 585; Pere Marquette R. Co. *v.* Bradford, 149 Fed. 492; Pennsylvania Co. *v.* Pay, 150 Fed. 770; Wallula Pac. R. Co. *v.* Portland, etc., R. Co., 154 Fed. 902; Louisville, etc., R. Co. *v.* Railroad Commission, 157 Fed. 944.

Alabama. — Cahaba, etc., Mercantile Cotton Oil Co., (Ala. 1907) 43 So. 706; Bessemer *v.* Bessemer Waterworks, (Ala. 1907) 44 So. 663.

Alaska. — Heine *v.* Roth, 2 Alaska 416.

California. — Farnum *v.* Clarke, 148 Cal. 610, 84 Pac. 166; Brookshire Oil Co. *v.* Casmalia Ranch Oil, etc., Co., 151 Cal. 577, 91 Pac. 383; Dunker *v.* Field, etc., Club, (Cal. App. 1907) 92 Pac. 502.

Florida. — Cowan *v.* Skinner, 52 Fla. 486, 42 So. 730, *citing* 16 Am. and Eng. Encyc. of Law (2d ed.) 361.

Georgia. — Massee-Felton Lumber Co. *v.* Sirmans, 122 Ga. 297, 50 S. E. 92; Roberts *v.* Heinsohn, 123 Ga. 685, 51 S. E. 589; Brown *v.* Atlantic, etc., R. Co., 126 Ga. 248, 55 S. E. 24; Downing *v.* Anderson, 126 Ga. 373, 55 S. E. 184; Lewis *v.* Hutchinson, 127 Ga. 789, 56 S. E. 998; Hamby *v.* Georgia Iron, etc., Co., 127 Ga. 792, 56 S. E. 1033; Baker *v.* Davis, 127 Ga. 649, 57 S. E. 62.

Idaho. — Weber *v.* Della Mountain Min. Co., 11 Idaho 264, 81 Pac. 931.

Illinois. — Adams *v.* Oberdorf, 121 Ill. App. 497; Stafford *v.* Swift, 121 Ill. App. 508; Laughlin *v.* Geer, 121 Ill. App. 534; People *v.* Rose, 219 Ill. 46, 76 N. E. 42.

Maryland. — Schley *v.* Lee, (Md. 1907) 67 Atl. 252.

Massachusetts. — Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730; Cohen *v.* Nagle, 190 Mass. 4, 76 N. E. 276.

Michigan. — Wilkinson *v.* Dunkley-Williams Co., 139 Mich. 621, 103 N. W. 170.

Minnesota. — Gordon *v.* Doran, 100 Minn. 343, 111 N. W. 272.

New Jersey. — McDowell *v.* Avon-by-the-Sea Land, etc., Co., (N. J. 1906) 63 Atl. 13; George Jonas Glass Co. *v.* Glass Bottle Blowers' Assoc., (N. J. 1907) 66 Atl. 953; Vulcan Detinning Co. *v.* American Can Co., (N. J. 1907) 67 Atl. 339.

New York. — Star F. Ins. Co. *v.* Ring, 118 N. Y. App. Div. 107, 103 N. Y. Supp. 137; Brown *v.* Cole, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 278, 104 N. Y. Supp. 109.

North Carolina. — Fayetteville St. R. Co. *v.* Aberdeen, etc., R. Co., 142 N. Car. 423, 55 S. E. 345.

Oregon. — Kane *v.* Littlefield, 48 Oregon 299, 86 Pac. 544; Roots *v.* Boring Junction Lumber Co., (Oregon 1907) 92 Pac. 811.

South Carolina. — Crawford *v.* Atlantic Coast Lumber Corp., (S. Car. 1907) 57 S. E. 670.

Texas. — Galveston, etc., R. Co. *v.* Miller, (Tex. Civ. App. 1906) 93 S. W. 177; Elliott *v.* Ferguson, (Tex. Civ. App. 1907) 103 S. W. 453.

Wisconsin. — My Laundry Co. *v.* Schmeling, 129 Wis. 597, 109 N. W. 540; Eau Claire Dells Imp. Co. *v.* Eau Claire, (Wis. 1908) 115 N. W. 155.

By Statute in Missouri the remedy of injunction exists where an irreparable injury to real or personal property is threatened, and to prevent the doing of any legal wrong whatever, whenever in the opinion of the court an adequate remedy cannot be afforded by an action for damages. Downing *v.* Corcoran, 112 Mo. App. 645, 87 S. W. 114.

Great Injury Sufficient. — Brugh *v.* Denman, (Ind. App. 1906) 78 N. E. 349.

Injunction Lies against an Infant to restrain him from soliciting business from the customers

of his former employer in violation of his agreement. Mutual Milk, etc., Co. *v.* Prigge, 112 N. Y. App. Div. 652, 98 N. Y. Supp. 458.

Where a Railroad Company has sold tickets at a reduced rate for a particular occasion, good for a return trip, but not transferable, and have so advised the public, the company may enjoin others from dealing in such tickets. Lytle *v.* Galveston, etc., R. Co., (Tex. 1907) 99 S. W. 396; Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 199.

Injunction Lies at the Suit of One Claiming Rights on the Land as a Settler to enjoin the county treasurer from selling school lands leased for a term of years, upon which the lease has expired, as leased land. Davies *v.* Benedict, 75 Kan. 47, 88 Pac. 536; Davies *v.* Bishop, 75 Kan. 855, 88 Pac. 536.

Enforcement of Unconstitutional Legislative Act Enjoined. — Consolidated Gas Co. *v.* New York, 15[illegible] Supp.

Railroad Enjoined from Charging Unreasonable Rates Pending Decision of Interstate Commerce Commission Thereon. — Kalispell Lumber Co. *v.* Great Northern R. Co., 157 Fed. 845.

Trespass Enjoined on Showing Irreparable Injury. — Brassington *v.* Waldron, 143 Mich. 364, 107 N. W. 100.

Police Officers Restrained from Interfering with Complainant's Business on Mere Suspicion that Such Business Is Unlawful. — McGorie *v.* McAdoo, 113 N. Y. App. Div. 271, 99 N. Y. Supp. 47; Burns *v.* McAdoo, 113 N. Y. App. Div. 165, 99 N. Y. Supp. 51; Hagan *v.* McAdoo, 113 N. Y. App. Div. 506, 99 N. Y. Supp. 255; Levy *v.* Bingham, 113 N. Y. App. Div. 424, 99 N. Y. Supp. 258; Olms *v.* Bingham, 116 N. Y. App. Div. 804, 101 N. Y. Supp. 1106. *Compare* Delaney *v.* Flood, 183 N. Y. 323, 76 N. E. 209; Stevens *v.* McAdoo, 112 N. Y. App. Div. 458, 98 N. Y. Supp. 553; Cleary *v.* McAdoo, 113 N. Y. App. Div. 178, 99 N. Y. Supp. 60.

Police Officers Not Enjoined. — Olympic Athletic Club *v.* Bingham, 125 N. Y. App. Div. 793, 110 N. Y. Supp. 216; Suesskind *v.* Bingham, 125 N. Y. App. Div. 787, 110 N. Y. Supp. 213; Moore *v.* Owen, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 332, 109 N. Y. Supp. 585; Eden Musee American Co. *v.* Bingham, 125 N. Y. App. Div. 780, 110 N. Y. Supp. 210.

2. Mountain Copper Co. *v.* U. S., (C. C. A.) 142 Fed. 625, *per* dissenting opinion of Hawley, J., *quoting* 16 AM. AND ENG. ENCYC. OF LAW (ed ed.) 361; Christian Church *v.* Sommer, (Ala. 1907) 43 So. 8; Parkovich *v.* Southern Pac. R. Co., 150 Cal. 39, 87 Pac. 1097, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361; Cowan *v.* Skinner, 52 Fla. 486, 42 So. 730, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361; Brown *v.* Atlantic, etc., R. Co., 126 Ga. 248, 55 S. E. 24, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361; Stoner *v.* Patten, 124 Ga. 754, 52 S. E. 894; Carlson *v.* Koerner, 226 Ill. 15, 80 N. E. 562, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361; Cleveland *v.* Martin, 218 Ill. 73, 75 N. E. 772; Devou *v.* Pence, (Ky. 1908) 106 S. W. 874; Cole *v.* Manners, (Neb. 1906) 107 N. W. 777; Eau Claire Water Co. *v.* Eau Claire, 127 Wis. 154, 106 N. W. 679.

3. Carlson *v.* Koerner, 226 Ill. 15, 80 N. E. 562, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361; Lanyon *v.* Garden City Sand Co., 223 Ill. 516, 79 N. E. 313; Mendenhall *v.* School Dist. No. 83, (Kan. 1907) 90 Pac. 773, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361; Rau *v.* Seiderberg, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 386, 104 N. Y. Supp. 798; Singer Mfg. Co. *v.* Summers, 143 N. Car. 102, 55 S. E. 522; Buchanan *v.* Wilburn, (Tex. Civ. App. 1907) 105 S. W. 841.

Insolvency Alone Insufficient. — Godwin *v.* Phifer, 51 Fla. 441, 41 So. 597.

Insolvency Alone Will Not Give Jurisdiction to restrain a trespass where the title to the land is in dispute. Hume *v.* Burns, (Oregon 1907) 90 Pac. 1009.

4. International Register Co. *v.* Recording Fare Register Co., (C. C. A.) 151 Fed. 199; Southern R. Co. *v.* Albes, (Ala. 1907) 45 So. 234; McMaster *v.* Waynesboro, 122 Ga. 231, 50 S. E. 122; Elberton *v.* Pearle Cotton Mills, 123 Ga. 1, 50 S. E. 977; Melvin *v.* Melvin, 129 Ga. 42, 58 S. E. 474; Spurgeon *v.* Rhodes, (Ind. 1906) 78 N. E. 228; Hull *v.* Harker, 130 Iowa 190, 106 N. W. 629; La Plant *v.* Marshalltown, 134 Iowa 261, 111 N. W. 816; Hurd *v.* Atchison, etc., R. Co., 73 Kan. 83, 84 Pac. 553; Troutman *v.* Hays, (Ky. 1907) 101 S. W. 976; Ponchatoula *v.* Police Jury, (La. 1908) 46 So. 16; Van Der Plaat *v.* Undertakers', etc., Assoc., 70 N. J. Eq. 116, 62 Atl. 453; Albuquerque First Nat. Bank *v.* Albright, (N. Mex. 1906) 86 Pac. 548; Griffith *v.* Dodgson, 103 N. Y. App. Div. 542, 93 N. Y. Supp. 155; Russell *v.* Stampers', etc., Union, No. 22, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 96, 107 N. Y. Supp. 303; Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 199; Healy *v.* Smith, 14 Wyo. 263, 83 Pac. 583.

Must Be at Least Threatened Injury. — McCaskill *v.* Bower, 126 Ga. 341, 54 S. E. 942.

Reasonable Probability Necessary. — Selma Water Co. *v.* Selma, 154 Fed. 138, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361, 362.

5. Richards *v.* Meissinger, 158 Fed. 109; Princess Amusement Co. *v.* Metzger, (Ind. 1907) 82 N. E. 761, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361; Forrester *v.* Island Heights Assoc., (N. J. 1906) 62 Atl. 775; Dempsie *v.* Darling, 39 Wash. 125, 81 Pac. 152.

362. 1. Trade Dollar Consol. Min. Co. *v.* Fraser, (C. C. A.) 148 Fed. 585; Selma Water Co. *v.* Selma, 154 Fed. 138; Hatton *v.* Gregg, 4 Cal. App. 542, 88 Pac. 594; Caskey *v.* Edwards, (Mo. 1908) 107 S. W. 37.

By Statute in Texas an injunction lies in a divorce suit in favor of a wife to prevent a husband from disposing of his property. Turner *v.* Turner, (Tex. Civ. App. 1907) 105 S. W.

2. Lindeberg *v.* Doverspike, 2 Alaska 177; McMaster *v.* Waynesboro, 122 Ga. 231, 50 S. E. 122; Shafer *v.* Fry, 164 Ind. 351, 73 N. E. 698; Kenneweg *v.* Allegany County, 102 Md. 119, 62 Atl. 249; Bernei *v.* Sappington, 102 Md. 185, 62 Atl. 365; O'Brien *v.* Murphy, 189 Mass. 353, 75 N. E. 700; McDaniel *v.* Hurt, 88 Miss. 769, 41 So. 381, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 362; Graden *v.* Parkville, 114 Mo. App. 527, 90 S. W. 115; Davis *v.* Hart-

wig, 195 Mo. 380, 94 S. W. 507; Logan *v.* Flattau, (N. J. 1907) 67 Atl. 1007; Litchfield *v.* Bond, 105 N. Y. App. Div. 229, 93 N. Y. Supp. 1016; Chamberlain *v.* Childs' Unique Dairy Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 371, 104 N. Y. Supp. 912; Huet *v.* Piedmont Springs Lumber Co., 138 N. Car. 443, 50 S. E. 846; [illegible] Oregon 1907, 1 [illegible] Pac. 10.

Rule Does Not Apply to Extent that Because Injury Is Begun Its Completion Will Not Be Enjoined. — Brown *v.* Atlantic, etc., R. Co., 126 Ga. 248, 55 S. E. 24.

3668. 1. Wells, etc., Co. *v.* Abraham, 146 Fed. 190, *affirmed* (C. C. A.) 149 Fed. 408; Dr. Miles Medical Co. *v.* Jaynes Drug Co., 149 Fed. 838; Spaulding *v.* Evenson, 149 Fed. 913, *affirmed* 150 Fed. 517; People *v.* Tool, 35 Colo. 225, 86 Pac. 224; Jetton-Dekle Lumber Co. *v.* Mather, 53 Fla. 969, 43 So. 590; Employing Printers' Club *v.* Dr. Blosser Co., 122 Ga. 509, 50 S. E. 353; Schwaubeck *v.* Backus, 148 Mich. 508, 111 N. W. 1046; Pratt Food Co. *v.* Bird, 148 Mich. 631, 112 N. W. 701; Western Union Tel. Co. *v.* Ulrich, 120 Mo. App. 177, 97 S. W. 191; Booth *v.* Burgess, (N. J. 1906) 65 Atl. 226; New York Cent. Iron Works Co. *v.* Brennan, (Supm. Ct. Spec. T.) 105 N. Y. Supp. 865; Purvis *v.* United Brotherhood, etc., (Pa. 1906) 63 Atl. 585; *Ex p.* Allison, 48 Tex. Crim. 634, 90 S. W. 492; Everett Waddey Co. *v.* Richmond Typographical Union, No. 90, 105 Va. 188, 53 S. E. 273; Johansen *v.* Mulligan, 41 Wash. 379, 83 Pac. 417.

Criminal Acts Amounting to Public Nuisance Enjoined Though Property Rights Not Violated. — State *v.* Canty, 207 Mo. 439, 105 S. W. 1078.

Maintaining House of Prostitution Enjoined. — Dempsie *v.* Darling, 39 Wash. 125, 81 Pac. [illegible].

By Statute in Texas injunction lies to restrain the keeping of a disorderly house. (Act 30th Leg., Laws 1907, p. 246, c. 132.) Clopton *v.* State, (Tex. Civ. App. 1907) 105 S. W. 994.

Where an Unlawful Act Is of Special and Particular Irreparable Injury to an Individual and he has no other adequate remedy he may have injunction to prevent it. Caskey *v.* Edwards, (Mo. 1908) 107 S. W. 37.

Injunction Lies in Favor of a Property Owner Restraining Erection of a Building in Violation of a City Ordinance. — O'Bryan *v.* Highland Apartment Co., (Ky. 1908) 108 S. W. 257.

An Injunction Will Not Lie to Enforce a Municipal Ordinance, but the legislature has the right to establish such a remedy. In the following cases it was held that an injunction would lie to restrain the violation of provisions of the building code in the city of New York: New York *v.* M. Wineburgh Advertising Co., 122 N. Y. App. Div. 748, 107 N. Y. Supp. 478; Kobbe Co. *v.* New York, 122 N. Y. App. Div 755, 107 N. Y. Supp. 489.

A City in Behalf of Itself and Inhabitants has the right to relief by injunction from excessive and unreasonable charges for the supply of gas by a gas company. Madison *v.* Madison Gas, etc., Co., 129 Wis. 249, 108 N. W. 65.

Illegal Acts. — City officers may be enjoined from acting [illegible] under an unconstitutional act to annex an adjoining city. Sample *v.* Pittsburg, 212 Pa. St. 533, 62 Atl. 201.

Unlawful Interference by Labor Unions Enjoined. — Loewe *v.* California State Federation, 139 Fed. 71; Goldfield Consol. Mines Co. *v.* Goldfield Miner's Union, 159 Fed. 500; Piano, etc., Workers' International Union *v.* Piano, etc., Supply Co., 124 Ill. App. 353; Seattle Brewing, etc., Co. *v.* Hansen, 144 Fed. 1011; Allis-Chalmers Co. *v.* Iron Molders' Union, 150 Fed. 155; Pope Motor Car Co. *v.* Keegan, 150 Fed. 148; National Telephone Co. *v.* Kent, 156 Fed. 173; Butterick Pub. Co. *v.* Typographical Union, No. 6, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 1, 100 N. Y. Supp. 292; Rocky Mountain Bell Telephone Co. *v.* Federation, 156 Fed. 809; Shine *v.* Fox Bros. Mfg. Co., (C. C. A.) 156 Fed. 357; Sailors' Union *v.* Hammond Lumber Co., (C. C. A.) 156 Fed. 450; Jensen *v.* Cooks', etc., Union, 39 Wash. 531, 81 Pac. 1069; Barnes *v.* Chicago Typographical Union, 232 Ill. 402, 83 N. E. 940; Wilson *v.* Hey, 232 Ill. 389, 83 N. E. 928; O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108; Goldberg, etc., Co. *v.* Stablemen's Union, 149 Cal. 429, 86 Pac. 806; Franklin Union *v.* People, 220 Ill. 355, 77 N. E. 176.

Under the facts in the following cases labor unions were not enjoined: Delaware, etc., R. Co. *v.* Switchmen's Union, 158 Fed. 541; Searle Mfg. Co. *v.* Terry, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 265, 106 N. Y. Supp. 438.

Injunction Lies to Restrain Violation of Elkins Act Prohibiting Rebating. — U. S. *v.* Milwaukee Refrigerator Transit Co., 145 Fed. 1007.

Unlawful Assessment of Taxes Enjoined. — Schley *v.* Lee, (Md. 1907) 67 Atl. 252.

Criminal Acts Not Enjoined — Property Rights Not Violated. — State *v.* Vaughan, 81 Ark. 117, 98 S. W. 685; Marshall *v.* Marksville, 116 La. 746, 41 So. 57; Van Der Plaat *v.* Undertakers', etc., Assoc., 70 N. J. Eq. 116, 62 Atl. 453; Russell *v.* Stampers, etc., Union, No. 22, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 96, 107 N. Y. Supp. 303; McDonald *v.* Lyon, (Tex. Civ. App. 1906) 95 S. W. 67; Bessemer *v.* Bessemer Waterworks, (Ala. 1907) 44 So. 663.

Officers Not Restrained from Doing Their Duty on the Ground that They Are Acting under an Invalid Municipal Ordinance. — Adams *v.* Chesapeake Oyster, etc., Co., (Colo. 1905) 82 Pac. 528.

Sheriff Not Enjoined from Enforcing Criminal Law. — Paulding *v.* Lane, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 37, 104 N. Y. Supp. 1051.

No Interference with Political Rights. — Shoemaker *v.* Des Moines, 129 Iowa 244, 105 N. W. 520; U. S. Standard Voting Mach. Co. *v.* Hobson, 132 Iowa 38, 109 N. W. 458; McDonald *v.* Lyon, (Tex. Civ. App. 1906) 95 S. W. 67.

Injunction Lies to Restrain Unconstitutional Election. — Conner *v.* Gray, 88 Miss. 489, 41 So. 186.

6. Hoy *v.* Altoona Midway Oil Co., 136 Fed. 483; Napier *v.* Westerhoff, 138 Fed. 420; Colorado Eastern R. Co. *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 898; Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Bigelow *v.* Calumet, etc., Min. Co., 155 Fed. 869; Merced Falls Gas, etc., Co. *v.* Turner, 2 Cal. App. 720, 84 Pac. 239; Williams *v.* Los Angeles R. Co., 150 Cal. 592, 89 Pac. 330; Cleveland *v.* Martin, 218 Ill. 73, 75 N. E. 772; State *v.* Newton County, 38 Ind. App. 52, 76

N. E. 308; Levi *v.* Worcester Consol. St. R. Co., 193 Mass. 116, 78 N. E. 853; Knoth *v.* Manhattan Ry. Co., 109 N. Y. App. Div. 802, 96 N. Y. Supp. 844; Bentley *v.* Empire Portland Cement Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 457, 96 N. Y. Supp. 831; Mt. Morris Bank *v.* New York, etc., R. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 417, 100 N. Y. Supp. 544; Rau *v.* Seidenberg, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 386, 104 N. Y. Supp. 798; Schefer *v.* Ball, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 451, 104 N. Y. Supp. 1028; Mann *v.* Parker, 48 Oregon 321, 86 Pac. 598; Woodard *v.* West Side Mill Co., 43 Wash. 308, 86 Pac. 570.

Injunction Refused Conditionally. — Menge *v.* Morris, etc., R. Co., (N. J. 1907) 67 Atl. 1028; Nelson *v.* New Jersey Short Line R. Co., (N. J. 1907) 67 Atl. 1032.

Mere Amount of Money Involved Insufficient. — McCleery *v.* Highland Boy Gold Min. Co., 140 Fed. 951.

Injunction Not Granted Where Plaintiff's Conduct Renders It Inequitable that It Should Be Granted. — Lester *v.* Sullivan, (Ky. 1908) 107 S. W. 300.

9. McCarthy *v.* Bunker Hill, etc., Min., etc., Co., 147 Fed. 981; Northwestern Traveling Men's Assoc. *v.* Raphael, 121 Ill. App. 540; La Société Anonyme des Théatres *v.* Lombard, 15 Quebec K. B. 267.

364. 2. Mt. Morris Bank *v.* New York, etc., R. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 417, 100 N. Y. Supp. 544; Nathan *v.* O'Brien, 117 N. Y. App. Div. 664, 102 N. Y. Supp. 947; Elliott *v.* Ferguson, (Tex. Civ. App. 1907) 103 S. W. 453, recognizing the general rule of balance of convenience and injury to public, but holding that it did not apply to the case at bar, as the injury to complainants would be irreparable.

5. Yellow Pine Export Co. *v.* Sutherland-Innes Co., 141 Ala. 664, 37 So. 922, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 364; Brown *v.* Donnelly, (Okla. 1907) 91 Pac. 859; Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257.

Possession of Property Not Divested on Preliminary Inquiry. — State Road Bridge Co. *v.* Gage, 143 Mich. 337, 106 N. W. 394.

365. 1. Cox *v.* Anderson, (Neb. 1907) 112 N. W. 317; Thompson *v.* Tucker, 15 Okla. 486, 83 Pac. 413.

3. Police Jury *v.* Mansura, 116 La. 1043, 41 So. 251, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365; Police Jury *v.* Marksville, 116 La. 1046, 41 So. 252.

5. Butler *v.* Topkis, (Del. 1906) 63 Atl. 646; Geddis *v.* Donovan, (Mich. 1908) 114 N. W. 871.

366. 1. *United States.* — Campbell *v.* Golden Cycle Min. Co., (C. C. A.) 141 Fed. 610.

Alabama. — Wilson *v.* Meyer, 144 Ala. 402, 39 So. 317, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 364 [366]; Brown *v.* Birmingham, 140 Ala. 590, 37 So. 173; Wilson *v.* Miller, 143 Ala. 264, 39 So. 178; Murray *v.* Barnes, 146 Ala. 688, 40 So. 348; White *v.* Hewlett, 143 Ala. 374, 42 So. 78; Ryder *v.* Johnston, (Ala. 1907) 45 So. 181.

Florida. — Peacock *v.* Feaster, 52 Fla. 565, 42 So. 889; Peacock *v.* Irvine, 52 Fla. 562, 42 So. 894.

Georgia. — Waters *v.* Waters, 124 Ga. 349, 52 S. E. 425; Hays *v.* Clay, 124 Ga. 908, 53 S. E. 399; Toole *v.* Lanier, 128 Ga. 279, 57 S. E. 516; Long *v.* McIntosh, 129 Ga. 660, 59 S. E. 779.

Illinois. — White *v.* Young Men's Christian Assoc., 233 Ill. 526, 84 N. E. 659.

Iowa. — La Plant *v.* Marshalltown, 134 Iowa 261, 111 N. W. 816.

Kentucky. — Smiser *v.* Cynthiana, (Ky. 1906) 97 S. W. 35; Turner *v.* Hampton, (Ky. 1906) 97 S. W. 761.

Michigan. — Lott *v.* Lott, 146 Mich. 580, 109 N. W. 1126; Gallon *v.* Mandell, (Mich. 1908) 114 N. W. 392.

Minnesota. — Schumacher *v.* Wright County, 97 Minn. 74, 105 N. W. 1125.

New Jersey. — Standard Roller Bearing Co. *v.* Crucible Steel Co., (N. J. 1906) 63 Atl. 546.

New York. — Griffith *v.* Dodgson, 103 N. Y. App. Div. 542, 93 N. Y. Supp. 155; Fraley, etc., Co. *v.* Delmont, 110 N. Y. App. Div. 468, 97 N. Y. Supp. 408; Bowman *v.* Poppenberg, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 373, 103 N. Y. Supp. 245; Reis *v.* Graham, 122 N. Y. App. Div. 312, 106 N. Y. Supp. 645.

Oregon. — Moss Mercantile Co. *v.* Payette First Nat. Bank, (Oregon 1905) 82 Pac. 8, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365 [366]; White *v.* Savage, 48 Oregon 604, 87 Pac. 1040.

Tennessee. — The Sailors *v.* Woelfle, 118 Tenn. 755, 102 S. W. 1109.

Texas. — Galveston *v.* Mistrot, (Tex. Civ. App. 1907) 104 S. W. 417.

West Virginia. — Grafton, etc., R. Co. *v.* Buckhannon, etc., R. Co., 56 W. Va. 458, 49 S. E. 532, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365 [366]; Connell *v.* Yost, (W. Va. 1907) 57 S. E. 299.

Where a Bill to Restrain an Action at Law is merely an attempt to traverse in equity the averment in the suit at law, and on such traverse to stop the further prosecution of the action at law, the relief will not be granted. Gray *v.* Chicago, etc., R. Co., (C. C. A.) 140 Fed. [illegible].

To Justify the Exercise of Injunction to Restrain Proceedings for the Collection of Taxes it must appear that the same is necessary to protect the rights of the property owner and that he has no adequate remedy at law. Crocker *v.* [illegible] (Cal. 1906) 87 Pac. [illegible].

2. Grafton., etc., R. Co. *v.* Buckhannon, etc., R. Co., 56 W. Va. 458, 49 S. E. 532, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365 [366]; Thompson *v.* Tucker, 15 Okla. 486, 83 Pac. 413.

5. Chicago, etc., R. Co. *v.* McKeigue, 126 Wis. 574, 105 N. W. 1030.

367. 5. Watkins *v.* Tallassee Falls Mfg. Co., (Ala. 1905) 38 So. 756; Butler *v.* Holmes, 128 Ga. 333, 57 S. E. 715; Butler *v.* Mitchell, 128 Ga. 431, 57 S. E. 764; Hladorcc *v.* Paul, 222 Ill. 254, 78 N. E. 619; Aimee Realty Co. *v.* Haller, (Mo. App. 1907) 106 S. W. 588; U. S. Fidelity, etc., Co. *v.* Jordan, 107 Va. 347, 58 S. E. 562.

Multiplicity of Suits Ground for Enjoining Ac-

tions at Law. — Whitlock *v.* Yazoo, etc., R. Co., (Miss. 1908) 45 So. 861.

Commencement of Actions to Recover Instalments Enjoined until Determination of Action for Instalments Already Due. — Fraley, etc., Co. *v.* Delmont, 110 N. Y. App. Div. 468, 97 N. Y. Supp. 408.

6. Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1.

11. King *v.* Hart, 116 Ill. App. 33.

368. 1. Clark *v.* Chase, 101 Me. 270, 64 Atl. 493; Ordway *v.* Farrow, 79 Vt. 192, 64 Atl. 1110.

Introduction, in Action at Law, of Evidence Obtained by Fraud and Duress Enjoined. — Matthews *v.* Carman, 122 N. Y. App. Div. 582, 107 N. Y. Supp. 694.

3. Cleveland *v.* Insurance Co. of North America, (Ala. 1907) 44 So. 37.

4. Fidelity Mut. L. Ins. Co. *v.* Blain, 144 Mich. 218, 107 N. W. 877.

6. Wilson *v.* Miller, 143 Ala. 264, 39 So. 178, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 178.

369. 8. Clark *v.* Chase, 101 Me. 270, 64 Atl. 493; Wall *v.* Harris, (Miss. 1907) 44 So. 36.

370. 6. Terrell *v.* Strong, (N. J. 1907) 66 Atl. 920.

10. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; Brown *v.* Birmingham, 140 Ala. 590, 37 So. 173, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370–372; Old Dominion Tel. Co. *v.* Powers, 140 Ala. 220, 37 So. 195, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370; Bessemer *v.* Bessemer Waterworks, (Ala. 1907) 44 So. 663; Sullivan *v.* San Francisco Gas, etc., Co., 148 Cal. 368, 83 Pac. 156; Georgia R., etc., Co. *v.* Okland City, 129 Ga. 576, 59 S. E. 296, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370–372; Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890; Smiser *v.* Cynthiana, (Ky. 1906) 97 S. W. 35, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 337 [370]; Pratt Food Co. *v.* Bird, 148 Mich. 631, 112 N. W. 701; State *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 570, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370; Schmidt *v.* Brennan, 16 Ohio Dec. 623; Cain *v.* Daly, 74 S. Car. 480, 55 S. E. 110; Flaherty *v.* Fleming, 58 W. Va. 669, 52 S. E. 857; Littleton *v.* Burgess, 14 Wyo. 173, 82 Pac. 864, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370.

Injunction Does Not Lie to Prevent Enforcement of Criminal Law. — Stevens *v.* McAdoo, 112 N. Y. App. Div. 458, 98 N. Y. Supp. 553.

371. 1. Brown *v.* Birmingham, 140 Ala. 590, 37 So. 173, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370–372; Old Dominion Tel. Co. *v.* Powers, 140 Ala. 220, 37 So. 195, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370 [371]; Montgomery *v.* West, 146 Ala. 680, 40 So. 215; Rider *v.* Leatherman, (Ark. 1908) 107 S. W. 996; Georgia R., etc., Co. *v.* Okland City, 129 Ga. 576, 59 S. E. 296, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370–372; Salter *v.* Columbus, 125 Ga. 96, 54 S. E. 74; White *v.* Tifton, 129 Ga. 582, 59 S. E. 299; Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890; Levy *v.* Kansas City, 74 Kan. 861, 86 Pac. 149; Pleasants *v.* Smith, (Miss. 1907) 43 So. 475; Galveston *v.* Mistrot, (Tex. Civ. App. 1907) 104 S. W. 417.

Public Officers Not Enjoined from Proceeding, to Abate a Nuisance, under Statutory Authority. — McQueen *v.* Phelan, 4 Cal. App. 695, 88 Pac. 1099.

5. Brown *v.* Birmingham, 140 Ala. 590, 37 So. 173, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370–372; Montgomery *v.* West, 146 Ala. 680, 40 So. 215; Bessemer *v.* Bessemer Waterworks, (Ala. 1907) 44 So. 663; Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 371; Princess Amusement Co. *v.* Metzger, (Ind. 1907) 82 N. E. 758; Turner *v.* Hampton, (Ky. 1906) 97 S. W. 761; Thompson *v.* Tucker, 15 Okla. 486, 83 Pac. 413.

In Illinois the Rule Is Well Settled that where a city is attempting to enforce an ordinance which is alleged to be invalid, against numerous persons whose interests are identical, such persons may file a bill, upon behalf of themselves and all others similarly situated, against the city for an injunction, and that a court of equity, in order to avoid a multiplicity of suits, and to the end that the controversy may be determined in one suit, will, if the ordinance be found to be invalid, enjoin the enforcement thereof. Spiegler *v.* Chicago, 216 Ill. 114, 74 N. E. 718.

372. 2. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; Cain *v.* Daly, 74 S. Car. 480, 55 S. E. 110; Flaherty *v.* Fleming, 58 W. Va. 669, 52 S. E. 857.

5. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; Cuba *v.* Mississippi Cotton Oil Co., (Ala. 1907) 43 So. 706; Bryan *v.* Birmingham, (Ala. 1908) 45 So. 922; Hasbrouck *v.* Bondurant, 127 Ga. 220, 56 S. E. 241; State *v.* Snelling, 71 Kan. 499, 80 Pac. 966; Turner *v.* Hampton, (Ky. 1906) 97 S. W. 761; New Orleans Baseball, etc., Co. *v.* New Orleans, 118 La. 228, 10 Ann. Cas. 757, 42 So. 784; State *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 570; Cain *v.* Daly, 74 S. Car. 480, 55 S. E. 110, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 372; Galveston *v.* Mistrot, (Tex. Civ. App. 1907) 104 S. W. 417; Flaherty *v.* Fleming, 58 W. Va. 669, 52 S. E. 857; Block *v.* Crockett, (W. Va. 1907) 56 S. E. 826; Fellows *v.* Charleston, (W. Va. 1907) 59 S. E. 623. See also Littleton *v.* Burgess, 14 Wyo. 173, 82 Pac. 864.

Prosecution under Void Statute Enjoined. — Cain *v.* Daly, 74 S. Car. 480, 55 S. E. 110.

Criminal Prosecution for Spite Enjoined. — State *v.* Snelling, 71 Kan. 499, 80 Pac. 966.

7. Jackson *v.* Stearns, 48 Oregon 25, 84 Pac. 798, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 372; Jackson Milling Co. *v.* Scott, 130 Wis. 267, 110 N. W. 184.

8. Jackson *v.* Stearns, 48 Oregon 25, 84 Pac. 798, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 372; Jackson Milling Co. *v.* Scott, 130 Wis. 267, 110 N. W. 184.

373. 3. **The Bill Will Lie to Enjoin an Action of Forcible Entry and Detainer** against a lessee, the lease not having expired, by a purchaser with notice of the lease. Butler *v.* Topkis, (Del. Ch. 1906) 63 Atl. 646.

374. 5. Peacock *v.* Feaster, 52 Fla. 565, 42 So. 880; McCormick *v.* McCormick, 104 Md.

325, 65 Atl. 54; Tyrrell *v.* Wood, (R. I. 1908) 68 Atl. 545; Ft. Pierre *v.* Hall, 19 S. Dak. 663, 104 N. W. 470; Wilson *v.* Cook, (Tex. Civ. App. 1906) 91 S. W. 236. See also Opie *v.* Clancy, 27 R. I. 42, 60 Atl. 635, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 374, as to the general rule governing applications for relief in chancery against judgments.

375. 1. Brown *v.* Pegram, 149 Fed. 515.

377. 1. White *v.* Hewlett, 143 Ala. 374, 42 So. 78, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 377; Gorman *v.* Bonner, 80 Ark. 339, 97 S. W. 282.

4. Church *v.* Gallic, 75 Ark. 507, 88 S. W. 307; Grossman *v.* Davis, 117 Ill. App. 354; Lasher *v.* Annunziata, 119 Ill. App. 653; Hoskins *v.* Nichols, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 465, 96 N. Y. Supp. 926.

378. 3. Knight *v.* Creswell, 82 Ark. 330, 101 S. W. 754.

8. Taylor *v.* Roniger, 147 Mich. 99, 110 N. W. 503.

379. 4. De Laval Separator Co. *v.* Sharpless, 134 Iowa 28, 111 N. W. 438.

9. Hearn *v.* Canning, 27 R. I. 217, 61 Atl. 602.

No Relief in Favor of One Also in Fault. — Wood *v.* Stewart, 81 Ark. 41, 98 S. W. 711.

The Enforcement of Judgment Obtained by Fraud Will Be Enjoined Only in cases of necessity and where there is no adequate remedy at law. Matthews *v.* Carman, 122 N. Y. App. Div. 582, 107 N. Y. Supp. 694.

Where a Federal Court Has Jurisdiction of the Case, it can grant relief against a judgment of a state court obtained by fraud in any case in which relief could be granted if the judgment were rendered by the United States court. Lehman *v.* Graham, (C. C. A.) 135 Fed. 39.

381. 5. Lasher *v.* Annunziata, 119 Ill. App. 653.

383. 7. Bacon *v.* Bacon, 150 Cal. 477, 89 Pac. 317, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 383.

11. Opie *v.* Clancy, 27 R. I. 42, 60 Atl. 635, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 383.

384. 1. Opie *v.* Clancy, 27 R. I. 42, 60 Atl. 635, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 384.

2. Opie *v.* Clancy, 27 R. I. 42, 60 Atl. 635, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 384.

386. 1. Lindberg *v.* Thomas, (Iowa 1908) 114 N. W. 562; Robinson *v.* Carlton, (Ky. 1906) 96 S. W. 549; Houston, etc., R. Co. *v.* Skeeter, (Tex. Civ. App. 1906) 98 S. W. 1064; Ketelsen *v.* Pratt, (Tex. Civ. App. 1907) 100 S. W. 1172.

387. 1. Broadway *v.* Sidway, 84 Ark. 527, 107 S. W. 163; Young *v.* Deneen, 220 Ill. 350, 77 N. E. 193; Reed *v.* New York Nat. Exch. Bank, 230 Ill. 50, 82 N. E. 341; Meyer *v.* Wilson, (Ind. 1906) 76 N. E. 748; Brandt *v.* Little, (Wash. 1907) 91 Pac. 765, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 386, 387.

388. 6. Smoot *v.* Judd, 184 Mo. 508, 83 S. W. 481, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 388.

389. 1. Gorman *v.* Bonner, 80 Ark. 339, 97 S. W. 282; Peacock *v.* Feaster, 52 Fla. 565, 42 So. 889; Jennings *v.* Munden, (Tex. Civ. App. 1907) 102 S. W. 945.

392. 3. Peacock *v.* Feaster, 52 Fla. 565, 42 So. 889; Palladino *v.* Hilpert, (N. J. 1907) 65 Atl. 721, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 392; White *v.* Smith, (N. J. 1907) 65 Atl. 1017, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 392; Opie *v.* Clancy, 27 R. I. 42, 60 Atl. 635, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 392; Hearn *v.* Canning, 27 R. I. 217, 61 Atl. 602.

393. 15. Ver Steeg Shoe Co. *v.* Morrow, 83 Ark. 191, 103 S. W. 166; Rowland *v.* Standiford, (Neb. 1907) 110 N. W. 1021.

395. 3. Pacific Debenture Co. *v.* Caldwell, 147 Cal. 106, 81 Pac. 314, in which case the judgment debtor sought to enjoin the enforcement of a judgment by default in an action based on a lottery transaction.

398. 3. Mairin *v.* Kentucky Heating Co., (Ky. 1900) 86 S. W. 676, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 398.

401. 6. See Buckley *v.* Kilker, (Pa. 1907) 67 Atl. 55.

Failure to Set Up Defense in Original Action No Ground for Restraining Execution. — Johnson *v.* Oldham, 146 Ala. 680, 40 So. 213.

Equity Will Not Interfere in the Absence of Some Ground of Equitable Jurisdiction and such an injunction will not be issued in aid of a bill filed to quiet title. West Jersey, etc., R. Co. *v.* Smith, 69 N. J. Eq. 429, 60 Atl. 757.

7. Arkadelphia Lumber Co. *v.* Asman, 79 Ark. 284, 95 S. W. 134; Roney *v.* McCall, 128 Ga. 249, 57 S. E. 503; Mathews *v.* Gelders, 129 Ga. 103, 58 S. E. 649; Kronson *v.* Lipschitz, 68 N. J. Eq. 367, 60 Atl. 819; Hearn *v.* Canning, 27 R. I. 217, 61 Atl. 602; Pleshek *v.* McDonell, 130 Wis. 445, 110 N. W. 269.

Where Judgment by Default Was Fraudulent in Effect, though not in design, execution will be restrained. Gulf, etc., R. Co. *v.* Flowers, 85 Miss. 633, 38 So. 37.

402. 2. Johnson *v.* Gillenwater, 75 Ark. 114, 87 S. W. 439; Baxley *v.* Laster, 82 Ark. 236, 101 S. W. 755; Florida Packing, etc., Co. *v.* Carney, 49 Fla. 293, 38 So. 602; Sturges *v.* Jackson, 88 Miss. 508, 40 So. 547.

403. 5. Kester *v.* Schuldt, 11 Idaho 663, 85 Pac. 974.

9. Cameron *v.* Griesa, 74 Kan. 560, 87 Pac. 670, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 403.

Execution Void on Face — No Injunction. — Thompson *v.* Gooldsby, (Tex. Civ. App. 1907) 106 S. W. 936.

405. 1. Cameron *v.* Griesa, 74 Kan. 560, 87 Pac. 670, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405.

5. Taylor *v.* Ward, (Tex. Civ. App. 1907) 102 S. W. 465.

407. 1. **Injunction Restraining Execution Lies to Prevent Inextricable Embarrassment and Confusion.** — Beardslee *v.* Ingraham, 106 N. Y. App. Div. 506, 94 N. Y. Supp. 937.

408. 4. Austin *v.* Union Paving, etc., Co., 4 Cal. App. 610, 88 Pac. 731; Jackson Milling Co. *v.* Scott, 130 Wis. 267, 110 N. W. 181.

By Statute in Missouri injunction will issue to prevent a cloud on title. Payne *v.* Daviess

County Sav. Assoc., 126 Mo. App. 593, 105 S. W. 15.

6. Fonsor *v.* Madison County, 204 Mo. 84, 102 S. W. 494.

Where Real Property Is to Be Sold under an Execution and the judgment creditor avails himself of that occasion to start a question of title to cheapen the land he will be restrained from making the sale until the question of title is determined. Brady *v.* Carteret Realty Co., 67 N. J. Eq. 64, 60 Atl. 938.

110. 7. Neeley *v.* Independence Bank, 114 Mo. App. 467, 89 S. W. 907; Texas Brewing Co. *v.* Bisso, (Tex. Civ. App. 1908) 109 S. W. 270.

Where Notice Only Calls for Sale of Husband's Interest Wife Cannot Enjoin. — Burris *v.* Craig, (Colo. 1905) 82 Pac. 944.

Execution Not Enjoined under the facts in the following cases: Beasley *v.* Jenkins, 117 La. 577, 42 So. 145; Beasley *v.* Robson, 117 La. 584, 42 So. 147.

111. 7. The Federal Court May Restrain Proceedings in a State Court where necessary to render its former decree effective. St. Louis Min., etc., Co. *v.* Montana Min. Co., 148 Fed. 450.

113. 12. Railroad Commission *v.* Texas, etc., R. Co., (C. C. A.) 144 Fed. 68; Rickey Land, etc., Co. *v.* Miller, (C. C. A.) 152 Fed. 11; Southern R. Co. *v.* Simon, 153 Fed. 234; Griffith *v.* Vicksburg Water Works Co., 88 Miss. 371, 40 So. 1011.

114. 5. Mutual L. Ins. Co. *v.* Langley, 145 Fed. 415; Atlantic Coast Line R. Co. *v.* Bailey, 151 Fed. 891; Chicago, etc., R. Co. *v.* Stepp, 151 Fed. 908.

120. 3. Beardslee *v.* Ingraham, 183 N. Y. 411, 76 N. E. 476; Lyons *v.* Importers', etc., Nat. Bank, 214 Pa. St. 428, 63 Atl. 827; Henderson *v.* Henrie, 61 W. Va. 183, 56 S. E. 360.

7. United Cigarette Mach. Co. *v.* Wright, 156 Fed. 244.

121. 2. United Cigarette Mach. Co. *v.* Wright, 156 Fed. 244.

7. Royal League *v.* Kavanagh, 233 Ill. 175, 84 N. E. 178; Wierse *v.* Thomas, 145 N. Car. 261, 59 S. E. 58; Rader *v.* Stubblefield, 43 Wash. 334, 86 Pac. 560.

8. Rader *v.* Stubblefield, 43 Wash. 334, 86 Pac. 560, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421.

122. 3. Lightfoot *v.* Murphy, (Tex. Civ. App. 1907) 104 S. W. 511, recognizing the rule but holding that it did not apply to the case at bar.

123. 4. **Suspension Pending Appeal.** — By statute in *New Jersey* an appeal from an order or decree granting an injunction does not modify or suspend the operation of the injunction without an order of the chancellor, and a suspension or modification by the court extends only so far as may be necessary to preserve the subject of the appeal, and shall not in any case destroy the right established or protected by the order or decree appealed from. Hoboken, etc., R. Co. *v.* Jersey City, etc., R. Co., 70 N. J. Eq. 122, 62 Atl. 539.

7. Phœnix Ins. Co. *v.* Carey, (Conn. 1908) 68 Atl. 993; Lowe *v.* Prospect Hill Cemetery Assoc., 75 Neb. 85, 106 N. W. 429, 108 N. W. 978; Devlin *v.* McAdoo, 116 N. Y. App. Div. 224, 101 N. Y. Supp. 546; Gardner *v.* Roycrofters, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 637; Enright *v.* Boyd, 122 N. Y. App. Div. 885, 106 N. Y. Supp. 493; Hart *v.* Seattle, 42 Wash. 113, 84 Pac. 640; A. H. Strange Co. *v.* Merrill, (Wis. 1908) 115 N. W. 115.

Second Injunction Not Granted While First in Force. — Police Jury *v.* Mansura, 116 La. 1043, 41 So. 251; Police Jury *v.* Marksville, 115 La. 1046, 41 So. 252.

9. Smith *v.* Ernest, (Tex. Civ. App. 1907) 102 S. W. 129.

No Appeal from Order Modifying Preliminary Injunction. — Simmons *v.* Alcona County, 144 Mich. 591, 108 N. W. 282.

10. Judge in Vacation May Dissolve Injunction. — Logan *v.* Ballard, 61 W. Va. 526, 57 S. E. 143.

124. 1. Hobbs *v.* Chamberlain, (Fla. 1908) 45 So. 989; Freeman *v.* Ammons, (Miss. 1908) 46 So. 61; Brown *v.* Donnelly, (Okla. 1907) 91 Pac. 859.

3. Mobile, etc., R. Co. *v.* Fowl River Lumber Co., (Ala. 1907) 44 So. 471; Knight *v.* Cohen, 5 Cal. App. 296, 90 Pac. 145; Godwin *v.* Phifer, 51 Fla. 441, 41 So. 597; Shaw *v.* Palmer, (Fla. 1907) 44 So. 953; H. W. Gossard Co. *v.* Crosby, 132 Iowa 155, 109 N. W. 483; La Plant *v.* Marshalltown, 134 Iowa 261, 111 N. W. 816; Xavier Realty *v.* Louisiana R., etc., Co., 115 La. 343, 39 So. 6; Jennings-Heywood Oil Syndicate *v.* Heywood Oil Co., 117 La. 536, 42 So. 126; Union Sawmill Co. *v.* Summit Lumber Co., 119 La. 303, 44 So. 28; Meyer *v.* Petersburg, 96 Minn. 314, 104 N. W. 899; Brown *v.* Donnelly, (Okla. 1907) 91 Pac. 859; Wilder *v.* D. W. Alderman, etc., Co., 74 S. Car. 178, 53 S. E. 950.

Order Dissolving Temporary Injunction Not Reviewable on Appeal until After Final Judgment in the Action. — Young *v.* Albion, (Neb. 1906) 110 N. W. 706.

125. 1. Goodson *v.* Stewart, (Ala. 1907) 42 So. 1019; Godwin *v.* Phifer, 51 Fla. 441, 41 So. 597; Williamson *v.* Moore, 10 Idaho 749, 80 Pac. 227.

Where Damages Would Be Irreparable — Error to Dissolve on Defendant Giving a Bond. — Wetherington *v.* Baxter, (Ga. 1907) 58 S. E. 467; Hart *v.* Lewis, 126 Ga. 439, 55 S. E. 180.

2. McKenzie *v.* McCrary, 88 Miss. 86, 40 So. 483.

5. Kelley *v.* Diamond Drill, etc., Co., 142 Fed. 868, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 425.

An Ancillary Injunction Falls with the Main Suit. — Day *v.* Bailey, 117 La. 154, 41 So. 448.

126. 7. Godwin *v.* Phifer, 51 Fla. 441, 41 So. 597; Hall *v.* Horne, 52 Fla. 510, 42 So. 383; Lafayette *v.* Hood, (Indian Ter. 1907) 104 S. W. 853; McGorie *v.* McAdoo, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 601, 99 N. Y. Supp. 1107; Josey *v.* Perlstein, (Tex. Civ. App. 1908) 107 S. W. 558.

127. 3. Olms *v.* Bingham, 116 N. Y. App. Div. 804, 101 N. Y. Supp. 1106.

Under the California Statute a preliminary injunction becomes inoperative after twelve

months from the time it was granted unless the parties consent to its continuance or the action is set for trial on its merits. German Sav., etc., Soc. *v.* Aldrich, 5 Cal. App. 215, 89 Pac. 1063.

429. 2. Adams *v.* Obendorf, 121 Ill. App. 497.

430. 5. **Injunction Should Not Be Dissolved unless Additional Security Refused.** — Wingert *v.* Snouffer, 134 Iowa 197, 108 N. W. 1035.

431. 7. Buchanan *v.* Barnsley, (Tex. Civ. App. 1907) 105 S. W. 843.

8. Cranor *v.* Volusia County, (Fla. 1907) 45 So. 455; Brown *v.* Cole, (Supm. Ct. Tr. T.) 105 N. Y. Supp. 196.

432. 1. Gray *v.* South, etc., R. Co., (Ala. 1906) 43 So. 859; Staley *v.* Big Sandy, etc., R. Co., (W. Va. 1907) 59 S. E. 946.

5. Stevens *v.* Taylor, 111 N. Y. App. Div. 561, 97 N. Y. Supp. 925.

433. 3. Ford *v.* Taylor, 140 Fed. 356; Robinson *v.* New York, etc., R. Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 516, 105 N. Y. Supp. 897.

4. Pekin Telephone Co. *v.* Farmers' Telephone Co., 120 Ill. App. 292.

435. 2. Staley *v.* Big Sandy, etc., R. Co., (W. Va. 1907) 59 S. E. 946.

4. **Under a Statute** providing that, under certain circumstances, a judge of the Court of Appeals may reinstate a preliminary injunction, it has been held that such statute did not authorize the reinstatement of a restraining order. Kelley *v.* Pulaski Stove Co., (Ky. 1907) 105 S. W. 153.

436. 1. People *v.* Tool, 35 Colo. 225, 86 Pac. 224; Enterprise Foundry Co. *v.* Iron Moulders' Union, 149 Mich. 31, 112 N. W. 685; *Ex p.* Breeding, (Tex. Crim. 1905) 90 S. W. 634; *Ex p.* Cash, (Tex. Crim. 1907) 99 S. W. 1118; Healy *v.* Smith, 14 Wyo. 263, 83 Pac. 583.

3. Warner *v.* Martin, 124 Ga. 387, 52 S. E. 446, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436.

4. Frank *v.* Bernard, 146 Fed. 137.

5. Barnes *v.* Chicago Typographical Union, 232 Ill. 402, 83 N. E. 932, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436; Wilkinson *v.* Dunkley-Williams, 141 Mich. 408, 104 N. W. 772, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436; Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 316; Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257.

7. Christensen Engineering Co. *v.* Westinghouse Air Brake Co., (C. C. A.) 135 Fed. 774; Blake *v.* Nesbet, 144 Fed. 279; Seattle Brewing, etc., Co. *v.* Hansen, 144 Fed. 1011; Hutchins *v.* Munn, 28 App. Cas. (D. C.) 271; Anderson *v.* Hall, 128 Ga. 525, 58 S. E. 43; O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108.

Person Amenable Though Not a Party to Suit. — Employers Teaming Co. *v.* Teamsters' Joint Council, 141 Fed. 679.

9. Acts Held to Constitute Violation of Injunction Forbidding Unlawful Interference with Employees. — See the following cases: Ideal Mfg. Co. *v.* Ludwig, 149 Mich. 133, 112 N. W. 723; Vilter Mfg. Co. *v.* Humphrey, (Wis. 1907) 112 N. W. 1095.

437. 1. Huttig Sash, etc., Co. *v.* Fuelle, 143 Fed. 363, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437.

Acts May Constitute Violation of Injunction by Strikers Though No Actual Violence Used. — Atchison, etc., R. Co. *v.* Gee, 139 Fed. 582.

3. Gardner *v.* Roycrofters, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 637.

8. Not Liable for Acts of Servant Without Employer's Knowledge or Consent. — Siegert *v.* Eiseman, 157 Fed. 314.

Agent as Well as Principal Punishable. — Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 316; Patterson *v.* Building Trades Council, 31 Pa. Co. Ct. 401, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436, 437; Patterson *v.* Building Trades Council, 14 Pa. Dist. 845, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436, 437.

438. 1. Public Service Corp. *v.* De Grote, 70 N. J. Eq. 454, 62 Atl. 65.

Stranger May Become Liable by knowingly assisting the party enjoined to disobey the injunction. Huttig Sash, etc., Co. *v.* Fuelle, 143 Fed. 363.

Grantees. — Where grantees of some of the parties to the original action for an injunction asserted the benefits of the injunction as against the other parties, such grantees were held liable for violating the injunction. State *v.* District Ct., 34 Mont. 258, 86 Pac. 798.

An Injunction Not Only Restrains the Parties to the Action in Which It Was Granted, but also, when so drawn, those who act under or in connection with a party, as attorneys, agents, or employees. People *v.* Marr, 181 N. Y. 463, 74 N. E. 431.

3. Where a Statute Passed Subsequent to the Issuance of the Injunction authorizes the defendants to do the acts restrained they are guilty of no contempt in disobeying the injunction. Newton Rubber Works *v.* De Las Casas, (Mass. 1908) 84 N. E. 119.

10. Blake *v.* Nesbet, 144 Fed. 279; O'Brien *v.* People, 216 Ill. 354, 75 N. E. [illegible] lin Union *v.* People, 220 Ill. 355, 77 N. E. 176; Christian Hospital *v.* People, 223 Ill. 244, 79 N. E. 72; Flannery *v.* People, 225 Ill. 62, 80 N. E. 60; Barnes *v.* Chicago Typographical Union, 232 Ill. 402, 83 N. E. 932; Ohlrogg *v.* District Ct., 126 Iowa 247, 99 N. W. 178, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 438; Hatlestad *v.* Hardin County District Ct., (Iowa 1908) 114 N. W. 628; Smith *v.* Miller, (Ky. 1906) 91 S. W. 1140; State *v.* District Ct., 98 Minn. 136, 107 N. W. 963; Miles *v.* State, 74 Neb. 684, 105 N. W. 201; Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 316; *Ex p.* Breeding, (Tex. Crim. 1905) 90 S. W. 634; Vilter Mfg. Co. *v.* Humphrey, (Wis. 1907) 112 N. W. 1095.

Clerical Error in Writ No Excuse. — *Ex p.* Testard, (Tex. 1908) 106 S. W. 319; *Ex p.* Howard, (Tex. 1908) 106 S. W. 321.

439. 2. Old Dominion Tel. Co. *v.* Powers, 140 Ala. 220, 37 So. 195, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 439.

440. 5. Milling *v.* Sulphur Timber Co., 119 La. 585, 44 So. 307; Miller *v.* Donovan, 13 Idaho 735, 92 Pac. 991; Wiles *v.* Northern Star Min. Co., 13 Idaho 326, 89 Pac. 1053;

Sheets *v.* Hays, 36 Ind. App. 106, 75 N. E. 20; Meier *v.* Fidelity Nat. Bank, 43 Wash. 324, 86 Pac. 574; State *v.* Chrislip, 58 W. Va. 414, 52 S. E. 476; Littleton *v.* Burgess, (Wyo. 1907) 91 Pac. 832.

111. 3. Liberally Construed. — Sheets *v.* Hays, 36 Ind. App. 106, 75 N. E. 20.

116. 6. Babcock *v.* Reeves, (Ala. 1907) 43 So. 21.

151. 5. White Pine Lumber Co. *v.* Ætna Indemnity Co., 42 Wash. 569, 85 Pac. 52.

157. 2. St. Joseph, etc., Power Co. *v.* Graham, 165 Ind. 16, 74 N. E. 498, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 456, 457; in this case, however, as the dismissal was pursuant to a stipulation of the parties, it was held that the plaintiff was not liable on the bond.

159. 8. Cuniotti Unhairing Co. *v.* American Fur Refining Co., 158 Fed. 171. See also Mica Insulator Co. *v.* Commercial Mica Co., [illegible] 92.

160. 2. Fry *v.* Radzinski, 219 Ill. 526, 76 N. E. 694; Sutliff *v.* Montgomery, 115 Mo. App. 592, 92 S. W. 515; McLennon *v.* Fenner, 19 S. Dak. 492, 104 N. W. 218; Cameron *v.* Jones, (Tex. Civ. App. 1905) 90 S. W. 1129.

3. O'Brien *v.* Levine, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 303, 98 N. Y. Supp. 636; Kelley *v.* Mead, 18 S. Dak. 594, 101 N. W. 882.

The Reference Should Not Be Ordered until after the final outcome of the action, and a reference ordered upon the vacation of the temporary injunction is premature. Slingerland *v.* Albany Typographical Union No. 4, 115 N. Y. App. Div. 15, 100 N. Y. Supp. 569; Brown *v.* Utopia Land Co., 118 N. Y. App. Div. 190, 103 N. Y. Supp. 53.

Damages Should Be Assessed Only After Decision on Merits.— Lewis *v.* Eagle, (Wis. 1908) 115 N. W. 361.

161. 6. The Court May Require Applicants for Injunctions to give bonds so conditioned that recovery may be had before assessment by the court. Buggeln *v.* Cameron, (Ariz. 1907) 90 Pac. 324.

Defendant May Waive Assessment and Sue on Bond. — McLennon *v.* Fenner, 19 S. Dak. 492, 104 N. W. 218.

163. 3. Shepherd *v.* Gambill, (Ky. 1906) 96 S. W. 1104.

Restraining Execution. — In an action on an injunction bond given in a suit to restrain the enforcement of an injunction it was held that the extent to which the amount collectible on the judgment had been reduced in consequence of the injunction was the proper element of damage. Stull *v.* Beddeo, (Neb. 1907) 112 N. W. 315, *modifying* (Neb. 1907) 110 N. W. 861.

164. 5. Where in an action to recover damages sustained in obeying an injunction it appeared that the injunction was granted conditionally on the complainant's giving a bond, and the [illegible] bond was given, it was held that the action would not lie. Batson *v.* Paris Mountain Water Co., 73 S. Car. 368, 53 S. E. 500.

466. 2. Hutchins *v.* Munn, 28 App. Cas. (D. C.) 271, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 466; McLennon *v.* Fenner, 19 S. Dak. 492, 104 N. W. 218; Clippens Oil Co. *v.* Edinburgh, etc., Water Trustees, (1907) A. C. 291.

3. In an Action on a Bond Given in a Suit Enjoining the Cutting of Timber, the measure of damages was the value of the timber. Fidelity, etc., Co. *v.* Tinsley, (Ky. 1907) 100 S. W. 272.

5. Public Service Corp. *v.* De Grote, 70 N. J. Eq. 454, 62 Atl. 65.

467. 1. Costs of Interlocutory Injunction. — See Jodoin *v.* Beloeil, 7 Quebec Pr. 222.

3. *In re* Hines, 144 Fed. 147; Lindeberg *v.* Howard, 146 Fed. 467, 8 Ann. Cas. 709; Sullivan *v.* Cartier, (C. C. A.) 147 Fed. 222.

5. Iberia Cypress Co. *v.* Thorgeson, 116 La. 218, 40 So. 682.

6. Marks *v.* Columbia Yacht Club, 219 Ill. 417, 76 N. E. 582; Weierhauser *v.* Cole, 132 Iowa 14, 109 N. W. 301; Fidelity, etc., Co. *v.* Tinsley, (Ky. 1907) 100 S. W. 272; Milling *v.* Sulphur Timber, etc., Co., 119 La. 585, 44 So. 307; Curphy *v.* Terrell, 89 Miss. 624, 42 So. 235; Reeves *v.* Sullivan, 117 N. Y. App. Div. 814, 102 N. Y. Supp. 1003; McLennon *v.* Fenner, 19 S. Dak. 492, 104 N. W. 218; Littleton *v.* Burgess, (Wyo. 1907) 91 Pac. 832.

468. 1. Weierhauser *v.* Cole, 132 Iowa 14, 109 N. W. 301.

Voluntary Dismissal by Plaintiff — No Attorney's Fees Where Attempt to Dissolve Unsuccessful. — Thompson *v.* Benson, 41 Wash. 70, 82 Pac. 1040.

3. Fry *v.* Radzinski, 219 Ill. 526, 76 N. E. 694; Miller *v.* Donovan, 13 Idaho 735, 92 Pac. 991; Curphy *v.* Terrell, 89 Miss. 624, 42 So. 235.

469. 1. Miller *v.* Donovan, 13 Idaho 735, 92 Pac. 991, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 468–470; Collins *v.* Huffman, (Wash. 1908) 93 Pac. 220.

Where the Injunction Is the Relief Sought in the action, and in fact gives the relief, if sustained, an attorney's cannot be recovered. Shepherd *v.* Gambill, (Ky. 1906) 96 S. W. 1104.

6. Littleton *v.* Burgess, (Wyo. 1907) 91 Pac. 835, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 469.

470. 2. Weierhauser *v.* Cole, 132 Iowa 14, 109 N. W. 301.

INJURIES TO ANIMALS BY RAILROADS.

472. 2. Perdue *v.* St. Louis Southwestern R. Co., 82 Ark. 172, 100 S. W. 901; Atchison, etc., R. Co. *v.* Adcock, 38 Colo. 369, 88 Pac. 180; Ramsbottom *v.* Atlantic Coast Line R. Co., 138 N. Car. 38, 50 S. E. 448.

473. 2. *Alabama.* — Louisville, etc., R. Co. *v.* Christian Moerlein Brewing Co., (Ala. 1907) 43 So. 723; Central of Georgia R. Co. *v.* Turner, 145 Ala. 441, 40 So. 355; Western R. Co. *v.* McPherson, 146 Ala. 427, 40 So. 934.

Arkansas. — St. Louis, etc., R. Co. *v.* Scott, 84 Ark. 623, 104 S. W. 1103; St. Louis, etc., R. Co. *v.* Minor, (Ark. 1908) 107 S. W. 171; St. Louis, etc., R. Co. *v.* Thompson, 83 Ark. 631, 104 S. W. 223; Kansas City Southern R. Co. *v.* Buckner, 80 Ark. 415, 97 S. W. 439; St. Louis, etc., R. Co. *v.* Courtney, 77 Ark.

431, 92 S. W. 251; Kansas City Southern R. Co. *v.* Edwards, 80 Ark. 273, 96 S. W. 1061; Kansas City Southern R. Co. *v.* Cash, 80 Ark. 284, 96 S. W. 1062; Kansas City Southern R. Co. *v.* Wayt, 80 Ark. 382, 97 S. W. 656; St. Louis Southwestern R. Co. *v.* Hutchison, 79 Ark. 247, 96 S. W. 374; St. Louis, etc., R. Co. *v.* Thompson, 76 Ark. 37, 88 S. W. 593.

Georgia. — Atlanta, etc., R. Co. *v.* Hudson, 123 Ga. 108, 51 S. E. 29; Atlantic, etc., R. Co. *v.* Smith, 2 Ga. App. 294, 58 S. E. 542; Southern R. Co. *v.* Sheffield, 127 Ga. 569, 56 S. E. 838; Berry *v.* Southern R. Co., 126 Ga. 426, 55 S. E. 239; Georgia R., etc., Co. *v.* Andrews, 125 Ga. 85, 54 S. E. 76; Atlantic Coast Line R. Co. *v.* Strickland, 125 Ga. 352, 54 S. E. 168; Atlantic, etc., R. Co. *v.* Smith, 123 Ga. 423, 51 S. E. 344; Atlantic Coast Line R. Co. *v.* Waycross Electric Light, etc., Co., 123 Ga. 613, 51 S. E. 621; South Georgia R. Co. *v.* Ryals, 123 Ga. 330, 51 S. E. 428. See also Macon, etc., R. Co. *v.* Stewart, 125 Ga. 88, 54 S. E. 197.

Iowa. — Mikesell *v.* Wabash R. Co., 134 Iowa 736, 112 N. W. 201.

Kentucky. — Mobile, etc., R. Co. *v.* Morrow, 97 S. W. 389, 30 Ky. L. Rep. 83; Illinois Cent. R. Co. *v.* Stanley, 96 S. W. 846, 29 Ky. L. Rep. 1054; Louisville, etc., R. Co. *v.* Rhoads, (Ky. 1906) 90 S. W. 219; Troutwine *v.* Louisville, etc., R. Co., (Ky. 1907) 105 S. W. 142.

Maryland. — Norfolk, etc., R. Co. *v.* Smith, 104 Md. 72, 64 Atl. 317.

Mississippi. — Southern R. Co. *v.* Murray, (Miss. 1907) 44 So. 785; Young *v.* Illinois Cent. R. Co., 88 Miss. 446, 40 So. 870; Johnson *v.* Illinois Cent. R. Co., (Miss. 1906) 39 So. 780.

Missouri. — Midgett *v.* St. Louis, etc., R. Co., 124 Mo. App. 540, 102 S. W. 56; Acord *v.* St. Louis Southwestern R. Co., 113 Mo. App. 84, 87 S. W. 537.

Montana. — Poindexter, etc., Live Stock Co. *v.* Oregon Short Line R. Co., 33 Mont. 338, 83 Pac. 886.

North Carolina. — See Ramsbottom *v.* Atlantic Coast Line R. Co., 138 N. Car. 38, 50 S. E. 448.

Wyoming. — But see Martin *v.* Chicago, etc., R. Co., 15 Wyo. 493, 89 Pac. 1025.

Canada. — Bacon *v.* Grand Trunk R. Co., 12 Ont. L. Rep. 106.

The Fact May Be Proved by Circumstantial Evidence that the Injury Was Done by the Train, but this proof may be circumstantial. St. Louis, etc., R. Co. *v.* Stites, 80 Ark.

Presumption Limited to Negligent Time of Killing. — Western R. Co. *v.* Mitchell, (Ala. 1906) 41 So. 427.

Killing Dog. — The rule does not apply in the case of killing a dog. Fowles *v.* Seaboard Air Line R. Co., 73 S. Car. 306, 53 S. E. 534.

Under Statutes. — Under the *Alabama* Code 1896, § 3443, in order to cast upon the defendant the onus of disproving negligence, the plaintiff must show not only that the defendant inflicted the injury, but that it occurred at or near one of the places specified in sections 3440, 3441, and 3442 of the Code of 1896. Alabama G. S. R. Co. *v.* Franklin, (Ala. 1907) 44 So. 373.

Under the *Montana* statute in order to raise the statutory presumption a claim in writing for the damage sustained must be made within three months after the maiming or killing. McKnight *v.* Oregon Short Line R. Co., 33 Mont. 40, 82 Pac. 661.

474. 1. Texas Cent. R. Co. *v.* Harbison, (Tex. Civ. App. 1903) 75 S. W. 549, (Tex. Civ. App. 1905) 88 S. W. 414.

2. Kansas City, etc., R. Co. *v.* Simmons, 147 Ala. 686, 40 So. 573; Central of Georgia R. Co. *v.* Turner, 145 Ala. 441, 40 So. 355. See also South Georgia R. Co. *v.* Ryals, 123 Ga. 330, 51 S. E. 428; Berry *v.* Southern R. Co., 126 Ga. 426, 55 S. E. 239.

Only Ordinary Care is required to be shown by the railroad company. Atlantic Coast Line R. Co. *v.* White, 129 Ga. 668, 59 S. E. 898; Atlantic Coast Line R. Co. *v.* Waycross Electric Light, etc., Co., 123 Ga. 613, 51 S. E. 621; Georgia Southern, etc., R. Co. *v.* Jones, 121 Ga. 822, 49 S. E. 729; East Tennessee, etc., R. Co. *v.* Daniel, 91 Ga. 768, 18 S. E. 22.

3. Central of Georgia R. Co. *v.* Brister, 145 Ala. 432, 40 So. 512; Southern R. Co. *v.* Puryear, 2 Ga. App. 75, 58 S. E. 306; Western, etc., R. Co. *v.* Clark, 2 Ga. App. 346, 58 S. E. 510; Atlantic Coast Line R. Co. *v.* Waycross Electric Light, etc., Co., 1 Ga. App. 488, 57 S. E. 1017; Atlantic Coast Line R. Co. *v.* Waycross Electric Light, etc., Co., 123 Ga. 613, 51 S. E. 621; Central of Georgia R. Co. *v.* Hughes, 127 Ga. 593, 56 S. E. 770; Southern R. Co. *v.* Murry, (Miss. 1905) 39 So. 478; Southern R. Co. *v.* Murray, (Miss. 1907) 44 So. 785; Young *v.* Illinois Cent. R. Co., 88 Miss. 446, 40 So. 870; Miller *v.* Chicago, etc., R. Co., (S. Dak. 1907) 111 N. W. 553.

Question of Negligence for Jury. — Southern R. Co. *v.* Pogue, 145 Ala. 444, 40 So. 565; Arkansas, etc., R. Co. *v.* Sanders, 81 Ark. 604, 99 S. W. 1109; Kansas City Southern R. Co. *v.* Edwards, 80 Ark. 273, 96 S. W. 1061; Western, etc., R. Co. *v.* Clark, 2 Ga. App. 346, 58 S. E. 510; Darien, etc., R. Co. *v.* Thomas, 125 Ga. 801, 54 S. E. 692; Louisville, etc., R. Co. *v.* Rhoads, (Ky. 1906) 90 S. W. 219; Young *v.* Illinois Cent. R. Co., 88 Miss. 446, 40 So. 870.

Evidence Held Sufficient to Go to the Jury on the question of the negligence of the engineer. Haardt *v.* Central of Georgia R. Co., (Ala. 1907) 44 So. 547.

Whether Presumption Rebutted Question for Jury. — St. Louis, etc., R. Co. *v.* Shaver, 76 Ark. 615, 88 S. W. 961; Illinois Cent. R. Co. *v.* Stanley, 96 S. W. 846, 29 Ky. L. Rep. 1054.

The Unimpeached Testimony of the Employees in charge of the train will overcome the statutory presumption. Mobile, etc., R. Co. *v.* Morrow, 97 S. W. 389, 30 Ky. L. Rep. 83.

The Causal Connection between the failure to comply with the statute and the injury must be shown. Louisville, etc., R. Co. *v.* Christian Moerlein Brewing Co., (Ala. 1907) 43 So. 723.

6. Harvey *v.* Southern Pac. Co., 46 Oregon 505, 80 Pac. 1061. See also St. Louis, etc., R. Co. *v.* Fankboner, 128 Ill. App. 284.

475. 1. Contributory Negligence Question for Jury. — Heise *v.* Chicago G. W. R. Co., (Iowa 1907) 114 N. W. 180; Wilmot *v.* Oregon R. Co., 48 Oregon 494, 87 Pac. 528.

3. St. Louis, etc., R. Co. *v.* Portis, 81 Ark. 325, 99 S. W. 66; Union Pac. R. Co. *v.* Entsminger, (Kan. 1907) 92 Pac. 1095; Norfolk, etc., R. Co. *v.* Smith, 104 Md. 72, 64 Atl. 317; Bankman *v.* Pere Marquette R. Co., 142 Mich. 202, 105 N. W. 154; Johnston *v.* Atchison, etc., R. Co., 117 Mo. App. 308, 93 S. W. 866; Brennan *v.* Pennsylvania R. Co., 73 N. J. L. 147, 62 Atl. 177; Galveston, etc., R. Co. *v.* Graham, (Tex. Civ. App. 1907) 101 S. W. 846; Texas Cent. R. Co. *v.* Harbison, (Tex. Civ. App. 1903) 75 S. W. 549, (Tex. Civ. App. 1905) 88 S. W. 414; Yeates *v.* Grand Trunk R. Co., 14 Ont. L. Rep. 63.

177. 1. St. Louis, etc., R. Co. *v.* Douglas, (Ala. 1907) 44 So. 677; Southern R. Co. *v.* Dickens, (Ala. 1907) 45 So. 215; Prescott, etc., R. Co. *v.* Brown, 74 Ark. 606, 86 S. W. 809; Charleston, etc., R. Co. *v.* Camp, (Ga. App. 1907) 59 S. E. 710; Chicago, etc., R. Co. *v.* Crose, 214 Ill. 602, 73 N. E. 865; O'Leary *v.* Chicago, etc., R. Co., (Iowa 1905) 103 N. W. 362; Spiller *v.* St. Louis, etc., R. Co., 112 Mo. App. 491, 87 S. W. 43; Union Pac. R. Co. *v.* Meyer, (Neb. 1906) 107 N. W. 793; Salathe *v.* Delaware, etc., R. Co., 28 Pa. Super. Ct. 1; France *v.* Salt Lake, etc., R. Co., 31 Utah 302, 88 Pac. 1.

178. 4. Campbell *v.* Indianapolis, etc., Traction Co., 39 Ind. App. 66, 79 N. E. 223; Bateman *v.* Rutland R. Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 312, 105 N. Y. Supp. 970. See also Mongogna *v.* Illinois Cent. R. Co., 115 La. 597, 39 So. 699.

Contributory Negligence Question of Fact. — O'Leary *v.* Chicago, etc., R. Co., (Iowa 1905) 103 N. W. 362; Carr *v.* Minneapolis, etc., R. Co., (N. Dak. 1907) 112 N. W. 972; Habenicht *v.* Chicago, etc., R. Co., 126 Wis. 521, 105 N. W. 910.

Burden of Proof of Negligence of Engineer on Plaintiff. — Chicago, etc., R. Co. *v.* Ramsey, 168 Ind. 390, 81 N. E. 79, transferred from appellate court (Ind. App. 1907) 79 N. E. 1065.

179. 1. Southern R. Co. *v.* Dickens, (Ala. 1907) 45 So. 215; Barnard *v.* Chicago, etc., R. Co., 133 Iowa 185, 110 N. W. 439; Atchison, etc., R. Co. *v.* Paxton, 75 Kan. 197, 88 Pac. 1082; Norfolk, etc., R. Co. *v.* Smith, 104 Md. 72, 64 Atl. 317; France *v.* Salt Lake, etc., R. Co., 31 Utah 302, 88 Pac. 1. See also Central of Georgia R. Co. *v.* Martin, (Ala. 1907) 43 So. 563.

2. Atlanta, etc., R. Co. *v.* Hudson, 2 Ga. App. 352, 58 S. E. 500.

3. See Missouri, etc., R. Co. *v.* Scofield, (Tex. Civ. App. 1906) 98 S. W. 435.

180. 1. Colorado, etc., R. Co. *v.* Webb, 36 Colo. 224, 85 Pac. 683. See also France *v.* Salt Lake, etc., R. Co., 31 Utah 302, 88 Pac. 1.

2. Sarja *v.* Great Northern R. Co., 99 Minn. 332, 109 N. W. 600.

4. *Alabama.* — Central of Georgia R. Co. *v.* Martin, (Ala. 1907) 43 So. 563; Central of Georgia R. Co. *v.* Main, 143 Ala. 149, 42 So. 108; Western R. Co. *v.* Stone, 145 Ala. 663, 39 So. 723.

Arkansas. — Jonesboro, etc., R. Co. *v.* Guest, 81 Ark. 267, 99 S. W. 71; Paragould Southeastern R. Co. *v.* Crunk, 81 Ark. 35, 98 S. W. 682; Kansas City Southern R. Co. *v.* Blair, 80 Ark. 363, 97 S. W. 296; Kansas City Southern R. Co. *v.* Ingram, 80 Ark. 269, 97 S. W. 55; St. Louis, etc., R. Co. *v.* Carlisle, 75 Ark. 560, 88 S. W. 584; Prescott, etc., R. Co. *v.* Brown, 74 Ark. 606, 86 S. W. 809; St. Louis, etc., R. Co. *v.* Satterfield, 75 Ark. 61, 86 S. W. 821. See also St. Louis, etc., R. Co. *v.* Thompson, 76 Ark. 37, 88 S. W. 593; St. Louis, etc., R. Co. *v.* Shannon, 76 Ark. 166, 88 S. W. 851.

Colorado. — Colorado, etc., R. Co. *v.* Webb, 36 Colo. 224, 85 Pac. 683; Colorado, etc., R. Co. *v.* Charles, 36 Colo. 221, 84 Pac. 67. See also Chicago, etc., R. Co. *v.* Campbell, 34 Colo. 380, 83 Pac. 138.

Indiana. — Campbell *v.* Indianapolis, etc., Traction Co., 39 Ind. App. 66, 79 N. E. 223.

Iowa. — O'Leary *v.* Chicago, etc., R. Co., (Iowa 1905) 103 N. W. 362.

Kansas. — Kansas City, etc., R. Co. *v.* Rockwell, 74 Kan. 840, 85 Pac. 802.

Kentucky. — Troutwine *v.* Louisville, etc., R. Co., (Ky. 1907) 105 S. W. 142.

Maryland. — Norfolk, etc., R. Co. *v.* Smith, 104 Md. 72, 64 Atl. 317.

Minnesota. — See Best *v.* Great Northern R. Co., 95 Minn. 67, 103 N. W. 709.

Missouri. — See Roberts *v.* Wabash R. Co., 113 Mo. App. 6, 87 S. W. 601; Payne *v.* Quincy, etc., R. Co., 113 Mo. App. 609, 88 S. W. 164.

Nebraska. — Kennedy *v.* Chicago, etc., R. Co., (Neb. 1907) 114 N. W. 165; Stading *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 460.

North Carolina. — Ramsbottom *v.* Atlantic Coast Line R. Co., 138 N. Car. 38, 50 S. E. 448.

North Dakota. — Carr *v.* Minneapolis, etc., R. Co., (N. Dak. 1907) 112 N. W. 972.

Texas. — Southern Kansas R. Co. *v.* West. (Tex. Civ. App. 1907) 102 S. W. 1174; Missouri, etc., R. Co. *v.* Rodgers, (Tex. Civ. App. 1905) 86 S. W. 625.

West Virginia. — Robbins *v.* Baltimore, etc., R. Co., (W. Va. 1907) 59 S. E. 512.

Measure of Duty Ordinary Care. — Atlanta, etc., R. Co. *v.* Hudson, 123 Ga. 108, 51 S. E. 29; Hansberry *v.* Chicago, etc., R. Co., (Neb. 1907) 112 N. W. 292; Cumming *v.* Great Northern R. Co., 15 N. Dak. 611, 108 N. W. 798; Borneman *v.* Chicago, etc., R. Co., 19 S. Dak. 450, 104 N. W. 208.

Question for Jury. — Whether the engineer used the required care after he discovered the animals on the track is a question of fact. Leslie *v.* Wabash R. Co., 118 Ill. App. 606.

The First Duty of an Engineer is to care for the safety of his passengers, and if it is dangerous to stop the train when he sees the cattle it is his duty to destroy the cattle if necessary for the safety of the passengers. Texas, etc., R. Co. *v.* Langham, (Tex. Civ. App. 1906) 95 S. W. 686.

Bushes on Right of Way. — A railroad company's negligence in permitting bushes to grow up on its right of way so as to conceal the plaintiff's hog from the engineer until it was too late to stop the train and prevent killing the animal was held a cause of action in Curry *v.* Southern R. Co., (Ala. 1906) 42 So. 447.

Physical Experiments under conditions similar to those surrounding the accident are ad-

missible in evidence to show negligence. Atlanta, etc., R. Co. *v.* Hudson, 2 Ga. App. 352, 58 S. E. 500.

Evidence Is Admissible to show that the engineer must have seen a cow killed by his train. Central of Georgia R. Co. *v.* Cox, 124 Ga. 143, 52 S. E. 161.

Sufficient Evidence of Negligence. — Gulf, etc., R. Co. *v.* Anson, (Tex. Civ. App. 1907) 102 S. W. 136.

Evidence Insufficient to Show Negligence. Chicago, etc., R. Co. *v.* Roberts, 35 Colo. 498,

Question for Jury. — St. Louis, etc., R. Co. *v.* Kimberlain, 76 Ark. 100, 88 S. W. 599; Cockburn *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1907) 102 S. W. 740.

481. 6. Smith *v.* St. Louis, etc., R. Co., 111 Mo. App. 410, 85 S. W. 972; Chicago, etc., R. Co. *v.* King, (Neb. 1906) 107 N. W. 981.

A statute imposing absolute liability for injury to live stock through failure to fence being penal and in derogation of the common law, the company must be brought within the terms of the statute. Denver, etc., R. Co. *v.* Kelso, (Colo. 1907) 90 Pac. 65.

The failure to fence must be the proximate cause of the killing or injury in order to make the company liable. Frisch *v.* Chicago G. W. R. Co., 95 Minn. 398, 104 N. W. 228.

482. 1. Missouri, etc., R. Co. *v.* Tolbert, (Tex. 1907) 101 S. W. 206; Missouri, etc., R. Co. *v.* Cassinoba, (Tex. Civ. App. 1907) 99 S. W. 888.

Failure to Fence Must Be Pleaded. — To recover damages for failure to fence there must be an allegation of such omission in the pleadings. St. Louis, etc., R. Co. *v.* Hoff, (Kan. 1907) 92 Pac. 539.

2. Recovery cannot be had for injuries received on the adjoining track of another railroad company upon which animals have strayed through the defendant's defective fences. Bear *v.* Chicago G. W. R. Co., 141 Fed. 25, 72 C. C. A. 513.

3. Harvey *v.* Southern Pac. Co., 46 Oregon 505, 80 Pac. 1061; Salathe *v.* Delaware, etc., R. Co., 28 Pa. Super. Ct. 1; Borneman *v.* Chicago, etc., R. Co., 19 S. Dak. 459, 104 N. W. 208.

Value Must Be Proved. — Prescott, etc., R. Co. *v.* Brown, 74 Ark. 606, 86 S. W. 809.

Expense Incurred and Value of Time Spent in curing the injured animals are recoverable as part of the damages. Smith *v.* Chicago, etc., R. Co., 127 Mo. App. 160, 105 S. W. 10.

Under the Arkansas Statute requiring the construction of cattle guards, the recovery of the statutory penalty for its violation is the exclusive remedy and the owner of animals killed cannot recover their value. St. Louis, etc., R. Co. *v.* Rowland, 76 Ark. 615, 88 S. W. 994; St. Louis, etc., R. Co. *v.* Busick, 74 Ark. 589, 86 S. W. 674; Choctaw, etc., R. Co. *v.* Vosburg, 71 Ark. 232, 72 S. W. 574.

But evidence of the value of the animal is admissible to aid the jury in determining the penalty. St. Louis, etc., R. Co. *v.* Busick, 74 Ark. 589, 86 S. W. 674.

483. 1. Hobbs *v.* St. Louis, etc., R. Co., 113 Mo. App. 126, 87 S. W. 525; Acord *v.* St. Louis Southwestern R. Co., 113 Mo. App. 84, 87 S. W. 537; Smith *v.* St. Louis, etc., R. Co., 111 Mo. App. 410, 85 S. W. 972.

2. Morris *v.* Chicago G. W. R. Co., 133 Iowa 28, 110 N. W. 154; Titus *v.* Chicago, etc., R. Co., 128 Iowa 194, 103 N. W. 343; Sikes *v.* St. Louis, etc., R. Co., 127 Mo. App. 326, 105 S. W. 700; Dees *v.* St. Louis, etc., R. Co., 127 Mo. App. 353, 104 S. W. 485; Sowders *v.* St. Louis, etc., R. Co., 127 Mo. App. 119, 104 S. W. 1122; Rinehart *v.* Kansas City Southern R. Co., 204 Mo. 269, 102 S. W. 958; Stepp *v.* St. Louis, etc., R. Co., 124 Mo. App. 644, 101 S. W. 1150; Till *v.* St. Louis, etc., R. Co., 124 Mo. App. 281, 101 S. W. 624; Hax *v.* Quincy, etc., R. Co., 123 Mo. App. 172, 100 S. W. 693; Clem *v.* Quincy, etc., R. Co., 119 Mo. App. 245, 96 S. W. 226; Carpenter *v.* Chicago, etc., R. Co., 119 Mo. App. 204, 95 S. W. 985; Payne *v.* Quincy, etc., R. Co., 113 Mo. App. 609, 88 S. W. 164; Acord *v.* St. Louis Southwestern R. Co., 113 Mo. App. 84, 87 S. W. 537; Oyler *v.* Quincy, etc., R. Co., 113 Mo. App. 375, 88 S. W. 162; Foster *v.* Kansas City Southern R. Co., 112 Mo. App. 67, 87 S. W. 57; Reed *v.* Chicago, etc., R. Co., 112 Mo. App. 575, 87 S. W. 65.

Double Damages on Failure to Post Killing. — St. Louis, etc., R. Co. *v.* Stites, 80 Ark. 72, 95 S. W. 1004.

484. 1. See Frisch *v.* Chicago G. W. R. Co., 95 Minn. 398, 104 N. W. 228.

4. Under the *Arkansas* act the value of the animal killed and double damages for failure to post the killing may be recovered. St. Louis, etc., R. Co. *v.* Ewing, (Ark. 1908) 107 S. W. 191.

7. Pittsburgh, etc., R. Co. *v.* Newsom, 35 Ind. App. 299, 74 N. E. 21.

8. Chicago, etc., R. Co. *v.* Nevitt, 122 Ill. App. 505.

10. Marion *v.* St. Louis, etc., R. Co., 127 Mo. App. 129, 104 S. W. 1125.

485. 1. See Claus *v.* Chicago G. W. R. Co., (Iowa 1907) 111 N. W. 15.

5. Till *v.* St. Louis, etc., R. Co., 124 Mo. App. 281, 101 S. W. 624; Southwestern Tel., etc., Co. *v.* Krause, (Tex. Civ. App. 1906) 92 S. W. 431. See also Hax *v.* Quincy, etc., R. Co., 123 Mo. App. 172, 100 S. W. 693.

Gates and Gate Fastenings. — Claus *v.* Chicago G. W. R. Co., (Iowa 1907) 111 N. W. 15; Atchison, etc., R. Co. *v.* Paxton, 75 Kan. 197, 88 Pac. 1082; Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14; Rinehart *v.* Kansas City Southern R. Co., 204 Mo. 260, 102 S. W. 958; Rowen *v.* Chicago G. W. R. Co., 198 Mo. 654, 96 S. W. 1009; Ft. Worth, etc., R. Co. *v.* Hickox, (Tex. Civ. App. 1907) 103 S. W. 202; Missouri, etc., R. Co. *v.* Dunnaway, (Tex. Civ. App. 1906) 95 S. W. 760; Cole *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1906) 94 S. W. 1128.

Sufficiency of Gate Fastening for Jury. — Roberts *v.* Chicago, etc., R. Co., 119 Mo. App. 372, 94 S. W. 838.

The Adjoining Owner's Agreement to Maintain gates binds his tenant whether he knew of it or not when he took the lease. Yeates *v.* Grand Trunk R. Co., 14 Ont. L. Rep. 63.

Where the Owner Has Himself Constructed a

Gate ... to ... different from that provided ... by the statute ... for injuries to his live stock getting upon the track through the open gate. Francis *v.* Quincy, etc., R. Co., 118 Mo. App. 435, 93 S. W. 876.

Duty of Keeping Gates Closed Rests upon Railroad. — Titus *v.* Chicago, etc., R. Co., 128 Iowa 194, 103 N. W. 343; Brown *v.* Quincy, etc., R. Co., 127 Mo. App. 614, 106 S. W. 551; High *v.* Southern Pac. Co., (Oregon 1907) 88 Pac. 961; Texas, etc., R. Co. *v.* Sproles, (Tex. Civ. App. 1907) 105 S. W. 521; Lebu *v.* Grand Trunk R. Co., 12 Ont. L. Rep. 590. See also Litton *v.* Chicago, etc., R. Co., 111 Mo. App. 140, 85 S. W. 978. But see St. Louis, etc., R. Co. *v.* Fankboner, 128 Ill. App. 284; Church *v.* Chicago, etc., R. Co., 102 Minn. 295, 113 N. W. 886; Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14; Colyer *v.* Missouri Pac. R. Co., 113 Mo. App. 457, 87 S. W. 572; International, etc., R. Co. *v.* Russell, (Tex. Civ. App. 1907) 106 S. W. 438.

Deficient Gate Must Be Proximate Cause of Injury. — Rowen *v.* Chicago G. W. R. Co., 198 Mo. 654, 96 S. W. 1009.

Adjoining Owner's Promise to Close Gate. — A railroad company is not liable for damages to animals straying through an open gate where the adjoining owner has been notified that the gate was open and has promised to close it. Whaley *v.* Erie R. Co., 181 N. Y. 448, 74 N. E. 417, *reversing* 88 N. Y. App. Div. 621, 84 N. Y. Supp. 1150.

Private Gates. — Duty to keep closed on property owner. Ft. Worth, etc., R. Co. *v.* Worsham, (Tex. Civ. App. 1907) 105 S. W. 853; Cole *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1906) 94 S. W. 1128.

When a private gate is opened by the company it must see that it is closed, without reference to the question as to whose duty it is, generally speaking, to keep the gate closed. Baltimore, etc., R. Co. *v.* Zollman, (Ind. App. 1907) 80 N. E. 40.

Duty of Erecting and Maintaining Cattle Guards. — Stewart *v.* Grand Rapids, etc., R. Co., 147 Mich. 48, 110 N. W. 126, 13 Detroit Leg. N. 948; Sowders *v.* St. Louis, etc., R. Co., 127 Mo. App. 119, 104 S. W. 1122; Texas, etc., R. Co. *v.* Sproles, (Tex. Civ. App. 1907) 105 S. W. 521; Ft. Worth, etc., R. Co. *v.* Polson, (Tex. Civ. App. 1907) 106 S. W. 429.

Duty to Maintain Sufficient Fence. — Colyer *v.* Missouri Pac. R. Co., 113 Mo. App. 457, 87 S. W. 572; Texas, etc., R. Co. *v.* Owens, (Tex. Civ. App. 1905) 87 S. W. 846.

The unconditional obligation concerning the construction of fences does not apply to the maintenance thereof. The company's liability for want of repair is governed by the ordinary rules of negligence. Coe *v.* Northern Pac. R. Co., 101 Minn. 12, 111 N. W. 651.

Covenant to Maintain Fences Runs with Land. — A covenant by the grantor of a right of way ... to maintain fences runs with the land and precludes a subsequent grantee thereof from recovering damages for injuries due to defective fences. Satterly *v.* Erie R. Co., 113 N. Y. App. Div. 462, 99 N. Y. Supp. 309.

... covenant by the company to maintain fences makes the company liable to a tenant of a subsequent grantee. Indianapolis Northern Traction Co. *v.* Harbaugh, 38 Ind. App. 115, 78 N. E. 80.

486. 1. Church *v.* Chicago, etc., R. Co., 102 Minn. 295, 113 N. W. 886.

It is error to submit to the jury the question whether the railroad company maintained lawful fences and cattle guards, without defining the term. Clem *v.* Quincy, etc., R. Co., 119 Mo. App. 245, 96 S. W. 226.

2. St. Louis, etc., R. Co. *v.* Busick, 74 Ark. 589, 86 S. W. 674; Gulf, etc., R. Co. *v.* Ellis, 85 Miss. 586, 38 So. 210.

3. Carrollton Short Line R. Co. *v.* Lipsey, (Ala. 1907) 43 So. 836.

Under the *New York* statute it is held that while the liability for failure to provide and maintain sufficient fences is absolute, a company is only liable for injuries wilfully or recklessly inflicted upon animals straying or trespassing over cattle guards. Bateman *v.* Rutland R. Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 312, 105 N. Y. Supp. 970.

5. Carrollton Short Line R. Co. *v.* Lipsey, (Ala. 1907) 43 So. 836; Pittsburgh, etc., R. Co. *v.* Newsom, 35 Ind. App. 299, 74 N. E. 21; Conrad *v.* Illinois Southern R. Co., 116 Mo. App. 517, 92 S. W. 752.

6. St. Louis, etc., R. Co. *v.* Ewing, (Ark. 1908) 107 S. W. 191; Earl *v.* St. Louis, etc., R. Co., 84 Ark. 507, 106 S. W. 675; Campbell *v.* Indianapolis, etc., Traction Co., 39 Ind. App. 66, 79 N. E. 223; Poindexter, etc., Live Stock Co. *v.* Oregon Short Line R. Co., 33 Mont. 338, 83 Pac. 886; Beaumont, etc., R. Co. *v.* Langford, (Tex. Civ. App. 1907) 104 S. W. 920. See also Texas, etc., R. Co. *v.* King, (Tex. Civ. App. 1907) 99 S. W. 1030.

Under Double Damage Statute. — Reed *v.* Chicago, etc., R. Co., 112 Mo. App. 575, 87 S. W. 65; Logan *v.* St. Louis, etc., R. Co., 111 Mo. App. 674, 86 S. W. 565.

Direct evidence of contact is not essential. Oyler *v.* Quincy, etc., R. Co., 113 Mo. App. 375, 88 S. W. 162; Payne *v.* Quincy, etc., R. Co., 113 Mo. App. 609, 88 S. W. 164.

But damages may be recovered at common law where there is no collision, though not recoverable under the statute. Earl *v.* St. Louis, etc., R. Co., 84 Ark. 507, 106 S. W. 675.

487. 1. Oyler *v.* Quincy, etc., R. Co., 113 Mo. App. 375, 88 S. W. 162; Hobbs *v.* St. Louis, etc., R. Co., 113 Mo. App. 126, 87 S. W. 525. See also Mikesell *v.* Wabash R. Co., 134 Iowa 736, 112 N. W. 201.

Whether Failure to Fence Proximate Cause Question for Jury. — Mikesell *v.* Wabash R. Co., 134 Iowa 736, 112 N. W. 201.

Negligence of Company Must Be Proximate Cause. — International, etc., R. Co. *v.* Russell, (Tex. Civ. App. 1907) 106 S. W. 438.

5. **Independent Contractor.** — Missouri, etc., R. Co. *v.* Armstrong, (Tex. Civ. App. 1907) 99 S. W. 431.

489. 11. Chicago, etc., R. Co. *v.* Ramsey, 168 Ind. 390, 81 N. E. 79, transferred from Appellate Court (Ind. App. 1905) 76 N. E. 1065; Mikesell *v.* Wabash R. Co., 134 Iowa 736, 112 N. W. 201; Sowders *v.* St. Louis, etc., R. Co., 127 Mo. App. 119, 104 S. W. 1122; Stepp *v.* St. Louis, etc., R. Co., 124 Mo. App. 644, 101 S. W.

1150; Kirkpatrick *v.* Illinois Southern R. Co., 120 Mo. App. 416, 96 S. W. 1036; McGuire *v.* St. Louis, etc., R. Co., 113 Mo. App. 79, 87 S. W. 564; Acord *v.* St. Louis Southwestern R. Co., 113 Mo. App. 84, 87 S. W. 537; Sands *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 855. See also Colorado, etc., R. Co. *v.* Neville, (Colo. 1907) 92 Pac. 956. But see *contra*, Toledo, etc., R. Co. *v.* Delliplane, 119 Ill. App. 122.

490. 3. Sowders *v.* St. Louis, etc., R. Co., 127 Mo. App. 119, 104 S. W. 1122; Acord *v.* St. Louis Southwestern R. Co., 113 Mo. App. 84, 87 S. W. 537; Hobbs *v.* St. Louis, etc., R. Co., 113 Mo. App. 126, 87 S. W. 525.

Where Question of Place of Entry for Jury. — Smith *v.* St. Louis, etc., R. Co., 125 Mo. App. 15, 102 S. W. 593.

Presumption Not Conclusive. — Sowders *v.* St. Louis, etc., R. Co., 127 Mo. App. 119, 104 S. W. 1122.

6. Morris *v.* Chicago G. W. R. Co., 133 Iowa 28, 110 N. W. 154.

7. Leslie *v.* Wabash R. Co., 118 Ill. App. 606; Toledo, etc., R. Co. *v.* Delliplane, 119 Ill. App. 122; St. Louis, etc., R. Co. *v.* Fankboner, 128 Ill. App. 284; Baltimore, etc., R. Co. *v.* McIlyar, (Ohio 1908) 83 N. E. 497; Jackson *v.* Sumpter Valley R. Co., (Oregon 1908) 93 Pac. 356; Habenicht *v.* Chicago, etc., R. Co., 126 Wis. 521, 105 N. W. 910. See also St. Louis, etc., R. Co. *v.* Scott, 84 Ark. 623, 104 S. W. 1103.

Turning Animals into Pasture with Knowledge of Defective Fence. — Baltimore, etc., R. Co. *v.* Litzinger, 116 Ill. App. 55; Chicago, etc., R. Co. *v.* Nevitt, 122 Ill. App. 505; Texas, etc., R. Co. *v.* Sproles, (Tex. Civ. App. 1907) 105 S. W. 521.

492. 3. Cook *v.* Southern R. Co., (S. Car. 1907) 59 S. E. 361.

Leading Horses Along Right of Way. — Gee *v.* St. Louis, etc., R. Co., 122 Mo. App. 358, 99 S. W. 506.

5. The Wilful Act of the Owner is a matter of defense upon which the company has the burden of proof. Claus *v.* Chicago G. W. R. Co., (Iowa 1907) 111 N. W. 15.

493. 1. Hax *v.* Quincy, etc., R. Co., 123 Mo. App. 172, 100 S. W. 693.

Fact that Plaintiff Has Not Notified Company. — Chicago, etc., R. Co. *v.* Nevitt, 122 Ill. App. 505.

Finding of Negligence Held to Include Finding of Notice. — Texas, etc., R. Co. *v.* Sproles, (Tex. Civ. App. 1907) 105 S. W. 521.

2. Morris *v.* Chicago G. W. R. Co., 133 Iowa 28, 110 N. W. 154; Smith *v.* Chicago, etc., R. Co., 127 Mo. App. 160, 105 S. W. 10; Ft. Worth, etc., R. Co. *v.* Hickox, (Tex. Civ. App. 1907) 103 S. W. 202.

3. Hax *v.* Quincy, etc., R. Co., 123 Mo. App. 172, 100 S. W. 693; Ft. Worth, etc., R. Co. *v.* Hickox, (Tex. Civ. App. 1907) 103 S. W. 202.

494. 2 Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 858, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494.

3. Ft. Worth, etc., R. Co. *v.* Polson, (Tex. Civ. App. 1907) 106 S. W. 420.

4. Russell *v.* Maine Cent. R. Co., 100 Me. 406, 61 Atl. 899; Gerry *v.* New York, etc., R. Co., 194 Mass. 35, 79 N. E. 783; Wood *v.* Snider, 187 N. Y. 28, 79 N. E. 858, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494; Canadian Pac. R. Co. *v.* Eggleston, 36 Can. Sup. Ct. 641, 3 Ann. Cas. 590.

A complaint which does not allege the plaintiff's ownership or possession of the adjoining land is demurrable. Metlen *v.* Oregon Short Line R. Co., 33 Mont. 45, 81 Pac. 737.

In Missouri. — Carpenter *v.* Chicago, etc., R. Co., 119 Mo. App. 204, 95 S. W. 985; Litton *v.* Chicago, etc., R. Co., 111 Mo. App. 140, 85 S. W. 978.

Animal Coming upon Railroad from Unenclosed Lands. — Reed *v.* Chicago, etc., R. Co., 112 Mo. App. 575, 87 S. W. 65.

From Adjoining Lands Defectively Fenced. — Oyler *v.* Quincy, etc., R. Co., 113 Mo. App. 375, 88 S. W. 162; Carpenter *v.* Chicago, etc., R. Co., 119 Mo. App. 204, 95 S. W. 985; Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14; Rinehart *v.* Kansas City Southern R. Co., 204 Mo. 269, 102 S. W. 958; Litton *v.* Chicago, etc., R. Co., 111 Mo. App. 140, 85 S. W. 978.

Railroad company liable for injuries to animals reaching a wagon road through a gate carelessly left open by plaintiff or his servants, and thence straying upon the railroad track by way of defective cattle guards. Clem *v.* Quincy, etc., R. Co., 119 Mo. App. 245, 96 S. W. 226.

Owner Not Negligent in Permitting Stock to Run at Large. — Gee *v.* St. Louis, etc., R. Co., 122 Mo. App. 358, 99 S. W. 506.

Canada. — Section 237 of the Railway Act, 1903, changes the law in Canada and makes the company liable in the case of animals which, being at large, have got upon the company's property and have been there killed or injured, unless the company can show negligence or some wilful act or omission on the owner's part whereby the animals got at large. Arthur *v.* Central Ontario R. Co., 11 Ont. L. Rep. 537; Canadian Pac. R. Co. *v.* Carruthers, 39 Can. Sup. Ct. 251; Bacon *v.* Grand Trunk R. Co., 12 Ont. L. Rep. 196; Lebu *v.* Grand Trunk R. Co., 12 Ont. L. Rep. 500; Lizotte *v.* Temiscouata R. Co., 37 N. Bruns. 397.

The Railway Act, 51 Vict., c. 29, § 194 (D.), as amended by 53 Vict., c. 28, § 2 (D.), altered the law to the same effect. Fensom *v.* Canadian Pac. R. Co., 8 Ont. L. Rep. 688.

In McDaniel *v.* Canadian Pac. R. Co., 13 British Columbia 49, it was held that the plaintiff could not recover, for the reason that the animals killed were at large upon the highway through the wilful act of their owner.

No liability is incurred by the company for contributory negligence or otherwise when the negligence or wilful act of the owner of cattle killed is shown. Bourassa *v.* Canadian Pac. R. Co., 30 Quebec Super. Ct. 285.

The company is not liable for the act of the plaintiff's tenant in making an opening in its railway fence through which, a few hours afterwards, the plaintiff's horse escapes on to the railway, where it is killed by falling from a bridge. Flewelling *v.* Grand Trunk R. Co., 6 Can. R. Cas. 47.

The burden of showing that an animal killed was unlawfully at large is upon the railway

company (Can.), New Westminster Southern R. Co., 12 British Columbia 419.

195. 1. Ft. Worth, etc., R. Co. *v.* Hickox, (Tex. Civ. App. 1907) 103 S. W. 202.

2. Sarja *v.* Great Northern R. Co., 99 Minn. 332, 109 N. W. 600; Brown *v.* Quincy, etc., R. Co., 127 Mo. App. 614, 106 S. W. 551; Smith *v.* Chicago, etc., R. Co., 127 Mo. App. 160, 105 S. W. 10.

196. 1. The burden is on the plaintiff to prove killing by a train and that the killing was due to the negligence of the railroad company's employees. Gibson *v.* Iowa Cent. R. Co., (Iowa 1907) 113 N. W. 927.

The Adoption of a Stock Law prohibiting stock running at large does not affect the liability of a company for injury to live stock straying from an adjoining pasture through a defective fence. Gulf, etc., R. Co. *v.* Coffin, (Tex. Civ. App. 1906) 97 S. W. 1066.

3. **Railroad Not Liable in Absence of Negligence.** — Houston, etc., R. Co. *v.* Nussbaum, (Tex. Civ. App. 1906) 94 S. W. 1101.

Only Liable for Gross Negligence Proximately Causing the Accident. — Ft. Worth, etc., R. Co. *v.* Hudgens, (Tex. Civ. App. 1906) 94 S. W. 375.

The Texas Statute providing that after the adoption of the stock law in any county or subdivision no person therein shall be required to fence against stock not permitted to run at large applies to railway companies and exempts a railway company from the obligation to fence. Missouri, etc., R. Co. *v.* Tolbert, (Tex. Civ. App. 1905) 90 S. W. 508.

198. 4. *Arkansas.* — St. Louis Southwestern R. Co. *v.* Conger, 84 Ark. 421, 105 S. W. 1177; Kansas City Southern R. Co. *v.* Lewis, 80 Ark. 396, 97 S. W. 56.

Colorado. — Colorado, etc., R. Co. *v.* Neville, (Colo. 1907) 92 Pac. 956; Denver, etc., R. Co. *v.* Coulter, (Colo. 1907) 92 Pac. 906; Atchison, etc., R. Co. *v.* Adcock, 38 Colo. 369, 88 Pac. 180.

Indiana. — Campbell *v.* Indianapolis, etc., Traction Co., 39 Ind. App. 66, 79 N. E. 223.

Indian Territory. — Missouri, etc., R. Co. *v.* Webb, 6 Indian Ter. 280, 97 S. W. 1010; Missouri, etc., R. Co. *v.* McCoy, (Indian Ter. 1907) 104 S. W. 620.

Iowa. — Hartman *v.* Chicago G. W. R. Co., 132 Iowa 582, 110 N. W. 10.

Massachusetts. — Gerry *v.* New York, etc., R. Co., 194 Mass. 35, 79 N. E. 783.

Nebraska. — Chicago, etc., R. Co. *v.* Dowhower, 74 Neb. 600, 104 N. W. 1070.

New York. — Yates *v.* New York Cent., etc., R. Co., 107 N. Y. App. Div. 629, 95 N. Y. Supp. 497.

North Dakota. — Cumming *v.* Great Northern R. Co., 15 N. Dak. 611, 108 N. W. 798.

Texas. — Gulf, etc., R. Co. *v.* Anson, (Tex. 1907) 105 S. W. 989; Texarkana, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1907) 101 S. W. 1167; Houston, etc., R. Co. *v.* Van Ness, (Tex. Civ. App. 1907) 101 S. W. 265; Missouri, etc., R. Co. *v.* Baker, (Tex. Civ. App. 1906) 93 S. W. 211; Galveston, etc., R. Co. *v.* Kropp, (Tex. Civ. App. 1906) 91 S. W. 819; Gulf, etc., R. Co. *v.* Simpson, (Tex. Civ. App. 1905) 91 S. W. 874; International, etc., R. Co. *v.* Carr, (Tex. Civ. App. 1905) 91 S. W. 858; Missouri, etc., R. Co. *v.* Tolbert, (Tex. Civ. App. 1905) 90 S. W. 508; Missouri, etc., R. Co. *v.* Baker, 99 Tex. 452, 90 S. W. 869; Mahler *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 206.

Wyoming. — Martin *v.* Chicago, etc., R. Co., 15 Wyo. 493, 89 Pac. 1025, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 498.

Negligence Question for Jury. — Anson *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 94 S. W. 94.

In an action for killing a team stalled on a railway bridge at a crossing the court held that the question whether the negligent construction of the bridge was the proximate cause of the accident was for the jury and not for the court. Thompson *v.* Seaboard Air Line R. Co., 78 S. Car. 384, 58 S. E. 1094.

Negligence Must Be Shown to Be Proximate Cause. — Louisville, etc., R. Co. *v.* Mertz, (Ala. 1907) 43 So. 7.

Negligence Cannot Be Inferred from the fact that a train is moving at a rapid rate of speed while passing a station or crossing. Texas, etc., R. Co. *v.* Langham, (Tex. Civ. App. 1906) 95 S. W. 686. See also Gulf, etc., R. Co. *v.* Blake, (Tex. Civ. App. 1906) 95 S. W. 593.

Where a cow was killed by an electric car while straying on the highway it was held that negligence must be proved by the plaintiff. Craft *v.* Peekskill Lighting, etc., Co., 121 N. Y. App. Div. 549, 106 N. Y. Supp. 232.

199. 1. Macon, etc., R. Co. *v.* Wood, (Ga. App. 1907) 59 S. E. 595; Padgitt *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 67.

INJURY, INJURE, ETC.

199. 3. **Injury to Property.** — Ghiglione *v.* Friedman, 115 N. Y. App. Div. 606, 100 N. Y. Supp. 1024 (wrongfully filing mechanic's lien).

INNOCENT.

503. 3. **An Innocent and Virtuous Woman** within a statute punishing seduction is one who never had illicit intercourse with any man and who is chaste and pure. State *v.* Whitley, 141 N. Car. 823, 53 S. E. 820.

INNS AND INNKEEPERS.

507. 1. **Inn Defined.** — Alsberg *v.* Lucerne Hotel Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 617, 92 N. Y. Supp. 851; Holstein *v.* Phillips, (N. Car. 1907) 59 S. E. 1037.

509. 6. Thus where an innkeeper also keeps a bath house to which the general public are admitted, a person does not become a guest at the inn merely by using the conveniences of the bath house. Walpert *v.* Bohan, 126 Ga. 532, 55 S. E. 181, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 509.

511. 1. **"Family Hotel."** — Alsberg *v.* Lucerne Hotel Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 617, 92 N. Y. Supp. 851.

512. 2. Humburd *v.* Crawford, 128 Iowa 742, 58 S. E. 447.

513. 2. Ross *v.* Daugherty, 127 Ill. App. 572.

3. Where a person held himself out as pro-

prietor of an inn by advertisements on the stationery and register especially arranged to attract the attention of the public and guests, a mere want of technical ownership of the plant or his private and personal relations to some corporation having an investment therein will not protect him from liability as innkeeper. Ross *v.* Daugherty, 127 Ill. App. 572.

514. 3. The *Alabama* statute provides that in the absence of special contract the rights of guests and the liability of innkeepers remain as at common law. Hervey *v.* Hart, (Ala. 1906) 42 So. 1013.

4. Com. *v.* Keathley, (Ky. 1904) 82 S. W. 232.

515. 2. Conover *v.* Atlantic City, 73 N. J. L. 596, 64 Atl. 146, *reversing* 72 N. J. L. 103, 60 Atl. 31.

7. Yall *v.* Gillham, 187 Mo. 393, 86 S. W. 125; Adams *v.* Cumberland Inn Co., 117 Tenn. 470, 101 S. W. 428.

The *Missouri* statute imposes the duty on the "owner, proprietor, lessee, or keeper of every hotel * * * which has a height of three or more stories," and the word "owner" is construed to mean the person who owns the building. Yall *v.* Snow, 201 Mo. 511, 100 S. W. 1; Johnson *v.* Snow, 201 Mo. 450, 100 S. W. 5.

8*a*. Fire Apparatus and Diagrams of Exits, Etc. — Acton *v.* Reed, 104 N. Y. App. Div. 507, 93 N. Y. Supp. 911.

517. 1. Crapo *v.* Rockwell, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 1, 94 N. Y. Supp. 1122.

522. 3. Crapo *v.* Rockwell, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 1, 94 N. Y. Supp. 1122.

10. Person Boarding by the Month May Be a Transient. — Greene *v.* Windsor Hotel Co., 26 Quebec Super. Ct. 97, 2 Ann. Cas. 12, 14 Quebec K. B. 56.

523. 1. Crapo *v.* Rockwell, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 1, 94 N. Y. Supp. 1122; Alsberg *v.* Lucerne Hotel Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 617, 92 N. Y. Supp. 851.

524. 3. Cornell *v.* Huber, 102 N. Y. App. Div. 293, 92 N. Y. Supp. 434.

4. Removing Guest from One Room to Another. — Hervey *v.* Hart, (Ala. 1906) 42 So. 1013, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 524, 525.

Right to Exclusive Occupation of Apartment. — A guest to whom a room has been assigned is not entitled to the exclusive occupation of it as against the innkeeper, and therefore it is not a trespass for the innkeeper's servants to enter such room, though without the guest's consent. De Wolf *v.* Ford, 119 N. Y. App. Div. 808, 104 N. Y. Supp. 876.

525. 2. **Disorderly Conduct — Annoying Other Guests.** — Chase *v.* Knabel, (Wash. 1907) 90 Pac. 642.

Forcible Expulsion of Guest. — If a guest is disorderly and refuses to leave the inn when directed to do so, the innkeeper may lawfully eject him, provided no more force is used than may be reasonably necessary. Holden *v.* Carraher, (Mass. 1907) 81 N. E. 261.

10. The *New York* statute imposing a penalty does not abrogate the common-law remedy. Cornell *v.* Huber, 102 N. Y. App. Div. 293, 92 N. Y. Supp. 434.

527. 2. Greene *v.* Windsor Hotel Co., 26 Quebec Super. Ct. 97, 2 Ann. Cas. 12, 14 Quebec K. B. 56.

528. 4. Barrie *v.* Wright, 15 Manitoba 197.

529. 6. **Leaving Window Open.** — Whether it was negligence for a guest to leave the window of his room open is a question for the jury under all the circumstances of the case. Kerlin *v.* Swart, 143 Mich. 228, 106 N. W. 710.

530. 10. Clark *v.* Ball, (Colo. 1905) 82 Pac. 529.

Where an innkeeper received the baggage of a person intending to become a guest and who afterwards did become such, these facts tend to prove that the custody of the baggage was in the innkeeper when the owner actually became a guest, and are sufficient to support a judgment against the innkeeper for the loss of the baggage. Oriental Hotel Assoc. *v.* Faust, (Tex. Civ. App. 1905) 86 S. W. 373.

531. 1. **Relation Terminated by Guest Becoming Permanent Border.** — Holstein *v.* Phillips, (N. Car. 1907) 59 S. E. 1037.

2. **Innkeeper Liable as Gratuitous Bailee.** — Clark *v.* Ball, (Colo. 1905) 82 Pac. 529, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 530. In this case the relation was terminated by the guest becoming a servant of the innkeeper before the loss occurred.

532. 3. Holstein *v.* Phillips, (N. Car. 1907) 59 S. E. 1037.

535. 5. Crapo *v.* Rockwell, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 1, 94 N. Y. Supp. 1122; Holstein *v.* Phillips, (N. Car. 1907) 59 S. E. 1037.

541. 2. **Limitation Effected by Terms of Statute.** — The innkeeper is not liable as such for the loss of an article, where the guest handed to the clerk a box containing such article and asked him to keep it, but did not ask that it be put in the safe, nor inform the clerk as to what the box contained. Under these circumstances the innkeeper is liable only as a gratuitous bailee. Horton *v.* Terminal Hotel, etc., Co., 114 Mo. App. 357, 89 S. E. 363.

542. 1. **Mode of Effecting Limitation — Posting Notices.** — Kerlin *v.* Swart, 143 Mich. 228, 106 N. W. 710.

544. 2. Where the statute excepts "valuables as is usual, common, and prudent for any such guest to retain in his room or about his person," evidence tending to prove the general usage of travelers as to articles taken to their rooms is competent. Kerlin *v.* Swart, 143 Mich. 228, 106 N. W. 710.

545. 4. Horton *v.* Terminal Hotel, etc., Co., 114 Mo. App. 357, 89 S. E. 363.

8*a*. Indemnity. — An innkeeper who has been held liable to a guest for injuries to a horse wrongfully taken from the inn stable by a third person, may recover the amount thereof from such third person. Reynolds *v.* Alderman, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 73, 103 N. Y. Supp. 863.

546. 1*a*. **Insult to Guest.** — There is no implied contract by which an innkeeper undertakes to protect his guests from insults by his employees. De Wolf *v.* Ford, 119 N. Y. App. Div. 808, 104 N. Y. Supp. 876.

7. In Clancy *v.* Barker, 71 Neb. 83, 103 N. W. 446, it was held that an innkeeper must protect his guests from assaults by his servants, and

that if a guest is so assaulted the innkeeper is liable in damages.

547. 5. Evidence of Defect in Stairway Question for Jury. — Brannan *v.* Stewart, 145 Mich. 548, 108 N. W. 964.

4. There can be no recovery by a guest who falls down a short flight of stairs in a dark passageway while looking for a toilet room, because he has no right to assume that the passageway will continue on the same level. Dailey *v.* Distler, 115 N. Y. App. Div. 102, 100 N. Y. Supp. 679.

548. 4. Waters *v.* Gerard, 189 N. Y. 302, 83 N. E. 143, *affirming* 106 N. Y. App. Div. 431, 94 N. Y. Supp. 702, and *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 548.

A Debt Must Exist before there can be a lien. Therefore there can be no such lien on a married woman's property while she is living with her husband, because indebtedness for her board is the husband's debt. Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797.

5. Waters *v.* Gerard, 189 N. Y. 302, 83 N. E. 143, *affirming* 106 N. Y. App. Div. 431, 94 N. Y. Supp. 702, and *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 548; Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797.

549. 3. The *Texas* statute giving boarding house keepers a lien on the effects of their boarders does not apply to the keepers of lodging houses. Hardin *v.* State, (Tex. Crim. 1905) 84 S. W. 591.

550. 7. Waters *v.* Gerard, 189 N. Y. 302, 83 N. E. 143, *affirming* 106 N. Y. App. Div. 431, 94 N. Y. Supp. 702.

551. 2. Waters *v.* Gerard, 189 N. Y. 302, 83 N. E. 143, *affirming* 106 N. Y. App. Div. 431, 94 N. Y. Supp. 702.

3. **Statutory Provisions.** — Wertheimer-Swarts Shoe Co. *v.* Hotel Stevens Co., 38 Wash. 409, 80 Pac. 563.

552. 3. Wertheimer-Swarts Shoe Co. *v.* Hotel Stevens Co., 38 Wash. 409, 80 Pac. 563.

553. 4. Where there was no express agreement on the part of the guest to pay at a specified rate, the innkeeper cannot recover unless he proves either the usual and customary rates charged by him for the entertainment of guests, or that the entertainment furnished was reasonably worth a certain sum. Baldwin *v.* Webb, 121 Ga. 416, 49 S. E. 268.

No recovery can be had on the implied promise of the guest unless the reasonable value of the entertainment is proved. Roach *v.* Road Drivers' Assoc., (Supm. Ct. App. T.) 96 N. Y. Supp. 205.

554. 6. **Wrongful Conduct of Guest.** — A guest is not liable in damages to the innkeeper because a trained nurse employed by him gave birth to an illegitimate child in the rooms occupied by his family, and thereby caused a scandal resulting in other guests leaving the hotel. The injury was not the proximate result of the delivery of the illegitimate child. Perkins *v.* Seasongood, 152 Fed. 583.

7. **Removal of Baggage with Intention of Not Paying Bill.** — Com. *v.* Billig, 25 Pa. Super. Ct. 477.

INSANITY.

562. 1. **Statutory Definitions.** — *In re* Wright, 74 Kan. 406, 89 Pac. 678, *rehearing denied* 86 Pac. 460; Caple *v.* Drew, 70 Kan. 136, 78 Pac. 427; Chapin *v.* Lowell, 194 Mass. 486, 80 N. E. 618.

2. Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69.

563. 1. **Statutory Definition of Lunacy.** — Matter of Preston, 113 N. Y. App. Div. 732, 99 N. Y. Supp. 312.

2. Johnson *v.* Safe Deposit, etc., Co., 104 Md. 460, 65 Atl. 333.

9. People *v.* Trebilcox, 149 Cal. 307, 86 Pac. 684.

565. 10. Team *v.* Bryant, 71 S. Car. 331, 51 S. E. 148, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 565.

566. 5. White *v.* Martin, 2 Alaska 471; Nelson *v.* Cowling, 77 Ark. 351, 91 S. W. 773; Robinson *v.* Dayton, 190 Mass. 459, 77 N. E. 503. See also Carter *v.* Bolster, 122 Mo. App. 135, 98 S. W. 105.

567. 12. Supreme Council, etc., *v.* Nicholson, 104 Md. 472, 65 Atl. 320, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 567; Foran *v.* Healy, 73 Kan. 633, 85 Pac. 751, *rehearing denied* 73 Kan. 640, 86 Pac. 470; Bennett *v.* Randall, (R. I. 1907) 67 Atl. 525.

568. 1. Martin *v.* White, 146 Fed. 461, 76 C. C. A. 671, *reversing* 2 Alaska 495; State *v.* Superior Ct., 41 Wash. 450, 83 Pac. 726; Karnes *v.* Johnston, 58 W. Va. 595, 52 S. E. 658.

Void under Direct Attack. — Donaldson *v.* Winningham, (Wash. 1908) 93 Pac. 534.

2. Hare *v.* Shaw, 84 Ark. 32, 104 S. W. 931; Packard *v.* Ulrich, (Md. 1907) 67 Atl. 246.

The Committee Himself cannot deny the validity of the appointment on the ground of want of notice when called to account for money received under it. Straight *v.* Ice, 56 W. Va. 60, 48 S. E. 837.

Ward Cannot Vacate Proceedings Where Guardianship Beneficial. — A person for whom a guardian has been appointed without the statutory notices is not entitled, on being cured, to a vacation of the proceedings on certiorari, where the guardianship has been beneficial to him. Bennett *v.* Randall, (R. I. 1907) 67 Atl. 525.

6. State *v.* Superior Ct., 41 Wash. 450, 83 Pac. 726; Donaldson *v.* Winningham, (Wash. 1908) 93 Pac. 534.

Notice by Publication on a nonresident incompetent is sufficient. Coleman *v.* Cravens, 41 Wash. 1, 82 Pac. 1005.

7. A statutory provision for notice to the person having the care, custody, and control of the incompetent person is mandatory, and the record must show that such notice has been given or that there is no person on whom notice can be served. State *v.* Superior Ct., 41 Wash. 450, 83 Pac. 726; Donaldson *v.* Winningham, (Wash. 1908) 93 Pac. 534.

569. 3. *Re* Webb, 12 Ont. L. Rep. 194.

4. Supreme Council, etc., *v.* Nicholson, 104 Md. 472, 65 Atl. 320.

574. 3. Foran *v.* Healy, 73 Kan. 633, 85 Pac. 751, *rehearing denied* 73 Kan. 640, 86 Pac. 470; Trust Co. of America *v.* State Safe Deposit Co., 109 N. Y. App. Div. 665, 96 N. Y. Supp. 585; Matter of Bergmann, 110 N. Y.

App. Div. 588, 97 N. Y. Supp. 346. But see Donaldson *v.* Winningham, (Wash. 1908) 93 Pac. 534, holding that the validity of an order appointing a guardian does not depend upon the validity of a prior adjudication of insanity.

Under the *Louisiana* statutes a writ of mandamus will be granted to compel the appointment of a curator pending an appeal from a judgment of interdiction where the judge of the District Court informs the court that there is no necessity for such appointment. *In re* Jones, 116 La. 776, 41 So. 89.

Where a wife has been adjudged insane in one county, the Probate Court of another county in which her husband has acquired a residence may appoint a guardian for her without the necessity of a sworn information. Schwartz *v.* West, (Tex. Civ. App. 1904) 84 S. W. 282.

4. Karnes *v.* Johnston, 58 W. Va. 595, 52 S. E. 658.

5. Foran *v.* Healy, 73 Kan. 633, 85 Pac. 751, *rehearing denied* 73 Kan. 640, 86 Pac. 470. See also Logue *v.* Fenning, 29 App. Cas. (D. C.) 510.

7. Matter of Andrews, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 6, 106 N. Y. Supp. 13. See also Matter of Cooper, 105 N. Y. App. Div. 449, 94 N. Y. Supp. 270.

8. Where There Is a Contest a referee will be appointed to take testimony as to the person who should be appointed and to report the same with his opinion. Matter of Cooper, 105 N. Y. App. Div. 449, 94 N. Y. Supp. 270.

575. **1.** Where the welfare of the incompetent demands it the court may direct that he shall not be taken out of its jurisdiction without its consent. Matter of Cooper, 105 N. Y. App. Div. 449, 94 N. Y. Supp. 270.

9. Under a statute authorizing friends and relations to apply for the appointment, a brother-in-law may be appointed notwithstanding that the incompetent has relations by consanguinity within the county. *In re* Wagner, (Mich. 1908) 114 N. W. 868, 14 Detroit Leg. N. 182.

10. Matter of Andrews, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 6, 106 N. Y. Supp. 13.

576. **3.** Sallier *v.* St. Louis, etc., R. Co., 114 La. 1090, 38 So. 868.

577. **1.** Matter of Cooper, 105 N. Y. App. Div. 449, 94 N. Y. Supp. 270.

4. A wife when appointed curatrix of her insane husband is not required to give security. Sallier *v.* St. Louis, etc., R. Co., 114 La. 1090, 38 So. 868.

8. Griffin *v.* Larwell, 148 Mich. 516, 111 N. W. 1089, 14 Detroit Leg. N. 182; Matter of Bergmann, 110 N. Y. App. Div. 588, 97 N. Y. Supp. 346; Coleman *v.* Cravens, 41 Wash. 1, 82 Pac. 1005.

Insane Ward Cannot Change His Domicil. — McIntire *v.* Bailey, 133 Iowa 418, 110 N. W. 787.

578. **1.** Coleman *v.* Cravens, 41 Wash. 1, 82 Pac. 1005.

Although it is not bound to do so, the Court of Chancery may in its discretion make an application 134 of the Lunacy Act, 1890, upon the application of the committee of a lunatic resident abroad, order the transfer abroad of securities in England belonging to the lunatic, notwithstanding that the funds are not required for his maintenance. *In re* De Larragoiti, (1907) 2 Ch. 14.

The committee of a nonresident alien lunatic, appointed by the proper tribunal of the state in which he lives, may collect and receive his ward's property and remove it to the state where he resides without being required to show that the removal is for the best interests of the ward, notwithstanding that the property is in the hands of a conservator appointed in the state where the property is and the fact that upon the ward's death his property will escheat to the state. Langmuir *v.* Landes, 113 Ill. App. 611.

4. Scribner *v.* Young, 111 N. Y. App. Div. 814, 97 N. Y. Supp. 866.

579. **7.** *In re* McGivery, 3 N. Bruns. Eq. Rep. 327.

10. Matter of Andrews, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 6, 106 N. Y. Supp. 13.

580. **1.** Sangfried's Succession, 114 La. 878, 38 So. 593.

2. The committee may be allowed to charge against the estate money borrowed and expended for the maintenance of a lunatic when the personal estate has been exhausted. Matter of Roberts, (County Ct.) 52 Misc. (N. Y.) 630, 103 N. Y. Supp. 1017.

583. **4.** Lemly *v.* Ellis, (N. Car. 1907) 59 S. E. 683.

585. **2.** The court will authorize a sale where necessary. *In re* Hayden, 1 Cal. App. 75, 81 Pac. 668.

Power under Statute. — Coleman *v.* Cravens, 41 Wash. 1, 82 Pac. 1005.

3. See Robinson *v.* Dayton, 190 Mass. 459, 77 N. E. 503.

Power under Statute. — Coleman *v.* Cravens, 41 Wash. 1, 82 Pac. 1005.

586. **6.** Cowling *v.* Nelson, 76 Ark. 146, 88 S. W. 913. See also Murdock *v.* Loeser, (Ky. 1905) 87 S. W. 808.

587. **5. To Raise Money to Pay Debts and to Make Improvements.** — *In re* McGivery, 3 N. Bruns. Eq. Rep. 327.

Void Mortgage Cannot Be Corrected. — If a mortgage by the guardian is void from want of confirmation by the court it cannot be made the basis of a bill for the correction of a mistake therein. Montgomery *v.* Perryman, 147 Ala. 207, 41 So. 838.

Liability of Sureties for Unauthorized Mortgage. — Where a committee is authorized to invest the lunatic's money on first mortgage and has invested it on second mortgage, and the court has ordered the committee to bring the money into court, a subsequent release of the first mortgage is no defense to a suit on the bond of the committee; and the court might have on appropriate application, the court might have modified its order and sanctioned the investment. Gamlin *v.* State, 101 Md. 171, 63 Atl. 873.

6. Dower Not Lost to Widow by Her Insanity. — Crenshaw *v.* Kener, 127 Ga. 742, 57 S. E. 57.

588. **1.** The court may order the sale of an insane widow's dower and homestead rights. Robinson *v.* Dayton, 190 Mass. 459, 77 N. E. 503.

Under the *Georgia* statutes the right of a

widow who was insane at her husband's death to apply for an assignment of vested [illegible] not become barred until the lapse of seven years after her restoration to sanity. La Grange Mills *v.* Kener, 121 Ga. 429, 49 S. E. 300.

9. Storm *v.* McGrover, 189 N. Y. 568, 82 N. E. 160.

12. The committee cannot cut timber without an order of the court nor ratify an unauthorized cutting thereof by others. Scribner *v.* Young, 111 N. Y. App. Div. 814, 97 N. Y. Supp. 806.

589. 2. *In re* McGivery, 3 N. Bruns. Eq. Rep. 327.

5. See Matter of Fisk, (Surrogate Ct.) 45 Misc. (N. Y.) 298, 92 N. Y. Supp. 394.

6. Statutory Duty. — McIntire *v.* Bailey, 133 Iowa 418, 110 N. W. 588.

590. 3. *In re* Kimble, 127 Iowa 665, 103 N. W. 1009.

5. Brehm *v.* U. S. Fidelity, etc., Co., 124 Wis. 339, 102 N. W. 36.

The Statute of Limitations will bar allowance for expenditures made more than six years before filing a petition for accounting. Matter of Roberts, (County Ct.) 52 Misc. (N. Y.) 630, 103 N. Y. Supp. 1017.

6. *In re* Compton, 70 N. J. Eq. 556, 67 Atl. 1077.

7. McIntire *v.* Bailey, 133 Iowa 418, 110 N. W. 588.

Suit will lie in the name of a second committee against the first committee's estate to recover money received by the first committee and chargeable against him. Straight *v.* Ice, 56 W. Va. 60, 48 S. E. 837.

591. 9. Ball *v.* Lindsey, 94 S. W. 630, 29 Ky. L. Rep. 653.

592. 3. Attorney's Fee for Making Up Account. — Matter of Roberts, (County Ct.) 52 Misc. (N. Y.) 630, 103 N. Y. Supp. 1017; Packard *v.* Ulrich, (Md. 1907) 67 Atl. 246.

4. *In re* Kimble, 127 Iowa 665, 103 N. W. 1009.

6. See *In re* Kimble, 127 Iowa 665, 103 N. W. 1009.

593. 5. See Straight *v.* Ice, 56 W. Va. 60, 48 S. E. 837.

594. 5. A committee should be allowed half commissions on property received and not converted into cash. Matter of Notman, 103 N. Y. App. Div. 520, 93 N. Y. Supp. 82.

9. Straight *v.* Ice, 56 W. Va. 60, 48 S. E. 837; *In re* Seager Hunt, (1906) 2 Ch. 295.

Guardian Clothed with Powers of Administrator. — Lang *v.* Friesenecker, 213 Ill. 598, 73 N. E. 320.

595. 4. *In re* Scheuer, 31 Mont. 606, 79 Pac. 244.

Committee Not Accountable as Such for Funds Subsequently Collected. — The committee is not accountable in the lunacy, in his character as committee, for rents and profits received by him after the lunatic's death, and where he makes default as to these his surety is not liable. *In re* Walker, (1907) 2 Ch. 120.

10. McIntire *v.* Bailey, 133 Iowa 418, 110 N. W. 588; Matter of Andrews, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 6, 106 N. Y. Supp. 13; Matter of Andrews, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 86, 106 N. Y. Supp. 1096.

596. 2. McIntire *v.* Bailey, 133 Iowa 418, 110 N. W. 588.

8. No Common-law Liability of the husband for the maintenance of his wife in an insane asylum. Richardson *v.* Stuesser, 125 Wis. 66, 103 N. W. 261.

597. 1. State *v.* Snell, (Wash. 1907) 89 Pac. 931.

The State may provide for the confinement of dangerous insane persons in a prison; and no time being specified in the statute for the duration of imprisonment, an order for the confinement until the further order of the court is not void for uncertainty. *In re* Brown, 39 Wash. 160, 81 Pac. 552.

3. See Byers *v.* Solier, (Wyo. 1907) 93 Pac. 59, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 596.

6. No parental authority can justify the confinement of a sane minor in a madhouse. People *v.* Bond, 104 N. Y. App. Div. 47, 93 N. Y. Supp. 277.

598. 4. Byers *v.* Solier, (Wyo. 1907) 93 Pac. 59, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 598; *Ex p.* Schwarting, (Neb. 1906) 108 N. W. 125; People *v.* Bond, 104 N. Y. App. Div. 47, 93 N. Y. Supp. 277.

8. See *Ex p.* Wright, 74 Kan. 406, 86 Pac. 460, 89 Pac. 678; *In re* Palmer, 26 R. I. 486, 59 Atl. 746.

10. People *v.* Bond, 104 N. Y. App. Div. 47, 93 N. Y. Supp. 277.

599. 1. *In re* Clary, 149 Cal. 732, 87 Pac. 580.

600. 4. See State *v.* Snell, 46 Wash. 327, 89 Pac. 931, *citing In re* Brown, 39 Wash. 160, 81 Pac. 552.

9. Schneider *v.* Rabb, (Tex. Civ. App. 1907) 100 S. W. 163.

Where a plaintiff's insanity has arisen after the commencement of the action the proceedings will not be suspended to allow of the appointment of a guardian *ad litem* at the defendant's suggestion. Koenig *v.* Union Depot R. Co., 194 Mo. 564, 92 S. W. 497.

601. 2. See Heath *v.* Capital Sav. Bank, etc., Co., 70 Vt. 301, 64 Atl. 1127.

The guardian may maintain a suit to compel the discharge of a mortgage given by the incompetent in defraud of his creditors, where the incompetent is insolvent and the money is needed to pay his debts. Brigham *v.* Madden, 74 N. H. 7, 64 Atl. 723.

Substitution of General Guardian for Next Friend. — Hare *v.* Shaw, 84 Ark. 32, 104 S. W. 921.

5. Gressly *v.* Hamilton County, (Iowa 1907) 114 N. W. 191; State *v.* Murphy, (Nev. 1906) 85 Pac. 1004; Grant *v.* Humbert, 114 N. Y. App. Div. 462, 100 N. Y. Supp. 44. See also Callahan *v.* New York Cent., etc., R. Co., 99 N. Y. App. Div. 56, 90 N. Y. Supp. 657.

602. 1. Manders' Committee *v.* Eastern State Hospital, 84 S. W. 761, 27 Ky. L. Rep. 254.

7. Grant *v.* Humbert, 114 N. Y. App. Div. 462, 100 N. Y. Supp. 44.

603. 8. Starke *v.* State, (Fla. 1905) 37 So. 850.

604. 4. People *v.* Willard, 150 Cal. 543, 89

Pac. 124; Central of Georgia R. Co. *v.* Harper, 124 Ga. 836, 53 S. E. 391.

605. 1. *In re* Brown, 39 Wash. 160, 81 Pac. 552, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605; Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374; State *v.* Snell, (Wash. 1907) 89 Pac. 931.

606. 1. Binyon *v.* U. S., 4 Indian Ter. 657, 76 S. W. 265, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 606; Security Sav. Bank *v.* Carroll, 131 Iowa 605, 109 N. W. 212; Sims *v.* State, (Tex. Crim. 1907) 99 S. W. 555.

2. Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 606; Karnes *v.* Johnston, 58 W. Va. 595, 52 S. E. 658, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 606; *Ex p.* Wright, 74 Kan. 406, 86 Pac. 460, 89 Pac. 678; Sbarbero *v.* Miller, (N. J. 1907) 65 Atl. 472; Schoenberg *v.* Ulman, (N. Y. City Ct. Spec. T.) 51 Misc. (N. Y.) 83, 99 N. Y. Supp. 650. See also Johnson *v.* Safe Deposit, etc., Co., 104 Md. 460, 65 Atl. 333.

A judgment adjudging a person a lunatic is conclusive that he was a lunatic at that time, and is *prima facie* evidence of his lunacy at a subsequent period, but it raises no presumption that he was a lunatic at any previous time. Andrews *v.* Andrews' Committee, 87 S. W. 1080, 27 Ky. L. Rep. 1119.

The record is conclusive as to acts and dealings subsequent to the inquisition, and presumptive only as to those prior thereto. O'Reilly *v.* Sweeney, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 408, 105 N. Y. Supp. 1033.

607. 4. An *ex parte* order of commitment to an asylum, though admissible in a subsequent prosecution for crime, is not conclusive. People *v.* Willard, 150 Cal. 543, 89 Pac. 124.

608. 2. See Sbarbero *v.* Miller, (N. J. 1907) 65 Atl. 472.

609. 5. People *v.* Fallon, 149 Cal. 287, 86 Pac. 689; State *v.* Jack, 4 Penn. (Del.) 470, 58 Atl. 833; State *v.* Constantine, (Wash. 1908) 93 Pac. 317.

Declarations and admissions of the defendant tending to show unsoundness of mind are admissible in proceedings for the appointment of a guardian where the defendant has not been previously adjudged insane. Conway *v.* Murphy, (Iowa 1907) 112 N. W. 764.

611. 5. Evidence that a father took improper liberties with his daughters and had carnal connection with one of them was held not sufficient to show that he was incapable of managing and caring for his own estate. Leefers *v.* People, 123 Ill. App. 634.

6. Before a guardian will be appointed for the estate of a person on the ground of weakness of mind and inability to take care of the property, it must be clearly shown that the person is so weak in mind that he is unable to take care of the property and so is liable to dissipate or lose the same and to become the victim of designing persons. *In re* Breyden, 211 Pa. St. 633, 61 Atl. 250.

8. *In re* Dunahugh, 130 Iowa 692, 107 N. W. 925.

612. 2. Rogers *v.* State, 77 Vt. 454, 61 Atl. 489.

7. State *v.* Penna, 35 Mont. 535, 90 Pac. 787.

613. 2. State *v.* Penna, 35 Mont. 535, 90 Pac. 787.

4. Dillman *v.* McDanel, 222 Ill. 276, 78 N. E. 591, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 613.

5. State *v.* Wetter, 11 Idaho 433, 83 Pac. 341.

6. State *v.* Wetter, 11 Idaho 433, 83 Pac. 341.

614. 1. State *v.* Crane, 202 Mo. 54, 100 S. W. 422; Rogers *v.* State, 77 Vt. 454, 61 Atl. 489.

3. Rogers *v.* State, 77 Vt. 454, 61 Atl. 489.

4. State *v.* Crane, 202 Mo. 54, 100 S. W. 422; State *v.* Austin, 71 Ohio St. 317, 73 N. E. 218; Duthey *v.* State, 131 Wis. 178, 111 N. W. 222.

5. People *v.* Willard, 150 Cal. 543, 89 Pac. 124; Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374; State *v.* Wetter, 11 Idaho 433, 83 Pac. 341; De Vries *v.* Crofoot, 148 Mich. 183, 111 N. W. 775, 14 Detroit Leg. N. 126; People *v.* Meringola, 113 N. Y. App. Div. 488, 99 N. Y. Supp. 357; State *v.* Austin, 71 Ohio St. 317, 73 N. E. 218. See also Taylor *v.* State, 49 Tex. Crim. 7, 90 S. W. 647.

615. 1. State *v.* Crane, 202 Mo. 54, 100 S. W. 422.

2. State *v.* Pressler, (Wyo. 1907) 92 Pac. 806.

616. 1. People *v.* Willard, 150 Cal. 543, 89 Pac. 124; Allams *v.* State, 123 Ga. 500, 51 S. E. 506; State *v.* Mitchell, 130 Iowa 697, 107 N. W. 804; State *v.* Johnston, 118 La. 276, 42 So. 935; State *v.* Quigley, 26 R. I. 263, 58 Atl. 905; McCullough *v.* State, (Tex. Crim. 1906) 94 S. W. 1056; Fults *v.* State, (Tex. Crim. 1906) 98 S. W. 1057; Sartin *v.* State, (Tex. Crim. 1907) 103 S. W. 875.

617. 1. McCullough *v.* State, (Tex. Crim. 1906) 94 S. W. 1056.

Degree of Proof — Reasonable Satisfaction. — See State *v.* Wetter, 11 Idaho 433, 83 Pac. 341.

3. State *v.* Jack, 4 Penn. (Del.) 470, 58 Atl. 833; Com. *v.* Johnson, 188 Mass. 382, 74 N. E. 930; Duthey *v.* State, 131 Wis. 178, 111 N. W. 222; State *v.* Pressler, (Wyo. 1907) 92 Pac. 806, *quoting* 16 AM. AND ENG. ENCYC. [illegible] (2d ed.) 617.

618. 3. People *v.* Griffith, 146 Cal. 339, 80 Pac. 68; Roberts *v.* State, 123 Ga. 146, 51 S. E. 374; Allams *v.* State, 123 Ga. 500, 51 S. E. 506. See also Carter *v.* State, 2 Ga. App. 254, 58 S. E. 532.

7. Sartin *v.* State, (Tex. Crim. 1907) 103 S. W. 875.

619. 1. Dow *v.* State, 77 Ark. 464, 92 S. W. 28; People *v.* Trebilcox, 149 Cal. 307, 86 Pac. 684; Turner *v.* Territory, 15 Okla. 557, 82 Pac. 650; State *v.* Lauth, 46 Oregon 342, 80 Pac. 660; Com. *v.* Renzo, 216 Pa. St. 147, 65 Atl. 30.

620. 2. People *v.* Willard, 150 Cal. 543, 89 Pac. 124; Sartin *v.* State, (Tex. Crim. 1907) 103 S. W. 875.

3. State *v.* Jack, 4 Penn. (Del.) 470, 58 Atl. 833; Carter *v.* State, 2 Ga. App. 254, 58 S. E. 532; State *v.* Wetter, 11 Idaho 433, 83 Pac. 341; Bast *v.* Com., (Ky. 1907) 99 S. W. 978; Rogers *v.* State, 77 Vt. 454, 61 Atl. 489.

621. 1. People *v.* Silverman, 181 N. Y. [illegible] N. E. 980.

5. U. S. *v.* Chisolm, 149 Fed. 284; Braham *v.* State, 143 Ala. 28, 38 So. 919.

7. Phillips *v.* State, (Tex. Crim. 1906) 98 S. W. 868.

8. *In re* Wright, 74 Kan. 406, 89 Pac. 678, *denying rehearing* 86 Pac. 460; Com. *v.* Woelfel, (Ky. 1905) 88 S. W. 1061; Barker *v.* State, (Neb. 1905) 106 N. W. 450. See also State *v.* Superior Ct., (Wash. 1907) 88 Pac. 207.

A verdict of guilty, where a plea of insanity has been interposed as a defense, does not bar a plea of insanity at the time of the trial or at the time of sentence. Ince *v.* State, 76 Ark. 615, 77 Ark. 418, 88 S. W. 818.

622. 3. See Brown *v.* Urquhart, 139 Fed. 846.

The *Nebraska* statute provides for a trial by jury in the case of a convict under sentence of death who shall appear to be insane. Barker *v.* State, 75 Neb. 289, 103 N. W. 1134, 106 N. W. 450.

4. U. S. *v.* Chisolm, 149 Fed. 284; Com. *v.* Woelfel, (Ky. 1905) 88 S. W. 1061. See also State *v.* Superior Ct., (Wash. 1907) 88 Pac. 207.

623. 1. Central of Georgia R. Co. *v.* Hall, 124 Ga. 332, 52 S. E. 679, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622; Feld *v.* Borodofski, 87 Miss. 731, 40 So. 816, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623.

2. Central of Georgia R. Co. *v.* Hall, 124 Ga. 332, 52 S. E. 679, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622.

Nonliability for Tortious Negligence of Guardian. — An insane person is not liable for the tortious negligence of his committee in the management of his estate. Ward *v.* Rogers, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 299, 100 N. Y. Supp. 1058; Reams *v.* Taylor 31 Utah 288, 87 Pac. 1089.

3. Central of Georgia R. Co. *v.* Hall, 124 Ga. 332, 52 S. E. 679, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622.

5. Feld *v.* Borodofski, 87 Miss. 731, 40 So. 816, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623.

6. See Feld *v.* Borodofski, 87 Miss. 731, 40 So. 816, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623.

624. 3. Sbarbero *v.* Miller, (N. J. 1907) 65 Atl. 472; Schoenberg *v.* Ulman, (N. Y. City Ct. Spec. T.) 51 Misc. (N. Y.) 83, 99 N. Y. Supp. 650. See also Ratliff *v.* Baltzer, 13 Idaho 152, 89 Pac. 71.

4. Saffer *v.* Mast, 223 Ill. 108, 79 N. E. 32; Swartwood *v.* Chance, 131 Iowa 714, 109 N. W. 297; Team *v.* Bryant, 71 S. Car. 331, 51 S. E. 148.

625. 1. Critchfield *v.* Easterday, 26 App. Cas. (D. C.) 80.

2. Swartwood *v.* Chance, 131 Iowa 714, 109 N. W. 297; D. M. Smith's Committee *v.* Forsythe, (Ky. 1906) 90 S. W. 1075. See also Miller *v.* Barber, 73 N. J. L. 38, 62 Atl. 276.

5. Ratliff *v.* Baltzer, 13 Idaho 152, 89 Pac. 71; D. M. Smith's Committee *v.* Forsythe, (Ky. 1906) 90 S. W. 1075; Gross *v.* Jones, 80 Miss. 44, 42 So. 802; Key *v.* Harris, 116 Tenn. 161, 92 S. W. 235.

626. 1. Ratliff *v.* Baltzer, 13 Idaho 152, 89 Pac. 71; D. M. Smith's Committee *v.* Forsythe, (Ky. 1906) 90 S. W. 1075.

4. The rule does not apply where the question of insanity arises as a collateral issue between strangers. Schoenberg *v.* Ulman, (N. Y. City Ct. Spec. T.) 51 Misc. (N. Y.) 83, 99 N. Y. Supp. 650.

628. 2. Dekle *v.* Barkley, 48 Fla. 250, 37 So. 581, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 628.

3. Ratliff *v.* Baltzer, 13 Idaho 152, 89 Pac. 71; Saffer *v.* Mast, 223 Ill. 108, 79 N. E. 32; Swartwood *v.* Chance, 131 Iowa 714, 109 N. W. 297; Ames *v.* Ames, 75 Neb. 473, 106 N. W. 584. See also Maionchi *v.* Nicholini, 1 Cal. App. 690, 82 Pac. 1052.

The Test of Competency. — Leefers *v.* People, 123 Ill. App. 634.

629. 2. See DeVries *v.* Crofoot, 148 Mich. 183, 111 N. W. 775, 14 Detroit Leg. N. 126; Koenig *v.* Union Depot R. Co., 194 Mo. 564, 92 S. W. 497.

INSOLVENCY AND BANKRUPTCY.

636. 1. *In re* Kehler, 153 Fed. 235.

2. California Consol. Min. Co. *v.* Manley, 10 Idaho 786, 81 Pac. 50, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 636; Empire State Trust Co. *v.* Fisher, 67 N. J. Eq. 602, 60 Atl. 940; Kingsley *v.* Merrill, 122 Wis. 185, 193, 99 N. W. 1044, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 636.

637. 1. **"Fair Valuation" of Property.** — *In re* Hines, 144 Fed. 142.

3. Plymouth Cordage Co. *v.* Smith, 18 Okla. 249, 90 Pac. 418; Edwards *v.* Carondelet Milling Co., 108 Mo. App. 275, 83 S. W. 764; Wilkinson *v.* Anderson-Taylor Co., 28 Utah 346, 79 Pac. 46; Rogers *v.* Ogden Bldg., etc., Assoc., 30 Utah 188, 83 Pac. 754, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637; Kingsley *v.* Merrill, 122 Wis. 185, 193, 99 N. W. 1044, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637.

The valuation for the test of solvency or insolvency of a printing company at the time it mortgaged its plant must relate to the conditions as a going concern when the mortgage alleged to have been a preference was given and not to the dead matter of the plant after bankruptcy intervened. I. W. Butler Paper Co. *v.* Goembel, (C. C. A.) 143 Fed. 295.

An order of the referee confirming a receiver's sale of the bankrupt's property is competent evidence on the issue of insolvency where it appears that the assets of the bankrupt had not varied from the time when the alleged preferential payment was made to the time of the receiver's sale. Pike Ave. Bank *v.* Studheim, (C. C. A.) 145 Fed. 708.

A man is insolvent, as that term is defined by the Bankruptcy Act, when the aggregate of his property exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed with intent to defraud, hinder or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts. *In re* Louisville First Nat. Bank, (C. C. A.) 155 Fed. [illegible].

In determining the issue as to the solvency or insolvency of the bankrupt under the Act of 1898 all the property which he owns is to be reckoned in computing the amount of his assets, except such as he may have transferred or concealed in fraud of creditors, but not excluding property which is exempt by the laws of the state. *In re* Crenshaw, 156 Fed. 638.

The Burden of Proving Solvency rests on the debtor in an involuntary proceeding. *In re* Crenshaw, 156 Fed. 638.

Exempt Property Not Included in Valuation. — Plymouth Cordage Co. *v.* Smith, 18 Okla. 249, 90 Pac. 418.

Insolvency of Partnership — Firm Assets Insufficient to Pay Firm Debts. — *In re* McMurtrey, 142 Fed. 853.

In determining the question of insolvency of a partnership the individual property of the partners is to be considered. *In re* Perley, 138 Fed. 927.

Sufficiency of Evidence to Show Insolvency. — Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346.

638. 3. Hurley *v.* Devlin, 151 Fed. 919.

641. 3. The amendatory act of February 5, 1903, provides that "the provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably with the provisions of" the original act. *In re* Felson, 139 Fed. 275.

6. The Act of 1898. — Shreck *v.* Hanlon, 74 Neb. 264, 104 N. W. 193.

642. 8. *In re* Salmon, 143 Fed. 395; Smith *v.* Mottley, (C. C. A.) 150 Fed. 266, *reversing* 143 Fed. 407; Dille *v.* People, 118 Ill. App. 426, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 642; Moody *v.* Port Clyde Development Co., 102 Me. 365, 66 Atl. 967; Murphy *v.* Penniman, (Md. 1907) 66 Atl. 282; Smith's Estate, 13 Pa. Dist. 81, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 642; Potts *v.* Smith Mfg. Co., 25 Pa. Super. Ct. 206.

8. *In re* Salmon, 143 Fed. 395; *Ex p.* Crawford, (C. C. A.) 154 Fed. 769; Boston Mercantile Co. *v.* Ould-Carter Co., 123 Ga. 458, 51 S. E. 466.

State insolvency laws are superseded and suspended by the passage of a federal bankruptcy law only as the two conflict, and it is only therefore where the bankruptcy law covers and supplies that which is undertaken to be disposed of by the state law that the state law must give way. Johnson *v.* Crawford, 154 Fed. 761.

Pennsylvania Act Relating to Farmers and Wage Earners. — Citizens' Nat. Bank *v.* Gass, 29 Pa. Super. Ct. 125; Rittenhouse's Estate, 30 Pa. Super. Ct. 468.

645. 2. Ancillary Jurisdiction. — Hull *v.* Burr, (C. C. A.) 153 Fed. 945.

4. A debtor must have resided in the district for six months preceding the adjudication, and if the petition is regular on its face and the adjudication is made without objection, though at the time the debtor had not resided in the district for six months, the proceeding will not be dismissed after the six months have elapsed, but a new order will be entered. *In re* Tully, 156 Fed. 634.

Waiver of Objections to Jurisdiction. — *In re* Worsham, (C. C. A.) 142 Fed. 121.

In the Case of a Corporation. — Lilly *v.* La Plume Condensed Milk Co., 141 Fed. 444.

Foreign Corporations. — Proof that a foreign corporation had not obtained a license to do business in the state will not defeat the jurisdiction of the bankruptcy court. *In re* Duplex Radiator Co., 142 Fed. 906.

647. 3. Under the provision of the bankruptcy law (§ 1, subd. 29) that "words importing the plural number may be applied to and mean only a single person or thing," a debtor who owes only one debt may become a voluntary bankrupt. *In re* Schwaninger, 144 Fed. 555.

12. The Bankruptcy Act of 1898 does not limit either the amount or number of debts. A person owing a single debt and having no assets may become a voluntary bankrupt. *In re* Schwaninger, 144 Fed. 555.

648. 1. The claim of a petitioning creditor in an involuntary proceeding may be contested by the bankrupt. Ayres *v.* Cone, (C. C. A.) 138 Fed. 778.

Where the petitioner in an involuntary proceeding has become a bankrupt his trustee in bankruptcy may be substituted as petitioner in his place. Hays *v.* Wagner, (C. C. A.) 150 Fed. 533.

3. "It is at least questionable whether persons who procure or connive at the commission of an act of bankruptcy are competent to maintain proceedings in bankruptcy on account of that act." Woolford *v.* Diamond State Steel Co., 138 Fed. 582.

No Estoppel by Participation in Void Assignment. — *In re* Salmon, 143 Fed. 395.

Proving a different claim under the assignment from that on which he joined in the bankruptcy petition will not affect the status of a creditor as such petitioner in bankruptcy. Hays *v.* Wagner, (C. C. A.) 150 Fed. 533.

4a. No creditor who has participated in an act of bankruptcy or connived in any fraud on the part of the bankrupt can be a petitioning creditor. *In re* Crenshaw, 156 Fed. 638.

5. Holder of Unmatured Note Indorsed by Bankrupt. — *In re* Rothenberg, 140 Fed. 798.

649. 7. After the petition has been filed other creditors may join at any time and may then be counted in order to make up the required number. *In re* Crenshaw, 156 Fed. 638.

Petition by Less than Three Creditors — Attempt by Bankrupt to Evade Law. — *In re* Blount, 142 Fed. 263.

Debts Must Amount to $1,000. — *In re* McMurtrey, 142 Fed. 853.

Preferred Creditors. — *In re* Blount, 142 Fed. 263.

651. 1 Naming Creditors — Equitable Owner of Note. — Ross-Lewin *v.* Goold, 112 Ill. App. 499, *affirmed* 211 Ill. 384, 71 N. E. 1028.

Effect of Errors in Names and Amounts. — Gatliff *v.* Mackey, (Ky. 1907) 104 S. W. 379.

Residence of Creditors. — *In re* [illegible] (Sup. Ct. Spec. T.) 44 Misc. (N. Y.) 516, 90 N. Y. Supp. 85.

Error in Creditor's Address. — [illegible] 122 N. Y. App. Div. 96, 106 N. Y. Supp. 1012.

Creditor's Office Address in Schedule Not Sufficient. — Weidenfeld *v.* Tillinghast, (N. Y. City

(C. Spec. T.) 54 Misc. (N. Y.) 90, 104 N. Y. Suppp. 902.

Surviving Partner Properly Scheduled as Creditor.—Kaufman *v.* Schreier, 108 N. Y. App. Div. 298, 95 N. Y. Supp. 729.

Debt of Partnership Scheduled as Debt of Bankrupt Partner.—New York Inst., etc., *v.* Crockett, 117 N. Y. App. Div. 269, 102 N. Y. Supp. [illegible].

Mortgage Transferred by Mortgagee Without Notice to Bankrupt Mortgagor.—Mueller *v.* Goerlitz, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 53, 103 N. Y. Supp. 1037.

7. Laing *v.* Fish, 119 Ill. App. 645.

653. 1. If the debt paid is one secured by mortgage on the bankrupt's property such payment is not a preference. The burden of proof, however, is on the creditor to establish the validity of the mortgage. Rogers *v.* Page, (C. C. A.) 140 Fed. 596.

654. 4. Edelstein *v.* U. S., (C. C. A.) 149 Fed. 636.

655. 6. A natural person may be adjudged an involuntary bankrupt though he is not "engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits." The quoted clause qualifies "any corporation" only. Cleage *v.* Laidley, (C. C. A.) 149 Fed. 346.

Under the Georgia Traders' Act it must appear that the debtor was a trader at the time the petition was filed. Illinois Sewing-Mach. Co. *v.* Whilden, 128 Ga. 169, 57 S. E. 235.

657. 1. In making out the defense of solvency to avoid the consequences of a conveyance made in bad faith the property thus conveyed is not to be computed in determining whether the aggregate of the defendant's property at the time of the filing of the petition against him was at a fair valuation sufficient in amount to pay his debts. Acme Food Co. *v.* Meier, (C. C. A.) 153 Fed. 74.

Solvency when the petition is filed is important only as a defense to an act of bankruptcy, and the burden of showing this is on the defendant. If the act of bankruptcy is the giving of a preference there must be a stated insolvency at the time of the preference, and the solvency or insolvency at the time of the filing of the petition can have only a reflex importance, if any. Acme Food Co. *v.* Meier, (C. C. A.) 153 Fed. 74.

3. The Bankruptcy Act of 1898 does not limit either the amount or number of debts. A person owing a single debt and having no assets may become a voluntary bankrupt. *In re* Schwaninger, 144 Fed. 555.

6. **Interest on Debts Not Allowed After Filing of Petition.**—*In re* Kallak, 147 Fed. 276.

659. 2. Building bridges, etc., is not manufacturing where the corporation has no manufacturing plant. Butt *v.* C. F. MacNichol Constr. Co., 140 Fed. 840.

A corporation engaged in quarrying and selling stone for building and other purposes is within the Bankruptcy Act. *In re* Quincy Granite Quarries Co., 147 Fed. 279.

The sale of the property and franchise of an insolvent corporation in proceedings under the state insolvency law does not dissolve the corporation so as to prevent its being adjudged bankrupt under the bankruptcy law. Cresson, etc., Coal, etc., Co. *v.* Stauffer, (C. C. A.) 148 Fed. 981.

The court to which a petition is presented has jurisdiction to determine whether the defendant corporation is subject to bankruptcy. *In re* John L. Nelson, etc., Co., 149 Fed. 590.

A corporation to be engaged in manufacturing must be actually so occupied. The mere fact that it has the authority but not the means to manufacture an article of commerce and has taken no steps in the process of manufacturing does not bring it within the meaning of the statute. *In re* Toledo Portland Cement Co., 156 Fed. 83.

What Are "Mercantile Pursuits"—Publishing Company.—Zugalla *v.* International Mercantile Agency, (C. C. A.) 142 Fed. 927.

Quarrying Company Held Subject to Bankruptcy—*In re* Mathews Consol. Slate Co., 144 Fed. 734.

Business at Time Debts Were Incurred Governs—Tiffany *v.* La Plume Condensed Milk Co., 141 Fed. 444.

State Banks Organized under General Incorporation Laws.—*In re* Oregon Trust, etc., Bank, 156 Fed. 319.

4. A partnership may be adjudicated a bankrupt by voluntary or involuntary proceedings irrespective of any adjudication of the individual partners as bankrupts. *In re* Perley, 138 Fed. 927.

660. 1. **The Burden of Proof** is on the petitioner to show that a person petitioned against as a partner is such in fact. Jones *v.* Burnham, (C. C. A.) 138 Fed. 986.

6. **Chiefly Engaged in Farming.**—Rise *v.* Bordner, 140 Fed. 566.

The provisions of the bankruptcy law exempting persons engaged in certain occupations from involuntary bankruptcy proceedings refers to their occupation at the time of the act of bankruptcy relied on. Flickinger *v.* Vandalia First Nat. Bank, 145 Fed. 162.

The fact that a person is a wage earner does not exempt him from bankruptcy proceedings as to debts incurred before he became a wage earner. *In re* Crenshaw, 156 Fed. 638.

661. 1. One who purchases the entire stock of goods of a retail merchant within four months before the filing of the petition in bankruptcy is presumptively a purchaser with knowledge of his vendor's insolvency. Such a sale is not in the usual course of business. Dokken *v.* Page, (C. C. A.) 147 Fed. 438.

Where an involuntary petition alleges that the bankrupt transferred, concealed, and moved merchandise with intent to hinder, delay, and defraud creditors, great latitude is allowed in the admission of evidence in order that the jury may be able to determine whether the transaction was fraudulent or not. *In re* Luber, 152 Fed. 492.

Evidence of Fraud.—*In re* Minard, 156 Fed. 377.

662. 1. There is no legal obligation on a debtor when he finds that he is insolvent to file a petition in bankruptcy, and his failure to do so is not sufficient evidence of an intent to give a preference to a creditor who obtained a judgment against him. Richmond

Standard Steel, etc., Co. *v.* Allen, (C. C. A.) 148 Fed. 657.

"**The Test of a Preference** under the act is the payment out of the bankrupt's property of a larger percentage of the creditor's claim than other creditors of the same class receive." Painter *v.* Napoleon Tp., 156 Fed. 289.

2. *In re* Foley, 140 Fed. 300; Long *v.* Farmers' State Bank, (C. C. A.) 147 Fed. 360; Macon Grocery Co. *v.* Beach, 156 Fed. 1009.

Payment with Intent to Prefer. — Goodlander-Robertson Lumber Co. *v.* Atwood, (C. C. A.) 152 Fed. 978.

Burden of Proving Intent to Prefer. — Calhoun County Bank *v.* Cain, (C. C. A.) 152 Fed. 983.

663. 1. Insolvency of Debtor. — *In re* American Pub. Co., 15 Okla. 177, 79 Pac. 762.

4. A conveyance by an insolvent debtor to his creditor will be held to be a preference when neither the debtor nor the creditor testifies as to the transaction and there is no other evidence regarding it. *In re* Billing, 145 Fed. 395.

It is not a preference under the Bankruptcy Act for a corporation to sell property and use the proceeds in paying the salary of an officer, because such payment is merely for current running expenses. Richmond Standard Steel, etc., Co. *v.* Allen, (C. C. A.) 148 Fed. 657.

Where an insolvent debtor transfers to one of his creditors personal property sufficient in value to satisfy the debt in full, his "intent to prefer such creditor over his other creditors" necessary to make such transfer an act of bankruptcy will be presumed; the preference being the natural result of such transfer. *In re* Harris, 155 Fed. 216.

Creating a Lien within the four months constitutes a preference, irrespective of payment by the debtor. Benjamin *v.* Chandler, 142 Fed. 217.

Renewal of Security. — A chattel mortgage given on chattels already mortgaged to secure the same debt is not a preference. *In re* Cutting, 145 Fed. 388.

664. 3. Wilder *v.* Watts, 138 Fed. 426; Tomlinson *v.* Lexington Bank, (C. C. A.) 145 Fed. 824.

4. *In re* Great Western Mfg. Co., (C. C. A.) 152 Fed. 123.

5. *In re* Grandy, 146 Fed. 318.

665. 6. West *v.* Lahoma Bank, 16 Okla. 328, 85 Pac. 469.

Proceeds of Mortgage Used to Prefer Creditor. — *In re* Lynden Mercantile Co., 156 Fed. 713.

7. A chattel mortgage given on chattels already mortgaged to secure the same debt is not a preference. *In re* Cutting, 145 Fed. 388.

666. 1. *In re* Chantler Cloak, etc., Co., 151 Fed. 952.

Mortgage to Secure Present and Future Loans. — Love *v.* Export Storage Co., (C. C. A.) 143 Fed. 1.

Mortgage Including Past Debt as Well as Present Loan. — *In re* Louisville First Nat. Bank, (C. C. A.) 155 Fed. 100.

2. Payment on Former Purchase at Time of Additional Purchase on Credit. — *In re* Watkinson, 142 Fed. 785.

668. 4. Thompson *v.* Jackson First Nat. Bank, 84 Miss. 54, 36 So. 65.

669. 6. *In re* C. H. Bennett Shoe Co., 149 Fed. 687; *In re* Salmon, 143 Fed. 395; *In re* Thomlinson Co., (C. C. A.) 154 Fed. 834.

670. 1. *In re* Sully, 142 Fed. 895; *In re* Salmon, 143 Fed. 395.

671. 7. *In re* Nusbaum, 152 Fed. 835.

A preference by a legal proceeding contemplated by the Bankrupt Act does not include a levy under a judgment foreclosing a lien which affects only the property bound by the lien. Richmond Standard Steel, etc., Co. *v.* Allen, (C. C. A.) 148 Fed. 657.

It is not an act of bankruptcy for the debtor to permit goods on the premises leased by the debtor to be taken under a distress warrant for past due rent, where the local law gives the landlord a lien. Richmond Standard Steel, etc., Co. *v.* Allen, (C. C. A.) 148 Fed. 657.

Affirmative Action on the Part of the Alleged Bankrupt in aid of the recovery of judgment and sale thereunder is not necessary in order to make out an act of bankruptcy. His mere failure to discharge the lien of the judgment five days before sale is sufficient. *In re* Rung Furniture Co., (C. C. A.) 139 Fed. 526.

Act of Bankruptcy Procured by Petitioner. — *In re* Weiss, 142 Fed. 279.

Appointment of Receiver. — Zwadlo *v.* International Mercantile Agency, (C. C. A.) 142 Fed. 927; *In re* Belfast Mesh Underwear Co., 153 Fed. 224.

Evidence held sufficient to sustain a finding that the appointment of a receiver by the state court was on the ground of insolvency. Hooks *v.* Aldridge, (C. C. A.) 145 Fed. 865.

Seizure under State Insolvency Law. — *In re* International Coal Min. Co., 143 Fed. 665.

Computation of Time to Discharge Levy. — Pittsburgh Laundry Supply Co. *v.* Imperial Laundry Co., (C. C. A.) 154 Fed. 662.

The five days before sale within which the debtor must vacate or discharge a preference begin to run on the fifth day before the sale, and the limitation of four months then commences to run. *In re* Nusbaum, 152 Fed. 835.

Where an act of bankruptcy consists of permitting a creditor to obtain a preference through legal proceedings and not having vacated or discharged such preference "at least five days before the sale or final disposition of any property affected" thereby, such act occurs five days before the sale, and the four months within which bankruptcy proceedings may be instituted begin to run from that date and not from the date of the sale. *In re* National Hotel, etc., Co., 138 Fed. 647.

672. 2. Liability of One Partner Not Affected by Proof of Claim against Other. — Robinson *v.* Marietta First Nat. Bank, 98 Tex. 184, 82 S. W. 505.

673. 4. The allegations of the proofs of claim are to be taken as true. If they set forth all the necessary facts to establish the claims and are not self-contradictory *prima facie* they establish the claim even in the presence of objections, and the objector is then called on to produce evidence and show facts tending to defeat the claim of probative force equal to that of the allegations of the proofs of claim. *In re* Castle Braid Co., 145 Fed. 224.

Burden of Proof — Claim for Salary. — Mason *v.* St. Albans Furniture Co., 149 Fed. 898.

Sufficiency of Proofs. — *In re* Morris, 154 Fed. 211.

674. 1. It is only necessary to present the claim duly verified and such objections as the trustee or any creditor may interpose to the allowance thereof. *In re* Carter, 138 Fed. 846.

Under the Bankruptcy Act of 1898, if a creditor whose claim is secured by the individual undertaking of any person fails to prove such claim the surety may prove it. *In re* Carter, 138 Fed. 846.

Proof by Surety of Debtor. — Sweaney *v.* Baugher, (Ind. 1906) 77 N. E. 1083.

675. 6. **Taxes Do Not Constitute a Debt,** and therefore the provision of the Bankruptcy Act that interest on a debt will not be allowed after the filing of the petition does not apply. *In re* Kallak, 147 Fed. 276.

676. 2. *Re* Rushforth, 95 L. T. N. S. 807, 14 Manson 135; *In re* Northrup, 152 Fed. 763; Citizens' Bank *v.* Kretschmar, (Miss. 1907) 44 So. 930; Steinhardt *v.* New York National Park Bank, 120 N. Y. App. Div. 255, 105 N. Y. Supp. 23.

The fact that a debt is not proved within the year limited by the Bankruptcy Act does not preclude the creditor from setting off the amount of his claim against an indebtedness from him to the bankrupt. Norfolk, etc., R. Co. *v.* Graham, (C. C. A.) 145 Fed. 809.

Unmatured Notes.—Frank *v.* Mercantile Nat. Bank, 182 N. Y. 264, 74 N. E. 841.

Tort and Contract. — *In re* Becker, 139 Fed. 966.

Balance in Bank Set Off against Debt to Bank. — Habegger *v.* St. Paul First Nat. Bank, 94 Minn. 445, 103 N. W. 216; Frank *v.* Mercantile Nat. Bank, 100 N. Y. App. Div. 449, 91 N. Y. Supp. 488.

Set-off against Judgment Recovered by Trustee. — Tootle-Weakley Millinery Co. *v.* Billingsley, 74 Neb. 531, 105 N. W. 85.

Claims Assigned within Four Months Before Bankruptcy.—Stich *v.* Berman, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 104, 96 N. Y. Supp. 742.

Depreciation in Collateral Security Given by Bankrupt — Effect on Right of Set-off. — Steinhardt *v.* National Park Bank, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 464, 102 N. Y. Supp. 1077.

677. 1. See Lewis *v.* Portland First Nat. Bank, 46 Oregon 182, 78 Pac. 990.

678. 3. *In re* Fagan, 140 Fed. 758; *In re* Landis, 156 Fed. 318.

Where a creditor asserts a lien on property of the bankrupt, but in a suit with the trustee it is determined that he is not entitled to a lien, the creditor's claim is "liquidated by litigation," and therefore may be proved within sixty days after the judgment though more than a year has elapsed since adjudication in bankruptcy. *In re* Baird, 154 Fed. 215, *following* Powell *v.* Leavitt, (C. C. A.) 150 Fed. 89.

Proving Preferred Claim after Recovery of Preference.—*In re* Kemper, 142 Fed. 210.

7. The presentation of a claim in its proper form duly verified makes a *prima facie* case for the claimant, and the burden is then shifted to the objectors. *In re* Carter, 138 Fed. 846.

The allegations of the proofs of claim are to be taken as true. *In re* Castle Braid Co., 145 Fed. 224.

"Proof" and "Allowance" Distinguished. — *In re* Mertens, (C. C. A.) 147 Fed. 177.

679. 1. Where the claim of a petitioning creditor in an involuntary proceeding is contested by the bankrupt and sustained by the court, the validity of such claim is then *res judicata* and cannot afterwards be contested when filed with the referee for allowance. Ayres *v.* Cone, (C. C. A.) 138 Fed. 778.

Under the provisions of the *Iowa* statute the defense of usury is as available to the debtor's trustee in bankruptcy as to the debtor himself. *In re* Stern, (C. C. A.) 144 Fed. 956.

A Debtor of the Bankrupt is not a "party in interest." *In re* Sully, (C. C. A.) 152 Fed. 619.

680. 5. The various subdivisions of section 63 of the Bankruptcy Act are not to be regarded as an enumeration of a group of characteristics, all of which are essential to a provable claim. On the contrary they specify separate classes of provable claims and constitute a classification. *In re* Smith, 146 Fed. 923.

Where a note executed by the bankrupt and another is held by the creditor as collateral security the creditor cannot prove both the note and the debt for which it is security. Beaumont First Nat. Bank *v.* Eason, (C. C. A.) 149 Fed. 204.

Effect of Compromise — Right to Prove Original Debt. — Du Vivier *v.* Gallice, (C. C. A.) 149 Fed. 118.

Debts Assumed by Bankrupt. — *In re* Baumblatt, 153 Fed. 485.

681. 1. *In re* Watkinson, 143 Fed. 602; *In re* Builders' Lumber Co., 148 Fed. 244.

In order to constitute a provable debt, such debt must be a fixed liability absolutely owing at the time that the petition in bankruptcy was filed. *In re* T. H. Thompson Milling Co., 144 Fed. 314.

Wife May Prove Claim against Husband for Money Lent Him. — *In re* Foss, 147 Fed. 790.

Taxes Not Debts. — *In re* Kallak, 147 Fed. 276.

Accommodation Note Made by Bankrupt. — *In re* Hopper-Morgan Co., 156 Fed. 525.

The Contribution of a Partner to the Partnership Capital is not a debt which he can prove in bankruptcy proceedings against the partnership. *In re* Floyd, 156 Fed. 206.

2. *In re* New York Car Wheel Works, 139 Fed. 421.

Notes given by a partner in the name of the firm for amounts which the payees as sureties on such partner's bond as postmaster had paid the government on account of postoffice money used by such partner in the firm business are supported by a sufficient consideration to make them provable in bankruptcy proceedings against the firm. *In re* Speer, 144 Fed. 910.

Where a bank took mortgage bonds of a corporation as collateral security for notes of the corporation discounted by the bank, the only consideration for the bonds was in the increase

of discounts by the bank for the corporation, and, therefore, the bank will be required to elect whether it will make the bonds valid by allowing the notes discounted to be converted into estate of the corporation or press its claim as a general creditor on the notes, leaving the bonds unsupported by any consideration. *In re* Waterloo Organ Co., (C. C. A.) 154 Fed. 557.

Stocks Given by Bankrupt to Wife and Loaned by Her to Him. — *In re* Tucker, 148 Fed. 928, 929.

3. *In re* Hemstreet, 139 Fed. 958.

Usury. — *In re* Stern, (C. C. A.) 144 Fed. 956.

Illegal Claim — Penalty. — *In re* Bevier Wood Pavement Co., 156 Fed. 583.

682. 3. Ogilby *v.* Munro, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 170, 101 N. Y. Supp. 753, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682.

684. 1. Premises Occupied by Trustee. — *In re* Grignard Lith. Co., 155 Fed. 699.

685. 1. Judgment Enforceable by Execution but Not by Action. — *In re* Rebman, (C. C. A.) 150 Fed. 759.

3. Damages for Breach of Contract. — *In re* Richards, (1907) 2 K. B. 33; *In re* Button, (1907) 2 K. B. 180.

5. Liability of Indorser Before Maturity Held a Provable Debt. — *In re* Rothenberg, 140 Fed. 798.

686. 2. *In re* Landis, 156 Fed. 318.

Damages Resulting from Breach of Contract of Sale. — *In re* Saxton Furnace Co., 142 Fed. 293.

Liability of Indorser of Commercial Paper. — *In re* Smith, 146 Fed. 923.

Claim Liquidated by Agreement of Parties. — *In re* Mertens, (C. C. A.) 147 Fed. 177.

Claims Liquidated by Litigation. — Powell *v.* Leavitt, (C. C. A.) 150 Fed. 89.

Damages for Breach of Contract. — *In re* Spittler, 151 Fed. 942.

3. Where a subcontract provides that the contractor shall not be liable to the subcontractor until payment to the contractor has been made by the owner of the building, the subcontractor's claim is not provable against the contractor's estate in bankruptcy until such payment by the owner. *In re* Ellis, (C. C. A.) 143 Fed. 103.

Contingent Claims Held Not Provable. — Smith *v.* McQuillin, 193 Mass. 289, 79 N. E. 401.

A contingent liability depending on the happening of a future event does not constitute a provable claim. Thus, where a note contains a stipulation for the payment of an attorney's fee in the case and "default is made in the payment of this note at maturity and it is placed in the hands of an attorney for collection or suit," such fee does not become a provable claim against the bankrupt's estate where the petition in bankruptcy was filed before the note matured. *In re* T. H. Thompson Milling Co., 144 Fed. 314.

6. Brown *v.* United Button Co., 149 Fed. 48, 9 Ann. Cas. 445; Winfree *v.* Jones, 104 Va. 39, 51 S. E. 153.

Action under Employers' Liability Act. — *In re* Crescent Lumber Co., 154 Fed. 724.

687. 6. *In re* Diamond, (C. C. A.) 149 Fed. 407.

7. *In re* McCoy, (C. C. A.) 150 Fed. 106.

8. Debts Assumed by Partnership. — *In re* Sickman, 155 Fed. 508.

688. 2. *In re* Meredith, 144 Fed. 230; *In re* Grive, 153 Fed. 597.

A note waiving exemptions is "secured" within the meaning of the Bankruptcy Act. *In re* Meredith, 144 Fed. 230.

A bankruptcy court has no power to estimate the value of the security and enter a decree against the creditor for the excess value of the security over the debt. Fitch *v.* Richardson, (C. C. A.) 147 Fed. 197.

3. *In re* Grive, 153 Fed. 597.

689. 2. *In re* Beaver Knitting Mills, (C. C. A.) 154 Fed. 320; Eisman *v.* Whalen, (Ind. App. 1906) 79 N. E. 514; *In re* Myer, (N. Mex. 1907) 89 Pac. 246.

690. 2. Johnson *v.* Joslyn, 45 Wash. 310, 88 Pac. 324.

9. A preferred claim may be proved but it cannot be allowed, nor can the creditors vote at a creditors' meeting, until the preference has been surrendered. Stevens *v.* Nave-McCord Mercantile Co., (C. C. A.) 150 Fed. 71.

Surrender of Preference after Recovery by Trustee. — *In re* Oppenheimer, 140 Fed. 51.

Creditor Must Have Had Reasonable Cause to Believe that Preference Was Intended. — *In re* Bloch, (C. C. A.) 142 Fed. 674.

Payments on Running Account. — Wild *v.* Provident L. & T. Co., (C. C. A.) 153 Fed. 562.

Claim by Infant — Disaffirmance of Contract after Denial of Right to Preference. — *In re* Huntenberg, 153 Fed. 768.

Burden of Proving Preference. — *In re* Pfaffinger, 154 Fed. 523.

Preference Obtained by Foreign Attachment. — *In re* Pollmann, 156 Fed. 221.

692. 1. Rent. — Ross *v.* Beaudry, (1905) A. C. 570.

4*a*. Attorneys' Fees. — *In re* Edens Co., 151 Fed. 940.

Allowance to Mortgagee for Services by Attorney. — *In re* Wendel, 152 Fed. 672.

5. Expense of Keeping Property Subject to Valid Mortgage. — *In re* Davis, 155 Fed. 671.

6. *In re* Krause, 155 Fed. 702.

Business Conducted by Assignee for Benefit of Creditors with Consent of Trustee. — *In re* Pattee, 143 Fed. 904.

7. A verified petition for the allowance of a claim which also asserts the right of priority is *prima facie* proof of such claim but not of the alleged right to priority. The right to priority must be proved by evidence. *In re* Jones, 151 Fed. 108.

693. 1. Priority Lost by Novation. — *In re* Fuller, 152 Fed. 538.

1*a*. On the bankruptcy of a married man who has only a community estate, the community creditors are entitled to priority over the antenuptial creditors. *In re* Chavez, (C. C. A.) 151 Fed. [illegible].

695. 1. Chattanooga *v.* Hill, 139 Fed. 600, 3 Ann. Cas. 237.

The liability of a corporation under the *Pennsylvania* law for the tax on its bonds arises out of the duty of the corporation to retain the amount of such taxes from the in-

terest accruing on the bonds, and is not itself a tax by or from the corporation to the state; therefore such a claim of the state against a bankrupt corporation is not entitled to priority as for taxes due. *In re* Wyoming Valley Ice Co., 145 Fed. 267.

Taxes Held Not to Be Debts. — *In re* Kallak, 147 Fed. 276.

Debt Due County for Taxes Collected Not Entitled to Priority in Maryland. — *In re* Waller, 142 Fed. 883.

3. Hausman *v.* Sessinghaus, 121 Mo. App. 75, 97 S. W. 991.

One who advanced money to the bankrupt corporation while it was a going concern, to be used in the payment of wages, and took assignments from the employees, is not entitled to priority. *In re* St. Louis Ice Mfg., etc., Co., 147 Fed. 752.

6. **Attorneys' Fees.** — *In re* Erie Lumber Co., 150 Fed. 817.

696. 1. *In re* Klein, 22 Times L. Rep. 664.

2. Cairney *v.* Back, (1906) 2 K. B. 746; *In re* Winter German Opera, 23 Times L. Rep. 662; Cohen *v.* Kent, 28 Quebec Super. Ct. 95.

3. *In re* Erie Lumber Co., 150 Fed. 817; *In re* Huntenberg, 153 Fed. 768.

The Act of June 15, 1906, amending the Bankruptcy Act 1898, § 64, *b*, par. 4, so as to include the compensation of traveling or city salesmen, does not apply in the case of a proceeding pending at the passage of such act. *In re* Photo Electrotype Engraving Co., 155 Fed. 684.

Who Are "Clerks." — *In re* Baumblatt, 156 Fed. 422.

Commissions for Services as Salesman Held to Be Wages. — *In re* New England Thread Co., 154 Fed. 742.

697. 1. *In re* Fuller, 152 Fed. 538.

Priority Lost by Novation. — An assignee of wages who takes the employer's note in place of the assigned claim, thereby loses his priority. *In re* Fuller, 152 Fed. 538.

2. Discharge Refused for Obtaining Goods on Credit by False Representations. — *In re* Harr, 143 Fed. 421.

3. *In re* Mullen, 140 Fed. 206; *In re* Jones, 151 Fed. 108; *In re* Bennett, (C. C. A.) 153 Fed. 673.

Under the provision of the bankruptcy law according to creditors of the bankrupt the priority given by the state law, creditors who sue in the state court to set aside a deed executed by the bankrupt more than four months before the bankruptcy proceeding as a preference under the state law thereby acquire an equitable lien on the property which the court of bankruptcy will recognize. Moore *v.* Green, (C. C. A.) 145 Fed. 472.

Though the *Pennsylvania* statute provides that the chattels on any demised premises liable to distress for rent which have been taken under execution shall be liable for the rent in arrears for one year at the time of such taking, yet the landlord has no lien which will be preserved in a court of bankruptcy where the bankruptcy proceedings were instituted within four months of the issuing of the execution. *In re* Whealton Restaurant Co., 143 Fed. 921.

Rent. — *In re* Winfield Mfg. Co., 140 Fed. 185.

Landlord's Lien. — *In re* Bishop, 153 Fed. 304; *In re* Consumers' Coffee Co., 151 Fed. 933.

Costs of Attachment Suit. — *In re* The Copper King, 143 Fed. 649.

Costs of Insolvency Proceeding under State Law. — *In re* Goldberg, 144 Fed. 566.

Time of Filing Petition Fixes Status of Persons Entitled to Priority. — *In re* Winfield Mfg. Co., 140 Fed. 185.

Assignee Entitled to Priority. — *In re* Bennett, (C. C. A.) 153 Fed. 673.

3*a*. Nature of Proceeding — In Rem. — Whitney *v.* Wenman, 140 Fed. 959.

4. Barrett *v.* Prince, (C. C. A.) 143 Fed. 302; *In re* Wenham, 153 Fed. 910; Keyes *v.* Bennett, 218 Ill. 625, 75 N. E. 1075.

Not Exempt from Commitment for Contempt. — — *In re* Fritz, 152 Fed. 562.

698. 1. Gibson *v.* Holmes, 78 Vt. 110, 62 Atl. 11.

4. Barrett *v.* Prince, (C. C. A.) 143 Fed. 302.

5. Property in Custody of Bankruptcy Court. — Morning Tel. Pub. Co. *v.* S. B. Hitchinson Co., 146 Mich. 38, 109 N. W. 42.

Title Vests in Bankruptcy Court at Time of Adjudication.—Rand *v.* Sage, 94 Minn. 344, 102 N. W. 864.

6. *In re* Franklin Lumber Co., 147 Fed. 852; *In re* Bishop, 153 Fed. 304.

A lienholder has no right of possession as against the trustee or receiver. *In re* Platteville Foundry, etc., Co., 147 Fed. 828.

The proceeds of exempt property in the hands of a trustee in bankruptcy are *in custodia legis* and not subject to attachment in an action on a note given by the bankrupt waiving his exemptions. *In re* Sorg, 155 Fed. 550.

Property in the course of administration under the Bankruptcy Act is *in custodia legis*, and any act interfering with the court's possession or with its power and control and disposal, and without its sanction, is void. *In re* Eppstein, (C. C. A.) 156 Fed. 42.

A petition in bankruptcy is not disposed of by paying the petitioning creditor's claim, as other creditors have the right to join in the petition, and, therefore, any interference with the bankrupt's property after a petition has been filed may constitute a contempt of court. *In re* Lutfy, 156 Fed. 873.

7. *In re* Duncan, 148 Fed. 464.

Proceeding in Rem. — State Bank *v.* Cox, (C. C. A.) 143 Fed. 91.

Laches. — *In re* Wilcox, 155 Fed. 704.

On the filing of a petition in bankruptcy followed by an adjudication all property in the possession of the bankrupt of which he claims the ownership passes at once into the custody of the court of bankruptcy and becomes subject to its jurisdiction to determine by plenary action or summary proceeding all adverse or conflicting claims thereto whether of title or of lien. *In re* Schermerhorn, (C. C. A.) 145 Fed. 341.

Though the title of the trustee in involuntary proceedings vests as of the date of the adjudication, yet the filing of the petition is a caveat to all the world and gives the trustee the

right to recover any property transferred by the bankrupt intermediate the filing of the petition and the adjudication. State Bank *v.* Cox, (C. C. A.) 143 Fed. 91.

The administration of all the bankrupt's property passes to the bankruptcy court on the adjudication of bankruptcy, though it may be subject to liens acquired more than four months before the bankruptcy proceeding was commenced, and the lienholder cannot enforce his lien independently of the bankruptcy court. *In re* Baughman, 138 Fed. 742, *following In re* Vastbinder, 132 Fed. 718.

The bankruptcy proceeding is not a mere personal action against the bankrupt for the collection of debts. Its purpose is to impound all of his nonexempt property, to distribute it equitably among his creditors, and to release him from further liability. It operates both *in personam* and *in rem*, and affects both the personalty and the realty. Shute *v.* Patterson, (C. C. A.) 147 Fed. 509.

699. 4. Rand *v.* Iowa Cent. R. Co., 186 N. Y. 58, 78 N. E. 574.

7. Wade *v.* Goza, 78 Ark. 7, 96 S. W. 388, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 699.

Assets Not Scheduled Do Not Revert. — Laing *v.* Fish, 119 Ill. App. 645.

700. 5*a*. **Corporation Not Dissolved by Adjudication.** — National Surety Co. *v.* Medlock, 2 Ga. App. 665, 58 S. E. 1131.

702. 3. **Bankrupt May Prosecute Appeal with Consent of Trustee.** — Christy *v.* Des Moines City R. Co., 126 Iowa 428, 102 N. W. 194.

Necessity for Leave of Court. — Hahlo *v.* Cole, 112 N. Y. App. Div. 636, 98 N. Y. Supp. 1049.

4. Hahlo *v.* Cole, 112 N. Y. App. Div. 636, 98 N. Y. Supp. 1049.

703. 1. **Actions in Rem Not Affected — Creditors' Bill.** — Flint *v.* Chaloupka, (Neb. 1907) 111 N. W. 465.

2. **Right to Maintain Creditors' Bill.** — Guaranty Title, etc., Co., 144 Fed. 550.

Landlord Cannot Distrain for Rent after Tenant Is Adjudicated Bankrupt. — *In re* Bishop, 153 Fed. 304.

6. *In re* Beede, 138 Fed. 441; Schall *v.* Kinsella, 117 La. 687, 42 So. 221; New Orleans Acid, etc., Co. *v.* Guillory, 117 La. 821, 42 So. [illegible]

Only Trustee May Move to Dissolve Attachment against Bankrupt. — Lamorelle *v.* Naas, 30 Pa. Super. Ct. 190.

7. Starr *v.* Whitcomb, (Mich. 1907) 114 N. W. 345.

704. 1. Reynolds *v.* Pennsylvania Oil Co., 150 Cal. 629, 89 Pac. 610; American Woodworking Machinery Co. *v.* Furbush, 193 Mass. 455, 79 N. E. 770; St. Louis World Pub. Co. *v.* Rialto Grain, etc., Co., 108 Mo. App. 479, 83 S. W. 781.

The action will not be stayed at the instance of a codefendant of the bankrupt. Johnson *v.* Waxelbaum Co., 1 Ga. App. 511, 58 S. E. 56.

Contempt Proceeding in Civil Suit in State Court. — *In re* Adler, (C. C. A.) 144 Fed. 659.

2. The judgment in such action is binding on the trustee. Linstroth Wagon Co. *v.* Ballew, (C. C. A.) 149 Fed. 960.

705. 4. *In re* Renda, 149 Fed. 614.

5. *In re* L'Hommedieu, (C. C. A.) 146 Fed. 708.

Attachment Levied More than Four Months before Bankruptcy Proceeding. — American Agricultural Chemical Co. *v.* Huntington, 99 Me. 361, 59 Atl. 515.

706. 1. **Unrecorded Mortgage** — *In re* Doran, (C. C. A.) 154 Fed. 467, *modifying* 148 Fed. 327; *In re* Reynolds, 153 Fed. 295.

Verbal Agreement for Lien. — Goodnough Mercantile, etc., Co. *v.* Galloway, 156 Fed. 504.

The Lien of a Distress Warrant for past rent due under a lease giving the landlord a lien and the right to distrain is a lien created by the act of the parties and is not dissolved by bankruptcy proceedings within four months after levy of the warrant. *In re* Robinson, (C. C. A.) 154 Fed. 343.

2. **Landlord's Lien — Waiver.** — *In re* McFadgen, 156 Fed. 715.

5. D. C. Wise Coal Co. *v.* Columbia Lead, etc., Co., 123 Mo. App. 249, 100 S. W. 680.

Though the *Pennsylvania* statute provides that the chattels on any demised premises liable to distress for rent which have been taken under execution shall be liable for the rent in arrears for one year at the time of such taking, yet the landlord has no lien which will be preserved in a court of bankruptcy where the bankruptcy proceedings were instituted within four months of the issuing of the execution. *In re* Whealton Restaurant Co., 143 Fed. 921.

Insolvency of Debtor. — W. S. Danby Millinery Co. *v.* Dogan, (Tex. Civ. App. 1907) 105 S. W. 337.

Computation of Time. — *In re* Warner, 144 Fed. 987.

Property Exempt as against Trustee but Not Exempt from Attachment. — Jewett *v.* Huffman, 14 N. Dak. 110, 103 N. W. 408.

Lien Dissolved [illegible] Court. — Goodnough Mercantile Co. *v.* Galloway, 48 Oregon 239, 84 Pac. 1049.

707. 1. It is the lien that is declared void by section 67 *f* and not the transfer by enforcing the lien. Therefore, if property is sold under execution on a judgment within four months before bankruptcy the title of the purchaser is good and the trustee in bankruptcy is remitted to his action against the judgment creditor as having obtained a preference. *In re* Bailey, 144 Fed. 214.

Trustee Cannot Recover Proceeds of Attachment in Hands of Creditor. — Farrell *v.* Lockett, 115 Tenn. 494, 91 S. W. 209.

Decree [illegible] Not a Lien. — *In re* McKane, 152 Fed. 733.

Judgment [illegible]. — The lien of an award of arbitrators rendered more than four months before the petition in bankruptcy is not dissolved by the bankruptcy proceedings, though judgment confirming it was entered within four months; even if the judgment was collusive it would remain in force until set aside by a direct proceeding. *In re* Koslowski, 153 Fed. 823.

Applies to Both Voluntary and Involuntary Proceedings. — Cavanaugh *v.* Fenley, 94 Minn. 505, 103 N. W. 711.

Only Trustee May Move to Dissolve Attachment

against Bankrupt. — Lamorelle *v.* Naas, 30 Pa. Super. Ct. 190.

Liens Not Obtained within Four Months. — Tucker *v.* Denico, 26 R. I. 560, 59 Atl. 920; Batchelder *v.* Wedge, (Vt. 1907) 67 Atl. 828.

Application to Voluntary Proceedings. — Farrell *v.* Lockett, 115 Tenn. 494, 91 S. W. 209.

712. 1. *In re* Eastlack, 145 Fed. 68; *In re* Jacobs, 154 Fed. 988; Conery *v.* His Creditors, 118 La. 161, 42 So. 760; Conery *v.* His Creditors, 115 La. 316, 38 So. 1005.

Under the Bankruptcy Act of 1898, § 5, the trustee of a partnership is also the trustee of individual partners and the appointment of a separate trustee to administer the individual property of the partners is not authorized. *In re* Coe, 154 Fed. 162.

714. 8. *In re* Columbia Iron Works, 142 Fed. 234.

9. Any effort on the part of the bankrupt to control the election of a trustee is to be condemned as a pernicious intermeddling and no attorney should be permitted to vote any claim that has come to him through the instrumentality of the bankrupt. *In re* Lloyd, 148 Fed. 92.

716. 15. *In re* Ketterer Mfg. Co., 155 Fed. 987.

717. 1. *In re* Eastlack, 145 Fed. 68; *In re* Hanson, 156 Fed. 717.

9. Where a controversy arises at a creditors' meeting which will probably prevent the appointment of a trustee the court may forthwith proceed to make the appointment. *In re* Morris, 154 Fed. 211.

718. 2. **Alienage Not a Disqualification.** — *In re* Eddleman, 154 Fed. 160.

719. 9. **Reinstatement by Referee.** — Bunch *v.* Smith, 116 Tenn. 201, 93 S. W. 80.

720. 3. The status as a creditor is fixed by filing a claim and making formal proof thereof, and so long as the claim has not been dissolved such person has the *prima facie* standing of a creditor which cannot be made the subject of collateral attack. *In re* Roanoke Furnace Co., 152 Fed. 846.

721. 7. *In re* Cullman Fruit, etc., Assoc., 155 Fed. 372; West *v.* Fulling, 36 Ind. App. 617, 76 N. E. 325; Wright *v.* Texas Moline Plow Co., (Tex. Civ. App. 1905) 90 S. W. 905.

The debtor's right to earn wages in the future and to dispose of the fruits of his labor is not "property" in any sense in which the bankruptcy statute uses the term. *In re* Home Discount Co., 147 Fed. 538, *disapproving* Mallin *v.* Wenham, 209 Ill. 252, 70 N. E. 564.

A mortgagee under an unrecorded chattel mortgage cannot claim any part of the proceeds of the property sold by the trustee where no steps were taken by the mortgagee to assert his right before the sale. Hanson *v.* Blake, 155 Fed. 342.

Any property, the title to which has vested in the bankrupt, will pass to his trustee. The bankrupt cannot, by returning goods for which he had not paid, defeat the trustee's title. Grange Co. *v.* Farmers' Union, etc., Co., 3 Cal. App. 519, 86 Pac. 615.

The Criterion is the power of disposal on the part of the bankrupt. Hence a life insurance agent's right to commissions on renewal premiums is property which passes to the trustee. *In re* Wright, 151 Fed. 361.

Life Estates. — Adair *v.* Adair, 99 S. W. 925; 30 Ky. L. Rep. 857.

Money Due on Insurance Policy. — Bradley *v.* Brown, (Neb. 1907) 112 N. W. 331.

Omission from the Schedule. — Ledoux *v.* Samuels, 116 N. Y. App. Div. 726, 102 N. Y. Supp. 43.

Goods of Third Persons Mingled with Bankrupt's Goods. — Erie R. Co. *v.* Dial, (C. C. A.) 140 Fed. 689.

Property in Custody of State Court. — *In re* Heckman, (C. C. A.) 140 Fed. 859.

Property in the Hands of Receiver Appointed by State Court. — Hooks *v.* Aldridge, (C. C. A.) 145 Fed. 865.

722. 1. **Intention to Abandon Must Appear.** — Laing *v.* Fish, 119 Ill. App. 645.

Trustee Not Obliged to Accept Property Not Beneficial to Estate. — Oldmixon *v.* Severance, 119 N. Y. App. Div. 821, 104 N. Y. Supp. 1042.

723. 1. **Community Property.** — Collins *v.* Bryan, (Tex. Civ. App. 1905) 88 S. W. 432.

5. But a legacy accruing after bankruptcy does not pass to the trustee. *In re* Harper, (C. C. A.) 155 Fed. 105.

724. 2. **Liquor License Held Not to Pass to Trustee.** — Tracy *v.* Ginzberg, 189 Mass. 260, 75 N. E. 637; Snyder *v.* Bougher, 214 Pa. St. 453, 63 Atl. 893.

7. Nebraska Moline Plow Co. *v.* Blackburn, (Neb. 1905) 104 N. W. 178; Cleland *v.* Anderson, (Neb. 1905) 105 N. W. 1092; Bradley *v.* Brown, (Neb. 1907) 112 N. W. 331.

725. 6*a*. **Price of Goods Sold.** — Leist *v.* Dierssen, 4 Cal. App. 634, 88 Pac. 812.

7. Sibley *v.* Nason, (Mass. 1907) 81 N. E. 887.

726. 4. *In re* Muncie Pulp Co., (C. C. A.) 139 Fed. 546.

5. O'Dell *v.* Boyden, (C. C. A.) 150 Fed. 731, 10 Ann. Cas. 239; Cohen *v.* Budd, (Supm. Ct. Tr. T.) 52 Misc. (N. Y.) 217, 103 N. Y. Supp. 45.

7. Stocker *v.* Davidson, 74 Kan. 214, 86 Pac. 136; Tiger Shoe Mfg. Co. *v.* Shanklin, (Ky. 1907) 102 S. W. 295.

Liability of Stockholders to Assessment. — *In re* Remington Automobile, etc., Co., (C. C. A.) 153 Fed. 345.

Stockholders' Excess Liability Not an Asset of the Corporation. — Tiger Shoe Mfg. Co. *v.* Shanklin, (Ky. 1907) 102 S. W. 295.

9. Clark *v.* Equitable L. Assur. Soc., 143 Fed. 175; *In re* Mertens, (C. C. A.) 142 Fed. 445, *affirmed* 205 U. S. 202, 27 U. S. Sup. Ct. 488.

The right of the bankrupt to retain his life insurance on payment of the surrender value of the policy to the trustee in bankruptcy is not lost by the death of the bankrupt after adjudication. Van Kirk *v.* Vermont Slate Co., 140 Fed. 38.

Premiums Paid by Bankrupt's Wife. — *In re* Tyler, (1907) 1 K. B. 865.

Policy Payable to Insured if Living at End of Term. — *In re* Schofield, 147 Fed. 862.

11. *In re* Booss, 154 Fed. 494.

11*a*. Fire Insurance Policies. — Hanson *v.* Blake, 155 Fed. 342.

727. 6. **Community Property — Undivided**

Profits of Wife's Bank Stock. — Bryan *v.* Sturgis Nat. Bank, (Tex. Civ. App. 1905) 90 S. W. 704.

728. 1. **Failure to Take Advantage of Breach of Condition.** — *In re* Palatable Distilled Water Co., 154 Fed. 531.

Brokers. — Doucette *v.* Baldwin, 194 Mass. 131, 80 N. E. 444.

3. *In re* Salmon, 145 Fed. 649.

It is open to the seller when the purchase was procured by the fraud of the bankrupt to elect whether to confirm the sale and maintain the position of a creditor for the price or to repudiate the sale and recover the goods; but he must make his election promptly on the discovery of the fraud. Standard Varnish Works *v.* Haydock, (C. C. A.) 143 Fed. 318.

Evidence Held Insufficient to Show Fraud. — *In re* American Knit Goods Mfg. Co., 155 Fed. 906.

3*a*. **Rescission of Sale on Ground of Mistake.** — *In re* American Knit Goods Mfg. Co., 155 Fed. 906.

4. *In re* Royea, 143 Fed. 182; Smith *v.* Mottley, (C. C. A.) 150 Fed. 266, *reversing* 143 Fed. 407; *In re* Coffin, (C. C. A.) 152 Fed. 381; Keeley Brewing Co. *v.* Mason, 116 Ill. App. 603; Ellison *v.* Ganiard, (Ind. 1906) 79 N. E. 450.

729. 1. Property mortgaged to secure a debt to the bankrupt and others was sold under foreclosure and afterwards conveyed to the bankrupt, who instituted a friendly suit in equity against the other persons for whose benefit the mortgage was given, and obtained a decree adjudging the property to be his. Thereafter from time to time he sold portions of the property, mingling the proceeds with his own funds, but at times making distribution among the other parties to the suit. It was held that they were estopped by the decree to claim that the bankrupt was not the owner of the property. *In re* Coffin, 146 Fed. 181.

730. 1. Whether a transaction by which goods were delivered to the bankrupt was a sale or a bailment is governed by the local law. *In re* Heckathorn, 144 Fed. 499.

Money Intrusted to Bankrupt for Safe Keeping Only. — *In re* Royea, 143 Fed. 182.

Stocks Purchased by Broker on Margin and Held as Security for Advances. — Richardson *v.* Shaw, (C. C. A.) 147 Fed. 659; Kean *v.* Dickinson, (C. C. A.) 152 Fed. 1022, *affirming In re* Bolling, 147 Fed. 786.

Securities Deposited with Broker as Margin. — *In re* Berry, (C. C. A.) 149 Fed. 176.

Bailment — Conditional Sale. — *In re* Smith, etc., Piano Co., (C. C. A.) 149 Fed. 111.

2. The right of the trustee to the entire amount on deposit is not affected by the fact that the bankrupt had given a check, so long as the bank had not paid or accepted the check even though it was presented before the bankruptcy. *In re* Greve, 151 Fed. 111.

3. Smith *v.* Mottley, (C. C. A.) 150 Fed. 266, *reversing* 143 Fed. 407.

4. Where the bank after making collection wrongfully mingles the proceeds with its other funds instead of remitting, it will be presumed that such proceeds are part of the cash remaining in the hands of the bank thereafter up to the time of its bankruptcy. *In re* Northrup, 152 Fed. 763.

7. Whittredge *v.* Sweetser, 189 Mass. 45, 75 N. E. 222; Currie *v.* Look, 14 N. Dak. 482, 106 N. W. 131, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 730.

Trustee in Bankruptcy Not Entitled to Trust Fund. — *In re* McKay, 143 Fed. 671.

Resulting Trust Held Not to Pass to Trustee in Bankruptcy. — Tucker *v.* Denico, 27 R. I. 239, 59 Atl. 920.

8. Perry *v.* Avery, 148 Mich. 211, 111 N. W. 746, 14 Detroit Leg. N. 110.

9. *In re* Jersey Island Packing Co., (C. C. A.) 138 Fed. 625.

Mortgage in Form of Absolute Deed. — *In re* Moore, 146 Fed. 187.

731. 1. Property subject to liens passes to the trustee free from any interference on the part of the lienholder and may be sold by the trustee free from the lien which will attach to the proceeds in the hands of the trustee. *In re* Baughman, 138 Fed. 742, *following In re* Vastbinder, 132 Fed. 718.

2 New York Inst., etc., *v.* Crockett, 117 N. Y. App. Div. 269, 102 N. Y. Supp. 412.

Identification of Funds. — *In re* Friedman, 153 Fed. 939.

5. Where partners conveyed their respective shares of the partnership realty to their wives, such transaction operates as a partition, and though voidable as to their creditors the share so conveyed to the wife of one partner does not pass to the assignee in bankruptcy of the other partner. Ludvigh *v.* Umstadter, 148 Fed. 319.

5*a*. **Bankruptcy of Partnership — Administration of Individual Property.** — Dickas *v.* Barnes, (C. C. A.) 140 Fed. 849.

7. **Validity of Gift.** — Savage *v.* Savage, (C. C. A.) 141 Fed. 346.

732. 1. *England.* — *In re* Harris, 14 Manson 127.

United States. — *In re* Hemstreet, 139 Fed. 958; Mitchell *v.* Mitchell, 147 Fed. 280; Johnston *v.* Forsyth Mercantile Co., 155 Fed. 268.

Arkansas. — Sharp *v.* Fitzhugh, 75 Ark. 562, 88 S. W. 929.

Indiana. — Sellers *v.* Hayes, 163 Ind. 422, 72 N. E. 119.

Iowa. — Lavender *v.* Bowen, (Iowa 1904) 101 N. W. 760.

Kentucky. — O'Sullivan *v.* Douglass, (Ky. 1907) 98 S. W. 990.

Massachusetts. — Clark *v.* Mulcahy, 190 Mass. 64, 76 N. E. 236.

Mississippi. — Thompson *v.* Jackson First Nat. Bank, 84 Miss. 54, 36 So. 65.

Nebraska. — Raley *v.* Raymond Bros., etc., Co., 73 Neb. 496, 103 N. W. 57.

New Jersey. — Crane *v.* Brewer, (N. J. 1907) 68 Atl. 78.

New York. — Bryan *v.* Madden, 109 N. Y. App. Div. 876, 96 N. Y. Supp. 465; Thomas *v.* Roddy, 122 N. Y. App. Div. 851, 107 N. Y. Supp. 473.

Tennessee. — Bunch *v.* Smith, 110 Tenn. 201, 93 S. W. 80.

Texas. — Shelley *v.* Nolen, (Tex. Civ. App. 1905) 88 S. W. 524.

Wisconsin. — Treseder *v.* Burgor, 130 Wis. 201, 109 N. W. 957.

There must be an intent to defraud. Even up to the moment of bankruptcy the person may make a valid disposition of his property where it is done for a fair consideration and with an honest motive. *In re* Benjamin, 140 Fed. 320.

When a deed has been set aside as fraudulent the vendee cannot claim the benefit of a mortgage held by him on the same property. Railton *v.* Chicago Title, etc., Co., 125 Ill. App. 617, *affirmed* 224 Ill. 485, 75 N. E. 609.

A receiver may be appointed before adjudication to take charge of property which the evidence clearly shows to have been transferred by the bankrupt in fraud of creditors, when such proceeding is necessary to prevent loss. *In re* Haupt, 153 Fed. 239.

A conveyance more than four months before bankruptcy to the bankrupt's wife and sons, he being indebted to the sons, is valid to the extent of such indebtedness, but voidable so far as it is voluntary. Merrill *v.* Hussey, 101 Me. 439, 64 Atl. 819.

Withholding Mortgage from Record Held Fraudulent. — Mitchell *v.* Mitchell, 147 Fed. 280.

Trustee Not Required to Obtain Judgment Before Suing to Set Aside Fraudulent Conveyances. — Crary *v.* Kurtz, 132 Iowa 105, 105 N. W. 590, 109 N. W. 452; Shreck *v.* Hanlon, 74 Neb. 264, 104 N. W. 193.

Accounting against Fraudulent Mortgagee. — Pfeiffer *v.* Roe, 108 N. Y. App. Div. 54, 95 N. Y. Supp. 1014.

Where the Conveyance Was in Consideration of Marriage, the trustee may show that the marriage was void because the grantee had a prior husband living. Hosmer *v.* Tiffany, 115 N. Y. App. Div. 303, 100 N. Y. Supp. 797, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 402, 105 N. Y. Supp. 1055.

733. 1. *In re* Hill, 140 Fed. 984; Houck *v.* Christy, (C. C. A.) 152 Fed. 612, *explaining* and *limiting* Dokken *v.* Page, (C. C. A.) 147 Fed. 438; Johnston *v.* Forsyth Mercantile Co., 155 Fed. 268.

Collusion on the part of the purchaser must be shown in order to affect his title. *In re* Benjamin, 140 Fed. 320.

Where a retail merchant with fraudulent intent sells the entire stock of goods out of the usual course of business, the burden is on the purchaser to show that he used reasonable diligence in endeavoring to ascertain the financial condition of his vendor and that his purchase was in good faith and for a fair consideration. *In re* Knopf, 144 Fed. 245.

What Constitutes Fraudulent Transfer Within Bankrupt Law. — Wright *v.* Sampter, 152 Fed. 196.

A Transfer Within Four Months of Bankruptcy Is Constructively Fraudulent. — Thomas *v.* Roddy, 122 N. Y. App. Div. 851, 107 N. Y. Supp. 473.

Transfer More than a Year Before Bankruptcy Not in Contemplation of Insolvency. — Gardner *v.* Haines, 19 S. Dak. 497, 104 N. W. 244.

Transfer by Husband to Wife Through Third Person. — Mowry *v.* Reed, 187 Mass. 174, 72 N. E. 936.

2. Ott *v.* Doroshow, 147 Fed. 762; Houck *v.* Christy, (C. C. A.) 152 Fed. 612, *explaining* and *limiting* Dokken *v.* Page, (C. C. A.) 147 Fed. 438.

Sufficiency of Evidence. — Murray *v.* Joseph, 146 Fed. 260; Entwisle *v.* Seidt, 155 Fed. 864; Durack *v.* Wilson, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 237, 94 N. Y. Supp. 232; Webb *v.* Manheim, 109 N. Y. App. Div. 63, 95 N. Y. Supp. 1003.

The sale by a retail merchant of his entire stock of goods not being in the usual course of business is sufficient to put the purchaser on the inquiry. *In re* Knopf, 146 Fed. 109.

Bona Fides of Purchaser a Question for the Jury. — Piedmont Sav. Bank *v.* Levy, 138 N. Car. 274, 3 Ann. Cas. 785.

734. 1. Hoague *v.* Cumner, 187 Mass. 296, 72 N. E. 956.

2. *United States.* — *In re* Hill, 140 Fed. 984; Morgan *v.* Mannington First Nat. Bank, (C. C. A.) 145 Fed. 466; *In re* Arkonia Fabric Mfg. Co., 151 Fed. 914; *In re* Ansley, 153 Fed. 983; Stevens *v.* Oscar Holway Co., 156 Fed. 90; *In re* Floyd, 156 Fed. 206; Allen *v.* McManus, 156 Fed. 615.

Indiana. — Boonville Nat. Bank *v.* Blakey, 166 Ind. 427, 76 N. E. 529.

Mississippi. — Belknap *v.* Lyell, 89 Miss. 197, 42 So. 799.

North Carolina. — Weeks *v.* Spooner, 142 N. Car. 479, 55 S. E. 432.

Texas. — Keller *v.* Faickney, (Tex. Civ. App. 1906) 94 S. W. 103.

Washington. — McIntire *v.* Jennings, 38 Wash. 119, 80 Pac. 278.

Subdivisions *a* and *b* of section 60 of the Bankruptcy Act of 1898 must be read together in determining whether a mortgage given by a debtor within four months before his bankruptcy is a preference which the trustee may avoid. *In re* Armstrong, 145 Fed. 202.

The preferential character of a transfer is to be determined on the facts existing at the time the transfer was made. Seager *v.* Lamm, 95 Minn. 325, 104 N. W. 1.

It is a preference for an officer of a corporation to take a transfer of corporate assets as security for money advanced by him to pay a debt of which he is a guarantor. Moody *v.* Chicago Title, etc., Co., 125 Ill. App. 68.

Any person who takes property of a bankrupt otherwise than by descent is a purchaser. Wright *v.* Sampter, 152 Fed. 196.

A person who has had stolen money restored to him, he being in entire ignorance of both the theft and the restoration, has not received the preference under the Bankruptcy Act so as to entitle the trustee to recover such amount from him. McNaboe *v.* Columbian Mfg. Co., (C. C. A.) 153 Fed. 967.

A valid lien on property of the bankrupt is not affected by his giving the creditor a mortgage, though such mortgage is invalid as a preference under the Bankruptcy Law. Smith *v.* Au Gres Tp., (C. C. A.) 150 Fed. 257.

A mortgage or other preferential transfer within four months of the filing of the petition in bankruptcy is not validated by the fact that it was executed in the performance of a contract to do so made more than four months before the filing of the petition. *In re* Great Western Mfg. Co., (C. C. A.) 152 Fed. 123.

An adjudication in bankruptcy on the ground that a mortgage given within four months was a preference is not *res judicata* as to the fact of the preference so as to entitle the trustee in bankruptcy to recover from the mortgagee. Hussey *v.* Richardson-Roberts Dry Goods Co., (C. C. A.) 148 Fed. 598.

A mortgage on a stock of merchandise which allows the mortgagor to retain possession with power of sale in the course of his business, being valid between the parties by the local law (*Ohio*), does not operate as a preference because the mortgagee took possession within four months before the bankruptcy of the mortgagor, the mortgage having been given more than four months before the bankruptcy to secure the *bona fide* debt. Fisher *v.* Zollinger, (C. C. A.) 149 Fed. 54.

It is a good defense to an action by the trustee to recover money paid by the bankrupt that the payment was in discharge of a mortgage on the bankrupt's property, but this puts the validity of the mortgage in issue and the burden of proof is on the defendant. Rogers *v.* Page, (C. C. A.) 140 Fed. 596.

A contractor assigned all his plant to the surety on his contractor's bond in the event of his being unable to complete or carry on the contract. More than four months thereafter the contractor became bankrupt. It was held that the act of the surety in taking possession of the contractor's plant under the indemnity agreement, though within four months before the bankruptcy, did not operate as an unlawful preference. Wood *v.* U. S. Fidelity, etc., Co., 143 Fed. 424.

Where a conveyance is set aside as a preference, the purchase money having been used to pay creditors of the bankrupt grantor, the purchaser has a valid claim against the trustee in bankruptcy for the full amount of the money he paid less the expenses of setting aside the sale. Barber *v.* Coit, (C. C. A.) 144 Fed. 381.

The trustee is entitled to recover only to the extent necessary for the payment of claims, costs, and expenses. Rogers *v.* Page, (C. C. A.) 140 Fed. 596.

Debtor Must Be Insolvent to Constitute a Voidable Transfer. — Wright *v.* Cotten, 140 N. Car. 1, 52 S. E. 141.

Adjudication Conclusive as to Insolvency. — Silvey *v.* Tift, 123 Ga. 804, 51 S. E. 748.

"Transfer" Defined. — Godwin *v.* Murchison Nat. Bank, 145 N. Car. 320, 59 S. E. 154.

Transfer through Third Person. — Russell *v.* Powell, 38 Wash. 651, 80 Pac. 837.

Transfer May Be a Preference Though Creditor Is Secured. — Horstman *v.* Little, (Tex. Civ. App. 1905) 88 S. W. 286.

Transfer to Sureties Not a Preference of Creditor. — Horstman *v.* Little, (Tex. 1906) 90 S. W. 1095, *rehearing denied* (Tex. 1906) 92 S. W. 407.

Transfer Not Voidable for Benefit of Creditor Whose Claims Accrued after Discharge. — Johnson *v.* Donohue, 113 Tenn. 446, 83 S. W. 360.

Payment of Money. — Wright *v.* Cotten, 140 N. Car. 1, 52 S. E. 141; West *v.* Lahoma Bank, 16 Okla. 328, 85 Pac. 469.

Mortgage to Secure Antecedent Debt. Empire State Trust Co. *v.* Fisher, 67 N. J. Eq. 602, 60 Atl. 940.

Judgment Docketed More than Four Months Before Bankruptcy. — Hillyer *v.* Le Roy, 179 N. Y. 369, 72 N. E. 237.

Taking Possession within Four Months under Unrecorded Mortgage. — *In re* Chadwick, 140 Fed. 674.

Taking Possession within Four Months after bankruptcy, under a bill of sale given before that time to secure a loan, relates back to the execution of the bill of sale, and is therefore not a voidable preference. Christ *v.* Zehner, 212 Pa. St. 188, 61 Atl. 822; *In re* National Valve Co., 140 Fed. 679; Stewart *v.* Hoffman, 31 Mont. 190, 81 Pac. 3.

Time Computed from Date of Recording. — *In re* Hunt, 139 Fed. 283; Buchanan County First Nat. Bank *v.* Connett, (C. C. A.) 142 Fed. 33; Bowler *v.* Pipestone First Nat. Bank, (S. Dak. 1907) 113 N. W. 618.

Where an involuntary petition has been adjudged insufficient because the proper number of creditors did not join, and afterwards other creditors unite so as to make up the proper number, the petition will be deemed to have been filed at that date for the purpose of computing the four months within which preferences are avoided. Manning *v.* Evans, 156 Fed. 106.

The provision of the statute that the four months shall not begin to run until the date of recording the transfer applies only to written instruments of transfer. Mower *v.* McCarthy, 79 Vt. 142, 64 Atl. 578, 7 L. R. A. (N. S.) 418.

The amendment of 1903 providing that the four months shall begin to run from the date of recording a mortgage given by the bankrupt is not retroactive. Murphy *v.* Murphy, 126 Iowa 157, 101 N. W. 486.

Before the amendment of 1903 the time was computed from the date of the execution of a mortgage. Murphy *v.* Murphy, 126 Iowa 157, 101 N. W. 486.

Mortgage Held to Be Transfer as of Date of Recording. — Loeser *v.* Savings Deposit Bank, etc., Co., (C. C. A.) 148 Fed. 975.

An unrecorded mortgage if valid between the parties by the local law does not operate as a preference because it is recorded after the bankruptcy of the mortgagor. *In re* McIntosh, (C. C. A.) 150 Fed. 546. See also *infra*, this title, **749**. 5.

Payment to Attorney for Services to Be Rendered. — *In re* Habegger, 139 Fed. 623, 3 Ann. Cas. 276.

Payments on Running Account. — An increase in the bankrupt's estate as a net result of transactions between the bankrupt and the creditor within four months prior to filing the petition in bankruptcy, where the last transaction was a payment on account of the indebtedness, is not sufficient to relieve the creditor from surrendering this last payment as preferential before he has permitted the balance of his claim against the bankrupt's estate, when the account runs far back beyond the four months before the petition was presented and the transactions end a large payment on account of the whole indebtedness. *In re* Watkinson, 146 Fed. 142, *affirmed* (C. C. A.) 153 Fed. 562.

Price of Property Purchased from Bankrupt and Applied to Debt Due Purchaser. — Stern *v.* Mayer, 113 N. Y. App. Div. 181, 98 N. Y. Supp. 1028.

Deposit in Bank to Which Bankrupt Is Indebted Not a Preferential Transfer. — Habegger *v.* St. Paul First Nat. Bank, 94 Minn. 445, 103 N. W. 10.

The payment of a bank loan by check drawn on the debtor's account with the bank is none the less a preference because the bank would have been entitled to retain the amount of its debt out of the deposit. Ridge Ave. Bank *v.* Studheim, (C. C. A.) 145 Fed. 798. *Compare* Tomlinson *v.* Lexington Bank, (C. C. A.) 145 Fed. 824, holding that a deposit in a bank to make good overdrafts was not a preference.

A Defective Mortgage filed for registration more than four months before the bankruptcy of the mortgagor, but not actually registered, may be corrected and registered and will take effect as of the date of deposit for registration in accordance with the local law. *In re* International Mahogany Co., (C. C. A.) 147 Fed. 147.

Mortgage of Exempt Property. — The character as a preference of a mortgage given within four months before bankruptcy is not affected by the fact that the mortgaged property is exempt. The exemption may be claimed only by the bankrupt personally and not by his mortgagee. Mitchell *v.* Mitchell, 147 Fed. 280.

Check Drawn by Officer of Insolvent Bank. — *In re* Plant, 148 Fed. 37.

The Lien of a Mortgage Covering After-acquired Property attaches at the time the property is acquired and relates back to its date and not to the time when the mortgagee takes possession under it, and therefore does not operate as a preference under the Bankruptcy Act because possession is taken within four months prior to the petition in bankruptcy. Fisher *v.* Zollinger, (C. C. A.) 149 Fed. 54.

Person Benefited by Preference. — *In re* Sanderson, 149 Fed. 273.

Dation En Paiement in Louisiana Not a Preference. — Gomila *v.* Wilcombe, (C. C. A.) 151 Fed. 470.

Expense of Transferee in Keeping Property. — *In re* Nechamkus, 155 Fed. 867.

Creditor Must Obtain Greater Percentage of His Claim than Other Creditors. — Bacon *v.* Merchants' Bank, 146 Ala. 521, 40 So. 413; Sellers *v.* Hayes, 163 Ind. 422, 72 N. E. 119; Jackman *v.* Eau Claire Nat. Bank, 125 Wis. 465, 104 N. W. 98.

Money Collected under Execution is not recoverable by the trustee though the judgment was obtained within the four months. Starbuck *v.* Gebo, (County Ct.) 48 Misc. (N. Y.) 333, 96 N. Y. Supp. 781.

Demand by Trustee Not Required. — Jackman *v.* Eau Claire Nat. Bank, 125 Wis. 465, 104 N. W. 98.

Trustee Alone Can Sue. — Moore, etc., Shoe Mfg. Co. *v.* Billings, 46 Oregon 401, 80 Pac. 422.

Waiver of Lien. — Dunn Salmon Co. *v.* Pillmore, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 546, 106 N. Y. Supp. 88.

Recovery of Preferential Payment — Suit in Equity. — Parker *v.* Black, (C. C. A.) 151 Fed. 18; Dyer *v.* Kratzenstein, 103 N. Y. App. Div. 404, 92 N. Y. Supp. 1012.

Action at Law. — Merritt *v.* Halliday, 107 N. Y. App. Div. 596, 95 N. Y. Supp. 331.

Equitable Jurisdiction of Bankruptcy Court. — Off *v.* Hakes, (C. C. A.) 142 Fed. 364.

Action against Township — Painter *v.* Napoleon Tp., 156 Fed. 289.

Lien Created More than Four Months Before Bankruptcy - Enforcement in State Court. — Bank *v.* Smith, 122 Mo. App. 61, 98 S. W. 104; Skilton *v.* Codington, 185 N. Y. 80, 77 N. E. 790.

3. Westheimer *v.* Flarsheim, 99 S. W. 346, 30 Ky. L. Rep. 641; Bolster *v.* Graves, 189 Mass. 301, 75 N. E. 714; Jaquith *v.* Davenport, 191 Mass. 415, 78 N. E. 93; Schroeder *v.* Page, 117 N. Y. App. Div. 107, 102 N. Y. Supp. 332.

Seizure of Property to Obtain Preference. — Jones *v.* North Pac. Fish, etc., Co., 42 Wash. 332, 84 Pac. 1122.

735. 2. Sureties Are Creditors of Their Principals. — Horstman *v.* Little, (Tex. Civ. App. 1905) 88 S. W. 286.

The surety of a contractor to whom the contractor had given indemnity becomes a creditor on the default in the performance of the contract, though his liability may not then be liquidated and to some extent may depend on contingencies. Wood *v.* U. S. Fidelity, etc., Co., 143 Fed. 424.

Surety or Indorser. — Kobusch *v.* Hand, (C. C. A.) 156 Fed. 660.

3. *In re* Armstrong, 145 Fed. 202; Robinson *v.* McGillivray, 12 Ont. L. Rep. 91; Cummings *v.* Kansas City Wholesale Grocery Co., 123 Mo. App. 9, 99 S. W. 470; Wright *v.* Cotten, 140 N. Car. 1, 52 S. E. 141.

Proof of Intent — Value of Debtor's Property. — Rutland County Nat. Bank *v.* Graves, 156 Fed. 168.

Mere Payment of Creditor Does Not Show Intent to Prefer. — Kingsbury *v.* Smith Center First Nat. Bank, 71 Kan. 570, 81 Pac. 187.

Intent Presumed from Fact of Insolvency. — Edwards *v.* Carondelet Milling Co., 108 Mo. App. 275, 83 S. W. 764.

Presumption from Creditor's Knowledge of Debtor's Insolvency. — Raley *v.* Raymond Bros., etc., Co., 73 Neb. 496, 103 N. W. 57.

Circumstances Rebutting Intent to Prefer. — Craig *v.* McKay, 12 Ont. L. Rep. 121; Coder *v.* Arts, (C. C. A.) 152 Fed. 943.

When Intent Is a Question for the Jury. — Upson *v.* Mt. Morris Bank, 103 N. Y. App. Div. 367, 92 N. Y. Supp. 1101.

The Intention of the Debtor Is Immaterial if the creditor had reasonable cause to believe that the debtor intended to give a preference. Parker *v.* Black, 143 Fed. 560, *affirmed* (C. C. A.) 151 Fed. 18.

5. *United States.* — Hardy *v.* Gray, (C. C. A.) 144 Fed. 922; *In re* Maher, 144 Fed. 503; *In re* Armstrong, 145 Fed. 202; *In re* Tindall, 155 Fed. 456.

Arkansas. — Arkansas Nat. Bank *v.* Sparks, 83 Ark. 324, 103 S. W. 626.

Colorado. — Andrews *v.* Kellogg, (Colo. 1907) 92 Pac. 222.

Georgia. — Hawes *v.* Elberton Bank, 124 Ga. 567, 52 S. E. 922.

Missouri. — Edwards *v.* Carondelet Milling Co., 108 Mo. App. 275, 83 S. W. 764.

New Jersey. — Wilson *v.* Weigle, 69 N. J. Eq. 561, 62 Atl. 458.

New York. — Starbuck *v.* Gebo, (County Ct.) 48 Misc. (N. Y.) 333, 96 N. Y. Supp. 781.

North Carolina. — Wright *v.* Cotten, 140 N. Car. 1, 52 S. E. 141; Weeks *v.* Spooner, 142 N. Car. 479, 55 S. E. 432.

South Dakota. — Christopherson *v.* Oleson, 19 S. Dak. 176, 102 N. W. 685.

Texas. — Galveston Dry Goods Co. *v.* Frenkel, (Tex. Civ. App. 1905) 86 S. W. 949; Hooker *v.* Blount, (Tex. Civ. App. 1906) 97 S. W. 1083.

Canada. — Benallack *v.* Bank of British North America, 36 Can. Sup. Ct. 120.

Actual Knowledge or Actual Belief that the debtor was insolvent is not necessary. Reasonable cause of belief is all that is required. Sundheim *v.* Ridge Ave. Bank, 138 Fed. 951.

It is not necessary that the creditor should in fact have believed or even had reasonable cause to believe that the debtor was insolvent at the time of the transfer. It is enough to constitute reasonable cause to believe him insolvent that the facts and circumstances with reference to the debtor's financial condition which are brought home to the creditor are such as would put an ordinarily prudent man on inquiry and if pursued would lead to a knowledge of insolvency. *In re* Virginia Hardwood Mfg. Co., 139 Fed. 209.

Insolvency Ascertainable on Reasonable Inquiry. — Allen *v.* McMannes, 156 Fed. 615.

Burden of Proof. — Arkansas Nat. Bank *v.* Sparks, 83 Ark. 324, 103 S. W. 626; Capital Nat. Bank *v.* Wilkerson, (Ind. App. 1904) 72 N. E. 247.

Creditor Must Have Known of Debtor's Insolvency at Time of Transfer. — Galveston Dry Goods Co. *v.* Frenkel, (Tex. Civ. App. 1907) 103 S. W. 224.

Knowledge of Creditor a Question of Fact. — Jackman *v.* Eau Claire Nat. Bank, 125 Wis. 465, 104 N. W. 98.

Good Faith of Purchaser a Question for the Jury. — Coolidge *v.* Ayers, 77 Vt. 448, 61 Atl. 40.

736. **2.** *United States.* — *In re* Nassau, 140 Fed. 912; *In re* Gesas, (C. C. A.) 146 Fed. 734; Pittsburgh Plate Glass Co. *v.* Edwards, (C. C. A.) 148 Fed. 377; Hussey *v.* Richardson-Roberts Dry Goods Co., (C. C. A.) 148 Fed. 598; Roberts *v.* Johnson, (C. C. A.) 151 Fed. 567; Coder *v.* McPherson, (C. C. A.) 152 Fed. 951; *In re* Pfaffinger, 154 Fed. 523; *In re* Louisville First Nat. Bank, (C. C. A.) 155 Fed. 100.

Maine. — Stevenson *v.* Milliken-Tomlinson Co., 99 Me. 320, 59 Atl. 472.

Missouri. — Edwards *v.* Carondelet Milling Co., 108 Mo. App. 275, 83 N. W. 764.

Montana. — Mackel *v.* Bartlett, (Mont. 1907) 91 Pac. 1064.

Texas. — Walker *v.* Tenison Bros. Saddlery Co., (Tex. Civ. App. 1906) 94 S. W. 166.

Virginia. — Johnston *v.* George D. Witt Shoe Co., 103 Va. 611, 50 S. E. 153.

Wisconsin. — Suffel *v.* McCartney Nat. Bank, 127 Wis. 208, 106 N. W. 837.

Knowledge of Facts Calculated to Produce Belief. — English *v.* Ross, 140 Fed. 630.

Knowledge that Debtor Failed to Meet His Obligations Promptly Not Sufficient. — Arkansas Nat. Bank *v.* Sparks, 83 Ark. 324, 103 S. W. 626.

Knowledge of the Fact that the Debtor Was Insolvent or of facts from which such knowledge might reasonably be inferred is sufficient to show that the creditor had reasonable cause to believe that the debtor intended a preference. Parker *v.* Black, 143 Fed. 560, *affirmed* (C. C. A.) 151 Fed. 18.

But the mere fact that the debtor was insolvent is not sufficient to show a voidable preference. Webb *v.* Lynchburg Shoe Co., 106 Va. 726, 56 S. E. 581.

3. Capital Nat. Bank *v.* Wilkerson, (Ind. App. 1904) 76 N. E. 258.

A circular letter issued by the debtor to creditors in an effort to effect a compromise, advising them that he was in failing circumstances, was held sufficient to put a creditor receiving it on the inquiry. Benjamin *v.* Chandler, 142 Fed. 217.

Circumstances Exciting Suspicion. — Ridge Ave. Bank *v.* Studheim, (C. C. A.) 145 Fed. 798.

Subsequent Transfers on Same Day. — Upson *v.* Mt. Morris Bank, 103 N. Y. App. Div. 367, 92 N. Y. Supp. 1101.

4. Sellers *v.* Hayes, 163 Ind. 422, 72 N. E. 119.

Evidence Held Insufficient to Show Reasonable Cause to Believe that Preference Was Intended. — J. W. Butler Paper Co. *v.* Goembel, (C. C. A.) 143 Fed. 295.

Sufficiency of Evidence. — Wright *v.* Sampter, 152 Fed. 196; *In re* Tindal, 155 Fed. 456; *In re* Lynden Mercantile Co., 156 Fed. 713; Bacon *v.* Merchants' Bank, 146 Ala. 521, 40 So. 413; Le Sueur First State Bank *v.* Sibley County Bank, 96 Minn. 456, 105 N. W. 485, 489; Hastings *v.* Fithian, 71 N. J. L. 311, 60 Atl. 350; Evans *v.* National Broadway Bank, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 248, 96 N. Y. Supp. 789; Walker *v.* Tenison Bros. Saddlery Co., (Tex. Civ. App. 1906) 94 S. W. 166; Jackman *v.* Eau Claire Nat. Bank, 125 Wis. 465, 104 N. W. 98.

738. **3.** Official Receiver *v.* Cooke, (1906) 2 Ch. 661; *In re* Bennett, (1907) 1 K. B. 149.

4. Official Receiver *v.* Cooke, (1906) 2 Ch. 661; *In re* Bennett, (1907) 1 K. B. 149.

8. Wages Earned after Adjudication. — *In re* Karns, 148 Fed. 143.

739. **1.** *In re* Barton, 144 Fed. 540; Sibley *v.* Nason, (Mass. 1907) 81 N. E. 887.

The debtor's right to earn wages in the future is not property within the meaning of the Bankruptcy Act. *In re* Home Discount Co., 147 Fed. 538, *disapproving* Mallin *v.* Wenham, 209 Ill. 252, 70 N. E. 564.

Legacy Accruing after Bankruptcy. — *In re* Harper, (C. C. A.) 155 Fed. 105.

5. *In re* Grady, 138 Fed. 935; *In re* Hemstreet, 139 Fed. 958; *In re* Woollcott, 140 Fed. 460; Steiner *v.* Marshall, (C. C. A.) 140 Fed. 710; *In re* Downing, 148 Fed. 120; Samuel Morganstein *v.* Chatsworth Commercial Nat. Bank, 115 Ill. App. 267.

The right to the personal property exemption should be denied where the bankrupt has not made a full disclosure of his property and the

amount of the concealment cannot be ascertained. *In re* Ansley, 153 Fed. 983.

The bankrupt is not entitled to a homestead exemption unless at the time the bankrupt petition was filed his right thereto had been perfected by compliance with the state law, in this case designated as Georgia. *In re* Youngstrom, (C. C. A.) 153 Fed. 98.

Power of Bankruptcy Court to Retain Custody of Exempt Property. — *In re* Hartsell, 140 Fed. 30.

A court of bankruptcy has no jurisdiction to administer exempt property of the bankrupt. *In re* Sorg, 155 Fed. 550.

The trustee takes no title to exempt property and the only jurisdiction that the court of bankruptcy has as to exempt property is for the purpose of setting it apart and after hearing any question raised as to the right of exemption. *In re* Castleberry, 143 Fed. 1018.

Crops Standing on Homestead. — *In re* Sullivan, 142 Fed. 620.

Life Insurance Exempt by State Law. — *In re* Booss, 154 Fed. 494.

Salary of City Officer. — O'Sullivan *v.* Douglass, (Ky. 1907) 98 S. W. 990.

Homestead Purchased with Proceeds of Non-exempt Property. — *In re* Wood, 147 Fed. 877.

Dower and Allowance to Widow. — Hurley *v.* Devlin, 151 Fed. 919; *In re* McKenzie, (C. C. A.) 142 Fed. 383.

Partnership Exemptions. — *In re* Novak, 150 Fed. 602.

A partnership exemption will not be allowed to a partner who had agreed to sell out his interest in the firm to his copartners and had actually retired from the management of the partnership affairs though the form of contract had not yet been executed. To claim such exemption he must be an actual partner. *In re* Fowler, 145 Fed. 270.

Allowance of Individual Exemptions in Partnership Property. — *In re* Monroe, 156 Fed. 216.

Since the bankrupt is entitled only to the exemptions allowed by state laws a minor who has contributed to the partnership assets but not participated in any of the firm transactions is not entitled to claim exemptions from the firm assets. *In re* Floyd, 154 Fed. 757.

Allowance of Exemptions Out of Proceeds of Sale. — *In re* Ansley, 153 Fed. 983; *In re* Paramore, 156 Fed. 208.

Persons Entitled to Exemptions — Head of Family. — *In re* Finklea, 153 Fed. 492.

Exemptions Only Claimable by Bankrupt Personally. — Mitchell *v.* Mitchell, 147 Fed. 280.

Forfeiture of Right to Exemptions. — *In re* Alex, 141 Fed. 483.

A debtor's right to exemptions is forfeited by concealing her property or denying ownership in order to prevent its application to the claims of creditors. *In re* Schafer, 151 Fed. 505; *In re* Simon, 151 Fed. 507.

Forfeiture by Fraudulent Concealment of Property. — *In re* Leverton, 155 Fed. 925.

Right to Homestead Not Defeated by Fraudulent Transfer. — *In re* Thompson, 140 Fed. 257.

Waiver of Exemptions — Ignorance of Law. — *In re* Kaufmann, 142 Fed. 898; Perry *v.* Britt-Carson Shoe Co., 129 Ga. 560, 59 S. E. 216.

Exemptions Dependent on State Law. — *In re* Sale, (C. C. A.) 143 Fed. 310; Duncan *v.* Ferguson-McKinney Dry Goods Co., (C. C. A.) 150 Fed. 269; McCarty *v.* Coffin, (C. C. A.) 150 Fed. 307.

6. Where the state exemption law allows the debtor property of a certain value but does not give him any right to such amount of the proceeds of the property after sale, a claim for such amount out of the proceeds is ineffectual. *In re* Pfeiffer, 155 Fed. 892.

If a debtor is permitted by the state law to waive his exemption but not to assign it, he will not be permitted to withdraw a waiver once made in favor of a creditor to whom he has assigned his right of exemption. *In re* Pfeiffer, 155 Fed. 892.

Waiver of Exemptions. — Adair *v.* Decker, 34 Pa. Super. Ct. 153; Citizens' Nat. Bank *v.* Gass, 29 Pa. Super. Ct. 125.

710. 3. *United States.* — Security Warehousing Co. *v.* Hand, 206 U. S. 415, 27 U. S. Sup. Ct. 720; *In re* MacDonald, 138 Fed. 463; *In re* Cutting, 145 Fed. 388; *In re* Blake, (C. C. A.) 150 Fed. 279; *In re* Chantler Cloak, etc., Co., 151 Fed. 952; *In re* Great Western Mfg. Co., (C. C. A.) 152 Fed. 123; *In re* Youngstrom, (C. C. A.) 153 Fed. 98; Atchison, etc., R. Co. *v.* Hurley, (C. C. A.) 153 Fed. 503; *In re* Newton, (C. C. A.) 153 Fed. 841; Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545.

California. — Lamb *v.* Hall, 147 Cal. 44, 81 Pac. 288.

District of Columbia. — Crosby *v.* Ridout, 27 App. Cas. (D. C.) 481.

Iowa. — Wick *v.* Hickey, (Iowa 1905) 103 N. W. 469.

Massachusetts. — Hough *v.* North Adams, (Mass. 1907) 82 N. E. 46.

Nebraska. — Nebraska Moline Plow Co. *v.* Blackburn, (Neb. 1905) 104 N. W. 178; Beer *v.* Wisner, (Neb. 1905) 104 N. W. 757.

New York. — Skilton *v.* Codington, 105 N. Y. App. Div. 617, 93 N. Y. Supp. 460; Waterloo First Nat. Bank *v.* Bacon, 113 N. Y. App. Div. 612, 98 N. Y. Supp. 717.

North Carolina. — Smith *v.* Godwin, 145 N. Car. 242, 58 S. E. 1089.

Texas. — Eason *v.* Garrison, 36 Tex. Civ. App. 574, 82 S. W. 800.

Thus the trustee in bankruptcy of a lessee takes the lease subject to a notice to quit given to the bankrupt before the adjudication. Lindeke *v.* Associates Realty Co., (C. C. A.) 146 Fed. 630.

A sale induced by the fraud of the bankrupt may be rescinded after the bankruptcy and the goods recovered from the trustee, but in order that the vendor may recover he must show knowledge of insolvency on the part of the bankrupt and an intention not to pay for the goods. The mere fact that the bankrupt knew that he was insolvent is not sufficient. *In re* Levi, 148 Fed. 654.

Sale with Reservation of Title to Seller. — Buckwalter Stove Co. *v.* Stratton, 118 N. Y. App. Div. 915, 103 N. Y. Supp. 118.

Contract of Sale or Return. — *In re* Landis, 151 Fed. 896.

4. *United States.* — *In re* Bauchman, 138 Fed. 742, *following In re* Vastbinder, 132 Fed. 718; *In re* L'Hommedieu, (C. C. A.) 146 Fed. 708; *In re* Platteville Foundry, etc., Co., 147 Fed.

Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545.

Alabama. — Bloch *v.* Moore, (Ala. 1905) 39 So. 1025.

Georgia. — Kaminsky *v.* Horrigan, 2 Ga. App. 338, 58 S. E. 497.

Massachusetts. — Richardson *v.* Winnisimmet Nat. Bank, 189 Mass. 25, 75 N. E. 97.

Wisconsin. — Krugmeier *v.* Hackett, (Wis. 1907) 113 N. W. 1103.

Where a municipal officer uses funds of the municipality in making additions to his stock of goods as a merchant and it is impossible to ascertain the portion so purchased, the municipality has a lien on the bankrupt's estate. Smith *v.* Au Gres Tp., (C. C. A.) 150 Fed. 257.

A valid lien on property of the bankrupt is not affected by his giving the creditor a mortgage though such mortgage is invalid as a preference under the bankruptcy law. Smith *v.* Au Gres Tp., (C. C. A.) 150 Fed. 257.

A mortgagee has an equitable lien on the proceeds of a fire policy on the mortgaged chattels, though the mortgage was not recorded and no steps had been taken by the mortgagee to assert his right. Hanson *v.* Blake, 155 Fed. 342.

The fact that a creditor has received a preference in one transaction does not affect the validity of a lien on the bankrupt's property acquired in a different transaction. *In re* Franklin, 151 Fed. 642.

Lien Created by Bond Assignment. — Union Trust Co. *v.* Bulkeley, (C. C. A.) 150 Fed. 510.

Statutory Liens. — Before a creditor can claim a lien given by a state statute he must comply with the statute and perfect his lien. It is only after so perfected that they are protected by the court of bankruptcy. *In re* Franklin, 151 Fed. 642.

Liens Reserved in Contract of Sale. — *In re* Mexicic Pulp Co., (C. C. A.) 151 Fed. 732.

Attorneys' Liens. — Kneeland *v.* Pennell, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 43, 104 N. Y. Supp. 498.

Liens Valid as to Bankrupt but Invalid as to Creditor. — *In re* Cramond, 145 Fed. 966.

Lien Voidable as to Creditors — Trustee Not Affected by Estoppel of Bankrupt. — *In re* Shaw, 146 Fed. 273.

Effect of Disallowance of Lien Debt on Preferred Claim. — Skilton *v.* Codington, 105 N. Y. App. Div. 617, 93 N. Y. Supp. 460.

When Liens Governed by Local Law. — *In re* Beede, 138 Fed. 441; *In re* Thackera Mfg. Co., 140 Fed. 126; *In re* Birck, (C. C. A.) 142 Fed. 1.

Unrecorded Mortgage. — Frost *v.* Wilson, (C. C. A.) 149 Fed. 197; Rogers *v.* Page, (C. C. A.) 140 Fed. 596; Goodrich *v.* Dore, 194 Mass. 493, 80 N. E. 480; Cornelius *v.* Boling, 18 Okla. 469, 90 Pac. 874.

Mortgage on After-acquired Property When Not Good as against Trustee. — Zartman *v.* First Nat. Bank, 189 N. Y. 267, 82 N. E. 127, *affirming* 100 N. Y. App. Div. 406, 96 N. Y. Supp. 633.

Unrecorded Bill of Sale Given as Security. — Clark *v.* Williams, 190 Mass. 119, 76 N. E. 722.

Enforcement of Liens. — Jungbecker *v.* Hulver, *modifying* (Tex. 1907) 105 S. W. 487, (Tex. Civ. App. 1907) 101 S. W. 522.

Since the trustee succeeds to the bankrupt's title and represents all his rights, the bankrupt is not a necessary party to a proceeding to determine the validity of an alleged lien on the bankrupt's property. Goodnough Mercantile, etc., Co. *v.* Galloway, 156 Fed. 504.

The property is not subject to sale under the lien as against the trustee. Hence, an execution obtained more than four months before bankruptcy may be stayed by the bankruptcy court, but the execution creditor will not be deprived of his priority. If the trustee sells the property free from liens the lien of the execution will attach to the proceeds. *In re* Baughman, 138 Fed. 742, *following In re* Vastbinder, 132 Fed. 718.

741. 1. Watkins *v.* Bigelow, 93 Minn. 361, 101 N. W. 497; Bryan *v.* Sturgis Nat. Bank, (Tex. Civ. App. 1905) 90 S. W. 704.

Sale or Bailment. — *In re* Froehlich Rubber Refining Co., 139 Fed. 201; *In re* Poore, 139 Fed. 862; *In re* Wells, 140 Fed. 752; *In re* Poore, 140 Fed. 786; Chisholm *v.* Eagle Ore Sampling Co., (C. C. A.) 144 Fed. 670.

Sale on Condition Precedent — Payment of Price. — Southern Pine Co. *v.* Savannah Trust Co., (C. C. A.) 141 Fed. 802.

Unrecorded Conditional Sale. — *In re* Franklin Lumber Co., 147 Fed. 852; Bradley *v.* McAfee, 149 Fed. 254; *In re* Builders' Lumber Co., 148 Fed. 244; *In re* Great Western Mfg. Co., (C. C. A.) 152 Fed. 123; *In re* Hassam, 153 Fed. 932; *In re* Perkins, 155 Fed. 237; *In re* Burt, 155 Fed. 267; Hanson *v.* Blake, 155 Fed. 342.

The Local Law Governs as to whether a contract under which goods were delivered to the bankrupt shortly before bankruptcy was a conditional sale or a chattel mortgage, and as to its validity between the parties. *In re* Newton, (C. C. A.) 153 Fed. 841; *In re* Montague, 143 Fed. 428; *In re* Cavagnaro, 143 Fed. 668; Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545; Low *v.* Taylor, (N. J. 1907) 68 Atl. 128.

The question whether the delivery of goods to the bankrupt with the provision that title shall not pass until the purchase price has been paid is valid as against creditors is to be determined by the local law. *In re* Tice, 139 Fed. 52.

An unrecorded contract of conditional sale to the bankrupt is good as against the trustee in bankruptcy where it is voidable under the state law only by lien creditors and *bona fide* purchasers and there are none of such creditors or purchasers. Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545.

An unrecorded bill of sale under the *Virginia* statute operates as against creditors only from the time that it is recorded, and if the recordation is not within four months before the filing of the petition in bankruptcy it is voidable by the trustee though the bill of sale was executed more than four months before. *In re* Montague, 143 Fed. 428.

Trustee Represents All the Creditors. — Crane *v.* Brewer, (N. J. 1907) 68 Atl. 78.

2. Godwin *v.* Murchison Nat. Bank, 145 N. Car. 320, 59 S. E. 154.

5. Annis *v.* Butterfield, 99 Me. 181, 58 Atl. 898; Hough *v.* North Adams, (Mass. 1907) 82 N. E. 46.

6. Ponsford *v.* Union of London, etc., Bank, (1906) 2 Ch. 444.

7. *In re* Youngstrom, (C. C. A.) 153 Fed. 98; *In re* Fulton, 153 Fed. 664; Hough *v.* North Adams, (Mass. 1907) 82 N. E. 46; Kempner *v.* Bauer, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 109, 104 N. Y. Supp. 76; Currie *v.* Look, 14 N. Dak. 482, 106 N. W. 131; French *v.* White, 78 Vt. 89, 62 Atl. 35.

8. Glidden *v.* Massachusetts Hospital L. Ins. Co., 187 Mass. 538, 73 N. E. 538.

11. Hunter *v.* Hodgson, (Tex. Civ. App. 1906) 95 S. W. 637.

Discharge of Trustee. — Kempner *v.* Bauer, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 109, 104 N. Y. Supp. 76.

712. 4. Duty of Trustee to Pay Taxes. — *In re* Fisher, 148 Fed. 907.

7*a*. The selection of an attorney is to be made by the trustees and not by the creditors. *In re* Columbia Iron Works, 142 Fed. 234.

713. 3*a*. Holding Over after Expiration of Bankrupt's Lease. — *In re* Hunter, 151 Fed. 904.

4. It is no excuse for the failure of a married woman to turn over her money to her trustee in bankruptcy that it is in the possession of her husband. The money being her estate is presumed to be in the husband's possession as her agent. *In re* Cole, 144 Fed. 392, *reversing* 135 Fed. 439.

An agreement between the trustee and creditors of a bankrupt to stop a criminal prosecution against the bankrupt in consideration of the surrender of transfers previously made by the bankrupt and the payment of a sum of money by his friends in order to increase the assets will not be approved by the bankruptcy court. *In re* Rosenblatt, 153 Fed. 335.

An application to compel the bankrupt to turn over money or property to the trustee in bankruptcy is determinable on a preponderance of the evidence. *In re* Cole, (C. C. A.) 144 Fed. 392.

Petition by Creditors to Compel Trustee to Act. — *In re* Bailey, 151 Fed. 953.

Property in Possession of State Court. — *In re* Kaplan, 144 Fed. 159.

5. Cornelius *v.* Boling, 18 Okla. 469, 90 Pac. 974.

718. 1. Removing Cloud on Title. — Lance *v.* Tainter, 137 N. Car. 249, 49 S. E. 211.

Proof of Ownership of Money in Hands of Third Person. — Waters *v.* Davis, (C. C. A.) 145 Fed. 617.

Liens Valid as to Bankrupt but Invalid as to Creditors. — *In re* Cramond, 145 Fed. 966.

3. *In re* Sunseri, 156 Fed. 103.

4. If the property of the bankrupt is sold under execution on a judgment within four months before bankruptcy, the title of the purchaser is good and the owner as of the trustee in bankruptcy is to sue the judgment creditor as having received the preference. Section 67 *f* of the Bankruptcy Act avoids only the lien of the execution and not a transfer effected by enforcing the execution. *In re* Bailey, 144 Fed. 214.

6. *In re* Heckman, (C. C. A.) 140 Fed. 859; *In re* Kane, 152 Fed. 587.

745. 2. *In re* Kane, 152 Fed. 587.

4. The officers of a bankrupt corporation may be directed to make known to the trustee the combination of a safe alleged to belong to the bankrupt at the time the petition was filed and to contain assets belonging to the bankrupt's estate, in order that the trustee may examine the contents of the safe. *In re* Hooks Smelting Co., 138 Fed. 954.

6. *In re* Cohen, (1905) 2 K. B. 704.

The trustee must elect whether or not he will assume an executory contract. Atchison, etc., R. Co. *v.* Hurley, (C. C. A.) 153 Fed. 503.

746. 1. *In re* Jersey Island Packing Co., (C. C. A.) 138 Fed. 625.

4. Thomas *v.* Fletcher, 153 Fed. 226; Bunnell *v.* Bronson, 78 Conn. 679, 63 Atl. 396; Wilson *v.* Griswold, 79 Conn. 18, 63 Atl. 659; Shelley *v.* Nolen, (Tex. Civ. App. 1905) 88 S. W. 524.

If the transferee under a preferential transfer has sold the property for as good a price as the trustees could have obtained, he will be held accountable only for such price. Allen *v.* McMannes, 156 Fed. 615.

Quære, whether the trustee can transfer his right to have an alleged fraudulent or preferential transfer by the bankrupt set aside. Annis *v.* Butterfield, 99 Me. 181, 58 Atl. 898.

Exclusive Right of Trustee. — Ruhl-Koblegard Co. *v.* Gillespie, 61 W. Va. 584, 56 S. E. 898.

Leave to Sue. — Chisholm *v.* Wallace, 146 Ala. 683, 40 So. 219.

Procedure Prescribed by Bankruptcy Act Must Be Followed. — Leavengood *v.* McGee, (Oregon 1907) 91 Pac. 453.

5. Hunt *v.* Doyal, 128 Ga. 416, 57 S. E. 489; Roney *v.* Conable, 125 Iowa 664, 101 N. W. 505; Ferguson *v.* Lederer, 128 Iowa 286, 103 N. W. 794; Seager *v.* Armstrong, 95 Minn. 325, 104 N. W. 479; Lesser *v.* Bradford Realty Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 463, 95 N. Y. Supp. 933.

If a preferential transfer was made more than four months before the petition in bankruptcy and was valid under the state law, the trustee in bankruptcy cannot have it set aside. Manning *v.* Evans, 156 Fed. 106.

748. 1. Ratification by Trustee of Receiver's Sale. — Mason *v.* Wolkowich, (C. C. A.) 150 Fed. 699.

749. 2. But see Annis *v.* Butterfield, 99 Me. 181, 58 Atl. 898.

Property Transferred in Preference of Creditor. — Keller *v.* Faickney, (Tex. Civ. App. 1906) 94 S. W. 103.

750. 1. *In re* Garner, 153 Fed. 914.

2. Sturgiss *v.* Corbin, (C. C. A.) 141 Fed. 1; Savage *v.* Savage, (C. C. A.) 141 Fed. 346; Long *v.* Gump, (C. C. A.) 144 Fed. 824; *In re* Wylie, (C. C. A.) 153 Fed. 281; *In re* Loveland, (C. C. A.) 155 Fed. 838.

Where an order does not refer to liens on the property the sale will be subject to the liens. *In re* Platteville Foundry, etc., Co., 147 Fed. 828.

Lien Transferred to Proceeds. — *In re* L'Hommedieu, (C. C. A.) 146 Fed. 708.

Notice to Lienholders. — *In re* Platteville Foundry, etc., Co., 147 Fed. 828.

Sale of Mortgaged Property — Allowance to Mortgagee of Attorney's Fees. — *In re* Wendel, 152 Fed. 672.

3. Craig *v.* McKay, 8 Ont. L. Rep. 651.

6. Contra. — Beall *v.* Chatham, (Tex. 1907) 99 S. W. 1116.

751. 7*a*. **Transfer by Purchaser to Bankrupt — Quantity of Title Acquired.** — Shesler *v.* Pattor, 114 N. Y. App. Div. 846, 100 N. Y. Supp. 286.

Cancellation of Prior Preferential Transfer by Bankrupt. — Bryan *v.* Madden, 109 N. Y. App. Div. 876, 96 N. Y. Supp. 465.

State Court Cannot Enjoin Execution of Deed. — Henderson *v.* Henrie, 61 W. Va. 183, 56 S. E. 500.

8. Sturgiss *v.* Corbin, (C. C. A.) 141 Fed. 1; *In re* Wylie, (C. C. A.) 153 Fed. 281.

Confirmation of a sale will not be refused because of an arrangement between the purchaser and the auctioneer that the bid of any person should be raised fifty dollars each time until a sign was given by the purchaser to stop. *In re* Ketterer Mfg. Co., 156 Fed. 719.

Collateral Attack. — Keller *v.* Faickney, (Tex. Civ. App. 1906) 94 S. W. 103.

Upset Bid. — *In re* Fisher, 148 Fed. 907; *In re* Shapiro, 154 Fed. 673.

752. 2*a*. **Improvements by Purchaser at First Sale.** — *In re* Fisher, 148 Fed. 907.

3. A trustee in bankruptcy cannot compromise a suit against the bankrupt without the consent of the attorney for the bankrupt who has prosecuted such suit and has an attorney's lien for services therein. *In re* Adamo, 151 Fed. 716.

4. Action to Recover Usurious Interest Paid by Bankrupt. — Reed *v.* American-German Nat. Bank, 155 Fed. 233.

Creditor May Sue before a trustee has been appointed when necessary to protect the estate. Depauli *v.* Espitallier, 3 Cal. App. 239, 84 Pac. 666.

Effect of Bankrupt's Attorney Acting for Trustee. — Callahan *v.* Israel, 186 Mass. 383, 71 N. E. 812.

5. Presumption as to Due Qualification by Trustee. — Breckons *v.* Snyder, 211 Pa. St. 176, 60 Atl. 575; Laubaugh *v.* Pennsylvania R. Co., 28 Pa. Super. Ct. 247.

5*a*. **Appointment Must Be Proved When Denied by Defendant.** — Van Houten *v.* Oliver, (Supm. Ct. App. T.) 91 N. Y. Supp. 36.

6. The trustee cannot be sued in a state court for anything done by him pursuant to an order of the bankruptcy court. Wood *v.* Cummings, (Mass. 1908) 83 N. E. 318.

9. Refusal of Trustee to Prosecute Suit. — *In re* Throckmorton, (C. C. A.) 149 Fed. 145.

Bankrupt May Prosecute Appeal with Consent of Trustee. — Christy *v.* Des Moines City R. Co., 126 Iowa 428, 102 N. W. 194.

753. 3. Only Trustee May Move for Substitution: the bankrupt has no right to ask that the trustee be substituted. Oscar Bonner Oil Co. *v.* Pennsylvania Oil Co., 150 Cal. 658, 89 Pac. 613.

Action by Creditor to Set Aside Fraudulent Conveyance. — Bunch *v.* Smith, 116 Tenn. 201, 93 S. W. 80.

754. 3. Brumby *v.* Jones, (C. C. A.) 141 Fed. 318; Goodnough Mercantile, etc., Co. *v.* Galloway, 156 Fed. 504.

The District Court as a court of bankruptcy has jurisdiction of a suit by a claimant of property when such property has come into the custody of the court either actual or constructive. Goodnough Mercantile, etc., Co. *v.* Galloway, 156 Fed. 504.

Where property is claimed in the right of the bankrupt, the District Court has jurisdiction, since the controversy is a part of the proceeding in bankruptcy, but if the claim is adverse to the bankrupt the claimant must sue in the Circuit Court or in a state court. Goodnough Mercantile, etc., Co. *v.* Galloway, 156 Fed. 504.

Jurisdiction under Amendment of 1903. — Mitchell *v.* Mitchell, 147 Fed. 280; Horner-Gaylord Co. *v.* Miller, 147 Fed. 295; Hurley *v.* Devlin, 149 Fed. 268; Bowman *v.* Alpha Farms, 153 Fed. 380.

755. 1. Hull *v.* Burr, (C. C. A.) 153 Fed. 945.

An action by the trustee to set aside a fraudulent conveyance by the bankrupt under section 70 *e* of the Bankruptcy Act as amended by the Act of 1903, may be maintained in the bankruptcy court only by consent of the defendant. Skewis *v.* Barthell, 152 Fed. 534.

2. Under the Bankruptcy Act of 1898 a composition will not be set aside because the bankrupt has not complied with its terms. Such default, however, may prevent the composition from operating as a discharge. *In re* Eisenberg, 148 Fed. 325.

4*a*. **Jurisdiction of Bankruptcy Courts — Summary Process.** — *In re* Ellis Bros. Printing Co., 156 Fed. 430.

A court of bankruptcy may by summary process require those who assert title to or interest in property which has rightfully come into its possession and control as part of the bankrupt's estate to present their claims to that court, and the notice being reasonable may proceed to adjudicate the merits of such claims. *In re* Eppstein, (C. C. A.) 156 Fed. 42.

5. Hatch *v.* Curtin, 146 Fed. 200; Reed *v.* American-German Nat. Bank, 155 Fed. 233.

6. Goodnough Mercantile, etc., Co. *v.* Galloway, 156 Fed. 504.

A bill in equity will not lie against the trustees in bankruptcy to compel them to pay over the proceeds of property claimed by the complainant. The complainant can only proceed if at all at law. Treat *v.* Wooden, 138 Fed. 934.

7. Goodnough Mercantile, etc., Co. *v.* Galloway, 156 Fed. 504; McLeod *v.* McLeod, 89 S. W. 199, 28 Ky. L. Rep. 284, 90 S. W. 5, 28 Ky. L. Rep. 667; Stern *v.* Mayer, 99 N. Y. App. Div. 427, 91 N. Y. Supp. 292; Volkhommer *v.* Frank, 107 N. Y. App. Div. 594, 95 N. Y. Supp. 324; Bouton *v.* Wheeler, 118 N. Y. App. Div. 426, 104 N. Y. Supp. 33; Breckons *v.* Snyder, 211 Pa. St. 176, 60 Atl. 575.

Action at Law. — Cohen *v.* Small, 120 N. Y. App. Div. 211, 105 N. Y. Supp. 287, *reversing* 104 N. Y. Supp. 412.

Jurisdiction of State Court Determined by State Statutes. — Redd *v.* Wallace, 145 Ala. 209, 40 So. 407.

757. 1. *In re* Screws, 14, Fed. 989; Caldwell *v.* Nash, 190 Mass. 507, 77 N. E. 515.

The trustee is entitled to his commissions on the amount of the distributive share of a creditor, though such creditor purchased property of the bankrupt estate and paid only the difference between the price and the amount of his share. *In re* Morse Iron Works, etc., Co., 154 Fed. 214.

Agreement for Extra Compensation Void. — Devries *v.* Orem, 104 Md. 648, 65 Atl. 430.

Commissions on Proceeds of Exempt Property. — *In re* Castleberry, 143 Fed. 1021.

Property Subject to Liens. — The trustee may be deprived of his commissions by the fact that the bankrupt's entire property is insufficient to pay the amount of liens on it. Smith *v.* Au Gres Tp., (C. C. A.) 150 Fed. 257.

Personal Services in Conducting Sales. — *In re* Dimm, 146 Fed. 402.

2. *In re* Leverton, 155 Fed. 931.

760. 4. **Payment of Costs — Fee of Attorney Procuring Confirmation.** — *In re* Martin, 152 Fed. 582.

5. **Motive of Objecting Creditor in Purchasing His Claim Not Material.** — *In re* Comstock, 154 Fed. 747.

761. 2. **Fraudulent Concealment and Disposal of Assets.** — *In re* Comstock, 154 Fed. 747.

762. 3. **False Oath — Offense Must Be Committed Knowingly or Fraudulently.** — *In re* Cohen, 149 Fed. 908.

764. 1. The bankrupt in a composition proceeding is required to deposit sufficient to cover costs, priority claims, and expenses, also the percentage named not only on all claims filed before confirmation but also on all other claims lifted by the bankrupt in his schedule, but not a percentage on secured claims nor for any supposed deficiency if it has not been yet ascertained and filed. *In re* Harvey, 144 Fed. 001.

2. Collins *v.* Crews, 3 Ga. App. 238, 59 S. E. 727.

Composition Agreement Construed. — La Banque d'Hochelaga *v.* Beauchamp, 36 Can. Sup. Ct. 18.

765. 1. An agreement between a third person and a creditor that such third person would advance the necessary money for the composition and that the creditor would refund the share which he should receive is an illegal contract and not enforceable against such creditor. McCormick *v.* Solinsky, (C. C. A.) 152 Fed. 984.

2. The application must be made within six months after confirmation of the composition. *In re* Eisenberg, 148 Fed. 325.

766. 4. **Conditional Discharge.** — *In re* Dallmeyer, 22 Times L. Rep. 445.

7. *In re* Eades, (C. C. A.) 143 Fed. 293.

768. 4. Young *v.* Stevenson, 73 Ark. 480, 84 S. W. 623; Custard *v.* Wigderson, 130 Wis. 412, 110 N. W. 263.

769. 2. Moore *v.* Trounstine, 126 Ga. 116, 54 S. E. 810; Alling *v.* Straka, 118 Ill. App. 184; Currier *v.* Williams, 189 Mass. 214, 75 N. E. 618; Mitchell *v.* Leland, 190 Mass. 258, 76 N. E. 670; Ruhl-Koblegard Co. *v.* Gillespie, 61 W. Va. 584, 56 S. E. 898.

"Where the same debts and the same assets are scheduled in the two proceedings, one being commenced subsequent to the termination of the other, it is manifest that the last proceeding is merely an attempt to evade the former one. To permit it would be to sanction a fraud upon the court." *In re* Kuffler, (C. C. A.) 151 Fed. 12, *reversing* 144 Fed. 445.

The discharge releases the debtor from all liability in respect to property acquired after bankruptcy. This is the policy of the statute, and, therefore, an assignment of future wages to secure an existing debt cannot be enforced after a discharge in bankruptcy. *In re* Home Discount Co., 147 Fed. 538.

The refusal of discharge operates as *res judicata* as to the bankrupt's right to a discharge; therefore, the debts provable in such proceeding cannot be discharged in a subsequent bankruptcy proceeding, and it is immaterial that such debts had in the meantime been reduced to judgment. *In re* Kuffler, 155 Fed. 1018; *In re* Kuffler, (C. C. A.) 151 Fed. 12, *reversing* 144 Fed. 445.

Effect Given to Discharge by State Courts. — Bluthenthal *v.* Jones, 51 Fla. 396, 41 So. 533.

Public policy does not preclude the discharge of a judgment for costs in a criminal case. Olds *v.* Forrester, 126 Iowa 456, 102 N. W. 419.

Only Provable Claims Are Discharged. — Smith *v.* McQuillin, 193 Mass. 289, 79 N. E. 401.

Discharge Must Be Pleaded. — Lovell *v.* Sneed, (Ark. 1906) 95 S. W. 157.

Proof of Discharge. — McGowan *v.* Bowman, 79 Vt. 295, 64 Atl. 1121.

Burden of Proving Exceptions. — Imhoff *v.* Whittle, (Tex. Civ. App. 1904) 82 S. W. 1056.

770. 2. *In re* Kuffler, 153 Fed. 667; Beck, etc., Hardware Co. *v.* Crum, 127 Ga. 94, 56 S. E. 242; Alling *v.* Straka, 118 Ill. App. 184; Hewins *v.* Whitney, 99 Me. 39, 58 Atl. 59, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 770; Grosso *v.* Marx, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 500, 92 N. Y. Supp. 773; Morrison *v.* Vaughan, 119 N. Y. App. Div. 184, 104 N. Y. Supp. 169; Delta County Bank *v.* McGranahan, 37 Wash. 307, 79 Pac. 796.

Creditor Without Notice of Bankruptcy Proceeding. — Under the Bankruptcy Act of 1898, debts not scheduled are not released by a discharge unless the creditor had notice or actual knowledge of the bankruptcy proceedings. *In re* Spicer, 145 Fed. 431; Marshall *v.* English-American L. & T. Co., 127 Ga. 376, 56 S. E. 449; Westheimer *v.* Howard, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 145, 93 N. Y. Supp. 518; Bernheim *v.* Bloch, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 581, 91 N. Y. Supp. 40; Schiller *v.* Weinstein, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 622, 94 N. Y. Supp. 763; Cagliostro *v.* Indelli, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 44, 102 N. Y. Supp. 918; Fields *v.* Rust, 36 Tex. Civ. App. 350, 82 S. W. 331; Biela *v.* Urbanczyk, (Tex. Civ. App. 1905) 85 S. W. 451.

Notice to Creditor's Attorney. — Strickland *v.* Capital City Mills, 74 S. Car. 16, 54 S. E. 220.

Notice of Bankruptcy Proceeding to One of Two Owners of Judgment against Bankrupt Not Notice to the Other. — Strickland *v.* Capital City Mills, 74 S. Car. 16, 54 S. E. 220.

Error in Creditor's Address. — Steele *v.* Thalheimer, 74 Ark. 516, 86 S. W. 305; Lewis *v.* Shaw, 122 N. Y. App. Div. 96, 106 N. Y. Supp. 1012.

Creditor's Office Address in Schedule Not Sufficient. — Weidenfeld *v.* Tillinghast, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 90, 104 N. Y. Supp. 902.

Sufficiency of Notice to Creditor. — Kaufman *v.* Schreier, 108 N. Y. App. Div. 298, 95 N. Y. Supp. 729.

Bankrupt Must Show that Holder of Unscheduled Claim Had Notice of the Bankruptcy Proceeding. — Armstrong *v.* Sweeney, 73 Neb. 775, 103 N. W. 436.

Burden of Proving that Debt Sued on Was Not Discharged. — Laffoon *v.* Kerner, 138 N. Car. 281, 50 S. E. 654.

771. 1. A proceeding *in rem* in equity against the bankrupt's homestead cannot be maintained after the discharge, though the debt was contracted before the enactment of the homestead law. Groves *v.* Osburn, 46 Oregon 173, 79 Pac. 500.

4. Lemert *v.* Lemert, 72 Ohio St. 364, 74 N. E. 194.

Debt for Necessaries Furnished Wife and Children Not within Exception. — Schellenberg *v.* Mullaney, 112 N. Y. App. Div. 384, 98 N. Y. Supp. 432.

4*a*. The provision of the Bankruptcy Act that a discharge shall not release the bankrupt from liability for "maintenance or support of a wife or child" does not refer to a debt incurred for services of a physician called by the bankrupt to attend his wife while she is in normal relation to him. *In re* Ostrander, 139 Fed. 592.

5. Schlessinger *v.* Schlessinger, (Colo. 1907) 88 Pac. 970.

8. Young *v.* Howe, (Ala. 1907) 43 So. 488; Nation *v.* Jones, 3 Ga. App. 83, 59 S. E. 310; Barnes Cycle Co. *v.* Haines, 69 N. J. Eq. 651, 61 Atl. 515; Grosso *v.* Marx, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 500, 92 N. Y. Supp. 773; Gardiner *v.* Ross, 19 S. Dak. 497, 104 N. W. 220.

If the judgment is enforceable under the state law against exempt property, the discharge, though a release from personal liability, will not affect the right to enforce the judgment against such exempt property. *In re* Weaver, 144 Fed. 229.

Cancellation of Judgment. — See New Trials, Etc. — Graber *v.* Gault, 103 N. Y. App. Div. 511, 93 N. Y. Supp. 76; Howe *v.* Noyes, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 338, 93 N. Y. Supp. 476; Matter of Quackenbush, 122 N. Y. App. Div. 456, 106 N. Y. Supp. 773; *In re* Boom, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 632, 96 N. Y. Supp. 204 (judgment omitted from schedules); Vaughn *v.* Irwin, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 611, 96 N. Y. Supp. 742 (erroneous address of debtor in schedules); Weidenfeld *v.* Tillinghast, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 90, 104 N. Y. Supp. 712 (burden of proof).

774. 5. Bassett *v.* Thackara, 72 N. J. L. 81, 60 Atl. 39; Wahlheimer *v.* Truslow, 106 N. Y. App. Div. 73, 94 N. Y. Supp. 137.

Assignment of Unearned Wages. — Leitch *v.* Northern Pac. R. Co., 95 Minn. 35, 103 N. W. 704.

Failure of Creditor to Attack Fraudulent Conveyance until after Discharge. — *In re* David, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 516, 90 N. Y. Supp. 85.

6. **Lien on Exempt Property.** — Samuel Morganstein *v.* Commercial Nat. Bank, 125 Ill. App. 307.

775. 5. Security Sav. Bank *v.* Scott, 3 Cal. App. 687, 86 Pac. 903.

Assignment of Wages to Be Earned in Future Employment. — Citizen's Loan Assoc. *v.* Boston, etc., R. Co., (Mass. 1907) 82 N. E. 696.

6. **Contractor's Lien Is Perfected.** — Philip Carey Mfg. Co. *v.* Viaduct Place, 1 Ga. App. 707, 58 S. E. 274.

7*a*. **Assignment of Salary as Security for Debt.** — Wabash R. Co. *v.* Meyer, 119 Ill. App. 104.

The Liability of a Bankrupt as Surety, Indorser, Etc. — Harmon *v.* McDonald, 187 Mass. 578, 73 N. E. 883.

779. 1. **Costs in Criminal Cases Not a Debt Due for Taxes.** — Olds *v.* Forrester, 126 Iowa 456, 102 N. W. 419.

6. Partners are not released from their individual liability for partnership debts where the proceeding is only against the partnership as an entity. *In re* Pincus, 147 Fed. 621.

780. 1. *In re* Adler, (C. C. A.) 144 Fed. 659; Leinkauf *v.* Wellhouse, 1 Ga. App. 670, 57 S. E. 961; Reeves *v.* McCracken, 69 N. J. Eq. 203, 60 Atl. 332; Haggerty *v.* Badkin, (N. J. 1907) 66 Atl. 420.

A Ticket Agent of a railroad company is not an officer of the company within the provision of the Bankruptcy Act excepting from the effect of discharge debts created by fraud, embezzlement, misappropriation, or defalcation while acting as an officer. *In re* Wenham, 153 Fed. 910.

Withdrawing Consent to Application. — Ehrhart *v.* Rork, 114 Ill. App. 509.

Public Officer. — See Stull *v.* Beddeo, (Neb. 1907) 112 N. W. 315.

2. Haggerty *v.* Badkin, (N. J. 1907) 66 Atl. 420; Reeves *v.* McCracken, 69 N. J. Eq. 203, 60 Atl. 332.

781. 6. Mathieu *v.* Goldberg, 156 Fed. 541.

It is well settled that a factor or agent who sells the goods of his principal and fails to pay over the money collected is not guilty of misappropriation "while acting in a fiduciary capacity" within the meaning of the Bankruptcy Act. *In re* Adler, (C. C. A.) 152 Fed. 422.

782. 8. Harper *v.* Rankin, (C. C. A.) 141 Fed. 626; Mathieu *v.* Goldberg, 156 Fed. 541.

Mere confidence reposed in the punctuality and integrity of the person with whom one has commercial transactions does not constitute the fiduciary relation that is meant to be covered by the accepting portion of the Bankruptcy Act. Barrett *v.* Prince, (C. C. A.) 143 Fed. 302.

Where the Original Cause of Action Is Barred by Limitation, a discharge in bankruptcy is a good defense to an action on the debtor's acknowledgment of liability and promise to pay. Nelson *v.* Petterson, 229 Ill. 240, 82 N. E.

Costs in Criminal Case Not a Debt Based on

Fraud. — Old ... 101, 130 Iowa 456, 102 N. W. 419.

Obtaining Property by False Representations. Lee *v.* Tarplin, 194 Mass. 47, 79 N. E. 786; *Ex p.* Peterson, 77 Vt. 226, 59 Atl. 828.

Discharge of Debts Created by Fraud. — Jewett *v.* Bentson, (S. Dak. 1905) 105 N. W. 173.

False Pretenses. — Katzenstein *v.* Reid, (Tex. Civ. App. 1906) 91 S. W. 360.

783. 5. Misappropriation by a ticket agent of a railroad company of money received by him for tickets sold is not a case of money obtained by false pretenses or false representations. *In re* Wenham, 153 Fed. 910.

9. Libel. — National Surety Co. *v.* Medlock, 2 Ga. App. 665, 58 S. E. 1131.

10. *Contra,* Fechter *v.* Postel, 114 N. Y. App. Div. 776, 100 N. Y. Supp. 207.

11. Flanders *v.* Mullin, (Vt. 1907) 66 Atl. 789.

A judgment against a landlord for injuries caused by a vicious dog kept by his tenant is not one for wilful and malicious injuries within the exception of the Bankruptcy Act, and, therefore, is released by the landlord's discharge in bankruptcy. *In re* Lorde, 144 Fed. 320.

A Judgment for Breach of Promise of Marriage is not within the exception, where there were no allegations of seduction or other wrong. Bond *v.* Milliken, 134 Iowa 447, 109 N. W. 774.

"Wilful and Malicious" Construed. — McChristal *v.* Clisbee, 190 Mass. 120, 76 N. E. 511.

Claims Not Reduced to Judgment Are Discharged. — Tindle *v.* Birkett, 183 N. Y. 267, 76 N. E. 25.

789. 2. Torrey *v.* Kraus, (Ala. 1907) 43 So. 184; Moore *v.* Trounstine, 126 Ga. 116, 54 S. E. 810; Stern *v.* Smith, 225 Ill. 430, 80 N. E. 307, *affirming* 127 Ill. App. 640; Mordaunt *v.* Monroe, 124 Ill. App. 306; *In re* Fussell, 129 Iowa 498, 105 N. W. 503, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789; Farmers', etc., Bank *v.* Richards, 119 Mo. App. 18, 95 S. W. 290, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 789, 790.

A release by creditors under a state assignment law extinguishes the debts and a subsequent promise to pay is without consideration. Westheimer *v.* Flarsheim, 99 S. W. 346, 30 Ky. L. Rep. 641.

790. 2. Moore *v.* Trounstine, 126 Ga. 116, 54 S. E. 810, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 790; Pearsall *v.* Tabour, 98 Minn. 248, 108 N. W. 808; Farmers', etc., Bank *v.* Richards, 119 Mo. App. 18, 95 S. W. 290, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 790.

Promise to Pay as Soon as Able. — Kraus *v.* Torry, 146 Ala. 548, 40 So. 956.

Promise to Pay "as Soon as Possible." — Sundling *v.* Willey, 19 S. Dak. 293, 103 N. W. 38.

792. 5. Carpenter *v.* Goddard, 191 Mass. 54, 76 N. E. 953; Loomis *v.* Wallblom, 94 Minn. 392, 102 N. W. 1114; D. C. Wise Coal Co. *v.* Columbia Lead, etc., Co., 123 Mo. App. 249, 100 S. W. 680.

Surety of Bankrupt Lessee. — Dersch *v.* Walker, 89 S. W. 233, 28 Ky. L. Rep. 325.

Sureties in Forthcoming Bonds. — Smith *v.* Lacey, 86 Miss. 295, 38 So. 311.

Discharge of Principal in Bail Bond in Civil Case. — Keyes *v.* Bennett, 122 Ill. App. 60, *judgment affirmed* 218 Ill. 625, 75 N. E. 1075.

Right of Bankrupt to Discharge from Firm Debts. — Dodge *v.* Kaufman, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 248, 91 N. Y. Supp. 727; Berry Bros. *v.* Sheehan, 115 N. Y. App. Div. 488, 101 N. Y. Supp. 371; Ogilby *v.* Munro, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 170, 101 N. Y. Supp. 753; New York Inst., etc., *v.* Crockett, 117 N. Y. App. Div. 269, 102 N. Y. Supp. 412.

Surety on Appeal Bond. — Young *v.* Howe, (Ala. 1907) 43 So. 488; Slusher *v.* Hopkins, (Ky. 1906) 97 S. W. 1128; St. Louis World Pub. Co. *v.* Rialto Grain, etc., Co., 108 Mo. App. 479, 83 S. W. 781.

794. 7. *In re* Servis, 140 Fed. 222.

One creditor may adopt and prosecute the objections of another after such other has declared his unwillingness to go on and his intention to abandon the litigation. *In re* Guilbert, 154 Fed. 676.

Prosecuting Objections in Forma Pauperis. — *In re* Guilbert, 154 Fed. 676.

795. 2. *In re* Eades, (C. C. A.) 143 Fed 293; *In re* Walder, 152 Fed. 489.

Failure to Keep Books. — *In re* Garrison, (C. C. A.) 149 Fed. 178.

Degree of Proof. — Troeder *v.* Lorsch, (C. C. A.) 150 Fed. 710.

6*a*. On the hearing of objections to a discharge before a special master, the special master must be governed entirely by such legal evidence as may be admissible under the specifications. He has no legal right to refuse to recommend a discharge on the ground that at some former hearing before him as referee, he as such referee may have formed an opinion on some fact which would be sufficient to bar a discharge, unless such fact is legally established by proper evidence on the specifications. *In re* Walder, 152 Fed. 489.

796. 6. The discharge will not be withheld until a judgment creditor can enforce his judgment against exempt property of the bankrupt which is subject to the judgment, because the discharge if granted would not affect the judgment creditor's right. *In re* Weaver, 144 Fed. 229.

10*a*. Refusal of Bankrupt to Answer Material Questions. — *In re* Weinreb, (C. C. A.) 153 Fed. 363.

11. Making False Oath. — *In re* Young, 140 Fed. 728.

797. 2. **Fraud.** — A discharge will be denied on the ground of fraud where the debtor made false representations to a commercial agency as to his financial condition. *In re* Pincus, 147 Fed. 621.

The facts relied on to show fraud must be inconsistent with honesty and fair dealing. *In re* Kolster, 146 Fed. 138.

The right to oppose a discharge on the ground that the bankrupt obtained goods on credit by false statements made to the seller may be taken by any parties of the proceedings and is not limited to the creditor thus defrauded. *In re* Harr, 143 Fed. 421.

A pledge by a bankrupt broker of stocks belonging to his customers is not a transfer of

his property with intent to defraud creditors, though he may have had a lien on such stocks. *In re* Berry, 146 Fed. 623.

Fraud was included by the amendment of 1903. *In re* Miller, 135 Fed. 591.

Fraudulent Transfers.—*In re* Hedley, 156 Fed. 314.

Evidence Held Insufficient to Show that Credit Was Obtained by Fraud. *In re* Kaplan, 141 Fed. 463.

Evidence Held Insufficient to Show Concealment.—*In re* Jacobs, 144 Fed. 868.

Acts of Employees.—*In re* Berry, 146 Fed. 623.

8. Vehon *v.* Ullman, (C. C. A.) 147 Fed. 694; *In re* Jacobs, 147 Fed. 797; *In re* Hedley, 156 Fed. 314.

A discharge will not be refused on the ground of fraudulent concealment of property unless the concealment was after the adjudication, but the concealment may be continuous and though begun before the adjudication continued afterwards. *In re* Jacobs, 147 Fed. 797.

A mere intent to conceal is not sufficient. There must be an actual concealment with a fraudulent intent. Vehon *v.* Ullman, (C. C. A.) 147 Fed. 694.

There must be a concealment of assets from the trustee. The mere attempt to hinder and delay creditors is not sufficient to support an objection to a discharge. *In re* Jacobs, 144 Fed. 868.

Omissions from Schedules in Good Faith.—*In re* Kolster, 146 Fed. 138; *In re* Schofield, 147 Fed. 862.

Evasive and Probably False Testimony.—*In re* Cohen, 149 Fed. 908.

Sufficiency of Evidence.—*In re* Weinreb, (C. C. A.) 146 Fed. 243.

Purchase of Stock in Name of Wife Held Not Fraudulent Concealment.—*In re* Tillyer, 147 Fed. 860.

798. 7. Hamilton *v.* Smith, (Mont. 1907) 92 Pac. 32.

799. **1.** *In re* Maher, 144 Fed. 503.

2. *In re* Battle, 154 Fed. 741.

8. *In re* Wolf, 156 Fed. 543.

A member of a firm will not be denied a discharge because of the failure of the firm to keep proper books, where such member resided in a distant city from the place where the firm did business and did not actively participate therein. *In re* Garrison, (C. C. A.) 149 Fed. 178.

800. **1. Evidence Held Insufficient to Show Concealment of Books.**—*In re* Eades, (C. C. A.) 143 Fed. 293.

802. **6. Former Discharge within Six Years—Computation of Time.**—*In re* Jordan, 142 Fed. 292.

Under the provision of section 14 *b* (5) that a discharge shall not be granted if the bankrupt has been granted a discharge in voluntary proceedings within six years, the six years are to be computed from the time of the first discharge to the time of the second discharge, and not from the time of the first discharge to the filing of the second petition. *In re* Smith, 155 Fed. 688.

7. *In re* Summers, (1907) 2 K. B. 166.

2. The provision of the Bankruptcy Act that an application to revoke a discharge may be made within a year after the discharge does not apply where the discharge results by operation of law from the confirmation of a composition. In such case the application, unless made within the four months prescribed by the statute, is barred. *In re* Jersey Island Packing Co., 152 Fed. 839.

806. **3. "False Oath."**—Edelstein *v.* U. S., (C. C. A.) 149 Fed. 636; *In re* Simon, 151 Fed. 507.

INSPECTION AND PHYSICAL EXAMINATION.

811. **6.** Richardson *v.* Nelson, 221 Ill. 254, 77 N. E. 583; Illinois Cent. R. Co. *v.* Downs, 122 Ill. App. 545; Kellyville Coal Co. *v.* Moreland, 121 Ill. App. 410.

812. **2.** Dickinson *v.* Kansas City El. R. Co., 74 Kan. 863, 86 Pac. 150.

815. **2. A Second Examination** will not be ordered where no special reasons are shown for another examination. Orlando *v.* Syracuse Rapid Transit R. Co., 109 N. Y. App. Div. 356, 95 N. Y. Supp. 898.

8. Goldenberg *v.* Zirinsky, 114 N. Y. App. Div. 827, 100 N. Y. Supp. 251.

10. Examination of Females by Female Physicians.—Potter *v.* Hammondsport, 112 N. Y. App. Div. 91, 98 N. Y. Supp. 186.

817. **3.** American Brake Shoe Foundry Co. *v.* Jankus, 121 Ill. App. 267; Houston, etc., R. Co. *v.* Anglin, 99 Tex. 349, 89 S. W. 966.

INSTITUTION.

823. **1. A Private Banker** is an ***institution*** within a statute prohibiting the officers of institutions from making false reports. State *v.* Struble, 19 S. Dak. 646, 104 N. W. 465.

INSTRUMENT.

824. **3.** Loch *v.* Mayer, 50 Misc. (N. Y.) 448, 100 N. Y. Supp. 837, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 824.

Word Instrument Imports Writing.—Abbott *v.* Campbell, 69 Neb. 371, 95 N. W. 591, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 824.

Forgery—Subscription Paper.—State *v.* Hazzard, (Ind.) 80 N. E. 149.

827. **1. A Rock** is an ***instrument*** within an averment in an indictment charging death by striking with a rock. Williams *v.* State, 144 Ala. 14, 40 So. 405.

INSURANCE.

838. **1.** Vredenburgh *v.* Physicians' Defense Co., 126 Ill. App. 509, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 838.

2. Vredenburgh *v.* Physicians' Defense Co., 126 Ill. App. 509, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 838; Physicians' Defense Co. *v.* O'Brien, 100 Minn. 490, 111 N. W. 396.

839. **2.** Schoeller *v.* Grand Lodge, 110 N. Y. App. Div. 456, 96 N. Y. Supp. 1088.

840. **5.** North British, etc., Ins. Co. *v.* Tye, 1 Ga. App. 380, 58 S. E. 110; American

Ins. Co. *v.* Egyptian Lodge, etc., 128 Ill. App. 161; Palatine Ins. Co. *v.* O'Brien, (Md. 1908) 68 Atl. 484.

6. Georgia Co-operative F. Assoc. *v.* Lanier, 1 Ga. App. 186, 57 S. E. 910.

812. 3. Fireman's Fund Ins. Co. *v.* Palatine Ins. Co., 150 Cal. 252, 88 Pac. 907.

813. 2. Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734.

815. 2. **Company Held Not Bound by Facts Undisclosed by Agent.**—Arispe Mercantile Co. *v.* Capital Ins. Co., 133 Iowa 272, 110 N. W. 581.

7. Bromley *v.* Washington L. Ins. Co., (Ky. 1906) 92 S. W. 17.

816. 1. Bennett *v.* Mutual F. Ins. Co., 100 Md. 337, 60 Atl. 99, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; Neher *v.* Western Assur. Co., (Wash. 1905) 82 Pac. 166, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; Tyree *v.* Virginia F. & M. Ins. Co., 55 W. Va. 63, 46 S. E. 706, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846. See also Fox *v.* Queen Ins. Co., 124 Ga. 948, 53 S. E. 271.

2. Metropolitan L. Ins. Co. *v.* Elison, 72 Kan. 199, 83 Pac. 410; Hull *v.* Grand Lodge, etc., (Ky. 1907) 105 S. W. 479; Ryan *v.* Metropolitan L. Ins. Co., 117 Mo. 688, 93 S. W. 347; Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734; American Mut. L. Ins. Co. *v.* Mead, (Ohio) 79 N. E. 526; Woody *v.* Schaaf, 106 Va. 799, 56 S. E. 807.

The Assignment of a Policy to a Party Not Having an Insurable Interest.—Mutual L. Ins. Co. *v.* Lane, 151 Fed. 276; Rylander *v.* Allen, 125 Ga. 206, 53 S. E. 1032; Bromley *v.* Washington L. Ins. Co., (Ky. 1906) 92 S. W. 17; Bramblett *v.* Hargis, (Ky. 1906) 94 S. W. 20; Hess *v.* Segenfelter, (Ky. 1907) 105 S. W. 476; Jenkins *v.* Morrow, (Mo. App. 1908) 109 S. W. 1051.

In an action on a policy an objection that there was no insurable interest in the beneficiary can be raised only by the insurer. Chicago Title, etc., Co. *v.* Haxtun, 129 Ill. App. 626.

One may insure his own life and name a beneficiary who has no insurable interest. New York L. Ins. Co. *v.* Greenlee, (Ind. App. 1908) 84 N. E. 1101; Hess *v.* Segenfelter, (Ky. 1907) 105 S. W. 476; Locher *v.* Kuechenmiester, 120 Mo. App. 701, 98 S. W. 92.

Where a policy was taken out with the intention that it should be assigned to one having no insurable interest it was held not to be a wagering agreement, although there was no consideration for the assignment. Harrison *v.* Northwestern Mut. L. Ins. Co., 78 Vt. 473, 63 Atl. 321.

3. Tyree *v.* Virginia F. & M. Ins. Co., 55 W. Va. 63, 46 S. E. 706, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; New York L. Ins. Co. *v.* Greenlee, (Ind. App. 1908) 84 N. E. 1101; Metropolitan L. Ins. Co. *v.* Elison, 72 Kan. 199, 83 Pac. 410.

4. Bennett *v.* Mutual F. Ins. Co., 100 Md. 337, 60 Atl. 99, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846.

5. Rylander *v.* Allen, 125 Ga. 206, 53 S. E. 1032; Schmidt *v.* Hauer, (Iowa 1907) 111 N. W. 966; Lake *v.* New York L. Ins. Co., (La. 1908) 45 So. 959; Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734.

Right of Creditor Whose Debt Is Barred by Limitation.—Chicago Title, etc., Co. *v.* Haxtun, 129 Ill. App. 626.

847. 2. Dickey *v.* Continental Casualty Co., (Tex. Civ. App. 1905) 89 S. W. 436.

848. 3. Beavers *v.* Security Mut. Ins. Co., 76 Ark. 595, 90 S. W. 13; Fidelity, etc., Co. *v.* Morrison, 129 Ill. App. 360; German Ins. Co. *v.* Goodfriend, (Ky. 1906) 97 S. W. 1098; Bindell *v.* Kenton County Assessment F. Ins. Co., (Ky. 1908) 108 S. W. 325; Western Assur. Co. *v.* Chesapeake Lighterage, etc., Co., (Md. 1907) 65 Atl. 637.

4. Bindell *v.* Kenton County Assessment F. Ins. Co., (Ky. 1908) 108 S. W. 325.

7. Policy Takes Effect from Date in Absence of Agreement.—Rayburn *v.* Pennsylvania Casualty Co., 138 N. Car. 379, 50 S. E. 762.

8. Where a policy was delivered the day after its date, but owing to a mistake as to the amount was corrected more than a month later, at which time the premium was paid from the date of the policy, it was held that the contract was binding from its date. Reynolds *v.* German-American Ins. Co., (Md. 1907) 68 Atl. 1062.

849. 1. An agreement that a policy should not take effect until the insured reached the age of fifteen years was held to be valid under a statute prohibiting insurance upon persons under that age. Security Mut. L. Ins. Co. *v.* Miller, 75 Neb. 257, 106 N. W. 229.

4. A policy, the duration of which was one year from twelve o'clock noon on December 11, 1902, was held not to cover a loss occurring at four o'clock P. M. on December 11 of the following year. Matthews *v.* Continental Casualty Co., 78 Ark. 81, 93 S. W. 55.

6. Posey County F. Assoc. *v.* Hogan, (Ind. App. 1906) 77 N. E. 670, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 840; Costello *v.* Grant County Mut. F., etc., Ins. Co., (Wis. 1907) 113 N. W. 639, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 849, 850; Todd *v.* German-American Ins. Co., 2 Ga. App. 789, 59 S. E. 94; Barlow *v.* Farmers' Mut. F. Ins. Co., 128 Ill. App. 580; Mooney *v.* Merriam, (Kan. 1908) 94 Pac. 263; New York L. Ins. Co. *v.* Levy, (Ky. 1906) 92 S. W. 325; Torney *v.* National L. Ins. Co., (Ky. 1906) 92 S. W. 982; New York L. Ins. Co. *v.* McIntosh, 86 Miss. 336, 38 So. 775; Bradley *v.* Standard L., etc., Ins. Co., 112 N. Y. App. Div. 536, 98 N. Y. Supp. 797; Nordness *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1908) 114 N. W. 1002. See Ætna L. Ins. Co. *v.* Hocker, (Tex. Civ. App. 1905) 89 S. W. 26; Whitman *v.* Milwaukee F. Ins. Co., 128 Wis. 124, 107 N. W. 291.

Negotiations Held Insufficient to Complete Contract.—Quill *v.* Boston Ins. Co., (Mass. 1908) 83 N. E. 401.

Where a policy was refused when issued because it differed from the kind applied for, and later the company wrote to the applicant stating that, after reconsidering the matter, they

had decided to issue a policy in accordance with his wishes, it was held that the company was estopped from denying that there was a contract of insurance, it appearing that the applicant had considered his life insured and that delivery of the policy was refused because of his illness. New York L. Ins. Co. *v.* McIntosh, (Miss. 1906) 41 So. 381.

850. 1. Posey County F. Assoc. *v.* Hogan, (Ind. App. 1906) 77 N. E. 670, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 849, 850.

3. Mooney *v.* Merriam, (Kan. 1908) 94 Pac. 263; Provident Sav. L. Assur. Soc. *v.* Elliott, (Ky. 1906) 93 S. W. 699; New York L. Ins. Co. *v.* McIntosh, 86 Miss. 236, 38 So. 775; Hartford F. Ins. Co. *v.* Whitman, 75 Ohio St. 312, 79 N. E. 459.

4. Todd *v.* German-American Ins. Co., 2 Ga. App. 789, 59 S. E. 94; Waters *v.* Security L., etc., Co., 144 N. Car. 663, 57 S. E. 437.

851. 1. Roark *v.* City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1; Waters *v.* Security L., etc., Co., 144 N. Car. 663, 57 S. E. 437; Hartford F. Ins. Co. *v.* Whitman, 75 Ohio St. 312, 79 N. E. 459; Starr *v.* Mutual L. Ins. Co., 41 Wash. 228, 83 Pac. 116; Thompson *v.* Germania F. Ins. Co., 45 Wash. 482, 88 Pac. 941.

Approval of Risk by Medical Board Not Acceptance. — Provident Sav. L. Assur. Soc. *v.* Elliott, (Ky. 1906) 93 S. W. 659.

Acceptance by Insurer Completes Contract though Application Not Signed. — Ætna Indemnity Co. *v.* Ryan, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 614, 103 N. Y. Supp. 756.

2. **Death Before Policy Issues.** — Starr *v.* Mutual L. Ins. Co., 41 Wash. 228, 83 Pac. 116.

3. Provident Sav. L. Assur. Soc. *v.* Elliott, (Ky. 1906) 93 S. W. 659; Lowe *v.* St. Paul F. & M. Ins. Co., (Neb. 1908) 114 N. W. 586; McGrath *v.* Piedmont Mut. Ins. Co., 74 S. Car. 69, 54 S. E. 218.

4. Costello *v.* Grant County Mut. F., etc., Ins. Co., (Wis. 1907) 113 N. W. 639, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 851.

Acceptance of Application and Mailing Policy to Agent for Delivery Completes Contract. — Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861.

5. Ryan *v.* Prudential Ins. Co., 33 Pa. Super. Ct. 364.

As to the effect of the insurer's retention of a premium and delay in passing upon an application for reinstatement as an acceptance, see Wichman *v.* Metropolitan L. Ins. Co., 120 Mo. App. 51, 96 S. W. 695.

7 Provident Sav. L. Assur. Soc. *v.* Elliott, (Ky. 1906) 93 S. W. 659.

8. McNicol *v.* New York L. Ins. Co., (C. C. A.) 149 Fed. 141; Ætna Indemnity Co. *v.* J. R. Crowe Coal, etc., Co., (C. C. A.) 154 Fed. 545; Empire Mut. Annuity, etc., Ins. Co. *v.* Avery, (Ga. App. 1907) 59 S. E. 324; New York L. Ins. Co. *v.* McIntosh, 86 Miss. 236, 38 So. 775.

852. 1. Roark *v.* City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1.

4. American Cent. Ins. Co. *v.* Leake, (Ky. 1907) 104 S. W. 373.

5. Posey County F. Assoc. *v.* Hogan, (Ind. App. 1906) 77 N. E. 670, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 852; King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 52; Knights of Maccabees *v.* Gordon, 83 Ark. 17, 102 S. W. 711; American Cent. Ins. Co. *v.* Leake, (Ky. 1907) 104 S. W. 373; Floars *v.* Ætna L. Ins. Co., 144 N. Car. 232, 56 S. E. 915; Whitman *v.* Milwaukee F. Ins. Co., 128 Wis. 124, 107 N. W. 291.

Writing Required by Georgia Statute. — Delaware Ins. Co. *v.* Pennsylvania F. Ins. Co., 126 Ga. 380, 55 S. E. 330; Todd *v.* German-American Ins. Co., 2 Ga. App. 789, 59 S. E. 94.

853. 1. Pelican Assur. Co. *v.* Schildknecht, (Ky. 1908) 108 S. W. 312; King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892; Roark *v.* City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1; Thompson *v.* Germania F. Ins. Co., 45 Wash. 482, 88 Pac. 941.

2. Thompson *v.* Germania F. Ins. Co., 45 Wash. 482, 88 Pac. 941.

5. Summers *v.* Mutual L. Ins. Co., 12 Wyo. 369, 75 Pac. 937, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 853.

7. **Policy Is Based on Status of Insured at Time of Application.** — Rayburn *v.* Pennsylvania Casualty Co., 138 N. Car. 379, 50 S. E. 762.

854. 1. Hubbard *v.* State L. Ins. Co., 129 Iowa 13, 105 N. W. 332; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610; Stroud *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 626; Summers *v.* Mutual L. Ins. Co., 12 Wyo. 369, 75 Pac. 937.

Right to Recover Premiums Lost by Laches. — Cathcart *v.* Life Ins. Co., 144 N. Car. 623, 57 S. E. 390.

Amount of Premium Measure of Damage. — Prince *v.* State Mut. L. Ins. Co., 77 S. Car. 187, 57 S. E. 766.

3. Lenagh *v.* Commercial Union Assur. Co., (Neb. 1906) 110 N. W. 740; Romano *v.* Concordia F. Ins. Co., 121 N. Y. App. Div. 489, 106 N. Y. Supp. 63.

4. A statute limiting the power of insurance companies to forfeit their policies for suicide of insured, except upon proof that the act was contemplated at the time application was made, is in derogation of the common law and requires a restrictive rather than an expansive interpretation. Whitfield *v.* Ætna L. Ins. Co., (C. C. A.) 144 Fed. 356.

855. 5. Todd *v.* German-American Ins. Co., 2 Ga. App. 789, 59 S. E. 94; Kimbro *v.* New York L. Ins. Co., 134 Iowa 84, 108 N. W. 1025; Hartford F. Ins. Co. *v.* Whitman, 75 Ohio St. 312, 79 N. E. 459; Wheaton *v.* Liverpool, etc., Ins. Co., (S. Dak. 1905) 104 N. W. 850; Starr *v.* Mutual L. Ins. Co., 41 Wash. 228, 83 Pac. 116.

6. McNicol *v.* New York L. Ins. Co., (C. C. A.) 149 Fed. 141; Powell *v.* Prudential Ins. Co., (Ala. 1907) 45 So. 208; Provident Sav. L. Assur. Soc. *v.* Elliott, (Ky. 1906) 93 S. W. 659; Summers *v.* Mutual L. Ins. Co., 12 Wyo. 369, 75 Pac. 937.

Delivery of Policy a Question of Fact. — New *v.* Germania F. Ins. Co., (Ind. App. 1907) 82 N. E. 1005.

7. Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861; Bowman *v.* Northern Acc. Co., 124 Mo. App. 477, 101 S. W. 691; Waters

v. Security L., etc., Co., 144 N. Car. 663, 57 S. E. 438; Kimbro v. New York L. Ins. Co., 134 Iowa 84, 108 N. W. 1025; Hartford F. Ins. Co. v. Whitman, 75 Ohio St. 312, 79 N. E. 459; New York L. Ins. Co. v. Greenlee, (Ind. App. 1908) 84 N. E. 1101.

Delivery Presumed from Possession by Insured. — National Mut. F. Ins. Co. v. Sprague, (Colo. 1907) 92 Pac. 227.

8. Equitable L. Assur. Soc. v. Perkins, (Ind. App. 1907) 80 N. E. 682; New v. Germania F. Ins. Co., (Ind. App. 1907) 82 N. E. 1005; Sovereign Camp, etc., v. Dees, (Tex. Civ. App. 1907) 100 S. W. 366.

856. 1. New York L. Ins. Co. v. Greenlee, (Ind. App. 1908) 84 N. E. 1101.

Delivery of a policy to an agent who pays the premium and takes insured's note is a complete delivery of the policy. Payne v. Mutual L. Ins. Co., (C. C. A.) 141 Fed. 339.

4. Travelers' F. Ins. Co. v. Globe Soap Co., (Ark. 1908) 107 S. W. 386.

5. Questions of Law and of Fact. — Amos-Richie v. Northwestern Mut. L. Ins. Co., 152 Fed. 192 (delivery and acceptance not shown).

Acceptance by Applicant's Agent. — New v. Germania F. Ins. Co., (Ind. App. 1907) 82 N. E. 1005.

6. Floars v. Ætna L. Ins. Co., 144 N. Car. 232, 56 S. E. 915.

7. Connecticut F. Ins. Co. v. Buchanan, (C. C. A.) 141 Fed. 877; Lefler v. New York L. Ins. Co., (C. C. A.) 143 Fed. 814; Kentucky Vermillion Min., etc., Co. v. Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695; Hearsh v. German F. Ins. Co., (Mo. App. 1908) 110 S. W. 23.

Delivery Held to Be Conclusive Proof of Completion of Contract. — Rayburn v. Pennsylvania Casualty Co., 138 N. Car. 379, 50 S. E. 762.

8. Hutson v. Prudential Ins. Co., 122 Ga. 847, 50 S. E. 1000; Ogletree v. Hutchinson, 126 Ga. 454, 55 S. E. 179; Modern Woodmen of America v. Angle, 127 Mo. App. 94, 104 S. W. 297; Thompson v. Metropolitan L. Ins. Co., (Supm. Ct. Tr. T.) 99 N. Y. Supp. 1006; Virginia F. & M. Ins. Co. v. J. I. Case Threshing Mach. Co., 107 Va. 588, 59 S. E. 369.

9. Cayford v. Metropolitan L. Ins. Co., 5 Cal. App. 715, 91 Pac. 266; Wyandotte Brewing Co. v. Hartford F. Ins. Co., 144 Mich. 440, 108 N. W. 393; Geraghty v. Washtenaw Mut. F. Ins. Co., 145 Mich. 635, 108 N. W. 1102; Floars v. Ætna L. Ins. Co., 144 N. Car. 232, 56 S. E. 915; Cathcart v. Life Ins. Co., 144 N. Car. 623, 57 S. E. 390.

857. 3. National Mut. F. Ins. Co. v. Sprague, (Colo. 1907) 92 Pac. 227; Todd v. German-American Ins. Co., 2 Ga. App. 789, 59 S. E. 94; Posey County F. Assoc. v. Hogan, (Ind. App. 1906) 77 N. E. 670; New York L. Ins. Co. v. Greenlee, (Ind. App. 1908) 84 N. E. 1101; Green v. Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649; Orient Ins. Co. v. Wingfield, (Tex. Civ. App. 1908) 108 S. W. 788. See also Reynolds v. German American Ins. Co., (Md. 1908) 71 Atl. 462.

4. Payment Not Essential to Validity of Oral Agreement to Issue Policy. — Roark v. City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1.

Where the insured accepted the policy from a broker and kept it for three months, it was held that he was *prima facie* liable for the premium. Westchester F. Ins. Co. v. Gurian, 115 N. Y. App. Div. 610, 101 N. Y. Supp. 50.

Where an oral contract to renew a policy was relied on, no written renewal having been issued, it was held that in determining the question of waiver of payment of the premium the course of dealing of the parties should be considered. Orient Ins. Co. v. Wingfield, (Tex. Civ. App. 1908) 108 S. W. 788.

5. Whether the acts of an applicant's son in paying a premium and accepting a binding receipt without his father's knowledge were the acts of an authorized agent of the father were both questions for the jury. Robinson v. Union Cent. L. Ins. Co., 144 Fed. 1005.

6. Policy May Be Delivered to Agent with Instructions to Withhold. — Bowen v. Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040.

7. Bowen v. Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 857; Clark v. Mutual L. Ins. Co., 129 Ga. 571, 59 S. E. 283; Amos-Richia v. Northwestern Mut. L. Ins. Co., 143 Mich. 684, 107 N. W. 707.

858. 1. New York L. Ins. Co. v. Greenlee, (Ind. App. 1908) 84 N. E. 1101; German Ins. Co. v. Goodfriend, (Ky. 1906) 97 S. W. 1098; Cornell v. Travelers' Ins. Co., 120 N. Y. App. Div. 459, 104 N. Y. Supp. 999; Rayburn v. Pennsylvania Casualty Co., 138 N. Car. 379, 50 S. E. 762; Clark v. Home Fund L. Ins. Co., (S. Car. 1908) 61 S. E. 80.

2. National Mut. F. Ins. Co. v. Sprague, (Colo. 1907) 92 Pac. 227; Globe Mut. L. Ins. Assoc. v. Meyer, 118 Ill. App. 155; Concordia F. Ins. Co. v. Bowen, 121 Ill. App. 35; Kimbro v. New York L. Ins. Co., 134 Iowa 84, 108 N. W. 1025; Buckley v. Citizens' Ins. Co., 188 N. Y. 399, 81 N. E. 165; McLean v. Tobin, (Supm. Ct. App. T.) 109 N. Y. Supp. 926.

Credit Presumed from Delivery Without Demanding Payment. — Cauthen v. Hartford L. Ins. Co., (S. Car. 1908) 61 S. E. 428.

3. London Guaranty, etc., Co. v. Hartman, 122 Ill. App. 315; New York L. Ins. Co. v. Greenlee, (Ind. App. 1908) 84 N. E. 1101; Germania L. Ins. Co. v. Lauer, (Ky. 1906) 97 S. W. 363; Pelican Assur. Co. v. Schildknecht, (Ky. 1908) 108 S. W. 312; Green v. Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649; Buckley v. Citizens' Ins. Co., 188 N. Y. 399, 81 N. E. 165; Hagins v. Ætna L. Ins. Co., 75 S. Car. 225, 55 S. E. 323.

Condition Waived by Soliciting Agent. — National Mut. F. Ins. Co. v. Sprague, (Colo. 1907) 92 Pac. 227.

Insured Charged with Notice of Stipulation in Application. — Bowen v. Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040.

859. 1. London Guaranty, etc., Co. v. Hartman, 122 Ill. App. 315; Kilborn v. Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861; Cauthen v. Hartford L. Ins. Co., (S. Car. 1908) 61 S. E. 428.

2. Mutual L. Ins. Co. v. Abbey, 76 Ark. 328, 88 S. W. 950.

Soliciting Agent May Accept Note. — Kilborn v. Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861.

Payment in Fee.— Dickinson *v.* National L., etc., Co., (S. Dak. 1906) 107 N. W. 537.

Mailing Premium.— Where a policy does not provide for payment by mail, a premium mailed to the insurer is not paid until it is received. Travelers' Protective Assoc. *v.* Roth, (Tex. Civ. App. 1908) 108 S. W. 1039.

3. Hipp *v.* Fidelity Mut. L. Ins. Co., (Ga. 1908) 61 S. E. 491, 57 S. E. 892; Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. App. 1908) 60 S. E. 470; Kimbro *v.* New York L. Ins. Co., 134 Iowa 84, 108 N. W. 1025; Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861; Clark *v.* Home Fund L. Ins. Co., (S. Car. 1908) 61 S. E. 80.

If the company permits a general agent to accept notes in payment of premiums as his own property, he paying the premiums in cash, the company is bound by the payment notwithstanding a requirement in the policy that premiums must be paid in cash. Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950.

4. Payne *v.* Mutual L. Ins. Co., (C. C. A.) 141 Fed. 339; Robinson *v.* Union Cent. L. Ins. Co., 144 Fed. 1005; Kimbro *v.* New York L. Ins. Co., 134 Iowa 84, 108 N. W. 1025; Metropolitan L. Ins. Co. *v.* Lindsay, (Ky. 1907) 100 S. W. 295; Buckley *v.* Citizens Ins. Co., 188 N. Y. 399, 81 N. E. 165; Clark *v.* Home Fund L. Ins. Co., (S. Car. 1908) 61 S. E. 80.

5. Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950; Clark *v.* Home Fund. L. Ins. Co., (S. Car. 1908) 61 S. E. 80; Reppond *v.* National L. Ins. Co., (Tex. 1907) 101 S. W. 786.

860. 1. Caldwell *v.* Campbell, (Ga. App. 1908) 61 S. E. 290. But see Rafferty *v.* Romer, 122 Ill. App. 57.

4. Murray *v.* State L. Ins. Co., 151 Fed. 539; State L. Ins. Co. *v.* Murray, (C. C. A.) 159 Fed. 408; Buckley *v.* Citizens' Ins. Co., 112 N. Y. App. Div. 451, 98 N. Y. Supp. 622; Starr *v.* Mutual L. Ins. Co., 41 Wash. 228, 83 Pac. 116.

5. Courtney *v.* Fidelity Mut. Aid Assoc., 120 Mo. App. 110, 94 S. W. 768, 101 S. W. 1098; Matthews *v.* Metropolitan L. Ins. Co., (N. Car. 1908) 61 S. E. 192.

6. Courtney *v.* Fidelity Mut. Aid Assoc., 120 Mo. App. 110, 94 S. W. 768, 101 S. W. 1098.

861. 3. Driver *v.* Planters' Mut. Ins. Assoc., 78 Ark. 127, 93 S. W. 752; American Ins. Co. *v.* Hornbarger, (Ark. 1908) 108 S. W. 213; Northwestern Nat. L. Ins. Co. *v.* Brooker, 120 Ill. App. 301; Weston *v.* State Mut. L. Assur. Soc., 234 Ill. 492, 84 N. E. 1073; Catholic Order, etc., *v.* Lynch, 126 Ill. App. 439; Hale *v.* Michigan Farmers' Mut. F. Ins. Co., 148 Mich. 453, 111 N. W. 1068; McCullough *v.* Home Ins. Co., 118 Tenn. 263, 100 S. W. 104; Johnson *v.* Continental Ins. Co., (Tenn. 1907) 107 S. W. 688; Moore *v.* Supreme Assembly, etc., (Tex. Civ. App. 1906) 93 S. W. 1077.

4. National Council, etc., *v.* Burch, 126 Ill. App. 15; Catholic Order, etc., *v.* Lynch, 126 Ill. App. 439.

5. American Ins. Co. *v.* Hornbarger, (Ark. 1908) 108 S. W. 213; National Council, etc., *v.* Burch, 126 Ill. App. 15.

General Agent May Not Extend Time when Policy Reserves Power to Certain Officers. — Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643.

General Agent Held Unauthorized to Revive Lapsed Policy.— Weston *v.* State Mut. L. Assur. Soc., 234 Ill. 492, 84 N. E. 1073.

6. Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643; Wilson *v.* Royal Union Mut. L. Ins. Co., (Iowa 1908) 114 N. W. 1051.

Company Bound by Customary Giving of Notice. — Kavanaugh *v.* Security Trust, etc., Ins. Co., 117 Tenn. 33, 96 S. W. 499.

862. 1. **Insurer Bound by General Agent's Consent to Revival after Part Payment.** — Carr *v.* Prudential Ins. Co., 115 N. Y. App. Div. 755, 101 N. Y. Supp. 158.

2. *United States.* — Lefler *v.* New York L. Ins. Co., (C. C. A.) 143 Fed. 814; Mutual Reserve Fund L. Assoc. *v.* Tuchfeld, (C. C. A.) 159 Fed. 833; Duncan *v.* Missouri State L. Ins. Co., 160 Fed. 646.

Arkansas. — Wells *v.* Union Cent. L. Ins. Co., 81 Ark. 145, 98 S. W. 697.

District of Columbia. — Supreme Commandery, etc., *v.* Bernard, 26 App. Cas. (D. C.) 169, 6 Ann. Cas. 694.

Georgia. — Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892; Mutual L. Ins. Co. *v.* Stegall, 1 Ga. App. 611, 58 S. E. 79.

Kentucky. — Franklin L. Ins. Co. *v.* McAfee, (Ky. 1906) 90 S. W. 216.

Louisiana. — Kennedy *v.* Metropolitan L. Ins. Co., 116 La. 66, 40 So. 533; Lesseps *v.* Fidelity Mut. L. Ins. Co., (La. 1908) 45 So. 522.

Massachusetts. — Kidder *v.* Supreme Commandery, etc., 192 Mass. 361, 78 N. E. 469.

Michigan. — Burnham *v.* Michigan Mut. L. Ins. Co., 149 Mich. 84, 112 N. W. 704; Jewett *v.* Northwestern Nat. L. Ins. Co., 149 Mich. 79, 112 N. W. 734.

Missouri. — Gruwell *v.* National Council, etc., 126 Mo. App. 496, 104 S. W. 884.

New York. — Schoeller *v.* Grand Lodge, etc., 110 N. Y. App. Div. 456, 96 N. Y. Supp. 1088.

Texas. — National L. Ins. Co. *v.* Reppond, (Tex. Civ. App. 1906) 96 S. W. 778; North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

Virginia. — Knights of Columbus *v.* Burroughs' Beneficiary, (Va. 1908) 60 S. E. 40.

3. *Alabama.* — Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011.

Illinois. — Farmers', etc., L. Assoc. *v.* Caine, 224 Ill. 599, 79 N. E. 956.

Indiana. — Equitable L. Assur. Soc. *v.* Perkins, (Ind. App. 1907) 80 N. E. 682.

Iowa. — Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Wood *v.* Grand Lodge, etc., 133 Iowa 33, 110 N. W. 164.

Massachusetts. — Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469.

Nebraska. — Soehner *v.* Grand Lodge, etc., 74 Neb. 399, 104 N. W. 871.

New Jersey. — Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681.

New York. — Kelly *v.* Security Mut. L. Ins. Co., 106 N. Y. App. Div. 352, 94 N. Y. Supp. 601; Cornell *v.* Travelers' Ins. Co., 120 N. Y. App. Div. 459, 104 N. Y. Supp. 999.

Pennsylvania. — Shay *v.* Phœnix Acc., etc., Ben. Assoc., 28 Pa. Super. Ct. 527; International Sav., etc., Co. *v.* Tillotson, 34 Pa. Super. Ct. 521.

4. Talbott *v.* Metropolitan L. Ins. Co., (C. C. A.) 141 Fed. 604; Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200; Home Ins. Co. *v.* Ballew, (Ky. 1906) 96 S. W. 878; Penn Mut. L. Ins. Co. *v.* Senhenn, (Ind. App. 1907) 81 N. E. 87; Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681; Carr *v.* Prudential Ins. Co., 115 N. Y. App. Div. 755, 101 N. Y. Supp. 158; Cardinale *v.* Society of Civility, etc., (Supm. Ct. App. T.) 102 N. Y. Supp. 471; North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

It must be shown that the agent had express authority to accept the premium, or that the insurer subsequently ratified his act. Supreme Commandery, etc., *v.* Bernard, 26 App. Cas. (D. C.) 169, 6 Ann. Cas. 694.

The statement of an agent that premiums need not be paid during a strike was held not to operate as a waiver, in the absence of proof of the agent's authority to make such an agreement. Murphy *v.* Prudential Ins. Co., 30 Pa. Super. Ct. 560.

5. *United States.* — Talbott *v.* Metropolitan L. Ins. Co., (C. C. A.) 142 Fed. 694; Mutual Reserve Fund L. Assoc. *v.* Tuchfeld, (C. C. A.) 159 Fed. 833; Duncan *v.* Missouri State L. Ins. Co., (C. C. A.) 160 Fed. 646.

Illinois. — Cigar Makers' International Union, etc., *v.* Huecker, 123 Ill. App. 336; Lane *v.* Yeomen of America, 125 Ill. App. 406; National Council, etc., *v.* Burch, 126 Ill. App. 15.

Indiana. — U. S. Benev. Soc. *v.* Watson, (Ind. App. 1908) 84 N. E. 29.

Iowa. — Wood *v.* Grand Lodge, etc., 133 Iowa 33, 110 N. W. 164.

Kansas. — Grand Lodge, etc., *v.* Smith, (Kan. 1907) 92 Pac. 710.

Massachusetts. — McNicholas *v.* Prudential Ins. Co., 191 Mass. 304, 77 N. E. 756.

Mississippi. — Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791.

Missouri. — Reed *v.* Bankers' Union, etc., 121 Mo. App. 419, 99 S. W. 55; Coleman *v.* Caldwell County Mut. F. Ins. Co., 125 Mo. App. 643, 103 S. W. 150; Leech *v.* Order of Railroad Telegraphers, (Mo. App. 1908) 109 S. W. 811.

Montana. — Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

New York. — Rewitzer *v.* Switchmen's Union, 112 N. Y. App. Div. 708, 98 N. Y. Supp. 974.

Pennsylvania. — Shay *v.* Phœnix Acc., etc., Ben. Assoc., 28 Pa. Super. Ct. 527.

South Carolina. — Singleton *v.* Progressive Ben. Assoc., 77 S. Car. 531, 58 S. E. 609.

Texas. — Continental Casualty Co. *v.* Jennings, (Tex. Civ. App. 1907) 99 S. W. 423.

Washington. — Morgan *v.* Northwestern Nat. L. Ins. Co., 42 Wash. 10, 84 Pac. 412.

Acceptance by General Agent No Waiver when Policy Limits Power to Waive to Officers. — Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643.

6. Franklin L. Ins. Co. *v.* McAfee, (Ky. 1906) 90 S. W. 216; Suess *v.* Imperial Life Ins. Co., 193 Mo. 564, 91 S. W. 1041; Johnson *v.* Continental Ins. Co., (Tenn. 1907) 107 S. W. 688.

7. See Farmers' Mut. L. Protective Assoc. *v.* Elliott, (Ga. App. 1908) 61 S. E. 493.

Insisting upon Payment of Premium Note Held to Waive Forfeiture. — Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011; Galliher *v.* State Mut. L. Ins. Co., (Ala. 1907) 43 So. 833.

Waiver by Renewal of Past-due Note. — Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681.

8. Bowen *v.* Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040.

9. St. Paul F. & M. Ins. Co. *v.* Penman, (C. C. A.) 151 Fed. 961; Standard L. & Acc. Ins. Co. *v.* McNulty, (C. C. A.) 157 Fed. 224; Modern Woodmen of America *v.* Vincent, (Ind. App. 1907) 82 N. E. 475, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 862; Ohio Farmers' Ins. Co. *v.* Vogel, 166 Ind. 239, 76 N. E. 977; Wilson *v.* Royal Union Mut. L. Ins. Co., (Iowa 1908) 114 N. W. 1051; Palatine Ins. Co. *v.* O'Brien, (Md. 1908) 68 Atl. 484; Hatch *v.* U. S. Casualty Co., (Mass. 1908) 83 N. E. 398.

10. *Georgia.* — North British, etc., Ins. Co. *v.* Tye, 1 Ga. App. 380, 58 S. E. 110; Insurance Co. of North America *v.* De Loach, 3 Ga. App. 807, 61 S. E. 406.

Kentucky. — Jagoe *v.* Ætna L. Ins. Co., (Ky. 1906) 96 S. W. 598.

Maine. — Bickford *v.* Ætna Ins. Co., 101 Me. 124, 63 Atl. 552.

Massachusetts. — Cutting *v.* Atlas Mut. Ins. Co., (Mass. 1908) 85 N. E. 174.

Minnesota. — Bader *v.* New Amsterdam Casualty Co., 102 Minn. 186, 112 N. W. 1065.

North Carolina. — Wilkie *v.* New York L. Ins. Co., (N. Car. 1908) 60 S. E. 427; Bray *v.* Virginia F. & M. Ins. Co., 139 N. Car. 390, 51 S. E. 922.

Ohio. — Livingston *v.* Fidelity, etc., Co., 76 Ohio St. 253, 81 N. E. 330.

Pennsylvania. — Frick *v.* United Firemen's Ins. Co., 218 Pa. St. 409, 67 Atl. 743; Frick *v.* Svea F., etc., Ins. Co., 218 Pa. St. 420, 67 Atl. 747; Farner *v.* Massachusetts Mut. Acc. Assoc., (Pa. 1907) 67 Atl. 927.

Washington. — Jump *v.* North British, etc., Ins. Co., 44 Wash. 596, 87 Pac. 928.

Wisconsin. — French *v.* Fidelity, etc., Co., (Wis. 1908) 115 N. W. 869; Cady *v.* Fidelity, etc., Co., (Wis. 1907) 113 N. W. 967.

863. 1. *United States.* — Maryland Casualty Co. *v.* Finch, (C. C. A.) 147 Fed. 388; Wood *v.* General Acc. Ins. Co., 156 Fed. 982; Standard L., etc., Ins. Co. *v.* McNulty, (C. C. A.) 157 Fed. 224; Baker *v.* Williamsburgh City F. Ins. Co., 157 Fed. 280.

Arkansas. — Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797.

Georgia. — North British, etc., Ins. Co. *v.* Tye, 1 Ga. App. 380, 58 S. E. 110.

Illinois. — Hartford F. Ins. Co. *v.* Northern Trust Co., 127 Ill. App. 355; American Ins. Co. *v.* Egyptian Lodge, etc., 128 Ill. App. 161.

Kansas. — Fire Assoc. of Philadelphia *v.* Taylor, (Kan. 1907) 91 Pac. 1070.

Maryland. — Palatine Ins. Co. *v.* O'Brien, (Md. 1908) 68 Atl. 484.

Minnesota. — Bader *v.* New Amsterdam Casualty Co., 102 Minn. 186, 112 N. W. 1065.

Missouri. — Rogers *v.* Modern Brotherhood of America, (Mo. App. 1908) 111 S. W. 518.

New York. — Garvey *v.* Phœnix Preferred

Acc. Ins. Co., 123 N. Y. App. Div. 106, 108 N. Y. Supp. 186.

Pennsylvania. — Farmer *v.* Massachusetts Mut. Acc. Assoc., (Pa. 1907) 67 Atl. 927.

Washington. — Jump *v.* North British, etc., Ins. Co., 44 Wash. 596, 87 Pac. 928.

Wisconsin. — Cady *v.* Fidelity, etc., Co., (Wis. 1907) 113 N. W. 967; French *v.* Fidelity, etc., Co., (Wis. 1908) 115 N. W. 869.

2. *California.* — Welch *v.* British-American Assur. Co., 148 Cal. 223, 82 Pac. 964.

Georgia. — Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. App. 1908) 60 S. E. 470.

Indiana. — Home Ins. Co. *v.* Gagen, 38 Ind. App. 680, 76 N. E. 927; U. S. Benev. Soc. *v.* Watson, (Ind. App. 1908) 84 N. E. 29.

Nebraska. — Soehner *v.* Grand Lodge, etc., 74 Neb. 399, 104 N. W. 871; Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286.

New Jersey. — Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681.

Texas. — Scotish-Union, etc., Ins. Co. *v.* Andrews, (Tex. Civ. App. 1905) 89 S. W. 419.

Virginia. — North British, etc., Ins. Co. *v.* Edmundson, 104 Va. 486, 52 S. E. 350.

Washington. — Thomson *v.* U. S. Fidelity, etc., Co., 44 Wash. 388, 87 Pac. 486.

Wisconsin. — Weidner *v.* Standard L., etc., Ins. Co., 130 Wis. 10, 110 N. W. 246; French *v.* Fidelity, etc., Co., (Wis. 1908) 115 N. W. 869.

Forfeitures Not Favored. — *United States.* — Krebs *v.* Security Trust, etc., Ins. Co., 156 Ind. 294; State L. Ins. Co. *v.* Murray, (C. C. A.) 159 Fed. 408.

District of Columbia. — Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46.

Indiana. — German-American Ins. Co. *v.* Yeagley, 163 Ind. 651, 71 N. E. 897.

Iowa. — Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099.

Mississippi. — Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791.

Missouri. — Lewine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99 S. W. 821; Coleman *v.* Caldwell County Mut. F. Ins. Co., 125 Mo. App. 643, 103 S. W. 150; Bange *v.* Supreme Council, etc., (Mo. App. 1907) 105 S. W. 1092; Leech *v.* Order of Railroad Telegraphers, (Mo. App. 1908) 109 S. W. 811.

New York. — Carey *v.* John Hancock Mut. L. Ins. Co., 114 N. Y. App. Div. 769, 100 N. Y. Supp. 289; Cardinale *v.* Society of Civility, etc., (Supm. Ct. App. T.) 102 N. Y. Supp. 471.

Texas. — Ætna L. Ins. Co. *v.* Wimberly, (Tex. Civ. App. 1908) 108 S. W. 778.

West Virginia. — Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 863.

3. *United States.* — Provident Sav. L. Assur. Soc. *v.* Taylor, (C. C. A.) 142 Fed. 709; Maryland Casualty Co. *v.* Finch, (C. C. A.) 147 Fed. 388; Bankers' Mut. Casualty Co. *v.* State Bank, (C. C. A.) 150 Fed. 78; Peden Iron, etc., Co. *v.* Ocean Acc., etc., Corp., 151 Fed. 992.

Arkansas. — American Bonding Co. *v.* Morrow, 80 Ark. 40, 96 S. W. 613.

California. — Finkbohner *v.* Glens Falls Ins. Co., (Cal. App. 1907) 92 Pac. 318.

District of Columbia. — Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46.

Georgia. — Missouri State L. Ins. Co. *v.* Lovelace, 1 Ga. App. 446, 58 S. E. 93; Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. App. 1908) 60 S. E. 470; Ætna Ins. Co. *v.* Lipsitz, (Ga. 1908) 60 S. E. 531, *citing* 3 SUPP. AM. AND ENG. ENCYC. OF LAW 671, note 3; Insurance Co. of North America *v.* De Loach, 3 Ga. App. 807, 61 S. E. 406.

Illinois. — Switchmen's Union *v.* Colehouse, 227 Ill. 561, 81 N. E. 696; Commercial Union Assur. Co. *v.* Parker, 119 Ill. App. 126; Concordia F. Ins. Co. *v.* Bowen, 121 Ill. App. 35; Smith *v.* Bankers L. Assoc., 123 Ill. App. 392; Provident Sav. L. Assur. Soc. *v.* Marshall, 125 Ill. App. 101.

Iowa. — Krell *v.* Chickasaw Farmers' Mut. F. Ins. Co., 127 Iowa 748, 104 N. W. 364; Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; Schmidt *v.* Hauer, (Iowa 1907) 111 N. W. 966.

Kansas. — Fire Assoc. of Philadelphia *v.* Taylor, (Kan. 1907) 91 Pac. 1070; Grand Lodge, etc., *v.* Smith, (Kan. 1907) 92 Pac. 710; Continental Casualty Co. *v.* Colvin, (Kan. 1908) 95 Pac. 565.

Maine. — Bickford *v.* Ætna Ins. Co., 101 Me. 124, 63 Atl. 552.

Massachusetts. — Lewis *v.* Brotherhood Acc. Co., 194 Mass. 1, 79 N. E. 802.

Minnesota. — Bader *v.* New Amsterdam Casualty Co., 102 Minn. 186, 112 N. W. 1065.

Missouri. — Foglesong *v.* Modern Brotherhood of America, 121 Mo. App. 548, 97 S. W. 240; Roark *v.* City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1; Long Bros. Grocery Co. *v.* U. S. Fidelity, etc., Co., (Mo. App. 1908) 110 S. W. 29; Batten *v.* Modern Woodmen of America, (Mo. App. 1908) 111 S. W. 513; Rogers *v.* Modern Brotherhood of America, (Mo. App. 1908) 111 S. W. 518.

Nebraska. — Merriman *v.* Grand Lodge, etc., (Neb. 1906) 110 N. W. 302; Harr *v.* Highland Nobles, (Neb. 1907) 110 N. W. 713.

New York. — Preston *v.* Ætna Ins. Co., 118 N. Y. App. Div. 784, 103 N. Y. Supp. 638; Preston *v.* Union Assur. Soc., 118 N. Y. App. Div. 788, 103 N. Y. Supp. 640; Lite *v.* Firemen's Ins. Co., 119 N. Y. App. Div. 410, 104 N. Y. Supp. 434; Moest *v.* Continental Casualty Co., (Supm. Ct. Eq. T.) 53 Misc. (N. Y.) 128, 104 N. Y. Supp. 553; Garvey *v.* Phœnix Preferred Acc. Ins. Co., 123 N. Y. App. Div. 106, 108 N. Y. Supp. 186; Dineen *v.* General Acc. Ins. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 344.

North Carolina. — Rayburn *v.* Pennsylvania Casualty Co., 138 N. Car. 370, 50 S. E. 762; Bray *v.* Virginia F. & M. Ins. Co., 139 N. Car. 390, 51 S. E. 922; East Carolina R. Co. *v.* Maryland Casualty Co., 145 N. Car. 114, 58 S. E. 906; Wilkie *v.* New York L. Ins. Co., (N. Car. 1908) 60 S. E. 427.

Ohio. — Livingston *v.* Fidelity, etc., Co., 76 Ohio St. 253, 81 N. E. 330; Bryant *v.* American Bonding Co., 77 Ohio St. 90, 82 N. E. 960.

Pennsylvania. — Frick *v.* United Firemen's Ins. Co., 218 Pa. St. 400, 67 Atl. 743; Frick *v.* Svea F., etc., Ins. Co., 218 Pa. St. 420, 67 Atl. 747; Farner *v.* Massachusetts Mut. Acc. Assoc., (Pa. 1907) 67 Atl. 927; Reynolds *v.* Maryland Casualty Co., 30 Pa. Super. Ct. 456.

South Carolina. — Edgefield Mfg. Co. *v.* Maryland Casualty Co., 78 S. Car. 73, 58 S. E. 969.

South Dakota. — Kennedy *v.* Agricultural Ins. Co., (S. Dak. 1906) 110 N. W. 116.

Tennessee. — Kavanaugh *v.* Security Trust, etc., Ins. Co., 117 Tenn. 33, 96 S. W. 499.

Texas. — Ætna L. Ins. Co. *v.* Wimberly, (Tex. Civ. App. 1908) 108 S. W. 778.

West Virginia. — Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 863.

Wisconsin. — Weidner *v.* Standard L., etc., Ins. Co., 130 Wis. 10, 110 N. W. 246; French *v.* Fidelity, etc., Co., (Wis. 1908) 115 N. W. 869.

864. 5. Rider. — Where a lightning clause was attached to a fire insurance policy in a rider, it was held that a provision therein exempting the company from liability for damage caused by wind storms affected only the stipulations contained in the rider. Russell *v.* German F. Ins. Co., 100 Minn. 528, 111 N. W. 400.

865. 1. Attached Due Bill Held Part of Contract. — Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155.

3. Gill *v.* Manhattan L. Ins. Co., (Ariz. 1908) 95 Pac. 89.

6. Paquette *v.* Prudential Ins. Co., 193 Mass. 215, 79 N. E. 250.

Application May Be Introduced to Show Fraud When Not Referred to in Policy. — Holden *v.* Prudential Ins. Co., 191 Mass. 153, 77 N. E. 309.

The Massachusetts Statute does not apply to beneficial insurance societies. Atty.-Gen. *v.* Colonial L. Assoc., 190 Mass. 527, 80 N. E. 455.

The Iowa Statute applies to applications for fidelity bonds. U. S. Fidelity, etc., Co. *v.* Egg Shippers, etc., Co., (C. C. A.) 148 Fed. 353.

Medical Examination Held a Part of Application under Iowa Statute. — Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

Statute Valid under Power of State to Improve Conditions on Right to Do Business. — Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

In an action on a benefit certificate, where the only issue was whether the insurer was exempt from liability under a clause contained in the certificate itself, it was held that the certificate was admissible in evidence without the application and by-laws. Tackman *v.* Brotherhood of American Yeomen, 132 Iowa 64, 106 N. W. 350.

Pennsylvania Statute.— Fidelity Title, etc., Co. *v.* Illinois L. Ins. Co., 213 Pa. St. 415, 63 Atl. 51.

The statute does not apply to answers made to a medical examiner, unless such answers are made a part of the application or referred to in the policy. Hews *v.* Equitable L. Assur. Soc., (C. C. A.) 143 Fed. 850.

The Pennsylvania statute does not apply to a policy obtained by fraud. Hews *v.* Equitable L. Assur. Soc., (C. C. A.) 143 Fed. 850.

The Kentucky Statute applies to a life insurance contract in a policy providing for both accident and life insurance. Continental Casualty Co. *v.* Harrod, (Ky. 1907) 100 S. W. 262.

866. 4. Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61; Gill *v.* Manhattan L. Ins. Co., (Ariz. 1908) 95 Pac. 89; Atty.-Gen. *v.* Colonial L. Assoc., 194 Mass. 527, 80 N. E. 455.

Under the *Massachusetts* statute the word "application" as used in the policy for the purpose of including it therein by reference includes all the statements in the application, except the report of the medical examiner. Paquette *v.* Prudential Ins. Co., 193 Mass. 215, 79 N. E. 250.

Provisions of Policy Control in Case of Conflict between Policy and Application. — Harr *v.* Highland Nobles, (Neb. 1907) 110 N. W. 713.

867. 3. Prince *v.* State Mut. L. Ins. Co., 77 S. Car. 187, 57 S. E. 766.

5. North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

6. Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. App. 1908) 60 S. E. 470.

7. *Arkansas.* — Supreme Lodge, etc., *v.* Johnson, 81 Ark. 512, 99 S. W. 834.

Connecticut. — Coughlin *v.* Knights of Columbus, 79 Conn. 218, 64 Atl. 223.

Georgia. — Edwards *v.* Farmers' Mut. Ins. Assoc., 128 Ga. 353, 57 S. E. 707.

Illinois. — Kaemmerer *v.* Kaemmerer, 231 Ill. 154, 83 N. E. 133; Nowak *v.* Murray, 127 Ill. App. 125.

Indiana. — Farra *v.* Braman, (Ind. App. 1905) 82 N. E. 926.

Iowa. — Norton *v.* Catholic Order of Foresters, (Iowa 1908) 114 N. W. 893.

Kansas. — Triple Tie Ben. Assoc. *v.* Wood, 73 Kan. 124, 84 Pac. 565.

Michigan. — Supreme Lodge, etc., *v.* Dewey, 142 Mich. 666, 106 N. W. 140.

Missouri. — Gruwell *v.* National Council, etc., 126 Mo. App. 496, 104 S. W. 884.

Montana. — Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

Nebraska. — Munk *v.* Frink, (Neb. 1908) 116 N. W. 525.

New York. — Butler *v.* Supreme Council, etc., 105 N. Y. App. Div. 164, 93 N. Y. Supp. 1012.

Virginia. — Knights of Columbus *v.* Burroughs' Beneficiary, (Va. 1908) 60 S. E. 40; Fraternities Acc. Order *v.* Armstrong, 106 Va. 746, 56 S. E. 565.

Language of Policy Prevails over Inconsistency in By-laws. — Bruger *v.* Princeton, etc., Mut. F. Ins. Co., 129 Wis. 281, 109 N. W. 95.

The By-laws Are Not a Part of the Contract under the *New Hampshire* standard form of policy, unless they are annexed to the policy. Gleason *v.* Canterbury Mut. F. Ins. Co., 73 N. H. 583, 64 Atl. 187.

868. 2. Wilson *v.* Royal Union Mut. L. Ins. Co., (Iowa 1908) 114 N. W. 1051, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 868; German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27.

A policy was made to cover a house and the furniture contained in it in separate items, and after removal of the furniture to another building a slip was attached stating that the clause relating to the furniture was thereby made to "read and cover as follows," and followed this statement by a clause insuring household furniture. The policy provided that it should be void in case the building should become un-

occupied, but the form on the attached slip permitted vacancy during change of tenants. A fire occurred thirty days after the removal of the furniture and while the house was vacant. In an action for the amount of insurance on the house it was held that the slip modified only the provisions relating to the furniture and did not permit vacancy of the house. Alvey *v.* Continental Ins. Co., 2 Cal. App. 253, 83 Pac. 285.

Where a policyholder was notified that a change had been made in the amount of insurance to which he was entitled, and was requested to return his policy for modification, but failed to do so and paid the same premium thereafter, there was no agreement with respect to the change. Morse *v.* Fraternal Acc. Assoc., 190 Mass. 417, 77 N. E. 491.

3. Kentucky Vermillion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 868; Long Bros. Grocery Co. *v.* U. S. Fidelity, etc., Co., (Mo. App. 1908) 110 S. W. 29.

Where a Policy Is Exchanged for One of a Different Kind, the insured is bound by the terms of the second policy and cannot claim the benefit of provisions contained in the original policy, such as a provision for extended insurance after payment of a certain number of premiums. McGuire *v.* Mut. L. Ins. Co., 114 N. Y. App. Div. 344, 99 N. Y. Supp. 891.

9. Kentucky Vermillion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 868; Frecking *v.* Germania F. Ins. Co., (Ind. App. 1907) 81 N. E. 217.

869. 1. Bickford *v.* Ætna Ins. Co., 101 Me. 124, 63 Atl. 552; Orient Ins. Co. *v.* Wingfield, (Tex. Civ. App. 1908) 108 S. W. 788.

5. German Ins. Co. *v.* Goodfriend, (Ky. 1906) 97 S. W. 1098; King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892.

7. Provident Sav. L. Ins. Co. *v.* Schoolfield, (Ky. 1906) 97 S. W. 345; Orient Ins. Co. *v.* Wingfield, (Tex. Civ. App. 1908) 108 S. W. 788.

8. The Measure of the Insurer's Liability on a contract to review a policy is determined by the amount of the original policy. Orient Ins. Co. *v.* Wingfield, (Tex. Civ. App. 1908) 108 S. W. 788.

9. Phœnix Ins. Co. *v.* State, 76 Ark. 180, 88 S. W. 917; Phœnix Assur. Co. *v.* Boyette, 77 Ark. 41, 90 S. W. 284; Flickinger *v.* Farmers' Mut. F., etc., Ins. Assoc., (Iowa 1907) 113 N. W. 824; Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908; Kelly *v.* Citizens' Mut. F. Assoc., 96 Minn. 477, 105 N. W. 675; Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057.

870. 1. Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057.

Laches — Where the Insured Neglected to Read His Policy until three months after receiving it his right to have it reformed was held to be lost. Floars *v.* Ætna L. Ins. Co., 144 N. Car. 232, 56 S. E. 915; Cathcart *v.* Life Ins. Co., 144 N. Car. 623, 57 S. E. 390.

2. Mississippi F. Assoc. *v.* Stein, 88 Miss. 499, 41 So. 66; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610; Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057.

3. Floars *v.* Ætna L. Ins. Co., 144 N. Car. 232, 56 S. E. 915.

4. Where the mistake of an agent is relied on it must be shown that the agent was authorized to act in the matter concerning which the mistake was made. Floars *v.* Ætna L. Ins. Co., 144 N. Car. 232, 56 S. E. 915.

5. Arkansas Mut. F. Ins. Co. *v.* Witham, 82 Ark. 226, 101 S. W. 721.

871. 1. Hatcher *v.* Branch, 141 Ala. 410, 37 So. 690, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 870 [871].

Facts Held Not to Show Concealment. — Globe, etc., F. Ins. Co. *v.* Emil Willbrandt Surgical Mfg. Co., 128 Ill. App. 262.

5. Where a proposition for cancellation by agreement was sent by mail an acceptance of the proposition took effect at the time of mailing such acceptance. Home Ins. Co. *v.* Chattahoochee Lumber Co., 126 Ga. 334, 55 S. E. 11.

872. 3. Waters *v.* Security L., etc., Co., 144 N. Car. 663, 57 S. E. 437.

873. 1. Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469; Kelly *v.* Security Mut. L. Ins. Co., 106 N. Y. App. Div. 352, 94 N. Y. Supp. 601.

2. Continental Ins. Co. *v.* Parkes, 142 Ala. 650, 39 So. 204, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 873; Equitable L. Assur. Soc. *v.* Perkins, (Ind. App. 1907) 80 N. E. 682; Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649.

3. Weston *v.* State Mut. L. Assur. Soc., 232 Ill. 492, 84 N. E. 1073; Gorge Hotel Co. *v.* Liverpool, etc., Ins. Co., 122 N. Y. App. Div. 152, 106 N. Y. Supp. 732.

4. Home Ins. Co. *v.* Chattahoochee Lumber Co., 126 Ga. 334, 55 S. E. 11.

5. Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649; Sherrod *v.* Farmers' Mut. F. Ins. Assoc., 139 N. Car. 167, 51 S. E. 910.

6. Sherrod *v.* Farmers' Mut. F. Ins. Assoc., 139 N. Car. 167, 51 S. E. 910.

7. See Provident Sav. L. Assur. Soc. *v.* Georgia Industrial Co., 124 Ga. 399, 52 S. E. 289. But see Continental Ins. Co. *v.* Parkes, 142 Ala. 650, 39 So. 204, where it was held that if the policy describes the owner as the assured, the mortgagee has no right to surrender it upon receiving notice of cancellation, although it is in his possession, unless notice is also given to the owner and his consent to the surrender obtained.

8. Citizens' Ins. Co. *v.* Henderson Elevator Co., (Ky. 1906) 96 S. W. 601; Citizens' Ins. Co. *v.* Henderson Elevator Co., (Ky. 1906) 97 S. W. 810; Davidson *v.* German Ins. Co., (N. J. 1907) 65 Atl. 996.

Where a policy does not prescribe the method of giving notice actual personal notice is required. Potomac Ins. Co. *v.* Atwood, 118 Ill. App. 340.

875. 1. Standard Leather Co. *v.* Northern Assur. Co., 156 Fed. 689; Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649.

2. Insured May Waive Requirement of Five Days' Notice. — Phœnix Ins. Co. *v.* State, 76 Ark. 180, 88 S. W. 917.

Where the notice was mailed under a provision requiring five days' notice of cancellation,

the insurer was held liable for a loss occurring within five days after the actual receipt of such notice. Potomac Ins. Co. *v.* Atwood, 118 Ill. App. 349.

3. Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649; Buckley *v.* Citizens' Ins. Co., 112 N. Y. App. Div. 451, 98 N. Y. Supp. 622; Gosch *v.* Firemen's Ins. Co., 33 Pa. Super. Ct. 496.

Contra. — Davidson *v.* German Ins. Co., (N. J. 1907) 65 Atl. 996.

6. Contra. — Davidson *v.* German Ins. Co., (N. J. 1907) 65 Atl. 996.

Offer to Return Premiums Must Be by Legal Tender. — U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760.

Where a policy was delivered to a broker who delivered it to the insured and received the premium, it was held that the receipt of the premium by the broker was receipt by the company, and did not relieve the company from repayment. Gosch *v.* Firemen's Ins. Co., 33 Pa. Super. Ct. 496.

876. 1. Buckley *v.* Citizens' Ins. Co., 188 N. Y. 399, 81 N. E. 165; Gorge Hotel Co. *v.* Liverpool, etc., Ins. Co., 122 N. Y. App. Div. 82, 106 N. Y. Supp. 732.

Acceptance of Policy No Waiver. — Buckley *v.* Citizens' Ins. Co., 112 N. Y. App. Div. 451, 98 N. Y. Supp. 622.

8. Globe, etc., F. Ins. Co. *v.* Emil Willbrandt Surgical Mfg. Co., 128 Ill. App. 262. See Farmers', etc., Ins. Co. *v.* Bodge, (Neb. 1907) 110 N. W. 1018.

Insurer Liable for Loss Occurring While Negotiations for Cancellation Are Pending. — Home Ins. Co. *v.* Chattahoochee Lumber Co., 126 Ga. 334, 55 S. E. 11.

Retention of Premium Waiver of Prior Cancellation. — North American Acc. Ins. Co. *v.* Rehacek, 123 Ill. App. 219.

Where an agent has no authority to waive a forfeiture, except in a particular manner, the cancellation of a policy by him is not a waiver of a prior breach although he had knowledge of such breach. Ruffner *v.* Dutchess Ins. Co., 59 W. Va. 432, 53 S. E. 943.

877. 1. Where a policy provided that it might be canceled by the insured and that when so canceled the customary rate should be retained by the company from premiums actually paid in cash, a demand made by the company after notice to cancel, for payment of premium notes, did not operate to prevent the termination of the insurance contract. Ohio Farmers' Ins. Co. *v.* Hunter, 38 Ind. App. 11, 77 N. E. 951.

3. Parsons *v.* Northwestern Nat. Ins. Co., 133 Iowa 532, 110 N. W. 907.

4. Where the policy prescribes no manner in which the notice is to be given, a notice sent by the insured by mail is not effective until received by the insurer. Bankers' Mut. Casualty Co. *v.* People's Bank, 127 Ga. 326, 56 S. E. 429.

6. Lierheimer *v.* Minnesota Mut. L. Ins. Co., 122 Mo. App. 374, 99 S. W. 525, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 877; Moore *v.* Mutual Reserve Fund L. Assoc., 121 N. Y. App. Div. 335, 106 N. Y. Supp. 255; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610; Stroud *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 626; Mutual L. Ins. Co. *v.* Hargus, (Tex. Civ. App. 1907) 99 S. W. 580; Glassner *v.* Johnston, (Wis. 1907) 113 N. W. 977.

Parties in Pari Delicto. — The fact that an agent may have represented that a certain policy was valid will not excuse the applicant's ignorance of the law as to the necessity for an insurable interest, where there is nothing to show why the applicant acted upon the agent's representations. American Mut. L. Ins. Co. *v.* Mead, (Ind. App. 1906) 79 N. E. 526.

7. Lierheimer *v.* Minnesota Mut. L. Ins. Co., 122 Mo. App. 374, 99 S. W. 525, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 877; Hutchinson *v.* Palmer, 147 Ala. 517, 40 So. 339; Robertson *v.* Covenant Mut. L. Ins. Co., 123 Mo. App. 238, 100 S. W. 686.

8. See Lierheimer *v.* Minnesota Mut. L. Ins. Co., 122 Mo. App. 374, 99 S. W. 525, *quoting* the rule laid down in the text (16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 877), but holding that under the circumstances of this case, where it appeared from the plaintiff's own evidence that he had waited nearly a month before attempting to repudiate the contract, and no reason was offered for his lack of promptness in that regard, the court was required to declare as a matter of law that he had not acted within a reasonable time.

9. Insurer Must Return Premiums when It Seeks Rescission of Policy for Fraud. — Mincho *v.* Bankers' L. Ins. Co., 124 N. Y. App. Div. 578, 109 N. Y. Supp. 179.

878. 1. Where an insurer wrongfully declares a policy forfeited a suit may be maintained in equity to have it adjudged in force. Kelly *v.* Security Mut. L. Ins. Co., 106 N. Y. App. Div. 352, 94 N. Y. Supp. 601.

7. Stockholders Not Liable as Partners. — Betts *v.* Connecticut L. Ins. Co., 78 Conn. 442, 62 Atl. 345.

8. Lord *v.* Equitable L. Assur. Soc., 109 N. Y. App. Div. 253, 96 N. Y. Supp. 10.

882. 3. Amalgamation Not Contrary to New York Statute Prohibiting Investment in Stock of Other Companies. — Morse *v.* Equitable L. Assur. Soc., 124 N. Y. App. Div. 235, 108 N. Y. Supp. 986.

5. Policyholders May Elect to Cancel Policies and Premium Notes. — Crowell *v.* Northwestern L., etc., Co., 99 Minn. 214, 108 N. W. 962.

Stockholder Cannot Enjoin Amalgamation unless Fraud Is Shown. — Morse *v.* Equitable L. Assur. Soc., 124 N. Y. App. Div. 235, 108 N. Y. Supp. 986.

883. 3. Crowell *v.* Northwestern L., etc., Co., 99 Minn. 214, 108 N. W. 962.

5. Northwestern Nat. L. Ins. Co. *v.* Hare, 26 Ohio Cir. Ct. 105.

884. 2. Continental Ins. Co. *v.* Parkes, 142 Ala. 650, 39 So. 204; New York L. Ins. Co. *v.* Hardison, (Mass. 1908) 85 N. E. 410; Boswell *v.* Security Mut. L. Ins. Co., 119 N. Y. App. Div. 723, 104 N. Y. Supp. 130.

Requirement that Application Be Attached to Policy Not in Excess of Power. — Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

3. New York L. Ins. Co. *v.* Hardison, (Mass. 1908) 85 N. E. 410; Lord *v.* Equitable L. Assur. Soc., 109 N. Y. App. Div. 253, 96 N. Y. Supp. 10; Boswell *v.* Security Mut. L. Ins. Co.,

119 N. Y. App. Div. 723, 104 N. Y. Supp. 130; Lord *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 108 N. Y. Supp. 67.

895. 3. New York L. Ins. Co. *v.* Hardison, (Mass. 1908) 85 N. E. 410; Atty.-Gen. *v.* Insurance Commissioner, 148 Mich. 566, 112 N. W. 132.

4. People *v.* Aachen, etc., F. Ins. Co., 126 Ill. App. 636; Equitable L. Assur. Soc. *v.* Com., (Ky. 1905) 89 S. W. 537; Hilton *v.* Com., (Ky. 1907) 105 S. W. 956; Cole *v.* State, (Miss. 1907) 45 So. 11.

In Alabama fire insurance companies are prohibited by statute from entering into rate agreements with other like corporations, and also from maintaining membership in traffic associations. Continental Ins. Co. *v.* Parks, 142 Ala. 650, 39 So. 204.

Act Prohibiting Premium Rate Agreement Among Companies. — Hartford F. Ins. Co. *v.* State, 76 Ark. 303, 89 S. W. 42.

It Is Not Discrimination to allow an agent the usual commission on a policy issued on his own life. People *v.* Penn Mut. L. Ins. Co., 126 Ill. App. 279.

11. Steck *v.* Prentice, (Colo. 1908) 95 Pac. 552.

12. Fikes *v.* State, 87 Miss. 251, 39 So. 783.

Limitation of Amount Insurance Companies May Pay for Procuring New Business. — Boswell *v.* Security Mut. L. Ins. Co., 119 N. Y. App. Div. 723, 104 N. Y. Supp. 130.

886. 1. Continental Ins. Co. *v.* Parkes, 142 Ala. 650, 39 So. 204; Equitable L. Assur. Soc. *v.* Com., (Ky. 1905) 89 S. W. 537; Hilton *v.* Com., (Ky. 1907) 105 S. W. 956; Fikes *v.* State, 87 Miss. 251, 39 So. 783.

6. **Fund for Payment of Maturing Risks Not Taxable as Net Profits.** — Provident Life, etc., Co. *v.* Durham, 212 Pa. St. 68, 61 Atl. 636.

887. 1. **For the Construction of Statutes and Municipal Ordinances.** — Lake Charles *v.* Equitable L. Assur. Soc., 114 La. 836, 38 So. 578.

889. 7. A similar provision in a policy was held to be invalid in McLean *v.* Tobin, (Supm. Ct. App. T.) 109 N. Y. Supp. 926.

892. 2. **Contra.** — Scott *v.* Bankers' Union, etc., 73 Kan. 575, 85 Pac. 604.

893. 1. Swing *v.* Brister, 87 Miss. 516, 40 So. 146.

Statute May Not Prohibit Working of Contracts Out of State. — Atlas Mut. Ins. Co. *v.* Fisheries Co., (Del. 1907) 68 Atl. 4.

In Michigan it is held that a foreign insurance company cannot maintain an action upon a contract of insurance covering property in that state, unless such company has obtained permission to do business there, although the contract was made in another state. Swing *v.* Cameron, 145 Mich. 175, 108 N. W. 506.

894. 1. **A Court of Equity Has No Jurisdiction,** in the absence of statute, to wind up the affairs of the company upon the ground of insolvency at the suit of a stockholder. Com. *v.* Richardson, (Ky. 1906) 94 S. W. 639.

3. **Under the New York Statute of 1892, c. 690,** no receiver can be appointed, except upon application made or approved by the attorney-general. Brown *v.* Equitable L. Assur. Soc., 142 Fed. 835.

In *New York,* under Code Civ. Pro., §§ 1781, 1782, the attorney general as well as a receiver may maintain an action to recover losses occasioned by the misconduct of officers and directors of an insurance company. People *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 339, 101 N. Y. Supp. 354.

The Kentucky Statute is held to be cumulative in effect and does not deprive stockholders of their right to apply for a receiver. Richardson *v.* People's L., etc., Ins. Co., (Ky. 1906) 92 S. W. 284.

4. **Under the Massachusetts Statute** it was held that the insurance commissioner was authorized in enjoining an insurance company where the only business desired to be done was the payment of losses. Cutting *v.* American Ins. Co., (Mass. 1908) 83 N. E. 396.

895. 4. **Liabilities Include All Claims for Losses** without regard to whether or not some of such claims may be shown to be invalid after suit. Cutting *v.* American Ins. Co., (Mass. 1908) 83 N. E. 396.

The probable income from premiums should be considered in determining the financial condition of a mutual insurance company. Munk *v.* Frink, (Neb. 1908) 116 N. W. 525.

896. 1. Hammond *v.* Knox, (Supm. Ct. App. T.) 109 N. Y. Supp. 367; Stone *v.* Penn Yan, etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 374.

In an action by a receiver of a foreign mutual assessment company to collect assessments due the company, a policy cannot offset against his liability for assessments a claim for an unpaid loss under the policy. Stone *v.* New Jersey, etc., R., etc., Co., (N. J. 1907) 66 Atl. 1072.

Court May Decree Assessments in Premium Notes. — Swing *v.* Rose, 75 Ohio St. 355, 79 N. E. 757.

3. Mutual L. Ins. Co. *v.* Muller, (Md. 1908) 69 Atl. 385; Fikes *v.* State, 87 Miss. 251, 39 So. 783; Williams *v.* Mutual Reserve Fund L. Assoc., 145 N. Car. 128, 58 S. E. 802.

897. 1. Equitable L. Assur. Soc. *v.* Babbitt, (Ariz. 1907) 89 Pac. 521; Hartford F. Ins. Co. *v.* State, 76 Ark. 303, 89 S. W. 42; Mutual L. Ins. Co. *v.* Muller, (Md. 1908) 69 Atl. 385; Presbyterian Ministers' Fund *v.* Thomas, 126 Wis. 281, 105 N. W. 801.

2. Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168.

Statute Prohibiting Agreement Among Companies as to Premium Rate Valid. — Carroll *v.* Greenwich Ins. Co., 199 U. S. 401.

898. 3. Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168.

4. Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168; Williams *v.* Mutual Reserve Fund L. Assoc., 145 N. Car. 128, 58 S. E. 802; Presbyterian Ministers' Fund *v.* Thomas, 126 Wis. 281, 105 N. W. 801.

899. 1. Swing *v.* Thomas, 120 Ill. App. 235; Latham Mercantile, etc., Co. *v.* Harrod, 71 Kan. 565, 81 Pac. 214; Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168; Presbyterian Ministers' Fund *v.* Thomas, 126 Wis. 281, 105 N. W. 801.

900. 3. Williams *v.* Mutual Reserve Fund L. Assoc., 145 N. Car. 128, 58 S. E. 802.

902. 1. Swing *v.* Brister, 87 Miss. 516, 40 So. 146; Stone *v.* Penn Yan, etc., R. Co.,

(Supm. Ct. App. Div.) 109 N. Y. Supp. 374. See Swing *v.* Cameron, 145 Mich. 175, 108 N. W. 506.

But in Illinois. — Swing *v.* Thomas, 120 Ill. App. 235.

And the Prohibition of the Wisconsin Statute. — The rule was applied to a policy of life insurance in an action on a premium note, where it appeared that the applicant had not acted through an agent, and the note was payable in another state. Presbyterian Ministers' Fund *v.* Thomas, 126 Wis. 281, 105 N. W. 801.

2. Where a citizen of one state obtained insurance in a foreign company through brokers residing in another state and representing the company in such other state, it was held that this did not constitute doing business in the state of the applicant's residence, and the provisions of the policy were enforceable against him in his state. Swing *v.* Brister, 87 Miss. 516, 40 So. 146.

903. 1. Swing *v.* Brister, 87 Miss. 516, 40 So. 146.

2. Swing *v.* Thomas, 120 Ill. App. 235; Swing *v.* Cameron, 145 Mich. 175, 108 N. W. 506; Swing *v.* Dayton, (Supm. Ct. App. Div.) 108 N. Y. Supp. 155; Presbyterian Ministers' Fund *v.* Thomas, 126 Wis. 281, 105 N. W. 801.

4. **In Mississippi** it was held that the statute prescribing conditions upon which a foreign company might do business in that state could not be construed so as to prevent the maintenance of a suit by a foreign company upon a contract made between a citizen of the state and the company in the state of the latter's domicil where it appeared that the company was not doing business in the state. Such a construction, the court held, would make the statute conflict with the Fourteenth Constitutional Amendment. Swing *v.* Brister, 87 Miss. 516, 40 So. 146.

905. 2. Harrod *v.* Latham Mercantile, etc., Co., (Kan. 1908) 95 Pac. 11; Corbett *v.* Physicians' Casualty Assoc., (Wis. 1908) 115 N. W. 365.

907. 2. Wortham *v.* Illinois L. Ins. Co., (Ky. 1908) 107 S. W. 276.

A person who agrees to solicit insurance for a certain company to **the** exclusion of other companies is an insurance agent and not a broker. Lake Charles *v.* Equitable L. Assur. Soc., 114 La. 836, 38 So. 578.

3. Smith *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1907) 113 N. W. 94.

Agency Held to Be Question for Jury. — Wortham *v.* Illinois L. Ins. Co., (Ky. 1908) 107 S. W. 276.

908. 1. Lake Charles *v.* Equitable L. Assur. Soc., 114 La. 836, 38 So. 578; Smith *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1907) 113 N. W. 94.

4. Fredman *v.* Consolidated F. & M. Ins. Co., (Minn. 1908) 116 N. W. 221; Costello *v.* Grant County Mut. F., etc., Ins. Co., (Wis. 1907) 113 N. W. 639.

7. German-American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27; Richard *v.* Springfield F. & M. Ins. Co., 114 La. 794, 38 So. 563.

909. 1. Pelican Assur. Co. *v.* Schildknecht, (Ky. 1908) 108 S. W. 312; Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812.

Subagent Cannot Appoint Another Agent. — Mutual L. Ins. Co. *v.* Reynolds, 81 Ark. 202, 98 S. W. 963.

5. Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93; Bowen *v.* Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040.

Where an employee of a firm who also acted as the agent of an insurance company obtained insurance upon goods owned by another, and the policy was subsequently made payable to his employers, it was held that he was the agent of the company in writing the insurance. German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068.

910. 4. See Todd *v.* German-American Ins. Co., 2 Ga. App. 789, 59 S. E. 94.

5. Where one instructed an agent to procure insurance on his property and keep the same insured, but gave no directions as to any particular company from which the insurance should be obtained, it was held that, although the agent was the agent of the companies writing the insurance, he was also agent for the insured with respect to procuring, canceling, and substituting policies of insurance. Phœnix Ins. Co. *v.* State, 76 Ark. 180, 88 S. W. 917.

911. 2. Fikes *v.* State, 87 Miss. 251, 39 So. 783.

3. Leviness *v.* Kaplan, 99 Md. 683, 59 Atl. 127, *quoting* 16 Am. and Eng. Encyc. of Law (2d ed.) 911.

4. *United States.* — Whitestone *v.* American Ins. Union, (C. C. A.) 143 Fed. 862.

Arkansas. — Mississippi Home Ins. Co. *v.* Adams, 84 Ark. 431, 106 S. W. 209.

California. — Milwaukee Mechanics' Ins. Co. *v.* Warren, 150 Cal. 346, 89 Pac. 93.

Illinois. — Helmick *v.* Western Assur. Co., 121 Ill. App. 281.

Kentucky. — National L. Ins. Co. *v.* Anderson, (Ky. 1906) 92 S. W. 976.

Nebraska. — Martin *v.* Fraternal L. Assoc., (Neb. 1907) 114 N. W. 159.

New Hampshire. — Perry *v.* U. S. Health, etc., Ins. Co., 73 N. H. 608, 63 Atl. 489.

New York. — Heyn *v.* New York L. Ins. Co., 118 N. Y. App. Div. 194, 103 N. Y. Supp. 20; Wightman *v.* New York L. Ins. Co., 119 N. Y. App. Div. 496, 104 N. Y. Supp. 214; Aldrich *v.* New York L. Ins. Co., 121 N. Y. App. Div. 18, 105 N. Y. Supp. 493.

Tennessee. — Michigan Mut. L. Ins. Co. *v.* Coleman, 118 Tenn. 215, 100 S. W. 122.

Washington. — Butler *v.* New York L. Ins. Co., 45 Wash. 141, 87 Pac. 1119.

Wisconsin. — Security Trust, etc., Co. *v.* Ellsworth, 129 Wis. 349, 109 N. W. 125.

7. New York L. Ins. Co. *v.* Rilling, 121 Ill. App. 169, *quoting* 16 Am. and Eng. Encyc. of Law (2d ed.) 911; Leviness *v.* Kaplan, 99 Md. 683, 59 Atl. 127, *quoting* 16 Am. and Eng. Encyc. of Law (2d ed.) 911.

912. 1. Penn Mut. L. Ins. Co. *v.* Ornauer, 39 Colo. 497, 90 Pac. 846.

An agent who has failed to comply with the statute requiring agents to obtain a certificate from the insurance superintendent in order to entitle them to solicit insurance, cannot re-

cover compensation under his contract, nor can he recover sums advanced by him in payment of commissions to subagents. Wyatt *v.* McNamee, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 127, 101 N. Y. Supp. 790.

3. Chase *v.* New York L. Ins. Co., 188 Mass. 271, 74 N. E. 325 (provision as to commissions on renewal contracts and restriction upon agents acting for other companies); Crowell *v.* Northwestern L., etc., Co., 99 Minn. 214, 108 N. W. 962 (right to percentage of premium notes as affected by transfer of company's business to another company); Heyn *v.* New York L. Ins. Co., 192 N. Y. 1, 84 N. E. 725 (provision held to entitle agent to commissions on renewal contracts).

4. Where an agent violated the law by giving rebates upon premiums with the company's knowledge, it was held that he was entitled to compensation for services subsequently performed in a lawful manner. National L. Ins. Co. *v.* Anderson, (Ky. 1906) 92 S. W. 976.

7. Agents Liable for Writing Insurance in Insolvent Company. — Latham Mercantile, etc., Co. *v.* Harrod, 71 Kan. 565, 81 Pac. 214.

A policy holder is not *in pari delicto* with an agent who writes insurance in an unlicensed company. Latham Mercantile, etc., Co. *v.* Harrod, 71 Kan. 565, 81 Pac. 214.

Where an agent was continued in his employment after the company learned that he was rebating premiums in violation of a statute, the company could not recover from him the amount which should have been collected. National L. Ins. Co. *v.* Anderson, (Ky. 1906) 92 S. W. 976.

914. 4. Roloff *v.* Farmers' Home Mut. Ins. Co., 130 Wis. 402, 110 N. W. 261.

7. *United States.* — State L. Ins. Co. *v.* Murray, (C. C. A.) 159 Fed. 408.

Arkansas. — Queen Ins. Co. *v.* Cooper-Cryer Co., 81 Ark. 160, 98 S. W. 694.

Illinois. — Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93; London Guaranty, etc., Co. *v.* Hartman, 122 Ill. App. 315.

Indiana. — Penn Mut. L. Ins. Co. *v.* Senhenn, (Ind. App. 1907) 81 N. E. 87.

Iowa. — Roe *v.* National L. Ins. Assoc., (Iowa 1908) 115 N. W. 500.

Kentucky. — Continental F. Ins. Co. *v.* Stunston, (Ky. 1907) 100 S. W. 338; Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719; Pelican Assur. Co. *v.* Schildknecht, (Ky. 1908) 108 S. W. 312.

Louisiana. — Richard *v.* Springfield F. & M. Ins. Co., 114 La. 794, 38 So. 563.

Massachusetts. — Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649; Providence Washington Ins. Co. *v.* Wolf, 168 Mass. 690, 80 N. E. 26.

Minnesota. — Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861; Fredman *v.* Consolidated F. & M. Ins. Co., (Minn. 1908) 116 N. W. 221.

Missouri. — Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016.

Nebraska. — Hunt *v.* State Ins. Co., (Neb. 1907) 113 N. W. 807.

New York. — Carr *v.* Prudential Ins. Co., 115 N. Y. App. Div. 755, 101 N. Y. Supp. 158.

South Carolina. — Hagins *v.* Ætna L. Ins. Co., 75 S. Car. 225, 55 S. E. 323.

South Dakota. — Wheaton *v.* Liverpool, etc., Ins. Co., (S. Dak. 1905) 104 N. W. 850; Smith *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1907) 113 N. W. 94.

Texas. — Johnson *v.* Standard L., etc., Ins. Co., (Tex. Civ. App. 1906) 97 S. W. 831; Security Mut. L. Ins. Co. *v.* Calvert, (Tex. Civ. App. 1907) 100 S. W. 1033; North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

Wisconsin. — Glassner *v.* Johnston, (Wis. 1907) 113 N. W. 977.

9. *United States.* — Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681.

Arkansas. — Security Mut. Ins. Co. *v.* Woodson, 79 Ark. 266, 95 S. W. 481; People's F. Ins. Assoc. *v.* Goyne, 79 Ark. 315, 96 S. W. 365; Capital F. Ins. Co. *v.* Montgomery, 81 Ark. 508, 99 S. W. 687.

California. — Arnold *v.* American Ins. Co., 148 Cal. 660, 84 Pac. 182.

Colorado. — German-American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27.

Georgia. — Ætna Ins. Co. *v.* Johnson, 127 Ga. 491, 56 S. E. 643; Insurance Co. of North America *v.* De Loach, 3 Ga. App. 807, 61 S. E. 406.

Indiana. — Ætna L. Ins. Co. *v.* Bockting, 39 Ind. App. 586, 79 N. E. 524.

Iowa. — Helm *v.* Anchor F. Ins. Co., 131 Iowa 177, 109 N. W. 605.

Kansas. — Fire Assoc. of Philadelphia *v.* Taylor, (Kan. 1907) 91 Pac. 1070.

Kentucky. — Crawford *v.* Travelers' Ins. Co., (Ky. 1907) 99 S. W. 963; Travelers' Ins. Co. *v.* Crawford, (Ky. 1907) 106 S. W. 290; Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294.

Massachusetts. — Newburyport *v.* Fidelity Mut. L. Ins. Co., (Mass. 1908) 84 N. E. 111.

Michigan. — Perry *v.* John Hancock Mut. L. Ins. Co., 147 Mich. 645, 111 N. W. 195.

Mississippi. — Mississippi Home Ins. Co. *v.* Stevens, (Miss. 1908) 46 So. 245.

Missouri. — Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237.

Nebraska. — Pringle *v.* Modern Woodmen of America, (Neb. 1906) 107 N. W. 756.

New York. — New York Mut. Sav., etc., Assoc. *v.* Westchester F. Ins. Co., 110 N. Y. App. Div. 760, 97 N. Y. Supp. 436; Wisotzkey *v.* Niagara F. Ins. Co., 112 N. Y. App. Div. 599, 98 N. Y. Supp. 760; Thompson *v.* Metropolitan L. Ins. Co., (Supm. Ct. Tr. T.) 99 N. Y. Supp. 1006; Irwin *v.* Westchester F. Ins. Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 612.

Pennsylvania. — Porter *v.* Insurance Co. of North America, 29 Pa. Super. Ct. 75.

South Carolina. — Fludd *v.* Equitable L. Assur. Soc., 75 S. Car. 315, 55 S. E. 762; Thompson *v.* Piedmont Mut. Ins. Co., 77 S. Car. 486, 58 S. E. 341; Rearden *v.* State Mut. L. Ins. Co., (S. Car. 1908) 60 S. E. 1106.

Texas. — Fire Assoc. of Philadelphia *v.* La Grange, etc., Compress Co., (Tex. Civ. App. 1908) 109 S. W. 1134.

Vermont. — Trow *v.* Preferred Acc. Ins. Co., (Vt. 1907) 67 Atl. 821.

10. Continental Ins. Co. *v.* Buchanan, (Ky. 1908) 108 S. W. 355; Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66.

915. 1. Phœnix Assur. Co. *v.* Boyette, 77 Ark. 41, 90 S. W. 284; Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294; Pelican Assur. Co. *v.* Schildknecht, (Ky. 1908) 108 S. W. 312; Richard *v.* Springfield F. & M. Ins. Co., 114 La. 794, 38 So. 563; King *v.* Phœnix Ins. Co., 195 Mo. 290, 92 S. W. 892; Wisotzkey *v.* Niagara F. Ins. Co., 112 N. Y. App. Div. 599, 98 N. Y. Supp. 760.

2. *Arkansas.* — Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950.

California. — Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102; Mackintosh *v.* American F. Ins. Co., 150 Cal. 453, 89 Pac. 107.

Connecticut. — Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134.

Illinois. — Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93.

Kentucky. — Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719.

Louisiana. — Richard *v.* Springfield F. & M. Ins. Co., 114 La. 794, 38 So. 563.

Massachusetts. — Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66; Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649.

Missouri. — Gorton *v.* Milwaukee Mechanics' Ins. Co., 115 Mo. App. 69, 90 S. W. 747; Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016; Reed *v.* Bankers' Union, etc., 121 Mo. App. 419, 99 S. W. 55; McIntyre *v.* Liverpool, etc., Ins. Co., (Mo. App. 1908) 110 S. W. 604.

New York. — New York Mut. Sav., etc., Assoc. *v.* Westchester F. Ins. Co., 110 N. Y. App. Div. 760, 97 N. Y. Supp. 436; Carr *v.* Prudential Ins. Co., 115 N. Y. App. Div. 755, 101 N. Y. Supp. 158.

Texas. — North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

4. **Agent's Partner.** — An insurance company is bound by the knowledge of its agent's partner, although such knowledge is not communicated to the partner who issued the policy. St. Paul F. & M. Ins. Co. *v.* Stogner, (Tex. Civ. App. 1906) 98 S. W. 218.

5. Mutual L. Ins. Co. *v.* Reynolds, 81 Ark. 202, 98 S. W. 963.

7. **Agent's Promise to Make Loan on Policy Not Binding.** — Albright *v.* State Ins. Co., (Neb. 1907) 113 N. W. 793.

916. 1. American Ins. Co. *v.* Hornbarger, (Ark. 1908) 108 S. W. 213.

4. Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950; Haapa *v.* Metropolitan L. Ins. Co., 150 Mich. 467, 114 N. W. 380; Butler *v.* Michigan Mut. L. Ins. Co., 184 N. Y. 337, 77 N. E. 398; Hottner *v.* Aachen, etc., F. Ins. Co., 31 Pa. Super. Ct. 461; Kness *v.* Anchor F. Ins. Co., 31 Pa. Super. Ct. 521; Dunn *v.* Farmers' F. Ins. Co., 34 Pa. Super. Ct. 245. But see Security Mut. Ins. Co. *v.* Woodson, 79 Ark. 266, 95 S. W. 481. *Compare* Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93; London Guaranty, etc., Co. *v.* Hartman, 122 Ill. App. 315; Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861. See Starr *v.* Mutual L. Ins. Co., 41 Wash. 228, 83 Pac. 116, where a soliciting agent was held to have bound the insurer by executing a binding receipt notwithstanding a provision in the application that the policy should not be in force until delivered.

5. Johnson *v.* Sun F. Ins. Co., 3 Ga. App. 430, 60 S. E. 118.

6. *Compare* Queen Ins. Co. *v.* Cooper-Cryer Co., 81 Ark. 160, 98 S. W. 694.

Contra. — Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719.

7. Cayford *v.* Metropolitan L. Ins. Co., 5 Cal. App. 715, 91 Pac. 266; Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971; Knights of Columbus *v.* Burroughs' Beneficiary, (Va. 1908) 60 S. E. 40.

9. Arkansas Mut. F. Ins. Co. *v.* Witham, 82 Ark. 226, 101 S. W. 721; Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569; Ft. Scott Bldg., etc., Assoc. *v.* Palatine Ins. Co., 74 Kan. 272, 86 Pac. 142; Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 88 Pac. 245; Providence Washington Ins. Co. *v.* Wolf, 168 Mass. 690, 80 N. E. 26; Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117; Herpolsheimer *v.* Citizens' Ins. Co., (Neb. 1907) 113 N. W. 152; Thompson *v.* Germania F. Ins. Co., 45 Wash. 482, 88 Pac. 941; Huntington, etc., Transp. Co. *v.* Western Assur. Co., 61 W. Va. 324, 57 S. E. 140.

10. An adjuster may bind the company by his construction of the terms of the policy relating to the loss covered. Gray *v.* Merchant's Ins. Co., 125 Ill. App. 370.

11. Shawnee F. Ins. Co. *v.* Knerr, 72 Kan. 385, 83 Pac. 611.

12. Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134; London Guaranty, etc., Co. *v.* Hartman, 122 Ill. App. 315; Crawford *v.* Travelers' Ins. Co., (Ky. 1907) 99 S. W. 963; Continental F. Ins. Co. *v.* Stunston, (Ky. 1907) 100 S. W. 338; Continental Ins. Co. *v.* Buchanan, (Ky. 1908) 108 S. W. 355; Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649; Thompson *v.* Piedmont Mut. Ins. Co., 77 S. Car. 486, 58 S. E. 341; Security Mut. L. Ins. Co. *v.* Calvert, (Tex. Civ. App. 1907) 100 S. W. 1033.

Agent's Authority a Question for Jury. — Michigan Mut. L. Ins. Co. *v.* Vierra, 116 Ill. App. 476.

917. 2. German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 917; Citizens' Ins. Co. *v.* Henderson Elevator Co., (Ky. 1906) 96 S. W. 601; Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649.

3. Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321.

4. Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908.

6. **Mode of Waiver.** — Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 869.

918. 8. Latham Mercantile, etc., Co. *v.* Harrod, 71 Kan. 565, 81 Pac. 214.

Agent Held Liable for Penalty under Statute Prohibiting Rebates on Premiums. — Hilton *v.* Com., (Ky. 1907) 105 S. W. 956.

Agent Liable Although Contract Made Out of State. — Bartlett *v.* Rothschild, 214 Pa. St. 421, 63 Atl. 1030.

919. 1. Aldrich *v.* New York L. Ins. Co., 121 N. Y. App. Div. 18, 105 N. Y. Supp. 493.

6. Star F. Ins. Co. *v.* Ring, 118 N. Y. App. Div. 107, 103 N. Y. Supp. 137.

7. Scott *v.* Travelers' Ins. Co., 103 Md. 69, 63 Atl. 377, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919.

8. Scott *v.* Travelers' Ins. Co., 103 Md. 69, 63 Atl. 377, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919; Heyn *v.* New York L. Ins. Co., 192 N. Y. 1, 84 N. E. 725; Heyn *v.* New York L. Ins. Co., 118 N. Y. App. Div. 194, 103 N. Y. Supp. 137; Wightman *v.* New York L. Ins. Co., 119 N. Y. App. Div. 496, 104 N. Y. Supp. 214; Aldrich *v.* New York L. Ins. Co., 121 N. Y. App. Div. 18, 105 N. Y. Supp. 493.

9. Mutual Reserve Fund L. Assoc. *v.* Austin, (C. C. A.) 142 Fed. 398; Minnesota Mut. L. Ins. Co. *v.* Link, 230 Ill. 273, 82 N. E. 637; Hirsch *v.* Fidelitas Société, etc., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 582, 99 N. Y. Supp. 517.

920. 5. Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61; Central Acc. Ins. Co. *v.* Spence, 126 Ill. App. 32; Mutual L. Ins. Co. *v.* Mullen, (Md. 1908) 69 Atl. 385; Gaines *v.* Fidelity, etc., Co., 188 N. Y. 411, 81 N. E. 169; Willoughby *v.* Fidelity, etc., Co., 16 Okla. 546, 85 Pac. 713; National L. Ins. Co. *v.* Reppond, (Tex. Civ. App. 1906) 96 S. W. 778; Supreme Lodge, etc., *v.* Payne, (Tex. 1908) 108 S. W. 1160; Supreme Lodge, etc., *v.* Payne, (Tex. Civ. App. 1908) 110 S. W. 523.

921. 1. French *v.* Fidelity, etc., Co., (Wis. 1908) 115 N. W. 869.

2. Provident Sav. L. Assur. Soc. *v.* Dees, 120 Ky. 285, 86 S. W. 522, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921; Mutual L. Ins. Co. *v.* Mullen, (Md. 1908) 69 Atl. 385.

The Texas Statute is not applicable to beneficial associations. Modern Order, etc., *v.* Holling, (Tex. Civ. App. 1907) 105 S. W. 846.

3. Keiper *v.* Equitable L. Assur. Soc., 159 Fed. 206; Provident Sav. L. Assur. Soc. *v.* Dees, 120 Ky. 285, 86 S. W. 522, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921; Ætna L. Ins. Co. *v.* Claypool, (Ky. 1908) 107 S. W. 325; Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469; Satterlee *v.* Modern Brotherhood of America, 15 N. Dak. 92, 106 N. W. 561.

4. Keller *v.* Home L. Ins. Co., 198 Mo. 440, 95 S. W. 903.

5. Roe *v.* National L. Ins. Assoc., (Iowa 1908) 115 N. W. 500; U. S. Health, etc., Ins. Co. *v.* Bennett, (Ky. 1907) 105 S. W. 433; Langdeau *v.* John Hancock Mut. L. Ins. Co., 194 Mass. 56, 80 N. E. 452; Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469, to the same effect as Levie *v.* Metropolitan L. Ins. Co., 163 Mass. 117, cited in the original note.

6. Under the *Kentucky* statute of 1903, it was held that a stipulation providing that answers in an application should be warranties was void. Provident Sav. L. Assur. Soc. *v.* Whayne, (Ky. 1906) 93 S. W. 1049.

922. 1. Capital F. Ins. Co. *v.* King, 82 Ark. 400, 102 S. W. 194; Mutual L. Ins. Co. *v.* Mullen, (Md. 1908) 69 Atl. 385; Gaines *v.* Fidelity, etc., Co., 188 N. Y. 411, 81 N. E. 169; Heintz *v.* Continental Casualty Co., 121 N. Y. App. Div. 75, 105 N. Y. Supp. 519; Colaneri *v.* General Acc. Ins. Corp., (Supm. Ct. App. Div.) 110 N. Y. Supp. 678; Satterlee *v.* Modern Brotherhood of America, 15 N. Dak. 92, 106 N. W. 561; Livingston *v.* Fidelity, etc., Co., 76 Ohio St. 253, 81 N. E. 330; Willoughby *v.* Fidelity, etc., Co., 16 Okla. 546, 85 Pac. 713; Supreme Lodge, etc., *v.* Payne, (Tex. 1908) 108 S. W. 1160; Supreme Lodge, etc., *v.* Payne, (Tex. Civ. App. 1908) 110 S. W. 523; Scofield *v.* Metropolitan L. Ins. Co., 79 Vt. 161, 64 Atl. 1107.

2. Blackman *v.* U. S. Casualty Co., (Tenn. 1907) 103 S. W. 784; Reppond *v.* National L. Ins. Co., (Tex. 1907) 101 S. W. 786.

4. Capital F. Ins. Co. *v.* King, 82 Ark. 400, 102 S. W. 194; Minnesota Mut. L. Ins. Co. *v.* Link, 230 Ill. 273, 82 N. E. 637; Monahan *v.* Mutual L. Ins. Co., 103 Md. 145, 63 Atl. 211, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 932 [922]; Bankers' L. Ins. Co. *v.* Miller, 100 Md. 1, 59 Atl. 116; Donley *v.* Glens Falls Ins. Co., 184 N. Y. 107, 76 N. E. 914; Livingston *v.* Fidelity, etc., Co., 76 Ohio St. 253, 81 N. E. 330; Fidelity, etc., Co. *v.* Guthrie Nat. Bank, 17 Okla. 397, 87 Pac. 300.

5. Globe Mut. L. Ins. Assoc. *v.* March, 118 Ill. App. 261; Monahan *v.* Mutual L. Ins. Co., 103 Md. 145, 63 Atl. 211, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 932 [922]; Mutual L. Ins. Co. *v.* Mullen, (Md. 1908) 69 Atl. 385.

6. Capital F. Ins. Co. *v.* King, 82 Ark. 400, 102 S. W. 194; Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61; Bertrand *v.* Franklin L. Ins. Co., 119 La. 423, 44 So. 186; Monahan *v.* Mutual L. Ins. Co., 103 Md. 145, 63 Atl. 211, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 932 [922]; Mutual L. Ins. Co. *v.* Mullen, (Md. 1908) 69 Atl. 385; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297; Donley *v.* Glens Falls Ins. Co., 184 N. Y. 107, 76 N. E. 914; Gaines *v.* Fidelity, etc., Co., 188 N. Y. 411, 81 N. E. 169; Livingston *v.* Fidelity, etc., Co., 76 Ohio St. 253, 81 N. E. 330; National L. Ins. Co. *v.* Reppond, (Tex. Civ. App. 1906) 96 S. W. 778; Modern Order, etc., *v.* Hollmig, (Tex. Civ. App. 1907) 105 S. W. 846.

923. 1. Central Acc. Ins. Co. *v.* Spence, 126 Ill. App. 32; Bertrand *v.* Franklin F. Ins. Co., 119 La. 423, 44 So. 186; Doll *v.* Equitable L. Assur. Soc., (C. C. A.) 138 Fed. 705; Carmichael *v.* John Hancock Mut. L. Ins. Co., 116 N. Y. App. Div. 291, 101 N. Y. Supp. 602; Gaines *v.* Fidelity, etc., Co., 188 N. Y. 411, 81 N. E. 169.

2. Minnesota Mut. L. Ins. Co. *v.* Link, 230 Ill. 273, 82 N. E. 637; Valentini *v.* Metropolitan Life Ins. Co., 106 N. Y. App. Div. 487, 94 N. Y. Supp. 758; Reppond *v.* National L. Ins. Co., (Tex. 1907) 101 S. W. 786.

5. Court of Honor *v.* Clark, 125 Ill. App. 490, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923; Minnesota Mut. L. Ins. Co. *v.* Link, 230 Ill. 273, 82 N. E. 637.

924. 1. Court of Honor *v.* Clark, 125 Ill. App. 490.

2. North American Acc. Ins. Co. *v.* Rehaeus, 143 Ill. App. 209; Reppond *v.* National L. Ins. Co., (Tex. 1907) 101 S. W. 786.

925. 1. American Bonding, etc., Co. *v.* Burke, 30 Colo. 40, 85 Pac. 102; Globe Mut. L. Ins. Assoc. *v.* March, 118 Ill. App. 261; Bankers' L. Ins. Co. *v.* Miller, 100 Md. 1, 59 Atl. 116; Richards *v.* King, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 720; Scofield *v.* Metropolitan L. Ins. Co., 79 Vt. 161, 64 Atl. 1107.

3. American Bonding Co. *v.* Morrow, 80 Ark. 49, 96 S. W. 613; Minnesota Mut. L. Ins. Co. *v.* Link, 230 Ill. 273, 82 N. E. 637; Pennsylvania F. Ins. Co. *v.* Waggener, (Tex. Civ. App. 1906) 97 S. W. 541; Reppond *v.* National L. Ins. Co., (Tex. 1907) 101 S. W. 786.

4. Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

5. Keiper *v.* Equitable L. Assur. Soc., 159 Fed. 206; Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61; Donley *v.* Glens Falls Ins. Co., 184 N. Y. 107, 76 N. E. 914; Supreme Lodge, etc., *v.* Payne, (Tex. 1908) 108 S. W. 1160.

In Arkansas substantial compliance with all terms, conditions, and warranties of a fire insurance policy upon personal property is made sufficient by statute. People's F. Ins. Assoc. *v.* Gorham, 79 Ark. 160, 95 S. W. 152.

926. **1. Other Statements Amounting to Warranties.** — A statement in an application that the insured had no fear that any one would set fire to his property was held to constitute an express warranty. Donley *v.* Glens Falls Ins. Co., 184 N. Y. 107, 76 N. E. 914.

927. 2. McCaffrey *v.* Knights, etc., of Columbia, 213 Pa. St. 609, 63 Atl. 189, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 927.

3. McCaffrey *v.* Knights, etc., of Columbia, 213 Pa. St. 609, 63 Atl. 189, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 927; Minnesota Mut. L. Ins. Co. *v.* Link, 230 Ill. 273, 82 N. E. 637.

7. Haughton *v.* Ætna L. Ins. Co., (Ind. App. 1908) 85 N. E. 125; Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286; Valentini *v.* Metropolitan L. Ins. Co., 106 N. Y. App. Div. 487, 94 N. Y. Supp. 758; Reppon *v.* National L. Ins. Co., (Tex. 1907) 101 S. W. 786.

8. Fidelity Mut. L. Ins. Co. *v.* Beck, 84 Ark. 57, 104 S. W. 533, 1102; Smith *v.* Bankers L. Assoc., 123 Ill. App. 392; Owen *v.* Metropolitan L. Ins. Co., (N. J. 1907) 67 Atl. 25; French *v.* Fidelity, etc., Co., (Wis. 1908) 115 N. W. 869.

9. Haughton *v.* Ætna L. Ins. Co., (Ind. App. 1908) 85 N. E. 125; French *v.* Fidelity, etc., Co., (Wis. 1908) 115 N. W. 869.

Where Partial Answer Is False There Is Breach of Warranty. — Hanrahan *v.* Metropolitan L. Ins. Co., 72 N. J. L. 504, 63 Atl. 280.

928. 2. *California.* — Lyon *v.* United Moderns, 148 Cal. 470, 83 Pac. 804.

Georgia. — Ætna Ins. Co. *v.* Johnson, 127 Ga. 491, 56 S. E. 643.

Illinois. — Szymkus *v.* Eureka F. & M. Ins. Co., 114 Ill. App. 401; Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155; Commercial Union Assur. Co. *v.* Parker, 119 Ill. App. 126; Smith *v.* Bankers L. Assoc., 123 Ill. App. 392.

Maryland. — Monahan *v.* Mutual L. Ins. Co., 103 Md. 145, 63 Atl. 211; Continental Ins. Co. *v.* Reynolds, (Md. 1907) 68 Atl. 277.

Michigan. — Perry *v.* John Hancock Mut. L. Ins. Co., 143 Mich. 290, 106 N. W. 860.

Missouri. — Hearsh *v.* German F. Ins. Co., (Mo. App. 1908) 110 S. W. 23; Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797.

Nebraska. — Modern Woodmen of America *v.* Wilson, (Neb. 1906) 107 N. W. 568.

New Jersey. — Owen *v.* Metropolitan L. Ins. Co., (N. J. 1907) 67 Atl. 25.

New York. — Dineen *v.* General Acc. Ins. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 344.

North Carolina. — Bray *v.* Virginia F. & M. Ins. Co., 139 N. Car. 390, 51 S. E. 922.

Pennsylvania. — Porter *v.* Insurance Co. of North America, 29 Pa. Super. Ct. 75.

South Dakota. — Edge *v.* St. Paul F. & M. Ins. Co., (S. Dak. 1905) 105 N. W. 281.

Tennessee. — Pacific Mut. L. Ins. Co. *v.* Galbraith, 115 Tenn. 471, 91 S. W. 204.

Virginia. — Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812.

West Virginia. — Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

Wisconsin. — French *v.* Fidelity, etc., Co., (Wis. 1908) 115 N. W. 869.

5. Ætna L. Ins. Co. *v.* Bockting, 39 Ind. App. 586, 79 N. E. 524; Modern Woodmen of America *v.* Vincent, (Ind. App. 1907) 80 N. E. 427; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760; Coleman *v.* Caldwell County Mut. F. Ins. Co., 125 Mo. App. 643, 103 S. W. 150.

929. 1. Central Acc. Ins. Co. *v.* Spence, 126 Ill. App. 32, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 929.

Contra. — U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760.

930. 2. Smith *v.* Bankers L. Assoc., 123 Ill. App. 392; Dineen *v.* General Acc. Ins. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 344; Porter *v.* Insurance Co. of North America, 29 Pa. Super. Ct. 75; Roloff *v.* Farmers' Home Mut. Ins. Co., 130 Wis. 402, 110 N. W. 261.

931. 1. Connecticut F. Ins. Co. *v.* Manning, (C. C. A.) 160 Fed. 382; Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102; Mackintosh *v.* American F. Ins. Co., 150 Cal. 450, 89 Pac. 107; Szymkus *v.* Eureka F. & M. Ins. Co., 114 Ill. App. 401.

2. Arkansas Ins. Co. *v.* McManus, (Ark. 1908) 110 S. W. 797.

4. Fries-Breslin Co. *v.* Star F. Ins. Co., (C. C. A.) 154 Fed. 35, 150 Fed. 611; Mulrooney *v.* Royal Ins. Co., 157 Fed. 508; Hartford F. Ins. Co. *v.* Liddell Co., (Ga. 1908) 60 S. E. 104; Meech *v.* Citizens' Ins. Co., 147 Mich. 342, 110 N. W. 1078.

8. Vancouver Nat. Bank *v.* Law Union, etc. Ins. Co., 153 Fed. 440; Brecht *v.* Law Union, etc., Ins. Co., 153 Fed. 452; Finkbohner *v.* Glens Falls Ins. Co., (Cal. App. 1907) 90 Pac. 318; Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321; Manning *v.* North British, etc., Ins. Co., 123 Mo. App. 456, 99 S. W. 1695; Cremo Light Co. *v.* Parker, 118 N.

Y. App. Div. 845, 103 N. Y. Supp. 710; Kompa *v.* Franklin F. Ins. Co., 28 Pa. Super. Ct. 425; Rochester German Ins. Co. *v.* Monumental Sav. Assoc., 107 Va. 701, 60 S. E. 93; Jump *v.* North British, etc., Ins. Co., 44 Wash. 596, 87 Pac. 928.

10. Contra. — Jump *v.* North British, etc., Ins. Co., 44 Wash. 596, 87 Pac. 928.

12. Rochester German Ins. Co. *v.* Monumental Sav. Assoc., 107 Va. 701, 60 S. E. 93.

932. 4. Hupfel *v.* Boston F. Ins. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 125, 104 N. Y. Supp. 659.

5. Connecticut F. Ins. Co. *v.* Buchanan, (C. C. A.) 141 Fed. 877.

7. Misrepresentation of Cost of Building Avoids Policy. — Capital F. Ins. Co. *v.* King, 82 Ark. 400, 102 S. W. 194.

8. Minnesota Mut. L. Ins. Co. *v.* Link, 230 Ill. 273, 82 N. E. 637.

9. Central Acc. Ins. Co. *v.* Spence, 126 Ill. App. 32.

10. Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294; Bankers' Union of the World *v.* Mixon, 74 Neb. 36, 103 N. W. 1049; McCaffrey *v.* Knights, etc., of Columbia, 213 Pa. St. 609, 63 Atl. 189; Reppond *v.* National L. Ins. Co., (Tex. 1907) 101 S. W. 786.

12. Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

933. 1. Globe Mut. L. Ins. Assoc. *v.* March, 118 Ill. App. 261; North American Acc. Ins. Co. *v.* Rehacek, 123 Ill. App. 219; Minnesota Mut. L. Ins. Co. *v.* Link, 230 Ill. 273, 82 N. E. 637; Metropolitan L. Ins. Co. *v.* Ford, (Ky. 1907) 102 S. W. 876; U. S. Health, etc., Ins. Co. *v.* Bennett, (Ky. 1907) 105 S. W. 433; Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294; Hirsch *v.* Fidelitas Societe, etc., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 582, 99 N. Y. Supp. 517.

4. *Compare* North American Acc. Ins. Co. *v.* Rehacek, 123 Ill. App. 219.

5. American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933; Waring *v.* U. S. Fidelity, etc., Co., 24 App. Cas. (D. C.) 119; U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670; Provident Sav. L. Assur. Soc. *v.* Dees, 120 Ky. 285, 86 S. W. 522; Max J. Winkler Brokerage Co. *v.* Fidelity, etc., Co., 119 La. 735, 44 So. 449; Bankers' L. Ins. Co. *v.* Miller, 100 Md. 1, 59 Atl. 116, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933; Glidden *v.* U. S. Fidelity, etc., Co., (Mass. 1908) 84 N. E. 142; Tyree *v.* Virginia F. & M. Ins. Co., 55 W. Va. 63, 46 S. E. 706.

6. *United States.* — Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681; Connecticut F. Ins. Co. *v.* Manning, 160 Fed. 382; Northwestern Steamship Co. *v.* Maritime Ins. Co., 161 Fed. 166.

Arkansas. — Fidelity Mut. L. Ins. Co. *v.* Beck, 84 Ark. 57, 104 S. W. 532, 1102.

Illinois. — Peterson *v.* Manhattan L. Ins. Co., 115 Ill. App. 421.

Iowa. — Roe *v.* National L. Ins. Assoc., (Iowa 1908) 115 N. W. 500.

Kentucky. — Provident Sav. L. Assur. Soc. *v.* Whayne, (Ky. 1906) 93 S. W. 1049; Moss *v.* Home Ins. Co., (Ky. 1907) 99 S. W. 308; U. S. Health, etc., Ins. Co. *v.* Bennett, (Ky. 1907) 105 S. W. 433; Supreme Lodge, etc., *v.* Bradley, (Ky. 1908) 107 S. W. 209; Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294.

Louisiana. — Max J. Winkler Brokerage Co. *v.* Fidelity, etc., Co., 119 La. 735, 44 So. 449.

Nebraska. — Bankers' Union of the World *v.* Mixon, 74 Neb. 36, 103 N. W. 1049.

North Carolina. — Fishblate *v.* Fidelity, etc., Co., 140 N. Car. 589, 53 S. E. 354, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933; Bryant *v.* Metropolitan L. Ins. Co., (N. Car. 1908) 60 S. E. 983.

Oklahoma. — Fidelity, etc., Co. *v.* Guthrie Nat. Bank, 17 Okla. 397, 87 Pac. 300.

Pennsylvania. — McCaffrey *v.* Knights, etc., of Columbia, 213 Pa. St. 609, 63 Atl. 189.

934. 1. Connecticut F. Ins. Co. *v.* Manning, 160 Fed. 382; North American Acc. Ins. Co. *v.* Williamson, 118 Ill. App. 670; Provident Sav. L. Assur. Soc. *v.* Whayne, (Ky. 1906) 93 S. W. 1049; Monahan *v.* Mutual L. Ins. Co., 103 Md. 145, 63 Atl. 211; Keller *v.* Home L. Ins. Co., 198 Mo. 440, 95 S. W. 903.

When Jury Should Be Instructed. — The question of the materiality of a representation should not be submitted to the jury, unless with instructions where it clearly appears from uncontradicted testimony or from the very nature of the statements that they are material to the risk. Bankers' L. Ins. Co. *v.* Miller, 100 Md. 1, 59 Atl. 116.

3. Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011; German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27; Western Underwriters' Assoc. *v.* Hankins, 221 Ill. 304, 77 N. E. 447; Glens Falls Ins. Co. *v.* Michael, 167 Ind. 699, 79 N. E. 905; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681; Frost *v.* North British Mercantile Ins. Co., 77 Vt. 407, 60 Atl. 803. See also American Cent. Ins. Co. *v.* Antram, 86 Miss. 224, 38 So. 626, where it was held that no waiver could be predicated upon a policy procured by fraudulent statements, as such a policy is void.

4. Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011; Galliher *v.* State Mut. L. Ins. Co., (Ala. 1907) 43 So. 833; Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. App. 1908) 60 S. E. 470; Coleman *v.* Caldwell County Mut. F. Ins. Co., 125 Mo. App. 643, 103 S. W. 150; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681.

5. Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Billings *v.* National Ins. Co., 27 Ohio Cir. Ct. 552.

935. 1. Murray *v.* State L. Ins. Co., 151 Fed. 530; Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011; Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61; Glens Falls Ins. Co. *v.* Michael, 167 Ind. 699, 79 N. E. 905; Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 568; Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Shay *v.* Phœnix Acc., etc., Ben. Assoc., 28 Pa. Super. Ct. 527.

2. Draper *v.* Oswego County Fire Relief Assoc., 190 N. Y. 12, 82 N. E. 755.

Lynchburg Cotton Mill Co. *v.* Travelers'

Ins. Co., 140 Fed. 418, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 935; Phenix Ins. Co. *v.* Grove, 215 Ill. 299, 74 N. E. 141, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 935; German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27; Hopkins *v.* Northwestern Nat. L. Ins. Co., 41 Wash. 592, 83 Pac. 1016.

4. Phenix Ins. Co. *v.* Grove, 215 Ill. 299, 74 N. E. 141, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 935.

5. Phenix Ins. Co. *v.* Grove, 215 Ill. 299, 74 N. E. 141, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 935; Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93; Helbig *v.* Citizens Ins. Co., 120 Ill. App. 58.

6. *California.* — Loring *v.* Dutchess Ins. Co., 1 Cal. App. 186, 81 Pac. 1025; Iverson *v.* Metropolitan L. Ins. Co., 151 Cal. 746, 91 Pac. 609.

Georgia. — Insurance Co. of North America *v.* De Loach, 3 Ga. App. 807, 61 S. E. 406.

Indiana. — Ohio Farmers' Ins. Co. *v.* Vogel, 166 Ind. 239, 76 N. E. 977.

Iowa. — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; Helm *v.* Anchor F. Ins. Co., 132 Iowa 177, 109 N. W. 605.

Kentucky. — Travelers' Ins. Co. *v.* Crawford, (Ky. 1907) 106 S. W. 290.

Michigan. — Perry *v.* John Hancock Mut. L. Ins. Co., 147 Mich. 645, 111 N. W. 195.

Mississippi. — Mississippi Home Ins. Co. *v.* Stevens, (Miss. 1908) 46 So. 245.

Missouri. — Edmonds *v.* Modern Woodmen of America, 125 Mo. App. 214, 102 S. W. 601.

New York. — New York Mut. Sav., etc., Assoc. *v.* Westchester F. Ins. Co., 110 N. Y. App. Div. 760, 97 N. Y. Supp. 436; Wisotzkey *v.* Niagara F. Ins. Co., 112 N. Y. App. Div. 599, 98 N. Y. Supp. 760; Hirsch *v.* Fidelitas Societe, etc., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 582, 99 N. Y. Supp. 517; Irwin *v.* Westchester F. Ins. Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 612.

Pennsylvania. — Porter *v.* Insurance Co. of North America, 29 Pa. Super. Ct. 75; Corrigan *v.* Cambridge Mut. Beneficial Assoc., 33 Pa. Super. Ct. 17.

South Carolina. — Doyle *v.* Hill, 75 S. Car. 261, 55 S. E. 446; Fludd *v.* Equitable L. Assur. Soc., 75 S. Car. 315, 55 S. E. 762; McMillan *v.* Insurance Co. of North America, 78 S. Car. 433, 58 S. E. 1020.

Wisconsin. — Waukau Milling Co. *v.* Citizens' Mut. F. Ins. Co., 130 Wis. 47, 109 N. W. 937.

936. 1. Insurance Co. of North America *v.* De Loach, 3 Ga. App. 807, 61 S. E. 406; Monahan *v.* Mutual L. Ins. Co., 103 Md. 145, 63 Atl. 211; Porter *v.* Insurance Co. of North America, 29 Pa. Super. Ct. 75; Fludd *v.* Equitable L. Assur. Soc., 75 S. Car. 315, 55 S. E. 762; Westchester F. Ins. Co. *v.* Ocean View Pleasure Pier Co., 106 Va. 633, 56 S. E. Metcalf *v.* Mutual F. Ins. Co., 132 Wis. 67, 112 N. W. 22.

2. Edmonds *v.* Modern Woodmen of America, 125 Mo. App. 214, 102 S. W. 601; Roloff *v.* Farmers' Home Mut. Ins. Co., 130 Wis. 402, 110 N. W. 261.

3. Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 869.

4. Brotherhood of Railroad Trainmen *v.* Roberts, (Tex. Civ. App. 1908) 107 S. W. 626. See also dissenting opinion of Gillett, J., in Glens Falls Ins. Co. *v.* Michael, 167 Ind. 659, 74 N. E. 964, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 935 [936].

937. 1. Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681; Glens Falls Ins. Co. *v.* Michael, 167 Ind. 659, 74 N. E. 964; Glens Falls Ins. Co. *v.* Michael, 167 Ind. 699, 79 N. E. 905; Roe *v.* National L. Ins. Assoc., (Iowa 1908) 115 N. W. 500; Brunswick-Balke-Collender Co. *v.* Northern Assur. Co., 142 Mich. 29, 105 N. W. 76; Westchester F. Ins. Co. *v.* Ocean View Pleasure Pier Co., 106 Va. 633, 56 S. E. 584.

2. Virginia F. & M. Ins. Co. *v.* J. I. Case Threshing Mach. Co., 107 Va. 588, 59 S. E. 369.

3. Security Mut. Ins. Co. *v.* Berry, 81 Ark. 92, 98 S. W. 693; Fidelity Mut. L. Ins. Co. *v.* Beck, 84 Ark. 57, 104 S. W. 533, 1102; Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155.

4. *United States.* — Krebs *v.* Security Trust, etc., Ins. Co., 156 Fed. 294; State L. Ins. Co. *v.* Murray, (C. C. A.) 159 Fed. 408.

Arkansas. — Arkansas Mut. F. Ins. Co. *v.* Claiborne, 82 Ark. 150, 100 S. W. 751.

Connecticut. — Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134.

Georgia. — Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. App. 1908) 60 S. E. 470.

Illinois. — Western Underwriters' Assoc. *v.* Hawkins, 221 Ill. 304, 77 N. E. 447; North American Acc. Ins. Co. *v.* Williamson, 118 Ill. App. 670; Lane *v.* Yeomen of America, 125 Ill. App. 406; Catholic Order, etc., *v.* Lynch, 126 Ill. App. 439.

Iowa. — Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Wood *v.* Grand Lodge, etc., 133 Iowa 33, 110 N. W. 164; Davidson *v.* Temple of Supreme Tribe, etc., (Iowa 1907) 111 N. W. 46.

Kansas. — Grand Lodge, etc., *v.* Smith, (Kan. 1907) 92 Pac. 710.

Kentucky. — Home Ins. Co. *v.* Ballew, (Ky. 1906) 96 S. W. 878.

Massachusetts. — Providence Washington Ins. Co. *v.* Wolf, 168 Mass. 690, 80 N. E. 26.

Missouri. — Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147; Roark *v.* City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1.

New York. — Glazer *v.* Home Ins. Co., 100 N. Y. 6, 82 N. E. 727; Rewitzer *v.* Switchmen's Union, 112 N. Y. App. Div. 708, 98 N. Y. Supp. 974; Carey *v.* John Hancock Mut. L. Ins. Co., 114 N. Y. App. Div. 769, 100 N. Y. Supp. 289.

Pennsylvania. — Pearce Mfg. Co. *v.* Lebanon Mut. Ins. Co., 216 Pa. St. 265, 65 Atl. 663.

Tennessee. — Kavanaugh *v.* Security Trust, etc., Ins. Co., 117 Tenn. 33, 96 S. W. 499.

Texas. — Johnson *v.* Standard L., etc., Ins. Co., (Tex. Civ. App. 1906) 97 S. W. 831; Brotherhood of Railway Trainmen *v.* Dee, (Tex. Civ. App. 1908) 108 S. W. 402.

Washington. — Sidebotham *v.* Merchants' F. Ins. Assoc., 41 Wash. 126, 83 Pac. 1028.

5. Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294; Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 568;

Shay *v.* Phœnix Acc., etc., Ben. Assoc., 28 Pa. Super. Ct. 527.

6. Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. App. 1908) 60 S. E. 470; Colonial Mut. F. Ins. Co. *v.* Ellinger, 112 Ill. App. 302; Potomac Ins. Co. *v.* Atwood, 118 Ill. App. 349; Dulany *v.* Fidelity, etc., Co., (Md. 1907) 66 Atl. 614; Carp *v.* Queen Ins. Co., 116 Mo. App. 528, 92 S. W. 1137; Ball *v.* Royal Ins. Co., (Mo. App. 1908) 107 S. W. 1097; Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286; Thompson *v.* Piedmont Mut. Ins. Co., 77 S. Car. 486, 58 S. E. 341; **Batson** *v.* South Carolina Mut. Ins. Co., 78 S. Car. 309, 58 S. E. 936; Hicks *v.* Northwestern Aid Assoc., 117 Tenn. 203, 96 S. W. 962.

Provision as to Time of Bringing Suit Waived by Denial of Liability.— French *v.* Fidelity, etc., Co., (Wis. 1908) 115 N. W. 869; Continental Ins. Co. *v.* Reynolds, (Md. 1907) 68 Atl. 277; Springfield F. & M. Ins. Co. *v.* Reynolds, (Md. 1907) 68 Atl. 281.

7. *United States.* — Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681.

Alabama. — Continental Ins. Co. *v.* Parkes, 142 Ala. 630, 39 So. 204.

Arkansas. — Planters' Mut. Ins. Assoc. *v.* Hamilton, 77 Ark. 27, 90 S. W. 283; Phœnix Assur. Co. *v.* Boyette, 77 Ark. 41, 90 S. W. 284; Security Mut. Ins. Co. *v.* Woodson, 79 Ark. 266, 95 S. W. 481; Yates *v.* Thomason, 83 Ark. 126, 102 S. W. 1112.

Colorado. — National Mut. F. Ins. Co. *v.* Sprague, (Colo. 1907) 92 Pac. 227; Hartford F. Ins. Co. *v.* Hammond. (Colo. 1907) 92 Pac. 686.

Idaho. — Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 88 Pac. 245.

Illinois. — U. S. Health, etc., Ins. Co. *v.* Harvey, 129 Ill. App. 104.

Indiana. — Ohio Farmers' Ins. Co. *v.* Vogel, 166 Ind. 239, 76 N. E. 977; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 937.

Iowa. — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Kentucky. — Continental Ins. Co. *v.* Buchanan, (Ky. 1908) 108 S. W. 355.

Maryland. — Spring Garden Ins. Co. *v.* Whayland, 103 Md. 699, 64 Atl. 925.

Missouri. — Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 568; Johnson *v.* Continental Casualty Co., 122 Mo. App. 369, 99 S. W. 473; Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117; Hays *v.* General Assembly American Benev. Assoc., 127 Mo. App. 195, 104 S. W. 1111.

Nebraska. — Continental Casualty Co. *v.* Buchtel, 74 Neb. 823, 105 N. W. 707.

New York. — Cornell *v.* Travelers' Ins. Co., 120 N. Y. App. Div. 450, 104 N. Y. Supp. 999.

North Carolina. — Lanier *v.* Eastern L. Ins. Co., 142 N. Car. 14, 54 S. E. 786; Thaxton *v.* Metropolitan L. Ins. Co., 143 N. Car. 33, 55 S. E. 419; Parker *v.* Continental Ins. Co., 143 N. Car. 339, 55 S. E. 717.

Pennsylvania. — Munson *v.* German F. Ins. Co., 32 Pa. Super. Ct. 551.

South Dakota. — Kennedy *v.* Agricultural Ins. Co., (S. Dak. 1906) 110 N. W. 116.

Texas. — Orient Ins. Co. *v.* Wingfield, (Tex. Civ. App. 1908) 108 S. W. 788.

Virginia. — North British, etc., Ins. Co. *v.* Edmundson, 104 Va. 486, 52 S. E. 350.

Vermont. — Frost *v.* North British Mercantile Ins. Co., 77 Vt. 407, 60 Atl. 803.

Washington. — Thompson *v.* Germania F. Ins. Co., 45 Wash. 482, 88 Pac. 941.

West Virginia. — Huntington, etc., Transp. Co. *v.* Western Assur. Co., 61 W. Va. 324, 57 S. E. 140.

938. 1. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068.

2. *United States.* — Lynchburg Cotton Mill Co. *v.* Travelers' Ins. Co., (C. C. A.) 149 Fed. 954; Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681.

Alabama. — Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011; Galliher *v.* State Mut. L. Ins. Co., (Ala. 1907) 43 So. 833.

Arkansas. — Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393; Capital F. Ins. Co. *v.* Johnson, 82 Ark. 90, 100 S. W. 749; Arkansas Mut. F. Ins. Co. *v.* Claiborne, 82 Ark. 150, 100 S. W. 751.

California. — Arnold *v.* American Ins. Co., 148 Cal. 660, 84 Pac. 182.

Colorado. — German American Ins. Co. *v.* Hyman, (Colo. 1908) 44 Pac. 27.

Georgia. — Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622.

Illinois. — Globe Mut. L. Ins. Assoc. *v.* March, 118 Ill. App. 261; Commercial Union Assur. Co. *v.* Parker, 119 Ill. App. 126; Lane *v.* Yeomen of America, 125 Ill. App. 406.

Indiana. — Modern Woodmen of America *v.* Vincent, (Ind. App. 1907) 80 N. E. 427.

Kentucky. — Continental Ins. Co. *v.* Buchanan, (Ky. 1908) 108 S. W. 355.

Louisiana. — Melancon *v.* Phœnix Ins. Co., 116 La. 324, 40 So. 718.

Mississippi. — Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791.

Missouri. — Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147; Myers *v.* Maryland Casualty Co., 123 Mo. App. 682, 101 S. W. 124; Leech *v.* Order of Railroad Telegraphers, (Mo. App. 1908) 109 S. W. 811; Roark *v.* City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1; Hearsh *v.* German F. Ins. Co., (Mo. App. 1908) 110 S. W. 23; McIntyre *v.* Liverpool, etc., Ins. Co., (Mo. App. 1908) 110 S. W. 604.

Nebraska. — Farmers', etc., Ins. Co. *v.* Bodge, (Neb. 1906) 106 N. W. 1004; Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286.

New Hampshire. — Gleason *v.* Canterbury Mut. F. Ins. Co., 73 N. H. 583, 64 Atl. 187.

New York. — Hirsch *v.* Fidelitas Societe, etc., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 582, 99 N. Y. Supp. 517; Cardinale *v.* Society of Civility, etc., (Supm. Ct. App. T.) 102 N. Y. Supp. 471; Norwood *v.* Preferred Acc. Ins. Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 529, 107 N. Y. Supp. 104.

Pennsylvania. — Shay *v.* Phœnix Acc., etc., Ben. Assoc., 28 Pa. Super. Ct. 527.

South Carolina. — McMillan *v.* Insurance Co. of North America, 78 S. Car. 433, 58 S. E. 1020.

Virginia. — Foreman *v.* German Alliance Ins. Assoc., 104 Va. 694, 52 S. E. 337.

Washington. — Morgan *v.* Northwestern Nat. L. Ins. Co., 42 Wash. 10, 84 Pac. 412.

Forfeiture Waived by Adjustment of Loss. — Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237.

939. 1. Driscoll *v.* Modern Brotherhood of America, (Neb. 1906) 109 N. W. 158; Dunn *v.* Farmers' F. Ins. Co., 34 Pa. Super. Ct. 245.

2. Burdick *v.* Modern Woodmen, etc., (Wash. 1907) 92 Pac. 439, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 939; Huff *v.* Century F. Ins. Co., (Iowa 1907) 113 N. W. 1078; Germania L. Ins. Co. *v.* Lauer, (Ky. 1906) 97 S. W. 363; A. M. Todd Co. *v.* Farmers' Mut. F. Ins. Co., 137 Mich. 188, 100 N W. 442; *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485; American Cent. Ins. Co. *v.* Antram, 86 Miss. 224, 38 So. 626; Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237; Baer *v.* American Credit Indemnity Co., 116 N. Y. App. Div. 233, 101 N. Y. Supp. 672; Gienty *v.* Knights of Columbus, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 98, 105 N. Y. Supp. 244; Kompa *v.* Franklin F. Ins. Co., 28 Pa. Super. Ct. 425; Knights of Columbus *v.* Burroughs' Beneficiary, (Va. 1908) 60 S. E. 40.

Payment of Loss No Waiver if Induced by Fraud. — Palatine Ins. Co. *v.* Kehoe, (Mass. 1908) 83 N. E. 866.

3. Moore *v.* Supreme Assembly, etc., (Tex. Civ. App. 1906) 93 S. W. 1077.

4. Phenix Ins. Co. *v.* Grove, 215 Ill. 299, 74 N. E. 141; Glens Falls Ins. Co. *v.* Michael, 167 Ind. 659, 74 N. E. 964; Modern Woodmen of America *v.* Vincent, (Ind. App. 1907) 82 N. E. 475; Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719; Roark *v.* City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1.

5. Kentucky Vermillion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 939; Weddington *v.* Piedmont F. Ins. Co., 141 N. Car. 234, 54 S. E. 271, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 939; Franklin L. Ins. Co. *v.* McAfee, (Ky. 1906) 90 S. W. 216; Travelers' Ins. Co. *v.* Nax, (C. C. A.) 142 Fed. 653; Goorberg *v.* Western Assur. Co., 150 Cal. 510, 89 Pac. 130; Lowenstein *v.* Franklin L. Ins. Co., 122 Ill. App. 632; Rundell *v.* Anchor F. Ins. Co., 128 Iowa 575, 105 N. W. 112; Huff *v.* Century F. Ins. Co., (Iowa 1907) 113 N. W. 1078; Shackelford *v.* Indemnity F. Ins. Co., 75 Neb. 680, 106 N. W. 771; Virginia F. & M. Ins. Co. *v.* J. I. Case Threshing Mach. Co., 107 Va. 588, 59 S. E. 369; Woodard *v.* German American Ins. Co., 128 Wis. 1, 106 N. W. 681.

940. 1. **Affirmative Act Impliedly Required by Provision for Reinstatement.** — Brooks *v.* Conservative L. Ins. Co., 132 Iowa 377, 106 N. W. [illegible].

2. Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147. See Waukau Milling Co. *v.* Citizens' Mut. F. Ins. Co., 130 Wis. 47, 109 N. W. 937.

3. Weddington *v.* Piedmont F. Ins. Co., 141 N. Car. 234, 54 S. E. 271.

4. *Georgia.* — Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622.

Indiana. — German-American Ins. Co. *v.* Yeagley, 163 Ind. 651, 71 N. E. 897, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 940; Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. App. 48, 76 N. E. 560; Ohio Farmers' Ins. Co. *v.* Vogel, (Ind. 1906) 76 N. E. 977; U. S. Benev. Soc. *v.* Watson, (Ind. App. 1908) 84 N. E. 29.

Kansas. — Modern Woodmen, etc., *v.* Breckenridge, 75 Kan. 373, 89 Pac. 661; Grand Lodge, etc., *v.* Smith, (Kan. 1907) 92 Pac. 710.

Kentucky. — Fidelity, etc., Co. *v.* Southern R. News Co., (Ky. 1907) 101 S. W. 900; Western, etc., L. Ins. Co. *v.* Oppenheimer, (Ky. 1907) 104 S. W. 721; Continental Ins. Co. *v.* Buchanan, (Ky. 1908) 108 S. W. 355.

Missouri. — Leech *v.* Order of Railroad Telegraphers, (Mo. App. 1908) 109 S. W. 811; Righter *v.* Loyal Protective Assoc., (Mo. App. 1908) 110 S. W. 11.

Nebraska. — Pringle *v.* Modern Woodmen of America, (Neb. 1906) 107 N. W. 756; Farmers', etc., Irrigation Co. *v.* U. S. Fidelity, etc., Co., (Neb. 1906) 108 N. W. 156; Pringle *v.* Modern Woodmen of America, (Neb. 1907) 113 N. W. 231.

New York. — Munn *v.* Masonic L. Assoc., 115 N. Y. App. Div. 855, 101 N. Y. Supp. 91.

Ohio. — Prudential Ins. Co. *v.* Gilligan, 28 Ohio Cir. Ct. 609.

Washington. — Morgan *v.* Northwestern Nat. L. Ins. Co., 42 Wash. 10, 84 Pac. 412.

Forfeiture Waived by Insisting upon Payment Though Demand Not Complied with. — Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011.

Default Is Not Waived by Accepting and depositing a check for a past-due premium note, where the insured was dead at the time of payment and that fact was unknown to the company. Franklin L. Ins. Co. *v.* McAfee, (Ky. 1906) 90 S. W. 216.

Waiver by Collection of Premiums Though Knowledge Only Constructive. — Monahan *v.* Mutual L. Ins. Co., 103 Md. 145, 63 Atl. 211.

Acceptance of a premium after loss does not estop the insurer from defending upon the ground that no such loss took place as that claimed by insured. Searles *v.* Western Assur. Co., 88 Miss. 260, 40 So. 866.

941. 1. Mutual Reserve Fund L. Assoc. *v.* Tuchfeld, (C. C. A.) 159 Fed. 833; Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643; Wilson *v.* Royal Union Mut. L. Ins. Co., (Iowa 1908) 114 N. W. 1051; Kennedy *v.* Metropolitan L. Ins. Co., 116 La. 66, 40 So. 533; Hay *v.* People's Mut. Benev. Assoc., 143 N. Car. 256, 55 S. E. 623; Burdick *v.* Modern Woodmen, etc., (Wash. 1907) 92 Pac. 439.

2. *Compare* Righter *v.* Loyal Protective Assoc., (Mo. App. 1908) 110 S. W. 11.

3. Mutual Reserve Fund L. Assoc. *v.* Tuchfeld, 159 Fed. 833; Lessens *v.* Fidelity Mut. L. Ins. Co., (La. 1908) 45 So. 522; Knowlton *v.* Patrons' Androscoggin Mut. F. Ins. Co., 100 Me. 481, 62 Atl. 280; Moore *v.* Supreme Assembly, etc., (Tex. Civ. App. 1906) 93 S. W. 1077.

Forfeiture Waived by Accepting Renewal Note

in Place of Note Past Due. — Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622.

Retention of Premium to Date of Loss Held to Constitute Waiver. — Farmers, etc., Ins. Co. *v.* Bodge, (Neb. 1906) 106 N. W. 1004.

5. Rundell *v.* Anchor F. Ins. Co., 128 Iowa 575, 105 N. W. 112; Roark *v.* City Trust, etc., Co., (Mo. App. 1908) 110 S. W. 1; Hirsch *v.* Fidelitas Societe, etc., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 582, 99 N. Y. Supp. 517.

Waiver by Payment of Loss after Knowledge of Breach. — Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908.

6. Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393.

942. 1. A beneficiary cannot rely upon a waiver based upon a demand for proofs of loss where it appears that the insured had abandoned his claim for benefits under the policy during his lifetime. Travelers' Protective Assoc. *v.* Roth, (Tex. Civ. App. 1908) 108 S. W. 1039.

3. Greenwaldt *v.* U. S. Health, etc., Ins. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 353, 102 N. Y. Supp. 157.

4. An act causing a forfeiture *ipso facto* is not waived by examining the insured after the loss, although the insured was thereby put to trouble and expense. Draper *v.* Oswego County Fire Relief Assoc., 115 N. Y. App. Div. 807, 101 N. Y. Supp. 168.

5. Travelers' Ins. Co. *v.* Nax, (C. C. A.) 142 Fed. 653; Draper *v.* Oswego County Fire Relief Assoc., 190 N. Y. 12, 82 N. E. 755; Elhart *v.* Pacific Mut. L. Ins. Co., (Wash. 1907) 92 Pac. 419.

6. Metcalf *v.* Mutual F. Ins. Co., 132 Wis. 67, 112 N. W. 22.

7. Arkansas Mut. F. Ins. Co. *v.* Claiborne, 82 Ark. 150, 100 S. W. 751.

9*a*. Waiver by De Facto Directors of Company. — Gleason *v.* Canterbury Mut. F. Ins. Co., 73 N. H. 583, 64 Atl. 187.

10. Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Bowen *v.* Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040.

Waiver by Superintendent of Agencies. — Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200.

943. 1. *Arkansas.* — Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328. 88 S. W. 950.

California. — Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102; Mackintosh *v.* American F. Ins. Co., 150 Cal. 453, 89 Pac. 107.

Georgia. — Hutson *v.* Prudential Ins. Co., 122 Ga. 847, 50 S. E. 1000; Johnson *v.* Ætna Ins. Co., 123 Ga. 404, 51 S. E. 339.

Illinois. — Phenix Ins. Co. *v.* Grove, 215 Ill. 299, 74 N. E. 141.

Indiana. — German-American Ins. Co. *v.* Yeagley, 163 Ind. 651, 71 N. E. 897, *citing* 16 Am. and Eng. Encyc. of Law (2d ed.) 942, 943.

Kentucky. — Crawford *v.* Travelers' Ins. Co., (Ky. 1907) 99 S. W. 963; Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294; Pelican Assur. Co. *v.* Schildknecht, (Ky. 1908) 108 S. W. 312.

Missouri. — Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147; Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237; McIntyre *v.* Liverpool, etc., Ins. Co., (Mo. App. 1908) 110 S. W. 604.

New York. — New York Mut. Sav. Assoc. *v.* Westchester F. Ins. Co., 110 N. Y. App. Div. 760, 97 N. Y. Supp. 436.

Vermont. — Trow *v.* Preferred Acc. Ins. Co., (Vt. 1907) 67 Atl. 821.

Wisconsin. — Roloff *v.* Farmers' Home Mut. Ins. Co., 130 Wis. 402, 110 N. W. 261.

2. *Arkansas.* — Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393.

Georgia. — Johnson *v.* Ætna Ins. Co., 123 Ga. 404, 51 S. E. 339; Ætna Ins. Co. *v.* Johnson, 127 Ga. 491, 56 S. E. 643; Insurance Co. of North America *v.* De Loach, 3 Ga. App. 807, 61 S. E. 406.

Indiana. — German-American Ins. Co. *v.* Yeagley, 163 Ind. 651, 71 N. E. 897, *citing* 16 Am. and Eng. Encyc. of Law (2d ed.) 943; Ætna L. Ins. Co. *v.* Bockting, 39 Ind. App. 586, 79 N. E. 524.

Kentucky. — Germania L. Ins. Co. *v.* Lauer, (Ky. 1906) 97 S. W. 363; Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294.

New York. — New York Mut. Sav., etc., Assoc. *v.* Westchester F. Ins. Co., 110 N. Y. App. Div. 760, 97 N. Y. Supp. 436; Wisotzkey *v.* Niagara Ins. Co., 112 N. Y. App. Div. 599, 98 N. Y. Supp. 760; Irwin *v.* Westchester F. Ins. Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 612.

North Carolina. — Fishblate *v.* Fidelity, etc., Co., 140 N. Car. 589, 53 S. E. 354.

Pennsylvania. — Porter *v.* Insurance Co. of North America, 29 Pa. Super. Ct. 75.

South Carolina. — Doyle *v.* Hill, 75 S. Car. 261, 55 S. E. 446; Fludd *v.* Equitable L. Assur. Soc., 75 S. Car. 315, 55 S. E. 762.

Texas. — Fire Assoc. of Philadelphia *v.* La Grange, etc., Compress Co., (Tex. Civ. App. 1908) 109 S. W. 1134.

Sufficiency of Knowledge. — Where an agent was informed that an applicant was subject to fits, but the applicant concealed the fact that his disease was that of epilepsy, the insurer was not bound by the agent's knowledge. Thompson *v.* Metropolitan L. Ins. Co., (Supm. Ct. Tr. T.) 99 N. Y. Supp. 1006.

3. Johnson *v.* Sun F. Ins. Co., 3 Ga. App. 430, 60 S. E. 118. *Compare* Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237.

4. *United States.* — Rochester German Ins. Co. *v.* Schmidt, 151 Fed. 681.

Colorado. — German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27.

Illinois. — Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93.

Indiana. — Penn Mut. L. Ins. Co. *v.* Senhenn, (Ind. App. 1907) 81 N. E. 87.

Kentucky. — Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 710.

Louisiana. — Richard *v.* Springfield F. & M. Ins. Co., 114 La. 794, 38 So. 563.

Minnesota. — Cooper *v.* German American Ins. Co., 96 Minn. 8, 104 N. W. 685.

Missouri. — Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Gorton *v.* Milwaukee Mechanics' Ins. Co., 115 Mo. App. 69,

90 S. W. 747; Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147; McIntyre *v.* Liverpool, etc., Ins. Co., (Mo. App. 1908) 110 S. W. 604.

Nebraska. — Pringle *v.* Modern Woodmen of America, (Neb. 1906) 107 N. W. 756.

Texas. — North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

5. *United States.* — Wilder *v.* Continental Casualty Co., (C. C. A.) 150 Fed. 92.

Arkansas. — Security Mut. Ins. Co. *v.* Woodson, 79 Ark. 266, 95 S. W. 481; People's F. Ins. Assoc. *v.* Goyne, 79 Ark. 315, 96 S. W. 365; Capital F. Ins. Co. *v.* Montgomery, 81 Ark. 508, 99 S. W. 687.

Colorado. — National Mut. F. Ins. Co. *v.* Sprague, (Colo. 1907) 92 Pac. 227.

Indiana. — Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. App. 48, 76 N. E. 560.

Iowa. — Wensel *v.* Property Mut. Ins. Assoc., 129 Iowa 295, 105 N. W. 522; Helm *v.* Anchor F. Ins. Co., 132 Iowa 177, 109 N. W. 605.

Maryland. — Dulany *v.* Fidelity, etc., Co., (Md. 1907) 66 Atl. 614, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 943, note 5.

Minnesota. — Kelly *v.* Citizens' Mut. F. Assoc., 96 Minn. 477, 105 N. W. 675; Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861.

Mississippi. — Mississippi Home Ins. Co. *v.* Stevens, (Miss. 1908) 46 So. 245.

South Carolina. — Thompson *v.* Piedmont Mut. Ins. Co., 77 S. Car. 486, 58 S. E. 341; Rearden *v.* State Mut. L. Ins. Co., (S. Car. 1908) 60 S. E. 1106.

South Dakota. — Smith *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1907) 113 N. W. 94.

Texas. — Security Mut. L. Ins. Co. *v.* Calvert, (Tex. Civ. App. 1907) 100 S. W. 1033.

Washington. — Starr *v.* Mutual L. Ins. Co., 41 Wash. 228, 83 Pac. 116.

Cannot Waive Requirement that Premium Be Paid in Cash. — Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950.

944. **1.** Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950; Metropolitan L. Ins. Co. *v.* Hall, 104 Va. 572, 52 S. E. 345.

Knowledge that Assured Is Arranging for Other Insurance. — Wensel *v.* Property Mut. Ins. Assoc., 129 Iowa 295, 105 N. W. 522.

Soliciting Agent's Knowledge of Applicant's State of Health Not Binding on Insurer. — Butler *v.* Michigan Mut. L. Ins. Co., 184 N. Y. 337, 77 N. E. 398.

945. **1.** Shackelford *v.* Indemnity F. Ins. Co., 75 Neb. 680, 106 N. W. 771. But see Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. App. 48, 76 N. E. 560; Continental F. Ins. Co. *v.* Stunston, (Ky. 1907) 100 S. W. 338. *Compare* Queen Ins. Co. *v.* Cooper-Cryer Co., 81 Ark. 160, 98 S. W. 694; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760.

2. A. M. Todd Co. *v.* Farmers' Mut. F. Ins. Co., 137 Mich. 188, 100 N. W. 442, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 944 [945]. See also Wensel *v.* Property Mut. Ins. Assoc., 129 Iowa 295, 105 N. W. 522, where the agent procured the additional insurance.

3. *Arkansas.* — Peoples F. Ins. Assoc. *v.* Goyne, 79 Ark. 315, 96 S. W. 365.

Idaho. — Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 88 Pac. 245.

Illinois. — North American Acc. Ins. Co. *v.* Rehacek, 123 Ill. App. 219; American Ins. Co. *v.* Egyptian Lodge, etc., 128 Ill. App. 161.

Indiana. — U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760; Iowa L. Ins. Co. *v.* Houghton, (Ind. App. 1908) 85 N. E. 127.

Kentucky. — Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908; Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294.

Maine. — Hewey *v.* Metropolitan L. Ins. Co., 100 Me. 523, 62 Atl. 600.

Michigan. — Perry *v.* John Hancock Mut. L. Ins. Co., 147 Mich. 645, 111 N. W. 195; Baumler *v.* Farmers' Northern Mut. F. Ins. Co., 148 Mich. 430, 111 N. W. 1069.

Missouri. — Coleman *v.* Caldwell County Mut. F. Ins. Co., 125 Mo. App. 643, 103 S. W. 150.

New York. — Williams *v.* Metropolitan L. Ins. Co., 109 N. Y. App. Div. 843, 96 N. Y. Supp. 823.

Pennsylvania. — Porter *v.* Insurance Co. of North America, 29 Pa. Super. Ct. 75.

Texas. — North American Acc. Ins. Co. *v.* Trenton, (Tex. Civ. App. 1907) 99 S. W. 740.

Medical Examiner. — Mutual Reserve Fund L. Assoc. *v.* Cotter, 81 Ark. 205, 99 S. W. 67; Lyon *v.* United Moderns, 148 Cal. 470, 83 Pac. 804; Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155; Roe *v.* National L. Ins. Assoc., (Iowa 1908) 115 N. W. 500; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297; Carmichael *v.* John Hancock Mut. L. Ins. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 386, 95 N. Y. Supp. 587; Modern Order, etc., *v.* Hollmig, (Tex. Civ. App. 1907) 103 S. W. 474.

When the Insured Learns of the Fraud it is his duty to notify the company and tender his policy for cancellation. Curry *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 263.

4. Hewey *v.* Metropolitan L. Ins. Co., 100 Me. 523, 62 Atl. 600; Coleman *v.* Caldwell County Mut. F. Ins. Co., 125 Mo. App. 643, 103 S. W. 150; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297.

946. **1.** Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908.

2. People's F. Ins. Assoc. *v.* Goyne, 79 Ark. 315, 96 S. W. 365; Capital F. Ins. Co. *v.* Montgomery, 81 Ark. 508, 99 S. W. 687; Baumler *v.* Farmers' Northern Mut. F. Ins. Co., 148 Mich. 430, 111 N. W. 1069; Coleman *v.* Caldwell County Mut. F. Ins. Co., 125 Mo. App. 643, 103 S. W. 150.

3. People's F. Ins. Assoc. *v.* Goyne, 79 Ark. 315, 96 S. W. 365; North American Acc. Ins. Co. *v.* Rehacek, 123 Ill. App. 219; Roe *v.* National L. Ins. Assoc., (Iowa 1908) 115 N. W. 500; Ætna L. Ins. Co. *v.* Howell, (Ky. 1908) 107 S. W. 294; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297; Williams *v.* Metropolitan L. Ins. Co., 109 N. Y. App. Div. 843, 96 N. Y. Supp. 823.

Failure to Read Application Held Inexcusable Negligence. — Rinker *v.* Ætna L. Ins. Co., 211 Pa. St. 608, 64 Atl. 82.

6. Smith *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1907) 113 N. W. 94. See also

Security Mut. Ins. Co. *v.* Woodson, 79 Ark. 266, 95 S. W. 481.

Where an agent was authorized by the applicant to fill out an application from a former application, it was held that he was bound to the strictest adherence to the answers contained in the first application, and the burden of showing such adherence was on the company. Hewey *v.* Metropolitan L. Ins. Co., 100 Me. 523, 62 Atl. 600.

8. Rinker *v.* Ætna L. Ins. Co., 214 Pa. St. 608, 64 Atl. 82.

947. 3. Mudge *v.* Supreme Ct., etc., 149 Mich. 467, 112 N. W. 1130; Baer *v.* American Credit Indemnity Co., 116 N. Y. App. Div. 233, 101 N. Y. Supp. 672; Elliott *v.* Knights of Modern Maccabees, (Wash. 1907) 89 Pac. 929.

4. Baer *v.* American Credit Indemnity Co., 116 N. Y. App. Div. 233, 101 N. Y. Supp. 672.

6. Shawnee F. Ins. Co. *v.* Knerr, 72 Kan. 385, 83 Pac. 611; Emanuel *v.* Maryland Casualty Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 378, 94 N. Y. Supp. 36; Berger *v.* Ætna L. Ins. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 385, 95 N. Y. Supp. 541. *Compare* Arnold *v.* American Ins. Co., 148 Cal. 660, 84 Pac. 182.

7. *Arkansas.* — Arkansas Mut. F. Ins. Co. *v.* Witham, 82 Ark. 226, 101 S. W. 721.

Connecticut. — Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569.

Idaho. — Allen *v.* Phœnix Assur. Co., 12 Idaho 653, 88 Pac. 245.

Illinois. — Western Underwriters' Assoc. *v.* Hankins, 221 Ill. 304, 77 N. E. 447.

Indiana. — Ohio Farmers' Ins. Co. *v.* Vogel, 166 Ind. App. 239, 76 N. E. 977.

Kansas. — Ft. Scott Bldg., etc., Assoc. *v.* Palatine Ins. Co., 74 Kan. 272, 86 Pac. 142.

Massachusetts. — Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66; Providence Washington Ins. Co. *v.* Wolf, 168 Mass. 690, 80 N. E. 26.

Missouri. — Cullen *v.* Insurance Co. of North America, 126 Mo. App. 412, 104 S. W. 117.

Nebraska. — Herpolsheimer *v.* Citizens' Ins. Co., (Neb. 1907) 113 N. W. 152.

New York. — Glazer *v.* Home Ins. Co., 190 N. Y. 6, 82 N. E. 727.

Vermont. — Frost *v.* North British Mercantile Ins. Co., 77 Vt. 407, 60 Atl. 803.

Washington. — Thompson *v.* Germania F. Ins. Co., 45 Wash. 482, 88 Pac. 941.

West Virginia. — Huntington, etc., Transp. Co. *v.* Western Assur. Co., 61 W. Va. 324, 57 S. E. 140.

8. Ball *v.* Royal Ins. Co., (Mo. App. 1908) 107 S. W. 1097.

9. Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286. But see Berger *v.* Ætna L. Ins. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 385, 95 N. Y. Supp. 541.

948. 1. Cayford *v.* Metropolitan L. Ins. Co., 5 Cal. App. 715, 91 Pac. 266; Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971; Knights of Columbus *v.* Burroughs' Beneficiary, (Va. 1908) 60 S. E. 40.

2. Union Cent. L. Ins. Co. *v.* Robinson, (C. C. A.) 148 Fed. 358; Whigham *v.* Supreme Ct., etc., (Oregon 1908) 94 Pac. 968; Continental Ins. Co. *v.* Cummings, (Tex. Civ. App. 1906) 95 S. W. 48.

Where a general agent issued a policy with knowledge that the house insured was unoccupied, the company was held to be estopped from setting up a breach of condition requiring occupancy, although the agent acquired the knowledge in his capacity of renting agent of the insured. New York Mut. Sav., etc., Assoc. *v.* Westchester F. Ins. Co., 110 N. Y. App. Div. 760, 97 N. Y. Supp. 436.

3. Fire Assoc. of Philadelphia *v.* La Grange, etc., Compress Co., (Tex. Civ. App. 1908) 109 S. W. 1134.

5. But see Foreman *v.* German Alliance Ins. Assoc., 104 Va. 694, 52 S. E. 337.

6. Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649.

7. Cayford *v.* Metropolitan L. Ins. Co., 5 Cal. App. 715, 91 Pac. 266; Iverson *v.* Metropolitan L. Ins. Co., 151 Cal. 746, 91 Pac. 609; Hutson *v.* Prudential Ins. Co., 122 Ga. 847, 50 S. E. 1000.

8. Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950; Capital F. Ins. Co. *v.* Montgomery, 81 Ark. 508, 99 S. W. 687; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760; Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237.

949. 1. Cayford *v.* Metropolitan L. Ins. Co., 5 Cal. App. 715, 91 Pac. 266.

2. Hutson *v.* Prudential Ins. Co., 122 Ga. 847, 50 S. E. 1000; Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643; Metropolitan L. Ins. Co. *v.* Hall, 104 Va. 572, 52 S. E. 345.

3. Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200; Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93; Penn Mut. L. Ins. Co. *v.* Senhenn, (Ind. App. 1907) 81 N. E. 87; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760; North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163. See also Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237; Pringle *v.* Modern Woodmen of America, (Neb. 1906) 107 N. W. 756.

4. People's F. Ins. Assoc. *v.* Goyne, 79 Ark. 315, 96 S. W. 365; Johnson *v.* Ætna Ins. Co., 123 Ga. 404, 51 S. E. 330; Dulany *v.* Fidelity, etc., Co., (Md. 1907) 66 Atl. 614; New York Mut. Sav., etc., Assoc. *v.* Westchester F. Ins. Co., 110 N. Y. App. Div. 760, 97 N. Y. Supp. 436; Wisotzkey *v.* Niagara Ins. Co., 112 N. Y. App. Div. 509, 98 N. Y. Supp. 760; Rearden *v.* State Mut. L. Ins. Co., (S. Car. 1908) 60 S. E. 1106.

950. 1. Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493.

2. German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760; Continental Ins. Co. *v.* Reynolds, (Md. 1907) 68 Atl. 277.

3. Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134; Gorton *v.* Milwaukee Mechanics' Ins. Co., 115 Mo. App. 69, 90 S. W. 747.

4. Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102; Mackintosh *v.* American F. Ins. Co., 150 Cal. 453, 89 Pac. 107.

951. 1. *Compare* U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760.

3. *Arkansas.* — Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200.

California. — Arnold *v.* American Ins. Co., 148 Cal. 660, 84 Pac. 182; Mackintosh *v.* Agricultural F. Ins. Co., 150 Cal. 440, 89 Pac. 102; Mackintosh *v.* American F. Ins. Co., 150 Cal. 455, 89 Pac. 107.

Colorado. — German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27.

Connecticut. — Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134; Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569.

Illinois. — Farmers', etc., L. Assoc. *v.* Caine, 224 Ill. 599, 79 N. E. 956.

Indiana. — Penn Mut. L. Ins. Co. *v.* Senhenn, (Ind. App. 1907) 81 N. E. 87.

Kentucky. — Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719.

Oklahoma. — Gish *v.* Insurance Co. of North America, 16 Okla. 59; 87 Pac. 869.

Texas. — North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

4. Mulrooney *v.* Royal Ins. Co., 157 Fed. 598; Cayford *v.* Metropolitan L. Ins. Co., 5 Cal. App. 715, 91 Pac. 266; Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 869.

5. Clements *v.* German Ins. Co., 153 Fed. 237; Gragg *v.* Home Ins. Co., (Ky. 1908) 107 S. W. 321; Beddall *v.* Citizens Ins. Co., 28 Pa. Super. Ct. 600; Smith *v.* West Branch Mut. F. Ins. Co., 31 Pa. Super. Ct. 29.

7. Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493; Woodard *v.* German American Ins. Co., 128 Wis. 1, 106 N. W. 681.

8. Scottish Nat. Ins. Co. *v.* Adams, 122 Ill. App. 471.

952. 1. Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134; Reed *v.* Continental Ins. Co., (Del. 1906) 65 Atl. 569; Frost *v.* North British Mercantile Ins. Co., 77 Vt. 407, 60 Atl. 803.

3. Caldwell *v.* Life Ins. Co., 140 N. Car. 100, 52 S. E. 252.

The insured may recover the premiums paid where it appears that the company fraudulently misrepresented its assets and liabilities. Moore *v.* Mutual Reserve Fund L. Assoc., 121 N. Y. App. Div. 335, 106 N. Y. Supp. 255.

953. 1. Empire Mut. Annuity, etc., Ins. Co. *v.* Avery, (Ga. App. 1907) 59 S. E. 324.

3. Hutchinson *v.* Palmer, 147 Ala. 517, 40 So. 339, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 953.

When Policy Does Not Express Contract. — Remmel *v.* Griffin, 81 Ark. 269, 99 S. W. 70.

8. Parker *v.* Simpson, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 537, 107 N. Y. Supp. 199.

10. After cancellation the insurer cannot elect to continue the policy and recover the full premium. Parker *v.* Murphy, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 541, 107 N. Y. Supp. 202.

954. 1. Where a policy has become paid up and the insurer fraudulently represents to the insured that it is necessary for him to continue the payment of premiums to keep his policy in force, the premiums may be recovered. Hopkins *v.* Northwestern Nat. L. Ins. Co., 41 Wash. 592, 83 Pac. 1019.

2. Metropolitan L. Ins. Co. *v.* Felix, 73 Ohio St. 46, 75 N. E. 941.

3. Metropolitan L. Ins. Co. *v.* Felix, 73 Ohio St. 46, 75 N. E. 941.

4. Elliott *v.* Knights of Modern Maccabees, (Wash. 1907) 89 Pac. 929, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 954; Provident Sav. L. Assur. Soc. *v.* Whayne, (Ky. 1906) 93 S. W. 1049; *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485.

The contrary was held in an action by a beneficial association to cancel a certificate for a false warranty in the application. Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297.

5. Where the insured seeks to establish the validity of a policy in an action, the insurer is not precluded from insisting upon a forfeiture by failing to offer to return an unearned premium, the contract providing that such premium should be returned upon surrender of the policy. Weddington *v.* Piedmont F. Ins. Co., 141 N. Car. 234, 54 S. E. 271.

6. Michaelsen *v.* Security Mut. L. Ins. Co., (C. C. A.) 154 Fed. 356.

7. Home Ins. Co. *v.* My rs, (Ky. 1908) 111 S. W. 289.

9. *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485.

A false warranty as to personalty avoids a policy covering both real and personal property. Fries-Breslin Co. *v.* Star F. Ins. Co., 150 Fed. 611, *affirmed* (C. C. A.) 154 Fed. 35.

955. 1. **Introduction of Policy and Proofs of Loss Constitutes Prima Facie Case.** — Helbig *v.* Citizens Ins. Co., 120 Ill. App. 58.

Plaintiff Must Show Reinstatement after Default. — Woodmen of the World *v.* Jackson, 80 Ark. 419, 97 S. W. 673.

Plaintiff Must Show that Building Was Kind Specified in Contract. — Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493.

Plaintiff Must Show Existence of Parol Agreement to Insure. — Hartford F. Ins. Co. *v.* Whitman, 75 Ohio St. 312, 79 N. E. 459.

5. Troy *v.* London, (Ala. 1905) 39 So. 713; Ryan *v.* Metropolitan L. Ins. Co., 117 Mo. App. 688, 93 S. W. 347.

6. Barner *v.* Lyter, 31 Pa. Super. Ct. 435.

9. Arkansas Mut. F. Ins. Co. *v.* Stuckey, 85 Ark. 33, 106 S. W. 203; Supreme Lodge, etc., *v.* Lipscomb, 50 Fla. 406, 39 So. 637; Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; Mutual L. Ins. Co. *v.* Mullen, (Md. 1908) 69 Atl. 385; Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493; Paquette *v.* Prudential Ins. Co., 193 Mass. 215, 79 N. E. 250; Gruwell *v.* National Council, etc., 126 Mo. App. 496, 104 S. W. 884; Carmichael *v.* John Hancock Mut. L. Ins. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 386, 95 N. Y. Supp. 587; Kinney *v.* Brotherhood of American Yeomen, 15 N. Dak. 21, 106 N. W. 44; Scofield *v.* Metropolitan L. Ins. Co., 79 Vt. 161, 64 Atl. 1107.

Under the *Iowa* statute the burden is on the plaintiff to show that the breach of a condition did not contribute to the loss. Krell *v.* Chicka-

saw Farmers' Mut. F. Ins. Co., 127 Iowa 748, 104 N. W. 364.

956. 1. Nabors *v.* Dixie Mut. F. Ins. Co., 84 Ark. 184, 105 S. W. 92; Hewey *v.* Metropolitan L. Ins. Co., 100 Me. 523, 62 Atl. 600; Mutual L. Ins. Co. *v.* Mullen, (Md. 1908) 69 Atl. 385; Valentini *v.* Metropolitan L. Ins. Co., 106 N. Y. App. Div. 487, 94 N. Y. Supp. 758; Scofield *v.* Metropolitan L. Ins. Co., 79 Vt. 161, 64 Atl. 1107; Goldman *v.* Fidelity, etc., Co., 125 Wis. 390, 104 N. W. 80.

Burden on Defendant to Show Fraud in Proofs of Loss. — Virginia F. & M. Ins. Co. *v.* Hogue, 105 Va. 355, 54 S. E. 8.

2. Kentucky Vermillion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695; Johnson *v.* Mercantile Town Mut. F. Ins. Co., 120 Mo. App. 80, 96 S. W. 697.

957. 4. Supreme Lodge, etc., *v.* Lipscomb, 50 Fla. 406, 39 So. 637; Kinney *v.* Brotherhood of American Yeomen, 15 N. Dak. 21, 106 N. W. 44. *Compare* Kentucky Vermillion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., (C. C. A.) 146 Fed. 695; Johnson *v.* Mercantile Town Mut. F. Ins. Co., 120 Mo. App. 80, 96 S. W. 697.

6. Mutual L. Ins. Co. *v.* Stegall, 1 Ga. App. 611, 58 S. E. 79.

7. Franklin L. Ins. Co. *v.* McAfee, (Ky. 1906) 90 S. W. 216; American Ins. Co. *v.* Hornbarger, (Ark. 1908) 108 S. W. 213; Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971; Kompa *v.* Franklin F. Ins. Co., 28 Pa. Super. Ct. 425.

8. Richmond Coal Co. *v.* Commercial Union Assur. Co., 159 Fed. 985; Continental Casualty Co. *v.* Todd, 82 Ark. 214, 101 S. W. 168; German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27; Supreme Lodge, etc., *v.* Lipscomb, 50 Fla. 406, 39 So. 637; Lloyd *v.* Travelers' Protective Assoc., 115 Ill. App. 39; Connell *v.* Iowa State Traveling Men's Assoc., (Iowa 1908) 116 N. W. 820; Noyes *v.* Commercial Travelers' Eastern Acc. Assoc., 190 Mass. 171, 76 N. E. 665; Garcelon *v.* Commercial Travelers' Eastern Acc. Assoc., 195 Mass. 531, 81 N. E. 201; Starr *v.* Ætna L. Ins. Co., 41 Wash. 199, 83 Pac. 113.

958. 3. Grand Lodge, etc., *v.* Banister, 80 Ark. 190, 96 S. W. 742; Van Norman *v.* Modern Brotherhood of America, 134 Iowa 575, 111 N. W. 992; Equitable L. Ins. Co. *v.* Hebert, 37 Ind. App. 373, 76 N. E. 1023; Connell *v.* Iowa State Traveling Men's Assoc., (Iowa 1908) 116 N. W. 820; Ferris *v.* Loyal Americans, etc., (Mich. 1908) 116 N. W. 445; Lindahl *v.* Supreme Ct., 100 Minn. 87, 110 N. W. 358; Kornig *v.* Western L. Indemnity Co., 102 Minn. 31, 112 N. W. 1039; Hildebrand *v.* United Artisans, (Oregon 1907) 91 Pac. 542; Sovereign Camp, etc., *v.* Boehme, (Tex. Civ. App. 1906) 97 S. W. 847; Rohloff *v.* Aid Assoc., etc., 130 Wis. 61, 109 N. W. 989; Cady *v.* Fidelity, etc., Co., (Wis. 1907) 113 N. W. 967.

5. National Assoc., etc., *v.* Scott, (C. C. A.) 155 Fed. 92; Preferred Acc. Ins. Co. *v.* Fielding, 35 Colo. 19, 83 Pac. 1013; Central Acc. Ins. Co. *v.* Stevens, 111 Ill. App. [illegible]

6. Garcelon *v.* Commercial Travelers' Eastern Acc. Assoc., 195 Mass. 531, 81 N. E. 201.

8. Continental Casualty Co. *v.* Todd, 82 Ark. 214, 101 S. W. 168; Noyes *v.* Commercial Travelers' Eastern Acc. Assoc., 190 Mass. 171, 76 N. E. 665.

959. 1. Franklin L. Ins. Co. *v.* McAfee, (Ky. 1906) 90 S. W. 216.

[illegible] Kinney *v.* Brotherhood of American Yeomen, 15 N. Dak. 21, 106 N. W. 44.

Where the policy acknowledges receipt of the first premium, the burden of showing that such premium was not paid is on the company. Cauthen *v.* Hartford L. Ins. Co., (S. Car. 1908) 61 S. E. 428.

[illegible] for [illegible] hood of Railway Trainmen *v.* Dee, (Tex. 1908) 111 S. W. 396.

2. Globe Mut. L. Ins. Assoc. *v.* March, 118 Ill. App. 261; Sleight *v.* Supreme Council, etc., 133 Iowa 379, 107 N. W. 183; Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469; Gruwell *v.* National Council, etc., 126 Mo. App. 496, 104 S. W. 884; Wilkie *v.* National Council, etc., (N. Car. 1908) 61 S. E. 580; Continental Casualty Co. *v.* Wade, (Tex. Civ. App. 1907) 99 S. W. 877.

Burden on Insurer to Show Proper Notice of Assessment. — Dufly *v.* Fidelity Mut. Ins. Co., 142 N. Car. 103, 55 S. E. 79.

3. Home Ins. Co. *v.* Chattahoochee Lumber Co., 126 Ga. 334, 55 S. E. 11; Lanier *v.* Eastern L. Ins. Co., 142 N. Car. 14, 54 S. E. 786; Kinney *v.* Brotherhood of American Yeomen, 15 N. Dak. 21, 106 N. W. 44.

Where an insane person asked to withdraw from a beneficial association, it was held that the association must show that it acted in good faith in obtaining a release from liability on such person's certificate. Wightman *v.* Grand Lodge, etc., 121 Mo. App. 252, 98 S. W. 829.

4. **Burden on Plaintiff to Show Error in Proofs.** — Felix *v.* Fidelity Mut. L. Ins. Co., 216 Pa. St. 95, 64 Atl. 903.

Burden on Defendant to Show Fraud in Proofs of Loss. — Newton *v.* Theresa Village Mut. F. Ins. Co., 125 Wis. 289, 104 N. W. 107.

7. Seibert *v.* Germania F. Ins. Co., 132 Iowa 58, 106 N. W. 507.

8. German American Ins. Co. *v.* Hyman, (Colo. 1908) 94 Pac. 27.

960. 1. **The Defendant Must Show Payment** of the proceeds of a beneficiary certificate, and that payment was made to the one entitled thereto. Kittredge *v.* Firemen's Mut. Relief Assoc., 191 Mass. 23, 77 N. E. 648.

7. Perry *v.* John Hancock Mut. L. Ins. Co., 143 Mich. 290, 106 N. W. 860.

9. Taylor *v.* Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919.

Evidence of Rejection by Other Companies Admissible. — Provident Sav. L. Assur. Soc. *v.* Whayne, (Ky. 1906) 93 S. W. 1049.

962. 6. **General Reputation as to Ownership Admissible to Show Knowledge on Part of Insurer.** — Continental Ins. Co. *v.* Cummings, (Tex. Civ. App. 1906) 95 S. W. 48.

963. 1. **Plaintiff May Rebut Evidence of Financial Condition by Showing Value of Assets.** — Palatine Ins. Co. *v.* Santa Fé Mercantile Co., 13 N. Mex. 341, 82 Pac. 363.

964. 4. Glaser *v.* Home Ins. Co., (Supm.

Ct. App. T.) 47 Misc. (N. Y.) 89, 93 N. Y. Supp. 524.

10. Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286.

Such Testimony Relevant on Issue of Fraud in Proofs of Loss. — Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812.

11. Dahlen *v.* Mechanics' Ins. Co., 131 Iowa 217, 108 N. W. 324; Jensen *v.* Palatine Ins. Co., (Neb. 1908) 116 N. W. 286.

12. Furlong *v.* North British, etc., Ins. Co., (Iowa 1907) 113 N. W. 1084; Furlong *v.* American Cent. F. Ins. Co., (Iowa 1907) 113 N. W. 1087; Glaser *v.* Home Ins. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 89, 93 N. Y. Supp. 524; Smith *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1907) 113 N. W. 94; Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86.

16. Adjustment Admissible as Evidence of Amount Due. — German Ins. Co. *v.* Gibbs, (Tex. Civ. App. 1906) 92 S. W. 1068.

965. 1. Furlong *v.* American Cent. F. Ins. Co., (Iowa 1907) 113 N. W. 1087.

3. Furlong *v.* North British, etc., Ins. Co., (Iowa 1907) 113 N. W. 1084.

Where a policy provided that the amount payable should be the value of the goods destroyed at the time and place of loss, an invoice made several months before the fire at another place was held to be incompetent, unless the comparative values at the different times were shown. Lundvick *v.* Westchester F. Ins. Co., 128 Iowa 376, 104 N. W. 429.

Inventories Not Conclusive. — Furlong *v.* American Cent. F. Ins. Co., (Iowa 1907) 113 N. W. 1087.

6. Arkansas Mut. F. Ins. Co. *v.* Woolverton, 82 Ark. 476, 102 S. W. 226.

7. Arkansas Mut. F. Ins. Co. *v.* Woolverton, 82 Ark. 476, 102 S. W. 226.

Where one of the books required to be kept was destroyed, parol testimony was held to be admissible by way of completing the evidence taken from other books. McMillan *v.* Insurance Co. of North America, 78 S. Car. 433, 58 S. E. 1020.

9. Furlong *v.* North British, etc., Ins. Co., (Iowa 1907) 113 N. W. 1084; Furlong *v.* American Cent. F. Ins. Co., (Iowa 1907) 113 N. W. 1087; Smith *v.* Mutual Cash Guaranty F. Ins. Co., (S. Dak. 1907) 113 N. W. 94.

966. 2. **Secondary Evidence of Policy.** — **A Copy of a Policy** made by the plaintiff's attorney from the original was held admissible, where it appeared that the original had been sent to the company with the proofs of loss, and the defendant failed to produce such original after notice. Carr *v.* Prudential Ins. Co., 115 N. Y. App. Div. 755, 101 N. Y. Supp. 158.

Where an insured had obtained renewal policies for several years, and it appeared that the [illegible] policy of a previous year was held to be admissible as a copy. Edgefield Mfg. Co. *v.* Maryland Casualty Co., 78 S. Car. 73, 58 S. E. 969.

[illegible] not apply to an application to revive a lapsed policy. Holden *v.* Metropolitan L. Ins. Co., 188 Mass. 212, 74 N. E. 337.

5. The *Iowa* statute precludes proof of the contents of the application. Bauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

It is error to exclude the application when it is attached to the policy. Supreme Lodge, etc., *v.* Bradley, (Ky. 1908) 109 S. W. 1178.

9. *United States.* — Connecticut F. Ins. Co. *v.* Buchanan, (C. C. A.) 141 Fed. 377; Lefler *v.* New York L. Ins. Co., (C. C. A.) 143 Fed. 814; St. Paul F. & M. Ins. Co. *v.* Penman, (C. C. A.) 151 Fed. 961.

Iowa. — Kelsey *v.* Continental Casualty Co., 131 Iowa 207, 108 N. W. 221.

Kentucky. — Provident Sav. L. Assur. Soc. *v.* Elliott, (Ky. 1906) 93 S. W. 659.

Massachusetts. — Bowditch *v.* Norwich Union F. Ins. Co., 193 Mass. 565, 79 N. E. 788.

Oklahoma. — Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 869.

South Dakota. — Bowen *v.* Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040.

Tennessee. — Johnson *v.* Continental Ins. Co., (Tenn. 1907) 107 S. W. 688.

Texas. — Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057.

Virginia. — Metropolitan L. Ins. Co. *v.* Hall, 104 Va. 572, 52 S. E. 345.

Washington. — Ferguson *v.* Lumbermen's Ins. Co., 45 Wash. 209, 88 Pac. 128.

Wisconsin. — Rief *v.* Continental Casualty Co., 131 Wis. 368, 111 N. W. 502.

Parol Evidence Is Admissible to show that statements were inserted in an application by the insurer's agent without the knowledge of insured. Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297.

967. 1. Harris *v.* North American Ins. Co., 190 Mass. 461, 77 N. E. 493; Wolverine Lumber Co. *v.* Phœnix Ins. Co., 145 Mich. 558, 108 N. W. 1088.

Parol Evidence Admitted to Show Value of Portion of Building Constructed after Policy Issued. — Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812.

3. Parol evidence as to the meaning of the word "noon" as established by the custom of the place was held to be admissible in an action upon a policy that expired at that time. Rochester German Ins. Co. *v.* Peaslee Gaulbert Co., (Ky. 1905) 87 S. W. 1115.

968. 2. Grand Lodge, etc., *v.* Mackey, (Tex. Civ. App. 1907) 104 S. W. 907; Travelers' Protective Assoc. *v.* Roth, (Tex. Civ. App. 1908) 108 S. W. 1039.

3. Bankers' Fraternal Union *v.* Donahue, (Ky. 1908) 109 S. W. 878; Dakan *v.* Union Mut. L. Ins. Co., 125 Mo. App. 451, 102 S. W. 634; Grand Lodge, etc., *v.* Mackey, (Tex. Civ. App. 1907) 104 S. W. 907.

Beneficiary's Declarations Admissible against Executor. Armond *v.* Connecticut Mut. L. Ins. Co., 145 N. Car. 140, 58 S. E. 997.

4. Felix *v.* Fidelity Mut. L. Ins. Co., 216 Pa. St. 95, 64 Atl. 903.

5. Prussian Nat. Ins. Co. *v.* Empire Catering Co., 111 Ill. App. 62; Brunswick-Balke-Collender Co. *v.* Northern Assur. Co., 150 Mich. 311, 113 N. W. 1113; Hildebrand *v.* United Artisans, (Oregon 1907) 91 Pac. 542; Wheaton *v.* Liverpool, etc., Ins. Co., (S. Dak. 1905) 104 N. W. 850; Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812; Frost *v.* North Brit-

ish Mercantile Ins. Co., 77 Vt. 407, 60 Atl. 803.

6. Helbig *v.* Citizens Ins. Co., 120 Ill. App. 58.

7. Modern Woodmen of America *v.* Graber, 128 Ill. App. 585; Craiger *v.* Modern Woodmen of America, (Ind. App. 1907) 80 N. E. 429; Lundvick *v.* Westchester F. Ins. Co., 128 Iowa 376, 104 N. W. 429; United Commercial Travelers', etc., *v.* Barnes, 72 Kan. 506, 82 Pac. 1099; Continental Casualty Co. *v.* Colvin, (Kan. 1908) 95 Pac. 566; Baldi *v.* Metropolitan L. Ins. Co., 30 Pa. Super. Ct. 213; Rondinella *v.* Metropolitan L. Ins. Co., 30 Pa. Super. Ct. 223; Tucker *v.* Colonial F. Ins. Co., 58 W. Va. 30, 51 S. E. 86. *Compare* Haapa *v.* Metropolitan L. Ins. Co., 150 Mich. 467, 114 N. W. 380.

Affidavits Concerning Other Matters. — Triple Tie Ben. Assoc. *v.* Wheatley, (Kan. 1907) 91 Pac. 59.

Proofs Not Evidence of Amount of Loss. — Lancashire Ins. Co. *v.* Lyon, 124 Ill. App. 491.

Admissible as Prima Facie Evidence of Cause of Death. — Felix *v.* Fidelity Mut. L. Ins. Co., 216 Pa. St. 95, 64 Atl. 903.

Proofs Held Prima Facie Evidence of Their Contents. — Supreme Lodge, etc., *v.* Bradley, (Ky. 1908) 109 S. W. 1178.

969. 4. Spring Garden Ins. Co. *v.* Whayland, 103 Md. 699, 64 Atl. 925; Krapp *v.* Metropolitan L. Ins. Co., 143 Mich. 369, 106 N. W. 1107.

6. Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61; U. S. Health, etc., Ins. Co. *v.* Harvey, 129 Ill. App. 104; Metropolitan L. Ins. Co. *v.* Thomas, (Ky. 1908) 106 S. W. 1175; Krapp *v.* Metropolitan L. Ins. Co., 143 Mich. 369, 106 N. W. 1107; Ferris *v.* Loyal Americans, etc., (Mich. 1908) 116 N. W. 445; Felix *v.* Fidelity Mut. L. Ins. Co., 216 Pa. St. 95, 64 Atl. 903.

7. Contra. — Craiger *v.* Modern Woodmen of America, (Ind. App. 1907) 80 N. E. 429; Kane *v.* Supreme Tent, etc., 113 Mo. App. 104, 87 S. W. 547.

A document signed by the coroner merely giving his opinion as to the cause of death is inadmissible. Kinney *v.* Brotherhood of American Yeomen, 15 N. Dak. 21, 106 N. W. 44.

8. Craiger *v.* Modern Woodmen of America, (Ind. App. 1907) 80 N. E. 429.

INSURANCE BROKERS.

970. 1. Fredman *v.* Consolidated F. & M. Ins. Co., (Minn. 1908) 116 N. W. 221.

971. 1. One Who, under a Contract with General Agents of an insurance company, gives his services exclusively to them in soliciting insurance, and receives a portion of their commissons as compensation, is not an insurance broker. Girardeau *v.* Atlanta, 2 Ga. App. 228, 58 S. E. 314.

2. Empress Assur. Corp. *v.* Bowring, 11 Com. Cas. (Eng.) 107; Fredman *v.* Consolidated F. & M. Ins. Co., (Minn. 1908) 116 N. W. 221; Westchester F. Ins. Co. *v.* Gurian, 115 N. Y. App. Div. 610, 101 N. Y. Supp. 50.

3. Travelers' F. Ins. Co. *v.* Globe Soap Co., (Ark. 1908) 107 S. W. 386.

4. Wisotzkey *v.* Niagara F. Ins. Co., 112 N. Y. App. Div. 599, 98 N. Y. Supp. 760.

6. Travelers' F. Ins. Co. *v.* Globe Soap Co., (Ark. 1908) 107 S. W. 386.

Delivery of Policy by Insured to Broker for Cancellation Not Binding on Insurer. — Westchester F. Ins. Co. *v.* Gurian, 115 N. Y. App. Div. 610, 101 N. Y. Supp. 50.

972. 3. Gosch *v.* Firemen's Ins. Co., 33 Pa. Super. Ct. 496.

Under the Minnesota Statute an insurance broker is the agent of the insured, except for the purpose of delivering policies and collecting premiums. Fredman *v.* Consolidated F. & M. Ins. Co., (Minn. 1908) 116 N. W. 221.

973. 1. Standard Leather Co. *v.* Northern Assur. Co., 156 Fed. 689.

When the Policy Is Received by the Insurer's Agent to be delivered by him direct to the insured the broker's agency is at an end. Green *v.* Star F. Ins. Co., (Mass. 1906) 77 N. E. [illegible].

2. Standard Leather Co. *v.* Northern Assur. Co., 156 Fed. 689; Green *v.* Star F. Ins. Co., (Mass. 1906) 77 N. E. 649.

974. 7. Insured Held Not Liable for Brokers' Commissions. — Arndt *v.* Miller, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 612, 95 N. Y. Supp. 604.

975. 6. If a Broker Fails to Procure Insurance at the Best Rates, the principal may cancel the policies and refuse to compensate him for his services. Strasburger *v.* Goldenberg, (Supm. Ct. App. T.) 109 N. Y. Supp. 803.

Where Warranties Were Incorrectly Inserted in a Policy, through the inadvertence of insurance brokers, and the amount recovered by the principal after a loss was thereby affected, it was held that a verdict for the plaintiff in an action against the brokers would not be disturbed, the question of their negligence being for the jury. Walker *v.* Black, 216 Pa. St. 395, 65 Atl. 799.

INSURRECTION.

977. 6. One Engaged in or Aiding and Abetting Insurrection Subject to Arrest. — *In re* Moyer, 35 Colo. 159, 85 Pac. 190.

978. 1. Where a Governor Is Authorized by Law to Call Out the Militia to suppress insurrections, it becomes his duty to determine as a fact when an insurrection exists, and his proclamation that an insurrection exists cannot be controverted. Moyer *v.* Peabody, 148 Fed. 870; *In re* Moyer, 35 Colo. 159, 85 Pac. 190.

The Governor, in Employing the Militia to Suppress an Insurrection, is merely acting in his capacity as the chief civil magistrate of the state, [illegible] not conflict with the provision of the bill of rights that the military shall always be in strict subordination to the civil power. *In re* Moyer, 35 Colo. 159, 85 Pac. 190.

INTEMPERANCE — INTEMPERATE.

979. 2. Intemperate Habits. — Fludd *v.* Equitable L. Assur. Soc., 75 S. Car. 315, 55 S. E. 762.

INTENTIONAL.

982. 1. Intentionally, used in the sense of "with a bad purpose," in a statute prohibiting

the obstruction of a telephone line. St. Louis, etc., R. Co. *v.* Batesville, etc., Telephone Co., 80 Ark. 499, 97 S. W. 660.

INTEREST.

991. 1. Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328; Maryland Casualty Co. *v.* Omaha Electric Light, etc., Co., (C. C. A.) 157 Fed. 514.

8. Whittemore *v.* People, 227 Ill. 453, 81 N. E. 427.

994. 4. Bernhard *v.* Rochester German Ins. Co., 79 Conn. 388, 65 Atl. 134.

995. 6. Montezuma County *v.* Wheeler, 39 Colo. 207, 89 Pac. 50.

Interest against United States. — "It is well settled by the decisions of the Supreme Court that in no case is interest allowable on claims against the government unless the government has stipulated to pay interest or it is given by express statutory provision." William R. Trigg Co. *v.* Bucyrus Co., 104 Va. 79, 51 S. E. 174.

996. 3. Licking Valley Bldg. Assoc. No. 3 *v.* Com., (Ky. 1905) 89 S. W. 682; Eau Claire Nat. Bank *v.* Chippewa Valley Bank, 124 Wis. 520, 102 N. W. 1068.

4. Montezuma County *v.* Wheeler, 39 Colo. 207, 89 Pac. 50.

997. 3. American Forwarding, etc., Co. *v.* Lindsay Chair Co., 129 Ill. App. 548; Borden, etc., Co. *v.* Fraser, 118 Ill. App. 655; Expert *v.* Ahlschlager, 117 Ill. App. 484; Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709.

4. Whittemore *v.* People, 227 Ill. 453, 81 N. E. 427.

7. Doyle *v.* Nesting, 37 Colo. 522, 88 Pac. 862; Bauer *v.* Jerolman, 124 Ill. App. 151; Concord Apartment House Co. *v.* O'Brien, 228 Ill. 360, 81 N. E. 1038; Supreme Lodge, etc., *v.* Rehg, 116 Ill. App. 59.

998. 6. Carr *v.* Judkins, 102 Me. 506, 67 Atl. 569.

999. 2. **Grounds of Allowance.** — As compensation for the detention of money due on contract. *In re* Burke, 191 N. Y. 437, 84 N. E. 406.

8. Moore *v.* Reiseker, (C. C. A.) 147 Fed. 367, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 999.

11. Safe Deposit, etc., Co. *v.* Gittings, 102 Md. 456, 62 Atl. 1033, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 999.

1001. 2. **Where a Bond Fails to Specify the Rate** of interest, reference will be had to the mortgage to determine the rate. *Ex p.* Powell, 74 S. Car. 193, 54 S. E. 236.

3. Winsted Sav. Bank *v.* New Hartford, (Conn. 1905) 62 Atl. 81; Rogers *v.* Osborne, 146 Mich. 613, 109 N. W. 1123.

5. U. S. Nat. Bank *v.* Waddingham, (Cal. App. 1907) 93 Pac. 1046.

7. Brooks *v.* Boyd, (Ga. App. 1907) 57 S. E. 1093.

1002. 3. Cochran *v.* Zachery, (Iowa 1908) 115 N. W. 486.

4. Meyer *v.* San Francisco, (Cal. 1907) 88 Pac. 722.

1003. 3. Kamber *v.* Becker, 27 Pa. Super. Ct. 266.

1004. 6. Gregory *v.* New Home Sewing Mach. Co., (Ky. 1905) 86 S. W. 529.

1006. 4. Williams Shoe Co. *v.* Gotzian, 130 Iowa 710, 107 N. W. 807; Cline *v.* Waters, (Ky. 1906) 90 S. W. 231.

1007. 4. Ewell *v.* Jackson, (Ky. 1905) 88 S. W. 1047; Winsted Sav. Bank *v.* New Hartford, (Conn. 1905) 62 Atl. 81; Tobin *v.* U. S. Safe Deposit, etc., Bank, 115 La. 366, 39 So. 33; Hoard *v.* Huntington, etc., R. Co., 39 W. Va. 91, 53 S. E. 278.

1009. 1. Where a penal bond is given to cover certain monthly payments and judgment is obtained on the failure to pay an instalment, interest should not be computed on the full amount of the bond, but on the instalments from their maturity. Dike *v.* Andrews, (Neb. 1908) 114 N. W. 582.

6. Interest is not recoverable under *North Carolina* statute, which excepts money due on penal bonds from the list of interest-bearing contracts. Moseley *v.* Johnson, 144 N. Car. 257, 274, 56 S. E. 922.

In an action in which the state recovers the penalty on a liquor dealers' bond the judgment does not bear interest. Hawthorne *v.* State, (Tex. Civ. App. 1905) 87 S. W. 830; White *v.* Manning, (Tex. Civ. App. 1907) 102 S. W. 1160.

9. New Haven *v.* Eastern Paving Brick Co., 78 Conn. 689, 63 Atl. 517; Johnson *v.* Charles D. Norton Co., (C. C. A.) 159 Fed. 361.

Interest cannot be recovered against a guarantor of a certain sum without interest. Dunlap *v.* Stannard, (Okla. 1907) 91 Pac. 845.

1010. 1. Moore *v.* Durnan, 70 N. J. Eq. 1, 62 Atl. 327.

1011. 1. Moylan *v.* Moylan, (Wash. 1908) 95 Pac. 271.

3. A wife who receives money under an assignment of a paid-up insurance policy by her husband under the belief that it is rightfully hers will not be held liable for interest in equity. Vashon *v.* Barrett, 105 Va. 490, 54 S. E. 705.

4. Pomeroy *v.* Noud, 145 Mich. 37, 108 N. W. 408.

A purchaser of an incompleted railroad who advances money to complete the road under the contract is entitled to recover interest on each advancement made. Union Trust Co. *v.* Preston Nat. Bank, 147 Mich. 106, 107 N. W. 1109.

1012. 1. Rutherford *v.* Irby, (Ga. App. 1907) 57 S. E. 927; Chicago *v.* Northwestern Mut. L. Ins. Co., 218 Ill. 40, 75 N. E. 803; Meyer *v.* Johnson, 122 Ill. App. 87; Whitcomb *v.* Collier, 133 Iowa 303, 110 N. W. 836; Newburyport *v.* Fidelity Mut. L. Ins. Co., (Mass. 1908) 84 N. E. 111; Earle *v.* Whiting, (Mass. 1907) 82 N. E. 32.

Recovery Back of Money Paid on Wager. — Interest is recoverable in an action to recover back the amount of money paid on an election bet. Matlow *v.* Johnson, (Ala. 1907) 44 So. 42.

What Interest Recoverable from State. — Lewis *v.* San Francisco, (Cal. 1905) 82 Pac. 1106.

2. Shaul *v.* Board of Education, 108 N. Y. App. Div. 19, 95 N. Y. Supp. 479.

Interest **Is Recoverable for Wrongful Delay**

by an engineer in giving a certificate of completion of work. Fruin-Bambrick Constr. Co. *v.* Ft. Smith, etc., R. Co., 140 Fed. 465.

4. Leary *v.* Corvin, 181 N. Y. *222*, 73 N. E. 984.

"The party who had more than his equitable share of the fund in his custody should pay interest to the other on the excess during the period of such custody." Deering *v.* Schreyer, 185 N. Y. 560, 78 N. E. 75.

Money Collected by an Attorney bears interest from the time it was received. Goodin *v.* Hays, (Ky. 1905) 88 S. W. 1101; Harkary *v.* Zisman, (Supm. Ct. App. T.) 96 N. Y. Supp. 214.

A Partner Who Overdraws His Account is liable for interest from the time he drew the money to the settlement of his accounts. Forsyth *v.* Butler, (Cal. 1907) 93 Pac. 90.

1013. 1. Underwood *v.* Whiteside County Bldg., etc., Assoc., 115 Ill. App. 387.

2. Collins *v.* Bryan, (Tex. Civ. App. 1905) 88 S. W. 432.

3. Clisby *v.* Masten, (Ala. 1907) 43 So. 742; Hubbard *v.* State L. Ins. Co., 129 Iowa 13, 105 N. W. 332; McCourt *v.* Singers-Bigger, (C. C. A.) 145 Fed. 103, 7 Ann. Cas. 287.

5. Pounds *v.* Coburn, (Mo. 1908) 107 S. W. 1080; Erb-Springall Co. *v.* Pittsburg Plate Glass Co., (Tex. Civ. App. 1907) 101 S. W. 1165.

1015. 3. Beckwith *v.* New York, 121 N. Y. App. Div. 462, 106 N. Y. Supp. 175; Bleakley *v.* Sheridan, 115 N. Y. App. Div. 657, 100 N. Y. Supp. 1029; Munson *v.* James Smith Woolen Mach. Co., 118 N. Y. App. Div. 398, 103 N. Y. Supp. 502; O'Reilly *v.* Mahoney, 123 N. Y. App. Div. 275, 108 N. Y. Supp. 53; Stannard *v.* Reid, 118 N. Y. App. Div. 304, 103 N. Y. Supp. 521; Baker County *v.* Huntington, (Oregon 1907) 89 Pac. 144; Stephens *v.* Phœnix Bridge Co., (C. C. A.) 139 Fed. 248.

"Mesne profit or rental value does not ordinarily bear interest, at least until it becomes a liquidated sum." Fricker *v.* Americus Mfg., etc., Co., 124 Ga. 165, 52 S. E. 65.

4. Chambers *v.* Boyd, 116 N. Y. App. Div. 208, 101 N. Y. Supp. 486; Devine *v.* Kerwin, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 535, 102 N. Y. Supp. 841.

1016. 1. O'Connell *v.* Storey, (Tex. Civ. App. 1907) 105 S. W. 1174.

7. Fleming *v.* Jacob, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 209.

9. Cutter *v.* Gudebrod Bros. Co., 190 N. Y. 252, 83 N. E. 16; Kervin *v.* Utter, 120 N. Y. App. Div. 610, 104 N. Y. Supp. 1016; Reynolds *v.* Burr, 104 N. Y. App. Div. 31, 93 N. Y. Supp. 319.

10. Florence Oil, etc., Co. *v.* McRae, (Colo. 1907) 90 Pac. 507.

1017. 2. Stimson *v.* Dunham, etc., Co., 146 Cal. 281, 79 Pac. 968; Goodwill *v.* Heim, 212 Pa. St. 595, 62 Atl. 24; Harrodsburg Water Co. *v.* Harrodsburg, (Ky. 1905) 89 S. W. 729; Harding *v.* York Knitting Mill, [illegible] Fed. 228, *citing* 16 Am. and Eng. Encyc. of Law (2d ed.) 1017.

Under the *Texas* statute interest on open accounts runs from January 1st after made. Erb-Springall Co. *v.* Pittsburg Plate Glass Co., (Tex. Civ. App. 1907) 101 S. W. 1165.

1018. 1. Erickson *v.* Stockton, etc., R. Co., (Cal. 1905) 82 Pac. 961; Manchester F. Assur. Co. *v.* Fitzpatrick, 120 Ill. App. 535.

1019. 4. Dunlap *v.* Kelly, 115 Mo. App. 610, 92 S. W. 140.

1020. 2. Citizens' Ban., *v.* Arkansas Compress, etc., Co., 80 Ark. 601, 96 S. W. 997; Clark *v.* Farmers' Nat. Bank, (Ky. 1907) 99 S. W. 674; Kirkland *v.* Niagara Gorge R. Co., 109 N. Y. App. Div. 201, 95 N. Y. Supp. 657.

4. Rhea *v.* Brewster, 130 Iowa 729, 107 N. W. 940.

1021. 1. Dary *v.* Providence Police Assoc., 27 R. I. 377, 62 Atl. 513.

1022. 2. Public Officers. — A sheriff who has money belonging to the county in his hands is liable for interest only from time of demand. State *v.* Keadle, (W. Va. 1908) 60 S. E. 798.

6. Parsons *v.* Utica Cement Mfg. Co., (Conn. 1907) 66 Atl. 1024.

1023. 5. Warren Commission, etc., Co. *v.* Leon L. Hull Real Estate Co., 120 Mo. App. 432, 96 S. W. 1038; Kervin *v.* Utter, 120 N. Y. App. Div. 610, 104 N. Y. Supp. 1061.

1024. 2. Webber *v.* Webber, 146 Mich. 31, 109 N. W. 50; Morrison Mfg. Co. *v.* Fargo Storage, etc., Co., (N. Dak. 1907) 113 N. W. 605; Dunnett *v.* Gibson, 78 Vt. 439, 63 Atl. 141.

5. Jonesboro, etc., R. Co. *v.* United Iron Works Co., 117 Mo. App. 153, 94 S. W. 726.

1025. 1. Leggat *v.* Gerrick, (Mont. 1907) 88 Pac. 788.

1026. 1. *In re* Hershey, 213 Pa. St. 601, 63 Atl. 296.

1027. 1. Interest Is Recoverable as Damages in an action for breach of contract to sell a certain printing press exclusively to the plaintiff. New York Bank Note Co. *v.* Kidder Press Mfg. Co., (Mass. 1906) 78 N. E. 463.

3. Interest on Conversion of Property is allowed under the *Oklahoma* statute. Drumm-Flato Commission Co. *v.* Edmisson, (Okla. 1906) 87 Pac. 311.

4. Kerr *v.* New York El. R. Co., (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 331, 96 N. Y. Supp. 1021; Walker *v.* Southern R. Co., (S. Car. 1907) 56 S. E. 952; St. Louis Southwestern R. Co. *v.* Guthrie, (Tex. Civ. App. 1907) 103 S. W. 211; Fele *v.* Union Pac. R. Co., (Utah 1907) 88 Pac. 1003; Felt *v.* Salt Lake City, (Utah 1907) 90 Pac. 402, *following* Kimball *v.* Salt Lake City, (Utah 1907) 90 Pac. 395.

1029. 3. Corn Exch. Bank *v.* Peabody, 111 N. Y. App. Div. 553, 98 N. Y. Supp. 78.

4. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 52 S. E. 679; St. Louis, etc., R. Co. *v.* Hooser, (Tex. Civ. App. 1906) 97 S. W. 708.

1031. 1. Interest Not Recoverable for Deprivation of Use of Property. — Schulte *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 941; Cummings *v.* Badger Lumber Co., (Mo. App. 1908) 109 S. W. 68.

2. Clyde Milling, etc., Co. *v.* Buoy, 71 Kan. [illegible], 80 Pac. 501.

Interest not allowable until after judgment. Missouri, etc., Telephone Co. *v.* Vandervort, 71 Kan. 101, 79 Pac. 1068.

No interest recoverable under *Oregon* statute. Sorenson *v.* Oregon Power Co., 47 Oregon [illegible] Pac. 10.

Under the *West Virginia* statute interest recoverable from verdict. Campbell *v.* Elkins, 58 W. Va. 308, 52 S. E. 220.

1032. 1. **Interest Recoverable at Legal Rate from Time of Death.**— St. Louis, etc., R. Co. *v.* Cleere, 76 Ark. 377, 88 S. W. 995.

4. Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328.

1033. 3. Strauss *v.* Gilbert, 232 Ill. 441, 83 N. E. 946.

1035. 1. Grote *v.* New York, 190 N. Y. 235, 82 N. E. 1088.

2. Northwestern Mortg. Trust Co. *v.* Ellis, (S. Dak. 1906) 108 N. W. 22.

1036. 2. Bramblett *v.* Deposit Bank, (Ky. 1906) 92 S. W. 283; Holcombe *v.* Holcombe, (N. J. 1907) 65 Atl. 855; Matter of Erving, 103 N. Y. App. Div. 500, 92 N. Y. Supp. 1109; Adams *v.* Illinois L. Ins. Co., (Ky. 1907) 104 S. W. 718; Dunlap *v.* Kelly, (Mo. App. 1908) 109 S. W. 793; Russell *v.* Cassidy, 122 Mo. App. 565, 99 S. W. 781.

Massachusetts Rule applied as to computing interest and applying payments. Armijo *v.* Henry, (N. Mex. 1907) 89 Pac. 305; Jones *v.* Chandler, (N. Mex. 1906) 85 Pac. 392.

1037. 3. Farmers', etc., Leaf Tobacco Warehouse Co. *v.* Head, (Ky. 1906) 93 S. W. 17.

4. Hawkins *v.* Merchants', etc., Loan, etc., Assoc., (Ky. 1905) 89 S. W. 197.

1038. 3. Morley *v.* St. Joseph, 112 Mo. App. 671, 87 S. W. 1013; Taylor *v.* Doom, (Tex. Civ. App. 1906) 95 S. W. 4; Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

4. Clyde Milling, etc., Co. *v.* Buoy, 71 Kan. 293, 80 Pac. 591; Missouri, etc., Telephone Co. *v.* Vandervort, 71 Kan. 101, 79 Pac. 1068; Ellis *v.* National City Bank, (Tex. Civ. App. 1906) 94 S. W. 437; Masterson *v.* Heitmann, (Tex. Civ. App. 1905) 87 S. W. 227; Warnock *v.* Itawis, 38 Wash. 144, 80 Pac. 297.

1039. 3. John A. Roebling's Sons Co. *v.* New York, 110 N. Y. App. Div. 366, 97 N. Y. Supp. 278.

4. J. M. Guffy Petroleum Co. *v.* Hamill, (Tex. Civ. App. 1906) 94 S. W. 458.

Where the defendant agrees to pay when able, interest does not run till he is able to pay the amount due. Ruzeoski *v.* Wilrodt, (Tex. Civ. App. 1906) 94 S. W. 142.

Interest on Demand Note Runs from Date Thereof. — Ottawa Bank *v.* McLean, 26 Quebec Super. Ct. 27.

6. Where the time for maturity of the note is extended, interest runs from the original date of maturity and not the latter. Dashiell *v.* Moody, (Tex. Civ. App. 1906) 97 S. W. 843.

1040. 3. Graham *v.* Burgiss, (S. Car. 1907) 59 S. E. 29.

1041. 1. Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687.

4. Tally *v.* Ganahl, (Cal. 1907) 90 Pac. 1049; Allen *v.* Grant, 122 Ga. 552, 50 S. E. 401.

5. **Promise to Pay on Delivery of Goods.** — Howard Supply Co. *v.* Bunn, 127 Ga. 663, 56 S. E. 757; McCarthy *v.* Nixon Grocery Co., 126 Ga. 762, 56 S. E. 72.

1042. 1. Marx *v.* Raley, (Cal. App. 1907) 92 Pac. 519.

Work Done — Interest from Time Services Rendered. — Morrow *v.* Pike County, 189 Mo. 610, 88 S. W. 99.

1043. 4. Foley *v.* Houston Co-operative, etc., Co., (Tex. Civ. App. 1907) 106 S. W. 160.

8. Church *v.* Stevens, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 572, 107 N. Y. Supp. 310.

9. Rosenberger *v.* Pacific Express Co., (Mo. App. 1908) 107 S. W. 459.

1044. 1. Savage *v.* Salem Mills Co., (Oregon 1906) 85 Pac. 69; Mead *v.* Morse, (Mass. 1907) 80 N. E. 513.

1045. 1. Denver *v.* Barber Asphalt Paving Co., (C. C. A.) 141 Fed. 69; Mullenary *v.* Burton, (Cal. App. 1906) 84 Pac. 159; *In re* Bristol County, (Mass. 1906) 79 N. E. 339; Brown *v.* Rogers, 76 S. Car. 180, 56 S. E. 680; Brown *v.* Rogers, (S. Car. 1908) 61 S. E. 440; Corcoran *v.* Halloran, (S. Dak. 1906) 107 N. W. 210; *In re* Ryer, 120 N. Y. App. Div. 154, 104 N. Y. Supp. 804.

2. Wood *v.* Claiborne, 82 Ark. 514, 102 S. W. 219; Wheatley *v.* Glover, 125 Ga. 710, 54 S. E. 626; Cully *v.* Isham, (Supm. Ct. App. Div.) 109 N. Y. Supp. 92; Rust *v.* Fitzhugh, (Wis. 1907) 112 N. W. 508; Freygang *v.* Vera Cruz, etc., R. Co., (C. C. A.) 154 Fed. 640; Henderson Bridge Co. *v.* Com., (Ky. 1905) 87 S. W. 1088.

1047. 5. McNeill *v.* Durham, etc., R. Co., 138 N. Car. 1, 50 S. E. 458; Field *v.* Field, 215 Ill. 496, 74 N. E. 443.

1048. 1. Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214.

1051. 1. County commissioners have no authority to reduce the amount of interest on notes given in payment of purchase of county land. Blackburn *v.* Delta County, (Tex. Civ. App. 1908) 107 S. W. 80, *affirming* (Tex. 1906) 9; S. W. 419.

3. A reduction in the rate of interest is good as to future interest but without consideration as to accrued interest. Bryson *v.* Biggs, (Ky. 1907) 104 S. W. 982.

5. **Rate Fixed by Conduct of Parties.**— Brown, etc., Co. *v.* Guise, (N. Mex. 1907) 91 Pac. 716.

7. Patrick *v.* Kirkland, 53 Fla. 768, 43 So. 969.

1055. 4. Johnson *v.* Downing, 76 Ark. 128, 88 S. W. 825; Thrasher *v.* Moran, 146 Cal. 683, 81 Pac. 32; Winsted Sav. Bank *v.* New Hartford, (Conn. 1905) 62 Atl. 81; Portage First Nat. Bank *v.* State Bank, 15 N. Dak. 594, 109 N. W. 61.

1056. 2. Eastern Trust Co. *v.* Cushing Sulphite Fibre Co., 3 N. Bruns. Eq. Rep. 392; Plenderleith *v.* Parsons, 14 Ont. L. Rep. 619.

1057. 1. Johnson *v.* Pullman State Bank, (Wash. 1905) 82 Pac. 122.

1058. 3. Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624.

1060. 2. Morris *v.* Carr, 77 Ark. 228, 91 S. W. 187; Portsmouth Sav. Bank *v.* Yeiser, (Neb. 1908) 116 N. W. 38.

1061. 1. Brewer *v.* Rust, (Okla. 1908) 95 Pac. [illegible].

1064. 1. **Interest Suspended During Trustee**

Process. — Walker *v.* Lancashire Ins. Co., 188 Mass. 560, 75 N. E. 66.

2. Finlen *v.* Heinze, 32 Mont. 354, 80 Pac. 918.

Insanity of a Mortgagee does not suspend interest. Gorgas *v.* Saxman, 216 Pa. St. 237, 65 Atl. 619.

1066. 3. Gund *v.* Ballard, (Neb. 1907) 114 N. W. 420.

6. Hatcher *v.* Fitzpatrick, (Ky. 1907) 101 S. W. 933; Kearney *v.* Kane, 32 Pa. Super. Ct. 236; Moore *v.* Reiseker, (C. C. A.) 147 Fed. 367.

Interest will be suspended when the equities of the case warrant it. Wood *v.* Deskins, (C. C. A.) 141 Fed. 500.

1067. 1. Harrodsburg Water Co. *v.* Harrodsburg, (Ky. 1905) 89 S. W. 729; Portsmouth Sav. Bank *v.* Yeiser, (Neb. 1908) 116 N. W. 38.

4. Donaldson *v.* Severn River Glass Sand Co., 138 Fed. 691.

5. Payment of money due on a mortgage to a third person, to be paid over to an agent on surrender or delivery of the securities, is not such a tender as will operate to discharge the debt or stop the interest. Hughes *v.* Clifton, 147 Ala. 531, 41 So. 998.

1068. 2. Interest does not run against one who admits his liability but holds money subject to the order of the court. Fall *v.* Nichols, (Tex. Civ. App. 1906) 97 S. W. 145.

5. Phœnix Ins. Co. *v.* Carey, (Conn. 1908) 68 Atl. 993.

1071. 5. Interest Computed on Annual Balances in Case of Running Accounts. — Gordon *v.* Mead, (Vt. 1908) 69 Atl. 134.

1072. 5. Quackenbush *v.* Mapes, (Supm. Ct. App. Div.) 107 N. Y. Supp. 1052.

1073. 2. Adams *v.* **Illinois** L. Ins. Co., (Ky. 1907) 104 S. W. 718; Stone *v.* Pettus, (Tex. Civ. App. 1907) 103 S. W. 413.

Not allowed under *Arkansas* statute in judgment settling indebtedness from one county to another. State *v.* Desha County, 82 Ark. 360, 99 S. W. 1108.

3. Sanford *v.* Lundquist, (Neb. 1907) 114 N. W. 279.

Simple interest is payable on money due unless there is an express requirement to the contrary. Tisbury *v.* V'neyard Haven Water Co., (Mass. 1906) 79 N. E. 256.

1075. 1. Cripple Creek *v.* Adams, (Colo. 1906) 85 Pac. 184; Parsons *v.* Utica Cement Mfg. Co., (Conn. 1907) 66 Atl. 1024; Rice *v.* Shealy, 71 S. Car. 161, 50 S. E. 868.

3. Arkansas Southern R. Co. *v.* German Nat. Bank, (Ark. 1908) 107 S. W. 668.

1076. 1. Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328.

2. A contract for compound interest will be enforced if when compounded it does not exceed the legal rate. Sanford *v.* Lundquist, (Neb. 1907) 114 N. W. 279.

4. "An agreement for interest on interest at a greater rate than that so allowed by the statute is illegal and void in its entirety, and not merely as to the excess over the rate that might have been agreed upon." Bell *v.* San Francisco Sav. Union, (Cal. 1908) 94 Pac. 225.

1077. 3. Waldron *v.* Pigeon Coal Co., (W. Va. 1907) 56 S. E. 492.

1080. 3. Farmers', etc., Leaf Tobacco Warehouse Co. *v.* Head, (Ky. 1906) 93 S. W. 17.

1085. 4. The Mary N. Bourke, (C. C. A.) 145 Fed. 909.

1086. 3. Bank *v.* Doherty, 42 Wash. 317, 84 Pac. 872; Freygang *v.* Vera Cruz, etc., R. Co., (C. C. A.) 154 Fed. 640.

1097. 2. Payment of Interest Discretionary in case of arrears of annuity. Savage *v.* Savage, (C. C. A.) 141 Fed. 346.

1098. 2. La Conner Trading, etc., Co. *v.* Widmer, (C. C. A.) 136 Fed. 177.

5. Union Water Power Co. *v.* Lewiston, 101 Me. 564, 65 Atl. 67.

1099. 4. Gulf, etc., R. Co. *v.* Graves, (Tex. Civ. App. 1907) 101 S. W. 488.

5. Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 52 S. E. 679; Drumm-Flato Commission Co. *v.* Edmisson, 28 U. S. Sup. Ct. 367; The North Star, 140 Fed. 263; The Rickmers, (C. C. A.) 142 Fed. 305; The Sitka, 156 Fed. 427; The Sovereign of the Seas, 139 Fed. 812.

1100. 2. Tifton, etc., R. Co. *v.* Butler, (Ga. App. 1908) 60 S. E. 1087.

4. Merritt, etc., Derrick, etc., Co. *v.* Morris, etc., Dredging Co., (C. C. A.) 137 Fed. 780.

1101. 4. Under Ontario Statute Interest Discretionary with Court. — Toronto R. Co. *v.* Toronto, (1906) A. C. 117.

INTERFERENCE WITH CONTRACT RELATIONS.

1109. 1. Thacker Coal Co. *v.* Burke, 59 W. Va. 253, 53 S. E. 161, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1109. See also National Phonograph Co. *v.* Edison-Bell Consol. Phonograph Co., 96 L. T. N. S. 218.

Specific Tort of Recent Origin. — Fleckenstein Bros. Co. *v.* Fleckenstein, 66 N. J. Eq. 252, 57 Atl. 1025, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1100.

1110. 1. Thacker Coal Co. *v.* Burke, 59 W. Va. 253, 53 S. E. 161.

1111. 1. Wells, etc., Co. *v.* Abraham, 146 Fed. 190; Southern R. Co. *v.* Chambers, 126 Ga. 404, 55 S. E. 37; Jones *v.* Roughton, (Ga. 1907) 57 S. E. 1061.

Interference with Relation of Landlord and Tenant. — By statute in *Georgia* it is provided that when the relation of landlord and tenant of agricultural lands has been created it is unlawful for any person to employ the tenant or to disturb in any way such relation. This statute gives the right to recover damages. Pace *v.* Goodson, 127 Ga. 211, 56 S. E. 363, in which case a promissory note was held to be such a contract within the meaning of the statute; Chambless *v.* Melton, 127 Ga. 414, 56 S. E. 414. An amendment to the statute adds, among other things, "employer and employee" and "landlord and cropper." McBride *v.* O'Neal, 128 Ga. 473, 57 S. E. 789, holding that the relation of employer and employee may exist before the person contracting to render the service has actually begun the performance thereof.

Malice Held Not Essential. South Wales Miners' Federation *v.* Glamorgan Coal Co., (1905) A. C. 239, 2 Ann. Cas. 436.

4. See Beekman *v.* Marsters, (Mass. 1907) 80 N. E. 817.

Interference with Any Kind of Contract, Involving Damage, Is Tort. — Booth *v.* Burgess, (N. J. [illegible]) 65 Atl. 220.

5. Inciting Dealers to Break a Trade Agreement as to selling prices held not actionable in the absence of malice and substantial pecuniary loss. National Phonograph Co. *v.* Edison-Bell Consol. Phonograph Co., 96 L. T. N. S. 218.

8. Brennan *v.* United Hatters of North America, 73 N. J. L. 729, 65 Atl. 165; Thacker Coal Co. *v.* Burke, 59 W. Va. 253, 53 S. E. 161.

1112. 2. Malice Implied Where Unlawful Act Proved. — Wyeman *v.* Deady, 79 Conn. 414, 65 Atl. 129; Joyce *v.* Great Northern R. Co., 100 Minn. 225, 110 N. W. 975, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1112; Brennan *v.* United Hatters of North America, 73 N. J. L. 729, 65 Atl. 165.

Malice Inferred from Wrongful Character of Act. — Thacker Coal Co. *v.* Burke, 59 W. Va. 253, 53 S. E. 161.

1113. 6. Denaby, etc., Main Collieries *v.* Yorkshire Miners' Assoc., (1906) A. C. 384, 5 Ann. Cas. 591; Banks *v.* Eastern R., etc., Co., (Wash. 1907) 90 Pac. 1048.

1113. 4. Substantial Damage Must Result. — National Phonograph Co. *v.* Edison-Bell Consol. Phonograph Co., 96 L. T. N. S. 218.

8. Joyce *v.* Great Northern R. Co., 100 Minn. 225, 110 N. W. 975, *citing* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1114.

Preventing Formation of Contracts. — By statute in *Minnesota* it is unlawful for two or more employers of labor to combine or confer together for the purpose of preventing any person from procuring employment. This act has been construed and held to be valid. Joyce *v.* Great Northern R. Co., 100 Minn. 225, 110 N. W. 975.

Contract Must Be One Which Party Is Obligated to Perform. — Roberts *v.* Clark, (Tex. Civ. App. 1907) 103 S. W. 417.

1115. 4. The Competition Which the Law Upholds must be honest competition, and not a malicious attempt to injure another. George Jonas Glass Co. *v.* Glass Bottle Blowers' Assoc., (N. J. 1907) 66 Atl. 953.

1116. 1. What Not Justification. — See South Wales Miners' Federation *v.* Glamorgan Coal Co., (1905) A. C. 239, 2 Ann. Cas. 436.

INTERLOCUTORY.

1117. 4. *In re* Sullivan, 36 Wash. 222, 78 Pac. 945, *quoting* 16 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1117.

Interlocutory and Final Distinguished — Orders. — *In re* Jerome, (1907) 2 Ch. 145, 76 L. J. Ch. 432, 96 L. T. N. S. 866.

INTERNATIONAL LAW.

1157. 3. Effect on Revenue Laws. — Galban *v.* U. S., 40 Ct. Cl. 495.

INTERPRETATION AND CONSTRUCTION.

2. 6. Intention of Parties to Contracts Generally — *United States.* — U. S. Fidelity, etc., Co. *v.* Woodson County, (C. C. A.) 145 Fed. 144; Hubbird *v.* Goin, (C. C. A.) 137 Fed. 822; American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357.

California. — Moreing *v.* Weber, 3 Cal. App. 14, 84 Pac. 220.

Colorado. — True *v.* Rocky Ford Canal, etc., Co., 36 Colo. 43, 85 Pac. 842.

Illinois. — Brockmeyer *v.* Sanitary Dist., 118 Ill. App. 49.

Kansas. — Vawter *v.* Newman, 74 Kan. 290, 86 Pac. 135.

Kentucky. — Chicago Veneer Co. *v.* Anderson, (Ky. 1907) 105 S. W. 108.

Minnesota. — Security Trust Co. *v.* Joesting, 96 Minn. 163, 104 N. W. 830.

Missouri. — Wilson *v.* Wilson, 115 Mo. App. 641, 92 S. W. 145.

Rhode Island. — Shartenberg *v.* Ellbey, 27 R. I. 414, 62 Atl. 979.

South Carolina. — Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945.

Tennessee. — Louisville, etc., R. Co. *v.* U. S. Iron Co., 118 Tenn. 194, 101 S. W. 414.

Texas. — San Jacinto Oil Co. *v.* Ft. Worth Light, etc., Co., (Tex. Civ. App. 1906) 93 S. W. 173; Keller *v.* State, (Tex. Crim. 1905) 87 S. W. 669.

West Virginia. — Griffin *v.* Fairmont Coal Co., 59 W. Va. 480, 53 S. E. 24; Morgan *v.* Morgan, 60 W. Va. 327, 55 S. E. 389.

Cardinal Rule of Construction of contracts that the intention of the parties thereto is to govern. Scotch Mfg. Co. *v.* Carr, 53 Fla. 480, 43 So. 427.

Intention of Parties to Deeds. — Sharp *v.* Sharp, 148 Mich. 278, 111 N. W. 767, 14 Detroit Leg. N. 72.

3. 1. Moreing *v.* Weber, 3 Cal. App. 14, 84 Pac. 220; Adkins *v.* Campbell, (Del. 1906) 64 Atl. 628; Smith *v.* Merrill, (Wis. 1908) 114 N. W. 508.

4. 1. Union Water Power Co. *v.* Lewiston, 101 Me. 564, 65 Atl. 67; Wilson *v.* Wilson, 115 Mo. App. 641, 92 S. W. 145.

3. Griffin *v.* Fairmont Coal Co., 59 W. Va. 541, 53 S. E. 24, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 4; Diederich *v.* Rose, 228 Ill. 610, 81 N. E. 1140; Brenzel *v.* Kirschner, 128 Ill. App. 136; Curtin-Clark Hardware Co. *v.* Churchill, 126 Mo. App. 462, 104 S. W. 476; Manti City Sav. Bank *v.* Peterson, (Utah 1[illegible]

4. Griffin *v.* Fairmont Coal Co., 59 W. Va. 541, 53 S. E. 24, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 4.

5. 1. *United States.* — Luhrig Coal Co. *v.* Jones, etc., Co., (C. C. A.) 141 Fed. 621, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 4, 5; American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Vocalion Organ Co. *v.* Wright, 137 Fed. 313, *reversed on other grounds* [illegible] 148 Fed. 209; Hubbird *v.* Goin, (C. C. A.) 137 Fed. 822; Uinta Tunnel, etc., Co. *v.* Ajax Gold Min. Co., (C. C. A.) 141 Fed. 563; U. S. Fidelity, etc., Co. *v.* Woodson County, (C. C. A.) 145 Fed. 144.

Alaska. — Daigle *v.* Maddocks, 2 Alaska 387.

California. — Kennedy *v.* Lee, 147 Cal. 596, 82 Pac. 257.

Florida. — Armour *v.* Doig, 45 Fla. 177, 34 So. 249, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 4; McNair, etc., Land Co. *v.* Adams, (Fla. 1907) 45 So. 492.

Kentucky. — Hall *v.* Wright, (Ky. 1905) 87 S. W. 1129.

Maine. — Bell *v.* Jordan, 102 Me. 67, 65 Atl. 359.

Maryland. — Milske *v.* Steiner Mantel Co., 103 Md. 235, 63 Atl. 471.

Minnesota. — Security Trust Co. *v.* Joesting, 96 Minn. 163, 104 N. W. 830, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 5.

Missouri. — Aldridge *v.* Aldridge, 202 Mo. 565, 101 S. W. 42.

Oklahoma. — Willoughby *v.* Fidelity, etc., Co., 16 Okla. 546, 85 Pac. 713.

Rhode Island. — Shartenberg *v.* Ellbey, 27 R. I. 414, 62 Atl. 979.

Utah. — I. X. L. Furniture, etc., Installment House *v.* Berets, (Utah 1907) 91 Pac. 279.

West Virginia. — Waldron *v.* Pigeon Coal Co., 61 W. Va. 280, 56 S. E. 492.

2. Brooks *v.* Halane, 116 Ill. App. 383; Funkhouser *v.* Porter, (Ky. 1908) 107 S. W. 202.

6. 4. See Drainage Commission *v.* National Contracting Co., 136 Fed. 794, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 6; American Bridge Co. *v.* Glenmore Distilleries Co., (Ky. 1908) 107 S. W. 279; Dooley *v.* Greening, 201 Mo. 343, 100 S. W. 43; *In re* Hammerstein, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 54, 108 N. Y. Supp. 197, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 6; *Ex p.* Heyman, 45 Tex. Crim. 541, 78 S. W. 349, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 6.

5. Lindeke *v.* Associates Realty Co., 146 Fed. 630, 77 C. C. A. 56.

7. 1. General Words Following Particular Words are controlled by the latter only to the extent required to reconcile the two. Modlin *v.* Roanoke R., etc., Co., 145 N. Car. 218, 58 S. E. 1075.

Schedule Following General Words. — See Drainage Commission *v.* National Contracting Co., 136 Fed. 794, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 7.

2. Shepherd Co. *v.* Shibles, 100 Me. 314, 61 Atl. 700.

3. *United States.* — Uinta Tunnel, etc., Co. *v.* Ajax Gold Min. Co., (C. C. A.) 141 Fed. 563.

Arkansas. — Mississippi Home Ins. Co. *v.* Adams, 84 Ark. 431, 106 S. W. 209.

Colorado. — Kephart *v.* Buddecke, 20 Colo. App. 551, 80 Pac. 501, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 7.

Florida. — Jacobs *v.* Parodi, 50 Fla. 541, 39 So. 833; Black *v.* Skinner Mfg. Co., 53 Fla. 1088, 1090, 43 So. 919, 922.

Illinois. — McCoy *v.* Griswold, 114 Ill. App. 556; Brooks *v.* Halane, 116 Ill. App. 383; Richmond *v.* Brandt, 118 Ill. App. 624.

Iowa. — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Kansas. — J. B. Ehrsam, etc., Mfg. Co. *v.*

Jackman, 73 Kan. 435, 85 Pac. 559, 91 Pac. 486; Jack *v.* Hooker, 71 Kan. 652, 81 Pac. 203.

Kentucky. — Chicago Veneer Co. *v.* Anderson, (Ky. 1907) 105 S. W. 108.

Maine. — Shepherd Co. *v.* Shibles, 100 Me. 314, 61 Atl. 700.

New York. — Williams *v.* Gridley, 110 N. Y. App. Div. 525, 96 N. Y. Supp. 978, *affirmed* 187 N. Y. 526, 79 N. E. 1119; Lite *v.* Firemen's Ins. Co., 119 N. Y. App. Div. 410, 104 N. Y. Supp. 434.

West Virginia. — Beverlin *v.* Casto, 62 W. Va. 158, 57 S. E. 411.

Habendum in Deed and granting clause should be read together in arriving at the proper interpretation of an instrument. Kepler *v.* Larson, 131 Iowa 438, 108 N. W. 1033.

8. 1. *United States.* — Employers' Liability Assur. Corp. *v.* Morrow, (C. C. A.) 143 Fed. 750.

Iowa. — Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914.

Kentucky. — Hall *v.* Wright, (Ky. 1905) 87 S. W. 1129.

Maryland. — Pritchett *v.* Jackson, 103 Md. 696, 63 Atl. 965.

Massachusetts. — New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231.

North Carolina. — Wilkins *v.* Norman, 139 N. Car. 40, 51 S. E. 797.

Virginia. — Wolverton *v.* Hoffman, 104 Va. 605, 52 S. E. 176.

When Rule Applies. — The first of two repugnant provisions of a contract prevails where it is in harmony with the other parts of the contract. Brady *v.* Carolina Steel Bridge, etc., Co., 76 S. Car. 297, 56 S. E. 964.

But the rule does not apply where the intention to qualify it is made very plain. McCombs *v.* Stephenson, (Ala. 1907) 44 So. 867.

2. Phillips *v.* Collinsville Granite Co., 123 Ga. 830, 51 S. E. 666; Crews *v.* Glasscock, (Ky. 1908) 107 S. W. 237.

3. Osler *v.* Bennett, 33 Pa. Co. Ct. 199, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8.

5. McNair, etc., Land Co. *v.* Adams, (Fla. 1907) 45 So. 492; Clayton *v.* Gilmer County Ct., 58 W. Va. 253, 52 S. E. 103; Carllee *v.* Ellsberry, 82 Ark. 209, 101 S. W. 407.

9. 1. *Alabama.* — Smith *v.* Smith, (Ala. 1907) 45 So. 168.

California. — Getz *v.* Federal Salt Co., 147 Cal. 115, 81 Pac. 416.

Idaho. — Hunt *v.* Capital State Bank, 12 Idaho 588, 87 Pac. 1129.

Illinois. — McCoy *v.* Griswold, 114 Ill. App. 556; Rider *v.* Rider, 114 Ill. App. 202; Baltimore, etc., R. Co. *v.* Brubaker, 217 Ill. 462, 75 N. E. 523.

Kansas. — Kurt *v.* Lanyon, 72 Kan. 60, 82 Pac. 459; Jack *v.* Hooker, 71 Kan. 652, 81 Pac. 203.

Michigan. — Epworth League Training Assembly *v.* Olney, 136 Mich. 50, 98 N. W. 860, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 9.

Minnesota. — Myrick *v.* Purcell, 95 Minn. 133, 103 N. W. 902.

Nebraska. — Rihner *v.* Jacobs, (Neb. 1907) 113 N. W. 220.

Utah. — Sterling *v.* Head Camp, etc., 28 Utah 520, 80 Pac. 1119.

Wisconsin. — Security Trust, etc., Ins. Co. *v.* Ellsworth, 129 Wis. 349, 109 N. W. 125; Urwan *v.* Northwestern Nat. L. Ins. Co., 125 Wis. 349, 103 N. W. 1102.

Order of Taking Effect. — Two or more deeds or other writings, executed simultaneously and so connected with each other that they may be regarded as a single transaction, shall be held to take effect in such order as shall carry out the intentions and secure the rights of all the parties. Crabtree *v.* Crabtree, (Iowa 1907) 113 N. W. 923.

10. 3. McCoy *v.* Griswold, 114 Ill. App. 556.

4. Rider *v.* Rider, 114 Ill. App. 202; McCoy *v.* Griswold, 114 Ill. App. 556.

5. Bartels *v.* Davis, 34 Mont. 285, 85 Pac. 1027.

7. Myrick *v.* Purcell, 95 Minn. 133, 103 N. W. 902.

8. Epworth League Training Assembly *v.* Olney, 136 Mich. 50, 98 N. W. 860, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 10; McArthor *v.* McGilvray, 1 Ga. App. 643, 57 S. E. 1058; Bogardus *v.* Phœnix Mfg. Co., 120 Ill. App. 46.

Map or Plan referred to in a deed becomes a material part thereof. Goldsmith *v.* Tillman, 33 Pa. Super. Ct. 44.

11. 2. *United States.* — Bowers Hydraulic Dredging Co. *v.* U. S., 41 Ct. Cl. 499, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 11; Standard L., etc., Ins. Co. *v.* McNulty, (C. C. A.) 157 Fed. 224; Maryland Casualty Co. *v.* Finch, 147 Fed. 388, 77 C. C. A. 566.

Georgia. — North British, etc., Ins. Co. *v.* Tye, 1 Ga. App. 380, 58 S. E. 110.

Maryland. — Palatine Ins. Co. *v.* O'Brien, (Md. 1908) 68 Atl. 484.

Missouri. — Greason *v.* St. Louis, etc., R. Co., 112 Mo. App. 116, 86 S. W. 722.

New York. — Pannuto *v.* Foglia, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 244, 105 N. Y. Supp. 495.

Texas. — San Jacinto Oil Co. *v.* Ft. Worth Light, etc., Co., (Tex. Civ. App. 1906) 93 S. W. 173.

West Virginia. — Griffin *v.* Fairmont Coal Co., 59 W. Va. 511, 53 S. E. 24, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 11.

Principles of Technical Nicety cannot be strictly applied in the construction of every-day oral contracts made by plain business men. Scotch Mfg. Co. *v.* Carr, 53 Fla. 480, 43 So. 427.

Thus the word "erected" may be used as synonymous with "completed." Hartrath *v.* Holsman, 127 Ill. App. 560.

And in a contract which provides for a sale of real estate when "advantageous," the word "advantageous" does not necessarily refer solely to profits. Mariner *v.* Ingraham, 127 Ill. App. 542.

Mutual Standard. — By the term "mutual standard" is meant the meaning in which the ambiguous word or phrase was used and accepted by both parties to the contract. West *v.* Hermann, (Tex. Civ. App. 1907) 104 S. W. 428.

12. 4. Local Usage as to the word "noon" in an insurance policy may be shown by parol.

Globe, etc., F. Ins. Co. *v.* David Moffatt Co., 154 Fed. 13, 83 C. C. A. 91.

13. 2. McSurley *v.* Venters, (Ky. 1907) 104 S. W. 365.

3. Erickson *v.* Green, (Wash. 1907) 92 Pac. 449; Toothman *v.* Courtney, (W. Va. 1907) 58 S. E. 915.

4. Langley *v.* Owens, 52 Fla. 302, 42 So. 457; Roanoke *v.* Blair, (Va. 1908) 60 S. E. 75.

5. Roanoke *v.* Blair, (Va. 1908) 60 S. E. 75.

14. 1. *Alabama.* — McCombs *v.* Stephenson, (Ala. 1907) 44 So. 867.

California. — King *v.* Samuel, (Cal. App. 1907) 93 Pac. 391.

Kentucky. — Crews *v.* Glasscock, (Ky. 1908) 107 S. W. 237.

Maine. — Chapman *v.* Hamblet, 100 Me. 454, 62 Atl. 215; Shepherd Co. *v.* Shibles, 100 Me. 314, 61 Atl. 700.

Oklahoma. — Edwards *v.* Brusha, 18 Okla. 234, 90 Pac. 727.

Texas. — McBride *v.* Burns, (Tex. Civ. App. 1905) 88 S. W. 394.

Application of Rule. — "The rule that a deed must be construed most strongly against the grantor can have no application where its terms are ambiguous, and there is allegation that the parties to the contract used the language in a permissible but special sense." West *v.* Hermann, (Tex. Civ. App. 1907) 104 S. W. 428.

2. **In Leases,** the rule cannot be invoked where the intention of the parties, gathered from the surrounding circumstances, is otherwise. Pere Marquette R. Co. *v.* Wabash R. Co., 141 Mich. 215, 104 N. W. 650.

15. 3. *United States.* — Christian *v.* Deadwood First Nat. Bank, (C. C. A.) 155 Fed. 705; Van Zandt *v.* Hanover Nat. Bank, 149 Fed. 127, 79 C. C. A. 23.

Arkansas. — Mississippi Home Ins. Co. *v.* Adams, 84 Ark. 431, 106 S. W. 209.

Illinois. — Richmond *v.* Brandt, 118 Ill. App. 624.

Iowa. — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Massachusetts. — New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231.

New York. — Harkavy *v.* Zisman, (Supm. Ct. App. T.) 96 N. Y. Supp. 214.

16. 1. *United States.* — Ætna Indemnity Co. *v.* J. R. Crowe Coal, etc., Co., 154 Fed. 545, 83 C. C. A. 431.

District of Columbia. — Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46.

Illinois. — Provident Sav. L. Assur. Soc. *v.* Marshall, 125 Ill. App. 101; Smith *v.* Bankers' L. Assoc., 123 Ill. App. 392; Concordia F. Ins. Co. *v.* Bowen, 121 Ill. App. 35; Travelers' Ins. Co. *v.* Ayers, 119 Ill. App. 402; Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155; Commercial Union Assur. Co. *v.* Parker, 119 Ill. App. 126; Szymkus *v.* Eureka F. & M. Ins. Co., 114 Ill. App. 401.

Iowa. — Krell *v.* Chickasaw Farmers' Mut. F. Ins. Co., 127 Iowa 748, 104 N. W. 364.

Kansas. — Philadelphia Fire Assoc. *v.* Taylor, (Kan. 1907) 91 Pac. 1070.

Maine. — Hewey *v.* Metropolitan L. Ins. Co., 100 Me. 523, 62 Atl. 600; Bickford *v.* Ætna Ins. Co., 101 Me. 124, 63 Atl. 552.

New York. — Moest *v.* Continental Casualty Co., (Supm. Ct. Eq. T.) 55 Misc. (N. Y.) 128, 104 N. Y. Supp. 553.

North Carolina. — Rayburn *v.* Pennsylvania Casualty Co., 138 N. Car. 379, 50 S. E. 762; Bray *v.* Virginia F. & M. Ins. Co., 139 N. Car. 390, 51 S. E. 922; East Carolina R. Co. *v.* Maryland Casualty Co., 145 N. Car. 114, 58 S. E. 906.

Oregon. — Stinchcombe *v.* New York L. Ins. Co., 46 Oregon 316, 80 Pac. 213.

South Dakota. — Kennedy *v.* Agricultural Ins. Co., (S. Dak. 1906) 110 N. W. 116; Edge *v.* St. Paul F. & M. Ins. Co., (S. Dak. 1905) 105 N. W. 281.

Tennessee. — Pacific Mut. L. Ins. Co. *v.* Galbraith, 115 Tenn. 471, 91 S. W. 204.

Application of Rule. — The rule is not applicable where the contract is plain and certain. Finkbohner *v.* Glens Falls Ins. Co., (Cal. App. 1907) 92 Pac. 318; Hartford F. Ins. Co. *v.* Northern Trust Co., 127 Ill. App. 355; Continental Casualty Co. *v.* Wade, (Tex. 1907) 105 S. W. 35, *reversed* (Tex. Civ. App. 1907) 99 S. W. 877; Furry *v.* General Acc. Ins. Co., (Vt. 1908) 68 Atl. 655.

3. A. B. Small Co. *v.* Claxton, 1 Ga. App. 83, 57 S. E. 977; Bridgeport Malleable Iron Co. *v.* Iowa Cutlery Works, 130 Iowa 736, 107 N. W. 937; Loomis *v.* MacFarlane, (Oregon 1907) 91 Pac. 466.

5. American Bonding Co. *v.* Morrow, 80 Ark. 49, 96 S. W. 613.

6. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; Empire Rubber Mfg. Co. *v.* Morris, 73 N. J. L. 602, 65 Atl. 450.

17. 2. Snead, etc., Iron Works *v.* Merchants' L. & T. Co., 225 Ill. 422, 80 N. E. 237; San Jacinto Oil Co. *v.* Ft. Worth Light, etc., Co., (Tex. Civ. App. 1906) 93 S. W. 173.

Statutory Provisions. — Code Civ. Pro. Neb., § 341, provides that "where the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it." Patterson *v.* Humboldt First Nat. Bank, (Neb. 1907) 110 N. W. 721.

17. 4. *United States.* — U. S. Fidelity, etc., Co. *v.* Woodson County, (C. C. A.) 145 Fed. 144.

California. — Mebius, etc., Co. *v.* Mills, (Cal. 1907) 88 Pac. 917.

Iowa. — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Kentucky. — Berry *v.* Frisbie, 120 Ky. 337, 86 S. W. 558; Nuckols *v.* Stone, 120 Ky. 631, 87 S. W. 799.

Missouri. — State *v.* Lewin, (Mo. App. 1907) 106 S. W. 581.

New Jersey. — Empire Rubber Mfg. Co. *v.* Morris, 73 N. J. L. 602, 65 Atl. 450.

West Virginia. — Higgins *v.* Round Bottom Coal, etc., Co., (W. Va. 1907) 59 S. E. 1064.

18. 1. Delaware, etc., R. Co. *v.* Kutter, 147 Fed. 51, 77 C. C. A. 315; Virginia Bridge, etc., Co. *v.* Crafts, 2 Ga. App. 126, 58 S. E. 322; Beasley *v.* Aberdeen, etc., R. Co., 145 N. Car. 272, 59 S. E. 60.

2. McSurley *v.* Venters, (Ky. 1907) 104 S. W. 365.

3. Letchworth *v.* Vaughan, (Ark. 1905) 90 S. W. 1001; Mercer County *v.* Stupp Bros. Bridge, etc., Co., 115 Ill. App. 298.

Insurance Contracts. — Glens Falls Ins. Co. *v.* Michael, 167 Ind. 659, 74 N. E. 964, 79 N. E. 1085.

4. Christian *v.* Deadwood First Nat. Bank, (C. C. A.) 155 Fed. 705; American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Stein *v.* Archibald, (Cal. 1907) 90 Pac. 536; Jacobs *v.* Parodi, 50 Fla. 541, 39 So. 833; Citizens Bank *v.* Taylor, 104 Va. 164, 51 S. E. 159.

19. 2. Cornett *v.* Creech, (Ky. 1907) 100 S. W. 1189.

3. *In re* Conroy, (Cal. App. 1907) 93 Pac. 205; American Bridge Co. *v.* Glenmore Distilleries Co., (Ky. 1908) 107 S. W. 279.

20. 1. "And" and "Or" have been so construed as to give one the meaning of the other. Manson *v.* Dayton, 153 Fed. 258, 82 C. C. A. 508.

"May" Does Not Mean "Shall," and is not so construed in private contracts. Northwestern Traveling Men's Assoc. *v.* Crawford, 126 Ill. App. 438, *affirmed* 226 Ill. 57, 80 N. E. 736.

21. 2. Miller *v.* Mowers, 227 Ill. 392, 81 N. E. 420, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 21; Perry *v.* Acme Oil Co., (Ind. App. 1907) 80 N. E. 174.

3. Hardie-Tynes Foundry, etc., Co. *v.* Glen Allen Oil Mill, 84 Miss. 259, 36 So. 262, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 21; Perry *v.* Acme Oil Co., (Ind. App. 1907) 80 N. E. 174.

Written and Oral Parts Construed Together. — American Mercantile Exch. *v.* Blunt, 102 Me. 128, 66 Atl. 212.

4. *California.* — Stein *v.* Archibald, (Cal. 1907) 90 Pac. 536.

Colorado. — True *v.* Rocky Ford Canal, etc., Co., 36 Colo. 43, 85 Pac. 842.

District of Columbia. — Harten *v.* Loffler, 29 App. Cas. (D. C.) 490.

Idaho. — Kroeger *v.* Good, 13 Idaho 184, 89 Pac. 632.

Illinois. — Miller *v.* Mowers, 227 Ill. 392, 81 N. E. 420, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 21; Calkins *v.* Pease, 125 Ill. App. 270.

Iowa. — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Kansas. — Philadelphia Fire Assoc. *v.* Taylor, (Kan. 1907) 91 Pac. 1070.

Minnesota. — Hamel *v.* Minneapolis, etc., R. Co., 97 Minn. 334, 107 N. W. 139, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 21.

Missouri. — Aldridge *v.* Aldridge, 202 Mo. 565, 101 S. W. 42; Greason *v.* St. Louis, etc., R. Co., 112 Mo. App. 116, 86 S. W. 722.

Nebraska. — Hart *v.* Saunders, 74 Neb. 818, 105 N. W. 709; Fiscus *v.* Wilson, 74 Neb. 444, 104 N. W. 856.

Rhode Island. — Shartenberg *v.* Ellbey, 27 R. I. 414, 62 Atl. 979.

Tennessee. — Hardwick *v.* American Can Co., 113 Tenn. 657, 88 S. W. 797.

West Virginia. — Casto *v.* Baker, 59 W. Va. 683, 53 S. E. 600.

Illustrations. — Common knowledge and understanding is sometimes such a circumstance. Trow *v.* Preferred Acc. Ins. Co., (Vt. 1907) 67 Atl. 821.

All Communications between the parties will be scrutinized to determine the character of the transaction and the intention of the parties. Wisner *v.* Field, 15 N. Dak. 43, 106 N. W. 38.

22. 1. *United States.* — Cook *v.* Foley, 152 Fed. 41, 81 C. C. A. 237.

Indiana. — Merica *v.* Burget, 36 Ind. App. 453, 75 N. E. 1083.

Iowa. — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Maine. — Union Water Power Co. *v.* Lewiston, 101 Me. 564, 65 Atl. 67.

Minnesota. — Security Trust Co. *v.* Joesting, 96 Minn. 163, 104 N. W. 830.

Nebraska. — Grothe *v.* Lane, (Neb. 1906) 110 N. W. 305; Fiscus *v.* Wilson, 74 Neb. 444, 104 N. W. 856.

Pennsylvania. — Wilson *v.* Wernwag, 217 Pa. St. 82, 66 Atl. 242.

Texas. — San Jacinto Oil Co. *v.* Ft. Worth Light, etc., Co., (Tex. Civ. App. 1906) 93 S. W. 173; Hubbard City *v.* Bounds, (Tex. Civ. App. 1906) 95 S. W. 69.

2. *Iowa.* — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Maine. — Chapman *v.* Hamblet, 100 Me. 454, 62 Atl. 215; Union Water Power Co. *v.* Lewiston, 101 Me. 564, 65 Atl. 67.

Minnesota. — Security Trust Co. *v.* Joesting, 96 Minn. 163, 104 N. W. 830.

Nebraska. — Grothe *v.* Lane, (Neb. 1906) 110 N. W. 305.

Pennsylvania. — Wilson *v.* Wernwag, 217 Pa. St. 82, 66 Atl. 242.

Texas. — San Jacinto Oil Co. *v.* Ft. Worth Light, etc., Co., (Tex. Civ. App. 1906) 93 S. W. 173; Hubbard City *v.* Bounds, (Tex. Civ. App. 1906) 95 S. W. 69.

3. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; Union Water Power Co. *v.* Lewiston, 101 Me. 564, 65 Atl. 67; Security Trust Co. *v.* Joesting, 96 Minn. 163, 104 N. W. 830; Hubbard City *v.* Bounds, (Tex. Civ. App. 1906) 95 S. W. 69.

23. 2. *United States.* — American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Uinta Tunnel, etc., Co. *v.* Ajax Gold Min. Co., (C. C. A.) 141 Fed. 563; U. S. Fidelity, etc., Co. *v.* Woodson County, (C. C. A.) 145 Fed. 144; Vocalian Organ Co. *v.* Wright, 137 Fed. 313, *reversed* on other grounds (C. C. A.) 148 Fed. 200.

Illinois. — Brockmeyer *v.* Sanitary Dist., 118 Ill. App. 49; Close *v.* Browne, 230 Ill. 228, 82 N. E. 629; Rider *v.* Rider, 114 Ill. App. 202.

Iowa. — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Kentucky. — McSurley *v.* Venters, (Ky. 1906) 104 S. W. 365.

Tennessee. — Hardwick *v.* American Can Co., 113 Tenn. 657, 88 S. W. 797.

Texas. — Parrish *v.* Mills, (Tex. Civ. App. 1907) 102 S. W. 184, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23.

24. 1. *United States.* — Walker *v.* U. S., 143 Fed. 685; Columbus, etc., R. Co. *v.* Pennsylvania Co., (C. C. A.) 143 Fed. 757; Uinta Tunnel, etc., Co. *v.* Ajax Gold Min. Co., (C. C. A.) 141 Fed. 563; Michigan Home Colony

Co. *v.* Tabor, (C. C. A.) 141 Fed. 332; Cook *v.* Foley, 152 Fed. 41, 81 C. C. A. 237.

California. — Kennedy *v.* Lee, 147 Cal. 596, 82 Pac. 257; Mitau *v.* Roddan, 149 Cal. 1, 84 Pac. 145.

District of Columbia. — Consaul *v.* Cummings, 24 App. Cas. (D. C.) 36.

Florida. — Scotch Mfg. Co. *v.* Carr, 53 Fla. 480, 43 So. 427.

Illinois. — Harter *v.* Morris, 124 Ill. App. 377; David Bradley Mfg. Co. *v.* Tedford, 127 Ill. App. 1; Turner *v.* Osgood Art Colortype Co., 125 Ill. App. 602, *affirmed* 223 Ill. 629, 79 N. E. 306; Snead, etc., Iron Works *v.* Merchants' L. & T. Co., 225 Ill. 442, 80 N. E. 237.

Iowa. — McCormick *v.* Merritt, 131 Iowa 160, 105 N. W. 428.

Kansas. — J. B. Ehrsam, etc., Mfg. Co. *v.* Jackman, 73 Kan. 435, 85 Pac. 559, 91 Pac. 486; Philadelphia Fire Assoc. *v.* Taylor, (Kan. 1907) 91 Pac. 1070.

Kentucky. — Trapp *v.* Conley, (Ky. 1905) 89 S. W. 514.

Maine. — Oakland Woolen Co. *v.* Union Gas, etc., Co., 101 Me. 198, 63 Atl. 915.

Minnesota. — Hamel *v.* Minneapolis, etc., R. Co., 97 Minn. 334, 107 N. W. 139, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 24.

Mississippi. — Powell *v.* Russell, 88 Miss. 549, 41 So. 5; Como *v.* Pointer, 87 Miss. 712, 40 So. 260.

Missouri. — Sawyer *v.* Sanderson, 113 Mo. App. 233, 88 S. W. 151, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23.

Nebraska. — School Dist. *v.* Davis, (Neb. 1906) 107 N. W. 842; Fiscus *v.* Wilson, 74 Neb. 444, 104 N. W. 856.

Ohio. — Braddock *v.* Boner, 29 Ohio Cir. Ct. 300.

Texas. — Bounds *v.* Hubbard City, (Tex. Civ. App. 1907) 105 S. W. 56.

West Virginia. — Myers *v.* Carnahan, 61 W. Va. 414, 57 S. E. 134.

Time of Construction by the parties, being several months after the execution of the contract, does not affect the rule. Powers *v.* Worlds Fair Min. Co., (Ariz. 1906) 86 Pac. 15.

25. 4. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; Hardwick *v.* American Can Co., 113 Tenn. 657, 88 S. W. 797.

26. 1. Security Trust Co. *v.* Joesting, 96 Minn. 163, 104 N. W. 830.

The law will not imply a relation between parties contrary to their agreement covering the subject. Smyser *v.* Fair, 73 Kan. 773, 85 Pac. 408.

2. Armour Packing Co. *v.* U. S., 153 Fed. 1, 82 C. C. A. 135; Hutchinson *v.* Ward, 114 N. Y. App. Div. 156, 99 N. Y. Supp. 708; Pannuto *v.* Foglia, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 244, 105 N. Y. Supp. 495; Wright *v.* Computing Scale Co., (Wash. 1907) 91 Pac. 571.

INTERPRETERS.

28. 8. **Interpreter Before Grand Jury.** — An interpreter may be appointed to act before the grand jury although the Criminal Code provides that "No person except the attorney for the commonwealth and the witnesses under examination shall be present." Lyon *v.* Com., (Ky. 1906) 96 S. W. 857.

29. 1. **The Professor of a State Deaf and Dumb Institution** may act as interpreter for a former pupil, in the discretion of the trial court. State *v.* Smith, 203 Mo. 695, 102 S. W. 526.

6. Perovich *v.* U. S., 205 U. S. 86, 27 U. S. Sup. Ct. 456.

30. 1. Dobbins *v.* Little Rock, etc., Co., 79 Ark. 85, 95 S. W. 794, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 29.

8. **Witness May Translate Book for Court.** — Yick Wo *v.* Underhill, 5 Cal. App. 519, 90 Pac. 967.

INTERSTATE COMMERCE.

31. 5. **Power to Regulate Commerce** among the states is general, and includes authority to regulate all its parts, (1) the subjects of commerce, the articles, information, intelligence transported from state to state; (2) the transactors of commerce, the merchants, carriers, laborers who carry it on; (3) the means, the vehicles, the cars, steamboats, coaches, wagons by which subjects of commerce are carried; (4) the operation, the contracts, terms, rates under which it is conducted. While this power to regulate is general, the regulations themselves by means of which this power is exercised must necessarily be particular and appropriate to the respective parts of this commerce which they are enacted to govern. U. S. *v.* Colorado, etc., R. Co., (C. C. A.) 157 Fed. 321.

42. 4. New Mexico *v.* Denver, etc., R. Co., 203 U. S. 38, 27 U. S. Sup. Ct. 1, 51 U. S. (L. ed.) 78; State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005.

5. Power of Congress Over Interstate Commerce Paramount. — New York Cent., etc., R. Co. *v.* Chosen Freeholders, (N. J. 1907) 65 Atl. 860.

44. 6. People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970; State *v.* Peet, (Vt. 1908) 68 Atl. 661.

46. 7. **State Lines Ignored.** — The Constitution reserved to the nation the unlimited power to regulate interstate and foreign commerce, and if that power cannot be effectually exercised without affecting intrastate commerce, then Congress may undoubtedly in that sense regulate intrastate commerce so far as necessary in order to regulate interstate commerce fully and effectually. U. S. *v.* Colorado, etc., R. Co., (C. C. A.) 157 Fed. 321.

48. 2. Wilson *v.* Shaw, 204 U. S. 24, 27 U. S. Sup. Ct. 233.

50. 2. **Congress May Compel Removal of Bridges.** — Union Bridge Co. *v.* U. S., 204 U. S. 364, 27 U. S. Sup. Ct. 367.

4. **Immigration Regulations.** — Congress may impose conditions upon the granting of clearance to vessels. International Mercantile Marine Co. *v.* Stranahan, 155 Fed. 428.

5. Ryman Steamboat Line Co. *v.* Com., 101 S. W. 403, 30 Ky. L. Rep. 1276.

55. 3. State *v.* Lowry, 166 Ind. 372, 77 N. E. 728; Morris-Scarboro Moffit Co. *v.* Southern Express Co., (N. Car. 1907) 59 S. E. 667; State *v.* Peet, (Vt. 1908) 68 Atl. 661.

56. 1. Platt *v.* Le Cocq, 150 Fed. 391.

3. New Mexico Lumber, etc., Co., 203 U. S. 38, 27 U. S. Sup. Ct. 1; Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; People *v.* Chicago, etc., R. Co., 223 Ill. 581, 79 N. E. 144; American Express Co. *v.* Southern Indiana Express Co., 167 Ind. 292, 78 N. E. 1021; State *v.* Missouri Pac. R. Co., (Kan. 1907) 92 Pac. 606; Louisville, etc., R. Co. *v.* Central Stock Yards Co., 97 S. W. 778, 30 Ky. L. Rep. 18; Com. *v.* Strauss, 191 Mass. 545, 78 N. E. 136; Harrill *v.* Southern R. Co., 144 N. Car. 532, 57 S. E. 383.

What Is Valid Exercise of Police Power. — An act requiring elevator companies to return certificate of inspection and weighmaster's certificate is a legitimate exercise of the police power. State *v.* Minneapolis, etc., El. Co., (N. Dak. 1908) 114 N. W. 485.

Reasonableness of Regulation. — A rule requiring railway companies to furnish cars upon four days' notice is unreasonable and void as to interstate shipments. Southern R. Co. *v.* Com., (Va. 1908) 60 S. E. 70.

Municipal Regulation of the distribution of hand bills, circulars, etc., is valid exercise of the police power. International Text-Book Co. *v.* Auburn, 155 Fed. 986.

57. 5. See State *v.* Peet, (Vt. 1908) 68 Atl. 661.

60. 5. **Power to Regulate Commerce Defined.** — "The correct definition of the power, * * * is that it is the power to enact legislation that directly affects interstate commerce or its adjuncts, and not legislation that affects it or them indirectly only." U. S. *v.* Adair, 152 Fed. 737.

The power to regulate embraces all the instrumentalities by which commerce may be conducted. Snead *v.* Central of Georgia R. Co., 151 Fed. 608.

Safety Appliance Act constitutes a regulation of commerce. U. S. *v.* Chicago, etc., R. Co., 149 Fed. 486; U. S. *v.* Atlantic Coast Line R. Co., 153 Fed. 918.

Regulation of Corporations. — The financial regulation of corporations engaged in interstate commerce is a regulation of that commerce by regulating its most potent instrumentality. Interstate Commerce Commission *v.* Harriman, 157 Fed. 432.

Regulation of Intercourse between Employer and Employee with reference to membership in labor unions is not a regulation of commercial intercourse. U. S. *v.* Scott, 148 Fed. 431. But see U. S. *v.* Adair, 152 Fed. 737.

61. 2. Ware *v.* Mobile County, 146 Ala. 170, 41 So. 153, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 61; Snead *v.* Central of Georgia R. Co., 151 Fed. 608; People *v.* Chicago, etc., R. Co., 223 Ill. 581, 79 N. E. 144; People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970.

Instrumentalities of Commerce are, *ex necessitate*, a part of commerce. Southern R. Co. *v.* Com., (Va. 1908) 60 S. E. 70.

3. Howard *v.* Illinois Cent. R. Co., 148 Fed. 907; *In re* Charge to Grand Jury, 151 Fed. 834; People *v.* Chicago, etc., R. Co., 223 Ill. 581, 79 N. E. 144.

Test of Interstate Commerce. — Importation into one state from another is the indispensable element, the test, of interstate commerce. Every part of every transportation of articles of commerce in a continuous passage from an inception in one state to a prescribed destination in another is a transaction of interstate commerce. Goods so carried never cease to be articles of interstate commerce from the time they are started upon their passage in one state until their delivery at their destination in the other is completed, and they there mingle with and become a part of the great mass of property within the latter state. Their transportation never ceases to be a transaction of interstate commerce from its inception in one state until the delivery of the goods at their prescribed destinations in the other, and every one who participates in it, who carries the goods through any part of their continuous passage, unavoidably engages in interstate commerce. U. S. *v.* Colorado, etc., R. Co., (C. C. A.) 157 Fed. 321.

"Commerce among the states does not depend on the residence of the parties, but on the interchange of property between different states." People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970.

Thus, a sale of property in one state for delivery in another is a transaction of interstate commerce. Globe Elevator Co. *v.* Andrew, 144 Fed. 871.

The Business of Correspondence Schools does not constitute interstate commerce. International Text-Book Co. *v.* Peterson, (Wis. 1907) 113 N. W. 730.

4. Globe Elevator Co. *v.* Andrew, 144 Fed. 871; State *v.* Peet, (Vt. 1908) 68 Atl. 661.

Commerce by Railroad. — The transportation by a common carrier by railroad of articles of interstate commerce for an independent express company is engaging in interstate commerce by railroad as effectually as their carriage by it for the vendors or consignors. U. S. *v.* Colorado, etc., R. Co., (C. C. A.) 157 Fed. 342.

62. 4. Globe Elevator Co. *v.* Andrew, 144 Fed. 871; U. S. *v.* Chicago, etc., R. Co., 149 Fed. 486; Jennings *v.* Big Sandy, etc., R. Co., 61 W. Va. 664, 57 S. E. 272.

7. Baer Bros. Mercantile Co. *v.* Missouri Pac. R. Co., 13 Int. Com. C. 333; Corcoran *v.* Louisville, etc., R. Co., 101 S. W. 1185, 31 Ky. L. Rep. 197.

63. 5. U. S. *v.* Delaware, etc., R. Co., 152 Fed. 269.

64. 7. Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714.

8. Empty Cars, not in motion, may be instrumentalities of commerce. Southern R. Co. *v.* Com., (Va. 1908) 60 S. E. 70.

Moving Car from One Yard to Another, to be put in a train, constitutes interstate commerce, within the meaning of the Safety Appliance Act. U. S. *v.* Pittsburgh, etc., R. Co., 11 Int. Com. C. 696.

10. State *v.* Insurance Co. of North America, 71 Neb. 320, 106 N. W. 767.

65. 1. **Allowance of Elevator Charges** to terminal elevators in other states is an incident of interstate commerce.

"Elevation" Defined. — Matter of Allowances to Elevators, etc., 12 Int. Com. C. 86.

3. Production or Manufacture Is Not Commerce. — A contract to manufacture and erect elevators in a building situated in another state, for the use of the building, is not interstate commerce. Portland Co. *v.* Hall, etc., Constr. Co., 121 N. Y. App. Div. 779, 106 N. Y. Supp. 649.

8. People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970.

10. Contracts for Sale and Transportation to Another State. — The facts that property sold is outside of the state and the seller and buyer foreigners are not enough to make a sale commerce with foreign nations or among the several states. People *v.* Reardon, 204 U. S. 152, 27 U. S. Sup. Ct. 188, 51 U. S. (L. ed.) 415.

66. 8. Lee *v.* La Fayette, (Ala. 1907) 45 So. 294; Com. *v.* Baldwin, 96 S. W. 914, 29 Ky. L. Rep. 1074; Com. *v.* Eclipse Hay Press Co., 104 S. W. 224, 31 Ky. L. Rep. 824; State *v.* Looney, (Mo. 1906) 97 S. W. 934; State *v.* Trotman, 142 N. Car. 662, 55 S. E. 599. See also Catlin, etc., Co. *v.* Schuppert, 130 Wis. 642, 110 N. W. 818.

9. State *v.* Looney, (Mo. 1906) 97 S. W. [illegible]

Sale from Warehouse. — People *v.* Smith, 147 Mich. 391, 110 N. W. 1102, 13 Detroit Leg. [illegible] 1068.

Sale by Sample Constitutes Interstate Commerce. — Rearick *v.* Pennsylvania, 203 U. S. 507, 27 U. S. Sup. Ct. 159, 51 U. S. (L. ed.) 295.

67. 5. "Articles Recognized by Congress as subjects of interstate commerce cannot be held to be otherwise." State *v.* Peet, (Vt. 1908) 68 Atl. 661.

70. 7. St. Louis Hay, etc., Co. *v.* Chicago, etc., R. Co., 11 Int. Com. C. 88.

9. Darnell, etc., Co. *v.* Memphis, 116 Tenn. 424, 95 S. W. 816. See also State *v.* Lowry, 166 Ind. 372, 77 N. E. 728.

71. 3. State *v.* Intoxicating Liquors, 102 Me. 206, 66 Atl. 393.

Contract for Further Transportation, to a point within the state, made by the consignee, is not governed by the Interstate Commerce Act. Gulf, etc., R. Co. *v.* Texas, 204 U. S. 403, 27 U. S. Sup. Ct. 360.

4. State *v.* Intoxicating Liquors, 101 Me. 430, 64 Atl. 812.

6. **Transfer of Title During Transportation** does not change the character of the shipment. Gulf, etc., R. Co. *v.* Texas, 204 U. S. 403, 27 U. S. Sup. Ct. 360, 51 U. S. (L. ed.) 540.

8. See Lehigh, etc., Coal Co. *v.* Junction, (N. J. 1907) 66 Atl. 923.

72. 1. **Delivery and Sale in Original Package** terminates interstate commerce so far as the police regulations of the states are concerned. Heyman *v.* Southern R. Co., 203 U. S. 270, 27 U. S. Sup. Ct. 104, 51 U. S. (L. ed.) 178.

73. 6. Parks *v.* Nez Perce County, 13 Idaho 298, 89 Pac. 940.

75. 3. McNeill *v.* Southern R. Co., 202 U. S. 543, 26 U. S. Sup. Ct. 722, 50 U. S. (L. ed.) 1142; Globe Elevator Co. *v.* Andrew, 144 Fed. 871.

Immaterial, Indirect, and Remote Effects should be ignored and substantial results alone considered. People *v.* Reardon, 184 N. Y. 457, 77 N. E. 970.

76. 1. John Deere Plow Co. *v.* Wyland, 69 Kan. 259, 76 Pac. 863, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 75.

4. State *v.* Peet, (Vt. 1908) 68 Atl. 661.

5. Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

77. 1. People *v.* Miller, 202 U. S. 584, 26 U. S. Sup. Ct. 714, 50 U. S. (L. ed.) 1155.

4. *Ex p.* Hull, 153 Fed. 459.

Equality in Markets of State. — A local statute fixing the grades by which grain in interstate commerce can be sold is void. Globe Elevator Co. *v.* Andrew, 144 Fed. 871.

Venue. [illegible] suits against common carriers is not invalid on the ground that it is discriminatory and a burden on interstate commerce. St. Louis, etc., R. Co. *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 1176.

78. 3. New Mexico *v.* Denver, etc., R. Co., 203 U. S. 38, 27 U. S. Sup. Ct. 1; State *v.* Asbell, 74 Kan. 397, 86 Pac. 457.

83. 4. **National Quarantine Law** governing shipments both interstate and intrastate is void. Illinois Cent. R. Co. *v.* McKendree, 203 U. S. 514, 27 U. S. Sup. Ct. 153, 51 U. S. (L. ed.) 298.

84. 1. *Ex p.* Massey, (Tex. Crim. 1906) 92 S. W. 1086.

Importing of Docked Horses cannot be prevented by a state statute. Stubbs *v.* People, (Colo. 1907) 90 Pac. 1114.

87. 7. State *v.* Lowry, 166 Ind. 372, 77 N. E. 728.

90. 2. People *v.* Reardon, 184 N. Y. 456, 77 N. E. 970.

95. 1. **A Penalty for Failure to Furnish Cars,** imposed by state statute, is void as to carriers engaged in interstate commerce. Allen *v.* Texas, etc., R. Co., (Tex. 1907) 101 S. W. 792.

3. Houston, etc., R. Co. *v.* Mayes, 201 U. S. 321, 26 U. S. Sup. Ct. 491, 50 U. S. (L. ed.) 772.

96. 7. **Constitutional Provision Valid.** — Louisville, etc., R. Co. *v.* Central Stock Yards Co., 97 S. W. 778, 30 Ky. L. Rep. 18.

97. 2. Seale *v.* State, 126 Ga. 644, 55 S. E. 472, *following* 90 Ga. 396.

99. 1. **Requiring Operation of Separate Passenger Service within State.** — State *v.* Missouri Pac. R. Co., (Kan. 1907) 92 Pac. 606.

4. **A Board of Railroad Commissioners,** acting under a state statute, cannot compel interstate trains to stop, where proper and reasonable facilities have been furnished. Mississippi R. Commission *v.* Illinois Cent. R. Co., 203 U. S. 335, 27 U. S. Sup. Ct. 90, 51 U. S. (L. ed.) 209; Atlantic Coast Line R. Co. *v.* Wharton, 207 U. S. 328, 28 U. S. Sup. Ct. 121.

5. **Ordinance Regulating Speed of Trains within Corporate Limits Valid.** — Peterson *v.* State, (Neb. 1907) 112 N. W. 306.

100. 6. Southern Kansas R. Co. *v.* State, (Tex. Civ. App. 1906) 99 S. W. 166.

7. State *v.* Thompson, 47 Oregon 492, 84 Pac. 476.

101. 3. Jennings *v.* Big Sandy, etc., R. Co., 61 W. Va. 664, 57 S. E. 272.

102. 7. Porter *v.* St. Louis Southwestern R. Co., 78 Ark. 182, 95 S. W. 453.

103. 4. Harrill *v.* Southern R. Co., 144 N. Car. 532, 57 S. E. 383.

Bill of Lading Prima Facie Evidence of Fact. — Skipper *v.* Seaboard Air Line R. Co., 75 S. Car. 276, 55 S. E. 454.

104. 3. Statute Regulating Liability Not a Regulation of Commerce. — Statute making each carrier liable as agent of its connecting carrier is valid. Venning *v.* Atlantic Coast Line R. Co., 78 S. Car. 42, 58 S. E. 983. See also Martin *v.* Pittsburg, etc., R. Co., 203 U. S. 284, 27 U. S. Sup. Ct. 100, 51 U. S. (L. ed.) 184.

4. Skipper *v.* Seaboard Air Line R. Co., 75 S. Car. 276, 55 S. E. 454. See also McManus *v.* Oregon Short Line R. Co., 118 Mo. App. 152, 94 S. W. 743.

Federal Employers' Liability Act of 1906 Invalid as to Intrastate Commerce. — Howard *v.* Illinois Cent. R. Co., 207 U. S. 463, 28 U. S. Sup. Ct. 141.

Liable for Loss of Goods. — Morris-Scarboro-Moffitt Co. *v.* Southern Express Co., (N. Car. 1907) 59 S. E. 667.

7. Disposal of Goods received by warehouseman, commission merchants, or common carriers, and not claimed by the owner or consignee, may be governed by state statutes. St. Louis Southwestern R. Co. *v.* Arkansas, etc., Grain Co., (Tex. Civ. App. 1906) 95 S. W. 656.

105. 5. Belle City Mfg. Co. *v.* Frizzell, 11 Idaho 1, 81 Pac. 58.

6. Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1; Flint, etc., Mfg. Co. *v.* McDonald, (S. Dak. 1908) 114 N. W. 684.

8. International Trust Co. *v.* A. Leschen, etc., Rope Co., (Colo. 1907) 92 Pac. 727.

Articles of Incorporation may be required to be filed as a condition of doing interstate business. Western Union Tel. Co. *v.* State, 82 Ark. 309, 101 S. W. 748.

106. 1. John Deere Plow Co. *v.* Wyland, 69 Kan. 259, 76 Pac. 863, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 106.

2. Ryman Steamboat Line Co. *v.* Com., 101 S. W. 403, 30 Ky. L. Rep. 1276.

4. See People *v.* Roberts, 116 N. Y. App. Div. 30, 101 N. Y. Supp. 184.

107. 4. Sale from Established Agency Is Not Interstate Commerce. — Milburn Wagon Co. *v.* Com., (Ky. 1907) 104 S. W. 323.

5. International Trust Co. *v.* A. Leschen, etc., Rope Co., (Colo. 1907) 92 Pac. 727.

7. Belle City Mfg. Co. *v.* Frizzell, 11 Idaho 9, 81 Pac. 58, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107.

108. 1. Belle City Mfg. Co. *v.* Frizzell, 11 Idaho 9, 81 Pac. 58, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107, 108.

4. State *v.* Trotman, 142 N. Car. 662, 55 S. E. 599; Galveston, etc., R. Co. *v.* Davidson, (Tex. Civ. App. 1906) 93 S. W. 436.

110. 3. See Texas Co. *v.* Stephens, (Tex. 1907) 103 S. W. 481.

111. 1. See Galveston, etc., R. Co. *v.* Davidson, (Tex. Civ. App. 1906) 93 S. W. 435.

2. I. M. Darnell, etc., Co. *v.* Memphis, 208 U. S. 113, 28 U. S. Sup. Ct. 247.

6. State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005; People *v.* Reardon, 184 N. Y. 455, 77 N. E. 970; State *v.* Patterson, (Wis. 1908) 114 N. W. 441.

114. 1. New York *v.* Wells, 208 U. S. 14, 28 U. S. Sup. Ct. 193; Parks *v.* Nez Perce County, 13 Idaho 298, 89 Pac. 949; Darnell, etc., Co. *v.* Memphis, 116 Tenn. 424, 95 S. W. 816.

2. New York *v.* Wells, 208 U. S. 14, 28 U. S. Sup. Ct. 193.

115. 9. Property in Storage Taxable. — Coal shipped to a foreign state, and there stored to await orders for sale, is taxable at the place of storage. Lehigh, etc., Coal Co. *v.* Junction, (N. J. 1907) 66 Atl. 923.

118. 4. **Occupation Tax** based on gross receipts is valid. State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

121. 1. See People *v.* Roberts, 116 N. Y. App. Div. 30, 101 N. Y. Supp. 184.

8. Sales by Agents in Other States Cannot Be Taxed. — Chicago Portrait Co. *v.* Macon, 147 Fed. 967.

122. 1. **Contra.** — Goods packed and shipped in bulk, in unidentified packages, not separated from others of like kind or appropriated to any particular purchaser, are subject to a state tax. Loverin, etc., Co. *v.* Tansil, 118 Tenn. 717, 102 S. W. 77.

5. Stamp Tax on Transfers of Stock Valid. — People *v.* Reardon, 204 U. S. 152, 27 U. S. Sup. Ct. 188, *affirming* 184 N. Y. 431, 77 N. E. 970.

123. 2. Southern Pac. Co. *v.* Interstate Commerce Commission, 200 U. S. 536, 26 U. S. Sup. Ct. 330, 50 U. S. (L. ed.) 585; Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003; U. S. *v.* Wood, 145 Fed. 405; U. S. *v.* Chicago, etc., R. Co., 148 Fed. 646; U. S. *v.* Standard Oil Co., 148 Fed. 719; Railroad Commission *v.* Hocking Valley R. Co., 12 Int. Com. C. 404.

Purpose of Elkins Act is to strike through all pretense, all ingenious device, to the substance of the transaction itself. U. S. *v.* Milwaukee Refrigerator Transit Co., 142 Fed. 247.

8. Effect Given to Whole Act. — "All provisions of the act must be read and construed in the light of each other, so as to give due effect to the whole." Coomes *v.* Chicago, etc., R. Co., 13 Int. Com. C. 194.

10. Texas, etc., R. Co. *v.* Abilene Cotton Oil Co., 204 U. S. 426, *followed* in Texas, etc., R. Co. *v.* Cisco Oil Mill, 204 U. S. 449, 27 U. S. Sup. Ct. 358, 51 U. S. (L. ed.) 562.

124. 5. **Railroad.** — Both electric and steam railroads are subject to the act and are entitled to equal consideration before the commission. Chicago, etc., Electric R. Co. *v.* Illinois Cent. R. Co., 13 Int. Com. C. 27.

125. 7. Missouri, etc., Shippers' Assoc. *v.* Missouri, etc., R. Co., 12 Int. Com. C. 483; Hussey *v.* Chicago, etc., R. Co., 13 Int. Com. C. 368.

11. Reciprocal Demurrage. — Commission has no authority to fix rules and regulations governing reciprocal demurrage. Mason *v.* Chicago, etc., R. Co., 12 Int. Com. C. 61.

126. 2. **Commission May Fix Rates.** — Amendment of June 29, 1906, provides that the Commission, in a proper case, shall have authority, and that it shall be its duty, if in its opinion

a given rate is unjust and unreasonable, to prescribe a just and reasonable rate which shall not be exceeded. Cattle Raisers' Assoc. *v.* Missouri, etc., R. Co., 12 Int. Com. C. 3; Potlatch Lumber Co. *v.* Spokane Falls, etc., R. Co., 157 Fed. 588.

3. Injunction to Enjoin Enforcement of Rate Fixed by Commission will not be granted by the courts. Potlatch Lumber Co. *v.* Spokane Falls, etc., R. Co., 157 Fed. 588.

127. 4. **Through Route Ordered.** — Memphis Freight Bureau *v.* Ft. Smith, etc., R. Co., 13 Int. Com. C. 8; Matter of Through Routes, etc., 12 Int. Com. C. 166.

Commission May Establish Through Routes and Through Rates as provided by the amendment of 1906. Matter of Through Routes, etc., 12 Int. Com. C. 166.

But such through routes and joint rates will not be established where neither the interest of the public, nor the ends of justice as between parties directly interested, will be promoted. Loup Creek Colliery Co. *v.* Virginian R. Co., 12 Int. Com. C. 477. Nor where a satisfactory through route is already in existence. Stedman *v.* Chicago, etc., R. Co., 13 Int. Com. C. 169; Gentry *v.* Atchison, etc., R. Co., 13 Int. Com. C. 171.

Purpose of the Amendment was to afford relief to shipping communities, and not to aid carriers to acquire strategic advantages. Chicago, etc., R. Co. *v.* Illinois Cent. R. Co., 13 Int. Com. C. 26.

Established Rates Binding. — Rates duly established are absolutely binding upon carriers and shippers alike until lawfully changed. Coomes *v.* Chicago, etc., R. Co., 13 Int. Com. C. 104. See cases **151.** 6.

5. Construction of Stations. — See Jones *v.* St. Louis, etc., R. Co., 12 Int. Com. C. 144.

Repayment of Advancements by Shippers for Construction of Switch Tracks. — See Weleetka Light, etc., Co. *v.* Ft. Smith, etc., R. Co., 12 Int. Com. C. 503.

Switch Connections may be ordered by the commission, under the amendment approved June 29, 1906. Barden *v.* Lehigh Valley R. Co., 12 Int. Com. C. 194.

128. 1. **What Carriers Are Subject to Act.** — "Two classes of carriers come within its scope — carriers engaged in interstate commerce having independent facilities for through carriage from a point in a state to a point in another state, and carriers which have entered into a compact establishing a joint traffic rate, the shipments being interstate over through or continuous lines." U. S. *v.* Vacuum Oil Co., 153 Fed. 598.

4. The Elkins Act is applicable to a private car company which furnishes cars to railway carriers. Interstate Commerce Commission *v.* Reichman, 145 Fed. 235.

And to all "parties interested in the traffic." U. S. *v.* Milwaukee Refrigerator Transit Co., 145 Fed. 1007.

5. Central Trust Co. *v.* Pittsburg, etc., R. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 105, 101 N. Y. Supp. 837.

6. Gallogly *v.* Cincinnati, etc., R. Co., 11 Int. Com. C. 12.

129. 4. **Participation in Through Rates and Through Bills of Lading.** — "When a carrier unites with one or others in making a rate for interstate traffic and a through bill is issued therefor, it is subject to the act. An express agreement for a through rate is not required." U. S. *v.* Wood, 145 Fed. 405.

130. 4. Lykes Steamship Line *v.* Commercial Union, 13 Int. Com. C. 315; Baer Bros. Mercantile Co. *v.* Missouri Pac. R. Co., 13 Int. Com. C. 332.

6. Matter of Exchange of Free Transportation, 12 Int. Com. C. 40.

131. 6. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003; Cattle Raisers' Assoc. *v.* Missouri, etc., R. Co., 12 Int. Com. C. 4.

The Word "Rate," as used in the Interstate Commerce Law, means the net amount the carrier receives from the shipper and retains. U. S. *v.* Chicago, etc., R. Co., 148 Fed. 646.

Establishment of Through Routes and just and reasonable rates applicable thereto is now provided for by section 1. But this section should be read in connection with section 15. Cardiff Coal Co. *v.* Chicago, etc., R. Co., 13 Int. Com. C. 466.

7. Illinois Cent. R. Co. *v.* Interstate Commerce Commission, 206 U. S. 441, 27 U. S. Sup. Ct. 700; Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003; Weil *v.* Pennsylvania R. Co., 11 Int. Com. C. 627.

Reasonableness of Rates of Express Companies. — See Kindel *v.* Adams Express Co., 13 I. C. C. Rep. 475.

132. 1. **Local and Through Rates.** — The commission will view a through rate that is in excess of the sum of the local rates between the same points as *prima facie* unreasonable. Morgan *v.* Missouri, etc., R. Co., 12 Int. Com. C. 528.

Length of Carriage as Affecting Reasonableness of Rates. — Enterprise Mfg. Co. *v.* Georgia R. Co., 12 Int. Com. C. 451.

Distance Is Not Controlling. — Wilhoit *v.* Missouri, etc., R. Co., 12 Int. Com. C. 139.

Condition, Situation, and Prospects of Company. — See Railroad Commission *v.* St. Louis, etc., R. Co., 12 Int. Com. C. 235.

Weight and Facility of Movement Convenience of Carrier Considered. — Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

Financial Returns determine the reasonableness of the rates of a road constructed for a special purpose. American Asphalt Assoc. *v.* Uintah R. Co., 13 Int. Com. C. 196.

Refrigeration Charges may be inquired into by the commission. Matter of Charges for Transportation, etc., of Fruit, 11 Int. Com. C. 129.

Unlawful Combination. — The mere fact that a rate is the result of an unlawful combination will not justify the commission in setting it aside. China, etc., Trading Co. *v.* Georgia R. Co., 12 Int. Com. C. 241.

133. 3. **Failure of Carrier to Secure Profit.** A carrier serving and dependent upon a new and undeveloped territory, and unable to earn any profit for [illegible] may charge higher rates than would be reasonable under different conditions. Memphis Freight Bureau *v.* Ft. Smith, etc., R. Co., 13 Int. Com. C. 9. See

also Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

133. 1. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

3. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003; Cannon *v.* Mobile, etc., R. Co., 11 Int. Com. C. 537.

Lower Rate Forced by [illegible] Co. p[illegible] Lawful. — China, etc., Trading Co. *v.* Georgia R. Co., 12 Int. Com. C. 241.

6. Banner Milling Co. *v.* New York Cent., etc., R. Co., 13 Int. Com. C. 34; Dallas Freight Bureau *v.* Gulf, etc., R. Co., 12 Int. Com. C. 226; Dallas Freight Bureau *v.* Missouri, etc., R. Co., 12 Int. Com. C. 433.

Rate Fixed by State Statute or Commission is entitled to consideration. Hope Cotton Oil Co. *v.* Texas, etc., R. Co., 12 Int. Com. C. [illegible].

7. Dallas Freight Bureau *v.* Gulf, etc., R. Co., 12 Int. Com. C. 226.

8. Farrar *v.* Southern R. Co., 11 Int. Com. C. 640; Cattle Raisers' Assoc. *v.* Missouri, etc., R. Co., 11 Int. Com. C. 298; Warren Mfg. Co. *v.* Southern R. Co., 12 Int. Com. C. 387. See also Matter of Rates from St. Louis to Texas Common Points, 11 Int. Com. C. 238.

Excessive Charge for Reconsigning Privilege. — Southern R. Co. *v.* St. Louis Hay, etc., Co., (C. C. A.) 153 Fed. 728.

9. Ocheltree Grain Co. *v.* St. Louis, etc., R. Co., 13 Int. Com. C. 47.

10. Flowers — Transportation Of. — See Society of American Florists, etc., *v.* U. S. Express Co., 12 Int. Com. C. 121.

Failure to Furnish Special Service is a bar to the carrier's right to demand the higher compensation. American Fruit Union *v.* Cincinnati, etc., R. Co., 12 Int. Com. C. 411.

134. 1. Party-rate Tickets. — "The commission has no affirmative power to require carriers to establish special fares, based upon less than the normal passenger-mile revenue, for the use of passengers on particular occasions or for special purpose." Field *v.* Southern R. Co., 13 Int. Com. C. 299.

3. Cost of Carrying Particular Article is not a conclusive method of arriving at the reasonableness of a rate. Society of American Florists, etc., *v.* U. S. Express Co., 12 Int. Com. C. 126.

6. Wylie *v.* Northern Pac. R. Co., 11 Int. Com. C. 145.

Elkins Act was passed to compel strict adherence to the mandate of Congress. U. S. *v.* Vacuum Oil Co., 153 Fed. 598.

And section 1 was not abrogated or repealed by the Hepburn Act of 1906. Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945.

The Elkins Act is clearly violated if the defendant has accepted or received any concession or discrimination which resulted in the carriage of freight at a less rate than that established under the act. U. S. *v.* Vacuum Oil Co., 153 Fed. 604.

135. 8. Unjust Discrimination Defined. — Disparity [illegible] traffic eastbound and westbound constitutes discrimination. Michigan Wooden Ware Co. *v.* Atchison, etc., R. Co., 11 Int. Com. C. 666.

"It is not permissible under this section for two or more carriers to establish a joint through rate, less than the sum of their locals, which is available only to a particular shipper or class of shippers, while denying such lower rate to other shippers of like traffic between the same points of origin and destination." Capital City Gas Co. *v.* Central Vermont R. Co., 11 Int. Com. C. 106.

136. 1. Goodhue *v.* Chicago G. W. R. Co., 11 Int. Com. C. 683; Pittsburg Plate Glass Co. *v.* Pittsburg, etc., R. Co., 13 Int. Com. C. 99; Commercial, etc., Assoc. *v.* Louisville, etc., R. Co., 12 Int. Com. C. 372; Reliance-Textile, etc., Works *v.* Southern R. Co., 13 Int. Com. C. 55.

6. Southern Pac. Co. *v.* Interstate Commerce Commission, 200 U. S. 536, 26 U. S. Sup. Ct. 330; City Gas Co. *v.* Baltimore, etc., R. Co., 11 Int. Com. C. 371. See also Davenport *v.* Southern R. Co., 11 Int. Com. C. 650.

7. Dewey Bros. Co. *v.* Baltimore, etc., R. Co., 11 Int. Com. C. 475; Farrar *v.* Southern R. Co., 11 Int. Com. C. 632; Enterprise Mfg. Co. *v.* Georgia R. Co., 12 Int. Com. C. 130; Texas Cement Plaster Co. *v.* St. Louis, etc., R. Co., 12 Int. Com. C. 68.

Lower Rates for Westbound Traffic Justified. — A. J. Phillips Co. *v.* Grand Trunk Western R. Co., 11 Int. Com. C. 659.

137. 2. Brabham *v.* Atlantic Coast Line R. Co., 11 Int. Com. C. 464.

3. Cannon *v.* Mobile, etc., R. Co., 11 Int. Com. C. 537.

Through Interstate Passenger Fare may exceed the sum of the local rates over the same route. Artz *v.* Seaboard Air Line R. Co., 11 Int. Com. C. 458.

5. Capital City Gas Co. *v.* Central Vermont R. Co., 11 Int. Com. C. 106.

138. 1. Pittsburg Plate Glass Co. *v.* Pittsburg, etc., R. Co., 13 Int. Com. C. 100.

3. Principle of Classification. — Classification must be based upon a real distinction from a transportation standpoint. Stowe-Fuller Co. *v.* Pennsylvania Co., 12 Int. Com. C. 216.

4. Enforcement of Discriminating Classification may be enjoined by the Interstate Commerce Commission. Cincinnati, etc., R. Co. *v.* Interstate Commerce Commission, 206 U. S. 142, 27 U. S. Sup. Ct. 648, 51 U. S. (L. ed.) 995.

5. Grain and Grain Products need not necessarily be carried at the same rate. Howard Mills Co. *v.* Missouri Pac. R. Co., 12 Int. Com. C. 264.

Proper Classification — Generally. — Forest City Freight Bureau *v.* Ann Arbor R. Co., 13 Int. Com. C. 110.

No classification can be so minute as to conform to the differing varieties and conditions of traffic; thus, cotton is not entitled to a better rate simply because compressed to a greater density. Planters' Compress Co. *v.* Cleveland, etc., R. Co., 11 Int. Com. C. 382, *followed* in 11 Int. Com. C. 606.

Classification of Leather should not control the classification of leather scraps. Newman *v.* New York Cent., etc., R. Co., 11 Int. Com. C. 513.

Classification of Explosives. — See Masurite Explosive Co. *v.* Pittsburg, etc., R. Co., 13 Int. Com. C. [illegible].

Sectional Bookcases are in the same class as

ordinary bookcases. Globe-Wernicke Co. *v.* Baltimore, etc., R. Co., 11 Int. Com. C. 156.

Cotton Waste has a lower classification than cotton goods. Riverside Mills *v.* Southern R. Co., 12 Int. Com. C. 388.

Lumber Given [illegible] — Farrar *v.* Southern R. Co., 11 Int. Com. C. 640.

Electrical Apparatus. — "Scheidel outfit" should be classified as X-ray apparatus or as apparatus used for medical and scientific purposes. Scheidel *v.* Chicago, etc., R. Co., 11 Int. Com. C. 532.

Dynamos which have become valuable only as junk should be so rated. National Machinery, etc., Co. *v.* Pittsburg, etc., R. Co., 11 Int. Com. C. 581.

Commodity Rate cannot be applied to the transportation of persons, and *vice versa*. Matter of Free Transportation of Newspaper Employees, 12 Int. Com. C. 19.

Cement and Iron Burial Vaults. — See Van Camp Burial Vault Co. *v.* Chicago, etc., R. Co., 12 Int. Com. C. 80.

6. Discrimination Must Be Established by Preponderating Proof. — Globe-Wernicke Co. *v.* Baltimore, etc., R. Co., 11 Int. Com. C. 156.

139. 4. Planters' Compress Co. *v.* Cleveland, etc., R. Co., 11 Int. Com. C. 382.

5. Kindel *v.* Boston, etc., R. Co., 11 Int. Com. C. 495.

7. Desel-Boettcher Co. *v.* Kansas City Southern R. Co., 12 Int. Com. C. 221. See also Mitchell *v.* Atchison, etc., R. Co., 12 Int. Com. C. 326.

140. 1. St. Louis Hay, etc., Co. *v.* Mobile, etc., R. Co., 11 Int. Com. C. 101; St. Louis Hay, etc., Co. *v.* Illinois Cent. R. Co., 11 Int. Com. C. 486.

Joint Through Rates are generally lower than the sum of the locals between two points. Lansing-Harris Coal, etc., Co. *v.* Missouri Pac. R. Co., 13 Int. Com. C. 157; Coomes *v.* Chicago, etc., R. Co., 13 Int. Com. C. 194.

But if they are higher than the sum of the locals, voluntarily made by the separate roads comprising the through line, it is for the carriers to show the justification therefor, if any exists. Coomes *v.* Chicago, etc., R. Co., 13 Int. Com. C. 194.

141. 4. Matter of Party Rate Tickets, 12 Int. Com. C. 96.

9. Matter of Allowances to Elevators, etc., 12 Int. Com. C. 86.

Rebates under Elkins Act. — See U. S. *v.* Milwaukee Refrigerator Transit Co., 145 Fed. 1007; U. S. *v.* Chicago, etc., R. Co., 148 Fed. 646; Chicago, etc., R. Co. *v.* U. S., (C. C. A.) 156 Fed. 558; Interstate Commerce Commission *v.* Reichman, 145 Fed. 235.

142. 2. Discrimination in Free Elevator Service Unlawful. — Preston *v.* Delaware, etc., R. Co., 12 Int. Com. C. 115.

4. Compressing Cotton in Transit. — See Commercial, etc., Assoc. *v.* Central of Georgia R. Co., 12 Int. Com. C. 375. See also Chickasaw Compress Co. *v.* Gulf, etc., R. Co., 12 Int. Com. C. 187.

7. Red Rock Fuel Co. *v.* Baltimore, etc., R. Co., 12 Int. Com. C. 18.

143. 4. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

Construction of Phrase "Undue or Unreasonable Preference or Advantage." Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

5. **Equal and Separate Accommodation.** — Carriers may not discriminate between white and colored passengers in the accommodations which they furnish to each, provided they pay the same rate. Edwards *v.* Nashville, etc., R. Co., 12 Int. Com. C. 249.

An Embargo, which refuses transportation facilities to some establishments while according such facilities to their competitors, is an unlawful discrimination. Rogers *v.* Philadelphia, etc., R. Co., 12 Int. Com. C. 311.

Demurrage. — The phrase of the statute, "delivering, storage, or handling," is broad enough to include demurrage. Michie *v.* New York, etc., R. Co., 151 Fed. 694.

7. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

Stoppage in Transit. — Carrier may grant the privilege of stopping a commodity in transit for the purpose of treatment or consignment. St. Louis Hay, etc., Co. *v.* Mobile, etc., R. Co., 11 Int. Com. C. 101.

144. 2. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

3. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

7. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

146. 2. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003; Hastings Malting Co. *v.* Chicago, etc., R. Co., 11 Int. Com. C. 675; Durham *v.* Illinois Cent. R. Co., 12 Int. Com. C. 38; Johnston-Larimer Dry Goods Co. *v.* New York, etc., Steamship Co., 12 Int. Com. C. 58.

5. See New York Team Owners' Assoc. *v.* Southern Pac. Co., 12 Int. Com. C. 204.

6. **Hydraulic Press Brick Co.** *v.* St. Louis, etc., R. Co., 13 Int. Com. C. 342.

148. 4. [illegible] etc., R. Co., 13 Int. Com. C. 66.

5. **Fair and Equal Treatment** in the use of cars and other facilities for shipment should be accorded to every shipper. Wagner *v.* Detroit, etc., R. Co., 13 Int. Com. C. 164. See also Logan Coal Co. *v.* Pennsylvania R. Co., 154 Fed. 497.

It is not reasonable that carriers unable to supply shippers with sufficient cars of large or [illegible] capacity should make such [illegible] requirements as cannot be practically complied with as to the smaller cars. Wiemer *v.* Chicago, etc., R. Co., 12 Int. Com. C. 465.

Remedies for Car Shortage. — See Matter of Car Shortage, etc., 12 Int. Com. C. 561.

Basis for Distribution of Cars. — See California Fruit Growers' Exch. *v.* Southern Pac. Co., 12 Int. Com. C. 553; Powhatan Coal, etc., Co. *v.* Norfolk, etc., R. Co., 13 Int. Com. C. 70; Traer *v.* Chicago, etc., R. Co., 13 Int. Com. C. 451.

"The occupation, the user, and the consequent reduction of the available equipment of the road are the vital matters in all cases of car distribution in times of shortage." Royal Coal, etc., Co. *v.* Southern R. Co., 12 Int. Com. C. 450.

Foreign Railway Fuel Cars should be consid-

cited by the [illegible] Hocking Valley R. Co., 12 Int. Com. C. 398.

8. U. S. *v.* Baltimore, etc., R. Co., 154 Fed. 108. See also Ruttle *v.* Pere Marquette R. Co., 13 Int. Com. C. 179.

[illegible] See Muskogee Commercial Club *v.* Missouri, etc., R. Co., 12 Int. Com. C. 319.

4. Arbitrary Rate, imposed on shipments received from connecting lines, is unlawful. Blackwell Milling, etc., Co. *v.* Missouri, etc., R. Co., 12 Int. Com. C. 24, *followed* in 12 Int. Com. C. 26.

151. 1. See Cardiff Coal Co. *v.* Chicago, etc., R. Co., 13 Int. Com. C. 468; Laning-Harris Coal, etc., Co. *v.* Atchison, etc., R. Co., 12 Int. Com. C. 479.

Connection to Shorter Road. — A through line may be ordered to give a connection to a shorter road under proper circumstances. McRae Terminal R. Co. *v.* Southern R. Co., 12 Int. Com. C. 270.

6. **Statute Amended.** — The amendment of 1906 makes it the duty of every carrier subject to the act "to establish through routes and just and reasonable rates applicable thereto." (Section 1.) Matter of Through Routes, etc., 12 Int. Com. C. 166; Enterprise Transportation Co. *v.* Pennsylvania R. Co., 12 Int. Com. C. 332. See also Birmingham Packing Co. *v.* Texas, etc., R. Co., 12 Int. Com. C. 31; American Nat. Live Stock Assoc. *v.* Texas, etc., R. Co., 12 Int. Com. C. 35; **Fred G. Clark Co. *v.*** Lake Shore, etc., R. Co., 11 Int. Com. C. [illegible].

Provided no reasonable and satisfactory through route exists. Enterprise Transportation Co. *v.* Pennsylvania R. Co., 12 Int. Com. C. [illegible].

Authority of Commission. — Section 15 confers upon the commission authority to require carriers to establish through routes when they have failed or refused voluntarily to do so, and when there is no reasonable or satisfactory through route already in existence. Cardiff Coal Co. *v.* Chicago, etc., R. Co., 13 Int. Com. C. 465.

The commission cannot make a general ruling that "through rates must not exceed the sum of the locals." Each case must be disposed of upon its own merits. Coffeyville Vitrified Brick, etc., Co. *v.* St. Louis, etc., R. Co., 12 Int. Com. C. 498.

Carrier Must Obtain Concurrence of Other Carriers. — "A carrier cannot establish a through route and joint rate except under concurrence of the other carriers that form parts of such route." Memphis Freight Bureau *v.* Ft. Smith, etc., R. Co., 13 Int. Com. C. 8.

Division of Joint Rates. — The statute apparently provides that the commission shall in the first instance establish the through route and joint rate, and shall only fix the divisions of that rate in case the carriers themselves have failed to agree after the same has been established. Cattle Raisers' Assoc. *v.* Galveston, etc., R. Co., 12 Int. Com. C. 23.

Division of Joint Rates upon Milling Basis. See Birmingham Packing Co. *v.* Texas, etc., R. Co., 12 Int. Com. C. 500.

Through Routes between Water and Rail Carriers. See Matter of Illegal and Unlawful Discrimination, etc., 11 Int. Com. C. 587.

154. 4. Rock Hill Buggy Co. *v.* Southern R. Co., 11 Int. Com. C. 229; Griffin Grocery Co. *v.* Southern R. Co., 11 Int. Com. C. 522; Bovaird Supply Co. *v.* Atchison, etc., R. Co., 13 Int. Com. C. 62; Goodhue *v.* Chicago G. W. R. Co., 11 Int. Com. C. 683; Johnston, etc., Dry Goods Co. *v.* Atchison, etc., R. Co., 13 Int. Com. C. 396; Tomlin-Harris Mach. Co. *v.* Louisville, etc., R. Co., 12 Int. Com. C. 134.

Higher Rate to Less Distant Point When Prohibited. — The charging of a higher rate to a less distant point is prohibited only where the carrier responsible for both rates occupies a like relation to the more distant point to which the lower rate applies. Railroad Commission *v.* Louisville, etc., R. Co., 13 Int. Com. C. 369.

155. 5. **Contra.** — The commission views with disfavor the maintenance of a lower rate for a longer haul than for a shorter one included within the longer. Bovaird Supply Co. *v.* Atchison, etc., R. Co., 13 Int. Com. C. 64.

156. 3. Commercial, etc., Assoc. *v.* Louisville, etc., R. Co., 12 Int. Com. C. 372; Rock Hill Buggy Co. *v.* Southern R. Co., 11 Int. Com. C. 229; Johnston, etc., Dry Goods Co. *v.* Atchison, etc., R. Co., 13 Int. Com. C. 398; Pecos Mercantile Co. *v.* Atchison, etc., R. Co., 13 Int. Com. C. 177; Hastings Malting Co. *v.* Chicago, etc., R. Co., 11 Int. Com. C. 675; Durham *v.* Illinois Cent. R. Co., 12 Int. Com. C. 38; Johnston-Larimer Dry Goods Co. *v.* New York, etc., Steamship Co., 12 Int. Com. C. 58.

157. 7. Commercial Club *v.* Southern Pac. Co., 12 Int. Com. C. 497.

158. 2. See Washburn-Crosby Co. *v.* Pennsylvania R. Co., 13 Int. Com. C. 40.

160. 2. **Rate Imposed by Law.** — When the rate has been regularly published it is no longer the rate imposed by the carrier but the rate imposed by the law. A. J. Poor Grain Co. *v.* Chicago, etc., R. Co., 12 Int. Com. C. 422.

Refrigeration Charges should be published and filed with the commission. Matter of Charges for Transportation, etc., of Fruit, 11 Int. Com. C. 129.

3. **Duty to Post in Two Public Places in Depot, Station, or Office.** — Wabash R. Co. *v.* Sloop, 200 Mo. 198, 98 S. W. 607.

Removal of Schedule. — The fact that the schedules required to be posted have been removed does not relieve the carrier. Griffin *v.* Wabash R. Co., 115 Mo. App. 549, 91 S. W. 1015.

Schedule Showing Place of Transfer, Rates, etc. — If a carrier provides for points of transfer in making delivery to the second carrier it must publish and file a tariff showing where the transfer will be made, the kind of transfer service required, and the rates and charges to be exacted therefor. Schwager *v.* Great Northern R. Co., 12 Int. Com. C. 524.

161. 1. **Evidence of Filing.** — In the absence of proof of the records of the commission the best evidence of filing would be a certified copy. Griffin *v.* Wabash R. Co., 115 Mo. App. 549, 91 S. W. 1015.

4. **Requisites of Schedule.** — Schedules should contain all particulars which materially affect the

value of the service to the shipper and the cost to the carrier. Shiel *v.* Illinois Cent. R. Co., 12 Int. Com. C. 211.

Schedule should show that tickets are non-transferable, otherwise such transfer cannot be enjoined. Baltimore, etc., R. Co. *v.* Hamburger, 155 Fed. 849.

"A tariff or schedule of transportation rates does not conform to the law which makes the rate charged dependent upon one or more factors which do not enter into the transportation as it is actually conducted." Pacific Coast Jobbers, etc., Assoc. *v.* Southern Pac. R. Co., 12 Int. Com. C. 324.

Charges for Refrigeration should be included in the schedule. Waxelbaum *v.* Atlantic Coast Line R. Co., 12 Int. Com. C. 178.

It seems that a rate for carriage and for icing cars may be scheduled separately. Knudsen-Ferguson Fruit Co. *v.* Michigan Cent. R. Co., (C. C. A.) 148 Fed. 968.

6. A. J. Poor Grain Co. *v.* Chicago, etc., R. Co., 12 Int. Com. C. 423, 471.

Construction of Classification Sheets is governed by the intention of the framers, regardless of the intention of the shipper or local usages. Smith *v.* Great Northern R. Co., 15 N. Dak. 195, 107 N. W. 56.

7. Smith *v.* Great Northern R. Co., 15 N. Dak. 195, 107 N. W. 56.

Carrier's Lien is governed by the published schedule. Texas, etc., R. Co. *v.* Mugg, 202 U. S. 242, 26 U. S. Sup. Ct. 628, 50 U. S. (L. ed.) 1011.

Tariffs Cannot Be Given Retroactive Effect. — Matter of Through Routes, etc., 12 Int. Com. C. 172.

162. 1. A. J. Poor Grain Co. *v.* Chicago, etc., R. Co., 12 Int. Com. C. 421, 471.

4. See William Larsen Canning Co. *v.* Chicago, etc., R. Co., 13 Int. Com. C. 287; Pacific Purchasing Co. *v.* Chicago, etc., R. Co., 12 Int. Com. C. 549.

Payment in Money. — Nothing but money can be lawfully received or accepted in payment for transportation subject to the act. Matter of Railroad-Tel. Co's, 12 Int. Com. C. 11.

The Phrase "Between Two Points" forbids the transporting of property between terminals in different states at a greater or less rate than that established. U. S. *v.* Pennsylvania R. Co., 153 Fed. 625.

Carriage over Different Route Unlawful. — A common carrier which has established a joint traffic arrangement violates the statute if the property is carried between termini over another and different connecting route at a less rate. U. S. *v.* Vacuum Oil Co., 153 Fed. 598.

Carriage of Officials of Other Companies. — It seems that "no railroad or system of railroads can lawfully stipulate or contract with a telegraph company for the carriage of its officials, employees, or property for any greater or less or different consideration than that specified in the regularly published tariffs in effect at the time, except in connection with the construction, operation, and maintenance of a telegraph service on its own lines or system of lines." Matter of Railroad-Tel. Co's, 12 Int. Com. C. 13.

Under the Elkins Act it may be unlawful for a carrier to give a rebate, concession, or discrimination on a joint tariff filed by it or on a joint tariff published by it, or on a joint tariff in which it participated when filed by another. U. S. *v.* Wood, 145 Fed. 405.

5. **Giving Rebate** renders carrier and agents criminally liable. U. S. *v.* New York Cent., etc., R. Co., 146 Fed. 298.

6. **Under the Elkins Act** it is only unlawful for a shipper to receive a rebate on a joint tariff which is both filed and published. U. S. *v.* Wood, 145 Fed. 405.

Consignee Liable under Elkins Law. — U. S. *v.* Standard Oil Co., 148 Fed. 719.

3. **What Constitute Pooling Contracts.** — See Southern Pac. Co. *v.* Interstate Commerce Commission, 200 U. S. 536, 26 U. S. Sup. Ct. 330.

7. **Land and Immigration Agents**, unless they are *bona fide* and actual employees, are not within the classes to which reduced transportation can be lawfully furnished. Transportation of Land, etc., Agents, 12 Int. Com. C. 8.

Caretakers of Newspaper Companies cannot lawfully be granted free transportation. Matter of Free Transportation of Newspaper Employees, 12 Int. Com. C. 16.

Employees of Local Transfer Companies are not entitled to free transportation by a common carrier subject to the act. Matter of Exchange of Free Transportation, 12 Int. Com. C. 40.

164. 8. **Jurisdiction of State Courts.** — In an action by a common carrier to recover the difference between the rate charged by the agent and the rate fixed by schedule, which was not posted, the state court has jurisdiction. Wabash R. Co. *v.* Sloop, 200 Mo. 198, 98 S. W. 607.

165. 1. Interstate Commerce Commission *v.* Harriman, 157 Fed. 432.

2. **Intraterritorial Provision.** — When the proclamation was issued admitting Oklahoma as a state the intraterritorial provision of the act expired, so far as it related to Oklahoma, and left no power in the commission to act under it. Hussey *v.* Chicago, etc., R. Co., 13 Int. Com. C. 368; Chandler Cotton Oil Co. *v.* Ft. Smith, etc., R. Co., 13 Int. Com. C. 473.

3. **Side Track Connections — Discrimination in Providing.** — See Red Rock Fuel Co. *v.* Baltimore, etc., R. Co., 11 Int. Com. C. 438.

5. "**The Word 'Adjacent,'** as used in the act to modify the words 'foreign country,' would seem to mean adjacent in the sense of the possibility of substantial continuity of rails." Lykes Steamship Line *v.* Commercial Union, 13 Int. Com. C. 315.

6. **Hepburn Act Applicable to Receiver of Railroad Company.** — Central Trust Co. *v.* Pittsburg, etc., R. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 195, 101 N. Y. Supp. 837.

166. 4. Forest City Freight Bureau *v.* Ann Arbor R. Co., 13 Int. Com. C. 110, 118.

7. **Wrong to Individual Stockholders** cannot be inquired into by the commission. Manning *v.* Chicago, etc., R. Co., 13 Int. Com. C. 127.

167. 4. Interstate Commerce Commission *v.* Reichmann, [illegible]

170. 4. **Findings of the Commission** have the strength due to judgments of a tribunal appointed by law and informed by experience. Illinois Cent. R. Co. *v.* Interstate Commerce

Commission, 206 U. S. 441, 27 U. S. Sup. Ct. 700.

171. 2. Cattle Raisers' Assoc. *v.* Chicago, etc., R. Co., 12 Int. Com. C. 6.

4. Duty under Amendment to Pass on Questions of Reparation. — Commission alone has jurisdiction of authorize a refund to be made from the charges collected on previous shipments. A. J. Poor Grain Co. *v.* Chicago, etc., R. Co., 12 Int. Com. C. 425.

"In any case where the published rate is unjustly discriminatory the commission has jurisdiction to order reparation to shippers injured thereby." Minneapolis Threshing Mach. Co. *v.* Chicago, etc., R. Co., 13 Int. Com. C. 130.

5. Basis for Reparation. — Theoretical or paper rate, which was practically unknown, is not a just basis for an order for reparation on shipments made to an intermediate point at a slightly higher rate. Missouri, etc., Shippers' Assoc. *v.* Missouri, etc., R. Co., 12 Int. Com. C. 483.

Reparation cannot be based on the breach of a privilege which was not shown by the published schedule. Shiel *v.* Illinois Cent. R. Co., 12 Int. Com. C. 211.

6. See Marley *v.* Norfolk, etc., R. Co., 11 Int. Com. C. 616; Hussey *v.* Chicago, etc., R. Co., 13 Int. Com. C. 367.

Measure of Damages, where the rate is found to be excessive, is the difference between the rate paid and what would have been a reasonable rate. Baer Bros. Mercantile Co. *v.* Missouri Pac. R. Co., 13 Int. Com. C. 338.

An award of reparation will not be measured by the probabilities of profit. Eaton *v.* Cincinnati, etc., R. Co., 11 Int. Com. C. 619.

8. Payment under Protest Not Necessary. — A protest made at the time of the payment of excessive rates is not a necessary prerequisite to the maintaining of a petition for the return of unreasonable charges exacted. Baer Bros. Mercantile Co. *v.* Missouri Pac. R. Co., 13 Int. Com. C. 338.

172. 2. Attorney-General on His Own Motion may maintain suit to restrain rebating under the Elkins Act. U. S. *v.* Milwaukee Refrigerator Transit Co., 145 Fed. 1007.

Elkins Act Provides Remedy in Court without going before the Interstate Commerce Commission. Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

7. Mandamus for Illegal Discrimination. — An agreement between an interstate carrier and shippers, fixing a basis for an equitable distribution of cars, does not prevent the remedy. U. S. *v.* Norfolk, etc., R. Co., 143 Fed. 266.

173. 1. Necessity for Valid Order by Commission and Violation by Carrier. — U. S. *v.* Atchison, etc., R. Co., 142 Fed. 176.

175. 1. Southern R. Co. *v.* St. Louis Hay, etc., Co., (C. C. A.) 153 Fed. 728.

177. 5. See U. S. *v.* Atchison, etc., R. Co., 142 Fed. 176.

178. 5. For Obtaining Less than Regular or Schedule Rates. — U. S. *v.* Wood, 145 Fed. 405.

INTERVENTION.

180. 1. Wightman *v.* Evanston Yaryan Co., 217 Ill. 371, 75 N. E. 502, *quoting* 17 Am. and Eng. Encyc. of Law (2d ed.) 180.

181. 1. Lambert *v.* Tucker, 83 Ark. 416, 104 S. W. 131; Townsend *v.* Driver, 5 Cal. App. 581, 90 Pac. 1071; Cache La Poudre Irrigating Ditch Co. *v.* Hawley, (Colo. 1908) 95 Pac. 317; City Nat. Bank *v.* Crahan, (Iowa 1907) 112 N. W. 793; McCracken *v.* Lewis, (Miss. 1907) 42 So. 671; Flint *v.* Chaloupka, (Neb. 1908) 115 N. W. 535; Dickson *v.* Dows (Dows Intervener), 11 N. Dak. 409, 92 N. W. 797, *citing* 17 Am. and Eng. Encyc. of Law (2d ed.) 180; Shore *v.* Baltimore, etc., R. Co., 76 S. Car. 472, 57 S. E. 526.

Trustee in Bankruptcy Has Right to Intervene in Pending Revocatory Action in State Court. — New Orleans Acid, etc., Co. *v.* Guillory, 117 La. 821, 42 So. 329.

2. Pennsylvania Steel Co. *v.* New York City R. Co., 157 Fed. 440; Waters *v.* Pool, 149 Cal. 795, 87 Pac. 617; Bower *v.* Cohen, 126 Ga. 35, 54 S. E. 918; Wightman *v.* Evanston Yaryan Co., 217 Ill. 371, 75 N. E. 502, *citing* 17 Am. and Eng. Encyc. of Law (2d ed.) 181; Walker *v.* Sanders, (Minn. 1908) 114 N. W. 649; Danker *v.* Jacobs, (Neb. 1907) 112 N. W. 579; Hickox *v.* Eastman, (S. Dak. 1908) 114 N. W. 706.

Adjudicatee at Judicial Sale Made Pending Expropriation Suit Has Right to Intervene. — Yazoo, etc., R. Co. *v.* Clarke, (La. 1908) 46 So. 17.

182. 1. In Kansas the right to intervene exists although there is no statute providing for it. Gibson *v.* Ferrell, (Kan. 1908) 94 Pac. 783.

3. Weed *v.* Saratoga First Nat. Bank, 117 N. Y. App. Div. 340, 101 N. Y. Supp. 1045; Farmers' L. & T. Co. *v.* Hoffman House, 96 N. Y. App. Div. 301, 89 N. Y. Supp. 281; Matter of Hoyt, (Surrogate Ct.) 55 Misc. (N. Y.) 159, 106 N. Y. Supp. 359; Friedman *v.* Schreiber, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 617, 98 N. Y. Supp. 235; Muller *v.* Philadelphia, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 322, 99 N. Y. Supp. 104; Callanan *v.* Keeseville, etc., R. Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 476, 95 N. Y. Supp. 513.

4. Goff *v.* O'Rourke, (Supm. Ct. App. Div.) 107 N. Y. Supp. 1041.

183. 2. Chase *v.* Beech Creek R. Co., 144 Fed. 571; Wightman *v.* Evanston Yaryan Co., 217 Ill. 371, 75 N. E. 502, *quoting* 17 Am. and Eng. Encyc. of Law (2d ed.) 183.

Where a Corporation Is in the Hands of a Receiver and hopelessly insolvent, one of its stockholders has no interest in a suit brought by a creditor against the corporation and therefore cannot intervene. Wenar *v.* Schwartz, (La. 1907) 44 So. 902.

3. Cole *v.* Philadelphia, etc., R. Co., 140 Fed. 944; Parsons *v.* Little, 28 App. Cas. (D. C.) 218; Washington Fifth Congregational Church *v.* Bright, 28 App. Cas. (D. C.) 229; Wightman *v.* Evanston Yaryan Co., 217 Ill. 371, 75 N. E. 502, *quoting* 17 Am. and Eng. Encyc. of Law (2d ed.) 181; Aull *v.* Bowling Green Opera House Co., (Ky. 1906) 92 S. W. 943.

5. Pennsylvania Steel Co. *v.* New York City R. Co., 157 Fed. 440.

6. Wightman *v.* Evanston Yaryan Co., 217 Ill. 371, 75 N. E. 502.

185. 2. Walker *v.* Sanders, (Minn. 1908) 114 N. W. 649. See also Coyne *v.* Yonkers,

(Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 366, 109 N. Y. Supp. 625.

5. Gaze *v.* Dominion Bridge Co., 15 Quebec K. B. 379.

Inaction of Defendants in Permitting Default Does Not Preclude Intervener from His Relief. — Townsend *v.* Driver, 5 Cal. App. 581, 90 Pac. 1071.

8. Seaboard Air Line R. Co. *v.* Knickerbocker Trust Co., 125 Ga. 463, 54 S. E. 138; Charleston, etc., R. Co. *v.* Pope, 122 Ga. 579, 50 S. E. 374, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185; Wightman *v.* Evanston Yaryan Co., 217 Ill. 371, 75 N. E. 502, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185.

10. McCullough *v.* Connelly, (Iowa 1907) 114 N. W. 301, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185.

15. Brinckerhoff *v.* Holland Trust Co., 146 Fed. 203; New York Bank Note Co. *v.* Kidder Press Mfg. Co., 192 Mass. 391, 78 N. E. 463.

186. 1. Intervener's Right to Costs. — Where the intervener's rights were protected by the original plaintiff, and his intervention did not change the character of the suit, he is not entitled to costs. Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734.

4. Whilden *v.* Chapman, (S. Car. 1908) 61 S. E. 249.

5. McCullough *v.* Connelly, (Iowa 1907) 114 N. W. 301, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185.

INTOXICATING LIQUORS.

197. 1. Mason *v.* State, 1 Ga. App. 534, 58 S. E. 139; Heintz *v.* Le Page, 100 Me. 542, 62 Atl. 605; State *v.* Parker, 139 N. Car. 586, 51 S. E. 1028; State *v.* Virgo, 14 N. Dak. 293, 103 N. W. 610. See also State *v.* Krinski, 78 Vt. 162, 62 Atl. 37.

Spirituous Liquors. — The term "spirituous liquors" includes malt liquors as well. State *v.* Dowdy, 145 N. Car. 432, 58 S. E. 1002; State *v.* Toler, (N. Car. 1907) 58 S. E. 1005.

Terms "Spirituous" and "Malt" Distinguished. — "There is a marked distinction between spirituous and malt liquors. The former is obtained by distillation, the latter by fermenting an infusion of malt." Wong Sing *v.* Independence, 47 Oregon 231, 83 Pac. 387.

Ardent Spirits. — The *Virginia* Code provides that "all mixtures, preparations, and liquors (except pure apple cider) which will produce intoxication, shall be deemed ardent spirits." Fletcher *v.* Com., 106 Va. 840, 56 S. E. 149.

The Word "Intoxicating" is a synonym of "spirituous, malt, or vinous." Renshaw *v.* Lane County Ct., (Oregon 1907) 89 Pac. 147.

Liquors Containing Alcohol. — "Intoxicating liquors" is confined to liquors containing alcohol, capable of producing intoxication when taken into the human stomach in such quantities as it may reasonably contain. Thompson *v.* State, (Tex. Crim. 1906) 97 S. W. 316.

Name of Liquor Immaterial. — The intoxicating properties of liquids do not depend on the name used or the name under which any such liquid is sold, but the real test is whether such liquid taken in reasonable quantities such as the human stomach would hold would make drunk or intoxicate. James *v.* State, (Tex. Crim. 1906) 91 S. W. 227.

198. 5. State *v.* Colvin, 127 Iowa 632, 103 N. W. 968.

A Compound Containing Alcohol is within the *Arkansas* statute prohibiting the sale of liquor without license, regardless of whether or not it is intoxicating. Bradshaw *v.* State, 76 Ark. 562, 89 S. W. 1051.

8. Edwards *v.* State, 124 Ga. 100, 52 S. E. 319; Tompkins *v.* State, 2 Ga. App. 639, 58 S. E. 1111; Donaldson *v.* State, (Ga. App. 1908) 60 S. E. 115; Wilcoxson *v.* State, (Tex. Crim. 1906) 91 S. W. 581; Potts *v.* State, (Tex. Crim. 1906) 97 S. W. 477.

9. State *v.* York, (N. H. 1907) 65 Atl. 685.

11. Edwards *v.* State, 124 Ga. 100, 52 S. E. 319.

199. 4. See Potts *v.* State, (Tex. Crim. 1906) 97 S. W. 477.

8. Nussbaumer *v.* State, (Fla. 1907) 44 So. 712.

10. State *v.* Piner, 141 N. Car. 763, 53 S. E. 305, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 199.

13. Hall *v.* State, 122 Ga. 142, 50 S. E. 59; State *v.* Piner, 141 N. Car. 763, 53 S. E. 305, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 199.

14. Nussbaumer *v.* State, (Fla. 1907) 44 So. 712; State *v.* Piner, 141 N. Car. 763, 53 S. E. 305, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 199.

200. 9. Potts *v.* State, (Tex. Crim. 1906) 97 S. W. 477.

10. Lambie *v.* State, (Ala. 1907) 44 So. 51; Cullinan *v.* McGovern, (Supm. Ct. Spec. T.) 94 N. Y. Supp. 525; State *v.* Seelig, (N. Dak. 1907) 112 N. W. 140.

11. Feddern *v.* State, (Neb. 1907) 113 N. W. 127; State *v.* Seelig, (N. Dak. 1907) 112 N. W. 140; State *v.* Moran, (Wash. 1907) 90 Pac. 1044.

201. 1. Cullinan *v.* McGovern, (Supm. Ct. Spec. T.) 94 N. Y. Supp. 525; Potts *v.* State, (Tex. Crim. 1905) 89 S. W. 835, 836; Potts *v.* State, (Tex. Crim. 1906) 97 S. W. 477.

3. State *v.* Carmody, (Oregon 1907) 91 Pac. 448, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201.

Malt Liquor Not Necessarily Intoxicating. — Denton *v.* State, (Tex. Crim. 1907) 105 S. W. 100.

4. Lambie *v.* State, (Ala. 1907) 44 So. 51.

Use of Word "Beer" by Witnesses. — See Otte *v.* State, 29 Ohio Cir. Ct. 203.

5. Competency of Evidence. — Testimony with reference to the taste and color of the beverage sold as being similar to that of beer is admissible. Wiginton *v.* State, (Tex. Crim. 1907) 102 S. W. 1124.

Evidence of those who were competent to give an opinion on the subject that liquor labeled as "Hop Soda," "Cream of Malt," "Malt Extract," and "Fremont Old German Tonic" tasted like beer was held admissible in Feddern *v.* State, (Neb. 1907) 113 N. W. 127.

"Malt Rose" Is Within Prohibition of New York Liquor Tax Law. — People *v.* Cox, 106 N. Y. App. Div. 299, 94 N. Y. Supp. 526.

"Hop Jack." — Whether hop jack or hop ale

is beer and an intoxicating liquor is a question of fact for the determination of the court, under the *Alabama* statute. Lambie *v.* State, (Ala. 1907) 44 So. 51.

"**Malt Tonic.**"— On a prosecution for unlawfully keeping for sale and selling a certain "malt and intoxicating liquor, to wit, malt tonic," it is for the jury to determine whether or not the liquor named is intoxicating. Luther *v.* State, (Neb. 1907) 114 N. W. 411.

"**Frosty.**" — The question as to whether a liquid named "Frosty" is an intoxicating liquor does not depend upon its name, but on the fact whether it would intoxicate when drunk in reasonable quantities. James *v.* State, (Tex. Crim. 1906) 91 S. W. 227.

202. 8. "**Hop Ale.**" — Daniel *v.* State, (Ala. 1907) 43 So. 22.

Competency of Evidence. — It is not necessary for the witness to be acquainted with the analysis of the ale to render him competent to testify whether or not it had an intoxicating effect on him. Brighton *v.* Miles, (Ala. 1907) 44 So. 394.

203. 4. State *v.* Frederickson, 101 Me. 37, 63 Atl. 535.

6. **Evidence.** — The testimony of those who drank the cider in question, showing what effect it had upon them, is competent. Devine *v.* Com., (Va. 1907) 60 S. E. 37.

7. See Fletcher *v.* Com., 106 Va. 840, 56 S. E. 149.

10. "**Pure Apple Cider.**" — Under the *Virginia* statute pure apple cider is construed to mean the pure juice of the fruit used without mixture whatever except preservatives, and not to contain more than seven and one-half per cent. of alcohol. Devine *v.* Com., (Va. 1907) 60 S. E. 37.

11. State *v.* Gillispie, (W. Va. 1907) 59 S. E. 957.

204. 5. Mason *v.* State, 1 Ga. App. 534, 58 S. E. 139.

6. State *v.* Williams, 14 N. Dak. 411, 104 N. W. 546; State *v.* Costa, 78 Vt. 198, 62 Atl. 38.

7. McRoberts *v.* State, (Tex. Crim. 1906) 92 S. W. 804.

205. 1. *Contra.* — Kincaid *v.* State, (Tex. Crim. 1906) 92 S. W. 415.

3. State *v.* Costa, 78 Vt. 198, 62 Atl. 38.

4. Kincaid *v.* State, (Tex. Crim. 1906) 92 S. W. 415; State *v.* Costa, 78 Vt. 198, 62 Atl. 38.

5. Stelle *v.* State, 77 Ark. 441, 92 S. W. 530.

206. 3. **Under the New Jersey Statute** which makes it unlawful to sell without license certain named liquors, "except such as shall be compounded and intended to be used as medicine," the clause "compounded and intended to be used as medicine" applies only to the compositions mentioned in the statute, and does not apply to whiskey, which is not mentioned. State *v.* Terry, 73 N. J. L. 554, 64 Atl. 113.

4. Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689. *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.), title INTOXICATING LIQUORS; Gambill *v.* Erdrich, 143 Ala. 440, 39 So. 297; *In re* Kidd, 5 Cal. App. 159, 89 Pac. 987; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044; State *v.* Barrett, 138 N. Car. 630, 50 S. E. 506; State *v.* Baker, (Oregon 1907) 92 Pac. 1076.

Statute Directed against Agent of Seller Is Constitutional. — Hart *v.* State, 87 Miss. 171, 39 So. 523.

In Canada both the federal parliament and the local legislature are vested with a concurrent jurisdiction, and each has the power to enact laws prohibiting or regulating the sale of spirituous liquors. *Ex p.* O'Neil, 9 Can. Crim. Cas. (Quebec) 141.

207. 1. State *v.* Frederickson, 101 Me. 37, 63 Atl. 535.

4. Clark *v.* Tower, 104 Md. 175, 65 Atl. 3, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 207; State *v.* Calloway, 11 Idaho 719, 84 Pac. 27.

6. State *v.* Calloway, 11 Idaho 719, 84 Pac. 27; State *v.* Frederickson, 101 Me. 37, 63 Atl. 535; Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689.

208. 3. *United States.* — Pabst Brewing Co. *v.* Crenshaw, 198 U. S. 17.

Alabama. — Equitable Loan, etc., Co. *v.* Edwardsville, 143 Ala. 182, 38 So. 1016; Gambill *v.* Erdrich, 143 Ala. 440, 39 So. 297.

Indiana. — Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, 896; Sopher *v.* State, (Ind. 1907) 81 N. E. 913.

Louisiana. — New Iberia *v.* Erath, 118 La. 305, 42 So. 945.

Maine. — State *v.* Frederickson, 101 Me. 37, 63 Atl. 535.

Montana. — State *v.* Settles, 34 Mont. 448, 87 Pac. 445.

New Jersey. — Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689.

Oregon. — State *v.* Baker, (Oregon 1907) 92 Pac. 1076.

Texas. — *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1083; De Grazier *v.* Stephens, (Tex. 1907) 105 S. W. 992.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

The Power of the Legislature to Regulate Ceases to Exist after the people of a certain county have adopted local option. *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086; *Ex p.* Hackney, (Tex. Crim. 1905) 92 S. W. 1092; Bruce *v.* State, (Tex. Crim. 1905) 92 S. W. 1092; Carter *v.* State, (Tex. Crim. 1906) 92 S. W. 1093.

4. Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, 896; State *v.* Robinson, 101 Minn. 277, 112 N. W. 269.

Power of Legislature Is Practically Unlimited. — New Orleans *v.* Smythe, 116 La. 685, 41 So. 33.

5. Gambill *v.* Erdrich, 143 Ala. 440, 39 So. 297; Sopher *v.* State, (Ind. 1907) 81 N. E. 913; Wells *v.* Torrey, 144 Mich. 689, 108 N. W. 423; State *v.* Conon, 73 N. H. 434, 62 Atl. 1044; Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689; McCampbell *v.* State, 116 Tenn. 98, 93 S. W. 100.

Power of State over Liquor Licenses Is Complete. — Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953.

Legislature Has Large Discretion in Imposition of Such Licenses. — Cofer *v.* Elizabethtown, (Ky. 1907) 99 S. W. 608.

Canada. — "The regulation of the liquor traffic within the limits of the province by a license law is one of the subjects assigned by the British North America Act to the provin-

cial legislatures." Rex *v.* Meikleham, 11 Ont. L. Rep. 370.

209. 1. Exemption of Wholesale Dealers. — A license law which exempts from its provisions persons engaged in business as wholesale dealers who do not sell in less quantities than five gallons at a time is not violative of section 1 of article 14 of the U. S. Constitution, or section 33 of the Indiana Bill of Rights. State *v.* Bock, 167 Ind. 559, 79 N. E. 493.

3. Meyer *v.* Mobile, 147 Fed. 843; Cofer *v.* Elizabethtown, (Ky. 1907) 99 S. W. 608; New Iberia *v.* Erath, 118 La. 305, 42 So. 945; Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689; State *v.* Delamater, (S. Dak. 1905) 104 N. W. 537.

4. Schiller *v.* State, 49 Fla. 25, 38 So. 706; State *v.* Maryland Club, 103 Md. 585, 66 Atl. 667; Joplin *v.* Jacobs, 119 Mo. App. 134, 96 S. W. 219.

Imposing of Discretion as to Granting License in Board Is Not Unconstitutional. — State *v.* Settles, 34 Mont. 448, 87 Pac. 445.

Nonresident Wholesale Liquor Dealer, Doing Business within State, May Be Required to Take Out License. — New Iberia *v.* Erath, 118 La. 305, 42 So. 945.

7. New Orleans *v.* Smythe, 116 La. 685, 41 So. 33, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209.

10. See Collins *v.* State, 38 Ind. App. 625, 78 N. E. 851.

210. 1. New South Brewing, etc., Co. *v.* Com., (Ky. 1906) 96 S. W. 805; State *v.* Settles, 34 Mont. 448, 87 Pac. 445.

3. De Grazier *v.* Stephens, (Tex. 1907) 105 S. W. 992.

8. See State *v.* Holmes, 53 Fla. 234, 44 So. 170.

9. **Legislature May Regulate Sale of Liquor by Druggists and Prescribe Form of Prescription to Be Given by Physician.** — Hutson *v.* Com., (Ky. 1907) 105 S. W. 955.

Sale May Be Restricted to Hotel Keepers. — *In re* Kidd, 5 Cal. App. 159, 89 Pac. 987.

211. 1. See Jessee *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011.

7. New Orleans *v.* Smythe, 116 La. 685, 41 So. 33, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211.

212. 1. New Orleans *v.* Smythe, 116 La. 685, 41 So. 33, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 212.

2. New Orleans *v.* Smythe, 116 La. 685, 41 So. 33, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 212.

15. Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040; Com. *v.* McCann, 94 S. W. 645, 29 Ky. L. Rep. 707.

213. 1. Beauvior Club *v.* State, (Ala. 1907) 42 So. 1040.

6. Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040; Com. *v.* McCann, 94 S. W. 645, 29 Ky. L. Rep. 707; Mallon *v.* Com., (Ky. 1906) 98 S. W. 315.

Sunday Law Does Not Violate "Local Option Section" of Texas Constitution. — Bennett *v.* State, (Tex. Crim. 1906) 92 S. W. 415.

7. **Female Remaining in Saloon.** — A statute making it a crime for the proprietor of a saloon to permit a female under the age of twenty-one years to remain in or about his saloon is not unconstitutional. State *v.* Baker, (Oregon 1907) 92 Pac. 1076.

12. Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.), title INTOXICATING LIQUORS. See also Croker *v.* Excise Com'rs, 73 N. J. L. 460, 63 Atl. 901.

214. 1. Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689.

4. **Clark *v.* Tower,** 104 Md. 175, 65 Atl. 3, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 214; State *v.* Barrett, 138 N. Car. 630, 50 S. E. 506; State *v.* Piner, 141 N. Car. 763, 53 S. E. 305. See also Scott *v.* State, (Ala. 1907) 43 So. 181.

Special Act Renders General Act Inoperative. — Harding *v.* Com., 105 Va. 858, 52 S. E. 832.

8. Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

Radius in Another State. — A statute prohibiting the sale of liquor within a prescribed territory is not invalid because one end of the radius fixing that territory is in another state. Clark *v.* Tower, 104 Md. 175, 65 Atl. 3.

215. 3. **Prohibition within Half-mile of State Hospital Is Valid.** — *In re* Brady, (Supm. Ct. Spec. T.) 106 N. Y. Supp. 921.

4. Otte *v.* State, 29 Ohio Cir. Ct. 203.

5. Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

7. **Statute Authorizing Summary Revocation of Druggist's Permit Is Valid.** — State *v.* Durein, 70 Kan. 13, 80 Pac. 987.

8. Borck *v.* State, (Ala. 1905) 39 So. 580, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 215; State *v.* Gilbert, (S. Dak. 1907) 111 N. W. 538; State *v.* McMillan, (S. Dak. 1907) 111 N. W. 540; State *v.* Harvey, (S. Dak. 1907) 111 N. W. 540; State *v.* Kirsh, (S. Dak. 1907) 111 N. W. 540.

9. Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953.

Contra — As Applied to Liquor Tax Certificates Issued Before Passage of Act. — People *v.* Flynn, 110 N. Y. App. Div. 279, 96 N. Y. Supp. 655.

12. *Contra.* — People *v.* Flynn, 110 N. Y. App. Div. 279, 96 N. Y. Supp. 655.

216. 6. **Statute Declaring Cider to Be Intoxicating Liquor Is Not Unconstitutional.** — State *v.* Frederickson, 101 Me. 37, 63 Atl. 535.

7. Jung Brewing Co. *v.* Com., (Ky. 1906) 98 S. W. 307.

8. See Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

217. 4. **Statute Directed against "Any Person" Does Not Discriminate against Nonresidents.** — Hart *v.* State, 87 Miss. 171, 39 So. 523.

5. Glover *v.* State, 126 Ga. 594, 55 S. E. 592; Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689.

218. 7. **Punishment for Contempt.** — A statute providing the punishment for contempt in violating an injunction against a liquor nuisance does not trench upon the inherent powers of the courts to punish for contempt and is not unconstitutional, as the subject of contempt in such case seriously affects the whole people of the state. State *v.* Thomas, 74 Kan. 360, 86 Pac. 490.

219. 2. Oliver *v.* State, (Tex. Crim. 1907) 105 S. W. 811.

3. Statute Providing for Seizure, but Not for Disposition of Intoxicating Liquors, Is Unconstitutional. — Powers v. Goodson, (Tex. Civ. App. 1905) 90 S. W. 930.

220. 3. Stahl *v.* Lee, 71 Kan. 511, 80 Pac. 983; *Ex p.* Dupree, (Tex. 1907) 105 S. W. 493; *Ex p.* Byrd, (Tex. 1907) 105 S. W. 496; Barckell *v.* State, (Tex. Civ. App. 1907) 106 S. W. 190.

222. 7. Mobile *v.* Phillips, 146 Ala. 158, 40 So. 826; Cofer *v.* Elizabethtown, (Ky. 1907) 99 S. W. 608; Wells *v.* Torrey, 144 Mich. 689, 108 N. W. 423.

8. Legislature May Impose Tax on Both Distilling and Rectifying. — Arey *v.* Rowan County, 138 N. Car. 500, 51 S. E. 41.

223. 2. Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 223, note 2; Cofer *v.* Elizabethtown, (Ky. 1907) 99 S. W. 608; Brown-Foreman Co. *v.* Com., (Ky. 1907) 101 S. W. 321.

Statute Requiring Publication of Receipt Given for Payment of Federal Tax Is within Police Power. — State *v.* Hanson, (N. Dak. 1907) 113 N. W. 371.

8. Brown-Foreman Co. *v.* Com., (Ky. 1907) 101 S. W. 321.

224. 2. Whittlesey *v.* Acme Brewing Co., 127 Ga. 208, 56 S. E. 299.

5. Otte *v.* State, 29 Ohio Cir. Ct. 203; Sandys *v.* Williams, 46 Oregon 327, 80 Pac. 642; State *v.* Kline, (Oregon 1907) 93 Pac. 237.

6. Childers *v.* Shepherd, 142 Ala. 385, 39 So. 235.

225. 4. Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, 896; Lanham *v.* Woods, 167 Ind. 398, 79 N. E. 376; Kunkle *v.* Abell, 167 Ind. 434, 79 N. E. 753; Regadanz *v.* Haines, 168 Ind. 140, 79 N. E. 1085.

7. State *v.* Barrett, 138 N. Car. 630, 50 S. E. 506. See also State *v.* McIntyre, 139 N. Car. 599, 52 S. E. 63.

10. Statute Making U. S. License Prima Facie Evidence of Illegal Selling in Prohibited Territory Is Valid. — State *v.* Dowdy, 145 N. Car. 432, 58 S. E. 1002; State *v.* Toler, (N. Car. 1907) 58 S. E. 1005.

226. 7. Caesar *v.* State, 50 Fla. 1, 39 So. 470.

10. A Statute Dispensing with the allegation as to the name of the alleged purchaser, and the time and place of the alleged sale, is not unconstitutional. Coleman *v.* State, (Ala. 1907) 43 So. 715.

227. 1. No Application to Municipal Ordinances Regulating Sale of Intoxicating Liquors. — Scanlon *v.* Denver, 38 Colo. 401, 88 Pac. 156.

9. Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, 896.

228. 3. Borck *v.* State, (Ala. 1905) 39 So. 580; James *v.* State, 124 Ga. 72, 52 S. E. 295.

Prohibiting Issuing of Licenses. — Where the title is "An act to prohibit the sale," etc., the act may provide that the clerk of the Circuit Court shall not issue licenses. Clark *v.* Tower, 104 Md. 175, 65 Atl. 3.

4. Ordinance Prohibiting Sale of Liquor in Any Side or Upper Room Is Not Unconstitutional. — Sandys *v.* Williams, 46 Oregon 327, 80 Pac. 642; Kruse *v.* Williams, 46 Oregon 632, 80 Pac. 648.

229. 2. Keeping Open on Sunday. — The title "to prohibit the sale of liquor on Sunday" authorizes provisions which prohibit the keeping open of a barroom or other place for the sale of liquors on Sunday. Beauvois Club *v.* State, (Ala. 1907) 42 So. 1040; Duluth *v.* Abrahamson, 96 Minn. 39, 104 N. W. 682.

6. Title Held Sufficient to Cover Provisions of Statute. — The title "An act relating to revenue and taxation" authorizes a provision relating to license taxes. Brown-Foreman Co. *v.* Com., 101 S. W. 321, 30 Ky. L. Rep. 793.

The title "An act relating to the sale of intoxicating liquors" is sufficiently broad to cover the prohibition of unlawful sales. State *v.* Kleinfield, 72 Kan. 674, 83 Pac. 831.

Providing for the Payment of license taxes, prescribing penalties for doing business without a license, and prescribing penalties for failure to comply with the provisions of such license, are matters properly connected with the subject of imposing license and other taxes, and they may properly be embraced in one act. Schiller *v* State, 49 Fla. 25, 38 So. 706.

The Constitutional Requirement that the title shall contain the title of the former act to which it is said to be supplemental or amendatory, is satisfied generally if the supplemental act identifies the original act by its title and declares the purpose to supplement the former. State *v.* Thomas, 74 Kan. 360, 86 Pac. 499.

Quantity. — Under a title reading "An act fixing the annual license fee for retailing or vending spirituous" or other liquors, a license fee may be imposed in the body of the act upon all vendors or sellers of intoxicating liquors, irrespective of the quantity involved in the sale. Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

Where the Body of the Act not only goes beyond the restrictive title, but purports to make a law precisely the opposite of the enactment indicated to be in contemplation of the general assembly, it is unconstitutional. Croxton *v.* Truesdel, 75 S. Car. 418, 56 S. E. 45.

230. 1. State *v.* Durein, 70 Kan. 13, 80 Pac. 987; State *v.* Seebold, 192 Mo. 720, 91 S. W. 491; State *v.* Barr, 78 Vt. 97, 62 Atl. 43; State *v.* Paige, 78 Vt. 286, 62 Atl. 1017. See also State *v.* Holmes, 53 Fla. 234, 44 So. 179.

7. State *v.* Maryland Club, 105 Md. 585, 66 Atl. 667.

Liquor License Is Not Mere Personal Right — It Is Attached to Property as Well as to Person. — *In re* Cavanagh, 14 Ont. L. Rep. 523.

231. 2. People *v.* Flynn, 110 N. Y. App. Div. 279, 96 N. Y. Supp. 655.

Liquor Tax Certificate Is in Nature of License. — People *v.* Seeley, 105 N. Y. App. Div. 149, 93 N. Y. Supp. 982.

4. Where a Statute Allows the Liquor Seller six months in which to close out his stock in hand, if his license remains so long in force, a licensing board has no power to renew a license which expires in less than six months. McIntyre *v.* Asheville, (N. Car. 1907) 59 S. E. 1007.

5. Mobile *v.* Phillips, 146 Ala. 158, 40 So. 826.

License Granted to Firm Will Not Protect Member Selling as Individual in Another Place — State *v.* McNett, 5 Penn. (Del.) 334, 61 Atl. 869.

6. Lynch *v.* State, 147 Ala. 143, 39 So. 912
7. Lynch *v.* State, 147 Ala. 143, 39 So. 912.
8. Lynch *v.* State, 147 Ala. 143, 39 So. 912.
10. Moise *v.* Weymuller, (Neb. 1907) 110 N. W. 554; State *v.* English, (N. H. 1907) 68 Atl. 129.

11. Dunning *v.* Owen, (1907) 2 K. B. 237.

232. 7. Tracy *v.* Ginzberg, 189 Mass. 260, 75 N. E. 637; Kennedy *v.* Welch, (Mass. 1907) 83 N. E. 11; Arnett *v.* Wright, 18 Okla. 337, 89 Pac. 1116; Deggender *v.* Seattle Brewing, etc., Co., 41 Wash. 385, 83 Pac. 898.

8. Kennedy *v.* Welch, (Mass. 1907) 83 N. E. 11; Moise *v.* Weymuller, (Neb. 1907) 110 N. W. 554. See also Deggender *v.* Seattle Brewing, etc., Co., 41 Wash. 385, 83 Pac. 898.

11. See Deggender *v.* Seattle Brewing, etc., Co., 41 Wash. 385, 83 Pac. 898.

233. 3. Kennedy *v.* Welch, (Mass. 1907) 83 N. E. 11; Arnett *v.* Wright, 18 Okla. 337, 89 Pac. 1116.

4. In New Jersey License Is Transferable. — Henkel *v.* Hoy, 74 N. J. L. 56, 64 Atl. 960.

English Statute Allows Transfer When Licensee Removes from Building. — Wilson *v.* Justices, (1905) 1 K. B. 491.

234. 2. Stern's License, 27 Pa. Super. Ct. 538.

3. Daniel's Case, 31 Pa. Super. Ct. 156.

4. New Jersey Transfer by Licensing Board to One of Its Members Who Acted for It Is Void. — Treeftz *v.* Excise Com'rs, 73 N. J. L. 278, 62 Atl. 1004.

Applicant for Renewal Permit Is Not Entitled to Hearing. — D'Amato's Appeal, (Conn. 1907) 68 Atl. 445.

5. Assignment by One Who Has Violated Liquor Tax Law Is Not Favorable. — Matter of Cullinan, 104 N. Y. App. Div. 205, 93 N. Y. Supp. 492.

8. Same Rule Recognized in Washington. — Deggender *v.* Seattle Brewing, etc., Co., 41 Wash. 385, 83 Pac. 898.

10. Transfer Applies Only to Existing License, and Not to License Subsequently Granted. — Mydosh *v.* Bayonne, 72 N. J. L. 439, 60 Atl. 1117.

235. 2. D'Amato's Appeal, (Conn. 1907) 68 Atl. 445; Henkel *v.* Hoy, 74 N. J. L. 56, 64 Atl. 960.

5. Nicolini *v.* Langermann, (Tex. Civ. App. 1907) 104 S. W. 501.

A Note and Mortgage given in consideration for the transfer of a liquor license to the promisor is illegal and no recovery can be had thereon. Kennedy *v.* Welch, (Mass. 1907) 83 N. E. 11.

In Washington License May Be Sold or Mortgaged as Personal Property. — Deggender *v.* Seattle Brewing, etc., Co., 41 Wash. 385, 83 Pac. 898.

In Massachusetts the holder of an assignment of a license for security has no rights under the assignment. Tracy *v.* Ginzberg, 189 Mass. 260, 75 N. E. 637.

6. Albion *v.* Boldt, 145 Mich. 285, 108 N. W. 703.

License Granted by Municipal Authorities Run for "Municipal Year." — Reusch *v.* Lincoln, (Neb. 1907) 112 N. W. 377; *Ex p.* Wilber, (Neb. 1907) 112 N. W. 379.

England — License May Be Granted for Term Not Exceeding Ten Years. — Rex *v.* Johnstone, (1906) 1 K. B. 228.

Canada — Extension of Licenses Is Limited to Three Months. — Rex *v.* Wilkinson, 37 N. Bruns. 53.

236. 2. Mistake of Clerk in Issuing License Does Not Extend Time. — State *v.* Brown, (Iowa 1906) 109 N. W. 1011.

5. Cooke *v.* Loper, (Ala. 1907) 44 So. 78; Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953; Harrison *v.* People, 222 Ill. 150, 78 N. E. 52; Joplin *v.* Jacobs, 119 Mo. App. 134, 96 S. W. 219.

No Right to Renewal. — The holder of a license has no right in reference to the granting of a future license after the expiration of the term for which he is licensed. Tracy *v.* Ginzberg, 189 Mass. 260, 75 N. E. 637.

237. 2. Malkan *v.* Chicago, 217 Ill. 471, 75 N. E. 548, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 237.

3. Matter of McCoy, 104 N. Y. App. Div. 215, 93 N. Y. Supp. 401.

4. Gambill *v.* Erdrich, 143 Ala. 440, 39 So. 297; Mobile *v.* Phillips, 146 Ala. 158, 40 So. 826.

239. 6. Applicant Must Be "Merchant in Good Faith." — Simpson *v.* Com., (Ky. 1906) 97 S. W. 404.

240. 3. Heidelberg Garden Co. *v.* People, 124 Ill. App. 301.

4. *Contra.* — *In re* Municipal Clauses Act, 11 British Columbia 154.

241. 6. Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953.

Permit Will Not Be Refused Druggist Because He Has Sold Cigars and Ice Cream on Sunday. — *In re* Maulsby, (Iowa 1907) 113 N. W. 548.

10. State *v.* Seebold, 192 Mo. 720, 91 S. W. 491.

242. 5. See Bordwell *v.* State, 77 Ark. 161, 91 S. W. 555.

7. Contra in Arkansas. — Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953.

9. Member of Board Is Disqualified from Voting for Transfer of License to Himself. — Treeftz *v.* Excise Com'rs, 73 N. J. L. 278, 62 Atl. 1004.

Private Arrangement as to Extinguishment of Licenses between Licensee and Board Disqualifies Latter. — Rex *v.* Woodhouse, (1906) 2 K. B. 501.

243. 1. State *v.* Durein, 70 Kan. 13, 80 Pac. 987; State *v.* Settles, 34 Mont. 448, 87 Pac. 445.

Amendment of Petition. — *In re* Matthew, 213 Pa. St. 269, 62 Atl. 837; *In re* Regan, 213 Pa. St. 279, 62 Atl. 841.

3. Omission of Names of Proposed Sureties Is Not Fatal When Their Names Appear on Bond Filed with Petition. — Oberfell's License, 28 Pa. Super. Ct. 68.

6. Hayes *v.* Oceanside, (Cal. App. 1907) 92 Pac. 492; *In re* Lofland, (Del. 1907) 66 Atl. 561.

Particular Description Is Jurisdictional. — Muncey *v.* Collins, 132 Iowa 50, 106 N. W. 262.

244. 5. Certificate of Surety as to His Financial Ability Need Not Be Recited in Petition. — Fourney's License, 28 Pa. Super. Ct. 71.

In California Petition Need Not Set Forth Qualification of Signers. — Hayes *v.* Oceanside, (Cal. App. 1907) 92 Pac. 492.

215. 2. Crawford's License, 33 Pa. Super. Ct. 338.

A Rule of Court which provides that all additional petitions and remonstrances shall be filed on or before the first day of the term at which the application is to be heard, deprives neither applicant nor remonstrant of any statutory right. Reznor Hotel Co.'s License, 34 Pa. Super. Ct. 525.

6. Muncey *v.* Collins, 132 Iowa 50, 106 N. W. 262.

216. 1. Muncey *v.* Collins, 132 Iowa 50, 106 N. W. 262.

2. The Same Rule Applies in *South Carolina* as to the notice required to be given of the location of a dispensary in a place other than an incorporated town. Croxton *v.* Truesdel, 75 S. Car. 418, 56 S. E. 45.

4. When There Are Two Unrepugnant Statutes Relating to Publication, Both Must Be Complied With. — *In re* Hedgreen, (Neb. 1907) 111 N. W. 786.

5. Indiana — One Publication Sufficient. — Perdue *v.* Gill, 35 Ind. App. 99, 73 N. E. 841.

217. 4. Vanaman *v.* Adams, (N. J. 1906) 65 Atl. 204; *In re* MacRae, 75 Neb. 757, 106 N. W. 1020; Tattersal *v.* Nevels, (Neb. 1906) 110 N. W. 708.

Statute Mandatory. — A statute providing that each person signing the recommendation must either have read it himself or have had the same read to him is mandatory and no license may be granted without a compliance therewith. *In re* Veasey, (Del. 1906) 63 Atl. 801.

218. 2. *In re* Dye, (Neb. 1907) 112 N. W. 332.

Signing Recommendations for Several Licenses. — In *New Jersey*, a freeholder is precluded, by statute, from signing more than one recommendation during the year. Cope *v.* Somers Point, 73 N. J. L. 376, 64 Atl. 156.

The Statute Is Satisfied "if the petitioner has by record or documentary evidence, or both, and in good faith has, and claims, a freehold estate in lands within the prescribed district within which he resides." Starkey *v.* Palm, (Neb. 1907) 114 N. W. 287.

219. 1. *In re* Clement, (Supm. Ct. Spec. T.) 101 N. Y. Supp. 447, 118 N. Y. App. Div. 575, *affirmed* 103 N. Y. Supp. 157; *In re* Deuel, (County Ct.) 55 Misc. (N. Y.) 618, 106 N. Y. Supp. 1030; Devanney *v.* Hanson, 60 W. Va. 3, 53 S. E. 603.

In New York the consent is not required where the building is a hotel and its use as a hotel has not been abandoned. *In re* Clement, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 325, 102 N. Y. Supp. 178.

Agent for Renting Purposes Is Not Authorized to Sign for Owner. — Matter of McCoy, 104 N. Y. App. Div. 215, 93 N. Y. Supp. 401.

New Consents for Second License Necessary Where Occupation Has Not Been Continuous. — Quigley *v.* Monsees, 121 N. Y. App. Div. 110, 106 N. Y. Supp. 167.

New Consent Must Be Obtained after Property Is Sold. — Conway *v.* District Ct., 132 Iowa 510, 109 N. W. 1074.

2. Consents Used on One Application Cannot Be Amended and Used on Application of Another Person. — *In re* Griffin, (Supm. Ct.) 56 Misc. (N. Y.) 21, 106 N. Y. Supp. 24.

3. Lessee Is Not Authorized to Sign. — *In re* Ruff, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 1, 105 N. Y. Supp. 467.

Consent of Both Husband and Wife Must Be Obtained. — Matter of Bullard, 113 N. Y. App. Div. 159, 98 N. Y. Supp. 1011; Quigley *v.* Monsees, 121 N. Y. App. Div. 110, 106 N. Y. Supp. 167.

Tenant in Common Is Freeholder. — Close *v.* O'Brien, (Iowa 1907) 112 N. W. 800.

Consent of Life Tenants Need Not Be Obtained. — *In re* Clement, (Supm. Ct. Spec. T.) 101 N. Y. Supp. 447, 118 N. Y. App. Div. 575, 103 N. Y. Supp. 157.

4. Consent Once Given Continues Effectual until Revoked. — Conway *v.* District Ct., 132 Iowa 510, 109 N. W. 1074.

6. See Matter of Bullard, 113 N. Y. App. Div. 159, 98 N. Y. Supp. 1011.

Number of Buildings, Not Number of Residents or Families, Controls. — Matter of Clement, 118 N. Y. App. Div. 575, 103 N. Y. Supp. 157.

250. 2. **Ordinary Frame Dwelling in County Village, though Used by Two Families, Is but One Building.** — Matter of Clement, 118 N. Y. App. Div. 575, 103 N. Y. Supp. 157, *affirming* (Supm. Ct. Spec. T.) 101 N. Y. Supp. 447.

4. The Obtaining of the Consent of a Person Living within the Prescribed Distance will not be excused by the fraudulent construction of a partition in the saloon which removes the room in which the liquor is sold from the distance prescribed by law. McColl *v.* Rally, 127 Iowa 633, 103 N. W. 972.

The New York Statute establishes the distance from an entrance as the test, and by the word "entrance" contemplates a doorway or passageway which may be used by any person outside the dwelling desiring to enter the same. McDougal *v.* Malaghan, 184 N. Y. 253, 77 N. E. 12.

An entrance to a rear building on a lot from the yard between the front and rear buildings, access to the yard being from the front of the lot, is not within the purview of the statute. *In re* Ruff, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 313, 106 N. Y. Supp. 483, *affirmed* 122 N. Y. App. Div. 891, 106 N. Y. Supp. 1143.

5. Blanket Remonstrance May Be Filed in Indiana.—Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, 896.

6. Jones *v.* Alexander, 167 Ind. 395, 79 N. E. 368.

A Majority of Voters Must Sign, but it is proper for voters who have signed the application for a license to change their minds and sign the remonstrance. Simpson *v.* Com., (Ky. 1906) 97 S. W. 404.

"Block" Construed. — A statute requiring the remonstrance to be signed by one-fourth of the property owners doing business upon both sides of the street in the block upon which the dramshop has its main entrance, is satisfied by one-quarter of the property owners on the street signing the remonstrance. The signatures of one-quarter of the property owners of the entire

block are not required. Chicago *v.* O'Hare, 124 Ill. App. 290.

In Indiana the remonstrants must constitute a majority of the greatest aggregate vote cast for the candidates for any office at the last preceding general election. Kunkle *v.* Abell, 167 Ind. 434, 79 N. E. 753.

7. Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, 896.

8. Sanasack *v.* Ader, (Ind. App. 1906) 78 N. E. 675.

Notice Must Be Given to Applicant. — Blencowe *v.* Hatherton, 96 L. T. N. S. 817.

The Filing of a Blanket Remonstrance does not invoke the exercise of any judicial power by the board of commissioners. Anderson *v.* Weber, 39 Ind. App. 443, 79 N. E. 1055.

251. 2. **Protest Need Not Be in Writing.** — Guinn *v.* Cumberland County Ct., 90 S. W. 274, 28 Ky. L. Rep. 759.

3. **Majority Vote for Prohibition Is Tantamount to Remonstrance.** — Sandys *v.* Williams, 46 Oregon, 327, 80 Pac. 642.

6. **Burden Is upon Remonstrants to Show that Remonstrance Responds to Statutory Requirements.** — Jones *v.* Alexander, 167 Ind. 395, 79 N. E. 368.

252. 1. Middlekauff *v.* Adams, (Neb. 1906) 107 N. W. 232.

2. Sanasack *v.* Ader, (Ind. App. 1906) 78 N. E. 675; Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, 896; Regadanz *v.* Haines, 168 Ind. 140, 79 N. E. 1085.

3. Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, 896; Jones *v.* Alexander, 167 Ind. 395, 79 N. E. 368; Lanham *v.* Woods, 167 Ind. 398, 79 N. E. 376; Kunkle *v.* Abell, 167 Ind. 434, 79 N. E. 753; Brezger's License, 34 Pa. Super. Ct. 460.

Proceeding Is Judicial Either with or without Remonstrance. — *In re* Arszman, (Ind. App. 1907) 81 N. E. 680.

5. **Testimony Must Be Reduced to Writing.** — State *v.* McGuire, (Neb. 1905) 105 N. W. 471; State *v.* Board of Fire, etc., Com'rs, (Neb. 1906) 108 N. W. 122.

Hearing Necessarily Informal but Competent Proof Is Required. — Swihart *v.* Hansen, (Neb. 1906) 107 N. W. 862.

Correction of Error by Licensing Board Has Same Effect. — Brezger's License, 34 Pa. Super. Ct. 469.

6. Blencowe *v.* Hatherton, 96 L. T. N. S. 817.

Hearing May Be Had at Special Term. — State *v.* Mitchell, 127 Mo. App. 455, 105 S. W. 685.

8. **Burden Is on State to Show that Remonstrants Are Legal Voters.** — Guinn *v.* Cumberland County Ct., (Ky. 1906) 90 S. W. 274.

10. Swihart *v.* Hansen, (Neb. 1906) 107 N. W. 862.

11. **It Is Error for Court to Refuse to Try Issue of Applicant's Fitness.** — Ardery *v.* Smith, 35 Ind. App. 94, 73 N. E. 840.

12. **Applicant Must Prove Averments of Application Regardless of Whether or Not Remonstrance Has Been Filed.** — *In re* Arszman, (Ind. App. 1907) 81 N. E. 680.

253. 2. *In re* MacRae, 75 Neb. 757, 106 N. W. 1020.

3. Reznor Hotel Co.'s License, 34 Pa. Super. Ct. 525.

7. Reznor Hotel Co.'s License, 34 Pa. Super. Ct. 525.

9. Reznor Hotel Co.'s License, 34 Pa. Super. Ct. 525.

12. Simpson *v.* Com., (Ky. 1906) 97 S. W. 404.

254. 3. State *v.* Holmes, 53 Fla. 234, 44 So. 179; Harrison *v.* People, 222 Ill. 150, 78 N. E. 52; Fooks *v.* Purnell, 101 Md. 321, 61 Atl. 582; State *v.* Settles, 34 Mont. 448, 87 Pac. 445; McCrory's License, 31 Pa. Super. Ct. 192; Reznor Hotel Co.'s License, 34 Pa. Super. Ct. 525.

4. State *v.* Durein, 70 Kan. 13, 80 Pac. 987; Burkarth *v.* Stephens, 117 Mo. App. 425, 94 S. W. 720.

255. 1. Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953.

3. State *v.* Durein, 70 Kan. 13, 80 Pac. 987; State *v.* Settles, 34 Mont. 448, 87 Pac. 445.

7. Jones *v.* Alexander, 167 Ind. 395, 79 N. E. 368.

256. 1. See Meyer *v.* Decatur, 125 Ill. App. 556.

7. State *v.* Holmes, 53 Fla. 234, 44 So. 179; Simpson *v.* Com., (Ky. 1906) 97 S. W. 404.

8. **It Is Not an Abuse of Discretion** to refuse an application for a wholesale liquor license, where it appears that the applicant intends to conduct the bottling business under cover of the same license. Ferch's License, 27 Pa. Super. Ct. 92.

9. Kretzmann *v.* Dunne, 228 Ill. 31, 81 N. E. 790, *affirming* 130 Ill. App. 469.

In England Licensing Board May Order Structural Alterations in Premises Before Granting Licenses. — Smith *v.* Justices, (1906) 2 K. B. 229.

Unsuitableness of Place — Too Close Proximity to Schools. — Harrison *v.* People, 222 Ill. 150, 78 N. E. 52.

11. **Denial on this Ground Precludes Another Application within One Year.** — D'Amato's Appeal, (Conn. 1907) 68 Atl. 445; Stern's License, 27 Pa. Super. Ct. 538; McCrory's License, 31 Pa. Super. Ct. 192. See also Tracy *v.* Ginzberg, 189 Mass. 260, 75 N. E. 637.

14. *In re* Arszman, (Ind. App. 1907) 81 N. E. 680; *In re* MacRae, 75 Neb. 757, 106 N. W. 1020.

257. 3. Londry's Appeal, 79 Conn. 1, 63 Atl. 293; Sanasack *v.* Ader, (Ind. App. 1906) 78 N. E. 675; Lanham *v.* Woods, 167 Ind. 398, 79 N. E. 376; State *v.* Durein, 70 Kan. 13, 80 Pac. 987; Free's License, 33 Pa. Super. Ct. 348. See also Simpson *v.* Com., (Ky. 1906) 97 S. W. 404.

England — No Appeal from Refusal to Renew. — Rex *v.* Justices, (1906) 1 K. B. 505.

In Maryland there is no appeal given by statute, and the decision of the clerk of the Circuit Court cannot be reviewed or controlled either by a court of equity or one of law. Fooks *v.* Purnell, 101 Md. 321, 61 Atl. 582.

The Word "Appeal," as used in the *Kansas* statute relating to the granting of a druggist's permit to sell intoxicating liquors, and providing that "no appeal shall be allowed from the order of the District Court," includes writs

of error. Hainer *v.* Burton, 75 Kan. 281, 89 Pac. 697.

The Judgment of a board of commissioners passing on a blanket remonstrance is void and no appeal is allowable. Only appeals from judgments granting or refusing a license are permissible. Anderson *v.* Weber, 39 Ind. App. 443, 79 N. E. 1055.

Failure of License Board to Reduce Evidence to Writing Does Not Prevent Taking of Appeal. — State *v.* McGuire, (Neb. 1905) 105 N. W. 471.

5. Burkarth *v.* Stephens, 117 Mo. App. 425, 94 S. W. 720; Rex *v.* Woodhouse, (1906) 2 K. B. 501.

6. **Neither State Nor County Is Necessary Party.** — *In re* Intoxicating Liquors, 129 Iowa 434, 105 N. W. 702.

259. 2. **It Is Sufficient to Serve Notice on Attorney of Parties.** — *In re* Intoxicating Liquors, 129 Iowa 434, 105 N. W. 702.

4. **Cause Is to Be Tried in Appellate Court as Original Cause.** — Sanasack *v.* Ader, (Ind. App. 1906) 78 N. E. 675. *Contra,* Holmes *v.* Robertson County Ct., 89 S. W. 106, 28 Ky. L. Rep. 283.

5. McCrory's License, 31 Pa. Super. Ct. 192; De Haven's License, 31 Pa. Super. Ct. 335; Black Diamond Distilling Co.'s License, 33 Pa. Super. Ct. 649; Reynoldsville Distilling Co.'s License, 34 Pa. Super. Ct. 269. But see Cole's Appeal, 79 Conn. 679, 66 Atl. 508.

Contra, Where License Was Refused for Invalid Reason. — Knoblauch's License, 28 Pa. Super. Ct. 323.

Pleadings Necessary to Perfect Appeal Are Liberally Construed. — *In re* Intoxicating Liquors, 129 Iowa 434, 105 N. W. 702.

Filing of Blanket Remonstrance Deprives Circuit Court on Appeal of Power to Grant License. — Regadanz *v.* Haines, 168 Ind. 140, 79 N. E. 1085.

6. De Haven's License, 31 Pa. Super. Ct. 335; Free's License, 33 Pa. Super. Ct. 348; Black Diamond Distilling Co.'s License, 33 Pa. Super. Ct. 649.

9. Pallidy *v.* Beatty, 15 Okla. 626, 83 Pac. 428.

When the Judgment of the Appellate Court Has Not Been Vacated or Set Aside the licensing board has no authority to issue a license on the same petition and notice. Paden *v.* Carson, 15 Okla. 399, 82 Pac. 830.

12. **In New Jersey** the want of a recommendation signed by a sufficient number of qualified freeholders furnishes a ground for the court to review on certiorari the granting of a license. Vanaman *v.* Adams, (N. J. 1906) 65 Atl. 204.

13. Rex *v.* Woodhouse, (1906) 2 K. B. 501.

259. 3. *In re* Tinkcom, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 250, 100 N. Y. Supp. 467.

4. Burkarth *v.* Stephens, 117 Mo. App. 425, 94 S. W. 720.

260. 3. Chicago *v.* O'Hare, 124 Ill. App. 290; New Orleans *v.* Smythe, 116 La. 685, 41 So. 33. See also Kennon *v.* Blackburn, (Ky. 1907) 104 S. W. 968.

4. Cooke *v.* Loper, (Ala. 1907) 44 So. 78; Harrison *v.* People, 124 Ill. App. 519; Meyer *v.* Decatur, 125 Ill. App. 556. See also State *v.* Davis, 119 La. 247, 44 So. 4.

Necessary Showing. — "While an applicant for a liquor license may obtain a mandamus to compel a city council to issue him license, if it arbitrarily refuses to do so, still he must show that he is a person of good character, possessed of the necessary qualifications to entitle him to license." The court, *per* Hobson, J., in Conlee *v.* Clay City, 102 S. W. 862, 31 Ky. L. Rep. 533.

261. 1. **Equity Will Set Aside Judgment Where Showing of Jurisdiction in Record Has Been Fraudulently Obtained.** — Burkarth *v.* Stephens, 117 Mo. App. 425, 94 S. W. 720.

New Brunswick — Writ of Prohibition Lies. — *Ex p.* Demmings, 37 N. Bruns. 586.

In South Carolina any taxpayer may sue to enjoin the opening of a dispensary without the notice required by law. Croxton *v.* Truesdel, 75 S. Car. 418, 56 S. E. 45.

2. **Contra, under Statute Making Clubs Licensees.** — State *v.* Maryland Club, 105 Md. 585, 66 Atl. 667.

3. Hayes *v.* Oceanside, (Cal. App. 1907) 92 Pac. 492.

7. Rex *v.* Ritchie, 37 N. Bruns. 213.

9. Sopher *v.* State, (Ind. 1907) 81 N. E. 913.

262. 7. **Unnecessary Statement in License as to Quantity of Liquor Authorized to Be Sold Will Not Vitiate.** — State *v.* Kiley, 36 Ind. App. 513, 76 N. E. 184.

10. **Description in License Must Correspond with that Stated in Application and Petition.** — Moniteau County *v.* Lewis, 123 Mo. App. 673, 100 S. W. 1107.

When There Is a Mistake in the Description the excise commission may correct it, but he will not be compelled to do so by the court. Matter of Littleton, 113 N. Y. App. Div. 471, 99 N. Y. Supp. 417.

263. 1. Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 262, 263; Littleton *v.* Burgess, 14 Wyo. 173, 82 Pac. 864, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 262; Sanasack *v.* Ader, (Ind. App. 1906) 78 N. E. 675; Clark *v.* Tower, 104 Md. 175, 65 Atl. 3; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044; Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689.

Municipal Council Cannot Prescribe for Revocation of License. — State *v.* Milwaukee, 129 Wis. 562, 109 N. W. 421.

2. State *v.* Seebold, 192 Mo. 720, 91 S. W. 491; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044.

4. Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 263.

6. Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 263; Littleton *v.* Burgess, 14 Wyo. 173, 82 Pac. 864, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 262; *Ex p.* Vaccarrezza, (Tex. Crim. 1907) 105 S. W. 1119. See also Sanasack *v.* Ader, (Ind. App. 1906) 78 N. E. 675.

8. State *v.* Seebold, 192 Mo. 720, 91 S. W. 491; State *v.* Superior Ct., 44 Wash. 526, 87 Pac. 818.

264. 3. **License Cannot Be Revoked by Board**

Rescinding Vote of Prior Board Granting License. — Dziok *v.* License Com'rs, (R. I. 1908) 68 Atl. 479; Ferron *v.* License Com'rs, (R. I. 1908) 68 Atl. 480.

4. Borck *v.* State, (Ala. 1905) 39 So. 580, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 263, 264, notes 1–9; Sarlo *v.* Pulaski County, 76 Ark. 336, 88 S. W. 953; Jacobs *v.* Reilly, (Conn. 1907) 68 Atl. 251; State *v.* Seebold, 192 Mo. 720, 91 S. W. 491.

Hotel License Can Only Be Revoked for Statutory Causes or Fraud. — Vanaman *v.* Adams, (N. J. 1906) 65 Atl. 204.

6. Belt *v.* Paul, 77 Ark. 211, 91 S. W. 301; Matter of Clement, 117 N. Y. App. Div. 5, 102 N. Y. Supp. 37.

8. Stambaugh's License, 31 Pa. Super. Ct. 243.

265. 2. State *v.* Curtis, 130 Wis. 357, 110 N. W. 189.

3. Arnold's License, 30 Pa. Super. Ct. 93.

4. State *v.* Curtis, 130 Wis. 357, 110 N. W. 189.

6. Violation of Wine Room Ordinance Is Ground for Revocation of License. — Harrison *v.* People, 124 Ill. App. 519.

7. *In re* Clement, 119 N. Y. App. Div. 622, 104 N. Y. Supp. 25.

10. *In re* Clement, (Supm. Ct. Spec. T.) 101 N. Y. Supp. 447, *affirmed* 118 N. Y. App. Div. 575, 103 N. Y. Supp. 157; *In re* Deuel, (County Ct.) 55 Misc. (N. Y.) 618, 106 N. Y. Supp. 1030.

266. 1. Matter of Littleton, 113 N. Y. App. Div. 471, 99 N. Y. Supp. 417.

3. Rex *v.* Wilkinson, 37 N. Bruns. 90.

4. Vanaman *v.* Adams, (N. J. 1906) 65 Atl. 204; *In re* Clement, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 325, 102 N. Y. Supp. 178.

5. Matter of McCoy, 104 N. Y. App. Div. 215, 93 N. Y. Supp. 401.

8. License of Transferee May Be Revoked for Previous Violation of Law by Transferrer. — Matter of Cullinan, 104 N. Y. App. Div. 205, 93 N. Y. Supp. 492.

The Purpose of the Licensee before he obtains his license, to permit another person to sell liquor under the license, otherwise than as his agent, will not render the license void, or affect it until executed. State *v.* English, (N. H. 1907) 68 Atl. 129.

10. *In re* Brady, (Supm. Ct. Spec. T.) 106 N. Y. Supp. 921. See also Wright *v.* Board of Excise, (N. J. 1907) 66 Atl. 1061.

Contra, When Building Was Used for Church Purposes Only after Granting of License. — *In re* Rupp, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 313, 106 N. Y. Supp. 483, *affirmed* 122 N. Y. App. Div. 891, 106 N. Y. Supp. 1143.

11. Londry's Appeal, 79 Conn. 1, 63 Atl. 293.

Permit of Druggist May Be Revoked Summarily in Kansas. — State *v.* Durein, 70 Kan. 13, 80 Pac. 987.

13. Carr *v.* Augusta, 124 Ga. 116, 52 S. E. 300; State *v.* Seebold, 192 Mo. 720, 91 S. W. 491; State *v.* Gilbert, (S. Dak. 1907) 111 N. W. 538; State *v.* Harvey, (S. Dak. 1907) 111 N. W. 540; State *v.* Kirsh, (S. Dak. 1907) 111 N. W. 540; State *v.* McMillan, (S. Dak. 1907) 111 N. W. 540.

267. 1. Heidelberg Garden Co. *v.* People, 124 Ill. App. 331.

2. Pallidy *v.* Beatty, 15 Okla. 626, 83 Pac. 4 .

Mandamus Will Lie When Facts Requiring Revocation Are Established Beyond Dispute. — State *v.* Curtis, 130 Wis. 357, 110 N. W. 189.

3. People *v.* Flynn, 110 N. Y. App. Div. 279, 96 N. Y. Supp. 655.

Cancellation of License Is Judicial Act. — State *v.* Corron, 73 N. H. 434, 62 Atl. 1044; Barry *v.* Little, (N. H. 1907) 68 Atl. 40.

In New York the proceeding by the state excise commissioner to revoke a liquor tax certificate is intended to be summary. Cullinan *v.* Devito, (Supm. Ct. Spec. T.) 99 N. Y. Supp. 976; Cullinan *v.* Sabating, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 442, 99 N. Y. Supp. 977.

4. State *v.* Seebold, 192 Mo. 720, 91 S. W. 491.

6. Owner of Real Estate Is Taxpayer within Meaning of New York Statute. — *In re* Schopp, 119 N. Y. App. Div. 192, 104 N. Y. Supp. 307.

Executors and Trustees are within the *New York* statute permitting taxpayers to maintain the action. *In re* Rupp, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 467, 105 N. Y. Supp. 467.

Petitioners Not Limited to Residents of Ward in Which Saloon Is Located. — McGinley's License, 32 Pa. Super. Ct. 324.

7. Particular Manner in Which Liquor Was Kept for Sale Need Not Be Specified. — State *v.* Suiter, 78 Vt. 391, 63 Atl. 182.

10. State *v.* Curtis, 130 Wis. 357, 110 N. W. 189.

Defects in Petition Are Waived by Appearance, Answer, and Consent to Reference. — *In re* Stedler, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 322, 102 N. Y. Supp. 147.

268. 1. McGinley's License, 32 Pa. Super. Ct. 324.

5. People *v.* Flynn, 110 N. Y. App. Div. 279, 96 N. Y. Supp. 655.

6. McGinley's License, 32 Pa. Super. Ct. 324.

269. 1. **Reference.** — Under the present *New York* Liquor Tax Law, a reference is not authorized. *In re* Clement, 187 N. Y. 274, 79 N. E. 1003.

But the court has power to order one under the general statutes of the state. Matter of Lawson, 109 N. Y. App. Div. 195, 96 N. Y. Supp. 33.

Sale of Liquor May Be Enjoined While Proceedings to Revoke Are Pending. — Cullinan *v.* Sabating, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 442, 99 N. Y. Supp. 977.

3. **As to Sufficiency of Findings.** — See Matter of Faber, 115 N. Y. App. Div. 451, 101 N. Y. Supp. 429.

4. *Contra*, when the revocation is by a mayor and council of an incorporated town, as they act in a legislative, and not a judicial capacity. State *v.* Superior Ct., 44 Wash. 526, 87 Pac. 818.

Bill in Equity Will Not Lie. — Barry *v.* Little, (N. H. 1907) 68 Atl. 40.

6. **Appeal Will Not Lie Where Revocation Is by Operation of Law and Action of Board Is Merely Ministerial.** — Londry's Appeal, 79 Conn. 1, 63 Atl. [illegible].

7. Carr *v.* Augusta, 124 Ga. 116, 52 S. E. 300.

Mandamus Will Lie where proceedings to revoke the license are dismissed, as certiorari would be inadequate, a judgment reversing the dismissal not having the effect of revoking the license. State *v.* Curtis, 130 Wis. 357, 110 N. W. 189.

9. McGinley's License, 32 Pa. Super. Ct. 124.

270. 1. Goldman *v.* Goodrum, 77 Ark. 582, 92 S. W. 865.

10. State *v.* Police Jury, (La. 1907) 45 So. 47.

271. 1. Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

2. Alexander *v.* State, 77 Ark. 294, 91 S. W. 181. *Contra,* State *v.* Lewis, 116 La. 762, 41 So. 63.

272. 1. Com. *v.* Central Hotel Co., 90 S. W. 565, 28 Ky. L. Rep. 829; Owensboro *v.* Fields, 102 S. W. 1184, 31 Ky. L. Rep. 627.

Tax Collector Cannot Demand Additional License Taxes for Back Years. — State *v.* New Orleans Chess, etc., Club, 116 La. 46, 40 So. 526.

3. Bingham County *v.* Fidelity, etc., Co., 13 Idaho 34, 88 Pac. 829; State *v.* Lewis, 116 La. 762, 41 So. 63.

4. Crocker *v.* Moore, 140 N. Car. 429, 53 S. E. 229.

5. One-half to State Treasurer, One-half to City. — People *v.* Cullinan, 111 N. Y. App. Div. 32, 97 N. Y. Supp. 194.

Money Paid to Sheriff Belongs to County. — Bingham County *v.* Fidelity, etc., Co., 13 Idaho 34, 88 Pac. 829.

11. See Bingham County *v.* Fidelity, etc., Co., 13 Idaho 34, 88 Pac. 829.

Statute Providing for Disposition Operates upon Funds from Time of Collection. — People *v.* Cullinan, 111 N. Y. App. Div. 32, 97 N. Y. Supp. 194.

273. 2. People *v.* Flynn, 110 N. Y. App. Div. 279, 96 N. Y. Supp. 655 (supporting second paragraph of original note). See also Matter of Faber, 115 N. Y. App. Div. 451, 101 N. Y. Supp. 429.

3. Anderson *v.* Galesburg, 118 Ill. App. 525; Ahlers *v.* Estherville, 130 Iowa 272, 104 N. W. 453.

In Washington the applicant for a license may recover from the county treasurer the license fee advanced upon the refusal of his application, but this does not authorize a recovery by a brewing company which has advanced the fee for the applicant. Hemrich Bros. Brewing Co. *v.* Kitsap County, 45 Wash. 454, 88 Pac. 838.

4. Alexander *v.* State, 77 Ark. 294, 91 S. W. 181.

6. See People *v.* Cullinan, 111 N. Y. App. Div. 32, 97 N. Y. Supp. 194.

274. 1. Paducah *v.* Jones, (Ky. 1907) 104 S. W. 971; Johnson *v.* Bessemer, 143 Mich. 313, 106 N. W. 852; Allen *v.* Houck, etc., Co., (Tex. Civ. App. 1906) 92 S. W. 993.

Delivery and Acceptance of Bond Necessary in Order to Bind Sureties. — Quist *v.* American Bonding, etc., Co., 74 Neb. 692, 105 N. W. 255.

275. 5. *In re* Matthew, 213 Pa. St. 269, 62 Atl. 837; *In re* Regan, 213 Pa. St. 279, 62 Atl. 841.

9. *Contra.* — Allen *v.* Houck, etc., Co., (Tex. Civ. App. 1906) 92 S. W. 993.

10. Edgar *v.* State, (Tex. Civ. App. 1907) 102 S. W. 439.

Misdescription of Location of Saloon Is Fatal. — Moniteau County *v.* Lewis, 123 Mo. App. 673, 100 S. W. 1107.

14. Failure of Board to Approve Bond — *That Approval Is Necessary.* — Johnson *v.* Bessemer, 143 Mich. 313, 106 N. W. 852; Allen *v.* Houck, etc., Co., (Tex. Civ. App. 1906) 92 S. W. 993.

277. 1. Two Sureties Required — One Corporate Surety Not Sufficient. — Lee *v.* Brittain, 74 Neb. 591, 104 N. W. 1076. *Contra,* Taggart *v.* Hielman, (Tex. Civ. App. 1906) 93 S. W. 245; Taggart *v.* Graham, (Tex. Civ. App. 1906) 93 S. W. 246.

3. Hilliker *v.* Farr, 149 Mich. 444, 112 N. W. 1116.

Sale of Business Discharges Obligor and Sureties. — Allen *v.* Houck, etc., Co., (Tex. Civ. App. 1906) 92 S. W. 993.

6. Jacobs *v.* Reilly, (Conn. 1907) 68 Atl. 251.

11. Selling to Intoxicated Person. — State *v.* Terheide, (Ind. 1906) 78 N. E. 195; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044.

Selling to Habitual Drunkard. — Coughtry *v.* Haupt, (Tex. Civ. App. 1907) 105 S. W. 516.

13. Clement *v.* Federal Union Surety Co., 122 N. Y. App. Div. 18, 106 N. Y. Supp. 1061.

No Breach Because of Assault by Third Party in Saloon Where Unlawful Sale Is Not Cause. — State *v.* Terheide, (Ind. 1906) 78 N. E. 195.

278. 1. See Allen *v.* Houck, etc., Co., (Tex. Civ. App. 1906) 92 S. W. 993.

3. *New York.* — Clement *v.* Federal Union Surety Co., 122 N. Y. App. Div. 18, 106 N. Y. Supp. 1061.

Person Aggrieved May Sue on Bond. — Brooks *v.* Ellis, (Tex. Civ. App. 1906) 98 S. W. 936.

Father of Minor Son Is Person "Aggrieved" under Texas Statute. — White *v.* Manning, (Tex. Civ. App. 1907) 102 S. W. 1160.

Right of Aggrieved Party to Sue Is Statutory Privilege, Reasonable at Any Time by Legislature. — Jesse *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011.

Mother of Habitual Drunkard May Sue. — Coughtry *v.* Haupt, (Tex. Civ. App. 1907) 105 S. W. 516.

The Virginia Statute providing that if the bond be forfeited, scire facias shall be issued thereon by the clerk of the court in whose office the bond is filed, gives a special remedy, and was not intended to exclude other remedies or forms of action by the commonwealth to collect the penalty of the bond. Anderson *v.* Com., 105 Va. 533, 54 S. E. 305.

5. State *v.* Corron, 73 N. H. 434, 62 Atl. 1044.

6. State *v.* Corron, 73 N. H. 434, 62 Atl. 1044.

Exception Where, on First Offense, Judge Certifies that License Should Not Be Revoked. — Jacobs *v.* Reilly, (Conn. 1907) 68 Atl. 251.

7. See Cullinan *v.* Horan, 116 N. Y. App. Div. 711, 102 N. Y. Supp. 132.

Estoppel to Deny Recital of Bond. — Moniteau County *v.* Lewis, 123 Mo. App. 673, 100 S. W. 1107.

Estoppel to Deny Validity of Bond.— Anderson *v.* Com., 105 Va. 533, 54 S. E. 305.

Defendant Is Estopped to Deny Constitutionality of Law Authorizing Suit on Bond.— White *v.* Manning, (Tex. Civ. App. 1907) 102 S. W. [illegible].

Burden of Proof Is on Plaintiff.— Allen *v.* Houck, etc., Co., (Tex. Civ. App. 1906) 92 S. W. 993.

Fact that License Was Obtained for Benefit of Another Is No Objection to Validity of Bond.— State *v.* English, (N. H. 1907) 68 Atl. 129.

279. 1. In an Action on a Bond properly executed the only legitimate object of inquiry is whether or not the conditions of the bond have been broken. Paducah *v.* Jones, (Ky. 1907) 104 S. W. 971.

2. State *v.* Corron, 73 N. H. 434, 62 Atl. 1041.

Extent of Recovery against Surety Is Limited by Amount of Bond.— People *v.* United Surety Co. of Baltimore, 120 N. Y. App. Div. 655, 105 N. Y. Supp. 72.

Sureties Are Liable for Acts of Agent of Proprietor.— State *v.* Terheide, (Ind. 1906) 78 N. E. 105.

Adoption of Local Option Terminates Right of Action on Bond.— Long *v.* Green, (Tex. Civ. App. 1906) 95 S. W. 79.

6. Sales May Be Made by Subagents Appointed by Town Agent.— State *v.* Marley, 78 Conn. 330, 62 Atl. 85.

281. 1. *Ex p.* Smith, (Tex. Crim. 1907) 102 S. W. 115; *Ex p.* Smith, (Tex. Crim. 1907) 102 S. W. 1124.

Police Power.— An ordinance prohibiting a saloon keeper from suffering or permitting infants or women to drink in the saloon or remain therein for over five minutes is a valid exercise of the police power of the municipality. Com. *v.* Price, 94 S. W. 32, 29 Ky. L. Rep. 593.

9. State *v.* Kessells, 120 Mo. App. 233, 96 S. W. 494; State *v.* Binswanger, 122 Mo. App. 78, 98 S. W. 103; Renshaw *v.* Lane County Ct., (Oregon 1907) 89 Pac. 147; Paul *v.* State, (Tex. Civ. App. 1907) 106 S. W. 448.

10. *Ex p.* Sweetman, 5 Cal. App. 577, 90 Pac. 1069; *Ex p.* Huillade, 5 Cal. App. XIII, 90 Pac. [illegible].

11. See Evans *v.* Police Jury, 114 La. 771, 38 So. 555.

12. See State *v.* Superior Ct., 44 Wash. 526, 87 Pac. 818.

282. 1. State *v.* Binswanger, 122 Mo. App. 78, 98 S. W. 103.

2. State *v.* Kessells, [illegible] Mo. App. [illegible], 96 S. W. 494; State *v.* Binswanger, 122 Mo. App. 78, 98 S. W. 103.

6. Cooper *v.* Greenfield, (Ind. 1907) 81 N. E. 56; Paul *v.* State, (Tex. Civ. App. 1907) 106 S. W. 448.

7. *Ex p.* O'Neil, 9 Can. Crim. Cas. (Que.) [illegible].

8. **Ordinance Fixing Penalty Must Follow Strictly Statute Conferring Authority.**— *In re* Van Cuyl, 71 Kan. 39, 79 Pac. 1081.

283. 1. *Ex p.* Elliott, 91 Tex. Crim. 108, 91 S. W. 570.

2. Earle *v.* Latonia Agricultural Assoc., (Ky. 1907) 106 S. W. 312.

7. Cofer *v.* Com., (Ky. 1905) 87 S. W. 264; Wells *v.* Torrey, 144 Mich. 689, 108 N. W. 423.

Municipality Cannot Issue License until It Has Adopted Valid Ordinance Authorizing It.— *In re* Ryan, (Neb. 1907) 112 N. W. 599.

8. Gambill *v.* Erdrich, 143 Ala. 440, 39 So. 297; Wells *v.* Torrey, 144 Mich. 689, 108 N. W. 423; State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

13. Power to License or Prohibit.— Conover *v.* Atlantic City, 73 N. J. L. 596, 64 Atl. 146.

14. Territory *v.* Robertson, (Okla. 1907) 92 Pac. 144.

284. 2. Mulkan *v.* Chicago, [illegible] Ill. 471, 75 N. E. 548; Chicago *v.* Slack, 121 Ill. App. 131.

The Power So Granted can only be exercised through general ordinances operating uniformly upon all persons of the class to which the ordinance relates. Meyer *v.* Decatur, 125 Ill. App. 556.

3. Cooke *v.* Loper, (Ala. 1907) 44 So. 78; Baton Rouge *v.* Butler, 118 La. 73, 42 So. 650; State *v.* Milwaukee, 129 Wis. 562, 109 N. W. 421.

6. **The Kentucky Legislature** has authorized cities of the fifth class to enact ordinances imposing an occupation tax on wholesale liquor dealers who sell to retail dealers. Cofer *v.* Elizabethtown, (Ky. 1907) 99 S. W. 608.

10. Pacific University *v.* Johnson, 47 Oregon 448, 84 Pac. 704.

Authority to License Does Not Exist under a statute conferring upon municipalities the power to regulate and license all taverns, etc., but further providing that nothing therein shall be construed as authorizing the licensing of the sale of intoxicating liquors. Fitzpatrick *v.* Weaver, 147 Mich. 382, 111 N. W. 163.

12. Com. *v.* Petri, 90 S. W. 987, 28 Ky. L. Rep. 910.

City Must Not Exceed Its Charter Provisions as to Term of License.—Albion *v.* Boldt, 145 Mich. 285, 108 N. W. 703.

In Georgia Dispensaries Are Authorized.— Smithville *v.* Dispensary Com'rs, 125 Ga. 559, 54 S. E. 530.

13. State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

14. Cooke *v.* Loper, (Ala. 1907) 44 So. 78; Centerville *v.* Gayken, (S. Dak. 1905) 104 N. W. 910.

Municipality Cannot License Sale of Liquors in Drug Store Without License.— Cooper *v.* Greenfield, (Ind. 1907) 81 N. E. 56.

285. 2. Johnson *v.* Fayette, (Ala. 1906) 42 So. 621; State *v.* Hinkel, 131 Wis. 103, 111 [illegible].

3. Lachman *v.* Walker, 52 Fla. 297, 42 So. [illegible].

4. State *v.* Police Jury, 116 La. 767, 41 So. 85, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 285; Johnson *v.* Fayette, (Ala. 1906) 42 So. 621. *Contra*, Cofer *v.* Elizabethtown, (Ky. 1907) 99 S. W. 608.

6. Wells *v.* Torrey, 144 Mich. 689, 108 N. W. 423.

Fact that License Taxation Incidentally Raises Revenue Is Not Fatal to Its Validity.— New Iberia *v.* Erath, 118 La. 315, 42 So. 945.

9. Johnson *v.* Fayette, (Ala. 1906) 42 So. 621.

10. Johnson *v.* Fayette, (Ala. 1906) 42 So. 621; Lachman *v.* Walker, 52 Fla. 297, 42 So. 461.

Ordinance Is to Be Vested by Constitutionality of Legislative Act Authorizing It. — Cofer *v.* Elizabethtown, (Ky. 1907) 99 S. W. 608.

286. 3. Lachman *v.* Walker, 52 Fla. 297, 42 So. 461.

7. **Authority Is Conferred in California by State Constitution.**—*Ex p.* Mogensen, (Cal. App. 1907) 90 Pac. 1063.

In Kansas cities of the first class may provide by ordinance for the prohibition of the sale of intoxicating liquors contrary to law, the suppression of common nuisances, and the seizure and destruction of all intoxicating liquors and other property used in maintaining a common nuisance. Stahl *v.* Lee, 71 Kan. 511, 80 Pac. 1003.

Ordinance Prohibiting Solicitation of Orders for Intoxicating Liquors Is Invalid. — Homer *v.* Brown, 117 La. 425, 41 So. 711.

8. State *v.* Police Jury, 116 La. 767, 41 So. 85, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 286.

Sale to Women Cannot Be Prohibited under Power to Regulate. — Joplin *v.* Jacobs, 119 Mo. App. 134, 96 S. W. 219.

9. State *v.* Police Jury, 116 La. 767, 41 So. 85, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 286.

287. 3. **Municipal Council May Prohibit Sale in Shops Without Prohibiting Sale in Taverns.** — *Re* Frawley, 14 Ont. L. Rep. 99.

4. Tucker *v.* Moultrie, 122 Ga. 160, 50 S. E. 61; Duren *v.* Stephens, 126 Ga. 496, 54 S. E. 1045; Sawyer *v.* Blakely, 2 Ga. App. 159, 58 S. E. 399.

5. **Ordinance Declaring "Blind Tiger" to Be Public Nuisance Is Valid.** — Ruston *v.* Fountain, 118 La. 53, 42 So. 644.

An Ordinance Is Invalid which makes it unlawful to keep for sale any spirituous, malt, or intoxicating liquors, for the reason that no exception is made with regard to the keeping for sale of domestic wines by person who may lawfully sell such wines within the city. Duren *v.* Stephens, 126 Ga. 496 54 S. E. 1045.

6. Cooke *v.* Loper, (Ala. 1907) 44 So. 78; Carr *v.* Augusta, 124 Ga. 116, 52 S. E. 300; Anderson *v.* Galesburg, 118 Ill. App. 525; Harrison *v.* People, 124 Ill. App. 519; O'Hare *v.* Chicago, 125 Ill. App. 73; Lawton *v.* Wood River, (Neb. 1906) 109 N. W. 748.

Contra. — Power "to license, regulate, and restrain" does not include the authority to prescribe how a license should be revoked. State *v.* Milwaukee, 129 Wis. 562, 109 N. W. 421.

288. 2. Littlejohn *v.* Stells, 123 Ga. 427, 51 S. E. 390.

4. State *v.* Marciniak, 97 Minn. 355, 105 N. W. 965.

Police Power Authorizes Ordinance Requiring that Saloons Shall Be Closed on Sunday. — Orme *v.* Tuscumbia, (Ala. 1907) 43 So. 584.

5. **Laws Held to Delegate Power to Require Closing on Sunday** — *Power to "License, Tax, Regulate, and Restrain."* — State *v.* Calloway, 11 Idaho 719, 84 Pac. 27.

6. Croker *v.* Excise Com'rs, 73 N. J. L. 460, 63 Atl. 901.

Ordinances Held Reasonable. — An ordinance making it a misdemeanor for the proprietor to permit any person, other than his family, to enter his saloon during the prohibited hours. State *v.* Calloway, 11 Idaho 719, 84 Pac. 27.

The Fact that the Retailer Has His Residence in the same apartment with his business is no reason against the validity of an ordinance prohibiting the keeping open of the saloon on Sunday. Orme *v.* Tuscumbia, (Ala. 1907) 43 So. 584.

289. 1. Johnson *v.* Bessemer, 143 Mich. 313, 106 N. W. 852; Timm *v.* Caledonia Station, 149 Mich. 323, 112 N. W. 942; Garonzik *v.* State, (Tex. Crim. 1906) 100 S. W. 374; Cohen *v.* Rice, (Tex. Civ. App. 1907) 101 S. W. 1052.

Special Statutory Authority Is Necessary. — *Ex p.* Smith, (Tex. Crim. 1907) 102 S. W. 1123, 1124.

2. **Power to Establish Saloon Limits Does Not Exist in Absence of Statute.** — *Ex p.* Smith, (Tex. Crim. 1907) 102 S. W. 115, 1124.

3. **Authority Does Not Exist under Power to "Suppress."** — Timm *v.* Caledonia Station, 149 Mich. 323, 112 N. W. 942.

6. Baton Rouge *v.* Butler, 118 La. 73, 42 So. 650.

7. Paducah *v.* Jones, (Ky. 1907) 104 S. W. 971.

Council Has No Power to Require More than Two Sureties. — Power *v.* Litchfield, 141 Mich. 350, 104 N. W. 664.

Statutory Provision for Bond Obviates Necessity for Penal Clause in Ordinance. — Johnson *v.* Bessemer, 143 Mich. 313, 106 N. W. 852.

8. Earle *v.* Latonia Agricultural Assoc., (Ky. 1907) 106 S. W. 312.

290. 3. Johnson *v.* Bessemer, 143 Mich. 313, 106 N. W. 852.

Where Section Fixing Penalty Is Void, Entire Ordinance Is Void. — *In re* Van Tuyl, 71 Kan. 659, 81 Pac. 181.

292. 2. See Meyer *v.* Mobile, 147 Fed. 843.

3. Peak *v.* Bidinger, 133 Iowa 127, 110 N. W. 292.

293. 3. State *v.* Delamater, (S. Dak. 1905) 104 N. W. 537, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 293; Pabst Brewing Co. *v.* Crenshaw, 198 U. S. 17; Meyer *v.* Mobile, 147 Fed. 843.

294. 4. Heyman *v.* Southern R. Co., 203 U. S. 270, 7 Ann. Cas. 1130; Adams Express Co. *v.* Kentucky, 206 U. S. 129; Crescent Liquor Co. *v.* Platt, 148 Fed. 894.

Act Permits States to Subject Nonresident Wholesale Dealers Doing Business within State to License Taxation. — New Iberia *v.* Erath, 118 La. 305, 42 So. 945.

5. Pabst Brewing Co. *v.* Crenshaw, 198 U. S. 17; Hart *v.* State, 87 Miss. 171, 39 So. 523; State *v.* Delamater, (S. Dak. 1905) 104 N. W. 537.

6. Meyer *v.* Mobile, 147 Fed. 843, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 294; Heyman *v.* Southern R. Co., 203 U. S. 270, 7 Ann. Cas. 1130; Adams Express Co. *v.* Kentucky, 206 U. S. 129; Westheimer *v.* Habinck, 131 Iowa 643, 109 N. W. 180.

Where the Carrier Is Also the Purchaser, the state may provide for the seizure of the liquors

as contraband. Jaro *v.* Holstein, 73 S. Car. 111, 52 S. E. 870; State *v.* Delamater, (S. Dak. 1905) 104 N. W. 537; State *v.* Kenney, 62 W. Va. 284, 57 S. E. 823.

An Act Making Penal All Solicitations of Sales for intoxicating liquors in local option territory is unconstitutional, where no exception is made as to the sale by solicitors from other states, under the laws of Congress regulating interstate commerce. *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086; *Ex p.* Hackney, (Tex. Crim. 1905) 92 S. W. 1092; Bruce *v.* State, (Tex. Crim. 1905) 92 S. W. 1092; Carter *v.* State, (Tex. Crim. 1906) 92 S. W. 1093.

7. State *v.* Delamater, (S. Dak. 1905) 104 N. W. 537. See also State *v.* Smith, 61 W. Va. 329, 56 S. E. 528.

297. 2. Setting Apart of Liquors from Bulk Passes Title and Completes Sale. — State *v.* Turner, 125 Mo. App. 21, 102 S. W. 599.

3. Westheimer *v.* Habinck, 131 Iowa 643, 109 N. W. 189; Com. *v.* Adair, (Ky. 1906) 89 S. W. 1130; Smith *v.* State, (Tex. Crim. 1906) 91 S. W. 592; Isom *v.* State, 49 Tex. Crim. 610, 95 S. W. 518. See also Brunson *v.* State, (Tex. Crim. 1906) 91 S. W. 582.

Sale to Agent of Undisclosed Principal Constitutes Sale to Either or Both. — Smart *v.* State (Tex. Crim. 1906) 92 S. W. 810.

Giving Order on Express Company Constitutes Sale. — McNeely *v.* State, 49 Tex. Crim. 286, 92 S. W. 419.

Sale Incomplete Where Selection by Seller Remains to Be Done. — Com. *v.* McDermott, (Ky. 1906) 96 S. W. 475.

4. Cook *v.* State, 124 Ga. 653, 53 S. E. 104.

Sale Exists, Where Value Was Measured in Money Terms, Although Metal Checks Were Used. — Duke *v.* State, 146 Ala. 138, 41 So. 170.

5. Cook *v.* State, 124 Ga. 653, 53 S. E. 104.

6. Ledbetter *v.* State, 143 Ala. 52, 38 So. 836; South Shore Country Club *v.* People, 228 Ill. 75, 81 N. E. 805; State *v.* Nelson, 14 N. Dak. 297, 103 N. W. 609; Polk *v.* State, (Tex. Crim. 1906) 97 S. W. 467; Oxford *v.* State, (Tex. Crim. 1906) 97 S. W. 484.

7. Lane *v.* State, 49 Tex. Crim. 335, 92 S. W. 839; O'Shennessey *v.* State, (Tex. Crim. 1906) 96 S. W. 790.

The Execution and Delivery of an Order for whiskey upon an express company, the delivery of the whiskey by the express agent to the person named in the order, and the payment of the C. O. D. and express charges by the latter, constitute a sale. Caton *v.* State, (Tex. Crim. 1906) 95 S. W. 540.

Mere Solicitation Is Not Sale. — *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086.

There Is No Sale Where Liquors Were Procured from an express office on an order to which the alleged seller's name was signed by another, without his knowledge or consent. Boyd *v.* State, (Tex. Crim. 1906) 92 S. W. 845.

298. 7. Ordering and Storing Liquor for Another Is Neither Sale Nor Gift. — Potts *v.* State, (Tex. Crim. 1906) 96 S. W. 1084.

Delivery of Liquor from Cold Storage Warehouse Is Not Sale. — Christ Diehl Brewing Co. *v.* Spencer, 29 Ohio Cir. Ct. 512.

10. Contra. — Taggart *v.* State, (Tex. Crim. 1906) 97 S. W. 95; Sparks *v.* State, (Tex. Crim. 1907) 99 S. W. 546.

11. Buckner *v.* State, 48 Tex. Crim. 558, 89 S. W. 829.

299. 1. Tombeaugh *v.* State, (Tex. Crim. 1906) 98 S. W. 1054; Sparks *v.* State, (Tex. Crim. 1907) 99 S. W. 546.

2. Cook *v.* State, 124 Ga. 653, 53 S. E. 104; Sparks *v.* State, (Tex. Crim. 1907) 99 S. W. 546.

The Word "Sale," in an act prohibiting the sale of intoxicating liquors, includes what is commonly known as barter and exchange. James *v.* State, 124 Ga. 72, 52 S. E. 295.

3. See Hays *v.* State, 49 Tex. Crim. 369, 91 S. W. 585.

Use of Money Paid on Debt to Procure Whiskey Does Not Constitute Sale. — Britton *v.* State, (Tex. Crim. 1907) 100 S. W. 148.

5. *Georgia.* — Gaskins *v.* State, 127 Ga. 51, 55 S. E. 1045; Meadows *v.* State, 127 Ga. 283, 56 S. E. 404.

Kentucky. — Com. *v.* Adair, (Ky. 1906) 89 S. W. 1130; George Wiedemann Brewing Co. *v.* Com., (Ky. 1906) 96 S. W. 834; Farris *v.* Com., 104 S. W. 288, 31 Ky. L. Rep. 847, 104 S. W. 290; Lemore *v.* Com., (Ky. 1907) 105 S. W. 470.

Mississippi. — See Price *v.* State, (Miss. 1905) 38 So. 41.

Missouri. — State *v.* Turner, 125 Mo. App. 21, 102 S. W. 599.

Pennsylvania. — Com. *v.* Pollak, 33 Pa. Super. Ct. 600.

Texas. — Buckner *v.* State, 48 Tex. Crim. 558, 89 S. W. 829; Choran *v.* State, (Tex. Crim. 1906) 92 S. W. 422; Merritt *v.* Com., 92 S. W. 611, 29 Ky. L. Rep. 184; Feige *v.* State, 49 Tex. Crim. 513, 95 S. W. 506; Alexander *v.* State, (Tex. Crim. 1907) 102 S. W. 1122.

Illustrations of Unsuccessful Device — *Purchasing for Accommodation of Others.* — Nixon *v.* State, (Tex. Crim. 1906) 97 S. W. 703.

Procuring Whiskey and Keeping Money. — Cable *v.* State, (Miss. 1905) 38 So. 98; Morris *v.* State, 48 Tex. Crim. 562, 89 S. W. 832; Feagin *v.* State, (Tex. Crim. 1907) 100 S. W. 776. See also Stovall *v.* State, (Tex. Crim. 1906) 97 S. W. 92.

Contra, unless there was a prior agreement that the sale should be made in that form. Lane *v.* State, 49 Tex. Crim. 335, 92 S. W. 839.

Accepting Pasteboard Checks for Liquor. — Smart *v.* State, (Tex. Crim. 1906) 92 S. W. 810; Adkins *v.* State, 49 Tex. Crim. 524, 95 S. W. 506.

Passing of Hat and Collection of Proportionate Share of Purchase Price. — State *v.* Nelson, 14 N. Dak. 297, 103 N. W. 609.

Giving Order on Express Company. — Where a shipment of whiskey is made by an express company C. O. D. to one person, and the original consignee of the shipment transfers the same to another person, who pays the purchase price and secures the whiskey, this constitutes a sale by the original consignee. Bennett *v.* State, 87 Miss. 803, 40 So. 554.

Receiving Money to assist in paying the C. O. D. charges on whiskey and the giving of whiskey to the person who furnished the money, constitutes a sale under the *Texas* Local Option

Law. Holman *v.* State, (Tex. Crim. 1905) 89 S. W. 977; Hoyt *v.* State, (Tex. Crim. 1905) 89 S. W. 1082; Hutchinson *v.* State, (Tex. Crim. 1905) 90 S. W. 178.

The Use of Samples in soliciting legitimate orders for the sale of intoxicating liquors is not in violation of a statute forbidding any one to "give in consideration of the purchase of any property or of any services or in evasion of the statute * * * any intoxicating liquor whatever." State *v.* Bernstein, 129 Iowa 520, 105 N. W. 1015.

In Charging the Jury as to tricks or devices in selling liquor contrary to law, the court should not assume that the sale was made. Ball *v.* Com., (Ky. 1907) 99 S. W. 326.

The Receipt of Money by a Person as Postmaster in payment of a money order, and the delivery of intoxicating liquor by him as express agent, does not constitute him a seller of intoxicating liquor. England *v.* State, 82 Ark. 488, 102 S. W. 373.

Question of Good Faith Is for Jury. — Sluder *v.* State, 84 Ark. 482, 106 S. W. 486.

3009. 1. McDermott *v.* Com., (Ky. 1906) 96 S. W. 474; F. W. Brewing Co. *v.* Com., (Ky. 1907) 99 S. W. 354; Com. *v.* Tynnauer, 33 Pa. Super. Ct. 604; Rex *v.* Bigelow, 9 Can. Crim. Cas. (Nova Scotia) 322.

By Statute in Kentucky, Place of Delivery Is Place of Sale. — McGuire *v.* Com., (Ky. 1907) 99 S. W. 612.

2. Newsome *v.* State, 1 Ga. App. 790, 58 S. E. 71; Doores *v.* Com., 89 S. W. 162, 28 Ky. L. Rep. 192, 89 S. W. 164, 28 Ky. L. Rep. 196; McDermott *v.* Com., (Ky. 1906) 96 S. W. 474; George Wiedemann Brewing Co. *v.* Com., (Ky. 1906) 96 S. W. 834; Com. *v.* Pollak, 33 Pa. Super. Ct. 600; Keller *v.* State, (Tex. Crim. 1905) 87 S. W. 669; *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086.

Where the Order Is Taken Over the Telephone, the delivery and sale are consummated at the place where the order is received. Moore *v.* State, 126 Ga. 414, 55 S. E. 327.

3. Hamilton *v.* Jos. Schlitz Brewing Co., 129 Iowa 172, 105 N. W. 438; Westheimer *v.* Habinck, 131 Iowa 643, 109 N. W. 189.

3011. 2. Com. *v.* Tynnauer, 33 Pa. Super. Ct. 604; Keller *v.* State, (Tex. Crim. 1905) 87 S. W. 669; Donley *v.* State, (Tex. Crim. 1905) 89 S. W. 553; Coats *v.* State, 48 Tex. Crim. 553, 89 S. W. 838; Wright *v.* State, (Tex. Crim. 1905) 90 S. W. 24; Golightly *v.* State, 49 Tex. Crim. 44, 90 S. W. 26; Hirsch *v.* State, (Tex. Crim. 1906) 96 S. W. 40; Potts *v.* State, (Tex. Crim. 1906) 96 S. W. 1084. See also Adams Express Co. *v.* Kentucky, 206 U. S. 129.

3. Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131; Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067; State *v.* Delamater, (S. Dak. 1905) 104 N. W. 537; Wright *v.* State, (Tex. Crim. 1905) 90 S. W. 24; Bigelow *v.* Craigellachie-Glenlivit Distillery Co., 37 Can. Sup. Ct. 55.

4. Taylor *v.* U. S., 6 Indian Ter. 350, 98 S. W. 123; George Wiedemann Brewing Co. *v.* Com., (Ky. 1906) 96 S. W. 834; George H. Goodman Co. *v.* Com., (Ky. 1907) 99 S. W. 252; Hart *v.* State, 87 Miss. 171, 39 So. 523; Com. *v.* Guja, 28 Pa. Super. Ct. 58.

5. McClure *v.* State, (Ala. 1907) 42 So. 813; Graves *v.* State, 127 Ga. 46, 56 S. E. 72; Com. *v.* Adair, 89 S. W. 1139, 28 Ky. L. Rep. 657, 89 S. W. 1132, 28 Ky. L. Rep. 659; State *v.* Johnston, 139 N. Car. 640, 52 S. E. 273; Parks *v.* State, (Tex. Crim. 1906) 96 S. W. 328.

Contra, Where Agreement Is Made in Local Option District and Delivery Is Made Outside. — Merritt *v.* Com., (Ky. 1906) 92 S. W. 611.

Under North Carolina Statute, Place of Delivery Is Place of Sale. — State *v.* Herring, 145 N. Car. 418, 58 S. E. 1007.

Where the Means of Transportation from one county to another does not appear in evidence, presumably the delivery was to be made at the place where the order was received, for the law will not presume an illegal delivery. Moore *v.* State, 126 Ga. 414, 55 S. E. 327.

3012. 2. McElroy *v.* State, 49 Tex. Crim. 604, 95 S. W. 539.

3. Com. *v.* Guja, 28 Pa. Super. Ct. 58.

4. Taylor *v.* U. S., 6 Indian Ter. 350, 98 S. W. 123; George H. Goodman Co. *v.* Com., (Ky. 1907) 99 S. W. 252.

7. Beavers *v.* Goodwin, (Tex. Civ. App. 1905) 90 S. W. 930.

3013. 1. Stahl *v.* Lee, 71 Kan. 511, 80 Pac. 983.

3014. 6. **Property of Person Used in Illegal Transportation of Liquors, Without His Knowledge or Consent, Is Not Liable to Seizure and Confiscation.** — Moody *v.* McKinney, 73 S. Car. 438, 53 S. E. 543.

7. **Owner Has Remedy Where Act, under Which Seizure Is Made, Is Unconstitutional.** — Beavers *v.* Goodwin, (Tex. Civ. App. 1905) 90 S. W. 930.

8. **Appeal Is Allowable** — White *v.* State, 80 Ark. 598, 98 S. W. 377.

9. See Bell *v.* Lott, 9 Ont. L. Rep. 114.

After Court Has Acquired Jurisdiction, Legality of Warrant Cannot Be Questioned. — O'Neal *v.* Parker, 83 Ark. 133, 103 S. W. 165.

11. Blackmar *v.* Nickerson, 188 Mass. 399, 74 N. E. 932.

State Is Not Necessary Party. — Jaro *v.* Holstein, 73 S. Car. 111, 52 S. E. 870.

3015. 6. Goldman *v.* Goodrum, 77 Ark. 582, 92 S. W. 865, *citing* 17 Am. and Eng. Encyc. of Law (2d ed.) 305; Moise *v.* Weymuller, (Neb. 1907) 110 N. W. 554.

3016. 2. See Weischelbaum *v.* Hayslip, 127 Ga. 417, 56 S. E. 413.

8. Westheimer *v.* Habinck, 131 Iowa 643, 109 N. W. 189.

13. Weischelbaum *v.* Hayslip, 127 Ga. 417, 56 S. E. 413.

Contra. — Where prohibition is the rule, the burden is upon the plaintiff to show that the sales were lawful. Westheimer *v.* Habinck, 131 Iowa 643, 109 N. W. 189.

3017. 2. Levy *v.* Stegemann, (Iowa 1905) 104 N. W. 372; Singer *v.* McNamara, (Iowa 1907) 111 N. W. 925; Boucher *v.* Capital Brewing Co., 9 Ont. L. Rep. 266.

3018. 9. See State *v.* Wilson, 73 Kan. 355, 84 Pac. 737, *citing* 17 Am. and Eng. Encyc. of Law (2d ed.) 308.

3019. 7. Singer *v.* McNamara, (Iowa 1907) 111 N. W. 925.

3020. 2. Boucher *v.* Capital Brewing Co., 9 Ont. L. Rep. 266.

Sales Made Outside of State. — Hamilton *v.* Jos. Schlitz Brewing Co., 129 Iowa 172, 105 N. W. 438.

312. 2. Hamilton *v.* Jos. Schlitz Brewing Co., 129 Iowa 172, 105 N. W. 438; Westheimer *v.* Habinck, 131 Iowa 643, 109 N. W. 189.

3. Bigelow *v.* Craigellachie-Glenlivet Distillery Co., 37 Can. Sup. Ct. 55.

5. Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 312; Levy *v.* Stegemann, (Iowa 1905) 104 N. W. 372.

6. Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 312.

313. 1. Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 312; Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131.

2. Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 312.

3. Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 312.

314. 3. Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131; Heintz *v.* Le Page, 100 Me. 542, 62 Atl. 605.

315. 5. **Liquors Owned by Municipality in Conducting Dispensary Are Not Subject to Execution.** — Equitable Loan, etc., Co. *v.* Edwardsville, 143 Ala. 182, 38 So. 1016.

7. **By Statute in South Carolina** liquors purchased outside the state, owned and conveyed as personal baggage, are exempt from seizure when the quantity does not exceed one gallon. Selling liquor from a bottle at a church is not conveying it as baggage within the meaning of the statute. State *v.* Pope, (S. Car. 1908) 60 S. E. 234.

318. 1. Sopher *v.* State, (Ind. 1907) 81 N. E. 913; Territory *v.* Robertson, (Okla. 1907) 92 Pac. 144.

3. State *v.* Thompson, 130 Iowa 227, 106 N. W. 515; Rizer *v.* Tapper, 133 Iowa 628, 110 N. W. 1038; State *v.* Storm, 74 Kan. 859, 86 Pac. 145.

Equity Has Jurisdiction Both under Old Chancery Practice and by Statute. — Devanney *v.* Hanson, 60 W. Va. 3, 53 S. E. 603.

Selling in Dispensary after It Has Been Abolished Constitutes Public Nuisance. — Dispensary Com'rs *v.* Hooper, 128 Ga. 99, 56 S. E. 997.

Under the Missouri Statute it is essential that the place is maintained to the annoyance of a portion of the inhabitants of the state. State *v.* Ingram, 118 Mo. App. 323, 94 S. W. 790.

5. See State *v.* Mulhern, 130 Iowa 46, 106 N. W. 267.

319. 3. Bohstedt *v.* Teufel, (Iowa 1906) 106 N. W. [illegible] State *v.* Thompson, 130 Iowa 227, 106 N. W. 515; State *v.* Brown, (Iowa 1906) 109 N. W. 1011; State *v.* De Moss, 74 Kan. 173, 85 Pac. 937; Kirkland *v.* Ferry, 45 Wash. 663, 88 Pac. 1123; State *v.* Moran, (Wash. 1907) 90 Pac. 1044.

5. **Keeping of Beer in Cold Storage House to Be Sold at Saloon Constitutes Nuisance.** — Bell *v.* Thompson, (Iowa 1906) 106 N. W. 949.

The Word "Place" in the *North Dakota* statute means the particular room, tenement, or apartment in which the liquor is sold or kept for sale. State *v.* Poull, 14 N. Dak. 557, 105 N. W. 717.

7. **Proof of Actual Sale Not Necessary.** — State *v.* De Moss, 74 Kan. 173, 85 Pac. 937.

9. **Maintaining Public Nuisance Is Continuous Act.** — State *v.* Giroux, 75 Kan. 695, 90 Pac. 249.

11. **A Nuisance Exists** where, in violation of a statute, the selling or keeping for sale is not carried on in a [illegible] entrance or exit. State *v.* Roney, 133 Iowa 416, 110 N. W. 604.

320. 8. See State *v.* Worden, 27 R. I. 484, 63 Atl. 486.

Before an Order of Abatement [illegible] criminal prosecution, the defendant is entitled to give a bond that he will not sell liquor in violation of law and that he will pay all fines, costs, and damages assessed against him for violation of the liquor laws. Weaver *v.* State, (Ohio 1906) 77 N. E. 273.

9. **Contra.** — State *v.* Brooks, 74 Kan. 175, 85 Pac. 1013.

321. 4. State *v.* O'Malley, 132 Iowa 696, 109 N. W. 491.

6 State *v.* Worden, 27 R. I. 484, 63 Atl. 486.

9. **Pendency of Criminal Prosecution Is No Ground for Postponement of Suit for Injunction and Abatement.** — Cowdery *v.* State, 71 Kan. 450, 80 Pac. 953.

12. **Defendant Not Entitled to Jury Trial.** — Cowdery *v.* State, 71 Kan. 450, 80 Pac. 953.

Proper Notice of Application for Temporary Writ of Injunction Is Necessary. — Beck *v.* Vaughn, 134 Iowa 331, 111 N. W. 994.

Contra. — State *v.* Jepson, (Kan. 1907) 92 Pac. 600; State *v.* Hunter, (Kan. 1907) 92 Pac. 603.

322. 2. **When Case Is Made for Injunction Temporary Writ Must Issue.** — Donnelly *v.* Smith, 128 Iowa 257, 103 N. W. 776.

Whenever a Fairly Reasonable Showing is made for a temporary injunction at the commencement of the action, it is the imperative duty of the court or judge promptly to allow the writ. State *v.* Jepson, (Kan. 1907) 92 Pac. 600; State *v.* Hunter, (Kan. 1907) 92 Pac. 603.

3. McCracken *v.* Miller, 129 Iowa 623, 106 N. W. 4; Bohstedt *v.* Teufel, (Iowa 1906) 106 N. W. 513.

4. Donnelly *v.* Smith, 128 Iowa 257, 103 N. W. 776.

Abandonment of the Business, after the granting of a temporary injunction and before trial, is no ground for the refusal to grant a permanent injunction. Drummond *v.* Richland City Drug Co., 133 Iowa 266, 110 N. W. 471.

323. 7. **State Board of Control Has No Power to Close County Dispensary Once Lawfully Established.** — State *v.* State Dispensary, 70 S. Car. 500, 50 S. E. 203.

9. **Officer Has No Authority to Destroy Property without Order of Competent Judicial Tribunal.** — Born *v.* Hopper, 110 N. Y. App. Div. 218, 96 N. Y. Supp. 671, 48 Misc. (N. Y.) 177.

324. 2. State *v.* Thomas, 74 Kan. 360, 86 Pac. 499.

Substantial Compliance with Statute Required. — Beck *v.* Vaughn, 134 Iowa 331, 111 N. W. 994.

Motive of Citizen in Instituting Proceedings Immaterial. — Rizer *v.* Tapper, 133 Iowa 628, 110 N. W. 1038.

City May Maintain Proceedings to Enjoin Nuisance. — Kirkland *v.* Ferry, 45 Wash. 663, 88 Pac. 1123.

3. Devanney *v.* Hanson, 60 W. Va. 3, 53 S. E. 603.

4. In Kansas whenever the county attorney refuses to bring suit, the attorney general and his assistants shall do so. State *v.* Jepson, (Kan. 1907) 92 Pac. 600; State *v.* Hunter, (Kan. 1907) 92 Pac. 603.

7. **No Proof Required Where Answer Admits that Plaintiff Is Resident of County.** — Devanney *v.* Hanson, 60 W. Va. 3, 53 S. E. 603.

8. Beck *v.* Vaughn, 134 Iowa 331, 111 N. W. 904; State *v.* Thomas, 74 Kan. 360, 86 Pac. 499; State *v.* Plomondon, 75 Kan. 269, 89 Pac. 23. See also State *v.* Porter, (Kan. 1907) 91 Pac. 1073.

Attorney's Fees. — In *Iowa* an attorney's fee of twenty-five dollars may be taxed as costs, whether the action is instituted in the name of the state or by a private individual. Plank *v.* Hertha, 132 Iowa 213, 109 N. W. 732.

Where the Decree Merely Enjoins the Act of Selling, and does not prohibit the keeping with intent to sell, the discovery of liquor upon the premises is not presumptive evidence of contempt in violating the decree. State *v.* Thompson, 130 Iowa 227, 106 N. W. 515.

325. 3. **Contra.** — "The judgment is a limitation upon the use of the property of which all subsequent owners or occupants must take notice." State *v.* Porter, (Kan. 1907) 91 Pac. 1073.

326. 4. State *v.* O'Malley, 132 Iowa 696, 109 N. W. 491.

Time Not Material Ingredient — Evidence of Sales Prior to Day Named in Indictment Is Admissible. — State *v.* Moore, (Iowa 1906) 106 N. W. 268.

6. State *v.* Giroux, 75 Kan. 695, 90 Pac. 249.

Bills and Accounts Found on Premises Are Admissible in Evidence. — State *v.* Corn, (Kan. 1907) 91 Pac. 1067.

7. State *v.* Giroux, 75 Kan. 695, 90 Pac. 249; State *v.* Corn, (Kan. 1907) 91 Pac. 1067.

327. 6. **Question of Permit Does Not Arise** where intoxicating liquor is sold to be used as a beverage, or where it is kept under circumstances which make the place where it is a public nuisance. State *v.* Giroux, 75 Kan. 695, 90 Pac. 249.

Admissions of Defendant Are Admissible to Show Ownership and Control of Premises. — State *v.* Plomondon, 75 Kan. 269, 89 Pac. 23.

8. **Admissible, after Sufficient Proof Has Otherwise Been Made of Its Real Character, to Show Knowledge of Owner.** — State *v.* Brooks, 74 Kan. [illegible] Pac. 1013.

11. **Defendant May Show His License in Evidence.** — Sopher *v.* State, (Ind. 1907) 81 N. E. 913.

12. "The Court Is Not Obliged to announce a rule of law which shall be a test in all cases of what constitutes maintaining or assisting in maintaining a liquor nuisance." State *v.* Sheasley, [illegible] Pac. 997.

13. McCracken *v.* Miller, 129 Iowa 623, 106 N. W. 4; Bohstedt *v.* Teufel, (Iowa 1906) 106 N. W. 513; State *v.* O'Malley, 132 Iowa 696, 109 N. W. 491; State *v.* White, 71 Kan. 356, 80 Pac. 589.

Unnecessary for State, in First Instance, to Prove Absence of Permit. — State *v.* Storm, 74 Kan. 859, 86 Pac. 145.

Proof that Defendant Was Without Druggist's Permit Is Not Necessary in Order to Convict. — State *v.* Plomondon, 75 Kan. 269, 89 Pac. 23.

Payment of United States Tax Is Prima Facie Evidence. — State *v.* Morin, 102 Me. 290, 66 Atl. 650.

Finding of U. S. Revenue Receipt Is Prima Facie but Not Conclusive Proof of Guilt. — State *v.* Momberg, 14 N. Dak. 291, 103 N. W. 566.

328. 1. **For Other Decisions in Which the Evidence Was Held Sufficient,** — See Jones *v.* Byington, 128 Iowa 397, 104 N. W. 473; McCracken *v.* Miller, 129 Iowa 623, 106 N. W. 4; State *v.* Mulhern, 130 Iowa 46, 106 N. W. 267; State *v.* White, 71 Kan. 356, 80 Pac. 589; State *v.* De Moss, 74 Kan. 173, 85 Pac. 937; State *v.* Giroux, 75 Kan. 695, 90 Pac. 249; State *v.* Corn, (Kan. 1907) 91 Pac. 1067.

For Cases in Which the Evidence Was Held Insufficient, see Sopher *v.* State, (Ind. 1907) 81 N. E. 913; State *v.* Thompson, (Kan. 1907) 91 Pac. 79.

Evidence Showing Clear Violation of Law Is Sufficient Regardless of Good Faith. — Peak *v.* Bidinger, 133 Iowa 127, 110 N. W. 292.

Where the Witness testifies to purchasing whiskey, but is not certain of the date, it is not error for the prosecuting attorney to refresh his memory. Thomasson *v.* State, 80 Ark. 364, 97 S. W. 297.

3. State *v.* Bock, 167 Ind. 559, 79 N. E. 493; Sopher *v.* State, (Ind. 1907) 81 N. E. 913.

Contra in Missouri. — State *v.* Ingram, 118 Mo. App. 323, 94 S. W. 790.

In Louisiana it is not a criminal offense to sell intoxicating liquors without first obtaining a state license. State *v.* Lewis, 116 La. 762, 41 So. 63.

5. **In Arkansas** a grower of grapes or berries may sell wine made therefrom in the state without a license, except where expressly prohibited in three-mile districts by order of the County Court. Bates *v.* State, 81 Ark. 336, 99 S. W. 388.

6. Henry *v.* State, 77 Ark. 453, 92 S. W. 405; McCampbell *v.* State, 116 Tenn. 98, 93 S. W. 100.

Gist of Offense Is Unlawful Sale. — Fletcher *v.* Com., 106 Va. 840, 56 S. E. 149.

Testimony by one witness that another witness had purchased whiskey of the accused for him is admissible to fix the date of the sale of the whiskey and to show that the indictment was not barred by limitation. Thomasson *v.* State, 80 Ark. 364, 97 S. W. 297.

329. 1. **Contra — State May Prove Commission of Offense upon Any Date within Statute of Limitations.** — Pitts *v.* State, 124 Ga. 79, 52 S. E. 147.

5. *Contra,* Territory *v.* Robertson, (Okla. 1907) 92 Pac. 144.

6. State *v.* McNett, 5 Penn. (Del.) 334, 61 Atl. 869; State *v.* Brown, (Iowa 1906) 109 N. W. 1011.

License under Old Law After Enactment of New License Law Is No Protection.— Barckell *v.* State, (Tex. Civ. App. 1907) 106 S. W. 190; *Ex p.* Vaccarezza, (Tex. Crim. 1907) 106 S. W. 392.

7. Goldman *v.* Goodrum, 77 Ark. 582, 92 S. W. 865.

9. State *v.* McIlvenna, (S. Dak. 1907) 113 N. W. 878. But see Edwards *v.* State, 123 Ga. 542, 51 S. E. 630.

Sale by Local Option District. — Com. *v.* Barbour, 89 S. W. 479, 28 Ky. L. Rep. 433; Fletcher *v.* Com., 106 Va. 840, 56 S. E. 149. But see Moore *v.* State, 126 Ga. 414, 55 S. E. 227; Hail *v.* State, 48 Tex. Crim. 514, 90 S. W. 503.

Where a sale has been made without license in a local-option district, the seller may be indicted and convicted either for selling without license or in violation of the Local Option Law. Dowdy *v.* Com., (Ky. 1907) 101 S. W. 338.

330. 6. Lambie *v.* State, (Ala. 1907) 44 So. 51, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 330. See also Rex *v.* McNutt, 38 Nova Scotia 339.

Where Statute Makes Finding of Certain Appliances Prima Facie Evidence, Burden of Proof Is Cast upon Defendant.— Rex *v.* Nugent, 9 Can. Crim. Cas. (N. W. Ter.) 1.

A Prima Facie Case is made by the state, when it proves the sale, the lack of license, and the intoxicating nature of the liquor. Goode *v.* State, 87 Miss. 495, 40 So. 12.

The *Arkansas* statute making a revenue license *prima facie* evidence against the owner or controller of the house, extends to all cases of unlawful selling of liquor, where it is shown that the defendant was the owner or controller of the house where the revenue license was kept or found. Winton *v.* State, 77 Ark. 143, 91 S. W. 7.

331. 4. State *v.* Laborde, 119 La. 410, 44 So. 156, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 331.

7. **License No Protection Where Tax Is Unpaid.** — Alexander *v.* State, 77 Ark. 294, 91 S. W. 181.

332. 4. State *v.* New Orleans, 117 La. 715, 42 So. 245.

6. State *v.* McIlvenna, (S. Dak. 1907) 113 N. W. 878.

Where There Is Apparent Authority to issue the license, it cannot be collaterally impeached in a criminal proceeding. State *v.* Lewis, 116 La. 762, 41 So. 63.

Defendant's Lack of Intent to Commit Crime Is Immaterial. — Collins *v.* State, (Ala. 1907) 44 So. 571.

10. **Law Is Violated by Sale after Surrender of Liquor Tax Certificate for Cancellation and Rebate.** — Matter of Cullinan, 114 N. Y. App. Div. 509, 99 N. Y. Supp. 1119.

11. **Sale at Unauthorized Time Is Not Protected by License.** — Schiller *v.* State, 49 Fla. 25, 38 So. 706.

13. Brame *v.* State, (Ala. 1905) 38 So. 1031; State *v.* McNett, 5 Penn. (Del.) 334, 61 Atl. 869; Jung Brewing Co. *v.* Com., (Ky. 1906) 98 S. W. 307; Arnold's License, 30 Pa. Super. Ct. 93.

333. 1. Lambie *v.* State, (Ala. 1907) 44 So. 51; McTaggarts' Bottlers' License, 32 Pa. Super. Ct. 560.

4. Matter of Heff, 197 U. S. 488.

The Mere Issuance of an internal revenue license is not sufficient to make out a *prima facie* case of unlawful sale of liquor. Peyton *v.* State, 83 Ark. 102, 102 S. W. 1110.

5. State *v.* Stroschein, 99 Minn. 248, 109 N. W. 235, supporting second paragraph of note.

7. **Necessity of Notice to Saloon Keeper.** — State *v.* Stroschein, 99 Minn. 248, 109 N. W. 235.

8. See *contra,* State *v.* Mulhern, 130 Iowa 26, 106 N. W. 267.

334. 7. State *v.* Hamill, 127 Mo. App. 661, 106 S. W. 1103.

Corporations Included. — Southern Express Co. *v.* State, 1 Ga. App. 700, 58 S. E. 67.

Effect of Local Option Law.— A sale to a minor cannot be prosecuted under a statute prohibiting sales to minors, where the sale occurs in local-option territory. Dean *v.* State, (Tex. Crim. 1906) 92 S. W. 38.

However, the state law with reference to giving intoxicants to a minor in local-option territory is effective in said territory. Deisher *v.* State, (Tex. Crim. 1906) 96 S. W. 28.

9. **The Fact that the Minor Has Neither Parents Nor Guardian.** — State *v.* Gary, 124 Mo. App. 175, 101 S. W. 614.

Seller Protected by Parent's Oral Consent When Present in Person.— State *v.* Hammons, 59 W. Va. 475, 53 S. E. 630.

Defense of Consent in Writing Is Not Available to Licensed Dramshop Keeper. — State *v.* Hamill, 127 Mo. App. 661, 106 S. W. 1103.

335. 4. Newsome *v.* State, 1 Ga. App. 790, 58 S. E. 71, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 335; *In re* Mac Rae, 75 Neb. 757, 106 N. W. 1020.

336. 1. State *v.* Fahey, 5 Penn. (Del.) 585, 65 Atl. 260; Newsome *v.* State, 1 Ga. App. 790, 58 S. E. 71; People *v.* Bronner, 145 Mich. 399, 108 N. W. 672; Holly *v.* Simmons, 99 Tex. 230, 89 S. W. 776; Farr *v.* Waterman, (Tex. Civ. App. 1906) 95 S. W. 65.

2. Ferguson *v.* State, (Tex. Crim. 1906) 95 S. W. 111; State *v.* Constatine, 43 Wash. 102, 86 Pac. 384.

4. People *v.* Bronner, 145 Mich. 399, 108 N. W. 672.

5. **By Statute in Iowa,** where the purchaser is not known to the seller, the latter must require identification and a statement in writing of a reliable person that the purchaser is not a minor. The fact that a former sale to the same person was legal is no defense under the statute. State *v.* Mulhern, 130 Iowa 46, 106 N. W. 267.

6. State *v.* Fahey, 5 Penn. (Del.) 585, 65 Atl. 260.

Inquiry Is Necessary.— Newsome *v.* State, 1 Ga. App. 790, 58 S. E. 71.

9. See Southern Express Co. *v.* State, 1 Ga. App. 700, 58 S. E. 67; Newsome *v.* State, 1 Ga. App. 790, 58 S. E. 71.

337. 1. State *v.* Fletcher, 74 Kan. 620, 87 Pac. 729.

8. See State *v.* Hammons, 59 W. Va. 475, 53 S. E. 630.

9. Posey *v.* State, 144 Ala. 54, 38 So. 1019,

citing 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 337.

338. 2. Anderson *v.* State, 82 Ark. 405, 101 S. W. 1152; Ford *v.* State, (Ark. 1907) 102 S. W. 1196; Harley *v.* State, 127 Ga. 308, 56 S. E. 452; *In re* Mac Rae, 75 Neb. 757, 106 N. W. 1020; People *v.* Hartstein, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 336, 99 N. Y. Supp. 272.

3. *In re* Mac Rae, 75 Neb. 757, 106 N. W. 1020.

7. State *v.* Mayo, 59 W. Va. 331, 53 S. E. 416.

339. 2. Farr *v.* Waterman, (Tex. Civ. App. 1906) 95 S. W. 65. *Contra,* People *v.* Bronner, 145 Mich. 399, 108 N. W. 672.

4. Ferguson *v.* State, (Tex. Crim. 1906) 95 S. W. 111.

5. Fact that Prior Sale to Same Person Was Legal Is No Defense.— State *v.* Mulhern, 130 Iowa 46, 106 N. W. 267.

The Testimony of Another Minor that he was present at the time of the sale, and that the defendant refused to sell him beer is not admissible. Cross *v.* State, 49 Tex. Crim. 437, 94 S. W. 1015.

6. State *v.* Fahey, 5 Penn. (Del.) 585, 65 Atl. 260.

Purpose for Which Liquor Was Purchased Is Immaterial. — State *v.* Stroschein, 99 Minn. 248, 109 N. W. 235.

340. 2. Southern Express Co. *v.* State, 1 Ga. App. 700, 58 S. E. 67; State *v.* Gary, 124 Mo. App. 175, 101 S. W. 614.

4. Proof that Purchaser Was under Twenty-one Years of Age Makes Prima Facie Case of Minority. — State *v.* Mulhern, 130 Iowa 46, 106 N. W. 267.

341. 2. State *v.* Fahey, 5 Penn. (Del.) 585, 65 Atl. 260.

Evidence Held Sufficient to Convict.— See State *v.* Hawkins, 96 Minn. 140, 104 N. W. 898.

3. State *v.* Gary, 124 Mo. App. 175, 101 S. W. 614.

4. White *v.* Manning, (Tex. Civ. App. 1907) 102 S. W. 1160, supporting second paragraph of note.

Minor Son of Proprietor Comes Within Prohibition.— Jones *v.* Byington, 128 Iowa 397, 104 N. W. 473.

Evidence of Sales of Liquor to Minor Is Admissible. — State *v.* Baker, (Oregon 1907) 92 Pac. 1076.

342. 1. State *v.* Nethken, 60 W. Va. 673, 55 S. E. 742.

2. State *v.* Nethken, 60 W. Va. 673, 55 S. E. 742.

344. 11. U. S. *v.* Buckles, 6 Indian Ter. 319, 97 S. W. 1022.

Soliciting and Reviewing Orders for Intoxicating Liquors Is within Purview of Statute. — Taylor *v.* U. S., 6 Indian Ter. 350, 98 S. W. 123.

345. 2. Evidence that defendant was running a low gambling house upon a Sunday, and that he furnished his patrons with intoxicating liquor, and also sold it to them on that occasion, is sufficient to sustain a conviction. Gibbs *v.* U. S., (Indian Ter. 1907) 104 S. W. 583.

6. Matter of Heff, 197 U. S. 488; *Ex p.* Viles, 139 Fed. 68.

346. 3. Borck *v.* State, (Ala. 1905) 39 So. 580; State *v.* O'Brien, 35 Mont. 482, 90 Pac. 514; Rector *v.* State, (Tex. Crim. 1905) 90 S. W. 41.

Testimony of Informers Should Be Carefully Scrutinized. — State *v.* Bryant, 97 Minn. 8, 105 N. W. 974.

9. Flood *v.* State, 103 Md. 692, 63 Atl. 684; Bennett *v.* State, (Tex. Crim. 1906) 92 S. W. 415.

10. Fact that Purchaser Was Officer of Law Is No Defense. — Borck *v.* State, (Ala. 1905) 39 So. 580.

347. 3. Aimo *v.* People, 122 Ill. App. 398.

7. School Election Throughout State Is "General" Election within Meaning of Kentucky Statute. — Ford *v.* Moss, (Ky. 1907) 98 S. W. 1015.

10. General Purpose of Statute Is to Include All Election Days. — Ford *v.* Moss, (Ky. 1907) 98 S. W. 1015.

Special Election for Justice of Peace Is within Statute. — Long *v.* State, 127 Ga. 285, 56 S. E. 424.

348. 2. **Prohibition of South Dakota Statute Includes All Places, Whether Licensed or Not.** — State *v.* Grant, (S. Dak. 1905) 105 N. W. 97.

Same Weight of Evidence Required to Convict as in Other Criminal Cases. — Veruki *v.* State, 127 Ga. 289, 56 S. E. 408.

3. Richardson *v.* State, (Ga. App. 1907) 59 S. E. 916.

Not Continuous Offense. — Com. *v.* McCann, (Ky. 1906) 94 S. W. 645.

4. *Contra.* — State *v.* Meagher, 114 Mo. App. 266, 89 S. W. 595.

Unexplained Fact of Saloon Being Open Constitutes Offense.—State *v.* Grant, (S. Dak. 1905) 105 N. W. 97.

6. Com. *v.* McCann, (Ky. 1906) 94 S. W. 645.

7. Selling Without License and Keeping Open on Sunday Are Distinct Offenses. — Shuler *v.* State, 125 Ga. 778, 54 S. E. 689.

9. Aimo *v.* People, 122 Ill. App. 398.

12. Cranfill *v.* State, (Tex. Crim. 1906) 92 S. W. 846.

349. 1. **Mere Irregularities, Which Do Not Vitiate Election, Are No Defense.** — Sadler *v.* State, 48 Tex. Crim. 507, 89 S. W. 974.

5. "Labor Day" Is Legal Holiday. — State *v.* Shelton, (Ind. App. 1906) 77 N. E. 1052.

10. Vandalia *v.* Carracker, 116 Ill. App. 62.

Same Rule Obtains in Missouri. — State *v.* Meagher, 114 Mo. App. 266, 89 S. W. 595.

In Texas there must be a sale or the opening of the saloon for traffic. Crawford *v.* State, (Tex. Crim. 1905) 89 S. W. 1079.

11. Vandalia *v.* Carracker, 116 Ill. App. 62.

350. 1. Birmingham *v.* People, (Colo. 1907) 90 Pac. 1121; Kolman *v.* State, 2 Ga. App. 648, 58 S. E. 1070; State *v.* Calloway, 11 Idaho 719, 84 Pac. 27; People *v.* Henze, 149 Mich. 130, 112 N. W. 491.

To Make the Offense Complete it is not necessary that the saloon be kept open in the same manner as on week days. Birmingham *v.* People, (Colo. 1907) 90 Pac. 1121.

2. Cranfill *v.* State, (Tex. Crim. 1906) 92 S. W. 846.

Contra — Temporary and Absolutely Necessary Opening for Innocent Purpose Is Not Violation of Statute. — Richardson *v.* State, (Ga. App. 1907) 59 S. E. 916.

4. People *v.* Tolman, 148 Mich. 305, 111 N. W. 772; Morris *v.* State, 48 Tex. Crim. 562, 89 S. W. 832.

6. Birmingham *v.* People, (Colo. 1907) 90 Pac. 1121; People *v.* Rand, 114 N. Y. App. Div. 826, 100 N. Y. Supp. 174.

7. **Allowing Bartender to Enter.** — Botkins *v.* State, 36 Ind. App. 179, 75 N. E. 298.

9. **Immaterial Whether Door Is Kept Open, or Is Only Opened on Application for Admission.** — Birmingham *v.* People, (Colo. 1907) 90 Pac. 1121.

12. **Opening of Place on Sunday for Delivery of Beer Ordered on Saturday Is Violation of Statute.** — Noblett *v.* Hopkinson, (1905) 2 K. B. 214.

13. Orme *v.* Tuscumbia, (Ala. 1907) 43 So. 584.

Room Adjoining One in Which Liquor Is Sold or Kept for Sale Is Not within Prohibition. — People *v.* Lupton, (County Ct.) 52 Misc. (N. Y.) 336, 103 N. Y. Supp. 172.

Barroom Is Tippling House within Meaning of Statute. — Kolman *v.* State, 2 Ga. App. 648, 58 S. E. 1070.

15. Mallon *v.* Com., (Ky. 1906) 98 S. W. 315.

351. 3. **Guest Must Resort to Hotel, in Good Faith, to Obtain Meal.** — Matter of Clement, 117 N. Y. App. Div. 5, 102 N. Y. Supp. 37.

Under the New York Statute which exempts hotels from the operation of the Sunday laws, the mere presence of some guests, who have made a stipulated engagement as to the duration of their stay, or as to the rate of compensation, cannot operate to deprive that which is a hotel of its character as such. Cullinan *v.* Clark, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 188, 93 N. Y. Supp. 256.

6. Matter of Clement, 117 N. Y. App. Div. 5, 102 N. Y. Supp. 37.

352. 1. **Burden Is upon Hotel Keeper to Prove that Purchaser Was Guest.** — Matter of Clement, 117 N. Y. App. Div. 5, 102 N. Y. Supp. 37.

2. Morris *v.* State, 48 Tex. Crim. 562, 89 S. W. 832.

4. **Evidence Held Sufficient.** — Griffith *v.* State, 48 Tex. Crim. 575, 89 S. W. 832; Ellicott *v.* State, (Tex. Crim. 1907) 99 S. W. 546.

Evidence Held Insufficient. — See *In re* Mac Rae, 75 Neb. 757, 106 N. W. 1020.

On a Prosecution for Giving Away Whiskey on Election Day the sufficiency of the evidence is a question for the jury. Latch *v.* State, 84 Ark. 569, 106 S. W. 944.

6. **Evidence Held Sufficient to Convict.** — See Birmingham *v.* People, (Colo. 1907) 90 Pac. 1121; Richardson *v.* State, (Ga. App. 1907) 59 S. E. 916; Botkins *v.* State, 36 Ind. App. 179, 75 N. E. 298; Duluth *v.* Abrahamson, 96 Minn. 39, 104 N. W. 682; People *v.* Rand, 114 N. Y. App. Div. 826, 100 N. Y. Supp. 174; State *v.* Grant, (S. Dak. 1905) 105 N. W. 97; State *v.* Kinney, (S. Dak. 1907) 113 N. W. 77; Morris *v.* State, 48 Tex. Crim. 562, 89 S. W. 832.

Evidence Held Insufficient to Convict. — See State *v.* Meagher, 114 Mo. App. 266, 89 S. W. 595.

On Prosecution for Keeping Open During Prohibited Hours, Sufficiency of Evidence Is Question for Jury. — McNulty *v.* State, (Ind. App. 1907) 81 N. E. 109.

7. **Conviction of Another Person for Keeping Open Same Place Is No Bar.** — Craig *v.* State, (Tex. Crim. 1906) 92 S. W. 416.

353. 1. **Conviction for Selling Bars Prosecution for Keeping Open.** — Dorrian *v.* M'Hugh, (1907) 2 Ir. R. 564.

2. **Giving Away of Liquor in Nearby Pool Room Is Violation of Statute.** — Jerseyville *v.* Becker, 117 Ill. App. 86.

Statute Is Violated When Proprietor and Bartenders Remain after Closing Hours to Count Cash. — Lingelbach *v.* Hobson, 130 Iowa 488, 107 N. W. 168.

4. State *v.* Bock, 167 Ind. 559, 79 N. E. 493. See also Lexington Brewing Co. *v.* Com., (Ky. 1907) 99 S. W. 618.

Mere Delivery of Beer from Cold Storage Warehouse Is Not Trafficking and Does Not Require License. — Christ Diehl Brewing Co. *v.* Spencer, 29 Ohio Cir. Ct. 512.

Wholesaler Selling in Five-gallon Lots Is Not within Kentucky Local Option Statute. — Howard *v.* Com., 89 S. W. 256, 28 Ky. L. Rep. 239.

5. Cofer *v.* Com., 87 S. W. 264, 27 Ky. L. Rep. 934.

6. **Wholesalers Are within Local Option Laws.** — Com. *v.* Adair, (Ky. 1906) 89 S. W. 1130; Adair *v.* Com., (Ky. 1906) 89 S. W. 1132.

In Indiana sales of liquor in quantities of five gallons or more at a time may be lawfully made by a wholesale dealer, without a license, to any person, whether such person be another wholesaler, or a jobber, retailer, or consumer. Terre Haute Brewing Co. *v.* State, (Ind. 1907) 82 N. E. 81.

7. **Grower of Grapes May Sell Wine Made Therefrom Without License.** — Bates *v.* State, 81 Ark. 336, 99 S. W. 388.

354. 3. **In Delaware** a person who has taken out a manufacturer's license is authorized to sell only on the premises. State *v.* McNett, 5 Penn. (Del.) 334, 61 Atl. 869.

The Kentucky License Statute is construed so as to require a tax to be paid for each agency in the state by resident brewers and also to be paid by each resident wholesale dealer in domestic beers or malted liquors. Com. *v.* Nunan, 104 S. W. 731, 31 Ky. L. Rep. 1000.

4. See Magee *v.* State, (Tex. Crim. 1906) 98 S. W. 245.

5. **Intoxicating Liquors.** — Rex *v.* Melderstadt, 11 British Columbia 347. See also Com. *v.* Oldham, 100 S. W. 1184, 30 Ky. L. Rep. 1273.

Licensed Distiller Is Not Restricted in Sales to Licensed Retailers or Wholesalers. — Farris *v.* Com., (Ky. 1907) 104 S. W. 288.

Manufacturers Within but Not Outside of Local Option Territory May Sell Product Therein. — F. W. Cook Brewing Co. *v.* Com., (Ky. 1907) 99 S. W. 354.

Manufacturer in Local Option District May Sell Liquor of His Own Make. — New South Brewing, etc., Co. *v.* Com., (Ky. 1906) 96 S. W. 805.

Statute Prohibiting Manufacturer Selling at Retail Does Not Prevent Retailer Selling Occasionally at Wholesale. — *Ex p.* Reusch, (Neb. 1907) 113 N. W. 138.

9. **Sales by Restaurant Keeper Not Authorized by License.** — Scanlon *v.* Denver, 38 Colo. 401, 88 Pac. 150.

355. 2. State *v.* Brown, (Iowa 1906) 109

N. W. 1011; State *v.* Heibel, 116 Mo. App. 43, 90 S. W. 758.

5. Hutson *v.* Com., (Ky. 1907) 105 S. W. 955; State *v.* Sharpe, 119 Mo. App. 386, 95 S. W. 298.

Sufficient if There Is Substantial Compliance with Statute and **Parties Act in Good Faith.** — De Tarr *v.* State, 37 Ind. App. 323, 76 N. E. 897.

356. 4. Hutson *v.* Com., (Ky. 1907) 105 S. W. 955, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 356.

5. State *v.* Sharpe, 119 Mo. App. 386, 95 S. W. 298.

8. Hutson *v.* Com., (Ky. 1907) 105 S. W. 955.

9. Hutson *v.* Com., (Ky. 1907) 105 S. W. 955.

13. See *contra*, De Tarr *v.* State, 37 Ind. App. 323, 76 N. E. 897.

357. 4. People *v.* Thompson, 147 Mich. 444, 111 N. W. 96; Goode *v.* State, 87 Miss. 495, 40 So. 12.

Sale of Patent Medicines in Good Faith by Storekeeper, as Medicine, Does Not Constitute Offense. — State *v.* Williams, 14 N. Dak. 411, 104 N. W. 546.

10. **Under a Statute** declaring it to be a misdemeanor for a druggist or dealer in drugs to suffer intoxicating liquor to be drunk at or about his place of business. it is immaterial whether the offender is a registered pharmacist or has such in his employ. If he is a dealer in drugs, it is sufficient. State *v.* Chipp, 121 Mo. App. 556, 97 S. W. 236.

358. 6. Holland *v.* State, (Tex. Crim. 1907) 101 S. W. 1001; State *v.* Potter, 125 Mo. App. 465, 102 S. W. 668.

8. *Contra.* — State *v.* Sharpe, 119 Mo. App. 386, 95 S. W. 298.

11. State *v.* Wilson, 71 Kan. 263, 80 Pac. 565.

359. 3. State *v.* Davis, 126 Mo. App. 235, 102 S. W. 1103; Weatherford *v.* State, (Tex. Crim. 1907) 102 S. W. 1146, 103 S. W. 633.

360. 2. Braisted *v.* People, 38 Colo. 49, 88 Pac. 150.

3. Creighton *v.* People, 36 Colo. 315, 83 Pac. 1057.

4. Walker *v.* State, 49 Tex. Crim. 345, 94 S. W. 230; Feige *v.* State, 49 Tex. Crim. 513, 95 S. W. 506.

6. Feige *v.* State, 49 Tex. Crim. 513, 95 S. W. 506.

7. Creighton *v.* People, 36 Colo. 315, 83 Pac. 1057.

It Is Immaterial Whether or Not Seller Knows Buyer Is Not Member. — State *v.* Warcholik, (Conn. 1007) 68 Atl. 379.

361. 5. Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040; South Shore Country Club *v.* People, 228 Ill. 75, 81 N. E. 805.

362. 1. State *v.* Kline, (Oregon 1907) 93 Pac. 237; Feige *v.* State, 49 Tex. Crim. 513, 95 S. W. 506; Adkins *v.* State, 49 Tex. Crim. 524, 95 S. W. 506.

2. Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040.

6. State *v.* New Orleans Chess, etc., Club, 116 La. 46, 40 So. 526.

10. See Henkel *v.* Hoy, 74 N. J. L. 56, 64 Atl. 960.

Advertising Is Not "Soliciting" Within Prohibited Territory.—Carter *v.* State, 81 Ark. 37, 98 S. W. 704.

11. **Church Does Not Exist Where Ambulatory Body of Worshipers Meet Together for Bible Study and Mission Work.** — George *v.* Excise Com'rs, 73 N. J. L. 366, 63 Atl. 870.

363. 1. State *v.* Superior Ct., 44 Wash. 526, 87 Pac. 818.

4. Erwin *v.* State, 116 Tenn. 71, 93 S. W. 73.

5. **Prohibition Not Affected by New Location Near Old Site.**—Mason *v.* State, 1 Ga. App. 534, 58 S. E. 139.

8. **Sales by Manufacturers.** — Salmon *v.* State, 81 Ark. 56, 98 S. W. 702.

364. 2. **Oral Testimony Is Admissible to Show Location of School.**—Mason *v.* State, 1 Ga. App. 534, 58 S. E. 139.

3. **Parks.**—Under a statute authorizing park commissioners to forbid any offensive business or amusement within 500 feet of any boulevard, park, or parkway, a park board has authority to make an order that no saloon shall be established or started within 500 feet of any park in a named city. *In re* Arszman, (Ind. App. 1907) 81 N. E. 680.

Within Mile of Certain Town. — See Com. *v.* Yokeley, (Ky. 1906) 96 S. W. 524.

Building Owned by City. — An act prohibiting the sale of intoxicating liquor in any building belonging to or under the control of the state, or of any county or town in the state, does not apply to a building owned by a city. Camp's Appeal, 80 Conn. 272, 68 Atl. 444.

State Hospital. — The Liquor Tax Law is to be construed liberally in favor of those institutions, like churches, schools, and state buildings, which are permitted to be a certain distance away from liquor selling. Hence, under a statute prohibiting the traffic in liquor within half a mile of any building, premises, or land occupied as a state hospital, the words "building, premises, or lands" are not confined to the premises on which the buildings stand, but include such contiguous property and premises as are used by and belong to the institution. *In re* Brady, (Supm. Ct. Spec. T.) 106 N. Y. Supp. 921.

365. 3. **Contra, under Peculiar Wording of Texas Statute.** — Teague *v.* State, (Tex. Crim. 1907) 102 S. W. 1142.

In Missouri it is a misdemeanor for a druggist, or dealer in drugs, to suffer intoxicating liquors to be drunk at or about his place of business. A dealer in drugs, to come within the provisions of this statute, need not be a registered pharmacist. State *v.* Chipp, 121 Mo. App. 556, 97 S. W. 236.

5. Olson *v.* People, 125 Ill. App 460.

Intent of Seller, Not of Purchaser, Controls. — Houtz *v.* People, 123 Ill. App. 445.

5. **Each Act** of permitting a person to drink liquor on the premises is a separate offense. Teague *v.* State, (Tex. Crim. 1907) 102 S. W. 1142.

7. State *v.* Bock, 167 Ind. 559, 79 N. E. 493.

366. 1. **What Are Premises under Statutes.** — See Teague *v.* State, (Tex. Crim. 1907) 102 S. W. 1142.

When the Statute uses the word "suffered" it is proper for the court to refuse a requested

instruction in which the word "consented" is used. State *v.* Chipp, 121 Mo. App. 556, 97 S. W. 236.

6. Alexander *v.* State, 77 Ark. 294, 91 S. W. 181; Matter of Cullinan, 114 N. Y. App. Div. 509, 99 N. Y. Supp. 1119; Meroney *v.* State, (Tex. Crim. 1906) 92 S. W. 844.

367. 4. Holland *v.* State, (Tex. Crim. 1907) 103 S. W. 631.

5. People *v.* Thompson, 147 Mich. 444, 111 N. W. 96.

8. State *v.* Bernstein, 129 Iowa 520, 105 N. W. 1015.

368. 2. **Interdiction of Giving Away Does Not Include Mere Act of Hospitality.** — State *v.* Linder, 76 Ohio St. 463, 81 N. E. 753.

4. **Keeping of Place, And Not Intent with Which It Is Kept, Constitutes Offense.**— State *v.* Linder, 76 Ohio St. 463, 81 N. E. 753.

6. **Under the Arkansas "Blind Tiger" Statute,** the use or control of the house need not be habitual or permanent. It is sufficient to convict if the proof shows that it was used or controlled by the defendant at the time of the illegal sale therein. Henry *v.* State, 77 Ark. 453, 92 S. W. 405.

369. 1. Dominick *v.* State, 27 Ohio Cir. Ct. 305.

2. *Contra,* State *v.* Linder, 76 Ohio St. 463, 81 N. E. 753.

17. Gorman *v.* State, (Tex. Crim. 1907) 106 S. W. 384.

370. 1. Gorman *v.* State, (Tex. Crim. 1907) 105 S. W. 200.

8. **Evidence of Finding in His Possession Bills of Sale of Liquor and Ice to Him Is Admissible.** — State *v.* Ford, (Kan. 1907) 91 Pac. 1066.

372. 1. See State *v.* Meagher, 114 Mo. App. 266, 89 S. W. 595.

3. Joplin *v.* Jacobs, 119 Mo. App. 134, 96 S. W. 219.

373. 1. State *v.* Kennard, 74 N. H. 76, 65 Atl. 376.

2. *Contra.* — Tucker *v.* Moultrie, 122 Ga. 160, 50 S. E. 61.

6. State *v.* Suiter, 78 Vt. 391, 63 Atl. 182.

8. State *v.* Krinski, 78 Vt. 162, 62 Atl. 37; State *v.* Costa, 78 Vt. 198, 62 Atl. 38.

10. **Possession Is Necessary.**— O'Neill *v.* State, (Neb. 1906) 107 N. W. 119.

374. 6. Steinkuhler *v.* State, (Neb. 1906) 109 N. W. 395; State *v.* Krinski, 78 Vt. 162, 62 Atl. 37; State *v.* Costa, 78 Vt. 198, 62 Atl. 38; State *v.* Suiter, 78 Vt. 391, 63 Atl. 182.

10. State *v.* Kennard, 74 N. H. 76, 65 Atl. 376.

375. 2. State *v.* Suiter, 79 Vt. 391, 63 Atl. 182.

3. State *v.* Krinski, 78 Vt. 162, 62 Atl. 37; State *v.* Suiter, 78 Vt. 391, 63 Atl. 182.

4. State *v.* Kennard, 74 N. H. 76, 65 Atl. 376.

8. *Contra, On Prosecution for Keeping Intoxicating Liquors to Be Given Away.* — Stanley *v.* State, 89 Miss. 63, 42 So. 284.

Testimony of State Chemist as to Intoxicating Quality of Liquors Kept Is Admissible.— Steinkuhler *v.* State, (Neb. 1906) 109 N. W. 395.

15. Steinkuhler *v.* State, (Neb. 1906) 109 N. W. 395; State *v.* Barrett, 138 N. Car. 630, 50 S. E. 506.

Where a Particular Liquor or class of liquors is named in the statute, it is not necessary to prove that the particular liquor is intoxicating. State *v.* York, (N. H. 1907) 65 Atl. 685.

376. 1. Steinkuhler *v.* State, (Neb. 1906) 109 N. W. 395; State *v.* Barrett, 138 N. Car. 630, 50 S. E. 506.

10. **Evidence Held Sufficient to Sustain Conviction.** — Tucker *v.* Moultrie, 122 Ga. 160, 50 S. E. 61; Watts *v.* Forsyth, 123 Ga. 507, 51 S. E. 508; Sawyer *v.* Blakely, 2 Ga. App. 159, 58 S. E. 399; Steinkuhler *v.* State, (Neb. 1906) 109 N. W. 395.

377. 13. See Taggart *v.* State, (Tex. Crim. 1906) 97 S. W. 95.

378. 3. State *v.* Morin, 102 Me. 290, 66 Atl. 650; State *v.* Martel, (Me. 1907) 68 Atl. 454.

10. State *v.* Morin, 102 Me. 290, 66 Atl. 650.

379. 10. McCampbell *v.* State, 116 Tenn. 98, 93 S. W. 100.

380. 4. Crescent Liquor Co. *v.* Platt, 148 Fed. 894; State *v.* Smith, 61 W. Va. 329, 56 S. E. 528; McGuire *v.* Com., (Ky. 1907) 99 S. W. 612, *contra* to second paragraph of original note.

Mistake Is No Defense Where Prosecution Is for Failure to Keep Record of Liquors Transported. — Com. *v.* Riley, (Mass. 1907) 81 N. E. 881.

6. See Moody *v.* McKinney, 73 S. Car. 438, 53 S. E. 543.

7. **Agent of Railroad Company Is Liable.** — State *v.* Smith, 61 W. Va. 329, 56 S. E. 528.

8. **Carrying on Person Is Transportation within Meaning of South Carolina Statute.** — State *v.* Pope, (S. Car. 1908) 60 S. E. 234.

381. 4. **Intention of Defendant Is to Be Judged from His Conduct and Surrounding Facts and Circumstances.**— McGuire *v.* Com., (Ky. 1907) 99 S. W. 612.

Evidence Is Admissible to show that the accused used precaution in investigating to ascertain whether the consignee was one who in good faith had ordered the liquor for his personal use. State *v.* Smith, 61 W. Va. 329, 56 S. E. 528.

382. 1. People *v.* Smith, 145 Mich. 530, 108 N. W. 1072.

Location of Saloon in Basement So as to Obstruct View of Bar Is Violation of Statute. — McColl *v.* Rally, 127 Iowa 633, 103 N. W. 972.

Immaterial Where Obstructions Are Placed, Whether at Windows or Doors — *In re* MacRae, 75 Neb. 757, 106 N. W. 1020.

Where There Are No Screens, and the curtain and sign do not obstruct the view, no offense is committed. Lingelbach *v.* Hobson, 130 Iowa 488, 107 N. W. 168.

5. **Statute Has No Application to Wholesalers.** — Teegarden *v.* State, 39 Ind. App. 15, 79 N. E. 211.

12. **To Constitute Offense Wineroom Must Be Kept in Connection with Saloon for Drinking Purposes.** — Ellis *v.* People, 38 Colo. 516, 88 Pac. 461.

383. 3. **Justices' Courts.** — *Ex p.* Demarco, 77 Vt. 445, 61 Atl. 36.

Police Courts. — State *v.* Marciniak, 97 Minn. 355, 105 N. W. 965.

Circuit Courts.— Ford *v.* Moss, (Ky. 1907) 98 S. W. 1015.

In *Virginia* the Circuit Court has jurisdiction of a prosecution for selling liquors without a license, even though the offense was committed in a local option district. Fletcher *v.* Com., 106 Va. 840, 56 S. E. 149.

Municipal Court of Minneapolis Has Jurisdiction within County.— State *v.* Dreger, 97 Minn. 221, 106 N. W. 904.

California Superior Court Has Jurisdiction of Actions to Abate Nuisances. — People *v.* Wing, 147 Cal. 379, 81 Pac. 1103.

Justice's Courts Have Jurisdiction Throughout County of Prosecution under Local Option Laws. — State *v.* O'Brien, 35 Mont. 482, 90 Pac. 514.

5. In Vermont justices of the peace and city and municipal courts no longer have jurisdiction of prosecutions for violations of the liquor laws, except where the plea is guilty. State *v.* Shappy, 79 Vt. 306, 65 Atl. 78.

7. See *contra*, Fletcher *v.* Com., 106 Va. 840, 56 S. E. 149.

8. States of Kentucky and Missouri Have Concurrent Jurisdiction over Mississippi River. — Lemore *v.* Com., (Ky. 1907) 105 S. W. 930.

9. State *v.* Collins, 27 R. I. 419, 62 Atl. 1010.

384. 1. Quillen *v.* Com., 105 Va. 874, 54 S. E. 333.

Limitation Is One Year in Arkansas — Thomasson *v.* State, 80 Ark. 364, 97 S. W. 297.

2. Stelle *v.* State, 77 Ark. 441, 92 S. W. 530; State *v.* Rennaker, 75 Kan. 685, 90 Pac. 245; Dominick *v.* State, 27 Ohio Cir. Ct. 305. See also Henderson *v.* State, 49 Tex. Crim. 269, 91 S. W. 569. But see Covington *v.* State, (Tex. Crim. 1907) 100 S. W. 370.

3. Flora *v.* American Express Co., (Miss. 1907) 45 So. 149.

A Conviction under an Ordinance prohibiting the keeping of intoxicating liquors for the purpose of unlawful sale, on one day, is no bar to a conviction for keeping the same liquors for that purpose on a subsequent day. Tucker *v.* Moultrie, 122 Ga. 160, 50 S. E. 61.

4. State *v.* Potter, 125 Mo. App. 465, 102 S. W. 668; State *v.* Pianfetti, 79 Vt. 236, 65 Atl. 84.

5. Teague *v.* State, (Tex. Crim. 1907) 102 S. W. 1142. See also State *v.* Bursaw, 74 Kan. 473, 87 Pac. 183.

An Acquital Does Not Prevent the evidence concerning the sales being used in a subsequent prosecution for another offense, where a certain character of system as to making sales is shown. Stovall *v.* State, (Tex. Crim. 1906) 97 S. W. 92.

6. See McDermott *v.* Com., 100 S. W. 830, 30 Ky. L. Rep. 1227.

8. State *v.* Virgo, 14 N. Dak. 293, 103 N. W. 610.

Former Conviction Cannot Be Shown for Purpose of Impeachment. — Ball *v.* Com., (Ky. 1907) 99 S. W. 326.

Evidence of Former Conviction Cannot Be Used to Prove Subsequent Offense. — People *v.* Myers, 115 N. Y. App. Div. 864, 101 N. Y. Supp. 291.

385. 2. State *v.* Terheide, (Ind. 1906) 78 N. E. 105.

4. McNulty *v.* State, (Ind. App. 1907) 81 N. E. 109; State *v.* O'Malley, 132 Iowa 606, 109 N. W. 401; Liberty *v.* Moran, 121 Mo. App. 682, 97 S. W. 948; Matter of Cullinan, 114 N. Y. App. Div. 509, 99 N. Y. Supp. 1119; Sweeney *v.* State, 49 Tex. Crim. 226, 91 S. W. 575; Fields *v.* State, (Tex. Crim. 1906) 98 S. W. 867; Holland *v.* State, (Tex. Crim. 1907) 101 S. W. 1001.

386. 1. Kolman *v.* State, 2 Ga. App. 648, 58 S. E. 1070.

5. Morgan *v.* Com., (Ky. 1906) 97 S. W. 411; McGovern *v.* State, 49 Tex. Crim. 35, 90 S. W. 502; Roberts *v.* State, (Tex. Crim. 1908) 107 S. W. 59.

7. Anderson *v.* Diaz, 77 Ark. 606, 92 S. W. 761.

8. Daniel *v.* State, (Ala. 1907) 43 So. 22; Robinson *v.* State, 125 Ga. 31, 53 S. E. 766; Com. *v.* Riley, (Mass. 1907) 81 N. E. 881; Kittrell *v.* State, 89 Miss. 666, 42 So. 609; Gaddis *v.* State, (Tex. Crim. 1908) 106 S. W. 1155. See also Liberty *v.* Moran, 121 Mo. App. 682, 97 S. W. 948; Rawls *v.* State, 48 Tex. Crim. 622, 89 S. W. 1071.

Application of Rule — *Sales in Violation of Local Option Laws.* — Pecaria *v.* State, 48 Tex. Crim. 139, 90 S. W. 42; Sweeney *v.* State, 49 Tex. Crim. 226, 91 S. W. 575; Holland *v.* State, (Tex. Crim. 1907) 101 S. W. 1001.

Employer Not Liable for Sale by Drayman Contrary to Orders. — Boyle *v.* Smith, (1906) 1 K. B. 432.

387. 1. Botkins *v.* State, 36 Ind. App. 179, 75 N. E. 298.

7. Osborne *v.* State, 77 Ark. 439, 92 S. W. 406.

10. See Rex *v.* McQuarrie, 37 N. Bruns. 374.

12. State *v.* Grant, (S. Dak. 1905) 105 N. W. 97; State *v.* Kinney, (S. Dak. 1907) 113 N. W. 77.

13. Application of Rule — *Sales to Minors.* — State *v.* Gilmore, (Vt. 1908) 68 Atl. 658; State *v.* Constatine, 43 Wash. 102, 86 Pac. 384.

Keeping Open on Sunday. — Paducah *v.* Jones, (Ky. 1907) 104 S. W. 971; State *v.* Grant, (S. Dak. 1905) 105 N. W. 97.

Furnishing Liquor to Minor. — Southern Express Co. *v.* State, 1 Ga. App. 700.

388. 2. Osborne *v.* State, 77 Ark. 439, 92 S. W. 406.

4. State *v.* Midkiff, 125 Mo. App. 397, 102 S. W. 599.

5. State *v.* Madeira, 125 Mo. App. 508, 102 S. W. 1046.

6. Teague *v.* State, (Tex. Crim. 1907) 102 S. W. 1142, 1144.

Burden Is upon Prosecution to Establish Relation. — Robinson *v.* State, 125 Ga. 31, 53 S. E. 766.

7. Liberty *v.* Moran, 121 Mo. App. 682, 97 S. W. 948.

8. Kohlman *v.* State, 2 Ga. App. 648, 58 S. E. 1070.

10. McNulty *v.* State, (Ind. App. 1907) 81 N. E. 109.

12. Com. *v.* Riley, (Mass. 1907) 81 N. E. 881.

Evidence of Keeping Open on Previous Sundays Is Admissible. — Paducah *v.* Jones, (Ky. 1907) 104 S. W. 971.

389. 3. Lamb *v.* State, (Ala. 1907) 44 So. 51.

6. State *v.* Mayo, 50 W. Va. 321, 53 S. E. 416; Boyle *v.* Smith, (1906) 1 K. B. 432.

9. Contra in England. — Dunning *v.* Owen, (1907) 2 K. B. 237.

10. On a Prosecution for Soliciting the Sale of Spirituous Liquors without a license, the offense is the same whether the party is soliciting for himself or is the agent of the vendor or vendee. State *v.* Braun, 96 Minn. 521, 105 N. W. 975.

390. 7. A Bartender may be prosecuted under a statute declaring that "any person" who sells intoxicating liquor to a minor without consent of the parent shall be guilty of a misdemeanor. State *v.* Gallagher, 126 Mo. App. 729, 106 S. W. 111.

9. Hart *v.* State, 87 Miss. 171, 39 So. 523.

11. State *v.* Earles, 84 Ark. 479, 106 S. W. 941; Hiers *v.* State, 52 Fla. 25, 41 So. 881; Hall *v.* State, 122 Ga. 142, 50 S. E. 59; Hall *v.* State, 125 Ga. 31, 53 S. E. 807; Oxford *v.* State, 49 Tex. Crim. 321, 94 S. W. 463; Polk *v.* State, (Tex. Crim. 1906) 97 S. W. 467; Oxford *v.* State, (Tex. Crim. 1906) 97 S. W. 484; Fields *v.* State, (Tex. Crim. 1906) 98 S. W. 867. See also American Express Co. *v.* Kentucky, 206 U. S. 139, *reversing* (Ky. 1906) 97 S. W. 807.

Voluntary Agent Is Subject to Prosecution. — Nixon *v.* State, (Tex. Crim. 1906) 97 S. W. 703.

391. 3. Failure of Expressman to Keep Record. — Under a statute providing that every railroad corporation, or person, or corporation conducting a general express business shall keep a record of all intoxicating liquors transported, a servant of an express company is guilty although he acted under an honest mistake. Com. *v.* Riley, (Mass. 1907) 81 N. E. 881.

4. Mitchell *v.* State, (Ala. 1906) 41 So. 951; Meadows *v.* State, 127 Ga. 283, 56 S. E. 404.

Burden Is upon Agent to Explain His Possession of Liquor. — Gaskins *v.* State, 127 Ga. 51, 55 S. E. 1045.

8. State *v.* Smith, (Iowa 1907) 113 N. W. 336; Ball *v.* Com., 91 S. W. 1123, 28 Ky. L. Rep. 1344.

392. 1. *Florida.* — Hiers *v.* State, 52 Fla. 25, 41 So. 881.

Georgia. — Hall *v.* State, 122 Ga. 142, 50 S. E. 59. See also Springfield *v.* State, 125 Ga. 281, 54 S. E. 172.

Iowa. — State *v.* Smith, (Iowa 1907) 113 N. W. 336.

Michigan. — People *v.* Journeau, 147 Mich. 520, 111 N. W. 95.

Texas. — Golightly *v.* State, 49 Tex. Crim. 44, 90 S. W. 26; Rector *v.* State, (Tex. Crim. 1905) 90 S. W. 41; Dupree *v.* State, (Tex. Crim. 1906) 91 S. W. 578; Harris *v.* State, 49 Tex. Crim. 233, 91 S. W. 590; Short *v.* State, 49 Tex. Crim. 244, 91 S. W. 1087; Givens *v.* State, 49 Tex. Crim. 267, 91 S. W. 1090; Potts *v.* State, (Tex. Crim. 1906) 96 S. W. 1084; Winslow *v.* State, (Tex. Crim. 1906) 98 S. W. 241; Fields *v.* State, (Tex. Crim. 1906) 98 S. W. 867; Gaston *v.* State, (Tex. Crim. 1907) 102 S. W. 116.

2. One Who Procures Others to Join with Him in Purchasing a Quantity of Liquor. — Dean *v.* State, (Tex. Crim. 1906) 92 S. W. 28; State *v.* Johnson, (W. Va. 1907) 57 S. E. 271.

Merely Assisting in Collecting Money to Pay Express Charges on Whiskey Does Not Constitute Sale. — Hilterbrand *v.* State, 49 Tex. Crim. 342, 91 S. W. 587.

Question of Bona Fides of Agency Is One of Fact. — Winslow *v.* State, (Tex. Crim. 1906) 98 S. W. 241.

It Is a Question for the Jury whether a restaurant keeper, who procures liquor from an adjoining saloon for her patrons, is, in good faith, acting occasionally as an intermediary for her patrons, the buyers of the liquor, or whether her conduct is a mere subterfuge and it is a part of her business to sell liquor. People *v.* Journeau, 147 Mich. 520, 111 N. W. 95.

3. Whether This Would Constitute Gift. — See Potts *v.* State, (Tex. Crim. 1906) 96 S. W. 1084, holding that the ordering of liquor for a minor and the storing of it after it was received did not constitute a gift of the liquor to the minor.

Mere Device to Evade Law. — Bonner *v.* State, 2 Ga. App. 711, 58 S. E. 1123.

4. Hall *v.* State, 122 Ga. 142, 50 S. E. 59; Oxford *v.* State, 49 Tex. Crim. 321, 94 S. W. 463. See also Hood *v.* State, (Tex. Crim. 1906) 101 S. W. 229.

393. 6. See also Trometer *v.* District of Columbia, 24 App. Cas. (D. C.) 242; Guarreno *v.* State, (Ala. 1906) 42 So. 833.

13. The Frequency of Such Sales authorizes the inference that the liquor was kept by the husband and that, in making the sales, the wife was acting as his agent. Guarreno *v.* State, (Ala. 1906) 42 So. 833.

394. 6. See People *v.* Bronner, 145 Mich. 399, 108 N. W. 672.

7. Lynch *v.* State, 147 Ala. 143, 39 So. 912.

8. Lynch *v.* State, 147 Ala. 143, 39 So. 912.

11. See Levy *v.* State, 89 Miss. 394, 42 So. 875.

395. 10. There Is No Personal Liability under Iowa Statute. — Carroll County *v.* Ley, 127 Iowa 230, 103 N. W. 101.

397. 1. Larsen *v.* Christianson, 14 N. Dak. 476, 106 N. W. 51.

2. Larson *v.* Christianson, 14 N. Dak. 476, 106 N. W. 51.

INTOXICATION.

399. 3. Waldron *v.* Angleman, 71 N. J. L. 168, 58 Atl. 568, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399; Cameron-Barkley Co. *v.* Thornton Light, etc., Co., 138 N. Car. 368, 50 S. E. 695, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399.

400. 2. Waldron *v.* Angleman, 71 N. J. L. 168, 58 Atl. 568, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 400.

401. 2. Martin *v.* Harsh, 231 Ill. 384, 83 N. E. 164; Kuhlman *v.* Weiben, 129 Iowa 188, 105 N. W. 445; Spoonheim *v.* Spoonheim, 14 N. Dak. 386, 104 N. W. 845, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 401.

3. Spoonheim *v.* Spoonheim, 14 N. Dak. 386, 104 N. W. 845, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 401.

4. Fagan *v.* Wiley, (Oregon 1907) 90 Pac. 911, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 401.

8. Nance *v.* Kemper, 35 Ind. App. 605, 73 N. E. 937.

9. Cameron-Barkley Co. *v.* Thornton Light, etc., Co., 138 N. Car. 368, 50 S. E. 695.

102. 3. J. I. Case Threshing Mach. Co. *v.* Meyers, (Neb. 1907) 111 N. W. 602; Spoonheim *v.* Spoonheim, 14 N. Dak. 380, 104 N. W. [illegible].

103. 5. People *v.* Hower, 151 Cal. 638, 91 Pac. 507; Carney *v.* U. S., (Ind. T. 1907) 104 S. W. 606; State *v.* Woodward, 191 Mo. 617, 90 S. W. 90; State *v.* Church, 199 Mo. 605, 98 S. W. 16.

104. 6. State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790; State *v.* Dillard, 59 W. Va. 197, 53 S. E. 117.

105. 3. Byrd *v.* State, 76 Ark. 286, 88 S. W. [illegible].

106. 3. Brennan *v.* People, 37 Colo. 262, 86 Pac. 79, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 406; State *v.* Bennett, 128 Iowa 713, 105 N. W. 324; State *v.* Sparegrove, 134 Iowa 599, 112 N. W. 83; Norman *v.* Com., (Ky. 1907) 104 S. W. 1024; People *v.* Pekarz, 185 N. Y. 470, 78 N. E. 294; State *v.* Blodgett, (Oregon 1907) 92 Pac. 820.

107. 8. Brennan *v.* People, 37 Colo. 256, 86 Pac. 79.

108. 1. State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790.

7. But Evidence of Intoxication Half an Hour before the Crime is admissible. State *v.* Rowell, 75 S. Car. 494, 56 S. E. 23.

109. 1. People *v.* Griffith, 146 Cal. 339, 80 Pac. 68; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Johnny, (Nev. 1906) 87 Pac. 3; Com. *v.* Byler, 217 Pa. St. 512, 66 Atl. 746.

4. Heninburg *v.* State, (Ala. 1907) 43 So. 959.

110. 1. State *v.* Hogan, 117 La. 863, 42 So. 352.

5. Butler *v.* State, (Miss. 1906) 39 So. 1005.

111. 2. People *v.* Owens, 3 Cal. App. 750, 86 Pac. 980; State *v.* Yates, 132 Iowa 475, 109 N. W. 1005.

6. Robb *v.* Com., 101 S. W. 918, 31 Ky. L. Rep. 246.

112. 3. Ryan *v.* U. S. 26 App. Cas. (D. C.) 74, 6 Ann. Cas. 633; Com. *v.* McDonald, 187 Mass. 581, 73 N. E. 852.

113. 7. State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790.

10. Laws *v.* State, 144 Ala. 118, 42 So. 40.

INVENTED WORD.

119. 1. Invented Word.— See *In re* Registered Trade Mark, (1907) 2 Ch. 478, 76 L. J. Ch. 616.

INVEST — INVESTMENT.

120. 1. *In re* Curtis, 26 R. I. 582, 60 Atl. 240, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 420.

"Investments" Includes Real Estate.— *In re* Curtis, 26 R. I. 582, 60 Atl. 240.

INVESTMENTS.

129. 4. *In re* Stanley, (1906) 1 Ch. 131.

132. 1. McIntire *v.* Bailey, 133 Iowa 418, 110 N. W. 588.

7. See Branch *v.* De Wolf, (R. I. 1908) 68 Atl. 543.

134. 2. *In re* Rayner, (1904) 1 Ch. 176; Murphy *v.* Union Trust Co., 5 Cal. App. 146, 89 Pac. 988.

4. Maynard *v.* Greer, 129 Ga. 709, 59 S. E. 798; Jewett *v.* Schmidt, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 471, 92 N. Y. Supp. 737.

151. 5. English Rule.— *In re* Tattersall, (1906) 2 Ch. 399.

154. 3. National Bank Stock.— The general rule that executors, administrators, guardians, and trustees are not authorized to invest the trust funds in the stock of national banks has no application to a trust voluntarily created by a donor as to such stock. Fowler *v.* Gowing, 152 Fed. 801; Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1080, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 454.

4. Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1080, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 454; Matter of Hirsch, 116 N. Y. App. Div. 367, 101 N. Y. Supp. 893.

159. 1. Pabst *v.* Goodrich, (Wis. 1907) 113 N. W. 407, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 459.

160. 8. *In re* Gent, (1905) 1 Ch. 386; *In re* Mordan, (1905) 1 Ch. 515; *Re* Tapp, 92 L. T. N. S. 829.

165. 1. Henderson *v.* Lightner, (Ky. 1906) 92 S. W. 945; Matter of Hunt, 121 N. Y. App. Div. 96, 105 N. Y. Supp. 696; Matter of Menzie, (Surrogate Ct.) 54 Misc. (N. Y.) 188, 105 N. Y. Supp. 925.

3. Matter of Hawk, (Surrogate Ct.) 54 Misc. (N. Y.) 187, 105 N. Y. Supp. 856.

168. 4. McIntire *v.* Bailey, 133 Iowa 418, 110 N. W. 588.

170. 1. A Remainderman is not entitled to the excess of interest as against the life tenant. Slade *v.* Chaine, 97 L. T. N. S. 192.

175. 1. Heffner *v.* Toledo, 29 Ohio Cir. Ct. 25.

176. 4. Beneficiary Subject to Dominating Will of Fiduciary.— Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241.

177. 4. Remainderman Not Affected by Assent of Life Tenant.— Heffner *v.* Toledo, 29 Ohio Cir. Ct. 25.

7. Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076.

INVOICE.

178. 5. B. F. Sturtevant Co. *v.* Dugan, (Md. 1907) 68 Atl. 351.

INVOLUNTARY.

179. 1. Involuntary Trustee.— Under the California Code, "one who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner." And "one who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it." Modesto First Nat. Bank *v.* Wakefield, 148 Cal. 558, 83 Pac. 1076.

IRREGULAR — IRREGULARITY.

481. 3. Chase *v.* Trout, 146 Cal. 360, 80 Pac. 81, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 481; Sache *v.* Gillette, 101 Minn. 171, 112 N. W. 386, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 481.

IRREPARABLE INJURY.

483. 4. **Irreparable Injury — Trespass on Game Preserve.** — Dunker *v.* Field, etc., Club, (Cal. App. 1907) 92 Pac. 502.

IRRIGATION.

487. 3. Clark *v.* Allaman, 71 Kan. 241, 80 Pac. 571, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487; Meng *v.* Coffey, 67 Neb. 500, 93 N. W. 713, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487.

7. Nielson *v.* Sponer, (Wash. 1907) 89 Pac. 155.

492. 7. Clark *v.* Allaman, 71 Kan. 241, 80 Pac. 571.

493. 2. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

6. Watkins Land Co. *v.* Clements, 98 Tex. 578, 86 S. W. 733.

495. 1. Meng *v.* Coffey, 67 Neb. 500, 93 N. W. 713, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494 [495].

4. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

496. 1. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

2. Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Nielson *v.* Sponer, (Wash. 1907) 89 Pac. 155.

5. **Water from Artesian Wells May Be Appropriated.** — Wolfskill *v.* Smith, (Cal. App. 1907) 89 Pac. 1001.

Water from Mines, which is made to flow in a natural channel, may in *Colorado,* by statute, be appropriated. Ripley *v.* Park Center Land, etc., Co., (Colo. 1907) 90 Pac. 75.

497. 8. Wolfskill *v.* Smith, (Cal. App. 1907) 89 Pac. 1001.

498. 3. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

499. 3. Lower Tule River Ditch Co. *v.* Angiola Water Co., 149 Cal. 496, 86 Pac. 1081.

500. 5. Wadsworth Ditch Co. *v.* Brown, 39 Colo. 57, 88 Pac. 1060; Lower Latham Ditch Co. *v.* Bijou Irrigation Co., (Colo. 1907) 93 Pac. 483.

10. Gates *v.* Settlers' Milling, etc., Co., (Okla. 1907) 91 Pac. 856.

501. 3. Seaweard *v.* Pacific Live Stock Co., (Oregon 1907) 88 Pac. 963.

502. 1. Ripley *v.* Park Center Land, etc., Co., (Colo. 1907) 90 Pac. 75; Seaweard *v.* Pacific Live Stock Co., (Oregon 1907) 88 Pac. 963.

503. 6. **The Land Need Not Be Furrowed** before irrigating it. Nephi Irrigation Co. *v.* Vickers, 29 Utah 315, 81 Pac. 144.

504. 3. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Norman *v.* Corbley, 32 Mont. 195, 79 Pac. 1059.

9. Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286.

508. 2. See Anderson *v.* Bassman, 140 Fed. 14.

4. Ft. Lyon Canal Co. *v.* Chew, 33 Colo. 392, 81 Pac. 37; Evans *v.* Swan, 38 Colo. 92, 88 Pac. 149; Combs *v.* Farmers' High Line Canal, etc., Co., 38 Colo. 420, 88 Pac. 396.

509. 1. Minnie Maud Reservoir, etc., Co. *v.* Grames, 29 Utah 225, 81 Pac. 893.

510. 1. Knight *v.* Cohen, (Cal. App. 1907) 93 Pac. 396.

512. 2. Barstow Irrigation Co. *v.* Black, (Tex. Civ. App. 1905) 86 S. W. 1036; Cody *v.* Lowry, (Tex. Civ. App. 1906) 91 S. W. 1109; McLellan *v.* Brownsville Land, etc., Co., (Tex. Civ. App. 1907) 103 S. W. 206; Howell *v.* Big Horn Basin Colonization Co., 14 Wyo. 36, 81 Pac. 785, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 512.

5. Fleming *v.* Lockwood, (Mont. 1907) 92 Pac. 962.

513. 6. Arroyo Ditch, etc., Co. *v.* Bequette, 149 Cal. 543, 87 Pac. 10.

514. 1. Hoyt *v.* Hart, 149 Cal. 722, 87 Pac. 560.

A Right of Way for an irrigation ditch is an easement. Blake *v.* Boye, 38 Colo. 55, 88 Pac. 470.

2. Jones *v.* Deardorff, 4 Cal. App. 18, 87 Pac. 213.

5. Seven Lakes Reservoir Co. *v.* New Loveland, etc., Irrigation, etc., Co., (Colo. 1907) 93 Pac. 485.

8. Rickey Land, etc., Co. *v.* Miller, (C. C. A.) 152 Fed. 11; Seven Lakes Reservoir Co. *v.* New Loveland, etc., Irrigation, etc., Co., (Colo. 1907) 93 Pac. 485.

515. 1. Cooper *v.* Shannon, 36 Colo. 98, 85 Pac. 175.

Exchange or Loan of Water. — A *Colorado* statute permits an exchange or loan of water under circumstances and conditions which do not injuriously affect the vested rights of other appropriators. Bowman *v.* Virdin, (Colo. 1907) 90 Pac. 506.

5. Graham *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 498.

517. 1. Farmers' High Line Canal, etc., Co. *v.* New Hampshire Real Estate Co., (Colo. 1907) 92 Pac. 290.

3. Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286.

4. Cooper *v.* Shannon, 36 Colo. 98, 85 Pac. 175; Norman *v.* Corbley, 32 Mont. 195, 79 Pac. 1059.

12. O'Brien *v.* King, (Colo. 1907) 92 Pac. 945.

518. 4. Clark *v.* Ashley, 34 Colo. 285, 82 Pac. 588; Bullerdick *v.* Hermsmeyer, 32 Mont. 541, [illegible].

6. Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286; Metcalfe *v.* Faucher, (Tex. Civ. App. 1907) 99 S. W. 1038.

8. Norman *v.* Corbley, 32 Mont. 195, 79 Pac. 1059.

520. 5. Miller *v.* Rickey, 146 Fed. 574.

523. 1. Wilson *v.* Eagleson, 10 Idaho 755, 81 Pac. 434.

9. Downey *v.* Twin Lakes Land, etc., Co., (Colo. 1907) 92 Pac. 946.

10. Mathieu *v.* North American Land, etc., Co., 119 La. 896, 44 So. 721; Colorado Canal Co. *v.* McFarland, (Tex. Civ. App. 1906) 94

S. W. 400; Gravity Canal Co. *v.* Sisk, (Tex. Civ. App. 1906) 95 S. W. 724.

11. See Perrine *v.* San Jacinto Valley Water Co., 4 Cal. App. 376, 88 Pac. 293; Creer *v.* Bancroft Land, etc., Co., (Idaho 1907) 90 Pac. 228.

524. 1. Candler *v.* Washoe Lake Reservoir, etc., Ditch Co., 28 Nev. 151, 80 Pac. 751; Barstow Irrigation Co. *v.* Cleghon, (Tex. Civ. App. 1906) 93 S. W. 1023.

525. 4. Salt River Valley Canal Co. *v.* Nelssen, (Ariz. 1906) 85 Pac. 117.

527. 2. **Land Without the District** is not entitled to water. Jenison *v.* Redfield, 149 Cal. 500, 87 Pac. 62.

Assessments. — Nevada Nat. Bank *v.* Kern County, (Cal. App. 1907) 91 Pac. 122.

As to the Organization of irrigation districts under the statute, see Ahern *v.* High Line Irrigation Dist., (Colo. 1907) 89 Pac. 963.

Scope of District's Authority to Contract. — See Willow Springs Irrigation Dist. *v.* Wilson, 74 Neb. 269, 104 N. W. 165.

3. Anderson *v.* Grand Valley Irrigation Dist., 35 Colo. 525, 85 Pac. 313; Nampa, etc., Irrigation Dist. *v.* Brose, 11 Idaho 474, 83 Pac. 490.

5. Healy *v.* Anglo-Californian Bank, (Cal. App. 1907) 90 Pac. 54; Thompson *v.* McFarland, 29 Utah 455, 82 Pac. 478.

6. Purdin *v.* Washington Nat. Bldg., etc., Assoc., 41 Wash. 395, 83 Pac. 723.

ISLANDS.

530. 1. **Whether a Formation Is an Island or a Sandbar** is to be determined by the stability of the soil, the physical features, and the size and permanence of the channels around it. McBride *v.* Steinweden, 72 Kan. 508, 83 Pac. 822.

531. 3. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; Smart *v.* Aroostook Lumber Co., (Me. 1907) 68 Atl. 527. See further the title NAVIGABLE WATERS.

4. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; People *v.* Board of Supervisors, 122 Ill. App. 40.

532. 1. Whitaker *v.* McBride, 197 U. S. 510, 25 U. S. Sup. Ct. 530, *affirming* 65 Neb. 137, 90 N. W. 966.

6. Wall *v.* Wall, 142 N. Car. 387, 55 S. E. 283, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532.

7. Wall *v.* Wall, 142 N. Car. 387, 55 S. E. 283, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532.

534. 4. **Contra.**—U. S. *v.* Chandler-Dunbar Water Power Co., (C. C. A.) 152 Fed. 25.

535. 1. Webber *v.* Axtell, 94 Minn. 375, 102 N. W. 915; Sliter *v.* Carpenter, 123 Wis. 578, 102 N. W. 27.

536. 2. **Riparian Rights.** — The owner of an island surrounded by two channels of a river has all the rights of a riparian owner in the channel lying opposite his banks. Whitaker *v.* McBride, 197 U. S. 510, 25 U. S. Sup. Ct. 530, *affirming* 65 Neb. 137, 90 N. W. 966.

8. Hilleary *v.* Wilson, (Ky. 1907) 100 S. W. 1190, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 536; Frank *v.* Goddin, 193 Mo. 390, 91 S. W. 1057; Houseman *v.* International Nav. Co., (Pa. 1906) 64 Atl. 379.

537. 1. **Where Part of an Island Was Washed Away,** and later a new island was formed within the boundaries where the old one had been, it was held that the new island did not belong to the owner of the island that was partly washed away. Frank *v.* Goddin, 193 Mo. 390, 91 S. W. 1057.

ISSUE.

537. 4. **Issue Distinguished from Event.** — Vancouver, etc., R. Co. *v.* Sam Kee, 12 British Columbia 1.

539. 3. **English Bill of Sale Act — Issue of Debentures.** — See *In re* Perth Electric Tramways, (1906) 2 Ch. 216, 75 L. J. Ch. 534.

ISSUE (DESCENDANTS).

543. 1. Bassett *v.* Wells, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 81, 106 N. Y. Supp. 1070, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 543.

544. 3. Phelps *v.* Cameron, 109 N. Y. App. Div. 798, 96 N. Y. Supp. 1014.

4. Dary *v.* Grau, 190 Mass. 482, 77 N. E. 507.

545. 2. Brisbin *v.* Huntington, 128 Iowa 166, 103 N. W. 144; Coyle *v.* Coyle, (N. J. 1907) 68 Atl. 224; Matter of Tenney, 104 N. Y. App. Div. 290, 93 N. Y. Supp. 811.

546. 2. *In re* Duckett, 214 Pa. St. 362, 63 Atl. 830.

548. 3. Bassett *v.* Wells, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 81, 106 N. Y. Supp. 1070; Beckley *v.* Riegert, 212 Pa. St. 91, 61 Atl. 641.

558. 2. Beckley *v.* Riegert, 212 Pa. St. 91, 61 Atl. 641; Daniels's Estate, 27 Pa. Super. Ct. 358; *Re* Johnston, 12 Ont. L. Rep. 262.

562. 1. Hull *v.* Holmes, 78 Conn. 362, 62 Atl. 705.

564. 5. Beckley *v.* Riegert, 212 Pa. St. 91, 61 Atl. 641.

565. 1. Hall *v.* Brownlee, 164 Ind. 238, 72 N. E. 131, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 565.

JEOPARDY.

581. 3. Gillespie *v.* State, 168 Ind. 298, 80 N. E. 829; State *v.* Webster, 206 Mo. 558, 105 S. W. 705.

583. 5. State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935.

584. 2. People *v.* Small, 1 Cal. App. 320, 82 Pac. 87; State *v.* Foley, 114 La. 412, 38 So. 402, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584.

5. Ingram *v.* State, 124 Ga. 448, 52 S. E. 759.

10. Crossland *v.* State, 77 Ark. 537, 92 S. W. 776; Burnett *v.* State, 76 Ark. 295, 88 S. W. 956; Allen *v.* State, 52 Fla. 1, 41 So. 593; O'Donnell *v.* People, 224 Ill. 218, 79 N. E. 639; Gillespie *v.* State, 168 Ind. 298, 80 N. E. 829, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; State *v.* Williams, 117 Mo. App. 564, 92 S. W. 151; Steinkuhler *v.* State, (Neb. 1906) 109 N. W. 395, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; Hall *v.* State, (Tex. Crim. 1905) 85 S. W. 765; State *v.* Hows, 31 Utah 168, 87 Pac. 163.

Proceeding Held Not to Constitute a Jeopardy. — The removal of a juror by the order of the judge, on the ground of being hostile toward the

defendant, does not warrant a plea of former jeopardy by the accused. State *v.* Pointdexter, 117 La. 380, 41 So. 688.

585. 1. State *v.* Keerl, 33 Mont. 501, 85 Pac. 862, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 585; State *v.* Trueman, 34 Mont. 249, 85 Pac. 1024.

587. 1. Barber *v.* State, (Ala. 1907) 43 So. 808; Kappes *v.* State, 26 Ohio Cir. Ct. 111.

2. Peterson *v.* State, (Neb. 1907) 112 N. W. 1063.

588. 1. *Contra*, in a case where the crime was committed near the boundary line. *Ex p.* Davis, 48 Tex. Crim. 644, 89 S. W. 978.

4. Barber *v.* State, (Ala. 1907) 43 So. 808.

589. 1. Sims *v.* State, 146 Ala. 109, 41 So. 415.

3. Horner *v.* State, 28 Ohio Cir. Ct. 568.

A defendant cannot plead jeopardy to an indictment for murder where a previous indictment on the same charge was so drawn that no phase of the transaction in question could be investigated under it. Moody *v.* State, 1 Ga. App. 772, 58 S. E. 262.

4. Drake *v.* Com., (Ky. 1906) 96 S. W. 580.

The Accused Is Estopped to Maintain that Variance Was Immaterial, where upon the first trial he insisted upon the existence of such a variance. Carroll *v.* State, (Tex. Crim. 1906) 98 S. W. 859.

590. 1. State *v.* Webster, 206 Mo. 558, 105 S. W. 705; Carroll *v.* State, (Tex. Crim. 1906) 98 S. W. 859.

4. Jones *v.* Com., (Ky. 1906) 97 S. W. 1118; Carroll *v.* State, (Tex. Crim. 1906) 98 S. W. 859.

592. 1. Mays *v.* State, (Tex. Crim. 1907) 101 S. W. 233.

10. Jones *v.* Com., (Ky. 1906) 97 S. W. 1118; Allen *v.* State, 52 Fla. 1, 41 So. 593.

11. **A Trial Must Have Been Commenced** before the accused can be said to have been placed in jeopardy. Montgomery *v.* State, 128 Wis. 183, 107 N. W. 14.

593. 2. **Inability of Jury to Agree.** — State *v.* Harris, 119 La. 297, 44 So. 22; Johnson *v.* State, (Fla. 1907) 44 So. 765; State *v.* Huff, 75 Kan. 585, 90 Pac. 279; O'Donnell *v.* People, 224 Ill. 218, 79 N. E. 639.

Disqualification of Juror. — Armor *v.* State, 125 Ga. 3, 53 S. E. 815.

Intoxication of Juror. — State *v.* Tyson, 138 N. Car. 627, 50 S. E. 456.

When the Jury Is Wrongfully Discharged the defendant is entitled to an acquittal. Vela *v.* State, 49 Tex. Crim. 588, 95 S. W. 529.

4. State *v.* Hansford, 76 Kan. 678, 92 Pac. 551; People *v.* Neff, 122 N. Y. App. Div. 135, 106 N. Y. Supp. 747.

594. 3. Dublin *v.* State, 126 Ga. 580, 55 S. E. 487.

595. 4. Floyd *v.* State, 80 Ark. 94, 96 S. W. 125, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 595; State *v.* Ruffin, 117 La. 357, 41 So. 647; O'Donnell *v.* People, 224 Ill. 218, 79 N. E. 639.

596. 5. State *v.* Learned, 73 Kan. 328, 85 Pac. 293; Harris *v.* State, (Tex. Crim. 1906) 97 S. W. 704; Thompson *v.* State, 48 Tex. Crim. 16, 85 S. W. 1059; Tompkins *v.* State, 49 Tex. Crim. 154, 90 S. W. 1019; Burton *v.* U. S., 202 U. S. 344, 26 U. S. Sup. Ct. 688.

6. State *v.* Norman, (Iowa 1907) 113 N. W. 340; State *v.* White, (N. Car. 1908) 60 S. E. 505; State *v.* Campbell, 40 Wash. 480, 82 Pac. 752.

597. 2. Mexico *v.* Harris, 115 Mo. App. 707, 92 S. W. 505.

3. *California.* — Noland *v.* People, 33 Colo. 322, 80 Pac. 887.

District of Columbia. — Nordlinger *v.* U. S., 24 App. Cas. (D. C.) 407, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 597.

Georgia. — Ingram *v.* State, 124 Ga. 448, 52 S. E. 759.

Illinois. — Spears *v.* People, 220 Ill. 72, 77 N. E. 112; Nagel *v.* People, 229 Ill. 598, 82 N. E. 315.

Indiana. — State *v.* Reed, 168 Ind. 588, 81 N. E. 572, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 597.

Iowa. — State *v.* Price, 127 Iowa 301, 103 N. W. 195.

Maryland. — Watson *v.* State, 105 Md. 650, 66 Atl. 635, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 597.

Nebraska. — Warren *v.* State, (Neb. 1907) 113 N. W. 143.

North Dakota. — State *v.* Virgo, 14 N. Dak. 293, 103 N. W. 610.

Pennsylvania. — Com. *v.* Shoener, 216 Pa. St. 71, 64 Atl. 890.

599. 7. Floyd *v.* State, 80 Ark. 94, 96 S. W. 125, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 599; *Ex p.* Vickery, 51 Fla. 141, 40 So. 77; Com. *v.* Gill, (Ky. 1906) 90 S. W. 605; Grafton *v.* U. S., 206 U. S. 333, 27 U. S. Sup. Ct. 749.

600. 4. **Conviction for Affray, No Bar to Prosecution for Aggravated Assault.** — Dumas *v.* State, 48 Tex. Crim. 27, 85 S. W. 1058.

6. Com. *v.* Ramunno, (Pa. 1907) 68 Atl. 184, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 600.

601. 2. **A Prosecution for Conspiracy to Commit Assault and Battery Is No Bar to a Prosecution for Disturbing the Peace** and quiet of a family in whose presence the assault was committed. Wilcox *v.* U. S., (Indian Ter. 1907) 103 S. W. 774.

4. State *v.* Smith, 132 Iowa 645, 109 N. W. 115; People *v.* Farrell, 146 Mich. 264, 109 N. W. 440.

5. Huntington *v.* Superior Ct., 5 Cal. App. 288, 90 Pac. 141; State *v.* Walker, 133 Iowa 489, 110 N. W. 925. But see Turner *v.* Territory, 15 Okla. 557, 82 Pac. 650.

6. U. S. *v.* Owens, 2 Alaska 480, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 601.

Conviction of Murder in the Second Degree on an Indictment for Murder in the First Degree being set aside, the accused may subsequently be tried for murder in the first degree. State *v.* Matthews, 142 N. Car. 621, 55 S. E. 342.

9. State *v.* Campbell, 40 Wash. 480, 82 Pac. 752.

602. 2. Clay *v.* State, (Ga. App. 1908) 60 S. E. 1028; State *v.* Temple, 194 Mo. 228, 92 S. W. 494; Woodroe *v.* State, (Tex. Crim. 1906) 96 S. W. 30.

Intoxication and Swearing. — A conviction for being drunk does not bar a prosecution for disturbing the peace by swearing at the time of the drunkenness. Mitchell *v.* State, 48 Tex. Crim. 533, 89 S. W. 645.

603. 1. Fews *v.* State, 1 Ga. App. 122, 58 S. E. 64; State *v.* Hooker, 145 N. Car. 581, 59 S. E. 866; Arrington *v.* State, 48 Tex. Crim. 541, 89 S. W. 643; Teague *v.* State, (Tex. Crim. 1907) 102 S. W. 1142; Flemister *v.* U. S., 207 U. S. 372, 28 U. S. Sup. Ct. 129.

2. Booker *v.* State, (Ala. 1907) 44 So. 56.

3. Com. *v.* Standard Oil Co., (Ky. 1905) 87 S. W. 1090; Crumpler *v.* Vicksburg, 89 Miss. 214, 42 So. 673; Paschal *v.* State, 49 Tex. Crim. 111, 90 S. W. 878.

604. 4. **Entirely Separate.** — Tucker *v.* Moultrie, 122 Ga. 160, 50 S. E. 61; Standard Oil Co. *v.* Com., (Ky. 1905) 87 S. W. 1092.

5. State *v.* Crofford, 133 Iowa 478, 110 N. W. 621.

605. 2. Black *v.* State, 144 Ala. 92, 40 So. 611; Sutton *v.* Washington, (Ga. App. 1908) 60 S. E. 811; Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289; State *v.* Lytle, 138 N. Car. 738, 51 S. E. 66; State *v.* Taylor, 133 N. Car. 755, 46 S. E. 5.

4. **Right a Personal Privilege.** — State *v.* White, 71 Kan. 356, 80 Pac. 589, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

5. Hill *v.* Nelms, 122 Ga. 572, 50 S. E. 344.

7. A plea of guilty having been entered by a defendant who stated he was in fact not guilty, whereupon his plea of guilty was withdrawn by the court without objection by him, such withdrawal will be deemed to be with his consent and will not sustain his plea of former jeopardy. Williams *v.* Com., (Ky. 1907) 101 S. W. 381.

606. 2. Trono *v.* U. S., 199 U. S. 521, 26 U. S. Sup. Ct. 121; U. S. *v.* Owens, 2 Alaska 480; State *v.* Gillis, 73 S. Car. 318, 53 S. E. 487; Czarra *v.* Board of Medical Supervisors, 25 App. Cas. (D. C.) 443.

JOINT — JOINTLY.

615. 1. **Joint Interest.** — See Conde *v.* Dreisam Gold Min., etc., Co., 3 Cal. App. 583, 86 Pac. 825.

JOINT EXECUTORS AND ADMINISTRATORS.

617. 7. Williams *v.* Williams, 25 App. Cas. (D. C.) 32, 4 Ann. Cas. 549; Slay *v.* Beck, (Md. 1908) 68 Atl. 573. See also Williams *v.* Williams, 24 App. Cas. (D. C.) 214.

11. Alerding *v.* Allison, (Ind. 1908) 83 N. E. 1006.

618. 2. Alerding *v.* Allison, (Ind. 1908) 83 N. E. 1006.

6. Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258.

620. 4. *In re* Houghton, (1904) 1 Ch. 622; Hosch Lumber Co. *v.* Weeks, 123 Ga. 336, 51 S. E. 439.

5. **In California** the statute provides that where there are more than two executors, the act of a majority is valid. *In re* Scott, 1 Cal. App. 740, 83 Pac. 85.

633. 9. *In re* Arnton, 116 N. Y. App. Div. 326, 94 N. Y. Supp. 471.

634. 1. *In re* McManus, 214 Pa. St. 634, 63 Atl. 1074.

JOINT-STOCK COMPANIES.

636. 1. Bradford *v.* National Ben. Assoc., 26 App. Cas. (D. C.) 268; Spotswood *v.* Morris, 12 Idaho 360, 85 Pac. 1094, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 636; People *v.* Rose, 219 Ill. 46, 76 N. E. 42, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 636; State *v.* Louisiana, etc., R. Co., 196 Mo. 523, 94 S. W. 279, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 636.

637. 1. People *v.* Rose, 219 Ill. 46, 76 N. E. 42, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637; Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353; Industrial Lumber Co. *v.* Texas Pine Land Assoc., (Tex. Civ. App. 1903) 72 S. W. 875, *citing* 22 [17] AM. AND ENG. ENCYC. OF LAW (2d ed.) 637.

2. Spotswood *v.* Morris, 12 Idaho 360, 85 Pac. 1094, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637; State *v.* Louisiana, etc., R. Co., 196 Mo. 523, 94 S. W. 279, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637; Industrial Lumber Co. *v.* Texas Pine Land Assoc., (Tex. Civ. App. 1903) 72 S. W. 875.

4. Spotswood *v.* Morris, 12 Idaho 360, 85 Pac. 1094; Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353.

638. 1. State *v.* Louisiana, etc., R. Co., 196 Mo. 523, 94 S. W. 279; Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353; Norwood *v.* Francis, 25 App. Cas. (D. C.) 463, 4 Ann. Cas. 865; Industrial Lumber Co. *v.* Texas Pine Land Assoc., (Tex. Civ. App. 1903) 72 S. W. 875.

2. Spotswood *v.* Morris, 12 Idaho 360, 85 Pac. 1094, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 638.

5. People *v.* Rose, 219 Ill. 46, 76 N. E. 42, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 638.

6. Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353; Colton *v.* Raymond, 114 N. Y. App. Div. 911, 100 N. Y. Supp. 1111, *affirming* (Sup. Ct. Spec. T.) 41 Misc. (N. Y.) 580, 85 N. Y. Supp. 210. See also Com. *v.* Adams Express Co., (Ky. 1906) 97 S. W. 386.

639. 2. **Contracts Limiting the Liability** to certain securities are valid. Hibbs *v.* Brown, 112 N. Y. App. Div. 214, 98 N. Y. Supp. 353.

640. 4. **A Joint Stock Company Is Without Citizenship** for the purpose of removing actions from state to federal courts. Saunders *v.* Adams Express Co., 136 Fed. 494.

642. 1. **Members Liable in Proportion to Number of Shares Held.** — Taber *v.* Brech, 192 Mass. 355, 78 N. E. 472.

643. 2. See Spotswood *v.* Morris, 12 Idaho 360, 85 Pac. 1094.

3. See Wilkinson *v.* Evans, 34 Pa. Super. Ct. 472.

5. See Weir *v.* Metropolitan St. R. Co., 126 Mo. App. 471, 103 S. W. 583.

645. 3. Colton *v.* Raymond, 114 N. Y. App. Div. 911, 100 N. Y. Supp. 1111, *affirming* (Supm. Ct. Spec. T.) 41 Misc. (N. Y.) 580, 85 N. Y. Supp. 210.

4. **Proper Parties.** — Every stockholder or creditor is a proper party to a suit to wind up the affairs of the association. Randolph *v.* Nichol, 74 Ark. 93, 84 S. W. 1037.

JOINT TENANTS AND TENANTS IN COMMON.

649. 4. Taylor *v.* Stephens, 165 Ind. 200, 74 N. E. 980, *reversing* (Ind. App. 1905) 74 N. E. 12; Bassler *v.* Rewodlinski, 130 Wis. 26, 109 N. W. 1032.

650. 1. Bassler *v.* Rewodlinski, 130 Wis. 26, 109 N. W. 1032.

3. Finch *v.* Haynes, 144 Mich. 352, 107 N. W. 910, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650.

10. *In re* McCallum, 211 Pa. St. 205, 60 Atl. 903.

651. 3. Laughlin *v.* O'Reily, (Miss. 1908) 45 So. 193; Dobbins *v.* Dobbins, 141 N. Car. 210, 53 S. E. 870.

4. Hoyt *v.* Lightbody, 98 Minn. 189, 108 N. W. 845; Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957; Norman *v.* Corbley, 32 Mont. 195, 79 Pac. 1059, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 651.

5. **Water Rights.** — The unity of possession must extend to the right of user in order to constitute a tenancy in common of a water right. Telluride *v.* Davis, 33 Colo. 355, 80 Pac. 1051; Norman *v.* Corbley, 32 Mont. 195, 79 Pac. 1059.

8. Gilmer *v.* Beauchamp, (Tex. Civ. App. 1905) 87 S. W. 907, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 651.

652. 3. Wilson *v.* Frost, 186 Mo. 311, 85 S. W. 375; Bassler *v.* Rewodlinski, 130 Wis. 26, 109 N. W. 1032, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652.

653. 4. Cover *v.* James, 217 Ill. 309, 75 N. E. 490; Taylor *v.* Stephens, 165 Ind. 200, 74 N. E. 980, *reversing* (Ind. App. 1905) 74 N. E. 12.

657. 1. Bassler *v.* Rewodlinski, 130 Wis. 26, 109 N. W. 1032.

658. 2. *In re* McCallum, 211 Pa. St. 205, 60 Atl. 903.

6. Cover *v.* James, 217 Ill. 309, 75 N. E. 490.

659. 2. Taylor *v.* Stephens, 165 Ind. 200, 74 N. E. 980, *reversing* (Ind. App. 1905) 74 N. E. 12.

6. Cameron *v.* Hicks, 141 N. Car. 21, 53 S. E. 728, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659; Webb *v.* Borden, 145 N. Car. 188, 58 S. E. 1083.

660. 1. Lester *v.* Kirtsley, 83 Ark. 554, 104 S. W. 213; Conde *v.* Dreisam Gold Min., etc., Co., (Cal. App. 1906) 86 Pac. 825; Gilmore *v.* Jenkins, 129 Iowa 686, 106 N. W. 193; Anderson *v.* Acheson, 132 Iowa 744, 110 N. W. 335 (cemetery lot); Wilson *v.* Frost, 186 Mo. 311, 85 S. W. 375; Cohen *v.* Herbert, 205 Mo. 537, 104 S. W. 84.

Language Requisite to Create Tenancy in Common. — Where the deed conveyed land to A, "and the heirs of her body which she has or may have by B," it was held the conveyance was of a fee simple to A and her children by B as tenants in common. Peurifoy *v.* Lloyd, 71 S. Car. 275, 51 S. E. 93.

Where a Person Conveys Land to Himself and Others he becomes a tenant in common with his grantees. Green *v.* Cannady, 77 S. Car. 193, 57 S. E. 832.

661. 7. Merolla *v.* Lane, 122 N. Y. App. Div. 535, 107 N. Y. Supp. 439.

8. Williams *v.* Clyatt, 53 Fla. 987, 43 So. 441.

662. 6. Schoonover v. Tyner, 72 Kan. 475, 84 Pac. 124, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 662.

663. 9. **Cropping Contract.** — Hendricks *v.* Clemmons, 147 Ala. 590, 41 So. 306.

Sale of Timber. — Where the owner contracted to sell certain standing timber under a contract with the buyer that the timber cut should be equally divided it was held that the parties became tenants in common of the cut timber. Colby-Hinkley Co. *v.* Jordan, 146 Ala. 634, 41 So. 962.

664. 6. Manti City Sav. Bank *v.* Peterson, (Utah 1908) 93 Pac. 566.

665. 1. Brig Sally, 41 Ct. Cl. 431.

669. 1. Savage *v.* Bradley, (Ala. 1907) 43 So. 20; Querney *v.* Querney, 127 Ill. App. 75; Hoyt *v.* Lightbody, 98 Minn. 189, 108 N. W. 843; Martin *v.* Castle, 193 Mo. 183, 91 S. W. 930, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 669; Mayes *v.* Rust, (Tex. Civ. App. 1906) 94 S. W. 110.

2. Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368; Waterman Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142; Steele *v.* Steele, 220 Ill. 318, 77 N. E. 232; Schoonover *v.* Tyner, 72 Kan. 475, 84 Pac. 124; Godsey *v.* Standifer, (Ky. 1907) 101 S. W. 921; Joyce *v.* Dyer, 189 Mass. 64, 75 N. E. 81; Coberly *v.* Coberly, 189 Mo. 1, 87 S. W. 957; Chapman *v.* Kullman, 191 Mo. 237, 89 S. W. 924; Merolla *v.* Lane, 122 N. Y. App. Div. 535, 107 N. Y. Supp. 439; Dobbins *v.* Dobbins, 141 N. Car. 210, 53 S. E. 870; Rohrbach *v.* Sanders, 212 Pa. St. 636, 62 Atl. 27.

670. 1. People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N. Y. Supp. 821.

Where One Cotenant Appropriated the Rents and Profits for several years it was held that this did not deprive the other tenants of their right to be let into possession when they saw proper to assert their right. Mecaskey *v.* Morris, (Tex. Civ. App. 1905) 89 S. W. 1085.

6. Williamson *v.* Moore, 10 Idaho 754, 80 Pac. 227, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 670.

671. 2. Hancock *v.* Tharpe, 129 Ga. 812, 60 S. E. 168, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671; Country Club Land Assoc. *v.* Lohbauer, 187 N. Y. 106, 79 N. E. 844, *affirming* 110 N. Y. App. Div. 875, 97 N. Y. Supp. 11.

672. 2. Ayotle *v.* Nadeau, 32 Mont. 498, 81 Pac. 145.

Contract for Improvements. — One cotenant may contract with the others for improvement of the premises and may waive for himself and his subcontractors a lien for materials. Westmoreland Guarantee Bldg., etc., Assoc. *v.* Connor, 216 Pa. St. 543, 65 Atl. 1089.

10. Blackledge *v.* Davis, 130 Iowa 501, 105 N. W. 1000; Wright *v.* Kayner, 150 Mich. 7, 113 N. W. 779.

Evidence of Ratification Held Sufficient. — Stuart *v.* Mattern, 141 Mich. 686, 105 N. W. 35.

673. 1. **Admissions of One Cotenant Not Binding on Other.** — Nichols-Shepard Co. *v.* Ringler, (Iowa 1907) 112 N. W. 543.

2. Wright *v.* Kayner, 150 Mich. 7, 113 N. W. 779.

4. Walker v. Marion, 143 Mich. 27, 106 N. W. 400, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 673; Lee v. Livingston, 143 Mich. 203, 106 N. W. 713.

5. **Consent Will Be Presumed** if the other tenants with knowledge of the lease do not make objection to it. Schwartz v. McQuaid, 214 Ill. [illegible] 73 N. E. 582.

6. Wright v. Kayner, 150 Mich. 7, 113 N. W. 779, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 673.

671. 1. Flat Top Grocery Co. v. Bailey, (W. Va. 1907) 57 S. E. 302, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 674.

4. Walker v. Marion, 143 Mich. 27, 106 N. W. 400, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 674.

A Right of Entry may be granted by one cotenant without the consent of the other in certain cases. Lee v. Follensby, (Vt. 1907) 67 Atl. 197.

Where one who had no interest in certain lands gave permission to a telegraph company to erect poles on the land it was held that the consent was not binding on her cotenant when the title was afterwards cast upon her by descent. Duke v. Postal Tel. Cable Co., 71 S. Car. 95, 50 S. E. 675.

7. Anderson v. Acheson, 132 Iowa 744, 110 N. W. 335 (license allowing removal of bodies from cemetery lot).

675. 1. Mauzey v. Dazcy, 114 Ill. App. 652; Hatfield v. Mahoney, (Ind. App. 1906) 79 N. E. 408; Beaman v. Beaman, (Miss. 1907) 44 So. 987; Mahoney v. Nevins, 190 Mo. 360, 88 S. W. 731; Coleman v. Coleman, 71 S. Car. 518, 51 S. E. 250, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 674 [675]; Niday v. Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027; Burnett v. Kirk, 39 Wash. 45, 80 Pac. 855; Reed v. Bachman, (W. Va. 1907) 57 S. E. 769. See also Anderson v. Snowden, (Wash. 1906) 87 Pac. 356.

Purchase of Fee by Lessee.—One cotenant of leased premises may purchase the fee from the lessor without violating the rule of the text. Kershaw v. Simpson, (Wash. 1907) 89 Pac. 889.

2. Niday v. Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027.

676. 2. Reed v. Bachman, (W. Va. 1907) 57 S. E. 769, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 676.

A Purchase by the Wife of One Cotenant inures to the benefit of the other cotenants. Beaman v. Beaman, (Miss. 1907) 44 So. 987.

4. Savage v. Bradley, (Ala. 1907) 43 So. 20; Keith v. Keith, (Tex. Civ. App. 1905) 87 S. W. 384.

6. Dahlem v. Abbott, 146 Mich. 605, 110 N. W. 47; Richards v. Richards, 31 Pa. Super. Ct. 509; Stoll v. Griffith, (Wash. 1905) 82 Pac. 1025; Reed v. Bachman, (W. Va. 1907) 57 S. E. 769, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 676; Clark v. Beard, 59 W. Va. 669, 53 S. E. 597.

7. Richards v. Richards, 31 Pa. Super. Ct. 509.

677. 2. Moragne v. Doe, 143 Ala. 459, 39 So. 161; Williams v. Clyatt, 53 Fla. 987, 43 So. 441.

Statutory Right to Redeem.—Where the statute gave the owner of an undivided interest a right to redeem from a tax sale by paying his proportionate share of the taxes, it was held that this did not remove the general inhibition against the assertion of an adverse tax title by one cotenant against another. Hoyt v. Lightbody, 98 Minn. 189, 108 N. W. 843.

The Legal Title Passes to the Purchaser as constructive trustee of the other cotenant. Ryason v. Dunten, 164 Ind. 85, 73 N. E. 74.

678. 5. Stubblefield v. Hanson, (Tex. Civ. App. 1906) 94 S. W. 406; Stoll v. Griffith, (Wash. 1905) 82 Pac. 1025.

6. Niday v. Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027.

679. 3. Niday v. Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027.

4. Given v. Troxel, (Ala. 1905) 39 So. 578; Olmstead v. Tracy, 145 Mich. 299, 108 N. W. 649. See also Hatfield v. Mahoney, (Ind. App. 1906) 79 N. E. 408.

5. Hoyt v. Lightbody, 98 Minn. 189, 108 N. W. 843.

6. Ryason v. Dunten, 164 Ind. 85, 73 N. E. 74, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679.

7. Savage v. Bradley, (Ala. 1907) 43 So. 20; Mahoney v. Nevins, 190 Mo. 360, 88 S. W. 731.

8. Savage v. Bradley, (Ala. 1907) 43 So. 20, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679; Ryason v. Dunten, 164 Ind. 85, 73 N. E. 74; Niday v. Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027.

9. Niday v. Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027.

680. 6. Wright v. Kayner, 150 Mich. 7, 113 N. W. 779; Eason v. Weeks, (Tex. Civ. App. 1907) 104 S. W. 1070.

Specific Performance.—Where a cotenant contracted to sell the entire property without the consent of the other cotenants, it was held that the buyer could have specific performance as to the interest owned by the cotenant making the contract. Moore v. Gariglietti, 228 Ill. 143, 81 N. E. 826.

8. **The Cotenant May Ratify the Sale** and recover his share of the proceeds. Harris v. Umsted, 79 Ark. 499, 96 S. W. 146.

682. 8. Frederick v. Frederick, 219 Ill. 568, 76 N. E. 856; Benjamin v. American Telephone, etc., Co., (Mass. 1907) 82 N. E. 681; Broom v. Pearson, 98 Tex. 469, 85 S. W. 790, *modifying* (Tex. Civ. App. 1904) 81 S. W. 753.

683. 4. Frederick v. Frederick, 219 Ill. 568, 76 N. E. 856; Currens v. Lauderdale, 118 Tenn. 496, 101 S. W. 431.

684. 4. Currens v. Lauderdale, 118 Tenn. 496, 101 S. W. 431, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684.

5. Currens v. Lauderdale, 118 Tenn. 496, 101 S. W. 431, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684.

9. Benjamin v. American Telephone, etc., Co., (Mass. 1907) 82 N. E. 681, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684; Hunter v. Hodgson, (Tex. Civ. App. 1906) 95 S. W. 637.

685. 5. Querney v. Querney, 127 Ill. App. 75.

6. [illegible] Lauderdale, 117 [illegible] S. W. 431, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684.

Liable in Proportion to Their Respective Interests. — Querney *v.* Querney, 127 Ill. App. 75.

2. The Right to Credit for Expenses is not affected by the inequitable conduct of the [illegible] ing *v.* Nordstrom, (C. C. A.) 148 Fed. 81.

7. Duty to Make Such Payment. — Where one tenant occupies the common property without paying rent it is his duty to pay the taxes. Cole *v.* Cole, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 124.

8. Barrett *v.* McCarty, (S. Dak. 1905) 104 N. W. 907; Snodgrass *v.* Jolliff, 59 W. Va. 292, 53 S. E. 151, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 686.

9. Sharp *v.* Zeller, 114 La. 549, 38 So. 449.

No Contribution if Taxes Are Void. — Cole *v.* Cole, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 124.

12. Young *v.* Bigger, 73 Kan. 146, 84 Pac. 747, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 686; Richards *v.* Richards, 31 Pa. Super. Ct. 509.

687. 6. Estell *v.* Francis, (Ky. 1905) 89 S. W. 172.

688. 5. Not Entitled to Compensation for Collecting Rents. — Cole *v.* Cole, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 124.

689. 1. Morris *v.* Morris, (Tex. Civ. App. 1907) 105 S. W. 242.

2. *Montana.* — The Statute of Anne is not in force in Montana. Ayotte *v.* Nadeau, 32 Mont. 498, 81 Pac. 145.

690. 4. McCrum *v.* McCrum, 36 Ind. App. 636, 76 N. E. 415; Carroll *v.* Carroll, 188 Mass. 558, 74 N. E. 913; Owings *v.* Owings, (Mich. 1908) 114 N. W. 393; Lloyd *v.* Turner, 70 N. J. Eq. 425, 62 Atl. 771; Cole *v.* Cole, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 124; Morris *v.* Morris, (Tex. Civ. App. 1907) 105 S. W. 242. See also Rose *v.* Cooley, (N. J. 1906) 62 Atl. 867.

691. 1. McCrum *v.* McCrum, 36 Ind. App. 636, 76 N. E. 415.

2. Dangerfield *v.* Caldwell, (C. C. A.) 151 Fed. 554; Ayotte *v.* Nadeau, 32 Mont. 498, 81 Pac. 145.

693. 3. Chapman *v.* Duffy, 20 Colo. App. 471, 79 Pac. 746; Carroll *v.* Carroll, 188 Mass. 558, 74 N. E. 913.

694. 1. McCrum *v.* McCrum, 36 Ind. App. 636, 76 N. E. 415; Sharp *v.* Zeller, 114 La. 549, 38 So. 449; Lloyd *v.* Turner, 70 N. J. Eq. 425, 62 Atl. 771.

3. Lloyd *v.* Turner, 70 N. J. Eq. 425, 62 Atl. 771.

695. 5. The Measure of Accountability is the amount of rents and profits actually received above the just share of the defendant. McCrum *v.* McCrum, 36 Ind. App. 636, 76 N. E. 415.

696. 5. Where Action Begun after Cotenancy Ceases. — See Hoolihan *v.* Hoolihan, 119 N. Y. App. Div. 925, 104 N. Y. Supp. 551.

Damages Recoverable. — Where the property was taken by one cotenant in good faith in the belief that he had good title to the whole property, it was held that the basis of an accounting was the value of the property produced on [illegible] and [illegible] wash out of production. McNeely *v.* South Penn Oil Co., 58 W. Va. 436, 52 S. E. 480.

[illegible] Where Property [illegible] Peter[illegible]

2. Davis *v.* Poland, 102 Me. 192, 66 Atl. [illegible]

5. Davis *v.* Poland, 102 Me. 192, 66 Atl. 380.

7. Parke *v.* Nixon, 141 Mich. 267, 104 N. W. 597; Thompson *v.* Silverthorne, 142 N. Car. 12, 54 S. E. 782.

703. 5. Mante City Sav. Bank *v.* Peterson, (Utah 1908) 93 Pac. 566.

704. 1. Graham *v.* Ford, 125 Ill. App. 578.

705. 2. Reed *v.* Bachman, (W. Va. 1907) 57 S. E. 769.

7. Burris *v.* Jackson, 8 Del. Ch. 345, 68 Atl. 381; Leatherbury *v.* McInnis, 85 Miss. 160, 37 So. 1018.

8. Thompson *v.* Silverthorne, 142 N. Car. 12, 54 S. E. 782.

Relief by Injunction — Illustrations. — Hancock *v.* Tharpe, 129 Ga. 812, 60 S. E. 168, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 705.

No Injunction for Trespass by Cotenant. — County Club Land Assoc. *v.* Lohbauer, 110 N. Y. App. Div. 875, 97 N. Y. Supp. 11.

706. 2. Thompson *v.* Silverthorne, 142 N. Car. 12, 54 S. E. 782.

Courts of Equity Are Averse to Appointing Receivers of land held by tenants in common. Miller *v.* Robinson, (N. J. 1907) 67 Atl. 828.

708. 7. The Right of Survivorship Cannot Be Destroyed where the deed under which the parties take title expressly provides that the property is granted "to them and the survivor of them, their heirs and assigns, forever." Finch *v.* Haynes, 144 Mich. 352, 107 N. W. 910.

709. 4. Bassler *v.* Rewodlinski, 130 Wis. 26, 109 N. W. 1032.

JUDGE.

717. 2. State *v.* Jackson, (S. Dak. 1907) 113 N. W. 880, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 717, as to entire paragraph.

8. Foster *v.* Rowe, 128 Wis. 336, 107 N. W. 635, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 717.

719. 1. Slaughter *v.* U. S., 5 Indian Ter. 239, 82 S. W. 732, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719; Williams *v.* State, (Tex. Crim. 1907) 99 S. W. 1000.

2. State *v.* Jackson, (S. Dak. 1907) 113 N. W. 880, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719.

5. Graves *v.* People, 32 Colo. 127, 75 Pac. 412, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719; Powers *v.* State, 75 Neb. 226, 106 N. W. 332; Miller *v.* State, 73 Ohio St. 195, 76 N. E. 823.

720. 1. Temporary Absence is allowed. State *v.* Leonard, (Iowa 1907) 112 N. W. 784.

2. Thomas *v.* State, (Ala. 1907) 43 So. 371.

6. Bateson *v.* State, 46 Tex. Crim. 43, 80 S. W. 88, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720.

721. 5. Cooper v. Mason v. State, 26 Ohio Cir. Ct. 535.

722. 7. Atlantic Coast Line R. Co. *v.* Mallard, 53 Fla. 515, 43 So. 764, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 722.

Successor May Pass on Bill of Exceptions. — Linderman Box, etc., Co. *v.* Thompson, 127 Ill. App. 434.

In Massachusetts a report to the Supreme Judicial Court cannot be made by a Superior Court judge who has not heard the parties. Newburyport Sav. Inst. *v.* Coffin, 189 Mass. 74, 75 N. E. 81.

723. 3. Atlantic Coast Line R. Co. *v.* Mallard, 53 Fla. 515, 43 So. 764, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 723.

724. 3. Kimble *v.* Dailey, 127 Iowa 668, 103 N. W. 1009, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 724.

731. 4. Rush *v.* Buckley, 100 Me. 322, 61 Atl. 774.

732. 8. Taylor *v.* Democratic Committee, 120 Ky. 676, 87 S. W. 786, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 732.

733. 1. See Tibbs *v.* Atlanta, 125 Ga. 21, 53 S. E. 811, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733.

4. State *v.* Houser, 122 Wis. 534, 100 N. W. 964, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733.

6. Morrow *v.* Watts, 80 Ark. 59, 95 S. W. 988, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733.

9. See People *v.* Haas, 105 N. Y. App. Div. 123, 93 N. Y. Supp. 790, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733.

734. 2. McGuire *v.* Blount, 199 U. S. 142, 26 U. S. Sup. Ct. 1; *Ex p.* Cornwell, 144 Ala. 497, 39 So. 354; Philbrook *v.* Newman, (Cal. 1905) 82 Pac. 772; Priddy *v.* Mackenzie, 205 Mo. 181, 103 S. W. 968; New York L. Ins. Co. *v.* Sides, (Tex. Civ. App. 1907) 101 S. W. 1163.

735. 7. Laplant *v.* Marshalltown, 134 Iowa 261, 111 N. W. 816.

8. *Compare* Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141.

736. 3. Layton *v.* Jacobs, (Del. 1904) 62 Atl. 691; Olliff *v.* State, 1 Ga. App. 553, 57 S. E. 941; Bliss *v.* Caille, 149 Mich. 606, 113 N. W. 317.

737. 3. **Relationship of Brother-in-law Will Disqualify.** — *Compare* Browning *v.* Lovett, 94 S. W. 661, 29 Ky. L. Rep. 692.

4. **Relationship to Attorney or Agent of Party.** — *Compare* People *v.* Patrick, 183 N. Y. 52, 75 N. E. 963.

738. 5. Lamberson *v.* Superior Ct., (Cal. 1907) 91 Pac. 100; Day *v.* Day, 12 Idaho 556, 86 Pac. 531; American Car, etc., Co. *v.* Hill, 226 Ill. 227, 80 N. E. 784; Juliana *v.* State, 167 Ind. 421, 79 N. E. 359; French *v.* Com., (Ky. 1906) 97 S. W. 427; State *v.* District Ct., 33 Mont. 138, 82 Pac. 789; State *v.* Dirlam, 28 Ohio Cir. Ct. 69.

6. State *v.* Webber, 96 Minn. 348, 105 N. W. 68.

739. 1. Tibbs *v.* Atlanta, 125 Ga. 21, 53 S. E. 811, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) [illegible]

3. Lassen Irrigation Co. *v.* Superior Ct., (Cal. 1907) 90 Pac. 709; Notley *v.* Brown, 17 Hawaii 405, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 739; Johnson *v.* Johnson, (Tex. Civ. App. 1905) 89 S. W. 1102; Gulf, etc., R. Co. *v.* Looney, (Tex. Civ. App. 1906) 95 S. W. 691.

740. 1. Juliana *v.* State, 167 Ind. 421, 79 N. E. 359.

4. People *v.* Haas, 105 N. Y. App. Div. 123, 93 N. Y. Supp. 790, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 740.

5. Keller *v.* Riverton Consol. Water Co., 34 Pa. Super. Ct. 301; Austin *v.* Cahill, 99 Tex. 172, 88 S. W. 542, 89 S. W. 552.

6. **Cannot Settle Bill of Exceptions.** — State *v.* Bradley, 194 Mo. 166, 92 S. W. 464.

741. 2. Lassen Irrigation Co. *v.* Superior Ct., (Cal. 1907) 90 Pac. 709.

5. State *v.* Houser, 122 Wis. 534, 100 N. W. 964, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 741.

742. 2. Cheuvront *v.* Horner, (W. Va. 1907) 59 S. E. 964.

3. Bliss *v.* Caille, 149 Mich. 606, 113 N. W. 317.

7. Johnson *v.* Johnson, (Tex. Civ. App. 1905) 89 S. W. 1102.

743. 1. Grafton *v.* Holt, 58 W. Va. 182, 52 S. E. 21, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 742 [743].

3. **Objection Too Late after Judgment.** — Morrow *v.* Watts, 80 Ark. 59, 95 S. W. 988.

744. 2. Hass *v.* Leverton, 128 Iowa 80, 102 N. W. 811, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744.

6. Stafford *v.* Mingo County Ct., 58 W. Va. 93, 51 S. E. 2, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744.

745. 3. See also State *v.* Dirlam, 28 Ohio Cir. Ct. 69.

748. 9. Dupoyster *v.* Clarke, 90 S. W. 1, 28 Ky. L. Rep. 655; State *v.* McCarver, 194 Mo. 717, 92 S. W. 684.

749. 4. Dupoyster *v.* Clarke, (Ky. 1906) 90 S. W. 1; Bower *v.* Daniel, 198 Mo. 289, 95 S. W. 347; Cox *v.* Oliver, (Tex. Civ. App. 1906) 95 S. W. 596.

Powers Exist So Long as Disability of Regular Judge Continues. — Warner *v.* Ford Lumber, etc., Co., 93 S. W. 650, 29 Ky. L. Rep. 527; John Hall Commission Co. *v.* Crook, 87 Miss. 445, 40 So. 20, 1006.

JUDGMENT NOTES.

752. 2. **A Stipulation Waiving and Releasing All Errors** which may intervene in proceedings of confession is sometimes contained in the note. Vennum *v.* Mertens, 119 Mo. App. 461, 95 S. W. 292.

3. Vennum *v.* Mertens, 119 Mo. App. 461, 95 S. W. 292.

753. 3. **A Warrant of Attorney to Confess Judgment in Favor of a Particular Person** named therein gives no authority to confess judgment in favor of another person. Rasmussen *v.* Hagler, 15 N. Dak. 542, 108 N. W. 541.

754. 6. Smith *v.* Weaver, (N. J. 1907) 66 Atl. 941.

JUDGMENTS AND DECREES.

762. 1. State *v.* Webber, 96 Minn. 422, 105 N. W. 490.

3. *In re* Harrington, 147 Cal. 124, 81 Pac. 546; Bossier *v.* Hollingsworth, 117 La. 221, 41 So. 553; State *v.* French, 118 Mo. App. 15, 93 S. W. 295; Raymond *v.* Blancgrass, (Mont. 1908) 93 Pac. 648.

9. Raymond *v.* Blancgrass, (Mont. 1908) 93 Pac. 648.

"Final Decision" Is Equivalent to "Final Decree" or "Final Judgment," as those terms are used in statutes. Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32; Cassatt *v.* Pennsylvania Coal, etc., Co., (C. C. A.) 150 Fed. 48; Cassatt *v.* Webster Coal, etc., Co., (C. C. A.) 150 Fed. 48.

763. 3. Neyens *v.* Flesher, 39 Ind. App. 399, 79 N. E. 1087; Continental Trust Co. *v.* Peterson, (Neb. 1906) 110 N. W. 316; Freund *v.* Freund, (N. J. 1906) 63 Atl. 756.

A Final Judgment disposes of the cause both as to the subject-matter and parties, so far as the court before which it is pending has power to dispose of it. Starkey *v.* Starkey, 166 Ind. 140, 76 N. E. 876.

9. A Judgment for Alimony Is a Judgment In Personam. — Downs *v.* Downs, (Ky. 1906) 96 S. W. 536.

10. Consent Judgment — A Contract. — Bunn *v.* Braswell, 139 N. Car. 135, 51 S. E. 927.

765. 5. State *v.* Donahoe, 5 Penn. (Del.) 278, 63 Atl. 643.

6. Mason *v.* Ward, (Vt. 1907) 67 Atl. 820, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 765.

766. 4. Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932.

6. Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 766.

9. **In Kentucky** it is provided by statute that power of attorney to confess judgment is illegal and void. Aultman, etc., Co. *v.* Meade, (Ky. 1905) 89 S. W. 137.

767. 1. Whelan *v.* Reynolds, 101 Minn. 290, 112 N. W. 223.

2. Mason *v.* Ward, (Vt. 1907) 67 Atl. 820, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 767.

5. Vennum *v.* Mertens, 119 Mo. App. 461, 95 S. W. 292.

768. 1. Leahy *v.* Rohnert, 144 Mich. 304, 107 N. W. 1060.

4. Pressed Steel Car Co. *v.* Steel Car Forge Co., (C. C. A.) 149 Fed. 182.

5. Jaqua *v.* Harkins, (Ind. App. 1907) 82 N. E. 920; State *v.* Webber, 96 Minn. 422, 105 N. W. 490, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 768.

12. Citizens' Bank *v.* Young, (Neb. 1907) 110 N. W. 1003, recognizing the common-law rule, but [illegible] modification thereof.

769. 5. Citizens' Bank *v.* Young, (Neb. 1907) 110 N. W. 1003.

In Kentucky judgments for money are not liens upon the judgment debtor's property. Low *v.* Skaggs, (Ky. 1907) 105 S. W. 439.

772. 4. Evans *v.* Silvey, 144 Ala. 398, 42 So. 62; Edinburgh American Land Mortg. Co. *v.* Grant, (Ala. 1907) 44 So. 554; Raymond *v.* Blancgrass, (Mont. 1908) 93 Pac. 648; Taylor *v.* Bell, 121 N. Y. App. Div. 437, 106 N. Y. Supp. 273; Budd *v.* Gallier, (Oregon 1907) 89 Pac. 638; Burns *v.* Ross, 215 Pa. St. 293, 64 Atl. 526.

775. 3. **Indexing Not Essential to validity** of judgment between the parties. State Sav. Bank *v.* Shinn, 13 Iowa 365, 106 N. W. 921.

4. Citizens' Bank *v.* Young, (Neb. 1907) 110 N. W. 1003.

8. **A Judgment Docketed** against Mrs. Wm. Rogers does not constitute a lien on property of Mrs. Lucy Rogers, although they are one and the same person. Uihlein *v.* Gladieux, 74 Ohio St. 232, 78 N. E. 363.

777. 1. **An Entry Substantially Correct** is sufficient to fix a lien on property of the judgment debtor. Bradley *v.* Janssen, (Tex. Civ. App. 1906) 93 S. W. 506.

7. **Judgment Is Lien on Coal Land.** — Coolbaugh *v.* Lehigh, etc., Coal Co., 213 Pa. St. 28, 62 Atl. 94.

8. **An Unpatented Mining Claim** is real property to which a judgment lien attaches. Bradford *v.* Morrison, (Ariz. 1906) 86 Pac. 6.

779. 7. Commerce Vault Co. *v.* Barrett, 222 Ill. 169, 78 N. E. 47.

780. 2. **Rule Applicable to Deed Absolute in Form but Intended as Mortgage.** — Graves Elevator Co. *v.* Seitz, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 552, 104 N. Y. Supp. 852.

783. 8. **Lands Held in Trust by the United States for an Indian** are not subject to the lien of a personal judgment against him. Beall *v.* Graham, (Kan. 1907) 88 Pac. 543.

786. 1. Collins *v.* Denny Clay Co., 41 Wash. 136, 82 Pac. 1012.

4. Judgment a Lien on Private Lands of Municipality Held for Its Benefit. — Beadles *v.* Fry, 15 Okla. 428, 82 Pac. 1041.

790. 6. Wehrheim *v.* Smith, 226 Ill. 346, 80 N. E. 908.

793. 5. Parrott *v.* Wolcott, 75 Neb. 530, 106 N. W. 607.

7. Parrott *v.* Wolcott, 75 Neb. 530, 106 N. W. 607.

9. Parrott *v.* Wolcott, 75 Neb. 530, 106 N. W. 607.

797. 9. **An Unrecorded Deed** executed before rendition of judgment is not affected by the judgment. McCalla *v.* Knight Invest. Co., (Kan. 1908) 94 Pac. 126.

801. 1. Evans *v.* Silvey, 144 Ala. 398, 42 So. 62; Halton *v.* Schmarback, 15 N. Dak. 38, 106 N. W. 36; J. C. Lewis Co. *v.* Adamski, 131 Wis. 311, 111 N. W. 495.

Lien Expires Six Years after Entry. — Meikle *v.* Cloquet, 44 Wash. 513, 87 Pac. 841; Heman *v.* Rinehart, (Wash. 1906) 87 Pac. 953.

802. 5. Execution Not Issued Within Five Years from Rendition of Judgment — Lien Becomes Dormant. — Glenn *v.* Glenn, (Neb. 1907) 112 N. W. 321.

809. 1. Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393.

3. Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393; Campbell *v.* Kauffman Milling Co., 127 Mo. App. 287, 105 S. W. 286.

4. Western Bank *v.* Coldeway, (Ky. 1906) 94 S. W. 1; Citizens' Nat. Bank *v.* Donnell, 195 Mo. 564, 94 S. W. 516.

5. Jonesboro, etc., R. Co. *v.* United Iron Works Co., 117 Mo. App. 153, 94 S. W. 726.

812. 2. Milcke *v.* Duross, 144 Mich. 243, 107 N. W. 907.

814. 1. *United States.* — O' Connor *v.* O'Connor, (C. C. A.) 142 Fed. 449; Miocene Ditch Co. *v.* Moore, (C. C. A.) 150 Fed. 483; Nelson *v.* Meehan, (C. C. A.) 155 Fed. 1.

California. — Erickson *v.* Stockton, etc., R. Co., 148 Cal. 206, 82 Pac. 961.

Colorado. — O'Brophy *v.* Era Gold Min. Co., 36 Colo. 247, 85 Pac. 679; Harris *v.* McLaughlin, 39 Colo. 459, 90 Pac. 93.

Georgia. — Phillips *v.* Phillips, 124 Ga. 912, 53 S. E. 457; Latimer *v.* Sweat, 125 Ga. 475, 54 S. E. 673; Georgia R., etc., Co. *v.* Hamer, 1 Ga. App. 673, 58 S. E. 54; Brawner *v.* Maddox, 1 Ga. App. 332, 58 S. E. 278; Ford *v.* Clark, 129 Ga. 292, 58 S. E. 818.

Illinois. — Griswold *v.* Smith, 221 Ill. 341, 77 N. E. 551.

Indian Territory. — Wagoner Nat. Bank *v.* Welch, (Indian Ter. 1907) 104 S. W. 610.

Kansas. — Chapman *v.* Western Irrigation Co., (Kan. 1907) 90 Pac. 284.

Kentucky. — U. S. Fidelity, etc., Co. *v.* Boyd, (Ky. 1906) 94 S. W. 35; Lindsey *v.* Brawner, (Ky. 1906) 97 S. W. 1.

Maryland. — Diamond State Telephone Co. *v.* Blake, (Md. 1907) 66 Atl. 631.

Missouri. — D. C. Wise Coal Co. *v.* Columbia Lead, etc., Co., 123 Mo. App. 249, 100 S. W. 680; Scott *v.* Joffee, 125 Mo. 537, 102 S. W. 1038.

New York. — Tim *v.* Berrick, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 351, 107 N. Y. Supp. 665.

Oklahoma. — Jackson *v.* Tenney, (Okla. 1906) 87 Pac. 867, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 814.

Oregon. — Ayers *v.* Lund, (Oregon 1907) 89 Pac. 806.

Tennessee. — Nashville R., etc., Co. *v.* Trawick, (Tenn. 1907) 99 S. W. 695.

Texas. — Cohen *v.* Moore, (Tex. 1907) 104 S. W. 1053.

Washington. — Stark *v.* Royce, 44 Wash. 287, 87 Pac. 340.

West Virginia. — Hansford *v.* Tate, 61 W. Va. 207, 56 S. E. 372; Guinn *v.* Warburton, (W. Va. 1908) 60 S. E. 1100.

A Municipal Court Judgment cannot be amended by that court unless a motion to amend is made within five days from the entry of the judgment. Ostrom *v.* Sapolsky, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 610, 96 N. Y. Supp. 1070; Lissner *v.* Dochtermann, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 624, 97 N. Y. Supp. 230; Barron *v.* Feist, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 589, 101 N. Y. Supp. 72.

815. 3. Judgment on the Merits May Be Changed to One of Nonsuit. — Freedman *v.* Sirota, 109 N. Y. App. Div. 874, 96 N. Y. Supp. 812.

5. Meritorious Reason Must Be Assigned for Motion Made. — Drought *v.* Poage, (Ga. 1907) 59 S. E. 728.

6. Judgment May Be Amended after Attempted Appeal. — Hoffman-Bruner Granite Co. *v.* Stark, 132 Iowa 100, 108 N. W. 329.

Judgment May Be Amended after Appeal Taken. — Griffin *v.* Frank Parmalee Co., 232 Ill. 503, 83 N. E. 1041.

9. Maginn *v.* Standard Equipment Co., (C. C. A.) 150 Fed. 139; Wells *v.* Moore, (Tex. Civ. App. 1906) 93 S. W. 220; U. S., etc., Trust Co. *v.* Young, (Tex. Civ. App. 1907) 101 S. W. 1045.

816. 1. *United States.* — Wetmore *v.* Karrick, 205 U. S. 141, 27 U. S. Sup. Ct. 434.

Alabama. — A. G. Story Mercantile Co. *v.* McClellan, 145 Ala. 629, 40 So. 123.

Arkansas. — Liddell *v.* Bodenheimer, 78 Ark. 364, 95 S. W. 475.

Colorado. — Venner *v.* Denver Union Water Co., 40 Colo. 212, 90 Pac. 623.

Georgia. — Giddens *v.* Alexander, 127 Ga. 734, 56 S. E. 1014.

Kansas. — Chapman *v.* Western Irrigation Co., (Kan. 1907) 90 Pac. 284; Lewis *v.* Woodrum, (Kan. 1907) 92 Pac. 306.

Missouri. — Davison *v.* Davison, 207 Mo. 702, 106 S. W. 1.

Nebraska. — Meade Plumbing, etc., Co. *v.* Irwin, (Neb. 1906) 109 N. W. 391; State *v.* State Journal Co., (Neb. 1907) 111 N. W. 118.

New Jersey. — State *v.* Tolla, 73 N. J. L. 249, 63 Atl. 338, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 816.

South Carolina. — Williams *v.* Ulmer, 73 S. Car. 579, 53 S. E. 999.

Texas. — Kempner *v.* Crockett First Nat. Bank, (Tex. Civ. App. 1906) 99 S. W. 112.

West Virginia. — Barbour *v.* Tompkins, 58 W. Va. 572, 52 S. E. 707.

In North Dakota, a judgment may be amended as to substance after the term at which rendered. Dedrick *v.* Charrier, 15 N. Dak. 515, 108 N. W. 38.

817. 1. Venner *v.* Denver Union Water Co., 40 Colo. 212, 90 Pac. 623, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 817.

818. 2. Venner *v.* Denver Union Water Co., 40 Colo. 212, 90 Pac. 623.

4. A. G. Story Mercantile Co. *v.* McClellan, 145 Ala. 629, 40 So. 123; Fay *v.* Stubenrauch, 2 Cal. App. 88, 83 Pac. 82; Latimer *v.* Sweat, 125 Ga. 475, 54 S. E. 673; Rucker *v.* Williams, (Ga. 1908) 60 S. E. 155; West Chicago Park Com'rs *v.* Boal, 232 Ill. 248, 83 N. E. 824; Cubitt *v.* Cubitt, 74 Kan. 353, 86 Pac. 475, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818; Christisen *v.* Bartlett, 73 Kan. 401, 84 Pac. 530; Dersch *v.* Walker, (Ky. 1905) 80 S. W. [illegible]; Davison *v.* Davison, 207 Mo. 702, 106 S. W. 1.

820. 1. McGourin *v.* De Funiak Springs, 52 Fla. 556, 42 So. 187; U. S. *v.* Rio Grande Dam, etc., Co., (N. Mex. 1906) 85 Pac. 393.

6. Cubitt *v.* Cubitt, 74 Kan. 353, 86 Pac. 475, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 820.

821. 3. Sioux Falls Electric Light, etc., Co. *v.* Sioux Falls, (S. Dak. 1906) 108 N. W. 488.

4. After Term, judgment cannot be amended so as to substitute another defendant. Chapman *v.* Western Irrigation Co., (Kan. 1907) 90 Pac. 284.

5. Fay *v.* Stubenrauch, 2 Cal. App. 88, 83 Pac. 82.

822. 1. Eisman *v.* Whalen, 39 Ind. App. 250, 79 N. E. 514, 1072; Cubitt *v.* Cubitt, 74 Kan. 353, 86 Pac. 475, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 822.

823. 1. Karrick *v.* Wetmore, 25 App. Cas. (D. C.) 427, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 823.

824. 1. Malone *v.* Johnson, (Tex. Civ. App. 1907) 101 S. W. 503.

3. O'Connor *v.* O'Connor, (C. C. A.) 142 Fed. 449; Nelson *v.* Meehan, (C. C. A.) 155 Fed. 1; Davis *v.* Vinson Land Co., (Kan. 1907) 90 Pac. 766, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 824; Martindale *v.* Battey, 73 Kan. 92, 84 Pac. 527; Spangler *v.* Vinson Land Co., (Kan. 1907) 90 Pac. 768; Heffernan *v.* Ragsdale, 199 Mo. 375, 97 S. W. 891, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 824; Amell *v.* Fisher, (Neb. 1907) 113 N. W. 260; Hockwald *v.* American Surety Co., (Tex. Civ. App. 1907) 102 S. W. 181; Kuteman *v.* Carroll, (Tex. Civ. App. 1907) 105 S. W. 222.

825. 2. Dearborn *v.* Gann, 126 Mo. App. 638, 105 S. W. 14; Huffman *v.* Huffman, (Oregon 1906) 86 Pac. 593, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 825; Jennings *v.* Bennett, 56 W. Va. 146, 49 S. E. 23, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 825.

3. Sweeney *v.* Tritsch, (Ala. 1907) 44 So. 184; Orchard *v.* National Exchange Bank, 121 Mo. App. 338, 98 S. W. 824, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 825; State *v.* Tolla, 73 N. J. L. 249, 63 Atl. 338.

826. 1. Heffernan *v.* Ragsdale, 199 Mo. 375, 97 S. W. 891, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 826.

827. 2. Nelson *v.* Meehan, 2 Alaska 484, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 827; Chicago *v.* Newberry Library, 224 Ill. 330, 79 N. E. 666; Trimble *v.* Corey, (Neb. 1907) 111 N. W. 376; State *v.* Tolla, 73 N. J. L. 249, 63 Atl. 338; York County *v.* Thompson, 212 Pa. St. 561, 61 Atl. 1024; Jordan *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 398; Cowan *v.* Brett, (Tex. Civ. App. 1906) 97 S. W. 330.

Power to Set Aside and Annul Judgments Obtained by Fraud is lodged in courts of superior general jurisdiction, but not in city courts. Steinmetz *v.* G. H. Hammond Co., 167 Ind. 153, 78 N. E. 628.

828. 2. Nelson *v.* Meehan, 2 Alaska 484, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 828.

3. Boggs *v.* Inter-American Min., etc., Co., 105 Md. 371, 66 Atl. 259; Eichner *v.* Metropolitan St. R. Co., 114 N. Y. App. Div. 247, 99 N. Y. Supp. 870.

830. 6. U. S. Fidelity, etc., Co. *v.* Com., (Ky. 1907) 101 S. W. 360.

831. 2. Roberts *v.* Wilson, 3 Cal. App. 32, 84 Pac. 216; Barnard Leas Mfg. Co. *v.* Washburn, (Ky. 1907) 99 S. W. 664.

3. Stretch *v.* Montezuma Min. Co., (Nev. 1906) 86 Pac. 445.

833. 2. U. S. *v.* Rio Grande Dam, etc., Co., (N. Mex. 1906) 85 Pac. 795.

3. Donovan *v.* Miller, (Idaho 1906) 88 Pac. 82.

835. 3. **A Judgment Will Be Vacated to Let in Evidence Not Obtainable on First Trial.** Richard *v.* National Distilling Co., (Supm. Ct. App. T.) 95 N. Y. Supp. 547.

6. **Taxation of Costs Without Notice** affords no ground for vacating judgment. Nichols *v.* Nichols, (Vt. 1907) 67 Atl. 531.

838. 1. **In California** it has been held that a judgment may be vacated for erroneous conclusions of law. Ballerino *v.* Superior Ct., 2 Cal. App. 146, 84 Pac. 225.

3. Poole *v.* Peoria Cordage Co., 6 Indian Ter. 298, 97 S. W. 1015; Williamson *v.* Williamson, 15 Okla. 680, 83 Pac. 718.

840. 4. *In re* Tinn, 148 Cal. 773, 84 Pac. 152; Thomas *v.* Superior Ct., (Cal. 1907) 92 Pac. 739; Estep *v.* Estep, (Ky. 1907) 99 S. W. 280; McClellan *v.* Troendle, (Ky. 1907) 99 S. W. 329; Biensteadt *v.* Clinton Circuit Judge, 142 Mich. 633, 105 N. W. 875; Heffernan *v.* Ragsdale, 199 Mo. 375, 97 S. W. 891, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 840; Kelsey *v.* Dilks, (N. J. 1907) 66 Atl. 1086; Keeney *v.* Fargo, 14 N. Dak. 419, 105 N. W. 92; Guthrie *v.* McKennon, (Okla. 1907) 91 Pac. 851; Masterson *v.* Whipple, 27 R. I. 192, 61 Atl. 446.

841. 2. *In re* Tinn, 148 Cal. 773, 84 Pac. 152; Kelsey *v.* Dilks, (N. J. 1907) 66 Atl. 1086.

6. Keeney *v.* Fargo, 14 N. Dak. 419, 105 N. W. 92.

7. *Eleven Years.* — Johnson *v.* Frothingham, 214 Pa. St. 523, 63 Atl. 823.

Four Years. — Keeney *v.* Fargo, 14 N. Dak. 419, 105 N. W. 92.

Six Months. — Park *v.* Regan, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 235, 105 N. Y. Supp. 253.

842. 2. Orchard *v.* National Exch. Bank, 121 Mo. App. 338, 98 S. W. 824, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 842.

844. 1. Montijo *v.* Sherer, 5 Cal. App. 736, 91 Pac. 261; Bannerot *v.* McClure, 39 Colo. 472, 90 Pac. 70; Holzman *v.* Henneberry, 11 Idaho 428, 83 Pac. 497, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 844; Poole *v.* Peoria Cordage Co., 6 Indian Ter. 298, 97 S. W. 1015; White *v.* Smith, (N. J. 1907) 65 Atl. 1017; Peck *v.* Kamsler, (Supm. Ct. App. T.) 104 N. Y. Supp. 346; Colean Mfg. Co. *v.* Feckler, (N. Dak. 1907) 112 N. W. 993; Augustine *v.* Wolf, 215 Pa. St. 558, 64 Atl. 777; *In re* Buggs, 71 S. Car. 439, 51 S. E. 263; Kjetland *v.* Pederson, (S. Dak. 1905) 104 N. W. 677; Evans *v.* Terrell, (Tex. Civ. App. 1906) 95 S. W. 684; Cutler *v.* Haycock, (Utah 1907) 90 Pac. 897; Jolly *v.* Haycock, (Utah 1907) 90 Pac. 901; Massuco *v.* Tomasi, (Vt. 1907) 67 Atl. 551; Reeves *v.* Kroll, (Wis. 1907) 113 N. W. 440.

845. 3. Zabel *v.* Zabel, (Cal. 1907) 90 Pac. 191; Bannerot *v.* McClure, 39 Colo. 472, 90 Pac. 70; Keeney *v.* Fargo, 14 N. Dak. 419, 105 N. W. 92; Augustine *v.* Wolf, 215 Pa. St. 558, 64 Atl. 777; Johnson *v.* Royal Ins. Co., (Pa. 1907) 68 Atl. 55.

846. 1. Peterson *v.* Plunkett, 4 Cal. App. 302, 88 Pac. 283; Gray *v.* Lawlor, 151 Cal. 352, 90 Pac. 691; Bannerot *v.* McClure, 39 Colo. 472, 90 Pac. 70; Holzeman *v.* Henneberry, 11 Idaho 428, 83 Pac. 497, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; Schaefer *v.* Gold Cord Min. Co., (Mont. 1908) 93 Pac. 344; Flowers *v.* King, 145 N. Car. 234, 58 S. E. 1074 (recognizing the general rule, but holding it not applicable to judgments void because of want of jurisdiction); Stockton *v.* Wolverine Gold Min. Co., 144 N. Car. 595, 57 S. E. 335;

Bartlett *v.* S. M. Jones Co., (Tex. Civ. App. 1907) 103 S. W. 705; Cutler *v.* Haycock, (Utah 1907) 90 Pac. 897; Jolly *v.* Haycock, (Utah 1907) 90 Pac. 901; Haefer *v.* Sawtelle, 43 Wash. 23, 85 Pac. 853; Brandt *v.* Little, (Wash. 1907) 91 Pac. 765.

817. 2. Gray *v.* Lawlor, 151 Cal. 352, 90 Pac. 691; Olson *v.* Sargent County, 15 N. Dak. 146, 107 N. W. 43; Redding *v.* Puget Sound Iron, etc., Works, 44 Wash. 200, 87 Pac. 119; Menasha Wooden Ware Co. *v.* Michelstetter, 126 Wis. 427, 105 N. W. 927.

818. 1. Colcan Mfg. Co. *v.* Feckler, (N. Dak. 1907) 112 N. W. 993.

4. Ebner *v.* Heid, 2 Alaska 600, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 849 [848].

6. Ebner *v.* Heid, 2 Alaska 600, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 849 [848]; Jackson *v.* Grosser, 218 Ill. 494, 75 N. E. 1032; Lyon *v.* Lyon, 230 Ill. 366, 82 N. E. 850; Bleakley *v.* Barclay, (Kan. 1907) 89 Pac. 906; Corbett *v.* Craven, (Mass. 1907) 82 N. E. 37; El Capitan Land, etc., Co. *v.* Lees, (N. Mex. 1906) 86 Pac. 924; Ross *v.* Dewey, 215 Pa. St. 526, 64 Atl. 674; Hoskins *v.* Somerset Coal Co., (Pa. 1908) 68 Atl. 843; H. F. Watson Co. *v.* Citizens' Concrete Co., (R. I. 1907) 68 Atl. 310.

819. 1. Brownell *v.* Snyder, 122 N. Y. App. Div. 246, 106 N. Y. Supp. 771, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 849.

850. 4. Grand Pac. Hotel Co. *v.* Pinkerton, 217 Ill. 61, 75 N. E. 427; Danley *v.* Hibbard, 222 Ill. 88, 78 N. E. 39; Fountain Head Drainage Dist. *v.* Wright, 228 Ill. 208, 81 N. E. 849; Morgan *v.* Hendricks, 80 Vt. 284, 67 Atl. 702; Hubbard *v.* Rutland R. Co., (Vt. 1908) 68 Atl. 647.

852. 1. Huger *v.* Cunningham, 126 Ga. 684, 56 S. E. 64; Danley *v.* Hibbard, 222 Ill. 88, 78 N. E. 39; Grace, etc., Co. *v.* Sanborn, 225 Ill. 138, 80 N. E. 88; George *v.* Robinson, 36 Ind. App. 310, 75 N. E. 607.

2. Robbins *v.* Bosserman, 133 Iowa 318, 110 N. W. 587.

853. 2. Varn *v.* Pelot, (Fla. 1908) 45 So. 1015; Langan *v.* Enos F. Escape Co., 233 Ill. 308, 84 N. E. 267.

855. 2. **A General Verdict upon Counts for Different Causes of Action,** some of which are bad, will be arrested. Massuco *v.* Tomasi, (Vt. 1907) 67 Atl. 551.

3. Winkelman *v.* Maddox, 119 Mo. App. 658, 95 S. W. 308.

856. 2. Philbin *v.* Thurn, 103 Md. 342, 63 Atl. 571.

3. Reid *v.* Hearn, 127 Ga. 117, 56 S. E. 129; Reid *v.* Beck, 127 Ga. 117, 56 S. E. 130; Danley *v.* Hibbard, 222 Ill. 88, 78 N. E. 39; Grace, etc., Co. *v.* Sanborn, 225 Ill. 138, 80 N. E. 88; Chicago City R. Co. *v.* Shreve, 226 Ill. 530, 80 N. E. 1049.

4. Huger *v.* Cunningham, 126 Ga. 684, 56 S. E. 64.

858. 1. **Proper Time for Motion** is at the term at which the judgment was rendered. Leffler *v.* Union Compress Co., 126 Ga. 662, 55 S. E. 927.

Motion for Arrest of Judgment Must Be Made Before the End of the Term at which the trial was had. Wright *v.* Fetters, 121 Mo. App. 588, 97 S. W. 627.

859. 6. Hayes *v.* Koepfli, (Wash. 1907) 89 Pac. 151.

860. 5. **Payment to Officer Having No Authority,** who does not turn the money over to the creditor, does not amount to a discharge. Brooks Oil Co. *v.* Weatherford, (Miss. 1907) 44 So. 928.

863. 2. National Bank *v.* Los Angeles Iron, etc., Co., (Cal. App. 1906) 84 Pac. 466; Tarlton *v.* Orr, (Tex. Civ. App. 1905) 90 S. W. 534.

Payment of Judgment by Surety Does Not Satisfy Judgment Against Maker — McKenna *v.* Corcoran, 70 N. J. Eq. 627, 61 Atl. 1026.

864. 4. Honce *v.* Schram, 73 Kan. 368, 85 Pac. 535.

866. 6. Janvier *v.* Culbreth, (Del. 1905) 63 Atl. 309.

7. Janvier *v.* Culbreth, (Del. 1905) 63 Atl. 309.

867. 4. Haynes *v.* Blanchard, 194 Mass. 244, 80 N. E. 504.

868. 7. Janvier *v.* Culbreth, (Del. 1905) 63 Atl. 309.

8. Janvier *v.* Culbreth, (Del. 1905) 63 Atl. 309.

10. Janvier *v.* Culbreth, (Del. 1905) 63 Atl. 309.

869. 3. Ackerman *v.* Pfent, 145 Mich. 710, 108 N. W. 1084.

7. Pilcher *v.* Hickman, (Ala. 1906) 41 So. 741.

Court Has Power to Direct an Order of Partial Satisfaction. — Blake *v.* Farrell, 31 Utah 110, 86 Pac. 805.

871. 2. Acme Harvester Co. *v.* Magill, 15 N. Dak. 116, 106 N. W. 563.

5. Acme Harvester Co. *v.* Magill, 15 N. Dak. 116, 106 N. W. 563.

10. Acme Harvester Co. *v.* Magill, 15 N. Dak. 116, 106 N. W. 563.

872. 8. Brown *v.* Lapp, (Ky. 1905) 89 S. W. 304.

10. Cannot Maintain Action for Revival, — Strother *v.* Hilliker, 120 Mo. App. 165, 96 S. W. 482.

873. 7. Little Rock Trust Co. *v.* Southern Missouri, etc., R. Co., 195 Mo. 669, 93 S. W. 944; Bamberger *v.* American Surety Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 221, 96 N. Y. Supp. 665.

877. 3. **The Assignment of a Part of a Judgment** conveys an equitable interest therein. Gebhart *v.* Merchant, (Ark. 1907) 105 S. W. 1036.

878. 5. Burns *v.* George, (Ala. 1908) 45 So. 421; Brown *v.* Lapp, (Ky. 1905) 89 S. W. 304.

879. 5. Geisenberger *v.* Cotton, 116 La. 651, 40 So. 929.

881. 7. Hinkley *v.* Champaign Nat. Bank, 216 Ill. 559, 75 N. E. 210.

882. 3. **No Warranty that Judgment Is Unassailable.** — Hinkley *v.* Champaign Nat. Bank, 216 Ill. 559, 75 N. E. 210.

883. 6. Cohen *v.* Cohen, 150 Cal. 99, 88 Pac. 267; Hinkley *v.* Champaign Nat. Bank, 216 Ill. 559, 75 N. E. 210; McManus *v.* Cash, (Tex. 1908) 108 S. W. 800.

884. 4. Cohen *v.* Cohen, 150 Cal. 99, 88

Pac. 267; Brown *v.* Lapp, (Ky. 1905) 89 S. W. 304; Boice *v.* Conover, 69 N. J. Eq. 580, 61 Atl. 159; Small *v.* Usher, 77 S. Car. 112, 57 S. E. 623; McManus *v.* Cash, (Tex. 1908) 108 S. W. 800.

885. 1. An Assignee Is Chargeable with Knowledge of His Attorney concerning litigation affecting the judgment. Boice *v.* Conover, 69 N. J. Eq. 580, 61 Atl. 159.

10. Cohen *v.* Cohen, 150 Cal. 99, 88 Pac. 267.

JUDICIAL NOTICE.

894. 1. Definition. — Sun Ins. Office *v.* Western Woolen Mill Co., 72 Kan. 41, 82 Pac. 513.

"The process of taking judicial notice does not necessarily imply that the judge at the moment actually knows and feels sure of the truth of the matter submitted; it merely relieves the party from offering evidence because the matter is one which the judge either knows or can easily discover." Ball *v.* Flora, 26 App. Cas. (D. C.) 394.

895. 1, *United States.* — Territory *v.* Denver, etc., R. Co., 27 U. S. Sup. Ct. 1, 203 U. S. 38; Jacobson *v.* Massachusetts, 197 U. S. 11, 25 U. S. Sup. Ct. 358; U. S. *v.* Strauss, 136 Fed. 185, 69 C. C. A. 201, *reversing* 128 Fed. 473; Baker *v.* F. A. Duncombe Mfg. Co., (C. C. A.) 146 Fed. 744.

Arizona. — Copper Queen Consol. Min. Co. *v.* Board of Equalization, (Ariz. 1906) 84 Pac. 511.

Arkansas. — Auten *v.* Board of Directors, 83 Ark. 431, 104 S. W. 130.

Georgia. — Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52; Central of Georgia R. Co. *v.* Wright, 125 Ga. 617, 54 S. E. 64.

Illinois. — Chicago *v.* Duffy, 117 Ill. App. 261 (*quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 895), *affirmed* 218 Ill. 242; Wabash R. Co. *v.* Thomas, 117 Ill. App. 110; Denegre *v.* Walker, 114 Ill. App. 234, *decree affirmed* 214 Ill. 133, 73 N. E. 409.

Indiana. — Indianapolis St. R. Co. *v.* Ray, 167 Ind. 236, 78 N. E. 978.

Iowa. — Dorr Cattle Co. *v.* Chicago G. W. R. Co., 128 Iowa 359, 103 N. W. 1003.

Kansas. — Sun Ins. Office *v.* Western Woolen Mill Co., 72 Kan. 41, 82 Pac. 513.

Kentucky. — Ayer, etc., Tie Co. *v.* Keown, (Ky. 1906) 93 S. W. 588.

Louisiana. — State *v.* Maloney, 115 La. 498, 39 So. 539.

Mississippi. — Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788.

Nevada. — *Ex. p.* Kair, 28 Nev. 425, 82 Pac. 453, *affirming* 28 Nev. 127, 80 Pac. 463.

New Hampshire. — State *v.* York, 74 N. H. 125, 65 Atl. 685.

New York. — O'Reilly *v.* Erlanger, 108 N. Y. App. Div. 318, 95 N. Y. Supp. 760; Kleffmann *v.* Dry Dock, etc., R. Co., 104 N. Y. App. Div. 416, 94 N. Y. Supp. 741.

North Carolina. — Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458.

Oregon. — State *v.* Carmody, (Oregon 1907) 91 Pac. 441.

Texas. — San Antonio, etc., R. Co. *v.* Mertink, (Tex. Civ. App. 1907) 102 S. W. 153.

Virginia. — Southern R. Co. *v.* Blanford, 105 Va. 373, 54 S. E. 1.

Washington. — State *v.* Mutty, 39 Wash. 624, 82 Pac. 118.

West Virginia. — Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017.

3. Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458.

4, People *v.* Board of Supervisors, 122 Ill. App. 40, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 894. See also Guinn *v.* Cumberland County Ct., (Ky. 1906) 90 S. W. 274.

896. 2. Lantry *v.* Hoffman, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 261, 105 N. Y. Supp. 353.

3. Sun Ins. Office *v.* Western Woolen Mill Co., 72 Kan. 41, 82 Pac. 513. But see State *v.* Wilhite, 132 Iowa 226, 109 N. W. 730.

4. *Ex p.* Berry, 147 Cal. 523, 82 Pac. 44.

5. *Ex p.* Berry, 147 Cal. 523, 82 Pac. 44; State *v.* Wilhite, 132 Iowa 226, 109 N. W. 730; Sun Ins. Office *v.* Western Woolen Mill Co., 72 Kan. 41, 82 Pac. 513.

897. 2. State *v.* Bunnell, 131 Wis. 198, 110 N. W. 177, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897.

"R. L. D." when used in connection with the collection of internal revenue. State *v.* Nippert, 74 Kan. 371, 86 Pac. 478.

"F. O. B." — The courts will take judicial notice that f. o. b. means "free on board." Kilmer *v.* Moneyweight Scale Co., 36 Ind. App. 568, 76 N. E. 271.

Pt. — Judicial notice will be taken that "Pt." is an abbreviation of "President." Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13.

898. 1. Mayes *v.* Palmer, 206 Mo. 293, 103 S. W. 1140.

5. Ferrell *v.* Ellis, 129 Iowa 614, 105 N. W. 993; Page *v.* McClure, 79 Vt. 83, 64 Atl. 451.

899. 1. Alameda County *v.* Dalton, 148 Cal. 246, 82 Pac. 1050.

4, Sims *v.* State, 1 Ga. App. 776, 57 S. E. 1039.

Facts Judicially Noticed. — That a nickel is lawful current coin representing five cents. Barddell *v.* State, 144 Ala. 54, 39 So. 975.

900. 5. Stephens *v.* Elliott, (Mont. 1907) 92 Pac. 45, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 900; Valente *v.* Sierra R. Co., 151 Cal. 534, 91 Pac. 481.

901. 2. Facts Contravening Positive Admitted Averments. — The court cannot negative positive admitted averments by taking judicial notice of facts which contravene such averments. People *v.* Michigan Cent. R. Co., 145 Mich. 140, 108 N. W. 772.

4. Baker *v.* F. A. Duncombe Mfg. Co., (C. C. A.) 146 Fed. 744; State *v.* Silver Bow County, 34 Mont. 426, 87 Pac. 450.

902. 1. That the District of Columbia Is the Seat of Government. — Milliken *v.* Dotson, 117 N. Y. App. Div. 527, 102 N. Y. Supp. 564.

A Federal Court will take judicial notice that the defendant is a federal corporation, although this does not appear from the plaintiffs' pleadings. Heffelfinger *v.* Choctaw, etc., R. Co., 140 Fed. 75.

The Admiralty Courts will take judicial notice of the intimate commercial relations existing

between American ports. The Elihu Thompson, 139 Fed. 89.

The Uses of Common Tools. — Post *v.* Chicago, etc., R. Co., 121 Mo. App. 562, 97 S. W. 233.

The General Duties and Character of the Occupations Known as Professions. — Wamser *v.* Browning, 109 N. Y. App. Div. 53, 95 N. Y. Supp. 1051.

That the Breaking of a Trolley Pole does not happen in the ordinary course of events unless there is some negligence in the construction or management of it. Cincinnati Traction Co. *v.* Holzenkamp, 74 Ohio St. 379, 78 N. E. 529.

That Draw Poker is a gambling game. Shreveport *v.* Bowen, 116 La. 522, 40 So. 859.

2. Scufferle *v.* MacFarland, 28 App. Cas. (D. C.) 94.

3. Scufferle *v.* MacFarland, 28 App. Cas. (D. C.) 94; Elser *v.* Gross Point, 223 Ill. 230, 79 N. E. 27; Hawley *v.* Jahnel, (Neb. 1906) 106 N. W. 459; Hawley *v.* Neilson, (Neb. 1906) 106 N. W. 459; Hawley *v.* Barry, (Neb. 1906) 106 N. W. 459; Hawley *v.* Pound, (Neb. 1906) 106 N. W. 458; Hawley *v.* Von Lanken, 75 Neb. 597, 106 N. W. 456; Morton *v.* Oregon Short Line R. Co., 48 Oregon 444, 87 Pac. 151, 1046; Putnam *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1906) 94 S. W. 1102.

901. 5. Putnam *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1906) 94 S. W. 1102.

6. Dayton, etc., Traction Co. *v.* Marshall, 36 Ind. App. 491, 75 N. E. 824; Orvik *v.* Casselman, 15 N. Dak. 34, 105 N. W. 1105.

7. State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294, *citing* 17 AM. AND ENG. ENCYC OF LAW (2d ed.) 904; Green *v.* Lineville Drug Co., (Ala. 1907) 43 So. 216; Scufferle *v.* MacFarland, 28 App. Cas. (D. C.) 94; Worden *v.* Cole, 74 Kan. 226, 86 Pac. 464.

905. 1. Scufferle *v.* MacFarland, 28 App. Cas. (D. C.) 94; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294.

3. Harrison *v.* Fite, 148 Fed. 781, 78 C. C. A. 447; Terrell *v.* Paducah, (Ky. 1906) 92 S. W. 310; People *v.* Board of Supervisors, 122 Ill. App. 40; McKinney *v.* Northcutt, 114 Mo. App. 146, 89 S. W. 351.

Where it is alleged that a river is navigable the court cannot, on demurrer, take judicial notice that it is nonnavigable and so prevent proof to show its navigability being introduced. State *v.* Norcross, (Wis. 1907) 112 N. W. 40.

Tidal Waters. — McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 525, 61 Atl. 710.

4. Atchison, etc., R. Co. *v.* Paxton, 75 Kan. 197, 88 Pac. 1082; Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905; Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 574, 581, 53 S. E. 362.

906. 2. Reasonable Time for Transportation by Express. — Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458.

3. Dupree *v.* State, (Ala. 1907) 42 So. 1004, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 906; Green *v.* Lineville Drug Co., (Ala. 1907) 43 So. 216; Anniston Electric, etc., Co. *v.* Elwell, 141 Ala. 317, 42 So. 45; Cleveland, etc., R. Co. *v.* Miller, (Ind. App. 1907) 81 N. E. 517; State *v.* Arthur, 129 Iowa 235, 105 N. W. 422; Lowville, etc., R. Co. *v.* Elliott, 115 N. Y. App. Div. 884, 101 N. Y. Supp. 328; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294; Com. *v.* Salawich, 28 Pa. Super. Ct. 330.

5. Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458.

It will be judicially noticed that a place is a city and a county seat in another state. Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423.

907. 1. Malone *v.* La Croix, 143 Ala. 657, 144 Ala. 648, 41 So. 724; People *v.* Michigan Cent. R. Co., 145 Mich. 140, 108 N. W. 772; State *v.* Flynn, 119 Mo. App. 712, 94 S. W. 543; Frank *v.* Gump, 104 Va. 306, 51 S. E. 358.

4. Existence of Civil War. — Day *v.* Smith, 87 Miss. 395, 39 So. 526.

Existence of Peace between United States and Foreign Nation. — Trotta *v.* Johnson, (Ky. 1906) 90 S. W. 540.

5. Day *v.* Smith, 87 Miss. 395, 39 So. 526.

908. 4. The court will take judicial notice of the existence of the Boer war. Dowie *v.* Sutton, 227 Ill. 183, 81 N. E. 395.

909. 1. *United States.* — Jacobson *v.* Massachusetts, 197 U. S. 11, 25 U. S. Sup. Ct. 358; Baker *v.* F. A. Duncombe Mfg. Co., 146 Fed. 744, 77 C. C. A. 234; Roberts *v.* Bennett, 136 Fed. 193, 69 C. C. A. 533.

Arkansas. — Auten *v.* Board of Directors, 83 Ark. 431, 104 S. W. 130.

Illinois. — Kappes *v.* Chicago, 119 Ill. App. 436.

Kansas. — Sun Ins. Office *v.* Western Woolen Mill Co., 72 Kan. 41, 82 Pac. 513.

Massachusetts. — Moeckel *v.* Cross, 190 Mass. 280, 76 N. E. 447.

New York. — Laturen *v.* Bolton Drug Co., (Supm. Ct. Tr. T.) 93 N. Y. Supp. 1035; Kleffmann *v.* Dry Dock, etc., R. Co., 104 N. Y. App. Div. 416, 93 N. Y. Supp. 741; Lantry *v.* Hoffman, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 261, 105 N. Y. Supp. 353.

Intoxicating Properties of Liquor — *Beer.* — White *v.* Manning, (Tex. Civ. App. 1907) 102 S. W. 1160; Lambie *v.* State, (Ala. 1907) 44 So. 51.

Whiskey. — Wilcoxson *v.* State, (Tex. Civ. App. 1906) 91 S. W. 581; Fears *v.* State, 125 Ga. 740, 54 S. E. 661.

That Whiskey is spirituous or distilled liquor. State *v.* York, 74 N. H. 125, 65 Atl. 685.

3. The Dangerous Qualities of Electricity. — Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613.

910. 1. Macomber *v.* State Board of Health, 28 R. I. 3, 65 Atl. 263.

911. 2. State *v.* Carmody, (Oregon 1907) 91 Pac. 441, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 911.

912. 6. Merritt *v.* Trinity County, 3 Cal. App. 168, 84 Pac. 675; Stanford *v.* Bailey, 122 Ga. 404, 50 S. E. 161, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 912; Huxford *v.* Southern Pine Co., 124 Ga. 181, 52 S. E. 439; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 912.

7. Atchison, etc., R. Co. *v.* Paxton, 75 Kan. 197, 88 Pac. 1082.

913. 1. Moore *v.* State, 126 Ga. 414, 55 S.

E. 327; Parker *v.* State, 126 Ga. 443, 55 S. E. 320.

4. Lemoore Bank *v.* Fulgham, (Cal. 1907) 90 Pac. 936; Kimball *v.* McKee, 149 Cal. 435, 86 Pac. 1089; Merritt *v.* Trinity County, 3 Cal. App. 168, 84 Pac. 675; Stanford *v.* Bailey, 122 Ga. 404, 50 S. E. 161, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 913; Huxford *v.* Southern Pine Co., 134 Ga. 181, 52 S. E. 439.

914. 1. Brannan *v.* Henry, 142 Ala. 698, 39 So. 92; Merritt *v.* Trinity County, 3 Cal. App. 168, 84 Pac. 675; Stanford *v.* Bailey, 122 Ga. 404, 50 S. E. 161, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 914; Huxford *v.* Southern Pine Co., 124 Ga. 181, 52 S. E. 439; Worden *v.* Cole, 74 Kan. 226, 86 Pac. 464.

915. 2. Atlanta, etc., R. Co. *v.* Atlanta, etc., R. Co., 124 Ga. 125, 52 S. E. 720; Powell *v.* Springston Lumber Co., 12 Idaho 723, 88 Pac. 97; State *v.* Ricksecker, 73 Kan. 495, 85 Pac. 547, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 914.

7. Southern Pac. R. Co. *v.* Lipman, 148 Cal. 480, 83 Pac. 445; Southern Pac. R. Co. *v.* Strauss, 148 Cal. xvii, 83 Pac. 451; Southern Pac. R. Co. *v.* Goldman, 148 Cal. xvii, 83 Pac. 452; Southern Pac. R. Co. *v.* Willard, 148 Cal. xvii, 83 Pac. 452; Wabash R. Co. *v.* Campbell, 219 Ill. 312, 76 N. E. 346; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294.

Regulations of Post-office Department. — Carr *v.* Jeffersonville First Nat. Bank, 35 Ind. App. 216, 73 N. E. 947.

Railroad Company's Report to the Corporation Commission. — Staton *v.* Atlantic Coast Line R. Co., 144 N. Car. 135, 56 S. E. 794.

United States Land Office Regulations. — Kimball *v.* McKee, 149 Cal. 435, 86 Pac. 1089.

8. But see Nagle *v.* U. S., (C. C. A.) 145 Fed. 302.

916. 2. Jones *v.* Southern R. Co., 76 S. Car. 67, 56 S. E. 666, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 916.

3. Ryan *v.* Young, 147 Ala. 660, 41 So. 954; Bailey *v.* McAlpin, 122 Ga. 616, 50 S. E. 388; Shaw *v.* Hemphill, 48 Oregon 371, 86 Pac. 373.

The court, on appeal, will take judicial notice of the appointment of the trial judge to fill a vacancy caused by the death of the regularly elected judge, and of his subsequent election to complete the unexpired term. Mayes *v.* Palmer, 206 Mo. 293, 103 S. W. 1140.

De Facto Officers. — The rule does not apply to *de facto* officers. Williams *v.* Finch, (Ala. 1906) 41 So. 834.

917. 6. Pardee *v.* Schanzlin, 3 Cal. App. 597, 86 Pac. 812.

Official Term. — Center First Nat. Bank *v.* Rowland, (Tex. Civ. App. 1907) 99 S. W. 1043.

Seals. — Brown Mfg. Co. *v.* Gilpin, 120 Mo. App. 130, 96 S. W. 669.

918. 2. Ryan *v.* Young, 147 Ala. 660, 41 So. 954.

4. Ryan *v.* Young, 147 Ala. 660, 41 So. 954.

5. Aultman Taylor Mach. Co. *v.* Burchett, 15 Okla. 490, 83 Pac. 719, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 918.

Terms of Office. — State *v.* Smith, 87 Miss. 551, 40 So. 22; Mayes *v.* Palmer, 206 Mo. 293, 103 S. W. 1140.

921. 5. Edwards *v.* State, 123 Ga. 542, 51 S. E. 630.

8. McMullan *v.* Long, (Ala. 1905) 39 So. 777.

922. 1. McMullan *v.* Long, (Ala. 1905) 39 So. 777; Fry *v.* Radzinski, 219 Ill. 526, 76 N. E. 694.

3. Distinction between Beginning and Ending of Terms. — Felt *v.* Cook, 31 Utah 299, 87 Pac. 1092.

4. Brunson *v.* State, (Ala. 1905) 39 So. 569.

923. 2. Bowen *v.* Webb, 34 Mont. 61, 85 Pac. 739.

The Court of Appeals of the District of Columbia will take judicial notice of the rules of the Supreme Court of the District. Johnson-Hynne Co. *v.* Wright, 28 App. Cas. (D. C.) 375.

924. 4. **Reasonable Attorney's Fees.** — Gates *v.* McClenahan, (Iowa 1905) 103 N. W. 969; Warnock *v.* Itawis, 38 Wash. 144, 80 Pac. 297.

925. 2. Wilson *v.* Calculagraph Co., 153 Fed. 961, 83 C. C. A. 77; Hancock *v.* Diamond Plate Glass Co., 37 Ind. App. 351, 75 N. E. 659; Shepherd *v.* Shepherd, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 418, 100 N. Y. Supp. 401, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 925.

3. McNish *v.* State, 47 Fla. 69, 36 So. 176, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 925; State *v.* Kesner, 72 Kan. 87, 82 Pac. 720; State *v.* Thomas, 74 Kan. 360, 86 Pac. 499; State *v.* Richardson, 48 Oregon 309, 85 Pac. 225.

926. 2. Van Burg *v.* Van Engen, (Neb. 1906) 107 N. W. 1006.

5. Morrison *v.* Hilburn, 126 Ga. 114, 54 S. E. 938; Baze *v.* Island City Mfg. Co., (Tex. Civ. App. 1906) 94 S. W. 460.

6. Murphy *v.* Citizens Bank, 82 Ark. 131, 100 S. W. 894; Hunter *v.* Lissner, 1 Ga. App. 1, 58 S. E. 54; Chicago, etc., Coal Co. *v.* People, 114 Ill. App. 75, *affirmed* 214 Ill. 421, 73 N. E. 770; Cumberland Telephone, etc., Co. *v.* St. Louis, etc., R. Co., 117 La. 199, 41 So. 492; Auditor Gen. *v.* Clifford, 143 Mich. 626, 107 N. W. 287; Allison *v.* Fidelity Mut. F. Ins. Co., 74 Neb. 366, 104 N. W. 753; *In re* Ollschlager, (Oregon 1907) 89 Pac. 1049.

928. 2. Peano *v.* Brennan, (S. Dak. 1906) 106 N. W. 409.

5. *United States.* — Nagle *v.* U. S., (C. C. A.) 145 Fed. 302.

Alabama. — Mobile, etc., R. Co. *v.* Bromberg, 141 Ala. 258, 37 So. 395, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 928; Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101.

California. — Kimball *v.* McKee, 149 Cal. 435, 86 Pac. 1089.

Illinois. — Wabash R. Co. *v.* Campbell, 117 Ill. App. 630, *affirmed* 219 Ill. 312, 76 N. E. 346.

Kansas. — Worden *v.* Cole, 74 Kan. 226, 86 Pac. 464.

Kentucky. — Com. *v.* Newport, etc., Turnpike Co., 30 Ky. L. Rep. 1235, 100 S. W. 871; Chicago, etc., R. Co. *v.* Liebel, (Ky. 1905) 86 S. W. 549.

Massachusetts. — American Steel, etc., Co. *v.* Bearse, 194 Mass. 596, 80 N. E. 623; Squier *v.* Barnes, 193 Mass. 21, 78 N. E. 731.

New York. — Milliken *v.* Dotson, 117 N. Y. App. Div. 527, 102 N. Y. Supp. 564, *citing* 17

AM. AND ENG. ENCYC. OF LAW (2d ed.) 928; Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371.

North Carolina. — State *v.* Piner, 141 N. Car. 760, 53 S. E. 305.

Rhode Island. — Foley *v.* Ray, 27 R. I. 127, 61 Atl. 50.

Texas. — Austin *v.* Forbis, 99 Tex. 234, 89 S. W. 405; Davenport *v.* State, 49 Tex. Crim. 11, 89 S. W. 1077, 1078; Bink *v.* State, 48 Tex. Crim. 598, 89 S. W. 1075, 1077.

929. 1. Campbell *v.* Shelby County, 147 Ala. 703, 41 So. 407, 408; Doss *v.* Mermentau Levee Dist., 117 La. 450, 41 So. 720.

Legislative Object and Intent. — State *v.* Custer, 28 R. I. 222, 66 Atl. 306.

930. 1. State *v.* Swiggart, 118 Tenn. 556, 102 S. W. 75.

4. Worden *v.* Cole, 74 Kan. 226, 86 Pac. 464.

931. 1. Milliken *v.* Dotson, 117 N. Y. App. Div. 527, 102 N. Y. Supp. 564, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 931; Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371; State *v.* Piner, 141 N. Car. 760, 53 S. E. 305.

2. Parker *v.* State, 126 Ga. 443, 55 S. E. 329; Moore *v.* State, 126 Ga. 414, 55 S. E. 327; Bass *v.* State, 1 Ga. App. 728, 790, 57 S. E. 1054; Ball *v.* Com., 30 Ky. L. Rep. 505, 99 S. W. 326; Crigler *v.* Com., 120 Ky. 512, 87 S. W. 276, 280, 281; State *v.* Piner, 141 N. Car. 760, 53 S. E. 305.

4. Craddick *v.* State, 48 Tex. Crim. 385, 88 S. W. 347.

The court will take judicial notice of the assessment of railroads under a public statute and the payment of the taxes. Gulf, etc., R. Co. *v.* Adams, 85 Miss. 772, 38 So. 348.

5. **Judicial Notice by Statute.** — French *v.* State Senate, 146 Cal. 604, 80 Pac. 1031; New York, etc., R. Co. *v.* Offield, 78 Conn. 1, 60 Atl. 740.

932. 3. **Constitution of the United States.** — Milliken *v.* Dotson, 117 N. Y. App. Div. 527, 102 N. Y. Supp. 564.

Constitutional Amendment. — The courts will take judicial notice of the adoption of a constitutional amendment. Carmody *v.* St. Louis Transit Co., 188 Mo. 572, 87 S. W. 913; State *v.* Silver Bow County, 34 Mont. 426, 87 Pac. 450.

934. 3. Com. *v.* Newport, etc., Turnpike Co., (Ky. 1907) 100 S. W. 871; American Steel, etc., Co. *v.* Bearse, 194 Mass. 596, 80 N. E. 623.

935. 1. Cumberland Telephone, etc., Co. *v.* St. Louis, etc., R. Co., 117 La. 199, 41 So. 492.

4. **Corporate Seals.** — Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687.

936. 1. Brownsville *v.* Arbuckle, 30 Ky. L. Rep. 414, 99 S. W. 239; Houston *v.* Dooley, (Tex. Civ. App. 1905) 89 S. W. 777; Austin *v.* Forbis, 99 Tex. 234, 89 S. W. 405.

3. Houston *v.* Dooley, (Tex. Civ. App. 1905) 89 S. W. 777.

4. Austin *v.* Forbis, 99 Tex. 234, 89 S. W. 405.

937. 8. *Arkansas.* — Gardner *v.* State, 80 Ark. 264, 97 S. W. 48.

Florida. — Logan *v.* Childs, 51 Fla. 233, 41 So. 197.

Georgia. — Hill *v.* Atlanta, 125 Ga. 697, 54 S. E. 354.

Missouri. — Canton *v.* Madden, 120 Mo. App. 404, 96 S. W. 699; St. Louis *v.* Liessing, 190 Mo. 464, 89 S. W. 611.

Nebraska. — Steiner *v.* State, (Neb. 1907) 110 N. W. 723.

New Hampshire. — Gibbs *v.* Manchester, 73 N. H. 265, 61 Atl. 128.

New York. — Sachs *v.* Lyons, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 640, 103 N. Y. Supp. 149; New York *v.* Knickerbocker Trust Co., 104 N. Y. App. Div. 223, 93 N. Y. Supp. 937.

Ohio. — Esch *v.* Elyria, 27 Ohio Cir. Ct. 446; Chittenden *v.* Columbus, 26 Ohio Cir. Ct. 531.

938. 1. Hill *v.* Atlanta, 125 Ga. 697, 54 S. E. 354; Steiner *v.* State, (Neb. 1907) 110 N. W. 723.

2. Esch *v.* Elyria, 27 Ohio Cir. Ct. 446.

3. *Compare* Esch *v.* Elyria, 27 Ohio Cir. Ct. 446.

4. Steiner *v.* State, (Neb. 1907) 110 N. W. 723.

5. Hill *v.* Atlanta, 125 Ga. 697, 54 S. E. 354.

7. The court will not take judicial notice of the two-mile limit from a city. West Seattle *v.* West Seattle Land, etc., Co., 38 Wash. 359, 80 Pac. 549.

939. 2. Matter of New York, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 602, 94 N. Y. Supp. 554, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 939; Gruber *v.* New York City R. Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 322, 103 N. Y. Supp. 216.

940. 1. Topeka *v.* Cook, 72 Kan. 595, 84 Pac. 376.

Condition of Streets. — In an action for breach of an ordinance regulating the erection of signs within a street the court will not take judicial notice of the condition of the street or of the public requirements there. St. Louis *v.* St. Louis Theatre Co., 202 Mo. 690, 100 S. W. 627.

4. Green *v.* Lineville Drug Co., (Ala. 1907) 43 So. 216; Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458.

6. Dupree *v.* State, (Ala. 1907) 42 So. 1004; Cleveland, etc., R. Co. *v.* Miller, (Ind. App. 1907) 81 N. E. 517; Com. *v.* Salawich, 28 Pa. Super. Ct. 330.

941. 1. Brownsville *v.* Arbuckle, 99 S. W. 239, 30 Ky. L. Rep. 414; Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423; Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458.

6. But see Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423.

942. 2. Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458.

3. Atlanta, etc., R. Co. *v.* Atlanta, etc., R. Co., 124 Ga. 125, 52 S. E. 320.

4. Chicago, etc., R. Co. *v.* Liebel, (Ky. 1905) 86 S. W. 540.

943. 1. Atlanta, etc., R. Co. *v.* Atlanta, etc., R. Co., 124 Ga. 125, 52 S. E. 320; American Steel, etc., Co. *v.* Bearse, 194 Mass. 596, 80 N. E. 623.

944. 2. Worden *v.* Cole, 74 Kan. 226, 86 Pac. 464, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 944; Lowville, etc., R. Co. *v.* Elliott, 115 N. Y. App. Div. 884, 101 N. Y. Supp. 328; Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458;

Texas Cent. R. Co. *v.* Marrs, (Tex. Civ. App. 1907) 101 S. W. 1177.

Railroad Partly in One State and Partly in Another. — Texas, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1906) 95 S. W. 743.

Railroad Terminus. — *Contra*, Wright *v.* Quincy, etc., R. Co., 119 Mo. App. 469, 95 S. W. 293.

Distance between Station Towns on a Railroad. — Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 581, 53 S. E. 362.

4. A federal court will take judicial notice that a common carrier engaged in interstate commerce operates certain trains over its railroad solely within a certain state. U. S. *v.* Adair, 152 Fed. 737.

The Operation of Street Cars. — Baskett *v.* Metropolitan St. R. Co., 123 Mo. App. 725, 101 S. W. 138.

Street Railways. — A court will take judicial notice that it is a common practice in all street-car traffic for a passenger to make his way to the step after the signal to stop has been given. Weir *v.* Seattle Electric Co., 41 Wash. 657, 84 Pac. 597.

945. 3. Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13; Taylor *v.* Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919; Harper Furniture Co. *v.* Southern Express Co., 144 N. Car. 639, 57 S. E. 458; Parkersville Drainage Dist. *v.* Wattier, 48 Oregon 332, 86 Pac. 775; Fleischman *v.* Southern R. Co., 76 S. Car. 237, 56 S. E. 974; State *v.* Metcalf, 18 S. Dak. 393, 100 N. W. 923, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 945; Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017.

4. Sanders *v.* Brown, 145 Ala. 665, 39 So. 732; Schultz *v.* Ford, 133 Iowa 402, 109 N. W. 614; Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017.

946. 1. *Ex p.* Berry, 147 Cal. 523, 82 Pac. 44; People *v.* Pederson, 220 Ill. 554, 77 N. E. 251.

9. Shaving by a Barber as Work of Necessity to Be Done on Sunday. — McCain *v.* State, 2 Ga. App. 389, 58 S. E. 550.

Practical Construction of Statute by a Territorial Board of Equalization. — Copper Queen Consol. Min. Co. *v.* Board of Equalization, (Ariz. 1906) 84 Pac. 511.

That Craps Is a Game Played with Dice. — Sims *v.* State, 1 Ga. App. 776, 57 S. E. 1029.

That Banks Exist in all cities and towns of large population and extensive business. Lewis *v.* Montgomery Supply Co., 59 W. Va. 75, 52 S. E. 1017.

947. 5. Existence of Local Option in a County within the State. — Allen *v.* State, (Tex. Crim. 1906) 98 S. W. 869.

Fraternal Character of Insurance Society. — Smith *v.* Grand Lodge, etc., 124 Mo. App. 181, 101 S. W. 662.

Character of the Light Supplied by a Town. — Chicago, etc., R. Co. *v.* Salem, 166 Ind. 71, 76 N. E. 631.

Distance within Which Train Going at Certain Speed Can Be Stopped. — Southern R. Co. *v.* Gullatt, (Ala. 1907) 43 So. 577.

Intoxicating Properties of "Hop Jack." — Daniel *v.* State, (Ala. 1907) 43 So. 22.

Number of Telegraph Companies in the State. — State *v.* Atlantic Coast Line R. Co., 51 Fla. 578, 40 So. 875.

Principles and Tenets by Which Members of Labor Union Are Bound. — Birmingham Paint, etc., Co. *v.* Crampton, (Ala. 1905) 39 So. 1020.

Bad Condition of the Roads of a County. — Ward *v.* State, (Ala. 1905) 39 So. 923.

Where Local Option Laws Are Put into Operation. — Craddick *v.* State, 48 Tex. Crim. 385, 88 S. W. 347.

Location of Street Identified Only by Name. Ingersoll *v.* Davis, 14 Wyo. 120, 82 Pac. 867.

The Location of a Tramway Company. — Ingersoll *v.* Davis, 14 Wyo. 120, 82 Pac. 867.

Quantity of Personalty within the State. Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52; Central of Georgia R. Co. *v.* Wright, 125 Ga. 617, 54 S. E. 64.

Solvency of a Foreign State. — Hebblethwaite *v.* Flint, 115 N. Y. App. Div. 597, 101 N. Y. Supp. 43.

Decisions of Courts of Other States. — Southern Express Co. *v.* Owens, 146 Ala. 412, 41 So. 752.

Cotton as a Thing of Value. — Wright *v.* State, 1 Ga. App. 158, 57 S. E. 1050.

That a Foggy Night Is Succeeded by a Foggy Morning. — Texas, etc., R. Co. *v.* Langham, (Tex. Civ. App. 1906) 95 S. W. 686.

JUDICIAL SALES.

954. 4. Staser *v.* Gaar, 38 Ind. App. 696, 78 N. E. 987, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 954.

957. 5. Cincinnati Third Nat. Bank *v.* Jackson, 156 Fed. 144.

965. 5. Brittain's Estate, 28 Pa. Super. Ct. 144.

969. 4. In Kentucky, by reason of statute, the notice must state for what sum of money the sale is to be made; otherwise the sale may be set aside. See Fink *v.* Herrick, 90 S. W. 268, 28 Ky. L. Rep. 763.

6. Thirty Days' Notice Required. — Stevens *v.* Naylor, 75 Neb. 325, 106 N. W. 446.

973. 11. *Compare* Culver Lumber Co. *v.* Culver, 81 Ark. 102, 99 S. W. 391.

17. Cramer *v.* Sides, 87 Miss. 241, 39 So. 693.

975. 4. Richardson *v.* Jones, 106 Va. 540, 56 S. E. 343.

976. 4. Miller *v.* Trudgeon, 16 Okla. 337, 86 Pac. 523, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 976.

977. 6. Bechtel *v.* Wier, (Cal. 1907) 93 Pac. 75.

980. 5. Henderson *v.* Henrie, 61 W. Va. 183, 56 S. E. 370, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980.

6. Dykes *v.* Jones, 129 Ga. 99, 58 S. E. 645, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980.

981. 2. Henderson *v.* Henrie, 61 W. Va. 183, 56 S. E. 370, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 981.

987. 5. Haggin *v.* Montague, 102 S. W. [illegible] Ky. L. Rep. 148.

989. 8. Noel *v.* Fitzpatrick, 100 S. W. 321, 30 Ky. L. Rep. 1011; Harrell *v.* Blythe, 140 N. Car. 415, 53 S. E. 232.

992. 1. Ousler *v.* Robinson, 72 Ark. 339,

80 S. W. 227, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 992.

2. Montague *v.* International Trust Co., 142 Ala. 544, 38 So. 1025, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 992; George *v.* Cone, 77 Ark. 216, 91 S. W. 557; Parsons *v.* Little, 28 App. Cas. (D. C.) 218; Harrell *v.* Blythe, 140 N. Car. 415, 53 S. E. 232.

4. Abbott *v.* Beebe, 226 Ill. 417, 80 N. E. 991.

7. Omaha Loan, etc., Assoc. *v.* Hendee, (Neb. 1906) 108 N. W. 190.

993. **3.** Forrester *v.* Howard, (Ky. 1907) 98 S. W. 984.

8. Morrison *v.* Burnette, 154 Fed. 617, 83 C. C. A. 391; Ebner *v.* Heid, 2 Alaska 600; Sawyer *v.* Hentz, 73 Ark. 324, 85 S. W. 775; Neff *v.* Elder, 84 Ark. 277, 105 S. W. 260; Bechtel *v.* Wier, (Cal. 1907) 93 Pac. 75; Mallar *v.* Mallarian, 138 Mich. 349, 101 N. W. 548, *citing* in *dissenting* opinion 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 993. See also Carter *v.* Hyatt, (Kan. 1907) 91 Pac. 64, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 993.

996. **5.** Macfarlane *v.* Macfarlane, 50 Fla. 577, 39 So. 995, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 996.

10. Kennedy *v.* Afdal, 229 Ill. 295, 82 N. E. 291; Strode *v.* Hoagland, (Neb. 1906) 107 N. W. 754; Locke *v.* Friedman, (Miss. 1907) 43 So. 673; Mansfield *v.* Wallace, 217 Ill. 610, 75 N. E. 682.

999. **3.** Hansford *v.* Tate, 61 W. Va. 207, 56 S. E. 372, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 999.

6. Mansfield *v.* Wallace, 217 Ill. 610, 75 N. E. 682; Brashears *v.* Holliday, 99 S. W. 951, 30 Ky. L. Rep. 913.

1001. **1.** George *v.* Cone, 77 Ark. 216, 91 S. W. 557; Abbott *v.* Beebe, 226 Ill. 417, 80 N. E. 991; Schulz *v.* Haase, 227 Ill. 156, 81 N. E. 50; *In re* Perryman, (Indian Ter. 1907) 104 S. W. 804; Wilber *v.* Wilber, 119 N. Y. App. Div. 740, 104 N. Y. Supp. 179; State Realty, etc., Co. *v.* Villaume, 121 N. Y. App. Div. 793, 106 N. Y. Supp. 698; Smith *v.* Pacific Heights R. Co., 17 Hawaii 102, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1000 [1001].

1002. **1.** Harrell *v.* Blythe, 140 N. Car. 415, 53 S. E. 232.

2. Smith *v.* Pacific Heights R. Co., 17 Hawaii 102, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1002.

1003. **2.** Morrison *v.* Burnette, 154 Fed. 617, 83 C. C. A. 391; Macfarlane *v.* Macfarlane, 50 Fla. 570, 39 So. 995; White *v.* Taylor, (Tex. Civ. App. 1907) 102 S. W. 747.

3. Davis *v.* Keen, 142 N. Car. 496, 55 S. E. 359, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1003.

1004. **7.** Montague *v.* International Trust Co., 142 Ala. 544, 38 So. 1025, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1004.

1005. **6.** Gravitt *v.* Mounty, (Ky. 1905) 87 S. W. 304.

1007. **1.** George *v.* Cone, 77 Ark. 216, 91 S. W. 557; Wilber *v.* Wilber, 119 N. Y. App. Div. 740, 104 N. Y. Supp. 179; Watkins *v.* Jones, (Va. 1907) 57 S. E. 608.

1010. **4.** Wilson *v.* Gaylord, 71 Ark. 477, 92 S. W. 26, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1010.

Purchaser Charged with Notice of Every Fact Appearing upon Face of Record. — Board of Education *v.* Berry, (W. Va. 1907) 59 S. E. 169.

5. Nickels *v.* Mineral Development Co., (Ky. 1907) 104 S. W. 1033; Cosby *v.* Newby, 101 S. W. 306, 30 Ky. L. Rep. 1375; Hart *v.* Beardsley, 67 Neb. 145, 93 N. W. 423, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1010.

1011. **1.** Hitchcock County *v.* Cole, (Neb. 1907) 114 N. W. 276; Brady *v.* Carteret Realty Co., 67 N. J. Eq. 641, 60 Atl. 938.

But a Secret Equity cannot be asserted to defeat the title of an innocent purchaser at judicial sale. Scarborough *v.* Holder, 127 Ga. 256, 56 S. E. 293.

1013. **2.** Downing *v.* Thompson, (Ky. 1906) 92 S. W. 290; State *v.* Several Parcels of Land, (Neb. 1906) 110 N. W. 544; Merrick County *v.* Stratton, (Neb. 1907) 111 N. W. 136.

1014. **1.** *Ex p.* Qualls, 71 S. Car. 87, 50 S. E. 646, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1014.

2. *Ex p.* Qualls, 71 S. Car. 87, 50 S. E. 646, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1014.

3. *Ex p.* Qualls, 71 S. Car. 87, 50 S. E. 646, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1014.

1016. **2.** Morrison *v.* Burnette, 154 Fed. 617, 83 C. C. A. 391.

4. Millsaps *v.* Estes, 137 N. Car. 535, 50 S. E. 227.

1017. **1.** Ebner *v.* Heid, 2 Alaska 605, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1017.

2. Hansford *v.* Tate, 61 W. Va. 207, 56 S. E. 372.

1019. **1.** Miller *v.* Kelsay, 114 Mo. App. 598, 90 S. W. 395, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1018 [1019].

3. Carroll *v.* Draughon, (Ala. 1907) 44 So. 553; Johnson *v.* McKinnon, (Fla. 1907) 45 So. 23, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1019.

1021. **5.** Cypress Lumber, etc., Co. *v.* Tillar, 73 Ark. 354, 84 S. W. 490, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021; Murdock *v.* Loeser, 87 S. W. 808, 27 Ky. L. Rep. 1057.

1022. **4.** Heim *v.* Schwoerer, 115 N. Y. App. Div. 295, 100 N. Y. Supp. 808; Moser *v.* Ellis, (Supm. Ct. Spec. T.) 106 N. Y. Supp. 1075; Wanser *v.* De Nyse, 188 N. Y. 378, 80 N. E. 1088; People *v.* New York Building-Loan Banking Co., 189 N. Y. 233, 82 N. E. 184.

1024. **7.** Davidson *v.* Marcum, 89 S. W. 703, 28 Ky. L. Rep. 562.

1025. **1.** Davidson *v.* Marcum, 89 S. W. 703, 28 Ky. L. Rep. 562.

1026. **2.** Watrous *v.* Hilliard, 38 Colo. 255, 88 Pac. 185; Pepper *v.* Deakyne, 212 Pa. St. 181, 61 Atl. 805; Miles *v.* Bradley, 212 Pa. St. 188, 61 Atl. 808.

1027. **5.** Richardson *v.* Jones, 106 Va. 540, 56 S. E. 343.

1031. **3.** Corbett *v.* Fogle, 72 S. Car. 312, 51 S. E. 884, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1031.

1032. **6.** Johnson *v.* McKinnon, (Fla. 1907) 45 So. 23.

9. Guffy *v.* Anderson, 102 S. W. 321, 31 Ky. L. Rep. 407.

1033. 1. Corbett *v.* Fogle, 72 S. Car. 312, 51 S. E. 884, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1033; Temple *v.* Branch Saw Co., (Tex. Civ. App. 1905) 88 S. W. 442.

7. Harrison *v.* Stephenson, 147 Ala. 539, 41 So. 1008; Bechtel *v.* Wier, (Cal. 1907) 93 Pac. 75; McGregor *v.* Kellum, 50 Fla. 588, 39 So. 697, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1033; Carter *v.* Hyatt, (Kan. 1907) 91 Pac. 63; Guffy *v.* Anderson, 102 S. W. 321, 31 Ky. L. Rep. 407.

1036. 4. Bunting *v.* Haskell, (Cal. 1907) 93 Pac. 110.

JURISDICTION.

1041. 2. *Ex p.* Moran, (C. C. A.) 144 Fed. 594; White *v.* Martin, 2 Alaska 495, *reversed* on other grounds in (C. C. A.) 146 Fed. 461; Camplin *v.* Jackson, 34 Colo. 447, 83 Pac. 1017, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041; O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108, *affirming* 114 Ill. App. 40; Christie *v.* Walker, 126 Ill. App. 424; Bonham *v.* Doyle, 39 Ind. App. 438, 79 N. E. 458, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041; State *v.* Stobie, 194 Mo. 14, 92 S. W. 191, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041.

1042. 2. *Ex p.* Moran, (C. C. A.) 144 Fed. 594; Camplin *v.* Jackson, 34 Colo. 447, 83 Pac. 1017, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041 [1042]; State *v.* Stobie, 194 Mo. 14, 92 S. W. 191, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041.

6. *United States.* — *In re* Belle Fourche First Nat. Bank, (C. C. A.) 152 Fed. 64.

Alabama. — Chattanooga Nat. Bldg., etc., Assoc. *v.* Vaught, 143 Ala. 389, 39 So. 215; Jenkins *v.* Clisby, 145 Ala. 665, 39 So. 735.

Alaska. — White *v.* Martin, 2 Alaska 495, *reversed* on other grounds in (C. C. A.) 146 Fed. 461.

California. — McHatton *v.* Rhodes, 143 Cal. 275, 76 Pac. 1036.

Colorado. — Camplin *v.* Jackson, 34 Colo. 447, 83 Pac. 1017, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1042; Mortgage Trust Co. *v.* Redd, 38 Colo. 458, 88 Pac. 473.

Illinois. — Forrest *v.* Fey, 218 Ill. 165, 75 N. E. 789; Jackson *v.* Grosser, 218 Ill. 494, 75 N. E. 1032; Broch *v.* French, 116 Ill. App. 15.

Indiana. — Chicago, etc., R. Co. *v.* Grantham, 165 Ind. 279, 75 N. E. 265; Robyn *v.* Pickard, 37 Ind. App. 161, 76 N. E. 642; Jones *v.* Leeds, (Ind. App. 1908) 83 N. E. 526.

Maine. — Mudgett's Appeal, (Me. 1907) 69 Atl. 575.

Minnesota. — Sache *v.* Wallace, 101 Minn. 169, 112 N. W. 386.

Missouri. — Jenkins *v.* Morrow, (Mo. App. 1908) 109 S. W. 1051.

New Jersey. — McDevitt *v.* Connell, (N. J. 1906) 63 Atl. 504.

New York. — Johnston *v.* Mutual Reserve L. Ins. Co., 104 N. Y. App. Div. 629, 93 N. Y. Supp. 1071.

North Carolina. — May *v.* Getty, 140 N. Car. 310, 53 S. E. 75.

Oklahoma. — Thurston *v.* Washington, (Okla. 1907) 90 Pac. 16.

Texas. — Wallace *v.* Turner, (Tex. Civ. App. 1905) 89 S. W. 432, *affirmed* 99 Tex. 543, 92 S. W. 31; Barrett *v.* McKinney, (Tex. Civ. App. 1906) 93 S. W. 240; Rye *v.* J. M. Guffey Petroleum Co., (Tex. Civ. App. 1906) 95 S. W. 622; Holland *v.* Ferris, (Tex. Civ. App. 1907) 107 S. W. 102; *Ex p.* Cox, (Tex. Crim. 1908) 109 S. W. 369.

Virginia. — Morgan *v.* Haley, 107 Va. 331, 58 S. E. 564.

West Virginia. — Pocahontas Wholesale Grocery Co. *v.* Gillespie, (W. Va. 1908) 60 S. E. 597.

For Definition of Collateral Attack see O'Neill *v.* Potvin, 13 Idaho 271, 93 Pac. 20, 257.

1046. 2. *United States.* — Basso *v.* U. S., 40 Ct. Cl. 202.

Alabama. — Chattanooga Nat. Bldg., etc., Assoc. *v.* Vaught, 143 Ala. 389, 39 So. 215, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1046.

Georgia. — Weaver *v.* Webb, 3 Ga. App. 726, 60 S. E. 367; Bedingfield *v.* Louisville First Nat. Bank, (Ga. App. 1908) 61 S. E. 30.

Kansas. — Kelso *v.* Norton, 74 Kan. 442, 87 Pac. 184; Duff, etc., Furniture Co. *v.* Read, 74 Kan. 730, 88 Pac. 264.

Minnesota. — Sache *v.* Wallace, 101 Minn. 169, 112 N. W. 386.

Missouri. — Buffington *v.* Carty, 195 Mo. 490, 93 S. W. 779.

Oklahoma. — Southern Pine Lumber Co. *v.* Ward, 16 Okla. 131, 85 Pac. 459.

Oregon. — Knapp *v.* Wallace, (Oregon 1907) 92 Pac. 1054.

Texas. — Bryson *v.* Boyce, (Tex. Civ. App. 1906) 92 S. W. 820; Lutcher *v.* Allen, (Tex. Civ. App. 1906) 95 S. W. 572.

West Virginia. — Roberts *v.* Hickory Camp Coal, etc., Co., 58 W. Va. 276, 52 S. E. 182, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048 [1046].

1050. 6. Knapp *v.* Wallace, (Oregon 1907) 92 Pac. 1054; Wetmore *v.* Karrick, 205 U. S. 141, 27 U. S. Sup. Ct. 434, *affirming* 26 App. Cas. (D. C.) 124.

1051. 4. Roberts *v.* Hickory Camp Coal, etc., Co., 58 W. Va. 276, 52 S. E. 182.

8. Davis *v.* Montgomery, 205 Mo. 271, 103 S. W. 979.

1052. 9. Kelso *v.* Norton, 74 Kan. 442, 87 Pac. 184.

1053. 6. Caldwell *v.* Bigger, (Kan. 1907) 90 Pac. 1095.

1054. 7. Rye *v.* J. M. Guffey Petroleum Co., (Tex. Civ. App. 1906) 95 S. W. 622.

1055. 8. Mortgage Trust Co. *v.* Redd, 38 Colo. 458, 88 Pac. 473.

1056. 6. Chicago *v.* Campbell, 118 Ill. App. 132, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1056; Brooks *v.* Morgan, 36 Ind. App. 672, 76 N. E. 331.

1057. 2. Kennedy *v.* Borah, 226 Ill. 243, 80 N. E. 767.

3. State *v.* Wheeler, 43 Wash. 183, 86 Pac. 394.

4. In a Proceeding to Revive a Judgment the jurisdiction of the court to render the judgment may be attacked by answer, which is a

direct attack upon the judgment. Waterman v. Bash, (Wash. 1907) 89 Pac. 396.

8. Bullington v. Carty, 195 Mo. 490, 93 S. W. 1000.

1058. 2. Weaver v. Webb, 3 Ga. App. 726, 60 S. E. 367.

6. State v. Stobie, 194 Mo. 14, 92 S. W. 191.

7. Gunderson v. District Ct., (Idaho 1908) 94 Pac. 166; State v. Stobie, 194 Mo. 14, 92 S. W. 191; State v. Reynolds, (Mo. 1907) 107 S. W. 487.

10. Johnson v. Matthews, 124 Iowa 255, 99 N. W. 1064, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1068.

1059. 9. Early v. People, 117 Ill. App. 608.

12. Hoskins v. Somerset Coal Co., (Pa. 1908) 68 Atl. 843; *Ex p.* Cox, (Tex. Crim. 1908) 109 S. W. 369.

13. *Ex p.* Stephens, (Tex. 1906) 94 S. W. 527.

1060. 1. Flannigan v. Chapman, etc., Land Co., (C. C. A.) 144 Fed. 371; Southern Pine Lumber Co. v. Ward, 16 Okla. 131, 85 Pac. 459.

2. Flannigan v. Chapman, etc., Land Co., (C. C. A.) 144 Fed. 371; Southern Pine Lumber Co. v. Ward, 16 Okla. 131, 85 Pac. 459.

4. O'Brien v. People, 216 Ill. 354, 75 N. E. 108; Hunter v. D. W. Alderman, etc., Co., (S. Car. 1908) 61 S. E. 202.

Jurisdiction of the Subject-matter means, not only authority to hear and determine a particular class of actions, but authority to hear and determine the particular questions the court assumes to decide. Sache v. Wallace, 101 Minn. 169, 112 N. W. 386.

Jurisdiction of the subject-matter means jurisdiction of the class of cases to which the particular case belongs. U. S. Health, etc., Ins. Co. v. Clark, (Ind. App. 1908) 83 N. E. 760.

To the same effect as Foltz v. St. Louis, etc., R. Co., 19 U. S. App. 581, cited in the original note, see Weinstein v. Douglas, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 559, 101 N. Y. Supp. 251.

5. Sanipoli v. Pleasant Valley Coal Co., 31 Utah 114, 86 Pac. 865, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060.

7. Christie v. Walker, 126 Ill. App. 424; Wong Sing v. Independence, 47 Oregon 231, 83 Pac. 387; Goodnough Mercantile Co. v. Galloway, 48 Oregon 239, 84 Pac. 1049.

Where the Court Has Jurisdiction of the Person, and the cause is the kind of a cause triable in such a court, it has jurisdiction of the subject of the action and power to render any rightful judgment. Crutcher v. Block, (Okla. 1907) 91 Pac. 1[illegible].

Where a Court Possesses Jurisdiction of the Subject-matter, but ought not to exercise it in the [illegible], it should be deemed to be without jurisdiction. *In re* Potter, (Wis. 1907) 112 N. W. 1087.

1061. 1. *United States.* — William H. Perry Co. v. Klosters Aktie Bolag, (C. C. A.) [illegible] Fed. 962.

Alabama. — Baggett v. Mason, 145 Ala. 664, 39 So. 708.

Colorado. — Taylor v. Colorado Iron Works, 33 Colo. 179, 80 Pac. 129; Morse v. People, (Colo. 1908) 95 Pac. 285.

Georgia. — Western Union Tel. Co. v. Cooper, 2 Ga. App. 376, 58 S. E. 517.

Illinois. — Aurora v. Schoeberlein, 230 Ill. 496, 82 N. E. 860; Darst v. Kirk, 230 Ill. 521, 82 N. E. 862.

Iowa. — Cole v. Bock, (Iowa 1905) 105 N. W. 331; Farmers' Mut. Tel. Co. v. Howell, 132 Iowa 22, 109 N. W. 294; Leathers v. Geitz, (Iowa 1907) 112 N. W. 191.

Maryland. — Baltimore v. Meredith's Ford, etc., Turnpike Co., 104 Md. 351, 65 Atl. 35.

Michigan. — Hull v. Hull, 149 Mich. 500, 112 N. W. 1126.

Missouri. — Barnes v. Metropolitan St. R. Co., 119 Mo. App. 303, 95 S. W. 971.

New York. — Weinstein v. Douglas, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 559, 101 N. Y. Supp. 251; Eisenberg v. Lape, (County Ct.) 52 Misc. (N. Y.) 329, 103 N. Y. Supp. 169.

Oregon. — Goodnough Mercantile Co. v. Galloway, 48 Oregon 239, 84 Pac. 1049.

Where Terms of Court Are Held at Stated Periods and the court fails to convene at the time fixed, the parties cannot by agreement confer jurisdiction upon the court to render a binding judgment. Myers v. East Bench Irr. Co., (Utah 1907) 89 Pac. 1005.

2. Taylor v. Colorado Iron Works, 33 Colo. 179, 80 Pac. 129, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1061; Anderson v. Halthusen Mercantile Co., 30 Utah 560, 83 Pac. 560 (notice of appeal filed too late).

1062. 1. Audubon v. Hand, 223 Ill. 367, 79 N. E. 71, *reversing* 123 Ill. App. 600; Wong Sing v. Independence, 47 Oregon 231, 83 Pac. 387.

3. Aurora v. Schoeberlein, 230 Ill. 496, 82 N. E. 860; Atty.-Gen. v. Booth, 143 Mich. 89, 106 N. W. 868; Hull v. Hull, 149 Mich. 500, 112 N. W. 1126; State v. District Ct., 34 Mont. 226, 85 Pac. 1022; Barnes v. Metropolitan St. R. Co., 119 Mo. App. 303, 95 S. W. 971.

Want of Jurisdiction of Subject-matter Not Waived by Appearance. — West v. Martin, (Wash. 1907) 92 Pac. 334.

1063. 3. Victor Talking Mach. Co. v. American Graphophone Co., 140 Fed. 860, *affirmed* (C. C. A.) 145 Fed. 350; Huber v. St. Joseph's Hospital, 11 Idaho 631, 83 Pac. 768; Maitland v. Reed, 37 Ind. App. 469, 77 N. E. 290; Lewis v. Brotherhood Acc. Co., 194 Mass. 1, 79 N. E. 802. See also Carlisle v. Spain, 147 Mich. 158, 110 N. W. 532.

1064. 1. Camplin v. Jackson, 34 Colo. 447, 83 Pac. 1017; Christie v. Walker, 126 Ill. App. 424; Evans v. State, 165 Ind. 369, 74 N. E. 244; Artusy v. Houston Ice, etc., Co., (Tex. Civ. App. 1906) 94 S. W. 1106; Sanipoli v. Pleasant Valley Coal Co., 31 Utah 111, 86 Pac. 865; Continental L. Ins., etc., Co. v. Jones, 31 Utah 403, 88 Pac. 229; Clem v. Givens, 106 Va. 145, 55 S. E. 567.

Jurisdiction Acquired by General Appearance. — Martin v. Chicago, etc., Electric R. Co., 220 Ill. 97, 77 N. E. 86; Hamilton v. Hamilton, 129 Iowa 628, 106 N. W. 5; West v. Martin, (Wash. 1907) 92 Pac. 334.

Jurisdiction of the Plaintiff is ordinarily acquired by the plaintiff coming voluntarily into

a court and by appropriate pleadings invoking the exercise of the court's jurisdiction. Southern Pine Lumber Co. *v.* Ward, 16 Okla. 131, 85 Pac. 459.

Informal Knowledge that Process Has Issued is not sufficient to confer jurisdiction. National Metal Co. *v.* Greene Consol. Copper Co., (Ariz. 1907) 89 Pac. 535.

2. Farmers' Mut. Tel. Co. *v.* Howell, 132 Iowa 22, 109 N. W. 294.

3. Pelham *v.* Miller, (Ala. 1906) 41 So. 418; National Metal Co. *v.* Greene Consol. Copper Co., (Ariz. 1907) 89 Pac. 535; Southern Express Co. *v.* B. R. Electric Co., 126 Ga. 472, 55 S. E. 254; Thomason *v.* Thompson, 129 Ga. 440, 59 S. E. 236; West *v.* Lehmer, 115 La. 213, 38 So. 969; Atty.-Gen. *v.* Booth, 143 Mich. 89, 106 N. W. 868; Farmers' Bank *v.* Wabash R. Co., 119 Mo. App. 1, 95 S. W. 286; Weinstein *v.* Douglas, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 559, 101 N. Y. Supp. 251; Wong Sing *v.* Independence, 47 Oregon 231, 83 Pac. 387; Goodnough Mercantile Co. *v.* Galloway, 48 Oregon 239, 84 Pac. 1049.

There Is No Waiver where the defendant makes a special appearance to object to the jurisdiction and when the objection is overruled answers to the merits. Goodnough Mercantile Co. *v.* Galloway, 48 Oregon 239, 84 Pac. 1049.

Objection to the Jurisdiction of the Subject-matter is a waiver of objection to the jurisdiction of the person. Brainard *v.* Butler, (Neb. 1906) 109 N. W. 766.

Where a Party Invokes the Jurisdiction of a Court he cannot thereafter be heard to deny that the court has jurisdiction. Littleton *v.* Burgess, (Wyo. 1907) 91 Pac. 832.

1065. **1.** Clem *v.* Givens, 106 Va. 145, 55 S. E. 567.

1066. **2.** Mortgage Trust Co. *v.* Redd, 38 Colo. 458, 88 Pac. 473, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1066; Clark *v.* Parks, 75 Neb. 676, 106 N. W. 770; Point Pleasant *v.* Greenlee, (W. Va. 1907) 60 S. E. 601. See also William H. Perry Co. *v.* Klosters Aktie Bolag, (C. C. A.) 152 Fed. 967.

3. O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108; Sache *v.* Wallace, 101 Minn. 169, 112 N. W. 386.

4. Louisville, etc., R. Co. *v.* Sutton, (Fla. 1907) 44 So. 946; Sache *v.* Wallace, 101 Minn. 169, 112 N. W. 386.

5. Judgment Larger than Jurisdictional Limit Void. — Louisville, etc., R. Co. *v.* Sutton, (Fla. 1907) 44 So. 946.

8. See Morrow *v.* Watts, 80 Ark. 57, 95 S. W. 988, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1066.

Waiver of Disqualification by Failure to Object. — Kerr *v.* Burns, (Colo. 1908) 93 Pac. 1120.

1067. **1.** Bliss *v.* Tyler, 149 Mich. 601, 113 N. W. 317.

3. Klenk *v.* Byrne, 143 Fed. 1008; National Metal Co. *v.* Greene Consol. Copper Co., (Ariz. 1907) 89 Pac. 535; Weaver *v.* Webb, 3 Ga. App. 726, 60 S. E. 367; Boyle *v.* Detroit, (Mich. 1908) 115 N. W. 1056; Bernard *v.* Lembeck, etc., Eagle Brewing Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 746; Skjelbred *v.* Shafer, 15 N. Dak. 539, 108 N. W. 487; Lutcher *v.* Allen, (Tex. Civ. App. 1906) 95 S. W. 572; Point Pleasant *v.* Greenlee, (W. Va. 1907) 60 S. E. 601.

Want of Service Cannot Be Shown on Collateral Attack except where it appears on the face of the record. Waterman *v.* Bash, (Wash. 1907) 89 Pac. 556.

1068. **1.** Ayres *v.* Deering, (Kan. 1907) 90 Pac. 794; Hansford *v.* Tate, 61 W. Va. 207, 56 S. E. 372.

4. Cohen *v.* Portland Lodge, etc., (C. C. A.) 152 Fed. 357, *affirming* 144 Fed. 266; Johnson *v.* Lesser, 76 Ark. 465, 91 S. W. 763; Finn *v.* Howard, (Kan. 1908) 94 Pac. 801; McDermott *v.* Gray, 198 Mo. 266, 95 S. W. 431; Peterson *v.* Investors' Trust Co., (Wash. 1907) 90 Pac. 596.

1069. **1.** Pitman *v.* Heumeier, (Neb. 1908) 115 N. W. 1083. See also Burke *v.* Kaltenbach, (Supm. Ct. App. Div.) 109 N. Y. Supp. 225.

Where the Statute Makes Proof of Service a Condition Precedent to the acquisition of jurisdiction, such proof must affirmatively appear before the tribunal can act. State *v.* Cary, (Wis. 1907) 112 N. W. 428.

2. Point Pleasant *v.* Greenlee, (W. Va. 1907) 60 S. E. 601.

7. Harbert *v.* Durden, 116 Mo. App. 512, 92 S. W. 746; Rye *v.* J. M. Guffey Petroleum Co., (Tex. Civ. App. 1906) 95 S. W. 622.

Errors Committed in the Course of the Trial render the judgment voidable but not void. Chicago *v.* Campbell, 118 Ill. App. 132.

8. Rose *v.* Davis, 140 N. Car. 266, 52 S. E. 780.

9. Camplin *v.* Jackson, 34 Colo. 447, 83 Pac. 1017, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1067 [1069]; O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108, *affirming* 114 Ill. App. 40; Kubesh *v.* Hanson, 93 Minn. 259, 101 N. W. 73, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1069; Banning *v.* Roy, (Oregon 1905) 82 Pac. 708.

1070. **6.** Berliner *v.* M. Zimmerman Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 246, 104 N. Y. Supp. 407, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1070; Pocahontas Wholesale Grocery Co. *v.* Gillespie, (W. Va. 1908) 60 S. E. 597.

Jurisdiction Is Lost by adjournment beyond the statutory time unless the parties consent thereto. Clemens *v.* Werner Co., 52 Misc. (N. Y.) 110, 101 N. Y. Supp. 755.

10. Wardrobe *v.* Leonard, (Neb. 1907) 111 N. W. 134; Hotchkin *v.* Bussell, (Wash. 1907) 89 Pac. 183.

12. Wilkinson *v.* Lehman-Durr Co., (Ala. 1906) 43 So. 857.

1072. **1.** *Ex p.* Moran, (C. C. A.) 144 Fed. 594; *In re* Belle Fourche First Nat. Bank, (C. C. A.) 152 Fed. 64; Camplin *v.* Jackson, 34 Colo. 447, 83 Pac. 1017; Mortgage Trust Co. *v.* Redd, 38 Colo. 458, 88 Pac. 473; Bedingfield *v.* Louisville First Nat. Bank, (Ga. App. 1908) 61 S. E. 30; O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108; Gillespie *v.* Rump, 163 Ind. 457, 72 N. E. 138; Robyn *v.* Pickard, 37 Ind. App. 161, 76 N. E. 642; Goodrum *v.* Buffalo, (Indian Ter. 1907) 104 S. W. 942; McDermott *v.* Gray, 198 Mo. 266, 95 S. W. 431; Rye *v.* J. M. Guffey Petroleum Co., (Tex. Civ.

App. 1906) 95 S. W. 622; Williams *v.* Steele, (Tex. 1908) 108 S. W. 155; *Ex p.* Cox, (Tex. Crim. 1908) 109 S. W. 369.

A Default Judgment in excess of the relief demanded by the prayer of the complaint is void for want of jurisdiction. Sache *v.* Wallace, 101 Minn. 169, 112 N. W. 386.

2. See Taylor *v.* Doom, (Tex. Civ. App. 1906) 95 S. W. 4.

3. Horrigan *v.* Savannah Grocery Co., 126 Ga. 127, 54 S. E. 961, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072; Potter *v.* Potter, (Ky. 1907) 101 S. W. 905; Rye *v.* J. M. Guffey Petroleum Co., (Tex. Civ. App. 1906) 95 S. W. 622.

1074. 1. *United States.* — Cohen *v.* Portland Lodge, etc., 144 Fed. 269 (*citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1074), *affirmed* 152 Fed. 357.

Alabama. — Brookside Dry Goods Co. *v.* City Furniture Co., (Ala. 1906) 41 So. 659.

Arkansas. — Briggs *v.* Manning, 80 Ark. 304, 97 S. W. 289.

California. — *In re* Davis, (Cal. 1906) 86 Pac. 183; Robinson *v.* Blood, 151 Cal. 504, 91 Pac. 258.

Georgia. — Franklin County *v.* Crow, 128 Ga. 458, 57 S. E. 784; Weaver *v.* Webb, 3 Ga. App. 726, 60 S. E. 367.

Idaho. — O'Neill *v.* Potvin, 13 Idaho 721, 93 Pac. 20, 257.

Illinois. — Forrest *v.* Fey, 218 Ill. 165, 75 N. E. 789; Harrow *v.* Grogan, 219 Ill. 288, 76 N. E. 350; Long *v.* Frank, 117 Ill. App. 207; Hawthorne *v.* Cartier Lumber Co., 121 Ill. App. 494.

Indiana. — Spangle *v.* Spangle, (Ind. App. 1908) 83 N. E. 720, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1073 [1074]; Chicago, etc., R. Co. *v.* Grantham, 165 Ind. 279, 75 N. E. 265; Roberts *v.* Leutzke, 39 Ind. App. 577, 78 N. E. 635; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760.

Kentucky. — Roberts *v.* Eastern Kentucky Insane Asylum, (Ky. 1907) 102 S. W. 818; Segal *v.* Reisert, (Ky. 1908) 107 S. W. 747.

Nebraska. — Martin *v.* Fraternal L. Assoc., (Neb. 1907) 114 N. W. 159.

New Jersey. — McDevitt *v.* Connell, (N. J. 1906) 63 Atl. 504.

New York. — Geduld *v.* Baltimore, etc., R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 239, 105 N. Y. Supp. 110; Burke *v.* Kaltenbach, (Supm. Ct. App. Div.) 109 N. Y. Supp. 225.

North Carolina. — State *v.* Settle, 141 N. Car. 553, 54 S. E. 445.

Oregon. — Knapp *v.* Wallace, (Oregon 1907) 92 Pac. 1054.

Texas. — Lutcher *v.* Allen, (Tex. Civ. App. 1906) 95 S. W. 572; Ft. Worth, etc., R. Co. *v.* Underwood, (Tex. Civ. App. 1906) 98 S. W. 453; *Ex p.* Cox, (Tex. Crim. 1908) 109 S. W. 369.

1075. 1. Kaylor *v.* Hiller, 77 S. Car. 393, 58 S. E. 2.

Hearn *v.* Ayres, 77 Ark. 497, 92 S. W. 768; Waldron *v.* Taenzer, 79 Ark. 16, 94 S. W. 925; Farmers' Union Ditch Co. *v.* Rio Grande Canal Co., (Colo. 1906) 86 Pac. 1042; Johnson *v.* Grace, (Tex. Civ. App. 1906) 94 S. W. 1064.

1076. 4. *In re* Belle Fourche First Nat. Bank, (C. C. A.) 152 Fed. 64.

5. Hickey *v.* Stallworth, 143 Ala. 535, 39 So. 267; Briggs *v.* Manning, 80 Ark. 304, 97 S. W. 289; Hare *v.* Shaw, 84 Ark. 32, 104 S. W. 931; Desloge *v.* Tucker, 196 Mo. 587, 94 S. W. 283; Strobel *v.* Clarke, (Mo. 1907) 106 S. W. 585; Dutton *v.* Wright, (Tex. Civ. App. 1905) 85 S. W. 1025.

1077. 1. Johnson *v.* Hunter, (C. C. A.) 147 Fed. 133, *reversing* 127 Fed. 219.

5. Cohen *v.* Portland Lodge, etc., 144 Fed. 269 (*citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1077), *affirmed* 152 Fed. 357; Old Wayne Mut. L. Ins. Assoc. *v.* McDonough, 204 U. S. 8, 27 U. S. Sup. Ct. 236; Hickey *v.* Stallworth, 143 Ala. 535, 39 So. 267; Alaska Commercial Co. *v.* Debney, 2 Alaska 303; Johnston *v.* Southern Pac. Co., 150 Cal. 535, 89 Pac. 348; Weaver *v.* Webb, 3 Ga. App. 726, 60 S. E. 367; Forrest *v.* Fey, 218 Ill. 165, 75 N. E. 789; Leman *v.* MacLennan, 18 Ohio Cir. Dec. 137, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1077; Dunn *v.* Taylor, (Tex. Civ. App. 1906) 94 S. W. 347; Lutcher *v.* Allen, (Tex. Civ. App. 1906) 95 S. W. 572; Stoneman *v.* Bilby, (Tex. Civ. App. 1906) 96 S. W. 50; State *v.* Wheeler, 43 Wash. 183, 86 Pac. 394.

1078. 2. Knapp *v.* Wallace, (Oregon 1907) 92 Pac. 1054, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1078.

3. Harbert *v.* Durden, 116 Mo. App. 512, 92 S. W. 746.

4. Cohen *v.* Portland Lodge, etc., (C. C. A.) 152 Fed. 357, *affirming* 144 Fed. 266.

1079. 2. Mortgage Trust Co. *v.* Redd, 38 Colo. 458, 88 Pac. 473.

3. Martin *v.* White, (C. C. A.) 146 Fed. 461; Cohen *v.* Portland Lodge, etc., (C. C. A.) 152 Fed. 357, *affirming* 144 Fed. 266; Calkins *v.* Calkins, 229 Ill. 68, 82 N. E. 242; Illinois Cent. R. Co. *v.* Hasenwinkle, 232 Ill. 224, 83 N. E. 815.

1080. 2. Plummer *v.* Wells, 6 Indian Ter. 189, 90 S. W. 303.

5. County Bank *v.* Jack, 148 Cal. 437, 83 Pac. 705; Welsh *v.* Koch, 4 Cal. App. 571, 88 Pac. 604; Johnston *v.* Southern Pac. Co., 150 Cal. 535, 89 Pac. 348; Farmers' Union Ditch Co. *v.* Rio Grande Canal Co., (Colo. 1906) 86 Pac. 1042, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1080; Medlin *v.* Downing Lumber Co., 128 Ga. 115, 57 S. E. 232; Eau Claire Bank *v.* Reed, 232 Ill. 238, 83 N. E. 820; Plummer *v.* Wells, 6 Indian Ter. 189, 90 S. W. 303; Strobel *v.* Clarke, (Mo. 1907) 106 S. W. 585; Dutton *v.* Wright, (Tex. Civ. App. 1005) 85 S. W. 1025; Wallace *v.* Turner, (Tex. Civ. App. 1905) 89 S. W. 432, *affirmed* 99 Tex. 543, 92 S. W. 31; Davis *v.* Ragland, (Tex. Civ. App. 1906) 93 S. W. 1099; Moore *v.* Hanscom, (Tex. 1908) 106 S. W. 876, *modifying* (Tex. Civ. App. 1907) 103 S. W. 665.

1081. 1. Franklin County *v.* Crow, 128 Ga. 458, 57 S. E. 784; Lutcher *v.* Allen, (Tex. Civ. App. 1906) 95 S. W. 572.

2. Wallace *v.* Adams, (C. C. A.) 143 Fed. 716, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082 [1081]; Cohen *v.* Portland Lodge, etc., 140 Fed. 774; Flannigan *v.* Chapman, etc., Land Co., (C. C. A.) 144 Fed. 371; Livingston *v.* New England Mortg. Security

Co., 77 Ark. 379, 91 S. W. 752; Sacramento Bank *v.* Montgomery, 146 Cal. 745, 81 Pac. 138; Johnston *v.* Southern Pac. Co., 150 Cal. 535, 89 Pac. 348; *Ex p.* Wallace, 75 Kan. 432, 89 Pac. 687; Hartzfeld *v.* Taylor, 207 Mo. 236, 105 S. W. 599; State *v.* Settle, 141 N. Car. 553, 54 S. E. 445; Leman *v.* MacLennan, 18 Ohio Cir. Dec. 137, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1081; Dunn *v.* Taylor, (Tex. Civ. App. 1906) 94 S. W. 347.

1082. 2. Forrest *v.* Fey, 218 Ill. 165, 75 N. E. 789; Point Pleasant *v.* Greenlee, (W. Va. 1907) 60 S. E. 601.

4. Commissioners' Ct. *v.* Johnson, 145 Ala. 553, 39 So. 910; Brooks *v.* Morgan, 36 Ind. App. 672, 76 N. E. 331; Taber *v.* Douglass, 101 Me. 363, 64 Atl. 653; Ruckert *v.* Richter, 127 Mo. App. 644, 106 S. W. 1081; Katz *v.* Schreckinger, (Sup. Ct. App. T.) 52 Misc. (N. Y.) 160, 101 N. Y. Supp. 743; Geduld *v.* Baltimore, etc., R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 239, 105 N. Y. Supp. 110; Carpenter *v.* Pirner, (Supm. Ct. App. T.) 107 N. Y. Supp. 875; Roberts *v.* Hickory Camp Coal, etc., Co., 58 W. Va. 276, 52 S. E. 182.

1084. 2. Sylvester *v.* Willson, 2 Alaska 325.

4. Duff, etc., Furniture Co. *v.* Read, 74 Kan. 730, 88 Pac. 264, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1084; Roberts *v.* Hickory Camp Coal, etc., Co., 58 W. Va. 276, 52 S. E. 182.

5. Sylvester *v.* Willson, 2 Alaska 325.

1085. 1. Taber *v.* Douglass, 101 Me. 363, 64 Atl. 653.

2. Teel *v.* Dunnihoo, 221 Ill. 471, 77 N. E. 906; Baltimore, etc., R. Co. *v.* Freeze, (Ind. 1906) 82 N. E. 761; Reich *v.* Cochran, 105 N. Y. App. Div. 542, 94 N. Y. Supp. 404, *reversing* (Supm. Ct. Spec. T.) 41 Misc. (N. Y.) 621, 85 N. Y. Supp. 247.

JURY AND JURY TRIAL.

1095. 1. Blair *v.* McCormick Constr. Co., 123 N. Y. App. Div. 30, 107 N. Y. Supp. 750.

"Jury" Means Twelve Men.— Gins *v.* U. S., (C. C. A.) 141 Fed. 956; Bettge *v.* Territory, 17 Okla. 85, 87 Pac. 897; Jones *v.* State, (Tex. Crim. 1907) 106 S. W. 345; Jennings *v.* State, (Wis. 1908) 114 N. W. 492.

1097. 2. U. S. *v.* Ramsey, 158 Fed. 488; Tracy *v.* Falvey, 102 N. Y. App. Div. 585, 92 N. Y. Supp. 625; Ogden *v.* Apalachian Land, etc., Co., (N. Car. 1907) 59 S. E. 1027; Hurley *v.* Walter, 129 Wis. 508, 109 N. W. 558.

3. *In re* McQuown, (Okla. 1907) 91 Pac. 689; Jennings *v.* State, (Wis. 1908) 114 N. W. 492.

Contrary Decisions.— U. S. *v.* Praeger, 149 Fed. 474.

1098. 1. Simmons *v.* State, 75 Ohio St. 346, 79 N. E. 555.

2. Moore *v.* State, 124 Ga. 30, 52 S. E. 81; Otto *v.* State, (Tex. Crim. 1905) 87 S. W. 698.

3. Jones *v.* State, (Tex. Crim. 1907) 106 S. W. 345; Jennings *v.* State, (Wis. 1908) 114 N. W. 492.

May Not Consent to Verdict by Majority of Jury.— Archer *v.* State, (Tex. Crim. 1907) 100 S. W. 769.

1099. 2. Allworth *v.* Interstate Consol. R. Co., (R. I. 1905) 60 Atl. 834.

Waiver Strictly Construed.— Sharrock *v.* Kreiger, 6 Indian Ter. 466, 98 S. W. 161.

3. Boonville Nat. Bank *v.* Blakey, 166 Ind. 427, 76 N. E. 529; Simmons *v.* State, 75 Ohio St. 346, 79 N. E. 555, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1099.

4. Puffer *v.* American Cent. Ins. Co., 48 Oregon 475, 87 Pac. 523; Lipscomb *v.* Condon, 56 W. Va. 416, 49 S. E. 392, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1099.

5. See Jacobs *v.* People, 218 Ill. 500, 75 N. E. 1034.

Constitutional Provisions giving a right to trial by jury unless a jury trial is waived "in the manner prescribed by law," means the law in force at the time the action is begun and not the law in force at the time of the adoption of the Constitution. Chelan County *v.* Navarre, 38 Wash. 684, 80 Pac. 845.

1100. 6. Oregon R., etc., Co. *v.* McCormick, (Wash. 1907) 89 Pac. 186.

1101. 8. **Waiver by Failure to Seasonably Request Jury Trial.**— Brock *v.* Fuller Lumber Co., (C. C. A.) 153 Fed. 272.

1102. 3. Lindstrom *v.* Hope Lumber Co., 12 Idaho 714, 88 Pac. 92; Brooklyn Heights R. Co. *v.* Brooklyn City R. Co., 104 N. Y. App. Div. 88, 93 N. Y. Supp. 849; Bruce *v.* Carolina Queen Consolidated Min. Co., (N. Car. 1908) 61 S. E. 579.

1103. 3. Ettlinger *v.* Sailors' Snug Harbor, 122 N. Y. App. Div. 681, 107 N. Y. Supp. 779; Sharrock *v.* Kreiger, 6 Indian Ter. 466, 98 S. W. 161.

5. Tietzel *v.* Tietzel, 122 N. Y. App. Div. 873, 107 N. Y. Supp. 878.

6. Love *v.* Scatcherd, (C. C. A.) 146 Fed. 1; Zajic *v.* Elian, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 289, 98 N. Y. Supp. 652; Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624; Dilcher *v.* Nellany, (Supm. Ct. Tr. T.) 52 Misc. (N. Y.). 364, 102 N. Y. Supp. 264.

A Previous Request to Direct a Verdict does not preclude a party from requesting to have the case submitted to the jury. Seddon *v.* Tagliabue, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 156, 98 N. Y. Supp. 236.

7. In Texas.— Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141.

1104. 1. Baker *v.* Jackson, 146 Ala. 688, 40 So. 348; *In re* Wickersham, (Cal. 1008) 96 Pac. 311; Ross *v.* McCaldin, 123 N. Y. App. Div. 13, 107 N. Y. Supp. 381; Reynolds *v.* Wynne, (Supm. Ct. App. Div.) 111 N. Y. Supp. 248; State *v.* Packenham, 40 Wash. 403, 82 Pac. 507.

1105. 9. **Statute Not Mandatory.**— Western Union Tel. Co. *v.* Merrill, 144 Ala. 618, 39 So. 121.

10. See *In re* Tuohy, 33 Mont. 230, 83 Pac. 486.

1106. 2. **Discretion of Court.** — Although the law provides that a demand for a jury trial be made before the case is set for trial, it is within the discretion of the court to grant a jury after that time. Knapp *v.* Order of Pendo, 36 Wash. 601, 79 Pac. 209.

4. *In re* Neasmith, (C. C. A.) 147 Fed. 160.

5. La Banque Nationale *v.* Atlantic, etc., R. Co., 8 Quebec Pr. 309 (demand within three days after issue joined).

6. Construction of Rule. — The demand should be made on the first day of the term at which the cause shall be tried and not necessarily on the first day of the term at which it is triable. Harris *v.* Bogle, 115 Tenn. 701, 92 S. W. 849.

1107. 1. Allworth *v.* Interstate Consol. R. Co., (R. I. 1905) 60 Atl. 834.

3. Williams *v.* Gottschalk, 231 Ill. 175, 83 N. E. 141; Humphrey *v.* Eakley, 72 N. J. L. 424, 60 Atl. 1097, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1107.

Payment of Jury Fees Cannot Be Required in the absence of legislative authority. Vineland *v.* Denoflio, (N. J. 1907) 65 Atl. 837.

In New Jersey a jury trial cannot be refused in justice court because of a failure to advance the jury fees. New Jersey Soc., etc., *v.* Wilbur, (N. J. 1908) 69 Atl. 1010.

1108. 5. Wadkins *v.* State, 127 Ga. 45, 56 S. E. 74.

11. Worthington *v.* Nashville, etc., R. Co., 114 Tenn. 177, 86 S. W. 307.

Contra. — Tracey *v.* Falvey, 102 N. Y. App. Div. 585, 92 N. Y. Supp. 625.

12. Wood *v.* Rio Grande Western R. Co., 28 Utah 351, 79 Pac. 182; Knapp *v.* Order of Pendo, 36 Wash. 601, 79 Pac. 209; Hart *v.* Cascade Timber Co., 39 Wash. 279, 81 Pac. 738.

1109. 2. Tracey *v.* Falvey, 102 N. Y. App. Div. 585, 92 N. Y. Supp. 625.

1111. 1. Bryan *v.* State, 124 Ga. 79, 52 S. E. 298.

10. People *v.* Richards, 1 Cal. App. 566, 82 Pac. 691; Litford *v.* State, (Miss. 1908) 46 So. 246; Hoback *v.* Com., 104 Va. 871, 52 S. E. 575.

Irregularities in Making Up the Jury Box were held not to be a ground for challenge where it was shown that the entire jury was selected from talesmen. Hill *v.* State, 89 Miss. 23, 42 So. 380.

Expiration of the List, after drawing of the panel but before trial, is not a ground of challenge. People *v.* Collins, (Cal. App. 1907) 92 Pac. 513.

1112. 5. **The Intentional Omission by a Sheriff** to summon persons of color is a ground of challenge to the venire. Montgomery *v.* State, 53 Fla. 115, 42 So. 894.

7. Pate *v.* State, (Ala. 1907) 43 So. 343; Hayward Lumber Co. *v.* Cox, (Tex. Civ. App. 1907) 104 S. W. 403.

1113. 3. Peel *v.* State, 144 Ala. 125, 39 So. 251; Skipper *v.* State, 144 Ala. 100, 42 So. 43; People *v.* Richards, 1 Cal. App. 566, 82 Pac. 691; Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1, *affirmed* 26 U. S. Supm. Ct. 560; Bryan *v.* State, 124 Ga. 79, 52 S. E. 298; Paulk *v.* State, 2 Ga. App. 662, 58 S. E. 1109.

Contra. — Ross *v.* State, (Tex. Crim. 1908) 109 S. W. 153.

4. **Prejudicial Accounts in Newspapers.** — State *v.* Crane, 202 Mo. 54, 100 S. W. 422.

7. State *v.* Quirk, 101 Minn. 334, 112 N. W. 409.

8. A motion to quash the venire is too late when made after some of the jurors had been selected and agreed upon by the state and the defendant. Smith *v.* State, 145 Ala. 17, 40 So. 957.

9. Eichman *v.* South Covington, etc., R. Co., (Ky. 1907) 104 S. W. 316.

1114. 2. Delmont *v.* State, 15 Wyo. 271, 88 Pac. 623, *rehearing denied* 88 Pac. 1102.

3. Porter *v.* State, 146 Ala. 36, 41 So. 421.

4. State *v.* Page, (Mo. 1908) 110 S. W. 1057.

1116. 2. State *v.* Hamilton, 74 Kan. 461, 87 Pac. 363.

1117. 4. A defect which does not deprive the juror in any degree of his right is not a ground for rejection of the juror. State *v.* Norman, (Iowa 1907) 113 N. W. 340.

1118. 6. Manning *v.* Boston El. R. Co., 187 Mass. 496, 73 N. E. 645.

It is not a ground for challenge in *Louisiana* that a juror is engaged in operating a game of chance. State *v.* Petit, 119 La. 1013, 44 So. 848.

Objection May Be Waived. — Turley *v.* State, 74 Neb. 471, 104 N. W. 934.

10. Challenge Must Be Seasonably Made. — Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237.

1119. 3. Gaines *v.* State, 146 Ala. 16, 41 So. 865.

10. A License to Cultivate Oysters in the navigable waters of the state is not such a freehold interest as will qualify for jury duty. State *v.* Young, 138 N. Car. 571, 50 S. E. 213.

14. In Alabama the requirement is no longer necessary. (See Acts 1900–01, pp. 2003, 2004.) Gaines *v.* State, 146 Ala. 16, 41 So. 865.

18. A Person Who Owned and Controlled a Room was held to be a householder. Mays *v.* State, (Tex. Crim. 1906) 96 S. W. 329.

1120. 1. Payment of Poll or Capitation Tax — Waiver of Requirement. — San Antonio, etc., R. Co. *v.* Lester, 99 Tex. 214, 89 S. W. 752, *reversing* (Tex. Civ. App. 1904) 84 S. W. 401.

2. Nonpayment of Poll Tax Not Ground for Challenge. — King *v.* State, (Tex. Crim. 1907) 100 S. W. 387.

3. Heir. — That a juror is an heir of a deceased person whose estate is on the assessment roll is not a sufficient qualification. People *v.* Warner, 147 Cal. 546, 82 Pac. 196.

Must Be on Roll for Years Immediately Preceding Selection. — Houghton *v.* Market St. R. Co., 1 Cal. App. 576, 82 Pac. 972.

Which Assessment Roll. — The statute is complied with if the name of the juror is on either the personal property or the real estate assessment rolls. State *v.* Gereke, 74 Kan. 196, 86 Pac. 160, *overruled* on rehearing on another point 87 Pac. 759.

6. Chicago *v.* Knobel, 232 Ill. 112. 83 N. E. 459, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1120.

1121. 4. **Conversely.** — An act dividing the county into several divisions for the holding of court does not make residence in a particular division a necessary qualification for jury service. Nordan *v.* State, 143 Ala. 13, 39 So. 406.

1122. 1. **In Alabama** by statute (Code of 1896, § 4988) the disqualification of prior service does not apply to special jurors in capital cases. Harrison *v.* State, 144 Ala. 20, 40 So. 568.

12. Hill *v.* State, 122 Ga. 166, 50 S. E. 57; Jackson *v.* State, 125 Ga. 277, 54 S. E. 167; Brown *v.* State, (Ga. App. 1907) 57 S. E. 1021;

Kinard *v.* State, 1 Ga. App. 146, 58 S. E. 263; Brooks *v.* Jennings County Agricultural Joint-Stock Assoc., 35 Ind. App. 221, 73 N. E. 951.

In Federal Courts. — Under the federal statute the prior service must have been as a petit juror. National Bank *v.* Schufelt, (C. C. A.) 145 Fed. 509.

13. **Service on Regular Panel at Same Term No Disqualification.** — Mason *v.* State, (Ind. 1908) 83 N. E. 613.

14. Mason *v.* State, (Ind. 1908) 83 N. E. [illegible].

1123. 1. Andrews *v.* State, (Ala. 1907) 44 So. 696.

"**During the Year Next Preceding Such Election,**" as used in the *Kansas* statute (Gen. Stat. 1905, c. 54, § 3), has been held to mean the preceding year counting from the time the last list was made. State *v.* Hamilton, 74 Kan. 461, 87 Pac. 363.

3. **Service as Grand Juror.** — In *Louisiana*, the service as grand juror, in order to disqualify, must have been on a grand jury that investigated the instant case. State *v.* Moore, 119 La. 564, 44 So. 299.

4. Morris *v.* U. S., (C. C. A.) 161 Fed. 672 (prior service in state court not bar to service in federal court).

5. "**During the Year Next Preceding**" means the preceding year counting back from the time of the making of the list. State *v.* Hamilton, 74 Kan. 461, 87 Pac. 363.

8. Humphrey *v.* State, 74 Ark. 554, 86 S. W. 437.

1124. 5. **Relationship to the Unsuccessful Party,** although unknown to the accused or his counsel, is not a ground for a new trial. Rumsey *v.* State, 2 Ga. App. 620, 58 S. E. 1066.

9. Watkins *v.* State, 125 Ga. 143, 53 S. E. 1024, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1124; Smith *v.* State, 2 Ga. App. 574, 59 S. E. 311.

11. State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542.

14. Smith *v.* State, 2 Ga. App. 574, 59 S. E. 311.

15. Senterfeit *v.* Shealy, 71 S. Car. 259, 51 S. E. 142. See People *v.* Schmitz, (Cal. App. 1908) 94 Pac. 407.

1125. 1. State *v.* Caron, 118 La. 349, 42 So. 960.

7. Gillespie *v.* State, 168 Ind. 298, 80 N. E. 829.

9. **Relationship to Witness Not Ground for Objection.** — King *v.* State, (Tex. Crim. 1906) 97 S. W. 488.

An Uncle of an Intimate Friend of the accused was held to be disqualified as a juror. Melbourne *v.* State, 51 Fla. 69, 40 So. 189.

1126. 2. **Relationship to President of Defendant Corporation.** — The fact that a juror was the uncle of the wife of the president of the defendant corporation was held not to be a disqualification. Walton *v.* Lindsey Lumber Co., 145 Ala. 661, 39 So. 670.

6. **Relationship to a County Commissioner** who only took such part in defending the suit as his official position required was held not to be a ground of disqualification. Pool *v.* Warren County, 123 Ga. 205, 51 S. E. 328, *distinguishing* Dumas *v.* State, 62 Ga. 58, cited in the original note.

9. Louisiana R., etc., Co. *v.* Morere, 116 La. 997, 41 So. 236.

1127. 5. **That the Juror Is a Client of the Prosecuting Attorney** is not a ground for challenge. State *v.* Glover, (S. Dak. 1907) 113 N. W. 625.

It was held not to be a ground for challenge that a juror in his official capacity as supervisor of a town had employed one of the attorneys to represent the town in an action then pending. Lerum *v.* Geving, 97 Minn. 269, 105 N. W. 967.

11. Georgia R., etc., Co. *v.* Tice, 124 Ga. 459, 52 S. E. 916 (employee of a corporation); Atlantic Coast Line R. Co. *v.* Bunn, 2 Ga. App. 305, 58 S. E. 538; Pearce *v.* Quincy Min. Co., 149 Mich. 112, 112 N. W. 739, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1127.

12. Tucker *v.* Buffalo Cotton Mills, 76 S. Car. 539, 57 S. E. 626.

16. Sansouver *v.* Glenlyon Dye Works, (R. I. 1908) 68 Atl. 545.

Contra. — Dimmack *v.* Wheeling Traction Co., 58 W. Va. 226, 52 S. E. 101.

The Employee of Another Corporation whose president was also president of the defendant corporation was held not to be disqualified for cause. Glasgow *v.* Metropolitan St. R. Co., 191 Mo. 347, 89 S. W. 915.

1128. 7. See State *v.* Caron, 118 La. 349, 42 So. 960.

8. Decker *v.* Laws, 74 Ark. 286, 85 S. W. 425; Soper *v.* Crutcher, (Ky. 1906) 96 S. W. 967.

Friendship for Deceased Not Necessarily Ground of Challenge. — State *v.* Bush, 117 La. 463, 41 So. 703.

It Is the Better Practice to exclude employees of a corporation where one of the parties is an employee of the corporation. Hopkins *v.* State, 52 Fla. 39, 42 So. 52.

10. **Plaintiff in Suit against Same Defendant.** — Stennett *v.* Bessemer, (Ala. 1908) 45 So. 890.

1129. 1. Ellis *v.* Brooks, (Tex. 1907) 102 S. W. 94.

7. Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354.

Prejudice against Railways. — St. Louis, etc., R. Co. *v.* Hooser, (Tex. Civ. App. 1906) 97 S. W. 708.

1130. 8. **Prejudice against Credibility of a Convict as a Witness Not Ground of Challenge.** — People *v.* Murphy, 146 Cal. 502, 80 Pac. 709.

9. **Prejudice against Important Witness.** — Southern Kansas R. Co. *v.* Sage, (Tex. Civ. App. 1906) 94 S. W. 1074.

1131. 5. State *v.* Brown, 188 Mo. 451, 87 S. W. 519; Moore *v.* State, (Tex. Crim. 1907) 107 S. W. 540.

13. **Previous Service on Trial of Joint Defendant Ground of Challenge.** — Paulk *v.* State, 2 Ga. App. 662, 58 S. E. 1109.

17. Faber *v.* C. Reiss Coal Co., 124 Wis. 554, 102 N. W. 1049, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1131.

17*a*. **Same Vocation.** — The fact that a juror pursues the same vocation as one of the parties is not a ground of challenge. Ballentine *v.* Mercer, (Mo. App. 1908) 109 S. W. 1037.

1132. 12. Martin *v.* Farmers' Mut. F. Ins. Co., 139 Mich. 148, 102 N. W. 656.

Contra. — Rogers *v.* Gladiator Min., etc., Co., (S. Dak. 1907) 113 N. W. 86.

13. Rinklin *v.* Acker, (Sup. Ct. App. Div.) 109 N. Y. Supp. 125.

Depositors of Bank. — Imboden *v.* People, (Colo. 1907) 90 Pac. 608.

15. A Member of a Fraternal Benefit Society was held to be disqualified where it was shown that assessments of members would be affected by the result of the trial. Edmonds *v.* Modern Woodmen of America, 125 Mo. App. 214, 102 S. W. 601.

16. In an Action to Try Title it was held that persons who were members of an association known as the "Actual Settlers" were not thereby disqualified from serving on the jury. Jones *v.* Wright, (Tex. Civ. App. 1906) 92 S. W. 1010.

1133. 4. Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389.

6. Citizens of a County are not disqualified for jury service in a case wherein the county is a party. Wilson *v.* Wapello County, 129 Iowa 77, 105 N. W. 363; Big Sandy R. Co. *v.* Floyd County, (Ky. 1907) 101 S. W. 354.

1134. 9. Sanford *v.* State, 143 Ala. 78, 39 So. 370; Haddix *v.* State, (Neb. 1906) 107 N. W. 781; Com. *v.* Minney, 216 Pa. St. 149, 65 Atl. 31.

1135. 1. Untreiner *v.* State, 146 Ala. 26, 41 So. 285.

4. Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948.

6. Exclusion Discretionary with Court. — Com. *v.* Curcio, (Pa. 1907) 67 Atl. 643.

1136. 2. Whatley *v.* State, 144 Ala. 68, 39 So. 1014; Coker *v.* State, 144 Ala. 28, 40 So. 516; Strickland *v.* State, (Ala. 1907) 44 So. 90; Coleman *v.* State, (Ala. 1907) 44 So. 184; State *v.* Stephens, 116 La. 36, 40 So. 523.

Ground of Challenge for State Only. — Gregory *v.* State, 148 Ala. 566, 42 So. 829.

4. Calhoun *v.* State, 143 Ala. 11, 39 So. 378.

7. State *v.* Sultan, 142 N. Car. 569, 54 S. E. 841; King *v.* State, (Tex. Crim. 1906) 97 S. W. 488; Starke *v.* State, (Wyo. 1908) 96 Pac. 148.

Where a Juror Signed a Petition together with 500 other citizens requesting that a special term of court be held to try the defendant, it was held not to be a ground for challenge for cause. Hicks *v.* State, 126 Ga. 80, 54 S. E. 807.

1137. 1. King *v.* State, (Tex. Crim. 1906) 97 S. W. 488.

5. Franks *v.* State, 47 Tex. Crim. 638, 88 S. W. 923 (prejudice against murder).

7. Fitts *v.* Southern Pac. Co., 149 Cal. 310, 86 Pac. 710. See also Denham *v.* Washington Water Power Co., 38 Wash. 354, 80 Pac. 546.

1138. 1. Wheeling, etc., R. Co. *v.* Parker, 29 Ohio Cir. Ct. 1.

4. Belief that an Indictment Is Evidence of Guilt. — State *v.* Kinney, 45 Wash. 165, 87 Pac. 1.

12. Where Insanity Is Not Relied On. — Franks *v.* State, 47 Tex. Crim. 638, 88 S. W. 923.

1139. 4. San Antonio Traction Co. *v.* Davis, (Tex. Civ. App. 1907) 101 S. W. 554.

10. Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948.

1140. 12. McCue *v.* Com., 103 Va. 870, 49 S. E. 623.

14. Thomas *v.* State, (Ala. 1907) 43 So. 371 ("fixed and definite").

1141. 8. State *v.* Brown, 130 Iowa 57, 106 N. W. 379; Territory *v.* Emilio, (N. Mex. 1907) 89 Pac. 239; Gregg *v.* State, (Tex. Crim. 1906) 100 S. W. 1161.

1142. 2. Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948.

1143. 3. McCue *v.* Com., 103 Va. 870, 49 S. E. 623.

5. *Alabama.* — Funderburk *v.* State, 145 Ala. 661, 39 So. 672; Thomas *v.* State, (Ala. 1907) 43 So. 371.

Arizona. — Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948.

Arkansas. — Daughtry *v.* State, 80 Ark. 13, 96 S. W. 748; St. Louis, etc., R. Co. *v.* Stamps, 84 Ark. 241, 104 S. W. 1114; Decker *v.* State, (Ark. 1908) 107 S. W. 182.

California. — People *v.* Murphy, 146 Cal. 502, 80 Pac. 709; People *v.* Warner, 147 Cal. 546, 82 Pac. 196; People *v.* Brown, 148 Cal. 743, 84 Pac. 204.

Florida. — Marlow *v.* State, 49 Fla. 7, 38 So. 653; Melbourne *v.* State, 51 Fla. 69, 40 So. 189.

Illinois. — Williams *v.* Supreme Ct., etc., 221 Ill. 152, 77 N. E. 542, *affirming* 120 Ill. App. 263; Cooke *v.* People, 231 Ill. 9, 82 N. E. 863.

Iowa. — State *v.* Ralston, (Iowa 1908) 116 N. W. 1058.

Kansas. — State *v.* Hamilton, 74 Kan. 461, 87 Pac. 363.

Mississippi. — Evans *v.* State, 87 Miss. 459, 40 So. 8.

Missouri. — State *v.* Forsha, 190 Mo. 296, 88 S. W. 746; State *v.* Sykes, 191 Mo. 62, 89 S. W. 851; State *v.* McCarver, 194 Mo. 717, 92 S. W. 684; State *v.* Myers, 198 Mo. 225, 94 S. W. 242; State *v.* Darling, 199 Mo. 168, 97 S. W. 592; State *v.* Church, 199 Mo. 605, 98 S. W. 16; State *v.* Vickers, (Mo. 1907) 106 S. W. 999.

Nebraska. — Barker *v.* State, 73 Neb. 469, 103 N. W. 71; Bridges *v.* State, (Neb. 1907) 113 N. W. 1048.

Nevada. — State *v.* Williams, (Nev. 1905) 82 Pac. 353.

New Mexico. — Territory *v.* Emilio, (N. Mex. 1907) 89 Pac. 239.

North Dakota. — State *v.* Werner, (N. Dak. 1907) 112 N. W. 60.

Oregon. — State *v.* Megorden, (Oregon 1907) 88 Pac. 306.

Texas. — Johnson *v.* State, 49 Tex. Crim. 314, 94 S. W. 224; Kegans *v.* State, (Tex. Crim. 1906) 95 S. W. 122; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100.

Newspaper Article by Witness. — An opinion based upon a newspaper article written by a witness known to the juror was held to be ground for challenge. Sullins *v.* State, 79 Ark. 127, 95 S. W. 159.

In California any opinion will disqualify except those founded upon "public rumor, common notoriety, or statements in the public journals." People *v.* Helm, (Cal. 1907) 93 Pac. 90.

1145. 1. State *v.* Miles, 199 Mo. 530, 98 S. W. 25.

3. *Compare* Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948.

6. *Compare* Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948.

7. State *v.* Miller, 46 Oregon 485, 81 Pac. 363; Quinn *v.* State, (Tex. Crim. 1907) 101 S. W. 248. But see Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948.

1146. 1. Barnett *v.* St. Francis Levee Dist., 125 Mo. App. 61, 102 S. W. 583; State *v.* Miller, 46 Oregon 485, 81 Pac. 363; Barnes *v.* State, (Tex. Crim. 1905) 88 S. W. 805 (hearing evidence in another case arising out of same transaction).

1147. 4. See State *v.* Wren, (La. 1908) 46 So. 99.

5. Walker *v.* State, 146 Ala. 45, 41 So. 878; Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948; Williams *v.* Supreme Ct., etc., 221 Ill. 152, 77 N. E. 542; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100.

Statements by Jurors as to Evidence Necessary. — Murphy *v.* State, (Miss. 1908) 45 So. 865 ("strong enough evidence to convince").

8. Com. *v.* Curcio, (Pa. 1907) 67 Atl. 643.

1148. 5. Cason *v.* State, (Tex. Crim. 1907) 106 S. W. 337.

12. Furlong *v.* American Cent. F. Ins. Co., (Iowa 1907) 113 N. W. 1087.

13*a*. **Opinion in Other Cases.** — An opinion as to the defendant's liability in other cases is not a ground for challenge. Smith *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 755.

1149. 4. Glover *v.* State, 128 Ga. 1, 57 S. E. 101.

9. Wallace *v.* State, (Tex. Crim. 1906) 97 S. W. 1050 (statement insufficient to show prejudice).

1150. 3. *United States.* — Rosencranz *v.* U. S., (C. C. A.) 155 Fed. 38.

Arizona. — Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948.

California. — Graybill *v.* De Young, 146 Cal. 421, 80 Pac. 618; Fitts *v.* Southern Pac. Co., 149 Cal. 310, 86 Pac. 710; People *v.* Helm, (Cal. 1907) 93 Pac. 99.

Florida. — Marlow *v.* State, 49 Fla. 7, 38 So. 65.

Illinois. — Clefford *v.* People, 229 Ill. 633, 82 N. E. 343.

Louisiana. — State *v.* Rodriguez, 115 La. 1004, 40 So. 438.

Mississippi. — Cook *v.* State, (Miss. 1907) 43 So. 618.

Oregon. — Schwarz *v.* Lee Gon, 46 Oregon 219, 80 Pac. 110.

Texas. — Green *v.* State, (Tex. Crim. 1906) 98 S. W. 1059; Gregg *v.* State, (Tex. Crim. 1906) 100 S. W. 1161.

Utah. — Hern *v.* Southern Pac. R. Co., 29 Utah 127, 81 Pac. 902.

Washington. — Denham *v.* Washington Water Power Co., 38 Wash. 354, 80 Pac. 546.

Where the Juror's Statements Are Contradictory the trial court must decide which of the answers most truly show the juror's mind, and if any doubts arise as to his fairness, a challenge should be sustained. People *v.* Ryan, (Cal. 1907) 92 Pac. 853.

5. Williams *v.* Supreme Ct., etc., 221 Ill. 152, 77 N. E. 542, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1150, and *affirming* 120 Ill. App. 263; Croft *v.* Chicago, etc., R. Co., 134 Iowa 411, 109 N. W. 723; Murphy *v.* State, (Miss. 1908) 45 So. 865; Lucas *v.* State, 75 Neb. 11, 105 N. W. 976; Bemis *v.* Omaha, (Neb. 1908) 116 N. W. 31; State *v.* Williams, (Nev. 1905) 82 Pac. 353; Com. *v.* Minney, 216 Pa. St. 149, 65 Atl. 31; Sansouver *v.* Glenlyon Dye Works, (R. I. 1908) 68 Atl. 545; Hern *v.* Southern Pac. R. Co., 29 Utah 127, 81 Pac. 902.

6. Doubts Should Be Resolved in Favor of Accused. — State *v.* Williams, (Nev. 1905) 82 [illegible]

7. State *v.* Darling, 199 Mo. 168, 97 S. W. 592; Barker *v.* State, 73 Neb. 469, 103 N. W. 71; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100.

1151. 1. Lucas *v.* State, 75 Neb. 11, 105 N. W. 976.

1152. 3. *Alabama.* — Walker *v.* State, 146 Ala. 45, 41 So. 878; Strickland *v.* State, (Ala. 1907) 44 So. 90.

Iowa. — Dale *v.* Colfax Consol. Coal Co., 131 Iowa 67, 107 N. W. 1096; Croft *v.* Chicago, etc., R. Co., 134 Iowa 411, 109 N. W. 723; State *v.* Fielding, (Iowa 1907) 112 N. W. 539.

Louisiana. — State *v.* Bush, 117 La. 463, 41 So. 793; State *v.* Howard, (La. 1907) 45 So. 260.

Mississippi. — Cook *v.* State, (Miss. 1907) 43 So. 618.

Missouri. — State *v.* Brown, 188 Mo. 451, 87 S. W. 519; State *v.* Sykes, 191 Mo. 62, 89 S. W. 851; State *v.* Myers, 198 Mo. 225, 94 S. W. 242.

Nebraska. — Keeler *v.* State, 73 Neb. 441, 103 N. W. 64.

New Mexico. — Territory *v.* Emilio, (N. Mex. 1907) 89 Pac. 239.

Pennsylvania. — Com. *v.* Minney, 216 Pa. St. 140, 65 Atl. 31.

Texas. — Russell *v.* State, (Tex. Crim. 1908) 111 S. W. 658.

Virginia. — Robinson *v.* Com., 104 Va. 888, 52 S. E. 600.

1153. [illegible] 85 Pac. 948; People *v.* Helm, (Cal. 1907) 93 Pac. 99; Murphy *v.* State, (Miss. 1908) 45 So. 865; Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354.

1154. 1. Jacobs *v.* State, (Ga. App. 1907) 57 S. E. 1063.

10. Holmes *v.* State, (Tex. Crim. 1908) 105 S. W. 1160.

Objection Must Be Made Before Verdict. — State *v.* Langford, 74 S. Car. 460, 55 S. E. 120.

16. Johnson *v.* State, (Ga. 1908) 60 S. E. 1[illegible]

1155. 2. People *v.* Mol, 137 Mich. 692, 100 N. W. 913; Fletcher *v.* Com., 106 Va. 840, 56 S. E. 149.

Contra. — Rose *v.* Com., 106 Va. 85, 56 S. E. 151.

3. Roberts *v.* State, (Ga. App. 1908) 61 S. E. 497; Hanes *v.* State, (Tex. Crim. 1908) 107 S. W. 818; Kenecht *v.* State, (Tex. Crim. 1908) 108 S. W. 1183. See also Hubbard *v.* State, (Tex. Crim. 1908) 107 S. W. 351.

7. Hunt *v.* Columbia, 122 Mo. App. 31, 97 S. W. 955.

1156. 2. Gaines *v.* State, 146 Ala. 16, 41 So. 865; People *v.* Lee, 1 Cal. App. 169, 81 Pac. 969; State *v.* Pointdexter, 117 La. 380, 41 So. 688; State *v.* White, 48 Oregon 416, 87 Pac. 137.

5. Calhoun County *v.* Watson, (Ala. 1907) 44 So. 702; Glasgow *v.* Metropolitan St. R. Co., 191 Mo. 347, 89 S. W. 915.

1157. 2. State *v.* Poindexter, 117 La. 380, 41 So. 688.

6. Brown *v.* State, (Miss. 1905) 38 So. 316.

1158. 2. Nordan *v.* State, 143 Ala. 13, 39 So. 406.

5. Sanford *v.* State, 143 Ala. 78, 39 So. 370; State *v.* Voorhies, 115 La. 200, 38 So. 964.

1159. 1. Williams *v.* State, 147 Ala. 10, 41 So. 992; State *v.* Fielding, (Iowa 1907) 112 N. W. 539.

2. State Militiamen Excused While on Camp Duty. — State *v.* Lang, (N. J. 1907) 66 Atl. 942, *affirmed* (N. J. 1907) 68 Atl. 210.

3. State *v.* Fielding, (Iowa 1907) 112 N. W. 539.

5. State *v.* White, 48 Oregon 416, 87 Pac. 137.

1160. 5. Com. *v.* Evans, 212 Pa. St. 369, 61 Atl. 989.

1161. 5. Parris *v.* State, 125 Ga. 777, 54 S. E. 751; Clefford *v.* People, 229 Ill. 633, 82 N. E. 343; Cleveland, etc., R. Co. *v.* Osgood, 36 Ind. App. 34, 73 N. E. 285; Reed *v.* State, 75 Neb. 509, 106 N. W. 649; Robinson *v.* Territory, 16 Okla. 241, 85 Pac. 451; Okershauser *v.* State, (Wis. 1908) 116 N. W. 769 (ignorance of English language).

1163. 1. Hill *v.* State, 122 Ga. 166, 50 S. E. 57; Jackson *v.* State, 125 Ga. 277, 54 S. E. 167 (previous service as juror); Manning *v.* Boston El. R. Co., 187 Mass. 496, 73 N. E. 645; State *v.* Langford, 74 S. Car. 460, 55 S. E. 120 (service on previous trial); Walker *v.* State, 118 Tenn. 375, 99 S. W. 366; Rice *v.* Dewberry, (Tex. Civ. App. 1906) 93 S. W. 715; McCorquodale *v.* State, (Tex. Crim. 1905) 98 S. W. 879.

3. Previous Service as Juror. — Hill *v.* State, 122 Ga. 166, 50 S. E. 57.

1164. 3. Senterfeit *v.* Shealy, 71 S. Car. 259, 51 S. E. 142; Blassingame *v.* Laurens, (S. Car. 1908) 61 S. E. 96; Lloyd *v.* Adams, 37 N. Bruns. 590.

5. See Reed *v.* State, 75 Neb. 509, 106 N. W. 649.

7. Walker *v.* State, 118 Tenn. 375, 99 S. W. 366.

1165. 1. **Investigation as to Juror's Qualification Before Trial Not Necessary.** — Manning *v.* Boston El. R. Co., 187 Mass. 496, 73 N. E. 645.

7. Wall *v.* State, 126 Ga. 54, 55 S. E. 484.

1166. 2. **Ignorance of Disqualification Must Be Shown.** — State *v.* Mathews, 202 Mo. 143, 100 S. W. 420.

3. Sansouver *v.* Glenlyon Dye Works, (R. I. 1908) 68 Atl. 545.

1167. 1. Massey *v.* State, 124 Ga. 24, 52 S. E. 78; State *v.* Matheson, 130 Iowa 440, 103 N. W. 137; Turley *v.* State, 74 Neb. 471, 104 N. W. 934; Com. *v.* Penrose, 27 Pa. Super. Ct. 101; Senterfeit *v.* Shealy, 71 S. Car. 259, 51 S. E. 142; Hern *v.* Southern Pac. R. Co., 29 Utah 127, 81 Pac. 902.

2. Orr *v.* Bradley, 126 Mo. App. 146, 103 S. W. 1149; Reed *v.* State, 75 Neb. 509, 106 N. W. 649; Blassingame *v.* Laurens, (S. Car. 1908) 61 S. E. 96.

1168. 6. State *v.* Lauth, 46 Oregon 342, 80 Pac. 660; Heasley *v.* Nichols, 38 Wash. 485, 80 Pac. 769.

1169. 1. See Cleveland, etc., R. Co. *v.* Osgood, 36 Ind. App. 34, 73 N. E. 285.

2. Must Show Ignorance of Counsel. — Territory *v.* Emilio, (N. Mex. 1907) 89 Pac. 239.

3. Williamson *v.* St. Louis Transit Co., 202 Mo. 345, 100 S. W. 1072.

Should Be Showing of Lack of Knowledge. — Watkins *v.* State, 125 Ga. 143, 53 S. E. 1024.

1170. 4. Wall *v.* State, 126 Ga. 549, 55 S. E. 484; Manning *v.* Boston El. R. Co., 187 Mass. 496, 73 N. E. 645; State *v.* Lauth, 46 Oregon, 342, 80 Pac. 660.

1171. 3. Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354.

4. People *v.* Collins, (Cal. App. 1907) 92 Pac. 513; People *v.* Ryan, (Cal. 1907) 92 Pac. 853; Imboden *v.* People, (Colo. 1907) 90 Pac. 608; De Vane *v.* Atlanta, etc., R. Co., (Ga. App. 1908) 60 S. E. 1079; Reed *v.* State, 75 Neb. 509, 106 N. W. 649; State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542; Gregg *v.* State, (Tex. Crim. 1906) 100 S. W. 1161.

1172. 1. Leigh *v.* Territory, (Ariz. 1906) 85 Pac. 948; Graybill *v.* De Young, 146 Cal. 421, 80 Pac. 618; State *v.* Norman, (Iowa 1907) 113 N. W. 340; Wilson *v.* Wapello County, 129 Iowa 77, 105 N. W. 363; State *v.* Smith, 74 Kan. 383, 85 Pac. 1020, 89 Pac. 21; Dennis *v.* State, (Miss. 1907) 44 So. 825; Bemis *v.* Omaha, (Neb. 1908) 116 N. W. 31; Sansouver *v.* Glenlyon Dye Works, (R. I. 1908) 68 Atl. 545; Southern Kansas R. Co. *v.* Sage, (Tex. Civ. App. 1906) 94 S. W. 1074.

1174. 2. Smith *v.* People, 39 Colo. 202, 88 Pac. 1072; Territory *v.* Emilio, (N. Mex. 1907) 89 Pac. 239.

3. Decker *v.* Laws, 74 Ark. 286, 85 S. W. 425; State *v.* Thompson, 116 La. 829, 41 So. 107; State *v.* Huff, 118 La. 194, 42 So. 771; Quay *v.* Duluth, etc., R. Co., (Mich. 1908) 116 N. W. 1102; Brown *v.* State, (Miss. 1905) 38 So. 316; McHugh *v.* Rhode Island Co., (R. I. 1908) 69 Atl. 853; International, etc., R. Co. *v.* Bingham, (Tex. Civ. App. 1905) 89 S. W. 1113.

1176. 5. National Bank *v.* Schufelt, (C. C. A.) 145 Fed. 509.

1177. 2. State *v.* Cantwell, 142 N. Car. 604, 55 S. E. 820, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1177.

4. State *v.* Petit, 119 La. 1013, 44 So. 848.

1178. 2. Wall *v.* State, 126 Ga. 549, 55 S. E. 484.

6. People *v.* Helm, (Cal. 1907) 93 Pac. 99; Com. *v.* Evans, 212 Pa. St. 369, 61 Atl. 989.

1179. 1. Melbourne *v.* State, 51 Fla. 69, 40 So. 189; Colson *v.* State, 51 Fla. 19, 40 So. 183; State *v.* Deliso, (N. J. 1908) 69 Atl. 218; State *v.* Sultan, 142 N. Car. 569, 54 S. E. 841; Ives *v.* Atlantic, etc., R. Co., 142 N. Car. 131, 55 S. E. 74; Medlin *v.* Simpson, 144 N. Car. 397, 57 S. E. 24; State *v.* Harding, 70 S. Car. 395, 50 S. E. 11.

1180. 3. Butler *v.* Hands, (Colo. 1908) 95

Pac. 920; North American Restaurant, etc., *v.* McElligott, 227 Ill. 317, 81 N. E. 388.

1181. 3. State *v.* Murray, 72 S. Car. 508, 52 S. E. 189.

5. State *v.* Davidson, 71 Kan. 494, 80 Pac. 945.

1182. 1. State *v.* Smith, 132 Iowa 645, 109 N. W. 115.

4. Waters-Pierce Oil Co. *v.* Burrows, (Ark. 1905) 96 S. W. 336; San Luis Obispo County *v.* Simas, 1 Cal. App. 175, 81 Pac. 972; Freiberg *v.* South Side El. R. Co., 221 Ill. 508, 77 N. E. 920; North American Restaurant, etc., *v.* McElligott, 227 Ill. 317, 81 N. E. 388; Pendly *v.* Illinois Cent. R. Co., (Ky. 1906) 92 S. W. 1.

6. Flowers *v.* Flowers, 74 Ark. 212, 85 S. W. 242; International, etc., R. Co. *v.* Bingham, (Tex. Civ. App. 1905) 89 S. W. 1113; Sweeney *v.* Taylor, (Tex. Civ. App. 1906) 92 S. W. 442.

7. *Compare* San Luis Obispo County *v.* Simas, 1 Cal. App. 175, 81 Pac. 972.

Consolidation of Actions. — Krause *v.* U. S., (C. C. A.) 147 Fed. 442.

Contra Where Joinder Is by Stipulation. — Hodges *v.* Southern Pac. Co., 3 Cal. App. 307, 86 Pac. 620.

Plaintiff Entitled to Full Number for Each Action. — Butler *v.* Evening Post Pub. Co., (C. C. A.) 148 Fed. 821.

1183. 1. Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1, *affirmed* 26 U. S. Supm. Ct. R. 560; State *v.* Caron, 118 La. 349, 42 So. 960.

5. Wilcox *v.* U. S., (C. C. A.) 161 Fed. 109; Booth *v.* Territory, (Ariz. 1905) 80 Pac. 354; Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337; Wilcox *v.* U. S., (Indian Ter. 1907) 103 S. W. 774.

13. Rawlins *v.* State, 124 Ga. 31, 52 S. E. 1, *affirmed* 26 U. S. Supm. Ct. R. 560; State *v.* Caron, 118 La. 349, 42 So. 960.

1184. 1. Wilcox *v.* U. S., (C. C. A.) 161 Fed. 109.

7. State *v.* McGee, (Conn. 1908) 69 Atl. 1059.

1185. 8. Sweeney *v.* Taylor, (Tex. Civ. App. 1906) 92 S. W. 442.

9. Gayle *v.* County Com'rs Ct., (Ala. 1908) 46 So. 261; Creech *v.* Aberdeen, 44 Wash. 72, 87 Pac. 44.

1186. 2. Dotterer *v.* Scott, 29 Pa. Super. Ct. 553 (waiver by nonappearance on day set for trial).

4. State *v.* Cornelius, 118 La. 146, 42 So. 754.

6. Com. *v.* Evans, 212 Pa. St. 369, 61 Atl. 989.

7. Carr *v.* State, 81 Ark. 589, 99 S. W. 831.

1187. 2. Austin *v.* Smith, (Iowa 1906) 109 N. W. 289; State *v.* Mathews, 133 Iowa 398, 109 N. W. 616; Harris *v.* Moore, 134 Iowa 704, 112 N. W. 163; State *v.* Fielding, (Iowa 1907) 112 N. W. 539; Furlong *v.* American Cent. F. Ins. Co., (Iowa 1907) 113 N. W. 1087; State *v.* Ayles, (La. 1908) 45 So. 540; Stowell *v.* Standard Oil Co., 139 Mich. 18, 102 N. W. 227; Olmstead *v.* Noll, (Neb. 1908) 117 N. W. 102; Betten *v.* Toledo, etc., R. Co., 29 Ohio Cir. Ct. 53; International, etc., R. Co. *v.* Bingham, (Tex. Civ. App. 1905) 89 S. W. 1113.

1188. 1. People *v.* Helm, (Cal. 1907) 93 Pac. 99; St. Louis, etc., R. Co. *v.* Hooser, (Tex. Civ. App. 1906) 97 S. W. 708.

2. People *v.* Helm, (Cal. 1907) 93 Pac. 99; Pearce *v.* Quincy Min. Co., 149 Mich. 112, 112 N. W. 739; State *v.* Sultan, 142 N. Car. 569, 54 S. E. 841; State *v.* Megorden, (Oregon 1907) 88 Pac. 306; Johnson *v.* State, 49 Tex. Crim. 314, 94 S. W. 224; Green *v.* State, (Tex. Crim. 1906) 98 S. W. 1059.

1189. 1. **Reversal Though Challenges Not Exhausted.**— Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354.

6. See State *v.* Bonar, 71 Kan. 800, 81 Pac. [illegible]

7. State *v.* Gercke, 74 Kan. 196, 86 Pac. 160; Hodgin *v.* Southern R. Co., 143 N. Car. 93, 55 S. E. 413.

The fact that a party's peremptory challenges were exhausted is a ground for reversal where a juror was wrongfully excluded against the objection of the complaining party. People *v.* Schmitz, (Cal. App. 1908) 94 Pac. 407.

1192. 6. Johnson *v.* State, (Fla. 1907) 44 So. 765.

1193. 1. **Where the Court Failed to Order the Regular Panel** it was held to be error to select the jury from the talesmen. Bickham *v.* State, (Tex. Crim. 1907) 101 S. W. 210.

But where the failure to select a jury was caused by inadvertence or oversight the above rule did not apply. Hurt *v.* State, (Tex. Crim. 1907) 101 S. W. 806.

2. Brown *v.* State, (Miss. 1905) 38 So. 316; Mays *v.* State, (Tex. Crim. 1906) 96 S. W. 329; Blackwell *v.* State, (Tex. Crim. 1907) 100 S. W. 774.

1194. 5. Nadeau *v.* Theriault, 37 N. Bruns. 498.

7. Russell *v.* State, (Neb. 1906) 110 N. W. 380.

Contra. — Hoback *v.* Com., 104 Va. 871, 52 S. E. 575.

1195. 1. Colson *v.* State, 51 Fla. 19, 40 So. 183; Haddix *v.* State, (Neb. 1906) 107 N. W. 781.

2. See Haddix *v.* State, (Neb. 1906) 107 N. W. 781.

1197. 2. **New York.**— In People *v.* McClellan, (Supm. Ct. App. Div.) 109 N. Y. Supp. 76, it was held that a struck jury would not be ordered where it appeared that an impartial and satisfactory jury could be more surely and speedily obtained by a resort to the special jury panel as provided by chapter 602, page 1462 of the Laws of 1901, as amended by chapter 458, page 1147 of the Laws of 1904.

4. **Intricacy.**— Industrial, etc., Trust *v.* Tod, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 492, 95 N. Y. Supp. 44.

1198. 2. Waiver. The court cannot waive a special venire [illegible] charged with a capital offense. Murdock *v.* State, (Tex. Crim. 1907) 106 S. W. 374.

4. **Proceedings Must Be Strictly Complied With.** — Industrial, etc., Trust *v.* Tod, 104 N. Y. App. Div. 517, 93 N. Y. Supp. 725.

7. Atlantic Coast Line R. Co. *v.* Bunn, 2 Ga. App. 305, 58 S. E. 538.

9. Diamond State Telephone Co. *v.* Blake, (Md. 1907) 66 Atl. 631.

1199. 2. **Sworn and Unsworn Jurors** should not be placed in custody of the same officers and allowed to associate together. State *v.* Craighead, 114 La. 84, 38 So. 28.

11. **On the Question of the Qualifications** of the sheriff and the elisor the defendant must have an opportunity to be heard. People *v.* Schmitz, (Cal. App. 1908) 94 Pac. 407.

1201. 7*a*. **Failure of Record to Show Oath Not Ground for New Trial.**— State *v.* Page, (Mo. 1908) 110 S. W. 1057.

1202. 8. State *v.* Jeffries, (Mo. 1908) 109 S. W. 614, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1202 (minstrel show with no reference to case on trial).

1203. 4. State *v.* Sanders, 75 S. Car. 409, 56 S. E. 35; Graves *v.* Territory, 16 Okla. 538, 86 Pac. 521.

7. Booker *v.* State, (Tex. Crim. 1908) 111 S. W. 744.

1204. 9. Adams *v.* State, 48 Tex. Crim. 452, 93 S. W. 116.

11. See People *v.* Quimby, (Cal. App. 1907) 92 Pac. 493.

14. U. S. *v.* Francis, 144 Fed. 520; Trombley *v.* State, 167 Ind. 231, 78 N. E. 976; Crowell *v.* State, (Neb. 1907) 113 N. W. 262; Com. *v.* Tucker, 188 Mass. 457, 76 N. E. 127; State *v.* Wilson, 42 Wash. 56, 84 Pac. 409.

1206. 1. Fields *v.* Dewitt, 71 Kan. 676, 81 Pac. 467, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206; State *v.* Moore, 119 La. 564, 44 So. 299, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206; Ewing *v.* Lunn, (S. Dak. 1908) 115 N. W. 527.

2. Smith *v.* State, 122 Ga. 154, 50 S. E. 62.

3. Wood *v.* Moulton, 146 Cal. 317, 80 Pac. 92, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206; Vasquez *v.* State, (Fla. 1907) 44 So. 739; Trombley *v.* State, 167 Ind. 231, 78 N. E. 976; Louisville R. Co. *v.* Masterson, (Ky. 1906) 96 S. W. 534; State *v.* Moore, 119 La. 564, 44 So. 299, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206; State *v.* High, 116 La. 79, 40 So. 538; State *v.* Richardson, 194 Mo. 326, 92 S. W. 649; Lyman *v.* Brown, 73 N. H. 411, 62 Atl. 650; Bernikow *v.* Pommerantz, (Supm. Ct. App. T.) 94 N. Y. Supp. 482.

1207. 1. State *v.* Shuck, 38 Wash. 270, 80 Pac. 444 (separation of jurors).

1208. 9. Styles *v.* State, 129 Ga. 425, 59 S. E. 249.

12. Brooks *v.* Camak, (Ga. 1908) 60 S. E. 456; State *v.* Barrington, 198 Mo. 23, 95 S. W. 235.

1209. 2. State *v.* Wilson, 42 Wash. 56, 84 Pac. 409.

3. Hooker *v.* State, 75 Ark. 67, 86 S. W. 846.

4. State *v.* Lauth, 46 Oregon 342, 80 Pac. 660.

Decision of Trial Court Not Reviewable. — Van Dalsen *v.* Com., (Ky. 1905) 89 S. W. 255.

7. People *v.* Feld, 149 Cal. 464, 86 Pac. 1100; People *v.* White, 5 Cal. App. 329, 90 Pac. 471; Trombley *v.* State, 167 Ind. 231, 78 N. E. 976; State *v.* Lauth, 46 Oregon 342, 80 Pac. 660, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1209; Tally *v.* State, (Tex. Crim. 1905) 90 S. W. 1113; Pickens *v.* Coal River Boom, etc., Co., 58 W. Va. 11, 50 S. E. 872, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1209.

1210. 6. McCaully *v.* U. S., 25 App. Cas. (D. C.) 404; Drady *v.* Polk County, 126 Iowa 345, 102 N. W. 115; Emery *v.* State, (Neb. 1907) 111 N. W. 374.

1211. 1. Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257.

2. State *v.* Goodson, 116 La. 388, 40 So. 771.

1212. 8. Early *v.* State, (Tex. Crim. 1907) 103 S. W. 868.

1214. 1. State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55; State *v.* Clifford, 58 W. Va. 681, 52 S. E. 864.

7. **Playing Cards with Jurors.**— It is a ground for a new trial that counsel for one of the parties played cards with some of the jurors after the evidence was closed and the arguments partly made. Austin *v.* Langlois, (Vt. 1908) 69 Atl. 739.

1215. 4. See Cook *v.* State, (Miss. 1905) 38 So. 113.

Innocent Communication Without Prejudice Not Ground for Reversal.— Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257.

8. Dralle *v.* Reedsburg, (Wis. 1908) 115 N. W. 819.

1216. 1. State *v.* Murphy, (N. Dak. 1908) 115 N. W. 84; Holliday *v.* Sampson, (Tex. Civ. App. 1906) 95 S. W. 643; Havenor *v.* State, 125 Wis. 444, 104 N. W. 116; Hurst *v.* Webster Mfg. Co., 128 Wis. 342, 107 N. W. 666.

3. Denison *v.* State, 49 Tex. Crim. 426, 93 S. W. 731 (referring jury to dictionary for meaning of a word).

Communications with the Jury by Telephone which referred simply to the manner of filling out the blank forms of verdict were held not to be ground for a new trial. Whitney *v.* Com., 190 Mass. 531, 77 N. E. 516.

9. State *v.* Baudoin, 115 La. 773, 40 So. 42.

1217. 1. Sutherland *v.* State, 76 Ark. 487, 89 S. W. 462.

2. State *v.* Craighead, 114 La. 84, 38 So. 28.

4. State *v.* Williams, 96 Minn. 351, 105 N. W. 265.

1218. 2. State *v.* Williams, 76 S. Car. 135, 56 S. E. 783.

1219. 2. Van Dalsen *v.* Com., (Ky. 1905) 89 S. W. 255; State *v.* Sims, 117 La. 1036, 42 So. 494; Powell *v.* State, 49 Tex. Crim. 473, 93 S. W. 544.

4. Hooker *v.* State, 75 Ark. 67, 86 S. W. 846; State *v.* Sly, 11 Idaho 110, 80 Pac. 1125; State *v.* West, 11 Idaho 157, 81 Pac. 107.

1220. 3. State *v.* Stevenson, 74 Kan. 193, 85 Pac. 797; Mason *v.* State, 26 Ohio Cir. Ct. 535.

4. State *v.* Baudoin, 115 La. 773, 40 So. 42.

1221. 3. **Contra.**— State *v.* West, 11 Idaho 157, 81 Pac. 107.

4. See Neal *v.* State, (Tex. Crim. 1907) 99 S. W. 1012.

1222. 7. State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55; State *v.* Sanders, 75 S. Car. 409, 56 S. E. 35.

1223. 1. **Going Alone to Toilet Improper.** — Barnett *v.* State, (Tex. Crim. 1907) 99 S. W. 557.

3. Reeves *v.* State, 84 Ark. 569, 106 S. W.

945; Huebner *v.* State, 131 Wis. 162, 111 N. W. 63.

5. Ince *v.* State, 76 Ark. 615, 77 Ark. 418, 88 S. W. 818.

1227. **1.** International, etc., R. Co. *v.* McVey, (Tex. Civ. App. 1907) 102 S. W. 172.

2. *In re* Abel, (Nev. 1908) 93 Pac. 227, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1227.

1229. **4. Sufficiency of Admonition.** — See Lee *v.* State, 78 Ark. 77, 93 S. W. 754.

5. See Lee *v.* State, 78 Ark. 77, 93 S. W. 754.

6. Record Should Show Admonition. — People *v.* Maughs, 149 Cal. 253, 86 Pac. 187; State *v.* Walker, (S. Car. 1908) 60 S. E. 309.

8. State *v.* Walker, (S. Car. 1908) 60 S. E. 309.

Admonition Unnecessary at Every Separation. — Fields *v.* Dewitt, 71 Kan. 676, 81 Pac. 467.

1230. **3. Waiver in Criminal Cases Also.** — Lee *v.* State, 78 Ark. 77, 93 S. W. 754.

1231. **5.** Southern R. Co. *v.* Brown, 126 Ga. 1, 54 S. E. 911; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55.

1232. **8. Visiting Public Saloon as Ground for New Trial.** — State *v.* Strodemier, 41 Wash. 159, 83 Pac. 22.

10. State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55.

1233. **1.** State *v.* Smith, 132 Iowa 645, 109 N. W. 115.

1235. **1.** Ewing *v.* Lunn, (S. Dak. 1908) 115 N. W. 527.

2. Rule Does Not Apply in Criminal Cases. — State *v.* Costa, 78 Vt. 198, 62 Atl. 38.

4. Scott *v.* Tubbs, (Colo. 1908) 95 Pac. 540; Pickens *v.* Coal River Boom, etc., Co., 58 W. Va. 11, 50 S. E. 872.

1236. **5.** Nadeau *v.* Theriault, 37 N. Bruns. 498.

6. Jury Should Not Board with Prosecuting Attorney. — Napier *v.* Com., (Ky. 1908) 110 S. W. 842.

1237. **1.** Hoskovec *v.* Omaha St. R. Co., (Neb. 1908) 115 N. W. 312.

3. Tutt *v.* State, 49 Tex. Crim. 202, 91 S. W. 584; Battles *v.* State, (Tex. Crim. 1908) 109 S. W. 195.

Must State Material Facts. — Where a juror simply states that he had personal knowledge of the case, but did not state the facts of which such knowledge consisted, it was held not to be a ground for a new trial. Feddern *v.* State, (Neb. 1907) 113 N. W. 127.

4. Winslow *v.* State, (Tex. Crim. 1906) 98 S. W. 241.

Discussion of Former Verdict Ground for Reversal. — Horn *v.* State, (Tex. Crim. 1906) 97 S. W. 822.

5. Hargrove *v.* State, (Tex. Crim. 1907) 99 S. W. 1121; Battles *v.* State, (Tex. Crim. 1908) 109 S. W. 195 (statement in favor of witness).

6. Morawitz *v.* State, 49 Tex. Crim. 366, 91 S. W. 227; Kegans *v.* State, (Tex. Crim. 1906) 96 S. W. 16; Vanduran *v.* State, (Tex. Crim. 1906) 98 S. W. 247.

1238. **2.** Gulf, etc., R. Co. *v.* Cook, (Tex. Civ. App. 1907) 102 S. W. 121.

3. Tally *v.* State, (Tex. Crim. 1905) 90 S. W. 1113.

7. Inquiry by One Juror Communicated to Others. — Hoskovec *v.* Omaha St. R. Co., (Neb. 1908) 115 N. W. 312.

9. Floody *v.* Great Northern R. Co., 102 Minn. 81, 112 N. W. 875.

1239. **1.** Crowell *v.* State, (Neb. 1907) 113 N. W. 262.

3. People *v.* White, 5 Cal. App. 329, 90 Pac. 471.

5. Where certain articles had been admitted in evidence and examined by the jury it was held to be no ground for a new trial that some of the jurors re-examined the articles during a recess of the court and while the defendant and counsel were absent. Martin *v.* Com., (Ky. 1907) 100 S. W. 872.

7. Smith *v.* State, 122 Ga. 154, 50 S. E. 62.

1240. **2.** State *v.* Young, 134 Iowa 505, 110 N. W. 292.

10. Toledo Traction Co. *v.* Cameron, (C. C. A.) 137 Fed. 48.

1241. **2.** Carty *v.* Boeseke-Dawe Co., 2 Cal. App. 646, 84 Pac. 267; Cooke *v.* People, 231 Ill. 9, 82 N. E. 863; Taylor *v.* Com., (Ky. 1906) 92 S. W. 292; Sibley *v.* Nason, (Mass. 1907) 81 N. E. 887; R. C. Stone Milling Co. *v.* McWilliams, 121 Mo. App. 319, 98 S. W. 328.

6. Shedden *v.* Stiles, 121 Ga. 637, 49 S. E. 719, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1241; Fottori *v.* Vesella, 27 R. I. 177, 61 Atl. 143.

1242. **4.** Shedden *v.* Stiles, 121 Ga. 637, 49 S. E. 719.

5. Fottori *v.* Vesella, 27 R. I. 177, 61 Atl. 143.

7. Frugia *v.* Truehart, (Tex. Civ. App. 1907) 106 S. W. 736.

8. Not Allowed to Take Bill of Particulars. — Citizens' Sav., etc., Assoc. *v.* Weaver, 127 Ill. App. 252.

9. Person, etc., Co. *v.* Liffs, 219 Pa. St. 99, 67 Atl. 1081.

1243. **3.** Smith *v.* State, 142 Ala. 14, 39 So. 329.

Obscure Memoranda. — Warth *v.* Loewenstein, 121 Ill. App. 71, *affirmed* in part 219 Ill. 222, 76 N. E. 379.

Immaterial Memoranda. — The fact that an exhibit which was sent to the jury contained some immaterial memoranda which the court had excluded was insufficient ground for a reversal. Warth *v.* Loewenstein, 121 Ill. App. 71, *affirmed* in part 219 Ill. 222, 76 N. E. 379.

7. Com. *v.* Tucker, 189 Mass. 457, 76 N. E. 127.

1244. **1.** Powley *v.* Swensen, 146 Cal. 471, 80 Pac. 722.

2. Mattson *v.* Minnesota, etc., R. Co., 98 Minn. 29, 108 N. W. 517; Reynolds *v.* Vinier, (Supm. Ct. App. Div.) 109 N. Y. Supp. 293.

3. Elgin, etc., Traction Co. *v.* Wilson, 217 Ill. 47, 75 N. E. 436; Hanchett *v.* Haas, 219 Ill. 546, 76 N. E. 845; Hanchett *v.* Haas, 125 Ill. App. 111; Willoughby *v.* Willoughby, 70 S. Car. 516, 50 S. E. 208.

7. Green *v.* State, 143 Ala. 2, 39 So. 362.

10. In Ohio. — Tucker *v.* Sherman, 29 Ohio Cir. Ct. 368.

11. In *Alabama* it is held to be within the discretion of the court to allow the jury to take with them the written testimony of a non-resident witness who testified at the preliminary

proceedings. Shirley *v.* State, 144 Ala. 35, 40 So. 269

1245. 3. **Former Verdict in Same Case.** — The decision of the trial court on an application for a new trial because the jury had possession of a former verdict will not be reviewed in the Appellate Court. Holmgren *v.* U. S., (C. C. A.) 156 Fed. 439.

7. Birmingham R., etc., Co. *v.* Mason, 144 Ala. 387, 39 So. 590.

1246. 5. Birmingham R., etc., Co. *v.* Mason, 144 Ala. 387, 39 So. 590; Gray *v.* State, (Miss. 1907) 43 So. 289.

1247. 5. State *v.* Stevenson, 74 Kan. 193, [illegible] Pac. 707.

6. Brister *v.* State, 86 Miss. 461, 38 So. 678; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55.

It was held to be proper to allow the jury to consult a volume of the reports containing certain tables when they were instructed by the court that they were not to use the book "for any other purpose." Atlantic Coast Line R. Co. *v.* Taylor, 125 Ga. 454, 54 S. E. 622.

11. It was within the discretion of the court to allow the jury to have a magnifying glass for the purpose of inspecting a photograph which was an exhibit in the case. State *v.* Wallace, 78 Conn. 677, 63 Atl. 448.

Should Be Used Only for Purpose for Which Introduced. — Puryear *v.* State, (Tex. Crim. 1906) 98 S. W. 258.

1248. 3. Vasquez *v.* State, (Fla. 1907) 44 So. 739; Lewes *v.* Crane, 78 Vt. 216, 62 Atl. 60.

5. U. S. *v.* Francis, 144 Fed. 520, *modified* on another point in (C. C. A.) 152 Fed. 155; People *v.* Fernandez, 3 Cal. App. 689, 86 Pac. 899; People *v.* Feld, 149 Cal. 464, 86 Pac. 1100; Fields *v.* Dewitt, 71 Kan. 676, 81 Pac. 467, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1248; State *v.* Williams, 96 Minn. 351, 105 N. W. 265.

6. People *v.* Chin Non, 146 Cal. 561, 80 Pac. 681; Styles *v.* State, 129 Ga. 425, 59 S. E. 249; State *v.* Caine, 134 Iowa 147, 111 N. W. 443.

10. McCue *v.* Com., 103 Va. 870, 49 S. E. 623.

1249. 8. State *v.* Rideau, 116 La. 245, 40 So. 691 (inferential question to witness); Vaughn *v.* State, (Tex. Crim. 1907) 101 S. W. 445.

1250. 9*a*. **Miscellaneous Cases.** — Where the jury returned and requested that certain testimony be read to them, including that of the defendant, and after the other testimony and about one-third of that of the defendant had been read the jury stated that they had heard all they wished to hear, it was held not to be error to allow them to retire without hearing the remainder of the defendant's testimony. People *v.* Smith, 3 Cal. App. 62, 84 Pac. 449.

When, at the time the jury was passing out of the jury box, the deputy prosecutor playfully kicked one of the jurors, and the juror turned and shook his fist at the prosecutor in a spirit of fun, it was held not to be such misconduct as to call for a reversal. Trombley *v.* State, 167 Ind. 231, 78 N. E. 976.

The fact that one of the jurors remarked that a certain question had been asked several times before and showed impatience at the controversy between the attorneys, and at another time said: "Judge, we want to hear the evidence," was held not to be such misconduct as to call for a new trial. Kennedy *v.* Com., (Ky. 1908) 109 S. W. 313.

1252. 1. State *v.* Tyson, 138 N. Car. 627, 50 S. E. 456.

1253. 5. People *v.* Parker, 145 Mich. 488, 108 N. W. 999.

8. People *v.* Parker, 145 Mich. 488, 108 N. W. 999.

1255. 1. Johnson *v.* State, (Fla. 1907) 44 So. 765; Hovey *v.* Sheffner, (Wyo. 1908) 93 Pac. 305.

1256. 1. People *v.* Parker, 145 Mich. 488, 108 N. W. 999.

3. As to sufficiency of showing in the record, see State *v.* Huff, 75 Kan. 585, 90 Pac. 279.

4. State *v.* Harris, 119 La. 297, 44 So. 22; People *v.* Koerner, 117 N. Y. App. Div. 40, 102 N. Y. Supp. 93.

1258. 5. **Intoxication of Juror Grounds for Discharge of Jury.** — State *v.* Tyson, 138 N. Car. 627, 50 S. E. 456.

9. People *v.* Hutchins, 137 Mich. 527, 100 N. W. 753, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1258.

1259. 4. Turner *v.* Territory, 15 Okla. 557, 82 Pac. 650.

1260. 3. Quay *v.* Duluth, etc., R. Co., (Mich. 1908) 116 N. W. 1102.

5. **In Georgia.** — See Armor *v.* State, 125 Ga. 3, 53 S. E. 815.

1261. 3. Sacra *v.* Com., (Ky. 1906) 96 S. W. 858; People *v.* Neff, 122 N. Y. App. Div. 135, 106 N. Y. Supp. 747.

4. Turner *v.* Territory, 15 Okla. 557, 82 Pac. 650.

7. Hary *v.* Speer, 120 Mo. App. 556, 97 S. W. 228, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1261.

8. Allen *v.* State, 52 Fla. 1, 41 So. 593; Gillespie *v.* State, 168 Ind. 298, 80 N. E. 829; People *v.* Parker, 145 Mich. 488, 108 N. W. 999.

1262. 1. Imboden *v.* People, (Colo. 1907) 90 Pac. 608; Smith *v.* Territory, 14 Okla. 518, 79 Pac. 214.

2. Ellis *v.* State, (Neb. 1908) 116 N. W. 52.

4. A juror who is charged with a violation of a municipal sanitary ordinance is not a person charged with a "crime or offense," within the meaning of *Louisiana* Act No. 135, p. 216, of 1898. State *v.* Calhoun, 117 La. 82, 41 So. 360; State *v.* Bush, 117 La. 463, 41 So. 793.

1263. 4. Sullins *v.* State, 79 Ark. 127, 95 S. W. 159.

5. State *v.* McClendon, 118 La. 792, 43 So. 417; State *v.* Favrot, 118 La. 804, 43 So. 421; State *v.* Plunkett, 118 La. 804, 43 So. 421; State *v.* Aikens, 118 La. 805, 43 So. 421; King *v.* State, (Tex. Crim. 1907) 100 S. W. 387.

Belief in God and the Holy Scriptures. — State *v.* Mercer, 101 Md. 535, 61 Atl. 220.

1264. 1. U. S. *v.* Mitchell, 136 Fed. 896; Sims *v.* State, 146 Ala. 109, 41 So. 413.

2 Sharp *v.* U. S., (C. C. A.) 138 Fed. 878; Sullins *v.* State, 79 Ark. 127, 95 S. W. 150; State *v.* Shanley, (S. Dak. 1905) 104 N. W. 522.

3. **Temporary Absence** from the parish will not destroy the juror's residential qualification, when, though living and working in another part of the state, he had no intention of chang-

ing his permanent abode. State *v.* Wimby, 119 La. 139, 43 So. 984.

1265. 3. **Facts Insufficient to Show Change of Domicil.** — Shirley *v.* State, (Ga. App. 1907) 57 S. E. 912.

5. In *North Carolina* it is required that jurors must have paid all their taxes. Breese *v.* U. S., (C. C. A.) 143 Fed. 250; King *v.* State, (Tex. Crim. 1907) 100 S. W. 387.

Name on Assessment Roll. — Kitts *v.* Superior Ct., 5 Cal. App. 462, 90 Pac. 977.

1266. 2. *Ex. p.* Ruef, 150 Cal. 665, 89 Pac. 605; Kitts *v.* Superior Ct., 5 Cal. App. 462, 90 Pac. 977; State *v.* Hopkins, 115 La. 786, 40 So. 166; State *v.* McNay, 100 Md. 622, 60 Atl. 273, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1266.

Disqualification Waived by Failure to Object. — Phillips *v.* Brown, 122 Ga. 571, 50 S. E. 361.

1267. 4. **Member of Former Grand Jury.** — State *v.* Bullard, 127 Iowa 168, 102 N. W. 1120.

6. In *Louisiana* previous jury service is a personal exemption. State *v.* Hopkins, 115 La. 786, 40 So. 166.

1268. 2. State *v.* Hopkins, 115 La. 786, 40 So. 166.

4. State *v.* McClendon, 118 La. 792, 43 So. 417; State *v.* Favrot, 118 La. 804, 43 So. 421; State *v.* Aikens, 118 La. 805, 43 So. 421; State *v.* Plunkett, 118 La. 804, 43 So. 421.

1269. 1. **Objection Should Be Made Before Indictment Returned.** — Parris *v.* State, 125 Ga. 777, 54 S. E. 751.

2. Colson *v.* State, 51 Fla. 19, 40 So. 183; Phillips *v.* Brown, 122 Ga. 571, 50 S. E. 361; State *v.* Brown, 128 Iowa 24, 102 N. W. 799; King *v.* State, (Tex. Crim. 1907) 100 S. W. 387.

In Mississippi by statute (Code 1892, § 2375) objection must be made at or before the impaneling of the grand jury. Cain *v.* State, 86 Miss. 505, 38 So. 227.

3. Carwile *v.* State, 148 Ala. 576, 39 So. 220.

Where There Were Enough Competent Jurors the presumption was that the indictment was found by them. McCampbell *v.* State, 116 Tenn. 98, 93 S. W. 100.

4. See Sullins *v.* State, 79 Ark. 127, 95 S. W. 150.

1270. 3. **Where the Number Actually Serving Was within the Limit,** the fact that more than the lawful number was drawn was held not to invalidate an indictment. Untreiner *v.* State, 146 Ala. 26, 41 So. 285.

1271. 1. **Where the Full Number Was Impaneled** it was held that the subsequent excusing of one did not invalidate the indictment. State *v.* McNay, 100 Md. 622, 60 Atl. 273.

4. Busse *v.* Barr, 132 Iowa 463, 109 N. W. 920.

5. **An Indictment Voted by the Full Jury** was held to be valid although no foreman had been appointed. State *v.* Von Kutzleben, (Iowa 1907) 113 N. W. 484.

1272. 1. **Supplying Place of Excused Foreman.** — Jacobs *v.* State, 146 Ala. 103, 42 So. 70.

1273. 7. *In re* Atwell, 140 Fed. 368, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1273.

1274. 6. *Ex p.* Love, 49 Tex. Crim. 475, 93 S. W. 551.

7. U. S. *v.* Mitchell, 136 Fed. 896.

9. State *v.* Brown, 118 La. 373, 42 So. 969; *Ex p.* Love, 49 Tex. Crim. 475, 93 S. W. 551.

1275. 1. U. S. *v.* Mitchell, 136 Fed. 896; State *v.* Strait, 94 Minn. 384, 102 N. W. 913.

If There Is a Sufficient Number to Complete the Panel the defendant cannot complain that certain grand jurors are absent or excused. State *v.* Jones, 118 La. 369, 42 So. 967.

3. State *v.* Strait, 94 Minn. 384, 102 N. W. 913.

9. U. S. *v.* Mitchell, 136 Fed. 896; Posey *v.* State, 86 Miss. 141, 38 So. 324.

11. Walker *v.* State, 146 Ala. 45, 41 So. 878; Jacobs *v.* State, 146 Ala. 103, 42 So. 70. But see Nordan *v.* State, 143 Ala. 13, 39 So. 406.

Filling Vacancies from Bystanders. — Posey *v.* State, 86 Miss. 141, 38 So. 324.

In Alabama, under the statute (Code 1896, § 5023), it was held that where eighteen jurors were summoned but three were excused, reducing the jury to the minimum number, it was error for the court to cause four other persons to be called and sworn and added to the number. Trammell *v.* State, (Ala. 1907) 44 So. 201. See also Vines *v.* State, (Ala. 1907) 44 So. 1045.

1276. 2. **In California.** — See Halsey *v.* Superior Ct., (Cal. 1907) 91 Pac. 987; Glass *v.* Superior Ct., (Cal. 1907) 91 Pac. 994.

6. **Recess.** — The grand jury may, with the consent of the court, take a recess for a longer time than authorized by statute. *Ex p.* Love, 49 Tex. Crim. 475, 93 S. W. 551.

1277. 7. State *v.* Brown, 128 Iowa 24, 102 N. W. 799.

1279. 2. *In re* Hale, 139 Fed. 496 (*quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1279), *affirmed* 201 U. S. 43, 26 U. S. Sup. Ct. 370; State *v.* Wilson, 115 Tenn. 725, 91 S. W. 195.

4. **In Tennessee.** — McCampbell *v.* State, 116 Tenn. 98, 93 S. W. 100 (power to investigate illegal sale of liquor).

The statute regarding the inquisitorial powers of the grand jury in investigating gaming and tipping does not apply to perjury. State *v.* Wilson, 115 Tenn. 725, 91 S. W. 195.

1280. 4. Oglesby *v.* State, 121 Ga. 602, 49 S. E. 706.

The fact that a report or presentment incidentally points out an individual as responsible for certain conditions is not a ground for quashing the presentment. *In re* Jones, 101 N. Y. App. Div. 55, 92 N. Y. Supp. 275.

1281. 8. Smith *v.* State, 142 Ala. 14, 39 So. 329; Nash *v.* State, 73 Ark. 399, 84 S. W. 497.

1282. 5. People *v.* Booth, (Supm. Ct.) 52 Misc. (N. Y.) 340, 102 N. Y. Supp. 62.

9. People *v.* Sexton, 187 N. Y. 495, 80 N. E. 366.

1283. 7. Gaines *v.* State, 146 Ala. 16, 41 So. 865; People *v.* Booth, (Supm. Ct.) 52 Misc. (N. Y.) 340, 102 N. Y. Supp. 62, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1283; State *v.* Woodrow, 58 W. Va. 527, 52 S. E. 545, *quoting* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1283.

1284. 2. People *v.* Booth, (Supm. Ct.) 52 Misc. (N. Y.) 340, 102 N. Y. Supp. 62.

1285. 6. *In re* Atwell, 140 Fed. 368, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1285;

Jones *v.* State, (Ala. 1907) 43 So. 179; State *v.* Woodrow, 58 W. Va. 527, 52 S. E. 545.

1286. 1. **In New York.** — People *v.* Steinhardt, (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 252, 93 N. Y. Supp. 1026.

6. **Minutes Not Evidence.** — Havenor *v.* State, 125 Wis. 444, 104 N. W. 116.

8. Havenor *v.* State, 125 Wis. 444, 104 N. W. 116.

1287. 2. **Grand Jury Is Judge of Competency of Witnesses.** — People *v.* Sexton, 187 N. Y. 495, 80 N. E. 396.

1288. 1. **An Interpreter** is regarded as a witness and may be sworn by the foreman. State *v.* Firmatura, (La. 1908) 46 So. 691.

2. Com. *v.* Edminston, 30 Pa. Super. Ct. 54.

6. *In re* Beer, (N. Dak. 1908) 115 N. W. 672.

9. **Contra.** — People *v.* Steinhardt, (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 252, 93 N. Y. Supp. 1026.

1289. 1. State *v.* Firmatura, (La. 1908) 46 So. 691, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) [1280] 1288.

4. Ferriman *v.* People, 128 Ill. App. 230.

1290. 2. **Visiting Scene of Crime without Permission of Court.** — State *v.* Johnson, 116 La. 856, 41 So. 117.

3. Coffey *v.* Superior Ct., 2 Cal. App. 453, 83 Pac. 580, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1290.

4. Robinson *v.* Territory, 16 Okla. 241, 85 Pac. 451.

1291. 1. Coffey *v.* Superior Ct., 2 Cal. App. 453, 83 Pac. 580.

3. *In re* Atwell, 140 Fed. 368.

4. **Grand Jury May Be Fined for Contempt.** — *In re* Atwell, 140 Fed. 368.

1292. 1. **An Interpreter** may be allowed in the jury room to assist in taking the evidence of witnesses who are unfamiliar with the English language. Lyon *v.* Com., (Ky. 1906) 96 S. W. 857; Fletcher *v.* Com., (Ky. 1906) 96 S. W. 855.

1293. 4. Jones *v.* State, (Ala. 1907) 43 So. 179; McElroy *v.* State, (Tex. Crim. 1906) 95 S. W. 539.

6. Thayer *v.* State, 138 Ala. 39, 35 So. 406; Smith *v.* State, 142 Ala. 14, 39 So. 329, *following* Thayer *v.* State, 138 Ala. 39, 35 So. 406.

Under the *Kentucky* statute (Crim. Code of Prac., § 110) it is held that a stenographer should not be allowed in the grand jury room. Com. *v.* Berry, (Ky. 1906) 92 S. W. 936.

6*a*. **An Interpreter** may be present when his services are needed. State *v.* Firmatura, (La. 1908) 46 So. 691.

1294. 3. State *v.* Campbell, 73 Kan. 688, 85 Pac. 784; Cramer *v.* Barmon, 126 Mo. App. 54, 103 S. W. 1086; Murphy *v.* State, 124 Wis. 635, 102 N. W. 1087; Havenor *v.* State, 125 Wis. 444, 104 N. W. 116.

A Member of the Grand Jury Is Competent to prove that the oath was administered to the bailiff. Zeigler *v.* State, 2 Ga. App. 632, 58 S. E. 1066.

1295. 1. U. S. *v.* Tallmadge, (N. Mex. 1907) 91 Pac. 729, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1295.

Contra. — Murphy *v.* State, 124 Wis. 635, 102 N. W. 1087.

3. *In re* Atwell, 140 Fed. 368, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1295; Taylor *v.* State, 49 Fla. 69, 38 So. 380, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1295; State *v.* Hopkins, 115 La. 786, 40 So. 166; U. S. *v.* Tallmadge, (N. Mex. 1907) 91 Pac. 729, *citing* 17 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1295.

1296. 4. **Jurors May Testify to Establish the Immunity of the Witness from Prosecution.** — Murphy *v.* State, 124 Wis. 635, 102 N. W. 1087.

1297. 1. Cramer *v.* Barmon, 126 Mo. App. 54, 103 S. W. 1086.

2. Cramer *v.* Barmon, 126 Mo. App. 54, 103 S. W. 1086.

1299. 1. **When Record Made.** — It is sufficient if the organization of the grand jury was incorporated in the minutes at any time before the adjournment of the term. Jacobs *v.* State, 146 Ala. 103, 42 So. 70.

3. Dix *v.* State, 147 Ala. 70, 41 So. 924.

1301. 6. **Manner of Return.** — It is not a ground for quashing the indictment that the record does not affirmatively show that the indictment was returned by the foreman in the presence of the other jurors. Williams *v.* State, (Ala. 1907) 43 So. 182.

JUST.

2. **1. Just and Equitable.** — See *In re* Melson, (1906) 1 Ch. 841, 75 L. J. Ch. 509.

JUSTICES OF THE PEACE.

11. **1.** State *v.* Mosman, 112 Mo. App. 540, 87 S. W. 75; Carpenter *v.* Roth, 192 Mo. 658, 91 S. W. 540.

2. New York. — Eisenberg *v.* Lape, (County Ct.) 52 Misc. (N. Y.) 329, 103 N. Y. Supp. 169.

12. Office Held Incompatible with that of Justice of the Peace — *County Judge.* — State *v.* Jones, 130 Wis. 572, 110 N. W. 431.

Mayor. — State *v.* Armstrong, (Miss. 1907) 44 So. 809.

Offices Held Compatible — *City Attorney.* — State *v.* Miller, 71 Kan. 491, 80 Pac. 947.

Recorder of a City Recorder's Court. — State *v.* Lord, 145 N. Car. 479, 59 S. E. 656.

12. **7.** State *v.* Mackelfresh, 29 Ohio Cir. Ct. 499.

13. **2.** Johnston *v.* Savidge, 11 Idaho 204, 81 Pac. 616; Maxey *v.* Powers, 117 Tenn. 381, 101 S. W. 181.

14. **3. The Recording** of the bond is not a condition precedent to a justice's right to act. Lund *v.* Ozanne, 13 N. Mex. 293, 84 Pac. 710.

7. Presumption that Approved Bond Was Accompanied by the Necessary Affidavit. — Guiberson *v.* Argabrite, 3 Cal. App. 768, 87 Pac. 226,

8. But see Smith *v.* Hilton, 147 Ala. 642, 41 So. 747.

Though elected under an unconstitutional statute, the justice's right to the office cannot be collaterally attacked. Thompson *v.* Couch, 144 Mich. 671, 108 N. W. 363, 13 Detroit Leg. N. 313.

16. **1.** Olson *v.* Hawkins, (Wis. 1908) 116 N. W. 18.

17. **1.** *Georgia.* — Berry *v.* Robinson, 122 Ga. 575, 50 S. E. 378; Savannah, etc., R. Co. *v.* Snider, 1 Ga. App. 14, 57 S. E. 898.

Illinois. — Cox *v.* Spurgin, 210 Ill. 398, 71 N. E. 456.

Montana. — State *v.* Taylor, 33 Mont. 212, 83 Pac. 484; State *v.* Houston, (Mont. 1907) 92 Pac. 476.

New York. — Eisenberg *v.* Lape, (County Ct.) 52 Misc. (N. Y.) 329, 103 N. Y. Supp. 169.

Pennsylvania. — Com. *v.* Grau, 16 Pa. Dist. 806, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 17.

West Virginia. — Thomasson *v.* Simmons, 57 W. Va. 576, 50 S. E. 740, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 17; Roberts *v.* Hickory Camp Coal, etc., Co., 58 W. Va. 279, 52 S. E. 182, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 17; State *v.* Wells, (W. Va. 1907) 59 S. E. 743.

3. Gaghagan *v.* Begley, 15 Pa. Dist. 918, 32 Pa. Co. Ct. 377, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 17; Harlan *v.* Gladding, (Cal. App. 1907) 93 Pac. 400.

6. But see Simpkins *v.* Hester, 3 Ga. App. 160, 59 S. E. 322; Stark *v.* Treat, 27 Ohio Cir. Ct. 282; Eisenberg *v.* Lape, (County Ct.) 52 Misc. (N. Y.) 329, 103 N. Y. Supp. 169.

18. **1.** Kaufman *v.* Kelley, 78 Ark. 176, 95 S. W. 448.

3. Katz *v.* Herschel Mfg. Co., 150 Fed. 684.

5. Jurisdiction Concurrent with County Courts — Gray *v.* State, (Tex. Crim. 1905) 86 S. W. 764.

Concurrent Jurisdiction with City Courts. — *Ex p.* Bagshaw, (Cal. 1908) 93 Pac. 864.

20. **7.** *Illinois.* — The jurisdiction of a justice of the peace is not excluded because the action is on the case. Smithley *v.* Snowden, 120 Ill. App. 86.

22. **7.** *Arkansas.* — Frank *v.* Dungan, 76 Ark. 599, 90 S. W. 17.

Where the allegations in an action against a common carrier for breach of contract for carriage and delivery of goods will support an action either *ex contractu* in assumpsit or *ex delicto* in case a justice of the peace has jurisdiction. St. Louis, etc., R. Co. *v.* Wilson, (Ark. 1908) 107 S. W. 978.

Georgia. — The killing of live stock is held to be included in the term "damages to personal property," and a justice has jurisdiction to an amount not exceeding $100. Seaboard Air Line R. Co. *v.* Smith, (Ga. App. 1908) 60 S. E. 353; Georgia, etc., R. Co. *v.* Elliot, (Ga. App. 1908) 60 S. E. 363.

In the case of breach of a bailee's duty the tort may be waived and suit maintained in assumpsit. Bates *v.* Bigby, 123 Ga. 727, 51 S. E. 717.

North Carolina. — Duckworth *v.* Mull, 143 N. Car. 461, 55 S. E. 850; Brick *v.* Atlantic Coast Line R. Co., 142 N. Car. 358, 55 S. E. 194; Watson *v.* Farmer, 141 N. Car. 452, 54 S. E. 419.

23. **7.** Frank *v.* Dungan, 76 Ark. 599, 90 S. W. 17; Bates *v.* Bigby, 123 Ga. 727, 51 S. E. 717; Georgia, etc., R. Co. *v.* Elliot, (Ga. App. 1908) 60 S. E. 363; Seaboard Air Line R. Co. *v.* Smith, (Ga. App. 1908) 60 S. E. 353.

8. *Arkansas.* — Storm *v.* Montgomery, 79 Ark. 172, 95 S. W. 149.

24. **4.** State *v.* District Ct., 33 Mont. 356, 83 Pac. 597.

25. **1. Bailment.** — Bates *v.* Bigby, 123 Ga. 727, 51 S. E. 717.

26. **2.** *Arkansas.* — Woolverton *v.* Freeman, 77 Ark. 234, 91 S. W. 190.

Georgia. — Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343; Nashville, etc., R. Co. *v.* Brown, (Ga. App. 1908) 60 S. E. 319; Simons *v.* Burt, 2 Ga. App. 472, 58 S. E. 689; Morrison *v.* Hilburn, 126 Ga. 114, 54 S. E. 938.

Iowa. — Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932.

Louisiana. — Equity Sav., etc., Co. *v.* Boisfontaine, 115 La. 842, 40 So. 241.

Michigan. — Marr *v.* Cook, 147 Mich. 425, 111 N. W. 116, 13 Detroit Leg. N. 1111; Knack *v.* Berlin, 150 Mich. 550, 114 N. W. 342.

Missouri. — Drake *v.* Gorrell, 127 Mo. App. 636, 106 S. W. 1080; Rosenthal *v.* Windensohler, 115 Mo. App. 237, 91 S. W. 432; Commercial Real Estate, etc., Co. *v.* Riemann, 116 Mo. App. 649, 93 S. W. 305.

New York. — Morse *v.* McQuade, (County Ct.) 54 Misc. (N. Y.) 166, 105 N. Y. Supp. 862.

27. **5.** Check *v.* Reiter, 102 S. W. 287, 31 Ky. L. Rep. 249; School Dist. No. 1 *v.* Holt, 126 Mo. App. 571, 105 S. W. 32; Clark *v.*

Tukey Land Co., 75 Neb. 326, 106 N. W. 328; State *v.* Schweitzer, 131 Wis. 138, 111 N. W. 219.

28. 1. Johnson *v.* Hartman, 119 Ill. App. 206; Barnes *v.* Plessner, 121 Mo. App. 677, 97 S. W. 626.

30. 9. A married woman may be sued in a Justice Court for a debt due by her, or on a contract made by her, before marriage, or for a debt contracted by her after marriage, as a free trader. McAfee *v.* Gregg, 140 N. Car. 448, 53 S. E. 304.

31. 1. Walker *v.* Miller, 139 N. Car. 448, 52 S. E. 125.

32. 4. Hoye Coal Co. *v.* Colvin, 83 Ark. 528, 104 S. W. 207.

5. **Mechanics' Lien on Personal Property.** — Lewis *v.* Warren, etc., R. Co., (Tex. Civ. App. 1906) 97 S. W. 104.

6. Tolbert *v.* Falkenberry, 147 Ala. 204, 40 So. 120.

8. Wissman *v.* Meagher, 115 Mo. App. 82, 91 S. W. 448; Warner *v.* Yates, 118 Tenn. 548, 102 S. W. 92.

Laborer's Lien Against Railroad. — A Justice Court has no authority to foreclose a laborer's lien on eighteen miles of railroad, a locomotive, and other property. Lewis *v.* Warren, etc., R. Co., (Tex. Civ. App. 1906) 97 S. W. 104.

34. 4. Edwards *v.* Kingston Lumber Co., (Miss. 1908) 46 So. 69; Wise *v.* Werts, 72 S. Car. 132, 51 S. E. 547.

6. Harlan *v.* Gladding, (Cal. App. 1907) 93 Pac. 400; Simpkins *v.* Hester, 3 Ga. App. 160, 59 S. E. 322.

In Indiana. — Worthington *v.* Qualkinbush, (Ind. App. 1907) 82 N. E. 534.

In Iowa the jurisdiction of the justice in attachments of property against nonresidents is now limited to the township in which the property is found. Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932.

In Missouri. — Daniels *v.* St. Louis, etc., R. Co., (Mo. App. 1908) 109 S. W. 85. But see State *v.* Mosman, 112 Mo. App. 540, 87 S. W. 75.

35. 1. Ferguson *v.* Basin Consol. Mines, (Cal. 1908) 93 Pac. 867; Rutherford *v.* Ray, (N. Car. 1908) 61 S. E. 57. See also Worthington *v.* Qualkinbush, (Ind. App. 1907) 82 N. E. 534.

36. 3. Stewart *v.* Smallwood, (Tex. Civ. App. 1907) 102 S. W. 159.

4. *Contra*, Stark *v.* Treat, 27 Ohio Cir. Ct. 282.

7. Com. *v.* Grau, 16 Pa. Dist. 806, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36, 37.

37. 4. Gaghagan *v.* Begley, 15 Pa. Dist. 918, 32 Pa. Co. Ct. 377, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 37; Thomasson *v.* Simmons, 57 W. Va. 576, 50 S. E. 740, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 37.

38. 3. Hughes *v.* Holbrook, (Ky. 1908) 108 S. W. 225.

8. But see State *v.* Davis, 43 Wash. 116, 86 Pac. 116.

43. 2. In *Canada* relationship within the ninth degree of consanguinity would disqualify the justice, but only if he were aware of such relationship. Rex *v.* Biggar, 37 N. Bruns. 372.

3. Rex *v.* Charest, 37 N. Bruns. 492.

7. Morrow *v.* Watts, 80 Ark. 57, 95 S. W. 988, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 43.

8. Nichols *v.* Oregon Short Line R. Co., 28 Utah 327, 78 Pac. 866, *quoting*. 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 43.

45. 13. Stallings *v.* Gilbreath, 146 Ala. 483, 41 So. 423.

14. **Exacting Illegal Fees.** — Whitmore *v.* Craig, 32 Pa. Super. Ct. 292; Lane *v.* Delta County, (Tex. Civ. App. 1908) 109 S. W. 866.

46. 2. Katz *v.* Herschel Mfg. Co., 150 Fed. 684, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 46; Burgin *v.* Sullivan, (Ala. 1907) 44 So. 202; Sorensen *v.* Wellman, 69 Kan. 637, 77 Pac. 536, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 46; Kraft *v.* De Verneuil, 105 N. Y. App. Div. 43, 94 N. Y. Supp. 230.

47. 10. **Excess of Jurisdiction.** — M'Creadle *v.* Thomson, (1907) Sc. Ct. Sess. 1176; McCarg *v.* Burr, 186 N. Y. 467, 79 N. E. 715, *affirming* 106 N. Y. App. Div. 275, 94 N. Y. Supp. 275.

49. 2. State *v.* Wells, (W. Va. 1907) 59 S. E. 743, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 49.

3. State *v.* Wells, (W. Va. 1907) 59 S. E. 743, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 49.

7. Polk *v.* Peterson, (Tex. Civ. App. 1906) 93 S. W. 504.

51. 1. *California.* — Summerfield *v.* Dow, 5 Cal. App. 678, 91 Pac. 156; Cothran *v.* Cook, 146 Cal. 468, 80 Pac. 699; Millard *v.* Kern County, 147 Cal. 682, 82 Pac. 329; Johnson *v.* Gunn, (Cal. App. 1905) 84 Pac. 370; Chinn *v.* Gunn, (Cal. App. 1905) 84 Pac. 374; Chinn *v.* Gunn, 148 Cal. 755, 84 Pac. 669.

Michigan. — Harrison *v.* Chippewa County, (Mich. 1908) 114 N. W. 851, 14 Detroit Leg. N. 811.

Missouri. — State *v.* Messerly, 198 Mo. 351, 95 S. W. 913.

Nebraska. — Leese *v.* Courier Pub., etc., Co., 75 Neb. 391, 106 N. W. 443.

Texas. — *Ex p.* Way, 48 Tex. Crim. 584, 89 S. W. 1075.

Washington. — Warren *v.* Chehalis County, 41 Wash. 698, 82 Pac. 1097; Ogden *v.* Chehalis County, 41 Wash. 45, 82 Pac. 1095.

Wisconsin. — Mead *v.* Simpson, (Wis. 1908) 114 N. W. 821.

52. 4. Conlon *v.* Holste, 99 Minn. 493, 110 N. W. 2.

Fees for Making Collections. — Brancecum *v.* Simmons, 116 Ill. App. 98.

7. See Kane *v.* Arneson Mercantile Co., 94 Minn. 451, 103 N. W. 218.

8. Koon *v.* Bushnell, 71 Ohio St. 521, 74 N. E. 1137, *affirming* 28 Ohio Cir. Ct. 367.

10. Bates *v.* Bigby, 123 Ga. 727, 51 S. E. 717.

12. Stephens *v.* Davis, (Ala. 1905) 39 So. 831; Olson *v.* Hawkins, (Wis. 1908) 116 N. W. 18.

53. 2. Smith *v.* Hilton, 147 Ala. 642, 41 So. 747.

5. A justice's resignation, accepted by the proper officer, cannot be withdrawn, even before the date when it is to take effect. Murray *v.* State, 115 Tenn. 303, 89 S. W. 101.

54. 4. *In re* Whyard, 121 N. Y. App. Div. 917, 106 N. Y. Supp. 400.

KEEP — KEEPER, ETC.

56. 2. **Keep and Conduct Premises in Regular and Proper Manner.** — See Palethorpe *v.* Home Brewery Co., (1906) 2 K. B. 5, 75 L. J. K. B. 555.

KIDNAPPING.

60. 1. **Definition.** — State *v.* Harrison, 145 N. Car. 408, 59 S. E. 867.

3. **Kidnapping for Purpose of Ransom.** — State *v.* Leuth, 128 Iowa 189, 103 N. W. 345.

4. Sutton *v.* State, 122 Ga. 158, 50 S. E. 60, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 60.

Under the Georgia Statute the offense is complete if it is shown that a child under eighteen years was decoyed or enticed away from parental control without the consent of the parent. Arrington *v.* State, (Ga. 1907) 59 S. E. 207.

61. 4. Sutton *v.* State 122 Ga. 158, 50 S. E. 60, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 61.

Mother's Removing and Secreting Child Awarded to Father by Divorce Decree Is Kidnapping. — *Re* Lorenz, 9 Can. Crim. Cas. (Quebec) 158.

62. 4. State *v.* Altemus, (Kan. 1907) 92 Pac. 594; State *v.* White, 48 Oregon 416, 87 Pac. 137.

In North Carolina a taking to another state is not an essential part of the offense of kidnapping. State *v.* Harrison, 145 N. Car. 408, 59 S. E. 867.

KINDERGARTEN.

64. 2. Los Angeles County *v.* Kirk, 148 Cal. 385, 83 Pac. 250.

KINDRED.

64. 3. **Blood Relations.** — Jacobs *v.* Prescott, 102 Me. 63, 65 Atl. 761.

KNOW — KNOWING — KNOWINGLY.

65. 6. **Guilty Knowledge.** — State *v.* Smith, (Tenn. 1907) 105 S. W. 68.

Knowingly in the Sense of with Knowledge. — Drainage Commission *v.* National Contracting Co., 136 Fed. 780.

In an action for ***knowingly*** charging and collecting illegal fees, it was held that the word ***knowingly*** "imports only a knowledge that the facts exist which bring the act or omission within the provisions of the code. It does not require any knowledge of the unlawfulness of the act or omission." Skeen *v.* Chambers, 31 Utah 36, 86 Pac. 492.

66. 1. **What Is Qualified by Knowingly.** — See U. S. *v.* Mitchell, 141 Fed. 666.

Positive Averment. — State *v.* Waterbury, 133 Iowa 137, 110 N. W. 328, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 65.

LABOR — LABORER.

72. 1. Sparks *v.* Crescent Lumber Co., (Tex. Civ. App. 1905) 89 S. W. 423, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 72; Moore *v.* American Industrial Co., 138 N. Car. 304, 50 S. E. 687.

2. **Clerk in Mercantile Establishment Not Laborer.** — Howell *v.* Atkinson, (Ga. App. 1907) 59 S. E. 316.

Superintendent Not Laborer. — Moore *v.* American Industrial Co., 138 N. Car. 304, 50 S. E. 687.

Teamster Not Laborer. — Sparks *v.* Crescent Lumber Co., (Tex. Civ. App. 1905) 89 S. W. [illegible]

LABOR COMBINATIONS.

82. 2. Karges Furniture Co. *v.* Amalgamated Woodworkers' Local Union No. 131, 165 Ind. 421, 75 N. E. 877; Iron Moulders' Union of North America *v.* I. & E. Greenwald Co., 16 Ohio Dec. 678.

3. Burke *v.* Fay, (Mo. App. 1908) 107 S. W. 408.

83. 1. **Labor Combinations held to be in restraint of trade within the meaning of the Anti-trust Act of July 2, 1890.** Loewe *v.* Lawlor, 208 U. S. 274, *reversing* 148 Fed. 924.

3. **Demand for "Closed Shop" against Public Policy.** — Barnes *v.* Berry, 156 Fed. 72.

84. 1. Everett Waddey Co. *v.* Richmond Typographical Union, 105 Va. 188, 53 S. E. 273.

Courts Will Not Take Judicial Knowledge of a compact or agreement, or its nature, or of the principles and tenets by which laborers belonging to a union are bound, and a contract by which a party agrees to do a piece of work for another with union laborers is not void on the ground of public policy. Birmingham Paint, etc., Co. *v.* Crampton, (Ala. 1905) 39 So. 1020. See also Jacobs *v.* Cohen, 183 N. Y. 207, 76 N. E. 5.

4. Everett Waddey Co. *v.* Richmond Typographical Union, 105 Va. 188, 53 S. E. 273.

85. 2. O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108; Hey *v.* Wilson, 128 Ill. App. 227.

3. Vilter Mfg. Co. *v.* Humphrey, (Wis. 1907) 112 N. W. 1095.

86. 1. Metallic Roofing Co. *v.* Jose, 12 Ont. L. Rep. 200; Karges Furniture Co. *v.* Amalgamated Woodworkers' Local Union, No. 131, 165 Ind. 421, 75 N. E. 877; Searle Mfg. Co. *v.* Terry, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 265, 106 N. Y. Supp. 438; Everett Waddey Co. *v.* Richmond Typographical Union, 105 Va. 188, 53 S. E. 273.

2. Franklin Union, No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176; Everett Waddey Co. *v.* Richmond Typographical Union, 105 Va. 188, 53 S. E. 273.

5. Franklin Union, No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176.

87. 1. Read *v.* Friendly Soc., etc., (1902) 2 K. B. 732.

Liability of Officers of Federation for Strike by Miners under Contract. — South Wales Miners Federation *v.* Glamorgan Coal Co., (1905) A. C. 239, 2 Ann. Cas. 436.

2. Searle Mfg. Co. *v.* Terry, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 265, 106 N. Y. Supp. 438.

3. See also the dissenting opinion in Franklin Union, No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 87.

4. Iron Moulders' Union of North America *v.* I. & E. Greenwald Co., 16 Ohio Dec. 678, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 87; Everett Waddey Co. *v.* Richmond Typographical Union, 105 Va. 188, 53 S. E. 273, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 87.

90. **3. The Right to Control His Own Labor.** — An employer may make the employment conditional upon the agreement that the employee will not join or become a member of a labor organization. People *v.* Marcus, 185 N. Y. 257, 77 N. E. 1073.

91. 2. Delaware, etc., R. Co. *v.* Switchmen's Union of North America, 158 Fed. 541.

3. Barnes *v.* Berry, 156 Fed. 72; Curphey *v.* Terrell, 87 Miss. 282, 39 So. 477.

Soliciting Employees to Join a Labor Organization cannot be made the basis of a suit for an injunction. Order of Railroad Telegraphers *v.* Louisville, etc., R. Co., 148 Fed. 437.

4. Calling Men Out on a Strike and boycotting the plaintiff's goods, for the purpose of inflicting injury upon the plaintiff, will justify the granting of an injunction. Metallic Roofing Co. *v.* Jose, 12 Ont. L. Rep. 200.

92. 5. Shine *v.* Fox Bros. Mfg. Co., (C. C. A.) 156 Fed. 357; Sailors' Union, etc., *v.* Hammond Lumber Co., (C. C. A.) 156 Fed. 450; Rocky Mountain Bell Telephone Co. *v.* Montana Federation of Labor, 156 Fed. 809; Delaware, etc., R. Co. *v.* Switchmen's Union of North America, 158 Fed. 541; Everett Waddey Co. *v.* Richmond Typographical Union, 105 Va. 188, 53 S. E. 273.

LACHES.

97. **1. Laches Defined.** — Lloyd *v.* Simons, 97 Minn. 315, 105 N. W. 902; Weimer *v.* Talbot, 56 W. Va. 257, 49 S. E. 372, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 97.

"It is the neglecting or omitting to do what in law should have been done and this for an unanswerable and unexplained length of time and in circumstances which afforded opportunity for diligence." Brock *v.* Kirkpatrick, 72 S. Car. 491, 52 S. E. 592.

2. Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403; Kleinclaus *v.* Dutard, 147 Cal. 245, 81 Pac. 516; Hamilton *v.* Hamilton, 231 Ill. 128, 83 N. E. 125; Marsh *v.* Marsh, 78 Vt. 399; 63 Atl. 159; Sabre *v.* United Traction, etc., Co., 156 Fed. 79; Citizens' Sav., etc., Co. *v.* Belleville, etc., R. Co., (C. C. A.) 157 Fed. 73.

"**The Defense that a Claim Is Stale** is purely an equitable one and unless there is some natural justice back of it a court of equity will not entertain it." Bucher *v.* Hohl, 199 Mo. 320, 97 S. W. 922.

4. This Dictum Has Met with General Approval — *United States.* — Stevens *v.* McChrystal, (C. C. A.) 150 Fed. 85; Steinbeck *v.* Bon Homme Min. Co., (C. C. A.) 152 Fed. 333; Duke *v.* Turner, 204 U. S. 623, 27 U. S. Sup. Ct. 316.

Arkansas. — Osceola Land Co. *v.* Henderson, 81 Ark. 432, 100 S. W. 896; Chisholm *v.* Crye, 83 Ark. 495, 104 S. W. 167.

Florida. — King *v.* Dekle, 53 Fla. 940, 43 So. 586.

Illinois. — Wilcoxon *v.* Wilcoxon, 230 Ill. 93, 82 N. E. 584.

Indiana. — Ryason *v.* Dunten, 164 Ind. 85, 73 N. E. 74.

Iowa. — Woodward *v.* Barr, 128 Iowa 727, 105 N. W. 207.

Kentucky. — Potter *v.* Potter, (Ky. 1907) 101 S. W. 905.

Maryland. — Ripple *v.* Kuehne, 100 Md. 672, 60 Atl. 464.

Maine. — Clark *v.* Chase, 101 Me. 270, 64 Atl. 493.

Montana. — Kavanaugh *v.* Flavin, 35 Mont. 133, 88 Pac. 764.

Utah. — Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 97.

Washington. — Stuart *v.* Pierce County, (Wash. 1905) 82 Pac. 270; Ferrell *v.* Lord, 43 Wash. 667, 86 Pac. 1060.

West Virginia. — Newman *v.* Newman, 60 W. Va. 371, 55 S. E. 377.

98. **1.** Ryason *v.* Dunten, 164 Ind. 85, 73 N. E. 74, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 98; Woodward *v.* Barr, 128 Iowa 727, 105 N. W. 207; Dexter *v.* MacDonald, 196 Mo. 373, 95 S. W. 359; Kavanaugh *v.* Flavin, 35 Mont. 133, 88 Pac. 764; Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760.

3. U. S. *v.* Luce, 141 Fed. 385; U. S. *v.* Brown, 141 Fed. 423; National Cash Register Co. *v.* Union Computing Mach. Co., 143 Fed. 342; Steinbeck *v.* Bon Homme Min. Co., (C. C. A.) 152 Fed. 333; Balfour *v.* San Joaquin Valley Bank, 156 Fed. 500; Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403; McConnell *v.* Pierce, 116 Ill. App. 103; Lozier *v.* Hill, 68 N. J. Eq. 300, 59 Atl. 234; Ripple *v.* Kuehne, 100 Md. 672, 60 Atl. 464; Leaver *v.* Gorman, (N. J. 1907) 67 Atl. 111.

99. **4.** Mullen *v.* Walton, 142 Ala. 166, 39 So. 97, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 99.

7. *United States.* — Thurmond *v.* Chesapeake, etc., R. Co., (C. C. A.) 140 Fed. 697; Arbuckle *v.* Kelley, 144 Fed. 276.

California. — Harby *v.* Board of Education, 2 Cal. App. 418, 83 Pac. 1081.

Illinois. — Johnson *v.* Buck, 220 Ill. 226, 77 N. E. 163; Stevenson *v.* Stevenson, 224 Ill. 482, 79 N. E. 608.

Iowa. — Woodward *v.* Barr, 128 Iowa 727, 105 N. W. 207.

Maryland. — Ripple *v.* Kuehne, 100 Md. 672, 60 Atl. 464.

Minnesota. — Lloyd *v.* Simons, 97 Minn. 315, 105 N. W. 902.

Missouri. — Buffington *v.* Carty, 195 Mo. 490, 93 S. W. 779.

New Jersey. — Holzer *v.* Thomas, 69 N. J. Eq. 515, 61 Atl. 154; Laird *v.* Atlantic Coast Sanitary Co., (N. J. 1907) 67 Atl. 387.

New York. — Connolly *v.* Board of Education, 114 N. Y. App. Div. 1, 99 N. Y. Supp. 737.

North Carolina. — Brochenbrough *v.* Mutual Reserve L. Ins. Co., 145 N. Car. 354, 59 S. E. 118.

Pennsylvania. — Pottsville Bank *v.* Minersville Water Co., 211 Pa. St. 566, 61 Atl. 119; *In re* Rahm, 219 Pa. St. 201, 68 Atl. 186; Tay-

lor *v.* Erie City Pass. R. Co., 212 Pa. St. 487, 61 Atl. 992.

Washington. — Samuel & Jessie Kenny Presbyterian Home *v.* Kenny, 45 Wash. 106, 88 Pac. 108.

8. Fielder *v.* Warner, 78 Ark. 158, 95 S. W. 452; Selden *v.* Kennedy, 104 Va. 826, 52 S. E. 6, 5.

100. 1. U. S. *v.* Luce, 141 Fed. 385; U. S. *v.* Brown, 141 Fed. 423; Waggermann *v.* Earle, 25 App. Cas. (D. C.) 582; Keeley *v.* Sayles, 217 Ill. 589, 75 N. E. 567; Ryason *v.* Dunten, 164 Ind. 85, 73 N. E. 74, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 100; Bronk *v.* Standard Mfg. Co., 141 Mich. 680, 105 N. W. 33.

2. Wooster *v.* Crane, (C. C. A.) 147 Fed. 515; Venable *v.* Burton, 129 Ga. 537, 59 S. E. 253, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 100; Horn *v.* White, 127 Ill. App. 222; Patrick *v.* Stark, (W. Va. 1907) 59 S. E. 606.

Excuse for Delay Must Be Shown. — Horn *v.* White, 127 Ill. App. 222.

4. *United States.* — National Cash Register Co. *v.* Union Computing Mach. Co., 143 Fed. 342; Sharp *v.* West, 150 Fed. 458.

Florida. — King *v.* Dekle, 53 Fla. 940, 43 So. 586, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 100.

Idaho. — Morrow *v.* Matthew, 10 Idaho 423, 79 Pac. 196.

Illinois. — Horn *v.* White, 127 Ill. App. 222.

Indiana. — Ferguson *v.* Boyd, (Ind. 1907) 81 N. E. 71.

Montana. — Kavanaugh *v.* Flavin, 35 Mont. 133, 88 Pac. 764.

Nebraska. — Hawley *v.* Von Lanken, 75 Neb 597, 106 N. W. 456; Hawley *v.* Pound, (Neb. 1906) 106 N. W. 458; Hawley *v.* Barry, (Neb. 1906) 106 N. W. 459; Hawley *v.* Neilson, (Neb. 1906) 106 N. W. 459; Hawley *v.* Jahnel, (Neb. 1906) 106 N. W. 459; Harrison *v.* Rice, (Neb. 1907) 114 N. W. 151.

5. Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 100.

101. 1. Rhodes *v.* Cissell, 82 Ark. 367, 101 S. W. 759; Verdugo Canon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021; Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 101; Patrick *v.* Stark, (W. Va. 1907) 59 S. E. 606.

2. Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 101.

4. National Exch. Bank *v.* U. S., (C. C. A.) 151 Fed. 402, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 101, note 4; Rhodes *v.* Cissell, 82 Ark. 367, 101 S. W. 759.

5. *United States.* — Stevens *v.* McChrystal, (C. C. A.) 150 Fed. 85; Brun *v.* Mann, (C. C. A.) 151 Fed. 146; Steinbeck *v.* Bon Homme Min. Co., (C. C. A.) 152 Fed. 333; Sabre *v.* United Traction, etc., Co., 156 Fed. 79; Ætna Ins. Co. *v.* Albany, etc., R. Co., 156 Fed. 132; Korsstrom *v.* Barnes, 156 Fed. 280; Balfour *v.* San Joaquin Valley Bank, 156 Fed. 500.

Alabama. — Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403; Wynn *v.* Fitzwater, (Ala. 1907) 44 So. 97.

California. — Estudillo *v.* Security L. & T. Co., 149 Cal. 556, 87 Pac. 19.

Illinois. — Horn *v.* White, 127 Ill. App. 222.

Iowa. — State *v.* Alexander, 129 Iowa 538, 105 N. W. 1021.

Michigan. — Jones *v.* Gable, (Mich. 1907) 113 N. W. 577.

Missouri. — Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 101.

Nebraska. — Hawley *v.* Von Lanken, 75 Neb. 597, 106 N. W. 456; Hawley *v.* Pound, (Neb. 1906) 106 N. W. 458; Hawley *v.* Barry, (Neb. 1906) 106 N. W. 459; Hawley *v.* Neilson, (Neb. 1906) 106 N. W. 459; Hawley *v.* Jahnel, (Neb. 1906) 106 N. W. 459; Harrison *v.* Rice, (Neb. 1907) 114 N. W. 151.

New York. — Treadwell *v.* Clark, 190 N. Y. 51, 82 N. E. 505.

Sometimes a Longer Period than that prescribed by the statute is required. Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760.

The Periods of Statutory Limitation are frequently adopted by way of analogy, as tests of the *prima facie* staleness of the demand. Citizens' Sav., etc., Co. *v.* Belleville, etc., R. Co., (C. C. A.) 157 Fed. 73; Redd *v.* Brun, (C. C. A.) 157 Fed. 190.

No Laches if Not Barred by Limitation. — Laches cannot usually be charged against a party for failing to bring an action to enforce an equitable claim if he acts within the time allowed by the statute of limitations for commencing a corresponding action at law. Hawley *v.* Von Lanken, 75 Neb. 597, 106 N. W. 456; Earle Imp. Co. *v.* Chatfield, 81 Ark. 296, 99 S. W. 84; Cohen *v.* Cohen, 150 Cal. 99, 88 Pac. 267; Hawley *v.* Pound, (Neb. 1906) 106 N. W. 458; Hawley *v.* Barry, (Neb. 1906) 106 N. W. 459.

Laches Does Not Depend upon the Statute of Limitation for its application, but is applied in analogy thereto. Warner *v.* Hamill, 134 Iowa 279, 111 N. W. 939.

Laches May Be Regarded as an Equitable Statute of Limitation and is applied to equity cases in analogy to legal statutes applied to cases at law. Brock *v.* Kirkpatrick, 72 S. Car. 491, 52 S. E. 592.

102. 1. Kessler *v.* Ensley Co., 141 Fed. 130; Steinbeck *v.* Bon Homme Min. Co., (C. C. A.) 152 Fed. 333; Brissell *v.* Knapp, 155 Fed. 809; Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403; Ferguson *v.* Boyd, (Ind. 1907) 81 N. E. 71, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102; Sheffield *v.* Hurst, (Ky. 1907) 104 S. W. 350; Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102; Hale *v.* Hale, (W. Va. 1907) 59 S. E. 1056, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

2. Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

3. Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

4. Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

5. Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W.

72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

6. Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102.

7. *United States.* — Kessler *v.* Ensley Co., 141 Fed. 130; Beers *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 957; Brinckeroff *v.* Roosevelt, (C. C. A.) 143 Fed. 478; Mexican Nat. Coal, etc., Co. *v.* Frank, 154 Fed. 217; Balfour *v.* San Joaquin Valley Bank, 156 Fed. 500.

Alabama. — Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403; Johnson *v.* Oldham, 146 Ala. 680, 40 So. 213.

Arkansas. — Rhodes *v.* Cissell, 82 Ark. 367, 101 S. W. 759.

California. — Union Ice Co. *v.* Doyle, (Cal. App. 1907) 92 Pac. 112, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102; Verdugo Canon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021.

Indiana. — Ryason *v.* Dunten, 164 Ind. 85, 73 N. E. 74.

Iowa. — Warner *v.* Hamill, 134 Iowa 279, 111 N. W. 939.

Utah. — Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

West Virginia. — Ruckman *v.* Cox, (W. Va. 1907), 59 S. E. 760; Hale *v.* Hale, (W. Va. 1907) 59 S. E. 1056.

103. 1. The Possession of the Means of Knowledge is equivalent to knowledge itself. Williamson *v.* Beardsley, (C. C. A.) 137 Fed. 467.

2. Duke *v.* Turner, 204 U. S. 623, 27 U. S. Sup. Ct. 316; Union Ice Co. *v.* Doyle, (Cal. App. 1907) 92 Pac. 112; Hartford *v.* Mechanics Sav. Bank, 79 Conn. 38, 63 Atl. 658; Horn *v.* White, 127 Ill. App. 222; Harrison *v.* Rice, (Neb. 1907) 114 N. W. 151; Farr *v.* Hauenstein, 69 N. J. Eq. 740, 61 Atl. 147; Farr *v.* Hauenstein, (N. J. 1907) 67 Atl. 377; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

104. 1. Laches Is Not Mere Delay, but Delay that Works Disadvantage to Another. — Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403; Osceola Land Co. *v.* Henderson, 81 Ark. 432, 100 S. W. 896; Cook *v.* Ceas, 147 Cal. 614, 82 Pac. 370; Verdugo Canon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021; Lloyd *v.* Simons, 97 Minn. 315, 105 N. W. 902; Brock *v.* Kirkpatrick, 72 S. Car. 491, 52 S. E. 592; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789; Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760; Hughes *v.* Thomas, 131 Wis. 315, 111 N. W. 474.

105. 1. Cusick *v.* Spencer, 149 Mich. 434, 112 N. W. 1111.

2. Salmon *v.* Wynn, (Ala. 1907) 45 So. 133, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 105; Osceola Land Co. *v.* Henderson, 81 Ark. 432, 100 S. W. 896; Potter *v.* Potter, (Ky. 1907) 101 S. W. 905; Clark *v.* Chase, 101 Me. 270, 64 Atl. 493; Dexter *v.* MacDonald, 196 Mo. 373, 95 S. W. 359; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789; Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760.

106. 3. Patrick *v.* Stark, (W. Va. 1907) 59 S. E. 606.

107. 1. Patrick *v.* Stark, (W. Va. 1907) 59 S. E. 606.

9. McPeck *v.* Graham, 56 W. Va. 200, 49 S. E. 125, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107; Patrick *v.* Stark, (W. Va. 1907) 59 S. E. 606.

110. 5. Burroughs *v.* Interborough Metropolitan Co., 156 Fed. 389; Hill *v.* Fitzgerald, (Mass. 1907) 79 N. E. 825.

The Law Will Not Impute Laches merely from the failure to prosecute suits pending the continuance of marital relations. Bennett *v.* Finnegan, (N. J. 1906) 65 Atl. 239.

7. Streicher *v.* Murray, (Mont. 1907) 92 Pac. 36, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 110.

111. 7. Dimmitt *v.* Flinn, 229 Ill. 111, 82 N. E. 249.

9. Espy Estate Co. *v.* Pacific County, 40 Wash. 67, 82 Pac. 129.

112. 7. Doncourt *v.* Denton, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 594, 105 N. Y. Supp. 906.

113. 1. Mexican Nat. Coal, etc., Co. *v.* Frank, 154 Fed. 217.

4. Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 113.

9. Mullen *v.* Walton, 142 Ala. 166, 39 So. 97, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 113.

114. 1. Ferrell *v.* Lord, 43 Wash. 667, 86 Pac. 1060; Harper *v.* Combs, 61 W. Va. 561, 56 S. E. 902, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 114.

115. 1. Harrison *v.* Rice, (Neb. 1907) 114 N. W. 151.

4. *United States.* — Williamson *v.* Beardsley, (C. C. A.) 137 Fed. 467.

Alabama. — Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403.

Georgia. — Hodges *v.* Wheeler, 126 Ga. 848, 56 S. E. 76; Venable *v.* Burton, 129 Ga. 537, 59 S. E. 253.

Massachusetts. — Manning *v.* Mulrey, (Mass. 1906) 78 N. E. 551, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 115.

Michigan. — Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722; Hamilton *v.* American Hulled Bean Co., 143 Mich. 277, 106 N. W. 731.

Mississippi. — Gordon *v.* Anderson, 44 Miss. 67, 44 So. 67; Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498.

Texas. — Shuttleworth *v.* McGee, (Tex. 1907) 105 S. W. 823.

West Virginia. — Harper *v.* Combs, 61 W. Va. 561, 56 S. E. 902.

116. 2. Gordon *v.* Anderson, 44 Miss. 67, 44 So. 67.

118. 1. Arbuckle *v.* Kelley, 144 Fed. 276.

119. 1. *Illinois.* — Spalding *v.* Macomb, etc., R. Co., 225 Ill. 535, 80 N. E. 327; Gray *v.* Bloomington, etc., R. Co., 120 Ill. App. 159; Horne *v.* White, 127 Ill. App. 222.

Indiana. — Ryason *v.* Dunten, 164 Ind. 85, 73 N. E. 74.

Missouri. — Desberger *v.* University Heights Realty, etc., Co., 126 Mo. App. 206, 102 S. W. 1060.

Montana. — Kavanaugh *v.* Flavin, 35 Mont. 133, 88 Pac. 764; Streicher *v.* Murray, (Mont. 1907) 92 Pac. 36,

Nebraska. — Harrison *v.* Rice, (Neb. 1907) 114 N. W. 151.

New Jersey. — Stevenson *v.* Markley, (N. J. 1907) 66 Atl. 185.

Utah. — Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

Washington. — Ferrell *v.* Lord, 43 Wash. 667, 86 Pac. 1060; Stewart *v.* Yesler, (Wash. 1907) 89 Pac. 705.

West Virginia. — Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760; Hale *v.* Hale, (W. Va. 1907) 59 S. E. 1056, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 119.

Wisconsin. — Hughes *v.* Thomas, 131 Wis. 315, 111 N. W. 474.

Lapse of Time is no bar where public interests are involved. People *v.* Decatur, etc., R. Co., 120 Ill. App. 229; State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761; People *v.* Decatur, etc., R. Co., 120 Ill. App. 229.

Laches Cannot Be Set Up against the Government. — U. S. *v.* Noojin, 155 Fed. 377.

Laches and Acquiescence Are Enforced against the State when it is a suitor for equitable relief as well as against private suitors. Atty.-Gen. *v.* Central R. Co., 68 N. J. Eq. 198, 59 Atl. 348.

2. Mexican Nat. Coal, etc., Co. *v.* Frank, 154 Fed. 217; Ferguson *v.* Boyd, (Ind. 1907) 81 N. E. 71; Kavanaugh *v.* Flavin, 35 Mont. 133, 88 Pac. 764.

120. 1. Verdugo Canon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021; Lawson *v.* Mullinix, 104 Md. 156, 64 Atl. 942; Sicher *v.* Rambausek, 193 Mo. 113, 91 S. W. 68; Morrow *v.* Matthew, 10 Idaho 423, 79 Pac. 196; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789; Ryason *v.* Dunten, 164 Ind. 85, 73 N. E. 74; Ferrell *v.* Lord, 43 Wash. 667, 86 Pac. 1060.

Laches Connotes Not Only Undue Lapse of Time, but also negligence and opportunity to have acted sooner. Brock *v.* Kirkpatrick, 72 S. Car. 491, 52 S. E. 592.

2. *United States.* — Thurmond *v.* Chesapeake, etc., R. Co., (C. C. A.) 140 Fed. 697; Brissell *v.* Knapp, 155 Fed. 809.

Alabama. — Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403.

California. — Cook *v.* Ceas, 147 Cal. 614, 82 Pac. 370.

Illinois. — Hamilton *v.* Hamilton, 231 Ill. 128, 83 N. E. 125; Wieczorek *v.* Adamski, 114 Ill. App. 161; Horn *v.* White, 127 Ill. App. 222.

Minnesota. — Lloyd *v.* Simons, 97 Minn. 315, 105 N. W. 902.

Nebraska. — Hawley *v.* Von Lanken, 75 Neb. 597, 106 N. W. 456; Hawley *v.* Pound, (Neb. 1906) 106 N. W. 458; Hawley *v.* Jahnel, (Neb. 1906) 106 N. W. 459; Hawley *v.* Barry, (Neb. 1906) 106 N. W. 459; Hawley *v.* Neilson, (Neb. 1906) 106 N. W. 459; Harrison *v.* Rice, (Neb. 1907) 114 N. W. 151.

New Jersey. — Farr *v.* Hauenstein, (N. J. 1907) 67 Atl. 377.

Washington. — Stewart *v.* Yesler, (Wash. 1907) 89 Pac. 705.

West Virginia. — Davisson *v.* Smith, 60 W. Va. 413, 55 S. E. 466.

121. 1. Bell *v.* Louisville Water Co., (Ky. 1906) 96 S. W. 572.

2. McAllen *v.* Raphael, (Tex. Civ. App. 1906) 96 S. W. 760.

4. Mahler *v.* Sanche, 121 Ill. App. 247.

124. 10. Eakle *v.* Hagan, 101 Md. 22, 60 Atl. 615, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 124; Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 124.

125. 1. Kirby *v.* Cartwright, (Tex. Civ. App. 1907) 106 S. W. 742; Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

2. Updegraff *v.* Marked Tree Lumber Co., 83 Ark. 154, 103 S. W. 606; G. F. Sanborn Co. *v.* Johnson, 148 Mich. 405, 111 N. W. 1091.

Barred by Laches from Setting Aside Tax Deed by Statute of Florida. — Florida Coast Line Canal, etc., Co. *v.* Ellsworth Trust Co., (C. C. A.) 144 Fed. 972.

Wild and Unoccupied Lands. — Rannels *v.* Rowe, (C. C. A.) 145 Fed. 296; Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469; Earle Imp. Co. *v.* Chatfield, 81 Ark. 296, 99 S. W. 84.

Tax Sales. — One who permits lands to be sold for nonpayment of taxes and pays no attention to them for eighteen years thereafter, is disbarred by laches from maintaining a suit in equity against innocent third persons who have become purchasers for value. Arbuckle *v.* Kelley, 144 Fed. 276.

4. Turner *v.* Burke, 81 Ark. 352, 99 S. W. 76.

9. Ogletree *v.* Rainer, (Ala. 1907) 44 So. 565, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 125; Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 125; Athens Terminal Co. *v.* Athens Foundry, etc., Co., 129 Ga. 393, 58 S. E. 891, holding that the abutting owner was not guilty of laches under the facts shown.

Possession of One Cotenant is the possession of all, and laches, acquiescence, or lapse of time cannot bar the right of entry of a cotenant until actual disseizin has been effected by some notorious act of ouster brought home to his knowledge. Reed *v.* Bachman, 61 W. Va. 452, 57 S. E. 769.

126. 1. Turner *v.* Burke, 81 Ark. 352, 99 S. W. 76; Ferrell *v.* Lord, 43 Wash. 667, 86 Pac. 1060.

127. 4. The Paul L. Bleakley, 146 Fed. 570.

LAID OUT.

128. 2. Surveyed. — An addition or town is laid off or ***laid out*** when it is surveyed or measured and marked upon the ground. Meachem *v.* Seattle, 45 Wash. 380, 88 Pac. 628.

LAKES AND PONDS.

132. 4. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783.

Rights of Riparian Owners on Non-navigable Lakes in Iowa. — Wright *v.* Council Bluffs, 130 Iowa 274, 104 N. W. 492.

6. Rule in Arkansas as to Non-navigable Lakes. — On the disappearance of the water owners of land are entitled to take to the centre, ratably with other riparian proprietors. Rhodes *v.* Cissell, 82 Ark. 367, 101 S. W. 758.

10. King *v.* Muller, (N. J. 1907) 67 Atl. 380.

11. In Iowa a riparian owner on inland lakes takes to high-water mark only. State *v.* Thompson, 134 Iowa 25, 111 N. W. 328.

134. 2. Title to Great Ponds in Massachusetts and Maine. — Atty.-Gen. *v.* Herrick, 190 Mass. 307, 76 N. E. 1045; American Woolen Co. *v.* Kennebec Water Dist., 102 Me. 153, 66 Atl. 316, holding further that the state can authorize the diversion for public uses without providing compensation to riparian owners.

135. 2. **Neither a Riparian Proprietor** nor an appropriator has title or ownership in the waters of a stream before it reaches his land or point of diversion. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

LAND.

140. 8. Real Property and Land Synonymous. — J. I. Case Threshing Mach. Co. *v.* Mickley, 72 Kan. 372, 83 Pac. 970.

141. 2. Block. — The word ***land***, when used in a contract without limitation, is broad enough to include a piece of real property described as a block in a townsite. J. I. Case Threshing Mach. Co. *v.* Mickley, 72 Kan. 372, 83 Pac. 970.

Hereditaments. — See Newton *v.* Hall, (1907) 2 K. B. 446, 76 L. J. K. B. 908, 96 L. T. N. S. 743, 71 J. P. 388, 23 Times L. Rep. 511.

LANDED.

147. 1. Landed Property. — Hiss *v.* Baltimore, 103 Md. 620, 64 Atl. 52.

LANDLORD AND TENANT.

163. 1. Hawkins *v.* Tanner, (Ga. 1907) 59 S. E. 225, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163.

164. 5. Alexander *v.* Gardner, (Ky. 1906) 96 S. W. 818; Schickedantz *v.* Rincker, 75 Neb. Neb. 312, 106 N. W. 441.

6. Winestine *v.* Ziglatzki-Marks Co., 77 Conn. 404, 59 Atl. 496; United Merchants' Realty, etc., Co. *v.* Roth, 122 N. Y. App. Div. 628, 107 N. Y. Supp. 511.

165. 1. Sharpe *v.* Mathews, 123 Ga. 794, 51 S. E. 706, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 164, 165.

2. Cummings *v.* Smith, 114 Ill. App. 35; Benedict *v.* Jennings, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 135, 93 N. Y. Supp. 464; Butler *v.* Smith, 121 N. Y. App. Div. 441, 106 N. Y. Supp. 46.

4. One who goes into possession simply of the real estate of another is presumed to be a tenant, in the absence of any proof to rebut such presumption. Heddleston *v.* Stoner, 128 Iowa 525, 105 N. W. 56.

7. Sims *v.* Price, 123 Ga. 97, 50 S. E. 961.

9. Barnewell *v.* Stephens, 142 Ala. 609, 38 So. 662.

166. 2. Chatfield *v.* Clark, 123 Ga. 867, 51 S. E. 743, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 166.

3. Cummings *v.* Smith, 114 Ill. App. 35.

4. Myer *v.* Roberts, (Oregon 1907) 89 Pac. 1051.

167. 5. Turner *v.* Gilliland, 4 Indian Ter. 606, 76 S. W. 253, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 167.

168. 3. Chambers *v.* Irish, 132 Iowa 319, 109 N. W. 787.

169. 1. Smith *v.* Caldwell, 78 Ark. 333, 95 S. W. 467.

2. Thomas *v.* Johnson, 78 Ark. 574, 95 S. W. 468, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 168, 169.

6. Possession of Grantee. — Sharep *v.* Mathews, 123 Ga. 794, 51 S. E. 706.

Tax Sale. — Where the premises, after the execution by the owner of a lease, are sold at tax sale, the relation of landlord and tenant does not arise thereby *ipso facto* between the lessee and the purchaser at the tax sale. Carlson *v.* Curran, 42 Wash. 647, 85 Pac. 627.

170. 2. Sadler *v.* Jefferson, 143 Ala. 669, 39 So. 380.

3. Parsons *v.* Palmer, 124 Mo. App. 50, 101 S. W. 609.

6. Glenwood Lumber Co. *v.* Phillips, (1904) A. C. 405, 90 L. T. N. S. 741, 20 Times L. Rep. 531, 73 L. J. P. C. 62; O. L. Shaffer Estate Co. *v.* Alvord, 2 Cal. App. 602, 84 Pac. 279; Asher *v.* Johnson, 118 Ky. 702, 82 S. W. 300; Alexander *v.* Gardner, (Ky. 1906) 96 S. W. 818; Roberts *v.* Lynn Ice Co., 187 Mass. 402, 73 N. E. 523.

Right to Advertising Space. — In Pocher *v.* Hall, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 639, 98 N. Y. Supp. 754, *distinguishing* Goldman *v.* New York Advertising Co., 29 Misc. (N. Y.) 133, 60 N. Y. Supp. 275, and Reynolds *v.* Van Beuren, 155 N. Y. 123, 49 N. E. 763, and *approving* O. J. Gude Co. *v.* Farley, 28 Misc. (N. Y.) 184, 58 N. Y. Supp. 1036.

171. 2. Glenwood Lumber Co. *v.* Phillips, (1904) A. C. 405, 90 L. T. N. S. 741, 20 Times L. Rep. 531, 73 L. J. P. C. 62.

5. Huggins *v.* Bridges, 29 Pa. Super. Ct. 82; Mead *v.* Owen, (Vt. 1907) 67 Atl. 722, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 171.

173. 3. Hendricks *v.* Clemmons, 147 Ala. 590, 41 So. 306; Bourland *v.* McKnight, 79 Ark. 427, 96 S. W. 179; Adams *v.* Thornton, 1 Cal. App. xviii, 82 Pac. 215; Garrick *v.* Jones, 2 Ga. App. 382, 58 S. E. 543; Olden *v.* Mather, (N. J. 1907) 67 Atl. 435; Moore *v.* Linn, (Okla. 1907) 91 Pac. 910, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 173; Wanamaker *v.* Buchanan, 33 Pa. Super. Ct. 138.

176. 1. Adams *v.* Thornton, 1 Cal. App. xviii, 82 Pac. 215.

177. 3. Sharpe *v.* Mathews, 123 Ga. 794, 51 S. E. 706; Reccius *v.* Columbia Finance, etc., Co., (Ky. 1905) 86 S. W. 1113, 27 Ky. L. Rep. 880; Wolfer *v.* Hurst, 47 Oregon 156 82 Pac. 20, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177.

178. 6. Guenther *v.* Gilchrist Improved Jar Co., 28 Pa. Super. Ct. 232.

180. 8. Where, upon the separation of a husband and wife, the husband remains in the possession of the real estate of the wife, refusing to deliver possession to her, he does not become a tenant at sufferance so as to render him liable for rent. Carpenter *v.* Allen, 189 Mass. 246, 75 N. E. 622.

9. Wolfer *v.* Hurst, 47 Oregon 156, 82 Pac. 20, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 180.

181. 6. Clark *v.* Tukey Land Co., 75 Neb. 326, 106 N. W. 328.

182. 1. Hayden *v.* Collins, 1 Cal. App. 259, 81 Pac. 1120.

2. Hayes *v.* Atlanta, 1 Ga. App. 25, 57 S. E. 1087.

A Mere Option conferred on the lessee to terminate the lease does not necessarily render it a tenancy at will. Brewster *v.* Lanyon Zinc Co., (C. C. A.) 140 Fed. 801.

183. 4. Wolfer *v.* Hurst, 47 Oregon 156, 82 Pac. 20, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 182, 183.

184. 2. Lyons *v.* Philadelphia, etc., R. Co., 209 Pa. St. 550, 58 Atl. 924, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 183.

4. Hayes *v.* Atlanta, 1 Ga. App. 25, 57 S. E. 1087.

7. Wessells *v.* Rodifer, (Ky. 1906) 97 S. W. 341.

185. 1. Swart *v.* Western Union Tel. Co., 142 Mich. 21, 105 N. W. 74.

186. 3. Lyons *v.* Philadelphia, etc., R. Co., 209 Pa. St. 550, 58 Atl. 924, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186.

8. Wolfer *v.* Hurst, 47 Oregon 156, 82 Pac. 20, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186, 187.

187. 3. Roberts *v.* McFaddin, 32 Tex. Civ. App. 47, 74 S. W. 105, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187.

5. The taking of the entire property under the power of eminent domain terminates the tenancy at will. Lyons *v.* Philadelphia, etc., R. Co., 209 Pa. St. 550, 58 Atl. 924.

190. 1. Hayes *v.* Atlanta, 1 Ga. App. 25, 57 S. E. 1087.

8. Lyons *v.* Philadelphia, etc., R. Co., 209 Pa. St. 550, 58 Atl. 924.

191. 2. Wolfer *v.* Hurst, 47 Oregon 156, 82 Pac. 20, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191, 192, 197.

3. Ward *v.* Hinkleman, 37 Wash. 375, 79 Pac. 956.

4. Lewis *v.* Baker, (1905) 2 K. B. 576; Lewis *v.* Baker, (1906) 2 K. B. 590.

192. 2. A lease, however, for one year, with the privilege to the lessee of extending it yearly so long as both the lessor and lessee agree, creates a periodical tenancy from year to year. Hatfield *v.* Lawton, 108 N. Y. App. Div. 113, 95 N. Y. Supp. 451.

5. Kroeger *v.* Bohrer, 116 Mo. App. 208, 91 S. W. 159.

193. 2. Brill *v.* Carsley, 2 Cal. App. 331, 84 Pac. 57; Gabel *v.* Page, (Cal. App. 1907) 92 Pac. 749; Stein *v.* Sutherland, (Supm. Ct. App. T.) 92 N. Y. Supp. 314; Hebberd *v.* Mayo, (Supm. Ct. App. T.) 97 N. Y. Supp. 706.

4. McFarland Real Estate Co. *v.* Joseph Gerardi Hotel Co., 202 Mo. 597, 100 S. W. 577; Sterling *v.* Heiman, 108 Mo. App. 40, 82 S. W. 539; Gerhart Realty Co. *v.* Weiter, 108 Mo. App. 248, 83 S. W. 278; Edmonston *v.* Webb, 119 Mo. App. 679, 94 S. W. 314 (lease of unimproved city lot); Adams *v.* Bonnefon, 124 Mo. App. 457, 101 S. W. 693.

5. Where five or six acres, with house, barn, and outbuildings, situated in the city of St. Louis, was rented by parol agreement for the purpose of agriculture, for two certain years and further indefinite period, the premises were a farm and the tenancy was from year to year, requiring sixty days' notice to quit, under Rev. Stat. Mo. [illegible] Bonnett, 118 Mo. App. 208, 91 S. W. 159.

8. Pusey *v.* Presbyterian Hospital, 70 Neb. 353, 97 N. W. 475, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193.

194. 4. Snyder *v.* Harding, 38 Wash. 666, 80 Pac. 789, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 194.

5. Mollitor *v.* C. M. Thom Van Co., 118 Ill. App. 293; Nichols *v.* Hicklin, 127 Mo. App. 672, 106 S. W. 1109; Watkins *v.* Balch, 41 Wash. 310, 83 Pac. 321, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 194; Mades *v.* Howaldt, (Wash. 1907) 90 Pac. 588.

195. 2. Ray *v.* Blackman, 120 Mo. App. 497, 97 S. W. 212.

196. 1. Snyder *v.* Harding, 38 Wash. 666, 80 Pac. 789, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 195, 196.

3. Ray *v.* Blackman, 120 Mo. App. 497, 97 S. W. 212.

197. 1. Mollitor *v.* C. M. Thom Van Co., 118 Ill. App. 293; Julian *v.* Berardini, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 119, 96 N. Y. Supp. 1064.

198. 1. See Bernstein *v.* Demmert, 73 N. J. L. 118, 62 Atl. 187.

3. The statutory provision limiting certain tenancies in the city of New York to May 1st, does not change this rule. Furman *v.* Galanopulo, (Supm. Ct. App. T.) 92 N. Y. Supp. 730.

7. Sterling *v.* Heiman, 108 Mo. App. 40, 82 S. W. 539; West *v.* Lungren, 74 Neb. 105, 103 N. W. 1057.

199. 19. Morgan *v.* Harrison, (1907) 2 Ch. 137.

201. 1. Asher *v.* Johnson, 118 Ky. 702, 82 S. W. 300 (statute).

5. Hood *v.* Drysdale, 27 Pa. Super. Ct. 540; Eastman *v.* Richards, 3 N. W. Ter. 73.

203. 3. Hanks *v.* Workmaster, (N. J. 1907) 66 Atl. 1097; Wolfer *v.* Hurst, 47 Oregon 156, 82 Pac. 20, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 202, 204.

4. Arbenz *v.* Exley, 57 W. Va. 580, 50 S. E. 813.

204. 1. Hatfield *v.* Lawton, 108 N. Y. App. Div. 113, 95 N. Y. Supp. 451.

8. Monthly Tenancy — Month's Notice. — Comte *v.* Gissing, 28 Quebec Super. Ct. 497.

205. 1. Hanks *v.* Workmaster, (N. J. 1907) 66 Atl. 1097; Arbenz *v.* Exley, 57 W. Va. 580, 50 S. E. 813.

3. Wolfer *v.* Hurst, 47 Oregon 156, 82 Pac. 20, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 205.

7. Ransom *v.* Ransom, 115 Ill. App. 1.

208. 7. Morris *v.* Healy Lumber Co., (Wash. 1907) 91 Pac. 186.

209. 1. Dundas *v.* Osmont, 1 W. L. R. 363.

3. Reccius *v.* Columbia Finance, etc., Co., 86 S. W. 1113, 27 Ky. L. Rep. 880.

210. 3. Broadwell *v.* Banks, 134 Fed. 470 (modification by statute in *Ohio* as to renewable leasehold estate).

5. Blocker *v.* McClendon, 6 Indian Ter. 481, 98 S. W. 166; Lanyon Zinc Co. *v.* Burtiss, 72 Kan. 441, 83 Pac. 989; Barada-Ohio Real Estate Co. *v.* Heidbrink, 112 Mo. App. 429, 86 S. W. 1109.

Dissolution of a Corporation Lessee terminates the lease. Hastings *v.* Letton, 97 L. T. N. S. 882.

211. 3. See Carmine *v.* Bowen, 104 Md. 198, 64 Atl. 932.

4. Lewis *v.* Baker, (1905) 1 Ch. 46, 74 L. J. Ch. 39, 91 L. T. N. S. 744.

212. 10. Johnston *v.* Corson Gold Min. Co., (C. C. A.) 157 Fed. 145.

213. 7. *In re* Coleman, (1907) 1 Ir. R. 488.

215. 4. *California.* — Brett *v.* Berger, 4 Cal. App. 12, 87 Pac. 222.

District of Columbia. — Howell *v.* Schneider, 24 App. Cas. (D. C.) 547, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 215; Keroes *v.* Richards, 28 App. Cas. (D. C.) 310, 8 Ann. Cas. 575.

Illinois. — Carpenter *v.* Stone, 112 Ill. App. 155; Martin *v.* Surman, 116 Ill. App. 282.

Iowa. — Flaherty *v.* Nieman, 125 Iowa 546, 101 N. W. 280; Ousley *v.* Hampe, 128 Iowa 675, 105 N. W. 122.

Kentucky. — Franklin *v.* Tracy, 117 Ky. 267, 77 S. W. 1113, 78 S. W. 1112, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 215.

Maryland. — Clark *v.* Gerke, 104 Md. 504, 65 Atl. 326; Whitcomb *v.* Mason, 102 Md. 275, 62 Atl. 749.

Massachusetts. — Galvin *v.* Beals, 187 Mass. 250, 72 N. E. 969; Shute *v.* Bills, 191 Mass. 433, 78 N. E. 96.

Michigan. — Rhoades *v.* Seidel, 139 Mich. 608, 102 N. W. 1025; Cooper *v.* Lawson, 139 Mich. 628, 103 N. W. 168, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 215.

Missouri. — Meyers *v.* Russell, 124 Mo. App. 317, 101 S. W. 606.

New York. — Estey *v.* Corn, (Supm. Ct. App. T.) 91 N. Y. Supp. 745; Faron *v.* Jones, (County Ct.) 49 Misc. (N. Y.) 47, 96 N. Y. Supp. 316; Richmond *v.* Lee, 123 N. Y. App. Div. 279, 107 N. Y. Supp. 1072, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 215.

Ohio. — Linke *v.* Walcutt, 26 Ohio Cir. Ct. 10, *affirmed* without opinion 69 Ohio St. 531, 70 N. E. 1125.

Oklahoma. — Tucker *v.* Bennett, 15 Okla. 187, 81 Pac. 423, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 215.

Pennsylvania. — Jackson *v.* Stewart, 31 Pa. Super. Ct. 58.

Tennessee. — Olmstead *v.* Tennessee Fixture, etc., Co., 1 Tenn. Ch. App. 653, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 215, 217.

Texas. — Morgan *v.* Tims, (Tex. Civ. App. 1906) 97 S. W. 832; Blackwell *v.* Speer, (Tex. Civ. App. 1906) 98 S. W. 903.

Wisconsin. — Auer *v.* Vahl, 129 Wis. 635, 109 N. W. 529.

In a Lease of Shooting Privileges there is no implied agreement to keep fences in repair. Patrick *v.* Harris, Sc. Ct. Sess. 6 F. 985.

216. 1. Howell *v.* Schneider, 24 App. Cas. (D. C.) 532, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 216; Lazarus *v.* Parmly, 113 Ill. App. 624; Bennett *v.* Sullivan, 100 Me. 118, 60 Atl. 886.

3. Lazarus *v.* Parmly, 113 Ill. App. 624.

4. Galvin *v.* Beals, 187 Mass. 250, 72 N. E. 969.

217. 5. Shute *v.* Bills, 191 Mass. 433, 78 N. E. 96.

8. Seymour *v.* Hughes, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 248, 105 N. Y. Supp. 249. But see Lindwall *v.* May, 111 N. Y. App. Div. 457, 97 N. Y. Supp. 821.

10. Where the real estate is used by the lessee for theatrical purposes, there is no implied agreement on the part of the lessor to make repairs required by the public authorities to enable the lessee to continue the theatrical business on the premises. Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203.

218. 3. Lazarus *v.* Parmly, 113 Ill. App. 624.

7. Betcher *v.* Hagell, 38 Nova Scotia 517 (roof); Miles *v.* Tracy, 89 S. W. 1128; 28 Ky. L. Rep. 621; Shute *v.* Bills, 191 Mass. 433, 78 N. E. 96; Cooper *v.* Lawson, 139 Mich. 628, 103 N. W. 168, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 218; Dustin *v.* Curtis, 74 N. H. 266, 67 Atl. 222, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 218; Brick *v.* Favilla, (County Ct.) 51 Misc. (N. Y.) 550, 101 N. Y. Supp. 970; American Exch. Nat. Bank *v.* Swope, (Tex. Civ. App. 1907) 101 S. W. 872.

219. 2. **Must Repair Roof.** — Fairmount Lodge No. 590 *v.* Tilton, 122 Ill. App. 636; Frank *v.* Simon, 109 N. Y. App. Div. 38, 95 N. Y. Supp. 666; Schwartz *v.* Monday, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 527, 97 N. Y. Supp. 978.

In Hargroves *v.* Hartopp, (1905) 1 K. B. 472, 92 L. T. N. S. 414, 74 L. J. K. B. 233, it was held that the landlord was bound to keep clear a gutter on the roof used to carry off the roof water.

The duty of a landlord to keep the roof of premises demised in repair is not absolute. The most that is required of him is the exercise of ordinary care in discovering the need of and making the necessary repairs. Rehbach *v.* Vogt, 126 Ill. App. 613.

5. Hargroves *v.* Hartopp, (1905) 1 K. B. 472 (maintenance of and failure to keep open water gutter on roof); Nahm *v.* Register Newspaper Co., 120 Ky. 485, 87 S. W. 296; Levin *v.* Habicht, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 381, 90 N. Y. Supp. 349; Pratt *v.* Tailer, 186 N. Y. 417, 79 N. E. 328.

220. 2. Tredway *v.* Machin, 91 L. T. N. S. 310, 53 W. R. 136; Phelan *v.* Fitzpatrick, 188 Mass. 237, 74 N. E. 326; Cooper *v.* Lawson, 139 Mich. 628, 103 N. W. 168; Schiff *v.* Pottlitzer, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 611, 101 N. Y. Supp. 249 (ceilings of rooms leased); American Exch. Nat. Bank *v.* Swope, (Tex. Civ. App. 1907) 101 S. W. 872.

3. Lebensburger *v.* Scofield, (C. C. A.) 155 Fed. 85.

4. Lebensburger *v.* Scofield, (C. C. A.) 155 Fed. 85; Brick *v.* Favilla, (County Ct.) 51 Misc. (N. Y.) 550, 101 N. Y. Supp. 970; Peterson *v.* Bullion-Beck, etc., Min. Co., (Utah 1907) 91 Pac. 1095.

7. Merchants L. & T. Co. *v.* Boucher, 115 Ill. App. 108, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 220; Timlan *v.* Dillworth, (N. J. 1907) 67 Atl. 433 (dumb waiter); Bogendoerfer *v.* Jacobs, 97 N. Y. App. Div. 355, 89 N. Y. Supp. 1051; Garrett *v.* Somerville, 98 N. Y. App. Div. 206, 90 N. Y. Supp. 705; Bryant *v.* Carr, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 155, 101 N. Y. Supp. 646 (steam radiators in office building).

Where the Landlord Merely Permits — Stiver *v.* Molter, 124 Ill. App. 21, to the same effect as Culver *v.* Kingsley, 78 Ill. App. 540, cited in the original note.

Negligent Maintenance of Waterworks — Kecoughtan Lodge No. 29 *v.* Steiner, 106 Va. 589, 56 S. E. 569.

221. 1. Burke *v.* Hulett, 216 Ill. 545, 75 N. E. 240, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 220; Whitcomb *v.* Mason, 102 Md. 275, 62 Atl. 749, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 220, 221; Andrews *v.* Williamson, 193 Mass. 92, 78 N. E. 737; Siggins *v.* McGill, 72 N. J. L. 263, 62 Atl. 411; Johnson *v.* Lembeck, etc., Eagle Brewing Co., (N. J. 1907) 68 Atl. 85; Sacks *v.* Segal, (Supm. Ct. App. T.) 101 N. Y. Supp. 41; Acker *v.* Stiner, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 157, 101 N. Y. Supp. 766; Walsh *v.* Frey, 116 N. Y. App. Div. 527, 101 N. Y. Supp. 774.

4. New York Statute Requiring Lights to Tenements. — Recovery denied on the ground of contributory negligence. Lather *v.* Bammann, 22 N. Y. App. Div. 13, 106 N. Y. Supp. 790.

222. 3. If the common appurtenance used by the several tenants of a building contains a hidden defect, the landlord must do more than keep such appurtenance in the condition that it was at the time of the letting, and must use due care to keep it as strong and safe as it then appeared to be, the tenant taking the risk only of obvious defects. Andrews *v.* Williamson, 193 Mass. 92, 78 N. E. 737.

4. Burke *v.* Hulett, 216 Ill. 545, 75 N. E. 240; Merchants L. & T. Co. *v.* Boucher, 115 Ill. App. 101, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221; Mospens *v.* Konz, (Ky. 1907) 105 S. W. 381; Hanselman *v.* Broad, 113 N. Y. App. Div. 447, 99 N. Y. Supp. 404; Murphy *v.* Crocicchia, (Supm. Ct. App. T.) 102 N. Y. Supp. 523. See also Whitcomb *v.* Mason, 102 Md. 275, 62 Atl. 749.

5. Joshua *v.* Breithaupt, (Supm. Ct. App. T.) 90 N. Y. Supp. 1053.

223. 1. Lather *v.* Bammann, 122 N. Y. App. Div. 13, 106 N. Y. Supp. 790 (held question of law under particular circumstances).

5. Eugene C. Lewis Co. *v.* Metropolitan Realty Co., 112 N. Y. App. Div. 385, 98 N. Y. Supp. 391 (negligence held to have been shown in application of the doctrine *res ipsa loquitur*).

6. Leakage of Water — Eugene C. Lewis Co. *v.* Metropolitan Realty Co., 112 N. Y. App. Div. 385, 98 N. Y. Supp. 391. See also Pratt *v.* Tailer, 114 N. Y. App. Div. 574, 100 N. Y. Supp. 1[illegible].

224. 4. Howell *v.* Schneider, 24 App. Cas. (D. C.) 532; Lazarus *v.* Parmly, 113 Ill. App. 624; Holzhauer *v.* Sheeny, (Ky. 1907) 104 S. W. 1034; Meyers *v.* Russell, 124 Mo. App. 317, 101 S. W. 606; Davis *v.* Smith, 26 R. I. 129, 58 Atl. 630, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224.

Concealment of Defects by Lessor. — Steefel *v.* Rothschild, 179 N. Y. 273, 72 N. E. 112.

5. See Finney *v.* Steele, (Ala. 1906) 41 So. [illegible].

225. 1. Holzhauer *v.* Sheeny, (Ky. 1907) 104 S. W. 1034.

2. Shute *v.* Bills, 191 Mass. 433, 78 N. E. 96; Rhoades *v.* Seidel, 139 Mich. 608, 102 N. W. 1025; Smith *v.* Donnelly, (Supm. Ct. Tr. T.) 45 Misc. (N. Y.) 447, 92 N. Y. Supp. 43; Steefel *v.* Rothschild, 179 N. Y. 273, 72 N. E. 112; American Exch. Nat. Bank *v.* Swope, (Tex. Civ. App. 1907) 101 S. W. 872.

Agent's Knowledge May be Imputed to Landlord. — Holzhauer *v.* Sheeny, (Ky. 1907) 104 S. W. 1034.

3. See Howell *v.* Schneider, 24 App. Cas. (D. C.) 547.

4. Finney *v.* Steele, (Ala. 1906) 41 So. 976.

5. Rhoades *v.* Seidel, 139 Mich. 608, 102 N. W. 1025.

8. Shute *v.* Bills, 191 Mass. 433, 78 N. E. 96. The same rule applies as regards the landlord's after-acquired knowledge of pre-existing defects. Holzhauer *v.* Sheeny, (Ky. 1907) 104 S. W. 1034.

226. 9. Faron *v.* Jones, (County Ct.) 49 Misc. (N. Y.) 47, 96 N. Y. Supp. 316; Schiavone *v.* Callahan, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 654, 102 N. Y. Supp. 538; Olmstead *v.* Tennessee Fixture, etc., Co., 1 Tenn. Ch. App. 653.

227. 3. Galvin *v.* Beals, 187 Mass. 250, 72 N. E. 969; Phelan *v.* Fitzpatrick, 188 Mass. 237, 74 N. E. 326; Dalton *v.* Gibson, 192 Mass. 1, 77 N. E. 1035; Schiff *v.* Pottlitzer, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 611, 101 N. Y. Supp. 249.

4. Frey *v.* Vignier, 145 Cal. 251, 78 Pac. 733 (sufficiency of consideration); Altsheler *v.* Conrad, 118 Ky. 647, 82 S. W. 257; Bennett *v.* Sullivan, 100 Me. 118, 60 Atl. 886; Rhoades *v.* Seidel, 139 Mich. 608, 102 N. W. 1025; Sherlock *v.* Rushmore, 99 N. Y. App. Div. 508, 91 N. Y. Supp. 152; Schiff *v.* Pottlitzer, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 611, 101 N. Y. Supp. 249; Tucker *v.* Bennett, 15 Okla. 187, 81 Pac. 423, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 227; Betcher *v.* Hagell, 38 Nova Scotia 517.

228. 1. Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203.

4. Faron *v.* Jones, (County Ct.) 49 Misc. (N. Y.) 47, 96 N. Y. Supp. 316.

5. Rubens *v.* Hill, 115 Ill. App. 565; Estey *v.* Corn, (Supm. Ct. App. T.) 91 N. Y. Supp. 745; Richmond *v.* Lee, 123 N. Y. App. Div. 279, 107 N. Y. Supp. 1072.

6. Cohn *v.* Naughton, 127 Mo. App. 294, 104 S. W. 1158.

The principles of construction of covenants by the lessee to repair apply equally to cove-

nants by the lessor to repair. Torrens *v.* Walker, (1906) 2 Ch. 166.

229. 9. Tredway *v.* Machin, 91 L. T. N. S. 310, 53 W. R. 136; Torrens *v.* Walker, (1906) 2 Ch. 166; Galvin *v.* Beals, 187 Mass. 250, 72 N. E. 969; Cummings *v.* Ayer, 188 Mass. 292, 74 N. E. 336.

230. 1. Reilly *v.* Tull, (Supm. Ct. App. T.) 102 N. Y. Supp. 522 (negligence in making repairs after notice renders landlord liable).

3. Rubens *v.* Hill, 115 Ill. App. 565.

231. 1. See Fallis *v.* Gray, 115 Mo. App. 253, 91 S. W. 175.

7. Dustin *v.* Curtis, 74 N. H. 266, 67 Atl. 222, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 231; Boden *v.* Scholtz, 101 N. Y. App. Div. 1, 91 N. Y. Supp. 437; Davis *v.* Smith, 26 R. I. 129, 58 Atl. 630, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 231.

9. Vincent *v.* Central City Loan, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 428.

232. 5. Cohn *v.* Naughton, 127 Mo. App. 204, 104 S. W. 1158; Lewis *v.* Ritoff, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 605, 101 N. Y. Supp. 40.

9. Keeley Institute Co. *v.* Shaw, 149 Mich. 519, 113 N. W. 30.

233. 1. Hamaker *v.* Manheim Light, etc., Co., 25 Pa. Super. Ct. 484. See also Willcox *v.* Kehoe, 124 Ga. 484, 52 S. E. 896.

It is otherwise as to a covenant to repair other premises than those demised. Dewar *v.* Goodman, (1907) 1 K. B. 612, *affirmed* (1908) 1 K. B. 94.

The landlord, however, after an assignment of the reversion remains liable on his covenant to repair. Stuart *v.* Joy, (1904) 1 K. B. 362.

6. Beakes *v.* Holzman, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 384, 94 N. Y. Supp. 33; Lewis *v.* Ritoff, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 605, 101 N. Y. Supp. 40; Uhfelder *v.* Loughran, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 593, 104 N. Y. Supp. 891.

8. Daly *v.* Piza, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 608, 90 N. Y. Supp. 1071.

234. 1. Eberson *v.* Continental Invest. Co., 118 Mo. App. 67, 93 S. W. 297; Pratt *v.* Tailer, 114 N. Y. App. Div. 574, 100 N. Y. Supp. 16, *affirmed* 186 N. Y. 418, 79 N. E. 328.

An express agreement on the part of the lessor to pay the tenant for injuries to his property is, of course, enforceable. Beakes *v.* Holzman, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 384, 94 N. Y. Supp. 33.

Damages to Crops Excluded.— See Gloor *v.* West, (Tex. Civ. App. 1905) 89 S. W. 783.

3. Weinberg *v.* Ely, 114 N. Y. App. Div. 857, 100 N. Y. Supp. 283.

6. **Remedy of Tenant against Landlord for Reimbursement.** — Altsheler *v.* Conrad, 118 Ky. 647, 82 S. W. 257.

7. Dustin *v.* Curtis, 74 N. H. 266, 67 Atl. 222, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 234; Kushes *v.* Ginsberg, 99 N. Y. App. Div. 417, 91 N. Y. Supp. 216; Boden *v.* Scholtz, 101 N. Y. App. Div. 1, 91 N. Y. Supp. 437; Schiff *v.* Pottlitzer, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 611, 101 N. Y. Supp. 240.

Failure to Heat. — Dancy *v.* Walz, 112 N. Y. App. Div. 355, 98 N. Y. Supp. 407.

235. 2. Martin *v.* Surman, 116 Ill. App. 282; Hedekin *v.* Gillespie, 33 Ind. App. 650, 72 N. E. 143.

4. Brett *v.* Berger, 4 Cal. App. 12, 87 Pac. 222; Beakes *v.* Holzman, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 384, 94 N. Y. Supp. 33; Reams *v.* Taylor, 31 Utah 288, 87 Pac. 1089.

9. **Georgia.** — Henley *v.* Brockman, 124 Ga. 1059, 53 S. E. 672.

Louisiana. — Mullen *v.* Kerlec, 115 La. 783, 40 So. 46; Lazare, etc., Co. *v.* Madden, 116 La. 374, 40 So. 766; Brodtman *v.* Finerty, 116 La. 1103, 41 So. 329; Bianchi *v.* Del Valle, 117 La. 587, 42 So. 148, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 235, for cases in other jurisdictions under similar statutes; Glain *v.* Sparandeo, 119 La. 339, 44 So. 120; Leithman *v.* Vaught, 115 La. 249, 38 So. 982.

Oklahoma. — Tucker *v.* Bennett, 15 Okla. 187, 81 Pac. 423.

Canada. — Fortier *v.* Youngheart, 28 Quebec Super. Ct. 118 (repairs to furnace); Hanleyson *v.* Dozois, 28 Quebec Super. Ct. 400 (landlord's liability as to repairs may be limited by contract); Raso *v.* Miller, 8 Quebec Pr. 329; Central Agency *v.* Les Religieuses, etc., 27 Quebec Super. Ct. 281; Beardmore *v.* Bellevue Land Co., 15 Quebec K. B. 43; Lamarche *v.* Bessette, 7 Quebec Pr. 351.

236. 2. Barron *v.* Liedloff, 95 Minn. 474, 104 N. W. 289, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 236; Lambert *v.* Hamlin, 73 N. H. 138, 59 Atl. 941; Honnemeyer *v.* Fischer, 27 Ohio Cir. Ct. 8; McNichol *v.* Malcolm, 39 Can. Sup. Ct. 265.

237. 2. Blickley *v.* Luce, 148 Mich. 233, 111 N. W. 752.

3. Upham *v.* Head, 74 Kan. 17, 85 Pac. 1017.

238. 1. Nahm *v.* Register Newspaper Co., 120 Ky. 485, 87 S. W. 296; Blickley *v.* Luce, 148 Mich. 233, 111 N. W. 752; Myhre *v.* Schleuder, 98 Minn. 234, 108 N. W. 276; Eberson *v.* Continental Invest. Co., 118 Mo. App. 67, 93 S. W. 297; Rosenberg *v.* Zeitchik, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 153, 101 N. Y. Supp. 591; Honnemeyer *v.* Fischer, 27 Ohio Cir. Ct. 8; Bancroft *v.* Godwin, 41 Wash. 253, 83 Pac. 189.

4. Lebensburger *v.* Scofield, (C. C. A.) 155 Fed. 85; Hirschfield *v.* Alsberg, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 141, 93 N. Y. Supp. 617.

5. *United States.* — Missel *v.* Lennox. (C. C. A.) 156 Fed. 347.

California. — Hatch *v.* McCloud River Lumber Co., 150 Cal. 111, 88 Pac. 355.

Illinois. — Carpenter *v.* Stone, 112 Ill. App. 155; Gronlund *v.* Forsman, 124 Ill. App. 362.

Iowa. — Burner *v.* Higman, etc., Co., 127 Iowa 580, 103 N. W. 802.

Kentucky. — Hess *v.* Hinkson, (Ky. 1906) 96 S. W. 436.

Massachusetts. — Cummings *v.* Ayer, 188 Mass. 292, 74 N. E. 336; Rice *v.* Boston University, 191 Mass. 30, 77 N. E. 308; Shute *v.* Bills, 191 Mass. 433, 78 N. E. 96; Dalton *v.* Gibson, 192 Mass. 1, 77 N. E. 1035.

Minnesota. — See Welker *v.* Anheuser-Busch Brewing Assoc., (Minn. 1908) 114 N. W. 745 (elevator — statutory provision).

Missouri. — Andrus *v.* Bradley-Alderson Co.,

117 Mo. App. 322, 93 S. W. 872; Mayer *v.* Schrumpf, 111 Mo. App. 54, 85 S. W. 915.

New York. — Sherlock *v.* Rushmore, 99 N. Y. App. Div. 598, 91 N. Y. Supp. 152; Kushes *v.* Ginsberg, 99 N. Y. App. Div. 417, 91 N. Y. Supp. 216; Washington *v.* Episcopal Church, 111 N. Y. App. Div. 402, 97 N. Y. Supp. 1072; Rosenstein *v.* Deffaa, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 554, 107 N. Y. Supp. 90.

Ohio. — Edwards *v.* Rissler, 26 Ohio Cir. Ct. 428, *affirmed* without opinion Rissler *v.* Edwards, 69 Ohio St. 572, 70 N. E. 1129.

Washington. — Ward *v.* Hinkleman, 37 Wash. 375, 79 Pac. 956, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 238.

239. 1. McCain *v.* Majestic Bldg. Co., (La. 1908) 45 So. 258.

6. Lebensburger *v.* Scofield, (C. C. A.) 155 Fed. 85; Gronlund *v.* Forsman, 124 Ill. App. 362; Mitchell *v.* Brady, (Ky. 1907) 99 S. W. 266; Mylander *v.* Beimschla, 102 Md. 689, 62 Atl. 1038; Uggla *v.* Brokaw, 117 N. Y. App. Div. 586, 102 N. Y. Supp. 857; Edwards *v.* Rissler, 26 Ohio Cir. Ct. 428, *affirmed* without opinion Rissler *v.* Edwards, 69 Ohio St. 572, 70 N. E. 1129; Keeler *v.* Lederer Realty Corp., 26 R. I. 524, 59 Atl. 855, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 238, 239.

The fact that the lease is for ninety-five years does not change the rule. Keeler *v.* Lederer Realty Corp., 26 R. I. 524, 59 Atl. 855.

240. 1. Wixon *v.* Bruce, 187 Mass. 232, 72 N. E. 978.

4. Mitchell *v.* Brady, (Ky. 1907) 99 S. W. 266; Keeler *v.* Lederer Realty Corp., 26 R. I. 524, 59 Atl. 855.

5. Ward *v.* Hinkleman, 37 Wash. 375, 79 Pac. 956, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 240.

241. 2. Clapp *v.* Donaldson, (Mass. 1907) 80 N. E. 486; Jones *v.* Brumme, 120 N. Y. App. Div. 494, 104 N. Y. Supp. 1038 (cellar door in sidewalk); Lindstrom *v.* Pennsylvania Co., 212 Pa. St. 391, 61 Atl. 940.

3. Uggla *v.* Brokaw, 117 N. Y. App. Div. 586, 102 N. Y. Supp. 857. But see Mitchell *v.* Brady, (Ky. 1907) 99 S. W. 266.

4. Neas *v.* Lowell, 193 Mass. 441, 79 N. E. 810.

6. Cavalier *v.* Pope, (1906) A. C. 428, *affirming* (1905) 2 K. B. 757 (wife of lessor); Kennedy *v.* Bruce, (1907) Sc. Ct. Sess. 845; Sherlock *v.* Rushmore, 99 N. Y. App. Div. 598, 91 N. Y. Supp. 152; Kushes *v.* Ginsberg, 99 N. Y. App. Div. 417, 91 N. Y. Supp. 216; Moulliet *v.* Anderson, 29 Ohio Cir. Ct. 723.

7. Barron *v.* Liedloff, 95 Minn. 474, 104 N. W. 289; Edwards *v.* Rissler, 26 Ohio Cir. Ct. 428, *affirmed* without opinion Rissler *v.* Edwards, 69 Ohio St. 572, 70 N. E. 1129.

242. 2. Lebensburger *v.* Scofield, (C. C. A.) 155 Fed. 85.

4. Neas *v.* Lowell, 193 Mass. 441, 79 N. E. 810.

A fortiori, the right of the landlord to enter to inspect the premises will not render him liable. Uggla *v.* Brokaw, 117 N. Y. App. Div. 586, 102 N. Y. Supp. 857.

7. See Veal *v.* Hanlon, 123 Ga. 642, 51 S. E. 579; Ross *v.* Jackson, 123 Ga. 657, 51 S. E. 578.

8. Clapp *v.* Donaldson, (Mass. 1907) 80 N. E. 486; Hirschfield *v.* Alsberg, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 141, 93 N. Y. Supp. 617; Uggla *v.* Brokaw, 117 N. Y. App. Div. 586, 102 N. Y. Supp. 857; Ward *v.* Hinkleman, 37 Wash. [illegible] 79 Pac. 956, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 242.

243. 1. Myhre *v.* Schleuder, 98 Minn. 234, 108 N. W. 276.

Tenant Negligently Leaving Uncovered Hole in Sidewalk. — Opper *v.* Hellinger, 116 N. Y. App. Div. 261, 101 N. Y. Supp. 616; Duffin *v.* Dawson, 211 Pa. St. 593, 61 Atl. 76.

244. 2. Chosen Freeholders *v.* Woodcliffe Land Imp. Co., 74 N. J. L. 355, 65 Atl. 841.

5. Ward *v.* Hinkleman, 37 Wash. 375, 79 Pac. 956, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 244.

245. 1. **Elevators.** — B. Shoninger Co. *v.* Mann, 121 Ill. App. 275; Pascieszny *v.* Boydell Bros. White Lead, etc., Co., 146 Mich. 223, 109 N. W. 417; Andrus *v.* Bradley-Alderson Co., 117 Mo. App. 322, 93 S. W. 872; Rosenberg *v.* Schoolhere, 116 N. Y. App. Div. 289, 101 N. Y. Supp. 505.

2. Wixon *v.* Bruce, 187 Mass. 232, 72 N. E. 978.

3. B. Shoninger Co. *v.* Mann, 219 Ill. 242, 76 N. E. 354; Burner *v.* Higman, etc., Co., 127 Iowa 580, 103 N. W. 802; Mills *v.* Cavanaugh, 94 S. W. 651, 29 Ky. L. Rep. 685; Hess *v.* Hinkson, (Ky. 1906) 96 S. W. 436; Hamilton *v.* Taylor, 195 Mass. 68, 80 N. E. 592; Domenicis *v.* Fleisher, (Mass. 1907) 81 N. E. 191; Widing *v.* Penn Mut. L. Ins. Co., (95 Minn. 279, 104 N. W. 239; Bogendoerfer *v.* Jacobs, 97 N. Y. App. Div. 355, 89 N. Y. Supp. 1051; Lee *v.* Ingraham, 106 N. Y. App. Div. 167, 94 N. Y. Supp. 284; Edwards *v.* Rissler, 26 Ohio Cir. Ct. 428, *affirmed* without opinion Rissler *v.* Edwards, 69 Ohio St. 572, 70 N. E. 1129.

4. Burke *v.* Hulett, 216 Ill. 545, 75 N. E. 240; Chicago, etc., R. Co. *v.* Doyle, 119 Ill. App. 303 (contributory negligence); Russo *v.* McLaughlin, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 34, 99 N. Y. Supp. 839; Ten Broeck *v.* Deinhardt, 120 N. Y. App. Div. 473, 105 N. Y. Supp. 59.

No Duty to Light Halls. — Robinson *v.* Crimmins, 120 N. Y. App. Div. 250, 104 N. Y. Supp. 1076.

246. 2. Forrester *v.* O'Rourke Engineering Constr. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 390, 95 N. Y. Supp. 600 (skylight).

5. Clark *v.* Gerke, 104 Md. 504, 65 Atl. 326.

When the premises leased are in a condition constituting a public nuisance there is no implied agreement by the tenant to remedy such condition. New York *v.* U. S. Trust Co., 116 N. Y. App. Div. 349, 101 N. Y. Supp. 574.

6. Junction Min. Co. *v.* Springfield Junction Coal Co., 122 Ill. App. 574, *affirmed* 222 Ill. 600, 78 N. E. 902.

8. Junction Min. Co. *v.* Springfield Junction Coal Co., 122 Ill. App. 574, *affirmed* 222 Ill. 600, 78 N. E. 902.

248. 8. New York *v.* U. S. Trust Co., 116 N. Y. App. Div. 340, 101 N. Y. Supp. 574.

9. Natelsohn *v.* Reich, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 585, 99 N. Y. Supp. 327.

251. 3. Street *v.* Central Brewing Co., 101 N. Y. App. Div. 3, 91 N. Y. Supp. 547.

6. Keroes *v.* Richards, 28 App. Cas. (D. C.)

310, 8 Ann. Cas. 575; Epstein *v.* Saviano, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 28, 99 N. Y. Supp. 910.

7. Street *v.* Central Brewing Co., 101 N. Y. App. Div. 3, 91 N. Y. Supp. 547.

8. Street *v.* Central Brewing Co., 101 N. Y. App. Div. 3, 91 N. Y. Supp. 547; Lehmaier *v.* Jones, 100 N. Y. App. Div. 495, 91 N. Y. Supp. 687.

252. 2. Franklin *v.* Triplett, 79 Ark. 82, 94 S. W. 929; Keroes *v.* Richards, 28 App. Cas. (D. C.) 310, 8 Ann. Cas. 575; Lehmaier *v.* Jones, 100 N. Y. App. Div. 495, 91 N. Y. Supp. 687, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 252; Appleton *v.* Marx, 117 N. Y. App. Div. 206, 102 N. Y. Supp. 2.

6. Keroes *v.* Richards, 28 App. Cas. (D. C.) 310, 8 Ann. Cas. 575; Markham *v.* David Stevenson Brewing Co., 104 N. Y. App. Div. 420, 93 N. Y. Supp. 684.

Fire Escape. — Kalman *v.* Cox, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 589, 92 N. Y. Supp. 811.

8. New York *v.* U. S. Trust Co., 116 N. Y. App. Div. 349, 101 N. Y. Supp. 574.

254. 1. **Breaking of a Plate-glass Front** from an inherent defect, held within the exception as to "wear and tear." Drouin *v.* Wilson, (Vt. 1907) 67 Atl. 825.

255. 10. Lehmaier *v.* Jones, 100 N. Y. App. Div. 495, 91 N. Y. Supp. 687.

256. 7. Keroes *v.* Richards, 28 App. Cas. (D. C.) 310, 8 Ann. Cas. 575; Markham *v.* David Stevenson Brewing Co., 111 N. Y. App. Div. 538, 97 N. Y. Supp. 604 (interest not recoverable on costs of repairs).

9. Lehmaier *v.* Jones, 100 N. Y. App. Div. 495, 91 N. Y. Supp. 687; Appleton *v.* Marx, 191 N. Y. 84, 83 N. E. 563.

Effect of Reletting by Landlord. — Appleton *v.* Marx, 117 N. Y. App. Div. 206, 102 N. Y. Supp. 2, *approving* Joyner *v.* Weeks, (1891) 2 Q. B. 31, cited in original note.

258. 1. Burner *v.* Higman, etc., Co., 127 Iowa 580, 103 N. W. 802; Mitchell *v.* Brady, (Ky. 1907) 99 S. W. 266; Hirschfield *v.* Alsberg, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 141, 93 N. Y. Supp. 617.

4. Weber *v.* Lieberman, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 593, 94 N. Y. Supp. 460.

6. The tenant of a building is not an insurer against articles being thrown from a window to the injury of persons outside; he is only bound to the exercise of ordinary care. Carl *v.* Young, (Me. 1907) 68 Atl. 593.

7. Cohn *v.* May, 210 Pa. St. 615, 60 Atl. 301 (obstructing passageway).

9. Aschenbach *v.* Keene, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 600, 92 N. Y. Supp. 764; Sheehan *v.* Barberis, 41 Wash. 671, 84 Pac. 607.

10. Andrus *v.* Bradley-Alderson Co., 117 Mo. App. 322, 93 S. W. 872.

263. 4. **Stepfather Occupying Land of Stepdaughter.** — Story *v.* McCormick, 70 Kan. 323, 78 Pac. 819.

264. 1. Illinois Cent. R. Co. *v.* Ross, 83 S. W. 635, 26 Ky. L. Rep. 1251; Carpenter *v.* Allen, 189 Mass. 246, 75 N. E. 622; Mathews *v.* Carlton, 189 Mass. 285, 75 N. E. 637; Rosenberg *v.* Sprecher, 74 Neb. 176, 103 N. W. 1045, 105 N. W. 293.

270. 5. Holt *v.* Nixon, (C. C. A.) 141 Fed. 952; Parker *v.* Gortatowsky, (Ga. 1907) 59 S. E. 286, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 270; Arcade Realty Co. *v.* Tunney, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 148, 101 N. Y. Supp. 593.

271. 1. See Price *v.* Grice, 10 Idaho 443, 79 Pac. 387.

4. Goesse, etc., Bldg., etc., Co. *v.* Kinnerk, 127 Mo. App. 451, 105 S. W. 674, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 271.

5. Musewald *v.* Seeker, (County Ct.) 51 Misc. (N. Y.) 355, 101 N. Y. Supp. 287 (rent to be paid at a certain date or sooner if the "party renting" desires).

272. 5. *In re* Winfield Mfg. Co., 137 Fed. 984.

273. 8. Lacy *v.* Morton, (Ark. 1905) 89 S. W. 842.

9. Morton *v.* Lacy, 84 Ark. 396, 106 S. W. 200; Pakas *v.* Shinberg, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 238, 97 N. Y. Supp. 209 (provision for reduction for services to be performed by lessee).

275. 9. Withers *v.* Massengill, 148 Cal. 769, 84 Pac. 153; Wilson *v.* People's Gas Co., 75 Kan. 499, 89 Pac. 897.

An Agreement to Make Alterations is a sufficient consideration. Natelsohn *v.* Reich, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 585, 99 N. Y. Supp. 327.

276. 5. Seymour *v.* Hughes, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 248, 105 N. Y. Supp. 249.

277. 1. **Costs of Appraisal.** — Costs of appraisal are to be borne by the lessee where the covenant is for renewal "at the costs of the lessee." Fitzsimmons *v.* Mostyn, (1904) A. C. 46, 89 L. T. N. S. 616, 52 W. R. 337, 20 Times L. Rep. 134, 73 L. J. K. B. 72.

Improvements Erected by Lessee. — Columbia Theatre Amusement Co. *v.* Adsit, 211 Ill. 122, 71 N. E. 868; Springer *v.* Borden, 112 Ill. App. 168, *affirmed* 210 Ill. 518, 71 N. E. 345.

On the Death of the Appraiser a court of equity may fix the rent. Weir *v.* Barker, 104 N. Y. App. Div. 112, 93 N. Y. Supp. 732.

278. 1. Canadian Pac. R. Co. *v.* Toronto, (1905) A. C. 33; Parker *v.* Gortatowsky, (Ga. 1907) 59 S. E. 286.

279. 7. Broadwell *v.* Banks, 134 Fed. 470.

280. 2. Hammond *v.* Jones, (Ind. App. 1908) 83 N. E. 257; Bernstein *v.* Koch, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 550, 102 N. Y. Supp. 524; Kaston *v.* Paxton, 46 Oregon 308, 80 Pac. 209, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 280.

The lessee is protected in payment to the lessor, without notice of the transfer of the reversion. Indiana Natural Gas, etc., Co. *v.* Lee, 34 Ind. App. 119, 72 N. E. 492.

281. 1. Groos *v.* Chittim, (Tex. Civ. App. 1907) 100 S. W. 1006.

282. 5. Groos *v.* Chittim, (Tex. Civ. App. 1907) 100 S. W. 1006.

7. *In re* Banner, 149 Fed. 936.

8. Finch *v.* Mishler, 100 Md. 458, 59 Atl. 1009.

283. 5. Where a receiver is appointed for a lessee who has sublet part of the demised premises, the lessor is entitled to the rents

paid in by the sublessee. Kemp *v.* Earp, 118 Mo. App. 134, 93 S. W. 342.

8. Silveira *v.* Ah Lo, 16 Hawaii 703, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 283; United Merchants' Realty, etc., Co. *v.* Roth, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 92, 103 N. Y. Supp. 1112, *judgment modified* 122 N. Y. App. Div. 628, 107 N. Y. Supp. 511. See also Shea *v.* McCauliff, 186 Mass. 569, 72 N. E. 69, *distinguishing* Harmon *v.* Flanagan, 123 Mass. 288, cited in the original note.

285. 4. Applegate *v.* Kilgore, (Tex. Civ. App. 1906) 91 S. W. 238.

286. 6. Bennett *v.* McKee, 144 Ala. 601, 38 So. 129; Swan *v.* Inderlied, 187 N. Y. 372, 80 N. E. 195.

288. 8. United Merchants' Realty, etc., Co. *v.* Roth, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 92, 103 N. Y. Supp. 1112, *judgment modified* 122 N. Y. App. Div. 628, 107 N. Y. Supp. 511.

291. 2. Sutton *v.* Goodman, 194 Mass. 389, 80 N. E. 608; Hechlau *v.* Hauser, (N. J. 1904) 59 Atl. 18; O'Brien *v.* Levine, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 303, 98 N. Y. Supp. 636; Coro *v.* Greenwald, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 548, 102 N. Y. Supp. 752.

A deposit as security for rent cannot be recovered by the tenant before the expiration of the lease. Mirsky *v.* Horowitz, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 257, 92 N. Y. Supp. 48.

Where a tenant seeks to recover a deposit as security for the performance of the covenants and conditions of the lease, the burden is upon him to show his performance of such covenants and conditions. Goldberg *v.* Freeman, (Supm. Ct. App. T.) 92 N. Y. Supp. 237.

Where a deposit is made as security for the payment of the rents and the performance of the covenants contained in the lease "during the continuance thereof," in case the lease is terminated by the order of the lessee by summary proceedings, the landlord is not entitled to retain the deposit as security for rents to accrue after such termination of the lease. Yannuzzi *v.* Grape, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 559, 92 N. Y. Supp. 819.

Grantee of Reversion. — A covenant by the lessor to return the deposit made by the lessee as security for his performance of the covenants of the lease does not run with the land so as to bind the lessor's grantee. Joseph Fallert Brewing Co. *v.* Blass, 119 N. Y. App. Div. 53, 103 N. Y. Supp. 865.

Right to Deposit as between Lessee and His Assignee. — Wackerow *v.* Engel, (Supm. Ct. App. T.) 96 N. Y. Supp. 1071.

Bankruptcy of Lessor — Application of Deposit to Payment of Rent. — *In re* Banner, 149 Fed. [illegible].

Tenant Held Entitled to Relief against Forfeiture of Deposit. — Weinberg *v.* Greenberger, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 117, 93 N. Y. Supp. 530; Wolf *v.* Dembosky, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 383, 95 N. Y. Supp. 550.

292. 3. Baker *v.* Connor, 20 Ohio Cir. Ct. 71, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 293.

6. Cuesta *v.* Goldsmith, 1 Ga. App. 48, 57 S. E. 983, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 293.

294. 3. *In re* Winfield Mfg. Co., 137 Fed. 984; West Concord Milling Co. *v.* Hosmer, 129 Wis. 9, 107 N. W. 12.

The burden of proving the time of a surrender, as regards liability for rent, is upon the lessee. Sammis *v.* Day, (County Ct.) 48 Misc. (N. Y.) 327, 96 N. Y. Supp. 777.

295. 1. American Bonding Co. *v.* Pueblo Inv. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Okie *v.* Person, 23 App. Cas. (D. C.) 170, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 295.

3. Okie *v.* Person, 23 App. Cas. (D. C.) 170, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 295; Henning *v.* Savage, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 609, 100 N. Y. Supp. 1015. See also Fallis *v.* Gray, 115 Mo. App. 253, 91 S. W. 175.

4. Stern *v.* Murphy, (Supm. Ct. App. T.) 102 N. Y. Supp. 797.

9. Surrender of part of the premises releases the surety for payment of the rent. Stern *v.* Sawyer, 78 Vt. 5, 61 Atl. 36.

296. 8. Frepons *v.* Grostein, 12 Idaho 671, 87 Pac. 1004; Rogers *v.* Babcock, 139 Mich. 94, 102 N. W. 636; Osmers *v.* Furey, 32 Mont. 581, 81 Pac. 345, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 296; Weiler *v.* Pancoast, 71 N. J. L. 414, 58 Atl. 1084; McCurdy *v.* Wyckoff, 73 N. J. L. 368, 63 Atl. 992; Myers *v.* Bernstein, (Supm. Ct. App. T.) 104 N. Y. Supp. 348; Krausi *v.* Fife, 120 N. Y. App. Div. 490, 105 N. Y. Supp. 384; Wade *v.* Herndl, 127 Wis. 544, 107 N. W. 4.

298. 5. Fred K. Higbie Co. *v.* Charles Weeghman Co., 126 Ill. App. 97; Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203; Donovan *v.* Koehler, 119 N. Y. App. Div. 51, 103 N. Y. Supp. 935; Kinney *v.* Libbey, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 595, 104 N. Y. Supp. 863.

6. Okie *v.* Person, 23 App. Cas. (D. C.) 170; Perniciaro *v.* Veniero, (Supm. Ct. App. T.) 90 N. Y. Supp. 369; Ferber *v.* Apfel, 113 N. Y. App. Div. 720, 99 N. Y. Supp. 215.

Where a lease contained a provision relieving the tenant from rent in case of the accidental destruction of the premises, and provided the premises were not restored by the landlord, in case of a fire destroying the upper floor of the premises and the subsequent restoration of the building leaving out such upper floor this is not a partial eviction by the landlord releasing the tenant from liability for rent. Rogers *v.* S. P. Grote Paint Co., 118 Mo. App. 300, 94 S. W. 518.

300. 6. Henning *v.* Savage, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 609, 100 N. Y. Supp. [illegible].

7. See Sutton *v.* Goodman, 194 Mass. 389, 80 N. E. 608.

301. 9. International Trust Co. *v.* Weeks, (C. C. A.) 139 Fed. 5; Woodbury *v.* Sparrell Print, 187 Mass. 426, 73 N. E. 547; Edmands *v.* Rust, etc., Drug Co., 191 Mass. 123, 77 N. E. 713; Landesman *v.* Hauser, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 603, 91 N. Y. Supp. 6; O'Brien *v.* Levine, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 303, 98 N. Y. Supp. 636; Slater *v.* Von Chorus, 120 N. Y. App. Div. 16, 104 N. Y. Supp. 996; Pannuto *v.* Foglia, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 244, 105 N. Y. Supp. 495;

Slater *v.* Bonfiglio, (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 385, 106 N. Y. Supp. 861; Colderaro *v.* Kempner, (Supm. Ct. App. T.) 107 N. Y. Supp. 41.

11. Duty to Relet. — International Trust Co. *v.* Weeks, 203 U. S. 364, 27 U. S. Sup. Ct. 69.

302. 1. Richardson *v.* Gordon, 188 Mass. [illegible], 74 N. E. 344; Linke *v.* Walcutt, 20 Ohio Cir. Ct. 10, *affirmed* without opinion 69 Ohio St. 531, 70 N. E. 1125.

3. Coro *v.* Greenwald, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 548, 102 N. Y. Supp. 752.

4. Hecklau *v.* Hauser, 71 N. J. L. 478, 59 Atl. 18; Slater *v.* Von Chorus, 120 N. Y. App. Div. 16, 104 N. Y. Supp. 996.

Provision in Lease Authorizing Tenant to Resume Possession. — Landesman *v.* Hauser, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 603, 91 N. Y. Supp. 6, to the same effect as Lewis *v.* Stafford, 24 Misc. (N. Y.) 717, 53 N. Y. Supp. 801, cited in the original note.

303. 7. Farmers' Deposit Nat. Bank *v.* Western Pennsylvania Fuel Co., 215 Pa. St. 115, 64 Atl. 374; Hastings *v.* Burchfield, 28 Pa. Super. Ct. 309; Davidson *v.* Hirsh, (Tex. Civ. App. 1907) 101 S. W. 269, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 303.

304. 1. Rau *v.* Baker, 118 Ill. App. 150; Feust *v.* Craig, (Supm. Ct. App. T.) 107 N. Y. Supp. 637.

5. Harrod *v.* Watt, 1 W. L. R. 216; Mahoney *v.* Broadway Brewing, etc., Co., (Supm. Ct. Tr. T.) 108 N. Y. Supp. 237.

6. Smucker *v.* Grinberg, 27 Pa. Super. Ct. 531.

305. 2. Higgins *v.* Street, (Okla. 1907) 92 Pac. 153; Smucker *v.* Grinberg, 27 Pa. Super. Ct. 531; Auer *v.* Hoffmann, (Wis. 1907) 112 N. W. 1090.

6. Harrod *v.* Watt, 1 W. L. R. 216; Houston Ice, etc., Co. *v.* Keenan, 99 Tex. 79, 88 S. W. 197. See also San Antonio Brewing Assoc. *v.* Brents, (Tex. Civ. App. 1905) 88 S. W. 368.

307. 2. Roberts *v.* Lynn Ice Co., 187 Mass. 402, 73 N. E. 523; Chambers *v.* Mattingly, (Tex. Civ. App. 1907) 103 S. W. 663.

308. 8. Paxson, etc., Co. *v.* Potter, 30 Pa. Super. Ct. 615.

309. 1. Jones *v.* J. W. Fowler Drug Co., 120 Ky. 157, 85 S. W. 721, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 309.

310. 6. Bowen *v.* Shackter, 72 N. J. L. 441, 60 Atl. 1111; Beers *v.* Taussig, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 619, 96 N. Y. Supp. 738.

7. **Evidence.** — Meyer Bros. Drug Co. *v.* Madden, (Tex. Civ. App. 1907) 99 S. W. 723 (evidence of amount of fire insurance received by landlord held admissible).

8. Booraem *v.* Morris, (N. J. 1906) 64 Atl. [illegible].

311. 5. Weinberg *v.* Savitzky, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 132, 93 N. Y. Supp. 485.

313. 1. Scott *v.* Flood, (Ky. 1907) 99 S. W. 967 (destruction of one of several buildings —proportionate abatement of rent); Booraem *v.* Morris, (N. J. 1906) 64 Atl. 953, applying to statutes the rule that contract provisions are not to be extended by construction, and *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 310; Richmond Ice Co. *v.* Crystal Ice Co., 103 Va. 465, 49 S. E. 650; Central Agency *v.* Les Religieuses, etc., 27 Quebec Super. Ct. 281.

9. Weinberg *v.* Savitzky, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 132, 93 N. Y. Supp. 485.

Kentucky Statute. — Scott *v.* Flood, (Ky. 1907) 99 S. W. 967.

314. 3. Richmond Ice Co. *v.* Crystal Ice Co., 103 Va. 465, 49 S. E. 650.

315. 4. Faron *v.* Jones, (County Ct.) 49 Misc. (N. Y.) 47, 96 N. Y. Supp. 316; Feinstein *v.* Gottfried, (Supm. Ct. App. T.) 107 N. Y. Supp. 881.

318. 1. Kessler *v.* Pearson, 126 Ga. 725, 55 S. E. 963, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 317.

7. Bayles *v.* Clark 115 N. Y. App. Div. 33, 100 N. Y. Supp. 586.

319. 2. Pelgram *v.* Ehrensweig, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 31, 99 N. Y. Supp. 913.

320. 10. Cockerline *v.* Fisher, 140 Mich. 95, 103 N. W. 522.

321. 5. Smith *v.* Green, 128 Ga. 90, 57 S. E. 98; Harmont *v.* Sullivan, 128 Iowa 309, 103 N. W. 951; Tobey *v.* Mattimore, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 231, 104 N. Y. Supp. 393; Uhlfelder *v.* Loughran, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 593, 104 N. Y. Supp. 891.

322. 3. Uhfelder *v.* Loughran, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 593, 104 N. Y. Supp. 891.

6. Smith *v.* Green, 128 Ga. 90, 57 S. E. 98.

323. 1. Newport News, etc., R., etc., Co. *v.* Bickford, 105 Va. 182, 52 S. E. 1011.

4. Rubens *v.* Hill, 213 Ill. 523, 72 N. E. 1127; Leeming *v.* Duryea, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 240, 97 N. Y. Supp. 355; Henning *v.* Savage, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 609, 100 N. Y. Supp. 1015.

5. Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203.

324. 1. Morningstar *v.* Querens, 142 Ala. 186, 37 So. 825.

2. Agreement to Put Premises in Repair. — Henning *v.* Savage, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 609, 100 N. Y. Supp. 1015; Lewis *v.* Ritoff, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 605, 101 N. Y. Supp. 40.

7. Marks *v.* Chapman (Iowa 1907) 112 N. W. 817; Rutledge *v.* Quinlan, 127 Mo. App. 419, 105 S. W. 653.

325. 2. Smith *v.* Barber, 112 N. Y. App. Div. 187, 98 N. Y. Supp. 365.

7. Duncan *v.* Moloney, 115 Ill. App. 522; Smith *v.* Barber, 112 N. Y. App. Div. 187, 98 N. Y. Supp. 365.

9. Leininger *v.* Clarke Nat. Bank, 97 Minn. 364, 107 N. W. 396.

326. 1. Smith *v.* Barber, 112 N. Y. App. Div. 187, 98 N. Y. Supp. 365, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 325.

9. Duncan *v.* Moloney, 115 Ill. App. 522; Rieger *v.* Welles, 110 Mo. App. 166, 84 S. W. 1136.

327. 4. Osmers *v.* Furey, 32 Mont. 581, 81 Pac. 345. But see Thostesen *v.* Doxsee, (Neb. 1907) 110 N. W. 567.

328. 7. Tuohy *v.* Linder, 144 Cal. 790, 78 Pac. 233.

9. Bowles *v.* Jones, (Ky. 1906) 96 S. W.

1121; Agne *v.* Skewis-Moen Co., 98 Minn. 32, 107 N. W. 415; Allen *v.* Houston Ice., etc., Co., (Tex. Civ. App. 1906) 97 S. W. 1063.

332. 6. Reynolds *v.* Taylor, 144 N. Car. 165, 56 S. E. 871.

333. 5. Beck *v.* Minnesota, etc., Grain Co., 131 Iowa 62, 107 N. W. 1032; Edwards *v.* Anderson, 36 Tex. Civ. App. 611, 82 S. W. 659.

334. 5. Hoopes *v.* Brier, (Ariz. 1905) 80 Pac. 327.

335. 2. Schall *v.* Kinsella, 117 La. 687, 42 So. 221.

6. Few *v.* Mitchell, 80 Ark. 243, 96 S. W. [illegible] for breach of lease). Saunders *v.* Ohlhausen, 127 Mo. App. 546, 106 S. W. 541.

Damages. — Bates *v.* Hallinan, 220 Ill. 21, [illegible] N. E. 115.

336. 11. *In re* McIntire, 142 Fed. 593; Des Moines Nat. Bank *v.* Council Bluffs Sav. Bank, (C. C. A.) 150 Fed. 301.

337. 4. **Notice to Landlord to Exempt Property from Lien.** — Allen *v.* Houston Ice, etc., Co., (Tex. Civ. App. 1906) 97 S. W. 1063; Duperreault *v.* Pauzé, 25 Quebec Super. Ct. 401.

The lien of the landlord on the personal property of his tenant does not follow or attach to the proceeds of its sale or conversion. Hartwig *v.* Iles, 131 Iowa 501, 109 N. W. 18.

5. Hoopes *v.* Brier, (Ariz. 1905) 80 Pac. 327.

10. Des Moines Nat. Bank *v.* Council Bluffs Sav. Bank, (C. C. A.) 150 Fed. 301.

338. 4. Montmarquette *v.* Berman, 29 Quebec Super. Ct. 193.

5. Brunswick-Balke-Collender Co. *v.* Murphy, 89 Miss. 264, 42 So. 283.

340. 1. Bennett *v.* McKee, 144 Ala. 601, 38 So. 129.

3. Griggs *v.* Horton, 84 Ark. 623, 104 S. W. [illegible].

341. 4. Chancellor *v.* Law, (Ala. 1906) 41 So. 514; Groesbeck *v.* T. H. Thompson Milling Co., (Tex. Civ. App. 1905) 86 S. W. 346.

5. Noe *v.* Layton, (Ark. 1905) 89 S. W. 1005 (receipt by landlord of part of proceeds of sale by tenant); Planters' Compress Co. *v.* Howard, (Tex. Civ. App. 1906) 92 S. W. 44. *Compare* Sparks *v.* Ponder, (Tex. Civ. App. 1906) 94 S. W. 428.

The burden of proof is on one who purchases the property subject to the landlord's lien, to show that the landlord authorized the tenant to sell the same. Antone *v.* Miles, (Tex. Civ. App. 1907) 105 S. W. 39.

6. *Compare* Antone *v.* Miles, (Tex. Civ. App. 1907) 105 S. W. 39.

342. 3. Miller *v.* Bider, (Iowa 1906) 105 N. W. 594.

The landlord does not, by redelivery of the rent note to the tenant, waive his lien. Wilson *v.* State, (Ala. 1905) 39 So. 776.

11. The delivery of the possession of the crop by the tenant to the landlord will preserve his lien beyond the time fixed by statute for its enforcement. Marquess *v.* Ladd, (Ky. 1907) 100 S. W. 305.

343. 3. *In re* McIntire, 142 Fed. 593.

344. 2. Wilson *v.* Curry, (Ala. 1907) 42 So. 753. See Citizens' Sav. Bank *v.* Wood, 134 Iowa 232, 111 N. W. 930.

345. 2. Maddox *v.* Maddox, 116 Fla. 460, 41 So. 426; Maelzer *v.* Swan, 75 Kan. 496, 89 Pac. 1037; Mangum *v.* Stadel, (Kan. 1907) 92 Pac. 1093.

3. **Missouri Statute.** — King *v.* Rowlett, 120 Mo. App. 120, 96 S. W. 493.

346. 4. Freeman *v.* Collier Racket Co., (Tex. 1907) 101 S. W. 202; Freeman *v.* Collier Racket Co., (Tex. Civ. App. 1907) 105 S. W. 1129.

347. 9. See Colean Mfg. Co. *v.* Jones, 122 Ill. App. 172.

349. 1. Miller *v.* Bider, (Iowa 1906) 105 N. W. 594.

350. 2. One who merely takes a mortgage on the property which was subject to the landlord's lien, does not incur any liability to the landlord. Hartwig *v.* Iles, 131 Iowa 501, 109 N. W. 18.

7. Baker *v.* Cotney, 142 Ala. 566, 38 So. 131; Beck *v.* Minnesota, etc., Grain Co., 131 Iowa 62, 107 N. W. 1032; Parks *v.* Laurens Cotton Mills, 70 S. Car. 274, 49 S. E. 871; Thomas *v.* Tucker, (Tex. Civ. App. 1905) 89 S. W. 802; Sexton Rice, etc., Co. *v.* Sexton, (Tex. Civ. App. 1908) 106 S. W. 728.

8. Overholser *v.* Christensen, 133 Iowa 129, 110 N. W. 321.

351. 1. King *v.* Henderson, 142 Ala. 460, 38 So. 118.

3. Maelzer *v.* Swan, 75 Kan. 496, 89 Pac. 1037; Mangum *v.* Stadel, (Kan. 1907) 92 Pac. 1093; King *v.* Rowlett, 120 Mo. App. 120, 96 S. W. 493.

13. Cochran *v.* Waits, 127 Ga. 93, 56 S. E. 241.

352. 5. Ranger Mercantile Co. *v.* Terrett, (Tex. Civ. App. 1908) 106 S. W. 1145.

6. Kaufman *v.* Underwood, 83 Ark. 118, 102 S. W. 718.

Pasturage for Tenant's Stock. — Thomas *v.* Tucker, (Tex. Civ. App. 1905) 89 S. W. 802.

7. Earl *v.* Malone, 80 Ark. 218, 96 S. W. 1062 (sewing machine, ginning cotton, and pasturing stock).

Essential Question. — Boyce *v.* Day, 3 Ga. App. 275, 59 S. E. 930.

Blacksmith Tools. — Holladay *v.* Rutledge, 145 Ala. 656, 39 So. 613.

353. 2. Parks *v.* Simpson, 124 Ga. 523, 52 S. E. 616.

4. Cochran *v.* Waits, 127 Ga. 93, 56 S. E. 241; Goodwin *v.* Mitchell, (Miss. 1905) 38 So. 657.

356. 7. Feust *v.* Craig, (Supm. Ct. App. T.) 107 N. Y. Supp. 637; Commercial Hotel Co. *v.* Brill, 123 Wis. 638, 101 N. W. 1101.

357. 6. Lester Agricultural Chemical Works *v.* Selby, (N. J. 1904) 59 Atl. 247 (surrender by president of corporation).

9. Harden *v.* Card, 15 Wyo. 217, 88 Pac. 217.

10. Watson *v.* Moggey, 15 Manitoba 241.

11. Duncan *v.* Moloney, 115 Ill. App. 522.

12. Steuber *v.* Huber, 107 N. Y. App. Div. 590, 95 N. Y. Supp. 348.

358. 2. Duncan *v.* Moloney, 115 Ill. App. 522; Commercial Hotel Co. *v.* Brill, 123 Wis. 638, 101 N. W. 1101.

3. Duncan *v.* Moloney, 115 Ill. App. 522.

8. Duncan *v.* Moloney, 115 Ill. App. 522.

359. 1. Sammis *v.* Day, (County Ct.) 48 Misc. (N. Y.) 327, 96 N. Y. Supp. 777.

5. Duncan *v.* Moloney, 115 Ill. App. 522; St. Louis *v.* Nelson, 108 Mo. App. 210, 83 S. W. 271. But see Lester Agricultural Chemical Works *v.* Selby, (N. J. 1904) 59 Atl. 247.

360. 1. McCaw *v.* Cox, 73 Neb. 486, 103 N. W. 76.

361. 4. Duncan *v.* Moloney, 115 Ill. App. [illegible].

5. Brayton *v.* Boomer, 131 Iowa 28, 107 N. W. 1099.

362. 2. Cooley *v.* Collins, 186 Mass. 507, 71 N. E. 979.

4. Hartz *v.* Eddy, 140 Mich. 479, 103 N. W. 852; Wray-Austin Machinery Co. *v.* Flower, 140 Mich. 452, 103 N. W. 873; Shand *v.* McCloskey, 27 Pa. Super. Ct. 260.

10. Stott *v.* Chamberlain, (S. Dak. 1908) 114 N. W. 683.

363. 1. K. P. Mining Co. *v.* Jacobson, 30 Utah 115, 83 Pac. 728, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 362; West Concord Milling Co. *v.* Hosmer, 129 Wis. 9, 107 N. W. [illegible].

2. Diker *v.* Hutchinson, (Supm. Ct. App. T.) 98 N. Y. Supp. 616; Schwarzwalder *v.* Eckert, (Supm. Ct. App. T.) 103 N. Y. Supp. 730; Daggett *v.* Champney, 122 N. Y. App. Div. 254, 106 N. Y. Supp. 892; Smucker *v.* Grinberg, 27 Pa. Super. Ct. 531.

364. 5. Sander *v.* Holstein Commission Co., 118 Mo. App. 29, 99 S. W. 12; Leggett *v.* Louisiana Purchase Exposition Co., 121 Mo. App. 70, 97 S. W. 976.

7. Sessinghaus *v.* Knocke, 127 Mo. App. 300, 105 S. W. 283; Smucker *v.* Grinberg, 27 Pa. Super. Ct. 531.

8. Snyder *v.* Henry, 32 Pa. Super. Ct. 167.

11. Feust *v.* Craig, (Supm. Ct. App. T.) 107 N. Y. Supp. 637.

365. 1. Gerhart Realty Co. *v.* Brecht, 109 Mo. App. 25, 84 S. W. 216.

2. Sander *v.* Holstein Commission Co., 118 Mo. App. 29, 99 S. W. 12.

3. Jackson *v.* Stewart, 31 Pa. Super. Ct. 58.

4. Daggett *v.* Champney, 122 N. Y. App. Div. 254, 106 N. Y. Supp. 892; Hastings *v.* Burchfield, 28 Pa. Super. Ct. 309; Snyder *v.* Henry, 32 Pa. Super. Ct. 167.

6. Rucker *v.* Tabor, 127 Ga. 101, 56 S. E. 124, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365; Haycock *v.* Johnston, 97 Minn. 289, 106 N. W. 304, *citing* 18 AM. AND ENG. ENCC. OF LAW (2d ed.) 365; Gutman *v.* Conway, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 363, 90 N. Y. Supp. 290; Hatfield *v.* Lawton, 108 N. Y. App. Div. 113, 95 N. Y. Supp. 451; Stern *v.* Murphy, (Supm. Ct. App. T.) 102 N. Y. Supp. 797, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365; Daggett *v.* Champney, 122 N. Y. App. Div. 254, 106 N. Y. Supp. 892. But see Gerhart Realty Co. *v.* Brecht, 109 Mo. App. 25, 84 S. W. 216; Higgins *v.* Street, (Okla. 1907) 92 Pac. 152.

366. 1. Daggett *v.* Champney, 122 N. Y. App. Div. 254, 106 N. Y. Supp. 892.

3. Sessinghaus *v.* Knocke, 127 Mo. App. 300, 105 S. W. 282; Feust *v.* Craig, (Supm. Ct. App. T.) 107 N. Y. Supp. 637.

6. American Bonding Co. *v.* Pueblo Inv. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Cohen *v.* Wittemann, 100 N. Y. App. Div. 338, 91 N. Y. Supp. 493.

7. American Bonding Co. *v.* Pueblo Inv. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Herrman *v.* Laemmle, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 549, 107 N. Y. Supp. 73.

367. 1. **Estate of Sublessee Not Affected by Surrender.** — Mitchell *v.* Young, 80 Ark. 441, 97 S. W. 454; Moskowitz *v.* Diringen, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 543, 96 N. Y. Supp. 173; Cuschner *v.* Westlake, 43 Wash. 690, 86 Pac. 948, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 366.

2. Sass *v.* Thomas, (C. C. A.) 152 Fed. 627; Barnewell *v.* Stephens, 142 Ala. 609, 38 So. 662; Schwoebel *v.* Fugina, (N. Dak. 1905) 104 N. W. 848.

370. 1. Wilmore Coal Co. *v.* Brown, 147 Fed. 942, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 369; Houssiere *v.* Latreille Oil Co. *v.* Jennings-Heywood Oil Syndicate, 115 La. 107, 38 So. 932; Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 369.

7. Knoepker *v.* Redel, 116 Mo. App. 62, 92 S. W. 171. But see Myer *v.* Roberts, (Oregon 1907) 89 Pac. 1051.

371. 10. Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 369.

12. Madden *v.* McKenzie, (C. C. A.) 144 Fed. 64.

372. 1. Solomon *v.* Waldstreicher, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 380, 95 N. Y. Supp. 551.

2. Lindeke *v.* Associates Realty Co., (C. C. A.) 146 Fed. 630.

4. Palmieri *v.* Antinozzi, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 237, 95 N. Y. Supp. 865 (covenant to comply with orders of municipal boards).

5. See Harman *v.* Ainslie, (1904) 1 K. B. 698.

11. Short *v.* Turffontein, (1905) A. C. 584.

12. Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 372.

373. 9. Carpenter *v.* Wilson, 100 Md. 13, 59 Atl. 186 (water rent), *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 373.

374. 8. The mere bankruptcy of a tenant does not *ipso facto* terminate the lease. Mayer *v.* Clarke, 129 Ill. App. 424.

11. Gunning *v.* Sorg, 113 Ill. App. 332, *judgment affirmed* 214 Ill. 616, 73 N. E. 870.

375. 8. But see Union Scale Co. *v.* Iowa Machinery, etc., Co., (Iowa 1907) 113 N. W. 762.

377. 3. Lund *v.* Ozanne, (N. Mex. 1906) 84 Pac. 710; Singer *v.* Sheriff, 28 Pa. Super. Ct. 305.

5. Hartford Wheel Club *v.* Travelers' Ins. Co., 78 Conn. 355, 62 Atl. 207.

378. 6. Mounier dit Lacacé *v.* Laurin, 30 Quebec Super. Ct. 68; Darwent *v.* Montbriant, 31 Quebec Super. Ct. 54.

379. 1. McCrillis *v.* Benoit, 96 R. I. [illegible], 50 Atl. 108.

5. Schwartz *v.* McQuaid, 214 Ill. 357, 73 N. E. 682. But see Schultz *v.* Lewis, (Colo. 1907) 90 Pac. 1030.

6. Conforti *v.* Romano, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 148, 98 N. Y. Supp. 194.

The fact of the alleged sale need not be proved beyond a reasonable doubt. Moser *v.* Stebel, 29 Ohio Cir. Ct. 487.

380. 1. Conforti *v.* Romano, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 148, 98 N. Y. Supp. 194, *distinguishing* Shaw *v.* McCarty, (C. Pl. Gen. T.) 2 Civ. Pro. (N. Y.) 23, and *following* Stearns *v.* Hemmens, 14 Daly (N. Y.) 501, 1 N. Y. Supp. 52.

9. Hartford Wheel Club *v.* Travelers' Ins. Co., 78 Conn. 355, 62 Atl. 207; Moulton *v.* Lawson, (Neb. 1907) 113 N. W. 244, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 380; Williams *v.* Beach Private Chemical Engine Co., 73 N. J. L. 446, 63 Atl. 990.

381. 4. Hartford Wheel Club *v.* Travelers' Ins. Co., 78 Conn. 355, 62 Atl. 207; Lane *v.* Brooks, 120 Ill. App. 501; Mayer *v.* Clarke, 129 Ill. App. 424; People *v.* Freeman, 110 N. Y. App. Div. 605, 97 N. Y. Supp. 343.

8. Palmieri *v.* Antinozzi, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 237, 95 N. Y. Supp. 865.

382. 2. Hartford Wheel Club *v.* Travelers' Ins. Co., 78 Conn. 355, 62 Atl. 207.

4. Patterson *v.* Northern Trust Co., 231 Ill. 22, 82 N. E. 840, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 382.

5. Hastalik *v.* Olson, 218 Ill. 411, 75 N. E. 1002; People *v.* Freeman, 110 N. Y. App. Div. 605, 97 N. Y. Supp. 343.

383. 10. Knoepker *v.* Redel, 116 Mo. App. 62, 92 S. W. 171.

384. 1. **Sufficiency of Verification by Agent.** — South St. Joseph Town Co. *v.* Scott, 115 Mo. App. 16, 90 S. W. 727.

385. 5. Mageon *v.* Alkire, (Colo. 1907) 92 Pac. 722, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 385; Hartford Wheel Club *v.* Travelers' Ins. Co., 78 Conn. 355, 62 Atl. 207; Walker *v.* Wadley, 124 Ga. 275, 52 S. E. 904; Marshall *v.* [illegible] (Ky. 1906) 91 S. W. 714; Kenny *v.* Seu Si Lun, 101 Minn. 253, 112 N. W. 220, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 385; Levy *v.* Blackmore, (N. J. 1907) 67 Atl. 1022; McHugh *v.* Regan, 28 Ohio Cir. Ct. 790; Cuschner *v.* Westlake, 43 Wash. 690, 86 Pac. 948, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 385.

The receipt of rent from a receiver appointed for the lessee is not a waiver of a prior forfeiture for nonpayment of rent. Fleming *v.* Fleming Hotel Co., 69 N. J. Eq. 715, 61 Atl. 1[illegible].

386. 4. Rich *v.* Rose, (Ky. 1907) 99 S. W. 953, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 382 *et seq.*; Kenny *v.* Seu Si Lun, 101 Minn. 253, 112 N. W. 222, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d. ed.) 386.

5. Mageon *v.* Alkire, (Colo. 1907) 92 Pac. 720; Walker *v.* Wadley, 124 Ga. 275, 52 S. E. 904.

387. 3. Lindeke *v.* Associates Realty Co., (C. C. A.) 146 Fed. 630; Mageon *v.* Alkire, (Colo. 1907) 92 Pac. 720.

388. 10. Fidelity Trust Co. *v.* Kohn, 27 Pa. Super. Ct. 374, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 388.

389. 7. Kann *v.* King, 204 U. S. 43, 27 U. S. Sup. Ct. 213; Carpenter *v.* Wilson, 100 Md. 13, 59 Atl. 186, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 389.

8. The rule should not, however, be applied when there has been a tax sale, though invalid, of the property for nonpayment of taxes. Kann *v.* King, 204 U. S. 43, 27 U. S. Sup. Ct. 213.

9. English Statute, — Moore *v.* Smee, (1907) 2 K. B. 8.

390. 2. See People *v.* Freeman, 110 N. Y. App. Div. 605, 97 N. Y. Supp. 343.

6. Humphreys *v.* Morten, (1905) 1 Ch. 739.

391. 12. Relief on the ground of accident or mistake, held not authorized under the circumstances. Kann *v.* King, 204 U. S. 43, 27 U. S. Sup. Ct. 213.

14. *Re* Castle, 94 L. T. N. S. 396 (bankruptcy of lessee).

392. 3. Watson *v.* Merrill, (C. C. A.) 136 Fed. 359.

6. Rubenstein *v.* Rosenthal, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 313, 98 N. Y. Supp. 681.

8. Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151; Guenther *v.* Gilchrist Improved Jar Co., 28 Pa. Super. Ct. 232; Duncan Co. *v.* Bridge, 14 Quebec K. B. [illegible].

10. Where, in a lease by a husband for a long term of years, the wife joins merely to release her dower, the husband alone may enforce the forfeiture of the lease. Gunning *v.* Sorg, 113 Ill. App. 332.

393. 4. Brewster *v.* Lanyon Zinc Co., (C. C. A.) 140 Fed. 808, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 393.

394. 7. McClung *v.* McPherson, 47 Oregon 73, 81 Pac. 567.

395. 1. Barnewell *v.* Stephens, 142 Ala. 609, 38 So. 662.

8. Bernstein *v.* Koch, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 550, 102 N. Y. Supp. 524.

396. 2. Reccius *v.* Columbia Finance, etc., Co., 86 S. W. 1113, 27 Ky. L. Rep. 880.

Signature. — Land *v.* Ozanne, (N. Mex. 1906) 84 Pac. 710.

3. McClung *v.* McPherson, 47 Oregon 73, 82 Pac. 13.

5. Smucker *v.* Grinberg, 27 Pa. Super. Ct. [illegible].

6. See Columbia Brewing Co. *v.* Miller, 124 Mo. App. 384, 101 S. W. 711.

10. Fotterall *v.* Armour, 218 Pa. St. 73, 66 Atl. 1001, *approving* Gardner *v.* Ingram, 61 L. T. N. S. 729.

397. 4. McClung *v.* McPherson, 47 Oregon 73, 82 Pac. 13.

9. McClung *v.* McPherson, 47 Oregon 73, 82 Pac. 13; Arbenz *v.* Exley, 57 W. Va. 580, 50 S. E. 813.

398. 4. Byrne *v.* Morrison, 25 App. Cas. (D. C.) 72.

9. Ewing *v.* OMalley, 108 Mo. App. 117, 82 S. W. 1087 (service on agent of lessee); Lindeke *v.* Associates Realty Co., (C. C. A.) 146 Fed. 630 (service on treasurer of corporation lessee).

399. 1. Gerhart Realty Co. *v.* Weiter [illegible] Mo. App. 248, 83 S. W. 278; Cranston Print Works *v.* Whalen, 27 R. I. 445, 63 Atl. 176 (leaving notice with wife of lessee), *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399.

400. 9. Sander *v.* Holstein Commission

Co., 118 Mo. App. 29, 99 S. W. 12 (evidence held not to show a waiver).

Disclaimer of the Landlord's Title waives the necessity for notice to quit. Cook *v.* Penrod, 111 Mo. App. 128, 85 S. W. 676.

101. 3. Wallace *v.* Ocean Grove Camp Meeting Assoc., (C. C. A.) 148 Fed. 672.

102. 1. Arcade Invest. Co. *v.* Gieriet, 99 Minn. 277, 109 N. W. 250.

6. Giving Second Notice to Quit after Expiration of Time Fixed by First Notice Held Not a Waiver of the First Notice. [illegible] *v.* O'Malley, 108 Mo. App. 117, 82 S. W. 1087.

7. Byrne *v.* Morrison, 25 App. Cas. (D. C.) 72; Smith *v.* MacFarlane, 5 N. W. Ter. 508.

9. Byrne *v.* Morrison, 25 App. Cas. (D. C.) 72.

105. 2. Eppstein *v.* Kuhn, 225 Ill. 115, 80 N. E. 80; Crawford *v.* Kline, (N. J. 1906) 65 Atl. 441; Stein *v.* Sutherland, (Supm. Ct. App. T.) 92 N. Y. Supp. 314; Latham *v.* Woodward, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 306, 98 N. Y. Supp. 639; Katz *v.* Schreckinger, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 160, 101 N. Y. Supp. 743; Stern *v.* Murphy, (Supm. Ct. App. T.) 102 N. Y. Supp. 797; United Merchants' Realty, etc., Co. *v.* Roth, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 92, 103 N. Y. Supp. 1112, judgment *modified* 122 N. Y. App. Div. 628, 107 N. Y. Supp. 511; Daggett *v.* Champney, 122 N. Y. App. Div. 254, 106 N. Y. Supp. 892; Snyder *v.* Henry, 32 Pa. Super. Ct. 167; Wilson *v.* Alexander, 115 Tenn. 125, 88 S. W. 935; Abeel *v.* McDonnell, (Tex. Civ. App. 1905) 87 S. W. 1066.

Statutory Modification. — Slafter *v.* Siddall, 97 Minn. 291, 106 N. W. 308; United Merchants' Realty Co. *v.* Roth, 122 N. Y. App. Div. 628, 107 N. Y. Supp. 511.

Effect of Election to Treat Overholding Tenants as Trespassers. — Rosenberg *v.* Sprecher, 74 Neb. 176, 103 N. W. 1045, 105 N. W. 293; Spring *v.* Lorimer, 25 Pa. Super. Ct. 340.

106. 3. McMann *v.* Bloomer, (Supm. Ct. App. T.) 107 N. Y. Supp. 882.

107. 4. Lally *v.* The New Voice, 128 Ill. App. 455; Schickedantz *v.* Rincker, 75 Neb. 312, 106 N. W. 441.

8. Ambrose *v.* Hyde, 145 Cal. 555, 79 Pac. 64; Rader *v.* Huffman, 125 Ill. App. 554; Slafter *v.* Siddall, 97 Minn. 291, 106 N. W. 308; Stevens *v.* New York, 111 N. Y. App. Div. 362, 97 N. Y. Supp. 1062; Appleton Waterworks Co. *v.* Appleton, (Wis. 1907) 113 N. W. 44.

108. 1. Puckett *v.* Scott, (Tex. Civ. App. 1907) 100 S. W. 969.

3. Dawson *v.* Cerf, 4 Cal. App. 272, 87 Pac. 559; Columbia Brewing Co. *v.* Miller, 124 Mo. App. 384, 101 S. W. 711; Schickedantz *v.* Rincker, 75 Neb. 312, 106 N. W. 441, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 308 [408]; Winnipeg Land, etc., Corp. *v.* Witcher, 15 Manitoba 423.

4. But see Appleton Waterworks Co. *v.* Appleton, (Wis. 1907) 113 N. W. 44.

In Lasher *v.* Heist, 126 Ill. App. 82, it was held that a tenant is not charged with an increased rental by holding over after the expiration of his lease, if prior to such expiration he is notified of an increase in rent, where he expressly dissents from such increase; he can only be held at the old rental or dispossessed, at the option of the landlord.

109. 11. But see Hinckley *v.* Casey, 45 Wash. 430, 88 Pac. 753.

12. Alexander *v.* Loeb, 230 Ill. 454, 82 N. E. 833.

The fact that the removal by the tenant would be very inconvenient and injurious to his business does not prevent the holding over from being wilful nor relieve the tenant from liability for the statutory penalty of double rent. Driver *v.* Edrington, 74 Ark. 12, 84 S. W. 783.

110. 2. But see Fletcher *v.* Fletcher, 123 Ga. 470, 51 S. E. 418.

11. Alexander *v.* Loeb, 230 Ill. 454, 82 N. E. 833 (lessor held entitled to sue, though he had re-leased the premises to another).

111. 3. *Arkansas.* — Washington *v.* Moore, 84 Ark. 220, 105 S. W. 253.

California. — Vatuone *v.* Cannobio, 4 Cal. App. 422, 88 Pac. 374.

District of Columbia. — McFarlane *v.* Kirby, 28 App. Cas. (D. C.) 391.

Florida. — Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687.

Georgia. — Hodges *v.* Waters, 124 Ga. 229, 52 S. E. 161; Bullard *v.* Hudson, 125 Ga. 393, 54 S. E. 132, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 411–414.

Iowa. — Beck *v.* Minnesota, etc., Grain Co., 131 Iowa 62, 107 N. W. 1032; Henderson *v.* Henderson, (Iowa 1907) 114 N. W. 178.

Louisiana. — Campbell *v.* Hart, 118 La. 871, 43 So. 533.

Nebraska. — Gies *v.* Storz Brewing Co., 75 Neb. 698, 106 N. W. 775.

New York. — Moore *v.* Gair, 108 N. Y. App. Div. 23, 95 N. Y. Supp. 475.

Texas. — Cobb *v.* Robertson, 99 Tex. 143, 86 S. W. 746, *affirmed* 99 Tex. 148, 87 S. W. 1148; Berry *v.* Jagoe, (Tex. Civ. App. 1907) 100 S. W. 815.

West Virginia. — Stover *v.* Davis, 57 W. Va. 196, 49 S. E. 1023.

113. 2. But see Niles *v.* Gonzales, 1 Cal. App. 324, 82 Pac. 212 (tenant may show payment to principal in defense).

114. 13. **Lease by Corporation.** — Farmers Deposit Nat. Bank *v.* Western Pennsylvania Fuel Co., 215 Pa. St. 115, 64 Atl. 374, *affirming* 29 Pa. Super. Ct. 69.

115. 3. Wallace *v.* Ocean Grove Camp Meeting Assoc., (C. C. A.) 148 Fed. 672; Hodges *v.* Waters, 124 Ga. 229, 52 S. E. 161; Bulard *v.* Hudson, 125 Ga. 393, 54 S. E. 132, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 415; Smith *v.* Smith, 144 Mich. 139, 107 N. W. 894; Stover *v.* Davis, 57 W. Va. 196, 49 S. E. 1023.

117. 6. Hodges *v.* Waters, 124 Ga. 229, 52 S. E. 161.

7. Merki *v.* Merki, 113 Ill. App. 518; Beck *v.* Minnesota, etc., Grain Co., 131 Iowa 62, 107 N. W. 1032, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 417; Smith *v.* Smith, 144 Mich. 139, 107 N. W. 894; Hackney *v.* McInnich, (Neb. 1907) 112 N. W. 296, *rehearing denied* (Neb. 1907) 113 N. W. 816; Stover *v.* Davis, 57 W. Va. 196, 49 S. E. 1023.

118. 1. Townsend *v.* Boyd, 217 Pa. St. 386, 66 Atl. 1099.

419. 2. Hackney *v.* McIninch, (Neb. 1907) 112 N. W. 296, *rehearing denied* (Neb. 1907) 113 N. W. 816.

3. Smith *v.* Hardwick, 89 S. W. 731, 28 Ky. L. Rep. 615.

9. Engle *v.* Tennis Coal Co., (Ky. 1907) 101 S. W. 309.

421. 3. But see Farmers Deposit Nat. Bank *v.* Western Pennsylvania Fuel Co., 215 Pa. St. 115, 64 Atl. 374.

5. But see Blocker *v.* McClendon, 6 Indian Ter. 481, 98 S. W. 166.

6. McFarlane *v.* Kirby, 28 App. Cas. (D. C.) 501.

12. Thomas *v.* Young, 79 Conn. 493, 65 Atl. 955; Haynes *v.* Sherwin-Williams Co., 126 Ill. App. 414; Hackney *v.* McIninch, (Neb. 1907) 112 N. W. 296, *rehearing denied* (Mich. 1907) 113 N. W. 816.

422. 2. Sadler *v.* Jefferson, 143 Ala. 669, 39 So. 380; Teich *v.* Arms, 5 Cal. App. 475, 90 Pac. 962; Spafford *v.* Hedges, 231 Ill. 140, 83 N. E. 129; Sherman *v.* Fisher, 138 Mich. 391, 101 N. W. 572.

423. 3. Reed *v.* Munn, (C. C. A.) 148 Fed. 737; Spafford *v.* Hedges, 231 Ill. 140, 83 N. E. 129; Nodine *v.* Richmond, 48 Oregon 527, 87 Pac. 775, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 423; Wright *v.* Jessup, 44 Wash. 618, 87 Pac. 930.

424. 2. Moulierre *v.* Coco, 116 La. 845, 41 So. 113.

427. 4. Groos *v.* Chittim, (Tex. Civ. App. 1907) 100 S. W. 1006.

429. 1. Rubens *v.* Hill, 115 Ill. App. 565.

431. 9. Clark *v.* Burton, (Ky. 1908) 106 S. W. 823.

432. 8. Davidson *v.* Hirsh, (Tex. Civ. App. 1907) 101 S. W. 269; Williams *v.* Houston Cornice Works, (Tex. Civ. App. 1907) 101 S. W. 839.

434. 3. Whitney *v.* Brown, 75 Kan. 678, 90 Pac. 277.

5. Montague *v.* Hood, 78 S. Car. 222, 58 S. E. 767.

A court of equity has no jurisdiction of a petition which in effect merely seeks to recover possession of demised premises after the declaration of forfeiture by the lessor. Gunning *v.* Sorg, 113 Ill. App. 332.

435. 2. *In re* Lumbers, 9 Ont. L. Rep. 680.

437. 1. Gies *v.* Storz Brewing Co., 75 Neb. 698, 106 N. W. 775; Rothman *v.* Kosower, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 538, 96 N. Y. Supp. 268; Wheeler *v.* Wheeler, 77 Vt. 177, 59 Atl. 842; Mead *v.* Owen, (Vt. 1907) 67 Atl. 722; Meyer *v.* Beyer, 43 Wash. 368, 86 Pac. 661, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436.

The relation of landlord and tenant does not exist between the lessee and his assignee. Weander *v.* Claussen Brewing Assoc., 42 Wash. 296, 84 Pac. 735.

4. Maxham *v.* Stewart, (Wis. 1907) 113 N. W. 972.

438. 7. Merki *v.* Merki, 113 Ill. App. 518; Haynes *v.* Sherwin-Williams Co., 126 Ill. App. 414.

Lessee May Be Joined with Sublessee. — Fletcher *v.* Fletcher, 123 Ga. 470, 51 S. E. 418.

9. Haas *v.* Schickner, 92 S. W. 949, 29 Ky. L. Rep. 87.

Mortgagee of Leasehold. — Rubenstein *v.* Rosenthal, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 313, 98 N. Y. Supp. 681.

439. 1. Thomason *v.* McLaughlin, (Indian Ter. 1907) 103 S. W. 595; Willis *v.* Weeks, 129 Iowa 525, 105 N. W. 1012; Binder *v.* Azzaro, (N. J. 1907) 65 Atl. 849. But see Cooper *v.* Gambill, 146 Ala. 184, 40 So. 827; Moulton *v.* Lawson, (Neb. 1907) 113 N. W. 244.

3. Ray *v.* Blackman, 120 Mo. App. 497, 97 S. W. 212.

440. 7. Houck *v.* Williams, 34 Colo. 138, 81 Pac. 800.

441. 1. Mageon *v.* Alkire, (Colo. 1907) 92 Pac. 720.

6. Kessel *v.* Mayer, 118 Ill. App. 267.

7. Barnewell *v.* Stephens, 142 Ala. 609, 38 So. 662.

442. 4. Sass *v.* Thomas, (C. C. A.) 152 Fed. 627; Mageon *v.* Alkire, (Colo. 1907) 92 Pac. 720; Preston *v.* Stover, 70 Neb. 635, 97 N. W. 812, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 442.

6. Martin *v.* Crossley (Supm. Ct. App. T.) 91 N. Y. Supp. 712; Bruder *v.* Geisler, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 370, 94 N. Y. Supp. 2. See also *In re* Schoelkopf, (County Ct.) 54 Misc. (N. Y.) 31, 105 N. Y. Supp. 477.

7. Peabody *v.* Long Acre Square Bldg. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 629, 94 N. Y. Supp. 507; McLain *v.* Nurnberg, (N. Dak. 1907) 112 N. W. 243.

443. 3. S. Liebmann's Sons Brewing Co. *v.* De Nicolo, (Supm. Ct. App. T.) 91 N. Y. Supp. 791.

444. 4. **New York Statutory Provision.** — Ireland *v.* Gauley, (Supm. Ct. App. T.) 95 N. Y. Supp. 521.

5. Union Scale Co. *v.* Iowa Machinery Co., (Iowa 1907) 113 N. W. 762.

Tender of rent held excused where a landlord had refused tender for one period and instituted proceedings for recovery of possession. Parker *v.* Gortatowsky, (Ga. 1907) 59 S. E. 286.

6. Glanz *v.* Schaefer, (Supm. Ct. App. T.) 102 N. Y. Supp. 518.

7. Cockerline *v.* Fisher, 140 Mich. 95, 103 N. W. 522 (implied authority of agent making demand, to receive payment).

8. Cockerline *v.* Fisher, 140 Mich. 95, 103 N. W. 522; Lund *v.* Ozanne, (N. Mex. 1906) 84 Pac. 710.

9. Cheek *v.* Preston, 34 Ind. App. 343, 72 N. E. 1018 (computation of length of notice).

445. 1. **Acceptance of Rent after Institution of Proceeding.** — Rich *v.* Rose, (Ky. 1907) 99 S. W. 953.

Receipt of Rent after Judgment of Ouster. — Woodbury *v.* Ryel, 128 Ill. App. 459.

9. Owen *v.* Herzikoff, 2 Cal. App. 622, 84 Pac. 274; Lasher *v.* Graves, 124 Ill. App. 646; Peabody *v.* Long Acre Square Bldg. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 629, 94 N. Y. Supp. 507; Chumar *v.* Melvin, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 460, 105 N. Y. Supp. 27.

Right of Mortgagee of Leasehold to Redeem. — Rubenstein *v.* Rosenthal, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 313, 98 N. Y. Supp. 681.

416. 1. **Nonpayment of Taxes.** — Crosby *v.* Jarvis, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 436, 92 N. Y. Supp. 229.

2. Conforti *v.* Romano, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 148, 98 N. Y. Supp. 194.

5. Buhman *v.* Nickels, 1 Cal. App. 266, 82 Pac. 85; Lane *v.* Brooks, 120 Ill. App. 501; Gossett *v.* Fox, (Supm. Ct. App. T.) 90 N. Y. Supp. 477; Benedict *v.* Hoffman, (Supm. Ct. App. T.) 101 N. Y. Supp. 37; Iroquois Realty Co. *v.* Iroquois Hotel, etc., Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 748; McLain *v.* Nurnberg, (N. Dak. 1907) 112 N. W. 243; Byrkett *v.* Gardner, 35 Wash. 668, 77 Pac. 1048. But see Craig *v.* Gray, 1 Cal. App. 598, 82 Pac. 699.

Demand Not Necessary unless Required by Statute. — Marshall *v.* Davis, (Ky. 1906) 91 S. W. 714; Smith *v.* Smith, 144 Mich. 139, 107 N. W. 894; Roy *v.* Blackman, 120 Mo. App. 497, 97 S. W. 212; Wolfer *v.* Hurst, 47 Oregon 156, 82 Pac. 20.

Waiver of Defects in Notice. — Peabody *v.* Long Acre Square Bldg. Co., 112 N. Y. App. Div. 114, 98 N. Y. Supp. 242.

Necessity for Notice May Be Waived by Provision in Lease. — Connors *v.* Clark, 79 Conn. 100, 63 Atl. 951; Kenyon *v.* Manley, 125 Ill. App. 615.

417. 1. But see State *v.* Pittenger, 37 Wash. 384, 79 Pac. 942.

3. Hays *v.* Clay, 124 Ga. 908, 53 S. E. 399.

Equitable Defense Not Allowed. — Patrick *v.* Cobb, 122 Ga. 80, 49 S. E. 806; Chambers *v.* Irish, 132 Iowa 319, 109 N. W. 787; Jones *v.* Com., (Ky. 1907) 104 S. W. 782; Cottrell *v.* Moran, 138 Mich. 410, 101 N. W. 561. But see Ogle *v.* Hubbel, 1 Cal. App. 357, 82 Pac. 217.

Partial Eviction by Landlord. — Ferber *v.* Apfel, 113 N. Y. App. Div. 720, 99 N. Y. Supp. 215.

5. Houck *v.* Williams, 34 Colo. 138, 81 Pac. 800;; McFarlane *v.* Kirby, 28 App. Cas. (D. C.) 391; Allen *v.* Lawson, 125 Ga. 336, 54 S. E. 176; Dilks *v.* Kelsey, (N. J. 1905) 59 Atl. 897, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 447; Stover *v.* Davis, 57 W. Va. 196, 49 S. E. 1023.

418. 1. The burden of proving an extension or renewal of the lease is on the tenant. Weinhandler *v.* Eastern Brewing Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 584, 92 N. Y. Supp. 792.

6. Millington *v.* O'Dell, 35 Ind. App. 225, 73 N. E. 949; Ellis *v.* Cross, 6 Indian Ter. 268, 97 S. W. 1030; Schellenberg *v.* Frank, 139 Mich. 183, 102 N. W. 644; Goesse, etc., Bldg., etc., Co. *v.* Kinnerk, 127 Mo. App. 451, 105 S. W. 673; State *v.* Pittenger, 37 Wash. 384, 79 Pac. 942.

12. Sperry *v.* Seidel, 218 Pa. St. 16, 66 Atl. 851.

419. 1. In *Iowa* the common-law right to estovers for firewood has been recognized as in force, but the extent of the right is dependent on the character of the timber and the prevailing custom. Anderson *v.* Cowan, 125 Iowa 259, 101 N. W. 92, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 448.

8. Palmieri *v.* Antinozzi, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 237, 95 N. Y. Supp. 865, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 449.

450. 1. Snedecor *v.* Pope, 143 Ala. 275, 39 So. 318; Maney *v.* Lamphere, 139 Mich. 429, 102 N. W. 974; Broadway Bldg. Co. *v.* Myers, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 531, 97 N. Y. Supp. 977.

Premises Abandoned by Tenant. — Cunningham *v.* Skinner, (Tex. Civ. App. 1906) 97 S. W. 509 (completing crop).

3. Wood *v.* Monteleone, 118 La. 1005, 43 So. 657 (that the alterations are beneficial to the tenant is immaterial); Haycock *v.* Pacaud, 27 Quebec Super. Ct. 464; Haycock *v.* Pacaud, 7 Quebec Pr. 249.

4. **Measure of Damages for Exceeding Time for Making Repairs.** — Léveillé *v.* Pigeon, 26 Quebec Super. Ct. 73.

Entry Where Possession Is Abandoned. — Parnass *v.* Ryerson, 128 Ill. App. 489.

An entry to repair under a reservation of such a right is not an eviction. Ernst *v.* Strauss, 114 N. Y. App. Div. 19, 99 N. Y. Supp. 507.

5. Snedecor *v.* Pope, 143 Ala. 275, 39 So. 318.

451. 1. Hayden *v.* Consolidated Min., etc., Co., 3 Cal. App. 136, 84 Pac. 422; Bright *v.* Bell, 113 La. 1078, 37 So. 976; Toohey *v.* Patterson, (County Ct.) 52 Misc. (N. Y.) 585, 102 N. Y. Supp. 1122; Green *v.* Sun Co., 32 Pa. Super. Ct. 521.

452. 8. Louisville, etc., R. Co. *v.* Moore, (Ky. 1907) 101 S. W. 934 (diverting surface water), *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 452.

11. Gulf, etc., R. Co. *v.* Caldwell, (Tex. Civ. App. 1907) 102 S. W. 461.

453. 1. Statute for Enticing Away Agricultural Tenant. — Pace *v.* Goodson, 127 Ga. 211, 56 S. E. 363; Jones *v.* Roughton, 1 Ga. App. 759, 57 S. E. 1061; Wagner *v.* Ellis, 85 Miss. 422, 37 So. 959; Petty *v.* Leggett, (Miss. 1905) 38 So. 549; Sneed *v.* Gilman, (Miss. 1907) 44 So. 830.

4. Coleman *v.* Holden, 88 Miss. 798, 41 So. 374 (damages for taking under eminent domain).

5. Snyder *v.* Regan, 5 Cal. App. 64, 89 Pac. 852 (wrongful withholding possession from tenant); Teller *v.* Bay, etc., Dredging Co., 151 Cal. 209, 90 Pac. 942; Moeckel *v.* Cross, 190 Mass. 280, 76 N. E. 447; Forrester *v.* O'Rourke Engineering Constr. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 390, 95 N. Y. Supp. 600; Baldwin *v.* Richardson, (Tex. Civ. App. 1905) 87 S. W. 746; Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18 (interference with lateral support); Painter *v.* Stahley Bros., 15 Wyo. 510, 90 Pac. 375.

6. **Injunction against Interference with Facility for Heating Rented Floor.** — Stevens *v.* Taylor, 111 N. Y. App. Div. 561, 97 N. Y. Supp. 925.

454. 2. **Prosecution under Statute for Enticing Away Agricultural Tenant.** — Haney *v.* State, (Miss. 1905) 38 So. 284; *Ex p.* Harris, 85 Miss. 4, 37 So. 505.

6. Wilson *v.* State, (Ala. 1905) 39 So. 776; Kellam *v.* State, 2 Ga. App. 479, 58 S. E. 695; Brown *v.* State, 2 Ga. App. 657, 58 S. E. 1070; State *v.* Ashpole, 127 Iowa 680, 104 N.

W. 281 (indictment held duplicitous); State *v.* Bell, 136 N. Car. 674, 49 S. E. 163, *overruling* State *v.* Neal, 129 N. Car. 692, 40 S. E. 205.

Injuring Demised Premises.— State *v.* Godwin, 138 N. Car. 582, 50 S. E. 277.

LARCENY.

459. 1. Larceny Defined.— State *v.* Stewart, (Del. 1907) 67 Atl. 786; State *v.* Wolf, (Del. 1907) 66 Atl. 739; State *v.* McDermet, (Iowa 1908) 115 N. W. 884; Williams *v.* U. S. Fidelity, etc., Co., 105 Md. 490, 66 Atl. 496, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 459; State *v.* Sloan, 35 Mont. 367, 89 Pac. 829; State *v.* Weatherman, 202 Mo. 6, 100 S. W. 482; Ladeaux *v.* State, 74 Neb. 19, 103 N. W. 1048; People *v.* Neff, 122 N. Y. App. Div. 135, 106 N. Y. Supp. 747; Rose *v.* State, (Tex. Crim. 1907) 106 S. W. 143.

460. 2. Maxwell *v.* Territory, (Ariz. 1906) 85 Pac. 116; Morris *v.* State, 125 Ga. 36, 53 S. E. 564; People *v.* Thorne, 148 Mich. 203, 111 N. W. 741; State *v.* Allen, 34 Mont. 403, 87 Pac. 177; People *v.* Burnham, 119 N. Y. App. Div. 302, 104 N. Y. Supp. 725; People *v.* Moss, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 198, 100 N. Y. Supp. 427; Miller *v.* Oklahoma, (C. C. A.) 149 Fed. 330, 9 Ann. Cas. 389; Barron *v.* State, 126 Ga. 92, 54 S. E. 812.

7. State *v.* Reyner, (Oregon 1907) 91 Pac. 301.

8. Robbery Is Larceny aggravated by the fact that property is taken by force. State *v.* Smith, 191 Mo. 706, 90 S. W. 440.

461. 5. Morris *v.* State, 125 Ga. 36, 53 S. E. 564.

6. Hickey *v.* State, 125 Ga. 145, 53 S. E. 1026.

The taking need not be done in a concealed manner and out of the observation of others; it is sufficient if it is done without the knowledge of the prosecutor, who was at the time either asleep or stupefied. Black *v.* State, (Tex. Crim. 1907) 104 S. W. 897.

7. Larceny from the House,— McCabe *v.* State, 1 Ga. App. 719, 58 S. E. 277.

464. 1. Maxwell *v.* Territory, (Ariz. 1906) 85 Pac. 116; People *v.* Roberts, (Cal. App. 1905) 82 Pac. 624; State *v.* Matejousky, (S. Dak. 1908) 115 N. W. 96.

Aggregate Value of Stolen Articles. If the articles were stolen at different times their aggregate value cannot be considered for the purpose of making a case of grand larceny. Weaver *v.* Com., (Ky. 1905) 86 S. W. 551.

3. Ayers *v.* State, 3 Ga. App. 305, 59 S. E. [illegible]

465. 1. Hutchinson *v.* State, 72 Ark. 640, 83 S. W. 331, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 465.

466. 2. People *v.* Flaherty, 119 N. Y. App. Div. 462, 104 N. Y. Supp. 173.

Petit Larceny Is a Misdemeanor Only, and hence it is immaterial whether an article stolen was worth seven dollars or fifteen dollars. Bernal *v.* State, (Tex. Crim. 1906) 95 S. W. 118.

10. Moss *v.* State, 146 Ala. 686, 40 So. 340; Vandergrift *v.* State, (Ala. 1907) 43 So. 852; Ayers *v.* State, 3 Ga. App. 305, 59 S. E. 924; Portwood *v.* State, 124 Ga. 783, 53 S. E. 99; *In re* Spaulding, 75 Kan. 163, 88 Pac. 547.

Proof of Value. — Under the *Texas* statute making domestic animals or birds, of any specific value, the subject of theft, failure to prove value is fatal to a conviction for larceny. Hasley *v.* State, (Tex. Crim. 1906) 94 S. W. 899.

Banknotes are considered as money, and a national bank bill is itself sufficient evidence that it is worth its face value. Jainer *v.* State, 124 Ga. 102, 52 S. E. 151; Sowles *v.* State, (Tex. Crim. 1907) 105 S. W. 178.

Silver and Currency.— On a trial for larceny of seventy-two dollars in silver and currency evidence by the prosecutor that the amount of money stolen was seventy-two dollars is synonymous with the value. Gibson *v.* State, (Tex. Crim. 1907) 100 S. W. 776.

467. 1. Francis *v.* State, 87 Miss. 493, 39 So. 897.

2. Moss *v.* State, 146 Ala. 686, 40 So. 340.

3. Proof of Market Value is not the sole criterion of value sufficient to sustain grand larceny, and opinions of nonexperts as to the value of a stolen article are admissible. Vandergrift *v.* State, (Ala. 1907) 43 So. 852.

Proof of market value at the time of trial is sufficient where testimony is produced showing no change in value from the time of the theft up to the time of the trial. Cummings *v.* State, (Tex. Crim. 1907) 106 S. W. 363.

The market value is shown by testimony as to the value of the article stolen at the time and place it was taken and its condition. Keipp *v.* State, (Tex. Crim. 1907) 103 S. W. 392.

4. Thorne *v.* State, (Tex. Crim. 1908) 107 S. W. 831.

469. 3. Ladeaux *v.* State, 74 Neb. 19, 103 N. W. 1048.

4. State *v.* Cathern, (Iowa 1908) 115 N. W. 890; State *v.* Finnegean, 127 Iowa 286, 103 N. W. 155; Cohoe *v.* State, (Neb. 1907) 113 N. W. 532; Tapolewski *v.* State, 130 Wis. 244, 109 N. W. 1037.

470. 1. Gaines *v.* State, 124 Ga. 5, 52 S. E. 78; People *v.* Neff, 122 N. Y. App. Div. 135, 106 N. Y. Supp. 747.

472. 4. Consent of Owner's Servant — Pearce *v.* State, (Tex. Crim. 1906) 98 S. W. 861.

The Consent of the Owner's Servant will not prevent the act being larceny, in a case where the servant had no authority to consent, and the wrongdoer knew that fact. Aldrich *v.* People, 224 Ill. 622, 79 N. E. 964.

Evidence of Nonconsent may be shown by testimony that the taking was without the knowledge or consent of the agent in whose possession the property was and by confessions of the defendant. State *v.* Bjelkstrom, (S. Dak. 1905) 104 N. W. 481.

Circumstantial Evidence. — Jones *v.* People, 33 Colo. 161, 79 Pac. 1013; Nixon *v.* State, (Tex. Crim. 1906) 93 S. W. 555.

472. 1. Crowder *v.* State, (Tex. Crim. 1906) 96 S. W. 934.

473. 1. Constructive Possession. — Williams *v.* State, 165 Ind. 472, 75 N. E. 875, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 473; State *v.* Bailey, (W. Va. 1908) 60 S. E. 785.

474. 2. Daniels *v.* State, (Ala. 1906) 41 So. 525.

476. 2. Williams *v.* State, 165 Ind. 472, 75 N. E. 875, *citing* 18 AM. AND ENG. ENCYC. OF

Law (2d ed.) 476; Peters *v.* State, (Tex. Crim. 1906) 91 S. W. 224.

4. Braxton *v.* State, (Tex. Crim. 1907) 99 S. W. 994.

478. 3. People *v.* Delbos, 146 Cal. 734, 81 Pac. 131; State *v.* Levine, 79 Conn. 714, 66 Atl. 529; Martin *v.* State, 123 Ga. 478, 51 S. E. 334; Aldrich *v.* People, 224 Ill. 622, 79 N. E. 964; Bradley *v.* State, 165 Ind. 397, 75 N. E. 873; Towns *v.* State, 167 Ind. 315, 78 N. E. 1012; Blackburn *v.* Com., (Ky. 1905) 89 S. W. 160; State *v.* Kosky, 191 Mo. 1, 90 S. W. 454; Harding *v.* State, (Tex. Crim. 1906) 95 S. W. 528; Lewis *v.* State, (Tex. Crim. 1905) 87 S. W. 831; Glascow *v.* State, (Tex. Crim. 1907) 100 S. W. 933.

Larceny after Trust. — Where property is voluntarily placed in the hands of another for a special purpose, a trust relationship of bailor and bailee exists, and a fraudulent disposition of the property after the trust has been imposed constitutes a larceny after trust. Barron *v.* State, 126 Ga. 92, 54 S. E. 812.

480. 6. People *v.* Kellogg, 105 N. Y. App. Div. 505, 94 N. Y. Supp. 617.

The statutes are not applicable to milling companies not doing a shipping business. *Ex p.* Bellamy, (N. Dak. 1908) 114 N. W. 376.

481. 6. People *v.* Proctor, (Cal. App. 1905) 82 Pac. 551; Welch *v.* State, 126 Ga. 475, 55 S. E. 183; Com. *v.* Barrett, 28 Pa. Super. Ct. 112; Bink *v.* State, (Tex. Crim. 1906) 98 S. W. 863; Underwood *v.* State, (Tex. Crim. 1906) 91 S. W. 572.

Larceny and False Pretense Distinguished. — Williams *v.* State, 165 Ind. 472, 75 N. E. 875.

482. 4. People *v.* Proctor, (Cal. App. 1905) 82 Pac. 551; Bink *v.* State, (Tex. Crim. 1906) 98 S. W. 249.

8. State *v.* Ryan, 47 Oregon 338, 82 Pac. 703, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 482.

A Distinction is to be noted between apparently winning a bet by fraudulent means and inducing a party to deposit money or goods on a bet merely as a means of getting possession. In the latter case the taking is larceny. Johnson *v.* State, 75 Ark. 427, 88 S. W. 905.

483. 7. People *v.* Peltin, (Cal. App. 1905) 82 Pac. 980; State *v.* Wolf, (Del. 1907) 66 Atl. 739; Franklin *v.* State, 3 Ga. App. 342, 59 S. E. 835; Miller *v.* People, 229 Ill. 376, 82 N. E. 39; State *v.* McDermet, (Iowa 1908) 115 N. W. 884; State *v.* McLain, 130 Iowa 73, 106 N. W. 376; State *v.* White, (Kan. 1907) 92 Pac. 829; State *v.* Gebey, 196 Mo. 104, 93 S. W. 402; State *v.* James, 194 Mo. 268, 92 S. W. 679; State *v.* Stanley, 123 Mo. App. 294, 100 S. W. 678; State *v.* Toohey, 203 Mo. 674, 102 S. W. 530; Pool *v.* State, (Tex. Crim. 1907) 103 S. W. 892.

Rule Inapplicable Where Evidence Shows Accused Not Guilty. — State *v.* Burnes, (Mo. App. 1908) 107 S. W. 1194.

484. 1. Jones *v.* State, (Ark. 1908) 108 S. W. 223; Harper *v.* State, (Tex. Crim. 1906) 95 S. W. 125.

485. 1. Duckworth *v.* State, 83 Ark. 192, 103 S. W. 601; State *v.* Wright, 12 Idaho 212, 85 Pac. 493; State *v.* Bartlett, 128 Iowa 518, 105 N. W. 59; State *v.* Loomis, 129 Iowa 141, 105 N. W. 397; State *v.* McKinney, (Kan. 1907) 91 Pac. 1068; Blair *v.* Territory, 15 Okla. 549, 82 Pac. 653; Green *v.* State, 49 Tex. 238, 90 S. W. 1114.

2. Collier *v.* State, (Fla. 1908) 45 So. 752,

486. 1. Duckworth *v.* State, 83 Ark. 192, 103 S. W. 601; Collier *v.* State, (Fla. 1908) 45 So. 752; Blair *v.* Territory, 15 Okla. 549, 82 Pac. 653.

3. An instruction that the possession of recently stolen property was usually regarded as a criminating circumstance tending to establish guilt is correct. Territory *v.* Livingston, (N. Mex. 1906) 84 Pac. 1021, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 486.

5. State *v.* Speritus, 191 Mo. 24, 90 S. W. 459.

488. 4. Com. *v.* Berney, 28 Pa. Super. Ct. 61.

5. State *v.* McKinney, (Kan. 1907) 91 Pac. 1068.

489. 1. State *v.* Hamilton, (S. Car. 1907) 57 S. E. 1098.

3. Com. *v.* Berney, 28 Pa. Super. Ct. 61.

4. Com. *v.* Berney, 28 Pa. Super. Ct. 61 (lapse of two months).

6. State *v.* Plant, (Mo. 1908) 107 S. W. 1076.

8. State *v.* Wright, (Del. 1907) 66 Atl. 364, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 489.

490. 1. State *v.* Wright, (Del. 1907) 66 Atl. 364, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 490.

2. State *v.* Wright, (Del. 1907) 66 Atl. 364, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 490.

3. State *v.* Wright, (Del. 1907) 66 Atl. 364, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 490.

6. State *v.* James, 194 Mo. 268, 92 S. W. 679.

The court may refuse a charge that the presumption may be rebutted by proof of good character in a case where defendant's conduct neutralizes the effect of the presumption. People *v.* Peltin, (Cal. App. 1905) 82 Pac. 980.

10. State *v.* Walker, 194 Mo. 253, 92 S. W. 659.

11. Echols *v.* State, 147 Ala. 700, 41 So. 298; State *v.* James, 194 Mo. 268, 92 S. W. 679; Hilscher *v.* State, (Tex. Crim. 1905) 88 S. W. 227.

491. 1. Selph *v.* State, (Tex. Crim. 1905) 90 S. W. 174.

Failure to Explain Possession has a tendency to show guilt. State *v.* Wright, 12 Idaho 212, 85 Pac. 493.

2. Collier *v.* State, (Fla. 1908) 45 So. 752; Selph *v.* State, (Tex. Crim. 1905) 90 S. W. 174.

3. Collier *v.* State, (Fla. 1908) 45 So. 752.

492. 1. Crossland *v.* State, 77 Ark. 539, 92 S. W. 776; Collier *v.* State, (Fla. 1908) 45 So. 752; Miller *v.* People, 229 Ill. 376, 82 N. E. 391; Green *v.* State, (Tex. Crim. 1905) 90 S. W. 1114; Ramon *v.* State, (Tex. Crim. 1906) 98 S. W. 872; Williams *v.* State, (Tex. Crim. 1906) 98 S. W. 246.

2. Collier *v.* State, (Fla. 1908) 45 So. 752.

3. State *v.* Bartlett, 128 Iowa 518, 105 N. W. 59; State *v.* McDermet, (Iowa 1908) 115 N. W. 884.

Reasonable Doubt Sufficient to Acquit. — Wiley *v.* State, 3 Ga. App. 120, 59 S. E. 438.

The accused is entitled to an acquittal if the explanation offered creates a reasonable doubt of his guilt. Miller *v.* People, 229 Ill. 376, 82 N. E. 391.

6. Lanier *v.* State, 126 Ga. 586, 55 S. E. 496, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 496; Brittain *v.* State, (Tex. Crim. 1907) 105 S. W. 817.

493. 1. State *v.* Grubb, 201 Mo. 585, 99 S. W. 1083.

2. Nelson *v.* State, (Tex. Crim. 1905) 88 S. W. 807.

6. State *v.* Wells, 33 Mont. 291, 83 Pac. 476.

9. Watters *v.* State, (Tex. Crim. 1906) 94 S. W. 1038.

10. Perry *v.* People, 38 Cal. 23, 87 Pac. 796.

494. 1. Territory *v.* Livingston, (N. Mex. 1906) 84 Pac. 1021, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 493, 494; Penrice *v.* State, (Tex. Crim. 1907) 105 S. W. 797.

5. Raymond *v.* State, (Ala. 1908) 45 So. 895; People *v.* Melandrez, 4 Cal. App. 396, 88 Pac. 372.

8. Contradictory Statements by the Accused together with the fact that he concealed himself to avoid arrest are facts inconsistent with innocence. Sheffield *v.* State, 1 Ga. App. 135, 57 S. E. 969.

9. Young *v.* State, 147 Ala. 686, 40 So. 656; Sheffield *v.* State, 1 Ga. App. 135, 57 S. E. 969; State *v.* Sofer, 207 Mo. 502, 106 S. W. 3; People *v.* Colmey, 117 N. Y. App. Div. 462, 102 N. Y. Supp. 714; State *v.* Ryan, 47 Oregon 338, 82 Pac. 703.

495. 7. Declarations of Conspirators. — After the conspiracy to commit a larceny has been accomplished, declarations of one of the co-conspirators are inadmissible against another. State *v.* Wells, 33 Mont. 291, 83 Pac. 476.

13. People *v.* Sekeson, 111 N. Y. App. Div. 490, 97 N. Y. Supp. 917; Alford *v.* State, (Tex. Crim. 1908) 108 S. W. 364; Bryan *v.* State, 49 Tex. Crim. 200, 91 S. W. 581; Wesley *v.* State, (Tex. Crim. 1905) 85 S. W. 802; Ray *v.* State, (Ga. App. 1908) 60 S. E. 816.

496. 1. People *v.* Neff, 191 N. Y. 210, 83 N. E. 970.

2. Echols *v.* State, 147 Ala. 700, 41 So. 298; Cook *v.* State, 80 Ark. 495, 97 S. W. 683; Stapleton *v.* State, 80 Ark. 617, 97 S. W. 296; Byrd *v.* State, 49 Tex. Crim. 279, 93 S. W. 114.

4. Henderson *v.* State, 79 Ark. 333, 96 S. W. 359; State *v.* Wolf, (Del. 1907) 66 Atl. 739; Ladeaux *v.* State, 74 Neb. 19, 103 N. W. 1048.

497. 2. State *v.* Williams, 199 Mo. 137, 97 S. W. 562.

498. 3. Herr *v.* State, (Tex. Crim. 1907) 105 S. W. 190.

499. 4. Lewis *v.* State, (Tex. Crim. 1906) 97 S. W. 481; State *v.* Nelson, 36 Wash. 126, 78 Pac. 790, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 499.

6. Atchison, etc., R. Co. *v.* Hinsdell, (Kan. 1907) 90 Pac. 800, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 499; Ayers *v.* State, 3 Ga. App. 305, 59 S. E. 924.

500. 3. *Arizona.* — Miller *v.* Territory, (Ariz. 1905) 80 Pac. 321.

Georgia. — Simmons *v.* State, 2 Ga. App. 638, 58 S. E. 1066.

Indiana. — Williams *v.* State, 165 Ind. 472, 75 N. E. 875.

Kentucky. — Triplett *v.* Com., (Ky. 1906) 91 S. W. 281.

Minnesota. — State *v.* Miller, (Minn. 1907) 114 N. W. 88.

Missouri. — State *v.* Weatherman, 202 Mo. 6, 100 S. W. 482.

Montana. — State *v.* Sloan, 35 Mont. 367, 89 Pac. 829; State *v.* Peterson, (Mont. 1907) 92 Pac. 302.

Nebraska. — Ladeaux *v.* State, 74 Neb. 19, 103 N. W. 1048.

New York. — People *v.* Burnham, 119 N. Y. App. Div. 302, 104 N. Y. Supp. 725.

Texas. — Alford *v.* State, (Tex. Crim. 1908) 108 S. W. 364; Chouch *v.* State, (Tex. Crim. 1908) 107 S. W. 859; Canaday *v.* State, (Tex. Crim. 1905) 87 S. W. 346; Matura *v.* State, (Tex. Crim. 1905) 89 S. W. 648; Womack *v.* State, (Tex. Crim. 1905) 86 S. W. 1015.

Washington. — State *v.* Eddy, (Wash. 1907) 90 Pac. 641.

501. 4. Dickens *v.* State, 142 Ala. 49, 39 So. 14; Malone *v.* State, (Ind. 1907) 81 N. E. 1099; Triplett *v.* Com., (Ky. 1906) 91 S. W. 281.

The intention of the defendant on trial for larceny of a hog being in issue it is error to refuse a request pertinent to the issue and timely made. Paulk *v.* State, 2 Ga. App. 660, 58 S. E. 1108.

503. 9. Pawning with Intent to Redeem and Restore the Goods Not Larceny. — Blackburn *v.* Com., (Ky. 1906) 89 S. W. 160.

504. 2. Cain *v.* State, (Tex. Crim. 1906) 92 S. W. 808.

3. People *v.* Kellogg, 105 N. Y. App. Div. 505, 94 N. Y. Supp. 617.

506. 6. State *v.* Casey, 207 Mo. 1, 105 S. W. 645; Flagg *v.* State, (Tex. Crim. 1907) 103 S. W. 855; McMahan *v.* State, (Tex. Crim. 1906) 96 S. W. 17.

507. 6. Malone *v.* State, (Ind. 1907) 81 N. E. 1099; Stoddard *v.* State, (Wis. 1907) 113 N. W. 453.

508. 4. Larcenous Intent a Matter of Inference. — State *v.* McCarthy, (Mont. 1907) 92 Pac. 521; Simmons *v.* State, 2 Ga. App. 638, 58 S. E. 1066; Moseley *v.* State, (Miss. 1908) 45 So. 833; State *v.* Stanley, 123 Mo. App. 304, 100 S. W. 678.

8. Evidence of Insanity — Question for Jury. — State *v.* Grendahl, 131 Iowa 602, 109 N. W. 121.

509. 1. Presumption of Incapacity to Form Intent may be rebutted by competent evidence. Neville *v.* State, (Ala. 1906) 41 So. 1011.

Evidence of Capacity to Commit Larceny by infant may be shown by character, and degree of intelligence, and knowledge that the theft was criminal and punishable. Binkley *v.* State, (Tex. Crim. 1907) 100 S. W. 780.

2. Com. *v.* Levinson, 34 Pa. Super. Ct. 286.

6. Dimmick *v.* U. S., (C. C. A.) 135 Fed. 257.

7. People *v.* Linp, 111 N. Y. App. Div. 504, 98 N. Y. Supp. 86.

510. 3. People *v.* Simmons, (Supm. Ct. App. Div.) 109 N. Y. Supp. 190.

4. Luddy *v.* People, 219 Ill. 413, 76 N. E. 581.

Obliterating Marks or Brands on the stolen property by which it could be identified by the owner, is evidence of an intent to steal. Thrash *v.* State, 79 Ark. 347, 96 S. W. 360.

10. Thrash *v.* State, 79 Ark. 347, 96 S. W. 360.

511. 4. Woodard *v.* State, 84 Ark. 119, 104 S. W. 1109.

5. Johnson *v.* State, 75 Ark. 427, 88 S. W. 905; State *v.* Toohey, 203 Mo. 674, 102 S. W. 530; Hammock *v.* State, 49 Tex. Crim. 471, 93 S. W. 549.

512. 9. Rex *v.* Payne, (1906) 1 K. B. 97.

513. 11. Osborne *v.* State, 115 Tenn. 717, 92 S. W. 853.

12. **Cost Value** of clothing may be shown in considering its actual value when taken. State *v.* McDermet, (Iowa 1908) 115 N. W. 884.

13. Ayers *v.* State, 3 Ga. App. 305, 59 S. E. 924; State *v.* Stanley, 123 Mo. App. 294, 100 S. W. 678.

514. 3. **Railroad Tickets.** — Patrick *v.* State, (Tex. Crim. 1906) 98 S. W. 840.

6. Woods *v.* People, 222 Ill. 293, 78 N. E. 607.

8. **A Pistol** is the subject of larceny even though its sale is prohibited by statute within the state. Osborne *v.* State, 115 Tenn. 717, 92 S. W. 853.

11. **Dogs Subjects of Larceny by Statute.** — State *v.* Soward, 83 Ark. 264, 103 S. W. 741.

12. **Oysters and Clams.** — People *v.* Morrison, 124 N. Y. App. Div. 10, 108 N. Y. Supp. 262.

515. 5. Crossland *v.* State, 77 Ark. 539, 92 S. W. 776; People *v.* Fletcher, 110 N. Y. App. Div. 231, 97 N. Y. Supp. 62.

Mortgages. — Shannon *v.* Sims, 146 Ala. 673, 40 So. 574.

516. 1. Shannon *v.* Sims, 146 Ala. 673, 40 So. 574.

4 **A Warehouse Receipt** for a bale of cotton describing it by number is the subject-matter of larceny. Currie *v.* State, 3 Ga. App. 309, 59 S. E. 926.

518. 6. **Turpentine in "Boxes."** — Dickens *v.* State, 142 Ala. 49, 39 So. 14.

519. 2. *Contra,* State *v.* Wolf, (Del. 1907) 66 Atl. 739.

5. Skaer *v.* Schwartz, 127 Ill. App. 48; State *v.* Beck, 141 N. Car. 829, 53 S. E. 842.

521. 3. Maxwell *v.* Territory, (Ariz. 1906) 85 Pac. 116.

523. 2. Whitsel *v.* State, (Tex. Crim. 1905) 90 S. W. 505.

11. Miller *v.* Territory, (Ariz. 1905) 80 Pac. 321; Triplett *v.* Com., (Ky. 1906) 91 S. W. 281; State *v.* Weatherman, 202 Mo. 6, 100 S. W. 482; People *v.* Moss, 113 N. Y. App. Div. 329, 99 N. Y. Supp. 138; State *v.* Bjelkstrom, (S. Dak. 1905) 104 N. W. 481; Brokaw *v.* State, (Tex. Crim. 1905) 85 S. W. 801; Johnson *v.* State, (Tex. Crim. 1905) 90 S. W. 633; Leak *v.* State, (Tex. Crim. 1906) 97 S. W. 476; Simpson *v.* State, (Tex. Crim. 1906) 96 S. W. 925; State *v.* Bailey, (W. Va. 1908) 60 S. E. 785, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 523.

524. 1. State *v.* Bailey, (W. Va. 1908) 60 S. E. 785, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 524.

2. Triplett *v.* Com., (Ky. 1906) 91 S. W. 281; State *v.* Bailey, (W. Va. 1908), 60 S. E. 785, *citing* 18 AM. AND ENG. ENCYC OF LAW (2d ed.) 524.

5. Havard *v.* State, (Tex. Crim. 1906) 92 S. W. 804.

525. 4. State *v.* Soper, 207 Mo. 502, 106 S. W. 3, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 525.

5. State *v.* Soper, 207 Mo. 502, 106 S. W. 3, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 525.

6. State *v.* Soper, 207 Mo. 502, 106 S. W. 3, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 525.

526. 1. State *v.* White, (Kan. 1907) 92 Pac. 829; State *v.* Mintz, 189 Mo. 268, 88 S. W. 12.

3. State *v.* White, (Kan. 1907) 92 Pac. 829.

527. 11. State *v.* Miller, (Minn. 1907) 114 N. W. 83, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 527.

12. Tinker *v.* State, 125 Ga. 743, 54 S. E. 662.

528. 9. Skidmore *v.* State, (Neb. 1908) 115 N. W. 288.

530. 2. **Acquittal for Larceny and Embezzlement No Bar to Prosecution for Forgery.** — Spears *v.* People, 220 Ill. 72, 77 N. E. 112.

4. **Conviction for Receiving Stolen Goods Pars Prosecution for Larceny.** — Booker *v.* State, (Ala. 1907) 44 So. 56.

11. Floyd *v.* State, 80 Ark. 94, 96 S. W. 125.

531. 4. **Acquittal for Larceny No Bar to Prosecution for Breaking and Entering with Intent to Commit Larceny.** — State *v.* Hooker, 145 N. Car. 581, 59 S. E. 866.

8. State *v.* Norman, (Iowa 1907) 113 N. W. 340.

534. 11. Com. *v.* O'Neil, 188 Mass. 330, 74 N. E. 592.

Cruel and Unusual Punishment. — A sentence of two years at hard labor in the penitentiary for the larceny of a calf is not cruel and unusual punishment. Clampitt *v.* U. S., (Indian Ter. 1905) 89 S. W. 666.

Excessive Punishment. — A sentence of ten years in the penitentiary for the larceny of a horse valued at forty dollars is excessive. George *v.* U. S., (Indian Ter. 1905) 89 S. W. 1121.

A conviction of larceny with the punishment assessed at five years, the statute naming seven years as the maximum, will not be set aside as excessive or the result of passion or prejudice, in the absence of misconduct on the part of the jury. State *v.* Smith, 190 Mo. 706, 90 S. W. 440.

In Louisiana, larceny of property of a less value than $100 is punishable at hard labor only. When it is unaccompanied by any of the several sorts of burglary or other crime, larceny not falling within the class quoted is necessarily punishable at hard labor. State *v.* Perry, 116 La. 231, 40 So. 686.

535. 3. **A Return after Detection Is Not a Voluntary Return.** — Dalton *v.* State, (Tex. Crim. 1906) 98 S. W. 855.

Voluntary Return of Same Property is essential in order to put in issue the voluntary return of stolen property. Elliston *v.* State, (Tex. Crim. 1907) 99 S. W. 999.

Branding Cattle and Turning Same Loose is not a voluntary return as will constitute a defense to a prosecution for larceny. Thorne *v.* State, (Tex. Crim. 1908) 107 S. W. 831.

7. In Louisiana petty larceny of property less than five dollars in value is not punishable by imprisonment in the state penitentiary. State *v.* Williams, 114 La. 940, 38 So. 686.

Grading minor offenses and making petty larceny punishable by imprisonment in the parish jail is not unconstitutional. State *v.* Eubanks, 114 La. 428, 38 So. 407.

LARGE — AT LARGE.

536. 7. Conner *v.* Fogg, (N. J. 1907) 67 Atl. 338, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 536.

Dog Following Owner Not at Large. — Brown *v.* Graham, (Neb. 1907) 114 N. W. 153.

Horse Escaping from Enclosure Without Owner's Fault Not at Large. — Howrigan *v.* Bakersfield, 79 Vt. 255, 64 Atl. 1130, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 536.

At Large upon Highway. — As to when animals are *at large* upon the highway within the Canadian Railway Act, see Canadian Pac. R. Co. *v.* Carruthers, 39 Can. Sup. Ct. 251; McDaniel *v.* Canadian Pac. R. Co., 13 British Columbia 49.

LATERAL AND SUBJACENT SUPPORT.

542. 1. Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 542; Chosen Freeholders *v.* Woodcliffe Land Imp. Co., 74 N. J. L. 355, 65 Atl. 844; Haverstraw *v.* Eckerson, 124 N. Y. App. Div. 18, 108 N. Y. Supp. 506; New York Steam Co. *v.* Foundation Co., 123 N. Y. App. Div. 254, 108 N. Y. Supp. 84; Riley *v.* Continuous Rail Joint Co., 110 N. Y. App. 787, 97 N. Y. Supp. 283, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 542; Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18; Simon *v.* Nance, (Tex. Civ. App. 1907) 100 S. W. 1038, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 542.

2. Belden *v.* Franklin, 28 Ohio Cir. Ct. 373.

3. Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 542; Riley *v.* Continuous Rail Joint Co., 110 N. Y. App. Div. 787, 97 N. Y. Supp. 283; Hannicker *v.* Lepper, (S. Dak. 1906) 107 N. W. 202; Simon *v.* Nance, (Tex. Civ. App. 1907) 100 S. W. 1038, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 542.

Injury to Lands Not Immediately Adjacent. — Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

Ditch for Surface Waters. — The right of an adjoining owner to repel surface water by throwing it off from his land does not go to the extent of permitting him by ditching or otherwise to interfere with his neighbor's right to lateral support of his soil. Simon *v.* Nance, (Tex. Civ. App. 1907) 100 S. W. 1038.

543. 2. Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 543.

3. **Retaining Wall.** — See Chosen Freeholders *v.* Woodcliffe Land Imp. Co., 74 N. J. L. 355, 65 Atl. 844.

7. Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 543; Tischler *v.* Pennsylvania Coal Co., 218 Pa. St. 82, 66 Atl. 988; Simon *v.* Nance, (Tex. Civ. App. 1907) 100 S. W. 1038.

8. The right to lateral support of the soil is absolute and is not subordinate to any right of the adjoining proprietor. Simon *v.* Nance, (Tex. Civ. App. 1907) 100 S. W. 1038.

544. 1. Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 544; McClelland *v.* Schwerd, 32 Pa. Super. Ct. 313.

2. McClelland *v.* Schwerd, 32 Pa. Super. Ct. 313.

4. **Artificial Structures.** — Recovery of damages must be based upon negligence. Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184.

6. Catlin Coal Co. *v.* Lloyd, 124 Ill. App. 394.

7. Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 544.

8. Simon *v.* Nance, (Tex. Civ. App. 1907) 100 S. W. 1038.

A Municipal Corporation is entitled to an injunction restraining a landowner from removing lateral support to the street. Haverstraw *v.* Eckerson, 124 N. Y. App. Div. 18, 108 N. Y. Supp. 506.

10. Chosen Freeholders *v.* Woodcliffe Land Imp. Co., 74 N. J. L. 355, 65 Atl. 844; Haverstraw *v.* Eckerson, 124 N. Y. App. Div. 18, 108 N. Y. Supp. 506; Riley *v.* Continuous Rail Joint Co., 110 N. Y. App. Div. 787, 97 N. Y. Supp. 283. *Compare* New York Steam Co. *v.* Foundation Co., 123 N. Y. App. Div. 254, 108 N. Y. Supp. 84.

545. 2. Gates *v.* Fulkerson, (Mo. 1908) 107 S. W. 1032; Riley *v.* Continuous Rail Joint Co., 110 N. Y. App. Div. 787, 97 N. Y. Supp. 283, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 545; McClelland *v.* Schwerd, 32 Pa. Super. Ct. 313; Simon *v.* Nance, (Tex. Civ. App. 1907) 100 S. W. 1038. See also Paltey *v.* Egan, 122 N. Y. App. Div. 512, 107 N. Y. Supp. 444. *Compare* Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

4. See Riley *v.* Continuous Rail Joint Co., 110 N. Y. App. Div. 787, 97 N. Y. Supp. 283.

546. 3. See Paltey *v.* Egan, 122 N. Y. App. Div. 512, 107 N. Y. Supp. 444.

5. Riley *v.* Continuous Rail Joint Co., 110 N. Y. App. Div. 787, 97 N. Y. Supp. 283.

The right to lateral support which is absolute for land in its natural state, extends no further than the avoidance of negligence as to land incumbered with buildings. Sharpless *v.* Boldt, (Pa. 1907) 67 Atl. 652.

A Tenant Is Not Liable to His Subtenant for injury to property occurring without fault of tenant. Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

7. Gates *v.* Fulkerson, (Mo. 1908) 107 S. W. 1032; Riley *v.* Continuous Rail Joint Co., 110 N. Y. App. Div. 787, 97 N. Y. Supp. 283;

Hannicker *v.* Lepper, (S. Dak. 1906) 107 N. W. 202. *Compare* New York Steam Co. *v.* Foundation Co., 123 N. Y. App. Div. 254, 108 N. Y. Supp. 84.

A Railway Company Excavating a Tunnel 120 feet distant from injured property was held liable in Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

547. 1. See Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

4. Hedstrom *v.* Union Trust Co., (Cal. App. 1908) 94 Pac. 386; Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 547; Gates *v.* Fulkerson, (Mo. 1908) 107 S. W. 1032; Hannicker *v.* Lepper, (S. Dak. 1906) 107 N. W. 202. *Compare* Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

548. 1. Gates *v.* Fulkerson, (Mo. 1908) 107 S. W. 1032. *Compare* Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

2. Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 548.

6. Hannicker *v.* Lepper, (S. Dak. 1906) 107 N. W. 202; Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

549. 4. See Hedstrom *v.* Union Trust Co., (Cal. App. 1908) 94 Pac. 386.

550. 3. Hannicker *v.* Lepper, (S. Dak. 1906) 107 N. W. 202.

5. Hedstrom *v.* Union Trust Co., (Cal. App. 1908) 94 Pac. 386; Milbaur *v.* Larkin, 188 N. Y. 453, 81 N. E. 321.

7. Blanchard *v.* Savarese, 184 N. Y. 537, 76 N. E. 1089, *affirming* 97 N. Y. App. Div. 58, 89 N. Y. Supp. 664.

City Operations.—The Building Code of New York City, § 22, applies to adjoining owners of property and concerns their rights and obligations and does not regulate the relations existing between landlord and tenant. Paltey *v.* Egan, 122 N. Y. App. Div. 512, 107 N. Y. Supp. 444; New York Steam Co. *v.* Foundation Co., 123 N. Y. App. Div. 254, 108 N. Y. Supp. 84.

551. 3. **Construction of Vaults in Streets,** see New York Steam Co. *v.* Foundation Co., 123 N. Y. App. Div. 254, 108 N. Y. Supp. 84.

4. See Milbaur *v.* Larkin, 188 N. Y. 453, 81 N. E. 321.

552. 2. Gates *v.* Fulkerson, (Mo. 1908) 107 S. W. 1032.

The Cause of Injury is a question for the jury to decide. Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

3. **Subterranean Watercourses.** — Settling caused by tapping of an underground stream or subterranean flow of water does not exempt the excavator from liability, if such water was withdrawn from underneath or below or in a public street or in property which was not the property of the excavator. Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18.

8. See Hedstrom *v.* Union Trust Co., (Cal. App. 1908) 94 Pac. 386; Milbaur *v.* Larkin, 188 N. Y. 453, 81 N. E. 321.

553. 1. Hannicker *v.* Lepper, (S. Dak. 1906) 107 N. W. 202; Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18. See also Riley *v.* Continuous Rail Joint Co., 110 N. Y. App. Div. 787, 97 N. Y. Supp. 283.

5. Miller *v.* Stuart, (Md. 1907) 68 Atl. 273; Bright *v.* Morgan, (Pa. 1907) 67 Atl. 58. *Compare* Lederer *v.* Colonial Invest. Co., 130 Iowa 157, 106 N. W. 357.

554. 4. Farnandis *v.* Great Northern R. Co., 41 Wash. 486, 84 Pac. 18, approving the doctrine laid down in the case of Cabot *v.* Kingman, 166 Mass. [illegible], cited in the original note.

555. 5. **Natural Right to Subjacent Support.** — Weaver *v.* Berwind-White Coal Co., 216 Pa. St. 195, 65 Atl. 545.

In *Colorado*, it is provided by statute (2 Mills' Anno. Stat., §§ 3139, 3159, and 3620) that the surface owner may require the mining owner to give a bond to secure the payment of damages resulting from the removal of minerals. It is held under this statute, that the failure of the surface owner to exact such security as a condition precedent, did not release the mining owner removing such minerals from the payment of damages caused by his negligence. Campbell *v.* Louisville Coal Min. Co., 39 Colo. 379, 89 Pac. 767.

556. 1. Silver Springs, etc., R. Co. *v.* Van Ness, 45 Fla. 559, 34 So. 884; Phillips *v.* Collinsville Granite Co., 123 Ga. 830, 51 S. E. 666; Western Indiana Coal Co. *v.* Brown, 36 Ind. App. 44, 74 N. E. 1027, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 556; Miles *v.* Pennsylvania Coal Co., 217 Pa. St. 449, 66 Atl. 764; Tischler *v.* Pennsylvania Coal Co., 218 Pa. St. 82, 66 Atl. 988; Baker *v.* Pittsburg, etc., R. Co., (Pa. 1908) 68 Atl. 1014; Madden *v.* Lehigh Valley Coal Co., 212 Pa. St. 63, 61 Atl. 559. *Compare* Campbell *v.* Louisville Coal Min. Co., 39 Colo. 379, 89 Pac. 767.

Measure of Damages.—The rule is settled that the measure of damages for permanent and irremediable injury to land caused by failure to give surface support is the actual loss in the depreciation of the value thereof. The permanence of the injury is the test of the application of the rule. If the injury is reparable the cost of repairing may be recovered, and if the cost of repairing is greater than the diminution in the market, the latter is the true measure of damages. Weaver *v.* Berwind-White Coal Co., 216 Pa. St. 195, 65 Atl. 545; Rabe *v.* Schoenberger Coal Co., 213 Pa. St. 252, 62 Atl. 854.

Injury to a Spring can be considered only as incidental to and affecting the value of the land. Rabe *v.* Schoenberger Coal Co., 213 Pa. St. 252, 62 Atl. 854; Weaver *v.* Berwind-White Coal Co., 216 Pa. St. 195, 65 Atl. 545.

Evidence showing the value of springs in themselves, as a separate, independent item, not connected with the general value of the land is inadmissible. Rabe *v.* Schoenberger Coal Co., 213 Pa. St. 252, 62 Atl. 854.

The value of springs as an element in estimating the value of the land, or the destruction of them, in determining the depreciation in the value of the land after the injury is a proper matter for the consideration of the jury. Rabe *v.* Schoenberger Coal Co., 213 Pa. St. 252, 62 Atl. 854; Weaver *v.* Berwind-White Coal Co., 216 Pa. St. 195, 65 Atl. 545.

The Lessor of a Mine is liable for injuries to a surface owner, where the lessor knew the lessee was taking all the coal out, leaving no

artificial supports, and took no steps to prevent the lessee from removing the coal. Campbell *v.* Louisville Coal Min. Co., 39 Colo. 379, 89 Pac. 767.

3. Weaver *v.* Berwind-White Coal Co., 216 Pa. St. 195, 65 Atl. 548.

6. Silver Springs, etc., R. Co. *v.* Van Ness, 45 Fla. 559, 34 So. 884; Western Indiana Coal Co. *v.* Brown, 36 Ind. App. 44, 74 N. E. 1027; Weaver *v.* Berwind-White Coal Co., 216 Pa. St. 195, 65 Atl. 545. *Compare* Campbell *v.* Louisville Coal Min. Co., 39 Colo. 379, 89 Pac. [illegible]

7. Silver Springs, etc., R. Co. *v.* Van Ness, 45 Fla. 559, 34 So. 884; Phillips *v.* Collinsville Granite Co., 123 Ga. 830, 51 S. E. 666, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 556; Baker *v.* Pittsburg, etc., R. Co., (Pa. 1908) 68 Atl. 1014. See also Weaver *v.* Berwind-White Coal Co., 216 Pa. St. 195, 65 Atl. 545; Rabe *v.* Shoenberger Coal Co., 213 Pa. St. 252, 62 Atl. 854.

557. 1. Phillips *v.* Collinsville Granite Co., 123 Ga. 830, 51 S. E. 666, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 557.

2. Campbell *v.* Louisville Coal Min. Co., 39 Colo. 379, 89 Pac. 767; Madden *v.* Lehigh Valley Coal Co., 212 Pa. St. 63, 61 Atl. 559; Miles *v.* Pennsylvania Coal Co., 217 Pa. St. 449, 66 Atl. 764.

3. Silver Springs, etc., R. Co. *v.* Van Ness, 45 Fla. 559, 34 So. 884; Weaver *v.* Berwind-White Coal Co., 216 Pa. St. 195, 65 Atl. 545; Miles *v.* Pennsylvania Coal Co., 217 Pa. St. 449, 66 Atl. 764. See also Madden *v.* Lehigh Valley Coal Co., 212 Pa. St. 63, 61 Atl. 559.

4. *Compare* Miles *v.* Pennsylvania Coal Co., 217 Pa. St. 449, 66 Atl. 764.

5. Western Indiana Coal Co. *v.* Brown, 36 Ind. App. 44, 74 N. E. 1027.

6. Western Indiana Coal Co. *v.* Brown, 36 Ind. App. 44, 74 N. E. 1027, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 557. See also Campbell *v.* Louisville Coal Min. Co., 39 Colo. 379, 89 Pac. 767.

7. In Chosen Freeholders *v.* Woodcliffe Land Imp. Co., 74 N. J. L. 355, 65 Atl. 844, the defendants conveyed land to plaintiffs for the purpose of a road to be built according to the grades shown on a map. It was held that adjoining land of the defendant was burdened with the lateral support of a road built in accordance with the terms of the deed.

558. 2. Silver Springs, etc., R. Co. *v.* Van Ness, 45 Fla. 559, 34 So. 884, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 558, *per* Maxwell, J., dissenting opinion.

LATERAL OR BRANCH RAILROADS.

559. 2. A Railroad Company May Extend Its Line to another part of the city, and it is not necessary that the railroad should own property at a certain point in order to make its terminus there. Central of Georgia R. Co. *v.* Union Springs, etc., R. Co., 144 Ala. 639, 39 So. [illegible]

The Louisiana Constitutional Provision declaring all railroads to be public highways and all railroad companies to be common carriers applies not only to main tracks, but also to all subsidiary tracks used for railroad traffic. Kansas City, etc., R. Co. *v.* Louisiana Western R. Co., 116 La. 178, 40 So. 627.

561. 2. In Tennessee there is no legislation which prohibits a railroad from building or causing to be built a railroad parallel to its own. Memphis, etc., R. Co. *v.* Union R. Co., 116 Tenn. 500, 95 S. W. 1019.

562. 1. Gillette *v.* Aurora R. Co., 228 Ill. 261, 81 N. E. 1005.

3. Right to Cross Another Company's Tracks. — Kansas City, etc., R. Co. *v.* Louisiana Western R. Co., 116 La. 178, 40 So. 627.

564. 1. The Location of a Branch Line cannot be changed without express legislative authority. Atlantic, etc., R. Co. *v.* Kirkland, (Ga. 1907) 59 S. E. 220.

Where a Bridge Is Washed Away, it is the duty of the railroad company to construct a new one. Louisville, etc., R. Co. *v.* U. S. Iron Co., 118 Tenn. 194, 101 S. W. 414.

565. 3. Under the Louisiana Statute, a railroad has a right to build a spur over the crossings of other railroads to reach private establishments. Kansas City, etc., R. Co. *v.* Louisiana Western R. Co., 116 La. 178, 40 So. 627.

Individual Cannot Enjoin Construction of Side Track. — Thornton *v.* Stevens Coal Co., 117 Ill. App. 376.

4. Reeser *v.* Pennsylvania, etc., R. Co., 215 Pa. St. 136, 64 Atl. 376.

566. 1. For the Construction of the Particular Provisions of the Pennsylvania Lateral Railroad Acts, see Olanta Coal Min. Co. *v.* Beech Creek R. Co., 144 Fed. 150; Beech Creek R. Co. *v.* Olanta Coal Min. Co., (C. C. A.) 158 Fed. 36; Reeser *v.* Pennsylvania, etc., R. Co., 215 Pa. St. 136, 64 Atl. 376.

2. Duty to Furnish Cars on Side Track for Shipment of Grain Upheld. — Roby *v.* State, (Neb. 1906) 107 N. W. 766.

4. Whittemore *v.* New York, etc., R. Co., 191 Mass. 392, 77 N. E. 717.

Equity will enforce an agreement to maintain a depot and operate a spur track, where such enforcement will not injuriously affect the material rights of the general public. Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574.

5. The General Right of Coal Miners to Connect Switch Tracks with a railroad was upheld in Olanta Coal Min. Co. *v.* Beech Creek R. Co., 144 Fed. 150.

567. 1. Kansas City, etc., R. Co. *v.* Louisiana Western R. Co., 116 La. 178, 40 So. 627. See also Roby *v.* State, (Neb. 1906) 107 N. W. 766.

6. Dawson *v.* Western Maryland R. Co., (Md. 1907) 68 Atl. 301, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 567; Jennings *v.* Delaware, etc., R. Co., 103 N. Y. App. Div. 164, 93 N. Y. Supp. 374.

The Term "Railroad" Includes All Side Tracks necessary or convenient for the transaction of the company's business. Roby *v.* State, (Neb. 1907) 107 N. W. 766.

Authority of Railroad Commissioners. — International, etc., R. Co. *v.* Railroad Commission, (Tex. Civ. App. 1905) 86 S. W. 16; International, etc., R. Co. *v.* Railroad Commission, (Tex. Civ. App. 1905) 89 S. W. 961.

Under the *New York* Railroad Law, the rail-

road commissioners may determine how and in what manner "additional switches and sidings" may be taken over a highway. *In re* Terminal R. Co., 122 N. Y. App. Div. 59, 106 N. Y. Supp. 655. See Kansas City, etc., R. Co. *v.* Louisiana Western R. Co., 116 La. 178, 40 So. 627.

8. See Kansas City, etc., R. Co. *v.* Louisiana Western R. Co., 116 La. 178, 40 So. 627.

Under the Nebraska Statute the state may require a railroad company to build side tracks to a grain elevator. State *v.* Missouri Pac. R. Co., (Neb. 1908) 115 N. W. 757. And so it has power to make a railroad extend its side track. State *v.* Missouri Pac. R. Co., (Neb. 1908) 115 N. W. 614.

568. 3. Delaware, etc., R. Co. *v.* Switchmen's Union, etc., 158 Fed. 700.

Side Track in Street under Municipal Grant Held to Be Public Highway.— Roby *v.* State, (Neb. 1906) 107 N. W. 766.

5. Newark *v.* Central R. Co., (N. J. Eq. 1907) 67 Atl. 1009; Beaver *v.* Beaver Valley R. Co., 217 Pa. St. 280, 66 Atl. 520.

9. Newark *v.* Central R. Co., (N. J. Eq. 1907) 67 Atl. 1009; Highway Com'rs *v.* Wabash R. Co., 148 Mich. 436, 111 N. W. 1090; Monroe *v.* Detroit, etc., Short Line, 143 Mich. 315, 106 N. W. 704; Beaver *v.* Beaver Valley R. Co., 217 Pa. St. 280, 66 Atl. 520.

LAW.

569. 9. **Law of the Case.** — See Turner *v.* Fidelity Loan Concern, 2 Cal. App. 122, 83 Pac. 70.

Law of His Residence means the *law* of his residence at the time the cause of action accrued, and not the time when the action was commenced. Utah Nat. Bank *v.* Jones, 109 N. Y. App. Div. 526, 96 N. Y. Supp. 338.

Law of This State. — A county ordinance is a *law* of this state. Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909.

Ignorantia Juris Haud Excusat. — In the maxim *ignorantia juris haud excusat*, the word *jus* is used in the sense of denoting general law, the ordinary law of the country. But when the word *jus* is used in the sense of denoting a private right, that maxim has no application. Marshall *v.* Lane, 27 App. Cas. (D. C.) 276.

LAWFUL — LAWFULLY.

572. 2. **Lawful Currency — Silver Dollars.** — See Brittain *v.* State, (Tex. Crim. 1907) 105 S. W. 817.

Lawful Child.— An adopted child held not to be a *lawful* child within the terms of a will. Cochran *v.* Cochran, (Tex. Civ. App. 1906) 95 S. W. 731.

Lawful Fence.—See Smith *v.* Chicago, etc., R. Co., 127 Mo. App. 160, 105 S. W. 10.

Lawfully Detained — Lunatics. — See *In re* Whalley, (1906) 1 Ch. 565, 75 L. J. Ch. 328.

Asphalt Is Lawful Merchandise in charters including the West Indies. Dene Shipping Co. *v.* Tweedie Trading Co., (C. C. A.) 143 Fed. 854, *affirming* 133 Fed. 589.

LAWFUL ISSUE.

576. 1. **Lawful Issue Equivalent to Descendants.** — Phelps *v.* Cameron, 109 N. Y. App. Div. 798, 96 N. Y. Supp. 1014.

Includes Only Lawful Children. — Brisbin *v.* Huntington, 128 Iowa 166, 103 N. W. 144.

LAW OF THE ROAD.

577. 1. McCarthy *v.* Consolidated R. Co., 79 Conn. 73, 63 Atl. 725; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589; Indianapolis St. R. Co. *v.* Bolin, 39 Ind. App. 169, 78 N. E. 210; United Railways, etc., Co. *v.* Watkins, 102 Md. 264, 62 Atl. 234; McCormack *v.* Boston El. R. Co., 188 Mass. 342, 74 N. E. 599; Hennessey *v.* Taylor, 189 Mass. 583, 76 N. E. 224; Wright *v.* Crane, 142 Mich. 508, 106 N. W. 71; Smith *v.* Minneapolis St. R. Co., 95 Minn. 254, 104 N. W. 16.

2. Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; House *v.* Cramer, 134 Iowa 374, 112 N. W. 3; Palmer Transfer Co. *v.* Paducah R., etc., Co., (Ky. 1905) 89 S. W. 515; Standard Oil Co. *v.* Hartman, 102 Md. 563, 62 Atl. 805; Halloran *v.* Worcester Consol. St. R. Co., 192 Mass. 104, 78 N. E. 381.

Degree of Care Varies with Character of Vehicle and Increase of Danger. — Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778.

578. 1. Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589; Indianapolis St. R. Co. *v.* Marschke, 166 Ind. 490, 77 N. E. 945; Indianapolis St. R. Co. *v.* Bolin, 39 Ind. App. 169, 78 N. E. 210; Indianapolis St. R. Co. *v.* Hoffman, (Ind. App. 1907) 82 N. E. 543; Kerr *v.* Boston El. R. Co., 188 Mass. 434, 74 N. E. 669; Williamson *v.* Old Colony St. R. Co., 191 Mass. 144, 77 N. E. 655; Littlefield *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 637, 101 N. Y. Supp. 75.

579. 1. Young *v.* Small, 188 Mass. 4, 73 N. E. 1019; O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805.

Exceptions to Rule.— A traveler may recover even if negligent, provided the negligence of the driver was the proximate cause of the injury. Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778.

So there may be a recovery notwithstanding contributory negligence if the plaintiff's peril was discovered by the defendant, or could by ordinary care have been discovered, in time to avoid the injury. Louisville R. Co. *v.* Hoskins, (Ky. 1905) 88 S. W. 1087; Hanson *v.* Manchester St. R. Co., 73 N. H. 395, 62 Atl. 595.

But this rule does not apply unless the use of such means would have avoided the collision. San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863.

See generally the title CONTRIBUTORY NEGLIGENCE.

Doctrine of Last Clear Chance Applied. — Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 728; Indianapolis St. R. Co. *v.* Bolin, 39 Ind. App. 169, 78 N. E. 210; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind.

402, 79 N. E. 347; Barrie *v.* St. Louis Transit Co., 119 Mo. App. 38, 96 S. W. 233.

2. McIntyre *v.* Orner, 166 Ind. 57, 76 N. E. 730; Acker *v.* Stern, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 650, 97 N. Y. Supp. 1041.

3. Violation of an Ordinance does not of itself constitute contributory negligence. McCarragher *v.* Proal, 114 N. Y. App. Div. 470, 100 N. Y. Supp. 208.

9. Buxton *v.* Ainsworth, 138 Mich. 536, 101 N. W. 817, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579.

580. 7. Wood *v.* Boston El. R. Co., 188 Mass. 161, 74 N. E. 298; Buxton *v.* Ainsworth, 138 Mich. 536, 101 N. W. 817.

12. Blakeslie's Express, etc., Co. *v.* Ford, 215 Ill. 230, 74 N. E. 135.

581. 1. Palmer Transfer Co. *v.* Paducah R., etc., Co., (Ky. 1905) 89 S. W. 515.

582. 1. Heavy and Cumbersome Vehicles ought to take such part of the highway as will afford lighter vehicles an opportunity of passing without colliding with them. Standard Oil Co. *v.* Hartman, 102 Md. 563, 62 Atl. 805.

10. Schneider *v.* Mobile Light, etc., Co., 146 Ala. 344, 40 So. 761; Williamson *v.* Old Colony St. R. Co., 191 Mass. 144, 77 N. E. 655; Mayes *v.* Metropolitan St. R. Co., 121 Mo. App. 614, 97 S. W. 612.

583. 9. Where a Runaway Team Was Approaching from Behind, the driver of the foremost vehicle was held not to be guilty of contributory negligence for failure to look around and attempt to get out of the way; he having had no intimation that the team was approaching. Abby *v.* Wood, 43 Wash. 379, 86 Pac. 558.

584. 2. Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873.

Care Must Be Commensurate with Exigencies of Occasion. — Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183; Richardson *v.* Davis, 94 Minn. 315, 102 N. W. 868.

585. 2. Boudwin *v.* Wilmington City R. Co., 4 Penn. (Del.) 381, 60 Atl. 865; Laronde *v.* Boston, etc., R. Co., 73 N. H. 247, 60 Atl. 684; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Young *v.* Herrmann, 119 N. Y. App. Div. 445, 104 N. Y. Supp. 72.

3. Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599.

3. Street Car Has Preferential Rights at Crossing. — Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Moore *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 663, 102 N. Y. Supp. 636. And see the title STREET RAILWAYS, **57.** 8 *et seq.*

5. Hennessey *v.* Taylor, 189 Mass. 583, 76 N. E. 224; Gerber *v.* Boorstein, 113 N. Y. App. Div. 808, 99 N. Y. Supp. 1091.

7. The Test to Be Applied is to inquire what a person of ordinary prudence would do under the circumstances. Stallman *v.* Shea, 99 Minn. 422, 109 N. W. 824.

586. 3. Richardson *v.* Davis, 94 Minn. 315, 102 N. W. 868.

6. Garside *v.* New York Transp. Co., 146 Fed. 588; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Blakeslie's Express, etc., Co. *v.* Ford, 215 Ill. 230, 74 N. E. 135; McQuisten *v.* Detroit Citizens' St. R. Co., 147 Mich. 67, 110 N. W. 118; Richardson *v.* Davis, 94 Minn. 315, 102 N. W. 868; Turner *v.* Hall, (N. J. 1906) 64 Atl. 1060; Buschner *v.* New York Transp. Co., 106 N. Y. App. Div. 493, 94 N. Y. Supp. 798.

7. Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49.

8. New York *v.* Metropolitan St. R. Co., 90 N. Y. App. Div. 66, 85 N. Y. Supp. 693 (injuries to hook and ladder truck).

587. 6. Gregory *v.* Slaughter, (Ky. 1907) 99 S. W. 247.

8. Christy *v.* Elliott, 216 Ill. 31, 74 N. E. 1035; Indiana Springs Co. *v.* Brown, 165 Ind. 465, 74 N. E. 615.

11. Foley *v.* Northrup, (Tex. Civ. App. 1907) 105 S. W. 229, holding it immaterial that the driver was an expert and handled his team well.

588. 13. Zambelli *v.* F. Johnson, etc., Co., 115 La. 483, 39 So. 501; Fertel *v.* Peck, (Vt. 1907) 67 Atl. 818.

Where a Horse Was Kept Where an Exciting Cause Existed, it was held to be a question for the jury whether the defendant acted as a prudent man, there having been ample opportunity to get the horse away from the exciting cause. West *v.* Woodruff, 112 N. Y. App. Div. 133, 97 N. Y. Supp. 1054.

589. 4. Denver *v.* Utzler, 38 Colo. 300, 88 Pac. 143.

Negligence Per Se under City Ordinance. — Healy *v.* Johnson, 127 Iowa 221, 103 N. W. 92; Zambelli *v.* F. Johnson, etc., Co., 115 La. 483, 39 So. 501; Stacey *v.* Haverhill, etc., R. Co., 191 Mass. 326, 77 N. E. 714; Acker *v.* Stern, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 650, 97 N. Y. Supp. 1041.

Team Fastened by Heavy Weight — Not Negligence Per Se. — Caughlin *v.* Campbell-Sell Baking Co., 39 Colo. 148, 89 Pac. 53.

5. Hensley *v.* Davidson Bros. Co., (Iowa 1905) 103 N. W. 975.

Ordinary Care and Prudence in fastening and restraining a horse left in a public street must be exercised. Moulton *v.* Lewiston, etc., St. R. Co., 102 Me. 186, 66 Atl. 388; Koonz *v.* New York Mail Co., 72 N. J. L. 530, 63 Atl. 341.

590. 4. Malice. — Foley *v.* Northrup, (Tex. Civ. App. 1907) 105 S. W. 229.

LEASES.

597. 1. Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 611, 53 S. E. 928, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 597; Headley *v.* Hoopengarner, 60 W. Va. 626, 55 S. E. 744, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 597.

2. Consideration. — Glessner *v.* Longley, 125 Ga. 676, 54 S. E. 753.

3. American Security, etc., Co. *v.* Walker, 23 App. Cas. (D. C.) 583; *In re* Woodville, 115 La. 810, 40 So. 174; Swart *v.* Western Union Tel. Co., 142 Mich. 21, 105 N. W. 74.

599. 4. Goldberg *v.* Wood, (Supm. Ct.

App. T.) 45 Misc. (N. Y.) 327, 90 N. Y. Supp. 427; Schlumpf *v.* Sasake, 38 Wash. 278, 80 Pac. 457.

11. Goldberg *v.* Wood, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 327, 90 N. Y. Supp. 427; Browder *v.* Phinney, 37 Wash. 70, 79 Pac. 598.

600. 2. But see Browder *v.* Phinney, 37 Wash. 70, 79 Pac. 598.

9. *In re* Woodville, 115 La. 810, 40 So. 174; Pittsburgh Amusement Co. *v.* Ferguson, 100 N. Y. App. Div. 453, 91 N. Y. Supp. 666; Finkelstein *v.* Fabyik, (Supm. Ct. App. T.) 107 N. Y. Supp. 67; Schlumpf *v.* Sasake, 38 Wash. 278, 80 Pac. 457.

601. 1. Feust *v.* Craig, (Supm. Ct. App. T.) 107 N. Y. Supp. 637.

2. Where the agreement is to execute a lease to be approved by the attorney of the lessee, such approval cannot be arbitrarily refused. Pittsburgh Amusement Co. *v.* Ferguson, 100 N. Y. App. Div. 453, 91 N. Y. Supp. 666.

11. A covenant, however, to pay rent in advance is not to be deemed a "usual one." Arcade Realty Co. *v.* Tunney, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 148, 101 N. Y. Supp. 593.

13. Canadian Pac. R. Co. *v.* Toronto, (1905) A. C. 33 (lease by municipality to railway company); Canadian Pac. R. *v.* Toronto, (1905) A. C. 33, 74 L. J. P. C. 15, 91 L. T. N. S. 703.

603. 7. Bedell *v.* Edgett, 120 N. Y. App. Div. 175, 104 N. Y. Supp. 1013.

604. 5. Relief from Forfeiture of Deposit. — Rosenfeld *v.* Silver, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 117, 96 N. Y. Supp. 1027.

605. 1. Dodd *v.* Pasch, 5 Cal. App. 686, 91 Pac. 166, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605; Merki *v.* Merki, 113 Ill. App. 518.

7. Brewster *v.* Lanyon Zinc Co., (C. C. A.) 140 Fed. 801; Smith *v.* Collins, (Ala. 1906) 41 So. 825.

11. A lease may fix a date in the future for the commencement of the term, and this does not render it an agreement for a lease rather than a lease. Johnston *v.* Corson Gold Min. Co., (C. C. A.) 157 Fed. 145.

606. 1. Okie *v.* Person, 23 App. Cas. (D. C.) 170; Santa Rosa Irrigation Co. *v.* Pecos River Irrigation Co., (Tex. Civ. App. 1906) 92 S. W. 1014 (description held sufficient).

Parol Evidence may be admissible to identify premises. Wellmaker *v.* Wheatley, 123 Ga. 201, 51 S. E. 436.

The failure of the lease to state the county in which the land is situated will not necessarily render the lease invalid for failure to describe the land with sufficient certainty. Gex *v.* Dill, 86 Miss. 10, 38 So. 103.

3. Haynes *v.* Sherwin-Williams Co., 126 Ill. App. 414.

4. See Bowman *v.* Powell, 127 Ill. App. 114 (lessee held bound by lease signed by himself but not by lessor).

9. Baragiano *v.* Villani, 117 Ill. App. 372; Braman *v.* Dodge, 100 Me. 143, 60 Atl. 700.

10. Dodd *v.* Pasch, 5 Cal. App. 686, 91 Pac. 166, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 606; Noland *v.* Cincinnati Cooperage Co., (Ky. 1904) 82 S. W. 627.

607. 7. Dorman *v.* Plowman, 41 Wash. 477, 83 Pac. 322.

608. 4. Beck *v.* Minnesota, etc., Grain Co., 131 Iowa 62, 107 N. W. 1032.

612. 2. Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151; Headley *v.* Hoopengarner, 60 W. Va. 626, 55 S. E. 744, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 612.

Where rooms in a building are leased for office purposes, there is no implied covenant on the part of the lessor that the remainder of the building will only be used for office purposes also. Tucker *v.* De Puy, 210 Pa. St. 461, 60 Atl. 4.

613. 3. *District of Columbia.* — Howell *v.* Schneider, 24 App. Cas. (D. C.) 532, 547; Keroes *v.* Richards, 28 App. Cas. (D. C.) 310, 8 Ann. Cas. 575.

Illinois. — Lazarus *v.* Parmly, 113 Ill. App. 624; Rubens *v.* Hill, 115 Ill. App. 565; Martin *v.* Surman, 116 Ill. App. 282.

Kentucky. — Miles *v.* Tracey, 89 S. W. 1128, 28 Ky. L. Rep. 621; Holzhauer *v.* Sheeny, (Ky. 1907) 104 S. W. 1034.

Maine. — Bennett *v.* Sullivan, 100 Me. 118, 60 Atl. 886.

Maryland. — Clark *v.* Gerke, 104 Md. 504, 65 Atl. 326; Whitcomb *v.* Mason, 102 Md. 275, 62 Atl. 749.

Massachusetts. — Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203.

New York. — Flannery *v.* Simons, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 123, 93 N. Y. Supp. 544.

Texas. — American Exch. Nat. Bank *v.* Swope, (Tex. Civ. App. 1907) 101 S. W. 872.

614. 3. Rosenstein *v.* Cohen, 96 Minn. 336, 104 N. W. 965.

In Meyers *v.* Liebeskind, (Supm. Ct. App. T.) 91 N. Y. Supp. 725, it was held that where an apartment is rented in a house which is being constructed, there is an implied covenant on the part of the lessor to complete the building by the time of the commencement of the lease.

7. An express covenant with regard to the habitable condition of the leased premises abrogates any implied condition with regard thereto. Rubens *v.* Hill, 213 Ill. 523, 72 N. E. 1127.

615. 1. Rubens *v.* Hill, 115 Ill. App. 565.

5. Rubens *v.* Hill, 115 Ill. App. 565.

8. Davignon *v.* Chevalier, 8 Quebec Pr. 104; Hammond *v.* Jones, (Ind. App. 1908) 83 N. E. 257; Herpolsheimer *v.* Christopher, (Neb. 1907) 111 N. W. 359; Meyers *v.* Liebeskind, (Supm. Ct. App. T.) 91 N. Y. Supp. 725; Rothman *v.* Kosower, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 538, 96 N. Y. Supp. 268; Smith *v.* Barber, 112 N. Y. App. Div. 187, 98 N. Y. Supp. 365, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 615.

Acceptance by the tenant of possession of part of the premises may constitute a waiver of the lessor's implied covenant to give possession of all the leased premises. Rieger *v.* Welles, 110 Mo. App. 166, 84 S. W. 1136.

616. 3. Mirsky *v.* Horowitz, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 257, 92 N. Y. Supp. 48.

6. Rothman *v.* Kosower, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 538, 96 N. Y. Supp. 268.

10. Palmer *v.* Ingram, 2 Ga. App. 200, 58 S. E. 362; Jarrait *v.* Peters, 145 Mich. 29, 108 N. W. 432; Shutt *v.* Lockner, (Neb. 1906) 109 N. W. 383; Huntington Easy Payment Co. *v.* Parsons, (W. Va. 1907) 57 S. E. 253, *distinguishing* Robrecht *v.* Marling, 29 W. Va. 765.

13. Devers *v.* May, (Ky. 1907) 99 S. W. 255; Herpolsheimer *v.* Christopher, (Neb. 1907) 111 N. W. 359; Rothman *v.* Kosower, (Supm. Ct. App. T.) 107 N. Y. Supp. 2.

617. 7. Jones *v.* Gammon, 123 Ga. 47, 50 S. E. 982.

The construction of a written lease is a question for the court. Needy *v.* Middlekauff, 102 Md. 181, 62 Atl. 159.

Construction of Agreement to Furnish Power. — Bentley *v.* Metcalfe, (1906) 2 K. B. 548 (power negligently furnished causing injury to servant of lessee).

8. Pere Marquette R. Co. *v.* Wabash R. Co., 141 Mich. 215, 104 N. W. 650; New York City *v.* U. S. Trust Co., 116 N. Y. App. Div. 349, 101 N. Y. Supp. 574; Shartenberg *v.* Ellbey, 27 R. I. 414, 62 Atl. 979; I. X. L. Furniture, etc., Installment House *v.* Berets, (Utah 1907) 91 Pac. 279.

9. Moskowitz *v.* Direngen, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 543, 96 N. Y. Supp. 173; Harry Angelo Co. *v.* Improved Property Holding Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 328, 105 N. Y. Supp. 590.

11. Donnellan *v.* Wood, 4 Cal. App. 192, 87 Pac. 235; Knoepker *v.* Redel, 116 Mo. App. 62, 92 S. W. 171.

13. Moskowitz *v.* Direngen, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 543, 96 N. Y. Supp. 173.

618. 2. Shartenberg *v.* Ellbey, 27 R. I. 414, 62 Atl. 979.

5. Printed clauses must give way to inconsistent typewritten clauses. Butt *v.* Maier, etc., Brewery Co., (Cal. App. 1907) 92 Pac. 652.

9. *Alabama.* — Wilson *v.* State, (Ala. 1905) 30 So. 776; Brown *v.* O'Byrne, (Ala. 1907) 45 So. 129.

Arkansas. — Rhodes *v.* Purvis, 74 Ark. 227, 85 S. W. 235; Smith *v.* Caldwell, 78 Ark. 333, 95 S. W. 467.

California. — Dodd *v.* Pasch, 5 Cal. App. 686, 91 Pac. 166; Gabel *v.* Page, (Cal. App. 1907) 92 Pac. 749.

Colorado. — Mageon *v.* Alkire, (Colo. 1907) 92 Pac. 720.

Georgia. — Smith *v.* Green, 128 Ga. 90, 57 S. E. 98.

Illinois. — Kenyon *v.* Manley, 125 Ill. App. 615; Slaughter *v.* Johnson, 128 Ill. App. 417.

Indian Territory. — Thurman *v.* Henderson, (Indian Ter. 1907) 104 S. W. 936.

Iowa. — Willis *v.* Weeks, 129 Iowa 525, 105 N. W. 1012; Hinsdale *v.* McCune, (Iowa 1907) 113 N. W. 478.

Louisiana. — Jackson Brewing Co. *v.* Wagner, 117 La. 875, 42 So. 356.

Massachusetts. — Pettigrew *v.* McNally, 192 Mass. 198, 78 N. E. 309; De Fricst *v.* Bradley, 192 Mass. 246, 78 N. E. 467.

Minnesota. — Trainor *v.* Schutz, 98 Minn. 213, 107 N. W. 812.

New Jersey. — Hallenbeck *v.* Chapman, 72 N. J. L. 201, 63 Atl. 498.

New York. — Leeming *v.* Duryea, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 240, 97 N. Y. Supp. 355; Bristol Hotel Co. *v.* Pegram, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 535, 98 N. Y. Supp. 512; Dickinson *v.* Brown, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 656, 99 N. Y. Supp. 838.

Pennsylvania. — Fidelity Trust Co. *v.* Kohn, 27 Pa. Super. Ct. 374.

Washington. — Morris *v.* Healy Lumber Co., (Wash. 1907) 91 Pac. 186.

619. 1. Agreement to Put Premises in Repair Held Collateral. — Tobey *v.* Mattimore, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 454, 104 N. Y. Supp. 393; Daly *v.* Pizer, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 608, 90 N. Y. Supp. 1071.

Grantee of Reversion. — Tobey *v.* Mattimore, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 454, 104 N. Y. Supp. 393.

10. Rubens *v.* Hill, 213 Ill. 523, 72 N. E. 1127, *citing* 18 AM. AND ENG. ENCYC. OF LAW [illegible] 616.

620. 4. Rubens *v.* Hill, 213 Ill. 523, 72 N. E. 1127, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 620.

621. 5. In Hubbard *v.* Spencer, 117 Wis. 128, 101 N. W. 357, under a lease for five years commencing October 15, 1899, providing further that "this lease will expire after three years from October 15, 1899, if the leased property is sold," it was held that if the leased property was sold after the expiration of three years from October 15, 1899, the lease expired at the time of the sale.

6. Spring *v.* Lorimer, 25 Pa. Super. Ct. 340; Heffron *v.* Treber, (S. Dak. 1907) 110 N. W. 781; I. X. L. Furniture, etc., Installment House *v.* Berets, (Utah 1907) 91 Pac. 279.

622. 10. "Basement Adjoining the Corner." — Kasower *v.* Sandler, (Supm. Ct. App. T.) 96 N. Y. Supp. 734.

11. Okie *v.* Person, 23 App. Cas. (D. C.) 170.

623. 4. The lease of an icehouse situated on a pond, its use being restricted to the purposes of an icehouse, does not by implication confer any right upon the lessee to cut ice from the pond. Oliphant *v.* Richman, 67 N. J. Eq. 280, 59 Atl. 241.

6. Fuller *v.* Rose, 110 Mo. App. 344, 85 S. W. 931; Oehme *v.* Shotland, 99 N. Y. App. Div. 173, 90 N. Y. Supp. 958.

7. See Whipple *v.* Gorsuch, 82 Ark. 252, 101 S. W. 735 (putting "to let" sign on outside of window of rooms leased).

11. Carstenbrook *v.* Wedderien, 5 Cal. App. 603, 91 Pac. 117 (right of pasturage passes to lessee).

Under a lease describing the premises as "the lands," etc., the lessee is entitled to the fruit of the trees on the rented premises maturing during the existence of the lease. Quiggle *v.* Vining, 125 Ga. 98, 54 S. E. 74.

14. Frepons *v.* Grostein, 12 Idaho 671, 87 Pac. 1004; Crabtree *v.* Miller, 191 Mass. 123, 80 N. E. 225.

Steam. — If, after the execution of the lease the lessor agrees to render an additional service not mentioned in the lease for an additional consideration, such as the furnishing of

steam, the execution of a second lease without mentioning the additional service, the agreement for which is still being performed by both parties, does not pass the right to such service to the lessee by implication, as an incident to the lease. Slack *v.* Knox, 213 Ill. 190, 72 N. E. 746, *reversing* 114 Ill. App. 435, and *distinguishing* Thomas *v.* Wiggers, 41 Ill. 470.

Water Connection. — Key *v.* Neath Rural Dist. Council, 93 L. T. N. S. 507.

Heat. — Slaughter *v.* Johnson, 128 Ill. App. 411.

Power and Heat. — New Era Mfg. Co. *v.* O'Reilly, 197 Mo. 466, 95 S. W. 322.

Furnace necessary to heat floor rented in two-family house, held an "appurtenance." Stevens *v.* Taylor, 111 N. Y. App. Div. 561, 97 N. Y. Supp. 925.

Light for Show Window. — Whitehouse *v.* Aiken, 190 Mass. 468, 77 N. E. 499.

Way of Access. — Georke Co. *v.* Wadsworth, (N. J. 1907) 68 Atl. 71; Ward *v.* Hinkleman, 37 Wash. 375, 79 Pac. 956; Lindbloom *v.* Berkman, 43 Wash. 356, 86 Pac. 567.

624. 3. Stebbins *v.* Demorest, 138 Mich. 297, 101 N. W. 528.

Reservation of Use of Outer Wall. — Fuller *v.* Rose, 110 Mo. App. 344, 85 S. W. 931.

7. Montgomery Amusement Co. *v.* Montgomery Traction Co., 139 Fed. 353 (reversion of privilege to grant right of way for street railway through land leased for a park).

625. 3. Lindwall *v.* May, 111 N. Y. App. Div. 457, 97 N. Y. Supp. 821.

4. Pabst Brewing Co. *v.* Thorley, (C. C. A.) 145 Fed. 117.

7. Duncan *v.* Moloney, 115 Ill. App. 522.

8. Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 625.

9. Williams *v.* Gabriel, (1906) 1 K. B. 155 (acts of assignee of reversion); Gauthier *v.* Saint-Onge, 15 Quebec K. B. 264; Saint-Onge *v.* Gauthier, 27 Quebec Super. Ct. 232; Duncan *v.* Moloney, 115 Ill. App. 522; Tucker *v.* Du Puy, 210 Pa. St. 461, 60 Atl. 4; Hastings *v.* Burchfield, 28 Pa. Super. Ct. 309; Thomas *v.* Brin, (Tex. Civ. App. 1905) 85 S. W. 842.

626. 2. Isabella Gold Min. Co. *v.* Glenn, 37 Colo. 165, 86 Pac. 349.

627. 4. Garrison *v.* Hutton, 118 N. Y. App. Div. 455, 103 N. Y. Supp. 265; Duker *v.* Kaelin, 90 S. W. 959, 28 Ky. L. Rep. 900 (lease by life tenant); Maas *v.* Kramer, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 151, 101 N. Y. Supp. 800.

10. See Williams *v.* Getman, 114 N. Y. App. Div. 282, 99 N. Y. Supp. 977.

628. 1. Pabst Brewing Co. *v.* Thorley, (C. C. A.) 145 Fed. 117 (eminent domain).

Ordinance preventing use of theatre for theatrical purposes is not a breach. Kiernan *v.* Bush Temple of Music Co., 229 Ill. 494, 82 N. E. 410.

8. But see Ely *v.* Collins, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 255, 92 N. Y. Supp. 160.

9. Elliott *v.* Bankston, (Ala. 1907) 45 So. 173; Campbell *v.* Howerton, (Tex. Civ. App. 1905) 87 S. W. 370.

629. 1. McElvaney *v.* Smith, 76 Ark. 468, 88 S. W. 981; Freeman *v.* Slay, (Tex. Civ. App. 1905) 88 S. W. 404; Waggoner *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 1058.

630. 2. Brewster *v.* Lanyon Zinc Co., (C. C. A.) 140 Fed. 801; Security Trust, etc., Ins. Co. *v.* Cogswell, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 535, 96 N. Y. Supp. 87.

3. Buhman *v.* Nickels, 1 Cal. App. 266, 82 Pac. 85; Harrison *v.* Jordan, 194 Mass. 496, 80 N. E. 604; Seymour *v.* Hughes, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 248, 105 N. Y. Supp. 249; Tips Foundry, etc., Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 686; Thomason *v.* Oates, (Tex. Civ. App. 1907) 103 S. W. 1114. See also Bove *v.* Coppola, 91 N. Y. Supp. 8; Brader *v.* Geisler, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 394, 94 N. Y. Supp. 2; Outhouse *v.* Baird, 121 N. Y. App. Div. 546, 106 N. Y. Supp. 246.

6. Bath *v.* Bowles, 93 L. T. N. S. 801 (liability of lessor in case of exercise of option by assignee of reversion); Cooper *v.* Gambill, 146 Ala. 184, 40 So. 827; Adler *v.* Lowenstein, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 556, 102 N. Y. Supp. 492; McClung *v.* McPherson, 47 Oregon 73, 81 Pac. 567.

7. Bunch *v.* Williams, 76 Ark. 102, 88 S. W. 588; Ogle *v.* Hubbel, 1 Cal. App. 357, 82 Pac. 217; Segear *v.* Westcott, (Neb. 1906) 110 N. W. 379; Donohue *v.* New York City, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 415, 105 N. Y. Supp. 1069; Lewis *v.* Taylor, (Tex. Civ. App. 1907) 101 S. W. 846.

631. 1. Anderson *v.* Hebbard, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 664, 107 N. Y. Supp. 824.

Colessees. — Where there are colessees, the required notice should be given to each of them. Adler *v.* Lowenstein, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 556, 102 N. Y. Supp. 492.

2. Wilkins *v.* M'Ginity, (1907) 2 Ir. R. 660 (what constitutes three months' notice — October 1, November 1); Carter *v.* Urquhart, 15 Quebec K. B. 509; M. Fine Realty Co. *v.* New York City, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 246, 103 N. Y. Supp. 115.

4. Where the lease provides for its termination on service of a particular notice to "any person in possession," service on a person found on the premises other than the lessee is not such a service as is contemplated by the lease. Baragiano *v.* Villani, 117 Ill. App. 372.

9. Wellmaker *v.* Wheatley, 123 Ga. 201, 51 S. E. 436; Bennett *v.* Farkas, 126 Ga. 228, 54 S. E. 942 (construction of option as to price); Rankin *v.* Rankin, 216 Ill. 132, 74 N. E. 763; West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666.

Rule against Perpetuity Invalidating Option to Purchase. — Worthing *v.* Heather, (1906) 2 Ch. 532.

632. 2. Wright *v.* Kayner, 150 Mich. 7, 113 N. W. 779, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 631.

4. Option Held Sufficiently Certain. — Slaughter *v.* Mallet Land, etc., Co., (C. C. A.) 141 Fed. 282, to same effect as Marshe *v.* Willard, 68 Ill. App. 83; Ogle *v.* Hubbel, 1 Cal. App. 357, 82 Pac. 217 (preference as purchaser); Engler *v.* Garrett, 100 Md. 387, 59 Atl. 648 (price to be fixed by appraisers); Wright *v.* Kayner, 150 Mich. 7, 113 N. W. 779.

5. Kadisk *v.* Lyon, *229* Ill. 40, 82 N. E. 194, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 632.

6. No Liability for Rent after Election to Purchase. — In Withington *v.* Nichols, 187 Mass. 575, 73 N. E. 855, it was held under the Massachusetts statute that the rent was to be apportioned.

9. Millard *v.* Martin, (R. I. 1907) 68 Atl. 420.

10. See, however, Woodall *v.* Clifton, (1905) 2 Ch. 257.

Under a lease providing that the lessee "but no other person" shall at the expiration of the lease have the option of purchasing the land, the privilege of purchase does not pass to the assignee of the lessee. Myers *v.* Stone, 128 Iowa 10, 102 N. W. 507.

633. 3. Brown *v.* Larry, (Ala. 1907) 44 So. 841; Carpenter *v.* Thornburn, 76 Ark. 578, 89 S. W. 1047.

4. Herman *v.* Winter, (S. Dak. 1905) 105 N. W. 457.

6. Atlantic Product Co. *v.* Dunn, 142 N. Car. 471, 55 S. E. 299.

7. Thomas *v.* Gottlieb, etc., Brewing Co., 102 Md. 417, 62 Atl. 633.

634. 2. Wright *v.* Kayner, 150 Mich. 7, 113 N. W. 779, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 634.

3. Wright *v.* Kayner, 150 Mich. 7, 113 N. W. 779.

4. Montgomery Amusement Co. *v.* Montgomery Traction Co., 139 Fed. 353 (lease for park purposes); Dodd *v.* Ozburn, 128 Ga. 380, 57 S. E. 701; Isom *v.* Rex Crude Oil Co., 147 Cal. 659, 82 Pac. 317.

5. Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290 (lease for ninety-nine years).

6. Ridpath *v.* Spokane Stamp Works, (Wash. 1908) 93 Pac. 416.

635. 1. Dartford Brewery Co. *v.* Till, 95 L. T. N. S. 636; Jos. Schlitz Brewing Co. *v.* Nielsen, (Neb. 1906) 110 N. W. 746.

Acts of Third Persons. — A covenant restricting particular acts upon the premises may include acts of third persons. Prothero *v.* Bell, 22 Times L. Rep. 370.

2. Sullivan *v.* Monahan, 123 Ill. App. 467, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 634, 635; Independent Steam Fire Engine Co. *v.* Richland Lodge, etc., 70 S. Car. 572, 50 S. E. 499; Houston Ice, etc., Co. *v.* Keenan, 99 Tex. 79, 88 S. W. 197, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 635. See also Boozer *v.* Loan, etc., Bank, 78 S. Car. 5, 58 S. E. 934; San Antonio Brewing Assoc. *v.* Brents, (Tex. Civ. App. 1905) 88 S. W. 368.

636. 9. See Jalageas *v.* Winton, 119 Ill. App. 139.

Restriction to Use as a First-class Theatre. — *In re* Schoelkopf, (County Ct.) 54 Misc. (N. Y.) 31, 105 N. Y. Supp. 477.

637. 3. King *v.* Murphy Varnish Co., 188 Mass. 66, 74 N. E. 290.

11. Teape *v.* Douse, 92 L. T. N. S. 319.

13. Jalageas *v.* Winton, 119 Ill. App. 139; Jos. Schlitz Brewing Co. *v.* Nielsen, (Neb. 1906) 110 N. W. 746.

638. 6. Garrett *v.* Brant, 27 Ohio Cir. Ct. 463; Roberts *v.* Jones, 71 S. Car. 404, 51 S. E. 240.

639. 12. Covenant as to Cultivation Enforceable by Assignee of Reversion. — Chapman *v.* Smith, (1907) 2 Ch. 97.

14. Diederich *v.* Rose, 228 Ill. 610, 81 N. E. 1140.

641. 5. Busby *v.* Marshall, 125 Ga. 645, 54 S. E. 646 (accrual of cause of action).

642. 3. Critcher *v.* Watson, (N. Car. 1907) 59 S. E. 544;

5. Lee Chu *v.* Deslauriers, 30 Quebec Super. Ct. 494; Powell *v.* Pierce, 103 Va. 526, 49 S. E. 666.

643. 2. Dalton *v.* Toronto, 12 Ont. L. Rep. 582.

644. 4. Ovington Bros. Co. *v.* Henshaw, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 167, 93 N. Y. Supp. 380 (devisee of lessor).

645. 3. Hollywood *v.* First Parish, 192 Mass. 269, 78 N. E. 124.

9. Diederich *v.* Rose, 228 Ill. 610, 81 N. E. 1140.

647. 10. Hamilton Ogilvy *v.* Elliot, Sc. Ct. Sess. 7 F. 1115.

648. 3. *In re* Smith, 22 Times L. Rep. 619.

6. Measure of Damages. — Gorman *v.* Miller, 27 Pa. Super. Ct. 62.

7. Oliver *v.* Bredl, 25 Pa. Super. Ct. 653.

649. 1. Bijou Co. *v.* Lehmann, 118 La. 956, 43 So. 632.

5. The lease of a lot to be used for a particular purpose, with permission to the lessee to erect improvements to fit the lot for such purpose and to remove the same at the termination of the lease, confers on the lessee the mere privilege to erect such improvements and does not impose on him any obligation to do so. Lillard *v.* Kentucky Distilleries, etc., Co., (C. C. A.) 134 Fed. 168.

Covenant Runs with the Land. — Peters *v.* Stone, 193 Mass. 179, 79 N. E. 336.

650. 1. Clinton *v.* Shugart, 126 Iowa 179, 101 N. W. 785; Boston Molasses Co. *v.* Com., 193 Mass. 391, 79 N. E. 827.

6. Construction of Covenant as to Payment of Meter Charges for Water. — Myers *v.* Reade, 112 N. Y. App. Div. 363, 98 N. Y. Supp. 620.

651. 2. See Phinney *v.* Foster, 189 Mass. 182, 75 N. E. 103.

3. Phinney *v.* Foster, 189 Mass. 182, 75 N. E. 103.

4. McMillan *v.* Wing Sang Kee, 29 Quebec Super. Ct. 440; Eichner *v.* Cohen, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 541, 96 N. Y. Supp. 270.

652. 5. Richards *v.* Richardson, 188 Mass. 279, 74 N. E. 341; Ogden *v.* Getty, 100 N. Y. App. Div. 430, 91 N. Y. Supp. 664.

7. Bourne *v.* Salmon, (1907) 1 Ch. 616, 8 Ann. Cas. 110 (water rates); Mansfield *v.* Relf, (1908) 1 K. B. 71; Greaves *v.* Whitmarsh, (1906) 2 K. B. 340; Stuckey *v.* Hooke, 69 J. P. 119; Bourn *v.* Salmon, 95 L. T. N. S. 139; Gridley *v.* Einbigler, 98 N. Y. App. Div. 160, 90 N. Y. Supp. 721 (covenant to pay increased taxes); Chicago G. W. R. Co. *v.* Kansas City, etc., R. Co., 75 Kan. 167, 88 Pac. 1086, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 652–653.

653. 2. McVickar-Gaillard Realty Co. *v.*

Garth, 111 N. Y. App. Div. 924, 97 N. Y. Supp. 1

654. 12. Broadwell *v.* Banks, 134 Fed. 470; Richardson *v.* Gordon, 188 Mass. 279, 74 N. E. 41.

655. 3. Perrin, etc., Printing Co. *v.* Cook Hotel, etc., Co., 118 Mo. App. 44, 93 S. W. 5.

5. Broadwell *v.* Banks, 134 Fed. 470.

8. Williams *v.* Lassell, 22 Times L. Rep. 443 (covenant to insure against loss of liquor li-

657. 1. Hollywood *v.* First Parish, 192 Mass. 269, 78 N. E. 124, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 657.

2. Livingston County Telephone Co. *v.* Herzberg, 118 Ill. App. 599; Alexander *v.* Morris, 145 N. Car. 22, 58 S. E. 600; Waggoner *v.* Wyatt, (Tex. Civ. App. 1906) 94 S. W. 1076; Joseph Speidel Grocery Co. *v.* Stark, (W. Va. 1907) 59 S. E. 498 (assignment need not be recorded as against creditors of assignor).

4. Lewis *v.* Baker, (1905) 1 Ch. 46, 74 L. J. Ch. 39, 91 L. T. N. S. 744; Weander *v.* Claussen Brewing Assoc., 42 Wash. 226, 84 Pac. 735, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 656, 657.

658. 4. Louisville Gunning System *v.* Parks, (Ky. 1907) 104 S. W. 331; Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151; Schenkel *v.* Lischinsky, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 423, 90 N. Y. Supp. 300.

In case of a lease to a firm, the fact that on dissolution of the firm one remains in possession does not constitute a subletting. Carter *v.* Urquhart, 15 Quebec K. B. 509.

7. Schumer *v.* Hurwitz, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 121, 96 N. Y. Supp. 1026. But see Herzig *v.* Blumenkrohn, 122 N. Y. App. Div. 756, 107 N. Y. Supp. 570.

9. Herzig *v.* Blumenkrohn, 122 N. Y. App. Div. 756, 107 N. Y. Supp. 570; Weander *v.* Claussen Brewing Assoc., 42 Wash. 226, 84 Pac. 735.

659. 5. Martin *v.* Sexton, 112 Ill. App. 199; Pierce *v.* Meadows, 86 S. W. 1127, 27 Ky. L. Rep. 870; Fleisch *v.* Schnaier, 119 N. Y. App. Div. 815, 104 N. Y. Supp. 921, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659.

660. 1. Meyer *v.* Livesley, 45 Oregon 487, 78 Pac. 670 (*following* Michigan decisions); Myer *v.* Roberts, (Oregon 1907) 89 Pac. 1051.

661. 10. Walker *v.* Wadley, 124 Ga. 275, 52 S. E. 904.

11. Gazlay *v.* Williams, (C. C. A.) 147 Fed. 678; Fleming *v.* Fleming Hotel Co., 69 N. J. Eq. 715, 61 Atl. 157.

13. But see West Shore R. Co. *v.* Wenner, (N. J. 1907) 68 Atl. 225.

662. 4. Squire *v.* Learned, (Mass. 1907) 81 N. E. 880 (bequest to executors in trust).

5. Langton *v.* Henson, 92 L. T. N. S. 805, *following* Varley *v.* Coppard, L. R. 7 C. P. 505, and *explaining* Bristol *v.* Westcott, 12 Ch. D. 461, 41 L. T. N. S. 117.

8. Langton *v.* Henson, 92 L. T. N. S. 805.

663. 1. Langton *v.* Henson, 92 L. T. N. S. 805.

6. **In England, Etc.** — Jenkins *v.* Price, (1908) 1 Ch. 10; *In re* Spark, (1905) 1 Ch. 456; Jenkins *v.* Price, (1907) 2 Ch. 229; Andrew *v.* Bridgman, (1907) 2 K. B. 494.

664. 1. Morrow *v.* Camp, (Tex. Civ. App. 1907) 101 S. W. 819.

4. But see Morrow *v.* Camp, (Tex. Civ. App. 1907) 101 S. W. 819 (consent to subletting does not authorize assignment).

6. Bowman *v.* Powell, 127 Ill. App. 114.

15. Bowman *v.* Powell, 127 Ill. App. 114; Fryszka *v.* Prybeski, 139 Mich. 461, 102 N. W. 977; Weil *v.* Witte, (Supm. Ct. App. T.) 90 N. Y. Supp. 287; Shand *v.* McCloskey, 27 Pa. Super. Ct. 260. But see Harris *v.* Sheffel, 117 Mo. App. 514, 94 S. W. 738 (where lease expressly authorized assignment).

667. 1. Norton *v.* Stroud State Bank, 17 Okla. 295, 87 Pac. 848.

5. **Injunction to Compel Specific Performance of Negative Covenants.** — Harris *v.* Boots, (1904) 2 Ch. 376.

668. 9. **Covenant against Assignments Without Consent of Lessor.** — Livingston County Telephone Co. *v.* Herzberg, 118 Ill. App. 599.

669. 13. Livingston County Telephone Co. *v.* Herzberg, 118 Ill. App. 599; Donaldson *v.* Strong, (Mass. 1907) 81 N. E. 267; Shalet *v.* Rauch, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 311, 98 N. Y. Supp. 883 (liability does not exceed that of the lessee).

670. 2. Schwartz *v.* Williamson, 29 Ohio Cir. Ct. 78.

672. 6. Landt *v.* McCullough, 218 Ill. 607, 75 N. E. 1069 (sufficiency of proof of entry by assignee); Landt *v.* McCullough, 121 Ill. App. 328.

7. In Fechter *v.* Schonger, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 648, 103 N. Y. Supp. 738, *applying* Dassori *v.* Zarek, 71 N. Y. App. Div. 538, 75 N. Y. Supp. 841, it was held that where the assignment does not contain any agreement of covenants on the part of the assignee to pay the rent or to perform the covenants of the lessee he incurs no liability to the lessor for rent accruing after he abandons possession of the premises.

673. 7. Langton *v.* Henson, 92 L. T. N. S. 805; Hartman *v.* Thompson, 104 Md. 389, 65 Atl. 117; Donaldson *v.* Strong, (Mass. 1907) 81 N. E. 267.

746. 3. Hartman *v.* Thompson, 104 Md. 389, 65 Atl. 117; Donaldson *v.* Strong, (Mass. 1907) 81 N. E. 267.

5. Donaldson *v.* Strong, (Mass. 1907) 81 N. E. 267.

8. Langton *v.* Henson, 92 L. T. N. S. 805; Donaldson *v.* Strong, (Mass. 1907) 81 N. E. 267.

9. Langton *v.* Henson, 92 L. T. N. S. 805.

675. 6. Waite *v.* Jennings, (1906) 2 K. B. 11.

680. 2. Mitchell *v.* Young, 80 Ark. 441, 97 S. W. 454; Martin *v.* Sexton, 112 Ill. App. 199; Schenkel *v.* Lischinsky, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 423, 90 N. Y. Supp. 300; Fleisch *v.* Schnaier, 119 N. Y. App. Div. 815, 104 N. Y. Supp. 921.

5. Dodd *v.* Ozburn, 128 Ga. 380, 57 S. E. 701; Louisville Gunning System *v.* Parks, (Ky. 1907) 104 S. W. 331; Adams *v.* Bonnefon, 124 Mo. App. 457, 101 S. W. 693; Waggoner *v.* Snody, 36 Tex. Civ. App. 514, 82 S. W. 355.

Liability for Subletting in Violation of Statute. — Wright *v.* Henderson, (Tex. Civ. App. 1905) 86 S. W. 799 (acquiescence of lessor in subletting).

8. Carlin *v.* Harris, 100 Md. 55, 59 Atl. 122, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680.

681. 3. Levey *v.* Hockwald, (Cal. App. 1907) 92 Pac. 872 (nature of rent reserved on sublease is immaterial).

5. A covenant against subletting the entire premises is not broken by a letting of a part of the premises. Cuschner *v.* Westlake, 43 Wash. 690, 86 Pac. 948.

13. Portage Grange, etc. *v.* Free, etc., Masonic Lodge, 141 Mich. 402, 104 N. W. 667.

682. 1. Where a landlord occupies part of a building with only one entrance and lets off another part with a covenant by the tenant not to assign or underlet without the landlord's license, such license not to be "unreasonably withheld," it is reasonable for the landlord, before granting a license to underlet, to ask for what purpose the portion to be underlet is to be used, and to stipulate for a similar covenant between the undertenant and himself. *In re* Spark, (1905) 1 Ch. 456, 74 L. J. Ch. 318, 92 L. T. N. S. 537.

8. Beck *v.* Minnesota, etc., Grain Co., 131 Iowa 62, 107 N. W. 1032; Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151; Morrow *v.* Camp, (Tex. Civ. App. 1907) 101 S. W. 819, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682–683.

The Sublessee May by Agreement between himself and his sublessors become liable to the lessor. Foucar *v.* Holberg, (Ark. 1908) 107 S. W. 172.

9. Missouri, etc., R. Co. *v.* Keahey, 37 Tex. Civ. App. 330, 83 S. W. 1102.

683. 9. South of England Dairies *v.* Baker, (1906) 2 Ch. 631.

11. Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151.

684. 2. Improper Use of Premises by Sublessee. — Palethorpe *v.* Home Brewery Co., (1906) 2 K. B. 5.

In Wilson *v.* Twamley, (1904) 2 K. B. 99, where the lessee covenanted that he would not do or "suffer" to be done on the premises any act whereby liquor licenses might be forfeited, it was held that he was not liable for acts done by his sublessee working a forfeiture of such license.

3. Americus Mfg., etc., Co. *v.* Hightower, 3 Ga. App. 65, 59 S. E. 309; Crow *v.* Burgin, (Miss. 1905) 38 So. 625.

6. Boyd *v.* Kinzy, 127 Ga. 358, 56 S. E. 420 (estopped to deny his lessor's title); Cuesta *v.* Goldsmith, 1 Ga. App. 48, 57 S. E. 983.

685. 5. Butt *v.* Maier, etc., Brewery, (Cal. App. 1907) 92 Pac. 652; Connors *v.* Clark, 79 Conn. 100, 63 Atl. 951 (construction as to term of renewal); Willis *v.* Weeks, 129 Iowa 525, 105 N. W. 1012.

7. Overall *v.* Madisonville, (Ky. 1907) 102 S. W. 278; Wright *v.* Kayner, 150 Mich. 7, 113 N. W. 779.

12. Barbee *v.* Greenberg, 144 N. Car. 430, 57 S. E. 126, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 685.

686. 5. Austin *v.* Newham, (1906) 2 K. B. 167, 6 Ann. Cas. 102 (covenant for renewal held sufficiently certain as to term of renewal); Streit *v.* Fay, 230 Ill. 319, 82 N. E. 648, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 686.

In Hoff *v.* Royal Metal Furniture Co., 117 N. Y. App. Div. 884, 103 N. Y. Supp. 371, *distinguishing* Western Transp. Co. *v.* Lansing, 49 N. Y. 499, it was held that a covenant in a lease for a year giving to the lessee "the privilege of renewing this lease from year to year upon notice to that effect in writing given on or before the day of the date of the expiration of each and every year" was not invalid for want of certainty as to the renewal term, but that it conferred on the lessee the right to demand a perpetual renewal from year to year.

687. 1. Holt *v.* Nixon, (C. C. A.) 141 Fed. 952; Walker *v.* Wadley, 124 Ga. 275, 52 S. E. 904 (covenant against assigning or subletting); Martin *v.* Babcock, etc., Co., 186 N. Y. 451, 79 N. E. 726; Hoff *v.* Royal Metal Furniture Co., 117 N. Y. App. Div. 884, 103 N. Y. Supp. 371.

Where a contract of lease renewable "upon the same terms and conditions" is secured by a surety so solid as to leave no room whatever for doubt or risk, the lessee must tender for the renewal a surety equally safe, or practically so. He cannot require the lessor to accept a surety as to whose solidity there may be some doubt. Piper *v.* Levy, 114 La. 544, 38 So. 448.

2. Martin *v.* Babcock, etc., Co., 109 N. Y. App. Div. 16, 95 N. Y. Supp. 1057.

5. Sears *v.* St. John, 1 Can. Sup. Ct. Cas. 486; Drake *v.* Board of Education, 208 Mo. 540, 106 S. W. 650, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687.

688. 2. Martin *v.* Babcock, etc., Co., 186 N. Y. 451, 79 N. E. 726; Hoff *v.* Royal Metal Furniture Co., 117 N. Y. App. Div. 884, 103 N. Y. Supp. 371.

9. Newberger *v.* Matchak, (Supm. Ct. App. T.) 99 N. Y. Supp. 470.

689. 5. Gray *v.* Maier, etc., Brewery, 2 Cal. App. 653, 84 Pac. 280.

6. Trainor *v.* Schutz, 98 Minn. 213, 107 N. W. 812.

13. I. X. L. Furniture, etc., Installment House *v.* Berets, (Utah 1907) 91 Pac. 279.

690. 1. Heffron *v.* Treber, (S. Dak. 1907) 110 N. W. 781; Williams *v.* Houston Cornice Works, (Tex. Civ. App. 1907) 101 S. W. 839.

On an issue whether a city has surrendered certain leased premises on the termination of a lease or has continued to occupy them so as to be liable on a covenant to pay rent during such occupation, the liability of the city is to be determined as that of any citizen would be. Commercial Wharf Corp. *v.* Boston, 194 Mass. 460, 80 N. E. 645.

2. Gerhart Realty Co. *v.* Brecht, 109 Mo. App. 25, 84 S. W. 216.

691. 1. Wright *v.* Kayner, 150 Mich. 7, 113 N. W. 779; White *v.* Sohn, (W. Va. 1907) 59 S. E. 800. But see Atlantic Product Co. *v.* Dunn, 142 N. Car. 471, 55 S. E. 299.

11. Giving Security for Rent. — Piper *v.* Levy, 114 La. 544, 38 So. 448.

692. 6. Atlantic Product Co. *v.* Dunn, 142

N. Car. 471, 55 S. E. 299; Mack *v.* Eckerlin, .. Ohio Cir. Ct. 133, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692; I. X. L. Furniture, etc., Installment House *v.* Berets, (Utah 1907) 91 Pac. 279.

7. Jackson Brewing Co. *v.* Wagner, 117 La. 875, 42 So. 356; Ocumpaugh *v.* Engel, 121 N. Y. App. Div. 9, 105 N. Y. Supp. 510; Murtland *v.* English, 214 Pa. St. 325, 6 Ann. Cas. 339, 63 Atl. 882.

9. Doepfner *v.* Bowers, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 561, 106 N. Y. Supp. 932; Keppler Bros. Co. *v.* Heinrichsdorf, 26 Ohio Cir. Ct. 16; I. X. L. Furniture, etc., Installment House *v.* Berets, (Utah 1907) 91 Pac. 279.

693. 1. Doepfner *v.* Bowers, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 7, 102 N. Y. Supp. 920, *applying* New York L. Ins., etc., Co. *v.* St. George's Church, (Supm. Ct. Spec. T.) 12 Abb. N. Cas. (N. Y.) 50 (accidental delay in foreign country due to passage difficulties).

4. Plattsmouth *v.* New Hampshire Sav. Bank, (C. C. A.) 139 Fed. 631.

7. Blount *v.* Connolly, 110 Mo. App. 603, 85 S. W. 605, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 693; Barbee *v.* Greenberg, 144 N. Car. 430, 57 S. E. 125.

8. Squire *v.* Learned, (Mass. 1907) 81 N. E. 880.

694. 2. Tweedie *v.* P. E. Olson Hardware, etc., Co., 96 Minn. 238, 104 N. W. 895, 1089; Tweedie *v.* P. E. Olson Hardware, etc., Co., 98 Minn. 11, 107 N. W. 557.

3. Parker *v.* Gortatowsky, 127 Ga. 564, 56 S. E. 846, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 694.

695. 2. Walker *v.* Wadley, 124 Ga. 275, 52 S. E. 904; Kentucky Lumber Co. *v.* Newell, (Ky. 1907) 105 S. W. 972; De Friest *v.* Bradley, 192 Mass. 346, 78 N. E. 467; Swan *v.* Inderlied, 187 N. Y. 372, 80 N. E. 195; Quinn *v.* Valiquette, (Vt. 1908) 68 Atl. 515.

4. Blount *v.* Connolly, 110 Mo. App. 603, 85 S. W. 605.

Contra. — Holt *v.* Nixon, (C. C. A.) 141 Fed. 952, decided under *Illinois* statute authorizing proceedings against tenants' holding over without right and distinguishing Hunter *v.* Silvers, 15 Ill. 174.

5. Austin *v.* Newham, (1906) 2 K. B. 167, 6 Ann. Cas. 102; Parker *v.* Gortatowsky, 127 Ga. 565, 56 S. E. 846, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 694, 695.

7. Blount *v.* Connolly, 110 Mo. App. 603, 85 S. W. 605.

696. 1. Liability of Surety. — Shand *v.* McCloskey, 27 Pa. Super. Ct. 260.

2. McCourt *v.* Singers-Bigger, (C. C. A.) 145 Fed. 103, 7 Ann. Cas. 287, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 696.

5. McCourt *v.* Singers-Bigger, (C. C. A.) 145 Fed. 103, 7 Ann. Cas. 287.

698. 10. The fact that the lessor has executed a second lease to a third person to begin on the expiration of the defendant's term does not prevent him from suing the defendant upon his express covenant to redeliver possession. Thomas *v.* Wightman, 129 Ill. App. 305.

699. 1. Lehmaier *v.* Jones, 100 N. Y. App. Div. 495, 91 N. Y. Supp. 687; Knutsen *v.* Cinque, 113 N. Y. App. Div. 677, 99 N. Y. Supp. 911.

2. Accidental Destruction. — Junction Min. Co. *v.* Springfield Junction Coal Co., 122 Ill. App. 574.

5. Fox *v.* Lynch, (N. J. 1906) 64 Atl. 439.

8. Injuries from Structural Defects. — Drouin *v.* Wilson, (Vt. 1907) 67 Atl. 825.

10. Destruction of Building by Fire. — Delamatter *v.* Brown Bros. Co., 9 Ont. L. Rep. 351.

700. 1. Randolph *v.* Randolph, 3 N. Bruns. Eq. Rep. 576; Fox *v.* Lynch, (N. J. 1906) 64 Atl. 439.

2. Stipulated Damages for Failure to Redeliver Possession. — Thomas *v.* Wightman, 129 Ill. App. 305.

3. Brown Land Co. *v.* Lehman, 134 Iowa 712, 112 N. W. 185 (depreciation in rental value held measure of damages).

LEGACIES AND DEVISES.

710. 5. Lindsay *v.* Wilson, 103 Md. 252, 63 Atl. 566, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 710.

6. Lindsay *v.* Wilson, 103 Md. 252, 63 Atl. 566, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 710; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38.

7. Lindsay *v.* Wilson, 103 Md. 252, 63 Atl. 566, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 710; Campbell *v.* Cole, (N. J. 1906) 64 Atl. 461; Mills *v.* Tompkins, 110 N. Y. App. Div. 212, 97 N. Y. Supp. 9.

711. 7. Nusly *v.* Curtis, 36 Colo. 464, 85 Pac. 846, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 711; Stilphen's Appeal, 100 Me. 146, 60 Atl. 888; Matter of King, 122 N. Y. App. Div. 354, 106 N. Y. Supp. 1073; White *v.* White, 73 S. Car. 261, 53 S. E. 371 *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 711.

712. 8. Matter of Matthews, 122 N. Y. App. Div. 605, 107 N. Y. Supp. 301.

713. 1. *In re* Bergen, (Surrogate Ct.) 56 Misc. (N. Y.) 92, 106 N. Y. Supp. 1038; *In re* Snyder, 217 Pa. St. 71, 66 Atl. 157.

3. Matter of King, 122 N. Y. App. Div. 354, 106 N. Y. Supp. 1073.

714. 1. *In re* Painter, 150 Cal. 498, 89 Pac. 98; Nusly *v.* Curtis, 36 Colo. 464, 85 Pac. 846; Lewis *v.* Sedgwick, 223 Ill. 213, 79 N. E. 14, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714; Stilphen's Appeal, 100 Me. 146, 60 Atl. 888; Gordon *v.* James, 86 Miss. 719, 39 So. 18, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714; Matter of Matthews, 122 N. Y. App. Div. 605, 107 N. Y. Supp. 301, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714; *In re* Noon, (Oregon 1907) 88 Pac. 673, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714; *In re* Snyder, 217 Pa. St. 71, 66 Atl. 157, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714; White *v.* White, 73 S. Car. 261, 53 S. E. 371, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714. See also *In re* Pullen, (Surrogate Ct.) 52 Misc. (N. Y.) 75, 102 N. Y. Supp. 435, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714.

5. Gordon *v.* James, 86 Miss. 719, 39 So. 18, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714; *In re* Noon, (Oregon 1907) 88 Pac. 673, *citing* 18 AM. AND ENG. ENCYC. OF

Law (2d ed.) 714. See also Missouri Baptist Sanitarium *v.* McCune, 112 Mo. App. 332, 87 S. W. 93.

715. 5. *In re* Pullen, (Surrogate Ct.) 52 Misc. (N. Y.) 75, 102 N. Y. Supp. 435, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 71[illegible].

7. Nusly *v.* Curtis, 36 Colo. 464, 85 Pac. 846; Missouri Baptist Sanitarium *v.* McCune, 112 Mo. App. 332, 87 S. W. 93; *In re* Howard, (Surrogate Ct.) 46 Misc. (N. Y.) 204, 94 N. Y. Supp. 86; *In re* Bergen, (Surrogate Ct.) 56 Misc. (N. Y.) 92, 106 N. Y. Supp. 1038; *In re* Noon, (Oregon 1907) 88 Pac. 673, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 715; *In re* Snyder, 217 Pa. St. 71, 66 Atl. 157; White *v.* White, 73 S. Car. 261, 53 S. E. 371.

8. Nusly *v.* Curtis, 36 Colo. 464, 85 Pac. 846.

716. 4. *In re* Painter, 150 Cal. 498, 89 Pac. 98, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 716.

6. *In re* Painter, 150 Cal. 498, 89 Pac. 98, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 716.

7. Matter of Matthews, 122 N. Y. App. Div. 605, 107 N. Y. Supp. 301. See also *In re* Miller, 128 Iowa 612, 105 N. W. 105.

717. 3. Nusly *v.* Curtis, 34 Colo. 464, 85 Pac. 846.

718. 5. See *In re* Bergen, (Surrogate Ct.) 56 Misc. (N. Y.) 92, 106 N. Y. Supp. 1038.

Bequest or Proceeds of Sale of Stock Not Specific Bequest. — Missouri Baptist Sanitarium *v.* McCune, 112 Mo. App. 332, 87 S. W. 93.

7. *In re* Noon, (Oregon 1907) 88 Pac. 673, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 718.

720. 11. *In re* Painter, 150 Cal. 498, 89 Pac. 98, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 720.

721. 5. Nusly *v.* Curtis, 36 Colo. 464, 85 Pac. 846; Stilphen's Appeal, 101 Me. 146, 60 Atl. 888; Matthews *v.* Targarona, 104 Md. 442, 65 Atl. 60; *In re* Howard, (Surrogate Ct.) 46 Misc. (N. Y.) 204, 94 N. Y. Supp. 86; White *v.* White, 73 S. Car. 261, 53 S. E. 371, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 721. See also O'Day *v.* O'Day, 193 Mo. 62, 91 S. W. 921.

6. Stilphen's Appeal, 101 Me. 146, 60 Atl. 888; Matthews *v.* Targarona, 104 Md. 442, 65 Atl. 60; *In re* Tinney, (Surrogate Ct.) 49 Misc. (N. Y.) 213, 99 N. Y. Supp. 159. See also White *v.* White, 73 S. Car. 261, 53 S. E. 371.

7. Matthews *v.* Targarona, 104 Md. 442, 65 Atl. 60.

8. Nusly *v.* Curtis, 36 Colo. 464, 85 Pac. 846; Stilphen's Appeal, 101 Me. 146, 60 Atl. 888; Matthews *v.* Targarona, 104 Md. 442, 65 Atl. 60; *In re* Howard, (Surrogate Ct.) 46 Misc. (N. Y.) 204, 94 N. Y. Supp. 86; White *v.* White, 73 S. Car. 261, 53 S. E. 371.

723. 4. **Miscellaneous Instances of Residuary Bequests.** — Collard *v.* Collard, (N. J. 1907) 67 Atl. 190.

724. 4. *In re* Isaac, (1905) 1 Ch. 427, 74 L. J. Ch. 277; Leggett *v.* Stevens, 185 N. Y. 70, 77 N. E. 874; Mills *v.* Tompkins, 110 N. Y. App. Div. 212, 97 N. Y. Supp. 9.

725. 2. O'Connor *v.* Murphy, 147 Cal. 148, 81 Pac. 406; *In re* Blackstone, (Surrogate Ct.) 47 Misc. (N. Y.) 538, 95 N. Y. Supp. 977. See also Foil *v.* Newsome, 138 N. Car. 115, 50 S. E. 597; Mills *v.* Tompkins, 110 N. Y. App. Div. 212, 97 N. Y. Supp. 9 (to the same effect as Matter of Tompkins, 154 N. Y. 634, 49 N. E. 135, cited in the original note).

727. 4. Hartwell *v.* Martin, (N. J. 1906) 63 Atl. 754.

730. 1. *In re* Segelcke, (1906) 2 Ch. 301.

731. 6. Moore *v.* Matthews, 70 N. J. Eq. 373, 61 Atl. 743.

735. 1. *In re* Tinney, (Surrogate Ct.) 49 Misc. (N. Y.) 213, 99 N. Y. Supp. 159, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 734.

2. **Infants en Ventre sa Mere.** — See Villar *v.* Gilbey, (1907) A. C. 139, 7 Ann. Cas. 130; *In re* Salaman, (1907) 2 Ch. 46.

738. 3. *In re* Klein, 35 Mont. 185, 88 Pac. 798.

741. 8. Fralick *v.* Lyford, 107 N. Y. App. Div. 543, 95 N. Y. Supp. 433.

744. 4. **Acceptance of Devise Implied from Acts Asserting Dominion.** — Torno *v.* Torno, (Tex. Civ. App. 1906) 95 S. W. 762.

745. 3. *In re* Church, (Vt. 1907) 67 Atl. 549.

746. 1. Cunningham *v.* Cunningham, 220 Ill. 45, 77 N. E. 95; Young *v.* Biehl, 166 Ind. 367, 77 N. E. 406; Morath *v.* Weber, (Ky. 1906) 98 S. W. 321; Bonnie *v.* Haldeman, (Ky. 1907) 102 S. W. 308; Paulus *v.* Besch, 127 Mo. App. 255, 104 S. W. 1149; Beetson *v.* Stoops, 186 N. Y. 456, 79 N. E. 731; *In re* Church, (Vt. 1907) 67 Atl. 549; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811.

2. See Beetson *v.* Stoops, 186 N. Y. 456, 79 N. E. 731.

748. 2. Cooch *v.* Clark, 8 Del. Ch. 290, 68 Atl. 247; Farnsworth *v.* Whiting, 102 Me. 296, 66 Atl. 831, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 749 *et seq.*; Roberts *v.* Bosworth, 107 N. Y. App. Div. 511, 95 N. Y. Supp. 239; McNeal *v.* Pierce, 73 Ohio St. 7, 75 N. E. 938; Watkins *v.* Blount, (Tex. Civ. App. 1906) 94 S. W. 1116, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 748. See also Gilbert *v.* Gilbert, 127 Iowa 568, 103 N. W. 789, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 748; Gragg *v.* Gragg, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 197, 94 N. Y. Supp. 53.

749. 1. *Re* Eve, 93 L. T. N. S. 235.

5. McNeal *v.* Pierce, 73 Ohio St. 7, 75 N. E. 938.

750. 1. **Death after Testator but before Probate Does Not Cause Lapse.** — Jersey *v.* Jersey, 146 Mich. 660, 110 N. W. 54.

751. 1. Schneider *v.* Heilbron, 115 N. Y. App. Div. 720, 101 N. Y. Supp. 152.

6. Best *v.* Berry, 189 Mass. 510, 75 N. E. 712.

8. Meserve *v.* Haak, (Mass. 1906) 77 N. E. 377; Pimel *v.* Betjemann, 183 N. Y. 104, 76 N. E. 157.

753. 4. Farnsworth *v.* Whiting, 102 Me. [illegible], 66 Atl. 831, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 749 *et seq.*; *In re* Trust, etc., Co., 110 N. Y. App. Div. 528, 97 N. Y. Supp. 405.

See Farnsworth *v.* Whiting, 102 Me. 296, 66 Atl. 831, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 749 *et seq.*

754. 5. Farnsworth *v.* Whiting, 102 Me. 296, 66 Atl. 831, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 749 *et seq.*

755. 1. Lindsay *v.* Wilson, 103 Md. 252, 63 Atl. 566.

Statutes Apply Only Where Legatee or Devisee Leaves Issue Surviving.—Howard *v.* Harrington, 27 R. I. 586, 65 Atl. 282.

3. Pimel *v.* Betjemann, 99 N. Y. App. Div. 559, 91 N. Y. Supp. 49; Watkins *v.* Blount, (Tex. Civ. App. 1906) 94 S. W. 1116. See also Roberts *v.* Bosworth, 107 N. Y. App. Div. 511, 95 N. Y. Supp. 239.

5. Bosworth *v.* Storkbridge, 189 Mass. 266, 75 N. E. 712; Tilton *v.* Tilton, (Mass. 1907) 82 N. E. 704; Larwill *v.* Ewing, 73 Ohio St. 177, 76 N. E. 503; Schaefer *v.* Bernhardt, 76 Ohio St. 443, 81 N. E. 640.

756. 1. Watkins *v.* Blount, (Tex. Civ. App. 1906) 94 S. W. 1116.

2. Roberts *v.* Bosworth, 107 N. Y. App. Div. 511, 95 N. Y. Supp. 239; Watkins *v.* Blount, (Tex. Civ. App. 1906) 94 S. W. 1116.

6. Schaefer *v.* Bernhardt, 76 Ohio St. 443, 81 N. E. 640.

Deceased Devisee Wife of Testator, Not a Relative within Meaning of Statute.—Farnsworth *v.* Whiting, 102 Me. 296, 66 Atl. 831.

760. 1. Hoffman *v.* Steubling, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 157, 98 N. Y. Supp. 706.

9. Garrison *v.* Day, 36 Ind. App. 543, 76 N. E. 188, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 760.

761. 1. Garrison *v.* Day, 36 Ind. App. 543, 76 N. E. 188, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 761.

2. *In re* Isaac, (1905) 1 Ch. 427; Miller *v.* Ahrens, 150 Fed. 644; Leggett *v.* Stevens, 185 N. Y. 70, 77 N. E. 874; Kent *v.* Kent, 106 Va. 199, 55 S. E. 564.

762. 1. Garrison *v.* Day, 36 Ind. App. 543, 76 N. E. 188, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 761.

2. Leggett *v.* Stevens, 185 N. Y. 70, 77 N. E. 874.

763. 4. Pitzel *v.* Schneider, 216 Ill. 87, 74 N. E. 779. See also *In re* Russell, 150 Cal. 604, 89 Pac. 345.

764. 1. See O'Connor *v.* Murphy, 147 Cal. 148, 81 Pac. 406.

5. *In re* Russell, 150 Cal. 604, 89 Pac. 345; O'Connor *v.* Murphy, 147 Cal. 148, 81 Pac. 406; Duckworth *v.* Jordan, 138 N. Car. 520, 51 S. E. 109; Kent *v.* Kent, 106 Va. 199, 55 S. E. 564.

765. 1. Crawford *v.* Mound Grove Cemetery Assoc., 218 Ill. 399, 75 N. E. 998; Kent *v.* Kent, 106 Va. 199, 55 S. E. 564.

3. Harmon *v.* Harmon, (Conn. 1907) 66 Atl. 771; Kent *v.* Kent, 106 Va. 199, 55 S. E. 564, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 765.

4. Kent *v.* Kent, 106 Va. 199, 55 S. E. 564, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 765.

767. 7. See Crawford *v.* Mound Grove Cemetery Assoc., 218 Ill. 399, 75 N. E. 998.

769. 5. Chaplin *v.* Leapley, 35 Ind. App. 511, 74 N. E. 546, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 769. See also *In re* Jones, 211 Pa. St. 364, 60 Atl. 915.

772. 7. *In re* Arnton, 106 N. Y. App. Div. 326, 94 N. Y. Supp. 471, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 772.

773. 3. *In re* Arnton, 106 N. Y. App. Div. 326, 94 N. Y. Supp. 471, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 773.

4. *In re* Arnton, 106 N. Y. App. Div. 326, 94 N. Y. Supp. 471, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 773.

777. 1. Bromley *v.* Atwood, 79 Ark. 357, 96 S. W. 356.

2. Bromley *v.* Atwood, 79 Ark. 357, 96 S. W. 356.

784. 7. **Pecuniary Legacy Satisfied by Gift of Money.**—Gallagher *v.* Martin, 102 Md. 115, 62 Atl. 247.

792. 7. McDevitt *v.* Hibben, 221 Ill. 234, 77 N. E. 586; Newcomb *v.* Pine Grove Cemetery, 192 Mass. 214, 78 N. E. 125. See also Hope Johnstone *v.* Sinclair, Sc. Ct. Sess. 7 F. 25.

9. Smith *v.* Smith, (N. J. 1907) 65 Atl. 869.

793. 3. But see Ballantine *v.* Ballantine, 152 Fed. 775.

4. *In re* Schabacker, (Surrogate Ct.) 46 Misc. (N. Y.) 219, 94 N. Y. Supp. 80; Niagara Bank *v.* Talbot, 110 N. Y. App. Div. 519, 96 N. Y. Supp. 976.

5. Redfield *v.* Marvin, 78 Conn. 704, 63 Atl. 120; Woodward *v.* Holton, 78 Vt. 254, 62 Atl. 718. See also *In re* Bostwick, 119 N. Y. App. Div. 455, 104 N. Y. Supp. 69; *In re* Bowlby, (1904) 2 Ch. 685, 73 L. J. Ch. 810.

794. 6. But see Harrison *v.* Watkins, 127 Ga. 314, 56 S. E. 437.

796. 1. Bowen *v.* True, 74 S. Car. 486, 54 S. E. 1018, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 796.

797. 5. **Interest Allowed from Date of Testator's Death on Trust Fund Bequeathed to Widow.**—Baker *v.* Fooks, (Del. 1896) 67 Atl. 969.

10. See *In re* Bostwick, (Surrogate Ct.) 49 Misc. (N. Y.) 186, 98 N. Y. Supp. 932.

11. *In re* Martens, 106 N. Y. App. Div. 50, 94 N. Y. Supp. 297; *In re* Bostwick, (Surrogate Ct.) 49 Misc. (N. Y.) 186, 98 N. Y. Supp. 932.

801. 4. **In Absence of Debts and Letters Testamentary Legatee May Sue.**—Patton *v.* Pinkston, 86 Miss. 651, 38 So. 500.

802. 6. *In re* Chesney, 1 Cal. App. 30, 81 Pac. 679.

803. 3. Matthews *v.* Targarona, 104 Md. 442, 65 Atl. 60, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 803.

6. See Wyckoff *v.* O'Niel, (N. J. 1906) 63 Atl. 982.

LEGAL REPRESENTATIVES, PERSONAL REPRESENTATIVES, REPRESENTATIVES, ETC.

813. 2. Alexander *v.* McPeck, 180 Mass. 34, 75 N. E. 88; New York L. Ins. Co. *v.* Kansas City Nat. Bank, 121 Mo. App. 479, 97 S. W. 195.

815. 1. *In re* Riesenberg, (Mo. App. 1905) 90 S. W. 1170.

Grantee in Case to Secure Title Executed Contemporaneously. — Coffin *v.* Ontonagon Circuit Judge, 140 Mich. 425, 103 N. W. 835, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 813.

Heirs. — *In re* Riesenberg, (Mo. App. 1905) 90 S. W. 1170; *In re* Harton, 213 Pa. St. 503, 62 Atl. 1058, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 814.

LEGATEE.

821. **1.** Weigel *v.* Green, 218 Ill. 227, 75 N. E. 913, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 821; Lindsay *v.* Wilson, 103 Md. 274, 63 Atl. 566, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 821.

Legatee Devisee of Land. — Weigel *v.* Green, 218 Ill. 240, 75 N. E. 913, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 821.

LEGISLATION.

822. **2. Proposal to Amend State Constitution Not Legislation.** — Warfield *v.* Vandiver, 101 Md. 78, 60 Atl. 538.

LETTERS.

829. **2.** See Philip *v.* Pennell, (1907) 2 Ch. 577.

830. **1.** See Philip *v.* Pennell, (1907) 2 Ch. 577, wherein it was held that one into whose possession *letters* have lawfully come may use them to compile a biography without authority from the writer, but may not publish the *letters*, or extracts or paraphrases.

3. Philip *v.* Pennell, (1907) 2 Ch. 577.

LETTERS OF CREDIT.

832. **4.** Adams *v.* Williams, 125 Ga. 430, 432, 54 S. E. 99, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 831, 832.

LEVY.

838. **4.** Gray *v.* School Inspectors, 231 Ill. 63, 83 N. E. 95.

LEWD AND LASCIVIOUS COHABITATION AND CONDUCT.

841. **1. Lewd.** — Jamison *v.* State, 117 Tenn. 58, 94 S. W. 675, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 841, 842.

842. **3.** State *v.* Dashman, 124 Mo. App. 238, 101 S. W. 597.

5. Jamison *v.* State, 117 Tenn. 58, 94 S. W. 675.

7. Must Be Open, Notorious, Offensive, and Injurious. — Jamison *v.* State, 117 Tenn. 58, 94 S. W. 675.

8. In Massachusetts any unnatural and lascivious act committed with another person is criminal. Com. *v.* Delano, (Mass. 1908) 83 N. E. 406.

843. **2. Open and Notorious.** — Jamison *v.* State, 117 Tenn. 58, 94 S. W. 675.

844. **1.** State *v.* Dashman, 124 Mo. App. 238, 101 S. W. 597.

845. **1.** McNeely *v.* State, 84 Ark. 484, 106 S. W. 674; Sadler *v.* State, (Tex. Crim. 1908) 107 S. W. 352.

LIABILITY — LIABLE.

848. **1. Liability Incurred Wrongfully Acting Out of Term.** — Price *v.* Parker, (Mass. 1907) 83 N. E. 323.

LIBEL AND SLANDER.

861. **1.** *Alabama.* — Brooke *v.* State, (Ala. 1907) 45 So. 622.

Florida. — Briggs *v.* Brown, (Fla. 1908) 46 So. 325.

Georgia. — Witham *v.* Atlanta Journal, 124 Ga. 688, 53 S. E. 105.

Idaho. — See State *v.* Sheridan, (Idaho 1908) 93 Pac. 656.

Iowa. — Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618.

Missouri. — Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496; Kenworthy *v.* Journal Co., 117 Mo. App. 327, 93 S. W. 882 (Rev. Stat. Mo. 1899, § 2259).

New Jersey. — See State *v.* O'Hagan, 73 N. J. L. 209, 63 Atl. 95.

New York. — Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 182; Quinn *v.* Sun Printing, etc., Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 572, 105 N. Y. Supp. 1092; Horton *v.* Binghamton Press Co., 122 N. Y. App. Div. 332, 106 N. Y. Supp. [illegible].

Pennsylvania. — Com. *v.* Applegate, 33 Pa. Co. Ct. 587.

Rhode Island. — Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835.

South Carolina. — See Hubbard *v.* Furman University, 76 S. Car. 510, 57 S. E. 478.

Utah. — Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

Washington. — Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627; Reynolds *v.* Holland, (Wash. 1907) 90 Pac. 648.

862. **1.** Farbenfabriken of Elberfeld Co. *v.* Beringer, (C. C. A.) 158 Fed. 802; Haub *v.* Friermuth, 1 Cal. App. 556, 82 Pac. 571 (Civil Code Cal. (1897), § 46); Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835 (Act 1647 R. I. Col. Rec. 184).

863. **3.** State *v.* Sheridan, (Idaho 1908) 93 Pac. 656.

4. Daily *v.* New York Herald Co., 151 Fed. 114; Stewart *v.* Codrington, (Fla. 1908) 45 So. 809; Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Ranson *v.* West, (Ky. 1907) 101 S. W. 885; Burgess *v.* Patterson, (Ky. 1908) 106 S. W. 837; Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565.

864. **1.** Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60.

3. State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; State *v.* Conklin, 47 Oregon 509, 84 Pac. 482, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 864.

865. **3.** Brooke *v.* State, (Ala. 1907) 45 So. 622; Com. *v.* Applegate, 33 Pa. Co. Ct. 587, [illegible] 18 [illegible] ed.) 865.

Definitions of Criminal Libel. — [illegible] Duncan, (Ky. 1907) 104 S. W. 997.

Foundation of Criminal Libel. The foundation of the theory on which libel is made a crime is that by provoking passions of persons libeled it excites them to violence and a breach of the peace. Therefore, a criminal prosecution can be sustained where no civil action would lie. People *v.* Eastman, 188 N. Y. 478, 81 N. E. 459.

5. State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618; State *v.* Williams, 74 Kan. 180, 85 Pac. [illegible]; State *v.* Kottman, 110 La. 730, 41 So. 55; Razee *v.* State, 73 Neb. 732, 103 N. W. 438; State *v.* O'Hagan, 73 N. J. L. 209, 63 Atl. 95; Gow *v.* Bingham, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 66, 107 N. Y. Supp. 1011; Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772.

6. Briggs *v.* Brown, (Fla. 1908) 46 So. 325; State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; Dallavo *v.* Snider, 143 Mich. 542, 107 N. W. 271; Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349; Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573; Morrison *v.* Dean, (Tex. Civ. App. 1907) 104 S. W. 505; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627. See also Memphis Telephone Co. *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 904.

867. 2. Drunkenness. — An article which in effect imputes drunkenness is actionable *per se.* Morse *v.* Star Co., 118 N. Y. App. Div. 256, 103 N. Y. Supp. 496, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 867.

4. Burkhart *v.* North American Co., 214 Pa. St. 39, 63 Atl. 410.

5. Briggs *v.* Brown, (Fla. 1908) 46 So. 325, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 867; Morrison *v.* Dean, (Tex. Civ. App. 1907) 104 S. W. 505.

868. 2. Witham *v.* Atlanta Journal, 124 Ga. 688, 53 S. E. 105; Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2; Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993; Quinn *v.* Sun Printing, etc., Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 572, 105 N. Y. Supp. 1092; Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349; Woolley *v.* Plaindealer Pub. Co., 47 Oregon 619, 84 Pac. 473, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 868; American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

3. Feast *v.* Auer, (Ky. 1906) 90 S. W. 564; Line *v.* Spies, 139 Mich. 484, 102 N. W. 993; Burr's Damascus Tool Works *v.* Peninsular Tool Mfg. Co., 142 Mich. 417, 105 N. W. 858; Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299; Baxter *v.* Mohr, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 558, 102 N. Y. Supp. 844; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

870. 1. Marks *v.* Saumel, (1904) 2 K. B. 287, 90 L. T. N. S. 590, 53 W. R. 88, 73 L. J. K. B. 587, 20 Times L. Rep. 430; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

871. 5. What Is Infamous Punishment — Imprisonment in County Jail. — Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

872. 3. Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

873. 3. Witham *v.* Atlanta Journal, 124 Ga. 688, 53 S. E. 105. See also Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

874. 1. Lee *v.* Crump, 146 Ala. 655, 40 So 609, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 874.

3. Tobin *v.* Alfred M. Best Co., 120 N. Y. App. Div. 387, 105 N. Y. Supp. 294.

875. 1. Criminal Cases Pending. — To falsely publish of another that there are criminal cases pending against him is libelous *per se.* Witham *v.* Atlanta Journal, 124 Ga. 688, 53 S. E. 105.

2. Soper *v.* Associated Press, 115 N. Y. App. Div. 815, 101 N. Y. Supp. 342; Soper *v.* Butler, 115 N. Y. App. Div. 818, 101 N. Y. Supp. 345. See also Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 982. *Compare* Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704.

A Statement that Plaintiff Has Been Released from Custody does not imply that he was arrested for a crime. Rees *v.* New York Herald Co., 112 N. Y. App. Div. 456, 98 N. Y. Supp. 548.

3. Submitting to Operation. — Written words charging plaintiff with having submitted to an operation are actionable. Wuest *v.* Brooklyn Citizen, 102 N. Y. App. Div. 480, 92 N. Y. Supp. 852.

876. 4. "Another Fire Will Cause Their Arrest" — Written Charge Actionable. — Bohan *v.* Record Pub. Co., 1 Cal. App. 429, 82 Pac. 634.

877. 2. Oral Words Charging a Daughter with Whipping Her Mother were held actionable. Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

4. Gordon *v.* Journal Pub. Co., (Vt. 1908) 69 Atl. 742.

878. 2. "You Are Not His Wife, You Could Not Be His Wife, as Your Husband, Mr. Waring, Is Still Living." — Oral words held not actionable as they did not impute the crime of bigamy. Maerlender *v.* Porter, 114 N. Y. App. Div. 180, 99 N. Y. Supp. 533.

4. See Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756.

879. 1. Written Words Charging Burglary Actionable. — Rose *v.* Imperial Engine Co., 110 N. Y. App. Div. 437, 96 N. Y. Supp. 808; McClure *v.* Review Pub. Co., 38 Wash. 160, 80 Pac. 303.

"Breaking and Entering" alleged contrary to the statute, implies that the crime of burglary was intended. State *v.* Lomack, 130 Iowa 79, 106 N. W. 386.

2. Written Charge of Fixing Case Before Magistrate Actionable. — See Breen *v.* New York Herald, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 567, 106 N. Y. Supp. 872.

Oral Charge of Cheating Society Not Actionable. — Casale *v.* Calderone, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 555, 97 N. Y. Supp. 1102, wherein the words were, "These men [referring to plaintiff and son] have paid their arrears for the purpose of cheating the society."

3. Charge of Passing or Attempting to Pass Counterfeit Money. — See Richardson *v.* Reps, (Iowa 1907) 112 N. W. 788.

880. 2. State *v.* Conklin, 47 Oregon 509, 84 Pac. 482, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 880; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463. See also Fordyce *v.* Richmond, (Neb. 1907) 111 N. W. 850.

3. **"Applied Money to His Own Use"** instead

of paying it over on the judgment, was held libelous *per se* in American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

881. 1. Written Words Imputing Breach of Trust Actionable. — American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

3. Written Words in Effect Charging Blackmail Actionable. — Town Topics Pub. Co. *v.* Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575.

Charging Person with Being Blackmailer Libelous Per Se. — Sheibley *v.* Nelson, 75 Neb. 804, 106 N. W. 1034.

"Men Mentioned in the Police Blackmail Scandal." — In Breen *v.* New York Herald Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 567, 106 N. Y. Supp. 872, these words published with a picture of the plaintiff, although the name was not mentioned, were held to charge plaintiff with "blackmailing," and the complaint was not demurrable.

884. 1. Lee *v.* Crump, 146 Ala. 655, 40 So. 609; Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767; Robinson *v.* Van Auken, 190 Mass. 161, 76 N. E. 601; Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2; Shockey *v.* McCauley, 101 Md. 461, 61 Atl. 583.

Written Words Charging Larceny Actionable. — Rose *v.* Imperial Engine Co., 110 N. Y. App. Div. 437, 96 N. Y. Supp. 808.

887. 1. Larceny of Wood — Written Words Actionable. — Burgess *v.* Patterson, (Ky. 1908) 106 S. W. 837.

3. Burgess *v.* Patterson, (Ky. 1908) 106 S. W. 837.

888. 5. Lee *v.* Crump, 146 Ala. 655, 40 So. 609, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 888; Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767; Register Newspaper Co. *v.* Stone, (Ky. 1907) 102 S. W. 800; Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2; Grimes *v.* Thorp, 113 Mo. App. 652, 88 S. W. 638; Shockey *v.* McCauley, 101 Md. 461, 61 Atl. 583; Rose *v.* Imperial Engine Co., 110 N. Y. App. Div. 437, 96 N. Y. Supp. 805.

889. 2. Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767; Cain *v.* Shutt, (Md. 1907) 66 Atl. 24; Line *v.* Spies, 139 Mich. 484, 102 N. W. 993; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307; Dallin *v.* Mayer, 122 N. Y. App. Div. 676, 107 N. Y. Supp. 316.

890. 1. *Compare* Cain *v.* Shutt, (Md. 1907) 66 Atl. 24.

891. 3. Shockey *v.* McCauley, 101 Md. 461, 61 Atl. 583.

892. 1. Written Charge that Plaintiff Received Stolen Goods Actionable. — Burgess *v.* Patterson, (Ky. 1908) 106 S. W. 837.

2. Poisoning All the Cats and Dogs in Neighborhood — Oral Charge Actionable. — Baxter *v.* Mohr, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 558, 102 N. Y. Supp. 844.

3 Oral Charge of Murder Actionable. — Hamb *v.* Friemuth, [illegible]; Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251.

893. 1. See Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 701.

"She Murdered the Child" Is Actionable. — Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251.

3 Oral Words Charging Husband with Criminal Negligence Actionable. — Gendron *v.* St. Pierre, 73 N. H. 419, 62 Atl. 966.

Under Arrest for Murder. — It is not libelous that a man is under arrest for murder is not equivalent to a declaration that he is guilty of murder. Soper *v.* Associated Press, 115 N. Y. App. Div. 815, 101 N. Y. Supp. 342; Soper *v.* Butler, 115 N. Y. App. Div. 818, 101 N. Y. Supp. 345.

Administered "Knock-out Drops" — Written Words Actionable. — Munnally *v.* Mail, etc., Co., 113 N. Y. App. Div. 831, 99 N. Y. Supp. 647.

894. 1. Evidence Must Show that Hearers Knew the Child Was Dead. — Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251.

2. Written Words Charging Perjury Actionable. — Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756; Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547.

898. 2. Moore *v.* Dodd, (Ky. 1907) 104 S. W. 224.

3. Written Charge that Witness Was "Bribed." — A writing containing a statement that a person had been "bribed" to testify as a witness against one party and in the interest of his adversary imputes to such person the crime of perjury and is libelous. Atlantic News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756.

Written Words Not Imputing Perjury. — In O'Neill *v.* Star Co., 121 N. Y. App. Div. 849, 106 N. Y. Supp. 973, the article published was as follows: "The diamonds in Mrs. O'Neill's ears and the jeweled brooch at her throat were mute opposing witnesses to her testimony of poverty." It was held not to impute the crime of perjury.

900. 1. Written Words charging that a notary public procured a party to make a false affidavit were held to be actionable in Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618.

2. Written Words Charging Keeping Bawdy House Actionable. — McArthur *v.* Sault News Printing Co., 148 Mich. 556, 112 N. W. 126.

901. 3. Fleming *v.* Wallace, 116 Tenn. 20, 91 S. W. 47.

5. Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 901.

Written Charge of Robbery Actionable. — Munnally *v.* Mail, etc., Co., 113 N. Y. App. Div. 831, 99 N. Y. Supp. 647; Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349.

6. Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 901.

902. 1. Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 901.

2. Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 902.

904. 1. "Buncoed" — Written Words Actionable. — State *v.* Williams, 74 Kan. 180, 85 Pac. 938 (which was a criminal prosecution).

Cruelty to Animals — Written Charge Actionable. — Sampson *v.* Peck Stencil Dryer Co., 113 N. Y. App. Div. 84, 94 N. Y. Supp. 693.

"Black Hand on His Back." — In Lambertini *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 437, 97 N. Y. Supp. 694, *reversing* (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 174, 95 N. Y. Supp. 329, these words were published as a joke, and it was held that they did not charge a crime against a man, as being a member of a band known as the Black Hand.

Charging Commission or Fee for Employment — Oral Words Not Actionable. — Russell *v.* Barron, 111 N. Y. App. Div. 382, 97 N. Y. Supp. 1061, wherein the plaintiff was charged orally with having employed men for his employer and charging them a commission or fee on their wages. It was held not a criminal offense.

Fraudulent Conversion of Property Actionable. — See Shipp *v.* Patton, (Ky. 1906) 93 S. W. 1033.

"Grafters" — Written Charge Actionable. — Craig *v.* Warren, 99 Minn. 246, 109 N. W. 231.

905. 1. Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Phythian *v.* Raison, (Ky. 1906) 92 S. W. 591; Burgess *v.* Patterson, (Ky. 1908) 106 S. W. 837; Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Scofield *v.* Milwaukee Free Press, 126 Wis. 81, 105 N. W. 227.

906. 1. Flood *v.* Evening Post Pub. Co., 71 S. Car. 122, 50 S. E. 641.

3. Schaefer *v.* Schoenborn, 101 Minn. 67, 111 N. W. 843; State *v.* Conklin, 47 Oregon 509, 84 Pac. 482.

908. 2. Helferich *v.* Faebel, 15 Ohio Dec. 396, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 908.

3. Dedcaux *v.* King, (Miss. 1908) 45 So. 466. See also Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693.

909. 1. *United States.* — Doherty *v.* Lynett, 155 Fed. 681.

Alabama. — Comer *v.* Louisville, etc., R. Co., (Ala. 1907) 44 So. 676, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 909.

California. — Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097.

Delaware. — Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97.

District of Columbia. — Raymond *v.* U. S., 25 App. Cas. (D. C.) 555; Washington Times Co. *v.* Downey, 26 App. Cas. (D. C.) 258, 6 Ann. Cas. 765.

Florida. — Stewart *v.* Codrington, (Fla. 1908) 45 So. 809; Briggs *v.* Brown, (Fla. 1908) 46 So. 325.

Georgia. — Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756.

Idaho. — State *v.* Sheridan, (Idaho 1908) 93 Pac. 656.

Iowa. — Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Jensen *v.* Damm, 127 Iowa 555, 103 N. W. 798; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618; Harriman *v.* New Nompareil Co., 132 Iowa 616, 110 N. W. 33.

Kentucky. — Phythian *v.* Raison, (Ky. 1906) 92 S. W. 591; Com. *v.* Duncan, (Ky. 1907) 104 S. W. 997; Burgess *v.* Patterson, (Ky. 1908) 106 S. W. 837.

Louisiana. — Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224.

Maryland. — Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36.

Massachusetts. — Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419.

Minnesota. — Craig *v.* Warren, 99 Minn. 246, 109 N. W. 231.

Missouri. — Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565.

Nebraska. — Sheibley *v.* Huse, 75 Neb. 811, 106 N. W. 1028.

New Hampshire. — Richardson *v.* Thorpe, 73 N. H. 532, 63 Atl. 580, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 909.

New York. — Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993; Flaherty *v.* New York Times Co., 109 N. Y. App. Div. 489, 96 N. Y. Supp. 381; Duffy *v.* New York Evening Post Co., 109 N. Y. App. Div. 471, 96 N. Y. Supp. 629; Lamberti *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 437, 97 N. Y. Supp. 694, *reversing* (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 174, 95 N. Y. Supp. 329; Hart *v.* Woodbury Dermatological Institute, 113 N. Y. App. Div. 1000, 98 N. Y. Supp. 1000; McDonald *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 467, 98 N. Y. Supp. 118; Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 982; Bergstrom *v.* Ridgway-Thayer Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 95, 103 N. Y. Supp. 1093; Quinn *v.* Sun Printing, etc., Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 572, 105 N. Y. Supp. 1092; O'Neill *v.* Star Co., 121 N. Y. App. Div. 849, 106 N. Y. Supp. 973; Hickey *v.* Carson Mfg. Co., (Supm. Ct. Spec. T.) 108 N. Y. Supp. 884; Van Heusen *v.* Argentean, (Supm. Ct. App. Div.) 109 N. Y. Supp. 238.

South Carolina. — Hubbard *v.* Furman University, 76 S. Car. 510, 57 S. E. 478.

Utah. — Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

Washington. — Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 909.

Wisconsin. — Gross Coal Co. *v.* Rose, 126 Wis. 24, 105 N. W. 225; Scofield *v.* Milwaukee Free Press, 126 Wis. 81, 105 N. W. 227; Wandt *v.* Hearst's Chicago American, (Wis. 1906) 109 N. W. 70.

910. 1. Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618; Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Hart *v.* Woodbury Dermatological Institute, 113 N. Y. App. Div. 281, 98 N. Y. Supp. 1000; Wandt *v.* Hearst's Chicago American, (Wis. 1906) 109 N. W. 70. See also Quinn *v.* Sun Printing, etc., Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 572, 105 N. Y. Supp. 1092.

2. Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Flood *v.* News, etc., Co., 71 S. Car. 112, 50 S. E. 638; Flood *v.* Evening Post Pub. Co., 71 S. Car. 122, 50 S. E. 641.

3. Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68.

Mere Ridicule Not Libelous unless it affects reputation and business. Lamberti *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 437, 97 N. Y. Supp. 694, *reversing* (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 174, 95 N. Y. Supp. 329.

911. 1. Wandt *v.* Hearst's Chicago American, (Wis. 1906) 109 N. W. 70.

Picture of Person in Advertisement. — See Peck *v.* Tribune Co., (C. C. A.) 154 Fed. 330.

Obtaining Picture under "Bertillon System" Criminal Libel. — Gow *v.* Bingham, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 66, 107 N. Y. Supp. 1011.

Portrait Exhibited by Advertisement. — Defendant published a circular containing an advertisement exhibiting a portrait of plaintiff representing the condition of her face after partial treatment, showing left side pocked, pitted, and scarred, and the right side in smooth, clear, and normal condition, and in conjunction therewith published a letter supposed to have been written by plaintiff, which was false and malicious, and it was held libelous *per se*. Hart *v.* Woodbury Dermatological Institute, 113 N. Y. App. Div. 281, 98 N. Y. Supp. 1000.

A publication of an advertisement of an insurance company, containing a person's picture and a statement that the person has policies of insurance with the company, and is pleased with his investment, when in fact he has no such policies, is libelous. Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68.

2. **"Pecksniff and Shylock Outdone" — Written Words Actionable.** — See Reynolds *v.* Holland, (Wash. 1907) 90 Pac. 648.

3. **The Nickname "Koke" Applied to a Politician** was held not libelous in Duffy *v.* New York Evening Post Co., 109 N. Y. App. Div. 471, 96 N. Y. Supp. 629.

912. 2. **Written Charge of Treachery Actionable.** — Doherty *v.* Lynett, 155 Fed. 681.

Trickster — Written Words Actionable. — Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257.

Violation of Promise. — Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36, wherein plaintiff was charged with violating a promise he had made prior to his election as vestryman of a church, that he would vote a certain way if elected.

914. 3. Richardson *v.* Thorpe, 73 N. H. 532, 63 Atl. 580, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 914.

"Record Well Known to the Police" — Written Words Actionable. — Harriman *v.* New Nonpareil Co., 132 Iowa 616, 110 N. W. 33.

To Say of a Woman that She Has Had an Eventful Life is not actionable *per se*. Harriman *v.* New Nonpariel Co., 132 Iowa 616, 110 N. W. 33.

The Words "They Make These Children as Corrupt as the Fountains of Hell," when read in connection with an entire article of such a character as to hold the plaintiff up to public hatred, contempt, and ridicule, are libelous. Atlanta News Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756.

"Graft" — Written Words Actionable. — In State *v.* Sheridan, (Idaho 1908) 93 Pac. 656, the words were as follows: "Gooding and graft have become so thoroughly known as synonymous terms that the rank and file will have no more of him."

"Grafters Foiled" — Written Words Actionable. — Craig *v.* Warren, 99 Minn. 246, 109 N. W. 231.

"Did Well in a Legislative Way" — Written Words Actionable. — Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496, in which case defendant published of another as follows: "Julian is remembered here as a member of the legislature who did well in a legislative way, but also as Stone's chief of police, of whom a Democratic senate committee said," etc.

916. 1. Peck *v.* Tribune Co., (C. C. A.) 154 Fed. 330; Lamberti *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 437, 97 N. Y. Supp. 694, *reversing* (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 174, 95 N. Y. Supp. 329; Russell *v.* Barron, 111 N. Y. App. Div. 382, 97 N. Y. Supp. 1061; Burkhart *v.* North American Co., 214 Pa. St. 39, 63 Atl. 410; Hubbard *v.* Furman University, 76 S. Car. 510, 57 S. E. 478; Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

2. Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 916.

918. 6. Mitchell *v.* Donanski, (R. I. 1906) 65 Atl. 611.

919. 2. *Compare* Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299.

921. 1. Paxton *v.* Woodward, 31 Mont. 195, 78 Pac. 215, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921. See also Agnew *v.* British Legal L. Assur. Co., Sc. Ct. Sess. 8 F. 422.

Written Words Imputing Want of Veracity Actionable. — Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257.

"Unworthiness of Belief under Oath" — Written Words Actionable. — Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365.

"Liar" — Poltroon — Written Charge Actionable. — Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772.

922. 1. Com. *v.* Applegate, 33 Pa. Co. Ct. 587, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 920 [922].

2. Sheibley *v.* Huse, 75 Neb. 811, 106 N. W. 1028.

4. See Russell *v.* Barron, 111 N. Y. App. Div. 382, 97 N. Y. Supp. 1061.

923. 1. Doherty *v.* Lynett, 155 Fed. 681; Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Stewart *v.* Codrington, (Fla. 1908) 45 So. 809; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463; Com. *v.* Duncan, (Ky. 1907) 104 S. W. 997; Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Richardson *v.* Thorpe, 73 N. H. 532, 63 Atl. 580; McDonald *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 465, 98 N. Y. Supp. 116.

2. See O'Neill *v.* Star Co., 121 N. Y. App. Div. 849, 106 N. Y. Supp. 973.

"Took Advantage of Bankruptcy Law" — Written Words Actionable. — Richardson *v.* Thorpe, 73 N. H. 532, 63 Atl. 580.

924. 1. Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188; Jockin *v.* Brassler, 114 N. Y. App. Div. 177, 99 N. Y. Supp. 586; Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

5. **"Graft" Used to Denote Dishonesty.** — State *v.* Sheridan, (Idaho 1908) 93 Pac. 656.

8. McDonald *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 465, 98 N. Y. Supp. 116.

Notice to Taxpayers.— A notice sent to a taxpayer to appear and show cause why property omitted from tax list should not be listed and assessed does not impute fraud and is therefore not actionable. O'Connell *v.* Shontz, 126 Iowa 709, 102 N. W. 807.

"Patho-social Humbug" and "Pseudo-scientist" — Written Words Actionable.—McDonald *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 465, 98 N. Y. Supp. 116.

925. 2. American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 925.

3. **Actionable under Statute in Kentucky.**— Shipp *v.* Patton, (Ky. 1906) 93 S. W. 1033.

926. 6. Morse *v.* Star Co., 118 N. Y. App. Div. 256, 103 N. Y. Supp. 496.

927. 1. See Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299.

928. 1. **Swindler — Written Charge Actionable.** — Richardson *v.* Thorpe, 73 N. H. 532, 63 Atl. 580.

929. 3. Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 929.

930. 1. **To Write that One Is "Ill with Disease and Worn with Care"** does not imply an infectious disease. Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419.

931. 1. **Written Words Imputing Want of Chastity to Woman Actionable Per Se.** — Dempster *v.* Mann, 157 Fed. 319; Miller *v.* Nuckolls, 77 Ark. 64, 91 S. W. 759; Neafie *v.* Hoboken Printing, etc., Co., (N. J. L. 1907) 68 Atl. 146; Rivers *v.* New York Evening Journal Pub. Co., 120 N. Y. App. Div. 574, 104 N. Y. Supp. 1081.

932. 1. **Question for Jury.**— Horton *v.* Binghamton Press Co., 122 N. Y. App. Div. 332, 106 N. Y. Supp. 875.

2. McDonald *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 467, 98 N. Y. Supp. 118 (in which case the words were written concerning a man).

3. State *v.* Clifford, 58 W. Va. 681, 52 S. E. 864 (wherein the writing concerned a woman).

4. Cairnes *v.* Pelton, 103 Md. 40, 63 Atl. 105. *Compare* Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146.

Oral Words Imputing Want of Chastity to Woman Not Actionable Where No Crime Charged. — Maerlender *v.* Porter, 114 N. Y. App. Div. 180, 99 N. Y. Supp. 533.

933. 2. De Festetics *v.* Sun Printing, etc., Assoc., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 194, 109 N. Y. Supp. 30. *Compare* Rivers *v.* New York Evening Journal Pub. Co., 120 N. Y. App. Div. 574, 104 N. Y. Supp. 1081.

4. **In Nebraska** oral words charging a woman with being a lewd character, of using her body for immoral purposes, and with keeping a gambling room, are actionable *per se*. Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299.

934. 1. Ward *v.* Merriam, 193 Mass. 145, 78 N. E. 745; Schaefer *v.* Schoenborn, 101 Minn. 67, 111 N. W. 843; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146. See also Flannigan *v.* Stauss, 131 Wis. 94, 111 N. W. 216.

935. 1. Cairnes *v.* Pelton, 103 Md. 40, 63 Atl. 105; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686; Raynolds *v.* Vinier, (Supm. Ct. App. Div.) 109 N. Y. Supp. 293.

936. 2. Cornelius *v.* State, 145 Ala. 65, 40 So. 670; Morphew *v.* State, 84 Ark. 487, 106 S. W. 480; Stutts *v.* State, 52 Fla. 110, 42 So. 51; State *v.* Collins, 117 Mo. App. 658, 93 S. W. 325; Gooing *v.* State, (Tex. Crim. 1906) 98 S. W. 857; Roberts *v.* State, (Tex. Crim. 1907) 100 S. W. 150; Kelley *v.* State, (Tex. Crim. 1907) 101 S. W. 230. See also Fox *v.* State, (Tex. Crim. 1907) 101 S. W. 808; Porter *v.* State, (Tex. Crim. 1908) 107 S. W. 817.

Accusation Must Be False and Malicious. — Cornelius *v.* State, 145 Ala. 65, 40 So. 670.

937. 1. Dempster *v.* Mann, 157 Fed. 319; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299.

Action for Divorce.— To publish an article stating that a woman is a defendant in an action for divorce which can only be brought upon the ground of adultery is libelous *per se*. Rivers *v.* New York Evening Journal Pub. Co., 120 N. Y. App. Div. 574, 104 N. Y. Supp. 1081.

2. Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299; Horton *v.* Binghamton Press Co., 122 N. Y. App. Div. 332, 106 N. Y. Supp. 875; De Festetics *v.* Sun Printing, etc., Assoc., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 194, 109 N. Y. Supp. 30.

3. Dempster *v.* Mann, 157 Fed. 319; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566.

938. 1. Sparks *v.* Bedford, (Ga. App. 1908) 60 S. E. 809; Ward *v.* Merriam, 193 Mass. 145, 78 N. E. 745.

939. 1. See Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686.

3. Miller *v.* Nuckolls, 77 Ark. 64, 91 S. W. 759.

4. Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146.

940. 6. Fox *v.* State, (Tex. Crim. 1907) 101 S. W. 808.

7. **To Falsely Publish of a Wife that Her Husband Has Instituted an Action for Divorce** against her is libelous *per se*, as such action implies either neglect of marital obligations or absolute violation of them. O'Neill *v.* Star Co., 121 N. Y. App. Div. 849, 106 N. Y. Supp. 97.

"A Dirty Vile Woman" — Oral Words Not Actionable. — Feast *v.* Auer, (Ky. 1906) 90 S. W. 564.

"You Are Not His Wife." — In Maerlender *v.* Porter, 114 N. Y. App. Div. 180, 99 N. Y. Supp. 533, the words spoken were as follows: "What right have you to his key or papers? You are not his wife." Plaintiff replied, "I am his wife. I have my marriage certificate and can show it to you." Defendant replied, "You could not be his wife, as your husband, Mr. Waring, is still living." It was held these words were not slanderous per se.

"Had a Big Time with Her" was held not slanderous in Gooing *v.* State, (Tex. Crim. 1906) 98 S. W. 857.

"Sold Half of His Wife" Words Actionable. — Ward *v.* Merriam, 193 Mass. 145, 78 N. E. 745, wherein it was held that the words, "Ward [meaning the plaintiff's husband] has sold half of his wife to Legeyt; hasn't he?" were actionable as charging adultery, even though the words were in form of a question.

"Housekeeper." To publish of a woman that she was the housekeeper of a man who himself was a criminal does not authorize the inference that she was his mistress, or that she was a person of immoral character. Horton *v.* Binghamton Press Co., 122 N. Y. App. Div. 332, 106 N. Y. Supp. 875.

"Living in Block Known as Resort of Prostitutes." — In Horton *v.* Binghamton Press Co., 122 N. Y. App. Div. 332, 106 N. Y. Supp. 875, these words published of a woman living with her husband and daughter, were held not to warrant an inference by the jury that plaintiff was charged with being a prostitute.

943. 1. *United States.* — Victor Safe, etc., Co. *v.* Deright, (C. C. A.) 147 Fed. 211, 8 Ann. Cas. 809.

Alabama. — Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188.

Florida. — Stewart *v.* Codrington, (Fla. 1908) 45 So. 809.

Iowa. — Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618; Vial *v.* Larson, 132 Iowa 208, 109 N. W. 1007.

Kentucky. — Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551.

Massachusetts. — Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419.

New Jersey. — Empire Cream Separator Co. *v.* De Laval Dairy Supply Co., (N. J. L. 1907) 67 Atl. 711.

New York. — Walker *v.* Best, 107 N. Y. App. Div. 304, 95 N. Y. Supp. 151; McDonald *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 465, 98 N. Y. Supp. 116; Flaherty *v.* New York Times Co., 109 N. Y. App. Div. 489, 96 N. Y. Supp. 381; Jockin *v.* Brassler, 114 N. Y. App. Div. 177, 99 N. Y. Supp. 586; Howarth *v.* Barlow, 113 N. Y. App. Div. 510, 99 N. Y. Supp. 457; Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 982; Bergstrom *v.* Ridgway-Thayer Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 95, 103 N. Y. Supp. 1093; Tobin *v.* Alfred M. Best Co., 120 N. Y. App. Div. 387, 105 N. Y. Supp. 294.

Pennsylvania. — Holland *v.* Flick, 212 Pa. St. 201, 61 Atl. 828.

Utah. — Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

Washington. — Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 942.

Wisconsin. — Gross Coal Co. *v.* Rose, 126 Wis. 24, 105 N. W. 225, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 942.

944. 5. *United States.* — Daily *v.* New York Herald Co., 151 Fed. 114.

Alabama. — Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188.

Connecticut. — Pascone *v.* Morning Union Co., 79 Conn. 523, 65 Atl. 972.

Florida. — Stewart *v.* Codrington, (Fla. 1908) 45 So. 809.

Georgia. — Witham *v.* Atlanta Journal, 124 Ga. 688, 53 S. E. 105.

Kentucky. — Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551.

Michigan. — Dallavo *v.* Snider, 143 Mich. 543, 107 N. W. 271.

New York. — Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 982.

Pennsylvania. — Burkhart *v.* North American Co., 214 Pa. St. 39, 63 Atl. 410.

Rhode Island. — Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835.

Utah. — Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

Virginia. — Gatewood *v.* Garrett, 106 Va. 552, 56 S. E. 335.

946. 1. Pascone *v.* Morning Union Co., 79 Conn. 523, 65 Atl. 972; Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835.

4. Stewart *v.* Codrington, (Fla. 1908) 45 So. 809.

947. 3. **Actionable unless Privileged.** — Ranson *v.* West, (Ky. 1907) 101 S. W. 885.

949. 1. Stewart *v.* Codrington, (Fla. 1908) 45 So. 809; State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; Shiebley *v.* Ashton, 130 Iowa 195, 106 N. W. 618, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 949; Com. *v.* Duncan, (Ky. 1907) 104 S. W. 997; Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Farley *v.* McBride, 74 Neb. 49, 103 N. W. 1036; McAvoy *v.* Press Pub. Co., 114 N. Y. App. Div. 540, 99 N. Y. Supp. 1041; Breen *v.* New York Herald Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 567, 106 N. Y. Supp. 872; Hickey *v.* Corson Mfg. Co., (Supm. Ct. Spec. T.) 108 N. Y. Supp. 884; Mulderig *v.* Wilkes-Barre Times, 215 Pa. St. 470, 64 Atl. 636; Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772.

950. 3. McAvoy *v.* Press Pub. Co., 114 N. Y. App. Div. 540, 99 N. Y. Supp. 1041. *Compare* McAvoy *v.* Press Pub. Co., 114 N. Y. App. Div. 540, 99 N. Y. Supp. 1041.

951. 2. **Written Charge of Corruption in Office Actionable.** — Stewart *v.* Codrington, (Fla. 1908) 45 So. 809. See also Hunter *v.* Ferguson, Sc. Ct. Sess. 8 F. 574.

6. **Town Councillor.** — See Hunter *v.* Ferguson, Sc. Ct. Sess. 8 F. 574.

953. 1. Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Farley *v.* McBride, 74 Neb. 49, 103 N. W. 1036. See also Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835.

Candidate for Delegate to Annual Convention. In Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573, the plaintiff was a candidate for delegate to the annual convention of the National Typographical Union, and the defendant printed and published a card, on one side of which were the words, "Vote for Honest Jake Boach for Delegate," and on the other "Explanatory. Mr. Nichols owes the Daily Reporter [illegible] borne on [illegible]. Draw your own conclusions and vote for Mr. Nichols, if you think he is not able to pay this debt." It was held not libelous [illegible].

Accusation of Corruption by Elector against Candidate Held Not Slanderous. — Ouimet *v.* Durand, 28 Quebec Super. Ct. 465.

2. Yager *v.* Bruce, 110 Mo. App. 435, 93 S. W. 307.

3. Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365.

A Charge that a Candidate's Election "Would Mean the Doom of Our Prohibition and Temperance Cause and would leave us almost at the mercy of the Blind Tiger, Thugs, Bootleggers & Co." was held not actionable *per se.* Morrison *v.* Dean, (Tex. Civ. App. 1907) 104 S. W. 505.

954. 1. **Oral Words.** — Dallavo *v.* Snider, 141 Mich. App. 607 N. W. 271.

Written Words. — Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60; Tobin *v.* Alfred M. Best Co., 120 N. Y. App. Div. 387, 105 N. Y. Supp. 294.

955. 1. Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60.

3. **Posting Name on Unfair List.** — Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 185.

Notice Prohibiting Members Transacting Business with Suspended Member on Produce Exchange. — See Sutkes *v.* New York Produce Exch., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 133, 93 N. Y. Supp. 254.

Advertisement of Rival Agent. — Hennessey *v.* Traders' Ins. Co., 87 Miss. 259, 39 So. 692.

5. **Record of Sales.** — Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60. In this case defendant published in its newspaper the following words: "Bills of Sale — A. G. Ukman, 612 Chestnut St., to Miss A. Handshiegel, cigar outfit, $1.00," and it was held not actionable.

956. 1. See Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

958. 1. Union Refrigerator Transit Co. *v.* S. S. McClure Co., 146 Fed. 623; Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551.

2. **An Attack upon Officers or Members** of a corporation does not give it a right of action. Warner Instrument Co. *v.* Ingersoll, 157 Fed. 311.

3. Memphis Telephone Co. *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 904; Warner Instrument Co. *v.* Ingersoll, 157 Fed. 311; Farbenfabriken of Elberfeld Co. *v.* Beringer, (C. C. A.) 158 Fed. 802; Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551; Burr's Damascus Tool Works *v.* Peninsular Tool Mfg. Co., 142 Mich. 417, 105 N. W. 858; Reporters Assoc. *v.* Sun Printing, etc., Assoc., 186 N. Y. 437, 79 N. E. 710, *reversing* 112 N. Y. App. Div. 246, 98 N. Y. Supp. 294; Town Topics Pub. Co. *v.* Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575; New York Bureau of Information *v.* Ridgway-Thayer Co., 119 N. Y. App. Div. 339, 104 N. Y. Supp. 202; Gross Coal Co. *v.* Rose, 126 Wis. 24, 105 N. W. 225.

Charging Corporation with Blackmail — Written Words Actionable. — Town Topics Pub. Co. *v.* Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575.

959. 1. Farbenfabriken of Elberfeld Co. *v.* Beringer, (C. C. A.) 158 Fed. 802; Hapgoods *v.* Crawford, (Supm. Ct. App. Div.) 110 N. Y. Supp. 122; Gross Coal Co. *v.* Rose, 126 Wis. 24, 105 N. W. 225. See also German Sav. Bank *v.* Fritz, (Iowa 1906) 109 N. W. 1008.

Slander upon Banking Corporation. — See German Sav. Bank *v.* Fritz, (Iowa 1906) 109 N. W. 1008.

3. Warner Instrument Co. *v.* Ingersoll, 157 Fed. 311; Burr's Damascus Tool Works *v.* Peninsular Tool Mfg. Co., 142 Mich. 417, 105 N. W. 858; Empire Cream Separator Co. *v.* De Laval Dairy Supply Co., (N. J. L. 1907) 67 Atl. 711; Reporters Assoc. *v.* Sun Printing, etc., Assoc., 186 N. Y. 437, 79 N. E. 710, *reversing* 112 N. Y. App. Div. 246, 98 N. Y. Supp. 294.

Imputations upon Officers. — Memphis Telephone Co. *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 904.

4. Warner Instrument Co. *v.* Ingersoll, 157 Fed. 311.

5. **Special Damage Must Be Alleged with Particularity.** — See Reporters Assoc. *v.* Sun Printing, etc., Assoc., 186 N. Y. 437, 79 N. E. 710, *reversing* 112 N. Y. App. Div. 246, 98 N. Y. Supp. 294; Town Topics Pub. Co. *v.* Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575.

7. State *v.* Williams, 74 Kan. 180, 85 Pac. 938.

960. 2. **Written Words.** — Stewart *v.* Codrington, (Fla. 1908) 45 So. 809; Luzenberg *v.* O'Malley, 116 La. 699, 41 So. 41; Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547; Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 982; Weber *v.* Credit Office, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 386, 106 N. Y. Supp. 583. See also Reynolds *v.* Holland, (Wash. 1907) 90 Pac. 648.

Oral Words. — Line *v.* Spies, 139 Mich. 484, 102 N. W. 993.

Rating in Legal Directory. — As to effect of omission to give rating in directory see Kirby *v.* Martindale 19 S. Dak. 394, 103 N. W. 648.

3. **Statement Affecting Credit of Solicitor Slanderous.** — A. B. *v.* C. D., Sc. Ct. Sess. 7 F. 22.

4. **Incompetent, Pettifogger, Dishonest Advice,** etc., held actionable in Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547.

Charging Village Attorney with Giving Dishonest Advice Actionable. — Smith *v.* Hubbell, (Mich. 1908) 114 N. W. 865.

961. 1. **Written Words Concerning Physician Actionable.** — Marion *v.* Courier Pub. Co., 125 Ill. App. 349.

2. **Reputable Physicians Avoid Advertising, Quacks Advertise.** — As to the effect of these words see Martin *v.* The Picayune, 115 La. 979, 40 So. 376.

963. 2. **Oral Words Touching Clergymen Actionable.** — Flanders *v.* Daley, 124 Ga. 714, 52 S. E. 687.

Written Words Touching Clergymen Actionable. — See Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850.

964. 4. **Charge of Carelessness Not Libelous.** — Walker *v.* Best, 107 N. Y. App. Div. 304, 95 N. Y. Supp. 151.

Music Teacher. — In Hubbard *v.* Furman University, 76 S. Car. 510, 57 S. E. 478, the plaintiff was formerly a director of music in defendant college. Defendant published and sent circulars to its patrons notifying them of the change of directors and that it was for the good

of the department and in the interest of its patrons. It was held not libelous *per se*.

965. 4. McGarry *v.* Healey, 78 Conn. 365, 62 Atl. 671.

Janitress. — Flaherty *v.* New York Times Co., 109 N. Y. App. Div. 489, 96 N. Y. Supp. 381.

Solicitor and Collector. — Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463.

966. 2. Published words to the effect that a factory girl was discharged, not for violation of the rules, but for a reason which the manager preferred not to disclose, but which was such that she could not be retained in the factory, constitute an actionable libel under the laws of *Louisiana*. Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224.

967. 1. **Artists.** — See Outcalt *v.* New York Herald Co., 117 N. Y. App. Div. 534, 102 N. Y. Supp. 685.

Detectives. — Holland *v.* Flick, 212 Pa. St. 201, 61 Atl. 828.

Inn Keepers and Boarding House Keepers. — Wright *v.* Coules, 4 Cal. App. 343, 87 Pac. 809.

Insurance Brokers. — Tobin *v.* Alfred M. Best Co., 120 N. Y. App. Div. 387, 105 N. Y. Supp. 294.

Janitors. — Flaherty *v.* New York Times Co., 109 N. Y. App. Div. 489, 96 N. Y. Supp. 381.

Notary Public. — To charge a notary public with procuring a false affidavit is actionable. Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618.

968. 3. Broom *v.* Ritchie, Sc. Ct. Sess. 6 F. 942.

5. Barrett *v.* Associated Newspapers, 23 Times L. Rep. 666; Victor Safe, etc., Co. *v.* Deright, (C. C. A.) 147 Fed. 211, 8 Ann. Cas. 809; Dust Sprayer Mfg. Co. *v.* Western Fruit Grower, 126 Mo. App. 139, 103 S. W. 566.

969. 1. Alcott *v.* Millar's Karri, etc., 91 L. T. N. S. 722; Lyne *v.* Nicholls, 23 Times L. Rep. 86; Victor Safe, etc., Co. *v.* Deright, (C. C. A.) 147 Fed. 211, 8 Ann. Cas. 809; Dust Sprayer Mfg. Co. *v.* Western Fruit Grower, 126 Mo. App. 139, 103 S. W. 566.

Disparagement of Hotel Property. — Wright *v.* Coules, 4 Cal. App. 343, 87 Pac. 809.

Slander of Title to Real Estate Actionable. — Nagy *v.* Manitoba Free Press Co., 16 Manitoba 619.

2. See Victor Safe, etc., Co. *v.* Deright, (C. C. A.) 147 Fed. 211, 8 Ann. Cas. 809.

4. Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188; Witham *v.* Atlanta Journal, 124 Ga. 688, 53 S. E. 105; Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496; Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299. See also Breen *v.* New York Herald Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 567, 106 N. Y. Supp. 872.

970. 1. Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224; Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251.

971. 1. Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496.

"The Thief Who Puts His Hand in Your Pocket and Steals Your Money Is a Gentleman," when used in connection with statements that plaintiff borrowed money, etc., and got himself into a position where the law could not reach him and then took advantage of the Bankruptcy Law, was held susceptible of the meaning that plaintiff was dishonest and acted fraudulently in his business, and therefore actionable *per se*. Richardson *v.* Thorpe, 73 N. H. 532, 63 Atl. 580.

5. Ward *v.* Merriam, 193 Mass. 135, 78 N. E. 745. See also Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835; Boal *v.* Scottish Catholic Printing Co., (1907) Sc. Ct. Sess. 1120.

6. Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Martin *v.* The Picayune, 115 La. 979, 40 So. 376; Gendron *v.* St. Pierre, 73 N. H. 419, 62 Atl. 966. See also Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835.

972. 1. **"I Think the Woman Was Neglected in Order that Her Family Might Get the Insurance" — Words Actionable.** — Gendron *v.* St. Pierre, 73 N. H. 419, 62 Atl. 966.

2. **Judicial Notice** of the Meaning of "Graft." — State *v.* Sheridan, (Idaho 1908) 93 Pac. 656, Craig *v.* Warren, 99 Minn. 246, 109 N. W. 231.

4. To publish of a man that he has done that which is legal and proper, without ironical innuendo, does not, under ordinary circumstances, tend at all to injure his reputation. State *v.* O'Hagan, 73 N. J. L. 209, 63 Atl. 95.

973. 1. State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; Irving *v.* Irving, 121 N. Y. App. Div. 258, 105 N. Y. Supp. 609.

Slang Words "Liar and Fraud" Not Slanderous. — Agnew *v.* British Legal L. Assur. Co., Sc. Ct. Sess. 8 F. 422.

3. Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Schaefer *v.* Schoenborn, 101 Minn. 67, 111 N. W. 843.

974. 2. *England.* — Hunter *v.* Ferguson, Sc. Ct. Sess. 8 F. 574.

United States. — Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704.

Alabama. — Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188.

Idaho. — State *v.* Sheridan, (Idaho 1908) 93 Pac. 656.

Iowa. — Sheibley *v.* Ashton, 130 Iowa 195 106 N. W. 618; Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767.

Kentucky. — Phythian *v.* Raison, (Ky. 1906) 92 S. W. 591.

Maryland. — Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566.

Massachusetts. — Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419.

Michigan. — Line *v.* Spies, 139 Mich. 484, 102 N. W. 993.

Missouri. — Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60.

Nebraska. — Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299.

New Jersey. — Flaacke *v.* Stratford, 73 N. J. L. 487, 64 Atl. 146.

New York. — Lamberti *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 437, 97 N. Y. Supp. 694; Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 982; Morse *v.* Star Co., 118 N. Y. App. Div.

[illegible] 103 N. Y. Supp. 196, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 974; Breen *v.* New York Herald Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 567, 106 N. Y. Supp. 872; De Festetics *v.* Sun Printing, etc., Assoc., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 194, 109 N. Y. Supp. 30.

Rhode Island. — Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835.

South Carolina. — Hubbard *v.* Furman University, 76 S. Car. 510, 57 S. E. 478.

Utah. — Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

Vermont. — Gordon *v.* Journal Pub. Co., (Vt. [illegible]) 69 Atl. 742.

976. 1. Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618.

977. 1. Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704; Sheftall *v.* Central of Georgia R. Co., 123 Ga. 589, 51 S. E. 646; Line *v.* Spies, 139 Mich. 484, 102 N. W. 993; Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146.

Defendant's Intention.— Defendant cannot testify as to his secret intentions in the doing or saying of a thing. Vest *v.* Speakman, (Ala. 1907) 44 So. 1017.

3. Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618.

978. 2. State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; Scofield *v.* Milwaukee Free Press, 126 Wis. 81, 105 N. W. 227.

3. Line *v.* Spies, 139 Mich. 484, 102 N. W. 993.

4. Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251.

979. 1. Watson *v.* Detroit Journal Co., 143 Mich. 430, 107 N. W. 81.

2. Blount *v.* Mason, 140 Mich. 1, 103 N. W. 525.

3. Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60; Gendron *v.* St. Pierre, 73 N. H. 419, 62 Atl. 966; State *v.* Renner, (N. J. L. 1906) 64 Atl. 988; Wright *v.* Daniel, 40 Wash. 6, 82 Pac. 139.

980. 1. Watson *v.* Detroit Journal Co., 143 Mich. 430, 107 N. W. 81; Wright *v.* Daniel, 40 Wash. 6, 82 Pac. 139.

981. 1. Wright *v.* Daniel, 40 Wash. 6, 82 Pac. 139.

2. *United States.* — Every Evening Printing Co. *v.* Butler, (C. C. A.) 144 Fed. 916; Memphis Telephone Co. *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 904; Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704; Daily *v.* New York Herald Co., 151 Fed. 114.

Delaware. — Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97.

Kentucky. — Feast *v.* Auer, (Ky. 1906) 90 S. W. 564.

Maryland. — Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566.

Michigan. — Watson *v.* Detroit Journal Co., 143 Mich. 430, 107 N. W. 81.

Minnesota. — Schaefer *v.* Schoenborn, 101 Minn. 67, 111 N. W. 843.

Missouri. — Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496.

New Hampshire. — Gendron *v.* St. Pierre, 73 N. H. 419, 62 Atl. 966; Richardson *v.* Thorpe, 73 N. H. 532, 63 Atl. 580.

New York. — Maerlender *v.* Porter, 114 N. Y. App. Div. 180, 99 N. Y. Supp. 533.

Rhode Island. — Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835.

Vermont. — Gordon *v.* Journal Pub. Co., (Vt. 1908) 69 Atl. 742.

If the Innuendo Meaning Fails the case may go to the jury on the actual meaning. Wuest *v.* Brooklyn Citizen, 102 N. Y. App. Div. 480, 92 N. Y. Supp. 852.

982. 1. Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496; Maerlender *v.* Porter, 114 N. Y. App. Div. 180, 99 N. Y. Supp. 533; Scofield *v.* Milwaukee Free Press, 126 Wis. 81, 105 N. W. 227.

2. *United States.* — Memphis Telephone Co. *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 904; Farbenfabriken of Elberfeld Co. *v.* Beringer, (C. C. A.) 158 Fed. 802.

Alabama. — Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188.

Delaware. — Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97.

Florida. — Briggs *v.* Brown, (Fla. 1908) 46 So. 325.

Iowa. — Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 982.

Kentucky. — Feast *v.* Auer, (Ky. 1906) 90 S. W. 564.

Maryland. — Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566.

Massachusetts. — Dow *v.* Long, 190 Mass. 138, 76 N. E. 667.

Michigan. — Line *v.* Spies, 139 Mich. 484, 102 N. W. 993.

Minnesota. — Schaefer *v.* Schoenborn, 101 Minn. 67, 111 N. W. 843.

Missouri. — Dust Sprayer Mfg. Co. *v.* Western Fruit Grower, 126 Mo. App. 139, 103 S. W. 566.

Nebraska. — See Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299.

New York. — Hart *v.* Woodbury Dermatological Institute, 113 N. Y. App. Div. 1000, 98 N. Y. Supp. 1000; Maerlender *v.* Porter, 114 N. Y. App. Div. 180, 99 N. Y. Supp. 533; Outcault *v.* New York Herald Co., 117 N. Y. App. Div. 534, 102 N. Y. Supp. 685.

Ohio. — Helferich *v.* Taebel, 15 Ohio Dec. 396.

Oregon. — State *v.* Conklin, 47 Oregon 500, 84 Pac. 482, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 982.

Rhode Island. — Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835.

Utah. — Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

Vermont. — Gordon *v.* Journal Pub. Co., (Vt. 1908) 69 Atl. 742.

984. 1. Daily *v.* New York Herald Co., 151 Fed. 114; Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188; Miller *v.* State, 81 Ark. 350, 99 S. W. 533, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 983, 984; Washington Post Co. *v.* Wells, 27 App. Cas. (D. C.) 495, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 983 [984]; Pavesich *v.* New England L.

Ins. Co., 122 Ga. 190, 50 S. E. 68; State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 982; State *v.* Conkiin, 47 Oregon 509, 84 Pac. 482, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983; McClure *v.* Review Pub. Co., 38 Wash. 160, 80 Pac. 303.

985. 1. Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704; Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784; Craig *v.* Warren, 99 Minn. 246, 109 N. W. 231; Sheibley *v.* Nelson, 75 Neb. 804, 106 N. W. 1034, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985; Breen *v.* New York Herald Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 567, 106 N. Y. Supp. 872. See also Soper *v.* Butler, 115 N. Y. App. Div. 818, 101 N. Y. Supp. 345; Wandt *v.* Hearst's Chicago American, (Wis. 1906) 109 N. W. 70.

986. 1. See Miller *v.* State, 81 Ark. 359, 99 S. W. 533.

2. Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704; Daily *v.* New York Herald Co., 151 Fed. 114; Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188; Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463; Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224; Line *v.* Spies, 139 Mich. 484, 102 N. W. 993; Dallavo *v.* Snider, 143 Mich. 542, 107 N. W. 271; Dust Sprayer Mfg. Co. *v.* Western Fruit Grower, 126 Mo. App. 139, 103 S. W. 566; Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146; Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 982; McClure *v.* Review Pub. Co., 38 Wash. 160, 80 Pac. 303; Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251.

Words of Praise and Gratulation may become actionable by reason of surrounding circumstances. Martin *v.* The Picayune, 115 La. 979, 40 So. 376.

987. 1. Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Irving *v.* Irving, 121 N. Y. App. Div. 258, 105 N. Y. Supp. 609.

2. Daily *v.* New York Herald Co., 151 Fed. 114; Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767; Line *v.* Spies, 139 Mich. 484, 102 N. W. 993; Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146; Hughes *v.* New York Evening Post Co., 115 N. Y. App. Div. 611, 100 N. Y. Supp. 982; Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251.

989. 1. To defeat the action, all hearers must be shown to have knowledge rendering the words spoken nonslanderous. Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251.

2. Schaefer *v.* Schoenborn, 101 Minn. 67, 111 N. W. 843; Gendron *v.* St. Pierre, 73 N. H. 419, 62 Atl. 966.

990. 1. Gordon *v.* Journal Pub. Co., (Vt. 1908) 69 Atl. 742, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990.

2. Greene *v.* Murdock, 1 Cal. App. 136, 81 Pac. 993.

3. *England.* — Dakhyl *v.* Labouchere, 96 L. T. N. S. 399.

United States. — Memphis Telephone Co. *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 904; Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704.

Alabama. — Labor Review Pub. Co. *v.* Galliher, (Ala. 1907) 45 So. 188.

Delaware. — Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97.

Idaho. — State *v.* Sheridan, (Idaho 1908) 93 Pac. 656.

Illinois. — Dowie *v.* Priddle, 216 Ill. 553, 75 N. E. 243.

Iowa. — Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Jensen *v.* Damm, 127 Iowa 555, 103 N. W. 798; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990; Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784; Harriman *v.* New Nonpariel Co., 132 Iowa 616, 110 N. W. 33.

Maryland. — Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36.

Massachusetts. — Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419; Bar Assoc. *v.* Hale, (Mass. 1908) 83 N. E. 885.

Missouri. — Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496; Dust Sprayer Mfg. Co. *v.* Western Fruit Grower, 126 Mo. App. 139, 103 S. W. 566.

New Hampshire. — Richardson *v.* Thorpe, 73 N. H. 532, 63 Atl. 580.

New York. — Russell *v.* Barron, 111 N. Y. App. Div. 382, 97 N. Y. Supp. 1061; Maerlender *v.* Porter, 114 N. Y. App. Div. 180, 99 N. Y. Supp. 533; Irving *v.* Irving, 121 N. Y. App. Div. 258, 105 N. Y. Supp. 609; Breen *v.* New York Herald Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 567, 106 N. Y. Supp. 872.

South Carolina. — Hubbard *v.* Furman University, 76 S. Car. 510, 57 S. E. 478.

Tennessee. — American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

Vermont. — Gordon *v.* Journal Pub. Co., (Vt. 1908) 69 Atl. 742.

Washington. — Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

Wisconsin. — Scofield *v.* Milwaukee Free Press, 126 Wis. 81, 105 N. W. 227; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

991. 1. Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36; Irving *v.* Irving, 121 N. Y. App. Div. 258, 105 N. Y. Supp. 609; Horton *v.* Binghamton Press Co., 122 N. Y. App. Div. 332, 106 N. Y. Supp. 875.

Property of Innuendo. — Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704.

2. *United States.* — Memphis Telephone Co. *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 904; Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704.

California. — Haub *v.* Friermuth, 1 Cal. App. 556, 82 Pac. 571.

Georgia. — Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68; Sheftall *v.* Central of Georgia R. Co., 123 Ga. 589, 51 S. E. 646.

Illinois. — Dowie *v.* Priddle, 216 Ill. 553, 75 N. E. 243.

Iowa. — Jensen *v.* Damm, 127 Iowa 555, 103 N. W. 798; Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784; Harriman *v.* New Nonpareil Co., 132 Iowa 616, 110 N. W. 33; Richardson *v.* Reps, (Iowa 1907) 112 N. W. 788.

Maryland. — Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36; Cain *v.* Shutt, (Md. 1907) 66 Atl. 24.

Massachusetts. — Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419; Bar Assoc. *v.* Hale, (Mass. 1908) 83 N. E. 885.

Missouri. — Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496; Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 25.

Nebraska. — Battles *v.* Tyson, (Neb. 1906) 110 N. W. 299.

New Hampshire. — Richardson *v.* Thorpe, 73 N. H. 532, 63 Atl. 580.

New Jersey. — Flaacke *v.* Stratford, 73 N. J. L. 487, 64 Atl. 146.

New York. — Vincent *v.* Onderdonk, 107 N. Y. App. Div. 626, 95 N. Y. Supp. 347; Maerlender *v.* Porter, 114 N. Y. App. Div. 180, 99 N. Y. Supp. 533; Soper *v.* Associated Press, 115 N. Y. App. Div. 342, 101 N. Y. Supp. 342; Soper *v.* Butler, 115 N. Y. App. Div. 818, 101 N. Y. Supp. 345; Outcault *v.* New York Herald Co., 117 N. Y. App. Div. 534, 102 N. Y. Supp. 685; Irving *v.* Irving, 121 N. Y. App. Div. 258, 105 N. Y. Supp. 609.

Pennsylvania. — Holland *v.* Flick, 212 Pa. St. 201, 61 Atl. 828.

Rhode Island. — Lubrano *v.* Curzio, 27 R. I. 594, 65 Atl. 273.

South Carolina. — Hubbard *v.* Furman University, 76 S. Car. 510, 57 S. E. 478.

Tennessee. — American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

Vermont. — Gordon *v.* Journal Pub. Co., (Vt. 1908) 69 Atl. 742.

Wisconsin. — Scofield *v.* Milwaukee Free Press, 126 Wis. 81, 105 N. W. 227; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

993. 1. Miller *v.* State, 81 Ark. 359, 99 S. W. 533.

2. Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496; Sands *v.* Marquardt, 113 Mo. App. 490, 87 S. W. 1011; Grimes *v.* Thorp, 113 Mo. App. 652, 88 S. W. 638.

3. Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60.

994. 1. Dowie *v.* Priddle, 216 Ill. 552, 75 N. E. 243; State *v.* Conklin, 47 Oregon 509, 84 Pac. 482; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

An instruction to the jury that they are the judges of the law, and that they are not bound by the instructions of the court is erroneous. Grimes *v.* Thorp, 113 Mo. App. 652, 88 S. W. 638.

Court May Direct Verdict. — Walston *v.* Com., (Ky. 1907) 106 S. W. 224.

2. **Court May Direct Nonsuit,** but cannot coerce a verdict for plaintiff. Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60.

3. Kenworthy *v.* Journal Co., 117 Mo. App. 327, 93 S. W. 882.

4. Every Evening Printing Co. *v.* Butler, (C. C. A.) 144 Fed. 916; Lanston Monotype Mach. Co. *v.* Mergenthaler Linotype Co., 147 Fed. 871; Farber Fabrikation of Elberfeld Co. *v.* Boringer, (C. C. A.) 158 Fed. 802; Witham *v.* Atlanta Journal, 124 Ga. 688, 53 S. E. 105; Kenworthy *v.* Journal Co., 117 Mo. App. 327, 93 S. W. 882; Burkhart *v.* North American Co., 214 Pa. St. 39, 63 Atl. 410; Cross *v.* Flood, 77 Vt. 285, 59 Atl. 1018; Butler *v.* News-Leader Co., 104 Va. 1, 51 S. E. 213; Morrell *v.* Grant, 30 Quebec Super. Ct. 327. See also Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419.

The Burden of Proof is upon the plaintiff to show that the article referred to her; and the defendant in denying it is at liberty to show that it referred to some one else. Butler *v.* Evening Leader Co., 134 Fed. 994.

Headlines and Pictures taken in connection with article held sufficient to identify plaintiff. Breen *v.* New York Herald Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 567, 106 N. Y. Supp. 872.

The insertion of a picture under the headline of an article is, in effect, a statement that it is a picture of the person referred to in the article. Wandt *v.* Hearst's Chicago American, (Wis. 1906) 109 N. W. 70.

Where **Plaintiff Is Described by Name and Picture,** it is no defense that the article referred to another person and that the picture was printed by mistake. Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565.

995. 1. Bohan *v.* Record Pub. Co., 1 Cal. App. 429, 82 Pac. 634; Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68; Soper *v.* Associated Press, 115 N. Y. App. Div. 815, 101 N. Y. Supp. 342; Soper *v.* Butler, 115 N. Y. App. Div. 818, 101 N. Y. Supp. 345; Nunnally *v.* New York Zeitung Pub., etc., Co., 117 N. Y. App. Div. 1, 101 N. Y. Supp. 1041; Rivers *v.* New York Evening Journal Pub. Co., 120 N. Y. App. Div. 574, 104 N. Y. Supp. 1081; Burkhart *v.* North American Co., 214 Pa. St. 39, 63 Atl. 410; Cross *v.* Flood, 77 Vt. 285, 59 Atl. 1018.

2. Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68; Rivers *v.* New York Evening Journal Pub. Co., 120 N. Y. App. Div. 574, 104 N. Y. Supp. 1081; Breen *v.* New York Herald Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 567, 106 N. Y. Supp. 872; Burkhart *v.* North American Co., 214 Pa. St. 39, 63 Atl. 410.

Sole Proprietor of Corporation. — Libel against the corporation by name only will affect a person who is sole proprietor and he may maintain the action personally. Bohan *v.* Record Pub. Co., 1 Cal. App. 429, 82 Pac. 634.

996. 1. Witham *v.* Atlanta Journal, 124 Ga. 688, 53 S. E. 105; Weston *v.* Commercial Advertiser Assoc., 184 N. Y. 479, 77 N. E. 660.

2. Every Evening Printing Co. *v.* Butler, (C. C. A.) 144 Fed. 916; Ball *v.* Tribune Co., 123 Ill. App. 235; Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36; Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Sheibley *v.* Nelson, 75 Neb. 804, 106 N. W. 1034; Pianchi *v.* Star Co., (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 486, 95 N. Y. Supp. 28; Soper *v.* Associated Press, 115 N. Y. App. Div. 815, 101 N. Y. Supp. 342; Soper *v.* Butler, 115 N. Y. App. Div. 818, 101 N. Y. Supp. 345; Burkhart *v.* North American Co., 214 Pa. St. 39, 63

Atl. 410; Butler *v.* News-Leader Co., 104 Va. 1, 51 S. E. 213.

4. Farbenfabriken of Elberfeld Co. *v.* Beringer, (C. C. A.) 158 Fed. 802; Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36; Kenworthy *v.* Journal Co., 117 Mo. App. 327, 93 S. W. 882; Bianchi *v.* Star Co., (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 486, 95 N. Y. Supp. 28; Nunnally *v.* Tribune Assoc., 111 N. Y. App. Div. 485, 97 N. Y. Supp. 909; Nunnally *v.* New Yorker Staats-Zeitung, 111 N. Y. App. Div. 482, 97 N. Y. Supp. 911; Soper *v.* Associated Press, 115 N. Y. App. Div. 815, 101 N. Y. Supp. 342; Soper *v.* Butler, 115 N. Y. App. Div. 818, 101 N. Y. Supp. 345; Nunnally *v.* New Yorker Zeitung Pub., etc., Co., 117 N. Y. App. Div. 1, 101 N. Y. Supp. 1041; Lyons *v.* New York Herald Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 570, 106 N. Y. Supp. 874; Van Heusen *v.* Argenteau, (Supm. Ct. App. T.) 109 N. Y. Supp. 238.

A Subsequent Publication taken in connection with the first article, which omitted the name, is sufficient to identify the plaintiff. Quinn *v.* Sun Printing, etc., Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 572, 105 N. Y. Supp. 1092.

997. **1.** Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36; Kenworthy *v.* Journal Co., 117 Mo. App. 327, 93 S. W. 882.

998. **3.** Lee *v.* Crump, 146 Ala. 655, 40 So. 609; Cain *v.* Shutt, (Md. 1907) 66 Atl. 24; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565.

4. Keith *v.* Lander, Sc. Ct. Sess. 8 F. 356; Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693; Lee *v.* Crump, 146 Ala. 655, 40 So. 609; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573. *Compare* Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772, wherein it was held that where the statute omits the word "malice" it is not a necessary element.

999. **1.** Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693; Lee *v.* Crump, 146 Ala. 655, 40 So. 609; Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478.

1000. **2.** Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097.

3. *United States.* — Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693.

Alabama. — Lee *v.* Crump, 146 Ala. 655, 40 So. 609.

California. — Leonard *v.* McPherson, 146 Cal. 616, 80 Pac. 1084; Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Bohan *v.* Record Pub. Co., 1 Cal. App. 429, 82 Pac. 634.

Florida. — Stutts *v.* State, 52 Fla. 110, 42 So. 51; Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357.

Georgia. — Sparks *v.* Bedford, (Ga. App. 1908) 60 S. E. 809.

Iowa. — Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; State *v.* Lomack, 130 Iowa 79, 106 N. W. 386; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463; Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784; Vail *v.* Larson, 132 Iowa 208, 109 N. W. 1007.

Kentucky. — Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S.W. 551.

Louisiana. — Luzenberg *v.* O'Malley, 116 La. 699, 41 So. 41.

Maryland. — Shockey *v.* McCauley, 101 Md. 461, 61 Atl. 583; Cairnes *v.* Pelton, 103 Md. 40, 63 Atl. 105.

Massachusetts. — Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2.

Michigan. — Hammond *v.* Porter, 150 Mich. 328, 114 N. W. 64.

Missouri. — Ukman *v.* Daily Record Co., 189 Mo. 378, 88 S. W. 60; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307. *Compare* Sands *v.* Marquardt, 113 Mo. App. 490, 87 S. W. 1011.

New York. — Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478.

Tennessee. — American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

Texas. — Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146.

Virginia. — Gatewood *v.* Garrett, 106 Va. 552, 56 S. E. 335.

Washington. — Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

1002. **1.** Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97. *Compare* Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146.

7. Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772; Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 1002.

8. Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784; Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 1002.

1003. **2.** Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Vail *v.* Larson, 132 Iowa 208, 109 N. W. 1007.

3. Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618.

4. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Taylor *v.* Chambers, 2 Ga. App. 178, 58 S. E. 369; Vial *v.* Larson, 132 Iowa 208, 109 N. W. 1007; German Sav. Bank *v.* Fritz, (Iowa 1906) 109 N. W. 1008; Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850; Gattis *v.* Kilgo, 140 N. Car. 106, 52 S. E. 249; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

5. Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478.

1004. **2.** Vial *v.* Larson, 132 Iowa 208, 109 N. W. 1007.

Evidence Admissible to Show Malice. — See Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Vail *v.* Larson, 132 Iowa 208, 109 N. W. 1007.

Evidence Admissible to Show Absence of Malice. — Vail *v.* Larson, 132 Iowa 208, 109 N. W. 1007; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

Evidence as to Motive.— Where the article is libelous *per se*, defendant cannot testify that his motives were pure, and that he had no intention of defaming plaintiff. Berger *v.* Freeman Tribune Co., 132 Iowa 290, 109 N. W. 784.

3. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131.

4. Thomas *v.* Bradbury, (1906) 2 K. B. 627, 6 Ann. Cas. 135; Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097.

Evidence Admissible to Show Intention and Motive.— Grimes *v.* Thorp, 113 Mo. App. 652, 88 S. W. 638.

1005. 2. Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463.

4. Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

5. Cornelius *v.* State, 145 Ala. 65, 40 So. 670.

1006. 5. Rule Abrogated by Statute.— Whittaker *v.* McQueen, (Ky. 1908) 108 S. W. 236.

1007. 2. Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2.

4. Konkle *v.* Haven, 144 Mich. 667, 108 N. W. 98.

6. See Schultz *v.* Guldenstein, 144 Mich. 636, 108 N. W. 96.

Plaintiff Must Prove Knowledge of Falsity.— Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

8. Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307.

1008. 1. Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307. *Compare* Earley *v.* Winn, 129 Wiss. 291, 109 N. W. 633.

3. Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496.

1009. 1. Vest *v.* Speakman, (Ala. 1907) 44 So. 1017; Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784; Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767.

Statements Made by an Employee Are Not Admissible, unless such relationship between the employee and the employer is shown as would be notice to the employer. American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

Evidence Not Admissible to Prove Falsity.— Schultz *v.* Guldenstein, 144 Mich. 636, 108 N. W. 96.

2. Vest *v.* Speakman, (Ala. 1907) 44 So. 1017; Cain *v.* Shutt, (Md. 1907) 66 Atl. 24.

1010. 1. Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767.

2. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Blodgett *v.* Des Moines Daily News Co., (Iowa 1907) 113 N. W. 821; Cain *v.* Shutt, (Md. 1907) 66 Atl. 24; Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 1010; Com. *v.* Cochran, 16 Pa. Dist.

1011. 1. Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 1010.

2. Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257. *Compare* Ott *v.* Press Pub. Co., 40 Wash. 308, 82 Pac. 403; Le Roi *v.* Molleur, 14 Quebec K. B. 556.

1012. 1. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463; Robinson *v.* Van Auken, 190 Mass. 161, 76 N. E. 601; Konkle *v.* Haven, 144 Mich. 667, 108 N. W. 98; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

1013. 2. Lee *v.* Crump, 146 Ala. 655, 40 So. 609; Saunders *v.* Post Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993; Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478.

Injury and Malice May Be Inferred from the nature and falsity of the words and the surrounding circumstances. Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224.

6. Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693; Lyon *v.* Lash, 74 Kan. 745, 88 Pac. 262.

8. Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693; Kramer *v.* Perkins, 102 Minn. 455, 113 N. W. 1062.

1014. 2. Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496. *Compare* Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693.

A Newspaper, to Be of General Circulation within the meaning of Crim. Code Neb., § 47, must circulate generally beyond the county where published. Razee *v.* State, 73 Neb. 732, 103 N. W. 438.

3. State *v.* Huston, 19 S. Dak. 644, 104 N. W. 451.

1015. 2. Kramer *v.* Perkins, 102 Minn. 455, 113 N. W. 1062.

3. Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496.

4. Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693.

5. *Compare* Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693.

1016. 3. Bennett *v.* Crumpton, 1 Ga. App. 476, 58 S. E. 104; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146.

7. Moran *v.* O'Regan, 38 N. Bruns. 189.

9. Kramer *v.* Perkins, 102 Minn. 455, 113 N. W. 1062.

1017. 1. Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693; Lyon *v.* Lash, 74 Kan. 745, 88 Pac. 262, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 1017; Buckwalter *v.* Gossow, 75 Kan. 147, 88 Pac. 742, *quoting* 18 Am. and Eng. Encyc. of Law (2d ed.) 1077 [1017].

In Minnesota, under Rev. Laws 1905, § 4918, the writing and mailing of a libelous article to a person defamed is a sufficient publication, but the court in the case of Kramer *v.* Perkins, 102 Minn. 455, 113 N. W. 1062, doubts its application to civil actions, and says the rule is applicable more particularly to criminal prosecutions.

2. Buckwalter *v.* Gossow, 75 Kan. 147, 88 Pac. 742, *quoting* 18 Am. and Eng Encyc. of Law (2d ed.) 1077 [1017].

3. Buckwalter *v.* Gossow, 75 Kan. 147, 88 Pac. 742, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 1017; Kramer *v.* Perkins, 102 Minn. 455, 113 N. W. 1062.

4. Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349.

7. Moore *v.* Dodd, (Ky. 1907) 104 S. W. 224. See also Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146.

1018. 1. Buckwalter *v.* Gossow, 75 Kan. 147, 88 Pac. 742; Com. *v.* Applegate, 33 Pa. Co. Ct. 587.

5. **License to Publish.** — Luzenberg *v.* O'Malley, 116 La. 699, 41 So. 41.

1019. 1. German Sav. Bank *v.* Fritz, (Iowa 1906) 109 N. W. 1008; Gutkes *v.* New York Produce Exch., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 133, 93 N. Y. Supp. 254.

2. Lyon *v.* Lash, 74 Kan. 745, 88 Pac. 262; Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850.

3. Commercial Pub. Co. *v.* Smith, (C. C. A.) 150 Fed. 704.

Slanderous Words Spoken in Foreign Language. — See Romano *v.* De Vito, 191 Mass. 457, 78 N. E. 105.

Libels Written in Foreign Language. — See Romano *v.* De Vito, 191 Mass. 457, 78 N. E. 105; Lubrano *v.* Curzio, 27 R. I. 594, 65 Atl. 273.

1020. 2. Buckwalter *v.* Gossow, 75 Kan. 147, 88 Pac. 742; Whittaker *v.* McQueen, (Ky. 1908) 108 S. W. 236.

4. **For Specific Rulings.** — Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864.

5. Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Proctor *v.* Pointer, 127 Ga. 134, 56 S. E. 111; Proctor *v.* Thompson, 127 Ga. 137, 56 S. E. 112; Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363.

Proof that a wife received a letter from her husband without showing how it came into his hands is not sufficient evidence of publication. Buckwalter *v.* Gossow, 75 Kan. 147, 88 Pac. 742.

6. **An Admission in the Answer** by the defendant of mailing libelous matter to plaintiff does not admit publication of the libel. Buckwalter *v.* Gossow, 75 Kan. 147, 88 Pac. 742.

8. Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864.

1021. 1. **Admissions in Plea.** — Briggs *v.* Brown, (Fla. 1908) 46 So. 325.

2. McAvoy *v.* Press Pub. Co., 114 N. Y. App. Div. 540, 99 N. Y. Supp. 1041; Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835; Butler *v.* News-Leader Co., 104 Va. 1, 51 S. E. 213; Marcotte *v.* Bolduc, 30 Quebec Super. Ct. 222. See also State *v.* Sheridan, (Idaho 1908) 93 Pac. 656.

4. McDonald *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 467, 98 N. Y. Supp. 118. See also Dow *v.* Long, 190 Mass. 138, 76 N. E. 667.

1022. 1. Thomas *v.* Bradbury, (1906) 2 K. B. 627, 6 Ann. Cas. 135; Dakhyl *v.* Labouchere, 96 L. T. N. S. 399; Duffy *v.* New York Evening Post Co., 109 N. Y. App. Div. 471, 96 N. Y. Supp. 629; McDonald *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 467, 98 N. Y. Supp. 118.

2. Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Farley *v.* McBride, 74 Neb. 49, 103 N. W. 1036; Howarth *v.* Barlow, 113 N. Y. App. Div. 510, 99 N. Y. Supp. 457; McAvoy *v.* Press Pub. Co., 114 N. Y. App. Div. 540, 99 N. Y. Supp. 1041; Ferber *v.* Gazette, etc., Pub. Assoc., 212 Pa. St. 367, 61 Atl. 939; Mulderig *v.* Wilkes-Barre Times, 215 Pa. St. 470, 64 Atl. 636; Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772.

3. Duffy *v.* New York Evening Post Co., 109 N. Y. App. Div. 471, 96 N. Y. Supp. 629; Barr *v.* Providence Telegram Pub. Co., 27 R. I. 101, 60 Atl. 835.

1023. 1. Outcault *v.* New York Herald Co., 117 N. Y. App. Div. 534, 102 N. Y. Supp. 685.

2. Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Ranson *v.* West, (Ky. 1907) 101 S. W. 885; Sebree *v.* Thompson, (Ky. 1907) 103 S. W. 374; Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307; Sheibley *v.* Huse, 75 Neb. 811, 106 N. W. 1028.

Privilege Absolute or Conditional. — Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756.

3. Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Ranson *v.* West, (Ky. 1907) 101 S. W. 885, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1023; Sebree *v.* Thompson, (Ky. 1907) 103 S. W. 374; Schultz *v.* Strauss, 127 Wis. 325, 106 N. W. 1066.

The Characteristic Feature of Absolute, as distinguished from conditional privilege, is that in the former the question of malice is not open. Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756.

4. See Myers *v.* Hodges, 53 Fla. 197, 44 So. 357.

In Kentucky the English Rule is adopted and followed. Sebree *v.* Thompson, (Ky. 1907) 103 S. W. 374.

5. Miller *v.* Nuckolls, 77 Ark. 64, 91 S. W. 759, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1023; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Maginn *v.* Schmick, 127 Mo. App. 411, 105 S. W. 666, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1023; Schultz *v.* Strauss, 127 Wis. 325, 106 N. W. 1066.

7. See Sheppard *v.* Bryant, 191 Mass. 591, 78 N. E. 394.

1024. 1. Lescale *v.* Joseph Schwartz Co., 116 La. 293, 40 So. 708, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1024; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307. See also Sebree *v.* Thompson, (Ky. 1907) 103 S. W. 374; Kemper *v.* Fort, (Pa. St. 1907) 67 Atl. 991; Maginn *v.* Schmick, 127 Mo. App. 411, 105 S. W. 666, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1023–1025. *Compare* Myers *v.* Hodges, 53 Fla. 197, 44 So. 357.

2. Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Stewart *v.* Codrington, (Fla. 1908) 45 So. 809; Buford *v.* Southeimer, 116 La. 500, 40 So. 851; Lescale *v.* Joseph Schwartz Co., 116 La. 293, 40 So. 708, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1024; Lescale *v.* Joseph Schwartz Co., 118 La. 718, 43 So. 385; Dunn *v.* Southern Ins. Co., 116 La. 431, 40 So. 786; Kemper *v.* Fort, (Pa. St. 1907) 67 Atl. 991.

3. Lescale *v.* Joseph Schwartz Co., 116 La. 293, 40 So. 708, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1024.

1025. 1. *Compare* Miller *v.* Nuckolls, 77 Ark. 64, 91 S. W. 759.

Statements by Witness Before Grand Jury Privileged. — Schultz *v.* Strauss, 127 Wis. 325, 106 N. W. 1066.

2. Miller *v.* Nuckolls, 77 Ark. 64, 91 S. W. 759.

4. Miller *v.* Nuckolls, 77 Ark. 64, 91 S. W. 759.

8. Sebree *v.* Thompson, (Ky. 1907) 103 S. W. 374.

1026. 2. American Rule as to Statements by Counsel in Open Court. — Carpenter *v.* Ashley, 148 [illegible], 83 Pac. 444; Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756. See also Dunn *v.* Southern Ins. Co., 116 La. 431, 40 So. 786.

Statements in Pleadings. — See Sebree *v.* Thompson, (Ky. 1907) 103 S. W. 374.

3. See Myers *v.* Hodges, 53 Fla. 197, 44 So. 357.

4. Sebree *v.* Thompson, (Ky. 1907) 103 S. W. 374.

Statements Made Outside of Witness Box. — See Hope *v.* Leng, 23 Times L. Rep. 243.

Statements Before Commission of Inquiry Appointed by Bishop held absolutely privileged though witness not under oath, the inquiry being considered a judicial tribunal. Barratt *v.* Kearns, (1905) 1 K. B. 504.

Communications Made by Witness for Preparation of Proof Privileged. — Watson *v.* M'Ewan, (1905) A. C. 480, 3 Ann. Cas. 124.

1027. 1. Hendrix *v.* Daughtry, (Ga. App. 1908) 60 S. E. 206, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1026; Schultz *v.* Strauss, 127 Wis. 325, 106 N. W. 1066. See also Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Sheppard *v.* Bryant, 191 Mass. 591, 78 N. E. 391.

Testimony Not Ruled Out by the Court. — In Hendrix *v.* Daughtry, (Ga. App. 1908) 60 S. E. 206, it was held that answers of a witness responsive to questions asked by counsel and not disallowed by the court are absolutely privileged.

2. Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451.

Statement by Magistrate after Withdrawal of Charge. — Law *v.* Llewellyn, (1906) 1 K. B. 487, 4 Ann. Cas. 431.

1028. 2. Miller *v.* Nuckolls, 77 Ark. 64, 91 S. W. 759, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1028. See also Sebree *v.* Thompson, (Ky. 1907) 103 S. W. 374.

Burden of Proof. — Hendrix *v.* Daughtry, (Ga. App. 1908) 60 S. E. 206.

4. Witness Not Permitted to Judge What Is Relevant or Material to Issue. — Hendrix *v.* Daughtry, (Ga. App. 1908) 60 S. E. 206.

1029. 1. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Taylor *v.* Chambers, 2 Ga. App. 178, 58 S. E. 369; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463; Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850; Howarth *v.* Barlow, 113 N. Y. App. Div. 510, 99 N. Y. Supp. 457; Laughlin *v.* Schnitzer, (Tex. Civ. App. 1907) 106 S. W. 908; Gatewood *v.* Garrett, 106 Va. 552, 56 S. E. 335; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

2. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Sheftall *v.* Central of Georgia R. Co., 123 Ga. 589, 51 S. E. 646; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2; Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451; Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363; Walker *v.* Best, 107 N. Y. App. Div. 304, 95 N. Y. Supp. 151; Lapetina *v.* Santangelo, 124 N. Y. App. Div. 519, 108 N. Y. Supp. 977; Gattis *v.* Kilgo, 140 N. Car. 106, 52 S. E. 249; Rosenbaum *v.* Roche, (Tex. Civ. App. 1907) 101 S. W. 1164, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1028 [1029].

Communications Made by Employer to Indemnity Company within Rule. — Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463.

Statements by Garnishee in Declaration within Rule. — Daoust *v.* Charbonneau, 30 Quebec Super. Ct. 188.

1030. 1. Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451; Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363.

The Privilege Is Not Confined to Legal Duties of the parties in the premises. Briggs *v.* Brown, (Fla. 1908) 46 So. 325.

2. Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Gattis *v.* Kilgo, 140 N. Car. 106, 52 S. E. 249.

4. Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451.

Officers of a Corporation have the right to communicate with each other as to the conduct of an employee. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131.

Privilege of Stockholder to Write upon Conduct of Officer. — See Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

1031. 1. Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Sheftall *v.* Central of Georgia R. Co., 123 Ga. 589, 51 S. E. 646; Rose *v.* Imperial Engine Co., 110 N. Y. App. Div. 437, 96 N. Y. Supp. 808; Lapetina *v.* Santangelo, 124 N. Y. App. Div. 519, 108 N. Y. Supp. 975.

3. Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451; Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349.

4. Edmondson *v.* Birch, (1907) 1 K. B. 371, 7 Ann. Cas. 192; Vail *v.* Larson, 132 Iowa 208, 109 N. W. 1007.

1032. 2. Rosenbaum *v.* Roche, (Tex. Civ. App. 1907) 101 S. W. 1164, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1037 [1032].

4. Response to Inquiry by Husband. — Schultz *v.* Guldenstein, 144 Mich. 636, 108 N. W. 96.

5. Rosenbaum *v.* Roche, (Tex. Civ. App. 1907) 101 S. W. 1164; Laughlin *v.* Schmitzer, (Tex. Civ. App. 1907) 106 S. W. 908. See also McLean *v.* Campbell, 38 Nova Scotia 416.

11. McGarry *v.* Healey, 78 Conn. 365, 62 Atl. 61.

Communication between Employer and Employee's Surety. — See Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463.

1033. 2. McGarry *v.* Healey, 78 Conn. 365, 62 Atl. 671; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Rose *v.* Imperial Engine Co., 110 N. Y. App. Div. 437, 96 N. Y. Supp. 808; Rosenbaum *v.* Roche, (Tex. Civ. App. 1907) 101 S. W. 1164.

5. See Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772.

1034. 3. Statement to Employee's Surety. — See Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463.

4. See Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131.

6. Sheftall *v.* Central of Georgia R. Co., 123 Ga. 589, 51 S. E. 646.

7. *Compare* Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

1035. 5. Universities and Colleges. — Proceedings before a board of trustees are qualifiedly privileged. Gattis *v.* Kilgo, 140 N. Car. 106, 52 S. E. 249.

Report against Servant to Employer's Association Privileged. — Keith *v.* Lauder, Sc. Ct. Sess. 8 F. 356.

1036. 1. Authorization by Official Board to Pastor to publish a libel is not a justification of his act, when made in excess of the ecclesiastical rights of its members. State *v.* Lomack, 130 Iowa 79, 106 N. W. 386.

3. Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363.

5. A Communication to the Elders of a Church by a person in another parish, as to the qualification of a minister leaving his pastorate to perform duties in a new pastorate, was held *quasi*-privileged in Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850.

1037. 2. See Schultz *v.* Guldenstein, 144 Mich. 636, 108 N. W. 96.

5. Family Council Privileged Occasion. — Coallier *v.* St. Denis, 30 Quebec Super. Ct. 340.

1038. 2. Sheftall *v.* Central of Georgia R. Co., 123 Ga. 589, 51 S. E. 646; Parr *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 792.

4. Lapetina *v.* Santangelo, 124 N. Y. App. Div. 519, 108 N. Y. Supp. 975.

11. Chapman *v.* Battle, 124 Ga. 574, 52 S. E. 812; Taylor *v.* Chambers, 2 Ga. App. 178, 58 S. E. 369; Gillis *v.* Powell, 129 Ga. 403, 58 S. E. 1051; Schultz *v.* Strauss, 127 Wis. 325, 106 N. W. 1066. See also Washington Post Co. *v.* Wells, 27 App. Cas. (D. C.) 495.

Statements Regarding Stolen Property Are Privileged when made in the prosecution of efforts to recover the property. Chapman *v.* Battle, 124 Ga. 574, 52 S. E. 812.

12. Richardson *v.* Reps, (Iowa 1907) 112 N. W. 788. See also Robinson *v.* Van Auken, 190 Mass. 161, 76 N. E. 601.

Information by a Person Having No Personal Knowledge of the Facts is not privileged. Miller *v.* Nuckolls, 77 Ark. 64, 91 S. W. 759.

1039. 1. Taylor *v.* Chambers, 2 Ga. App. 178, 58 S. E. 369.

2. *Compare* Miller *v.* Nuckolls, 77 Ark. 64, 91 S. W. 759.

3. De Arnaud *v.* Ainsworth, 24 App. Cas. (D. C.) 167.

4. Ranson *v.* West, (Ky. 1907) 101 S. W. 885.

Communication by Principal to City School Superintendent Privileged. — Walker *v.* Best, 107 N. Y. App. Div. 304, 95 N. Y. Supp. 151.

Diagnosis by Police Surgeon of Illness of Constable Privileged. — A. *v.* B. (1907) Sc. Ct. Sess. 1154.

5. By School Trustees to County School Superintendent. — Ranson *v.* West, (Ky. 1907) 101 S. W. 885.

1040. 1. Howarth *v.* Barlow, 113 N. Y. App. Div. 510, 99 N. Y. Supp. 457.

4. Cassidy *v.* Connochie, (1907) Sc. Ct. Sess. 1112.

5. Sheppard *v.* Bryant, 191 Mass. 591, 78 N. E. 394.

10. Ambrosius *v.* O'Farrell, 119 Ill. App. 265; Fleming *v.* Brauer, 110 N. Y. App. Div. 876, 96 N. Y. Supp. 594; Howarth *v.* Barlow, 113 N. Y. App. Div. 510, 99 N. Y. Supp. 457; Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1040; Gatewood *v.* Garrett, 106 Va. 552, 56 S. E. 335. See also Com. *v.* Duncan, (Ky. 1907) 104 S. W. 997.

11. Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1040.

1041. 1. Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1040.

4. State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; Harriman *v.* New Nonpareil Co., 132 Iowa 616, 110 N. W. 33; Butler *v.* News Leader Co., 104 Va. 1, 51 S. E. 213; Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041. See also Wiles *v.* Victoria Times Printing, etc., Co., 11 British Columbia 143.

7. Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041.

8. Raymond *v.* U. S., 25 App. Cas. (D. C.) 555; Com. *v.* Duncan, (Ky. 1907) 104 S. W. 997; Dow *v.* Long, 190 Mass. 138, 76 N. E. 667; Howarth *v.* Barlow, 113 N. Y. App. Div. 510, 99 N. Y. Supp. 457; Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1041.

1042. 1. Ferber *v.* Gazette, etc., Pub. Assoc., 212 Pa. St. 367, 61 Atl. 939; Muhlerig *v.* Wilkes-Barre Times, 215 Pa. St. 470, 64 Atl. 636.

2. Farley *v.* McBride, 74 Neb. 49, 103 N. W. 1036; Sheibley *v.* Huse, 75 Neb. 811, 106 N. W. 1028; Sheibley *v.* Fales, 75 Neb. 823, 106 N. W. 1032; Sheibley *v.* Nelson, 75 Neb. 804, 106 N. W. 1034; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307. See also State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365.

1043. 3. Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756; Blodgett *v.* Des Moines Daily News Co., (Iowa 1907) 113 N. W. 821; Register Newspaper Co. *v.* Stone, (Ky. 1907) 102 S. W. 800; Monaghan *v.* Globe Newspaper Co., 190 Mass. 304, 77 N. E. 476; Nixon *v.* Dispatch Printing Co., 101 Minn. 309, 112 N. W. 258; American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

Opinion of Reporter Not Privileged. — An article which gives the opinion of a reporter as to the proceedings of a judicial, legislative, or

other public official body is not privileged, under Rev. St. Idaho 1887, § 6743. State *v.* Sheridan, (Idaho 1908) 93 Pac. 656.

Under Statute in Wisconsin the same rule is laid down as that prevailing in New York. Ilsley *v.* Sentinel Co., (Wis. 1907) 113 N. W. 425.

4. Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005. *Compare* Todd *v.* Every Evening Printing Co., (Del. 1906) 62 Atl. 1089.

1044. 1. American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

Investigations Connected with Coroner's Office and Police Department. — The mere investigations of a detective's character conducted by persons connected with the coroner's office and by members of a municipal police force has been held not to be a proceeding before a judicial body within the meaning of the New York statute. Munnally *v.* Press Pub. Co., 110 N. Y. App. Div. 10, 96 N. Y. Supp. 1042.

3. Nixon *v.* Dispatch Printing Co., 101 Minn. 309, 112 N. W. 258; American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005; Ilsley *v.* Sentinel Co., (Wis. 1907) 113 N. W. 425, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 1044. See also Todd *v.* Every Evening Printing Co., (Del. 1906) 62 Atl. 1089.

4. Monaghan *v.* Globe Newspaper Co., 190 Mass. 394, 77 N. E. 476; Nixon *v.* Dispatch Printing Co., 101 Minn. 309, 112 N. W. 258; American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

5. Furniss *v.* Cambridge Daily News, 23 Times L. Rep. 705; Register Newspaper Co. *v.* Stone, (Ky. 1907) 102 S. W. 800; Monaghan *v.* Globe Newspaper Co., 190 Mass. 394, 77 N. E. 476; American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005. See also Todd *v.* Every Evening Printing Co., (Del. 1906) 62 Atl. 1089.

Headlines of Reports. — See Ilsley *v.* Sentinel Co., (Wis. 1907) 113 N. W. 425.

Alleged Remarks of Counsel. — Where a publication is made in a newspaper of the proceedings of a judicial trial, in which appears what purports to be the remarks of counsel made during the progress of the case, if such remarks are slanderous in their nature and were not in fact made by counsel the publisher is liable in an action of libel to the party aggrieved. Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756.

1045. 8. American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

1046. 8. See State *v.* Sheridan, (Idaho 1908) 93 Pac. 656.

1047. 3. Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591.

1048. 1. Transmission by Cablegram where that is the usual and necessary means does not avoid the privilege. Edmondson *v.* Birch, (1907) 1 K. B. 371, 7 Ann. Cas. 192.

6. *England.* — See Gall *v.* Slessor, (1907) Sc. Ct. Sess. 708.

Canada. — Wilcox *v.* Stewart, 38 Nova Scotia 409; Kavanagh *v.* Norwich Union F. Ins. Co., 28 Quebec Super. Ct. 506.

Colorado. — Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131.

Florida. — Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Briggs *v.* Brown, (Fla. 1908) 46 So. 325.

Georgia. — Gillis *v.* Powell, 129 Ga. 403, 58 S. E. 1051; Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756.

Iowa. — Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463; German Sav. Bank *v.* Fritz, (Iowa 1906) 109 N. W. 1008.

Massachusetts. — Robinson *v.* Van Auken, 190 Mass. 161, 76 N. E. 601; Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2.

Michigan. — Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850; Burr's Damascus Tool Works *v.* Peninsular Tool Mfg. Co., 142 Mich. 417, 105 N. W. 858; Schultz *v.* Guldenstein, 144 Mich. 636, 108 N. W. 96; Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451.

New York. — Howarth *v.* Barlow, 113 N. Y. App. Div. 510, 99 N. Y. Supp. 457; McAvoy *v.* Press Pub. Co., 114 N. Y. App. Div. 540, 99 N. Y. Supp. 1041.

Pennsylvania. — Mulderig *v.* Wilkes-Barre Times, 215 Pa. St. 470, 64 Atl. 636; Com. *v.* Di Silvestro, 31 Pa. Super. Ct. 537.

Washington. — Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

7. See Laughlin *v.* Schnitzer, (Tex. Civ. App. 1907) 106 S. W. 908.

1049. 1. Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

2. Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2; Com. *v.* Cochran, 16 Pa. Dist. 313.

3. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2; Schultz *v.* Guldenstein, 144 Mich. 636, 108 N. W. 96; Mulderig *v.* Wilkes-Barre Times, 215 Pa. St. 470, 64 Atl. 636; Com. *v.* Cochran, 16 Pa. Dist. 313; Crate *v.* McCallum, 11 Ont. L. Rep. 81.

4. See Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Crafer *v.* Hooper, 194 Mass. 68, 80 N. E. 2.

The Protection of Privilege may be lost by abuse of the privilege. Robinson *v.* Van Auken, 190 Mass. 161, 76 N. E. 601.

5. Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627. *Compare* Schultz *v.* Guldenstein, 144 Mich. 636, 108 N. W. 96.

5. Statements Made by an Employee after the publication tending to show the employer's knowledge of the falsity of the communication previous to the publication, are inadmissible unless it is shown that the relationship existing between them is such as would charge notice to the employer. American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

1050. 1. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Vial *v.* Larson, 132 Iowa 208, 109 N. W. 1007; Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850; Schultz *v.* Guldenstein, 144 Mich. 636, 108 N. W. 96; Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451; Laughlin *v.* Schnitzer, (Tex. Civ. App. 1907) 106 S. W. 908; Gatewood *v.* Garrett, 106 Va. 552, 56 S. E. 325; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627, *citing* 18 Am. and Eng. Encyc. of Law (2d ed.) 1050.

2. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Sheftall *v.* Central of Georgia R. Co., 123 Ga. 589, 51 S. E. 646; Gillis *v.* Powell, 129 Ga. 403, 58 S. E. 1051; Richardson *v.* Reps, (Iowa 1907) 112 N. W. 788; Shipp *v.* Patton, (Ky. 1906) 93 S. W. 1033; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Burr's Damascus Tool Works *v.* Peninsular Tool Mfg. Co., 142 Mich. 417, 105 N. W. 858; Schultz *v.* Guldenstein, 144 Mich. 636, 108 N. W. 96; Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1050.

3. Carpenter *v.* Ashley, 148 Cal. 422, 83 Pac. 444; Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Shipp *v.* Patton, (Ky. 1906) 93 S. W. 1033; Sebree *v.* Thompson, (Ky. 1907) 103 S. W. 374; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850; Burr's Damascus Tool Works *v.* Peninsular Tool Mfg. Co., 142 Mich. 417, 105 N. W. 858; Gattis *v.* Kilgo, 140 N. Car. 106, 52 S. E. 249; Echard *v.* Morton, 26 Pa. Super. Ct. 579; Com. *v.* Di Silvestro, 31 Pa. Super. Ct. 537; Byrne *v.* Funk, 38 Wash. 506, 80 Pac. 772; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1050; Kavanagh *v.* Norwich Union F. Ins. Co., 28 Quebec Super. Ct. 506.

4. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Robinson *v.* Van Auken, 190 Mass. 161, 76 N. E. 601; Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850; Trimble *v.* Morrish, (Mich. 1908) 116 N. W. 451; Howarth *v.* Barlow, 113 N. Y. App. Div. 510, 99 N. Y. Supp. 457; Gattis *v.* Kilgo, 140 N. Car. 106, 52 S. E. 249; Mulderig *v.* Wilkes-Barre Times, 215 Pa. St. 470, 64 Atl. 636; Echard *v.* Morton, 26 Pa. Super. Ct. 57[illegible].

1051. 1. Denver Public Warehouse Co. *v.* Holloway, 34 Colo. 432, 83 Pac. 131; Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Myers *v.* Hodges, 53 Fla. 197, 44 So. 357; Konkle *v.* Haven, 140 Mich. 472, 103 N. W. 850.

3. Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704; Atlanta News Pub. Co. *v.* Medlock, 123 Ga. 714, 51 S. E. 756; Register Newspaper Co. *v.* Stone, (Ky. 1907) 102 S. W. 800; Luzenberg *v.* O'Malley, 116 La. 699, 41 So. 41; Nixon *v.* Dispatch Printing Co., 101 Minn. 309, 112 N. W. 258; Farley *v.* McBride, 74 Neb. 49, 103 N. W. 1036; Sheibley *v.* Huse, 75 Neb. 811, 106 N. W. 1028; American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005; Reynolds *v.* Holland, (Wash. 1907) 90 Pac. 648; Marcotte *v.* Bolduc, 30 Quebec Super. Ct. 222.

4. Todd *v.* Every Evening Printing Co. (Del. 1906) 62 Atl. 1080; Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68; Farley *v.* McBride, 74 Neb. 49, 103 N. W. 1036.

6. President of Corporation. Meyers *v.* Hodges, 53 Fla. 197, 44 So. 357.

1052. 1. *Compare* Merrill *v.* Post Pub. Co., (Mass. 1908) 83 N. E. 419.

2. Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224.

5. Warner Instrument Co. *v.* Ingersoll, 157 Fed. 311; Farbenfabriken of Elberfeld Co. *v.* Beringer, (C. C. A.) 158 Fed. 802; Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551; Reporters Assoc. *v.* Sun Printing, etc., Co., 186 N. Y. 437, 79 N. E. 710, *reversing* (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 174, 95 N. Y. Supp. 329, 112 N. Y. App. Div. 246, 112 N. Y. Supp. 294; New York Bureau of Information *v.* Ridgway-Thayer Co., 119 N. Y. App. Div. 339, 104 N. Y. Supp. 202; Gross Coal Co. *v.* Rose, 126 Wis. 24, 105 N. W. 225.

Cannot Sue for Libel of Officers or Stockholders. — Hapgoods *v.* Crawford, (Supm. Ct. App. Div.) 110 N. Y. Supp. 122.

Nontrading Corporation May Maintain Action. — Chinese Empire Reform Assoc. *v.* Chinese Daily Newspaper Pub. Co., 13 British Columbia 141.

6. Farbenfabriken of Elberfeld Co. *v.* Beringer, (C. C. A.) 158 Fed. 802.

1053. 3. Louisiana — Husband or Court Must Authorize Action. — Martin *v.* Derenbecker, 116 La. 495, 40 So. 849.

1054. 1. Comes *v.* Cruce, (Ark. 1908) 107 S. W. 185; Watson *v.* Detroit Journal Co., 143 Mich. 430, 107 N. W. 81, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1053; Weston *v.* Commercial Advertiser Assoc., 184 N. Y. 479, 77 N. E. 660. See also People *v.* Eastman, 188 N. Y. 478, 81 N. E. 450.

2. Goldborough *v.* Orem, 103 Md. 671, 64 Atl. 36; Watson *v.* Detroit Journal Co., 143 Mich. 430, 107 N. W. 81, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1053; Weston *v.* Commercial Advertiser Assoc., 184 N. Y. 479, 77 N. E. 660. *Compare* Kenworthy *v.* Journal Co., 117 Mo. App. 327, 93 S. W. 882.

3. Weston *v.* Commercial Advertiser Assoc., 184 N. Y. 479, 77 N. E. 660; Watson *v.* Detroit Journal Co., 143 Mich. 430, 107 N. W. 81, wherein the alleged libel referred to "trading-stamp concerns," as "the get-rich-quick industry," and "the trading-stamp fake." It was held to refer to the business generally and not to any particular individual, and therefore the action could not be maintained.

1055. 5. Weitershausen *v.* Croatian Printing, etc., Co., 151 Fed. 947; Bergstrom *v.* Ridgway-Thayer Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 95, 103 N. Y. Supp. 1093, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1055.

9. Weitershausen *v.* Croatian Printing, etc., Co., 151 Fed. 947; Bergstrom *v.* Ridgway-Thayer Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 95, 103 N. Y. Supp. 1093, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1055; Tobin *v.* Alfred M. Best Co., 120 N. Y. App. Div. 387, 105 N. Y. Supp. 294, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1055.

1056. 3. Miller *v.* Nuckolls, 76 Ark. 485, 89 S. W. 88.

7. Jensen *v.* Damm, 127 Iowa 555, 103 N. W.

798, Noyes v. Thorpe, 73 N. H. [illegible] Atl. 787; Gow v. Bingham, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 66, 107 N. Y. Supp. 1011.

1057. 6. Singer Mfg. Co. *v.* Taylor, (Ala. 1906) 43 So. 210; Parr *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 792. *Contra,* Green *v.* Davies, 182 N. Y. 499, 75 N. E. 536.

1058. 1. See Parr *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 792.

2. Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551; Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224; Empire Cream Separator Co. *v.* De Laval Dairy Supply Co., (N. J. L. 1907) 67 Atl. 711.

As to Liability of Telegraph Company, see Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693.

The President of a Corporation is not personally liable for a libel published by the corporation in the absence of personal participation in the tortious act. Folwell *v.* Miller, (C. C. A.) 145 Fed. 495, 7 Ann. Cas. 455.

Limited Company Liable for Libel Published by Officer. — Citizens' L. Assur. Co. *v.* Brown, (1904) A. C. 423, 73 L. J. P. C. 102, 90 L. T. N. S. 739, 53 W. R. 176, 20 Times L. Rep. 497.

1059. 1. Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551.

3. Singer Mfg. Co. *v.* Taylor, (Ala. 1906) 43 So. 210; Rivers *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 471, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059.

4. Singer Mfg. Co. *v.* Taylor, (Ala. 1906) 43 So. 210; Rivers *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 471; Empire Cream Separator Co. *v.* De Laval Dairy Supply Co., (N. J. L. 1907) 67 Atl. 711; Sawyer *v.* Norfolk, etc., R. Co., 142 N. Car. 1, 54 S. E. 793.

6. Burgess *v.* Patterson, (Ky. 1908) 106 S. W. 837.

1060. 7. Proctor *v.* Pointer, 127 Ga. 134, 56 S. E. 111; Proctor *v.* Thompson, 127 Ga. 137, 56 S. E. 112.

Burden of Proof on Defendant. — Kelley *v.* State, (Tex. Crim. 1907) 101 S. W. 230.

Insanity Is a Complete Defense in Criminal Actions. — Kelley *v.* State, (Tex. Crim. 1907) 101 S. W. 230.

1061. 1. Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146; Kellar *v.* James, (W. Va. 1907) 59 S. E. 939.

2. Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864.

Exemplary Damages May Be Allowed in an action against husband and wife for slanderous words spoken by the wife. Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146.

Exemplary Damages Not Allowable against the husband where he is absolutely blameless and is held liable on technical grounds only. But exemplary damages may be awarded against the wife. Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864.

3. Kellar *v.* James, (W. Va. 1907) 59 S. E. 939.

4. See Berryhill *v.* Holland, (Ky. 1907) 99 S. W. 902.

1062. 4. Singer Mfg. Co. *v.* Taylor, (Ala. 1906) 43 So. 210; Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551.

5. Singer Mfg. Co. *v.* Taylor, (Ala. 1906) 43 So. 210. *Compare* Folwell *v.* Miller, (C. C. A.) 145 Fed. 495, 7 Ann. Cas. 455.

Failure to Disapprove or Repudiate a letter after obtaining knowledge of its publication amounts to ratification. Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551.

1063. 1. Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693.

2. Luzenberg *v.* O'Malley, 116 La. 699, 41 So. 41; Craig *v.* Warren, 99 Minn. 246, 109 N. W. 231. See also Folwell *v.* Miller, (C. C. A.) 145 Fed. 495, 7 Ann. Cas. 455.

3. Neafie *v.* Hoboken Printing, etc., Co., 72 N. J. L. 340, 62 Atl. 1129.

1064. 7. Neafie *v.* Hoboken Printing, etc., Co., 72 N. J. L. 346, 62 Atl. 1129.

11. Neafie *v.* Hoboken Printing, etc., Co., 72 N. J. L. 340, 62 Atl. 1129.

1065. 1. State *v.* O'Malley, 115 La. 1095, 40 So. 470.

4. *Compare* Folwell *v.* Miller, (C. C. A.) 145 Fed. 495, 7 Ann. Cas. 455.

5. *Compare* Folwell *v.* Miller, (C. C. A.) 145 Fed. 495, 7 Ann. Cas. 455, which case comments upon the doctrine laid down in the case of Smith *v.* Utley, 92 Wis. 133, 65 N. W. 744, cited in the original note, and holds that an editor-in-chief is not liable for the acts of his subordinate in printing a libelous article during his absence.

1066. 1. Jensen *v.* Damm, 127 Iowa 555, 103 N. W. 798.

3. *Compare* Noyes *v.* Thorpe, 73 N. H. 481, 62 Atl. 787.

4. Noyes *v.* Thorpe, 73 N. H. 481, 62 Atl. 787.

5. Pickford *v.* Talbott, 28 App. Cas. (D. C.) 498.

7. Jensen *v.* Damm, 127 Iowa 555, 103 N. W. 798.

1067. 1. Marcotte *v.* Bolduc, 30 Quebec Super. Ct. 222.

2. Burkhart *v.* North American Co., 214 Pa. St. 39, 63 Atl. 410.

4. Death Pending Appeal. — See Miller *v.* Nuckolls, 76 Ark. 485, 89 S. W. 88.

7. Rollins *v.* Louisville Times Co., (Ky. 1906) 90 S. W. 1081, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1067; Nixon *v.* Dispatch Printing Co., 101 Minn. 309, 112 N. W. 258; Ukman *v.* Daily Record Co., 180 Mo. 378, 88 S. W. 60; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307; Sheibley *v.* Huse, 75 Neb. 811, 106 N. W. 1028; Sheibley *v.* Fales, 75 Neb. 823, 106 N. W. 1032; Sheibley *v.* Nelson, 75 Neb. 804, 106 N. W. 1034; Ott *v.* Press Pub. Co., 40 Wash. 308, 82 Pac. 403; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627; Reynolds *v.* Holland, (Wash. 1907) 90 Pac. 648.

1068. 2. See Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627.

4. See Fordyce *v.* Richmond, (Neb. 1907) 111 N. W. 850.

7. Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Sheibley *v.* Fales, 75 Neb. 823, 106 N. W. 1032; Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478; Sacchetti *v.* Fehr, 217 Pa. St. 475, 66

Atl. 742; Mulderig *v.* Wilkes-Barre Times, 215 Pa. St. 470, 64 Atl. 636; Fleming *v.* Wallace, 116 Tenn. 20, 91 S. W. 47; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146; Chambers *v.* Leiser, 43 Wash. 285, 86 Pac. 627; Reynolds *v.* Holland, (Wash. 1907) 90 Pac. 648.

8. State *v.* Conklin, 47 Oregon 509, 84 Pac. 482, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1068.

9. Razee *v.* State, 73 Neb. 732, 103 N. W. 438.

10. State *v.* Sheridan, (Idaho 1908) 93 Pac. 656; State *v.* Lomack, 130 Iowa 79, 106 N. W. 386; State *v.* Williams, 74 Kan. 180, 85 Pac. 938; State *v.* Collins, 117 Mo. App. 658, 93 S. W. 325; State *v.* Conklin, 47 Oregon 509, 84 Pac. 482; State *v.* Clifford, 58 W. Va. 681, 52 S. E. 864. See also People *v.* Eastman, 188 N. Y. 478, 81 N. E. 459.

In Alabama the constitutional provision is silent as to the purpose for which and to what extent the evidence is admissible, whether in justification or mitigation. Brooke *v.* State, (Ala. 1907) 45 So. 622.

Insanity of Defendant as Defense. — See Kelley *v.* State, (Tex. Crim. 1907) 101 S. W. 230.

Proof of Subornation of Perjury is not sufficient where the charge is one of perjury, nor will it be received in justification. State *v.* Lomack, 130 Iowa 79, 106 N. W. 386.

1069. **4.** Commercial Pub. Co. *v.* Smith, (C. C. A.) 149 Fed. 704; Jensen *v.* Damm, 127 Iowa 555, 103 N. W. 798; Blodgett *v.* Des Moines Daily News Co., (Iowa 1907) 113 N. W. 821. See also Monaghan *v.* Globe Newspaper Co., 190 Mass. 394, 77 N. E. 476.

5. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Blodgett *v.* Des Moines Daily News Co., (Iowa 1907) 113 N. W. 821; Rollins *v.* Louisville Times Co., (Ky. 1906) 90 S. W. 1081; Whittaker *v.* McQueen, (Ky. 1908) 108 S. W. 236; Monaghan *v.* Globe Newspaper Co., 190 Mass. 394, 77 N. E. 476; Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686; Ferber *v.* Gazette, etc., Pub. Assoc., 212 Pa. St. 367, 61 Atl. 930.

6. Dowie *v.* Priddle, 216 Ill. 553, 75 N. E. 243; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Luzenberg *v.* O'Malley, 116 La. 699, 41 So. 41.

1070. **1.** Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784; Register Newspaper Co. *v.* Stone, (Ky. 1907) 102 S. W. 800, *quoting* [18] AM. AND ENG. ENCYC. OF LAW [(2d ed.) 1070]; Monaghan *v.* Globe Newspaper Co., 190 Mass. 394, 77 N. E. 476; Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547; Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1070; Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993.

2. Farbenfabriken of Elberfeld Co. *v.* Beringer, (C. C. A.) 158 Fed. 802; Register Newspaper Co. *v.* Stone, (Ky. 1907) 102 S. W. 800, *quoting* [18] AM. AND ENG. ENCYC. OF LAW [(2d ed.) 1070]; Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993.

3. Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591.

Perjury. — See Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547.

1071. **1.** See Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591.

5. Abraham *v.* Baldwin, 52 Fla. 151, 42 So. 591; Bennett *v.* Crumpton, 1 Ga. App. 476, 58 S. E. 104; Whittaker *v.* McQueen, (Ky. 1908) 108 S. W. 236; Sacchetti *v.* Fehr, 217 Pa. St. 475, 66 Atl. 742; Fleming *v.* Wallace, 116 Tenn. 20, 91 S. W. 47.

1072. **1.** Razee *v.* State, 73 Neb. 732, 103 N. W. 438.

4. See Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307. *Compare* Dowie *v.* Priddle, 216 Ill. 553, 75 N. E. 243.

1073. **5.** Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Bennett *v.* Crumpton, 1 Ga. App. 476, 58 S. E. 104; Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784; Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307; Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363; Brown *v.* McArthur, 106 N. Y. App. Div. 366, 94 N. Y. Supp. 537; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

1074. **1.** Bennett *v.* Crumpton, 1 Ga. App. 476, 58 S. E. 104.

2. Bennett *v.* Crumpton, 1 Ga. App. 476, 58 S. E. 104; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146.

Newspaper Article Purporting to Be Copied. — Sheibley *v.* Huse, 75 Neb. 811, 106 N. W. 1028; Prevost *v.* Huard, 7 Quebec Pr. 406.

3. Farbenfabriken of Elberfeld Co. *v.* Beringer, (C. C. A.) 158 Fed. 802; Bohan *v.* Record Pub. Co., 1 Cal. App. 429, 82 Pac. 634; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; McHugh *v.* Ambrose, (Iowa 1907) 113 N. W. 1080; Hammond *v.* Porter, 150 Mich. 328, 114 N. W. 64; Neafie *v.* Hoboken Printing, etc., Co., (N. J. L. 1907) 68 Atl. 146. See also Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097.

1075. **2. Words Used in Jest — Exception to Rule.** — See Lambertini *v.* Sun Printing, etc., Assoc., 111 N. Y. App. Div. 437, 97 N. Y. Supp. 694, *reversing* (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 174, 95 N. Y. Supp. 329.

5. Wrong Person's Picture by Mistake. — Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565.

8. Childs *v.* Childs, (Wash. 1908) 94 Pac. 660.

9. Monaghan *v.* Globe Newspaper Co., 190 Mass. 394, 77 N. E. 476.

1076. **10. Headlines of a Newspaper** are not sufficient to prove a libel without the introduction of the entire article. Miller *v.* State, 81 Ark. 359, 99 S. W. 533.

1077. **1.** Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365.

2. Frost *v.* London Joint-Stock Bank, 22 Times L. Rep. 760; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618.

4. Sheibley v. Ashton, 130 Iowa 195, 106 N. W. 618.

5. State v. Williams, 74 Kan. 180, 85 Pac. 938; Lodge v. Hampton, 116 Ill. App. 414; Earley v. Winn, 129 Wis. 291, 109 N. W. 633.

1078. 2. Sheffall v. Central of Georgia R. Co., 123 Ga. 589, 51 S. E. 646; Sunley v. Metropolitan Life Ins. Co., 129 Iowa 123, 105 N. W. 392; Line v. Spies, 139 Mich. 484, 102 N. W. 993; Earley v. Winn, 129 Wis. 291, 109 N. W. 633.

4. Brinsfield v. Howeth, (Md. 1908) 68 Atl. 566; Line v. Spies, 139 Mich. 484, 102 N. W. [illegible]

5. Proctor v. Pointer, 127 Ga. 134, 56 S. E. 111; Proctor v. Thompson, 127 Ga. 137, 56 S. E. 112; Julian v. Kansas City Star Co., (Mo. 1907) 107 S. W. 496. See also Brinsfield v. Howeth, (Md. 1908) 68 Atl. 566.

6. Kloths v. Hess, 126 Wis. 587, 106 N. W. 251; Sheffall v. Central of Georgia R. Co., 123 Ga. 589, 51 S. E. 646.

7. **Action against Husband and Wife.** — Proof that the wife did not sign a letter or take part in the publication will release her from liability. Konkle v. Haven, 140 Mich. 472, 103 N. W. 850.

1079. 1. Miller v. Nuckolls, 77 Ark. 64, 91 S. W. 759, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1078; Haub v. Friermuth, 1 Cal. App. 556, 82 Pac. 571; Ladwig v. Heyer, (Iowa 1907) 113 N. W. 767; Robinson v. Van Auken, 190 Mass. 161, 76 N. E. 601; State v. Fenn, 112 Mo. App. 531, 86 S. W. 1098; Yager v. Bruce, 116 Mo. App. 473, 93 S. W. 307; Patterson v. Frazer, (Tex. Civ. App. 1906) 93 S. W. 146; Patterson v. Frazer, (Tex. 1906) 94 S. W. 324. See also Childs v. Childs, (Wash. 1908) 94 Pac. 660; Earley v. Winn, 129 Wis. 291, 109 N. W. 633. *Compare* Jensen v. Damm, 127 Iowa 555, 103 N. W. 798.

2. Haub v. Friermuth, 1 Cal. App. 556, 82 Pac. 571; Kloths v. Hess, 126 Wis. 587, 106 N. W. 251, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1079.

3. Ladwig v. Heyer, (Iowa 1907) 113 N. W. 767.

4. Miller v. Nuckolls, 77 Ark. 64, 91 S. W. 759, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1079; Robinson v. Van Auken, 190 Mass. 161, 76 N. E. 601; Yager v. Bruce, 116 Mo. App. 473, 93 S. W. 307.

5. Miller v. Nuckolls, 77 Ark. 64, 91 S. W. 759, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1079; Haub v. Friermuth, 1 Cal. App. 556, 82 Pac. 571; State v. Fenn, 112 Mo. App. 531, 86 S. W. 1098; Yager v. Bruce, 116 Mo. App. 473, 93 S. W. 307; Kloths v. Hess, 126 Wis. 587, 106 N. W. 251.

1080. 3. Konkle v. Havens, 140 Mich. 472, 103 N. W. 850.

4. *Compare* State v. Collins, 117 Mo. App. 678, 93 S. W. 325.

7. Com. v. Di Silvestro, 31 Pa. Super. Ct. 537, 556.

8. Salem News Pub. Co. v. Caliga, (C. C. A.) 144 Fed. 965, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1080; Tingley v. Times Mirror Co., [illegible] Pac. 1097; Julian v. Kansas City Star Co., (Mo. 1907) 107 S. W. 496; Nunnally v. Mail, etc., Co., 113 N. Y. App. Div. 831, 99 N. Y. Supp. 647; Earley v. Winn, 129 Wis. 291, 109 N. W. 633.

1081. 2. Peck v. Tribune Co., (C. C. A.) 154 Fed. 330; Labor Review Pub. Co. v. Galliher, (Ala. 1907) 45 So. 188; Nichols v. Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

3. Burkhart v. North American Co., 214 Pa. St. 39, 63 Atl. 410.

4. Todd v. Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Briggs v. Brown, (Fla. 1908) 46 So. 325; Line v. Spies, 139 Mich. 484, 102 N. W. 993; Meriwether v. Knapp, 120 Mo. App. 354, 97 S. W. 257; Butler v. Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637; American Pub. Co. v. Gabriel, 115 Tenn. 601, 90 S. W. 1005; Woodhouse v. Powles, 43 Wash. 617, 86 Pac. 1063.

6. *United States.* — Doherty v. Lynett, 155 Fed. 681; Dempster v. Mann, 157 Fed. 319.

California. — Tingley v. Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Bohan v. Record Pub. Co., 1 Cal. App. 429, 82 Pac. 634.

Delaware. — Todd v. Every Evening Printing Co., (Del. 1907) 66 Atl. 97.

Georgia. — Sparks v. Bedford, (Ga. App. 1908) 60 S. E. 809.

Iowa. — Prewitt v. Wilson, 128 Iowa 198, 103 N. W. 365; Jensen v. Damm, 127 Iowa 555, 103 N. W. 798; Sheibley v. Ashton, 130 Iowa 195, 106 N. W. 618.

Kentucky. — Pennsylvania Iron Works Co. v. Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551; Burgess v. Patterson, (Ky. 1908) 106 S. W. 837.

Missouri. — Farley v. Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565.

Montana. — Paxton v. Woodward, 31 Mont. 195, 78 Pac. 215, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1081.

New Jersey. — Butler v. Hoboken Printing, etc., Co. 73 N. J. L. 45, 62 Atl. 272.

New York. — Reporters Assoc. v. Sun Printing, etc., Assoc., 186 N. Y. 437, 79 N. E. 710; Flaherty v. New York Times Co., 109 N. Y. App. Div. 489, 96 N. Y. Supp. 381; Town Topics Pub. Co. v. Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575; Jockin v. Brassler, 114 N. Y. App. Div. 177, 99 N. Y. Supp. 586; Butler v. Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637.

Washington. — Ott v. Press Pub. Co., 40 Wash. 308, 82 Pac. 403.

Wisconsin. — Scofield v. Milwaukee Free Press, 126 Wis. 81, 105 N. W. 227.

1082. 1. Town Topics Pub. Co. v. Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575; Jockin v. Brassler, 114 N. Y. App. Div. 177, 99 N. Y. Supp. 586.

2. Jockin v. Brassler, 114 N. Y. App. Div. 177, 99 N. Y. Supp. 586; Ammons v. Southern R. Co., 140 N. Car. 196, 52 S. E. 731, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082; Williams v. Carolina, etc., R. Co., 144 N. Car. 498, 57 S. E. 218, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082.

3. Jensen v. Damm, 127 Iowa 555, 103 N. W. 798; Town Topics Pub. Co. v. Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575.

4. See Woodhouse v. Powles, 43 Wash. 617, 86 Pac. 1062.

1083. 1. Washington Times Co. v. Downey, 26 App. Cas. (D. C.) 258; McArthur

v. Sault News Printing Co., 148 Mich. 556, 112 N. W. 126; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565. See also Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

2. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Washington Times Co. *v.* Downey, 26 App. Cas. (D. C.) 258, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1083; Finger *v.* Pollock, 188 Mass. 208, 74 N. E. 317; McArthur *v.* Sault News Printing Co., 148 Mich. 556, 112 N. W. 126; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Neafie *v.* Hoboken Printing, etc., Co., (N. J. L. 1907) 68 Atl. 146; Ott *v.* Press Pub. Co., 40 Wash. 308, 82 Pac. 403; Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063. *Compare* Butler *v.* Hoboken Printing, etc., Co., 73 N. J. L. 45, 62 Atl. 272.

3. Comer *v.* Age-Herald Pub. Co., (Ala. 1907) 44 So. 673; Bohan *v.* Record Pub. Co., 1 Cal. App. 429, 82 Pac. 634; Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Neafie *v.* Hoboken Printing, etc., Co., (N. J. L. 1908) 68 Atl. 146; Rosenbaum *v.* Roche, (Tex. Civ. App. 1907) 101 S. W. 1164. See also Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

1084. 1. Later Michigan Statute — *Damages for Injury to Reputation Recoverable.* — Andrews *v.* Booth, 148 Mich. 333, 111 N. W. 1059, *following* McGee *v.* Baumgartner, 121 Mich. 287, 80 N. W. 21, stated in the original note.

Alabama Statute Held Constitutional. — Comer *v.* Age-Herald Pub. Co., (Ala. 1907) 44 So. 673.

New Jersey Statute Held Unconstitutional, — Neafie *v.* Hoboken Printing, etc., Co., (N. J. L. 1908) 68 Atl. 146.

Similar Statute in Ohio — Questioned as to Constitutionality in Post Pub. Co. *v.* Butler, (C. C. A.) 137 Fed. 723.

3. General Damages Recoverable. — Morning Union Co. *v.* Butler, (C. C. A.) 151 Fed. 188.

1085. 1. Bohan *v.* Record Pub. Co., 1 Cal. App. 429, 82 Pac. 634; Washington Times Co. *v.* Downey, 26 App. Cas. (D. C.) 258; Smith *v.* Hubbell, (Mich. 1908) 114 N. W. 865; Ott *v.* Press Pub. Co., 40 Wash. 308, 82 Pac. [illegible]

Evidence Must Show Injury to Business. — Line *v.* Spies, 130 Mich. 484, 102 N. W. 993.

Plaintiff Must Show Pecuniary Loss. — Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547.

2. Evidence to Show Loss after Publication Admissible. — Smith *v.* Hubbell, (Mich. 1908) 114 N. W. 865.

3. Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Town Topics Pub. Co. *v.* Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1085.

4. Memphis Telephone Co. *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 904.

5. Pascone *v.* Morning Union Co., 79 Conn. 523, 65 Atl. 972; Reporters Assoc. *v.* Sun Printing, etc., Assoc., 186 N. Y. 437, 79 N. E. 710; Walker *v.* Best, 107 N. Y. App. Div. 304, 95 N. Y. Supp. 151; Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

1086. 1. *United States.* — Memphis Telephone Co. *v.* Cumberland Telephone, etc., Co., (C. C. A.) 145 Fed. 904; Lanston Monotype Mach. Co. *v.* Merganthaler Linotype Co., (C. C. A.) 154 Fed. 42.

Alabama. — Vest *v.* Speakman, (Ala. 1907) 44 So. 1017.

Florida. — Briggs *v.* Brown, (Fla. 1908) 46 So. 325.

Iowa. — Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618.

New Jersey. — Butler *v.* Hoboken Printing, etc., Co., 73 N. J. L. 45, 62 Atl. 272. See also Neafie *v.* Hoboken Printing, etc., Co., 74 N. J. L. 340, 62 Atl. 1129.

New York. — Casale *v.* Calderone, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 555, 97 N. Y. Supp. 1102; Reporters' Assoc. *v.* Sun Printing, etc., Co., 112 N. Y. App. Div. 246, 98 N. Y. Supp. 294; Town Topics Pub. Co. *v.* Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575; Jockin *v.* Brassler, 114 N. Y. App. Div. 177, 99 N. Y. Supp. 586.

Texas. — Morrison *v.* Dean, (Tex. Civ. App. 1907) 104 S. W. 505.

Utah. — Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

The Items of Special Damage must be alleged. Reporters Assoc. *v.* Sun Printing, etc., Assoc., 186 N. Y. 437, 79 N. E. 710.

2. Metcalf *v.* Collinson, 95 Minn. 238, 103 N. W. 1022; Butler *v.* Hoboken Printing, etc., Co., 73 N. J. L. 45, 62 Atl. 272; Town Topics Pub. Co. *v.* Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575.

3. Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Sheibley *v.* Ashton, 130 Iowa 195, 106 N. W. 618; Walker *v.* Best, 107 N. Y. App. Div. 304, 95 N. Y. Supp. 151; Town Topics Pub. Co. *v.* Collier, 114 N. Y. App. Div. 191, 99 N. Y. Supp. 575; Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573.

1087. 1. Casale *v.* Calderone, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 555, 97 N. Y. Supp. 1102; Walker *v.* Best, 107 N. Y. App. Div. 304, 95 N. Y. Supp. 151.

4. Casale *v.* Calderone, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 555, 97 N. Y. Supp. 1102, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1087.

5. Casale *v.* Calderone, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 555, 97 N. Y. Supp. 1102, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1087. *Compare* Reporters Assoc. *v.* Sun Printing, etc., Assoc., 186 N. Y. 437, 79 N. E. 710, *reversing* 112 N. Y. App. Div. 246, 98 N. Y. Supp. 294.

6. Casale *v.* Calderone, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 555, 97 N. Y. Supp. 1102, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1087.

7. Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463; Potter *v.* Batt, 72 N. J. L. 470, 63 Atl. 282.

1088. 3. Butler *v.* Hoboken Printing, etc., Co., 73 N. J. L. 45, 62 Atl. 272.

4. Butler *v.* Hoboken Printing, etc., Co., 73 N. J. L. 45, 62 Atl. 272.

5. Casale *v.* Calderone, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 555, 97 N. Y. Supp. 1102,

citing 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1088.

6. Casale *v.* Calderone, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 555, 97 N. Y. Supp. 1102, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1088.

9. Casale *v.* Calderone, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 555, 97 N. Y. Supp. 1102, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1088.

11. Potter *v.* Batt, 72 N. J. L. 470, 63 Atl. 282.

12. Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Slater *v.* Walter, 148 Mich. 650, 112 N. W. 682; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637. See also Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864; Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573; Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

1089. 1. McArthur *v.* Sault News Printing Co., 148 Mich. 556, 112 N. W. 126; Kramer *v.* Perkins, 102 Minn. 455, 113 N. W. 1062; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637; Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146. *Compare* Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

2. Comer *v.* Age-Herald Pub. Co., (Ala. 1907) 44 So. 673. See also Ammons *v.* Southern R. Co., 140 N. Car. 196, 52 S. E. 731, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082 [1089].

4. Lanston Monotype Mach. Co. *v.* Mergenthaler Linotype Co., 147 Fed. 871, (C. C. A.) 154 Fed. 42; Briggs *v.* Brown, (Fla. 1908) 46 So. 325; Jensen *v.* Damm, 127 Iowa 555, 103 N. W. 798; Sunley *v.* Metropolitan L. Ins. Co., 132 Iowa 123, 109 N. W. 463; Brinsfield *v.* Howeth, (Md. 1908) 68 Atl. 566; Metcalf *v.* Collinson, 95 Minn. 238, 103 N. W. 1022; Potter *v.* Kent, 72 N. J. L. 470, 63 Atl. 282; Reporters Assoc. *v.* Sun Printing, etc., Assoc., 186 N. Y. 437, 79 N. E. 710; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146; Morrison *v.* Dean, (Tex. Civ. App. 1907) 104 S. W. 505; Nichols *v.* Daily Reporter Co., 30 Utah 74, 83 Pac. 573; Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

1091. 1. Comer *v.* Age-Herald Pub. Co., (Ala. 1907) 44 So. 673; Cairnes *v.* Pelton, 103 Md. 40, 63 Atl. 105; Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478. See also Williams *v.* Carolina, etc., R. Co., 144 N. Car. 498, 57 S. E. 218, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082 [1091].

3. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Cairnes *v.* Pelton, 103 Md. 40, 63 Atl. 105; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146; Filiatrault *v.* La Compagnie, etc., 28 Quebec Super. Ct. 380.

Punitive Damages Are Not Allowed in Washington unless their recovery is especially provided for by statute. Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

1092. 1. Fordyce *v.* Richmond, (Neb. 1907) 111 N. W. 850.

3. Post Pub. Co. *v.* Butler, (C. C. A.) 137 Fed. 723; Lee *v.* Crump, 146 Ala. 655, 40 So. 609; Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551; Shockey *v.* McCauley, 101 Md. 461, 61 Atl. 583; Neafie *v.* Hoboken Printing, etc., Co., 72 N. J. L. 340, 62 Atl. 1129; Neafie *v.* Hoboken Printing, etc., Co., (N. J. L. 1908) 68 Atl. 146; Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637; Raynolds *v.* Vinier (Supm. Ct. App. Div.) 109 N. Y. Supp. 293; Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349.

Similar Charges. — Punitive damages may be allowed where the defendants have been before the court on similar charges. Luzenberg *v.* O'Malley, 116 La. 699, 41 So. 41.

1093. 2. See also Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307; Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097.

When Falsity of Libel Proved. — Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993.

3. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Pennsylvania Iron Works Co. *v.* Henry Voght Mach. Co., (Ky. 1906) 96 S. W. 551; Shockey *v.* McCauley, 101 Md. 461, 61 Atl. 583; Walker *v.* Best, 107 N. Y. App. Div. 304, 95 N. Y. Supp. 151; Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1093; Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864; Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251.

4. Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1093; Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993. See Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864.

1095. 1. Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693; Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767; Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257; Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993.

2. Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993.

3. Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767; American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

6. Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565; Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257; Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637; American Pub. Co. *v.* Gamble, 115 Tenn. 663, 90 S. W. 1005.

1096. 1. New York Evening Journal Pub. Co. *v.* Simon, (C. C. A.) 147 Fed. 224; Saunders *v.* Post-Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993.

Plaintiff may prove his own rank and condition in life. Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547.

3. Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547.

The Fact that Defendant Was a Single Woman without parents to sustain and comfort her when charged with disgraceful conduct may be considered by the jury. Washington Times Co. *v.* Downey, 26 App. Cas. (D. C.) 258.

6. See Washington Times Co. *v.* Downey, 26 App. Cas. (D. C.) 258.

8. Cairnes *v.* Pelton, 103 Md. 40, 63 Atl. 105; Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1096.

1097. 1. Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1096.

2. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Cairnes *v.* Pelton, 103 Md. 40, 63 Atl. 105; Flaacke *v.* Stratford, 72 N. J. L. 487, 64 Atl. 146, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1096.

3. Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097.

1098. 1. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; McHugh *v.* Ambrose, (Iowa 1907) 113 N. W. 1080; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097.

2. Dowie *v.* Priddle, 216 Ill. 553, 75 N. E. 243; McHugh *v.* Ambrose, (Iowa 1907) 113 N. W. 1080; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097; Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349.

1099. 6. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1099.

1100. 1. Hilton *v.* Jesup Banking Co., 128 Ga. 30, 57 S. E. 78, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1100; Dowie *v.* Priddle, 216 Ill. 553, 75 N. E. 243; Corning *v.* Dollmeyer, 123 Ill. App. 188; Register Newspaper Co. *v.* Stone, (Ky. 1907) 102 S. W. 800; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307; Pier *v.* Speer, 73 N. J. L. 633, 64 Atl. 161; Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1100.

1101. 1. McArthur *v.* Sault News Printing Co., 148 Mich. 556, 112 N. W. 126; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307.

2. Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

1102. 1. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Dowie *v.* Priddle, 216 Ill. 553, 75 N. E. 243; Register Newspaper Co. *v.* Stone, (Ky. 1907) 102 S. W. 800; Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686; Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1102; Pier *v.* Speer, 73 N. J. L. 633, 64 Atl. 161; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633. See also Oakes *v.* Star Co., 119 N. Y. App. Div. 358, 104 N. Y. Supp. 244.

3. Pier *v.* Speer, 73 N. J. L. 633, 64 Atl. 161.

1103. 4. Butler *v.* Hoboken Printing, etc., Co., 73 N. J. L. 45, 62 Atl. 272; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637.

Admissible When Stipulated. — Butler *v.* Gazette, 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637.

1104. 4. Proctor *v.* Pointer, 127 Ga. 134, 56 S. E. 111; Proctor *v.* Thompson, 127 Ga. 137, 56 S. E. 112.

5. Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307; Raynolds *v.* Vinier, (Supm. Ct. App. Div.) 109 N. Y. Supp. 293.

1105. 5. Berger *v.* Freeman Tribune Pub. Co., 132 Iowa 290, 109 N. W. 784.

An instruction, "that the allegation in the defendant's answer that the charge is true may be considered by the jury as an aggravation of damages," is erroneous. Bellis *v.* Roberts, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 493, 102 N. Y. Supp. 575.

1106. 1. Yager *v.* Bruce, 116 Mo. App. 473, 93 S. W. 307.

3. Blodgett *v.* Des Moines Daily News Co., (Iowa 1907) 113 N. W. 821.

1107. 1. Actions against Other Newspapers. — The rule is well settled that a defendant cannot show in mitigation of damages that the plaintiff has commenced actions against other papers for publishing the same libel. Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637.

3. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; Grimes *v.* Thorp, 113 Mo. App. 652, 88 S. W. 638; Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349; Ott *v.* Press Pub. Co., 40 Wash. 308, 82 Pac. 403; Wandt *v.* Hearst's Chicago American, (Wis. 1906) 109 N. W. 70.

4. Grimes *v.* Thorp, 113 Mo. App. 652, 88 S. W. 638; Neafie *v.* Hoboken Printing, etc., Co., (N. J. L. 1907) 68 Atl. 146; Dalziel *v.* Press Pub. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 207, 102 N. Y. Supp. 609. See also Bohan *v.* Record Pub. Co., 1 Cal. App. 429, 82 Pac. 634.

5. Matters Offered in Mitigation Must Be Connected with Defamation. — Brown *v.* McArthur, 106 N. Y. App. Div. 366, 94 N. Y. Supp. 537.

In Washington by statute evidence is admissible to effect actual damages. Ott *v.* Press Pub. Co., 40 Wash. 308, 82 Pac. 403.

1108. 1. Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767.

4. Provocation Caused by Husband in Action by Wife cannot be considered in mitigation of damages. Childs *v.* Childs, (Wash. 1908) 94 Pac. 660.

1109. 1. Shockey *v.* McCauley, 101 Md. 461, 61 Atl. 583, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1109.

8. Post Pub. Co. *v.* Butler, (C. C. A.) 137 Fed. 723; White *v.* Sun Pub. Co., 164 Ind. 426, 73 N. E. 890, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1109; Monaghan *v.*

Globe Newspaper Co., 190 Mass. 394, 77 N. E. 476; Neafie *v.* Hoboken Printing, etc., Co., (N. J. L.) 62 Atl. 1129.

Sufficiency of Notice to Retract. — See Craig *v.* Warren, 99 Minn. 246, 109 N. W. 231.

Offer to Retract or Apologize. — The case of Burton *v.* New York Recorder Co., 144 N. Y. 144, 38 N. E. 1009, cited in the original note, is distinguished and criticised in Dalziel *v.* Press Pub. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 207, 102 N. Y. Supp. 909, wherein it was held that evidence of an offer to retract was admissible.

1110. 3. Bennett *v.* Crumpton, 1 Ga. App. 476, 58 S. E. 104; Sheibley *v.* Huse, 75 Neb. 811, 106 N. W. 1028; Patterson *v.* Frazer, (Tex. 1906) 94 S. W. 324. *Compare* Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

Defendant Must Allege Belief in Truth of Statements. — Brown *v.* McArthur, 106 N. Y. App. Div. 366, 94 N. Y. Supp. 537.

1111. 1. Bennett *v.* Crumpton, 1 Ga. App. 476, 58 S. E. 104. See also Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

1112. 1. **Defendant Cannot Show that Charge Originated with Another.** — Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

Defendant Cannot Show that Defamation Is Merely a Repetition of Common Rumors or Reports. — Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Brown *v.* McArthur, 106 N. Y. App. Div. 366, 94 N. Y. Supp. 537; Earley *v.* Winn, 129 Wis. 291, 109 N. W. 633.

2. Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 87 S. W. 565.

4. Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Woolley *v.* Plaindealer Pub. Co., 47 Oregon 619, 84 Pac. 473. See also Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097.

1113. 1. Ladwig *v.* Heyer, (Iowa 1907) 113 N. W. 767.

2. Logan *v.* Hodges, (N. Car. 1907) 59 S. E. 349.

1114. 3. Proctor *v.* Pointer, 127 Ga. 134, 56 S. E. 111; Proctor *v.* Thompson, 127 Ga. 137, 56 S. E. 112.

4. Butler *v.* Every Evening Printing Co., 140 Fed. 934; Todd *v.* Every Evening Printing Co., (Del. 1907) 66 Atl. 97; White *v.* Sun Pub. Co., 164 Ind. 426, 73 N. E. 890; Jensen *v.* Damm, 127 Iowa 555, 103 N. W. 798; Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478; Baxter *v.* Mohr, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 558, 102 N. Y. Supp. 844; Butler *v.* Gazette Co., 119 N. Y. App. Div. 767, 104 N. Y. Supp. 637; Rosenbaum *v.* Roche, (Tex. Civ. App. 1907) 101 S. W. 1164; Ott *v.* Press Pub. Co., 40 Wash. 308, 82 Pac. 403; McLean *v.* Campbell, 38 Nova Scotia 416. See also Woodhouse *v.* Powles, 43 Wash. 617, 86 Pac. 1063.

1115. 1. Butler *v.* Every Evening Printing Co., 140 Fed. 934; Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686; Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257; Butler *v.* Hoboken Printing, etc., Co., 73 N. J. L. 45, 62 Atl. 272; Dallin *v.* Mayer, 122 N. Y. App. Div. 676, 107 N. Y. Supp. 316; Price *v.* Clapp, (Tenn. 1907) 105 S. W. 864; Flannigan *v.* Stauss, 131 Wis. 94, 111 N. W. 216.

5. White *v.* Sun Pub. Co., 164 Ind. 426, 73 N. E. 890.

1116. 4. **Cases Illustrative of Damages Held Not Excessive.** — Butler *v.* Every Evening Printing Co., 140 Fed. 934; Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686; Meriwether *v.* Knapp, 120 Mo. App. 354, 97 S. W. 257; Overton *v.* White, 117 Mo. App. 576, 93 S. W. 363; Gendron *v.* St. Pierre, 73 N. H. 419, 62 Atl. 966; Saunders *v.* Post Standard Co., 107 N. Y. App. Div. 84, 94 N. Y. Supp. 993; Dallin *v.* Mayer, 122 N. Y. App. Div. 676, 107 N. Y. Supp. 316; Raynolds *v.* Vinier, (Supm. Ct. App. Div.) 109 N. Y. Supp. 293; Childs *v.* Childs, (Wash. 1908) 94 Pac. 660; Kloths *v.* Hess, 126 Wis. 587, 106 N. W. 251; Flannigan *v.* Stauss, 131 Wis. 94, 111 N. W. 216.

1117. 1. Luzenberg *v.* O'Malley, 116 La. 699, 41 So. 41; Pattison *v.* Gulf Bag Co., 116 La. 963, 41 So. 224; Line *v.* Spies, 139 Mich. 484, 102 N. W. 993.

6. Right to Attorney's Fees on Dismissal of Action. — See Gaffey *v.* Mann, 3 Cal. App. 124, 84 Pac. 424.

Attorney's Fees Allowed to Prevailing Party. — See Gaffey *v.* Mann, 5 Cal. App. 712, 91 Pac. 172.

Suit Brought in Wrong County. — Plaintiff is entitled to only such reasonable allowance as would compensate him for being compelled to make his defense in the wrong county. Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365.

1118. 2. **Successful Defendant Deprived of Costs.** — Byers *v.* Kidd, 13 Ont. L. Rep. 396.

5. Doherty *v.* Lynett, 155 Fed. 681.

6. Defense Cannot Be Set Up by Demurrer. — Doherty *v.* Lynett, 155 Fed. 681.

7. Central Imp., etc., Co. *v.* Grasser Contracting Co., 119 La. 263, 44 So. 10.

1119. 3. **County of Defendant's Domicil — Texas Statute.** — Parr *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 792.

5. Julian *v.* Kansas City Star Co., (Mo. 1907) 107 S. W. 496; MacCormac *v.* Tobey, 109 N. Y. App. Div. 581, 96 N. Y. Supp. 302.

1120. 5. Christian Hospital *v.* People, 223 Ill. 244, 79 N. E. 72; Butterick Pub. Co. *v.* Typographical Union No. 6, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 1, 100 N. Y. Supp. 292.

1121. 3. See People *v.* Eastman, 188 N. Y. 478, 81 N. E. 459.

4. **Kansas Statute Includes Corporations.** — State *v.* Williams, 74 Kan. 180, 85 Pac. 938.

In Pennsylvania a corporation cannot be the subject of a criminal libel. Com. *v.* Cochran, 16 Pa. Dist. 313, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1121.

5. Roberts *v.* State, (Tex. Crim. 1907) 100 S. W. 150.

Want of Chastity Must Be Imputed. — Imputations that a woman desired sexual intercourse do not impute actual want of chastity. Fox *v.* State, (Tex. Crim. 1907) 101 S. W. 808.

Statutory Offense. — Cornelius *v.* State, 145 Ala. 65, 40 So. 670; Stutts *v.* State, 52 Fla. 110, 42 So. 51; State *v.* Collins, 117 Mo. App. 658, 93 S. W. 325.

Words "Had a Pig Tied With Her" Not Slanderous. — Gooing *v.* State, (Tex. Crim. 1906) 98 S. W. 857.

1122. 5. Accusation of Other Acts Not Admissible.—Roberts *v.* State, (Tex. Crim. 1907) 100 S. W. 150.

8. Noyes *v.* Thorpe, 73 N. H. 481, 62 Atl. 787.

9. Brooke *v.* State, (Ala. 1907) 45 So. 622; Walston *v.* Com., (Ky. 1907) 106 S. W. 224; State *v.* Kiernan, 116 La. 739, 41 So. 55; Razee *v.* State, 73 Neb. 732, 103 N. W. 438; State *v.* Clifford, 58 W. Va. 681, 52 S. E. 864.

Absence of Defendant.—The court may proceed with the trial of the case in the absence of the defendant. Walston *v.* Com., (Ky. 1907) 102 S. W. 275.

10. Walston *v.* Com., (Ky. 1907) 102 S. W. 275.

12. See Brooke *v.* State, (Ala. 1907) 45 So. 622; State *v.* Conklin, 47 Oregon 509, 84 Pac. 482.

13. State *v.* Collins, 117 Mo. App. 658, 93 S. W. 325.

1123. 1. Repeating Rumors. Defendant may show in mitigation of damages that he was merely repeating what others had said, when stating that fact at the time the words were uttered and giving his authority. Cornelius *v.* State, 145 Ala. 65, 40 So. 670.

LIBERTY.

1124. 3. **Right to Follow Lawful Avocation.**—See People *v.* Steele, 231 Ill. 340, 83 N. E. 236.

LICENSE (REAL PROPERTY).

1127. 1. Belser *v.* Moore, 73 Ark. 296, 84 S. W. 219, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1127; Price, etc., Co. *v.* Madison, 17 S. Dak. 247, 95 N. W. 933, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1127; Polk *v.* Carney, 17 S. Dak. 436, 97 N. W. 360; Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1127.

For Other Definitions see Howes *v.* Barmon, 11 Idaho 64, 81 Pac. 48; Croft *v.* Chicago, etc., R. Co., 132 Iowa 687, 108 N. W. 1053; Rodefer *v.* Pittsburg, etc., R. Co., 72 Ohio St. 272, 74 N. E. 183.

1128. 1. **Right of Way.**—Louisville, etc., R. Co. *v.* Smith, 141 Ala. 335, 37 So. 490.

Telephone Right of Way.—Bowerman *v.* Inter-Ocean Telephone, etc., Co., 121 N. Y. App. Div. 22, 105 N. Y. Supp. 565.

Permission to Use Streets for Street Railway.—Blocki *v.* People, 220 Ill. 444, 77 N. E. 172.

License to Cut Timber.—Colby-Hinkley Co. *v.* Jordan, 146 Ala. 634, 41 So. 962.

License to Drill Wells for Oil.—Dill *v.* Fraze, (Ind. 1907) 79 N. E. 971.

License to Use Rear Portion of Premises.—Kommer *v.* Daly, 104 N. Y. App. Div. 528, 93 N. Y. Supp. 1021.

License to Box Turpentine Trees.—Purdom Naval Stores Co. *v.* Knight, 129 Ga. 590, 59 S. E. 433.

License to Connect Sewerage.—Fogg *v.* Ocean City Sewer Co., (N. J. 1907) 66 Atl. 609.

Permission to Use Landing and Wharf Site.—Van Siclen *v.* Muir, (Wash. 1907) 89 Pac. 188.

License to Construct Irrigation Ditch.—Stoner *v.* Zucker, 148 Cal. 516, 83 Pac. 808.

License to Use Wall for Advertising Purpose.—Levy *v.* Louisville Gunning System, (Ky. 1905) 89 S. W. 528.

License to Attach Telephone Wires to Building.—Bunke *v.* New York Telephone Co., 110 N. Y. App. Div. 241, 97 N. Y. Supp. 66.

License for Driveway.—Wilkinson *v.* Hutzel, 142 Mich. 674, 106 N. W. 207.

2. Louisville, etc., R. Co. *v.* Smith, 141 Ala. 335, 37 So. 490, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1128; Colby-Hinkley Co. Jordan, 141 Ala. 634, 41 So. 962; Howes *v.* Barmon, 11 Idaho 64, 81 Pac. 48; Jones *v.* Stover, 131 Iowa 119, 108 N. W. 112; Kommer *v.* Daly, 104 N. Y. App. Div. 528, 93 N. Y. Supp. 1021; Smyth *v.* Brooklyn Union El. R. Co., 121 N. Y. App. Div. 282, 105 N. Y. Supp. 601; Price, etc., Co. *v.* Madison, 17 S. Dak. 247, 95 N. W. 933; Polk *v.* Carney, 17 S. Dak. 436, 97 N. W. 360; Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1128.

1129. 1. Purdom Naval Stores Co. *v.* Knight, 129 Ga. 590, 59 S. E. 433.

2. Belser *v.* Moore, 73 Ark. 296, 84 S. W. 219, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1129.

1130. 3. Howes *v.* Barmon, 11 Idaho 64, 81 Pac. 48.

4. Price, etc., Co. *v.* Madison, 17 S. Dak. 247, 95 N. W. 933.

Written License Need Not Be Recorded.—Denton *v.* Cumberland Telephone, etc., Co., (Ky. 1906) 96 S. W. 1112.

9. McBride *v.* Bair, 134 Iowa 661, 112 N. W. 169; Staples *v.* Cornwall, 114 N. Y. App. Div. 596, 99 N. Y. Supp. 1009; Wilson *v.* Cather, 214 Pa. St. 3, 63 Atl. 190.

1131. 1. Price, etc., Co. *v.* Madison, 17 S. Dak. 247, 95 N. W. 933; Polk *v.* Carney, 17 S. Dak. 436, 97 N. W. 360.

2. Mining — License.—Cubbage *v.* Pittsburg Coal Co., 216 Pa. St. 411, 65 Atl. 797.

6. Howes *v.* Barmon, 11 Idaho 64, 81 Pac. 48; Valk *v.* Olsen, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 227, 104 N. Y. Supp. 415; Adams *v.* Weir, (Tex. Civ. App. 1907) 99 S. W. 726.

9. Parsons *v.* Hunt, 98 Tex. 420, 84 S. W. 644, *quoting* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1131.

1132. 2. **License to Use Water on Adjoining Land.**—Stacy *v.* Glen Ellyn Hotel, 223 Ill. 546, 79 N. E. 133; Clark *v.* Strong, 105 N. Y. App. Div. 579, 93 N. Y. Supp. 514.

License to Convey Water from One Farm to Another.—Graham *v.* Redlands Heights Water Co., 3 Cal. App. 633, 86 Pac. 989.

Agreement as to Drainage.—Thompson *v.* Normanden, 134 Iowa 720, 112 N. W. 188.

1133. 6. Mallock *v.* Derby, (Mass. 1906) 76 N. E. 721.

7. Shaw *v.* Goldman, 116 Mo. App. 332, 92 S. W. 165.

1134. 6. **License Does Not Authorize Acts Not Specified.**—Cubbage *v.* Pittsburg Coal Co., 216 Pa. St. 411, 65 Atl. 797.

1135. 3. Graham *v.* Redlands Heights Water Co., 3 Cal. App. 633, 86 Pac. 989.

11. [illegible] (1907) 90 Pac. 487, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1135.

1136. 8. St. Louis, etc., R. Co. *v.* Dooley, 77 Ark. 561, 92 S. W. 789, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1136.

9. Flaherty *v.* Nieman, 125 Iowa 546, 101 N. W. 280, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1136; Croft *v.* Chicago, etc., R. Co., 132 Iowa 687, 108 N. W. 1053; Archer *v.* Union Pac. R. Co., 110 Mo. App. 349, 85 S. W. 934, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1136; Shaw *v.* Goldman, 116 Mo. App. 332, 92 S. W. 165; Oats *v.* New York Dock Co., 109 N. Y. App. Div. 841, 96 N. Y. Supp. 813; Rosenthal *v.* United Dressed Beef Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 1 6, 101 N. Y. Supp. 532.

1137. 3. St. Louis, etc., R. Co. *v.* Dooley, 77 Ark. 561, 92 S. W. 789, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1137; Rink *v.* Lowry, 38 Ind. App. 132, 77 N. E. 967; Belvidere Bldg. Co. *v.* Bryan, 103 Md. 514, 64 Atl. 44; Shaw *v.* Goldman, 116 Mo. App. 332, 92 S. W. 165.

1138. 1. Belvidere Bldg. Co. *v.* Bryan, 103 Md. 514, 64 Atl. 44.

4. Defective Steps Over Right-of-way Fence. — St. Louis, etc., R. Co. *v.* Dooley, 77 Ark. 561, 92 S. W. 789, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1138.

1139. 10. Act Must Be within Reasonable Time or Excused by Law. — Blocki *v.* People, 220 Ill. 444, 77 N. E. 172.

1140. 2. Conqueror Gold Min., etc., Co. *v.* Ashton, 39 Colo. 133, 90 Pac. 1124; Jones *v.* Stower, 131 Iowa 119, 108 N. W. 112; Price, etc., Co. *v.* Madison, 17 S. Dak. 247, 95 N. W. 933.

1141. 9. Anderson *v.* Acheron, 132 Iowa 744, 110 N. W. 335, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1141; Clark *v.* Strong, 105 N. Y. App. Div. 579, 93 N. Y. Supp. 514.

10. Bunke *v.* New York Telephone Co., 110 N. Y. App. Div. 241, 97 N. Y. Supp. 66; Smyth *v.* Brooklyn Union El. R. Co., 102 N. Y. App. Div. 282, 105 N. Y. Supp. 601; Price, etc., Co. *v.* Madison, 17 S. Dak. 247, 95 N. W. 933, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1141; Polk *v.* Carney, 17 S. Dak. 436, 97 N. W. 360.

1143. 7. *Alabama.* — Colby-Hinkley Co. *v.* Jordan, 146 Ala. 634, 41 So. 962.

Arkansas. — Belser *v.* Moore, 73 Ark. 296, 84 S. W. 219.

Idaho. — Howes *v.* Barmon, 11 Idaho 64, 81 Pac. 48.

Illinois. — Stacy *v.* Glen Ellyn Hotel, 223 Ill. 546, 79 N. E. 133.

Iowa. — Jones *v.* Stower, 131 Iowa 119, 108 N. W. 112; McBride *v.* Bair, 134 Iowa 661, 112 N. W. 169; Thompson *v.* Normanden, 134 Iowa 720, 112 N. W. 188.

Kentucky. — Rittenhouse *v.* Swango, (Ky. 1906) 97 S. W. 743, recognizing the general rule, but holding the grant to be an easement.

Michigan. — Wilkinson *v.* Hutzel, 142 Mich. 674, 106 N. W. 207.

New York. — Manheimer *v.* Gudat, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 330, 106 N. Y. Supp. 461.

Ohio. — Rodefer *v.* Pittsburg, etc., R. Co., 72 Ohio St. 272, 74 N. E. 183.

Pennsylvania. — Bishop *v.* Buckley, 33 Pa. Super. Ct. 123.

South Dakota. — Price, etc., Co. *v.* Madison, 17 S. Dak. 247, 95 N. W. 933; Polk *v.* Carney, 17 S. Dak. 436, 97 N. W. 360, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1143.

Texas. — Adams *v.* Weir, (Tex. Civ. App. 1907) 99 S. W. 726.

Washington. — Van Siclen *v.* Muir, (Wash. 1907) 89 Pac. 188.

Wyoming. — Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364.

1144. 2. Revocable — Consideration Immaterial. — Kommer *v.* Daly, 105 N. Y. App. Div. 528, 93 N. Y. Supp. 1021.

3. Levy *v.* Louisville Gunning System, (Ky. 1905) 89 S. W. 528, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1144.

1145. 4. Fogg *v.* Ocean City Sewer Co., (N. J. 1907) 66 Atl. 609.

8. Stoner *v.* Zucker, 148 Cal. 516, 83 Pac. 808; Howes *v.* Barmon, 11 Idaho 64, 81 Pac. 48, *citing* 18 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1145, as to the general rule where expense has been incurred; Levy *v.* Louisville Gunning System, (Ky. 1905) 89 S. W. 528; Dawson *v.* Western Maryland R. Co., (Md. 1907) 68 Atl. 301; Smith *v.* Pittsburgh, etc., R. Co., 26 Ohio Cir. Ct. 44; Sumpter R. Co. *v.* Gardner, (Oregon 1907) 90 Pac. 499.

1146. 7. Shipley *v.* Fink, 102 Md. 219, 62 Atl. 360.

1150. 4. Shipley *v.* Fink, 102 Md. 219, 62 Atl. 360.

LIENS.

7. 7. Nicolette Lumber Co. *v.* People's Coal Co., 213 Pa. St. 382, 62 Atl. 1060, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 7, as to the general rule.

10. 5. Palin *v.* Cooke, 125 Ga. 442, 54 S. E. 90.

11. 9. Watts *v.* Newberry, (Va. 1907) 57 S. E. 657.

13. 1. Storm *v.* McGrover, 189 N. Y. 568, 82 N. E. 160, *affirming* 114 N. Y. App. Div. 910, 100 N. Y. Supp. 1145.

3. Markham *v.* Wallace, 147 Ala. 250, 41 So. 304, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 13; Lee *v.* Lee, (Ky. 1907) 99 S. W. 306.

14. 2. Goodnough Mercantile, etc., Co. *v.* Galloway, 156 Fed. 510, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 14; Reardon *v.* Higgins, 39 Ind. App. 363, 79 N. E. 208.

An Oral Agreement by an Agent to Pay for a Right of Way deeded to his company will be enforced in equity. Matthews *v.* Delta Southern R. Co., (Miss. 1907) 43 So. 475.

4. Reardon *v.* Higgins, 39 Ind. App. 363, 79 N. E. 208.

6. Hazenwinkle Grain Co. *v.* McComb, 116 Ill. App. 541.

15. 4. Morganstein *v.* Commercial Nat. Bank, 125 Ill. App. 397; Schermerhorn *v.* Gardenier, 107 N. Y. App. Div. 564, 95 N. Y. Supp. 494, *reversing* (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 280, 94 N. Y. Supp. 253.

19. 6. Diederich *v.* Rose, 228 Ill. 616, 81 N. E. 1140, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 19, as to the general rule, but inapplicable to that case.

7. A Deed Given in Payment of a Just Debt having become inoperative for want of delivery prior to the death of the grantor, a court of equity will declare a lien on the land for the amount of the debt. Sutton *v.* Gibson, 119 Ky. 422, 84 S. W. 335.

20. 1. Ross *v.* Clark, 225 Ill. 326, 80 N. E. 275, *affirming* 126 Ill. App. 460.

5. Diederich *v.* Rose, 228 Ill. 616, 81 N. E. 1140.

22. 4. Diederich *v.* Rose, 228 Ill. 616, 81 N. E. 1140.

23. 8. Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 327, 56 S. E. 158.

Act Providing for Attorney's Liens upon Client's Cause of Action Held Constitutional. — O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150; Wait *v.* Atchison, etc., R. Co., 204 Mo. 491, 103 S. W. 60.

Thresher's Lien Law Held Constitutional. — Phelan *v.* Terry, 101 Minn. 454, 112 N. W. 872; Hahn *v.* Sleepy Eye Milling Co., (S. Dak. 1907) 112 N. W. 843.

24. 2. Faircloth *v.* Webb, 125 Ga. 230, 53 S. E. 592.

26. 4. Moody *v.* Huntley, 149 Fed. 797; Brown *v.* Rash, (Tex. Civ. App. 1905) 89 S. W. 438.

The Payment of a Vendor's Lien by Request of the vendee will entitle the person paying to the right of subrogation. Mergele *v.* Felix, (Tex. Civ. App. 1007) 99 S. W. 709.

27. 4. City Nat. Bank *v.* Graham, (Iowa 1907) 112 N. W. 793; Crismon *v.* Barse Live Stock Commission Co., 17 Okla. 117, 87 Pac. 876.

10. Hahl *v.* Laux, (Tex. Civ. App. 1906) 93 S. W. 1080.

28. 4. Downey *v.* Lozier Motor Co., 138 Fed. 176, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 28.

29. 1. **A Demand** for more than is due on the lien is a waiver of it. Stephenson *v.* Lichtenstein, 72 N. J. L. 113, 59 Atl. 1033.

7. Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 327, 56 S. E. 158.

30. 1. Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591.

2. Spence *v.* Palmer, 115 Mo. App. 76, 90 S. W. 749.

3. Security Trust Co. *v.* Temple Co., 67 N. J. Eq. 514, 58 Atl. 865.

4. Griffin *v.* Smith, (C. C. A.) 143 Fed. 865.

5. **The Burden of Showing a Waiver of a Lien** is, in the first instance, on the party asserting a waiver; but when it is shown that independent security is taken, the onus is shifted on the vendor. Spears *v.* Taylor, (Ala. 1907) 42 So. 1016.

6. *In re* Bennett, (C. C. A.) 153 Fed. 673, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30, as to the general rule, but holding that the presumption of waiver does not arise in *Kentucky* as against mechanics or materialmen.

31. 4. Brackett *v.* Pierson, 114 N. Y. App. Div. 281, 99 N. Y. Supp. 770.

34. 3. Eisman *v.* Whalen, 39 Ind. App. 350, 79 N. E. 514, 1072.

36. 2. Travis *v.* Rhodes, 142 Ala. 189, 37 So. 804; Palin *v.* Cooke, 125 Ga. 442, 54 S. E. 90; Howell *v.* Atkinson, 3 Ga. App. 58, 59 S. E. 316; Mulkey *v.* Thompson, (Ga. App. 1908) 60 S. E. 223; Mills *v.* Fortune, 14 N. Dak. 460, 105 N. W. 235; O'Neil *v.* Taylor, 59 W. Va. 370, 53 S. E. 471.

6. Stubbs *v.* Pitts, 84 Ark. 160, 104 S. W. 1110.

8. Schermerhorn *v.* Gardenier, 107 N. Y. App. Div. 564, 95 N. Y. Supp. 494, *reversing* (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 280, 94 N. Y. Supp. 253.

9. Maguire *v.* Spaulding, 194 Mass. 601, 80 N. E. 587.

37. 1. Eisman *v.* Whalen, 39 Ind. App. 350, 79 N. E. 514, 1072; Smith *v.* Equitable Trust Co., 215 Pa. St. 418, 64 Atl. 594.

2. Spears *v.* Taylor, (Ala. 1907) 42 So. 1016; Eck *v.* Tate, (Ala. 1907) 44 So. 384; Eisman *v.* Whalen, 39 Ind. App. 350, 79 N. E. 514, 1072; Cecil *v.* Henry, (Tex. Civ. App. 1906) 93 S. W. 216.

3. "Caveat emptor" applies to the purchaser of a judgment of record which is subject to an attorney's lien. Tyler *v.* Slemp, (Ky. 1906) 90 S. W. 1041; Smith *v.* Cayuga Lake Cement Co., 107 N. Y. App. Div. 524, 95 N. Y. Supp. 236.

LIFE INSURANCE.

42. 1. Rylander *v.* Allen, 125 Ga. 206, 53 S. E. 1032; Price *v.* Mutual Reserve L. Ins. Co., 102 Md. 683, 62 Atl. 1040, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 42; Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 714.

43. 5. **Allowance of Income for Information**

Furnished by Policy Holder Is Discrimination. Cole *v.* State, (Miss. 1907) 45 So. 11.

Policy Issued in Violation of Statute Valid. — Laun *v.* Pacific Mut. L. Ins. Co., 131 Wis. 555, 111 N. W. 660.

8. New York L. Ins. Co. *v.* Greenlee, (Ind. App. 1906) 78 N. E. 1001.

11. 2. Clark *v.* Mutual L. Ins. Co., 129 Cal. 1, 61 S. E. 591; Kennedy *v.* Metropolitan L. Ins. Co., 116 La. 66, 40 So. 533; Amos-Richia *v.* Northwestern Mut. L. Ins. Co., 143 Mich. 684, 107 N. W. 707; Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861; Bowen *v.* Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040.

Payment by Third Person without Knowledge of Assured. — Harriman *v.* New York L. Ins. Co., 43 Wash. 398, 86 Pac. 656.

4. Bowen *v.* Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040. See also Harriman *v.* New York L. Ins. Co., 43 Wash. 398, 86 Pac. 656.

7. Wells *v.* Union Cent. L. Ins. Co., 81 Ark. 145, 98 S. W. 697; Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892; Northwestern Nat. L. Ins. Co. *v.* Brooker, 120 Ill. App. 301; Lesseps *v.* Fidelity Mut. L. Ins. Co., (La. 1908) 45 So. 522; Price *v.* Mutual Reserve L. Ins. Co., 102 Md. 683, 62 Atl. 1040; Gruwell *v.* National Council, etc., 126 Mo. App. 496, 104 S. W. 884; Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 44; Pacific Mut. L. Ins. Co. *v.* Galbraith, (Tenn. 1905) 91 S. W. 204; Pense *v.* Northern L. Assur. Co., 15 Ont. L. Rep. 131, *reversing* 14 Ont. L. Rep. 613.

15. 1. Franklin L. Ins. Co. *v.* McAfee, (Ky 1906) 90 S. W. 216.

4. Provident Sav. L. Assur. Soc. *v.* Taylor (C. C. A.) 142 Fed. 709.

16. 1. Wells *v.* Union Cent. L. Ins. Co., 81 Ark. 145, 98 S. W. 697; Mutual L. Ins. Co. *v.* Stegall, 1 Ga. App. 611, 58 S. E. 79.

2. Provident Sav. L. Assur. Soc. *v.* Taylor, (C. C. A.) 142 Fed. 709; Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470; Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791.

3. Murray *v.* State L. Ins. Co., 151 Fed. 539, *affirmed* (C. C. A.) 159 Fed. 408; Thompson *v.* Fidelity Mut. L. Ins. Co., 116 Tenn. 557, 92 S. W. 1098.

4. Capp *v.* Security Mut. L. Ins. Co., 117 Mo. App. 532.

Missouri Statute Not Applicable to Beneficial Insurance Companies. — Westerman *v.* Supreme Lodge, etc., 196 Mo. 670.

7. Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892; Lesseps *v.* Fidelity Mut. L. Ins. Co., (La. 1908) 45 So. 522; Burnham *v.* Michigan Mut. L. Ins. Co., 149 Mich. 84, 112 N. W. 704; National L. Ins. Co. *v.* Reppond, (Tex. Civ. App. 1906) 96 S. W. 778.

17. 1. Duncan *v.* Missouri State L. Ins. Co., (C. C. A.) 160 Fed. 646; Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643.

2. Provision Must Be in Policy as Well as in Note. — Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470.

3. Bromley *v.* Washington L. Ins. Co., (Ky. 1906) 92 S. W. 17; Gruwell *v.* National Council, etc., 126 Mo. App. 496, 104 S. W. 884; Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 47; Schoeller *v.* Grand Lodge, etc., 110 N. Y. App. Div. 456, 96 N. Y. Supp. 1088; Pacific Mut. L. Ins. Co. *v.* Galbraith, (Tenn. 1905) 91 S. W. 204; Thompson *v.* Fidelity Mut. L. Ins. Co., 116 Tenn. 557, 92 S. W. 1098.

Suspension with Privilege of Reinstatement. — Where a policy provides for the suspension of liability for nonpayment of premiums, but contains a provision for reinstatement upon certain conditions, affirmative action is necessary to effect a suspension. Brooks *v.* Conservative L. Ins. Co., 132 Iowa 377, 106 N. W. 913.

4. Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643; Franklin L. Ins. Co. *v.* McAfee, (Ky. 1906) 90 S. W. 216. But see Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470.

Where a note was sent to a bank for collection, although it was not made payable at a bank, it was held that the insured had the entire day of maturity in which to pay it. Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892.

18. 2. Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892; Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470; Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861.

Acceptance of Note by Agent. — Batson *v.* Fidelity Mut. L. Ins. Co., (Ala. 1908) 46 So. 573; Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950.

Acceptance by General Agent Held to Bind Insurer. — Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950.

Insurer Bound When Limitations on Agent's Authority Unknown to Insured. — Kilborn *v.* Prudential Ins. Co., 99 Minn. 176, 108 N. W. 861.

19. 5. Mutual Reserve Fund L. Assoc. *v.* Tuchfeld, (C. C. A.) 159 Fed. 833.

6. Vancura *v.* Zapadni Cesko Bratrska Zednota, (Neb. 1907) 111 N. W. 845.

50. 1. Robinson *v.* Union Cent. L. Ins. Co., 144 Fed. 1005; Kimbro *v.* New York L. Ins. Co., 134 Iowa 84, 108 N. W. 1025; Wood *v.* Iowa Legion of Honor, 133 Iowa 33, 110 N. W. 164; Metropolitan L. Ins. Co. *v.* Lindsay, (Ky. 1907) 100 S. W. 295; Manhattan L. Ins. Co. *v.* Kephart, (Ky. 1907) 102 S. W. 882; Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016; Clark *v.* Home Fund L. Ins. Co., (S. Car. 1908) 61 S. E. 80; Reppond *v.* National L. Ins. Co., (Tex. 1907) 101 S. W. 786.

51. 4. *Compare* Patton *v.* Continental Casualty Co., (Tenn. 1907) 104 S. W. 305.

6. Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 51; Thompson *v.* Fidelity Mut. L. Ins. Co., 116 Tenn. 557, 92 S. W. 1098; Brotherhood of Railway Trainmen *v.* Dee, (Tex. 1908) 111 S. W. 396.

7. Sheridan *v.* Modern Woodmen of America, 44 Wash. 230, 87 Pac. 127.

52. 3. Ætna L. Ins. Co. *v.* Wimberly,

(Tex. Civ. App. 1908) 108 S. W. 778, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 52.

5. Kray *v.* Mutual Reserve L. Ins. Co., (Tex. Civ. App. 1908) 111 S. W. 421.

6. Where it had been the company's custom during seven years to give notice of the dates when premiums fell due, it was held that a notice sent by mail was not effective until actually received. Kavanaugh *v.* Security Trust, etc., Co., 117 Tenn. 33, 96 S. W. 499.

53. 2. Equitable L. Assur. Soc. *v.* Perkins, (Ind. App. 1907) 80 N. E. 682.

4. Seely *v.* Manhattan L. Ins. Co., 73 N. H. 339, 61 Atl. 585; Napier *v.* Bankers' L. Ins. Co., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 283, 100 N. Y. Supp. 1072; Wolarsky *v.* New York L. Ins. Co., 120 N. Y. App. Div. 99, 104 N. Y. Supp. 1047.

54. 1. Bange *v.* Supreme Council, etc., (Mo. App. 1907) 105 S. W. 1092.

An agreement to notify the assignee of a policy of the time when premiums fall due does not require the company to notify him of the maturity of a premium note given by the assignor before the assignment. Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643.

2. Smith *v.* Mutual Reserve L. Ins. Co., 44 Wash. 315, 87 Pac. 347.

Notice Must Be Sent to Regular Address of Insured. — Bange *v.* Supreme Council, etc., (Mo. App. 1907) 105 S. W. 1092.

8. Talbott *v.* Metropolitan L. Ins. Co., (C. C. A.) 142 Fed. 694; Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011; Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622; Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791; People's L. Ins. Co. *v.* Tattersall, 37 Can. Sup. Ct. 690, *affirming* 11 Ont. L. Rep. 326.

9. Krebs *v.* Security Trust, etc., Ins. Co., 156 Fed. 295; Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470; Lane *v.* Yeomen of America, 125 Ill. App. 406; U. S. Benevolent Soc. *v.* Watson, (Ind. App. 1908) 84 N. E. 29; Grand Lodge, etc. *v.* Smith, (Kan. 1907) 92 Pac. 710; Mutual L. Ins. Co. *v.* Twyman, (Ky. 1905) 89 S. W. 178; Bange *v.* Supreme Council, etc., (Mo. App. 1907) 105 S. W. 1092; Leech *v.* Order of Railroad Telegraphers, (Mo. App. 1908) 109 S. W. 811; Soehner *v.* Grand Lodge, etc., 74 Neb. 399, 104 N. W. 871; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681; Carey *v.* John Hancock Mut. L. Ins. Co., 114 N. Y. App. Div. 769, 100 N. Y. Supp. 289.

55. 2. Weston *v.* State Mut. L. Assur. Soc., 234 Ill. 492, 84 N. E. 1073.

6. Mutual Reserve L. Ins. Co. *v.* Heidel, (C. C. A.) 161 Fed. 535; Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155; Cauthen *v.* Hartford L. Ins. Co., (S. Car. 1908) 61 S. E. 428.

Where, through the carelessness of the insurer's agents, a policy was not delivered until after the death of insured, who was prepared to pay the premium, it was held that the beneficiary could recover. Sovereign Camp, etc. *v.* Dees, (Tex. Civ. App. 1907) 100 S. W. 366.

7. Germania L. Ins. Co. *v.* Lauer, (Ky. 1906) 97 S. W. 363; Cauthen *v.* Hartford L. Ins. Co., (S. Car. 1908) 61 S. E. 428.

8. New York L. Ins. Co. *v.* Greenlee, (Ind. App. 1908) 84 N. E. 1101; Hagins *v.* Ætna L. Ins. Co., 75 S. Car. 225, 55 S. E. 323; Security Mut. L. Ins. Co. *v.* Calvert, (Tex. Civ. App. 1907) 100 S. W. 1033. *Compare* Batson *v.* Fidelity Mut. L. Ins. Co., (Ala. 1908) 46 So. 578.

9. Krebs *v.* Security Trust, etc., Ins. Co., 156 Fed. 295; Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622; Farmers', etc., L. Assoc. *v.* Caine, 224 Ill. 599, 79 N. E. 956; Catholic Order of Foresters *v.* Lynch, 126 Ill. App. 439; Penn Mut. L. Ins. Co. *v.* Senhenn, (Ind. App. 1907) 81 N. E. 87; Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Wood *v.* Iowa Legion of Honor, 133 Iowa 33, 110 N. W. 164; Davidson *v.* Temple, etc., (Iowa 1907) 111 N. W. 46; Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016; Kelly *v.* Security Mut. L. Ins. Co., 106 N. Y. App. Div. 352, 94 N. Y. Supp. 601; Brotherhood of Railway Trainmen *v.* Dee, (Tex. Civ. App. 1908) 108 S. W. 492; Morgan *v.* Northwestern Nat. L. Ins. Co., 42 Wash. 10, 84 Pac. 412.

56. 1. Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016; Carr *v.* Prudential Ins. Co., 115 N. Y. App. Div. 755, 101 N. Y. Supp. 158.

5. Schoeller *v.* Grand Lodge, etc., 110 N. Y. App. Div. 456, 96 N. Y. Supp. 1088; Thompson *v.* Fidelity Mut. L. Ins. Co., 116 Tenn. 557, 92 S. W. 1098.

6. Wilson *v.* Royal Union Mut. L. Ins. Co., (Iowa 1908) 114 N. W. 1051; Kennedy *v.* Metropolitan L. Ins. Co., 116 La. 66, 40 So. 533; Hay *v.* People's Mut. Benev. Assoc., 143 N. Car. 256, 55 S. E. 623; Thompson *v.* Fidelity Mut. L. Ins. Co., 116 Tenn. 557, 92 S. W. 1098; Brotherhood of Railway Trainmen *v.* Dee, (Tex. 1908) 111 S. W. 396.

7. Krebs *v.* Security Trust, etc., Ins. Co., 156 Fed. 295; Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Kelly *v.* Security Mut. L. Ins. Co., 106 N. Y. App. Div. 352, 94 N. Y. Supp. 601; Brotherhood of Railway Trainmen *v.* Dee, (Tex. Civ. App. 1908) 108 S. W. 492; Morgan *v.* Northwestern Nat. L. Ins. Co., 42 Wash. 10, 84 Pac. 412.

Company Bound by Customary Giving of Notice. — Kavanaugh *v.* Security Trust, etc., Co., 117 Tenn. 33, 96 S. W. 499; Bange *v.* Supreme Council, etc., (Mo. App. 1907) 105 S. W. 1092.

57. 1. Carey *v.* John Hancock Mut. L. Ins. Co., 114 N. Y. App. Div. 769, 100 N. Y. Supp. 289; Kavanaugh *v.* Security Trust, etc., Co., 117 Tenn. 33, 96 S. W. 499.

2. Morgan *v.* Northwestern Nat. L. Ins. Co., 42 Wash. 10, 84 Pac. 412.

4. Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470; Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734; Hicks *v.* Northwestern Aid Assoc., 117 Tenn. 203, 96 S. W. 962.

5. Carey *v.* John Hancock Mut. L. Ins. Co., 114 N. Y. App. Div. 769, 100 N. Y. Supp. 289.

58. 1. Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011; Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622; Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470; Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93; U. S. Benevolent Soc. *v.* Watson, (Ind. App. 1908) 84 N. E. 29;

Soehner *v.* Grand Lodge, etc., 74 Neb. 399, 104 N. W. 871; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681; Rewitzer *v.* Switchmen's Union of North America, 112 N. Y. App. Div. 708, 98 N. Y. Supp. 974.

2. Tender of Premium by Beneficiary Unnecessary. — Washburn *v.* Union Cent. L. Ins. Co., [illegible].

3. Mutual Reserve Fund L. Assoc. *v.* Tuchfeld, (C. C. A.) 159 Fed. 833; Duncan *v.* Missouri State L. Ins. Co., (C. C. A.) 160 Fed. 646; Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200; Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622; Lane *v.* Yeomen of America, 125 Ill. App. 406; National Council, etc. *v.* Burch, 126 Ill. App. 15; Catholic Order of Foresters *v.* Lynch, 126 Ill. App. 439; Grand Lodge, etc. *v.* Smith, (Kan. 1907) 92 Pac. 710; McNicholas *v.* Prudential Ins. Co., 191 Mass. 304, 77 N. E. 756; Morgan *v.* Independent Order, etc., (Miss. 1907) 44 So. 791; Reed *v.* Bankers' Union of World, 121 Mo. App. 419, 99 S. W. 55; Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971; Soehner *v.* Grand Lodge, etc., 74 Neb. 399, 104 N. W. 871; Rewitzer *v.* Switchmen's Union of North America, 112 N. Y. App. Div. 708, 98 N. Y. Supp. 974; Morgan *v.* Northwestern Nat. L. Ins. Co., 42 Wash. 10, 84 Pac. 412.

4. Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016; Continental Casualty Co. *v.* Jennings, (Tex. Civ. App. 1907) 99 S. W. 423.

5. Cayford *v.* Metropolitan L. Ins. Co., 5 Cal. App. 715, 91 Pac. 266; Supreme Commandery, etc., *v.* Bernard, 26 App. Cas. (D. C.) 169, 6 Ann. Cas. 694; National Council, etc., *v.* Burch, 126 Ill. App. 15; Kennedy *v.* Metropolitan L. Ins. Co., 116 La. 66, 40 So. 533; Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016; Schoeller *v.* Grand Lodge, etc., 110 N. Y. App. Div. 456, 96 N. Y. Supp. 1088; Murphy *v.* Prudential Ins. Co., 30 Pa. Super. Ct. 560; Metropolitan L. Ins. Co. *v.* Hall, 104 Va. 572, 52 S. E. 345. *Compare* Murray *v.* State L. Ins. Co., 151 Fed. 539; Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681.

6. Talbott *v.* Metropolitan L. Ins. Co., (C. C. A.) 142 Fed. 694; McNicholas *v.* Prudential Ins. Co., 191 Mass. 304, 77 N. E. 756; Morgan *v.* Northwestern Nat. L. Ins. Co., 42 Wash. 10, 84 Pac. 412.

7. Mutual Reserve Fund L. Assoc. *v.* Tuchfeld, (C. C. A.) 159 Fed. 833; Woodmen of World *v.* Jackson, 80 Ark. 419, 97 S. W. 673; Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643.

59. 1. Reed *v.* Bankers' Union of World, 121 Mo. App. 419, 99 S. W. 55.

3. Brown *v.* Knights of Protected Ark, (Colo. 1908) 96 Pac. 450; National Council, etc., *v.* Burch, 126 Ill. App. 15; Catholic Order of Foresters *v.* Lynch, 126 Ill. App. 439; Franklin L. Ins. Co. *v.* McAfee, (Ky. 1906) 90 S. W. 216; Bromley *v.* Washington L. Ins. Co., (Ky. 1906) 92 S. W. 17; Kennedy *v.* Metropolitan L. Ins. Co., 116 La. 66, 40 So. 533; Schoeller *v.* Grand Lodge, etc., 110 N. Y. App. Div. 456, 96 N. Y. Supp. 1088; Moore *v.* Supreme Assembly, etc., (Tex. Civ. App. 1906) 93 S. W. 1077.

Rule Applied to Acceptance of Premium in Ignorance of Illness of Assured. — Mutual Reserve Fund L. Assoc. *v.* Tuchfeld, (C. C. A.) 159 Fed. 833.

5. Franklin L. Ins. Co. *v.* McAfee, (Ky. 1906) 90 S. W. 216.

7. Washburn *v.* Union Cent. L. Ins. Co., 143 Ala. 485, 38 So. 1011; Galliher *v.* State Mut. L. Ins. Co., (Ala. 1907) 43 So. 833; Farmers' Mut. L. Protective Assoc. *v.* Elliott, (Ga. App. 1908) 61 S. E. 493; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681.

Forfeiture Waived by Acceptance of Renewal Note. — Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622.

10. Duncan *v.* Missouri State L. Ins. Co., (C. C. A.) 160 Fed. 646; Lesseps *v.* Fidelity Mut. L. Ins. Co., (La. 1908) 45 So. 522. *Compare* Galliher *v.* State Mut. L. Ins. Co., (Ala. 1907) 43 So. 833.

11. The insurer will be estopped from denying the reinstatement of a policy where it retains the past due premium together with the application, and cannot exact payment of the next premium in the absence of any showing that the provisions of the policy relating to reinstatement required such payment. Wichman *v.* Metropolitan L. Ins. Co., 120 Mo. App. 51, 96 S. W. 695.

Burden of Proving Reinstatement on Plaintiff — Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

60. 2. A Mere Offer to Pay by one not the agent of the insured is insufficient. Hipp *v.* Fidelity Mut. L. Ins. Co., 128 Ga. 491, 57 S. E. 892.

The Insurer Will Be Estopped from claiming a forfeiture, after the death of the insured, where it appears that its medical examiner inexcusably delayed to pass upon the applicant's evidence of insurability. Leonard *v.* Prudential Ins. Co., 128 Wis. 348, 107 N. W. 646.

61. 9. Powell *v.* Prudential Ins. Co., (Ala. 1907) 45 So. 208; Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. App. 48, 76 N. E. 560; Barker *v.* Metropolitan L. Ins. Co., 188 Mass. 542, 74 N. E. 945; Carmichael *v.* John Hancock Mut. L. Ins. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 386, 95 N. Y. Supp. 587; Carmichael *v.* John Hancock Mut. L. Ins. Co., 116 N. Y. App. Div. 291, 101 N. Y. Supp. 602; Metropolitan L. Ins. Co. *v.* Betz, (Tex. Civ. App. 1906) 99 S. W. 1140.

62. 2. Owen *v.* Metropolitan L. Ins. Co., (N. J. 1907) 67 Atl. 25.

5. Fidelity Mut. L. Ins. Co. *v.* Beck, 84 Ark. 57, 104 S. W. 533; Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61; Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. App. 48, 76 N. E. 560; Haapa *v.* Metropolitan L. Ins. Co., 150 Mich. 467, 114 N. W. 380; Colaneri *v.* General Acc. Assur. Corp., (Supm. Ct. App. Div.) 110 N. Y. Supp. 678.

Answers Falsely Reported by Medical Examiners. — Wilder *v.* Continental Casualty Co., (C. C. A.) 150 Fed. 92; Mutual Reserve Fund L. Assoc. *v.* Cotter, 81 Ark. 205, 99 S. W. 67; Lyon *v.* United Moderns, 148 Cal. 470, 83 Pac.

804; Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760; Iowa L. Ins. Co. *v.* Haughton, (Ind. App. 1908) 85 N. E. 127; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297.

If the insured knows that the answer is falsely reported, there can be no recovery. Mudge *v.* Supreme Ct., etc., 149 Mich. 467, 112 N. W. 1130.

7. Thompson *v.* Metropolitan L. Ins. Co., (Supm. Ct. Tr. T.) 99 N. Y. Supp. 1006.

8. Pregnancy Not Breach of Representation as to Sound Health. — Merriman *v.* Grand Lodge, etc., (Neb. 1906) 110 N. W. 302.

9. Supreme Lodge, etc., *v.* Bradley, (Ky. 1908) 107 S. W. 209; Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469; Reppond *v.* National L. Ins. Co., (Tex. 1907) 101 S. W. 786.

10. Lyon *v.* United Moderns, 148 Cal. 470, 83 Pac. 804; Court of Honor *v.* Clark, 125 Ill. App. 490; U. S. Health, etc., Ins. Co. *v.* Bennett, (Ky. 1907) 105 S. W. 433; Modern Woodmen of America *v.* Wilson, (Neb. 1906) 107 N. W. 568; Owen *v.* Metropolitan L. Ins. Co., (N. J. 1907) 67 Atl. 25.

63. 1. See Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. App. 48, 76 N. E. 560.

2. Bertrand *v.* Franklin L. Ins. Co., 119 La. 423, 44 So. 186; Loehr *v.* Supreme Assembly, (Wis. 1907) 112 N. W. 441.

Paralysis. — Where the applicant stated that he never had had paralysis, the policy was held to be avoided upon it being shown that he had been afflicted with partial paralysis. Iverson *v.* Metropolitan L. Ins. Co., 151 Cal. 746, 91 Pac. 609.

False Statement as to Previous Insanity Avoids Policy. — Mudge *v.* Supreme Ct., etc., 149 Mich. 467, 112 N. W. 1130.

False Warranty as to Pregnancy Avoids Policy. — Satterlee *v.* Modern Brotherhood of America, 15 N. Dak. 92, 106 N. W. 561.

4. Metropolitan L. Ins. Co. *v.* Schmidt, (Ky. 1906) 93 S. W. 1055.

Applicant's Knowledge of Physical History Presumed. — Kidder *v.* Supreme Commandery, etc., 192 Mass. 326, 78 N. E. 469.

A Misstatement as to Pregnancy of the insured was held to avoid a policy, although both the applicant and the medical examiner believed that insured was not pregnant. Supreme Lodge, etc., *v.* Payne, (Tex. 1908) 108 S. W. 1160.

5. Owen *v.* Metropolitan L. Ins. Co., (N. J. 1907) 67 Atl. 25.

6. Wilder *v.* Continental Casualty Co., (C. C. A.) 150 Fed. 92; Keiper *v.* Equitable L. Assur. Soc., 159 Fed. 206; Fidelity Mut. L. Ins. Co. *v.* Beck, 84 Ark. 57, 104 S. W. 533; U. S. Health, etc., Ins. Co. *v.* Hatch, (Ind. App. 1908) 83 N. E. 760; Illinois L. Ins. Co. *v.* De Lang, (Ky. 1907) 99 S. W. 616; Supreme Lodge, etc., *v.* Bradley, (Ky. 1908) 107 S. W. 209; Mutual L. Ins. Co. *v.* Mullen, (Md. 1908) 69 Atl. 385; Mutual L. Ins. Co. *v.* Rain, (Md. 1908) 70 Atl. 87; Barker *v.* Metropolitan L. Ins. Co., 188 Mass. 542, 74 N. E. 945; Barker *v.* Metropolitan L. Ins. Co., (Mass. 1908) 84 N. E. 490; Perry *v.* John Hancock Mut. L. Ins. Co., 143 Mich. 290, 106 N. W. 860; Fidelity Mut. L. Ins. Co. *v.* Miazza, (Miss. 1908) 46 So. 817; Modern Woodmen of America *v.* Wilson, (Neb. 1906) 107 N. W. 568; Provident Sav. L. Assur. Soc. *v.* Whayne, (Ky. 1906) 93 S. W. 1049; Security Mut. L. Ins. Co. *v.* Calvert, (Tex. Civ. App. 1907) 100 S. W. 1033; Mutual Reserve L. Ins. Co. *v.* Jay, (Tex. Civ. App. 1907) 101 S. W. 545; Mutual Reserve L. Ins. Co. *v.* Jay, (Tex. Civ. App. 1908) 109 S. W. 1116; Scofield *v.* Metropolitan L. Ins. Co., 79 Vt. 161, 64 Atl. 1107.

Where it is shown by undisputed testimony that the statements were untrue to such an extent as to have influenced the insurer in issuing the policy, the jury should be directed to find for the insurer. Metropolitan L. Ins. Co. *v.* Schmidt, (Ky. 1906) 93 S. W. 1055.

7. U. S. Health, etc., Ins. Co. *v.* Bennett, (Ky. 1907) 105 S. W. 433; Modern Woodmen of America *v.* Wilson, (Neb. 1906) 107 N. W. 568; Trenton *v.* North American Acc. Ins. Co., (Tex. Civ. App. 1905) 89 S. W. 276.

64. 1. Trenton *v.* North American Acc. Ins. Co., (Tex. Civ. App. 1905) 89 S. W. 276.

3. Cady *v.* Fidelity, etc., Co., (Wis. 1907) 113 N. W. 967.

5. Keiper *v.* Equitable L. Assur. Soc., 159 Fed. 206; Modern Order, etc., *v.* Hollmig, (Tex. Civ. App. 1907) 103 S. W. 974.

65. 9. Life Assoc. of America *v.* Edwards, (C. C. A.) 159 Fed. 53; Metropolitan L. Ins. Co. *v.* Brubaker, (Kan. 1908) 96 Pac. 62; Mutual L. Ins. Co. *v.* Mullen, (Md. 1908) 69 Atl. 385; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297; Bryant *v.* Metropolitan L. Ins. Co., (N. Car. 1908) 60 S. E. 983; National L. Ins. Co. *v.* Reppond, (Tex. Civ. App. 1906) 96 S. W. 778; Modern Order, etc., *v.* Hollmig, (Tex. Civ. App. 1907) 105 S. W. 846.

66. 1. But see Valentini *v.* Metropolitan L. Ins. Co., 106 N. Y. App. Div. 487, 94 N. Y. Supp. 758.

2. Harris *v.* Knights, etc., of Honor, (Mo. App. 1908) 108 S. W. 130; Modern Woodmen of America *v.* Wilson, (Neb. 1906) 107 N. W. 568. See also Bryant *v.* Metropolitan L. Ins. Co., (N. Car. 1908) 60 S. E. 983.

Where the insured warranted that he had not been treated by a physician, and it appeared that he had called at a doctor's office to learn whether he had consumption, but was not advised to take treatment and no fee was charged for the consultation, it was held that there was no breach of warranty. Scofield *v.* Metropolitan L. Ins. Co., 79 Vt. 161, 64 Atl. 1107.

8. A negative answer to a question as to whether the applicant had ever been an inmate of an "infirmary, sanitarium, retreat, asylum, or hospital," was held not to avoid a policy, although it was shown that the applicant had spent ten days at a physician's residence which was referred to as his sanitarium and as his home. Modern Woodmen of America *v.* Wilson, (Neb. 1906) 107 N. W. 568.

9. Ranta *v.* Supreme Tent, etc., 97 Minn. 454, 107 N. W. 156.

67. 1. Doll *v.* Equitable L. Assur. Soc., (C. C. A.) 138 Fed. 705.

2. A representation as to the cause of death of a member of the applicant's family is not an assurance that the applicant's opinion is in accordance with the facts, but is a mere assurance that to the best of insured's knowledge the facts were as represented by him. Ranta *v.* Supreme Tent, etc., 97 Minn. 454, 107 N. W. 156.

7. Mutual Reserve Fund L. Assoc. *v.* Austin, (C. C. A.) 142 Fed. 398.

9. Langdeau *v.* John Hancock Mut. L. Ins. Co., 194 Mass. 56, 80 N. E. 452.

A warranty as to the cause of death of the father of insured requires only an expression of the honest belief of the applicant. Gilroy *v.* Supreme Ct., etc., (N. J. 1907) 67 Atl. 1037.

10. Mutual Reserve Fund L. Assoc. *v.* Cotter, 81 Ark. 205, 99 S. W. 67; Metropolitan L. Ins. Co. *v.* Ford, (Ky. 1907) 102 S. W. 876; Fludd *v.* Equitable L. Assur. Soc., 75 S. Car. 315, 55 S. E. 762.

68. 1. Mutual Reserve Fund L. Assoc. *v.* Cotter, 81 Ark. 205, 99 S. W. 67.

3. Scofield *v.* Metropolitan L. Ins. Co., 79 Vt. 161, 64 Atl. 1107.

4. Central Acc. Ins. Co. *v.* Spence, 126 Ill. App. 32.

5. Brotherhood of Railway Trainmen *v.* Roberts, (Tex. Civ. App. 1908) 107 S. W. 626.

A Misstatement of Age May Be Waived by accepting premiums after knowledge of the misstatement. Hemmings *v.* Sceptre L. Assoc., (1905) 1 Ch. 365.

6. Perry *v.* John Hancock Mut. L. Ins. Co., 143 Mich. 290, 106 N. W. 860.

7. Stevens *v.* Modern Woodmen of America, 127 Wis. 606, 107 N. W. 8.

69. 1. Peterson *v.* Manhattan L. Ins. Co., 115 Ill. App. 421; Langdeau *v.* John Hancock Mut. L. Ins. Co., 194 Mass. 56, 80 N. E. 452; Genrow *v.* Modern Woodmen of America, (Mich. 1908) 114 N. W. 1009.

The word "company" was held to apply only to ordinary insurance companies where it was used in an application for mutual benefit insurance. Lyon *v.* United Moderns, 148 Cal. 470, 83 Pac. 804.

Insurer Must Show that Applicant Knew of Rejection. — Metropolitan L. Ins. Co. *v.* Ford, (Ky. 1907) 102 S. W. 876.

2. Haughton *v.* Ætna L. Ins. Co., (Ind. App. 1908) 85 N. E. 125.

7. Peterson *v.* Manhattan L. Ins. Co., 115 Ill. App. 421.

70. 4. **False Warranty as to Relationship of Beneficiary Avoids Policy.** — Gaines *v.* Fidelity, etc., Co., 188 N. Y. 411, 81 N. E. 169.

71. 4. Fidelity Mut. L. Ins. Co. *v.* Beck, 84 Ark. 57, 104 S. W. 533; Smith *v.* Bankers L. Assoc., 123 Ill. App. 392; Haughton *v.* Ætna L. Ins. Co., (Ind. App. 1908) 85 N. E. 125; Hanrahan *v.* Metropolitan L. Ins. Co., 72 N. J. L. 504, 63 Atl. 280.

Insurer Bound by Inconsistent Statements as to Age. — Edmonds *v.* Modern Woodmen of America, 125 Mo. App. 214, 102 S. W. 601.

5. **Where the Insured Is Legally Executed** for a crime, the insurer is exempt from liability in the absence of a provision in the policy covering death from that cause, and this upon the ground of public policy. Collins *v.* Metropolitan L. Ins. Co., 27 Pa. Super. Ct. 353. But see Collins *v.* Metropolitan L. Ins. Co., 232 Ill. 37, 83 N. E. 542.

72. 3. **Where Two Men Engaged in a Combat** in which both were killed, the insured killing his antagonist in self defense, the death of the insured was held not to have occurred while he was engaged in a violation of the law. Woodmen of World *v.* Walters, (Ky. 1907) 99 S. W. 930.

5. Where one was killed by the husband of a woman with whom he was about to commit adultery, it was held that his death was not induced by a criminal violation of the law. Supreme Lodge, etc., *v.* Crenshaw, 129 Ga. 195, 58 S. E. 628.

73. 5. Hunziker *v.* Supreme Lodge, etc., 117 Ky. 418, 78 S. W. 201, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 73, 74.

6. Davis *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 294.

74. 2. Davis *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 294. *Compare* Lange *v.* Royal Highlanders, (Neb. 1907) 110 N. W. 1110.

5. Grand Legion, etc., *v.* Beaty, 224 Ill. 346, 79 N. E. 565; Lange *v.* Royal Highlanders, (Neb. 1907) 110 N. W. 1110.

6. Grand Legion, etc., *v.* Beaty, 224 Ill. 346, 79 N. E. 565.

7. Ellinger *v.* Mutual L. Ins. Co., (1905) 1 K. B. 31, 74 L. J. K. B. 39.

9. Lange *v.* Royal Highlanders, 75 Neb. 188, 106 N. W. 224, 110 N. W. 1110. But see Hunziker *v.* Supreme Lodge, etc., 117 Ky. 418, 78 S. W. 201; Levine *v.* Supreme Lodge, etc., 122 Mo. App. 547, 99 S. W. 821.

75. 1. **Provision Held Valid.** — Thaxton *v.* Metropolitan L. Ins. Co., 143 N. Car. 33, 55 S. E. 419.

2. Whitfield *v.* Ætna L. Ins. Co., (C. C. A.) 144 Fed. 356.

7. Tuttle *v.* Iowa State Traveling Men's Assoc., 132 Iowa 652, 104 N. W. 1131, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 75; Hunziker *v.* Supreme Lodge, etc., 117 Ky. 418, 78 S. W. 201.

76. 1. Masonic L. Assoc. *v.* Pollard, (Ky. 1905) 89 S. W. 219; Metropolitan L. Ins. Co. *v.* Thomas, (Ky. 1908) 106 S. W. 1175; Modern Woodmen of America *v.* Neeley, (Ky. 1908) 111 S. W. 282; Thaxton *v.* Metropolitan L. Ins. Co., 143 N. Car. 33, 55 S. E. 419; Cady *v.* Fidelity, etc., Co., (Wis. 1907) 113 N. W. 967.

Provision Held to Cover Every Case of Suicide Regardless of Mental Condition. — Moore *v.* Northwestern Mut. L. Ins. Co., 192 Mass. 468, 78 N. E. 488.

2. Moore *v.* Northwestern Mut. L. Ins. Co., 192 Mass. 468, 78 N. E. 488.

3. Atty.-Gen. *v.* Colonial L. Assoc., 194 Mass. 527, 80 N. E. 455; Lange *v.* Royal Highlanders, 75 Neb. 188, 106 N. W. 224, 110 N. W. 1110; Childress *v.* Fraternal Union of America, 113 Tenn. 252, 82 S. W. 832, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76.

By-law Enacted by Supreme Lodge of Mutual Benefit Association. — Scow *v.* Supreme Council, etc., 223 Ill. 32, 79 N. E. 42; Court of Honor *v.* Hutchens, (Ind. App. 1906) 79 N. E. 409;

Plunkett *v.* Supreme Conclave, etc., 105 Va. 643, 55 S. E. 9. But see Court of Honor *v.* Hutchens, (Ind. App. 1907) 82 N. E. 89, *affirming* (Ind. App. 1906) 79 N. E. 409.

Evidence as to State of Mind Held Inadmissible. — Kiesewetter *v.* Supreme Tent, etc., 227 Ill. 48, 81 N. E. 19.

77. 3. Masonic L. Assoc. *v.* Pollard, (Ky. 1905) 89 S. W. 219.

5. Thaxton *v.* Metropolitan L. Ins. Co., 143 N. Car. 33, 55 S. E. 419.

7. Grand Lodge, etc., *v.* Banister, 80 Ark. 190, 96 S. W. 742, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 77; Equitable L. Ins. Co. *v.* Hebert, 37 Ind. App. 373, 76 N. E. 1023; Sovereign Camp, etc., *v.* Bridges, (Indian Ter. 1907) 104 S. W. 672; Tackman *v.* Brotherhood of American Yeomen, 132 Iowa 64, 106 N. W. 350; Van Norman *v.* Modern Brotherhood, etc., 134 Iowa 575, 111 N. W. 992; Masonic L. Assoc. *v.* Pollard, (Ky. 1905) 89 S. W. 219; Lindahl *v.* Supreme Ct., etc., 100 Minn. 87, 110 N. W. 358; Koring *v.* Western L. Indemnity Co., 102 Minn. 31, 112 N. W. 1039; Bowman *v.* Northern Acc. Co., 124 Mo. App. 477, 101 S. W. 691; White *v.* Prudential Ins. Co., 120 N. Y. App. Div. 260, 105 N. Y. Supp. 87; Thaxton *v.* Metropolitan L. Ins. Co., 143 N. Car. 33, 55 S. E. 419; Hildebrand *v.* United Artisans, (Oregon 1907) 91 Pac. 542; Sovereign Camp, etc., *v.* Boehme, (Tex. Civ. App. 1906) 97 S. W. 847; Cady *v.* Fidelity, etc., Co., (Wis. 1907) 113 N. W. 967. But see Supreme Tent, etc., *v.* King, (C. C. A.) 142 Fed. 678.

8. Koring *v.* Western L. Indemnity Co., 102 Minn. 31, 112 N. W. 1039.

Exhumation of Body. — A court of equity may allow the exhumation of the body of the insured where the defense alleges suicide by poison. Mutual L. Ins. Co. *v.* Griesa, 156 Fed. 399.

9. Equitable L. Ins. Co. *v.* Hebert, 37 Ind. App. 373, 76 N. E. 1023; Tackman *v.* Brotherhood of American Yeomen, 132 Iowa 64, 106 N. W. 350; Metropolitan L. Ins. Co. *v.* Thomas, (Ky. 1907) 106 S. W. 1175; Rohloff *v.* Aid Assoc., etc., 130 Wis. 61, 109 N. W. 989.

10. Supreme Tent, etc., *v.* King, (C. C. A.) 142 Fed. 678; Masonic L. Assoc. *v.* Pollard, (Ky. 1905) 89 S. W. 219; Zearfoss *v.* Switchman's Union of North America, 102 Minn. 56, 112 N. W. 1044.

78. 4. Ferris *v.* Loyal Americans of Republic, (Mich. 1908) 116 N. W. 445; Felix *v.* Fidelity Mut. L. Ins. Co., 216 Pa. St. 95, 64 Atl. 903; Rohloff *v.* Aid Assoc., etc., 130 Wis. 61, 109 N. W. 989.

5. Felix *v.* Fidelity Mut. L. Ins. Co., 216 Pa. St. 95, 64 Atl. 903.

10. Wife's Testimony Competent. — Metropolitan L. Ins. Co. *v.* Thomas, (Ky. 1907) 106 S. W. 1175.

79. 1. *Contra.* — Craiger *v.* Modern Woodmen of America, (Ind. 1907) 80 N. E. 429.

6. Court of Honor *v.* Hutchens, (Ind. App. 1906) 79 N. E. 409, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 78 [79].

7. Reagan *v.* Union Mut. L. Ins. Co., 189 Mass. 555, 76 N. E. 217; New York L. Ins. Co. *v.* Hardison, (Mass. 1908) 85 N. E. 410.

80. 1. Mutual Reserve Fund L. Assoc. *v.* Austin, (C. C. A.) 142 Fed. 398; Flanigan *v.* Federal L. Ins. Co., 231 Ill. 399, 83 N. E. 178; Kansas Mut. L. Ins. Co. *v.* Whitehead, (Ky. 1906) 93 S. W. 609. See also Reagan *v.* Union Mut. L. Ins. Co., 189 Mass. 555, 76 N. E. 217.

Fraud in Procuring Reinstatement. — The insurer may take advantage of fraud committed by the insured in obtaining reinstatement within the incontestable period after the time of reinstatement. Pacific Mut. L. Ins. Co. *v.* Galbraith, (Tenn. 1905) 91 S. W. 204.

2. Mutual Reserve Fund L. Assoc. *v.* Austin, (C. C. A.) 142 Fed. 398.

3. Kansas Mut. L. Ins. Co. *v.* Whitehead, (Ky. 1906) 93 S. W. 609.

4. Flanigan *v.* Federal L. Ins. Co., 231 Ill. 399, 83 N. E. 178.

5. Bromley *v.* Washington L. Ins. Co., (Ky. 1906) 92 S. W. 17.

6. Incontestable Clause Limited to Causes of Forfeiture Other than Nonpayment of Premiums. — Thompson *v.* Fidelity Mut. L. Ins. Co., 116 Tenn. 557, 92 S. W. 1098.

8. *Contra.* — Childress *v.* Fraternal Union of America, 113 Tenn. 252, 82 S. W. 832.

82. 1. Shumaker *v.* Security L., etc., Co., 153 Fed. 332.

83. 1. *Compare* Shumaker *v.* Security L., etc., Co., 153 Fed. 332.

6. Bank of Commerce *v.* New York L. Ins. Co., 125 Ga. 552, 54 S. E. 643.

84. 1. Where demand was made in time it was held that, although no new policy had been issued at the time of the death of insured, an action could be maintained for the amount of the paid-up insurance. Lenon *v.* Mutual L. Ins. Co., 80 Ark. 563, 98 S. W. 117.

3. Collman *v.* Equitable L. Assur. Soc., 133 Iowa 177, 110 N. W. 444.

Where an application is required an oral application is sufficient. Wortham *v.* Illinois L. Ins. Co., (Ky. 1908) 107 S. W. 276.

4. Lenon *v.* Mutual L. Ins. Co., 80 Ark. 563, 98 S. W. 117; Dawson *v.* Equitable L. Assur. Soc., (Ky. 1907) 105 S. W. 422; Capp *v.* Security Mut. L. Ins. Co., 117 Mo. App. 532.

In *Kentucky* the demand for paid-up insurance may be made within five years after default. U. S. Life Ins. Co. *v.* Wood, (Ky. 1908) 107 S. W. 1193; Wilson *v.* Washington L. Ins. Co., (Ky. 1907) 103 S. W. 339.

6. Right Lost by Failure to Make Demand During Life of Insured. — Balthaser *v.* Illinois L. Ins. Co., (Ky. 1908) 110 S. W. 258.

85. 6. Where a policy provided for temporary insurance after payment of premiums for two years, in case there was no indebtedness to the company, and further provided that the insured could borrow a certain amount after payment of three annual premiums, it was held that the insured, having borrowed the full amount allowed and having failed to repay the same, was not entitled to the extended insurance. Jagoe *v.* Ætna L. Ins. Co., (Ky. 1906) 96 S. W. 598.

86. 6. A suit in equity may be brought to enforce specific performance of the provisions of the original policy relating to paid-up insurance. Lenon *v.* Mutual L. Ins. Co., 80 Ark. 563, 98 S. W. 117.

7. Stewart *v.* Gwynn, (Ind. App. 1907) 82 N. E. 1000; Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544; McNevins *v.* Prudential Ins. Co., (Supm. Ct. App. T.) 57 Misc. (N. Y.) 608, 108 N. Y. Supp. 745.

8. Lake *v.* New York L. Ins. Co., (La. 1908) 45 So. 959.

87. 4. Troy *v.* London, 145 Ala. 280, 39 So. 713, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 87.

5. Harrison *v.* Northwestern Mut. L. Ins. Co., 78 Vt. 473, 63 Atl. 321.

6. Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734.

7. Bramblett *v.* Hargis, (Ky. 1906) 94 S. W. 20; Irons *v.* U. S. Life Ins. Co., (Ky. 1908) 108 S. W. 904; McNeill *v.* Chinn, (Tex. Civ. App. 1907) 101 S. W. 465; Woody *v.* Schaaf, 106 Va. 799, 56 S. E. 807.

Where a paid-up policy, assigned to the insurer as collateral for a loan, is canceled for failure to pay the debt, the insurer must have its rights determined by a court of equity based on the policy's surrender value. Mutual L. Ins. Co. *v.* Twyman, (Ky. 1906) 92 S. W. 335.

8. Clark *v.* Equitable L. Assur. Soc., 143 Fed. 175.

Assignment Gives Creditor Right to Paid-up Policy if Debt Not Paid. — Du Brutz *v.* Visalia Bank, 4 Cal. App. 201, 87 Pac. 467, 469.

88. 5. Lake *v.* New York L. Ins. Co., (La. 1908) 45 So. 959.

6. Dubrule *v.* Sun L. Ins. Co., 29 Quebec Super. Ct. 457.

89. 6. McNevins *v.* Prudential Ins. Co., (Supm. Ct. App. T.) 57 Misc. (N. Y.) 608, 108 N. Y. Supp. 745, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 89; Harrison *v.* Northwestern Mut. L. Ins. Co., 78 Vt. 473, 63 Atl. 321.

7. **In Kentucky** an assignee must have an insurable interest, and an assignment to a creditor is invalid where it appears that the debt for which the policy was assigned did not enter into the contract. Bramblett *v.* Hargis, (Ky. 1906) 94 S. W. 20.

Love and affection is a sufficient consideration to support the assignment of a policy by a parent to his child. Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544.

Assignment in Consideration of Marriage Valid. — Howe *v.* Hagan, 110 N. Y. App. Div. 392, 97 N. Y. Supp. 86.

Promise by Assignee to Maintain Illicit Relations with Assignor. — Where the consideration for an assignment was an agreement by the assignee to maintain illicit relations with the insured, it was held that the assignment could be attacked on the ground that the consideration was immoral. Harrison *v.* Northwestern Mut. L. Ins. Co., (Vt. 1907) 66 Atl. 787.

90. 2. Johnson *v.* Bacon, (Miss. 1908) 45 So. 858.

3. Perry *v.* Tweedy, 128 Ga. 402, 57 S. E. 782; Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470.

Contra. — See Rylander *v.* Allen, 125 Ga. 206, 53 S. E. 1032; Mutual L. Ins. Co. *v.* Twyman, (Ky. 1906) 92 S. W. 335; Crice *v.* Illinois L. Ins. Co., (Ky. 1906) 92 S. W. 560.

Not Assignable to Insurer as Collateral Without Consent. — Mutual L. Ins. Co. *v.* Twyman, (Ky. 1905) 89 S. W. 178.

Where the Policy Gives the Insured the Right to Change the Beneficiary, he may assign his policy, the beneficiary's interest being subject to such right. Fuos *v.* Dietrich, (Tex. Civ. App. 1907) 101 S. W. 291.

But the interest of the beneficiary may be made subject to the right reserved to the insured to change the beneficiary. McNeill *v.* Chinn, (Tex. Civ. App. 1907) 101 S. W. 465.

91. 3. Matlock *v.* Bledsoe, 77 Ark. 60, 90 S. W. 848; Rylander *v.* Allen, 125 Ga. 206, 53 S. E. 1032; New York L. Ins. Co. *v.* Kansas City Nat. Bank, 121 Mo. App. 479, 97 S. W. 195; Nixon *v.* Malone, (Tex. Civ. App. 1906) 95 S. W. 577; New York L. Ins. Co. *v.* Malone, (Tex. Civ. App. 1906) 95 S. W. 585; Mutual L. Ins. Co. *v.* Malone, (Tex. Civ. App. 1906) 95 S. W. 585; Mutual Ben. L. Ins. Co. *v.* Malone, (Tex. Civ. App. 1906) 95 S. W. 585; Harrison *v.* Northwestern Mut. L. Ins. Co., 78 Vt. 473, 63 Atl. 321.

4. Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544; Gaines *v.* Gaines, (Ky. 1907) 99 S. W. 600.

92. 7. Dudley *v.* Fifth Ave. Trust Co., 115 N. Y. App. Div. 396, 100 N. Y. Supp. 934.

93. 1. Mutual L. Ins. Co. *v.* Lane, 151 Fed. 276; Metropolitan L. Ins. Co. *v.* Elison, 72 Kan. 199, 83 Pac. 410; Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544; Hess *v.* Segenfelter, (Ky. 1907) 105 S. W. 476; Hull *v.* Grand Lodge, etc., (Ky. 1907) 105 S. W. 479; Bromley *v.* Washington L. Ins. Co., (Ky. 1906) 92 S. W. 17; Bramblett *v.* Hargis, (Ky. 1906) 94 S. W. 20.

An Insurable Interest Must Be Proved by the assignee or those claiming under him. Troy *v.* London, 145 Ala. 280, 39 So. 713.

Lack of Insurable Interest Can Be Availed of Only by Insurer. — Chicago Title, etc., Co. *v.* Haxtim, 129 Ill. App. 626.

2. Clark *v.* Equitable L. Assur. Soc., 143 Fed. 175; Rylander *v.* Allen, 125 Ga. 206, 53 S. E. 1032; Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734; Harrison *v.* Northwestern Mut. L. Ins. Co., 78 Vt. 473, 63 Atl. 321.

3. Farra *v.* Braman, (Ind. App. 1905) 82 N. E. 926.

Where a bank held insured's note and also his insurance policy, it was held that such possession by the bank raised a presumption of an assignment of the policy. New York L. Ins. Co. *v.* Kansas City Nat. Bank, 121 Mo. App. 479, 97 S. W. 195.

4. McNevins *v.* Prudential Ins. Co., (Supm. Ct. App. T.) 57 Misc. (N. Y.) 608, 108 N. Y. Supp. 745; Ormond *v.* Connecticut Mut. L. Ins. Co., 145 N. Car. 140, 58 S. E. 997; Coffman *v.* Liggett, 107 Va. 418, 59 S. E. 392.

7. Stewart *v.* Gwynn, (Ind. App. 1907) 82 N. E. 1000; McNevins *v.* Prudential Ins. Co., (Supm. Ct. App. T.) 57 Misc. (N. Y.) 608, 108 N. Y. Supp. 745; Nixon *v.* Malone, (Tex. Civ. App. 1906) 95 S. W. 577; Mutual Ben. L. Ins. Co. *v.* Malone, (Tex. Civ. App. 1906) 95 S. W. 585; Mutual L. Ins. Co. *v.* Malone, (Tex. Civ. App. 1906) 95 S. W. 585; New York L. Ins. Co. *v.* Malone, (Tex. Civ. App. 1906) 95 S. W. 585.

Policy Must Be Delivered to Pass Title by Parol Assignment. — Ingersoll *v.* Pond, (Va. 1908) 60 S. E. 738.

94. 1. Coffman *v.* Liggett, 107 Va. 418, 59 S. E. 392.

3. Howe *v.* Hagan, 110 N. Y. App. Div. 392, 97 N. Y. Supp. 86.

4. Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544; McNeill *v.* Chinn, (Tex. Civ. App. 1907) 101 S. W. 465; Coleman *v.* Grand Lodge, etc., (Tex. Civ. App. 1907) 104 S. W. 909.

5. Farra *v.* Braman, (Ind. App. 1905) 82 N. E. 926; Barner *v.* Lyter, 31 Pa. Super. Ct. 435; Fuos *v.* Dietrich, (Tex. Civ. App. 1907) 101 S. W. 291; McNeill *v.* Chinn, (Tex. Civ. App. 1907) 101 S. W. 465; Coleman *v.* Grand Lodge, etc., (Tex. Civ. App. 1907) 104 S. W. 909.

96. 5. McNeill *v.* Chinn, (Tex. Civ. App. 1907) 101 S. W. 465, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 96.

7. The Appointment of a Trustee to administer the proceeds of a life policy is not an assignment but a charge of the beneficiary, and therefore a provision requiring consent to an assignment is inapplicable. Howe *v.* Fidelity Trust Co., (Ky. 1905) 89 S. W. 521.

97. 4. Brown *v.* Equitable L. Assur. Soc., 142 Fed. 835; Buford *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 98 N. Y. Supp. 152.

5. Brown *v.* Equitable L. Assur. Soc., 142 Fed. 835.

Rule Held Not Applicable to Mutual Companies. — U. S. Life Ins. Co. *v.* Spinks, (Ky. 1906) 96 S. W. 889.

98. 1. Buford *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 98 N. Y. Supp. 152.

2. Brown *v.* Equitable L. Assur. Soc., 142 Fed. 835.

3. Com. *v.* Richardson, (Ky. 1906) 94 S. W. 639.

4. Brown *v.* Equitable L. Assur. Soc., (C. C. A.) 151 Fed. 1, 10 Ann. Cas. 402.

5. Brown *v.* Equitable L. Assur. Soc., 142 Fed. 835.

A Policy Holder May Maintain a Suit in equity to wind up an insolvent insurance company's affairs and have its assets distributed, upon the theory that he occupies the position of a creditor of the company. Com. *v.* Richardson, (Ky. 1906) 94 S. W. 639.

8. The statute becomes a part of every policy issued by an insurance company of the state, and policy holders, whether residents of the state or not, are bound by its terms. Brown *v.* Equitable L. Assur. Soc., 142 Fed. 835.

Member of Mutual Company May Maintain Suit in Equity Where Fraud Shown. — Brown *v.* Equitable L. Assur. Soc., (C. C. A.) 151 Fed. 1, 10 Ann. Cas. 402.

9. Brown *v.* Equitable L. Assur. Soc., 142 Fed. 835; Buford *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 98 N. Y. Supp. 152.

99. 1. **Remedies Apply to Breach of Contract by Insurer.** — Blakely *v.* Fidelity Mut. L. Ins. Co., 143 Fed. 619.

Under the Missouri Nonforfeiture Statute an attempted forfeiture by the insurer after payment of the required number of premiums, the forfeiture claimed being nonpayment of certain premiums, gives no right of action for breach of contract inasmuch as such attempted forfeiture is without effect. Capp *v.* Security Mut. L. Ins. Co., 117 Mo. App. 532.

4. **In Tennessee** where the policy of an assessment company entitles the beneficiary to one assessment upon the members of the company, not exceeding a certain amount, the beneficiary may recover the face value of the policy, in the absence of proof of the amount that would be raised by an assessment. Hicks *v.* Northwestern Aid Assoc., 117 Tenn. 203, 96 S. W. 962.

5. Michaelsen *v.* Security Mut. L. Ins. Co., (C. C. A.) 154 Fed. 356; Kelly *v.* Security Mut. L. Ins. Co., 106 N. Y. App. Div. 352, 94 N. Y. Supp. 601.

6. Michaelsen *v.* Security Mut. L. Ins. Co., (C. C. A.) 154 Fed. 356, *reversing* 150 Fed. 224; Kelly *v.* Security Mut. L. Ins. Co., 106 N. Y. App. Div. 352, 94 N. Y. Supp. 601.

Difference of Opinion as to Amount of Premium Required No Ground for Rescission by Assured. Blakely *v.* Fidelity Mut. L. Ins. Co., 143 Fed. 619.

If the Company Wrongfully Increases Its Rates and insists upon payment of the new rate, it is not necessary for the insured to continue to tender the amount of the original premium. Hicks *v.* Northwestern Aid Assoc., 117 Tenn. 203, 96 S. W. 962.

7. **Policies with Investment Feature.** — When, by the terms of the contract, the insured is entitled to a portion of the profits earned on his policy, the damages are increased by the entire amount of profits of the contract. Krebs *v.* Security Trust, etc., Ins. Co., 156 Fed. 295, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99.

8. **Assessment Insurance Company Not Liable for Interest.** — Blakely *v.* Fidelity Mut. L. Ins. Co., 143 Fed. 619.

9. Kelly *v.* Security Mut. L. Ins. Co., 106 N. Y. App. Div. 352, 94 N. Y. Supp. 601. *Compare* Mutual Reserve Fund L. Assoc. *v.* Ferrenbach, (C. C. A.) 144 Fed. 342.

100. 1. **Hatch** *v.* U. S. Casualty Co., (Mass. 1908) 83 N. E. 398; Metropolitan L. Ins. Co. *v.* Wagner, (Tex. Civ. App. 1908) 109 S. W. 1120.

7. The policy is not forfeited by failure to furnish proofs within the required time, but no recovery may be had on the policy until proofs have been furnished. Continental Casualty Co. *v.* Waters, (Ky. 1906) 97 S. W. 1103.

Reasonable Diligence Sufficient under Limitation in Policy. — Simmons *v.* Western Travelers' Acc. Assoc., (Neb. 1907) 112 N. W. 365.

8. **Condition Waived by Failure to Furnish Blanks in Time.** — Continental Casualty Co. *v.* Buchtel, 74 Neb. 823, 105 N. W. 707.

10. Worthan *v.* Illinois L. Ins. Co., (Ky. 1908) 107 S. W. 276; Lanier *v.* Eastern L. Ins. Co., 142 N. Car. 14, 54 S. E. 786.

Where an insurer received proofs of death of the wrong person and denied liability in the belief that such proofs related to insured, it was not a waiver of proper proofs. Mutual L. Ins. Co. *v.* Thomas, 101 Md. 501, 61 Atl. 201.

101. 1. Lanier *v.* Eastern L. Ins. Co., 142 N. Car. 14, 54 S. E. 786.

Irregular Notice Waived by Investigation of

Loss. — Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016.

2. Continental Casualty Co. *v.* Buchtel, 74 Neb. 823, 105 N. W. 707.

Notice of Death Sent by Insurer's Agent Held Sufficient. — Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016.

7. Lyon *v.* United Moderns, 148 Cal. 470, 83 Pac. 804.

102. 1. Metropolitan L. Ins. Co. *v.* Thomas, (Ky. 1908) 106 S. W. 1175; Worthan *v.* Illinois L. Ins. Co., (Ky. 1908) 107 S. W. 276; Thaxton *v.* Metropolitan L. Ins. Co., 143 N. Car. 33, 55 S. E. 419; Security Mut. L. Ins. Co. *v.* Calvert, (Tex. Civ. App. 1907) 100 S. W. 1033.

2. U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760.

3. Breach of Contract with Insured. — Although a beneficiary is named in the policy, the personal representative is the proper party to sue for any breach of the contract between the insurer and insured. Price *v.* Mutual Reserve L. Ins. Co., 102 Md. 683, 62 Atl. 1040.

An Action on a Benefit Certificate under Seal must be brought by the legal representative of insured where the beneficiaries are his children. Morrill *v.* Catholic Order of Foresters, 79 Vt. 479, 65 Atl. 526.

4. Smith *v.* Grand Lodge, etc., 124 Mo. App. 181, 101 S. W. 662; Lanier *v.* Eastern L. Ins. Co., 142 N. Car. 14, 54 S. E. 786.

Right of Beneficiary to Sue Limited to Action for Benefits. — Price *v.* Mutual Reserve L. Ins. Co., 102 Md. 683, 62 Atl. 1040.

103. 2. Davis *v.* U. S. Health, etc., Co., 73 N. H. 425, 62 Atl. 728.

3. Rohloff *v.* Aid Assoc., etc., 130 Wis. 61, 109 N. W. 989, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 103.

Waiver of Proofs Held Not to Constitute Waiver of this Provision. — Davis *v.* U. S. Health, etc., Co., 73 N. H. 425, 62 Atl. 728.

6. Wells *v.* Union Cent. L. Ins. Co., 81 Ark. 145, 98 S. W. 697; Gill *v.* Manhattan L. Ins. Co., (Ariz. 1908) 95 Pac. 89; Küsel *v.* Mutual Reserve L. Ins. Co., 131 Iowa 54, 107 N. W. 1027; Dolan *v.* Royal Neighbors of America, 123 Mo. App. 147, 100 S. W. 498. But see Continental Casualty Co. *v.* Harrod, (Ky. 1907) 100 S. W. 262.

104. 3. Statute Not Applicable to Policy Issued Before Its Enactment. — Wells *v.* Union Cent. L. Ins. Co., 81 Ark. 145, 98 S. W. 697.

4. Küsel *v.* Mutual Reserve L. Ins. Co., 131 Iowa 54, 107 N. W. 1027.

5. Küsel *v.* Mutual Reserve L. Ins. Co., 131 Iowa 54, 107 N. W. 1027.

Limitation Held Not to Run from Denial of Liability Before Filing of Proofs. — Munn *v.* Masonic L. Assoc., 189 N. Y. 486, 82 N. E. 724; Munn *v.* Masonic L. Assoc., 115 N. Y. App. Div. 855, 101 N. Y. Supp. 91.

6. Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61; Dolan *v.* Royal Neighbors of America, 123 Mo. App. 147, 100 S. W. 498.

7. Gill *v.* Manhattan L. Ins. Co., (Ariz. 1908) 95 Pac. 89.

8. The Limitation Is Not Waived by a denial of liability coupled with a statement to the effect that performance of all conditions precedent will be required in case payment is sought to be enforced. Küsel *v.* Mutual Reserve L. Ins. Co., 131 Iowa 54, 107 N. W. 1027.

Where Time Expires on Sunday. — In *New York*, where the last day of the period limited falls on Sunday an action commenced on the following day is barred. Ryer *v.* Prudential Ins. Co., 185 N. Y. 6, 77 N. E. 727.

Mere Negotiations in Regard to Adjustment No Waiver. — Curry *v.* Empire L. Ins. Co., (Supm. Ct. Tr. T.) 49 Misc. (N. Y.) 65, 98 N. Y. Supp. 6.

105. 1. Action for Paid-up Policy Barred by Delay for More than Five Years. — Dawson *v.* Equitable L. Assur. Soc., (Ky. 1907) 105 S. W. 422.

3. Mutual Reserve Fund L. Assoc. *v.* Tuchfeld, (C. C. A.) 159 Fed. 833.

Demand Waived by Denial of Liability. — Ætna L. Ins. Co. *v.* Wimberly, (Tex. Civ. App. 1908) 108 S. W. 778.

106. 4. For a case where plaintiff was estopped by failure to assert his claim, see Renick *v.* Mutual L. Ins. Co., (Ky. 1907) 106 S. W. 310.

5. Weston *v.* State Mut. L. Assur. Soc., 234 Ill. 492, 84 N. E. 1073, *quoting* 19 Am. and Eng. Encyc. of Law (2d ed.) 106.

7. The Compromise Is Not Valid unless there is a difference of opinion as to the amount of liability. Farmers', etc., L. Assoc. *v.* Caine, 224 Ill. 599, 79 N. E. 956.

8. Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200; Caine *v.* Farmers', etc., L. Assoc., 115 Ill. App. 307; Sovereign Camp, etc., *v.* Bridges, (Ind. Ter. 1907) 104 S. W. 672; Mowry *v.* National Protective Soc., 27 Pa. Super. Ct. 390.

Tender of Premium Returned to Plaintiff in Settlement Not Condition Precedent. — Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016.

11. Southwestern Ins. Co. *v.* Woods Nat. Bank, (Tex. Civ. App. 1908) 107 S. W. 114.

12. Where a policy provided for semi-annual or quarterly payments, it was held that a provision therein permitting the company to deduct, at the maturity of the policy, the amount necessary to complete a full year's premium was an unauthorized modification of the agreement to pay a certain sum in consideration of the payment of certain amounts at fixed times. Bracher *v.* Equitable L. Assur. Soc., 103 N. Y. App. Div. 269, 92 N. Y. Supp. 1105.

107. 1. Mutual Reserve Fund L. Assoc. *v.* Austin, (C. C. A.) 142 Fed. 398; Nophsker *v.* Supreme Council, etc., 215 Pa. St. 631, 64 Atl. 788.

Declarations as to Age Held Admissible. — Taylor *v.* Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919.

4. Statements as to Health Made Several Years Before Application Admitted against Beneficiary. — Hews *v.* Equitable L. Assur. Soc., (C. C. A.) 143 Fed. 850.

7. Krapp *v.* Metropolitan L. Ins. Co., 143 Mich. 369, 106 N. W. 1107; Felix *v.* Fidelity Mut. L. Ins. Co., 216 Pa. St. 95, 64 Atl. 903.

Proofs Admissible as Evidence for Plaintiff. — Modern Woodmen of America *v.* Graber, 128 Ill. App. 585.

When Not Available to Defendant. — Proofs introduced by the plaintiff for the purpose of

showing that they were furnished are not available to the defendant to show the falsity of the application, where the defendant offers no other evidence but merely moves for a nonsuit. Baldi *v.* Metropolitan L. Ins. Co., 30 Pa. Super. Ct. 213; Rondinella *v.* Metropolitan L. Ins. Co., 30 Pa. Super. Ct. 223.

8. Supreme Lodge, etc., *v.* Bradley, (Ky. 1908) 109 S. W. 1178; Barker *v.* Metropolitan L. Ins. Co., (Mass. 1908) 84 N. E. 490.

108. 2. Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61; Triple Tie Benefit Assoc. *v.* Wheatley, (Kan. 1907) 91 Pac. 59; Continental Casualty Co. *v.* Jennings, (Tex. Civ. App. 1907) 99 S. W. 423.

3. Barker *v.* Metropolitan L. Ins. Co., (Mass. 1908) 84 N. E. 490.

5. Perry *v.* John Hancock Mut. L. Ins. Co., 143 Mich. 290, 106 N. W. 860; Taylor *v.* Modern Woodmen of America, 42 Wash. 304, 84 Pac. 867.

109. 3. See Kinney *v.* Brotherhood of American Yeomen, 15 N. Dak. 21, 106 N. W. 44.

5. Taylor *v.* Modern Woodmen of America, 42 Wash. 304, 84 Pac. 867.

6. Illinois L. Ins. Co. *v.* De Lang, (Ky. 1907) 99 S. W. 616.

A nonexpert may testify that relatives of the insured died of consumption. Krapp *v.* Metropolitan L. Ins. Co., 143 Mich. 369, 106 N. W. 1107.

Nonexpert Testimony on Issue of Insanity Admissible. — Wightman *v.* Grand Lodge, etc., 121 Mo. 252, 98 S. W. 829.

Question Calling for Opinion. — Where the plaintiff was asked whether, at the time she consulted a physician on behalf of the insured, the latter was afflicted and required medical attention, it was held that the question was improper as calling for a conclusion upon the point at issue. Valentini *v.* Metropolitan L. Ins. Co., 106 N. Y. App. Div. 487, 94 N. Y. Supp. 758.

May Testify as to Nature of Instrument Apparently Causing Wounds. — Metropolitan L. Ins. Co. *v.* Wayner, (Tex. Civ. App. 1908) 109 S. W. 1120.

7. Taylor *v.* Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919.

110. 4. Modern Woodmen of America *v.* Graber, 128 Ill. App. 585; Modern Woodmen of America *v.* Gerdom, (Kan. 1908) 94 Pac. 788; Heagany *v.* National Union, 143 Mich. 186, 106 N. W. 700; Spahr *v.* Mutual L. Ins. Co., 98 Minn. 471, 108 N. W. 4.

6. Felix *v.* Fidelity Mut. L. Ins. Co., 216 Pa. St. 95, 64 Atl. 903.

7. Krapp *v.* Metropolitan L. Ins. Co., 143 Mich. 369, 106 N. W. 1107.

Exhumation of Insured's Body May Be Had to Establish Defense of Suicide. — Mutual L. Ins. Co. *v.* Griesa, 156 Fed. 398.

111. 1. Metropolitan L. Ins. Co. *v.* Wagner, (Tex. Civ. App. 1908) 109 S. W. 1120. But see Craiger *v.* Modern Woodmen of America, (Ind. 1907) 80 N. E. 130.

Verdict of Suicide Not Prima Facie Evidence. — Grand Lodge, etc., *v.* Banister, 80 Ark. 190, 96 S. W. 742.

A Mere Opinion as to the Cause of Death set forth in a document signed by the coroner is not admissible. Kinney *v.* Brotherhood of American Yeomen, 15 N. Dak. 21, 106 N. W. 44.

LIGHT AND AIR.

114. 4. Ruetsch *v.* Spry, 14 Ont. L. Rep. 233.

116. 1. *Compare* Darnell *v.* Columbus Show Case Co., 129 Ga. 62, 58 S. E. 631.

4. Ray *v.* Hazeldine, (1904) 2 Ch. 17.

117. 3. Hyman *v.* Van Den Bergh, (1907) 2 Ch. 516.

A Right to a Special Amount of Light necessary for a particular business cannot be acquired by twenty years' enjoyment to the knowledge of ... owner of the servient tenement. Ambler *v.* Gordon, (1905) 1 K. B. 417.

Fact that Two Tenements Held by Two Tenants under Common Landlord. — Fear *v.* Morgan, (1906) 2 Ch. 406, *affirmed* (1907) A. C. 425.

118. 1. Colls *v.* Home, etc., Stores, (1904) A. C. 179.

121. 8. Marshall *v.* Columbia, etc., Electric St. R. Co., 73 S. Car. 241, 53 S. E. 417.

122. 5. Koblegard *v.* Hale, 60 W. Va. 40, 53 S. E. 793, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122.

6 Koblegard *v.* Hale, 60 W. Va. 40, 53 S. E. 793, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122.

124. 4. Colls *v.* Home, etc., Stores, (1904) A. C. 179.

129. 1. Ankerson *v.* Connelly, (1907) 1 Ch. 678.

2. Andrews *v.* Waite, (1907) 2 Ch. 500.

LIKE.

130. 8. Like Manner — Wills. — See Sterling *v.* Ives, 78 Conn. 498, 62 Atl. 948.

LIKELY.

132. 1. Likely Equivalent to Reasonably Expected — Instruction to Jury. — Garard *v.* Manufacturers Coal, etc., Co., 207 Mo. 242, 105 S. W. 767.

LIMITATION.

134. 1. Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201.

LIMITATION OF ACTIONS.

146. 10. Lynchburg Cotton Mill Co. *v.* Travelers' Ins. Co., 140 Fed. 722, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146; Patterson *v.* Ft. Lyon Canal Co., 36 Colo. 181, 84 Pac. 807, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146; Warren *v.* Clemenger, 120 Ill. App. 435; Cassell *v.* Lowry, 164 Ind. 1, 4, 72 N. E. 640, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146; People *v.* Freeman, 110 N. Y. App. Div. 605, 97 N. Y. Supp. 343; McAden *v.* Palmer, 140 N. Car. 258, 52 S. E. 1034.

147. 1. Gregory *v.* Southern Pac. Co., 157 Fed. 113; Murray *v.* Farrell, 2 Alaska 360; Puckhaber *v.* Henry, (Cal. 1907) 93 Pac. 114; Holmquist *v.* Gilbert, (Colo. 1907) 92 Pac.

232; Foot *v.* Burr, (Colo. 1907) 92 Pac. 236; Brereton *v.* Benedict, (Colo. 1907) 92 Pac. 238; Gross *v.* Watts, 206 Mo. 373, 104 S. W. 30; House *v.* Carr, 185 N. Y. 453, 78 N. E. 171; Davidson *v.* Witthaus, 106 N. Y. App. Div. 182, 94 N. Y. Supp. 428.

119. 5. Galliher *v.* State Mut. L. Ins. Co., (Ala. 1907) 43 So. 833; Dolan *v.* Royal Neighbors of America, 123 Mo. App. 156, 100 S. W. [illegible] *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140.

Where a Life Insurance Policy Bars Action Thereon, the right to sue on a bond given to a state officer conditioned for the prompt payment of losses is also barred. McCulloch *v.* Mutual Reserve Fund L. Assoc., 76 Ark. 32, 93 S. W. 62.

Limitation Must Be Reasonable.— Ausplund *v.* Etna Indemnity Co., 47 Oregon 10, 81 Pac. 577, 82 Pac. 12.

7. Luther *v.* Crawford, 213 Ill. 596, 73 N. E. 430, *affirming* 116 Ill. App. 351; Love *v.* Love, 72 Kan. 658, 83 Pac. 201; People *v.* Freeman, 110 N. Y. App. Div. 605, 97 N. Y. Supp. 343; Allison *v.* Wood, 104 Va. 765, 52 S. E. 559.

150. 5. O'Brien *v.* Bonfield, 220 Ill. 219, 77 N. E. 167; Steinbach *v.* Murphy, 70 Kan. 487, 78 Pac. 823.

6. Swanson *v.* Atlantic, etc., Co., 156 Fed. 977; Glazier *v.* Heneybuss, (Okla. 1907) 91 Pac. 872.

Actions to Recover Property Lost at Gaming.— Myers *v.* Friedenberg, 70 N. J. Eq. 3, 62 Atl. 532, *affirmed* (N. J. 1907) 65 Atl. 1118.

151. 1. Keep *v.* National Tube Co., 154 Fed. 121; Swanson *v.* Atlantic, etc., Co., 156 Fed. 977.

5. Kansas City Hydraulic Press Brick Co. *v.* National Surety Co., 149 Fed. 507.

6. Jones *v.* Boykin, 70 S. Car. 315, 49 S. E. 877, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 151.

7. O'Brien *v.* Bonfield, 220 Ill. 219, 77 N. E. 167; Stout *v.* Young, 217 Pa. St. 427, 66 Atl. 659; Smith *v.* Beales, 33 Pa. Super. Ct. 570.

8. Medill *v.* Snyder, 71 Kan. 600, 81 Pac. 216, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 150, 151.

13. Miller *v.* Calumet Lumber, etc., Co., 121 Ill. App. 56.

14. Warren *v.* Clemenger, 120 Ill. App. 435.

152. 7. *United States.* — Ramsden *v.* Knowles, 151 Fed. 718.

California. — Puckhaber *v.* Henry, (Cal. 1907) 93 Pac. 114.

Colorado.— Holmquist *v.* Gilbert, (Colo. 1907) 92 Pac. 233, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 152; Brereton *v.* Benedict, (Colo. 1907) 92 Pac. 238.

Connecticut.— Hartford *v.* Mechanics Sav. Bank, 79 Conn. 38, 63 Atl. 658.

Georgia.— Doris *v.* Story, 122 Ga. 611, 50 S. E. 348.

Missouri.— Prewitt *v.* Prewitt, 188 Mo. 675, 87 S. W. 1000.

Nevada.— Fox *v.* Bernard, (Nev. 1906) 85 Pac. 351.

New York.— People *v.* Freeman, 110 N. Y. App. Div. 605, 97 N. Y. Supp. 343; Greenley *v.* Greenley, 114 N. Y. App. Div. 640, 100 N. Y. Supp. 114.

Ohio.— David *v.* Fauble, 29 Ohio Cir. Ct. 495.

Pennsylvania.— U. S. *v.* Mercantile Trust Co., 213 Pa. St. 411, 62 Atl. 1062.

Texas.— Williams *v.* Armistead, (Tex. Civ. App. 1905) 90 S. W. 925.

West Virginia.— Emmons *v.* Hawk, (W. Va. 1907) 59 S. E. 519.

153. 5. Hudson *v.* Cahoon, 193 Mo. 547, 91 S. W. 72.

6. Burns *v.* Cooper, (C. C. A.) 140 Fed. 273; McColgan *v.* Muirland, 2 Cal. App. 6, 82 Pac. 1113; Marshutz *v.* Seltzor, 5 Cal. App. 140, 89 Pac. 877; Louisville Banking Co. *v.* Buchanan, 117 Ky. 981, 80 S. W. 193, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153, 154; Aultman, etc., Co. *v.* Meade, 89 S. W. 137, 28 Ky. L. Rep. 208; Williamson *v.* Brown, 195 Mo. 313, 93 S. W. 791; Enterline *v.* Miller, 27 Pa. Super. Ct. 463; Earle *v.* Owings, 72 S. Car. 362, 51 S. E. 980; Smith *v.* Fairbanks, (Tex. 1907) 102 S. W. 908, *affirming* (Tex. Civ. App. 1907) 99 S. W. 705; State *v.* Tanner, 45 Wash. 348, 88 Pac. 321.

154. 5. Darlington *v.* Turner, 24 App. Cas. (D. C.) 573; Burrus *v.* Cook, 117 Mo. App. 385, 93 S. W. 888; Stevenson *v.* Markley, (N. J. 1907) 66 Atl. 185; Scoville *v.* Brock, 79 Vt. 449, 65 Atl. 577; Patrick *v.* Stark, (W. Va. 1907) 59 S. E. 606.

8. To the Same Effect.— Ferrell *v.* Lord, 43 Wash. 667, 86 Pac. 1060.

155. 1. Whetsler *v.* Sprague, 224 Ill. 461, 79 N. E. 667; Sicher *v.* Rambousek, 193 Mo. 113, 91 S. W. 68; Burrus *v.* Cook, 117 Mo. App. 385, 93 S. W. 888; Stevenson *v.* Markley, (N. J. 1907) 66 Atl. 185.

3. Carey-Lombard Lumber Co. *v.* Daugherty, 125 Ill. App. 258; People *v.* Michigan Cent. R. Co., 145 Mich. 140, 108 N. W. 772; Burrus *v.* Cook, 117 Mo. App. 403, 93 S. W. 888, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 155; Smith *v.* Krueger, (N. J. 1906) 63 Atl. 850; Asbury Park, etc., R. Co. *v.* Neptune Tp., (N. J. 1907) 67 Atl. 790; Francis *v.* Gisborn, 30 Utah 73, 83 Pac. 571, *citing* 18 [19] AM. AND ENG. ENCYC. OF LAW (2d ed.) 155, 156; Figge *v.* Bergenthal, 130 Wis. 594, 109 N. W. 581, 110 N. W. 798. *Compare* Fitzpatrick *v.* Stevens, 114 Mo. App. 497, 89 S. W. 897.

156. 1. This Notion as to Obedience Rather than Analogy.— Kansas City Southern R. Co. *v.* Stevenson, 135 Fed. 553; Baldwin *v.* Williams, 74 Ark. 316, 86 S. W. 423; Cassell *v.* Lowry, 164 Ind. 1, 72 N. E. 640.

157. 5. McRae *v.* Auditor General, 146 Mich. 594, 596, 109 N. W. 1122, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 157.

158. 3. Jones *v.* Rogers, 85 Miss. 802, 38 So. 742; Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498; Callender *v.* Basquin, 26 Ohio Cir. Ct. 540; Figge *v.* Bergenthal, 130 Wis. 594, 109 N. W. 581, 110 N. W. 798.

159. 7. Nichols *v.* Nichols, 79 Conn. 644, 66 Atl. 161.

10. Brun *v.* Mann, 151 Fed. 145, 80 C. C. A. 513; Redd *v.* Brun, (C. C. A.) 157 Fed. 100; Cobia *v.* Ellis, (Ala. 1906) 42 So. 751; Updegraff *v.* Marked Tree Lumber Co., 83 Ark. 154, 103 S. W. 606; Cook *v.* Ceas, 147 Cal. 614, 82 Pac. 370; Estudillo *v.* Security L. & T. Co., 149

Cal. 556, 87 Pac. 19; Cohen v. Cohen, 150 Cal. 99, 88 Pac. 267; Burrall *v.* American Telephone, etc., Co., 224 Ill. 226, 79 N. E. 705; Barrett *v.* Mutual L. Ins. Co., 85 S. W. 749, 27 Ky. L. Rep. 586; Treadwell *v.* Clark, 190 N. Y. 51, 82 N. E. 505.

160. **2.** Columbian University *v.* Taylor, 25 App. Cas. (D. C.) 124.

3. Mexican Nat. Coal, etc., Co. *v.* Frank, 154 Fed. 217; Brissell *v.* Knapp, 155 Fed. 809; Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233.

161. **1.** Kansas City Southern R. Co. *v.* Stevenson, 135 Fed. 353.

2. Estoppel applies only to party at whose instance suit was enjoined or prevented. Hunter *v.* Niagara F. Ins. Co., 73 Ohio St. 110, 76 N. E. 563.

5. The Same Rule Is Upheld in Many Other Cases. — Frank *v.* Butler County, (C. C. A.) 139 Fed. 119; Ramsden *v.* Knowles, 151 Fed. 721, 81 C. C. A. 105; U. S. *v.* Axman, 152 Fed. 816; Palmer *v.* Bradley, 154 Fed. 311, 83 C. C. A. 231; Redd *v.* Brun, (C. C. A.) 157 Fed. 190.

162. **3.** See Rankin *v.* Barton, 199 U. S. 228, 26 U. S. Sup. Ct. 29, 50 U. S. (L. ed.) 163.

6. In Admiralty Cases the federal statute governs the United States courts. The San Rafael, (C. C. A.) 141 Fed. 270.

163. **3. Embezzlement.** — *Ex p.* Vice, 5 Cal. App. 153, 89 Pac. 983.

Bribery. — People *v.* Gibson, 122 N. Y. App. Div. 69, 106 N. Y. Supp. 590.

4. People *v.* Sewell, (County Ct.) 56 Misc. (N. Y.) 250, 107 N. Y. Supp. 382.

164. **7.** Greene *v.* U. S., (C. C. A.) 154 Fed. 401.

Changing Name and Residing in Another County Insufficient to Suspend Statute. — *Ex p.* Vice, 5 Cal. App. 153, 89 Pac. 983.

9. Davis *v.* State, 145 Ala. 69, 40 So. 663; King *v.* State, (Ala. 1907) 44 So. 200; State *v.* Disbrow, 130 Iowa 19, 106 N. W. 263.

165. **5.** U. S. *v.* Bradford, 148 Fed. 419, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 165; Bradford *v.* U. S., 152 Fed. 617, 81 C. C. A. 607; Ware *v.* U. S., (C. C. A.) 154 Fed. 577; Cooke *v.* People, 231 Ill. 9, 82 N. E. 863; Lowell *v.* People, 131 Ill. App. 137.

6. Newly Created Offenses Within Operation of Existing Statute of Limitations. — U. S. *v.* Central Vermont R. Co., 157 Fed. 291.

166. **2.** State *v.* Simpson, 166 Ind. 211, 76 N. E. 544, 1005; State *v.* Smith, 72 Kan. 246, 83 Pac. 832, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 166; State *v.* Waterman, 75 Kan. 253, 88 Pac. 1074, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 166; State *v.* White, (Kan. 1907) 92 Pac. 829.

Where a warrant was returned unexecuted by the sheriff by order of the prosecuting attorney the statute is not suspended. *In re* Broadhead, 74 Kan. 401, 86 Pac. 458.

167. **1.** State *v.* Waterman, 75 Kan. 253, 88 Pac. 1074.

4. Nelson *v.* State, (Ala. 1907) 43 So. 966; Stelle *v.* State, 77 Ark. 441, 92 S. W. 530.

5. Soper *v.* Lawrence Bros. Co., 201 U. S. 359, 26 U. S. Sup. Ct. 473, 50 U. S. (L. ed.) 788; Schauble *v.* Schulz, 137 Fed. 389, 69 C. C. A. 581; Ft. Lyon Canal Co. *v.* Arkansas Valley Sugar Beet, etc., Co., 39 Colo. 332, 90 Pac. 1023.

6. Arbuckle *v.* Kelley, 144 Fed. 276; Mulvey *v.* Boston, (Mass. 1908) 83 N. E. 402; Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884.

7. Statute Not Unconstitutional as Depriving of Property Without Due Process of Law. — Terry *v.* Heisen, 115 La. 1070, 40 So. 461.

168. **8.** Weldon *v.* Rogers, 151 Cal. 432, 90 Pac. 1062; Doehla *v.* Phillips, 151 Cal. 488, 91 Pac. 330; Dare *v.* Wabash, etc., R. Co., 119 Ill. App. 256; Wooster *v.* Bateman, 126 Iowa 552, 554, 102 N. W. 521, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 169 [168]; Mulvey *v.* Boston, (Mass. 1908) 83 N. E. 402; Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49; Gaffney *v.* Jones, 39 Wash. 589, 81 Pac. 1058, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 168, 169; Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884.

169. **2.** Fitzgerald *v.* Scovil Mfg. Co., 77 Conn. 528, 60 Atl. 132; Hathaway *v.* Merchants' L. & T. Co., 218 Ill. 583, 75 N. E. 1060, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 168, 169; Mulvey *v.* Boston, (Mass. 1908) 83 N. E. 402; Clark *v.* Beck, 14 N. Dak. 287, 103 N. W. 755.

A Statute Providing that a Suit to Foreclose a Mortgage, etc. — Bumgardner *v.* Wealand, 197 Mo. 433, 95 S. W. 211.

170. **2.** Soper *v.* Lawrence Bros. Co., 201 U. S. 359, 26 U. S. Sup. Ct. 473, 50 U. S. (L. ed.) 788; Schauble *v.* Schulz, 137 Fed. 389, 69 C. C. A. 581; Arbuckle *v.* Kelley, 144 Fed. 276; Ross *v.* Royal, 77 Ark. 324, 91 S. W. 178; Kelley *v.* McDuffy, 79 Ark. 629, 96 S. W. 358; Fitzgerald *v.* Scovil Mfg. Co., 77 Conn. 528, 60 Atl. 132; Wooster *v.* Bateman, 126 Iowa 552, 102 N. W. 521; Mulvey *v.* Boston, (Mass. 1908) 83 N. E. 402; People *v.* Christian, 144 Mich. 247, 107 N. W. 919; Davidson *v.* Witthaus, 106 N. Y. App. Div. 182, 94 N. Y. Supp. 428.

6. Wooster *v.* Bateman, 126 Iowa 552, 102 N. W. 521.

171. **2.** *Compare* McKay *v.* Bradley, 26 App. Cas. (D. C.) 449.

4. Cases Following United States Supreme Court View. — O'Neill *v.* Hoboken, 73 N. J. L. 189, 63 Atl. 986.

6. *Compare In re* Beauchamp, (N. Car. 1907) 59 S. E. 687.

174. **4.** Herrick *v.* Boquillas Land, etc., Co., 200 U. S. 96, 26 U. S. Sup. Ct. 192, 50 U. S. (L. ed.) 388; Tyee Consol. Min. Co. *v.* Jennings, (C. C. A.) 137 Fed. 863; Wells *v.* Union Cent. L. Ins. Co., 81 Ark. 145, 98 S. W. 697; Hathaway *v.* Merchants' L. & T. Co., 218 Ill. 582, 75 N. E. 1060, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 174; Hathaway *v.* Washington Milling Co., 139 Mich. 708, 103 N. W. 164; Bumgardner *v.* Wealand, 197 Mo. 433, 95 S. W. 211; Gaar *v.* Black, 120 Mo. App. 181, 96 S. W. 683; McMahon *v.* Arnold, 107 N. Y. App. Div. 132, 94 N. Y. Supp. 775; Clark *v.* Beck, 14 N. Dak. 287, 103 N. W. 755; Slover *v.* Union Bank, 115 Tenn. 347, 89 S. W. 399.

175. **1.** Lehigh Valley R. Co. *v.* Comar, 151 Fed. 559, 81 C. C. A. 39; Brown *v.* Pinkerton, 95 Minn. 153, 103 N. W. 897.

176. **1.** Slover *v.* Union Bank, 115 Tenn. 347, 89 S. W. 399.

2. Crothers *v.* Edison Electric Co., 149 Fed. 606; Bumgardner *v.* Wealand, 197 Mo. 433, 95 S. W. 211; Martin *v.* Teasdale, 115 Mo. App.

... S. W. 1...; McCauley *v.* Brady, ... Mo. ... 100 S. W. 511; Beale *v.* Johnson, (Tex. Civ. App. 1907) 99 S. W. 1045.

3. Shook *v.* Laufer, (Tex. Civ. App. 1907) 100 S. W. 1042.

4. Royal Ins. Co. *v.* Miller, 199 U. S. 353, 26 U. S. Sup. Ct. 46; Glover *v.* Floyd, 76 S. Car. 292, 57 S. E. 25.

177. 2. Herrick *v.* Boquillas Land, etc., Co., 200 U. S. 96, 26 U. S. Sup. Ct. 192; Clark *v.* Beck, 14 N. Dak. 287, 103 N. W. 755.

4. McCulloch *v.* Mutual Reserve Fund L. Assoc., 76 Ark. 35, 93 S. W. 62, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177; Puckhaber *v.* Henry, (Cal. 1907) 93 Pac. 114; Foot *v.* Burr, (Colo. 1907) 92 Pac. 236; Brereton *v.* Benedict, (Colo. 1907) 92 Pac. 238; Cassell *v.* Lowry, 164 Ind. 1, 72 N. E. 640, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177; German American Sav. Bank *v.* Hanna, 124 Iowa 374, 379, 100 N. W. 57, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177; Greenley *v.* Greenley, 114 N. Y. App. Div. 640, 643, 100 N. Y. Supp. 114, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177; Lyles *v.* Lyles, 71 S. Car. 391, 51 S. E. 113; Emmons *v.* Hawk, (W. Va. 1907) 59 S. E. 519.

Rule Modified by Statute in Some States. — Churchill *v.* Woodworth, 148 Cal. 669, 84 Pac. 155; Banks *v.* Stockton, 149 Cal. 599, 87 Pac. 83; Cassell *v.* Lowry, 164 Ind. 1, 72 N. E. 640; McCormick *v.* Perry, 93 S. W. 607, 29 Ky. L. Rep. 420; Houston Ice, etc., Co. *v.* Stratton, (Tex. Civ. App. 1905) 89 S. W. 1111; Stone *v.* McGregor, 99 Tex. 51, 87 S. W. 334, *reversing* (Tex. Civ. App. 1904) 84 S. W. 399; Dakota Lumber Co. *v.* Rinderknecht, 1 W. L. R. 481.

5. Hartford *v.* Mechanics' Sav. Bank, 79 Conn. 38, 63 Atl. 658.

Debts Secured by Pledge of Collateral — Contra. — Knoll *v.* Melone, 1 Cal. App. 637, 82 Pac. 982.

Where No Limitation Existed Prior to Statute. — Clowry *v.* Nolan, 221 Ill. 458, 77 N. E. 906, *affirming* 123 Ill. App. 562.

178. 1. Sturdivant *v.* McCorley, 83 Ark. 278, 103 S. W. 732; Churchill *v.* Woodworth, 148 Cal. 669, 84 Pac. 155; Cassell *v.* Lowry, 164 Ind. 1, 5, 72 N. E. 640, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177.

2. Haggart *v.* Wilczinski, (C. C. A.) 143 Fed. ...

Rule Does Not Apply to One Claiming Title Independent of Mortgagor. — Marshutz *v.* Seltzor, 5 Cal. App. 140, 89 Pac. 877.

3. Puckhaber *v.* Henry, (Cal. 1907) 93 Pac. 114; New York L. Ins. Co. *v.* Kansas City Nat. Bank, 121 Mo. App. 479, 97 S. W. 195.

4. House *v.* Carr, 185 N. Y. 453, 78 N. E. 171; Williams *v.* Armistead, (Tex. Civ. App. 1905) 90 S. W. 925. *Compare* Holmquist *v.* Gilbert, (Colo. 1907) 92 Pac. 232,

Contra, by Statute in North Dakota. — Scott *v.* District Court, 15 N. Dak. 259, 107 N. W. 61.

7. Colonial, etc., Mortg. Co. *v.* Flemington, 14 N. Dak. 181, 103 N. W. 929. *Compare* Banks *v.* Stockton, 149 Cal. 599, 87 Pac. 83.

180. 5. Bartee *v.* Edmunds, 96 S. W. 535, 29 Ky. L. Rep. 872.

6. Kahaleaahu *v.* Pereira, 15 Hawaii 285, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 180; Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896.

181. 1. U. S. *v.* Gillies, 144 Fed. 991; Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616; Geisenberger *v.* Cotton, 116 La. 651, 40 So. 9... ; Woodworth *v.* Carroll, (Minn. 1907) 112 N. W. 1054; Smith *v.* Fairbanks, (Tex. 1907) 102 S. W. 908, *affirming* (Tex. Civ. App. 1907) 99 S. W. 705.

Rule of Text Not Universal. — Dillon *v.* Cross, 5 Cal. App. 766, 91 Pac. 439.

182. 2. **See Also, as Sustaining the Rule of the Text:** U. S. *v.* Gillies, 144 Fed. 992, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 181, 182; Richardson *v.* Richardson, 134 Iowa 242, 111 N. W. 934; Preston *v.* Thayer, 127 Wis. 123, 106 N. W. 672. *Compare* Hevener *v.* Hannah, 59 W. Va. 476, 53 S. E. 635.

4. Geisenberger *v.* Cotton, 116 La. 651, 40 So. 929. *Compare* Maurer *v.* Miller, (Kan. 1908) 93 Pac. 596.

183. 1. **Contra.** — Cameron *v.* Hicks, 141 N. Car. 21, 53 S. E. 728.

2. Franklin *v.* Cunningham, 187 Mo. 184, 86 S. W. 79.

184. 1. Morris *v.* Hulme, 71 Kan. 628, 81 Pac. 169; Moberly *v.* Hassett, 127 Mo. App. 11, 106 S. W. 115; Keddy *v.* Morden, 15 Manitoba 629.

2. Funk *v.* Kempton, 123 Ill. App. 100, *appeal dismissed* 221 Ill. 436, 77 N. E. 683.

Tax Deed Holder Cannot Plead Statute against Mortgage on the Land. — Robidoux *v.* Munson, 75 Kan. 207, 88 Pac. 1085; Scott *v.* District Court, 15 N. Dak. 259, 107 N. W. 61.

3. Holmquist *v.* Gilbert, (Colo. 1907) 92 Pac. 232; Funk *v.* Kempton, 123 Ill. App. 100, *appeal dismissed* 221 Ill. 436, 77 N. E. 683; Dugue *v.* Levy, (La. 1908) 45 So. 280.

4. California Title Ins., etc., Co. *v.* Miller, 3 Cal. App. 54, 84 Pac. 453; Blakeslee *v.* Hoit, 116 Ill. App. 87, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 184; Colonial, etc., Mortg. Co. *v.* Flemington, 14 N. Dak. 181, 103 N. W. 929; Paine *v.* Dodds, 14 N. Dak. 189, 103 N. W. 931; Graves *v.* Seifried, 31 Utah 203, 87 Pac. 674.

185. 4. Foot *v.* Burr, (Colo. 1907) 92 Pac. 236.

7. Belt *v.* Cetti, (Tex. 1906) 93 S. W. 1000, *reversing* (Tex. Civ. App. 1906) 91 S. W. 1098.

13. **Nonresident Cannot Plead Statute.** — Green *v.* Hartford L. Ins. Co., 139 N. Car. 309, 51 S. E. 887; Beale *v.* Johnson, (Tex. Civ. App. 1907) 99 S. W. 1045.

A Foreign Corporation Cannot Plead Statute where it fails to comply with local law giving it such right on condition of compliance. Black *v.* Vermont Marble Co., 1 Cal. App. 718, 82 Pac. 1060.

186. 1. Waterman Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142; Cross *v.* Iler, 103 Md. 592, 64 Atl. 33; Bennett *v.* Finnegan, (N. J. 1906) 65 Atl. 239. *Compare* Barry *v.* Minahan, 127 Wis. 570, 107 N. W. 488.

3. Barber *v.* Barber, 125 Ga. 226, 53 S. E. 1017.

7. Waterman Hall *v.* Waterman, 220 Ill. 569, 575, 77 N. E. 142, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186; Watkins *v.* Pfeiffer, 92 S. W. 562, 29 Ky. L. Rep. 97; Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945.

187. 5. Pendley *v.* Powers, 129 Ga. 69, 58 S. E. 653.

8. Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 42, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 187, 188; Brock *v.* Wildey, 125 Ga. 82, 54 S. E. 195; Knowles *v.* Rome Tribune Co., 127 Ga. 90, 56 S. E. 109; Hinze *v.* Hinze, (Kan. 1907) 90 Pac. 762; McGrew *v.* Congleton, 102 S. W. 1185, 31 Ky. L. Rep. 609; Hall *v.* Semple, (Tex. Civ. App. 1905) 91 S. W. 248; Wilson *v.* Miller, 104 Va. 446, 51 S. E. 837; North American Land, etc., Co. *v.* Watkins, (1904) 2 Ch. 233, 73 L. J. Ch. 626, 91 L. T. N. S. 425, 20 Times L. Rep. 642, *affirming* 52 W. R. 360.

188. **1.** Mountainhome *v.* Elmore County, [illegible] AM. AND ENG. ENCYC. OF LAW (2d ed.) 187, 188.

3. U. S. *v.* Noojin, 155 Fed. 379, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 188; Brown *v.* School Trustees, 224 Ill. 184, 79 N. E. 579; Whitney *v.* Morton County, 73 Kan. 502, 85 Pac. 530; Com. *v.* Ryan, 104 S. W. 727, 31 Ky. L. Rep. 1069; State *v.* Vandalia, 119 Mo. App. 425, 94 S. W. 1009, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 188, 189; Lawless *v.* Wright, (Tex. Civ. App. 1905) 86 S. W. 1039; Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1907) 106 S. W. 918; Eastern State Hospital *v.* Graves, 105 Va. 151, 52 S. E. 837.

In Kentucky the statute of limitation applies to the state in certain cases. Louisville, etc., R. Co. *v.* Smith, 101 S. W. 317, 31 Ky. L. Rep. 1.

189. **2.** Bradford *v.* Story, 189 Mass. 104, 75 N. E. 256.

4. Eastern State Hospital *v.* Graves, 105 Va. 151, 52 S. E. 837.

191. **3.** McRae *v.* Auditor General, 146 Mich. 594, 596, 109 N. W. 1122, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191, 192.

6. Brown *v.* School Trustees, 224 Ill. 187, 79 N. E. 579, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191; Hamblen County *v.* Cain, 115 Tenn. 279, 89 S. W. 103.

Right of City to Public Highway. — McLean *v.* Llewellyn Iron Works, 2 Cal. App. 346, 83 Pac. 1082, 1085; Pew *v.* Litchfield, 115 Ill. App. 13; Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205.

192. **1.** Schoenhoeft *v.* Kearny County, (Kan. 1907) 92 Pac. 1097; Asbury Park, etc., R. Co. *v.* Neptune Tp., (N. J. 1907) 67 Atl. 790; People *v.* Miller, 181 N. Y. 439, 74 N. E. 477; Hamblen County *v.* Cain, 115 Tenn. 279, 89 S. W. 103.

School District. — Clarke *v.* School Dist. No. 16, 84 Ark. 516, 106 S. W. 678, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 191, 192; Brown *v.* School Trustees, 224 Ill. 184, 79 N. E. 579.

193. **3***a*. Patterson *v.* Ft. Lyon Canal Co., 36 Colo. 178, 84 Pac. 807, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193.

4. *United States.* — Bernheimer *v.* Converse, 206 U. S. 516, 27 U. S. Sup. Ct. 755; Schauble *v.* Schulz, 137 Fed. 389, 69 C. C. A. 581; Hubbird *v.* Goin, (C. C. A.) 137 Fed. 822; Walker *v.* U. S., 139 Fed. 409, *affirmed* (C. C. A.) 148 Fed. 1022; Ramsden *v.* Gately, 142 Fed. 912; Rich *v.* Victoria Copper Min. Co., 147 Fed. 380, 77 C. C. A. 558; Sanger *v.* U. S., 40 Ct. Cl. 47.

Arkansas. — Chisholm *v.* Crye, 83 Ark. 495, 104 S. W. 167.

California. — O'Neill *v.* Quarnstrom, (Cal. App. 1907) 92 Pac. 391.

Colorado. — Enos *v.* Anderson, (Colo. 1907) 93 Pac. 475.

Illinois. — Davis *v.* Pohlman, 128 Ill. App. 206; Siegel *v.* Fish, 129 Ill. App. 319.

Kansas. — Seward County *v.* Shepherd, 71 Kan. 61, 80 Pac. 36.

Kentucky. — Green County *v.* Howard, (Ky. 1907) 105 S. W. 897.

Michigan. — Jocque *v.* McRae, 142 Mich. 371, 105 N. W. 874, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193; Clinton *v.* Clinton, 148 Mich. 496, 111 N. W. 1087.

Minnesota. — Willius *v.* Albrecht, 100 Minn. 436, 111 N. W. 387; Trudeau *v.* Germann, 101 Minn. 387, 112 N. W. 281.

Nevada. — Fox *v.* Bernard, (Nev. 1906) 85 Pac. 351.

New Mexico. — Cunningham *v.* Fiske, (N. Mex. 1906) 83 Pac. 789.

New York. — Treadwell *v.* Clark, 190 N. Y. 51, 82 N. E. 505; Greenley *v.* Greenley, 114 N. Y. App. Div. 640, 100 N. Y. Supp. 114.

North Carolina. — Dunn *v.* Dunn, 137 N. Car. 533, 50 S. E. 212.

Oregon. — Barstow *v.* The Aurelia, 45 Oregon 289, 77 Pac. 835, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193.

Pennsylvania. — Schofield *v.* Turner, 212 Pa. St. 548, 62 Atl. 1068.

South Carolina. — Lyles *v.* Lyles, 71 S. Car. 391, 51 S. E. 113; Williams *v.* Halford, 73 S. Car. 119, 53 S. E. 88.

Texas. — Southern Pine Lumber Co. *v.* Cameron, (Tex. Civ. App. 1907) 101 S. W. 488.

Wisconsin. — Barry *v.* Minahan, 127 Wis. 570, 573, 107 N. W. 488, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193; *In re* Hanlin, (Wis. 1907) 113 N. W. 411, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193; Chaffee *v.* Conway, 125 Wis. 77, 103 N. W. 269.

Canada. — Galarneau *v.* Lefebvre, 27 Quebec Super. Ct. 466; Myler *v.* Huot, 30 Quebec Super. Ct. 483.

The liability of the stockholders of a National Bank dates only from the order of the comptroller requiring them to contribute towards the payment of the bank debts, and the statute does not begin to run until the order is made. Rankin *v.* Barton, 190 U. S. 228, 26 U. S. Sup. Ct. 29, 50 U. S. (L. ed.) 163.

Running against Patentee of Government Title from Issuance of Patent. — Slaght *v.* Northern Pac. R. Co., 205 U. S. 122, 27 U. S. Sup. Ct. 442.

Usury. — Right to sue to recover usurious interest paid accrues only when the usurious transactions are closed. Slover *v.* Union Bank, 115 Tenn. 347, 89 S. W. 399; *In re* Pardoe, (1906) 2 Ch. 340, 95 L. T. N. S. 512, 75 L. J. Ch. 748, *reversing* (1906) 1 Ch. 265, 94 L. T. N. S. 88, 75 L. J. Ch. 161, 54 W. R. 210.

6. *United States.* — Hubbird *v.* Goin, (C. C. A.) 137 Fed. 822.

Alabama. — Vaughn *v.* Alabama Nat. Bank, 143 Ala. 572, 42 So. 64.

California. — Daniels *v.* Daniels, 3 Cal. App. 294, 85 Pac. 134.

Connecticut. — Velhage *v.* Stanley, 78 Conn. 520, 63 Atl. 347.

Georgia. — Busby *v.* Marshall, 125 Ga. 645, 647, 54 S. E. 646, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193 *et seq.*

Iowa. — Crouse *v.* Moody, (Iowa 1906) 106 N. W. 757.

Kansas. — Henley *v.* Myers, (Kan. 1907) 93 Pac. 168.

Maryland. — Coates *v.* Locust Point Co., 102 Md. 291, 62 Atl. 625.

Minnesota. — Comstock *v.* Devlin, 99 Minn. 68, 108 N. W. 888.

Missouri. — Prewitt *v.* Prewitt, 188 Mo. 675, 87 S. W. 1000.

Montana. — Noyes *v.* Young, 32 Mont. 226, 79 Pac. 1063.

Nebraska. — Lancaster County *v.* State, (Neb. 1906) 107 N. W. 388; Hackler *v.* Miller, (Neb. 1907) 114 N. W. 274.

New York. — Knutsen *v.* Cinque, 113 N. Y. App. Div. 677, 99 N. Y. Supp. 911; Porter *v.* Magnetic Separator Co., 115 N. Y. App. Div. 333, 100 N. Y. Supp. 888; Doncourt *v.* Denton, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 594, 105 N. Y. Supp. 906.

Ohio. — Wolcott *v.* Holland, 27 Ohio Cir. Ct. 71, 76, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193, 194.

Texas. — Bateman *v.* Ward, (Tex. Civ. App. 1906) 93 S. W. 508; Ruzeoski *v.* Wilrodt, (Tex. Civ. App. 1906) 94 S. W. 142; Robertson *v.* Warren, (Tex. Civ. App. 1907) 100 S. W. 805.

Virginia. — Davis *v.* Davis, 104 Va. 65, 51 S. E. 216.

Washington. — Denny *v.* Spurr, 38 Wash. 347, 80 Pac. 541; Washington Securities Invest. Co. *v.* Flynn, 38 Wash. 701, 80 Pac. 544.

194. 5. *Compare* Galarneau *v.* Lefebvre, 27 Quebec Super. Ct. 466.

7. Patterson *v.* Ft. Lyon Canal Co., 36 Colo. 175, 84 Pac. 807; Seattle *v.* Northern Pac. R. Co., (Wash. 1907) 92 Pac. 411; Montreal *v.* Cantin, (1906) A. C. 241.

195. 1. Goss *v.* Carter, (C. C. A.) 156 Fed. 746; State *v.* O'Neill, 114 Mo. App. 611, 90 S. W. 410.

2. Missouri, etc., R. Co. *v.* Pratt, 73 Kan. 210, 85 Pac. 141.

4. Northwestern Lumber Co. *v.* Aberdeen, 44 Wash. 261, 87 Pac. 260; Ott *v.* Boring, 131 Wis. 472, 484, 110 N. W. 824, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 195.

5. Emerson *v.* Gaither, 103 Md. 564, 582, 64 Atl. 26, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 195.

196. 3. Greenley *v.* Greenley, 114 N. Y. App. Div. 640, 100 N. Y. Supp. 114.

6. Austin *v.* Van Loon, 36 Colo. 196, 85 Pac. 183; Hampton *v.* Miller, 78 Conn. 267, 61 Atl. 952; Godley *v.* Hopkins, 126 Ga. 178, 54 S. E. 974; Harrison *v.* Watkins, 127 Ga. 314, 56 S. E. 437; Cromwell *v.* Norton, 193 Mass. 291, 79 N. E. 433; McCarter *v.* Ketcham, 72 N. J. L. 247, 62 Atl. 693; Cook *v.* Carpenter, 212 Pa. St. 165, 180, 61 Atl. 799, 805; Pick *v.* Edwards, 3 N. Bruns. Eq. Rep. 410.

197. 8. Sturdivant *v.* McCorley, 83 Ark. 278, 103 S. W. 732; Luther *v.* Crawford, 116 Ill. App. 351, *affirmed* 213 Ill. 596, 73 N. E. 430; Webber *v.* Webber, 146 Mich. 31, 109 N. W. 50; De Raismes *v.* De Raismes, 71 N. J. L. 680, 60 Atl. 1133, *mem. reaffirming* 70 N. J. L. 15; Church *v.* Stevens, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 572, 107 N. Y. Supp. 310; Barry *v.* Minahan, 127 Wis. 570, 107 N. W. 488; Ottawa Bank *v.* McLean, 26 Quebec Super. Ct. 27.

City Warrants. — Condon *v.* Eureka Springs, 135 Fed. 566.

198. 4. Daniels *v.* Daniels, 3 Cal. App. 294, 85 Pac. 134; Neale *v.* Morrow, 150 Cal. 414, 88 Pac. 815; Lyndon Sav. Bank *v.* International Co., 78 Vt. 169, 62 Atl. 50.

199. 1. Swing *v.* Brister, 87 Miss. 516, 40 So. 146.

2. Appointment of Receiver for Building and Loan Association Matures the Debt and Starts the Statute Running. — Graves *v.* Seifried, 31 Utah 203, 87 Pac. 674.

3. Jocque *v.* McRae, 142 Mich. 370, 105 N. W. 874.

Where a check is payable at a future date the statute runs from the day after the date of payment, without allowing days of grace. Jocque *v.* McRae, 142 Mich. 370, 105 N. W. 874.

Bank Drafts. — Wrigley *v.* Farmers', etc., State Bank, (Neb. 1906) 108 N. W. 132.

4. Warren *v.* Clemenger, 120 Ill. App. 435; Ingersoll *v.* Davis, 14 Wyo. 120, 82 Pac. 867.

200. 6. *United States.* — Aachen, etc., F. Ins. Co. *v.* Morton, (C. C. A.) 156 Fed. 654.

Georgia. — Cobb *v.* Wrightsville, etc., R. Co., 129 Ga. 377, 58 S. E. 862.

Iowa. — Foley *v.* Cedar Rapids, 133 Iowa 64, 110 N. W. 158; Thiessen *v.* Claussen, (Iowa 1907) 112 N. W. 545.

Michigan. — Jenks *v.* Hart Cedar, etc., Co., 143 Mich. 449, 106 N. W. 1119; Ovid First Nat. Bank *v.* Steel, 146 Mich. 308, 109 N. W. 423; Clinton *v.* Clinton, 148 Mich. 496, 111 N. W. 1087.

Nebraska. — Burling *v.* Allvord, (Neb. 1906) 110 N. W. 683.

North Carolina. — Cherry *v.* Lake Drummond Canal, etc., Co., 140 N. Car. 422, 53 S. E. 138.

Pennsylvania. — Pulaski Avenue, 33 Pa. Super. Ct. 108.

7. *United States.* — Aachen, etc., F. Ins. Co. *v.* Morton, (C. C. A.) 156 Fed. 654.

Arkansas. — St. Louis, etc., R. Co. *v.* Hoshall, 82 Ark. 387, 102 S. W. 207.

Indiana. — Schmoe *v.* Cotton, 167 Ind. 364, 79 N. E. 184.

Kentucky. — Central Covington *v.* Beiser, 122 Ky. 715, 92 S. W. 973; Dodd *v.* Pittsburg, etc., R. Co., (Ky. 1908) 106 S. W. 787.

Missouri. — Barnett *v.* St. Francis Levee Dist., 125 Mo. App. 66, 102 S. W. 583, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 200, 201.

New York. — Erwin *v.* Erie R. Co., 98 N. Y. App. Div. 402, 90 N. Y. Supp. 315, *affirmed* 186 N. Y. 550, 79 N. E. 1104.

Tennessee. — State *v.* McClellan, 113 Tenn. 624, 85 S. W. 267, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 200.

Texas. — Grossman *v.* Houston, etc., R. Co., 99 Tex. 641, 92 S. W. 836; Gulf, etc., R. Co. *v.* Caldwell, (Tex. Civ. App. 1907) 102 S. W. 461.

West Virginia. — Pickens *v.* Coal River

Boom, etc., Co., 58 W. Va. 11, 50 S. E. 872; Day *v.* Louisville Coal, etc., Co., 60 W. Va. 27, 53 S. E. 776.

201. **5.** St. Louis Southwestern R. Co. *v.* Morris, 76 Ark. 542, 89 S. W. 846; Chicago, etc., R. Co. *v.* McCutchen, 80 Ark. 235, 96 S. W. 1054; Henshaw *v.* Salt River Valley Canal Co., 9 Ariz. 418, 84 Pac. 908; Jones *v.* Stover, 131 Iowa 119, 108 N. W. 112; Crabtree Coal Min. Co. *v.* Hamby, 90 S. W. 226, 28 Ky. L. Rep. 687; Lawton *v.* Seaboard Air Line R. Co., 75 S. Car. 82, 55 S. E. 128; International, etc., R. Co. *v.* Kyle, (Tex. Civ. App. 1907) 101 S. W. 272.

8. Flege *v.* Covington, etc., Bridge Co., 91 S. W. 738, 28 Ky. L. Rep. 1257, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 201; Bryson *v.* Biggs, (Ky. 1907) 104 S. W. 982; Johnson *v.* Johnson, 31 Utah 408, 88 Pac. 230.

202. **1. Action to Enforce Continuing Duty of Public Officer Is Never Barred.** — Jones *v.* Stokes County, 143 N. Car. 59, 55 S. E. 427.

5. Aachen, etc., F. Ins. Co. *v.* Morton, (C. C. A.) 156 Fed. 654; Abercrombie *v.* Shapira, (Tex. Civ. App. 1906) 94 S. W. 392; Fairbanks *v.* Smith, (Tex. Civ. App. 1907) 99 S. W. 705, *affirmed* (Tex. 1907) 102 S. W. 908.

203. **4. In Ireland** the statute runs from the death of the testator. Waddell *v.* Harshaw, (1905) 1 Ir. R. 416.

204. **5.** Altzheimer *v.* Central R. Co., (N. J. 1907) 67 Atl. 1051.

205. **3.** Bissell *v.* Forbes, 1 Cal. App. 606, 82 Pac. 698; Quackenbush *v.* Mapes, (Supm. Ct. App. Div.) 107 N. Y. Supp. 1047, 1052, *modifying* (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 124, 105 N. Y. Supp. 654; Paris *v.* Cabiness, (Tex. Civ. App. 1906) 98 S. W. 925.

5. Default in Payment of Taxes Matures Debt. — Spesard *v.* Spesard, 75 Kan. 87, 88 Pac. 576. *Compare* Snyder *v.* Miller, 71 Kan. 410, 80 Pac. 970.

7. Hall *v.* Jameson, 151 Cal. 606, 91 Pac. 518; Greeley First Nat. Bank *v.* Park, 37 Colo. 303, 86 Pac. 106; Blakeslee *v.* Hoit, 116 Ill. App. 83; Quackenbush *v.* Mapes, (Supm. Ct. App. Div.) 107 N. Y. Supp. 1047, 1052, *modifying* (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 124, 105 N. Y. Supp. 654; Scott *v.* Blades Lumber Co., 144 N. Car. 44, 56 S. E. 548.

Rule Applies to Taxes Payable in Instalments. — Gilsonite Constr. Co. *v.* Arkansas McAlester Coal Co., 205 Mo. 49, 103 S. W. 93

206. **2.** *Contra,* Greeley First Nat. Bank *v.* Park, 37 Colo. 303, 86 Pac. 106.

6. Filing Justice's Judgment in District Court — Statute Runs from Date of Entry. — Miller *v.* Rosebrook, (Iowa 1907) 113 N. W. 771.

An appeal by one of several defendants does not stop the statute from running on the judgment as to the others, where there was a complete severance. Britton *v.* Matlock, (Tex. Civ. App. 1905) 89 S. W. 1092.

207. **4.** Parratt *v.* Hartsuff, 75 Neb. 706, 106 N. W. 966; Howe *v.* Sears, 30 Utah 344, 84 Pac. 1107.

208. **4. Tax Sales.** — The statute runs from the time the purchaser is entitled to demand a deed. Wolcott *v.* Holland, 27 Ohio Cir. Ct. 71.

209. **1.** Switzer *v.* Gertenbach, 122 Ill. App. 26; Greenwood *v.* Judson, 109 N. Y. App. Div. 398, 96 N. Y. Supp. 147; O'Connell *v.* Storey, (Tex. Civ. App. 1907) 105 S. W. 1174.

2. St. Louis, etc., R. Co. *v.* Love, 74 Ark. 528, 86 S. W. 395; Cooper *v.* Claxton, 122 Ga. 596, 50 S. E. 399; Sidway *v.* Missouri Land, etc., Co., 187 Mo. 649, 86 S. W. 150.

3. Boogher *v.* Roach, 25 App. Cas. (D. C.) 324.

5. Switzer *v.* Gertenbach, 122 Ill. App. 26; McNamara *v.* Michigan Trust Co., 148 Mich. 346, 111 N. W. 1066; Chambers *v.* Boyd, 116 N. Y. App. Div. 208, 101 N. Y. Supp. 486; Goodloe *v.* Goodloe, 116 Tenn. 252, 92 S. W. 767, *overruling* Byrne *v.* Fleming, 3 Head (Tenn.) 658, and Taylor *v.* Wood, 4 Lea (Tenn.) 514.

210. **5. Accounts Stated — Statute Runs from Time of Statement.** — Visher *v.* Wilbur, 5 Cal. App. 562, 90 Pac. 1065; Brown, etc., Co. *v.* Guise, (N. Mex. 1907) 91 Pac. 716.

Dividends Unlawfully Paid to Stockholders. — Emerson *v.* Gaither, 103 Md. 564, 64 Atl. 26.

Annuity. — Stringer *v.* Stephens, 146 Mich. 181, 109 N. W. 269.

Personal Injury. — Indianapolis St. R. Co. *v.* Fearnaught, (Ind. App. 1907) 82 N. E. 102; Geneva Cooperage Co. *v.* Brown, 98 S. W. 279, 30 Ky. L. Rep. 272; Louisville, etc., R. Co. *v.* Simrall, (Ky. 1907) 104 S. W. 1011, 1199.

Penalties. — A suit to recover triple damages for extortion practiced in violation of the anti-trust law, is not a suit for a penalty, and is not within the federal or state statutes limiting the time in which to sue for penalties. Chattanooga Foundry etc., Works *v.* Atlanta, 203 U. S. 390, 27 U. S. Sup. Ct. 65.

211. **1.** Chisholm *v.* Crye, 83 Ark. 495, 104 S. W. 167; Hewlett *v.* Beede, 2 Cal. App. 561, 83 Pac. 1089; Hampton *v.* Miller, 78 Conn. 267, 61 Atl. 952; Shearer *v.* Citizens' Bank, 129 Iowa 564, 105 N. W. 1025; Moberly *v.* Hassett, 127 Mo. App. 11, 106 S. W. 115; Tomlinson *v.* Bennett, 145 N. Car. 279, 59 S. E. 37; Hoiles *v.* Riddle, 26 Ohio Cir. Ct. 367, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211; Glazier *v.* Heneybuss, (Okla. 1907) 91 Pac. 872; Wescott *v.* Upham, 127 Wis. 590, 107 N. W. 2.

2. Collman *v.* Equitable L. Assur. Soc., 133 Iowa 177, 110 N. W. 444; Arp *v.* Allis-Chalmers Co., 130 Wis. 454, 110 N. W. 386.

3. Freeman *v.* Ingerson, 143 Mich. 7, 9, 106 N. W. 278, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193, 194, 196, 211.

212. **3.** Schauble *v.* Schulz, 137 Fed. 389, 69 C. C. A. 581.

6. Schauble *v.* Schulz, 137 Fed. 389, 69 C. C. A. 581; Picard *v.* General Hospital, 26 Quebec Super. Ct. 159.

7. *United States.* — Williamson *v.* Beardsley, 137 Fed. 467, 69 C. C. A. 615; Walker *v.* U. S., 139 Fed. 409, *affirmed* (C. C. A.) 148 Fed. 1022; Patterson *v.* Safe Deposit, etc., Co., 148 Fed. 787, 78 C. C. A. 453.

Delaware. — Lewis *v.* Pawnee Bill's Wild West Co., 5 Penn. (Del.) 397, 399, 61 Atl. 868, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 212; Lewis *v.* Pawnee Bill's Wild West Co., (Del. 1907) 66 Atl. 471, 474, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 212.

Georgia. — Weaver *v.* Davis, 2 Ga. App. 455, 58 S. E. 786, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 212 *et seq.*

Iowa. State *v.* Disbrow, 130 Iowa 19, 106 N. W. 263.

Michigan. — Colling *v.* McGregor, 144 Mich. 651, 108 N. W. 87.

Missouri. — Robinson *v.* Allison, 192 Mo. 378, 91 S. W. 115, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 212.

New York. — Grant *v.* Humbert, 114 N. Y. App. Div. 462, 100 N. Y. Supp. 44.

Virginia. — Ackiss *v.* Satchell, 104 Va. 700, 52 S. E. 378.

Washington. — Carroll *v.* Hill Tract Imp. Co., 44 Wash. 569, 87 Pac. 835.

Wisconsin. — Pietsch *v.* Milbrath, 123 Wis. 647, 670, 102 N. W. 342, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 212; Wescott *v.* Upham, 127 Wis. 590, 107 N. W. 2.

Absence from the jurisdiction will not suspend the running of the statute, in the absence of statutory provision. Rutledge *v.* U. S. Savings, etc., Co., 37 Can. Sup. Ct. 546, 5 Ann. Cas. 542.

214. **1.** Fay *v.* Costa, 2 Cal. App. 241, 83 Pac. 275; Steele *v.* Steele, 220 Ill. 318, 77 N. E. 232; Chilberg *v.* Siebenbaum, 41 Wash. 671, 84 Pac. 598, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 213, 214.

3. Ignorance of Cause of Action Without Fault. — Nichols *v.* Nichols, 79 Conn. 644, 66 Atl. 161.

Action by Ward against Guardian. — Scoville *v.* Brock, 79 Vt. 449, 65 Atl. 577.

215. **9.** Church *v.* Church, 80 Vt. 228, 67 Atl. 549; Sipe *v.* Taylor, 106 Va. 232, 55 S. E. 542.

Invincible Necessity. — Cobb *v.* Houston, 117 Mo. App. 645, 94 S. W. 299, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 215; Weaver *v.* Davis, 2 Ga. App. 455, 58 S. E. 786.

No Remedy Provided. — Kraut *v.* Dayton, 97 S. W. 1101, 30 Ky. L. Rep. 191.

216. **1.** Alice E. Min. Co. *v.* Blanden, 136 Fed. 252.

2. Steinbach *v.* Murphy, 70 Kan. 490, 78 Pac. 823, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 216; Glazier *v.* Heneybuss, (Okla. 1907) 91 Pac. 874, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 216; Patterson *v.* Safe Deposit, etc., Co., 148 Fed. 787, 78 C. C. A. 453.

3. Shively *v.* Harris, 5 Cal. App. 513, 90 Pac. 971; Lancaster County *v.* State, (Neb. 1906) 107 N. W. 388.

217. **1.** Hinkle *v.* Smith, 127 Ga. 437, 56 S. E. 464; *In re* Morgan, 46 Oregon 233, 77 Pac. 608 (*citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 216), 78 Pac. 1029.

Exemption in Favor of Heir. — Eirley *v.* Eirley, 102 Md. 452, 62 Atl. 962.

218. **7.** Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251; Davis *v.* Roller, 106 Va. 46, 55 S. E. 4. *Compare* Hunter *v.* Niagara F. Ins. Co., 73 Ohio St. 110, 76 N. E. 563.

219. **5. The Term Cause of Action.** — Chisholm *v.* Crye, 83 Ark. 495, 501, 104 S. W. 167, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 219; Kennedy *v.* Linn Orphan Asylum, (Ky. 1907) 103 S. W. 341, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 219; Tobias *v.* Richardson, 26 Ohio Cir. Ct. 81.

220. **3.** Hildebrand *v.* Kinney, (Ind. App. 1908) 83 N. E. 379, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 220; Stevenson *v.* Markley, (N. J. 1907) 66 Atl. 185, 189, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 219, 220; Heeser *v.* Taylor, 1 Cal. App. 619, 82 Pac. 977; Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62; White *v.* Blankenbeckler, 115 Mo. App. 722, 92 S. W. 503; Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769; Crapo *v.* Syracuse, 183 N. Y. 395, 184 N. Y. 561, 76 N. E. 465, 1092; Tobias *v.* Richardson, 26 Ohio Cir. Ct. 81; Hoiles *v.* Riddle, 74 Ohio St. 173, 78 N. E. 219; Palmer *v.* O'Rourke, 130 Wis. 507, 110 N. W. 389.

221. **3.** Hildebrand *v.* Kinney, (Ind. App. 1908) 83 N. E. 379; Hoiles *v.* Riddle, 26 Ohio Cir. Ct. 368, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221.

Rule of Text Denied, in Hoiles *v.* Riddle, 74 Ohio St. 173, 78 N. E. 219.

222. **1. In Georgia** the time between the death and the appointment of a representative, not to exceed five years, is not to be counted. Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62.

In Maryland the statute is suspended for eighteen months after the death of the debtor. Eirley *v.* Eirley, 102 Md. 452, 62 Atl. 962.

2. Fuhrman *v.* Power, 43 Wash. 533, 86 Pac. 940.

5. *Indiana.* — Hildebrand *v.* Kinney, (Ind. App. 1908) 83 N. E. 379, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 222.

Iowa. — Widner *v.* Wilcox, 131 Iowa 223, 108 N. W. 238.

Maryland. — Brooks *v.* Preston, (Md. 1907) 68 Atl. 294.

Michigan. — Colling *v.* McGregor, 144 Mich. 651, 108 N. W. 87.

Missouri. — Griesel *v.* Jones, 123 Mo. App. 45, 99 S. W. 769.

Nebraska. — Lesieur *v.* Simon, 73 Neb. 645, 103 N. W. 302; Lyons *v.* Carr, (Neb. 1906) 110 N. W. 705.

New Jersey. — Stevenson *v.* Markley, (N. J. 1907) 66 Atl. 185.

New York. — Scallon *v.* Manhattan R. Co., 185 N. Y. 364, 78 N. E. 284, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 222.

Ohio. — Tobias *v.* Richardson, 26 Ohio Cir. Ct. 81.

Washington. — Fuhrman *v.* Power, 43 Wash. 533, 86 Pac. 940.

Wisconsin. — Barry *v.* Minahan, 127 Wis. 570, 107 N. W. 488; Palmer *v.* O'Rourke, 130 Wis. 507, 110 N. W. 389; Garner *v.* Wingrove, (1905) 2 Ch. 233, 93 L. T. N. S. 131, 74 L. J. Ch. 545, 53 W. R. 588.

Where the creditor's right to apply for administration is postponed in favor of others, the statute is suspended until appointment of others, or he has opportunity to apply. Alice E. Min. Co. *v.* Blanden, 136 Fed. 252.

223. **3.** Murphy *v.* Cady, 145 Mich. 33, 108 N. W. 493.

In Arkansas the death of the debtor suspends the statute, and it is succeeded by statute of nonclaim. McGill *v.* Hughes, 84 Ark. 238, 105 S. W. 255.

4. To What Causes of Action Applicable. — Morse *v.* Hayes, (Mich. 1908) 114 N. W. 397.

In Indiana. — Hildebrand *v.* Kinney, (Ind. App. 1908) 83 N. E. 379.

224. 3. Arnold *v.* Limeburger, 122 Ga. 72, 78, 49 S. E. 812, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224 *et seq.*; Snyder *v.* Miller, 71 Kan. 410, 80 Pac. 970; Spesard *v.* Spesard, 75 Kan. 87, 88 Pac. 576; Joplin Brewing Co. *v.* Payne, 197 Mo. 422, 94 S. W. 896; Lyons *v.* Carr, (Neb. 1906) 110 N. W. 705; Charmley *v.* Charmley, 125 Wis. 297, 103 N. W. 1106.

225. 2. **Cause of Action Accruing in Lifetime of Ancestor — Infancy of Heirs or Distributees Does Not Interrupt Statute.** — Robinson *v.* Allison, 192 Mo. 377, 91 S. W. 115, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 225; Doty *v.* Jameson, 93 S. W. 638, 29 Ky. L. Rep. 507; Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131; De Hatre *v.* Edmunds, 200 Mo. 246, 98 S. W. 744; Lyons *v.* Carr, (Neb. 1906) 110 N. W. 705; Scallon *v.* Manhattan R. Co., 185 N. Y. 359, 78 N. E. 284, *reversing* 112 N. Y. App. Div. 262, 98 N. Y. Supp. 272; Messinger *v.* Foster, 115 N. Y. App. Div. 689, 101 N. Y. Supp. 387; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698; Garner *v.* Wingrove, (1905) 2 Ch. 233, 74 L. J. Ch. 545, 93 L. T. N. S. 131, 53 W. R. 588.

226. 1. Franklin *v.* Cunningham, 187 Mo. 184, 86 S. W. 79; Robinson *v.* Allison, 192 Mo. 366, 91 S. W. 115; De Hatre *v.* Edmunds, 200 Mo. 246, 98 S. W. 744; Priddy *v.* Boice, 201 Mo. 309, 99 S. W. 1055; Messinger *v.* Foster, 115 N. Y. App. Div. 689, 101 N. Y. Supp. 387; Elcan *v.* Childress, (Tex. Civ. App. 1905) 89 S. W. 84.

227. 1. *Compare* Smith *v.* Cornett, 98 S. W. 297, 30 Ky. L. Rep. 302.

228. 6. Nickel *v.* Vogel, (Kan. 1907) 92 Pac. 1105; Miller *v.* Warren, 94 N. Y. App. Div. 192, 87 N. Y. Supp. 1011, *affirmed* 182 N. Y. 539, 75 N. E. 1131; Fidelity Nat. Bank *v.* Adams, 38 Wash. 75, 80 Pac. 284.

229. 1. Cobb *v.* Houston, 117 Mo. App. 645, 94 S. W. 299; Omaha Nat. Bank *v.* Lindsay, 41 Wash. 531, 84 Pac. 11.

2. **Under the New Mexico Statute** the exception does not apply where the defendant was a nonresident at the time when the cause of action accrued. Lindauer Mercantile Co. *v.* Boyd, 11 N. Mex. 479, 70 Pac. 568, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) . . .

230. 1. Lewis *v.* Pawnee Bill's Wild West Co., (Del. 1907) 66 Atl. 471.

3. Stewart *v.* Stewart, (Cal. 1907) 92 Pac. 87; Blakeslee *v.* Hoit, 116 Ill. App. 83; Withers *v.* Withers, 100 S. W. 253, 30 Ky. L. Rep. 1099; Lawrence *v.* Hogue, 105 N. Y. App. Div. 247, 93 N. Y. Supp. 998; Paine *v.* Dodds, 14 N. Dak. 189, 103 N. W. 931.

4. **No th Dakota Statute Construed.** — Paine *v.* Dodds, 14 N. Dak. 189, 103 N. W. 931.

5. State *v.* Allen, 124 Mo. App. 465, 103 S. W. 1090; *In re* Taylor, (Wis. 1907) 111 N. W. 290.

231. 5. Willis *v.* Rice, (Ala. 1905) 39 So. 991; Murray *v.* Farrell, 2 Alaska 360.

232. 2. Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498.

233. 2. Redd *v.* Brun, (C. C. A.) 157 Fed. 190.

6. Stewart *v.* Stewart, (Cal. 1907) 92 Pac. 87.

7. Stewart *v.* Stewart, (Cal. 1907) 92 Pac. 87.

8. Lawrence *v.* Hogue, 105 N. Y. App. Div. 247, 93 N. Y. Supp. 998.

9. Dakota Lumber Co. *v.* Rinderknecht, 1 W. L. R. 481.

234. 1. **Real Actions and Proceedings in Rem.** — Beatty *v.* Lewis, (N. J. 1907) 68 Atl. 95.

Action to Correct Defective Acknowledgment. — Veeder *v.* Gilmer, (Tex. Civ. App. 1907) 105 S. W. 331.

3. Colonial, etc., Mortg. Co. *v.* Northwest Thresher Co., 14 N. Dak. 147, 103 N. W. 915, Paine *v.* Dodds, 14 N. Dak. 189, 103 N. W. 931.

Statute Runs in Favor of Grantee of Mortgaged Land, Although Mortgagor Is Absent. — Boyer *v.* Price, 45 Wash. 667, 88 Pac. 1106.

236. 3. Colonial, etc., Mortg. Co. *v.* Flemington, 14 N. Dak. 181, 103 N. W. 929.

4. Cobb *v.* Wrightsville, etc., R. Co., 129 Ga. 377, 58 S. E. 862; Scovell *v.* St. Louis Southwestern R. Co., 117 La. 459, 41 So. 723; McKnight *v.* New York, 186 N. Y. 35, 78 N. E. 576; Winter *v.* Niagara Falls, 119 N. Y. App. Div. 586, 104 N. Y. Supp. 39, 190 N. Y. 198, 82 N. E. 1101; Muerin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984; Simon *v.* Nance, (Tex. Civ. App. 1907) 100 S. W. 1038; May *v.* Sutherlin, 41 Wash. 609, 84 Pac. 585.

Applies to Suits to Recover Land Sold for Taxes. — Jones *v.* Boykin, 70 S. Car. 309, 49 S. E. 877.

237. 1. Fowler *v.* Prichard, (Ala. 1906) 41 So. 667; Howard *v.* Carter, 71 Kan. 85, 80 Pac. 61; Sallier *v.* St. Louis, etc., R. Co., 114 La. 1090, 38 So. 868; Nebola *v.* Minnesota Iron Co., 102 Minn. 89, 112 N. W. 880; Curry *v.* Wilson, 45 Wash. 19, 87 Pac. 1065.

3. *Compare* Langer *v.* Newmann, 100 Minn. 27, 110 N. W. 68.

Death Starts Statute. — Wood *v.* Wood, (Iowa 1907) 113 N. W. 492.

238. 2. *Contra*, Bell *v.* Villard, 110 N. Y. App. Div. 916, 46 Misc. (N. Y.) 587, 97 N. Y. Supp. . . .

6. Smith *v.* Cornett, 98 S. W. 297, 30 Ky. L. Rep. 302; Franklin *v.* Cunningham, 187 Mo. 184, 86 S. W. 79; Graham *v.* Ketchum, 192 Mo. 15, 90 S. W. 350; Bucher *v.* Hohl, 199 Mo. 320, 97 S. W. 922; Hymer *v.* Holyfield, (Tex. Civ. App. 1905) 87 S. W. 722; Surghenor *v.* Taliaferro, (Tex. Civ. App. 1906) 98 S. W. 648; Veeder *v.* Gilmer, (Tex. Civ. App. 1907) 105 S. W. 331; McMurray *v.* Dixon, 105 Va. 605, 54 S. E. 481.

Void Marriage No Impediment. — Hinkle *v.* Lovelace, 201 Mo. 208, 102 S. W. 1015.

239. 4. Where the disability of coverture is withdrawn from the statute the defendant must prove that the statute began to run before coverture, or that the full period has elapsed since the withdrawal of the disability. Broom *v.* Pearson, 98 Tex. 469, 85 S. W. 790, 98 Tex. 476, 86 S. W. 733.

5. Higgins *v.* Stokes, 116 Ky. 668, 76 S. W. 834, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 239, and note; Dukes *v.* Davis, 101 S. W. 390, 30 Ky. L. Rep. 1348.

241. 2. Graham *v.* Ketchum, 192 Mo. 15, 90 S. W. 350.

Infancy of Cestui Que Trust Not Available Where Trustee Is Barred. — Waterman Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142.

3. Robinson *v.* Allison, 192 Mo. 377, 91 S. W. 115, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 241; Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131.

4. Arnold *v.* Limeberger, 122 Ga. 72, 49 S. E. 812.

242. 4. Stone *v.* Baldwin, 127 Ill. App. 563, *affirmed* 226 Ill. 338, 80 N. E. 890.

5. Nelson *v.* Petterson, 131 Ill. App. 443; Dunn *v.* Taylor, (Tex. Civ. App. 1906) 94 S. W. 347.

243. 1. New England Mut. L. Lns. Co. *v.* Swain, 100 Md. 558, 60 Atl. 469.

7. *England.* — North American Land, etc., Co. *v.* Watkins, (1904) 2 Ch. 233, 73 L. J. Ch. 626, 91 L. T. N. S. 425, 20 Times L. Rep. 642, *affirming* 52 W. R. 360.

Alabama. — Mullen *v.* Walton, 142 Ala. 166, 39 So. 97.

Georgia. — Hodges *v.* Wheeler, 126 Ga. 848, 56 S. E. 76.

Massachusetts. — Manning *v.* Mulrey, (Mass. 1906) 78 N. E. 551.

Missouri. — Prewitt *v.* Prewitt, 188 Mo. 685, 87 S. W. 1000, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 243.

Montana. — Delmoe *v.* Long, 35 Mont. 139, 88 Pac. 778.

Nebraska. — Hanson *v.* Hanson, (Neb. 1907) 111 N. W. 368.

New Mexico. — Alexander *v.* Cleland, (N. Mex. 1906) 86 Pac. 425.

New York. — Anderson *v.* Fry, 116 N. Y. App. Div. 740, 102 N. Y. Supp. 112.

North Carolina. — Modlin *v.* Roanoke R., etc., Co., 145 N. Car. 218, 58 S. E. 1075; Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008.

Oklahoma. — Guthrie *v.* McKennon, (Okla. 1907) 91 Pac. 851.

Texas. — Shuttleworth *v.* McGee, (Tex. Civ. App. 1907) 105 S. W. 823.

Washington. — Fidelity Nat. Bank *v.* Adams, 38 Wash. 75, 80 Pac. 284.

245. 1. Pietsch *v.* Milbrath, 123 Wis. 647, 102 N. W. 342.

2. The Rule Has Also Been Applied in the Following Cases. — Redd *v.* Brun, (C. C. A.) 157 Fed. 190; Roberts *v.* Smith, 165 Ind. 414, 74 N. E. 894; The Telegraph *v.* Loetscher, 127 Iowa 383, 101 N. W. 773; Western Cottage Piano, etc., Co. *v.* Griffin, (Tex. Civ. App. 1905) 90 S. W. 884; Harris *v.* Cain, (Tex. Civ. App. 1905) 91 S. W. 866; Walla Walla County *v.* Oregon R., etc., Co., 40 Wash. 398, 82 Pac. 716.

247. 1. **The Kentucky Statute.** — Reid *v.* Singer Mfg. Co., (Ky. 1908) 107 S. W. 310.

3. Bates *v.* Bates Mach. Co., 230 Ill. 619, 82 N. E. 911.

248. 1. Equitable Securities Co. *v.* Johnson, 36 Colo. 382, 85 Pac. 840, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 247; Murto *v.* Lemon, 19 Colo. App. 319, 75 Pac. 160, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 247; Louisville Banking Co. *v.* Buchanan, 117 Ky. 975, 80 S. W. 193; Delmoe *v.* Long, 35 Mont. 139, 88 Pac. 778; Bonner *v.* Stotesbury, 139 N. Car. 3, 51 S. E. 781.

2. Arnold *v.* Limeburger, 122 Ga. 72, 49 S. E. 812.

4. Burrus *v.* Cook, 117 Mo. App. 411, 93 S. W. 888, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 247 [248].

Agency. — New England Mut. L. Ins. Co. *v.* Swain, 100 Md. 558, 576, 60 Atl. 469, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 249, to same effect as Atlantic Nat. Bank *v.* Harris, 118 Mass. 147.

250. 1. *California.* — People *v.* San Joaquin Valley Agricultural Assoc., 151 Cal. 797, 91 Pac. 740.

Illinois. — Steele *v.* Steele, 220 Ill. 318, 77 N. E. 232.

Kentucky. — Meehan *v.* Peck, 89 S. W. 491, 28 Ky. L. Rep. 446; Green County *v.* Howard, (Ky. 1907) 105 S. W. 897.

Mississippi. — Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498.

Nebraska. — Weckerly *v.* Taylor, 74 Neb. 84, 103 N. W. 1065.

New Jersey. — Smith *v.* Krueger, (N. J. 1906) 63 Atl. 850.

New York. — Coffin *v.* Barber, 115 N. Y. App. Div. 713, 101 N. Y. Supp. 147.

Oklahoma. — Guthrie *v.* McKennon, (Okla. 1907) 91 Pac. 851.

Texas. — Dunn *v.* Taylor, (Tex. Civ. App. 1906) 94 S. W. 347.

Washington. — Carroll *v.* Hill Tract Imp. Co., 44 Wash. 569, 87 Pac. 835.

Wisconsin. — Figge *v.* Bergenthal, 130 Wis. 594, 110 N. W. 798; State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 515.

2. The Kentucky Statute. — Wren *v.* Wren, 104 S. W. 737, 31 Ky. L. Rep. 1096.

251. 1. Molloy *v.* Mutual Reserve L. Ins. Co., 94 L. T. N. S. 756, 22 Times L. Rep. 525.

2. Kansas City Southern R. Co. *v.* Stevenson, 135 Fed. 553; Redd *v.* Brun, (C. C. A.) 157 Fed. 190; Ovid First Nat. Bank *v.* Steel, 146 Mich. 308, 109 N. W. 423.

3. Hudson *v.* Cahoon, 193 Mo. 560, 91 S. W. 72, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 251.

252. 1. Redd *v.* Brun, (C. C. A.) 157 Fed. 190; California Title Ins., etc., Co. *v.* Miller, 3 Cal. App. 54, 84 Pac. 453; Piekenbrock *v.* Knoer, (Iowa 1907) 114 N. W. 200; Gordon *v.* Anderson, 90 Miss. 677, 44 So. 67. *Compare* Hinze *v.* Hinze, (Kan. 1907) 90 Pac. 762; Modlin *v.* Roanoke R., etc., Co., 145 N. Car. 218, 58 S. E. 1075.

253. 6. Fortune *v.* English, 226 Ill. 267, 80 N. E. 781, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 253; Cunningham v. Dougherty, 121 Ill. App. 395.

254. 6. Swinebroad *v.* Wood, 97 S. W. 25, 29 Ky. L. Rep. 1202.

255. 2. Huntington Nat. Bank *v.* Huntington Distilling Co., 152 Fed. 240; Manning *v.* Mulrey, (Mass. 1906) 78 N. E. 551.

An Attorney. — *Compare* Fortune *v.* English, 226 Ill. 262, 80 N. E. 781.

6. Fortune *v.* English, 226 Ill. 262, 80 N. E. 781, *affirming* 128 Ill. App. 537.

256. 3. New England Mut. L. Ins. Co. *v.* Swain, 100 Md. 558, 60 Atl. 469.

4. Indian Territory Statute. — Gatlin *v.* Vaut, 6 Indian Ter. 254, 91 S. W. 38.

The Kentucky Statute. — Huntington v. Wright, 87 S. W. 1093, 27 Ky. L. Rep. 1144.

The West Virginia Statute. — Huntington Nat. Bank *v.* Huntington Distilling Co., 152 Fed. 240; Hevener *v.* Hannah, 59 W. Va. 476, 53 S. E. 635.

5. Stark *v.* Zehnder, 204 Mo. 442, 102 S. W. 992.

257. 2. Bacon *v.* Bacon, 150 Cal. 477, 89 Pac. 317.

3. Garst *v.* Brutsche, 129 Iowa 501, 105 N. W. 452; West *v.* Fry. 134 Iowa 675, 112 N. W. 184; German Security Bank *v.* Columbia Finance, etc., Co., 85 S. W. 761, 27 Ky. L. Rep. 581; Peacock *v.* Barnes, 142 N. Car. 215, 219, 55 S. E. 99, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 257; Wright *v.* Isaacks, (Tex. Civ. App. 1906) 95 S. W. 55; Stanford *v.* Finks, (Tex. Civ. App. 1907) 99 S. W. 449.

Where by Mistake a Party Took an Invalid Mortgage, the running of the statute was not suspended until discovery of the mistake. Banks *v.* Stockton, 149 Cal. 599, 87 Pac. 83.

4. The Express Language of the Statute. — Grant *v.* Humbert, 114 N. Y. App. Div. 462, 100 N. Y. Supp. 44; Bovaird, etc., Mfg. Co. *v.* Ferguson, 215 Pa. St. 235, 64 Atl. 513.

A suit suspends the statute as to the grantee of the mortgagor not made a party, Livingston *v.* New England Mortg. Security Co., 77 Ark. 379, 91 S. W. 752; or who intervenes, Less *v.* English, 75 Ark. 288, 87 S. W. 447.

258. 6. Rees *v.* Clark, 213 Pa. St. 617, 63 Atl. 364; *In re* O'Neill, 29 Pa. Super. Ct. 415; Faires *v.* Loessin, (Tex. Civ. App. 1907) 102 S. W. 924.

8. Bradley *v.* Chicago-Virden Coal Co., 231 Ill. 622, 83 N. E. 424.

260. 1. Breaux *v.* Broussard, 116 La. 215, 40 So. 639; Dutro *v.* Ladd, (Oregon 1907) 91 Pac. 459.

7. Action by Tenant Does Not Affect Statute Running against Landlord. — Goldstrom *v.* Interborough Rapid Transit Co., 115 N. Y. App. Div. 323, 100 N. Y. Supp. 911.

Suit by an Heir Will Not Suspend the Statute Running against the Personal Representative. — Barry *v.* Minahan, 127 Wis. 570, 107 N. W. 488.

Garnishment of a Debtor Does Not Suspend the Statute Running in His Favor. — Clyne *v.* Easton, 148 Cal. 287, 83 Pac. 36.

Suit against a Principal Does Not Suspend the Statute as to His Sureties. — McGovern *v.* Rectanus, (Ky. 1907) 105 S. W. 965.

9. Matteson *v.* Wagoner, 147 Cal. 739, 82 Pac. 436; Geneva Cooperage Co. *v.* Brown, 98 S. W. 279, 30 Ky. L. Rep. 272.

Suit against One of Several Defendants. — Wallace *v.* Swepston, 74 Ark. 520, 86 S. W. 398; Anderson *v.* Atchison, etc., R. Co., 71 Kan. 453, 80 Pac. 946.

Defendants Brought in by Amendment May Plead. — Nunn *v.* Louisville, (Ky. 1907) 105 S. W. 119.

262. 8. Kansas City Hydraulic Press Brick Co. *v.* National Surety Co., 149 Fed. 507; Bellinger *v.* German Ins. Co., 113 N. Y. App. Div. 917, 51 Misc. (N. Y.) 463, 100 N. Y. Supp. 424.

The statute does not apply where the cause was remanded. Hutter *v.* Paige Iron Works, 127 Ill. App. 177.

10. Larkins *v.* Terminal R. Assoc., 221 Ill. 428, 77 N. E. 678, *affirming* 112 Ill. App. 366 and 122 Ill. App. 246.

263. 2. Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; Wetmore *v.* Crouch, (Mo. 1905) 87 S. W. 954; Stuber *v.* Louisville, etc., R. Co., 113 Tenn. 305, 87 S. W. 411; La Follette Coal, etc., R. Co. *v.* Minton, 117 Tenn. 427, 101 S. W. 178, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 262, 263.

3. Koch *v.* Sheppard, 223 Ill. 172, 79 N. E. 52, *affirming* 124 Ill. App. 266; Wiehe *v.* Atkins, 126 Ill. App. 1; Glass *v.* Basin, etc., Min. Co., 34 Mont. 88, 85 Pac. 746; Bannister *v.* Michigan Mut. L. Ins. Co., 111 N. Y. App. Div. 765, 97 N. Y. Supp. 843.

6. Tyndale *v.* Stanwood, 190 Mass. 513, 77 N. E. 481.

9. Miscellaneous Cases — *Action Dismissed.* — Harris *v.* Quincy, etc., R. Co., 124 Mo. App. 45, 101 S. W. 601.

Action Dismissed for Refusing to Give Additional Security for Costs. — Wetmore *v.* Crouch, (Mo. 1905) 87 S. W. 954.

Where the Suit Was Dismissed and Writ of Error Sued Out to Reverse the Judgment, the statute does not run pending the hearing of the writ of error. Seaboard Air Line R. Co. *v.* Randolph, 126 Ga. 238, 55 S. E. 47

264. 1. The service of a summons is equivalent to bringing new suit. Livingston *v.* New England Mortg. Security Co., 77 Ark. 379, 91 S. W. 752.

3. Defendant May Claim Advantage of Statute. — Hevener *v.* Hannah, 59 W. Va. 476, 53 S. E. 635.

5. Where Contractual Limitation Specially Provided by Statute. — Bellinger *v.* German Ins. Co., 113 N. Y. App. Div. 917, 100 N. Y. Supp. 424, *affirmed* 189 N. Y. 533, 82 N. E. 1124.

265. 1. Wood-Dickerson Supply Co. *v.* Cocciola, (Ala. 1907) 45 So. 192.

5. Action by Widow for Injuries to Her Husband. — Miller *v.* Wolfe, 115 Tenn. 234, 89 S. W. 398.

6. Covington *v.* Berry, 76 Ark. 460, 88 S. W. 1005; Hatchell *v.* Hebeisen, 16 Okla. 223, 82 Pac. 826.

266. 2. Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314.

6. Fay *v.* Costa, 2 Cal. App. 241, 83 Pac. 275.

267. 6. Contra, La Follette Coal, etc., R. Co. *v.* Minton, 117 Tenn. 415, 101 S. W. 178.

7. Other Cases Not within Statute — *Decree annulled on review.* — Fay *v.* Costa, 2 Cal. App. 241, 83 Pac. 275.

Dismissing Second Action after Bar Will Not Justify a Third Action. — Denton *v.* Atchison, (Kan. 1907) 90 Pac. 764.

268. 1. Bates *v.* Bates Mach. Co., 230 Ill. 619, 622, 82 N. E. 911, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 268; Stringer *v.* Stevens, 146 Mich. 181, 109 N. W. 269; Francis *v.* Gisborn, 30 Utah 67, 83 Pac. 571. *Compare* Bates *v.* Bates Mach. Co., 120 Ill. App. 563; *In re* Mackay, (1906) 1 Ch. 25, 54 W. R. 88, 75 L. J. Ch. 47.

2. Williams *v.* Southern Pac. R. Co., 150 Cal. 624, 89 Pac. 599.

270. 3. Fabian *v.* Lammers, 3 Cal. App. 109, 84 Pac. 432; Bauer *v.* Hindley, 222 Ill.

319, 78 N. E. 626; Patten *v.* Iroquois Furnace Co., 124 Ill. App. 1; Bennett *v.* Palmer, 128 Ill. App. 626; Deering *v.* Miller, 29 Ohio Cir. Ct. 259, *affirmed* 64 Ohio St. 548, 61 N. E. 1150; Houston Saengerbund *v.* Dunn, (Tex. Civ. App. 1906) 92 S. W. 429; Fidelity, etc., Co. *v.* Callaghan, (Tex. Civ. App. 1907) 104 S. W. 1073; Lurty *v.* Lurty, 107 Va. 466, 59 S. E. 405.

271. 1. **Ordinance.** — *Compare* Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49.

272. 8. Pincus *v.* Muntzer, 34 Mont. 502, 87 Pac. 612, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 272.

273. 1. Du Brutz *v.* Visalia Bank, 4 Cal. App. 201, 87 Pac. 469.

274. 1. Gibson *v.* Allen, 19 S. Dak. 617, 104 N. W. 275.

2. **What Is Not Action on Sealed Instrument.** — — Condon *v.* Eureka Springs, 135 Fed. 566; McKenzie *v.* Matthews, (Ala. 1907) 44 So. 958.

3. **Contra.** — Somers *v.* Florida Pebble Phosphate Co., 50 Fla. 275, 39 So. 61.

277. 1. **In Louisiana.** — Amet *v.* Texas, etc., R. Co., 117 La. 454, 41 So. 721; Scovell *v.* St. Louis Southwestern R. Co., 117 La. 459, 41 So. 723; McCutchen *v.* Texas, etc., R. Co., 118 La. 436, 43 So. 42.

278. 9. **Action by Husband for Injury to Wife.** — Mulvey *v.* Boston, (Mass. 1908) 83 N. E. 402.

Ontario Statute. — Ryckman *v.* Hamilton, etc., Electric R. Co., 10 Ont. L. Rep. 419, 4 Ann. Cas. 1126. See also Sayers *v.* British Columbia Electric R. Co., 12 British Columbia 102, construing similar provision in charter of defendant (B. C. Stat. 1896, c. 55, § 60).

280. 2. Gregory *v.* Southern Pac. Co., 157 Fed. 113.

3. Crapo *v.* Syracuse, 183 N. Y. 395, 184 N. Y. 561, 76 N. E. 465, 1092.

6. **False Representations in Sale of Corporate Stock.** — Butler *v.* Supreme Council, etc., 105 N. Y. App. Div. 164, 93 N. Y. Supp. 1012.

281. 1. **What Is Liability Created by Statute** — *Railroad License Tax Based on Gross Earnings.* — State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 515.

Liability of Stockholder for Corporate Debt. — O'Neill *v.* Quarnstrom, (Cal. App. 1907) 92 Pac. 391.

Refusal of Transfer by Street Railroad. — Munro *v.* Brooklyn Heights R. Co., 120 N. Y. App. Div. 516, 105 N. Y. Supp. 325.

Liability of Officers of Bank. — Klages *v.* Kohl, 127 Ill. App. 70.

Special Assessments. — Moberly *v.* Hassett, 127 Mo. App. 11, 106 S. W. 115.

2. **What Is Not Liability Created by Statute** — *Treble Damages for Timber Cut on State Land.* — State *v.* Bonness, 99 Minn. 392, 109 N. W. 703.

282. 2. U. S. *v.* Guest, (C. C. A.) 143 Fed. 456.

4. O'Brien *v.* Bonfield, 220 Ill. 219, 77 N. E. 167.

5. Palmer *v.* Bradley, 154 Fed. 311, 83 C. C. A. 231.

8. Medill *v.* Snyder, 71 Kan. 600, 81 Pac. 216, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 282.

In Alabama there is express exception in favor of infants. Ellis *v.* Crawson, 147 Ala. 294, 41 So. 912.

283. 1. Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784.

7. **Waiver by Testator in Will Binds Executor.** — Glassell *v.* Glassell, 147 Cal. 510, 82 Pac. 42.

10. Cuykendall *v.* Doe, 129 Iowa 453, 105 N. W. 698.

285. 4. *Contra.* — Lyndon Sav. Bank *v.* International Co., 78 Vt. 169, 62 Atl. 50.

286. 1. Moore *v.* Taylor, 2 Tenn. Ch. App. 550.

8. Munroe *v.* Herrington, 110 Mo. App. 509, 85 S. W. 1002.

288. 4. **An Appropriation by Congress** to pay barred claims against the government will operate as a new promise and revive the claims. Sanderson *v.* U. S., 41 Ct. Cl. 230.

289. 3. **Rule Applies to Right to Require Drainage Commissioners to Properly Drain Private Property.** — Kreiling *v.* Northrup, 215 Ill. 195, 74 N. E. 123, *affirming* 116 Ill. App. 448.

4. Nelson *v.* Petterson, 229 Ill. 245, 82 N. E. 229, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 289, and *affirming* 131 Ill. App. 443; Van Auken *v.* Adrian, 135 Mich. 534, 539, 98 N. W. 15, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 289.

7. Brooks *v.* Preston, (Md. 1907) 68 Atl. 294; Olson *v.* Dahl, 99 Minn. 433, 437, 109 N. W. 1001, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 289. *Contra*, Spilde *v.* Johnson, 132 Iowa 484, 109 N. W. 1023.

11. *Alabama.* — Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368.

Arkansas. — Davies *v.* Pugh, 81 Ark. 253, 99 S. W. 78.

Colorado. — Sartor *v.* Wells, 39 Colo. 84, 89 Pac. 797.

Illinois. — Ritzmuller *v.* Neuer, 130 Ill. App. 380.

Iowa. — German American Sav. Bank *v.* Hanna, 124 Iowa 374, 100 N. W. 57; Iowa L. & T. Co. *v.* McMurray, 129 Iowa 65, 105 N. W. 361.

Kansas. — Disney *v.* Healey, 73 Kan. 326, 85 Pac. 287.

Kentucky. — Hamilton *v.* Wright, 87 S. W. 1093, 27 Ky. L. Rep. 1144.

Nebraska. — McLaughlin *v.* Senne, (Neb. 1907) 111 N. W. 377; Gillilan *v.* Fletcher, (Neb. 1907) 114 N. W. 161.

North Dakota. — Omlie *v.* O'Toole, (N. Dak. 1907) 112 N. W. 677.

South Carolina. — Lyles *v.* Lyles, 71 S. Car. 391, 397, 51 S. E. 113, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 289.

Wisconsin. — Hughes *v.* Thomas, 131 Wis. 315, 111 N. W. 474.

290. 2. Kleinclaus *v.* Dutard, 147 Cal. 245, 81 Pac. 516.

4. Barker *v.* Heath, 74 N. H. 270, 67 Atl. 222; Doncourt *v.* Denton, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 504, 105 N. Y. Supp. 906.

5. **No Recovery Where New Promise Barred.** — Hall *v.* Jennings, (Tex. Civ. App. 1907) 104 S. W. 480.

291. 3. Schell *v.* Weaver, 128 Ill. App. 106, *affirmed* 225 Ill. 159, 80 N. E. 95.

292. 5. Morris *v.* Carr, 77 Ark. 228, 91 S.

W. 187; Moon *v.* Highland Development Co., 104 Va. 551, 52 S. E. 209.

6. Churchill *v.* Woodworth, 148 Cal. 669, 84 Pac. 155; Kleis *v.* McGrath, 127 Iowa 459, 103 N. W. 371; Finn *v.* Seegmiller, 134 Iowa 15, 111 N. W. 314.

293. 1. Anderson *v.* Nystrom, (Minn. 1908) 114 N. W. 742.

Colorado Rule Followed in Illinois. — Chicago Chronicle Co. *v.* Franklin, 119 Ill. App. 384.

2. Greenwood *v.* Judson, 109 N. Y. App. Div. 398, 96 N. Y. Supp. 147.

3. Stewart *v.* Forman, (Miss. 1907) 43 So. 6[illegible].

4. Holley *v.* Curry, 58 W. Va. 70, 51 S. E. 1[illegible].

294. 3. Visher *v.* Wilbur, 5 Cal. App. 562, 90 Pac. 1065, *rehearing denied* 5 Cal. App. 573, 91 Pac. 412; Ryan *v.* Canton Nat. Bank, 103 Md. 428, 446, 63 Atl. 1062, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 294; Brooklyn Bank *v.* Barnaby, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 584; Hervey *v.* Wynn, 22 Times L. Rep. 93.

295. 2. Moore *v.* Rush, 52 Fla. 369, 42 So. 238.

5. Reed *v.* Interstate Oil Co., (Colo. 1907) 92 Pac. 911; Schuchler *v.* Cooper, 5 Penn. (Del.) 42, 62 Atl. 261; Throop *v.* Russell, 145 Mich. 482, 108 N. W. 1013; Rodgers *v.* Robson, 147 Mich. 656, 111 N. W. 193; Newell *v.* Clark, 73 N. H. 289, 61 Atl. 555; Serrell *v.* Forbes, 106 N. Y. App. Div. 482, 94 N. Y. Supp. 805, *affirmed* 185 N. Y. 572, 78 N. E. 1112; Willis *v.* Wileman, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 462, 102 N. Y. Supp. 1004; Levy *v.* Popper, 106 N. Y. App. Div. 394, 94 N. Y. Supp. 905, *affirmed* 186 N. Y. 600, 79 N. E. 1109; McNeal *v.* Pierce, 73 Ohio St. 7, 75 N. E. 938; Toronto General Trusts Corp. *v.* Central Ontario R. Co., 4 Can. R. Cas. 70; Grant *v.* Cameron, 1 Can. Sup. Ct. Cas. 239; Ottawa Bank *v.* McLean, 26 Quebec Super. Ct. 27.

296. 1. Where an executor lists his debt to his testator as an asset of the estate, it is such acknowledgment of the debt as to take it out of the statute. *In re* Emmett, 95 L. T. N. S. 755.

297. 3. Woolwine *v.* Storrs, 148 Cal. 7, 82 Pac. 434; Reed *v.* Interstate Oil Co., (Colo. 1907) 92 Pac. 911; McGrew *v.* O'Donnell, 92 S. W. 301, 28 Ky. L. Rep. 1366; Throop *v.* Russell, 145 Mich. 482, 108 N. W. 1013; Munroe *v.* Herrington, 110 Mo. App. 509, 85 S. W. 1002; Robertson *v.* Warren, (Tex. Civ. App. 1907) 100 S. W. 805; Barrett *v.* Davies, 91 L. T. N. S. 736, 21 Times L. Rep. 21, *reversing* 90 L. T. N. S. 460, 20 Times L. Rep. 318, 52 W. R. 607.

298. 3. Lusher *v.* Hassard, 20 Times L. Rep. 563; Visher *v.* Wilbur, 5 Cal. App. 562, 90 Pac. 1065, *rehearing denied* 5 Cal. App. 573, 91 Pac. 412.

299. 1. Barker *v.* Heath, 74 N. H. 270, 67 Atl. 232.

6. Throop *v.* Russell, 145 Mich. 482, 108 N. W. 1013.

302. 6. Confessing Judgment Sufficient Although Judgment Is Invalid. — Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932.

303. 4. Giving security is not a novation of the debt, and the period of limitation from the time of giving the security is the same as applied to the original debt, without regard to the form or character of the security. Rioux *v.* Bouliane, 29 Quebec Super. Ct. 448.

6. Woolwine *v.* Storrs, 148 Cal. 7, 82 Pac. 434.

8. Morris *v.* Carr, 77 Ark. 228, 91 S. W. 187, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 303; Hendrix *v.* Hendrix, 96 S. W. 921, 29 Ky. L. Rep. 1084; David *v.* Fauble, 29 Ohio Cir. Ct. 495; Maniram *v.* Rupchand, 22 Times L. Rep. 619; Ottawa Bank *v.* McLean, 26 Quebec Super. Ct. 27.

304. 1. Withers *v.* Withers, 100 S. W. 253, 30 Ky. L. Rep. 1099.

305. 3. Marchand's Succession, 116 La. 207, 40 So. 637; Woodcock *v.* Putnam, 101 Minn. 1, 111 N. W. 639; *In re* Boswell, (1906) 2 Ch. 359, 94 L. T. N. S. 243, 75 L. J. Ch. 234, 54 W. R. 306, 22 Times L. Rep. 247, *affirmed* 75 L. J. Ch. 658; Nickle *v.* Kingston, etc., R. Co., 12 Ont. L. Rep. 349.

Promise by Assignor to Pay Assigned Debt Tolls Statute as to Him. — Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616.

5. Instances Showing Authority on Agent's Part. — Brooklyn Bank *v.* Barnaby, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 584.

306. 2. Wanamaker *v.* Plank, 117 Ill. App. 327; Harris *v.* Greenwood, 9 Ont. L. Rep. 25.

307. 4. McKee *v.* Covalt, 71 Kan. 772, 81 Pac. 475.

5. Robertson Lumber Co. *v.* Anderson, 96 Minn. 527, 105 N. W. 972.

6. Robertson Lumber Co. *v.* Anderson, 100 Minn. 137, 110 N. W. 623.

308. 5. *Compare In re* Finnegan, (1906) 1 Ir. R. 370.

6. Brown *v.* Hayes, 146 Mich. 474, 109 N. W. 845; Sheak *v.* Wilbur, 48 Oregon 376, 86 Pac. 575.

309. 2. Ritzmuller *v.* Neuer, 130 Ill. App. 380; Disney *v.* Healey, 73 Kan. 326, 85 Pac. 287; Medomak Nat. Bank *v.* Wyman, 100 Me. 556, 62 Atl. 658; Atwood *v.* Lammers, 97 Minn. 214, 106 N. W. 310; Keese *v.* Dewey, 111 N. Y. App. Div. 16, 97 N. Y. Supp. 519; Old Dominion Min., etc., Co. *v.* Daggett, 38 Wash. 675, 80 Pac. 839.

Payment by a husband, who is the agent of his wife to collect and disburse moneys coming to her, made out of such moneys on a joint debt of husband and wife, will not toll the statute as to her. Harris *v.* Greenwood, 9 Ont. L. Rep. 25.

310. 1. Munroe *v.* Herrington, 110 Mo. App. 509, 85 S. W. 1002; Newell *v.* Clark, 73 N. H. 289, 61 Atl. 555; Ulster County Sav. Inst. *v.* Deyo, 116 N. Y. App. Div. 1, 101 N. Y. Supp. 262.

311. 4. Thompson *v.* Brown, 121 Mo. App. 524, 97 S. W. 242.

312. 4. Adams *v.* Douglas, 128 Ill. App. 319.

Payment by Request. — *In re* Hallenbeck, 119 N. Y. App. Div. 757, 104 N. Y. Supp. 568.

313. 5. Husband and Wife Joint Debtors — Mortgage. — Brown *v.* Hayes, 146 Mich. 474, 109 N. W. 845; Clinton *v.* Clinton, 148 Mich. 496, 111 N. W. 1087.

314. 1. Sargent *v.* Perry, 101 Me. 52, 61 Atl. 888; Walter A. Wood Mowing, etc., Mach. Co. *v.* Harris, 212 Pa. St. 452, 61 Atl. 996; Desrosiers *v.* Bardon, 7 Quebec Pr. 395; Birkett *v.* Bisonette, 15 Ont. L. Rep. 93.

Payment by Assignee in Bankruptcy Tolls Statute. Sheak *v.* Wilbur, 48 Oregon 376, 86 Pac. 673.

3. **By One of Two Joint Mortgagors.** Brown *v.* Hayes, 146 Mich. 474, 109 N. W. 845. *Compare* Clinton *v.* Clinton, 148 Mich. 496, 111 N. W. 1087.

315. 1. Gilman *v.* Heitman, (Iowa 1907) 111 N. W. 552.

5. McLaughlin *v.* Senne, (Neb. 1907) 111 N. W. 377.

6. Medina *v.* Phelps, 39 Colo. 92, 88 Pac. 848; Disney *v.* Healey, 73 Kan. 326, 85 Pac. 287.

316. 2. **Where Widow Acts as Survivor of Community Her Promise Tolls Statute.** — Dashiell *v.* Moody, (Tex. Civ. App. 1906) 97 S. W. 843.

4. Withers *v.* Withers, 100 S. W. 253, 30 Ky. L. Rep. 1099. *Compare In re* Chant, (1905) 2 Ch. 225, 74 L. J. Ch. 542, 93 L. T. N. S. 265, 53 W. R. 526.

5. **Contra.** — Omlie *v.* O'Toole, (N. Dak. 1907) 112 N. W. 677.

By Life Tenant. — Pinkney *v.* Weaver, 216 Ill. 185, 74 N. E. 714.

6. *In re* Watkinson, 143 Fed. 602; Visher *v.* Wilbur, 5 Cal. App. 562, 90 Pac. 1065, *rehearing denied* 5 Cal. App. 573, 91 Pac. 412; Wallber *v.* Caldwell, (Neb. 1907) 112 N. W. 584; *In re* De Haven, 215 Pa. St. 549, 64 Atl. 779; Hervey *v.* Wynn, 22 Times L. Rep. 93; Moore *v.* Roper, 35 Can. Sup. Ct. 533; Moore *v.* Roper, 37 Nova Scotia 161.

Payment of Annual Interest on a Mortgage Debt by an Agent of the Mortgagor to whom the latter has given the money to discharge the debt, which was converted by the agent, keeps alive the mortgage debt, and incidentally suspends the statute as to the demand of the mortgagor against the agent. *In re* Lowerre, (Surrogate Ct.) 48 Misc. (N. Y.) 317, 96 N. Y. Supp. 764.

319. 7. *Contra,* Willis *v.* Wileman, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 462, 102 N. Y. Supp. 1004.

320. 3. Munroe *v.* Herrington, 110 Mo. App. 509, 85 S. W. 1002; Wells *v.* Moore, (Tex. Civ. App. 1906) 93 S. W. 220; Beaudoin *v.* Fecteau, 14 Quebec K. B. 29.

321. 1. **Statute Requiring Writing Does Not Affect Promise Made Before Its Passage.** — Vinson *v.* Palmer, 45 Fla. 630, 34 So. 276.

2. **Giving Note.** — U. S. *v.* Axman, 152 Fed. 816.

Giving New Note. — Davies *v.* Pugh, 81 Ark. 253, 99 S. W. 78.

Acknowledgment of Renewal Sufficient. — Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616.

Recitals in Deed. — Stewart *v.* Forman, (Miss. 1907) 43 So. 67.

City Warrant Sufficient. — Abrahams *v.* Omaha, (Neb. 1907) 114 N. W. 161; Rogers *v.* Omaha, (Neb. 1908) 114 N. W. 833.

4. Jewell *v.* Jewell, 139 Mich. 578, 102 N. W. 1059.

5. De Raismes *v.* De Raismes, 71 N. J. L. 680, 60 Atl. 1133, *mem. affirming* 70 N. J. L. 15.

322. 4. **Where Statute Does Not Require Writing, New Promise May Be Proved by Parol.** — Sartor *v.* Wells, 39 Colo. 84, 89 Pac. 797.

324. 1. Brown *v.* Puller, 75 Ark. 603, 88 S. W. 838; Medina *v.* Phelps, 39 Colo. 92, 88 Pac. 848; Ackerman *v.* Larner, 116 La. 101, 40 So. 581; Barker *v.* Heath, 74 N. H. 270, 67 Atl. 222; Greenwood *v.* Judson, 109 N. Y. App. Div. 398, 96 N. Y. Supp. 147; Van Name *v.* Barber, 115 N. Y. App. Div. 593, 100 N. Y. Supp. 987; Church *v.* Stevens, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 572, 107 N. Y. Supp. 310; Warnock *v.* Itawis, 38 Wash. 144, 80 Pac. 297.

In Louisiana part payment will not revive a barred debt. Manders *v.* Irwin, 118 La. 1048, 43 So. 698.

In Utah part payment of debts barred prior to the adoption of an act providing for suspension of running of the statute of limitations was specially declared by the act not to revive such debts. Francis *v.* Gisborn, 30 Utah 67, 83 Pac. 571.

325. 1. *In re* Watkinson, 143 Fed. 602; McBride *v.* Noble, (Colo. 1907) 90 Pac. 1037; Anderson *v.* Nystrom, (Minn. 1908) 114 N. W. 742; Murphy *v.* Walsh, 113 N. Y. App. Div. 428, 99 N. Y. Supp. 346; Gilman *v.* Cochran, (Oregon 1907) 90 Pac. 1001; Brennan *v.* Finley, 9 Ont. L. Rep. 131.

3. Ryan *v.* Canton Nat. Bank, 103 Md. 428, 63 Atl. 1062; Cashman-King Supply Co. *v.* Dowd, (N. Car. 1907) 59 S. E. 685.

326. 1. Nunn *v.* McKnight, 79 Ark. 397, 96 S. W. 193, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 325–329. *Compare In re* Boswell, (1906) 2 Ch. 359, 94 L. T. N. S. 243, 75 L. J. Ch. 234, 54 W. R. 306, 22 Times L. Rep. 247, *affirmed* 75 L. J. Ch. 658.

4. **Part Payment.** — See also *In re* Lacey, (1907) 1 Ch. 330, 96 L. T. N. S. 306, 76 L. J. Ch. 316.

Part Payment by a Life Tenant under a will interrupts the statute, not only as to the devisees in remainder, but as to the devisees generally. *In re* Chant, (1905) 2 Ch. 225, 93 L. T. N. S. 265, 74 L. J. Ch. 542, 53 W. R. 526.

7. Wanamaker *v.* Plank, 117 Ill. App. 327; Rodgers *v.* Robson, 147 Mich. 656, 658, 111 N. W. 193, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 326; Brooklyn Bank *v.* Barnaby, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 584.

327. 2. Thompson *v.* Hurly, (1905) 1 Ir. R. 588; Nickle *v.* Kingston, etc., R. Co., 12 Ont. L. Rep. 349; Gilman *v.* Fernald, 141 Fed. 941, 72 C. C. A. 675; Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368; Purdy *v.* Deprez, 39 Colo. 68, 88 Pac. 972; Pinkney *v.* Weaver, 216 Ill. 185, 74 N. E. 714; *In re* Lowerre, (Surrogate Ct.) 48 Misc. (N. Y.) 317, 96 N. Y. Supp. 764; *In re* Clad, 214 Pa. St. 141, 63 Atl. 542; Hughes *v.* Thomas, 131 Wis. 315, 323, 111 N. W. 474, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 327.

4. **The Debtor's Giving a Note for Accrued Interest.** — Medomak Nat. Bank *v.* Wyman, 100 Me. 556, 62 Atl. 658.

Collecting and Crediting Dividends on Stock Held as Collateral Constitutes Part Payment. — Bosler *v.* McShane, (Neb. 1907) 113 N. W. 008, *affirming* on rehearing (Neb. 1907) 110 N. W. 726.

328. 1. Nunn *v.* McKnight, 79 Ark. 393, 96 S. W. 193; Vinson *v.* Palmer, 45 Fla. 630, 34 So. 276; Green *v.* Dodge, 79 Vt. 73, 64 Atl. 499.

3. **Amount of Credit Must Be Definite.**— Reinhard *v.* Fluckinger, 119 Mo. App. 465, 94 S. W. 994.

5. *In re* Boswell, (1906) 2 Ch. 359, 94 L. T. N. S. 243, 75 L. J. Ch. 234, 54 W. R. 306, 22 Times L. Rep. 247, *affirmed* 75 L. J. Ch. 658; Massey-Harris *v.* Smith, 6 N. W. Ter. 50; Atwood *v.* Lammers, 97 Minn. 214, 106 N. W. [illegible] Stockyards [illegible] (Wyo. 1907) 92 Pac. 621, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 328.

Payment by a Trustee who makes a sale and pays the proceeds under authority of the trust deed is not a voluntary payment, starting the statute anew. Holmquist *v.* Gilbert, (Colo. 1907) 92 Pac. 232.

329. 2. Carter *v.* Johnson, (Tex. Civ. App. 1905) 90 S. W. 701.

5. Crow *v.* Crow, 124 Mo. App. 120, 100 S. W. 1123; Barker *v.* Heath, 74 N. H. 270, 67 Atl. 222; Scott *v.* Christenson, (Oregon 1907) 89 Pac. 376; Peters *v.* Rothermel, 30 Pa. Super. Ct. 281.

330. 1. Sartor *v.* Wells, 39 Colo. 84, 89 Pac. 797; Woodcock *v.* Putnam, 101 Minn. 1, 111 N. W. 639.

2. Rodgers *v.* Robson, 147 Mich. 656, 111 N. W. 193.

6. Scott *v.* Christenson, (Oregon 1907) 89 Pac. 376.

9. Peters *v.* Rothermel, 30 Pa. Super. Ct. 281.

331. 3. **Husband of Deceased Payee.**— Peters *v.* Rothermel, 30 Pa. Super. Ct. 281.

4. Van Name *v.* Barber, 115 N. Y. App. Div. 593, 100 N. Y. Supp. 987.

5. Greenwood *v.* Judson, 109 N. Y. App. Div. 398, 96 N. Y. Supp. 147.

332. 9. Schell *v.* Weaver, 225 Ill. 159, 80 N. E. 95; Moffett *v.* Farwell, 123 Ill. App. 528, *affirmed* 222 Ill. 543, 78 N. E. 925; Van Burg *v.* Van Engen, (Neb. 1906) 107 N. W. 1006; Scott *v.* Christenson, 46 Oregon 419, 80 Pac. 731, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 332; McAllen *v.* Alonzo, (Tex. Civ. App. 1907) 102 S. W. 475; Green *v.* Dodge, 79 Vt. 73, 64 Atl. 499. See *contra*, Swing *v.* St. Louis Refrigerator, etc., Co., 78 Ark. 246, 93 S. W. 978.

333. 1. Ryan *v.* Canton Nat. Bank, 103 Md. 428, 447, 63 Atl. 1062, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 323 [333]; Paine *v.* Dodds, 14 N. Dak. 189, 199, 103 N. W. 931, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 332–334.

2. Owsley *v.* Boles, 99 S. W. 1157, 30 Ky. L. Rep. 1016; Murphy *v.* Walsh, 113 N. Y. App. Div. 428, 99 N. Y. Supp. 346; Church *v.* Stevens, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 572, 107 N. Y. Supp. 310; Scott *v.* Christenson, 46 Oregon 417, 80 Pac. 731; Gilman *v.* Cochran, (Oregon 1907) 90 Pac. 1001.

4. Paine *v.* Dodds, 14 N. Dak. 189, 103 N. W. 931; Ingersoll *v.* Davis, 14 Wyo. 120, 82 Pac. 867.

5. Arnold *v.* Limeburger, 122 Ga. 72, 49 S. E. 812; Elcan *v.* Childress, (Tex. Civ. App. 1905) 89 S. W. 81.

6. Williams *v.* Southern Pac. R. Co., 150 Cal. 624, 89 Pac. 599; Gatlin *v.* Vaut, 6 Indian Ter. 254, 91 S. W. 38; Breaux *v.* Broussard, 116 La. 215, 40 So. 639; Manders *v.* Irwin, 118 La. 1048, 43 So. 698; Clifford *v.* Duffy, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 667, 107 N. Y. Supp. 809; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698.

7. Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423, *affirmed* 188 N. Y. 606, 81 N. E. 1173.

9. Green County *v.* Howard, (Ky. 1907) 105 S. W. 897; Jones *v.* Rogers, 85 Miss. 802, 38 So. 742; Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008; Clement *v.* Clement, (Tex. Civ. App. 1906) 99 S. W. 138.

334. 2. Dauphin's Succession, 112 La. 103, 36 So. 287.

LIMITED PARTNERSHIP.

337. 8. Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 337.

341. 5. Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 341.

6. Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 341.

344. 2. **Brokerage Business in Stocks** is authorized by *Maryland* Code Pub. Gen. Laws 1904, § 1, art. 73, authorizing limited partnerships for the transaction of any mercantile, mechanical, manufacturing, or banking business. Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

Liberal Construction of Statute.— Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

3. **Insurance Prohibited.**— Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

345. 1. Chatham Nat. Bank *v.* Gardner, 31 Pa. Super. Ct. 135.

354. 1. Under *Maryland* Code, art. 73, § 4, it is required that the certificate of a limited partnership shall be recorded in a certain office in a specified city, if the principal place of business of the partnership be in that city. A limited partnership which has complied with this requirement is not converted into a general partnership merely because the principal office of the concern is alleged to be out of the state, though the duly executed certificate declares that its principal place of business within the state is located in that city. Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

360. 9. The source from which the money is obtained is immaterial, provided it is actually paid in cash and is not a fictitious payment made by agreement with the general partners. Webster *v.* Lanum, (C. C. A.) 137 Fed. 376.

367. 7. Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

Liability of Succeeding Limited Partnership for Debts of Predecessor.— Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

368. 6. **Distinction between Liability of General and Special Partners.**— Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

Primary Liability of General Partner after Dissolution.— Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

8. Burt *v.* Laplace, 114 La. 489, 38 So. 429; *In re* Dunn, 115 La. 1084, 40 So. 466.

LINE.

389. 1. **Line or System of Railroad — Taxation.** — State *v.* Canadian Pac. R. Co., 100 Me. [illegible] 60 Atl. 901.

LINEAL.

390. 2. **Adopted Children Not Lineal Issue within Succession Tax Law.** — Kerr *v.* Goldsborough, (C. C. A.) 150 Fed. 289.

LINT COTTON.

391. 5. **Lint Cotton Distinguished from Delinted or Grabbs Cotton — Taxation Statute.** See Mississippi Levee Com'rs *v.* Refuge Cotton Oil Co., (Miss. 1907) 44 So. 828.

LIQUIDATED DAMAGES.

396. 3. Lytle *v.* Scottish American Mortg. Co., 122 Ga. 458, 50 S. E. 402.

397. 2. Mercer County *v.* Stupp Bros. Bridge, etc., Co., 115 Ill. App. 298, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 397. See also Sanders *v.* McKim, (Iowa 1908) 115 N. W. 917; Brodfeld *v.* Schlanger, (Supm. Ct. App. T.) 104 N. Y. Supp. 369.

398. 2. Lytle *v.* Scottish American Mortg. Co., 122 Ga. 458, 50 S. E. 402; Sanders *v.* McKim, (Iowa 1908) 115 N. W. 917. See also Robertson *v.* Grand Rapids, 96 Minn. 69, 104 N. W. 715, holding that the amount provided for in the stipulation was indefinite and uncertain and the stipulation was therefore not enforceable.

A Provision in a Contract that, upon failure to pay a sum agreed upon as liquidated damages for breach of the contract without suit, the party so failing to pay shall be liable for double the amount is a stipulation for a penalty. Carruthers *v.* Gay, (Tex. Civ. App. 1906) 91 S. W. 593.

3. U. S. *v.* Bethlehem Steel Co., 205 U. S. 105, 27 U. S. Sup. Ct. 450, *reversing* 41 Ct. Cl. 19; Selby *v.* Matson, (Iowa 1908) 114 N. W. 609; Couch *v.* Newtown Council Bldg. Assoc., 109 N. Y. App. Div. 856, 96 N. Y. Supp. 441; Erickson *v.* Green, (Wash. 1907) 92 Pac. 449.

4. Merica *v.* Burgett, 36 Ind. 453, 75 N. E. 1083; Morrison *v.* Richardson, 194 Mass. 370, 80 N. E. 468; Calbeck *v.* Ford, 140 Mich. 48, 103 N. W. 516. See also Robertson *v.* Grand Rapids, 96 Minn. 69, 104 N. W. 715.

The Contract and the Surrounding Circumstances Are to Be Considered. — Couch *v.* Newtown Council Bldg. Assoc., 109 N. Y. App. Div. 856, 96 N. Y. Supp. 441.

Each Case Is to Be Considered in the Light of Its Own Facts. — Perley *v.* Schubert, 121 N. Y. App. Div. 786, 106 N. Y. Supp. 593.

399 4. Mercer County *v.* Stupp Bros. Bridge, etc., Co., 115 Ill. App. 298, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399.

100. 2. U. S. *v.* Bethlehem Steel Co., 205 U. S. 105, 27 U. S. Sup. Ct. 450; Lytle *v.* Scottish American Mortg. Co., 122 Ga. 458, 50 S. E. 402; Merica *v.* Burgett, 36 Ind. App. 453, 75 N. E. 1083; Sanders *v.* McKim, (Iowa 1908) 115 N. W. 917; Davidson *v.* Hughes, (Kan. 1907) 91 Pac. 913, 915; Cowart *v.* Connally, (Tex. Civ. App. 1908) 108 S. W. 973.

See, however, to the effect that the language though not conclusive is of weight in determining whether or not the contract provides for stipulated damages or merely for a penalty, U. S. *v.* Alcorn, 145 Fed. 995.

3. Boulware *v.* Crohn, 122 Mo. App. 571, 99 S. W. 796; Coker *v.* Brevard, (Miss. 1907) 43 So. 177, where it was stipulated that the amount of a bond should be considered as liquidated damages and not as a penalty.

When the Stipulation Designates Liquidated Damages, the burden of proof is on the party contending that a penalty was intended. Selby *v.* Matson, (Iowa 1908) 114 N. W. 609.

401. 1. Clydebank Engineering, etc., Co. *v.* Yzquierdoy Castaneda, (1905) A. C. 6; Erickson *v.* Green, (Wash. 1907) 92 Pac. 449.

4. Davidson *v.* Hughes, (Kan. 1907) 91 Pac. 913, 915. See Pinkney *v.* Weaver, 216 Ill. 185, 74 N. E. 714, where it was stipulated that in a certain event the vendee should "forfeit all payments made by him on his contract."

402. 1. Western Gas Constr. Co. *v.* Dowagiac Gas., etc., Co., 146 Mich. 119, 109 N. W. 29.

2. Merica *v.* Burgett, 36 Ind. App. 453, 75 N. E. 1083; Elmore *v.* Rugely, (Tex. Civ. App. 1908) 107 S. W. 151.

3. *England.* — Diestal *v.* Stevenson, (1906) 2 K. B. 345.

United States. — U. S. *v.* Bethlehem Steel Co., 205 U. S. 105, 27 U. S. Sup. Ct. 450; Phœnix Iron Co. *v.* U. S., 39 Ct. Cl. 526; Stephens *v.* Essex County Park Commission, (C. C. A.) 143 Fed. 844; Chapman Decorative Co. *v.* Security Mut. L. Ins. Co., 145 Fed. 434, *affirmed* (C. C. A.) 149 Fed. 189.

Arkansas. — Jonesboro, etc., R. Co. *v.* Crigger, (Ark. 1907) 103 S. W. 1153.

Kansas. — Davidson *v.* Hughes, (Kan. 1907) 91 Pac. 913, 915.

Kentucky. — Ford *v.* Ingles Coal Co., (Ky. 1907) 102 S. W. 332.

Massachusetts. — Morrison *v.* Richardson, 194 Mass. 370, 80 N. E. 468.

Michigan. — Springwell Tp. *v.* Detroit, etc., R. Co., 140 Mich. 277, 103 N. W. 700 (where a bond was given by a railroad company conditioned for the construction of a street railway in accordance with a resolution of the township board and the road was never constructed); Western Gas Constr. Co. *v.* Dowagiac Gas, etc., Co., 146 Mich. 119, 109 N. W. 29.

New Hampshire. — State *v.* Corron, 73 N. H. 434, 62 Atl. 1044 (where the damages held to be liquidated were those accruing to the state by reason of the breach of a liquor dealer's bond).

New Jersey. — Gussow *v.* Betheson, (N. J. 1908) 68 Atl. 907.

New York. — Harris *v.* Snyder, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 306, 105 N. Y. Supp. 502.

Ohio. — Hattersly *v.* Waterville, 26 Ohio Cir. Ct. 226.

Texas. — Neblett *v.* McGraw, (Tex. Civ. App. 1905) 91 S. W. 309.

Washington. — Canady *v.* Knox, 43 Wash. 567, 86 Pac. 930; Erickson *v.* Green, (Wash. 1907) 92 Pac. 449.

See also George B. Swift Co. *v.* Dolle, 39 Ind. App. 653, 80 N. E. 678.

A provision in a contract relating to the use and keeping of a pasture used in common by the contracting parties under certain expressed conditions, requiring the party making a breach to pay $5co, is a provision for stipulated damages. Carruthers *v.* Gay, (Tex. Civ. App. 1906) 91 S. W. 593.

Rule by Statute. — Home Land, etc., Co. *v.* McNamara, (C. C. A.) 145 Fed. 17.

405. 4. Boulware *v.* Crohn, 122 Mo. App. 571, 99 S. W. 796.

408. 4. Raymond *v.* Edelbrock, 15 N. Dak. 231, 107 N. W. 194.

409. 5. **Rule as to Alternative Agreements.** — Ahlers *v.* Harrison, 131 Iowa 289, 108 N. W. 331.

410. 1. **See Contra** Ahlers *v.* Harrison, 131 Iowa 289, 108 N. W. 331.

2. Lytle *v.* Scottish American Mortg. Co., 122 Ga. 458, 50 S. E. 402; Boulware *v.* Crohn, 122 Mo. App. 571, 99 S. W. 796; Cowart *v.* Connally, (Tex. Civ. App. 1908) 108 S. W. 973.

411. 3. **Excessive Damages Indicative that Penalty Was Intended.** — Selby *v.* Matson, (Iowa 1908) 114 N. W. 609.

412. 1. Wheeling Mold, etc., Co. *v.* Wheeling Steel, etc., Co., 58 W. Va. 62, 51 S. E. 129, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 412.

413. 1. Wheeling Mold, etc., Co. *v.* Wheeling Steel, etc., Co., 58 W. Va. 62, 51 S. E. 129, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 413.

3. Westbay *v.* Terry, 83 Ark. 144, 103 S. W. 160, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 413.

414. 2. Hall *v.* Middleby, (Mass. 1908) 83 N. E. 1114.

415. 1. **Retention of Part of Consideration** to guarantee completion of the work has been held a penalty. Henderson-Boyd Lumber Co. *v.* Cook, (Ala. 1906) 42 So. 838.

3. Springwell Tp. *v.* Detroit, etc., R. Co., 140 Mich. 277, 103 N. W. 700.

416. 1. U. S. *v.* Alcorn, 145 Fed. 995; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044.

2. United Shoe Machinery Co. *v.* Abbott, (C. C. A.) 158 Fed. 762.

417. 4. United Shoe Machinery Co. *v.* Abbott, (C. C. A.) 158 Fed. 762.

418. 4. Westbay *v.* Terry, 83 Ark. 144, 103 S. W. 160.

419. 1. Merica *v.* Burgett, 36 Ind. App. 453, 75 N. E. 1083.

6. Westbay *v.* Terry, 83 Ark. 144, 103 S. W. 160; Pinkney *v.* Weaver, 216 Ill. 185, 74 N. E. 714; Calbeck *v.* Ford, 140 Mich. 48, 103 N. W. 516, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 419; Howard *v.* Adkins, 167 Ind. 184, 78 N. E. 665.

420. 2. An agreement to pay seventy-five dollars to cover the cost of installing an electric sign in the event of failure to pay the stipulated rent for the same is an agreement for stipulated damages. Federal Sign System Electric Co. *v.* Epps, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 547, 98 N. Y. Supp. 855.

7. Shafer *v.* Sloan, 3 Cal. App. 335, 85 Pac. 162; Geiger *v.* Cawley, 146 Mich. 550, 109 N. W. 1064; Canady *v.* Knox, 43 Wash. 567, 86 Pac. 930. See also Broadbrooks *v.* Tolles, 114 N. Y. App. Div. 646, 99 N. Y. Supp. 996.

421. 1. **Stipulated Damages for Breach of a Contract Not to Engage in Business** are not recoverable where the breach complained of is "an isolated sale in three years." Broadbrooks *v.* Tolles, 114 N. Y. App. Div. 646, 99 N. Y. Supp. 996.

3. Stephens *v.* Phœnix Bridge Co., (C. C. A.) 139 Fed. 248.

422. 2. Raymond *v.* Edelbrock, 15 N. Dak. 231, 107 N. W. 194. See also Henderson-Boyd Lumber Co. *v.* Cook, (Ala. 1906) 42 So. 838.

3. Stephens *v.* Essex County Park Commission, (C. C. A.) 143 Fed. 844; U. S. *v.* Alcorn, 145 Fed. 995; Choctaw R., etc., Co. *v.* McAlester, (Indian Ter. 1907) 104 S. W. 821; Ahlers *v.* Harrison, 131 Iowa 289, 108 N. W. 331; Morrison *v.* Richardson, 194 Mass. 370, 80 N. E. 468; Donovan *v.* Hanauer, (Utah 1907) 90 Pac. 569; Neblett *v.* McGraw, (Tex. Civ. App. 1905) 91 S. W. 309; Wheeling Mold, etc., Co. *v.* Wheeling Steel & Iron Co., 58 W. Va. 62, 51 S. E. 129, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422.

Where Liquidated Damages were at the rate of five dollars per day for every day beyond a certain date that work remained incomplete, it was held that an abandonment of the contract was not contemplated and that actual damages accruing by reason of such abandonment were recoverable. Murphy *v.* U. S. Fidelity, etc., Co., 100 N. Y. App. Div. 93, 91 N. Y. Supp. 582, *affirmed* (N. Y. 1906) 76 N. E. 1101.

4. Long *v.* Furnas, 130 Iowa 504, 107 N. W. 432; Selby *v.* Matson, (Iowa 1908) 114 N. W. 609; Geiger *v.* Cawley, 146 Mich. 550, 109 N. W. 1064; Erickson *v.* Green, (Wash. 1907) 92 Pac. 449. See also Howard *v.* Adkins, 167 Ind. 184, 78 N. E. 665, holding that when liquidated damages are the subject-matter of the action actual damages need not be alleged.

423. 4. Menzies *v.* Fairburn, 113 N. Y. App. Div. 119, 99 N. Y. Supp. 3.

5. **Contractor Prevented from Completing Work by Obligee Assuming Completion.** — New Haven *v.* National Steam Economizer Co., 79 Conn. 482, 65 Atl. 959.

6. **Where a Railroad Company Takes Possession of and Operates** a road for the noncompletion of which at a certain time it was entitled to liquidated damages at the rate of $100 a day for each day beyond that time, it thereby waives the right to recover such sum. Fruin-Bambrick Constr. Co. *v.* Ft. Smith, etc., R. Co., 140 Fed. 465.

No Waiver Arises by reason of the fact that the obligee fails to terminate the contract and permits the contractor to finish the work. Louisville, etc., R. Co. *v.* Mason, etc., Co., (Ky. 1907) 104 S. W. 975.

Acceptance by a City of Work Performed under a Contract which contains a provision for stipulated damages is a waiver of such damages. Central Bitulithic Paving Co. *v.* Mt. Clemens, 143 Mich. 259, 106 N. W. 888.

LIQUOR.

424. 2, **Liquor.** — See People *v.* Myers, 185 N. Y. 558, 77 N. E. 1093, *affirming* 109 N. Y. App. Div. 143, 95 N. Y. Supp. 993.

LIVERY-STABLE KEEPERS.

431. 2. See Billings *v.* Cook, (Mont. 1907) 88 Pac. 950.

432. 4. Weick *v.* Dougherty, (Ky. 1906) 90 S. W. 966; Weaver *v.* Montana Stables, (Wash. 1907) 89 Pac. 154.

7. **For the Negligence** of Third Persons to whom he has hired the plaintiff's property, the livery-stable keeper is liable. Byrnes *v.* Holscher, (Supm. Ct. App. T.) 96 N. Y. Supp. 89.

435. 4. **Possession Acquired by an Abuse of Legal Process** will not support a lien. Hodgkins *v.* Bowser, (Mass. 1907) 80 N. E. 796.

438. 9. National Bank of Commerce *v.* Jones, 18 Okla. 555, 91 Pac. 191, *quoting* 19 Am. and Eng. Encyc. of Law (2d ed.) 438.

440. 10. **An Unauthorized Assignment of a Statutory Lien** works a loss of the lien. Reardon *v.* Higgins, 39 Ind. App. 363, 79 N. E. 208.

LOANS.

459. 2. **The Placing of Some Specific Thing** in the hands of a borrower, to be used by him without compensation, but at some future time to be returned, constitutes a loan. Woodward *v.* San Antonio Traction Co., (Tex. Civ. App. 1906) 95 S. W. 76.

472. 3. Woodward *v.* San Antonio Traction Co., (Tex. Civ. App. 1906) 95 S. W. 76.

LOAN, TRUST, AND SAFE-DEPOSIT COMPANIES.

479. 1. **A Trust Company Merged with a Banking Company,** after the latter has been named by a testator as his executor, does not succeed to the right to act as executor. *In re* Stikeman, (Surrogate Ct.) 48 Misc. (N. Y.) 156, 96 N. Y. Supp. 460.

481. 6. See also Elgin Loan, etc., Co. *v.* National Trust Co., 10 Ont. L. Rep. 41; Guaranty Trust Co. *v.* Diltz, (Tex. Civ. App. 1906) 91 S. W. 596.

9. **A Managing Agent** of a trust company who mingles the moneys collected for another with the current funds of the company in violation of his express directions is personally liable to such person. Sweet *v.* Montpelier Sav. Bank, etc., Co., 73 Kan. 47, 84 Pac. 542.

LOBBYING.

482. 4. Le Tourneux *v.* Gilliss, 1 Cal. App. 546, 82 Pac. 627.

LOCAL.

482. 6. **Local Agent - Service of Process.** — Higgs *v.* Sperry, etc., Co., 139 N. Car. 299, 51 S. E. 1020.

Local Law and Special Law Synonymous. — Gaston *v.* O'Neal, 145 Ala. 484, 41 So. 742.

LOCAL AND TRANSITORY ACTIONS.

484. 1. See German Sav., etc., Soc. *v.* Tull, 136 Fed. 1, 69 C. C. A. 1.

LOCALITY.

485. 1. **The Word Locality Means Place** as used in an instruction that the measure of damages was the value of the wood in the *locality* where it was. Hart *v.* Atlantic Coast Line R. Co., 144 N. Car. 91, 56 S. E. 559.

LOCAL OPTION.

489. 1. People *v.* Election Com'rs, 221 Ill. 9, 77 N. E. 321; King *v.* Concordia F. Ins. Co., 140 Mich. 258, 103 N. W. 616.

490. 1. **Annexation of Territory to Town or City.** — People *v.* Ontario, 148 Cal. 625, 84 Pac. 205; Atty.-Gen. *v.* Township Board, 143 Mich. 523, 107 N. W. 87.

Regulating or Prohibiting Sale of Liquor. — New Castle *v.* Scott, (Ky. 1907) 101 S. W. 944; Jung Brewing Co. *v.* Com., (Ky. 1906) 98 S. W. 307; State *v.* Kline, (Oregon 1907) 93 Pac. 237; Wright *v.* Cunningham, 115 Tenn. 445, 91 S. W. 293, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 488–496; Cohen *v.* Rice, (Tex. Civ. App. 1907) 101 S. W. 1052; *Ex p.* King, (Tex. Crim. 1908) 107 S. W. 549; State *v.* Doerring, 194 Mo. 398, 92 S. W. 489; Green *v.* State, 49 Tex. Crim. 380, 92 S. W. 847.

Storage of Intoxicating Liquors. — *Ex p.* Massey, 49 Tex. Crim. 60, 92 S. W. 1083; *Ex p.* Dupree, (Tex. 1907) 105 S. W. 493.

492. 1. Wright *v.* Cunningham, 115 Tenn. 445, 91 S. W. 293, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 488–496.

493. 5. Fouts *v.* Hood River, 46 Oregon 492, 81 Pac. 370.

495. 6. State *v.* Richardson, 48 Oregon 309, 85 Pac. 225.

8. Claussen *v.* Luverne, (Minn. 1908) 115 N. W. 643; State *v.* Williams, (N. Car. 1908) 61 S. E. 61; Stephens *v.* State, 47 Tex. Crim. 604, 85 S. W. 797; Cohen *v.* Rice, (Tex. Civ. App. 1907) 101 S. W. 1052.

496. 5. Meyers *v.* State, (Tex. Civ. App. 1907) 105 S. W. 48.

497. 3. **Signing and Acknowledging Petition — Strict Compliance.** — Kennedy *v.* Warner, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 362, 100 N. Y. Supp. 616.

7. State *v.* McCord, 207 Mo. 519, 106 S. W. 27.

It Will Be Presumed after the election that the petition was sufficient. Dalrymple *v.* State, 26 Ohio Cir. Ct. 562.

9. Jackson *v.* Seeber, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 479, 100 N. Y. Supp. 563; Kennedy *v.* Warner, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 362, 100 N. Y. Supp. 616.

11. An order of submission containing the words "and taxpayers" following "qualified voters" will not render the order void. State *v.* McCord, 207 Mo. 519, 106 S. W. 27.

498. 5. Failure to hear evidence as to the residence or signatures of the petitioners cannot form grounds for a contest. Howard *v.* Stanfill, (Ky. 1907) 102 S. W. 831.

Under a statute requiring the petition to be signed by one-tenth of the "qualified voters," an order for an election is void where it recites that the petition was signed by one-tenth of the "qualified voters and taxpayers." State *v.* McCord, 124 Mo. App. 63, 100 S. W. 1129.

A presumption arises that the law was complied with where the board of supervisors determine that a sufficient number of names appeared on the petition to authorize its submission. People *v.* Hamilton, 143 Mich. 1, 106 N. W. 275.

Payment of Poll Tax a Prerequisite to Voting. — Pace *v.* Raleigh, 140 N. Car. 65, 52 S. E. 277.

8. Davis *v.* Henderson, (Ky. 1907) 104 S. W. 1009; O'Neil *v.* Minary, (Ky. 1907) 101 S. W. 951.

Withdrawal Can Only Be Had for Cause Shown. — Clark *v.* Daniel, 77 Ark. 122, 91 S. W. 9; Colvin *v.* Finch, 75 Ark. 154, 87 S. W. 443.

Withdrawal need not be made with the same formalities as the signing of the petition. Dye *v.* Augur, (Iowa 1907) 110 N. W. 323.

9. Several Separate Petitions. — *In re* Cipperley, (County Ct.) 50 Misc. (N. Y.) 266, 100 N. Y. Supp. 473; Neal *v.* State, (Tex. Crim. 1907) 102 S. W. 1139.

10. State *v.* Hitchcock, 124 Mo. App. 101, 101 S. W. 117.

499. 4. Marsden *v.* Harlocker, 48 Oregon 90, 85 Pac. 328.

A presumption as to the sufficiency of the petition arises from the fact that the election was ordered to be held. State *v.* Hitchcock, 124 Mo. App. 101, 101 S. W. 117.

5. State *v.* McCord, 207 Mo. 519, 106 S. W. 27.

7. A special term of a commissioner's court may correct an order made at a former term without having the former order set aside. Hanna *v.* State, 48 Tex. Crim. 269, 87 S. W. 702.

Town Being in Two Counties. — An order for election for a town that is situated between two counties must give jurisdiction to the court wherein the greater part of the town is situated. Early *v.* Rains, (Ky. 1905) 89 S. W. 289.

In Louisiana an election held by order of the president of the police jury, who had no authority to order same, is void. Police Jury *v.* Ponchatoula, 118 La. 138, 42 So. 725.

8. Special Session. — It may be made at a special session or a regular session of the commissioner's court. Koch *v.* State, 48 Tex. Crim. 396, 88 S. W. 809.

"Within Two Years." — *Ex p.* Randall, (Tex. Crim. 1906) 98 S. W. 870.

500. 4. Immaterial Variance Disregarded. — O'Neal *v.* Minary, (Ky. 1907) 101 S. W. 951.

The Name of the Presiding Officer who ordered the election need not be shown in the order. Fitze *v.* State, (Tex. Crim. 1905) 85 S. W. 1156.

501. 5. Brooks *v.* Ellis, (Tex. Civ. App. 1906) 98 S. W. 936.

An order for a notice requiring publication for "four successive" instead of four consecutive weeks will not invalidate the election, since it has complied with the local option law regarding notice. State *v.* Hitchcock, 124 Mo. App. 101, 101 S. W. 117.

8. Method of Computing Period of Publication. — State *v.* Brown, (Mo. App. 1908) 109 S. W. 99; *In re* Lafayette, (County Ct.) 45 Misc. (N. Y.) 141, 91 N. Y. Supp. 970.

9. State *v.* Swearingen, (Mo. App. 1908) 107 S. W. 1; State *v.* Oliphant, (Mo. App. 1908) 107 S. W. 32.

502. 1. Brooks *v.* Ellis, (Tex. Civ. App. 1906) 98 S. W. 936.

Notices of an election held under the local option law and not under the Terrell election law, must comply with the provisions for notice under the former law. Parks *v.* State, (Tex. Crim. 1906) 96 S. W. 328.

The order need not recite that the notices be posted in public places, or specify any particular length of time. Magill *v.* State, (Tex. Crim. 1907) 103 S. W. 397.

2. Chenowith *v.* State, (Tex. Crim. 1906) 96 S. W. 19.

4. The mere fact that other modes were used after the statutory method had been complied with will not invalidate the election. Neal *v.* State, (Tex. Crim. 1907) 102 S. W. 1139.

6. In Computing the Time from the last election, the date on which the last election was held must be included. Newton *v.* Ogden, (Ky. 1907) 102 S. W. 865.

7. Seay *v.* State, (Tex. Crim. 1907) 102 S. W. 1127.

The date of the election, and not the date when the result is published, is material in determining whether the election is held within the time authorized by law. *Ex p.* Smith, 48 Tex. Crim. 356, 88 S. W. 245.

Power of County Judge to Change Date. — O'Neal *v.* Minary, (Ky. 1907) 101 S. W. 951.

503. 3. Hancock *v.* Bingham, (Ky. 1907) 102 S. W. 341; New Castle *v.* Scott, (Ky. 1907) 101 S. W. 944.

6. Holding County and Local Option Elections on Same Day. — Yates *v.* Nunnelly, (Ky. 1907) 102 S. W. 292.

8. Manner of Computing Time. — Newton *v.* Ogden, (Ky. 1907) 102 S. W. 865.

504. 1. Merely publishing or posting the questions, without stating that they would be voted on, is not sufficient. *In re* Foster, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 788.

3. Special Officers Required by Statute. — Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 201.

6. An Election Held in School District Is Void, since a school district is not a subdivision of a county within the meaning of the State Const., art. 16, § 20. *Ex p.* Haney, (Tex. Crim. 1907) 103 S. W. 1155; *Ex p.* Banks, (Tex. Crim. 1907) 103 S. W. 1156.

Combining School Districts by the commissioner's court in order to hold local option elections within the districts, being without authority, invalidates an election held therein. Anderson *v.* State, 49 Tex. Crim. 195, 92 S. W. 39.

Use of Word "Voting Box" Instead of "Voting Place" Will Not Invalidate the Order. — Neal *v.* State, (Tex. Crim. 1907) 102 S. W. 1139.

7. Bordwell *v.* State, 77 Ark. 161, 91 S. W. 555.

505. 4. Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291; *In re* Merow, 112 N. Y. App. Div. 562,

99 N. Y. Supp. 9; State *v.* Harris, (S. Dak. 1908) 115 N. W. 533; Hash *v.* Ely, (Tex. Civ. App. 1907) 100 S. W. 980; Hanna *v.* State, 48 Tex. Crim. 269, 87 S. W. 702.

Irregularity in Form of Ballot. — *In re* Gibson, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 485; Arnold *v.* Anderson, (Tex. Civ. App. 1906) 93 S. W. 692; Brigance *v.* Horlock, (Tex. Crim. 1906) 97 S. W. 1060.

Provisions in an election law requiring the ballot to be marked "for prohibition" or "against prohibition" have no application to local option elections. Walker *v.* Molbey, (Tex. 1907) 103 S. W. 490.

5. Bordwell *v.* State, 77 Ark. 161, 91 S. W. [illegible]

506. 1. A court of equity will not grant a writ of certiorari to review the decision of the election judges. State *v.* McIntosh, 95 Minn. 243, 103 N. W. 1017, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 506.

Failure to Sign Ballots by the presiding judge will not vitiate an election. *Ex p.* Anderson, (Tex. Crim. 1907) 102 S. W. 727.

2. **The Granting of the License Raises a Presumption** that the majority of votes on the question of license were cast in favor of same. State *v.* Songer, 76 Ark. 169, 88 S. W. 903.

Mandamus to Compel Recanvass of Votes Refused. — *In re* Burrell, (County Ct.) 50 Misc. (N. Y.) 261, 100 N. Y. Supp. 470.

3. **"Majority of Votes Cast at Said Election."** — Bordwell *v.* State, 77 Ark. 161, 91 S. W. 555.

507. 4. An order will not be invalidated by the county judge certifying more facts in the order than required. Neal *v.* State, (Tex. Crim. 1907) 102 S. W. 1139.

Error as to Date of Election in the Order Declaring the Result. — Luck *v.* State, (Tex. Crim. 1906) 97 S. W. 1049.

5. Neal *v.* State, (Tex. Crim. 1907) 102 S. W. 1139.

6. **The Metes and Bounds** of the territory need not be shown in the order. Fitze *v.* State, (Tex. Crim. 1905) 85 S. W. 1156.

508. 3. Luck *v.* State, (Tex. Crim. 1906) 97 S. W. 1049.

5. State *v.* O'Brien, 35 Mont. 482, 90 Pac. 514; Moss *v.* State, (Tex. Crim. 1905) 89 S. W. 833; Chenowith *v.* State, (Tex. Crim. 1906) 96 S. W. 19.

Method of Computing Period of Publication. — Williams *v.* State, (Tex. Crim. 1908) 109 S. W. 189.

7. The publication of the order taken from the minutes of the court without containing the names of the commissioners is all that the law requires. Hillard *v.* State, 48 Tex. Crim. 314, 87 S. W. 821.

8. **Order Not Invalidated by Indefinite Delay.** — Rawls *v.* State, 48 Tex. Crim. 622, 89 S. W. [illegible]

9. Chenowith *v.* State, (Tex. Crim. 1906) 96 S. W. 19.

It will be presumed that the county judge, and not the commissioner's court, selected the newspaper in which the order should be published. Holland *v.* State, (Tex. Crim. 1907) 101 S. W. 1002.

County Judge Need Not Be Directed to Designate the Newspaper. — Johnson *v.* State, (Tex. Crim. 1908) 108 S. W. 683.

10. McHam *v.* Love, (Tex. Crim. 1905) 87 S. W. 875; *Ex p.* Gill, 48 Tex. Crim. 517, 89 S. W. 272; Johnson *v.* State, (Tex. Crim. 1905) 89 S. W. 834; Riggs *v.* State, (Tex. Crim. 1906) 97 S. W. 482.

Contra where the publication is not resumed for some time after the injunction is dissolved. Griffin *v.* State, (Tex. Crim. 1905) 87 S. W. 155; Stephens *v.* State, (Tex. Crim. 1905) 87 S. W. 157.

509. 1. Magill *v.* State, (Tex. Civ. App. 1907) 103 S. W. 397.

Entry of Certificate. — Walker *v.* State, (Tex. Crim. 1907) 106 S. W. 376.

Date of the Expiration of Publication Erroneously Stated in Certificate. — Williams *v.* State, (Tex. Crim. 1908) 109 S. W. 189.

3. **Proof by Affidavit of Publisher.** — State *v.* O'Brien, 35 Mont. 482, 90 Pac. 514.

A Certified Copy of Result of Election, as spread upon the records of the court, is *prima facie* evidence of the result of the election. State *v.* Hitchcock, 124 Mo. App. 101, 101 S. W. 117.

Evidence Held Admissible to Prove Publication. — Gorman *v.* State, (Tex. Crim. 1907) 106 S. W. 384.

4. Biddy *v.* State, (Tex. Crim. 1908) 108 S. W. 689.

7. **Power of Superior Court to Determine Contest.** — Ogburn *v.* Elmore, 123 Ga. 677, 51 S. E. 641.

Jurisdiction Is Limited to matters necessarily involved in determining the result of the election. Harris *v.* Sheffield, 128 Ga. 299, 57 S. E. 305.

8. **Contest Must Be Made within Time Prescribed by Statute.** — Cole *v.* Com., (Ky. 1907) 98 S. W. 1002.

9. Ogburn *v.* Elmore, 123 Ga. 677, 51 S. E. 641.

An election not contested in the manner prescribed by statute cannot be attacked in a collateral proceeding. Kennon *v.* Blackburn, (Ky. 1907) 104 S. W. 968.

10. Marsden *v.* Harlocker, 48 Oregon 90, 85 Pac. 328.

The contestants must show that they have suffered injury through the illegality of the election. Hash *v.* Ely, (Tex. Civ. App. 1907) 100 S. W. 980.

510. 9. A city may adopt local option when the county of which it is an integral portion is entitled to local option by the constitution. *Ex p.* Elliott, 49 Tex. Crim. 108, 91 S. W. 570.

511. 2. **Adoption by Subdivision Effectual though Balance of County Opposed.** — Baxter *v.* State, (Oregon 1907) 89 Pac. 369.

9. *Ex p.* Pollard, (Tex. Crim. 1906) 103 S. W. 878.

11. *Ex p.* Fields, (Tex. Crim. 1905) 86 S. W. 1022; *Ex p.* Curlee, (Tex. Crim. 1907) 103 S. W. 896.

512. 2. Givens *v.* State, 49 Tex. Crim. 267, 91 S. W. 1090.

3. **Adoption Suspends Operation of Prior Inconsistent Law.** — Kerr *v.* Mohr, (Tex. Civ. App. 1907) 103 S. W. 210, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 512.

4. Tompkins *v.* State, 49 Tex. Crim. 154, 90 S. W. 1010.

513. 6. A local option law prohibiting the sale of liquor is not repealed by the passage

of another law of the same effect. Tippitt *v.* State, (Tex. Crim. 1908) 109 S. W. 161.

The addition of new territory to a local option district does not operate as a repeal of a local option law which formerly existed in said territory. *Ex p.* Fields, (Tex. Crim. 1905) 86 S. W. 1022.

514. 7. McGovern *v.* State, 49 Tex. Crim. 35, 90 S. W. 502.

8. State *v.* Foreman, 121 Mo. App. 502, 97 S. W. 269; State *v.* Carmody, (Oregon 1907) 91 Pac. 446.

10. Parker *v.* State, 126 Ga. 443, 55 S. E. 329; Crigler *v.* Com., 120 Ky. 512, 87 S. W. 276.

515. 1. State *v.* Brown, (Mo. App. 1908) 109 S. W. 99.

LOCATE — LOCATED — LOCATION.

515. 2. **Mining Claims.** — See Uinta Tunnel etc., Co. *v.* Ajax Gold Min. Co., 141 Fed. 563, 73 C. C. A. 35.

LOGS AND LUMBER.

524. 3. Norris *v.* Clark, 29 Pa. Super. Ct. 562; Rice *v.* Knostman, 45 Wash. 282, 88 Pac. 194.

5. McKinney *v.* Northcutt, 114 Mo. App. 146, 89 S. W. 351.

525. 3. **Persons Driving Logs Liable for Damage Caused by Overflowing Adjacent Land.** — Osborn *v.* Mississippi, etc., Boom Co., 95 Minn. 149, 103 N. W. 879, holding further that the measure of damages is the difference in the value of the land before and after the flowing.

Equity Will Grant Relief to a Riparian Owner upon whose lands logs have been floated to such extent as to interfere with his use thereof. White *v.* Codd, 39 Wash. 14, 80 Pac. 836.

Damage Resulting Notwithstanding Reasonable Care and Prudence has been held to constitute an incidental burden which the riparian owner must bear. Mitchell *v.* Lea Lumber Co., 43 Wash. 195, 86 Pac. 405.

5. Marsh *v.* Great Northern Paper Co., 101 Me. 489, 64 Atl. 844.

531. 6. Brackett *v.* Pierson, 114 N. Y. App. Div. 281, 99 N. Y. Supp. 770.

532. 1. Brackett *v.* Pierson, 114 N. Y. App. Div. 281, 99 N. Y. Supp. 770, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 531 [532], as to the fact that liens have been created by statute for loggers in other states.

7. **Statutory Liens Strictly Construed.** — Haralson *v.* Speer, 1 Ga. App. 573, 58 S. E. 142.

11. **Subcontractor Who Hauls Logs Is Entitled to Lien.** — Allen *v.* Roper, 75 Ark. 104, 86 S. W.

533. 1. Valley Pine Lumber Co. *v.* Hodgens, 80 Ark. 516, 97 S. W. 682.

534. 2. **One Working under a Contract to Cut Sawlogs in the Woods**, and to deliver them at a mill, is not an employee performing labor in the operation of the mill, within the contemplation of the *Washington* statute. Graham *v.* Gardner, 45 Wash. 648, 89 Pac. 171.

One Who Hauls Lumber from the Mills after manufacture is not entitled to a lien under a statute giving a lien on lumber material for the labor of producing it from sawlogs. McGeorge *v.* Stanton-De Long Lumber Co., 131 Wis. 7, 110 N. W. 788.

535. 6. **The Word "Laborer"** means one who labors with his hands for wages, and does not include one who contracts for the hauling of lumber with his wagon and team at a fixed price per thousand feet of lumber hauled. Sparks *v.* Crescent Lumber Co., (Tex. Civ. App. 1905) 89 S. W. 423.

536. 7. International Boom Co. *v.* Rainy Lake River Boom Corp., 97 Minn. 513, 107 N. W. 735.

540. 5. International Boom Co. *v.* Rainy Lake River Boom Corp., 97 Minn. 513, 107 N. W. 735.

7. **In Oregon** a logger's lien may be assigned, even after the identification of the logs has been rendered impossible. Fischer *v.* G. W. Cone Lumber Co., (Oregon 1907) 89 Pac. 737.

541. 3. **The Oregon Statute** gives a cause of action to a lienholder against any person who shall render logs subject to a lien impossible of identification. Fischer *v.* G. W. Cone Lumber Co., (Oregon 1907) 89 Pac. 737.

5. **Where the Lien Is Claimed for the Amoun Due for Labor,** part of which is lienable and part not lienable, and there is no proof produced so that the one can be separated from the other, the entire claim for a lien must be denied. McGeorge *v.* Stanton-De Long Lumber Co., 131 Wis. 7, 110 N. W. 788.

542. 7. **As to the Construction of Particular Contracts** see the following: Peterson *v.* Reichel, 143 Mich. 212, 106 N. W. 877; Nelson *v.* Charles Betcher Lumber Co., 96 Minn. 76, 104 N. W. 833; Wisconsin Sulphite Fibre Co. *v.* D. K. Jeffris Lumber Co., (Wis. 1907) 111 N. W. 237; Loree *v.* Webster Mfg. Co., (Wis. 1908) 114 N. W. 449.

Terms of Agreement Question for Jury — Nelson *v.* Mashek Lumber Co., 95 Minn. 217, 103 N. W. 1027.

543. 3. Madunkeunk Dam, etc., Co. *v.* F. E. Allen Clothing Co., 102 Me. 257, 66 Atl. 537.

4. Robinson *v.* Ward, 141 Mich. 1, 104 N. W. 373.

546. 3. Madunkeunk Dam, etc., Co. *v.* F. E. Allen Clothing Co., 102 Me. 257, 66 Atl. 537.

5. **Error in Scale May Be Shown.** — Hurst *v.* Webster Mfg. Co., 128 Wis. 342, 107 N. W. 666.

547. 1. Seymour *v.* Bruske, 140 Mich. 244, 103 N. W. 613.

LOSS — LOST.

549. 4. **Loss as Synonym of Damage.** — Turner *v.* Woodward, 123 Ga. 866, 51 S. E. 760.

Loss of Ship. — The capture of a ship together with the fact of her subsequent destruction held a *loss* of the ship within the Merchant Shipping Act terminating the seamen's service. Sivewright *v.* Allen, (1906) 2 K. B. 81, 6 Ann. Cas. 65, 75 L. J. K. B. 476.

LOST PAPERS AND RECORDS.

553. 6. Poess *v.* Twelfth Ward Bank, (Supm. Ct. App. T.) 43 Misc. (N. Y.) 45, 86 N. Y. Supp. 857, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 553.

555. 7. Shugars *v.* Shugars, 105 Md. 336, 66 Atl. 273; White *v.* Smith, (N. J. 1907) 65 Atl. 1017, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555.

556. 2. Title to land may be established under "Burnt Records Act," Hurd's Rev. St. 1903, p. 1484, c. 115, where the records were destroyed by fire. Glos v. Kelly, 211 Ill. 314, 71 N. E. 978.

4. Alabama City, etc., R. Co. *v.* Ventress, (Ala. 1907) 42 So. 1017.

557. 5. State *v.* Strayer, 58 W. Va. 676, 52 S. E. 862.

559. 1. Poling *v.* Poling, 61 W. Va. 78, 55 S. E. 993, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 558.

3. State *v.* Circuit Ct., (S. Dak. 1905) 104 N. W. 1048.

561. 2. Title, etc., Restoration Co. *v.* Kerrigan, (Cal. 1907) 88 Pac. 356; Florida Cent. R. Co. *v.* Bostwick, 53 Fla. 124, 44 So. 31; Jones *v.* Ballon, 139 N. Car. 526, 52 S. E. 254; Hutchins *v.* Murphy, 146 Mich. 621, 110 N. W. 52.

562. 1. Kennedy *v.* Lorah, 226 Ill. 243, 80 N. E. 767.

2. Smith *v.* Gowdy, (Ky. 1906) 96 S. W. 566.

8. Meyer *v.* Purcell, 214 Ill. 62, 73 N. E. 392; Kennedy *v.* Borah, 226 Ill. 243, 80 N. E. 767.

563. 2. Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 563.

5. Hogan *v.* Kaiser, 113 Mo. App. 711, 88 S. W. 1128.

564. 6. Clinton Nat. Bank *v.* Stiger, 67 N. J. Eq. 522, 58 Atl. 1055; Moore *v.* Durnan, 69 N. J. Eq. 828, 65 Atl. 463.

565. 3. Hogan *v.* Kaiser, 113 Mo. App. 711, 88 S. W. 1128; Barclay *v.* Lehigh Coal, etc., Co., 33 Pa. Super. Ct. 214.

566. 2. Belle Plaine First Nat. Bank *v.* McConnell, (Minn. 1908) 114 N. W. 1129; Clinton Nat. Bank *v.* Stiger, 67 N. J. Eq. 522, 58 Atl. 1055; Councilman *v.* Towson Nat. Bank, 103 Md. 469, 64 Atl. 358.

569. 1. Equity also has jurisdiction. Moore *v.* Durnan, 69 N. J. Eq. 828, 65 Atl. 463.

573. 2. State *v.* New Orleans Cotton Exch., 114 La. 324, 38 So. 204.

576. 1. *Alabama.* — Ryan *v.* Shaneyfelt, 146 Ala. 683, 40 So. 223; Martin *v.* Jesse French Piano, etc., Co., (Ala. 1907) 44 So. 112; Powers *v.* Hatter, (Ala. 1907) 44 So. 850.

Arkansas. — Kenady *v.* Gilkey, 81 Ark. 147, 98 S. W. 969.

Colorado. — Mortgage Trust Co. *v.* Elliot, 36 Colo. 238, 84 Pac. 980.

Georgia. — Sims *v.* Scheussler, 2 Ga. App. 466, 58 S. E. 693; Smith *v.* Hightower, 3 Ga. App. 197, 59 S. E. 593.

Illinois. — Glos *v.* Talcott, 213 Ill. 81, 72 N. E. 707.

Iowa. — Houghtalling *v.* Houghtalling, (Iowa 1907) 112 N. W. 197.

Louisiana. — Moulierre *v.* Coco, 116 La. 845, 41 So. 113.

Minnesota. — Lloyd *v.* Simons, 97 Minn. 315, 105 N. W. 902.

Missouri. — Schaaf *v.* Peters, 111 Mo. App. 447, 90 S. W. 1037; Haworth *v.* Haworth, 123 Mo. App. 303, 100 S. W. 531; Jenkins *v.* Emmons, 117 Mo. App. 1, 94 S. W. 812.

Montana. — Bond *v.* Hurd, 31 Mont. 314, 78 Pac. 579.

South Carolina. — Senterfeit *v.* Shealy, 71 S. Car. 259, 51 S. E. 142.

Texas. — Fred W. Wolf Co. *v.* Galbraith, (Tex. Civ. App. 1906) 94 S. W. 1100; Latta *v.* Wiley, (Tex. Civ. App. 1906) 92 S. W. 433; International, etc., R. Co. *v.* Lynch, (Tex. Civ. App. 1907) 99 S. W. 160; Jones *v.* Neal, (Tex. Civ. App. 1906) 98 S. W. 417; Garrett *v.* Spradling, (Tex. Civ. App. 1905) 88 S. W. 203.

2. Cross *v.* Aby, (Fla. 1908) 45 So. 820.

3. *Florida.* — Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874.

Georgia. — Houston *v.* State, 124 Ga. 417, 52 S. E. 757; Proctor, etc., Co. *v.* Blakely Oil, etc., Co., 128 Ga. 606, 57 S. E. 879.

Kentucky. — Hogg *v.* Combs, 93 S. W. 670, 29 Ky. L. Rep. 559; Burkhart *v.* Loughridge, 98 S. W. 291, 30 Ky. L. Rep. 303.

Mississippi. — McCaughn *v.* Young, 85 Miss. 277, 37 So. 839.

Missouri. — Kries *v.* Holladay-Klotz Land, etc., Co., 121 Mo. App. 184, 98 S. W. 1086.

South Carolina. — Edgefield Mfg. Co. *v.* Maryland Casualty Co., 78 S. Car. 73, 58 S. E. 969.

Texas. — Simmons *v.* Hewitt, (Tex. Civ. App. 1905) 87 S. W. 188.

LOST PROPERTY.

579. 1. Kuykendall *v.* Fisher, 61 W. Va. 87, 56 S. E. 48, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579.

580. 1. Williams *v.* State, 165 Ind. 472, 75 N. E. 875, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 580; Kuykendall *v.* Fisher, 61 W. Va. 87, 56 S. E. 48.

LOT.

586. 1. Fruita *v.* Williams, 33 Colo. 159, 80 Pac. 132, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 586.

LOTTERIES.

589. 3. **Selling Lottery Tickets and Employing Agents** for that purpose and to distribute winnings constitutes one guilty of assisting and establishing a lottery as an avocation or business, even though the drawings are to occur outside the state. State *v.* Miller, 190 Mo. 449, 89 S. W. 377.

4. Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 380.

591. 2. U. S. *v.* McKenna, 149 Fed. 252.

592. 3. **Games and Devices Held to Be Lotteries** — *Guessing Contest Held to Be Lottery.* — Waite *v.* Press Pub. Assoc., (C. C. A.) 155 Fed. 58.

Money-distributing Scheme. — State *v.* U. S. Express Co., 95 Minn. 442, 104 N. W. 556.

A Contract Containing a Prize Feature. — Fidelity Funding Co. *v.* Vaughn, 18 Okla. 13, 90 Pac. 34.

Games and Devices Held Not to Be Lotteries — *A Contract or Debenture.* — McDonald *v.* Pacific Debenture Co., 146 Cal. 667, 80 Pac. 1090.

Giving Trading Stamps or Coupons. — *Ex p.*

Drexel, 147 Cal. 763, 82 Pac. 429; *Ex p.* West, 147 Cal. 774, 82 Pac. 434; and see the title TRADING STAMPS.

4. A Statute Licensing "Lung Testers, striking machines, weighing machines, chewing-gum stands, automatic penny-in-the-slot machines, or any other device of a similar nature," under a constitution prohibiting lotteries, will not be construed to license the operation of a machine in which the element of chance largely predominates. State *v.* Vasquez, 49 Fla. 126, 38 So. 830.

594. 1. Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 389.

595. 4. U. S. *v.* McKenna, 149 Fed. 252.

596. 3. Evidence that the defendant exposed lottery tickets for sale is inadmissible under an indictment for establishing a lottery. Howard *v.* State, (Tex. Crim. 1906) 91 S. W. 785.

LUCRATIVE — LUCRATIVE OFFICE.

601. 2. Office of Deputy Sheriff Is a Lucrative Office under constitution providing that no person shall hold more than one ***lucrative office*** at the same time. State *v.* Slagle, 115 Tenn. 336, 89 S. W. 326.

A Retired Army Officer is not a person holding a ***lucrative office*** under the United States, within a state constitution making such persons ineligible to state office. Reed *v.* Sehon, 2 Cal. App. 55, 83 Pac. 77.

MACHINE — MACHINERY.

604. 2. A Crane used to hoist molten metal held a ***machine*** to be properly guarded within a Factory Act. Crawford, etc., Co. *v.* Gose, (Ind. App. 1907) 82 N. E. 984.

3. Tubbs *v.* Mechanics' Ins. Co., 131 Iowa 27, 108 N. W. 324.

Water Pipes and Mains Not Taxable as Machinery. — See Coffin *v.* Artesian Water Co., 193 Mass. 274, 79 N. E. 262.

Kiln Doors Classed as Machinery under the terms of a contract enumerating them as such. Thomas China Co. *v.* C. W. Raymond Co., 135 Fed. 25, 67 C. C. A. 629.

The Boiler Pipes and Fittings of a Steam Laundry are ***machinery*** within the meaning of that term in a policy of fire insurance. Tubbs *v.* Mechanics F. Ins. Co., 131 Iowa 217, 108 N. W. 324.

MAIL.

608. 1. Presumption of Receipt in Due Course of Mail. — Click *v.* Sample, 73 Ark. 198, 83 S. W. 932, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608; Merchants Exch. Co. *v.* Sanders, 74 Ark. 18, 84 S. W. 786, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608.

MAIN.

609. 1. Main Stem of Railroad — Taxation Statute. — See *In re* United New Jersey R., etc., Co., (N. J. 1907) 67 Atl. 1075.

MAINTAIN — MAINTENANCE.

610. 1. National Fertilizer Co. *v.* Fall River Five Cents Sav. Bank, (Mass. 1907) 82 N. E. 671.

3. Maintenance of Public Roads. — The constitutional authority conferred upon the legislature to pass local laws for the ***maintenance*** of public roads authorizes the inauguration of a system of public roads in a county. Dallas County *v.* Plowman, 99 Tex. 509, 91 S. W. 221.

612. 1. Maintain School. — A local education authority does not ***maintain*** a non-provided school as required by the Education Act, 1902, § 7, subs. 1, if it refuses to pay what is reasonable for denominational religious instruction lawfully given during school hours. Atty.-Gen. *v.* West Riding of Yorkshire, (1907) A. C. 29, 76 L. J. K. B. 97.

MAJORITY.

614. 1. Majority Vote of Members Elected held to mean a ***majority*** of the members of a city council and not a ***majority*** of the council as then constituted. Wood *v.* Gordon, 58 W. Va. 321, 52 S. E. 261.

616. 1. Murphy *v.* Long Branch, (N. J. 1905) 61 Atl. 593.

MALICE.

623. 1. State *v.* Harvey, 130 Iowa 399, 106 N. W. 938, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623.

2. Lee *v.* Crump, 146 Ala. 655, 40 So. 609.

3. State *v.* Miller, 73 S. Car. 277, 53 S. E. 426.

4. Louisville, etc., R. Co. *v.* Smith, 141 Ala. 342, 37 So. 490, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623; Maun *v.* State, 124 Ga. 760, 53 S. E. 324; State *v.* Worley, 141 N. Car. 764, 53 S. E. 128; Haney *v.* Blandino, (Tex. Civ. App. 1905) 89 S. W. 1108; State *v.* Coleman, 29 Utah 417, 82 Pac. 465; Thacker Coal, etc., Co. *v.* Burke, 59 W. Va. 253, 53 S. E. 161.

624. 2. State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077.

3. State *v.* Hayden, 131 Iowa 1, 107 N. W. 929.

5. State *v.* Tilghman, (Del. 1906) 63 Atl. 772.

Malice Aforethought. — People *v.* Fallon, 149 Cal. 287, 86 Pac. 689; Hill *v.* Com., (Ky. 1906) 91 S. W. 1123.

625. 12. Van Meter *v.* Bass, (Colo. 1907) 90 Pac. 637; Staples *v.* Johnson, 25 App. Cas. (D. C.) 155; Sasse *v.* Rogers, (Ind. App. 1907) 81 N. E. 590; Pierce *v.* Doolittle, 130 Iowa 333, 106 N. W. 751; National L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895; Davis *v.* McMillan, 142 Mich. 391, 105 N. W. 862; Pinson *v.* Campbell, 124 Mo. App. 260, 101 S. W. 621; East *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 683, 101 N. Y. Supp. 364; Berkowich *v.* Kommel, (Supm. Ct. App. T.) 107 N. Y. Supp. 119. And see the title MALICIOUS PROSECUTION.

626. 7. Brown *v.* Edinburgh Magistrates, (1907) Sc. Ct. Sess. 256; Nagy *v.* Manitoba Free Press Co., 16 Manitoba 642, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 626.

MALICIOUS — MALICIOUSLY.

628. 1. State *v.* Willing, 129 Iowa 72, 105 N. W. 355.

629. 1. Where a statute did not use the

word *maliciously* in defining the crime of abortion, an information omitting the word was not defective. Johnson *v.* People, 33 Colo. 224, 80 Pac. 133.

MALICIOUS ABUSE OF PROCESS.

630. 2. Baxley *v.* Laster, 81 Ark. 236, 101 S. W. 757, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 630.

4. Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 143 N. Car. 58, 55 S. E. 422, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 630.

631. 4. McClerg *v.* Vielee, 116 N. Y. App. Div. 731, 102 N. Y. Supp. 45.

5. Whitesell *v.* Study, (Ind. App. 1906) 76 N. E. 1010.

6. **Threats of Arrest** have been held sufficient to authorize an action for a malicious abuse of process where the threats resulted in the extortion of money. Marlatte *v.* Weickgenant, 147 Mich. 266, 110 N. W. 1061.

632. 1. Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 143 N. Car. 54, 55 S. E. 422.

4. Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015.

6. Gordon *v.* West, 129 Ga. 532, 59 S. E. 233, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 632; Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015.

MALICIOUS MISCHIEF.

634. 3. State *v.* Coleman, 29 Utah 417, 82 Pac. 465, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 634.

635. 4. State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

5. Moody *v.* State, 127 Ga. 821, 56 S. E. 993; State *v.* Patton, (Kan. 1907) 92 Pac. 588; State *v.* Martin, 141 N. Car. 832, 53 S. E. 874; State *v.* Click, 115 Tenn. 283, 90 S. W. 855; Davis *v.* Chesapeake, etc., R. Co., 61 W. Va. 246, 56 S. E. 400.

6. *In re* Mitchell, 1 Cal. App. 396, 82 Pac. 347.

7. Price *v.* State, 49 Tex. Crim. 343, 92 S. W. 811.

8. State *v.* Martin, 141 N. Car. 832, 53 S. E. 874.

13. See State *v.* Soward, 83 Ark. 264, 103 S. W. 741.

636. 1. **"A Trespass Notice"** has been held to be property, although the steps to make it a legal notice had not been completed. Moody *v.* State, 127 Ga. 821, 56 S. E. 993.

3. **An Electric Street Car** is personalty within the meaning of the *North Carolina* statute. State *v.* Martin, 141 N. Car. 832, 53 S. E. 874.

637. 3. Burkhalter *v.* State, (Tex. Crim. 1907) 104 S. W. 901.

14. Black *v.* State, 3 Ga. App. 297, 59 S. E. 823.

18. **Valuable Papers.** — Construed to include election tickets. State *v.* Click, 115 Tenn. 283, 90 S. W. 855.

638. 7. The term "or any other structure" embraces a mine within the meaning of a statute prohibiting malicious explosions therein. *In re* Mitchell, 1 Cal. App. 396, 82 Pac. 347.

17. **Value of Property Immaterial.** — Holder *v.* State, 127 Ga. 51, 56 S. E. 71; Moody *v.* State, 127 Ga. 821, 56 S. E. 993.

Under a statute prohibiting the malicious destruction of "valuable papers" it must appear that the papers whose destruction is alleged were valuable. State *v.* Click, 115 Tenn. 283, 90 S. W. 855.

18. Price *v.* State, 49 Tex. Crim. 343, 92 S. W. 811.

19. **But in North Carolina.** — State *v.* Martin, 141 N. Car. 832, 53 S. E. 874.

20. Davis *v.* Chesapeake, etc., R. Co., 61 W. Va. 246, 56 N. E. 400, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 638.

639. 3. **"Destroying, Injuring, or Removing"** railroad property. Davis *v.* Chesapeake, etc., R. Co., 61 W. Va. 246, 56 N. E. 400, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 639.

641. 3. State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

5. State *v.* Roscum, 128 Iowa 509, 104 S. W. 800; Davis *v.* Chesapeake, etc., R. Co., 61 W. Va. 246, 56 S. E. 400.

6. State *v.* Martin, 141 N. Car. 832, 53 N. E. 874; State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

11*a*. **Other States.** — State *v.* Roscum, 128 Iowa 509, 104 N. W. 800; State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

12. State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

642. 3. State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

4. See Atwood *v.* State, 84 Ark. 623, 106 S. W. 953.

5. State *v.* Roscum, 128 Iowa 509, 104 S. W. 800; State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

6. Atwood *v.* State, 84 Ark. 623, 106 S. W. 953; McClurg *v.* State, 2 Ga. App. 624, 58 S. E. 1064; State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

8. State *v.* Coleman, 29 Utah 417, 82 Pac. 465.

643. 2. State *v.* Martin, 141 N. Car. 832, 53 S. E. 874.

4. Black *v.* State, 3 Ga. App. 297, 59 S. E. 823.

8. State *v.* Martin, 141 N. Car. 832, 53 S. E. 874.

644. 7. McClurg *v.* State, 2 Ga. App. 624, 58 S. E. 1064; State *v.* Patton, (Kan. 1907) 92 Pac. 588.

Where the vendee of land knocked down and removed a house therefrom before the foreclosure of a vendor's lien he was held not guilty of malicious mischief. Price *v.* State, 49 Tex. Crim. 343, 92 S. W. 811.

646. 2. See Atwood *v.* State, 84 Ark. 623, 106 S. W. 953.

4. **In Georgia** the offer to pay the full value of timber cut from another's land has been given determining weight in setting aside a conviction for wilfully cutting the same. Black *v.* State, 3 Ga. App. 297, 59 S. E. 823.

MALICIOUS PROSECUTION.

650. 1. Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 138 N. Car. 174, 50 S. E.

571, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650.

4. Gaither *v.* Carpenter, 143 N. Car. 240, 55 S. E. 625; Graves *v.* Scott, 104 Va. 372, 51 S. E. 821, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650; Berkowich *v.* Kommel, (Supm. Ct. App. T.) 107 N. Y. Supp. 119.

652. 4. Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 138 N. Car. 174, 50 S. E. 571; Nowotny *v.* Grona, (Tex. Civ. App. 1906) 98 S. W. 416.

6. Whitesell *v.* Study, 37 Ind. App. 429, 76 N. E. 1010; Cobbey *v.* State Journal Co., (Neb. 1907) 113 N. W. 224, *reversing* (Neb. 1906) 110 N. W. 643.

The Institution of Bankruptcy Proceedings, if done maliciously and without probable cause, is a sufficient basis for an action for malicious prosecution, even though there is no seizure of property. Wilkinson *v.* Goodfellow-Brooks Shoe Co., 141 Fed. 218; King *v.* Sullivan, (Tex. Civ. App. 1906) 92 S. W. 51.

653. 1. Russell *v.* Chamberlain, 12 Idaho 299, 85 Pac. 926; Horner *v.* Chamberlain, 12 Idaho 304, 85 Pac. 927; Sasse *v.* Rogers, (Ind. App. 1907) 81 N. E. 590; Pierce *v.* Doolittle, 130 Iowa 333, 106 N. W. 751, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653; Stanford *v.* A. F. Messick Grocery Co., 143 N. Car. 419, 55 S. E. 815; Evans *v.* Atlantic Coast Line R. Co., 105 Va. 72, 53 S. E. 3; Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 320.

Distinguished from Malicious Abuse of Process. — In an action for abuse of process it is not necessary to show malice, want of probable cause, or termination of the proceedings. Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 143 N. Car. 54, 55 S. E. 422.

5. Contra. — The action will not lie unless the plaintiff was served with process. Mitchell *v.* Donanski, (R. I. 1906) 65 Atl. 611.

654. 2. Rutherford *v.* Dyer, 146 Ala. 665, 40 So. 974; Cochran *v.* Bones, 1 Cal. App. 729, 82 Pac. 970 (misnomer in warrant); Baker *v.* Langley, (Ga. App. 1908) 60 S. E. 371; Hackler *v.* Miller, (Neb. 1907) 114 N. W. 274.

4. Forrest *v.* McBee, 72 S. Car. 189, 51 S. E. 675, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 654.

5. Ailstock *v.* Moore Lime Co., 104 Va. 565, 52 S. E. 213.

655. 2. *England.* — Cox *v.* English, etc., Bank, (1905) A. C. 168.

Canada. — Sinclair *v.* Ruddell, 16 Manitoba 53.

United States. — McGuirk *v.* O'Halloran, 149 Fed. 909.

Alabama. — Goldstein *v.* Drysdale, (Ala. 1906) 42 So. 744.

Arizona. — Cunningham *v.* Moreno, (Ariz. 1905) 80 Pac. 327.

Colorado. — Van Meter *v.* Bass, (Colo. 1907) 90 Pac. 637.

District of Columbia. — Staples *v.* Johnson, 25 App. Cas. (D. C.) 155.

Idaho. — Russell *v.* Chamberlain, 12 Idaho 299, 85 Pac. 926; Horner *v.* Chamberlain, 12 Idaho 304, 85 Pac. 927.

Illinois. — Enright *v.* Gibson, 219 Ill. 550, 76 N. E. 689, *affirming* 119 Ill. App. 411; Young *v.* Lindstrom, 115 Ill. App. 239.

Indiana. — Whitesell *v.* Study, 37 Ind. App. 429, 76 N. E. 1010.

Iowa. — Miller *v.* Runkle, (Iowa 1908) 114 N. W. 611.

Kentucky. — Sehon *v.* Whitt, (Ky. 1906) 92 S. W. 280; National L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895.

Massachusetts. — Shattuck *v.* Simonds, 191 Mass. 506, 78 N. E. 122.

Missouri. — Pandjiris *v.* Hartman, 196 Mo. 539, 94 S. W. 270.

Montana. — Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33.

Nebraska. — Cobbey *v.* State Journal Co., (Neb. 1907) 113 N. W. 224, *reversing* (Neb. 1906) 110 N. W. 643.

New Hampshire. — Moon *v.* Flack, (N. H. 1907) 65 Atl. 829.

New York. — Fetzer *v.* Burlew, 114 N. Y. App. Div. 650, 99 N. Y. Supp. 1100; Cook *v.* Bartlett, 115 N. Y. App. Div. 829, 100 N. Y. Supp. 1032; Berkowich *v.* Kommel, (Supm. Ct. App. T.) 107 N. Y. Supp. 119.

North Carolina. — Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 138 N. Car. 174, 50 S. E. 571; Moore *v.* Statesville First Nat. Bank, 140 N. Car. 293, 52 S. E. 944; Gaither *v.* Carpenter, 143 N. Car. 240, 55 S. E. 625.

Pennsylvania. — Robitzek *v.* Daum, (Pa. 1908) 69 Atl. 96.

Virginia. — Graves *v.* Scott, 104 Va. 372, 51 S. E. 821.

Washington. — Ton *v.* Stetson, 43 Wash. 471, 86 Pac. 668.

Wisconsin. — Brinsley *v.* Schulz, 124 Wis. 426, 102 N. W. 918.

657. 4. Cook *v.* Proskey, (C. C. A.) 138 Fed. 273; Enright *v.* Gibson, 219 Ill. 550, 76 N. E. 689, *affirming* 119 Ill. App. 411; Kirk *v.* Wiener-Loeb Laundry Co., (La. 1908) 45 So. 738; Price *v.* Denison, 95 Minn. 106, 103 N. W. 728; Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78; Pinson *v.* Campbell, 124 Mo. App. 260, 101 S. W. 621; Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33; Rawson *v.* Leggett, 184 N. Y. 504, 77 N. E. 662, *reversing* 97 N. Y. App. Div. 416, 90 N. Y. Supp. 5; Robitzek *v.* Daum, (Pa. 1908) 69 Atl. 96; Coyle *v.* Snellenburg, 30 Pa. Super. Ct. 246; King *v.* Apple River Power Co., 131 Wis. 575, 111 N. W. 668; Desaulniers *v.* Hird, 15 Quebec K. B. 394.

"Just or Legal" Cause is not synonymous with "probable" cause. Sehon *v.* Whitt, (Ky. 1906) 92 S. W. 280.

The Standard Test is what a reasonably prudent man would do under like circumstances. Reynolds *v.* Dunlap, 73 Kan. 759, 84 Pac. 720.

658. 2. Lansky *v.* Prettyman, 140 Mich. 40, 103 N. W. 538; Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78; Cramer *v.* Barmon, 126 Mo. App. 54, 103 S. W. 1086; McFadden *v.* Lane, 71 N. J. L. 624, 60 Atl. 365; Rawson *v.* Leggett, 184 N. Y. 504, 77 N. E. 662, *reversing* 97 N. Y. App. Div. 416, 90 N. Y. Supp. 5; Conner *v.* Wetmore, 110 N. Y. App. Div. 440, 96 N. Y. Supp. 999; Hobson *v.* Koch, 115 N. Y. App. Div. 299, 100 N. Y. Supp. 893; Boyd *v.* Kerr, 216 Pa. St. 259, 65 Atl. 674; Radcliffe *v.* Hollyfield, 216 Pa. St.

307, 65 Atl. 789; Robitzek v. Daum, (Pa. 1908) 69 Atl. 96.

659. 4. Enright v. Gibson, 231 Ill. 550, 76 N. E. 689, *affirming* 119 Ill. App. 411; Young v. Lindstrom, 115 Ill. App. 239; Rawson v. Leggett, 184 N. Y. 504, 77 N. E. 662, *reversing* 97 N. Y. App. Div. 416, 90 N. Y. Supp. 5; Conner v. Wetmore, 110 N. Y. App. Div. 440, 96 N. Y. Supp. 999; Moore v. Statesville First Nat. Bank, 140 N. Car. 293, 52 S. E. 944, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659.

7. **Illustrative Cases — Probable Cause.** — Morgan v. Illinois Cent. R. Co., 117 La. 671, 42 So. 216 (theft — confessions implicating plaintiff); Rawson v. Leggett, 184 N. Y. 504, 77 N. E. 662, *reversing* 97 N. Y. App. Div. 416, 90 N. Y. Supp. 5 (grand larceny); Tyson v. Joseph H. Bauland Co., 186 N. Y. 397, 79 N. E. 3, *reversing* 107 N. Y. App. Div. 627, 95 N. Y. Supp. 1164 (larceny); Moore v. Statesville First Nat. Bank, 140 N. Car. 293, 52 S. E. 944 (issuance of attachment); Morgan v. Stewart, 144 N. Car. 424, 57 S. E. 149 (prosecution for violation of health ordinance); Singer Mfg. Co. v. Bryant, 105 Va. 403, 54 S. E. 320 (embezzlement); Simmons v. Gardner, (Wash. 1907) 89 Pac. 887 (charge of petit larceny); Desaulniers v. Hird, 15 Quebec K. B. 394; Meaney v. Reid-Newfoundland Co., 39 Nova Scotia 407 (embezzlement).

660. 1. **Illustrative Cases — Want of Probable Cause.**—Price v. Denison, 95 Minn. 106, 103 N. W. 728 (maliciously severing articles from freehold); McFadden v. Lane, 71 N. J. L. 624, 60 Atl. 365 (larceny); Krasnow v. Singer Mfg. Co., 115 N. Y. App. Div. 59, 100 N. Y. Supp. 591 (grand larceny); Berkowich v. Kommel, (Supm. Ct. App. T.) 107 N. Y. Supp. 119 (malicious civil action); Evans v. Atlantic Coast Line R. Co., 105 Va. 72, 53 S. E. 3 (larceny); Sharpe v. Willis, 29 Quebec Super. Ct. 475 (charge of theft).

4. Rawson v. Leggett, 184 N. Y. 504, 77 N. E. 662, *reversing* 97 N. Y. App. Div. 416, 90 N. Y. Supp. 5; Moore v. Statesville First Nat. Bank, 140 N. Car. 293, 52 S. E. 944; Hantman v. Hedden, 31 Pa. Super. Ct. 564; Coyle v. Snellenburg, 30 Pa. Super. Ct. 246; Singer Mfg. Co. v. Bryant, 105 Va. 403, 54 S. E. 320.

661. 2. Whipple v. Gorsuch, 82 Ark. 252, 101 S. W. 735, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 661.

5. King v. Apple River Power Co., 131 Wis. 575, 111 N. W. 668, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 661.

662. 1. King v. Apple River Power Co., 131 Wis. 575, 111 N. W. 668, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 662.

663. 1. Still v. Hastings, 13 Ont. L. Rep. 322, *affirmed* 14 Ont. L. Rep. 638. See also Malich v. Josephson, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 315, 98 N. Y. Supp. 671.

4. Jones v. Louisville, etc., R. Co., (Ky. 1906) 96 S. W. 793; Pinson v. Campbell, 124 Mo. App. 260, 101 S. W. 621; Stanford v. A. F. Messick Grocery Co., 143 N. Car. 419, 55 S. E. 815, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 663.

664. 1. Wells v. Parker, 76 Ark. 41, 88 S. W. 602, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 664; Pinson v. Campbell, 124 Mo. App. 260, 101 S. W. 621; Schultz v. Greenwood Cemetery, 190 N. Y. 276, 83 N. E. 41; Stanford v. A. F. Messick Grocery Co., 143 N. Car. 419, 55 S. E. 815, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 664; Putnam v. Stalker, (Oregon 1907) 91 Pac. 363.

3. Putnam v. Stalker, (Oregon 1907) 91 Pac. 363.

665. 1. Miller v. Runkle, (Iowa 1908) 114 N. W. 611.

2. Miller v. Runkle, (Iowa 1908) 114 N. W. 611; Lansky v. Prettyman, 140 Mich. 40, 103 N. W. 538.

5. National L., etc., Ins. Co. v. Gibson, (Ky. 1907) 101 S. W. 895.

666. 1. McGuirk v. O'Halloran, 149 Fed. 909; Goode v. Eslow, (Mich. 1908) 114 N. W. 859; Morgan v. Stewart, 144 N. Car. 424, 57 S. E. 149.

3. Jones v. Louisville, etc., R. Co., (Ky. 1906) 96 S. W. 793; Diab v. Shibley, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 315, 99 N. Y. Supp. 188, *affirming* 113 N. Y. App. Div. 903, 98 N. Y. Supp. 1100, and *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 666; Singer Mfg. Co. v. Bryant, 105 Va. 403, 54 S. E. 320.

6. Wells v. Parker, 76 Ark. 41, 88 S. W. 602; Gordon v. West, 129 Ga. 532, 59 S. E. 232; Thick v. Washer, 137 Mich. 155, 100 N. W. 394, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 666; Marlatte v. Weickgenant, 147 Mich. 266, 110 N. W. 1061, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 666.

667. 1. Gilmore v. Mastin, 115 Ill. App. 46; Thick v. Washer, 137 Mich. 155, 100 N. W. 394, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 667; Cobbey v. State Journal Co., (Neb. 1907) 113 N. W. 224, *reversing* (Neb. 1906) 110 N. W. 643; MacDonald v. Schroeder, 214 Pa. St. 411, 63 Atl. 1024, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 666 [667].

Iowa Rule — Prima Facie Proof. — Miller v. Runkle, (Iowa 1908) 114 N. W. 611.

2. McGuirk v. O'Halloran, 149 Fed. 909; Wells v. Parker, 76 Ark. 41, 88 S. W. 602; Thick v. Washer, 137 Mich. 155, 100 N. W. 394, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 667.

Prima Facie Evidence. — A judgment of conviction which is reversed on appeal is *prima facie* evidence of probable cause. Skeffington v. Eylward, 97 Minn. 244, 105 N. W. 638; Staton v. Mason, 119 N. Y. App. Div. 437, 104 N. Y. Supp. 155.

668. 5. Bell v. Thompson, (Ky. 1907) 102 S. W. 830.

669. 3. Cox v. English, etc., Bank, (1905) A. C. 168; Bélanger v. Larocque, 25 Quebec Super. Ct. 403; Sasse v. Rogers, (Ind. App. 1907) 81 N. E. 590; Young v. Lindstrom, 115 Ill. App. 239.

4. Staples v. Johnson, 25 App. Cas. (D. C.) 155; Goode v. Eslow, (Mich. 1908) 114 N. W. 859; Carp v. Queen Ins. Co., 203 Mo. 295, 101 S. W. 78; Sinclair v. Ruddell, 16 Manitoba 53.

670. 1. Jenkins v. Gilligan, 131 Iowa 176,

108 N. W. 237; Slater *v.* Walter, 148 Mich. 650, 112 N. W. 682; Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78; Pinson *v.* Campbell, 124 Mo. App. 260, 101 S. W. 621; Clark *v.* Palmer, 116 N. Y. App. Div. 117, 101 N. Y. Supp. 759; Robitzek *v.* Daum, (Pa. 1908) 69 Atl. 96; Mikelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906; Haas *v.* Powers, 130 Wis. 406, 110 N. W. 205 (on the evidence question held for jury); Still *v.* Hastings, 13 Ont. L. Rep. 322, *affirmed* 14 Ont. L. Rep. 638; Meaney *v.* Reid-Newfoundland Co., 39 Nova Scotia 407; Sinclair *v.* Ruddell, 16 Manitoba 53; Tanghe *v.* Morgan, 11 British Columbia 4[illegible].

671. 1. *Arizona.* — Richardson *v.* Powers, (Ariz. 1907) 89 Pac. 542.

District of Columbia. — Staples *v.* Johnson, 25 App. Cas. (D. C.) 155.

Iowa. — Jenkins *v.* Gilligan, 131 Iowa 176, 108 N. W. 237.

Michigan. — Slater *v.* Walter, 148 Mich. 650, 112 N. W. 682; Fleckinger *v.* Taffee, 149 Mich. 678, 113 N. W. 311.

Missouri. — Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78.

New York. — Malich *v.* Josephson, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 315, 98 N. Y. Supp. 671; Fetzer *v.* Burlew, 114 N. Y. App. Div. 650, 99 N. Y. Supp. 1100; Hobson *v.* Koch, 115 N. Y. App. Div. 299, 100 N. Y. Supp. 893; Freer *v.* Schmitt, 116 N. Y. App. Div. 462, 101 N. Y. Supp. 737; Clark *v.* Palmer, 116 N. Y. App. Div. 117, 101 N. Y. Supp. 759.

North Carolina. — Moore *v.* Statesville First Nat. Bank, 140 N. Car. 293, 52 S. E. 944; Morgan *v.* Stewart, 144 N. Car. 424, 57 S. E. 149.

Pennsylvania. — Boyd *v.* Kerr, 216 Pa. St. 259, 65 Atl. 674; Robitzek *v.* Daum, (Pa. 1908) 69 Atl. 96; Mikelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906.

Washington. — Simmons *v.* Gardner, (Wash. 1907) 89 Pac. 887.

Wisconsin. — King *v.* Apple River Power Co., 131 Wis. 575, 111 N. W. 668.

Canada. — Still *v.* Hastings, 13 Ont. L. Rep. 322, *affirmed* 14 Ont. L. Rep. 638; Meaney *v.* Reid-Newfoundland Co., 39 Nova Scotia 407; Tanghe *v.* Morgan, 11 British Columbia 455; Sinclair *v.* Ruddell, 16 Manitoba 53; Wainwright *v.* Villetard, 2 W. L. R. 242.

672. 2. Malich *v.* Josephson, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 315, 98 N. Y. Supp. 671; Boyd *v.* Kerr, 216 Pa. St. 259, 65 Atl. 674.

4. Shattuck *v.* Simonds, 191 Mass. 506, 78 N. E. 122; Healey *v.* Aspinwall, (Mass. 1907) [illegible] Transit Co., 16 Pa. Dist. 906.

5. Krassnow *v.* Singer Mfg. Co., 115 N. Y. App. Div. 59, 100 N. Y. Supp. 591.

6. Price *v.* Denison, 95 Minn. 106, 103 N. W. 728.

673. 1. Whipple *v.* Gorsuch, 82 Ark. 252, 101 S. W. 735, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 673.

3. *England.* — Cox *v.* English, etc. Bank, (1905) A. C. 168.

Canada. — Sinclair *v.* Ruddell, 16 Manitoba 53.

Alabama. — Goldstein *v.* Drysdale, (Ala. 1906) 42 So. 744.

Colorado. — Van Meter *v.* Bass, (Colo. 1907) 90 Pac. 637.

District of Columbia. — Staples *v.* Johnson, 25 App. Cas. (D. C.) 155.

Idaho. — Russell *v.* Chamberlain, 12 Idaho [illegible] Chamberlain, 12 Idaho 304, 85 Pac. 927.

Illinois. — Enright *v.* Gibson, 219 Ill. 550, 76 N. E. 689, *affirming* 119 Ill. App. 411.

Indiana. — Farmers' Mut. F. Ins. Assoc. *v.* Stewart, 167 Ind. 544, 79 N. E. 490, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 673; Whitesell *v.* Study, 37 Ind. App. 429, 76 N. E. 1010.

Iowa. — Gabriel *v.* McMullin, 127 Iowa 426, 103 N. W. 355; Miller *v.* Runkle, (Iowa 1908) 114 N. W. 611.

Kentucky. — Sehon *v.* Whitt, (Ky. 1906) 92 S. W. 280; National L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895.

Louisiana. — Kirk *v.* Wiener-Loeb Laundry Co., (La. 1908) 45 So. 738.

Massachusetts. — Shattuck *v.* Simonds, 191 Mass. 506, 78 N. E. 122.

Missouri. — Pandjiris *v.* Hartman, 196 Mo. 539, 94 S. W. 270.

Montana. — Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33.

Nebraska. — Cobbey *v.* State Journal Co., (Neb. 1907) 113 N. W. 224, *reversing* (Neb. 1906) 110 N. W. 643.

New York. — Schultz *v.* Greenwood Cemetery, 190 N. Y. 276, 83 N. E. 41; Fetzer *v.* Burlew, 114 N. Y. App. Div. 650, 99 N. Y. Supp. 1100; Cook *v.* Bartlett, 115 N. Y. App. Div. 829, 100 N. Y. Supp. 1032; East *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 683, 101 N. Y. Supp. 364; Berkowich *v.* Kommel, (Supm. Ct. App. T.) 107 N. Y. Supp. 119.

North Carolina. — Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 138 N. Car. 174, 50 S. E. 571; Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 143 N. Car. 54, 55 S. E. 422; Gaither *v.* Carpenter, 143 N. Car. 240, 55 S. E. 625.

South Carolina. — Freeland *v.* Southern R. Co., 70 S. Car. 427, 50 S. E. 11.

Virginia. — Graves *v.* Scott, 104 Va. 372, 51 S. E. 821.

Washington. — Ton *v.* Stetson, 43 Wash. 471, 86 Pac. 668.

Malice Never Assumed. — Mikell [illegible] delphia Rapid Transit Co., 16 Pa. Dist. 906.

674. 2. Definition. — See McFadden *v.* Lane, 71 N. J. L. 624, 60 Atl. 365; Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 138 N. Car. 174, 50 S. E. 571.

Malice is a disposition to do the person prosecuted a wrong without legal excuse. Gaither *v.* Carpenter, 143 N. Car. 240, 55 S. E. 625.

Malice Is Distinguishable from Mere Negligence in that it arises from some purpose, while negligence arises from absence of purpose. Jenkins *v.* Gilligan, 131 Iowa 176, 108 N. W. 237.

675. 4. Rutherford *v.* Dyer, 146 Ala. 665, 40 So. 974; Jenkins *v.* Gilligan, 131 Iowa 176, 108 N. W. 237; Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 138 N. Car. 174, 50

S. E. 571; Stanford *v.* A. F. Messick Grocery Co., 143 N. Car. 419, 55 S. E. 815.

676. 3. Vorhes *v.* Buchwald, (Iowa 1907) 112 N. W. 1105; White *v.* Apsley Rubber Co., 194 Mass. 97, 80 N. E. 500. See also Potter *v.* Sims, (Iowa 1907) 111 N. W. 29.

4. O'Donald *v.* Schroeder, 214 Pa. St. 411, 63 Atl. 1024.

8. Goldstein *v.* Drysdale, (Ala. 1906) 42 So. 744; Staples *v.* Johnson, 25 App. Cas. (D. C.) 155; Sasse *v.* Rogers, (Ind. App. 1907) 81 N. E. 590; Pierce *v.* Doolittle, 130 Iowa 333, 106 N. W. 751; Shattuck *v.* Simonds, 191 Mass. 506, 78 N. E. 122; Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78; Fetzer *v.* Burlew, 114 N. Y. App. Div. 650, 99 N. Y. Supp. 1100; Stanford *v.* A. F. Messick Grocery Co., 143 N. Car. 419, 55 S. E. 815; Haas *v.* Powers, 130 Wis. 406, 110 N. W. 205 (evidence held to be for the jury).

677. 2. Russell *v.* Chamberlain, 12 Idaho 290, 85 Pac. 926; Horner *v.* Chamberlain, 12 Idaho 304, 85 Pac. 927; Young *v.* Lindstrom, 115 Ill. App. 239; Pinson *v.* Campbell, 124 Mo. App. 260, 101 S. W. 621; Cobbey *v.* State Journal Co., (Neb. 1907) 113 N. W. 224, *reversing* (Neb. 1906) 110 N. W. 643; Gaither *v.* Carpenter, 143 N. Car. 240, 55 S. E. 625; Simmons *v.* Gardner, (Wash. 1907) 89 Pac. 887.

678. 1. Young *v.* Lindstrom, 115 Ill. App. 239; Vorhes *v.* Buchwald, (Iowa 1907) 112 N. W. 1105; Emory *v.* Eggan, 75 Kan. 82, 88 Pac. 742; National L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895; Goode *v.* Eslow, (Mich. 1908) 114 N. W. 859; Hudson *v.* Truman, (Neb. 1907) 112 N. W. 325; Cobbey *v.* State Journal Co., (Neb. 1907) 113 N. W. 224, *reversing* (Neb. 1906) 110 N. W. 643; Conner *v.* Wetmore, 110 N. Y. App. Div. 440, 96 N. Y. Supp. 999; Simmons *v.* Gardner, (Wash. 1907) 89 Pac. 887.

2. Simmons *v.* Gardner, (Wash. 1907) 89 Pac. 887.

4. Cunningham *v.* Moreno, (Ariz. 1905) 80 Pac. 327; Jenkins *v.* Gilligan, 131 Iowa 176, 108 N. W. 237; Vorhes *v.* Buchwald, (Iowa 1907) 112 N. W. 1105; Jones *v.* Louisville, etc., R. Co., (Ky. 1906) 96 S. W. 793; National L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895; Price *v.* Denison, 95 Minn. 106, 103 N. W. 728; Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33; McFadden *v.* Lane, 71 N. J. L. 624, 60 Atl. 365, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 678; Merrell *v.* Dudley, 139 N. Car. 57, 51 S. E. 777; Evans *v.* Atlantic Coast Line R. Co., 105 Va. 72, 53 S. E. 3; Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 320.

Malice Not Inferred from Want of Probable Cause Alone. — Pierce *v.* Doolittle, 130 Iowa 333, 106 N. W. 751, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 678.

679. 1. Cook *v.* Proskey, (C. C. A.) 138 Fed. 273; Pierce *v.* Doolittle, 130 Iowa 333, 106 N. W. 751; McCarthy *v.* Weir, 113 N. Y. App. Div. 435, 99 N. Y. Supp. 372; Fetzer *v.* Burlew, 114 N. Y. App. Div. 650, 99 N. Y. Supp. 1100; Cook *v.* Bartlett, 115 N. Y. App. Div. 829, 100 N. Y. Supp. 1032; Baker *v.* Moore, 29 Pa. Super. Ct. 301; Ton *v.* Stetson, 43 Wash. 471, 86 Pac. 668.

680. 2. National L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895; Marlatte *v.* Weickgenant, 147 Mich. 266, 110 N. W. 1061; Evans *v.* Atlantic Coast Line R. Co., 105 Va. 72, 53 S. E. 3; Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 320.

3. Gordon *v.* West, 129 Ga. 532, 59 S. E. 232, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680; Whitesell *v.* Study, 37 Ind. App. 429, 76 N. E. 1010; Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 138 N. Car. 174, 50 S. E. 571; Gaiser *v.* Hurleman, 74 Ohio St. 271, 78 N. E. 372; Graves *v.* Scott, 104 Va. 372, 51 S. E. 821; Ton *v.* Stetson, 43 Wash. 471, 86 Pac. 668.

Proof of Want of Probable Cause does not relieve the plaintiff from proving a termination of the former action in his favor. McGuirk *v.* O'Halloran, 149 Fed. 909.

Action May Be Begun Same Day Proceedings Terminated. — Enright *v.* Gibson, 119 Ill. App. 411, *affirmed* 219 Ill. 550, 76 N. E. 689.

Termination Must Be by Acquittal of Accused or by Dismissal of Prosecution. — Lieblang *v.* Cleveland City Electric R. Co., 26 Ohio Cir. Ct. 30.

681. 1. Beemer *v.* Beemer, 9 Ont. L. Rep. 69, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 681; Graves *v.* Scott, 104 Va. 372, 51 S. E. 821, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 681; Evans *v.* Atlantic Coast Line R. Co., 105 Va. 72, 53 S. E. 3.

682. 1. Sasse *v.* Rogers, (Ind. App. 1907) 81 N. E. 590; Schaefer *v.* Cremer, 19 S. Dak. 656, 104 N. W. 468; Bartlett *v.* Jenkins, 150 Mich. 682, 114 N. W. 679.

3. Wells *v.* Parker, 76 Ark. 41, 88 S. W. 602, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682.

6. McKinnon *v.* McLaughlin Carriage Co., 37 N. Bruns. 3.

9. Gaiser *v.* Hurleman, 74 Ohio St. 271, 78 N. E. 372.

683. 1. Lamprey *v.* Hood, 73 N. H. 384, 62 Atl. 380.

684. 1. Cox *v.* English, etc., Bank, (1905) A. C. 168; Gordon *v.* West, 129 Ga. 532, 59 S. E. 232; Shattuck *v.* Simonds, 191 Mass. 506, 78 N. E. 122; Berkowich *v.* Kommel, (Supm. Ct. App. T.) 107 N. Y. Supp. 119.

2. Cascarella *v.* National Grocer Co., (Mich. 1908) 114 N. W. 857, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684; Marlatte *v.* Weickgenant, 147 Mich. 266, 110 N. W. 1061; Lamprey *v.* Hood, 73 N. H. 384, 62 Atl. 380; Baxter *v.* Gordon, etc., Co., 13 Ont. L. Rep. 598, 7 Ann. Cas. 452.

3. Gaiser *v.* Hurleman, 74 Ohio St. 271, 78 N. E. 372.

685. 1. Where the Defendant Instructed the Officers not to serve the warrant, it was held not to be a termination of the action unless the court discharged the plaintiff or recalled the warrant. Mitchell *v.* Donanski, (R. I. 1906) 65 Atl. 611.

3. Lamprey *v.* Hood, 73 N. H. 384, 62 Atl. 380.

5. Shannon *v.* Sims, 146 Ala. 673, 40 So. 574; Van Meter *v.* Bass, (Colo. 1907) 90 Pac. 637 (advice of prosecuting attorney); Staples *v.* Johnson, 25 App. Cas. (D. C.) 155; National

L., etc., Ins. Co. *v.* Gibson, (Ky. 1907) 101 S. W. 895; Fleckinger *v.* Taffee, 149 Mich. 678, 113 N. W. 311; Slater *v.* Walter, 148 Mich. 650, 112 N. W. 682 (advice of prosecuting officer); Pandjiris *v.* Hartman, 196 Mo. 539, 94 S. W. 270; Pinson *v.* Campbell, 124 Mo. App. 260, 101 S. W. 621; Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33; Putnam *v.* Stalker, (Oregon 1907) 91 Pac. 363 (advice of prosecuting attorney); Brinsley *v.* Schultz, 124 Wis. 426, 102 N. W. 918; King *v.* Apple River Power Co., 131 Wis. 575, 111 N. W. 668.

Acting Beyond Advice of Counsel. — Where the magistrate or counsel advises that it is doubtful if upon the facts stated a party is guilty of any crime, the party proceeds at his own risk. Cascarella *v.* National Grocer Co., (Mich. 1908) 114 N. W. 857, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684.

Advice Given after the Commencement of the Prosecution cannot be offered as evidence of probable cause. Murphy *v.* Eidlitz, 121 N. Y. App. Div. 224, 105 N. Y. Supp. 674, *reversing* 113 N. Y. App. Div. 659, 99 N. Y. Supp. 950.

686. 1. McGuirk *v.* O'Halloran, 149 Fed. 909.

2. Emory *v.* Eggan, 75 Kan. 82, 88 Pac. 742, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 686.

687. 1. Cook *v.* Proskey, (C. C. A.) 138 Fed. 273; Emory *v.* Eggan, 75 Kan. 82, 88 Pac. 742, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687; Sehon *v.* Whitt, 92 S. W. 280, 29 Ky. L. Rep. 691; Cook *v.* Bartlett, 115 N. Y. App. Div. 829, 100 N. Y. Supp. 1032; Pittsburg, etc., R. Co. *v.* Wakefield Hardware Co., 143 N. Car. 54, 55 S. E. 422.

2. Baker *v.* Moore, 29 Pa. Super. Ct. 301.

4. Baker *v.* Langley, (Ga. App. 1908) 60 S. E. 371; King *v.* Erskins, 116 La. 480, 40 So. 841; Lansky *v.* Prettyman, 140 Mich. 40, 103 N. W. 538; Davis *v.* McMillan, 142 Mich. 391, 105 N. W. 862; Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78; Radcliffe *v.* Hollyfield, 216 Pa. St. 367, 65 Atl. 789; Evans *v.* Atlantic Coast Line R. Co., 105 Va. 72, 53 S. E. 3; Brinsley *v.* Schulz, 124 Wis. 426, 102 N. W. 918; Haas *v.* Powers, 130 Wis. 406, 110 N. W. 205; King *v.* Apple River Power Co., 131 Wis. 575, 111 N. W. 668.

Omission of any Material Fact. — Cochran *v.* Bones, 1 Cal. App. 729, 82 Pac. 970 (statement made to justice of peace).

5. Lansky *v.* Prettyman, 140 Mich. 40, 103 N. W. 538, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687.

688. 3. King *v.* Apple River Power Co., 131 Wis. 575, 111 N. W. 668, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

4. King *v.* Apple River Power Co., 131 Wis. 575, 111 N. W. 668, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

5. Kirk *v.* Wiener-Loeb Laundry Co., (La. 1908) 45 So. 738; Davis *v.* McMillan, 142 Mich. 391, 105 N. W. 862; Gurden *v.* Stevens, 146 Mich. 489, 109 N. W. 856; Putnam *v.* Stalker, (Oregon 1907) 91 Pac. 363 (evidence of good faith held sufficient); Radcliffe *v.* Hollyfield, 216 Pa. St. 367, 65 Atl. 789; Evans *v.* Atlantic Coast Line R. Co., 105 Va. 72, 53 S. E. 3; Haas *v.* Powers, 130 Wis. 406, 110 N. W. 205.

689. 5. Staples *v.* Johnson, 25 App. Cas. (D. C.) 155; Healey *v.* Aspinwall, (Mass. 1907) 81 N. E. 256; Gurden *v.* Stevens, 146 Mich. 489, 109 N. W. 856; Haas *v.* Powers, 130 Wis. 406, 110 N. W. 205.

6. Goldstein *v.* Drysdale, (Ala. 1906) 42 So. 744; Wells *v.* Parker, 76 Ark. 41, 88 S. W. 602; Staples *v.* Johnson, 25 App. Cas. (D. C.) 155; Healey *v.* Aspinwall, (Mass. 1907) 81 N. E. 256; Lansky *v.* Prettyman, 140 Mich. 40, 103 N. W. 538; Phiscator *v.* Rice, 147 Mich. 411, 110 N. W. 1095 (evidence held to require submission to jury); Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78; Radcliffe *v.* Hollyfield, 216 Pa. St. 367, 65 Atl. 789; Simmons *v.* Gardner, (Wash. 1907) 89 Pac. 887; Haas *v.* Powers, 130 Wis. 406, 110 N. W. 205; King *v.* Apple River Power Co., 131 Wis. 575, 111 N. W. 668.

690. 1. Cook *v.* Proskey, (C. C. A.) 138 Fed. 273 (police magistrate).

3. Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78.

691. 1. **Action by Parent for Prosecution of Child.** — See Sperier *v.* Ott, 116 La. 1087, 41 So. 323.

2. Cascarella *v.* National Grocer Co., (Mich. 1908) 114 N. W. 857.

The Agent Is Not Liable if he took no part in the institution of the proceedings, but simply furnished the information on which the prosecution was based. Miller *v.* Metropolitan L. Ins. Co., (Ky. 1905) 89 S. W. 183.

3. **The Attorney Is Not Liable** where the advice is given in good faith in the belief that there is probable cause. Miller *v.* Metropolitan L. Ins. Co., 89 S. W. 183, 28 Ky. L. Rep. 223.

5. Farmers' Mut. F. Ins. Assoc. *v.* Stewart, 167 Ind. 544, 79 N. E. 490, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 691; White *v.* Apsley Rubber Co., 194 Mass. 97, 80 N. E. 500; Nickelson *v.* Cameron Lumber Co., 39 Wash. 569, 81 Pac. 1059; Croteau *v.* Arthabaska Water, etc., Co., 30 Quebec Super. Ct. 128; Léonard *v.* Ramsay, 30 Quebec Super. Ct. 345.

Authorization or Ratification Must Be Shown. — Canon *v.* Sharon, etc., St. R. Co., 216 Pa. St. 408, 65 Atl. 795.

7. Staton *v.* Mason, 119 N. Y. App. Div. 437, 104 N. Y. Supp. 155 (evidence of authority held sufficient).

Evidence of Authority Held Sufficient. — Nickelson *v.* Cameron Lumber Co., 39 Wash. 569, 81 Pac. 1059.

692. 1. Farmers' Mut. F. Ins. Assoc. *v.* Stewart, 167 Ind. 544, 79 N. E. 490, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692.

3. Shannon *v.* Sims, 146 Ala. 673, 40 So. 574; Goldstein *v.* Drysdale, (Ala. 1906) 42 So. 744.

4. Baker *v.* Moore, 29 Pa. Super. Ct. 306.

6. **It Must Appear that the Affiant Knew that Affidavit Was False** or did not have reasonable and probable cause to believe it to be true. Izzo *v.* Viscount, (N. J. 1906) 64 Atl. 953.

7. Russell *v.* Chamberlain, 12 Idaho 299, 85 Pac. 926; Horner *v.* Chamberlain, 12 Idaho 304, 85 Pac. 927.

8. Russell *v.* Chamberlain, 12 Idaho 299, 85 Pac. 926; Horner *v.* Chamberlain, 12 Idaho 304, 85 Pac. 927; Shannon *v.* Sims, 146 Ala. 673, 40 So. 574.

693. 1. Cook *v.* Proskey, (C. C. A.) 138 Fed. 273.

694. 3. **It Is Sufficient Proof** that a prosecution was carried on to show that a warrant was issued, an arrest thereunder made, and a commitment for trial had. Baker *v.* Langley, (Ga. App. 1908) 60 S. E. 371.

7. **Evidence Admissible of Probable Cause.** Skeffington *v.* Eylward, 97 Minn. 244, 105 N. W. 638 (evidence that defendant acted in official capacity); Schroeder *v.* Blum, 74 Neb. 60, 103 N. W. 1073 (threats made by defendant); Conner *v.* Wetmore, 110 N. Y. App. Div. 440, 96 N. Y. Supp. 999 (plaintiff's belief as to probable cause).

Evidence Admissible of Want of Probable Cause. — Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78 (evidence that purpose of malicious prosecution was to avoid civil liability).

Evidence Inadmissible of Want of Probable Cause. — Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33 (entry in justice docket that there seemed to be no cause for the prosecution); Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 320 (self-serving declarations made by the plaintiff to his attorney).

695. 1. **Evidence of What Occurred between the Magistrate and the Defendant** at the time the information was sworn to was held to be admissible on the question of malice. Fetzer *v.* Burlew, 114 N. Y. App. Div. 650, 99 N. Y. Supp. 1100.

4. Conner *v.* Wetmore, 110 N. Y. App. Div. 440, 96 N. Y. Supp. 999.

696. 2. Merrell *v.* Dudley, 139 N. Car. 57, 51 S. E. 777.

697. 1. **The Grand Jury Docket May Be Received in Evidence** as showing that an investigation was had and no indictment returned. Shannon *v.* Sims, 146 Ala. 673, 40 So. 574.

3. Enright *v.* Gibson, 119 Ill. App. 411, *affirmed* 219 Ill. 550, 76 N. E. 689 (certified transcript of justice's proceedings); Tanghe *v.* Morgan, 11 British Columbia 455.

5. Conner *v.* Wetmore, 110 N. Y. App. Div. 440, 96 N. Y. Supp. 999.

698. 1. **The Disagreement of the Jury on a Prior Trial** is not admissible as evidence of probable cause. Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78.

5. Shea *v.* Cloquet Lumber Co., 97 Minn. 41, 105 N. W. 552; Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78.

7. Emory *v.* Eggan, 75 Kan. 82, 88 Pac. 74[illegible].

699. 1. Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33.

3. Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33.

6. Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33.

700. 4. Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 320.

6. Pierce *v.* Doolittle, 130 Iowa 333, 106 N. W. 751.

7. *England.* — Cox *v.* English, etc., Bank, (1905) A. C. 168.

Canada. — Desaulniers *v.* Hird, 15 Quebec K. B. 394. *Compare* Sharpe *v.* Willis, 29 Quebec Super. Ct. 14.

Illinois. — Enright *v.* Gibson, 219 Ill. 550, 76 N. E. 689, *affirming* 119 Ill. App. 411; Young *v.* Lindstrom, 115 Ill. App. 239.

Massachusetts. — Healey *v.* Aspinwall, (Mass. 1907) 81 N. E. 256.

Michigan. — Harris *v.* Thomas, 140 Mich. 462, 103 N. W. 863; Davis *v.* McMillan, 142 Mich. 391, 105 N. W. 862.

Nebraska. — Cobbey *v.* State Journal Co., (Neb. 1907) 113 N. W. 224, *reversing* (Neb. 1906) 110 N. W. 643.

New York. — Schultz *v.* Greenwood Cemetery, 190 N. Y. 276, 83 N. E. 41; Malich *v.* Josephson, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 315, 98 N. Y. Supp. 671; Clark *v.* Palmer, 116 N. Y. App. Div. 117, 101 N. Y. Supp. 759.

North Carolina. — Stanford *v.* A. F. Messick Grocery Co., 143 N. Car. 419, 55 S. E. 815.

Oregon. — Putnam *v.* Stalker, (Oregon 1907) 91 Pac. 363.

Pennsylvania. — Mikelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906.

Washington. — Simmons *v.* Gardner, (Wash. 1907) 89 Pac. 887.

701. 1. Clark *v.* Palmer, 116 N. Y. App. Div. 117, 101 N. Y. Supp. 759; MacDonald *v.* Schroeder, 214 Pa. St. 411, 63 Atl. 1024.

2. Healey *v.* Aspinwall, (Mass. 1907) 81 N. E. 256; Cobbey *v.* State Journal Co., (Neb. 1907) 113 N. W. 224, *reversing* (Neb. 1906) 110 N. W. 643; Mikelberg *v.* Philadelphia Rapid Transit Co., 16 Pa. Dist. 906; Simmons *v.* Gardner, (Wash. 1907) 89 Pac. 887; Desaulniers *v.* Hird, 15 Quebec K. B. 394; Sharpe *v.* Willis, 29 Quebec Super. Ct. 14.

702. 2. Cobbey *v.* State Journal Co., (Neb. 1907) 113 N. W. 224, *reversing* (Neb. 1906) 110 N. W. 643.

Proof of Want of Probable Cause is not alone sufficient to support a verdict for substantial damages. Cook *v.* Bartlett, 115 N. Y. App. Div. 829, 100 N. Y. Supp. 1032.

5. **For Instances of Verdicts Held to Be Excessive.** — Sasse *v.* Rogers, (Ind. App. 1907) 81 N. E. 590; Davis *v.* McMillan, 142 Mich. 391, 105 N. W. 862 ($4,000 for malicious prosecution for obtaining money by false pretense).

For Instances of Verdicts Held Not to Be Excessive. — Provident Sav. L. Assur. Soc. *v.* Johnson, (Ky. 1907) 99 S. W. 1159; Shea *v.* Cloquet Lumber Co., 97 Minn. 41, 105 N. W. 552 ($1,200 for prosecution for assault with intent to kill); Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78 ($12,500 for malicious prosecution for arson); Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33 ($550 for prosecution for larceny).

6. **Evidence.** — Although the plaintiff did not attempt to secure his release on his own recognizance it was held that this could not be used to show that he did not consider himself damaged by the prosecution. Reynolds *v.* Dunlap, 73 Kan. 759, 84 Pac. 720.

703. 2. Stanford *v.* A. F. Messick Grocery Co., 143 N. Car. 419, 55 S. E. 815.

5. Shannon *v.* Sims, 146 Ala. 673, 40 So. 574; Harris *v.* Thomas, 140 Mich. 462, 103 N. W. 863.

A Parent May Not Recover for Mental Suffering caused by the malicious prosecution of his child. Sperier *v.* Ott, 116 La. 1087, 41 So. 323.

704. 3. Martin *v.* Corscadden, 34 Mont. 308, 86 Pac. 33; Faroux *v.* Cornwell, (Tex. Civ. App. 1905) 90 S. W. 537.

Punitive Damages Will Not Be Awarded against the master for the malicious acts of the servant not ratified by the master. East *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 683, 101 N. Y. Supp. 364; Samieloff *v.* New York, etc., R. Co., 122 N. Y. App. Div. 770, 107 N. Y. Supp. 774.

Punitive Damages Allowed When Express Malice Shown. — Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 320.

Punitive Damages Not Awarded against Estate of Wrongdoer. — Morris *v.* Duncan, 126 Ga. 467, 54 S. E. 1045.

Exemplary Damages Are Not Allowed unless there are some features of aggravation, as when the wrong is done wilfully, or under circumstances of oppression or with reckless disregard of the plaintiff's rights. Stanford *v.* A. F. Messick Grocery Co., 143 N. Car. 419, 55 S. E. 815, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 704.

MALT LIQUOR.

705. 1. Cullinan *v.* McGovern, (Supm. Ct. Spec. T.) 94 N. Y. Supp. 525; People *v.* Cox, 106 N. Y. App. Div. 299, 94 N. Y. Supp. 526, *affirming* (County Ct.) 45 Misc. (N. Y.) 311, 92 N. Y. Supp. 125.

MALUM IN SE AND MALUM PROHIBITUM.

705. 2. State *v.* Horton, 139 N. Car. 592, 51 S. E. 945, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 705.

MAN.

705. 3. **The Expression "Man in Possession,"** as used in the schedule to the Distress (Costs) Act, 1817, means *man* in possession of the goods seized, and is not confined to *man* in possession upon the premises where the seizure took place. Scott *v.* Denton, (1907) 1 K. B. 456, 76 L. J. K. B. 330, 95 L. T. N. S. 760, 71 J. P. 66, 5 Local Gov. Rep. 251, 23 Times L. Rep. 73.

MANAGE.

706. 1. *In re* Haywood, 148 Cal. 188, 82 Pac. 755, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 706.

MANAGER.

707. 1. State *v.* Hemenover, 188 Mo. 381, 87 S. W. 482, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 707.

Insurance Solicitor Not Managing Agent. — Spiker *v.* American Relief Soc., 140 Mich. 225, 103 N. W. 611, 104 N. W. 670.

Part Owner of Building Manager. — State *v.* Eyermann, 115 Mo. App. 664, 90 S. W. 1168, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 707.

MANDAMUS.

716. 1. Shreve *v.* Pendleton, 129 Ga. 374, 58 S. E. 880; Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1100, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 716, *per* Carter, J., dissenting; Hager *v.* New South Brewing Co., (Ky. 1906) 90 S. W. 608; People *v.* Doe, 109 N. Y. App. Div. 674, 96 N. Y. Supp. 389, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 716; Matney *v.* King, (Okla. 1908) 93 Pac. 737; Ramsey *v.* King, (Okla. 1908) 93 Pac. 754; State *v.* Ross, 39 Wash. 408, 81 Pac. 865; State *v.* Drainage Dist. No. 1, (Wash. 1907) 90 Pac. 660.

2. Southern R. Co. *v.* Atlanta Stove Works, 128 Ga. 207, 57 S. E. 429; Funk *v.* State, 166 Ind. 455, 77 N. E. 854; State *v.* Richardson, 48 Oregon 309, 85 Pac. 225.

717. 1. **History of Writ.** — Southern R. Co. *v.* Atlanta Stove Works, 128 Ga. 207, 57 S. E. 429; Hamlin *v.* Higgins, 102 Me. 510, 67 Atl. 625; *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404; State *v.* Richardson, 48 Oregon 309, 85 Pac. 225; State *v.* Drainage Dist. No. 1, (Wash. 1907) 90 Pac. 660.

2. Hamlin *v.* Higgins, 102 Me. 510, 67 Atl. 625; San Antonio *v.* Routledge, (Tex. Civ. App. 1907) 102 S. W. 756.

4. People *v.* Rose, 225 Ill. 496, 80 N. E. 293; Funk *v.* State, 166 Ind. 455, 77 N. E. 854; State *v.* Gibson, 187 Mo. 536, 86 S. W. 177; State *v.* Miles, (Mo. 1908) 109 S. W. 595; People *v.* Best, 187 N. Y. 1, 79 N. E. 890; State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907.

5. Southern R. Co. *v.* Atlanta Stove Works, 128 Ga. 207, 57 S. E. 429; Funk *v.* State, 166 Ind. 455, 77 N. E. 854; *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404; State *v.* Gibson, 187 Mo. 536, 86 S. W. 177; People *v.* Best, 187 N. Y. 1, 79 N. E. 890.

718. 1. State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 718.

2. State *v.* Gibson, 187 Mo. 536, 86 S. W. 177; Nuckolls County *v.* Guthrie, (Neb. 1906) 107 N. W. 779; State *v.* Cain, 78 S. Car. 348, 58 S. E. 937.

3. Fox *v.* Workman, (Cal. 1907) 92 Pac. 742; State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907.

5. Ford *v.* Manchester, (Iowa 1907) 113 N. W. 846, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 718; State *v.* U. S. Express Co., 95 Minn. 442, 104 N. W. 556; Jacquelin *v.* Erie R. Co., 69 N. J. Eq. 432, 61 Atl. 18; State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907; Caffrey *v.* Caffrey, 28 Pa. Super. Ct. 22; Com. *v.* James, 214 Pa. St. 319, 63 Atl. 743; Stegmaier *v.* Goeringer, (Pa. 1907) 67 Atl. 782; Wall *v.* Club Land, etc., Co., (Tex. Civ. App. 1905) 88 S. W. 534; Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

719. 2. Fox *v.* Workman, (Cal. 1907) 92 Pac. 742; Chicago City R. Co. *v.* People, 116 Ill. App. 633; Hager *v.* New South Brewing Co., (Ky. 1906) 90 S. W. 608; Wall *v.* Club Land, etc., Co., (Tex. Civ. App. 1907) 88 S. W. 534.

3. Woodworth *v.* Old Second Nat. Bank, 144 Mich. 338, 107 N. W. 905, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719; State *v.* Kendall, 45 Wash. 542, 87 Pac. 821.

4. Merrill *v.* Suffa, (Colo. 1908) 93 Pac. 1009; Nelson *v.* Steele, 12 Idaho 762, 88 Pac. 95; State *v.* Drainage Dist. No. 1, (Wash. 1907) 90 Pac. 660.

5. Duke *v.* Turner, 204 U. S. 623, 27 U. S. Sup. Ct. 317; Nelson *v.* Steele, 12 Idaho 762, 88 Pac. 95; State *v.* Clausen, 45 Wash. 437, 87 Pac. 498.

720. 1. Nelson *v.* Steele, 12 Idaho 762, 88 Pac. 95; Funk *v.* State, 166 Ind. 455, 77 N. E. 854; Ford *v.* Manchester, (Iowa 1907) 113 N. W. 846; State *v.* Fabrick, (N. Dak. 1907) 112 N. W. 74.

2. Woodworth *v.* Old Second Nat. Bank, 144 Mich. 338, 107 N. W. 905, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720.

3. Woodworth *v.* Old Second Nat. Bank, 144 Mich. 338, 107 N. W. 905, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720.

4. *United States.* — Duke *v.* Turner, 204 U. S. 623, 27 U. S. Sup. Ct. 317.

Illinois. — McCann *v.* Harris, 114 Ill. App. 308.

Indiana. — Funk *v.* State, 166 Ind. 455, 77 N. E. 854.

Kansas. — Nation *v.* Rundberg, (Kan. 1908) 94 Pac. 257.

Louisiana. — State *v.* Acme Lumber Co., 115 La. 893, 40 So. 301.

Maine. — Edwards Mfg. Co. *v.* Farrington, 102 Me. 140, 66 Atl. 309.

Mississippi. — McHenry *v.* State, (Miss. 1907) 44 So. 831.

Missouri. — State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720; State *v.* Miles, (Mo. 1908) 109 S. W. 595.

Pennsylvania. — Caffrey *v.* Caffrey, 28 Pa. Super. Ct. 22.

Tennessee. — State *v.* Thompson, 118 Tenn. 571, 102 S. W. 349.

Texas. — Munson *v.* Terrell, (Tex. 1907) 105 S. W. 1114.

6. Hager *v.* New South Brewing Co., (Ky. 1906) 90 S. W. 608; O'Neal *v.* Minary, (Ky. 1907) 101 S. W. 951; McHenry *v.* State, (Miss. 1907) 44 So. 831; Caffrey *v.* Caffrey, 28 Pa. Super. Ct. 22; State *v.* Thompson, 118 Tenn. 571, 102 S. W. 349; Wandelohr *v.* Rainey, (Tex. 1907) 100 S. W. 1155; San Antonio *v.* Routledge, (Tex. Civ. App. 1907) 102 S. W. 756.

7. Shreve *v.* Pendleton, 129 Ga. 374, 58 S. E. 880; Kingsberry *v.* People's Furniture Co., (Ga. 1908) 60 S. E. 865; State *v.* Spinney, 166 Ind. 282, 76 N. E. 971; State *v.* Jackson, 168 Ind. 384, 81 N. E. 62; Perry *v.* Clarke County, 133 Iowa 281, 110 N. W. 591; Hamlin *v.* Higgins, 102 Me. 510, 67 Atl. 625; State *v.* U. S. Express Co., 95 Minn. 442, 104 N. W. 556; *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404; State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907; Starkweather *v.* Kemp, 18 Okla. 28, 88 Pac. 1045.

721. 5. State *v.* Connersville Natural Gas Co., 163 Ind. 563, 71 N. E. 483, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721; McDowell *v.* Avon-by-the-Sea Land, etc., Co., (N. J. 1906) 63 Atl. 13.

6. McCaskell *v.* Bower, 126 Ga. 341, 54 S. E. 943; Lindblad *v.* Board of Education, 221 Ill. 261, 77 N. E. 450; Jacquelin *v.* Erie R. Co., 69 N. J. Eq. 432, 61 Atl. 18; Harley *v.* Lindemann, 129 Wis. 514, 109 N. W. 570; Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337, 984.

10. State *v.* Ross, 39 Wash. 408, 81 Pac. 865, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721.

722. 1. State *v.* Ross, 39 Wash. 408, 81 Pac. 865, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 722.

3. State *v.* Summit Lumber Co., 117 La. 643, 42 So. 195.

5. State *v.* Lawrence, (Kan. 1907) 92 Pac. 1131; State *v.* Hyland, 75 Neb. 767, 107 N. W. 113; People *v.* McAdoo, 110 N. Y. App. Div. 432, 96 N. Y. Supp. 362; Matney *v.* King, (Okla. 1908) 93 Pac. 737; Caffrey *v.* Caffrey, 28 Pa. Super. Ct. 22.

6. People *v.* Keefe, 119 N. Y. App. Div. 713, 104 N. Y. Supp. 154.

9. Rose *v.* McKie, (C. C. A.) 145 Fed. 584; Whitaker *v.* Roberts, 155 Fed. 882; Territory *v.* Santa Fe County, (N. Mex. 1907) 89 Pac. 252.

723. 2. Hewel *v.* Hogin, 3 Cal. App. 248, 84 Pac. 1002; Goytino *v.* McAleer, 4 Cal. App. 655, 88 Pac. 991; Greenfield Gas Co. *v.* Trees, 165 Ind. 209, 75 N. E. 2; Kaufer *v.* Ford, 100 Minn. 49, 110 N. W. 364; Lighton *v.* Syracuse, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 134, 96 N. Y. Supp. 692; Lighton *v.* Syracuse, 112 N. Y. App. Div. 589, 98 N. Y. Supp. 792.

3. State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213; Ransom *v.* Boston, (Mass. 1907) 81 N. E. 998; State *v.* Horton, 70 Neb. 343, 99 N. W. 501; Lighton *v.* Syracuse, 188 N. Y. 499, 81 N. E. 464; Winchester, etc., R. Co. *v.* Com., 106 Va. 264, 55 S. E. 692; State *v.* Hinkel, 131 Wis. 103, 111 N. W. 217.

4. *United States.* — Rose *v.* McKie, (C. C. A.) 145 Fed. 584.

California. — Blakeley *v.* Kingsbury, (Cal. App. 1907) 93 Pac. 129.

Georgia. — Sapp *v.* De Lacy, 127 Ga. 659, 56 S. E. 755; Sapp *v.* Graham, 127 Ga. 663, 56 S. E. 756; Smith *v.* Hodgson, 129 Ga. 494, 59 S. E. 272.

Illinois. — Coles County *v.* People, 226 Ill. 576, 80 N. E. 1066; People *v.* Errant, 229 Ill. 56, 82 N. E. 271; Hertel *v.* Boismenue, 229 Ill. 474, 82 N. E. 298.

Indiana. — Rodenbarger *v.* State, 165 Ind. 685, 76 N. E. 398; State *v.* Spinney, 166 Ind. 282, 76 N. E. 971; State *v.* Jackson, 168 Ind. 384, 81 N. E. 62.

Kansas. — State *v.* Missouri Pac. R. Co., (Kan. 1907) 92 Pac. 606.

Kentucky. — Hager *v.* New South Prewing Co., (Ky. 1906) 90 S. W. 608; Prewitt *v.* Illinois L. Ins. Co., (Ky. 1906) 93 S. W. 633.

Louisiana. — State *v.* Theus, 114 La. 1097, 38 So. 870.

Massachusetts. — Sinclair *v.* Brightman, (Mass. 1908) 84 N. E. 453.

New York. — Hamburger *v.* Board of Estimate, etc., 109 N. Y. App. Div. 427, 96 N. Y. Supp. 130; John H. Parker Co. *v.* New York, 110 N. Y. App. Div. 360, 97 N. Y. Supp. 200; People *v.* Armstrong, 116 N. Y. App. Div. 103, 101 N. Y. Supp. 713; People *v.* Wheeler, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 289, 106 N. Y. Supp. 450; Gow *v.* Bingham, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 66, 107 N. Y. Supp. 1011.

Ohio. — State v. Baldwin, 77 Ohio St. 532, 83 N. E. 907.

Oklahoma. — Eberle *v.* King, (Okla. 1908) 93 Pac. 748; State *v.* Russell, (Okla. 1908) 95 Pac. 463.

Texas. — San Antonio *v.* Routledge, (Tex. Civ. App. 1907) 102 S. W. 756; Bailey *v.* Aransas County, (Tex. Civ. App. 1907) 102 S. W. 1159.

Washington. — State *v.* Drainage Dist. No. 1, (Wash. 1907) 90 Pac. 660.

Wisconsin. — State *v.* Milwaukee Medical College, 128 Wis. 7, 106 N. W. 116.

5. *California.* — Fox *v.* Workman, (Cal. 1907) 92 Pac. 742; Perrine *v.* San Jacinto Valley Water Co., 4 Cal. App. 376, 88 Pac. 293; Meyer *v.* San Francisco, 150 Cal. 131, 88 Pac. 722; Higgins *v.* Keyes, (Cal. 1907) 90 Pac. 671.

Idaho. — Connolly *v.* Woods, 13 Idaho 591, 92 Pac. 573.

Illinois. — Coles County *v.* People 226 Ill. 576, 80 N. E. 1066.

Indiana. — Rodenbarger *v.* State, 165 Ind. 685, 76 N. E. 398; State *v.* Spinney, 166 Ind. 282, 76 N. E. 971; State *v.* Jackson, 168 Ind. 384, 81 N. E. 62.

Kansas. — Nation *v.* Rundberg, (Kan. 1908) 94 Pac. 257.

Kentucky. — Hager *v.* New South Brewing Co., (Ky. 1906) 90 S. W. 608.

Louisiana. — State *v.* Theus, 114 La. 1097, 38 So. 870.

Massachusetts. — Sinclair *v.* Brightman, (Mass. 1908) 84 N. E. 453.

Montana. — State *v.* Red Lodge, 33 Mont. 345, 83 Pac. 642.

Ohio. — State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907.

Oklahoma. — Eberle *v.* King, (Okla. 1908) 93 Pac. 748.

Tennessee. — State *v.* Willett, 117 Tenn. 334, 97 S. W. 299.

Texas. — San Antonio *v.* Routledge, (Tex. Civ. App. 1907) 102 S. W. 756; Bailey *v.* Aransas County, (Tex. Civ. App. 1907) 102 S. W. 1159.

Washington. — State *v.* Washington Irr. Co., 41 Wash. 283, 83 Pac. 308; State *v.* Drainage Dist. No. 1, (Wash. 1907) 90 Pac. 660.

Wyoming. — State *v.* Irvine, 14 Wyo. 351, 84 Pac. 90; State *v.* Brooks, 14 Wyo. 393, 84 Pac. 488; Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337, 984.

724. 1. Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185; People *v.* Voorhis, 115 N. Y. App. Div. 218, 100 N. Y. Supp. 927; State *v.* Milwaukee Medical College, 128 Wis. 7, 106 N. W. 116.

4. Funk *v.* State, 166 Ind. 455, 77 N. E. 854.

5. State *v.* Horn, (Mont. 1908) 93 Pac. 351. But see State *v.* Hammel, (Wis. 1907) 114 N. W. 97.

725. 1. State *v.* Atlantic Coast Line R. Co., (Fla. 1904) 37 So. 652; State *v.* Richards, 50 Fla. 284, 39 So. 152; People *v.* Dunne, 219 Ill. 346, 76 N. E. 570; State *v.* Henderson, 117 La. 209, 41 So. 496, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 724; State *v.* Brewer, 39 Wash. 69, 80 Pac. 1001.

2. State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213; People *v.* Dunne, 219 Ill. 346, 76 N. E. 570; *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404; Kennedy *v.* Warner, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 362, 100 N. Y. Supp. 616; Ward *v.* Beaufort County, (N. Car. 1908) 60 S. E. 418.

3. *Florida.* — State *v.* Stewart, 49 Fla. 259, 38 So. 600, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725.

Georgia. — Dennington *v.* Roberta, (Ga. 1908) 61 S. E. 20.

Illinois. — Case *v.* Sullivan, 222 Ill. 56, 78 N. E. 37; People *v.* Errant, 229 Ill. 56, 82 N. E. 271; People *v.* Busse, 231 Ill. 251, 83 N. E. 175.

Indiana. — State *v.* Spinney, 166 Ind. 282, 76 N. E. 971, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725; Funk *v.* State, 166 Ind. 455, 77 N. E. 854.

Missouri. — State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052.

New Jersey. — Jacquelin *v.* Erie R. Co., 69 N. J. Eq. 432, 61 Atl. 18.

New York. — People *v.* Doe, 109 N. Y. App. Div. 670, 96 N. Y. Supp. 389, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725; *In re* Elder, 118 N. Y. App. Div. 25, 103 N. Y. Supp. 617; People *v.* Treasurer, 121 N. Y. App. Div. 84, 105 N. Y. Supp. 576.

Ohio. — State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907.

Pennsylvania. — Com. *v.* James, 214 Pa. St. 319, 63 Atl. 743.

South Carolina. — State *v.* Durant, 71 S. Car. 311, 51 S. E. 146; Ehrlich *v.* Jennings, 78 S. Car. 269, 58 S. E. 922.

Vermont. — Jenney *v.* Alden, 79 Vt. 156, 64 Atl. 609.

West Virginia. — State *v.* Graybeal, 60 W. Va. 357, 55 S. E. 398.

4. *Alabama.* — Goodwin *v.* Sherer, 145 Ala. 501, 40 So. 279; Kelly *v.* Horsley, 147 Ala. 508, 41 So. 902.

California. — De La Beckwith *v.* Superior Ct., 146 Cal. 496, 80 Pac. 717.

Florida. — State *v.* Stewart, 49 Fla. 259, 38 So. 600, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725; State *v.* Richards, 50 Fla. 284, 39 So. 152; [illegible] County Comrs. *v.* Howell, 51 Fla. 160, 40 So. 192; State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213.

Georgia. — Smith *v.* Hodgson, 129 Ga. 404, 59 S. E. 272.

Illinois. — Case *v.* Sullivan, 222 Ill. 56, 78 N. E. 37; People *v.* Rose, 225 Ill. 496, 80 N. E. 293; McGann *v.* Harris, 114 Ill. App. 308; People *v.* Helt, 116 Ill. App. 391; Chicago City R. Co. *v.* People, 116 Ill. App. 633; People *v.* St. Louis, etc., Electric R. Co., 122 Ill. App. 422; Lee *v.* People, 123 Ill. App. 520; Harrison *v.* People, 124 Ill. App. 519; Meyer *v.* Decatur, 125 Ill. App. 556; People *v.* Chicago, 127 Ill. App. 118.

Indiana. — State *v.* Spinney, 166 Ind. 282, 76 N. E. 971, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725; Vandalia R. Co. *v.* State, 166 Ind. 219, 76 N. E. 980; Funk *v.* State, 166 Ind. 455, 77 N. E. 854; State *v.* Jackson, 168 Ind. 384, 81 N. E. 62.

Kansas. — Wilson *v.* Winfrey, 72 Kan. 470, 84 Pac. [illegible], citing 19 Am. and Eng. Encyc. of Law (2d ed.) 725; True *v.* Grandt, 72 Kan. 502, 83 Pac. 826.

Kentucky. — Chesapeake, etc., R. Co. *v.* Vanceburg, etc., Turnpike Road Co., (Ky. 1907) 104 S. W. 951.

Louisiana. — State *v.* Acme Lumber Co., 115 La. 893, 40 So. 301; Beasley *v.* Jenkins, 117 La. 577, 42 So. 145; State *v.* Colorado Southern, etc., R. Co., (La. 1907) 44 So. 905.

Michigan. — Olds *v.* State Land Office, 150 Mich. 134, 112 N. W. 952.

Minnesota. — State *v.* U. S. Express Co., 95 Minn. 442, 104 N. W. 556; *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404.

Missouri. — State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052; State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071.

Nebraska. — State *v.* Eaton, (Neb. 1907) 110 N. W. 709.

Nevada. — State *v.* Jumbo Extension Min. Co., (Nev. 1908) 94 Pac. 74.

New York. — Hamburger *v.* Board of Estimate, etc., 109 N. Y. App. Div. 427, 96 N. Y. Supp. 130; People *v.* Grout, 111 N. Y. App. Div. 924, 98 N. Y. Supp. 185; People *v.* Reville, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 474, 100 N. Y. Supp. 584; People *v.* Ellison, 115 N. Y. App. Div. 254, 101 N. Y. Supp. 55; People *v.* Adam, 116 N. Y. App. Div. 613, 101 N. Y. Supp. 925; People *v.* Butler, 120 N. Y. App. Div. 751, 105 N. Y. Supp. 631.

Oregon. — State *v.* County Ct., 46 Oregon 521, 81 Pac. 368, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 725.

Pennsylvania. — Old Tacony Road, 32 Pa. Super. Ct. 444.

Rhode Island. — Rosenkrans *v.* State Board of Registration, (R. I. 1907) 67 Atl. 367.

South Carolina. — Wilson *v.* Cox, 73 S. Car. 398, 53 S. E. 613; State *v.* Goodwin, (S. Car. 1907) 59 S. E. 35.

Texas. — Caven *v.* Coleman, (Tex. 1907) 101 S. W. 199.

Vermont. — Page *v.* McClure, 79 Vt. 83, 64 Atl. 451.

Washington. — State *v.* Washington Irr. Co., 41 Wash. 283, 83 Pac. 308.

Wisconsin. — State *v.* Krumenauer, (Wis. 1908) 115 N. W. 798.

727. **1.** *Alabama.* — Kelly *v.* Horsley, 147 Ala. 508, 41 So. 902.

Illinois. — Case *v.* Sullivan, 222 Ill. 56, 78 N. E. 37; People *v.* Rose, 225 Ill. 496, 80 N. E. 293; Chicago City R. Co. *v.* People, 116 Ill. App. 633; People *v.* St. Louis, etc., Electric R. Co., 122 Ill. App. 422.

Indiana. — State *v.* Jackson, 168 Ind. 384, 81 N. E. 62.

Louisiana. — State *v.* Acme Lumber Co., 115 La. 893, 40 So. 301; State *v.* Colorado Southern, etc., R. Co., (La. 1907) 44 So. 905.

Michigan. — Road Com'rs *v.* Auditors, 148 Mich. 255, 111 N. W. 901; New York Mortg. Co. *v.* Secretary of State, 150 Mich. 197, 114 N. W. 82.

Missouri. — State *v.* Gibson, 187 Mo. 536, 86 S. W. 177, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 727; State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052; State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1078, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 727; State *v.* Miller, (Mo. App. 1908) 108 S. W. 603.

New York. — Cullen *v.* New York Telephone Co., 106 N. Y. App. Div. 250, 94 N. Y. Supp. 290.

Oklahoma. — Higgins *v.* Brown, (Okla. 1908) 94 Pac. 703.

Oregon. — Blakeley *v.* Kingsbury, (Cal. App. 1907) 93 Pac. 129.

South Carolina. — Wilson *v.* Cox, 73 S. Car. 398, 53 S. E. 613.

Utah. — Hoffman *v.* Lewis, 31 Utah 179, 87 Pac. 167.

728. **3.** State *v.* Pan-American Co., 5 Penn. (Del.) 391, 61 Atl. 398; Chesapeake, etc., R. Co. *v.* Vanceburg, etc., Turnpike Road Co., (Ky. 1907) 104 S. W. 951; State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052; State *v.* Lewis and Clarke County, 34 Mont. 351, 86 Pac. 419; State *v.* McMonies, 75 Neb. 443, 106 N. W. 454; State *v.* State Board of Equalization, (Neb. 1908) 115 N. W. 789; Hamburger *v.* Board of Estimate, etc., 109 N. Y. App. Div. 427, 96 N. Y. Supp. 130; Com. *v.* Barker, 211 Pa. St. 610, 61 Atl. 253; Com. *v.* Foster, 215 Pa. St. 177, 64 Atl. 367.

729. **2.** Territory *v.* Yavapai County, 9 Ariz. 405, 84 Pac. 519; Chesapeake, etc., R. Co. *v.* Vanceburg, etc., Turnpike Road Co., (Ky. 1907) 104 S. W. 951; State *v.* U. S. Express Co., 95 Minn. 442, 104 N. W. 556; *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404; Farnham *v.* Colman, 19 S. Dak. 342, 103 N. W. 161; State *v.* Willett, 117 Tenn. 334, 97 S. W. 299; Caven *v.* Coleman, (Tex. 1907) 101 S. W. 199; Page *v.* McClure, 79 Vt. 83, 64 Atl. 451; Frye *v.* Mt. Vernon, 42 Wash. 268, 84 Pac. 864; State *v.* Krumenauer, (Wis. 1908) 115 N. W. 798.

730. **1.** People *v.* Kelsey, 114 N. Y. App. Div. 888, 100 N. Y. Supp. 391.

3. Hicks *v.* Perry, (Mich. 1908) 114 N. W. 682.

4. State *v.* Lincoln Medical College, (Neb. 1908) 116 N. W. 294.

5. *Florida.* — State *v.* Stewart, 49 Fla. 259, 38 So. 600, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 730.

Georgia. — Green *v.* Road Board, 126 Ga. 693, 56 S. E. 59.

Illinois. — White County *v.* People, 222 Ill. 9, 78 N. E. 13.

Louisiana. — State *v.* Board of Liquidation, 115 La. 471, 39 So. 448.

Minnesota. — *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404.

New York. — Hearst *v.* Woelper, 183 N. Y. 274, 76 N. E. 28; People *v.* Grout, 111 N. Y. App. Div. 924, 98 N. Y. Supp. 185; People *v.* Bingham, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 607, 99 N. Y. Supp. 1111.

North Carolina. — State *v.* Raleigh, 142 N. Car. 229, 55 S. E. 145.

Pennsylvania. — Com. *v.* Foster, 215 Pa. St. 177, 64 Atl. 367.

South Carolina. — State *v.* Goodwin, (S. Car. 1907) 59 S. E. 35.

South Dakota. — Nelson *v.* King, (S. Dak. 1906) 109 N. W. 649.

Washington. — State *v.* Nichols, 38 Wash. 309, 80 Pac. 462; State *v.* Nichols, 40 Wash. 437, 82 Pac. 741.

The Performance of Duties Imposed by a Repealed Statute is not enforceable by mandamus. Browne *v.* State, (Ala. 1906) 41 So. 407.

731. **1.** Brunson *v.* Caskie, 127 Ga. 501, 56 S. E. 621; State *v.* Raleigh, 142 N. Car. 229, 55 S. E. 145.

A common carrier, able and accustomed to transport a certain class of goods from Atlanta to Lawrenceville, and to deliver the same to the consignees thereof in the latter city, cannot lawfully refuse to do so merely because of the passage of an invalid municipal ordinance. Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185.

3. State *v.* Snelling, 71 Kan. 499, 80 Pac. 966.

4. An *ad interim* injunction, granted by a judge of the United States court, on a bill filed subsequently to the petition for mandamus by the respondent in the mandamus proceeding against the railroad commission, to enjoin the specific rate which petitioner is seeking by mandamus to compel respondent to observe, to which litigation in the United States court the petitioner is not a party, affords no sufficient reason for staying the mandamus proceeding or denying the issuance of a mandamus absolute. Southern R. Co. *v.* Atlanta Stove Works, 128 Ga. 207, 57 S. E. 429.

732. **1.** Harrison *v.* People, 124 Ill. App. 519; Ross *v.* Sioux City, (Iowa 1907) 113 N. W. 474; Ehrlich *v.* Jennings, 78 S. Car. 269, 58 S. E. 922, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 731, 732, in dissenting opinion of Jones, J.

2. *Alabama.* — *Ex p.* Merritt, 142 Ala. 115, 38 So. 183.

Arkansas. — Rankin *v.* Fletcher, 84 Ark. 156, 104 S. W. 933.

California. — Pipher *v.* Superior Ct., 3 Cal. App. 626, 86 Pac. 905; Wyatt *v.* Arnot, (Cal. App. 1907) 04 Pac. 86.

Idaho. — Connolly *v.* Woods, 13 Idaho 591, 92 Pac. 573.

Illinois. — Bromwell *v.* Flowers, 217 Ill. 174, 75 N. E. 466; Van Dorn *v.* Anderson, 219 Ill. 32, 76 N. E. 53; People *v.* Chytraus, 228 Ill. 194, 81 N. E. 844; McGann *v.* Harris, 114 Ill. App. 308.

Indiana. — State *v.* Deupree, (Ind. App. 1907) 81 N. E. 678.

Iowa. — Perry *v.* Clarke County, 133 Iowa 281, 110 N. W. 591.

Kentucky. — O'Neal *v.* Minary, (Ky. 1907) 101 S. W. 951; Moore *v.* Harrodsburg, (Ky. 1907) 105 S. W. 926.

Michigan. — Power *v.* Common Council, 141 Mich. 350, 104 N. W. 664; Dickinson *v.* County Canvassers, 148 Mich. 513, 111 N. W. 1075.

Mississippi. — McHenry *v.* State, (Miss. 1907) 44 So. 831; Cole *v.* State, (Miss. 1907) 45 So. 11.

Missouri. — State *v.* Gentry, 112 Mo. App. 589, 87 S. W. 68; State *v.* McCutchan, 119 Mo. App. 69, 96 S. W. 251.

New York. — People *v.* McWilliams, 185 N. Y. 92, 77 N. E. 785; Metz *v.* Maddox, 189 N. Y. 460, 82 N. E. 507; Hartman *v.* Collins, 106 N. Y. App. Div. 11, 94 N. Y. Supp. 63; Hamburger *v.* Board of Estimate, etc., 109 N. Y. App. Div. 427, 96 N. Y. Supp. 130; People *v.* Wells, 110 N. Y. App. Div. 336, 97 N. Y. Supp. 333; Kelsey *v.* Church, 112 N. Y. App. Div. 408, 98 N. Y. Supp. 535; People *v.* Voorhis, 115 N. Y. App. Div. 218, 100 N. Y. Supp. 927; People *v.* State Racing Commission, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 955.

Rhode Island. — Gainer *v.* Dunn, (R. I. 1908) 69 Atl. 336.

South Carolina. — Richland Drug Co. *v.* Moorman, 71 S. Car. 236, 50 S. E. 792.

Washington. — State *v.* Board of Dental Examiners, 38 Wash. 325, 80 Pac. 544; State *v.* Ross, 42 Wash. 439, 85 Pac. 29; State *v.* Steiner, 44 Wash. 150, 87 Pac. 66; State *v.* Clausen, 44 Wash. 437, 87 Pac. 498; State *v.* Kendall, 45 Wash. 542, 87 Pac. 821.

West Virginia. — Taylor County Ct. *v.* Holt, 61 W. Va. 54, 56 S. E. 205; State *v.* Bare, 60 W. Va. 486, 56 S. E. 390.

Wyoming. — State *v.* Craig, 15 Wyo. 439, 89 Pac. 584, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 732.

733. **1.** *United States.* — *In re* Pollitz, 206 U. S. 323, 27 U. S. Sup. Ct. 729; Whitaker, etc., Co. *v.* Roberts, 155 Fed. 882.

Alabama. — *Ex p.* Merritt, 142 Ala. 115, 38 So. 183; State *v.* Langan, (Ala. 1907) 43 So. 187.

Arkansas. — McBride *v.* Hon, 82 Ark. 483, 102 S. W. 389; Rankin *v.* Fletcher, 84 Ark. 156, 104 S. W. 933; Burrow *v.* Hot Springs, (Ark. 1908) 108 S. W. 823.

California. — Pipher *v.* Superior Ct., 3 Cal. App. 626, 86 Pac. 904; Berger *v.* Justice, 4 Cal. App. 532, 88 Pac. 591; Wyatt *v.* Arnot, (Cal. App. 1907) 94 Pac. 86.

Colorado. — Keefe Mfg., etc., Co. *v.* Board of Education, 33 Colo. 513, 81 Pac. 257.

Connecticut. — State *v.* Upson, 79 Conn. 154, 64 Atl. 2.

District of Columbia. — U. S. *v.* Hitchcock, 28 App. Cas. (D. C.) 338; U. S. *v.* Cortelyou, 28 App. Cas. (D. C.) 570.

Idaho. — Connolly *v.* Woods, 13 Idaho 591, 92 Pac. 573.

Illinois. — Bromwell *v.* Flowers, 217 Ill. 174, 75 N. E. 466; People *v.* Chytraus, 228 Ill. 194, 81 N. E. 844; Chicago *v.* People, 114 Ill. App. 145; McGann *v.* Harris, 114 Ill. App. 308; Harrison *v.* People, 124 Ill. App. 519.

Indiana. — State *v.* Deupree, (Ind. App. 1907) 81 N. E. 678.

Iowa. — Kinzer *v.* Independent School Dist., 129 Iowa 441, 105 N. W. 686; Perry *v.* Clarke County, 133 Iowa 281, 110 N. W. 591; Wilson *v.* Louisiana Purchase Exposition Commission, 133 Iowa 586, 110 N. W. 1045; Ross *v.* Sioux City, (Iowa 1907) 113 N. W. 474; Queeny *v.* Higgins, (Iowa 1907) 114 N. W. 51; Robertson *v.* Alberson, (Iowa 1908) 114 N. W. 885.

Kentucky. — Hager *v.* New South Brewing Co., (Ky. 1906) 90 S. W. 608; Monroe *v.* Berry, (Ky. 1906) 94 S. W. 38; O'Neal *v.* Minary, (Ky. 1907) 101 S. W. 951; Moore *v.* Harrodsburg, (Ky. 1907) 105 S. W. 926.

Louisiana. — Xavier Realty *v.* Louisiana R., etc., Co., 114 La. 967, 38 So. 695.

Michigan. — Dickinson *v.* County Canvassers, 148 Mich. 513, 111 N. W. 1075.

[illegible] State v. McCutchan, 116 Mo. App. 69, 90 S. W. 251.

Nebraska. — State *v.* Switzer, (Neb. 1907) 112 N. W. 297.

New York. — People *v.* McWilliams, 185 N. Y. 92, 77 N. E. 785; Ramsay *v.* Hayes, 187 N. Y. 367, 80 N. E. 193; Metz *v.* Maddox, 189 N. Y. 460, 82 N. E. 507; People *v.* State Racing Commission, 190 N. Y. 31, 82 N. E. 723; Hartman *v.* Collins, 106 N. Y. App. Div. 11, 94 N. Y. Supp. 63; People *v.* Early, 106 N. Y. App. Div. 269, 94 N. Y. Supp. 640; Hamburger *v.* Board of Estimate, etc., 109 N. Y. App. Div. 427, 96 N. Y. Supp. 130; People *v.* Wells, 110 N. Y. App. Div. 336, 97 N. Y. Supp. 333; Kelsey *v.* Church, 112 N. Y. App. Div. 408, 98 N. Y. Supp. 535; People *v.* McClellan, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 609, 102 N. Y. Supp. 946; People *v.* Gilman, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 954; People *v.* State Racing Commission, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 955.

North Carolina. — Ward *v.* Beaufort County, (N. Car. 1908) 60 S. E. 418.

Oklahoma. — Pallidy *v.* Beatty, 15 Okla. 626, 83 Pac. 428; Harding *v.* Garber, (Okla. 1907) 93 Pac. 530.

Oregon. — State *v.* County Ct., 46 Oregon 521, 81 Pac. 368.

Pennsylvania. — Com. *v.* Real Estate Trust Co., 211 Pa. St. 51, 60 Atl. 551.

South Carolina. — Richland Drug Co. *v.* Moorman, 71 S. Car. 236, 50 S. E. 792; State *v.* Matthews, 77 S. Car. 357, 57 S. E. 1099; State *v.* Burley, (S. Car. 1908) 61 S. E. 255.

Texas. — Caven *v.* Coleman, (Tex. Civ. App. 1906) 96 S. W. 775.

Washington. — State *v.* Board of Dental Examiners, 38 Wash. 325, 80 Pac. 544; State *v.* Brewer, 39 Wash. 69, 80 Pac. 1001; State *v.* Ross, 42 Wash. 439, 85 Pac. 29; State *v.* Steiner, 44 Wash. 150, 87 Pac. 66.

West Virginia. — Taylor County Ct. *v.* Holt, 61 W. Va. 54, 56 S. E. 205; State *v.* Bare, 60 W. Va. 486, 56 S. E. 390.

Wisconsin. — Rudolph *v.* Hutchinson, (Wis. 1908) 114 N. W. 453; State *v.* Phillips, (Wis. 1908) 114 N. W. 802.

Wyoming. — State *v.* Craig, 15 Wyo. 439, 89 Pac. 584.

737. **1.** *United States.* — *In re* Pollitz, 206 U. S. 323, 27 U. S. Sup. Ct. 729; Fink *v.* Bay Shore Terminal Co., (C. C. A.) 144 Fed. 837; Whitaker, etc., Co. *v.* Roberts, 155 Fed. 882.

Alabama. — *Ex p.* Merritt, 142 Ala. 115, 38 So. 183.

Arkansas. — Rankin *v.* Fletcher, 84 Ark. 156, 104 S. W. 933.

California. — Pipher *v.* Superior Ct., 3 Cal. App. 626, 86 Pac. 905; Lamb *v.* Webb, 151 Cal. 451, 91 Pac. 102, 646; Scheerer *v.* Hutton, (Cal. App. 1908) 94 Pac. 849.

Georgia. — Wells *v.* John G. Butler's Builders Supply Co., 128 Ga. 37, 57 S. E. 55.

Illinois. — Van Dorn *v.* Anderson, 219 Ill. 32, 76 N. E. 53.

Iowa. — Perry *v.* Clarke County, 133 Iowa 281, 110 N. W. 591.

Kentucky. — Moore *v.* Harrodsburg, (Ky. 1907) 105 S. W. 926.

Michigan. — Roberts *v.* Lenawee Circuit Judge, 140 Mich. 115, 103 N. W. 512; Chatfield *v.* Lenawee Circuit Judge, 140 Mich. 636, 104 N. W. 45; Howell *v.* Lansing, etc., Traction Co., 146 Mich. 450, 109 N. W. 846; Dickinson *v.* County Canvassers, 148 Mich. 513, 111 N. W. 1075; McMeekin *v.* Saginaw Probate Judge, 150 Mich. 354, 114 N. W. 241.

Mississippi. — Cole *v.* State, (Miss. 1907) 45 So. 11.

Missouri. — State *v.* Mosman, 112 Mo. App. 540, 87 S. W. 75; State *v.* Broaddus, 207 Mo. 107, 105 S. W. 629.

Nebraska. — State *v.* Switzer, (Neb. 1907) 112 N. W. 297.

Nevada. — Andrews *v.* Cook, 28 Nev. 270, 81 Pac. 303.

New Jersey. — Gleistman *v.* West New York, (N. J. 1906) 64 Atl. 1084.

New York. — People *v.* Hayes, 106 N. Y. App. Div. 563, 94 N. Y. Supp. 754; People *v.* Wells, 110 N. Y. App. Div. 336, 97 N. Y. Supp. 333; Kelsey *v.* Church, 112 N. Y. App. Div. 408, 98 N. Y. Supp. 535; People *v.* Voorhis, 115 N. Y. App. Div. 218, 100 N. Y. Supp. 927; People *v.* Gilman, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 954; People *v.* Keefe, 119 N. Y. App. Div. 713, 104 N. Y. Supp. 154; People *v.* Manufacturers', etc., Protective Assoc., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 332, 104 N. Y. Supp. 575; People *v.* Bingham, (Supm. Ct. App. Div.) 110 N. Y. Supp. 136; Ramsey *v.* Hayes, 187 N. Y. 367, 80 N. E. 193.

North Carolina. — Glenn *v.* Moore County, 139 N. Car. 412, 52 S. E. 58.

South Carolina. — State *v.* Matthews, 77 S. Car. 357, 57 S. E. 1099.

South Dakota. — Farnham *v.* Colman, 19 S. Dak. 342, 103 N. W. 161.

Texas. — Dunn *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 88 S. W. 532.

West Virginia. — Taylor County Ct. *v.* Holt, 61 W. Va. 54, 56 S. E. 205; State *v.* Bare, 60 W. Va. 486, 56 S. E. 390, *quoting* 19 Am. and Eng. Encyc. of Law (2d ed.) 737.

739. **1.** *California.* — Lamb *v.* Webb, 151 Cal. 451, 91 Pac. 102, 646.

District of Columbia. — U. S. *v.* Cortelyou, 28 App. Cas. (D. C.) 570.

Illinois. — Bromwell *v.* Flowers, 217 Ill. 174, 75 N. E. 466; People *v.* Healy, 230 Ill. 280, 82 N. E. 599; People *v.* Healy, 231 Ill. 629, 83 N. E. 453.

Iowa. — Kinzer *v.* Independent School Dist., 129 Iowa 441, 105 N. W. 686.

Kentucky. — Moore *v.* Harrodsburg, (Ky. 1906) 105 S. W. 926.

New York. — People *v.* McWilliams, 185 N. Y. 92, 77 N. E. 789; People *v.* State Racing Commission, 190 N. Y. 31, 82 N. E. 723; Hartman *v.* Collins, 106 N. Y. App. Div. 11, 94 N. Y. Supp. 63.

Washington. — State *v.* Board of Dental Examiners, 38 Wash. 325, 80 Pac. 544; State *v.* Steiner, 44 Wash. 150, 87 Pac. 66.

West Virginia. — State *v.* Bare, 60 W. Va. 486, 56 S. E. 390, *quoting* 19 Am. and Eng. Encyc. of Law (2d ed.) 737 [739].

2. State *v.* Matthews, 77 S. Car. 357, 57 S. E. 1099.

3. People *v.* Hayes, 106 N. Y. App. Div. 563, 94 N. Y. Supp. 754.

740. **1.** Chesapeake, etc., R. Co. *v.* Vance-

burg, etc., Turnpike Road Co., (Ky. 1907) 104 S. W. 951; People *v.* State Racing Commission, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 955.

2. *Alabama.* — State *v.* Williams, (Ala. 1905) 39 So. 276; Roach *v.* State, (Ala. 1905) 39 So. 685; Smith *v.* McCutchen, 146 Ala. 455, 41 So. 619; State *v.* Langdon, (Ala. 1907) 43 So. 187.

Arizona. — Territory *v.* Gaines, (Ariz. 1908) 93 Pac. 281.

Arkansas. — Burrow *v.* Hot Springs, (Ark. 1908) 108 S. W. 823.

California. — Elliott *v.* Pardee, 149 Cal. 516, 86 Pac. 1087; Good *v.* San Diego, (Cal. 1907) 90 Pac. 44; Alberger *v.* Kingsbury, (Cal. App. 1907) 91 Pac. 674; Cerini *v.* De Long, (Cal. App. 1908) 94 Pac. 582.

Colorado. — Lehman *v.* Pettingell, 39 Colo. 258, 89 Pac. 48.

Connecticut. — State *v.* Upson, 79 Conn. 154, 64 Atl. 2.

Delaware. — State *v.* Fisher, 5 Penn. (Del.) 273, 64 Atl. 68.

District of Columbia. — Roberts *v.* Consaul, 24 App. Cas. (D. C.) 551; U. S. *v.* Bowyer, 25 App. Cas. (D. C.) 121; U. S. *v.* Cortelyou, 26 App. Cas. (D. C.) 298; U. S. *v.* MacFarland, 28 App. Cas. (D. C.) 552.

Florida. — State *v.* McRae, 49 Fla. 389, 38 So. 605; De Soto County Com'rs *v.* Howell, 51 Fla. 160, 40 So. 192.

Illinois. — People *v.* Errant, 229 Ill. 56, 82 N. E. 271; Hertel *v.* Boismenue, 229 Ill. 474, 82 N. E. 298; People *v.* Busse, 231 Ill. 251, 83 N. E. 175; People *v.* Mounds, 122 Ill. App. 449; Harrison *v.* People, 124 Ill. App. 519.

Kentucky. — Cochran *v.* Beckhan, (Ky. 1905) 89 S. W. 262; Hager *v.* New South Brewing Co., (Ky. 1907) 90 S. W. 608.

Louisiana. — State *v.* Fireman's Pension, etc., Fund, 117 La. 1071, 42 So. 506; State *v.* Parish Democratic Committee, (La. 1908) 45 So. 526.

Massachusetts. — Sinclair *v.* Brightman, (Mass. 1908) 84 N. E. 453; Cheney *v.* Barker, (Mass. 1908) 84 N. E. 492.

Michigan. — Pape *v.* Benton Tp., 140 Mich. 165, 103 N. W. 591.

Minnesota. — State *v.* Brasie, 96 Minn. 209, 104 N. W. 962; *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404.

Mississippi. — Sullivan *v.* Yazoo, etc., R. Co., 85 Miss. 649, 38 So. 33; McHenry *v.* State, (Miss. 1907) 44 So. 831; Cole *v.* State (Miss. 1907) 45 So. 11.

Missouri. — State *v.* McCammon, 111 Mo. App. 626, 86 S. W. 510; State *v.* Guinotte, 113 Mo. App. 399, 86 S. W. 884; Sanders *v.* St. Louis, etc., R. Co., 116 Mo. App. 614, 92 S. W. 736; State *v.* Adcock, 206 Mo. 550, 105 S. W. 270.

Nebraska. — State *v.* Junkin, (Neb. 1908) 115 N. W. 547.

New Jersey. — Gleistman *v.* West New York, (N. J. 1906) 64 Atl. 1084.

New York. — Ramsay *v.* Hayes, 187 N. Y. 367, 80 N. E. 193; People *v.* Department of Health, 189 N. Y. 187, 82 N. E. 187; People *v.* Brush, 110 N. Y. App. Div. 722, 96 N. Y. Supp. 500; People *v.* Baker, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 143, 97 N. Y. Supp. 453; People *v.* Reville, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 474, 100 N. Y. Supp. 584; People *v.* Gilman, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 954; People *v.* Chamberlain, (Supm. Ct. Spec. T.) 106 N. Y. Supp. 149; People *v.* Metz, 123 N. Y. App. Div. 269, 107 N. Y. Supp. 970; *In re* North American Mercantile Agency Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 165.

North Carolina. — Glenn *v.* Moore County, 139 N. Car. 412, 52 S. E. 58.

Oklahoma. — Starkweather *v.* Kemp, 18 Okla. 28, 88 Pac. 1045.

Pennsylvania. — Com. *v.* Real Estate Trust Co., 211 Pa. St. 51, 60 Atl. 551; Miller *v.* Henderson, 212 Pa. St. 263, 61 Atl. 913.

South Carolina. — Richland Drug Co. *v.* Moorman, 71 S. Car. 236, 50 S. E. 792; State *v.* Durant, 71 S. Car. 311, 51 S. E. 146; Wilson *v.* Cox, 73 S. Car. 398, 53 S. E. 613; Ehrlich *v.* Jennings, 78 S. Car. 269, 58 S. E. 922; Bishop *v.* Valley Falls Mfg. Co., 78 S. Car. 312, 58 S. E. 939; State *v.* Burley, (S. Car. 1908) 61 S. E. 1089.

South Dakota. — State *v.* Circuit Court, (S. Dak. 1905) 104 N. W. 1048.

Texas. — Denman *v.* Coffee, (Tex. Civ. App. 1905) 91 S. W. 800; Caven *v.* Coleman, (Tex. Civ. App. 1905) 96 S. W. 775; Thorne *v.* Moore, (Tex. 1907) 105 S. W. 985; Munson *v.* Terrell, (Tex. 1907) 105 S. W. 1114; Patton *v.* Terrell, (Tex. 1907) 105 S. W. 1115.

Virginia. — Tazewell *v.* Herman, (Va. 1908) 60 S. E. 767.

Washington. — State *v.* Brewer, 39 Wash. 69, 80 Pac. 1001; State *v.* Kendall, 44 Wash. 542, 87 Pac. 821.

West Virginia. — Mann *v.* Mercer County Ct., 58 W. Va. 651, 52 S. E. 776; State *v.* Bare, 60 W. Va. 486, 56 S. E. 390; State *v.* Melton, (W. Va. 1907) 57 S. E. 729.

742. 1. Hager *v.* New South Brewing Co., (Ky. 1906) 90 S. W. 608; State *v.* Fireman's Pension, etc., Fund, 117 La. 1071, 42 So. 506; Citizens' Nat. Bank *v.* Burdette, 61 W. Va. 636, 57 S. E. 53, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 742.

2. Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136; State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907; State *v.* Milwaukee Medical College, 128 Wis. 7, 106 N. W. 116.

3. State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907.

4. Vandalia R. Co. *v.* State, 166 Ind. 219, 76 N. E. 980, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 742; State *v.* Lazarus, 127 Mo. App. 401, 105 S. W. 780.

7. Nettles *v.* McConnell, (Ala. 1907) 43 So. 839; McCarthy *v.* Street Com'rs, 188 Mass. 338, 74 N. E. 659.

8. Clement *v.* Graham, 78 Vt. 290, 63 Atl. 140.

743. 1. U. S. *v.* Norfolk, etc., R. Co., 138 Fed. 849; U. S. *v.* Norfolk, etc., R. Co., (C. C. A.) 143 Fed. 269; Perrine *v.* San Jacinto Valley Water Co., 4 Cal. App. 376, 88 Pac. 293; Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136; Newark *v.* North Jersey St. R. Co., 73 N. J. L. 265, 62 Atl. 1003; State *v.* Washington Irr. Co., 41 Wash. 281, 83 Pac. 308; State *v.* Milwaukee Medical College, 128 Wis. 7, 106 N. W. 116.

2. Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136; Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84.

4. State *v.* Drainage Dist. No. 1, (Wash. 1907) 90 Pac. 660.

5 Putnam Foundry, etc., Co. *v.* Barrington, (R. I. 1907) 67 Atl. 733.

6. De Soto County Com'rs *v.* Howell, 51 Fla. 160, 40 So. 192; Beasley *v.* Jenkins, 117 La. 577, 42 So. 145; State *v.* Broaddus, 207 Mo. 107, 105 S. W. 629; Gow *v.* Bingham, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 66, 107 N. Y. Supp. 1011; Briggs *v.* Carr, 27 R. I. 477, 63 Atl. 487; State *v.* Willett, 117 Tenn. 334, 97 S. W. 299; State *v.* Ross, 39 Wash. 399, 81 Pac. 865, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 743. *Contra,* U. S. *v.* Cortelyou, 26 App. Cas. (D. C.) 298.

Where an applicant files his petition for license to sell intoxicating liquors, and certain persons file their remonstrance against the issuance of such license, and the board, after a hearing upon the remonstrance, duly appeal from such order to the District Court, held that mandamus will lie to compel said board to reconvene and revoke a license issued pending appeal. Pallidy *v.* Beatty, 15 Okla. 626, 83 Pac. 428.

7. Beasley *v.* Jenkins, 117 La. 577, 42 So. 145; Kelsey *v.* Church, 112 N. Y. App. Div. 408, 98 N. Y. Supp. 535; Gow *v.* Bingham, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 66, 107 N. Y. Supp. 1011; State *v.* Ross, 39 Wash. 399, 81 Pac. 865, *quoting* 119 AM. AND ENG. ENCYC. OF LAW (2d ed.) 743.

744. 5. State *v.* Richardson, 48 Oregon 309, 85 Pac. 225; State *v.* Steiner, 44 Wash. 150, 87 Pac. 66.

8. Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744, *per* Carter, J., *dissenting;* State *v.* Hale, 166 Ind. 413, 77 N. E. 802; Eberle *v.* King, (Okla. 1908) 93 Pac. 748, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744.

745. 1. Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 745, *per* Carter, J., *dissenting.*

5. *California.* — Gibson *v.* Twaddle, 1 Cal. App. 126, 81 Pac. 727; Blakeley *v.* Kingsbury, (Cal. App. 1907) 93 Pac. 129.

Florida. — State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213.

Indiana. — Jackson County *v.* Branaman, (Ind. 1907) 82 N. E. 65; Couch *v.* State, (Ind. 1907) 82 N. E. 457.

Louisiana. — State *v.* Acme Lumber Co., 115 La. 893, 40 So. 301; State *v.* Whitaker, 116 La. 947, 41 So. 218; Hanson *v.* Police Jury, 116 La. 1080, 41 So. 321; Landry *v.* Bellanger, 119 La. 466, 44 So. 266; State *v.* Police Dept., 119 La. 515, 44 So. 283.

Massachusetts. — Finlay *v.* Boston, (Mass. 1907) 82 N. E. 5; Malone *v.* New York, etc., R. Co., (Mass. 1908) 83 N. E. 408.

Michigan. — Flint *v.* Genesee Circuit Judge, 146 Mich. 439, 109 N. W. 769.

Missouri. — State *v.* Gibson, 187 Mo. 536, 86 S. W. 177; Sanders *v.* St. Louis, etc., R. Co., 116 Mo. App. 614, 92 S. W. 736.

Pennsylvania. — Com. *v.* James, 214 Pa. St. 319, 63 Atl. 743.

Washington. — State *v.* Clausen, 44 Wash. 437, 87 Pac. 498.

Under the Illinois Statute. — Smith *v.* Automatic Photographic Co., 118 Ill. App. 649.

6. McCarthy *v.* Street Com'rs, 188 Mass. 338, 74 N. E. 659; Ransom *v.* Boston, 193 Mass. 537, 79 N. E. 823.

8. *California.* — McKannay *v.* Horton, 151 Cal. 711, 91 Pac. 598.

Idaho. — State *v.* Quarles, 13 Idaho 252, 89 Pac. 636.

Iowa. — Kinzer *v.* Independent School Dist., 129 Iowa 441, 105 N. W. 686.

Louisiana. — Hanson *v.* Police Jury, 116 La. 1080, 41 So. 321; Beasley *v.* Jenkins, 117 La. 577, 42 So. 145.

Michigan. — Chatfield *v.* Lenawee Circuit Judge, 140 Mich. 636, 104 N. W. 45.

Missouri. — State *v.* Miles, (Mo. 1908) 109 S. W. 595.

Nebraska. — Vermillion *v.* State, (Neb. 1907) 110 N. W. 736.

New Jersey. — Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84.

Texas. — Texas Tram, etc., Co. *v.* Hightower, (Tex. 1906) 96 S. W. 1071; Bailey *v.* Aransas County, (Tex. Civ. App. 1907) 102 S. W. 1159.

Washington. — State *v.* Brewer, 39 Wash. 69, 80 Pac. 1001; State *v.* Superior Ct., 40 Wash. 443, 82 Pac. 875; State *v.* Washington Irr. Co., 41 Wash. 283, 83 Pac. 308; State *v.* Seattle, 42 Wash. 370, 85 Pac. 11.

Wisconsin. — State *v.* Milwaukee Medical College, 128 Wis. 7, 106 N. W. 116; State *v.* Curtis, 130 Wis. 357, 110 N. W. 189.

Wyoming. — Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337, 984.

746. 1. State *v.* Acme Lumber Co., 115 La. 893, 40 So. 301.

4. Chatfield *v.* Lenawee Circuit Judge, 140 Mich. 636, 104 N. W. 45.

6. Hines *v.* Salter, (Ala. 1908) 45 So. 587; State *v.* Acme Lumber Co., 115 La. 893, 40 So. 301.

8. Spencer *v.* Smith, 74 Kan. 142, 85 Pac. 573, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746.

747. 2. Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; Lay *v.* Hoboken, (N. J. 1907) 67 Atl. 1024.

5. State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747; Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907; St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 99 S. W. 171.

748. 1. Beasley *v.* Jenkins, 117 La. 577, 42 So. 145; Brewster *v.* Sherman, (Mass. 1907) 80 N. E. 821; Finlay *v.* Boston, (Mass. 1907) 82 N. E. 5.

2. Beasley *v.* Jenkins, 117 La. 577, 42 So. 145; Finlay *v.* Boston, (Mass. 1907) 82 N. E. 5. *Compare* South Pasadena *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 490; Orcutt *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 495.

5. State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213; Jackson County *v.* Branaman, (Ind. 1907) 82 N. E. 65; State *v.* Baldwin, 77 Ohio St. 532, 83 N. E. 907; State *v.* Chambers, 26 Ohio Cir. Ct. 404.

6. Trewin *v.* Shurts, (N. J. 1907) 65 Atl.

984; Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

749. 6. Commissioners' Ct. *v.* State, 146 Ala. 439, 41 So. 463; Kelly *v.* Horsley, 147 Ala. 508, 41 So. 902; De Soto County Com'rs *v.* Howell, 51 Fla. 160, 40 So. 192; State *v.* Acme Lumber Co., 115 La. 893, 40 So. 301; State *v.* Chambers, 26 Ohio Cir. Ct. 404; State *v.* Washington Irr. Co., 41 Wash. 283, 83 Pac. 308.

750. 3. *England.* — Rex *v.* City of London Union, (1907) 2 K. B. 764.

United States. — Dowagiac Mfg. Co. *v.* McSherry Mfg. Co., (C. C. A.) 155 Fed. 524.

Alabama. — *Ex p.* Merritt, 142 Ala. 115, 38 So. 183.

Arkansas. — Rankin *v.* Fletcher, 84 Ark. 156, 104 S. W. 933.

California. — Scheerer *v.* Hutton, (Cal. App. 1908) 94 Pac. 849.

Georgia. — Spitler *v.* Guy, 107 Ga. 811, 58 S. E. 769.

Indiana. — State *v.* Black, 166 Ind. 138, 76 N. E. 882; Nelson *v.* State, 168 Ind. 491, 81 N. E. 486.

Iowa. — Kinzer *v.* Independent School Dist., 129 Iowa 441, 105 N. W. 686; Doubet *v.* Independent School Dist., (Iowa 1907) 111 N. W. 326; Queeny *v.* Higgins, (Iowa 1907) 114 N. W. 51; Zinser *v.* Buena Vista County, (Iowa 1907) 114 N. W. 51.

Louisiana. — Hanson *v.* Police Jury, 116 La. 1080, 41 So. 321; Beasley *v.* Jenkins, 117 La. 577, 42 So. 145; Manion *v.* Public Schools, 119 La. 879, 44 So. 515.

Michigan. — Lemon *v.* Oakland Circuit Judge, 140 Mich. 504, 103 N. W. 843; Chatfield *v.* Lenawee Circuit Judge, 140 Mich. 636, 104 N. W. 45; Pontiac, etc., R. Co. *v.* Oakland Circuit Judge, 142 Mich. 257, 105 N. W. 745; Sharp *v.* Montcalm Circuit Judge, 144 Mich. 328, 107 N. W. 874; Cosgrove *v.* Rohnert, 144 Mich. 682, 108 N. W. 361; Flint *v.* Genesee Circuit Judge, 146 Mich. 439, 109 N. W. 769; Reynolds *v.* Mecosta Circuit Judge, 148 Mich. 470, 111 N. W. 1038; Shenevare *v.* Weber, (Mich. 1907) 113 N. W. 595; Wooster *v.* Calhoun Circuit Judge, 150 Mich. 459, 114 N. W. 232; Luther *v.* Wolcott, (Mich. 1908) 114 N. W. 673.

Montana. — Forbis *v.* Cannon, 35 Mont. 424, 90 Pac. 161.

Nebraska. — State *v.* Drexel, 75 Neb. 751, 107 N. W. 110.

Nevada. — State *v.* Langan, (Nev. 1907) 91 Pac. 737.

New Jersey. — Stockton *v.* Board of Education, 72 N. J. L. 80, 59 Atl. 1061.

New York. — People *v.* Hayes, 106 N. Y. App. Div. 563, 94 N. Y. Supp. 754; People *v.* McAdoo, (Supm. Ct. App. T.) 96 N. Y. Supp. 1069; People *v.* Wells, 110 N. Y. App. Div. 336, 97 N. Y. Supp. 333; *In re* Hagemeyer, 113 N. Y. App. Div. 472, 99 N. Y. Supp. 369; People *v.* Murray, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 364, 104 N. Y. Supp. 740.

South Carolina. — Greenville College *v.* Board of Education, 75 S. Car. 93, 55 S. E. 132.

Texas. — Cohen *v.* Moore, (Tex. 1907) 104 S. W. 1053.

Washington. — State *v.* Superior Ct., 45 Wash. 196, 87 Pac. 1120.

Wisconsin. — Hartwig *v.* Watertown, (Wis. 1907) 112 N. W. 21, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 750.

4. Rankin *v.* Fletcher, 84 Ark. 156, 104 S. W. 933; State *v.* Black, 166 Ind. 138, 76 N. E. 882; Hanson *v.* Police Jury, 116 La. 1080, 41 So. 321; Manion *v.* Public Schools, 119 La. 879, 44 So. 515; Reynolds *v.* Mecosta Circuit Judge, 148 Mich. 470, 111 N. W. 1038; People *v.* Wells, 110 N. Y. App. Div. 336, 97 N. Y. Supp. 333.

751. 1. Funk *v.* State, 166 Ind. 455, 77 N. E. 854; King *v.* Lane, (S. Dak. 1906) 110 N. W. 37.

4. *Alabama.* — Bibb *v.* Gaston, 146 Ala. 434, 40 So. 936, *quoting* 19 Am. and Eng. Encyc. of Law (2d ed.) 75 [751].

California. — Bashore *v.* Superior Ct., (Cal. 1907) 91 Pac. 801; Gordan *v.* Graham, (Cal. 1908) 95 Pac. 145.

Colorado. — School Dist. No. 1 *v.* School Dist. No. 98, 33 Colo. 52, 78 Pac. 693; Lake County *v.* Schradsky, (Colo. 1908) 95 Pac. 312.

Georgia. — Smith *v.* Hodgson, 129 Ga. 494, 59 S. E. 272.

Illinois. — People *v.* Rock Island, 215 Ill. 488, 74 N. E. 437; People *v.* Olsen, 215 Ill. 620, 74 N. E. 785; People *v.* Rose, 219 Ill. 46, 76 N. E. 42; Kenneally *v.* Chicago, 220 Ill. 485, 77 N. E. 155; People *v.* Rose, 225 Ill. 496, 80 N. E. 293; People *v.* Wieboldt, 233 Ill. 572, 84 N. E. 647; Chicago City R. Co. *v.* People, 116 Ill. App. 633; People *v.* Chicago, 127 Ill. App. 118.

Indiana. — Funk *v.* State, 166 Ind. 455, 77 N. E. 854.

Kansas. — Nation *v.* Rundberg, (Kan. 1908) 94 Pac. 257.

Louisiana. — State *v.* Acme Lumber Co., 115 La. 893, 40 So. 301; State *v.* Summit Lumber Co., 117 La. 643, 42 So. 195.

Massachusetts. — McCarthy *v.* Street Com'rs, 188 Mass. 338, 74 N. E. 659; Hill *v.* Fitzgerald, 193 Mass. 569, 79 N. E. 825.

Michigan. — Sherwood *v.* Rynearson, 141 Mich. 92, 104 N. W. 392; Traverse City First Nat. Bank *v.* Union Tp., 141 Mich. 404, 104 N. W. 771; Robinson *v.* Branch Circuit Judge, 142 Mich. 70, 105 N. W. 25; Grand Rapids, etc., R. Co. *v.* Auditor Gen., 144 Mich. 77, 107 N. W. 1075; McRae *v.* Auditor Gen., 146 Mich. 594, 109 N. W. 1122; Indiana Road Mach. Co. *v.* Keeney, 147 Mich. 184, 110 N. W. 530; Road Com'rs *v.* Auditors, 148 Mich. 255, 111 N. W. 901; New York Mortg. Co. *v.* Secretary of State, 150 Mich. 197, 114 N. W. 82; Wooster *v.* Calhoun Circuit Judge, 150 Mich. 459, 114 N. W. 232; Granger *v.* French, (Mich. 1908) 116 N. W. 181.

Minnesota. — State *v.* U. S. Express Co., 95 Minn. 442, 104 N. W. 556.

Missouri. — State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052, *quoting* 19 Am. and Eng. Encyc. of Law (2d ed.) 751; State *v.* Lazarus, 127 Mo. App. 401, 105 S. W. 780; State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112; State *v.* Wilder, (Mo. 1908) 109 S. W. 575; State *v.* Gibson, 187 Mo. 536, 86 S. W. 177, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 751.

Montana. — State *v.* Barret, 30 Mont. 203, 81 Pac. 349.

... State v. Hendee, 74 Neb. 847, 105 N. W. 892; State v. Lincoln Medical College, (Neb. 1908) 116 N. W. 294.

New Jersey. — Smith v. Baker, 73 N. J. L. 328, 63 Atl. 619; Gleistman v. West New York, (N. J. 1906) 64 Atl. 1084; *In re* Freeman, (N. J. 1907) 68 Atl. 222.

New York. — Cullen v. New York Telephone Co., 106 N. Y. App. Div. 250, 94 N. Y. Supp. 290; People v. Saratoga County, 106 N. Y. App. Div. 381, 94 N. Y. Supp. 1012; People v. New York L. Ins. Co., 111 N. Y. App. Div. 183, 97 N. Y. Supp. 465; People v. Giroux Consol. Mines Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 188; People v. National Park Bank, 122 N. Y. App. Div. 635, 107 N. Y. Supp. 369.

Ohio. — State v. Baldwin, 77 Ohio St. 532, 83 N. E. 907.

Oklahoma. — Higgins v. Brown, (Okla. 1908) 94 Pac. 703.

Texas. — Munson v. Terrell, (Tex. 1907) 105 S. W. 1114.

West Virginia. — State v. Melton, (W. Va. 1907) 57 S. E. 729.

Wisconsin. — Hartwig v. Watertown, (Wis. 1907) 112 N. W. 21, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 751.

753. 1. State v. Gibson, 187 Mo. 536, 86 S. W. 177, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 751 [753]; State v. Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753; State v. Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112; *In re* Freeman, (N. J. 1907) 68 Atl. 222; State v. Melton, (W. Va. 1907) 57 S. E. 729.

2. Dancy v. Clark, 24 App. Cas. (D. C.) 487; Southern R. Co. v. Atlanta Stove Works, 128 Ga. 207, 57 S. E. 429; State v. Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

3. *Alabama.* — Bibb v. Gaston, 146 Ala. 434, 40 So. 936, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

California. — Bashore v. Superior Ct., (Cal. 1907) 91 Pac. 801.

District of Columbia. — Dancy v. Clark, 24 App. Cas. (D. C.) 487, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

Florida. — State v. Richards, 50 Fla. 284, 39 So. 152, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

Illinois. — People v. Olsen, 215 Ill. 620, 74 N. E. 785; Kenneally v. Chicago, 220 Ill. 485, 77 N. E. 155; People v. Chicago, 127 Ill. App. 118.

Indiana. — Funk v. State, 166 Ind. 455, 77 N. E. 854; State v. Bigler, (Ind. 1907) 82 N. E. 464.

Michigan. — New York Mortg. Co. v. Secretary of State, 150 Mich. 197, 114 N. W. 82; Wooster v. Calhoun Circuit Judge, 150 Mich. 450, 114 N. W. 232.

Missouri. — State v. Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

754. 1. State v. Acme Lumber Co., 115 La. 893, 40 So. 301; State v. Baldwin, 77 Ohio St. 532, 83 N. E. 907. But see People v. Olsen, 215 Ill. 620, 74 N. E. 785.

3. New York Mortg. Co. v. Secretary of State, 150 Mich. 197, 114 N. W. 82.

4. People v. Rose, 225 Ill. 496, 80 N. E. 293; State v. Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052.

5. Kenneally v. Chicago, 220 Ill. 485, 77 N. E. 155; Indiana Road Mach. Co. v. Keeney, 147 Mich. 184, 110 N. W. 530; State v. U. S. Express Co., 95 Minn. 442, 104 N. W. 556; State v. Ross, 44 Wash. 249, 87 Pac. 262, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 754.

6. Grand Rapids, etc., R. Co. v. Auditor Gen., 144 Mich. 77, 107 N. W. 1075.

7. New York Mortg. Co. v. Secretary of State, 150 Mich. 197, 114 N. W. 82.

10. Gordan v. Graham, (Cal. 1908) 95 Pac. 145, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 754; State v. U. S. Express Co., 95 Minn. 442, 104 N. W. 556.

11. Smith v. Hodgson, 129 Ga. 494, 59 S. E. 272, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 754.

12. Sherwod v. Rynearson, 141 Mich. 92, 104 N. W. 392.

13. Young v. Van Buren Circuit Judge, 145 Mich. 341, 108 N. W. 506.

14. Agricultural Ditch Co. v. Rollins, (Colo. 1908) 93 Pac. 1125; State v. Raleigh, 142 N. Car. 229, 55 S. E. 145; Hartwig v. Watertown, (Wis. 1907) 112 N. W. 21.

755. 1. **Contra.** — Farrell v. Police Com'rs, 1 Cal. App. 5, 81 Pac. 674.

It Is Not an Abuse of Discretion for the Court to Refuse to Allow an Amendment Which Contains No Affirmative Matter and amounts to no more than a tardy demurrer to the complaint. Hewel v. Hogin, 3 Cal. App. 248, 84 Pac. 1002.

2. But see Harby v. Board of Education, 2 Cal. App. 418, 83 Pac. 1081.

In New York the rule is that four months is the statutory period within which a mandamus proceeding can be brought, by analogy to certiorari proceedings. People v. Ahearn, 120 N. Y. App. Div. 95, 104 N. Y. Supp. 860.

Where the Duty Sought to Be Coerced Is a Prescriptive and Continuing One, the right to the writ is not barred by limitations. Jones v. Stokes County, 143 N. Car. 59, 55 S. E. 427.

3. Duke v. Turner, 204 U. S. 623, 27 U. S. Sup. Ct. 317.

4. Frank v. Butler County, (C. C. A.) 139 Fed. 119; McRae v. Auditor Gen., 146 Mich. 594, 109 N. W. 1122; People v. Board of Education, 114 N. Y. App. Div. 1, 99 N. Y. Supp. 737; People v. Board of Health, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 26, 106 N. Y. Supp. 923; Munson v. Terrell, (Tex. 1907) 105 S. W. 1114.

5. *California.* — Harby v. Board of Education, 2 Cal. App. 418, 83 Pac. 1081.

Illinois. — People v. Chicago, 127 Ill. App. 118.

Massachusetts. — Hill v. Fitzgerald, 193 Mass. 569, 79 N. E. 825.

Michigan. — McRae v. Auditor Gen., 146 Mich. 594, 109 N. W. 1122; Daniel v. Citizens Mut. F. Ins. Co., (Mich. 1907) 113 N. W. 17.

Missouri. — State v. Gibson, 187 Mo. 536, 86 S. W. 177; State v. Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052.

New York. — People v. Snyder, 106 N. Y. App. Div. 28, 94 N. Y. Supp. 541; People v. Board of Education, 114 N. Y. App. Div. 1, 99

N. Y. Supp. 737; Grendon *v.* Board of Education, 114 N. Y. App. Div. 759, 100 N. Y. Supp. 253; People *v.* Board of Health, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 26, 106 N. Y. Supp. 943.

Texas. — Munson *v.* Terrell, (Tex. 1907) 105 S. W. 1114.

A Motion to Dismiss the Alternative Writ on the Ground of Laches does not estop the defendant, it having interposed an answer, from pleading it as a defense. People *v.* Board of Education, 114 N. Y. App. Div. 1, 99 N. Y. Supp. 757.

6. *United States.* — Duke *v.* Turner, 204 U. S. 623, 27 U. S. Sup. Ct. 317.

California. — Cahill *v.* Superior Ct., 145 Cal. 46, 78 Pac. 467, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 755; Harby *v.* Board of Education, 2 Cal. App. 418, 83 Pac. 1081; Nevada Nat. Bank *v.* Kern County, 5 Cal. App. 638, 91 Pac. 122.

Massachusetts. — Hill *v.* Fitzgerald, 193 Mass. 569, 79 N. E. 825.

Missouri. — State *v.* Gibson, 187 Mo. 536, 86 S. W. 177; State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052; State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071.

Montana. — Barker *v.* Montana Gold, etc., Min. Co., 35 Mont. 351, 89 Pac. 66.

New York. — People *v.* Baker, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 143, 97 N. Y. Supp. 453; People *v.* Butler, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 18, 103 N. Y. Supp. 583; Ramsay *v.* Lantry, 123 N. Y. App. Div. 71, 107 N. Y. Supp. 828.

756. 1. Rutgers College *v.* Morgan, 71 N. J. L. 663, 60 Atl. 205.

3. Bibb *v.* Gaston, 146 Ala. 434, 40 So. 936, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 756; Goytino *v.* McAleer, 4 Cal. App. 655, 88 Pac. 991; Smith *v.* Auditor-Gen., (Mich. 1908) 115 N. W. 735; State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746 [756].

4. Bibb *v.* Gaston, 146 Ala. 434, 40 So. 936, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 756; Detroit, etc., Plank Road Co. *v.* Highland Park, 142 Mich. 326, 105 N. W. 775.

5. Ransom *v.* Boston, 193 Mass. 537, 79 N. E. 823; Hill *v.* Fitzgerald, 193 Mass. 569, 79 N. E. 825; State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746 [756].

6. State *v.* McRae, 49 Fla. 389, 38 So. 605; Howell *v.* State, (Fla. 1907) 45 So. 453; State *v.* Reid, 119 La. 390, 44 So. 137; People *v.* Snyder, 106 N. Y. App. Div. 28, 94 N. Y. Supp. 541; Hawkins *v.* Bare, (W. Va. 1908) 60 S. E. 391; State *v.* Hammel, (Wis. 1907) 114 N. W. 97.

757. 1. *Alabama.* — Gray *v.* Lindsey, (Ala. 1905) 39 So. 927.

California. — Davenport *v.* Los Angeles, 146 Cal. 508, 80 Pac. 684; Board of Education *v.* San Diego, 1 Cal. App. 311, 82 Pac. 89.

District of Columbia. — Dancy *v.* Clark, 24 App. Cas. (D. C.) 487.

Florida. — State *v.* McRae, 49 Fla. 389, 38 So. 605; Howell *v.* State, (Fla. 1907) 45 So. 453.

Georgia. — Gilliam *v.* Green, 122 Ga. 322, 50 S. E. 137; Smith *v.* Hodgson, 129 Ga. 494, 59 S. E. 272.

Illinois. — People *v.* Rose, 219 Ill. 46, 76 N. E. 42; Coles County *v.* People, 226 Ill. 576, 80 N. E. 1066.

Maine. — Edwards Mfg. Co. *v.* Farrington, 102 Me. 140, 66 Atl. 309, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 757.

Montana. — State *v.* Red Lodge, 33 Mont. 345, 83 Pac. 642.

Nebraska. — State *v.* Cronin, 75 Neb. 738, 106 N. W. 986.

New York. — People *v.* Doe, 109 N. Y. App. Div. 670, 96 N. Y. Supp. 389.

Tennessee. — State *v.* Willett, 117 Tenn. 334, 97 S. W. 299.

Texas. — Center First Nat. Bank *v.* Rowland, (Tex. Civ. App. 1906) 99 S. W. 1043.

Washington. — State *v.* Irwin, 40 Wash. 413, 82 Pac. 420; State *v.* Ross, 44 Wash. 249, 87 Pac. 262, *citing* 19 AM. AND ENG. ENCYC OF LAW (2d ed.) 757.

West Virginia. — Hawkins *v.* Bare, (W. Va. 1908) 60 S. E. 391.

Wisconsin. — State *v.* Hammel, (Wis. 1907) 114 N. W. 97.

758. 1. Gilliam *v.* Green, 122 Ga. 322, 50 S. E. 137; Chesapeake, etc., R. Co. *v.* Vanceburg, etc., Turnpike Road Co., (Ky. 1907) 104 S. W. 951; People *v.* Butler, 120 N. Y. App. Div. 751, 105 N. Y. Supp. 631; Page *v.* McClure, 79 Vt. 83, 64 Atl. 451.

2. Las Animas County *v.* People, 36 Colo. 246, 91 Pac. 36; Chemung Min. Co. *v.* Morgan, 11 Idaho 232, 81 Pac. 384; Mystic Milling Co. *v.* Chicago, etc., R. Co., 131 Iowa 10, 107 N. W. 943, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758; State *v.* Reid, 119 La. 390, 44 So. 137.

3. Presthus *v.* Gogebic Circuit Judge, 142 Mich. 204, 105 N. W. 154.

4. People *v.* St. Louis, etc., Electric R. Co., 122 Ill. App. 422; Edwards Mfg. Co. *v.* Farrington, 102 Me. 140, 66 Atl. 309, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758; State *v.* Cronin, 75 Neb. 738, 106 N. W. 986; Hawkins *v.* Bare, (W. Va. 1908) 60 S. E. 391.

759. 1. State *v.* McGuire, 74 Neb. 769, 105 N. W. 471; State *v.* Dunn, (Neb. 1906) 107 N. W. 236; People *v.* Saratoga County, 106 N. Y. App. Div. 381, 94 N. Y. Supp. 1012.

2. *United States.* — Edinburg Coal Co. *v.* Humphreys, (C. C. A.) 134 Fed. 839; Jones *v.* U. S., (C. C. A.) 135 Fed. 518.

California. — Burke *v.* Police Relief, etc., Fund, 4 Cal. App. 235, 87 Pac. 421; Higgins *v.* Keyes, (Cal. 1907) 90 Pac. 972; Ferguson *v.* Board of Education, (Cal. App. 1908) 95 Pac. 165.

Illinois. — People *v.* Edgar County, 223 Ill. 181; 79 N. E. 123;

Iowa. — Mystic Milling Co. *v.* Chicago, etc., R. Co., 131 Iowa 10, 107 N. W. 943.

New York. — *In re* Hatt, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 320, 108 N. Y. Supp. 468.

Pennsylvania. — Miller *v.* Henderson, 212 Pa. St. 263, 61 Atl. 913; Stegmaier *v.* Goeringer, (Pa. 1907) 67 Atl. 782.

Texas. — Wall *v.* Club Land, etc., Co., (Tex. Civ. App. 1905) 88 S. W. 534, *citing* 19 AM.

AND ENG. ENCYC. OF LAW (2d ed.) 759; Thorne v. Moore, (Tex. 1907) 105 S. W. 985; Gutta Percha, etc., Mfg. Co. v. Cleburne, (Tex. Civ. App. 1908) 107 S. W. 157.

Washington. — State v. Superior Ct., 45 Wash. 196, 87 Pac. 1120.

Wisconsin. — State v. Milwaukee, (Wis. 1907) 113 N. W. 40, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 759, 761.

760. 1. Wall v. Club Land, etc., Co., (Tex. Civ. App. 1905) 88 S. W. 534, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 760; Thorne v. Moore, (Tex. 1907) 105 S. W. 985.

4. Thorne v. Moore, (Tex. 1907) 105 S. W. 985.

761. 2. People v. Edgar County, 223 Ill. 187, 79 N. E. 123.

762. 5. *In re* Hatt, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 320, 108 N. Y. Supp. 468.

9. Wall v. Club Land, etc., Co., (Tex. Civ. App. 1905) 88 S. W. 534, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 762.

763. 6. State v. McIntosh, 205 Mo. 616, 103 S. W. 1071, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 763.

764. 1. State v. Burley, (S. Car. 1908) 61 S. E. 255.

2. Com. v. Mathues, 210 Pa. St. 383, 59 Atl. 961, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 764; Hindman v. Boyd, 42 Wash. 17, 84 Pac. 609.

3. Com. v. Mathues, 210 Pa. St. 383, 59 Atl. 961, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 764; State v. Burley, (S. Car. 1908) 61 S. E. 255; State v. Blumberg, (Wash. 1907) 89 Pac. 708, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 764.

4. Smith v. Baker, 73 N. J. L. 328, 63 Atl. 616.

765. 2. *Compare* Lake County v. Schradsky, (Colo. 1908) 95 Pac. 312.

4. Wilson v. Louisiana Purchase Exposition Commission, 133 Iowa 586, 110 N. W. 1045.

5. Wilson v. Louisiana Purchase Exposition Commission, 133 Iowa 586, 110 N. W. 1045.

6. Shaw v. Marshalltown, 131 Iowa 128, 104 N. W. 1121.

766. 5. *Alabama.* — Goodwin v. Sherer, 145 Ala. 501, 40 So. 279.

California. — McKannay v. Horton, 151 Cal. 711, 91 Pac. 598.

Illinois. — Hertel v. Boismenue, 229 Ill. 474, 82 N. E. 298.

Indiana. — Hoy v. State, 168 Ind. 506, 81 N. E. 509; Couch v. State, (Ind. 1907) 82 N. E. 457.

Nebraska. — State v. Hyland, 75 Neb. 767, 107 N. W. 113.

New York. — People v. Cahill, 116 N. Y. App. Div. 885, 102 N. Y. Supp. 325; People v. Cahill, 116 N. Y. App. Div. 927, 102 N. Y. Supp. 327; *In re* Williams, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 1105.

North Dakota. — State v. Fabrick, (N. Dak. 1907) 112 N. W. 74.

Oklahoma. — Matney v. King, (Okla. 1908) 93 Pac. 737; Ramsey v. King, (Okla. 1908) 93 Pac. 754.

Rhode Island. — Briggs v. Carr, 27 R. I. 477, 63 Atl. 487.

Wyoming. — State v. Grant, 14 Wyo. 41, 81 Pac. 795.

767. 2. McKannay v. Horton, 151 Cal. 711, 91 Pac. 598; State v. Richards, 50 Fla. 284, 39 So. 152; State v. Grant, 14 Wyo. 41, 81 Pac. 795.

7. Couch v. State, (Ind. 1907) 82 N. E. 457; Blain v. Chippewa Circuit Judge, 145 Mich. 59, 108 N. W. 440; *In re* Williams, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 1105; Matney v. King, (Okla. 1908) 93 Pac. 737; Ramsey v. King, (Okla. 1908) 93 Pac. 754.

The Approval of an Official Bond, and the giving of the statement required by the statute to an appointee, are ministerial acts, the performance of which may be coerced by mandamus. Hertel v. Boismenue, 229 Ill. 474, 82 N. E. 298.

768. 1. *California.* — Davenport v. Los Angeles, 146 Cal. 508, 80 Pac. 684.

Colorado. — School Dist. No. 1 v. School Dist. No. 7, 33 Colo. 43, 78 Pac. 690.

Indiana. — State v. Metropolitan Police Com'rs, (Ind. 1907) 83 N. E. 83.

Massachusetts. — Ransom v. Boston, 193 Mass. 537, 79 N. E. 823; Hill v. Fitzgerald, 193 Mass. 569, 79 N. E. 825; Lattime v. Hunt, (Mass. 1907) 81 N. E. 1001.

Missouri. — State v. Miles, (Mo. 1908) 109 S. W. 595.

New York. — People v. Best, 187 N. Y. 1, 79 N. E. 890; People v. Cahill, 188 N. Y. 489, 81 N. E. 453; People v. Ahearn, 115 N. Y. App. Div. 171, 100 N. Y. Supp. 716; People v. Ahearn, 120 N. Y. App. Div. 95, 104 N. Y. Supp. 860.

Ohio. — State v. Baldwin, 77 Ohio St. 532, 83 N. E. 907.

South Dakota. — King v. Lane. (S. Dak. 1906) 110 N. W. 37.

Title to public office, based upon mistakes of fact or misconceptions of law, may impart a color of right which will bar the allowance of a mandamus; but palpable disregard of law renders the action whereby an office is seized merely colorable, and in a clear case will be brushed aside as affording no obstruction to the exercise of a plain legal duty. Matney v. King, (Okla. 1908) 93 Pac. 737.

2. Matney v. King, (Okla. 1908) 93 Pac. 737; Ramsey v. King, (Okla. 1908) 93 Pac. 754.

769. 3. People v. Wilson, 106 N. Y. App. Div. 609, 94 N. Y. Supp. 544; People v. Cahill, 116 N. Y. App. Div. 885, 102 N. Y. Supp. 325; People v. Cahill, 116 N. Y. App. Div. 927, 102 N. Y. Supp. 327; Caffrey v. Caffrey, 28 Pa. Super. Ct. 22.

770. 1. People v. Cahill, 116 N. Y. App. Div. 885, 102 N. Y. Supp. 325; People v. Cahill, 116 N. Y. App. Div. 927, 102 N. Y. Supp 327; Caffrey v. Caffrey, 28 Pa. Super. Ct. 22.

2. State v. Miles, (Mo. 1908) 109 S. W. 595.

771. 6. Pleasantville v. Atlantic City, etc., Traction Co., (N. J. 1907) 68 Atl. 60; Hartwig v. Watertown, (Wis. 1907) 112 N. W. 21.

772. 5. People v. Butler, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 18, 103 N. Y. Supp. 583.

773. 1. People v. Errant, 229 Ill. 56, 82 N. E. 271.

Bringing Positions within Operation of Statute. — People v. Wheeler, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 280, 106 N. Y. Supp. 450.

Certifying Pay-rolls. — People v. McWilliams,

(Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 296, 106 N. Y. Supp. 459.

Placing a Position in the Competitive Class, or Striking It Therefrom, may be compelled by mandamus, if the action of the civil service commission in refusing so to do is clearly illegal. People *v.* McWilliams, 185 N. Y. 92, 77 N. E. 785.

3. People *v.* Snyder, 106 N. Y. App. Div. 28, 94 N. Y. Supp. 541.

Promotional Examination. — Mandamus lies to compel civil service commissioners to perform the mandatory duty, imposed on them by statute, of holding a promotional examination. People *v.* Errant, 229 Ill. 56, 82 N. E. 271.

5. People *v.* Baker, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 143, 97 N. Y. Supp. 453.

11. Ross *v.* Sioux City, (Iowa 1907) 113 N. W. 474.

774. 1. Ross *v.* Sioux City, (Iowa 1907) 113 N. W. 474; Robertson *v.* Alberson, (Iowa 1908) 114 N. W. 885.

4. People *v.* Hayes, 106 N. Y. App. Div. 563, 94 N. Y. Supp. 754; Walters *v.* New York, 119 N. Y. App. Div. 464, 105 N. Y. Supp. 950; People *v.* Butler, (Supm. Ct. App. Div.) 107 N. Y. Supp. 833.

775. 1. People *v.* Butler, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 18, 103 N. Y. Supp. 583.

2. People *v.* Bermel, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 75, 100 N. Y. Supp. 728.

776. 2. State *v.* Lawrence, (Kan. 1907) 92 Pac. 1131; State *v.* Hyland, 75 Neb. 767, 107 N. W. 113; Eberle *v.* King, (Okla. 1908) 93 Pac. 748, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 776; State *v.* Green, 131 Wis. 324, 111 N. W. 519.

3. Eberle *v.* King, (Okla. 1908) 93 Pac. 748, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 776.

4. Eberle *v.* King, (Okla. 1908) 93 Pac. 748, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 776.

5. Eberle *v.* King, (Okla. 1908) 93 Pac. 748, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 776.

777. 1. Eberle *v.* King, (Okla. 1908) 93 Pac. 748, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 777.

Mandamus will not lie at the instance of a relator holding *prima facie* title to the office of register of deeds, and who has qualified and given bond as such, as required by law, to compel the judge of the District Court to turn over to him the books, papers, and records belonging to the office of register of deeds, the unauthorized custody of which the respondent holds, not as a court, but as an individual, and refuses to surrender on demand. Eberle *v.* King, (Okla. 1908) 93 Pac. 748.

778. 1. Orcutt *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 497; People *v.* Mounds, 122 Ill. App. 449; Trewin *v.* Shurts, (N. J. 1907) 65 Atl. 984; Morris, etc., Dredging Co. *v.* Bayonne, (N. J. 1907) 67 Atl. 20; Lay *v.* Hoboken, (N. J. 1907) 67 Atl. 1024; Hoboken Manufacturers' R. Co. *v.* Hoboken, (N. J. 1908) 68 Atl. 1098; People *v.* Brush, 115 N. Y. App. Div. 688, 101 N. Y. Supp. 312; Com. *v.* Real Estate Trust Co., 211 Pa. St. 51, 60 Atl. 551; State *v.* Kendall, 44 Wash. 542, 87 Pac. 821; State *v.* Mason, 45 Wash. 234, 88 Pac. 126.

3. Lay *v.* Hoboken, (N. J. 1907) 67 Atl. 1024.

4. Com. *v.* Real Estate Trust Co., 211 Pa. St. 51, 60 Atl. 551.

779. 2. McDowell *v.* Terrell, 99 Tex. 107 87 S. W. 668; Thaxton *v.* Terrell, 99 Tex. 562, 91 S. W. 559; Munson *v.* Terrell, (Tex. 1907) 105 S. W. 1114; Patton *v.* Terrell, (Tex. 1907) 105 S. W. 1115.

3. Blakeley *v.* Kingsbury, (Cal. App. 1907) 93 Pac. 129; Munson *v.* Terrell, (Tex. 1907) 105 S. W. 1114.

No Clear Legal Right — Writ Refused. — Blakeley *v.* Kingsbury, (Cal. App. 1907) 93 Pac. 129.

The Writ Will Not Be Issued pending the examination, by the commissioners, of a charge of fraud in the sale against the applicant. State *v.* Ross, 44 Wash. 249, 87 Pac. 262.

6. McDowell *v.* Terrell, 99 Tex. 107, 87 S. W. 668; State *v.* Ross, 42 Wash. 439, 85 Pac. 29.

780. 1. County commissioners may be compelled by a writ of mandamus to give their consent to the appointment of appraisers, made by the county superintendent of public instruction in proper proceedings for the sale of school land, when such appraisers are duly qualified and satisfactory. Bushey *v.* Hardin, 74 Kan. 285, 86 Pac. 146.

8. Patton *v.* Terrell, (Tex. 1907) 105 S. W. 1115.

12. U. S. *v.* Hitchcock, 28 App. Cas. (D. C.) 338; State *v.* Eaton, (Neb. 1907) 110 N. W. 709.

781. 9. Beatty *v.* Smith, 75 Kan. 803, 90 Pac. 272.

782. 16. Com. *v.* Barker, 211 Pa. St. 610, 61 Atl. 253.

783. 1. Commissioners' Ct. *v.* State, 146 Ala. 439, 41 So. 463; Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; Howell *v.* State, (Fla. 1907) 45 So. 453; Funk *v.* State, 166 Ind. 455, 77 N. E. 854; State *v.* Johns, (Ind. 1908) 84 N. E. 1; Boyd *v.* Board of Health, 140 Mich. 306, 103 N. W. 605; Denman *v.* Coffee, (Tex. Civ. App. 1905) 91 S. W. 800.

2. Commissioners' Ct. *v.* State, 146 Ala. 439, 41 So. 463.

3. Commissioners' Ct. *v.* State, 146 Ala. 439, 41 So. 463.

784. 2. People *v.* Saratoga County, 106 N. Y. App. Div. 281, 94 N. Y. Supp. 1012.

785. 3. Denman *v.* Coffee, (Tex. Civ. App. 1905) 91 S. W. 800.

9. Traverse City First Nat. Bank *v.* Union Tp., 141 Mich. 404, 104 N. W. 771; State *v.* Irvine, 14 Wyo. 318, 84 Pac. 90.

786 1. Smith *v.* McCutchen, 146 Ala. 455, 41 So. 619; State *v.* Brasie, 96 Minn. 209, 104 N. W. 962; Wunderlich *v.* Kalkofen, (Wis. 1907) 113 N. W. 1091.

787. 1. Rutgers College *v.* Morgan, 71 N. J. L. 663, 60 Atl. 205.

2. Roberts *v.* Consaul, 24 App. Cas. (D. C.) 551; Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; State *v.* Brasie, 96 Minn. 209, 104 N. W. 962.

4. State *v.* Brasie, 96 Minn. 209, 104 N. W. 962; Webb *v.* Ritter, 60 W. Va. 213, 54 S. E. 484, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 787, 791.

788. 1. Stegmaier v. Goeringer, (Pa. 1907) [illegible]

2. See Smith *v.* McCutchen, 146 Ala. 455, 41 So. 619.

7. Claims for Which Appropriation Has Not Been Made. — Com. *v.* Foster, 215 Pa. St. 177, 64 Atl. 367.

8. Where the Appropriation Has Been Exhausted. — [illegible] Hagan v. Shuck, 120 Ky. 574, 87 S. W. 300.

789. 1. Road Com'rs *v.* Auditors, 148 Mich. 255, 111 N. W. 901.

4. [illegible] County *v.* Branaman, (Ind. 1907) [illegible]

6. Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; Putnam Foundry, etc., Co. *v.* Barrington, (R. I. 1907) 67 Atl. 733; San Antonio *v.* Routledge, (Tex. Civ. App. 1907) 102 S. W. 756; Espy Estate Co. *v.* Pacific County, 40 Wash. 67, 82 Pac. 129; State *v.* Lewis County, 45 Wash. 423, 88 Pac. 760.

790. 1. Neal Loan, etc., Co. *v.* Chastain, 121 Ga. 500, 49 S. E. 618; McNutt *v.* Lemhi County, 12 Idaho 63, 84 Pac. 1054; Espy Estate Co. *v.* Pacific County, 40 Wash. 67, 82 Pac. 129; State *v.* Lewis County, 45 Wash. 423, 88 Pac. 760.

3. Howell *v.* State, (Fla. 1907) 45 So. 453.

791. 4. Matter of Morris, etc., Dredging Co., 116 N. Y. App. Div. 257, 101 N. Y. Supp. 726; People *v.* Treasurer, 121 N. Y. App. Div. 84, 105 N. Y. Supp. 576.

9. Howell *v.* State, (Fla. 1907) 45 So. 453.

792. 4. Wunderlich *v.* Kalkofen, (Wis. 1907) 113 N. W. 1091.

6. Hines *v.* Salter, (Ala. 1908) 45 So. 587.

11. Howell *v.* State, (Fla. 1907) 45 So. 452.

794. 1. People *v.* Metz, 115 N. Y. App. Div. 269, 100 N. Y. Supp. 913.

2. Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; State *v.* Spinney, 166 Ind. 282, 76 N. E. 971.

795. 5. McNutt *v.* Lemhi County, 12 Idaho 63, 84 Pac. 1054.

6. Dennington *v.* Roberta, (Ga. 1908) 61 S. E. 20.

8. State *v.* Spinney, 166 Ind. 282, 76 N. E. 971, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 795, 796; State *v.* Johns, (Ind. 1908) 84 N. E. 1; State *v.* Barret, 30 Mont. 203, 81 Pac. 349; State *v.* Burley, (S. Car. 1908) 61 S. E. 255.

798. 2. Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; State *v.* Edwards, (Utah 1908) 93 Pac. 720.

5. Davenport *v.* Los Angeles, 146 Cal. 508, 80 Pac. 684; McKannay *v.* Horton, 151 Cal. 711, 91 Pac. 598; Granger *v.* French, (Mich. 1908) 116 N. W. 181.

6. Davenport *v.* Los Angeles, 146 Cal. 508, 80 Pac. 684.

799. 7. But see State *v.* Grant, 14 Wyo. 41, 81 Pac. 795.

800. 1. Graham *v.* Tuscumbia, 146 Ala. 449, 42 So. 400; De Soto County Com'rs *v.* Howell, 51 Fla. 160, 40 So. 192; Common School Dist. No. 10 *v.* Miller, (Ky. 1907) 105 S. W. 457; State *v.* New Orleans, 116 La. 851, 41 So. 115; Territory *v.* Santa Fe County, (N. Mex. 1907) 89 Pac. 252; San Antonio *v.* Routledge, (Tex. Civ. App. 1907) 102 S. W. 756; State *v.* Fairley, 45 Wash. 52, 87 Pac. 1052.

2. Territory *v.* Santa Fe County, (N. Mex. 1907) 89 Pac. 252.

3. State *v.* New Orleans, 116 La. 851, 41 So. 115.

4. State *v.* New Orleans, 116 La. 851, 41 So. 115.

801. 1. Graham *v.* Tuscumbia, 146 Ala. 449, 42 So. 400; San Antonio *v.* Routledge, (Tex. Civ. App. 1907) 102 S. W. 756.

Where the Officers Have Exhausted Their Power of Taxation mandamus will not issue to compel them to take steps to raise money by taxation. State *v.* New Orleans, 116 La. 851, 41 So. 115.

2. Graham *v.* Tuscumbia, 146 Ala. 449, 42 So. 400.

3. See Graham *v.* Tuscumbia, 146 Ala. 449, 42 So. 400.

7. But see Graham *v.* Tuscumbia, 146 Ala. 449, 42 So. 400.

802. 1. "When an issue of fact has been joined on the issuance of an alternative writ of mandamus, the proceedings thereafter are the same as in an action, except as otherwise provided by law (Code Civ. Pro. N. Y., § 2082); and such issue must be tried by a jury as if it were an issue joined in an action, unless a jury trial is waived or a reference directed by consent of the parties." People *v.* Italian Assoc., etc., Mut. Aid, (Supm. Ct. App. Div.) 107 N. Y. Supp. 1101.

7. Common School Dist. No. 10 *v.* Miller, (Ky. 1907) 105 S. W. 457; Territory *v.* Santa Fe County, (N. Mex. 1907) 89 Pac. 252; State *v.* Fairley, 45 Wash. 52, 87 Pac. 1052.

8. State *v.* Fairley, 45 Wash. 52, 87 Pac. 1052.

803. 3. People *v.* Italian Assoc., etc., Mut. Aid, (Supm. Ct. App. Div.) 107 N. Y. Supp. 1101; Beadles *v.* Fry, 15 Okla. 428, 82 Pac. 1041; Beadles *v.* Smyser, 17 Okla. 162, 87 Pac. 292.

804. 7. Ehrlich *v.* Jennings, 78 S. Car. 269, 58 S. E. 922.

805. 1. Ehrlich *v.* Jennings, 78 S. Car. 269, 58 S. E. 922, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 804, 805, in dissenting opinion of Jones, J.

8. *Arizona.* — Territory *v.* Gaines, (Ariz. 1908) 93 Pac. 281.

California. — Gibson *v.* Twaddle, 1 Cal. App. 126, 81 Pac. 727; Hewel *v.* Hogin, 3 Cal. App. 248, 84 Pac. 1002.

Florida. — De Soto County Com'rs *v.* Howell, 51 Fla. 160, 40 So. 192.

Illinois. — Coles County *v.* People, 226 Ill. 576, 80 N. E. 1066; Murphy *v.* People, 129 Ill. App. 533.

Kansas. — True *v.* Brandt, 72 Kan. 502, 83 Pac. 826; Spencer *v.* Smith, 74 Kan. 145, 85 Pac. 573; Beatty *v.* Smith, 75 Kan. 803, 90 Pac. 272.

New Jersey. — Christie *v.* Chosen Freeholders, (N. J. 1907) 66 Atl. 1073.

New York. — People *v.* Page, 105 N. Y. App. Div. 212, 94 N. Y. Supp. 660; People *v.* Ontario County, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 63, 100 N. Y. Supp. 330.

Pennsylvania. — Com. *v.* Baker, 212 Pa. St. 230, 61 Atl. 910.

South Carolina. State *v.* Durant, 71 S. Car. 311, 51 S. E. 146; State *v.* Burley, (S. Car. 1908) 61 S. E. 255.

A peremptory writ of mandamus will not be granted to compel a board of county commissioners to consent to an appointment of appraisers of lands claimed to be school lands, it being conceded that such lands had, prior to the application [illegible] been purchased by the state to a purchaser thereof. Nation *v.* Rundberg, (Kan. 1908) 94 Pac. 257.

9. Berger *v.* Justice, 4 Cal. App. 532, 88 Pac. 591; Keefe Mfg., etc., Co. *v.* Board of Education, 33 Colo. 513, 81 Pac. 257; Queeny *v.* Higgins, (Iowa 1907) 114 N. W. 51; Dickinson *v.* County Canvassers, 148 Mich. 513, 111 N. W. 1075; State *v.* Switzer, (Neb. 1907) 112 N. W. 297.

806. 7. *In re* Timmerman, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 192, 100 N. Y. Supp. 57.

13. Christie *v.* Chosen Freeholders, (N. J. 1907) 66 Atl. 1073.

22. Ward *v.* Beaufort County, (N. Car. 1908) 60 S. E. 418.

807. 1. State *v.* Giddings, 98 Minn. 102, 107 N. W. 1049; State *v.* Brewer, 39 Wash. 69, 80 Pac. 1001.

6. Williams *v.* Cooley, 127 Ga. 21, 55 S. E. 917.

7. Lyle *v.* Sherman, 147 Mich. 424, 110 N. W. 932.

8. State *v.* Fisher, 5 Penn. (Del.) 273, 64 Atl. 68; Rudolph *v.* Hutchinson, (Wis. 1908) 114 N. W. 453.

9. State *v.* Vasaly, 98 Minn. 46, 107 N. W. 818.

808. 4. Egilbert *v.* Superior Ct., (Cal. App. 1907) 91 Pac. 748. But see Aspinwall *v.* Boston, 191 Mass. 441, 78 N. E. 103.

809. 7. State *v.* Red Lodge, 33 Mont. 345, 83 Pac. 642.

21. Perry *v.* Clarke County, 133 Iowa 281, 110 N. W. 591.

810. 4. Green *v.* Road Board, 126 Ga. 693, 56 S. E. 59.

811. 1. Barber *v.* Delaware Tp., (N. J. 1908) 69 Atl. 641.

3. Rodenbarger *v.* State, 165 Ind. 685, 76 N. E. 398.

5. People *v.* Town Board, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 913.

812. 7. People *v.* Hawxhurst, (Supm. Ct. App. Div.) 107 N. Y. Supp. 746.

12. State *v.* Switzer, (Neb. 1907) 112 N. W. 297; People *v.* Early, 106 N. Y. App. Div. 269, 94 N. Y. Supp. 640.

813. 2. Glenn *v.* Moore County, 139 N. Car. 412, 52 S. E. 58, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 813; Com. *v.* Baker, 212 Pa. St. 230, 61 Atl. 910.

3. Glenn *v.* Moore County, 139 N. Car. 412, 52 S. E. 58.

6. People *v.* Early, 106 N. Y. App. Div. 269, 94 N. Y. Supp. 640.

814. 13. State *v.* Smith, (Neb. 1906) 108 N. W. 173.

When Remedy Not by Mandamus. — Bloomer *v.* Bloomer, 128 Wis. 294, 107 N. W. 974.

815. 13. People *v.* Whalen, 110 N. Y. App. Div. 740, 104 N. Y. Supp. 555, *affirmed* (Sup. Ct. Spec. T.) 56 Misc. (N. Y.) 278, 106 N. Y. Supp. 434.

816. 3. New York Mortg. Co. *v.* Secretary of State, 150 Mich. 197, 114 N. W. 82.

5. Larabee Flour Mills Co. *v.* Missouri Pac. R. Co., 74 Kan. 808, 88 Pac. 72.

13. Joliet Bridge, etc., Co. *v.* Freeman, 149 Mich. 274, 112 N. W. 928; State *v.* Drainage Dist. No. 1, (Wash. 1907) 90 Pac. 600.

14. People *v.* Chamberlain, (Supm. Ct. Spec. T.) 106 N. Y. Supp. 149.

817. 5. Higgins *v.* Lockwood, (N. J. 1906) 64 Atl. 184; Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

6. *In re* Freeman, (N. J. 1907) 68 Atl. 222.

819. 1. People *v.* Edgcomb, 112 N. Y. App. Div. 604, 98 N. Y. Supp. 965.

820. 1. State *v.* Cincinnati, 27 Ohio Cir. Ct. 832.

821. 1. State *v.* Williams, (Ala. 1905) 39 So. 276; Hudgins *v.* State, 145 Ala. 499, 39 So. 717.

3. State *v.* Fisher, 5 Penn. (Del.) 273, 64 Atl. 68.

10. State *v.* Langan, (Ala. 1907) 43 So. 187, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 821; Goytino *v.* McAleer, 4 Cal. App. 655, 88 Pac. 991; Harrison *v.* People, 121 Ill. App. 189; State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071; People *v.* State Racing Commission, 190 N. Y. 31, 82 N. E. 723; People *v.* Gilman, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 954; People *v.* State Racing Commission, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 955.

11. U. S. *v.* MacFarland, 28 App. Cas. (D. C.) 552; Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745; Cheney *v.* Barker, (Mass. 1908) 84 N. E. 492; State *v.* McCammon, 111 Mo. App. 626, 86 S. W. 510; State *v.* Adcock, 206 Mo. 550, 105 S. W. 270; People *v.* State Racing Commission, 190 N. Y. 31, 82 N. E. 723, *affirming* 120 N. Y. App. Div. 484, 105 N. Y. Supp. 528; People *v.* Metz, 123 N. Y. App. Div. 269, 107 N. Y. Supp. 970.

822. 1. People *v.* Busse, 231 Ill. 251, 83 N. E. 175; Conlee *v.* Clay City, (Ky. 1907) 102 S. W. 862; New York Mortg. Co. *v.* Secretary of State, 150 Mich. 197, 114 N. W. 82; State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071; State *v.* Adcock, 206 Mo. 550, 105 S. W. 270.

2. Harrison *v.* People, 124 Ill. App. 519; Middlekauff *v.* Adams, (Neb. 1906) 107 N. W. 232; Pallidy *v.* Beatty, 15 Okla. 626, 83 Pac. 428.

3. Chicago *v.* O'Hare, 124 Ill. App. 290; Meyer *v.* Decatur, 125 Ill. App. 556; Power *v.* Common Council, 141 Mich. 350, 104 N. W. [illegible] State *v.* McCammon, 111 Mo. App. 626, 86 S. W. 510.

4. Arwine *v.* Medical Examiners, 151 Cal. 499, 91 Pac. 319.

5. Rosenkrans *v.* State Board of Registration, (R. I. 1907) 67 Atl. 367.

6. State *v.* Matthews, 77 S. Car. 357, 57 S. E. 1099.

8. State *v.* Board of Dental Examiners, 38 Wash. 325, 80 Pac. 544.

9. State *v.* Adcock, 206 Mo. 550, 105 S. W. [illegible]

823. 3. State *v.* Curtis, 130 Wis. 357, 110 N. W. 189.

"The writ will not issue if it is too late to be available as a remedy to enforce the right alleged to have been violated." State *v.* Hammel, (Wis. 1907) 114 N. W. 97.

5. Frank *v.* Butler County, (C. C. A.) 139 Fed. 119; Carlson *v.* People, 118 Ill. App. 592; Hertel *v.* Boismenue, 128 Ill. App. 322.

6. Paulk *v.* Greer, 126 Ga. 714, 55 S. E. 943; People *v.* Burns, 106 N. Y. App. Div. 36, 94 N. Y. Supp. 196; People *v.* Independent Order Brith Abraham, 116 N. Y. App. Div. 364, 101 N. Y. Supp. 866.

Review by Certiorari. — Graham *v.* Hosmer, 143 Mich. 360, 106 N. W. 1109.

821. 2. Hertel *v.* Boismenue, 128 Ill. App. 322.

5. Firemen's Pensions. — State *v.* Fireman's Pension, etc., Fund, 117 La. 1071, 42 So. 506.

825. 1. Dancy *v.* Clark, 24 App. Cas. (D. C.) 487.

5. State *v.* Brewer, 39 Wash. 69, 80 Pac. 1001.

8. McGann *v.* Harris, 114 Ill. App. 308; Gleistman *v.* West New York, (N. J. 1906) 64 Atl. 1084; People *v.* McAdoo, (Supm. Ct. App. Div.) 96 N. Y. Supp. 1069; *In re* Pritchard, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 483, 101 N. Y. Supp. 711; People *v.* Bingham, (Supm. Ct. App. Div.) 110 N. Y. Supp. 136.

10. Sawyer *v.* Manton, 145 Mich. 272, 108 N. W. 644.

826. 2. In New Jersey mandamus cases are not reviewable on error, "except in cases covered by the amendment to the Mandamus Act, 2 Gen. Stat., p. 2002, § 13," which limits it to cases decided in the Supreme Court upon the constitutionality of a statute. School Dist. *v.* Mannion, 73 N. J. L. 816, 65 Atl. 440.

827. 1. State *v.* Steiner, 44 Wash. 150, 87 Pac. 66.

4. *United States.* — *In re* Pollitz, 206 U. S. 323, 27 U. S. Sup. Ct. 729; Collin County Nat. Bank *v.* Hughes, (C. C. A.) 152 Fed. 414; Dowagiac Mfg. Co. *v.* McSherry Mfg. Co., (C. C. A.) 155 Fed. 524; Prosser *v.* U. S., (C. C. A.) 158 Fed. 971.

California. — De La Beckwith *v.* Superior Ct., 146 Cal. 496, 80 Pac. 717.

Idaho. — Connolly *v.* Woods, 13 Idaho 591, 92 Pac. 573.

Louisiana. — Berthelot *v.* Hotard, 117 La. 524, 42 So. 90; State *v.* Reid, (La. 1907) 44 So. 689; State *v.* Reid, (La. 1907) 45 So. 103.

Nevada. — State *v.* Murphy, (Nev. 1906) 85 Pac. 1004.

New York. — Kelsey *v.* Church, 112 N. Y. App. Div. 408, 98 N. Y. Supp. 535.

Oklahoma. — Higgins *v.* Brown, (Okla. 1908) 94 Pac. 703.

Tennessee. — State *v.* Taylor, (Tenn. 1907) 104 S. W. 242, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 827.

Texas. — St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 99 S. W. 177; Gordon *v.* Willson, (Tex. 1907) 104 S. W. 1043.

Utah. — Hoffman *v.* Lewis, 31 Utah 179, 87 Pac. 167.

Washington. — State *v.* Superior Ct., 40 Wash. 443, 82 Pac. 875; State *v.* Ross, 42 Wash. 439, 85 Pac. 20.

West Virginia. — Mann *v.* Mercer County Ct., 58 W. Va. 651, 52 S. E. 776; Taylor County Ct. *v.* Holt, 61 W. Va. 154, 56 S. E. 205.

828. 2. Kelsey *v.* Church, 112 N. Y. App. Div. 408, 98 N. Y. Supp. 535.

5. Kelsey *v.* Church, 112 N. Y. App. Div. 408, 98 N. Y. Supp. 535; State *v.* Taylor, (Tenn. 1907) 104 S. W. 242; State *v.* Steiner, 44 Wash. 150, 87 Pac. 66; Taylor County Ct. *v.* Holt, 61 W. Va. 154, 56 S. E. 205.

829. 4. Specifications of Error Not Contained in Statement of Case. — State *v.* Fabrick, (N. Dak. 1907) 112 N. W. 74.

6. Bashore *v.* Superior Ct., (Cal. 1907) 91 Pac. 801.

830. 3. Miller *v.* Henderson, 212 Pa. St. 263, 61 Atl. 913.

4. State *v.* Superior Ct., 45 Wash. 196, 87 Pac. 1120.

12. Hoffman *v.* Lewis, 31 Utah 179, 87 Pac. 167.

831. 2. Taylor County Ct. *v.* Holt, 61 W. Va. 154, 56 S. E. 205.

832. 2. State *v.* Clem, 143 Ala. 556, 39 So. 214; Wooster *v.* Calhoun Circuit Judge, 150 Mich. 459, 114 N. W. 232.

6. Bleakley *v.* Smart, 74 Kan. 476, 87 Pac. 76.

833. 7. *Ex p.* Wisner, 203 U. S. 449, 27 U. S. Sup. Ct. 150.

8. *In re* Pollitz, 206 U. S. 323, 27 U. S. Sup. Ct. 729.

834. 5. The Writ Will Lie, however, where the judge had no authority or jurisdiction to make the order. State *v.* Superior Ct., 40 Wash. 443, 82 Pac. 875.

6. State *v.* Clementson, (Wis. 1907) 113 N. W. 667.

7. Time for Granting. — State *v.* Goodland, 128 Wis. 57, 107 N. W. 29.

838. 9. Geddis *v.* Donovan, (Mich. 1908) 114 N. W. 874.

11. Gordan *v.* Graham, (Cal. 1908) 95 Pac. 115.

839. 1. State *v.* Superior Ct., 43 Wash. 225, 86 Pac. 632.

10. To Amend an Order Setting Aside a Verdict mandamus will not lie. Birmingham R., etc., Co. *v.* Tanner, (Ala. 1905) 40 So. 58.

11. Nunn *v.* Robertson, 80 Ark. 350, 97 W. 293; Wyatt *v.* Arnot, (Cal. App. 1907) 94 Pac. 86; Bishop *v.* Valley Falls Mfg. Co., 78 S. Car. 312, 58 S. E. 939; Texas Tram, etc., Co. *v.* Hightower, (Tex. 1906) 96 S. W. 1071.

840. 3. Texas Tram, etc., Co. *v.* Hightower, (Tex. 1906) 96 S. W. 1071.

6. King *v.* Mason, 60 W. Va. 607, 56 S. E. 317.

7. *Ex p.* Merritt, 142 Ala. 115, 38 So. 183; Kingsberry *v.* People's Furniture Co., (Ga. 1908) 60 S. E. 865.

10. Presthus *v.* Gogebic Circuit Judge, 142 Mich. 204, 105 N. W. 154.

841. 5. *Ex p.* Merritt, 142 Ala. 115, 38 So. 183.

6. Com. *v.* Berry, (Ky. 1906) 92 S. W. 026; Travelers' Ins. Co. *v.* Wolcott, 144 Mich. 687, 108 N. W. 363; State *v.* Guinotte, 113 Mo. App. 399, 86 S. W. 884.

7. Travelers' Ins. Co. *v.* Wolcott, 144 Mich. 687, 108 N. W. 363.

An Appealable Interlocutory Order will not be

vacated on mandamus where the court does not refuse to proceed with the trial of the cause. Geddis *v.* Donovan, (Mich. 1908) 114 N. W. 874.

9. Bradfield *v.* St. Clair Circuit Judge, 148 Mich. 366, 111 N. W. 1043; Cohen *v.* Moore, (Tex. 1907) 104 S. W. 1053.

10. Connolly *v.* Woods, 13 Idaho 591, 92 Pac. 573; State *v.* Parsons, 119 La. 955, 44 So. 795.

842. 1. *Louisiana.* — State *v.* Police Dept., 119 La. 515, 44 So. 283.

Michigan. — Lemon *v.* Oakland Circuit Judge, 140 Mich. 504, 103 N. W. 843; Jones *v.* Mandell, 141 Mich. 408, 104 N. W. 692; Pontiac, etc., R. Co. *v.* Oakland Circuit Judge, 142 Mich. 257, 105 N. W. 745; Hitchcock *v.* Rohnert, 144 Mich. 362, 107 N. W. 1123; Cosgrove *v.* Rohnert, 144 Mich. 682, 108 N. W. 361; Small *v.* Cheboygan Circuit Judge, 150 Mich. 6, 113 N. W. 370; Peninsular Club *v.* Perkins, 150 Mich. 614, 114 N. W. 396.

Missouri. — State *v.* Guinotte, 113 Mo. App. 399, 86 S. W. 884.

Texas. — Cohen *v.* Moore, (Tex. 1907) 104 S. W. 1053.

2. Coffin *v.* Ontonagon Circuit Judge, 140 Mich. 420, 103 N. W. 835; Robinson *v.* Branch Circuit Judge, 142 Mich. 70, 105 N. W. 25.

4. Where the Relator Has a Remedy by Appeal, a court will not by mandamus be compelled to amend a judgment. Luther *v.* Wolcott, (Mich. 1908) 114 N. W. 673.

7. State *v.* Wills, 49 Fla. 380, 38 So. 289; Wenar *v.* Schwartz, 116 La. 151, 40 So. 599; Lewis *v.* Sandell, 118 La. 852, 43 So. 526; Stock *v.* Mandell, 143 Mich. 339, 106 N. W. 897; Graham *v.* Hosmer, 143 Mich. 360, 106 N. W. 1109; State *v.* Ritchie, (Utah 1907) 91 Pac. 24.

843. 3. Fink *v.* Bay Shore Terminal Co., (C. C. A.) 144 Fed. 837.

5. Union Sawmill Co. *v.* Arkansas Southeastern R. Co., 119 La. 670, 44 So. 803.

6. Where Irreparable Injury Will Not Be Done to the relator by failure to grant the appeal, mandamus will not lie to compel a suspensive appeal in an injunction case. Lewis *v.* Sandell, 118 La. 852, 43 So. 526.

13. To Perfect Record on Appeal. — Com. *v.* Hutton, 32 Pa. Super. Ct. 66.

844. 1. Trapp *v.* Frizzell, (Tex. Civ. App. 1906) 98 S. W. 947.

3. State *v.* Deupree, (Ind. App. 1907) 81 N. E. 678; People *v.* Chytraus, 228 Ill. 194, 81 N. E. 844.

4. Miller *v.* American Cent. Ins. Co., 2 Cal. App. 271, 83 Pac. 289; Thomas *v.* Com., 106 Va. 855, 56 S. E. 705; Richardson *v.* Steiner, 41 Wash. 439, 83 Pac. 1027; State *v.* Craig, 15 Wyo. 439, 89 Pac. 584.

845. 1. State *v.* Craig, 15 Wyo. 439, 89 Pac. 584.

846. 5. State *v.* Craig, 15 Wyo. 439, 89 Pac. 584.

7. State *v.* Craig, 15 Wyo. 439, 89 Pac. 584.

847. 1. Richardson *v.* Steiner, 41 Wash. 439, 83 Pac. 1027.

3. Shipman *v.* Unangst, 150 Cal. 425, 88 Pac. 1000.

848. 1. Morgan *v.* Perkins, (Mich. 1907) 113 N. W. 583.

3. Rawlins *v.* Mitchell, 127 Ga. 24, 55 S. E. 958; Harris *v.* Sheffield, 128 Ga. 299, 57 S. E. 305; Sistrunk *v.* Pendleton, 129 Ga. 255, 58 S. E. 712.

4. Sistrunk *v.* Pendleton, 129 Ga. 255, 58 S. E. 712.

5. Hendricks *v.* Reid, 125 Ga. 775, 54 S. E. 747; Rawlins *v.* Mitchell, 127 Ga. 24, 55 S. E. 958; Sistrunk *v.* Pendleton, 129 Ga. 255, 58 S. E. 712.

6. Hendricks *v.* Reid, 125 Ga. 775, 54 S. E. 747.

8. *Ex p.* Chicago Title, etc., Co., (C. C. A.) 146 Fed. 742.

850. 13. People *v.* Lang, 109 N. Y. App. Div. 706, 96 N. Y. Supp. 555.

852. 9. Where the Will Was Admitted to Probate, but there was a controversy between two persons as to who was entitled to letters testamentary, mandamus will not be issued to compel granting of the letters until the determination of the controversy. Miller *v.* Henderson, 212 Pa. St. 263, 61 Atl. 913.

857. 4. Lewis *v.* D'Albor, 116 La. 679, 41 So. 31.

Where There Is a Remedy by Appeal, mandamus will not issue to compel the granting of an injunction. Manion *v.* Public Schools, 119 La. 879, 44 So. 515.

6. Chatfield *v.* Lenawee Circuit Judge, 140 Mich. 636, 104 N. W. 45; Blain *v.* Chippewa Circuit Judge, 145 Mich. 59, 108 N. W. 440; River Rouge *v.* Hosmer, 147 Mich. 204, 110 N. W. 622.

859. 1. Bundy *v.* U. S., 25 App. Cas. (D. C.) 459; State *v.* Kloke, (Neb. 1907) 110 N. W. 687.

862. 4. Pipher *v.* Superior Ct., 3 Cal. App. 626, 86 Pac. 905.

7. People *v.* Best, 187 N. Y. 1, 79 N. E. 890; State *v.* Phillips, (Wis. 1908) 114 N. W. 802.

863. 1. French *v.* Senate of State, 146 Cal. 604, 80 Pac. 1031.

6. State *v.* Dunn, (Neb. 1906) 107 N. W. 236.

8. Cooper *v.* Cape May Point, 72 N. J. L. 164, 60 Atl. 516.

9. Dorlan *v.* Westervitch, 140 Ala. 283, 37 So. 382; Jackson County *v.* Branaman, (Ind. App. 1907) 79 N. E. 923; Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745.

864. 12. Jackson County *v.* Branaman, (Ind. App. 1907) 79 N. E. 923.

13. State *v.* Board of Liquidation, 115 La. 471, 39 So. 448.

14. Rose *v.* McKie, (C. C. A.) 145 Fed. 584; Huey *v.* Waldrop, 141 Ala. 318, 37 So. 380, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 864; Dennington *v.* Roberta, (Ga. 1908) 61 S. E. 20.

Mandamus will not be granted to compel authorities to levy and collect a tax to pay a judgment alleged to be held by the applicants against the municipality, where it appears that the judgment relied on is not a valid judgment against it. Meyer *v.* Jordan, 123 Ga. 669, 51 S. E. 602.

15. Graham *v.* Folsom, 200 U. S. 248, 26 U. S. Sup. Ct. 245; Nevada Nat. Bank *v.* Kern County, 5 Cal. App. 638, 91 Pac. 122; Lake County *v.* Schradsky, (Colo. 1908) 95 Pac. 312;

Coles County *v.* People, 226 Ill. 576, 80 N. E. 1066; Pape *v.* Benton Tp., 140 Mich. 165, 103 N. W. 591; State *v.* Farrington, (Neb. 1908) 114 N. W. 1100.

Before the writ of mandamus will issue to compel the county commissioners to issue their warrant upon the treasurer to pay a debt, it must appear that the debt comes within the classes provided in the constitution for which a tax may be levied. Brunson *v.* Caskie, 127 Ga. 501, 56 S. E. 621.

865. 3. Graham *v.* Folsom, 200 U. S. 248, 26 U. S. Sup. Ct. 245.

5. **Purchasers from a Contractor, of Non-negotiable Bonds** issued by a municipality for local improvements, cannot, by mandamus, compel their payment from the general funds of the municipality, where the contractor could not, by his fraud in performing the work, recover on the bonds. Northern Trust Co. *v.* Wilmette, 220 Ill. 417, 77 N. E. 169.

8. Harrison *v.* New Brighton, 110 N. Y. App. Div. 267, 97 N. Y. Supp. 246; Waldron *v.* Snohomish, 41 Wash. 566, 83 Pac. 1106.

866. 5. State *v.* Raleigh, 142 N. Car. 229, 55 S. E. 145.

867. 2. Huey *v.* Waldrop, 141 Ala. 318, 37 So. 380, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 867.

Permit to Railway Company to Lay Additional Track. — Mandamus will not lie to compel a municipal board to issue a permit for a railway company to lay an additional track, where it is left for such board to determine whether the prevailing conditions and the public welfare require the laying of an additional track. People *v.* South Park Com'rs, 221 Ill. 522, 77 N. E. 925.

3. People *v.* Brush, 110 N. Y. App. Div. 720, 96 N. Y. Supp. 500, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 867.

4. State *v.* Vasaly, 98 Minn. 46, 107 N. W. 818.

8. Nettles *v.* McConnell, (Ala. 1907) 43 So. 839.

868. 3. Nettles *v.* McConnell, (Ala. 1907) 43 So. 839; Parscouta *v.* State, 165 Ind. 484, 75 N. E. 970; State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052; State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112; State *v.* Lincoln Medical College, (Neb. 1908) 116 N. W. 294.

Mandamus, "in the absence of a statute, will not lie against an unincorporated association." Doyle *v.* Burke, (R. I. 1908) 69 Atl. 362.

4. See Nettles *v.* McConnell, (Ala. 1907) 43 So. 839; State *v.* Lazarus, 127 Mo. App. 401, 105 S. W. 780.

869. 1. Nettles *v.* McConnell, (Ala. 1907) 43 So. 839.

Inspection of Corporate Books and Papers. — Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337, 984, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 869.

3. State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052; State *v.* Lazarus, 127 Mo. App. 401, 105 S. W. 780.

4. State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052.

5. State *v.* Boonville R. Bridge Co., 206 Mo. 74, 103 S. W. 1052.

870. 1. Where water is diverted from its natural channel by means of a canal constructed and operated to supply power for a mill, it is the duty of the mill owner to erect and maintain suitable bridges for the convenience of the public at any point where the canal crosses a public road, and mandamus will lie to compel the performance of that duty. Nuckolls County *v.* Guthrie, (Neb. 1906) 107 N. W. 779.

3. State *v.* Hillyard Water Co., (Wash. 1908) 94 Pac. 1080.

5. State *v.* Milwaukee Medical College, 128 Wis. 7, 106 N. W. 116.

872. 4. South Pasadena *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 490; Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185; Southern R. Co. *v.* Atlanta Stove Works, 128 Ga. 207, 57 S. E. 429; Connolly *v.* Woods, 13 Idaho 591, 92 Pac. 573; Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136; Oklahoma City *v.* Oklahoma R. Co., (Okla. 1907) 93 Pac. 48.

873. 3. Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; Pleasantville *v.* Atlantic City, etc., Traction Co., (N. J. 1907) 68 Atl. 60.

875. 2. **Stopping Trains at Station.** — Railroad Com'rs *v.* Atlantic Coast Line R. Co., 71 S. Car. 130, 50 S. E. 641, 74 S. Car. 80, 54 S. E. 224.

Construction of Farms and Other Private Crossings. — Herrstrom *v.* Newton, etc., R. Co., 129 Iowa 507, 105 N. W. 436.

To Prevent Abandonment of Station. — See Jacquelin *v.* Erie R. Co., 69 N. J. Eq. 432, 61 Atl. 18.

Change of Grade. — People *v.* Geneva, etc., Traction Co., 112 N. Y. App. Div. 581, 98 N. Y. Supp. 719.

To Run Separate Passenger Trains. — State *v.* Missouri Pac. R. Co., (Kan. 1907) 92 Pac. 606.

3. People *v.* St. Louis, etc., Electric R. Co., 122 Ill. App. 422; People *v.* East St. Louis, etc., R. Co., 122 Ill. App. 431.

876. 1. U. S. *v.* Norfolk, etc., R. Co., 138 Fed. 849.

The writ of mandamus may issue notwithstanding the remedy by proceedings before the board of railroad commissioners. Larabee Flour Mills Co. *v.* Missouri Pac. R. Co., 74 Kan. 808, 88 Pac. 72.

2. Southern R. Co. *v.* Atlanta Stove Works, 128 Ga. 207, 57 S. E. 429; Larabee Flour Mills Co. *v.* Missouri Pac. R. Co., 74 Kan. 808, 88 Pac. 72.

4. U. S. *v.* Norfolk, etc., R. Co., (C. C. A.) 143 Fed. 269; Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185; Connolly *v.* Woods, 13 Idaho 591, 92 Pac. 573.

5. Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; Pleasantville *v.* Atlantic City, etc., Traction Co., (N. J. 1907) 68 Atl. 60.

A writ of mandamus should not issue at the instance of a municipal corporation to compel a street railway company to give transfers to its passengers within the municipality, when the obligation of the company to do so arises wholly from its assent to certain municipal ordinances which of themselves have no legislative force.

Newark *v.* North Jersey St. R. Co., 73 N. J. L. 265, 62 Atl. 1003.

6. Seymour Water Co. *v.* Seymour, 163 Ind. 120, 70 N. E. 514, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 876; Richman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 216, 100 N. Y. Supp. 81; *In re* Rebecchi, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 327, 100 N. Y. Supp. 335.

877. 1. South Pasadena *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 490; Independent School Dist. *v.* Le Mars City Water, etc., Co., 131 Iowa 14, 107 N. W. 945. *Compare* State *v.* Hillyard Water Co., (Wash. 1908) 94 Pac. 1080.

Telephone Companies. — *Contra,* Cullen *v.* New York Telephone Co., 106 N. Y. App. Div. 250, 94 N. Y. Supp. 290.

2. Cozzens *v.* North Fork Ditch Co., 2 Cal. App. 404, 84 Pac. 342. *Compare* Perrine *v.* San Jacinto Valley Water Co., 4 Cal. App. 376, 88 Pac. 293.

879. 2. Enforcing Order of Commission. *Compare* Railroad Com'rs *v.* Atlantic Coast Line R. Co., 71 S. Car. 130, 50 S. E. 641.

5. Hodgens *v.* United Copper Co., (N. J. 1907) 67 Atl. 756; Clawson *v.* Clayton, (Utah 1908) 93 Pac.

880. 2. *Alabama.* — Nettles *v.* McConnell, (Ala. 1907) 43 So. 839.

California. — Gavin *v.* Pacific Coast Marine Firemen's Union, 2 Cal. App. 638, 84 Pac. 270.

Delaware. — State *v.* Pan American Co., 3 Penn. (Del.) 391, 61 Atl. 398.

Massachusetts. — Varney *v.* Baker, 194 Mass. 239, 80 N. E. 524.

Missouri. — State *v.* Lazarus, 127 Mo. App. 401, 105 S. W. 780; State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112.

New Hampshire. — Hub Constr. Co. *v.* New England Breeders' Club, (N. H. 1907) 67 Atl. 574.

New Jersey. — Garcin *v.* Trenton Rubber Mfg. Co., (N. J. 1905) 60 Atl. 1098; Hodgens *v.* United Copper Co., (N. J. 1907) 67 Atl.

New York. — *In re* O'Neill, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 495, 95 N. Y. Supp. 964; People *v.* National Park Bank, 122 N. Y. App. Div. 635, 107 N. Y. Supp. 369; *In re* Hatt, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 320, 108 N. Y. Supp. 468.

Pennsylvania. — Neubert *v.* Armstrong Water Co., 211 Pa. St. 582, 61 Atl. 125.

Utah. — Clawson *v.* Clayton, (Utah 1908) 93 Pac. 729.

Wyoming. — Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337, 984.

"The writ is granted only on behalf of a stockholder, considered as such, and in proper aid of his stock interest only. Wherever information concerning the management, conduct, and control of the corporation is necessary for the protection of such stock interest, its revelation will be compelled; but where the information is sought, not for the benefit of an owner's stock interest, but to assist him in matters personal to himself and wholly apart from such interest, the writ should not be granted." *In re* Taylor, 117 N. Y. App. Div. 348, 101 N. Y. Supp. 1039; People *v.* Giroux Consol. Mines Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 188.

Policy holders in an insurance company have no right by mandamus to inspect the index cards of the company for the purpose of finding out the names and addresses of the policy holders, to enable them to organize an opposition ticket for the election of trustees. People *v.* New York L. Ins. Co., 111 N. Y. App. Div. 183, 97 N. Y. Supp. 465.

881. 1. Hodgens *v.* United Copper Co., (N. J. 1907) 67 Atl. 756; Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337, 984.

2. State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112.

3. State *v.* Jumbo Extension Min. Co., (Nev. 1908) 94 Pac. 74.

882. 1. Smith *v.* Automatic Photographic Co., 118 Ill. App. 649; State *v.* Consumers' Brewing Co., 115 La. 782, 40 So. 45.

883. 2. People *v.* Erste Ulaszkowcer, etc., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 304, 106 N. Y. Supp. 922.

3. United Brothers *v.* Williams, 126 Ga. 19, 54 S. E. 907; Venezia *v.* Italian Mut. Benev. Soc., (N. J. 1907) 65 Atl. 898; Hughes *v.* North Clinton Baptist Church, (N. J. 1907) 67 Atl. 66; People *v.* Independent Order Brith Abraham, 116 N. Y. App. Div. 364, 101 N. Y. Supp. 866; *In re* Wilcox, 123 N. Y. App. Div. 86, 108 N. Y. Supp. 483.

884. 2. Grant *v.* Ancient Order of Foresters, (N. J. 1907) 66 Atl. 902.

3. Kelly *v.* Grand Circle Women of Woodcraft, 40 Wash. 691, 82 Pac. 1007.

885. 1. Religious, Social, and Like Societies. — People *v.* Erste Ulaszkowcer, etc., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 304, 106 N. Y. Supp. 922.

887. 4. Churchwardens. — *In re* Williams, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 1105.

890. 5. U. S. *v.* Norfolk, etc., R. Co., 138 Fed. 849.

891. 11. U. S. *v.* Lake Shore, etc., R. Co., 197 U. S. 361, 25 U. S. Sup. Ct. 538; Covington, etc., Bridge Co. *v.* Hager, 203 U. S. 109, 27 U. S. Sup. Ct. 24; Large *v.* Consolidated Nat. Bank, 137 Fed. 168; Whitaker, etc., Co. *v.* Roberts, 155 Fed. 882; Burnham *v.* Fields, 157 Fed. 246.

894. 1. State *v.* Holmes, (N. Dak. 1908) 114 N. W. 367.

3. *In re* Burnette, 73 Kan. 609, 85 Pac. 575; Matney *v.* King, (Okla. 1908) 93 Pac. 737; Ramsey *v.* King, (Okla. 1908) 93 Pac. 754; State *v.* Goff, 129 Wis. 668, 109 N. W. 628; State *v.* Brooks, 14 Wyo. 393, 84 Pac. 488.

4. Minnesota. — *In re* Lauritsen, 99 Minn. 313, 109 N. W. 404.

895. 3. State *v.* Horn, (Mont. 1908) 93 Pac. 351.

897. 1. Goytino *v.* McAleer, 4 Cal. App. 655, 88 Pac. 991.

2. Lyle *v.* Sherman, 147 Mich. 424, 110 N. W. 932; State *v.* Holmes, (N. Dak. 1908) 114 N. W. 367.

4. State *v.* Goff, 129 Wis. 668, 109 N. W. 628.

898. 2. Oklahoma. — Starkweather *v.* Kemp, 18 Okla. 28, 88 Pac. 1045.

899. 5. Territory *v.* Gaines, (Ariz. 1908) Pac. 281.

900. 1. Neubert *v.* Armstrong Water Co., 211 Pa. St. 582, 61 Atl. 125.

901. 1. State *v.* Giddings, 98 Minn. 102, 107 N. W. 1049.

4. Rex *v.* Worcester Corporation, 69 J. P. 2.

12. A judgment directing the issuance of a peremptory writ of mandamus commanding the doing of some act which is within the authority and jurisdiction of the court to command, cannot be collaterally impeached or avoided in proceedings to punish for contempt. State *v.* Giddings, 98 Minn. 102, 107 N. W. 1049.

906. 5. Hill *v.* Fitzgerald, 193 Mass. 569, 79 N. E. 825.

907. 8. State *v.* Ritchie, (Utah 1907) 91 Pac. 4.

909. 9. State *v.* Kendall, 44 Wash. 542, 87 Pac. 821.

13. Harris *v.* Sheffield, 128 Ga. 299, 57 S. E. 305.

910. 5. State *v.* Rombotis, (La. 1907) 45 So. 43, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 910.

MANUAL.

922. 2. **Girls and Women Employed in a Florist Shop** in serving customers, making up flowers into boquets, and arranging floral decorations, are engaged in *manual* labor within the Factory and Workshop Act. Hoare *v.* Green, (1907) 2 K. B. 315, 96 L. T. N. S. 724, 71 J. P. 341, 23 Times L. Rep. 483, 76 L. J. K. B. 730.

MANUFACTURE — MANUFACTURER — MANUFACTURING, ETC.

922. 5. **Manufacturing.** — See *In re* Toledo Portland Cement Co., 156 Fed. 83.

Baker. — In Robinson *v.* Graham, 16 Manitoba 71, the court expressed a doubt as to whether a baker was a *manufacturer* or trader within an attachment statute, and *cited* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923.

The Manufacture of Engines, Pumps, and Fans constitutes a *manufacturing* establishment. Crawford, etc., Co. *v.* Gose, (Ind. App. 1907) 82 N. E. 984.

Fireproofed Lumber not dutiable as *manufactures* of wood under Tariff Act. Myers *v.* U. S., (C. C. A.) 147 Fed. 204.

Silk. — "Remanit," a covering for steam pipes and boilers, held to be a *manufacture* of silk within Tariff Act. Frank *v.* U. S., 143 Fed. 702, *affirmed* (C. C. A.) 149 Fed. 1023.

Wool. — As to what constitutes *manufactures* of wool under the Tariff Act, see Robinson *v.* U. S., 143 Fed. 919.

MANURE.

927. 2. **Manure Considered as Realty.** — Brigham *v.* Overstreet, 128 Ga. 450, 57 S. E. 484, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 927; Roberts *v.* Jones, 71 S. Car. 404, 51 S. E. 240, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 927.

MARE.

928. 5. **A Female Colt Is a Mare** within a larceny statute. Miller *v.* Territory, (Ariz. 1905) 80 Pac. 321.

MARINE INSURANCE.

945. 9. Moran *v.* Uzielli, (1905) 2 K. B. 555.

946. 3. Western Assur. Co. *v.* Chesapeake Lighterage, etc., Co., 105 Md. 232, 65 Atl. 637, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946.

957. 7. Western Assur. Co. *v.* Chesapeake Lighterage, etc., Co., 105 Md. 232, 65 Atl. 637.

985. 2. Northwestern Steamship Co. *v.* Maritime Ins. Co., 161 Fed. 166.

986. 4. Northwestern Steamship Co. *v.* Maritime Ins. Co., 161 Fed. 166.

1008. 11. Paddock-Hawley Iron Co. *v.* Providence-Washington Ins. Co., 118 Mo. App. 85, 93 S. W. 358.

1011. 1. Western Assur. Co. *v.* Chesapeake Lighterage, etc., Co., 105 Md. 232, 65 Atl. 637; Paddock-Hawley Iron Co. *v.* Providence-Washington Ins. Co., 118 Mo. App. 85, 93 S. W. 358.

1014. 6. Simpson Steamship Co. *v.* Premier Underwriting Assoc., 92 L. T. N. S. 730.

1023. 12. St. Paul F. & M. Ins. Co. *v.* Pacific Cold Storage Co., (C. C. A.) 157 Fed. 625.

Loss Due to Detention by Ice Not Caused by Perils of Sea. — Great Western Ins. Co. *v.* Jordan, 1 Can. Sup. Ct. Cas. 86.

1027. 4. **Where the Sunken Vessel Had Been under Water Only a Few Hours,** and, although it was possible to raise her, this had not been done, it was held that a vessel striking the sunken vessel did not collide with the latter. Burnham *v.* China Mut. Ins. Co., 189 Mass. 100, 75 N. E. 74.

7. St. Paul F. & M. Ins. Co. *v.* Pacific Cold Storage Co., (C. C. A.) 157 Fed. 625.

Where a policy excepted liability for stranding unless caused by "stress of weather," it was held that the wind causing the vessel to strand need not be of unusual violence in the locality where the accident occurred. Huntington, etc., Transp. Co. *v.* Western Assur. Co., 61 W. Va. 324, 57 S. E. 140.

1029. 5. Northwestern Steamship Co. *v.* Maritime Ins. Co., 161 Fed. 166.

1039. 4. Western Assur. Co. *v.* Chesapeake Lighterage, etc., Co., 105 Md. 232, 65 Atl. 637.

1047. 2. Leonard *v.* Bosch, (N. J. 1907) 68 Atl. 56.

6. Leonard *v.* Bosch, (N. J. 1907) 68 Atl. 56.

7. Leonard *v.* Bosch, (N. J. 1907) 68 Atl. 56.

1048. 1. **Loss of Profits Not Included.** — Leonard *v.* Bosch, (N. J. 1907) 68 Atl. 56, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048.

4. Leonard *v.* Bosch, (N. J. 1907) 68 Atl. 56, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048.

1049. 7. New York, etc., Mail Steamship Co. *v.* Royal Exch. Assur., (C. C. A.) 154 Fed. 315, *reversing* 145 Fed. 713.

1050. 6. See New York, etc., Mail Steamship Co. *v.* Royal Exch. Assur., (C. C. A.) 154 Fed. 315, *reversing* 145 Fed. 713.

1052. 4. The Welsh Girl, 22 Times L. Rep. 475.

1055. 3. New York, etc., Mail Steamship

Co. *v.* Royal Exch. Assur., (C. C. A.) 154 Fed. 315, *reversing* 145 Fed. 713.

1056. 2. St. Paul F. & M. Ins. Co. *v.* Pacific Cold Storage Co., (C. C. A.) 157 Fed. 625.

5. Dennis *v.* Home Ins. Co., 136 Fed. 481.

1058. 2. St. Paul F. & M. Ins. Co. *v.* Pacific Cold Storage Co., (C. C. A.) 157 Fed. 625.

1063. 2. **Distinct Stipulations.** — Providence Washington Ins. Co. *v.* Paducah Towing Co., (Ky. 1905) 89 S. W. 722.

1070. 5. Western Transit Co. *v.* Brown, 152 Fed. 476.

1071. 10. Munson *v.* Standard Marine Ins. Co., (C. C. A.) 156 Fed. 44, *affirming* 145 Fed. 957.

1073. 2. **Admiralty Has Jurisdiction Though Fire Is Only Risk Covered.** — North German F. Ins. Co. *v.* Adams, (C. C. A.) 142 Fed. 439.

MARITIME LIENS.

1081. 3. **Suit to Enforce Lien Proceeding in Rem.** — Merriman *v.* Currier, 191 Mass. 133, 77 N. E. 708.

1082. 1. The Vigilant, (C. C. A.) 151 Fed. 747.

3. The San Rafael, (C. C. A.) 141 Fed. 270, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1082; The Marjorie, (C. C. A.) 151 Fed. 183; The Vigilant, (C. C. A.) 151 Fed. 747.

5. The James T. Furber, 157 Fed. 126.

1084. 3. The Vigilant, (C. C. A.) 151 Fed. 747.

8. The San Rafael, (C. C. A.) 141 Fed. 270, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1084; The Winnebago, (C. C. A.) 141 Fed. 945; The Vigilant, (C. C. A.) 151 Fed. 747.

11. The Rockaway, 156 Fed. 692.

12. **In Determining the Maritime Nature** of the contract it could make no difference whether the ship was intended to be used wholly in *Michigan* waters or elsewhere as well. The Winnebago, (C. C. A.) 141 Fed. 945.

1086. 1. **Dredge Boat Not a "Steamboat, Ship, or Vessel,"** under the *Pennsylvania* Act of 1858. Fredericks *v.* James Rees, etc., Co., (C. C. A.) 135 Fed. 730.

1087. 8. **A Lease** to a steamer and its owners of wharf privileges is not a maritime contract. The James T. Furber, 157 Fed. 126.

1088. 3. **Whether a Contract Is Maritime or Not** depends, not on the place where the contract was made, but on the subject-matter of the contract. The Conveyor, 147 Fed. 586.

6. **For a Maritime Lien** to attach, it is necessary that the services must be rendered by a mariner. The James T. Furber, 157 Fed. 124.

9. The Paul L. Bleakley, 146 Fed. 570; The Golden Rod, (C. C. A.) 151 Fed. 6.

The fact that charges for repairs were made to the owner on the books will not defeat the right of the repairer to a lien where an agreement for a lien is shown. The Grand Republic, 138 Fed. 615.

1089. 7. The Cimbria, 156 Fed. 378.

11. The Paul L. Bleakley, 146 Fed. 570.

1090. 5. The Conveyor, 147 Fed. 586.

10. Delaney Forge, etc., Co. *v.* Iroquois Transp. Co., 142 Mich. 84, 105 N. W. 527.

Contract to Furnish Materials. — The Winnebago, (C. C. A.) 141 Fed. 945.

The Materials Being Supplied for the construction of the vessel is the test supplied by the *Michigan* statute in order that the lien attach. The Winnebago, (C. C. A.) 141 Fed. 945.

11. Downey *v.* Lozier Motor Co., 138 Fed. 173.

15. Delaney Forge, etc., Co. *v.* Iroquois Transp. Co., 142 Mich. 84, 105 N. W. 527; The Winnebago, (C. C. A.) 141 Fed. 945.

1091. 1. Iroquois Transp. Co. *v.* Delaney Forge, etc., Co., 205 U. S. 354, 27 U. S. Sup. Ct. 509; Delaney Forge, etc., Co. *v.* Iroquois Transp. Co., 142 Mich. 84, 105 N. W. 527.

Power of States to Give Lien for Construction. — The Winnebago, (C. C. A.) 141 Fed. 945.

Taking Notes for the Amount Due for materials furnished for the construction of a vessel does not necessarily constitute payment depriving the materialman of his lien. The Winnebago, (C. C. A.) 141 Fed. 945.

3. Fredericks *v.* James Rees, etc., Co., (C. C. A.) 135 Fed. 730.

7. Iroquois Transp. Co. *v.* Delaney Forge, etc., Co., 205 U. S. 354, 27 U. S. Sup. Ct. 509; Delaney Forge, etc., Co. *v.* Iroquois Transp. Co., 142 Mich. 84, 105 N. W. 527.

State Legislation creating liens for the construction of vessels or furnishing materials for their construction and conferring upon their courts the power to enforce them does not derogate from the jurisdiction of the admiralty courts of the United States. The Winnebago, (C. C. A.) 141 Fed. 945.

1092. 2. The Winnebago, (C. C. A.) 141 Fed. 945.

1093. 5. The Golden Rod, 145 Fed. 743; The Rockaway, 156 Fed. 692; Russel *v.* Myers Excursion, etc., Co., (N. J. 1907) 67 Atl. 1016.

Proving an Account Stated does not establish a maritime lien. The J. S. Warden, 155 Fed. 697.

1094. 8. **Money is Registered as Material** by the general maritime law which gives a lien on a vessel for necessaries furnished to her in a foreign port. The City of Camden, 147 Fed. 847.

1096. 2. The City of Camden, 147 Fed. 847.

4. The Golden Rod, (C. C. A.) 151 Fed. 8; The Vigilant, (C. C. A.) 151 Fed. 747; The Heathglen, 153 Fed. 213.

5. The Vigilant, (C. C. A.) 151 Fed. 747.

1097. 5. The Paul L. Bleakley, 146 Fed. 570.

1098. 5. The Vigilant, (C. C. A.) 151 Fed. 747.

10. The Reed Bros. Dredge No. 1, 135 Fed. 867; The Vigilant, (C. C. A.) 151 Fed. 747; The Heathglen, 153 Fed. 213; The Cimbria, 156 Fed. 378.

1099. 3. **Lien Created by Verbal Agreement.** — The Charles Spear, 143 Fed. 185.

4. **An Understanding that the Owner Will Pay** for repairs to a vessel injured does not imply that the repairs will be made on his credit, rather than on the credit of the vessel. The Seefahrer, 143 Fed. 697.

12. Where the agent aboard the yacht stated to the dealer who furnished the coal that the

yacht "was good for her bills" and made a continuing arrangement for a supply of coal, it was an agreement for a lien covering the coal supplied by the libellant. The Golden Rod, 145 Fed. 743.

14. **Where Two Agents Represent** the owner, one cannot bind the vessel so as to give a maritime lien without the consent of the other. The Robert R. Kirkland, 143 Fed. 610.

No Lien under Contract Made by Firm Unauthorized. — The Heathglen, 153 Fed. 213.

1101. 3. The Cimbria, 156 Fed. 378.

1102. 1. The Sue, 137 Fed. 133; The City of Camden, 147 Fed. 847; The Marjorie, (C. C. A.) 151 Fed. 183; The Vigilant, (C. C. A.) 151 Fed. 747; The Cimbria, 156 Fed. 378.

4. The City of Camden, 147 Fed. 847.

1103. 2. The Golden Rod, (C. C. A.) 151 Fed. 6.

1104. 2. The Golden Rod, (C. C. A.) 151 Fed. 6.

1105. 2. When a question as to a maritime lien arises the vessel should be considered as if she were in the possession *pro hac vice* of a charterer to whom the owner had temporarily turned her over. The Golden Rod, (C C. A.) 151 Fed. 6.

1106. 7. The Sue, 137 Fed. 133.

1107. 3. The Vigilant, (C. C. A.) 151 Fed. 747; The J. S. Warden, 155 Fed. 697; The Cimbria, 156 Fed. 378.

State Statutes Do Not Apply to Foreign Ships.— The Golden Rod, (C. C. A.) 151 Fed. 6.

1108. 3. The Vigilant, (C. C. A.) 151 Fed. 747; Russel *v.* Myers Excursion, etc., Co., (N. J. 1907) 67 Atl. 1016.

4. The City of Camden, 147 Fed. 847; The Vigilant, (C. C. A.) 151 Fed. 747; The William P. Donnelly, 156 Fed. 302. *Compare* Shailer *v.* Hanlon, 26 Ohio Cir. Ct. 120.

1110. 1. An order of the Court of Chancery of *New Jersey* compelling the paying of funds held by the receivers of the sale of a vessel, to the holder of a lien, is not an exercise of the jurisdiction to enforce liens by proceedings *in rem.* Russel *v.* Myers Excursion, etc., Co., (N. J. 1907) 67 Atl. 1016.

Where a bank had a maritime lien on the freights deposited in the bank it was entitled to enforce it in a court of admiralty to the extent to which they could be traced, and by an action *in rem.* Bank of British North America *v.* Freights, etc., (C. C. A.) 137 Fed. 534.

By Statute in Wisconsin a lien upon vessels may be had for certain demands against the owners, which may be enforced in a personal action against the owner. Phillips *v.* Eggert, (Wis. 1907) 113 N. W. 686.

4. Phillips *v.* Eggert, (Wis. 1907) 113 N. W. 686.

7. The William P. Donnelly, 156 Fed. 302.

8. Under a state statute as well as under the general maritime law a lien will not attach unless it appears that credit was given to the ship. The Golden Rod, (C. C. A.) 151 Fed. 8.

1111. 9. The Vigilant, (C. C. A.) 151 Fed. 747; Upson Walton Co. *v.* The Ship Brian Boru, 10 Can. Exch. 176.

1113. 4. The Golden Rod, (C. C. A.) 151 Fed. 8.

1114. 4. **Subrogation.** — The Pauline, 136 Fed. 815.

A Stockholder and Treasurer of the Company Owning the Boat, who loaned money to pay off claims at the request of the manager, acquired a lien of equal standing to those discharged with the money so loaned. The City of Camden, 147 Fed. 847.

5. Claims for materials, repairs, and supplies which arise at a home port for which a lien is given by the local law, are entitled to the same footing with claims arising in foreign parts. The City of Camden, 147 Fed. 847.

6. Where a bank advanced money to a charterer to be used in the aid of particular vessels' voyages, the bank acquired a maritime lien upon the freights earned by an agreement of hypothecation and thereby became the equitable owner, and could follow the freights wherever found. Bank of British North America *v.* Freights, etc., (C. C. A.) 137 Fed. 534.

A Libel in Admiralty is the proper proceeding for a bank to enforce its lien for advances. Bank of British North America *v.* Freights, etc., 127 Fed. 859.

1115. 1. **To Entitle Claims to Liens,** it must appear that the materials and supplies, on account of which said claims were made, were used by the boat, and that the repairs, work, and labor which were paid for with the money loaned by the intervener, were done on, in, or about the boat. The City of Camden, 147 Fed. 847.

1117. 8. The San Rafael, (C. C. A.) 141 Fed. 270, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1117.

9. The Seefahrer, 143 Fed. 697.

1121. 5. The Conveyor, 147 Fed. 586.

11. The Conveyor, 147 Fed. 586.

1122. 15. The Conveyor, 147 Fed. 586; Russel *v.* Myers Excursion, etc., Co., (N. J. 1907) 67 Atl. 1016.

1124. 2. The Conveyor, 147 Fed. 586.

7. The Conveyor, 147 Fed. 586.

1126. 6. **Seizure by a Sheriff** is not an invasion of the exclusive jurisdiction of the admiralty courts of the United States, because the vessel itself is not proceeded against. Phillips *v.* Eggert, (Wis. 1907) 113 N. W. 686.

1127. 5*a*. **Lien on Freights.**—Where a bank advances money to a charterer on the credit of the freights of particular vessels thereby securing a maritime lien, such lien is not terminated upon the mingling of the freight money with his own funds. Bank of British North America *v.* Freights, etc., (C. C. A.) 137 Fed. 534.

1129. 6. A judicial sale of a vessel may be rescinded before confirmation upon a *bona fide* offer being made to materially increase the price bid, even though the bidder has incurred expense. The Sue, 137 Fed. 133.

1130. 5. The Paul L. Bleakley, 146 Fed. 570; The Marjorie, (C. C. A.) 151 Fed. 183.

6. The Marjorie, (C. C. A.) 151 Fed. 183.

1131. 1. The Marjorie, (C. C. A.) 151 Fed. 183.

3. The Cimbria, 156 Fed. 378.

Mere Lapse of Time such as at law might bar a suit would not necessarily prevent a court of admiralty giving relief, if there were peculiar

circumstances excusing delay which might render it inequitable to refuse it. The Marjorie, (C. C. A.) 151 Fed. 183.

1132. 3. The San Rafael, (C. C. A.) 141 Fed. 270.

1136. 7. The attempted assertion of a right by an action *in personam* is not a concession that no lien exists. The Grand Republic, 138 Fed. 615.

MARKET.

1137. 7. **Market Purpose.** — The erection and maintenance of a slaughter house is not a ***market*** purpose within the meaning of a conveyance of lands to a city for ***market*** purposes. Bird *v.* Grout, 100 N. Y. App. Div. 159, 94 N. Y. Supp. 127.

MARKETABLE SECURITY.

1138. 1. **Marketable Security — English Stamp Act.** — See Speyer *v.* Inland Revenue, (1907) 1 K. B. 246, 96 L. T. N. S. 70, 23 Times L. Rep. 145, 76 L. J. K. B. 186.

MARKETABLE TITLE.

1138. 2. **Marketable Title.** — See Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397.

Error in name provable by parol will not make a title marketable. Walters *v.* Mitchell, (Cal. App. 1907) 92 Pac. 315.

MARKETS.

1142. 3. **No Right to Sell Without Paying Toll Acquired by Nonpayment for Considerable Period.** — Woolwich *v.* Gibson, 92 L. T. N. S. [illegible].

8. Gracey *v.* Banbridge Urban Council, (1905) 2 Ir. R. 209.

1146. 2. **Land Purchased for Market Purposes,** under an enabling act, cannot legally be used for any other municipal purposes. Bird *v.* Grout, 106 N. Y. App. Div. 159, 94 N. Y. [illegible].

1148. 1. **May Regulate Slaughter of Animals in Market.** — Bird *v.* Grout, 106 N. Y. App. Div. 159, 94 N. Y. Supp. 127.

Power to Appoint Market Master Is Incidental. — Potter *v.* Bell, (Ky. 1907) 101 S. W. 297.

1152. 5. **Contra.** — Swayze *v.* Monroe, 116 La. 643, 40 So. 926.

1153. 3. **Private Legal Rights,** exercised within market limits, cannot be denied under the guise of regulation. Swayze *v.* Monroe, 116 La. 643, 40 So. 926.

MARKET VALUE — MARKET PRICE.

1153. 5. The Mobila, 147 Fed. 883, *citing* 19 Am. and Eng. Encyc. of Law (2d ed.) 1154.

"The ***market value*** is the price at which the goods can be replaced for money in the market." Rosenkranz *v.* Jacobowitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 580, 99 N. Y. Supp. 469.

By ***market value*** is meant the value at which the article shipped would sell in the open market in the quantities as carried. Chicago, etc., R. Co. *v.* Broe, 16 Okla. 25, 86 Pac. 441.

Purpose for Which Used. — The Mobila, 147 Fed. 883, *quoting* 19 Am. and Eng. Encyc. of Law (2d ed.) 1154.

MARRIAGE.

1160. 2. **Marriage Is a Civil Contract.** — Avakian *v.* Avakian, 69 N. J. Eq. 89, 60 Atl. 521; Reaves *v.* Reaves, 15 Okla. 240, 82 Pac. [illegible].

3. **Differs from All Other Contracts** in its far-reaching consequences to the body politic. Willits *v.* Willits, (Neb. 1906) 107 N. W. 379.

1161. 3. **Void Only upon Decree Annulling Marriage.** — Jones *v.* Brinsmade, 183 N. Y. 258, 76 N. E. 22.

1167. 4. Rex *v.* Grinder, 11 British Columbia 370.

1168. 3. **Want of Sincerity Must Be Pleaded.** — S. *v.* S., (1907) P. 224.

7. S. *v.* B., 21 Times L. Rep. 219.

1170. 6. **Binding in Morals, but Did Not Produce any Civil Effects.** — Johnson *v.* Raphael, 117 La. 967, 42 So. 470.

1171. 3. Talbott *v.* Owen, (Ky. 1906) 93 S. W. 658; Haines *v.* Haines, (Miss. 1907) 43 So. 465; Nelson *v.* Hunter, 140 N. Car. 598, 53 S. E. 439; Lee *v.* Bolden, (Tex. Civ. App. 1905) 85 S. W. 1027.

Act Legitimatizes Children of Union — Middleton *v.* Middleton, 221 Ill. 623, 77 N. E. 1123.

Statute Giving Right to Ratify or Disaffirm Marriage. — Johnson *v.* Raphael, 117 La. 967, 42 So. 470.

1172. 1. Moore *v.* Moore, (Ky. 1907) 98 S. W. 1027.

1176. 1. Baker *v.* Gibson, (Ky. 1907) 106 S. W. 253 (recognizing the general rule); Lee *v.* Bolden, (Tex. Civ. App. 1905) 85 S. W. 1027.

6. State *v.* Westmoreland, 76 S. Car. 145, 56 S. E. 673.

1177. 8. Pettit *v.* Pettit, 105 N. Y. App. Div. 312, 93 N. Y. Supp. 1001.

1178. 2. Com. *v.* Stevens, (Mass. 1907) 82 N. E. 33.

Marriage Becomes Valid from Time Disability Removed. — Mock *v.* Chaney, 36 Colo. 60, 87 Pac. 538.

6. **Absence for Five Years — Valid unless Annulled.** — *In re* Del Genovese, (Surrogate Ct.) 56 Misc. (N. Y.) 418, 107 N. Y. Supp. 1033.

Absence of Seven Years — Marriage Valid. — Smith *v.* Fuller, (Iowa 1906) 108 N. W. 765; Gilroy *v.* Brady, 195 Mo. 205, 93 S. W. 279.

Death Presumed — Validity of Second Marriage Presumed. — *In re* McCausland, 213 Pa. St. 189, 62 Atl. 780.

1179. 3. **Second Marriage Valid after Divorce.** — Chamberlain *v.* Chamberlain, 68 N. J. Eq. 736, 62 Atl. 680.

1180. 6. **Consent Essential.** — Brisbin *v.* Huntington, 128 Iowa 166, 103 N. W. 144.

Contract Essential. — State *v.* Kennedy, 207 Mo. 528, 106 S. W. 57.

1181. 1. Travers *v.* Reinhardt, 205 U. S. 423, 27 U. S. Sup. Ct. 563; Heymann *v.* Heymann, 218 Ill. 636, 75 N. E. 1079; Edelstein *v.* Brown, (Tex. Civ. App. 1906) 95 S. W. 1126.

6. **Essentials Lacking — No Marriage.** — Topper *v.* Perry, 107 Mo. 531, 95 S. W. 203.

Present Agreement Essential. — Judson *v.* Judson, 147 Mich. 518, 111 N. W. 78.

7. Stipulations to Keep Marriage Secret Cast Suspicion upon Conduct of Parties. — Sorensen *v.* Sorensen, 68 Neb. 510, 103 N. W. 455, *affirming* 100 N. W. 930.

1182. 1. **Ceremony under Void License — Marriage Incomplete in Absence of Cohabitation.** — Hawkins *v.* Hawkins, 142 Ala. 571, 38 So.

1183. 1. Judson *v.* Judson, 147 Mich. 518, 111 N. W. 78.

1184. 5. Lyon *v.* Lyon, 230 Ill. 366, 82 N. E. 850, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1184.

1185. 1. Lyon *v.* Lyon, 230 Ill. 366, 82 N. E. 850, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1185; Beckley *v.* Beckley, 115 Ill. App. 27.

5. Lenoir *v.* Lenoir, 24 App. Cas. (D. C.) 160.

1188. 5. Hawkins *v.* Hawkins, 142 Ala. 571, 38 So. 640; Marsh *v.* Whittington, 88 Miss. 400, 40 So. 326; Avakian *v.* Avakian, 69 N. J. Eq. 89, 60 Atl. 521.

1189. 2. Merrell *v.* Moore, (Tex. Civ. App. 1907) 104 S. W. 514.

1191. 6. Darling *v.* Dent, 82 Ark. 76, 100 S. W. 747; Burks *v.* State, (Tex. Crim. App. 1906) 94 S. W. 1040; Jackson *v.* Banister, (Tex. Civ. App. 1907) 105 S. W. 66.

Marriage under Void License Invalid. — Hawkins *v.* Hawkins, 142 Ala. 571, 38 So. 640.

License Not Essential to Validity of Marriage in Georgia. — Southern R. Co. *v.* Brown, 126 Ga. 1, 54 S. E. 911.

1192. 1. Morrison *v.* Teague, 143 N. Car. 186, 55 S. E. 521.

3. **In Louisiana** a marriage must be celebrated by a priest or minister or magistrate in the presence of three witnesses. Johnson *v.* Raphael, 117 La. 967, 42 So. 470.

1194. 4. Darling *v.* Dent, 82 Ark. 76, 100 S. W. 747; Klipfel *v.* Klipfel, (Colo. 1907) 92 Pac. 26; Porter *v.* U. S., (Indian Ter. 1907) 104 S. W. 855; Reaves *v.* Reaves, 15 Okla. 240, 82 Pac. 490; *In re* McCausland, 213 Pa. St. 189, 62 Atl. 780; *Ex p.* Romans, 78 S. Car. 210, 58 S. E. 614; Edelstein *v.* Brown, (Tex. Civ. App. 1906) 95 S. W. 1126.

1195. 3. Heymann *v.* Heymann, 218 Ill. 636, 75 N. E. 1079; Fuller *v.* Fuller, (Iowa 1906) 108 N. W. 765; Plattner *v.* Plattner, 116 Mo. App. 405, 91 S. W. 457; Topper *v.* Perry, 197 Mo. 531, 95 S. W. 203; Snuffer *v.* Karr, 197 Mo. 182, 94 S. W. 983, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1195, as to the general rule; Matter of Wells, 123 N. Y. App. Div. 79, 108 N. Y. Supp. 164; Reaves *v.* Reaves, 15 Okla. 240, 82 Pac. 490; Burks *v.* State, (Tex. Crim. App. 1906) 94 S. W. 1040; Edelstein *v.* Brown, (Tex. Civ. App. 1906) 95 S. W. 1126.

1196. 1. *Tennessee.* — A marriage not conforming to the statutory regulations is invalid. Smith *v.* North Memphis Sav. Bank, 115 Tenn. 12, 89 S. W. 392.

1197. 2. Southern R. Co. *v.* Brown, 126 Ga. 1, 54 S. E. 911; State *v.* Rocker, 130 Iowa 239, 106 N. W. 645; Smith *v.* Fuller, (Iowa 1906) 108 N. W. 765; State *v.* Thompson, 31 Utah 228, 87 Pac. 709; State *v.* Nelson, 39 Wash. 221, 81 Pac. 721, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1197.

1198. 2. Richardson *v.* State, 103 Md. 112, 63 Atl. 317; State *v.* Thompson, 31 Utah 228, 87 Pac. 709; State *v.* Nelson, 39 Wash. 221, 81 Pac. 721.

Marriage May Be Proved by Any Person Who Knows the Facts. — Sellers *v.* Page, 127 Ga. 633, 56 S. E. 1011.

6. Southern R. Co. *v.* Brown, 126 Ga. 1, 54 S. E. 911; Richardson *v.* State, 103 Md. 112, 63 Atl. 317; State *v.* Frye, 45 Wash. 645, 89 Pac. 170, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1198, as to the general rule.

1199. 1. Bartee *v.* Edmunds, (Ky. 1906) 96 S. W. 535; Bowman *v.* Little, 101 Md. 273, 61 Atl. 223, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1199.

Surviving Wife Held Competent. — Miller's Estate, 34 Pa. Super. Ct. 385.

4. State *v.* Rocker, 130 Iowa 239, 106 N. W. 645, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1199.

Certificate of Marriage Is Highest and Best Evidence. — Dictum by the court in Imboden *v.* St. Louis Union Trust Co., 111 Mo. App. 220, 86 S. W. 263.

1200. 3. Bowman *v.* Little, 101 Md. 273, 61 Atl. 223, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1200; State *v.* Thompson, 31 Utah 228, 87 Pac. 709.

1201. 1. Caldwell *v.* State, 146 Ala. 147, 41 So. 473; State *v.* Rocker, 130 Iowa 239, 106 N. W. 645, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1201.

Admissions of Marriage Admissible. — Topper *v.* Perry, 197 Mo. 531, 95 S. W. 203.

3. **Denial of Marriage Made by Alleged Husband Admissible.** — Topper *v.* Perry, 197 Mo. 531, 95 S. W. 203.

1202. 3. Bowman *v.* Little, 101 Md. 273, 61 Atl. 223, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1202; Plattner *v.* Plattner, 116 Mo. App. 405, 91 S. W. 457; Sparks *v.* Ross, (N. J. Eq. 1907) 65 Atl. 977; *In re* Thewlis, 217 Pa. St. 307, 66 Atl. 519.

1203. 5. Murchison *v.* Green, 128 Ga. 339, 57 S. E. 709.

6. See McDonald *v.* White, (Wash. 1907) 89 Pac. 891, wherein the evidence was held to show a marriage.

7. See McDonald *v.* White, (Wash. 1907) 89 Pac. 891, wherein the evidence was held to show a valid marriage.

1204. 1. Resnick *v.* Resnick, 126 Ill. App. 132.

2. *In re* Shephard, (1904) 1 Ch. 456; Plattner *v.* Plattner, 116 Mo. App. 405, 91 S. W. 457; McFadden *v.* McFadden, 32 Pa. Super. Ct. 534.

3. *United States.* — Travers *v.* Reinhardt, 205 U. S. 423, 27 U. S. Sup. Ct. 563; Pourier *v.* McKinzie, 147 Fed. 287.

Colorado. — Klipfel *v.* Klipfel, (Colo. 1907) 92 Pac. 26.

Iowa. — State *v.* Rocker, 130 Iowa 239, 106 N. W. 645, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1204; Smith *v.* Fuller, (Iowa 1906) 108 N. W. 765.

Kentucky. — Bartee *v.* Edmunds, (Ky. 1906) 96 S. W. 535.

Michigan. — Bechtel *v.* Barton, 147 Mich. 318, 110 N. W. 935.

Missouri. — Imboden *v.* St. Louis Union Trust Co., 111 Mo. App. 220, 86 S. W. 263.

Nebraska. — Sorensen *v.* Sorensen, 68 Neb. 510, 103 N. W. 455, *affirming* 100 N. W. 930.

New York. — Cramsey *v.* Sterling, 111 N. Y. App. Div. 568, 97 N. Y. Supp. 1082; Geiger *v.* Ryan, 123 N. Y. App. Div. 722, 108 N. Y. Supp. 13; Matter of Wells, 123 N. Y. App. Div. 79, 108 N. Y. Supp. 164.

South Carolina. — *Ex p.* Romans, 78 S. Car. 210, 58 S. E. 614.

Texas. — Edelstein *v.* Brown, (Tex. Civ. App. 1906) 95 S. W. 1126.

Washington. — Potter *v.* Potter, 45 Wash. 401, 88 Pac. 625.

1205. 1. Topper *v.* Perry, 197 Mo. 531, 95 S. W. 203; State *v.* Kennedy, 207 Mo. 528, 106 S. W. 57.

1206. 4. Bowman *v* Little, 101 Md. 273, 61 Atl. 223, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206; *In re* Thewlis, 217 Pa. St. 307, 66 Atl. 519; Hallums *v.* Hallums, 74 S. Car. 407, 54 S. E. 613, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206.

5. No Presumption that Illicit Relationship Continued. — Darling *v.* Dent, 82 Ark. 76, 100 S. W. 747.

1207. 3. *Re* Haynes, 94 L. T. N. S. 431.

6. Johnson *v.* Raphael, 117 La. 967, 42 So. 470.

7. Resnick *v.* Resnick, 126 Ill. App. 132; *In re* Thewlis, 217 Pa. St. 307, 66 Atl. 519; Hallums *v.* Hallums, 74 S. Car. 407, 54 S. E. 613, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1207.

1208. 1. Murchison *v.* Green, 128 Ala. 339, 57 S. E. 709.

1209. 3. Johnson *v.* St. Joseph Terminal R. Co., 203 Mo. 381, 101 S. W. 641, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1209.

Burden of Proof on Party Denying Marriage. — Potter *v.* Potter, 45 Wash. 401, 88 Pac. 625.

In an Action for the Death of Plaintiff's Child, where the defendant denies plaintiff's marriage, the onus is on the plaintiff to prove it. Lynch *v.* Knoop, 118 La. 611, 43 So. 252.

5. Johnson *v.* St. Joseph Terminal R. Co., 203 Mo. 381, 101 S. W. 641, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1209.

1211. 6. Darling *v.* Dent, 82 Ark. 76, 100 S. W. 747; Moore *v.* Wa-Me-Go, 72 Kan. 160, 83 Pac. 400; McHenry *v.* Brackin, 93 Minn. 510, 101 N. W. 960, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1211.

1212. 2. Gabisso's Succession, 119 La. 704, 44 So. 438, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1212; State *v.* Fenn, (Wash. 1907) 92 Pac. 417, recognizing exceptions.

1213. 1. Gabisso's Succession, 119 La. 704, 44 So. 438, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1213.

1216. 4. Moore *v.* Wa-Me-Go, 72 Kan. 169, 83 Pac. 400, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1216; Ortley *v.* Ross, (Neb. 1907) 110 N. W. 982; People *v.* Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787.

1218. 7. Piper *v.* Piper, (Wash. 1907) 91 Pac. 189, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1218.

9. Pettit *v.* Pettit, 105 N. Y. App. Div. 312, 93 N. Y. Supp. 1001.

Statutory Ground of Annulment. Stierlen *v.* Stierlen, (Cal. App. 1907) 92 Pac. 329.

A Marriage, in the First Instance Void Because of Prior Marriage of One of the Parties, but validated by statute upon the death of the first wife, is no ground for annulment. Turner *v.* Turner, 189 Mass. 373, 75 N. E. 612.

10. Gould *v.* Gould, 78 Conn. 242, 61 Atl. 604.

Fraud Not Shown. — Trimpe *v.* Trimpe, (N. J. Eq. 1907) 65 Atl. 744.

The Uncorroborated Testimony of the Plaintiff in a suit for the annulment of his marriage on the ground of fraud will not justify a decree of annulment. Bange *v.* Bange, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 196, 94 N. Y. Supp. 8.

Equity Will Not Take Jurisdiction While Another Ample Remedy Is Provided by Statute, — Selby *v.* Selby, 27 R. I. 172, 61 Atl. 142.

11. Hawkins *v.* Hawkins, 142 Ala. 571, 38 So. 640; Marsh *v.* Whittington, 88 Miss. 400, 40 So. 326; Avakian *v.* Avakian, 69 N. J. Eq. 89, 60 Atl. 521.

1219. 1. **Marriage Annulled upon Ground of Insanity upon Petition of Lunatic's Next Friend.** — Schneider *v.* Rabb, (Tex. Civ. App. 1906) 100 S. W. 163.

2. Weisberg *v.* Weisberg, 112 N. Y. App. Div. 231, 98 N. Y. Supp. 260.

4. Piper *v.* Piper, (Wash. 1907) 91 Pac. 189, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1219.

New York. — A marriage may be annulled upon the ground that one of the parties had not reached the age of legal consent. Wander *v.* Wander, 111 N. Y. App. Div. 189, 97 N. Y. Supp. 586.

5. Bater *v.* Bater, 21 Times L. Rep. 517; Piper *v.* Piper, (Wash. 1907) 91 Pac. 189, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1219.

Venue of Suit for Annulment against Wife Is County of Wife's Residence. — Schneider *v.* Rabb, (Tex. Civ. App. 1906) 100 S. W. 163.

In Texas a suit for annulment must be brought in the county of the defendant's residence, although it is otherwise in suits for divorce. Schneider *v.* Rabb, (Tex. 1906) 97 S. W. 463.

1220. 3. **Lapse of Thirty-three Years — Insanity — Annulment Refused.** — Price *v.* Price, 142 Ala. 631, 38 So. 802.

9. **Decree of Annulment Cannot Be Set Aside by Consent.** — Johnson *v.* Johnson, 141 N. Car. 91, 53 S. E. 623.

1221. 2. Michels *v.* Fennell, 15 N. Dak. 188, 107 N. W. 53.

6. Willits *v.* Willits, (Neb. 1906) 107 N. W. 771.

7. **The Supreme Court Has No Authority to Allow Temporary Alimony** in an action to annul a marriage for insanity. Jones *v.* Brinsmade, 183 N. Y. 258, 76 N. E. 22.

MARRIAGE SETTLEMENTS.

1225. 4. Kroell *v.* Kroell, 219 Ill. 105, 76 N. E. 63, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1225; Frazer *v.* Andrews, 134 Iowa 621, 112 N. W. 92, recognizing the general rule.

1226. 1. Appleby *v.* Appleby, 100 Minn.

[illegible] W. [illegible] to Vol. and [illegible] Encyc. of Law (2d ed.) 1225 [1226].

1228. 3. Murdock *v.* Murdock, 219 Ill. [illegible], 76 N. E. 57.

5. Murdock *v.* Murdock, 219 Ill. 123, 76 N. E. 57.

6. [illegible] Burbeck, [illegible] Pa. St. [illegible], 61 Atl. 546.

1229. 1. Murdock *v.* Murdock, 219 Ill. 123, 76 N. E. 57.

Burden of Proof upon Husband's Executors.— Maze *v.* Maze, (Ky. 1907) 99 S. W. 336.

3. **Ignorance of Legal Effect of Contract No Ground for Setting Same Aside.** Robbins *v.* Robbins, 225 Ill. 333, 80 N. E. 326.

9. **In Louisiana** a donation made by one spouse to the other spouse before marriage is covered by a statutory provision according to which the spouse who marries a second time forfeits to the children of the first marriage the property so acquired. Didlake *v.* Cappel, 116 La. 844, 41 So. 112.

1233. 8. Kroeli *v.* Kroell, 219 Ill. 105, 76 N. E. 63, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1233; Pierce *v.* Vansell, 35 Ind. App. 525, 74 N. E. 554; Huntress *v.* Hanley, 195 Mass. 236, 80 N. E. 946; Appleby *v.* Appleby, 100 Minn. 408, 111 N. W. 305; Hosmer *v.* Tiffany, 115 N. Y. App. Div. 303, 100 N. Y. Supp. 797.

Marriage Sufficient Consideration to Support Antenuptial Settlement; but Otherwise as to Postnuptial Settlement. — Unger *v.* Mellinger, 37 Ind. App. 639, 77 N. E. 814.

1235. 11. Frazer *v.* Andrews, 134 Iowa 621, 112 N. W. 92.

1236. 2. Frazer *v.* Andrews, 134 Iowa 621, 112 N. W. 92, recognizing the general rule, but holding it not applicable, since the agreement did not show it was made as evidence of the oral agreement.

1239. 2. *In re* Reis, (1904) 2 K. B. 769; *In re* Bland, (1905) 1 Ch. 4; *In re* Clutterbuck, (1905) 1 Ch. 200; Dunlap *v.* Hill, 145 N. Car. 312, 59 S. E. 112, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1239, as to the general rule.

3. Kleb *v.* Kleb, 70 N. J. Eq. 305, 62 Atl. 396.

1240. 1. Hogan *v.* Eadie, 30 Quebec Super. Ct. 402; Colbert *v.* Rings, 231 Ill. 404, 83 N. E. 274.

4. **Antenuptial Agreement May Bar Homestead.** — Colbert *v.* Rings, 231 Ill. 404, 83 N. E. 274.

5. **Widow's Award May Be Barred by Antenuptial Agreement.** — Kroell *v.* Kroell, 219 Ill. 105, 76 N. E. 63.

6. Collins *v.* Bauman, (Ky. 1907) 102 S. W. 815, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1240.

As to the Construction and Effect of Particular Contracts and Settlements, see the following cases: *In re* Warner, (Cal. App. 1907) 92 Pac. 191; Rougtell *v.* Strode, 126 Mo. App. 348, 103 S. W. 510; Appleby *v.* Appleby, 100 Minn. 408, 111 N. W. 305; *In re* Bostwick, (Surrogate Ct.) 49 Misc. (N. Y.) 186, 98 N. Y. Supp. 932; Brown *v.* Brown, 117 N. Y. App. Div. 199, 102 N. Y. Supp. 291; Dulaney *v.* Dulaney, 105 Va. 429, 54 S. E. 40.

1247. 5. Compare Indiana Match Co. *v.* Kirk, 118 Ill. App. 102, wherein it was said to be the settled law of Illinois that an existing marriage relation is a valuable and sufficient consideration to support a settlement by a husband on his wife if it does not affect the claims of creditors existing at the time of the said settlement.

8. **In Iowa** a husband and wife cannot make a valid postnuptial agreement concerning their property. Frazer *v.* Andrews, 134 Iowa 621, 112 N. W. 92.

1248. 1. **Inequitable Settlement Will Be Set Aside.** — Bechtel *v.* Barton, 147 Mich. 318, 110 N. W. 935.

1249. 2. **A Wife's Inchoate Right of Dower** is a sufficient consideration to support a postnuptial settlement. Beverlin *v.* Casto, (W. Va. 1907) 57 S. E. 411.

MARSHALING ASSETS.

1257. 1. New York L. Ins. Co. *v.* Brown, 32 Colo. 365, 76 Pac. 799, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1256; Weidemann *v.* Springfield Breweries Co., 78 Conn. 660, 63 Atl. 162, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed. 1256; Henneberry *v.* Binns, 125 Ill. App. 499, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed. 1256; Wolfe *v.* Houston Land, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 1069. And see Carter *v.* Tanners' Leather Co., (Mass. 1907) 81 N. E. 902; Sternberger *v.* Sussman, (N. J. 1905) 60 Atl. 195.

2. New York L. Ins. Co. *v.* Brown, 32 Colo. 365, 76 Pac. 799, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1257.

3. Wolfe *v.* Houston Land, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 1069, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1257.

4. See Mulherin *v.* Porter, 1 Ga. App. 153, 58 S. E. 60.

General Rule Recognized and Applied. — New York L. Ins. Co. *v.* Brown, 32 Colo. 365, 76 Pac. 799, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1257; Mansur *v.* Dupree, (C. C. A.) 150 Fed. 329; Blanchard *v.* Naquin, 116 La. 806, 41 So. 99; Campbell *v.* J. I. Campbell Co., 117 La. 402, 41 So. 696; Anthes *v.* Schroeder, (Neb. 1907) 112 N. W. 593; Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760; Wolfe *v.* Houston Land, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 1069, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1257; Groos *v.* Chittim, (Tex. Civ. App. 1907) 100 S. W. 1006.

1259. 4. Wolfe *v.* Houston Land, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 1069, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1259.

1262. 1. Henneberry *v.* Binns, 125 Ill. App. 499, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1262; Wolfe *v.* Houston Land, etc., Co., (Tex. Civ. App. 1906 98 S. W. 1069, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1262.

6. **Both Funds Must Be within Jurisdiction and Control of Court.** — Sternberger *v.* Sussman, (N. J. 1905) 60 Atl. 195.

1264. 3. Mansur *v.* Dupree, (C. C. A.) 150 Fed. 329; Blanchard *v.* Naquin, 116 La. 806, 41 So. 99; Anthes *v.* Schroeder, (Neb. 1907) 112 N. W. 593.

6. New York L. Ins. Co. *v.* Brown, 32 Colo.

365, 76 Pac. 799; Mulherin *v.* Porter, 1 Ga. App. 153, 58 S. E. 60; Pope *v.* Baltimore Warehouse Co., 103 Md. 9, 62 Atl. 1119; Carter *v.* Tanners' Leather Co., (Mass. 1907) 81 N. E. 902.

1265. 2. Pope *v.* Baltimore Warehouse Co., 103 Md. 9, 62 Atl. 1119.

1266. 1. **Junior Lienor Must Show Existence of Other Security.**—Brown *v.* Lapp, (Ky. 1905) 89 S. W. 304.

3. See Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760.

1270. 2. Mulherin *v.* Porter, 1 Ga. App. 153, 58 S. E. 60. And see Guiher *v.* Huffman, (Iowa 1906) 109 N. W. 469.

1284. 2. Citizens' Sav. Bank *v.* Woods, 134 Iowa 232, 111 N. W. 929. And see Martin *v.* Brown, 129 Ga. 562, 59 S. E. 302.

6. Wardlaw *v.* Troy Oil Mill, 74 S. Car. 368, 54 S. E. 658, *quoting* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1284; Mulherin *v.* Porter, 1 Ga. App. 153, 58 S. E. 60; Willets *v.* Metcalf, 216 Pa. St. 445, 65 Atl. 794; French *v.* Vradenburg, 105 Va. 16, 52 S. E. 695.

7. See Knox *v.* Carr, 26 Ohio Cir. Ct. 345, *affirmed* without opinion (Ohio 1904) 70 N. E. 1125.

1285. 1. Bradley *v.* Bond, 101 Md. 691, 61 Atl. 504; Carter *v.* Tanners' Leather Co., (Mass. 1907) 81 N. E. 902.

3. See Carter *v.* Tanners' Leather Co., (Mass. 1907) 81 N. E. 902.

MARSHALING DECEDENTS' ESTATES.

1293. 1. New York L. Ins. Co. *v.* Brown, 32 Colo. 365, 76 Pac. 799, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1292.

5. Getchell *v.* Rust, 8 Del. Ch. 284, 68 Atl. 404; Ferguson *v.* Worrall, (Ky. 1907) 101 S. W. 966; Withers *v.* Withers, (Ky. 1907) 100 S. W. 253; Comstock *v.* Keating, 115 Mo. App. 372, 91 S. W. 416.

1298. 1. See Baldwin *v.* Alexander, 145 Ala. 186, 40 So. 391.

1300. 1. **Where Devastavit Occurs after Fund for Payment of Specific Legacies** has been set aside, residuary legatees who have received their share may not be compelled to account to the specific legatees. Farmers' L. & T. Co. *v.* M'Carthy, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 413, 107 N. Y. Supp. 928.

6. *In re* Banks, (1905) 1 Ch. 547, 74 L. J. Ch. 336; Baldwin *v.* Alexander, 145 Ala. 186, 40 So. 391; Getchell *v.* Rust, 8 Del. Ch. 284, 68 Atl. 404; Gordon *v.* James, 86 Miss. 719, 39 So. 18; Paterson General Hospital Assoc. *v.* Blauvelt, (N. J. 1907) 66 Atl. 1055; Van Gillurve *v.* Becker, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 157, 106 N. Y. Supp. 1080; Stark *v.* Byers, 213 Pa. St. 101, 62 Atl. 371; Heyer *v.* Moerlein, (Tex. Civ. App. 1906) 94 S. W. 446, *affirmed* (Tex. 1906) 97 S. W. 1040; French *v.* Vradenburg, 105 Va. 16, 52 S. E. 695. And see Brock *v.* Kirkpatrick, 72 S. Car. 491, 52 S. E. 592; Dixon *v.* Roessler, 76 S. Car. 415, 57 S. E. 203.

1302. 4. *In re* Trenchard, (1905) 1 Ch. 82, 74 L. J. Ch. 135; Getchell *v.* Rust, 8 Del. Ch. 284, 68 Atl. 404; Warner *v.* Bullen, 123 Ill. App. 138; Lacey *v.* Collins, 134 Iowa 583, 112 N. W. 101; Paterson General Hospital Assoc. *v.* Blauvelt, (N. J. 1907) 66 Atl. 1055; Bankers' Trust Co. *v.* Dietz, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 459, 106 N. Y. Supp. 32; Van Gillurve *v.* Becker, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 157, 106 N. Y. Supp. 1080; Morisey *v.* Brown, 144 N. Car. 154, 56 S. E. 704; Heyer *v.* Moerlein, (Tex. Civ. App. 1906) 94 S. W. 446, *affirmed* (Tex. 1906) 97 S. W. 1040. And see Todd's Estate, 32 Pa. Super. Ct. 187; Dixon *v.* Roessler, 76 S. Car. 415, 57 S. E. 203.

6. Getchell *v.* Rust, 8 Del. Ch. 284, 68 Atl. 404; Shuld *v.* Wilson, 225 Ill. 336, 80 N. E. 259; Lacey *v.* Collins, 134 Iowa 583, 112 N. W. 101.

1305. 2. French *v.* Vradenburg, 105 Va. 16, 52 S. E. 695.

1307. 4. Lawrence *v.* Binninger, 112 N. Y. App. Div. 241, 98 N. Y. Supp. 279; French *v.* Vradenburg, 105 Va. 16, 52 S. E. 695.

1310. 1. French *v.* Vradenburg, 105 Va. 16, 52 S. E. 695.

1311. 6. See French *v.* Vradenburg, 105 Va. 16, 52 S. E. 695.

1312. 1. French *v.* Vradenburg, 105 Va. 16, 52 S. E. 695.

3. See Frost *v.* Wingate, 73 N. H. 535, 64 Atl. 19.

1313. 9. French *v.* Vradenburg, 105 Va. 16, 52 S. E. 695. And see Robinson *v.* Cogswell, (Mass. 1906) 78 N. E. 389.

Specific Legacies Must Be Exhausted Before Specific Devises Can Be Reached.—Gordon *v.* James, 86 Miss. 719, 39 So. 18.

Specific Legacies and Devises Not Reachable until General Legacies and Devises Exhausted.—Cooney *v.* Whitaker, (Mass. 1906) 78 N. E. 751.

1314. 1. Manlove *v.* Gaut, 2 Tenn. Ch. App. 410.

2. Gordon *v.* James, 86 Miss. 719, 39 So. 18.

1316. 3. Gordon *v.* James, 86 Miss. 719, 39 So. 18, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1316.

1317. 5. Whitmore *v.* Roscoe, 112 Tenn. 621, 85 S. W. 860.

1327. 5. Whitmore *v.* Roscoe, 112 Tenn. 621, 85 S. W. 860, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1327.

1337. 1. *In re* Kempster, (1906) 1 Ch. 446.

1338. 9. Warner *v.* Bullen, 123 Ill. App. 138. And see *In re* Banks, (1905) 1 Ch. 547, 74 L. J. Ch. 336.

1339. 5. *In re* Banks (1905) 1 Ch. 547, 74 L. J. Ch. 336.

1349. 4. Getchell *v.* Rust, 8 Del. Ch. 284, 68 Atl. 404; Shuld *v.* Wilson, 225 Ill. 336, 80 N. E. 259; Lacey *v.* Collins, 134 Iowa 583, 112 N. W. 101; Heyer *v.* Moerlein (Tex. Civ. App. 1906) 97 S. W. 1040, *affirming* (Tex. 1906) 94 S. W. 446. And see Simonsen *v.* Hutchinson, 231 Ill. 508, 83 N. E. 183. But see Methodist Episcopal Church *v.* Hammell, (N. J. 1907) 67 Atl. 941.

7. Morisey *v.* Brown, 144 N. Car. 154, 56 S. E. 704.

1350. 3. Getchell *v.* Rust, 8 Del. Ch. 284, 68 Atl. 404; Shuld *v.* Wilson, 225 Ill. 336, 80 N. E. 259; Simonsen *v.* Hutchinson, 231 Ill.

508, 83 N. E. 183; Bankers' Trust Co. *v.* Dietz, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 459, 106 N. Y. Supp. 32; Gragg *v.* Gragg, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 197, 94 N. Y. Supp. 53; *In re* Jones, (Surrogate Ct.) 56 Misc. (N. Y.) 421, 107 N. Y. Supp. 1030; Kettell *v.* Baxter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 428, 100 N. Y. Supp. 529; Todd's Estate, 32 Pa. Super. Ct. 187; Stark *v.* Byers, 213 Pa. St. 101, 62 Atl. 371; Willcox *v.* Willcox, 106 Va. 626, 56 S. E. 588. And see *In re* Boury, (Surrogate Ct.) 49 Misc. (N. Y.) 389, 99 N. Y. Supp. 511.

4. Getchell *v.* Rust, 8 Del. Ch. 284, 68 Atl. 404; Simonsen *v.* Hutchinson, 231 Ill. 508, 83 N. E. 183; Lacey *v.* Collins, 134 Iowa 583, 112 N. W. 101; O'Day *v.* O'Day, 193 Mo. 62, 91 S. W. 921; Irwin *v.* Teller, 188 N. Y. 25, 80 N. E. 376; Van Gillurve *v.* Becker, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 157, 106 N. Y. Supp. 1080; Todd's Estate, 32 Pa. Super. Ct. 187; Willcox *v.* Willcox, 106 Va. 626, 56 S. E. 588. And see Paterson General Hospital Assoc. *v.* Blauvelt, (N. J. 1907) 66 Atl. 1055.

1351. **1.** Getchell *v.* Rust, 8 Del. Ch. 284, 68 Atl. 404; Warner *v.* Bullen, 123 Ill. App. 138; Bankers' Trust Co. *v.* Dietz, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 459, 106 N. Y. Supp. 32; Morisey *v.* Brown, 144 N. Car. 154, 56 S. E. 704; Heyer *v.* Moerlein, (Tex. Civ. App. 1906) 97 S. W. 1040, *affirming* (Tex. 1906) 94 S. W. 446.

1352. **1. Absence of Personal Property a Circumstance to Be Considered.**—*In re* Jones, (Surrogate Ct.) 56 Misc. (N. Y.) 421, 107 N. Y. Supp. 1030.

2. See Van Gillurve *v.* Becker, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 157, 106 N. Y. Supp. 1080.

4. Van Gillurve *v.* Becker, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 157, 106 N. Y. Supp. 1080.

5. Van Gillurve *v.* Becker, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 157, 106 N. Y. Supp. 1080.

6. Heyer *v.* Moerlein, (Tex. Civ. App. 1906) 94 S. W. 446, *affirmed* (Tex. 1906) 97 S. W. 1040. And see Willcox *v.* Willcox, 106 Va. 626, 56 S. E. 588.

1354. **2.** Simonsen *v.* Hutchinson, 231 Ill. 508, 83 N. E. 183.

6. Simonsen *v.* Hutchinson, 231 Ill. 508, 83 N. E. 183, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1354; Lacey *v.* Collins, 134 Iowa 583, 112 N. W. 101, *citing* 19 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1354; Haberman *v.* Kaufer, 70 N. J. Eq. 381, 61 Atl. 976; Paterson General Hospital Assoc. *v.* Blauvelt, (N. J. 1907) 66 Atl. 1055; Todd's Estate, 32 Pa. Super. Ct. 187; Heyer *v.* Moerlein, (Tex. Civ. App. 1906) 97 S. W. 1040. And see O'Day *v.* O'Day, 193 Mo. 62, 91 S. W. 921.

1355. **6.** Bankers' Trust Co. *v.* Dietz, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 459, 106 N. Y. Supp. 32; Irwin *v.* Teller, 188 N. Y. 25, 80 N. E. 376; Van Gillurve *v.* Becker, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 157, 106 N. Y. Supp. 1080.

7. *In re* Jones, (Surrogate Ct.) 56 Misc. (N. Y.) 421, 107 N. Y. Supp. 1030; Irwin *v.* Teller, 188 N. Y. 25, 80 N. E. 376.

1356. **3.** Paterson General Hospital Assoc. *v.* Blauvelt, (N. J. 1907) 66 Atl. 1055.

1362. **7.** *In re* Trenchard, (1905) 1 Ch. 82, 74 L. J. Ch. 135.

1363. **2.** *In re* Trenchard, (1905) 1 Ch. 82, 74 L. J. Ch. 135.

1379. **10.** See Whitmore *v.* Roscoe, 112 Tenn. 621, 85 S. W. 860.

11. See Whitmore *v.* Roscoe, 112 Tenn. 621, 85 S. W. 860.

MASTER AND SERVANT.

11. 1. McColligan *v.* Pennsylvania R. Co., 214 Pa. St. 229, 63 Atl. 792, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 11.

2. McColligan *v.* Pennsylvania R. Co., 214 Pa. St. 232, 63 Atl. 792, *quoting* 20 AM. AND [illegible] Dorcy *v.* Redford, (R. I. 1907) 67 Atl. 367.

12. 1. A Trained Nurse, performing her usual duties with the skill which is the result of training in that profession, ordinarily does not come within the definition of a servant, but rather is one who renders personal service to an employer in the pursuit of an independent calling. Parkes *v.* Seasongood, 152 Fed. 583.

5. Alabama G. S. R. Co. *v.* Burks, (Ala. 1906) 41 So. 638, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 12; Sumner *v.* Nevin, 4 Cal. App. 347, 87 Pac. 1105; Metzinger *v.* New Orleans Board of Trade, (La. 1907) 44 So. 1008, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 12.

13. 1. McBride *v.* O'Neal, 128 Ga. 476, 57 S. E. 789, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 13; Louisville, etc., R. Co. *v.* Pendleton, (Ky. 1907) 104 S. W. 382; Embry *v.* Hargadine, etc., Dry Goods Co., 127 Mo. App. 383, 105 S. W. 777; Zahler *v.* Arkin, 112 N. Y. App. Div. 327, 98 N. Y. Supp. 544.

The relationship of master and servant rests upon contract, express or implied, and where there is dispute of fact as to whether the contract of employment was made with an independent contractor or the employer of such contractor it is for a jury, under proper instructions, to determine the controversy. Caron *v.* Powers-Simpson Co., 96 Minn. 192, 104 N. W. 889.

Written Contract Unnecessary. — Sadler-Lusk Trading Co. *v.* Logan, 83 Ark. 512, 104 S. W. 205; Featherstone Foundry, etc., Co. *v.* Criswell, 36 Ind. App. 681, 75 N. E. 30 (oral acceptance of terms of written contract).

Express Contract Unnecessary. — Aga *v.* Harbach, 127 Iowa 144, 102 N. W. 833.

Mutuality of Contract Necessary. — Silberman *v.* Schwarez, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 355, 90 N. Y. Supp. 382; Schultz *v.* Simmons Fur Co., (Wash. 1907) 90 Pac. 917.

Invalidity of Contract of Employment for Uncertainty. — Bluemner *v.* Garvin, 120 N. Y. App. Div. 29, 104 N. Y. Supp. 1009.

Liability of Party Adding "Trustee" to His Name in Signing Contract of Employment — Whalen *v.* Ruegamer, (Supm. Ct. App. Div.) 108 N. Y. Supp. 38.

Memorandum of Contract Subsequently to Be Completed and Reduced to Writing. — Petze *v.* Morse Dry Dock, etc., Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 328.

Acceptance of an Offer of Employment may be shown by acts without express verbal acceptance. Smith *v.* Williams, 123 Mo. App. 479, 100 S. W. 55.

2. Magida *v.* Wiesen, 114 N. Y. App. Div. 866, 100 N. Y. Supp. 268.

3 Devonald *v.* Rosser, 93 L. T. N. S. 274, 21 Times L. Rep. 595. See also Byrns *v.* United Telpherage Co., 105 N. Y. App. Div. 69, 93 N. Y. Supp. 906.

4. Gould *v.* McCrae, 14 Ont. L. Rep. 194, 8 Ann. Cas. 279.

14. 4. Henderson *v.* Canadian Timber, etc., Mills, 12 British Columbia 294.

5. Killen *v.* Citizens' L. Ins. Co., (Ky. 1907) 99 S. W. 943; Summers *v.* Phenix Ins. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 181, 98 N. Y. Supp. 226; Messenio *v.* Atchison, etc., R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 317, 98 N. Y. Supp. 647; Stein *v.* Kooperstein, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 481, 102 N. Y. Supp. 578; Frank *v.* Manhattan Maternity, etc., (Supm. Ct. App. T.) 107 N. Y. Supp. 404; Egan *v.* Chabot, 124 N. Y. App. Div. 593, 109 N. Y. Supp. 110; Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 445, 55 S. E. 300, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 14; Hickey *v.* Kiam, (Tex. Civ. App. 1904) 83 S. W. 716; Prescott *v.* Puget Sound, etc., Co., 40 Wash. 357, 82 Pac. 606, *per* Mount, C. J., *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 14, 15.

Custom as Affecting Duration of Contract. — Arkadelphia Lumber Co. *v.* Asman, (Ark. 1907) 107 S. W. 1171.

Necessity for Notice to Servant of Termination. — Mee *v.* Bowden Gold Min. Co., 47 Oregon 143, 81 Pac. 980.

Sufficient Notice of Termination. — Kershner *v.* Henderson, (Wash. 1908) 93 Pac. 323.

6. Woods *v.* Shumard, 114 La. 451, 38 So. 416; Cronemillar *v.* Duluth-Superior Milling Co., (Wis. 1908) 114 N. W. 432; Kosloski *v.* Kelly, 122 Wis. 665, 100 N. W. 1037. See also The Pokanoket, (C. C. A.) 156 Fed. 241.

"A hiring at so much a day, week, month, or year, no time being specified, is an indefinite hiring, and no presumption attaches that it was for a day even, but only at the rate fixed for whatever time the party may serve." Frank *v.* Manhattan Maternity, etc., (Supm. Ct. App. T.) 107 N. Y. Supp. 404.

7. King *v.* Seaboard Air Line R. Co., 140 N. Car. 433, 53 S. E. 237.

15. 5. Starkweather *v.* Emerson Mfg. Co., 132 Iowa 266, 109 N. W. 719; Carter *v.* Weber, 138 Mich. 576, 101 N. W. 818; Beissel *v.* Vermillion Farmers' Elevator Co., 102 Minn. 220, 113 N. W. 575; Saxe *v.* Shubert Theatrical Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 683 (actor); Corgan *v.* George F. Lee Coal Co., 218 Pa. St. 389, 67 Atl. 655, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 15; Watkins *v.* Napier, (Tex. Civ. App. 1906) 98 S. W. 904.

An employer is the sole judge as to whether its interests are neglected or jeopardized where the contract of employment provides that the employer may cancel the same when it "considers its interests are neglected or jeopardized." International Harvester Co. *v.* Boatman, 122 Ill. App. 474.

Under a Contract Making the Master the "Sole Arbiter and Judge" of the existence of grounds for termination of the employment, the exercise by the master of his judgment is not reviewable. Lipshutz *v.* Proctor, (Supm. Ct. App. T.) 95 N. Y. Supp. 566.

7. Lake Erie, etc., R. Co. *v.* Tierney, 29 Ohio Cir. Ct. 83, *affirmed* 75 Ohio St. 565, 80 N. E. 1128.

16. 1. Bentley *v.* Smith, 3 Ga. App. 242, 59 S. E. 722, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 16.

2. A contract for employment until certain work is completed is not indefinite so as to render it terminable at any time by the master. Prescott *v.* Puget Sound Bridge, etc., Co., 40 Wash. 354, 82 Pac. 606.

3. Gabriel *v.* Suisun Bank, 145 Cal. 266, 78 Pac. 736; Bell *v.* Peper Tobacco Warehouse Co., 205 Mo. 475, 103 S. W. 1014; Fitch *v.* Martin, 74 Neb. 538, 104 N. W. 1072; Houston Ice, etc., Co. *v.* Nicolini, (Tex. Civ. App. 1906) 96 S. W. 84.

4. Stevenson *v.* North British R. Co., Sc. Ct. Sess. 7 F. 1106; Fish *v.* Marzluff, 128 Ill. App. 549; Treffinger *v.* Groh, 100 N. Y. App. Div. 433, 91 N. Y. Supp. 837; Treffinger *v.* Groh, 112 N. Y. App. Div. 250, 98 N. Y. Supp. 291; Mendelson *v.* Bronner, (Supm. Ct. App. Div.) 108 N. Y. Supp. 807; Appleton Waterworks Co. *v.* Appleton, (Wis. 1907) 113 N. W. 44.

It is otherwise when the original contract of hiring was for two years. Schott *v.* La Compagnie Generale, etc., (Supm. Ct. Tr. T.) 52 Misc. (N. Y.) 236, 102 N. Y. Supp. 901.

17. 1. Summers *v.* Phenix Ins. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 181, 98 N. Y. Supp. 226.

Where a contract for an indefinite period, terminable by either party by thirty days' notice, is "extended" for a definite period of one year, it cannot during such period of extension be terminated by thirty days' notice. Daniel *v.* Manhattan L. Ins. Co., 116 N. Y. App. Div. 780, 102 N. Y. Supp. 27.

2. Bluemner *v.* Garvin, 120 N. Y. App. Div. 29, 104 N. Y. Supp. 1009; Babcock *v.* Anson, 122 N. Y. App. Div. 73, 106 N. Y. Supp. 642.

Construction of Contract as to Amount of Compensation. — Weik *v.* Williamson-Gunning Advertising Co., 109 Mo. App. 6, 84 S. W. 144; Schwerin *v.* Rosen, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 409, 90 N. Y. Supp. 407.

On request for a raise in wages a promise of compensation which shall be "satisfactory" does not entitle the servant to recover what his services were reasonably worth. Mackintosh *v.* Kimball, 101 N. Y. App. Div. 494, 92 N. Y. Supp. 132.

Evidence of the Value of Service has been held admissible on an issue as to the amount expressly agreed upon. Rosenberg *v.* Heidleberg, 98 N. Y. App. Div. 17, 90 N. Y. Supp. 684.

3. Alford *v.* Cook, (Supm. Ct. App. T.) 107 N. Y. Supp. 710 (provision for extra pay if services are satisfactory to master).

7. Provision in Contract for Conclusive Determination by Master of Amount of Profits. — Jones *v.* Roberts, 113 N. Y. App. Div. 285, 98 N. Y. Supp. 873.

18. 2. Arthur Jordan Co. *v.* Caylor, 36 Ind. App. 640, 76 N. E. 419; Boisnot *v.* Wilson, 109 N. Y. App. Div. 569, 96 N. Y. Supp. 581.

Charging Interest on Capital Invested. — Schrader *v.* Fraenckel, 117 N. Y. App. Div. 97, 102 N. Y. Supp. 335.

3. Schrader *v.* Fraenckel, 117 N. Y. App. Div. 97, 102 N. Y. Supp. 335.

8. Where the master is under the duty of furnishing his servant with lunches, and there is no restriction as to the place or manner of purchasing the same by the servant, the master is liable to reimburse the servant for money expended in procuring lunches irrespective of where they are procured. Taylor *v.* St. Clair, 79 Vt. 536, 65 Atl. 655.

19. 3. Cooper *v.* Brooklyn Trust Co., 109 N. Y. App. Div. 211, 96 N. Y. Supp. 56.

4. Jerome *v.* Wood, 39 Colo. 197, 88 Pac. 1067, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 19.

5. Murray *v.* Griffiths, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 398, 95 N. Y. Supp. 573, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 19.

6. Brown *v.* Crown Gold Milling Co., 150 Cal. 376, 89 Pac. 92, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 19; Jerome *v.* Wood, 39 Colo. 197, 88 Pac. 1068, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 19; Bidwell *v.* Grand Trunk Western R. Co., 148 Mich. 524, 112 N. W. 122.

Waiver of Right to Compensation for Extra Services. — Burns *v.* Fox, 98 N. Y. App. Div. 507, 90 N. Y. Supp. 254.

7. Niblett *v.* Midland R. Co., 96 L. T. N. S. 462; Hughes *v.* Toledo Scale, etc., Co., 112 Mo. App. 91, 86 S. W. 895 (time lost through illness); Keysaw *v.* Dotterweich Brewing Co., 121 N. Y. App. Div. 58, 105 N. Y. Supp. 562.

Vacation with Pay. — Birch *v.* Glasgow Sav. Bank, 114 Mo. App. 711, 90 S. W. 746.

Construction of Contract as to Payment for Time Lost. — Egan *v.* Winnipeg Baseball Club, 96 Minn. 345, 104 N. W. 947.

20. 2. Kelly *v.* Jersey City Water Supply Co., (N. J. 1907) 67 Atl. 108.

Increasing Compensation — Consideration. — An agreement during term of contract to pay an increased compensation held to be without consideration. Graff *v.* Blumberg, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 296, 103 N. Y. Supp. 184.

21. 4. Smith *v.* Cashie, etc., R., etc., Co., 142 N. Car. 31, 54 S. E. 788, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 21.

6. Seelyville Coal, etc., Co. *v.* McGlosson, 166 Ind. 561, 77 N. E. 1044.

Statutory Penalty for Nonpayment of Wages on Discharge of Servant. — Wisconsin, etc., Lumber Co. *v.* Reaves, 82 Ark. 377, 102 S. W. 206; St. Louis Southwestern R. Co. *v.* Brown, 75 Ark. 137, 86 S. W. 994 (waiver of penalty); State *v.* Chehalis Furniture, etc., Co., (Wash. 1907) 92 Pac. 277; Stewart, etc., Lumber Co. *v.* Weaver, 83 Ark. 445, 104 S. W. 152 (to recover the penalty the servant must show that wages were owing him).

22. 1. But see Williams *v.* North's Nav. Collieries, (1906) A. C. 136 (statute requiring payment of wages in coin).

23. 2. A contract by a servant that his indebtedness to a third person shall be deducted from his wages is valid. Lewis *v.* Warren, etc., R. Co., (Tex. Civ. App. 1906) 97 S. W. 104.

5. Morrison Mfg. Co. *v.* Bryson, 129 Iowa 645, 106 N. W. 153; Ivey *v.* Bessemer City Cotton Mills, 143 N. Car. 189, 55 S. E. 613.

Option to Terminate Employment. — Gray *v.*

Weir, 113 N. Y. App. Div. 479, 99 N. Y. Supp. 252 (sufficiency of notice of termination).

Resignation Tendered and Accepted after Threat of Wrongful Discharge. — New York L. Ins. Co. *v.* Thomas, (Tex. Civ. App. 1907) 103 S. W. 423.

6. Trawick *v.* Trussell, 122 Ga. 320, 50 S. E. 86; Bailey *v.* Bourn Rubber Co., (R. I. 1907) 67 Atl. 427.

. Dunn *v.* Crichfield, 214 Ill. 292, 73 N. E. 386; Wheaton *v.* Higgins, (Supm. Ct. App. T.) 90 N. Y. Supp. 1041 (only wages to term of abandonment can be recovered).

24. 3. Langguth *v.* Buermeister, 101 Minn. 14, 111 N. W. 653.

12. Natalizzio *v.* Valentino, 71 N. J. L. 500, 59 Atl. 8; Seaburn *v.* Zachmann, 99 N. Y. App. Div. 218, 90 N. Y. Supp. 1005; Keane *v.* Liebler, (Supm. Ct. App. T.) 107 N. Y. Supp. 102; Fenster *v.* Bass, (Supm. Ct. App. T.) 107 N. Y. Supp. 872.

In Trawick *v.* Trussell, 122 Ga. 320, 50 S. E. 86, the court, in speaking of this rule, said: "The rule laid down in Cutter *v.* Powell, 2 Smith's Lead. Cas. 1, has been disregarded in some jurisdictions, doubted in others, and where followed is recognized as a harsh rule, and not to be extended."

A statute requiring weekly payment of wages in certain employments, and for the payment of wages to servant discharged or leaving, does not render invalid a contract for forfeiture of wages earned when servant abandons contract without cause. Ferry *v.* Kinsley Iron, etc., Co., (Mass. 1907) 81 N. E. 305.

25. 2. Parkin *v.* South Hetton Coal Co., 97 L. T. N. S. 98; Buckwalter *v.* Bradley, (Ky. 1907) 104 S. W. 970.

26. 3. But as regards each period for which the periodical payments are to be made the contract is not severable. Keane *v.* Liebler, (Supm. Ct. App. T.) 107 N. Y. Supp. 102.

7. Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W. 985; Shugg *v.* American Shoe, etc., Assoc., 192 Mass. 167, 77 N. E. 1029; Sigmon *v.* Goldstone, 116 N. Y. App. Div. 490, 101 N. Y. Supp. 984.

To take the case to the jury on the question of discharge, it was not necessary for the plaintiff to prove that the corporation defendant had expressly and formally terminated his employment. Facts from which an intent to do so could reasonably be inferred were adequately shown, and whether or not the existence of such intent should be actually deduced from them was for determination by the jury. Semet-Solway Co. *v.* Wilcox, (C. C. A.) 143 Fed. 880.

Refusal to accept the services of an employee except on conditions violative of the terms of the contract of employment is equivalent to a discharge. Curtis *v.* Lehmann, 115 La. 40, 38 So. 887.

Request to Resign.—New York L. Ins. Co. *v.* Thomas, (Tex. Civ. App. 1907) 103 S. W. 423.

8. Hinchman *v.* Matheson Motor Car Co., (Mich. 1908) 115 N. W. 48.

27. 1. Porter *v.* Murphy, (Indian Ter. 1907) 104 S. W. 658.

3. Parker *v.* Farlinger, 122 Ga. 315, 50 S. E. 98.

5. Parkin *v.* South Hetton Coal Co., 97 L. T. N. S. 98; Peterson *v.* Drew, 2 Alaska 560.

6. Allen *v.* Glen Creamery Co., 101 N. Y. App. Div. 306, 91 N. Y. Supp. 935; Ware *v.* Gautemalan, etc., Mahogany, etc., Co., 119 N. Y. App. Div. 262, 104 N. Y. Supp. 520; Wright *v.* Lake, (Wash. 1908) 93 Pac. 1072.

In every instance the question as to the right of the master to discharge a servant for absenting himself from his work is to be determined by the contract, the nature of the business, and the effect upon the master's interests. Vidalia Compress, etc., Co. *v.* Mathews, 1 Ga. App. 56, 57 S. E. 902.

8. Hughes *v.* Toledo Scale, etc., Co., 112 Mo. App. 91, 86 S. W. 895.

Construction of Contract with Baseball Player. — Egan *v.* Winnipeg Baseball Club, 96 Minn. 345, 104 N. W. 947.

9. But see Storey *v.* Fulham Steel Works, 23 Times L. Rep. 306, *affirmed* 24 Times L. Rep. 89.

11. Goode *v.* Downing, 5 N. W. Ter. 505; Gaynor *v.* Jonas, 104 N. Y. App. Div. 35, 93 N. Y. Supp. 287.

28. 5. Williams *v.* Hammond, 16 Manitoba 369.

29. 3. It is otherwise when the contract is for the exclusive services of the servant. Glaser *v.* National Alumni, (Supm. Ct. App. T.) 97 N. Y. Supp. 984; Hughes *v.* Toledo Scale, etc., Co., 112 Mo. App. 91, 86 S. W 895.

4. Seaburn *v.* Zachmann, 99 N. Y. App. Div. 218, 90 N. Y. Supp. 1005.

6. Franklin *v.* Empire Rubber Mfg. Co., 72 N. J. L. 58, 60 Atl. 186; Allcroft *v.* Adams, 38 Can. Sup. Ct. 365.

The burden of proving that the servant was incompetent is upon the master. Mobile, etc., R. Co. *v.* Hayden, 116 Tenn. 672, 94 S. W. 940.

7. Jones *v.* Oppenheim, (Supm. Ct. App. T.) 91 N. Y. Supp. 343; McKeithan *v.* American Telephone, etc., Co., 136 N. Car. 213, 48 S. E. 646; Eubanks *v.* Alspaugh, 139 N. Car. 520, 52 S. E. 207; Ivey *v.* Bessemer City Cotton Mills, 143 N. Car. 189, 55 S. E. 613; Hatton *v.* Mountford, 105 Va. 96, 52 S. E. 847.

30. 1. That other employees would not work with or under the plaintiff is not ground for discharge. Sun Printing, etc., Assoc. *v.* Edwards, 136 Fed. 591, 69 C. C. A. 365.

4. Kirley *v.* Thom, 32 Pa. Super. Ct. 130.

5. Standidge *v.* Lynde, 120 Ill. App. 418.

31. 2. Costet *v.* Jeantet, 108 N. Y. App. Div. 201, 95 N. Y. Supp. 638 (requiring a clerk's presence at the store by eight o'clock in the morning).

3. Kirley *v.* Thom, 32 Pa. Super. Ct. 130.

4. Kramer *v.* Wolf Cigar Stores Co., 99 Tex. 597, 91 S. W. 775.

The question whether a regulation adopted by a corporation for the government of its employees is invalid for unreasonableness is a question for the court, and not one to be submitted to the jury. Walker *v.* John Hancock Mut. L. Ins. Co., (N. J. 1907) 68 Atl. 113.

12. Fraudulent Representations Inducing Employment Authorize Discharge of Servant. — Hughes *v.* Toledo Scale, etc., Co., 112 Mo.

App. 91, 86 S. W. 895; Parks *v.* Tolman, 113 Mo. App. 14, 87 S. W. 576.

32. 2. Merely complaining through an attorney as to controversy between master and servant does not warrant the latter's discharge. Clark *v.* Capp, 9 Ont. L. Rep. 192.

3. Swale *v.* Ipswich Tannery, 11 Com. Cas. (Eng.) 88 (placing insurance on master's property with insurance company of which the servant was agent).

6. The fact that the master has disposed of [illegible] business and no longer needs the services of the servant is no ground for discharge. Chipman *v.* Turner, etc., Mfg. Co., (Ky. 1908) [illegible] S. W. 852.

13. Clouston *v.* Corry, (1906) A. C. 122; Butterick Pub. Co. *v.* Whitcomb, 225 Ill. 605, 80 N. E. 247.

14. McKeithan *v.* American Telephone, etc., Co., 136 N. Car. 213, 48 S. E. 646; Pacific Express Co. *v.* Walters, (Tex. Civ. App. 1906) 93 S. W. 496.

15. Glaser *v.* National Alumni, (Supm. Ct. App. T.) 97 N. Y. Supp. 984.

33. 1. Corgan *v.* George F. Lee Coal Co., 218 Pa. St. 386, 67 Atl. 655.

3. Fitzpatrick Square Bale Ginning Co. *v.* McLaney, (Ala. 1907) 44 So. 1023; Reynolds *v.* Hart, (Colo. 1908) 94 Pac. 14; Butterick Pub. Co. *v.* Whitcomb, 225 Ill. 609, 80 N. E. 247, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33; Des Allemands Lumber Co. *v.* Morgan City Timber Co., 117 La. 18, 41 So. 332, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33; Sharpp *v.* McBride, (La. 1907) 45 So. 41; Spindel *v.* Cooper, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 569, 92 N. Y. Supp. 822 (loss of time from illness); Murray *v.* O'Donohue, 109 N. Y. App. Div. 696, 96 N. Y. Supp. 335; United Oil, etc., Co. *v.* Grey, (Tex. Civ. App. 1907) 102 S. W. 936, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 26 *et seq.*

4. Continued Incompetency as ground for discharge is not waived by failure to discharge. United Oil, etc., Co. *v.* Grey, (Tex. Civ. App. 1907) 102 S. W. 936, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33.

34. 5. *Alabama.* — Fitzpatrick Square Bale Ginning Co. *v.* McLaney, (Ala. 1907) 44 So. 1023.

Alaska. — Peterson *v.* Drew, 2 Alaska 560, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34.

Iowa. — Wood *v.* Ravenscroft, (Iowa 1907) 112 N. W. 640.

Kentucky. — Smith *v.* Ohler, (Ky. 1907) 104 S. W. 995.

Massachusetts. — Bussell Trimmer Co. *v.* Coburn, 188 Mass. 254, 74 N. E. 334.

Missouri. — Hughes *v.* Toledo Scale, etc., Co., 112 Mo. App. 91, 86 S. W. 895; Tenzer *v.* Gilmore, 114 Mo. App. 210, 89 S. W. 341.

New York. — Jones *v.* Oppenheim, (Supm. Ct. App. T.) 91 N. Y. Supp. 343.

[illegible] Pacific Express Co. [illegible] Walters, (Tex. Civ. App. 1906) 93 S. W. 496; Peacock *v.* Coltrane, (Tex. Civ. App. 1906) 90 S. W. 107; San Antonio Light Pub. Co. *v.* Moore, (Tex. Civ. App. [illegible]) [illegible] S. W. [illegible]

[illegible] Lockerbie [illegible] Vancouver Temperance Hotel Co., 11 British Columbia 67.

6. Gillespie *v.* Ashford, 125 Iowa 729, 101 N. W. 649; Kessler *v.* Ellis, 87 S. W. 798, 27 Ky. L. Rep. 1042; Kramer *v.* Wolf Cigar Stores Co., 99 Tex. 597, 91 S. W. 775.

7. Milage *v.* Woodward, 186 N. Y. 252, 78 N. E. 873.

The servant is bound to seek other employment for which he is fitted though not of the same character. Kramer *v.* Wolf Cigar Stores Co., 99 Tex. 597, 91 S. W. 775.

35. 2. Kramer *v.* Wolf Cigar Stores Co., 99 Tex. 597, 91 S. W. 775.

5. Americus Grocery Co. *v.* Roney, 129 Ga. 40, 58 S. E. 462.

6. The employee's right to recover the salary for the unexpired term accrues at the moment of discharge, and becomes a vested right, which cannot be affected by the employee's subsequently engaging his services to another, or by his refusal to return to the employment from which he had been discharged. Curtis *v.* Lehmann, 115 La. 40, 38 So. 887.

36. 1. Wolf Cigar Stores Co. *v.* Kramer, (Tex. Civ. App. 1905) 89 S. W. 995, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34 [36].

3. A Striking Servant has no right to enter the premises of the master to get his tools. Sloss-Sheffield Steel, etc., Co. *v.* Pryor, (Ala. 1907) 44 So. 649.

5. Sinclair *v.* Tod, (1907) Sc. Ct. Sess. 1038.

7. Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W. 985.

An action for wages earned before discharge is not a bar to a subsequent action for breach of contract. American China Development Co. *v.* Boyd, 148 Fed. 258.

8. Brown *v.* Crown Gold Milling Co., 150 Cal. 376, 89 Pac. 86.

37. 1. James *v.* Parsons, 70 Kan. 158, 78 Pac. 438, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36.

2. Reupke *v.* D. H. Stuhr, etc., Grain Co., 126 Iowa 632, 102 N. W. 509; Menage *v.* Rosenthal, 187 Mass. 470, 73 N. E. 537 (immediate action); McDonald *v.* Ideal Mfg. Co., 143 Mich. 17, 106 N. W. 279, 12 Detroit Leg. N. 896; Cooke *v.* Independent Telephone, etc., Constr. Co., (N. J. 1908) 68 Atl. 790; Pacific Express Co. *v.* Walters, (Tex. Civ. App. 1906) 93 S. W. 496.

3. *United States.* — Kansas Union L. Ins. Co. *v.* Burman, 141 Fed. 835, 73 C. C. A. 69; American China Development Co. *v.* Boyd, 148 Fed. 258.

Alabama. — Fitzpatrick Square Bale Ginning Co. *v.* McLaney, (Ala. 1907) 44 So. 1023.

Arkansas. — Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W. 985.

Missouri. — Bradner *v.* Rockdale Powder Co., 115 Mo. App. 102, 91 S. W. 997.

New York. — Jones *v.* Oppenheim, (Supm. Ct. App. T.) 91 N. Y. Supp. 343; Cross *v.* Florsheim, 102 N. Y. App. Div. 498, 92 N. Y. Supp. 832; Schreiber *v.* Klingenstein, (Supm. Ct. App. T.) 95 N. Y. Supp. 549; Roth *v.* Spero, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 506, 96 N. Y. Supp. 211.

North Carolina. — Smith *v.* Cashie, etc., R., etc., Co., 142 N. Car. 36, 54 S. E. 788, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 37.

Tennessee. — Mobile, etc., R. Co. *v.* Hayden, 116 Tenn. 672, 94 S. W. 940.

Texas. — Seago *v.* White, (Tex. Civ. App. 1907) 100 S. W. 1015.

This rule, however, applies to cases only where the contract is for the whole time and services of the employee. It has no application to a case where the servant could have earned the money he did between the time of his dismissal and the expiration of his contract, and still have rendered to the appellant the services required by such contract. Nuckolls *v.* College of Physicians and Surgeons, (Cal. App. 1907) 94 Pac. 81.

Contract for Employment for Life. — Lake Erie, etc., R. Co. *v.* Tierney, 29 Ohio Cir. Ct. 87.

Though the Master Was Entitled to Discharge the Servant at Any Time after He Started Work, the servant is entitled to recover nominal damages where the master refused to permit the servant to perform any work. Cronemillar *v.* Duluth-Superior Milling Co., (Wis. 1908) 114 N. W. 432.

38. 1. Freeman *v.* Goldstein, (Supm. Ct. App. T.) 99 N. Y. Supp. 395.

2. Smith *v.* Cashie, etc., R., etc., Co., 142 N. Car. 37, 54 S. E. 788, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 37, 38.

Servant Engaging in Business for Himself. — Kramer *v.* Wolf Cigar Stores Co., 99 Tex. 597, 91 S. W. 775.

5. Semet-Solway Co. *v.* Wilcox, (C. C. A.) 143 Fed. 839, *following* Pierce *v.* Tennessee, etc., Co., 173 U. S. 1, 19 U. S. Sup. Ct. 335.

39. 1. Stein *v.* Kooperstein, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 481, 102 N. Y. Supp. 578.

2. Spencer Medicine Co. *v.* Hall, 78 Ark. 336, 93 S. W. 985; Roth *v.* Spero, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 506, 96 N. Y. Supp. 211.

Determination of Probable Profits According to Business of Prior Years. — Smith *v.* Smith, 116 N. Y. App. Div. 165, 101 N. Y. Supp. 521.

3. Brightson *v.* H. B. Claflin Co., 180 N. Y. 76, 72 N. E. 920.

40. 4. Sharp *v.* McBride, (La. 1907) 45 So. 41; Hinchman *v.* Matheson Motor Car Co., (Mich. 1908) 115 N. W. 48; Schreiber *v.* Klingenstein, (Supm. Ct. App. T.) 95 N. Y. Supp. 549; Eubanks *v.* Alspaugh, 139 N. Car. 520, 52 S. E. 207; Ivey *v.* Bessemer City Cotton Mills, 143 N. Car. 189, 55 S. E. 613.

41. 1. Hitchens *v.* School Dist. No. 180, 5 Penn. (Del.) 325, 62 Atl. 897; Woods *v.* Shumard, 114 La. 451, 38 So. 416 (code provision); Berlin *v.* Cusachs, 114 La. 744, 38 So. 539 (code provision); Thurmond *v.* Skannal, 118 La. 6, 42 So. 577 (code provision); Daspit *v.* D. H. Holmes Co., (La. 1907) 44 So. 993 (under *Louisiana* code the right of action accrues immediately on discharge); Sharp *v.* McBride, (La. 1907) 45 So. 41; Smith *v.* Cashie, etc., R., etc., Co., 142 N. Car. 33, 54 S. E. 788, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40.

5. The complaint must include all instalments due at the time the action is commenced, otherwise instalments not included cannot be recovered. Smith *v.* Cashie, etc., R., etc., Co., 142 N. Car. 26, 54 S. E. 788.

6. Chase *v.* Alaska Fish, etc., Co., 2 Alaska 82; Peterson *v.* Drew, 2 Alaska 560; Keane *v.* Liebler, (Supm. Ct. App. T.) 107 N. Y. Supp. 102; Carmean *v.* North American Trans., etc., Co., (Wash. 1907) 88 Pac. 835, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 41.

Wages which would have accrued after the commencement of the action cannot be recovered, though at the time of the trial they would have been due. Dixon *v.* Bunnell, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 560, 102 N. Y. Supp. 775.

42. 1. The master is not liable to his servant for remote collateral damages arising from unjust or unauthorized inferences or conclusions adverse to him which the public might draw from the mere fact itself of the discharge. Berlin *v.* Cusachs, 114 La. 744, 38 So. 539.

2. But see Porter *v.* Murphy, (Indian Ter. 1907) 104 S. W. 658.

3. Gibson *v.* Fidelity, etc., Co., 232 Ill. 49, 83 N. E. 539.

5. Shepherd *v.* Gambill, (Ky. 1906) 96 S. W. 1104; Lamberton *v.* Vancouver Temperance Hotel Co., 11 British Columbia 67.

6. American China Development Co. *v.* Boyd, 148 Fed. 258; Beissel *v.* Vermillion Farmers' Elevator Co., 102 Minn. 229, 113 N. W. 575; Tenzer *v.* Gilmore, 114 Mo. App. 210, 89 S. W. 341; Milage *v.* Woodward, 186 N. Y. 252, 78 N. E. 873; Allen *v.* Glen Creamery Co., 101 N. Y. App. Div. 306, 91 N. Y. Supp. 935; Monroe *v.* Proctor, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 632, 100 N. Y. Supp. 1021; Jefferson, etc., R. Co. *v.* Dreeson, (Tex. Civ. App. 1906) 96 S. W. 63; Peacock *v.* Coltrane, (Tex. Civ. App. 1906) 99 S. W. 107; San Antonio Light Pub. Co. *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 867.

43. 2. Parker *v.* Farlinger, 122 Ga. 315, 50 S. E. 98.

3. Peacock *v.* Coltrane, (Tex. Civ. App. 1906) 99 S. W. 107; Parks *v.* Tolman, 113 Mo. App. 14, 87 S. W. 576 (servant discharged for fraudulent representation inducing employment).

7. Gaynor *v.* Jonas, 104 N. Y. App. Div. 35, 93 N. Y. Supp. 287.

44. 3. Old Settlers' Invest. Co. *v.* Marshall Vinegar, etc., Co., (Iowa 1908) 113 N. W. 326; Hughes *v.* Toledo Scale, etc., Co., 112 Mo. App. 91, 86 S. W. 895 (time lost through illness).

45. 1. Campbell *v.* Faxon, 73 Kan. 675, 85 Pac. 760; Casto *v.* Murray, 47 Oregon 63, 81 Pac. 883, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 45.

3. Option to Terminate Contract in Case of Dissolution of Corporation may be exercised in case of dissolution in voluntary bankruptcy proceedings. *In re* Sweetser, etc., Co., 142 Fed. 131, 73 C. C. A. 349.

9. Where by a contract of employment the servant is to perform certain services with regard to a specific business, the disposal of such business by the master is a wrongful breach of the contract by him and the servant is under no obligation to continue in the services

of the one to whom the business is transferred. White *v.* Lumiere North American Co., 79 Vt. 206, 64 Atl. 1121.

Option to Terminate Contract in Case of Formation of Combination with Other Manufacturers. — Fuller *v.* Downing, 120 N. Y. App. Div. 36, 104 N. Y. Supp. 991.

17. 6. Sheppard Pub. Co. *v.* Harkins, 9 Ont. L. Rep. 504.

7. Genco *v.* Remington, 100 N. Y. App. Div. 223, 91 N. Y. Supp. 898.

11. Bentley *v.* Smith, 3 Ga. App. 242, 59 S. E. 720.

Contracts for a Year to Commence in Future. — Chase *v.* Hinkley, 126 Wis. 79, 105 N. W. 230, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 47.

18. 1. Mobile, etc., R. Co. *v.* Hayden, 116 Tenn. 672, 94 S. W. 940; San Antonio Light Pub. Co. *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 867; Texarkana Lumber Co. *v.* Lennard, (Tex. Civ. App. 1907) 104 S. W. 506.

A contract of employment for a year to begin from the time the contract was made is not within the statute of frauds. Embry *v.* Hargadine-McKittrick Dry Goods Co., 115 Mo. App. 130, 91 S. W. 170.

The fact that the death of the servant will terminate the contract does not render it valid on the ground that for that reason it may be performed within a year. Chase *v.* Hinckley, 126 Wis. 79, 105 N. W. 230, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 48.

3. San Antonio Light Pub. Co. *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 867.

4. But see Schrader *v.* Fraenckel, 117 N. Y. App. Div. 97, 102 N. Y. Supp. 335.

19. 5. Summers *v.* Boyce, 97 L. T. N. S. 505.

6. Marion *v.* Roberts, 14 Quebec K. B. 23; Vulcan Detinning Co. *v.* American Can Co., 70 N. J. Eq. 588, 62 Atl. 881; Taylor Iron, etc., Co. *v.* Nichols, (N. J. 1907) 65 Atl. 695.

9. American Circular Loom Co. *v.* Wilson, (Mass. 1908) 84 N. E. 133; New York Automobile Co. *v.* Franklin, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 8, 97 N. Y. Supp. 781.

10. Portland Iron Works *v.* Willett, (Oregon 1907) 89 Pac. 421 (express contract).

50. 4. Construction of Contract as to Inventions by Servant. — Detroit Lubricator Co. *v.* Lavigne Mfg. Co., (Mich. 1908) 115 N. W. 988.

51. 7. Liability of Accountant for Negligen. Checking of Employee's Books, Thereby Enabling Another Employee to Embezzle. — Smith *v.* London Assur. Corp., 109 N. Y. App. Div. 882, 96 N. Y. Supp. 820.

8. No cause of action accrues to the master as against the servant until the master is compelled to pay the party injured by the act of the servant. Gaffner *v.* Johnson, 39 Wash. 437, 81 Pac. 859, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 51, 52.

52. 5. Scheller *v.* Silbermintz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 176, 98 N. Y. Supp. 230, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 52. But see Southern R. Co. *v.* Reynolds, 126 Ga. 657, 55 S. E. 1039.

"The True Rule deducible from the authorities is that the servant is personally liable to third persons when his wrongful act is the direct and proximate cause of the injury, whether such wrongful act be one of nonfeasance or misfeasance." Ellis *v.* Southern R. Co., 72 S. Car. 465, 52 S. E. 228.

7. Southern R. Co. *v.* Rowe, 2 Ga. App. 557, 59 S. E. 462; Deck *v.* Baltimore, etc., R. Co., 100 Md. 168, 59 Atl. 650; Whalen *v.* Pennsylvania R. Co., 73 N. J. L. 192, 63 Atl. 993.

A vice principal is not liable for the negligent acts of other servants under his control. Ellis *v.* Southern R. Co., 72 S. Car. 465, 52 S. E. 228.

8. Miller *v.* Beaver Hill Coal Co., 48 Oregon 136, 85 Pac. 502.

For breach of contract to furnish medical attendance, the action must be on the contract and not in tort. Scanlon *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 86 S. W. 930.

Construction of Contract as to Medical Attendance to Be Rendered.— Scanlon *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 86 S. W. 930.

54. 6. Williamson Iron Co. *v.* McQueen, 144 Ala. 265, 40 So. 306; Stecher Cooperage Works *v.* Steadman, 78 Ark. 381, 94 S. W. 41; Schwarzschild, etc., Co. *v.* Weeks, 72 Kan. 190, 83 Pac. 406; San Antonio, etc., R. Co. *v.* Hahl, (Tex. Civ. App. 1904) 83 S. W. 27; Ft. Worth, etc., R. Co. *v.* Caskey, 37 Tex. Civ. App. 463, 84 S. W. 264; Gulf, etc., R. Co. *v.* Minter, (Tex. Civ. App. 1905) 85 S. W. 477; Allan *v.* Sawyer-Massey Co., 12 Ont. L. Rep. 282.

The master must exercise reasonable care to prevent exposure of his servant to contagious diseases. O'Connor *v.* Armour Packing Co., (C. C. A.) 158 Fed. 241.

Liability of Municipality. — Moest *v.* Buffalo, 116 N. Y. App. Div. 657, 101 N. Y. Supp. 996.

The maintenance of a fire department by a municipal corporation is legislative action and it is not liable to firemen for injuries caused by defect in the appliances. Lynch *v.* North Yakima, 37 Wash. 657, 80 Pac. 79.

Evidence that the Master Carried Employer's Casualty Insurance Not Inadmissible. — Steve *v.* Bonners Ferry Lumber Co., (Idaho 1907) 92 Pac. 363; Virginia-Carolina Chemical Co. *v.* Knight, 106 Va. 674, 56 S. E. 725; Iverson *v.* McDonnell, 36 Wash. 73, 78 Pac. 202.

Statutory Requirement as to Notice to Master of Injury to Servant — *England.* — Duncan *v.* Fife Coal Co., Sc. Ct. Sess. 7 F. 958.

Canada. — Smith *v.* McIntosh, 13 Ont. L. Rep. 118 (waiver of notice by misleading conduct).

United States. — Denver, etc., R. Co. *v.* Norgate, 141 Fed. 247, 5 Ann. Cas. 448, 72 C. C. A. 365 (*Colorado* statute not applicable to action based on common-law liability); Castner Electrolytic Alkali Co. *v.* Davies, (C. C. A.) 154 Fed. 938 (*New York* statute); Janssen *v.* Missouri Pac. R. Co., 155 Fed. 654 (*Kansas* statute).

Kansas. — St. Louis, etc., R. Co. *v.* Burgess, 72 Kan. 454, 83 Pac. 991.

Massachusetts. — Bartley *v.* Boston, etc., St. R. Co., (Mass. 1908) 83 N. E. 1002; Lukkonen *v.* Fore River Shipbuilding Co., (Mass. 1908) 84 N. E. 299.

New York. — Grasso *v.* Holbrook, etc., Contracting Co., 102 N. Y. App. Div. 49, 92 N. Y.

Supp. 101; Holm *v.* Empire Hardware Co., 102 N. Y. App. Div. 505, 92 N. Y. Supp. 914; Hughes *v.* Russell, 104 N. Y. App. Div. 144, 93 N. Y. Supp. 307; Miller *v.* Solvay Process Co., 109 N. Y. App. Div. 135, 95 N. Y. Supp. 1020; O'Neil *v.* Karr, 110 N. Y. App. Div. 571, 97 N. Y. Supp. 148; Chisholm *v.* Manhattan R. Co., 116 N. Y. App. Div. 320, 101 N. Y. Supp. 622; Schradin *v.* New York Cent., etc., R. Co., (Supm. Ct. Tr. T.) 103 N. Y. Supp. 73; Ortolano *v.* Degnon Contracting Co., 120 N. Y. App. Div. 59, 104 N. Y. Supp. 1064; Hope *v.* Scranton, etc., Coal Co., 120 N. Y. App. Div. 595, 105 N. Y. Supp. 372; Heffron *v.* Lackawanna Steel Co., 121 N. Y. App. Div. 35, 105 N. Y. Supp. 429; Barry *v.* Derby Desk Co., 121 N. Y. App. Div. 392, 106 N. Y. Supp. 575; Finnigan *v.* New York Contracting Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 855; Bovi *v.* Hess, (Supm. Ct. App. Div.) 107 N. Y. Supp. 1001; Glynn *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 103.

The notice required to be given by c. 393, p. 599, Kansas Laws 1903, by an employee of a railroad company before commencing an action to recover damages for personal injuries, applies only to actions brought under the statute. The present action was upon a common-law liability, and the statutory notice was not required. St. Louis, etc., R. Co. *v.* Little, 75 Kan. 716, 90 Pac. 447.

Violation of Employers' Liability Acts as Evidence of Negligence. — American Car, etc., Co. *v.* Armentraut, 116 Ill. App. 121; Swift *v.* Rennard, 119 Ill. App. 173; American Car, etc., Co. *v.* Armentraut, 214 Ill. 509, 73 N. E. 766; Conroy *v.* Acken, 110 N. Y. App. Div. 48, 96 N. Y. Supp. 530; Regling *v.* Lehmaier, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 331, 98 N. Y. Supp. 642; Lee *v.* Sterling Silk Mfg. Co., 115 N. Y. App. Div. 589, 101 N. Y. Supp. 78; Kenyon *v.* W. P. Sanford Mfg. Co., 119 N. Y. App. Div. 570, 103 N. Y. Supp. 1053; Schmidt *v.* Printing Business, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 130, 106 N. Y. Supp. 443.

In case of extra-hazardous employment, requiring the employment of a considerable number of persons, the legislature has power to require necessary precautions for the safety of employees to be taken by the master. Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233.

55. 1. *United States.* — The Fulton, 143 Fed. 591; Southern R. Co. *v.* Carr, 153 Fed. 106, 82 C. C. A. 240.

Alabama. — Herren *v.* Tuscaloosa Waterworks Co., (Ala. 1905) 40 So. 55.

Alaska. — Seittn *v.* Alaska Treadwell Min. Co., 2 Alaska 8.

Arkansas. — Harris Lumber Co. *v.* Morris, 80 Ark. 260, 96 S. W. 1067.

Georgia. — McEwen *v.* Central of Georgia R. Co., 127 Ga. 246, 56 S. E. 289; Zipperer *v.* Seaboard Air Line R. Co., 129 Ga. 387, 58 S. E. 872.

Illinois. — Swierez *v.* Illinois Steel Co., 231 Ill. 456, 83 N. E. 168 (only reasonable care required); Illinois Steel Co. *v.* Rolewicz, 113 Ill. App. 312; Darrow *v.* The Fair, 118 Ill. App. 665.

Indiana. — Grace *v.* Globe Stove, etc., Co., (Ind. App. 1907) 82 N. E. 99.

Kentucky. — Campbell Creek Coal Co. *v.* Lewis, (Ky. 1905) 89 S. W. 504; Havlin *v.* Oliver, 100 S. W. 835, 30 Ky. L. Rep. 1192; Peeno *v.* Overman-Schrader Cordage Co., (Ky. 1908) 108 S. W. 349.

Maine. — Snowdale *v.* United Box Board, etc., Co., 100 Me. 300, 61 Atl. 683.

Michigan. — Guest *v.* Edison Illuminating Co., 150 Mich. 438, 114 N. W. 226.

Mississippi. — Gulf, etc., R. Co. *v.* Blockman, 87 Miss. 192, 39 So. 479.

Missouri. — Helm *v.* Missouri Pac. R. Co., 185 Mo. 212, 84 S. W. 5; Furber *v.* Kansas City Bolt, etc., Co., 185 Mo. 301, 84 S. W. 890; Wojtylak *v.* Kansas, etc., Coal Co., 188 Mo. 260, 87 S. W. 506; Clippard *v.* St. Louis Transit Co., 202 Mo. 432, 101 S. W. 44; Whitley *v.* Chicago, etc., R. Co., 109 Mo. App. 123, 83 S. W. 68; Harrod *v.* Hammond Packing Co., 125 Mo. App. 357, 102 S. W. 637.

Nebraska. — Cudahy Packing Co. *v.* Wesolowski, 75 Neb. 786, 106 N. W. 1007.

New York. — Zevin *v.* Goldman, (Supm. Ct. App. T.) 94 N. Y. Supp. 35; Guilmartin *v.* Solvay Process Co., 115 N. Y. App. Div. 794, 101 N. Y. Supp. 118; Sticht *v.* Buffalo Cereal Co., 116 N. Y. App. Div. 632, 101 N. Y. Supp. 905; McCann *v.* Interurban St. R. Co., 117 N. Y. App. Div. 188, 102 N. Y. Supp. 296.

Ohio. — W. J. Gawne Co. *v.* Fry, 28 Ohio Cir. Ct. 16.

Pennsylvania. — Fox *v.* Clearfield Wooden Ware Co., 211 Pa. St. 645, 61 Atl. 245; Whitley *v.* Evans, 30 Pa. Super. Ct. 41.

Texas. — International, etc., R. Co. *v.* Still, (Tex. Civ. App. 1905) 88 S. W. 257.

Virginia. — Virginia Iron, etc., Co. *v.* Kiser, 105 Va. 695, 54 S. E. 889.

It is not negligence to fail to provide against an accident of such a nature that nobody could have foreseen it, and that no prudence could have anticipated the need of guarding against. Martin *v.* Niles-Bement-Pond Co., 214 Pa. St. 616, 64 Atl. 370.

An instruction that the master is required to exercise the highest degree of care to protect its infant servants is erroneous; only care according to the circumstances is required. Virginia Iron, etc., Co. *v.* Tomlinson, 104 Va. 249, 51 S. E. 362.

An instruction that the master was not an "absolute insurer of the safety of the scaffolding," held erroneous as implying that the master was an insurer in some sense. Harry Bros. Co. *v.* Brady, (Tex. Civ. App. 1905) 86 S. W. 615.

Refusal to instruct that the master is not an insurer of the safety of its servant, held error. Wood *v.* Burke, 121 N. Y. App. Div. 542, 106 N. Y. Supp. 204.

Duty of Master to Afford Relief to Servant Caught in Dangerous Machinery. — Raasch *v.* Elite Laundry Co., 98 Minn. 357, 108 N. W. 477.

Burden of Proof as to Negligence Is on Servant. — *United States.* — Looney *v.* Metropolitan R. Co., 200 U. S. 480, 26 U. S. Sup. Ct. 303; Norfolk, etc., R. Co. *v.* Gesswine, (C. C. A.) 144 Fed. 56; Shankweiler *v.* Baltimore, etc.,

R. Co., 148 Fed. 195, 78 C. C. A. 353 (rule ... by Ohio statute providing that an injury from defective car is *prima facie* evidence of railroad company's negligence).

Arkansas. — St. Louis, etc., R. Co. *v.* Standifer, 81 Ark. 275, 99 S. W. 81; St. Louis, etc., R. Co. *v.* Wells, 82 Ark. 372, 101 S. W. 738.

Colorado. — Elkton Consol. Min., etc., Co. *v.* ..., (Colo. 1907) 90 Pac. 679.

Delaware. — Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Graboski *v.* New Castle Leather Co., (Del. 1906) 64 Atl. 74.

Florida. — But see Louisville, etc., R. Co. *v.* Jones, 50 Fla. 225, 39 So. 485 (statutory modification).

Georgia. — Holly *v.* Virginia-Carolina Chemical Co., 128 Ga. 352, 57 S. E. 482; Vinson *v.* Willingham Cotton Mills, 2 Ga. App. 53, 58 S. E. 413.

Indiana. — Adams *v.* Central Indiana R. Co., 38 Ind. App. 607, 78 N. E. 687.

Indian Territory. — Southwestern Development Co. *v.* Boyd, (Indian Ter. 1907) 104 S. W. 1174.

Kentucky. — Dana *v.* Blackburn, (Ky. 1906) 90 S. W. 237; Louisville, etc., R. Co. *v.* Cox, (Ky. 1907) 104 S. W. 956.

Louisiana. — Harris *v.* Tremont Lumber Co., 115 La. 973, 40 So. 374.

Massachusetts. — Saxe *v.* Walworth Mfg. Co., 191 Mass. 338, 77 N. E. 883; Cummings *v.* Grand Lodge, etc., (Mass. 1907) 81 N. E. 189; Bonin *v.* Ballard, (Mass. 1907) 82 N. E. 702.

Minnesota. — Griffin *v.* Minnesota Transfer R. Co., 94 Minn. 191, 102 N. W. 391; Martyn *v.* Minnesota, etc., R. Co., 95 Minn. 333, 104 N. W. 133; Binewicz *v.* Haglin, (Minn. 1908) 115 N. W. 271; Vik *v.* Red Cliff Lumber Co., 99 Minn. 88, 108 N. W. 469.

Missouri. — Dunphy *v.* St. Joseph Stockyards Co., 118 Mo. App. 506, 95 S. W. 301; Purcell *v.* Tennant Shoe Co., 187 Mo. 276, 86 S. W. 121; Shore *v.* American Bridge Co., 111 Mo. App. 278, 86 S. W. 905; Bromley *v.* Hudson Lumber Co., 127 Mo. App. 151, 104 S. W. 1134.

Montana. — McGowan *v.* Nelson, (Mont. 1907) 92 Pac. 40.

New Hampshire. — Hamel *v.* Newmarket Mfg. Co., 73 N. H. 386, 62 Atl. 592; Hicks *v.* Claremont Paper Co., 74 N. H. 154, 65 Atl. 1075.

New York. — Pearsall *v.* New York Cent., etc., R. Co., 189 N. Y. 474, 82 N. E. 752; Holm *v.* Empire Hardware Co., 102 N. Y. App. Div. 505, 92 N. Y. Supp. 914; Valvo *v.* New York, etc., R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 253, 105 N. Y. Supp. 105; Arnold *v.* National Starch Co., 121 N. Y. App. Div. 880, 105 N. Y. Supp. 420; Gibbons *v.* Lehigh Valley R. Co., 122 N. Y. App. Div. 87, 106 N. Y. Supp. 543; McCarthy *v.* Norcross Bros. Co., 121 N. Y. App. Div. 775, 106 N. Y. Supp. 578; Wurthlee *v.* Concrete Steel, etc., Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 101.

North Carolina. — Hendrix *v.* Cooleemee Cotton Mills, 138 N. Car. 169, 50 S. E. 561.

Ohio. — Klunk *v.* Hocking Valley R. Co., 74 Ohio St. 125, 77 N. E. 752.

Pennsylvania. — Allen *v.* Kingston Coal Co., 212 Pa. St. 54, 61 Atl. 572; Sheridan *v.* Gray's Ferry Abattoir Co., 214 Pa. St. 115, 63 Atl. 418; Sandt *v.* North Wales Foundry Co., 214 Pa. St. 215, 63 Atl. 596; Politowski *v.* Burnham, 214 Pa. St. 165, 63 Atl. 459; Veit *v.* Class, etc., Brewing Co., 216 Pa. St. 29, 64 Atl. 871; Cunningham *v.* Pennsylvania R. Co., 217 Pa. St. 97, 66 Atl. 236.

Rhode Island.—Venbuvr *v.* Lafayette Worsted Mills, 27 R. I. 89, 60 Atl. 770.

Texas. — Missouri, etc., R. Co. *v.* Greenwood, (Tex. Civ. App. 1905) 89 S. W. 810.

Utah. — Edgar *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 745.

Virginia. — Norfolk, etc., R. Co. *v.* McDonald, 106 Va. 207, 55 S. E. 554.

Wisconsin. — Schell *v.* Chicago, etc., R. Co., (Wis. 1907) 113 N. W. 657.

Mere Proof of Accidental Injuries to Servant Is Not Generally Sufficient Proof of Negligence of Master — *England.* — But see McArthur *v.* Dominion Cartridge Co., (1905) A. C. 72.

United States. — Chicago, etc., R. Co. *v.* O'Brien, (C. C. A.) 132 Fed. 593 (derailment of train); Rosney *v.* Erie R. Co., (C. C. A.) 135 Fed. 311 (collision of trains); Leonard *v.* Miami Min. Co., 148 Fed. 827, 78 C. C. A. 517; Omaha Packing Co. *v.* Sanduski, (C. C. A.) 155 Fed. 897; Jeffreys *v.* Nebraska Bridge Supply, etc., Co., 157 Fed. 932. But see Iarussi *v.* Missouri Pac. R. Co., 155 Fed. 654 (collision of trains).

Arkansas. — St. Louis, etc., R. Co. *v.* Hill, 79 Ark. 76, 94 S. W. 914.

California. — Thompson *v.* California Constr. Co., 148 Cal. 35, 82 Pac. 367.

Georgia. — But see King *v.* Seaboard Air-Line R. Co., 1 Ga. App. 88, 58 S. E. 252 (employee injured in running of trains); Atlanta, etc., Air-Line R. Co. *v.* McManus, 1 Ga. App. 302, 58 S. E. 258 (employee injured by running of train).

Illinois. — Omaha Packing Co. *v.* Murray, 112 Ill. App. 233 (explosion).

Indiana. — Southern Indiana R. Co. *v.* Messick, 35 Ind. App. 676, 74 N. E. 1097 (derailment of train); Southern Indiana R. Co. *v.* Baker, 37 Ind. App. 405, 77 N. E. 64 (collision of trains).

Kentucky. — Vissman *v.* Southern R. Co., (Ky. 1905) 89 S. W. 502; Groves *v.* Louisville, etc., R. Co., (Ky. 1906) 96 S. W. 439.

Massachusetts. — But see Gregory *v.* American Thread Co., 187 Mass. 239, 72 N. E. 962 (holding that the fact that the master was negligent in not repairing a machine at all, or in not repairing it properly, is a fair inference from the fact that the machine started of itself).

Michigan. — Fuller *v.* Ann Arbor R. Co., 141 Mich. 66, 104 N. W. 414; Casterton *v.* American Blower Co., 142 Mich. 407, 106 N. W. 61 (fall of elevator).

Missouri. — But see St. Clair *v.* St. Louis, etc., R. Co., 123 Mo. App. 519, 99 S. W. 775 (collision of trains); Klebe *v.* Parker Distilling Co., 207 Mo. 480, 105 S. W. 1057 (rule of *res ipsa loquitur* applied).

Montana. — But see Hardesty *v.* Largey Lumber Co., 34 Mont. 151, 86 Pac. 29 (fall of lumber piled — rule *res ipsa loquitur* applied).

New York. — Rende *v.* New York, etc., Co., 187 N. Y. 382, 80 N. E. 206; Storer *v.* Stern, 100 N. Y. App. Div. 393, 91 N. Y. Supp. 821, (fall of elevator); Carron *v.* Standard, etc., Co., (Supm. Ct. App. Div.) 106 N. Y. Supp. 723.

North Carolina. — Shaw *v.* Highland Park Mfg. Co., 143 N. Car. 131, 55 S. E. 433; Jones *v.* Atlantic, etc., R. Co., 144 N. Car. 79, 56 S. E. 556. But see Stewart *v.* Raleigh, etc., R. Co., 137 N. Car. 687, 50 S. E. 313 (collision of trains); Stewart *v.* Raleigh, etc., R. Co., 141 N. Car. 253, 53 S. E. 877 (collision of trains); Hemphill *v.* Buck Creek Lumber Co., 141 N. Car. 487, 54 S. E. 420 (derailment of car raises presumption of negligence).

Ohio. — Charles Boldt Glass Co. *v.* Harris, 27 Ohio Cir. Ct. 590.

Rhode Island. — But see Petrarca *v.* Quidnick Mfg. Co., 27 R. I. 265, 61 Atl. 648 (starting of machine automatically).

South Carolina. — But see Bussey *v.* Charleston, etc., R. Co., 78 S. Car. 352, 58 S. E. 1015 (statute).

Virginia. — Pittard *v.* Southern R. Co., 107 Va. 1, 57 S. E. 561.

2. *United States.* — American Bridge Co. *v.* Seeds, (C. C. A.) 144 Fed. 605; Latting *v.* Owasso Mfg. Co., 148 Fed. 369, 78 C. C. A. 183; Kreigh *v.* Westinghouse, etc., Co., 152 Fed. 120, 81 C. C. A. 338; Teis *v.* Smuggler Min. Co., (C. C. A.) 158 Fed. 260.

Alabama. — Thomas *v.* Sloss-Sheffield Steel, etc., Co., 144 Ala. 188, 39 So. 715 (employee serving as guard shot by convict laborers); Richards *v.* Sloss-Sheffield Steel, etc., Co., 146 Ala. 254, 41 So. 288.

Georgia. — Ballew *v.* Broach, 121 Ga. 421, 49 S. E. 297; Vinson *v.* Willingham Cotton Mills, 2 Ga. App. 53, 58 S. E. 413.

Illinois. — Simpson *v.* Hansel-Elcock Foundry Co., 229 Ill. 554, 82 N. E. 388; Strojny *v.* Griffin Wheel Co., 116 Ill. App. 550; Wright *v.* Illinois Cent. R. Co., 119 Ill. App. 132; Rosan *v.* Big Muddy Coal, etc., Co., 128 Ill. App. 128; Carterville, etc., Coal Co. *v.* Moake, 128 Ill. App. 133.

Indiana. — Indianapolis, etc., Rapid Transit Co. *v.* Andis, 33 Ind. App. 625, 72 N. E. 145; P. H., etc., Roots Co. *v.* Meeker, 165 Ind. 132, 73 N. E. 253; South Bend Chilled Plow Co. *v.* Cissne, 35 Ind. App. 373, 74 N. E. 282; Crawford, etc., Co. *v.* Gose, (Ind. App. 1907) 82 N. E. 984; New York, etc., R. Co. *v.* Hamlin, (Ind. 1908) 83 N. E. 343; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626; Chicago, etc., R. Co. *v.* Dinius, (Ind. 1908) 84 N. E. 9.

Iowa. — Andrews *v.* Chicago G. W. R. Co., 129 Iowa 162, 105 N. W. 404; Cavanaugh *v.* Centerville Block Coal Co., 131 Iowa 700, 109 N. W. 303.

Kansas. — Griffin Wheel Co. *v.* Stanton, 70 Kan. 762, 79 Pac. 651.

Louisiana. — Gahagan *v.* New Orleans, G. N. R. Co., 119 La. 25, 43 So. 900.

Missouri. — Foley *v.* McMahon, 114 Mo. App. 442, 90 S. W. 113; Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158; McGahan *v.* St. Louis Transit Co., 201 Mo. 500, 100 S. W. 601.

New York. — Stenger *v.* Buffalo Union Furnace Co., 98 N. Y. App. Div. 361, 90 N. Y. Supp. 222; Burnos *v.* American Sugar Refining Co., 107 N. Y. App. Div. 286, 94 N. Y. Supp. 1104; Keefe *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 180, 95 N. Y. Supp. 828; Madin *v.* Norcross Bros. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 173, 98 N. Y. Supp. 223; Bannon *v.* New York Cent., etc., R. Co., 112 N. Y. App. Div. 552, 98 N. Y. Supp. 770; Dulfer *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 670, 101 N. Y. Supp. 207; Shutter *v.* McClintic-Marshall Constr. Co., 122 N. Y. App. Div. 293, 106 N. Y. Supp. 706; Ziehr *v.* Maumee Paper Co., 28 Ohio Cir. Ct. 342.

Texas. — Chicago, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 89 S. W. 1117; Missouri, etc., R. Co. *v.* Greenwood, (Tex. Civ. App. 1905) 89 S. W. 810; Galveston, etc., R. Co. *v.* Paschall, (Tex. Civ. App. 1906) 92 S. W. 446; Galveston, etc., R. Co. *v.* Smith, (Tex. 1906) 98 S. W. 240; Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. 1906) 98 S. W. 892; English *v.* International, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 913.

Washington. — Hunter *v.* Washington Pipe, etc., Co., 43 Wash. 167, 86 Pac. 171.

Wisconsin. — Stefanowski *v.* Chain Belt Co., 129 Wis. 484, 109 N. W. 532.

Canada. — Hillyer *v.* Wilkinson Plough Co., 9 Ont. L. Rep. 711.

The Burden is on the servant to show that the negligence of the master was the proximate cause of his injuries.

United States. — Cryder *v.* Chicago, etc., R. Co., (C. C. A.) 152 Fed. 417; Bookman *v.* Seaboard Air Line R. Co., 152 Fed. 686, 81 C. C. A. 612.

Alabama. — Creola Lumber Co. *v.* Mills, (Ala. 1906) 42 So. 1019.

Arkansas. — Walker *v.* Louis-Werner Sawmill Co., 76 Ark. 436, 88 S. W. 988.

Delaware. — Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148.

Indiana. — Davis *v.* Mercer Lumber Co., 164 Ind. 413, 73 N. E. 899.

Iowa. — O'Connor *v.* Chicago, etc., R. Co., 129 Iowa 636, 106 N. W. 161.

Kentucky. — Louisville, etc., R. Co. *v.* Guest, (Ky. 1908) 106 S. W. 817; Black *v.* Southern R. Co., (Ky. 1908) 108 S. W. 856.

Louisiana. — Meyers *v.* Ruddock Orleans Cypress Co., 118 La. 805, 43 So. 448.

Missouri. — McGrath *v.* St. Louis Transit Co., 197 Mo. 97, 94 S. W. 872; Candle *v.* Kirkbridge, 117 Mo. App. 412, 93 S. W. 868; Jackson *v.* Gulf Elevator Co., (Mo. 1908) 108 S. W. 44.

New Hampshire. — Reynolds *v.* Burgess Sulphite Fibre Co., 73 N. H. 126, 59 Atl. 615.

New York. — Nelson *v.* New York, 101 N. Y. App. Div. 18, 91 N. Y. Supp. 763; Carney *v.* Minnesota Dock Co., 191 N. Y. 301, 84 N. E. 62.

North Dakota. — Meehan *v.* Great Northern R. Co., 13 N. Dak. 432, 101 N. W. 183.

South Carolina. — Green *v.* Southern R. Co., 72 S. Car. 398, 52 S. E. 45.

Utah. — Tuckett *v* American Steam, etc., Laundry, 30 Utah 273, 84 Pac. 500.

Washington. — Gardner *v.* Porter, 45 Wash. [illegible] Pac. [illegible].

Though the employment of a child under the

prohibited statutory age is negligence *per se*, the master is not liable to a child so employed if injured through the negligent act of a third person coming upon the premises where the child is employed. Nickey *v.* Steuder, 164 Ind. [illegible] N. E. 115.

Proximate Cause Held Question for Jury. — Butler *v.* New England Structural Co., 191 Mass. 397, 77 N. E. 764.

Where the evidence, though circumstantial, is such that it would appear possible that the injury resulted from any one of several causes, and yet points to the greater probability that it resulted from the specific cause charged by the plaintiff, a nonsuit should not be granted. In the latter case the jury would be justified in returning a verdict in favor of the plaintiff, although it be possible that the injury may have resulted from some other cause. The law does not anticipate or attempt to exclude mere possibilities. Adams *v.* Bunker Hill Min. Co., 12 Idaho 637, 89 Pac. 624.

3. *United States.* — Santa Fe Pac. R. Co. *v.* Holmes, 202 U. S. 438, 26 U. S. Sup. Ct. 676; Western Electric Co. *v.* Hanselmann, 136 Fed. 564, 69 C. C. A. 346; Brown *v.* Baltimore, etc., R. Co., 142 Fed. 911, *reversed* 146 Fed. 24; Pennsylvania Steel Co. *v.* Jacobsen, (C. C. A.) 157 Fed. 656.

Arkansas. — Choctaw, etc., R. Co. *v.* Doughty, 77 Ark. 1, 91 S. W. 768; St. Louis, etc., R. Co. *v.* Andrews, 79 Ark. 437, 96 S. W. 183; St. Louis, etc., R. Co. *v.* Inman, 81 Ark. 591, 99 S. W. 832.

California. — McRae *v.* Erickson, 1 Cal. App. 326, 82 Pac. 209.

Delaware. — Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Graboski *v.* New Castle Leather Co., (Del. 1906) 64 Atl. 74; Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148.

Georgia. — Southern Cotton-Oil Co. *v.* Gladman, 1 Ga. App. 259, 58 S. E. 249; King Mfg. Co. *v.* Walton, 1 Ga. App. 412, 58 S. E. 115, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 55, 56.

Illinois. — Illinois Steel Co. *v.* Olste, 214 Ill. 181, 73 N. E. 422; Acme Harvester Co. *v.* Chittick, 230 Ill. 558, 82 N. E. 647 (slippery floor); Davis *v.* Illinois Collieries Co., 232 Ill. 284, 83 N. E. 836 (statute as to mines — sprinkling roadways); Dalton *v.* Ogden Gas Co., 126 Ill. App. 502; William Grace Co. *v.* Larson, 129 Ill. App. 290, *affirmed* 227 Ill. 101, 81 N. E. 44.

Indiana. — New Castle Bridge Co. *v.* Doty, 168 Ind. 259, 79 N. E. 485; Bessler *v.* Laughlin, 168 Ind. 38, 79 N. E. 1033 (statute — duty to guard vats); Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Brooks *v.* W. T. Joyce Co., 127 Iowa 266, 103 N. W. 91 (lumber negligently piled in lumber yard); Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359.

Kentucky. — Pfisterer *v.* Peter, 117 Ky. 510, 78 S. W. 450, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 55; Cumberland Telephone, etc., Co. *v.* Adams, 28 Ky. Law. Rep. 1265, 91 S. W. 739; Western Union Tel. Co. *v.* Holtby, (Ky. 1906) 93 S. W. 652; Bates-Rogers Constr. Co. *v.* Dunn, 93 S. W. 1032, 29 Ky. L. Rep. 428; Daniel Boone Coal Co. *v.* Sisk, (Ky. 1907) 99 S. W. 977; Mead *v.* Ashland Steel Co., 100 S. W. 821, 30 Ky. L. Rep. 1164; Louisville, etc., R. Co. *v.* Pendleton, (Ky. 1907) 104 S. W. 382; Webster *v.* Stewart Iron Works Co., (Ky. 1907) 104 S. W. 708; Republic Iron, etc., Co. *v.* Walsh, (Ky. 1907) 105 S. W. 974; Owensboro Brick, etc., Co. *v.* Glenn, (Ky. 1908) 106 S. W. 1195; Black Diamond Coal, etc., Co. *v.* Price, (Ky. 1908) 108 S. W. 345.

Louisiana. — Foreman *v.* Eagle Rice Mill Co., 117 La. 227, 41 So. 555; Johnson *v.* Christie, 117 La. 911, 42 So. 421; Godfrey *v.* Illinois Cent. R. Co., 117 La. 1094, 42 So. 571; Parrenin *v.* Crescent City Stockyard, etc., Co., (La. 1907) 44 So. 990; Bourg *v.* Brownell-Drews Lumber Co., (La. 1908) 45 So. 972.

Maine. — Erickson *v.* Monson Consol. Slate Co., 100 Me. 107, 60 Atl. 708; McTaggart *v.* Maine Cent. R. Co., 100 Me. 223, 60 Atl. 1027.

Maryland. — Philadelphia, etc., R. Co. *v.* Devers, 101 Md. 341, 61 Atl. 418.

Massachusetts. — Cooney *v.* Commonwealth Ave. St. R. Co., (Mass. 1907) 81 N. E. 905; Flynn *v.* Prince, etc., Co., (Mass. 1908) 84 N. E. 321.

Minnesota. — Haidt *v.* Swift, 94 Minn. 146, 102 N. W. 388; Carlson *v.* James Forrestal Co., 101 Minn. 446, 112 N. W. 626.

Missouri. — Purcell *v.* Tennent Shoe Co., 187 Mo. 276, 86 S. W. 121; Depuy *v.* Chicago, etc., R. Co., 110 Mo. App. 110, 84 S. W. 103; Rigsby *v.* Oil Well Supply Co., 115 Mo. App. 297, 91 S. W. 460; Spencer *v.* Bruner, 126 Mo. App. 94, 103 S. W. 578; Rigsby *v.* Oil Well Supply Co., (Mo. App. 1908) 108 S. W. 1128.

Montana. — Hardesty *v.* Largey Lumber Co., 34 Mont. 151, 86 Pac. 29.

Nebraska. — Kotera *v.* American Smelting, etc., Co., (Neb. 1908) 114 N. W. 945.

New Hampshire. — Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848.

New York. — Iesief *v.* New York, etc., R. Co., 102 N. Y. App. Div. 168, 92 N. Y. Supp. 342; Corrigan *v.* Oceanic Steam Nav. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 368, 94 N. Y. Supp. 19; Johnson *v.* Terry, etc., Co., 113 N. Y. App. Div. 762, 99 N. Y. Supp. 375; Muller *v* Oakes Mfg. Co., 113 N. Y. App. Div. 689, 99 N. Y. Supp. 923; Ambellan *v.* Barcalo Mfg. Co., 118 N. Y. App. Div. 547, 102 N. Y. Supp. 993; Morrissey *v.* Dwyer, 121 N. Y. App. Div. 247, 105 N. Y. Supp. 821; Lynch *v.* American Linseed Co., 122 N. Y. App. Div. 428, 107 N. Y. Supp. 458.

North Carolina. — Turrentine *v.* Wellington, 136 N. Car. 308, 48 S. E. 739, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 55; Fearington *v.* Blackwell Durham Tobacco Co., 141 N. Car. 80, 53 S. E. 662; Bradley *v.* South, etc., R. Co., 144 N. Car. 555, 57 S. E. 222.

Pennsylvania. — Sweigert *v.* Klingensmith, 210 Pa. St. 565, 60 Atl. 253; McCoy *v.* Ohio Valley Gas Co., 213 Pa. St. 367, 62 Atl. 858; Bardsley *v.* Gill, 218 Pa. St. 56, 66 Atl. 1112; Delaney *v.* Penn Steel Casting, etc., Co., 30 Pa. Super. Ct. 387; Clegg *v.* Seaboard Steel Casting Co., 34 Pa. Super. Ct. 63.

South Carolina. — Willis *v.* Cherokee Falls Mfg. Co., 72 S. Car. 126, 51 S. E. 538; Biggers *v.* Catawba Power Co., 72 S. Car. 264, 51 S. E. 882.

Texas. — Galveston, etc., R. Co. *v.* Manns, 37 Tex. Civ. App. 356, 84 S. W. 254; Price *v.* Consumers' Cotton Oil Co., (Tex. Civ. App. 1905) 90 S. W. 717; Galveston, etc., R. Co. *v.* Udalle, (Tex. Civ. App. 1905) 91 S. W. 330; Kirby Lumber Co. *v.* Dickerson, (Tex. Civ. App. 1906) 94 S. W. 153; Yellow Pine Oil Co. *v.* Noble, (Tex. Civ. App. 1906) 97 S. W. 332; Commerce Milling, etc., Co. *v.* Gowan, (Tex. Civ. App. 1907) 104 S. W. 916; Texas, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 106 S. W. 773.

Utah. — Anderson *v.* Mammoth Min. Co., (Utah 1907) 93 Pac. 190.

Virginia.—Black *v.* Virginia Portland Cement Co., 104 Va. 450, 51 S. E. 831; Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373; Low Moor Iron Co. *v.* La Bianca, 106 Va. 83, 55 S. E. 532.

Washington. — Schwaninger *v.* McNeeley, 44 Wash. 447, 87 Pac. 514.

Wisconsin. — Walker *v.* Simmons Mfg. Co., 131 Wis. 542, 111 N. W. 694; Chopin *v.* Combined Locks Paper Co., (Wis. 1907) 114 N. W. 95.

Canada. — Oliver *v.* Dominion Iron, etc., Co., 37 Nova Scotia 183.

Where a railroad company is in possession of a switching yard and its appurtenances for the purpose of there conducting and carrying on its business, its duty with respect to the condition and safety thereof is the same as though it owned the yard and appurtenances in fee. Illinois Terminal R. Co. *v.* Thompson, 112 Ill. App. 463, *affirmed* 210 Ill. 226, 71 N. E. 328.

That the servant was a foreman with much power over other employees, does not place him outside of the class of persons to whom the master owes the duty of exercising reasonable care in furnishing a safe place and instrumentalities for work. Viou *v.* Brooks-Scanlon Lumber Co., 99 Minn. 97, 108 N. W. 891.

The doctrine of a safe place has no application where the place was safe, and was only made unsafe by the negligent act of a third party, for which the defendant was not responsible. Penner *v.* Vinton Co., 141 Mich. 77, 104 N. W. 385.

The place furnished to work must not alone be safe from such dangers as are patent, but also from such as are latent; not alone from those in the place, but also from such extraneous matters as menace its safety, and which could be ascertained upon reasonable inquiry. Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337.

A platform built on piling at the edge of a lake, upon which workmen are directed to carry on the operations of unloading logging cars, is an appliance or place, within the rule requiring the master to furnish a reasonably safe place for his employees to carry on their work. Bailey *v.* Swallow, 98 Minn. 104, 107 N. W. 747.

A master cannot relieve himself from the duty of maintaining a safe place for work by a contract with a third person requiring such third person to keep the place in a safe condition. Pacific Express Co. *v.* Shivers, (Tex. Civ. App. 1906) 92 S. W. 46.

The duty does not obtain except in the case of premises and the parts thereof where servants in reason may be expected to be. Leffler *v.* Anheuser-Busch Brewing Assoc., 127 Mo. App. 488, 106 S. W. 105.

Want of Control of Place by Master. — Where a master is a mere lessee of space for his servants to work in, he is not required to inspect or liable for injuries due to a pail's falling from steam pipes over which he had no control. Kirk *v.* Sturdy, 187 Mass. 87, 72 N. E. 349, *applying* Moynihan *v.* King's Windsor Cement, etc., Co., 168 Mass. 450, 47 N. E. 425.

Liability of Municipality as Employer. — Wilcox *v.* Rochester, 114 N. Y. App. Div. 734, 99 N. Y. Supp. 1020.

Electric Wires Required to Be Insulated. — Paducah R., etc., Co. *v.* Bell, (Ky. 1905) 85 S. W. 216.

Duty to Cut Off Current from Electric Wires on Which Servant Is Working. — Austin *v.* Forbis, (Tex. Civ. App. 1905) 86 S. W. 29.

The Master Is Only Required to Furnish a Reasonably Safe Place to Work. — Herren *v.* Tuscaloosa Waterworks Co., (Ala. 1905) 40 So. 55; Moran *v.* Mulligan, 110 N. Y. App. Div. 208, 97 N. Y. Supp. 7; Charping *v.* Toxaway Mills, 70 S. Car. 470, 50 S. E. 186; Roth *v.* Eccles, 28 Utah 456, 79 Pac. 918.

Degree of Care in Furnishing Place to Work. — Howard *v.* Beldenville Lumber Co., 129 Wis. 98, 108 N. W. 48. *Compare* Thompson *v.* California Constr. Co., 148 Cal. 35, 82 Pac. 367; Fearon *v.* Mullins, 35 Mont. 232, 88 Pac. 794; Cudahy Packing Co. *v.* Wesolowski, 75 Neb. 786, 106 N. W. 1007; Swift *v.* O'Brien, 127 Ill. App. 26.

57. 2. Landrigan *v.* Taylor-Goodwin Co., (Mass. 1908) 84 N. E. 314; Hyatt *v.* Southern R. Co., 88 Miss. 546, 41 So. 3; Blonski *v.* American Enameled Brick, etc., Co., (N. J. 1906) 63 Atl. 909; McLaughlin *v.* Atlantic Mills, 27 R. I. 158, 61 Atl. 42; Lyon *v.* Charleston, etc., R. Co., 77 S. Car. 328, 58 S. E. 12. See also Welch *v.* Carlucci Stone Co., 215 Pa. St. 34, 64 Atl. 302; Powell *v.* American Sheet, etc., Co., 216 Pa. St. 618, 65 Atl. 1113; International, etc., R. Co. *v.* Rieden, (Tex. Civ. App. 1908) 107 S. W. 661.

3. Fulton *v.* Crosby, etc., Co., 57 W. Va. 91, 49 S. E. 1012.

4. *United States.* — Texas, etc., R. Co. *v.* Swearingen, 196 U. S. 51, 25 U. S. Sup. Ct. 164; Mountain Copper Co. *v.* Van Buren, 133 Fed. 1, 66 C. C. A. 151; Chicago, etc., R. Co. *v.* Riley, (C. C. A.) 145 Fed. 137, 7 Ann. Cas. 327; Boston, etc., R. Co. *v.* Gokey, 149 Fed. 42, 9 Ann. Cas. 384, 79 C. C. A. 64.

Alabama. — E. E. Jackson Lumber Co. *v.* Cunningham, 141 Ala. 206, 37 So. 445; Alabama Western R. Co. *v.* Russell, 144 Ala. 142, 39 So. 311; Foley *v.* Pioneer Min., etc., Co., 144 Ala. 178, 40 So. 273; Jones *v.* Pioneer Min., etc., Co., (Ala. 1907) 42 So. 908; West Pratt Coal Co. *v.* Andrews, (Ala. 1906) 43 So. 348.

California. — Davis *v.* Diamond Carriage, etc., Co., 146 Cal. 59, 79 Pac. 596; Bird *v.* Utica Gold Min. Co., 2 Cal. App. 674, 84 Pac. 256; Hershberger *v.* Pacific Lumber Co., 4 Cal. App. 460, 88 Pac. 587; Reeve *v.* Colusa Gas, etc., Co., (Cal. 1907) 92 Pac. 89.

Georgia. — Southern Cotton-Oil Co. *v.* Glad-

man, 1 Ga. App. 259, 58 S. E. 249; King Mfg. Co. *v.* Walton, 1 Ga. App. 403, 58 S. E. 115.

Illinois. — Superior Coal, etc., Co. *v.* Kaiser, 239 Ill. 29, 82 N. E. 239; McCarthy *v.* Spring Valley Coal Co., 232 Ill. 473, 83 N. E. 957; Erie, etc., Transp. Co. *v.* Gaines, 112 Ill. App. 189; Illinois Terminal R. Co. *v.* Thompson, 112 Ill. App. 463; Macon County Telephone Co. *v.* West, 116 Ill. App. 435; Myreen *v.* Smith, 127 Ill. App. 426.

Indiana. — Union Traction Co. *v.* Buckland, 34 Ind. App. 420, 72 N. E. 158; Southern R. Co. *v.* Sittasen, (Ind. App. 1905) 74 N. E. 898; H. Rumely Co. *v.* Myer, (Ind. App. 1907) 82 N. E. 97; Indianapolis Traction, etc., Co. *v.* Holtsclaw, (Ind. App. 1907) 82 N. E. 986.

Iowa. — Flockhart *v.* Hocking Coal Co., 126 Iowa 576, 102 N. W. 494; Calloway *v.* Agar Packing Co., 129 Iowa 1, 104 N. W. 721.

Kentucky. — Wallace *v.* Bach, (Ky. 1906) 97 S. W. 418; Central Coal, etc., Co. *v.* Walker, (Ky. 1907) 99 S. W. 309; Ingram *v.* Covington, etc., R. Co., (Ky. 1907) 99 S. W. 666; Finley *v.* Louisville R. Co., (Ky. 1907) 103 S. W. 343; Cumberland Telephone, etc., Co. *v.* Graves, (Ky. 1907) 104 S. W. 356; Webster *v.* Stewart Iron Works Co., (Ky. 1907) 104 S. W. 708; Republic Iron, etc., Co. *v.* Walsh, (Ky. 1907) 105 S. W. 974; Smith *v.* Garrison, (Ky. 1908) 108 S. W. 293.

Massachusetts. — Murphy *v.* New York, etc., R. Co., 187 Mass. 18, 72 N. E. 330; Thompson *v.* American Writing Paper Co., 187 Mass. 93, 72 N. E. 343; Carroll *v.* Metropolitan Coal Co., 189 Mass. 159, 75 N. E. 84; White *v.* William H. Perry Co., 190 Mass. 99, 76 N. E. 512.

Michigan. — Clark *v.* Wolverine Portland Cement Co., 138 Mich. 673, 101 N. W. 845.

Missouri. — Broomfield *v.* Wurster Constr. Co., 118 Mo. App. 254, 94 S. W. 304; Cessna *v.* Metropolitan St. R. Co., 118 Mo. App. 659, 95 S. W. 277; Kremer *v.* Eagle Mfg. Co., 120 Mo. App. 247, 96 S. W. 726; Smith *v.* Kansas City, 125 Mo. App. 150, 101 S. W. 1118; Combs *v.* Rountree Constr. Co., 205 Mo. 367, 101 S. W. 77; Hach *v.* St. Louis, etc., R. Co., 208 Mo. 581, 106 S. W. 525.

Nebraska. — Kotera *v.* American Smelting, etc., Co., (Neb. 1908) 114 N. W. 945.

New Jersey. — Dunne *v.* Jersey City Galvanizing Co., 73 N. J. L. 586, 64 Atl. 1076.

New York. — Rooney *v.* Brogan Constr. Co., 107 N. Y. App. Div. 258, 95 N. Y. Supp. 1.

Texas. — St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1906) 97 S. W. 534; Wells, etc., Express *v.* Boyle, (Tex. Civ. App. 1906) 98 S. W. 441; G. A. Duerler Mfg. Co. *v.* Eichhorn, (Tex. Civ. App. 1907) 99 S. W. 715; Chicago, etc., R. Co. *v.* Birk, (Tex. Civ. App. 1907) 99 S. W. 753; Cameron *v.* Realmuto, (Tex. Civ. App. 1907) 100 S. W. 194.

Utah. — Leach *v.* Oregon Short Line R. Co., 29 Utah 90, 81 Pac. 90.

Vermont. — Dunbar *v.* Central Vermont R. Co., 79 Vt. 474, 65 Atl. 528; McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124.

Washington. — Wiest *v.* Coal Creek R. Co., 42 Wash. 176, 84 Pac. 725; Ball *v.* Megrath, 43 Wash. 107, 86 Pac. 382; Liedke *v.* Moran Bros. Co., 43 Wash. 428, 86 Pac. 646; Barrett *v.* Banner Shingle Co., 45 Wash. 12, 87 Pac. 919.

5. *United States.* — Florence, etc., R. Co. *v.* Whipps, (C. C. A.) 138 Fed. 13 (removing landslide from railway track); American Bridge Co. *v.* Seeds, (C. C. A.) 144 Fed. 605; Kreigh *v.* Westinghouse, etc., Co., 152 Fed. 120, 81 C. C. A. 338; Moit *v.* Illinois Cent. R. Co., 153 Fed. 354, 82 C. C. A. 430; Westinghouse, etc., Co. *v.* Callaghan, (C. C. A.) 155 Fed. 397; Omaha Packing Co. *v.* Sanduski, (C. C. A.) 155 Fed. 897; American Window Glass Co. *v.* Noe, (C. C. A.) 158 Fed. 777 (razing structures).

Arkansas. — Grayson-McLeod Lumber Co. *v.* Carter, 76 Ark. 69, 88 S. W. 597 (dismantling trestle).

Colorado. — Poorman Silver Mines *v.* Devling, 34 Colo. 37, 81 Pac. 252; Maloney *v.* Florence, etc., R. Co., 39 Colo. 384, 89 Pac. 649.

Illinois. — American Car, etc., Co. *v.* Hill, 226 Ill. 227, 80 N. E. 784; Utica Hydraulic Cement Co. *v.* Whalen, 117 Ill. App. 23; F. J. McCain Co. *v.* Kingsley, 126 Ill. App. 165; Chicago, etc., Coal Co. *v.* Reese, 126 Ill. App. 567 (razing structures).

Indiana. — Dill *v.* Marmon, 164 Ind. 507, 73 N. E. 67; Jennings *v.* Ingle, 35 Ind. App. 153, 73 N. E. 945.

Indian Territory. — Rolla *v.* McAlester Coal Min. Co., 6 Indian Ter. 404, 98 S. W. 141.

Iowa. — Beardsley *v.* Murray Iron Works Co., 129 Iowa 675, 106 N. W. 180.

Maryland. — Gans Salvage Co. *v.* Byrnes, 102 Md. 230, 62 Atl. 155.

Michigan. — Livingstone *v.* Saginaw Plate Glass Co., 146 Mich. 236, 109 N. W. 431.

Missouri. — Zeigenmeyer *v.* Charles Goetz Lime, etc., Co., 113 Mo. App. 340, 88 S. W. 139, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 55, 57; Henson *v.* Armour Packing Co., 113 Mo. App. 618, 88 S. W. 166; Meehan *v.* St. Louis, etc., R. Co., 114 Mo. App. 396, 90 S. W. 102 (laying railway track); Rigsby *v.* Oil Well Supply Co., 115 Mo. App. 319, 91 S. W. 460, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 57.

Montana. — Allen *v.* Bell, 32 Mont. 69, 79 Pac. 582; Friel *v.* Kimberly-Montana Gold Min. Co., 34 Mont. 54, 85 Pac. 734.

New Jersey. — Rocco *v.* F. A. Gillespie Co., 73 N. J. L. 591, 64 Atl. 117.

New York. — Citrone *v.* O'Rourke Engineering Constr. Co., 188 N. Y. 339, 80 N. E. 1092; Bertolami *v.* United Engineering, etc., Co., 120 N. Y. App. Div. 192, 105 N. Y. Supp. 90; Kelly *v.* Battle Island Paper Co., 122 N. Y. App. Div. 185, 106 N. Y. Supp. 736 (razing structures); Logerto *v.* Central Bldg. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 604; Ward *v.* Edison Electric Illuminating Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 608.

Pennsylvania. — Welch *v.* Carlucci Stone Co., 215 Pa. St. 34, 64 Atl. 392.

Tennessee. — Norman *v.* Southern R. Co., (Tenn. 1907) 104 S. W. 1088.

Texas. — Armour *v.* Dumas, (Tex. Civ. App. 1906) 95 S. W. 710.

Washington. — Smith *v.* Hecla Min. Co., 38 Wash. 454, 80 Pac. 779.

West Virginia. — Richards *v.* Riverside Iron Works, 56 W. Va. 510, 49 S. E. 437.

The rule which requires the master to use reasonable diligence to furnish a reasonably

safe place for his employees to work has no application to those whose duty it is to make dangerous places safe. Kellyville Coal Co. *v.* Bruzas, 223 Ill. 595, 79 N. E. 309.

In Montgomery *v.* Robertson, 229 Ill. 466, 82 N. E. 396, the court said: "There is a general rule that a master must exercise reasonable care to furnish a reasonably safe place for his servant to work, but that rule is subject to limitations and exceptions. One exception universally recognized is that the general rule does not apply where the conditions are changing from time to time in the prosecution of the work. If the nature of the work is such as to produce changes and temporary conditions in the place where the work is performed, the rule does not require the master to keep the place reasonably safe under such changed conditions which the work renders necessary."

7. Hamilton *v.* Louisiana, etc., R. Co., 117 La. 243, 41 So. 560; Hyde *v.* Booth, 188 Mass. 290, 74 N. E. 337 (defects in parts of vessel not under control of the master or stevedore); Loehring *v.* Westlake Constr. Co., 118 Mo. App. 163, 94 S. W. 747; Haber *v.* Jenkins Rubber Co., 72 N. J. L. 171, 61 Atl. 382; Barsalou *v.* Pierce, 109 N. Y. App. Div. 506, 96 N. Y. Supp. 538; Walker *v.* Gleason, 109 N. Y. App. Div. 791, 96 N. Y. Supp. 843; Droge *v.* John N. Robins Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 457; Dalton *v.* Towanda, 215 Pa. St. 402, 64 Atl. 547.

It is absurd to suppose that the master's duty to provide a reasonably safe place in which his servant shall work, extends to safeguarding the route of every journey he may be required to make in fetching and carrying, whether messages or portable articles. American Bridge Co. *v.* Bainum, (C. C. A.) 146 Fed. 367.

Where a master directs without further instructions his servant to deliver goods on the premises of another, he is not responsible for the safety of the premises or appliances of his customer. De Maries *v.* Jameson, 98 Minn. 453, 108 N. W. 830.

An employer is not responsible for an injury sustained by his employee, caused solely by unsafe premises which are owned and controlled by a third person, and where the employee's services are performed. The reason of the rule is that the employer does not own, use, or control the premises, and hence is without power to make any change in their condition. Long *v.* John Stephenson Co., 73 N. J. L. 186, 63 Atl. 910.

8. Fouts *v.* Swift, 113 Mo. App. 526, 88 S. W. 167 (unprotected electric fan); **Dix *v.*** Union Ice Co., (N. J. 1908) 68 Atl. 1101 (statute requiring vats to be guarded).

If There Are Holes or Excavations. — King Mfg. Co. *v.* Walton, 1 Ga. App. 403, 58 S. E. 115.

58. 1. Eldorado Coal, etc., Co. *v.* Swan, 227 Ill. 586, 81 N. E. 691, *affirming* 128 Ill. App. 237 (statute — lighting mining shaft); Nash *v.* Kansas City Hydraulic Press Brick Co., 109 Mo. App. 600, 83 S. W. 90; Battle *v.* Robinson, 27 R. I. 588, 65 Atl. 273; Galveston, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1905) 85 S. W. 28; Chicago, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1908) 108 S. W. 483.

2. Falardeau *v.* Hoar, 192 Mass. 263, 78 N. E. 456; Day *v.* Emery-Bird-Thayer Dry Goods Co., 114 Mo. App. 479, 89 S. W. 903; Kiernan *v.* Eidlitz, 109 N. Y. App. Div. 726, 96 N. Y. Supp. 387 (statute); Burke *v.* Manhattan R. Co., 109 N. Y. App. Div. 722, 96 N. Y. Supp. 516; Texas Portland Cement, etc., Co. *v.* Lee, 36 Tex. Civ. App. 482, 82 S. W. 306.

3. Dakan *v.* G. W. Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944; Sembler *v.* Cowperthwait, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 28, 103 N. Y. Supp. 979. But see Carrigan *v.* Stillwell, 90 Me. 434, 59 Atl. 683.

4. Roundy *v.* United Box, etc., Co., (Me. 1907) 68 Atl. 535.

8. *Alabama.* — Birmingham Rolling Mill Co. *v.* Rockhold, 143 Ala. 115, 42 So. 96.

Illinois. — Henrietta Coal Co. *v.* Campbell, 211 Ill. 216, 71 N. E. 863; Deering Harvester Co. *v.* Barzak, 227 Ill. 71, 81 N. E. 1.

Iowa. — Norris *v.* Cudahy Packing Co., 124 Iowa 748, 100 N. W. 853.

Louisiana. — Muscarelli *v.* Hodge Fence, etc., Co., (La. 1907) 45 So. 268.

Massachusetts. — Urquhart *v.* Smith, etc., Co., 192 Mass. 257, 78 N. E. 410 (statute — accumulation of ice and snow).

Michigan. — McDonald *v.* Champion Iron, etc., Co., 140 Mich. 401, 103 N. W. 829.

Minnesota. — Hebert *v.* Interstate Iron Co., 94 Minn. 257, 102 N. W. 451.

New Jersey. — Haber *v.* Jenkins Rubber Co., 72 N. J. L. 171, 61 Atl. 382.

New York. — Finn *v.* Ironclad Mfg. Co., (Supm. Ct. App. Div.) 90 N. Y. Supp. 887.

Pennsylvania. — Clegg *v.* Seaboard Steel Casting Co., 34 Pa. Super. Ct. 63.

Texas. — San Antonio Foundry Co. *v.* Drish, (Tex. Civ. App. 1905) 85 S. W. 440.

9. Western Coal, etc., Co. *v.* Douglass, 80 Ark. 239, 96 S. W. 994.

Statute Requiring Timber for Props to Be Furnished by Master. — McDaniels *v.* Royle Min. Co., 110 Mo. App. 7, 85 S. W. 679.

10. *Alabama.* — Foley *v.* Pioneer Min., etc., Co., 144 Ala. 178, 40 So. 273 (statute); Alabama Consol. Coal, etc., Co. *v.* Heald, (Ala. 1907) 45 So. 686.

Arkansas. — Mt. Nebo Anthracite Coal Co. *v.* Williamson, 73 Ark. 530, 84 S. W. 779; Western Coal, etc., Co. *v.* Jones, 75 Ark. 76, 87 S. W. 440; Central Coal, etc., Co. *v.* Gregory, 78 Ark. 43, 93 S. W. 56 (Act of Cong. March 3, 1891); Western Coal, etc., Co. *v.* Buchanan, 82 Ark. 499, 102 S. W. 694.

Illinois. — Madison Coal Co. *v.* Hayes, 215 Ill. 625, 74 N. E. 755 (statutory requirement as to doors); Athens Min. Co. *v.* Carnduff, 221 Ill. 354, 77 N. E. 571 (statute); Wilmington, etc., Coal Co. *v.* Sloan, 127 Ill. App. 218, *affirmed* 225 Ill. 467, 80 N. E. 265 (statute).

Indiana. — Indiana, etc., Coal Co. *v.* Neal, (Ind. App. 1905) 75 N. E. 295 (statute regulating ventilating doors); Indiana, etc., Coal Co. *v.* Neal, 166 Ind. 458, 77 N. E. 850 (statute regulating ventilating doors).

Indian Territory. — Bolen-Darnall Coal Co. *v.* Williams, (Indian Ter. 1907) 104 S. W. 867.

Kentucky. — Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; McHenry Coal Co. *v.* Render, (Ky. 1907) 104 S. W. 996; Black

Diamond Coal, etc., Co. *v.* Price, (Ky. 1908) 108 S. W. 345.

Ohio. — W. J. Gawne Co. *v.* Fry, 28 Ohio Cir. Ct. 16.

Pennsylvania. — Saylor *v.* Chartiers Coal, etc., Co., 31 Pa. Super. Ct. 447.

South Dakota. — Davis *v.* Holy Terror Min. Co., (S. Dak. 1906) 107 N. W. 374.

11. *England.* — Bett *v.* Dalmeny Oil Co., Sc. Ct. Sess. 7 F. 787 (statute).

United States. — Mountain Copper Co. *v.* Van Buren, 133 Fed. 1, 66 C. C. A. 151; Cumberland Coal, etc., Co. *v.* Gray, 152 Fed. 939, 82 C. C. A. 87.

Alabama. — Tennessee Coal, etc., R. Co. *v.* Garrett, 140 Ala. 563, 37 So. 355; Tutwiler Coal, etc., Co. *v.* Farrington, 144 Ala. 157, 39 So. 898 (statute); Cahaba Southern Min. Co. *v.* Pratt, 146 Ala. 245, 40 So. 943; Birmingham Min., etc., Co. *v.* Skelton, (Ala. 1907) 43 So. 110; Pioneer Min., etc., Co. *v.* Smith, (Ala. 1907) 43 So. 561.

California. — Bird *v.* Utica Gold Min. Co., 2 Cal. App. 674, 84 Pac. 256.

Colorado. — Monarch Min., etc., Co. *v.* De Voe, 36 Colo. 270, 85 Pac. 633; Cripple Creek Min. Co. *v.* Brabant, 37 Colo. 423, 87 Pac. 794; Stratton Cripple Creek Min., etc., Co. *v.* Ellison, (Colo. 1908) 94 Pac. 303; Hotchkiss Mt. Min., etc., Co. *v.* Bruner, (Colo. 1908) 94 Pac. 331.

Illinois. — Superior Coal, etc., Co. *v.* Kaiser, 229 Ill. 29, 82 N. E. 239; McCarthy *v.* Spring Valley Coal Co., 232 Ill. 473, 83 N. E. 957; New Virginia Coal Co. *v.* Gower, 119 Ill. App. 1; Kellyville Coal Co. *v.* Moreland, 121 Ill. App. 410; Henrietta Coal Co. *v.* Martin, 122 Ill. App. 354, *affirmed* 221 Ill. 460, 77 N. E. 902; Springfield Coal Min. Co. *v.* Gedutis, 127 Ill. App. 327, *affirmed* 227 Ill. 9, 81 N. E. 9.

Indiana. — Diamond Block Coal Co. *v.* Cuthbertson, 166 Ind. 290, 76 N. E. 1060; Antioch Coal Co. *v.* Rockey, (Ind. 1907) 82 N. E. 76 (statute).

Indian Territory. — Choctaw, etc., R. Co. *v.* O'Nesky, 6 Indian Ter. 180, 90 S. W. 300; Brunson *v.* Southwestern Development Co., (Indian Ter. 1907) 104 S. W. 593.

Iowa. — Cook *v.* Smith-Lowe Co., (Iowa 1906) 109 N. W. 798; Madden *v.* Saylor Coal Co., 133 Iowa 699, 111 N. W. 57.

Kentucky. — McFarland *v.* Harbison, etc., Co., (Ky. 1904) 82 S. W. 430; Big Hill Coal Co. *v.* Abney, (Ky. 1907) 101 S. W. 394; Central Coal, etc., Co. *v.* Thompson, (Ky. 1907) 102 S. W. 272; Ballou *v.* Potter, (Ky. 1908) 106 S. W. 1178; Smith *v.* Garrison, (Ky. 1908) 108 S. W. 293; Tanner *v.* W. A. Wickliffe Coal Co., (Ky. 1908) 108 S. W. 351.

Michigan. — Pearce *v.* Quincy Min. Co., 149 Mich. 112, 112 N. W. 739, 14 Detroit Leg. N. 367.

Minnesota. — Tomazin *v.* Shenango Furnace Co., (Minn. 1908) 114 N. W. 1128.

Missouri. — Wojtylak *v.* Kansas, etc., Coal Co., 188 Mo. 260, 87 S. W. 506; Abbott *v.* Marion Min. Co., 112 Mo. App. 550, 87 S. W. 110; McKinnon *v.* Western Coal, etc., Co., 120 Mo. App. 148, 96 S. W. 485; Spencer *v.* Bruner, 126 Mo. App. 94, 103 S. W. 578; Garard *v.* Manufacturers' Coal, etc., Co., 207 Mo. 242, 105 S. W. 767; Rogers *v.* Rundell, (Mo. App. 1908) 106 S. W. 1096.

New York. — Arras *v.* Standard Plaster Co., 121 N. Y. App. Div. 61, 105 N. Y. Supp. 440.

Tennessee. — Smith *v.* Dayton Coal, etc., Co., 115 Tenn. 553, 92 S. W. 62, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 58; Minton *v.* La Follette Coal, etc., Co., 117 Tenn. 415, 101 S. W. 178.

Washington. — Pachko *v.* Wilkeson Coal, etc., Co., (Wash. 1907) 90 Pac. 436.

59. 2. Shea *v.* Manning, 141 Ala. 628, 37 So. 632; Grace, etc., Co. *v.* Strong, 224 Ill. 630, 79 N. E. 967, *affirming* 127 Ill. App. 336; Grace, etc., Co. *v.* Strong, 127 Ill. App. 336, *affirmed* 224 Ill. 630, 79 N. E. 967; Columbus *v.* Allen, (Ind. App. 1907) 81 N. E. 114; Smith *v.* Kansas City, 125 Mo. App. 150, 101 S. W. 1118; Overbaugh *v.* Wieber, 106 N. Y. App. Div. 283, 94 N. Y. Supp. 644.

Shoring Up Excavations. — Kurstelska *v.* Jackson, 93 Minn. 385, 101 N. W. 606.

3. *United States.* — Gila Valley, etc., R. Co. *v.* Lyon, 203 U. S. 465, 27 U. S. Sup. Ct. 145; Chicago, etc., R. Co. *v.* Benton, 132 Fed. 460, 65 C. C. A. 660; Shugart *v.* Atlanta, etc., R. Co., (C. C. A.) 133 Fed. 505; Baltimore, etc., R. Co. *v.* Doty, (C. C. A.) 133 Fed. 866; Reardon *v.* Toledo, etc., R. Co., 147 Fed. 187, 77 C. C. A. 415; St. Louis, etc., R. Co. *v.* Bishard, 147 Fed. 496, 78 C. C. A. 62.

Alabama. — E. E. Jackson Lumber Co. *v.* Cunningham, 141 Ala. 206, 37 So. 445; Northern Alabama R. Co. *v.* Shea, 142 Ala. 119, 37 So. 796; Alabama Western R. Co. *v.* Russell, 144 Ala. 142, 39 So. 311.

Arkansas. — Wallis *v.* St. Louis, etc., R. Co., 77 Ark. 556, 95 S. W. 446; Arkadelphia Lumber Co. *v.* Smith, 78 Ark. 505, 95 S. W. 880.

Delaware. — Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935.

Illinois. — Illinois Cent. R. Co. *v.* Heath, 228 Ill. 312, 81 N. E. 1022; Pittman *v.* Chicago, etc., R. Co., 231 Ill. 581, 83 N. E. 431.

Indiana. — Union Traction Co. *v.* Buckland, 34 Ind. App. 420, 72 N. E. 158 (omission to sand tracks on steep grade).

Iowa. — Mumford *v.* Chicago, etc., R. Co., 128 Iowa 685, 104 N. W. 1135; Gordon *v.* Chicago, etc., R. Co., 129 Iowa 747, 106 N. W. 177.

Kansas. — Atchison, etc., R. Co. *v.* White, (Kan. 1908) 94 Pac. 265.

Kentucky. — Illinois Cent. R. Co. *v.* Leisure, (Ky. 1906) 90 S. W. 269; Cincinnati, etc., R. Co. *v.* Zachary, (Ky. 1908) 106 S. W. 842.

Louisiana. — Fuller *v.* Tremont Lumber Co., 114 La. 266, 38 So. 164.

Michigan. — Culver *v.* South Haven, etc., R. Co., 144 Mich. 254, 109 N. W. 256.

Minnesota. — Ross *v.* Great Northern R. Co., 101 Minn. 122, 111 N. W. 951.

Mississippi. — Mississippi Cent. R. Co. *v.* Hardy, 88 Miss. 732, 41 So. 505.

Missouri. — Houts *v.* St. Louis Transit Co., 108 Mo. App. 686, 84 S. W. 161; Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621; Dunphy *v.* St. Joseph Stockyards Co., 118 Mo. App. 506, 95 S. W. 301; Hach *v.* St. Louis, etc., R. Co., 208 Mo. 581, 106 S. W. 525.

New Hampshire. — Smith *v.* Boston, etc., R. Co., 73 N. H. 325, 61 Atl. 359.

New Jersey. — Van Blarcom *v.* Central R. Co., 72 N. J. L. 33, 60 Atl. 182.

New York. — Neagle *v.* Syracuse, etc., R. Co., 185 N. Y. 270, 77 N. E. 1064; Neagle *v.* Syracuse, etc., R. Co., 109 N. Y. App. Div. 339, 95 N. Y. Supp. 884; McAuley *v.* New York Cent., etc., R. Co., 111 N. Y. App. Div. 117, 112 N. Y. App. Div. 906, 97 N. Y. Supp. 631; Crissman *v.* Erie R. Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 827.

South Carolina. — Jones *v.* Wilcox, (S. Car. 1908) 60 S. E. 231.

Texas. — Cane Belt R. Co. *v.* Crosson, (Tex. Civ. App. 1905) 87 S. W. 867; Texas Cent. R. Co. *v.* George, (Tex. Civ. App. 1905) 89 S. W. 1091; St. Louis, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1905) 90 S. W. 926; Galveston, etc., R. Co. *v.* Fitzpatrick, (Tex. Civ. App. 1906) 91 S. W. 355; Missouri, etc., R. Co. *v.* Hagan, (Tex. Civ. App. 1906) 93 S. W. 1014; Kirby Lumber Co. *v.* Chambers, (Tex. Civ. App. 1906) 95 S. W. 607; Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932; Chicago, etc., R. Co. *v.* Birk, (Tex. Civ. App. 1907) 99 S. W. 753; Lodwick Lumber Co. *v.* Mounce, (Tex. Civ. App. 1907) 102 S. W. 142; Missouri, etc., R. Co. *v.* Wise, (Tex. Civ. App. 1907) 106 S. W. 465; Galveston, etc., R. Co. *v.* Gillespie, (Tex. Civ. App. 1907) 106 S. W. 707; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 910; International, etc., R. Co. *v.* Rieden, (Tex. Civ. App. 1908) 107 S. W. 661; Galveston, etc., R. Co. *v.* Worth, (Tex. Civ. App. 1907) 107 S. W. 958.

Vermont. — Dunbar *v.* Central Vermont R. Co., 79 Vt. 474, 65 Atl. 528.

Virginia. — Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373; Southern R. Co. *v.* Newton, (Va. 1908) 60 S. E. 625.

A reasonably safe place to work, which it is a nonassignable duty of the master to provide, includes, in the case of railroads, the entire track over which the servant is required to pass in discharge of his duties. Newhouse *v.* Kanawha, etc., R. Co., (W. Va. 1907) 59 S. E. 1071.

Where the unsafe condition of the track is due to improper original construction it is no defense that the defect could not have been discovered by the exercise of ordinary care. Galveston, etc., R. Co. *v.* Roberts, (Tex. Civ. App. 1905) 91 S. W. 375.

Effect of Notice to Servant of Unsafe Condition of Track. — St. Louis, etc., R. Co. *v.* Mize, (Ark. 1906) 95 S. W. 488.

61. **2.** Hach *v.* St. Louis, etc., R. Co., 117 Mo. App. 11, 93 S. W. 825.

It is error to instruct that the company must use a "high degree" of care in keeping its roadbed in a safe condition. Van Blarcom *v.* Central R. Co., 73 N. J. L. 540, 64 Atl. 111.

5. Denver, etc., R. Co. *v.* Warring, 39 Colo. 122, 86 Pac. 305.

The fact that other railway companies ballast their tracks in the same manner as the defendant is not conclusive that the defendant had used reasonable care in this respect. Rickerd *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 905.

10. Dutro *v.* Metropolitan St. R. Co., 111 Mo. App. 258, 86 S. W. 915.

62. **1.** Chicago, etc., R. Co. *v.* Dinius, (Ind. 1908) 84 N. E. 9.

3. Tillson *v.* Maine Cent. R. Co., 102 Me. 463, 67 Atl. 407.

4. *United States.* — Texas, etc., R. Co. *v.* Swearingen, 196 U. S. 51, 25 U. S. Sup. Ct. 164; Hawley *v.* Chicago, etc., R. Co., (C. C. A.) 133 Fed. 150; Boston, etc., R. Co. *v.* Gokey, 149 Fed. 42, 9 Ann. Cas. 384, 79 C. C. A. 64; Southern R. Co. *v.* Carr, 153 Fed. 106, 82 C. C. A. 240.

Colorado. — Denver, etc., R. Co. *v.* Burchard, 35 Colo. 539, 86 Pac. 749.

Illinois. — Kath *v.* East St. Louis, etc., R. Co., 232 Ill. 126, 83 N. E. 533; Illinois Terminal R. Co. *v.* Thompson, 112 Ill. App. 463; Swift *v.* O'Brien, 127 Ill. App. 26.

Indiana. — Indianapolis Traction, etc., Co. *v.* Holtsclaw, (Ind. App. 1907) 82 N. E. 986; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626.

Kentucky. — Dudley *v.* Illinois Cent. R. Co., (Ky. 1906) 96 S. W. 835; Finley *v.* Louisville R. Co., 103 S. W. 343, 31 Ky. L. Rep. 740.

Minnesota. — Keopsel *v.* Minneapolis, etc., R. Co., 100 Minn. 202, 110 N. W. 974; Clay *v.* Chicago, etc., R. Co., (Minn. 1908) 115 N. W. 949.

Missouri. — Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529.

New York. — Kinney *v.* Rutland R. Co., 114 N. Y. App. Div. 286, 99 N. Y. Supp. 800.

Pennsylvania. — Kaylor *v.* Cornwall R. Co., 216 Pa. St. 134, 65 Atl. 65.

Rhode Island. — Savage *v.* Rhode Island Co., 28 R. I. 391, 67 Atl. 633.

Tennessee. — Nashville, etc., R. Co. *v.* Hayes, 117 Tenn. 680, 99 S. W. 362.

Texas. — Consolidated Kansas City Smelting, etc., Co. *v.* Binkley, (Tex. Civ. App. 1906) 99 S. W. 181.

Utah. — Leach *v.* Oregon Short Line R. Co., 29 Utah 285, 81 Pac. 90.

Vermont. — McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124 (water tank).

Virginia. — Norfolk, etc., R. Co. *v.* Cheatwood, 103 Va. 356, 49 S. E. 489; Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373.

If it is necessary to place obstructions in close proximity to the track, and the railway employees are warned of their presence, the company is not negligent. Mobile, etc., R. Co. *v.* Vallowe, 214 Ill. 124, 73 N. E. 416.

If an electric company erects and maintains a pole in too close proximity to a street railway company's track, the latter may be deemed negligent as regards its employees in operating its line with knowledge of such obstruction. South Side El. R. Co. *v.* Nesvig, 214 Ill. 463, 73 N. E. 749.

As an electric railway company has no authority over the street to control the erection of telephone poles, etc., in the street, it is not liable for injuries to a servant operating its cars by reason of the placing of the poles, under authority of the municipality, in dangerous proximity to the track. Chattanooga Electric R. Co. *v.* Moore, 113 Tenn. 531, 82 S. W. 478.

Bridges.—If the employees of a railroad company are required to be on the sides of its cars in the discharge of their duty as the trains pass over bridges, it is incumbent on the company to so construct and maintain its bridges as to make them reasonably safe for such use; but if the employees are not required to be on the side of the cars at such times, the company violates no duty it owes them by failing to construct its bridges of sufficient width to permit of an employee riding on the side of a car over a bridge. Krebbs *v.* Oregon R., etc., Co., 40 Wash. 138, 82 Pac. 130, 84 Pac. 609, 87 Pac. 59.

63. 1. Texarkana, etc., R. Co. *v.* Toliver, 37 Tex. Civ. App. 437, 84 S. W. 375; Missouri, etc., R. Co. *v.* Keefe, 37 Tex. Civ. App. 588, 84 S. W. 679; El Paso, etc., R. Co. *v.* Whatley, (Tex. Civ. App. 1905) 85 S. W. 306; International, etc., R. Co. *v.* Vanlandingham, (Tex. Civ. App. 1905) 85 S. W. 847.

64. 2. Neitge *v.* Chicago, etc., R. Co., (Minn. 1908) 114 N. W. 467.

7. But see Southern R. Co. *v.* Blanford, 105 Va. 373, 54 S. E. 1.

Statutory Obligation to Provide Switch Lights.—Toledo, etc., R. Co. *v.* Bond, 35 Ind. App. 142, 72 N. E. 647.

65. 2. Wabash R. Co. *v.* Kithcart, 149 Fed. 108, 9 Ann. Cas. 497, 79 C. C. A. 150.

3. Schroeder *v.* Chicago, etc., R. Co., 128 Iowa 365, 103 N. W. 985; Lee *v.* Missouri Pac. R. Co., 195 Mo. 400, 92 S. W. 614; McManus *v.* Oregon Short Line R. Co., 118 Mo. App. 152, 94 S. W. 743; Texarkana, etc., R. Co. *v.* Toliver, 37 Tex. Civ. App. 437, 84 S. W. 375.

4. **A Manufacturing Company** using railway tracks within its premises to shift cars is not a "railroad" corporation within the meaning of the *Ohio* statute requiring such corporations to block the frogs of its rails. Taggart *v.* Republic Iron, etc., Co., (C. C. A.) 141 Fed. 910.

5. Denver, etc., R. Co. *v.* Gannon, (Colo. 1907) 90 Pac. 853.

66. 1. Isley *v.* Wabash R. Co., 27 Ohio Cir. Ct. 785.

4. Alabama Western R. Co. *v.* Russell, 144 Ala. 142, 39 So. 311; Ferguson *v.* Central R. Co., 74 N. J. L. 691, 67 Atl. 602; Strong *v.* Rutland R. Co., 121 N. Y. App. Div. 391, 106 N. Y. Supp. 85.

67. 2. St. Louis, etc., R. Co. *v.* Hill, 79 Ark. 81, 94 S. W. 914, *citing* 20 Am. and Eng. Encyc. of Law (2d ed.) 61–67; Bowen *v.* Sierra Lumber Co., 3 Cal. App. 312, 84 Pac. 1010; Bundy *v.* Sierra Lumber Co., 149 Cal. 772, 87 Pac. 622; Indianapolis *v.* Cauley, 164 Ind. 304, 73 N. E. 691 (municipal bridge used by street railway); McCabe, etc., Constr. Co. *v.* Wilson, 17 Okla. 355, 87 Pac. 320.

68. 1. M'Guire *v.* Lehigh Valley R. Co., 215 Pa. St. 618, 64 Atl. 825.

3. Chicago Terminal Transfer R. Co. *v.* O'Donnell, 213 Ill. 545, 72 N. E. 1133, *affirming* 114 Ill. App. 345; Chicago Terminal Transfer R. Co. *v.* O'Donnell, 114 Ill. App. 345; Louisville, etc., R. Co. *v.* Thomas, 87 Miss. 600, 40 So. 257.

4. Anderson *v.* Northern Pac. R. Co., 34 Mont. 181, 85 Pac. 884.

69. 2. **Sufficiency of Whipping Straps.**—Taliaferro *v.* Vicksburg, etc., R. Co., 115 La. 443, 39 So. 437.

3. But see Hedrick *v.* Southern R. Co., 136 N. Car. 510, 48 S. E. 830.

While the court cannot affirm as a matter of law that the failure to place whipping straps on a bridge is negligence, yet, on the other hand, the court cannot affirm as a matter of law that it is not negligence. Central of Georgia R. Co. *v.* Alexander, 144 Ala. 257, 40 So. 424.

Where the railroad company is negligent in maintaining a "telltale" constructed it will be liable. Whitehead *v.* Wisconsin Cent. R. Co., (Minn. 1907) 114 N. W. 254.

70. 2. Mayer *v.* Detroit, etc., R. Co., 142 Mich. 459, 105 N. W. 888; Walker *v.* Newton Falls Paper Co., 111 N. Y. App. Div. 19, 97 N. Y. Supp. 521. But see Atchison, etc., R. Co. *v.* Dickens, (Indian Ter. 1907) 103 S. W. 750; Black Diamond, etc., Co. *v.* Price, (Ky. 1908) 108 S. W. 345 (evidence of subsequent explosions in mine held inadmissible).

Evidence of Condition of Premises Before and After Accident.—E. E. Jackson Lumber Co. *v.* Cunningham, 141 Ala. 206, 37 So. 445 (evidence of the condition of railway track shortly after derailment held admissible); Redus *v.* Milner Coal, etc., Co., (Ala. 1906) 41 So. 634 (evidence as to condition of railway track eighteen months after injury held inadmissible); Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475 (evidence of the condition of the premises shortly before and after the accident held admissible); Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233 (evidence of prior dangerous condition of mine due to want of ventilation held admissible); Moon *v.* Pere Marquette R. Co., 143 Mich. 125, 106 N. W. 715 (evidence of condition of place long after accident held inadmissible); Dean *v.* Kansas City, etc., R. Co., 199 Mo. 396, 97 S. W. 910.

Where a railway employee's claim for personal injuries is based on the failure of the railway company to maintain its roadbed in a proper condition, evidence as to the condition of the roadbed a year and a half after the accident is inadmissible without proof that it was then in the same condition as at the time of the accident. Shanks *v.* Central Vermont R. Co., 79 Vt. 469, 65 Atl. 529.

4. Southern R. Co. *v.* Sittasen, (Ind. App. 1905) 74 N. E. 898 (general bad condition of railroad track near derailment); Kremer *v.* Eagle Mfg. Co., 120 Mo. App. 247, 96 S. W. 726; Lamb *v.* Philadelphia, etc., R. Co., 217 Pa. St. 564, 66 Atl. 762 (evidence of general bad condition of roof).

6. Law *v.* Central Dist. Printing, etc., Co., 140 Fed. 558, *quoting* 20 Am. and Eng. Encyc. of Law (2d ed.) 70.

7. Gratz *v.* Worden, (Ky. 1904) 82 S. W. 395; Lee *v.* Missouri Pac. R. Co., 195 Mo. 400, 92 S. W. 614.

8. Lee *v.* Missouri Pac. R. Co., 195 Mo. 400, 92 S. W. 614.

71. 1. St. Louis, etc., R. Co. *v.* Andrews, 79 Ark. 437, 96 S. W. 183; Denver, etc., R. Co. *v.* Burchard, 35 Colo. 539, 86 Pac. 749.

2. *United States.* — Crookston Lumber Co. *v.* Boutin, 149 Fed. 680, 79 C. C. A. 368.

Alabama. — Birmingham Rolling Mill Co. *v.* Myers, (Ala. 1907) 43 So. 492.

Arkansas. — St. Louis, etc., R. Co. *v.* Inman, 81 Ark. 591, 99 S. W. 832.

California. — Giacomini *v.* Pacific Lumber Co., 5 Cal. App. 218, 89 Pac. 1059; Carlson *v.* Cucamonga Water Co., (Cal. App. 1908) 94 Pac. 399.

Connecticut. — Farrell *v.* Eastern Machinery Co., 77 Conn. 484, 59 Atl. 611; Swain *v.* O'Loughlin, 80 Conn. 200, 67 Atl. 480.

Delaware. — Graboski *v.* New Castle Leather Co., (Del. 1908) 64 Atl. 74; Jemmenski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935.

Georgia. — Riverside Mills *v.* Jones, 121 Ga. 33, 48 S. E. 700; Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110.

Illinois. — Donk Bros. Coal, etc., Co. *v.* Lucis, 226 Ill. 23, 80 N. E. 560, *affirming* 127 Ill. App. 61; Springfield Coal Min. Co. *v.* Gedutis, 227 Ill. 9, 81 N. E. 9 (statute requiring props to be furnished by mine owners).

Indiana. — Kentucky, etc., Bridge, etc., Co. *v.* Moran, (Ind. 1907) 80 N. E. 536.

Kentucky. — Buey *v.* Chess, etc., Co., (Ky. 1905) 84 S. W. 563; Stratton *v.* Mattingly, (Ky. 1905) 89 S. W. 513; Pitts *v.* Wells, (Ky. 1907) 101 S. W. 1192.

Louisiana. — Williams *v.* Levert Lumber, etc., Co., 114 La. 805, 38 So. 567; Smith *v.* Minden Lumber Co., 114 La. 1035, 38 So. 821; Moses *v.* Grant Lumber Co., 114 La. 933, 38 So. 684; Roff *v.* Summit Lumber Co., 119 La. 571, 44 So. 302; Parrenin *v.* Crescent City Stockyard, etc., Co., (La. 1907) 44 So. 990.

Maine. — Caven *v.* Bodwell Granite Co., 99 Me. 278, 59 Atl. 285.

Massachusetts. — Moylon *v.* D. S. McDonald Co., 188 Mass. 499, 74 N. E. 929; Erickson *v.* American Steel, etc., Co., 193 Mass. 119, 78 N. E. 761; Cahill *v.* New England Telephone, etc., Co., 193 Mass. 415, 79 N. E. 821; Cooney *v.* Commonwealth Ave. St. R. Co., (Mass. 1907) 81 N. E. 905.

Minnesota. — Kjosnes *v.* Gray, 102 Minn. 410, 113 N. W. 1009.

Missouri. — Goransson *v.* Riter-Conley Mfg. Co., 186 Mo. 300, 85 S. W. 338; Thein *v.* Gus V. Brecht Butchers' Supply Co., 116 Mo. App. 1, 91 S. W. 953; Zeis *v.* St. Louis Brewing Assoc., 205 Mo. 638, 104 S. W. 99; Rittel *v.* E. E. Souther Iron Co., 127 Mo. App. 463, 105 S. W. 662.

Nebraska. — Kotera *v.* American Smelting, etc., Co., (Neb. 1908) 114 N. W. 945.

New Jersey. — Sparks *v.* River, etc., Imp. Co., (N. J. 1907) 67 Atl. 600.

New York. — Braunberg *v.* Solomon, 102 N. Y. App. Div. 330, 92 N. Y. Supp. 506; Smith *v.* Manhattan R. Co., 112 N. Y. App. Div. 202, 98 N. Y. Supp. 1 (duty to furnish wooden shovels to remove snow from track of electric railway using third rail system); Michael *v.* Standard Concrete Steel Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 255, 105 N. Y. Supp. 131 (statute — what constitutes a "mechanical contrivance").

North Carolina. — Fressly *v.* Dover Yarn Mills, 138 N. Car. 410, 51 S. E. 69; Mathis *v.* Atlantic Coast Line R. Co., 144 N. Car. 162, 56 S. E. 864; Shaw *v.* Highland Park Mfg. Co., (N. Car. 1907) 59 S. E. 676; Avery *v.* West Lumber Co., (N. Car. 1908) 60 S. E. 646.

Pennsylvania. — Sweigert *v.* Klingensmith, 210 Pa. St. 565, 60 Atl. 253; McKee *v.* Crucible Steel Co., 213 Pa. St. 333, 62 Atl. 921; McGeehan *v.* Hughes, 217 Pa. St. 121, 66 Atl. 238.

South Carolina. — Anderson *v.* Southern R. Co., 70 S. Car. 490, 50 S. E. 202; Biggers *v.* Catawba Power Co., 72 S. Car. 264, 51 S. E. 682; Keys *v.* Winnsboro Granite Co., 76 S. Car. 284, 56 S. E. 949.

Texas. — American Cotton Co. *v.* Simmons, (Tex. Civ. App. 1905) 87 S. W. 842; Wood *v.* Texas Cotton Product Co., (Tex. Civ. App. 1905) 88 S. W. 496; Drake *v.* San Antonio, etc., R. Co., 99 Tex. 240, 89 S. W. 407; Texas, etc., Coal Co. *v.* Daves, (Tex. Civ. App. 1906) 92 S. W. 275; Ham *v.* Hayward Lumber Co., (Tex. Civ. App. 1906) 96 S. W. 938; International, etc., R. Co. *v.* Trump, (Tex. 1906) 97 S. W. 464; Gulf, etc., R. Co. *v.* Griggs, (Tex. 1907) 105 S. W. 486; Vilter Mfg. Co. *v.* Kent, (Tex. Civ. App. 1907) 105 S. W. 525; El Paso, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1908) 108 S. W. 988.

Virginia. — Truckers' Mfg., etc., Co. *v.* White, (Va. 1908) 60 S. E. 630.

Canada. — Commarford *v.* Empire Limestone Co., 11 Ont. L. Rep. 119, 5 Ann. Cas. 1012; Drolet *v.* La Compagnie, etc., 26 Quebec Super. Ct. 107; Kirk *v.* Canada Paint Co., 29 Quebec Super. Ct. 500; Canada Woollen Mills *v.* Traplin, 35 Can. Sup. Ct. 424.

The foregoing rule has no application where the servant possesses ordinary intelligence and knowledge, and the tools and appliances furnished are of a simple nature, easily understood, and in which defects can be readily observed by such servant. Vanderpool *v.* Partridge, (Neb. 1907) 112 N. W. 318.

Rule Applicable to Animate Appliances. — Manufacturers' Fuel Co. *v.* White, 228 Ill. 187, 81 N. E. 841.

Rule Applicable to Appliances Owned by Others but Which Servant Is Required to Use in Line of His Duty. — Wood *v.* Rio Grande Western R. Co., 28 Utah 351, 79 Pac. 182; New Ohio Washed Coal Co. *v.* Hindman, 119 Ill. App. 287.

The fact that the appliance used by the servant was not owned by the master does not relieve the master from liability if he had knowledge of its general use by the servant. Merganthaler-Horton Basket Co. *v.* Taylor, (Ky. 1906) 90 S. W. 968.

Ownership or control of an appliance by the master is not, in all cases, the test of his liability for injury resulting to his servant by its use. As between them, all appliances owned or in possession of another, of such a character and use as to impose the duty of inspection, which the master directs or authorizes his servant to use in the business of the master, stand on the same footing as those actually belonging to him. De Maries *v.* Jameson, 98 Minn. 453, 108 N. W. 830.

Automatic Couplers. — Whalin *v.* Illinois Cent.

R. Co., 112 Ill. App. 428; Chicago, etc., R. Co. *v.* Walters, 120 Ill. App. 152 (Act of Congress).

Liability of State as an Employer. — Hazzard *v.* State, 108 N. Y. App. Div. 119, 95 N. Y. Supp. 1103.

73. 1. Pfisterer *v.* Peter, 117 Ky. 510, 78 S. W. 450.

3. *United States.* — Chicago, etc., R. Co. *v.* Riley, (C. C. A.) 145 Fed. 137, 7 Ann. Cas. 327.

Alabama. — Southern R. Co. *v.* McGowan, (Ala. 1907) 43 So. 378.

California. — Hersberger *v.* Pacific Lumber Co., 4 Cal. App. 460, 88 Pac. 587; Reeve *v.* Colusa Gas, etc., Co., (Cal. 1907) 92 Pac. 94, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 73.

District of Columbia. — Carter *v.* McDermott, 29 App. Cas. (D. C.) 145, 10 Ann. Cas. 691.

Georgia. — Southern States Portland Cement Co. *v.* Helms, 2 Ga. App. 308, 58 S. E. 524.

Illinois. — Chicago, etc., R. Co. *v.* Kinnare, 115 Ill. App. 132; Bates Mach. Co. *v.* Crowley, 115 Ill. App. 540; Schneider *v.* Carlin, 120 Ill. App. 538; Western Electric Co. *v.* Prochaska, 129 Ill. App. 589.

Indiana. — Columbian Enameling, etc., Co. *v.* Burke, 37 Ind. App. 518, 77 N. E. 409.

Kansas. — St. Louis, etc., R. Co. *v.* Morris, (Kan. 1907) 93 Pac. 153; Missouri, etc., R. Co. *v.* Quinlan, (Kan. 1908) 93 Pac. 632.

Kentucky. — Louisville, etc., R. Co. *v.* Poulter, (Ky. 1905) 84 S. W. 576; Merganthaler-Horton Basket Co. *v.* Taylor, (Ky. 1906) 90 S. W. 968; Covington, etc., Bridge Co. *v.* Hull, (Ky. 1906) 90 S. W. 1055; Louisville Belt, etc., Co. *v.* Hart, 92 S. W. 951, 29 Ky. L. Rep. 310; Cumberland Telephone, etc., Co. *v.* Metzger, (Ky. 1906) 97 S. W. 35; Nortonville Coal Co. *v.* Brooks, (Ky. 1907) 99 S. W. 357; Wood *v.* Daviess County Distilling Co., (Ky. 1907) 102 S. W. 813; Cumberland Telephone, etc., Co. *v.* Graves, (Ky. 1907) 104 S. W. 356.

Massachusetts. — Foster *v.* New York, etc., R. Co., 187 Mass. 21, 72 N. E. 331; Feeney *v.* York Mfg. Co., 189 Mass. 336, 75 N. E. 733; Donahue *v.* Buck, (Mass. 1908) 83 N. E. 1090.

Missouri. — Briner *v.* Chicago, etc., R. Co., 109 Mo. App. 493, 85 S. W. 653; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12; Eliot *v.* Kansas City, etc., R. Co., 204 Mo. 1, 102 S. W. 532.

Nebraska. — Kotera *v.* American Smelting, etc., Co., (Neb. 1908) 114 N. W. 945.

Pennsylvania. — Bartholomew *v.* Kemmerer, 211 Pa. St. 277, 60 Atl. 908; Esher *v.* Mineral R., etc., Co., 28 Pa. Super. Ct. 387.

South Carolina. — McCarley *v.* Glenn-Lowry Mfg. Co., 75 S. Car. 390, 56 S. E. 1.

Texas. — St. Louis Southwestern R. Co. *v.* Pope, 98 Tex. 535, 86 S. W. 5; Texas Short Line R. Co. *v.* Waymire, (Tex. Civ. App. 1905) 89 S. W. 452; Texas Cent. R. Co. *v.* George, (Tex. Civ. App. 1905) 89 S. W. 1091; Missouri, etc., R. Co. *v.* Lynch, (Tex. Civ. App. 1905) 90 S. W. 511; Price *v.* Consumers' Cotton Oil Co., (Tex. Civ. App. 1905) 90 S. W. 717; Galveston, etc., R. Co. *v.* Udalle, (Tex. Civ. App. 1905) 91 S. W. 330; Galveston, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 93 S. W. 184; Wells, etc., Express *v.* Boyle, (Tex. Civ. App. 1906) 98 S. W. 441; St. Louis Southwestern R. Co. *v.* Schuler, (Tex. Civ. App. 1907) 102 S. W. 783; Southern Pac. Co. *v.* Godfrey, (Tex. Civ. App. 1908) 107 S. W. 1135.

Utah. — Leach *v.* Oregon Short Line R. Co., 29 Utah 303, 81 Pac. 90, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 73; Tuckett *v.* American Steam, etc., Laundry, 30 Utah 273, 84 Pac. 500.

Washington. — Wiest *v.* Coal Creek R. Co., 42 Wash. 176, 84 Pac. 725.

74. 2. *United States.* — Armour *v.* Russell, (C. C. A.) 144 Fed. 614.

Arkansas. — Harris Lumber Co. *v.* Morris, 80 Ark. 260, 96 S. W. 1067.

Kentucky. — Langhorn *v.* Nelson, (Ky. 1907) 99 S. W. 223; Roy Lumber Co. *v.* Donnelly, (Ky. 1907) 103 S. W. 255.

Missouri. — Mueller *v.* La Prelle Shoe Co., 109 Mo. App. 506, 84 S. W. 1010; Dunn *v.* Nicholson, 117 Mo. App. 374, 93 S. W. 869; Bennett *v.* Himmelberger-Harrison Lumber Co., 116 Mo. App. 699, 94 S. W. 808; Longree *v.* Jackes-Evans Mfg. Co., 120 Mo. App. 478, 97 S. W. 272; Kielty *v.* Buehler-Cooney Constr. Co., 121 Mo. App. 58, 97 S. W. 998; Zeis *v.* St. Louis Brewing Assoc., 205 Mo. 638, 104 S. W. 99.

Montana. — Leary *v.* Anaconda Copper Mill. Co., (Mont. 1907) 92 Pac. 477.

Texas. — Bryan *v.* International, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 693; Graham *v.* Chicago, etc., R. Co., 99 Tex. 589, 91 S. W. 1081; St. Louis Southwestern R. Co. *v.* Kern, (Tex. Civ. App. 1907) 100 S. W. 971; Vilter Mfg. Co. *v.* Kent, (Tex. 1907) 105 S. W. 526, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 74. See also Orr *v.* Waterson, 228 Ill. 138, 81 N. E. 825, *reversing* 128 Ill. App. 124.

Duty to Furnish Servant Handling Bottles of Mineral Waters with Masks to Avoid Injury from Explosion of Bottles. — G. A. Duerler Mfg. Co. *v.* Dullnig, (Tex. Civ. App. 1904) 83 S. W. 889, (Tex. 1905) 87 S. W. 332.

75. 1. Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510.

Where an accident is unusual and not reasonably to be anticipated in the light of experience from the appliances used, there is no culpable negligence. Standard Pottery Co. *v.* Moudy, 35 Ind. App. 427, 73 N. E. 188.

2. Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Currie *v.* Missouri, etc., R. Co., (Tex. 1908) 108 S. W. 1167.

3. Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

In matters of this kind an employer is not permitted to experiment at the risk of his employees. He must use the ordinary, recognized appliances, or know that those he does employ are reasonably safe for the purposes for which they are intended. Johnson *v.* Griffith-Sprague Stevedoring Co., 45 Wash. 278, 88 Pac. 193.

4. Vissman *v.* Southern R. Co., (Ky. 1905) 89 S. W. 502 (coal for use in locomotives); Purcell *v.* Hoffman House, 97 N. Y. App. Div. 307, 89 N. Y. Supp. 975; Wilson *v.* Atlantic Crushed Coke Co., (Pa. 1908) 68 Atl. 671;

Galveston, etc., R. Co. *v.* Perry, 36 Tex. Civ. App. 414, 82 S. W. 343.

76. **1.** *United States.* — The Chico, 140 Fed. 568; McDonnell *v.* Oceanic Steam Nav. Co., (C. C. A.) 143 Fed. 480; The Fulton, 143 Fed. 591; Great Western Sugar Co. *v.* Pray, (C. C. A.) 158 Fed. 756.

California. — McDonald *v.* California Timber Co., (Cal. App. 1908) 94 Pac. 376.

Delaware. — Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148.

District of Columbia. — Butler *v.* Frazee, 25 App. Cas. (D. C.) 392.

Georgia. — Ballew *v.* Broach, 121 Ga. 421, 49 S. E. 297; Vinson *v.* Willingham Cotton Mills, 2 Ga. App. 53, 58 S. E. 413.

Illinois. — Osner *v.* Zadek, 120 Ill. App. 444; Smith *v.* Chicago Junction R. Co., 127 Ill. App. 89.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Lynn *v.* Glucose Sugar Refining Co., 128 Iowa 501, 104 N. W. 577.

Kentucky. — Langhorn *v.* Wiley, 91 S. W. 255, 28 Ky. L. Rep. 1186; New Galt House Co. *v.* Chapman, (Ky. 1907) 99 S. W. 632.

Massachusetts. — Wolfe *v.* New Bedford Cordage Co., 189 Mass. 591, 76 N. E. 222; McDonnell *v.* New York, etc., R. Co., 192 Mass. 538, 78 N. E. 548.

Michigan. — Mayer *v.* Detroit, etc., R. Co., 142 Mich. 459, 105 N. W. 888; Wheaton *v.* Wagner Lake Ice, etc., Co., (Mich. 1908) 114 N. W. 853.

Minnesota. — Monsen *v.* Crane, 99 Minn. 186, 108 N. W. 933.

Missouri. — Blundell *v.* William A. Miller Elevator Mfg. Co., 189 Mo. 552, 88 S. W. 103.

New Jersey. — Bauman *v.* Cowdin, (N. J. 1907) 66 Atl. 914; Sparks *v.* River, etc., Imp. Co., (N. J. 1907) 67 Atl. 600.

New York. — Burns *v.* Old Sterling Iron, etc., Co., 188 N. Y. 175, 80 N. E. 927; Moran *v.* Mulligan, 110 N. Y. App. Div. 208, 97 N. Y. Supp. 7; O'Neil *v.* Karr, 110 N. Y. App. Div. 571, 97 N. Y. Supp. 148; Hart *v.* Clinton, 115 N. Y. App. Div. 761, 100 N. Y. Supp. 1092; Gozzett *v.* Plaut, 21 N. Y. App. Div. 513, 106 N. Y. Supp. 161; Wren *v.* Kennedy Valve Mfg. Co., 122 N. Y. App. Div. 289, 106 N. Y. Supp.

Oregon. — Blust *v.* Pacific States Telephone Co., 48 Oregon 34, 84 Pac. 847.

Texas. — Texas, etc., R. Co. *v.* Hemphill, (Tex. Civ. App. 1905) 86 S. W. 350; Kirby Lumber Co. *v.* Dickerson, (Tex. Civ. App. 1906) 94 S. W. 153; El Paso, etc., R. Co. *v.* Foth, (Tex. 1907) 105 S. W. 322.

Virginia. — Norfolk, etc., R. Co. *v.* Bell, 104 Va. 836, 52 S. E. 700.

Washington. — Henne *v.* J. T. Steeb Shipping Co., 37 Wash. 331, 79 Pac. 938; Berg *v.* Seattle, etc., R. Co., 44 Wash. 14, 87 Pac. 34.

Wisconsin. — Moulton *v.* Northern Iron Co., 125 Wis. 326, 104 N. W. 67.

Canada. — Patton *v.* Alberta R., etc., Co., 2 N. W. Ter. 438; Woods *v.* Toronto Bolt, etc., Co., 11 Ont. L. Rep. 216.

The fact that implements furnished may be safe and proper for some kinds of work, and under some circumstances, but unsafe and unsuitable under other circumstances, does not change the character of the duty originally resting upon the master. It amounts to a failure to provide proper appliances for the work to be carried on. Costello *v.* Frankman, 97 Minn. 522, 107 N. W. 739.

2. *United States.* — Southern Pac. Co. *v.* Gloyd, (C. C. A.) 138 Fed. 388; Law *v.* Central Dist. Printing, etc., Co., 140 Fed. 562, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76.

Alabama. — But see Going *v.* Alabama Steel, etc., Co., 141 Ala. 537, 37 So. 784; Davis *v.* Kornman, 141 Ala. 479, 37 So. 789.

Missouri. — Post *v.* Chicago, etc., R. Co., 121 Mo. App. 562, 97 S. W. 233.

Nebraska. — Central Granaries Co. *v.* Ault, 75 Neb. 249, 106 N. W. 418, 107 N. W. 1015.

New York. — Healy *v.* Buffalo, etc., R. Co., 111 N. Y. App. Div. 618, 97 N. Y. Supp. 801; Gardner *v.* Schenectady R. Co., 113 N. Y. App. Div. 133, 98 N. Y. Supp. 1034; Paul *v.* Westinghouse, 113 N. Y. App. Div. 515, 99 N. Y. Supp. 356; McGrath *v.* Fibre Conduit Co., 122 N. Y. App. Div. 424, 106 N. Y. Supp. 777.

Oregon. — Warner *v.* De Armond, (Oregon 1907) 90 Pac. 1113.

Pennsylvania. — McGregor *v.* Pennsylvania R. Co., 212 Pa. St. 482, 61 Atl. 1017; Powell *v.* American Sheet, etc., Co., 216 Pa. St. 618, 65 Atl. 1113.

South Carolina. — But see Jennings *v.* Edgefield Mfg. Co., 72 S. Car. 411, 52 S. E. 113.

Canada. — Patton *v.* Alberta R., etc., Co., 2 N. W. Ter. 438.

If the appliances in general use are obviously dangerous, the master does not perform his duty by furnishing such appliances. Yazdzewski *v.* Barker, 131 Wis. 494, 111 N. W. 689.

The fact that the brand of fuse supplied by a mining company for the use of its miners is in general use and favorably known is not conclusive evidence that the company is not guilty of negligence in furnishing that particular kind of fuse for use in its mines. Nor is the fact that a better and safer kind of fuse has been introduced within recent years and come into common use conclusive evidence that the company is negligent in using the older kind. Both facts are but evidence for the consideration of the jury in determining whether the employer failed to exercise the degree of care required by the circumstances, the nature of the instrumentalities, and the danger to be anticipated from defective appliances. Wiita *v.* Interstate Iron Co., (Minn. 1908) 115 N. W. 169.

Machinery Similar to That Used in Other Establishments. — Roy Lumber Co. *v.* Donnelly, (Ky. 1907) 103 S. W. 255.

77. **1.** Dow Wire Works Co. *v.* Morgan, (Ky. 1906) 96 S. W. 530; Buttner *v.* South Baltimore Steel Car, etc., Co., 101 Md. 168, 60 Atl. 597; Smith *v.* Fordyce, 190 Mo. 1, 88 S. W. 679.

78. **1.** El Paso, etc., R. Co. *v.* Foth, (Tex. Civ. App. 1907) 100 S. W. 171.

2. Ballew *v.* Broach, 121 Ga. 421, 49 S. E. 297; Higgins *v.* Higgins, 188 Mass. 113, 74 N. E. 471; Conroy *v.* Morrill, etc., Constr. Co., 194

Mass. 476, 80 N. E. 480; Perry *v.* Michigan Alkali Co., 150 Mich. 537, 114 N. W. 315; Salisbury *v.* Press Pub. Co., (Neb. 1906) 108 N. W. 136; Burns *v.* Old Sterling Iron, etc., Co., 188 N. Y. 175, 80 N. E. 927; Hogan *v.* Strauss, 104 N. Y. App. Div. 623, 93 N. Y. Supp. 850; Davitt *v.* Metropolitan St. R. Co., 106 N. Y. App. Div. 567, 94 N. Y. Supp. 790; Carroll *v.* Union R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 163, 101 N. Y. Supp. 745.

3. Walker *v.* Shreveport Gas, etc., Co., (La. 1907) 44 So. 925; Maitrejean *v.* New Orleans R., etc., Co., (La. 1908) 46 So. 21; Earle *v.* Clyde Steamship Co., 103 N. Y. App. Div. 21, 92 N. Y. Supp. 839; Walsh *v.* Smith, 26 R. I. 554, 59 Atl. 992; Quick *v.* Millfort Mill Co., 78 S. Car. 472, 59 S. E. 365.

Where the servant discarded the tools furnished by the master, not because they were unsafe, but because they were not handy, and, without requesting the employer to furnish other tools, he procured some which seemed to him to be more convenient, the master is not liable. Denver, etc., R. Co. *v.* Sporleder, 39 Colo. 142, 89 Pac. 55.

6. Ladiew *v.* Sherwood Metal Working Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 477.

79. 1. *Arkansas.* — Ultima Thule, etc., R. Co. *v.* Calhoun, 83 Ark. 318, 103 S. W. 726.

Iowa. — Pierson *v.* Chicago, etc., R. Co., 127 Iowa 13, 102 N. W. 149.

Minnesota. — Fry *v.* Great Northern R. Co., 95 Minn. 87, 103 N. W. 733.

Missouri. — Markey *v.* Louisiana, etc., R. Co., 185 Mo. 348, 84 S. W. 61.

North Carolina. — Moore *v.* Southern R. Co., 141 N. Car. 111, 53 S. E. 745.

Texas. — Gulf, etc., R. Co. *v.* Garren, (Tex. Civ. App. 1905) 84 S. W. 1096; Missouri, etc., R. Co. *v.* Henserlang, (Tex. Civ. App. 1905) 86 S. W. 948; Missouri, etc., R. Co. *v.* Lynch, (Tex. Civ. App. 1905) 90 S. W. 511; Galveston, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 93 S. W. 184; Galveston, etc., R. Co. *v.* Stevens, (Tex. Civ. App. 1906) 94 S. W. 395; Galveston, etc., R. Co. *v.* Cherry, (Tex. Civ. App. 1906) 98 S. W. 898; El Paso, etc., R. Co. *v.* Foth, (Tex. Civ. App. 1907) 100 S. W. 171.

2. *Arkansas.* — St. Louis Southwestern R. Co. *v.* Plumlee, 78 Ark. 147, 95 S. W. 442.

Delaware. — Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935.

Indian Territory. — Missouri, etc., R. Co. *v.* Wilhoit, 6 Indian Ter. 534, 98 S. W. 341.

Kentucky. — Illinois Cent. R. Co. *v.* Leisure, (Ky. 1906) 90 S. W. 269; Louisville, etc., R. Co. *v.* Simrall, (Ky. 1907) 104 S. W. 1011.

Maryland. — Crawford *v.* United R., etc., Co., 101 Md. 402, 61 Atl. 287.

Massachusetts. — Flynn *v.* Connecticut Valley St. R. Co., (Mass. 1907) 82 N. E. 1085.

Minnesota. — Turrittin *v.* Chicago, etc., R. Co., 95 Minn. 408, 104 N. W. 225.

Missouri. — Grissamore *v.* Chicago, etc., R. Co., 118 Mo. App. 387, 94 S. W. 306; Toncrey *v.* Metropolitan St. R. Co., (Mo. App. 1908) 107 S. W. 1091.

New Jersey. — McIsaac *v.* South Jersey Gas, etc., Co., (N. J. 1906) 64 Atl. 976.

New York. — Durkee *v.* Hudson Valley R. Co., 122 N. Y. App. Div. 278, 106 N. Y. Supp. 735.

Tennessee. — Louisville, etc., R. Co. *v.* Bohan, 116 Tenn. 271, 94 S. W. 84.

Texas. — Galveston, etc., R. Co. *v.* King, (Tex. Civ. App. 1906) 91 S. W. 622; Missouri, etc., R. Co. *v.* Box, (Tex. Civ. App. 1906) 93 S. W. 1341; Sanders *v.* Houston, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 139; St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1906) 97 S. W. 534; Texas Mexican R. Co. *v.* Lewis, (Tex. Civ. App. 1906) 99 S. W. 577; Galveston, etc., R. Co. *v.* Parish, (Tex. Civ. App. 1907) 100 S. W. 1175; Houston, etc., R. Co. *v.* McHale, (Tex. Civ. App. 1907) 105 S. W. 1149; Galveston, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1908) 107 S. W. 108.

Vermont. — Kiley *v.* Rutland R. Co., (Vt. 1908) 68 Atl. 713.

Automatic Couplers. — Schlemmer *v.* Buffalo, etc., R. Co., 205 U. S. 1, 27 U. S. Sup. Ct. 407 (Act Congress March 2, 1893, requiring automatic couplers); Denver, etc., R. Co. *v.* Arrighi, (C. C. A.) 141 Fed. 67.

Coupling Pins. — San Antonio, etc., R. Co. *v.* Hahl, (Tex. Civ. App. 1904) 83 S. W. 27.

Handholds. — Galveston, etc., R. Co. *v.* Perry, 36 Tex. Civ. App. 414, 82 S. W. 343.

80. 1. *Georgia.* — Lucas *v.* Southern R. Co., 1 Ga. App. 810, 57 S. E. 1041.

Illinois. — Chicago, etc., R. Co. *v.* Snedaker, 122 Ill. App. 262, *affirmed* 223 Ill. 395, 79 N. E. 169.

Indiana. — New York, etc., R. Co. *v.* Hamlin, (Ind. 1907) 79 N. E. 1040; New York, etc., R. Co. *v.* Hamlin, (Ind. 1908) 83 N. E. 343.

Massachusetts. — Foster *v.* New York, etc., R. Co., 187 Mass. 21, 72 N. E. 331.

Texas. — Galveston, etc., R. Co. *v.* Parish, (Tex. Civ. App. 1906) 93 S. W. 682; Missouri, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1907) 101 S. W. 506.

Utah. — Wood *v.* Rio Grande Western R. Co., 28 Utah 351, 79 Pac. 182.

Virginia. — Risque *v.* Chesapeake, etc., R. Co., 104 Va. 478, 51 S. E. 730, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 80, 81.

Washington. — Woods *v.* Northern Pac. R. Co., 36 Wash. 658, 79 Pac. 309.

The duty to inspect foreign cars does not devolve upon one who merely receives such a car on its siding to be unloaded. Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626.

81. 5. Gulf, etc., R. Co. *v.* Sliger, (Tex. Civ. App. 1907) 100 S. W. 957.

9. *United States.* — Hutton *v.* Holdrook, etc., Contracting Co., 139 Fed. 734 (New York statute); National Refining Co. *v.* Willis, (C. C. A.) 143 Fed. 107; Thompson-Starrett Co. *v.* Fitzgerald, 149 Fed. 721.

Connecticut. — Farrell *v.* Eastern Machinery Co., 77 Conn. 484, 59 Atl. 611.

Illinois. — Schillinger Bros. Co. *v.* Smith, 225 Ill. 74, 80 N. E. 65, *affirming* 128 Ill. App. 30; Hinchcliff *v.* Robinson, 118 Ill. App. 450; Chicago Union Traction Co. *v.* Theorell, 120 Ill. App. 490; Cleveland, etc., R. Co. *v.* Austin, 127 Ill. App. 281 (Indiana statute).

Kentucky. — Pfisterer *v.* Peter, 117 Ky. 510, 78 S. W. 450; Louisville, etc., R. Co. *v.* Poulter,

(Ky. 1905) 84 S. W. 576; George Weidemann Brewing Co. *v.* Wood, (Ky. 1905) 87 S. W. 772; Covington, etc., Bridge Co. *v.* Hull, (Ky. 1906) 90 S. W. 1055; Ingram *v.* Covington, etc., R. Co., (Ky. 1907) 99 S. W. 666.

Louisiana. — Ingham *v.* John B. Honor Co., 113 La. 1040, 37 So. 963.

Maine. — McCarthy *v.* Cullen, 99 Me. 200, [illegible] Atl. 291.

Massachusetts. — Rapson *v.* Leighton, 187 Mass. 432, 73 N. E. 540; White *v.* William H. Perry Co., 190 Mass. 99, 76 N. E. 512; Donahue *v.* Buck, (Mass. 1908) 83 N. E. 1090.

Minnesota. — Carlson *v.* Haglin, 95 Minn. 347, 104 N. W. 297.

Missouri. — Neves *v.* Green, 111 Mo. App. 634, 86 S. W. 508; Shore *v.* American Bridge Co., 111 Mo. App. 278, 86 S. W. 905; Forbes *v.* Dunnavant, 198 Mo. 193, 95 S. W. 934; Combs *v.* Rountree Constr. Co., 205 Mo. 367, 104 S. W. 77.

Nebraska. — Bell *v.* Rocheford, (Neb. 1907) 113 N. W. 157.

New York. — Schapp *v.* Bloomer, 181 N. Y. 125, 73 N. E. 563 (statute); Madden *v.* Hughes, 185 N. Y. 466, 78 N. E. 167 (statute); Welk *v.* Jackson Architectural Iron Works, 98 N. Y. App. Div. 247, 90 N. Y. Supp. 541 (statute); Swenson *v.* Wilson, etc., Mfg. Co., 104 N. Y. App. Div. 101, 92 N. Y. Supp. 849 (statute); Siversen *v.* Jenks, 102 N. Y. App. Div. 313, 92 N. Y. Supp. 382; Madden *v.* Hughes, 104 N. Y. App. Div. 101, 92 N. Y. Supp. 849 (statute); Berthelson *v.* Gabler, 111 N. Y. App. Div. 142, 97 N. Y. Supp. 421 (statute); Cunningham *v.* Pierce, 112 N. Y. App. Div. 65, 98 N. Y. Supp. 60 (statute); Sutherland *v.* Ammann, 112 N. Y. App. Div. 332, 98 N. Y. Supp. 574 (statute); Croce *v.* Buckley, 115 N. Y. App. Div. 354, 100 N. Y. Supp. 898 (statute); Riley *v.* McNulty, 115 N. Y. App. Div. 650, 100 N. Y. Supp. 985 (statute); Williams *v.* Utica First Nat. Bank, 118 N. Y. App. Div. 555, 102 N. Y. Supp. 1031 (statute); Priolo *v.* Southard, (Supm. Ct. Tr. T.) 103 N. Y. Supp. 593 (statute); Anderson *v.* Milliken, (Supm. Ct. App. Div.) 108 N. Y. Supp. 61 (statute).

North Carolina. — Aiken *v.* Rhodhiss Mfg. Co., (N. Car. 1907) 59 S. E. 696.

Pennsylvania. — Gulla *v.* Lehigh Valley Coal Co., 28 Pa. Super. Ct. 11 (statute).

South Carolina. — Green *v.* Catawba Power Co., 77 S. Car. 426, 58 S. E. 147.

Texas. — Louisiana, etc., Lumber Co. *v.* Meyers, (Tex. Civ. App. 1906) 94 S. W. 140.

Vermont. — Lewes *v.* Crane, 78 Vt. 216, 62 Atl. 60.

Washington. — Liedke *v.* Moran Bros. Co., 43 Wash. 428, 86 Pac. 646.

West Virginia. — Richards *v.* Riverside Iron Works, 56 W. Va. 510, 49 S. E. 437.

Wisconsin. — Parker *v.* Fairbanks-Morse Mfg. Co., 130 Wis. 525, 110 N. W. 409; Hoveland *v.* National Blower Works, (Wis. 1908) 114 N. W. 795.

The doctrine of exemption from liability of an employer who buys from reputable makers for use in his business a completed machine or other appliances which generally are recognized as being suitable, but prove to be unsound by reason of latent defects, has no application to staging where it appears from the evidence that upon a superficial examination the structural weakness of the staging could have been readily discovered. Feeney *v.* York Mfg. Co., 189 Mass. 336, 75 N. E. 733.

82. 1. Fukare *v.* Kerbaugh, 72 N. J. L. 254, 61 Atl. 376.

4. Garner *v.* Metropolitan St. R. Co., (Mo. App. 1908) 107 S. W. 427.

83. 7. Shea *v.* Pacific Power Co., 145 Cal. 680, 79 Pac. 373; Strand *v.* Great Northern R. Co., 101 Minn. 85, 111 N. W. 958, 101 Minn. 85, 112 N. W. 987; Green *v.* Washington Oil Co., 216 Pa. St. 35, 64 Atl. 877; Hollis *v.* U. S. Glass Co., (Pa. 1908) 69 Atl. 55.

9. McGuire *v.* Waterloo, etc., Union Mill Co., (Iowa 1907) 113 N. W. 850; Gomez *v.* Tracey, 115 La. 824, 40 So. 234; Ford *v.* Eastern Bridge, etc., Co., 193 Mass. 89, 78 N. E. 771; Morena *v.* Winston, 194 Mass. 378, 80 N. E. 473; Cushing *v.* G. W., etc., Smith Iron Co., 194 Mass. 310, 80 N. E. 596; Isley *v.* Virginia Bridge, etc., Co., 141 N. Car. 220, 53 S. E. 841.

11. Harris *v.* Putnam Mach. Co., 188 Mass. 85, 74 N. E. 287; Sorensen *v.* J. I. Case Threshing Mach. Co., 129 Wis. 366, 109 N. W. 84.

12. Rincicotti *v.* John J. O'Brien Contracting Co., 77 Conn. 617, 60 Atl. 115; Grace, etc., Co. *v.* Sanborn, 225 Ill. 138, 80 N. E. 88, *affirming* 124 Ill. App. 472; George B. Swift Co. *v.* Gaylord, 229 Ill. 330, 82 N. E. 299; Miroslawski *v.* Ferguson, etc., Foundry Co., 232 Ill. 630, 83 N. E. 1086; Consolidated Stone Co. *v.* Staggs, 164 Ind. 331, 73 N. E. 695; Butler *v.* New England Structural Co., 191 Mass. 397, 77 N. E. 764; Fallon *v.* Mertz, 110 N. Y. App. Div. 755, 97 N. Y. Supp. 417; Ball *v.* Megrath, 43 Wash. 107, 86 Pac. 382; Lounsbury *v.* Davis, 124 Wis. 432, 102 N. W. 941.

13. Johnston *v.* Moore Lime Co., 104 Va. 547, 52 S. E. 360.

18. Chybowski *v.* Bucyrus Co., 127 Wis. 332, 106 N. W. 833.

19. Brossman *v.* Drake Standard Mach. Works, 232 Ill. 412, 83 N. E. 936; Louisville, etc., Packet Co. *v.* Hazzard, (Ky. 1908) 107 S. W. 270; Wren *v.* Kennedy Valve Mfg. Co., 122 N. Y. App. Div. 289, 106 N. Y. Supp. 710; Wilkinson *v.* Evans, 34 Pa. Super. Ct. 472; Drake *v.* San Antonio, etc., R. Co., 99 Tex. 240, 89 S. W. 407 (rail hooks).

20. Manufacturers' Fuel Co. *v.* White, 228 Ill. 187, 81 N. E. 841; Milby, etc., Coal, etc., Co. *v.* Balla, (Indian Ter. 1907) 104 S. W. 860; Fleming *v.* Covington, 102 Minn. 403, 113 N. W. 1016; Bellamy *v.* Whitsell, 123 Mo. App. 610, 100 S. W. 514; Esher *v.* Mineral R., etc., Co., 28 Pa. Super. Ct. 387; Morgan *v.* Hendricks, 80 Vt. 284, 67 Atl. 702; Scott *v.* Fernie Lumber Co., 11 British Columbia 91.

Proof of Viciousness of Horse. — Evidence of vicious act both before and after accident held admissible. Palmer *v.* Coyle, 187 Mass. 136, 72 N. E. 844.

84. 3. McConnell *v.* Morse Iron Works, etc., Co., 102 N. Y. App. Div. 324, 92 N. Y. Supp. 477 (statute); Adams *v.* Gulf, etc., R. Co., (Tex. 1907) 102 S. W. 906.

5. Deckerd *v.* Wabash R. Co., 111 Mo. App. [illegible], 85 S. W. 982.

6. Wilder *v.* Great Western Cereal Co., 134 Iowa 451, 109 N. W. 789; Swanson *v.* Oakes,

93 Minn. 404, 101 N. W. 949; Huston *v.* Quincy, etc., R. Co., (Mo. App. 1908) 107 S. W. 1045; Hazzard *v.* State, 108 N. Y. App. Div. 119, 95 N. Y. Supp. 1103.

10. The Luckenbach, 144 Fed. 980; Cal Hirsch, etc., Iron, etc., Co. *v.* Coleman, 227 Ill. 149, 81 N. E. 21, *affirming* 128 Ill. App. 245; Cumberland Telephone, etc., Co. *v.* Metzger, (Ky. 1906) 97 S. W. 35; Chenowith *v.* Sutherland, (Mo. App. 1908) 107 S. W. 6; Reeder *v.* Crystal Carbonate Lime Co., (Mo. App. 1908) 107 S. W. 1016; Geldard *v.* Marshall, 4 Oregon 271, 83 Pac. 867; Wallace *v.* Henderson, 211 Pa. 142, 60 Atl. 574; Williams *v.* Norton, (Vt. 1908) 69 Atl. 146; Henne *v.* J. T. Steeb Shipping Co., 39 Wash. 331, 79 Pac. 938.

11. National Fire Proofing Co. *v.* Andrews, (C. C. A.) 158 Fed. 294 (duty under *Ohio* statute to countersink or cut off screws); Cowett *v.* American Woolen Co., 100 Me. 65, 60 Atl. 703; Van De Bogart *v.* Marinette, etc., Paper Co., 127 Wis. 104, 106 N. W. 805; Chopin *v.* Combined Locks Paper Co., (Wis. 1907) 114 N. W. 95.

16. Currie *v.* Missouri, etc., R. Co., (Tex. 1908) 108 S. W. 1167.

17. *United States.* — National Biscuit Co. *v.* Nolan, (C. C. A.) 138 Fed. 6.

Illinois. — Christiansen *v.* William Graver Tank Works, 223 Ill. 142, 79 N. E. 97, *affirming* 126 Ill. App. 86.

Iowa. — Calloway *v.* Agar Packing Co., 129 Iowa 1, 104 N. W. 721; Sutton *v.* Des Moines Bakery Co., (Iowa 1907) 112 N. W. 836.

Kentucky. — Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 99 S. W. 634; Roy Lumber Co. *v.* Donnelly, 103 S. W. 255, 31 Ky. L. Rep. 601.

Louisiana. — Foreman *v.* Eagle Rice Mill Co., 117 La. 227, 41 So. 555; Roff *v.* Summit Lumber Co., 119 La. 571, 44 So. 302.

Massachusetts. — Gomes *v.* New Bedford Cordage Co., 187 Mass. 124, 72 N. E. 840.

Michigan. — Swick *v.* Ætna Portland Cement Co., 147 Mich. 454, 111 N. W. 110.

Mississippi. — Bradford *v.* Taylor, 85 Miss. 409, 37 So. 812.

Missouri. — Stafford *v.* Adams, 113 Mo. App. 717, 88 S. W. 1130; Morgan *v.* C. Hager, etc., Hinge Mfg. Co., 120 Mo. App. 590, 97 S. W. 638; McGinnis *v.* R. M. Rigby Printing Co., 122 Mo. App. 227, 99 S. W. 4; Strode *v.* Columbia Box Co., 124 Mo. App. 511, 101 S. W. 1099; Meifert *v.* New Union Sand Co., 124 Mo. App. 491, 101 S. W. 1103.

North Carolina. — Jones *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 202, 53 S. E. 840.

Pennsylvania. — Greenan *v.* Eggeling, 30 Pa. Super. Ct. 253.

Wisconsin. — Winchel *v.* Goodyear, 126 Wis. 271, 105 N. W. 824; Walker *v.* Simmons Mfg. Co., 131 Wis. 542, 111 N. W. 694.

Canada. — Snow *v.* Crow's Nest Pass Coal Co., 13 British Columbia 145.

If by due care and reasonable expense dangerous machinery can be covered or fenced, without interference with the conduct of the business, so as to lessen the risk to employees, it is the duty of the master to do so. Westman *v.* Wind River Lumber Co., (Oregon 1907) 91 Pac. 478.

A master performs his statutory duty to guard machinery when he has furnished guards which are sufficient protection against dangers that an ordinarily prudent person could anticipate. Johnston *v.* Northern Lumber Co., 42 Wash. 230, 84 Pac. 627.

It is not necessary to guard machinery which cannot be guarded without materially affecting its efficiency. Huss *v.* Heydt Bakery Co., (Mo. 1908) 108 S. W. 63.

Statutory Obligation to Guard Machinery — *United States.* — Michigan Headlining, etc., Co. *v.* Wheeler, 141 Fed. 61, 72 C. C. A. 71 (*Ohio* statute); Inland Steel Co. *v.* Kachwinski, 151 Fed. 219, 80 C. C. A. 571 (*Indiana* statute).

Indiana. — Baltimore, etc., R. Co. *v.* Cavanaugh, 35 Ind. App. 32, 71 N. E. 239; Espenlaub *v.* Ellis, 34 Ind. App. 163, 72 N. E. 527; Nickey *v.* Dougan, 34 Ind. App. 601, 73 N. E. 288; Davis *v.* Mercer Lumber Co., 164 Ind. 413, 73 N. E. 899; M. S. Huey Co. *v.* Johnston, 164 Ind. 489, 73 N. E. 996; Robertson *v.* Ford, 164 Ind. 538, 74 N. E. 1; La Porte Carriage Co. *v.* Sullender, 165 Ind. 290, 75 N. E. 277 (what machinery must be guarded under statute — application of rule *ejusdem generis*); National Fire Proofing Co. *v.* Roper, 38 Ind. App. 600, 77 N. E. 370 (what machinery must be guarded under statute — application of rule *ejusdem generis*); Kintz *v.* Johnson, 39 Ind. App. 280, 79 N. E. 533; Tucker, etc., Mfg. Co. *v.* Staley, (Ind. App. 1907) 80 N. E. 975; Cincinnati Seating Co. *v.* Neiry, (Ind. App. 1907) 81 N. E. 216 (removal of guard by servant will prevent his recovery under a statute requiring machinery to be guarded); U. S. Furniture Co. *v.* Taschner, (Ind. App. 1907) 81 N. E. 736; National Drill Co. *v.* Myers, (Ind. App. 1907) 81 N. E. 1103 (statute — what machinery to be guarded — application of rule *ejusdem generis*); Grace *v.* Globe Stove, etc., Co., (Ind. App. 1907) 82 N. E. 99; U. S. Cement Co. *v.* Cooper, (Ind. App. 1907) 82 N. E. 981; Crawford, etc., Co. *v.* Gose, (Ind. App. 1907) 82 N. E. 984; Pein *v.* Miznerr, (Ind. App. 1908) 83 N. E. 784 (statute — laundry mangle held included in phrase "machinery of every description").

Kansas. — Western Furniture, etc., Co. *v.* Bloom, (Kan. 1907) 90 Pac. 82.

Minnesota. — McGinty *v.* Waterman, 93 Minn. 242, 101 N. W. 300; Carlin *v.* Kennedy, 97 Minn. 141, 106 N. W. 340.

New York. — Dillon *v.* National Coal Tar Co., 181 N. Y. 215, 73 N. E. 978; Walker *v.* Newton Falls Paper Co., 111 N. Y. App. Div. 19, 97 N. Y. Supp. 521; Lynch *v.* American Linseed Co., 122 N. Y. App. Div. 428, 107 N. Y. Supp. 458; King *v.* Reid, (Supm. Ct. App. Div.) 108 N. Y. Supp. 615; Civetti *v.* American Hatters', etc., Corp., (Supm. Ct. App. Div.) 108 N. Y. Supp. 663; Kirwan *v.* American Litho. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 805; Graves *v.* Gustave Stickley Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 256; Scialo *v.* Steffens, 105 N. Y. App. Div. 592, 94 N. Y. Supp. 305; Johnson *v.* Onondaga Paper Co., 112 N. Y. App. Div. 667, 98 N. Y. Supp. 602; Seveson *v.* Hill-Warner-Fitch Co., 116 N. Y. App. Div. 108, 101 N. Y. Supp. 808.

Ohio. — Bresewski *v.* Royal Brush, etc., Co.,

28 Ohio Cir. Ct. 752, *affirmed* 76 Ohio St. 593, 81 N. E. 1194; Ziehr *v.* Maumee Paper Co., 28 Ohio Cir. Ct. 342.

Washington. — Daffron *v.* Majestic Laundry Co., 41 Wash. 65, 82 Pac. 1089; Hoveland *v.* Hall Bros. Marine R., etc., Co., 41 Wash. 164, 82 Pac. 1090; Hansen *v.* Seattle Lumber Co., 41 Wash. 349, 83 Pac. 102; Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323; Erickson *v.* McNeely, 41 Wash. 509, 84 Pac. 3; Rector *v.* Bryant Lumber, etc., Mill Co., 41 Wash. 556, 84 Pac. 7; Tergeson *v.* Robinson Mfg. Co., 43 Wash. 298, 86 Pac. 578; Thomson *v.* Issaquah Shingle Co., 43 Wash. 253, 86 Pac. 588; Miller *v.* Union Mill Co., 45 Wash. 199, 88 Pac. 130; Campbell *v.* Wheelihan-Weidauer Co., 45 Wash. 675, 89 Pac. 161; Vosberg *v.* Michigan Lumber Co., 45 Wash. 670, 89 Pac. 168; Horen *v.* Larson Lumber Co., (Wash. 1907) 89 Pac. 563; Boyle *v.* Anderson, etc., Lumber Co., (Wash. 1907) 90 Pac. 433; Johnson *v.* Far West Lumber Co., (Wash. 1907) 92 Pac. 274; Adams *v.* Peterman Mfg. Co., (Wash. 1907) 92 Pac. 339; Tergeson *v.* Robinson Mfg. Co., (Wash. 1908) 93 Pac. 428; Barclay *v.* Puget Sound Lumber Co., (Wash. 1908) 93 Pac. 430; McIntosh *v.* Sawmill Phœnix, (Wash. 1908) 94 Pac. 930 (effect of failure of servant to give notice of unguarded condition of machinery); Desrosiers *v.* St. Lawrence Furniture Co., 27 Quebec Super. Ct. 73, *affirming* 26 Quebec Super. Ct. 535; Bélanger *v.* Desjardins, 29 Quebec Super. Ct. 1.

Certificate of Commissioner of Labor as to compliance with statute is only *prima facie* evidence of compliance. Noelle *v.* Hoquiam Lumber, etc., Co., (Wash. 1907) 92 Pac. 372.

18. Gorman *v.* Hand Brewing Co., 28 R. I. 180, 66 Atl. 209; Pacific Express Co. *v.* Shivers, (Tex. Civ. App. 1906) 92 S. W. 46.

20. *California.* — Reeve *v.* Colusa Gas, etc., Co., (Cal. 1907) 92 Pac. 89.

Illinois. — Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780; Goddard *v.* Enzler, 222 Ill. 462, 78 N. E. 805, *affirming* 123 Ill. App. 108; Postal Tel. Cable Co. *v.* Likes, 225 Ill. 249, 80 N. E. 136; Illinois Cent. R. Co. *v.* Panebiango, 227 Ill. 170, 81 N. E. 53, *affirming* 129 Ill. App. 1.

Iowa. — Barto *v.* Iowa Telephone Co., 126 Iowa 241, 101 N. W. 876.

Massachusetts. — Mehan *v.* Lowell Electric Light Corp., 192 Mass. 53, 78 N. E. 385; Saures *v.* Stevens Mfg. Co., (Mass. 1907) 82 N. E. 694.

Nebraska. — New Omaha Thomson-Houston Electric Light Co. *v.* Dent, (Neb. 1905) 103 N. W. 1091; New Omaha Thomson-Houston Electric Light Co. *v.* Rombold, 73 Neb. 259, 106 N. W. 213; Grimm *v.* Omaha Electric Light, etc., Co., (Neb. 1908) 114 N. W. 760.

New Hampshire. — Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848.

New York. — Irish *v.* Union Bag, etc., Co., 103 N. Y. App. Div. 45, 92 N. Y. Supp. 695; Carey *v.* Manhattan R. Co., 116 N. Y. App. Div. 247, 101 N. Y. Supp. 631.

Ohio. — City, etc., Tel. Assoc. *v.* Kelly, 28 Ohio Cir. Ct. 820.

Pennsylvania. — Combs *v.* Delaware, etc., Tel., etc., Co., 218 Pa. St. 440, 67 Atl. 751.

Vermont. — Drown *v.* New England Telephone, etc., Co., 80 Vt. 1, 66 Atl. 801.

Wisconsin. — Smith *v.* Milwaukee Electric R., etc., Co., 127 Wis. 253, 106 N. W. 829.

21. Van De Bogart *v.* Marinette, etc., Paper Co., (Wis. 1907) 112 N. W. 443.

Belts. — Northern Pac. R. Co. *v.* Wendel, (C. C. A.) 156 Fed. 336; Davis *v.* Kornman, 141 Ala. 479, 37 So. 789; Gilmore *v.* American Tube, etc., Co., 79 Conn. 498, 66 Atl. 4; Rochelle *v.* White Castle Lumber, etc., Co., (La. 1908) 45 So. 449; McCaughey *v.* Jenckes Spinning Co., 26 R. I. 426, 59 Atl. 110.

Carding Machine. — Petrarca *v.* Quidnick Mfg. Co., 27 R. I. 265, 61 Atl. 648.

Crucible. — Ahrens, etc., Mfg. Co. *v.* Rellihan, (Ky. 1904) 82 S. W. 993.

Dies. — Hocking *v.* Windsor Spring Co., 131 Wis. 532, 111 N. W. 685.

Edger. — Johnson *v.* Atwood Lumber Co., 101 Minn. 325, 112 N. W. 262.

Fly Wheel. — Boop *v.* Laurelton Lumber Co., 212 Pa. St. 523, 61 Atl. 1021.

Fuses. — Laitnen *v.* Shenango Furnace Co., (Minn. 1908) 114 N. W. 264; Wilta *v.* Interstate Iron Co., (Minn. 1908) 115 N. W. 169.

Torch for Lighting Fuses. — Breckenridge *v.* American Eagle Consol. Min. Co., 42 Wash. 279, 84 Pac. 858.

Looms. — Chambers *v.* Wampanoag Mills, 189 Mass. 529, 75 N. E. 1093.

Mangle. — Burkhalter *v.* Kemmerer, 211 Pa. St. 277, 60 Atl. 908; Greenan *v.* Eggeling, 30 Pa. Super. Ct. 253; Tuckett *v.* American Steam, etc., Laundry, 30 Utah 273, 84 Pac. 500; Kranich *v.* Knapp, 43 Wash. 85, 86 Pac. 207.

Planer. — Silva *v.* Davis, 191 Mass. 47, 77 N. E. 525.

Pulley. — Poindexter *v.* Kirby Lumber Co., (Tex. 1908) 107 S. W. 42.

Rock Crusher. — Milton *v.* Biesanz Stone Co., 99 Minn. 439, 109 N. W. 999.

Saws. — Sink *v.* Sikes Co., 134 Fed. 144; Baltimore, etc., R. Co. *v.* Cavanaugh, 35 Ind. App. 32, 71 N. E. 239; Woolf *v.* Nauman Co., 128 Iowa 261, 103 N. W. 785; Harney *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 886; Chicago Veneer Co. *v.* Walden, (Ky. 1904) 82 S. W. 294; Harrod *v.* Hammond Packing Co., 125 Mo. App. 357, 102 S. W. 637; Jones *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 202, 53 S. E. 849; Jancko *v.* West Coast Mfg., etc., Co., 40 Wash. 230, 82 Pac. 284; Coolidge *v.* Hallauer, 126 Wis. 244, 105 N. W. 568; Winchel *v.* Goodyear, 126 Wis. 271, 105 N. W. 824.

Sawmill Carriage. — Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 800.

Steam Shovel. — Southern R. Co. *v.* Wiley, 88 Miss. 825, 41 So. 511.

Tongs. — Mulligan *v.* Colorado Fuel, etc., Co., 20 Colo. App. 198, 77 Pac. 977.

Wrench. — Merganthaler-Horton Basket Co. *v.* Taylor, (Ky. 1906) 90 S. W. 968.

22. Other Accidents. — Davis *v.* Kornman, 141 Ala. 470, 37 So. 789; Southern Coal, etc., Co. *v.* Swinney, (Ala. 1907) 42 So. 808; Leathers *v.* Blackwell Durham Tobacco Co., 144 N. Car. 320, 57 S. E. 11; Hansen *v.* Seattle Lumber Co., 41 Wash. 349, 83 Pac. 102.

Condition of Other Appliances. — Fountaine

v. Wampanoag Mills, 189 Mass. 498, 75 N. E. 738.

Evidence that no other accident had happened in the use of the machine is inadmissible. Sheehan *v.* Hammond, 2 Cal. App. 371, 84 Pac. 310.

Declarations of Vice-Principal after Accident held admissible as *res gestæ*. Young *v.* Seaboard Air Line R. Co., 75 S. Car. 190, 55 S. E. 225.

85. 1. Wilder *v.* Great Western Cereal Co., 134 Iowa 451, 109 N. W. 789; Jones *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 202, 53 S. E. 849; Hover *v.* Chicago, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1084; Southern R. Co. *v.* Blanford, 105 Va. 373, 54 S. E. 1; Thomson *v.* Issaquah Shingle Co., 43 Wash. 253, 86 Pac. 588. But see Sibbert *v.* Scotland Cotton Mills, 145 N. Car. 308, 59 S. E. 79 (evidence that similar machinery in one other mill was guarded held inadmissible).

More Modern Appliances. — Norfolk, etc., R. Co. *v.* Bell, 104 Va. 836, 52 S. E. 700.

4. Shea *v.* Pacific Power Co., 145 Cal. 680, 79 Pac. 373; Brunger *v.* Pioneer Roll Paper Co., (Cal. App. 1907) 92 Pac. 1043; Casterton *v.* American Blower Co., 142 Mich. 407, 106 N. W. 61.

In an action for damages caused by alleged defects in defendant's machinery, evidence of the same defective condition, immediately before and after the accident complained of, is admissible for the purpose of proving the condition of the machinery; and as to its prior condition, for the additional purpose of showing knowledge on the part of the defendant. Union Pac. R. Co. *v.* Edmondson, (Neb. 1906) 110 N. W. 650.

7. *Alabama.* — Going *v.* Alabama Steel, etc., Co., 141 Ala. 537, 37 So. 784; Davis *v.* Kornman, 141 Ala. 479, 37 So. 789; Southern Coal, etc., Co. *v.* Swinney, (Ala. 1907) 42 So. 808; Alabama Consol. Coal, etc., Co. *v.* Heald, (Ala. 1907) 45 So. 686.

Arkansas. — St. Louis Southwestern R. Co. *v.* Plumlee, 78 Ark. 147, 95 S. W. 442; Bodcaw Lumber Co. *v.* Ford, 82 Ark. 555, 102 S. W. 896.

Massachusetts. — Silva *v.* Davis, 191 Mass. 47, 77 N. E. 525.

New York. — Loughlin *v.* Brassil, 187 N. Y. 128, 79 N. E. 854; Wren *v.* Kennedy Valve Mfg. Co., 122 N. Y. App. Div. 289, 106 N. Y. Supp. 710; Burns *v.* Crow, (Supm. Ct. App. Div.) 107 N. Y. Supp. 944.

North Carolina. — Aiken *v.* Rhodhiss Mfg. Co., (N. Car. 1907) 59 S. E. 696.

South Carolina. — Worthy *v.* Jonesville Oil Mill, 77 S. Car. 69, 57 S. E. 634.

Evidence of the subsequent erection of guards around machinery is admissible to show that the machinery could have been guarded as required by statute. La Porte Carriage Co. *v.* Sullender, (Ind. App. 1904) 71 N. E. 922.

86. 1. E. E. Jackson Lumber Co. *v.* Cunningham, 141 Ala. 214, 37 So. 445, *citing* 20 Am. and Eng. Encyc. of Law (2d ed.) 86. See also Erickson *v.* McNeeley, 41 Wash. 509, 84 Pac. 3; Thomson *v.* Issaquah Shingle Co., 43 Wash. 253, 86 Pac. 588.

2. Sullivan *v.* Rowe, 194 Mass. 500, 80 N. E. 459.

3. If there is proof of alterations evidence of the condition of the appliance thereafter is inadmissible. Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 809.

6. Fordyce *v.* Keys, 74 Ark. 19, 84 S. W. 797; Davis *v.* Queen City Furniture Mfg. Co., 116 La. 1070, 41 So. 318; Clark *v.* A. Garrison Foundry Co., 219 Pa. St. 426, 68 Atl. 974; G. A. Duerler Mfg. Co. *v.* Dullnig, (Tex. Civ. App. 1904) 83 S. W. 889; Galveston, etc., R. Co. *v.* Parish, (Tex. Civ. App. 1906) 93 S. W. 682.

The servant must also prove that the appliance was furnished by the master. Blundell *v.* William A. Miller Mfg. Co., 189 Mo. 552, 88 S. W. 103.

87. 1. Looney *v.* Metropolitan R. Co., 200 U. S. 480, 26 U. S. Sup. Ct. 303; Rush *v.* Thos. D. Murphy Co., (Iowa 1907) 112 N. W. 814; Lambert *v.* Troy Laundry Co., 118 La. 48, 42 So. 642; Carleton *v.* Great Northern R. Co., 93 Minn. 378, 101 N. W. 501; Goransson *v.* Riter-Conley Mfg. Co., 186 Mo. 300, 85 S. W. 338; Owen *v.* Retsoff Min. Co., 102 N. Y. App. Div. 130, 92 N. Y. Supp. 270; Andrews *v.* Reiners, 112 N. Y. App. Div. 378, 98 N. Y. Supp. 658; Green *v.* Southern R. Co., 72 S. Car. 398, 52 S. E. 45; Green *v.* Catawba Power Co., 75 S. Car. 102, 55 S. E. 125; Lachappelle *v.* San Antonio, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 349.

2. Carnegie Steel Co. *v.* Byers, (C. C. A.) 149 Fed. 667; Southern R. Co. *v.* Carr, 153 Fed. 106, 82 C. C. A. 240; Birmingham Rolling Mill Co. *v.* Rockhold, 143 Ala. 115, 42 So. 96; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Montgomery Coal Co. *v.* Barringer, 218 Ill. 327, 75 N. E. 900; Cederberg *v.* Minneapolis, etc., R. Co., 101 Minn. 100, 111 N. W. 953; Eliot *v.* Kansas City, etc., R. Co., 204 Mo. 1, 102 S. W. 532; Beebe *v.* St. Louis Transit Co., 206 Mo. 419, 103 S. W. 1019; Montanye *v.* Northern Electrical Mfg. Co., 127 Wis. 22, 105 N. W. 1043.

Where it is shown that the appliance was defective the master must show that he exercised reasonable care in its inspection. Harrod *v.* Hammond Packing Co., 125 Mo. App. 357, 102 S. W. 637.

3. *United States.* — Illinois Cent. R. Co. *v.* Coughlin, 132 Fed. 801, 65 C. C. A. 101; Carnegie Steel Co. *v.* Byers, (C. C. A.) 149 Fed. 667. But see Jefferys *v.* Nebraska Bridge Supply, etc., Co., 157 Fed. 932.

Alabama. — But see Going *v.* Alabama Steel, etc., Co., 141 Ala. 537, 37 So. 784.

California. — McDonald *v.* California Timber Co., (Cal. App. 1908) 94 Pac. 376.

District of Columbia. — Butler *v.* Frazee, 25 App. Cas. (D. C.) 392.

Indiana. — National Biscuit Co. *v.* Wilson, (Ind. 1907) 82 N. E. 916 (doctrine of *res ipsa loquitur* held inapplicable).

Kentucky. — Justice *v.* W. M. Ritter Lumber Co., (Ky. 1905) 89 S. W. 171.

Louisiana. — But see Williams *v.* Levert Lumber, etc., Co., 114 La. 805, 38 So. 567; Gomez *v.* Tracey, 115 La. 824, 40 So. 234.

Massachusetts. — Curtin *v.* Boston El. R. Co., 194 Mass. 260, 80 N. E. 522. But see Hannan *v.* American Steel, etc., Co., 193 Mass. 127, 78 N. E. 749; Sullivan *v.* Rowe, 194 Mass. 500,

80 N. E. 459; Donahue *v.* Bucks, (Mass. 1908) 83 N. E. 1090 (rotten rope breaking).

Missouri. — Deckerd *v.* Wabash R. Co., 111 Mo. App. 117, 85 S. W. 982.

Nebraska. — Standard Distilling, etc., Co. *v.* Harris, 75 Neb. 480, 106 N. W. 582 (breaking of chain).

New Jersey. — Rogers *v.* Roe, (N. J. 1907) 66 Atl. 408.

New York. — Stackpole *v.* Wray, 99 N. Y. App. Div. 262, 90 N. Y. Supp. 1045 (fall of elevator); Schapiro *v.* Levy, 101 N. Y. App. Div. 444, 91 N. Y. Supp. 1044; Griffin *v.* Flank, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 617, 95 N. Y. Supp. 546; Moran *v.* Mulligan, 110 N. Y. App. Div. 208, 97 N. Y. Supp. 7; Fallon *v.* Mertz, 110 N. Y. App. Div. 755, 97 N. Y. Supp. 417 (fall of derrick); Carey *v.* Manhattan R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 335, 98 N. Y. Supp. 668 (defectively insulated wires); Muhlmeyer *v.* Koehler, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 651, 99 N. Y. Supp. 814; Henson *v.* Lehigh Valley R. Co., 122 N. Y. App. Div. 160, 106 N. Y. Supp. 602. But see Madden *v.* Hughes, 105 N. Y. App. Div. 101, 93 N. Y. Supp. 324 (statute requiring safe scaffolds — plank of scaffold breaking); Samuels *v.* McKesson, 113 N. Y. App. Div. 497, 99 N. Y. Supp. 294 (tearing out of bottom of elevator); Ristau *v.* E. Frank Coe Co., 120 N. Y. App. Div. 478, 104 N. Y. Supp. 1059 (collapse of trestle); Michael *v.* Standard Concrete Street Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 255, 105 N. Y. Supp. 131; Robinson *v.* Consolidated Gas. Co., (Supm. Ct. Tr. T.) 106 N. Y. Supp. 1088 (fall of scaffolding); Ferrick *v.* Eidlitz, (Supm. Ct. App. Div.) 108 N. Y. Supp. 28 (fall of scaffold); Konigsberg *v.* Davis, (Supm. Ct. App. Div.) 108 N. Y. Supp. 595; Keenan *v.* McAdams, etc., Elevator Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 952.

North Carolina. — See Ross *v.* Double Shoals Cotton Mills, 140 N. Car. 115, 52 S. E. 121; Fitzgerald *v.* Southern R. Co., 141 N. Car. 530, 54 S. E. 391.

Ohio. — Egan *v.* New York, etc., R. Co., 26 Ohio Cir. Ct. 616.

Oregon. — Finn *v.* Oregon Water Power, etc., Co., (Oregon 1908) 93 Pac. 690.

South Carolina. — Edgens *v.* Gaffney Mfg. Co., 69 S. Car. 529, 48 S. E. 538. But see Roach *v.* Haile Gold Min. Co., 71 S. Car. 79, 50 S. E. 543; Willis *v.* Cherokee Falls Mfg. Co., 72 S. Car. 126, 51 S. E. 538.

Texas. — See Galveston, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1908) 107 S. W. 108.

Virginia. — Moore Lime Co. *v.* Johnston, 103 Va. 84, 48 S. E. 557.

Washington. — Peterson *v.* Union Iron Works, (Wash. 1908) 93 Pac. 1077. But see La Bee *v.* Sultan Logging Co., (Wash. 1907) 91 Pac. 560.

West Virginia. — Richards *v.* Riverside Iron Works, 56 W. Va. 510, 49 S. E. 437; Newhouse *v.* Kanawha, etc., R. Co., (W. Va. 1907) 59 S. E. 1071.

Canada. — See Wilson *v.* Lincoln Paper Mills Mfg. Co., 9 Ont. L. Rep. 119.

The doctrine of *res ipsa loquitur* sometimes applies as between master and servant, as in this case, where the injury resulted to the servant through the explosion by the operation of a defective electric appliance. Goddard *v.* Enzler, (1907) 123 Ill. App. 108, *affirmed* (1906) 222 Ill. 462, 78 N. E. 805.

It is not necessary that a servant seeking to recover because of defective machinery should prove what particular fault or imperfection caused the improper working of such machinery; it is enough that it did so improperly operate, if the master knew of it; such improper operation is in itself a defect. National Enameling, etc., Co. *v.* Kinder, 126 Ill. App. 642.

5. Eliot *v.* Kansas City, etc., R. Co., 204 Mo. 1, 102 S. W. 532. But see Montgomery Coal Co. *v.* Barringer, 218 Ill. 327, 75 N. E. 900.

6. Remington, etc., Co. *v.* Blazosseck, 146 Fed. 363, 76 C. C. A. 643.

7. But see Bryne *v.* Boston Woven Hose, etc., Co., 191 Mass. 40, 77 N. E. 696 (automatic starting of printing press).

88. 3. *United States.* — Chicago, etc., R. Co. *v.* Benton, 132 Fed. 460, 65 C. C. A. 660; Lyle *v.* Alabama G. S. R. Co., (C. C. A.) 145 Fed. 611; International Mercantile Marine Co. *v.* Fleming, 151 Fed. 203, 80 C. C. A. 479; Pennsylvania R. Co. *v.* Garcia, 152 Fed. 104, 81 C. C. A. 322.

Arkansas. — St. Louis, etc., R. Co. *v.* Andrews, 79 Ark. 437, 96 S. W. 183.

California. — Shea *v.* Pacific Power Co., 145 Cal. 680, 79 Pac. 373; Fogarty *v.* Southern Pac. Co., 151 Cal. 785, 91 Pac. 650.

Connecticut. — Rincicotti *v.* John J. O'Brien Contracting Co., 77 Conn. 617, 60 Atl. 115; Gilmore *v.* American Tube, etc., Co., 79 Conn. 498, 66 Atl. 4.

Delaware. — Graboski *v.* New Castle Leather Co., (Del. 1906) 64 Atl. 74; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369.

Florida. — Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516.

Georgia. — Southern States Portland Cement Co. *v.* Helms, 2 Ga. App. 308, 58 S. E. 524.

Illinois. — Spring Valley Coal Co. *v.* Greig, 226 Ill. 511, 80 N. E. 1042 (statute); Diamond Glue Co. *v.* Wietzychowski, 227 Ill. 338, 81 N. E. 303; Waukegan *v.* Sunn, 118 Ill. App. 479; Chicago Union Traction Co. *v.* Sawusch, 119 Ill. App. 349; North American Restaurant, etc., House *v.* McElligott, 120 Ill. App. 498, *affirmed* 227 Ill. 317, 81 N. E. 388.

Indiana. — Columbian Enameling, etc., Co. *v.* Burke, 37 Ind. App. 518, 77 N. E. 409; National Biscuit Co. *v.* Wilson, (Ind. App. 1907) 80 N. E. 33; Kentucky, etc., Bridge, etc., Co. *v.* Moran, (Ind. 1907) 80 N. E. 536; Oolitic Stone Co. *v.* Ridge, (Ind. App. 1907) 80 N. E. 441; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Klaffke *v.* Bettendorf Axle Co., 125 Iowa 223, 100 N. W. 1116.

Kentucky. — Buey *v.* Chess, etc., Co., (Ky. 1905) 84 S. W. 563.

Louisiana. — Burns *v.* Ruddock-Orleans Cypress Co., 114 La. 247, 38 So. 157; Williams *v.* Levert Lumber, etc., Co., 114 La. 805, 38 So. [illegible] Thomas, 115 La. 814, 40 So. 234; Yarbrough *v.* Swift, 119 La. 344, 44 So. 121; Roff *v.* Summit Lumber Co., 119 La. 571, 44 [illegible] 302.

Maine. — Caven *v.* Bodwell Granite Co., 99 Me. 278, 59 Atl. 285.

Maryland. — Crawford *v.* United R., etc., Co., 101 Md. 405, 61 Atl. 287.

Massachusetts. — Thompson *v.* American Writing Paper Co., 187 Mass. 93, 72 N. E. 343; Dawson *v.* Lawrence Gaslight Co., 188 Mass. 481, 74 N. E. 912; Feeney *v.* York Mfg. Co., 189 Mass. 336, 75 N. E. 733; Chambers *v.* Wampanoag Mills, 189 Mass. 529, 75 N. E. 1093; Cahill *v.* New England Telephone, etc., Co., 193 Mass. 415, 79 N. E. 821; Morena *v.* Winston, 194 Mass. 378, 80 N. E. 473; Mulvancy *v.* Peck, (Mass. 1907) 81 N. E. 874; Lammi *v.* Milford Pink Granite Quarries, (Mass. 1907) 82 N. E. 26.

Michigan. — Kaess *v.* Tivoli Brewing Co., 149 Mich. 371, 111 N. W. 106; Gillespie *v.* Grand Trunk R. Co., 150 Mich. 303, 113 N. W. 1110.

Minnesota. — Fry *v.* Great Northern R. Co., 95 Minn. 87, 103 N. W. 733; Kohout *v.* Newman, 96 Minn. 61, 104 N. W. 764.

Mississippi. — Yazoo, etc., R. Co. *v.* Slaughter, (Miss. 1908) 45 So. 873.

Missouri. — Gibson *v.* Freygang, 112 Mo. App. 594, 87 S. W. 3; Rigsby *v.* Oil Well Supply Co., 115 Mo. App. 297, 91 S. W. 460; Harrod *v.* Hammond Packing Co., 125 Mo. App. 357, 102 S. W. 637; Dunphy *v.* St. Joseph Stockyards Co., 118 Mo. App. 506, 95 S. W. 301; Klebe *v.* Parker Distilling Co., 207 Mo. 480, 105 S. W. 1057; Leffler *v.* Anheuser-Busch Brewing Assoc., 127 Mo. App. 488, 106 S. W. 105; Koerner *v.* St. Louis Car Co., (Mo. 1907) 107 S. W. 481; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88.

New Jersey. — Reinhardt *v.* Central Lard Co., (N. J. 1906) 64 Atl. 990; Kane *v.* Babcock, etc., Co., (N. J. 1907) 67 Atl. 1014.

New York. — Koehler *v.* New York Steam Co., 183 N. Y. 1, 75 N. E. 538; Nelson *v.* New York, 101 N. Y. App. Div. 18, 91 N. Y. Supp. 763; Starer *v.* Stern, 100 N. Y. App. Div. 393, 91 N. Y. Supp. 821.

North Carolina. — Wallace *v.* Seaboard Air Line R. Co., 141 N. Car. 646, 54 S. E. 399; Sibbert *v.* Scotland Cotton Mills, 145 N. Car. 308, 59 S. E. 79.

North Dakota. — Meehan *v.* Great Northern R. Co., 13 N. Dak. 432, 101 N. W. 183.

Pennsylvania. — Combs *v.* Delaware, etc., Tel., etc., Co., 218 Pa. St. 440, 67 Atl. 751 (inspection of poles and wires by electric light company); Weller *v.* Aberfoyle Mfg. Co., 28 Pa. Super. Ct. 102; Clegg *v.* Seaboard Steel Casting Co., 34 Pa. Super. Ct. 63; Wilkinson *v.* Evans, 34 Pa. Super. Ct. 472.

Rhode Island. — McCaughey *v.* Jenckes Spinning Co., 26 R. I. 426, 59 Atl. 110; Petrarca *v.* Quidnick Mfg. Co., 27 R. I. 265, 61 Atl. 648.

Texas. — San Antonio, etc., R. Co. *v.* Hahl, (Tex. Civ. App. 1904) 83 S. W. 27; Southern Kansas R. Co. *v.* Sage, 98 Tex. 438, 84 S. W. 814; Texas Short Line R. Co. *v.* Waymire, (Tex. Civ. App. 1905) 89 S. W. 452; Missouri, etc., R. Co. *v.* Box, (Tex. Civ. App. 1906) 93 S. W. 124; Missouri, etc., R. Co. *v.* Hagan, (Tex. Civ. App. 1906) 93 S. W. 1014; Galveston, etc., R. Co. *v.* Stevens, (Tex. Civ. App. 1906) 94 S. W. 395; Southwestern Tel., etc., Co. *v.* Tucker, (Tex. Civ. App. 1906) 98 S. W. 909; Missouri, etc., R. Co. *v.* Wise, (Tex. Civ. App. 1907) 106 S. W. 465; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 910; Poindexter *v.* Kirby Lumber Co., (Tex. 1908) 107 S. W. 42; Galveston, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1908) 107 S. W. 108; Atchison, etc., R. Co. *v.* Mills, (Tex. Civ. App. 1908) 108 S. W. 480; El Paso, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1908) 108 S. W. 988.

Utah. — Wood *v.* Rio Grande Western R. Co., 28 Utah 351, 79 Pac. 182.

Virginia. — Wood *v.* Southern R. Co., 104 Va. 650, 52 S. E. 371; Black *v.* Virginia Portland Cement Co., 106 Va. 121, 55 S. E. 587.

Washington. — Young *v.* O'Brien, 36 Wash. 570, 79 Pac. 211.

Wisconsin. — Montanye *v.* Northern Electrical Mfg. Co., 127 Wis. 22, 105 N. W. 1043.

Canada. — Drolet *v.* La Compagnie, etc., 26 Quebec Super. Ct. 107; Demers *v.* Montreal Brewing Co., 28 Quebec Super. Ct. 35.

If the master is not in a position to safeguard his servants by inspection of appliances, he must refrain from giving his servants orders to use them whereby their safety will be imperilled. De Maries *v.* Jameson, 98 Minn. 453, 108 N. W. 830.

An employee who, without his master's authority, creates a dangerous condition in the place in which he is working, assumes the risk which such dangerous condition produces. He has no claim on his master for protection against it, and no right to compensation from the latter for injuries resulting from it though the master is aware of it. Sharp *v.* Durand, 71 N. J. L. 354, 59 Atl. 7.

A consignee of a loaded car run into its premises by the railway company owes no duty to its servants to inspect such car. Dunn *v.* Boston, etc., St. R. Co., 189 Mass. 62, 75 N. E. 75.

89. 3. *United States.* — The Fulton, 143 Fed. 591 (ropes used in unloading cargo of ship).

Iowa. — Lynn *v.* Glucose Sugar Refining Co., 128 Iowa 501, 104 N. W. 577.

Kansas. — But see Missouri, etc., R. Co. *v.* Quinlan, (Kan. 1908) 93 Pac. 632 (sledge).

Minnesota. — Koschman *v.* Ash, 98 Minn. 312, 108 N. W. 514 (common sledge or hammer); Dessecker *v.* Phœnix Mills Co., 98 Minn. 439, 108 N. W. 516 (ladder).

Nebraska. — Vanderpool *v.* Partridge, (Neb. 1907) 112 N. W. 318.

New York. — Smith *v.* Green Fuel Economizer Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 45 (ladder).

Oregon. — Busch *v.* Robinson, 46 Oregon 539, 81 Pac. 237.

Texas. — O'Brien *v.* Missouri, etc., R. Co., 36 Tex. Civ. App. 528, 82 S. W. 310; Gulf, etc., R. Co. *v.* Larkin, 98 Tex. 228, 82 S. W. 1026 (lantern globes), *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 80.

Wisconsin. — Meyer *v.* Ladewig, 130 Wis. 566, 110 N. W. 419 (machinist's hammer).

This rule held not applicable to a punching or shearing machine. Morden Frog, etc., Works *v.* Fries, 228 Ill. 246, 81 N. E. 862.

A thirty-five foot ladder attached to a water tank, only occasionally used, is not a common tool or appliance within the meaning of the rules which exempt the master from the duty to inspect them upon the presumption that those using them will, and should, first discover defects. Nichols *v.* Pere Marquette R. Co., 145 Mich. 643, 108 N. W. 1016.

This rule does not apply when the master has actual knowledge of defects in simple tools, and the servant has not. Stork *v.* Charles Stolper Cooperage Co., 127 Wis. 318, 106 N. W. 841.

Appliances Constructed by Servant. — Where a master was not bound to furnish appliances, but discharged his duty by furnishing adequate materials for that purpose, he is not required to inspect the appliances after construction. Leishman *v.* Union Iron Works, 148 Cal. 274, 83 Pac. 30.

90. 1. Ultima Thule, etc., R. Co. *v.* Calhoun, 83 Ark. 318, 103 S. W. 726; Atlantic Coast Line R. Co. *v.* Ryland, 50 Fla. 190, 40 So. 24; Bedford Quarries Co. *v.* Turner, (Ind. App. 1905) 75 N. E. 25; Hill *v.* Iver Johnson Sporting Goods Co., 188 Mass. 75, 74 N. E. 303; Kremer *v.* Eagle Mfg. Co., 120 Mo. App. 247, 96 S. W. 726; St. Pierre *v.* Foster, 74 N. H. 4, 64 Atl. 723; Hover *v.* Chicago, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1084; Suderman *v.* Woodruff, (Tex. Civ. App. 1907) 105 S. W. 217; Lane Bros. Co. *v.* Seakford, 106 Va. 93, 55 S. E. 556.

Master Required to Use Only Reasonable Care in Inspection and Repair. — Brossman *v.* Drake Standard Mach. Works, 232 Ill. 412, 83 N. E. 936; Brusseau *v.* Lower Brick Co., 133 Iowa 245, 110 N. W. 577; Needham *v.* Stone, 186 Mass. 565, 72 N. E. 80; Clark *v.* Goldie, 146 Mich. 303, 109 N. W. 1044; Nichols *v.* Pere Marquette R. Co., 145 Mich. 643, 108 N. W. 1016; Vincent *v.* Clements, 150 Mich. 406, 114 N. W. 330; Loughlin *v.* Brassil, 187 N. Y. 128, 79 N. E. 854; Law *v.* Central Dist. Printing, etc., Co., 140 Fed. 558; Howard *v.* Beldenville Lumber Co., 129 Wis. 98, 108 N. W. 48. See also Alves *v.* New York, etc., R. Co., 27 R. I. 581, 65 Atl. 261, *following* Louisville, etc., R. Co. *v.* Hinder, (Ky. 1895) 30 S. W. 399; Culver *v.* South Haven, etc., R. Co., 138 Mich. 443, 101 N. W. 663; Cleveland, etc., R. Co. *v.* Snow, 37 Ind. App. 646, 74 N. E. 968; Galveston, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 93 S. W. 184.

2. Illinois Cent. R. Co. *v.* Coughlin, 132 Fed. 801, 65 C. C. A. 101; Shandrew *v.* Chicago, etc., R. Co., 142 Fed. 320, 73 C. C. A. 430; Healy *v.* Buffalo, etc., R. Co., 111 N. Y. App. Div. 618, 97 N. Y. Supp. 801.

3. Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516; Barto *v.* Iowa Telephone Co., 126 Iowa 241, 101 N. W. 876; Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359; Finnegan *v.* Samuel Winslow Skate Mfg. Co., 189 Mass. 580, 76 N. E. 192; Hardy *v.* Sulphur Min. Co., (N. J. 1907) 67 Atl. 177; Fulton *v.* Grieb Rubber Co., (N. J. 1907) 68 Atl. 116; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 910; Williams *v.* Norton, (Vt. 1908) 69 Atl. 146; Fulton *v.* Crosby, etc., Co., 57 W. Va. 91, 49 S. E. 1012. See also Horne *v.* Consolidated R., etc., Co., 144 N. Car. 375, 57 S. E. 19; Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337.

5. Law *v.* Central Dist. Printing, etc., Co., 140 Fed. 558; Shankweiler *v.* Baltimore, etc., R. Co., (C. C. A.) 148 Fed. 195; Cryder *v.* Chicago, etc., R. Co., 152 Fed. 417, 81 C. C. A. 559; Reilly *v.* Troy Brick Co., 108 N. Y. App. Div. 108, 47 Misc. (N. Y.) 530, 94 N. Y. Supp. 1156; Creswell *v.* United Shirt, etc., Co., 115 N. Y. App. Div. 12, 100 N. Y. Supp. 497; Ware *v.* Ithaca St. R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 426; Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1904) 82 S. W. 787; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12.

A master must be deemed to have had notice of every defect which an inspection would have revealed, as he had actual notice of a condition which should have led him to make a careful and searching investigation of the mechanism in question. Libby *v.* Cook, 222 Ill. 206, 78 N. E. 590.

7. *United States.* — American Car, etc., Co. *v.* Brinkman, 146 Fed. 712, 77 C. C. A. 138.

Arkansas. — Mt. Nebo Anthracite Coal Co. *v.* Williamson, 73 Ark. 530, 84 S. W. 779.

Indiana. — Monongahela River Consol. Coal, etc., Co. *v.* Hardsaw, (Ind. App. 1906) 77 N. E. 363.

Iowa. — Klaffke *v.* Bettendorf Axle Co., 125 Iowa 223, 100 N. W. 1116.

Kentucky. — Ahrens, etc., Mfg. Co. *v.* Rellihan, (Ky. 1904) 82 S. W. 993; Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; Western Union Tel. Co. *v.* Holtby, 93 S. W. 652, 29 Ky. L. Rep. 523.

Louisiana. — Burns *v.* Ruddock-Orleans Cypress Co., 114 La. 247, 38 So. 157.

Maine. — Caven *v.* Bodwell Granite Co., 99 Me. 278, 59 Atl. 285.

Massachusetts. — Thompson *v.* American Writing Paper Co., 187 Mass. 93, 72 N. E. 343; Chiappini *v.* Fitzgerald, 191 Mass. 598, 77 N. E. 1030.

Missouri. — Rigsby *v.* Oil Well Supply Co., 115 Mo. App. 297, 91 S. W. 460.

Rhode Island. — Petrarca *v.* Quidnick Mfg. Co., 27 R. I. 365, 61 Atl. 648.

Texas. — Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1904) 82 S. W. 787; International, etc., R. Co. *v.* Royal, 37 Tex. Civ. App. 261, 83 S. W. 713; Galveston, etc., R. Co. *v.* Manns, 37 Tex. Civ. App. 356, 84 S. W. 254; St. Louis Southwestern R. Co. *v.* Rea, (Tex. Civ. App. 1904) 84 S. W. 428; Peck *v.* Peck, 99 Tex. 10, 87 S. W. 248; Missouri, etc., R. Co. *v.* Kellerman, (Tex. Civ. App. 1905) 87 S. W. 401; El Paso, etc., R. Co. *v.* Vizard, (Tex. Civ. App. 1905) 88 S. W. 457; Louisiana, etc., Lumber Co. *v.* Meyers, (Tex. Civ. App. 1906) 94 S. W. 140.

91. 1. *United States.* — Pennsylvania R. Co. *v.* Hartell, (C. C. A.) 157 Fed. 667.

Alabama. — Alabama G. S. R. Co. *v.* Vail, 142 Ala. 134, 38 So. 124.

Delaware. — Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148.

Illinois. — North Chicago St. R. Co. *v.* Aufmann, 221 Ill. 614, 77 N. E. 1120.

Missouri. — Bokamp *v.* Chicago, etc., R. Co., 123 Mo. App. 270, 100 S. W. 689.

New Hampshire. — Hilton *v.* Fitchburg R. Co., 73 N. H. 116, 59 Atl. 625.

New York. — Sheridan *v.* Interborough Rapid Transit Co., 115 N. Y. App. Div. 282, 100 N. Y. Supp. 821 (failure to provide lookout to give warning of danger).

North Carolina. — Shaw *v.* Highland Park Mfg. Co., (N. Car. 1907) 59 S. E. 676.

Rhode Island. — Walsh *v.* Smith, 26 R. I. 554, 59 Atl. 1025.

Texas. — Bonn *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1904) 82 S. W. 808; Haywood *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 85 S. W. 433; Galveston, etc., R. Co. *v.* Bonn, (Tex. Civ. App. 1907) 99 S. W. 413.

Washington. — Sandquist *v.* Independent Telephone Co., 38 Wash. 313, 80 Pac. 539.

The master must have been negligent in not knowing that the force was insufficient. Bertholet *v.* J. W. Bishop Co., 187 Mass. 32, 72 N. E. 342.

The failure to supply sufficient servants must be the proximate cause of the injury. Haggland *v.* St. Hilaire Lumber Co., 97 Minn. 94, 106 N. W. 91.

3. Blundell *v.* William A. Miller Elevator Mfg. Co., 189 Mo. 552, 88 S. W. 103; Cincinnati Gas, etc., Co. *v.* Johnston, 76 Ohio St. 119, 81 N. E. 155; International, etc., R. Co. *v.* Figures, (Tex. Civ. App. 1905) 89 S. W. 780.

4. Bokamp *v.* Chicago, etc., R. Co., 123 Mo. App. 270, 100 S. W. 689.

5. Stephens *v.* Elliott, (Mont. 1907) 92 Pac. 45.

92. 2. Darrow *v.* The Fair, 118 Ill. App. 665; Saxe *v.* Walworth Mfg. Co., 191 Mass. 338, 77 N. E. 883; Fasini *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 404, 96 N. Y. Supp. 415; Creswell *v.* United Shirt, etc., Co., 115 N. Y. App. Div. 12, 100 N. Y. Supp. 497; Daffron *v.* Majestic Laundry Co., 41 Wash. 65, 82 Pac. 1089.

4. *United States.* — Looney *v.* Metropolitan R. Co., 200 U. S. 480, 26 U. S. Sup. Ct. 303.

Alabama. — Yates *v.* Huntsville Hoop, etc., Co., (Ala. 1905) 39 So. 647.

California. — Thompson *v.* California Constr. Co., 148 Cal. 39, 82 Pac. 367, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 92; Bundy *v.* Sierra Lumber Co., 149 Cal. 772, 87 Pac. 622.

Georgia. — Southern Bell Telephone, etc., Co. *v.* Starnes, 122 Ga. 602, 50 S. E. 343; Crown Cotton Mills *v.* McNally, 123 Ga. 35, 51 S. E. 13; Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110; Johnston *v.* Enterprise Mfg. Co., (Ga. 1908) 60 S. E. 449.

Illinois. — McCormick Harvesting Mach. Co. *v.* Zakzewski, 220 Ill. 522, 77 N. E. 147; Brennan *v.* Electrical Installation Co., 120 Ill. App. 461; Chicago Hardware Co. *v.* Matthews, 124 Ill. App. 89.

Indiana. — Doyle *v.* Hawkins, 34 Ind. App. 514, 73 N. E. 200.

Kansas. — Missouri Pac. R. Co. *v.* Dorr, 73 Kan. 486, 85 Pac. 533; Missouri Pac. R. Co. *v.* Brinkmeier, (Kan. 1908) 93 Pac. 621.

Maryland. — Buttner *v.* South Baltimore Steel Car, etc., Co., 101 Md. 168, 60 Atl. 597.

Minnesota. — Cederberg *v.* Minneapolis, etc., R. Co., 101 Minn. 100, 111 N. W. 953.

Montana. — Nelson *v.* Boston, etc., Consol. Copper, etc., Min. Co., 35 Mont. 223, 88 Pac. 785.

New Hampshire. — Klinientie *v.* Nashua Mfg. Co., 74 N. H. 276, 67 Atl. 573.

New York. — Olcott *v.* Passaic Steel Co., 122 N. Y. App. Div. 90, 106 N. Y. Supp. 566; Kroos *v.* Lehmaier, (Supm. Ct. App. T.) 107 N. Y. Supp. 218; Stackpole *v.* Wray, 99 N. Y. App. Div. 262; Dolan *v.* New York Sanitary Utilization Co., 104 N. Y. App. Div. 14, 93 N. Y. Supp. 217; Hughes *v.* Russell, 104 N. Y. App. Div. 144, 93 N. Y. Supp. 307; Bannon *v.* Buffalo Union Furnace Co., 109 N. Y. App. Div. 324, 95 N. Y. Supp. 891.

North Carolina. — Nelson *v.* R. J. Reynolds Tobacco Co., 144 N. Car. 418, 57 S. E. 127; Hendrix *v.* Cooleemee Cotton Mills, 138 N. Car. 160, 50 S. E. 561.

South Carolina. — See Jennings *v.* Edgefield Mfg. Co., 72 S. Car. 411, 52 S. E. 113 (knowledge of latent defects in appliances will be imputed to master).

Tennessee. — Acme Box Co. *v.* Gregory, (Tenn. 1907) 105 S. W. 350.

Texas. — Suderman *v.* Woodruff, (Tex. Civ. App. 1907) 105 S. W. 217; Industrial Lumber Co. *v.* Bivens, (Tex. Civ. App. 1907) 105 S. W. 831.

Wisconsin. — Montanye *v.* Northern Electrical Mfg. Co., 127 Wis. 22, 105 N. W. 1043; Howard *v.* Beldenville Lumber Co., 129 Wis. 115, 108 N. W. 48, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 92, 93.

93. 1. Stine *v.* S. Morgan Smith Co., 219 Pa. St. 145, 67 Atl. 990.

3. Birmingham Rolling Mill Co. *v.* Rockhold, 143 Ala. 115, 42 So. 96; M. O'Connor Co. *v.* Gillaspy, (Ind. 1908) 83 N. E. 738; Markey *v.* Louisiana, etc., R. Co., 185 Mo. 348, 84 S. W. 61; Houts *v.* St. Louis Transit Co., 108 Mo. App. 686, 84 S. W. 161; Johnson *v.* Onondaga Paper Co., 112 N. Y. App. Div. 667, 98 N. Y. Supp. 602; Black *v.* Virginia Portland Cement Co., 106 Va. 121, 55 S. E. 587; King *v.* Griffiths-Sprague Stevedoring Co., 45 Wash. 425, 88 Pac. 759; Fleming *v.* Northern Tissue Paper Mill, (Wis. 1908) 114 N. W. 841 (continuous abnormal action of machine).

94. 3. Malott *v.* Sample, 164 Ind. 648, 74 N. E. 245, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 94.

5. *United States.* — National Biscuit Co. *v.* Nolan, (C. C. A.) 138 Fed. 6; American Bridge Co. *v.* Bainum, 146 Fed. 367, 76 C. C. A. 633.

Alabama. — King *v.* Woodstock Iron Co., 143 Ala. 632, 42 So. 27; Walton *v.* Lindsay Lumber Co., 145 Ala. 661, 39 So. 670; Richards *v.* Sloss-Sheffield Steel, etc., Co., 146 Ala. 254, 41 So. 288; Brammer *v.* Pettyjohn, (Ala. 1907) 45 So. 646.

Arkansas. — Louisiana, etc., R. Co. *v.* Miles, 82 Ark. 534, 103 S. W. 158; Grayson-McLeod Lumber Co. *v.* Carter, 76 Ark. 60, 88 S. W. 597.

Colorado. — Cripple Creek Sampling, etc., Co. *v.* Souza, 37 Colo. 393, 86 Pac. 1005; Denver, etc., R. Co. *v.* Sporleder, 39 Colo. 142, 89 Pac. 55; Elkton Consol. Min. Co. *v.* Sullivan, (Colo. 1907) 92 Pac. 679.

Connecticut. — Dickenson *v.* Vernon, 77 Conn. 537, 60 Atl. 270.

Delaware. — McMahon *v.* Bangs, 5 Penn. (Del.) 178, 62 Atl. 1098.

Georgia. — Ballew *v.* Broach, 121 Ga. 421, 49 S. E. 297; Crown Cotton Mills *v.* McNally, 123 Ga. 35, 51 S. E. 13.

Illinois. — Montgomery *v.* Robertson, 229 Ill. 466, 82 N. E. 396 (liability of gravel bank to cave in); Reynolds *v.* Grace, 115 Ill. App. 473; Valentine *v.* Chicago City R. Co., 127 Ill. App. 430.

Indiana. — Cleveland, etc., R. Co. *v.* Haas, 35 Ind. App. 626, 74 N. E. 1003; La Porte Carriage Co. *v.* Sullender, 165 Ind. 290, 75 N. E. 277.

Iowa. — Sutton *v.* Des Moines Bakery Co., (Iowa 1907) 112 N. W. 836; Freebourn *v.* Chamberlain Medicine Co., (Iowa 1907) 113 N. W. 918 (rule applied to boy sixteen years of age); Hardy *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 8.

Kansas. — Atchison, etc., R. Co. *v.* Weikal, 73 Kan. 763, 84 Pac. 720.

Kentucky. — Bollington *v.* Louisville, etc., R. Co., 100 S. W. 850, 30 Ky. L. Rep. 1260; Knight *v.* Paducah Box, etc., Co., (Ky. 1907) 102 S. W. 1185.

Maine. — Bryant *v.* Great Northern Paper Co., 100 Me. 171, 60 Atl. 797.

Massachusetts. — Meehan *v.* Holyoke St. R. Co., 186 Mass. 511, 72 N. E. 61; O'Keefe *v.* John P. Squire Co., 188 Mass. 210, 74 N. E. 340; Chisholm *v.* Donovan, 188 Mass. 378, 74 N. E. 652; Wolfe *v.* New Bedford Cordage Co., 189 Mass. 591, 76 N. E. 222; Bamford *v.* G. H. Hammond Co., 191 Mass. 479, 78 N. E. 115; Duffy *v.* New York, etc., R. Co., 192 Mass. 28, 77 N. E. 1031; Lennon *v.* Goodrich, 192 Mass. 293, 78 N. E. 421; Regan *v.* Lombard, 192 Mass. 319, 78 N. E. 476; Jacobson *v.* Favor, 193 Mass. 85, 78 N. E. 763; Boyd *v.* Taylor, (Mass. 1907) 81 N. E. 277; Korsman *v.* Rice, etc., Mach., etc., Co., (Mass. 1908) 84 N. E. 311.

Michigan. — Hess *v.* Escanaba Woodenware Co., 146 Mich. 566, 109 N. W. 1058; Erickson *v.* Cummer Mfg. Co., 140 Mich. 434, 103 N. W. 828; White *v.* Owosso Sugar Co., 149 Mich. 473, 112 N. W. 1125.

Missouri. — Smith *v.* Forrester-Nace Box Co., 193 Mo. 715, 92 S. W. 394; Mueller *v.* La Prelle Shoe Co., 109 Mo. App. 506, 84 S. W. 1010.

Nebraska. — Freemont Telephone Co. *v.* Keeler, 72 Neb. 613, 101 N. W. 245; Central Granaries Co. *v.* Ault, 75 Neb. 249, 106 N. W. 418, 107 N. W. 1015.

New Hampshire. — Hicks *v.* Claremont Paper Co., 74 N. H. 154, 65 Atl. 1075.

New Jersey. — Sabere *v.* Atha, (N. J. 1907) 68 Atl. 103.

New York. — Stevens *v.* Gair, 109 N. Y. App. Div. 621, 96 N. Y. Supp. 303; Radley *v.* Shopiro, 114 N. Y. App. Div. 659, 99 N. Y. Supp. 1077; Bovi *v.* Hess, (Supm. Ct. App. Div.) 107 N. Y. Supp. 1001; Dillon *v.* National Coal Tar Co., 181 N. Y. 215, 73 N. E. 978.

North Carolina. — Mathis *v.* Magnolia Mfg. Co., 140 N. Car. 530, 53 S. E. 349.

Oregon. — Magone *v.* Portland Mfg. Co., (Oregon 1908) 93 Pac. 450.

Pennsylvania. — Cracraft *v.* Bessemer Limestone Co., 210 Pa. St. 15, 59 Atl. 432 (visible circular saw); Gallagher *v.* Snellenburg, 210 Pa. St. 642, 60 Atl. 307; Eisenberg *v.* Fraim, 215 Pa. St. 570, 64 Atl. 793; Vant *v.* Roelofs, 217 Pa. St. 535, 66 Atl. 749.

South Carolina. — Martin *v.* Royster Guano Co., 72 S. Car. 237, 51 S. E. 680.

Tennessee. — Norman *v.* Southern R. Co., (Tenn. 1907) 104 S. W. 1088.

Texas. — San Antonio Sewer Pipe Co. *v.* Noll, 37 Tex. Civ. App. 269, 83 S. W. 900; Texas, etc., R. Co. *v.* Sherman, (Tex. Civ. App. 1905) 87 S. W. 887 (servant seventeen years of age lifting heavy weight).

Utah. — Grandin *v.* Southern Pac. Co., 30 Utah 360, 85 Pac. 357; Richards *v.* Ogden Steam Laundry, (Utah 1907) 91 Pac. 267.

Washington. — Woods *v.* Northern Pac. R. Co., 36 Wash. 658, 79 Pac. 309; Sandquist *v.* Independent Telephone Co., 38 Wash. 313, 80 Pac. 539; Anderson *v.* Columbia Imp. Co., 41 Wash. 83, 82 Pac. 1037; Kranich *v.* Knapp, 43 Wash. 85, 86 Pac. 207.

Wisconsin. — Horn *v.* La Crosse Box Co., 131 Wis. 384, 111 N. W. 522 (rule applied to boy fifteen years of age).

Question for Jury as to Whether Risk or Danger Was Obvious. — Wilder *v.* Great Western Cereal Co., 130 Iowa 263, 104 N. W. 434.

95. 2. *United States.* — McGill *v.* Michigan Steamship Co., (C. C. A.) 144 Fed. 788; Chicago, etc., R. Co. *v.* Riley, (C. C. A.) 145 Fed. 137, 7 Ann. Cas. 327; Bartlett *v.* Farrell, 152 Fed. 150, 81 C. C. A. 56; The Buffalo, 154 Fed. 815, 83 C. C. A. 531.

Alabama. — Alabama Western R. Co. *v.* Russell, 144 Ala. 142, 39 So. 311.

California. — Bone *v.* Ophir Silver Min. Co., 149 Cal. 293, 86 Pac. 685.

Delaware. — Graboski *v.* New Castle Leather Co., (Del. 1906) 64 Atl. 74.

Georgia. — Crown Cotton Mills *v.* McNally, 123 Ga. 35, 51 S. E. 13; Blount Carriage, etc., Co. *v.* Ware, 125 Ga. 571, 54 S. E. 637; Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110; Bowen *v.* Adams, 129 Ga. 688, 59 S. E. 795; Green *v.* Babcock Bros. Lumber Co., (Ga. 1908) 60 S. E. 1062.

Illinois. — Shickle-Harrison, etc., Iron Co. *v.* Beck, 212 Ill. 268, 72 N. E. 423; Postal Tel. Cable Co. *v.* Likes, 225 Ill. 249, 80 N. E. 136; Mobile, etc., R. Co. *v.* Vallowe, 214 Ill. 124, 73 N. E. 416; Swiercz *v.* Illinois Steel Co., 231 Ill. 456, 83 N. E. 168; Chicago Terminal Transfer R. Co. *v.* O'Donnell, 114 Ill. App. 345.

Iowa. — Klaffke *v.* Bettendorf Axle Co., 125 Iowa 223, 100 N. W. 1116.

Kansas. — Consolidated Kansas City Smelting, etc., Co. *v.* Sharber, 71 Kan. 700, 81 Pac. 476.

Kentucky. — Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; East Tennessee Telephone Co. *v.* Carmine, 93 S. W. 903, 29 Ky. L. Rep. 479; Anderson *v.* Republic Iron, etc., Co., (Ky. 1908) 107 S. W. 220; Black Diamond Coal, etc., Co. *v.* Price, (Ky. 1908) 108 S. W. 345.

Massachusetts. — Flynn *v.* Prince, etc., Co., (Mass. 1908) 84 N. E. 321.

Michigan. — Charron *v.* Union Carbide Co., (Mich. 1908) 115 N. W. 718; Graham *v.* Detroit, etc., R. Co., (Mich. 1908) 115 N. W. 993.

Missouri. — Cameron *v.* B. Roth Tool Co., 108 Mo. App. 265, 83 S. W. 270; Wilson *v.* Kansas City Southern R. Co., 122 Mo. App. 607, 99 S. W. 495.

Montana. — Allen *v.* Bell, 32 Mont. 69, 79 Pac. 582.

New Hampshire. — Sirois *v.* Henry, 73 N. H. 148, 59 Atl. 936; Bennett *v.* Concord Woodworking Co., (N. H. 1907) 68 Atl. 460; Curtis *v.* Laconia Car Co. Works, 73 N. H. 516, 63 Atl. 400.

New Jersey. — Snyer *v.* New York, etc., Telephone Co., 73 N. J. L. 535, 64 Atl. 122; Dunne *v.* Jersey City Galvanizing Co., 73 N. J. L. 586, 64 Atl. 1076.

New York. — Nelson *v.* New York, 101 N. Y. App. Div. 18, 91 N. Y. Supp. 763; Johnson *v.* Terry, etc., Co., 113 N. Y. App. Div. 762, 99 N. Y. Supp. 375; Carey *v.* Manhattan R. Co., 116 N. Y. App. Div. 247, 101 N. Y. Supp. 631; Heffron *v.* Lackawanna Steel Co., 121 N. Y. App. Div. 35, 105 N. Y. Supp. 429.

North Carolina. — Harris *v.* Balfour Quarry Co., 137 N. Car. 204, 49 S. E. 95.

Ohio. — Jackson Knife, etc., Co. *v.* Hathaway, 27 Ohio Cir. Ct. 745.

Oregon. — Strauhal *v.* Asiatic Steamship Co., 48 Oregon 100, 85 Pac. 230.

Pennsylvania. — Patterson *v.* Harrisburg Trust Co., 211 Pa. St. 173, 60 Atl. 265.

Rhode Island. — Hardacre *v.* Sayles, 28 R. I. 235, 66 Atl. 298; Savage *v.* Rhode Island Co., 28 R. I. 391, 67 Atl. 633.

South Carolina. — Elms *v.* Southern Power Co., (S. Car. 1908) 60 S. E. 1110.

Texas. — Yellow Pine Oil Co. *v.* Noble, (Tex. Civ. App. 1906) 97 S. W. 332; Industrial Lumber Co. *v.* Bivens, (Tex. Civ. App. 1907) 105 S. W. 831.

Virginia. — Lane *v.* Bauserman, 103 Va. 146, 48 S. E. 857; Low Moor Iron Co. *v.* La Bianca, 106 Va. 83, 55 S. E. 532; Virginia Iron, etc., Co. *v.* Lore, 104 Va. 217, 51 S. E. 371; Pocahontas Collieries Co. *v.* Rukas, 104 Va. 278, 51 S. E. 449.

Washington. — Dossett *v.* St. Paul, etc., Lumber Co., 40 Wash. 276, 82 Pac. 273; Baker *v.* Duwamish Mill Co., 43 Wash. 149, 86 Pac. 167; Barrett *v.* Banner Shingle Co., 45 Wash. 12, 87 Pac. 919; Curtin *v.* Clear Lake Lumber Co., (Wash. 1907) 91 Pac. 956; Ongaro *v.* Twohy, (Wash. 1908) 94 Pac. 916; Cook *v.* Chehalis River Lumber Co., (Wash. 1908) 94 Pac. 189.

Wisconsin. — Yess *v.* Chicago Brass Co., 124 Wis. 406, 102 N. W. 932; Van De Bogart *v.* Marinette, etc., Paper Co., 127 Wis. 104, 106 N. W. 805; Segall *v.* Padlasky, 123 Wis. 207, 101 N. W. 381; Fleming *v.* Northern Tissue Paper Mill, (Wis. 1908) 114 N. W. 841.

Canada. — Shawinigan Carbide Co. *v.* St. Onge, 15 Quebec K. B. 5; Nicholls Chemical Co. *v.* Forster, 15 Quebec K. B. 411.

Posting Warning Notices Held Sufficient Warning. — Daniels *v.* New England Cotton Yarn Co., 188 Mass. 260, 74 N. E. 332.

96. 1. Seigel *v.* United Electric Heating Co., 143 Mich. 484, 106 N. W. 1127, 13 Detroit Leg. N. 45.

2. Sommers *v.* Standard Min. Co., 146 Mich. 111, 109 N. W. 30; Lord *v.* Boston, etc., R. Co., 74 N. H. 39, 65 Atl. 111; Moran *v.* Mulligan, 110 N. Y. App. Div. 208, 97 N. Y. Supp. 7; McDonald *v.* Triest, 119 N. Y. App. Div. 75, 103 N. Y. Supp. 1041; Djamond Rubber Co. *v.* McClurg, 26 Ohio Cir. Ct. 481; Smith *v.* Naushon Co., 26 R. I. 578, 60 Atl. 242; Roessler, etc., Chemical Co. *v.* Peterson, (C. C. A.) 134 Fed. 789.

4. Southern Cotton-Oil Co. *v.* Gladman, 1 Ga. App. 259, 58 S. E. 249; Seaboard Air Line R. Co. *v.* Witt, (Ga. App. 1908) 60 S. E. 1012; Schminkey *v.* Sinclair, (Iowa 1908) 114 N. W. 612; Johnson *v.* Crookston Lumber Co., 95 Minn. 142, 103 N. W. 891; Edington *v.* St. Louis, etc., Co., 204 Mo. 61, 102 S. W. 491; Hicks *v.* Naomi Falls Mfg. Co., 143 N. Car. 77, 55 S. E. 411, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 96; Texarkana, etc., R. Co. *v.* Toliver, 37 Tex. Civ. App. 437, 84 S. W. 375.

97. 2. Rogers *v.* Cleveland, etc., R. Co., 211 Ill. 126, 71 N. E. 850; Galveston, etc., R. Co. *v.* Manns, 37 Tex. Civ. App. 356, 84 S. W. 254.

3. Marshall *v.* Burt, etc., Co., (N. J. 1908) 69 Atl. 183.

4. Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516; Illinois Cent. R. Co. *v.* Gill, 88 Miss. 417, 40 So. 865.

5. See Hardy *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 8; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Sabere *v.* Atha, (N. J. 1907) 68 Atl. 103.

6. *United States.* — Britton *v.* Central Union Telephone Co., 131 Fed. 844, 65 C. C. A. 598; Mountain Copper Co. *v.* Pierce, 136 Fed. 150, 69 C. C. A. 148; The Buffalo, 147 Fed. 304; Peters *v.* George, 154 Fed. 634, 83 C. C. A. 408; Pennsylvania R. Co. *v.* Hartell, (C. C. A.) 157 Fed. 667.

Alabama. — Moss *v.* Mosley, (Ala. 1906) 41 So. 1012; Woodstock Iron Works *v.* Kline, (Ala. 1906) 43 So. 362; Reaves *v.* Anniston Knitting Mills, (Ala. 1907) 45 So. 702; King *v.* Woodstock Iron Co., 143 Ala. 642, 42 So. 27.

Arkansas. — Ford *v.* Bodcaw Lumber Co., 73 Ark. 49, 83 S. W. 346; Arkadelphia Lumber Co. *v.* Whitted, 81 Ark. 247, 98 S. W. 697; Bodcaw Lumber Co. *v.* Ford, 82 Ark. 555, 102 S. W. 896; Arkadelphia Lumber Co. *v.* Henderson, 84 Ark. 382, 105 S. W. 882.

California. — Jenson *v.* Will, etc., Co., 150 Cal. 398, 89 Pac. 113; Sheehan *v.* Hammond, 2 Cal. App. 371, 84 Pac. 340.

Connecticut. — Anderson *v.* U. S. Rubber Co., 78 Conn. 48, 60 Atl. 1057.

Delaware. — Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148.

Georgia. — Crown Cotton Mills *v.* McNally, 127 Ga. 404, 56 S. E. 452.

Illinois. — Chicago, etc., R. Co. *v.* Daugaard, 118 Ill. App. 67; American Brake Shoe, etc., Co. *v.* Toluszis, 125 Ill. App. 622.

Indiana. — Fletcher Bros. Co. *v.* Hyde, 36 Ind. App. 96, 75 N. E. 9.

Iowa. — Mace *v.* Boecker, 127 Iowa 721, 104 N. W. 475; Vohs *v.* Shorthill, 130 Iowa 541, 107 N. W. 417, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 97; Wilder *v.* Great Western Cereal Co., 130 Iowa 263, 104 N. W. 434;

Beardsley *v.* Murray Iron Works Co., 129 Iowa 675, 106 N. W. 180; Meier *v.* Way, (Iowa 1907) 111 N. W. 420; Harney *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 886.

Kentucky. — James *v.* Ames, (Ky. 1904) 82 S. W. 229; Cohankus Mfg. Co. *v.* Rogers, (Ky. 1906) 96 S. W. 437; Dow Wire Works Co. *v.* Morgan, (Ky. 1906) 96 S. W. 530; Gains *v.* Johnson, (Ky. 1907) 105 S. W. 381; Owensboro Brick, etc., Co. *v.* Glenn, (Ky. 1908) 106 S. W. 1195.

Louisiana. — Parker *v.* Crowell, etc., Lumber Co., 115 La. 467, 39 So. 445, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 97; Foreman *v.* Eagle Rice Mill Co., 117 La. 227, 41 So. 555; McBailey *v.* Suberbielle, (La. 1908) 45 So. 442.

Maine. — Erickson *v.* Monson Consol. Slate Co., 100 Me. 107, 60 Atl. 708.

Massachusetts. — Rudberg *v.* Bowden Felting Co., 188 Mass. 365, 74 N. E. 590; Manning *v.* Excelsior Laundry Co., 189 Mass. 231, 75 N. E. 254; O'Neill *v.* Lowell Mach. Shop, 189 Mass. 446, 75 N. E. 744; Byrne *v.* Learnard, 191 Mass. 269, 77 N. E. 316; Hodde *v.* Attleboro Mfg. Co., 193 Mass. 237, 79 N. E. 252; Reardon *v.* Byrne, 195 Mass. 146, 80 N. E. 827; Boyd *v.* Taylor, (Mass. 1907) 81 N. E. 277.

Michigan. — Brockmiller *v.* Industrial Works, 148 Mich. 642, 112 N. W. 688; McDonald *v.* Champion Iron, etc., Co., 140 Mich. 401, 103 N. W. 829; Kolodziejski *v.* Seestadt, 143 Mich. 38, 106 N. W. 557, 12 Detroit Leg. N. 918; Marklewitz *v.* Olds Motor Works, (Mich. 1908) 115 N. W. 999.

Minnesota. — Carlin *v.* Kennedy, 97 Minn. 141, 106 N. W. 340; Pinney *v.* King, 98 Minn. 160, 107 N. W. 1127; Hagerty *v.* St. Paul Brick Co., 98 Minn. 502, 108 N. W. 278; Frazier *v.* Lloyd Mfg. Co., 98 Minn. 484, 108 N. W. 819; Ludwig *v.* Spicer, 99 Minn. 400, 109 N. W. 832; Granrus *v.* Croxton Min. Co., 102 Minn. 25, 113 N. W. 693; Small *v.* Brainard Lumber Co., 95 Minn. 95, 103 N. W. 726.

Missouri. — Mitchell *v.* Chicago, etc., R. Co., 108 Mo. App. 142, 83 S. W. 289.

New Hampshire. — Kasjeta *v.* Nashua Mfg. Co., 73 N. H. 22, 58 Atl. 874; Hamel *v.* Newmarket Mfg. Co., 73 N. H. 386, 62 Atl. 592; Disalets *v.* International Paper Co., (N. H. 1908) 69 Atl. 263.

Ohio. — Cleveland, etc., R. Co. *v.* Tehon, 26 Ohio Cir. Ct. 457.

Oregon. — Westman *v.* Wind River Lumber Co., (Oregon 1907) 91 Pac. 480, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 97.

Pennsylvania. — Sweigert *v.* Klingensmith, 210 Pa. St. 565, 60 Atl. 253; Zearfoss *v.* Norway Iron, etc., Co., (Pa. 1907) 67 Atl. 867; Medis *v.* Bentley, 216 Pa. St. 324, 65 Atl. 758; Wessel *v.* Jones, etc., Steel Co., 28 Pa. Super. Ct. 332; Greenan *v.* Eggeling, 30 Pa. Super. Ct. 253; Lavia *v.* Kountz Bros. Co., 31 Pa. Super. Ct. 481.

Texas. — Texarkana Table, etc., Co. *v.* Webb, (Tex. Civ. App. 1905) 86 S. W. 782; Wood *v.* Texas Cotton Product Co., (Tex. Civ. App. 1905) 88 S. W. 496; Rice *v.* Dewberry, (Tex. Civ. App. 1906) 93 S. W. 715; Gulf, etc., R. Co. *v.* Archambault, (Tex. Civ. App. 1906) 94 S. W. 1108; Rice *v.* Dewberry, (Tex. Civ. App. 1906) 95 S. W. 1090; Houston, etc., R. Co. *v.* Rutland, (Tex. Civ. App. 1907) 101 S. W. 529; McCracken *v.* Lantry-Sharpe Contracting Co., (Tex. Civ. App. 1907) 101 S. W. 520.

Vermont. — Sias *v.* Consolidated Lighting Co., 79 Vt. 224, 64 Atl. 1104.

Washington. — Stark *v.* Port Blakely Mill Co., 44 Wash. 309, 87 Pac. 339; Wilkstrom *v.* Preston Mill Co., (Wash. 1908) 93 Pac. 213; Tergeson *v.* Robinson Mfg. Co., (Wash. 1908) 93 Pac. 428.

Wisconsin. — Gussart *v.* Greenleaf Stone Co., (Wis. 1908) 114 N. W. 799; Schmitt *v.* Hamilton Mfg. Co., (Wis. 1908) 115 N. W. 353.

98. 1. Chess, etc., Co. *v.* Gohagan, (Ky. 1907) 105 S. W. 891, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 98.

99. 1. *California.* — Fries *v.* American Lead Pencil Co., 2 Cal. App. 148, 83 Pac. 173.

Georgia. — See Beck *v.* Standard Cotton Mills, 1 Ga. App. 278, 57 S. E. 998.

Illinois. — Siegel *v.* Trcka, 115 Ill. App. 56.

Kentucky. — Avery *v.* Cottrill, (Ky. 1908) 107 S. W. 332.

Maryland. — Chambers *v.* Woodbury Mfg. Co., (Md. 1907) 68 Atl. 290.

Missouri. — Vanesler *v.* Moser Cigar, etc., Co., 108 Mo. App. 621, 84 S. W. 201.

North Carolina. — Rolin *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 300, 53 S. E. 891.

Oregon. — Magone *v.* Portland Mfg. Co., (Oregon 1908) 93 Pac. 450.

South Carolina. — Shirley *v.* Abbeville Furniture Co., 76 S. Car. 452, 57 S. E. 178.

Texas. — Chicago, etc., R. Co. *v.* Connors, (Tex. Civ. App. 1907) 101 S. W. 480.

Virginia. — Virginia Iron, etc., Co. *v.* Tomlinson, 104 Va. 249, 51 S. E. 362.

Washington. — Kirkman *v.* Wheeler-Osgood Co., 39 Wash. 415, 81 Pac. 869; Kirby *v.* Wheeler-Osgood Co., 42 Wash. 610, 85 Pac. 62.

West Virginia. — Bare *v.* Crane Creek Coal, etc., R. Co., 61 W. Va. 28, 55 S. E. 907, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99.

2. Chess, etc., Co. *v.* Gohagan, (Ky. 1907) 105 S. W. 890, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99; Beckwith Organ Co. *v.* Malone, (Ky. 1908) 106 S. W. 809; Parrenin *v.* Crescent City Stockyard, etc., Co., (La. 1907) 44 So. 990; Bolton *v.* Ovitt, (Vt. 1907) 67 Atl. 881; Bare *v.* Crane Creek Coal, etc., Co., 61 W. Va. 28, 55 S. E. 907, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99.

It is a question for the jury whether the operation of an electric freight elevator was an employment dangerous to life and limb within the meaning of the *Michigan* statute prohibiting the employment of children in such work. Braasch *v.* Michigan Stove Co., 147 Mich. 676, 111 N. W. 19.

5. Brammer *v.* Pettyjohn, (Ala. 1907) 45 So. 646; Crown Cotton Mills *v.* McNally, 127 Ga. 404, 56 S. E. 452; Chicago Hardware Co. *v.* Matthews, 124 Ill. App. 89; Nye *v.* Dutton, 187 Mass. 549, 73 N. E. 654; Daniels *v.* New England Cotton Yarn Co., 188 Mass. 260, 74 N. E. 332; Pembroke *v.* Cambridge Electric Light Co., (Mass. 1908) 84 N. E. 331; Mueller *v.* La

Prelle Shoe Co., 109 Mo. App. 506, 84 S. W. 1010; Lynch *v.* Shanley Co., 112 N. Y. App. Div. 305, 98 N. Y. Supp. 406; Carron *v.* Standard Refrigerator Co., 122 N. Y. App. Div. 296, 106 N. Y. Supp. 723; Rogers *v.* Macbeth, (Supm. Ct. App. Div.) 108 N. Y. Supp. 74; La Duke *v.* Hudson River Telephone Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 189.

Where the servant fails to follow the instructions given he cannot recover for injuries received. Thayer *v.* Utica Knitting Co., 183 N. Y. 18, 75 N. E. 577.

100. 2. Washington Mills *v.* Cox, (C. C. A.) 157 Fed. 634.

4. And evidence that other employees had not been warned is inadmissible. Virginia Iron, etc., Co. *v.* Tomlinson, 104 Va. 249, 51 S. E. 362.

5. The burden of proving a failure to instruct the servant seems to be upon the party relying upon such a failure. Carnes *v.* Guelph Patent Cask Co., 141 Mich. 23, 104 N. W. 322.

101. 1. *United States.* — Seaboard Air Line R. Co. *v.* Shanklin, 148 Fed. 342, 78 C. C. A. 334; Nelson *v.* Southern R. Co., (C. C. A.) 158 Fed. 92.

Georgia. — Moore *v.* Dublin Cotton Mills, 127 Ga. 609, 56 S. E. 839.

Illinois. — Illinois Cent. R. Co. *v.* Panebiango, 129 Ill. App. 1, *affirmed* 227 Ill. 170, 81 N. E. 53.

Indiana. — Inland Steel Co. *v.* Smith, (Ind. App. 1905) 75 N. E. 852; Pittsburgh, etc., R. Co. *v.* Nicholas, 165 Ind. 679, 76 N. E. 522; Coal Bluff Min. Co. *v.* Akers, 39 Ind. App. 617, 80 N. E. 545.

Kansas. — Griffin Wheel Co. *v.* Stanton, 70 Kan. 762, 79 Pac. 651.

Massachusetts. — Chambers *v.* Wampanoag Mills, 189 Mass. 529, 75 N. E. 1093.

Minnesota. — Johnson *v.* C. A. Smith Lumber Co., 99 Minn. 343, 109 N. W. 810.

Missouri. — Gaska *v.* American Car, etc., Co., 127 Mo. App. 169, 105 S. W. 3.

New Hampshire. — Smith *v.* Boston, etc., R. Co., 73 N. H. 325, 61 Atl. 359.

New York. — McCoy *v.* New York Cent., etc., R. Co., 185 N. Y. 276, 77 N. E. 1174; Lane *v.* New York Cent. & H. R. R. Co., 107 N. Y. App. Div. 166, 94 N. Y. Supp. 988; Burns *v.* Palmer, 107 N. Y. App. Div. 321, 95 N. Y. Supp. 161; Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 179; Ryan *v.* Delaware, etc., Co., 114 N. Y. App. Div. 268, 99 N. Y. Supp. 794; Van Alstine *v.* Standard Light, etc., Co., 116 N. Y. App. Div. 100, 101 N. Y. Supp. 696; Baldwin *v.* Schenectady R. Co., 118 N. Y. App. Div. 441, 103 N. Y. Supp. 514; Dayton *v.* Brooklyn Heights R. Co., 119 N. Y. App. Div. 32, 103 N. Y. Supp. 867; Durkos *v.* Chelsea Jute Mills, 120 N. Y. App. Div. 561, 105 N. Y. Supp. 183; Johnson *v.* Prince Line, (Supm. Ct. App. Div.) 108 N. Y. Supp. 193.

Oregon. — Lindsay *v.* Grande Ronde Lumber Co., 48 Oregon 430, 87 Pac. 145.

Pennsylvania. — Hickey *v.* Solid Steel Casting Co., 212 Pa. St. 255, 61 Atl. 708.

Texas. — Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29; St. Louis, etc., R. Co. *v.* Ames, (Tex. Civ. App. 1906) 94 S. W. 1112.

Utah. — Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85.

Virginia. — Virginia Iron, etc., Co. *v.* Lore, 104 Va. 217, 51 S. E. 371.

Wisconsin. — Polaski *v.* Pittsburgh Coal Dock Co., (Wis. 1908) 114 N. W. 437.

Construction of Rule Adopted is a question for the court. Denver, etc., R. Co. *v.* Maydole, 33 Colo. 150, 79 Pac. 1023.

The obligation of the master to make rules to secure the safety of the workmen in the performance of the work is a particular of the general rule which requires him to furnish suitable instrumentalities for the work, or, to state the obligation with entire exactness, requires of him personal care to that end. Lord *v.* Boston, etc., R. Co., 74 N. H. 39, 65 Atl. 111.

102. 1. See Louisville, etc., R. Co. *v.* Vincent, 116 Tenn. 317, 95 S. W. 179.

2. St. Louis, etc., R. Co. *v.* Conway, (C. C. A.) 156 Fed. 234; Gaska *v.* American Car, etc., Co., 127 Mo. App. 169, 105 S. W. 3; Kelley *v.* American Locomotive Co., 121 N. Y. App. Div. 81, 105 N. Y. Supp. 583; Wolfinger *v.* Brooklyn Heights R. Co., 121 N. Y. App. Div. 140, 105 N. Y. Supp. 610; Johnson *v.* Prince Line, (Supm. Ct. App. Div.) 108 N. Y. Supp. 193.

The question is not whether the master adopted by its rules the safest plan that could be devised for guarding against accidents, but whether the rules in force were reasonably sufficient, when observed, to protect its servants from accidents. Pearsall *v.* New York, etc., R. Co., 189 N. Y. 474, 82 N. E. 752.

8. Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Blust *v.* Pacific States Telephone Co., 48 Oregon 34, 84 Pac. 847.

9. Northern Alabama R. Co. *v.* Key, (Ala. 1907) 43 So. 794; Anderson *v.* Great Northern R. Co., 102 Minn. 355, 113 N. W. 913; Humphries *v.* Raritan Copper Works, (N. J. 1905) 60 Atl. 62; Baldwin *v.* Schenectady Ry. Co., 118 N. Y. App. Div. 441, 103 N. Y. Supp. 514; Strong *v.* Rutland R. Co., 121 N. Y. App. Div. 391, 106 N. Y. Supp. 85; Caron *v.* Standard Shirt Co., 28 Quebec Super. Ct. 211. But see Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555 (servant must use reasonable care to ascertain rules).

103. 6. St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1904) 82 S. W. 360; San Antonio, etc., R. Co. *v.* Lester, (Tex. Civ. App. 1904) 84 S. W. 401; Murphy *v.* Galveston, etc., R. Co., (Tex. 1907) 101 S. W. 439; Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85.

104. 1. **Reasonable Diligence in Enforcing Rule a Question for Jury.** — Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85.

2. Johnson *v.* Prine Line, 104 N. Y. App. Div. 157, 93 N. Y. Supp. 273.

4. Kenefick-Hammond Co. *v.* Rohr, 77 Ark. 290, 91 S. W. 179; Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555; Louisville, etc., R. Co. *v.* Herndon, (Ky. 1907) 104 S. W. 732; Bussey *v.* Charleston, etc., R. Co., 73 S. Car. 352, 58 S. E. 1016, *quoting* 20 Am. and Eng. Encyc. of Law (2d ed.) 104.

7. Ryan *v.* Delaware, etc., Co., 114 N. Y. App. Div. 268, 99 N. Y. Supp. 794; Dayton *v.*

Brooklyn Heights R. Co., 119 N. Y. App. Div. 32, 103 N. Y. Supp. 867; Choctaw, etc., R. Co. *v.* McLaughlin, (Tex. Civ. App. 1906) 96 S. W. 1091; Polaski *v.* Pittsburgh Coal Dock Co., (Wis. 1908) 114 N. W. 437. But see Keating *v.* Manhattan R. Co., 110 N. Y. App. Div. 108, 97 N. Y. Supp. 137; Kascsak *v.* Central R. Co., 115 N. Y. App. Div. 632, 101 N. Y. Supp. 211.

8. Rosney *v.* Erie R. Co., 135 Fed. 311, 68 C. C. A. 155; Shuster *v.* Philadelphia, etc., R. Co., (Del. 1906) 62 Atl. 689.

Construction of Particular Rule — Rule Relating to Signal as to Presence of Car Repairers under Car. — O'Neill *v.* Lehigh Valley R. Co., (N. J. 1907) 67 Atl. 1019.

105. 2. *United States.* — Baltimore, etc., R. Co. *v.* Doty, (C. C. A.) 133 Fed. 866; The Esperanza, 133 Fed. 1015; Canadian Pac. R. Co. *v.* Elliott, (C. C. A.) 137 Fed. 904; St. Louis, etc., R. Co. *v.* Dewees, 153 Fed. 56, 82 C. C. A. 190; Missouri, etc., R. Co. *v.* Collier, (C. C. A.) 157 Fed. 347.

Alabama. — Huggins *v.* Southern R. Co., 148 Ala. 153, 41 So. 856; Cogbill *v.* Louisville, etc., R. Co., (Ala. 1907) 44 So. 683.

Arkansas. — St. Louis, etc., R. Co. *v.* Caraway, 77 Ark. 405, 91 S. W. 749; Snellen *v.* Kansas City Southern R. Co., 82 Ark. 334, 102 S. W. 193; Central Coal, etc., Co. *v.* Wilson, 83 Ark. 428, 104 S. W. 174; Western Coal, etc., Co. *v.* Burns, 84 Ark. 74, 104 S. W. 535; Dallas Coal Co. *v.* Rotenberry, (Ark. 1908) 107 S. W. 997.

Colorado. — Union Coal, etc., Co. *v.* Sundberg, 36 Colo. 8, 85 Pac. 319; El Paso Gold Min. Co. *v.* Ewing, 36 Colo. 513, 86 Pac. 119; Elkton Consol. Min., etc., Co. *v.* Sullivan, (Colo. 1907) 92 Pac. 679.

Connecticut. — See Gilmore *v.* American Tube, etc., Co., 79 Conn. 498, 66 Atl. 4 (where failure to obey rule operated merely to increase the injuries).

Florida. — Atlantic Coast Line R. Co. *v.* Mallard, (Fla. 1907) 44 So. 366.

Illinois. — Illinois Cent. R. Co. *v.* Braden, 128 Ill. App. 265.

Indiana. — Pittsburgh, etc., R. Co. *v.* Collins, 168 Ind. 467, 80 N. E. 415.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Kentucky. — Howard *v.* Chesapeake, etc., R. Co., (Ky. 1906) 90 S. W. 950.

Louisiana. — Moore *v.* St. Louis, etc., R. Co., 115 La. 86, 38 So. 913.

Maine. — Erickson *v.* Monson Consol. Slate Co., 100 Me. 107, 60 Atl. 708.

Maryland. — Tkac *v.* Maryland Steel Co., 101 Md. 179, 60 Atl. 618.

Minnesota. — Burris *v.* Minneapolis, etc., R. Co., 95 Minn. 30, 103 N. W. 717; Turrittin *v.* Chicago, etc., R. Co., 95 Minn. 408, 104 N. W. 225; Elmgren *v.* Chicago, etc., R. Co., 102 Minn. 41, 112 N. W. 1067.

New York. — Civetti *v.* American Hatters, etc., Corp., (Supm. Ct. App. Div.) 108 N. Y. Supp. 663; Ladiew *v.* Sherwood Metal Working Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 477.

North Carolina. — Holland *v.* Seaboard Air Line R. Co., 137 N. Car. 368, 49 S. E. 359; Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703; Biles *v.* Seaboard Air Line R. Co., 139 N. Car. 528, 52 S. E. 129; Holland *v.* Seaboard Air Line R. Co., 143 N. Car. 435, 55 S. E. 835.

Ohio. — New York, etc., R. Co. *v.* Ropp, 76 Ohio St. 449, 81 N. E. 748; Interurban R., etc., Co. *v.* Treuheit, 29 Ohio Cir. Ct. 407.

South Carolina. — Morrow *v.* Gaffney Mfg. Co., 70 S. Car. 244, 49 S. E. 573; Charping *v.* Toxaway Mills, 70 S. Car. 470, 50 S. E. 186; Quick *v.* Millfort Mill Co., 78 S. Car. 472, 59 S. E. 365.

Texas. — Worcester *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 91 S. W. 339; Yellow Pine Oil Co. *v.* Noble, (Tex. Civ. App. 1906) 97 S. W. 332; Galveston, etc., R. Co. *v.* Quinn, (Tex. Civ. App. 1907) 104 S. W. 397; Hynson *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1907) 107 S. W. 625. But see Southern Pac. Co. *v.* Allen, (Tex. Civ. App. 1907) 106 S. W. 441 (violation of rule held not negligence *per se*); Galveston, etc., R. Co. *v.* Still, (Tex. Civ. App. 1907) 100 S. W. 176.

Utah. — Morrison *v.* San Pedro, etc., Co., (Utah 1907) 88 Pac. 1002, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 105.

Washington. — Brown *v.* Northern Pac. R. Co., 44 Wash. 1, 86 Pac. 1053; Losnes *v.* Leroy, 44 Wash. 416, 87 Pac. 502; Crow *v.* Northern Pac. R. Co., 45 Wash. 605, 88 Pac. 1022.

Wisconsin. — Butteris *v.* Mifflin, etc., Min. Co., (Wis. 1907) 113 N. W. 642.

Evidence of the servant's prior violation of a rule is inadmissible to show that he violated such rule at the time of his injury. Missouri etc., R. Co. *v.* Parrott, (Tex. Civ. App. 1906) 96 S. W. 950.

Excuse for Non-obedience. — Ft. Wayne, etc., Traction Co. *v.* Crosbie, (Ind. 1907) 81 N. E. 474; Maehren *v.* Great Northern R. Co., 98 Minn. 375, 107 N. W. 951; Chicago Union Traction Co. *v.* Sawusch, 119 Ill. App. 349.

Construction of Rule. — Southern R. Co. *v.* Holbrook, 124 Ga. 679, 53 S. E. 203.

106. 1. Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Illinois Cent. R. Co. *v.* Stith, 120 Ky. 237, 85 S. W. 1173; Doe *v.* Boston, etc., St. R. Co., 195 Mass. 168, 80 N. E. 814.

107. 1. *United States.* — Kane *v.* Erie R. Co., 142 Fed. 682, 73 C. C. A. 672.

Arkansas. — St. Louis, etc., R. Co. *v.* Caraway, 77 Ark. 405, 91 S. W. 749.

California. — Jenson *v.* Will, etc., Co., 150 Cal. 398, 89 Pac. 113.

Massachusetts. — Feneff *v.* Boston, etc., R. Co., (Mass. 1907) 82 N. E. 705.

Minnesota. — Anderson *v.* Great Northern R. Co., 102 Minn. 355, 113 N. W. 913.

Missouri. — Brady *v.* Kansas City, etc., R. Co., 206 Mo. 509, 102 S. W. 978.

New York. — McCarthy *v.* Pennsylvania R. Co., 189 N. Y. 170, 81 N. E. 770.

North Carolina. — Biles *v.* Seaboard Air Line R. Co., 139 N. Car. 528, 52 S. E. 129; Biles *v.* Seaboard Air Line Co., 143 N. Car. 78, 55 S. E. 512; Haynes *v.* North Carolina R. Co., 143 N. Car. 154, 55 S. E. 516.

South Carolina. — Bussey *v.* Charleston, etc., R. Co., 78 S. Car. 352, 58 S. E. 1015.

Texas. — International, etc., R. Co. *v.* Jacobs, 37 Tex. Civ. App. 390, 84 S. W. 288; Worcester

v. Galveston, etc., R. Co., (Tex. Civ. App. 1906) 91 S. W. 330; El Paso, etc., R. Co. v. Darr, (Tex. Civ. App. 1906) 93 S. W. 166; Chicago, etc., R. Co. v. Thompson, (Tex. Civ. App. 1906) 93 S. W. 702, *reversed* (Tex. 1906) 97 S. W. 459; Beaumont Traction Co. v. Dilworth, (Tex. Civ. App. 1906) 94 S. W. 352; Texas, etc., R. Co. v. Conway, (Tex. Civ. App. 1906) 98 S. W. 1070.

2. Canadian Pac. R. Co. v. Elliott, (C. C. A.) 137 Fed. 904; Southern R. Co. v. McGowan, (Ala. 1907) 43 So. 378; Himrod Coal Co. v. Clingan, 114 Ill. App. 568; Bussey v. Charleston, etc., R. Co., 78 S. Car. 352, 58 S. E. 1016, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107; Driver v. Southern R. Co., 103 Va. 650, 49 S. E. 1000.

3. Merrill v. Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85.

6. Haynes v. North Carolina R. Co., 143 N. Car. 154, 55 S. E. 516.

108. 3. Bussey v. Charleston, etc., R. Co., 78 S. Car. 352, 58 S. E. 1016, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 108.

4. Quinn v. Galveston, etc., R. Co., (Tex. Civ. App. 1904) 84 S. W. 395.

6. The rules themselves are the best evidence thereof. Barschow v. Lake Shore, etc., R. Co., 147 Mich. 226, 110 N. W. 1057; Chicago, etc., R. Co. v. Lawrence, (Ind. 1907) 82 N. E. 768.

109. 1. But see Fitter v. Iowa Telephone Co., 129 Iowa 610, 106 N. W. 7.

Subsequent Amendment of Rule held inadmissible to show meaning of rule. Quinn v. Galveston, etc., R. Co., (Tex. Civ. App. 1904) 84 S. W. 395.

7. Haynes v. North Carolina R. Co., 143 N. Car. 166, 55 S. E. 516, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 109.

110. 1. *United States.* — Roessler, etc., Chemical Co. v. Peterson, 134 Fed. 789, 67 C. C. A. 295; Southern Pac. R. Co. v. Hetzer, 135 Fed. 272, 68 C. C. A. 26; Deye v. Lodge, etc., Mach. Tool Co., (C. C. A.) 137 Fed. 480; Kinzel v. Atlanta, etc., R. Co., (C. C. A.) 137 Fed. 489; American Bridge Co. v. Bainum, 146 Fed. 367, 76 C. C. A. 633; Bell Telephone Co. v. Detharding, 148 Fed. 371, 78 C. C. A. 185.

Alabama. — Creola Lumber Co. v. Mills, (Ala. 1906) 42 So. 1019.

Illinois. — Schillinger Bros. Co. v. Smith, 225 Ill. 74, 80 N. E. 65; Diamond Glue Co. v. Wietzychowski, 227 Ill. 338, 81 N. E. 392; Illinois Cent. R. Co. v. Fitzpatrick, 227 Ill. 482, 81 N. E. 529, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 109; Illinois Terminal R. Co. v. Thompson, 112 Ill. App. 463; St. Louis Nat. Stockyards v. Morris, 116 Ill. App. 107; Eckhart, etc., Milling Co. v. Schaefer, 118 Ill. App. 21; Pioneer Fire Proofing Co. v. Clifford, 118 Ill. App. 457; Chicago, etc., R. Co. v. Landroth, 123 Ill. App. 656; Lumaghi Coal Co. v. Bartlett, 128 Ill. App. 275; Illinois Steel Co. v. Saylor, 129 Ill. App. 73, *affirmed* 226 Ill. 283, 80 N. E. 783.

Indiana. — Evansville Gas, etc., Co. v. Raley, 38 Ind. App. 342, 76 N. E. 548, 78 N. E. 254; H. Rumely Co. v. Myer, (Ind. App. 1907) 82 N. E. 97; Haskell, etc., Car Co. v. Prezezdziankowski, (Ind. 1908) 83 N. E. 626.

Indian Territory. — Atoka Coal, etc., Co. v. Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Collingwood v. Illinois, etc., Fuel Co., 125 Iowa 537, 101 N. W. 283.

Kentucky. — Illinois Cent. R. Co. v. Mercer, (Ky. 1905) 88 S. W. 1054; De Witt v. Louisville, etc., R. Co., (Ky. 1906) 96 S. W. 1122; Illinois Cent. R. Co. v. Young, (Ky. 1906) 97 S. W. 1115; Mize v. Louisville, etc., R. Co., (Ky. 1907) 105 S. W. 908; Avery v. Lung, (Ky. 1908) 106 S. W. 865.

Maine. — Babb v. Oxford Paper Co., 99 Me. 298, 59 Atl. 290.

Massachusetts. — Wolfe v. New Bedford Cordage Co., 189 Mass. 591, 76 N. E. 222; Sullivan v. New Bedford Gas, etc., Co., 190 Mass. 288, 76 N. E. 1048; McKenna v. Gould Wire Cord Co., (Mass. 1908) 83 N. E. 1113; Fearns v. New York Cent., etc., R. Co., 186 Mass. 529, 72 N. E. 68.

Michigan. — Hathaway v. Washington Milling Co., 139 Mich. 708, 103 N. W. 164; Sommers v. Standard Min. Co., 146 Mich. 111, 109 N. W. 30; Livingstone v. Saginaw Plate Glass Co., 146 Mich. 236, 109 N. W. 431; Gillespie v. Grand Trunk R. Co., 150 Mich. 303, 113 N. W. 1116.

Minnesota. — Hjelm v. Western Granite Contracting Co., 98 Minn. 222, 108 N. W. 803.

Missouri. — Lee v. St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12; Zeigenmeyer v. Charles Goetz Lime, etc., Co., 113 Mo. App. 330, 88 S. W. 139 (blasting); Blundell v. William A. Miller Elevator Mfg. Co., 189 Mo. 552, 88 S. W. 103; Lee v. St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12; Meehan v. St. Louis, etc., R. Co., 114 Mo. App. 396, 90 S. W. 102; Rigsby v. Oil Well Supply Co., 115 Mo. App. 297, 91 S. W. 460; Kennedy v. Kansas City, etc., R. Co., 190 Mo. 424, 89 S. W. 370; Charlton v. St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; Harrod v. Hammond Packing Co., 125 Mo. App. 357, 102 S. W. 637; Chrismer v. Bell Telephone Co., 194 Mo. 189, 92 S. W. 378.

New Hampshire. — Murphy v. Grand Trunk R. Co., 73 N. H. 18, 58 Atl. 835; Gaudette v. Boston, etc., R. Co., (N. H. 1906) 64 Atl. 667.

New York. — Hempstock v. Lackawanna Iron, etc., Co., 98 N. Y. App. Div. 332, 90 N. Y. Supp. 663; Smith v. Manhattan R. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 393, 95 N. Y. Supp. 529; O'Neil v. Karr, 110 N. Y. App. Div. 571, 97 N. Y. Supp. 148; Moran v. Mulligan, 110 N. Y. App. Div. 208, 97 N. Y. Supp. 7; Clark v. New York Cent., etc., R. Co., 115 N. Y. App. Div. 813, 101 N. Y. Supp. 96; Willis v. Thompson Starrett Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 238, 104 N. Y. Supp. 668; Ootolano v. Degnon Contracting Co., 120 N. Y. App. Div. 59, 104 N. Y. Supp. 1064; Logerto v. Central Bldg. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 604; Best v. New York Cent., etc., R. Co., 117 N. Y. App. Div. 739, 102 N. Y. Supp. 957.

North Carolina. — Sibbert v. Scotland Cotton Mills, 145 N. Car. 308, 59 S. E. 79.

Ohio. — Marshka v. Republic Iron, etc., Co., 27 Ohio Cir. Ct. 721; W. J. Gawne Co. v. Fry, 28 Ohio Cir. Ct. 16; Zarembski v. Cincinnati, etc., R. Co., 29 Ohio Cir. Ct. 644, *affirmed* 73 Ohio St. 337, 78 N. E. 1143; Isley v. Wabash R. Co., 27 Ohio Cir. Ct. 785.

Pennsylvania. — Danisch v. Amer, 214 Pa.

St. 105, 63 Atl. 416; Zeilmann *v.* McCullough, 214 Pa. St. 27, 63 Atl. 368; Welch *v.* Carlucci Stone Co., 215 Pa. St. 34, 64 Atl. 392; Bowen *v.* Pennsylvania R. Co., 219 Pa. St. 405, 68 Atl. 963; Esher *v.* Mineral R., etc., Co., 28 Pa. Super. Ct. 387.

South Carolina. — Charping *v.* Toxaway Mills, 70 S. Car. 470, 50 S. E. 186; Martin *v.* Royster Guano Co., 72 S. Car. 237, 51 S. E. 680; Dawkins *v.* Keystone Granite Co., 74 S. Car. 419, 54 S. E. 604; Lyon *v.* Charleston, etc., R. Co., 77 S. Car. 328, 58 S. E. 12; Pagan *v.* Southern R. Co., 78 S. Car. 413, 59 S. E. 32.

Texas. — International, etc., R. Co. *v.* Figures, (Tex. Civ. App. 1905) 89 S. W. 780; Houston, etc., R. Co. *v.* Helm, (Tex. Civ. App. 1906) 93 S. W. 697; Coley *v.* Kansas City Southern R. Co., (Tex. Civ. App. 1906) 95 S. W. 96; Armour *v.* Dumas, (Tex. Civ. App. 1906) 95 S. W. 710; Reeves *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 929; Chicago, etc., R. Co. *v.* Birk, (Tex. Civ. App. 1907) 99 S. W. 753; St. Louis Southwestern R. Co. *v.* Brisco, (Tex. 1907) 99 S. W. 1020; Suderman *v.* Woodruff, (Tex. Civ. App. 1907) 105 S. W. 217; Thompson *v.* Planters' Compress Co., (Tex. Civ. App. 1907) 106 S. W. 470; International, etc., R. Co. *v.* Rieden, (Tex. Civ. App. 1908) 107 S. W. 661; Texas, etc., R. Co. *v.* Davidson, (Tex. Civ. App. 1908) 107 S. W. 949.

Vermont. — Robinson *v.* St. Johnsbury, etc., R. Co., 80 Vt. 129, 66 Atl. 814.

Virginia. — Truckers' Mfg., etc., Co. *v.* White, (Va. 1908) 60 S. E. 630.

West Virginia. — Richards *v.* Riverside Iron Works, 56 W. Va. 510, 49 S. E. 437; Fulton *v.* Crosby, etc., Co., 57 W. Va. 91, 49 S. E. ;

Wisconsin. — Walaszewski *v.* Schoknecht, 127 Wis. 376, 106 N. W. 1070 (destroying building); Ives *v.* Wisconsin Cent. R. Co., 128 Wis. 357, 107 N. W. 452; Vaundry *v.* Chicago, etc., R. Co., 130 Wis. 233, 109 N. W. 926.

Defense of Assumption of Risk rests on contract. Choctaw, etc., R. Co. *v.* Jones, 77 Ark. 367, 92 S. W. 244; Consolidated Barb Wire Co. *v.* Maxwell, 116 Ill. App. 296.

Application of Rule to Minor. — Moss *v.* Mosley, (Ala. 1906) 41 So. 1012; Decatur Car Wheel, etc., Co. *v.* Terry, (Ala. 1906) 41 So. 839; King *v.* Woodstock Iron Co., 143 Ala. 632, 42 So. 27.

A minor as a servant or employee assumes the risk of all dangers, incident to the work or business in which he is engaged, that are known to and fully appreciated by him. Laverty *v.* Hambrick, 61 W. Va. 687, 57 S. E. 240.

Application of Rule to Convict Laborer. — Simonds *v.* Georgia Iron, etc., Co., 133 Fed. 776, *affirmed* 133 Fed. 1019.

Statutory Abolition of Defense of Assumption of Risk. — Hemphill *v.* Buck Creek Lumber Co., 141 N. Car. 487, 54 S. E. 420; Biles *v.* Seaboard Air Line R. Co., 143 N. Car. 78, 55 S. E. 512; Chicago G. W. R. Co. *v.* Crotty, 141 Fed. 913, 73 C. C. A. 147.

Distinction Between Defense of Assumption of Risk and of Contributory Negligence. — Crookston Lumber Co. *v.* Boutin, (C. C. A.) 149 Fed. 680; El Paso, etc., R. Co. *v.* Foth, (Tex. Civ. App. 1907) 100 S. W. 171; Houston, etc., R. Co. *v.* McHale, (Tex. Civ. App. 1907) 105 S. W. 1149; Southern Pac. Co. *v.* Allen, (Tex. Civ. App. 1907) 106 S. W. 441; St. Louis, etc., R. Co. *v.* Mathis, (Tex. 1908) 107 S. W. 530; Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077. See also Chicago G. W. R. Co. *v.* Crotty, (C. C. A.) 141 Fed. 913.

111. 1. Sudden Jerks and Movements. — Yates *v.* Miller's Creek Constr. Co., (Ky. 1905) 89 S. W. 241.

112. 1. *United States.* — Southern Pac. Co. *v.* Gloyd, (C. C. A.) 138 Fed. 388; Southern R. Co. *v.* Logan, (C. C. A.) 138 Fed. 725, American Tin Plate Co. *v.* Smith, (C. C. A.) 143 Fed. 281; Norfolk, etc., R. Co. *v.* Gesswine, (C. C. A.) 144 Fed. 56; Wade *v.* John Thomson Press Co., 144 Fed. 305.

Colorado. — Denver, etc., R. Co. *v.* Sporleder, 39 Colo. 142, 89 Pac. 55; Maloney *v.* Florence, etc., R. Co., 39 Colo. 384, 89 Pac. 649.

Delaware. — Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369.

Illinois. — Montgomery Coal Co. *v.* Barringer, 218 Ill. 327, 75 N. E. 900; Kath *v.* East St. Louis, etc., R. Co., 232 Ill. 126, 83 N. E. 533; Chicago City R. Co. *v.* Enroth, 113 Ill. App. 285; St. Louis Nat. Stock Yards *v.* Morris, 116 Ill. App. 107; Simpson *v.* Weir, etc., Mfg. Co., 116 Ill. App. 286; Utica Hydraulic Cement Co. *v.* Whalen, 117 Ill. App. 23; Velzandt *v.* Friedman Mfg. Co., 118 Ill. App. 339; Wisenger *v.* Donk Bros. Coal, etc., Co., 119 Ill. App. 298; International Packing Co. *v.* Kretowicz, 119 Ill. App. 488; Chicago Union Traction Co. *v.* Theorell, 120 Ill. App. 490; City Water Works *v.* Lane, 122 Ill. App. 427; Chicago Hardware Co. *v.* Matthews, 124 Ill. App. 89; Western Union Tel. Co. *v.* Gilleran, 126 Ill. App. 429; St. Clair, etc., Belt R. Co. *v.* Henckell, 127 Ill. App. 54; Valentine *v.* Chicago City R. Co., 127 Ill. App. 436; Riley *v.* American Steel, etc., Co., 129 Ill. App. 123; American Bridge Co. *v.* Bialk, 129 Ill. App. 202.

Indiana. — Robertson *v.* Ford, 164 Ind. 538, 74 N. E. 1; Sandusky Portland Cement Co. *v.* Rice, (Ind. App. 1907) 82 N. E. 1007.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Sutton *v.* Des Moines Bakery Co., (Iowa 1907) 112 N. W. 836.

Kentucky. — Bates-Rogers Constr. Co. *v.* Dunn, 93 S. W. 1032, 29 Ky. L. Rep. 428; Toler *v.* Swan-Day Lumber Co., (Ky. 1907) 99 S. W. 625.

Louisiana. — Welton *v.* Genesee Lumber Co., 114 La. 842, 38 So. 580; Harris *v.* Tremont Lumber Co., 115 La. 973, 40 So. 374.

Maine. — Erickson *v.* Monson Consol. Slate Co., 100 Me. 107, 60 Atl. 708; Bryant *v.* Great Northern Paper Co., (Me. 1907) 68 Atl. 379.

Massachusetts. — Meehan *v.* Holyoke St. R. Co., 186 Mass. 511, 72 N. E. 61; Chisholm *v.* Donovan, 188 Mass. 378, 74 N. E. 652; Duffy *v.* New York, etc., R. Co., 192 Mass. 28, 77 N. E. 1031; Sampson *v.* Holbrook, 192 Mass. 121, 78 N. E. 127; Lennon *v.* Goodrich, 192 Mass. 293, 78 N. E. 421; Loynes *v.* Loring B. Hall Co., 194 Mass. 221, 80 N. E. 472.

Michigan. — Breeze *v.* MacKinnon Mfg. Co., 140 Mich. 372, 103 N. W. 908; Carnes *v.*

Guelph Patent Cask Co., 141 Mich. 23, 104 N. W. 322, 12 Detroit Leg. N. 331; Martin *v.* Detroit Lumber Co., 141 Mich. 363, 104 N. W. 692; Page *v.* Battle Creek Pure Food Co., 142 Mich. 17, 105 N. W. 72; Wilson *v.* Lake Shore, etc., R. Co., 145 Mich. 509, 108 N. W. 1021; Schneider *v.* Wolverine Portland Cement Co., 146 Mich. 87, 108 N. W. 1113; Walters *v.* Wolverine Portland Cement Co., 148 Mich. 315, 112 N. W. 113.

Minnesota. — Hagglund *v.* St. Hilaire Lumber Co., 97 Minn. 94, 106 N. W. 91; Thorne *v.* Minneapolis General Electric Co., 97 Minn. 329, 106 N. W. 253; Mattsen *v.* Chicago, etc., R. Co., (Minn. 1908) 114 N. W. 759.

Missouri. — Smith *v.* Hammond Packing Co., 111 Mo. App. 13, 85 S. W. 625; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 396, 87 S. W. 12, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 112; Rigsby *v.* Oil Well Supply Co., 115 Mo. App. 297, 91 S. W. 460; Smith *v.* Kansas City, 125 Mo. App. 150, 101 S. W. 1118; Brady *v.* Kansas City, etc., R. Co., 206 Mo. 509, 102 S. W. 978.

Nebraska. — Anderson *v.* Union Stock Yards Co., (Neb. 1906) 109 N. W. 171; Holmes *v.* Chicago, etc., R. Co., 73 Neb. 489, 103 N. W. 77.

New Hampshire. — Sirois *v.* Henry, 73 N. H. 148, 59 Atl. 936.

New Jersey. — Precodnick *v.* Lehigh Valley R. Co., (N. J. 1907) 65 Atl. 1047; McConnell *v.* Alpha Portland Cement Co., (N. J. 1907) 67 Atl. 346; Ball *v.* Ransome Concrete Machinery Co., (N. J. 1907) 68 Atl. 104.

New York. — Dillon *v.* National Coal Tar Co., 181 N. Y. 215, 73 N. E. 978; Mullins *v.* Manhattan Brass Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 138, 93 N. Y. Supp. 635; Weizinger *v.* Erie R. Co., 106 N. Y. App. Div. 411, 94 N. Y. Supp. 869; Laffan *v.* Metropolitan St. R. Co., 108 N. Y. App. Div. 288, 95 N. Y. Supp. 705; Rooney *v.* Borgan Constr. Co., 113 N. Y. App. Div. 813, 99 N. Y. Supp. 939; Roche *v.* India Rubber, etc., Insulating Co., 115 N. Y. App. Div. 582, 100 N. Y. Supp. 1009; Krug *v.* American Sugar Refining Co., 120 N. Y. App. Div. 537, 104 N. Y. Supp. 1072; Rockstrow *v.* Astoria Marble Co., 121 N. Y. App. Div. 144, 105 N. Y. Supp. 501; James *v.* Cranford, (Supm. Ct. App. Div.) 108 N. Y. Supp. 142; Ware *v.* Ithaca St. R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 426.

Oregon. — Mundhenke *v.* Oregon City Mfg. Co., 47 Oregon 127, 81 Pac. 977.

Pennsylvania. — Meixner *v.* Philadelphia Brewing Co., 210 Pa. St. 597, 60 Atl. 259.

South Carolina. — See Morrow *v.* Gaffney Mfg. Co., 70 S. Car. 242, 49 S. E. 573.

Texas. — Hightower *v.* Gray, 36 Tex. Civ. App. 674, 83 S. W. 254; St. Louis Southwestern R. Co. *v.* Rea, 99 Tex. 58, 87 S. W. 324; St. Louis Southwestern R. Co. *v.* Demsey, (Tex. Civ. App. 1905) 89 S. W. 786; Beaumont Traction Co. *v.* Dilworth, (Tex. Civ. App. 1906) 94 S. W. 352.

Utah. — Grandin *v.* Southern Pac. Co., 30 Utah 360, 85 Pac. 357.

Vermont. — Hatch *v.* Reynolds, (Vt. 1907) 67 Atl. 816.

Washington. — Beltz *v.* American Mill Co., 37 Wash. 399, 79 Pac. 981; Smith *v.* Hecla Min. Co., 38 Wash. 454, 80 Pac. 779; Tham *v.* J. T. Steeb Shipping Co., 39 Wash. 271, 81 Pac. 711; Anderson *v.* Columbia Imp. Co., 41 Wash. 83, 82 Pac. 1037; Imhoof *v.* Northwestern Lumber Co., 43 Wash. 387, 86 Pac. 650; Raven *v.* Seattle Electric Co., (Wash. 1907) 92 Pac. 451.

Wisconsin. — Corrigan *v.* West Div. Steam ship Co., (Wis. 1907) 113 N. W. 441; Schmitt *v.* Hamilton Mfg. Co., (Wis. 1908) 115 N. W. 353.

Minor Servants assume the risk of dangers obvious to them. Bender *v.* New York Glucose Co., 72 N. J. L. 218, 61 Atl. 388; Cohen *v.* Hamblin-Russell Mfg. Co., 186 Mass. 544, 71 N. E. 948 (rule applied to child fourteen years of age).

Failure to Supply Sufficient Servants for the Work. — White *v.* Owosso Sugar Co., 149 Mich. 473, 112 N. W. 1125.

115. 1. *United States.* — Riley *v.* Louisville, etc., R. Co., (C. C. A.) 133 Fed. 904; Hull *v.* Northern Pac. R. Co., 136 Fed. 153, 69 C. C. A.) 151; Haggerty *v.* Chicago, etc., R. Co., 141 Fed. 966, 73 C. C. A. 282; Southern R. Co. *v.* Carr, 153 Fed. 106, 82 C. C. A. 240; Burke *v.* Union Coal, etc., Co., (C. C. A.) 157 Fed. 178.

Alabama. — Herren *v.* Tuscaloosa Waterworks Co., (Ala. 1905) 40 So. 55.

Arkansas. — Choctaw, etc., R. Co. *v.* Thompson, 82 Ark. 11, 100 S. W. 83 (unblocked railway frogs).

Colorado. — Dickson *v.* Newhouse, 34 Colo. 228, 82 Pac. 537.

Georgia. — Central of Georgia R. Co. *v.* Price, 121 Ga. 651, 49 S. E. 683; Van Dyke *v.* Menlo Fruit Co., 129 Ga. 532, 59 S. E. 215.

Illinois. — Schillinger Bros. Co. *v.* Smith, 225 Ill. 74, 80 N. E. 65; Mobile, etc., R. Co. *v.* Vallowe, 214 Ill. 124, 73 N. E. 416; Republic Iron, etc., Co. *v.* Lee, 227 Ill. 246, 81 N. E. 411; Alton Roller Milling Co. *v.* Bender, 112 Ill. App. 484; Crown Coal, etc., Co. *v.* Koenig, 119 Ill. App. 192; Chicago, etc., R. Co. *v.* Walker, 127 Ill. App. 212.

Indiana. — Indianapolis *v.* Cauley, 164 Ind. 304, 73 N. E. 691; Atchison, etc., R. Co. *v.* Dickens, (Indian Ter. 1907) 103 S. W. 750.

Indian Territory. — Choctaw, etc., R. Co. *v.* O'Nesky, 6 Indian Ter. 180, 90 S. W. 300.

Iowa. — Brooks *v.* W. T. Joyce Co., 127 Iowa 266, 103 N. W. 91.

Kentucky. — Carey *v.* Samuels, (Ky. 1905) 88 S. W. 1052 (insufficient light); Big Hill Coal Co. *v.* Abney, (Ky. 1907) 101 S. W. 394; Tanner *v.* W. A. Wickliffe Coal Co., (Ky. 1908) 108 S. W. 351.

Maine. — Bryant *v.* Great Northern Paper Co., 100 Me. 171, 60 Atl. 797.

Maryland. — Gans Salvage Co. *v.* Byrnes, 102 Md. 248, 62 Atl. 155, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 114 (salvaging in building destroyed by fire).

Massachusetts. — McDonald *v.* Dutton, 190 Mass. 391, 76 N. E. 1055; McCafferty *v.* Lewando's French Dyeing, etc., Co., 194 Mass. 412, 80 N. E. 460; Carroll *v.* Boston Coal Co., (Mass. 1907) 81 N. E. 296; Bradley *v.* Cen-

tral Vermont R. Co., (Mass. 1907) 82 N. E. 44 (obstruction near railway track).

Michigan. — Sheon *v.* Kerr-Murray Mfg. Co., 146 Mich. 99, 109 N. W. 40; Hodgson *v.* Michigan Cent. R. Co., 146 Mich. 627, 109 N. W. 1125; Hertel *v.* Safety Folding Bed Co., 149 Mich. 223, 112 N. W. 712; Ritzema *v.* Valley City Brick Co., (Mich. 1908) 115 N. W. 705.

Missouri. — Henson *v.* Armour Packing Co., 113 Mo. App. 618, 88 S. W. 166; Knorpp *v.* Wagner, 195 Mo. 637, 93 S. W. 961; Berry *v.* Kansas City, (Mo. App. 1908) 107 S. W. 415.

New Hampshire. — Bennett *v.* Concord Woodworking Co., (N. H. 1907) 68 Atl. 460.

New Jersey. — Riddle *v.* Alpha Portland Cement Co., 73 N. J. L. 594, 64 Atl. 1065; Hardy *v.* Sulphur Min. Co., (N. J. 1907) 67 Atl. 178, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 114; Laragy *v.* East Jersey Pipe Co., (N. J. 1908) 68 Atl. 1073.

New York. — Finn *v.* Ironclad Mfg. Co., (Supm. Ct. App. Div.) 90 N. Y. Supp. 887.

Oregon. — Westman *v.* Wind River Lumber Co., (Oregon 1907) 91 Pac. 478.

Pennsylvania. — Lindberg *v.* National Tube Co., 213 Pa. St. 545, 62 Atl. 985; Taylor *v.* Penn Steel Casting, etc., Co., 217 Pa. St. 269, 66 Atl. 353.

Rhode Island. — McLaughlin *v.* Atlantic Mills, 27 R. I. 158, 61 Atl. 42.

Tennessee. — Acme Box Co. *v.* Gregory, (Tenn. 1907) 105 S. W. 350.

Texas. — International, etc., R. Co. *v.* Royal, 37 Tex. Civ. App. 261, 83 S. W. 713.

Utah. — Dunn *v.* Oregon Short Line R. Co., 28 Utah 478, 80 Pac. 311.

Virginia. — Cranes Nest Coal, etc., Co. *v.* Mace, 105 Va. 624, 54 S. E. 479.

Washington. — Krickeberg *v.* St. Paul, etc., Lumber Co., 37 Wash. 63, 79 Pac. 492.

West Virginia. — Purkey *v.* Southern Coal, etc., Co., 57 W. Va. 595, 50 S. E. 755; Laverty *v.* Hambrick, 61 W. Va. 687, 57 S. E. 240.

Wisconsin. — Yess *v.* Chicago Brass Co., 124 Wis. 406, 102 N. W. 932; Faber *v.* Reiss Coal Co., 124 Wis. 554, 102 N. W. 1049; Zentner *v.* Oshkosh Gaslight Co., (Wis. 1907) 112 N. W. 449.

A promise by the master to remove a servant to a safer place of employment, if he will continue at the place of employment complained of for a short period of time, does not relieve the servant of the application of the doctrine of assumed risk. U. S. Sugar Refinery *v.* Welcher, 123 Ill. App. 374.

Obstructions Near Track. — McLeod *v.* New York, etc., R. Co., 191 Mass. 389, 77 N. E. 715.

Caving in of Earth in Making Excavation. — Hightower *v.* Gray, 36 Tex. Civ. App. 674, 83 S. W. 254.

117. 1. *United States.* — Cincinnati, etc., R. Co. *v.* Robertson, (C. C. A.) 139 Fed. 519; Chicago, etc., R. Co. *v.* Griffin, (C. C. A.) 157 Fed. 912.

Alabama. — Southern R. Co. *v.* McGowan, (Ala. 1907) 43 So. 378.

Arkansas. — Marshall *v.* St. Louis, etc., R. Co., 78 Ark. 213, 94 S. W. 56.

California. — Limberg *v.* Glenwood Lumber Co., 145 Cal. 255, 78 Pac. 728.

Colorado. — Denver, etc., R. Co. *v.* Scott, 34 Colo. 99, 81 Pac. 763.

District of Columbia. — Butler *v.* Frazee, 25 App. Cas. (D. C.) 392.

Florida. — Atlantic Coast Line R. Co. *v.* Ryland, 50 Fla. 190, 40 So. 24.

Georgia. — Wilder *v.* Miller, 128 Ga. 139, 57 S. E. 309.

Illinois. — McCormick Harvesting Mach. Co. *v.* Zakzewski, 220 Ill. 522, 77 N. E. 147; Christiansen *v.* William Graver Tank Works, 223 Ill. 142, 79 N. E. 97, *affirming* 126 Ill. App. 86; U. S. Wind Engine, etc., Co. *v.* Butcher, 223 Ill. 638, 79 N. E. 304, *affirming* 126 Ill. App. 302; Elgin, etc., R. Co. *v.* Myers, 226 Ill. 358, 80 N. E. 897; Ward *v.* Daniels, 114 Ill. App. 374; Mobile, etc., R. Co. *v.* Beasley, 119 Ill. App. 18; Manufacturers' Fuel Co. *v.* White, 122 Ill. App. 527 (vicious mule).

Indiana. — Cincinnati, etc., R. Co. *v.* Phinney, 38 Ind. App. 546, 77 N. E. 296.

Iowa. — Foster *v.* Chicago, etc., R. Co., 127 Iowa 84, 102 N. W. 422.

Kansas. — Creamery Package Mfg. Co. *v.* Daniels, 72 Kan. 420, 83 Pac. 986, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 117; Gillaspie *v.* United Iron Works Co., (Kan. 1907) 90 Pac. 760.

Kentucky. — Duncan *v.* Gernert Bros. Lumber Co., 87 S. W. 762, 27 Ky. L. Rep. 1039 (ladder too short); Brents *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 961; Louisville, etc., R. Co. *v.* Stanfill, (Ky. 1908) 107 S. W. 721.

Massachusetts. — Saxe *v.* Walworth Mfg. Co., 191 Mass. 338, 77 N. E. 883; Mutter *v.* Lawrence Mfg. Co., (Mass. 1907) 81 N. E. 263; McDonald *v.* Lovell, (Mass. 1907) 82 N. E. 955.

Michigan. — Minnie *v.* Mueller, 140 Mich. 3, 103 N. W. 524; Erickson *v.* Cummer Mfg. Co., 140 Mich. 434, 103 N. W. 828; Goga *v.* American Car, etc., Co., 142 Mich. 340, 105 N. W. 859; Mayer *v.* Detroit, etc., R. Co., 142 Mich. 459, 105 N. W. 888; Eligh *v.* Goldie, 143 Mich. 596, 107 N. W. 316.

Missouri. — Hollingsworth *v.* National Biscuit Co., 114 Mo. App. 20, 88 S. W. 1118; Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158; Rahm *v.* Chicago, etc., R. Co., (Mo. App. 1908) 108 S. W. 570.

Montana. — Coulter *v.* Union Laundry Co., 34 Mont. 590, 87 Pac. 973.

New Hampshire. — Shaw *v.* Manchester St. R. Co., 73 N. H. 65, 58 Atl. 1073; Hicks *v.* Claremont Paper Co., 74 N. H. 154, 65 Atl. 1075; Roy *v.* Hodge, 74 N. H. 190, 66 Atl. 123.

New York. — Cunningham *v.* Pierce, 112 N. Y. App. Div. 65, 98 N. Y. Supp. 60 (wheelbarrow); Kellogg *v.* New York Edison Co., 120 N. Y. App. Div. 410, 105 N. Y. Supp. 398.

North Carolina. — Pressly *v.* Dover Yarn Mills, 138 N. Car. 410, 51 S. E. 69. But see Boney *v.* Atlantic, etc., R. Co., 145 N. Car. 248, 58 S. E. 1082 (statute).

Rhode Island. — Sheridan *v.* Gorham Mfg. Co., 28 R. I. 256, 66 Atl. 576.

South Carolina. — Wofford *v.* Clinton Cotton Mills, 72 S. Car. 346, 51 S. E. 918; Bryant

v. Gaffney Mfg. Co., 75 S. Car. 487, 56 S. E. 9.

Texas. — Galveston, etc., R. Co. *v.* Perry, 36 Tex. Civ. App. 414, 82 S. W. 343; Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1904) 82 S. W. 787; Klutts *v.* Gibson, 37 Tex. Civ. App. 216, 83 S. W. 404; Gulf, etc., R. Co. *v.* Smith, 37 Tex. Civ. App. 188, 83 S. W. 719; San Antonio Sewer Pipe Co. *v.* Noll, 37 Tex. Civ. App. 269, 83 S. W. 900; Ft. Worth, etc., R. Co. *v.* Robinson, 37 Tex. Civ. App. 465, 84 S. W. 410; Smith *v.* Armour, 37 Tex. Civ. App. 633, 84 S. W. 675; San Antonio, etc., R. Co. *v.* Drake, (Tex. Civ. App. 1905) 85 S. W. 447; Texas, etc., R. Co. *v.* Hemphill, (Tex. Civ. App. 1905) 86 S. W. 350; Price *v.* Consumers' Cotton Oil Co., (Tex. Civ. App. 1905) 90 S. W. 717; Missouri, etc., R. Co. *v.* Hanson, (Tex. Civ. App. 1905) 90 S. W. 1122; Ramm *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 92 S. W. 426; Trinity, etc., R. Co. *v.* Perdue, (Tex. Civ. App. 1907) 101 S. W. 485; Day *v.* Houston, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 1044; International, etc., R. Co. *v.* Hall, (Tex. Civ. App. 1907) 102 S. W. 740; Kirby Lumber Co. *v.* Poindexter, (Tex. Civ. App. 1907) 103 S. W. 439; Thompson *v.* Planters' Compress Co., (Tex. Civ. App. 1907) 106 S. W. 470; Currie *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 1149.

Utah. — Richards *v.* Ogden Steam Laundry, (Utah 1907) 91 Pac. 267.

Vermont. — Johnson *v.* Boston, etc., R. Co., 78 Vt. 344, 62 Atl. 1021.

Washington. — Woods *v.* Northern Pac. R. Co., 36 Wash. 658, 79 Pac. 309.

Wisconsin. — Yunkes *v.* Racine-Sattley Co., (Wis. 1908) 115 N. W. 348.

Complaint by Servant. — This is true, though the servant had complained of the defective machinery, if the master made no promise to repair. Gainer *v.* Southern R. Co., (Ala. 1907) 44 So. 652; Talbot *v.* Sims, 213 Pa. St. 1, 62 Atl. 107.

118. 1. *United States.* — Britton *v.* Central Union Telephone Co., 131 Fed. 844, 65 C. C. A. 598; Nelson *v.* Southern R. Co., (C. C. A.) 158 Fed. 92.

Illinois. — Chicago, etc., R. Co. *v.* Walker, 127 Ill. App. 212.

Iowa. — Arenschield *v.* Chicago, etc., R. Co., 128 Iowa 677, 105 N. W. 200.

Kentucky. — Kirby *v.* Hillside Coal Co., (Ky. 1907) 106 S. W. 278.

Michigan. — Williams *v.* Verona Min. Co., 149 Mich. 45, 112 N. W. 496.

Missouri. — Knorpp *v.* Wagner, 195 Mo. 637, 93 S. W. 961; Chandler *v.* St. Louis, etc., R. Co., 127 Mo. App. 34, 106 S. W. 553. But see McGuire *v.* Quincy, etc., R. Co., 128 Mo. App. 677, 107 S. W. 411.

New York. — Tydeman *v.* Prince Line, 102 N. Y. App. Div. 279, 92 N. Y. Supp. 446; Lane *v.* New York Cent., etc., R. Co., 107 N. Y. App. Div. 166, 94 N. Y. Supp. 988; McLaughlin *v.* Manhattan R. Co., 111 N. Y. App. Div. 254, 97 N. Y. Supp. 719.

Ohio. — Green *v.* New York, etc., R. Co., 26 Ohio Cir. Ct. 609.

Oregon. — Blust *v.* Pacific States Telephone Co., 48 Oregon 34, 84 Pac. 847.

Texas. — Quinn *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1904) 84 S. W. 395; St. Louis Southwestern R. Co. *v.* Rea, (Tex. Civ. App. 1904) 84 S. W. 428; Gulf, etc., R. Co. *v.* Huyett, 99 Tex. 631, 92 S. W. 454; St. Louis Southwestern R. Co. *v.* Brisco, (Tex. Civ. App. 1907) 100 S. W. 989.

It is otherwise if the servant had no knowledge of the negligent methods of work. Galveston, etc., R. Co. *v.* Berry, (Tex. Civ. App. 1907) 105 S. W. 1019.

When an employer carries on his business in a manner unnecessarily dangerous to his workmen, it is his duty to take correspondingly proper precautions to protect them against such increased risks. The workman does not waive his right to such protection by entering the service. Roff *v.* Summit Lumber Co., 119 La. 571, 44 So. 302.

119. 2. Florence, etc., R. Co. *v.* Whipps, (C. C. A.) 138 Fed. 13; Graboski *v.* New Castle Leather Co., (Del. 1906) 64 Atl. 74; Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148; Griffith *v.* Lexington Terminal R. Co., 124 Ga. 553, 53 S. E. 97; Jennings *v.* Ingle, 35 Ind. App. 153, 73 N. E. 945; Bedford Quarries Co. *v.* Turner, (Ind. App. 1905) 75 N. E. 25; Lindsey *v.* Hollerbach, etc., Contract Co., (Ky. 1906) 92 S. W. 294; Gibson *v.* Freygang, 112 Mo. App. 594, 87 S. W. 3; Biggers *v.* Catawba Power Co., 72 S. Car. 264, 51 S. E. 882.

120. 2. *United States.* — American Car, etc., Co. *v.* Brinkman, 146 Fed. 712, 77 C. C. A. 138; Chicago G. W. R. Co. *v.* Crotty, (C. C. A.) 141 Fed. 913.

Alabama. — Moss *v.* Mosley, (Ala. 1906) 41 So. 1012.

Arkansas. — Southern Cotton Oil Co. *v.* Spotts, 77 Ark. 458, 92 S. W. 249; Western Coal, etc., Co. *v.* Burns, 84 Ark. 74, 104 S. W. 535.

Illinois. — Henrietta Coal Co. *v.* Campbell, 211 Ill. 216, 71 N. E. 863; Consolidated Coal Co. *v.* Shepherd, 220 Ill. 123, 77 N. E. 133, *affirming* 122 Ill. App. 323; North Chicago St. R. Co. *v.* Aufmann, 221 Ill. 614, 77 N. E. 1120; Springfield Boiler, etc., Co. *v.* Parks, 222 Ill. 355, 78 N. E. 809; Chicago, etc., R. Co. *v.* Rathneau, 225 Ill. 278, 80 N. E. 119, *affirming* 124 Ill. App. 427; Illinois Cent. R. Co. *v.* Panebiango, 227 Ill. 170, 81 N. E. 53, *affirming* 129 Ill. App. 1; Hinchliff *v.* Robinson, 118 Ill. App. 450; Kraft *v.* Neunkirchen, 119 Ill. App. 369; American Brake Shoe, etc., Co. *v.* Jankus, 121 Ill. App. 267; Dalton *v.* Ogden Gas Co., 126 Ill. App. 502; American Brake Shoe, etc., Co. *v.* Hank, 129 Ill. App. 188. See also Linderman Box, etc., Co. *v.* Thompson, 127 Ill. App. 134; American Bridge Co. *v.* Bialk, 129 Ill. App. 202.

Indiana. — Perry-Matthews-Buskirk Stone Co. *v.* Speer, (Ind. App. 1905) 73 N. E. 933; Cleveland, etc., R. Co. *v.* Patterson, 37 Ind. App. 617, 75 N. E. 857.

Iowa. — Meier *v.* Way, etc., Co., (Iowa 1907) 111 N. W. 420.

Kentucky. — Dryden *v.* H. E. Pogue Distillery Co., (Ky. 1904) 82 S. W. 262; Ross-Paris Co. *v.* Brown, (Ky. 1906) 90 S. W. 568; Cumberland Telephone, etc., Co. *v.* Graves, (Ky. 1907) 104 S. W. 356.

Louisiana. — Hunley *v.* Patterson, 116 La. 736, 41 So. 54.

Maine. Jensen *v.* Kyer, 101 Me. 106, 63 Atl. 389.

Massachusetts. — Edgar *v.* New York, etc., R. Co., 188 Mass. 420, 74 N. E. 911; Peterson *v.* Morgan Spring Co., 189 Mass. 576, 76 N. E. 220; Byrne *v.* Boston Woven Hose, etc., Co., 191 Mass. 40, 77 N. E. 696.

Michigan. — McClure *v.* Detroit Southern R. Co., 146 Mich. 457, 109 N. W. 847.

Minnesota. — Anderson *v.* Pitt Iron Min. Co., (Minn. 1908) 114 N. W. 953.

Missouri. — Neves *v.* Green, 111 Mo. App. 634, 86 S. W. 508; Bokamp *v.* Chicago, etc., R. Co., 123 Mo. App. 270, 100 S. W. 689.

Nebraska. — Sapp *v.* Christie, (Neb. 1907) 113 N. W. 189.

North Carolina. — Jones *v.* American Warehouse Co., 137 N. Car. 337, 49 S. E. 355, *rehearing denied* 138 N. Car. 546, 51 S. E. 106.

Ohio. — City, etc., Tel. Assoc. *v.* Kelly, 28 Ohio Cir. Ct. 820; Crockett *v.* Michael, 29 Ohio Cir. Ct. 41.

Pennsylvania. — Hughes *v.* Fayette Mfg. Co., 214 Pa. St. 282, 63 Atl. 692.

Texas. — Haywood *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1905) 85 S. W. 433; Texas, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 99 S. W. 738; Industrial Lumber Co. *v.* Bivens, (Tex. Civ. App. 1907) 105 S. W. 831. See also Sherman *v.* Texas, etc., R. Co., 99 Tex. 571, 91 S. W. 561.

Wisconsin. — Ives *v.* Wisconsin Cent. R. Co., 128 Wis. 357, 107 N. W. 452.

The general rule is well established that the servant does not take upon himself risks which he would not reasonably expect to encounter because not within the scope of his contract of hiring. But, in order for this rule to be available, it must be shown that the servant was transferred to essentially new duties and that the order under which he acted was negligent. Lyon *v.* Charleston, etc., R. Co., (S. Car. 1906) 56 S. E. 18.

Working under Orders When Danger Is Obvious. — Shaver *v.* Home Telephone Co., 36 Ind. App. 233, 75 N. E. 288; Kirby *v.* Hillside Coal Co., (Ky. 1907) 106 S. W. 278; Kane *v.* St. Louis, etc., R. Co., 112 Mo. App. 650, 87 S. W. 571; Rahm *v.* Chicago, etc., R. Co., (Mo. App. 1908) 108 S. W. 570 (stating the law of Illinois); International, etc., R. Co. *v.* Royal, 37 Tex. Civ. App. 261, 83 S. W. 713; Tuckett *v.* American Steam, etc., Laundry, 30 Utah 273, 84 Pac. [illegible].

3. Southern Cotton Oil Co. *v.* Spotts, 77 Ark. 458, 92 S. W. 249; Elgin, etc., R. Co. *v.* Myers, 226 Ill. 358, 80 N. E. 897; Consolidated Barb Wire Co. *v.* Maxwell, 116 Ill. App. 296; Lindsey *v.* Hollerbach, etc., Contract Co., 92 S. W. 294, 29 Ky. L. Rep. 68; Burke *v.* Davis, 191 Mass. 20, 76 N. E. 1039; Gogo *v.* American Car, etc., Co., 142 Mich. 340, 105 N. W. 859. But see Bush *v.* West Yellow Pine Co., 2 Ga. App. 295, 58 S. E. 529. See also Springfield Boiler, etc., Co. *v.* Parks, 123 Ill. App. 502.

4. In Viohl *v.* North Pac. Lumber Co., 46 Oregon 297, 80 Pac. 112, it was held that a servant called upon to execute an order requiring prompt attention and haste was not conclusively presumed to remember a defect in the machinery or a particular danger connected with the work. See also King *v.* Seaboard Air-Line R. Co., 1 Ga. App. 88, 58 S. E. 252.

121. 1. Dickenson *v.* Vernon, 77 Conn. 537, 60 Atl. 270; Burke *v.* Davis, 191 Mass. 20, 76 N. E. 1039; Marshall *v.* Norcross, 191 Mass. 568, 77 N. E. 1151; Bonn *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1904) 82 S. W. 808; Laverty *v.* Hambrick, 61 W. Va. 687, 57 S. E. 240; American Linseed Co. *v.* Heins, (C. C. A.) 141 Fed. 45, *following* St. Louis Cordage Co. *v.* Miller, (C. C. A.) 126 Fed. 495.

2. Denver, etc., R. Co. *v.* Norgate, 141 Fed. 247, 5 Ann. Cas. 448 (*Colorado* statute as to blocking railway flags), *citing* 20 Am. and Eng. Encyc. of Law (2d ed.) (127) 121; Patterson Coal Co. *v.* Poe, 81 Ark. 343, 99 S. W. 538 (failure to provide timber for propping roof of mine); Denver, etc., R. Co. *v.* Gannon, (Colo. 1907) 90 Pac. 853; Sutton *v.* Des Moines Bakery Co., (Iowa 1907) 112 N. W. 836; McGinty *v.* Waterman, 93 Minn. 242, 101 N. W. 300; Stevens *v.* Gair, 109 N. Y. App. Div. 621, 96 N. Y. Supp. 303 (statute requiring machinery to be guarded), *following* Knisley *v.* Pratt, 148 N. Y. 372, 42 N. E. 986; Kiernan *v.* Eidlitz, 115 N. Y. App. Div. 141, 100 N. Y. Supp. 731; Travis *v.* Haan, 119 N. Y. App. Div. 138, 103 N. Y. Supp. 973 (failure to guard machinery). But see Lee *v.* Sterling Silk Mfg. Co., (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 182, 93 N. Y. Supp. 560 (statute prohibiting employment of children in factories); Fromberg *v.* Evans Laundry Co., 134 Iowa 38, 111 N. W. 417. See also Woolf *v.* Nauman Co., 128 Iowa 261, 103 N. W. 785 (employment of child under statutory age).

3. *United States.* — Schlemmer *v.* Buffalo, etc., R. Co., 205 U. S. 1, 27 U. S. Sup. Ct. 407 (express provision in Act Cong. March 2, 1893); Malloy *v.* Northern Pac. R. Co., 151 Fed. 1019 (effect of provision of Act Cong. June 11, 1906, providing "that no contract of employment, * * * entered into by or on behalf of any employer, * * * shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee"); Inland Steel Co. *v.* Kachwinski, (C. C. A.) 151 Fed. 219 (Indiana rule).

Alabama. — Mobile, etc., R. Co. *v.* Bromberg, 141 Ala. 258, 37 So. 395 (express provision of Act Cong. 1893, c. 196, § 8).

Illinois. — Helmbacher Forge, etc., Co. *v.* Garrett, 119 Ill. App. 166; Chicago, etc., R. Co. *v.* Walters, 120 Ill. App. 152, *affirmed* 217 Ill. 87, 75 N. E. 441; Joseph Taylor Coal Co. *v.* Dawes, 122 Ill. App. 389, *affirmed* 220 Ill. 145, 77 N. E. 131; Jefferson Theatre Program Co. *v.* Crejczyk, 125 Ill. App. 1.

Indiana. — Davis *v.* Mercer Lumber Co., 164 Ind. 413, 73 N. E. 899; Diamond Block Coal Co. *v.* Cuthbertson, 166 Ind. 290, 76 N. E. 1060; Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1032; Chicago, etc., R. Co. *v.* Lawrence, (Ind. 1906) 79 N. E. 363; Bessler *v.* Laughlin, 168 Ind. 38, 79 N. E. 1033; Indianapolis St. R. Co. *v.* Kane, (Ind. 1907) 80 N. E. 841; Tucker, etc., Mfg. Co. *v.* Staley, (Ind. App. 1907) 80 N. E. 975; Pittsburgh, etc., R. Co. *v.* Ross, (Ind. 1907) 80 N. E. 845; Indianapolis Union R. Co. *v.* Waldington, (Ind. 1907) 82 N. E. 1070; La Porte Carriage Co. *v.* Sullender, (Ind. App. 1908) 71 N. E. 922;

Espenlaub *v.* Ellis, 34 Ind. App. [illegible] N. E. 527; Nickey *v.* Dougan, 34 Ind. App. 601, 73 N. E. 288; Indiana, etc., Coal Co. *v.* Neal, (Ind. App. 1905) 75 N. E. 295; Muncie Pulp Co. *v.* Hacker, 37 Ind. App. 194, 76 N. E. 770; U. S. Cement Co. *v.* Cooper, (Ind. App. 1907) 82 N. E. 981.

Indian Territory. — Bolen-Darnall Coal Co. *v.* Williams, (Indian Ter. 1907) 104 S. W. 867.

Kansas. — Western Furniture, etc., Co. *v.* Bloom, (Kan. 1907) 90 Pac. 822, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 121.

Michigan. — Sterling *v.* Union Carbide Co., 142 Mich. 284, 105 N. W. 755 (prohibiting employment of child whereby its life or limb is endangered); Murphy *v.* Grand Rapids Veneer Works, 142 Mich. 677, 106 N. W. 211, 12 Detroit Leg. N. 868 (protection of elevator shafts); Swick *v.* Ætna Portland Cement Co., 147 Mich. 454, 111 N. W. 110.

Missouri. — Stafford *v.* Adams, 113 Mo. App. 717, 88 S. W. 1130; Nairn *v.* National Biscuit Co., 120 Mo. App. 144, 96 S. W. 679; McGinnis *v.* R. M. Rigby Printing Co., 122 Mo. App. 227, 99 S. W. 4.

North Carolina. — Biles *v.* Seaboard Air Line R. Co., 139 N. Car. 528, 52 S. E. 129; Hairston *v.* U. S. Leather Co., 143 N. Car. 512, 55 S. E. 847.

Ohio. — Ziehr *v.* Maumee Paper Co., 28 Ohio Cir. Ct. 342.

Pennsylvania. — See also Gulla *v.* Lehigh Valley Coal Co., 28 Pa. Super. Ct. 11.

Texas. — Southern Pac. Co. *v.* Allen, (Tex. Civ. App. 1907) 106 S. W. 441.

Washington. — Hall *v.* West, etc., Mill Co., 39 Wash. 447, 81 Pac. 915; Daffron *v.* Majestic Laundry Co., 41 Wash. 65, 82 Pac. 1089; Whelan *v.* Washington Lumber Co., 41 Wash. 153, 83 Pac. 98; Hoveland *v.* Hall Bros. Marine R., etc., Co., 41 Wash. 164, 82 Pac. 1090; Drugalis *v.* Northwestern Imp. Co., 41 Wash. 398, 83 Pac. 101; Erickson *v.* McNeeley, 41 Wash. 509, 84 Pac. 3; Rector *v.* Bryant, etc., Mill Co., 41 Wash. 556, 84 Pac. 7; Johnston *v.* Northern Lumber Co., 42 Wash. 230, 84 Pac. 627; Thompson *v.* Issaquah Shingle Co., 43 Wash. 253, 86 Pac. 588; Miller *v.* Union Mill Co., 45 Wash. 199, 88 Pac. 130; Pachko *v.* Wilkeson Coal, etc., Co., (Wash. 1907) 90 Pac. 436; Johnson *v.* Far West Lumber Co., (Wash. 1907) 92 Pac. 274. But see Nottage *v.* Sawmill Phœnix, 133 Fed. 979 (unguarded machinery, Washington statute).

Wisconsin. — See Walker *v.* Simmons Mfg. Co., 131 Wis. 542, 111 N. W. 694 (assumption of risk held question for jury and finding the risk was not assumed sustained).

4. *United States.* — Texas, etc., R. Co. *v.* Swearingen, 196 U. S. 51, 25 U. S. Sup. Ct. 164; Northern Pac. R. Co. *v.* Wendel, (C. C. A.) 156 Fed. 336; Munroe *v.* Ley, (C. C. A.) 156 Fed. 468; American Smelting, etc., Co. *v.* McGee, (C. C. A.) 157 Fed. 69.

Alabama. — Alabama Western R. Co. *v.* Russell, 144 Ala. 142, 39 So. 311.

Arkansas. — Archer Foster Constr. Co. *v.* Vaughn, 79 Ark. 20, 94 S. W. 717.

Florida. — Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516.

Georgia. — Steele *v.* Georgia Iron, etc., Co., 121 Ga. 459, 49 S. E. 291.

Illinois. — Postal Tel. Cable Co. *v.* Likes, 225 Ill. 249, 80 N. E. 136; Illinois Cent. R. Co. *v.* Heath, 228 Ill. 312, 81 N. E. 1022; Bates Mach. Co. *v.* Crowley, 115 Ill. App. 540; Illinois Steel Co. *v.* Strong, 129 Ill. App. 581.

Iowa. — Mumford *v.* Chicago, etc., R. Co., 128 Iowa 685, 104 N. W. 1135; Barto *v.* Iowa Telephone Co., 126 Iowa 241, 101 N. W. 876; Beardsley *v.* Murray Iron Works Co., 129 Iowa 675, 106 N. W. 180; Hamner *v.* Janowitz, 131 Iowa 20, 108 N. W. 109; Brusseau *v.* Lower Brick Co., 133 Iowa 245, 110 N. W. 577; Schminkey *v.* Sinclair, (Iowa 1908) 114 N. W. 612; Harney *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 886.

Kentucky. — Bates-Rogers Constr. Co. *v.* Dunn, (Ky. 1906) 93 S. W. 1032.

Louisiana. — Ingham *v.* John B. Honor Co., 113 La. 1040, 37 So. 963; Levins *v.* Bancroft, 114 La. 105, 38 So. 72; Williams *v.* Levert Lumber, etc., Co., 114 La. 805, 38 So. 567; Moses *v.* Grant Lumber Co., 114 La. 933, 38 So. 684; Johnson *v.* Christie, 117 La. 911, 42 So. 421.

Maine. — Cowett *v.* American Woolen Co., 100 Me. 65, 60 Atl. 703.

Maryland. — State *v.* Trimble, 104 Md. 317, 64 Atl. 1026.

Massachusetts. — Hearns *v.* New York Cent., etc., R. Co., 186 Mass. 529, 72 N. E. 68; Murphy *v.* New York, etc., R. Co., 187 Mass. 18, 72 N. E. 330; Dawson *v.* Lawrence Gaslight Co., 188 Mass. 481, 74 N. E. 912; Moylon *v.* D. S. McDonald Co., 188 Mass. 499, 74 N. E. 929; Finnegan *v.* Samuel Winslow Skate Mfg. Co., 189 Mass. 580, 76 N. E. 192; Cahill *v.* New England Telephone, etc., Co., 193 Mass. 415, 79 N. E. 821; Morena *v.* Winston, 194 Mass. 378, 80 N. E. 473; Saures *v.* Stevens Mfg. Co., (Mass. 1907) 82 N. E. 694; Feneff *v.* Boston, etc., R. Co., (Mass. 1907) 82 N. E. 705; Heffernan *v.* Fall River Iron Works Co., (Mass. 1907) 83 N. E. 5; Flynn *v.* Prince, etc., Co., (Mass. 1908) 84 N. E. 321.

Michigan. — McDonald *v.* Champion Iron, etc., Co., 140 Mich. 401, 103 N. W. 829; McClure *v.* Detroit Southern R. Co., 146 Mich. 457, 109 N. W. 847 (working under car jacked but not blocked up, suggested by court as a border-line case); Barschow *v.* Lake Shore, etc., R. Co., 147 Mich. 226, 110 N. W. 1057; Charron *v.* Union Carbide Co., (Mich. 1908) 115 N. W. 718.

Minnesota. — Dobsloff *v.* Nichols-Chisolm Lumber Co., 101 Minn. 267, 112 N. W. 218; Clay *v.* Chicago, etc., R. Co., (Minn. 1908) 115 N. W. 949.

Mississippi. — Southern R. Co. *v.* Wiley, 88 Miss. 825, 41 So. 511.

Missouri. — Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621; Zeis *v.* St. Louis Brewing Assoc., 205 Mo. 638, 104 S. W. 99; Briner *v.* Chicago, etc., R. Co., 109 Mo. App. 493, 85 S. W. 653; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 399, 87 S. W. 12, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 121; Gibson *v.* Freygang, 112 Mo. App. 594, 87 S. W. 3; Rigsby *v.* Oil Well Supply Co., 115 Mo. App. 297, 91 S. W. 460; Obermeyer *v.* F. H. Logeman Chair Mfg. Co., 120 Mo. App. 59, 96 S. W. 673; Bellamy *v.*

Whitsell, 123 Mo. App. 610, 100 S. W. 514 (viciousness of horses); McManus *v.* Oregon Short Line R. Co., 118 Mo. App. 152, 94 S. W. 743.

Nebraska. — New Omaha Thomson-Houston Electric Light Co. *v.* Dent, (Neb. 1905) 103 N. W. 1901; New Omaha Thomson-Houston Electric Light Co. *v.* Rombold, 73 Neb. 259, 106 N. W. 213.

New Hampshire. — Thomas *v.* Exeter, etc., R. Co., 73 N. H. 1, 58 Atl. 838.

New York. — Nelson *v.* New York, 101 N. Y. App. Div. 18, 91 N. Y. Supp. 763; Madden *v.* Hughes, 104 N. Y. App. Div. 101, 93 N. Y. Supp. 324 (statute); Hazzard *v.* State, 108 N. Y. App. Div. 119, 95 N. Y. Supp. 1103; Burke *v.* Manhattan R. Co., 109 N. Y. App. Div. 722, 96 N. Y. Supp. 516; Walker *v.* Newton Falls Paper Co., 111 N. Y. App. Div. 19, 97 N. Y. Supp. 521; Smith *v.* Manhattan R. Co., 112 N. Y. App. Div. 202, 98 N. Y. Supp. 1; Hohl *v.* Hewitt Motor Co., (Supm. Ct. App. T.) 103 N. Y. Supp. 755, *reversed on other grounds* 106 N. Y. Supp. 881; Lynch *v.* American Linseed Co., 122 N. Y. App. Div. 428, 107 N. Y. Supp. 458.

New Jersey. — Sparks *v.* River, etc., Imp. Co., (N. J. 1907) 67 Atl. 600.

Rhode Island. — Hardacre *v.* Sayles, 28 R. I. 235, 66 Atl. 298.

Texas. — Texarkana, etc., R. Co. *v.* Toliver, 37 Tex. Civ. App. 437, 84 S. W. 375; Missouri, etc., R. Co. *v.* Dickson, (Tex. Civ. App. 1905) 90 S. W. 507; Lone Star State Co. *v.* Allen, (Tex. Civ. App. 1906) 97 S. W. 131; Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1907) 99 S. W. 743; Commerce Milling, etc., Co. *v.* Gowan, (Tex. Civ. App. 1907) 104 S. W. 916; Cameron *v.* Realmuto, (Tex. Civ. App. 1907) 100 S. W. 194.

Utah. — Farney *v.* Oregon Short Line R. Co., 31 Utah 194, 87 Pac. 440.

Vermont. — Drown *v.* New England Telephone, etc., Co., 80 Vt. 1, 66 Atl. 801; Bolton *v.* Ovitt, (Vt. 1907) 67 Atl. 881.

Virginia. — Black *v.* Virginia Portland Cement Co., 106 Va. 121, 55 S. E. 587.

Washington. — Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323; Baker *v.* Duwamish Mill Co., 43 Wash. 149, 86 Pac. 167; King *v.* Griffiths-Sprague Stevedoring Co., 45 Wash. 425, 88 Pac. 759; Lounsbury *v.* Davis, 124 Wash. 432, 102 N. W. 941.

Wisconsin. — Hocking *v.* Windsor Spring Co., 125 Wis. 575, 104 N. W. 705; Van De Bogart *v.* Marinette, etc., Paper Co., 127 Wis. 104, 106 N. W. 805; Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077.

The servant assumes the risks of injuries from defects which would not have been discovered by the master in the use of reasonable care in inspection. Galveston, etc., R. Co. *v.* Perry, 36 Tex. Civ. App. 414, 82 S. W. 343; Cryder *v.* Chicago, etc., R. Co., (C. C. A.) 152 Fed. 117.

122. **1.** Montgomery *v.* Chicago G. W. R. Co., 109 Mo. App. 88, 83 S. W. 66; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 399, 87 S. W. 12, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 121; San Antonio Foundry Co. *v.* Drish, (Tex. Civ. App. 1905) 85 S. W. 440.

2. Drake *v.* San Antonio, etc., R. Co., 99 Tex. 240, 89 S. W. 407.

3. *United States.* — Sink *v.* Sikes Co., 134 Fed. 144; National Steel Co. *v.* Hore, (C. C. A.) 155 Fed. 62.

Alabama. — Southern R. Co. *v.* McGowan, (Ala. 1907) 43 So. 378; West Pratt Coal Co. *v.* Andrews, (Ala. 1906) 43 So. 348.

Arkansas. — Choctaw, etc., R. Co. *v.* Jones, 77 Ark. 367, 92 S. W. 244.

California. — Jenson *v.* Will, etc., Co., 150 Cal. 398, 89 Pac. 113; Giacomini *v.* Pacific Lumber Co., 5 Cal. App. 218, 89 Pac. 1059.

Colorado. — Daniels *v.* Johnston, 39 Colo. 177, 89 Pac. 811.

Georgia. — Bowen *v.* Adams, 129 Ga. 688, 59 S. E. 795.

Illinois. — Montgomery Coal Co. *v.* Barringer, 218 Ill. 327, 75 N. E. 900; George B. Swift Co. *v.* Gaylord, 229 Ill. 330, 82 N. E. 299; Omaha Packing Co. *v.* Murray, 112 Ill. App. 233; Siegel *v.* Trcka, 115 Ill. App. 56; Chicago, etc., R. Co. *v.* Daugaard, 118 Ill. App. 67; Chicago, etc., R. Co. *v.* Rathneau, 124 Ill. App. 427, *affirmed* 225 Ill. 278, 80 N. E. 119.

Indiana. — Chicago, etc., R. Co. *v.* Bryan, 37 Ind. App. 487, 75 N. E. 678.

Kentucky. — Cooper *v.* Oscar Daniels Co., (Ky. 1906) 96 S. W. 1100; Meade *v.* Ashland Steel Co., (Ky. 1907) 100 S. W. 821; Pitts *v.* Wells, 101 S. W. 1192, 31 Ky. L. Rep. 208.

Massachusetts. — Moylon *v.* D. S. McDonald Co., 188 Mass. 499, 74 N. E. 929; Arnold *v.* Harrington Cutlery Co., 189 Mass. 547, 76 N. E. 194; Bartley *v.* Boston, etc., St. R. Co., (Mass. 1908) 83 N. E. 1093.

Minnesota. — Hendrickson *v.* Ash, 99 Minn. 417, 109 N. W. 830; Atlas *v.* National Biscuit Co., 100 Minn. 30, 110 N. W. 250; Whitehead *v.* Wisconsin Cent. R. Co., (Minn. 1907) 114 N. W. 254.

Missouri. — Houts *v.* St. Louis Transit Co., 108 Mo. App. 686, 84 S. W. 161; Shepherd *v.* St. Louis Transit Co., 189 Mo. 362, 87 S. W. 1007; Blundell *v.* William A. Miller Elevator Mfg. Co., 189 Mo. 552, 88 S. W. 103; Whaley *v.* Coleman, 113 Mo. App. 594, 88 S. W. 119; Kennedy *v.* Kansas City, etc., R. Co., 190 Mo. 424, 89 S. W. 370; Lee *v.* Missouri Pac. R. Co., 195 Mo. 400, 92 S. W. 614; Clippard *v.* St. Louis Transit Co., 202 Mo. 432, 101 S. W. 44; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 390, 87 S. W. 12, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122; Dodge *v.* Manufacturers' Coal, etc., Co., 115 Mo. App. 501, 91 S. W. 1007; Smith *v.* Kansas City, 125 Mo. App. 150, 101 S. W. 1118.

Montana. — Johnson *v.* Maiette, 34 Mont. 477, 87 Pac. 447.

Nebraska. — Kotera *v.* American Smelting, etc., Co., (Neb. 1908) 114 N. W. 945.

New Hampshire. — Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848; Hamel *v.* Newmarket Mfg. Co., 73 N. H. 386, 62 Atl. 509.

New Jersey. — Osterhout *v.* Jersey City, etc., R. Co., 73 N. J. L. 42, 62 Atl. 190; Rogers *v.* Roe, (N. J. 1907) 66 Atl. 408.

North Carolina. — Aiken *v.* Rhodhiss Mfg. Co., (N. Car. 1907) 59 S. E. 696.

Oregon. — Strauhal *v.* Asiatic Steamship Co., 48 Oregon 100, 85 Pac. 230.

[illegible] Interurban, etc., R. Co. v. Jourdan, (Tex. Civ. App. 1904) 84 S. W. 266; Galveston, etc., R. Co. v. McAdams, 37 Tex. Civ. App. 575, 84 S. W. 1076; Peck v. Peck, 99 Tex. 10, 87 S. W. 248; El Paso, etc., R. Co. v. Vizard, (Tex. Civ. App 1905) 88 S. W. 457; Gulf, etc., R. Co. v. Griggs, (Tex. Civ. App. 1907) 101 S. W. 473; Marshall v. St. Louis Southwestern R. Co., (Tex. Civ. App. 1908) 107 S. W. 883; El Paso, etc., R. Co. v. Smith, (Tex. Civ. App. 1908) 108 S. W. 988.

Virginia. — Virginia Portland Cement Co. v. Luck, 103 Va. 427, 49 S. E. 577.

Washington. — Sullivan v. Wood, 43 Wash. 250, 86 Pac. 629; Bailey v. Mukilteo Lumber Co., 44 Wash. 581, 87 Pac. 819.

Canada. — Montreal Park, etc., R. Co. v. McDougall, 36 Can. Sup. Ct. 1.

There is no presumption that an inexperienced servant knew the danger attendant upon the throwing of water upon a furnace fire. Malone v. American Smelting, etc., Co., (Neb. 1906) 110 N. W. 572, citing a number of cases of explosions from similar causes.

If the danger arising from the defect is so obvious as to be apparent to a person of ordinary intelligence, the law will charge the servant with knowledge of the danger. Christiansen v. William Graver Tank Works, 223 Ill. 142, 79 N. E. 97; Elgin, etc., R. Co. v. Myers, 226 Ill. 358, 80 N. E. 897; Burke v. Union Coal, etc., Co., (C. C. A.) 157 Fed. 178.

Infants. — Thein v. Gus V. Brecht Butchers' Supply Co., 116 Mo. App. 1, 91 S. W. 953.

[illegible] 1. *United States.* — Mountain Copper Co. v. Van Buren, 133 Fed. 1, 66 C. C. A. 151; Rickerd v. Chicago, etc., R. Co., 141 Fed. 905, 73 C. C. A. 139; Chicago, etc., R. Co. v. Riley, (C. C. A.) 145 Fed. 137, 7 Ann. Cas. 327; Boston, etc., R. Co. v. Gokey, 149 Fed. 42, 9 Ann. Cas. 384, 79 C. C. A. 64; American Window Glass Co. v. Noe, (C. C. A.) 158 Fed. 777.

Alabama. — Kansas City, etc., R. Co. v. Thornhill, 141 Ala. 215, 37 So. 412; Reiter-Conley Mfg. Co. v. Hamlin, 144 Ala. 192, 40 So. 280; Southern Coal, etc., Co. v. Swinney, (Ala. 1907) 42 So. 808; Birmingham Min., etc., Co. v. Skelton, (Ala. 1907) 43 So. 110.

Arkansas. — Choctaw, etc., R. Co. v. Jones, 77 Ark. 367, 92 S. W. 244; St. Louis, etc., R. Co. v. Boyles, 78 Ark. 374, 95 S. W. 783.

Colorado. — Denver, etc., R. Co. v. Warring, 37 Colo. 122, 86 Pac. 305; Vindicator Consol. Gold Min. Co. v. Firstbrook, 36 Colo. 498, 86 Pac. 313.

Delaware. — Jemnienski v. Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935.

Georgia. — Southern Cotton-Oil Co. v. Gladman, 1 Ga. App. 259, 58 S. E. 249; Atlanta, etc., Air-Line R. Co. v. McManus, 1 Ga. App. 302, 58 S. E. 258.

Illinois. — Wells, etc., Co. v. Kapaczynski, 218 Ill. 140, 75 N. E. 751; Illinois Steel Co. v. Ziemkowski, 220 Ill. 324, 77 N. E. 190; Schillinger Bros. Co. v. Smith, 225 Ill. 74, 80 N. E. 65; Superior Coal, etc., Co. v. Kaiser, 229 Ill. 29, 82 N. E. 239; Swiercz v. Illinois Steel Co., 231 Ill. 456, 83 N. E. 168; Hinchliff v. Robinson, 118 Ill. App. 450; Indiana, etc., R. Co. v. Otstot, 113 Ill. App. 37; Spring Valley Coal Co. v. Buzis, 115 Ill. App. 196; National Enameling, etc., Co. v. Fagan, 115 Ill. App. 590; Mobile, etc., R. Co. v. Vallowe, 115 Ill. App. 621; Illinois Steel Co. v. Olste, 116 Ill. App. 303; Pennsylvania Co. v. Chapman, 118 Ill. App. 201; Leighton, etc., Steel Co. v. Snell, 119 Ill. App. 199; Belvidere Gas, etc., Co. v. Boyer, 122 Ill. App. 116; Chicago, etc., R. Co. v. Seevers, 122 Ill. App. 558.

Indiana. — Pittsburgh, etc., R. Co. v. Nicholas, (Ind. App. 1905) 73 N. E. 195, 74 N. E. 626; Pittsburgh, etc., R. Co. v. Nicholas, 165 Ind. 679, 76 N. E. 522; New Castle Bridge Co. v. Steele, 38 Ind. App. 194, 78 N. E. 208; New Castle Bridge Co. v. Doty, 168 Ind. 259, 79 N. E. 485; Monongahela River Consol. Coal, etc., Co. v. Hardsaw, (Ind. App. 1907) 79 N. E. 1062; Coal Bluff Min. Co. v. Akers, 39 Ind. App. 617, 80 N. E. 545; Indianapolis Traction, etc., Co. v. Holtsclaw, (Ind. App. 1907) 82 N. E. 986.

Iowa. — Scott v. Iowa Telephone Co., 126 Iowa 524, 102 N. W. 432; Nugent v. Cudahy Packing Co., 126 Iowa 517, 102 N. W. 442; Mace v. Boedker, 127 Iowa 721, 104 N. W. 475; Martin v. Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359.

Kansas. — Electric Plaster Co. v. Reedy, 74 Kan. 57, 85 Pac. 824.

Kentucky. — Louisville, etc., R. Co. v. Metcalf, (Ky. 1906) 96 S. W. 525; Central Coal, etc., Co. v. Walker, (Ky. 1907) 99 S. W. 309; Cumberland Telephone, etc., Co. v. Graves, (Ky. 1907) 104 S. W. 356; South Covington, etc., St. R. Co. v. Brown, (Ky. 1907) 104 S. W. 703; Brents v. Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 961.

Louisiana. — Roff v. Summit Lumber Co., 119 La. 571, 44 So. 302.

Maine. — Jensen v. Kyer, 101 Me. 106, 63 Atl. 389.

Maryland. — Philadelphia, etc., R. Co. v. Devers, 101 Md. 341, 61 Atl. 418.

Massachusetts. — Wagner v. Boston El. R. Co., 188 Mass. 437, 74 N. E. 919; Chambers v. Wampanoag Mills, 189 Mass. 529, 75 N. E. 1093; Baggneski v. Lyman Mills, 193 Mass 103, 78 N. E. 852; Morena v. Winston, 194 Mass. 378, 80 N. E. 473; Lammi v. Milford Pink Granite Quarries, (Mass. 1907) 82 N. E. 26; Bradley v. Central Vermont R. Co., (Mass. 1907) 82 N. E. 44.

Michigan. — McDonald v. Champion Iron, etc., Co., 140 Mich. 401, 103 N. W. 829.

Minnesota. — Jensen v. Commodore Min. Co., 94 Minn. 53, 101 N. W. 944; Lee v. Wild Rice Lumber Co., 102 Minn. 74, 112 N. W. 887.

Missouri. — Shore v. American Bridge Co., 111 Mo. App. 278, 86 S. W. 905; Warren v. Chicago, etc., R. Co., 113 Mo. App. 498, 87 S. W. 585; Blundell v. William A. Miller Elevator Mfg. Co., 189 Mo. 552, 88 S. W. 103; Smith v. Fordyce, 190 Mo. 1, 88 S. W. 679; Kennedy v. Kansas City, etc., R. Co., 190 Mo. 424, 89 S. W. 370; Robertson v. George A. Fuller Constr. Co., 115 Mo. App. 456, 92 S. W. 130; Phippin v. Missouri Pac. R. Co., 196 Mo. 321, 93 S. W. 410; Longree v. Jackes-Evans Mfg. Co., 120 Mo. App. 478, 97 S. W. 272; Naughton v. Laclede Gaslight Co., 123 Mo. App. 192, 100 S. W. 1104; Mack v. Chicago, etc., R. Co., 123 Mo. App. 531, 101 S. W. 142;

Garaci *v.* Hill-O'Meara Constr. Co., 124 Mo. App. 709, 102 S. W. 596, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 123; Harrod *v.* Hammond Packing Co., 125 Mo. App. 357, 102 S. W. 637; Kirby *v.* Manufacturers' Coal, etc., Co., 127 Mo. App. 588, 106 S. W. 1069; Garner *v.* Metropolitan St. R. Co., (Mo. App. 1908) 107 S. W. 427; Koerner *v.* St. Louis Car Co., (Mo. 1907) 107 S. W. 481; Huston *v.* Quincy, etc., R. Co., (Mo. App. 1908) 107 S. W. 1045.

New York. — Aleckson *v.* Erie R. Co., 101 N. Y. App. Div. 395, 91 N. Y. Supp. 1029; Lynch *v.* American Linseed Co., 113 N. Y. App. Div. 502, 99 N. Y. Supp. 260; Morrissey *v.* Dwyer, 121 N. Y. App. Div. 247, 105 N. Y. Supp. 821; Strong *v.* Rutland R. Co., 121 N. Y. App. Div. 391, 106 N. Y. Supp. 85; Perrotta *v.* Richmond Brick Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 10; Anderson *v.* Milliken, (Supm. Ct. App. Div.) 108 N. Y. Supp. 61.

North Carolina. — Tanner *v.* Hitch Lumber Co., 140 N. Car. 475, 53 S. E. 287.

North Dakota. — Meehan *v.* Great Northern R. Co., 13 N. Dak. 432, 101 N. W. 183.

Ohio. — City, etc., Tel. Assoc. *v.* Kelly, 28 Ohio Cir. Ct. 820.

Oklahoma. — McCabe, etc., Constr. Co. *v.* Wilson, 17 Okla. 355, 87 Pac. 320.

South Carolina. — Anderson *v.* Southern R. Co., 70 S. Car. 490, 50 S. E. 202.

Texas. — St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1904) 82 S. W. 360; San Antonio, etc., R. Co. *v.* Stevens, 37 Tex. Civ. App. 80, 83 S. W. 235; Galveston, etc., R. Co. *v.* Manns, 37 Tex. Civ. App. 356, 84 S. W. 254; Vicars *v.* Gulf, etc., R. Co., 37 Tex. Civ. App. 500, 84 S. W. 286; St. Louis Southwestern R. Co. *v.* Rea, (Tex. Civ. App. 1904) 84 S. W. 428; Missouri, etc., R. Co. *v.* Keefe, 37 Tex. Civ. App. 588, 84 S. W. 679; St. Louis Southwestern R. Co. *v.* Pope, 98 Tex. 535, 86 S. W. 5; St. Louis, etc., R. Co. *v.* Vestal, (Tex. Civ. App. 1905) 86 S. W. 790; Peck *v.* Peck, 99 Tex. 10, 87 S. W. 248; Ft. Worth, etc., Co. *v.* Smith, (Tex. Civ. App. 1905) 87 S. W. 371; Ray *v.* Pecos, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 466; St. Louis Southwestern R. Co. *v.* Demsey, (Tex. Civ. App. 1905) 89 S. W. 786; International, etc., R. Co. *v.* Muschamp, (Tex. Civ. App. 1905) 90 S. W. 706; Galveston, etc., R. Co. *v.* Udalle, (Tex. Civ. App. 1905) 91 S. W. 330; Worcester *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 91 S. W. 339; Galveston, etc., R. Co. *v.* Fitzpatrick, (Tex. Civ. App. 1906) 91 S. W. 355; Smith *v.* Buffalo Oil Co., (Tex. Civ. App. 1906) 91 S. W. 383; Houston, etc., R. Co. *v.* Oram, (Tex. Civ. App. 1906) 92 S. W. 1029; Missouri, etc., R. Co. *v.* Barnes, (Tex. Civ. App. 1906) 95 S. W. 714; Yellow Pine Oil Co. *v.* Noble, (Tex. Civ. App. 1906) 97 S. W. 332; St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1906) 97 S. W. 534; Texas Mexican R. Co. *v.* Higgins, (Tex. Civ. App. 1906) 99 S. W. 200; Texas, etc., R. Co. *v.* Middleton, (Tex. Civ. App. 1907) 103 S. W. 203; Gulf, etc., R. Co. *v.* Harrison, (Tex. Civ. App. 1907) 104 S. W. 309; Galveston, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1908) 107 S. W. 108; Kansas City Consol. Smelting, etc., Co. *v.* Taylor, (Tex. Civ. App. 1908) 107 S. W. 889; Missouri, etc., R. Co. *v.* Balliet, (Tex. Civ. App. 1908) 107 S. W. 906; Atchison, etc., R. Co. *v.* Mills, (Tex. Civ. App. 1908) 108 S. W. 480.

Utah. — Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85.

Vermont. — Dunbar *v.* Central Vermont R. Co., 79 Vt. 474, 65 Atl. 528; Place *v.* Grand Trunk R. Co., 80 Vt. 196, 67 Atl. 545.

Virginia. — Black *v.* Virginia Portland Cement Co., 104 Va. 450, 51 S. E. 831.

Washington. — Ball *v.* Megrath, 43 Wash. 107, 86 Pac. 382; Sullivan *v.* Wood, 43 Wash. 259, 86 Pac. 629; Cook *v.* Chehalis River Lumber Co., (Wash. 1908) 94 Pac. 189; Ongaro *v.* Twohy, (Wash. 1908) 94 Pac. 916.

Wisconsin. — Zentner *v.* Oshkosh Gas Light Co., 126 Wis. 196, 105 N. W. 911; Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048; Hardt *v.* Chicago, etc., R. Co., 130 Wis. 512, 110 N. W. 427.

The fact that the master was habitually negligent is immaterial. Houston, etc., R. Co. *v.* Turner, 99 Tex. 547, 91 S. W. 562.

125. 1. *Colorado.* — Cripple Creek Sampling, etc., Co. *v.* Souza, 37 Colo. 393, 86 Pac. 1005.

Illinois. — Elgin, etc., R. Co. *v.* Myers, 226 Ill. 358, 80 N. E. 897; Illinois Cent. R. Co. *v.* Fitzpatrick, 227 Ill. 478, 81 N. E. 529; Morden Frog, etc., Works *v.* Fries, 228 Ill. 246, 81 N. E. 862; Jenco *v.* Illinois Steel Co., 233 Ill. 301, 84 N. E. 273.

Mississippi. — See Yazoo, etc., R. Co. *v.* Parker, 88 Miss. 193, 40 So. 746 (statutory modification).

Missouri. — Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12. But see Garaci *v.* Hill-O'Meara Constr. Co., 124 Mo. App. 717, 102 S. W. 594, where it is held that where a servant continues in the employment with knowledge of defects due to the master's negligence the defense is contributory negligence and not assumption of risk.

Montana. — Coulter *v.* Union Laundry Co., 34 Mont. 603, 87 Pac. 973, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 124; Leary *v.* Anaconda Copper Min. Co., (Mont. 1907) 92 Pac. 479, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 124.

Nebraska. — Vanderpool *v.* Partridge, (Neb. 1907) 112 N. W. 318.

Pennsylvania. — Jones *v.* Burnham, 217 Pa. St. 286, 66 Atl. 523; Lee *v.* Dobson, 217 Pa. St. 349, 66 Atl. 557.

Texas. — Texas Portland Cement, etc., Co. *v.* Lee, 36 Tex. Civ. App. 482, 82 S. W. 306; Texas, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 106 S. W. 773.

Vermont. — McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124.

Virginia. — See Southern R. Co. *v.* Blanford, 105 Va. 373, 54 S. E. 1 (statute providing that railway employee's knowledge of defects shall not prevent his recovery); Truckers' Mfg., etc., Co. *v.* White, (Va. 1908) 60 S. E. 630.

The defect of which the servant had knowledge must have been the proximate cause of the injury. Barschow *v.* Lake Shore, etc., R. Co., 147 Mich. 226, 110 N. W. 1057.

Effect of Making Complaint. — Alton Roller Milling Co. *v.* Bender, 112 Ill. App. 484.

127. 1. Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703; Jones *v.* American Warehouse Co., 138 N. Car. 546, 51 S. E. 106; McCarley *v.* Glenn-Lowry Mfg. Co., 75 S. Car. 390, 56 S. E. 1; Sibbert *v.* Scotland Cotton Mills, 145 N. Car. 308, 59 S. E. 79; Pearson *v.* Federal Min., etc., Co., 42 Wash. 94, 84 Pac. 632, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 126.

2. *United States.* — Cincinnati, etc., R. Co. *v.* Robertson, (C. C. A.) 139 Fed. 519; Burch *v.* Southern Pac. Co., 140 Fed. 270; Burch *v.* Southern Pac. Co., 145 Fed. 443; Crookston Lumber Co. *v.* Boutin, 149 Fed. 680, 79 C. C. A. 368; Utah Consol. Min. Co. *v.* Paxton, (C. C. A.) 150 Fed. 114; Crosby *v.* Cuba R. Co., 158 Fed. 144.

Alabama. — Going *v.* Alabama Steel, etc., Co., 141 Ala. 537, 37 So. 784.

California. — Anderson *v.* Seropian, 147 Cal. 201, 81 Pac. 521.

Colorado. — Monarch Min., etc., Co. *v.* De Voe, 36 Colo. 270, 85 Pac. 633.

Illinois. — Odin Coal Co. *v.* Tadlock, 216 Ill. 624, 75 N. E. 332; Morden Frog, etc., Works *v.* Fries, 228 Ill. 252, 81 N. E. 862, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 127; Clark *v.* Chicago, etc., R. Co., 231 Ill. 548, 83 N. E. 286; Simpson *v.* Weir, etc., Mfg. Co., 116 Ill. App. 286; Sattley Mfg. Co. *v.* Wendt, 116 Ill. App. 375; Victor Coal Co. *v.* Dunbar, 120 Ill. App. 288 (promise to get another mule in place of one which was vicious); Chicago Telephone Co. *v.* Schulz, 121 Ill. App. 573; Bowen *v.* Chicago, etc., R. Co., 117 Ill. App. 9, *following* Webster Mfg. Co. *v.* Nisbett, 205 Ill. 273, 68 N. E. 936; Kistner *v.* American Steel Foundries, 233 Ill. 35, 84 N. E. 44; International Packing Co. *v.* Kretowicz, 119 Ill. App. 488.

Indiana. — Terre Haute Electric Co. *v.* Kiely, 35 Ind. App. 180, 72 N. E. 658.

Iowa. — Foster *v.* Chicago, etc., R. Co., 127 Iowa 84, 102 N. W. 422.

Kentucky. — Louisville Hotel Co. *v.* Kaltenbrun, (Ky. 1904) 82 S. W. 378; Buey *v.* Chess, etc., Co., (Ky. 1905) 84 S. W. 563; Bell-Coggeshall Co. *v.* Lewis, (Ky. 1905) 89 S. W. 135; Louisville Belt, etc., Co. *v.* Hart, 92 S. W. 951, 29 Ky. L. Rep. 310; Louisville, etc., R. Co. *v.* Wyatt, 93 S. W. 601, 29 Ky. L. Rep. 437; Bates-Rogers Constr. Co. *v.* Dunn, (Ky. 1906) 93 S. W. 1032; Buffalo Creek Coal Min. Co. *v.* Hodges, (Ky. 1906) 98 S. W. 274; Kentucky, etc., Bridge, etc., Co. *v.* Melvin, (Ky. 1907) 104 S. W. 334; Ballou *v.* Potter, (Ky. 1908) 106 S. W. 1178.

Massachusetts. — Flynn *v.* Connecticut Valley St. R. Co., (Mass. 1907) 82 N. E. 1085.

Michigan. — Krohn *v.* Smith, (Mich. 1908) 114 N. W. 1017.

Minnesota. — Shalgren *v.* Red Cliff Lumber Co., 95 Minn. 450, 104 N. W. 531; Antletz *v.* Smith, 97 Minn. 217, 106 N. W. 517; Bailey *v.* Swallow, 98 Minn. 104, 107 N. W. 727; Viou *v.* Brooks-Scanlon Lumber Co., 99 Minn. 97, 108 N. W. 891.

Missouri. — Fouts *v.* Swift, 113 Mo. App. 526, 88 S. W. 167; Robertson *v.* Hammond Packing Co., 115 Mo. App. 520, 91 S. W. 161.

Nebraska. — Sapp *v.* Christie, (Neb. 1908) 115 N. W. 319.

New Jersey. — Cicalese *v.* Lehigh Valley R. Co., (N. J. 1908) 69 Atl. 166.

New York. — Citrone *v.* O'Rourke Engineering Constr. Co., 113 N. Y. App. Div. 518, 99 N. Y. Supp. 241; Tannhauser *v.* Uptegrove, 114 N. Y. App. Div. 764, 100 N. Y. Supp. 245; Swarts *v.* R. M. Wilson Mfg. Co., 115 N. Y. App. Div. 739, 100 N. Y. Supp. 1054; Altman *v.* Schwab Mfg. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 243, 104 N. Y. Supp. 349.

North Carolina. — Britt *v.* Carolina, etc., R. Co., 144 N. Car. 242, 56 S. E. 910; Boney *v.* Atlantic, etc., R. Co., 145 N. Car. 248, 58 S. E. 1082.

Pennsylvania. — Maines *v.* Harbison-Walker Co., 213 Pa. St. 145, 62 Atl. 640.

Texas. — St. Louis Southwestern R. Co. *v.* Kern, (Tex. Civ. App. 1907) 100 S. W. 971.

Virginia. — Virginia, etc., Wheel Co. *v.* Harris, 103 Va. 708, 49 S. E. 991.

Washington. — Leeson *v.* Sawmill Phœnix, 41 Wash. 423, 83 Pac. 891; Shea *v.* Seattle Lumber Co., (Wash. 1907) 91 Pac. 623.

Wisconsin. — Coolidge *v.* Hallauer, 126 Wis. 244, 105 N. W. 568; Williams *v.* Kimberly, etc., Co., 131 Wis. 303, 111 N. W. 481 (promise to replace incompetent servant).

A servant has the same right to rely upon a second promise to repair as he had a right to rely upon the first. Czajkowski *v.* Robinson, 124 Ill. App. 97.

If the danger in the working place is known and imminent, the servant must not expose himself to it, even if a promise has been made to remove it. Crum *v.* North Vernon Pump, etc., Co., 34 Ind. App. 253, 72 N. E. 193, *appeal dismissed* 163 Ind. 596, 72 N. E. 587.

If the master fails to make the promised repairs within a reasonable time, the servant thereafter reassumes the risks. Heathcock *v.* Milwaukee-Platteville Lead, etc., Min. Co., 128 Wis. 46, 107 N. W. 463.

The promise of the master to furnish a servant with a new implement with which to perform his work does not justify the servant in continuing in the use of the old implement, where such implement applies to ordinary labor, such as a shovel. Riley *v.* American Steel, etc., Co., 129 Ill. App. 123.

Refusal of Request to Repair. — Kansas City, etc., R. Co. *v.* Loosley, (Kan. 1907) 90 Pac. 990.

The promise to repair must be made by the master or his vice-principal. Spencer *v.* Haines, (N. J. 1906) 64 Atl. 970.

128. 1. Anderson *v.* Seropian, 147 Cal. 201, 81 Pac. 521; Morden Frog, etc., Works *v.* Fries, 228 Ill. 246, 81 N. E. 862; Alton Roller Milling Co. *v.* Bender, 112 Ill. App. 484; Western Electric Co. *v.* Prochaska, 129 Ill. App. 589; Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Roy *v.* Hodge, 74 N. H. 190, 66 Atl. 123; Texas, etc., R. Co. *v.* Nichols, (Tex. Civ. App. 1906) 92 S. W. 411.

Proof of Reliance on Promise. — Terre Haute Electric Co. *v.* Kiely, 35 Ind. App. 180, 72 N. E. 658.

2. Waight *v.* Lake Washington Mill Co., (Wash. 1908) 93 Pac. 1069.

3. Parker *v.* Drakesboro Coal, etc., Co., (Ky. 1906) 96 S. W. 575. See also Gunning System *v.* Lapointe, 212 Ill. 274, 72 N. E. 393, *reversing* 113 Ill. App. 405, *following* Illinois Steel Co. *v.* Mann, 170 Ill. 200, 48 N. E. 417.

129. 2. Cincinnati, etc., R. Co. *v.* Robertson, (C. C. A.) 139 Fed. 519; Victor Coal Co. *v.* Dunbar, 120 Ill. App. 288; Czajkowski *v.* Robinson, 124 Ill. App. 97; Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Tannhauser *v.* Uptegrove, 114 N. Y. App. Div. 764, 100 N. Y. Supp. 245; Shea *v.* Seattle Lumber Co., (Wash. 1907) 91 Pac. 623; Coolidge *v.* Hallauer, 126 Wis. 244, 105 N. W. 568; Williams *v.* Kimberly, etc., Co., 131 Wis. 303, 111 N. W. 481. But see Gunning System *v.* Lapointe, 212 Ill. 274, 72 N. E. 393; Heathcock *v.* Milwaukee-Platteville Lead, etc., Min. Co., 128 Wis. 46, 107 N. W. 463. See also Andrecsik *v.* New Jersey Tube Co., 73 N. J. L. 664, 63 Atl. 719.

3. Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Coolidge *v.* Hallauer, 126 Wis. 244, 105 N. W. 568; Burch *v.* Southern Pac. Co., 140 Fed. 270; Simpson *v.* Weir, etc., Mfg. Co., 116 Ill. App. 286.

5. Odin Coal Co. *v.* Tadlock, 216 Ill. 624, 75 N. E. 332; Foster *v.* Chicago, etc., R. Co., 127 Iowa 84, 102 N. W. 422; Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475.

A Promise by One Not a Vice-principal. — United Zinc Cos. *v.* Wright, (C. C. A.) 156 Fed. 571; Hempstock *v.* Lackawanna Iron, etc., Co., 98 N. Y. App. Div. 332, 90 N. Y. Supp. 663; Purkey *v.* Southern Coal, etc., Co., 57 W. Va. 595, 50 S. E. 755.

6. Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Viou *v.* Brooks-Scanlon Lumber Co., 99 Minn. 97, 108 N. W. 891.

7. Crookston Lumber Co. *v.* Boutin, 149 Fed. 680, 79 C. C. A. 368; Trudeau *v.* American Mill Co., 41 Wash. 465, 83 Pac. 725.

130. 1. Robertson *v.* Hammond Packing Co., 115 Mo. App. 520, 91 S. W. 161; Leeson *v.* Sawmill Phœnix, 41 Wash. 423, 83 Pac. 891 (question for jury).

2. Lynch *v.* M. T. Stevens, etc., Co., 187 Mass. 397, 73 N. E. 478.

4. Chicago, etc., R. Co. *v.* Benton, 132 Fed. 460, 65 C. C. A. 660; Pioneer Min., etc., Co. *v.* Smith, (Ala. 1907) 43 So. 561; Monongahela River Consol. Coal, etc., Co. *v.* Hardsaw, (Ind. App. 1907) 79 N. E. 1062; Hunt *v.* Dexter Sulphite Pulp, etc., Co., 100 N. Y. App. Div. 119, 91 N. Y. Supp. 279; McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124.

The duty to inspect for defects in appliances is not equal. Caven *v.* Bodwell Granite Co., 99 Me. 278, 59 Atl. 285.

5. *United States.* — Britton *v.* Central Union Telephone Co., 131 Fed. 844, 65 C. C. A. 598; Hull *v.* Northern Pac. R. Co., 136 Fed. 153, 69 C. C. A. 151; National Biscuit Co. *v.* Nolan, (C. C. A.) 138 Fed. 6; Williams *v.* Choctaw, etc., R. Co., 149 Fed. 104, 70 C. C. A. 146.

California. — Thompson *v.* California Cent. Ry. Co., 148 Cal. 35, 82 Pac. 367, *citing* 19 [20] Am. and Eng. Encyc. of Law [2d ed.] 121; Hersberger *v.* Pacific Lumber Co., 4 Cal. App. 460, 88 Pac. 587.

Colorado. — Hughes *v.* Schnavel, 20 Colo. App. 306, 78 Pac. 623; Denver, etc., R. Co. *v.* Scott, 34 Colo. 99, 81 Pac. 763.

Florida. — Atlantic Coast Line R. Co. *v.* Ryland, 50 Fla. 190, 40 So. 24.

Georgia. — Hobbs *v.* Bowie, 121 Ga. 421, 49 S. E. 285; Crown Cotton Mills *v.* McNally, 123 Ga. 35, 51 S. E. 13; Price *v.* Central of Georgia R. Co., 124 Ga. 899, 53 S. E. 455; Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110; Lee *v.* Atlantic Coast Line R. Co., 125 Ga. 655, 54 S. E. 678; Banks *v.* J. S. Schofield's Sons Co., 126 Ga. 667, 55 S. E. 939; Bush *v.* West Yellow Pine Co., 2 Ga. App. 295, 58 S. E. 529; Short *v.* Cherokee Mfg. Co., 3 Ga. App. 377, 59 S. E. 1115.

Illinois. — Elgin, etc., R. Co. *v.* Myers, 226 Ill. 358, 80 N. E. 897; Jones, etc., Co. *v.* George, 227 Ill. 64, 81 N. E. 4; Kath *v.* East St. Louis, etc., R. Co., 232 Ill. 126, 83 N. E. 533; Erie, etc., Transp. Co. *v.* Gaines, 112 Ill. App. 189; Wiggins Ferry Co. *v.* Hill, 112 Ill. App. 475; Chicago City R. Co. *v.* Enroth, 113 Ill. App. 285; Dalton *v.* Ogden Gas Co., 126 Ill. App. 502; Illinois Steel Co. *v.* Strong, 129 Ill. App. 581.

Indiana. — Evansville Gas, etc., Co. *v.* Raley, 38 Ind. App. 342, 76 N. E. 548, 78 N. E. 254; Adams *v.* Central Indiana R. Co., 38 Ind. App. 607, 78 N. E. 687; H. Rumely Co. *v.* Myer, (Ind. App. 1907) 82 N. E. 97; Indianapolis Traction, etc., Co. *v.* Holtsclaw, (Ind. App. 1907) 82 N. E. 986.

Massachusetts. — Lavelle *v.* Dunn-Green Leather Co., 194 Mass. 294, 80 N. E. 475; Mutter *v.* Lawrence Mfg. Co., (Mass. 1907) 81 N. E. 263.

Montana. — Nelson *v.* Boston, etc., Consol. Copper, etc., Min. Co., 35 Mont. 223, 88 Pac. 785.

Pennsylvania. — Esher *v.* Mineral R., etc., Co., 28 Pa. Super. Ct. 387.

South Carolina. — Wysong *v.* Seaboard Air Line R. Co., 74 S. Car. 1, 54 S. E. 214 (statute). But see Davis *v.* Northwestern R. Co., 75 S. Car. 303, 55 S. E. 526 (constitutional provision allowing recovery by servant irrespective of knowledge of defects).

Utah. — Roth *v.* Eccles, 28 Utah 456, 79 Pac. 918.

Washington. — Griffiths *v.* Craney, 38 Wash. 90, 80 Pac. 274; Tham *v.* J. T. Steeb Shipping Co., 38 Wash. 271, 81 Pac. 711; Miller *v.* Moran Bros. Co., 39 Wash. 631, 81 Pac. 1089; Creamer *v.* Moran Bros. Co., 41 Wash. 636, 84 Pac. 502.

131. 2. Baltimore, etc., R. Co. *v.* Doty, (C. C. A.) 133 Fed. 866; National Fire Proofing Co. *v.* Andrews, (C. C. A.) 158 Fed. 294; Pioneer Min., etc., Co. *v.* Talley, (Ala. 1907) 43 So. 800; Maitrejean *v.* New Orleans R., etc., Co., (La. 1908) 46 So. 21; Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555; Aziz *v.* Atlantic Cotton Mills, 189 Mass. 156, 75 N. E. 73; Baldwin *v.* American Writing Paper Co., (Mass. 1907) 82 N. E. 1; International, etc., R. Co. *v.* Hall, (Tex. Civ. App. 1907) 102 S. W. 740.

Risks encountered by a railroad conductor [illegible] of his train [illegible] of his brakeman, are not assumed risks as a

matter of law. Chicago, etc., R. Co. *v.* Snedaker, 122 Ill. App. 262.

132. 2. National Fire Proofing Co. *v.* Andrews, (C. C. A.) 158 Fed. 294; New Castle Bridge Co. *v.* Doty, 168 Ind. 259, 79 N. E. 485; Oolitic Stone Co. *v.* Ridge, (Ind. App. 1907) 80 N. E. 441; Byrne *v.* Learnard, 191 Mass. 269, 77 N. E. 316; Bartley *v.* Boston, etc., St. R. Co., (Mass. 1908) 83 N. E. 1093; Cleveland, etc., R. Co. *v.* Tehan, 26 Ohio Cir. Ct. 457; Zearfoss *v.* Norway Iron, etc., Co., (Pa. 1907) 67 Atl. 867. See also Perrotta *v.* Richmond Brick Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 10; O'Connor *v.* Atchison, etc., R. Co., (C. C. A.) 137 Fed. 503; American Brake Shoe, etc., Co. *v.* Toluszis, 125 Ill. App. 622.

3. Brown *v.* J. A. Adams, etc., Co., (La. 1907) 44 So. 1005.

4. American Bridge Co. *v.* Seeds, (C. C. A.) 144 Fed. 605; Reed *v.* Moore, 153 Fed. 358, 82 C. C. A. 434; Green *v.* Babcock Bros. Lumber Co., (Ga. 1908) 60 S. E. 1062; Kellyville Coal Co. *v.* Bruzas, 223 Ill. 595, 79 N. E. 309; Jennings *v.* Ingle, 35 Ind. App. 153, 73 N. E. 945; Antioch Coal Co. *v.* Rockey, (Ind. 1907) 82 N. E. 76; Illinois Cent. R. Co. *v.* Emerson, 88 Miss. 608, 40 So. 818, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 132; Newport News Pub. Co. *v.* Beaumeister, 104 Va. 744, 52 S. E. 627.

133. 2. If a dangerously loaded car be received from a connecting carrier, the master is not liable for injuries received by his inspector in attempting to inspect such car, unless the master has actual knowledge of its dangerous condition, and fails to warn the inspector of such dangers. Lucas *v.* Southern R. Co., 1 Ga. App. 810, 57 S. E. 1041.

134. 1. *United States.* — Hawley *v.* Chicago, etc., R. Co., (C. C. A.) 133 Fed. 150.

California. — Hersberger *v.* Pacific Lumber Co., 4 Cal. App. 460, 88 Pac. 587.

Colorado. — Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337.

Iowa. — Woolf *v.* Nauman Co., 128 Iowa 261, 103 N. W. 785; Mace *v.* Boedker, 127 Iowa 721, 104 N. W. 475; Calloway *v.* Agar Packing Co., 129 Iowa 1, 104 N. W. 721; Arenschield *v.* Chicago, etc., R. Co., 128 Iowa 677, 105 N. W. 200; Madden *v.* Saylor Coal Co., 133 Iowa 699, 111 N. W. 57. But see Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359. It is otherwise as to the assumption of the ordinary risks of the employment. Clark *v.* Johnson County Telephone Co., (Iowa 1908) 114 N. W. 554.

Kentucky. — Cumberland Telephone, etc., Co. *v.* Graves, (Ky. 1907) 104 S. W. 356.

Montana. — Stephens *v.* Elliott, (Mont. 1907) 92 Pac. 45.

Nebraska. — Grimm *v.* Omaha Electric Light, etc., Co., (Neb. 1908) 114 N. W. 769.

New York. — Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 179; Graves *v.* Gustave Stickley Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 256.

Washington. — Hoff *v.* Japanese American Fish, etc., Co., (Wash. 1908) 94 Pac. 109; Gauthier *v.* Wood, (Wash. 1908) 94 Pac. 654.

Canada. — Canada Foundry Co. *v.* Mitchell, 35 Can. Sup. Ct. 452.

Burden of proving servant's knowledge of defect is on the master. F. E. Jackson Lumber Co. *v.* Cunningham, 141 Ala. 206, 37 So. 445.

2. Southern States Portland Cement Co. *v.* Helms, 2 Ga. App. 308, 58 S. E. 524; McCormick Harvesting Mach. Co. *v.* Zakzewski, 220 Ill. 522, 77 N. E. 147; St. Louis Nat. Stockyards *v.* Morris, 116 Ill. App. 107; Dalton *v.* Ogden Gas Co., 126 Ill. App. 502; Evansville Gas, etc., Co. *v.* Raley, 38 Ind. App. 342, 76 N. E. 548, 78 N. E. 254; Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510; Dunbar *v.* Central Vermont R. Co., 79 Vt. 474, 65 Atl. 528; Bolton *v.* Ovitt, (Vt. 1907) 67 Atl. 881; McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124. But see Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780; Chicago Terminal Transfer R. Co. *v.* O'Donnell, 114 Ill. App. 345.

The servant must show want of knowledge of defects in machinery. Elgin, etc., R. Co. *v.* Myers, 226 Ill. 358, 80 N. E. 897; George B. Swift Co. *v.* Gaylord, 229 Ill. 330, 82 N. E. 299.

The servant must prove, in order to show nonassumption of risk, the want of knowledge both actual and imputed, and therefore an instruction authorizing a recovery if he "did not know" is erroneous. New Castle Bridge Co. *v.* Steele, 38 Ind. App. 194, 78 N. E. 208.

Under the *South Carolina* statute 1895 the servant must show that he did not and could not by the exercise of ordinary care have acquired knowledge of the defect. Wysong *v.* Seaboard Air Line R. Co., 74 S. Car. 1, 54 S. E. 214.

4. A railroad engineer in operating his train is only required to exercise reasonable care for his own safety. Gulf, etc., R. Co. *v.* Boyce, (Tex. Civ. App. 1905) 87 S. W. 395.

5. *United States.* — American Smelting, etc., Co. *v.* McGee, (C. C. A.) 157 Fed. 69.

Alabama. — Williamson Iron Co. *v.* McQueen, 144 Ala. 265, 40 So. 306.

Illinois. — Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780.

Indiana. — Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033.

Maine. — Bryant *v.* Great Northern Paper Co., (Me. 1907) 68 Atl. 379.

Minnesota. — Merril *v.* Pike, 94 Minn. 186, 102 N. W. 393.

Mississippi. — See Yazoo, etc., R. Co. *v.* Block, 86 Miss. 426, 38 So. 372 (gross negligence on part of master).

Nebraska. — Cudahy Packing Co. *v.* Wesolowski, 75 Neb. 786, 106 N. W. 1007.

New York. — Perrotta *v.* Richmond Brick Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 10.

Texas. — St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1904) 82 S. W. 360; Texas, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1907) 106 S. W. 773.

Washington. — Drugalis *v.* Northwestern Imp. Co., 41 Wash. 398, 83 Pac. 101; Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323; Gage *v.* Springston Lumber Co., (Wash. 1907) 91 Pac. 558.

Wisconsin. — Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077; Hayes *v.* Chicago, etc., R. Co., 131 Wis. 399, 111 N. W. 491.

135. 1. Western Coal, etc., Co. *v.* Burns,

84 Ark. 74, 104 S. W. 535; San Antonio, etc., R. Co. *v.* Lester, (Tex. Civ. App. 1904) 84 S. W. 401.

Degree of Care Required of Infants. — Keating *v.* Coon, 102 N. Y. App. Div. 112, 92 N. Y. Supp. 475; Thein *v.* Brecht Butchers' Supply Co., 116 Mo. App. 1, 91 S. W. 953; Magone *v.* Portland Mfg. Co., (Oregon 1908) 93 Pac. 450.

Negligence of Servant to Be Considered. — Kasjeta *v.* Nashua Mfg. Co., 73 N. H. 22, 58 Atl. 874.

3. Northern Pac. R. Co. *v.* Wendel, (C. C. A.) 156 Fed. 336; Reaves *v.* Anniston Knitting Mills, (Ala. 1907) 45 So. 702; Southern Cotton-Oil Co. *v.* Gladman, 1 Ga. App. 259, 58 S. E. 249; King Mfg. Co. *v.* Walton, 1 Ga. App. 403, 58 S. E. 115; Brinkman *v.* St. Landry Cotton Oil Co., 118 La. 835, 43 So. 458; Dobyns *v.* Yazoo, etc., R. Co., 119 La. 72, 43 So. 934; Boney *v.* Atlantic, etc., R. Co., 145 N. Car. 248, 58 S. E. 1082; Betchman *v.* Seaboard Air Line R. Co., 75 S. Car. 68, 55 S. E. 140; McCarley *v.* Glenn-Lowry Mfg. Co., 75 S. Car. 390, 56 S. E. 1.

The negligence of the servant must contribute to his injury. Buchman *v.* Jeffery, (Wis. 1908) 115 N. W. 372.

4. *United States.* — St. Louis, etc., R. Co. *v.* Dewees, 153 Fed. 56, 82 C. C. A. 190. But see Kelley *v.* Great Northern R. Co., 152 Fed. 211 (statutory modification — Act Cong. June 11, 1906); Bookman *v.* Seaboard Air Line R. Co., (C. C. A.) 152 Fed. 686 (Florida statute).

Alabama. — King *v.* Southern R. Co., (Ala. 1906) 41 So. 639.

Arkansas. — Western Coal, etc., Co. *v.* Jones, 75 Ark. 76, 87 S. W. 440; Walker *v.* Louis-Werner Sawmill Co., 76 Ark. 436, 88 S. W. 988.

Florida. — Atlantic Coast Line R. Co. *v.* Ryland, 50 Fla. 190, 40 So. 24 (Fla. Laws 1887 and Laws 1891, c. 4071, p. 113, abolishing the fellow-servant rule, do not affect the rule as to contributory negligence).

Georgia. — Seaboard Air-Line R. Co. *v.* Bostock, 1 Ga. App. 189, 58 S. E. 136; Vinson *v.* Willingham Cotton Mills, 2 Ga. App. 53, 58 S. E. 413.

Illinois. — Elgin, etc., R. Co. *v.* Herath, 230 Ill. 109, 82 N. E. 610.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Kansas. — National Brass Mfg. Co. *v.* Rawlings, 71 Kan. 246, 80 Pac. 628.

Kentucky. — Witten *v.* Bell, etc., Co., 85 S. W. 1094, 27 Ky. L. Rep. 580; Carmony *v.* Louisville, etc., R. Co., 87 S. W. 319, 27 Ky. L. Rep. 948; Louisville, etc., R. Co. *v.* Mounce, (Ky. 1906) 90 S. W. 956; Cotton *v.* Owensboro Wheel Co., (Ky. 1906) 97 S. W. 763; Louisville, etc., R. Co. *v.* Cox, (Ky. 1907) 105 S. W. 165.

Louisiana. — Williams *v.* Illinois Cent. R. Co., 114 La. 13, 37 So. 992; Nassauer *v.* New-Orleans, etc., R., etc., Co., 116 La. 475, 40 So. 842.

Massachusetts. — Barry *v.* Boston Elevated R. Co., 194 Mass. 265, 80 N. E. 225; Moran *v.* Chelsea, 194 Mass. 428, 80 N. E. 492; Whippen *v.* Stone, (Mass. 1908) 83 N. E. 980.

Missouri. — Dickey *v.* Dickey, 111 Mo. App. 304, 86 S. W. 909; McGahan *v.* St. Louis Transit Co., 201 Mo. 500, 100 S. W. 601; Heightman *v.* Sammons, (Mo. App. 1908) 107 S. W. ...

Nebraska. — Fielding *v.* Chicago, etc., R. Co., 72 Neb. 854, 101 N. W. 1022; Bryant *v.* Beebe, etc., Furniture Co., (Neb. 1907) 110 N. W. 696.

New York. — Voegle *v.* Barousch, 98 N. Y. App. Div. 127, 90 N. Y. Supp. 735.

North Carolina. — Hicks *v.* Naomi Falls Mfg. Co., 138 N. Car. 319, 50 S. E. 703; Pressly *v.* Dover Yarn Mills, 138 N. Car. 410, 51 S. E. 69; Whitfield *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 60 S. E. 1126.

Pennsylvania. — Hickey *v.* Solid Steel Casting Co., 212 Pa. St. 255, 61 Atl. 793; Kuhns *v.* H. C. Frick Coke Co., 216 Pa. St. 385, 65 Atl. 796; Wisniawski *v.* Carbon Steel Co., 216 Pa. St. 486, 65 Atl. 935.

South Carolina. — Charping *v.* Toxaway Mills, 70 S. Car. 470, 50 S. E. 186.

Texas. — Gulf, etc., R. Co. *v.* Powell, 37 Tex. Civ. App. 470, 84 S. W. 670; St. Louis Southwestern R. Co. *v.* Rea, 99 Tex. 58, 87 S. W. 324; Southern Constr. Co. *v.* Hinkle, (Tex. Civ. App. 1905) 89 S. W. 309; Worcester *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 91 S. W. 339 (use of intoxicating liquors); Galveston, etc., R. Co. *v.* Gillespie, (Tex. Civ. App. 1907) 106 S. W. 707.

Virginia. — Newport News Pub. Co. *v.* Beaumeister, 104 Va. 744, 52 S. E. 627; Fewell *v.* Southern R. Co., 105 Va. 1, 52 S. E. 689.

Washington. — Smith *v.* Hecla Min. Co., 38 Wash. 454, 80 Pac. 779.

Canada. — See Bloval *v.* Clinton Fireproofing Co., 29 Quebec Super. Ct. 481.

A statutory provision that the servant's knowledge of defects and danger shall not bar a recovery, does not prevent the master from relying on the defense of contributory negligence. Norfolk, etc., R. Co. *v.* Cheatwood, 103 Va. 356, 49 S. E. 489.

137. 1. Norfolk, etc., R. Co. *v.* Spencer, 104 Va. 657, 52 S. E. 310.

2. *Alabama.* — Louisville, etc., R. Co. *v.* Preston, 146 Ala. 685, 40 So. 337.

Iowa. — Dale *v.* Colfax Consol. Coal Co., 131 Iowa 67, 107 N. W. 1096.

Kansas. — Missouri Pac. R. Co. *v.* Bentley, (Kan. 1907) 93 Pac. 152, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 137.

Mississippi. — Allen *v.* Yazoo, etc., R. Co., 88 Miss. 25, 40 So. 1009.

Missouri. — Johnson *v.* St. Joseph Terminal R. Co., 203 Mo. 381, 101 S. W. 641; Lynch *v.* Chicago, etc., R. Co., 208 Mo. 1, 106 S. W. 68.

North Carolina. — Lassiter *v.* Raleigh, etc., R. Co., 137 N. Car. 150, 49 S. E. 93.

South Carolina. — Betchman *v.* Seaboard Air Line R. Co., 75 S. Car. 68, 55 S. E. 140.

Texas. — International, etc., R. Co. *v.* Villareal, 36 Tex. Civ. App. 532, 82 S. W. 10063; Chicago, etc., R. Co. *v.* Williams, 37 Tex. Civ. App. 198, 83 S. W. 248; Pecos, etc., R. Co. *v.* Blasengame, (Tex. Civ. App. 1906) 93 S. W. ...

3. Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238; Dyerson *v.* Union Pac. R. Co., 74 Kan. 536, 87 Pac. 680, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 137; Cin-

cinnati, etc., R. Co. *v.* Hill, (Ky. 1905) 89 S. W. 523; Cardwell *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 422.

4. Holland *v.* Seaboard Air Line R. Co., 137 N. Car. 368, 49 S. E. 359; Allen *v.* Atlantic Coast Line R. Co., 145 N. Car. 214, 58 S. E.

138. 7. Hersberger *v.* Pacific Lumber Co., 4 Cal. App. 460, 88 Pac. 587; Bien *v.* St. Louis Transit Co., 108 Mo. App. 399, 83 S. W. 986; Browning *v.* Chicago, etc., R. Co., 118 Mo. App. 449, 94 S. W. 315; Texas Portland Cement, etc., Co. *v.* Lee, 36 Tex. Civ. App. 482, 82 S. W. 305; Galveston, etc., R. Co. *v.* Fitzpatrick, (Tex. Civ. App. 1904) 83 S. W. 406; Houston, etc., R. Co. *v.* Fanning, (Tex. Civ. App. 1905) 91 S. W. 344.

Knowledge of One of Several Defects. — Baker *v.* Duwamish Mill Co., 43 Wash. 149, 86 Pac. 167.

139. 1. Mammoth Vein Coal Co. *v.* Bublis, 83 Ark. 567, 104 S. W. 210; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Brooks *v.* W. T. Joyce Co., 127 Iowa 266, 103 N. W. 91; Huss *v.* Heydt Bakery Co., (Mo. 1908) 108 S. W. 63; Kinney *v.* Rutland R. Co., 114 N. Y. App. Div. 286, 99 N. Y. Supp. 800 (statute); Kiernan *v.* Eidlitz, 115 N. Y. App. Div. 141, 100 N. Y. Supp. 731 (statute); Henne *v.* J. T. Steeb Shipping Co., 37 Wash. 331, 79 Pac. 938. But see Di Stefeno *v.* Peekskill Lighting, etc., Co., 107 N. Y. App. Div. 293, 95 N. Y. Supp. 179 (statute); Berthelson *v.* Gabler, 111 N. Y. App. Div. 142, 97 N. Y. Supp. 421 (statute). See also Rector *v.* Bryant Lumber, etc., Mill Co., 41 Wash. 556, 84 Pac. 7; Garaci *v.* Hill-O'Meara Constr. Co., 124 Mo. App. 716, 102 S. W. 594; King *v.* Griffiths-Sprague Stevedoring Co., 45 Wash. 425, 88 Pac. 759; U. S. Cement Co. *v.* Cooper, (Ind. App. 1907) 82 N. E. 981; Johnson *v.* Far West Lumber Co., (Wash. 1907) 92 Pac. 274.

140. 1. International, etc., R. Co. *v.* Jourdan, (Tex. Civ. App. 1904) 84 S. W. 266.

2. Mammoth Vein Coal Co. *v.* Bublis, 83 Ark. 574, 104 S. W. 210, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140. But see Maines *v.* Harbison-Walker Co., 213 Pa. St. 145, 62 Atl. 640 (promise of master to repair).

141. 1. Blundell *v.* William A. Miller Elevator Mfg. Co., 189 Mo. 552, 88 S. W. 103; Lawrence *v.* Heidbreder Ice Co., 119 Mo. App. 316, 93 S. W. 897; St. Louis Southwestern R. Co. *v.* Kern, (Tex. Civ. App. 1907) 100 S. W. 971.

2. Standard Distilling, etc., Co. *v.* Harris, 75 Neb. 480, 106 N. W. 582; Lyon *v.* Charleston, etc., R. Co., 77 S. Car. 328, 58 S. E. 14, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 141; O'Brien *v.* Missouri, etc., R. Co., 36 Tex. Civ. App. 528, 82 S. W. 319.

142. 2. *United States.* — Britton *v.* Central Union Telephone Co., 131 Fed. 844, 65 C. C. A. 598.

Alaska. — See Seittn *v.* Alaska Treadwell Gold Min. Co., 2 Alaska 8.

Colorado. — Poorman Silver Mines *v.* Devling, 34 Colo. 37, 81 Pac. 252.

Kentucky. — George Weidemann Brewing Co. *v.* Wood, 87 S. W. 772, 27 Ky. L. Rep. 1012.

Massachusetts. — Little *v.* Hyde Park Electric Light Co., 191 Mass. 386, 77 N. E. 716.

Missouri. — Huss *v.* Heydt Bakery Co., (Mo. 1908) 108 S. W. 63 (failure to keep floor clean).

Nebraska. — New Omaha Thompson-Houston Electric Light Co. *v.* Rombold, 68 Neb. 73, 97 N. W. 1030, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 142.

New York. — Wood *v.* New York Cent., etc., R. Co., 184 N. Y. 290, 77 N. E. 27; Baker *v.* Empire Wire Co., 102 N. Y. App. Div. 125, 92 N. Y. Supp. 355.

South Carolina. — See Jennings *v.* Edgefield Mfg. Co., 72 S. Car. 411, 52 S. E. 113 (where master had knowledge of defect); Keys *v.* Winnsboro Granite Co., 76 S. Car. 284, 56 S. E. 949.

Virginia. — Newport News Pub. Co. *v.* Beaumeister, 104 Va. 744, 52 S. E. 627.

It is otherwise as to non-obvious defects which it is the common-law duty of the master to discover and remedy. Martin *v.* Wabash R. Co., 142 Fed. 650, 6 Ann. Cas. 582, 73 C. C. A. 646.

A master cannot shift upon his employees his responsibility to them for injuries resulting from defects due to wear and tear, by devolving upon them the duty of inspection, unless they are given time and opportunity to make such inspection as would reveal the defects. Sturgeon *v.* Tacoma Eastern R. Co., (Wash. 1908) 93 Pac. 526.

143. 5. Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555; Foster *v.* Chicago, etc., R. Co., 127 Iowa 84, 102 N. W. 422; Buey *v.* Chess, etc., Co., (Ky. 1905) 84 S. W. 563; Lynch *v.* M. T. Stevens, etc., Co., 187 Mass. 397, 73 N. E. 478; Urquhart *v.* Smith, etc., Co., 192 Mass. 257, 78 N. E. 410 (statute); Keating *v.* Coon, 102 N. Y. App. Div. 112, 92 N. Y. Supp. 474 (statute). But see Roach *v.* Haile Gold Min. Co., 71 S. Car. 79, 50 S. E. 543.

The servant is not required to notify the master of defects of which the latter has notice. Mt. Nebo Anthracite Coal Co. *v.* Williamson, 73 Ark. 530, 84 S. W. 779. See also Southern R. Co. *v.* McGowan, (Ala. 1907) 43 So. 378.

144. 1. *United States.* — Dishon *v.* Cincinnati, etc., R. Co., 133 Fed. 471, 66 C. C. A. 345; *In re* Michigan Steamship Co., 133 Fed. 577; Northwestern Steamship Co. *v.* Griggs, 146 Fed. 472, 77 C. C. A. 28.

California. — Vinson *v.* Los Angeles Pac. R. Co., 147 Cal. 479, 82 Pac. 53.

Connecticut. — Kennedy *v.* Scovill Mfg. Co., 79 Conn. 722, 65 Atl. 131.

Illinois. — Cullen *v.* Higgins, 216 Ill. 78, 74 N. E. 698.

Indiana. — McElwaine-Richards Co. *v.* Wall, 166 Ind. 267, 76 N. E. 408.

Kentucky. — Hilman Land, etc., Co. *v.* Littlejohn, (Ky. 1906) 90 S. W. 1053 (pouring powder into 'blast hole from large canister).

Massachusetts. — Flansberg *v.* Heywood Bros., etc., Co., 190 Mass. 125, 76 N. E. 599; O'Brien *v.* Hargraves Mills, (Mass. 1907) 82 N. E. 677; Whippen *v.* Stone, (Mass. 1908) 83 N. E. 989.

Michigan. — Roberts *v.* Sanitas Nut Food Co., 142 Mich. 589, 106 N. W. 68, 12 Detroit Leg. N. 788; Mulholland *v.* Ideal Mfg. Co., 149 Mich. 126, 112 N. W. 483 (unclogging machine while in motion); Schulte *v.* Pfaudler Co., 150 Mich. 427, 113 N. W. 1120.

Mississippi. — Illinois Cent. R. Co. *v.* Emerson, 88 Miss. 598, 40 So. 818.

Missouri. — Smith *v.* Forrester-Nace Box Co., 193 Mo. 715, 92 S. W. 394; Bennett *v.* Himmelberger, 117 Mo. App. 58, 93 S. W. 823; Pohlmann *v.* American Car, etc., Co., 123 Mo. App. 219, 100 S. W. 544.

Montana. — Thomas *v.* Boston, etc., Consol. Copper, etc., Min. Co., 34 Mont. 370, 86 Pac. 499, 87 Pac. 972.

New Hampshire. — Hamel *v.* Burgess Sulphite Fibre Co., (N. H. 1907) 68 Atl. 191.

New York. — Fink *v.* Hartog, etc., Candy Co., 112 N. Y. App. Div. 387, 98 N. Y. Supp. 393; Fortune *v.* Hall, 122 N. Y. App. Div. 250, 106 N. Y. Supp. 787; Lyon *v.* Coleman, (Supm. Ct. App. Div.) 108 N. Y. Supp. 378.

North Carolina. — Sledge *v.* Weldon Lumber Co., 140 N. Car. 459, 53 S. E. 295.

Pennsylvania. — Best *v.* Williamsport Staple Co., 218 Pa. St. 202, 67 Atl. 205; Bowen *v.* Pennsylvania R. Co., 219 Pa. St. 405, 68 Atl. 963.

Rhode Island. — Leahy *v.* U. S. Cotton Co., 28 R. I. 252, 66 Atl. 572 (stepping into lighted elevator shaft without looking).

Tennessee. — Nashville Spoke, etc., Co. *v.* Thomas, 114 Tenn. 458, 86 S. W. 379.

Texas. — Ft. Worth, etc., R. Co. *v.* Robinson, 37 Tex. Civ. App. 465, 84 S. W. 410; Missouri, etc., R. Co. *v.* Barnes, (Tex. Civ. App. 1905) 85 S. W. 1006; Robinson *v.* Ft. Worth, etc., R. Co., 99 Tex. 110, 87 S. W. 667; Wagnon *v.* Houston, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1112; Houston, etc., R. Co. *v.* Oram, (Tex. Civ. App. 1906) 92 S. W. 1029.

Washington. — Laidley *v.* Wm. Musser Lumber, etc., Co., 45 Wash. 239, 88 Pac. 124; Jones *v.* Moran Bros. Co., 45 Wash. 391, 88 Pac. 626.

Wisconsin. — Gardner *v.* Paine Lumber Co., 123 Wis. 338, 101 N. W. 700.

2. *Alabama.* — Kansas City, etc., R. Co. *v.* Thornhill, 141 Ala. 215, 37 So. 412; Northern Alabama R. Co. *v.* Key, (Ala. 1907) 43 So. 701.

Arkansas. — St. Louis, etc., R. Co. *v.* Jackson, 78 Ark. 100, 93 S. W. 746.

Illinois. — Pittsburg, etc., R. Co. *v.* Bovard, 223 Ill. 176, 79 N. E. 128.

Indiana. — Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Masterson *v.* Southern R. Co., (Ind. App. 1907) 82 N. E. 1021.

Kansas. — Missouri Pac. R. Co. *v.* Bentley, (Kan. 1907) 93 Pac. 150.

Massachusetts. — Dunphy *v.* Boston El. R. Co., 192 Mass. 415, 78 N. E. 479; Meadowcroft *v.* New York, etc., R. Co., 193 Mass. 249, 79 N. E. 266.

New York. — McLaughlin *v.* Manhattan R. Co., 111 N. Y. App. Div. 254, 97 N. Y. Supp. 719.

North Carolina. — Peoples *v.* North Carolina R. Co., 137 N. Car. 96, 49 S. E. 87; Sherrill *v.* Southern R. Co., 140 N. Car. 252, 52 S. E. 940; Brown *v.* Southern R. Co., 143 N. Car. 697, 144 N. Car. 634, 57 S. E. 397.

Texas. — International, etc., R. Co. *v.* Villareal, 36 Tex. Civ. App. 532, 82 S. W. 1063.

A custom of a railroad company to warn employees engaged upon its yard tracks of the approach of switch engines, by ringing the bell or sounding the whistle thereof, relieves such employees in a large measure from the strict rule of self-protection. Floan *v.* Chicago, etc., R. Co., 101 Minn. 113, 111 N. W. 957.

3. *Iowa.* — Hoffard *v.* Illinois Cent. R. Co., (Iowa 1907) 110 N. W. 446.

Kentucky. — Cincinnati, etc., R. Co. *v.* Hill, (Ky. 1905) 89 S. W. 523.

Louisiana. — Lewis *v.* Vicksburg, etc., R. Co., 114 La. 161, 38 So. 92.

Massachusetts. — Cannon *v.* New York, etc., R. Co., 194 Mass. 177, 80 N. E. 450; Blute *v.* New York, etc., R. Co., (Mass. 1907) 81 N. E. 188; Lizotte *v.* New York Cent., etc., R. Co., (Mass. 1907) 83 N. E. 362.

Michigan. — Zulke *v.* Michigan Cent. R. Co., 147 Mich. 192, 110 N. W. 493.

Missouri. — Cahill *v.* Chicago, etc., R. Co., 205 Mo. 393, 103 S. W. 532.

New York. — Makin *v.* Pettebone Cataract Paper Co., 188 N. Y. 559, 80 N. E. 1113; Rich *v.* Pennsylvania R. Co., 112 N. Y. App. Div. 818, 98 N. Y. Supp. 678; Chisholm *v.* Manhattan R. Co., 116 N. Y. App. Div. 320, 101 N. Y. Supp. 622; Caffi *v.* New York Cent., etc., R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 570, 102 N. Y. Supp. 633; Kupec *v.* Interborough Rapid Transit Co., 120 N. Y. App. Div. 166, 104 N. Y. Supp. 924.

Ohio. — Green *v.* New York, etc., R. Co., 26 Ohio Cir. Ct. 609.

Texas. — Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1907) 101 S. W. 453.

145. 1. *Indiana.* — Baltimore, etc., R. Co. *v.* Clapp, 35 Ind. App. 403, 74 N. E. 267.

Kansas. — Dyerson *v.* Union Pac. R. Co., 74 Kan. 528, 87 Pac. 680.

Kentucky. — Southern R. Co. *v.* Thomas, 92 S. W. 578, 29 Ky. L. Rep. 79 (climbing between cars in crossing track); Hocker *v.* Louisville, etc., R. Co., (Ky. 1906) 96 S. W. 526.

Ohio. — Byrket *v.* Lake Shore, etc., R. Co., 20 Ohio Cir. Ct. 614, *affirmed* 75 Ohio St. 625, 80 N. E. 1124.

Pennsylvania. — Damikas *v.* Standard Steel Car Co., 15 Pa. Dist. 719, *quoting* 20 Am. and Eng. Encyc. of Law (2d ed.) 145.

Texas. — Bennett *v.* St. Louis Southwestern R. Co., 36 Tex. Civ. App. 459, 82 S. W. 333; Gulf, etc., R. Co. *v.* Melville, (Tex. Civ. App. 1905) 87 S. W. 863; Missouri, etc., R. Co. *v.* Balliet, (Tex. Civ. App. 1908) 107 S. W. 906.

Washington. — Anson *v.* Northern Pac. R. Co., 45 Wash. 92, 87 Pac. 1058.

Wisconsin. — Polaski *v.* Pittsburgh Coal Dock Co., (Wis. 1908) 114 N. W. 437.

3. *United States.* — Demko *v.* Carbon Hill Coal Co., 136 Fed. 162, 69 C. C. A. 74; Tower Lumber Co. *v.* Brandvold, 141 Fed. 919, 73 C. C. A. 153; St. Louis, etc., R. Co. *v.* Conway, (C. C. A.) 156 Fed. 234.

Colorado. — Union Coal, etc., Co. *v.* Sundberg, 36 Colo. 8, 85 Pac. 319; Cripple Creek

Sampling, etc., Co. *v.* Souza, 37 Colo. 393, 86 Pac. 1005.

Illinois. — Western Union Tel. Co. *v.* Gilleran, 126 Ill. App. 429.

Kentucky. — Baker *v.* Lexington, etc., R. Co., (Ky. 1905) 89 S. W. 149; Cincinnati, etc., R. Co. *v.* Hill, (Ky. 1905) 89 S. W. 523.

Maryland. — State *v.* Western Maryland R. Co., (Md. 1907) 65 Atl. 635.

Missouri. — Kelley *v.* Lawrence, 195 Mo. 75, 92 S. W. 1158.

New York. — Karch *v.* Kipp, (Supm. Ct. App. T.) 90 N. Y. Supp. 404.

Ohio. — Davis *v.* Somers-Cambridge Co., 75 Ohio St. 215, 79 N. E. 233.

Pennsylvania. — Fox *v.* Clearfield Wooden Ware Co., 211 Pa. St. 645, 61 Atl. 245; Slota *v.* Albert Lewis Lumber, etc., Co., 215 Pa. St. 434, 64 Atl. 632.

Rhode Island. — Benson *v.* New York, etc., R. Co., 26 R. I. 405, 59 Atl. 79.

Texas. — Burns *v.* Chronister Lumber Co., (Tex. Civ. App. 1905) 87 S. W. 163.

Washington. — Stratton *v.* C. H. Nichols Lumber Co., 39 Wash. 323, 81 Pac. 831.

146. 1. *United States.* — American Linseed Co. *v.* Heins, 141 Fed. 45, 72 C. C. A. 533; Suttle *v.* Choctaw, etc., R. Co., (C. C. A.) 144 Fed. 668; Williams *v.* Choctaw, etc., R. Co., 149 Fed. 104, 79 C. C. A. 146; Crookston Lumber Co. *v.* Boutin, 149 Fed. 680, 79 C. C. A. 368.

Alabama. — Geis *v.* Tennessee Coal, etc., Co., 143 Ala. 299, 39 So. 301 (leaving lighted way for unlighted route in going from master's premises); Reiter-Conley Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280; Moss *v.* Mosley, (Ala. 1906) 41 So. 1012.

Alaska. — Begenish *v.* Gates, 2 Alaska 511.

California. — Schwind *v.* Floriston Pulp, etc., Co., 5 Cal. App. 197, 89 Pac. 1066; Douglas *v.* Southern Pac. Co., 151 Cal. 242, 90 Pac. 538 (selection of dangerous passageway).

Georgia. — Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110; Cawood *v.* Chattahoochee Lumber Co., 126 Ga. 159, 54 S. E. 944.

Illinois. — Kath *v.* East St. Louis, etc., R. Co., 232 Ill. 126, 83 N. E. 533; Southern R. Co. *v.* Lambert, 116 Ill. App. 52; Baltimore, etc., R. Co. *v.* Arnold, 122 Ill. App. 278; Illinois Cent. R. Co. *v.* Swift, 213 Ill. 307, 72 N. E. 737.

Indiana. — Grace *v.* Globe Stove, etc., Co., (Ind. App. 1907) 82 N. E. 99; New York, etc., R. Co. *v.* Hamlin, (Ind. 1908) 83 N. E. 343.

Kentucky. — Corley *v.* Paducah Cooperage Co., (Ky. 1905) 89 S. W. 512.

Maine. — Leard *v.* International Paper Co., 100 Me. 59, 60 Atl. 700.

Massachusetts. — Gillette *v.* General Electric Co., 187 Mass. 1, 72 N. E. 255.

Michigan. — Dutchowski *v.* Handy Things Co., 141 Mich. 11, 104 N. W. 358, 12 Detroit Leg. N. 328; Perry *v.* Michigan Alkali Co., 150 Mich. 537, 114 N. W. 315.

Missouri. — Lawrence *v.* Heidbreder Ice Co., 119 Mo. App. 316, 93 S. W. 897.

Montana. — Johnson *v.* Maiette, 34 Mont. 477, 87 Pac. 447.

New Jersey. — McConnell *v.* Alpha Portland Cement Co., (N. J. 1907) 67 Atl. 346.

New York. — Patterson *v.* V. J. Hedden, etc., Co., (Supm. Ct. App. T.) 90 N. Y. Supp. 1069; Mullins *v.* Manhattan Brass Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 138, 93 N. Y. Supp. 635; Guillano *v.* F. W. Seagrist, Jr., Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 577; Civetti *v.* American Hatters, etc., Corp., (Supm. Ct. App. Div.) 108 N. Y. Supp. 663.

North Carolina. — Horne *v.* Consolidated R., etc., Co., 141 N. Car. 50, 53 S. E. 658.

Oregon. — See Viohl *v.* North Pac. Lumber Co., 46 Oregon 297, 80 Pac. 112.

Pennsylvania. — Meyers *v.* Moorehead, 28 Pa. Super. Ct. 503.

Rhode Island. — Carbury *v.* Eastern Nut, etc., Co., 27 R. I. 116, 60 Atl. 773.

South Carolina. — Quick *v.* Millfort Mill Co., 78 S. Car. 472, 59 S. E. 365.

Texas. — St. Louis, etc., R. Co. *v.* Mathis, (Tex. 1908) 107 S. W. 530.

Washington. — Dossett *v.* St. Paul, etc., Lumber Co., 40 Wash. 276, 82 Pac. 273; Bundy *v.* Union Iron Works, (Wash. 1907) 89 Pac. 545.

2. Baltimore, etc., R. Co. *v.* Cavanaugh, 35 Ind. App. 44, 71 N. E. 239, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146; Montgomery *v.* Chicago G. W. R. Co., 109 Mo. App. 88, 83 S. W. 66; St. Louis, etc., R. Co. *v.* Vestal, (Tex. Civ. App. 1905) 86 S. W. 790.

147. 1. *United States.* — Pennsylvania R. Co. *v.* Garcia, 152 Fed. 104, 81 C. C. A. 322.

Alabama. — Kansas City, etc., R. Co. *v.* Thornhill, 141 Ala. 215, 37 So. 412.

Connecticut. — Swain *v.* O'Loughlin, 80 Conn. 200, 67 Atl. 480.

Georgia. — Southern Cotton-Oil Co. *v.* Gladman, 1 Ga. App. 259, 58 S. E. 249; Southern R. Co. *v.* Rutledge, (Ga. App. 1908) 60 S. E. 1011.

Illinois. — Illinois Steel Co. *v.* Olste, 214 Ill. 181, 73 N. E. 422; Waukegan *v.* Sturm, 118 Ill. App. 479.

Indiana. — Perry-Matthews-Buskirk Stone Co. *v.* Speer, (Ind. App. 1905) 73 N. E. 933.

Iowa. — Nugent *v.* Cudahy Packing Co., 126 Iowa 517, 102 N. W. 442.

Kansas. — St. Louis, etc., R. Co. *v.* Morris, (Kan. 1907) 93 Pac. 153.

Kentucky. — Dryden *v.* H. E. Pogue Distillery Co., (Ky. 1904) 82 S. W. 262; Ross-Paris Co. *v.* Brown, (Ky. 1906) 90 S. W. 568; Western Union Tel. Co. *v.* Holtby, 93 S. W. 652, 29 Ky. L. Rep. 523; Central Coal, etc., Co. *v.* Thompson, (Ky. 1907) 102 S. W. 272.

Maine. — Jensen *v.* Kyer, 101 Me. 106, 63 Atl. 389.

Massachusetts. — Lammi *v.* Milford Pink Granite Quarries, (Mass. 1907) 82 N. E. 26.

Minnesota. — Shalgren *v.* Red Cliff Lumber Co., 95 Minn. 450, 104 N. W. 531.

Missouri. — Butz *v.* Murch Bros. Constr. Co., 199 Mo. 279, 97 S. W. 895; Bokamp *v.* Chicago, etc., R. Co., 123 Mo. App. 270, 100 S. W. 689.

New Hampshire. — Kasjeta *v.* Nashua Mfg. Co., 73 N. H. 22, 58 Atl. 874.

New York. — Motzing *v.* Excelsior Brewing Co., 107 N. Y. App. Div. 275, 94 N. Y. Supp. 1118; Burke *v.* Manhattan R. Co., 109 N. Y. App. Div. 722, 96 N. Y. Supp. 516; Regling *v.* Lehmaier, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 331, 98 N. Y. Supp. 642.

North Carolina. — Pearce *v.* Blackwell Durham Tobacco Co., 141 N. Car. 80, 53 S. E. 662; Liles *v.* Fosburg Lumber Co., 142 N. Car. 39, 54 S. E. 795; Biles *v.* Seaboard Air Line R. Co., 143 N. Car. 78, 55 S. E. 512.

Ohio. — Crockett *v.* Michael, 29 Ohio Cir. Ct. 41.

Oregon. — Sorenson *v.* Oregon Power Co., 47 Oregon 24, 82 Pac. 10.

Pennsylvania. — Dougherty *v.* Dobson, 214 Pa. St. 252, 63 Atl. 748; Zearfoss *v.* Norway Iron, etc., Co., (Pa. 1907) 67 Atl. 867.

Texas. — Bonn *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1904) 82 S. W. 808; Missouri, etc., R. Co. *v.* Kellerman, (Tex. Civ. App. 1905) 87 S. W. 401; International, etc., R. Co. *v.* Wray, (Tex. Civ. App. 1906) 96 S. W. 74; St. Louis Southwestern R. Co. *v.* Schuler, (Tex. Civ. App. 1907) 102 S. W. 783; Marshall *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1908) 107 S. W. 883.

Vermont. — Sias *v.* Consolidated Lighting Co., 79 Vt. 224, 64 Atl. 1104.

Virginia. — Lane *v.* Bott, 104 Va. 615, 52 S. E. 258.

Washington. — Withiam *v.* Tenino Stone Quarry, (Wash. 1907) 92 Pac. 900.

Getting Off Cars in Motion. — Mitchell *v.* Chicago, etc., R. Co., 108 Mo. App. 142, 83 S. W. 289.

148. 1. St. Louis, etc., R. Co. *v.* Mathis, 76 Ark. 184, 91 S. W. 763; Choctaw, etc., R. Co. *v.* Jones, 77 Ark. 367, 92 S. W. 244; Illinois Cent. R. Co. *v.* Kechler, (Ky. 1905) 84 S. W. 1167; Pullman Co. *v.* Geller, (Ky. 1908) 107 S. W. 271; Hunley *v.* Patterson, 116 La. 736, 41 So. 54, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 148; Schiglizzo *v.* Dunn, 211 Pa. St. 253, 60 Atl. 724; San Antonio, etc., R. Co. *v.* Stevens, 37 Tex. Civ. App. 80, 83 S. W. 235.

4. Atlantic Coast Line R. Co. *v.* Ryland, 50 Fla. 190, 40 So. 24; Southern Cotton-Oil Co. *v.* Gladman, 1 Ga. App. 259, 58 S. E. 249; Milby, etc., Coal, etc., Co. *v.* Balla, (Indian Ter. 1907) 104 S. W. 860; Jensen *v.* Kyer, 101 Me. 106, 63 Atl. 389; Knorpp *v.* Wagner, 195 Mo. 637, 93 S. W. 961; Meyers *v.* O'Bear-Nester Glass Co., (Mo. App. 1908) 107 S. W. 1041; Hubler *v.* Johnson-McLean Co., 74 Neb. 849, 105 N. W. 247 (cleaning near circular saw in motion); Tuckett *v.* American Steam, etc., Laundry, 30 Utah 273, 84 Pac. 500; Mason *v.* Post, 105 Va. 494, 54 S. E. 311.

5. Atlantic Coast Line R. Co. *v.* Beazley, (Fla. 1907) 45 So. 761.

6. Redus *v.* Milner Coal, etc., Co., (Ala. 1906) 41 So. 634; Diamond Rubber Co. *v.* McClurg, 26 Ohio Cir. Ct. 481; Zoesch *v.* Flambeau Paper Co., (Wis. 1908) 114 N. W. 485; Royal Electric Co. *v.* Paquette, 35 Can. Sup. Ct. 202.

149. 3. Moore *v.* St. Louis Transit Co., 193 Mo. 411, 91 S. W. 1060.

4. Johnson *v.* Bridgeport Deoxidized Bronze, etc., Co., 135 Fed. 216; Louisville, etc., R. Co. *v.* Pendleton, (Ky. 1907) 104 S. W. 382; Duvall *v.* Armour Packing Co., 119 Mo. App. 153, 95 S. W. 978, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 131 [149]; Michalofski *v.* Pittsburg Screw, etc., Co., 213 Pa. St. 563, 62 Atl. 1112; Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731; Patterson *v.* North Carolina Lumber Co., 145 N. Car. 42, 58 S. E. 438.

5. Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555; Shirley *v.* Abbeville Furniture Co., 76 S. Car. 452, 57 S. E. 178; Imhoof *v.* Northwestern Lumber Co., 43 Wash. 387, 86 Pac. 650.

6. Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516; Ballou *v.* Potter, (Ky. 1908) 106 S. W. 1178; Mehan *v.* Lowell Electric Light Corp., 192 Mass. 53, 78 N. E. 385; Toledo, etc., R. Co. *v.* Pfisterer, 26 Ohio Cir. Ct. 669.

150. 1. *United States.* — Crosby *v.* Cuba R. Co., 158 Fed. 144.

Alabama. — Pierson Lumber Co. *v.* Hart, 144 Ala. 239, 39 So. 566; Southern Coal, etc., Co. *v.* Swinney, (Ala. 1907) 42 So. 808.

California. — McRae *v.* Erickson, 1 Cal. App. 326, 82 Pac. 209.

District of Columbia. — Jennings *v.* Philadelphia, etc., R. Co., 29 App. Cas. (D. C.) 219, 10 Ann. Cas. 761.

Georgia. — Western, etc., Co. *v.* Bryant, 123 Ga. 77, 51 S. E. 20.

Illinois. — Chicago, etc., R. Co. *v.* Walters, 217 Ill. 87, 75 N. E. 441; Paige *v.* Illinois Steel Co., 233 Ill. 313, 84 N. E. 239; American Brake Shoe, etc., Co. *v.* Jankus, 121 Ill. App. 267; North American Restaurant, etc., House *v.* McElligott, 129 Ill. App. 498, *affirmed* 227 Ill. 317, 81 N. E. 388.

Iowa. — Brantner *v.* Chicago, etc., R. Co., (Iowa 1907) 112 N. W. 790.

Minnesota. — Dolson *v.* Dunham, 96 Minn. 227, 104 N. W. 964.

Missouri. — Bien *v.* St. Louis Transit Co., 108 Mo. App. 399, 83 S. W. 686; Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621.

Montana. — Anderson *v.* Northern Pac. R. Co., 34 Mont. 181, 85 Pac. 884.

New York. — Sembler *v.* Cowperthwait, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 28, 103 N. Y. Supp. 979.

Ohio. — Isley *v.* Wabash R. Co., 27 Ohio Cir. Ct. 785; Interurban R., etc., Co. *v.* Treuheit, 20 Ohio Cir. Ct. 407.

Texas. — San Antonio, etc., R. Co. *v.* Stevens, 37 Tex. Civ. App. 80, 83 S. W. 235; El Paso, etc., R. Co. *v.* Kelly, (Tex. Civ. App. 1904) 83 S. W. 855; Mounce *v.* Lodwick Lumber Co., (Tex. Civ. App. 1906) 91 S. W. 340; Kansas City Consol. Smelting, etc., Co. *v.* Taylor, (Tex. Civ. App. 1908) 107 S. W. 880.

Washington. — Sundgren *v.* [illegible] Tel. phone Co., 38 Wash. 313, 80 Pac. 539; Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323.

151. 1. Houston, etc., R. Co. *v.* Burnet, (Tex. Civ. App. 1908) 108 S. W. 404 (removing hand car from track to prevent wreck).

2. See Lee *v.* Sterling Silk Mfg. Co., (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 182, 93 N. Y. Supp. 560 (statute prohibiting employment of children in factories); Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408; Walker *v.* Shreveport Gas, etc., Co., (La. 1907) 44 So. 925.

3. Leffler *v.* Anheuser-Busch Brewing Assoc., 127 Mo. App. 488, 106 S. W. 105.

5. *United States.* — American Linseed Co. *v.* Heins, 141 Fed. 45, 72 C. C. A. 533.

Indiana. — P. H., etc., Roots Co. *v.* Meeker, 165 Ind. 132, 73 N. E. 253.

Kansas. — Madison *v.* Clippinger, (Kan. 1906) 88 Pac. 260 (unguarded machinery).

Massachusetts. — Dumphy *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 675.

Michigan. — Swick *v.* Ætna Portland Cement Co., 147 Mich. 454, 111 N. W. 110; Beghold *v.* Auto Body Co., 149 Mich. 14, 112 N. W. 691 (statute prohibiting employment of children on certain work).

Minnesota. — McKinny *v.* Waterman, 93 Minn. 242, 101 N. W. 300; Schutt *v.* Adair, 99 Minn. 9, 108 N. W. 811, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 159 [151].

Missouri. — Millsap *v.* Beggs, 122 Mo. App. 1, 97 S. W. 956; Huss *v.* Heydt Bakery Co., (Mo. 1908) 108 S. W. 63.

New York. — Chisholm *v.* Manhattan R. Co., 116 N. Y. App. Div. 320, 101 N. Y. Supp. 622; Lee *v.* Sterling Silk Mfg. Co., 115 N. Y. App. Div. 589, 101 N. Y. Supp. 78 (statute prohibiting employment of children in factories).

North Carolina. — Biles *v.* Seaboard Air Line R. Co., 139 N. Car. 528, 52 S. E. 129.

Rhode Island. — Leahy *v.* U. S. Cotton Co., 28 R. I. 252, 66 Atl. 572.

Texas. — Smith *v.* Atchison, etc., R. Co., (Tex. Civ. App. 1905) 87 S. W. 1052 (statute regulating hours of railroad employees).

Washington. — Hunter *v.* Washington Pipe, etc., Co., 43 Wash. 167, 86 Pac. 171 (guarding machinery); Bundy *v.* Union Iron Works, (Wash. 1907) 89 Pac. 545.

The fact that a servant continues to work with machinery not guarded as required by statute does not of itself render him guilty of contributory negligence. Baltimore, etc., R. Co. *v.* Cavanaugh, 35 Ind. App. 32, 71 N. E. 230.

6. Fulton *v.* Wilmington Star Min. Co., 133 Fed. 193, 66 C. C. A. 247 (*Illinois* statute with regard to mines); Henrietta Coal Co. *v.* Martin, (1906) 221 Ill. 460, 77 N. E. 902, 122 Ill. App. 354 (regulations as to mines); Kellyville Coal Co. *v.* Strine, 117 Ill. App. 115; Helmbacher Forge, etc., Co. *v.* Garrett, 119 Ill. App. 166; Bolen-Darnell Coal Co. *v.* Williams, (Indian Ter. 1907) 104 S. W. 867; Lenahan *v.* Pittston Coal Min. Co., 218 Pa. St. 311, 67 Atl. 642 (statute prohibiting employment of young children to oil machinery). See also Woolf *v.* Nauman Co., 128 Iowa 261, 103 N. W. 785 (employment of child under statutory age).

152. 1. Eastern, etc., Lumber Co. *v.* Rayley, (C. C. A.) 157 Fed. 532.

3. But see St. Louis, etc., R. Co. *v.* Inman, 81 Ark. 591, 99 S. W. 832.

5. Smith *v.* Milwaukee Electric R., etc., Co., 127 Wis. 253, 106 N. W. 829.

6. Davis *v.* Mercer Lumber Co., 164 Ind. 413, 73 N. E. 899 (statutory modification); Hunt *v.* Dexter Sulphite Pulp, etc., Co., 100 N. Y. App. Div. 119, 91 N. Y. Supp. 279.

16. *Georgia.* — Sanders *v.* Central of Georgia R. Co., 123 Ga. 763, 51 S. E. 728.

Indiana. — See Diamond Block Coal Co. *v.* Cuthberston, 166 Ind. 290, 76 N. E. 1060 (statutory modification); New Castle Bridge Co. *v.* Doty, 168 Ind. 259, 79 N. E. 485; Pittsburgh, etc., R. Co. *v.* Collins, 168 Ind. 467, 80 N. E. 415; Crawford, etc., Co. *v.* Gose, (Ind. App. 1907) 82 N. E. 984.

Iowa. — Calloway *v.* Agar Packing Co., 129 Iowa 1, 104 N. W. 721; Sutton *v.* Des Moines Bakery Co., (Iowa 1907) 112 N. W. 836.

Kentucky. — Willie *v.* East Tennessee Coal Co., (Ky. 1905) 84 S. W. 1166.

Massachusetts. — Lizotte *v.* New York Cent., etc., R. Co., (Mass. 1907) 83 N. E. 362.

New York. — Goodhines *v.* Chase, 100 N. Y. App. Div. 87, 91 N. Y. Supp. 313; Wilson *v.* New York Mills, 107 N. Y. App. Div. 99, 94 N. Y. Supp. 1090 (Employers' Liability Act 1902 does not change rule); Voorhees *v.* Hudson River Telephone Co., 109 N. Y. App. Div. 465, 95 N. Y. Supp. 703, 1167; La Duke *v.* Hudson River Telephone Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 189.

153. 1. **Death of Servant.** — In case a servant is killed, thus taking away the sole witness of the accident, his freedom from contributory negligence may be inferred by the jury from the circumstances. Irish *v.* Union Bag, etc., Co., 103 N. Y. App. Div. 1, 92 N. Y. Supp. 695.

2. Wallis *v.* St. Louis, etc., R. Co., 77 Ark. 556, 95 S. W. 446.

3. *United States.* — Looney *v.* Metropolitan R. Co., 200 U. S. 480, 26 U. S. Sup. Ct. 303.

Alabama. — Mobile, etc., R. Co. *v.* Bromberg, 141 Ala. 258, 37 So. 395.

Arkansas. — Choctaw, etc., R. Co. *v.* Doughty, 77 Ark. 1, 91 S. W. 768.

Delaware. — Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369.

Florida. — Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516.

Idaho. — Crawford *v.* Bonners Ferry Lumber Co., 12 Idaho 678, 87 Pac. 998.

Minnesota. — Hjelm *v.* Western Granite Contracting Co., 98 Minn. 222, 108 N. W. 803.

Mississippi. — Mississippi Cent. R. Co. *v.* Hardy, 88 Miss. 732, 41 So. 505.

Missouri. — Edington *v.* St. Louis, etc., Co., 204 Mo. 61, 102 S. W. 491.

Montana. — Stephens *v.* Elliott, (Mont. 1907) 92 Pac. 45.

North Carolina. — Peoples *v.* North Carolina R. Co., 137 N. Car. 96, 49 S. E. 87; Stewart *v.* Raleigh, etc., Air Line R. Co., 137 N. Car. 687, 50 S. E. 312 (statute).

Ohio. — Cleveland, etc., R. Co. *v.* Tehan, 26 Ohio Cir. Ct. 457; Jackson Knife, etc., Co. *v.* Hathaway, 27 Ohio Cir. Ct. 745.

Texas. — Bonn *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1904) 82 S. W. 808; Gulf, etc., R. Co. *v.* Melville, (Tex. Civ. App. 1905) 87 S. W. 863; International, etc., R. Co. *v.* Tisdale, (Tex. Civ. App. 1905) 87 S. W. 1063; Galveston, etc., R. Co. *v.* Worcester, (Tex. Civ. App. 1907) 100 S. W. 990.

Washington. — Hoff *v.* Japanese American Fish, etc., Co., (Wash. 1908) 94 Pac. 109; Gauthier *v.* Wood, (Wash. 1908) 94 Pac. 654.

Wisconsin. — Hardt *v.* Chicago, etc., R. Co., 130 Wis. 512, 110 N. W. 427.

The Rule in Georgia. — Roquemore *v.* Albany, etc., R. Co., 127 Ga. 330, 56 S. E. 424.

A Preponderance of Evidence is sufficient to establish contributory negligence. Sanders *v.* Aiken Mfg. Co., 71 S. Car. 58, 50 S. E. 679.

154. 3. *United States.* — Busby *v.* Anderson

Water, etc., Co., 136 Fed. 156, 69 C. C. A. 154. But see Chicago, etc., R. Co. *v.* O'Brien, (C. C. A.) 132 Fed. 593.

Alabama. — Tutwiler Coal, etc., Co. *v.* Farrington, 144 Ala. 157, 39 So. 898; Dallas Mfg. Co. *v.* Townes, (Ala. 1906) 41 So. 988.

California. — Houghton *v.* Loma Prieta Lumber Co., (Cal. 1907) 93 Pac. 82.

Illinois. — Condon *v.* Schoenfeld, 214 Ill. 226, 73 N. E. 333; Boyd *v.* Chicago, etc., R. Co., 217 Ill. 332, 75 N. E. 496. But see Swift *v.* O'Brien, 127 Ill. App. 26.

Indiana. — Wabash R. Co. *v.* Erb, 36 Ind. App. 650, 73 N. E. 939.

Kentucky. — Baker *v.* Lexington, etc., R. Co., (Ky. 1905) 89 S. W. 149; Illinois Cent. R. Co. *v.* Timmons, 100 S. W. 337, 30 Ky. L. Rep. 1155.

Louisiana. — Metzinger *v.* New Orleans Board of Trade, (La. 1907) 44 So. 1008; Smith *v.* New Orleans G. N. R. Co., 119 La. 975, 44 So. 805; Williams *v.* Kansas City, etc., R. Co., (La. 1908) 45 So. 924.

Massachusetts. — Heffernan *v.* Fall River Iron Works Co., (Mass. 1907) 83 N. E. 5.

Minnesota. — Caron *v.* Powers-Simpson Co., 96 Minn. 192, 104 N. W. 889.

New Hampshire. — O'Brien *v.* Derry, 73 N. H. 198, 60 Atl. 843.

New York. — McMullen *v.* New York, 104 N. Y. App. Div. 337, 93 N. Y. Supp. 772; Davis *v.* Martin, 111 N. Y. App. Div. 411, 97 N. Y. Supp. 835; Antes *v.* Watkins, 112 N. Y. App. Div. 860, 98 N. Y. Supp. 519. But see O'Keefe *v.* Great Northern Elevator Co., 105 N. Y. App. Div. 8, 93 N. Y. Supp. 407.

Texas. — Freeman *v.* San Antonio Brewing Co., (Tex. Civ. App. 1905) 85 S. W. 1165. See also American Cotton Co. *v.* Simmons, (Tex. Civ. App. 1905) 87 S. W. 842; El Paso, etc., R. Co. *v.* Kelly, (Tex. Civ. App. 1904) 83 S. W. 855.

Virginia. — Risque *v.* Chesapeake, etc., R. Co., 104 Va. 476, 51 S. E. 730.

Liability of Lessor of Railroad to Servants of Lessee — Missouri Statute. — Markey *v.* Louisiana, etc., R. Co., 185 Mo. 348, 84 S. W. 61.

False Representations by the Servant by means of which he secured the employment are no defense. Galveston, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1908) 107 S. W. 108; American Car, etc., Co. *v.* Armentraut, 214 Ill. 509, 73 N. E. 766; Norfolk, etc., R. Co. *v.* Bondurant, 107 Va. 515, 59 S. E. 1901.

The Burden of Proving the existence of the relation of master and servant is on the servant. Larson *v.* Centennial Mill Co., 40 Wash. 224, 82 Pac. 294.

4. James Ramage Paper Co. *v.* Bulduzzi, 147 Fed. 151, 77 C. C. A. 393 (question for jury whether relation existed); Virginia Bridge, etc., Co. *v.* Jordan, 143 Ala. 603, 42 So. 73; Pioneer Min., etc., Co. *v.* Talley, (Ala. 1907) 43 So. 800; Woodward Iron Co. *v.* Curl, (Ala. 1907) 44 So. 969; Shadoan *v.* Cincinnati, etc., R. Co., (Ky. 1904) 82 S. W. 567 (employee entering cab of engine to get a drink); McHenry Coal Co. *v.* Render, (Ky. 1907) 104 S. W. 996; Bryan *v.* International, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 693; Pugmire *v.* Oregon Short Line R. Co., (Utah 1907) 92 Pac. 762. See also Gross *v.* Fischer Lumber, etc., Co., 119 La. 201, 43 So. 1006; Kansas City, etc., R. Co. *v.* Loosley, (Kan. 1907) 90 Pac. 990; Wiest *v.* Coal Creek R. Co., 42 Wash. 176, 84 Pac. 725.

Relation of Master and Servant may continue after day's work of day laborer is done, while he remains on the master's premises. Taylor *v.* George W. Bush, etc., Co., 5 Penn. (Del.) 378, 61 Atl. 236.

The relation of master and servant continues to exist while the servant is leaving the master's premises. Southern Coal, etc., Co. *v.* Swinney, (Ala. 1907) 42 So. 808.

The relation of master and servant may exist though at the time the servant is not actually working. Chambers *v.* Woodbury Mfg. Co., (Md. 1907) 68 Atl. 290.

The Burden of Proving that the servant at the time of his injury was engaged in his master's business is upon the servant. Yazoo, etc., R. Co. *v.* Slaughter, (Miss. 1908) 45 So. 873.

5. Grissom *v.* Atlanta, etc., Air Line R. Co., (Ala. 1907) 44 So. 661; Belt R. Co. *v.* Charters, 123 Ill. App. 322; Hatfield *v.* Adams, (Ky. 1906) 96 S. W. 583; Louisville, etc., R. Co. *v.* Pendleton, (Ky. 1907) 104 S. W. 382; Foley *v.* Young Men's Christian Assoc., (Supm. Ct. App. T.) 90 N. Y. Supp. 406; Fiesel *v.* New York Edison Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 130; Vassor *v.* Atlantic Coast Line R. Co., 142 N. Car. 68, 54 S. E. 849. But see Tucker *v.* Buffalo Cotton Mills, 76 S. Car. 539, 57 S. E. 626.

Volunteers Stand in No Better Position than Servants. — Atlanta, etc., R. Co. *v.* West, 121 Ga. 641, 49 S. E. 711.

7. Meyers *v.* Syndicate Heat, etc., Co., (Wash. 1907) 91 Pac. 549.

155. 2. *Indiana.* — Pittsburgh, etc., R. Co. *v.* Ross, (Ind. 1907) 80 N. E. 845.

Iowa. — Mumford *v.* Chicago, etc., R. Co., 128 Iowa 685, 104 N. W. 1135 (provision for notice of injury held invalid in view of statute).

Kansas. — Atchison, etc., R. Co. *v.* Fronk, 74 Kan. 519, 87 Pac. 698.

Massachusetts. — Wagner *v.* Boston El. R. Co., 188 Mass. 437, 74 N. E. 919.

New York. — Johnston *v.* Fargo, 184 N. Y. 379, 77 N. E. 388; Johnson *v.* Fargo, 98 N. Y. App. Div. 436, 90 N. Y. Supp. 725.

South Carolina. — Reed *v.* Southern R. Co., 75 S. Car. 170, 55 S. E. 218, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 154, 155.

Texas. — Galveston, etc., R. Co. *v.* Hughes, (Tex. Civ. App. 1905) 91 S. W. 643; Chicago, etc., R. Co. *v.* Thompson, (Tex. Civ. App. 1906) 93 S. W. 702, *reversed* (Tex. 1906) 97 S. W. 450.

Utah. — Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715; Pugmire *v.* Oregon Short Line R. Co., (Utah 1907) 92 Pac. 762.

Validity of Stipulations Requiring Notices to Master of Injury. — Chicago, etc., R. Co. *v.* Thompson, (Tex. 1906) 97 S. W. 459.

3. Harrison *v.* Alabama Midland R. Co., 144 Ala. 246, 40 So. 394; Atlantic Coast Line R. Co. *v.* Beazley, (Fla. 1907) 45 So. 761; Pennsylvania Co. *v.* Chapman, 220 Ill. 428, 77 N. E. 248; Gipe *v.* Pittsburgh, etc., R. Co., (Ind. App. 1907) 82 N. E. 471; Frank *v.* Newport Min. Co., 148 Mich. 637, 112 N. W. 504; Cannaday *v.* Atlantic Coast Line R. Co., 143 N. Car. 439, 55 S. E. 836; Chicago, etc., R. Co. *v.*

Healy, (Neb. 1907) 111 N. W. 503. But see Sturgess *v.* Atlantic Coast Line R. Co., (S. Car. 1908) 60 S. E. 939 (statutory modification).

Effect of Failure of Servant to Secure the Relief Benefits Contracted For. — Pennsylvania Co. *v.* Chapman, 118 Ill. App. 201, *affirmed* 220 Ill. 428, 77 N. E. 248.

156. 6. Perry *v.* Michigan Alkali Co., 150 Mich. 537, 114 N. W. 315.

If the servant was of unsound mind at the time of the release it is not of course binding upon him. Butler *v.* New England Structural Co., 191 Mass. 397, 77 N. E. 764.

7. Consideration Held Insufficient. — Gulf, etc., R. Co. *v.* Minter, (Tex. Civ. App. 1905) 85 S. W. 157.

157. 1. Bowers *v.* Detroit Southern R. Co., 26 Ohio Cir. Ct. 518.

2. Bowers *v.* Detroit Southern R. Co., 26 Ohio Cir. Ct. 518.

5. Louisville, etc., R. Co. *v.* Helm, (Ky. 1905) 89 S. W. 709; Merril *v.* Pike, 94 Minn. 186, 102 N. W. 393; Robertson *v.* George A. Fuller Constr. Co., 115 Mo. App. 456, 92 S. W. 130; Bennett *v.* Himmelberger-Harrison Lumber Co., 116 Mo. App. 699, 94 S. W. 808; Chicago, etc., R. Co. *v.* Williams, 37 Tex. Civ. App. 198, 83 S. W. 248; Galveston, etc., R. Co. *v.* Cade, (Tex. Civ. App. 1906) 93 S. W. 124; Westby *v.* Washington Brick, etc., Co., 40 Wash. 289, 82 Pac. 271.

Invalidity of release on ground of fraud may be shown in action for the injuries received by the servant. Spring Valley Coal Co. *v.* Buzis, 213 Ill. 341, 72 N. E. 1060.

The burden of proving fraud is on the party alleging it. Gipe *v.* Pittsburgh, etc., R. Co., (Ind. App. 1907) 82 N. E. 471.

Physician's misrepresentation to the defendant as to his injuries will not warrant a settlement between the master and servant being set aside. Gulf, etc., R. Co. *v.* Huyett, 99 Tex. 631, 92 S. W. 454.

Consideration Received Must Be Returned. — Harrison *v.* Alabama Midland R. Co., 144 Ala. 246, 40 So. 394.

Effect of Subsequent Discharge of Servant under Preconceived Plan. — Illinois Cent. R. Co. *v.* Keebler, (Ky. 1905) 84 S. W. 1167.

6. Punitive Damages. — Covington, etc., Bridge Co. *v.* Lillard, (Ky. 1906) 96 S. W. 538; Chesapeake, etc., R. Co. *v.* Satterfield, 100 S. W. 844, 30 Ky. L. Rep. 1168.

9. Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110 (probable future pain); Galveston, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1906) 93 S. W. 184; Kirkham *v.* Wheeler-Osgood Co., 39 Wash. 415, 81 Pac. 869 (future pain).

10. Busch *v.* Robinson, 46 Oregon 543, 81 Pac. 237, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 157.

11. Missouri, etc., R. Co. *v.* Dickson, (Tex. Civ. App. 1905) 90 S. W. 507.

The probability of future results need be reasonable only. Industrial Lumber Co. *v.* Bivens, (Tex. Civ. App. 1907) 105 S. W. 831.

The future results must be probable as distinguished from possible. Galveston, etc., R. Co. *v.* Powers, (Tex. 1907) 105 S. W. 491.

158. 1. Verdicts Held Excessive. — Scheu *v.* Pennsylvania R. Co., 141 Fed. 496, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 158.

159. 4. Missouri, etc., R. Co. *v.* Box, (Tex. Civ. App. 1906) 93 S. W. 134.

160. 1. *United States.* — Chicago, etc., R. Co. *v.* Benton, 132 Fed. 460, 65 C. C. A. 660; Rickerd *v.* Chicago, etc., R. Co., 141 Fed. 905, 73 C. C. A. 139; International Mercantile Marine Co. *v.* Fleming, 151 Fed. 203, 80 C. C. A. 479; Northport Smelting, etc., Co. *v.* Twitchell, (C. C. A.) 156 Fed. 643.

Alabama. — E. E. Jackson Lumber Co. *v.* Cunningham, 141 Ala. 206, 37 So. 445.

Arkansas. — St. Louis, etc., R. Co. *v.* Jackson, 78 Ark. 100, 93 S. W. 746.

Colorado. — Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337.

Illinois. — Illinois Steel Co. *v.* Olste, 214 Ill. 181, 73 N. E. 422; William Grace Co. *v.* Larson, 227 Ill. 101, 81 N. E. 44, *affirming* 129 Ill. App. 290; Illinois Cent. R. Co. *v.* Heath, 129 Ill. App. 143, *affirmed* 228 Ill. 312, 81 N. E. 1022.

Indiana. — Perry-Matthews-Buskirk Stone Co. *v.* Speer, (Ind. App. 1905) 73 N. E. 933; Perry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510.

Kentucky. — McFarland *v.* Harbison, etc., Co., etc., (Ky. 1904) 82 S. W. 430; Martin *v.* South Covington St. R. Co., 92 S. W. 571, 29 Ky. L. Rep. 148.

Maryland. — Baltimore, etc., R. Co. *v.* Belinski, (Md. 1907) 67 Atl. 249.

Massachusetts. — Carroll *v.* Metropolitan Coal Co., 189 Mass. 159, 75 N. E. 84.

Minnesota. — Samuelson *v.* Hennepin Paper Co., 101 Minn. 443, 112 N. W. 537; Merril *v.* Pike, 94 Minn. 186, 102 N. W. 393.

Missouri. — Moore *v.* St. Louis Transit Co., 193 Mo. 411, 91 S. W. 1060; Robertson *v.* George A. Fuller Constr. Co., 115 Mo. App. 456, 92 S. W. 130; Hach *v.* St. Louis, etc., R. Co., 117 Mo. App. 11, 93 S. W. 825; Broomfield *v.* Wurster Constr. Co., 118 Mo. App. 254, 94 S. W. 304; Kremer *v.* Eagle Mfg. Co., 120 Mo. App. 247, 96 S. W. 726; Rigsby *v.* Oil Well Supply Co., (Mo. App. 1908) 108 S. W. 1128.

Nebraska. — Fremont Brewing Co. *v.* Schulz, 72 Neb. 631, 101 N. W. 234; Central Granaries Co. *v.* Ault, 75 Neb. 249, 106 N. W. 418, 107 N. W. 1015; Kotera *v.* American Smelting, etc., Co., (Neb. 1908) 114 N. W. 945.

New York. — Wazenski *v.* New York Cent., etc., R. Co., 180 N. Y. 466, 73 N. E. 229; O'Donnell *v.* Welz, 97 N. Y. App. Div. 286, 89 N. Y. Supp. 959; Iesief *v.* New York, etc., R. Co., 102 N. Y. App. Div. 168, 92 N. Y. Supp. 342; Walker *v.* Newton Falls Paper Co., 111 N. Y. App. Div. 19, 97 N. Y. Supp. 521; Cadigan *v.* Glens Falls Gas, etc., Light Co., 112 N. Y. App. Div. 751, 98 N. Y. Supp. 954; Meehan *v.* Hogan, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 241, 104 N. Y. Supp. 417.

North Carolina. — Bradley *v.* South, etc., R. Co., 144 N. Car. 555, 57 S. E. 222.

Pennsylvania. — Miller *v.* Merritt, 211 Pa. St. 127, 60 Atl. 508.

South Carolina. — Worthy *v.* Jonesville Oil Mill, 77 S. Car. 69, 57 S. E. 634.

Texas. — Smith *v.* Buffalo Oil Co., (Tex. Civ. App. 1906) 91 S. W. 383; Pipkin *v.* Hayward Lumber Co., (Tex. Civ. App. 1906) 94 S. W.

1068; Chicago, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1908) 108 S. W. 483.

Utah. — Farney *v.* Oregon Short Line R. Co., 31 Utah 194, 87 Pac. 440.

Washington. — Hall *v.* West, etc., Mill Co., 39 Wash. 447, 81 Pac. 915.

Wisconsin. — Chopin *v.* Combined Locks Paper Co., (Wis. 1907) 114 N. W. 95; Zoesch *v.* Flambeau Paper Co., (Wis. 1908) 114 N. W. 485.

2. *United States.* — Burton *v.* Texas, etc., R. Co., 149 Fed. 388, 79 C. C. A. 208; Davis *v.* Chicago, etc., R. Co., 151 Fed. 1008, 81 C. C. A. 286.

Alabama. — Southern R. Co. *v.* McGowan, (Ala. 1907) 43 So. 378.

California. — Brunger *v.* Pioneer Roll Paper Co., (Cal. App. 1907) 92 Pac. 1043; Carlson *v.* Cucamonga Water Co., (Cal. App. 1908) 94 Pac. 399.

Georgia. — Evans *v.* Josephine Mills, 124 Ga. 318, 52 S. E. 538.

Illinois. — U. S. Wind Engine, etc., Co. *v.* Butcher, 223 Ill. 638, 79 N. E. 304, *affirming* 126 Ill. App. 302; Illinois Steel Co. *v.* Saylor, 226 Ill. 283, 80 N. E. 783, *affirming* 129 Ill. App. 73.

Iowa. — Fries *v.* Bettendorf Axle Co., 126 Iowa 138, 101 N. W. 850.

Kentucky. — George T. Stagg Co. *v.* Brightwell, 92 S. W. 8, 28 Ky. L. Rep. 1220; Ford *v.* Providence Coal Co., (Ky. 1907) 99 S. W. 609.

Massachusetts. — Lynch *v.* M. T. Stevens, etc., Co., 187 Mass. 397, 73 N. E. 478; Harris *v.* Putnam Mach. Co., 188 Mass. 85, 74 N. E. 287; Peterson *v.* Morgan Spring Co., 189 Mass. 576, 76 N. E. 220; Lack *v.* Hargraves Mills, 190 Mass. 56, 76 N. E. 235; Silva *v.* Davis, 191 Mass. 47, 77 N. E. 525; McGuinness *v.* Lehan, 193 Mass. 241, 79 N. E. 265.

Minnesota. — Wolfe *v.* Minneapolis, etc., R. Co., 100 Minn. 306, 111 N. W. 5; Cederberg *v.* Minneapolis, etc., R. Co., 101 Minn. 100, 111 N. W. 953; Lee *v.* Wild Rice Lumber Co., 102 Minn. 74, 112 N. W. 887; Martin *v.* Gould, (Minn. 1908) 115 N. W. 276; Monsen *v.* Crane, 99 Minn. 186, 108 N. W. 933.

Missouri. — Seeger *v.* St. Louis Silver Co., 107 Mo. 400, 91 S. W. 1030; Longree *v.* Jackes-Evans Mfg. Co., 120 Mo. App. 478, 97 S. W. 272; Huston *v.* Quincy, etc., R. Co., (Mo. App. 1908) 107 S. W. 1045.

Nebraska. — Kotera *v.* American Smelting, etc., Co., (Neb. 1908) 114 N. W. 945.

New Jersey. — Maurer *v.* Gould, (N. J. 1904) 59 Atl. 28.

New York. — Stenger *v.* Buffalo Union Furnace Co., 186 N. Y. 323, 78 N. E. 1068; Hunt *v.* Dexter Sulphite Fulp, etc., Co., 100 N. Y. App. Div. 119, 91 N. Y. Supp. 279; Kremer *v.* New York Edison Co., 102 N. Y. App. Div. 433, 92 N. Y. Supp. 883; Dolan *v.* Herring-Hall-Marvin Safe Co., 105 N. Y. App. Div. 366, 94 N. Y. Supp. 241; Motzing *v.* Excelsior Brewing Co., 107 N. Y. App. Div. 275, 94 N. Y. Supp. 1118; Fish *v.* Utica Steam, etc., Cotton Mills, 109 N. Y. App. Div. 326, 95 N. Y. Supp. 673 (verdict may be set aside by the court as contrary to the evidence); Lynch *v.* American Linseed Co., 113 N. Y. App. Div. 502, 99 N. Y. Supp. 260; Swarts *v.* R. M. Wilson Mfg. Co., 115 N. Y. App. Div. 739, 100 N. Y. Supp. 1054; Kenyon *v.* William P. Stanford Mfg. Co., 119 N. Y. App. Div. 570, 103 N. Y. Supp. 1053; Owen *v.* Retsof Min. Co., 119 N. Y. App. Div. 618, 104 N. Y. Supp. 37; Durkee *v.* Hudson Valley R. Co., 122 N. Y. App. Div. 278, 106 N. Y. Supp. 735; Lynch *v.* American Linseed Co., 122 N. Y. App. Div. 428, 107 N. Y. Supp. 458; Huber *v.* Whale Creek Iron Works, (Supm. Ct. App. Div.) 109 N. Y. Supp. 177.

North Carolina. — Britt *v.* Carolina, etc., R. Co., 144 N. Car. 242, 56 S. E. 910; Sibbert *v.* Scotland Cotton Mills, 145 N. Car. 308, 59 S. E. 79; Phillips *v.* Salem Iron Works, (N. Car. 1907) 59 S. E. 660.

Oregon. — Trickey *v.* Clark, (Oregon 1908) 93 Pac. 157.

Pennsylvania. — Wallace *v.* Henderson, 211 Pa. St. 142, 60 Atl. 574.

South Carolina. — Roach *v.* Haile Gold Min. Co., 71 S. Car. 79, 50 S. E. 543.

Texas. — Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1904) 82 S. W. 787; El Paso, etc., R. Co. *v.* Vizard, (Tex. Civ. App. 1905) 88 S. W. 457; Drake *v.* San Antonio, etc., R. Co., 99 Tex. 240, 89 S. W. 407.

Vermont. — Williams *v.* Norton, (Vt. 1908) 69 Atl. 146.

Virginia. — Virginia Iron, etc., Co. *v.* Cash, 105 Va. 570, 54 S. E. 472.

Washington. — Hart *v.* Cascade Timber Co., 39 Wash. 279, 81 Pac. 738; Conine *v.* Olympia Logging Co., 42 Wash. 50, 84 Pac. 407.

161. 1. Alabama G. S. R. Co. *v.* Vail, 142 Ala. 134, 38 So. 124; Vohs *v.* Shorthill, 130 Iowa 538, 107 N. W. 417.

2. Sloss-Sheffield Steel, etc., Co. *v.* Hutchinson, 144 Ala. 221, 40 So. 114; Libby *v.* Cook, 222 Ill. 206, 78 N. E. 599, *affirming* 123 Ill. App. 574; Fountaine *v.* Wampanoag Mills, 189 Mass. 498, 75 N. E. 738; Barrett *v.* Reardon, 95 Minn. 425, 104 N. W. 309; Gomulak *v.* C. A. Smith Lumber Co., 98 Minn. 149, 107 N. W. 542; Hamann *v.* Milwaukee Bridge Co., 127 Wis. 550, 106 N. W. 1081.

3. *United States.* — Ginty *v.* New Haven Iron, etc., Co., 152 Fed. 979, 82 C. C. A. 110. But see Equitable L. Assur. Soc. *v.* Tolbert, (C. C. A.) 145 Fed. 338.

Alabama. — Decatur Car Wheel, etc., Co. *v.* Terry, (Ala. 1906) 41 So. 839.

Iowa. — Long *v.* Johnson County Telephone Co., 134 Iowa 336, 111 N. W. 984.

Massachusetts. — Rudberg *v.* Bowden Felting Co., 188 Mass. 365, 74 N. E. 590; O'Neill *v.* Lowell Mach. Shop, 189 Mass. 446, 75 N. E. 744; Reardon *v.* Byrne, 195 Mass. 146, 80 N. E. 827; Boyd *v.* Taylor, (Mass. 1907) 81 N. E. 277; Bartley *v.* Boston, etc., St. R. Co., (Mass. 1908) 83 N. E. 1093.

Michigan. — Braasch *v.* Michigan Stove Co., 147 Mich. 676, 111 N. W. 197.

Minnesota. — Haverty *v.* St. Paul Brick Co., 98 Minn. 502, 108 N. W. 278; Granrus *v.* Croxton Min. Co., 102 Minn. 325, 113 N. W. 693; Balder *v.* Zenith Furnace Co., (Minn. 1908) 114 N. W. 948.

New York. — Makin *v.* Pettibone Cataract Paper Co., 111 N. Y. App. Div. 726, 97 N. Y. Supp. 894; Smith *v.* Manhattan R. Co., 112 N.

Y. App. Div. 202, 98 N. Y. Supp. 1; Carey *v.* Manhattan R. Co., 116 N. Y. App. Div. 247, 101 N. Y. Supp. 631.

Ohio. — Jackson Knife, etc., Co. *v.* Hathaway, 27 Ohio Cir. Ct. 745.

Oregon. — Magone *v.* Portland Mfg. Co., (Oregon 1908) 93 Pac. 450.

South Carolina. — Strickland *v.* Capital City Mills, 74 S. Car. 16, 54 S. E. 220.

Virginia. — Pocahontas Collieries Co. *v.* Williams, 105 Va. 708, 54 S. E. 868.

Wisconsin. — Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077.

4. *United States.* — Chicago, etc., R. Co. *v.* Benton, 132 Fed. 460, 65 C. C. A. 660; Hawley *v.* Chicago, etc., R. Co., (C. C. A.) 133 Fed. 150; Hayward *v.* Key, (C. C. A.) 138 Fed. 34; Michigan Headlining, etc., Co. *v.* Wheeler, (C. C. A.) 141 Fed. 61; Denver, etc., R. Co. *v.* Arrighi, 141 Fed. 67, 72 C. C. A. 400 (attempt to couple cars not supplied with automatic couplers); Taggart *v.* Republican Iron, etc., Co., 141 Fed. 910, 73 C. C. A. 144; Baltimore, etc., R. Co. *v.* Davis, 149 Fed. 191, 79 C. C. A. 139; New York Cent., etc., R. Co. *v.* McGrath, 151 Fed. 436, 80 C. C. A. 666; U. S. Leather Co. *v.* Howell, 151 Fed. 444, 80 C. C. A. 674 (rule under *North Carolina* statute); Chicago, etc., R. Co. *v.* Heil, 154 Fed. 626, 83 C. C. A. 400; Northport Smelting, etc., Co. *v.* Twitchell, (C. C. A.) 156 Fed. 643.

Alabama. — Shea *v.* Manning, 141 Ala. 628, 37 So. 632; Going *v.* Alabama Steel, etc., Co., 141 Ala. 537, 37 So. 784; Herren *v.* Tuscaloosa Waterworks Co., (Ala. 1905) 40 So. 55; Birmingham Min., etc., Co. *v.* Skelton, (Ala. 1907) 43 So. 110; Pioneer Min., etc., Co. *v.* Smith, (Ala. 1907) 43 So. 561.

Arkansas. — Western Coal, etc., Co. *v.* Douglass, 80 Ark. 239, 96 S. W. 994; Dalhoff Constr. Co. *v.* Luntzel, 82 Ark. 82, 100 S. W. 743; Ong Chair Co. *v.* Cook, (Ark. 1908) 108 S. W. 203.

Colorado. — Monarch Min., etc., Co. *v.* De Voe, 36 Colo. 270, 85 Pac. 633.

Florida. — Atlantic Coast Line R. Co. *v.* Beazley, (Fla. 1907) 45 So. 761.

Georgia. — Central of Georgia R. Co. *v.* Harper, 124 Ga. 836, 53 S. E. 391; Talley *v.* Atlantic, etc., R. Co., 126 Ga. 56, 54 S. E. 817; Ranford *v.* Southern R. Co., 126 Ga. 452, 55 S. E. 183.

Illinois. — Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780; Chicago, etc., R. Co. *v.* Walters, 217 Ill. 87, 75 N. E. 441; National Enameling, etc., Co. *v.* McCorkle, 219 Ill. 557, 76 N. E. 843; Springfield Boiler, etc., Co. *v.* Parks, 222 Ill. 355, 78 N. E. 809; U. S. Wind Engine, etc., Co. *v.* Butcher, 223 Ill. 638, 79 N. E. 304, *affirming* 126 Ill. App. 302; Peoria, etc., Terminal R. Co. *v.* Schantz, 226 Ill. 506, 80 N. E. 1041, *affirming* 130 Ill. App. 141; Jones, etc., Co. *v.* George, 227 Ill. 64, 81 N. E. 4; Illinois Cent. R. Co. *v.* Panebiango, 227 Ill. 170, 81 N. E. 53, *affirming* 129 Ill. App. 1; Donk Bros. Coal, etc., Co. *v.* Rezloff, 229 Ill. 104, 82 N. E. 214; Marquette Cement Mfg. Co. *v.* Williams, 230 Ill. 26, 82 N. E. 424; Clark *v.* Chicago, etc., R. Co., 231 Ill. 548, 83 N. E. 286; Belvidere Gas, etc., Co. *v.* Boyer, 122 Ill. App. 116.

Indiana. — Espenlaub *v.* Ellis, 34 Ind. App. 163, 72 N. E. 527; Annadall *v.* Union Cement, etc., Co., 165 Ind. 110, 74 N. E. 893; Southern R. Co. *v.* Sittasen, (Ind. App. 1905) 74 N. E. 898; New Castle Bridge Co. *v.* Steele, 38 Ind. App. 194, 78 N. E. 208; Coal Bluff Min. Co. *v.* Akers, 39 Ind. App. 617, 80 N. E. 545; Crawford, etc., Co. *v.* Gose, (Ind. App. 1907) 82 N. E. 984.

Iowa. — Collingwood *v.* Illinois, etc., Fuel Co., 125 Iowa 537, 101 N. W. 283; Pierson *v.* Chicago, etc., R. Co., 127 Iowa 13, 102 N. W. 149; Hughes *v.* Iowa Cent. R. Co., 128 Iowa 207, 103 N. W. 339; Schroeder *v.* Chicago, etc., R. Co., 128 Iowa 365, 103 N. W. 985; Calloway *v.* Agar Packing Co., 129 Iowa 1, 104 N. W. 721.

Kansas. — St. Louis, etc., R. Co. *v.* Burgess, 72 Kan. 454, 83 Pac. 991.

Kentucky. — Guthrie *v.* Carney, 86 S. W. 1126, 27 Ky. L. Rep. 861; Cason *v.* Covington, etc., El. R., etc., Co., 93 S. W. 19, 29 Ky. L. Rep. 352 (walking on railroad bridge in going to place of work); Louisville, etc., R. Co. *v.* Hall, 29 Ky. L. Rep. 584, 94 S. W. 26; Louisville, etc., R. Co. *v.* Metcalf, (Ky. 1906) 96 S. W. 525; Spinks *v.* Turley, 103 S. W. 321, 31 Ky. L. Rep. 676.

Louisiana. — Smith *v.* Minden Lumber Co., 114 La. 1035, 38 So. 821.

Massachusetts. — Gomes *v.* New Bedford Cordage Co., 187 Mass. 124, 72 N. E. 840; Gregory *v.* American Thread Co., 187 Mass. 239, 72 N. E. 962; Meagher *v.* Crawford Laundry Mach. Co., 187 Mass. 586, 73 N. E. 853; Nagle *v.* Boston, etc., St. R. Co., 188 Mass. 38, 73 N. E. 1019; Higgins *v.* Higgins, 188 Mass. 113, 74 N. E. 471; Fountaine *v.* Wampanoag Mills, 189 Mass. 498, 75 N. E. 738; Chiappini *v.* Fitzgerald, 191 Mass. 598, 77 N. E. 1030; Falardeau *v.* Hoar, 192 Mass. 263, 78 N. E. 456; Keeley *v.* Boston El. R. Co., 192 Mass. 481, 78 N. E. 490; Hannan *v.* American Steel, etc., Co., 193 Mass. 127, 78 N. E. 749; Hodde *v.* Attleboro Mfg. Co., 193 Mass. 237, 79 N. E. 252; McGuinness *v.* Lehan, 193 Mass. 241, 79 N. E. 265; Coates *v.* Soley, 194 Mass. 386, 80 N. E. 464; Doe *v.* Boston, etc., St. R. Co., 195 Mass. 168, 80 N. E. 814; Flynn *v.* Connecticut Valley St. R. Co., (Mass. 1907) 82 N. E. 1085.

Michigan. — Milbourne *v.* Arnold Electric Power Station Co., 140 Mich. 316, 103 N. W. 821; Sterling *v.* Union Carbide Co., 142 Mich. 284, 105 N. W. 755; Livingway *v.* Houghton County St. R. Co., 145 Mich. 86, 108 N. W. 662; Boman *v.* Mashek Chemical, etc., Co., 147 Mich. 178, 110 N. W. 518.

Minnesota. — Graham *v.* Minneapolis, etc., R. Co., 95 Minn. 49, 103 N. W. 714; Hartman *v.* Minneapolis, etc., R. Co., 100 Minn. 43, 110 N. W. 102; Lee *v.* Wild Rice Lumber Co., 102 Minn. 74, 112 N. W. 887; Goss *v.* Goss, 102 Minn. 346, 113 N. W. 690; Kjosnes *v.* Gray, 102 Minn. 410, 113 N. W. 1009; Larson *v.* Haglin, (Minn. 1908) 114 N. W. 958; Tomazin *v.* Shenango Furnace Co., (Minn. 1908) 114 N. W. 1128; Martin *v.* Gould, (Minn. 1908) 115 N. W. 276.

Mississippi. — Louisville, etc., R. Co. *v.* Thomas, 87 Miss. 600, 40 So. 257; Southern R. Co. *v.* Isom, (Miss. 1908) 45 So. 424.

Missouri. — Hollweg *v.* Bell Telephone Co.,

195 Mo. 149, 93 S. W. 262; Phippin *v.* Missouri Pac. R. Co., 196 Mo. 321, 93 S. W. 410; Broomfield *v.* Wurster Constr. Co., 118 Mo. App. 254, 94 S. W. 304; Cessna *v.* Metropolitan St. R. Co., 118 Mo. App. 659, 95 S. W. 277; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12; Obermeyer *v.* F. H. Logeman Chair Mfg. Co., 120 Mo. App. 59, 96 S. W. 673; Kremer *v.* Eagle Mfg. Co., 120 Mo. App. 247, 96 S. W. 726; Kielty *v.* Buehler-Cooney Constr. Co., 121 Mo. App. 58, 97 S. W. 998; Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 90; Lynch *v.* Chicago, etc., R. Co., 208 Mo. 1, 106 S. W. 68; McGuire *v.* Quincy, etc., R. Co., 128 Mo. App. 677, 107 S. W. 411.

Nebraska. — New Omaha Thomson Houston Electric Light Co. *v.* Dent, (Neb. 1905) 103 N. W. 1091.

New Jersey. — Maurer *v.* Gould, (N. J. 1904) 59 Atl. 28.

New York. — Wazenski *v.* New York Cent., etc., R. Co., 180 N. Y. 466, 73 N. E. 229; Sheridan *v.* Interborough Rapid Transit Co., 101 N. Y. App. Div. 534, 91 N. Y. Supp. 1052; McBride *v.* New York Tunnel Co., 101 N. Y. App. Div. 448, 92 N. Y. Supp. 282 (statutory provision as to servant's continuing in service with knowledge of defect); Faith *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 222, 95 N. Y. Supp. 774; Burke *v.* Manhattan R. Co., 109 N. Y. App. Div. 722, 96 N. Y. Supp. 516; Rahn *v.* Standard Optical Co., 110 N. Y. App. Div. 501, 96 N. Y. Supp. 1080; Berthelson *v.* Gabler, 111 N. Y. App. Div. 142, 97 N. Y. Supp. 421 (statute); Harris *v.* Baltimore Mach., etc., Co., 112 N. Y. App. Div. 389, 98 N. Y. Supp. 440; Dragotto *v.* Plunkett, 113 N. Y. App. Div. 648, 99 N. Y. Supp. 361 (child employed in violation of statute); Bauer *v.* Empire State Dairy Co., 115 N. Y. App. Div. 71, 100 N. Y. Supp. 663; Meehan *v.* Hogan, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 614, 100 N. Y. Supp. 1008; McCoy *v.* New York Cent., etc., R. Co., 119 N. Y. App. Div. 531, 103 N. Y. Supp. 1083; Reich *v.* Iron Clad Mfg. Co., 120 N. Y. App. Div. 445, 104 N. Y. Supp. 1069; Heffron *v.* Lackawanna Steel Co., 121 N. Y. App. Div. 35, 105 N. Y. Supp. 429; Morrissey *v.* Dwyer, 121 N. Y. App. Div. 247, 105 N. Y. Supp. 821; Overbaugh *v.* Wicher, 106 N. Y. App. Div. 283, 94 N. Y. Supp. 644; Ward *v.* Edison Electric Illuminating Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 608; Schradin *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 428.

North Carolina. — Whisenhant *v.* Southern R. Co., 137 N. Car. 349, 49 S. E. 559; Rolin *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 300, 53 S. E. 891; Wallace *v.* Seaboard Air Line R. Co., 141 N. Car. 646, 54 S. E. 399; Hicks *v.* Naomi Falls Mfg. Co., 143 N. Car. 73, 55 S. E. 411; Beard *v.* Southern R. Co., 143 N. Car. 137, 55 S. E. 505; Beck *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 1015.

Oregon. — Viohl *v.* North Pac. Lumber Co., 46 Oregon 207, 80 Pac. 112; Mundhenke *v.* Oregon City Mfg. Co., 47 Oregon 127, 81 Pac. 977; Warner *v.* De Armond, (Oregon 1907) 89 Pac. 373; Magone *v.* Portland Mfg. Co., (Oregon 1908) 93 Pac. 450.

Tennessee. — Louisville, etc., R. Co. *v.* Bohan, 116 Tenn. 271, 94 S. W. 84.

Texas. — Galveston, etc., R. Co. *v.* Manns, 37 Tex. Civ. App. 356, 84 S. W. 254; Texarkana, etc., R. Co. *v.* Toliver, 37 Tex. Civ. App. 437, 84 S. W. 375; Missouri, etc., R. Co. *v.* Keefe, 37 Tex. Civ. App. 588, 84 S. W. 679; Texarkana Table, etc., Co. *v.* Webb, (Tex. Civ. App. 1905) 86 S. W. 782; International, etc., R. Co. *v.* McVey, 99 Tex. 28, 87 S. W. 328; Smith *v.* Buffalo Oil Co., (Tex. Civ. App. 1906) 91 S. W. 383; Galveston, etc., R. Co. *v.* Cade, (Tex. Civ. App. 1906) 93 S. W. 124; Missouri, etc., R. Co. *v.* Houlihan, (Tex. Civ. App. 1906) 93 S. W. 495; International, etc., R. Co. *v.* Brice, (Tex. Civ. App. 1906) 95 S. W. 660, (Tex. 1906) 97 S. W. 461; El Paso, etc., R. Co. *v.* Foth, (Tex. Civ. App. 1907) 100 S. W. 171; Galveston, etc., R. Co. *v.* Still, (Tex. Civ. App. 1907) 100 S. W. 176; St. Louis Southwestern R. Co. *v.* Thornton, (Tex. Civ. App. 1907) 103 S. W. 437; Missouri, etc., R. Co. *v.* Carter, (Tex. Civ. App. 1907) 104 S. W. 910; Southern Pac. Co. *v.* Allen, (Tex. Civ. App. 1907) 106 S. W. 441; Galveston, etc., R. Co. *v.* Wafer, (Tex. Civ. App. 1907) 106 S. W. 897; Hynson *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1907) 107 S. W. 625; Kansas City Consol. Smelting, etc., Co. *v.* Taylor, (Tex. Civ. App. 1908) 107 S. W. 889; Galveston, etc., R. Co. *v.* Janert, (Tex. Civ. App. 1908) 107 S. W. 963.

Virginia. — Chesapeake, etc., R. Co. *v.* Pierce, 103 Va. 99, 48 S. E. 534; Norfolk, etc., R. Co. *v.* Spencer, 104 Va. 657, 52 S. E. 310; Wood *v.* Southern R. Co., 104 Va. 650, 52 S. E. 371; Virginia Iron, etc., Co. *v.* Cash, 105 Va. 570, 54 S. E. 472.

Washington. — Jancko *v.* West Coast Mfg., etc., Co., 40 Wash. 230, 82 Pac. 284; Williams *v.* Ballard Lumber Co., 41 Wash. 338, 83 Pac. 323; Rector *v.* Bryant Lumber, etc., Mill Co., 41 Wash. 556, 84 Pac. 7, Doyle *v.* Great Northern R. Co., 43 Wash. 558, 86 Pac. 861; Comrade *v.* Atlas Lumber, etc., Co., 44 Wash. 470, 87 Pac. 517; Cox *v.* Capitol Box Co., (Wash. 1907) 91 Pac. 555; Bell *v.* Peterman Mfg. Co., (Wash. 1907) 92 Pac. 425; Withiam *v.* Tenino Stone Quarry, (Wash. 1907) 92 Pac. 900.

Wisconsin. — Horn *v.* La Crosse Box Co., 123 Wis. 399, 101 N. W. 935; Williams *v.* North Wisconsin Lumber Co., 124 Wis. 328, 102 N. W. 589; Van De Bogart *v.* Marinette, etc., Paper Co., 127 Wis. 104, 106 N. W. 805; Parker *v.* Fairbanks-Morse Mfg. Co., 130 Wis. 525, 110 N. W. 409; Walker *v.* Simmons Mfg. Co., 131 Wis. 542, 111 N. W. 604; Hemmingsen *v.* Chicago, etc., R. Co., (Wis. 1908) 114 N. W. 785.

162. 1. *United States.* — Chicago, etc., R. Co. *v.* Benton, 132 Fed. 460, 65 C. C. A. 660; Hawley *v.* Chicago, etc., R. Co., (C. C. A.) 133 Fed. 150; Hayward *v.* Key, (C. C. A.) 138 Fed. 34; Michigan Headlining, etc., Co. *v.* Wheeler, (C. C. A.) 141 Fed. 61; Rickerd *v.* Chicago, etc., R. Co., 141 Fed. 905, 73 C. C. A. 139; National Steel Co. *v.* Hore, (C. C. A.) [illegible] New England Telephone, etc., Co. *v.* Butler, (C. C. A.) 156 Fed. 321; Northern Pac. R. Co. *v.* Wendel, (C. C. A.) 156 Fed. 336.

Alabama. — Birmingham Min., etc., Co. *v.* Skelton, (Ala. 1907) 43 So. 110.

Arkansas. — Choctaw, etc., R. Co. *v.* Jones, 77 Ark. 367, 92 S. W. 244; Choctaw, etc., R. Co. *v.* Craig, 79 Ark. 53, 95 S. W. 168; Ong Chair Co. *v.* Cook, (Ark. 1908) 108 S. W. 203.

California. — Olsen *v.* Gray, 147 Cal. 112, 81 Pac. 414.

Colorado. — Denver, etc., R. Co. *v.* Burchard, 35 Colo. 539, 86 Pac. 749.

Illinois. — Siegel *v.* Trcka, 218 Ill. 559, 75 N. E. 1053; National Enameling, etc., Co. *v.* McCorkle, 219 Ill. 557, 76 N. E. 843; Christiansen *v.* William Graver Tank Works, 223 Ill. 142, 79 N. E. 97, *affirming* 126 Ill. App. 86; Grace, etc., Co. *v.* Sanborn, 225 Ill. 138, 80 N. E. 88, *affirming* 124 Ill. App. 472; Chicago, etc., R. Co. *v.* Rathneau, 225 Ill. 278, 80 N. E. 119, *affirming* 124 Ill. App. 427; Jones, etc., Co. *v.* George, 227 Ill. 64, 81 N. E. 4; Illinois Cent. R. Co. *v.* Panebiango, 227 Ill. 170, 81 N. E. 53, *affirming* 129 Ill. App. 1; Diamond Glue Co. *v.* Wietzychowski, 227 Ill. 338, 81 N. E. 392; Clark *v.* Chicago, etc., R. Co., 231 Ill. 548, 83 N. E. 286; Siegel *v.* Trcka, 115 Ill. App. 56; Wabash R. Co. *v.* Thomas, 117 Ill. App. 110; Libby *v.* Kearney, 124 Ill. App. 339; Grace, etc., Co. *v.* Sanborn, 124 Ill. App. 472, *affirmed* 225 Ill. 138, 80 N. E. 88.

Indiana. — Annadall *v.* Union Cement, etc., Co., 165 Ind. 110, 74 N. E. 893; Columbus *v.* Allen, (Ind. App. 1907) 81 N. E. 114.

Iowa. — Woolf *v.* Nauman Co., 128 Iowa 261, 103 N. W. 785; Schroeder *v.* Chicago, etc., R. Co., 128 Iowa 365, 103 N. W. 985; Wilder *v.* Great Western Cereal Co., 130 Iowa 263, 104 N. W. 434; Calloway *v.* Agar Packing Co., 129 Iowa 1, 104 N. W. 721; Wilder *v.* Great Western Cereal Co., 134 Iowa 451, 109 N. W. 789; Meier *v.* Way, etc., Co., (Iowa 1907) 111 N. W. 420.

Kansas. — St. Louis, etc., R. Co. *v.* Burgess, 72 Kan. 454, 83 Pac. 991.

Kentucky. — Ahrens, etc., Mfg. Co. *v.* Rellihan, (Ky. 1904) 82 S. W. 993; Dow Wire Works Co. *v.* Morgan, (Ky. 1906) 96 S. W. 530; Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 99 S. W. 634; Meade *v.* Ashland Steel Co., (Ky. 1907) 100 S. W. 821; Wood *v.* Daviess County Distilling Co., 102 S. W. 813, 31 Ky. L. Rep. 511; Cumberland Telephone, etc., Co. *v.* Graves, (Ky. 1907) 104 S. W. 356.

Massachusetts. — Manning *v.* Excelsior Laundry Co., 189 Mass. 231, 75 N. E. 254; Chambers *v.* Wampanoag Mills, 189 Mass. 529, 75 N. E. 1093; White *v.* William H. Perry Co., 190 Mass. 99, 76 N. E. 512; Byrne *v.* Learnard, 191 Mass. 269, 77 N. E. 316; Silva *v.* Davis, 191 Mass. 47, 77 N. E. 525; Keeley *v.* Boston El. R. Co., 192 Mass. 481, 78 N. E. 490; Hodde *v.* Attleboro Mfg. Co., 193 Mass. 237, 79 N. E. 252; Cahill *v.* New England Telephone, etc., Co., 193 Mass. 415, 79 N. E. 821; Baldwin *v.* American Writing Paper Co., (Mass. 1907) 82 N. E. 1; Flynn *v.* Connecticut Valley St. R. Co., (Mass. 1907) 82 N. E. 1085.

Michigan. — McDonald *v.* Champion Iron, etc., Co., 140 Mich. 401, 103 N. W. 829; Eligh *v.* Goldie, 143 Mich. 596, 107 N. W. 316; McClure *v.* Detroit Southern R. Co., 146 Mich. 457, 109 N. W. 847.

Minnesota. — Caron *v.* Powers-Simpson Co., 100 Minn. 341, 111 N. W. 152; Campbell *v.* Railway Transfer Co., 95 Minn. 375, 104 N. W. 547; Carlin *v.* Kennedy, 97 Minn. 141, 106 N. W. 340; Johnson *v.* St. Paul Gas Light Co., 98 Minn. 512, 108 N. W. 816; Atlas *v.* National Biscuit Co., 100 Minn. 30, 110 N. W. 250; Hendrickson *v.* Ash, 99 Minn. 417, 109 N. W. 830; Hahn *v.* Plymouth Elevator Co., 101 Minn. 58, 111 N. W. 841; Johnson *v.* Atwood Lumber Co., 101 Minn. 325, 112 N. W. 262; Goss *v.* Goss, 102 Minn. 346, 113 N. W. 690; Kjosnes *v.* Gray, 102 Minn. 410, 113 N. W. 1009; Jacobson *v.* Hobart Iron Co., (Minn. 1908) 114 N. W. 951; Anderson *v.* Pitt Iron Min. Co., (Minn. 1908) 114 N. W. 953; Tomazin *v.* Shenango Furnace Co., (Minn. 1908) 114 N. W. 1128; Martin *v.* Gould, (Minn. 1908) 115 N. W. 276.

Mississippi. — O'Neal *v.* Refuse Cotton Oil Co., 88 Miss. 617, 41 So. 67.

Missouri. — Lee *v.* Missouri Pac. R. Co., 195 Mo. 400, 92 S. W. 614; Cessna *v.* Metropolitan St. R. Co., 118 Mo. App. 659, 95 S. W. 277; Dean *v.* Kansas City, etc., R. Co., 199 Mo. 386, 97 S. W. 910; Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; Lee *v.* St. Louis, etc., R. Co., 112 Mo. App. 372, 87 S. W. 12.

Montana. — Anderson *v.* Northern Pac. R. Co., 34 Mont. 181, 85 Pac. 884; Hardesty *v.* Largey Lumber Co., 34 Mont. 151, 86 Pac. 29.

Nebraska. — Grimm *v.* Omaha Electric Light, etc., Co., (Neb. 1908) 114 N. W. 769.

New Hampshire. — Sirois *v.* Henry, 73 N. H. 148, 59 Atl. 936.

New Jersey. — Snyer *v.* New York, etc., Telephone Co., 73 N. J. L. 535, 64 Atl. 122.

New York. — O'Brien *v.* Buffalo Furnace Co., 183 N. Y. 317, 76 N. E. 161; Allcot *v.* Kirkham, 101 N. Y. App. Div. 77, 91 N. Y. Supp. 775; Baker *v.* Empire Wire Co., 102 N. Y. App. Div. 125; 92 N. Y. Supp. 355 (statute — finding of jury is subject to review on the facts); Siversen *v.* Jenks, 102 N. Y. App. Div. 313, 92 N. Y. Supp. 382; Overbaugh *v.* Wieber, 106 N. Y. App. Div. 283, 94 N. Y. Supp. 644; Faith *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 222, 95 N. Y. Supp. 774; Rahn *v.* Standard Optical Co., 110 N. Y. App. Div. 501, 96 N. Y. Supp. 1080; Makin *v.* Pettibone Cataract Paper Co., 111 N. Y. App. Div. 726, 97 N. Y. Supp. 894; Smith *v.* Manhattan R. Co., 112 N. Y. App. Div. 202, 98 N. Y. Supp. 1; Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 179 (statute); Cadigan *v.* Glens Falls Gas, etc., Light Co., 112 N. Y. App. Div. 751, 98 N. Y. Supp. 954; Wynkoop *v.* Ludlow Valve Mfg. Co., 112 N. Y. App. Div. 729, 98 N. Y. Supp. 1076; Lynch *v.* American Linseed Co., 113 N. Y. App. Div. 502, 99 N. Y. Supp. 260; Dragotto *v.* Plunkett, 113 N. Y. App. Div. 648, 99 N. Y. Supp. 361 (child employed in violation of statute); Kiernan *v.* Eidlitz, 115 N. Y. App. Div. 141, 100 N. Y. Supp. 731; Smith *v.* F. Wesel Mfg. Co., 117 N. Y. App. Div. 834, 102 N. Y. Supp. 959; Aken *v.* Barnet, etc., Co., 118 N. Y. App. Div. 463, 103 N. Y. Supp. 1078 (statute); Kellogg *v.* New York Edison Co., 120 N. Y. App. Div. 410, 105 N. Y. Supp. 308 (statute — finding of jury reviewable on facts); Sienbida *v.* Tonawanda Board, etc., Co., 121 N. Y. App. Div. 70, 105 N. Y. Supp. 513 (statute); Onesti *v.* Central New England R.

Co., 121 N. Y. App. Div. 554, 106 N. Y. Supp. 233 (statute); Perrotta *v.* Richmond Brick Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 10; Ward *v.* Edison Electric Illuminating Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 608; Graves *v.* Gustave Stickley Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 256.

North Carolina. — Marks *v.* Harriet Cotton Mills, 138 N. Car. 401, 50 S. E. 769.

Oregon. — Busch *v.* Robinson, 46 Oregon 539, 81 Pac. 237; Mundhenke *v.* Oregon City Mfg. Co., 47 Oregon 127, 81 Pac. 977; Westman *v.* Wind River Lumber Co., (Oregon 1907) 91 Pac. 478.

South Carolina. — Strickland *v.* Capital City Mills, 74 S. Car. 16, 54 S. E. 220; McCarley *v.* Glenn-Lowry Mfg. Co., 75 S. Car. 390, 56 S. E. 1.

Tennessee. — Minton *v.* La Follette Coal, etc., Co., 117 Tenn. 415, 101 S. W. 178

Texas. — Galveston, etc., R. Co. *v.* Manns, 37 Tex. Civ. App. 356, 84 S. W. 254; Galveston, etc., R. Co. *v.* Cade, (Tex. Civ. App. 1906) 93 S. W. 124; Pipkin *v.* Hayward Lumber Co., (Tex. Civ. App. 1906) 94 S. W. 1068; Gulf, etc., R. Co. *v.* Archambault, (Tex. Civ. App. 1906) 94 S. W. 1108; Titterington *v.* Harry, (Tex. Civ. App. 1906) 97 S. W. 840; St. Louis Southwestern R. Co. *v.* Thornton, (Tex. Civ. App. 1907) 103 S. W. 437; Missouri, etc., R. Co. *v.* Carter, (Tex. Civ. App. 1907) 104 S. W. 910; Hynson *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1907) 107 S. W. 625; Galveston, etc., R. Co. *v.* Janert, (Tex. Civ. App. 1908) 107 S. W. 963.

Utah. — Merrill *v.* Oregon Short Line R. Co., 29 Utah 264, 81 Pac. 85; Tuckett *v.* American Steam, etc., Laundry, 30 Utah 273, 84 Pac. 500.

Vermont. — McKane *v.* Marr, 79 Vt. 13, 63 Atl. 944.

Washington. — Hart *v.* Cascade Timber Co., 39 Wash. 279, 81 Pac. 738; De Mase *v.* Oregon R., etc., Co., 40 Wash. 108, 82 Pac. 170; Creamer *v.* Moran Bros. Co., 41 Wash. 636, 84 Pac. 592; Pearson *v.* Federal Min., etc., Co., 42 Wash. 90, 84 Pac. 632; Doyle *v.* Great Northern R. Co., 43 Wash. 558, 86 Pac. 861; Cox *v.* Capitol Box Co., (Wash. 1907) 91 Pac. 555; Hoff *v.* Japanese American Fish, etc., Co., (Wash. 1908) 94 Pac. 109; Cook *v.* Chehalis River Lumber Co., (Wash. 1908) 94 Pac. 189.

Wisconsin. — Hocking *v.* Windsor Spring Co., 125 Wis. 575, 104 N. W. 705; Hamann *v.* Milwaukee Bridge Co., 127 Wis. 550, 106 N. W. 1081; Hemmingsen *v.* Chicago, etc., R. Co., (Wis. 1908) 114 N. W. 785.

The facts being undisputed, it is a question of law whether an injury resulted from one of the assumed risks of the employment. Smith *v.* Chicago Junction R. Co., 127 Ill. App. 89; Kath *v.* East St. Louis, etc., R. Co., 232 Ill. 126, 83 N. E. 533; Jennings *v.* Ingle, 35 Ind. App. 153, 73 N. E. 945; Chicago, etc., R. Co. *v.* Bryan, 37 Ind. App. 487, 75 N. E. 678.

2. Fogarty *v.* Southern Pac. Co., 151 Cal. 785, 91 Pac. 650; Indiana, etc., Coal Co. *v.* Neal, (Ind. App. 1905) 75 N. E. 295; Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210; Trickey *v.* Clark, (Oregon 1908) 93 Pac. 457; Tuckett *v.* American Steam, etc., Laundry, 30 Utah 273, 84 Pac. 500.

3. Stephens *v.* Elliott, (Mont. 1907) 92 Pac. 45; McDaniel *v.* Atlantic Coast Line R. Co., 76 S. Car. 189, 56 S. E. 956; Baker *v.* Duwamish Mill Co., 43 Wash. 149, 86 Pac. 167; Barrett *v.* Banner Shingle Co., 45 Wash. 12, 87 Pac. 919.

163. 1. *United States.* — Riley *v.* Louisville, etc., R. Co., (C. C. A.) 133 Fed. 904; Roessler, etc., Chemical Co. *v.* Peterson, 134 Fed. 789, 67 C. C. A. 295; Rosney *v.* Erie R. Co., 135 Fed. 311, 68 C. C. A. 155; Baltimore, etc., R. Co. *v.* Baldwin, (C. C. A.) 144 Fed. 53; Remington, etc., Co. *v.* Blazosseck, 146 Fed. 363, 76 C. C. A. 643; St. Louis, etc., R. Co. *v.* Dewees, 153 Fed. 56, 82 C. C. A. 190; Southern R. Co. *v.* Hardin, (C. C. A.) 157 Fed. 645; Burke *v.* Union Coal, etc., Co., (C. C. A.) 157 Fed. 178.

Illinois. — Casey *v.* Daugherty, 118 Ill. App. 134; Murphy *v.* Chicago, etc., R. Co., 127 Ill. App. 446.

Missouri. — Whaley *v.* Coleman, 113 Mo. App. 594, 88 S. W. 119 (using steel to pack powder in blast); Coonce *v.* National Biscuit Co., 115 Mo. App. 629, 92 S. W. 352.

New York. — Frangipane *v.* Metal Stamping Co., (Supm. Ct. App. T.) 103 N. Y. Supp. 109; Loughran *v.* Jordan L. Mott Iron Works, 122 N. Y. App. Div. 595, 107 N. Y. Supp. 434; Wack *v.* Tobin, (Supm. Ct. App. Div.) 107 N. Y. Supp. 659; Smith *v.* Green Fuel Economizer Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 45; Rogers *v.* Macbeth, (Supm. Ct. App. Div.) 108 N. Y. Supp. 74; La Duke *v.* Hudson River Telephone Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 189; Bowers *v.* Norwich Pharmacal Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 959.

Texas. — Murphy *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 96 S. W. 940; International, etc., R. Co. *v.* Brice, (Tex. 1906) 97 S. W. 461; Parker *v.* Fairbanks-Morse Mfg. Co., 130 Wis. 525, 110 N. W. 409.

2. *England.* — Hammond *v.* Grand Trunk R. Co., 9 Ont. L. Rep. 64.

Alabama. — Lookout Mountain Iron Co. *v.* Lea, 144 Ala. 169, 39 So. 1017.

Arkansas. — St. Louis, etc., R. Co. *v.* Davenport, 80 Ark. 244, 96 S. W. 994.

Colorado. — Rimmer *v.* Wilson, (Colo. 1908) 93 Pac. 1110.

Connecticut. — Rooney *v.* Woolworth, 78 Conn. 167, 61 Atl. 366.

Delaware. — Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254.

Illinois. — Variety Mfg. Co. *v.* Landaker, 129 Ill. App. 630.

Indiana. — Southern R. Co. *v.* Sittasen, (Ind. App. 1905) 74 N. E. 808; Rink *v.* Lowry, 38 Ind. App. 132, 77 N. E. 967; Falender *v.* Blackwell, 39 Ind. App. 121, 79 N. E. 303; Indiana Union Traction Co. *v.* Benadum, (Ind. App. 1908) 83 N. E. 261.

Kentucky. — Merschel *v.* Louisville, etc., R. Co., (Ky. 1905) 85 S. W. 710 (leaving railroad torpedo where it was taken by a child); Willis *v.* Maysville, etc., R. Co., 92 S. W. 601, 29 Ky. L. Rep. 178 (brakeman kicking ice from platform of car); New Ellerslie Fishing Club *v.* Stewart, 93 S. W. 598, 29 Ky. L. Rep. 414; Central Consumers Co. *v.* Booher, (Ky. 1908) 107 S. W. 198.

Louisiana. — Levins *v.* Bancroft, 114 La. 105, 38 So. 72.

Massachusetts. McNicholas *v.* New England Telephone, etc., Co., (Mass. 1907) 81 N. E. 889; Boucher *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 15; Feneff *v.* Boston, etc., R. Co., (Mass. 1907) 82 N. E. 705; Wakefield *v.* Boston Coal Co., (Mass. 1908) 83 N. E. 1116; Conroy *v.* G. W., etc., Smith Iron Co., 194 Mass. 468, 80 N. E. 488.

Missouri. — Phelen *v.* Granite Bituminous Paving Co., 115 Mo. App. 423, 91 S. W. 440; Compher *v.* Missouri, etc., Telephone Co., 127 Mo. App. 553, 106 S. W. 536.

New Jersey. — Urbanneck *v.* Pennsylvania R. Co., (N. J. 1907) 65 Atl. 897; John M. Hughes Sons Co. *v.* Bergen, etc., Automobile Co., (N. J. 1907) 67 Atl. 1018; Record *v.* Pennsylvania R. Co., (N. J. 1907) 67 Atl. 1040 (sufficiency of proof as to relation of master and servant — gateman at railway crossing).

New York. — Rogers *v.* Jones, 115 N. Y. App. Div. 576, 100 N. Y. Supp. 1013.

Rhode Island. — Dorsey *v.* Redford, (R. I. 1907) 67 Atl. 367; Burnham *v.* Central Automobile Exch., (R. I. 1907) 67 Atl. 429.

Tennessee. — Greenlaw *v.* Louisville, etc., R. Co., 114 Tenn. 187, 86 S. W. 1072.

Texas. — Kampmann *v.* Rothwell, (Tex. Civ. App. 1908) 107 S. W. 120.

Utah. — Lewis *v.* Mammoth Min. Co., (Utah 1908) 93 Pac. 732, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163.

Washington. — Melse *v.* Alaska Commercial Co., 42 Wash. 356, 84 Pac. 1127; Johnson *v.* Great Northern Lumber Co., (Wash. 1908) 93 Pac. 516.

Where action is brought against both the servant and the master, the liability of the latter being based on the negligent act of his servant, a verdict in favor of the servant but against the master is unwarranted. Indiana Nitroglycerine, etc., Co. *v.* Lippencott Glass Co., 165 Ind. 361, 75 N. E. 649.

An action cannot be maintained jointly against master and servant for the wrongful and negligent act of the latter if in the particular case the master's liability for such wrongful and negligent act arises solely from the relationship between them under the doctrine of respondeat superior. French *v.* Central Constr. Co., 76 Ohio St. 509, 81 N. E. 751.

Intrusting Servant with Dangerous Appliance. — Barmore *v.* Vicksburg, etc., R. Co., 85 Miss. 426, 38 So. 210 (railway tricycle).

164. 2. Standard Oil Co. *v.* Parkinson, 152 Fed. 681, 82 C. C. A. 29.

165. 1. Rochester *v.* Bull, 78 S. Car. 249, 58 S. E. 766 (automobile).

The intoxicated condition of the servant may be considered as bearing on the question of his negligence. Cooke Brewing Co. *v.* Ryan, 223 Ill. 382, 79 N. E. 132.

2. Patterson *v.* Sams, 2 Ga. App. 755, 59 S. E. 18; Rogers *v.* Fowler, (Mich. 1908) 115 N. W. 469; Gibson *v.* W. C. Wood Lumber Co., (Miss. 1908) 45 So. 834; Paraffine Oil Co. *v.* Berry, (Tex. Civ. App. 1906) 93 S. W. 1089.

5. Southern R. Co. *v.* Power Fuel Co., 152 Fed. 917, 82 C. C. A. 65.

166. 1. *California.* — Riordan *v.* Gas Consumers' Assoc., 4 Cal. App. 639, 88 Pac. 809.

Connecticut. — Pigeon *v.* Lane, (Conn. 1907) 67 Atl. 886.

Delaware. — Robinson *v.* Huber, (Del. 1906) 63 Atl. 873.

Illinois. — Star Brewery Co. *v.* Hauck, 222 Ill. 348, 78 N. E. 827, *affirming* 126 Ill. App. 608; Cooke Brewing Co. *v.* Ryan, 223 Ill. 382, 79 N. E. 132, *affirming* 125 Ill. App. 597.

Indiana. — Broadstreet *v.* Hall, 168 Ind. 192, 80 N. E. 145 (intrusting horse to reckless child nine years of age).

Kentucky. — Louisville Water Co. *v.* Phillips, (Ky. 1905) 89 S. W. 700; Ewing *v.* Callahan, (Ky. 1907) 105 S. W. 387.

Maryland. — Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202; Mattingly *v.* Montgomery, (Md. 1907) 68 Atl. 205.

Massachusetts. — Brough *v.* Towle, 187 Mass. 590, 73 N. E. 851; Hayes *v.* Wilkins, 194 Mass. 223, 80 N. E. 449 (leaving horse unattended while going into store for servant's own business — master held liable); Sibley *v.* Nason, (Mass. 1907) 81 N. E. 887.

New York. — Bamberg *v.* International R. Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 403, 103 N. Y. Supp. 297, *reversed* on other grounds 121 N. Y. App. Div. 1, 105 N. Y. Supp. 621; Ortolano *v.* Degnon Contracting Co., 120 N. Y. App. Div. 59, 104 N. Y. Supp. 1064; Johnson *v.* Stevens, 123 N. Y. App. Div. 208, 108 N. Y. Supp. 407; Connell *v.* Havey, (Supm. Ct. App. Div.) 109 N. Y. Supp. 260.

Pennsylvania. — Prinz *v.* Lucas, 210 Pa. St. 620, 60 Atl. 309; Kelton *v.* Fifer, 26 Pa. Super. Ct. 603.

South Carolina. — Banks *v.* Southern Express Co., 73 S. Car. 211, 53 S. E. 166.

Canada. — Turcotte *v.* Ryan, 39 Can. Sup. Ct. 8.

Automobile. — Bennett *v.* Busch, (N. J. 1907) 67 Atl. 188; Shepard *v.* Wood, 116 N. Y. App. Div. 861, 102 N. Y. Supp. 306.

3. Reynolds *v.* Buck, 127 Iowa 601, 103 N. W. 946; Brenner *v.* Ford, 116 La. 554, 40 So. 894, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 166; Doran *v.* Thomsen, (N. J. 1907) 66 Atl. 897; Bursh *v.* Jackson, (Supm. Ct. App. T.) 101 N. Y. Supp. 19; Bohan *v.* Metropolitan Express Co., 122 N. Y. App. Div. 590, 107 N. Y. Supp. 530.

Automobile — Same Rule Applies. — Slater *v.* Advance Thresher Co., 97 Minn. 305, 107 N. W. 133; Clark *v.* Buckmobile Co., 107 N. Y. App. Div. 120, 94 N. Y. Supp. 771; McEnroe *v.* Taylor, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 680, 107 N. Y. Supp. 565; Maher *v.* Benedict, (Supm. Ct. App. Div.) 108 N. Y. Supp. 228; Noden *v.* Verlenden, 211 Pa. St. 135, 60 Atl. 505; Jones *v.* Hoge, (Wash. 1907) 92 Pac. 433.

The burden of showing that the driver of his master's automobile was at the time engaged in his master's business is upon the plaintiff. Lotz *v.* Hanlon, 217 Pa. St. 339, 66 Atl. 525.

4. Long *v.* Nute, 123 Mo. App. 210, 100 S. W. 511, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 166; Wills *v.* Belle Ewart Ice Co., 12 Ont. L. Rep. 526. But see Patterson *v.* Kates, 152 Fed. 481 (automobile).

5. When Master's Liability Reattaches after Deviation. — Barmore *v.* Vicksburg, etc., R. Co., 85 Miss. 426, 38 So. 210.

167. 2. Healy *v.* Johnson, *127* Iowa *226*, 103 N. W. *92*, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 167; Davis *v.* Ohio Valley Banking, etc., Co., (Ky. 1908) 106 S. W. 843; Grant *v.* Singer Mfg. Co., 190 Mass. 489, *77* N. E. 480; Crandall *v.* Boutell, 95 Minn. 116, 103 N. W. 890, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163 [167]; Houck *v.* Chicago, etc., R. Co., 116 Mo. App. 559, 92 S. W. 738; Compher *v.* Missouri, etc., Telephone Co., 127 Mo. App. 553, 106 S. W. 536; Sharp *v.* Erie R. Co., 184 N. Y. 100, 76 N. E. 923; Lewis *v.* Mammoth Min. Co., (Utah 1908) 93 Pac. 732; Whaley *v.* Citizens' Nat. Bank, 28 Pa. Super. Ct. 531; Read *v.* McGivney, 36 N. Bruns. 513.

168. 1. *United States.* — Southern R. Co. *v.* Power Fuel Co., (C. C. A.) 152 Fed. 920, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 168.

Arkansas. — St. Louis Southwestern R. Co. *v.* Bryant, (Ark. 1907) 99 S. W. 693.

Colorado. — Western Union Tel. Co. *v.* Olsson, (Colo. 1907) 90 Pac. 841.

District of Columbia. — Sherwood *v.* Warner, 27 App. Cas. (D. C.) 64, 7 Ann. Cas. 98.

Georgia. — Louisville, etc., R. Co. *v.* Blackmon, 3 Ga. App. 80, 59 S. E. 341 (railway surgeon performing *post mortem* on person killed in railway accident).

Illinois. — Cullen *v.* Higgins, 216 Ill. 78, 74 N. E. 698; Illinois Steel Co. *v.* Zolnowski, 118 Ill. App. 209.

Iowa. — Williams *v.* Mineral City Park Assoc., 128 Iowa 32, 102 N. W. 783.

Kansas. — Merick *v.* Suchy, 74 Kan. 718, 87 Pac. 1141, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 167, 168.

Louisiana. — Vara *v.* R. M. Quigley Constr. Co., 114 La. 261, 38 So. 162.

Massachusetts. — Obertoni *v.* Boston, etc., R. Co., 186 Mass. 481, 71 N. E. 980.

Missouri. — Drolshagen *v.* Union Depot R. Co., 186 Mo. 258, 85 S. W. 344; Evans *v.* A. L. Dyke Automobile Supply Co., 121 Mo. App. 266, 101 S. W. 1132.

Nebraska. — Younkin *v.* Rocheford, (Neb. 1907) 110 N. W. 632.

New York. — Bowden *v.* J. L. Mott Iron Works, 113 N. Y. App. Div. 738, 99 N. Y. Supp. 209; Weinstein *v.* Singer Mfg. Co., 121 N. Y. App. Div. 708, 106 N. Y. Supp. 517; Bassi *v.* Orth, (Supm. Ct. Tr. T.) 109 N. Y. Supp. 88.

Pennsylvania. — Shay *v.* American Iron, etc., Mfg. Co., 218 Pa. St. 172, 67 Atl. 54.

Rhode Island. — Macartney *v.* Colwell, (R. I. 1908) 68 Atl. 719.

Tennessee. — Foster-Herbert Cut Stone Co. *v.* Pugh, 115 Tenn. 688, 91 S. W. 199 (injury to child invited to ride by driver of wagon).

Canada. — Morgan *v.* British Yukon Nav. Co., 11 British Columbia 316.

There is a marked distinction between an act done by the servant during his employment and an act done within the scope of his employment. To bind the master for an injury done by the servant, the servant must at the time be acting for the master within the scope of the duty assigned by him. Bowen *v.* Illinois Cent. R. Co., 136 Fed. 306, 69 C. C. A. 444.

It is a general rule that an act done by a servant while engaged in his master's work, but not done as a means or for the purpose of performing that work, is not to be deemed the act of the master. Daugherty *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 902.

The fact that the act of the servant is performed on the premises of the master is immaterial. Berry *v.* Boston El. R. Co., 188 Mass. 536, 74 N. E. 933.

Where a street car is obstructed by a coal wagon, and the motorman leaves his car, and in attempting to start the horses of the wagon negligently injures the driver, the street railway company is not liable to the driver, inasmuch as the motorman was acting without the scope of his employment. Murphey *v.* Philadelphia Rapid Transit Co., 30 Pa. Super. Ct. [illegible].

If the Servant Steps Aside from His Business for However Short a Time, etc. — St. Louis Southwestern R. Co. *v.* Harvey, (C. C. A.) 144 Fed. 806.

Acts of Servant Intrusted with Instrument Belonging to the Master. — St. Louis Southwestern R. Co. *v.* Harvey, (C. C. A.) 144 Fed. 806; Louisville, etc., R. Co. *v.* Gillen, 166 Ind. 231, 76 N. E. 1058.

Question of Law or Fact. — Barmore *v.* Vicksburg, etc., R. Co., 85 Miss. 426, 38 So. 210.

The Burden of Proving that the servant was acting within the scope of his authority is upon the party seeking to hold the master liable therefor. Hogle *v.* H. H. Franklin Mfg. Co., (Supm. Ct. Tr. T.) 105 N. Y. Supp. 1094.

169. 2. Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 627; Columbus R. Co. *v.* Woolfolk, 128 Ga. 631, 58 S. E. 152; South Covington, etc., St. R. Co. *v.* Cleveland, (Ky. 1907) 100 S. W. 283; Canton *v.* Grinnell, 138 Mich. 592, 101 N. W. 811, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 169; Usher *v.* Western Union Tel. Co., 122 Mo. App. 98, 98 S. W. 84; Greene *v.* New York, etc., R. Co., 102 N. Y. App. Div. 322, 92 N. Y. Supp. 424; Tway *v.* Salvin, 109 N. Y. App. Div. 288, 95 N. Y. Supp. 653 (bartender drugging liquor served customer); Stewart *v.* Cary Lumber Co., (N. Car. 1907) 59 S. E. 545. See also Lesch *v.* Great Northern R. Co., 93 Minn. 435, 101 N. W. 965; Galveston, etc., R. Co. *v.* Currie, (Tex. Civ. App. 1905) 91 S. W. 1100, *reversed* (Tex. 1906) S. W. 1073.

Unless the master by some act or order participated in the wanton and wilful act of his servant, he cannot be charged with wantonness and wilfulness. Birmingham R., etc., Co. *v.* Randle, (Ala. 1906) 43 So. 355.

170. 1. Moore *v.* Camden, etc., R. Co., (N. J. 1907) 65 Atl. 1022, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 170.

171. 1. Avery *v.* White, 79 Conn. 705, 66 Atl. 517.

2. Tyler Ice Co. *v.* Tyler Water Co., (Tex. Civ. App. 1906) 95 S. W. 649.

3. *Illinois.* — Ziegenhein *v.* Smith, 116 Ill. App. 80; Coal Belt Electric R. Co. *v.* Young, 126 Ill. App. 651.

Indiana. — Brooks *v.* Jennings County Agricultural Joint-Stock Assoc., 35 Ind. App. 221, 73 N. E. 951.

Massachusetts. — Collins *v.* Wise, 190 Mass

206, 76 N. E. 65; Hirst *v.* Fitchburg, etc., St. R. Co., (Mass. 1907) 82 N. E. 10.

Michigan. — Canton *v.* Grinnell, 138 Mich. 592, 101 N. W. 811.

Minnesota. — Merrill *v.* Coates, 101 Minn. 43, 111 N. W. 836.

New York. — Dealy *v.* Coble, 112 N. Y. App. Div. 296, 98 N. Y. Supp. 452.

Ohio. — Cincinnati, etc., R. Co. *v.* Klute, 29 Ohio Cir. Ct. 702, *affirmed* 73 Ohio St. 380, 78 N. E. 1120.

Oklahoma. — Goodwin *v.* Greenwood, 16 Okla. 490, 85 Pac. 1115 (restaurant waiter — dispute over bill).

South Carolina. — Fields *v.* Lancaster Cotton Mills, 77 S. Car. 546, 58 S. E. 608.

Wisconsin. — Schultz *v.* La Crosse City R. Co., (Wis. 1907) 113 N. W. 658. But see Cobb *v.* Simon, 124 Wis. 467, 102 N. W. 891.

172. 1. Grant *v.* Singer Mfg. Co., 190 Mass. 489, 77 N. E. 480; Peddie *v.* Gally, 109 N. Y. App. Div. 178, 95 N. Y. Supp. 652.

2. New Ellerslie Fishing Club *v.* Stewart, (Ky. 1906) 93 S. W. 598; Deck *v.* Baltimore, etc., R. Co., 100 Md. 168, 59 Atl. 650; Schmidt *v.* Vanderveer, 110 N. Y. App. Div. 758, 97 N. Y. Supp. 441; Blakely *v.* Greer, 28 Ohio Cir. Ct. 33; Johnston *v.* Chicago, etc., R. Co., 130 Wis. 492, 110 N. W. 424.

3. Savannah Electric Co. *v.* Wheeler, 128 Ga. 550, 58 S. E. 38 (act of conductor in shooting person); Howard *v.* Terminal R. Assoc., 110 Mo. App. 574, 85 S. W. 608; Sharp *v.* Erie R. Co., 184 N. Y. 100, 76 N. E. 923.

4. Blomsness *v.* Puget Sound Electric R. Co., (Wash. 1907) 92 Pac. 414.

7. East *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 683, 101 N. Y. Supp. 364; Jackson *v.* American Telephone, etc., Co., 139 N. Car. 347, 51 S. E. 1015 (arrest of landowner by employee erecting poles on former's land to prevent his interference); Johnston *v.* Chicago, etc., R. Co., 130 Wis. 492, 110 N. W. 424.

174. 2. Schmidt *v.* New Orleans R. Co., 116 La. 322, 40 So. 714.

3. Staton *v.* Mason, 119 N. Y. App. Div. 437, 104 N. Y. Supp. 155 (manager of instalment store — removal of mortgaged chattel); Samieloff *v.* New York, etc., R. Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 774.

4. Ellis *v.* National Free Labour Assoc., Sc. Ct. Sess. 7 F. 629.

175. 1. Cheshire *v.* Bailey, (1905) 1 K. B. 237, 1 Ann. Cas. 94, 74 L. J. K. B. 176, 92 L. T. N. S. 142, 53 W. R. 322 (theft by servant); Alabama Mineral Land Co. *v.* Lathrop-Hatton Lumber Co., (Ala. 1906) 41 So. 952; Anderson *v.* Diaz, 77 Ark. 606, 92 S. W. 861 (bartender setting fire to person asleep in saloon); Mace *v.* Ashland Coal, etc., R. Co., 118 Ky. 885, 82 S. W. 612; Davenport *v.* Charleston, etc., R. Co., 72 S. Car. 205, 51 S. E. 677 (train-hand throwing bricks at house near tracks).

4. Staton *v.* Mason, 106 N. Y. App. Div. 26, 94 N. Y. Supp. 417 (credit clerk does not have implied authority to institute criminal prosecution for offense against master).

5. St. Louis, etc., R. Co. *v.* Wyatt, 84 Ark. 193, 105 S. W. 72; Daniel *v.* Atlantic Coast Line R. Co., 136 N. Car. 517, 48 S. E. 816; Vara *v.* R. M. Quigley Constr. Co., 114 La. 261, 38 So. 162.

6. *Alabama.* — Palos Coal, etc., Co. *v.* Benson, (Ala. 1905) 39 So. 727.

Arkansas. — St. Louis, etc., R. Co. *v.* Boyle, 83 Ark. 302, 103 S. W. 744; St. Louis, etc., R. Co. *v.* Wyatt, 84 Ark. 193, 105 S. W. 72.

Georgia. — Central of Georgia R. Co. *v.* Morris, 121 Ga. 484, 49 S. E. 606.

Louisiana. — Queen *v.* Schwann, 119 La. 495, 44 So. 278, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 171 (farm servant shooting overseer).

Massachusetts. — Fairbanks *v.* Boston Storage Warehouse Co., 189 Mass. 419, 75 N. E. 737.

Michigan. — Foster *v.* Grand Rapids R. Co., 140 Mich. 689, 104 N. W. 380, 12 Detroit Leg. N. 311.

Mississippi. — Alabama, etc., R. Co. *v.* Harz, 88 Miss. 681, 42 So. 201.

Missouri. — Collette *v.* Rebori, 107 Mo. App. 711, 82 S. W. 552 (assault and battery by collector).

Nebraska. — Clancy *v.* Barker, 71 Neb. 83, 103 N. W. 446 (assault by servant of innkeeper).

New York. — Magar *v.* Hammond, 183 N. Y. 387, 76 N. E. 474 (poacher shot by watchman of game preserve); Froomkin *v.* Brooklyn Daily Eagle Co., 113 N. Y. App. Div. 443, 99 N. Y. Supp. 300.

North Carolina. — Roberts *v.* Southern R. Co., 143 N. Car. 176, 55 S. E. 509.

South Dakota. — Waaler *v.* Great Northern R. Co., 18 S. Dak. 420, 100 N. W. 1097.

Washington. — Chase *v.* Knabel, (Wash. 1907) 90 Pac. 642.

Canada. — Roth *v.* Canadian Pac. R. Co., 4 Can. R. Cas. 238.

A servant in charge of an ice wagon, without authority to do so, gave permission to a person to take a piece of ice from the wagon, and then, while the person was in the act of taking the piece of ice, the servant assaulted him. It was held that the master was not responsible for the assault. Kiernan *v.* New Jersey Ice Co., (N. J. 1906) 63 Atl. 998.

176. 1. Boutwell *v.* Medlin Milling Co., (Tex. Civ. App. 1908) 108 S. W. 1025 (assault).

177. 2. Thyssen *v.* Davenport Ice, etc., Storage Co., 134 Iowa 749, 112 N. W. 177.

3. Deck *v.* Baltimore, etc., R. Co., 100 Md. 168, 59 Atl. 650; Baltimore, etc., R. Co. *v.* Deck, 102 Md. 669, 62 Atl. 958; Hirst *v.* Fitchburg, etc., St. R. Co., (Mass. 1907) 82 N. E. 10; Sharp *v.* Erie R. Co., 184 N. Y. 100, 76 N. E. 923.

"When a disorderly person is arrested by a police officer, the presumption is that the officer is acting in an official capacity, and not as an agent for the party who by law is required to pay him." Foster *v.* Grand Rapids R. Co., 140 Mich. 689, 104 N. W. 380.

178. 3. M'Fall *v.* Adams, (1907) Sc. Ct. Sess. 367; Perkins *v.* Stead, 23 Times L. Rep. 433; Dewar *v.* Tasker, 95 L. T. N. S. 87; The Elton, 142 Fed. 367, 73 C. C. A. 467; Sexton *v.* New York Cent. R. Co., 114 N. Y. App. Div. 678, 99 N. Y. Supp. 1111; Bassi *v.* Orth, (Supm. Ct. Tr. T.) 109 N. Y. Supp. 88; McComb *v.* Baskerville, (S. Dak. 1906) 106 N. W. 300; Wiest *v.* Coal Creek R. Co., 42 Wash. 176, 84 Pac. 725.

General Master Is Not Liable to Special Master

for Act of Servant Furnished. — Haskell *v.* Boston Dist. Messenger Co., 190 Mass. 189, 76 N. E. 215 (messenger misappropriating money).

4. Dewar *v.* Tasker, 223 Times L. Rep. 259; Fitzpatrick *v.* Michigan Cent. R. Co., 149 Mich. 194, 112 N. W. 915; Cohen *v.* Western Electric Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 1007.

5. Bohan *v.* Metropolitan Express Co., 122 N. Y. App. Div. 590, 107 N. Y. Supp. 530. But see Dewar *v.* Tasker, 95 L. T. N. S. 87.

179. 4. But see Kelton *v.* Fifer, 26 Pa. Super. Ct. 603.

5. The hirer may recover for injuries caused by the negligence of the driver. Frerker *v.* Nicholson, (Colo. 1907) 92 Pac. 224.

180. 3. South Covington, etc., St. R. Co. *v.* Cleveland, 100 S. W. 283, 30 Ky. L. Rep. 1072; Townsend *v.* Texas, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 302.

9. Kaminiski *v.* Knights of Modern Maccabees, 146 Mich. 19, 109 N. W. 33, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 180, 181; Titus *v.* Tangeman, 116 N. Y. App. Div. 487, 101 N. Y. Supp. 1000.

10. Oulighan *v.* Butler, 189 Mass. 287, 75 N. E. 726.

Where the evidence is conflicting the question as to the existence of the relation of master and servant is for the jury. Greenberg *v.* Western Turf Assoc., 148 Cal. 126, 82 Pac. 684.

181. 1. If a servant, who is employed to do certain work for his master, employs another person to assist him, the master is liable for the negligence of the assistant only when the servant had authority, express or implied, to employ him, or when the act of employment is ratified by the master. Cooper *v.* Lowery, (Ga. App. 1908) 60 S. E. 1015; Harris *v.* Fiat Motors, 22 Times L. Rep. 556.

4. Foote *v.* Kelley, 126 Ga. 799, 55 S. E. 1045.

The mere fact that one is operating a ferry owned by another is sufficient evidence to warrant a finding that he was the servant of the owner of the ferry. Wilson *v.* Alexander, 115 Tenn. 125, 88 S. W. 935.

182. 1. Hudgins *v.* State, 126 Ga. 639, 55 S. E. 492 (indictment); Chambless *v.* Melton, 127 Ga. 414, 56 S. E. 414.

2. The servant need not have actually begun the services to be rendered by him under his contract. McBride *v.* O'Neal, 128 Ga. 473, 57 S. E. 789. But see Sears *v.* Whitaker, 136 N. Car. 37, 48 S. E. 517.

9. Sturdivant *v.* Tollette, 84 Ark. 412, 105 S. W. 1037; McAllister *v.* State, 122 Ga. 744, 50 S. E. 921.

183. 5. Gregory *v.* State, (Miss. 1906) 42 So. 168.

6. The statute does not apply where the contract was made on the part of the minor servant by his guardian and the minor was enticed away by a third person. State *v.* Richardson, 86 Miss. 439, 38 So. 497.

184. 1. Seduction of Servant. — McKenzie *v.* Hardinge, 23 Times L. Rep. 15; Murray *v.* Fitzgerald, (1906) 2 Ir. R. 254.

185. 2. State *v.* Robinson, 70 S. Car. 468, 50 S. E. 192 (illegal contract).

6. A Valid Contract Is Essential. — Johnson *v.* State, (Ala. 1907) 45 So. 230.

7. Georgia Statute. — Hart *v.* State, 121 Ga. 140, 48 S. E. 925; Vinson *v.* State, 124 Ga. 19, 52 S. E. 79 (cropper is within the statute and a minor may be guilty of the crime); Wilson *v.* State, 124 Ga. 22, 52 S. E. 82 (indictment); Townsend *v.* State, 124 Ga. 69, 52 S. E. 293; Williams *v.* State, 124 Ga. 136, 52 S. E. 156 (in case of a minor, if he is forced to abandon the service by his parent, he cannot be convicted); McCoy *v.* State, 124 Ga. 218, 52 S. E. 434; Presley *v.* State, 124 Ga. 446, 52 S. E. 750 (indictment); Millinder *v.* State, 124 Ga. 452, 52 S. E. 760 (indictment — time of prosecution — necessity for loss to master); Young *v.* State, 124 Ga. 788, 53 S. E. 101; Watson *v.* State, 124 Ga. 454, 52 S. E. 751; Taylor *v.* State, 124 Ga. 798, 53 S. E. 320; Braughner *v.* State, 125 Ga. 629, 54 S. E. 653 (necessity for loss by master); Sterling *v.* State, 126 Ga. 92, 54 S. E. 921 (necessity for fraudulent intent — and sufficiency of proof thereof); Howard *v.* State, 126 Ga. 538, 55 S. E. 239 (minor leaving service under direction of parent held not punishable); Abrams *v.* State, 126 Ga. 591, 55 S. E. 497 (loss to master is necessary); Anthony *v.* State, 126 Ga. 632, 55 S. E. 479 (minor may be punished); Harwell *v.* State, 2 Ga. App. 613, 58 S. E. 1111; Mulkey *v.* State, 1 Ga. App. 521, 57 S. E. 1022 (fraudulent intent must exist at time servant obtained the property); Heywood *v.* State, 1 Ga. App. 530, 57 S. E. 1025 (fraudulent intent); Perry *v.* State, 1 Ga. App. 542, 58 S. E. 60; Patterson *v.* State, 1 Ga. App. 782, 58 S. E. 284; Fuller *v.* State, 2 Ga. App. 696, 59 S. E. 1 (fraudulent intent); Barnes *v.* State, 3 Ga. App. 332, 59 S. E. 937; Mason *v.* Terrell, (Ga. App. 1908) 60 S. E. 4; Rickerson *v.* State, (Ga. App. 1908) 60 S. E. 114 (fraudulent intent); Young *v.* State, (Ga. App. 1908) 60 S. E. 117 (loss to hirer is essential); Mobley *v.* State, (Ga. App. 1908) 60 S. E. 803. See also Campbell *v.* State, 121 Ga. 167, 48 S. E. 920; Johnson *v.* State, 125 Ga. 243, 54 S. E. 184; Bridges *v.* State, 126 Ga. 91, 54 S. E. 916.

There must be an express contract, clear and definite in terms. Glenn *v.* State, 123 Ga. 585, 51 S. E. 605.

Louisiana Statute. — State *v.* Murray, 116 La. 655, 40 So. 930.

186. 2. Banks *v.* State, 124 Ga. 15, 52 S. E. 74; Townsend *v.* State, 124 Ga. 69, 52 S. E. 293; State *v.* Murray, 116 La. 655, 40 So. 930. But see *Ex p.* Drayton, 153 Fed. 986 (holding unconstitutional South Carolina Act 1904, amending South Carolina Code. § 357, as imposing involuntary servitude).

4. At Common Law the servant has no lien for wages upon property produced by his labor. Michaelson *v.* Fish, 1 Cal. App. 116, 81 Pac. 661.

A receiver appointed in a foreclosure suit upon the allegation of the complainant that the property was insufficient in value to satisfy the mortgage indebtedness is not a "receiver" within the contemplation of Burns's Ann. Stat. 1901, § 1236, subd. 4, giving preference to wages of laborers when a receiver is appointed. McDaniel *v.* Osborn, (Ind. App. 1904) 72 N. E. 601.

Under the *Indiana* statute providing that "when the property of any company * * * shall be seized by any process," etc., its employees shall have a preferential lien for labor

performed, to entitle employees to a lien it is not necessary that all of the property of the company shall have been taken under process if the company has afterwards disposed of all of its property not taken. Anundsen *v.* Standard Printing Co., 129 Iowa 200, 105 N. W. 424.

13. A bartender whose duties also required him to keep books held to be a laborer. Bluthenthal *v.* Bennefield, 127 Ga. 444, 56 S. E. 517.

14. Howell *v.* Atkinson, 3 Ga. App. 58, 59 S. E. 316.

15. Moore *v.* American Industrial Co., 138 N. Car. 304, 50 S. E. 687.

192. 2. Anunsden *v.* Standard Printing Co., 129 Iowa 200, 105 N. W. 424.

A mortgage on future to be grown crops is inferior to the lien of laborers producing the crop. Sheeks-Stephens Store Co. *v.* Richardson, 76 Ark. 282, 88 S. W. 983.

One purchasing for a pre-existent debt held not entitled to protection. Sheeks-Stephens Store Co. *v.* Richardson, 76 Ark. 282, 88 S. W. 983.

MASTERS OF VESSELS.

199. 4. Master May Bind Vessel for Pilotage. — The Cervantes, 135 Fed. 573.

201. 1. The Svealand, (C. C. A.) 136 Fed. 109; Johnson *v.* Holmes, 188 Mass. 170, 74 N. E. 364.

4. The Cuzco, (C. C. A.) 154 Fed. 177.

206. 8. Pacific Packing, etc., Co. *v.* Fielding, (C. C. A.) 136 Fed. 577.

208. 1. Exemplary Damages Cannot Be Recovered against the Owner of a vessel for the unlawful imprisonment of a seaman by the master, the act being unauthorized and not within the scope of the master's authority. Pacific Packing, etc., Co. *v.* Fielding, (C. C. A.) 136 Fed. 577.

224. 7. Priority of Lien for Wages. — The Emilie Million, (1905) 2 K. B. 817.

225. 1. "Bonus" as "Wages." — The Elmville, (1904) P. 422.

230. 8. Occasional Intoxication and Abandonment will work a forfeiture for the time that such condition existed. Brennan *v.* Hagan, 147 Fed. 290.

MATERIAL — MATERIALS.

232. 3. Hay, Straw, and Feed are not *materials* under a statute giving a lien for *materials* furnished for the construction of a railroad. Pennsylvania Co. *v.* Mehaffey, 75 Ohio St. 432, 9 Ann. Cas. 305, 80 N. E. 177.

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237. 1. Barringer *v.* Loder, 47 Oregon 230, 81 Pac. 778, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 237; Windham Tp. *v.* Colley Tp., 16 Pa. Dist. 385, 32 Pa. Co. Ct. 271, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 237.

238. 1. Dillingham *v.* Spartanburg, 75 S. Car. 549, 56 S. E. 381.

239. 3. Fields *v.* U. S., 27 App. Cas. (D. C.) 433; *Ex p.* Doyle, (W. Va. 1907) 57 S. E. 824.

4. *Ex p.* Prindle, (Cal. 1905) 94 Pac. 871; Houghton Implement Co. *v.* Doughty, 14 N. Dak. 330, 104 N. W. 516, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 239; Van Dyke *v.* School Dist. No. 77, 43 Wash. 237, 86 Pac. 402, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 237 [239]; *Ex p.* Doyle, (W. Va. 1907) 57 S. E. 824.

242. 1. Vineland *v.* Denoflio, (N. J. 1907) 65 Atl. 837, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 242; *Ex p.* Doyle, (W. Va. 1907) 57 S. E. 824.

5. Change of Venue. — Walker *v.* Maronda, 15 N. Dak. 63, 106 N. W. 296.

244. 1. "May Be Paid." — The by-laws of an accident insurance society provided, among other things, that a deficiency "*may* be paid from the emergency fund." It was held that the words "*may* be paid" left it optional with the board of directors to make such payment, and was not mandatory. Crawford *v.* Northwestern Traveling Men's Assoc., 226 Ill. 57, 80 N. E. 736.

"May Cause." — In an instruction to a jury that plaintiff was entitled to recover for "such bodily pain and mental suffering as you may believe such injuries may hereafter cause her," the use of the word *may* was held not erroneous as allowing a recovery for speculative or contingent results. Halley *v.* St. Joseph R. Light, etc., Co., 115 Mo. App. 652, 91 S. W. 163.

"May Have Received." — Use of the word *may* in an instruction to the jury that the plaintiff should recover such damages as she "*may* have received" is not erroneous, the word *may* being used to express the possibility of the existence of such damages, no element of probability being included. Henry *v.* Omaha Packing Co., (Neb. 1908) 115 N. W. 777.

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247. 4. Green *v.* State, (Ala. 1907) 44 So. 194; Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310; State *v.* Mulhall, 199 Mo. 202, 97 S. W. 583.

6. Green *v.* State, (Ala. 1907) 44 So. 194.

248. 4. Extent of Injury. — Green *v.* State, (Ala. 1907) 44 So. 194.

249. 1. Green *v.* State, (Ala. 1907) 44 So. 194.

Attempt to Commit Mayhem. — Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310.

250. 6. Resistance Must Be in Proportion to Injury. — Green *v.* State, (Ala. 1907) 44 So. 194, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 250.

MECHANIC — MECHANICAL.

251. 2. Mechanical Equivalent — Patent Law. — The term *mechanical* equivalent has a broad and generous signification in the interpretation of a pioneer patent, a very narrow and restricted meaning in the construction of a patent for a slight improvement, and, in the interpretation of patents for the great mass of inventions which fall between these extremes, its meaning is proportioned to the advance which the invention under consideration evidences. See Mallon *v.* Gregg, 137 Fed. 68, 69 C. C. A. 48.

MECHANICS' LIENS.

268. **1.** Tommasi *v.* Bolger, 114 N. Y. App. Div. 838, 100 N. Y. Supp. 367.

11. Humboldt Lumber Mill Co. *v.* Crisp, 146 Cal. 686, 81 Pac. 30; Stimson Mill Co. *v.* Nolan, 5 Cal. App. 754, 91 Pac. 262; Crane Co. *v.* Epworth Hotel Constr., etc., Co., 121 Mo. App. 209, 98 S. W. 795; Falvello *v.* New York, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 468, 103 N. Y. Supp. 260; Schaghticoke Powder Co. *v.* Greenwich, etc., R. Co., 183 N. Y. 306, 76 N. E. 153; Friedlander *v.* Taintor, 14 N. Dak. 393, 104 N. W. 527.

269. **1.** Humboldt Lumber Mill Co. *v.* Crisp, 146 Cal. 686, 81 Pac. 30; Burke *v.* Coyne, 188 Mass. 401, 74 N. E. 942.

2. Jorgensen Co. *v.* Sheldon, 2 Alaska 607; Prince *v.* Neal-Millard Co., 124 Ga. 892, 53 S. E. 761.

3. *United States.* — *In re* Hobbs, 145 Fed. 211; Westinghouse Air Brake Co. *v.* Kansas City Southern R. Co., (C. C. A.) 137 Fed. 26; Cameron *v.* Campbell, (C. C. A.) 141 Fed. 32.

Alaska. — Jorgensen Co. *v.* Sheldon, 2 Alaska 607.

Arkansas. — Midland Valley R. Co. *v.* Moran Bolt, etc., Mfg. Co., 80 Ark. 399, 97 S. W. 679.

Georgia. — Arnold *v.* Farmers' Exch., 123 Ga. 731, 51 S. E. 754; Prince *v.* Neal-Miliard Co., 124 Ga. 892, 53 S. E. 761; Reaves *v.* Meredeth, 123 Ga. 444, 51 S. E. 390.

Illinois. — Boylan *v.* Cameron, 126 Ill. App. 432; Garthwait *v.* Bloomington Hotel Co., 130 Ill. App. 418; Joseph N. Eisendrath Co. *v.* Gebhardt, 222 Ill. 113, 78 N. E. 22; Provost *v.* Shirk, 223 Ill. 468, 79 N. E. 178; Shields *v.* Sorg, 129 Ill. App. 266.

Indiana. — Pere Marquette R. Co. *v.* Baertz, 36 Ind. App. 408, 74 N. E. 51; Pere Marquette R. Co. *v.* Palmer, 36 Ind. App. 703, 74 N. E. 546, *following* Pere Marquette R. C. *v.* Baertz, 36 Ind. App. 408, 74 N. E. 51, and Pere Marquette R. Co. *v.* Smith, 36 Ind. App. 439, 74 N. E. 545.

Iowa. — Empire Portland Cement Co. *v.* Payne, 128 Iowa 730, 105 N. W. 331.

Kansas. — Lang *v.* Adams, 71 Kan. 309, 80 Pac. 593.

Maryland. — Evans Marble Co. *v.* International Trust Co., 101 Md. 221, 60 Atl. 667.

Michigan. — Bauer *v.* Long, 147 Mich. 351, 110 N. W. 1059.

Missouri. — Curtin-Clark Hardware Co. *v.* Churchill, 126 Mo. App. 462, 104 S. W. 476; Dougherty-Moss Lumber Co. *v.* Churchill, (Mo. App. 1907) 104 S. W. 478, *following* Curtin-Clark Hardware Co. *v.* Churchill, 126 Mo. App. 462, 104 S. W. 476.

Nevada. — Porteous Decorative Co. *v.* Fee, (Nev. 1907) 91 Pac. 135.

New Jersey. — Somers Brick Co. *v.* Souder, 70 N. J. Eq. 388, 61 Atl. 840.

New York. — Abbott *v.* Easton, 122 N. Y. App. Div. 274, 106 N. Y. Supp. 970; Hurley *v.* Tucker, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 464, 105 N. Y. Supp. 162; Tommasi *v.* Bolger, 114 N. Y. App. Div. 838, 100 N. Y. Supp. 367.

Oklahoma. — Alberti *v.* Moore, (Okla. 1908) 93 Pac. 543.

Pennsylvania. — Collins *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 547; Deeds *v.* Imperial Brick Co., (Pa. 1908) 69 Atl. 78; Este *v.* Pennsylvania R. Co., 27 Pa. Super. Ct. 521; Wolf Co. *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 439.

Tennessee. — Luttrell *v.* Knoxville, etc., R. Co., (Tenn. 1907) 105 S. W. 565.

Utah. — Eccles Lumber Co. *v.* Martin, 31 Utah 249, 87 Pac. 713; Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

Vermont. — Baldwin *v.* Spear, 79 Vt. 43, 64 Atl. 235.

West Virginia. — Wees *v.* Elbon, 61 W. Va. 380, 56 S. E. 611.

270. **1.** Empire Portland Cement Co. *v.* Payne, 128 Iowa 730, 105 N. W. 331; Schaghticoke Powder Co. *v.* Greenwich, etc., R. Co., 183 N. Y. 306, 76 N. E. 153.

2. St. Louis, etc., R. Co. *v.* Love, 74 Ark. 528, 86 S. W. 395; Arnold *v.* Farmers' Exch., 123 Ga. 731, 51 S. E. 754; Palin *v.* Cooke, 125 Ga. 442, 54 S. E. 90; Boylan *v.* Cameron, 126 Ill. App. 432; Provost *v.* Shirk, 223 Ill. 468, 79 N. E. 178; Eastern Ohio Oil Co. *v.* McEvoy, (Kan. 1907) 89 Pac. 1048; Lang *v.* Adams, 71 Kan. 309, 80 Pac. 593; Evans Marble Co. *v.* International Trust Co., 101 Md. 221, 60 Atl. 667; Bauer *v.* Long, 147 Mich. 351, 110 N. W. 1059; Lake *v.* Brannin, (Miss. 1907) 44 So. 65; Porteous Decorative Co. *v.* Fee, (Nev. 1907) 91 Pac. 135.

Burden upon Lienor to Show Sum Due or to Become Due. — Brandt *v.* Burke, 110 N. Y. App. Div. 396, 97 N. Y. Supp. 280, *affirmed* 186 N. Y. 599, 79 N. E. 1101.

271. **7.** Prince *v.* Neal-Millard Co., 124 Ga. 892, 53 S. E. 761; Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 339, 56 S. E. 158.

8. Stimson Mill Co. *v.* Nolan, 5 Cal. App. 754, 91 Pac. 262; Gardner, etc., Co. *v.* New York Cent., etc., R. Co., 72 N. J. L. 257, 62 Atl. 416; Snyder *v.* New York Cent., etc., R. Co., 72 N. J. L. 262, 62 Atl. 418; Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 327, 56 S. E. 158.

9. Stimson Mill Co. *v.* Nolan, 5 Cal. App. 754, 91 Pac. 262; Gardner, etc., Co. *v.* New York Cent., etc., R. Co., 72 N. J. L. 257, 62 Atl. 416; Snyder *v.* New York Cent., etc., R. Co., 72 N. J. L. 262, 62 Atl. 418, *following* Gardner, etc., Co. *v.* New York Cent., etc., R. Co., 72 N. J. L. 257, 62 Atl. 416.

272. **1.** Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 339, 56 S. E. 158.

274. **1.** Van Kannel Revolving Door Co. *v.* Sloane, 119 N. Y. App. Div. 214, 104 N. Y. Supp. 653.

2. Western Plumbing Co. *v.* Fried, 33 Mont. 7, 81 Pac. 394; Abbott *v.* Easton, 122 N. Y. App. Div. 274, 106 N. Y. Supp. 970; Casey *v.* Connors Bros. Constr. Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 101, 103 N. Y. Supp. 1103; Daxe *v.* Hajek, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 673, 107 N. Y. Supp. 601; Maneely *v.* New York, 119 N. Y. App. Div. 376, 105 N. Y. Supp. 976; McDonald *v.* New York, 113 N. Y. App. Div. 625, 99 N. Y. Supp. 122; Murphy *v.* Hardiman, 112 N. Y. App. Div. 670, 99 N. Y. Supp. 6; Schenectady Contracting Co. *v.* Schenectady R. Co., 106 N. Y. App. Div. 336, 94 N. Y. Supp. 401; Uvalde Asphalt Paving Co. *v.* New York, 191 N. Y. 244, 84 N. E. 83; Woolf *v.* Schaefer, 103 N. Y.

App. Div. 567, 93 N. Y. Supp. 184; Ponti *v.* Eckels, 120 Wis. 26, 108 N. W. 62.

Where No Valid Lien Acquired Personal Judgment Unauthorized. — Thompson-Starrett Co. *v.* Brooklyn Heights Realty Co., 111 N. Y. App. Div. 358, 98 N. Y. Supp. 128.

275. 1. No Foreclosure of Materialman's Lien in Absence of Valid Judgment Against Contractor. Mauck *v.* Rosser, 126 Ga. 268, 55 S. E. 32.

11. *United States.* — *In re* Hobbs, 145 Fed. 211; Salt Lake Hardware Co. *v.* Chainman Min., etc., Co., 137 Fed. 632.

Alaska. — Jorgensen Co. *v.* Sheldon, 2 Alaska 607.

Connecticut. — Cronan *v.* Corbett, 78 Conn. 475, 62 Atl. 662.

Georgia. — Arnold *v.* Farmers' Exch., 123 Ga. 731, 51 S. E. 754; Reaves *v.* Meredeth, 123 Ga. 444, 51 S. E. 390.

Illinois. — Joseph N. Eisendrath Co. *v.* Gebhardt, 222 Ill. 113, 78 N. E. 22; Provost *v.* Shirk, 223 Ill. 468, 79 N. E. 178; Shields *v.* Sorg, 129 Ill. App. 266.

Kansas. — Lang *v.* Adams, 71 Kan. 309, 80 Pac. 593.

Michigan. — Battle Creek Lumber Co. *v.* Poland, 150 Mich. 690, 114 N. W. 671; Kleinert *v.* Knoop, 147 Mich. 387, 110 N. W. 941.

Nevada. — Porteous Decorative Co. *v.* Fee, (Nev. 1907) 91 Pac. 135.

New Jersey. — Somers Brick Co. *v.* Souder, 70 N. J. Eq. 388, 61 Atl. 840.

New York. — Waters *v.* Goldberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 992.

North Dakota. — Salzer Lumber Co. *v.* Claflin, (N. Dak. 1907) 113 N. W. 1036.

Pennsylvania. — Este *v.* Pennsylvania R. Co., 27 Pa. Super. Ct. 521; Westmoreland Guarantee Bldg., etc., Assoc. *v.* Connor, 216 Pa. St. 543, 65 Atl. 1089; Wolf Co. *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 439.

Texas. — Kinsey *v.* Spurlin, (Tex. Civ. App. 1907) 102 S. W. 122.

Utah. — Eccles Lumber Co. *v.* Martin, 31 Utah 249, 87 Pac. 713; Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

Vermont. — Baldwin *v.* Spear, 79 Vt. 43, 64 Atl. 235.

West Virginia. — Wees *v.* Elbon, 61 W. Va. 380, 56 S. E. 611.

Wyoming. — Davis *v.* Big Horn Lumber Co., 14 Wyo. 517, 85 Pac. 980.

Lien Being Created by Constitution, Compliance with Statute Unnecessary — *Texas.* — Blakeney *v.* Nalle, (Tex. Civ. App. 1907) 101 S. W. 875.

277. 1. Eccles Lumber Co. *v.* Martin, 31 Utah 249, 87 Pac. 713, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 276.

2. Mulkey *v.* Thompson, (Ga. App. 1908) 60 S. E. 223; Palin *v.* Cooke, 125 Ga. 442, 54 S. E. 90; Reaves *v.* Meredeth, 123 Ga. 444, 51 S. E. 390; Boylan *v.* Cameron, 126 Ill. App. 432; Garthwait *v.* Bloomington Hotel Co., 130 Ill. App. 418; Joseph N. Eisendrath Co. *v.* Gebhardt, 222 Ill. 113, 78 N. E. 22; Provost *v.* Shirk, 223 Ill. 468, 79 N. E. 178.

3. *United States.* — Salt Lake Hardware Co. *v.* Chainman Min., etc., Co., 137 Fed. 632; Canton Roll, etc., Co. *v.* Rolling Mill Co., 155 Fed.

Alaska. — Jorgensen Co. *v.* Sheldon, 2 Alaska 607

California. — Baker *v.* Lake Land Canal, etc., Co., (Cal. App. 1908) 94 Pac. 773; Newell *v.* Brill, 2 Cal. App. 61, 83 Pac. 76; Southern California Lumber Co. *v.* Peters, 3 Cal. App. 478, 86 Pac. 816; Union Lumber Co. *v.* Simon, (Cal. App. 1906) 89 Pac. 1077, *modified* and *affirmed* (Cal. 1907) 89 Pac. 1081.

Colorado. — Gutshall *v.* Kornaley, 38 Colo. 195, 88 Pac. 158.

Connecticut. — Cronan *v.* Corbett, 78 Conn. 475, 62 Atl. 662.

Indiana. — Pere Marquette R. Co. *v.* Baertz, 36 Ind. App. 408, 74 N. E. 51; Pere Marquette R. Co. *v.* Palmer, 36 Ind. App. 703, 74 N. E. 546, *following* Pere Marquette R. Co. *v.* Baertz, 36 Ind. App. 408, 74 N. E. 51, and Pere Marquette R. Co. *v.* Smith, 36 Ind. App. 439, 74 N. E. 545; Williamson *v.* Shank, (Ind. App. 1908) 83 N. E. 641.

Kansas. — Eastern Ohio Oil Co. *v.* McEvoy, (Kan. 1907) 89 Pac. 1048; Fossett *v.* Rock Island Lumber, etc., Co., (Kan. 1907) 92 Pac. 833.

Minnesota. — Doyle *v.* Wagner, 100 Minn. 382, 111 N. W. 275.

Missouri. — Crane Co. *v.* Epworth Hotel Constr., etc., Co., 121 Mo. App. 209, 98 S. W. 795; Faulkner *v.* Budget, 110 Mo. App. 377, 86 S. W. 483; Frank Adam Electric Co. *v.* Gottlieb, 112 Mo. App. 226, 86 S. W. 901.

Nevada. — Porteous Decorative Co. *v.* Fee, (Nev. 1907) 91 Pac. 135.

New Jersey. — See McNab, etc., Mfg. Co. *v.* Paterson Bldg. Co., (N. J. 1906) 63 Atl. 709, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 277, 278.

New York. — Abelman *v.* Myer, 122 N. Y. App. Div. 470, 106 N. Y. Supp. 978; Brandt *v.* Burke, 110 N. Y. App. Div. 396, 97 N. Y. Supp. 280, *affirmed* 186 N. Y. 599, 79 N. E. 1101; Griffin *v.* Ernst, 124 N. Y. App. Div. 289, 108 N. Y. Supp. 816; Hurley *v.* Tucker, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 464, 105 N. Y. Supp. 162; *In re* Hudson Waterworks, 111 N. Y. App. Div. 860, 98 N. Y. Supp. 33; Schaghticoke Powder Co. *v.* Greenwich, etc., R. Co., 183 N. Y. 306, 76 N. E. 153; Waters *v.* Goldberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 992.

North Carolina. — Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 410.

North Dakota. — Friedlander *v.* Taintor, 14 N. Dak. 393, 104 N. W. 527; Salzer Lumber Co. *v.* Claflin, (N. Dak. 1907) 113 N. W. 1036.

Oklahoma. — Alberti *v.* Moore, (Okla. 1908) 93 Pac. 543.

Oregon. — Barton *v.* Rose, 48 Oregon 235, 85 Pac. 1009.

Rhode Island. — See McPherson *v.* Greenwell, 27 R. I. 178, 61 Atl. 175.

South Dakota. — Rolewitch *v.* Harrington, (S. Dak. 1906) 107 N. W. 207.

Tennessee. — Luttrell *v.* Knoxville, etc., R. Co., (Tenn. 1907) 105 S. W. 565.

Utah. — Eccles Lumber Co. *v.* Martin, 31 Utah 249, 87 Pac. 713.

Virginia. — Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 339, 56 S. E. 158.

Statutes Requiring Liberal Construction. — Kerwin *v.* Post, 120 N. Y. App. Div. 179, 104 N. Y. Supp. 1005; Martin *v.* Ambrose A. Gavigan Co., 107 N. Y. App. Div. 279, 95 N. Y.

Supp. 14; Russell, etc., Mfg. Co. *v.* New York, 118 N. Y. App. Div. 88, 103 N. Y. Supp. 9; Van Kannel Revolving Door Co. *v.* Sloane, 119 N. Y. App. Div. 214, 104 N. Y. Supp. 653; Vitelli *v.* May, 120 N. Y. App. Div. 448, 104 N. Y. Supp. 1082.

278. 3. McNab, etc., Mfg. Co. *v.* Paterson Bldg. Co., (N. J. 1906) 63 Atl. 709, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 278; St. Louis, etc., R. Co. *v.* Love, 74 Ark. 528, 86 S. W. 395; Neuman *v.* Grant, (Mont. 1907) 92 Pac. 43; Lapham *v.* Ransford, 27 Ohio Cir. Ct. 80.

279. 2. McElroy *v.* Keily, 27 R. I. 64, 60 Atl. 679.

3. Salter *v.* Goldberg, (Ala. 1907) 43 So. 571; Leiper *v.* Minnig, 74 Ark. 510, 86 S. W. 407; Fulton *v.* Parlett, 104 Md. 62, 64 Atl. 58; Guarantee Sav., etc., Co. *v.* Cash, 99 Tex. 555, 91 S. W. 781; Eccles Lumber Co. *v.* Martin, 31 Utah 249, 87 Pac. 713. And see Linck *v.* Meikeljohn, 2 Cal. App. 506, 84 Pac. 309.

Lien Does Not Attach to Land Where Building Destroyed. — Humboldt Lumber Mill Co. *v.* Crisp, 146 Cal. 686, 81 Pac. 30.

281. 3. Jorgensen Co. *v.* Sheldon, 2 Alaska 607; Linck *v.* Meikeljohn, 2 Cal. App. 506, 84 Pac. 309; Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. 228; Fulton *v.* Parlett, 104 Md. 62, 64 Atl. 58; Sanford *v.* Kunkel, 30 Utah 379, 85 Pac. 363, *opinion modified, rehearing denied,* 30 Utah 389, 85 Pac. 1012. And see Seely *v.* Neill, 37 Colo. 198, 86 Pac. 334.

Where materials were furnished for different lots, and it did not appear that they were so furnished under separate contracts, nor that the owner held title to the lots by separate conveyances, the law permits a lien to be filed against the entire tract. Woolf *v.* Schaefer, 103 N. Y. App. Div. 567, 93 N. Y. Supp. 184.

282. 5. Manatee Light, etc., Co. *v.* Tampa Plumbing, etc., Co., 52 Fla. 533, 42 So. 703.

7. See Central Lumber Co. *v.* Braddock Land, etc., Co., 84 Ark. 560, 105 S. W. 583.

284. 8. Williamson *v.* Shank, (Ind. App. 1908) 83 N. E. 641.

285. 7. Central Lumber Co. *v.* Braddock Land, etc., Co., 84 Ark. 560, 105 S. W. 583.

8. See Kittrell *v.* Hopkins, 114 Mo. App. 431, 90 S. W. 109.

286. 4. Central Lumber Co. *v.* Braddock Land, etc., Co., 84 Ark. 560, 105 S. W. 583; Schlosser *v.* Moores, (N. Dak. 1907) 112 N. W. 78, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 286; Guarantee Sav., etc., Co. *v.* Cash, (Tex. Civ. App. 1905) 87 S. W. 749.

5. McElroy *v.* Keily, 27 R. I. 264, 60 Atl. 679; Guarantee Sav., etc., Co. *v.* Cash, 99 Tex. 555, 91 S. W. 781, *distinguishing* Lyon *v.* Logan, 68 Tex. 521, 5 S. W. 72.

287. 5. Central Lumber Co. *v.* Braddock Land, etc., Co., 84 Ark. 560, 105 S. W. 583; Aimee Realty Co. *v.* Haller, (Mo. App. 1907) 106 S. W. 588.

6. Warick First Nat. Bank *v.* Mitchell, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 30, 93 N. Y. Supp. 231.

289. 4. *United States.* — Westinghouse Air Brake Co. *v.* Kansas City Southern R. Co., (C. C. A.) 137 Fed. 26.

Arkansas. — Midland Valley R. Co. *v.* Moran Bolt, etc., Mfg. Co., 80 Ark. 399, 97 S. W. 679; St. Louis, etc., R. Co. *v.* Love, 74 Ark. 528, 86 S. W. 395.

Connecticut. — Egan *v.* Cheshire St. R. Co., 78 Conn. 291, 61 Atl. 950.

Indiana. — Pere Marquette R. Co. *v.* Baertz, 36 Ind. App. 408, 74 N. E. 51; Pere Marquette R. Co. *v.* Smith, 36 Ind. App. 439, 74 N. E. 545.

Missouri. — Indiana Powder Co. *v.* St. Louis, etc., R. Co., 116 Mo. App. 364, 92 S. W. 150; Little Rock Trust Co. *v.* Southern Missouri, etc., R. Co., 195 Mo. 669, 93 S. W. 944.

Ohio. — Pennsylvania Co. *v.* Mehaffey, 75 Ohio St. 432, 80 N. E. 177.

Tennessee. — Norman *v.* Edington, 115 Tenn. 309, 89 S. W. 744; Luttrell *v.* Knoxville, etc., R. Co., (Tenn. 1907) 105 S. W. 565.

Texas. — Waters-Pierce Oil Co. *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1906) 99 S. W. 212.

Washington. — Laidlaw *v.* Portland, etc., R. Co., 42 Wash. 292, 84 Pac. 855.

5. Statutes Held to Extend to Railroads. — Schaghticoke Powder Co. *v.* Greenwich, etc., R. Co., 183 N. Y. 306, 76 N. E. 153.

290. 2. **Street Railway Held Subject to Lien.** — Egan *v.* Cheshire St. R. Co., 78 Conn. 291, 61 Atl. 950.

291. 13. Stevenson *v.* Woodward, 3 Cal. App. 754, 86 Pac. 990.

14. Porch *v.* Agnew Co., 70 N. J. Eq. 328, 61 Atl. 721. And see Frank Adam Electric Co. *v.* Gottlieb, 112 Mo. App. 226, 86 S. W. 901.

292. 3. **Oil-well Derrick Attached to Leasehold Estate Subject to Mechanic's Lien.** — Showalter *v.* Lowndes, 56 W. Va. 463, 49 S. E. 448.

4. Griffin *v.* Ernst, 124 N. Y. App. Div. 289, 108 N. Y. Supp. 816.

295. 1. See Thompson *v.* Stephens, 131 Iowa 51, 107 N. W. 1095; Allen County *v.* U. S. Fidelity, etc., Co., (Ky. 1906) 93 S. W. 44.

2. Kruse *v.* Wilson, 3 Cal. App. 91, 84 Pac. 442.

298. 2. Green *v.* Tenold, 14 N. Dak. 46, 103 N. W. 398.

300. 4. Holliday *v.* Mathewson, 146 Mich. 336, 109 N. W. 669. And see Rowley *v.* Varnum, 15 Okla. 612, 84 Pac. 487.

5. Statute Making Homestead Subject to Mechanics' Liens Unconstitutional. — Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

301. 1. **Same Rule Obtains in Utah.** — Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896.

Mechanic's Lien Cannot Be Acquired upon Homestead in North Dakota. — Green *v.* Tenold, 14 N. Dak. 46, 103 N. W. 398.

2. Saunders *v.* Tuscumbia Roofing, etc., Co., (Ala. 1906) 41 So. 982; Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 410.

Lien on Joint Property of Husband and Wife. — Bauer *v.* Long, 147 Mich. 351, 110 N. W. 1059. See also McMillan *v.* Schneider, 147 Mich. 258, 110 N. W. 961.

302. 2. Crutcher *v.* Block, (Okla. 1907) 91 Pac. 895, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 301.

303. 2. See Crutcher *v.* Block, (Okla. 1907) 91 Pac. 895.

3. Salzer Lumber Co. *v.* Claflin, (N. Dak. 1907) 113 N. W. 1036.

4. Crutcher *v.* Block, (Okla. 1907) 91 Pac. 895, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 303; Block *v.* Pearson, (Okla. 1907) 91 Pac. 714; Jarrell *v.* Block, (Okla. 1907) 92 Pac. 167; Showalter *v.* Lowndes, 56 W. Va. 463, 49 S. E. 448, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 301, 303.

Lien Will Not Attach to Interest Acquired by Lessee under Oil or Gas Lease. — Phillips *v.* Springfield Crude Oil Co., (Kan. 1907) 92 Pac. 1119.

304. 5. Ottumwa Iron Works *v.* Muir, 126 Mo. App. 582, 105 S. W. 29.

7. Showalter *v.* Lowndes, 56 W. Va. 463, 49 S. E. 448, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 304.

306. 9. Kountz Brothers Co. *v.* Consolidated Ice Co., 28 Pa. Super. Ct. 266.

308. 3. **Lien May Attach to Heating Plant of Municipality.** — Wells *v.* Christian, 165 Ind. 662, 76 N. E. 518.

9. In *Washington* a lien for constructing a well is expressly given. Lee *v.* Kimball, 45 Wash. 656, 88 Pac. 1121.

309. 3. Leiper *v.* Minnig, 74 Ark. 510, 86 S. W. 407.

5. O'Neil *v.* Taylor, 59 W. Va. 370, 53 S. E. 471.

310. 4. O'Neil *v.* Taylor, 59 W. Va. 370, 53 S. E. 471, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 310. This case follows the *Massachusetts* rule enunciated in the text at page 310.

311. 10. **Lien Acquirable Though Repairs Made to Facilitate Unlawful Business.** — Doyle *v.* Franks, 71 Kan. 640, 81 Pac. 211.

312. 4. Prince *v.* Neal-Millard Co., 124 Ga. 892, 53 S. E. 761, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 314, 315.

314. 4. Vickery *v.* Richardson, 189 Mass. 53, 75 N. E. 136; Barnard *v.* Lantry, 116 N. Y. App. Div. 535, 101 N. Y. Supp. 502; Hampson *v.* Smith, 115 N. Y. App. Div. 910, 101 N. Y. Supp. 386; Kerwin *v.* Post, 120 N. Y. App. Div. 179, 104 N. Y. Supp. 1005; Ripley *v.* Smith, 115 N. Y. App. Div. 911, 101 N. Y. Supp. 386; Schnaufer *v.* Ahr, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 299, 103 N. Y. Supp. 195; Seklir *v.* Krizer, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 25, 96 N. Y. Supp. 74; Tinsley *v.* Smith, 115 N. Y. App. Div. 708, 101 N. Y. Supp. 382.

7. McCormick *v.* Butland, 191 Mass. 424, 77 N. E. 761; Hampson *v.* Smith, 115 N. Y. App. Div. 910, 101 N. Y. Supp. 386; Pope *v.* Heckscher, 109 N. Y. App. Div. 495, 96 N. Y. Supp. 533; Ripley *v.* Smith, 115 N. Y. App. Div. 911, 101 N. Y. Supp. 386; Tinsley *v.* Smith, 115 N. Y. App. Div. 708, 101 N. Y. Supp. 382; Builders' Supply Co. *v.* North Augusta Electric, etc., Co., 71 S. Car. 361, 51 S. E. 231.

9. Clark *v.* North, 131 Wis. 599, 111 N. W. [illegible].

315. 1. Schummer *v.* Clark, 107 N. Y. App. Div. 207, 95 N. Y. Supp. 836.

320. 1. Dougherty-Moss Lumber Co. *v.* Churchill, 114 Mo. App. 578, 90 S. W. 405.

325. 5. Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 410.

329. 3. Logan Planing Mill Co. *v.* Aldredge, (W. Va. 1908) 60 S. E. 783, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 329.

332. 1. Evans Marble Co. *v.* International Trust Co., 101 Md. 221, 60 Atl. 667, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 332.

333. 2. Mineah *v.* Stotts, 130 Iowa 530, 107 N. W. 425.

3. Mineah *v.* Stotts, 130 Iowa 530, 107 N. W. 425.

335. 2. **Subcontractor of Subcontractor Not Entitled to Lien.** — Vandenberg *v.* P. T. Walton Lumber Co., (Okla. 1907) 92 Pac. 149.

3. Crutcher *v.* Block, (Okla. 1907) 91 Pac. 895.

336. 1. Pere Marquette R. Co. *v.* Baertz, 36 Ind. App. 408, 74 N. E. 51; Pere Marquette R. Co. *v.* Palmer, 36 Ind. App. 703, 74 N. E. 546; Stephens *v.* Duffy, (Ind. App. 1907) 81 N. E. 1154; Berger *v.* Turnblad, 98 Minn. 163, 107 N. W. 543; Gardner, etc., Co. *v.* New York Cent., etc., R. Co., 72 N. J. L. 257, 62 Atl. 416; Snyder *v.* New York Cent., etc., R. Co., 72 N. J. L. 262, 62 Atl. 418.

Subcontractors Entitled to Direct Lien under North Dakota Statute. — Robertson Lumber Co. *v.* State Bank, 14 N. Dak. 511, 105 N. W. 719.

337. 10. Tennis Bros. Co. *v.* Wetzel, etc., R. Co., 140 Fed. 193.

340. 2. Wera *v.* Bowerman, 191 Mass. 458, 78 N. E. 102.

8. Vickery *v.* Richardson, 189 Mass. 53, 75 N. E. 136.

9. Evans Marble Co. *v.* International Trust Co., 101 Md. 221, 60 Atl. 667, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 340.

10. Evans Marble Co. *v.* International Trust Co., 101 Md. 221, 60 Atl. 667, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 340.

11. **Simple Preparation of Plans and Specifications Gives No Right to Lien.** — Thompson-Starrett Co. *v.* Brooklyn Heights Realty Co., 111 N. Y. App. Div. 358, 98 N. Y. Supp. 128.

342. 4. **Plans Not Used — No Lien.** — Buckingham *v.* Flummerfelt, 15 N. Dak. 112, 106 N. W. 403.

343. 4. **The Term "Materials" Has Been Held to Include Explosives.** — Luttrell *v.* Knoxville, etc., R. Co., (Tenn. 1907) 105 S. W. 565.

The Term "Materials" Has Been Held to Include Dynamite. — Schaghticoke Powder Co. *v.* Greenwich, etc., R. Co., 183 N. Y. 306, 76 N. E. 153.

6. But see Berger *v.* Turnblad, 98 Minn. 163, 107 N. W. 543.

346. 9. Central Lumber Co. *v.* Braddock Land, etc., Co., 84 Ark. 560, 105 S. W. 585, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 346; North *v.* Globe Fence Co., 144 Mich. 557, 108 N. W. 285; Riverside Lumber Co. *v.* Schmidt, (Mo. App. 1908) 109 S. W. 71.

347. 4. Bell *v.* Mecum, (N. J. 1907) 68 Atl. 149; Schlosser *v.* Moores, (N. Dak. 1907) 112 N. W. 78, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347; Luttrell *v.* Knoxville, etc., R. Co., (Tenn. 1907) 105 S. W. 565.

348. 2. But see Seattle Lumber Co. *v.* Sweeney, 43 Wash. 1, 85 Pac. 677.

3. Seattle Lumber Co. *v.* Sweeney, 43 Wash. 1, 85 Pac. 677.

349. 3. Uvalde Asphalt Paving Co. *v.* New York, 191 N. Y. 244, 84 N. E. 83.

5. Miltimore *v.* Nofziger Bros. Lumber Co., 150 Cal. 790, 90 Pac. 114; Evans Marble Co. *v.* International Trust Co., 101 Md. 221, 60 Atl. 667; Guarantee Sav., etc., Co. *v.* Cash, 99 Tex. 555, 91 S. W. 781; Eccles Lumber Co. *v.* Martin, 31 Utah 249, 87 Pac. 713; Volker-Scowcroft Lumber Co. *v.* Vance, (Utah 1907) 88 Pac. 896; Wells *v.* Christian, 165 Ind. 662, 76 N. E. 518.

350. 5. *Georgia.* — Cambridge Tile Mfg. Co. *v.* Germania Bank, 128 Ga. 178, 57 S. E. 311; Central of Georgia R. Co. *v.* Shiver, 125 Ga. 218, 53 S. E. 610; General Supply Co. *v.* Hunn, 126 Ga. 615, 55 S. E. 957; Pittsburgh Plate Glass Co. *v.* Peters Land Co., 123 Ga. 723, 51 S. E. 725.

Iowa. — Webster City Steel Radiator Co. *v.* Chamberlin, (Iowa 1908) 115 N. W. 504.

Maryland. — Evans Marble Co. *v.* International Trust Co., 101 Md. 221, 60 Atl. 667.

Minnesota. — Fitzpatrick *v.* Ernst, 102 Minn. 195, 113 N. W. 4.

Missouri. — Curtin-Clark Hardware Co. *v.* Churchill, 126 Mo. App. 462, 104 S. W. 476; Dougherty-Moss Lumber Co. *v.* Churchill, (Mo. App. 1907) 104 S. W. 478; Indiana Powder Co. *v.* St. Louis, etc., R. Co., 116 Mo. App. 364, 92 S. W. 150; Riverside Lumber Co. *v.* Schmidt, (Mo. App. 1908) 109 S. W. 71. And see Berger Mfg. Co. *v.* Lloyd, 113 Mo. App. 205, 91 S. W. 468.

Nebraska. — Meade Plumbing, etc., Co. *v.* Irwin, (Neb. 1906) 109 N. W. 391.

New York. — Entenman *v.* Anderson, 106 N. Y. App. Div. 149, 94 N. Y. Supp. 45.

Ohio. — Lapham *v.* Ransford, 27 Ohio Cir. Ct. 80; Stewart *v.* Westwood Brick Co., 27 Ohio Cir. Ct. 272.

Pennsylvania. — Horn, etc., Mfg. Co. *v.* Steelman, 215 Pa. St. 187, 64 Atl. 409.

Utah. — Eccles Lumber Co. *v.* Martin, 31 Utah 249, 87 Pac. 714.

Wyoming. — Davis *v.* Big Horn Lumber Co., 14 Wyo. 517, 85 Pac. 980.

Principal Contractor Must Sustain Contractual Relation to Owner. — Prince *v.* Neal-Millard Co., 124 Ga. 892, 53 S. E. 761, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 350.

Contract Must Be Made with Owner or One Authorized to Act for Him. — Snyder *v.* Sparks, 73 Neb. 804, 103 N. W. 662.

351. 1. See Central of Georgia R. Co. *v.* Shiver, 125 Ga. 218, 53 S. E. 610.

352. 5. Guarantee Sav., etc., Co. *v.* Cash, (Tex. Civ. App. 1905) 87 S. W. 749.

6. Stimson Mill Co. *v.* Nolan, 5 Cal. App. 754, 91 Pac. 262.

353. 4. Holliday *v.* Mathewson, 146 Mich. 336, 109 N. W. 669.

354. 2. Smith *v.* Bradbury, 148 Cal. 41, 82 Pac. 367; Stimson Mill Co. *v.* Nolan, 5 Cal. App. 754, 91 Pac. 262. And see Nason *v.* John, 1 Cal. App. 538, 82 Pac. 566.

11. Guarantee Sav., etc., Co. *v.* Cash, (Tex. Civ. App. 1905) 87 S. W. 749.

357. 5. Merritt *v.* Crane Co., 225 Ill. 181, 80 N. E. 103.

7. See Ryan *v.* Desmond, 118 Ill. App. 186.

358. 1. Provose *v.* Shirk, 223 Ill. 468, 79 N. E. 178.

2. Merritt *v.* Crane Co., 225 Ill. 181, 80 N. E. 103.

359. 7. Evans Marble Co. *v.* International Trust Co., 101 Md. 221, 60 Atl. 667, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 359.

361. 1. Gray *v.* Jones, 47 Oregon 40, 81 Pac. 813, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361.

8. Prince *v.* Neal-Milliard Co., 124 Ga. 892, 53 S. E. 761, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 363; Gray *v.* Jones, 47 Oregon 40, 81 Pac. 813; Glassport Lumber Co. *v.* Wolf, 213 Pa. St. 407, 62 Atl. 1074; Lee *v.* Williams, 30 Pa. Super. Ct. 349, 357.

Effect Will Be Given to Express Stipulation against Lien by Sureties. — Miller *v.* Taggart, 36 Ind. App. 595, 76 N. E. 321.

362. 8. See Terrell *v.* McHenry, (Ky. 1905) 89 S. W. 306, *citing* 20 AM. AND ENG. [illegible] 362, 444.

363. 3. Stewart Contracting Co. *v.* Trenton, etc., R. Co., 71 N. J. L. 568, 60 Atl. 405.

4. Glassport Lumber Co. *v.* Wolf, 213 Pa. St. 407, 62 Atl. 1074.

Where Subcontractor Has Knowledge of Stipulation He Cannot Claim Lien. — George B. Swift Co. *v.* Dolle, 39 Ind. App. 653, 80 N. E. 678.

6. Cost *v.* Newport Builders' Supply, etc., Co., (Ark. 1908) 108 S. W. 509.

366. 4. Rochford *v.* Rochford, 192 Mass. 231, 78 N. E. 454; Derr *v.* Kearney, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 148, 93 N. Y. Supp. 1099; Woolf *v.* Schafer, 103 N. Y. App. Div. 567, 93 N. Y. Supp. 184.

Substantial Performance Requisite to Personal Judgment. — Aex *v.* Allen, 107 N. Y. App. Div. 182, 94 N. Y. Supp. 844.

8. *United States.* — D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 137 Fed. 625.

California. — Hill *v.* Clark, (Cal. App. 1908) 95 Pac. 382; Schindler *v.* Green, 149 Cal. 752, 87 Pac. 626.

Illinois. — Bloomington Hotel Co. *v.* Garthwait, 227 Ill. 613, 81 N. E. 714.

Massachusetts. — Bergfors *v.* Caron, 190 Mass. 168, 76 N. E. 655; Burke *v.* Coyne, 188 Mass. 401, 74 N. E. 942.

Minnesota. — Hankee *v.* Arundel Realty Co., 98 Minn. 219, 108 N. W. 842.

Nebraska. — Hahn *v.* Bonacum, (Neb. 1906) 107 N. W. 1001.

New York. — Brandt *v.* Burke, 110 N. Y. App. Div. 396, 97 N. Y. Supp. 280, *affirmed* 186 N. Y. 396, 79 N. E. 1101; Felgenhauer *v.* Haas, 123 N. Y. App. Div. 75, 108 N. Y. Supp. 476; Nesbit *v.* Braker, 104 N. Y. App. Div. 393, 93 N. Y. Supp. 856. And see Rowe *v.* Gerry, 109 N. Y. App. Div. 153, 95 N. Y. Supp. 857.

South Dakota. — Burgi *v.* Rudgers, (S. Dak. 1906) 108 N. W. 253.

Texas. — Roane *v.* Murphy, (Tex. Civ. App. 1906) 96 S. W. 782.

367. 1. See Otis Elevator Co. *v.* Dusenbury, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 450, 95 N. Y. Supp. 959.

Where Time Is of Essence of Contract, a failure to perform within the time limited in the

contract is a failure to substantially perform. D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 137 Fed. 625.

2. Schindler *v.* Green, (Cal. App. 1905) 82 Pac. 341.

4. Easthampton Lumber, etc., Co. *v.* Worthington, 186 N. Y. 407, 79 N. E. 323; Easthampton Lumber, etc., Co. *v.* Worthington, 186 N. Y. 581, 79 N. E. 325.

5. Schindler *v.* Green, 149 Cal. 752, 87 Pac. 626; Gier *v.* Daiber, 148 Mich. 190, 111 N. W. 773. And see H. A. Grimwood Co. *v.* Capitol Hill Bldg., etc., Co., (R. I. 1906) 65 Atl. 304.

8. Schindler *v.* Green, (Cal. App. 1905) 82 Pac. 341; Otis Elevator Co. *v.* Dusenbury, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 450, 95 N. Y. Supp. 959; Roane *v.* Murphy, (Tex. Civ. App. 1906) 96 S. W. 782.

368. **1.** Central Bldg. Co. *v.* Karr Supply Co., 115 Ill. App. 610.

369. **3.** Westmoreland Guarantee Bldg., etc., Assoc. *v.* Connor, 216 Pa. St. 543, 65 Atl. 1089.

370. **5.** Taylor *v.* Dall Lead, etc., Co., 131 Wis. 348, 111 N. W. 490.

6. Bloomington Hotel Co. *v.* Garthwait, 227 Ill. 613, 81 N. E. 714; Joseph N. Eisendrath Co. *v.* Gebhardt, 222 Ill. 113, 78 N. E. 22; Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. 228; Nesbit *v.* Braker, 104 N. Y. App. Div. 393, 93 N. Y. Supp. 856; Thompson-Starrett Co. *v.* Brooklyn Heights Realty Co., 111 N. Y. App. Div. 358, 98 N. Y. Supp. 128.

371. **2.** Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. 228.

372. **10.** Salt Lake Hardware Co. *v.* Chainman Min., etc., Co., 137 Fed. 632; Cronan *v.* Corbett, 78 Conn. 475, 62 Atl. 662; Somers Brick Co. *v.* Souder, 70 N. J. Eq. 388, 61 Atl. 840.

373. **4.** Cameron *v.* Campbell, (C. C. A.) 141 Fed. 32; Jorgensen Co. *v.* Sheldon, 2 Alaska 607; Hurley *v.* Tucker, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 464, 105 N. Y. Supp. 162; Waters *v.* Goldberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 992; Este *v.* Pennsylvania R. Co., 27 Pa. Super. Ct. 521; Baldwin *v.* Spear, 79 Vt. 43, 64 Atl. 235; Davis *v.* Big Horn Lumber Co., 14 Wyo. 517, 85 Pac. 980.

374. **4. Notice Must Be Given of Intention to File Lien on Public Property.** — Philadelphia Tenth Nat. Bank *v.* Smith Constr. Co., 34 Pa. Super. Ct. 471.

375. **7.** Kneisley Lumber Co. *v.* Edward B. Stoddard Co., 113 Mo. App. 306, 88 S. W. 774.

376. **1. Subcontractor's Rights Depend upon Rights of Contractor** unless he elects to file and give notice of lien. Snyder *v.* Monroe Eckstein Brewing Co., 107 N. Y. App. Div. 328, 95 N. Y. Supp. 144.

377. **3.** Joseph N. Eisendrath Co. *v.* Gebhardt, 222 Ill. 113, 78 N. E. 22.

378. **1.** Fulton *v.* Parlett, 104 Md. 62, 64 Atl. 58; Wolf Co. *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 439; Wees *v.* Elbon, 61 W. Va. 380, 56 S. E. 611.

379. **7.** Faulkner *v.* Bridget, 110 Mo. App. 377, 86 S. W. 483.

380. **2.** Star Mill, etc., Co. *v.* Porter, 4 Cal. App. 470, 88 Pac. 497; Fulton *v.* Parlett, 104 Md. 62, 64 Atl. 58.

Substantial Compliance with Statute Sufficient. — American Car, etc., Co. *v.* Alexandria Water Co., 215 Pa. St. 520, 64 Atl. 683.

3. Notice Should Contain Correct Statement of Facts Required by Statute. — Nofziger Bros. Lumber Co. *v.* Shafer, 2 Cal. App. 219, 83 Pac. 284.

4. Faulkner *v.* Bridget, 110 Mo. App. 377, 86 S. W. 483.

7. Notice Must Be True in All Essential Particulars. — Nofziger Bros. Lumber Co. *v.* Shafer, 2 Cal. App. 219, 83 Pac. 284.

381. **5. Notice Must Set Forth Date of Last Item of Claim.** — Wolf Co. *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 439.

382. **5. Signature by Claimant's Attorney in Name of Claimant Sufficient.** — Siegmund *v.* Kellogg-Mackay-Cameron Co., 38 Ind. App. 95, 77 N. E. 1096.

383. **5. Service upon Wife of Owner Held Sufficient.** — J. E. Greilick Co. *v.* Rogers, 144 Mich. 313, 107 N. W. 885.

384. **3.** *United States.* — Canton Roll, etc., Co. *v.* Rolling Mill Co., 155 Fed. 321 (West Virginia case).

Alabama. — McGreever *v.* Harris, (Ala. 1906) 41 So. 930.

California. — Hubbard *v.* Lee, (Cal. App. 1907) 92 Pac. 744.

Georgia. — Arnold *v.* Farmers' Exch., 123 Ga. 731, 51 S. E. 754.

Illinois. — McNicholas *v.* Tinsler, 127 Ill. App. 381; Shields *v.* Sorg, 129 Ill. App. 266; Stone *v.* Juvinall, 125 Ill. App. 562.

Kansas. — Fossett *v.* Rock Island, etc., Co., (Kan. 1907) 92 Pac. 833, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 384.

Kentucky. — Dobson *v.* Thurman, (Ky. 1907) 101 S. W. 310.

Louisiana. — Shreveport Nat. Bank *v.* Maples, 119 La. 41, 43 So. 905.

Michigan. — J. E. Greilick Co. *v.* Taylor, 143 Mich. 704, 107 N. W. 712; Kleinert *v.* Knoop, 147 Mich. 387, 110 N. W. 941.

Missouri. — Kneisley Lumber Co. *v.* Edward B. Stoddard Co., 113 Mo. App. 306, 88 S. W. 774. And see Crane Co. *v.* Epworth Hotel Constr., etc., Co., 121 Mo. App. 209, 98 S. W. 795.

Montana. — McEwen *v.* Montana Pulp, etc., Co., 35 Mont. 470, 90 Pac. 359; Western Plumbing Co. *v.* Fried, 33 Mont. 7, 81 Pac. 394.

New Jersey. — J. C. Vreeland Bldg. Co. *v.* Knickerbocker Sugar Refining Co., (N. J. 1907) 68 Atl. 215.

Oregon. — Horn *v.* U. S. Mining Co., 47 Oregon 125, 81 Pac. 1009.

Virginia. — Brown *v.* Cornwell, (Va. 1908) 60 S. E. 623.

388. **2.** Guarantee Sav., etc., Co. *v.* Cash, (Tex. Civ. App. 1905) 87 S. W. 749.

10. J. C. Vreeland Bldg. Co. *v.* Knickerbocker Sugar Refining Co., (N. J. 1907) 68 Atl. 215.

389. **3.** *United States.* — Canton Roll, etc., Co. *v.* Rolling Mill Co., 155 Fed. 321. And see *In re* Hobbs, 145 Fed. 211.

Colorado. — Foley *v.* Coon, (Colo. 1907) 93 Pac. 13.

Georgia. — Arnold *v.* Farmers' Exch., 123 Ga. 731, 51 S. E. 754.

Illinois. — McNicholas *v.* Tinsler, 127 Ill. App. 381; Stone *v.* Juvinall, 125 Ill. App. 562.

Kansas. — Fossett *v.* Rock Island Lumber, etc., Co., (Kan. 1907) 92 Pac. 833.

Michigan. — North *v.* Globe Fence Co., 144 Mich. 557, 108 N. W. 285.

Montana. — McEwen *v.* Montana Pulp, etc., Co., 35 Mont. 470, 90 Pac. 359.

Nebraska. — Searle, etc., Lumber Co. *v.* Jones, (Neb. 1908) 114 N. W. 783.

New York. — Schnaufer *v.* Ahr, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 299, 103 N. Y. Supp. 195.

Washington. — Brown *v.* Trimble, (Wash. 1908) 93 Pac. 317; Laidlaw *v.* Portland, etc., R. Co., 42 Wash. 292, 84 Pac. 855.

And see Perkins *v.* Boyd, 37 Colo. 265, 86 Pac. 1045.

390. 4. Lindsay, etc., Co. *v.* Zoeckler, 128 Iowa 558, 104 N. W. 802; Robertson Lumber Co. *v.* State Bank, 14 N. Dak. 511, 105 N. W. 719.

6. Baker *v.* Lake Land Canal, etc., Co., (Cal. App. 1908) 94 Pac. 773.

391. 5. Big Horn Lumber Co. *v.* Davis, 14 Wyo. 455, 84 Pac. 900, 85 Pac. 1048.

392. 2. See Big Horn Lumber Co. *v.* Davis, 14 Wyo. 455, 84 Pac. 900, 85 Pac. 1048.

10. Rockwell *v.* Light, (Cal. App. 1907) 92 Pac. 649; Lichty *v.* Houston Lumber Co., 39 Colo. 53, 88 Pac. 846; Bader *v.* New York, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 358, 101 N. Y. Supp. 351.

394. 8. Lichty *v.* Houston Lumber Co., 39 Colo. 53, 88 Pac. 846, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 394.

395. 4. But see Shields *v.* Sorg, 129 Ill. App. 266.

9. Lichty *v.* Houston Lumber Co., 39 Colo. 53, 88 Pac. 846, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 395.

10. Lichty *v.* Houston Lumber Co., 39 Colo. 53, 88 Pac. 846, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 395.

397. 8. Schindler *v.* Green, 149 Cal. 752, 87 Pac. 626.

398. 1. Schindler *v.* Green, 149 Cal. 752, 87 Pac. 626; Lichty *v.* Houston Lumber Co., 39 Colo. 53, 88 Pac. 846.

2. Schindler *v.* Green, 149 Cal. 752, 87 Pac. 626.

399. 2. Whitcomb *v.* Roll, (Ind. App. 1907) 81 N. E. 106.

3. Hubbard *v.* Lee, (Cal. App. 1907) 92 Pac. 744, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399.

400. 7. Taylor *v.* Dall Lead, etc., Co., 131 Wis. 348, 111 N. W. 490.

401. 2. Material "Furnished" When Delivered to Carrier.— McEwen *v.* Montana Pulp, etc., Co., 35 Mont. 470, 90 Pac. 359.

5. Salt Lake Hardware Co. *v.* Chainman Min., etc., Co., 137 Fed. 632; Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 327, 56 S. E. 158.

402. 5. Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 327, 56 S. E. 158.

407. 2. Neuman *v.* Grant, (Mont. 1907) 92 Pac. 43; Hurley *v.* Tucker, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 464, 105 N. Y. Supp. 162.

8. Porteous Decorative Co. *v.* Fee, (Nev. 1907) 91 Pac. 135; Schenectady Contracting Co. *v.* Schenectady R. Co., 106 N. Y. App. Div. 336, 94 N. Y. Supp. 401; American Car, etc., Co. *v.* Alexandria Water Co., 215 Pa. St. 520, 64 Atl. 683. And see Lapham *v.* Ransford, 27 Ohio Cir. Ct. 80.

408. 1. Crane Co. *v.* Epworth Hotel Constr., etc., Co., 121 Mo. App. 209, 98 S. W. 795; Kneisley Lumber Co. *v.* Edward B. Stoddard Co., 113 Mo. App. 306, 88 S. W. 774.

2. *California.* — Union Lumber Co. *v.* Simon, (Cal. App. 1906) 89 Pac. 1077, 1081.

Colorado. — Gutshall *v.* Kornaley, 38 Colo. 195, 88 Pac. 158.

Georgia. — Broxton Artificial Stone Works *v.* Jowers, (Ga. App. 1908) 60 S. E. 1012.

Illinois. — Shields *v.* Sorg, 129 Ill. App. 266.

Kentucky. — Dobson *v.* Thurman, (Ky. 1907) 101 S. W. 310.

Michigan. — Kleinert *v.* Knoop, 147 Mich. 387, 110 N. W. 941.

New York. — Martin *v.* Ambrose A. Gavigan Co., 107 N. Y. App. Div. 279, 95 N. Y. Supp. 14.

Pennsylvania. — American Car, etc., Co. *v.* Alexandria Water Co., 215 Pa. St. 520, 64 Atl. 683; Winton *v.* Benore, 28 Pa. Super. Ct. 27.

Vermont. — Baldwin *v.* Spear, 79 Vt. 43, 64 Atl. 235.

West Virginia. — Grant *v.* Cumberland Valley Cement Co., 58 W. Va. 162, 52 S. E. 36; O'Neil *v.* Taylor, 59 W. Va. 370, 53 S. E. 471; Rainey *v.* Freeport Smokeless Coal, etc., Co., 58 W. Va. 381, 52 S. E. 473.

8. Vickery *v.* Richardson, 189 Mass. 53, 75 N. E. 136.

410. 10. Alexander *v.* Hallender, 106 N. Y. App. Div. 404, 94 N. Y. Supp. 796; Finn *v.* Smith, 186 N. Y. 465, 79 N. E. 714.

411. 2. Hecla Iron Works *v.* Hall, 115 N. Y. App. Div. 126, 100 N. Y. Supp. 696.

6. Soule *v.* Borelli, (Conn. 1908) 68 Atl. 979; Nancolas *v.* Hitaffer, (Iowa 1907) 112 N. W. 382.

412. 8. O'Neil *v.* Taylor, 59 W. Va. 370, 53 S. E. 471.

9. Brown *v.* Cornwell, (Va. 1908) 60 S. E. 623.

Accounts Held Sufficiently Itemized. — Fulton *v.* Parlett, 104 Md. 62, 64 Atl. 58; Kneisley Lumber Co. *v.* Edward B. Stoddard Co., 113 Mo. App. 306, 88 S. W. 774; Grant *v.* Cumberland Valley Cement Co., 58 W. Va. 162, 52 S. E. 36.

414. 1. Southern California Lumber Co. *v.* Peters, 3 Cal. App. 478, 86 Pac. 816.

415. 1. Felgenhauer *v.* Haas, 123 N. Y. App. Div. 75, 108 N. Y. Supp. 476.

5. Barnes *v.* Colorado Springs, etc., R. Co., (Colo. 1908) 94 Pac. 570.

6. Kittrell *v.* Hopkins, 114 Mo. App. 431, 90 S. W. 109.

7. Finn *v.* Smith, 186 N. Y. 465, 79 N. E. 714; Norton & Gorman Contracting Co. *v.* Unique Constr. Co., 121 N. Y. App. Div. 585, 106 N. Y. Supp. 372; Vitelli *v.* May, 120 N. Y. App. Div. 448, 104 N. Y. Supp. 1082.

9. Statements Held Sufficient. — Martin *v.* Ambrose A. Gavigan Co., 107 N. Y. App. Div. 279, 95 N. Y. Supp. 14; Woolf *v.* Schaefer, 103 N. Y. App. Div. 567, 93 N. Y. Supp. 184.

417. 5. Western Plumbing Co. *v.* Fried, 33 Mont. 7, 81 Pac. 394.

Sufficiency of Description Question of Face. — Union Lumber Co. *v.* Simon, (Cal. App. 1906) 89 Pac. 1077, 1081.

418. 2. Union Lumber Co. *v.* Simon, (Cal. App. 1906) 89 Pac. 1077, 1081; Mivelaz *v.* Johnson, (Ky. 1907) 98 S. W. 1020.

3. Union Lumber Co. *v.* Simon, (Cal. App. 1906) 89 Pac. 1077, 1081; Doyle *v.* Wagner, 100 Minn. 382, 111 N. W. 275; Guiou *v.* Ryckman, (Neb. 1906) 110 N. W. 759; Security Bldg., etc., Union *v.* Colvin, 27 Pa. Super. Ct. 594.

419. 2. Salter *v.* Goldberg, (Ala. 1907) 43 So. 571; Mandary *v.* Smartt, 1 Cal. App. 498, 82 Pac. 561; Cronan *v.* Corbett, 78 Conn. 475, 62 Atl. 662; Broxton Artificial Stone Works *v.* Jowers, (Ga. App. 1908) 60 S. E. 1012; Doyle *v.* Wagner, 100 Minn. 382, 111 N. W. 275.

420. 1. Stephens *v.* Duffy, (Ind. App. 1907) 81 N. E. 1154; Sphickerhoff *v.* Gordon, 120 N. Y. App. Div. 748, 105 N. Y. Supp. 586; Security Bldg., etc., Union *v.* Colvin, 27 Pa. Super. Ct. 594.

421. 1. Guiou *v.* Ryckman, (Neb. 1906) 110 N. W. 759.

5. Union Lumber Co. *v.* Simon, (Cal. App. 1906) 89 Pac. 1077, 1081.

422. 2. Halsey *v.* Waukesha Springs Sanitarium, 125 Wis. 311, 104 N. W. 94.

3. Mivelaz *v.* Johnson, (Ky. 1907) 98 S. W. 1020, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422.

7. Lang *v.* Adams, 71 Kan. 309, 80 Pac. 593; J. C. Vreeland Bldg. Co. *v.* Knickerbocker Sugar Refining Co., (N. J. 1907) 68 Atl. 215; Davis *v.* Big Horn Lumber Co., 14 Wyo. 517, 85 Pac. [illegible]

8. **Failure to State Name, or Misdescription of True Owner Not Fatal.** — Abelman *v.* Myer, 122 N. Y. App. Div. 470, 106 N. Y. Supp. 978.

423. 4. **Averment of Ownership upon Information and Belief Sufficient.** — Crane Co. *v.* Epworth Hotel Constr., etc., Co., 121 Mo. App. 209, 98 S. W. 795.

424. 4. Davis *v.* Big Horn Lumber Co., 14 Wyo. 517, 85 Pac. 980.

7. Mivelaz *v.* Johnson, (Ky. 1907) 98 S. W. 1020, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 424.

425. 5. Mivelaz *v.* Johnson, (Ky. 1907) 98 S. W. 1020.

8. Barton *v.* Rose, 48 Oregon 235, 85 Pac. 1009.

427. 3. Waters *v.* Goldberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 992, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 427.

7. Porteous Decorative Co. *v.* Fee, (Nev. 1907) 91 Pac. 135.

Statement Need Not Aver Written Contract. — Baldwin *v.* Spear, 79 Vt. 43, 64 Atl. 235.

428. 7. Guiou *v.* Ryckman, (Neb. 1906) 110 N. W. 759.

429. 4. Shields *v.* Sorg, 129 Ill. App. 266.

432. 13. Schenectady Contracting Co. *v.* Schenectady R. Co., 106 N. Y. App. Div. 336, 94 N. Y. Supp. 401.

433. 12. Siegmund *v.* Kellogg-Mackay-Cameron Co., 38 Ind. App. 95, 77 N. E. 1096.

13. McGeever *v.* Harris, (Ala. 1906) 41 So. 930; Parke, etc., Co. *v.* Inter Nos Oil, etc., Co., 147 Cal. 490, 82 Pac. 51; Western Plumbing Co. *v.* Fried, 33 Mont. 7, 81 Pac. 394. And see Kneisley Lumber Co. *v.* Edward B. Stoddard Co., 113 Mo. App. 306, 88 S. W. 774; McDonald *v.* New York, 113 N. Y. App. Div. 625, 99 N. Y. Supp. 122.

434. 3. See Gutshall *v.* Kornaley, 38 Colo. 105, 88 Pac. 158.

5. McGeever *v.* Harris, (Ala. 1906) 41 So. 930.

6. **Verification by President of Corporation on Information and Belief Sufficient.** — Western Plumbing Co. *v.* Fried, 33 Mont. 7, 81 Pac. 394.

7. Waters *v.* Goldberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 992.

438. 6. J. C. Vreeland Bldg. Co. *v.* Knickerbocker Sugar Refining Co., (N. J. 1907) 68 Atl. 215.

439. 2. J. C. Vreeland Bldg. Co. *v.* Knickerbocker Sugar Refining Co., (N. J. 1907) 68 Atl. 215, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 439; Thirsk *v.* Evans, 211 Pa. St. 239, 60 Atl. 726.

5. The *Pennsylvania* statute requires that the statement of claim must set out "when and how notice was given to the owner of an intention to file a claim." Thirsk *v.* Evans, 211 Pa. St. 239, 60 Atl. 726.

441. 2. See Lowden *v.* Sorg, 129 Ill. App. 261.

444. 5. See Fossett *v.* Rock Island Lumber, etc., Co. (Kan. 1907) 92 Pac. 833.

447. 1. Terrell *v.* McHenry, (Ky. 1905) 89 S. W. 306, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 362, 444.

Subcontractor Must Show Indebtedness by Owner to Contractor. — Kirschner *v.* Mahoney, (Supm. Ct. App. T.) 96 N. Y. Supp. 195.

450. 4. Zollars *v.* Snyder, (Tex. Civ. App. 1906) 94 S. W. 1096.

451. 4. Sorg *v.* Crandall, 129 Ill. App. 255.

452. 5. **Unliquidated Claim Does Not Draw Interest.** — Fox *v.* Davidson, 111 N. Y. App. Div. 174, 97 N. Y. Supp. 603.

456. 3. Fossett *v.* Rock Island Lumber, etc., Co., (Kan. 1907) 92 Pac. 833.

458. 2. O'Reilly *v.* Mahoney, 123 N. Y. App. Div. 275, 108 N. Y. Supp. 53.

459. 3. Wardlaw *v.* Troy Oil Mill, 74 S. Car. 368, 54 S. E. 658.

6. See Wardlaw *v.* Troy Oil Mill, 74 S. Car. 368, 54 S. E. 658.

Rule Not Applicable Where Money Received by Debtor from Third Party whose property would be liable for the debt in case the money was not applied upon the third party's liability. Lee *v.* Storz Brewing Co., 75 Neb. 212, 106 N. W. 220.

460. 1. Barbee *v.* Morris, 221 Ill. 382, 77 N. E. 589; Wardlaw *v.* Troy Oil Mill, 74 S. Car. 368, 54 S. E. 658.

461. 2. Drall *v.* Gordon, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 618, 101 N. Y. Supp. 171.

4. Van Kannel Revolving Door Co. *v.* Sloane, 110 N. Y. App. Div. 214, 104 N. Y. Supp. 653.

462. 1. Home Brewing Co. *v.* Johnson, (Ind. App. 1908) 83 N. E. 358.

The *New Jersey* statute prohibits payments by the owner in advance of the terms of the filed contract. Daley *v.* Somers Lumber Co., 70 N. J. Eq. 343, 61 Atl. 732.

2. Behrer *v.* City, etc., Homes Co., 114 N. Y. App. Div. 450, 100 N. Y. Supp. 35; Tommasi *v.* Bolger, 114 N. Y. App. Div. 858, 100 N. Y. Supp. 367.

466. 2. **Owner Not Protected in Making Payments after Notice of Lien.** — D. J. McDonald Stone Co. *v.* Stern, 142 Ala. 506, 38 So. 643.

467. **2.** Sweatt *v.* Hunt, 42 Wash. 96, 84 Pac. 1.

3. Fall *v.* Nichols, (Tex. Civ. App. 1906) 97 S. W. 145; Slade *v.* Amarillo Lumber Co., (Tex. Civ. App. 1906) 93 S. W. 475.

468. **4.** Condon *v.* St. Augustine Church, 112 N. Y. App. Div. 168, 98 N. Y. Supp. 253.

469. **3. Burden of Lien Claimant to Show Actual Cost of Completion.** — Martin *v.* Flahive, 112 N. Y. App. Div. 347, 98 N. Y. Supp. 577.

470. **2.** Hampton *v.* Christensen, 148 Cal. 729, 84 Pac. 200.

4. Little Rock Trust Co. *v.* Southern Missouri, etc., R. Co., 195 Mo. 669, 93 S. W. 944; Warick First Nat. Bank *v.* Mitchell, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 30, 93 N. Y. Supp. 231.

471. **1.** Norman *v.* Edington, 115 Tenn. 309, 89 S. W. 744.

5. Soule *v.* Borelli, (Conn. 1908) 68 Atl. 979; Pere Marquette R. Co. *v.* Baertz, 36 Ind. App. 408, 74 N. E. 51; Pere Marquette R. Co. *v.* Palmer, 36 Ind. App. 703, 74 N. E. 546.

473. **5.** See Kneisley Lumber Co. *v.* Edward B. Stoddard Co., 113 Mo. App. 306, 88 S. W. 774.

475. **7.** Sanford *v.* Kunkel, 30 Utah 379, 85 Pac. 363, 1012.

Lien Attaches on Delivery of Goods to Building. — Horn, etc., Mfg. Co. *v.* Steelman, 29 Pa. Super. Ct. 544.

476. **2.** Hughes *v.* McCasland, 122 Ill. App. 365.

Under the *Massachusetts* statute the right of the lienor attaches from day to day as he performs the work. Vickery *v.* Richardson, 189 Mass. 53, 75 N. E. 136.

3. Hughes *v.* Hoover, 3 Cal. App. 145, 84 Pac. 681; Shreveport Nat. Bank *v.* Maples, 119 La. 41, 43 So. 905; J. E. Greilick Co. *v.* Taylor, 143 Mich. 704, 107 N. W. 712; Pope *v.* Heckscher, 109 N. Y. App. Div. 495, 96 N. Y. Supp. 533.

477. **1.** McDonald *v.* Erwin, 53 Fla. 1079, 43 So. 872; Mulliken *v.* Harrison, 53 Fla. 255, 44 So. 426.

Lien Attaches upon Service of Statement. — Holliday *v.* Mathewson, 146 Mich. 336, 109 N. W. 669.

2. Long *v.* Abeles, 77 Ark. 156, 93 S. W. 67; Slade *v.* Amarillo Lumber Co., (Tex. Civ. App. 1906) 93 S. W. 475.

Equality Provisions Extend Only to Liens Filed as Provided by Law. — Nichols *v.* Dixon, 99 Tex. 263, 89 S. W. 765.

Constitutional Guaranty of Equality in California — Legislature Cannot Impair. — Millimore *v.* Nofziger Bros. Lumber Co., 150 Cal. 790, 90 Pac. 114; Stimson Mill Co. *v.* Nolan, 5 Cal. App. 754, 91 Pac. 262.

3. Long *v.* Abeles, 77 Ark. 156, 93 S. W. 67.

478. **6.** See Nichols *v.* Dixon, 99 Tex. 263, 89 S. W. 765.

7. City Funds Subject First to Liens of Laborers and Materialmen. — Falvello *v.* New York, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 468, 103 N. Y. Supp. 260.

479. **1.** Long *v.* Abeles, 77 Ark. 156, 93 S. W. 67.

2. *In re* Hobbs, 145 Fed. 211; Seely *v.* Neill, 37 Colo. 198, 86 Pac. 334; Soule *v.* Borelli, (Conn. 1908) 68 Atl. 979; American Mortg. Co. *v.* Merrick Constr. Co., 120 N. Y. App. Div. 150, 104 N. Y. Supp. 900. And see Hahn *v.* Bonacum, (Neb. 1906) 107 N. W. 1001; Eckels *v.* Stuart, 212 Pa. St. 161, 61 Atl. 820.

481. **2.** Rochford *v.* Rochford, 188 Mass. 108, 74 N. E. 299.

488. **2.** Martin *v.* Clark, (Ala. 1908) 46 So. 232.

490. **7.** Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 500.

491. **2.** Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328.

493. **1.** George B. Swift Co. *v.* Dolle, 39 Ind. App. 653, 80 N. E. 678.

494. **1.** Horn *v.* U. S. Mining Co., 47 Oregon 124, 81 Pac. 1009, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 493; Gray *v.* Jones, 47 Oregon 40, 81 Pac. 813; Security Nat. Bank *v.* St. Croix Power Co., 126 Wis. 370, 105 N. W. 914.

Question of Waiver One of Fact. — Scott Mfg. Co. *v.* Morgan, 217 Pa. St. 367, 66 Atl. 566.

Tenant in Common May Waive for Himself and Cotenant. — Westmoreland Guarantee Bldg., etc., Assoc. *v.* Connor, 216 Pa. St. 543, 65 Atl. 1089.

2. Concord Apartment House Co. *v.* O'Brien, 128 Ill. App. 437.

5. Wyss *v.* Beaver Valley Brewing Co., 216 Pa. St. 443, 65 Atl. 814; Wyss-Thalman *v.* Beaver Valley Brewing Co., 216 Pa. St. 435, 65 Atl. 811.

496. **5.** Concord Apartment House Co. *v.* O'Brien, 128 Ill. App. 437.

8. Rolewitch *v.* Harrington, (S. Dak. 1906) 107 N. W. 207.

498. **2.** Belmont Farm *v.* Dobbs Hardware Co., 124 Ga. 827, 53 S. E. 312; Mivelaz *v.* Genovely, (Ky. 1905) 89 S. W. 109; Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 339, 56 S. E. 158, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 498.

3. Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 339, 56 S. E. 158, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 498.

4. Cosgrove *v.* Farwell, 114 Ill. App. 491.

499. **3.** Westinghouse Air Brake Co. *v.* Kansas City Southern R. Co., (C. C. A.) 137 Fed. 26.

500. **9.** Elwood State Bank *v.* Mock, (Ind. App. 1907) 82 N. E. 1003.

502. **12. Assignment by Contractor Will Not Defeat Materialman's Lien.** — Carter *v.* Brady, 51 Fla. 404, 41 So. 539.

503. **2.** But see Van Buskirk *v.* Summitville Min. Co., 38 Ind. App. 198, 78 N. E. 208.

506. **7.** Halsey *v.* Waukesha Springs Sanitarium, 125 Wis. 311, 104 N. W. 94.

9. Sanford *v.* Kunkel, 30 Utah 379, 85 Pac. 363, *opinion modified, rehearing denied* 30 Utah 389, 85 Pac. 1012.

12. Humboldt Lumber Mill Co. *v.* Crisp, 146 Cal. 686, 81 Pac. 30.

510. **3.** Hughes *v.* McCasland, 122 Ill. App. 365.

513. **5.** Ochs *v.* M. J. Carnahan Co., (Ind. App. 1906) 76 N. E. 788; Pierce, etc., Mfg. Co. *v.* American Bonding Co., 118 N. Y. App. Div. 662, 103 N. Y. Supp. 678; Uris *v.* Brackett Realty Co., 114 N. Y. App. Div. 29, 99 N. Y. Supp. 642.

514. 2. Rockwell *v.* Kelly, 100 Mass. 439, 1 N. E. 100.

4. *In re* Hudson Waterworks, 111 N. Y. App. Div. 860, 98 N. Y. Supp. 33.

516. 3. Pierce, etc., Mfg. Co. *v.* American Bonding Co., 118 N. Y. App. Div. 662, 103 N. Y. Supp. 678.

520. 6. *United States.* — Westinghouse Air Brake Co. *v.* Kansas City Southern R. Co., (C. C. A.) 137 Fed. 26 (*Missouri* statute).

Alaska. — Jorgensen Co. *v.* Sheldon, 2 Alaska 607.

California. — Hughes *v.* Hoover, 3 Cal. App. 145, 84 Pac. 681.

Illinois. — Boylan *v.* Cameron, 126 Ill. App. 432; Joseph N. Eisendrath Co. *v.* Gebhardt, 222 Ill. 113, 78 N. E. 22.

New Jersey. — Rosselle Park *v.* Montgomery, (N. J. 1905) 60 Atl. 954; Somers Brick Co. *v.* Souder, 70 N. J. Eq. 388, 61 Atl. 840.

New York. — *In re* Gabler, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 542; Matter of Rudiger, 118 N. Y. App. Div. 86, 102 N. Y. Supp. 1053; Matter of Thirty-fifth St., etc., Realty Co., 121 N. Y. App. Div. 625, 106 N. Y. Supp. 390; Uris *v.* Brackett Realty Co., 114 N. Y. App. Div. 29, 99 N. Y. Supp. 642.

Tennessee. — Warner *v.* Yates, 118 Tenn. 548, 102 S. W. 92.

Washington. — Service *v.* McMahon, 42 Wash. 452, 85 Pac. 33.

522. 5. Doyle *v.* Wagner, 100 Minn. 382, 111 N. W. 275, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 522, 523.

524. 1. **Expired Statutory Lien against Municipality Cannot Be Extended or Revived.**— Rosselle Park *v.* Montgomery, (N. J. 1905) 60 Atl. 954.

526. 1. **For Cases Especially Discussing Sales under Mechanics' Liens.** — Ocala Foundry, etc., Works *v.* Lester, 49 Fla. 347, 38 So. 56.

527. 2. Ocala Foundry, etc., Works *v.* Lester, 49 Fla. 347, 38 So. 56, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 527.

6. See Solomon *v.* Bok, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 493, 98 N. Y. Supp. 838.

Failure to Assert Lien by One Holding Possession, coupled with a claim of ownership, constitutes a waiver of the lien. Brackett *v.* Pierson, 114 N. Y. App. Div. 281, 99 N. Y. Supp. 770.

8. **Lien Not Lost by Partial Delivery.** — Solomon *v.* Bok, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 493, 98 N. Y. Supp. 838.

MEDICAL JURISPRUDENCE.

532. 4. **Seduction.** — Kesselring *v.* Hummer, 130 Iowa 145, 106 N. W. 501.

534. 1. State *v.* Welch, 191 Mo. 179, 89 S. W. 945.

2. **Prosecutrix May Testify as to Her Age.** — State *v.* Miller, 71 Kan. 200, 6 Ann. Cas. 58, 80 Pac. 51.

The Physician Who Attended the Birth of the Prosecutrix may testify as to her age. State *v.* Palmberg, 199 Mo. 233, 97 S. W. 566; Neill *v.* State, 49 Tex. Crim. 219, 91 S. W. 791.

4. See Perez *v.* State, (Tex. Crim. 1906) 94 S. W. 1036.

536. 2. State *v.* Blackburn, (Iowa 1907) 110 N. W. 275.

Evidence of Probable Period of Gestation Admissible. Kesselring *v.* Hummer, 130 Iowa 145, 106 N. W. 501.

3. Mayer *v.* Davis, 119 N. Y. App. Div. 96, 103 N. Y. Supp. 943.

537. 2. Higley *v.* Bostick, 79 Conn. 97, 63 Atl. 786; Schailer *v.* Bullock, 78 Conn. 65, 61 Atl. 65.

538. 5. Johnson *v.* People, 33 Colo. 224, 80 Pac. 133.

539. 10. **Voice.** — See Waggoner *v.* State, (Tex. Crim. 1906) 98 S. W. 255.

540. 3. State *v.* Barnes, 47 Oregon 592, 85 Pac. 998.

548. 6. **Insanity of the Testator's Aunt** may be shown in a proceeding to probate a will. Dillman *v.* McDanel, 222 Ill. 276, 78 N. E. 591.

554. 1. **The Reasoning Faculties May Be Temporarily Affected** by a blow on the head. State *v.* Megorden, (Oregon 1907) 88 Pac. 306.

555. 4. Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

556. 4. Byrd *v.* State, 76 Ark. 286, 88 S. W. 974.

557. 5. **Age Alone Does Not Denote Incompetency.** — Ames *v.* Ames, 75 Neb. 473, 106 N. W. 584; Simmons *v.* Kelsey, (Neb. 1906) 107 N. W. 122.

558. 2. Wood *v.* Wood, 129 Iowa 255, 105 N. W. 517.

560. 7. Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

Forgetfulness Consistent with Mental Capacity. — Wood *v.* Wood, 129 Iowa 255, 105 N. W. 517.

561. 4. Saffer *v.* Mast, 223 Ill. 108, 79 N. E. 32; Swartwood *v.* Chance, 131 Iowa 714, 109 N. W. 297.

562. 6. Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

10. Saffer *v.* Mast, 223 Ill. 108, 79 N. E. 32.

563. 3. Trubey *v.* Richardson, 224 Ill. 136, 79 N. E. 592.

564. 1. *In re* Colt, 215 Pa. St. 333, 64 Atl. 597.

566. 2. Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

567. 7. Hardenburgh *v.* Hardenburgh, 133 Iowa 1, 109 N. W. 1014. See also Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

568. 2. **For Instances of Sane Men Who Have Had Delusions.** — Swartwood *v.* Chance, 131 Iowa 714; 109 N. W. 297.

569. 5. **Monomania as to Legitimacy of Testator's Child — Finding of Insanity Not Disturbed.** — Johnson *v.* Johnson, 105 Md. 81, 65 Atl. 918.

Delusion as to Chastity of Daughter Held to Be Evidence of Insanity. — Hardenburgh *v.* Hardenburgh, 133 Iowa 1, 109 N. W. 1014.

570. 2. Steinkuehler *v.* Wempner, (Ind. 1907) 81 N. E. 482.

A Belief in Spiritualism and Christian Science does not denote insanity. Trubey *v.* Richardson, 224 Ill. 136, 79 N. E. 592.

3. O'Dell *v.* Goff, 149 Mich. 152, 112 N. W. 736. See also Trubey *v.* Richardson, 224 Ill. 136, 79 N. E. 592.

571. 1. See Hardenburgh *v.* Hardenburgh, 133 Iowa 1, 109 N. W. 1014; Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

5. Sbarbero *v.* Miller, (N. J. 1907) 65 Atl. 472.

MEDICINE.

573. **4.** O'Neil *v.* State, 115 Tenn. 441, 90 S. W. 627, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 573.

Medicinal Preparation. — "The commercial meaning of the term ***medicinal preparation*** is the same as its ordinary meaning, viz., a substance used solely in medicine and prepared for the use of the apothecary or physician to be administered as a remedy in disease." U. S. *v.* Merck, 136 Fed. 817, 69 C. C. A. 472.

MERCHANT — MERCANTILE, ETC.

580. **3.** **Mercantile Transactions.** — Sales and purchases of bonds, stocks and other securities are ***mercantile*** transactions under a statute authorizing limited partnerships for the transaction of ***mercantile*** business. Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

Mercantile Pursuits. — See Zugalla *v.* International Mercantile Agency, (C. C. A.) 142 Fed. 927, as to what constitutes ***mercantile*** pursuits within the Federal Bankruptcy Act.

MERCHANTABLE.

584. **1.** **Merchantable and Marketable Synonymous Terms.** — Eaton *v.* Blackburn, (Oregon 1907) 88 Pac. 303.

MERE.

585. **5.** **Mere Negligence.** — An inadvertent failure to observe due care indicates ***mere*** negligence, but an advertent or conscious failure to observe due care passes beyond ***mere*** negligence into wantonness or wilfulness. Tinsley *v.* Western Union Tel. Co., 72 S. Car. 350, 51 S. E. 913.

MERGER.

588. **4.** Muscogee Mfg. Co. *v.* Eagle, etc., Mills, 126 Ga. 210, 54 S. E. 1028; Ft. Scott Bldg., etc., Assoc. *v.* Palatine Ins. Co., 74 Kan. 272, 86 Pac. 142; Chrisman *v.* Linderman, 202 Mo. 619, 100 S. W. 1090, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d. ed.) 588; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130; Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114; Berger *v.* Waldbaum, 110 N. Y. App. Div. 915, 96 N. Y. Supp. 1114, *affirming* (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 4, 93 N. Y. Supp. 352; Scheuer *v.* Chloupek, 130 Wis. 72, 109 N. W. 1035.

5. Chrisman *v.* Linderman, 202 Mo. 619, 100 S. W. 1090, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d. ed.) 588.

589. **1.** Chrisman *v.* Linderman, 202 Mo. 619, 100 S. W. 1090, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 589.

3. Bromback *v.* Keister, 220 Ill. 544, 77 N. E. 75; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130.

4. Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130; Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114.

5. Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130.

590. **6.** McCreary *v.* Coggeshall, 74 S. Car. 57, 53 S. E. 978, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 590.

10. Moffet *v.* Farwell, 222 Ill. 543, 78 N. E. 925; Ft. Scott Bldg., etc., Assoc. *v.* Palatine Ins. Co., 74 Kan. 272, 86 Pac. 142, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 590; Chrisman *v.* Linderman, 202 Mo. 619, 100 S. W. 1090, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 590; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130; Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114; Townsend *v.* Provident Realty Co., 110 N. Y. App. Div. 226, 96 N. Y. Supp. 1091; Katz *v.* Obenchain, 48 Oregon 352, 85 Pac. 617; McCreary *v.* Coggeshall, 74 S. Car. 57, 53 S. E. 978.

591. **4.** Chrisman *v.* Linderman, 202 Mo. 619, 100 S. W. 1090, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 591, notes 1-4.

5. Mergers Are Said Not to Be Favored in Courts of Law. — McCreary *v.* Coggeshall, 74 S. Car. 57, 53 S. E. 978.

592. **1.** Berger *v.* Waldbaum, 110 N. Y. App. Div. 915, 96 N. Y. Supp. 1114, *affirming* (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 4, 93 N. Y. Supp. 352; McCreary *v.* Coggeshall, 74 S. Car. 57, 53 S. E. 978.

Merger Depends upon Intention. — Matter of Stafford, 105 N. Y. App. Div. 46, 94 N. Y. Supp. 194.

3. **An Equitable Interest** vested in certain children during the life of a widow does not merge with a vested legal remainder in such children, where possession is postponed till the death of the widow. Toombs *v.* Spratlin, 127 Ga. 766, 57 S. E. 59.

596. **3.** Wyman *v.* Friedman, 120 Ill. App. 543, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 596.

597. **2.** **Merger of Oral Negotiations in Written Contract.** — Hayden *v.* Shaw, 191 Mass. 533, 78 N. E. 110; Hoover *v.* St. Louis, etc., R. Co., 113 Mo. App. 688, 88 S. W. 769.

Merger of Negotiations in Lease. — Ranalli *v.* Zeppetelli, (Supm. Ct. App. T.) 94 N. Y. Supp. 561.

3. Hampe *v.* Higgins, 74 Kan. 296, 85 Pac. 1019; De Roberts *v.* Cross, (Okla. 1905) 82 Pac. 735.

4. Walsh *v.* Lunney, 75 Neb. 337, 106 N. W. 4[illegible].

599. **1.** Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; Davis *v.* Sanders, 25 App. Cas. (D. C.) 26; Fleming *v.* Ross, 225 Ill. 140, 80 N. E. 92; Williams-Abbott Electric Co. *v.* Model Electric Co., 134 Iowa 665, 112 N. W. 181; Roberts *v.* Moss, (Ky. 1907) 106 S. W. 297; Olson *v.* Dahl, 99 Minn. 439, 109 N. W. 1001, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 599; Marks *v.* Equitable L. Assur. Soc., 109 N. Y. App. Div. 675, 96 N. Y. Supp. 551; Eller *v.* Carolina, etc., R. Co., 140 N. Car. 140, 52 S. E. 305.

A Separate Action for Damages for detention of property may be maintained after the plaintiff has obtained possession of the property in a previous action. Bowen *v.* Harris, (N. Car. 1907) 50 S. E. 1014.

2. Olson *v.* Dahl, 99 Minn. 439, 109 N. W. 1001, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 599; Yates *v.* Jones Nat. Bank, 74 Neb. 734, 105 N. W. 287.

3. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696; Kline *v.* Stein, (Wash. 1907) 90 Pac. 1041.

4. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696.

5. Wheeler *v.* Bennett, 79 Ark. 210, 95 S. W. 142; Peacock *v.* Feaster, 52 Fla. 565, 42 So. 889; Smith *v.* Smith, 125 Ga. 83, 54 S. E. 73; Roberts *v.* Moss, (Ky. 1907) 106 S. W. 297; Cotter *v.* Boston, etc., St. R. Co., 190 Mass. 302, 76 N. E. 910; Collins *v.* Gleason, (Wash. 1907) 91 Pac. 566; Weisinger *v.* Rosenberg, (Supm. Ct. App. T.) 108 N. Y. Supp. 1065.

A Judgment that the Court Had No Jurisdiction of the Cause does not bar a subsequent action. Brick *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 58 S. E. 1073.

602. 3. Territory *v.* Schilling, 17 Hawaii 249, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 602.

603. 4. Territory *v.* Schilling, 17 Hawaii 249.

604. 4. *Alabama.* — Gregory *v.* State, 148 Ala. 566, 42 So. 829.

California. — People *v.* Bradbury, (Cal. 1907) 91 Pac. 497.

Delaware. — State *v.* Fleetwood, (Del. 1906) 65 Atl. 772; State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Uzzo, (Del. 1907) 65 Atl. 775; State *v.* Brown, 5 Penn. (Del.) 440, 63 Atl. 328.

Hawaii. — Territory *v.* Schilling, 17 Hawaii 249, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 604.

Iowa. — State *v.* Moore, 129 Iowa 514, 106 N. W. 16; State *v.* Smith, 132 Iowa 645, 109 N. W. 115.

Michigan. — People *v.* Murphy, 145 Mich. 524, 108 N. W. 1009.

Missouri. — State *v.* Feeley, 194 Mo. 300, 92 S. W. 663; State *v.* Wilson, 126 Mo. App. 302, 103 S. W. 110.

Nebraska. — Haddix *v.* State, (Neb. 1906) 107 N. W. 781.

South Dakota. — State *v.* Horn, (S. Dak. 1907) 111 N. W. 552.

607. 1. U. S. *v.* Scott, 139 Fed. 697; Territory *v.* Schilling, 17 Hawaii 249, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 607.

MILITARY LAW.

619. 2. *Ex p.* Schlaffer, 154 Fed. 921.

623. 8. See McCalla *v.* Facer, (C. C. A.) 144 Fed. 61; *Ex p.* Lisk, 145 Fed. 860.

11. When Adopted in Published Regulations by the Secretary of War, the provisions for enlistment in the army apply. McCalla *v.* Façer. (C. C. A.) 144 Fed. 61.

624. 7. *In re* Carver, 142 Fed. 623.

628. 6. Wallace *v.* U. S., 41 Ct. Cl. 352.

638. 9. **Discharge Effective from Date of Mustering Out** of organization to which a member of the service belongs. U. S. *v.* Brown, 206 U. S. 240, 27 U. S. Sup. Ct. Rep. 620.

639. 5. **As to Right of Officer Temporarily Exercising Higher Command to Increased Pay,** see U. S. *v.* Mitchell, 205 U. S. 161, 27 U. S. Sup. Ct. Rep. 463.

640. 1. See U. S. *v.* Miller, 28 U. S. Sup. Ct. Rep. 199.

It has been held that a naval officer, ordered to a hospital while awaiting a ship to whose command he is assigned, is not entitled to sea pay while thus waiting, nor entitled to pay for shore duty beyond the seas under the provisions of the Navy Personnel Act (30 Stat. L., p. 1007, § 13), though he is at the time in a foreign port. Ackley *v.* U. S., 40 Ct. Cl. 216.

Extra Pay under Act of March 3, 1899 (30 Stat. at L., p. 1214, c. 427). U. S. *v.* Hite, 204 U. S. 343, 27 U. S. Sup. Ct. Rep. 386.

4. Mahan *v.* U. S., 40 Ct. Cl. 36.

641. 1. **Incapacitation from Sickness During Furlough.** — Legg *v.* U. S., 40 Ct. Cl. 115.

642. 4. U. S. *v.* Miller, 28 U. S. Sup. Ct. Rep. 199.

643. 4. **As to Extra Compensation,** see Mahan *v.* U. S., 40 Ct. Cl. 36; Bishop *v.* U. S., 41 Ct. Cl. 151.

As to the Right of Heirs to the Extra Pay of an officer dying of wounds received in battle, see Wallace *v.* U. S., 41 Ct. Cl. 52.

644. 5. Under Act of March 3, 1899 (30 Stat. L., pp. 1064, 1068, § 1) an army officer traveling under orders, for whom transportation is not furnished by the quartermasters' department, or on a conveyance owned or chartered by the United States or on a railroad on which troops may travel free, may recover seven cents per mile for each mile actually traveled. Duncan *v.* U. S., 40 Ct. Cl. 235.

Constructive Travel is travel where an officer, by some fiction of law or fact, is paid for travel where there was none. Duncan *v.* U. S., 40 Ct. Cl. 235.

647. 2. See U. S. *v.* Brown, 206 U. S. 240, 27 U. S. Sup. Ct. Rep. 620.

658. 4. **Decision of Court Martial on Civilian's Contempt of Court Not Conclusive on Civil Courts.** — U. S. *v.* Praeger, 149 Fed. 474.

6. Grafton *v.* U. S., 206 U. S. 333, 27 U. S. Sup. Ct. Rep. 749; U. S. *v.* Praeger, 149 Fed. 474.

661. 7. **Enlisted Soldiers in Time of Peace Punishable for Violations of Civil Enactments,** but it has been held that the civil authorities must act in utmost good faith. *Ex p.* Schlaffer, 154 Fed. 921.

MILITIA.

670. 1. Hamill *v.* Dungan, (N. J. 1908) 68 Atl. 1096.

672. 1. **An Unintentional Error** committed by an officer in the performance of his duties during an insurrection will not render him liable in an action for damages. Moyer *v.* Peabody, 148 Fed. 870.

673. 3. **Governor Has Power to Call Out Militia.** — Moyer *v.* Peabody, 148 Fed. 870; Haley *v.* Cochran, (Ky. 1907) 102 S. W. 852; State *v.* Josephson, (La. 1908) 45 So. 381.

MILL.

674. 3. **Mill Site and Mill Seat Synonymous.** — "A 'mill seat' means the mill house, dam, and appurtenances used for operating the *mill* by water power and the ground upon which they stand." State *v.* Sutton, 139 N. Car. 574, 51 S. E. 1012, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 675.

Mill Site and Mill Privilege. — See State *v.* Sutton, 139 N. Car. 575, 51 S. E. 1012, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 675.

MINES AND MINING CLAIMS.

683. 4. McCombs *v.* Stephenson, (Ala. 1907) 44 So. 867, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683; Poe *v.* Ulrey, 233 Ill. 56, 84 N. E. 46; Brady *v.* Smith, 181 N. Y. 178, 73 N. E. 963; Silver *v.* Bush, 213 Pa. St. 195, 62 Atl. 832.

5. **Petroleum Held to Be Mineral.** — Isom *v.* Rex Crude Oil Co., 147 Cal. 659, 82 Pac. 317; Swayne *v.* Lone Acre Oil Co., 98 Tex. 597, 86 S. W. 740; Preston *v.* White, 57 W. Va. 278, 50 S. E. 236.

Natural Gas Held to Be Mineral. — Watford Oil, etc., Co. *v.* Shipman, 233 Ill. 9, 84 N. E. 53; Richmond Natural Gas Co. *v.* Davenport, 37 Ind. App. 25, 76 N. E. 525. But see *contra*, Silver *v.* Bush, 213 Pa. St. 195, 62 Atl. 832.

688. 3. Bulette *v.* Dodge, 2 Alaska 427; Heine *v.* Roth, 2 Alaska 416; Steele *v.* Tanana Mines R. Co., 2 Alaska 451; Cunningham *v.* Pirrung, (Ariz. 1905) 80 Pac. 329; Southern California R. Co. *v.* O'Donnell, 3 Cal. App. 382, 85 Pac. 932; McWilliams *v.* Winslow, (Colo. 1905) 82 Pac. 538; Sierra Blanca Min., etc., Co. *v.* Winchell, 35 Colo. 13, 83 Pac. 628.

689. 1. Burns *v.* Schoenfeld, 1 Cal. App. 121, 81 Pac. 713.

693. 5. **"Lode" Defined.** — Grand Cent. Min. Co. *v.* Mammoth Min. Co., 29 Utah 490, 83 Pac. 648; Webb *v.* American Asphaltum Min. Co., (C. C. A.) 157 Fed. 203.

694. 4. Webb *v.* American Asphaltum Min. Co., (C. C. A.) 157 Fed. 203.

695. 4. McElligott *v.* Krogh, 151 Cal. 126, 90 Pac. 823.

695. 4. Baillie *v.* Larson, 138 Fed. 177.

697. 6. Webb *v.* American Asphaltum Min. Co., (C. C. A.) 157 Fed. 203.

701. 3. Stolp *v.* Treasury Gold Min. Co., 38 Wash. 619, 80 Pac. 817.

702. 2. Stewart *v.* Gold, etc., Co., (Utah 1905) 82 Pac. 475.

3. Stewart *v.* Gold, etc., Co., (Utah 1905) 82 Pac. 475.

703. 1. Jackson *v.* White Cloud Gold Min., etc., Co., 36 Colo. 122, 85 Pac. 639.

3. McMahon *v.* Meehan, 2 Alaska 278.

4. **Free Miner May Locate Mineral Claim by Agent.** — Docksteader *v.* Clark, 11 British Columbia 37.

6. Bulette *v.* Dodge, 2 Alaska 427; Charlton *v.* Kelly, 2 Alaska 532; Ware *v.* White, (Ark. 1907) 108 S. W. 834; Anderson *v.* Caughey, 3 Cal. App. 22, 84 Pac. 223; New England, etc., Oil Co. *v.* Congdon, (Cal. 1907) 92 Pac. 180; Hickey *v.* Anaconda Copper Min. Co., 33 Mont. 46, 81 Pac. 807; Butte Consol. Min. Co. *v.* Barker, 35 Mont. 327, 89 Pac. 302, 90 Pac. 177; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275

704. 1. **Definition of Location.** — Uinta Tunnel Min., etc., Co. *v.* Ajax Gold Min. Co., (C. C. A.) 141 Fed. 563.

705. 1. New England, etc., Oil Co. *v.* Congdon, (Cal. 1907) 92 Pac. 180; Fox *v.* Myers, (Nev. 1906) 86 Pac. 793; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275; Lawson *v.* U. S. Mining Co., 207 U. S. 1, 28 U. S. Sup. Ct. 15; Sierra Blanca Min., etc., Co. *v.* Winchell, 35 Colo. 13, 83 Pac. 628.

3. See Chrisman *v.* Miller, 197 U. S. 313, 25 U. S. Sup. Ct. 468. See also Cascaden *v.* Bartolis, (C. C. A.) 146 Fed. 739; Charlton *v.* Kelly, 2 Alaska 532.

706. 1. Score *v.* Griffin, (Ariz. 1905) 80 Pac. 331; Hoban *v.* Boyer, 37 Colo. 185, 85 Pac. 837; Fox *v.* Myers, (Nev. 1906) 86 Pac. 793; Lockhart *v.* Farrell, 31 Utah 155, 86 Pac. 1077; Lange *v.* Robinson, (C. C. A.) 148 Fed. 799.

707. 1. Reiner *v.* Schroder, 146 Cal. 411, 80 Pac. 517.

Discovery after Location. — New England, etc., Oil Co. *v.* Congdon, (Cal. 1907) 92 Pac. 180; Healey *v.* Rupp, 37 Colo. 25, 86 Pac. 1015.

Discovery after Location operates to perfect the location against the whole world save those whose *bona fide* rights have intervened. Charlton *v.* Kelly, 2 Alaska 532.

708. 1. Ingemarson *v.* Coffey, (Colo. 1907) 92 Pac. 908; Butte Consol. Min. Co. *v.* Barker, 35 Mont. 327, 89 Pac. 702, 90 Pac. 177.

Statutory Limitation of Time in which to do discovery work cannot be extended. Ingemarson *v.* Coffey, (Colo. 1907) 92 Pac. 908.

5. Redden *v.* Harlan, 2 Alaska 402; Sierra Blanca Min., etc., Co. *v.* Winchell, 35 Colo. 13, 83 Pac. 628; Ingemarson *v.* Coffey, (Colo. 1907) 92 Pac. 908.

6. Barnette *v.* Freeman, 2 Alaska 286; Charlton *v.* Kelly, 2 Alaska 532; Redden *v.* Harlan, 2 Alaska 402; New England, etc., Oil Co. *v.* Congdon, (Cal. 1907) 92 Pac. 180; Steele *v.* Tanana Mines R. Co., (C. C. A.) 148 Fed. 678, *citing* 20 AM. AND ENG. ENCYC OF LAW (2d ed.) 708.

709. 2. Anderson *v.* Caughey, 3 Cal. App. 22, 84 Pac. 223.

710. 4. Bismark Mountain Gold Min. Co. *v.* North Sunbeam Gold Co., (Idaho 1908) 95 Pac. 14; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

Instances of Description Held Sufficient. — Smith *v.* Cascaden, (C. C. A.) 148 Fed. 792.

711. 4. Cunningham *v.* Pirrung, (Ariz. 1905) 80 Pac. 329.

7. Webb *v.* Carlon, 148 Cal. 555, 83 Pac. 998; Bismark Mountain Gold Min. Co. *v.* North Sunbeam Gold Co., (Idaho 1908) 95 Pac. 14.

712. 1. Sierra Blanca Min., etc., Co. *v.* Winchell, 35 Colo. 13, 83 Pac. 628.

2. Charlton *v.* Kelly, 2 Alaska 532.

713. 1. Ware *v.* White, (Ark. 1907) 108 S. W. 831; Londonderry Min. Co. *v.* United Gold Mines Co., 38 Colo. 480, 88 Pac. 455; Butte Consol. Min. Co. *v.* Barker, 35 Mont. 327, 89 Pac. 302, 90 Pac. 177; Dolan *v.* Passmore, 34 Mont. 277, 85 Pac. 1034.

2. Londonderry Min. Co. *v.* United Gold Mines Co., 38 Colo. 480, 88 Pac. 455; Bonanza Consol. Min. Co. *v.* Golden Head Min. Co., 29 Utah 150, 80 Pac. 736; Charlton *v.* Kelly, (C. C. A.) 156 Fed. 433.

714. 1. **When Corner Stakes Sufficient.** Bonanza Consol. Min. Co. *v.* Golden Head Min. Co., 29 Utah 150, 80 Pac. 736.

Adopting Old Marks. — Brockbank *v.* Albion Min. Co., 29 Utah 367, 81 Pac. 863.

2. Smith *v.* Cascaden, (C. C. A.) 148 Fed. 702.

5. Fox *v.* Myers, (Nev. 1906) 86 Pac. 793.

715. 4. Dolan *v.* Passmore, 34 Mont. 277, 85 Pac. 1034.

716. 4. **Recording Certificate Unnecessary.** — Ford *v.* Campbell, (Nev. 1907) 92 Pac. 206.

6. Londonderry Min. Co. *v.* United Gold Mines Co., 38 Colo. 480, 88 Pac. 455.

7. Anderson *v.* Caughey, 3 Cal. App. 22, 84 Pac. 223.

717. 4. Ford *v.* Campbell, (Nev. 1907) 92 Pac. 206.

5. Slothower *v.* Hunter, 15 Wyo. 189, 88 Pac. 36.

718. 4. Bismark Mountain Gold Min. Co. *v.* North Sunbeam Gold Co., (Idaho 1908) 95 Pac. 14; Sharkey *v.* Candiani, 48 Oregon 112, 85 Pac. 219.

719. 4. Londonderry Min. Co. *v.* United Gold Mines Co., 38 Colo. 480, 88 Pac. 455.

5. Londonderry Min. Co. *v.* United Gold Mines Co., 38 Colo. 480, 88 Pac. 455; Ford *v.* Campbell, (Nev. 1907) 92 Pac. 206; Bismark Mountain Gold Min. Co. *v.* North Sunbeam Gold Co., (Idaho 1908) 95 Pac. 14.

Metes and Bounds.—The claim may be described in the location notice by metes and bounds. Vogel *v.* Warsing, (C. C. A.) 146 Fed. 949.

Monuments Which Can Easily Be Ascertained and have an element of certainty govern the location certificate. Treadwell *v.* Marrs, (Ariz. 1905) 83 Pac. 350.

721. 3. Hickey *v.* Anaconda Copper Min. Co., 33 Mont. 46, 81 Pac. 806.

722. 1. Bismark Mountain Gold Min. Co. *v.* North Sunbeam Gold Co., (Idaho 1908) 95 Pac. 14.

3. Windmuller *v.* Clarkson, 2 Alaska 298; Ophir Silver Min. Co. *v.* San Francisco, (Cal. 1905) 82 Pac. 70; Southern California R. Co. *v.* O'Donnell, 3 Cal. App. 382, 85 Pac. 932; Hickey *v.* Anaconda Copper Min. Co., 33 Mont. 46, 81 Pac. 807; Malone *v.* Jackson, (C. C. A.) 137 Fed. 878.

725. 1. O'Connell *v.* Pinnacle Gold Mines Co., (C. C. A.) 140 Fed. 854; Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

2. Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

3. Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

8. O'Connell *v.* Pinnacle Gold Mines Co., (C. C. A.) 140 Fed. 854.

727. 1. Baillie *v.* Larson, 138 Fed. 177.

729. 1. Daggett *v.* Yreka Min., etc., Co., 149 Cal. 357, 86 Pac. 968.

6. McElligott *v.* Krogh, 151 Cal. 126, 90 Pac. 823.

7. Southern California R. Co. *v.* O'Donnell, 3 Cal. App. 382, 85 Pac. 932.

732. 2. Hickey *v.* Anaconda Copper Min. Co., 33 Mont. 46, 81 Pac. 807.

733. 4. Wilmore Coal Co. *v.* Brown, 147 Fed. 931.

7. Wolfskill *v.* Smith, (Cal. App. 1907) 89 Pac. 1001, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733.

Temporary Absence Without Intent to Abandon Not Abandonment. — Davis *v.* Dennis, 43 Wash. 54, 85 Pac. 1079; Charlton *v.* Kelly, (C. C. A.) 156 Fed. 432.

734. 2. Daggett *v.* Yreka Min., etc., Co., 149 Cal. 357, 86 Pac. 968; Goldberg *v.* Bruschi, 146 Cal. 708, 81 Pac. 23; Delmoe *v.* Long, 35 Mont. 129, 88 Pac. 778; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275; New York First Nat. Gold Min. Co. *v.* Altvater, (C. C. A.) 149 Fed. 393.

Watchmen's Services. — Gear *v.* Ford, 4 Cal. App. 556, 88 Pac. 600.

735. 3. Goldberg *v.* Bruschi, 146 Cal. 708, 81 Pac. 23; Gear *v.* Ford, 4 Cal. App. 556, 88 Pac. 600; Dye *v.* Crary, 13 N. Mex. 439, 85 Pac. 1038; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275; Wailes *v.* Davies, 158 Fed. 667.

736. 1. Gear *v.* Ford, 4 Cal. App. 556, 88 Pac. 600; Goldberg *v.* Bruschi, 146 Cal. 708, 81 Pac. 23; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275; McKay *v.* Neussler, (C. C. A.) 148 Fed. 86; Wailes *v.* Davies, 158 Fed. 667.

4. **Work Outside of the Boundary Lines** of the claim if done for the development of the claim may properly be considered as assessment work for such location. Godfrey *v.* Faust, (S. Dak. 1905) 105 N. W. 460.

737. 1. Wailes *v.* Davies, 158 Fed. 667.

Constructing a Tunnel is sufficient. Godfrey *v.* Faust, (S. Dak. 1905) 105 N. W. 460.

Gratuitous Work. — Work contributed gratuitously constitutes assessment work under the law. Anderson *v.* Caughey, 3 Cal. App. 22, 84 Pac. 223.

738. 1. **Labor by Equitable Owner Sufficient.** — Wailes *v.* Davies, 158 Fed. 667.

3. Garvey *v.* Elder, (S. Dak. 1906) 109 N. W. 508.

4. Southern Cross Gold Min. Co. *v.* Sexton, (Cal. 1905) 82 Pac. 423.

739. 4. Badger Gold Min., etc., Co. *v.* Stockton Gold, etc., Min. Co., 139 Fed. 838; Stephens *v.* Galob, 34 Colo. 429, 83 Pac. 381.

Failure to Name the Co-Owner in the notice invalidates the same, Ballard *v.* Golob, 34 Colo. 417, 83 Pac. 376.

740. 5. Lockhart *v.* Farrell, 31 Utah 155, 86 Pac. 1077.

8. Malone *v.* Jackson, (C. C. A.) 137 Fed. 878; Yosemite Gold Min., etc., Co. *v.* Emerson, 208 U. S. 25, 28 U. S. Sup. Ct. 196; Ware *v.* White, (Ark. 1907) 108 S. W. 831; Anderson *v.* Caughey, 3 Cal. App. 22, 84 Pac. 223; Moffatt *v.* Blue River Gold Excavating Co., 33 Colo. 142, 80 Pac. 139; Sullivan *v.* Sharp, 33 Colo. 346, 80 Pac. 1054; Ford *v.* Campbell, (Nev. 1907) 92 Pac. 206; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275; Lockhart *v.* Farrell, 31 Utah 155, 86 Pac. 1077; Paragon Min., etc., Co. *v.* Stevens County Exploration Co., 45 Wash. 59, 87 Pac. 1068.

741. 1. Cunningham *v.* Pirrung, (Ariz. 1905) 80 Pac. 329; Brockbank *v.* Albion Min. Co., 29 Utah 367, 81 Pac. 863.

Relocation by Amended Certificate. — Brown *v.* Gurney, 201 U. S. 184, 26 U. S. Sup. Ct. 509.

Relocation Notice must state that the claim was relocated as abandoned or forfeited property. Matko *v.* Daley, (Ariz. 1906) 85 Pac. 721.

8. Barnette *v.* Freeman, 2 Alaska 286; Thompson *v.* Burke, 2 Alaska 249.

743. 3. **Survey Must Determine Location of Lines Underground.** — Orphan Belle Min., etc., Co. *v.* Pinto Min. Co., 35 Colo. 564, 85 Pac. 323.

744. 4. Smoot *v.* Consolidated Coal Co., 114 Ill. App. 512.

749. 1. Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

3. Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

750. 7. Healey *v.* Rupp, 37 Colo. 25, 86 Pac. 1015.

8. **Description.** — Southern Cross Gold Min. Co. *v.* Sexton, (Cal. 1905) 82 Pac. 423.

754. 1. Davidson *v.* Fraser, 36 Colo. 1, 84 Pac. 695.

2. Keppler *v.* Becker, (Ariz. 1905) 80 Pac. 334; Healey *v.* Rupp, 37 Colo. 25, 86 Pac. 1015; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

755. 5. Moffatt *v.* Blue River Gold Excavating Co., 33 Colo. 142, 80 Pac. 139.

6. Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

756. 2. Treadwell *v.* Marrs, (Ariz. 1905) 83 Pac. 350.

4. Lawson *v.* U. S. Min. Co., 207 U. S. 1, 28 U. S. Sup. Ct. 15.

6. Mineral Farm Min. Co. *v.* Barrick, 33 Colo. 410, 80 Pac. 1055.

757. 3. Wright *v.* Hartville, 13 Wyo. 497, 81 Pac. 649.

758. 2. Davidson *v.* Fraser, 36 Colo. 1, 84 Pac. 695.

4. **Mining and Townsite Claimants.** — Wright *v.* Hartville, 13 Wyo. 497, 81 Pac. 649.

759. 3. **Filing of Suit Held to Be Commencement of Action.** — Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

5. The land department having entrusted the controversy to the local courts, leaves it to them to determine whether the suit is being prosecuted with reasonable diligence. Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

760. 1. Kirby *v.* Higgins, 33 Mont. 518, 85 Pac. 275.

3. Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

4. Phely *v.* Lake Superior, etc., Min. Co., (Ariz. 1906) 85 Pac. 952; Goldberg *v.* Bruschi, 146 Cal. 708, 81 Pac. 23.

5. Gulf Coal, etc., Co. *v.* Alabama Coal, etc., Co., 145 Ala. 228, 40 So. 397.

Persons Out of Possession can maintain the action by statute. Costello *v.* Muheim, 9 Ariz. 422, 84 Pac. 906.

762. 1. Keppler *v.* Becker, (Ariz. 1905) 80 Pac. 334.

2. Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275; Slothower *v.* Hunter, 15 Wyo. 189, 88 Pac. 36; Brown *v.* Gurney, 201 U. S. 184, 26 U. S. Sup. Ct. 509.

5. **Priority of Right to the Land** is all that is determined in an adverse suit. Lawson *v.* U. S. Mining Co., 207 U. S. 1, 28 U. S. Sup. Ct. 15.

765. 1. Hickey *v.* Anaconda Copper Min. Co., 33 Mont. 46, 81 Pac. 807; Sharkey *v.* Candiani, 48 Oregon 112, 85 Pac. 219.

766. 6. Ballard *v.* Golob, 34 Colo. 417, 83 Pac. 381.

768. 4. Tanner *v.* Treasury Tunnel Min., etc., Co., 35 Colo. 593, 83 Pac. 464.

769. 1. Ammons *v.* Toothman, 59 W. Va. 165, 53 S. E. 13; Griffin *v.* Fairmont Coal Co., 59 W. Va. 480, 53 S. E. 24; Smith *v.* South Penn Oil Co., 59 W. Va. 204, 53 S. E. 152.

4. Richmond Natural Gas Co. *v.* Davenport, 37 Ind. App. 25, 76 N. E. 525; Hill *v.* Ground, 114 Mo. App. 80, 89 S. W. 343.

Tenant in Dower or by Courtesy. — Swayne *v.* Lone Acre Oil Co., 98 Tex. 597, 86 S. W. 740.

770. 1. Swayne *v.* Lone Acre Oil Co., 98 Tex. 597, 86 S. W. 740.

2. **Tenant May Commit Waste** by an unauthorized removal of oil. Isom *v.* Rex Crude Oil Co., 147 Cal. 659, 82 Pac. 317.

3. Hill *v.* Ground, 114 Mo. App. 80, 89 S. W. 343; Robb *v.* New York, etc., Gas Coal Co., 216 Pa. St. 418, 65 Atl. 938.

771. 6. Brand *v.* Consolidated Coal Co., 219 Ill. 543, 76 N. E. 849; Kansas Natural Gas Co. *v.* Neosho County, 75 Kan. 335, 89 Pac. 750; Gill *v.* Fletcher, 74 Ohio St. 295, 78 N. E. 433, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771–773; Moore *v.* Indian Camp Coal Co., 75 Ohio St. 493, 80 N. E. 6; Gallagher *v.* Hicks, 216 Pa. St. 243, 65 Atl. 623; Youghiogheny River Coal Co. *v.* Allegheny Nat. Bank, 211 Pa. St. 319, 60 Atl. 924; Interstate Coal, etc., Co. *v.* Clintwood Coal, etc., Co., 105 Va. 574, 54 S. E. 593; Preston *v.* White, 57 W. Va. 278, 50 S. E. 236, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771.

773. 1. Moore *v.* Griffin, 72 Kan. 164, 83 Pac. 395; Gill *v.* Fletcher, 74 Ohio St. 295, 78 N. E. 433, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771–773; Preston *v.* White, 57 W. Va. 278, 50 S. E. 236, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 773; Wallace *v.* Elm Grove Coal Co., 58 W. Va. 449, 52 S. E. 485; Wilmore Coal Co. *v.* Brown, 147 Fed. 931.

2. Gill *v.* Fletcher, 74 Ohio St. 295, 78 N. E. 433; Gordon *v.* Park, 202 Mo. 236, 100 S. W. 621.

3. Gill *v.* Fletcher, 74 Ohio St. 295, 78 N. E. 433; Wallace *v.* Elm Grove Coal Co., 58 W. Va. 449, 52 S. E. 485.

774. 4. Preston *v.* White, 57 W. Va. 278, 50 S. E. 236.

5. Gordon *v.* Park, 202 Mo. 236, 100 S. W. 621; Moore *v.* Indian Camp Coal Co., 75 Ohio St. 493, 80 N. E. 6; Baker *v.* Pittsburg, etc., R. Co., (Pa. 1908) 68 Atl. 1014; Griffin *v.* Fairmont Coal Co., 59 W. Va. 480, 53 S. E. 24.

Right to Construct Roads. — Duncan *v.* American Standard Asphalt Co., (Ky. 1906) 97 S. W. 392.

Owner of Mine can maintain an action against the owner of the surface for negligence in mining. Tischler *v.* Pennsylvania Coal Co., 218 Pa. St. 82, 66 Atl. 988.

775. 2. Wilmore Coal Co. *v.* Brown, 147 Fed. 931, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 775.

4. O'Connell *v.* Pinnacle Gold Mines Co., (C. C. A.) 140 Fed. 854.

Subject to Sale by Government for Unpaid Taxes. — Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928.

6. **Minerals Are Real Estate,** and any instrument by which they are to be conveyed must be executed with the law in regard to conveyances of land. Brooks *v.* Cook, 141 Ala. 499, 38 So. 641.

776. 2. Brooks *v.* Cook, 141 Ala. 499, 38 So. 641; Kansas Natural Gas Co. *v.* Neosho County, 75 Kan. 335, 89 Pac. 750; Pittsburg Vitrified Paving, etc., Co. *v.* Bailey, (Kan. 1907) 90 Pac. 803; State *v.* Evans, 99 Minn. 220, 108 N. W. 958; Headley *v.* Hoopengarner, 60 W. Va. 626, 55 S. E. 744; Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928.

3. **Mining Lease Subject to Taxation in Kentucky.** — Wolfe County *v.* Beckett, (Ky. 1907) 105 S. W. 447.

4. **A Mining Lease, Wanting in Mutuality and Being Purely Unilateral,** the lessee assuming no obligation to mine, was construed to be an option only and not a lease. Collins *v.* Smith, (Ala. 1907) 43 So. 838.

Construction of Oil and Gas Lease. — See Logansport, etc., Gas Co. *v.* Null, 36 Ind. App. 503, 76 N. E. 125.

777. 1. Brooks *v.* Cook, 141 Ala. 499, 38 So. 641; Test Oil Co. *v.* La Tourette, (Okla. 1907) 91 Pac. 1025; Brewster *v.* Lanyon Zinc Co., (C. C. A.) 140 Fed. 801.

4. State *v.* Evans, 99 Minn. 220, 108 N. W. 958.

778. 2. Junction Min. Co. *v.* Springfield Junction Coal Co., 222 Ill. 600, 78 N. E. 902.

3. **For Applications and Illustrations of the Rules Stated in the Text,** see Junction Min. Co. *v.* Springfield Junction Coal Co., 222 Ill. 600, 78 N. E. 902.

5. Watson *v.* Charlesworth, (1905) 1 K. B. 74; Collins *v.* Abel, (Ala. 1907) 44 So. 109; Daigle *v.* Maddocks, 2 Alaska 387; Macon *v.* Trowbridge, 38 Colo. 330, 87 Pac. 1147; McConnell *v.* Pierce, 116 Ill. App. 103; American Window Glass Co. *v.* Indiana Natural Gas, etc., Co., 37 Ind. App. 439, 76 N. E. 1006; Indiana Natural Gas, etc., Co. *v.* Beales, (Ind. App. 1905) 74 N. E. 551; Zeigler *v.* Dailey, 37 Ind. App. 240, 76 N. E. 819; Collier *v.* Monger, 75 Kan. 550, 89 Pac. 1011; Pittsburg Vitrified Paving, etc., Co. *v.* Bailey, (Kan. 1907) 90 Pac. 803; Meek *v.* Cooney, 26 Ohio Cir. Ct. 553; Hays *v.* Forest Oil Co., 213 Pa. St. 556, 62 Atl. 1072; Prigg *v.* Preston, 28 Pa. Super. Ct. 272; McArthur *v.* Tionesta Gas Co., 28 Pa. Super. Ct. 568; Turner *v.* Lehigh Valley Coal Co., 34 Pa. Super. Ct. 191; Cranes Nest Coal, etc., Co. *v.* Virginia Iron, etc., Co., 105 Va. 785, 54 S. E. 884; Moore *v.* Ohio Valley Gas Co., (W. Va. 1908) 60 S. E. 401.

Lease to Be Determined in the light of its own peculiar provisions. Kansas Natural Gas Co. *v.* Neosho County, 75 Kan. 335, 89 Pac. 750.

779. 1. **For Construction of Certain Provisions Peculiar to Mining Leases.** — See Isabella Gold Min. Co. *v.* Glenn, 37 Colo. 165, 86 Pac. 349; Watford Oil, etc., Co. *v.* Shipman, 233 Ill. 9, 84 N. E. 53; Hancock *v.* Diamond Plate Glass Co., 37 Ind. App. 351, 75 N. E. 659; New American Oil, etc., Co. *v.* Troyer, (Ind. App. 1905) 74 N. E. 37; New American Oil, etc., Co. *v.* Troyer, 166 Ind. 402, 76 N. E. 253; Ramage *v.* Wilson, 37 Ind. App. 532, 77 N. E. 368; Shenk *v.* Stahl, 35 Ind. App. 493, 74 N. E. 538; Bellevue Gas, etc., Co. *v.* Pennell, (Kan. 1907) 92 Pac. 1101; Ringle *v.* Quigg, 74 Kan. 581, 87 Pac. 724; Martel *v.* Jennings-Heywood Oil Syndicate, 114 La. 351, 38 So. 253; Murray *v.* Barnhart, 117 La. 1023, 42 So. 489; Henry *v.* Lehigh Valley Coal Co., 215 Pa. St. 448, 64 Atl. 635; McKeever *v.* Westmoreland Coal Co., (Pa. 1908) 68 Atl. 670; McGavock *v.* Virginia Carolina Chemical Co., 114 Tenn. 317, 86 S. W. 380; Montgomery *v.* Economy Fuel Co., 61 W. Va. 620, 57 S. E. 137.

Lease of a Coal Mine held to be an assignment of a license where the language used was in harmony with a personal license. Chalfant *v.* Rocks, 212 Pa. St. 521, 61 Atl. 1105.

Right to Mine and Carry Away Coal coupled with the right to transport other coal through entries to be made, confers no right of ventilating the territory, from which such other coal might come. Cubbage *v.* Pittsburg Coal Co., 216 Pa. St. 411, 65 Atl. 797.

Implied Covenant for Quiet Enjoyment. — The words demise, grant, lease, and let, in an oil and gas lease create an implied covenant of quiet enjoyment for the purposes of the lease. Headley *v.* Hoopengarner, 60 W. Va. 626, 55 S. E. 744.

Implied Covenant for Quiet Possession and Good Title. — Kilcoyne *v.* Southern Oil Co., 61 W. Va. 538, 56 S. E. 888.

An Insufficient Description of the premises granted in an oil and gas lease will invalidate it. South Penn Oil Co. *v.* Calf Creek Oil, etc., Co., 140 Fed. 507.

2. Buffalo Valley Oil, etc., Co. *v.* Jones, (Kan. 1907) 88 Pac. 537.

Forfeiture Optional with Lessor. — Chauvenet *v.* Person, 217 Pa. St. 464, 66 Atl. 855; *In re* Murray, 216 Pa. St. 270, 65 Atl. 675.

What Constitutes Reasonable Diligence depends upon a variety of circumstances, such as the quantity of oil and gas capable of being produced from the premises, local market, character of reservoir, and usage of business. Brewster *v.* Lanyon Zinc Co., (C. C. A.) 140 Fed. 801.

781. 1. Puritan Oil Co. *v.* Myers, 39 Ind. App. 695, 80 N. E. 851; Mills *v.* Hartz, (Kan. 1908) 94 Pac. 142; Berry *v.* Frisbie, 120 Ky. 337, 86 S. W. 558; Monarch Oil, etc., Co. *v.* Richardson, (Ky. 1907) 99 S. W. 668; Venedocia Oil, etc., Co. *v.* Robinson, 71 Ohio St. 302, 73 N. E. 222; National Light, etc., Co. *v.* Alexander, (S. Car. 1908) 61 S. E. 214, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 780, 781; Starn *v.* Huffman, (W. Va. 1907) 59 S. E. 179; Toothman *v.* Courtney, (W. Va. 1907) 58 S. E. 915; Brewster *v.* Lanyon Zinc Co., (C. C. A.) 140 Fed. 801; Wilmore Coal Co. *v.* Brown, 147 Fed. 931.

2. McIntosh *v.* Robb, (Cal. App. 1906) 88 Pac. 517; Puritan Oil Co. *v.* Myers, 39 Ind. App. 695, 80 N. E. 851; Mills *v.* Hartz, (Kan. 1908) 94 Pac. 142; Berry *v.* Frisbie, 120 Ky. 337, 86 S. W. 558; Starn *v.* Huffman, (W. Va. 1907) 59 S. E. 179. But see Poe *v.* Ulrey, 233 Ill. 56, 84 N. E. 46; Houssiere Latreille Oil Co. *v.* Jennings-Heywood Oil Syndicate, 115 La. 107, 38 So. 932.

Proper Remedy Action at Law for Damages. — Wilmore Coal Co. *v.* Brown, 147 Fed. 931.

Action at Law for Breach of Covenant. — Doddridge County Oil, etc., Co. *v.* Smith, 154 Fed. 970.

3. Bay State Petroleum Co. *v.* Penn Lubricating Co., (Ky. 1905) 87 S. W. 1102; Campbell *v.* Rock Oil Co., (C. C. A.) 151 Fed. 191.

Construction of Phrase "Paying Quantities." — Manhattan Oil Co. *v.* Carrell, 164 Ind. 526, 73 N. E. 1084.

782. 1. Macon *v.* Trowbridge, 38 Colo. 330, 87 Pac. 1147.

2. Kissick *v.* Dalton, 134 Iowa 650, 112 N. W. 95, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d Ed.) 762.

3. McIntosh *v.* Robb, (Cal. App. 1906) 88 Pac. 517; O'Neill *v.* Risinger, (Kan. 1908) 93 Pac. 340; Ohio Oil Co. *v.* Detamore, 165 Ind. 243, 73 N. E. 906; Flanagan *v.* Marsh, (Ky. 1907) 105 S. W. 424; Brooks *v.* Gaffin, 192 Mo. 228, 90 S. W. 808; Drake *v.* Pennsylvania Coal Co., 217 Pa. St. 446, 66 Atl. 660; Headley *v.* Hoopengarner, 60 W. Va. 626, 55 S. E. 744; Lawson *v.* Williamson Coal, etc., Co., 61 W. Va. 669, 57 S. E. 258.

Ejectment Lies for Breach of an Essential Condition Contained in a Mining Lease even though the lease contains a forfeiture clause. Brooks *v.* Gaffin, 195 Mo. 228, 95 S. W. 418.

Equitable Relief may be had from a technical forfeiture, where no pecuniary or substantial injury has resulted. Pheasant *v.* Hanna, (W. Va. 1908) 60 S. E. 618.

783. 1. **Contract Allowing Royalty on "Merchantable Coal" Construed.** — Hutson Coal Co. *v.* Hughes, 29 Ohio Cir. Ct. 139.

Lessee Not Relieved from Payment of Royalties by Fire. — Everhart *v.* Lehigh Valley Coal Co., (Pa. 1907) 67 Atl. 618.

3. Dorris *v.* Morrisdale Coal Co., 215 Pa. St. 638, 64 Atl. 855.

Lessee Is Relieved from Payment of Minimum Rent when conditions warrant same. Krause *v.* Redman, 134 Iowa 629, 112 N. W. 91.

784. 2. Robinson *v.* Kistler, (W. Va. 1907) 59 S. E. 505.

3. **For the Peculiar Provisions** of clauses reserving to the lessor a minimum royalty or dead rent, see Hoyt *v.* Kingston Coal Co., 212 Pa. St. 205, 61 Atl. 885; Pennsylvania Coal, etc., Co. *v.* Witherow, 215 Pa. St. 327, 64 Atl. 535; Brooks *v.* Gaffin, 192 Mo. 228, 90 S. W. 808.

785. 1. Wilmore Coal Co. *v.* Brown, 147 Fed. 931.

2. Bay State Petroleum Co. *v.* Penn Lubricating Co., (Ky. 1905) 87 S. W. 1102.

4. Diamond Plate Glass Co. *v.* Knote, 38 Ind. App. 20, 77 N. E. 954; Indiana Rolling Mill Co. *v.* Gas Supply, etc., Co., 37 Ind. App. 154, 76 N. E. 640; New American Oil, etc., Co. *v.* Troyer, 166 Ind. 402, 77 N. E. 739; Kimball Oil Co. *v.* Keeton, (Ky. 1907) 101 S. W. 887.

Question for Jury. — Cole *v.* Ellwood Power Co., 216 Pa. St. 283, 65 Atl. 678.

Waiver of Right to Declare Forfeiture. — American Window Glass Co. *v.* Indiana Natural Gas, etc., Co., 37 Ind. App. 439, 76 N. E. 1006.

Lessor May Reserve Right to Terminate on Giving Notice. — Gearhart *v.* Gwinn, 32 Pa. Super. Ct. 567.

5. Shenk *v.* Stahl, 35 Ind. App. 493, 74 N. E. 538; Adams *v.* Washington Brick, etc., Co., 38 Wash. 243, 80 Pac. 446.

786. 1. Perry *v.* Acme Oil Co., (Ind. App. 1907) 80 N. E. 174.

2. Russell *v.* Howe, 30 Pa. Super. Ct. 591.

4. Dill *v.* Fraze, (Ind. App. 1906) 77 N. E. 1147; Indianapolis Gas Co. *v.* Pierce, 36 Ind. App. 573, 76 N. E. 173; Hunner *v.* Mulcahy, (Wash. 1907) 88 Pac. 521.

A mining lease, being in terms a grant of an interest in real estate, such interest is within the control of a court of equity and subject to be assigned by order of said court. Robyn *v.* Pickard, 37 Ind. App. 161, 76 N. E. 642.

787. 1. Wolfe *v.* Childs, (Colo. 1908) 94 Pac. 292.

788. 4. Madar *v.* Norman, 13 Idaho 585, 92 Pac. 572.

8. Boone *v.* Manley, 2 Alaska 552.

"Tenants in common of coal beneath the soil, which has been severed from the surface are entitled to a partition, but they must be tenants in common to have that right." Brand *v.* Consolidated Coal Co., 219 Ill. 543, 76 N. E. 849.

789. 6. Wolf *v.* Smith, (Ala. 1906) 42 So. 824; Western Coal, etc., Co. *v.* Jones, 75 Ark. 76, 87 S. W. 440; Sutter County *v.* Nicols, (Cal. 1908) 93 Pac. 872; Spring Valley Coal Co. *v.* Greig, 226 Ill. 511, 80 N. E. 1042; Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; Moseley *v.* Black Diamond Coal, etc., Co., (Ky. 1908) 109 S. W. 306; Kirby *v.* Manufacturers' Coal, etc., Co., 127 Mo. App. 588, 106 S. W. 1069; Morris Coal Co. *v.* Donley, 73 Ohio St. 298, 76 N. E. 945; Koppala *v.* State, 15 Wyo. 398, 89 Pac. 577, 93 Pac. 662.

Statute Requiring Registration of Miners Held Partially Invalid. — Com. *v.* Shaleen, 30 Pa. Super. Ct. 1.

790. 1. Springfield Coal Min. Co. *v.* Gordon, (C. C. A.) 147 Fed. 690.

2. Howells Min. Co. *v.* Gray, (Ala. 1905) 42 So. 448.

3. Athens Min. Co. *v.* Carnduff, 221 Ill. 354, 77 N. E. 571; New Virginia Coal Co. *v.* Gower, 119 Ill. App. 1.

6. McLean *v.* State, 81 Ark. 304, 98 S. W. 729.

7. Bradford *v.* Morrison, (Ariz. 1906) 86 Pac. 6; Hoye Coal Co. *v.* Colvin, 83 Ark. 528, 104 S. W. 207; Berentz *v.* Belmont Oil Co., 148 Cal. 577, 84 Pac. 47; Higgins *v.* Carlotta Gold Min. Co., 148 Cal. 700, 84 Pac. 758; Caster *v.* McClellan, 132 Iowa 502, 109 N. W. 1020; Salt Lake Hardware Co. *v.* Chainman Min., etc., Co., 137 Fed. 632; Lewis *v.* Beeman, 46 Oregon 311, 80 Pac. 417.

Extent of Statutory Compliance Necessary. — Castagnetto *v.* Coppertown Min., etc., Co., 146 Cal. 329, 80 Pac. 74; Slover *v.* Bailey, (Oregon 1907) 90 Pac. 665; Horn *v.* U. S. Mining Co., 47 Oregon 35, 81 Pac. 1009.

Priority of Lien. — Mott *v.* Wissler Min. Co., (C. C. A.) 135 Fed. 697.

Watchman Not Entitled to a Lien in caring for the mine while it is lying idle. Donaldson *v.* Orchard Crude Oil Co., (Cal. App. 1907) 92 Pac. 1046.

No lien is created for services rendered in

listing property and keeping the same free from trespassers. Morrison *v.* New Haven, etc., Min. Co., 143 N. Car. 250, 55 S. E. 611.

798. 1. Williams *v.* Eldora-Enterprise Gold Min. Co., 35 Colo. 127, 83 Pac. 780; Littler *v.* Friend, 167 Ind. 35, 78 N. E. 238; Caster *v.* McClellan, 132 Iowa 502, 109 N. W. 1020.

California Statute as to Leased Mine. — Brentz *v.* Belmont Oil Co., 148 Cal. 577, 84 Pac. 47.

"Agent" under California Statute. — Higgins *v.* Carlotta Gold Min. Co., 148 Cal. 700, 84 Pac. 758.

Lessee under an Oil and Gas Lease has a mere license and no present vested interest to which a mechanic's lien could attach. Phillips *v.* Springfield Crude Oil Co., (Kan. 1907) 92 Pac. 1119.

792. 1. Sandy River Cannel Coal Co. *v.* White House Cannel Coal Co., (Ky. 1907) 101 S. W. 319, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 792; Smoot *v.* Consolidated Coal Co., 114 Ill. App. 512.

793. 1. Double Damages Allowed — Code Iowa, § 2485. — Mier *v.* Phillips Fuel Co., 130 Iowa 570, 107 N. W. 621.

MINISTERIAL.

793. 3. People *v.* Van Horn, 20 Colo. App. 225, 77 Pac. 978, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 793; Freund *v.* Freund, 218 Ill. 204, 75 N. E. 925, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 793.

MISDEMEANOR.

802. 1. State *v.* Melies, 117 La. 660, 42 So. 199, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 802; Stoltman *v.* Lake, 124 Wis. 462, 102 N. W. 920.

MISFEASANCE.

802. 3. Southern R. Co. *v.* Rowe, 2 Ga. App. 557, 59 S. E. 462.

MISSIONARY.

804. 7. "The Terms 'Missionary' and 'Missionary Society' are of common use, and have a well accepted meaning. This meaning is the same whether the use is intended to be precise and technical or merely that of everyday speech. By universal acceptance the word ***missionary,*** whether as a noun or adjective, embraces, not only the conception of a religious, charitable, or educational work or worker, but also of such a work done through philanthropic motives, for the welfare of others too poor, too unappreciative, or too indifferent to do it themselves, and by persons supported or means furnished in part at least by some agency of which those for whom the work is done do not form a sustaining part. The derivative of the word implies a sending, and so it is that in both technical and common speech, the idea of a sending forth, a sending forth to the service of others, the doing of a work for others, is associated with its meaning. Sometimes it is used to characterize the agency sent; sometimes of the agency sending; but always there is associated with the notion of a benevolent service for others that of such service sent whether far or near by those who maintain it to those who need it." Bulkeley *v.* Worthington Ecclesiastical Soc., 78 Conn. 526, 63 Atl. 351.

MISTAKE.

807. 2. Scott *v.* Ford, 45 Oregon 531, 80 Pac. 899, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 807.

809. 1. Mistake Apparent on Face of Instrument Will Preclude Enforcement. — Buckberg *v.* Washburn-Crosby Co., 115 Mo. App. 701, 92 S. W. 733.

3. U. S. *v.* Milliken Imprinting Co., 202 U. S. 168, 26 U. S. Sup. Ct. 572, *reversing* 40 Ct. Cl. 81.

810. 3. Steinfeld *v.* Zeckendorf, (Ariz. 1906) 86 Pac. 7; Jacobs *v.* Parodi, 50 Fla. 541, 39 So. 833; Kitchen *v.* Chantland, 130 Iowa 618, 105 N. W. 367.

811. 2. Flynn *v.* Smith, 111 N. Y. App. Div. 870, 98 N. Y. Supp. 56.

812. 4. Somerville *v.* Coppage, 101 Md. 519, 61 Atl. 318.

5. Specific Performance will not be decreed in case of mistake as to material facts by reason of which the real intention of the parties is not expressed in a contract. Somerville *v.* Coppage, 101 Md. 519, 61 Atl. 318.

813. 1. Graham *v.* Carnegie Steel Co., 217 Pa. St. 34, 66 Atl. 103.

5. Traders' Ins. Co. *v.* Aachen, etc., F. Ins. Co., 150 Cal. 370, 89 Pac. 109.

815. 1. Cook *v.* Bagnell Timber Co., 78 Ark. 47, 94 S. W. 695.

3. Mistake in Calculation. — Steinmeyer *v.* Schroeppel, 226 Ill. 9, 80 N. E. 564.

4. Noecker *v.* Wallingford, 133 Iowa 605, 111 N. W. 37.

5. Cleveland-Cliffs Iron Co. *v.* East Itasca Min. Co., (C. C. A.) 146 Fed. 232; Traders' Ins. Co. *v.* Aachen, etc., F. Ins. Co., 150 Cal. 370, 89 Pac. 109, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 815; Godfrey *v.* Kidwell, 15 Hawaii 351.

816. 1. McKeon *v.* Roan, (Tex. Civ. App. 1907) 106 S. W. 404.

3. Burke *v.* Williams, 124 Ga. 248, 52 S. E. 653; American Mut. L. Ins. Co. *v.* Bertram, 163 Ind. 51, 70 N. E. 258, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 816; Scott *v.* Ford, 45 Oregon 531, 78 Pac. 742, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 816, *rehearing denied* 80 Pac. 899.

4. Scott *v.* Ford, 45 Oregon 531, 78 Pac. 742, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 816, *rehearing denied* 80 Pac. 899.

5. Jacobs *v.* Parodi, 50 Fla. 541, 39 So. 833; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811.

818. 6. Godfrey *v.* Kidwell, 15 Hawaii 351, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818 (citation in dissenting opinion).

821. 2. Owens *v.* Carthage, etc., R. Co., 110 Mo. App. 320, 85 S. W. 087, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 821.

822. 3. Mistake as Defense to Action for Purchase Price. — If unilateral it is not, in the absence of fraud or sharp practice, a defense. Bevins *v.* Coates, (Ky. 1906) 96 S. W. 585.

4. *Georgia.* — Quiggle *v.* Vining, 125 Ga. 98, 54 S. E. 74.

Illinois. — Matthews *v.* Whitethorn, 220 Ill. 36, 77 N. E. 89; Morgan *v.* Owens, 228 Ill. 598, 81 N. E. 1135.

Iowa. — Pyne *v.* Knight, 130 Iowa 113, 106 N. W. 505; Wilson *v.* Wyoming Cattle, etc., Co., 129 Iowa 16, 105 N. W. 338.

Kentucky. — East Jellico Coal Co. *v.* Carter, (Ky. 1906) 97 S. W. 768.

Michigan. — Kinyon *v.* Cunningham, 146 Mich. 430, 109 N. W. 675.

Minnesota. — Thompson *v.* E. I. Dupont Co., 100 Minn. 367, 111 N. W. 302; Nelson *v.* Mashek Lumber Co., 95 Minn. 217, 103 N. W. 1028, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 822.

Missouri. — Turner *v.* Wabash R. Co., 114 Mo. App. 539, 90 S. W. 391; Weissenfels *v.* Cable, 208 Mo. 515, 106 S. W. 1028.

Wyoming. — Grieve *v.* Grieve, 15 Wyo. 358, 89 Pac. 569; Stoll *v.* Nagle, (Wyo. 1906) 86 Pac. 26.

Canada. — Slouski *v.* Hopp, 15 Manitoba 548.

823. **2.** Jacobs *v.* Parodi, 50 Fla. 541, 39 So. 833; Williamson *v.* Brown, 195 Mo. 313, 93 S. W. 791; King *v.* Hobbs, 139 N. Car. 170, 51 S. E. 911.

A Mistake of the Scrivener under the Sole Direction of One Party has been held to be a merely unilateral mistake which will not furnish a basis for reformation. Dougherty *v.* Dougherty, 204 Mo. 228, 102 S. W. 1099.

3. Morgan *v.* Owens, 228 Ill. 598, 81 N. E. 1135; Noecker *v.* Wallingford, 133 Iowa 605, 111 N. W. 37; Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198; Cox *v.* Beard, 75 Kan. 369, 89 Pac. 671.

824. **1.** Ranalli *v.* Zeppetelli, (Supm. Ct. App. T.) 94 N. Y. Supp. 561.

3. Owens *v.* Carthage, etc., R. Co., 110 Mo. App. 320, 85 S. W. 987; King *v.* Hobbs, 139 N. Car. 170, 51 S. E. 911, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 823 (824).

826. **7.** **"Call" Omitted** or incorrectly set down, it has been held, will be read into the deed or be corrected. Cornett *v.* Creech, (Ky. 1907) 100 S. W. 1188.

Matthews *v.* Whitethorn, 220 Ill. 36, 77 N. E. 89.

827. **5.** Perry *v.* Sadler, 76 Ark. 43, 88 S. W. 832; Dillard *v.* Jones, 229 Ill. 119, 82 N. E. 206; Cox *v.* Beard, 75 Kan. 369, 89 Pac. 671.

6. Pyne *v.* Knight, 130 Iowa 113, 106 N. W. 505; Los Angeles, etc., R. Co. *v.* New Liverpool Salt Co., 150 Cal. 21, 87 Pac. 1029; Laufer *v.* Moppins, (Tex. Civ. App. 1906) 99 S. W. 109.

7. Laufer *v.* Moppins, (Tex. Civ. App. 1906) 99 S. W. 109.

828. **2. Improper Words to Convey the Interest Intended** furnish ground for equitable relief. Williamson *v.* Brown, 195 Mo. 313, 93 S. W. 791.

Omission of Essential Words from Contract of Pledge. — Waterloo First Nat. Bank *v.* Bacon, 113 N. Y. App. Div. 612, 98 N. Y. Supp. 717.

3. Quitclaim Deed Intended Merely as a Release of Estate by Curtesy. — Morgan *v.* Owens, 228 Ill. 598, 81 N. E. 1135.

4. Fee Simple Instead of Life Estate to Grantee with Remainder to Children of Another. — Williamson *v.* Brown, 195 Mo. 313, 93 S. W. 791.

7. Pickett *v.* Taylor, (Ky. 1906) 96 S. W. 1111.

12. King *v.* Hobbs, 139 N. Car. 170, 51 S. E. 911; Mattox *v.* Davis, (Tex. Civ. App. 1907) 106 S. W. 169.

16. Omission of Conditions. — Crossley *v.* Newman, (Ky. 1907) 105 S. W. 954.

831. **5.** Bibber *v.* Carville, 101 Me. 59, 63 Atl. 303; Nelson *v.* Mashek Lumber Co., 95 Minn. 217, 103 N. W. 1028; Weinhard *v.* Summerville, (Wash. 1907) 89 Pac. 490; Grieve *v.* Grieve, 15 Wyo. 358, 89 Pac. 569, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 831; Cauman *v.* Smith, 3 N. Bruns. Eq. Rep. 44.

832. **2. Misrepresentation Must Be Acted On.** — Spinks *v.* Clark, 147 Cal. 439, 82 Pac. 45; Selby *v.* Matson, (Iowa 1908) 114 N. W. 609.

4. Steffen *v.* Supreme Assembly, etc., 130 Wis. 485, 110 N. W. 401.

5. Mower Harwood Creamery, etc., Supply Co. *v.* Hill, (Iowa 1907) 113 N. W. 466; Bennett *v.* Himmelberger-Harrison Lumber Co., 116 Mo. App. 699, 94 S. W. 808; Reed *v.* Coughran, (S. Dak.) 111 N. W. 559; Steffen *v.* Supreme Assembly, etc., 130 Wis. 485, 110 N. W. 401.

Signing an Instrument Drawn by an Agent under a Misapprehension of Its Complete Purport has been held not to constitute such negligence as to preclude the right of rescission. Pyne *v.* Knight, 130 Iowa 113, 106 N. W. 505.

Failure of an Illiterate Person to Read the Instrument Due to Misrepresentations will not preclude avoidance of the contract. Baldwin *v.* Postal Tel. Cable Co., 78 S. Car. 419, 59 S. E. 67.

6. Murphy *v.* Hussey, 117 La. 390, 41 So. 692; Grieve *v.* Grieve, 15 Wyo. 358, 89 Pac. 569.

833. **1.** Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

MODERATE.

836. **2. Moderate Speed — Navigation.** — See Quinette *v.* Bisso, 136 Fed. 825, 69 C. C. A. 503.

MONEY.

838. **4. Ready Money.** — ***Money*** on deposit in a bank withdrawable at fourteen days' notice is not ready ***money.*** *In re* Wheeler, (1904) 2 Ch. 66, 73 L. J. Ch. 576, 91 L. T. N. S. 227, W. R. 586.

Moneys Owing. — ***Moneys*** on deposit at a testator's bank, whether notice of withdrawal is or is not required in respect of the same, will pass under a bequest of "***moneys*** owing to me at the time of my decease." *In re* Derbyshire, (1906) 1 Ch. 135, 75 L. J. Ch. 95.

MONOPOLIES AND CORPORATE TRUSTS.

846. **1.** Jones *v.* Carter, (Tex. Civ. App. 1907) 101 S. W. 514, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264. See also U. S. *v.* MacAndrews, etc., Co., 149 Fed. 823.

Strict Legal Meaning of Monopoly Is Power to Exclude All Others from Field Monopolized. — Burrows *v.* Interborough Metropolitan Co., 156 Fed. 389.

2. Walter A. Wood Mowing, etc., Co. *v.* Greenwood Hardware Co., 75 S. Car. 378, 55 S. E. 973, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; Jones *v.* Carter, (Tex. Civ. App. 1907) 101 S. W. 514, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; Charleston Natural Gas Co. *v.* Kanawha Natural Gas, etc., Co., 58 W. Va. 22, 50 S. E. 876, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; U. S. *v.* MacAndrews, etc., Co., 149 Fed. 823; Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264.

Statutory Definition. — Over *v.* Bryam Foundry Co., 37 Ind. App. 452, 77 N. E. 302; Norton *v.* W. H. Thomas, etc., Co., 99 Tex. 578, 91 S. W. 780; Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1908) 106 S. W. 918.

Monopoly Is Substantially Complete Control of Particular Business or Article of Trade. — Burrows *v.* Interborough Metropolitan Co., 156 Fed. 389.

3. Walter A. Wood Mowing, etc., Co. *v.* Greenwood Hardware Co., 75 S. Car. 378, 55 S. E. 973, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846; Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846.

Statutory Definitions of Trusts. — Bigelow *v.* Calumet, etc., Min. Co., 155 Fed. 869; State *v.* Missouri, etc., R. Co., 99 Tex. 516, 91 S. W. 214; Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1908) 106 S. W. 918; Forrest Photographic Co. *v.* Hutchinson Grocery Co., (Tex. Civ. App. 1908) 108 S. W. 768.

"**Combination**" is a word not yet possessed of an accurate legal meaning. Its place in the terminology of criminal law is no older than the "Anti-trust" Act of 1890. U. S. *v.* MacAndrews, etc., Co., 149 Fed. 823.

847. 1. Charleston Natural Gas Co. *v.* Kanawha Natural Gas, etc., Co., 58 W. Va. 22, 50 S. E. 876, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847; Purington *v.* Hinchliff, 120 Ill. App. 523, *affirmed* 219 Ill. 159, 76 N. E. 47; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Jones *v.* Carter, (Tex. Civ. App. 1907) 101 S. W. 514.

3. Dunbar *v.* American Telephone, etc., Co., 224 Ill. 9, 79 N. E. 423.

Contra by Statute in New York. — *In re* Consolidated Gas Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407.

6. Southern Electric Securities Co. *v.* State, (Miss. 1907) 44 So. 785.

7. Bigelow *v.* Calumet, etc., Min. Co., 155 Fed. 869; Hammond Packing Co. *v.* State, 81 Ark. 519, 100 S. W. 407, 1199; Sanford *v.* People, 121 Ill. App. 619; Klingel's Pharmacy *v.* Sharp, 104 Md. 218, 64 Atl. 1029; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Charleston Natural Gas Co. *v.* Kanawha Natural Gas, etc., Co., 58 W. Va. 22, 50 S. E. 876; Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264.

848. 1. Klingel's Pharmacy *v.* Sharp, 104 Md. 218, 64 Atl. 1029.

3. Charleston Natural Gas Co. *v.* Kanawha Natural Gas, etc., Co., 58 W. Va. 22, 50 S. E. 876.

4. Subjects Held Capable of Being Monopolized — *Coal.* — Sanford *v.* People, 121 Ill. App. 619.

Wall Paper. — Continental Wall Paper Co. *v.* Lewis Voight, etc., Co., (C. C. A.) 148 Fed. 939.

Monopoly Is Created by Reservation in Deed of Exclusive Right to Use Street for Gas Mains and Other Public Utilities. — Jones *v.* Carter, (Tex. Civ. App. 1907) 101 S. W. 514.

849. 1. Exclusive Right of Property in Trade Secret Is Monopoly, but Not Illegal. — Dr. Miles Medical Co. *v.* Jaynes Drug Co., 149 Fed. 838.

The Manufactured Product of a Trade Secret or private formula is not immune from the common-law rules forbidding monopolies. John D. Park, etc., Co. *v.* Hartman, (C. C. A.) 153 Fed. 24.

2. Telegraph Service is not a tangible article of trade and commerce in common use and a monopoly thereof is not illegal. *In re* Jackson, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 1, 107 N. Y. Supp. 799.

The Rules of a Live Stock Exchange, prohibiting its members from dealing with a member who has been expelled for dishonest dealing, are not opposed to the common law. Gladish *v.* Kansas City Live Stock Exch., 113 Mo. App. 726, 89 S. W. 77.

850. 1. Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 849.

2. Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 849; Purington *v.* Hinchliff, 120 Ill. App. 523, *affirmed* 219 Ill. 159, 76 N. E. 47; Over *v.* Byram Foundry Co., 37 Ind. App. 452, 77 N. E. 302.

3. Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 850; Klingel's Pharmacy *v.* Sharp, 104 Md. 218, 64 Atl. 1029.

4. Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 850; Sanford *v.* People, 121 Ill. App. 619; Anderson *v.* Shawnee Compress Co., 17 Okla. 231, 87 Pac. 315, *affirmed* 209 U. S. 423; Charleston Natural Gas Co. *v.* Kanawha Natural Gas, etc., Co., 58 W. Va. 22, 50 S. E. 876.

7. Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 850; Anderson *v.* Shawnee Compress Co., 17 Okla. 231, 87 Pac. 315, *affirmed* 209 U. S. 423.

851. 3. Thomson *v.* Union Castle Mail Steamship Co., 149 Fed. 933; Southern Fire Brick, etc., Co. *v.* Garden City Land Co., 223 Ill. 616, 79 N. E. 313, *affirming* 124 Ill. App. 599; Over *v.* Byram Foundry Co., 37 Ind. App. 452, 77 N. E. 302; Walter A. Wood Mowing, etc., Co. *v.* Greenwood Hardware Co., 75 S. Car. 378, 55 S. E. 973.

Contract between Manufacturer and Producer, and Retail Dealer, Does Not Create Combination. — Locker *v.* American Tobacco Co., 121 N. Y. App. Div. 443, 106 N. Y. Supp. 115.

4. People *v.* Klaw, (Ct. Gen. Sess.) 55 Misc. (N. Y.) 72, 106 N. Y. Supp. 341.

5. State *v.* Robb, 100 Me. 180, 60 Atl. 874, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 851.

9. **The Kentucky Constitution** does not prohibit trusts, pools, or combinations, nor does it command the general assembly to enact laws forbidding them. Owen County Burley Tobacco Soc. *v.* Brumvack, (Ky. 1908) 107 S. W. 710.

852. 2. Com. *v.* Strauss, 191 Mass. 545, 78 N. E. 136.

3. Com. *v.* Strauss, 191 Mass. 545, 78 N. E. 136.

4. **A Statute Providing that the Character of the Trust May Be Established by Proof of Its General Reputation** as such, is unconstitutional in that it deprives a defendant of his right to the decision of a jury as to his guilt or innocence. Hughes *v.* State, 29 Ohio Cir. Ct. 237.

6. Hammond Packing Co. *v.* State, 81 Ark. 579, 100 S. W. 407; State *v.* Wilson, 73 Kan. 343, 84 Pac. 737; State *v.* Witherspoon, 115 Tenn. 138, 90 S. W. 852; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1908) 106 S. W. 918.

In Kentucky, the legislature may legalize such pool or combination as is created or organized for the purpose of obtaining fair and remunerative prices. Owen County Burley Tobacco Soc. *v.* Brumback, (Ky. 1908) 107 S. W. 710.

7. **Kentucky Statute Authorizing Pooling of Crops Is Constitutional.** — Owen County Burley Tobacco Soc. *v.* Brumback, (Ky. 1908) 107 S. W. 710.

Patents. — *In re* Opinion of Justices, 193 Mass. 605, 81 N. E. 142.

8. Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

853. 1. Southern Fire Brick, etc., Co. *v.* Garden City Land Co., 223 Ill. 616, 79 N. E. 313, *affirming* 124 Ill. App. 599; Hastings Industrial Co. *v.* Baxter, 125 Mo. App. 494, 102 S. W. 1075.

New York Statute. — *In re* Consolidated Gas Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407; *In re* Jackson, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 1, 107 N. Y. Supp. 799; Brooklyn Distilling Co. *v.* Standard Distilling, etc., Co., 120 N. Y. App. Div. 237, 105 N. Y. Supp. 264; Atty.-Gen. *v.* Consolidated Gas Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 823; Burrows *v.* Interborough Metropolitan Co., 156 Fed. 389.

The Owning, Controlling, and Leasing of Theatres, and the producing of plays and entertainments of the stage, and the booking of contracts for the production of plays, are not articles of trade or commerce and are not subject to the provision of the New York Anti-trust Act. People *v.* Klaw, (Ct. Gen. Sess.) 55 Misc. (N. Y.) 72, 106 N. Y. Supp. 341.

Exclusive Privilege Given by Railway to Express Company within Statute. — State *v.* Missouri, etc., R. Co., 99 Tex. 516, 91 S. W. 214.

The Statute Denounces the Combination or agreement that results in restraint of trade, whether that result is accomplished by the act of each individual on his own account, doing as he agreed to do, or by the joint action of all. State *v.* Kansas City Live Stock Exch., (Mo. 1908) 109 S. W. 675.

An Advertising Scheme, entered into by a grocery company and a photographic company, and contemplating that, by the use of trading tickets, customers of the former would have their photos placed upon calendars, is not a monopoly. Forrest Photographic Co. *v.* Hutchinson Grocery Co., (Tex. Civ. App. 1908) 108 S. W. 768.

A Contract between Common Carriers and certain associations, whereby the former agreed to issue nontransferable excursion tickets at a reduced rate for a return passage, does not contravene the "anti-trust" laws of Texas. Lytle *v.* Galveston, etc., R. Co., (Tex. 1907) 99 S. W. 396.

A Contract between Two Corporations, whereby one agrees to buy all its raw materials from, and to sell all its manufactured product to the other, is not forbidden by the *Illinois* statute. Heimbuecher *v.* Goff, 119 Ill. App. 373.

Arkansas Statute. — State *v.* International Harvester Co., 79 Ark. 517, 96 S. W. 119.

2. **"Cornering" Wheat Not in Violation of Statute.** — C. H. Albers Commission Co. *v.* Spencer, 205 Mo. 105, 103 S. W. 523.

Live Stock Exchange. — State *v.* Wilson, 73 Kan. 343, 84 Pac. 737; State *v.* Kansas City Live Stock Exch., (Mo. 1908) 109 S. W. 675; Gladish *v.* Kansas City Live Stock Exch., 113 Mo. App. 726, 89 S. W. 77.

7. Com. *v.* Strauss, 191 Mass. 545, 78 N. E. 136; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

8. Kellogg *v.* Sowerby, 190 N. Y. 370, 83 N. E. 47; Walter A. Wood Mowing, etc., Co. *v.* Greenwood Hardware Co., 75 S. Car. 378, 55 S. E. 973.

9. Kellogg *v.* Sowerby, 190 N. Y. 370, 83 N. E. 47; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

Complete Monopoly Need Not Be Effected. — Bigelow *v.* Calumet, etc., Min. Co., 155 Fed. 869.

Indiana — Control of Output Must Exist. — Over *v.* Byram Foundry Co., 37 Ind. App. 452, 77 N. E. 302.

Association Necessary. — Norton *v.* N. H. Thomas, etc., Co., 99 Tex. 578, 91 S. W. 780.

10. Wampole *v.* F. E. Karn Co., 11 Ont. L. Rep. 619.

A Consolidation of Gas Companies, which cannot either limit production or increase prices and maintain them, because both of those matters are within the control of the legislature, is not a monopoly within the meaning of the *New York* statute. Atty.-Gen. *v.* Consolidated Gas Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 823.

The Main Test Should Be whether the contract, trust, or combination is monopolistic in purpose or natural tendency. Walter A. Wood Mowing, etc., Co. *v.* Greenwood Hardware Co., 75 S. Car. 378, 55 S. E. 973.

Statute Does Not Apply to Contracts Made to Increase Trade or Business. — Southern Fire Brick, etc., Co. *v.* Garden City Land Co., 223 Ill. 616, *affirming* 124 Ill. App. 599.

854. 1. Chicago Wall Paper Mills *v.* General Paper Co., (C. C. A.) 147 Fed. 491, 8 Ann. Cas. 880; State *v.* International Harvester Co., 79 Ark. 517, 96 S. W. 119.

Statutes Have No Extraterritorial Effect. — In-

ternational Harvester Co. *v.* Com., (Ky. 1907) 99 S. W. 637.

Statute Should Receive Reasonable Construction. — Gladish *v.* Kansas City Live Stock Exch., 113 Mo. App. 726, 89 S. W. 77.

Mississippi Statute Provides for Liberal Construction. — Kosciusko Oil Mill, etc., Co. *v.* Wilson Cotton Oil Co., (Miss. 1907) 43 So. 435.

The Whole Series of Statutes directed against combinations and monopolies should be considered as parts of a connected system, and no one act should be singled out for construction and be considered apart from the general trend of legislation upon the subject. State *v.* Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979, 110 N. W. 874.

2. Burrows *v.* Interborough Metropolitan Co., 156 Fed. 389; State *v.* Missouri, etc., R. Co., 99 Tex. 516, 91 S. W. 214. See also *In re* Opinion of Justices, 193 Mass. 605, 81 N. E. 1147.

3. State *v.* Missouri, etc., R. Co., 99 Tex. 516, 91 S. W. 214.

4. **Statutory Remedy Is Exclusive.** — C. H. Albers Commission Co. *v.* Spencer, 205 Mo. 105, 103 S. W. 523.

7. Dunbar *v.* American Telephone, etc., Co., 224 Ill. 9, 79 N. E. 423.

8. **What Constitutes Laches.** — Burrows *v.* Interborough Metropolitan Co., 156 Fed. 389.

9. **Corporation Not Indictable under Tennessee Statute.** — Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

Civil Suit to Recover Penalty under Texas Statute. Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1908) 106 S. W. 918.

855. 1. Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

Common-law Offense Not Abolished by Illinois Statute. — Sanford *v.* People, 121 Ill. App. 615.

5. Hammond Packing Co. *v.* State, 81 Ark. 519, 100 S. W. 407; Southern Electric Securities Co. *v.* State, (Miss. 1907) 44 So. 785.

7. Atty.-Gen. *v.* Booth, 143 Mich. 89, 106 N. W. 868; Southern Electric Securities Co. *v.* State, (Miss. 1907) 44 So. 785; State *v.* Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979, 110 N. W. 874.

8. Southern Electric Securities Co. *v.* State, (Miss. 1907) 44 So. 785; Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1908) 106 S. W. 918.

Acts Done in Other States. — Chicago Wall Paper Mills *v.* General Paper Co., (C. C. A.) 147 Fed. 491. See also Frank A. Menne Factory *v.* Harback, (Ark. 1908) 107 S. W. 991.

856. 1. Atty.-Gen. *v.* Booth, 143 Mich. 89, 106 N. W. 868.

3. Purington *v.* Hinchliff, 120 Ill. App. 523, *affirmed* 219 Ill. 159, 76 N. E. 47; C. H. Albers Commission Co. *v.* Spencer, 205 Mo. 105, 103 S. W. 523.

857. 2. Kosciusko Oil Mill, etc., Co. *v.* Wilson Cotton Oil Co., (Miss. 1907) 43 So. 435.

4. Pocahontas Coke Co. *v.* Powhatan Coal, etc., Co., 60 W. Va. 508, 56 S. E. 264, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 857.

Contra — Pool Legalized by Legislature. — Owen County Burley Tobacco Soc. *v.* Brumbach, (Ky. 1908) 107 S. W. 710.

5. **Action against Subscriber of Stock Not Maintainable.** — Hastings Industrial Co. *v.* Baxter, 125 Mo. App. 494, 102 S. W. 1075.

7. Chicago Wall Paper Mills *v.* General Paper Co., (C. C. A.) 147 Fed. 491.

858. 8. State *v.* Wilson, 73 Kan. 343, 84 Pac. 737.

By Statute. — Frank A. Menne Factory *v.* Harbeck, (Ark. 1908) 107 S. W. 991.

Rent, under Lease to Illegal Combination, May Be Collected. — Brooklyn Distilling Co. *v.* Standard Distilling, etc., Co., 120 N. Y. App. Div. 237, 105 N. Y. Supp. 264.

Contract with Stranger to Alleged Unlawful Combination May Be Enforced. — Chicago Wall Paper Mills *v.* General Paper Co., (C. C. A.) 147 Fed. 491.

859. 1. Hadley-Dean Plate Glass Co. *v.* Highlands Glass Co., (C. C. A.) 143 Fed. 242.

4. Southern Electric Securities Co. *v.* State, (Miss. 1907) 44 So. 785.

5. **Illegality Question for Jury.** — Burrows *v.* Interborough Metropolitan Co., 156 Fed. 389.

The Conduct or Hearsay Statements of alleged conspirators in the absence of claimed associates cannot be used to establish their association. Hughes *v.* State, 29 Ohio Cir. Ct. 237.

7. *In re* Charge to Grand Jury, 151 Fed. 834.

860. 3. Cincinnati, etc., Packet Co. *v.* Bay, 200 U. S. 179, 26 U. S. Sup. Ct. 208; Loewe *v.* Lawlor, 148 Fed. 924; C. H. Albers Commission Co. *v.* Spencer, 205 Mo. 105, 103 S. W. 523.

4. Loewe *v.* Lawlor, 148 Fed. 924; Com. *v.* Strauss, 191 Mass. 545, 78 N. E. 136.

Patents. — Rubber Tire Wheel Co. *v.* Milwaukee Rubber Works Co., (C. C. A.) 154 Fed. 358; Indiana Mfg. Co. *v.* J. I. Case Threshing Mach. Co., (C. C. A.) 154 Fed. 365, *reversing* 148 Fed. 21.

Secret Formulas are not considered lawful monopolies as are patents, and are not exempt from the operation of the statute. John D. Park, etc., Co. *v.* Hartman, (C. C. A.) 153 Fed. 24.

Contra. — Dr. Miles Medical Co. *v.* Jaynes Drug Co., 149 Fed. 838.

A Contract or Combination to Destroy Competition between certain wholesalers and jobbers in window glass, alleged to be seventy-five per cent. of the whole number so engaged in the United States, violates the statute. Wheeler-Stengel Co. *v.* National Window Glass Jobbers Assoc., (C. C. A.) 152 Fed. 864.

When the Purpose of the Combination or Pool between four corporations is to create a monopoly to control the freight and passenger traffic between certain points in different states, the statute is violated. White Star Line *v.* Star Line of Steamers, 141 Mich. 604, 105 N. W. 135, 12 Detroit Leg. N. 586.

A Contract by Which One Corporation binds itself to buy all its raw materials from, and to sell all its manufactured product to, another corporation, is not forbidden by the statute. Heimbuecher *v.* Goff, 119 Ill. App. 373.

Creation of Monopoly by Way of Stock Purchase and Control Offends against Statute. — Bigelow *v.* Calumet, etc., Min. Co., 155 Fed. 869.

The Concerted Policy of proprietors of patent medicines, together with wholesale and retail druggists, by which it is sought to maintain by each not only the price of his own medicines,

but also the prices of all those who are banded together, is a direct interference and restraint upon the freedom of trade and is within the statute. Jayne *v.* Loder, (C. C. A.) 149 Fed. 21, 9 Ann. Cas. 294, *reversing* 142 Fed. 1010.

5. Delaware, etc., R. Co. *v.* Kutter, (C. C. A.) 147 Fed. 51; Southern Fire Brick, etc., Co. *v.* Garden City Sand Co., 223 Ill. 616, 79 N. E. 313, *affirming* 124 Ill. App. 599.

Restraint Ancillary to Lawful Contract. — Cincinnati, etc., Packet Co. *v.* Bay, 200 U. S. 179, 26 U. S. Sup. Ct. 208.

Issuance of Nontransferable Excursion Tickets by Railroads to Certain Associations Not within Statute. — Lytle *v.* Galveston, etc., R. Co., (Tex. 1907) 99 S. W. 396.

861. 1. Continental Wall Paper Co. *v.* Lewis Voight, etc., Co., 148 Fed. 939; Wheeler-Stenzel Co. *v.* National Window Glass Jobbers' Assoc., 152 Fed. 864, 81 C. C. A. 658. See also Shawnee Compress Co. *v.* Anderson, 209 U. S. 423, 28 U. S. Sup. Ct. 572.

Restraint upon Selling Copyrighted Books to Persons Who Cut Prices Is within Statute. — Mines *v.* Scribner, 147 Fed. 927.

2. Jayne *v.* Loder, (C. C. A.) 149 Fed. 21, 9 Ann. Cas. 294, *reversing* 142 Fed. 1010; U. S. *v.* MacAndrews, etc., Co., 149 Fed. 823; Rubber Tire Wheel Co. *v.* Milwaukee Rubber Works Co., 154 Fed. 358, 83 C. C. A. 336; Bigelow *v.* Calumet, etc., Min. Co., 155 Fed. 860.

Prevention of Injurious Competition and Maintenance of Reasonable Prices. — John D. Park, etc., Co. *v.* Hartman, 153 Fed. 24, 82 C. C. A. 155.

6. Thomson *v.* Union Castle Mail Steamship Co., 149 Fed. 933.

7. Statute Applies to Corporations. — *In re* Charge to Grand Jury, 151 Fed. 834.

9. Crimes of Monopoly and Combination Legally Distinct and Punishable Separately. — U. S. *v.* MacAndrews, etc., Co., 149 Fed. 836.

862. 3. Contra. — Bigelow *v.* Calumet, etc., Min. Co., 155 Fed. 869.

Independently of Statute, Equity Jurisdiction May Be Invoked to Prevent Irreparable Injury. — Leonard *v.* Abner-Drury Brewing Co., 25 App. Cas. (D. C.) 161.

5. Continental Wall Paper Co. *v.* Lewis Voight, etc., Co., (C. C. A.) 148 Fed. 939.

City May Sue for Damages. — Chattanooga Foundry, etc., Works *v.* Atlanta, 203 U. S. 390, 27 U. S. Sup. Ct. 65.

Person Injured in Business or Property by Violation of Act May Sue. — Wheeler-Stenzel Co. *v.* National Window Glass Jobbers' Assoc., (C. C. A.) 152 Fed. 864.

6. Thomson *v.* Union Castle Mail Steamship Co., 149 Fed. 933.

8. Chattanooga Foundry, etc., Works *v.* Atlanta, 203 U. S. 390, 27 U. S. Sup. Ct. 65.

9. Continental Wall Paper Co. *v.* Lewis Voight, etc., Co., (C. C. A.) 148 Fed. 939.

10. Chicago Wall Paper Mills *v.* General Paper Co., (C. C. A.) 147 Fed. 491, 8 Ann. Cas. 889.

863. 4. When Offense of "Combination" Is Complete. — U. S. *v.* MacAndrews, etc., Co., 149 Fed. 836.

864. 1. Patents and Copyrights. — *In re* Opinion of Justices, 193 Mass. 605, 81 N. E. 142.

8. Licensing and Limiting Number of Pilots. — St. George *v.* Hardie, (N. Car. 1908) 60 S. E. 920.

866. 2. People *v.* Clean St. Co., 225 Ill. 470, 80 N. E. 298.

867. 4. Grant of Exclusive Privilege of Disposing of Garbage Valid. — State *v.* Robb, 100 Me. 180, 60 Atl. 874.

MONTH.

869. 3. Bruner *v.* Moore, (1904) 1 Ch. 305, 73 L. J. Ch. 377, 89 L. T. N. S. 738, 52 W. R. 295, 20 Times L. Rep. 125.

4. Simmons *v.* Hanne, 50 Fla. 267, 39 So. 77; Oehler *v.* Walsh, 28 Ohio Cir. Ct. 446.

MORE OR LESS.

873. 1. Kitzman *v.* Carl, 133 Iowa 340, 110 N. W. 587; Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 873, as to the general rule, but holding the case at bar to be one for relief.

"More or Less" and "Containing by Estimate" Synonymous. — Mayer *v.* Wooten, (Tex. Civ. App. 1907) 102 S. W. 423.

874. 1. Brooks *v.* Halane, 116 Ill. App. 383.

875. 1. Early *v.* Long, 89 Miss. 285, 42 So. 348; Hendricks *v.* Vivion, 118 Mo. App. 417, 94 S. W. 318.

3. Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435.

878. 1. Material Difference — *Six Acres Deficiency.* — Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435.

880. 1. Hadley Dean Plate Glass Co. *v.* Highland Glass Co., (C. C. A.) 143 Fed. 242.

The Use of the Words "More or Less" Is Merely Precautionary, so as to cover slight and unimportant inaccuracies, and does not enlarge the descriptive words of quantity. Little Rock Cooperage Co. *v.* Gunnels, 82 Ark. 286, 101 S. W. 729, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 879 [880].

MORTALITY TABLES.

883. 2. Southern R. Co. *v.* Cunningham, (Ala. 1907) 44 So. 658; Birmingham R., etc., Co. *v.* Wright, (Ala. 1907) 44 So. 1040, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 883; McMahon *v.* Bangs, 5 Penn. (Del.) 178, 62 Atl. 1098; Pittsburgh, etc., R. Co. *v.* Ross, (Ind. 1907) 80 N. E. 845; Croft *v.* Chicago, etc., R. Co., 134 Iowa 411, 109 N. W. 723; Patton *v.* Sanborn, 133 Iowa 650, 110 N. W. 1032; Clark *v.* Van Vleck, (Iowa 1907) 112 N. W. 648; Louisville Belt, etc., Co. *v.* Hart, (Ky. 1906) 92 S. W. 951; O'Clair *v.* Rhode Island Co., 27 R. I. 448, 63 Atl. 238; Banks *v.* Braman, (Mass. 1907) 80 N. E. 799.

That Plaintiff Is Present in Court is immaterial on the question of the admission of mortality tables. Messing *v.* Wilmington City R. Co., 5 Penn. (Del.) 526, 64 Atl. 247.

In the Case of Abnormal Individuals or persons suffering from incurable diseases, life tables are not admissible. Colbert *v.* Rhode Island Co., (R. I. 1906) 67 Atl. 446.

3. Ward *v.* Dampskibsselskabet Kjoebenhavn, 144 Fed. 524; Illinois Cent. R. Co. *v.* Cane, (Ky. 1906) 90 S. W. 1061; Norfolk, etc., R. Co. *v.* Spencer, 104 Va. 657, 52 S. E. 310.

884. 4. Kahn *v.* Herold, 147 Fed. 575.

885. 1. Banks *v.* Braman, (Mass. 1907) 80 N. E. 799.

American Table Admissible. — Illinois Cent. R. Co. *v.* Houchins, (Ky. 1905) 89 S. W. 530.

886. 1. Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Howard *v.* McCabe, (Neb. 1907) 112 N. W. 305; Brown *v.* Blaine, 41 Wash. 287, 83 Pac. 310.

887. 1. Valente *v.* Sierra R. Co., 151 Cal. 534, 91 Pac. 481, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 886 [887]; Stephens *v.* Elliott, (Mont. 1907) 92 Pac. 47, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 886 [887].

2. Ward *v.* Dampskibsselskabet Kjoebenhavn, 144 Fed. 524; Memphis St. R. Co. *v.* Berry, 118 Tenn. 581, 102 S. W. 85.

MORTGAGES.

897. 1. Williams *v.* Davis, (Ala. 1908) 45 So. 908, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897; Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

Other Definitions. — Stumpe *v.* Kopp, 201 Mo. 412, 99 S. W. 1073; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489; Safe Deposit, etc., Guaranty Co. *v.* Linton, 213 Pa. St. 105, 62 Atl. 566; Poarch *v.* Duncan, (Tex. Civ. App. 1906) 91 S. W. 1110; Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

For Statutory Definitions of Term. — Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210.

898. 3. Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588; Lemke *v.* Lemke, (Neb. 1907) 111 N. W. 138; McCourt *v.* Peppard, 126 Wis. 326, 105 N. W. 809.

A Bond and Mortgage are separate obligations, the mortgage being only collateral security for the bond. Stricker *v.* McDonnell, 213 Pa. St. 108, 62 Atl. 520.

4. Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588; Stark *v.* Royer, 44 Wash. 287, 87 Pac. 340.

899. 1. Scott *v.* Hughes, 124 Ga. 1000, 53 S. E. 453.

900. 2. Stumpe *v.* Kopp, 201 Mo. 412, 99 S. W. 1073.

3. Barson *v.* Mulligan, 191 N. Y. 306, 84 N. E. 75.

5. Williams *v.* Davis, (Ala. 1908) 45 So. 908, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 900; Standard Leather Co. *v.* Mercantile Town Mut. Ins. Co., (Mo. App. 1908) 111 S. W. 631; Lake *v.* Weaver, (N. J. 1908) 70 Atl. 81; Poarch *v.* Duncan, (Tex. Civ. App. 1906) 91 S. W. 1110.

901. 1. Standard Leather Co. *v.* Mercantile Town Mut. Ins. Co., (Mo. App. 1908) 111 S. W. 631.

4. Standard Leather Co. *v.* Mercantile Town Mut. Ins. Co., (Mo. App. 1908) 111 S. W. 631.

902. 1. *California.* — Anglo-Californian Bank *v.* Cerf, 147 Cal. 384, 81 Pac. 1077; De Leonis *v.* Hammel, 1 Cal. App. 390, 82 Pac. 349; Renton *v.* Gibson, 148 Cal. 650, 84 Pac. 186.

Colorado. — Moncrieff *v.* Hare, 38 Colo. 221, 87 Pac. 1082.

Georgia. — Scott *v.* Hughes, 124 Ga. 1000, 53 S. E. 453.

Indiana. — Ætna L. Ins. Co. *v.* Broecker, 166 Ind. 576, 77 N. E. 1092.

Michigan. — Flynn *v.* Holmes, 145 Mich. 606, 108 N. W. 685.

New York. — Barson *v.* Mulligan, 191 N. Y. 306, 84 N. E. 75.

Oklahoma. — Gilbert *v.* Ronig, 17 Okla. 324, 87 Pac. 325.

Oregon. — Kaston *v.* Storey, 47 Oregon 150, 80 Pac. 217; Noble *v.* Watkins, 48 Oregon 518, 87 Pac. 771.

South Dakota. — Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210.

Washington. — Jump *v.* North British, etc., Ins. Co., 44 Wash. 596, 87 Pac. 928.

903. 1. **Form of Mortgage.** — McVay *v.* Tousley, (S. Dak. 1905) 105 N. W. 932.

904. 3. Williams *v.* Davis, (Ala. 1908) 45 So. 908; Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210.

Guaranty of Mortgage Debt Must Be in Writing. — Commonwealth Bank *v.* Kirkland, 102 Md. 662, 62 Atl. 799.

4. **Seal Not Necessary between Parties.** — Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62.

Absence of Corporate Seal. — St. Louis Fourth Nat. Bank *v.* Camden Lumber Co., 142 Fed. 257.

5. **Proof of Execution in General.** — Diamond *v.* Dennison, 102 Minn. 302, 113 N. W. 696.

Oral Authority to Scrivener — Estoppel to Deny Execution. — Carr *v.* McColgan, 100 Md. 462, 60 Atl. 606.

905. 1. Ray *v.* Baker, 165 Ind. 74, 74 N. E. 619.

Sufficiency of Signature by Mark. — Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62.

2. **Application of General Rules to Mortgages.** — Markham *v.* Wallace, 147 Ala. 243, 41 So. 304.

Defectively Attested Mortgage Good between Parties. — Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62; Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307.

Defective Acknowledgment Operating as Attestation. — Maddox *v.* Wood, (Ala. 1907) 43 So. 968.

3. **General Principles Applied to Mortgages** — *Sufficiency of Delivery.* — Clymer *v.* Groff, (Pa. 1908) 69 Atl. 1119; Dodsworth *v.* Sullivan, 95 Minn. 39, 103 N. W. 719; Fryer *v.* Fryer, (Neb. 1906) 109 N. W. 175.

Presumption of Delivery in General. — Clymer *v.* Groff, (Pa. 1908) 69 Atl. 1119.

Proof of Delivery. — Dodsworth *v.* Sullivan, 95 Minn. 39, 103 N. W. 719.

Ratification of Delivery. — Carr *v.* McColgan, 100 Md. 462, 60 Atl. 606.

Time of Delivery. — Fryer *v.* Fryer, (Neb. 1906) 109 N. W. 175; Moyer *v.* Dodson, 212 Pa. St. 344, 61 Atl. 937.

Delivery of Notes Secured Not Necessary Where Part Paid. — Moyer *v.* Dodson, 212 Pa. St. 344, 61 Atl. 937.

906. 1. *Sufficiency and Proof of Accept-*

ance. — Dodsworth *v.* Sullivan, 95 Minn. 39, 103 N. W. 719.

Presumption of Acceptance. — Rhea *v.* Planters' Mut. Ins. Co., 77 Ark. 57, 90 S. W. 850.

Separate Defeasance Must Be Accepted. — O'Donnell *v.* Vandersaal, 213 Pa. St. 551, 63 Atl. 60.

2. **Application of General Principles — Necessity and Sufficiency of Acknowledgment.** — Markham *v.* Wallace, 147 Ala. 243, 41 So. 304; Maddox *v.* Wood, (Ala. 1907) 43 So. 968.

Mortgage Defectively Acknowledged Good as to Parties and Purchasers with Notice. — Lynch *v.* Cade, 41 Wash. 216, 83 Pac. 118.

To Overcome a Certificate of Acknowledgment there must be such clear and convincing proof as will amount to a moral certainty. Bennett *v.* Edgar, (County Ct.) 46 Misc. (N. Y.) 231, 93 N. Y. Supp. 203.

907. 1. **Necessity of Recording.** — Rhea *v.* Planters' Mut. Ins. Co., 77 Ark. 57, 90 S. W. 850; Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62; Robertson *v.* Sebastian, (Ky. 1907) 99 S. W. 933; Cornish *v.* Woolverton, 32 Mont. 456, 81 Pac. 4; Girard Trust Co. *v.* Baird, 212 Pa. St. 41, 61 Atl. 507; Francis *v.* Francis, 78 S. Car. 178, 58 S. E. 804.

Necessity of Recording Assignment of Mortgage. — Pennypacker *v.* Latimer, 10 Idaho 618, 81 Pac. 55; Anthony *v.* Brennan, 74 Kan. 707, 87 Pac. 1136; Mayse *v.* Williams, (Kan. 1905) 91 Pac. 795; Huitink *v.* Thompson, 95 Minn. 392, 104 N. W. 237; Casserly *v.* Morrow, 101 Minn. 16, 111 N. W. 654; Morton *v.* Blades Lumber Co., 144 N. Car. 31, 56 S. E. 551; Barringer *v.* Loder, 47 Oregon 223, 81 Pac. 778; Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210; Richards Trust Co. *v.* Rhomberg, 19 S. Dak. 595, 104 N. W. 268; Miller *v.* Berry, 19 S. Dak. 625, 104 N. W. 311; Marling *v.* Milwaukee Realty Co., 127 Wis. 363, 106 N. W. 844.

908. 1. Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62; Robertson *v.* Sebastian, (Ky. 1907) 99 S. W. 933.

4. Vallely *v.* Grafton First Nat. Bank, 14 N. Dak. 580, 106 N. W. 127; Safe Deposit, etc., Guaranty Co. *v.* Linton, 213 Pa. St. 105, 62 Atl. 566; O'Donnell *v.* Vandersaal, 213 Pa. St. 551, 63 Atl. 60; *In re* King, 215 Pa. St. 59, 64 Atl. 324.

909. 1. *In re* Snyder, (Iowa 1908) 114 N. W. 615; Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561; Standorf *v.* Shockley, (N. Dak. 1907) 111 N. W. 622, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 909.

3. Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

4. Safe Deposit, etc., Guaranty Co. *v.* Linton, 213 Pa. St. 105, 62 Atl. 566.

5. Scott *v.* Hughes, 124 Ga. 1000, 53 S. E. 453; Samuelson *v.* Mickey, 73 Neb. 852, 106 N. W. 461.

910. 4. O'Donnell *v.* Vandersaal, 213 Pa. St. 551, 63 Atl. 60.

5. Linkemann *v.* Knepper, 226 Ill. 473, 80 N. E. 1009; Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Abrams *v.* Abrams, 74 Kan. 888, 88 Pac. 70; Hall *v.* O'Connell, (Oregon 1908) 95 Pac. 717.

Parol Defeasance Extinguished by Parol. — Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Sears *v.* Gilman, (Mass. 1908) 85 N. E. 466.

Subsequent Oral Defeasance Requires Consideration. — Samuelson *v.* Mickey, 73 Neb. 852, 106 N. W. 461.

911. 1. Hall *v.* O'Connell, (Oregon 1908) 95 Pac. 717.

3. Sebree *v.* Thompson, (Ky. 1907) 104 S. W. 781; O'Donnell *v.* Vandersaal, 213 Pa. St. 551, 63 Atl. 60.

4. O'Donnell *v.* Vandersaal, 213 Pa. St. 551, 63 Atl. 60.

912. 1. Dennis *v.* Atlantic Nat. Bldg., etc., Assoc., (C. C. A.) 136 Fed. 539; Kean *v.* Landrum, 72 S. Car. 556, 52 S. E. 421.

Mortgage by Third Party with Owner's Consent. — Pellerin *v.* Sanders, 116 La. 616, 40 So. 917.

Bona Fide Mortgagee Protected Notwithstanding Reversal of Partition Decree. — Ure *v.* Ure, 223 Ill. 454, 79 N. E. 153.

2. Williamson-Halsell, Frazier Co. *v.* Ackerman, (Kan. 1908) 94 Pac. 807; Long *v.* Branham, (Ky. 1907) 99 S. W. 271.

Where Mortgagee Is Ignorant of Duress. — Parsons *v.* Crocker, 128 Iowa 641, 105 N. W. 162.

Assignment Procured by Undue Influence. — Adsit *v.* Ide, 150 Mich. 367, 114 N. W. 211.

3. Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034.

4. **Effect of Fraud in General.** — Abercombie *v.* Carpenter, (Ala. 1907) 43 So. 746; De Leonis *v.* Hammel, 1 Cal. App. 390, 82 Pac. 349; Langley *v.* Fitzgerald, (Colo. 1908) 95 Pac. 923; Ray *v.* Baker, 165 Ind. 74, 74 N. E. 610; Williams *v.* Ketcham, 37 Ind. App. 506, 77 N. E. 285; McCusker *v.* Geiger, 195 Mass. 46, 80 N. E. 648; Adsit *v.* Ide, 150 Mich. 367, 114 N. W. 211; Skajewski *v.* Skaya, (Minn. 1907) 114 N. W. 247; Safe Deposit, etc., Guaranty Co. *v.* Linton, 213 Pa. St. 105, 62 Atl. 566, *distinguishing* Goodwin *v.* McMinn, 193 Pa. St. 646, 44 Atl. 1094; Whittle *v.* Jones, (S. Car. 1908) 60 S. E. 522.

Mortgagee Must Have Knowledge of Fraud. — Parsons *v.* Crocker, 128 Iowa 641, 105 N. W. 162.

913. 2. Jacks *v.* Deering, 150 Cal. 272, 88 Pac. 909; Gross *v.* Jones, 89 Miss. 44, 42 So. 802. See Maas *v.* Dunmyer, (Okla. 1908) 96 Pac. 591.

914. 1. **Statute Prescribing Character of Investments Does Not Apply to Purchase-money Mortgage.** — Cumberland Trust Co. *v.* Padgett, 70 N. J. Eq. 349, 61 Atl. 837.

915. 5. Carpenter *v.* Zarbuck, 74 Ark. 474, 86 S. W. 299; Stark *v.* Kirkley, (Mo. App. 1908) 108 S. W. 625.

6. Stark *v.* Kirkley, (Mo. App. 1908) 108 S. W. 625.

7. Bourn *v.* Robinson, (Tex. Civ. App. 1908) 107 S. W. 873.

8. **Life Interest.** — Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660.

11. Clark *v.* Smallwood, 156 Fed. 400; Washington Trust Co. *v.* Morse Iron Works, etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495.

916. 3. Washington Trust Co. *v.* Morse Iron Works, etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495.

6. Clark *v.* Lyster, (C. C. A.) 155 Fed. 513; Washington Trust Co. *v.* Morse Iron Works,

etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495.

8. Bourn *v.* Robinson, (Tex. Civ. App. 1908) 107 S. W. 873.

9. State *v.* Mobley, 102 Md. 408, 62 Atl. 063.

10. Hess *v.* Zahn, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 515, 107 N. Y. Supp. 951.

11. Monmouth County Electric Co. *v.* McKenna, 68 N. J. Eq. 160, 60 Atl. 32; Donovan *v.* Twist, 105 N. Y. App. Div. 171, 93 N. Y. Supp. 990; Washington Trust Co. *v.* Morse Iron Works, etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495; Cummings *v.* Consolidated Mineral Water Co., 27 R. I. 195, 61 Atl. 353.

917. 3. New England Water Works Co. *v.* Farmers' L. & T. Co., (C. C. A.) 136 Fed. 521; *In re* Adamant Plaster Co., 137 Fed. 251; McClung *v.* Quincy Carriage, etc., Co., 117 Tenn. 250, 96 S. W. 960; Ross *v.* Lafferty, (Tex. Civ. App. 1906) 95 S. W. 18.

7. Smith *v.* Vary, 147 Ala. 186, 41 So. 941.

918. 2. Smith *v.* Vary, 147 Ala. 186, 41 So. 941; Walden *v.* Walden, 128 Ga. 126, 57 S. E. 323; Payton *v.* McPhaul, 128 Ga. 510, 58 S. E. 50; Martin *v.* Kitchen, 195 Mo. 477, 93 S. W. 780; Holley *v.* Curry, 58 W. Va. 70, 51 S. E. 135.

4. Walden *v.* Walden, 128 Ga. 126, 57 S. E. 323; Martin *v.* Kitchen, 195 Mo. 477, 93 S. W. 780; Armstrong *v.* Wilson, (Tex. Civ. App. 1908) 109 S. W. 955; Holley *v.* Curry, 58 W. Va. 70, 51 S. E. 135.

5. Kellogg *v.* Randolph, (N. J. 1906) 63 Atl. 753.

6. Ferguson *v.* Twisdale, 137 N. Car. 414, 49 S. E. 914, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919.

7. *Compare* Smith *v.* Vary, 147 Ala. 186, 41 So. 941.

920. 1. **Trivial Errors in Otherwise Correct Description.**—See Kellogg *v.* Randolph, (N. J. 1906) 63 N. J. 753, wherein it was held that a misdescription of the town in which the properties were located was not fatal.

6. *Arizona.*—Richardson *v.* Wren, (Ariz. 1908) 95 Pac. 124.

California.—Muir *v.* Hamilton, (Cal. 1908) 93 Pac. 857.

Florida.—Otis *v.* McCaskill, 51 Fla. 516, 41 So. 458.

Illinois.—Thackaberry *v.* Johnson, 228 Ill. 149, 81 N. E. 828.

Indiana.—Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. 1908) 84 N. E. 1077.

Iowa.—Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034.

Michigan.—Dierkes *v.* Wideman, 143 Mich. 181, 106 N. W. 735.

Minnesota.—Dodsworth *v.* Sullivan, 95 Minn. 39, 103 N. W. 719.

New Jersey.—Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167; Smith *v.* Krueger, (N. J. 1906) 63 Atl. 850; Sternberg *v.* Sternberg, (N. J. 1908) 69 Atl. 492.

New York.—Towanda First Nat. Bank *v.* Robinson, 188 N. Y. 45, 80 N. E. 567.

Oklahoma.—Clowers *v.* Snowden, (Okla. 1908) 96 Pac. 596.

Wisconsin.—McCourt *v.* Peppard, 126 Wis. 326, 105 N. W. 809.

Application of General Principles to Mortgages.—Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. 1908) 84 N. E. 1077.

921. 1. Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167.

2. **In Absence of Donative Intent Consideration Necessary.**—Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167.

3. Muir *v.* Greene, 115 N. Y. App. Div. 173, 100 N. Y. Supp. 722; Richfield Springs First Nat. Bank *v.* Keller, (Supm. Ct. App. Div.) 111 N. Y. Supp. 729.

Evidence of Fraud and Duress Inadmissible in Absence of Knowledge by Mortgagee.—Moyer *v.* Dodson, 212 Pa. St. 344, 61 Atl. 937.

5. Waterloo First Nat. Bank *v.* Bennett, 215 Ill. 398, 74 N. E. 405; Quackenbush *v.* Mapes, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 124, 105 N. Y. Supp. 654, *affirmed* 123 N. Y. App. Div. 250, 107 N. Y. Supp. 1052; Richfield Springs First Nat. Bank *v.* Keller, (Supm. Ct. App. Div.) 111 N. Y. Supp. 729.

6. Towanda First Nat. Bank *v.* Robinson, 105 N. Y. App. Div. 193, 94 N. Y. Supp. 767.

8. Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167.

9. Henry *v.* State Bank, 131 Iowa 97, 107 N. W. 1034; Dierkes *v.* Wideman, 143 Mich. 181, 106 N. W. 735.

Threat of Criminal Prosecution.—Williamson-Halsell, Frazier Co. *v.* Ackerman, (Kan. 1908) 94 Pac. 807.

In the absence of an agreement to abandon or suppress a criminal prosecution a mortgage will be upheld against the contention that it was given to stop a threatened prosecution. Moyer *v.* Dodson, 212 Pa. St. 344, 61 Atl. 937.

Illegality of Consideration for Assignment No Defense to Mortgagor.—Conradt *v.* Lepper, 13 Wyo. 473, 81 Pac. 307.

922. 2. Lepper *v.* Conradt, 15 Wyo. 394, 89 Pac. 575.

7. Richardson *v.* Wren, (Ariz. 1908) 95 Pac. 124; Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167.

9. Richardson *v.* Wren, (Ariz. 1908) 95 Pac. 124.

923. 1. Smith *v.* Krueger, (N. J. 1906) 63 Atl. 850.

3. Bastin *v.* Schafer, 15 Okla. 607, 85 Pac. 349, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923.

4. Griffis *v.* Connersville First Nat. Bank, (Ind. App. 1906) 79 N. E. 230; Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167.

5. Richardson *v.* Wren, (Ariz. 1908) 95 Pac. 124.

925. 4. Davis *v.* Davis, (Vt. 1908) 69 Atl. 876.

5. Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

926. 1. **Misdescription of Bond Not Fatal.**—Emerson *v.* Knight, (Ga. 1908) 60 S. E. 255.

3. Bastin *v.* Schafer, 15 Okla. 607, 85 Pac. 349, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926.

5. Bastin *v.* Schafer, 15 Okla. 607, 85 Pac. 349, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926.

6. Bastin *v.* Schafer, 15 Okla. 607, 85 Pac. 349, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926.

7. Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

927. 5. Du Bois *v.* Denver First Nat. Bank, (Colo. 1908) 96 Pac. 169.

6. Ladd *v.* Lookout Distilling Co., 147 Ala. 173, 40 So. 610; Groos *v.* Chittim, (Tex. Civ. App. 1907) 100 S. W. 1006.

928. 5. San Gabriel Valley Bank *v.* Lake View Town Co., (Cal. App. 1906) 86 Pac. 727; Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616; Bastin *v.* Schafer, 15 Okla. 607, 85 Pac. 349, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 928.

7. Gray *v.* Bennett, (Iowa 1905) 105 N. W. 377.

10. Anglo-Californian Bank *v.* Cerf, 147 Cal. 384, 81 Pac. 1077; Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660.

929. 1. Hester *v.* Gairdner, 128 Ga. 531, 58 S. E. 165; Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660; Blake *v.* Lowry, (Tex. Civ. App. 1906) 93 S. W. 521.

2. Ladd *v.* Lookout Distilling Co., 147 Ala. 173, 40 So. 610; Du Bois *v.* Denver First Nat. Bank, (Colo. 1908) 96 Pac. 169; Hester *v.* Gairdner, 128 Ga. 531, 58 N. E. 165; Askew *v.* Thompson, 129 Ga. 325, 58 S. E. 854; Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

3. Ladd *v.* Lookout Distilling Co., 147 Ala. 173, 40 So. 610; Anglo-Californian Bank *v.* Cerf, 147 Cal. 384, 81 Pac. 1077; Du Bois *v.* Denver First Nat. Bank, (Colo. 1908) 96 Pac. 169.

4. *Compare* Anglo-Californian Bank *v.* Cerf, 147 Cal. 384, 81 Pac. 1077.

6. **Covenant of Warranty Limited by Recital of Prior Mortgage.** — Frye *v.* Hubbell, (N. H. 1907) 68 Atl. 325.

930. 3. Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588; White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

4. Loos *v.* McCormack, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 144, 93 N. Y. Supp. 1088.

6. Meeker *v.* Shuster, 4 Cal. App. 294, 87 Pac. 1102; Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183.

9. Krug *v.* Kautz, (S. Dak. 1907) 113 N. W. 623.

Statute Requiring Mortgage to Show When Due. — Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

931. 2. Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. 1908) 84 N. E. 1077.

3. Spesard *v.* Spesard, 75 Kan. 87, 88 Pac. 551.

Mortgagor May Buy Tax Title Notwithstanding Such Covenant. — Ross *v.* Cole, 94 Minn. 513, 103 N. W. 561.

932. 1. Germania L. Ins. Co. *v.* Potter, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 204, 107 N. Y. Supp. 912.

Breach of Warranty Maturing Debt. — King *v.* King, 215 Ill. 100, 74 N. E. 89.

Maturity of Entire Debt on Sale by Mortgagor — Grantee Bound. — Tidwell *v.* Wittmeier, (Ala. 1907) 43 So. 782.

A Mere Technical Default in the Payment of Taxes will not entitle a mortgagee to foreclosure in equity. Germania L. Ins. Co. *v.* Potter, (Supm. Ct. App. Div.) 109 N. Y. Supp. 435.

3. Bumpus *v.* Willett, (County Ct.) 55 Misc. (N. Y.) 94, 106 N. Y. Supp. 366.

4. Robson *v.* Beasley, 118 La. 738, 43 So. 391, *citing* [20] AM. AND ENG. ENCYC. OF LAW (2d ed.) 932; Caldwell *v.* Kimbrough, (Miss. 1907) 45 So. 7; Macdonald *v.* Potter, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 206, 107 N. Y. Supp. 915.

Rights of Assignee. — Bartlett Estate Co. *v.* Fairhaven Land Co., (Wash. 1908) 94 Pac. 900.

5. Caldwell *v.* Kimbrough, (Miss. 1907) 45 So. 7; Arnot *v.* Union Salt Co., 109 N. Y. App. Div. 433, 96 N. Y. Supp. 80; Pizer *v.* Herzig, 120 N. Y. App. Div. 102, 105 N. Y. Supp. 38; Smith *v.* Lamb, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 455; Kilpatrick *v.* Germania L. Ins. Co., 183 N. Y. 163, 75 N. E. 1124.

Option Inures to Assignee. — Patten *v.* Pepper Hotel Co., (Cal. 1908) 96 Pac. 296.

That the Mortgagee Could Not Be Found when interest became due is sufficient reason to prevent forfeiture for default in payment of interest. Isaacs *v.* Baldwin, (Supm. Ct. Spec. T.) 105 N. Y. Supp. 38.

6. Caldwell *v.* Kimbrough, (Miss. 1907) 45 So. 7.

7. Provident Sav. L. Assur. Soc. *v.* Georgia Industrial Co., 124 Ga. 399, 52 S. E. 289; Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. 1908) 84 N. E. 1077; Caldwell *v.* Kimbrough, (Miss. 1907) 45 So. 7.

9. Trinity County Bank *v.* Haas, 151 Cal. 553, 91 Pac. 385; Quackenbush *v.* Mapes, 123 N. Y. App. Div. 242, 107 N. Y. Supp. 1047.

933. 1. Caldwell *v.* Kimbrough, (Miss. 1907) 45 So. 7.

Election Irrevocable. — Kilpatrick *v.* Germania L. Ins. Co., 183 N. Y. 163, 75 N. E. 1124.

Option Lost by Tender of Interest Due. — Trinity County Bank *v.* Haas, 151 Cal. 553, 91 Pac. 385.

Tender after Exercise of Option Ineffectual. — Caldwell *v.* Kimbrough, (Miss. 1907) 45 So. 7.

3. Reis *v.* McDevitt, (Pa. 1908) 68 Atl. 1012. *Compare* Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. 1908) 84 N. E. 1077.

934. 1. *In re* Banner, 149 Fed. 936; Pizer *v.* Herzig, 121 N. Y. App. Div. 609, 106 N. Y. Supp. 370. See also Union Trust Co. *v.* Charlotte General Electric Co., (Mich. 1908) 116 N. W. 379.

Not Appointed Where Inequitable. — Ætna L. Ins. Co. *v.* Broecker, 166 Ind. 576, 77 N. E. 1092.

3. Hayward *v.* Hayward, 114 La. 476, 38 So. 424; Robson *v.* Beasley, 118 La. 738, 43 So. 391.

7. **Statute Requiring Rate of Interest to Be Stated.** — Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

8. McKinnon *v.* Waterbury, 136 Fed. 489.

935. 2. *In re* Noel, 137 Fed. 694; Lefmann *v.* Brill, (C. C. A.) 142 Fed. 44; Carlsbad Water Co. *v.* New, 33 Colo. 389, 81 Pac. 34; McCauley *v.* Shockey, 105 Md. 641, 66 Atl. 625; Klauber *v.* Schloss, 193 Mo. 502, 95 S. W. 930; Weis *v.* Levy, 106 N. Y. App. Div. 496, 94 N. Y. Supp. 857; Zartman *v.* Waterloo First Nat. Bank, 109 N. Y. App. Div. 406, 96 N. Y. Supp. 633; Jones *v.* Jones, (S. Dak. 1906) 108 N. W. 23.

Innocent Mortgagee from Fraudulent Grantee Protected. — Gilcrest *v.* Bartlett, (N. H. 1906) 64 Atl. 767.

3. Thomas *v.* Livingston, 147 Ala. 200, 40 So. 504; Smith *v.* Smith, (Ala. 1907) 45 So. 163; Sheffield *v.* Hurst, (Ky. 1907) 104 S. W. 350; Borders *v.* Allen, (Ky. 1908) 110 S. W. 240; Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

Question Cannot Be Raised at Law — *Contra.* [illegible] Pfluger, 120 Wis. 253, 105 N. W. 476; Barchent *v.* Snyder, 128 Wis. 423, 107 N. W. 770.

In Maine a separate bill in equity is no longer necessary, as courts of law have equity powers. Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660.

936. 2. *Grantor.* — Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660.

Judgment Creditors of Grantor. — See Valley *v.* Grafton First Nat. Bank, 14 N. Dak. 580, 106 N. W. 127.

937. 1. Conover *v.* Palmer, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 1074.

2. *Alabama.* — Shreve *v.* McGowin, 143 Ala. 665, 42 So. 94.

Arkansas. — Hays *v.* Emerson, 75 Ark. 551, 87 S. W. 1027.

Colorado. — Blackstock *v.* Robertson, (Colo. 1908) 94 Pac. 336.

Florida. — De Bartlett *v.* De Wilson, 52 Fla. 497, 42 So. 189.

Illinois. — Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

Iowa. — Laub *v.* Romans, (Iowa 1905) 105 N. W. 102; Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257.

Kansas. — Wiswell *v.* Simmons, (Kan. 1908) 95 Pac. 407.

Kentucky. — Veach *v.* Smith, (Ky. 1908) 107 S. W. 234; Borders *v.* Allen, (Ky. 1908) 110 S. W. 240.

Louisiana. — *In re* Schmidt, 114 La. 78, 38 So. 26.

Maryland. — Miller *v.* Miller, 101 Md. 600, 61 Atl. 210; Rosenstock *v.* Keyser, 104 Md. 380, 65 Atl. 37.

Missouri. — Powell *v.* Crow, 204 Mo. 481, 102 S. W. 1024; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

Nebraska. — Lemke *v.* Lemke, (Neb. 1907) 111 N. W. 138.

New Jersey. — Wilson *v.* Ferry, 70 N. J. Eq. 213, 62 Atl. 310.

New York. — Huntington *v.* Kneeland, 105 N. Y. App. Div. 629, 93 N. Y. Supp. 845; Conover *v.* Palmer, (Supm. Ct. App. Div.) 108 N. Y. Supp. 480.

North Dakota. — Wisner *v.* Field, 15 N. Dak. 43, 106 N. W. 38; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

Oregon. — Cooper *v.* Stauber, (Oregon 1907) 89 Pac. 641; Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183; Hall *v.* O'Connell, (Oregon 1908) 95 Pac. 717.

South Carolina. — Francis *v.* Francis, 78 S. Car. 178, 58 S. E. 804.

South Dakota. — Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210; Krug *v.* Kautz, (S. Dak. 1907) 113 N. W. 623.

Texas. — Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Rotan Grocery Co. *v.* Turner, (Tex. Civ. App. 1907) 102 S. W. 932; Middleton *v.* Johnston, (Tex. Civ. App. 1908) 110 S. W. 789.

West Virginia. — Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724; Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

3. Smith *v.* Smith, (Ala. 1907) 45 So. 163; Thomas *v.* Livingston, (Ala. 1908) 46 So. 851; Thornton *v.* Pinckard, (Ala. 1908) 47 So. 289; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489; Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657.

4. Thomas *v.* Livingston, (Ala. 1908) 46 So. 851; Thornton *v.* Pinckard, (Ala. 1908) 47 So. 289; Graham *v.* Fischer, (Ky. 1908) 110 S. W. 386; Dabney *v.* Smith, 38 Wash. 40, 80 Pac. 199; Hesser *v.* Brown, 40 Wash. 688, 82 Pac. 934.

5. *Alabama.* — Maxwell *v.* Herzfeld, (Ala. 1907) 42 So. 987; Thomas *v.* Livingston, (Ala. 1908) 46 So. 851.

Arkansas. — Hays *v.* Emerson, 75 Ark. 551, 87 S. W. 1027.

Illinois. — Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588. *Compare* Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704.

Iowa. — Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257; Krebs *v.* Lauser, 133 Iowa 241, 110 N. W. 443.

Missouri. — Bailey *v.* St. Louis Union Trust Co., 188 Mo. 483, 87 S. W. 1003; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

Nebraska. — Fryer *v.* Fryer, (Neb. 1906) 109 N. W. 175.

New Jersey. — Jeffreys *v.* Charlton, (N. J. 1907) 65 Atl. 711.

North Dakota. — Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

Texas. — Blake *v.* Lowey, (Tex. Civ. App. 1906) 93 S. W. 521; Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Rotan Grocery Co. *v.* Turner, (Tex. Civ. App. 1907) 102 S. W. 932.

Washington. — Dabney *v.* Smith, 38 Wash. 40, 80 Pac. 199; Hesser *v.* Brown, 40 Wash. 688, 82 Pac. 934; Hinchman *v.* Cook, 45 Wash. 490, 88 Pac. 931; Neeson *v.* Smith, (Wash. 1907) 92 Pac. 131.

6. *Alabama.* — Thomas *v.* Livingston, 147 Ala. 200, 40 So. 504; Thomas *v.* Livingston, (Ala. 1908) 46 So. 851.

Indiana. — White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

Iowa. — Kinkead *v.* Peet (Iowa 1908) 114 N. W. 616.

Kentucky. — Sheffield *v.* Day, (Ky. 1906) 90 S. W. 545; Sebree *v.* Thompson, (Ky. 1907) 104 S. W. 781.

Missouri. — Powell *v.* Crow, 204 Mo. 481, 102 S. W. 1024; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

North Dakota. — Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

Oregon. — Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183.

Texas. — Blake *v.* Lowry, (Tex. Civ. App. 1906) 93 S. W. 521.

Utah. — Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980.

Washington. — Dabney *v.* Smith, 38 Wash. 40, 80 Pac. 199.

938. 1. **Where the Transaction, if Construed to Be Mortgage.** — Maxwell *v.* Herzfeld, (Ala.

1907) 42 So. 987; Sheffield *v.* Hurst, (Ky. 1907) 104 S. W. 350.

2. Harrah *v.* Smith, (Neb. 1907) 112 N. W. 337.

4. Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Rotan Grocery Co. *v.* Turner, (Tex. Civ. App. 1907) 102 S. W. 932; Plummer *v.* Ilse, 41 Wash. 5, 82 Pac. 1009.

Transaction Cannot Be Mortgage and Conditional Sale. — Blake *v.* Lowry, (Tex. Civ. App. 1906) 93 S. W. 521.

5. Blackstock *v.* Robertson, (Colo. 1908) 94 Pac. 336; Ferguson *v.* Boyd, (Ind. App. 1906) 79 N. E. 549; Laub *v.* Romans, (Iowa 1905) 105 N. W. 102; Rosenstock *v.* Keyser, 104 Md. 380, 65 Atl. 37; Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561; Wisner *v.* Field, 15 N. Dak. 43, 106 N. W. 38; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980.

939. 1. *Colorado.* — Butsch *v.* Smith, (Colo. 1907) 90 Pac. 61; Blackstock *v.* Robertson, (Colo. 1908) 94 Pac. 336.

Indiana. — Ferguson *v.* Boyd, (Ind. App. 1906) 79 N. E. 549; White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

Iowa. — Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257.

Kentucky. — Veach *v.* Smith, (Ky. 1908) 107 S. W. 234; Borders *v.* Allen, (Ky. 1908) 110 S. W. 240.

Maryland. — Miller *v.* Miller, 101 Md. 600, 61 Atl. 210.

Missouri. — Powell *v.* Crow, 204 Mo. 481, 102 S. W. 1024.

Oregon. — Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183.

South Carolina. — Francis *v.* Francis, 78 S. Car. 178, 58 S. E. 804.

South Dakota. — Jones *v.* Jones, (S. Dak. 1906) 108 N. W. 23; Krug *v.* Kautz, (S. Dak. 1907) 113 N. W. 623.

Texas. — Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657.

Washington. — Dabney *v.* Smith, 38 Wash. 40, 80 Pac. 199; Plummer *v.* Ilse, 41 Wash. 5, 82 Pac. 1009; Hinchman *v.* Cook, 45 Wash. 490, 88 Pac. 931.

2. De Bartlett *v.* De Wilson, 52 Fla. 497, 42 So. 189; Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257; Frazier *v.* Frazier, (Ky. 1908) 108 S. W. 889; Powell *v.* Crow, 204 Mo. 481, 102 S. W. 1024; Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183.

3. Butsch *v.* Smith, (Colo. 1907) 90 Pac. 61; White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110; Betts *v.* Betts, 132 Iowa 72, 106 N. W. 928; Frazier *v.* Frazier, (Ky. 1908) 108 S. W. 889; Borders *v.* Allen, (Ky. 1908) 110 S. W. 240; Wagg *v.* Herbert, (Okla. 1907) 92 Pac. 250; Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183; Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724.

940. 1. *Indiana.* — Ferguson *v.* Boyd, (Ind. App. 1906) 79 N. E. 549.

Iowa. — Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257; Betts *v.* Betts, 132 Iowa 72, 106 N. W. 928; Kinkead *v.* Peet, (Iowa 1908) 114 N. W. 616.

Kansas. — Hubbard *v.* Cheney, (Kan. 1907) 91 Pac. 793.

Kentucky. — Sheffield *v.* Day, (Ky. 1906) 90 S. W. 545; Veach *v.* Smith, (Ky. 1908) 107 S. W. 234.

Maryland. — Miller *v.* Miller, 101 Md. 600, 61 Atl. 210.

Missouri. — Bailey *v.* St. Louis Union Trust Co., 188 Mo. 483, 87 S. W. 1003.

New Jersey. — Wilson *v.* Terry, 70 N. J. Eq. 231, 62 Atl. 310.

Oregon. — Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183.

South Dakota. — Jones *v.* Jones, (S. Dak. 1906) 108 N. W. 23.

Texas. — Rotan Grocery Co. *v.* Turner, (Tex. Civ. App. 1907) 102 S. W. 932.

Washington. — Dabney *v.* Smith, 38 Wash. 40, 80 Pac. 199; Hinchman *v.* Cook, 45 Wash. 490, 88 Pac. 931.

West Virginia. — Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724.

Subsequent Conversations and Declarations. — Hoskins *v.* Hoskins, (Ky. 1905) 87 S. W. 320.

2. *Alabama.* — Pearson *v.* Dancer, 144 Ala. 427, 39 So. 474; Wynn *v.* Fitzwater, (Ala. 1907) 44 So. 97; Farrow *v.* Cotney, (Ala. 1907) 45 So. 69; Smith *v.* Smith, (Ala. 1907) 45 So. 168; Thomas *v.* Livingston, (Ala. 1908) 46 So. 851; Rogers *v.* Burt, (Ala. 1908) 47 So. 226.

Arkansas. — Hays *v.* Emerson, 75 Ark. 551, 87 S. W. 1027.

Georgia. — Askew *v.* Thompson, 129 Ga. 325, 58 S. E. 854.

Illinois. — Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704.

Indiana. — White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

Iowa. — Kinkead *v.* Peet, (Iowa 1908) 114 N. W. 616.

Kansas. — Wiswell *v.* Simmons, (Kan. 1908) 95 Pac. 407.

Maryland. — Miller *v.* Miller, 101 Md. 600, 61 Atl. 210.

Massachusetts. — Sears *v.* Gilman, (Mass. 1908) 85 N. E. 466.

Michigan. — Flynn *v.* Holmes, 145 Mich. 606, 108 N. W. 685.

Missouri. — Powell *v.* Crow, 204 Mo. 481, 102 S. W. 1024; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

Nebraska. — Samuelson *v.* Mickey, 73 Neb. 852, 103 N. W. 671; Harrah *v.* Smith, (Neb. 1907) 112 N. W. 337.

New Jersey. — Lake *v.* Weaver, (N. J. 1908) 70 Atl. 81.

Oregon. — Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 940.

South Carolina. — Francis *v.* Francis, 78 S. Car. 178, 58 S. E. 804.

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West Virginia. — Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724; Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

911. 2. Smith *v.* Smith, (Ala. 1907) 45 So. 168; Ferguson *v.* Boyd, (Ind. App. 1906) 79 N. E. 549; Bartels *v.* Davis, 34 Mont. 285, 85 Pac. 1027; Wisner *v.* Field, 15 N. Dak. 43, 106 N. W. 38.

4. *Alabama.* — Pearson *v.* Dancer, 144 Ala. 427, 39 So. 474; Farrow *v.* Cotney, (Ala. 1907) 45 So. 69; Smith *v.* Smith, (Ala. 1907) 45 So. 168; Thomas *v.* Livingston, (Ala. 1908) 46 So. 851.

Illinois. — Rankin *v.* Rankin, 216 Ill. 132, 74 N. E. 763; Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

Iowa. — Krebs *v.* Lauser, 133 Iowa 241, 110 N. W. 443.

Kentucky. — Graham *v.* Fischer, (Ky. 1908) 110 S. W. 386.

Maryland. — Rosenstock *v.* Keyser, 104 Md. 380, 65 Atl. 37.

Minnesota. — Webster *v.* McDowell, 102 Minn. 445, 113 N. W. 1021.

Missouri. — Bailey *v.* St. Louis Union Trust Co., 188 Mo. 483, 87 S. W. 1003; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

Nebraska. — Lemke *v.* Lemke, (Neb. 1907) 111 N. W. 138; Harrah *v.* Smith, (Neb. 1907) 112 N. W. 337.

Oregon. — Cooper *v.* Stauber, (Oregon 1907) 89 Pac. 641.

South Dakota. — Jones *v.* Jones, (S. Dak. 1906) 108 N. W. 23.

Texas. — Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Rotan Grocery Co. *v.* Turner, (Tex. Civ. App. 1907) 102 S. W. 932.

Washington. — Neeson *v.* Smith, (Wash. 1907) 92 Pac. 131.

West Virginia. — Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724; Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

912. 2. Smith *v.* Smith, (Ala. 1907) 45 So. 168; Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

3. Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588; Linkemann *v.* Knepper, 226 Ill. 473, 80 N. E. 1009; Krebs *v.* Lauser, 133 Iowa 241, 110 N. W. 443; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489; Jeffreys *v.* Charlton, (N. J. 1907) 65 Atl. 711; Blake *v.* Lowry, (Tex. Civ. App. 1906) 93 S. W. 521; Neeson *v.* Smith, (Wash. 1907) 92 Pac. 131.

4. Rogers *v.* Burt, (Ala. 1908) 47 So. 226; Deadman *v.* Yatis, 230 Ill. 243, 82 N. E. 592.

Contra. — Conover *v.* Palmer, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 1074.

913. 1. *Alabama.* — Thomas *v.* Livingston, 147 Ala. 200, 40 So. 504; Shreve *v.* McGowin, 143 Ala. 665, 42 So. 94; Harper *v.* Hays, (Ala. 1907) 43 So. 360; Courtner *v.* Etheredge, (Ala 1907) 43 So. 368; Wynn *v.* Fitzwater, (Ala. 1907) 44 So. 97.

Arkansas. — Reynolds *v.* Blanks, 78 Ark. 527, 94 S. W. 694.

California. — Anglo-Californian Bank *v.* Cerf, 147 Cal. 384, 81 Pac. 1077; De Leonis *v.* Hammel, 1 Cal. App. 390, 82 Pac. 349; Prefumo *v.* Russell, 148 Cal. 451, 83 Pac. 810; Renton *v.* Gibson, 148 Cal. 650, 84 Pac. 186; Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93; Meeker *v.* Shuster, 4 Cal. App. 294, 87 Pac. 1102; Muir *v.* Hamilton, (Cal. 1908) 93 Pac. 857; Couts *v.* Winston, (Cal. 1908) 96 Pac. 357.

Florida. — De Bartlett *v.* De Wilson, 52 Fla. 497, 42 So. 189; Wylly-Gabbett Co. *v.* Williams, 53 Fla. 872, 42 So. 910.

Georgia. — Askew *v.* Thompson, 129 Ga. 325, 58 S. E. 854.

Illinois. — Linkemann *v.* Knepper, 226 Ill. 473, 80 N. E. 1009; Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704.

Indiana. — Holliday *v.* Perry, 38 Ind. App. 588, 78 N. E. 877; Ferguson *v.* Boyd, (Ind. App. 1906) 79 N. E. 549; White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

Indian Territory. — Guarantee Gold Bond, etc., Co. *v.* Edwards, (Indian Ter. 1907) 104 S. W. 624.

Iowa. — Laub *v.* Romans, (Iowa 1905) 105 N. W. 102; Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257; McElroy *v.* Allfree, 131 Iowa 112, 108 N. W. 116; *In re* Snyder, (Iowa 1908) 114 N. W. 615.

Kansas. — Foster Lumber Co. *v.* Harlan County Bank, 71 Kan. 180, 80 Pac. 49; Hilt *v.* Griffin, (Kan. 1907) 90 Pac. 808; Hubbard *v.* Cheney, (Kan. 1907) 91 Pac. 793; Wiswell *v.* Simmons, (Kan. 1908) 95 Pac. 407.

Kentucky. — Hoskins *v.* Hoskins, (Ky. 1905) 87 S. W. 320; Gavin *v.* Vincent, (Ky. 1905) 87 S. W. 804; Sheffield *v.* Day, (Ky. 1906) 90 S. W. 545; Barnett *v.* Williams, (Ky. 1907) 101 S. W. 1191; Howe *v.* Courtney, (Ky. 1908) 107 S. W. 206; Frazier *v.* Frazier, (Ky. 1908) 108 S. W. 889; Clarke *v.* McDowell, (Ky. 1908) 109 S. W. 887; Borders *v.* Allen, (Ky. 1908) 110 S. W. 240.

Louisiana. — *In re* Schmidt, 114 La. 78, 38 So. 26; Leger *v.* Leger, 118 La. 322, 42 So. 951; Rester *v.* Powell, (La. 1907) 45 So. 372.

Maine. — Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660.

Maryland. — Miller *v.* Miller, 101 Md. 600, 61 Atl. 210; Rosenstock *v.* Keyser, 104 Md. 380, 65 Atl. 37.

Massachusetts. — Alexander *v.* Grover, 190 Mass. 462, 77 N. E. 487.

Michigan. — Flynn *v.* Holmes, 145 Mich. 606, 108 N. W. 685; Cusick *v.* Spencer, 149 Mich. 434, 112 N. W. 1111.

Minnesota. — Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561.

Missouri. — Powell *v.* Crow, 204 Mo. 481, 102 S. W. 1024; Gibbs *v.* Haughowout, 207 Mo. 384, 105 S. W. 1067.

Nebraska. — Samuelson *v.* Mickey, 73 Neb. 852, 106 N. W. 461.

New York. — Huntington *v.* Kneeland, 105 N. Y. App. Div. 629, 93 N. Y. Supp. 845; Conover *v.* Palmer, (Supm. Ct. App. Div.) 108 N. Y. Supp. 480, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 1074; Patrono *v.* Patrono, (Supm. Ct. App. Div.) 111 N. Y. Supp. 268.

North Dakota. — Vallely *v.* Grafton First Nat. Bank, 14 N. Dak. 580, 106 N. W. 127; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

Oklahoma. — Wagg *v.* Herbert, (Okla. 1907) 92 Pac. 250.

Oregon. — Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183; Eldriedge *v.* Hoefer, (Oregon

1908) 93 Pac. 240; Hall *v.* O'Connell, (Oregon 1908) 95 Pac. 717.

Pennsylvania. — *In re* King, 215 Pa. St. 59, 64 Atl. 324.

South Dakota. — Krug *v.* Kautz, (S. Dak 1907) 113 N. W. 623.

Texas. — Blake *v.* Lowry, (Tex. Civ. App. 1906) 93 S. W. 521; Musick *v.* O'Brien, (Tex. Civ. App. 1907) 102 S. W. 458; Ullman *v.* Devereux, (Tex. Civ. App. 1907) 102 S. W. 1163; Hall *v.* Jennings, (Tex. Civ. App. 1907) 104 S. W. 489.

Utah. — Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980.

Vermont. — Ordway *v.* Farrow, 79 Vt. 192, 64 Atl. 1116.

Washington. — Plummer *v.* Ilse, 41 Wash. 5, 82 Pac. 1009.

Wisconsin. — Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476; Lynch *v.* Ryan, (Wis. 1907) 111 N. W. 707.

Parties' Own Construction Binding. — Ferguson *v.* Boyd, (Ind. App. 1906) 79 N. E. 549.

944. **1.** Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210.

2. *Alabama.* — Wynn *v.* Fitzwater, (Ala. 1907) 44 So. 97; Farrow *v.* Cotney, (Ala. 1907) 45 So. 69; Smith *v.* Smith, (Ala. 1907) 45 So. 168; Rogers *v.* Burt, (Ala. 1908) 47 So. 226.

Florida. — De Bartlett *v.* De Wilson, 52 Fla. 497, 42 So. 189.

Illinois. — Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

Indiana. — Ferguson *v.* Boyd, (Ind. App. 1906) 79 N. E. 549.

Iowa. — Laub *v.* Romans, (Iowa 1905) 105 N. W. 102; Kinkead *v.* Peet, (Iowa 1908) 114 N. W. 616.

Kansas. — Wiswell *v.* Simmons, (Kan. 1908) 95 Pac. 407.

Kentucky. — Sebree *v.* Thompson, (Ky. 1907) 104 S. W. 781.

Maryland. — Miller *v.* Miller, 101 Md. 600, 61 Atl. 210; Rosenstock *v.* Keyser, 104 Md. 380, 65 Atl. 37.

Michigan. — Flynn *v.* Holmes, 145 Mich. 606, 108 N. W. 685.

Oregon. — Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183.

South Carolina. — Francis *v.* Francis, 78 S. Car. 178, 58 S. E. 804.

Texas. — Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Hall *v.* Jennings, (Tex. Civ. App. 1907) 104 S. W. 489.

Utah. — Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980.

Washington. — Plummer *v.* Ilse, 41 Wash. 5, 82 Pac. 1009.

West Virginia. — Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

945. **1.** *Alabama.* — Wynn *v.* Fitzwater, (Ala. 1907) 44 So. 97.

Arkansas. — Reynolds *v.* Blanks, 78 Ark. 527, 94 S. W. 694.

California. — Couts *v.* Winston, (Cal. 1908) 96 Pac. 357.

Illinois. — Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704.

Indian Territory. — Guarantee Gold Bond, etc., Co. *v.* Edwards, (Indian Ter. 1907) 104 S. W. 624.

Iowa. — Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257.

Kentucky. — Garvin *v.* Vincent, (Ky. 1905) 87 S. W. 804; Sheffield *v.* Day, (Ky. 1908) 90 S. W. 545; Veach *v.* Smith, (Ky. 1908) 107 S. W. 234; Frazier *v.* Frazier, (Ky. 1908) 108 S. W. 889; Borders *v.* Allen, (Ky. 1908) 110 S. W. 240.

Oklahoma. — Wagg *v.* Herbert, (Okla. 1907) 92 Pac. 250.

Oregon. — Eldriedge *v.* Hoefer, (Oregon 1908) 93 Pac. 246; Hall *v.* O'Connell, (Oregon 1908) 95 Pac. 717.

West Virginia. — Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724.

2. Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

3. Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257; Frazier *v.* Frazier, (Ky. 1908) 108 S. W. 889; Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724; Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

4. *Alabama.* — Wynn *v.* Fitzwater, (Ala. 1907) 44 So. 97.

Illinois. — Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704.

Indiana. — White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

Kentucky. — Veach *v.* Smith, (Ky. 1908) 107 S. W. 234; Clarke *v.* McDowell, (Ky. 1908) 109 S. W. 887.

North Dakota. — Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

Utah. — Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980.

West Virginia. — Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724.

5. Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704; Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724; Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

7. Wynn *v.* Fitzwater, (Ala. 1907) 44 So. 97; Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93; Askew *v.* Thompson, 129 Ga. 325, 58 S. E. 854; Veach *v.* Smith, (Ky. 1908) 107 S. W. 234; Rester *v.* Powell, (La. 1907) 45 So. 372; Butler *v.* Peterson, (Neb. 1908) 116 N. W. 515.

946. **1.** White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110; Laub *v.* Romans, (Iowa 1905) 105 N. W. 102; McElroy *v.* Allfree, 131 Iowa 112, 108 N. W. 116; Miller *v.* Miller, 101 Md. 600, 61 Atl. 210.

2. White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110; McElroy *v.* Allfree, 131 Iowa 112, 108 N. W. 116; Miller *v.* Miller, 101 Md. 600, 61 Atl. 210; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980.

Payment by Grantee. — Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704.

3. Laub *v.* Romans, (Iowa 1905) 105 N. W. 102; Miller *v.* Miller, 101 Md. 600, 61 Atl. 210.

Improvements by Grantee. — Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704; Dabney *v.* Smith, 38 Wash. 10, 80 Pac. 199.

4. Reynolds *v.* Blanks, 78 Ark. 527, 94 S. W. 694; Butsch *v.* Smith, (Colo. 1907) 90 Pac. 61; Risser *v.* Patton, 232 Ill. 353, 83 N. E. 914; Guarantee Gold Bond, etc., Co. *v.* Edwards, (Indian Ter. 1907) 104 S. W. 624; Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257; Frazier *v.* Frazier, (Ky. 1908) 108 S. W. 889; Borders *v.* Allen, (Ky. 1908) 110 S. W. 240; Wagg *v.* Herbert, (Okla. 1907) 92 Pac. 250; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980; Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724; Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

5. Wynn *v.* Fitzwater, (Ala. 1907) 44 So. 97; Couts *v.* Winston, (Cal. 1908) 96 Pac. 357; Linkemann *v.* Knepper, 226 Ill. 473, 80 N. E. 1009; White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110; Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704; Sheffield *v.* Day, (Ky. 1908) 90 S. W. 545; Leger *v.* Leger, 118 La. 322, 42 So. 951; Rester *v.* Powell, (La. 1907) 45 So. 372; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

6. Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980.

7. Kinkead *v.* Peet, (Iowa 1908) 114 N. W. 616.

917. **1.** Wynn *v.* Fitzwater, (Ala. 1907) 44 So. 97; Miller *v.* Miller, 101 Md. 600, 61 Atl. 210; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980.

Part Payment on Indebtedness. — Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704.

2. Sheffield *v.* Hurst, (Ky. 1907) 104 S. W. 350; Butler *v.* Peterson, (Neb. 1908) 116 N. W. 515; Hesser *v.* Brown, 40 Wash. 688, 82 Pac. 934; Osborne *v.* Osborne, (Wash. 1907) 89 Pac. 881.

4. Thomas *v.* Livingston, 147 Ala. 200, 40 So. 504; Blackstock *v.* Robertson, (Colo. 1908) 94 Pac. 336; Kinkead *v.* Peet, (Iowa 1908) 114 N. W. 616; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306; Plummer *v.* Ilse, 41 Wash. 5, 82 Pac. 1009.

918. **1.** Thomas *v.* Livingston, (Ala. 1908) 46 So. 851; Hays *v.* Emerson, 75 Ark. 551, 87 S. W. 1027; Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489; Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306; O'Donnell *v.* Vandersaal, 213 Pa. St. 551, 63 Atl. 60; Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Rotan Grocery Co. *v.* Turner, (Tex. Civ. App. 1907) 102 S. W. 932; Middleton *v.* Johnston, (Tex. Civ. App. 1908) 110 S. W. 789.

2. Thomas *v.* Livingston, (Ala. 1908) 46 So. 851; Hays *v.* Emerson, 75 Ark. 551, 87 S. W. 1027; Hamilton *v.* Holmes, 48 Oregon 453, 87 Pac. 154; Jones *v.* Jones, (S. Dak. 1906) 108 N. W. 23; Rotan Grocery Co. *v.* Turner, (Tex. Civ. App. 1907) 102 S. W. 932; Hesser *v.* Brown, 40 Wash. 688, 82 Pac. 934; Hinchman *v.* Cook, 45 Wash. 490, 88 Pac. 931; Osborne *v.* Osborne, (Wash. 1907) 89 Pac. 881; Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

3. *Alabama.* — Smith *v.* Smith, (Ala. 1907) 45 So. 168; Thomas *v.* Livingston, (Ala. 1908) 46 So. 851.

Kentucky. — Graham *v.* Fischer, (Ky. 1908) 110 S. W. 386.

Massachusetts. — Sears *v.* Gilman, (Mass. 1908) 85 N. E. 466.

Minnesota. — Webster *v.* McDowell, 102 Minn. 445, 113 N. W. 1021.

Missouri. — Powell *v.* Crow, 204 Mo. 481, 102 S. W. 1024.

New Jersey. — Jeffreys *v.* Charlton, (N. J. 1907) 65 Atl. 711.

Washington. — Hesser *v.* Brown, 40 Wash. 688, 82 Pac. 934; Sahlin *v.* Gregson, (Wash. 1907) 90 Pac. 592.

West Virginia. — Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724; Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

Where Consideration Is Not Grossly Inadequate. — Rogers *v.* Burt, (Ala. 1908) 47 So. 226; Betts *v.* Betts, 132 Iowa 72, 106 N. W. 928.

4. *Alabama.* — Pearson *v.* Dancer, 144 Ala. 427, 39 So. 474; Smith *v.* Smith, (Ala. 1907) 45 So. 168; Thomas *v.* Livingston, (Ala. 1908) 46 So. 851; Rogers *v.* Burt, (Ala. 1908) 47 So. 226.

Arkansas. — Hays *v.* Emerson, 75 Ark. 551, 87 S. W. 1027.

Illinois. — Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588.

Indiana. — White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

Kentucky. — Fuson *v.* Chestnut, (Ky. 1908) 109 S. W. 1192.

Massachusetts. — Sears *v.* Gilman, (Mass. 1908) 85 N. E. 466.

Missouri. — Powell *v.* Crow, 204 Mo. 481, 102 S. W. 1024; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

Nebraska. — Samuelson *v.* Mickey, 73 Neb. 852, 103 N. W. 671; Harrah *v.* Smith, (Neb. 1907) 112 N. W. 337.

Texas. — Goodbar *v.* Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Rotan Grocery Co. *v.* Turner, (Tex. Civ. App. 1907) 102 S. W. 932.

Washington. — Dabney *v.* Smith, 38 Wash. 40, 80 Pac. 199; Neeson *v.* Smith, (Wash. 1907) 92 Pac. 131.

West Virginia. — Fridley *v.* Somerville, 60 W. Va. 272, 54 S. E. 502.

5. Farrow *v.* Cotney, (Ala. 1907) 45 So. 69; Thomas *v.* Livingston, (Ala. 1908) 46 So. 851; Harrah *v.* Smith, (Neb. 1907) 112 N. W. 337; Dabney *v.* Smith, 38 Wash. 40, 80 Pac. 199; Hesser *v.* Brown, 40 Wash. 688, 82 Pac. 934; Osborne *v.* Osborne, (Wash. 1907) 89 Pac. 881; Neeson *v.* Smith, (Wash. 1907) 92 Pac. 131.

919. **1.** *Alabama.* — Rogers *v.* Burt, (Ala. 1908) 47 So. 226.

Florida. — Wylly-Gabbett Co. *v.* Williams, 53 Fla. 872, 42 So. 910.

Illinois. — Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Halbert *v.* Turner, 233 Ill. 531, 84 N. E. 704.

Iowa. — Betts *v.* Betts, 132 Iowa 72, 106 N. W. 928.

Missouri. — Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489.

New Jersey. — Jeffreys *v.* Charlton, (N. J. 1907) 65 Atl. 711.

Oregon. — Hall *v.* O'Connell, (Oregon 1908) 95 Pac. 717.

South Dakota. — Jones *v.* Jones, (S. Dak. 1906) 108 N. W. 23; Krug *v.* Kautz, (S. Dak. 1907) 113 N. W. 623.

Absence of Express Promise to Pay.— Shreve *v.* McGowin, 143 Ala. 605, 42 So. 94; Caraway *v.* Sly, 222 Ill. 203, 78 N. E. 588; White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110.

Standing Alone, Circumstance that There Is No Written Obligation.—Krug *v.* Kautz, (S. Dak. 1907) 113 N. W. 623, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 949.

2. But see Barchent *v.* Snyder, 128 Wis. 423, 107 N. W. 329.

Evidence Was Admitted. — Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

950. 2. *Alabama.* — Thomas *v.* Livingston, 147 Ala. 200, 40 So. 504; Shreve *v.* McGowin, 143 Ala. 665, 42 So. 94; Rogers *v.* Burt, (Ala. 1908) 47 So. 226; Smith *v.* Smith, (Ala. 1907) 45 So. 168; Thornton *v.* Pinckard, (Ala. 1908) 47 So. 289.

Arkansas. — Reynolds *v.* Blanks, 78 Ark. 527, 94 S. W. 694.

California. — Anglo-Californian Bank *v.* Cerf, 147 Cal. 384, 81 Pac. 1077; Couts *v.* Winston, (Cal. 1908) 96 Pac. 357.

Colorado. — Blackstock *v.* Robertson, (Colo. 1908) 94 Pac. 336.

Florida. — De Bartlett *v.* De Wilson, 52 Fla. 497, 42 So. 189.

Georgia. — Askew *v.* Thompson, 129 Ga. 325, 58 S. E. 854.

Illinois. — Rankin *v.* Rankin, 216 Ill. 132, 74 N. E. 763; Linkemann *v.* Knepper, 226 Ill. 473, 80 N. E. 1009; Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Belinski *v.* National Brewing Co., 124 Ill. App. 45.

Iowa. — Laub *v.* Romans, (Iowa 1905) 105 N. W. 102; McElroy *v.* Allfree, 131 Iowa 112, 108 N. W. 116; Krebs *v.* Lauser, 133 Iowa 241, 110 N. W. 443; Kinkead *v.* Peet, (Iowa 1908) 114 N. W. 616.

Kansas. — Hilt *v.* Griffin, (Kan. 1907) 90 Pac. 808; Hubbard *v.* Cheney, (Kan. 1907) 91 Pac. 793.

Kentucky. — Fuson *v.* Chestnut, (Ky. 1908) 109 S. W. 1192; Graham *v.* Fischer, (Ky. 1908) 110 S. W. 386.

Louisiana. — Rester *v.* Powell, (La. 1907) 45 So. 372.

Maine. — Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660.

Maryland. — Rosenstock *v.* Keyser, 104 Md. 380, 65 Atl. 37; Miller *v.* Miller, 101 Md. 600, 61 Atl. 210.

Massachusetts. — Alexander *v.* Grover, 190 Mass. 462, 77 N. E. 487; Jennings *v.* Demmon, 194 Mass. 108, 80 N. E. 471.

Michigan. — Flynn *v.* Holmes, 145 Mich. 606, 108 N. W. 685.

Minnesota. — Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561.

Missouri. — Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489; Stumpe *v.* Kopp, 201 Mo. 412, 99 S. W. 1073.

New Mexico. — Alexander *v.* Cleland, 13 N. Mex. 524, 86 Pac. 425.

North Dakota. — Omlie *v.* O'Toole, (N. Dak. 1907) 112 N. W. 677.

Oregon. — Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183; Eldriedge *v.* Hoefer, (Oregon 1907) 93 Pac. 246; Hall *v.* O'Connell, (Oregon 1908) 95 Pac. 717.

South Dakota. — Bernardy *v.* Colonial, etc., Mortg. Co., (S. Dak. 1905) 105 N. W. 737; Krug *v.* Kautz, (S. Dak. 1907) 113 N. W. 623.

Texas. — Musick *v.* O'Brien, (Tex. Civ. App. 1907) 102 S. W. 458; Hall *v.* Jennings, (Tex. Civ. App. 1907) 104 S. W. 489.

Utah. — Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980.

West Virginia. — Way *v.* Mayhugh, 57 W. Va. 175, 50 S. E. 724.

Wisconsin. — Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

952. 5. Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

6. Crockett *v.* Waller, (Ky. 1906) 96 S. W. 860.

953. 1. Veach *v.* Smith, (Ky. 1908) 107 S. W. 234; Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660; Rosenstock *v.* Keyser, 104 Md. 380, 65 Atl. 37; Flynn *v.* Holmes, 145 Mich. 606, 108 N. W. 685.

2. Shreve *v.* McGowin, 143 Ala. 665, 42 So. 94; Smith *v.* Smith, (Ala. 1907) 45 So. 168; De Bartlett *v.* De Wilson, 52 Fla. 497, 42 So. 189, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 953; Linkemann *v.* Knepper, 226 Ill. 473, 80 N. E. 1009; Foster Lumber Co. *v.* Harlan County Bank, 71 Kan. 180, 80 Pac. 49; Jennings *v.* Demmon, 194 Mass. 108, 80 N. E. 471; Flynn *v.* Holmes, 145 Mich. 606, 108 N. W. 685; Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561; Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

3. Thomas *v.* Livingston, 147 Ala. 200, 40 So. 504; Reynolds *v.* Blanks, 78 Ark. 527, 94 S. W. 694; Anglo-Californian Bank *v.* Cerf, 147 Cal. 384, 81 Pac. 1077; Couts *v.* Winston, (Cal. 1908) 96 Pac. 357; Blackstock *v.* Robertson, (Colo. 1908) 94 Pac. 336; Askew *v.* Thompson, 129 Ga. 325, 58 S. E. 854; Laub *v.* Romans, (Iowa 1905) 105 N. W. 102; Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 953; Stumpe *v.* Kopp, 201 Mo. 412, 99 S. W. 1073; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 978; Duerden *v.* Solomon, (Utah 1908) 94 Pac. 980; Smith *v.* Pfluger, 126 Wis. 253, 105 N. W. 476.

4. Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660.

954. 1. *Alabama.* — Thomas *v.* Livingston, 147 Ala. 200, 40 So. 504; Maxwell *v.* Herzfeld, (Ala. 1907) 42 So. 987.

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Missouri. — Powell *v.* Crow, 203 Mo. 481, 102 S. W. 1024.

Nebraska. — Samuelson *v.* Mickey, 73 Neb. 852, 106 N. W. 461.

New Jersey. — Lake *v.* Weaver, (N. J. 1908) 70 Atl. 81.

North Dakota. — Smith *v.* Jensen, (N. Dak. 1907) 114 N. W. 306.

Texas. — Johnson *v.* Scrimshire, (Tex. Civ.

App. 1906) [illegible] Goodbar v. Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Irvin v. Johnson, (Tex. Civ. App. 1906) 98 S. W. 405; Lowry v. Carter, (Tex. Civ. App. 1907) 102 S. W. 930.

Washington. — Dabney v. Smith, 38 Wash. 40, 80 Pac. 199; Hesser v. Brown, 40 Wash. [illegible] 82 Pac. [illegible].

West Virginia. — Fridley v. Somerville, 60 W. Va. 272, 54 S. E. 502.

2. Harrah v. Smith, (Neb. 1907) 112 N. W. 337; Hall v. O'Connell, (Oregon 1908) 95 Pac. 717; Goodbar v. Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Hall v. Jennings, (Tex. Civ. App. 1907) 104 S. W. 489.

3. *Alabama.* — Rogers v. Burt, (Ala. 1908) 47 So. 226; Thornton v. Pinckard, (Ala. 1908) 47 So. 289.

California. — Wadleigh v. Phelps, 149 Cal. 627, 87 Pac. 93.

Illinois. — Rankin v. Rankin, 216 Ill. 132, 74 N. E. 763; Hill v. Viele, 128 Ill. App. 5.

Iowa. — Betts v. Betts, 132 Iowa 72, 106 N. W. 928.

Nebraska. — Butler v. Peterson, (Neb. 1908) 116 N. W. 515.

New Jersey. — Jeffreys v. Charlton, (N. J. 1907) 65 Atl. 711.

Oregon. — Hamilton v. Holmes, 48 Oregon 453, 87 Pac. 154.

Texas. — Johnson v. Scrimshire, (Tex. Civ. App. 1906) 93 S. W. 712.

Utah. — Duerden v. Solomon, (Utah 1908) 94 Pac. 978; Duerden v. Solomon, (Utah 1908) 94 Pac. 980.

West Virginia. — Fridley v. Somerville, 60 W. Va. 272, 54 S. E. 502.

4. *Alabama.* — Thomas v. Livingston, 147 Ala. 200, 40 So. 504; Maxwell v. Herzfeld, (Ala. 1907) 42 So. 987; Harper v. Hays, (Ala. 1907) 43 So. 360; Thornton v. Pinckard, (Ala. 1908) 47 So. 289; Rogers v. Burt, (Ala. 1908) 47 So. 226.

Arkansas. — Reynolds v. Blanks, 78 Ark. 527, 94 S. W. 694; Hays v. Emerson, 75 Ark. 551, 87 S. W. 1027.

California. — Renton v. Gibson, 148 Cal. 650, 84 Pac. 186; Wadleigh v. Phelps, 149 Cal. 627, 87 Pac. 93; Couts v. Winston, (Cal. 1908) 96 Pac. 357.

Colorado. — Butsch v. Smith, (Colo. 1907) 90 Pac. 61.

Illinois. — Rankin v. Rankin, 216 Ill. 132, 74 N. E. 763; Deadman v. Yantis, 230 Ill. 243, 82 N. E. 592; Hill v. Viele, 128 Ill. App. 5.

Iowa. — Betts v. Betts, 132 Iowa 72, 106 N. W. 928; Krebs v. Lauser, 133 Iowa 241, 110 N. W. 443.

Maine. — Hurd v. Chase, 100 Me. 561, 62 Atl. 660.

Maryland. — Rosenstock v. Keyser, 104 Md. 380, 65 Atl. 37.

Minnesota. — Minneapolis Threshing Mach. Co. v. Jones, 95 Minn. 127, 103 N. W. 1017; Stitt v. Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561.

New Jersey. — Wilson v. Terry, 70 N. J. Eq. 231, 62 Atl. 310.

New York. — Reich v. Cochran, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 827; Harris v. Hirsch, 121 N. Y. App. Div. 767, 106 N. Y. Supp. 621.

North Dakota. — Smith v. Jensen, (N. Dak. 1907) 114 N. W. 306.

Oregon. — Hall v. O'Connell, (Oregon 1908) 95 Pac. 717.

South Dakota. — Jones v. Jones, (S. Dak. 1906) 108 N. W. 23.

Texas. — Goodbar v. Bloom, (Tex. Civ. App. 1906) 96 S. W. 657; Irvin v. Johnson, (Tex. Civ. App. 1906) 98 S. W. 405; Rotan Grocery Co. v. Turner, (Tex. Civ. App. 1907) 102 S. W. 93[illegible].

Utah. — Duerden v. Solomon, (Utah 1908) 94 Pac. 978; Duerden v. Solomon, (Utah 1908) 94 Pac. 980.

Washington. — Dabney v. Smith, 38 Wash. 40, 80 Pac. 199; Hesser v. Brown, 40 Wash. 688, 82 Pac. 934; Reynolds v. Reynolds, 42 Wash. 107, 84 Pac. 579.

West Virginia. — Fridley v. Somerville, 60 W. Va. 272, 54 S. E. 502.

Preponderance of Evidence. — Johnson v. Scrimshire, (Tex. Civ. App. 1906) 93 S. W. 712.

Mere Preponderance Is Not Sufficient. — Rogers v. Burt, (Ala. 1908) 47 So. 226; Butsch v. Smith, (Colo. 1907) 90 Pac. 61; Betts v. Betts, 132 Iowa 72, 106 N. W. 928.

High Degree of Proof Necessary — Minneapolis Threshing Mach. Co. v. Jones, 95 Minn. 127, 103 N. W. 1017.

Evidence of Subsequent Oral Statements Scrutinized with Great Caution. — Wilson v. Terry, 70 N. J. Eq. 231, 62 Atl. 310.

955. 1. Lowry v. Carter, (Tex. Civ. App. 1907) 102 S. W. 930.

3. Rogers v. Burt, (Ala. 1908) 47 So. 226; Thornton v. Pinckard, (Ala. 1908) 47 So. 289; Butsch v. Smith, (Colo. 1907) 90 Pac. 61; Dabney v. Smith, 38 Wash. 40, 80 Pac. 199; Hesser v. Brown, 40 Wash. 688, 82 Pac. 934.

956. 1. Butsch v. Smith, (Colo. 1907) 90 Pac. 61; Minneapolis Threshing Mach. Co. v. Jones, 95 Minn. 127, 103 N. W. 1017; Hall v. O'Connell, (Oregon 1908) 95 Pac. 717; Jones v. Jones, (S. Dak. 1906) 108 N. W. 23.

Decisive. — Hays v. Emerson, 75 Ark. 551, 87 S. W. 1027; Reynolds v. Blanks, 78 Ark. 527, 94 S. W. 694.

2. Butsch v. Smith, (Colo. 1907) 90 Pac. 61; Smith v. Jensen, (N. Dak. 1907) 114 N. W. 306; Lowry v. Carter, (Tex. Civ. App. 1907) 102 S. W. 930.

Proof Need Not Be Beyond Reasonable Doubt. — Minneapolis Threshing Mach. Co. v. Jones, 95 Minn. 127, 103 N. W. 1017; Stitt v. Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561.

3. Renton v. Gibson, 148 Cal. 650, 84 Pac. 186; Jennings v. Demmon, 191 Mass. 168, 80 N. E. 471; Dabney v. Smith, 38 Wash. 40, 80 Pac. 199; Hesser v. Brown, 40 Wash. 688, 82 Pac. 934; Way v. Mayhugh, 57 W. Va. 175, 50 S. E. 724.

4. Minneapolis Threshing Mach. Co. v. Jones, 95 Minn. 127, 103 N. W. 1017; Jeffreys v. Charlton, (N. J. 1907) 65 Atl. 711.

5. Betts v. Betts, 132 Iowa 72, 106 N. W. 928; Minneapolis Threshing Mach. Co. v. Jones, 95 Minn. 127, 103 N. W. 1017.

7. Graham v. Fischer, (Ky. 1908) 110 S. W. 386; Stitt v. Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561.

8. Wilson *v.* Terry, 70 N. J. Eq. 231, 62 Atl. 310.

957. 9. Du Bois *v.* Denver First Nat. Bank, (Colo. 1908) 96 Pac. 169; Rester *v.* Powell, (La. 1907) 45 So. 372; Jones *v.* Norris, (N. Car. 1908) 60 S. E. 714.

Parol Evidence Not Admissible Where No Ambiguity Appears. — Bartlett Estate Co. *v.* Fairhaven Land Co., (Wash. 1908) 94 Pac. 900.

11. Bartels *v.* Davis, 34 Mont. 285, 85 Pac. 1027; Security Trust, etc., Ins. Co. *v.* Ellsworth, 129 Wis. 349, 109 N. W. 125.

14. Mortgage and Note Secured by It. — Trinity County Bank *v.* Haas, 151 Cal. 553, 91 Pac. 385; Graham *v.* Fitts, 53 Fla. 1046, 43 So. 512; Spesard *v.* Spesard, 75 Kan. 87, 88 Pac. 576; Phelps *v.* Lowell Sav. Inst., (Mass. 1908) 83 N. E. 989; Kramer *v.* Wilson, (Oregon 1907) 90 Pac. 183; Armstrong *v.* Wilson, (Tex. Civ. App. 1908) 109 S. W. 955.

959. 4. Relation Back to Time of Secured Note. — Spesard *v.* Spesard, 75 Kan. 87, 88 Pac. 576.

5. Hughes *v.* Mt. Vernon Bank, (Ga. App. 1908) 60 S. E. 809.

960. 4. Mead *v.* Hammond, 107 N. Y. App. Div. 575, 95 N. Y. Supp. 241.

Note for Interest Due Is Secured. — Kleis *v.* McGrath, 127 Iowa 459, 103 N. W. 371.

961. 1. Davis *v.* Carlisle, (C. C. A.) 142 Fed. 106; Ladd *v.* Lookout Distilling Co., 147 Ala. 173, 40 So. 610; Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760.

962. 11. Insolvency of Mortgagor Relieves Mortgagee. — Tripp *v.* Babcock, (Mass. 1907) 80 N. E. 593.

963. 8. Preston *v.* Lamano, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 304, 93 N. Y. Supp. 210.

964. 3. Ordway *v.* Farrow, 79 Vt. 192, 64 Atl. 1116.

5. Mausert *v.* Feigenspan, (N. J. 1905) 64 Atl. 801.

6. Provident Mut. Bldg. Loan Assoc. *v.* Shaffer, 2 Cal. App. 216, 83 Pac. 274.

7. Girard Trust Co. *v.* Baird, 212 Pa. St. 41, 61 Atl. 507.

8. Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760.

965. 2. Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319; Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760.

3. Hester *v.* Gairdner, 128 Ga. 531, 58 S. E. 165.

6. See Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

966. 1. Campbell *v.* Perth Amboy Shipbuilding, etc., Co., (N. J.) 62 Atl. 319.

Estoppel to Deny that Advances Were Made under Mortgage. — Mausert *v.* Feigenspan, (N. J. 1905) 64 Atl. 801.

968. 6. Brethauer *v.* Schorer, 77 Conn. 575, 60 Atl. 125.

Heir of Mortgagee Paying Interest on Prior Mortgage Mere Volunteer. — Brethauer *v.* Schorer, 77 Conn. 575, 60 Atl. 125.

969. 2. Hendricks *v.* Webster, (C. C. A.) 159 Fed. 927.

4. Merchants' State Bank *v.* Tufts, 14 N. Dak. 238, 103 N. W. 760.

5. No Lien for Mortgagee's Services. — Monmouth County Electric Co. *v.* McKenna, 68 N. J. Eq. 160, 60 Atl. 32.

970. 4. *In re* Canal Place, 115 N. Y. App. Div. 458, 101 N. Y. Supp. 397.

Annexations to Mortgaged Premises. — Prudential Ins. Co. *v.* Guild, (N. J. 1906) 64 Atl. 694.

Mortgage Does Not Cover Railroad's Right of Way over Mortgagor's Property. — Nittany Valley R. Co. *v.* Empire Steel, etc., Co., 218 Pa. St. 224, 67 Atl. 349.

972. 2. Water Privileges. — Stanislaus Water Co. *v.* Bachman, (Cal. 1908) 93 Pac. 858; Latta *v.* Catawba Electric, etc., Co., (N. Car. 1907) 59 S. E. 1028.

Water Rights Do Not Cover Stock in Water Company. — Visalia Bank *v.* Smith, 146 Cal. 398, 81 Pac. 542. But see San Gabriel Valley Bank *v.* Lake View Town Co., 4 Cal. App. 630, 89 Pac. 360, holding that stock in a water company passes under a mortgage of water rights.

3. New England Water Works Co. *v.* Farmers' L. & T. Co., (C. C. A.) 136 Fed. 521; Guaranty Trust Co. *v.* Atlantic Coast Electric R. Co., (C. C. A.) 138 Fed. 517; Stanislaus Water Co. *v.* Bachman, (Cal. 1908) 93 Pac. 858; Monmouth County Electric Co. *v.* McKenna, 68 N. J. Eq. 160, 60 Atl. 32; Cummings *v.* Consolidated Mineral Water Co., 27 R. I. 195, 61 Atl. 353.

Deed and Mortgage Must Be Part of Same Transaction to Give Priority over Antecedent Contract Lien. — Libbey *v.* Tidden, 192 Mass. 175, 78 N. E. 313.

Easement Necessary to Annexed Building. — Warner *v.* Grayson, 200 U. S. 257, 26 U. S. Sup. Ct. 240.

4. Latta *v.* Catawba Electric, etc., Co., (N. Car. 1907) 59 S. E. 1028.

5. Washington Trust Co. *v.* Morse Iron Works, etc., Co., 106 N. Y. App. Div. 195, 94 N. Y. Supp. 495; New York Water Co. *v.* Crow, 110 N. Y. App. Div. 32, 96 N. Y. Supp. 899; People's Trust Co. *v.* Schenck, 121 N. Y. App. Div. 604, 106 N. Y. Supp. 783.

6. Donovan *v.* Twist, 105 N. Y. App. Div. 171, 93 N. Y. Supp. 990.

974. 3. Wilson *v.* Rehm, 117 Ill. App. 473; Barson *v.* Mulligan, 191 N. Y. 306, 84 N. E. 75.

975. 1. Easement Created by Mortgagor Affects Only Equity of Redemption. — Hazeldine *v.* McVey, 67 N. J. Eq. 275, 63 Atl. 165.

2. Anglo-Californian Bank *v.* Cerf, 147 Cal. 384, 81 Pac. 1077.

976. 1. New England Mortg. Security Co. *v.* Fry, 143 Ala. 637, 42 So. 57; Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 03; Tainter *v.* Abrams, (Neb. 1906) 107 N. W. 225; Gillett *v.* Romig, 17 Okla. 324, 87 Pac. 325, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 975.

2. Standard Leather Co. *v.* Mercantile Town Mut. Ins. Co., (Mo. App. 1908) 111 S. W. 631; Fidelity Trust Co. *v.* Hoboken, etc., St. R. Co., (N. J. 1906) 63 Atl. 273.

5. [illegible] W. 1010; Hazeldine *v.* McVey, 67 N. J. Eq. 275, 63 Atl. 165; Fidelity Trust Co. *v.* Hoboken, etc., St. R. Co., (N. J. 1906) 63 Atl.

978. 3. Pellerin *v.* Sanders, 116 La. 616,

40 So. 917; Standard Leather Co. *v.* Mercantile Town Mut. Ins. Co., (Mo. App. 1908) 111 S. W. 631; Fidelity Trust Co. *v.* Hoboken, etc., St. R. Co., (N. J. 1906) 63 Atl. 273.

5. Sammons *v.* Kearney Power, etc., Co., (Neb. 1906) 110 N. W. 308.

7. Mortgagor Cannot Accept Surrender of Lease Without Consent of Mortgagee. — Robbins *v.* Whyte, (1906) 1 K. B. 125, 22 Times L. Rep. 106; Standard Leather Co. *v.* Mercantile Town Mut. Ins. Co., (Mo. App. 1908) 111 S. W. 631; Fidelity Trust Co. *v.* Hoboken, etc., St. R. Co., (N. J. 1906) 63 Atl. 273.

979. 1. Provision in Mortgage. — Sammons *v.* Kearney Power, etc., Co., (Neb. 1906) 110 N. W. 308.

4. Traer *v.* Fowler, (C. C. A.) 144 Fed. 810; White *v.* Redenbaugh, (Ind. App. 1907) 82 N. E. 110; Weinberger *v.* Brumberg, 69 N. J. Eq. 609, 61 Atl. 732; Gross *v.* Chittim, (Tex. Civ. App. 1907) 100 S. W. 1006.

980. 3. Elmira Mechanics' Soc. *v.* Stanchfield, (C. C. A.) 160 Fed. 811.

981. 4. Green *v.* Thornton, (Cal. App. 1908) 96 Pac. 382.

5. Who Entitled to Accounting — Subsequent Incumbrancers. — Keeline *v.* Clark, 132 Iowa 360, 106 N. W. 257.

8. Denman *v.* Payne, (Ala. 1907) 44 So. 635; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 480.

982. 3. Horner *v.* Chaisty, 101 Md. 593, 61 Atl. 283.

984. 3. Estoppel as to Mortgagee. — Prudential Ins. Co. *v.* Cushman, 130 Iowa 378, 106 N. W. 934; Mausert *v.* Feigenspan, (N. J. 1905) 64 Atl. 801.

985. 10. French *v.* French, 107 N. Y. App. Div. 107, 94 N. Y. Supp. 1026.

986. 1. Hutchinson *v.* Ward, 114 N. Y. App. Div. 156, 99 N. Y. Supp. 708.

2. Agreement with Mortgagor's Grantee as Constituting Release. — Meigs *v.* Tunnicliffe, 214 Pa. St. 495, 63 Atl. 1019.

987. 1. Scholten *v.* Barber, 217 Ill. 148, 75 N. E. 460, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 986; Assets Realization Co. *v.* Heiden, 215 Ill. 9, 74 N. E. 56; Rose *v.* Dempster Mill Mfg. Co., 75 Neb. 784, 106 N. W. 990; Bonhoff *v.* Wiehorst, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 437; Marling *v.* Milwaukee Realty Co., 127 Wis. 363, 106 N. W. 844.

2. Signing New Notes after Maturity Not Assumption. — Scholten *v.* Barber, 217 Ill. 148, 75 N. E. 460.

3. Sherman *v.* Goodwin, (Ariz. 1908) 95 Pac. 121; Capitol Nat. Bank *v.* Holmes, (Colo. [illegible] Pac. 314.

988. 1. Hartsuff *v.* Parrott, (Neb. 1908) 115 N. W. 569.

989. 2. Reed *v.* Humphrey, 69 Kan. 155, 76 Pac. 390, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 989.

3. *In re* Lukens, 138 Fed. 188.

990. 1. Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973.

2. Assets Realization Co. *v.* Heiden, 215 Ill. 9, 74 N. E. 56; Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 990.

991. 1. Sherman *v.* Goodwin, (Ariz. 1908) 95 Pac. 121.

Consideration Presumed. — Sherman *v.* Goodwin, (Ariz. 1908) 95 Pac. 121.

992. 2. Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 992.

4. North End Sav. Bank *v.* Snow, (Mass. 1908) 83 N. E. 1099.

5. Sherman *v.* Goodwin, (Ariz. 1908) 95 Pac. 121; Priddy *v.* Miners', etc., Bank, (Mo. App. 1908) 111 S. W. 865.

Where the Full Purchase Price is paid to the grantor upon the grantee's election not to assume the mortgage, the grantee is not liable to the grantor although a receipt for the initial payment recited an assumption of the mortgage. Marling *v.* Milwaukee Realty Co., 127 Wis. 363, 106 N. W. 844.

6. Sherman *v.* Goodwin, (Ariz. 1908) 95 Pac. 121; Priddy *v.* Miners', etc., Bank, (Mo. App. 1908) 111 S. W. 865; Feltenstein *v.* Ernst, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 262, 97 N. Y. Supp. 376.

993. 2. Scholten *v.* Barber, 217 Ill. 148, 75 N. E. 460; North End Sav. Bank *v.* Snow, (Mass. 1908) 83 N. E. 1099; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130; Priddy *v.* Miners', etc., Bank, (Mo. App. 1908) 111 S. W. 865; Hartsuff *v.* Parrott, (Neb. 1908) 115 N. W. 569.

994. 1. Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 994; Priddy *v.* Miners', etc., Bank, (Mo. App. 1908) 111 S. W. 865; Bonhoff *v.* Wiehorst, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 437; Bonhoff *v.* Wiehorst, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 444.

997. 4. Scholten *v.* Barber, 217 Ill. 148, 75 N. E. 460.

998. 1. Crisman *v.* Lanterman, 149 Cal. 647, 87 Pac. 89.

1000. 1. Sherman *v.* Goodwin, (Ariz. 1908) 95 Pac. 121; Reed *v.* Humphrey, 69 Kan. 155, 76 Pac. 390, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1000; Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1000.

2. Blakeslee *v.* Hoit, 116 Ill. App. 83, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1000.

3. Last Grantee Not Released by Extension of Time between Original Grantee and Mortgagee. — Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973.

5. Reed *v.* Humphrey, 69 Kan. 155, 76 Pac. 390, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1000.

1001. 3. Grantee Not Bound by Void Mortgage Not Part of Consideration. — Sherman *v.* Goodwin, (Ariz. 1908) 95 Pac. 121.

1002. 9. Loos *v.* McCormack, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 144, 93 N. Y. Supp. 1088.

1003. 4. Grantee Protected Where Payment Made in Ignorance of Junior Lien. — Capitol Nat. Bank *v.* Holmes, (Colo. 1908) 95 Pac. 314.

1004. 1. Cory *v.* Santa Ynez Land, etc., Co., 151 Cal. 778, 91 Pac. 647; Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792.

6. Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20.

9. Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20.

1005. 10. **Though Mortgage Barred Sale under Power Not Enjoined.** — House *v.* Carr, 185 N. Y. 453, 78 N. E. 171.

1006. 3. Hagerstown *v.* Groh, 101 Md. 560, 61 Atl. 467.

Junior Mortgagee Entitled to Possession after Purchase under Foreclosure of First Mortgage. — Strong *v.* Smith, 68 N. J. Eq. 686, 60 Atl. 66.

4. Hagerstown *v.* Groh, 101 Md. 560, 61 Atl. 467.

8. Hurd *v.* Chase, 100 Me. 561, 62 Atl. 660.

1007. 1. Moncrieff *v.* Hare, 38 Colo. 221, 87 Pac. 1082; Standard Leather Co. *v.* Mercantile Town Mut. Ins. Co., (Mo. App. 1908) 111 S. W. 631; Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20; Barson *v.* Mulligan, 191 N. Y. 306, 84 N. E. 75.

1008. 1. Cory *v.* Santa Ynez Land, etc., Co., 151 Cal. 778, 91 Pac. 647; Green *v.* Thornton, (Cal. App. 1908) 96 Pac. 382; Walters *v.* Chance, 73 Kan. 680, 85 Pac. 779; Becker *v.* McCrea, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 341, 94 N. Y. Supp. 20; Barson *v.* Mulligan, 191 N. Y. 306, 84 N. E. 75; Gillett *v.* Romig, 17 Okla. 324, 87 Pac. 325; Lambert *v.* Howard, (Oregon 1907) 90 Pac. 150; Francis *v.* Francis, 78 S. Car. 178, 58 S. E. 804.

1009. 2. Strain *v.* Palmer, (C. C. A.) 159 Fed. 628; Elmira Mechanics' Soc. *v.* Stanchfield, (C. C. A.) 160 Fed. 811; Monmouth County Electric Co. *v.* McKenna, 68 N. J. Eq. 160, 60 Atl. 32; Gross *v.* Chittim, (Tex. Civ. App. 1907) 100 S. W. 1006.

Appointment of Receiver to Collect Where Mortgagee Is Not Entitled to Possession. — Moncrieff *v.* Hare, 38 Colo. 221, 87 Pac. 1082.

3. Gillett *v.* Romig, 17 Okla. 324, 87 Pac. 325.

Transfer of Property to Mortgagee after Assignment of Mortgage. — It has been held that where the mortgagor transferred the property to the mortgagee without notice of an assignment of the mortgage, he had at least the right to have the rents applied in reduction of the debt. Weinberger *v.* Brumberg, 69 N. J. Eq. 669, 61 Atl. 732.

1010. 4. Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93; Pomeroy *v.* Noud, 145 Mich. 37, 108 N. W. 498.

5. Ketchum *v.* Bell, (N. J. 1907) 67 Atl. 30; Gillett *v.* Romig, 17 Okla. 324, 87 Pac. 325.

Equitable Mortgagee. — Holliday *v.* Perry, 38 Ind. App. 588, 78 N. E. 877.

1011. 1. Watson *v.* Perkins, 88 Miss. 64, 40 So. 643.

Mortgagee Relieved by Mortgagor's Conduct Rendering Property Unproductive. — La Forest *v.* Wm. L. Blake Co., 100 Me. 218, 60 Atl. 899.

Mortgagee Not Entitled to Commissions on Rent in Absence of Agreement. — Gilluly *v.* Shumway, 144 Mich. 661, 108 N. W. 88.

1012. 11. **Deed by Mortgagee Not in Possession Passes Title.** — Sadler *v.* Jefferson, 143 Ala. 669, 39 So. 380.

Damages for Unauthorized Sale. — Ullman *v.* Devereux, (Tex. Civ. App. 1907) 102 S. W. 1162.

1013. 4. Omlie *v.* O'Toole, (N. Dak. 1907) 112 N. W. 677.

5. Jones *v.* Black, 18 Okla. 344, 88 Pac. 1052. See also Wiswell *v.* Simmons, (Kan. 1908) 95 Pac. 407.

Junior Mortgagees May Buy for Their Own Benefit at Sales. — Francis *v.* Sheats, (Ala. 1907) 45 So. 241.

6. Rogers *v.* Burt, (Ala. 1908) 47 So. 226; Thornton *v.* Pinckard, (Ala. 1908) 47 So. 289.

1014. 1. Thornton *v.* Pinckard, (Ala. 1908) 47 So. 289, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1014.

1015. 4. Macaulay *v.* Hayden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 21, 96 N. Y. Supp. 64.

Necessity of Consideration. — Sturgeon *v.* Mudd, 190 Mo. 200, 88 S. W. 630.

6. Corson *v.* McDonald, 3 Cal. App. 412, 85 Pac. 861; Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616.

1016. 2. Hagerstown *v.* Groh, 101 Md. 560, 61 Atl. 467.

3. Jackson *v.* Brandon Realty Co., (Supm. Ct. App. T.) 100 N. Y. Supp. 1005.

1017. 1. **Damages Limited to Injury to Security.** — Prudential Ins. Co. *v.* Guild, (N. J. 1906) 64 Atl. 694.

3. Wilkinson *v.* Dunkley-Williams Co., 139 Mich. 621, 103 N. W. 170, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1017; Fidelity Trust Co. *v.* Hoboken, etc., St. R. Co., (N. J. 1906) 63 Atl. 273.

1018. 4. Reis *v.* McDevitt, (Pa. 1908) 68 Atl. 1012.

Breach of Warranty Gives Right of Action. — King *v.* King, 215 Ill. 100, 74 N. E. 89.

5. Clark *v.* Havard, 122 Ga. 273, 50 S. E. 108; North End Sav. Bank *v.* Snow, (Mass. 1908) 83 N. E. 1099.

1019. 7. Allen *v.* Pierson, 113 N. Y. App. Div. 586, 100 N. Y. Supp. 451.

1020. 1. Clark *v.* Havard, 122 Ga. 273, 50 S. E. 108.

1021. 9. Hutchinson *v.* Ward, 114 N. Y. App. Div. 156, 99 N. Y. Supp. 708.

1022. 4. **Right to Rents.** — Ruprecht *v.* Muhlke, 225 Ill. 188, 80 N. E. 106.

A Receiver Will Be Appointed where the security is inadequate and the mortgagor refuses to pay interest and taxes. Baier *v.* Kelley, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 368, 106 N. Y. Supp. 552.

6. Windt *v.* Covert, (Cal. 1907) 93 Pac. 67.

7. Tripp *v.* Babcock, (Mass. 1907) 80 N. E. 593.

1023. 2. Dunn *v.* Oettinger, (N. Car. 1908) 61 S. E. 679.

Judgment on a Prior Mortgage Is Effective against a Junior Mortgagee who was a party defendant in foreclosure proceedings. Weisendanger *v.* Westchester Trust Co., (Supm. Ct. Spec. T.) 100 N. Y. Supp. 622.

6. **Junior Mortgagee May Plead Usury.** — Lembeck *v.* Jarvis Terminal Cold Storage Co., (N. J. 1906) 64 Atl. 126.

1024. 2. Hillard *v.* Taylor, 114 La. 883, 38 So. 594.

Express Restriction on Assignment Operates Only against Voluntary Assignment. — Scaife *v.* Scammon Invest., etc., Assoc., 71 Kan. 402, 80 Pac. 957.

3. Bartholf *v.* Bensley, 234 Ill. 336, 84 N. E. 918.

7. **Obligation of Mortgagor Devolves on Administration.** — Pattee *v.* Boynton, 73 N. H. 525, 63 Atl. 787.

1025. 2. **Assignment to Agent to Raise Money for Mortgagor Valid.** — Bogert *v.* Stevens, 69 N. J. Eq. 800, 63 Atl. 246.

8. Mathews *v.* Nefsy, 13 Wyo. 458, 81 Pac. 305.

1026. 3. **One Partner May Assign Mortgage Made in Name of Other.** — Miller *v.* Berry, 19 S. Dak. 625, 104 N. W. 311.

6. **Foreign Administrator.** — In *Maine* a foreign administrator cannot assign a mortgage for collection. Brown *v.* Smith, 101 Me. 545, 64 Atl. 915.

1027. 4. **Assignee Sustaining Confidential Relation to Assignor as Trustee.** — *In re* Plankinton, 212 Pa. St. 235, 61 Atl. 888.

1028. 13. Barringer *v.* Loder, 47 Oregon 223, 81 Pac. 778.

14. **Indorsement on Note Including Mortgage Sufficient.** — Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

1029. 1. Anthony *v.* Brennan, 74 Kan. 707, 87 Pac. 1136.

3. Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210.

5. Messinger *v.* Foster, 115 N. Y. App. Div. 689, 101 N. Y. Supp. 387.

1030. 1. Noble *v.* Watkins, 48 Oregon 518, 87 Pac. 771, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029.

3. Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717.

4. See Scaife *v.* Scammon Invest., etc., Assoc., 71 Kan. 402, 80 Pac. 957.

5. Anthony *v.* Brennan, 74 Kan. 707, 87 Pac. 1136; Urbansky *v.* Shirmer, 111 N. Y. App. Div. 50, 97 N. Y. Supp. 577.

7. Fish *v.* Seattle First Nat. Bank, (C. C. A.) 150 Fed. 524; Clark *v.* Havard, 122 Ga. 273, 50 S. E. 108; Anthony *v.* Brennan, 74 Kan. 707, 87 Pac. 1136; Hillard *v.* Taylor, 114 La. 883, 38 So. 594; Barringer *v.* Loder, 47 Oregon 223, 81 Pac. 778; Miller *v.* Berry, 19 S. Dak. 625, 104 N. W. 311; Bartlett Estate Co. *v.* Fairhaven Land Co., (Wash. 1908) 94 Pac. 900; Emmons *v.* Hawk, (W. Va. 1907) 59 S. E. 519; Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083; Roach *v.* Sanborn Land Co., (Wis. 1908) 115 N. W. 1102.

1032. 1. Snyder *v.* Parmalee, 80 Vt. 496, 68 Atl. 649.

1033. 5. Miller *v.* Berry, 19 S. Dak. 625, 104 N. W. 311, *citing* [20] AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029 [1033]; Richards Trust Co. *v.* Rhomberg, 19 S. Dak. 595, 104 N. W. 268.

6. Hodge *v.* Hudson, 139 N. Car. 358, 51 S. E. 954.

1034. 3. Capitol Nat. Bank *v.* Holmes, (Colo. 1908) 95 Pac. 314; Linkemann *v.* Knepper, 226 Ill. 473, 80 N. E. 1009; Lydon *v.* Campbell, (Mass. 1908) 84 N. E. 305; Simonson *v.* Lauck, 105 N. Y. App. Div. 82, 93 N. Y. Supp. 965; Sampers *v.* Conolly, 115 N. Y. App. Div. 364, 100 N. Y. Supp. 806; Krugmeier *v.* Hackett, (Wis. 1907) 113 N. W. 1103.

1035. 3. Casserly *v.* Morrow, 101 Minn. 16, 111 N. W. 654.

8. **Required by Statute.** — Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210.

1036. 4. **Burden on Donee to Show Bona Fides of Transfer and Capacity of Donor.** *In re* Plankinton, 212 Pa. St. 235, 61 Atl. 888.

6. *Compare* Weinberger *v.* Brumberg, 69 N. J. Eq. 669, 61 Atl. 732.

1037. 1. Bogert *v.* Stevens, 69 N. J. Eq. 800, 63 Atl. 246.

4. Bogert *v.* Stevens, 69 N. J. Eq. 800, 63 Atl. 246.

7. Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929.

8. Warren *v.* Hayes, (N. H. 1907) 68 Atl. 193.

1038. 14. Preston *v.* Morsman, 75 Neb. 358, 106 N. W. 320.

1040. 7. Patten *v.* Pepper Hotel Co., (Cal. 1908) 96 Pac. 296; Clark *v.* Havard, 122 Ga. 273, 50 S. E. 108; Webster *v.* McDowell, 102 Minn. 445, 113 N. W. 1021; Bergman *v.* Fortescue, (N. J. 1908) 69 Atl. 474; Bartlett Estate Co. *v.* Fairhaven Land Co., (Wash. 1908) 94 Pac. 900; Roach *v.* Sanborn Land Co., (Wis. 1908) 115 N. W. 1102.

8. Black *v.* Thurston, (N. J. 1906) 63 Atl. 999; Loos *v.* McCormack, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 144, 93 N. Y. Supp. 1088.

9. Patten *v.* Pepper Hotel Co., (Cal. 1908) 96 Pac. 296.

1041. 1. Bartholf *v.* Bensley, 234 Ill. 336, 84 N. E. 928; Black *v.* Thurston, (N. J. 1906) 63 Atl. 999; Voorhees *v.* Nixon, (N. J. 1907) 66 Atl. 192; Gantt *v.* Gantt, 76 S. Car. 163, 56 S. E. 676.

2. Bartholf *v.* Bensley, 234 Ill. 336, 84 N. E. 928; Voorhees *v.* Nixon, (N. J. 1907) 66 Atl. 192.

1042. 4. Wapakoneta First Nat. Bank *v.* Brotherton, (Ohio 1908) 84 N. E. 794.

7. Quackenbush *v.* Wheaton, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 357, 94 N. Y. Supp. 823; Weis *v.* Levy, 106 N. Y. App. Div. 496, 94 N. Y. Supp. 857.

1043. 4. Ray *v.* Baker, 165 Ind. 74, 74 N. E. 619.

5. Black *v.* Thurston, (N. J. 1906) 63 Atl. 999; Quackenbush *v.* Wheaton, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 357, 94 N. Y. Supp. 823; Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792; Gantt *v.* Gantt, 76 S. Car. 163, 56 S. E. 676.

1044. 1. *Compare* Barry *v.* Stover, (S. Dak. 1906) 107 N. W. 672.

3. Casserly *v.* Morrow, 101 Minn. 16, 111 N. W. 654; Weis *v.* Levy, 106 N. Y. App. Div. 496, 94 N. Y. Supp. 857; American Guild *v.* Damon, 107 N. Y. App. Div. 140, 94 N. Y. Supp. 985; Davenport *v.* Davenport, 80 Vt. 400, 68 Atl. 49; Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

The Mortgagor Must Be Notified of an Assignment before the assignee can enforce a stipulation providing for forfeiture for nonpayment of interest. Isaacs *v.* Baldwin, (Supm. Ct. Spec. T.) 105 N. Y. Supp. 38.

1045. 3. Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792.

1047. 5. Weinberger *v.* Brumberg, 69 N. J. Eq. 669, 61 Atl. 732; American Guild *v.* Damon, 107 N. Y. App. Div. 140, 94 N. Y. Supp. 985.

1049. 5. Velleman *v.* Rohrig, (Supm. Ct. App. Div.) 111 N. Y. Supp. 736.

1050. 4. Polk County Nat. Bank *v.* Darrah, 52 Fla. 581, 42 So. 323.

1051. 2. Tacking Not Abolished in Ontario. — Federal L. Assur. Co. *v.* Stinson, 13 Ont. L. Rep. 127, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1054, and *explaining* Stark *v.* Reid, 26 Ont. 257, there cited.

1055. 5. Stricker *v.* McDonnell, 213 Pa. St. 108, 62 Atl. 520.

7. White *v.* Breidenbaugh, (Ind. App. 1907) 82 N. E. 110.

1056. 2. Payment Is Presumed in the absence of proof of payments on the mortgage for twenty years. Greenfield *v.* Mills, 123 N. Y. App. Div. 43, 107 N. Y. Supp. 705.

5. Denman *v.* Payne, (Ala. 1907) 44 So. 635; Patterson *v.* Northern Trust Co., 230 Ill. 334, 82 N. E. 837; Horner *v.* Chaisty, 101 Md. 593, 61 Atl. 283; Bradley *v.* Bond, 101 Md. 691, 61 Atl. 504; Campbell *v.* Miller, 73 Neb. 779, 103 N. W. 434; Black *v.* Thurston, (N. J. 1906) 63 Atl. 999; Heilig *v.* Heilig, 215 Pa. St. 256, 64 Atl. 442; McVay *v.* Tousley, (S. Dak. 1905) 105 N. W. 932; Neeson *v.* Smith, (Wash. 1907) 92 Pac. 131; Friend *v.* Yahr, 126 Wis. 291, 104 N. W. 997.

Release of Debt. — Brownell *v.* Oviatt, 215 Pa. St. 514, 64 Atl. 670.

Sum Less than Due Accepted as Payment. — Frye *v.* Hubbell, (N. H. 1907) 68 Atl. 325.

Evidence of Payment — *Admissions and Declarations of Mortgagor, Mortgagee, and Assignee.* — York *v.* West, 147 Mich. 549, 111 N. W. 164.

Sufficiency. — Eakle *v.* Hagan, 101 Md. 22, 60 Atl. 615.

Presumption of Payment. — Edmonston *v.* Wilbur, 99 Minn. 495, 110 N. W. 3; Morgan *v.* Pott, 124 Mo. 371, 101 S. W. 717; Brownell *v.* Oviatt, 215 Pa. St. 514, 64 Atl. 670; Clymer *v.* Groff, (Pa. 1908) 69 Atl. 1119.

Mortgage Not Extinguished by Payment Before Secured Guaranty Due. — Ruberg *v.* Brown, 71 S. Car. 287, 51 S. E. 96.

1057. 3. Sherman *v.* Matthieu, 106 N. Y. App. Div. 368, 94 N. Y. Supp. 565; Behrendt *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 146.

1058. 1. Durkin *v.* Markus, 107 N. Y. App. Div. 612, 94 N. Y. Supp. 757.

2. Patterson *v.* Northern Trust Co., 230 Ill. 334, 82 N. E. 837; Horner *v.* Chaisty, 101 Md. 593, 61 Atl. 283.

3. Macaulay *v.* Hayden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 21, 96 N. Y. Supp. 64; Krebs *v.* Carpenter, (Supm. Ct. App. Div.) 109 N. Y. Supp. 482.

4. Blanchard *v.* Naquin, 116 La. 806, 41 So. 99; Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973.

8. North End Sav. Bank *v.* Snow, (Mass. 1908) 83 N. E. 1099; Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130; Winslow *v.* Stoothoff, 104 N. Y. App. Div. 28, 93 N. Y. Supp. 335; Iowa L. & T. Co. *v.* Schnose, 19 S. Dak. 248, 103 N. W. 22.

1059. 1. Forbes *v.* Reynard, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 154, 98 N. Y. Supp. 708; Hayne *v.* Van Epps, 114 N. Y. App. Div. 278, 99 N. Y. Supp. 772; Heilig *v.* Heilig, 215 Pa. St. 256, 64 Atl. 442; Bantz *v.* Adams, 131 Wis. 152, 111 N. W. 69.

2. Bettle *v.* Tiedgen, (Neb. 1906) 110 N. W. 548; Weinberger *v.* Brumberg, 69 N. J. Eq. 669, 61 Atl. 732.

4. Pennypacker *v.* Latimer, 10 Idaho 618, 81 Pac. 55; Pine *v.* Mangus, (Neb. 1906) 107 N. W. 222; McLeod *v.* Despain, (Oregon 1907) 90 Pac. 492; Friend *v.* Yahr, 126 Wis. 291, 104 N. W. 997; Becker *v.* Bluemel, 129 Wis. 491, 109 N. W. 534; Bautz *v.* Adams, 131 Wis. 152, 111 N. W. 69.

7. Pine *v.* Mangus, (Neb. 1906) 107 N. W. 222; Weinberger *v.* Brumberg, 69 N. J. Eq. 669, 61 Atl. 732.

8. Bettle *v.* Tiedgen, (Neb. 1906) 110 N. W. 548; Barry *v.* Stover, (S. Dak. 1906) 107 N. W. 672.

1060. 5. Lydon *v.* Campbell, (Mass. 1908) 84 N. E. 305; Grafflin *v.* State, 103 Md. 171, 63 Atl. 373; Wiener *v.* Boehm, (Supm. Ct. App. Div.) 111 N. Y. Supp. 126.

6. Lydon *v.* Campbell, (Mass. 1908) 84 N. E. 305.

1061. 3. **Redelivery for New Debt Good Between Parties.** — Girard Trust Co. *v.* Baird, 212 Pa. St. 41, 61 Atl. 507. See also Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

5. Capitol Nat. Bank *v.* Holmes, (Colo. 1908) 95 Pac. 314; Scribner *v.* Malinowski, 148 Mich. 446, 111 N. W. 1032.

8. Parsons *v.* Urie, 104 Md. 238, 64 Atl. 927.

9. Capitol Nat. Bank *v.* Holmes, (Colo. 1908) 95 Pac. 314; Parsons *v.* Urie, 104 Md. 238, 64 Atl. 927.

1062. 1. Bonhoff *v.* Wiehorst, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 437.

3. **By Whom Made.** — Grafflin *v.* State, 103 Md. 171, 63 Atl. 373.

6. McCue *v.* Bradbury, 149 Cal. 108, 84 Pac. 993; Grafflin *v.* State, 103 Md. 171, 63 Atl. 373; Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1062.

1063. 1. Heal *v.* Richmond County Sav. Bank, (Supm. Ct. App. Div.) 111 N. Y. Supp. 602; Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063.

7. Hughes *v.* Mt. Vernon Bank, (Ga. App. 1908) 60 S. E. 809.

1064. 1. Hamilton *v.* Rogers, 126 Ga. 27, 54 S. E. 926; Hughes *v.* Mt. Vernon Bank, (Ga. App. 1908) 60 S. E. 809.

4. Gibbs *v.* Haughowout, 207 Mo. 384, 105 S. W. 1067; Duell *v.* Leslie, 207 Mo. 658, 106 S. W. 489; Security Trust, etc., Ins. Co. *v.* Ellsworth, 129 Wis. 349, 109 N. W. 125.

5. *Alabama.* — Francis *v.* Sheats, (Ala. 1907) 45 So. 241.

Arkansas. — Neff *v.* Elder, 84 Ark. 277, 105 S. W. 260.

California. — Anglo-Californian Bank *v.* Field, 146 Cal. 644, 80 Pac. 1080; Crisman *v.* Lanterman, 149 Cal. 647, 87 Pac. 89.

Colorado. — Capitol Nat. Bank *v.* Holmes, (Colo. 1908) 95 Pac. 314.

Illinois. — Moffet *v.* Farwell, 222 Ill. 543, 78 N. E. 925.

Kansas. — Ft. Scott Bldg., etc., Assoc. *v.* Palatine Ins. Co., 74 Kan. 272, 86 Pac. 142, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1064.

Massachusetts. — Taber *v.* Boston, 190 Mass. 101, 76 N. E. 727.

Missouri. — Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1064.

Montana. — Hamilton *v.* Smith, (Mont. 1907) 92 Pac. 32, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1064.

Nebraska. — Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114.

New York. — Townsend *v.* Provident Realty Co., 110 N. Y. App. Div. 226, 96 N. Y. Supp. 1001.

Oregon. — Katz *v.* Obenchain, 48 Oregon 352, 85 Pac. 617.

Wisconsin. — Lynch *v.* Ryan, (Wis. 1907) 111 N. W. 707; Behrendt *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 146.

1066. 1. Neff *v.* Elder, 84 Ark. 277, 105 S. W. 260; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1066.

2. Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114.

Acceptance of Warranty Deed and Cancellation of Instruments Do Not Extinguish Mortgage. — Moffet *v.* Farwell, 222 Ill. 543, 78 N. E. 925.

3. Anglo-Californian Bank *v.* Field, 146 Cal. 644, 80 Pac. 1080; Taber *v.* Boston, 190 Mass. 101, 76 N. E. 727; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130; Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114.

4. Ft. Scott Bldg., etc., Assoc. *v.* Palatine Ins. Co., 74 Kan. 272, 86 Pac. 142.

6. Egan *v.* Engeman, 125 N. Y. App. Div. 743, 110 N. Y. Supp. 366.

1067. 2. Crisman *v.* Lanterman, 149 Cal. 647, 87 Pac. 89; Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1067. See also Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592.

3. Neff *v.* Elder, 84 Ark. 277, 105 S. W. 260; Anglo-Californian Bank *v.* Field, 146 Cal. 644, 80 Pac. 1080; Capitol Nat. Bank *v.* Holmes, (Colo. 1908) 95 Pac. 314; Moffet *v.* Farwell, 222 Ill. 543, 78 N. E. 925; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130; Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114.

1068. 4. Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114.

1069. 3. Equitable Bldg., etc., Assoc. *v.* Thomas, 216 Pa. St. 571, 65 Atl. 1100.

5. **Delivery in Escrow.** — Franklin *v.* Killilea, 126 Wis. 88, 104 N. W. 993.

Unrecorded Release Valid. — Horner *v.* Chaisty, 101 Md. 593, 61 Atl. 283.

Releasor's Intent Controls. — Taylor *v.* Godfrey, (W. Va. 1907) 59 S. E. 631.

8. Willhite *v.* Berry, 232 Ill. 331, 83 N. E. 852.

11. Sherman *v.* Matthieu, 106 N. Y. App. Div. 368, 94 N. Y. Supp. 565.

12. Alexander *v.* Cleland, 13 N. Mex. 524, 86 Pac. 425.

1070. 1. Ferguson *v.* Boyd, (Ind. App. 1906) 79 N. E. 549; Lynch *v.* Ryan, (Wis. 1907) 111 N. W. 707.

Payment Not Only Sufficient Consideration. — Sherman *v.* Matthieu, 106 N. Y. App. Div. 368, 94 N. Y. Supp. 565.

1071. 2. McCrery *v.* Nivin, (Del. 1907) 67 Atl. 452.

1072. 2. Weinberger *v.* Brumberg, 69 N. J. Eq. 669, 61 Atl. 732.

7. Brumby *v.* Jones, (C. C. A.) 141 Fed. 318, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072; Bristow *v.* Thackston, 187 Mo. 332, 86 S. W. 94; U. S. Title Guaranty, etc., Co. *v.* Donohue, 113 N. Y. App. Div. 882, 99 N. Y. Supp. 639; Taylor *v.* Godfrey, (W. Va. 1907) 59 S. E. 631; Franklin *v.* Killilea, 126 Wis. 88, 104 N. W. 993.

Evidence Insufficient to Show Fraud or Mistake. — Barco *v.* Doyle, 50 Fla. 488, 39 So. 103.

Non-production of Instruments upon Payment Not Conclusive Evidence of Fraud. — Weinberger *v.* Brumberg, 69 N. J. Eq. 669, 61 Atl. 732.

Trustee May Release in Breach of Trust. — Vogel *v.* Troy, 232 Ill. 481, 83 N. E. 960.

8. Griffin *v.* International Trust Co., (C. C. A.) 161 Fed. 48.

1073. 1. Warren *v.* Hayes, (N. H. 1907) 68 Atl. 193.

1074. 3. Black *v.* Thurston, (N. J. 1906) 63 Atl. 999; Manchester Bldg., etc., Assoc. *v.* Beardsley, (N. J. 1907) 66 Atl. 1; Krulder *v.* Hillman, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 209, 107 N. Y. Supp. 727.

4. Friend *v.* Yahr, 126 Wis. 291, 104 N. W. 997.

5. Kinard *v.* Hill, (Ala. 1907) 45 So. 60; Hood *v.* Baker, (Ind. App. 1905) 75 N. E. 608; Pierce *v.* Kingston Lumber Co., (Miss. 1907) 43 So. 81; Kingston *v.* Newell, 125 Mo. 389, 102 S. W. 604.

No Recovery of Penalty Where Mortgage Invalid. — Duke *v.* Chandler, (Ala. 1905) 39 So. 567.

Full Payment Necessary. — Smith *v.* Enterprise Bank, (Ala. 1906) 42 So. 551.

MOVING.

1079. 1. **Moving Traffic.** — Under a statute prohibiting a railroad company from hauling cars in ***moving*** traffic, which are not equipped with automatic couplers, it was held that taking a damaged car to the repair shop was not ***moving*** traffic. Taylor *v.* Boston, etc., R. Co., 188 Mass. 390, 74 N. E. 591.

MULTIFARIOUSNESS.

1080. 2. Martin *v.* Brown, 129 Ga. 562, 59 S. E. 302.

MUNICIPAL — MUNICIPALITY.

1080. 6. Miller *v.* People, 230 Ill. 65, 82 N. E. 521.

7. **Municipality and Municipal Corporations Distinguished.** — Hanson *v.* Cresco, 132 Iowa 533, 109 N. W. 1109.

Township. — See Hanson *v.* Cresco, 132 Iowa 533, 109 N. W. 1109.

MUNICIPAL AID.

1084. 6. Collier Shovel, etc., Co. *v.* Washington, 38 Ind. App. 370, 76 N. E. 122.

1086. 2. See Tolson *v.* Police Jury, 119 La. 215, 43 So. 1011; Territory *v.* Vail, (Ariz. 1906) 85 Pac. 652.

1090. 1. **Volunteer Firemen Association.** — Com. *v.* Barker, 211 Pa. St. 610, 61 Atl. 253.

1091. 2. People *v.* Metz, 120 N. Y. App. Div. 565, 104 N. Y. Supp. 1115.

1095. **2.** Inverness County *v.* McIsaac, 37 Can. Sup. Ct. 75; Red River Furnace Co. *v.* Tennessee Cent. R. Co., 113 Tenn. 697, 87 S. W. 1016.

1098. **5.** Voss *v.* Waterloo Water Co., 163 Ind. 91, 71 N. E. 208, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1098, 1099; Water, etc., Co. *v.* Hutchinson Interurban R. Co., (Kan. 1906) 87 Pac. 883.

1100. **10. Railroad "into or through" Municipality.** — Water, etc., Co. *v.* Hutchinson Interurban R. Co., (Kan. 1906) 87 Pac. 883.

1102. **12.** Colburn *v.* McDonald, 72 Neb. 431, 100 N. W. 961, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1102.

1104. **1.** Frank *v.* Butler County, (C. C. A.) 139 Fed. 119; Water, etc., Co. *v.* Hutchinson Interurban R. Co., (Kan. 1906) 87 Pac. 883.

1105. **1. Delegation of Ministerial Duties.** — Estill County *v.* Embry, (C. C. A.) 144 Fed. 913.

1109. **5.** Good *v.* Burke, 167 Ind. 462, 77 N. E. 1080 (use of initials in signature); Tolson *v.* Police Jury, 119 La. 215, 43 So. 1011.

1110. **4.** Red River Furnace Co. *v.* Tennessee Cent. R. Co., 113 Tenn. 697, 87 S. W. 1016.

1111. **1.** Tolson *v.* Police Jury, 119 La. 215, 43 So. 1011, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1111. See also Leavenworth *v.* Wilson, 69 Kan. 74, 76 Pac. 400, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1111.

2. Donation of Land. — Swanson *v.* Ottumwa, 131 Iowa 540, 106 N. W. 9.

1113. **5.** Duncan *v.* Cox, (Ind. App. 1907) 81 N. E. 735, *rehearing denied* 82 N. E. 125. But see Arkansas Southern R. Co. *v.* Wilson, 118 La. 395, 42 So. 976 (where railroad had complied with conditions entitling it to tax aid voted).

1115. **1.** Quinlan *v.* Green County, (C. C. A.) 157 Fed. 33; State *v.* Clinton County, 166 Ind. 162, 76 N. E. 986; Red River Furnace Co. *v.* Tennessee Cent. R. Co., 113 Tenn. 697, 87 S. W. 1016.

1116. **3.** Arkansas Southern R. Co. *v.* Wilson, 118 La. 395, 42 So. 976.

1117. **5.** Marklove *v.* Utica, etc., R. Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 258, 96 N. Y. Supp. 795.

1118. **2.** Marklove *v.* Utica, etc., R. Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 258, 96 N. Y. Supp. 795.

1119. **5.** See Sweeney *v.* Tennessee Cent. R. Co., 118 Tenn. 297, 100 S. W. 732.

1120. **2.** Estill County *v.* Embry, (C. C. A.) 144 Fed. 913.

5. Sorel *v.* Quebec So. R. Co., 36 Can. Sup. Ct. 686.

1121. **5.** Whitney *v.* Chicago, etc., R. Co., 133 Iowa 508, 110 N. W. 912.

MUNICIPAL CORPORATIONS.

1130. **1. Various Definitions.** — O'Donnell *v.* Syracuse, 184 N. Y. 1, 76 N. E. 738, *reversing* 102 N. Y. App. Div. 80, 92 N. Y. Supp. 555; Acme Dairy Co. *v.* Astoria, (Oregon 1907) 90 Pac. 153.

2. Davis *v.* Henry, 32 Pa. Co. Ct. 32, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1130.

3. Davis *v.* Henry, 32 Pa. Co. Ct. 32, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1130.

4. Los Angeles City School Dist. *v.* Longden, (Cal. 1905) 83 Pac. 246; Los Angeles City School Dist. *v.* Longden, (Cal. 1905) 83 Pac. 248; Davis *v.* Henry, 32 Pa. Co. Ct. 32, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1130.

5. The Word "Town" is often used as a generic term, embracing cities as well as towns. Smithville *v.* Dispensary Com'rs, 125 Ga. 559, 54 S. E. 539.

1132. **2.** People *v.* Stratton, 33 Colo. 464, 81 Pac. 245; Frisch *v.* Ard, 34 Colo. 66, 81 Pac. 247.

3. Miller *v.* Pineville, (Ky. 1906) 89 S. W. 521.

6. Washburn Waterworks Co. *v.* Washburn, 129 Wis. 73, 108 N. W. 194.

7. Required Number of Inhabitants. — People *v.* Loyalton, (Cal. 1905) 82 Pac. 620; Boyd *v.* Bickel, 13 Idaho 191, 89 Pac. 631.

1133. **1.** Frisch *v.* Ard, 34 Colo. 66, 81 Pac. 247; People *v.* Stratton, 33 Colo. 464, 81 Pac. 245.

7. *Ex p.* Sweetman, 5 Cal. App. 577, 90 Pac. 1069; *Ex p.* Huillade, 5 Cal. App. xiii, 90 Pac. 1071; Turner *v.* Snyder, 101 Minn. 481, 112 N. W. 868.

8. State *v.* Green, 131 Minn. 324, 111 N. W. 510.

9. Constitutional Provision — Effect upon Pre-existing Corporations. — Butler *v.* Lewiston, 11 Idaho 393, 83 Pac. 234; Acme Dairy Co. *v.* Astoria, (Oregon 1907) 90 Pac. 153.

10. North Troy Graded School Dist. *v.* Troy, 80 Vt. 16, 66 Atl. 1033.

1134. **1. For Cases Construing General Municipal Incorporation Acts,** see Mangham *v.* Mallory, 128 Ga. 430, 57 S. E. 688; Bumb *v.* Evansville, 168 Ind. 272, 80 N. E. 625; Boyd *v.* Bickel, 13 Idaho 191, 89 Pac. 631; Davenport *v.* Ham, 72 Kan. 179, 83 Pac. 398; Lewis *v.* Newark, (N. J. 1907) 65 Atl. 1039; State *v.* Larkin, (Tex. Civ. App. 1905) 90 S. W. 912; Campbell *v.* Bryant, 104 Va. 509, 52 S. E. 638.

The Legislature May by Special Act Validate Defects made in an honest attempt to incorporate under a general law. State *v.* Larkin, (Tex. Civ. App. 1905) 90 S. W. 912.

While the Special Act Incorporating a City Is Still in Force, an attempt to incorporate it under a general law is abortive. State *v.* Larkin, (Tex. Civ. App. 1905) 90 S. W. 912.

3. Butler *v.* Lewiston, 11 Idaho 393, 83 Pac. 234.

4. Lewis *v.* Newark, (N. J. 1907) 65 Atl. 1039.

A General Law Operates Prospectively so as to include any city which afterwards attains a sufficient population to fall within the class created by the act. Bumb *v.* Evansville, 168 Ind. 272, 80 N. E. 625.

1135. **4.** Levitt *v.* Wilson, 72 Kan. 160, 83 Pac. 397.

5. People *v.* Pederson, 220 Ill. 554, 77 N. E. 251; Levitt *v.* Wilson, 72 Kan. 160, 83 Pac. 397.

1136. **5.** Horton *v.* Newport, 27 R. I. 283, 61 Atl. 750.

1137. **7.** Acme Dairy Co. *v.* Astoria, (Oregon 1907) 90 Pac. 153.

1138. 5. *Ex p.* Sweetman, 5 Cal. App. 577, 90 Pac. 1009; *Ex p.* Ahlquist, 5 Cal. App. xiii, 90 Pac. 1071.

1139. 3. School Trustees *v.* Board of School Inspectors, 115 Ill. App. 479.

5. Acme Dairy Co. *v.* Astoria, (Oregon 1907) 90 Pac. 153.

6. Lake Charles *v.* Roy, 115 La. 930, 40 So. 362; Wolfe *v.* Moorhead, 98 Minn. 113, 107 N. W. 728; Hindman *v.* Boyd, 42 Wash. 17, 84 Pac. 609.

7. Porter *v.* Vinzant, 49 Fla. 213, 38 So. 607; State *v.* Stobie, 194 Mo. 14, 92 S. W. 191.

8. Davoust *v.* Alameda, 149 Cal. 69, 84 Pac. 760; O'Donnell *v.* Syracuse, 184 N. Y. 1, 76 N. E. 738, *reversing* 102 N. Y. App. Div. 80, 92 N. Y. Supp. 555.

9. Taylor *v.* District of Columbia, 24 App. Cas. (D. C.) 392; Elkhart *v.* Lipschitz, 164 Ind. 671, 74 N. E. 528; *Ex p.* Paducah, (Ky. 1905) 89 S. W. 302; Wolfe *v.* Moorhead, 98 Minn. 113, 107 N. W. 728; Hindman *v.* Boyd, 42 Wash. 17, 84 Pac. 609.

1140. 1. *United States.* — Quimby *v.* Consumers' Gas Trust Co., 140 Fed. 362; Glucose Sugar Refining Co. *v.* Marshalltown, 153 Fed. 620.

Alabama. — Gambill *v.* Erdrich, 143 Ala. 506, 39 So. 297; Cleveland School Furniture Co. *v.* Greenville, 146 Ala. 559, 41 So. 862; Bessemer *v.* Bessemer Waterworks, (Ala. 1907) 44 So. 663.

California. — Hyatt *v.* Williams, 148 Cal. 585, 84 Pac. 41.

District of Columbia. — U. S. *v.* MacFarland, 28 App. Cas. (D. C.) 552.

Florida. — Porter *v.* Vinzant, 49 Fla. 213, 38 So. 607.

Illinois. — Chicago *v.* Gunning System, 114 Ill. App. 377, *affirmed* 214 Ill. 628, 73 N. E.

Iowa. — McAllen *v.* Hamblin, 129 Iowa 329, 105 N. W. 593; Hubbell *v.* Bennett, 130 Iowa 66, 106 N. W. 375.

New Jersey. — Ross *v.* Long Branch, 73 N. J. L. 292, 63 Atl. 609.

Pennsylvania. — *In re* Pennsylvania R. Co., 213 Pa. St. 377, 62 Atl. 986, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1139 [1140]; Edgewood *v.* Scott, 29 Pa. Super. Ct. 156.

South Carolina. — Luther *v.* Wheeler, 73 S. Car. 83, 52 S. E. 874.

Virginia. — Donable *v.* Harrisonburg, 104 Va. 533, 52 S. E. 174.

Washington. — Farwell *v.* Seattle, 43 Wash. 141, 86 Pac. 217.

Canada. — Tremblay *v.* Montreal, 28 Quebec Super. Ct. 411.

Power to Sprinkle Streets. McAllen *v.* Hamblin, 129 Iowa 329, 105 N. W. 593.

7. *District of Columbia.* — Taylor *v.* District of Columbia, 24 App. Cas. (D. C.) 392; U. S. *v.* MacFarland, 28 App. Cas. (D. C.) 552.

Illinois. — Chicago *v.* Gunning System, 114 Ill. App. 377, *affirmed* 214 Ill. 628, 73 N. E. 1035.

Indiana. — Elkhart *v.* Lipschitz, 164 Ind. 671, 74 N. E. 528.

Maine. — State *v.* Wallace, 102 Me. 232, 66 Atl. 476, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1140.

Missouri. — State *v.* Missouri, etc., Telephone Co., 189 Mo. 83, 88 S. W. 41.

Pennsylvania. — *In re* Pennsylvania R. Co., 213 Pa. St. 377, 62 Atl. 986.

South Carolina. — Luther *v.* Wheeler, 73 S. Car. 90, 52 S. E. 874.

Washington. — Farwell *v.* Seattle, 43 Wash. 141, 86 Pac. 217.

1141. 1. Porter *v.* Vinzant, 49 Fla. 213, 8 So. 607; Elkart *v.* Lipschitz, 164 Ind. 671, 74 N. E. 528.

Powers Intended to Be Conferred to Be Effectuated. — Taylor *v.* District of Columbia, 24 App. Cas. (D. C.) 392.

4. **Discretionary Powers — How Exercised.** Goytino *v.* McAleer, 4 Cal. App. 655, 88 Pac. 991; Enders *v.* Friday, (Neb. 1907) 111 N. W. 140; Peterson *v.* State, (Neb. 1907) 112 N. W. 306.

1142. 1. Weeks *v.* Middletown, 107 N. Y. App. Div. 587, 95 N. Y. Supp. 352.

6. May *v.* Chicago, 124 Ill. App. 527, *affirmed* 222 Ill. 595, 78 N. E. 912; Burns *v.* New York, 121 N. Y. App. Div. 180, 105 N. Y. Supp. 605, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1142; Emmert *v.* Elyria, 74 Ohio St. 185, 78 N. E. 269.

7. Chicago *v.* Malkan, 119 Ill. App. 542, *affirmed* 217 Ill. 471, 75 N. E. 548.

8. Van Ingen *v.* Hudson Realty Co., 106 N. Y. App. Div. 444, 94 N. Y. Supp. 645; State *v.* Atlantic, etc., R. Co., 141 N. Car. 736, 53 S. E. 290; State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261; State *v.* Northern Pac. R. Co., 98 Minn. 429, 108 N. W. 269; State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121.

1143. 7. In the *District of Columbia* power to contract is in Congress and not in the District commissioners. Myers *v.* District of Columbia, 25 App. Cas. (D. C.) 132.

8. Cleveland School Furniture Co. *v.* Greenville, 146 Ala. 559, 41 So. 862; Luther *v.* Wheeler, 73 S. Car. 90, 52 S. E. 874, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1143.

9. Glucose Sugar Refining Co. *v.* Marshalltown, 153 Fed. 620.

10. Cunningham *v.* Cleveland, (C. C. A.) 152 Fed. 907; Equitable Loan, etc., Co. *v.* Edwardsville, 143 Ala. 182, 38 So. 1016; McMaster *v.* Waynesboro, 122 Ga. 231, 50 S. E. 122; Thomasville *v.* Thomasville Electric Light, etc., Co., 122 Ga. 399, 50 S. E. 169; Halsey *v.* Belle Plaine, 128 Iowa 467, 104 N. W. 494; Blood *v.* Beal, 100 Me. 30, 60 Atl. 427; Wheelwright *v.* Boston, 188 Mass. 521, 74 N. E. 937; Conner *v.* Nevada, 188 Mo. 148, 86 S. W. 256; Bailey *v.* Sioux Falls, 19 S. Dak. 231, 103 N. W. 16; Robertson *v.* Staunton, 104 Va. 73, 51 S. E. 178.

1144. 1. Equitable Loan, etc., Co. *v.* Edwardsville, 143 Ala. 182, 38 So. 1016; Halsey *v.* Belle Plaine, 128 Iowa 467, 104 N. W. 494; Wheelwright *v.* Boston, 188 Mass. 521, 74 N. E. 937; Houston *v.* Stewart, 99 Tex. 67, 87 S. W. 663.

4. Voss *v.* Waterloo Water Co., 163 Ind. 69, 71 N. E. 208, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1144; Marklove *v.* Utica, etc., R. Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 258, 96 N. Y. Supp. 795; Red River Furnace Co. *v.* Tennessee Cent. R. Co., 113 Tenn. 697, 87 S. W. 1016.

5. Luxora *v.* Jonesboro, etc., R. Co., 83 Ark. 277, 103 S. W. 605.

1145. 1. [illegible] 502, 106 N. W. 666.

1146. 1. Chicago *v.* Wolf, 221 Ill. 130, 77 N. E. 414; Com. *v.* Barker, 211 Pa. St. 610, 61 Atl. 253.

Where a Claim for Compensation Is Pleaded by a Person Injured. — Tremblay *v.* Montreal, 28 Quebec Super. Ct. 411, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1146.

2. Com. *v.* Barker, 211 Pa. St. 610, 61 Atl. 253.

6. Truesdale *v.* Newport, (Ky. 1906) 90 S. W. 589.

Thirty Years has been held not an unreasonable time for the city to bind itself for a supply of water. Gadsden *v.* Mitchell, 145 Ala. 137, 40 So. 557.

1147. 2. Taylor *v.* District of Columbia, 24 App. Cas. (D. C.) 392; Porter *v.* Vinzant, 49 Fla. 213, 38 So. 607; Littlejohn *v.* Stells, 123 Ga. 427, 51 S. E. 390; Chicago *v.* Gunning System, 114 Ill. App. 377, *affirmed* 214 Ill. 628, 73 N. E. 1035; State *v.* Stobie, 194 Mo. 14, 92 S. W. 191.

5. Bodewig *v.* Port Huron, 141 Mich. 564, 104 N. W. 769; Reis *v.* New York, 113 N. Y. App. Div. 468, 99 N. Y. Supp. 291, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1147; Allentown *v.* Wagner, 27 Pa. Super. Ct. 485.

6. Hyatt *v.* Williams, 148 Cal. 585, 84 Pac. 41; Aiken *v.* Columbus, 167 Ind. 139, 78 N. E. 657; Richmond *v.* Lincoln, 167 Ind. 468, 79 N. E. 445; Yazoo City *v.* Birchett, 89 Miss. 700, 42 So. 569; Connor *v.* Marshfield, 128 Wis. 280, 107 N. W. 639.

The Right to Construct Gas Works does not include the right to purchase gas wells, pumping stations, and pipe lines which are outside of the territory over which the city has jurisdiction. Quinby *v.* Consumers' Gas Trust Co., 140 Fed. 362.

7. Indianapolis *v.* Consumers' Gas Trust Co., (C. C. A.) 144 Fed. 641.

9. Hyatt *v.* Williams, 148 Cal. 585, 84 Pac. 41; Potsdam Electric Light, etc., Co. *v.* Potsdam, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 18, 97 N. Y. Supp. 190.

1148. 1. Wiltse *v.* Red Wing, 99 Minn. 255, 109 N. W. 114; Wiltse *v.* Red Wing, (Minn. 1907) 111 N. W. 1134; Connor *v.* Marshfield, 128 Wis. 280, 107 N. W. 639.

6. Western Pac. R. Co. *v.* Southern Pac. R. Co., (C. C. A.) 151 Fed. 376; Roswell *v.* Ezzard, 128 Ga. 43, 57 S. E. 114.

10. Donable *v.* Harrisonburg, 104 Va. 533, 52 S. E. 174; Farwell *v.* Seattle, 43 Wash. 141, 86 Pac. 217.

11. Jordan *v.* Evansville, 163 Ind. 512, 72 N. E. 544, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1148; Topeka *v.* Cook, 72 Kan. 595, 84 Pac. 376; Farwell *v.* Seattle, 43 Wash. 141, 86 Pac. 217.

12. See Donable *v.* Harrisonburg, 104 Va. 533, 52 S. E. 174.

1149. 1. Southern Pac. Co. *v.* Western Pac. R. Co., 144 Fed. 160; Western Pac. R. Co. *v.* Southern Pac. R. Co., (C. C. A.) 151 Fed. 376; Roswell *v.* Ezzard, 128 Ga. 43, 57 S. E. 114.

2. Western Maryland Tidewater R. Co. *v.* Baltimore, (Md. 1907) 68 Atl. 6, *citing* 20 AM. [illegible]

3. Miller *v.* Pineville, (Ky. 1905) 89 S. W. 261; Allentown *v.* Wagner, 27 Pa. Super. Ct. [illegible]

1150. 1. Merritt *v.* State, (Tex. Civ. App. 1906) 94 S. W. 372. See also Levitt *v.* Wilson, 72 Kan. 160, 83 Pac. 397.

3. See State *v.* Clark, 75 Neb. 620, 106 N. W. 971.

4. People *v.* Loyalton, (Cal. 1905) 82 Pac. 620; State *v.* Clark, 75 Neb. 620, 106 N. W. 971; Merritt *v.* State, (Tex. Civ. App. 1906) 94 S. W. 372.

7. Allentown *v.* Wagner, 27 Pa. Super. Ct. 485.

Changing Boundaries by Special Act. — Levitt *v.* Wilson, 72 Kan. 160, 83 Pac. 397; Davenport *v.* Ham, 72 Kan. 179, 83 Pac. 398.

1151. 1. **A Legislative Act Conferring upon a Designated Court.** — New Orleans, etc., R. Co. *v.* Vidalia, 117 La. 573, 42 So. 139, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1151.

3. Delegation of Power Not Unconstitutional. — People *v.* Ontario, 148 Cal. 625, 84 Pac. 205.

1152. 4. **A Provision Exempting Territory Annexed** from debts of the city before annexation does not create a contract which cannot be impaired, but merely grants a revocable privilege. Galloway *v.* Memphis, 116 Tenn. 736, 94 S. W. 75.

6. Little Rock R., etc., Co. *v.* North Little Rock, 76 Ark. 48, 88 S. W. 826, *affirmed on rehearing* 76 Ark. 63, 88 S. W. 1026; Wild *v.* People, 227 Ill. 556, 81 N. E. 707; McCain *v.* Des Moines, 128 Iowa 331, 103 N. W. 979; Miller *v.* Pineville, (Ky. 1905) 89 S. W. 261; Atty.-Gen. *v.* Springwells Tp., 143 Mich. 523, 107 N. W. 87; Allentown *v.* Wagner, 27 Pa. Super. Ct. 485; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

Collateral Attack. — A legislative enactment authorizing the annexation of territory to a city is, as a general rule, subject to collateral attack. McCain *v.* Des Moines, 128 Iowa 331, 103 N. W. 979.

1153. 1. Atty.-Gen. *v.* Springwells Tp., 143 Mich. 523, 107 N. W. 87.

3. But where a legislative district, etc. Atty.-Gen. *v.* Springwells Tp., 143 Mich. 523, 107 N. W. 87.

4. People *v.* Ontario, 148 Cal. 625, 84 Pac. 205; Hardesty *v.* Mt. Eden, (Ky. 1905) 86 S. W. 687; Forbes *v.* Meridian, 86 Miss. 243, 38 So. 676.

5. Ernsperger *v.* Mishawaka, 168 Ind. 253, 80 N. E. 543; Forbes *v.* Meridian, 86 Miss. 243, 38 So. 676.

1154. 2. Orlando *v.* Orlando Water, etc., Co., 50 Fla. 207, 39 So. 532; Wild *v.* People, 227 Ill. 556, 81 N. E. 707; Ernsperger *v.* Mishawaka, 168 Ind. 253, 80 N. E. 543.

Territory in Adjoining County. — Portsmouth Sav. Bank *v.* Smith, 74 Kan. 223, 86 Pac. 462.

5. People *v.* Ontario, 148 Cal. 625, 84 Pac. 205; Orlando *v.* Orlando Water, etc., Co., 50 Fla. 207, 39 So. 532; Wild *v.* People, 227 Ill. 556, 81 N. E. 707; Ernsperger *v.* Mishawaka, 168 Ind. 253, 80 N. E. 543; Mill Creek *v.*

Borough, 32 Pa. Super. Ct. 633; Malone v. Williams, 118 Tenn. 390, 103 S. W. 798; East Montpelier v. Barre, 79 Vt. 542, 66 Atl. 100.

1155. 1. Roswell v. Ezzard, 128 Ga. 43, 57 S. E. 114.

2. Barber v. Franklin, (Neb. 1906) 108 N. W. 146.

3. Atchison, etc., R. Co. v. Lyon County, 72 Kan. 13, 84 Pac. 1031.

5. Fruita v. Williams, 33 Colo. 157, 80 Pac. 132; Anaconda Min. Co. v. Anaconda, 33 Colo. 70, 80 Pac. 144; Ormond v. Shaw, 50 Fla. 445, 39 So. 108; Johnson v. Forest City, 129 Iowa 51, 105 N. W. 353; Miller v. Pineville, (Ky. 1905) 89 S. W. 261; Grover Hill v. McClure, 27 Ohio Cir. Ct. 376; Allentown v. Wagner, 27 Pa. Super. Ct. 485.

1156. 2. Luther v. Wheeler, 73 S. Car. 90, 52 S. E. 874.

6. **A Mere Resolution Directed to the President and Clerk** of the town of Harrison to execute a contract with Jersey City not communicated to Jersey City, did not constitute a proposal which Jersey City might accept and thereby bind Harrison. Jersey City v. Harrison, 72 N. J. L. 185, 62 Atl. 765.

1157. 4. Dickey v. Porter, 203 Mo. 1, 101 S. W. 586.

5. Gordon v. Jefferson, 111 Mo. App. 27, 85 S. W. 617, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1156 [1157].

6. Valley Falls Co. v. Taft, 27 R. I. 136, 61 Atl. 41.

7. Hardwick v. Wolcott, 78 Vt. 23, 61 Atl. 471.

8. **Unauthorized Act of City Officer.** — Central Bitulithic Paving Co. v. Mt. Clemens, 143 Mich. 259, 106 N. W. 888.

10. Fountain v. Sacramento, 1 Cal. App. 461, 82 Pac. 637.

1158. 3. American Brewing Co. v. St. Louis, 187 Mo. 376, 86 S. W. 129, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1158; Luther v. Wheeler, 73 S. Car. 90, 52 S. E. 874, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1158.

1159. 1. Vandalia R. Co. v. State, 166 Ind. 219, 76 N. E. 980; McFarlane v. School Directors, 33 Pa. Co. Ct. 119, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1158, 1159.

3. McGonigale v. Defiance, 140 Fed. 621.

4. Gadsden v. Mitchell, 145 Ala. 137, 40 So. 55.

6. State v. St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261; State v. Northern Pac. R. Co., 98 Minn. 429, 108 N. W. 269; State v. Atlantic, etc., R. Co., 141 N. Car. 736, 53 S. E. 290.

7. Wilmington v. Bryan, 141 N. Car. 666, 54 S. E. 543, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1159, in dissenting opinion of Walker, J.

A Contract for the Services of an Attorney made in defiance of an existing ordinance is invalid. Hope v. Alton, 116 Ill. App. 116, *affirmed* 214 Ill. 102, 73 N. E. 406.

1160. 4. **Employment by Former Does Not Bind Subsequent Board.** — Wilmington v. Bryan, 141 N. Car. 666, 54 S. E. 543.

6. Moorhead v. Murphy, 94 Minn. 127, 102 N. W. 219, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1160.

1161. 3. Com. v. Witman, 217 Pa. St. 411, 66 Atl. 986; Kolb v. Tamaqua, (Pa. 1907) 67 Atl. 44.

1162. 5. Earl v. Bowen, 146 Cal. 754, 81 Pac. 133; People v. Peyton, 214 Ill. App. 376, 73 N. E. 768; People v. Borman, 214 Ill. 416, 73 N. E. 770; People v. McDermott, 214 Ill. 562, 73 N. E. 770; California v. Bunceton Telephone Co., 112 Mo. App. 722, 87 S. W. 604; Emmmert v. Elyria, 74 Ohio St. 185, 78 N. E. 269; Paul v. Seattle, 40 Wash. 294, 82 Pac. 601.

Contract for Street Improvement. — Emmert v. Elyria, 74 Ohio St. 185, 78 N. E. 269.

6. People v. Peyton, 214 Ill. 376, 73 N. E. 768; People v. McDermott, 214 Ill. 562, 73 N. E. 770; People v. Borman, 214 Ill. 416, 73 N. E. 770; Emmert v. Elyria, 74 Ohio St. 185, 78 N. E. 269; Paul v. Seattle, 40 Wash. 294, 82 Pac. 601.

1163. 6. Rogers v. Omaha, (Neb. 1906) 107 N. W. 214; Horgan v. New York, 114 N. Y. App. Div. 555, 100 N. Y. Supp. 68.

1164. 3. Pillager v. Hewitt, 98 Minn. 265, 107 N. W. 815.

4. Earl v. Bowen, 146 Cal. 754, 81 Pac. 133; California v. Bunceton Telephone Co., 112 Mo. App. 722, 87 S. W. 604.

Recovery May Be Had on an Oral Contract for Necessaries furnished a family under quarantine, notwithstanding a charter provision that all municipal contracts shall be in writing and signed and approved by certain officers. Meily v. Columbus, 27 Ohio Cir. Ct. 822.

6. Chicago v. Duffy, 117 Ill. App. 261, *affirmed* 218 Ill. 242, 75 N. E. 912; W. F. Stewart Co. v. Flint, 147 Mich. 697, 111 N. W. 352.

1165. 1. Mankato v. Barber Asphalt Pav. Co., (C. C. A.) 142 Fed. 329; Chicago v. Mohr, 216 Ill. 320, 74 N. E. 1056; Chicago v. Duffy, 117 Ill. App. 261, *affirmed* 218 Ill. 242, 75 N. E. 912; Monaghan v. Indianapolis, (Ind. App. 1905) 75 N. E. 33; Owens v. Marion, 127 Iowa 469, 103 N. W. 381; Kenyou v. Ionia County, 138 Mich. 547, 101 N. Y. 851, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1165. 1166; Allen v. Labsap, 188 Mo. 692, 87 S. W. 926; Faist v. Hoboken, 72 N. J. L. 361, 60 Atl. 1120.

3. Montgomery v. Barnett, (Ala. 1907) 43 So. 92; National Surety Co. v. Kansas City Hydraulic Press Brick Co., 73 Kan. 196, 84 Pac. 1034; Atkin v. Wyandotte Coal, etc., Co., 73 Kan. 768, 84 Pac. 1040; Elsberry v. Black, 120 Mo. App. 20, 96 S. W. 256.

4. Gage v. New York, 110 N. Y. App. Div. 403, 97 N. Y. Supp. 157.

5. Bunker v. Hutchinson, 74 Kan. 658, 87 Pac. 884, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1165; Walter v. McClellan, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 279, 96 N. Y. Supp. 479.

7. *United States.* — Drainage Commission v. National Contracting Co., 136 Fed. 780, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1165.

Alabama. — Montgomery v. Barnett, (Ala. 1907) 43 So. 92.

Florida. — Anderson v. Fuller, 51 Fla. 380, 41 So. 684.

Indiana. — Monaghan v. Indianapolis, (Ind. App. 1905) 75 N. E. 33.

Kansas. — National Surety Co. *v.* Kansas City Hydraulic Press Brick Co., 73 Kan. 196, 84 Pac. 1034; Atkin *v.* Wyandotte Coal, etc., Co., 73 Kan. 768, 84 Pac. 1040.

Kentucky. — Providence *v.* Providence Electric Light Co., (Ky. 1906) 91 S. W. 664.

Minnesota. — Patterson *v.* Barber Asphalt Paving Co., 96 Minn. 9, 104 N. W. 566.

Missouri. — Elsberry *v.* Black, 120 Mo. App. 20, 96 S. W. 256.

New York. — People *v.* Kingston, 189 N. Y. 66, 81 N. E. 557.

8. Drainage Commission *v.* National Contracting Co., 136 Fed. 780, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1165; Valentine Clark Co. *v.* Allegheny City, 143 Fed. 644; People *v.* Kingston, 189 N. Y. 66, 81 N. E. 557. *Compare* Providence *v.* Providence Electric Light Co., (Ky. 1906) 91 S. W. 664.

1166. 1. Monaghan *v.* Indianapolis, (Ind. App. 1905) 75 N. E. 33; Saunders *v.* Iowa City, 134 Iowa 132, 111 N. W. 529; Stites *v.* Norton, (Ky. 1907) 101 S. W. 1189; Lacoste *v.* New Orleans, 119 La. 469, 44 So. 267; People *v.* Kingston, 189 N. Y. 66, 81 N. E. 557.

May Impose Restrictions as to Supplies. — Gilsonite Constr. Co. *v.* Arkansas McAlester Coal Co., 205 Mo. 49, 103 S. W. 93.

2. Sawyer *v.* Pittsburg, 217 Pa. St. 17, 66 Atl. 86.

3. Services Requiring Scientific Knowledge and Professional Skill. — Houston *v.* Glover, (Tex. Civ. App. 1905) 89 S. W. 425; Houston *v.* Potter, (Tex. Civ. App. 1906) 91 S. W. 389.

4. Monaghan *v.* Indianapolis, (Ind. App. 1905) 75 N. E. 33; Monaghan *v.* Indianapolis, 37 Ind. App. 280, 76 N. E. 424; Allen *v.* Milwaukee, 128 Wis. 678, 106 N. W. 1099.

5. Monaghan *v.* Indianapolis, 37 Ind. App. 315, 76 N. E. 424, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1166, 1167, in dissenting opinion of Wiley, J.

1167. 1. Monaghan *v.* Indianapolis, 37 Ind. App. 315, 76 N. E. 424, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1166, 1167, in dissenting opinion of Wiley, J.; Lacoste *v.* New Orleans, 119 La. 469, 44 So. 267.

2. Owens *v.* Marion, 127 Iowa 469, 103 N. W. 381; Comstock *v.* Eagle Grove City, 133 Iowa 589, 111 N. W. 51; Faist *v.* Hoboken, 72 N. J. L. 361, 60 Atl. 1120.

3. Comstock *v.* Eagle Grove City, 133 Iowa 589, 111 N. W. 51.

4. Owens *v.* Marion, 127 Iowa 469, 103 N. W. 381; Gage *v.* New York, 110 N. Y. App. Div. 403, 97 N. Y. Supp. 157.

8. Bids to Be Considered in Entirety. — Stimson *v.* Hanley, 151 Cal. 379, 90 Pac. 945.

1168. 1. Faist *v.* Hoboken, 72 N. J. L. 361, 60 Atl. 1120.

2. Seibert *v.* Indianapolis, (Ind. App. 1907) 81 N. E. 99.

3. Philadelphia *v.* Neill, 211 Pa. St. 353, 60 Atl. 1033.

1169. 1. Stites *v.* Norton, (Ky. 1907) 101 S. W. 1189; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Milbank *v.* Western Surety Co., (S. Dak. 1907) 111 N. W. 561; State *v.* Holt, (Wis. 1907) 111 N. W. 1106.

4. Montgomery *v.* Barnett, (Ala. 1907) 43 So. 92, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1169; Patterson *v.* Barber Asphalt Paving Co., 96 Minn. 9, 104 N. W. 566; Boonville *v.* Stephens, (Mo. App. 1906) 95 S. W. 314.

A Departure in Matters Not Substantial will not invalidate the contract. Mankato *v.* Barber Asphalt Pav. Co., (C. C. A.) 142 Fed. 329.

5. Patterson *v.* Barber Asphalt Paving Co., 96 Minn. 9, 104 N. W. 566.

7. Williams *v.* New York, 118 N. Y. App. Div. 756, 104 N. Y. Supp. 14; Jonathan Clark, etc., Co. *v.* Pittsburg, 217 Pa. St. 46, 66 Atl. 154.

1170. 1. Williams *v.* New York, 118 N. Y. App. Div. 756, 104 N. Y. Supp. 14; Jonathan Clark, etc., Co. *v.* Pittsburg, 217 Pa. St. 46, 66 Atl. 154.

5. Patterson *v.* Barber Asphalt Paving Co., 96 Minn. 9, 104 N. W. 566; Faist *v.* Hoboken, 72 N. J. L. 361, 60 Atl. 1120.

1171. 3. Barber Asphalt Paving Co. *v.* Field, 188 Mo. 182, 86 S. W. 860.

5. McCain *v.* Des Moines, 128 Iowa 331, 103 N. W. 979; Marklove *v.* Utica, etc., R. Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 258, 96 N. Y. Supp. 795; O'Rourke *v.* Philadelphia, 211 Pa. St. 79, 60 Atl. 499; McManus *v.* Philadelphia, 211 Pa. St. 394, 60 Atl. 1001.

6. Marklove *v.* Utica, etc., R. Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 258, 96 N. Y. Supp. 795; Rome *v.* Whitestown Waterworks, 113 N. Y. App. Div. 547, 100 N. Y. Supp. 357; Connor *v.* Marshfield, 128 Wis. 280, 107 N. W. 639.

1172. 3. Toomey *v.* Bridgeport, 79 Conn. 229, 64 Atl. 215; McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Lobdell *v.* Chicago, 227 Ill. 218, 81 N. E. 354; Blood *v.* Beal, 100 Me. 30, 60 Atl. 427; Conner *v.* Nevada, 188 Mo. 148, 86 S. W. 256; Brockway *v.* Roseberg, 46 Oregon 77, 79 Pac. 335, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1172; Houston *v.* Glover, (Tex. Civ. App. 1905) 89 S. W. 425; Robertson *v.* Staunton, 104 Va. 73, 51 S. E. 178.

4. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Robertson *v.* Staunton, 104 Va. 73, 51 S. E. 178.

1173. 7. Conner *v.* Nevada, 188 Mo. 155, 86 S. W. 256, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1173.

9. Covington, etc., Bridge Co. *v.* Davidson, (Ky. 1907) 102 S. W. 339.

10. Toomey *v.* Bridgeport, 79 Conn. 229, 64 Atl. 215; McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Board of Education *v.* Winchester, (Ky. 1905) 87 S. W. 768; Overall *v.* Madisonville, (Ky. 1907) 102 S. W. 278; Conner *v.* Nevada, 188 Mo. 148, 86 S. W. 256; Luther *v.* Wheeler, 73 S. Car. 90, 52 S. E. 874.

1174. 5. Subsequent Diversion of Fund Does Not Affect City's Liability. — Houston *v.* Potter, (Tex. Civ. App. 1906) 91 S. W. 389.

6. Horgan *v.* New York, 114 N. Y. App. Div. 555, 100 N. Y. Supp. 68.

7. Houston *v.* Stewart, 90 Tex. 67, 87 S. W. 663; Houston *v.* Glover, (Tex. Civ. App. 1905) 89 S. W. 425.

8. Contracts Extending Through Term of Years. — Detroit Reduction Co. *v.* Blades, 144 Mich. 516, 107 N. W. 286.

9. Houston *v.* Glover, (Tex. Civ. App. 1905) 89 S. W. 425.

1175. 1. **Construing Constitutional Provisions.** — Coleman *v.* New Kensington, 140 Fed. 687; Lobdell *v.* Chicago, 227 Ill. 218, 81 N. E. 354; Eddy Valve Co. *v.* Crown Point, 166 Ind. 623, 76 N. E. 536; Halsey *v.* Belle Plaine, 128 Iowa 467, 104 N. W. 494; Blood *v.* Beal, 100 Me. 30, 60 Atl. 427.

How Provision Construed. — Providence *v.* Providence Electric Light Co., (Ky. 1906) 91 S. W. 664.

1176. 1. Lobdell *v.* Chicago, 227 Ill. 218, 81 N. E. 354; Eddy Valve Co. *v.* Crown Point, 166 Ind. 623, 76 N. E. 536; Overall *v.* Madisonville, (Ky. 1907) 102 S. W. 278.

A Bonded Indebtedness, Made by Authority of the Electors, does not, under the law of *Pennsylvania,* constitute a debt, within the meaning of a constitutional prohibition. Coleman *v.* New Kensington, 140 Fed. 684.

A Liability Arising from the City's Negligence in failing to keep the streets in repair, does not constitute an indebtedness within a provision limiting debts. Conner *v.* Nevada, 188 Mo. 148, 86 S. W. 256.

Debt for Improvements to Be Paid by Special Assessments. — Coleman *v.* New Kensington, 140 Fed. 684.

5. Houston *v.* Stewart, 99 Tex. 67, 87 S. W. 663.

6. Lobdell *v.* Chicago, 227 Ill. 218, 81 N. E. 354; Corey *v.* Fort Dodge, 133 Iowa 666, 111 N. W. 6.

8. Blood *v.* Beal, 100 Me. 30, 60 Atl. 427.

1177. 2. McGilvery *v.* Lewiston, 13 Idaho 238, 90 Pac. 348. But see Connor *v.* Marshfield, 128 Wis. 280, 107 N. W. 639.

Toomey *v.* Bridgeport, 79 Conn. 229, 64 Atl. 215.

A Lease for one year of a lighting plant, with an option to the city to renew it from year to year, does not come within a constitutional prohibition against incurring a liability in excess of the revenues of the year. Overall *v.* Madisonville, (Ky. 1907) 102 S. W. 278.

1178. 1. Overall *v.* Madisonville, (Ky. 1907) 102 S. W. 278.

Moneys Derived from Fines and License Fees during the ensuing year are too indefinite and uncertain to be deducted in determining the indebtedness of a city. Overall *v.* Madisonville, (Ky. 1907) 102 S. W. 278.

3. McMaster *v.* Waynesboro, 122 Ga. 231, 50 S. E. 122.

5. Toomey *v.* Bridgeport, 79 Conn. 229, 64 Atl. 215.

7. Bay *v.* Davidson, 133 Iowa 688, 111 N. W. 25.

8. Bay *v.* Davidson, 133 Iowa 688, 111 N. W. 25; Bardstown *v.* Nelson County, (Ky. 1906) 90 S. W. 246; McManus *v.* Scheele, 116 La. 72, 40 So. 535; Noxubee County Hardware Co. *v.* Macon, (Miss. 1907) 43 So. 304; Tyrell *v.* New York, (Supm. Ct. Tr. T.) 94 N. Y. Supp. 951; Com. *v.* Witman, 217 Pa. St. 411, 66 Atl. 986. See also Young *v.* Mankato, 97 Minn. 4, 105 N. W. 969.

1179. 1. Bay *v.* Davidson, 133 Iowa 688, 111 N. W. 25; McManus *v.* Scheele, 116 La. 72, 40 So. 535; Tyrell *v.* New York, (Supm. Ct. Tr. T.) 94 N. Y. Supp. 951.

1180. 2. Coker *v.* Atlanta, etc., R. Co., 123 Ga. 483, 51 S. E. 481; Plattsmouth *v.* Murphy, 74 Neb. 749, 105 N. W. 293; Jersey City Supply Co. *v.* Jersey City, 71 N. J. L. 631, 60 Atl. 381; Burns *v.* New York, 121 N. Y. App. Div. 180, 105 N. Y. Supp. 605.

3. *Compare* Pillager *v.* Hewitt, 98 Minn. 265, 107 N. W. 815.

4. Valentine Clark Co. *v.* Allegheny City, 143 Fed. 644; Texarkana *v.* Friedell, 82 Ark. 531, 102 S. W. 374; Nelson *v.* Georgetown, 190 Mass. 225, 76 N. E. 606; Wheat *v.* Van Tine, 149 Mich. 314, 112 N. W. 933; Hett *v.* Portsmouth, 73 N. H. 334, 61 Atl. 596; McFarlane *v.* School Directors, 33 Pa. Co. Ct. 119, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1180.

1181. 4. Wheat *v.* Van Tine, 149 Mich. 314, 112 N. W. 933.

Ratification by Acceptance of Benefits. — Central Bitulithic Paving Co. *v.* Mt. Clemens, 143 Mich. 259, 106 N. W. 888; Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86.

5. Luxora *v.* Jonesboro, etc., R. Co., 83 Ark. 277, 103 S. W. 605, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1181; Eddy Valve Co *v.* Crown Point, 166 Ind. 623, 76 N. E. 536, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1181, 1182; *In re* Niland, 113 N. Y. App. Div. 661, 99 N. Y. Supp. 914; McFarlane *v.* School Directors, 33 Pa. Co. Ct. 119, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1181.

1182. 1. Valentine Clark Co. *v.* Allegheny City, 143 Fed. 644; Texarkana *v.* Friedell, 82 Ark. 531, 102 S. W. 374; Plattsmouth *v.* Murphy, 74 Neb. 749, 105 N. W. 293; Hett *v.* Portsmouth, 73 N. H. 334, 61 Atl. 596; Wilmington *v.* Bryan, 141 N. Car. 682, 54 S. E. 543, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1182, in dissenting opinion of Walker, J.; Emmert *v.* Elyria, 74 Ohio St. 185, 78 N. E. 269; Paul *v.* Seattle, 40 Wash. 294, 82 Pac. 601.

2. Plattsmouth *v.* Murphy, 74 Neb. 749, 105 N. W. 293.

4. Valentine Clark Co. *v.* Allegheny City, 143 Fed. 644; Nelson *v.* Georgetown, 190 Mass. 225, 76 N. E. 606.

5. Eddy Valve Co. *v.* Crown Point, 166 Ind. 623, 76 N. E. 536, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1181, 1182.

7. Cleveland School Furniture Co. *v.* Greenville, 146 Ala. 559, 41 So. 862; Fountain *v.* Sacramento, 1 Cal. App. 461, 82 Pac. 637; Eddy Valve Co. *v.* Crown Point, 166 Ind. 623, 76 N. E. 536, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1181, 1182; Bay *v.* Davidson, 133 Iowa 688, 111 N. W. 25; Paul *v.* Seattle, 40 Wash. 294, 82 Pac. 601.

1183. 3. Emmert *v.* Elyria, 74 Ohio St. 185, 78 N. E. 269.

5. Marklove *v.* Utica, etc., R. Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 258, 96 N. Y. Supp. 795.

7. May *v.* Chicago, 124 Ill. App. 527, *affirmed* 222 Ill. 595, 78 N. E. 912; Plattsmouth *v.* Murphy, 74 Neb. 749, 105 N. W. 293; *In re* Niland, 113 N. Y. App. Div. 661, 99 N. Y. Supp. 914; Burns *v.* New York, 121 N. Y. App. Div. 180, 105 N. Y. Supp. 605; Emmert *v.* Elyria, 74 Ohio St. 185, 78 N. E. 269; Paul *v.* Seattle, 40 Wash. 294, 82 Pac. 601.

1184. 1. Horgan *v.* New York, 114 N. Y. App. Div. 555, 100 N. Y. Supp. 68.

2. Sheridan *v.* New York, 145 Fed. 835; May *v.* Chicago, 124 Ill. App. 527, *affirmed* 222 Ill. 595, 78 N. E. 912; Paul *v.* Seattle, 40 Wash. 294, 82 Pac. 601.

3. Plattsmouth *v.* Murphy, 74 Neb. 749, 105 N. W. 293.

5. Oakland *v.* Thompson, 151 Cal. 572, 91 Pac. 387; Jenkins *v.* Hanson, 101 Minn. 298, 112 N. W. 216; Mundy *v.* Water Com'rs, (N. J. 1907) 66 Atl. 896; *In re* Jerome Avenue, 120 N. Y. App. Div. 297, 105 N. Y. Supp. 319; State *v.* Superior Ct., (Wash. 1907) 90 Pac. 663; Hathaway *v.* Milwaukee, (Wis. 1907) 111 N. W. 570, *rehearing denied* (Wis. 1907) 112 N. W. 455.

1185. 5. Jenkins *v.* Hanson, 101 Minn. 298, 112 N. W. 216; Hathaway *v.* Milwaukee, (Wis. 1907) 111 N. W. 570, *rehearing denied* (Wis. 1907) 112 N. W. 455.

1187. 3. Montezuma *v.* Law, 1 Ga. App. 580, 57 S. E. 1025, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1187; Jenkins *v.* Hanson, 101 Minn. 298, 112 N. W. 216.

4. Allentown *v.* Wagner, 27 Pa. Super. Ct. 485.

8. Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268; *In re* Jerome Avenue, 120 N. Y. App. Div. 297, 105 N. Y. Supp. 319.

1188. 1. Bryant *v.* Logan, 56 W. Va. 146, 49 S. E. 21, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1187 [1188].

2. Jenkins *v.* Hanson, 101 Minn. 298, 112 N. W. 216; State *v.* Superior Ct., (Wash. 1907) 90 Pac. 663.

4. Murray *v.* Allegheny, (C. C. A.) 136 Fed. 57; Krause *v.* El Paso, (Tex. 1907) 106 S. W. 121.

1190. 1. Equitable Loan, etc., Co. *v.* Edwardsville, 143 Ala. 185, 38 So. 1016, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1190.

2. Equitable Loan, etc., Co. *v.* Edwardsville, 143 Ala. 185, 38 So. 1016, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1190.

1191. 6. Collier *v.* Fort Smith, 73 Ark. 450, 84 S. W. 480, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1191; Davoust *v.* Alameda, 149 Cal. 69, 84 Pac. 760; Haley *v.* Boston, (Mass. 1906) 77 N. E. 888; Wilcox *v.* Rochester, 114 N. Y. App. Div. 734, 99 N. Y. Supp. 1020; State *v.* Knoxville, 115 Tenn. 175, 90 S. W. 289; Cunningham *v.* Seattle, 42 Wash. 134, 84 Pac. 641.

1192. 2. Parsons *v.* New York, 107 N. Y. App. Div. 324, 95 N. Y. Supp. 131, *affirmed* 184 N. Y. 604, 77 N. E. 1192.

1193. 1. Sadlier *v.* New York, (N. Y. 1906) 78 N. E. 272, *affirming* 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579; Ebbets *v.* New York, 111 N. Y. App. Div. 364, 97 N. Y. Supp. 833.

2. Sadlier *v.* New York, (N. Y. 1906) 78 N. E. 272, *affirming* 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579; Ebbets *v.* New York, 111 N. Y. App. Div. 364, 97 N. Y. Supp. 833; Davis *v.* Silverton, 47 Oregon 171, 82 Pac. 16.

3. *United States.* — Naumburg *v.* Milwaukee, (C. C. A.) 146 Fed. 641.

California. — Davoust *v.* Alameda, 149 Cal. 69, 84 Pac. 760.

Connecticut. — Rudnyai *v.* Harwinton, 79 Conn. 91, 63 Atl. 918.

Illinois. — Tollefson *v.* Ottawa, 228 Ill. 134, 81 N. E. 823.

Iowa. — Beeks *v.* Dickinson County, 131 Iowa 244, 108 N. W. 311.

Kentucky. — Jones *v.* Corbin, (Ky. 1907) 98 S. W. 1002.

Maine. — Keeley *v.* Portland, 100 Me. 260, 61 Atl. 180.

Massachusetts. — Rome *v.* Worcester, 188 Mass. 307, 74 N. E. 370.

Michigan. — Miller *v.* Kalamazoo, 140 Mich. 494, 103 N. W. 845; Brink *v.* Grand Rapids, 144 Mich. 472, 108 N. W. 430; Alberts *v.* Muskegon, 146 Mich. 210, 109 N. W. 263.

New Jersey. — Watkins *v.* Chosen Freeholders, 73 N. J. L. 213, 62 Atl. 1134.

New York. — O'Donnell *v.* Syracuse, 194 N. Y. 1, 76 N. E. 738, *reversing* 102 N. Y. App. Div. 80, 92 N. Y. Supp. 555; Rogers *v.* Binghamton, 186 N. Y. 595, 79 N. E. 1115; MacMullen *v.* Middletown, 112 N. Y. App. Div. 81, 98 N. Y. Supp. 145; Wilcox *v.* Rochester, 114 N. Y. App. Div. 734, 99 N. Y. Supp. 1020; McGuinness *v.* Allison Realty Co., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 8, 93 N. Y. Supp. 267.

North Carolina. — Fisher *v.* New Bern, 140 N. Car. 506, 53 S. E. 342.

Oregon. — Davis *v.* Silverton, 47 Oregon 171, 82 Pac. 16.

Pennsylvania. — Rosenblit *v.* Philadelphia, 28 Pa. Super. Ct. 587.

Tennessee. — State *v.* Knoxville, 115 Tenn. 175, 90 S. W. 289.

Utah. — Gillmor *v.* Salt Lake City, (Utah 1907) 89 Pac. 714, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1193, 1194.

Vermont. — Carty *v.* Winooski, 78 Vt. 104, 62 Atl. 45.

Washington. — Lynch *v.* North Yakima, 37 Wash. 657, 80 Pac. 79; Cunningham *v.* Seattle, 40 Wash. 60, 82 Pac. 143, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1193, *rehearing denied* 42 Wash. 134, 84 Pac. 641.

West Virginia. — Shaw *v.* Charleston, 57 W. Va. 433, 50 S. E. 527.

1194. 1. Watkins *v.* Chosen Freeholders, 73 N. J. L. 213, 62 Atl. 1134; Gillmor *v.* Salt Lake City, (Utah 1907) 89 Pac. 714, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1193, 1194; Cunningham *v.* Seattle, 42 Wash. 134, 84 Pac. 641.

2. Gillmor *v.* Salt Lake City, (Utah 1907) 89 Pac. 714, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1193, 1194.

3. Haley *v.* Boston, (Mass. 1906) 77 N. E. 888; State *v.* Knoxville, 115 Tenn. 175, 90 S. W. 289; Gillmor *v.* Salt Lake City, (Utah 1907) 89 Pac. 714, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1193, 1194.

4. Gillmor *v.* Salt Lake City, (Utah 1907) 89 Pac. 714, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1193, 1194.

5. Beeks *v.* Dickinson County, 131 Iowa 244, 108 N. W. 311; Gillmor *v.* Salt Lake City, (Utah 1907) 89 Pac. 714, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1193, 1194.

1195. 4. Millett *v.* Princeton, 167 Ind. 582, 79 N. E. 909; Mansfield *v.* Brister, (Ohio 1907) 81 N. E. 631.

5. Watkins *v.* Chosen Freeholders, 73 N. J. L. 213, 62 Atl. 1134.

6. Jones *v.* Corbin, (Ky. 1907) 98 S. W. 1002; Carty *v.* Winooski, 78 Va. 104, 62 Atl. 45; Shaw *v.* Charleston, 57 W. Va. 433, 50 S. E. 527.

10. Denver *v.* Davis, (Colo. 1906) 86 Pac. 1027; Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268; Gillmor *v.* Salt Lake City, (Utah 1907) 89 Pac. 714.

1196. 4. Aiken *v.* Columbia, 167 Ind. 139, 78 N. E. 657; Richmond *v.* Lincoln, 167 Ind. 468, 79 N. E. 445; Dickinson *v.* Boston, 188 Mass. 595, 75 N. E. 68; Wiltse *v.* Red Wing, 99 Minn. 255, 109 N. W. 114; Yazoo City *v.* Birchett, 89 Miss. 700, 42 So. 569.

7. *United States.* — Naumburg *v.* Milwaukee, (C. C. A.) 146 Fed. 641.

California. — Davoust *v.* Alameda, 149 Cal. 69, 84 Pac. 760.

Colorado. — Denver *v.* Davis, (Colo. 1906) 86 Pac. 1027.

Connecticut. — Rudnyai *v.* Harwinton, 79 Conn. 91, 63 Atl. 948.

District of Columbia. — Koontz *v.* District of Columbia, 24 App. Cas. (D. C.) 59.

Idaho. — Eaton *v.* Weiser, 12 Idaho 544, 86 Pac. 541.

Indiana. — Aschoff *v.* Evansville, 34 Ind. App. 32, 72 N. E. 279, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1196; Aiken *v.* Columbus, 167 Ind. 139, 78 N. E. 657; Richmond *v.* Lincoln, 167 Ind. 468, 79 N. E. 657.

Massachusetts. — Davies *v.* Boston, 190 Mass. 194, 76 N. E. 663.

Minnesota. — Wiltse *v.* Red Wing, 99 Minn. 255, 109 N. W. 114; Wiltse *v.* Red Wing, (Minn. 1907) 111 N. W. 1134.

Mississippi. — Yazoo City *v.* Birchett, 89 Miss. 700, 42 So. 569.

Missouri. — Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96.

New Hampshire. — Lockwood *v.* Dover, 73 N. H. 209, 61 Atl. 32.

New York. — O'Donnell *v.* Syracuse, 76 N. Y. 738, 76 N. E. 738, *reversing* 92 N. Y. Supp. 738, 102 N. Y. App. Div. 80; MacMullen *v.* Middletown, 112 N. Y. App. Div. 81, 98 N. Y. Supp. 145; Wilcox *v.* Rochester, 114 N. Y. App. Div. 734, 99 N. Y. Supp. 1020.

North Carolina. — Fisher *v.* New Bern, 140 N. Car. 506, 53 S. E. 342.

Tennessee. — State *v.* Knoxville, 115 Tenn. 175, 90 S. W. 289.

1197. 1. Richmond *v.* Lincoln, 167 Ind. 468, 79 N. E. 445; Wiltse *v.* Red Wing, (Minn. 1907) 111 N. W. 1134.

2. Davoust *v.* Alameda, 149 Cal. 69, 84 Pac. 760; Eaton *v.* Weiser, 12 Idaho 544, 86 Pac. 541; Aiken *v.* Columbus, 167 Ind. 139, 78 N. E. 657; Richmond *v.* Lincoln, 167 Ind. 470, 79 N. E. 445, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1193–1198 [1197]; Dickinson *v.* Boston, 188 Mass. 595, 75 N. E. 68; Wiltse *v.* Red Wing, 99 Minn. 255, 109 N. W. 114; Yazoo City *v.* Birchett, 89 Miss. 700, 42 So. 569; Lockwood *v.* Dover, 61 N. H. 32, 73 N. E. 200.

The Placing of Its Lighting Plant under the Control of a Given Municipal Board does not relieve the city of liability for negligence. Richmond *v.* Lincoln, 167 Ind. 468, 79 N. E. 445.

3. U. S. *v.* Sault Ste. Marie, 137 Fed. 258; Brink *v.* Grand Rapids, 144 Mich. 472, 108 N. W. 430.

4. *Compare* Fisher *v.* New Bern, 140 N. Car. 506, 53 S. E. 342.

5. Keeley *v.* Portland, 100 Me. 260, 61 Atl. 180; Davies *v.* Boston, 190 Mass. 194, 76 N. E. 663.

1198. 1. Millett *v.* Princeton, 167 Ind. 582, 79 N. E. 909; Keeley *v.* Portland, 100 Me. 260, 61 Atl. 180; Ebbets *v.* New York, 111 N. Y. App. Div. 364, 97 N. Y. Supp. 833; Van Gordon *v.* Seneca Falls, (Supm. Ct. Tr. T.) 104 N. Y. Supp. 299.

2. Ebbets *v.* New York, 111 N. Y. App. Div. 364, 97 N. Y. Supp. 833.

3. Rogers *v.* Binghamton, 186 N. Y. 595, 79 N. E. 1115; McGuinness *v.* Allison Realty Co., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 8, 93 N. Y. Supp. 267; Hull *v.* Roxboro, 142 N. Car. 453, 55 S. E. 351.

6. Keeley *v.* Portland, 100 Me. 260, 61 Atl. 180.

1199. 1. Hart *v.* Neillsville, 125 Wis. 546, 104 N. W. 699.

2. Hart *v.* Neillsville, 125 Wis. 546, 104 N. W. 699.

3. Hart *v.* Neillsville, 125 Wis. 546, 104 N. W. 699.

5. Healdsburg Electric Light, etc., Co. *v.* Healdsburg, 5 Cal. App. 558, 90 Pac. 955; McGuinness *v.* Allison Realty Co., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 8, 93 N. Y. Supp. 267, *affirmed* 111 N. Y. App. Div. 926, 97 N. Y. Supp. 1141.

1200. 1. Chicago *v.* Rust, 117 Ill. App. 427.

2. Healdsburg Electric Light, etc., Co. *v.* Healdsburg, 5 Cal. App. 558, 90 Pac. 955; Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268.

3. Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Lockwood *v.* Dover, 73 N. H. 209, 61 Atl. 32.

1201. 1. Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268; Bodewig *v.* Port Huron, 141 Mich. 564, 104 N. W. 769.

4. Barree *v.* Cape Girardeau, 197 Mo. 382, 95 S. W. 330.

7. Healdsburg Electric Light, etc., Co. *v.* Healdsburg, 5 Cal. App. 558, 90 Pac. 955; Montezuma *v.* Law, 1 Ga. App. 579, 57 S. E. 1025; Tollefson *v.* Ottawa, 228 Ill. 134, 81 N. E. 823; Chicago *v.* Hannon, 115 Ill. App. 183; Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268; Kehoe *v.* Rutherford, (N. J. 1907) 65 Atl. 1046; Donable *v.* Harrisonburg, 104 Va. 533, 52 S. E. 174.

1202. 1. Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268; Rosenblit *v.* Philadelphia, 28 Pa. Super. Ct. 587.

1203. 1. Davoust *v.* Alameda, 149 Cal. 69, 84 Pac. 760; Wahrman *v.* Board of Education, 187 N. Y. 331, 80 N. E. 192; Prime *v.* Yonkers, 116 N. Y. App. Div. 699, 102 N. Y. Supp. 118; Fisher *v.* New Bern, 140 N. Car. 506, 53 S. E. 342; Cunningham *v.* Seattle, 40 Wash. 60, 82 Pac. 143, *rehearing denied* 84 Pac. 641; State *v.* Knoxville, 115 Tenn. 175, 90 S. W. 289.

3. Wahrman *v.* Board of Education, 187 N. Y. 331, 80 N. E. 192; Prime *v.* Yonkers, 116 N. Y. App. Div. 600, 102 N. Y. Supp. 118; Rosenblit *v.* Philadelphia, 28 Pa. Super. Ct. 587.

1204. 3. Clayman *v.* New York, 117 N. Y. App. Div. 565, 102 N. Y. Supp. 661; Lynch *v.* North Yakima, 37 Wash. 657, 80 Pac. 79.

4. Clayman *v.* New York, 117 N. Y. App. Div. 565, 102 N. Y. Supp. 661.

1205. 3. Hazel *v.* Owensboro, (Ky. 1907) 99 S. W. 315; Lynch *v.* North Yakima, 37 Wash. 657, 80 Pac. 79; Cunningham *v.* Seattle, 40 Wash. 60, 82 Pac. 143, *rehearing denied* 42 Wash. 134, 84 Pac. 641; Manske *v.* Milwaukee, 123 Wis. 175, 101 N. W. 377, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1205.

7. Eaton *v.* Weiser, 12 Idaho 544, 86 Pac. 541, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1205; Wahrman *v.* Board of Education, 111 N. Y. App. Div. 345, 97 N. Y. Supp. 1066; Wilcox *v.* Rochester, 114 N. Y. App. Div. 734, 99 N. Y. Supp. 1020; Rosenblit *v.* Philadelphia, 28 Pa. Super. Ct. 587.

Mere Legal Title to Premises. — Rosenblit *v.* Philadelphia, 28 Pa. Super. Ct. 587.

1206. 5. Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268; McGuinness *v.* Allison Realty Co., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 8, 93 N. Y. Supp. 267, *affirmed* 111 N. Y. App. Div. 926, 97 N. Y. Supp. 1141; O'Donnell *v.* Syracuse, 76 N. Y. 738, 76 N. E. 738, *reversing* 102 N. Y. App. Div. 80, 92 N. Y. Supp. 738; Soulsby *v.* Toronto, 15 Ont. L. Rep. 13.

7. De Agramonte *v.* Mt. Vernon, 112 N. Y. App. Div. 291, 98 N. Y. Supp. 454.

9. Adamson *v.* New York, 110 N. Y. App. Div. 58, 96 N. Y. Supp. 907; Long *v.* Neenah, 128 Wis. 40, 107 N. W. 10, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206.

1207. 1. Iola *v.* Birnbaum, 71 Kan. 603, 81 Pac. 198, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206 [1207]; Adamson *v.* New York, 110 N. Y. App. Div. 58, 96 N. Y. Supp. 907; Long *v.* Neenah, 128 Wis. 40, 107 N. W. 10.

Diligence of Property Owner to Prevent Damage. — Long *v.* Neenah, 128 Wis. 40, 107 N. W. 10.

Construction of Such Statutes. — Long *v.* Neenah, 128 Wis. 40, 107 N. W. 10; Adamson *v.* New York, 110 N. Y. App. Div. 58, 96 N. Y. Supp. 907.

2. Iola *v.* Birnbaum, 71 Kan. 600, 81 Pac. 198; Long *v.* Neenah, 128 Wis. 40, 107 N. W. 10.

1208. 1. Adamson *v.* New York, 110 N. Y. App. Div. 58, 96 N. Y. Supp. 907.

2. Long *v.* Neenah, 128 Wis. 40, 107 N. W. 10.

4. *Compare* Long *v.* Neenah, 128 Wis. 40, 107 N. W. 10.

1209. 1. Richmond *v.* Lincoln, 167 Ind. 468, 79 N. E. 445; Murray *v.* Butte, 35 Mont. 161, 88 Pac. 789.

2. Chicago *v.* Boston, 117 Ill. App. 430; Covington *v.* Lee, (Ky. 1905) 89 S. W. 493; Martin *v.* Butte, 34 Mont. 281, 86 Pac. 264; Fitzgerald *v.* Concord, 140 N. Car. 110, 52 S. E. 309; Reed *v.* Tarentum, 213 Pa. St. 357, 62 Atl. 928.

3. Wile *v.* Los Angeles Ice, etc., Storage Co., 2 Cal. App. 190, 83 Pac. 271; Shreck *v.* Cœur d'Alene, 12 Idaho 708, 87 Pac. 1001.

4. Walker *v.* New York, 107 N. Y. App. Div. 351, 95 N. Y. Supp. 121.

6. *Compare* Frank *v.* Warsaw, 116 N. Y. App. Div. 618, 101 N. Y. Supp. 938; Frick *v.* Kansas City, 117 Mo. App. 488, 93 S. W. 351.

9. State *v.* Craig, 100 Minn. 352, 111 N. W. 3.

1210. 1. Fisher *v.* New Bern, 140 N. Car. 506, 53 S. E. 342.

4. Davis *v.* Claus, (Ky. 1907) 100 S. W. 263.

7. Montgomery Light, etc., Co. *v.* Citizens' Light, etc., Co., 142 Ala. 462, 38 So. 1026.

9. South Jersey Tel. Co. *v.* Woodbury, 73 N. J. L. 276, 63 Atl. 4.

1211. 1. Montgomery Light, etc., Co. *v.* Citizens' Light, etc., Co., 142 Ala. 462, 38 So. 1026.

3. State *v.* Ross, (Wash. 1907) 89 Pac. 158.

4. Wells *v.* Mt. Olivet, (Ky. 1907) 102 S. W. 1182.

5. Richardson *v.* Omaha, 74 Neb. 297, 104 N. W. 172; Rome *v.* Whitestown Waterworks Co., (N. Y. 1907) 80 N. E. 1108; State *v.* Ross, (Wash. 1907) 89 Pac. 158.

6. State *v.* Bowers, 26 Ohio Cir. Ct. 326, *affirmed* (Ohio 1904) 72 N. E. 1155.

1212. 1. Shugars *v.* Hamilton, (Ky. 1906) 92 S. W. 564; State *v.* Bowers, 26 Ohio Cir. Ct. 326, *affirmed* (Ohio 1904) 72 N. E. 1155.

5. Stiles *v.* Lambertville, 73 N. J. L. 90, 62 Atl. 288; State *v.* Ross, (Wash. 1907) 89 Pac. 158.

6. Rowe *v.* Whitestown Water Works Co., 113 N. Y. App. Div. 547, 100 N. Y. Supp. 357, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1212; American Foundry, etc., Co. *v.* Board of Education, 131 Wis. 220, 110 N. W. 403, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1212.

9. Davis *v.* Claus, (Ky. 1907) 100 S. W. 263.

10. McManus *v.* Police Com'rs, 73 N. J. L. 307, 62 Atl. 997; Lemoyne *v.* Borough Councilmen, 15 Pa. Dist. 241, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1112; Com. *v.* Densten, 217 Pa. St. 423, 66 Atl. 653.

1213. 2. Latonia *v.* Hedger, (Ky. 1907) 100 S. W. 267; Vossen *v.* St. Clair, 148 Mich. 686, 112 N. W. 746; O'Dwyer *v.* Monett, 123 Mo. App. 184, 100 S. W. 670.

Requirement for Majority of All Elected. — Wood *v.* Gordon, 58 W. Va. 321, 52 S. E. 261.

4. State *v.* Dunn, (Neb. 1906) 107 N. W. 236.

5. State *v.* Dunn, (Neb. 1906) 107 N. W. 236.

6. Wheelock *v.* Lowell, (Mass. 1907) 81 N. E. 977.

1214. 2. Cook *v.* Independence, 133 Iowa 582, 110 N. W. 1029; *In re* Ryan, (Neb. 1907) 112 N. W. 590.

4. State *v.* Craig, 100 Minn. 352, 111 N. W. 3.

5. See Hobbs *v.* Upington, (Ky. 1905) 89 S. W. 1[illegible].

6. Meachem *v.* New Brunswick, 73 N. J. L. 121, 62 Atl. 303.

7. Hobbs *v.* Upington, (Ky. 1905) 89 S. W. 1[illegible].

1215. 1. Wiesenthal *v.* Atlantic City, 73 N. J. L. 245, 63 Atl. 759.

3. Shugars *v.* Hamilton, (Ky. 1906) 92 S. W. 564.

4. Shugars *v.* Hamilton, (Ky. 1906) 92 S. W. 564; Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141.

1216. 1. Stiles *v.* Lambertville, 73 N. J. L. 90, 62 Atl. 288; Adkins *v.* Toledo, 27 Ohio Cir. Ct. 417.

1217. 3. People *v.* Clean St. Co., 225 Ill. 479, 80 N. E. 298, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) [illegible]; Schwartz *v.* Dover, 72 N. J. L. 311, 62 Atl. 1135; Ramsey *v.* Field, 115 Mo. App. 620, 92 S. W. 350.

1218. 1. Patterson *v.* Taylor, 51 Fla. 275, 40 So. 493.

3. [illegible] Memphis [illegible] Tel. Cable Co., 139 Fed. 707.

California. — Graham *v.* Fresno, 151 Cal. 465, 91 Pac. 147.

Kentucky. — Miller *v.* Pineville, (Ky. 1905) 89 S. W. 261; *Ex p.* Paducah, (Ky. 1907) 101 S. W. 898.

Michigan. — Atty.-Gen. *v.* Springwells Tp., 143 Mich. 523, 107 N. W. 87.

New Jersey. — Van Cleve *v.* Passaic Valley Sewerage Com'rs, 71 N. J. L. 198, 58 Atl. 571, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1218.

New York. — Reis *v.* New York, 188 N. Y. 58, 80 N. E. 573; *In re* East 178th St., (N. Y. 1907) 80 N. E. 1109; Burns *v.* New York, 121 N. Y. App. Div. 180, 105 N. Y. Supp. 605; People *v.* Delany, 120 N. Y. App. Div. 801, 105 N. Y. Supp. 748.

North Dakota. — State *v.* Mayo, 15 N. Dak. 327, 108 N. W. 36.

Ohio. — Emmert *v.* Elyria, 74 Ohio St. 185, 78 N. E. 269.

Rhode Island. — Horton *v.* Newport, 27 R. I. 283, 61 Atl. 759.

1219. 1. Memphis *v.* Postal Tel. Cable Co., 139 Fed. 707; State *v.* Robinson, 101 Minn. 285, 112 N. W. 269, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1219; Horton *v.* Newport, 27 R. I. 283, 61 Atl. 759.

2. Black *v.* State, 144 Ala. 92, 40 So. 611; Griffin *v.* Drennen, 145 Ala. 128, 40 So. 1016; Atty.-Gen. *v.* Springwells Tp., 143 Mich. 523, 107 N. W. 87; Cathers *v.* Hennings, (Neb. 1906) 107 N. W. 586; Elmira *v.* Seymour, 111 N. Y. App. Div. 199, 97 N. Y. Supp. 623.

1220. 2. Graham *v.* Fresno, 151 Cal. 465, 91 Pac. 147; *Ex p.* Paducah, (Ky. 1907) 101 S. W. 898; Burns *v.* New York, 121 N. Y. App. Div. 180, 105 N. Y. Supp. 180; People *v.* Delany, 120 N. Y. App. Div. 801, 105 N. Y. Supp. 746; Reis *v.* New York, 188 N. Y. 58, 80 N. E. 291; *In re* East 178th St., (N. Y. 1907) 80 N. E. 1109; McKim *v.* Philadelphia, 217 Pa. St. 243, 66 Atl. 340.

4. State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121; Van Cleve *v.* Passaic Valley Sewerage Com'rs, 71 N. J. L. 224, 58 Atl. 571, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1220; People *v.* Delany, 120 N. Y. App. Div. 801, 105 N. Y. Supp. 746; Reis *v.* New York, 188 N. Y. 58, 80 N. E. 573; *In re* East 178th St., (N. Y. 1907) 80 N. E. 1109.

6. **The Streets of a City.** — Memphis *v.* Postal Tel. Cable Co., 139 Fed. 707.

1221. 2. Memphis *v.* Postal Tel. Cable Co., 139 Fed. 707.

1222. 1. Covington, etc., Bridge Co. *v.* Davidson, (Ky. 1907) 102 S. W. 339; Horton *v.* Newport, 27 R. I. 283, 61 Atl. 759.

3. *Ex p.* Folsom, 131 Fed. 496, *affirmed* Graham *v.* Folsom, 200 U. S. 248, 26 U. S. Sup. Ct. 245.

4. *Ex p.* Folsom, 131 Fed. 496, *affirmed* Graham *v.* Folsom, 200 U. S. 248, 26 U. S. Sup. Ct. 245.

8 State *v.* Wall, 15 Ohio Dec. 349, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1222.

1223. 2. State *v.* Wall, 15 Ohio Dec. 349, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1223.

3. State *v.* Wall, 15 Ohio Dec. 349, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1223.

5. Horton *v.* Newport, 27 R. I. 283, 61 Atl. 759; *Ex p.* Tracey, (Tex. Crim. 1906) 93 S. W. 538. See also Wilcox *v.* McClellan, 110 N. Y. App. Div. 378, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 465, 97 N. Y. Supp. 311, *affirming* 95 N. Y. Supp. 941.

7. *Ex p.* Tracey, (Tex. Crim. 1905) 93 S. W. 538, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1223.

1224. 1. Horton *v.* Newport, 27 R. I. 283, 61 Atl. 759; *Ex p.* Tracey, (Tex. Crim. 1905) 93 S. W. 538.

7. Washburn Waterworks Co. *v.* Washburn, 129 Wis. 73, 108 N. W. 194.

1225. 2. Sample *v.* Pittsburg, 212 Pa. St. 533, 62 Atl. 201.

10. Miller *v.* Pineville, (Ky. 1905) 89 S. W. 261.

1226. 3. **The Power to Divide the Property.** — Washburn Waterworks Co. *v.* Washburn, 129 Wis. 73, 108 N. W. 194.

1227. 4. Levitt *v.* Wilson, 72 Kan. 160, 83 Pac. 397; Davenport *v.* Ham, 72 Kan. 179, 83 Pac. 398; Lake Charles *v.* Roy, 115 La. 939, 40 So. 362; Acme Dairy Co. *v.* Astoria, (Oregon 1907) 90 Pac. 153; Terry *v.* King County, 43 Wash. 61, 86 Pac. 210.

Illustrations of Special Legislation Acts Extending or Reducing Boundaries. — Levitt *v.* Wilson, 72 Kan. 160, 83 Pac. 397; Davenport *v.* Ham, 72 Kan. 179, 83 Pac. 398.

5. *Compare* Butler *v.* Lewiston, 11 Idaho 393, 83 Pac. 234.

1228. 4. Sample *v.* Pittsburg, 212 Pa. St. 533, 62 Atl. 201.

5. State *v.* Mayo, 15 N. Dak. 327, 108 N. W. 36.

1229. 1. Longview *v.* Crawfordsville, 164 Ind. 122, 73 N. E. 78, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1228, 1229; State *v.* Nealon, 73 N. J. L. 100, 62 Atl. 182; State *v.* Mayo, 15 N. Dak. 327, 108 N. W. 36.

4. Terry *v.* King County, 43 Wash. 61, 86 Pac. 210.

5. Parker-Washington Co. *v.* Kansas City, 73 Kan. 722, 85 Pac. 781.

8. Poulan *v.* Atlantic Coast Line R. Co., 123 Ga. 605, 51 S. E. 657; Carr *v.* Augusta, 124 Ga. 116, 52 S. E. 300; Dyer *v.* Woods, 166 Ind. 44, 76 N. E. 624; Murphy *v.* Police Jury, 118 La. 410, 42 So. 979, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) [1229] 1230; Graham *v.* Grand Rapids, 141 Mich. 612, 104 N. W. 983; State *v.* Gates, 190 Mo. 540, 89 S. W. 881; Walter *v.* McClellan, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 279, 96 N. Y. Supp. 479;

Edgewood *v.* Scott, 29 Pa. Super. Ct. 156; Angle *v.* Stroudsburg, 29 Pa. Super. Ct. 601; Ponischil *v.* Hoquiam Sash, etc., Co., 41 Wash. 303, 83 Pac. 316.

Where a municipal council acts in a judicial capacity, its action is subject to review on certiorari. Carr *v.* Augusta, 124 Ga. 116, 52 S. E. 300.

Presumptions Favor Propriety of Corporate Acts. — Connor *v.* Marshfield, 128 Wis. 280, 107 N. W. 639.

1230. 1. People *v.* Grand Trunk R. Co., 232 Ill. 292, 83 N. E. 839, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1230; Dyer *v.* Woods, 166 Ind. 44, 76 N. E. 624; People *v.* Gardner, 143 Mich. 104, 106 N. W. 541; Walter *v.* McClellan, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 215, 96 N. Y. Supp. 479; Cox *v.* Jones, 73 N. H. 504, 63 Atl. 178.

2. State *v.* Gates, 190 Mo. 540, 89 S. W. 881.

1231. 1. Montgomery *v.* Barnett, (Ala. 1907) 43 So. 92, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1231; Walter *v.* McClellan, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 215, 96 N. Y. Supp. 479.

3. Any Taxpayer of a Municipal Corporation. — Anderson *v.* Fuller, 51 Fla. 380, 41 So. 684; Allen *v.* Milwaukee, 128 Wis. 678, 106 N. W. 1099; Atlantic Gas, etc., Co. *v.* Atlantic City, 73 N. J. L. 360, 63 Atl. 997.

7. "Where the charter of a city * * * gives the right to sue the city without previous demand, the council cannot, by ordinance, impose any limitation upon this right." Bowling Green *v.* Duncan, 122 Ky. 244, 91 S. W. 268.

8. Mankato *v.* Barber Asphalt Paving Co., (C. C. A.) 142 Fed. 329; Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933; Schleicher *v.* Mt. Vernon, 107 N. Y. App. Div. 584, 95 N. Y. Supp. 326; Lamay *v.* Fulton, 109 N. Y. App. Div. 424, 96 N. Y. Supp. 703; John A. Roebling's Sons Co. *v.* New York, 110 N. Y. App. Div. 366, 97 N. Y. Supp. 278; Huggins *v.* Sutherland, 39 Wash. 552, 82 Pac. 112; Postel *v.* Seattle, 41 Wash. 432, 83 Pac. 1025.

Nature of Claim Such that It Cannot Be Presented. — Lamay *v.* Fulton, 109 N. Y. App. Div. 424, 96 N. Y. Supp. 703.

1232. 1. *United States.* — Mankato *v.* Barber Asphalt Pav. Co., (C. C. A.) 142 Fed. 329; Grand Forks *v.* Allman, (C. C. A.) 153 Fed. 532.

Kansas. — Cook *v.* Topeka, (Kan. 1907) 90 Pac. 244.

Michigan. — Nestle *v.* Flint, 141 Mich. 153, 104 N. W. 406; Miller *v.* Birmingham, 145 Mich. 470, 108 N. W. 1015; Barribeau *v.* Detroit, 147 Mich. 119, 110 N. W. 512; Davis *v.* Adrian, 147 Mich. 300, 110 N. W. 1084.

Minnesota. — Kelly *v.* Faribault, 95 Minn. 293, 104 N. W. 231.

Missouri. — Strange *v.* St. Joseph, 112 Mo. App. 629, 87 S. W. 2; Lyons *v.* St. Joseph, 112 Mo. App. 681, 87 S. W. 588.

Nebraska. — Wright *v.* Omaha, (Neb. 1907) 110 N. W. 754; Forbes *v.* Omaha, (Neb. 1907) 112 N. W. 326.

New York. — MacMullen *v.* Middleton, (N. Y. 1907) 79 N. E. 863; Dobson *v.* Oneida, 106 N. Y. App. Div. 377, 94 N. Y. Supp. 958; Forseyth *v.* Oswego, 107 N. Y. App. Div. 187, 95 N. Y. Supp. 33; Schleicher *v.* Mt. Vernon, 107 N. Y. App. Div. 584, 95 N. Y. Supp. 326; Lamay *v.* Fulton, 109 N. Y. App. Div. 424, 96 N. Y. Supp. 703; John A. Roebling's Sons Co. *v.* New York, 110 N. Y. App. Div. 366, 97 N. Y. Supp. 278.

Wisconsin. — Peeri . . Oconto, 125 Wis. 551, 104 N. W. 88; Hay *v.* Baraboo, 127 Wis. 1, 105 N. W. 654.

2. Postel *v.* Seattle, 41 Wash. 432, 83 Pac. 1025.

3. Schleicher *v.* Mt. Vernon, 107 N. Y. App. Div. 584, 95 N. Y. Supp. 326; John A. Roebling's Sons Co. *v.* New York, 110 N. Y. App. Div. 366, 97 N. Y. Supp. 278; Hay *v.* Baraboo, 127 Wis. 1, 105 N. W. 654.

4. Mankato *v.* Barber Asphalt Pav. Co., (C. C. A.) 142 Fed. 329.

5. Postel *v.* Seattle, 41 Wash. 432, 83 Pac. 1025.

1233. 1. Postel *v.* Seattle, 41 Wash. 432, 83 Pac. 1025.

2. Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359; Hay *v.* Baraboo, 127 Wis. 1, 105 N. W. 654.

7. Mackay *v.* Salt Lake City, 29 Utah 247, 81 Pac. 81, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1233.

10. John A. Roebling's Sons Co. *v.* New York, 110 N. Y. App. Div. 366, 97 N. Y. Supp. 278.

1234. 1. High *v.* Jacksonville, 51 Fla. 211, 40 So. 1032, *citing* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1234; Northdurft *v.* Lincoln, 75 Neb. 76, 105 N. W. 1084; Blount *v.* Troy, 110 N. Y. App. Div. 609, 97 N. Y. Supp. 182; Pyke *v.* Jamestown, 15 N. Dak. 150, 107 N. W. 359; Ehrhardt *v.* Seattle, 40 Wash. 221, 82 Pac. 296; Short *v.* Spokane, 41 Wash. 257, 83 Pac. 183; Hay *v.* Baraboo, 127 Wis. 1, 105 N. W. 654.

Laws Minn. 1897, c. 248, applies only to actions to recover damages for injuries to the person. Megins *v.* Duluth, 97 Minn. 23, 106 N. W. 89.

Attempt to Serve Notice after Office Hours Held Insufficient. — Ehrhardt *v.* Seattle, 40 Wash. 221, 82 Pac. 296.

Notice Not Necessary where the injury complained of was received by an employee of the municipality in the due performance of his duties, where the relation of master and servant exists. Pesek *v.* New Prague, 97 Minn. 171, 106 N. W. 305.

The Fact That the Plaintiff Brought an Action for a Greater Sum than That Specified in His Notice does not deprive him of the right to recover, but he cannot recover a sum in excess of that specified in the notice. Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933.

2. Blount *v.* Troy, 110 N. Y. App. Div. 609, 97 N. Y. Supp. 182; Forsyth *v.* Oswego, 114 N. Y. App. Div. 616, 99 N. Y. Supp. 1022; Pyke *v.* Jamestown, 15 N. Dak. 157, 107 N. W. 359; Short *v.* Spokane, 41 Wash. 257, 83 Pac. 183.

3. Blount *v.* Troy, 110 N. Y. App. Div. 600, 97 N. Y. Supp. 182; Hammock *v.* Tacoma, 40 Wash. 539, 82 Pac. 893; Mulligan *v.* Seattle, 42 Wash. 264, 84 Pac. 721; Hay *v.* Baraboo, 127 Wis. 1, 105 N. W. 654.

In Giving the Date of the Happening of an **Accident** an error of one day is not fatal to the right of recovery. Kleyle *v.* Oswego, 109 N. Y. App. Div. 330, 95 N. Y. Supp. 879.

4. Williams *v.* Port Chester, 97 N. Y. App. Div. 84, 89 N. Y. Supp. 671, *affirmed* 183 N. Y. 550, 566, 76 N. E. 1116; Forsyth *v.* Oswego, 114 N. Y. App. Div. 616, 99 N. Y. Supp. 1022.

5. Biggs *v.* Geneva, 100 N. Y. App. Div. 25, 90 N. Y. Supp. 858, *affirmed* 184 N. Y. 580, 77 N. E. 1182.

Notice Held Sufficient Description of Place of Injury. — Beyer *v.* North Tonawanda, 183 N. Y. 338, 76 N. E. 214, *reversing* 94 N. Y. App. Div. 614, 88 N. Y. Supp. 1092.

1235. 5. Forsyth *v.* Oswego, 114 N. Y. App. Div. 616, 99 N. Y. Supp. 1022.

7. Hill *v.* Anderson, (Ky. 1906) 90 S. W. 1071.

1236. 3. Hill *v.* Anderson, (Ky. 1906) 90 S. W. 1071; Beale *v.* Pankey, (Va. 1907) 57 S. E. 661, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1236.

4. Beale *v.* Pankey, (Va. 1907) 57 S. E. 661, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1236.

5. Beale *v.* Pankey, (Va. 1907) 57 S. E. 661, *quoting* 20 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1236.

6. State *v.* Green, 131 Wis. 324, 111 N. W. 519.

1237. 5. Washburn Waterworks Co. *v.* Washburn, 129 Wis. 73, 108 N. W. 194.

MUNICIPAL COURTS.

2. 1. Harris *v.* Alabama G. S. R. Co., (Ala. 1906) 40 So. 267.

Statute Giving Jurisdiction Beyond City Limits Held Unconstitutional. — Miller *v.* People, 230 Ill. 65, 82 N. E. 521.

3. 1. Weinstein *v.* Douglas, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 559, 101 N. Y. Supp. 251.

4. 4. Butler *v.* Holmes, 128 Ga. 333, 57 S. E. 715; House *v.* Oliver, 123 Ga. 784, 51 S. E. 722.

MUNICIPAL SECURITIES.

16. 7. Harrison County *v.* Ogden, 133 Iowa 9, 110 N. W. 32.

17. 1. Tehama County *v.* Sisson, (Cal. 1907) 92 Pac. 64; McNutt *v.* Lemhi County, 12 Idaho 63, 84 Pac. 1054; Eddy Valve Co. *v.* Crown Point, 166 Ind. 613, 76 N. E. 536.

5. Tally *v.* Jackson County, (Ala. 1905) 39 So. 167.

18. 2. O'Dell *v.* Scranton, 126 Mo. App. 19, 103 S. W. 570.

3. Decatur *v.* McKean, 167 Ind. 249, 78 N. E. 982; State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

7. School Dist. No. 3 *v.* Western Tube Co., 13 Wyo. 304, 80 Pac. 155.

8. Tunica County *v.* Rhodes, 85 Miss. 500, 37 So. 1005.

19. 2. Condon *v.* Eureka Springs, 135 Fed. 566.

4. **Registration.** — See Neal Loan, etc., Co. *v.* Chastain, 121 Ga. 500, 49 S. E. 618; School Dist. No. 3 *v.* Western Tube Co., 13 Wyo. 304, 80 Pac. 155.

7. Tunica County *v.* Rhodes, 85 Miss. 500, 37 So. 1005.

20. 5. Greer County *v.* Gregory, 15 Okla. 208, 81 Pac. 422, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 20; State *v.* Mutty, 39 Wash. 624, 82 Pac. 118.

21. 1. Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49; State *v.* Melton, 62 W. Va. 253, 57 S. E. 729.

4. *Ex p.* Willis, 74 Ark. 498, 86 S. W. 300.

13. **What Constitutes Payment.** — Manitou *v.* Colorado Springs First Nat. Bank, 37 Colo. 344. 86 Pac. 75.

15. State *v.* Gormley, 40 Wash. 601, 82 Pac. 929 (warrant holder as a necessary party).

22. 2. Neal Loan, etc., Co. *v.* Chastain, 121 Ga. 500, 49 S. E. 618; Bechtel *v.* Fry, 217 Pa. St. 591, 66 Atl. 992.

6. See Nelson *v.* Harrison County, 126 Iowa 436, 102 N. W. 197.

7. State *v.* Clark, (Neb. 1907) 112 N. W. 857; State *v.* Moss, 44 Wash. 91, 86 Pac. 1129; State *v.* Blaine, (Wash. 1906) 87 Pac. 124; Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353.

8. Abrahams *v.* Omaha, (Neb. 1907) 114 N. W. 161.

23. 2. Thurston County *v.* McIntyre, 75 Neb. 335, 106 N. W. 217, *following* Ayres *v.* Thurston Co., 63 Neb. 96, 88 N. W. 178; Red River Valley Nat. Bank *v.* Fargo, 14 N. Dak. 88, 103 N. W. 390; Northwestern Lumber Co. *v.* Aberdeen, 35 Wash. 636, 77 Pac. 1063.

7. State *v.* Gardner, (Neb. 1907) 112 N. W. 373; Red River Valley Nat. Bank *v.* Fargo, 14 N. Dak. 88, 103 N. W. 390; State *v.* Melton, 62 W. Va. 253, 57 S. E. 729.

8. Butts County *v.* Jackson Banking Co., (Ga. 1908) 60 S. E. 149.

24. 14. Yell County *v.* Wills, 83 Ark. 229, 103 S. W. 618.

Statute Operates Prospectively Only. — Condon *v.* Eureka Springs, 135 Fed. 566.

25. 2. State *v.* Stewart, 49 Fla. 259, 38 So. 6[illegible].

3. Kline *v.* Jefferson County, 101 S. W. 356, 30 Ky. L. Rep. 1344.

4. Winsted Sav. Bank *v.* New Hartford, 78 Conn. 319, 62 Atl. 81; Isenhour *v.* Barton County, 190 Mo. 163, 88 S. W. 759.

6. Chicago *v.* People, 116 Ill. App. 564, *affirmed* 215 Ill. 235, 74 N. E. 137 (voucher for special assessment against municipality).

26. 7. Winsted Sav. Bank *v.* New Hartford, 78 Conn. 319, 62 Atl. 81; State *v.* Stout, 43 Wash. 501, 86 Pac. 848, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 26.

8. Coleman *v.* New Kensington, 140 Fed. 684; Morrison *v.* Austin State Bank, 213 Ill. 472, 72 N. E. 1109; Northern Trust Co. *v.* Wilmette, 220 Ill. 425, 77 N. E. 169, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed. 26; Oppenheimer *v.* Greencastle School Tp., 164 Ind. 99, 72 N. E. 1100; Field *v.* Highland Park, 141 Mich. 69, 104 N. W. 393, 12 Detroit Leg. N. 340; Issaquena County *v.* Anderson, (Miss. 1905) 38 So. 47; Jack *v.* National Bank, 17 Okla. 430, 89 Pac. 219.

27. 1. State *v.* Milton, 62 W. Va. 253, 57 S. E. 729.

28. 5. Isenhour *v.* Barton County, 190 Mo. 163, 88 S. W. 759.

7. Giblin *v.* North Wisconsin Lumber Co., 131 Wis. 261, 111 N. W. 499.

9. Neal Loan, etc., Co. *v.* Chastain, 121 Ga. 500, 49 S. E. 618.

10. **Suspension of Right of Action Pending Proceeding for Funding Warrants by Bond Issue.** — De Roberts *v.* Cross, (Okla. 1905) 82 Pac. 735.

30. 3. Funk *v.* State, 166 Ind. 455, 77 N. E. 854 (claim for unpaid taxes in mandamus proceedings).

6. Seward County *v.* Shepherd, 71 Kan. 61, 80 Pac. 36 (warrant called in for payment).

8. Condon *v.* Eureka Springs, 135 Fed. 566.

9. Condon *v.* Eureka Springs, 135 Fed. 566.

31. 6. Luther *v.* Wheeler, 73 S. Car. 91, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 31.

7. Cleveland School Furniture Co. *v.* Greenville, 146 Ala. 559, 41 So. 862; Luther *v.* Wheeler, 73 S. Car. 83, 52 S. E. 874. See also Butts County *v.* Jackson Banking Co., (Ga. 1908) 60 S. E. 149.

9. Wadley *v.* Lancaster, 124 Ga. 354, 52 S. E. 335.

32. 2. Swanson *v.* Ottumwa, 131 Iowa 540, 106 N. W. 9.

3. Wichmann *v.* Placerville, 147 Cal. 162, 81 Pac. 537 (implied repeal of powers).

5. Ontario County *v.* Shepard, 100 N. Y. App. Div. 200, 91 N. Y. Supp. 611.

33. 1. White River Sav. Bank *v.* Superior, 148 Fed. 1, 78 C. C. A. 169; Oneida *v.* King, 116 N. Y. App. Div. 35, 101 N. Y. Supp. 239.

5. Clagett *v.* Duluth Tp., (C. C. A.) 143 Fed. 824.

34. 9. Hawkins *v.* Nicholas County, 89 S. W. 484, 28 Ky. L. Rep. 479.

10. Graham *v.* Tuscumbia, 146 Ala. 449, 42 So. 400.

35. 7. Smith *v.* Vicksburg, 86 Miss. 577, 38 So. 301; Chatham County *v.* Stafford, 138 N. Car. 453, 50 S. E. 862.

The failure of the municipality to give notice for the redemption of bonds to be funded does not invalidate the funding bonds. Dietemeller *v.* State, (Wyo. 1906) 83 Pac. 501.

10. Macon *v.* Jones, 122 Ga. 455, 50 S. E. 340 (restriction on right to issue funding bonds).

11. Hamilton County *v.* Montpelier Sav. Bank, etc., Co., (C. C. A.) 157 Fed. 19.

36. 4. Jones *v.* Madison County, 137 N. Car. 579, 50 S. E. 291.

7. **Mortgage Bonds Charged on Property Purchased by Corporation.** — Gaulbert *v.* Louisville, 97 S. W. 342, 30 Ky. L. Rep. 50 (waterworks).

37. 4. Hamilton County *v.* Montpelier Sav. Bank, etc., Co., (C. C. A.) 157 Fed. 19; Wharton *v.* Greensboro, (N. Car. 1907) 59 S. E. 1043.

40. 1. School Dist. No. 11 *v.* Chapman, 152 Fed. 887, 82 C. C. A. 35; Law *v.* San Francisco, 144 Cal. 384, 77 Pac. 1014; Denver *v.* Hallett, 34 Colo. 393, 83 Pac. 1066; Linn *v.* Omaha, (Neb. 1906) 107 N. W. 983; Christie *v.* Chosen Freeholders, (N. J. 1907) 66 Atl. 1073.

2. Ontario County *v.* Shepard, 100 N. Y. App. Div. 200, 91 N. Y. Supp. 611; Heffner *v.* Toledo, 75 Ohio St. 413, 80 N. E. 8.

4. Haeussler *v.* St. Louis, 205 Mo. 656, 103 S. W. 1034.

5. Law *v.* San Francisco, 144 Cal. 384, 77 Pac. 1014; Smith *v.* Rockford, 29 Ohio Cir. Ct. 478.

41. 2. Kucera *v.* West Chicago Park Com'rs, 221 Ill. 488, 77 N. E. 912.

7. *Arizona.* — Phœnix Water Co. *v.* Phœnix, 9 Ariz. 430, 84 Pac. 1095; Vallelly *v.* Park Com'rs, (N. Dak. 1907) 111 N. W. 615.

Colorado. — Cripple Creek *v.* Adams, 36 Colo. 320, 85 Pac. 184.

Kansas. — Belleville *v.* Wells, 74 Kan. 823, 88 Pac. 47.

Maryland. — Baltimore *v.* Bond, 104 Md. 590, 65 Atl. 318 (amount of issue authorized).

Missouri. — Evans *v.* McFarland, 186 Mo. 703, 85 S. W. 873.

South Carolina. — Seegers *v.* Gibbes, 72 S. Car. 532, 52 S. E. 586; Dick *v.* Scarborough, 73 S. Car. 150, 53 S. E. 86.

Washington. — Dean *v.* Walla Walla, (Wash. 1907) 92 Pac. 895.

42. 1. Redlands *v.* Brook, 151 Cal. 474, 91 Pac. 150; State *v.* Searle, (Neb. 1906) 107 N. W. 588.

6. Robertson *v.* Staunton, 104 Va. 73, 51 S. E. 178.

44. 7. Clagett *v.* Duluth Tp., (C. C. A.) 143 Fed. 824; Smith *v.* Rockford, 29 Ohio Cir. Ct. 478.

45. 1. Redlands *v.* Brook, 151 Cal. 474, 91 Pac. 159; State *v.* District Ct., (Minn. 1907) 113 N. W. 697, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 44.

4. State *v.* Newton County, 162 Ind. 262, 74 N. E. 1091.

46. 3. Lumberton *v.* Nuven, 144 N. Car. 303, 56 S. E. 940; Rome *v.* Whitestown Water Works Co., 113 N. Y. App. Div. 547, 100 N. Y. Supp. 357.

4. Bingham *v.* Milwaukee County, 127 Wis. 344, 106 N. W. 1071.

In *Georgia* under the provision requiring a provision for the assessment and collection of the annual taxes "at or before incurring the bond of indebtedness" the provision for such tax may be made at any time before the bonds are actually issued. Woodall *v.* Adel, 122 Ga. 301, 50 S. E. 1020. See also Oliver *v.* Elberton, 124 Ga. 64, 52 S. E. 15.

5. The fact, however, that the tax provided for will not be collectible until after the first semi-instalment of interest falling due on the bonds is due will not invalidate the bond. Jermyn *v.* Scranton, 212 Pa. St. 598, 62 Atl. 29.

47. 5. Dick *v.* Scarborough, 73 S. Car. 150, 53 S. E. 86.

Amount of Tax Required to Be Stated. — See Bronxville *v.* Seymour, 122 N. Y. App. Div. 377, 106 N. Y. Supp. 834.

6. Sioux Falls *v.* Farmers' L. & T. Co., (C. C. A.) 136 Fed. 721, 131 Fed. 890; Leavenworth *v.* Wilson, 69 Kan. 74, 76 Pac. 400, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 47; State *v.* Allen, 186 Mo. 673, 85 S. W. 531, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 47; State *v.* Wilder, 200 Mo. 97, 98 S. W. 465; Linn *v.* Omaha, (Neb. 1906) 107 N. W. 983.

48. 5. Law *v.* San Francisco, 144 Cal. 384, 77 Pac. 1014.

6. Sioux Falls *v.* Farmers' L. & T. Co., (C. C. A.) 136 Fed. 721, 131 Fed. 890.

7. Calahan *v.* Handsaker, 133 Iowa 622, 111 N. W. 22; State *v.* Clay Center, (Kan. 1907) 91 Pac. 91; Troutman *v.* Hays, 101 S. W. 976, 31 Ky. L. Rep. 204; State *v.* Wilder, 200 Mo. 97, 98 S. W. 465; Fletcher *v.* Collingswood, (N. J. 1904) 59 Atl. 90.

The notice of election need not state the polling places, such places of voting being fixed by general law. Wilson *v.* Pike County, 144 Ala. 397, 39 So. 370.

Proof of Notice. — Blakey *v.* Montgomery, 144 Ala. 481, 39 So. 745.

Description of Amount and Character of Bonds to Be Issued. — Arbuckle *v.* McKinney, 97 S. W. 408, 30 Ky. L. Rep. 55.

Specification of Rate of Interest. — Lumberton *v.* Nuveen, 144 N. Car. 303, 56 S. E. 940.

8. Law *v.* San Francisco, 141 Cal. 384, 77 Pac. 1014; Murphy *v.* Long Branch, (N. J. 1905) 61 Atl. 503; Fox *v.* Seattle, 43 Wash. 74, 86 Pac. 379.

49. 1. Arbuckle *v.* McKinney, (Ky. 1906) 97 S. W. 408; Greene *v.* Rienzi, 87 Miss. 463, 40 So. 17; Hall *v.* Madison, 128 Wis. 132, 107 N. W. 31 (school bonds — women may vote).

4. Calahan *v.* Handsaker, 133 Iowa 622, 111 N. W. 22; Fletcher *v.* Collingswood, (N. J. 1904) 59 Atl. 90.

6. **Inscription on Ballot Label of Voting**

Machine of Proposition Submitted. Linn *v.* Omaha, (Neb. 1906) 107 N. W. 983.

Separate Ballot Boxes. — Lumberton *v.* Nuveen, 144 N. Car. 303, 56 S. E. 940.

Use of Separate Ballot Boxes at General Election. — Fletcher *v.* Collingswood, (N. J. 1904) 59 Atl. 90.

7. Arbuckle *v.* McKinney, (Ky. 1906) 97 S. W. 408; Nichols *v.* School Dist. No. 10, 39 Wash. 137, 81 Pac. 325.

Persons Who Are to Canvass Returns. Linn *v.* Omaha, (Neb. 1906) 107 N. W. 983.

10. Blakey *v.* Montgomery, 144 Ala. 481, 39 So. 745, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 49; Phœnix Water Co. *v.* Phœnix, 9 Ariz. 430, 84 Pac. 1095; Arbuckle *v.* McKinney, (Ky. 1906) 97 S. W. 408 (harmless exclusion of voters).

50. 5. Wright *v.* East Riverside Irrigation Dist., (C. C. A.) 138 Fed. 313; Gutta Percha, etc., Mfg. Co. *v.* Attalla, (Ala. 1905) 39 So. 719.

6. Bowman *v.* Middlesboro, 91 S. W. 726, 28 Ky. L. Rep. 1290; Diefenderfer *v.* State, 14 Wyo. 302, 83 Pac. 591.

51. 1. Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50.

52. 6. Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753.

53. 1. See Frank *v.* Butler County, (C. C. A.) 139 Fed. 119 (*Nebraska* constitution).

9. Ontario County *v.* Shepard, 100 N. Y. App. Div. 200, 91 N. Y. Supp. 611.

The form of the bonds must conform to the proposition submitted to the voters for approval. Denver *v.* Hallett, 34 Colo. 383, 83 Pac. 1066.

10. Law *v.* San Francisco, 144 Cal. 384, 77 Pac. 1014.

The fact that a bond provides for the payment of annual interest does not render it invalid where the statute providing for its issue directed that the interest should be paid semi-annually. Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753.

54. 8. See Reed *v.* Cedar Rapids, (Iowa 1907) 113 N. W. 773.

9. Gamble *v.* Rural Independent School Dist., 132 Fed. 514.

55. 2. Northern Trust Co. *v.* Wilmette, 220 Ill. 425, 77 N. E. 169, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 54.

6. Tyler *v.* Tyler Bldg., etc., Assoc., 99 Tex. 6, 86 S. W. 750.

8. Wright *v.* East Riverside Irrigation Dist., (C. C. A.) 138 Fed. 313; Sauer *v.* Gillett, 20 Colo. App. 365, 78 Pac. 1068; Denver *v.* Hallett, 34 Colo. 393, 83 Pac. 1066; Jermyn *v.* Scranton, 212 Pa. St. 598, 62 Atl. 29.

56. 2. Lumberton *v.* Nuveen, 144 N. Car. 303, 56 S. E. 940.

57. 6. Lumberton *v.* Nuveen, 144 N. Car. 303, 56 S. E. 940.

8. School Dist. No. 44 *v.* Baxter, 14 Okla. 374, 78 Pac. 386.

9. Santa Barbara *v.* Davis, (Cal. App. 1907) 92 Pac. 308.

58. 7. Vadakin *v.* Crilly, 28 Ohio Cir. Ct. 634, *affirmed* 73 Ohio St. 380, 78 N. E. 1140 (private suit).

59. 8. Manitou *v.* Colorado Springs First Nat. Bank, 37 Colo. 344, 86 Pac. 75.

60. 6. Diefenderfer *v.* State, 13 Wyo. 387, 80 Pac. 667.

7. Bradford *v.* Westbrook, (Tex. Civ. App. 1905) 88 S. W. 382.

8. Water, etc., Co. *v.* Hutchinson Interurban R. Co., (Kan. 1906) 87 Pac. 883. But see Vadakin *v.* Crilly, 28 Ohio Cir. Ct. 634, *affirmed* 73 Ohio St. 380, 78 N. E. 1140 (suit instituted in the interest of private waterworks company).

61. 11. Gilman *v.* Fernald, 141 Fed. 940, 73 C. C. A. 675 (limitation of actions).

Recovery by Assignee. — See Swanson *v.* Ottumwa, 131 Iowa 540, 106 N. W. 9.

62. 3. Gamble *v.* Rural Independent School Dist., 132 Fed. 514.

7. Quinlan *v.* Green County, 205 U. S. 416, 27 U. S. Sup. Ct. 505, 51 U. S. (L. ed.) 860; Gamble *v.* Rural Independent School Dist., 132 Fed. 514; Rees *v.* Olmsted, 135 Fed. 296, 68 C. C. A. 50; Cripple Creek *v.* Adams, 36 Colo. 320, 85 Pac. 184; Montvale *v.* People's Bank, (N. J. 1907) 67 Atl. 67 (under negotiable instruments law).

If There Are No Recitals in the Bonds, etc. — Northern Trust Co. *v.* Wilmette, 220 Ill. 417, 77 N. E. 169.

64. 1, School Dist. No. 11 *v.* Chapman, 152 Fed. 887, 82 C. C. A. 35; Thompson *v.* Mecosta, 141 Mich. 175, 104 N. W. 694, 12 Detroit Leg. N. 474.

2. Gamble *v.* Rural Independent School Dist., 132 Fed. 514; Schmid *v.* Frankfort, 141 Mich. 291, 104 N. W. 668, 12 Detroit Leg. N. 473.

5. The transferee of a bond in consideration of services rendered and to be rendered, the latter being rendered as required, may be a *bona fide* holder for value. Gamble *v.* Rural Independent School Dist., 132 Fed. 514.

8. In Gamble *v.* Rural Independent School Dist., 132 Fed. 514, a purchaser of a municipal bond for mere nominal consideration, though his vendor is a *bona fide* holder for value, was permitted to recover against the municipality only the consideration paid by him.

65. 5. Clagett *v.* Duluth Tp., (C. C. A.) 143 Fed. 824.

7. Sauer *v.* Gillett, 20 Colo. App. 365, 78 Pac. 1068; Corbet *v.* Rocksbury, 94 Minn. 397, 103 N. W. 11; Tyler *v.* Tyler Bldg., etc., Assoc., 99 Tex. 6, 86 S. W. 750.

66. 1. School Dist. No. 11 *v.* Chapman, 152 Fed. 887, 82 C. C. A. 35.

2. Swanson *v.* Ottumwa, 131 Iowa 540, 106 N. W. 9; Thompson *v.* Mecosta, 141 Mich. 175, 104 N. W. 694.

5. Sauer *v.* Gillett, 20 Colo. App. 365, 78 Pac. 1068.

68. 2. Corbet *v.* Rocksbury, 94 Minn. 397, 103 N. W. 11.

4. Platt *v.* Hitchcock County, (C. C. A.) 139 Fed. 929; Northwestern Sav. Bank *v.* Centreville Station, (C. C. A.) 143 Fed. 81; Superior *v.* Marble Sav. Bank, 148 Fed. 7, 78 C. C. A. 175; School Dist. No. 11 *v.* Chapman, 152 Fed. 887, 82 C. C. A. 35; Quinlan *v.* Green County, (C. C. A.) 157 Fed. 33. But see Evans *v.* McFarland, 186 Mo. 703, 85 S. W. 873.

70. 1. Corbet *v.* Rocksbury, 94 Minn. 397, 103 N. W. 11.

2. Sauer *v.* Gillett, 20 Colo. App. 365, 78 Pac. 1068.

72. 3. Northwestern Sav. Bank *v.* Centre-

ville Station, (C. C. A.) 143 Fed. 81; Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753.

4. Rees *v.* Olmsted, 135 Fed. 296, 68 C. C. A. 50; Tolman *v.* Onslow County, 140 Fed. 89.

5. See Swanson *v.* Ottumwa, 131 Iowa 540, 106 N. W. 9.

6. Fletcher *v.* Hickman, 136 Fed. 568, 69 C. C. A. 350; Greene *v.* Rienzi, 87 Miss. 463, 40 So. 17.

74. 1. Northwestern Sav. Bank *v.* Centreville Station, (C. C. A.) 143 Fed. 81.

2. Bradford *v.* Cameron, (C. C. A.) 145 Fed. 21; Hamilton County *v.* Montpelier Sav. Bank, etc., Co., (C. C. A.) 157 Fed. 19; Tyler *v.* Tyler Bldg., etc., Assoc., 99 Tex. 6, 86 S. W. 750, *reversing* (Tex. Civ. App. 1904) 82 S. W. 1066.

4. Quinlan *v.* Green County, (C. C. A.) 157 Fed. 33.

75. 5. Wright *v.* East Riverside Irrigation Dist., (C. C. A.) 138 Fed. 313.

76. 1. Quinlan *v.* Green County, 205 U. S. 410, 27 U. S. Sup. Ct. 505.

3. Platt *v.* Hitchcock County, (C. C. A.) 139 Fed. 929.

78. 6. Packard *v.* Mobile, (Ala. 1907) 43 So. 963.

9. See Meyer *v.* San Francisco, 150 Cal. 131, 88 Pac. 722.

79. 6. Superior *v.* Marble Sav. Bank, 148 Fed. 7, 78 C. C. A. 175.

7. Jewell *v.* Superior, 135 Fed. 19, 67 C. C. A. 623; Meyer *v.* San Francisco, 150 Cal. 131, 88 Pac. 722.

80. 1. White River Sav. Bank *v.* Superior, 148 Fed. 1, 78 C. C. A. 169.

3. Eddy *v.* San Francisco, 148 Fed. 272 (laches).

5. Olmsted *v.* Superior, 155 Fed. 172.

81. 5. Austin *v.* Cahill, 99 Tex. 172, 88 S. W. 542.

10. Olmsted *v.* Superior, 155 Fed. 172.

82. 10. Meyer *v.* San Francisco, 150 Cal. 131, 88 Pac. 722; Smith *v.* Rockford, 29 Ohio Cir. Ct. 478.

MURDER AND MANSLAUGHTER.

93. 7. Percer *v.* State, 118 Tenn. 765, 103 S. W. 780.

95. 1. State *v.* Baldes, 133 Iowa 158, 110 N. W. 440.

7. Bonner *v.* State, 125 Ga. 237, 54 S. E. 143; State *v.* Baruth, (Wash. 1907) 91 Pac. 977. *Compare* Sartin *v.* State, (Tex. Crim. 1907) 103 S. W. 875.

99. 1. Com. *v.* Hicks, 118 Ky. 641, 82 S. W. 265, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 98 [99].

2. Com. *v.* Hicks, 118 Ky. 641, 82 S. W. 265, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 98 [99].

4. People *v.* Beardsley, 150 Mich. 206, 113 N. W. 1128, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 99.

101. 4. Rex *v.* Izod, 20 Cox C. C. 690.

102. 7. French *v.* Com., 88 S. W. 1070, 28 Ky. L. Rep. 64.

103. 4. Morris *v.* State, 146 Ala. 66, 41 So. 274.

105. 1. Hamilton *v.* State, 129 Ga. 747, 59 S. E. 803.

2. State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; Com. *v.* Johnson, 219 Pa. St. 174, 68 Atl. 53; Nelson *v.* State, 48 Tex. Crim. 274, 87 S. W. 143.

3. People *v.* Trebilcox, 149 Cal. 307, 86 Pac. 684; State *v.* Mathews, 133 Iowa 398, 109 N. W. 616; State *v.* Cavin, 199 Mo. 154, 97 S. W. 573; State *v.* Lilliston, 141 N. Car. 857, 54 S. E. 427; Ricks *v.* State, 48 Tex. Crim. 264, 87 S. W. 1036; State *v.* Marfandille, (Wash. 1907) 92 Pac. 939; State *v.* Briggs, 58 W. Va. 291, 52 S. E. 218.

6. Thompkins *v.* Com., 90 S. W. 221, 28 Ky. L. Rep. 642; State *v.* Clifford, 59 W. Va. 30, 52 S. E. 981, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 105.

107. 10. Com. *v.* Hargis, 99 S. W. 348, 30 Ky. L. Rep. 510.

110. 6. Morris *v.* State, 146 Ala. 66, 41 So. 274; State *v.* Adams, (Del. 1906) 65 Atl. 510; Watkins *v.* Com., 97 S. W. 740, 29 Ky. L. Rep. 1273; State *v.* Crittenden, 191 Mo. 17, 89 S. W. 952; People *v.* Cascone, 185 N. Y. 317, 78 N. E. 287; State *v.* Kendall, 143 N. Car. 659, 57 S. E. 340; Com. *v.* Johnson, 217 Pa. St. 77, 66 Atl. 233.

112. 8. Landrum *v.* Com., 96 S. W. 587, 29 Ky. L. Rep. 924.

113. 3. McLeroy *v.* State, 125 Ga. 240, 54 S. E. 125; Davis *v.* State, 125 Ga. 299, 54 S. E. 126; Cecil *v.* State, (Tex. Crim. 1907) 100 S. W. 390; Abbata *v.* State, (Tex. Crim. 1907) 102 S. W. 1125.

114. 1. State *v.* Keleher, 74 Kan. 631, 87 Pac. 738.

115. 5. Brooks *v.* State, 128 Ga. 261, 57 S. E. 483; State *v.* Hunter, 77 S. Car. 119, 57 S. E. 637.

117. 2. Rigsby *v.* State, (Ala. 1907) 44 So. 608; Patterson *v.* State, 124 Ga. 4, 52 S. E. 77; Smith *v.* State, (Tex. Crim. 1907) 105 S. W. 182.

4. Conrad *v.* State, 75 Ohio St. 52, 78 N. E. 957

121. 1. Moore *v.* State, 146 Ala. 687, 40 So. 345; People *v.* Eldridge, 147 Cal. 782, 82 Pac. 442; People *v.* Cowan, 1 Cal. App. 411, 82 Pac. 339; Clay *v.* State, 15 Wyo. 42, 86 Pac. 17, 544.

122. 2. State *v.* Horner, 139 N. Car. 611, 52 S. E. 136, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122.

124. 1. Oates *v.* State, (Tex. Crim. 1906) 95 S. W. 105.

129. 3. State *v.* McCoomer, (S. Car. 1908) 60 S. E. 237.

131. 3. State *v.* Ireland, 72 Kan. 270, 83 Pac. 1036, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 131.

132. 2. **Nature and Definition of Murder at Common Law Not Changed by Statute.** — Hamilton *v.* U. S., 26 App. Cas. (D. C.) 382; Burge *v.* U. S., 26 App. Cas. (D. C.) 524.

4. Morello *v.* People, 226 Ill. 388, 80 N. E. 903; Com *v.* Parsons, 195 Mass. 560, 81 N. E. 291.

5. People *v.* Dinser, 121 N. Y. App. Div. 738, 106 N. Y. Supp. 495.

133. 5. People *v.* Fallon, 149 Cal. 287, 86 Pac. 689; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Brown, 5 Penn. (Del.)

339, 61 Atl. 1077; State *v.* Tilghman, (Del. 1906) 63 Atl. 772; State *v.* Johns, (Del. 1906) 65 Atl. 763; Long *v.* State, 127 Ga. 350, 56 S. E. 444; Parsons *v.* People, 218 Ill. 386, 75 N. E. 993; Jones *v.* State, (Tex. Crim. 1906) 96 S. W. 930.

134. 6. Glass *v.* State, 147 Ala. 50, 41 So. 727; Campbell *v.* State, 124 Ga. 432, 52 S. E. 914; Lewis *v.* State, 129 Ga. 731, 59 S. E. 782; Clefford *v.* People, 229 Ill. 633, 82 N. E. 343; Com. *v.* Danz, 211 Pa. St. 507, 60 Atl. 1070.

8. Carwile *v.* State, 148 Ala. 576, 39 So. 220; State *v.* Barrington, 198 Mo. 23, 95 S. W. 235; State *v.* Francis, 199 Mo. 671, 98 S. W. 11; State *v.* Thrailkill, 73 S. Car. 314, 53 S. E. 482.

135. 3. State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Johns, (Del. 1906) 65 Atl. 763; Watkins *v.* Com., 97 S. W. 740, 29 Ky. L. Rep. 1273; Oates *v.* State, (Tex. Crim. 1907) 103 S. W. 859.

4. Heningburg *v.* State, (Ala. 1907) 45 So. 246.

137. 1. State *v.* Johns, (Del. 1906) 65 Atl. 763.

2. Rice *v.* State, (Tex. Crim. 1907) 103 S. W. 1156.

3. Robinson *v.* State, 129 Ga. 336, 58 S. E. 842.

138. 3. Lucas *v.* State, (Neb. 1907) 111 N. W. 145; State *v.* Rochester, 72 S. Car. 194, 51 S. E. 685.

139. 3. State *v.* Clifford, 59 W. Va. 1, 52 S. E. 981.

140. 1. Mann *v.* State, 124 Ga. 760, 53 S. E. 324.

2. State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; Campbell *v.* State, 124 Ga. 432, 52 S. E. 914; State *v.* Moore, 119 La. 564, 44 So. 299.

3. *California.* — People *v.* McRoberts, 1 Cal. App. 25, 81 Pac. 734; People *v.* Grill, 151 Cal. 592, 91 Pac. 515.

Connecticut. — State *v.* Bailey, 79 Conn. 589, 65 Atl. 951.

Delaware. — State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Tilghman, (Del. 1906) 63 Atl. 772; State *v.* Johns, (Del. 1906) 65 Atl. 763.

Georgia. — Smith *v.* State, 124 Ga. 213, 52 S. E. 329; Tolbirt *v.* State, 124 Ga. 767, 53 S. E. 327; Nail *v.* State, 125 Ga. 234, 54 S. E. 145; Bradley *v.* State, 128 Ga. 20, 57 S. E. 237.

Minnesota. — State *v.* Prolow, 98 Minn. 459, 108 N. W. 873.

North Carolina. — State *v.* Worley, 141 N. Car. 764, 53 S. E. 128; State *v.* Banks, 143 N. Car. 652, 57 S. E. 174; State *v.* McDowell, 145 N. Car. 563, 59 S. E. 690.

South Carolina. — State *v.* Henderson, 74 S. Car. 477, 55 S. E. 117.

141. 2. State *v.* Barrett, 142 N. Car. 565, 54 S. E. 856; Conrad *v.* State, 75 Ohio St. 78, 78 N. E. 957, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 141.

144. 4. Harper *v.* State, 129 Ga. 770, 59 S. E. 792; Coile *v.* State, 28 Ohio Cir. Ct. 827; State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542; Anderson *v.* State, (Wis. 1907) 114 N. W. 112.

145. 7. State *v.* Vaughan, 200 Mo. 1, 98 S. W. 2; People *v.* Pekarz, 185 N. Y. 470, 78 N. E. 294.

Killing in Perpetration of Any Offense Punishable by Imprisonment in Penitentiary. — U. S. *v.* Evans, 28 App. Cas. (D. C.) 264.

149. 3. *Alabama.* — Ledbetter *v.* State, (Ala. 1905) 39 So. 618; Kennedy *v.* State, 147 Ala. 687, 40 So. 658; Austin *v.* State, 145 Ala. 37, 40 So. 989; Allen *v.* State, 146 Ala. 61, 42 So. 1006; Heninburg *v.* State, (Ala. 1907) 45 So. 246.

Delaware. — State *v.* Uzzo, (Del. 1907) 65 Atl. 775; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Tilghman, (Del. 1906) 63 Atl. 772.

Georgia. — McLeod *v.* State, 128 Ga. 17, 57 S. E. 83.

Iowa. — State *v.* Hayden, 131 Iowa 1, 107 N. W. 929.

North Carolina. — State *v.* Walker, 145 N. Car. 567, 59 S. E. 878.

Pennsylvania. — Com. *v.* Gibson, 211 Pa. St. 546, 60 Atl. 1086.

South Carolina. — State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542.

Texas. — Brownlee *v.* State, 48 Tex. Crim. 408, 87 S. W. 1153; Campos *v.* State, (Tex. Crim. 1906) 95 S. W. 1042; Early *v.* State, (Tex. Crim. 1906) 97 S. W. 82.

150. 2. State *v.* Minor, 193 Mo. 597, 92 S. W. 466.

151. 4. Jordan *v.* State, 124 Ga. 780, 53 S. E. 331; Jones *v.* State, 125 Ga. 254, 54 S. E. 144; Joiner *v.* State, 129 Ga. 295, 58 S. E. 859.

5. State *v.* Legg, 59 W. Va. 315, 53 S. E. 545.

8. State *v.* Johns, (Del. 1906) 65 Atl. 763; State *v.* Cephus, (Del. 1906) 67 Atl. 150.

152. 1. Lucas *v.* State, 49 Tex. Crim. 135, 90 S. W. 880.

2. Coleman *v.* State, 49 Tex. Crim. 82, 90 S. W. 499; Thomson *v.* State, 49 Tex. Crim. 384, 93 S. W. 111.

3. McLin *v.* State, 48 Tex. Crim. 549, 90 S. W. 1107.

12. Benjamin *v.* State, (Ala. 1906) 41 So. 739.

153. 1. Allen *v.* State, 148 Ala. 588, 42 So. 1006; State *v.* Seery, 129 Iowa 259, 105 N. W. 511.

2. State *v.* Marfaudille, (Wash. 1907) 92 Pac. 939.

3. Nordan *v.* State, 143 Ala. 13, 39 So. 407. *Compare* State *v.* Phinney, 13 Idaho 307, 89 Pac. 634.

5. State *v.* Lilliston, 141 N. Car. 858, 54 S. E. 427, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153.

156. 7. State *v.* Hogan, 117 La. 863, 42 So. 352.

9. State *v.* Banks, 143 N. Car. 652, 57 S. E. 171.

157. 4. *Arkansas.* — Vasser *v.* State, 75 Ark. 373, 87 S. W. 635; Howard *v.* State, 82 Ark. 97, 100 S. W. 756.

California. — People *v.* Maughs, 149 Cal. 253, 86 Pac. 187.

Delaware. — State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Samuels, (Del. 1904) 67 Atl. 164.

Florida. — Melbourne *v.* State, 51 Fla. 69, 40 So. 189; Baker *v.* State, (Fla. 1907) 44 So. 719.

Missouri. — State *v.* Brown, 188 Mo. 451, 87 S. W. 519; State *v.* McCarver, 194 Mo. 717, 92 S. W. 684; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55; State *v.* Speyer, 207 Mo. 540, 106 S. W. 505.

New Jersey. — State *v.* Lang, (N. J. 1907) 66 Atl. 942.

New York. — People *v.* Totterman, 181 N. Y. 385, 74 N. E. 222; People *v.* Pekarz, 185 N. Y. 470, 78 N. E. 294; People *v.* Granger, 187 N. Y. 67, 79 N. E. 833.

North Carolina. — State *v.* Barrett, 142 N. Car. 565, 54 S. E. 856; State *v.* Banks, 143 N. Car. 652, 57 S. E. 174.

Texas. — Tune *v.* State, 49 Tex. Crim. 445, 94 S. W. 231; Vaughn *v.* State, (Tex. Crim. 1907) 101 S. W. 445; Dixon *v.* State, (Tex. Crim. 1907) 103 S. W. 399; Mitchell *v.* State, (Tex. Crim. 1907) 106 S. W. 135.

Wyoming. — State *v.* Pressler, (Wyo. 1907) 92 Pac. 806.

159. 4. State *v.* Barrington, 198 Mo. 23, 95 S. W. 235.

8. *Alabama.* — Dunn *v.* State, 143 Ala. 67, 39 So. 147; Green *v.* State, 143 Ala. 2, 39 So. 362; Franklin *v.* State, 145 Ala. 669, 39 So. 70.

California. — People *v.* Yee Foo, 4 Cal. App. 730, 89 Pac. 450.

Colorado. — Wickham *v.* People, (Colo. 1907) 93 Pac. 478.

Delaware. — State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Tilghman, (Del. 1906) 63 Atl. 772; State *v.* Honey, (Del. 1906) 65 Atl. 764.

Louisiana. — State *v.* Heidelberg, (La. 1907) 45 So. 256.

Minnesota. — State *v.* Prolow, 98 Minn. 459, 108 N. W. 873.

Missouri. — State *v.* Speyer, 207 Mo. 540, 106 S. W. 505.

North Carolina. — State *v.* Daniel, 139 N. Car. 549, 51 S. E. 858; State *v.* Jones, 145 N. Car. 466, 59 S. E. 353.

Texas. — Benson *v.* State, (Tex. Crim. 1907) 103 S. W. 911.

West Virginia. — State *v.* Clifford, 59 W. Va. 1, 52 S. E. 981.

161. 1. Davis *v.* State, (Ala. 1907) 44 So. 561.

6. State *v.* Pyles, 206 Mo. 626, 105 S. W. 613; State *v.* Megorden, (Oregon 1907) 88 Pac. 205.

162. 8. State *v.* Niehaus, 188 Mo. 304, 87 S. W. 473.

Malignity and Cruelty as Evidence of Premeditation and Deliberation. — People *v.* Hill, 1 Cal. App. 414, 82 Pac. 398.

163. 3. Howard *v.* State, 82 Ark. 102, 100 S. W. 756, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163; State *v.* Minor, 193 Mo. 507, 92 S. W. 466.

164. 3. **Murder in Perpetration, etc., of Robbery.** — State *v.* Rogers, 129 Iowa 229, 105 N. W. 455; People *v.* Jackson, 182 N. Y. 66, 74 N. E. 565; Turner *v.* State, 48 Tex. Crim. 585, 89 S. W. 975; Johnson *v.* State, 49 Tex. Crim. 314, 94 S. W. 224; Oates *v.* State, (Tex. Crim. 1907) 103 S. W. 859.

Murder in Perpetration, etc., of Burglary. — Conrad *v.* State, 75 Ohio St. 52, 78 N. E. 957.

If the defendant at the time of the killing had ceased to be engaged in the commission of a burglary he is not within the statute. People *v.* Huter, 184 N. Y. 237, 77 N. E. 6.

166. 8. State *v.* Thomas, (Iowa 1906) 109 N. W. 900.

167. 11. Dixon *v.* State, (Tex. Crim. 1907) 103 S. W. 399; Oates *v.* State, (Tex. Crim. 1907) 103 S. W. 859.

168. 5. Abbata *v.* State, (Tex. Crim. 1907) 102 S. W. 1125; Clark *v.* State, (Tex. Crim. 1907) 102 S. W. 1136.

6. *Alabama.* — Franklin *v.* State, 145 Ala. 669, 39 So. 979; Miller *v.* State, 145 Ala. 677, 40 So. 47; Strickland *v.* State, (Ala. 1907) 44 So. 90.

Delaware. — State *v.* Uzzo, (Del. 1907) 65 Atl. 775; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Cephus, (Del. 1906) 67 Atl. 150.

New Jersey. — State *v.* Biango, (N. J. 1907) 68 Atl. 125.

North Carolina. — State *v.* Jones, 145 N. Car. 466, 59 S. E. 353.

Texas. — Kannmacher *v.* State, (Tex. Crim. 1907) 101 S. W. 238; Dixon *v.* State, (Tex. Crim. 1907) 103 S. W. 399.

West Virginia. — State *v.* Legg, 59 W. Va. 315, 53 S. E. 545.

169. 1. Brennan *v.* People, 37 Colo. 256, 86 Pac. 79; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Johnny, (Nev. 1906) 87 Pac. 3; Com. *v.* Eyler, 217 Pa. St. 512, 66 Atl. 746.

3. Barnett *v.* State, (Ala. 1905) 39 So. 778. *Compare* State *v.* Mitchell, 130 Iowa 697, 107 N. W. 804.

4. Beene *v.* State, 79 Ark. 460, 96 S. W. 151; State *v.* Speyer, 207 Mo. 540, 106 S. W. 505; State *v.* Marfaudille, (Wash. 1907) 92 Pac. 939.

6. Petty *v.* State, 76 Ark. 515, 89 S. W. 465; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Seery, 129 Iowa 259, 105 N. W. 511; State *v.* Baldes, 133 Iowa 158, 110 N. W. 440.

But Proof of an Intent to Kill does not exclude a conviction of murder in the second degree. Vasquez *v.* State, (Fla. 1907) 44 So. 739.

7. Munday *v.* State, 26 Ohio Cir. Ct. 712.

170. 4. State *v.* McCarver, 194 Mo. 717, 92 S. W. 684; Cravens *v.* State, (Tex. Crim. 1907) 103 S. W. 921.

6. Parham *v.* State, 147 Ala. 57, 42 So. 1; Com. *v.* Fellows, 212 Pa. St. 297, 61 Atl. 922; Com *v.* Frucci, 216 Pa. St. 84, 64 Atl. 879; Com. *v.* Curcio, 216 Pa. St. 380, 65 Atl. 792; State *v.* Perry, 78 S. Car. 184, 59 S. E. 851; State *v.* Hubbard, (S. Dak. 1905) 104 N. W. 1120; Moore *v.* State, (Tex. Crim. 1907) 107 S. W. 540; State *v.* May, (W. Va. 1907) 57 S. E. 366.

171. 1. State *v.* Phinney, 13 Idaho 307, 89 Pac. 634.

5. Galloway *v.* State, 47 Fla. 33, 36 So. 168, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 171; Watkins *v.* Com., 97 S. W. 740, 29 Ky. L. Rep. 1273.

6. [illegible] Penn. (Del.) 192, 61 Atl. 1077; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Ireland, 72 Kan. 270, 83 Pac. 1036, *citing* 21 AM. AND ENG. ENCYC. OF [illegible]

No Such Thing as Involuntary Manslaughter in Indian Territory. — Carney *v.* U. S., (Indian Ter. 1907) 104 S. W. 606.

172. 1. State *v.* Edmunds, (S. Dak. 1905) 104 N. W. 1115, *quoting* 21 AM. AND ENG. [illegible]

Killing Must Be Intentional. — State *v.* Elsey, 201 Mo. 561, 100 S. W. 11.

2. *Alabama.* — Miller *v.* State, 145 Ala. 677, 40 So. 47; Morris *v.* State, 146 Ala. 66, 41 So. 274; Untreinor *v.* State, 146 Ala. 26, 41 So. 285.

Arkansas. — Lee *v.* State, 78 Ark. 77, 93 S. W. 754.

California. — People *v.* Waysman, 1 Cal. App. 246, 81 Pac. 1087.

Delaware. — State *v.* Uzzo, (Del. 1907) 65 Atl. 775.

Florida. — Cook *v.* State, 46 Fla. 76, 35 So. 665, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 172.

Georgia. — Rentfrow *v.* State, 123 Ga. 539, 51 S. E. 596; Wall *v.* State, 126 Ga. 549, 55 S. E. 484.

Louisiana. — State *v.* Vicknair, 118 La. 963, 43 So. 635.

Missouri. — State *v.* Hartley, 185 Mo. 671, 84 S. W. 910, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 172.

Pennsylvania. — Com. *v.* Curcio, 216 Pa. St. 380, 65 Atl. 792.

West Virginia. — State *v.* Clifford, 59 W. Va. 1, 52 S. E. 981.

3. State *v.* Moore, 129 Iowa 514, 106 N. W. 16; Sims *v.* Com., (Ky. 1907) 106 S. W. 214; State *v.* Hartley, 185 Mo. 671, 84 S. W. 910, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 172.

4. State *v.* Hartley, 185 Mo. 671, 84 S. W. 910, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 172.

173. 2. State *v.* Edmunds, (S. Dak. 1905) 104 N. W. 1115, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 172 [173].

3. Green *v.* State, (Tex. Crim. 1907) 105 S. W. 205.

5. State *v.* Tilghman, (Del. 1906) 63 Atl. 774.

174. 2. Johnson *v.* State, 129 Wis. 162, 108 N. W. 55, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 174.

Transport of Passion Not Essential. — Kannmacher *v.* State, (Tex. Crim. 1907) 101 S. W. 238; Clark *v.* State, (Tex. Crim. 1907) 102 S. W. 1136.

5. Findley *v.* State, 125 Ga. 570, 54 S. E. 106; Wall *v.* State, 126 Ga. 549, 55 S. E. 484.

6. Peel *v.* State, 144 Ala. 125, 39 So. 251; Dow *v.* State, 77 Ark. 464, 92 S. W. 28; State *v.* Reeder, 72 S. Car. 223, 51 S. E. 702; Cole *v.* State, 48 Tex. Crim. 439, 88 S. W. 341; Dixon *v.* State, (Tex. Crim. 1907) 103 S. W. 399.

176. 2. Harrison *v.* State, 144 Ala. 20, 40 So. 568; Gossett *v.* State, 123 Ga. 431, 51 S. [illegible] 1. Tex. Crim. 636, 88 S. W. 923.

4. State *v.* Hazlett, (N. Dak. 1907) 113 N. W. 374.

177. 2. State *v.* Williams, 141 N. Car. 827, 53 S. E. 823.

3. Rice *v.* State, (Tex. Crim. 1907) 103 S. W. 1156.

5. Wickham *v.* People, (Colo. 1907) 93 Pac. 478.

6. People *v.* Gallaner, 3 Cal. App. 431, 86 Pac. 814; Mann *v.* State, 124 Ga. 760, 53 S. E. 324; Bradley *v.* State, 128 Ga. 20, 57 S. E. [illegible]

7. State *v.* Barrington, 198 Mo. 23, 95 S. W. 235; Johnson *v.* State, 129 Wis. 159, 108 N. W. 55, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 177.

179. 2. Bruster *v.* State, (Tex. Crim. 1906) 95 S. W. 1066.

5. *Arkansas.* — Petty *v.* State, 76 Ark. 515, 89 S. W. 465; Dow *v.* State, 77 Ark. 464, 92 S. W. 28.

Delaware. — State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. 147.

Georgia. — Findley *v.* State, 125 Ga. 579, 54 S. E. 106; Fargerson *v.* State, 128 Ga. 27, 57 S. E. 101; Pryer *v.* State, 128 Ga. 28, 57 S. E. 93; Bird *v.* State, 128 Ga. 253, 57 S. E. 320; Parker *v.* State, 1 Ga. App. 781, 57 S. E. 1028; Holland *v.* State, (Ga. App. 1908) 60 S. E. 205.

Kansas. — State *v.* Buffington, 71 Kan. 810, 81 Pac. 465, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 179.

Missouri. — State *v.* Gordon, 191 Mo. 114, 89 S. W. 1025; State *v.* Kennedy, 207 Mo. 528 106 S. W. 57; State *v.* Ballance, 207 Mo. 607, 106 S. W. 60.

181. 2. Nelson *v.* State, 48 Tex. Crim. 274, 87 S. W. 143.

10. Hill *v.* State, (Tex. Crim. 1907) 106 S. W. 145; Stewart *v.* State, (Tex. Crim. 1907) 106 S. W. 685; State *v.* Clifford, 59 W. Va. 11, 52 S. E. 981, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 181.

182. 1. Ricks *v.* State, 48 Tex. Crim. 264, 87 S. W. 1036.

3. Bays *v.* State, (Tex. Crim. 1907) 99 S. W. 561.

183. 3. Ware *v.* State, 49 Tex. Crim. 413, 92 S. W. 1093; Riles *v.* State, (Tex. Crim. 1907) 106 S. W. 357.

5. State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Bell, 5 Penn. (Del.) 192, 62 Atl. [illegible]

184. 3. Jackson *v.* State, 125 Ga. 277, 54 S. E. 167; Giles *v.* State, 126 Ga. 549, 55 S. E. 405; Goodin *v.* State, 126 Ga. 560, 55 S. E. 503; Sapp *v.* State, 2 Ga. App. 449, 58 S. E. 667; Harris *v.* State, 2 Ga. App. 487, 58 S. E. 680; Kennedy *v.* Com., 102 S. W. 863, 31 Ky. L. Rep. 546; State *v.* Andrews, 73 S. Car. 257, 53 S. E. 423.

5. Lee *v.* State, 2 Ga. App. 481, 58 S. E. 676.

185. 1. Bundrick *v.* State, 125 Ga. 753, 54 S. E. 683; State *v.* Gordon, 191 Mo. 114, 89 S. W. 1025.

2. State *v.* Maupin, 196 Mo. 164, 93 S. W. 870.

3. State *v.* Taylor, 57 W. Va. 241, 50 S. E.

247, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185.

4. Noble *v.* State, 75 Ark. 246, 87 S. W. 129; State *v.* Gordon, 191 Mo. 114, 89 S. W. 1025; Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496.

Commencing a difficulty is not necessarily provoking a difficulty. Reese *v.* State, 49 Tex. Crim. 242, 91 S. W. 583.

186. 1. State *v.* Clifford, 59 W. Va. 10, 52 S. E. 981, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 185 [186].

5. Jenkins *v.* State, 3 Ga. App. 146, 59 S. E. 435.

189. 9. Westrup *v.* Com., 93 S. W. 646, 29 Ky. L. Rep. 519; Com. *v.* Couch, (Ky. 1908) 106 S. W. 830.

190. 2. State *v.* Horton, 139 N. Car. 588, 51 S. E. 945.

7. State *v.* Walker, 133 Iowa 489, 110 N. W. 925.

191. 5. Nolly *v.* State, 124 Ga. 10, 52 S. E. 19.

6. **Where a Woman Quick with Child** was frightened, but not hit, by an illegal discharge of firearms in the street, and gave premature birth to a child, and later died, it was held that the person firing the gun was not guilty of involuntary manslaughter. Com. *v.* Couch, (Ky. 1908) 106 S. W. 830.

192. 2. Blanton *v.* Com., 103 S. W. 329, 31 Ky. L. Rep. 800; State *v.* Clardy, 73 S. Car. 340, 53 S. E. 493.

194. 6. People *v.* Smith, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 1, 105 N. Y. Supp. 1082.

Intent Is Not an Essential Element of the statutory definition of manslaughter when committed by culpable negligence. Kent *v.* State, 53 Fla. 51, 43 So. 773.

197. 3. State *v.* Moore, 129 Iowa 514, 106 N. W. 16.

7. Hampton *v.* State, 50 Fla. 55, 39 So. 421.

198. 2. People *v.* Beardsley, 150 Mich. 206, 113 N. W. 1128, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 192 [198].

199. 5. See Westrup *v.* Com., (Ky. 1906) 93 S. W. 646, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 199.

200. 1. Untreimor *v.* State, 146 Ala. 26, 41 So. 285.

3. Neilson *v.* State, 146 Ala. 683, 40 So. 221; Heninburg *v.* State, (Ala. 1907) 43 So. 959.

7. People *v.* Huson, 114 N. Y. App. Div. 603, 99 N. Y. Supp. 1081; People *v.* Stacy, 119 N. Y. App. Div. 743, 104 N. Y. Supp. 615.

201. 4. Duthey *v.* State, 131 Wis. 178, 111 N. W. 222. *Compare* State *v.* Darling, 199 Mo. 168, 97 S. W. 592.

5. State *v.* Todd, 194 Mo. 377, 92 S. W. 674; Johnson *v.* State, 129 Wis. 146, 108 N. W. 55.

9. **Defense of Property.** — See Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

205. 11. Reed *v.* Com., 100 S. W. 856, 30 Ky. L. Rep. 1212.

207. 2. **In Iowa,** where the interference of a third person is a felony, an officer may kill the third person if necessary, although the arrest was for a misdemeanor. State *v.* Smith, 127 Iowa 534, 103 N. W. 944.

7. State *v.* Hennessy, (Nev. 1907) 90 Pac. 226, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 207; State *v.* Cook, 78 S. Car. 253, 59 S. E. 865, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 207.

209. 7. Gregory *v.* State, (Tex. Crim. 1906) 94 S. W. 1041.

214. 1. People *v.* Woods, 147 Cal. 265, 81 Pac. 652; State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Tilghman, (Del. 1906) 63 Atl. 772; Sapp *v.* State, 2 Ga. App. 449, 58 S. E. 667; State *v.* Blydenburgh, (Iowa 1905) 104 N. W. 1015; Flinchem *v.* Com., 89 S. W. 1129, 28 Ky. L. Rep. 653; Allen *v.* State, 88 Miss. 159, 40 So. 744; Com. *v.* Karamarkovic, 218 Pa. St. 405, 67 Atl. 650; State *v.* Gillis, 73 S. Car. 318, 53 S. E. 487; Holder *v.* State, (Tenn. 1907) 104 S. W. 225; Rex *v.* Collins, 38 N. Bruns. 218.

2. State *v.* Thrailkill, 73 S. Car. 314, 53 S. E. 482.

215. 1. People *v.* Soeder, 150 Cal. 12, 87 Pac. 1016; Wall *v.* State, 126 Ga. 86, 54 S. E. 815.

3. People *v.* Weber, 149 Cal. 325, 86 Pac. 671; Thurman *v.* Com., (Va. 1908) 60 S. E. 99.

4. Johnson *v.* State, (Ga. 1908) 60 S. E. 158; Jahnke *v.* State, 68 Neb. 182, 104 N. W. 154.

216. 4. People *v.* Bowers, 1 Cal. App. 501, 82 Pac. 553; State *v.* Martin, 47 Oregon 282, 83 Pac. 849; Rice *v.* State, 49 Tex. Crim. 569, 94 S. W. 1024; State *v.* Legg, 59 W. Va. 315, 53 S. E. 545.

6. People *v.* Easton, 148 Cal. 50, 82 Pac. 840; People *v.* Cook, 148 Cal. 334, 83 Pac. 43; State *v.* Andrews, 73 S. Car. 257, 53 S. E. 423; Moore *v.* State, (Tex. Crim. 1907) 107 S. W. 540.

217. 1. Maloy *v.* State, 52 Fla. 101, 41 So. 791; Graham *v.* State, 125 Ga. 48, 53 S. E. 816; Hayes *v.* State, 126 Ga. 95, 54 S. E. 809.

218. 1. Green *v.* State, 125 Ga. 742, 54 S. E. 724; State *v.* Clark, 119 La. 733, 44 So. 449.

219. 3. Dunn *v.* State, 143 Ala. 67, 39 So. 147; Stallworth *v.* State, 146 Ala. 8, 41 So. 184; Logan *v.* State, (Ala. 1907) 43 So. 10; Fleming *v.* State, (Ala. 1907) 43 So. 219; Bluett *v.* State, (Ala. 1907) 44 So. 84; Robinson *v.* Territory, 16 Okla. 241, 85 Pac. 451.

4. Deal *v.* State, 82 Ark. 61, 100 S. W. 75, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 219.

5. Morris *v.* State, 146 Ala. 66, 41 So. 274; Williams *v.* State, 147 Ala. 10, 41 So. 992; Parham *v.* State, 147 Ala. 57, 42 So. 1; Bluett *v.* State, (Ala. 1907) 44 So. 84; Graham *v.* State, 125 Ga. 48, 53 S. E. 816; Golatt *v.* State, (Ga. 1908) 60 S. E. 107; Ward *v.* Com., 91 S. W. 700, 29 Ky. L. Rep. 62; State *v.* Cummings, 189 Mo. 626, 88 S. W. 706; State *v.* Rosa, 72 N. J. L. 462, 62 Atl. 695; Owen *v.* State, (Tex. Crim. 1907) 105 S. W. 513.

222. 2. *Alabama.* — Dunn *v.* State, 143 Ala. 67, 39 So. 147; Skipper *v.* State, 144 Ala. 100, 42 So. 43.

Arkansas. — Long *v.* State, 76 Ark. 493, 91 S. W. 26; Burton *v.* State, 82 Ark. 595, 102 S. W. 362.

Colorado. — Warford *v.* People, (Colo. 1907) 92 Pac. 24.

Florida. — Stafford *v.* State, 50 Fla. 134, 39 So. 106.

Georgia. — Warrick *v.* State, 125 Ga. 133, 53 S. E. 1027.

Indian Territory. — Burroughs *v.* U. S., 6 Indian Ter. 164, 90 S. W. 8.

Louisiana. — State *v.* Coleman, 119 La. 669, 44 So. 338; State *v.* Bradley, (La. 1907) 45 So. 126.

Mississippi. — Sinclair *v.* State, 87 Miss. 330, 39 So. 522.

Missouri. — State *v.* Beckner, 194 Mo. 281, 91 S. W. 892; State *v.* Birks, 199 Mo. 263, 97 S. W. 578; State *v.* Edwards, 203 Mo. 528, 102 S. W. 520.

New Jersey — State *v.* Scaduto, 74 N. J. L. 289, 65 Atl. 908.

North Carolina. — State *v.* Worley, 141 N. Car. 764, 53 S. E. 128.

Texas. — Early *v.* State, (Tex. Crim. 1907) 103 S. W. 868; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804.

West Virginia. — State *v.* Clifford, 59 W. Va. 1, 52 S. E. 981.

223. 1. Com. *v.* Thomas, 104 S. W. 326, 31 Ky. L. Rep. 899.

224. 6. Glass *v.* State, 147 Ala. 50, 41 So. 727.

227. 8. Fuller *v.* State, 147 Ala. 35, 41 So. 774.

10. *Compare* Tinsley *v.* State, (Tex. Crim. 1907) 106 S. W. 347.

11. Long *v.* State, 48 Tex. Crim. 175, 88 S. W. 203; Alarcon *v.* State, (Tex. Crim. 1905) 90 S. W. 179.

12. Clark *v.* State, (Tex. Crim. 1907) 102 S. W. 1136; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804.

13. *Compare* Tinsley *v.* State, (Tex. Crim. 1907) 106 S. W. 347.

228. 6. State *v.* Cummings, 189 Mo. 626, 88 S. W. 706.

229. 8. **If There Is Any Evidence at All** tending to connect the accused with the crime, the case should go to the jury. Creech *v.* Com., (Ky. 1908) 107 S. W. 212.

232. 1. State *v.* Heusack, 189 Mo. 295, 88 S. W. 21.

235. 1. Percer *v.* State, 118 Tenn. 765, 103 S. W. 780.

MUTUAL — MUTUALITY.

241. 2. **Mutually Understood.** — See Butterick Pub. Co. *v.* Whitcomb, 225 Ill. 607, 80 N. E. 247, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 241.

MUTUAL ACCOUNTS.

242. 2. Copriviza *v.* Rilovich, 4 Cal. App. 26, 87 Pac. 398; Brock *v.* Wildey, 125 Ga. 82, 54 S. E. 195.

244. 3. Hulsey *v.* Walker County, 147 Ala. 503, 40 So. 311, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 244; Flynn *v.* Seale, 2 Cal. App. 665, 84 Pac. 263.

246. 2. Copriviza *v.* Rilovich, 4 Cal. App. 26, 87 Pac. 398.

MUTUAL INSURANCE.

254. 2. Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031.

257. 5. **For Construction of Peculiar Provisions.** — Geraghty *v.* Washtenaw Mut. F. Ins. Co., 145 Mich. 635, 108 N. W. 1102.

260. 5. **Nonresident as Well as Resident Members.** — Swing *v.* American Glucose Co., 123 Ill. App. 156.

261. 8. **For Construction of Some of Peculiar Provisions.** — Hammond *v.* Knox, (Supm. Ct. App. Div.) 109 N. Y. Supp. 367.

262. 3. **May Fix Rate with View to Establishing Surplus for Future Distribution.** — Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031.

265. 1. Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 264–266.

266. 6. Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 264–266.

9. Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031.

267. 8. Geraghty *v.* Washtenaw Mut. F. Ins. Co., 145 Mich. 635, 108 N. W. 1102; Huber *v.* Martin, 127 Wis. 421, 105 N. W. 1031, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 267.

268. 4. Geraghty *v.* Washtenaw Mut. F. Ins. Co., 145 Mich. 635, 108 N. W. 1102, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 267, 268.

5. **Member May Sue or Defend Suit in Equity When Officers Refuse to Act.** — Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031.

269. 9. Provident Sav. L. Assur. Soc. *v.* Marshall, 125 Ill. App. 101; Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031.

10. U. S. Life Ins. Co. *v.* Spinks, (Ky. 1906) 96 S. W. 889; Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031; Zinn *v.* Germantown Farmers' Mut. Ins. Co., (Wis. 1907) 111 N. W. 1107.

11. See U. S. Life Ins. Co. *v.* Spinks, (Ky. 1906) 96 S. W. 889; Zinn *v.* Germantown Farmers' Mut. Ins. Co., (Wis. 1907) 111 N. W. 1107.

271. 4. **Directors Liable to Members Induced to Take Policies by Misrepresentations.** — Dwinnell *v.* Minneapolis F. & M. Mut. Ins. Co., 97 Minn. 340, 106 N. W. 312.

10. See Nichol *v.* Murphy, 145 Mich. 427, 108 N. W. 704.

276. 4. Brown *v.* Spackman, 29 Pa. Super. Ct. 638.

277. 2. Where an assessment was due and unpaid at the time a member surrendered his policy for cancellation, it was held that he was liable under assessments subsequently levied. Nichol *v.* Murphy, 145 Mich. 424, 108 N. W. 704.

5. Perry *v.* Farmers' Mut. F. Ins. Assoc., 139 N. Car. 374, 51 S. E. 1025, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 277; Backenstoe *v.* Kline, 31 Pa. Super. Ct. 268.

282. 3. Schofield *v.* Turner, 28 Pa. Super. Ct. 177.

286. 5. Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. App. 1908) 60 S. E. 470.

287. 6. Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. 1908) 60 S. E. 470.

288. 5. Freeman *v.* Farmers' Mut. F., etc., Ins. Co., 121 Mo. App. 532, 97 S. W. 225.

6. International Sav., etc., Co. *v.* Stenger, 31 Pa. Super. Ct. 294.

290. 1. Hammond *v.* Knox, (Supm. Ct. App. Div.) 109 N. Y. Supp. 367.

291. 8. Arnold v. Empire Mut. Annuity etc., Ins. Co., (Ga. 1908) 60 S. E. 470.

293. 5. Arnold *v.* Empire Mut. Annuity, etc., Ins. Co., (Ga. 1908) 60 S. E. 470.

295. 7. Hammond *v.* Knox, (Supm. Ct. App. Div.) 109 N. Y. Supp. 367.

9. Swing *v.* Consolidated Fruit Jar Co., (N. J. 1906) 63 Atl. 899.

300. 1. Nichol *v.* Murphy, 145 Mich. 424, 108 N. W. 704.

8. Collins *v.* Welch, 141 Mich. 676, 105 N. W. 31; International Sav., etc., Co. *v.* Kleber, 29 Pa. Super. Ct. 200.

9. Swing *v.* Consolidated Fruit Jar Co., (N. J. 1906) 63 Atl. 899; Stone *v.* Penn Yan, etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 374.

301. 4. Hammond *v.* Knox, (Supm. Ct. App. Div.) 109 N. Y. Supp. 367.

8. Stone *v.* New Jersey, etc., R., etc., Co., (N. J. 1907) 66 Atl. 1072.

NAME.

306. 2. Uihlein *v.* Gladieux, 74 Ohio St. 232, 78 N. E. 363, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 306.

307. 1. Alabama Steel, etc., Co. *v.* Griffin, (Ala. 1907) 42 So. 1039, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 307; State *v.* Loser, 132 Iowa 419, 104 N. W. 337; Morrison *v.* Turnbaugh, 192 Mo. 427, 91 S. W. 152, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 307; Howard *v.* Brown, 197 Mo. 36, 95 S. W. 191, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 307; Trimble *v.* Burroughs, (Tex. Civ. App. 1906) 95 S. W. 614.

308. 2. Good *v.* Burk, 167 Ind. 465, 77 N. E. 1080, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 308; Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623.

309. 4. Johnson *v.* State, 51 Fla. 49, 40 So. 678, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 309.

310. 4. Teague *v.* State, 144 Ala. 42, 40 So. 312; Kane *v.* Sholars, (Tex. Civ. App. 1905) 90 S. W. 937.

311. 2. Ewert *v.* State, 48 Fla. 36, 37 So. 334, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 311.

3. Brayton *v.* Beall, 73 S. Car. 308, 53 S. E. 641, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 311.

312. 6. See Von Thodorovich *v.* Franz Josef Beneficial Assoc., 154 Fed. 911.

313. 2. Ewert *v.* State, 48 Fla. 36, 37 So. 334, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 313; Johnson *v.* State, 51 Fla. 49, 40 So. 678, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 313; Roland *v.* State, 127 Ga. 402, 56 S. E. 412, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 313; Boyd *v.* Boyd, 128 Iowa 699, 104 N. W. 798; Armstead *v.* Jones, 71 Kan. 142, 80 Pac. 56, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 313; Sporya *v.* German Sav. Bank, 119 N. Y. App. Div. 174, 104 N. Y. Supp. 260, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 313.

D. — Names Held Idem Sonans. — Dorgan and Durgan, O'Donnell *v.* People, 224 Ill. 218, 79 N. E. 620.

G. — Names Held Idem Sonans. Gottlieb and Gottleib, Gottlieb *v.* Alton Grain Co., 181 N. Y. 563, 74 N. E. 1117.

G. — Names Held Not Idem Sonans. — Graton and Grafton, Graton *v.* Holiday-Klotz Land, etc., Co., 189 Mo. 322, 87 S. W. 37.

J. — Names Held Idem Sonans. — Jetta and Jetter, Sporza *v.* German Sav. Bank, 119 N. Y. App. Div. 172, 104 N. Y. Supp. 260.

K. — Names Held Idem Sonans. — Karney and Carney, McCash *v.* Penrod, 131 Iowa 631, 109 N. W. 180.

M. — Names Held Idem Sonans. — Morris and Maurice, Thompson *v.* State, (Tex. Crim. 1906) 97 S. W. 316.

M. — Names Held Not Idem Sonans. — McCinney and McKinney, Grimmer *v.* Nolen, 146 Ala. 466, 40 So. 97; Max and Matt, Vincendeau *v.* People, 219 Ill. 474, 76 N. E. 675; Mara and Maria, Berger *v.* Tracy, (Iowa 1907) 113 N. W. 465.

P. — Names Held Idem Sonans. — Peder Pederson and Peter Peterson, Pederson *v.* Lease, (Wash. 1908) 93 Pac. 439.

R. — Names Held Idem Sonans. — Ravier and Revear, Howard *v.* State, (Ala. 1907) 44 So. 95; Roland and Rolin, Roland *v.* State, 127 Ga. 401, 56 S. E. 412; Robert and Roberts, Willis *v.* U. S., 6 Indian Ter. 424, 98 S. W. 147; Rigby and Rigley, State *v.* Pointdexter, 117 La. 380, 41 So. 688.

V. — Names Held Idem Sonans. — Vester and Vister, Gaither *v.* Com., (Ky. 1906) 91 S. W. 1124.

W. — Names Held Idem Sonans. — Warford and Wafford, Western Union Tel. Co. *v.* Wafford, (Tex. Civ. App. 1906) 97 S. W. 324.

317. 1. Roland *v.* State, 127 Ga. 402, 56 S. E. 412, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 317.

NATIONAL BANKS.

328. 1. Van Reed *v.* People's Nat. Bank, 198 U. S. 554, 25 U. S. Sup. Ct. 775; Guthrie *v.* Harkness, 199 U. S. 148, 26 U. S. Sup. Ct. 4; Merchants' Nat. Bank *v.* Ford, 99 S. W. 260, 30 Ky. L. Rep. 558, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 328.

333. 1. Jerome *v.* Cogswell, 204 U. S. 1, 27 U. S. Sup. Ct. 241.

334. 4. Muir *v.* Citizens' Nat. Bank, 39 Wash. 57, 80 Pac. 1007.

335. 5. Bridges *v.* National Bank, 185 N. Y. 146, 77 N. E. 1005.

336. 5. People *v.* Consolidated Nat. Bank, 105 N. Y. App. Div. 409, 94 N. Y. Supp. 173.

6. Guthrie *v.* Harkness, 199 U. S. 148, 26 U. S. Sup. Ct. 4.

10. Ohio Valley Nat. Bank *v.* Hulitt, 204 U. S. 162, 27 U. S. Sup. Ct. 179, *affirming* (C. C. A.) 137 Fed. 461.

337. 4. Kenyon *v.* Fowler, (C. C. A.) 155 Fed. 107.

339. 2. Ohio Valley Nat. Bank *v.* Hulitt, 204 U. S. 162, 27 U. S. Sup. Ct. 179, *affirming* (C. C. A.) 137 Fed. 461.

10. McDonald *v.* Dewey, 202 U. S. 510, 26 U. S. Sup. Ct. 731.

340. 8. Fowler *v.* Gowing, 152 Fed. 801.

341. 4. Christopher *v.* Norvell, 201 U. S.

216, 26 U. S. Sup. Ct. 502; Christopher *v.* Norvell, 134 Fed. 842, 67 C. C. A. 438.

344. 2. Rankin *v.* Barton, 199 U. S. 228, 26 U. S. Sup. Ct. 29.

345. 2. Wyman *v.* Wallace, 201 U. S. 230, 26 U. S. Sup. Ct. 495.

346. 2. McClaine *v.* Rankin, 197 U. S. 154, 25 U. S. Sup. Ct. 410.

3. McClaine *v.* Rankin, 197 U. S. 154, 25 U. S. Sup. Ct. 410; Rankin *v.* Barton, 199 U. S. 228, 26 U. S. Sup. Ct. 29.

351. 2. Lineville First Nat. Bank *v.* Alexander, (Ala. 1907) 44 So. 866.

352. 4. Cherry *v.* City Nat. Bank, 144 Fed. 587.

354. 11. Arnold *v.* National Bank, 126 Wis. 362, 105 N. W. 828.

355. 13. Allen *v.* Luke, 141 Fed. 694.

356. 6. Smalley *v.* McGraw, 148 Mich. 384, 111 N. W. 1093; Taylor *v.* Thomas, (Supm. Ct. App. Div.) 108 N. Y. Supp. 454.

358. 2. Rankin *v.* Cooper, 149 Fed. 1010.

359. 4. Emerson *v.* Gaither, 103 Md. 564, 64 Atl. 26.

360. 6. Emerson *v.* Gaither, 103 Md. 564, 64 Atl. 26.

361. 15. **"Moneys"** refers to the currency or circulating medium of the country. U. S. *v.* Smith, 152 Fed. 542.

362. 1. **"Funds" and "Credits" Defined.** — U. S. *v.* Smith, 152 Fed. 542.

364. 8. Lear *v.* U. S., 147 Fed. 349, 77 C. C. A. 527.

9. U. S. *v.* Martindale, 146 Fed. 280.

365. 1. **Overdraft by Cashier.** — Brock *v.* U. S., 149 Fed. 173, 79 C. C. A. 121.

4. Flickinger *v.* U. S., 150 Fed. 1, 79 C. C. A. 515.

367. 2. Harper *v.* U. S., (Indian Ter. 1907) 104 S. W. 673.

368. 5. Twining *v.* U. S., 141 Fed. 41, 72 C. C. A. 529.

370. 1. Clement *v.* U. S., 149 Fed. 305, 79 C. C. A. 243.

373. 13. Larimer *v.* Beardsley, 130 Iowa 706, 107 N. W. 935; Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70; Minneapolis Threshing Mach. Co. *v.* Jones, 95 Minn. 127, 103 N. W. 1017; Farmers' Deposit Nat. Bank *v.* Western Pennsylvania Fuel Co., 215 Pa. St. 115, 64 Atl. 374.

375. 7. Wyman *v.* Wallace, 201 U. S. 230, 26 U. S. Sup. Ct. 495.

376. 12. Appleton *v.* Citizens' Cent. Nat. Bank, 116 N. Y. App. Div. 404, 101 N. Y. Supp. 1027; National Bank *v.* Philadelphia Sixth Nat. Bank, 212 Pa. St. 238, 61 Atl. 889; Barnwell Bank *v.* Sixth Nat. Bank, 28 Pa. Super. Ct. 413.

379. 1. Westminster Nat. Bank *v.* New England Electrical Works, 73 N. H. 465, 62 Atl. 971.

3. Ottawa First Nat. Bank *v.* Converse, 200 U. S. 425, 26 U. S. Sup. Ct. 306.

381. 8. **May Buy at Less than Face Value.** — Morris *v.* Springfield Third Nat. Bank, 142 Fed. 25, 73 C. C. A. 211.

382. 5. Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70.

383. 5. *Compare* Merchants' Nat. Bank *v.* Wehrmann, 202 U. S. 295, 26 U. S. Sup. Ct. 613.

391. 7. **The Statute Is Constitutional.** — Schlesinger *v.* Gilhooly, 189 N. Y. 1, 81 N. E. 619.

398. 1. Van Reed *v.* People's Nat. Bank, 198 U. S. 554, 25 U. S. Sup. Ct. 775.

399. 2. See *contra,* Merchants' Laclede Bank *v.* Troy Grocery, 144 Ala. 605, 39 So. 476.

411. 3. Emigh *v.* Earling, (Wis. 1908) 115 N. W. 128.

NATURAL GAS.

417. 2. Louisville Gas Co. *v.* Kentucky Heating Co., 117 Ky. 77, 77 S. W. 368, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 417; Preston *v.* White, 57 W. Va. 278, 50 S. E. 236.

3. Richmond Natural Gas Co. *v.* Davenport, 37 Ind. App. 525, 76 N. E. 525.

Adjoining Owners. — *Compare* Louisville Gas Co. *v.* Kentucky Heating Co., 117 Ky. 77, 77 S. W. 368, wherein it was held that natural gas could not be wasted to the detriment of a neighbor using the same reservoir.

NAVIGABLE WATERS.

426. 2. *Illinois.* — Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783; People *v.* Board of Supervisors, 122 Ill. App. 40.

Maine. — Smart *v.* Aroostook Lumber Co., (Me. 1907) 68 Atl. 527.

Nebraska. — Kinkead *v.* Turgeon, 74 Neb. 573, 104 N. W. 1061.

New Jersey. — McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 525, 61 Atl. 710.

Oregon. — Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

Washington. — Kalez *v.* Spokane Valley Land, etc., Co., 42 Wash. 43, 84 Pac. 395.

Wisconsin. — Bloomer *v.* Bloomer, 128 Wis. 294, 107 N. W. 974.

If a Stream Is Not Navigable in Fact the mere legislative declaration that it is navigable in fact cannot make it so. Potlatch Lumber Co. *v.* Peterson, 12 Idaho 769, 88 Pac. 426.

428. 4. Harrison *v.* Fite, (C. C. A.) 148 Fed. 781; Burns *v.* Crescent Gun, etc., Club, 116 La. 1038, 41 So. 249; McKinney *v.* Northcutt, 114 Mo. App. 146, 89 S. W. 351, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428; Kamm *v.* Normand, (Oregon 1907) 91 Pac. 448; Bloomer *v.* Bloomer, 128 Wis. 294, 107 N. W. 974.

5. Smart *v.* Aroostook Lumber Co., (Me. 1907) 68 Atl. 527; McKinney *v.* Northcutt, 114 Mo. App. 146, 89 S. W. 351, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428; Kamm *v.* Normand, (Oregon 1907) 91 Pac. 448, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428; Hot Springs Lumber, etc., Co. *v.* Revercomb, 106 Va. 176, 55 S. E. 580; Bloomer *v.* Bloomer, 128 Wis. 294, 107 N. W. 974.

6. McKinney *v.* Northcutt, 114 Mo. App. 146, 89 S. W. 351, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428.

7. Bolsa Land Co. *v.* Burdick, 151 Cal. 254, 90 Pac. 532; McKinney *v.* Northcutt, 114 Mo. App. 146, 89 S. W. 351, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428; Kamm *v.* Normand, (Oregon 1907) 91 Pac. 448; Hot

Springs Lumber, etc., Co. *v.* Revercomb, 106 Va. 176, 55 S. E. 580.

429. 2. Kamm *v.* Normand, (Oregon 1907) 91 Pac. 448.

3. McKinney *v.* Northcutt, 114 Mo. App. 146, 89 S. W. 351, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 429; Kamm *v.* Normand, (Oregon 1907) 91 Pac. 448; Hot Springs Lumber, etc., Co. *v.* Revercomb, 106 Va. 176, 55 S. E. 580.

4. Kamm *v.* Normand, (Oregon 1907) 91 Pac. 448; State *v.* Superior Ct., 42 Wash. 491, 85 Pac. 264.

5. People *v.* Board of Supervisors, 122 Ill. App. 40; Burns *v.* Crescent Gun, etc., Club, 116 La. 1038, 41 So. 249; Smart *v.* Aroostook Lumber Co., (Me. 1907) 68 Atl. 527; McKinney *v.* Northcutt, 114 Mo. App. 146, 89 S. W. 351, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 429.

430. 2. U. S. *v.* Chandler-Dunbar Water Power Co., (C. C. A.) 152 Fed. 25.

3. Brinckman *v.* Matley, (1904) 2 Ch. 313.

4. *United States.* — Carver *v.* San Pedro, etc., R. Co., 151 Fed. 334; West Chicago St. R. Co. *v.* Illinois, 201 U. S. 506, 26 U. S. Sup. Ct. 518.

Alabama. — Cain *v.* Simonson, (Ala. 1905) 39 So. 571, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 430.

Alaska. — U. S. *v.* Roth, 2 Alaska 257.

California. — People *v.* Kerber, (Cal. 1908) 93 Pac. 878.

Idaho. — Powell *v.* Springston Lumber Co., 12 Idaho 723, 88 Pac. 97.

Kansas. — Fowler *v.* Wood, 73 Kan. 511, 85 Pac. 763.

Kentucky. — Terrell *v.* Paducah, 122 Ky. 331, 92 S. W. 310; Warner *v.* Ford Lumber, etc., Co., (Ky. 1906) 93 S. W. 650.

Minnesota. — Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395.

Nebraska. — Kinkead *v.* Turgeon, 74 Neb. 573, 104 N. W. 1061.

New Jersey. — McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 525, 61 Atl. 710.

North Carolina. — Pedrick *v.* Raleigh, etc., R. Co., 143 N. Car. 485, 55 S. E. 877.

Oregon. — Grant *v.* Oregon R., etc., Co., (Oregon 1907) 90 Pac. 178; Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

Pennsylvania. — McGunnegle *v.* Pittsburg, etc., R. Co., 213 Pa. St. 383, 62 Atl. 988.

Rhode Island. — Providence *v.* Comstock, 27 R. I. 537, 65 Atl. 307.

Washington. — Kneeland *v.* Korter, 40 Wash. 359, 82 Pac. 608.

431. 4. **The Title to the Bed of a Navigable Stream** is vested in the state with the right to sell and convey land below high-water mark, subject to the paramount right of navigation in the public. Caddo Levee Dist. *v.* Glassel, (La. 1907) 45 So. 370.

432. 4. U. S. *v.* Union Bridge Co., 143 Fed. 377; Carver *v.* San Pedro, etc., R. Co., 151 Fed. 334; Western Pac. R. Co. *v.* Southern Pac. Co., (C. C. A.) 151 Fed. 376; Ryman Steamboat Line Co. *v.* Com., (Ky. 1907) 101 S. W. 403; Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395; U. S. *v.* Rio Grande Dam, etc., Co., 13 N. Mex. 386, 85 Pac. 393; Milwaukee *v.* Gimbel, 130 Wis. 31, 110 N. W. 7.

433. 6. Caddo Levee Dist. *v.* Glassel, (La. 1907) 45 So. 370; Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395; McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 695, 65 Atl. 489.

Rights of State as to Niagara River. — Niagara County Irrigation, etc., Co. *v.* College Heights Land Co., 111 N. Y. App. Div. 770, 98 N. Y. Supp. 4.

434. 4. Kalez *v.* Spokane Valley Land, etc., Co., 42 Wash. 43, 84 Pac. 395.

435. 1. Western Pac. R. Co. *v.* Southern Pac. Co., (C. C. A.) 151 Fed. 376; Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; Western Maryland Tidewater R. Co. *v.* Baltimore, (Md. 1907) 68 Atl. 6; Baltimore *v.* Baltimore, etc., Steamboat Co., 104 Md. 485, 65 Atl. 353; Scully *v.* Com., 188 Mass. 178, 74 N. E. 342; South Haven *v.* Van Buren Probate Judge, 140 Mich. 117, 103 N. W. 521; Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395; Terrell *v.* Paducah, 122 Ky. 331, 92 S. W. 310.

A Private Corporation or Individual cannot without authority of law improve the navigation of a stream to the ruin of agricultural interests of the riparian owners. Bigham *v.* Port Arthur Canal, etc., Co., (Tex. 1906) 97 S. W. 686.

3. Warner *v.* Ford Lumber, etc., Co., (Ky. 1906) 93 S. W. 650.

436. 1. Fowler *v.* Wood, 73 Kan. 511, 85 Pac. 763; Kinkead *v.* Turgeon, 74 Neb. 573, 104 N. W. 1061.

2. Brookhaven *v.* Smith, 188 N. Y. 74, 80 N. E. 665.

4. Butler *v.* Atty.-Gen., (Mass. 1907) 80 N. E. 688; Kneeland *v.* Korter, 40 Wash. 359, 82 Pac. 608.

437. 1. Whitmore *v.* Brown, 100 Me. 410, 61 Atl. 985; Brookhaven *v.* Smith, 188 N. Y. 74, 80 N. E. 665; Ennis *v.* Grover, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 66, 103 N. Y. Supp. 1088.

2. *United States.* — Carver *v.* San Pedro, etc., R. Co., 151 Fed. 334; Western Pac. R. Co. *v.* Southern Pac. Co., (C. C. A.) 151 Fed. 376.

Alabama. — Cain *v.* Simonson, (Ala. 1905) 39 So. 571; Mobile Dry-Docks Co. *v.* Mobile, 146 Ala. 198, 40 So. 205.

Connecticut. — Lane *v.* Smith, (Conn. 1907) 67 Atl. 558.

Iowa. — Park Com'rs *v.* Taylor, 133 Iowa 453, 108 N. W. 927.

Louisiana. — Minor *v.* New Orleans, 115 La. 301, 38 So. 999.

Maryland. — Baltimore *v.* Baltimore, etc., Steamboat Co., 104 Md. 485, 65 Atl. 353.

Massachusetts. — Preston *v.* West Beach Corp., 195 Mass. 482, 81 N. E. 253.

Missouri. — Frank *v.* Goddin, 193 Mo. 390, 91 S. W. 1057.

Nebraska. — Kinkead *v.* Turgeon, 74 Neb. 573, 109 N. W. 744.

New Jersey. — McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 695, 65 Atl. 489; Heiney *v.* Nolan, (N. J. 1907) 67 Atl. 1008.

New York. — *In re* Driveway, etc., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 157, 93 N. Y. Supp. 1107; Coudert *v.* Underhill, 107 N. Y. App. Div. 335, 95 N. Y. Supp. 134; Naylor *v.*

New York Cent., etc., R. Co., 119 N. Y. App. Div. 24, 103 N. Y. Supp. 966.

Rhode Island. — Providence *v.* Comstock, 27 R. I. 537, 65 Atl. 307.

South Carolina. — Sutton *v.* Catawba Power Co., 76 S. Car. 320, 56 S. E. 966.

Washington. — Madson *v.* Spokane Valley Land, etc., Co., 40 Wash. 414, 82 Pac. 718.

Where a Lot Fronts on a Street extending along the bank of a navigable river, the riparian owner's title extends over the street to the water's edge. Johnson *v.* Grenell, 112 N. Y. App. Div. 620, 98 N. Y. Supp. 629.

438. 1. *Alabama.* — Mobile Transp. Co. *v.* Mobile, (Ala. 1907) 44 So. 976.

Connecticut. — Lane *v.* Smith, (Conn. 1907) 67 Atl. 558.

Maine. — Chase *v.* Cochran, 102 Me. 431, 67 Atl. 320.

Maryland. — Baltimore *v.* Baltimore, etc., Steamboat Co., 104 Md. 485, 65 Atl. 353.

New York. — Brookhaven *v.* Smith, 188 N. Y. 74, 80 N. E. 665; *In re* Water Front, etc., 113 N. Y. App. Div. 84, 98 N. Y. Supp. 1063.

Oregon. — Grant *v.* Oregon R., etc., Co., (Oregon 1907) 90 Pac. 178.

439. 8. **The Right of the Public to Navigate** cannot be extended in a navigable lake by flooding the lake. King *v.* Muller, (N. J. 1907) 67 Atl. 380.

440. 1. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783.

4. U. S. *v.* Union Bridge Co., 143 Fed. 377; U. S. *v.* Roth, 2 Alaska 257; Heine *v.* Roth, 2 Alaska 416; Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; Powell *v.* Springston Lumber Co., 12 Idaho 723, 88 Pac. 97; Ryman Steamboat Line Co. *v.* Com., (Ky. 1907) 101 S. W. 403; Smart *v.* Aroostook Lumber Co., (Me. 1907) 68 Atl. 527; Hot Springs Lumber, etc., Co. *v.* Revercomb, 106 Va. 176, 55 S. E. 580.

441. 8. Schulte *v.* Warren, 218 Ill. 108, 75 N. E. 783.

443. 9. Smart *v.* Aroostook Lumber Co., (Me. 1907) 68 Atl. 527.

11. New England Dredging Co. *v.* U. S., (C. C. A.) 144 Fed. 932; McGunnegle *v.* Pittsburg, etc., R. Co., 213 Pa. St. 383, 62 Atl. 988.

12. **Statutes as to Removing Wrecks.** — The Anna M. Fahy, (C. C. A.) 153 Fed. 866; Hagan *v.* Richmond, 104 Va. 723, 52 S. E. 385.

Barges. — Gillikin *v.* Lake Drummond Canal, etc., Co., (N. Car. 1908) 60 S. E. 654.

444. 3. Viebahn *v.* Crow Wing County, 96 Minn. 276, 104 N. W. 1089.

4. Powell *v.* Springston Lumber Co., 12 Idaho 723, 88 Pac. 97; Silver Creek Nav., etc., Co. *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 478.

5. Holden *v.* U. S., 24 App. Cas. (D. C.) 318.

6. Corrigan Transit Co. *v.* Sanitary Dist., (C. C. A.) 137 Fed. 851; Pharr *v.* Morgan's Louisiana, etc., R., etc., Co., 115 La. 138, 38 So. 943; Smart *v.* Aroostook Lumber Co., (Me. 1907) 68 Atl. 527; Osborn *v.* Mississippi, etc., River Boom Co., 95 Minn. 149, 103 N. W. 879; Connolly *v.* New York, 115 N. Y. App. Div. 81, 100 N. Y. Supp. 673; Ben Franklin Transp. Co. *v.* Yonkers, 117 N. Y. App. Div. 703, 102 N. Y. Supp. 1060; Bigham *v.* Port Arthur Canal, etc., Co., (Tex. 1906) 97 S. W. 686; Drews *v.* Burton, 76 S. Car. 362, 57 S. E. 176.

Liability to Pecuniary Penalties. — New England Dredging Co. *v.* U. S., (C. C. A.) 144 Fed. 932; The Scow No. 9, 152 Fed. 548.

7. Thropp *v.* Harpers Ferry Paper Co., (C. C. A.) 142 Fed. 690; Carver *v.* San Pedro, etc., R. Co., 151 Fed. 334; Lane *v.* Smith, (Conn. 1907) 67 Atl. 558; State *v.* Ashtabula County, 28 Ohio Cir. Ct. 212; White *v.* Codd, 39 Wash. 14, 80 Pac. 836; Winsor *v.* Hanson, 40 Wash. 423, 82 Pac. 710.

The Construction of a Dam across a navigable stream may be authorized by state legislation in the exercise of its police power. Manigault *v.* Springs, 199 U. S. 473, 26 U. S. Sup. Ct. 127.

NAVIGATE.

445. 3. **Hauling Barge Out of Dock** by a line fastened to dock is not *navigating*. Gardner *v.* Doe, (1906) 2 K. B. 171, 75 L. J. K. B. 814.

NEAR — NEAREST — NEARLY.

445. 7. Pedrick *v.* Raleigh, etc., R. Co., 143 N. Car. 485, 55 S. E. 877.

At and Near Synonymous.—Davis *v.* Hinckley, 141 Fed. 708; Harris *v.* Theus, (Ala. 1907) 43 So. 134, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 447 [445].

Nearest Blood Relatives, generally speaking, in wills means such persons as take under the statute regarding the distribution of estates of intestates. But that does not stand in the way of giving to them, by judicial construction, any reasonably different meaning necessary to effectuate the intention of the testator. *In re* Sander, 126 Wis. 660, 105 N. W. 1064.

NECESSARY — NECESSITY — NECESSARILY.

449. 1. **Necessary Expenses.** — See Lenhart *v.* Cambria County, 216 Pa. St. 25, 64 Atl. 876.

451. 1. **Necessary Injury Synonymous with Pecuniary Injury.** — Marshall *v.* Consolidated Jack Mines Co., 119 Mo. App. 270, 95 S. W. 972.

NEGLIGENCE.

457. 2. **For Various Definitions of Negligence** see the following cases:

United States. — Davidson Steamship Co. *v.* U. S., 205 U. S. 187, 27 U. S. Sup. Ct. 480; Southern R. Co. *v.* Stutts, (C. C. A.) 144 Fed. 948; Kern *v.* Snider, (C. C. A.) 145 Fed. 327; Kreigh *v.* Westinghouse, (C. C. A.) 152 Fed. 120.

Alabama. — Williamson Iron Co. *v.* McQueen, 144 Ala. 265, 40 So. 306; Alabama City, etc., R. Co. *v.* Bates, (Ala. 1908) 46 So. 776.

California. — Bacon *v.* Kearney Vineyard Syndicate, 1 Cal. App. 275, 82 Pac. 84.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369.

Georgia. — Southern R. Co. *v.* Chatman, 124 Ga. 1036, 53 S. E. 692, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 457; Harden *v.* Georgia R. Co., 3 Ga. App. 344, 59 S. E. [illegible].

Illinois. — Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232; Goddard *v.* Enzler, 123 Ill. App. 108; Knickerbocker Ice Co. *v.* Leyda, 128 Ill. App. 66; Chicago City R. Co. *v.* Strong, 129 Ill. App. 511.

Iowa. — Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359; Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593.

Kentucky. — Louisville, etc., R. Co. *v.* Rhoads, (Ky. 1906) 90 S. W. 219; Cornelius *v.* South Covington, etc., R. Co., (Ky. 1906) 93 S. W. 643; Henderson City R. Co. *v.* Lockett, (Ky. 1906) 98 S. W. 303; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337; Dorris *v.* Warford, (Ky. 1907) 100 S. W. 312; Big Hill Coal Co. *v.* Abney, (Ky. 1907) 101 S. W. 394; Schulte *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 941; Adkisson *v.* Louisville, etc., R. Co., (Ky. 1908) 110 S. W. 284; Cross *v.* Illinois Cent. R. Co., (Ky. 1908)110 S. W. 290; Nashville, etc., R. Co. *v.* Russell, (Ky. 1908) 110 S. W. 317; Louisville R. Co. *v.* Boutellier, (Ky. 1908) 110 S. W. 357; Louisville, etc., R. Co. *v.* Joshlin, (Ky. 1908) 110 S. W. 382; Cincinnati, etc., R. Co. *v.* Evans, (Ky. 1908) 110 S. W. 844.

Louisiana. — Meyers *v.* Ruddock Orleans Cypress Co., 118 La. 805, 43 So. 448.

Maine. — Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602.

Maryland. — Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202; Chambers *v.* Woodbury Mfg. Co., (Md. 1907) 68 Atl. 290.

Michigan. — Allen *v.* Bainbridge, 145 Mich. 366, 108 N. W. 732.

Missouri. — Peterson *v.* St. Louis Transit Co., (Mo. 1906) 97 S. W. 860; Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; Arkansas, etc., R. Co. *v.* Sanders, 81 Ark. 604, 99 S. W. 1109; Feddeck *v.* St. Louis Car Co., 125 Mo. App. 24, 102 S. W. 675.

Nebraska. — Lincoln Gas, etc., Co. *v.* Thomas, 74 Neb. 257, 104 N. W. 153.

New Hampshire. — Hewett *v.* Woman's Hospital Aid Assoc., 73 N. H. 556, 64 Atl. 190.

New York. — Walsh *v.* Yonkers R. Co., 114 N. Y. App. Div. 797, 100 N. Y. Supp. 278; Sullivan *v.* Brooklyn Heights R. Co., 117 N. Y. App. Div. 784, 102 N. Y. Supp. 982; Bertolami *v.* United Engineering, etc., Co., 120 N. Y. App. Div. 192, 105 N. Y. Supp. 90; Birch *v.* New York, 121 N. Y. App. Div. 395, 106 N. Y. Supp. 104.

North Carolina. — Jones *v.* American Warehouse Co., 138 N. Car. 546, 51 S. E. 106; Fisher *v.* Newbern, 140 N. Car. 506, 53 S. E. 342; Marable *v.* Southern R. Co., 142 N. Car. 557, 55 S. E. 355.

Pennsylvania. — Hoffman *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 87, 63 Atl. 409; Schimmack *v.* Washington, etc., R. Co., 33 Pa. Super. Ct. 653.

South Carolina. — Wofford *v.* Clinton Cotton Mills, 72 S. Car. 346, 51 S. E. 918.

Texas. — Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29; St. Louis Southwestern R. Co. *v.* Dixon, (Tex. Civ. App. 1906) 91 S. W. 626; St. Louis Southwestern R. Co. *v.* Connally, (Tex. Civ. App. 1906) 93 S. W. 206; Houston, etc., R. Co. *v.* Beard, (Tex. Civ. App. 1906) 93 S. W. 532.

Vermont. — Corbin *v.* Grand Trunk R. Co., 78 Vt. 458, 63 Atl. 138.

Intelligence Not the Test. — Van Cleve *v.* St. Louis, etc., R. Co., 124 Mo. App. 224, 101 S. W. 632.

458. 1. **"Actionable" Negligence — Definitions.** — Armour *v.* Russell, (C. C. A.) 144 Fed. 614; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177; Grissom *v.* Atlanta, etc., Air Line R. Co., (Ala. 1907) 44 So. 661; Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020; Indianapolis, etc., Rapid Transit Co. *v.* Edwards, 36 Ind. App. 202, 74 N. E. 533; Indianapolis Traction, etc., Co. *v.* Pressell, 39 Ind. App. 472, 77 N. E. 357; McGehee *v.* Norfolk, etc., R. Co., (N. Car. 1908) 60 S. E. 912.

Elements of Actionable Negligence — *United States.* — Kreigh *v.* Westinghouse, (C. C. A.) 152 Fed. 120.

Connecticut. — Wilmot *v.* McPadden, 79 Conn. 367, 65 Atl. 157.

Georgia. — Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 374.

Illinois. — McAndrews *v.* Chicago, etc., R. Co., 222 Ill. 232, 78 N. E. 603; Chicago Union Traction R. Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232; Bahr *v.* National Safe Deposit Co., 234 Ill. 101, 84 N. E. 717; Greinke *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 327.

Indiana. — Clevéland, etc., R. Co. *v.* Henry, (Ind. App. 1907) 80 N. E. 636; Wabash R. Co. *v.* Reynolds, (Ind. App. 1908) 84 N. E. 992; Chicago, etc., R. Co. *v.* Barker, (Ind. 1908) 83 N. E. 369.

Maryland. — Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202.

Missouri. — Shaw *v.* Goldman, 116 Mo. App. 332, 92 S. W. 165; Loehring *v.* Westlake Constr. Co., 118 Mo. App. 163, 94 S. W. 747.

North Carolina. — Brewster *v.* Elizabeth, 142 N. Car. 9, 54 S. E. 784.

Oklahoma. — Faurot *v.* Oklahoma Wholesale Grocery Co., (Okla. 1908) 95 Pac. 463.

Texas. — Rice *v.* Dewberry, (Tex. Civ. App. 1906) 93 S. W. 715.

459. 6. **"Gross Negligence."** — For various uses of the expression see Harris Lumber Co. *v.* Morris, 80 Ark. 260, 96 S. W. 1067; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 616, 86 Pac. 903; Louisville, etc., R. Co. *v.* Eaden, (Ky. 1906) 93 S. W. 7; Louisville St. R. Co. *v.* Brownfield, (Ky. 1906) 96 S. W. 912; Banks *v.* Braman, 188 Mass. 367, 74 N. E. 594; Thomasson *v.* Southern R. Co., 72 S. Car. 1, 51 S. E. 443; Wilson *v.* Chippewa Valley Electric R. Co., (Wis. 1908) 114 N. W. 462.

"Slight Negligence." — See Harvey *v.* Chicago, etc., R. Co., 116 Ill. App. 507; Knickerbocker Ice Co. *v.* Leyda, 128 Ill. App. 66.

7. Southern R. Co. *v.* Fisk, (C. C. A.) 150 Fed. 373; Colorado, etc., R. Co. *v.* Webb, 36 Colo. 224, 85 Pac. 683; Ross *v.* Daugherty, 127 Ill. App. 572; Valparaiso *v.* Schwerdt, (Ind.

App. 1907) 82 N. E. 923; Gould *v.* Winona Gas Co., 100 Minn. 265, 111 N. W. 254.

8. Lake Erie, etc., R. Co. *v.* Ford, 167 Ind. 211, 78 N. E. 969, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 459; Valparaiso *v.* Schwerdt, (Ind. App. 1907) 82 N. E. 923.

"Reckless" Conduct may justify punitive damages. Thomasson *v.* Southern R. Co., 72 S. Car. 1, 51 S. E. 443; Foley *v.* Northrup, (Tex. Civ. App. 1907) 105 S. W. 229.

9. Pomroy *v.* Bangor, etc., R. Co., 102 Me. 497, 67 Atl. 561.

460. 1. Chicago, etc., R. Co. *v.* Hamler, 215 Ill. 525, 74 N. E. 705; Missouri Pac. R. Co. *v.* Watters, (Kan. 1908) 96 Pac. 346; Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602, all of which *cite* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 459, and quote the whole or greater part of the text paragraph.

2. Illinois Cent. R. Co. *v.* Houchins, (Ky. 1905) 89 S. W. 530; Louisville, etc., R. Co. *v.* Eaden, (Ky. 1906) 93 S. W. 7; Louisville St. R. Co. *v.* Brownfield, (Ky. 1906) 96 S. W. 912; Weiskopf *v.* Ritter, (Ky. 1906) 97 S. W. 1120; Owensboro City R. Co. *v.* Robertson, (Ky. 1907) 104 S. W. 707; Schulte *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 941; Yazoo, etc., R. Co. *v.* Roberts, 88 Miss. 80, 40 So. 481.

4. Banks *v.* Braman, 188 Mass. 367, 74 N. E. 594; Dolphin *v.* Worcester Consol. St. R. Co., 189 Mass. 270, 75 N. E. 635; Ouligan *v.* Butler, 189 Mass. 287, 75 N. E. 726; Spooner *v.* Old Colony St. R. Co., (Mass. 1906) 76 N. E. 660; Caswell *v.* Boston El. R. Co., 190 Mass. 527, 77 N. E. 380; Pearlstein *v.* New York, etc., R. Co., 192 Mass. 20, 77 N. E. 1024; Manning *v.* Conway, 192 Mass. 122, 78 N. E. 401; Moran *v.* Milford, etc., St. R. Co., 193 Mass. 52, 78 N. E. 736; Lanci *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 1; Pearlstein *v.* New York, etc., R. Co., (Mass. 1908) 83 N. E. 1040.

5. *United States.* — Chunn *v.* City, etc., R. Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63, Indianapolis Traction, etc., Co. *v.* Lawson, (C. C. A.) 143 Fed. 834, 6 Ann. Cas. 666; International Mercantile Marine Co. *v.* Smith, (C. C. A.) 145 Fed. 891.

Alabama. — Mobile Light, etc., Co. *v.* Walsh, 146 Ala. 295, 40 So. 560, Southern R. Co. *v.* Burgess, 143 Ala. 364, 42 So. 35; Williams *v.* Louisville, etc., R. Co., (Ala. 1907) 43 So. 576; Birmingham R., etc., Co. *v.* Sawyer, (Ala. 1908) 47 So. 67.

Arkansas. — St. Louis, etc., R. Co. *v.* Green, (Ark. 1908) 107 S. W. 168.

Colorado. — Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815.

District of Columbia. — Barstow *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362.

Georgia. — Atlantic Coast Line R. Co. *v.* Powell, 127 Ga. 805, 56 S. E. 1006.

Illinois. — Chicago City R. Co. *v.* Smith, 226 Ill. 178, 80 N. E. 716; Harvey *v.* Chicago, etc., R. Co., 116 Ill. App. 507; Masonic Temple Safety Deposit Co. *v.* Langfelt, 117 Ill. App. 652; Anderson Art Co. *v.* Greenburg, 118 Ill. App. 220; Byron Telephone Co. *v.* Sheets, 122 Ill. App. 6; Ross *v.* Daugherty, 127 Ill. App. 572; Goodman *v.* Bigler, 133 Ill. App. 301.

Indiana. — Pittsburgh, etc., R. Co. *v.* Harris, 38 Ind. App. 77, 77 N. E. 1051; Flint, etc., Mfg. Co. *v.* Beckett, 167 Ind. 491, 79 N. E. 503; Knoefel *v.* Atkins, (Ind. App. 1907) 81 N. E. 600; Pere Marquette R. Co. *v.* Strange, (Ind. 1908) 84 N. E. 819; Ohio Valley Trust Co. *v.* Wernke, (Ind. App. 1908) 84 N. E. 999.

Iowa. — Ambroz *v.* Cedar Rapids Electric Light, etc., Co., 131 Iowa 336, 108 N. W. 540; McNaughton *v.* Illinois Cent. R. Co., (Iowa 1907) 113 N. W. 844; Haase *v.* Morton, (Iowa 1908) 115 N. W. 921.

Kansas. — Chicago, etc., R. Co. *v.* Ralston, (Kan. 1908) 93 Pac. 592.

Kentucky. — Mangan *v.* Louisville Electric Light Co., 122 Ky. 476, 91 S. W. 703; Louisville City R. Co. *v.* Hudgins, (Ky. 1906) 98 S. W. 275; Louisville, etc., R. Co. *v.* Brown, (Ky. 1908) 107 S. W. 321; Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216; Dorris *v.* Warford, (Ky. 1907) 100 S. W. 312; Louisville, etc., R. Co. *v.* Daugherty, (Ky. 1908) 108 S. W. 336.

Maryland. — Belvidere Bldg. Co. *v.* Bryan, 103 Md. 514, 64 Atl. 44.

Massachusetts. — Hamilton *v.* Boston, etc., St. R. Co., 193 Mass. 324, 79 N. E. 734; Black *v.* New York, etc., R. Co., 193 Mass. 448, 79 N. E. 797.

Michigan. — Boisen *v.* Cobbs, 147 Mich. 429, 111 N. W. 82.

Minnesota. — Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264; Decker *v.* Chicago, etc., R. Co., 102 Minn. 99, 112 N. W. 901; Raasch *v.* Elite Laundry Co., 98 Minn. 357, 108 N. W. 477.

Missouri. — Becker *v.* Lincoln Real Estate, etc., Co., 118 Mo. App. 74, 93 S. W. 291; Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062; Gibler *v.* Terminal R. Assoc., 203 Mo. 208, 101 S. W. 37; Ghere *v.* Zey, (Mo. App. 1908) 107 S. W. 418; Tinkle *v.* St. Louis, etc., R. Co., (Mo. 1908) 110 S. W. 1086.

Nebraska. — Chicago, etc., R. Co. *v.* Mann, (Neb. 1907) 111 N. W. 379.

New Jersey. — Speer *v.* West Jersey, etc., R. Co., 74 N. J. L. 282, 65 Atl. 896.

New York. — Gregory *v.* Elmira Water, etc., Co., 190 N. Y. 363, 83 N. E. 32; Whittacker *v.* Brooklyn, etc., R. Co., 110 N. Y. App. Div. 767, 97 N. Y. Supp. 414; Morhard *v.* Richmond Light, etc., Co., 111 N. Y. App. Div. 353, 98 N. Y. Supp. 124; Davenport *v.* Prentice, (Supm. Ct. App. Div.) 110 N. Y. Supp. 1056.

North Carolina. — Mangum *v.* North Carolina R. Co., 145 N. Car. 152, 58 S. E. 913; Smith *v.* North Carolina R. Co., (N. Car. 1908) 61 S. E. 266.

Oregon. — Harvey *v.* Deep River Logging Co., (Oregon 1907) 90 Pac. 501.

Pennsylvania. — Morgan *v.* United Gas Imp. Co., 214 Pa. St. 109, 63 Atl. 417; Delahunt *v.* United Telephone, etc., Co., 215 Pa. St. 241, 64 Atl. 515.

South Carolina. — Richardson *v.* Augusta, etc., R. Co., (S. Car. 1908) 61 S. E. 83.

Texas. — Gulf, etc., R. Co. *v.* Coopwood, (Tex. Civ. App. 1906) 96 S. W. 102; Northern Texas Traction Co. *v.* Mullins, (Tex. Civ. App. 1906) 99 S. W. 433; Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589; Galveston, etc., R. Co. *v.* Fink, (Tex. Civ. App. 1906) 99 S. W. 204; Gulf, etc., R. Co. *v.* Redeker, (Tex. Civ. App. 1907) 100 S. W. 362; Ft. Worth, etc., R. Co. *v.* Gribble, (Tex. Civ. App. 1907) 102 S. W. 157; Gulf, etc., R. Co. *v.* Wittnebert, (Tex.

Civ. App. 1907) 104 S. W. 424; Missouri, etc., R. Co. *v.* Criswell, (Tex. 1908) 108 S. W. 806; Herring *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 977.

Virginia. — Norfolk, etc., R. Co. *v.* Birchfield, 105 Va. 809, 54 S. E. 879.

Washington. — Froman *v.* Ayars, 42 Wash. 385, 85 Pac. 14.

Wisconsin. — Ferguson *v.* Truax, (Wis. 1907) 110 N. W. 395; Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865.

6. Wells *v.* Gallagher, 144 Ala. 363, 39 So. 747; German American Lumber Co. *v.* Brock, (Fla. 1908) 46 So. 740; Charleston, etc., R. Co. *v.* Camp, 3 Ga. App. 232, 59 S. E. 710; Shaw *v.* Goldman, 116 Mo. App. 338, 92 S. W. 165, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 460, 461.

Imposed by Law. — Most of the recent cases use the expression that the duty is imposed by law, or that it is a duty the law imposes.

United States. — The W. G. Mason, (C. C. A.) 142 Fed. 913; Armour *v.* Kollmeyer, (C. C. A.) 161 Fed. 78.

Alabama. — Reaves *v.* Anniston Knitting Mills, (Ala. 1907) 45 So. 702.

Colorado. — Colorado, etc., R. Co. *v.* Webb, 36 Colo. 224, 85 Pac. 683.

Connecticut. — Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020.

Georgia. — Western, etc., R. Co. *v.* Tate, 129 Ga. 526, 59 S. E. 266.

Illinois. — Morris *v.* Chicago Union Traction Co., 119 Ill. App. 527; Belt R. Co. *v.* Charters, 123 Ill. App. 322.

Kentucky. — Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776.

Minnesota. — Smith *v.* Minneapolis St. R. Co., 95 Minn. 254, 104 N. W. 16; Neitge *v.* Chicago, etc., R. Co., (Minn. 1908) 114 N. W. 467.

Missouri. — Robertson *v.* Hammond Packing Co., 115 Mo. App. 520, 91 S. W. 161; Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141.

New Hampshire. — Hamel *v.* Newmarket Mfg. Co., 73 N. H. 386, 62 Atl. 592.

New York. — Burns *v.* Old Sterling Iron, etc., Co., 188 N. Y. 175, 80 N. E. 927.

North Carolina. — Jones *v.* American Warehouse Co., 138 N. Car. 546, 51 S. E. 106.

Texas. — San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863; St. Louis Southwestern R. Co. *v.* Davis, (Tex. Civ. App. 1908) 110 S. W. 939.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Virginia. — Johnston *v.* Moore Lime Co., 104 Va. 547, 52 S. E. 360; Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373; Norfolk, etc., R. Co. *v.* Dean, 107 Va. 505, 59 S. E. 389.

Misfeasance of Sheriff. — See Parker *v.* Young, 188 Mass. 600, 75 N. E. 98.

7. *United States.* — Schlemmer *v.* Buffalo, etc., R. Co., 205 U. S. 1, 27 U. S. Sup. Ct. 407; Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; Cincinnati, etc., R. Co. *v.* Davis, (C. C. A.) 161 Fed. 334.

Illinois. — Madison Coal Co. *v.* Hayes, 215 Ill. 625, 74 N. E. 755; Christy *v.* Elliott, 216 Ill. 31, 74 N. E. 1035; Chicago, etc., Electric R. Co. *v.* Freeman, 125 Ill. App. 318.

Indiana. — Jeffersonville *v.* Gray, 165 Ind. 26, 74 N. E. 611; Southern Indiana R. Co. *v.* Corps, 37 Ind. App. 586, 76 N. E. 902.

Louisiana. — Taliaferro *v.* Vicksburg, etc., R. Co., 115 La. 443, 39 So. 437.

Maryland. — Fletcher *v.* Dixon, (Md. 1908) 68 Atl. 875.

Massachusetts. — Torphy *v.* Fall River, 188 Mass. 310, 74 N. E. 465; Campbell *v.* Boston, 189 Mass. 7, 75 N. E. 96.

Michigan. — Deneen *v.* Houghton County St. R. Co., 150 Mich. 235, 113 N. W. 1126.

Minnesota. — Anderson *v.* Settergren, 100 Minn. 296, 111 N. W. 279, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 460, note 7.

Missouri. — Oyler *v.* Quincy, etc., R. Co., 113 Mo. App. 375, 88 S. W. 162; McHugh *v.* St. Louis Transit Co., 190 Mo. 85, 88 S. W. 853; Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14.

New Jersey. — Dix *v.* Union Ice Co., (N. J. 1908) 68 Atl. 1101.

New York. — Rooney *v.* Brogan Constr. Co., 107 N. Y. App. Div. 258, 95 N. Y. Supp. 1; Duffghe *v.* Metropolitan St. R. Co., 109 N. Y. App. Div. 603, 96 N. Y. Supp. 324.

Texas. — Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279.

461. **1.** *England.* — Scarborough *v.* Cosgrove, (1905) 2 K. B. 805.

United States. — Bleakley *v.* New York, 139 Fed. 807; The W. G. Mason, (C. C. A.) 142 Fed. 913.

Alabama. — Jefferson County Sav. Bank *v.* Hendrix, 147 Ala. 670, 39 So. 295.

California. — McGehee *v.* Schiffman, 4 Cal. App. 50, 87 Pac. 290.

Colorado. — Rimmer *v.* Wilson, (Colo. 1908) 93 Pac. 1110.

Delaware. — Bowen *v.* Isenberg Bros. Co., (Del. 1907) 67 Atl. 152.

Georgia. — Stewart *v.* Greene, 124 Ga. 975, 53 S. E. 450.

Illinois. — Masonic Temple Safety Deposit Co. *v.* Langfelt, 117 Ill. App. 652; Ross *v.* Daugherty, 127 Ill. App. 572; Goodman *v.* Bigler, 133 Ill. App. 301.

Indiana. — Lake Shore, etc., R. Co. *v.* Teeters, 166 Ind. 335, 77 N. E. 599; Flint, etc., Mfg. Co. *v.* Beckett, 167 Ind. 491, 79 N. E. 503.

Iowa. — Haase *v.* Morton, (Iowa 1908) 115 N. W. 921.

Kentucky. — Weick *v.* Dougherty, (Ky. 1906) 90 S. W. 966; Dorris *v.* Warford, (Ky. 1907) 100 S. W. 312.

Massachusetts. — Moody *v.* Boston, etc., R. Co., 189 Mass. 277, 75 N. E. 631; Bates *v.* Dr. King Co., 191 Mass. 585, 77 N. E. 1154; Andrews *v.* Williamson, 193 Mass. 92, 78 N. E. 737; Domenicis *v.* Fleisher, (Mass. 1907) 81 N. E. 191.

Minnesota. — Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264.

Missouri. — Ghere *v.* Zey, (Mo. App. 1908) 107 S. W. 418; Collins *v.* Fillingham, (Mo. App. 1908) 108 S. W. 616; Phillips *v.* St. Louis, etc., R. Co., (Mo. 1908) 111 S. W. 109.

New Hampshire. — See Dustin *v.* Curtis, 74 N. H. 266, 67 Atl. 220.

New Jersey. — King *v.* Zierz, 73 N. J. L. 134, 62 Atl. 287; Timlan *v.* Dillworth, (N. J. 1907) 67 Atl. 433; Johnson *v.* Lembeck, etc., Brewing Co., (N. J. 1907) 68 Atl. 85.

New York. — Wood *v.* Wyeth, 106 N. Y. App. Div. 21, 94 N. Y. Supp. 360; Littlefield *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 637, 101 N. Y. Supp. 75; Rosenberg *v.* Schoolherr, 116 N. Y. App. Div. 289, 101 N. Y. Supp. 505; Lamprecht *v.* Bien, (Supm. Ct. App. Div.) 110 N. Y. Supp. 128.

Oregon. — Harvey *v.* Deep River Logging Co., (Oregon 1907) 90 Pac. 501.

Pennsylvania. — Delahunt *v.* United Telephone, etc., Co., 215 Pa. St. 241, 64 Atl. 515; Walker *v.* Black, 216 Pa. St. 395, 65 Atl. 799; Gresh *v.* Wanamaker, (Pa. 1908) 69 Atl. 1123.

Texas. — Guaranty Trust Co. *v.* Diltz, (Tex. Civ. App. 1906) 91 S. W. 596; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S. W. 146; Studebaker Bros. Mfg. Co. *v.* Carter, (Tex. Civ. App. 1908) 111 S. W. 1086.

Vermont. — McKenzie *v.* Boutwell, 79 Vt. 383, 65 Atl. 99; Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807.

Virginia. — Kecoughtan Lodge No. 29 *v.* Steiner, 106 Va. 589, 56 S. E. 569.

Washington. — Sheehan *v.* Maison Barberis, 41 Wash. 671, 84 Pac. 607; Froman *v.* Ayars, 42 Wash. 385, 85 Pac. 14; Welch *v.* Fransioli, (Wash. 1907) 90 Pac. 644.

6. **Privity Unnecessary.** — Casey *v.* Hoover, 114 Mo. App. 47, 89 S. W. 330; McMullen *v.* New York, 110 N. Y. App. Div. 117, 97 N. Y. Supp. 109.

Servant of Contractor. — Kesterson *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 871.

Doctrine that Privity Necessary. — Earl *v.* Lubbock, (1905) 1 K. B. 253, 1 Ann. Cas. 753, *approving* Winterbottom *v.* Wright, 10 M. & W. 109, cited in the original note.

462. 1. Watson *v.* Augusta Brewing Co., 124 Ga. 121, 52 S. E. 152; Ellis *v.* Republic Oil Co., 133 Iowa 11, 110 N. W. 20; Clement *v.* Crosby, 148 Mich. 293, 111 N. W. 745; Tomlinson *v.* Armour, (N. J. 1908) 70 Atl. 314; Waters-Pierce Oil Co. *v.* Deselms, 18 Okla. 107, 89 Pac. 212. See also Holmvick *v.* Parsons Band Cutter, etc., Co., 98 Minn. 424, 108 N. W. 810.

Contract to Furnish Cars — Servants of Obligee. — Fassbinder *v.* Missouri Pac. R. Co., 126 Mo. App. 563, 104 S. W. 1154; Leas *v.* Continental Fruit Express, (Tex. Civ. App. 1907) 99 S. W. 859; Continental Fruit Express *v.* Leas, (Tex. Civ. App. 1908) 110 S. W. 129.

But one furnishing a defective car to a master is not liable to the servant for injuries caused by a defect known to the master. McCallion *v.* Missouri Pac. R. Co., 74 Kan. 785, 88 Pac. 50.

2. Heindirk *v.* Louisville Elevator Co., (Ky. 1906) 92 S. W. 608; Berger *v.* Standard Oil Co., (Ky. 1907) 103 S. W. 245.

A merchant selling goods bought from the manufacturer is not liable for injuries in their use when he has no reason to suppose that they are of a dangerous character. Clement *v.* Rommeck, 149 Mich. 595, 113 N. W. 286.

A Shipper of goods owes no duty to the servant of the carrier to provide a safe means of handling goods which are not inherently dangerous. Cronin *v.* American Linen Co., 147 Fed. 755.

"Inherently Dangerous" Rule. — Standard Oil Co. *v.* Parrish, (C. C. A.) 145 Fed. 829; Faulkner *v.* Birch, 120 Ill. App. 281; Knoefel *v.* Atkins, (Ind. App. 1907) 81 N. E. 600; Pierce *v.* C. H. Bidwell Thresher Co., (Mich. 1908) 116 N. W. 1104; Cunningham *v.* C. R. Pease House Furnishing Co., (N. H. 1908) 69 Atl. 120; Statler *v.* George A. Ray Mfg. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 172; Torgesen *v.* Schultz, 192 N. Y. 156, 84 N. E. 956.

The rule includes things which become dangerous when applied to their intended use. Keep *v.* National Tube Co., 154 Fed. 121.

But the rule does not apply unless the dangerous character of the article or appliance existed when it left the hands of the defendant. Finan *v.* Valvoline Oil Co., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 292, 100 N. Y. Supp. 1087.

The conduct of the manufacturer must be the proximate cause of the injury, Reddick *v.* General Chemical Co., 124 Ill. App. 31; and it must appear that the article is intrinsically dangerous or likely to cause injury. See Lebourdais *v.* Vitrified Wheel Co., 194 Mass. 341, 80 N. E. 482.

463. 1. *England.* — Scarborough *v.* Cosgrove, (1905) 2 K. B. 805; Atherton *v.* London, etc., R. Co., 93 L. T. N. S. 464.

Canada. — Wallman *v.* Canadian Pac. R. Co., 16 Manitoba 82.

United States. — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709; Chunn *v.* City, etc., R. Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63; Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528; The Henry B. Fiske, 141 Fed. 188; Denver, etc., R. Co. *v.* Norgate, (C. C. A.) 141 Fed. 247, 5 Ann. Cas. 448; The Lowlands, 142 Fed. 888; American Bridge Co. *v.* Seeds, (C. C. A.) 144 Fed. 605; Sharpsburg Sand Co. *v.* Monongahela River Consol. Coal, etc., Co., 145 Fed. 424; Citizens' Gas, etc., Co. *v.* Nicholson, (C. C. A.) 152 Fed. 389; The Blackheath, 154 Fed. 758; Katahdin Pulp, etc., Co. *v.* Peltomaa, (C. C. A.) 156 Fed. 342; Chicago, etc., R. Co. *v.* Donovan, (C. C. A.) 160 Fed. 826; Armour *v.* Kollmeyer, (C. C. A.) 161 Fed. 78.

Alabama. — Schneider *v.* Mobile Light, etc., Co., 146 Ala. 344, 40 So. 761.

Arizona. — Santa Fé, etc., R. Co. *v.* Ford, (Ariz. 1906) 85 Pac. 1072.

Arkansas. — St. Louis, etc., Co. *v.* Dawson, 77 Ark. 434, 92 S. W. 27; St. Louis, etc., R. Co. *v.* Thompson-Hailey Co., 79 Ark. 12, 94 S. W. 707; Waters-Pierce Oil Co. *v.* Knisel, 79 Ark. 608, 96 S. W. 342; Hayes *v.* Brandt, 80 Ark. 592, 98 S. W. 368; Harris Lumber Co. *v.* Morris, 80 Ark. 260, 96 S. W. 1067; Paragould, etc., R. Co. *v.* Crunk, 81 Ark. 35, 98 S. W. 682; Choctaw, etc., R. Co. *v.* Hickey, 81 Ark. 579, 99 S. W. 839; Perdue *v.* St. Louis Southwestern R. Co., 82 Ark. 172, 100 S. W. 901.

California. — Thompson *v.* California Constr. Co., 148 Cal. 35, 82 Pac. 367; Bilton *v.* Southern Pac. Co., 148 Cal. 443, 83 Pac. 440; Rowe *v.* Southern California R. Co., 4 Cal. App. 1, 87

Pac. 220; Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976; Humphrey *v.* Leonard, 151 Cal. 375, 90 Pac. 705; Wistrom *v.* Redlick, (Cal. App. 1907) 92 Pac. 1048; Scott *v.* San Bernardino Valley Traction Co., (Cal. 1908) 93 Pac. 677.

Colorado. — Colorado Springs, etc., R. Co. *v.* Petit, 37 Colo. 326, 86 Pac. 121; Denver, etc., R. Co. *v.* Warring, 37 Colo. 122, 86 Pac. 305; Caughlin *v.* Campbell-Sell Baking Co., 39 Colo. 148, 89 Pac. 53; Stratton Cripple Creek Min., etc., Co. *v.* Ellison, (Colo. 1908) 94 Pac. 303; Liutz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Connecticut. — Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020; Swain *v.* O'Loughlin, (Conn. 1907) 67 Atl. 480; Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888; Garfield *v.* Hartford, etc., St. R. Co., (Conn. 1907) 67 Atl. 890; Cutler *v.* Putnam Light, etc., Co., (Conn. 1908) 68 Atl. 1006; Deming *v.* Johnson, (Conn. 1908) 69 Atl. 347.

Delaware. — Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Bowen *v.* Isenberg Bros. Co., (Del. 1907) 67 Atl. 152; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173; Anderson *v.* Wilmington, (Del. 1908) 70 Atl. 204.

District of Columbia. — Carter *v.* McDermott, 29 App. Cas. (D. C.) 145, 10 Ann. Cas. 601.

Florida. — Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183; Gracy *v.* Atlantic Coast Line R. Co., 53 Fla. 350, 42 So. 903; German-American Lumber Co. *v.* Brock, (Fla. 1908) 46 So. 740.

Georgia. — Atlanta, etc., R. Co. *v.* Hudson, 123 Ga. 108, 51 S. E. 29; Crown Cotton Mills *v.* McNally, 123 Ga. 35, 51 S. E. 13; Atlantic, etc., R. Co. *v.* Owens, 123 Ga. 393, 51 S. E. 404; Atlantic Coast Line R. Co. *v.* Waycross Electric Light, etc., Co., 123 Ga. 613, 51 S. E. 621; Herrington *v.* Macon, 125 Ga. 58, 54 S. E. 71; Howington *v.* Madison County, 126 Ga. 699, 55 S. E. 941; Brown Store Co. *v.* Chattahoochee Lumber Co., 1 Ga. App. 609, 57 S. E. 1043; Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518; Atlantic, etc., R. Co. *v.* Smith, 2 Ga. App. 294, 58 S. E. 542; Southern R. Co. *v.* Thompson, 129 Ga. 367, 58 S. E. 1044; Western, etc., R. Co. *v.* Tate, 129 Ga. 526, 59 S. E. 266; Albany, etc., R. Co. *v.* Wheeler, 3 Ga. App. 414, 59 S. E. 1116; Snowball *v.* Seaboard Air Line R. Co., (Ga. 1908) 60 S. E. 180.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho) 94 Pac. 432; Barrow *v.* B. R. Lewis Lumber Co., (Idaho 1908) 95 Pac. 682.

Illinois. — Christy *v.* Elliott, 216 Ill. 31, 74 N. E. 1035; Chicago, etc., R. Co. *v.* Hamler, 215 Ill. 525, 74 N. E. 705; Mattoon *v.* Faller, 217 Ill. 273, 75 N. E. 387; Rock Island *v.* Gingles, 217 Ill. 185, 75 N. E. 468; B. Shoninger Co. *v.* Mann, 219 Ill. 242, 76 N. E. 354; Ward *v.* Meredith, 220 Ill. 66, 77 N. E. 118; Elgin, etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407; Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821; Purcell *v.* Chicago, 231 Ill. 164, 83 N. E. 137; Langan *v.* Enos Fire Escape Co., 233 Ill. 308, 84 N. E. 267; Bartz *v.* Chicago City R. Co., 116 Ill. App. 554; Chicago *v.* Boston, 117 Ill. App. 430; Masonic Temple Safety Deposit Co. *v.* Langfelt, 117 Ill. App. 652; Rock Island *v.* Littig, 118 Ill. App. 643; Gibson *v.* Murray, 120 Ill. App. 296; White *v.* Chicago, 120 Ill. App. 607; Freyer *v.* Aurora, etc., R. Co., 123 Ill. App. 423; Cooke Brewing Co. *v.* Ryan, 125 Ill. App. 597; Smith *v.* Chicago Junction R. Co., 127 Ill. App. 89; Scanlon *v.* Chicago Union Traction Co., 127 Ill. App. 406; Ross *v.* Daugherty, 127 Ill. App. 572; Chicago, etc., Electric R. Co. *v.* Barrows, 128 Ill. App. 11; Larsen *v.* Chicago Union Traction Co., 131 Ill. App. 286; Elgin, etc., Traction Co. *v.* Wilcox, 132 Ill. App. 446; Hennepin *v.* Coleman, 132 Ill. App. 604; Farmington *v.* Wallace, 134 Ill. App. 366.

Indiana. — Indiana Springs Co. *v.* Brown, 165 Ind. 465, 74 N. E. 615; Cleveland, etc., R. Co. *v.* Snow, 37 Ind. App. 646, 74 N. E. 908; Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883; Indianapolis St. R. Co. *v.* Marschke, 166 Ind. 490, 77 N. E. 945; Indianapolis St. R. Co. *v.* Hackney, 39 Ind. App. 372, 77 N. E. 1048; Pittsburgh, etc., R. Co. *v.* Harris, 38 Ind. App. 77, 77 N. E. 1051; Indianapolis Traction, etc., Co. *v.* Smith, 38 Ind. App. 160, 77 N. E. 1140; Lake Erie, etc., R. Co. *v.* Ford, 167 Ind. 205, 78 N. E. 969; Baltimore, etc., R. Co. *v.* Zollman, (Ind. App. 1907) 80 N. E. 40; Indianapolis St. R. Co. *v.* Coyner, (Ind. App. 1907) 80 N. E. 168; Bloomington *v.* Woodworth, (Ind. App. 1907) 81 N. E. 611; Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934; Huntington *v.* Stuver, (Ind. App. 1908) 83 N. E. 518.

Indian Territory. — Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182; Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Connolly *v.* Des Moines Invest. Co., 130 Iowa 633, 105 N. W. 400; Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359; Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593; Heinmiller *v.* Winston, 131 Iowa 132, 107 N. W. 1102; Anders *v.* West Union, 131 Iowa 192, 108 N. W. 226; Steele *v.* Grahl-Peterson Co., (Iowa 1906) 109 N. W. 882; House *v.* Cramer, 134 Iowa 374, 112 N. W. 3; Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555; Ramsey *v.* Cedar Rapids, etc., R. Co., (Iowa 1907) 112 N. W. 798; Merryman *v.* Chicago G. W. R. Co., (Iowa 1907) 113 N. W. 357; Strand *v.* Grinnell Automobile Garage Co., (Iowa 1907) 113 N. W. 488; McNaughton *v.* Illinois Cent. R. Co., (Iowa 1907) 113 N. W. 844; Garnetz *v.* Carroll, (Iowa 1907) 114 N. W. 57; Powers *v.* Des Moines City R. Co., (Iowa 1903) 115 N. W. 494; Remillard *v.* Sioux City Traction Co., (Iowa 1908) 115 N. W. 900.

Kansas. — Schwarzschild, etc., Co. *v.* Weeks, 72 Kan. 190, 83 Pac. 406.

Kentucky. — Louisville R. Co. *v.* Hoskins, (Ky. 1905) 88 S. W. 1087; Louisville R. Co. *v.* Blum, (Ky. 1905) 89 S. W. 186; Palmer Transfer Co. *v.* Paducah R., etc., Co., (Ky. 1905) 89 S. W. 515; McCabe *v.* Maysville, etc.,

R. Co., (Ky. 1905) 89 S. W. 683; Louisville, etc., R. Co. *v.* Rhoads, (Ky. 1906) 90 S. W. 219; Weick *v.* Dougherty, (Ky. 1906) 90 S. W. 966; Louisville City R. Co. *v.* Hudgins, (Ky. 1906) 98 S. W. 275; Brownsville *v.* Arbuckle, (Ky. 1907) 99 S. W. 239; Covington *v.* Billiter, (Ky. 1907) 99 S. W. 318; Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337; Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606; Daniel Boone Coal Co. *v.* Sisk, (Ky. 1907) 99 S. W. 977; Brucker *v.* Gainesboro Telephone Co., (Ky. 1907) 100 S. W. 240; South Covington, etc., St. R. Co. *v.* Cleveland, (Ky. 1907) 100 S. W. 283; Dorris *v.* Warford, (Ky. 1907) 100 S. W. 312; Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810; Illinois Cent. R. Co. *v.* Cotter, (Ky. 1907) 103 S. W. 279; Louisville R. Co. *v.* Hofgesand, (Ky. 1907)104 S. W. 361; Paducah City R. Co. *v.* Alexander, (Ky. 1907) 104 S. W. 375; Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776; Ewing *v.* Callahan, (Ky. 1907) 105 S. W. 387; Louisville R. Co. *v.* Hutchcraft, (Ky. 1907) 105 S. W. 983; Lexington R. Co. *v.* Woodward, (Ky. 1908) 106 S. W. 853; Hummer *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 885; Cross *v.* Illinois Cent. R. Co., (Ky. 1908) 110 S. W. 290; Nashville, etc., R. Co. *v.* Russell, (Ky. 1908) 110 S. W. 317; Southern R. Co. *v.* Miller, (Ky. 1908) 110 S. W. 351; Louisville, etc., R. Co. *v.* Onan, (Ky. 1908) 110 S. W. 380; Louisville, etc., R. Co. *v.* Joshlin, (Ky. 1908) 110 S. W. 382; Clarke *v.* Louisville, etc., R. Co., (Ky. 1908) 111 S. W. 344; Paducah Traction Co. *v.* Sine, (Ky. 1908) 111 S. W. 356.

Louisiana. — Jones *v.* Sibley, etc., R. Co., (La. 1908) 46 So. 61.

Maine. — Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602; Jensen *v.* Kyer, 101 Me. 106, 63 Atl. 389.

Maryland. — United R., etc., Co. *v.* Weir, 102 Md. 286, 62 Atl. 588; Gans Salvage Co. *v.* Byrnes, 102 Md. 230, 62 Atl. 155; Strasburger *v.* Vogel, 103 Md. 85, 63 Atl. 202; Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202; Mattingly *v.* Montgomery, (Md. 1907) 68 Atl. 205.

Massachusetts. — Banks *v.* Braman, 188 Mass. 367, 74 N. E. 594; Mahan *v.* Newton, etc., St. R. Co., 189 Mass. 1, 75 N. E. 59; Finnegan *v.* Samuel Winslow Skate Mfg. Co., 189 Mass. 580, 76 N. E. 192; Bennett *v.* Everett, 191 Mass. 364, 77 N. E. 886; Woodall *v.* Boston El. R. Co., 192 Mass. 308, 78 N. E. 446; Andrews *v.* Williamson, 193 Mass. 92, 78 N. E. 737; Ladd *v.* New York, etc., R. Co., 193 Mass. 359, 79 N. E. 742; Black *v.* New York, etc., R. Co., 193 Mass. 448, 79 N. E. 797; Cammett *v.* Haverhill, (Mass. 1908) 83 N. E. 331; Jones *v.* Boston, (Mass. 1907) 83 N. E. 309; Jeddrey *v.* Boston, etc., St. Co., (Mass. 1908) 84 N. E. 316.

Michigan. — Mayer *v.* Detroit, etc., R. Co., 142 Mich. 459, 105 N. W. 888; Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395; Ladd *v.* Germain, 145 Mich. 225, 108 N. W. 679; Cousineau *v.* Muskegon Traction, etc., Co., 145 Mich. 314, 108 N. W. 720; Bishop *v.* Baldwin, 147 Mich. 22, 110 N. W. 139.

Minnesota. — Ritschdorf *v.* St. Paul, 95 Minn. 370, 104 N. W. 129; Sumner *v.* Northfield, 96 Minn. 107, 104 N. W. 686; Raasch *v.* Elite Laundry Co., 98 Minn. 357, 108 N. W. 477; Johnson *v.* C. A. Smith Lumber Co., 99 Minn. 343, 109 N. W. 810; Harper *v.* St. Paul City R. Co., 99 Minn. 253, 109 N. W. 227; Mahoney *v.* Maxfield, 102 Minn. 377, 113 N. W. 904.

Missouri. — Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Ayers *v.* Wabash R. Co., 190 Mo. 228, 88 S. W. 608; Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354; Latson *v.* St. Louis Transit Co., 192 Mo. 449, 91 S. W. 109; Phelan *v.* Granite Bituminous Paving Co., 115 Mo. App. 423, 91 S. W. 440; Hach *v.* St. Louis, etc., R. Co., 117 Mo. App. 11, 93 S. W. 825; Dunn *v.* Nicholson, 117 Mo. App. 374, 93 S. W. 869; Haley *v.* Missouri Pac. R. Co., 197 Mo. 15, 93 S. W. 1120; Kielty *v.* Buehler-Cooney Constr. Co., 121 Mo. App. 58, 97 S. W. 998; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; Nephler *v.* Woodward, 200 Mo. 179, 98 S. W. 488; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Moxley *v.* Southwest Missouri Electric R. Co., 123 Mo. App. 80, 99 S. W. 763; Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566; Wallack *v.* St. Louis Transit Co., 123 Mo. App. 160, 100 S. W. 496; White *v.* St. Louis, etc., R. Co., 202 Mo. 539, 101 S. W. 14; Gibler *v.* Terminal R. Assoc., 203 Mo. 208, 101 S. W. 37; Hall *v.* St. Louis, etc., R. Co., 124 Mo. App. 661, 101 S. W. 1137; O'Keefe *v.* United R. Co., 124 Mo. App. 613, 101 S. W. 1144; Bensiek *v.* St. Louis Transit Co., 125 Mo. App. 121, 102 S. W. 587; Feddeck *v.* St. Louis Car Co., 125 Mo. App. 24, 102 S. W. 675; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006; Hauck-Hoerr Bakery Co. *v.* United R. Co., 127 Mo. App. 190, 104 S. W. 1137; Cornovski *v.* St. Louis Transit Co., 207 Mo. 263, 106 S. W. 51; St. Louis Southwestern R. Co. *v.* Hawkins, (Tex. Civ. App. 1908) 108 S. W. 736; Holland *v.* Missouri Pac. R. Co., (Mo. 1908) 109 S. W. 19; Smith *v.* Hayti, (Mo. App. 1908) 109 S. W. 817.

Montana. — Bourke *v.* Butte Electric, etc., Co., 33 Mont. 267, 83 Pac. 470; Martin *v.* Butte, 34 Mont. 281, 86 Pac. 264; Fearon *v.* Mullins, 35 Mont. 232, 88 Pac. 794; Riley *v.* Northern Pac. R. Co., (Mont. 1908) 93 Pac. 948.

Nebraska. — Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182; Clingan *v.* Dixon County, 74 Neb. 807, 105 N. W. 710; Cudahy Packing Co. *v.* Wesolowski, 75 Neb. 786, 106 N. W. 1007; Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368; Struble *v.* DeWitt, (Neb. 1908) 116 N. W. 154.

Nevada. — Powell *v.* Nevada, etc., R. Co., 28 Nev. 305, 82 Pac. 96.

New Hampshire. — Hewett *v.* Woman's Hospital Aid Assoc., 73 N. H. 556, 64 Atl. 190; Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404; Bennett *v.* Concord Woodworking Co., (N. H. 1907) 68 Atl. 460.

New Jersey. — King *v.* Zierz, 73 N. J. L. 134, 62 Atl. 287; Koonz *v.* New York Mail Co., 72 N. J. L. 530, 63 Atl. 341; Van Blarcom *v.* Central R. Co., 73 N. J. L. 540, 64 Atl. 111; Napurana *v.* Young, (N. J. 1907) 65 Atl. 1052; Hardy *v.* Sulphur Min. Co., (N. J. 1907) 67 Atl. 177; Sparks *v.* River, etc., Imp. Co., (N. J. 1907) 67 Atl. 600; Johnson *v.* Lembeck, etc.,

Brewing Co., (N. J. 1907) 68 Atl. 85; Mason *v.* Erie R. Co., (N. J. 1907) 68 Atl. 105; McCracken *v.* Meyers, (N. J. 1908) 68 Atl. 805; Mead *v.* Baum, (N. J. 1908) 69 Atl. 962; Smith *v.* Delaware River Amusement Co., (N. J. 1908) 69 Atl. 970; Migans *v.* Jersey City, etc., R. Co., (N. J. 1908) 70 Atl. 168.

New York. — Loomis *v.* Lake Shore, etc., R. Co., 182 N. Y. 380, 75 N. E. 228; Butler *v.* Oxford, 186 N. Y. 444, 79 N. E. 712; Fish *v.* Waverly Electric Light, etc., Co., 189 N. Y. 336, 82 N. E. 150; Stratton *v.* New York, 190 N. Y. 294, 83 N. E. 40; Duhme *v.* Hamburg-American Packet Co., 107 N. Y. App. Div. 237, 94 N. Y. Supp. 1102; Wood *v.* Wyeth, 106 N. Y. App. Div. 21, 94 N. Y. Supp. 360; Conway *v.* Rheims, 107 N. Y. App. Div. 289, 95 N. Y. Supp. 119; Scholtz *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 619, 95 N. Y. Supp. 557; Frank *v.* Simon, 109 N. Y. App. Div. 38, 95 N. Y. Supp. 666; Caffi *v.* New York Cent., etc., R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 620, 96 N. Y. Supp. 835; Driggs *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 621, 96 N. Y. Supp. 1031; Moran *v.* Mulligan, 110 N. Y. App. Div. 208, 97 N. Y. Supp. 7; Whittacker *v.* Brooklyn, etc., R. Co., 110 N. Y. App. Div. 767, 97 N. Y. Supp. 414; Kopper *v.* Yonkers, 110 N. Y. App. Div. 747, 97 N. Y. Supp. 425; Johnson *v.* Terry, etc., Co., 113 N. Y. App. Div. 762, 99 N. Y. Supp. 375; Solomon *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 557, 99 N. Y. Supp. 529; Muller *v.* Oakes Mfg. Co., 113 N. Y. App. Div. 689, 99 N. Y. Supp. 923; Farrell *v.* New York, 113 N. Y. App. Div. 687, 99 N. Y. Supp. 947; Recktenwald *v.* Erie R. Co., 114 N. Y. App. Div. 490, 99 N. Y. Supp. 1094; Littlefield *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 637, 101 N. Y. Supp. 75; Bruckel *v.* Milhau, 116 N. Y. App. Div. 832, 102 N. Y. Supp. 395; Heckmuller *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 541, 104 N. Y. Supp. 679; Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928; Kear *v.* New York City R. Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 444; McDonald *v.* Degnon-McLean Contracting Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 519; Lanigan *v.* Brooklyn Heights R. Co., 125 N. Y. App. Div. 622, 110 N. Y. Supp. 30; O'Rourke *v.* Guy B. Waite Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 170; Davenport *v.* Prentice, (Supm. Ct. App. Div.) 110 N. Y. Supp. 1056; Hanley *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 575; Stevenson *v.* Joline, (Supm. Ct. App. Div.) 111 N. Y. Supp. 698.

North Carolina. — Jones *v.* American Warehouse Co., 138 N. Car. 546, 51 S. E. 106; Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

North Dakota. — Cumming *v.* Great Northern R. Co., 15 N. Dak. 611, 108 N. W. 798.

Ohio. — Cincinnati Traction Co. *v.* Holzenkamp, 74 Ohio St. 370, 78 N. E. 529; Columbus R. Co. *v.* Connor, 27 Ohio Cir. Ct. 229.

Oklahoma. — Stillwater *v.* Swisher, 16 Okla. 585, 85 Pac. 1110; McCabe, etc., Constr. Co. *v.* Wilson, 17 Okla. 355, 87 Pac. 320; Oklahoma City *v.* Reed, 17 Okla. 518, 87 Pac. 645.

Oregon. — Wolf *v.* City R. Co., (Oregon 1907) 91 Pac. 460; Millen *v.* Pacific Bridge Co., (Oregon 1908) 95 Pac. 196.

Pennsylvania. — Gillard *v.* Chester, 212 Pa. St. 338, 61 Atl. 929; Reed *v.* Tarentum, 213 Pa. St. 357, 62 Atl. 928; Shaffer *v.* Roesch, 215 Pa. St. 287, 64 Atl. 511; Clifton *v.* Philadelphia, 217 Pa. St. 102, 66 Atl. 159; Tucker *v.* American Car, etc., Co., 218 Pa. St. 323, 67 Atl. 616; Metzler *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 180; Ackley *v.* Bradford Tp., 32 Pa. Super. Ct. 487.

Rhode Island. — Edwards *v.* Manufacturers' Bldg. Co., 27 R. I. 248, 61 Atl. 646.

South Carolina. — Tinsley *v.* Western Union Tel. Co., 72 S. Car. 350, 51 S. E. 913.

South Dakota. — Borneman *v.* Chicago, etc., R. Co., 19 S. Dak. 466, 104 N. W. 208.

Tennessee. — Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324; Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902; Acme Box Co. *v.* Gregory, (Tenn. 1907) 105 S. W. 350.

Texas. — Missouri, etc., R. Co. *v.* Sisson, (Tex. Civ. App. 1905) 88 S. W. 371; Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279; Drake *v.* San Antonio, etc., R. Co., 99 Tex. 240, 89 S. W. 407; Houston, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1905) 89 S. W. 805; Bryan *v.* International, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 693; Missouri, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 702; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918; Beaty *v.* El Paso Electric R. Co., (Tex. Civ. App. 1905) 91 S. W. 365; St. Louis Southwestern R. Co. *v.* Connally, (Tex. Civ. App. 1906) 93 S. W. 206; Houston, etc., R. Co. *v.* Beard, (Tex. Civ. App. 1906) 93 S. W. 532; Kirby Lumber Co. *v.* Dickerson, (Tex. Civ. App. 1906) 94 S. W. 153; Austin *v.* Nuchols, (Tex. Civ. App. 1906) 94 S. W. 336; Southern Kansas R. Co. *v.* Sage, (Tex. Civ. App. 1906) 94 S. W. 1074; Murphy *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 96 S. W. 940; International, etc., R. Co. *v.* Trump, (Tex. 1906) 97 S. W. 464; St. Louis, etc., R. Co. *v.* Andrews, (Tex. Civ. App. 1906) 99 S. W. 871; Citizens Telephone Co. *v.* Thomas, (Tex. Civ. App. 1907) 99 S. W. 879; San Antonio Traction Co. *v.* Haines, (Tex. Civ. App. 1907) 100 S. W. 788; St. Louis Southwestern R. Co. *v.* Hunt, (Tex. Civ. App. 1907) 100 S. W. 968; Houston, etc., R. Co. *v.* Van Ness, (Tex. Civ. App. 1907) 101 S. W. 265; Texarkana, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1907) 101 S. W. 1167; San Antonio, etc., R. Co. *v.* Mertink, (Tex. Civ. App. 1907) 102 S. W. 153; Missouri, etc., R. Co. *v.* Saunders, (Tex. Civ. App. 1907) 103 S. W. 457; Horton *v.* Houston, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 467; Gulf, etc., R. Co. *v.* Wittnebert, (Tex. Civ. App. 1907) 104 S. W. 424; El Paso, etc., R. Co. *v.* Foth, (Tex. 1907) 105 S. W. 322; Foley *v.* Northrup, (Tex. Civ. App. 1907) 105 S. W. 229; Feille *v.* San Antonio Traction Co., (Tex. Civ. App. 1908) 107 S. W. 367; Texas Mexican R. Co. *v.* Hernandez, (Tex. Civ. App. 1908) 108 S. W. 765; Missouri, etc., R. Co. *v.* Criswell, (Tex. 1908) 108 S. W. 806; San Antonio *v.* Wildenstein, (Tex. Civ. App. 1908) 109 S. W. 231; Missouri, etc., R. Co. *v.* Malone, (Tex. Civ. App. 1908) 110 S. W. 958; Morgan *v.* Missouri, etc., R. Co., (Tex. Civ.

App. 1908) 110 S. W. 978; Studebaker Bros. Mfg. Co. *v.* Carter, (Tex. Civ. App. 1908) 111 S. W. 1086.

Utah. — Hickey *v.* Rio Grande Western R. Co., 29 Utah 392, 82 Pac. 29; Farney *v.* Oregon Short Line R. Co., 31 Utah 194, 87 Pac. 440; Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715; Gesas *v.* Oregon Short Line R. Co., (Utah 1907) 93 Pac. 274; Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838; Loofbourow *v.* Utah Light, etc., Co., (Utah 1908) 94 Pac. 981; Herndon *v.* Salt Lake City, (Utah 1908) 95 Pac. 646.

Vermont. — McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124.

Virginia. — Virginia Iron, etc., Co. *v.* Tomlinson, 104 Va. 249, 51 S. E. 362; American Tobacco Co. *v.* Polisco, 104 Va. 777, 52 S. E. 563; Wilkie *v.* Richmond Traction Co., 105 Va. 290, 54 S. E. 43; Lane Bros. Co. *v.* Seakford, 106 Va. 93, 55 S. E. 556; Chesapeake, etc., R. Co. *v.* Farrow, 106 Va. 137, 55 S. E. 569; Richmond *v.* Pemberton, (Va. 1908) 61 S. E. 787.

Washington. — Wiest *v.* Coal Creek R. Co., 42 Wash. 176, 84 Pac. 725; Curtis *v.* Barber Asphalt Paving Co., 44 Wash. 334, 87 Pac. 345; Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924.

West Virginia. — Kelley *v.* Ohio River R. Co., 58 W. Va. 216, 52 S. E. 520; Robbins *v.* Baltimore, etc., R. Co., (W. Va. 1907) 59 S. E. 512; Lay *v.* Ells Ridge Coal, etc., Co., (W. Va. 1908) 61 S. E. 156.

Wisconsin. — Olwell *v.* Skobis, 126 Wis. 308, 105 N. W. 777; Hughes *v.* Chicago, etc., R. Co., 126 Wis. 525, 106 N. W. 526; Wilbert *v.* F. Zurheide Brick Co., 129 Wis. 1, 106 N. W. 1058; Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973; Carlon *v.* Greenfield, 130 Wis. 342, 110 N. W. 208; Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865; Weber *v.* Swallow, (Wis. 1908) 116 N. W. 844.

"Carelessly" and "Negligently" Synonymous Words. — Mascot Coal Co. *v.* Garrett, (Ala. 1908) 47 So. 149.

The Expression "Due Care" is often used instead of "ordinary" or "reasonable" care.

United States. — Gloucester Electric Co. *v.* Dover, (C. C. A.) 153 Fed. 139; Hoagland *v.* Canfield, 160 Fed. 146.

Alabama. — Daniels *v.* Carney, (Ala. 1906) 42 So. 452.

California. — Quint *v.* Dimond, (Cal. 1905) 82 Pac. 310.

Delaware. — Stidham *v.* Delaware City, (Del. 1907) 67 Atl. 175.

Illinois. — West Chicago St. R. Co. *v.* Schulz, 217 Ill. 322, 75 N. E. 495; Aurora, etc., R. Co. *v.* Gary, 123 Ill. App. 163; West Chicago St. R. Co. *v.* Nuttschall, 131 Ill. App. 630.

Louisiana. — Muscarelli *v.* Hodge Fence, etc., Co., (La. 1907) 45 So. 268.

Massachusetts. — McCormack *v.* Boston El. R. Co., 188 Mass. 342, 74 N. E. 599; Bellino *v.* Columbus Constr. Co., 188 Mass. 430, 74 N. E. 684; Wagner *v.* Boston El. R. Co., 188 Mass. 437, 74 N. E. 919; Rubinovitch *v.* Boston El. R. Co., 192 Mass. 119, 77 N. E. 895; Halloran *v.* Worcester Consol. St. R. Co., 192 Mass. 104, 78 N. E. 381.

Michigan. — Hunter *v.* Ithaca, 141 Mich. 539, 105 N. W. 9.

Minnesota. — Smith *v.* Minneapolis St. R. Co., 95 Minn. 254, 104 N. W. 16.

Missouri. — Christman *v.* Meierhoffer, 116 Mo. 46, 92 S. W. 141.

New Jersey. — Dunham *v.* Public Service Corp., (N. J. 1908) 69 Atl. 1012.

New York. — Corcoran *v.* New York, 188 N. Y. 131, 80 N. E. 660; Buscher *v.* New York Transp. Co., 106 N. Y. App. Div. 493, 94 N. Y. Supp. 798; Cassasa *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 170, 95 N. Y. Supp. 648.

Pennsylvania. — Pyne *v.* Delaware, etc., R. Co., 212 Pa. St. 143, 61 Atl. 817.

South Carolina. — Rochester *v.* Bull, 78 S. Car. 249, 58 S. E. 766.

In Minnesota the test is "due care, or care commensurate with the danger." Gould *v.* Winona Gas Co., 100 Minn. 265, 111 N. W. 254.

Implied Promise. — It seems that in some situations the view may be taken that there is an implied promise of reasonable care. Eriksson *v.* Goodwin, (C. C. A.) 154 Fed. 351.

The Law of the Road is not a conclusive test of the ordinary care of the defendant. Dickinson *v.* Platt, 116 N. Y. App. Div. 651, 101 N. Y. Supp. 956.

Discovered Peril calls for more than ordinary care. Johnson *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 206.

2. *United States.* — Webster *v.* Chicago, etc., R. Co., (C. C. A.) 158 Fed. 769.

Arkansas. — Choctaw, etc., R. Co. *v.* Coker, (Ark. 1905) 90 S. W. 999.

Colorado. — Caughlin *v.* Campbell-Sell Baking Co., 39 Colo. 148, 89 Pac. 53.

Connecticut. — Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020; Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1024; Keagy *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1024.

Georgia. — Southern R. Co. *v.* Puryear, 2 Ga. App. 75, 58 S. E. 306; Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 378; Whistenant *v.* Southern States Portland Cement Co., 2 Ga. App. 598, 59 S. E. 920.

Illinois. — Knickerbocker Ice Co. *v.* Leyda, 128 Ill. App. 66, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 462.

Indiana. — Lake Erie, etc., R. Co. *v.* Fike, 35 Ind. App. 554, 74 N. E. 636.

Kansas. — Chicago, etc., R. Co. *v.* Wimmer, 72 Kan. 566, 84 Pac. 378.

Kentucky. — Louisville, etc., R. Co. *v.* McCandless, (Ky. 1906) 93 S. W. 1041; Illinois Cent. R. Co. *v.* Tandy, (Ky. 1908) 107 S. W. 715.

Louisiana. — Siefker *v.* Paysee, 115 La. 953, 40 So. 366.

Maine. — Berry *v.* Boston, etc., R. Co., 102 Me. 213, 66 Atl. 387.

Maryland. — Hatcher *v.* McDermot, 103 Md. 78, 63 Atl. 214.

Minnesota. — Everett *v.* Great Northern R. Co., 100 Minn. 309, 111 N. W. 281.

Missouri. — Hedrick *v.* Missouri Pac. R. Co., 105 Mo. 104, 93 S. W. 268; O'Donnell *v.* O'Neil, (Mo. App. 1908) 109 S. W. 815.

South Carolina. — Hughes *v.* Southern R. Co., (S. Car. 1908) 61 S. E. 1079.

Texas. — Galveston, etc., R. Co. *v.* Graham, (Tex. Civ. App. 1907) 101 S. W. 846.

Virginia. — Norfolk, etc., R. Co. *v.* Gee, 104 Va. 806, 52 S. E. 572; Newport News, etc., R., etc., Co. *v.* Clark, 105 Va. 205, 52 S. E. 1010.

"Negligence cannot be presumed when nothing is done out of the usual course of business, unless the course is improper." Hawk *v.* Chicago, etc., R. Co., (Mo. App. 1908) 108 S. W. 1119.

Rights of Property Owner. — "Negligence cannot be predicated on one's lawful and ordinary use of one's own premises." Bannon *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 231.

Where the plaintiff's horse took fright at bright tin lying on the defendant's land near the side of the road, it was held that the defendant was not liable for the resulting injuries. Davis *v.* Pennsylvania R. Co., 218 Pa. St. 463, 67 Atl. 777.

464. 1. Brunswick, etc., R. Co. *v.* Hoodenpyle, 129 Ga. 174, 58 S. E. 705; McIntyre *v.* Orner, 166 Ind. 57, 76 N. E. 750; Illinois Cent. R. Co. *v.* Martin, (Ky. 1908) 110 S. W. 815; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596.

2. Barklow *v.* Avery, (Tex. Civ. App. 1905) 89 S. W. 417; Thomas *v.* Somerset, (Ky. 1906) 97 S. W. 420.

Rule of Rylands v. Fletcher Limited. — See Caughlin *v.* Campbell-Sell Baking Co., 39 Colo. 148, 89 Pac. 53; Gould *v.* Winona Gas Co., 100 Minn. 258, 111 N. W. 254; McNulty *v.* Ludwig, (Supm. Ct. App. Div.) 109 N. Y. Supp. 703.

Consequential Damages from driving piling for a vault have been held not recoverable in the absence of negligence on behalf of a steam heating company having pipes in the street. New York Steam Co. *v.* Foundation Co., 123 N. Y. App. Div. 254, 108 N. Y. Supp. 84.

Nuisance and Negligence — Explanation. — Uggla *v.* Brokaw, 117 N. Y. App. Div. 586, 102 N. Y. Supp. 857.

3. *United States.* — Mearns *v.* Central R. Co., (C. C. A.) 139 Fed. 543; Law *v.* Central Dist. Printing, etc., Co., 140 Fed. 558; The Henry B. Fiske, 141 Fed. 188; The Samuel E. Bouker, 141 Fed. 480; Pennsylvania R. Co. *v.* McCaffrey, (C. C. A.) 149 Fed. 404; Citizens' Gas, etc., Co. *v.* Nicholson, (C. C. A.) 152 Fed. 389; The Blackheath, 154 Fed. 758.

Alabama. — Louisville, etc., R. Co. *v.* Mulder, (Ala. 1906) 42 So. 742; Birmingham R., etc., Co. *v.* King, (Ala. 1906) 42 So. 612.

Arkansas. — Harris Lumber Co. *v.* Morris, 80 Ark. 260, 96 S. W. 1067; Perdue *v.* St. Louis Southwestern R. Co., 82 Ark. 172, 100 S. W. 901; Abelson *v.* St. Louis, etc., R. Co., 84 Ark. 181, 105 S. W. 81; St. Louis, etc., R. Co. *v.* Fritts, (Ark. 1908) 108 S. W. 841.

California. — Kline *v.* Santa Barbara Consol. R. Co., 150 Cal. 741, 90 Pac. 125; McVay *v.* Central California Invest. Co., (Cal. App. 1907) 91 Pac. 745; McDonald *v.* California Timber Co., (Cal. App. 1908) 94 Pac. 376.

Colorado. — Colorado, etc., R. Co. *v.* Sonne, 34 Colo. 206, 83 Pac. 383.

Connecticut. — Campbell *v.* New Haven, 78 Conn. 394, 62 Atl. 665; Crotty *v.* Danbury, 79 Conn. 379, 65 Atl. 147.

Delaware. — Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Stidham *v.* Delaware City, (Del. 1907) 67 Atl. 175; Anderson *v.* Wilmington, (Del. 1907) 70 Atl. 204.

District of Columbia. — Bell *v.* Central Nat. Bank, 28 App. Cas. (D. C.) 580.

Florida. — Florala Sawmill Co. *v.* Smith, (Fla. 1908) 46 So. 332.

Georgia. — Grimsley *v.* Atlantic Coast Line R. Co., (Ga. App. 1907) 57 S. E. 943.

Illinois. — Lockport *v.* Licht, 221 Ill. 35, 77 N. E. 581; Brossman *v.* Drake Standard Mach. Works, 232 Ill. 412, 83 N. E. 936; Sandy *v.* Lake St. El. R. Co., (Ill. 1908) 85 N. E. 300; Toledo, etc., R. Co. *v.* Smart, 116 Ill. App. 523; Chicago, etc., R. Co. *v.* Gardanier, 116 Ill. App. 619; Chicago *v.* Boston, 117 Ill. App. 430; Rock Island *v.* Littig, 118 Ill. App. 643; Alton Light, etc., Co. *v.* Oller, 119 Ill. App. 181; Faulkner *v.* Birch, 120 Ill. App. 281; White *v.* Chicago, 120 Ill. App. 607; Reddick *v.* General Chemical Co., 124 Ill. App. 31; Chicago *v.* Hutchinson, 129 Ill. App. 239; Chicago City R. Co. *v.* Flynn, 131 Ill. App. 502; Hennepin *v.* Coleman, 132 Ill. App. 604; Goodman *v.* Bigler, 133 Ill. App. 301.

Indiana. — Cleveland, etc., R. Co. *v.* Snow, 37 Ind. App. 646, 74 N. E. 908; Wabash River Traction Co. *v.* Baker, 167 Ind. 266, 78 N. E. 196; Bloomington *v.* Woodworth, (Ind. App. 1907) 81 N. E. 611; Pittsburg, etc., R. Co. *v.* Richardson, (Ind. App. 1907) 82 N. E. 536; Spencer *v.* Mayfield, (Ind. App. 1908) 85 N. E. 23.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Connolly *v.* Des Moines Invest. Co., 130 Iowa 633, 105 N. W. 400; Blumenthal *v.* Union Electric Co., 129 Iowa 322, 105 N. W. 588; Brusseau *v.* Lower Brick Co., 133 Iowa 245, 110 N. W. 577; Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555.

Kansas. — Lewark *v.* Parkinson, 73 Kan. 553, 85 Pac. 601.

Kentucky. — Mangan *v.* Louisville Electric Light Co., 122 Ky. 476, 91 S. W. 703; Louisville St. R. Co. *v.* Brownfield, (Ky. 1906) 96 S. W. 912; New Galt House Co. *v.* Chapman, (Ky. 1907) 99 S. W. 632; Cincinnati, etc., R. Co. *v.* Baxter, (Ky. 1908) 110 S. W. 248.

Maine. — Wells *v.* Northeastern Telephone Co., 101 Me. 371, 64 Atl. 648.

Maryland. — Gans Salvage Co. *v.* Byrnes, 102 Md. 230, 62 Atl. 155; Philadelphia, etc., R. Co. *v.* Allen, 102 Md. 110, 62 Atl. 245; Miller *v.* United R., etc., Co., (Md. 1908) 69 Atl. 636.

Massachusetts. — Brooks *v.* Boston, etc., R. Co., 188 Mass. 416, 74 N. E. 670; Millmore *v.* Boston El. R. Co., 194 Mass. 323, 80 N. E. 445; Isbell *v.* Pittsfield Electric St. Co., (Mass. 1907) 82 N. E. 3.

Michigan. — Hendershott *v.* Grand Rapids, 142 Mich. 140, 105 N. W. 140; Karrer *v.* Detroit, 142 Mich. 331, 106 N. W. 64; Warren *v.* Porter, 144 Mich. 699, 108 N. W. 435; Clark *v.* Goldie, 146 Mich. 303, 109 N. W. 1044;

Mercer *v.* Cincinnati Northern R. Co., (Mich. 1908) 115 N. W. 733.

Minnesota. — Gould *v.* Winona Gas Co., 100 Minn. 258, 111 N. W. 254; Cederberg *v.* Minneapolis, etc., R. Co., 101 Minn. 100, 111 N. W. 953.

Missouri. — Hamilton *v.* Metropolitan St. R. Co., 114 Mo. App. 504, 89 S. W. 893; Evers *v.* Wiggins Ferry Co., 116 Mo. 130, 92 S. W. 118; Chrismer *v.* Bell Telephone Co., 194 Mo. 189, 92 S. W. 378; Becker *v.* Lincoln Real Estate, etc., Co., 118 Mo. App. 74, 93 S. W. 291; Moxley *v.* Southwest Missouri Electric R. Co., 123 Mo. App. 80, 99 S. W. 763; Luehrmann *v.* Laclede Gaslight Co., 127 Mo. App. 213, 104 S. W. 1128.

Nebraska. — Bevard *v.* Lincoln Traction Co., 74 Neb. 802, 105 N. W. 635; Cudahy Packing Co. *v.* Wesolowski, 75 Neb. 786, 106 N. W. 1007; Shipman *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 535; Struble *v.* De Witt, (Neb. 1908) 116 N. W. 154.

New Jersey. — Traphagen *v.* Erie R. Co., 73 N. J. L. 759, 64 Atl. 1072.

New York. — Butler *v.* Oxford, 186 N. Y. 444, 79 N. E. 712; McKone *v.* Warsaw, 187 N. Y. 336, 80 N. E. 212; Corcoran *v.* New York, 188 N. Y. 131, 80 N. E. 660; Stratton *v.* New York, 190 N. Y. 294, 83 N. E. 40; Atkins *v.* New York City R. Co., (Supm. Ct. App. T.) 94 N. Y. Supp. 500; Moran *v.* Mulligan, 110 N. Y. App. Div. 208, 97 N. Y. Supp. 7; Bruckel *v.* Milhau, 116 N. Y. App. Div. 832, 102 N. Y. Supp. 395; Henry *v.* New York, 119 N. Y. App. Div. 432, 104 N. Y. Supp. 440; Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928; O'Neil *v.* New York, etc., R. Co., 121 N. Y. App. Div. 487, 106 N. Y. Supp. 128; Stappers *v.* Interurban St. R. Co., (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 337, 106 N. Y. Supp. 854; McDonald *v.* Degnon-McLean Contracting Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 519; Lanigan *v.* Brooklyn Heights R. Co., 125 N. Y. App. Div. 622, 110 N. Y. Supp. 30.

North Carolina. — Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617; Hollingsworth *v.* Skelding, 142 N. Car. 246, 55 S. E. 212; White *v.* Newberne, (N. Car. 1907) 59 S. E. 992; Briggs *v.* Durham Traction Co., (N. Car. 1908) 61 S. E. 373.

Ohio. — Weaver *v.* Columbus, etc., R. Co., 76 Ohio St. 164, 81 N. E. 180; Dayton *v.* Glaser, 76 Ohio St. 471, 81 N. E. 991.

Oklahoma. — Shawnee Light, etc., Co. *v.* Sears, (Okla. 1908) 95 Pac. 449.

Oregon. — Millen *v.* Pacific Bridge Co., (Oregon 1908) 95 Pac. 196.

Pennsylvania. — Delahunt *v.* United Telephone, etc., Co., 215 Pa. St. 241, 64 Atl. 515; Powell *v.* American Sheet, etc., Co., 216 Pa. St. 618, 65 Atl. 1113.

Rhode Island. — Edwards *v.* Manufacturers' Bldg. Co., 27 R. I. 248, 61 Atl. 646.

South Carolina. — Nickles *v.* Seaboard Air Line R. Co., 74 S. Car. 102, 54 S. E. 255; Jackson *v.* Southern R. Co., 77 S. Car. 550, 58 S. E. 605.

Tennessee. — St. Louis, etc., R. Co. *v.* Hatch, 116 Tenn. 580, 94 S. W. 671.

Texas. — St. Louis Southwestern R. Co. *v.* Parks, (Tex. Civ. App. 1905) 90 S. W. 343; Gulf, etc., R. Co. *v.* Coopwood, (Tex. Civ. App. 1906) 96 S. W. 102; Galveston, etc., R. Co. *v.* Currie, (Tex. 1906) 96 S. W. 1073; Norton *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 1044.

Vermont. — McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124.

Virginia. — Lane Bros. Co. *v.* Seakford, 106 Va. 93, 55 S. E. 556; Richmond *v.* Pemberton, (Va. 1908) 61 S. E. 787.

Washington. — Dignan *v.* Spokane County, 43 Wash. 419, 86 Pac. 649; Schwaninger *v.* McNeeley, 44 Wash. 447, 87 Pac. 514.

West Virginia. — Marshall Window Glass Co. *v.* Cameron Oil, etc., Co., (W. Va. 1907) 59 S. E. 959; Lay *v.* Elk Ridge Coal, etc., Co., (W. Va. 1908) 61 S. E. 156.

Wisconsin. — Mueller *v.* Northwestern Iron Co., 125 Wis. 326, 104 N. W. 67.

When an Ordinance forbids a certain act, the liability may be absolute. Clements *v.* Potomac Electric Power Co., 26 App. Cas. (D. C.) 482.

Warning — English Language. — Bilotta *v.* Media, etc., R. Co., (Pa. 1908) 70 Atl. 123.

4. Vallaster *v.* Atlantic City R. Co., 72 N. J. L. 334, 62 Atl. 993; Newport News, etc., R. & Electric Co. *v.* Clark, 105 Va. 205, 52 S. E. 1010.

The Test. — Norfolk, etc., R. Co. *v.* Bell, 104 Va. 836, 52 S. E. 700.

As to mistakes of judgment or opinion, see *infra*, p. 477, note 1.

5. Goodwyn *v.* Central of Georgia R. Co., 2 Ga. App. 470, 58 S. E. 688; Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602; Rudquist *v.* Empire Lumber Co., (Minn. 1908) 116 N. W. 1019; Spaulding *v.* Metropolitan St. R. Co., (Mo. App. 1908) 107 S. W. 1049.

Sometimes in the same opinion the three expressions, "ordinary," "due," and "reasonable" care, are used indiscriminately. Wood *v.* Southern R. Co., 104 Va. 650, 52 S. E. 371.

6. *United States.* — Davidson Steamship Co. *v.* U. S., 205 U. S. 187, 27 U. S. Sup. Ct. 480; Bleakley *v.* New York, 139 Fed. 807; Denver, etc., R. Co. *v.* Norgate (C. C. A.) 141 Fed. 247, 5 Ann. Cas. 448; The Samuel E. Bouker, 141 Fed. 480; Rickerd *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 905; Shandrew *v.* Chicago, etc., R. Co., (C. C. A.) 142 Fed. 320; Buckley *v.* New York, etc., R. Co., 148 Fed. 460; Cryder *v.* Chicago, etc., R. Co., (C. C. A.) 152 Fed. 417; American Window Glass Co. *v.* Noe, (C. C. A.) 158 Fed. 777; Chicago G. W. R. Co. *v.* Egan, (C. C. A.) 159 Fed. 40; H. D. Williams Cooperage Co. *v.* Headrick, (C. C. A.) 159 Fed. 680; Lake *v.* Shenango Furnace Co., (C. C. A.) 160 Fed. 887; Chicago G. W. R. Co. *v.* McDonough, (C. C. A.) 161 Fed. 657.

Alabama. — Alabama G. S. R. Co. *v.* Fulton, 144 Ala. 332, 39 So. 282; Woodward Iron Co. *v.* Curl, (Ala. 1907) 44 So. 969.

Arkansas. — St. Louis, etc., R. Co. *v.* Inman, 81 Ark. 591, 99 S. W. 832; Arkansas, etc., R. Co. *v.* Sanders, 81 Ark. 604, 99 S. W. 1109.

California. — Carty *v.* Boeseke-Dawe Co., 2 Cal. App. 646, 84 Pac. 267; Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976; Wistrom *v.* Redlick, (Cal. App. 1907) 92 Pac. 1048; DeWitt *v.* Floriston Pulp, etc., Co., (Cal. App. 1908) 96 Pac. 397.

Colorado. — Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337; Caughlin *v.* Campbell-Sell Baking Co., 39 Colo. 148, 89 Pac. 53; Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815; Liutz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Connecticut. Deming *v.* Johnson, (Conn. 1908) 69 Atl. 347.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Bowen *v.* Isenberg Bros. Co., (Del. 1907) 67 Atl. 152.

Georgia. — Goodwyn *v.* Central of Georgia R. Co., 2 Ga. App. 470, 58 S. E. 688; Atlanta *v.* Harper, 129 Ga. 415, 59 S. E. 230.

Illinois. — Aurora, etc., R. Co. *v.* Gary, 123 Ill. App. 163; Chicago Union Traction Co. *v.* Hansen, 125 Ill. App. 153.

Indiana. — Baltimore, etc., R. Co. *v.* Zollman, (Ind. App. 1907) 80 N. E. 40.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359; Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593; Brusseau *v.* Lower Brick Co., 133 Iowa 245, 110 N. W. 577; Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555; Strand *v.* Grinnell Automobile Garage Co., (Iowa 1907) 113 N. W. 488.

Kentucky. — Louisville, etc., R. Co. *v.* Rhoads, (Ky. 1906) 90 S. W. 219; Weick *v.* Dougherty, (Ky. 1906) 90 S. W. 966; Louisville Belt, etc., Co. *v.* Hart, (Ky. 1906) 92 S. W. 951; Eirk *v.* Louisville R. Co., (Ky. 1906) 98 S. W. 293; Henderson City R. Co. *v.* Lockett, (Ky. 1906) 98 S. W. 303; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337; Evans *v.* Eastern Kentucky Telephone, etc., Co., (Ky. 1907) 99 S. W. 936; Dorris *v.* Warford, (Ky. 1907) 100 S. W. 312; Big Hill Coal Co. *v.* Abney, (Ky. 1907) 101 S. W. 394; Ewing *v.* Callahan, (Ky. 1907) 105 S. W. 387; Lexington R. Co. *v.* Woodward, (Ky. 1908) 106 S. W. 853; Chesapeake, etc., R. Co. *v.* Pace, (Ky. 1908) 106 S. W. 1176; Adkisson *v.* Louisville, etc., R. Co., (Ky. 1908) 110 S. W. 284; Cross *v.* Illinois Cent. R. Co., (Ky. 1908) 110 S. W. 290; Louisville R. Co. *v.* Boutellier, (Ky. 1908) 110 S. W. 357; Louisville, etc., R. Co. *v.* Joshlin, (Ky. 1908) 110 S. W. 382; Illinois Cent. R. Co. *v.* Martin, (Ky. 1908) 110 S. W. 815; Cincinnati, etc., R. Co. *v.* Evans, (Ky. 1908) 110 S. W. 844; Louisville, etc., R. Co. *v.* Berry, (Ky. 1908) 111 S. W. 350.

Maine. — Raymond *v.* Portland R. Co., 100 Me. 520, 62 Atl. 602.

Maryland. — Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202.

Massachusetts. — Rubinovitch *v.* Boston El. R. Co., 192 Mass. 119, 77 N. E. 895.

Michigan. — Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613; Hunter *v.* Ithaca, 141 Mich. 539, 105 N. W. 9; Seigel *v.* United Electric Heating Co., 143 Mich. 484, 106 N. W. 1127; Ladd *v.* Germain, 145 Mich. 225, 108 N. W. 679; Clark *v.* Goldie, 146 Mich. 303, 109 N. W. 1044; Rollo *v.* City Electric R. Co., (Mich. 1908) 115 N. W. 727; Wilson *v.* Escanaba Woodenware Co., (Mich. 1908) 116 N. W. 198.

Minnesota. — Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264.

Missouri. — Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354; Latson *v.* St. Louis Transit Co., 192 Mo. 449, 91 S. W. 109; Chrismer *v.* Bell Telephone Co., 194 Mo. 189, 92 S. W. 378; Nephler *v.* Woodward, 200 Mo. 179, 98 S. W. 488; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Mertens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; Politowitz *v.* Citizens Telephone Co., 123 Mo. App. 77, 99 S. W. 756; Gibler *v.* Terminal R. Assoc., 203 Mo. 208, 101 S. W. 37; Feddeck *v.* St. Louis Car Co., 125 Mo. App. 24, 102 S. W. 675; Zeis *v.* St. Louis Brewing Assoc., 205 Mo. 638, 104 S. W. 99; Cornovski *v.* St. Louis Transit Co., 207 Mo. 263, 106 S. W. 51; Ahlfeldt *v.* Mexico, (Mo. App. 1908) 108 S. W. 122; Hebeler *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 34.

Montana. — Bourke *v.* Butte Electric, etc., Co., 33 Mont. 267, 83 Pac. 470.

Nebraska. — Watters *v.* Omaha, (Neb. 1907) 110 N. W. 981.

New Hampshire. — Yeaton *v.* Boston, etc., R. Co., 73 N. H. 285, 61 Atl. 522.

New York. — Burns *v.* Old Sterling Iron, etc., Co., 188 N. Y. 175, 80 N. E. 927; Ibbeken *v.* New York, (Supm. Ct. App. T.) 94 N. Y. Supp. 568; Grogan *v.* Brooklyn Heights R. Co., 107 N. Y. App. Div. 254, 95 N. Y. Supp. 23; Conway *v.* Rheims, 107 N. Y. App. Div. 289, 95 N. Y. Supp. 119; Becker *v.* Pennsylvania R. Co., 109 N. Y. App. Div. 230, 96 N. Y. Supp. 1; Moran *v.* Mulligan, 110 N. Y. App. Div. 208, 97 N. Y. Supp. 7; Whittacker *v.* Brooklyn, etc., R. Co., 110 N. Y. App. Div. 767, 97 N. Y. Supp. 414; Horning *v.* Hudson River Telephone Co., 111 N. Y. App. Div. 122, 97 N. Y. Supp. 625; Heckmuller *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 541, 104 N. Y. Supp. 679; Bertolami *v.* United Engineering, etc., Co., 120 N. Y. App. Div. 192, 105 N. Y. Supp. 90; Purcell *v.* Union R. Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 1068; Watson *v.* New York Contracting Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 277.

North Carolina. — Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 52 S. E. 932; Fuller *v.* Atlantic Coast Line R. Co., 140 N. Car. 480, 53 S. E. 297; Fitzgerald *v.* Southern R. Co., 141 N. Car. 530, 54 S. E. 391.

Pennsylvania. — Riegert *v.* Thackery, 212 Pa. St. 86, 61 Atl. 614.

Rhode Island. — Petrarca *v.* Quidnick Mfg. Co., 27 R. I. 265, 61 Atl. 648; Wilson *v.* New York, etc., R. Co., (R. I. 1908) 69 Atl. 364.

South Carolina. — Willis *v.* Cherokee Falls Mfg. Co., 72 S. Car. 126, 51 S. E. 538; Keys *v.* Winnsboro Granite Co., 72 S. Car. 97, 51 S. E. 549; Bamberg *v.* Atlantic Coast Line R. Co., 72 S. Car. 389, 51 S. E. 988.

Texas. — Missouri, etc., R. Co. *v.* Sisson,

(Tex. Civ. App. 1905) 88 S. W. 371; Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29; Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279; St. Louis, etc., R. Co. *v.* Bussong, (Tex. Civ. App. 1905) 90 S. W. 73; Rockwall *v.* Heath, (Tex. Civ. App. 1905) 90 S. W. 514; Beaty *v.* El Paso Electric R. Co., (Tex. Civ. App. 1905) 91 S. W. 365; International, etc., R. Co. *v.* Hall, (Tex. Civ. App. 1905) 92 S. W. 996; Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932; San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863; Missouri, etc., R. Co. *v.* Snowden, (Tex. Civ. App. 1906) 99 S. W. 865; St. Louis, etc., R. Co. *v.* Andrews, (Tex. Civ. App. 1906) 99 S. W. 871; Citizens Telephone Co. *v.* Thomas, (Tex. Civ. App. 1907) 99 S. W. 879; San Antonio Traction Co. *v.* Haines, (Tex. Civ. App. 1907) 100 S. W. 788; Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1907) 101 S. W. 453; Foley *v.* Northrup, (Tex. Civ. App. 1907) 105 S. W. 229; Morgan *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1908) 110 S. W. 978.

Vermont. — Williams *v.* Norton, (Vt. 1908) 69 Atl. 146.

Virginia. — Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373.

Washington. — Schwaninger *v.* McNeeley, 44 Wash. 447, 87 Pac. 514; Graves *v.* Washington Water Power Co., 44 Wash. 675, 87 Pac. 956; Noren *v.* Larson Lumber Co., (Wash. 1907) 89 Pac. 563; Welch *v.* Fransioli, (Wash. 1907) 90 Pac. 644.

Wisconsin. — Zentner *v.* Oshkosh Gaslight Co., 126 Wis. 196, 105 N. W. 911; Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88.

But It Is Not Necessarily Sufficient that the defendant used as much care in the protection of his neighbor's property as in the protection of his own. Brown Stove Co. *v.* Chattahoochee, etc., Co., 1 Ga. App. 609, 57 S. E. 1043.

Such Care as the Great Mass of Mankind would have exercised. Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048.

"The Great Majority of Men." — Olwell *v.* Skobis, 126 Wis. 308, 105 N. W. 777.

The Ideal Prudent Man. — Jones *v.* American Warehouse Co., 138 N. Car. 546, 51 S. E. 106; Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

Every Prudent Man. — Sanders *v.* Central of Georgia R. Co., 123 Ga. 763, 51 S. E. 728.

"Such a Degree of Solicitude as persons of average prudence would exercise." Wolf *v.* City R. Co., (Oregon 1907) 91 Pac. 460.

Care of an "Ordinarily Careful, Prudent, and Humane Person." — Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480.

"Reasonably Prudent and Cautious Person." — Smith *v.* Kansas City, 125 Mo. App. 150, 101 S. W. 1118.

Rule of Ordinary or Reasonable Care the Only Rule. — Whittacker *v.* Brooklyn, etc., R. Co., 110 N. Y. App. Div. 767, 97 N. Y. Supp. 414; Walsh *v.* Yonkers R. Co., 114 N. Y. App. Div. 797, 100 N. Y. Supp. 278; Missouri Pac. R. Co. *v.* Walters, (Kan. 1908) 96 Pac. 346; Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602; Pomroy *v.* Bangor, etc., R. Co., 102 Me. 497, 67 Atl. 561; Toledo, etc., R. Co. *v.* Sullivan, (Ind. App. 1908) 83 N. E. 1024; Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593; Millmore *v.* Boston El. R. Co., 194 Mass. 323, 80 N. E. 445.

But this may imply a high degree of vigilance or precaution. Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815; Faulkner *v.* Birch, 120 Ill. App. 281; Scanlan *v.* Chicago Union Traction Co., 127 Ill. App. 406; Harton *v.* Forest City Telephone Co., (N. Car. 1907) 59 S. E. 1022; Warren First Nat. Bank *v.* Gillen, 27 Ohio Cir. Ct. 609; Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. App. 1906) 98 S. W. 892; Bice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

465. 1. *England.* — Atherton *v.* London, etc., R. Co., 93 L. T. N. S. 464.

United States. — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709; Chunn *v.* City, etc., R. Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63; Pittsburgh R. Co. *v.* Chapman, (C. C. A.) 145 Fed. 886; Chicago, etc., R. Co. *v.* O'Brien, (C. C. A.) 153 Fed. 511; The Chester W. Chapin, 155 Fed. 854; Armour *v.* Kollmeyer, (C. C. A.) 161 Fed. 78; Springer *v.* St. Louis Southwestern R. Co., (C. C. A.) 161 Fed. 801.

Alabama. — Southern R. Co. *v.* McGowan, (Ala. 1907) 43 So. 378; Carleton *v.* Central of Georgia R. Co., (Ala. 1908) 46 So. 495.

Arkansas. — Choctaw, etc., R. Co. *v.* Hickey, 81 Ark. 579, 99 S. W. 839.

California. — Bresee *v.* Los Angeles Traction Co., 149 Cal. 131, 85 Pac. 152; Maxwell *v.* Fresno City R. Co., 4 Cal. App. 745, 89 Pac. 367; Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976; Doherty *v.* California Nav., etc., Co., (Cal. App. 1907) 91 Pac. 419; Scott *v.* San Bernardino Valley Traction Co., (Cal. 1908) 93 Pac. 677.

Colorado. — Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337; Caughlin *v.* Campbell-Sell Baking Co., 39 Colo. 148, 89 Pac. 53; Lintz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Connecticut. — Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020; Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888; Garfield *v.* Hartford, etc., St. R. Co., (Conn. 1907) 67 Atl. 890.

Delaware. — Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589.

Florida. — Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183; Gracy *v.* Atlantic Coast Line R. Co., 53 Fla. 350, 42 So. 903; Seaboard Air Line R. Co. *v.* Smith, 53 Fla. 375, 43 So. 235.

Georgia. — Savannah Electric Co. *v.* Bell, 124 Ga. 663, 53 S. E. 109; Talmadge *v.* Central of Georgia R. Co., 125 Ga. 400, 54 S. E. 128; Rollestone *v.* Cassirer, 3 Ga. App. 161, 59 S. E. 442.

Illinois. — Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821; Masonic Temple Safety Deposit Co. *v.* Langfelt, 117 Ill. App. 652; Larsen *v.* Chicago Union Traction Co., 131 Ill. App. 286; Illinois Steel Co. *v.* Koshinski, 135 Ill. App. 587.

Indiana. — Indiana Springs Co. *v.* Brown, 165 Ind. 465, 74 N. E. 615; Lake Erie, etc., R. Co. *v.* Ford, 167 Ind. 205, 78 N. E. 969; Pittsburgh, etc., R. Co. *v.* Simons, 168 Ind. 333, 79 N. E. 911; Pittsburgh, etc., R. Co. *v.* Rose, (Ind. App. 1907) 79 N. E. 1094; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N E. 95; Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510.

Iowa. — Hill *v.* Glenwood, 124 Iowa 483, 100 N. W. 522, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 465; Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593; Hartman *v.* Chicago, etc., R. Co., 132 Iowa 582, 110 N. W. 10; Raber *v.* Hinds, 133 Iowa 312, 110 N. W. 597; Ramsey *v.* Cedar Rapids, etc., R. Co., (Iowa 1907) 112 N. W. 798.

Kansas. — Johnson *v.* Veneman, 75 Kan. 278, 89 Pac. 677; Atchison, etc., R. Co. *v.* McElroy, (Kan. 1907) 91 Pac. 785; Metropolitan St. R. Co. *v.* Fawcett, (Kan. 1907) 92 Pac. 543.

Kentucky. — Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Adkisson *v.* Louisville, etc., R. Co., (Ky. 1908) 110 S. W. 284.

Maine. — Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602; Pomroy *v.* Bangor, etc., R. Co., 102 Me. 497, 67 Atl. 561.

Maryland. — Mattingly *v.* Montgomery, (Md. 1907) 68 Atl. 205; Chambers *v.* Woodbury Mfg. Co., (Md. 1907) 68 Atl. 290.

Massachusetts. — McCormack *v.* Boston El. R. Co., 188 Mass. 342, 74 N. E. 599; Rubinovitch *v.* Boston El. R. Co., 192 Mass. 119, 77 N. E. 895.

Michigan. — Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395; Cousineau *v.* Muskegon Traction, etc., Co., 145 Mich. 314, 108 N. W. 720; Allen *v.* Bainbridge, 145 Mich. 366, 108 N. W. 732; Barnum *v.* Grand Trunk Western R. Co., 148 Mich. 370, 111 N. W. 1036.

Minnesota. — Raasch *v.* Elite Laundry Co., 98 Minn. 357, 108 N. W. 477; Harper *v.* St. Paul City R. Co., 99 Minn. 253, 109 N. W. 227; Mahoney *v.* Maxfield, 102 Minn. 377, 113 N. W. 904.

Mississippi. — Jackson Electric R., etc., Co. *v.* Waycaster, (Miss. 1908) 46 So. 135.

Missouri. — Klein *v.* St. Louis Transit Co., 117 Mo. App. 691, 93 S. W. 281; Haley *v.* Missouri Pac. R. Co., 197 Mo. 15, 93 S. W. 1120; Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; Higgins *v.* St. Louis, etc., R. Co., 197 Mo. 300, 95 S. W. 863; American Storage, etc., Co. *v.* St. Louis Transit Co., 120 Mo. App. 410. 97 S. W. 184; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Feddeck *v.* St. Louis Car Co., 125 Mo. App. 24, 102 S. W. 675; Hall *v.* Compton, (Mo. App. 1908) 108 S. W. 1122.

Nebraska. — Coffey *v.* Omaha, etc., R. Co., (Neb. 1907) 112 N. W. 589; Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285.

New York. — Wood *v.* Wyeth, 106 N. Y. App. Div. 21, 94 N. Y. Supp. 360; Quinn *v.* New York City R. Co., (Supm. Ct. App. T.) 94 N. Y. Supp. 560; Bellinger *v.* Broadhead, (County Ct.) 52 Misc. (N. Y.) 57, 102 N. Y. Supp. 381; Schell *v.* German Flatts, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116; Corr *v.* New York, 121 N. Y. App. Div. 578, 106 N. Y. Supp. 280.

North Carolina. — Fuller *v.* Atlantic Coast Line R. Co., 140 N. Car. 480, 53 S. E. 297.

Oregon. — Wolf *v.* City R. Co., (Oregon 1907) 91 Pac. 460.

Pennsylvania. — Sheffer *v.* Roesch, 215 Pa. St. 287, 64 Atl. 511; Bickel *v.* Pennsylvania R. Co., 217 Pa. St. 456, 66 Atl. 756; Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877.

South Carolina. — Rochester *v.* Bull, 78 S. Car. 249, 58 S. E. 766.

Texas. — Drake *v.* San Antonio, etc., R. Co., 99 Tex. 240, 89 S. W. 407; Missouri, etc., R. Co. *v.* Sanders, (Tex. Civ. App. 1906) 94 S. W. 149; Houston, etc., R. Co. *v.* Oram, (Tex. Civ. App. 1907) 107 S. W. 74; Ft. Worth, etc., R. Co. *v.* Spear, (Tex. Civ. App. 1908) 107 S. W. 613; El Paso, etc., R. Co. *v.* Polk, (Tex. Civ. App. 1908) 108 S. W. 761; Houston, etc., R. Co. *v.* Patrick, (Tex. Civ. App. 1908) 109 S. W. 1097; St. Louis Southwestern R. Co. *v.* Davis, (Tex. Civ. App. 1908) 110 S. W. 939.

Utah. — Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402; Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Virginia. — Virginia Iron, etc., Co. *v.* Tomlinson, 104 Va. 249, 51 S. E. 362; Chesapeake, etc., R. Co. *v.* Farrow, 106 Va. 137, 55 S. E. 569.

Washington. — Sullivan *v.* Seattle Electric Co., 44 Wash. 53, 86 Pac. 786; Plattor *v.* Seattle Electric Co., 44 Wash. 408, 87 Pac. 489; Welch *v.* Fransioli, (Wash. 1907) 90 Pac. 644.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016; Bowles *v.* Chesapeake, etc., R. Co., 61 W. Va. 272, 57 S. E. 131.

Wisconsin. — Wilbert *v.* F. Zurheide Brick Co., 129 Wis. 1, 106 N. W. 1058.

"Apart from the Situation and Surrounding Circumstances, no act or omission can be pronounced negligent." Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202.

No Hard and Fast Rule. — United R., etc., Co. *v.* Watkins, 102 Md. 264, 62 Atl. 234.

The Highest Degree of Care should be exercised where there is danger to life. Baltimore, etc., R. Co. *v.* Kleespies, 39 Ind. App. 151, 76 N. E. 1015.

The "Quantum of Diligence" required of the two parties is not always the same. Missouri, etc., R. Co. *v.* Brown, (Tex. Civ. App. 1907) 101 S. W. 464.

466. 1. Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Goddard *v.* Enzler, 123 Ill. App. 108; Chicago City R. Co. *v.* Strong, 129 Ill. App. 511; Gregory *v.* Slaughter, (Ky. 1907) 99 S. W. 247;

Charron *v.* Union Carbide Co., (Mich. 1908) 115 N. W. 718; Mascitelli *v.* Union Carbide Co., (Mich. 1908) 115 N. W. 721; Hovarka *v.* St. Louis Transit Co., 191 Mo. 441, 90 S. W. 1142; Hewett *v.* Woman's Hospital Aid Assoc., 73 N. H. 556, 64 Atl. 190; Dunn *v.* Asheville, etc., R. Co., 141 N. Car. 521, 54 S. E. 416; Stahle *v.* Poth, (Pa. 1908) 69 Atl. 864; Southern R. Co. *v.* Hansbrough, 105 Va. 527, 54 S. E. 17.

Dangerous Instrumentalities or Circumstances require great care. The William E. Reis, 143 Fed. 1013; Bowley *v.* Mangrum, 3 Cal. App. 229, 84 Pac. 996; Davis *v.* Ohio Valley Banking, etc., Co., (Ky. 1908) 106 S. W. 843; Wilson *v.* Escanaba Woodenware Co., (Mich. 1908) 116 N. W. 198; Fogarty *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 69 Atl. 964; Sawyer *v.* Roanoke R., etc., Co., 145 N. Car. 24, 58 S. E. 598; Bardsley *v.* Gill, 218 Pa. St. 56, 66 Atl. 1112; Jenison *v.* Rhode Island Suburban R. Co., (R. I. 1906) 67 Atl. 367.

Automobiles. — Brinkman *v.* Pacholke, (Ind. App. 1908) 84 N. E. 762; McFern *v.* Gardner, 121 Mo. App. 1, 97 S. W. 972.

Druggists. — Faulkner *v.* Birch, 120 Ill. App. 281; Knoefel *v.* Atkins, (Ind. App. 1907) 81 N. E. 600; Goldberg *v.* Hegeman, (Supm. Ct. App. T.) 111 N. Y. Supp. 679.

Dynamite. — Caldwell *v.* Kerbaugh, 144 Fed. 443; Anderson *v.* Smith, (Minn. 1908) 115 N. W. 743; Sowers *v.* McManus, 214 Pa. St. 244, 63 Atl. 601.

Gas. — Shirey *v.* Consumers' Gas Co., 215 Pa. St. 399, 64 Atl. 541; Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 81, 102 S. W. 608.

Gasoline. — Waters-Pierce Oil Co. *v.* Snell, (Tex. Civ. App. 1907) 106 S. W. 170.

Electricity — *Colorado.* — Colorado Springs Electric Co. *v.* Soper, 38 Colo. 126, 88 Pac. 161; Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815; Denver Consol. Electric Co. *v.* Walters, 39 Colo. 318, 89 Pac. 820.

Connecticut. — Cutler *v.* Putnam Light, etc., Co., (Conn. 1908) 68 Atl. 1006.

Delaware. — Wood *v.* Wilmington City R. Co., 5 Penn. (Del.) 369, 64 Atl. 246.

Florida. — Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516.

Idaho. — Eaton *v.* Weiser, 12 Idaho 544, 86 Pac. 541; Younie *v.* Blackfoot Light, etc., Co., (Idaho 1908) 96 Pac. 193.

Illinois. — Palestine *v.* Siler, 225 Ill. 630, 80 N. E. 345; Byron Telephone Co. *v.* Sheets, 122 Ill. App. 6.

Iowa. — Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359.

Kentucky. — Mangan *v.* Louisville Electric Light Co., 122 Ky. 476, 91 S. W. 703; Thomas *v.* Somerset, (Ky. 1906) 97 S. W. 420.

Louisiana. — Simmons *v.* Shreveport Gas., etc., Co., 116 La. 1033, 41 So. 248.

Mississippi. — Temple *v.* McComb City Electric Light, etc., Co., 89 Miss. 1, 42 So. 874.

Missouri. — Luehrmann *v.* Laclede Gaslight Co., 127 Mo. App. 213, 104 S. W. 1128; Von Trebra *v.* Laclede Gaslight Co., (Mo. 1908) 108 S. W. 559.

Montana. — Bourke *v.* Butte Electric, etc., Co., 33 Mont. 267, 83 Pac. 470.

New Jersey. — Kelly *v.* Bergen County Gas Co., (N. J. 1907) 67 Atl. 21.

New York. — Morhard *v.* Richmond Light, etc., Co., 111 N. Y. App. Div. 353, 98 N. Y. Supp. 124; Dutcher *v.* Rockland Electric Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 567.

North Carolina. — Fisher *v.* Newbern, 140 N. Car. 506, 53 S. E. 342; Horne *v.* Consolidated R., etc., Co., 144 N. Car. 375, 57 S. E. 19.

Oklahoma. — Shawnee Light, etc., Co. *v.* Sears, (Okla. 1908) 95 Pac. 449.

Oregon. — Carroll *v.* Grande Ronde Electric Co., 47 Oregon 424, 84 Pac. 389.

Pennsylvania. — Delahunt *v.* United Telephone, etc., Co., 215 Pa. St. 241, 64 Atl. 515; Eagle Hose Co. *v.* Priceburg Electric Light Co., 33 Pa. Super. Ct. 581.

Washington. — Garretson *v.* Tacoma R., etc., Co., (Wash. 1908) 96 Pac. 511.

West Virginia. — Bice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

Wisconsin. — Wilbert *v.* F. Zurheide Brick Co., 129 Wis. 1, 106 N. W. 1058.

As Governed by Character of Agency Employed. — Wright *v.* Crane, 142 Mich. 508, 106 N. W. 71.

Commensurate. — The care must be commensurate with the danger or risk. Western R. Co. *v.* Mitchell, (Ala. 1906) 41 So. 427; Illinois Cent. R. Co. *v.* Coley, (Ky. 1905) 89 S. W. 234; Illinois Cent. R. Co. *v.* Proctor, (Ky. 1905) 89 S. W. 714; Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 219, 91 S. W. 685; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Mertens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062; Hall *v.* Compton, (Mo. App. 1908) 108 S. W. 1122; Fitch *v.* Central R. Co., (N. J. 1906) 64 Atl. 992; Conway *v.* Rheims, 107 N. Y. App. Div. 289, 95 N. Y. Supp. 119; Kopper *v.* Yonkers, 110 N. Y. App. Div. 747, 97 N. Y. Supp. 425; Weaver *v.* Columbus, etc., R. Co., 76 Ohio St. 164, 81 N. E. 180; Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877; Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324; Seewald *v.* Harding Lumber Co., (Wash. 1908) 96 Pac. 221.

"Proportionate" to Danger. — Many of the cases use the expression that the care must be "proportionate" or "proportioned" to the danger. Delaware, etc., R. Co. *v.* Larnard, (C. C. A.) 161 Fed. 520; Anderson *v.* Wilmington, (Del. 1908) 70 Atl. 204; Pittsburgh, etc., R. Co. *v.* Rose, (Ind. App. 1907) 79 N. E. 1094; La Barge *v.* Union Electric Co., (Iowa 1908) 116 N. W. 816; Continental Ins. Co. *v.* Chicago, etc., R. Co., 97 Minn. 467, 107 N. W. 548; Van Horn *v.* St. Louis Transit Co., 198 Mo. 481, 95 S. W. 326; Gibler *v.* Terminal R. Assoc., 203 Mo. 208, 101 S. W. 37; O'Leary *v.* Glens Falls Gas, etc., Co., 107 N. Y. App. Div. 505, 95 N. Y. Supp. 232; Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945; Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. App. 1906) 98 S. W. 892; Citizens Telephone Co. *v.* Thomas, (Tex. Civ. App. 1907) 99 S. W. 879; Southern R. Co. *v.* Hansbrough, 107 Va. 723, 60 S. E. 58.

2. *United States.* — Chunn *v.* City, etc., R. Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63; Hoagland *v.* Canfield, 160 Fed. 146.

California. — Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976.

Colorado. — Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254.

Florida. — Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183.

Illinois. — Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821; Chicago City R. Co. *v.* Shreve, 128 Ill. App. 462.

Indiana. — Lake Erie, etc., R. Co. *v.* Ford, 167 Ind. 205, 78 N. E. 969; Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510; M. O'Connor Co. *v.* Gillaspy, (Ind. 1908) 83 N. E. 738.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Louisiana. — Cherry *v.* Louisiana, etc., R. Co., (La. 1908) 46 So. 596.

Maine. — Raymond *v.* Portland R. Co., 100 Me. 529, 62 Atl. 602; Wells *v.* Northeastern Telephone Co., 101 Me. 371, 64 Atl. 648.

Maryland. — Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202.

Massachusetts. — Partelow *v.* Newton, etc., St. R. Co., (Mass. 1907) 81 N. E. 894.

Michigan. — Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613; Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395.

Missouri. — Kappes *v.* Brown Shoe Co., 116 Mo. 154, 90 S. W. 1158; Haas *v.* St. Louis, etc., R. Co., (Mo. App. 1907) 106 S. W. 599; O'Donnell *v.* O'Neil, (Mo. App. 1908) 109 S. W. 815; Knight *v.* Donnelly, (Mo. App. 1908) 110 S. W. 687.

New Jersey. — Guinn *v.* Delaware, etc., Telephone Co., 72 N. J. L. 276, 62 Atl. 412.

New York. — Whittacker *v.* Brooklyn, etc., R. Co., 110 N. Y. App. Div. 767, 97 N. Y. Supp. 414; Walsh *v.* Yonkers R. Co., 114 N. Y. App. Div. 797, 100 N. Y. Supp. 278; Altenkirch *v.* National Biscuit Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 284.

North Carolina. — Fitzgerald *v.* Southern R. Co., 141 N. Car. 530, 54 S. E. 391.

South Carolina. — Rochester *v.* Bull, 78 S. Car. 249, 58 S. E. 766.

Texas. — Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 90 S. W. 185; International, etc., R. Co. *v.* Hall, (Tex. Civ. App. 1905) 92 S. W. 996; International, etc., R. Co. *v.* Rieden, (Tex. Civ. App. 1908) 107 S. W. 661; Rapid Transit R. Co. *v.* Strong, (Tex. Civ. App. 1908) 108 S. W. 394.

Virginia. — Chesapeake, etc., R. Co. *v.* Farrow, 106 Va. 137, 55 S. E. 569.

Reasonable Care in Emergency. — Indianapolis Traction, etc., Co. *v.* Smith, 38 Ind. App. 160, 77 N. E. 1140.

3. *United States.* — Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528; Law *v.* Central Dist. Printing, etc., Co., 140 Fed. 558; Cronin *v.* American Linen Co., 147 Fed. 755; Missel *v.* Lennox, (C. C. A.) 156 Fed. 347.

Alabama. — St. Louis, etc., R. Co. *v.* Douglas, (Ala. 1907) 44 So. 677; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177; Birmingham Southern R. Co. *v.* Kendrick, (Ala. 1908) 46 So. 588.

Connecticut. — Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020; Swain *v.* O'Loughlin, (Conn. 1907) 67 Atl. 480.

Georgia. — Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 374; Central of Georgia R. Co. *v.* Floyd, 3 Ga. App. 257, 59 S. E. 826; Whistenant *v.* Southern States Portland Cement Co., 2 Ga. App. 598, 59 S. E. 920.

Illinois. — Chicago, etc., R. Co. *v.* Kimmel, 221 Ill. 547, 77 N. E. 936; McAndrews *v.* Chicago, etc., R. Co., 222 Ill. 232, 78 N. E. 603; East St. Louis Connecting R. Co. *v.* Meeker, 229 Ill. 98, 82 N. E. 202; Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232; Bahr *v.* National Safe Deposit Co., 234 Ill. 101, 84 N. E. 717; Chicago, etc., R. Co. *v.* Gardanier, 116 Ill. App. 619; Belt R. Co. *v.* Charters, 123 Ill. App. 322.

Indiana. — Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883; Indianapolis Traction, etc., Co. *v.* Pressell, 39 Ind. App. 472, 77 N. E. 357; Evansville, etc., R. Co. *v.* Yeager, (Ind. 1908) 83 N. E. 742; Indianapolis Water Co. *v.* Harold, (Ind. 1908) 83 N. E. 993.

Iowa. — Wilson *v.* Wapello County, 129 Iowa 77, 105 N. W. 363; Croft *v.* Chicago, etc., R. Co., 132 Iowa 687, 108 N. W. 1053.

Kansas. — St. Louis, etc., R. Co. *v.* Morrison, 73 Kan. 265, 85 Pac. 295.

Kentucky. — Illinois Cent. R. Co. *v.* Cruse, (Ky. 1906) 96 S. W. 821; Zehe *v.* Louisville, (Ky. 1906) 96 S. W. 918; Howard *v.* Hunter, (Ky. 1907) 104 S. W. 723; Thomas *v.* Cincinnati, etc., R. Co., (Ky. 1907) 105 S. W. 379; Swartwood *v.* Louisville, etc., R. Co., (Ky. 1908) 111 S. W. 305.

Louisiana. — Mayronne *v.* Keegan, 117 La. 661, 42 So. 212.

Maryland. — Chambers *v.* Woodbury Mfg. Co., (Md. 1907) 68 Atl. 290.

Massachusetts. — Mahan *v.* Newton, etc., St. R. Co., 189 Mass. 1, 75 N. E. 59; Cooper *v.* Cashman, 190 Mass. 75, 76 N. E. 461; Dahlin *v.* Walsh, 192 Mass. 163, 77 N. E. 830; Dalton *v.* Gibson, 192 Mass. 1, 77 N. E. 1035; Glennon *v.* Everson, 194 Mass. 314, 80 N. E. 476.

Michigan. — Sweet *v.* Detroit United R. Co., 141 Mich. 650, 105 N. W. 132.

Minnesota. — Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827.

Mississippi. — Illinois Cent. R. Co. *v.* Lucas, 89 Miss. 411, 42 So. 607.

Missouri. — Ruppenthal *v.* St. Louis, 190 Mo. 213, 88 S. W. 612.

Nebraska. — Powell *v.* New Omaha Thomson-Houston Electric Light Co., 74 Neb. 280, 104 N. W. 162; Trouton *v.* New Omaha Thomson-Houston Electric Light Co., (Neb. 1906) 110 N. W. 569.

New Hampshire. — Hamel *v.* Newmarket Mfg. Co., 73 N. H. 386, 62 Atl. 592; Dustin *v.* Curtis, 74 N. H. 266, 67 Atl. 220; Klineintie *v.* Nashua Mfg. Co., (N. H. 1907) 67 Atl. 573.

New Jersey. — Prosser *v.* West Jersey, etc., R. Co., (N. J. 1907) 68 Atl. 58.

New York. — Wieber *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 81, 96 N. Y. Supp. 28; Hordern *v.* Salvation Army, (Supm. Ct. App. Div.) 109 N. Y. Supp. 131; Kooperberg *v.* Sussman, (Supm. Ct. App. T.) 110 N. Y. Supp. 319.

North Carolina. — Peterson *v.* South, etc., R. Co., 143 N. Car. 260, 55 S. E. 618; McGehee *v.* Norfolk, etc., R. Co., (N. Car. 1908) 60 S. E. 912.

Ohio. — Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66.

Pennsylvania. — Lone *v.* Philadelphia, 212 Pa. St. 125, 61 Atl. 810; Politowski *v.* Burnham, 214 Pa. St. 165, 63 Atl. 459; Chroust *v.* Acme Bldg., etc., Assoc., 214 Pa. St. 179, 63 Atl. 595; Davis *v.* Pennsylvania R. Co., 218 Pa. St. 463, 67 Atl. 777.

Rhode Island. — Prospert *v.* Rhode Island Suburban R. Co., (R. I. 1907) 67 Atl. 522; Macartney *v.* Colwell, (R. I. 1908) 68 Atl. 719; McGrath *v.* Misch, (R. I. 1908) 69 Atl. 8.

South Carolina. — Franks *v.* Southern Cotton Oil Co., 78 S. Car. 10, 58 S. E. 960.

South Dakota. — Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 631, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 466; Phillips *v.* International Harvester Co., (S. Dak. 1908) 117 N. W. 146.

Texas. — Texas Cent. R. Co. *v.* Harbison, (Tex. Civ. App. 1905) 88 S. W. 414; Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932; Gulf, etc., R. Co. *v.* Wittnebert, (Tex. Civ. App. 1907) 104 S. W. 424; St. Louis Southwestern R. Co. *v.* Davis, (Tex. Civ. App. 1908) 110 S. W. 939; Louthian *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1908) 111 S. W. 665.

Utah. — Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

Virginia. — Walker *v.* Potomac, etc., R. Co., 105 Va. 226, 53 S. E. 113; Norfolk, etc., R. Co. *v.* Stegall, 105 Va. 538, 54 S. E. 19.

Washington. — Miller *v.* Moran Bros. Co., 39 Wash. 631, 81 Pac. 1089; Krebbs *v.* Oregon R., etc., Co., 40 Wash. 138, 82 Pac. 130, 84 Pac. 609, 87 Pac. 59.

Wisconsin. — Compty *v.* C. H. Starke Dredge, etc., Co., 129 Wis. 622, 109 N. W. 650.

"Where There Is No Duty there can be no negligence." McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111.

One Who Voluntarily Assumes a duty may become responsible for its performance with reasonable care. Hanlon *v.* Central R. Co., 187 N. Y. 73, 79 N. E. 846.

467. 2. There Must Be Ownership or Control. — Long *v.* John Stephenson Co., 73 N. J. L. 186, 63 Atl. 910; Collier *v.* Great Northern R. Co., 40 Wash. 639, 82 Pac. 935.

3. *United States.* — International Mercantile Marine Co. *v.* Gaffney, (C. C. A.) 143 Fed. 305.

California. — Johnson *v.* Helbing, (Cal. App. 1907) 92 Pac. 360; Houghton *v.* Loma Prieta Lumber Co., (Cal. 1907) 93 Pac. 82; Houghton *v.* Loma Prieta Lumber Co., (Cal. 1907) 93 Pac. 377.

Georgia. — West *v.* Brakelow Steamship Co., 124 Ga. 658, 52 S. E. 888.

Illinois. — Wheeler *v.* Pullman Palace Car Co., 131 Ill. App. 262.

Iowa. — Brown *v.* Rockwell City Canning Co., 132 Iowa 631, 110 N. W. 12.

Kansas. — Chute *v.* Moeser, (Kan. 1908) 95 Pac. 398.

Maryland. — Symons *v.* Allegany County, 105 Md. 254, 65 Atl. 1067.

Massachusetts. — Moret *v.* George A. Fuller Co., 195 Mass. 118, 80 N. E. 789; Coman *v.* Alles, (Mass. 1908) 83 N. E. 1097.

New York. — Washington *v.* Episcopal Church, 111 N. Y. App. Div. 402, 97 N. Y. Supp. 1072; McNulty *v.* Ludwig, (Supm. Ct. App. Div.) 109 N. Y. Supp. 703.

Oklahoma. — Missouri, etc., R. Co. *v.* Ferguson, (Okla. 1908) 96 Pac. 755.

Pennsylvania. — Noggle *v.* Carlisle, etc., R. Co., 215 Pa. St. 357, 64 Atl. 547.

West Virginia. — Anderson *v.* Tug River Coal, etc., Co., 59 W. Va. 301, 53 S. E. 713.

As illustrating a similar doctrine in case of the lease of an appliance, see Haigh *v.* Edelmeyer, etc., Hod Elevator Co., 123 N. Y. App. Div. 376, 107 N. Y. Supp. 937.

Leased Railroad Lines. — Curtis *v.* Cleveland, etc., R. Co., 140 Fed. 777.

If the Use Permitted Is Intrinsically Dangerous, the rule is otherwise. Sherman House Hotel Co. *v.* Gallagher, 129 Ill. App. 557; Falender *v.* Blackwell, 39 Ind. App. 121, 79 N. E. 393; St. Louis, etc., R. Co. *v.* Madden, (Kan. 1908) 93 Pac. 586; Rock *v.* American Constr. Co., (La. 1908) 45 So. 741; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

4. Lindstrom *v.* Pennsylvania Co., 212 Pa. St. 391, 61 Atl. 940; Chroust *v.* Acme Bldg., etc., Assoc., 214 Pa. St. 179, 63 Atl. 595.

5. Richardson *v.* Nelson, 221 Ill. 254, 77 N. E. 583; French *v.* Boston Coal Co., 195 Mass. 334, 81 N. E. 265; De Agramonte *v.* Mt. Vernon, (Supm. Ct. App. Div.) 108 N. Y. Supp. 236; Newman *v.* New York, (Supm. Ct. App. T.) 108 N. Y. Supp. 676; Kampman *v.* Rothwell, (Tex. Civ. App. 1908) 107 S. W. 120.

Railroads. — St. Louis, etc., R. Co. *v.* Chappell, 83 Ark. 94, 102 S. W. 893.

6. *Alabama.* — Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Montgomery *v.* Halse, (Ala. 1906) 40 So. 665.

Illinois. — Chicago *v.* Jarvis, 226 Ill. 614, 80 N. E. 1079; Hearst's Chicago American *v.* Spiss, 117 Ill. App. 436.

Iowa. — Connolly *v.* Des Moines Invest. Co., 130 Iowa 633, 105 N. W. 400; Elzig *v.* Bales, (Iowa 1907) 112 N. W. 540.

Kansas. — St. Louis, etc., R. Co. *v.* Madden, (Kan. 1908) 93 Pac. 586.

Kentucky. — Mitchell *v.* Brady, (Ky. 1907) 99 S. W. 266; Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606.

Massachusetts. — Torphy *v.* Fall River, 188 Mass. 310, 74 N. E. 465; Bennett *v.* Everett, 191 Mass. 364, 77 N. E. 886; Boucher *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 15.

Michigan. — Barker *v.* Kalamazoo, 146 Mich. 257, 109 N. W. 427; Davis *v.* Adrian, 147 Mich. 300, 110 N. W. 1084.

Missouri. — Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141; Hollis *v.* Kansas City, Mo., Retail Merchants' Assoc., 205 Mo. 508, 103 S. W. 32; O'Hara *v.* Laclede Gaslight Co., (Mo. App. 1908) 110 S. W. 642.

New York. — Lubelsky *v.* Silverman, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 133, 96 N. Y. Supp. 1056; Scheller *v.* Silbermintz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 175, 98 N. Y. Supp. 230; Rosenberg *v.* Zeitchik, (Supm. Ct.

App. T.) 52 Misc. (N. Y.) 153, 101 N. Y. Supp. 591.

North Carolina. — Kinsey *v.* Kingston, 145 N. Car. 106, 58 S. E. 912.

Pennsylvania. — Bucher *v.* Sunbury, 216 Pa. St. 89, 64 Atl. 906.

Tennessee. McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700; Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902.

Texas. — Pacific Express Co. *v.* Shivers, (Tex. Civ. App. 1906) 92 S. W. 46; Kampmann *v.* Rothwell, (Tex. 1908) 109 S. W. 1089; Missouri, etc., R. Co. *v.* McDuffey, (Tex. Civ. App. 1908) 109 S. W. 1104.

Virginia. — Southern R. Co. *v.* Newton, (Va. 1908) 60 S. E. 625.

Canada. — See Flynn *v.* Toronto Industrial Exhibition Assoc., 9 Ont. L. Rep. 582.

Sleeping Cars of Third Party. — Louisville, etc., R. Co. *v.* Church, (Ala. 1908) 46 So. 457.

Statutory Duty. — The Anna M. Fahy, (C. C. A.) 153 Fed. 866; Choctaw, etc., R. Co. *v.* Wilker, 16 Okla. 384, 84 Pac. 1086.

7. Pennsylvania Co. *v.* Rossett, 116 Ill. App. 342; Cleveland, etc., R. Co. *v.* Miller, 165 Ind. 381, 74 N. E. 509; Hale *v.* New York, etc., R. Co., 190 Mass. 84, 76 N. E. 656; San Filippo *v.* American Bill Posting Co., 188 N. Y. 514, 81 N. E. 463; Weber *v.* Lieberman, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 593, 94 N. Y. Supp. 460; Shields *v.* Pugh, 122 N. Y. App. Div. 586, 107 N. Y. Supp. 604.

468. 2. Casey *v.* Hoover, 114 Mo. App. 47, 89 S. W. 330.

3. **But One Who Voluntarily Undertakes** a duty may become responsible in case of a negligent discharge of it. Hopkins *v.* Grand Rapids, etc., R. Co., 147 Mich. 339, 110 N. W. 1064.

469. 1. **Purchaser May Become Liable by Contract with Vendor.** — Gray *v.* Grand Trunk Western R. Co., 156 Fed. 736.

2. *United States.* — Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528; Munroe *v.* Ley, (C. C. A.) 156 Fed. 468.

Alabama. — Southern R. Co. *v.* Johnson, 144 Ala. 361, 39 So. 376; Birmingham R., etc., Co. *v.* Adams, 146 Ala. 267, 40 So. 385; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177.

Georgia. — Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 374; Georgia R., etc., Co. *v.* Williams, 2 Ga. App. 272, 59 S. E. 846; Harden *v.* Georgia R. Co., 3 Ga. App. 344, 59 S. E. 1122.

Illinois. — McAndrews *v.* Chicago, etc., R. Co., 222 Ill. 232, 78 N. E. 603; Thompson *v.* Cleveland, etc., R. Co., 226 Ill. 542, 80 N. E. 1054; East St. Louis Connecting R. Co. *v.* Meeker, 229 Ill. 98, 82 N. E. 202; Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232; Chicago, etc., R. Co. *v.* Gardanier, 116 Ill. App. 619.

Indiana. — Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883; Evansville, etc., R. Co. *v.* Yeager, (Ind. 1908) 83 N. E. 742.

Iowa. — Cavanaugh *v.* Centerville Block Coal Co., 131 Iowa 700, 109 N. W. 303; Steele *v.* Grahl-Peterson Co., (Iowa 1906) 109 N. W. 882.

Kansas. — U. S. Express Co. *v.* Everest, 72 Kan. 517, 83 Pac. 817.

Kentucky. — Louisville, etc., R. Co. *v.* Hathaway, (Ky. 1905) 89 S. W. 724; Johnson *v.* Louisville, etc., R. Co., (Ky. 1906) 91 S. W. 707; Mobile, etc., R. Co. *v.* Dowdy, (Ky. 1906) 91 S. W. 709; Pollard *v.* Kentucky, etc., R. Co., (Ky. 1906) 97 S. W. 735.

Maryland. — Chambers *v.* Woodbury Mfg. Co., (Md. 1907) 68 Atl. 290.

Massachusetts. — Mahan *v.* Newton, etc., St. R. Co., 189 Mass. 1, 75 N. E. 59; McDonough *v.* Boston El. R. Co., 191 Mass. 509, 78 N. E. 141.

Mississippi. — Illinois Cent. R. Co. *v.* Lucas, 89 Miss. 411, 42 So. 607.

Missouri. — Carr *v.* Missouri Pac. R. Co., 195 Mo. 214, 92 S. W. 874.

Nebraska. — Trouton *v.* New Omaha Thompson-Houston Electric Light Co., (Neb. 1906) 110 N. W. 569.

New Hampshire. — Hamel *v.* Newmarket Mfg. Co., 73 N. H. 386, 62 Atl. 592; Hewett *v.* Woman's Hospital Aid Assoc., 73 N. H. 556, 64 Atl. 190; Lord *v.* Boston, etc., R. Co., 74 N. H. 39, 65 Atl. 111.

New Jersey. — Prosser *v.* West Jersey, etc., R. Co., 72 N. J. L. 342, 63 Atl. 494; Ball *v.* Ransome Concrete Machinery Co., (N. J. 1907) 68 Atl. 104.

New York. — Wieber *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 81, 96 N. Y. Supp. 28; Crimmins *v.* United Engineering, etc., Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 622, 96 N. Y. Supp. 1032; Washington *v.* Episcopal Church, 111 N. Y. App. Div. 402, 97 N. Y. Supp. 1072.

North Carolina. — McGehee *v.* Norfolk, etc., R. Co., (N. Car. 1908) 60 S. E. 912; Morrow *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 621.

Ohio. — Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66.

Oregon. — Harvey *v.* Deep River Logging Co., (Oregon 1907) 90 Pac. 501.

South Carolina. — Franks *v.* Southern Cotton Oil Co., 78 S. Car. 10, 58 S. E. 960.

Texas. — Texas, etc., R. Co. *v.* McDonald, 99 Tex. 207, 88 S. W. 201; Houston, etc., R. Co. *v.* O'Donnell, 99 Tex. 636, 92 S. W. 409; Greenville *v.* Pitts, (Tex. 1908) 107 S. W. 50; St. Louis Southwestern R. Co. *v.* Davis, (Tex. Civ. App. 1908) 110 S. W. 939; Louthian *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1908) 111 S. W. 665.

Virginia. — Walker *v.* Potomac, etc., R. Co., 105 Va. 226, 53 S. E. 113.

It Is Error to instruct the jury as to the defendant's duty to others than the plaintiff. Baltimore, etc., R. Co. *v.* Lee, 106 Va. 32, 55 S. E. 1.

470. 1. Anderson *v.* Settergren, 100 Minn. 276, 111 N. W. 279.

2. Anderson *v.* Settergren, 100 Minn. 296, 111 N. W. 279, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 470; Everett *v.* Great Northern R. Co., 100 Minn. 309, 111 N. W. 281.

3. *United States.* — Pittsburgh R. Co. *v.* Chapman, (C. C. A.) 145 Fed. 886.

California. — Grant *v.* Sunset Telephone, etc., Co., (Cal. App. 1908) 94 Pac. 368.

Colorado. — Denver, etc., R. Co. *v.* Mitchell, (Colo. 1908) 94 Pac. 289.

Indiana. — Indiana Springs Co. *v.* Brown, 165 Ind. 465, 74 N. E. 615; McIntyre *v.* Orner, 166 Ind. 57, 76 N. E. 750; Indianapolis Water Co. *v.* Harold, (Ind. App. 1906) 79 N. E. 542; Indianapolis St. R. Co. *v.* Demaree, (Ind. App. 1907) 80 N. E. 687; Ft. Wayne Cooperage Co. *v.* Page, (Ind. 1908) 84 N. E. 145; Brinkman *v.* Pacholke, (Ind. App. 1908) 84 N. E. 762.

Iowa. — Heinmiller *v.* Winston, 131 Iowa 132, 107 N. W. 1102; House *v.* Cramer, 134 Iowa 374, 112 N. W. 3; Strand *v.* Grinnell Automobile Garage Co., (Iowa 1907) 113 N. W. 488; Horak *v.* Dougherty, (Iowa 1908) 114 N. W. 883.

Kansas. — Dulin *v.* Metropolitan St. R. Co., 72 Kan. 676, 83 Pac. 821; Falkenberg *v.* Stout, 75 Kan. 172, 88 Pac. 874; Atchison, etc., R. Co. *v.* Wilkie, (Kan. 1907) 90 Pac. 775.

Kentucky. — Gregory *v.* Slaughter, (Ky. 1907) 99 S. W. 247; Glinn *v.* Louisville, etc., R. Co., (Ky. 1907) 105 S. W. 437.

Massachusetts. — McCormack *v.* Boston El. R. Co., 188 Mass. 342, 74 N. E. 599; Woodall *v.* Boston El. R. Co., 192 Mass. 308, 78 N. E. 446; Sibley *v.* Nason, (Mass. 1907) 81 N. E. 887.

Michigan. — Bishop *v.* Baldwin, 147 Mich. 22, 110 N. W. 139.

Mississippi. — Temple *v.* McComb City Electric Light, etc., Co., 89 Miss. 1, 42 So. 874.

Missouri. — Shaw *v.* Goldman, 116 Mo. App. 338, 92 S. W. 165, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 470; Phelen *v.* Granite Bituminous Paving Co., 115 Mo. App. 423, 91 S. W. 440; Hall *v.* Compton, (Mo. App. 1908) 108 S. W. 1122.

Nevada. — Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210.

New Hampshire. — Minot *v.* Boston, etc., R. Co., 73 N. H. 317, 61 Atl. 509.

New Jersey. — Guinn *v.* Delaware, etc., Telephone Co., 72 N. J. L. 276, 62 Atl. 412; Righter *v.* Jersey City Water Supply Co., 73 N. J. L. 298, 63 Atl. 6.

New York. — Fish *v.* Waverly Electric Light, etc., Co., 189 N. Y. 336, 82 N. E. 150; Weitzmann *v.* A. L. Barber Asphalt Co., 190 N. Y. 452, 83 N. E. 477; San Filippo *v.* American Bill Posting Co., 112 N. Y. App. Div. 395, 98 N. Y. Supp. 661, *affirmed* 188 N. Y. 514, 81 N. E. 463; Breen *v.* Gill, 125 N. Y. App. Div. 642, 110 N. Y. Supp. 64.

South Carolina. — Davis *v.* Charleston, etc., R. Co., 72 S. Car. 112, 51 S. E. 552.

Utah. — Gesas *v.* Oregon Short Line R. Co., (Utah 1907) 93 Pac. 274.

Washington. — Fireman's Fund Ins. Co. *v.* Northern Pac. R. Co., (Wash. 1907) 91 Pac. 13.

West Virginia. — Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893; Truax *v.* South Penn Oil Co., (W. Va. 1907) 59 S. E. 517.

Wisconsin. — Compty *v.* C. H. Starke Dredge, etc., Co., 129 Wis. 622, 109 N. W. 650.

"'Due Care' is a duty lying at the root of the social compact." Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 520.

4. Leading Case — Heaven v. Pender Followed. — Loehring *v.* Westlake Constr. Co., 113 Mo. App. 163, 94 S. W. 747; Continental Fruit Express *v.* Leas, (Tex. Civ. App. 1908) 110 S. W. 129.

Maxim. — Goforth *v.* Southern R. Co., 144 N. Car. 569, 57 S. E. 209; Preston *v.* Toronto R. Co., 11 Ont. L. Rep. 56.

Limits to Maxim. — Beckham *v.* Seaboard Air Line R. Co., 127 Ga. 550, 56 S. E. 638.

The General Principle is exemplified in the following cases: The City of Seattle, (C. C. A.) 150 Fed. 537, 10 Ann. Cas. 159; St. Louis, etc., R. Co. *v.* Day, (Ark. 1908) 110 S. W. 220; Chicago, etc., R. Co. *v.* Lannon, (Ark. 1908) 112 S. W. 177; Freyer *v.* Aurora, etc., R. Co., 123 Ill. App. 423; Variety Mfg. Co. *v.* Landaker, 129 Ill. App. 630; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 95; Raber *v.* Hinds, 133 Iowa 312, 110 N. W. 597; Illinois Cent. R. Co. *v.* Martin, (Ky. 1908) 110 S. W. 815; Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Minot *v.* Boston, etc., R. Co., 73 N. H. 317, 61 Atl. 509; Fiesel *v.* New York Edison Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 130.

Duty to Shelter Sick Person. — Depue *v.* Flateau, 100 Minn. 303, 111 N. W. 1, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 470. *Compare* Tucker *v.* Burt, (Mich. 1908) 115 N. W. 722.

Humane Duty of Carrier to Injured Passenger. — Yazoo, etc., R. Co. *v.* Byrd, 89 Miss. 308, 42 So. 286.

Discovered Peril. — Indiana Springs Co. *v.* Brown, 165 Ind. 465, 74 N. E. 615; Ross *v.* Sibley, etc., R. Co., 116 La. 789, 41 So. 93; San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863; El Paso Electric R. Co. *v.* Kelly, (Tex. Civ. App. 1908) 109 S. W. 415. See also the title Contributory Negligence, **382.** 5.

471. 1. See dissenting opinion of Munn, J., in Johnson *v.* Paducah Laundry Co., (Ky. 1906) 92 S. W. 330, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 471.

When Status of Injured Person Immaterial. — Minot *v.* Boston, etc., R. Co., 73 N. H. 317, 61 Atl. 509.

2. *United States.* — Chunn *v.* City, etc., R. Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63; The City of Seattle, (C. C. A.) 150 Fed. 537, 10 Ann. Cas. 159; The Wyneric, 156 Fed. 276; Columbia Box, etc., Co. *v.* Drown, (C. C. A.) 156 Fed. 459.

Alabama. — Alabama Steel, etc., Co. *v.* Clements, 146 Ala. 259, 40 So. 971.

Arizona. — Santa Fé, etc., R. Co. *v.* Ford, (Ariz. 1906) 85 Pac. 1072.

Arkansas. — St. Louis, etc., R. Co. *v.* Cleere, 76 Ark. 377, 88 S. W. 995.

Georgia. — Atlantic, etc., R. Co. *v.* Owens, 123 Ga. 393, 51 S. E. 404; Atlantic Coast Line R. Co. *v.* O'Neill, 127 Ga. 685, 56 S. E. 986; Central of Georgia R. Co. *v.* Hunter, 128 Ga. 600, 58 S. E. 154; Mandeville Mills *v.* Dale, 2 Ga. App. 607, 58 S. E. 1060.

Illinois. — Pauckner *v.* Wakem, 231 Ill. 276, 83 N. E. 202; Chicago, etc., R. Co. *v.* Walker, 118 Ill. App. 397; B. Shoninger Co. *v.* Mann, 121 Ill. App. 275.

Indiana. — Rink *v.* Lowry, 38 Ind. App. 132, 77 N. E. 967; Baltimore, etc., R. Co. *v.* Slaughter, 167 Ind. 330, 79 N. E. 186; Pittsburgh, etc., R. Co. *v.* Cozatt, 39 Ind. App. 682, 79 N. E. 534; Pittsburgh, etc., R. Co. *v.* Simons, 168 Ind. 333, 79 N. E. 911.

Iowa. — Gardner *v.* Waterloo Cream Separator Co., 134 Iowa 6, 111 N. W. 316.

Kansas. — Atchison, etc., R. Co. *v.* McElroy, (Kan. 1907) 91 Pac. 785.

Kentucky. — Illinois Cent. R. Co. *v.* Morris, (Ky. 1906) 90 S. W. 979; Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Oliver *v.* Roach, (Ky. 1907) 102 S. W. 274; Cincinnati, etc., R. Co. *v.* Rodes, (Ky. 1907) 102 S. W. 321; Louisville, etc., R. Co. *v.* Brown, (Ky. 1908) 107 S. W. 321.

Louisiana. — See Frank *v.* Suthon, 159 Fed. 174.

Massachusetts. — Mallock *v.* Derby, 190 Mass. 208, 76 N. E. 721; Wills *v.* Taylor, 193 Mass. 113, 78 N. E. 774; Paine *v.* Armour, 194 Mass. 334, 80 N. E. 500; Hamilton *v.* Taylor, 195 Mass. 68, 80 N. E. 592; McDermott *v.* Sallaway, (Mass. 1908) 85 N. E. 422.

Minnesota. — Hyatt *v.* Murray, 101 Minn. 507, 112 N. W. 881.

Missouri. — Shaw *v.* Goldman, 116 Mo. App. 338, 92 S. W. 165, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 471; Loehring *v.* Westlake Constr. Co., 118 Mo. App. 163, 94 S. W. 747; Evans *v.* Chicago, etc., R. Co., (Mo. App. 1908) 109 S. W. 79; Robinson *v.* Paragould Southeastern R. Co., (Mo. App. 1908) 111 S. W. 827.

Montana. — Anderson *v.* Northern Pac. R. Co., 34 Mont. 200, 85 Pac. 884, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 471.

New Jersey. — Siggins *v.* McGill, 72 N. J. L. 263, 62 Atl. 411; Ryan *v.* Delaware, etc., R. Co., 72 N. J. L. 266, 62 Atl. 412; Nolan *v.* Bridgeton, etc., Traction Co., (N. J. 1907) 65 Atl. 992; McCracken *v.* Meyers, (N. J. 1908) 68 Atl. 805.

New York. — Loomis *v.* Lake Shore, etc., R. Co., 182 N. Y. 380, 75 N. E. 228; Ford *v.* Arbuckle, 107 N. Y. App. Div. 221, 94 N. Y. Supp. 1097; Duhme *v.* Hamburg-American Packet Co., 107 N. Y. App. Div. 237, 94 N. Y. Supp. 1102; Schlessinger *v.* Manhattan R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 504, 98 N. Y. Supp. 840; Best *v.* New York Cent., etc., R. Co., 117 N. Y. App. Div. 739, 102 N. Y. Supp. 957; Higgins *v.* Ruppert, (Supm. Ct. App. Div.) 108 N. Y. Supp. 919; Bayley *v.* Curtis Bros. Lumber Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 937; Ward *v.* Hill, 125 N. Y. App. Div. 587, 110 N. Y. Supp. 106; Roth *v.* G. A. Feld Co., (Supm. Ct. App. T.) 110 N. Y. Supp. 427; Jolliffe *v.* Miller, (Supm. Ct. App. Div.) 111 N. Y. Supp. 406; Stern *v.* Miller, (Supm. Ct. App. T.) 111 N. Y. Supp. 650.

Pennsylvania. — Ayres *v.* Wanamaker, (Pa. 1908) 69 Atl. 759; Bloomer *v.* Snellenburg, (Pa. 1908) 69 Atl. 1124. See also the dissenting opinion of Elkin, J., in Hotchkin *v.* Erdrich, 214 Pa. St. 460, 63 Atl. 1035, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 471.

Rhode Island. — Edwards *v.* Manufacturers' Bldg. Co., 27 R. I. 248, 61 Atl. 646.

South Carolina. — Cooper *v.* Atlantic Coast Line R. Co., 78 S. Car. 562, 59 S. E. 704.

Texas. — Cowans *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1116; Consolidated Kansas City Smelting, etc., Co. *v.* Binkley, (Tex. Civ. App. 1906) 99 S. W. 181; Waters-Pierce Oil Co. *v.* Snell, (Tex. Civ. App. 1907) 106 S. W. 170; Missouri, etc., R. Co. *v.* Hollan, (Tex. Civ. App. 1908) 107 S. W. 642; Missouri, etc., R. Co. *v.* Thomas, (Tex. Civ. App. 1908) 107 S. W. 868; Galveston, etc., R. Co. *v.* Matzdorf, (Tex. Civ. App. 1908) 107 S. W. 882; Dooley *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1908) 110 S. W. 135.

Utah. — Hickey *v.* Rio Grande Western R. Co., 29 Utah 392, 82 Pac. 29.

Virginia. — Chesapeake, etc., R. Co. *v.* Fortune, 107 Va. 412, 59 S. E. 1095.

Washington. — Stone *v.* Smith-Premier Typewriter Co., (Wash. 1908) 93 Pac. 209.

Wisconsin. — Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738; Nichols *v.* Jung Shoe Co., (Wis. 1908) 115 N. W. 334.

Limits of Doctrine. — Dudley *v.* Abraham, 122 N. Y. App. Div. 480, 107 N. Y. Supp. 97.

Visitor Personally Conducted. — Boyd *v.* U. S. Mortgage, etc., Co., 187 N. Y. 262, 79 N. E. 999.

Visitors with Knowledge of Dangerous Conditions Assume Risk. — Atchison, etc., R. Co. *v.* Fuller, 72 Kan. 527, 84 Pac. 140; Hotchkin *v.* Erdrich, 214 Pa. St. 460, 63 Atl. 1035; Fonseca *v.* Lake of the Woods Milling Co., 15 Manitoba 413.

Servants. — Where by the nature of the invitation the servants of the person invited are included, the duty extends to them. Standard Steel Car Co. *v.* McGuire, (C. C. A.) 161 Fed. 527; Calvert *v.* Springfield Electric Light, etc., Co., 231 Ill. 290, 83 N. E. 184; Chicago, etc., R. Co. *v.* Pritchard, 168 Ind. 398, 79 N. E. 509; Steele *v.* Grahl-Peterson Co., (Iowa 1906) 109 N. W. 882; Wagner *v.* Boston El. R. Co., 188 Mass. 437, 74 N. E. 919; Ladd *v.* New York, etc., R. Co., 193 Mass. 359, 79 N. E. 742; Power *v.* Beattie, 194 Mass. 170, 80 N. E. 607; Smith *v.* Twin City Rapid Transit Co., 102 Minn. 4, 112 N. W. 1001; Urbanneck *v.* Pennsylvania R. Co., (N. J. 1907) 65 Atl. 897; Perrine *v.* Union Stockyards Co., (Neb. 1908) 116 N. W. 776; Caffi *v.* New York Cent., etc., R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 620, 96 N. Y. Supp. 835; Froelich *v.* Interborough Rapid Transit Co., 120 N. Y. App. Div. 474, 104 N. Y. Supp. 910; Wheeling, etc., R. Co. *v.* Rupp, 27 Ohio Cir. Ct. 212; Cameron *v.* Realmuto, (Tex. Civ. App. 1907) 100 S. W. 194; Meyers *v.* Syndicate Heat, etc., Co., (Wash. 1907) 91 Pac. 549.

Vessel Invited to Dock. — Philadelphia, etc., R. Co. *v.* Walker, 139 Fed. 855.

Quarantine Guard. — Louisville, etc., R. Co. *v.* Goulding, 52 Fla. 327, 42 So. 854.

Lumber on Railroad's Premises Destroyed by Fire. — Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528.

A Person on Premises by Invitation owes the duty of reasonable care to others rightfully there. O'Rourke *v.* Guy B. Waite Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 170; Langan *v.* Enos Fire Escape Co., 233 Ill. 308, 84 N. E. 267. See also Grant *v.* Sunset Telephone, etc., Co., (Cal. App. 1908) 94 Pac. 368.

Defendant's Control of Premises Need Not Be Absolute. — Kuhlen *v.* Boston, etc., St. R. Co., 193 Mass. 341, 79 N. E. 815.

472. 1. Limits of Invitation. — Snow *v.* Coe Brass Mfg. Co., (Conn. 1907) 66 Atl. 881; Mt. Greenwood Cemetery Assoc. *v.* Hildebrand,

126 Ill. App. 399; McNaughton *v.* Illinois Cent. R. Co., (Iowa 1907) 113 N. W. 844; Shaw *v.* Goldman, 116 Mo. App. 338, 92 S. W. 165, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 427 [472]; Green *v.* Urban Contracting, etc., Co., 106 N. Y. App. Div. 460, 94 N. Y. Supp. 743; Robinson *v.* Crimmins, 120 N. Y. App. Div. 250, 104 N. Y. Supp. 1076; Van Ness *v.* Murphy, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 556, 107 N. Y. Supp. 99; Foard *v.* Rath, 33 Pa. Super. Ct. 182; Black *v.* Southern Cotton Oil Co., (S. Car. 1908) 60 S. E. 447.

2. Lovell *v.* Kansas City Southern R. Co., 121 Mo. App. 466, 97 S. W. 193; Donohue *v.* Braaf, 122 N. Y. App. Div. 552, 107 N. Y. Supp. 377; Clark *v.* Fehlhaber, 106 Va. 803, 56 S. E. 817.

3. Farnsworth *v.* Farwell, etc., Co., 102 Minn. 371, 113 N. W. 897; Pittsburgh, etc., R. Co. *v.* Simons, 168 Ind. 333, 79 N. E. 911; Mallock *v.* Derby, 190 Mass. 208, 76 N. E. 721; Nolan *v.* Bridgeton, etc., Traction Co., (N. J. 1907) 65 Atl. 992; Cowans *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1116.

Extent of Invitation for Jury. — Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738.

When Question of Law. — Alabama G. S. R. Co. *v.* Godfrey, (Ala. 1908) 47 So. 185; Louthian *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1908) 111 S. W. 665.

4. Higgins *v.* Franklin County Agricultural Soc., 100 Me. 565, 62 Atl. 708; Scott *v.* Michigan University Athletic Assoc., (Mich. 1908) 116 N. W. 624, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 472; Nephler *v.* Woodward, 200 Mo. 179, 98 S. W. 488; Hollis *v.* Kansas City, Mo., Retail Merchants' Assoc., 205 Mo. 508, 103 S. W. 32; Mead *v.* Baum, (N. J. 1908) 69 Atl. 962; Smith *v.* Delaware River Amusement Co., (N. J. 1908) 69 Atl. 970; Schnizer *v.* Phillips, 108 N. Y. App. Div. 17, 95 N. Y. Supp. 478; Brown *v.* Batchellor, (R. I. 1908) 69 Atl. 295; Larkin *v.* Saltair Beach Co., 30 Utah 100, 83 Pac. 686, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 471, 472; Flynn *v.* Toronto Industrial Exhibition Assoc., 9 Ont. L. Rep. 582.

5. Southern R. Co. *v.* Chatman, 124 Ga. 1026, 53 S. E. 692; Curtis *v.* Southern R. Co., (Ga. 1908) 61 S. E. 539; Southern R. Co. *v.* Mouchet, 3 Ga. App. 266, 59 S. E. 927; Illinois Cent. R. Co. *v.* Jennings, 229 Ill. 608, 82 N. E. 403; Fitzmaurice *v.* New York, etc., R. Co., 192 Mass. 159, 78 N. E. 418; Burde *v.* Chicago, etc., R. Co., 123 Mo. App. 629, 100 S. W. 509; Vassor *v.* Atlantic Coast Line R. Co., 142 N. Car. 68, 54 S. E. 849; Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66; Graves *v.* Washington Water Power Co., 44 Wash. 675, 87 Pac. 956.

Where the Defendant Is Also a Trespasser, it may not raise the question that the plaintiff was a trespasser. Davoust *v.* Alameda, 149 Cal. 69, 84 Pac. 760.

473. 1. No Liability Except for Wantonness or Wilfulness — *United States.* — Grand Trunk R. Co. *v.* Flagg, 156 Fed. 359.

Alabama. — Southern R. Co. *v.* Stewart, (Ala. 1907) 45 So. 51.

Georgia. — De Vane *v.* Atlanta, etc., R. Co., (Ga. App. 1908) 60 S. E. 1079.

Illinois. — Bartlett *v.* Wabash R. Co., 220 Ill 163, 77 N. E. 96; McLain *v.* Chicago, etc., R. Co., 121 Ill. App. 614; Janowicz *v.* Pittsburgh, etc., R. Co., 124 Ill. App. 149.

Kansas. — Coy *v.* Missouri Pac. R. Co., 74 Kan. 853, 86 Pac. 468.

Kentucky. — Louisville, etc., R. Co. *v.* Daniel, (Ky. 1906) 91 S. W. 691.

Maine. — Russell *v.* Maine Cent. R. Co., 100 Me. 406, 61 Atl. 899; Copp *v.* Maine Cent. R. Co., 100 Me. 568, 62 Atl. 735.

Massachusetts. — Massell *v.* Boston El. R. Co., 191 Mass. 491, 78 N. E. 108.

Mississippi. — Illinois Cent. R. Co. *v.* Brown, (Miss. 1905) 39 So. 531.

New York. — Weitzmann *v.* A. L. Barber Asphalt Co., 190 N. Y. 452, 83 N. E. 477; Butler *v.* New York Cent., etc., R. Co., (C. C. A.) 152 Fed. 976.

Pennsylvania. — Bailey *v.* Lehigh Valley R. Co., (Pa. 1908) 69 Atl. 998.

West Virginia. — Melton *v.* Chesapeake, etc., R. Co., (W. Va. 1908) 61 S. E. 39.

No Duty until Discovered — *United States.* — Texas, etc., R. Co. *v.* Modawell, (C. C. A.) 151 Fed. 421.

Alabama. — Southern R. Co. *v.* Gullatt, (Ala. 1907) 43 So. 577.

Arkansas. — St. Louis Southwestern R. Co. *v.* Bryant, 81 Ark. 368, 99 S. W. 693; St. Louis, etc., R. Co. *v.* Raines, (Ark. 1908) 111 S. W. 262.

Georgia. — Hall *v.* Western, etc., R. Co., 123 Ga. 213, 51 S. E. 311; Atlantic Coast Line R. Co. *v.* Riley, 127 Ga. 566, 56 S. E. 635; Georgia R., etc., Co. *v.* Williams, 2 Ga. App. 272, 59 S. E. 846.

Iowa. — Graham *v.* Chicago, etc., R. Co., 131 Iowa 741, 107 N. W. 595; Flint *v.* Illinois Cent. R. Co., (Ky. 1905) 88 S. W. 1055; Yates *v.* Illinois Cent. R. Co., (Ky. 1905) 89 S. W. 161; Louisville, etc., R. Co. *v.* Hathaway, (Ky. 1905) 89 S. W. 724; Smith *v.* Illinois Cent. R. Co., (Ky. 1906) 90 S. W. 254; Johnson *v.* Louisville, etc., R. Co., (Ky. 1906) 91 S. W. 707; Louisville, etc., R. Co. *v.* Redmon, 122 Ky. 385, 91 S. W. 722; Beiser *v.* Chesapeake, etc., R. Co., (Ky. 1906) 92 S. W. 928; Chesapeake, etc., R. Co. *v.* Barbour, (Ky. 1906) 93 S. W. 24; Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745; Hoback *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 241; Prince *v.* Illinois Cent. R. Co., (Ky. 1906) 99 S. W. 293; Louisville, etc., R. Co. *v.* Woolfork, (Ky. 1907) 99 S. W. 294; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246; Skirvin *v.* Louisville, etc., R. Co., (Ky. 1907) 100 S. W. 308; Adam *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 363; Illinois Cent. R. Co. *v.* Tyson, (Ky. 1908) 108 S. W. 863; Nashville, etc., R. Co. *v.* Bean, (Ky. 1908) 110 S. W. 328; O'Bannion *v.* Southern R. Co., (Ky. 1908) 110 S. W. 329; Cummings *v.* Illinois Cent. R. Co., (Ky. 1908) 110 S. W. 809.

Michigan. — Wade *v.* Detroit, etc., R. Co., (Mich. 1908) 115 N. W. 713.

Missouri. — O'Donnell *v.* Kansas City, etc., R. Co., 197 Mo. 110, 95 S. W. 196; Doyle *v.* Kansas City, etc., R. Co., (Mo. 1906) 95 S. W. 200; Frye *v.* St. Louis, etc., R. Co., 200 Mo. 377, 98 S. W. 566.

South Carolina. — Cook *v.* Southern R. Co., 78 S. Car. 527, 59 S. E. 361.

Texas. — Houston, etc., R. Co. *v.* Ramsey, (Tex. Civ. App. 1906) 97 S. W. 1067.

Virginia. — Seaboard, etc., R. Co. *v.* Vaughan, 104 Va. 113, 51 S. E. 182.

Liable for Wanton or Reckless Injury. — Toledo, etc., R. Co. *v.* Gordon, (C. C. A.) 143 Fed. 95; Parulo *v.* Philadelphia, etc., R. Co., 145 Fed. 664; Forest *v.* Georgia R., etc., Co., 128 Ga. 77, 57 S. E. 98; Hayes *v.* Southern R. Co., 141 N. Car. 195, 53 S. E. 847; Williams *v.* Louisiana R., etc., Co., (La. 1908) 46 So. 528; Folley *v.* Chicago, etc., R. Co., 16 Okla. 32, 84 Pac. 1090.

But it has been held that a conductor who orders a trespasser off a moving train owes no affirmative duty to first look and see whether the trespasser is lame. Doggett *v.* Chicago, etc., R. Co., 134 Iowa 690, 112 N. W. 171.

2. *Alabama.* — Alabama G. S. R. Co. *v.* Guest, 144 Ala. 373, 39 So. 654; Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177.

Georgia. — Southern R. Co. *v.* Chatman, 124 Ga. 1026, 53 S. E. 692; Shaw *v.* Georgia R. Co., 127 Ga. 8, 55 S. E. 960; Macon, etc., R. Co. *v.* Parker, 127 Ga. 471, 56 S. E. 616.

Iowa. — Ambroz *v.* Cedar Rapids Electric Light, etc., Co., 131 Iowa 336, 108 N. W. 540.

Kentucky. — Glenn *v.* Louisville, etc., R. Co., (Ky. 1906) 90 S. W. 975; Louisville, etc., R. Co. *v.* Daniel, (Ky. 1906) 91 S. W. 691; Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Rader *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 774; Louisville, etc., R. Co. *v.* Hoskins, (Ky. 1908) 108 S. W. 305; Louisville, etc., R. Co. *v.* McNary, (Ky. 1908) 108 S. W. 898. See also dissenting opinion of Nunn, J., in Johnson *v.* Paducah Laundry Co., (Ky. 1906) 92 S. W. 330, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 472.

Missouri. — Williams *v.* Metropolitan St. R. Co., 114 Mo. App. 1, 89 S. W. 59; Levelsmeier *v.* St. Louis, etc., R. Co., 114 Mo. App. 412, 90 S. W. 104.

New Hampshire. — Brown *v.* Boston, etc., R. Co., 73 N. H. 568, 64 Atl. 194.

North Carolina. — McGehee *v.* Norfolk, etc., R. Co., (N. Car. 1908) 60 S. E. 912, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 473, as to the general principle, but holding that under the circumstances of the case the plaintiff had no right of recovery.

Doctrine Explained. — Thomas *v.* Cincinnati, etc., R. Co., (Ky. 1907) 105 S. W. 379.

3. St. Louis, etc., R. Co. *v.* Cain, 84 Ark. 623, 104 S. W. 533; Herzog *v.* Hemphill, (Cal. App. 1907) 93 Pac. 899; Charlestown, etc., R. Co. *v.* Johnson, 1 Ga. App. 441, 57 S. E. 1064; Starr *v.* Southern R. Co., (Ga. App. 1908) 61 S. E. 735; Davis *v.* Ohio Valley Banking, etc., Co., (Ky. 1908) 106 S. W. 843; Starett *v.* Chesapeake, etc., R. Co., (Ky. 1908) 110 S. W. 282; Jones *v.* Sibley, etc., R. Co., (La. 1908) 46 So. 61; Lange *v.* Missouri Pac. R. Co., 115 Mo. App. 582, 91 S. W. 989; Hobbs *v.* Geo. W. Blanchard, etc., Co., (N. H. 1906) 65 Atl. 382; Chicago, etc., R. Co. *v.* Kerr, 74 Neb. 1, 104 N. W. 49; Norfolk, etc., R. Co. *v.* Dean, 107 Va. 505, 59 S. E. 389; Kelley *v.* Ohio River R. Co., 58 W. Va. 216, 52 S. E. 530.

Only Reasonable Care Required. — Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 431, 98 N. Y. Supp. 476.

474. 1. Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; Peirce *v.* Lyden, (C. C. A.) 157 Fed. 552; Denver City Tramway Co. *v.* Nicholas, 35 Colo. 462, 84 Pac. 813; Indianapolis Water Co. *v.* Harold, (Ind. App. 1906) 79 N. E. 542; Lewis *v.* Cleveland, etc., R. Co., (Ind. App. 1908) 84 N. E. 23; Gates *v.* Northern Pac. R. Co., (Mont. 1908) 94 Pac. 751; Brown *v.* Salt Lake City, (Utah 1908) 93 Pac. 570; Akin *v.* Bradley Engineering, etc., Co., (Wash. 1907) 92 Pac. 903; Coley *v.* Canadian Pac. R. Co., 29 Quebec Super. Ct. 282.

In or Near Streets or Highways. — Cahill *v.* Stone, (Cal. 1908) 96 Pac. 84; Louisville R. Co. *v.* Esselman, (Ky. 1906) 93 S. W. 50; O'Leary *v.* Michigan State Telephone Co., 146 Mich. 243, 109 N. W. 434; Iamurri *v.* Saginaw City Gas Co., 148 Mich. 27, 111 N. W. 884; Temple *v.* McComb City Electric Light, etc., Co., 89 Miss. 1, 42 So. 874; O'Hara *v.* Laclede Gaslight Co., (Mo. App. 1908) 110 S. W. 642; Weida *v.* Hanover Tp., 30 Pa. Super. Ct. 424; Kreiner *v.* Straubmüller, 30 Pa. Super. Ct. 609; Franks *v.* Southern Cotton Oil Co., 78 S. Car. 10, 58 S. E. 960; McAllister *v.* Seattle Brewing, etc., Co., 44 Wash. 179, 87 Pac. 68.

Where Implied Invitation. — Henderson *v.* Continental Refining Co., (Pa. 1908) 68 Atl. 968.

Doctrine of Attractive Nuisances Applied in case of a young employee. Force *v.* Standard Silk Co., 160 Fed. 992, where the court followed the rule of the Supreme Court of the United States although the law of the state of New York where the accident occurred is to the contrary.

Limits of Doctrine. — Swartwood *v.* Louisville, etc., R. Co., (Ky. 1908) 111 S. W. 305; Mehalek *v.* Minneapolis, etc., R. Co., (Minn. 1908) 117 N. W. 250; St. Louis Southwestern R. Co. *v.* Davis, (Tex. Civ. App. 1908) 110 S. W. 939.

2. Charlestown, etc., R. Co. *v.* Johnson, 1 Ga. App. 441, 57 S. E. 1064; Duggan *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 829; Davis *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1906) 92 S. W. 831; Texas, etc., R. Co. *v.* Buch, (Tex. Civ. App. 1907) 102 S. W. 124.

3. *United States.* — Hasting *v.* Southern R. Co., (C. C. A.) 143 Fed. 260.

Alabama. — Chambers *v.* Milner Coal, etc., Co., 143 Ala. 255, 39 So. 170.

Connecticut. — Fitzmaurice *v.* Connecticut R., etc., Co., 78 Conn. 406, 62 Atl. 620.

Georgia. — Southern R. Co. *v.* Chatman, 124 Ga. 1026, 53 S. E. 692.

Kentucky. — Mayfield Water, etc., Co. *v.* Webb, (Ky. 1908) 111 S. W. 712.

Louisiana. — Lynch *v.* Knoop, 118 La. 611, 43 So. 252; Blum *v.* Weatherford, (La. 1908) 46 So. 317.

Massachusetts. — New York Cent., etc., R. Co. *v.* Price, (C. C. A.) 159 Fed. 330.

Michigan. — Stark *v.* Muskegon Traction, etc., Co., 141 Mich. 575, 104 N. W. 1100; Hamilton *v.* Detroit, etc., R. Co., 142 Mich. 56, 105 N. W. 82.

Missouri. — Houck *v.* Chicago, etc., R. Co., 116 Mo. App. 559, 92 S. W. 738.

Nebraska. — Johnston *v.* New Omaha Thomson Houston Electric Light Co., (Neb. 1907) 110 N. W. 711.

Pennsylvania. — Estep *v.* Webster Coal, etc., Co., 213 Pa. St. 471, 62 Atl. 1082.

Texas. — Forge *v.* Houston, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 1118; Isbell *v.* Hayward Lumber Co., (Tex. Civ. App. 1907) 105 S. W. 211.

Washington. — Graves *v.* Washington Water Power Co., 44 Wash. 675, 87 Pac. 956.

Canada. — See Newell *v.* Canadian Pac. R. Co., 12 Ont. L. Rep. 21.

The rule applies although the defendant is himself a trespasser in placing the dangerous thing upon a third person's property. Meyer *v.* Benton, (N. J. 1907) 65 Atl. 1023.

4. Sullivan *v.* Huidekoper, 27 App. Cas. (D. C.) 154, 7 Ann. Cas. 196; Indianapolis Water Co. *v.* Harold, (Ind. 1908) 83 N. E. 993; Brown *v.* Rockwell City Canning Co., 132 Iowa 631, 110 N. W. 12; Falkenberg *v.* Stout, 75 Kan. 172, 88 Pac. 874; Lopes *v.* Sahuque, 114 La. 1004, 38 So. 810; Kane *v.* Erie R. Co., 110 N. Y. App. Div. 7, 96 N. Y. Supp. 810; Widger *v.* Philadelphia, 217 Pa. St. 161, 66 Atl. 249.

Instrumentality Must Be Proximate Cause. — Seymour *v.* Union Stockyards, etc., Co., 224 Ill. 579, 79 N. E. 950.

Liability for Artificial Conditions. — Brown *v.* Salt Lake City, (Utah 1908) 93 Pac. 570.

475. 1. Wilmot *v.* McPadden, 79 Conn. 367, 65 Atl. 157; Elliott *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 233; Kane *v.* Erie R. Co., 110 N. Y. App. Div. 7, 96 N. Y. Supp. 810; Davis *v.* Joslin Mfg. Co., (R. I. 1908) 69 Atl. 65.

Turntable Cases — Not to Be Extended. — Brown *v.* Rockwell City Canning Co., 132 Iowa 631, 110 N. W. 12; Foster-Herbert Cut Stone Co. *v.* Pugh, 115 Tenn. 688, 91 S. W. 199.

Doctrine Repudiated. — Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66; Thompson *v.* Baltimore, etc., R. Co., 218 Pa. St. 444, 67 Atl. 768; Walker *v.* Potomac, etc., R. Co., 105 Va. 226, 53 S. E. 113; Conrad *v.* Baltimore, etc., R. Co., (W. Va. 1908) 61 S. E. 44.

2. Anternoitz *v.* New York, etc., R. Co., (Mass. 1907) 79 N. E. 789; Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827.

Rule Applied to Child Licensee. — Dalin *v.* Worcester Consol. St. R. Co., 188 Mass. 344, 74 N. E. 597.

Liability for Wanton Injuries. — Drogmund *v.* Metropolitan St. R. Co., 122 Mo. App. 154, 98 S. W. 1091.

3. *Alabama.* — Alabama G. S. R. Co. *v.* Godfrey, (Ala. 1908) 47 So. 185.

Colorado. — Watson *v.* Manitou, etc., R. Co., (Colo. 1907) 92 Pac. 17.

Georgia. — Jenkins *v.* Central of Georgia R. Co., 124 Ga. 986, 53 S. E. 379.

Illinois. — Thompson *v.* Cleveland, etc., R. Co., 226 Ill. 542, 80 N. E. 1054; Strong *v.* North Chicago St. R. Co., 116 Ill. App. 246; Saffer *v.* Molter, 124 Ill. App. 21; Ahern *v.* Chicago, etc., R. Co., 124 Ill. App. 36; Raymond *v.* Chicago, etc., R. Co., 126 Ill. App. 240; Deakin *v.* Illinois Cent. R. Co., 127 Ill. App. 258; Crane Co. *v.* Sobkowicz, 131 Ill. App. 211; Palmer *v.* Byrd, 131 Ill. App. 495; Chicago, etc., R. Co. *v.* Bell, 133 Ill. App. 56.

Indiana. — Martin *v.* Louisville, etc., Bridge Co., (Ind. App. 1908) 84 N. E. 360.

Kentucky. — Brown *v.* Thomas Blackwell Coal, etc., Co., (Ky. 1907) 99 S. W. 299.

Maine. — McClain *v.* Caribou Nat. Bank, 100 Me. 437, 62 Atl. 144.

Maryland. — Chesapeake Beach R. Co. *v.* Donahue, (Md. 1908) 68 Atl. 507.

Massachusetts. — McManus *v.* Thing, 194 Mass. 362, 80 N. E. 487; Burke *v.* Boston, etc., R. Co., 195 Mass. 179, 80 N. E. 695.

Michigan. — Habina *v.* Twin City General Electric Co., 150 Mich. 41, 113 N. W. 586.

Mississippi. — Illinois Cent. R. Co. *v.* Lucas, 89 Miss. 411, 42 So. 607.

Missouri. — Carr *v.* Missouri Pac. R. Co., 195 Mo. 214, 92 S. W. 874.

New York. — Birch *v.* New York, 190 N. Y. 397, 83 N. E. 51; Weitzmann *v.* A. L. Barber Asphalt Co., 190 N. Y. 452, 83 N. E. 477; Oats *v.* New York Dock Co., 109 N. Y. App. Div. 841, 96 N. Y. Supp. 813; Rosenthal *v.* United Dressed Beef Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 166, 101 N. Y. Supp. 532; Smetanka *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 323, 107 N. Y. Supp. 973.

North Carolina. — Peterson *v.* South, etc., R. Co., 143 N. Car. 260, 55 S. E. 618.

Oklahoma. — Faurot *v.* Oklahoma Wholesale Grocery Co., (Okla. 1908) 95 Pac. 463.

Texas. — Greenville *v.* Pitts, (Tex. 1908) 107 S. W. 50.

Virginia. — Norfolk, etc., R. Co. *v.* Stegall, 105 Va. 538, 54 S. E. 19.

Washington. — Johnson *v.* Great Northern R. Co., (Wash. 1908) 94 Pac. 895.

Children Inviting Themselves to Ride in Wagon. — West *v.* Poor, (Mass. 1907) 81 N. E. 960.

A Constable on the cars or premises of a railroad company for the purpose of apprehending criminals is a bare licensee. Creeden *v.* Boston, etc., R. Co., 193 Mass. 280, 79 N. E. 344. See also Casey *v.* Adams, 234 Ill. 350, 84 N. E. 933.

Known Presence Requires Ordinary Care. — Gulf, etc., R. Co. *v.* Walters, (Tex. Civ. App. 1907) 107 S. W. 369.

Liability for Pitfalls or Mantraps. — Rollestone *v.* Cassirer, 3 Ga. App. 161, 59 S. E. 442.

476. 2. *United States.* — Phipps *v.* Oregon R., etc., Co., 161 Fed. 376.

Arkansas. — Missouri, etc., R. Co. *v.* Bratton, (Ark. 1908) 108 S. W. 518.

Florida. — Gainesville, etc., R. Co. *v.* Peck, (Fla. 1908) 46 So. 1019, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 476.

Georgia. — Southern R. Co. *v.* Hill, 125 Ga. 354, 54 S. E. 113.

Illinois. — St. Louis Nat. Stock Yards *v.* Brennan, 126 Ill. App. 601.

Iowa. — Croft *v.* Chicago, etc., R. Co., 132 Iowa 687, 108 N. W. 1053; Calwell *v.* Minneapolis, etc., R. Co., (Iowa 1908) 115 N. W. 605.

Kentucky. — Louisville, etc., R. Co. *v.* Berry, (Ky. 1908) 111 S. W. 370.

Missouri. — Eppstein *v.* Missouri Pac. R. Co., 197 Mo. 720, 94 S. W. 967; Smith *v.* Wabash R. Co., (Mo. App. 1907) 107 S. W. 22; Ahne-

feld *v.* Wabash R. Co., (Mo. 1908) 111 S. W. 95.

Nebraska. — Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

Texas. — Gulf, etc., R. Co. *v.* Matthews, 99 Tex. 160, 88 S. W. 192; Hutchens *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 89 S. W. 24; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563; Missouri, etc., R. Co. *v.* Snowden, (Tex. Civ. App. 1906) 99 S. W. 865; International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560; Missouri, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1908) 109 S. W. 1126; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1908) 110 S. W. 199.

Utah. — Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

Virginia. — Chesapeake, etc., R. Co. *v.* Farrow, 106 Va. 137, 55 S. E. 569; Norfolk, etc., R. Co. *v.* Carr, 106 Va. 508, 56 S. E. 276; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

Wisconsin. — Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865.

4. Chicago, etc., R. Co. *v.* Donovan, (C. C. A.) 160 Fed. 826; Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232; Indianapolis St. R. Co. *v.* James, 35 Ind. App. 543, 74 N. E. 536; Milton *v.* Bangor R., etc., Co., (Me. 1907) 68 Atl. 826; Torphy *v.* Fall River, 188 Mass. 310, 74 N. E. 465; Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589.

5. *United States.* — The Charles A. Campbell, 142 Fed. 996; Chicago, etc., R. Co. *v.* Riley, (C. C. A.) 145 Fed. 137, 7 Ann. Cas. 327; The City of Seattle, (C. C. A.) 150 Fed. 537, 10 Ann. Cas. 159; Armour *v.* Skene, (C. C. A.) 153 Fed. 241; The Annie L. Vansciver, 161 Fed. 640.

Alabama. — Daniels *v.* Carney, (Ala. 1906) 42 So. 452; Montgomery Traction Co. *v.* Whatley, (Ala. 1907) 44 So. 538; Southern R. Co. *v.* Reeder, (Ala. 1907) 44 So. 699.

California. — Carty *v.* Boeseke-Dawe Co., 2 Cal. App. 646, 84 Pac. 267; Dinnigan *v.* Peterson, 3 Cal. App. 764, 87 Pac. 218; Doherty *v.* California Nav., etc., Co., (Cal. App. 1907) 91 Pac. 419; McVay *v.* Central California Invest. Co., (Cal. App. 1907) 91 Pac. 745; Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122.

Colorado. — Rimmer *v.* Wilson, (Colo. 1908) 93 Pac. 1110; Denver, etc., R. Co. *v.* Mitchell, (Colo. 1908) 94 Pac. 289; Farrier *v.* Colorado Springs Rapid Transit R. Co., (Colo. 1908) 95 Pac. 294.

Georgia. — Southern R. Co. *v.* Grizzle, 124 Ga. 735, 53 S. E. 244; Augusta *v.* Dozier, 126 Ga. 524, 55 S. E. 234; Southern R. Co. *v.* Reynolds, 126 Ga. 657, 55 S. E. 1039; Atlantic Coast Line R. Co. *v.* Powell, 127 Ga. 805, 56 S. E. 1006; Savannah Electric Co. *v.* Wheeler, 128 Ga. 550, 58 S. E. 38.

Illinois. — Palestine *v.* Siler, 225 Ill. 630, 80 N. E. 345.

Indiana. — Flint, etc., Mfg. Co. *v.* Beckett, 167 Ind. 491, 79 N. E. 503; Broadstreet *v.* Hall, 168 Ind. 192, 80 N. E. 145; Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934; Ft. Wayne Cooperage Co. *v.* Page, (Ind. 1908) 84 N. E. 145.

Iowa. — Croft *v.* Chicago, etc., R. Co., 134 Iowa 411, 109 N. W. 723; Gardner *v.* Waterloo Cream Separator Co., 134 Iowa 6, 111 N. W. 316; Haase *v.* Morton, (Iowa 1908) 115 N. W. 921.

Kansas. — Atchison, etc., R. Co. *v.* Wilkie, (Kan. 1907) 90 Pac. 775.

Kentucky. — Louisville, etc., R. Co. *v.* Vincent, (Ky. 1906) 96 S. W. 898; Nicholasville *v.* Fain, (Ky. 1907) 99 S. W. 275; Maysville, etc., R. Co. *v.* Willis, (Ky. 1907) 104 S. W. 1016; Louisville, etc., R. Co. *v.* Daugherty, (Ky. 1908) 108 S. W. 336.

Louisiana. — Damonte *v.* Patton, 118 La. 530, 43 So. 153; Hollins *v.* New Orleans, etc., R. Co., 119 La. 419, 44 So. 159.

Maine. — Roundy *v.* United Box, etc., Co., (Me. 1907) 68 Atl. 535.

Massachusetts. — Manning *v.* Excelsior Laundry Co., 189 Mass. 231, 75 N. E. 254; Carey *v.* Milford, etc., St. R. Co., 193 Mass. 161, 78 N. E. 1001; Murphy *v.* Withington, 194 Mass. 28, 79 N. E. 783; Black *v.* New York, etc., R. Co., 193 Mass. 448, 79 N. E. 797; Hayes *v.* Wilkins, 194 Mass. 223, 80 N. E. 449; Beverley *v.* Boston El. R. Co., 194 Mass. 450, 80 N. E. 507; Smith *v.* Edison Electric Illuminating Co., (Mass. 1908) 84 N. E. 434.

Michigan. — Cousineau *v.* Muskegon Traction, etc., Co., (Mich. 1906) 108 N. W. 720; McWilliams *v.* Lake Shore, etc., R. Co., 146 Mich. 216, 109 N. W. 272; Bishop *v.* Baldwin, 147 Mich. 22, 110 N. W. 139.

Minnesota. — Raasch *v.* Elite Laundry Co., 98 Minn. 357, 108 N. W. 477; Gould *v.* Winona Gas Co., 100 Minn. 265, 111 N. W. 254; Decker *v.* Chicago, etc., R. Co., 102 Minn. 99, 112 N. W. 901; Kundar *v.* Shenango Furnace Co., 102 Minn. 162, 112 N. W. 1012.

Missouri. — Becker *v.* Lincoln Real Estate, etc., Co., 118 Mo. App. 74, 93 S. W. 291; Bond *v.* Chicago, etc., R. Co., 122 Mo. App. 207, 99 S. W. 30; Smith *v.* American Car, etc., Co., 122 Mo. App. 610, 99 S. W. 790; Hall *v.* Compton, (Mo. App. 1908) 108 S. W. 1122; Knight *v.* Donnelly, (Mo. App. 1908) 110 S. W. 687.

Nebraska. — Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596; Kruger *v.* Omaha, etc., St. R. Co., (Neb. 1908) 114 N. W. 571; Henry *v.* Omaha Packing Co., (Neb. 1908) 115 N. W. 777.

New Jersey. — Slater *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 163; Yetter *v.* Gloucester Ferry Co., (N. J. 1908) 69 Atl. 1079.

New York. — Hanlon *v.* Central R. Co., 187 N. Y. 73, 79 N. E. 846; Corcoran *v.* New York, 188 N. Y. 131, 80 N. E. 660; Finkle *v.* Valatie, 114 N. Y. App. Div. 251, 99 N. Y. Supp. 715; Swarts *v.* R. M. Wilson Mfg. Co., 115 N. Y. App. Div. 739, 100 N. Y. Supp. 1054; Littlefield *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 637, 101 N. Y. Supp. 75; Mendleson *v.* Van Rensselaer, 118 N. Y. App. Div. 516, 103 N. Y. Supp. 578; Birch *v.* New York, 121 N. Y. App. Div. 395, 106 N. Y. Supp. 104; Corr *v.* New York, 127 N. Y. App. Div. 578, 106 N. Y. Supp. 280; Phenix Ins. Co. *v.* New York Cent., etc., R. Co., 122 N. Y. App. Div. 113, 106 N. Y. Supp.

696; Johnson *v.* Stevens, 123 N. Y. App. Div. 208, 108 N. Y. Supp. 407; Davis *v.* Bouton Motor Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 359; McMahon *v.* Interborough Rapid Transit Co., (N. Y. City Ct. Tr. T.) 110 N. Y. Supp. 876.

North Carolina. — Fuller *v.* Atlantic Coast Line R. Co., 140 N. Car. 480, 53 S. E. 297; Gillikin *v.* Lake Drummond Canal, etc., Co., (N. Car. 1908) 60 S. E. 654.

Oregon. — Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389.

Pennsylvania. — Keller *v.* Philadelphia, etc., R. Co., 214 Pa. St. 82, 63 Atl. 413; Waltz *v.* Pennsylvania R. Co., 216 Pa. St. 165, 65 Atl. 401.

Rhode Island. — Battle *v.* Robinson, 27 R. I. 588, 65 Atl. 273; Reid *v.* Rhode Island Co., (R. I. 1907) 67 Atl. 328.

South Carolina. — Walker *v.* Southern R. Co., 77 S. Car. 161, 57 S. E. 764.

Tennessee. — St. Louis, etc., R. Co. *v.* Hatch, 116 Tenn. 580, 94 S. W. 671.

Texas. — Missouri, etc., R. Co. *v.* Sanders, (Tex. Civ. App. 1906) 94 S. W. 149; St. Louis Southwestern R. Co. *v.* Kennedy, (Tex. Civ. App. 1906) 96 S. W. 653; Texas, etc., R. Co. *v.* Harrington, (Tex. Civ. App. 1906) 98 S. W. 653; Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589; Gulf, etc., R. Co. *v.* Redeker, (Tex. Civ. App. 1907) 100 S. W. 362; Missouri, etc., R. Co. *v.* Corse, (Tex. Civ. App. 1907) 101 S. W. 522; McCardell *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 102 S. W. 941; Gulf, etc., R. Co. *v.* Wittnebert, (Tex. Civ. App. 1907) 104 S. W. 424; Buchanan *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1907) 107 S. W. 552; St. Louis Southwestern R. Co. *v.* Moore, (Tex. Civ. App. 1908) 107 S. W. 658; Atchison, etc., R. Co. *v.* Mills, (Tex. Civ. App. 1908) 108 S. W. 480; Missouri, etc., R. Co. *v.* Criswell, (Tex. 1908) 108 S. W. 806; International, etc., R. Co. *v.* Dixon, (Tex. Civ. App. 1908) 109 S. W. 978.

Vermont. — Mixer *v.* Herrick, 78 Vt. 349, 62 Atl. 1019; Drown *v.* New England Telephone, etc., Co., 80 Vt. 1, 66 Atl. 801.

Washington. — Abby *v.* Wood, 43 Wash. 379, 86 Pac. 558; Welch *v.* Fransioli, (Wash. 1907) 90 Pac. 644; Fireman's Fund Ins. Co. *v.* Northern Pac. R. Co., (Wash. 1907) 91 Pac. 13; Mooney *v.* Seattle, etc., R. Co., (Wash. 1907) 92 Pac. 408; Ulrich *v.* Stephens, (Wash. 1908) 93 Pac. 206.

West Virginia. — Bare *v.* Crane Creek Coal, etc., Co., 61 W. Va. 28, 55 S. E. 907; Nichols *v.* Camden Interstate R. Co., (W. Va. 1907) 59 S. E. 968.

Wisconsin. — Chant *v.* Clinton Telephone Co., 130 Wis. 533, 110 N. W. 423; Karr *v.* Milwaukee Light, etc., Traction Co., (Wis. 1907) 113 N. W. 62; Polaski *v.* Pittsburgh Coal Dock Co., (Wis. 1908) 114 N. W. 437.

Canada. — Turner *v.* Snider, 16 Manitoba 79.

"Practical Jokers." — Lange *v.* Missouri Pac. R. Co., 208 Mo. 458, 106 S. W. 660.

Omission and Commission. — It has been said that "a person who maintains an artificial thing like a gutter, used for the very purpose of carrying off the rain water from the roof, in an improper condition after notice, may be said to be guilty of an act of commission." Alverstone, L. Ch. J., in Hargroves *v.* Hartopp, (1905) 1 K. B. 47.

Passive and Active Negligence. — Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 431, 98 N. Y. Supp. 476.

477. 1. Louisville, etc., R. Co. *v.* Perkins, (Ala. 1907) 44 So. 602; Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238; Tinsley *v.* Western Union Tel. Co., 72 S. Car. 350, 51 S. E. 913; Talbert *v.* Charleston, etc., R. Co., 75 S. Car. 136, 55 S. E. 138.

"Wilfulness or intention in no sense obtain in an act of negligence." Birmingham R., etc., Co. *v.* Randle, (Ala. 1906) 43 So. 355.

Good Faith and honest intention will not refute an imputation of negligence. Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238.

"Thoughtless Inattention." — Towle *v.* Morse, (Me. 1907) 68 Atl. 1044.

Distinction between Negligence and "Wrongful Act." — Howard *v.* Hunter, (Ky. 1907) 104 S. W. 723.

Mistakes — Errors of Judgment or Opinion. — A failure to exercise perfect judgment is not necessarily negligence. The City of Boston, 159 Fed. 261; Sanders *v.* Texas, etc., R. Co., 118 La. 174, 42 So. 764; Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Martin *v.* Degnon Contracting Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 359; Small *v.* Pittsburg R. Co., 216 Pa. St. 584, 66 Atl. 76; Downey *v.* Pittsburg R. Co., (Pa. 1908) 69 Atl. 71.

The exercise of judgment is not the correct test of negligence. Arkansas, etc., R. Co. *v.* Sanders, 81 Ark. 604, 99 S. W. 1109; Sheppard *v.* New York City R. Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 639, 107 N. Y. Supp. 553; particularly in cases where the duty includes a reasonable amount of skill. The Blackheath, 154 Fed. 758. See also Raasch *v.* Elite Laundry Co., 98 Minn. 357, 108 N. W. 477; Canadian Asbestos Co. *v.* Girard, 36 Can. Sup. Ct. 13.

2. **Nonfeasance and Misfeasance.** — Southern R. Co. *v.* Miller, 1 Ga. App. 616, 57 S. E. 1090; Southern R. Co. *v.* Rowe, 2 Ga. App. 557, 59 S. E. 462; McGinnis *v.* Chicago, etc., R. Co., 200 Mo. App. 347, 98 S. W. 590. See also Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062.

3. Galveston, etc., R. Co. *v.* Currie, (Tex. Civ. App. 1905) 91 S. W. 1100.

4. See the dissenting opinion of Jaggard, J., in Anderson *v.* Minneapolis, etc., R. Co., (Minn. 1908) 114 N. W. 1123.

Recklessness. — In *South Carolina* recklessness is the equivalent of wilfulness or intentional wrong, Bussey *v.* Charleston, etc., R. Co., 75 S. Car. 116, 55 S. E. 163; and will justify exemplary damages, Thomasson *v.* Southern R. Co., 72 S. Car. 1, 51 S. E. 443; Cole *v.* Blue Ridge R. Co., 75 S. Car. 156, 55 S. E. 126.

Wantonness or Wilfulness. — *Alabama.* — Mobile, etc., R. Co. *v.* Smith, 146 Ala. 312, 40 So. 763; Louisville, etc., R. Co. *v.* Muscat, 147 Ala. 701, 41 So. 302; Birmingham R., etc., Co.

v. Ryan, (Ala. 1906) 41 So. 616; Montgomery St. R. Co. *v.* Lewis, (Ala. 1906) 41 So. 736; Anniston Electric, etc., Co. *v.* Elwell, 144 Ala. 317, 42 So. 45; Birmingham R., etc., Co. *v.* Brown, (Ala. 1906) 43 So. 342; Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Birmingham R., etc., Co. *v.* Brown, (Ala. 1907) 44 So. 572; Southern R. Co. *v.* Weatherlow, (Ala. 1907) 44 So. 1019; Mobile, etc., R. Co. *v.* Smith, (Ala. 1907) 45 So. 57; Birmingham, R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198; Birmingham R., etc., Co. *v.* Jaffee, (Ala. 1908) 45 So. 469.

Illinois. — Cleveland, etc., R. Co. *v.* Ricker, 116 Ill. App. 428.

Missouri. — Drogmund *v.* Metropolitan St. R. Co., 122 Mo. App. 154, 98 S. W. 1091.

South Carolina. — Brickman *v.* Southern R. Co., 74 S. Car. 306, 54 S. E. 553; Hull *v.* Seaboard Air Line R. Co., 76 S. Car. 278, 57 S. E. 28; Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3; Horn *v.* Southern R. Co., 78 S. Car. 67, 58 S. E. 963; Entzminger *v.* Seaboard Air Line R. Co., (S. Car. 1908) 60 S. E. 441; Crosby *v.* Seaboard Air Line R. Co., (S. Car. 1908) 61 S. E. 1064.

"Wilful" Omission of Statutory Duty. — Kellyville Coal Co. *v.* Strine, 117 Ill. App. 115.

Wilful Act of Servant Blowing Whistle. — Stewart *v.* Cary Lumber Co., (N. Car. 1907) 59 S. E. 545.

5. Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 616, 86 Pac. 903.

6. **Wilful Negligence** has been applied to conduct after the discovery of peril. Teal *v.* St. Paul City R. Co., 96 Minn. 379, 104 N. W. 945; Rawitzer *v.* St. Paul City R. Co., 98 Minn. 294, 108 N. W. 271; Anderson *v.* Minneapolis, etc., R. Co., (Minn. 1908) 114 N. W. 1123.

7. Gibbons *v.* Northern Pac. R. Co., 99 Minn. 142, 108 N. W. 471. And see the discussion in Banks *v.* Braman, 188 Mass. 367, 74 N. E. 594.

478. 1. **"Wanton Negligence."** — As to various views of the expression, see Alabama G. S. R. Co. *v.* Guest, 144 Ala. 373, 39 So. 654; Lacey *v.* Louisville, etc., R. Co., (C. C. A.) 152 Fed. 134; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 616, 86 Pac. 903; Chesapeake, etc., R. Co. *v.* Satterfield, (Ky. 1907) 100 S. W. 844; Rawitzer *v.* St. Paul City R. Co., 98 Minn. 294, 108 N. W. 271; Gibbons *v.* Northern Pac. R. Co., 99 Minn. 142, 108 N. W. 471.

4. **Two Innocent Parties Rule — Negligence — Fraud.** — Fifth Cong. Church *v.* Bright, 28 App. Cas. (D. C.) 229.

5. **Precautions** in addition to those prescribed by statute may be required in the exercise of reasonable care. Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

6. *United States.* — The Anna M. Fahy, (C. C. A.) 153 Fed. 866; Cooper *v.* Baltimore, etc., R. Co., (C. C. A.) 159 Fed. 82.

Alabama. — Louisville, etc., R. Co. *v.* Christian Moerlein Brewing Co., (Ala. 1907) 43 So. 720.

California. — Bresee *v.* Los Angeles Traction Co., 149 Cal. 131, 85 Pac. 152.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898.

Georgia. — Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508; Bensel Constr. Co. *v.* Homer, 2 Ga. App. 369, 58 S. E. 489.

Illinois. — Illinois Cent. R. Co. *v.* Andrews, 116 Ill. App. 8.

Indiana. — Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Indianapolis Traction, etc., Co. *v.* Romans, (Ind. App. 1907) 79 N. E. 1068; Tucker, etc., Mfg. Co. *v.* Staley, (Ind. App. 1907) 80 N. E. 975; Antioch Coal Co. *v.* Rockey, (Ind. 1907) 82 N. E. 76; U. S. Cement Co. *v.* Cooper, (Ind. App. 1907) 82 N. E. 981; Evansville Hoop, etc., Co. *v.* Bailey, (Ind. App. 1908) 84 N. E. 549.

Iowa. — Bromberg *v.* Evans Laundry Co., 134 Iowa 38, 111 N. W. 417.

Kentucky. — Andricus *v.* Pineville Coal Co., (Ky. 1906) 90 S. W. 233; Louisville, etc., R. R. Co. *v.* Sanders, (Ky. 1906) 92 S. W. 937; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Louisville, etc., R. Co. *v.* Joshlin, (Ky. 1908) 110 S. W. 382.

Mississippi. — Southern R. Co. *v.* Murray, (Miss. 1907) 44 So. 785.

Missouri. — Stafford *v.* Adams, 113 Mo. App. 717, 88 S. W. 1130; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Heintz *v.* St. Louis Transit Co., 115 Mo. App. 667, 92 S. W. 353; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Steinmann *v.* St. Louis Transit Co., 116 Mo. App. 673, 94 S. W. 799; Mulderig *v.* St. Louis, etc., R. Co., 116 Mo. App. 655, 94 S. W. 801; Nairn *v.* National Biscuit Co., 120 Mo. App. 144, 96 S. W. 679; Mitchell *v.* St. Louis, etc., R. Co., 122 Mo. App. 50, 97 S. W. 552; Millsap *v.* Beggs, 122 Mo. App. 1, 97 S. W. 956; Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509; Campbell *v.* St. Louis Transit Co., 121 Mo. App. 406, 99 S. W. 58; Mertens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; Weinstein *v.* Toledo, etc., R. Co., (Mo. App. 1908) 106 S. W. 1125.

Nebraska. — Vanderveer *v.* Moran, (Neb. 1907) 112 N. W. 581.

New York. — Poole *v.* American Linseed Co., 119 N. Y. App. Div. 136, 103 N. Y. Supp. 1047.

North Carolina. — Leathers *v.* Blackwell's Durham Tobacco Co., 144 N. Car. 330, 57 S. E. 11, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 478; Rolin *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 300, 53 S. E. 891; Hairston *v.* U. S. Leather Co., 143 N. Car. 512, 55 S. E. 847; Starnes *v.* Albion Mfg. Co., (N. Car. 1908) 61 S. E. 525.

South Carolina. — Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3.

Texas. — St. Louis Southwestern R. Co. *v.* Elledge, (Tex. Civ. App. 1906) 93 S. W. 499; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563; Northern Texas Traction Co. *v.* Thompson, (Tex. Civ. App. 1906) 95 S. W. 708; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; San Antonio Gas, etc., Co. *v.* Badders, (Tex. Civ. App. 1907) 103 S. W. 220; Ft. Worth, etc., St. R. Co. *v.* Hawes, (Tex. Civ. App. 1908) 107 S. W. 556; El Paso, etc., R. Co. *v.* Murtle, (Tex. Civ. App. 1908) 108 S. W. 998; Missouri, etc., R. Co. *v.* Malone, (Tex. Civ. App. 1908) 110 S. W. 958.

Utah. — Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075.

West Virginia. — Bowles *v.* Chesapeake, etc., R. Co., 61 W. Va. 272, 57 S. E. 131.

Violation Must Be Proximate Cause. — Johnson *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 206; Callopy *v.* Atwood, (Minn. 1908) 117 N. W. 238; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

Explanation of Doctrine. — Platt *v.* Southern Photo Material Co., (Ga. App. 1908) 60 S. E. 1068.

Where an Ordinance is designed for the safety of life, limb, or property, its violation constitutes negligence *per se.* Smith *v.* Mine, etc., Supply Co., (Utah 1907) 88 Pac. 683, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 478.

Theory that Negligence Immaterial. — Hearst's Chicago American *v.* Spiss, 117 Ill. App. 436.

Absolute Duty. — St. Louis Southwestern R. Co. *v.* Lowe, (Tex. Civ. App. 1906) 97 S. W. 1087.

7. Wolf *v.* Smith, (Ala. 1906) 42 So. 824; Foley *v.* Northrup, (Tex. Civ. App. 1907) 105 S. W. 229.

8. Gipson *v.* Southern R. Co., 140 Fed. 410; Southwestern Tel., etc., Co. *v.* Myane, (Ark. 1908) 111 S. W. 987; Chicago, etc., R. Co. *v.* Steckman, 125 Ill. App. 299; Madison *v.* Clippinger, 74 Kan. 703, 88 Pac. 260, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 478; Fowler Packing Co. *v.* Enzenperger, (Kan. 1908) 94 Pac. 995; Kansas Buff Brick, etc., Co. *v.* Stark, (Kan. 1908) 95 Pac. 1047; Anderson *v.* Settergren, 100 Minn. 296, 111 N. W. 279, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 478; Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827; Fitzgerald *v.* International Flax Twine Co., (Minn. 1908) 116 N. W. 475; Sembler *v.* Cowperthwait, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 28, 103 N. Y. Supp. 979.

By Terms of Statute. — Ward *v.* Meredith, 220 Ill. 66, 77 N. E. 118.

479. 1. Finnegan *v.* Samuel Winslow Skate Mfg. Co., 189 Mass. 580, 76 N. E. 192; Iamurri *v.* Saginaw City Gas Co., 148 Mich. 27, 111 N. W. 884; Christman *v.* Meierhoffer, 116 Mo. App. 46, 92 S. W. 141; Burns *v.* Delaware, etc., Co., 110 N. Y. App. Div. 592, 96 N. Y. Supp. 509; Schmidt *v.* Printing Business, etc., (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 130, 106 N. Y. Supp. 443; Lichtman *v.* Rose, (Supm. Ct. App. T.) 110 N. Y. Supp. 935; Houston, etc., R. Co. *v.* Burnet, (Tex. Civ. App. 1908) 108 S. W. 404; Southern R. Co. *v.* Stockdon, 106 Va. 693, 56 S. E. 713.

2. Giacomo *v.* New York, etc., R. Co., (Mass. 1907) 81 N. E. 899; Corbs *v.* Michigan Cent. R. Co., 144 Mich. 73, 107 N. W. 892; Mattes *v.* Great Northern R. Co., 100 Minn. 34, 110 N. W. 98; Kiernan *v.* Eidlitz, 109 N. Y. App. Div. 726, 96 N. Y. Supp. 387; Regling *v.* Lehmaier, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 331, 98 N. Y. Supp. 642; Kenyon *v.* William P. Sanford Mfg. Co., 119 N. Y. App. Div. 570, 103 N. Y. Supp. 1053; Shields *v.* Pugh, 122 N. Y. App. Div. 586, 107 N. Y. Supp. 604; Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617; Oates *v.* Union R. Co., 27 R. I. 499, 63 Atl. 675.

As Adverting to the Conflict of Authority, see Clements *v.* Potomac Electric Power Co., 26 App. Cas. (D. C.) 482; Lee *v.* Sterling Silk Co., 115 N. Y. App. Div. 589, 101 N. Y. Supp. 78; Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141; Stehle *v.* Jaeger Automatic Mach. Co., (Pa. 1908) 69 Atl. 1116; Bornemann *v.* Chicago, etc., R. Co., 19 S. Dak. 466, 104 N. W. 208, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 478, 479.

It has been said that in an action at common law the failure to perform a duty enjoined by statute or ordinance is sufficient to sustain the action. Shell *v.* Missouri Pac. R. Co., (Mo. App. 1908) 112 S. W. 39.

Ordinance. — Erie R. Co. *v.* Farrell, (C. C. A.) 147 Fed. 220; Wilson *v.* Atlantic Coast Line R. Co., 142 N. Car. 333, 55 S. E. 257.

An Ordinance may be admitted not as evidence in itself of negligence, but for the consideration of the jury. Bracken *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 22; Riegert *v.* Thackery, 212 Pa. St. 86, 61 Atl. 614.

Obedience of an Ordinance is proper for the consideration of the jury, although such obedience may not satisfy the duty of ordinary care. Caughlin *v.* Campbell-Sell Baking Co., 39 Colo. 148, 89 Pac. 53; Seaboard Air Line R. Co. *v.* Smith, 53 Fla. 375, 43 So. 235.

480. 1. *United States.*—Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; Bear *v.* Chicago G. W. R. Co., (C. C. A.) 141 Fed. 25.

Alabama. — Louisville, etc., R. Co. *v.* Mertz, (Ala. 1905) 40 So. 60; Wilson *v.* Louisville, etc., R. Co., 146 Ala. 285, 40 So. 941; Louisville, etc., R. Co. *v.* Christian Moerlein Brewing Co., (Ala. 1907) 43 So. 723.

Colorado. — Mead *v.* Ph. Zang Brewing Co., (Colo. 1908) 95 Pac. 284.

District of Columbia. — Clements *v.* Potomac Electric Power Co., 26 App. Cas. (D. C.) 482.

Illinois. — Kellyville Coal Co. *v.* Strine, 217 Ill. 516, 75 N. E. 375; Joseph Taylor Coal Co. *v.* Dawes, 220 Ill. 145, 77 N. E. 131; Athens Min. Co. *v.* Carnduff, 221 Ill. 354, 77 N. E. 571; American Car, etc., Co. *v.* Armentraut, 116 Ill. App. 121; Elgin, etc., R. Co. *v.* Hoadley, 122 Ill. App. 165; Ingraham *v.* Harmon, 133 Ill. App. 82.

Indiana. — Pittsburgh, etc., R. Co. *v.* Schepman, (Ind. 1908) 84 N. E. 988.

Kentucky. — Cincinnati, etc., R. Co. *v.* Baxter, (Ky. 1908) 110 S. W. 248.

Louisiana. — Lopes *v.* Sahuque, 114 La. 1004, 38 So. 810; Laborde *v.* Louisiana R., etc., Co., (La. 1908) 46 So. 97.

Massachusetts. — Farrell *v.* B. F. Sturtevant Co., 194 Mass. 431, 80 N. E. 469.

Michigan. — Stark *v.* Muskegon Traction, etc., Co., 141 Mich. 575, 104 N. W. 1100.

Minnesota. — Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827.

Mississippi. — Leeke *v.* Gulf, etc., R. Co., (Miss. 1908) 46 So. 68

Missouri. — Fore *v.* Chicago, etc., R. Co., 114 Mo. App. 551, 89 S. W. 1034; Hutchinson

v. Missouri Pac. R. Co., 195 Mo. 546, 93 S. W. 931; Bowen *v.* Chicago G. W. R. Co., 198 Mo. 654, 96 S. W. 1009.

Nebraska. — Clinebell *v.* Chicago, etc., R. Co., (Neb. 1906) 110 N. W. 347, (Neb. 1907) 111 N. W. 577.

New York. — Burns *v.* Delaware, etc., Co., 110 N. Y. App. Div. 592, 96 N. Y. Supp. 509; Conroy *v.* Acken, 110 N. Y. App. Div. 48, 96 N. Y. Supp. 530; Sembler *v.* Cowperthwait, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 28, 103 N. Y. Supp. 979; Schmidt *v.* Printing Business, etc., (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 130, 106 N. Y. Supp. 443; Fortune *v.* Hall, 122 N. Y. App. Div. 250, 106 N. Y. Supp. 787.

Rhode Island. — Weeks *v.* Fletcher, (R. I. 1908) 69 Atl. 294.

South Carolina. — Weaver *v.* Southern R. Co., 76 S. Car. 49, 56 S. E. 657.

South Dakota. — Borneman *v.* Chicago, etc., R. Co., 19 S. Dak. 466, 104 N. W. 208; Dougherty *v.* Chicago, etc., R. Co., (S. Dak. 1905) 104 N. W. 672; Miller *v.* Chicago, etc., R. Co., (S. Dak. 1907) 111 N. W. 553.

Texas. — Missouri, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 88 S. W. 406; St. Louis Southwestern R. Co. *v.* Everett, (Tex. Civ. App. 1905) 89 S. W. 457; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918; St. Louis Southwestern R. Co. *v.* Elledge, (Tex. Civ. App. 1906) 93 S. W. 499; Northern Texas Traction R. Co. *v.* Thompson, (Tex. Civ. App. 1906) 95 S. W. 708; Texas, etc., R. Co. *v.* Stoker, (Tex. Civ. App. 1907) 103 S. W. 1183.

Vermont. — Corbin *v.* Grand Trunk R. Co., 78 Vt. 458, 63 Atl. 138.

Virginia. — Norfolk, etc., R. Co. *v.* Gee, 104 Va. 806, 52 S. E. 572; Foreman *v.* Norfolk, etc., News Co., 106 Va. 770, 56 S. E. 805; Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56.

Washington. — Hoveland *v.* Hall Bros. Marine R., etc., Co., (Wash. 1905) 82 Pac. 1090.

Wisconsin. — Kujawa *v.* Chicago, etc., R. Co., (Wis. 1908) 116 N. W. 249.

By Terms of Statute. — Kansas Buff Brick, etc., Co. *v.* Stark, (Kan. 1908) 95 Pac. 1047.

Question for Jury. — Chicago, etc., R. Co. *v.* Averill, 127 Ill. App. 275; Kelsall *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 674.

481. 2. MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Platt *v.* Southern Photo Material Co., (Ga. App. 1908) 60 S. E. 1068; Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Campbell *v.* St. Louis Transit Co., 121 Mo. App. 406, 99 S. W. 58; Stotler *v.* Chicago, etc., R. Co., 200 Mo. 107, 98 S. W. 509; Rolin *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 300, 53 S. E. 891; Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Smith *v.* Mine, etc., Supply Co., (Utah 1907) 88 Pac. 683; Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075.

The doctrine holds good, even though the language of the statute does not limit the liabilities for its violation to injuries caused thereby. Chicago, etc., R. Co. *v.* King, (Neb. 1906) 107 N. W. 981.

Violation Conclusive by Terms of Statute. — Ft. Worth, etc., R. Co. *v.* Polson, (Tex. Civ. App. 1907) 106 S. W. 429.

Statute Putting Burden of Proof on Defendant. — Illinois Cent. R. Co. *v.* Watson, (Miss. 1907) 39 So. 69; McNulty *v.* St. Louis, etc., R. Co., 203 Mo. 475, 101 S. W. 1082; Midgett *v.* St. Louis, etc., R. Co., 124 Mo. App. 540, 102 S. W. 56; King *v.* Wabash R. Co., (Mo. 1908) 109 S. W. 671.

5. See Brunelle *v.* Lowell Electric Light Corp., 188 Mass. 493, 74 N. E. 676.

Where the statute declares the measure of duty, ordinary care is not the test of performance. Cunningham *v.* Frankfort, (Me. 1908) 70 Atl. 441; Graves *v.* Waitsfield, (Vt. 1908) 69 Atl. 137.

7. But see, under the *Illinois* Mines and Miners Act, Maplewood Coal Co. *v.* Graham, 134 Ill. App. 277.

482. 1. *United States.*—Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Bear *v.* Chicago G. W. R. Co., (C. C. A.) 141 Fed. 25.

Arkansas. — St. Louis Southwestern R. Co. *v.* Conger, 84 Ark. 421, 105 S. W. 1177.

Georgia. — Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 374; Georgia R., etc., Co. *v.* Williams, 2 Ga. App. 272, 59 S. E. 846; Harden *v.* Georgia R. Co., 3 Ga. App. 344, 59 S. E. 1122.

Illinois. — Carterville, etc., Coal Co. *v.* Moake, 128 Ill. App. 133, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 481; Bischof *v.* Illinois Southern R. Co., 232 Ill. 446, 83 N. E. 948; Wabash R. Co. *v.* Gaull, 116 Ill. App. 443.

Indiana. — Indiana, etc., Coal Co. *v.* Neal, 166 Ind. 458, 77 N. E. 850.

Louisiana. — Lopes *v.* Sahuque, 114 La. 1004, 38 So. 810; Laborde *v.* Louisiana R., etc., Co., (La. 1908) 46 So. 97.

Michigan. — Stark *v.* Muskegon Traction, etc., Co., 141 Mich. 575, 104 N. W. 1100; Richards *v.* Waltz, (Mich. 1908) 117 N. W. 193.

Missouri. — Latapie-Vignaux *v.* Askew Saddlery Co., 193 Mo. 1, 91 S. W. 496.

Pennsylvania. — Allen *v.* Kingston Coal Co., 212 Pa. St. 54, 61 Atl. 572.

Rhode Island. — Oates *v.* Union R. Co., 27 R. I. 499, 63 Atl. 675.

Texas. — Houston, etc., R. Co. *v.* Schuttee, (Tex. Civ. App. 1906) 91 S. W. 806.

Canada. — See Wallman *v.* Canadian Pac. R. Co., 16 Manitoba 82.

2. Macon, etc, R. Co. *v.* Parker, 127 Ga. 471, 56 S. E. 616; Missouri, etc., R. Co. *v.* Saunders, (Tex. 1908) 106 S. W. 321.

Where the Users of a Private Crossing are accustomed to rely on the statutory signals for a public crossing some distance away, it has been held that the failure to give the statutory signals is negligence toward one approaching the private crossing. Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810.

3. Burns *v.* Delaware, etc., Co., 110 N. Y. App. Div. 592, 96 N. Y. Supp. 509.

4. Bischof *v.* Illinois Southern R. Co., 232 Ill. 446, 83 N. E. 948; Murphy *v.* Grand Rapids Veneer Works, 142 Mich. 677, 106 N. W. 11.

When There Is No Evidence of violation,

the court should not submit the question. Strode *v.* Columbia Box Co., 124 Mo. App. 511, 101 S. W. 1099; Meifert *v.* New Union Sand Co., 124 Mo. App. 491, 101 S. W. 1103.

5. Sterling *v.* Union Carbide Co., 142 Mich. 284, 105 N. W. 755; Smith *v.* Mine, etc., Supply Co., (Utah 1907) 88 Pac. 683.

6. Norfolk, etc., R. Co. *v.* Gesswine, (C. C. A.) 144 Fed. 56; Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 374; Platt *v.* Southern Photo Material Co., (Ga. App. 1908) 60 S. E. 1068; Thompson *v.* Cleveland, etc., R. Co., 226 Ill. 542, 80 N. E. 1054; Bischof *v.* Illinois Southern R. Co., 232 Ill. 446, 83 N. E. 948; McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111; Janowicz *v.* Pittsburgh, etc., R. Co., 124 Ill. App. 149; Chicago, etc., R. Co. *v.* Bell, 133 Ill. App. 56; Indiana, etc., Coal Co. *v.* Neal, 166 Ind. 458, 77 N. E. 850; New York Cent., etc., R. Co. *v.* Price, (C. C. A.) 159 Fed. 330; Everett *v.* Great Northern R. Co., 100 Minn. 309, 111 N. W. 281; Houston, etc., R. Co. *v.* Schuttee, (Tex. Civ. App. 1906) 91 S. W. 806. See also Anderson *v.* Settergren, 100 Minn. 296, 111 N. W. 279, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 428 [482].

483. 1. Wolf *v.* Smith, (Ala. 1906) 42 So. 824; Clements *v.* Potomac Electric Power Co., 26 App. Cas. (D. C.) 482; Syneszewski *v.* Schmidt, (Mich. 1908) 116 N. W. 1107; Rooney *v.* Brogan Constr. Co., 107 N. Y. App. Div. 258, 95 N. Y. Supp. 1.

2. Clements *v.* Potomac Electric Power Co., 26 App. Cas. (D. C.) 482; Stehle *v.* Jaeger Automatic Mach. Co., (Pa. 1908) 69 Atl. 1116.

4. Louisville, etc., R. Co. *v.* Redmon, 122 Ky. 385, 91 S. W. 722; Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355. See also Shaffer *v.* Roesch, 215 Pa. St. 287, 64 Atl. 511.

6. *United States.* — Chicago G. W. R. Co. *v.* Smith, (C. C. A.) 141 Fed. 930; Chicago, etc., R. Co. *v.* Donaldson, (C. C. A.) 157 Fed. 821.

Arkansas. — St. Louis, etc., R. Co. *v.* Hitt, 76 Ark. 224, 88 S. W. 911; Mammoth Vein Coal Co. *v.* Bublis, 83 Ark. 567, 104 S. W. 210.

Illinois. — Cleveland, etc., R. Co. *v.* Sparks, 122 Ill. App. 400; Cleveland, etc., R. Co. *v.* Dukeman, 130 Ill. App. 105; Chicago, etc., R. Co. *v.* Gill, 132 Ill. App. 310.

Iowa. — Sutton *v.* Des Moines Bakery Co., (Iowa 1907) 112 N. W. 836.

Kansas. — Madison *v.* Clippinger, 74 Kan. 700, 88 Pac. 260; Missouri Pac. R. Co. *v.* Trahern, (Kan. 1907) 91 Pac. 48.

Kentucky. — Illinois Cent. R. Co. *v.* Wills, (Ky. 1906) 97 S. W. 21; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246.

Michigan. — Swick *v.* Ætna Portland Cement Co., 147 Mich. 454, 111 N. W. 110; Beghold *v.* Auto Body Co., 149 Mich. 14, 112 N. W. 691; Schulte *v.* Pfaulder Co., 150 Mich. 427, 113 N. W. 1120.

Mississippi. — Hopson *v.* Kansas City, etc., R. Co., 87 Miss. 789, 40 So. 872.

Missouri. — Sanguinette *v.* Mississippi River, etc., R. Co., 196 Mo. 466, 95 S. W. 386; Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880; Huss *v.* Heydt Bakery Co., (Mo. 1908) 108 S. W. 63.

Nebraska. — Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

New York. — Lee *v.* Sterling Silk Co., 115 N. Y. App. Div. 589, 101 N. Y. Supp. 78.

North Dakota. — Morrison *v.* Lee, (N. Dak. 1907) 113 N. W. 1025.

Ohio. — Baltimore, etc., R. Co. *v.* McIlyar, (Ohio 1908) 83 N. E. 497.

Oregon. — Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141.

Rhode Island. — Leahy *v.* U. S. Cotton Co., 28 R. I. 252, 66 Atl. 572.

Texas. — International, etc., R. Co. *v.* Edwards, (Tex. 1906) 93 S. W. 106.

Virginia. — Stokes *v.* Southern R. Co., 104 Va. 817, 52 S. E. 855; Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155; Foreman *v.* Norfolk, etc., News Co., 106 Va. 770, 56 S. E. 805; Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56; Southern R. Co. *v.* Hansbrough, 107 Va. 733, 60 S. E. 58.

In Cases of Injuries to Property the plaintiff will not be excused for his own negligence in regard to it by the defendant's notation of a statute. Gee *v.* St. Louis, etc., R. Co., 122 Mo. App. 358, 99 S. W. 506.

The Nature of the Statute may exclude the defense of contributory negligence. Henrietta Coal Co. *v.* Martin, 221 Ill. 460, 77 N. E. 902; Kellyville Coal Co. *v.* Strine, 117 Ill. App. 115; Jefferson Theatre Program Co. *v.* Crejczyk, 125 Ill. App. 1; Nairn *v.* National Biscuit Co., 120 Mo. App. 144, 96 S. W. 679; Hairston *v.* U. S. Leather Co., 143 N. Car. 512, 55 S. E. 847; Drawdy *v.* Atlantic Coast Line R. Co., 78 S. Car. 374, 58 S. E. 980.

7. Schutt *v.* Adair, 99 Minn. 7, 108 N. W. 811; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Millsap *v.* Beggs, 122 Mo. App. 1, 97 S. W. 956; Holland *v.* Missouri Pac. R. Co., (Mo. 1908) 109 S. W. 19.

8. *United States.* — Gila Valley, etc., R. Co. *v.* Lyon, 203 U. S. 465, 27 U. S. Sup. Ct. 145; Northern Pac. R. Co. *v.* Dixon, (C. C. A.) 139 Fed. 737; Norfolk, etc., R. Co. *v.* Gesswine, (C. C. A.) 144 Fed. 56; U. S. Fidelity, etc., Co. *v.* Des Moines Nat. Bank, (C. C. A.) 145 Fed. 273; Kreigh *v.* Westinghouse, (C. C. A.) 152 Fed. 120; Keep *v.* National Tube Co., 154 Fed. 121; Washington Mills *v.* Cox, (C. C. A.) 157 Fed. 634.

Alabama. — Williamson Iron Co. *v.* McQueen, 144 Ala. 265, 40 So. 306; Wilson *v.* Louisville, etc., R. Co., 146 Ala. 285, 40 So. 941; Birmingham R., etc., Co. *v.* Jones, 146 Ala. 495, 41 So. 146; Creola Lumber Co. *v.* Mills, (Ala. 1906) 42 So. 1019; Louisville, etc., R. Co. *v.* Mertz, (Ala. 1907) 43 So. 7; Mobile Light, etc., Co. *v.* Bell, (Ala. 1907) 45 So. 56; Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238; Malcomb *v.* Louisville, etc., R. Co., (Ala. 1908) 46 So. 768.

Arkansas. — Walker *v.* Louis Werner Sawmill Co., 76 Ark. 436, 88 S. W. 988; Little Rock R., etc., Co. *v.* Newman, 77 Ark. 599, 92 S. W. 864; Ft. Smith Light, etc., Co. *v.* Flint, 81 Ark. 231, 99 S. W. 79; Jewell *v.* St. Louis, etc., R. Co., 82 Ark. 508, 102 S. W. 370.

California. — Fogarty *v.* Southern Pac. Co., 151 Cal. 785, 91 Pac. 650; McVay *v.* Central California Invest. Co., (Cal. App. 1907) 91 Pac. 745.

Colorado. — Colorado, etc., R. Co. *v.* Webb, 36 Colo. 224, 85 Pac. 683; Denver *v.* Utzler, 38

Colo. 300, 88 Pac. 143; Elkton Consol. Min., etc., Co. *v.* Sullivan, (Colo. 1907) 92 Pac. 679.

Delaware. — MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778.

Florida. — Western Union Tel. Co. *v.* Barlow, 51 Fla. 351, 40 So. 491; Seaboard Air Line R. Co. *v.* Barwick, 51 Fla. 304, 41 So. 70; Atlantic Coast Line R. Co. *v.* Benedict Pineapple Co., 52 Fla. 165, 42 So. 529; Seaboard Air Line R. Co. *v.* Smith, 53 Fla. 375, 43 So. 235; Atlantic Coast Line R. Co. *v.* Mallard, (Fla. 1907) 44 So. 366; Jacksonville Electric Co. *v.* Batchis, (Fla. 1907) 44 So. 933; Benedict Pineapple Co. *v.* Atlantic Coast Line R. Co., (Fla. 1908) 46 So. 732; German-American Lumber Co. *v.* Brock, (Fla. 1908) 46 So. 740; Bookman *v.* Seaboard Air Line R. Co., (C. C. A.) 152 Fed. 686.

Georgia. — Hill *v.* Louisville, etc., R. Co., 124 Ga. 243, 52 S. E. 651; Beckham *v.* Seaboard Air Line R. Co., 127 Ga. 550, 56 S. E. 638; Shields *v.* Georgia R., etc., Co., 1 Ga. App. 172, 57 S. E. 980; Southern R. Co. *v.* Puryear, 2 Ga. App. 75, 58 S. E. 306; Vinson *v.* Willingham Cotton Mills, 2 Ga. App. 53, 58 S. E. 413; Seaboard Air Line R. Co. *v.* Smith, 3 Ga. App. 1, 59 S. E. 199.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Illinois. — Burke *v.* Hulett, 216 Ill. 545, 75 N. E. 240; Southern R. Co. *v.* Cullen, 221 Ill. 392, 77 N. E. 470; Illinois Cent. R. Co. *v.* Johnson, 221 Ill. 42, 77 N. E. 592; McAndrews *v.* Chicago, etc., R. Co., 222 Ill. 232, 78 N. E. 603; Thompson *v.* Cleveland, etc., R. Co., 226 Ill. 542, 80 N. E. 1054; East St. Louis R. Co. *v.* Hessling, 116 Ill. App. 125; Illinois Cent. R. Co. *v.* Kerr, 125 Ill. App. 363; Rosan *v.* Big Muddy Coal, etc., Co., 128 Ill. App. 128.

Indiana. — Greenawaldt *v.* Lake Shore, etc., R. Co., 165 Ind. 219, 74 N. E. 1081; Indianapolis St. R. Co. *v.* Ray, 167 Ind. 236, 78 N. E. 978; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626; Hammond, etc., Electric R. Co. *v.* Antonia, (Ind. App. 1908) 83 N. E. 766; Toledo, etc., R. Co. *v.* Sullivan, (Ind. App. 1908) 83 N. E. 1024; Richmond, etc., R. Co. *v.* Beverley, (Ind. App. 1908) 84 N. E. 558.

Indian Territory. — Atchison, etc., R. Co. *v.* Dickens, (Indian Ter. 1907) 103 S. W. 750; Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Andrews *v.* Chicago, etc., R. Co., 129 Iowa 162, 105 N. W. 404; O'Connor *v.* Chicago, etc., R. Co., 129 Iowa 636, 106 N. W. 161; Gordon *v.* Chicago, etc., R. Co., 129 Iowa 747, 106 N. W. 177; Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359; Cavanaugh *v.* Centerville Block Coal Co., 131 Iowa 700, 109 N. W. 303; McEldon *v.* Drew, (Iowa 1908) 116 N. W. 147.

Kentucky. — Lexington R. Co. *v.* Fain, (Ky. 1906) 90 S. W. 574; Snydor *v.* Arnold, (Ky. 1906) 92 S. W. 289; Hazel *v.* Owensboro, (Ky. 1907) 99 S. W. 315; Cincinnati, etc., R. Co. *v.* Zachary, (Ky. 1908) 106 S. W. 842; Louisville, etc., R. Co. *v.* Daugherty, (Ky. 1908) 108 S. W. 336.

Louisiana. — Laborde *v.* Louisiana R., etc., Co., (La. 1908) 46 So. 97.

Maine. — Neal *v.* Rendall, 100 Me. 574, 62 Atl. 706.

Maryland. — Cumberland, etc., Electric R. Co. *v.* Thompson, 102 Md. 193, 62 Atl. 243; Strasburger *v.* Vogel, 103 Md. 85, 63 Atl. 202.

Massachusetts. — Butler *v.* New England Structural Co., 191 Mass. 397, 77 N. E. 764.

Michigan. — Warren *v.* Porter, 144 Mich. 699, 108 N. W. 435; Logan *v.* Lake Shore, etc., R. Co., 148 Mich. 603, 112 N. W. 506; Briggs *v.* Pine River Tp., 150 Mich. 381, 114 N. W. 221.

Minnesota. — Lee *v.* Wild Rice Lumber Co., 102 Minn. 74, 112 N. W. 887; Mageau *v.* Great Northern R. Co., 102 Minn. 399, 113 N. W. 1016.

Mississippi. — Leeke *v.* Gulf, etc., R. Co., (Miss. 1908) 46 So. 68.

Missouri. — Jager *v.* Metropolitan St. R. Co., 114 Mo. App. 10, 89 S. W. 62; Foley *v.* McMahon, 114 Mo. 442, 90 S. W. 113; Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 98 S. W. 1158; Kelley *v.* Lawrence, 195 Mo. 75, 92 S. W. 1158; Becker *v.* Lincoln Real Estate, etc., Co., 118 Mo. 74, 93 S. W. 291; McFern *v.* Gardner, 121 Mo. App. 1, 97 S. W. 972; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Luehrmann *v.* Laclede Gaslight Co., 127 Mo. App. 213, 104 S. W. 1128; Cornovski *v.* St. Louis Transit Co., 207 Mo. 263, 106 S. W. 51.

Nebraska. — Riley *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 847.

Nevada. — See Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210.

New Hampshire. — St. Pierre *v.* Foster, 74 N. H. 4, 64 Atl. 723.

New Jersey. — Batton *v.* Public Service Corp., (N. J. 1908) 69 Atl. 164; Stumpf *v.* Delaware, etc., R. Co., (N. J. 1908) 69 Atl. 207.

New York. — Zilver *v.* Robert Graves Co., 106 N. Y. App. Div. 582, 94 N. Y. Supp. 714; Burnos *v.* American Sugar Refining Co., 107 N. Y. App. Div. 286, 94 N. Y. Supp. 1104; McVay *v.* Brooklyn, etc., R. Co., 113 N. Y. App. Div. 724, 99 N. Y. Supp. 266; Fanizzi *v.* New York, etc., R. Co., 113 N. Y. App. Div. 440, 99 N. Y. Supp. 281; Famularo *v.* Oil Well Supply Co., (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 75, 105 N. Y. Supp. 1063; Ostrander *v.* Orange County Traction Co., 125 N. Y. App. Div. 603, 110 N. Y. Supp. 15.

North Carolina. — Pressly *v.* Dover Yarn Mills, 138 N. Car. 410, 51 S. E. 69; Jones *v.* American Warehouse Co., 138 N. Car. 546, 51 S. E. 106; Byrd *v.* Southern Express Co., 139 N. Car. 273, 51 S. E. 851; Pegram *v.* Seaboard Air Line R. Co., 139 N. Car. 303, 51 S. E. 975; Kearns *v.* Southern R. Co., 139 N. Car. 470, 52 S. E. 131; Fuller *v.* Atlantic Coast Line R. Co., 140 N. Car. 480, 53 S. E. 297; Harton *v.* Forest City Telephone Co., 141 N. Car. 455, 54 S. E. 299; Brewester *v.* Elizabeth, 142 N. Car. 9, 54 S. E. 784; Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86; Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945; Horton *v.* Seaboard Air Line R. Co., 145 N. Car. 132, 58 S. E. 993;

McGehee *v.* Norfolk, etc., R. Co., (N. Car. 1908) 60 S. E. 912.

North Dakota. — Morrison *v.* Lee, (N. Dak. 1907) 113 N. W. 1025.

Ohio. — Baltimore, etc., R. Co. *v.* Lockwood, 72 Ohio St. 586, 74 N. E. 1071; Miller *v.* Baltimore, etc., R. Co., (Ohio 1908) 85 N. E. 499.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076.

Oregon. — Trickey *v.* Clark, (Oregon 1908) 93 Pac. 457.

Pennsylvania. — Herbstritt *v.* Lackawanna Lumber Co., 212 Pa. St. 495, 61 Atl. 1101; Merrigan *v.* Evans, (Pa. 1908) 69 Atl. 1113.

Rhode Island. — Weeks *v.* Fletcher, (R. I. 1908) 69 Atl. 294.

South Carolina. — Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3; Rochester *v.* Bull, 78 S. Car. 249, 58 S. E. 766; Horn *v.* Southern R. Co., 78 S. Car. 67, 58 S. E. 963; Harbert *v.* Atlanta, etc., R. Co., 78 S. Car. 537, 59 S. E. 644; Anderson *v.* South Carolina, etc., R. Co., (S. Car. 1908) 61 S. E. 1096.

South Dakota. — Louiseau *v.* Arp, (S. Dak. 1908) 114 N. W. 701; Phillips *v.* International Harvester Co., (S. Dak. 1908) 117 N. W. 146.

Tennessee. — Kansas City, etc., R. Co. *v.* Williford, 115 Tenn. 108, 88 S. W. 178.

Texas. — Sanders *v.* Houston, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 139, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 483 to 497, inclusive; Hardin *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 88 S. W. 440; St. Louis Southwestern R. Co. *v.* Everett, (Tex. Civ. App. 1905) 89 S. W. 457; Texas Cent. R. Co. *v.* George, (Tex. Civ. App. 1905) 89 S. W. 1091; Chicago, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 89 S. W. 1117; Latimer *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 90 S. W. 665; Bryan *v.* International, etc., R. Co., (Tex. Civ. App. 1905) 90 S. W. 693; Missouri, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 702; Beaty *v.* El Paso Electric R. Co., (Tex. Civ. App. 1905) 91 S. W. 365; Galveston, etc., R. Co. *v.* Heard, (Tex. Civ. App. 1905) 91 S. W. 371; Gulf, etc., R. Co. *v.* Simpson, (Tex. Civ. App. 1905) 91 S. W. 874; St. Louis Southwestern R. Co. *v.* Hall, (Tex. Civ. App. 1906) 92 S. W. 1079; Houston, etc., R. Co. *v.* Beard, (Tex. Civ. App. 1906) 93 S. W. 532; Rice *v.* Dewberry, (Tex. Civ. App. 1906) 93 S. W. 715; Nix *v.* San Antonio Traction Co., (Tex. Civ. App. 1906) 94 S. W. 335; Gulf, etc., R. Co. *v.* Blake, (Tex. Civ. App. 1906) 95 S. W. 593; International, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1906) 98 S. W. 911; Houston, etc., R. Co. *v.* Aughin, (Tex. Civ. App. 1907) 99 S. W. 897; Feille *v.* San Antonio Traction Co., (Tex. Civ. App. 1908) 107 S. W. 367; International, etc., R. Co. *v.* Rieden, (Tex. Civ. App. 1908) 107 S. W. 661; Texas, etc., R. Co. *v.* Davidson, (Tex. Civ. App. 1908) 107 S. W. 949; Missouri, etc., R. Co. *v.* Morgan, (Tex. Civ. App. 1908) 108 S. W. 724; Hillsboro Cotton Mills *v.* King, (Tex. Civ. App. 1908) 109 S. W. 484.

Utah. — Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715.

Vermont. — Mahoney *v.* Rutland R. Co., 78 Vt. 244, 62 Atl. 722.

Virginia. — Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731; Norfolk, etc., R. Co. *v.* Stegalls, 105 Va. 538, 54 S. E. 19; Virginia Iron, etc., Co. *v.* Kiser, 105 Va. 695, 54 S. E. 889.

Washington. — Shannon *v.* Tacoma, 41 Wash. 220, 83 Pac. 186; Breckenridge *v.* American Eagle Consol. Min. Co., 42 Wash. 279, 84 Pac. 858.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

Wisconsin. — Van De Bogart *v.* Marinette, etc., Paper Co., 127 Wis. 104, 106 N. W. 805; Eichmann *v.* Buchheit, 128 Wis. 385, 107 N. W. 325.

Canada. — Mader *v.* Halifax Electric Tramway Co., 37 Can. Sup. Ct. 94; Dumphy *v.* Montreal Light, etc., Co., 28 Quebec Super. Ct. 18.

"The negligent act or omission of duty upon the part of the defendant must first be determined before it becomes necessary to ascertain the proximate cause of an injury." Jones *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 202, 53 S. E. 849.

"Causa Proxima, Non Remota Spectatur." — Place *v.* Grand Trunk R. Co., 80 Vt. 196, 67 Atl. 545.

It Is upon the Theory of proximate cause that the decisions rest in cases of discovered peril and "last clear chance." See Reid *v.* Atlanta, etc., Air Line R. Co., 140 N. Car. 146, 52 S. E. 307. See also the title Contributory Negligence.

485. 1. *Alabama.* — Higgins *v.* Southern R. Co., 148 Ala. 153, 41 So. 856; Alabama G. S. R. Co. *v.* Vail, (Ala. 1908) 46 So. 587.

California. — McVay *v.* Central California Invest. Co., (Cal. App. 1907) 91 Pac. 745.

Florida. — Bookman *v.* Seaboard Air Line R. Co., (C. C. A.) 152 Fed. 686.

Illinois. — Simpson *v.* Hansel-Elock Foundry Co., 229 Ill. 554, 82 N. E. 388; Illinois Cent. R. Co. *v.* Kerr, 125 Ill. App. 363.

Indiana. — Southern R. Co. *v.* Sittasen, 166 Ind. 257, 76 N. E. 973; Crawfordville *v.* Van Cleave, 39 Ind. App. 574, 77 N. E. 1149; Zeller *v.* Wright, (Ind. App. 1908) 83 N. E. 1030.

Kentucky. — Chesapeake, etc., R. Co. *v.* Anderson, (Ky. 1907) 103 S. W. 311; Hummer *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 885.

Massachusetts. — Brooks *v.* Boston, etc., R. Co., 188 Mass. 416, 74 N. E. 670; Caswell *v.* Boston El. R. Co., 190 Mass. 527, 77 N. E. 380.

New York. — Conroy *v.* Acken, 110 N. Y. App. Div. 48, 96 N. Y. Supp. 530.

North Carolina. — Byrd *v.* Southern Express Co., 139 N. Car. 273, 51 S. E. 851.

Texas. — Hardin *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 88 S. W. 440.

Utah. — Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075.

Virginia. — Southern R. Co. *v.* Daves, (Va. 1908) 61 S. E. 748.

2. Bellino *v.* Columbus Constr. Co., 188 Mass. 430, 74 N. E. 684; Conroy *v.* Acken, 110 N. Y. App. Div. 48, 96 N. Y. Supp. 530. See also the dissenting opinion of Woodward, J., in Kremer *v.* New York Edison Co., 102 N. Y. App. Div. 442, 92 N. Y. Supp. 883.

3. Definitions and Meaning of Proximate

Cause — *United States.* — Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; Washington Mills *v.* Cox, (C. C. A.) 157 Fed. 634; San Francisco, etc., Steamship Co. *v.* Carlson, (C. C. A.) 161 Fed. 851.

Alabama. — Southern R. Co. *v.* Reeder, (Ala. 1907) 44 So. 699.

Colorado. — Snyder *v.* Colorado Springs, etc., R. Co., 36 Colo. 288, 85 Pac. 686; Lyons *v.* Watt, (Colo. 1908) 95 Pac. 949.

Connecticut. — Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Florida. — Moore *v.* Lanier, 52 Fla. 353, 42 So. 462; Florida East Coast R. Co. *v.* Wade, 53 Fla. 620, 43 So. 775; Florida East Coast R. Co. *v.* Welch, 53 Fla. 145, 44 So. 250.

Georgia. — Southern R. Co. *v.* Tankersley, (Ga. App. 1908) 60 S. E. 297.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Illinois. — Strojny *v.* Griffin Wheel Co., 116 Ill. App. 550; Yunkes *v.* Latrobe Steel, etc., Co., 131 Ill. App. 292.

Indiana. — Baltimore, etc., R. Co. *v.* Kleespies, 39 Ind. App. 160, 76 N. E. 1015, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485; New York, etc., R. Co. *v.* Hamlin, (Ind. 1908) 83 N. E. 343; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626; Evansville Hoop, etc., Co. *v.* Bailey, (Ind. App. 1908) 84 N. E. 549; Richmond, etc., R. Co. *v.* Beverley, (Ind. App. 1908) 84 N. E. 558.

Iowa. — Andrews *v.* Chicago, etc., R. Co., 129 Iowa 162, 105 N. W. 404.

Missouri. — Foley *v.* McMahon, 114 Mo. App. 442, 90 S. W. 113; Lawrence *v.* Heidbreder Ice Co., 119 Mo. App. 316, 93 S. W. 897; Bokamp *v.* Chicago, etc., R. Co., 123 Mo. App. 270, 100 S. W. 689.

New Hampshire. — Vaisbord *v.* Nashua Mfg. Co., (N. H. 1908) 69 Atl. 520.

New Jersey. — Batton *v.* Public Service Corp., (N. J. 1908) 69 Atl. 164.

New Mexico. — Roswell *v.* Davenport, (N. Mex. 1907) 89 Pac. 256.

New York. — Schell *v.* German Flatts, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116; McGovern *v.* Degnon-McLean Contracting Co., 120 N. Y. App. Div. 524, 105 N. Y. Supp. 408.

North Carolina. — Bowers *v.* East Tennesee, etc., R. Co., 144 N. Car. 684, 57 S. E. 453, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485.

South Carolina. — Cooper *v.* Richland County, 76 S. Car. 202, 56 S. E. 958.

Texas. — Missouri, etc., R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 89 S. W. 991; Galveston, etc., R. Co. *v.* Heard, (Tex. Civ. App. 1905) 91 S. W. 371; Houston, etc., R. Co. *v.* Oram, (Tex. Civ. App. 1906) 92 S. W. 1029; St. Louis Southwestern R. Co. *v.* Hall, (Tex. Civ. App. 1906) 92 S. W. 1079; Houston, etc., R. Co. *v.* Beard, (Tex. Civ. App. 1906) 93 S. W. 532; Rice *v.* Dewberry, (Tex. Civ. App. 1906) 93 S. W. 715; St. Louis Southwestern R. Co. *v.* Haney, (Tex. Civ. App. 1906) 94 S. W. 386; El Paso, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1908) 108 S. W. 988; San Antonio, etc., R. Co. *v.* Trigo, (Tex. Civ. App. 1908) 108 S. W. 1193.

Vermont. — Place *v.* Grand Trunk R. Co., 80 Vt. 196, 67 Atl. 545.

Wisconsin. — Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88; Stefanowski *v.* Chain Belt Co., 129 Wis. 484, 109 N. W. 532.

Test of Natural and Probable Consequences — *United States.* — American Bridge Co. *v.* Seeds, (C. C. A.) 144 Fed. 605; U. S. Fidelity, etc., Co. *v.* Des Moines Nat. Bank, (C. C. A.) 145 Fed. 273; Kreigh *v.* Westinghouse, (C. C. A.) 152 Fed. 120; Citizens' Gas, etc., Co. *v.* Nicholson, (C. C. A.) 152 Fed. 389.

Arkansas. — York *v.* St. Louis, etc., R. Co., (Ark. 1908) 110 S. W. 803; Ultima Thule, etc., R. Co. *v.* Benton, (Ark. 1908) 110 S. W. 1037.

California. — Newton *v.* United Electric Gas, etc., Co., 3 Cal. App. 701, 86 Pac. 901.

Georgia. — Savannah Electric Co. *v.* Wheeler, 128 Ga. 550, 58 S. E. 38.

Indiana. — Pittsburgh, etc., R. Co. *v.* Cozatt, 39 Ind. 682, 79 N. E. 534; Chicago, etc., R. Co. *v.* Dinius, (Ind. 1908) 84 N. E. 9.

Indian Territory. — Atchison, etc., R. Co. *v.* Dickens, (Indian Ter. 1907) 103 S. W. 750.

Kansas. — Schwarzschild, etc., Co. *v.* Weeks, 72 Kan. 190, 83 Pac. 406.

Kentucky. — Louisville Home Telephone Co. *v.* Gesper, (Ky. 1906) 93 S. W. 1057; Louisville, etc., R. Co. *v.* Daugherty, (Ky. 1908) 108 S. W. 336.

Maine. — Marsh *v.* Great Northern Paper Co., 101 Me. 489, 64 Atl. 844.

Missouri. — Boyce *v.* Chicago, etc., R. Co., 120 Mo. App. 168, 96 S. W. 670; Nephler *v.* Woodward, 200 Mo. 179, 98 S. W. 488; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Brubaker *v.* Kansas City Electric Light Co., (Mo. App. 1908) 110 S. W. 12.

Nebraska. — Bryant *v.* Beebe, etc., Furniture Co., (Neb. 1907) 110 N. W. 690; Johnston *v.* New Omaha Thomson-Houston Electric Light Co., (Neb. 1907) 110 N. W. 711.

New Hampshire. — Lord *v.* Manchester St. R. Co., (N. H. 1907) 67 Atl. 639; Boucher *v.* Larochelle, (N. H. 1908) 68 Atl. 870.

New York. — Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928.

North Carolina. — Hudson *v.* Atlantic, etc., R. Co., 142 N. Car. 204, 55 S. E. 103.

Ohio. — Miller *v.* Baltimore, etc., R. Co., (Ohio 1908) 85 N. E. 499.

Pennsylvania. — McCabe *v.* Philadelphia, 217 Pa. St. 140, 66 Atl. 247; Eagle Hose Co. *v.* Priceburg Electric Light Co., 33 Pa. Super. Ct. 581.

Texas. — Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 90 S. W. 185; Galveston, etc., R. Co. *v.* Paschall, (Tex. Civ. App. 1906) 92 S. W. 446; International, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 595; Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. App. 1906) 98 S. W. 892; Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589; Missouri, etc., R. Co. *v.* Scruggs, (Tex. Civ. App. 1907) 106 S. W. 778; International, etc., R. Co. *v.* Rieden, (Tex. Civ. App. 1908) 107 S. W. 661.

Utah. — Edgar *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 745.

Vermont. — Corbin *v.* Grand Trunk R. Co., 78 Vt. 458, 63 Atl. 138.

Virginia. — Clark *v.* Fehlhaber, 106 Va. 803, 56 S. E. 817.

Wisconsin. — Olwell *v.* Skobis, 126 Wis. 308, 105 N. W. 777; Van De Bogart *v.* Marinette, etc., Paper Co., 127 Wis. 104, 106 N. W. 805; Eichmann *v.* Buchheit, 128 Wis. 385, 107 N. W. 325; Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738.

Probable Result Which Should Have Been Foreseen. — Western Union Tel. Co. *v.* Milton, 53 Fla. 501, 43 So. 495, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485–496.

Some of the cases seem to draw a distinction between results which are natural and probable and those which could have been foreseen. Evansville Hoop, etc., Co. *v.* Bailey, (Ind. App. 1908) 84 N. E. 549.

The Dominant Cause. — Bell *v.* Rocheford, (Neb. 1907) 113 N. W. 157.

"Proximate" and "Principal" Not Synonymous. — Woolsey *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 16.

486. 1. Southern R. Co. *v.* Tankersley, (Ga. App. 1908) 60 S. E. 297; New York, etc., R. Co. *v.* Hamlin, (Ind. 1908) 83 N. E. 343; Atchison, etc., R. Co. *v.* Wilkie, (Kan. 1907) 90 Pac. 775; Marsh *v.* Great Northern Paper Co., 101 Me. 489, 64 Atl. 844; Campbell *v.* Railway Transfer Co., 95 Minn. 375, 104 N. W. 547; Bell *v.* Rocheford, (Neb. 1907) 113 N. W. 157; Collins *v.* West Jersey Express Co., 72 N. J. L. 231, 62 Atl. 675; Batton *v.* Public Service Corp., (N. J. 1908) 69 Atl. 164; Cameron *v.* Citizens' Traction Co., 216 Pa. St. 191, 65 Atl. 534; Mayrant *v.* Columbia, 77 S. Car. 281, 57 S. E. 857; Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3; Houston, etc., R. Co. *v.* Oram, (Tex. Civ. App. 1906) 92 S. W. 1029; Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. App. 1906) 98 S. W. 892; San Antonio, etc., R. Co. *v.* Trigo, (Tex. Civ. App. 1908) 108 S. W. 1193.

Unbroken Sequence or Succession. — Crowley *v.* West End, (Ala. 1907) 43 So. 359; Sallie *v.* New York City R. Co., 110 N. Y. App. Div. 665, 97 N. Y. Supp. 491; Eagle Hose Co. *v.* Priceburg Electric Light Co., 33 Pa. Super. Ct. 581.

2. **Efficiency** — *Georgia.* — Southern R. Co. *v.* Tankersley, (Ga. App. 1908) 60 S. E. 297.

Illinois. — Chicago Union Traction Co. *v.* Sawusch, 218 Ill. 130, 75 N. E. 797.

Indiana. — Chicago, etc., R. Co. *v.* Pritchard, 168 Ind. 398, 79 N. E. 509; Pittsburgh, etc., R. Co. *v.* Cozett, 39 Ind. App. 682, 79 N. E. 534; Bessler *v.* Laughlin, 168 Ind. 38, 79 N. E. 1033; Cincinnati, etc., R. Co. *v.* Acrea, (Ind. App. 1907) 82 N. E. 1009; Chicago, etc., R. Co. *v.* Dinius, (Ind. 1908) 84 N. E. 9.

Iowa. — Madden *v.* Saylor Coal Co., 133 Iowa 699, 111 N. W. 57.

Massachusetts. — Doe *v.* Boston, etc., St. R. Co., 195 Mass. 168, 80 N. E. 814.

Mississippi. — Yazoo, etc., R. Co. *v.* Roberts, 88 Miss. 80, 40 So. 481.

Missouri. — Lawrence *v.* Hoffbrauer Ice Co., 119 Mo. App. 316, 93 S. W. 807.

New York. — Burke *v.* Manhattan R. Co., 109 N. Y. App. Div. 722, 96 N. Y. Supp. 516.

North Carolina. — Sibbert *v.* Scotland Cotton Mills, 145 N. Car. 308, 59 S. E. 79.

Texas. — International, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 595; El Paso, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1908) 108 S. W. 988.

Wisconsin. — Winchel *v.* Goodyear, 126 Wis. 271, 105 N. W. 824; Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88.

Canada. — Labombarde *v.* Chatham Gas Co., 10 Ont. L. Rep. 446.

3. **"Natural" — Various Views.** — Mikesell *v.* Wabash R. Co., 134 Iowa 736, 112 N. W. 201; Iamurri *v.* Saginaw City Gas Co., 148 Mich. 27, 111 N. W. 884; Reynolds *v.* Galveston, etc., R. Co., (Tex. 1907) 102 S. W. 724.

Natural Sequence. — Malcomb *v.* Louisville, etc., R. Co., (Ala. 1908) 46 So. 768; Benedict Pineapple Co. *v.* Atlantic Coast Line R. Co., (Fla. 1908) 46 So. 732; German-American Lumber Co. *v.* Brock, (Fla. 1908) 46 So. 740; Bessler *v.* Laughlin, 168 Ind. 38, 79 N. E. 1033; Payne *v.* Georgetown Lumber Co., 117 La. 983, 42 So. 475; Fuller *v.* Atlantic Coast Line R. Co., 140 N. Car. 480, 53 S. E. 297; St. Louis Southwestern R. Co. *v.* Hall, (Tex. Civ. App. 1906) 92 S. W. 1079.

5. **"Natural and Proximate"** consequences are not necessarily those which should have been foreseen. Mikesell *v.* Wabash R. Co., 134 Iowa 736, 112 N. W. 201.

6. "Every one is bound to anticipate the results naturally flowing from his acts." Illinois Cent. R. Co. *v.* Siler, 229 Ill. 390, 82 N. E. 362.

"The injurious, proximate, and natural consequences of an act of negligence are always deemed to be foreseen." El Paso Southwestern R. Co. *v.* Barrett, (Tex. Civ. App. 1907) 101 S. W. 1025.

The Conduct of the Defendant is to be viewed in the light of the circumstances existing before, and not after, the accident. King *v.* Reid, (Supm. Ct. App. Div.) 108 N. Y. Supp. 615.

When Doctrine Inapplicable. — Brecher *v.* Chicago Junction R. Co., 119 Ill. App. 554.

7. *United States.* — Northern Commercial Co. *v.* Nestor, (C. C. A.) 138 Fed. 383; The Prinzess Irene, 139 Fed. 810; Brown *v.* Chicago, etc., R. Co., (C. C. A.) 139 Fed. 972, 3 Ann. Cas. 251; The Henry B. Fiske, 141 Fed. 188; Lake Erie Transp. Co. *v.* Gilchrist Transp. Co., (C. C. A.) 142 Fed. 89; National Refining Co. *v.* Willis, (C. C. A.) 143 Fed. 107; Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; U. S. Fidelity, etc., Co. *v.* Des Moines Nat. Bank, (C. C. A.) 145 Fed. 273; Kern *v.* Snider, (C. C. A.) 145 Fed. 327.

Alabama. — Mobile, etc., R. Co. *v.* Christian Moerlein Brewing Co., 146 Ala. 410, 41 So. 17, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486.

Arkansas. — Waters-Pierce Oil Co. *v.* Knisel, 79 Ark. 608, 96 S. W. 342.

California. — Prescott *v.* Los Angeles Traction Co., 149 Cal. 151, 85 Pac. 150; McVay *v.* Central California Invest. Co., (Cal. App. 1907) 91 Pac. 745; Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122; Doherty *v.* California Nav., etc., Co., (Cal. App. 1907) 91

Pac. 419; Grant *v.* Sunset Telephone, etc., Co., (Cal. App. 1908) 94 Pac. 368.

District of Columbia. — McDermott *v.* Severe, 25 App. Cas. (D. C.) 276, *affirmed* 202 U. S. 600, 26 U. S. Sup. Ct. 709.

Georgia. — Rollestone *v.* Cassirer, 3 Ga. App. 161, 59 S. E. 442.

Illinois. — Swiercz *v.* Illinois Steel Co., 231 Ill. 456, 83 N. E. 168; Illinois Cent. R. Co. *v.* Kerr, 125 Ill. App. 363.

Indiana. — Draper *v.* Evansville, etc., R. Co., 165 Ind. 117, 74 N. E. 839; Cleveland, etc., R. Co. *v.* Haas, 35 Ind. App. 626, 74 N. E. 1003; Fletcher Bros. Co. *v.* Hyde, 36 Ind. App. 96, 75 N. E. 9; Indianapolis Water Co. *v.* Harold, (Ind. App. 1906) 79 N. E. 542.

Indian Territory. — Atchison, etc., R. Co. *v.* Dickens, (Indian Ter. 1907) 103 S. W. 750; Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Lynn *v.* Glucose Sugar Refining Co., 128 Iowa 501, 104 N. W. 577; Malony *v.* Bishop, (Iowa 1905) 105 N. W. 407; Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359; Long *v.* Johnson County Telephone Co., 134 Iowa 336, 111 N. W. 985.

Kansas. — Atchison, etc., R. Co. *v.* White, (Kan. 1908) 94 Pac. 265.

Kentucky. — Louisville, etc., R. Co. *v.* Hathaway, (Ky. 1905) 89 S. W. 724; Chesapeake, etc., R. Co. *v.* Wiley, (Ky. 1906) 90 S. W. 557; Brice *v.* South Covington, etc., R. Co., (Ky. 1906) 93 S. W. 37; Nicholasville *v.* Fain, (Ky. 1907) 99 S. W. 275; Hazel *v.* Owensboro, (Ky. 1907) 99 S. W. 315; South Covington, etc., St. R. Co. *v.* Cleveland, (Ky. 1907) 100 S. W. 283; Gibson *v.* Louisville, etc., R. Co., (Ky. 1908) 106 S. W. 838.

Louisiana. — Lopes *v.* Sahuque, 114 La. 1004, 38 So. 810; Harvey *v.* Louisiana Western R. Co., 114 La. 1065, 38 So. 859.

Maine. — Logue *v.* Grand Trunk R. Co., 102 Me. 34, 65 Atl. 522; Roundy *v.* United Box, etc., Co., (Me. 1907) 68 Atl. 535.

Maryland. — Whitcomb *v.* Mason, 102 Md. 275, 62 Atl. 749.

Massachusetts. — Brooks *v.* Boston, etc., R. Co., 188 Mass. 416, 74 N. E. 670; Dolphin *v.* Worcester Consol. St. R. Co., 189 Mass. 270, 75 N. E. 635; Oulighan *v.* Butler, 189 Mass. 287, 75 N. E. 726; Joyce *v.* Exeter, etc., St. R. Co., 190 Mass. 304, 76 N. E. 1054; Duffy *v.* New York, etc., Co., 192 Mass. 28, 77 N. E. 1031; Ormandroyd *v.* Fitchburg, etc., St. R. Co., 193 Mass. 130, 78 N. E. 739; Kuhlen *v.* Boston, etc., St. R. Co., 193 Mass. 341, 79 N. E. 815; Feneff *v.* Boston, etc., R. Co., (Mass. 1907) 82 N. E. 705.

Michigan. — Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613; Judd *v.* Caledonia Tp., 150 Mich. 480, 114 N. W. 346.

Minnesota. — Milton *v.* Biesanz Stone Co., 99 Minn. 439, 109 N. W. 909; Anderson *v.* Smith, (Minn. 1908) 115 N. W. 743.

Mississippi. — Gulf, etc., R. Co. *v.* Blockman, 87 Miss. 192, 39 So. 479; Temple *v.* McComb City Electric Light, etc., Co., 89 Miss. 1, 42 So. 874.

Missouri. — Ryan *v.* St. Louis Transit Co., 190 Mo. 621, 89 S. W. 865; Fore *v.* Chicago, etc., R. Co., 114 Mo. App. 551, 89 S. W. 1034; Foley *v.* McMahon, 114 Mo. App. 442, 90 S W. 113; Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158; Burde *v.* Chicago, etc., R. Co., 123 Mo. App. 629, 100 S. W. 509.

Nebraska. — Lincoln Gas, etc., Co. *v.* Thomas, 74 Neb. 257, 104 N. W. 153; Bevard *v.* Lincoln Traction Co., 74 Neb. 802, 105 N. W. 635; Bendekovick *v.* Omaha, etc., St. R. Co., (Neb. 1907) 113 N. W. 988.

New Hampshire. — Minot *v.* Boston, etc., R. Co., 73 N. H. 317, 61 Atl. 509; Brown *v.* Boston, etc., R. Co., 73 N. H. 568, 64 Atl. 194; St. Pierre *v.* Foster, 74 N. H. 4, 64 Atl. 723; Harriman *v.* Moore, 74 N. H. 277, 67 Atl. 225; Vaisbord *v.* Nashua Mfg. Co., (N. H. 1908) 69 Atl. 520.

New Jersey. — Guinn *v.* Delaware, etc., Telephone Co., 72 N. J. L. 276, 62 Atl. 412; Koonz *v.* New York Mail Co., 72 N. J. L. 530, 63 Atl. 341; Rogers *v.* Roe, (N. J. 1907) 66 Atl. 408.

New York. — Hanlon *v.* Central R. Co., 187 N. Y. 73, 79 N. E. 846; Stratton *v.* New York, 190 N. Y. 294, 83 N. E. 40; Lambert *v.* Westchester Electric R. Co., 191 N. Y. 248, 83 N. E. 977; Green *v.* Urban Contracting, etc., Co., 106 N. Y. App. Div. 460, 94 N. Y. Supp. 743; Lane *v.* New York Cent., etc., R. Co., 107 N. Y. App. Div. 166, 94 N. Y. Supp. 988; Wallace *v.* New Albion, 107 N. Y. App. Div. 172, 94 N. Y. Supp. 793; Ibbeken *v.* New York, (Supm. Ct. App. T.) 94 N. Y. Supp. 568; Conway *v.* Rheims, 107 N. Y. App. Div. 289, 95 N. Y. Supp. 119; Cassasa *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 170, 95 N. Y. Supp. 648; Smith *v.* Borden's Condensed Milk Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 648, 95 N. Y. Supp. 900; Fitzgerald *v.* Warholy, 109 N. Y. App. Div. 606, 96 N. Y. Supp. 243; Gott *v.* Brooklyn Heights R. Co., 110 N. Y. App. Div. 18, 96 N. Y. Supp. 945; Johnson *v.* Terry, etc., Co., 113 N. Y. App. Div. 762, 99 N. Y. Supp. 375; Frank *v.* Warsaw, 116 N. Y. App. Div. 618, 101 N. Y. Supp. 938; McGrath *v.* Fibre Conduit Co., 122 N. Y. App. Div. 424, 106 N. Y. Supp. 777; Powers *v.* Moravia, 123 N. Y. App. Div. 191, 108 N. Y. Supp. 159; Karcher *v.* Fiss, etc., Horse Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 54.

North Carolina. — Fuller *v.* Atlantic Coast Line R. Co., 140 N. Car. 480, 53 S. E. 297; Hudson *v.* Atlantic, etc., R. Co., 142 N. Car. 204, 55 S. E. 103; Knott *v.* Cape Fear, etc., R. Co., 142 N. Car. 238, 55 S. E. 150; Kimberly *v.* Howland, 143 N. Car. 398, 55 S. E. 778.

Ohio. — Miller *v.* Baltimore, etc., R. Co., (Ohio 1908) 85 N. E. 499.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076.

Pennsylvania. — Weatherbee *v.* Philadelphia, etc., R. Co., 214 Pa. St. 12, 63 Atl. 367; Small *v.* Pittsburgh R. Co., 216 Pa. St. 584, 66 Atl. 76; Meyers *v.* Central R. Co., 218 Pa. St. 305, 67 Atl. 620.

South Carolina. — Davis *v.* Charleston, etc., R. Co., 72 S. Car. 112, 51 S. E. 552.

Tennessee. — Wilson *v.* Alexander, 115 Tenn. 125, 88 S. W. 935.

Texas. — Galveston, etc., R. Co. *v.* Paschall, (Tex. Civ. App. 1906) 92 S. W. 446; Rice *v.* Dewberry, (Tex. Civ. App. 1906) 93 S. W. 715; International, etc., R. Co. *v.* Addison, (Tex. Civ. App. 1906) 93 S. W. 1081; St.

Louis, etc., R. Co. *v.* Ames, (Tex. Civ. App. 1906) 94 S. W. 1112; Murphy *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 96 S. W. 940; Missouri, etc., R. Co. *v.* Nesbit, (Tex. Civ. App. 1906) 97 S. W. 825; St. Louis, etc., R. Co. *v.* Neely, (Tex. Civ. App. 1907) 101 S. W. 481; Consolidated Kansas City Smelting, etc., Co. *v.* Binkley, (Tex. Civ. App. 1906) 99 S. W. 181; International, etc., R. Co. *v.* Elder, (Tex. Civ. App. 1907) 99 S. W. 856; Paris, etc., R. Co. *v.* Calvin, (Tex. Civ. App. 1907) 103 S. W. 428; Missouri, etc., R. Co. *v.* Pennewell, (Tex. Civ. App. 1908) 110 S. W. 758.

Utah. — Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715.

Virginia. — Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731.

Washington. — Boyle *v.* Anderson, etc., Lumber Co., (Wash. 1907) 90 Pac. 433; Garretson *v.* Tacoma R., etc., Co., (Wash. 1908) 96 Pac. 511; Howland *v.* Standard Milling, etc., Co., (Wash. 1908) 96 Pac. 686.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

Wisconsin. — Eichmann *v.* Buckheit, 128 Wis. 385, 107 N. W. 325; Hardt *v.* Chicago, etc., R. Co., 130 Wis. 512, 110 N. W. 427; Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865.

View of Ordinary Natural Sequence Irrespective of Reasonable Anticipation. — Bacon *v.* Pullman Co., (C. C. A.) 159 Fed. 1.

The Iowa Rule is based on the result of a wrong or negligent act, irrespective of any reasonable apprehension of such a disaster. Cutter *v.* Des Moines, (Iowa 1907) 113 N. W. 1081.

Permitting Son to Have a Gun. — A father is not liable for injuries from negligent shooting by his twelve-year-old son, when it appears that the boy is an experienced and excellent marksman. Palm *v.* Ivorson, 117 Ill. App. 535.

487. 1. *United States.* — Armour *v.* Kollmeyer, (C. C. A.) 161 Fed. 78.

Alabama. — Williamson Iron Co. *v.* McQueen, 144 Ala. 265, 40 So. 306.

Colorado. — Colorado Springs, etc., R. Co. *v.* Nichols, (Colo. 1907) 92 Pac. 691.

Florida. — Florida East Coast R. Co. *v.* Wade, 53 Fla. 620, 43 So. 775; Benedict Pineapple Co. *v.* Atlantic Coast Line R. Co., (Fla. 1908) 46 So. 732.

Indiana. — Bessler *v.* Laughlin, 168 Ind. 38, 79 N. E. 1033; Tucker, etc., Mfg. Co. *v.* Staley, (Ind. App. 1907) 80 N. E. 975.

Iowa. — Haase *v.* Morton, (Iowa 1908) 115 N. W. 921.

Kansas. — St. Louis, etc., R. Co. *v.* Morris, (Kan. 1907) 93 Pac. 153.

Louisiana. — Payne *v.* Georgetown Lumber Co., 117 La. 983, 42 So. 475.

Maine. — Marsh *v.* Great Northern Paper Co., 101 Me. 489, 64 Atl. 844.

Minnesota. — Hyatt *v.* Murray, 101 Minn. 507, 112 N. W. 881.

Missouri. — Harrison *v.* Kansas City Electric Light Co., 195 Mo. 630, 93 S. W. 951, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 487; Lawrence *v.* Heidbrader Ice Co., 119 Mo. App. 316, 93 S. W. 897; Feddeck *v.* St. Louis Car Co., 125 Mo. App. 24, 102 S. W. 675; Brady *v.* Kansas City, etc., R. Co., 206 Mo. 509, 102 S. W. 978.

New York. — Schell *v.* German Flatts, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116.

North Carolina. — Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 574, 53 S. E. 362; Rolin *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 300, 53 S. E. 891; Horne *v.* Consolidated R., etc., Co., 144 N. Car. 375, 57 S. E. 19.

Texas. — Missouri, etc., R. Co. *v.* Morgan, (Tex. Civ. App. 1908) 108 S. W. 724; Texas, etc., R. Co. *v.* Barwick, (Tex. Civ. App. 1908) 110 S. W. 953.

Utah. — Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715.

Wisconsin. — Coolidge *v.* Hallauer, 126 Wis. 244, 105 N. W. 568; Winchel *v.* Goodyear, 126 Wis. 271, 105 N. W. 824.

2. Western, etc., R. Co. *v.* Bryant, 123 Ga. 77, 51 S. E. 20; Siegel *v.* Treka, 218 Ill. 559, 75 N. E. 1053; Chicago, etc., R. Co. *v.* Pritchard, 168 Ind. 398, 79 N. E. 509; Haase *v.* Morton, (Iowa 1908) 115 N. W. 921; Slattery *v.* Lawrence Ice Co., 190 Mass. 79, 76 N. E. 459; Hollidge *v.* Duncan, (Mass. 1908) 85 N. E. 186; Mobile, etc., R. Co. *v.* Hicks, (Miss. 1908) 46 So. 360, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 487; Hudson *v.* Atlantic, etc., R. Co., 142 N. Car. 204, 55 S. E. 103, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 487; Rice *v.* Dewberry, (Tex. Civ. App. 1906) 93 S. W. 715; Industrial Lumber Co. *v.* Bivens, (Tex. Civ. App. 1907) 105 S. W. 831; Houston, etc., R. Co. *v.* McHale, (Tex. Civ. App. 1907) 105 S. W. 1149; Van De Bogart *v.* Marinette, etc., Paper Co., 127 Wis. 104, 106 N. W. 805.

488. 1. Illinois Cent. R. Co. *v.* Siler, 229 Ill. 390, 82 N. E. 362; Broadstreet *v.* Hall, 168 Ind. 192, 80 N. E. 145; Cincinnati, etc., R. Co. *v.* Acrea, (Ind. App. 1907) 82 N. E. 1009; McDowell *v.* Preston, (Minn. 1908) 116 N. W. 470; Boyce *v.* Chicago, etc., R. Co., 120 Mo. App. 168, 96 S. W. 670; Green *v.* Missouri, etc., R. Co., 121 Mo. App. 720, 97 S. W. 646; Chicago, etc., R. Co. *v.* Harley, 74 Neb. 462, 104 N. W. 862; Sawyer *v.* Roanoke R., etc., Co., 145 N. Car. 24, 58 S. E. 598; Kirby Lumber Co. *v.* Chambers, (Tex. Civ. App. 1906) 95 S. W. 607.

2. Ambroz *v.* Cedar Rapids Electric Light, etc., Co., 131 Iowa 336, 108 N. W. 540; Mobile, etc., R. Co. *v.* Hicks, (Miss. 1908) 46 So. 360; Kimberly *v.* Howland, 143 N. Car. 398, 55 S. E. 778; Moore *v.* Northern Texas Traction Co., (Tex. Civ. App. 1906) 95 S. W. 652.

3. *United States.* — Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; McGill *v.* Michigan Steamship Co., (C. C. A.) 144 Fed. 788; Adams Express Co. *v.* Adams, (C. C. A.) 159 Fed. 62; Armour *v.* Kollmeyer, (C. C. A.) 161 Fed. 78.

Arkansas. — Paragould Southwestern R. Co. *v.* Crunk, 81 Ark. 35, 98 S. W. 682.

California. — McVay *v.* Central California Invest. Co., (Cal. App. 1907) 91 Pac. 745; Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122.

Florida. — Moore *v.* Lanier, 52 Fla. 353, 42 So. 462.

Georgia. — Macon, etc., R. Co. *v.* Moore, 125 Ga. 810, 54 S. E. 700; Rollestone *v.* Cassirer, 3 Ga. App. 161, 59 S. E. 442.

Indiana. — Broadstreet *v.* Hall, 168 Ind. 192, 80 N. E. 145.

Iowa. — Haase *v.* Morton, (Iowa 1908) 115 N. W. 921.

Kentucky. — Snydor *v.* Arnold, (Ky. 1906) 92 S. W. 289; Louisville Home Telephone Co. *v.* Gasper, (Ky. 1906) 93 S. W. 1057; Louisville, etc., R. Co. *v.* Daugherty, (Ky. 1908) 108 S. W. 336.

Maine. — Marsh *v.* Great Northern Paper Co., 101 Me. 489, 64 Atl. 844.

Massachusetts. — Doe *v.* Boston, etc., St. R. Co., 195 Mass. 168, 80 N. E. 814.

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Missouri. — Lawrence *v.* Heidbreder Ice Co., 119 Mo. App. 316, 93 S. W. 897; Phillips *v.* St. Louis, etc., R. Co., (Mo. 1908) 111 S. W. 100.

Nebraska. — Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596.

New Hampshire. — Lord *v.* Manchester St. R. Co., (N. H. 1907) 67 Atl. 639.

New York. — Newman *v.* New York, (Supm. Ct. App. T.) 108 N. Y. Supp. 676; McMahon *v.* Interborough Rapid Transit Co., (N. Y. City Ct. Tr. T.) 110 N. Y. Supp. 876.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076.

Oregon. — Trickey *v.* Clark, (Oregon 1908) 93 Pac. 457.

Pennsylvania. — Bannon *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 231.

South Dakota. — Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 631.

Texas. — Moore *v.* Northern Texas Traction Co., (Tex. Civ. App. 1906) 95 S. W. 652; Gulf, etc., R. Co. *v.* Coopwood, (Tex. Civ. App. 1906) 96 S. W. 102; Houston, etc., R. Co. *v.* Wilkins, (Tex. Civ. App. 1906) 98 S. W. 202; Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589; Gulf, etc., R. Co. *v.* Redeker, (Tex. Civ. App. 1907) 100 S. W. 362; Ft. Worth, etc., R. Co. *v.* Morris, (Tex. Civ. App. 1907) 101 S. W. 1038; Greenville *v.* Pitts, (Tex. Civ. App. 1907) 102 S. W. 451; St. Louis Southwestern R. Co. *v.* Foster, (Tex. Civ. App. 1907) 103 S. W. 194; Missouri, etc., R. Co. *v.* Morgan, (Tex. Civ. App. 1908) 108 S. W. 724; Texas, etc., R. Co. *v.* Barwick, (Tex. Civ. App. 1908) 110 S. W. 953.

Utah. — Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715.

Wisconsin. — Fay *v.* Minneapolis, etc., R. Co., 131 Wis. 639, 111 N. W. 683.

4. *United States.* — Eriksson *v.* Goodwin, (C. C. A.) 154 Fed. 351.

Alabama. — Wells *v.* Gallagher, 144 Ala. 363, 39 So. 747.

California. — Wile *v.* Los Angeles Ice, etc., Co., 2 Cal. App. 190, 83 Pac. 271.

Colorado. — Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337.

Connecticut. — Swain *v.* O'Loughlin, (Conn. 1907) 67 Atl. 480; Cavanaugh *v.* Windsor Cut Stone Corp., (Conn. 1908) 69 Atl. 345.

Delaware. — Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369.

Georgia. — Idlett *v.* Atlanta, 123 Ga. 821, 51 S. E. 709.

Illinois. — Libby *v.* Cook, 222 Ill. 206, 78 N. E. 599; Goddard *v.* Enzler, 222 Ill. 462, 78 N. E. 805; Wallace *v.* Farmington, 231 Ill. 232, 83 N. E. 180.

Indiana. — Clear Creek Stone Co. *v.* Carmichael, 37 Ind. App. 413, 73 N. E. 935, 76 N. E. 320; Cincinnati, etc., R. Co. *v.* Bravard, 38 Ind. App. 422, 76 N. E. 899.

Iowa. — Vohs *v.* Shorthill, 130 Iowa 538, 107 N. W. 417; Pfeffer *v.* Cedar Rapids, (Iowa 1906) 108 N. W. 313; Brusseau *v.* Lower Brick Co., 133 Iowa 245, 110 N. W. 577; Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555.

Kansas. — St. Louis, etc., R. Co. *v.* Johnson, 74 Kan. 83, 86 Pac. 156.

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Louisiana. — Smith *v.* Minden Lumber Co., 114 La. 1035, 38 So. 821; Simmons *v.* Shreveport Gas, etc., Co., 116 La. 1033, 41 So. 248; Lowenthal *v.* Vicksburg, etc., R. Co., 117 La. 1007, 42 So. 483; Whitworth *v.* South Arkansas Lumber Co., (La. 1908) 46 So. 912.

Massachusetts. — Carroll *v.* Metropolitan Coal Co., 189 Mass. 159, 75 N. E. 84; Campbell *v.* Boston, 189 Mass. 7, 75 N. E. 96; Feeney *v.* York Mfg. Co., 189 Mass. 336, 75 N. E. 733; Gould *v.* Boston El. R. Co., 191 Mass. 396, 77 N. E. 712; Mulvaney *v.* Peck, (Mass. 1907) 81 N. E. 874.

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Montana. — Stephens *v.* Elliott, (Mont. 1907) 92 Pac. 45.

Nebraska. — Central City *v.* Marquis, 75 Neb. 233, 106 N. W. 221.

New Jersey. — Fulton *v.* Grieb Rubber Co., (N. J. 1907) 68 Atl. 116.

New Mexico. — Roswell *v.* Davenport, (N. Mex. 1907) 89 Pac. 256.

New York. — O'Leary *v.* Glens Falls Gas, etc., Co., 107 N. Y. App. Div. 505, 95 N. Y. Supp. 232; Dickerman *v.* Weeks, 108 N. Y. App. Div. 257, 95 N. Y. Supp. 714; Conway *v.* Rheims, 107 N. Y. App. Div. 289, 95 N. Y. Supp. 119; Walsh *v.* New York, 109 N. Y. App. Div. 541, 96 N. Y. Supp. 540; Johnson *v.* Onondaga Paper Co., 112 N. Y. App. Div. 667, 98 N. Y. Supp. 602; Henson *v.* Lehigh Valley R. Co., 122 N. Y. App. Div. 160, 106 N. Y. Supp. 602.

North Carolina. — Fitzgerald *v.* Concord, 140 N. Car. 110, 52 S. E. 309; Brown *v.* Durham, 141 N. Car. 249, 53 S. E. 513.

North Dakota. — Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076.

Oregon. — Rush *v.* Oregon Power Co., (Oregon 1908) 95 Pac. 193.

Pennsylvania. — Gillard *v.* Chester, 212 Pa. St. 338, 61 Atl. 929; Morgan *v.* Westmoreland Electric Co., 213 Pa. St. 151, 62 Atl. 638; Goff *v.* Philadelphia, 214 Pa. St. 172, 63 Atl. 431.

Rhode Island. — Petrarce *v.* Quidnick Mfg. Co., 27 R. I. 265, 61 Atl. 648; Carr *v.* American Locomotive Co., (R. I. 1908) 70 Atl. 196.

Tennessee. — Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324.

Texas. — Texas Cent. R. Co. *v.* George, (Tex. Civ. App. 1905) 89 S. W. 1091; St. Louis, etc., R. Co. *v.* Bussong, (Tex. Civ. App. 1905) 90 S. W. 73; Galveston, etc., R. Co. *v.* Roberts, (Tex. Civ. App. 1905) 91 S. W. 375; Missouri, etc., R. Co. *v.* Hagan, (Tex. Civ. App. 1906) 93 S. W. 1014; Galveston, etc., R. Co. *v.* Stevens, (Tex. Civ. App. 1906) 94 S. W. 395; Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932; Citizens Telephone Co. *v.* Thomas, (Tex. Civ. App. 1907) 99 S. W. 879; Galveston, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1908) 107 S. W. 108.

Virginia. — Black *v.* Virginia Portland Cement Co., 106 Va. 121, 55 S. E. 587.

Washington. — Short *v.* Spokane, 41 Wash. 257, 83 Pac. 183; King *v.* Griffiths, etc., Co., 45 Wash. 425, 88 Pac. 759.

West Virginia. — Comer *v.* Ritter Lumber Co., 59 W. Va. 688, 53 S. E. 906.

Wisconsin. — Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048; Wilbert *v.* F. Zurheide Brick Co., 129 Wis. 1, 106 N. W. 1058.

Statutory Duty — Illustration. — Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14.

When Knowledge Necessary — Injuries by Animals. — Swanson *v.* Miller, 130 Ill. App. 208.

Reasonable Time for Repairs after Notice. — Ballard *v.* Kansas City, 126 Mo. App. 541, 104 S. W. 1126.

489. 1. *United States.* — Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595.

California. — Wistrom *v.* Redlick, (Cal. App. 1907) 92 Pac. 1048; King *v.* Green, (Cal. App. 1908) 94 Pac. 777.

Illinois. — South Chicago City R. Co. *v.* Kinnare, 117 Ill. App. 1; Illinois Steel Co. *v.* Zolnowski, 118 Ill. App. 209; Illinois Cent. R. Co. *v.* Johnson, 123 Ill. App. 300; Bloomington, etc., R., etc., Co. *v.* Koss, 123 Ill. App. 497; Sandberg *v.* Brink's Chicago City Express Co., 126 Ill. App. 175; Central Illinois Constr. Co. *v.* Lloyd, 134 Ill. App. 494.

Iowa. — Barnard *v.* Chicago, etc., R. Co., 133 Iowa 185, 110 N. W. 439.

Kansas. — Atchison, etc., R. Co. *v.* Wilkie, (Kan. 1907) 90 Pac. 775.

Kentucky. — Gregory *v.* Slaughter, (Ky. 1907) 99 S. W. 247; Cox *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 282.

Louisiana. — Dole *v.* New Orleans R., etc., Co., (La. 1908) 46 So. 929.

Massachusetts. — Chaput *v.* Haverhill, etc., St. R. Co., 194 Mass. 218, 80 N. E. 597.

Missouri. — Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; McFern *v.* Gardner, 121 Mo. App. 1, 97 S. W. 972; St. Louis, etc., R. Co. *v.* Sparks, 81 Mo. 187, 99 S. W. 73; O'Keefe *v.* United R. Co., 124 Mo. App. 613, 101 S. W. 1144; Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624; Brown *v.* St. Louis, etc., R. Co., 127 Mo. App. 499, 106 S. W. 83.

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New Jersey. — Harbison *v.* Camden, etc., R. Co., (N. J. 1907) 65 Atl. 868.

New York. — McDonald *v.* Triest, 119 N. Y. App. Div. 75, 103 N. Y. Supp. 1041; Doctoroff *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 216, 105 N. Y. Supp. 229; McGurgan *v.* New York City R. Co., 121 N. Y. App. Div. 519, 106 N. Y. Supp. 201; Mittleman *v.* New York City R. Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 599, 107 N. Y. Supp. 108; Geoghegan *v.* Union R. Co., 122 N. Y. App. Div. 646, 107 N. Y. Supp. 503; Frank J. Lennon Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 995; Newman *v.* New York, etc., R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 289.

Texas. — Davis *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 92 S. W. 831; Missouri, etc., R. Co. *v.* Nesbit, (Tex. Civ. App. 1906) 97 S. W. 825.

Inattention — *United States.* — Klutt *v.* Philadelphia, etc., R. Co., (C. C. A.) 142 Fed. 394.

Alabama. — Anniston Electric, etc., Co. *v.* Elwell, 144 Ala. 317, 42 So. 45.

Arkansas. — Kansas City Southern R. Co. *v.* Ingram, 80 Ark. 269, 97 S. W. 55.

California. — Scott *v.* San Bernardino Valley Traction Co., (Cal. 1908) 93 Pac. 677; Zipperlen *v.* Southern Pac. Co., (Cal. App. 1907) 93 Pac. 1049.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 331, 85 Pac. 630.

District of Columbia. — Hawley *v.* Columbia R. Co., 25 App. Cas. (D. C.) 1.

Idaho. — Pilmer *v.* Boise Traction Co., (Idaho 1908) 94 Pac. 432.

Indiana. — Indianapolis Traction, etc., Co. *v.* Smith, 38 Ind. App. 160, 77 N. E. 1140; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347.

Iowa. — Clark *v.* Van Vleck, (Iowa 1907) 112 N. W. 648; Remillard *v.* Sioux City Traction Co., (Iowa 1908) 115 N. W. 900.

Kentucky. — Louisville City R. Co. *v.* Hudgins, (Ky. 1906) 98 S. W. 275; Paducah City R. Co. *v.* Alexander, (Ky. 1907) 104 S. W. 375; Chesapeake, etc., R. Co. *v.* Perkins, (Ky. 1907) 105 S. W. 148; South Covington, etc., St. R. Co. *v.* Eichler, (Ky. 1908) 108 S. W. 329.

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Michigan. — May *v.* Hill, (Mich. 1908) 115 N. W. 1064.

Missouri. — Recktenwald *v.* Metropolitan St. R. Co., 121 Mo. App. 595, 97 S. W. 557; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; McQuade *v.* St. Louis, etc., R. Co., 200 Mo. 150, 98 S. W. 552; Deschner *v.* St. Louis, etc.,

R. Co., 200 Mo. 310, 98 S. W. 737; Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566; Cytron *v.* St. Louis Transit Co., 205 Mo. 692, 104 S. W. 109; Zalotuchin *v.* Metropolitan St. R. Co., 127 Mo. App. 577, 106 S. W. 548; Prendeville *v.* St. Louis Transit Co., (Mo. App. 1908) 107 S. W. 453.

Nebraska. — Stading *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 460.

New York. — Charters *v.* Palmer, 113 N. Y. App. Div. 108, 98 N. Y. Supp. 887; Levin *v.* Dunn, (Supm. Ct. App. T.) 101 N. Y. Supp. 25; Barth *v.* Borden's Condensed Milk Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 487, 102 N. Y. Supp. 498; Brauner *v.* Third Ave. R. Co., 122 N. Y. App. Div. 572, 107 N. Y. Supp. 759; Lamb *v.* Union R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 97; Hickman *v.* Schimper, (Supm. Ct. App. Div.) 109 N. Y. Supp. 325; Paff *v.* Union R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 145.

North Carolina. — Sawyer *v.* Roanoke R., etc., Co., 145 N. Car. 24, 58 S. E. 598.

Ohio. — Columbus R. Co. *v.* Connor, 27 Ohio Cir. Ct. 229.

Pennsylvania. — Conner *v.* Pittsburg R. Co., 216 Pa. St. 609, 65 Atl. 1106.

Texas. — Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563; Texas Mexican R. Co. *v.* De Hernandez, (Tex. Civ. App. 1908) 108 S. W. 765.

Utah. — Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

Virginia. — Norfolk, etc., R. Co. *v.* Carr, 106 Va. 508, 56 S. E. 276.

Wisconsin. — Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973.

Canada. — Wallman *v.* Canadian Pac. R. Co., 16 Manitoba 82.

2. Cleveland, etc., R. Co. *v.* Snow, 37 Ind. App. 646, 74 N. E. 908; Pittsburgh, etc., R. Co. *v.* Rose, (Ind. App. 1907) 79 N. E. 1094; Missouri Pac. R. Co. *v.* Dorr, 73 Kan. 486, 85 Pac. 533; Robison *v.* White City, (Kan. 1908) 94 Pac. 141; Hazelrigg *v.* Frankfort, (Ky. 1906) 92 S. W. 584; Louisville, etc., R. Co. *v.* Armstrong, (Ky. 1907) 105 S. W. 473; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682; Seigel *v.* United Electric Heating Co., 143 Mich. 484, 106 N. W. 1127; Daffron *v.* Majestic Laundry Co., (Wash. 1905) 82 Pac. 1089.

3. Benedict Pineapple Co. *v.* Atlantic Coast Line R. Co., (Fla. 1908) 46 So. 732; Baltimore, etc., R. Co. *v.* Slaughter, 167 Ind. 330, 79 N. E. 186; Lawrence *v.* Heidbreder Ice Co., 119 Mo. App. 316, 93 S. W. 897.

4. *United States.* — Kreigh *v.* Westinghouse, (C. C. A.) 152 Fed. 120; Butler *v.* New York Cent., etc., R. Co., (C. C. A.) 152 Fed. 976; St. Louis, etc., R. Co. *v.* Conway, (C. C. A.) 156 Fed. 234; Conklin *v.* R. P., etc., Staats Co., (C. C. A.) 161 Fed. 897.

Alabama. — Schneider *v.* Mobile Light, etc., Co., 146 Ala. 344, 40 So. 761.

Colorado. — Snyder *v.* Colorado Springs, etc., R. Co., 36 Colo. 288, 85 Pac. 686.

Florida. — Florida East Coast R. Co. *v.* Wade, 53 Fla. 620, 43 So. 775.

Illinois. — Keeshan *v.* Elgin, etc., Traction Co., 229 Ill. 533, 82 N. E. 360; Chicago *v.* Norton, 116 Ill. App. 570; North Chicago St. R. Co. *v.* Canfield, 118 Ill. App. 353; Scanlan *v.* Chicago Union Traction Co., 127 Ill. App. 406; Wilson *v.* Chicago City R. Co., 133 Ill. App. 433; Chicago City R. Co. *v.* Soszynski, 134 Ill. App. 149.

Indiana. — New Castle Bridge Co. *v.* Steele, 38 Ind. App. 194, 78 N. E. 208; Pittsburgh, etc., R. Co. *v.* Rose, (Ind. App. 1907) 79 N. E. 1094; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626; Chicago, etc., R. Co. *v.* Dinius, (Ind. 1908) 84 N. E. 9; Spencer *v.* Mayfield, (Ind. App. 1908) 85 N. E. 23.

Iowa. — Cavanaugh *v.* Centerville Block Coal Co., 131 Iowa 700, 109 N. W. 303; McNaughton *v.* Illinois Cent. R. Co., (Iowa 1907) 113 N. W. 844.

Kansas. — Chute *v.* Moeser, (Kan. 1908) 95 Pac. 398.

Kentucky. — Cornelius *v.* South Covington, etc., R. Co., (Ky. 1906) 93 S. W. 643; Cincinnati, etc., R. Co. *v.* Reynolds, (Ky. 1907) 102 S. W. 888; Edwards *v.* Chesapeake, etc., R. Co., (Ky. 1908) 108 S. W. 303; Brackett *v.* Louisville, etc., R. Co., (Ky. 1908) 111 S. W. 710.

Louisiana. — Meyers *v.* Ruddock Orleans Cypress Co., 118 La. 805, 43 So. 448; Cloud *v.* Alexandria Electric R. Co., (La. 1908) 46 So. 1017.

Maine. — Berry *v.* Boston, etc., R. Co., 102 Me. 213, 66 Atl. 387.

Massachusetts. — Bellino *v.* Columbus Constr. Co., 188 Mass. 430, 74 N. E. 684; Landrigan *v.* Taylor-Goodwin Co., (Mass. 1908) 84 N. E. 314; McDonald *v.* Dutton, (Mass. 1908) 84 N. E. 434; Hines *v.* Boston El. R. Co., (Mass. 1908) 84 N. E. 475.

Michigan. — White *v.* Owosso Sugar Co., 149 Mich. 473, 112 N. W. 1125.

Minnesota. — Baxter *v.* Minneapolis, etc., R. Co., (Minn. 1908) 116 N. W. 474.

Missouri. — Ayers *v.* Wabash R. Co., 190 Mo. 228, 88 S. W. 608; Loehring *v.* Westlake Constr. Co., 118 Mo. App. 163, 94 S. W. 747; Woas *v.* St. Louis Transit Co., 198 Mo. 664, 96 S. W. 1017; Lovell *v.* Kansas City Southern R. Co., 121 Mo. App. 466, 97 S. W. 193; Moxley *v.* Southwest Missouri Electric R. Co., 123 Mo. App. 80, 99 S. W. 763; Strode *v.* Columbia Box Co., 124 Mo. 511, 101 S. W. 1099; Leffler *v.* Anheuser-Busch Brewing Assoc., 127 Mo. App. 488, 106 S. W. 105; Hebeler *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 34.

Nebraska. — Bryant *v.* Beebe, etc., Furniture Co., (Neb. 1907) 110 N. W. 690; Johnston *v.* New Omaha Thompson Houston Electric Light Co., (Neb. 1907) 110 N. W. 711.

New Jersey. — Rhobovsky *v.* New Jersey Worsted Spinning Co., (N. J. 1908) 70 Atl. 170.

New York. — Butler *v.* Oxford, 186 N. Y. 444, 79 N. E. 712; Burns *v.* Old Sterling Iron, etc., Co., 188 N. Y. 175, 80 N. E. 927; Fasini *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 404, 96 N. Y. Supp. 415; Maillefert *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 160, 98 N. Y. Supp. 207; Derby *v.* Degnon-McLean Contracting Co., 112 N. Y. App. Div. 324, 98 N. Y. Supp. 592; Molloy *v.* Starin, 113 N. Y. App. Div. 852, 99 N. Y. Supp. 603; Bell *v.* New York, 114 N. Y. App. Div. 22, 99 N. Y. Supp. 684; Creswell *v.*

United Shirt, etc., Co., 115 N. Y. App. Div. 12, 100 N. Y. Supp. 497; Guilmartin *v.* Solvay Process Co., 115 N. Y. App. Div. 794, 101 N. Y. Supp. 118; McCann *v.* Interurban St. R. Co., 117 N. Y. App. Div. 188, 102 N. Y. Supp. 296; Bruckel *v.* Milhau, 116 N. Y. App. Div. 832, 102 N. Y. Supp. 395; Damjanovic *v.* Herring-Hall-Marvin Safe Co., 119 N. Y. App. Div. 12, 103 N. Y. Supp. 932; Choyce *v.* Hopper, 120 N. Y. App. Div. 177, 105 N. Y. Supp. 48; McGovern *v.* Degnon-McLean Contracting Co., 120 N. Y. App. Div. 524, 105 N. Y. Supp. 408; Powers *v.* New York, 121 N. Y. App. Div. 433, 106 N. Y. Supp. 166; McGrath *v.* Fibre Conduit Co., 122 N. Y. App. Div. 424, 106 N. Y. Supp. 777; Scofield *v.* Poughkeepsie, 122 N. Y. App. Div. 868, 107 N. Y. Supp. 767; King *v.* Reid, (Supm. Ct. App. Div.) 108 N. Y. Supp. 615.

Ohio. — Dayton *v.* Glaser, 76 Ohio St. 471, 81 N. E. 991.

Pennsylvania. — Martin *v.* Niles-Bement-Pond Co., 214 Pa. St. 616, 64 Atl. 370; Shaffer *v.* Roesch, 215 Pa. St. 287, 64 Atl. 511; Dalton *v.* Towanda, 215 Pa. St. 402, 64 Atl. 547; Clifton *v.* Philadelphia, 217 Pa. St. 102, 66 Atl. 159; Small *v.* Pittsburg R. Co., 216 Pa. St. 584, 66 Atl. 76; McCabe *v.* Philadelphia, 217 Pa. St. 140, 66 Atl. 247; Hemscher *v.* Dobson, (Pa. 1908) 69 Atl. 669.

Texas. — Murphy *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 96 S. W. 940; Reynolds *v.* Galveston, etc., R. Co., (Tex. 1907) 102 S. W. 724; International, etc., R. Co. *v.* Rieden, (Tex. Civ. App. 1908) 107 S. W. 661; Studebaker Bros. Mfg. Co. *v.* Carter, (Tex. Civ. App. 1908) 111 S. W. 1086.

Virginia. — Newport News Pub. Co. *v.* Beaumeister, 104 Va. 744, 52 S. E. 627; Virginia Iron, etc., Co. *v.* Kiser, 105 Va. 695, 54 S. E. 889; Norfolk, etc., R. Co. *v.* McDonald, 106 Va. 207, 55 S. E. 554; Clark *v.* Fehlhaber, 106 Va. 803, 56 S. E. 817; Southern R. Co. *v.* Daves, (Va. 1908) 61 S. E. 748.

Washington. — Johnston *v.* Northern Lumber Co., 42 Wash. 230, 84 Pac. 627; Graves *v.* Washington Water Power Co., 44 Wash. 675, 87 Pac. 956; Hyde *v.* Seattle Electric Co., (Wash. 1908) 93 Pac. 903.

Wisconsin. — Stefanowski *v.* Chain Belt Co., 129 Wis. 484, 109 N. W. 532.

Canada. — Hill *v.* Granby Consol. Mines, 12 British Columbia 118.

5. Rosan *v.* Big Muddy Coal, etc., Co., 128 Ill. App. 128; Fulton *v.* Grieb Rubber Co., (N. J. 1907) 68 Atl. 116; Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928; McCabe *v.* Philadelphia, 217 Pa. St. 140, 66 Atl. 247; Morford *v.* Sharpsville, 28 Pa. Super. Ct. 544.

6. McGill *v.* Michigan Steamship Co., (C. C. A.) 144 Fed. 788; Grimsley *v.* Atlantic Coast Line R. Co., 1 Ga. App. 557, 57 S. E. 943.

7. Brossman *v.* Drake Standard Mach. Works, 232 Ill. 412, 83 N. E. 936; Illinois Steel Co. *v.* Zolnowski, 118 Ill. App. 209; McDonald *v.* Degnon-McLean Contracting Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 519; Herbstritt *v.* Lackawanna Lumber Co., 212 Pa. St. 495, 61 Atl. 1101; Small *v.* Pittsburg R. Co., 216 Pa. St. 584, 66 Atl. 76; Hill *v.* Granby Consol. Mines, 12 British Columbia 118.

Otherwise if such precautions are reasonable and customary. Jones *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 202, 53 S. E. 849.

490. 1. Janes *v.* Tampa, 52 Fla. 292, 42 So. 729.

2. Bruckel *v.* Milhau, 116 N. Y. App. Div. 832, 102 N. Y. Supp. 395; McCann *v.* Interurban St. R. Co., 117 N. Y. App. Div. 188, 102 N. Y. Supp. 296; Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928; King *v.* Reid, (Supm. Ct. App. Div.) 108 N. Y. Supp. 615; Green *v.* Southern R. Co., 72 S. Car. 398, 52 S. E. 45.

"Due Care cannot be settled by one incident or a single hypothesis." Chrismer *v.* Bell Telephone Co., 194 Mo. 189, 92 S. W. 378.

Where Appliance Has Been Used for Considerable Length of Time. — Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158; Moran *v.* Mulligan, 110 N. Y. App. Div. 208, 97 N. Y. Supp. 7.

3. Missouri, etc., R. Co. *v.* Wilhoit, (C. C. A.) 160 Fed. 440; Williamson Iron Co. *v.* McQueen, 144 Ala. 265, 40 So. 306; Morroney *v.* New York, (Supm. Ct. Tr. T.) 49 Misc. (N. Y.) 307, 97 N. Y. Supp. 642; Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932; Waters-Pierce Oil Co. *v.* Snell, (Tex. Civ. App. 1907) 106 S. W. 170.

4. Birmingham R., etc., Co. *v.* Hinton, 146 Ala. 273, 40 So. 988; Western, etc., R. Co. *v.* Bryant, 123 Ga. 82, 51 S. E. 20, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 490; Huntington Light, etc., Co. *v.* Beaver, 37 Ind. App. 11, 73 N. E. 1002, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 490; Bessler *v.* Laughlin, 168 Ind. 38, 79 N. E. 1033; Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933; Beckler *v.* Merringer, 131 Iowa 614, 109 N. W. 185; Emporia *v.* White, 74 Kan. 864, 86 Pac. 295; Louisville Home Telephone Co. *v.* Gasper, (Ky. 1906) 93 S. W. 1057, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 490; Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613; Schell *v.* German Flats, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116; Randazzo *v.* Brooklyn Heights R. Co., 121 N. Y. App. Div. 573, 106 N. Y. Supp. 193; Dallas *v.* McCullough, (Tex. Civ. App. 1906) 95 S. W. 1121.

Unbroken Sequence. — Southern R. Co. *v.* Reeder, (Ala. 1907) 44 So. 690.

491. 1. *United States.* — Omaha Water Co. *v.* Schamel, (C. C. A.) 147 Fed. 502.

Alabama. — Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207.

Florida. — Florida East Coast R. Co. *v.* Welch, 53 Fla. 145, 44 So. 250.

Georgia. — Western, etc., R. Co. *v.* Bryant, 123 Ga. 77, 51 S. E. 20; Southern R. Co. *v.* Tankersley, (Ga. App. 1908) 60 S. E. 297.

Indiana. — Cincinnati, etc., R. Co. *v.* Acrea, (Ind. App. 1907) 82 N. E. 1009.

Maryland. — Pennsylvania Steel Co. *v.* Wilkinson, (Md. 1908) 69 Atl. 412, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 490, and quoting the whole of the last sentence of the original text paragraph.

Minnesota. — Anderson *v.* Smith, (Minn. 1908) 115 N. W. 743.

Mississippi. — Yazoo, etc., R. Co. *v.* Roberts, 88 Miss. 80, 40 So. 481.

Missouri. — Harrison *v.* Kansas City Electric Light Co., 195 Mo. 630, 93 S. W. 951; Laub *v.* Chicago, etc., R. Co., 118 Mo. App. 488, 94 S. W. 550; Mitchell *v.* St. Louis, etc., R. Co., 122 Mo. App. 50, 97 S. W. 552.

New Jersey. — Collins *v.* West Jersey Express Co., 72 N. J. L. 231, 62 Atl. 675.

New York. — Horan *v.* Rockwell, 110 N. Y. App. Div. 522, 96 N. Y. Supp. 973.

Oklahoma. — Atchison, etc., R. Co. *v.* Calhoun, 18 Okla. 75, 89 Pac. 207.

Pennsylvania. — Dannenhower *v.* Western Union Tel. Co., 218 Pa. St. 216, 67 Atl. 207.

South Carolina. — Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3.

Tennessee. — Memphis St. R. Co. *v.* Berry, 118 Tenn. 581, 102 S. W. 85.

Texas. — Murphy *v.* Galveston, etc., R. Co., (Tex. 1907) 101 S. W. 439.

Washington. — Akin *v.* Bradley Engineering, etc., Co., (Wash. 1907) 92 Pac. 903.

Results of Original Injury — When Proximate and When Remote. — Baltimore, etc., R. Co. *v.* Sheridan, (Ky. 1907) 101 S. W. 928; Batton *v.* Public Service Corp., (N. J. 1908) 69 Atl. 164; Ostrander *v.* Orange County Traction Co., 125 N. Y. App. Div. 603, 110 N. Y. Supp. 15; Miller *v.* Baltimore, etc., R. Co., (Ohio 1908) 85 N. E. 499; Hendrix *v.* Texas, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 461; Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589; Missouri, etc., R. Co. *v.* Schroeder, (Tex. Civ. App. 1906) 100 S. W. 808; Hoseth *v.* Preston Mill Co., (Wash. 1908) 96 Pac. 423.

2. *United States.* — Citizens' Gas, etc., Co. *v.* Nicholson, (C. C. A.) 152 Fed. 389.

Florida. — Moore *v.* Lanier, 52 Fla. 353, 42 So. 462; Benedict Pineapple Co. *v.* Atlantic Coast Line R. Co., (Fla. 1908) 46 So. 732.

Indiana. — Cleveland, etc., R. Co. *v.* Patterson, 37 Ind. App. 617, 75 N. E. 857; Crawford, etc., Co. *v.* Gose, (Ind. App. 1907) 82 N. E. 984.

Kentucky. — Kentucky, etc., Bridge, etc., Co. *v.* Buckler, (Ky. 1907) 100 S. W. 328.

Minnesota. — Anderson *v.* Settergren, 100 Minn. 276, 111 N. W. 279; McDowell *v.* Preston, (Minn. 1908) 116 N. W. 470.

North Carolina. — Harton *v.* Forest City Telephone Co., 141 N. Car. 455, 54 S. E. 299.

Ohio. — Warren First Nat. Bank *v.* Gillen, 27 Ohio Cir. Ct. 609.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076.

Oregon. — Trickey *v.* Clark, (Oregon 1908) 93 Pac. 457.

Texas. — Missouri, etc., R. Co. *v.* Raney, (Tex. Civ. App. 1906) 99 S. W. 589; International, etc., R. Co. *v.* Elder, (Tex. Civ. App. 1907) 99 S. W. 856; Citizens Telephone Co. *v.* Thomas, (Tex. Civ. App. 1907) 99 S. W. 879.

West Virginia. — Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893.

Canada. — Labombarde *v.* Chatham Gas. Co., 10 Ont. L. Rep. 446.

3. Wells *v.* Gallagher, 144 Ala. 363, 39 So. 747; Rollestone *v.* Cassirer, 3 Ga. App. 161, 59 S. E. 442; Illinois Cent. R. Co. *v.* Siler, 229 Ill. 390, 82 N. E. 362; Lawrence *v.* Heidbreder Ice Co., 119 Mo. App. 316, 93 S. W. 897; Chicago, etc., R. Co. *v.* Harley, 74 Neb. 462, 104 N. W. 862; Bell *v.* Rocheford, (Neb. 1907) 113 N. W. 157; Short *v.* Spokane, 41 Wash. 257, 83 Pac. 183.

The Wrongful Act of the Plaintiff will not bar a recovery if the defendant's act is the proximate cause of the injury. Chunn *v.* City, etc., R. Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63; Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888; Seaboard Air Line R. Co. *v.* Witt, (Ga. App. 1908) 60 S. E. 1012; Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432; Star Brewery Co. *v.* Houck, 222 Ill. 348, 78 N. E. 827; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514; Chicago, etc., R. Co. *v.* Clinkenbeard, (Kan. 1908) 94 Pac. 1001; Bensiek *v.* St. Louis Transit Co., 125 Mo. App. 121, 102 S. W. 587; Vessels *v.* Metropolitan St. R. Co., (Mo. App. 1908) 108 S. W. 578; Atchison, etc., R. Co. *v.* Baker, (Okla. 1908) 95 Pac. 433; Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

Defendant Putting Plaintiff in Peril — *United States.* — Sandy *v.* Swift, 159 Fed. 271; Armour *v.* Kollmeyer, (C. C. A.) 161 Fed. 78.

Alabama. — Southern R. Co. *v.* Reeder, (Ala. 1907) 44 So. 699.

Connecticut. — Garfield *v.* Hartford, etc., St. R. Co., 79 Conn. 458, 65 Atl. 598.

District of Columbia. — Jennings *v.* Philadelphia, etc., R. Co., 29 App. Cas. (D. C.) 219, 10 Ann. Cas. 761.

Georgia. — Western, etc., R. Co. *v.* Bryant, 123 Ga. 77, 51 S. E. 20; Central of Georgia R. Co. *v.* Motz, (Ga. 1908) 61 S. E. 1.

Illinois. — Paige *v.* Illinois Steel Co., 233 Ill. 313, 84 N. E. 239; Illinois Southern R. Co. *v.* Hamill, 128 Ill. App. 152.

Iowa. — Blumenthal *v.* Union Electric Co., 129 Iowa 322, 105 N. W. 588; Burger *v.* Omaha, etc., St. R. Co., (Iowa 1908) 117 N. W. 35.

Kentucky. — Maysville, etc., R. Co. *v.* McCabe, (Ky. 1907) 100 S. W. 219; Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776.

Massachusetts. — Green *v.* Haverhill, etc., St. R. Co., 193 Mass. 428, 79 N. E. 735.

Missouri. — McManus *v.* Metropolitan St. R. Co., 116 Mo. App. 110, 92 S. W. 176; Boyce *v.* Chicago, etc., R. Co., 120 Mo. App. 168, 96 S. W. 670; McFern *v.* Gardner, 121 Mo. App. 1, 97 S. W. 972; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Williamson *v.* St. Louis Transit Co., 202 Mo. 345, 100 S. W. 1072; Feddeck *v.* St. Louis Car Co., 125 Mo. App. 24, 102 S. W. 675.

Nebraska. — Cudahy Packing Co. *v.* Wesolowski, 75 Neb. 786, 106 N. W. 1007.

New Hampshire. — Lord *v.* Manchester St. R. Co., (N. H. 1907) 67 Atl. 639.

New York. — Sembler *v.* Cowperthwait, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 28, 103 N. Y. Supp. 979; Sherwood *v.* New York Cent., etc., R. Co., 120 N. Y. App. Div. 639, 105 N. Y. Supp. 547.

South Carolina. — Burton *v.* Anderson Phosphate, etc., Co., 75 S. Car. 173, 55 S. E. 217; Cooper *v.* Richland County, 76 S. Car. 202, 56 S. E. 958.

Texas. — Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1908) 110 S. W. 199.

4. Elgin, etc., Traction Co. *v.* Wilson, 217 Ill. 47, 75 N. E. 436; Marsh *v.* Great Northern Paper Co., 101 Me. 489, 64 Atl. 844; Collins *v.* West Jersey Express Co., 72 N. J. L. 231, 62 Atl. 675, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 492; Miller *v.* Lewiston Electric Light, etc., Co., 212 Pa. St. 593, 62 Atl. 32; Cooper *v.* Richland County, 76 S. Car. 202, 56 S. E. 958.

492. 1. Schell *v.* German Flats, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116.

3. American Bridge Co. *v.* Seeds, (C. C. A.) 144 Fed. 605; Yunkes *v.* Latrobe Steel, etc., Co., 131 Ill. App. 292; Harton *v.* Forest City Telephone Co., (N. Car. 1907) 59 S. E. 1022; Widger *v.* Philadelphia, 217 Pa. St. 161, 66 Atl. 249.

Continuous Succession Required. — Ostrander *v.* Orange County Traction Co., 125 N. Y. App. Div. 603, 110 N. Y. Supp. 15.

4. Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158; Bevard *v.* Lincoln Traction Co., 74 Neb. 802, 105 N. W. 635; Edgar *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 745.

The Adequate intervening cause may be an innocent cause. Cavanaugh *v.* Centerville Block Coal Co., 131 Iowa 700, 109 N. W. 303.

5. Variety Mfg. Co. *v.* Landaker, 227 Ill. 22, 81 N. E. 47; Chicago City R. Co. *v.* Nelson, 116 Ill. App. 609; Bethany *v.* Lee, 124 Ill. App. 397; O'Donnell *v.* Rhode Island Co., (R. I. 1907) 66 Atl. 578; San Antonio, etc., R. Co. *v.* Muecke, (Tex. Civ. App. 1907) 105 S. W. 1009. *Contra,* Chicago, etc., R. Co. *v.* Heil, (C. C. A.) 154 Fed. 626; Wade *v.* Mt. Vernon, (Supm. Ct. App. Div.) 108 N. Y. Supp. 241.

After Recovery from Physician. — Viou *v.* Brooks-Scanlon Lumber Co., 99 Minn. 97, 108 N. W. 891.

493. 1. Western Union Tel. Co. *v.* Schriver, (C. C. A.) 141 Fed. 538; Gwyn *v.* Cincinnati, etc., R. Co., (C. C. A.) 155 Fed. 88; Teis *v.* Smuggler Min. Co., (C. C. A.) 158 Fed. 260; Crowley *v.* West End, (Ala. 1907) 43 So. 359; Lyons *v.* Watt, (Colo. 1908) 95 Pac. 949; Florida East Coast R. Co. *v.* Wade, 53 Fla. 620, 43 So. 775; Bellino *v.* Columbus Constr. Co., 188 Mass. 430, 74 N. E. 684; Stark *v.* Muskegon Traction, etc., Co., 141 Mich. 575, 104 N. W. 1100; Bear *v.* Chicago G. W. R. Co., (C. C. A.) 141 Fed. 25; Foley *v.* McMahon, 114 Mo. 442, 90 S. W. 113; McGovern *v.* Degnon-McLean Contracting Co., 120 N. Y. App. Div. 524, 105 N. Y. Supp. 408; Bannon *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 231; Stefanowski *v.* Chain Belt Co., 129 Wis. 484, 109 N. W. 532.

Where the Defendant's Negligence Is Imminently Dangerous to human life the intervention of an innocent human agency will not relieve the wrongdoer. Iamurri *v.* Saginaw City Gas Co., 148 Mich. 27, 111 N. W. 884.

Superseding Original Act. — Strojny *v.* Griffin Wheel Co., 116 Ill. App. 550.

Interruption of Natural Sequence. — Brubaker *v.* Kansas City Electric Light Co., (Mo. App. 1908) 110 S. W. 12; San Antonio, etc., R. Co. *v.* Trigo, (Tex. Civ. App. 1907) 101 S. W. 254; Edgar *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 715.

Fires — Arbitrary Rule Limiting Liability to Contiguous Property. — McDonough *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 270.

2. Yunkes *v.* Latrobe Steel, etc., Co., 131 Ill. App. 292.

"Negligence cannot be found to have been the proximate cause unless it can be said that, but for such negligence, the injury would not have happened." Tibbitts *v.* Mason City, etc., R. Co., (Iowa 1908) 115 N. W. 1021.

494. 1. Elgin, etc., Traction Co. *v.* Wilson, 120 Ill. App. 371.

2. Beckham *v.* Seaboard Air Line R. Co., 127 Ga. 550, 56 S. E. 638; Reddick *v.* General Chemical Co., 124 Ill. App. 31; Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030; Strasburger *v.* Vogel, 103 Md. 85, 63 Atl. 202; Conroy *v.* Acken, 110 N. Y. App. Div. 48, 96 N. Y. Supp. 530.

3. Louisville Home Telephone Co. *v.* Gaspeo, (Ky. 1906) 93 S. W. 1057; Nashville, etc., R. Co. *v.* Flake, 114 Tenn. 671, 88 S. W. 326; Wilbert *v.* F. Zurheide Brick Co., 129 Wis. 1, 106 N. W. 1058.

4. Rollestone *v.* Cassirer, 3 Ga. App. 161, 59 S. E. 442; Charleston, etc., R. Co. *v.* Camp, 3 Ga. App. 232, 59 S. E. 710; Blocher *v.* Dieco, (Ky. 1907) 99 S. W. 606; Laub *v.* Chicago, etc., R. Co., 118 Mo. App. 488, 94 S. W. 550; Hooper *v.* Metropolitan St. R. Co., 125 Mo. App. 329, 102 S. W. 58; Moore *v.* Royal Lead, etc., Co., 125 Mo. App. 393, 102 S. W. 616; Collins *v.* West Jersey Express Co., 72 N. J. L. 231, 62 Atl. 675, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494; Horning *v.* Hudson River Telephone Co., 111 N. Y. App. Div. 122, 97 N. Y. Supp. 625; Atchison, etc., R. Co. *v.* Calhoun, 18 Okla. 75, 89 Pac. 207; Galveston, etc., R. Co. *v.* Fitzpatrick, (Tex. Civ. App. 1906) 91 S. W. 355; Winchel *v.* Goodyear, 126 Wis. 277, 105 N. W. 824, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494; Hardt *v.* Chicago, etc., R. Co., 130 Wis. 512, 110 N. W. 427.

So the Wrongful Act of the Plaintiff. — Alabama, etc., R. Co. *v.* Bonner, (Ala. 1905) 39 So. 619; Black *v.* New York, etc., R. Co., 193 Mass. 448, 79 N. E. 797.

495. 1. Moore *v.* Lanier, 52 Fla. 353, 42 So. 462; Florida East Coast R. Co. *v.* Welch, 53 Fla. 145, 44 So. 250; Gardner *v.* Waterloo Cream Separator Co., 134 Iowa 6, 111 N. W. 316; Harton *v.* Forest City Telephone Co., 141 N. Car. 455, 54 S. E. 299; St. Louis Southwestern R. Co. *v.* Bryant, (Tex. Civ. App. 1907) 103 S. W. 237.

2. Mobile, etc., R. Co. *v.* Christian Moerlein Brewing Co., 146 Ala. 410, 41 So. 17; Smith *v.* District of Columbia, 25 App. Cas. (D. C.) 370; Reddick *v.* General Chemical Co., 124 Ill. App. 31; Atchison, etc., R. Co. *v.* Dickens, (Indian Ter. 1907) 103 S. W. 750; Hilman Land, etc., Co. *v.* Littlejohn, (Ky. 1906) 90 S. W. 1053; Higgins *v.* Higgins, 188 Mass. 113, 74 N. E. 471; Hagglund *v.* St. Hilaire Lumber Co., 97 Minn. 94, 106 N. W. 91; Pullman Co. *v.* Stern, 88 Miss. 390, 41 So. 383; Kappes *v.* Brown Shoe Co., 116 Mo. App. 154, 90 S. W. 1158; McVay *v.* Brooklyn, etc., R. Co., 113 N. Y. App. Div. 724, 99 N. Y. Supp. 266; Fanizzi *v.* New York, etc., R. Co., 113 N. Y. App. Div. 440, 99 N. Y. Supp. 281; Bowers *v.* East Ten-

nessee, etc., R. Co., 144 N. Car. 684, 57 S. E. 453; San Antonio, etc., R. Co. *v.* Trigo, (Tex. Civ. App. 1907) 101 S. W. 254. See also Thomas *v.* Sloss-Sheffield Steel, etc., Co., 144 Ala. 188, 39 So. 715.

3. *Arkansas.* — Strange *v.* Bodcaw Lumber Co., 79 Ark. 490, 96 S. W. 152.

California. — Forsythe *v.* Los Angeles R. Co., 149 Cal. 569, 87 Pac. 24.

Illinois. — Chicago City R. Co. *v.* Shaw, 220 Ill. 532, 77 N. E. 139; Kraft *v.* Neunkirchen, 119 Ill. App. 369; Western Tube Co. *v.* Pederson, 128 Ill. App. 637.

Indiana. — Cleveland, etc., R. Co. *v.* Patterson, 37 Ind. App. 617, 75 N. E. 857; Tucker, etc., Mfg. Co. *v.* Staley, (Ind. App. 1907) 80 N. E. 975; Evansville Hoop, etc., Co. *v.* Bailey, (Ind. App. 1908) 84 N. E. 549.

Iowa. — Van Camp *v.* Keokuk, 130 Iowa 716, 107 N. W. 933; Haase *v.* Morton, (Iowa 1908) 115 N. W. 921.

Kentucky. — Snyder *v.* Arnold, (Ky. 1906) 92 S. W. 289.

Massachusetts. — Conroy *v.* G. W. & F. Smith Iron Co., 194 Mass. 468, 80 N. E. 488; Miller *v.* Boston, etc., St. Co., (Mass. 1908) 83 N. E. 990.

Missouri. — O'Gara *v.* St. Louis Transit Co., 204 Mo. 724, 103 S. W. 54; Zalotuchin *v.* Metropolitan St. R. Co., 127 Mo. App. 577, 106 S. W. 548.

New York. — Scheib *v.* New York City R. Co., 115 N. Y. App. Div. 578, 100 N. Y. Supp. 986.

Texas. — Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279; St. Louis Southwestern R. Co. *v.* Bryant, (Tex. Civ. App. 1907) 103 S. W. 237; Ft. Worth, etc., R. Co. *v.* Monell, (Tex. Civ. App. 1908) 110 S. W. 504.

Washington. — Akin *v.* Bradley Engineering, etc., Co., (Wash. 1907) 92 Pac. 903.

4. *United States.* — Bacon *v.* Pullman Co., (C. C. A.) 159 Fed. 1.

Illinois. — Christy *v.* Elliott, 216 Ill. 31, 74 N. E. 1035; Siegel *v.* Trcka, 218 Ill. 559, 75 N. E. 1053; Chicago, etc., R. Co. *v.* Averill, 224 Ill. 516, 79 N. E. 654; Wabash R. Co. *v.* Barrett, 117 Ill. App. 315.

Indiana. — Baltimore, etc., R. Co. *v.* Kleespies, 39 Ind. App. 151, 76 N. E. 1015.

Maine. — Neal *v.* Reudall, 100 Me. 574, 62 Atl. 706.

Minnesota. — Campbell *v.* Railway Transfer Co., 95 Minn. 375, 104 N. W. 547.

Missouri. — Obermeyer *v.* F. H. Logeman Chair Mfg. Co., 120 Mo. App. 59, 96 S. W. 673; Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624.

New Hampshire. — Harriman *v.* Moore, 74 N. H. 277, 67 Atl. 225.

New York. — Schell *v.* German Flats, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116; Arras *v.* Standard Plaster Co., 121 N. Y. App. Div. 61, 105 N. Y. Supp. 440.

Pennsylvania. — Eagle Hose Co. *v.* Priceburg Electric Light Co., 33 Pa. Super. Ct. 581.

Texas. — Missouri, etc., R. Co. *v.* Wolf, (Tex. Civ. App. 1905) 89 S. W. 778; Gulf, etc., R. Co. *v.* Josey, (Tex. Civ. App. 1906) 95 S. W. 688; St. Louis Southwestern R. Co. *v.* Bryant, (Tex. Civ. App. 1907) 103 S. W. 237.

Contra under the Massachusetts statute in suits against cities or towns for injuries from defects in highways. Clinton *v.* Revere, 195 Mass. 151, 80 N. E. 813.

496. 1. Janes *v.* Tampa, 52 Fla. 292, 42 So. 729; Rollestone *v.* Cassirer, 3 Ga. App. 161, 59 S. E. 442; Madden *v.* Saylor Coal Co., 133 Iowa 699, 111 N. W. 57; Louisville Home Telephone Co. *v.* Gasper, (Ky. 1906) 93 S. W. 1057; Godfrey *v.* Illinois Cent. R. Co., 117 La. 1094, 42 So. 571; Campbell *v.* Railway Transfer Co., 95 Minn. 375, 104 N. W. 547; Harrison *v.* Kansas City Electric Light Co., 195 Mo. 630, 93 S. W. 951; Birsch *v.* Citizens' Electric Co., (Mont. 1908) 93 Pac. 940; Schell *v.* German Flats, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116; Harton *v.* Forest City Telephone Co., 141 N. Car. 461, 54 S. E. 299, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 495, 496; Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279; Southwestern Tel., etc., Co. *v.* Krause, (Tex. Civ. App. 1906) 92 S. W. 431.

So Where Only One of two efficient acts or omissions of the defendant is set up in the declaration. Wilmington Star Min. Co. *v.* Fulton, 205 U. S. 60, 27 U. S. Sup. Ct. 412.

Two Negligent Acts of the defendant may so operate as to become jointly the proximate cause of the injury. Liles *v.* Fosburg Lumber Co., 142 N. Car. 39, 54 S. E. 795; Britt *v.* Carolina Northern R. Co., 144 N. Car. 242, 56 S. E. 910.

2. **It Is for the Jury** in general to say whether as between two causes it was the negligence of the defendant which caused the injuries. Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621.

3. *California.* — Fowden *v.* Pacific Coast Steamship Co., 149 Cal. 151, 86 Pac. 178.

Georgia. — Southern R. Co. *v.* Grizzle, 124 Ga. 735, 53 S. E. 244; Southern R. Co. *v.* Reynolds, 126 Ga. 657, 55 S. E. 1039; Southern R. Co. *v.* Rowe, 2 Ga. App. 557, 59 S. E. 462.

Illinois. — Chicago Union Traction Co. *v.* Sawusch, 218 Ill. 130, 75 N. E. 797; Wabash R. Co. *v.* Keeler, 127 Ill. App. 265.

Indiana. — Baltimore, etc., R. Co. *v.* Kleespies, 39 Ind. App. 151, 76 N. E. 1015.

Kentucky. — Illinois Cent. R. Co. *v.* Coley, (Ky. 1905) 89 S. W. 234; Illinois Cent. R. Co. *v.* Houchins, (Ky. 1905) 89 S. W. 530; Schulte *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 941.

Minnesota. — Mayberry *v.* Northern Pac. R. Co., 100 Minn. 79, 110 N. W. 356.

New Jersey. — Whalen *v.* Pennsylvania R. Co., 73 N. J. L. 192, 63 Atl. 993.

New York. — Page *v.* Dempsey, 184 N. Y. 245, 77 N. E. 9; Parks *v.* New York, 111 N. Y. App. Div. 836, 98 N. Y. Supp. 94.

North Carolina. — Martin *v.* Seaboard Air Line R. Co., (N. Car. 1908) 61 S. E. 625.

Oregon. — Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389.

Tennessee. — Louisville, etc., R. Co. *v.* Vincent, 116 Tenn. 317, 95 S. W. 179; Louisville, etc., R. Co. *v.* Cheatham, 118 Tenn. 160, 100 S. W. 902.

Texas. — Hardin *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 88 S. W. 440;

Consolidated Kansas City Smelting, etc., Co. *v.* Binkley, (Tex. Civ. App. 1906) 99 S. W. 181.

Washington. — Thomas *v.* Great Northern R. Co., (C. C. A.) 147 Fed. 83.

Wisconsin. — Olwell *v.* Skobis, 126 Wis. 308, 105 N. W. 777.

Where three defendants were shooting at a mark, using one rifle, and one of the bullets struck the plaintiff, it was held that he was not required to show which of the defendants fired the shot resulting in the injury, as all of the defendants were acting in concert in an act not only violating a city ordinance but palpably and grossly negligent, and a judgment for the defendants upon a directed verdict was set aside. Benson *v.* Ross, 143 Mich. 452, 106 N. W. 1120.

In an action against two defendants jointly charged with negligence judgment may properly be entered against either or both as may be proper under the evidence. St. Louis, etc., R. Co. *v.* Noland, 75 Kan. 691, 90 Pac. 273.

But where proceedings are taken in admiralty against two tugs belonging to one owner for injuries to the vessel they were towing, and only one tug is in fault, no liability rests upon the blameless tug. The W. G. Mason, (C. C. A.) 142 Fed. 913.

4. *United States.* — Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Sea Ins. Co. *v.* Vicksburg, etc., R. Co., (C. C. A.) 159 Fed. 676.

Illinois. — Frank Parmelee Co. *v.* Wheelock, 224 Ill. 194, 79 N. E. 652; Tandrup *v.* Sampsell, (Ill. 1908) 85 N. E. 331.

Indiana. — Chicago, etc., R. Co. *v.* Marshall, (Ind. App. 1905) 75 N. E. 973; Cincinnati, etc., R. Co. *v.* Acrea, (Ind. App. 1907) 82 N. E. 1009; Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030.

Kentucky. — Louisville R. Co. *v.* Blum, (Ky. 1905) 89 S. W. 186; Louisville Home Telephone Co. *v.* Gasper, (Ky. 1906) 93 S. W. 1057.

Louisiana. — Simmons *v.* Shreveport Gas, etc., Co., 116 La. 1033, 41 So. 248.

Massachusetts. — Oulighan *v.* Butler, 189 Mass. 287, 75 N. E. 726; Feneff *v.* Boston, etc., R. Co., (Mass. 1907) 82 N. E. 705; Lindenbaum *v.* New York, etc., R. Co., (Mass. 1908) 84 N. E. 129.

Michigan. — Clement *v.* Crosby, 148 Mich. 293, 111 N. W. 745; Van Orman *v.* Lake Shore, etc., R. Co., (Mich. 1908) 115 N. W. 968.

Missouri. — Bragg *v.* Metropolitan St. R. Co., 192 Mo. 359, 91 S. W. 527, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 496.

New York. — Mangan *v.* Hudson River Telephone Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 388, 100 N. Y. Supp. 539.

Oregon. — Strauhal *v.* Asiatic Steamship Co., 48 Oregon 100, 85 Pac. 230.

Texas. — Butterick Pub. Co. *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 299; Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279; Northern Texas Traction Co. *v.* Caldwell, (Tex. Civ. App. 1906) 99 S. W. 869; San Marcos Electric Light, etc., Co. *v.* Compton, (Tex. Civ. App. 1908) 107 S. W. 1151.

Vermont. — Drown *v.* New England Telephone, etc., Co., 80 Vt. 1, 66 Atl. 801.

But if the parties do not concur in the same negligent act the causes of action are separate. Hamnstrown *v.* New York Contracting Co., 122 N. Y. App. Div. 43, 106 N. Y. Supp. 880.

Theory of the Negligence of each defendant being a part of the proximate cause. Brecher *v.* Chicago Junction R. Co., 119 Ill. App. 554.

Plaintiff Not Concerned About Rights of Defendants between Themselves. — Cerdiner *v.* Los Angeles Traction Co., 5 Cal. App. 400, 91 Pac. 436. *Compare* Bamberg *v.* International R. Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 403, 103 N. Y. Supp. 297.

497. 1. Day *v.* Louisville Coal, etc., Co., 60 W. Va. 27, 53 S. E. 776, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 796 [496].

2. Lyons *v.* Watt, (Colo. 1908) 95 Pac. 949.

3. See the title Fellow Servants, **905.** 3. *et seq.* See also the following cases:

United States. — Gila Valley, etc., R. Co. *v.* Lyon, 203 U. S. 465, 27 U. S. Sup. Ct. 145.

Illinois. — Roebling Constr. Co. *v.* Thompson, 229 Ill. 42, 82 N. E. 196; Klofski *v.* Railroad Supply Co., (Ill. 1908) 85 N. E. 274; Kennedy *v.* Swift, (Ill. 1908) 85 N. E. 287; New Ohio Washed Coal Co. *v.* Hindman, 119 Ill. App. 287; Chicago, etc., R. Co. *v.* Bell, 130 Ill. App. 45.

Iowa. — Gordon *v.* Chicago, etc., R. Co., 129 Iowa 747, 106 N. W. 177; Kroeger *v.* Marsh Bridge Co., (Iowa 1908) 116 N. W. 125.

Louisiana. — Johnson *v.* Christie, 117 La. 911, 42 So. 421; Lochbaum *v.* Southwestern Box, etc., Mfg. Co., (La. 1908) 46 So. 201.

Michigan. — De Kallands *v.* Washtenaw, (Mich. 1908) 116 N. W. 564.

Missouri. — Moore *v.* St. Louis Transit Co., 193 Mo. 411, 91 S. W. 1060.

New Hampshire. — Vaisbord *v.* Nashua Mfg. Co., (N. H. 1908) 69 Atl. 520.

New York. — Kupfersmith *v.* Hopper, 122 N. Y. App. Div. 31, 106 N. Y. Supp. 797.

Rhode Island. — Weeks *v.* Fletcher, (R. I. 1908) 69 Atl. 294.

South Carolina. — Elms *v.* Southern Power Co., (S. Car. 1908) 60 S. E. 1110.

Texas. — Texas Mexican R. Co. *v.* Higgins, (Tex. Civ. App. 1906) 99 S. W. 200; Chicago, etc., R. Co. *v.* Birk, (Tex. Civ. App. 1907) 99 S. W. 753; Industrial Lumber Co. *v.* Bivens, (Tex. Civ. App. 1907) 105 S. W. 831.

Vermont. — Mahoney *v.* Rutland R. Co., 78 Vt. 244, 62 Atl. 722.

West Virginia. — Lay *v.* Elk Ridge Coal, etc., Co., (W. Va. 1908) 61 S. E. 156.

4. Peerless Mfg. Co. *v.* New York, etc., R. Co., 73 N. H. 328, 61 Atl. 511.

5. *United States.* — The Euxinia, (C. C. A.) 150 Fed. 541; The Blackheath, 154 Fed. 758.

Arkansas. — Ultima Thule, etc., R. Co. *v.* Benton, (Ark. 1908) 110 S. W. 1037.

Colorado. — Lyons *v.* Watt, (Colo. 1908) 95 Pac. 949.

Delaware. — Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778.

Georgia. — Gainesville, etc., Electric R. Co. *v.* Austin, 127 Ga. 120, 56 S. E. 254; McEwen *v.* Central of Georgia R. Co., 127 Ga. 246, 56 S. E. 289.

Illinois. — Larsen *v.* Chicago Union Traction

Co., 131 Ill. App. 286; Donk Bros. Coal, etc., Co. *v.* De Laney, 133 Ill. App. 135.

Indiana. — Rainbow Coal, etc., Co. *v.* Martin, 35 Ind. App. 658, 74 N. E. 902.

Indian Territory. — Brunson *v.* Southwestern Development Co., (Indian Ter. 1907) 104 S. W. 593.

Kentucky. — Peeno *v.* Overman-Schrader Cordage Co., (Ky. 1908) 108 S. W. 349.

Mississippi. — Gulf, etc., R. Co. *v.* Blockman, 87 Miss. 192, 39 So. 479.

Missouri. — Hunt *v.* Metropolitan St. R. Co., 126 Mo. App. 79, 103 S. W. 1088.

"An accident is the happening of an event proceeding from an unknown cause." Zeis *v.* St. Louis Brewing Assoc., 205 Mo. 638, 104 S. W. 99.

6. Moffatt Commission Co. *v.* Union Pac. R. Co., 113 Mo. App. 544, 88 S. W. 117; McCook *v.* McAdams, (Neb. 1906) 106 N. W. 988; Briggs *v.* Durham Traction Co., (N. Car. 1908) 61 S. E. 373; Southwestern Tel., etc., Co. *v.* Keys, (Tex. Civ. App. 1908) 110 S. W. 767.

Insanity as an "Act of God." — See the review of authorities in Central of Georgia R. Co. *v.* Hall, 124 Ga. 322, 52 S. E. 679.

7. McVay *v.* Central California Invest. Co., (Cal. App. 1907) 91 Pac. 745; De Witt *v.* Louisville, etc., R. Co., (Ky. 1906) 96 S. W. 1122.

Cyclone. — Galveston, etc., R. Co. *v.* Crier, (Tex. Civ. App. 1907) 100 S. W. 1177.

498. 1. Bleakley *v.* New York, 139 Fed. 807; Brigham *v.* Luckenbach, 140 Fed. 322; Evans *v.* Eastern Kentucky Telephone, etc., Co., (Ky. 1907) 99 S. W. 936; Cain *v.* Atlantic Coast Line R. Co., 74 S. Car. 89, 54 S. E. 244; St. Louis Southwestern R. Co. *v.* Jenkins, (Tex. Civ. App. 1905) 89 S. W. 1106. See also Honnemeyer *v.* Fischer, 27 Ohio Cir. Ct. 8.

Where the Negligence of the Defendant is an efficient concurring cause. Sandy *v.* Lake St. El. R. Co., (Ill. 1908) 85 N. E. 300; Elgin, etc., Traction Co. *v.* Wilson, 120 Ill. App. 371; Byron Telephone Co. *v.* Sheets, 122 Ill. App. 6; Quincy Gas, etc., Co. *v.* Schmitt, 123 Ill. App. 647; Forney *v.* Melvin, 130 Ill. App. 203.

2. Feille *v.* San Antonio Traction Co., (Tex. Civ. App. 1908) 107 S. W. 367.

3. Gordon *v.* Chicago, etc., R. Co., 129 Iowa 747, 106 N. W. 177.

4. **Negligence — Mixed Question of Law and Fact.** — Johnson *v.* Lembeck, etc., Brewing Co., (N. J. 1907) 68 Atl. 85.

"Negligence is not so much a fact in itself as a logical inference from a collocation of facts." Mumma *v.* Easton, etc., R. Co., 73 N. J. L. 653, 65 Atl. 208.

Function and Duty of Courts of Appeal. — Pickens *v.* Metropolitan St. R. Co., 125 Mo. App. 669, 103 S. W. 124.

5. *England.* — Scarborough *v.* Cosgrove, (1905) 2 K. B. 805.

United States. — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709; Davidson Steamship Co. *v.* U. S., 205 U. S. 187, 27 U. S. Sup. Ct. 480; McCabe, etc., Constr. Co. *v.* Wilson, 209 U. S. 275, 28 U. S. Sup. Ct. 558; Porter *v.* Buckley, (C. C. A.) 147 Fed. 140; Omaha Water Co. *v.* Schamel, (C. C. A.) 147 Fed. 502; Toledo, etc., R. Co. *v.* Connolly, (C. C. A.) 149 Fed. 398; Pullman Co. *v.* Haight, (C. C. A.) 151 Fed. 1009; New York, etc., R Co. *v.* De Noyelles, (C. C. A.) 153 Fed. 543.

Alabama. — Western R. Co. *v.* Cleghorn, 143 Ala. 392, 39 So. 133; Ball *v.* Mobile Light, etc., Co., 146 Ala. 309, 39 So. 584; Sweet *v.* Birmingham R., etc., Co., 145 Ala. 667, 39 So. 767; Hoge *v.* Southern R. Co., 146 Ala. 384, 41 So. 425; Carrollton Short Line R. Co. *v.* Lipsey, (Ala. 1907) 43 So. 836; Haardt *v.* Central of Georgia R. Co., (Ala. 1907) 44 So. 547; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 627; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 631; Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032.

Arkansas. — Rodgers *v.* Choctaw, etc., R. Co., 76 Ark. 520, 89 S. W. 468; Southern Cotton Oil Co. *v.* Spotts, 78 Ark. 458, 92 S. W. 249; Hayes *v.* Brandt, 80 Ark. 592, 98 S. W. 368; Paragould Southwestern R. Co. *v.* Crunk, 81 Ark. 35, 98 S. W. 682; Southwestern Tel., etc., Co. *v.* Myane, (Ark. 1908) 111 S. W. 987.

California. — McRae *v.* Erickson, 1 Cal. App. 326, 82 Pac. 209; Murphy *v.* Southern Pac. Co., 2 Cal. App. 275, 83 Pac. 299; Brown *v.* Los Angeles R. Co., 2 Cal. App. 618, 84 Pac. 362; Manning *v.* App. Consol. Gold Min. Co., 149 Cal. 35, 84 Pac. 657; Bresee *v.* Los Angeles Traction Co., 149 Cal. 131, 85 Pac. 152; Humphrey *v.* Leonard, 151 Cal. 375, 90 Pac. 705.

Colorado. — Denver, etc., R. Co. *v.* Warring, 37 Colo. 122, 86 Pac. 305; Rimmer *v.* Wilson, (Colo. 1908) 93 Pac. 1110; Farrier *v.* Colorado Springs Rapid Transit R. Co., (Colo. 1908) 95 Pac. 294; Liutz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Connecticut. — Garfield *v.* Hartford, etc., St. R. Co., (Conn. 1907) 67 Atl. 890; Fisher *v.* Crosby Mfg. Co., (Conn. 1907) 67 Atl. 943.

Delaware. — Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935.

Florida. — German-American Lumber Co. *v.* Brock, (Fla. 1908) 46 So. 740.

Georgia. — Atlanta, etc., R. Co. *v.* Hudson, 123 Ga. 108, 51 S. E. 29; Macon R., etc., Co. *v.* Streyer, 123 Ga. 279, 51 S. E. 342; Atlantic Coast Line R. Co. *v.* Taylor, 125 Ga. 454, 54 S. E. 622; Ingram *v.* Hilton, etc., Lumber Co., 125 Ga. 658, 54 S. E. 648; Carger *v.* Macon R., etc., Co., 126 Ga. 626, 55 S. E. 914; Shaw *v.* Georgia R. Co., 127 Ga. 8, 55 S. E. 960; Georgia R., etc., Co. *v.* Adams, 127 Ga. 408, 56 S. E. 409; Southern R. Co. *v.* Gore, 128 Ga. 627, 58 S. E. 180; Tallulah Falls R. Co. *v.* Harris, 129 Ga. 305, 58 S. E. 838; Central of Georgia R. Co. *v.* Minor, 2 Ga. App. 804, 59 S. E. 81; Austin *v.* Central of Georgia R. Co., (Ga. App. 1908) 61 S. E. 998.

Illinois. — Chicago City R. Co. *v* Lowitz, 218 Ill. 24, 75 N. E. 755; Chicago, etc., Electric R. Co. *v.* Patton, 219 Ill. 214, 76 N. E. 381; Chicago City R. Co. *v.* Shaw, 220 Ill. 532, 77 N. E. 139; Illinois Cent. R. Co. *v.* Johnson, 221 Ill. 42, 77 N. E. 592; Chicago, etc., R. Co. *v.* Kimmel, 221 Ill. 547, 77 N. E. 936; Chicago City R. Co. *v.* Shreve, 226 Ill. 530, 80 N. E. 1049; Koshinski *v.* Illinois Steel Co., 231 Ill. 198, 83 N. E. 149; Swiercz *v.* Illinois Steel Co., 231 Ill. 456, 83 N. E. 168; O'Leary *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 233; Chicago City R. Co. *v.* Jordan, 116 Ill. App. 650; South

Chicago City R. Co. *v.* Kinnare, 117 Ill. App. 1; Alton R., etc., Co. *v.* Webb, 119 Ill. App. 75; Morris *v.* Chicago Union Traction Co., 119 Ill. App. 527; Fisk *v.* Chicago Water Chute Co., 119 Ill. App. 536; Illinois Cent. R. Co. *v.* Downs, 122 Ill. App. 545; Cooke Brewing Co. *v.* Ryan, 125 Ill. App. 597; Illinois Cent. R. Co. *v.* Stewart, 130 Ill. App. 197; Chicago City R. Co. *v.* Nonn, 133 Ill. App. 365.

Indiana. — Cleveland, etc., R. Co. *v.* Schneider, (Ind. App. 1907) 80 N. E. 985; Lake Erie, etc., R. Co. *v.* Hobbs, (Ind. App. 1907) 81 N. E. 90; Louisville, etc., Traction Co. *v.* Short, (Ind. App. 1908) 83 N. E. 265.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Long *v.* Johnson County Telephone Co., 134 Iowa 336, 111 N. W. 985; McGuire *v.* Waterloo, etc., Mill Co., (Iowa 1907) 113 N. W. 850; Mickey *v.* Indianola, (Iowa 1908) 114 N. W. 1072; Powers *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 494.

Kansas. — Chute *v.* Moeser, (Kan. 1908) 95 Pac. 398.

Kentucky. — Smith *v.* Illinois Cent. R. Co., (Ky. 1906) 90 S. W. 254; Willis *v.* Maysville, etc., R. Co., (Ky. 1906) 92 S. W. 604; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Louisville R. Co. *v.* Williams, (Ky. 1907) 99 S. W. 245; Spinks *v.* Turley, (Ky. 1907) 103 S. W. 321; Latonia *v.* Hall, (Ky. 1907) 103 S. W. 354; Paducah City R. Co. *v.* Alexander, (Ky. 1907) 104 S. W. 375; Cincinnati, etc., R. Co. *v.* Mounts, (Ky. 1907) 104 S. W. 748; Merchants' Ice, etc., Co. *v.* Bargholt, (Ky. 1908) 110 S. W. 364; Cincinnati, etc., R. Co. *v.* Lorton, (Ky. 1908) 110 S. W. 857.

Maine. — Logue *v.* Great Trunk R. Co., 102 Me. 34, 65 Atl. 522.

Maryland. — Hartford County *v.* Hanse, (Md. 1907) 67 Atl. 273; Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202; United R., etc., Co. *v.* Rosik, (Md. 1908) 68 Atl. 511.

Massachusetts. — Orth *v.* Boston El. R. Co., 188 Mass. 427, 74 N. E. 673; Campbell *v.* Boston, 189 Mass. 7, 75 N. E. 96; Hennessey *v.* Taylor, 189 Mass. 583, 76 N. E. 224; Halloran *v.* Worcester Consol. St. R. Co., 192 Mass. 104, 78 N. E. 381; Hannan *v.* American Steel, etc., Co., 193 Mass. 127, 78 N. E. 749; Cutting *v.* Shelburne, 193 Mass. 1, 78 N. E. 752; Pomeroy *v.* Boston, etc., St. R. Co., 193 Mass. 507, 79 N. E. 764; Murphy *v.* Withington, 194 Mass. 28, 79 N. E. 783; Paine *v.* Armour, 194 Mass. 334, 80 N. E. 500; Heffernan *v.* Fall River Iron Works Co., (Mass. 1907) 83 N. E. 5; Thompson *v.* Bolton, (Mass. 1908) 83 N. E. 1089.

Michigan. — Cousineau *v.* Muskegon Traction, etc., Co., 145 Mich. 314, 108 N. W. 720; Harker *v.* Detroit United R. Co., 150 Mich. 697, 114 N. W. 657.

Minnesota. — Crandall *v.* Minneapolis, etc., R. Co., 96 Minn. 434, 105 N. W. 185; Carlin *v.* Kennedy, 97 Minn. 141, 106 N. W. 340; Svendsen *v.* Alden, 101 Minn. 158, 112 N. W. 10; Hyatt *v.* Murray, 101 Minn. 507, 112 N. W. 881; Decker *v.* Chicago, etc., R. Co., 102 Minn. 99, 112 N. W. 901; Whitehead *v.* Wisconsin Cent. R. Co., (Minn. 1907) 114 N. W. 254.

Mississippi. — Laurel Mercantile Co. *v.* Mobile, etc., R. Co., 87 Miss. 675, 40 So. 259; Leeke *v.* Gulf, etc., R. Co., (Miss. 1908) 46 So. 68; Harrison *v.* Southern R. Co., (Miss. 1908) 46 So. 408.

Missouri. — Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Christman *v.* Meierhoffer, 116 Mo. App. 446, 92 S. W. 141; Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621; Broomfield *v.* Wurster Constr. Co., 118 Mo. App. 254, 94 S. W. 304; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Nephler *v.* Woodward, 200 Mo. 179, 98 S. W. 488; McNamara *v.* Chicago, etc., R. Co., 126 Mo. App. 152, 103 S. W. 1093; Hauck-Hoerr Bakery Co. *v.* United R. Co., 127 Mo. App. 190, 104 S. W. 1137; Lattimore *v.* Union Electric Light, etc., Co., (Mo. App. 1907) 106 S. W. 543; Gage *v.* St. Louis Transit Co., (Mo. 1908) 109 S. W. 13.

Montana. — Johnson *v.* Maiette, 34 Mont. 477, 87 Pac. 447.

Nebraska. — Kotera *v.* American Smelting, etc., Co., (Neb. 1908) 114 N. W. 945; Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285.

Nevada. — Powell *v.* Nevada, etc., R. Co., 28 Nev. 305, 82 Pac. 96; Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210.

New Hampshire. — Hamel *v.* Newmarket Mfg. Co., 73 N. H. 386, 62 Atl. 592; Cunningham *v.* C. R. Pease House Furnishing Co., (N. H. 1908) 69 Atl. 120.

New Jersey. — Collins *v.* West Jersey Express Co., 72 N. J. L. 231, 62 Atl. 675; Koonz *v.* New York Mail Co., 72 N. J. L. 530, 63 Atl. 341; Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74; Fogarty *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 69 Atl. 964.

New York. — Gray *v.* Siegel-Cooper Co., 187 N. Y. 376, 80 N. E. 201; Serano *v.* New York Cent., etc., R. Co., 188 N. Y. 156, 80 N. E. 1025; Guilmartin *v.* Solvay Process Co., 189 N. Y. 490, 82 N. E. 725; Cramer *v.* Brooklyn Heights R. Co., 190 N. Y. 310, 83 N. E. 35; Murphy *v.* Union R. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 672, 94 N. Y. Supp. 350; Rahn *v.* Standard Optical Co., 110 N. Y. App. Div. 501, 96 N. Y. Supp. 1080; Gregorio *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 249, 97 N. Y. Supp. 373; Carey *v.* Manhattan R. Co., 116 N. Y. App. Div. 247, 101 N. Y. Supp. 631; Thayer *v.* New York Cent., etc., R. Co., 117 N. Y. App. Div. 318, 102 N. Y. Supp. 135; Stratton *v.* New York, 117 N. Y. App. Div. 887, 103 N. Y. Supp. 358; Dayton *v.* Brooklyn Heights R. Co., 119 N. Y. App. Div. 32, 103 N. Y. Supp. 867; Griffin *v.* Bell, 119 N. Y. App. Div. 673, 104 N. Y. Supp. 295; Bausert *v.* Thompson-Starrett Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 521; McDowell *v.* Auburn, (Supm. Ct. App. Div.) 110 N. Y. Supp. 941; Buckley *v.* Garden City Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 23.

North Carolina. — Williams *v.* Atlantic Coast Line R. Co., 140 N. Car. 623, 53 S. E. 448; Ruffin *v.* Atlantic, etc., R. Co., 142 N. Car. 120, 55 S. E. 86; Goforth *v.* Southern R. Co., 144 N. Car. 569, 57 S. E. 209.

North Dakota. — Johnson *v.* Fargo, 15 N.

Dak. 525, 108 N. W. 243; Carr *v.* Minneapolis, etc., R. Co., (N. Dak. 1907) 112 N. W. 972.

Ohio. — Columbus R. Co. *v.* Connor, 27 Ohio Cir. Ct. 229.

Oklahoma. — Missouri, etc., R. Co. *v.* Shepherd, (Okla. 1908) 95 Pac. 243.

Pennsylvania. — Casey *v.* U. S. Express Co., 214 Pa. St. 1, 63 Atl. 365; Prethrow *v.* West Jersey, etc., R. Co., 214 Pa. St. 112, 63 Atl. 415; Minnich *v.* Wright, 214 Pa. St. 201, 63 Atl. 428; Cox *v.* Schuylkill Valley Traction Co., 214 Pa. St. 223, 63 Atl. 599; Dougherty *v.* Dobson, 214 Pa. St. 252, 63 Atl. 748; Walker *v.* Black, 216 Pa. St. 395, 65 Atl. 799; Emmel *v.* Pittsburg R. Co., 216 Pa. St. 541, 65 Atl. 1083; Meyers *v.* Central R. Co., 218 Pa. St. 305, 67 Atl. 620.

Rhode Island. — Tilden *v.* Rhode Island Co., 27 R. I. 482, 63 Atl. 675.

South Carolina. — Rochester *v.* Bull, 78 S. Car. 249, 58 S. E. 766.

Tennessee. — Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324.

Texas. — Southern Constr. Co. *v.* Hinkle, (Tex. Civ. App. 1905) 89 S. W. 309; Galveston, etc., R. Co. *v.* Udalle, (Tex. Civ. App. 1905) 91 S. W. 330; Galveston, etc., R. Co. *v.* Cade, (Tex. Civ. App. 1906) 93 S. W. 124; Gulf, etc., R. Co. *v.* Booth, (Tex. Civ. App. 1906) 97 S. W. 128; Houston, etc., R. Co. *v.* Wilkins, (Tex. Civ. App. 1906) 98 S. W. 202; Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932; Gulf, etc., R. Co. *v.* Wittnebert, (Tex. Civ. App. 1907) 104 S. W. 424; El Paso, etc., R. Co. *v.* Polk, (Tex. Civ. App. 1908) 108 S. W. 761.

Utah. — Hickey *v.* Rio Grande Western R. Co., 29 Utah 392, 82 Pac. 29; Morrison *v.* San Pedro, etc., R. Co., (Utah 1907) 88 Pac. 998; Loofbourow *v.* Utah Light, etc., Co., (Utah 1908) 94 Pac. 981.

Vermont. — Strong *v.* Burlington Traction Co., 80 Vt. 34, 66 Atl. 786; Williams *v.* Norton, (Vt. 1908) 69 Atl. 146.

Virginia. — Norfolk, etc., R. Co. *v.* Spencer, 104 Va. 657, 52 S. E. 310; Massey *v.* Southern R. Co., 106 Va. 515, 56 S. E. 275; Norfolk, etc., R. Co. *v.* Carr, 106 Va. 508, 56 S. E. 276.

Washington. — De Mase *v.* Oregon R., etc., Co., 40 Wash. 108, 82 Pac. 170; Creamer *v.* Moran Bros. Co., 41 Wash. 636, 84 Pac. 592; Sullivan *v.* Seattle Electric Co., 44 Wash. 53, 86 Pac. 786; Ball *v.* Peterman Mfg. Co., (Wash. 1907) 92 Pac. 425.

Wisconsin. — Mueller *v.* Northwestern Iron Co., 125 Wis. 326, 104 N. W. 67; Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077; Carlon *v.* Greenfield, 130 Wis. 342, 110 N. W. 208; Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120; Polaski *v.* Pittsburgh Coal Dock Co., (Wis. 1908) 114 N. W. 437; Miller *v.* Kenosha Electric R. Co., (Wis. 1908) 115 N. W. 355.

Gross Negligence. — St. Louis, etc., R. Co. *v.* Stamps, 84 Ark. 241, 104 S. W. 1114; Weiskopf *v.* Ritter, (Ky. 1906) 97 S. W. 1120; South Covington, etc., St. R. Co. *v.* Cleveland, (Ky. 1907) 100 S. W. 283; Missouri, etc., R. Co. *v.* Scofield, (Tex. Civ. App. 1906) 98 S. W. 425.

Wanton Negligence is a question for the jury, Lacey *v.* Louisville, etc., R. Co., (C. C. A.) 152 Fed. 134; as is also the question of recklessness or wantonness. Garth *v.* North Alabama Traction Co., (Ala. 1906) 42 So. 627; Ruddell *v.* Seaboard Air Line R. Co., 75 S. Car. 290, 55 S. E. 528.

Negligence an Inference from Facts. — Hollweg *v.* Bell Telephone Co., 195 Mo. 149, 93 S. W. 262.

It Is the Jury and Not Expert Witnesses who are to pass upon the question of negligence. Carty *v.* Boeseke-Dawe Co., 2 Cal. App. 646, 84 Pac. 267.

501. 1. *United States.* — Rickerd *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 905; Shandrew *v.* Chicago, etc., R. Co., (C. C. A.) 142 Fed. 320; Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; Southern R. Co. *v.* Stutts, (C. C. A.) 144 Fed. 948; Kern *v.* Snider, (C. C. A.) 145 Fed. 327; James Ramage Paper Co. *v.* Bulduzzi, (C. C. A.) 147 Fed. 151; Castner Electrolytic Alkali Co. *v.* Davies, 154 Fed. 938; New England Telephone, etc., Co. *v.* Butler, (C. C. A.) 156 Fed. 321; Columbia Box, etc., Co. *v.* Drown, (C. C. A.) 156 Fed. 459.

Alabama. — Chambers *v.* Milner Coal, etc., Co., 143 Ala. 255, 39 So. 170; Herren *v.* Tuscaloosa Waterworks Co., (Ala. 1905) 40 So. 55; Southern R. Co. *v.* McGowan, (Ala. 1907) 43 So. 378; Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238; Birmingham R., etc., Co. *v.* Ryan, (Ala. 1906) 41 So. 616.

Arkansas. — Little Rock, etc., R. Co. *v.* McQueeney, 78 Ark. 22, 92 S. W. 1120; Choctaw, etc., R. Co. *v.* Stroble, 80 Ark. 68, 96 S. W. 116; Arkansas Cent. R. Co. *v.* Bennett, 82 Ark. 393, 102 S. W. 198.

California. — Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976; De Witt *v.* Floriston Pulp, etc., Co., (Cal. App. 1908) 96 Pac. 397.

District of Columbia. — McDermott *v.* Severe, 25 App. Cas. (D. C.) 276; Barstow *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362.

Georgia. — Macon, etc., R. Co. *v.* Parker, 127 Ga. 471, 56 S. E. 616; Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518; Rollestone *v.* Cassirer, 3 Ga. App. 161, 59 S. E. 442.

Illinois. — Freyer *v.* Aurora, etc., R. Co., 123 Ill. App. 423; Frank Parmelee Co. *v.* Wheelock, 127 Ill. App. 500.

Indiana. — Indianapolis St. R. Co. *v.* Bolin, 39 Ind. App. 169, 78 N. E. 210; Hammond, etc., Electric St. R. Co. *v.* Blockie, (Ind. App. 1907) 82 N. E. 541; Brinkman *v.* Pacholke, (Ind. App. 1908) 84 N. E. 762.

Iowa. — Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593; Brusseau *v.* Lower Brick Co., 133 Iowa 245, 110 N. W. 577; Raber *v.* Hinds, 133 Iowa 312, 110 N. W. 597; Ramsey *v.* Cedar Rapids, etc., R. Co., (Iowa 1907) 112 N. W. 798; Strand *v.* Grinnell Automobile Garage, etc., Co., (Iowa 1907) 113 N. W. 488.

Kansas. — Metropolitan St. R. Co. *v.* Summers, 75 Kan. 342, 89 Pac. 652; Atchison, etc., R. Co. *v.* McElroy, (Kan. 1907) 91 Pac. 785.

Kentucky. — Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Eirk *v.* Louisville R. Co., (Ky. 1906) 98 S. W. 293; Evans *v.* Eastern Kentucky Telephone, etc., Co., (Ky.

1907) 99 S. W. 936; South Covington, etc., St. R. Co. *v.* Cleveland, (Ky. 1907) 100 S. W. 283; Davis *v.* Ohio Valley Banking, etc., Co., (Ky. 1908) 106 S. W. 843; Central Consumers Co. *v.* Booher, (Ky. 1908) 107 S. W. 198.

Maine. — Wells *v.* Northeastern Telephone Co., 101 Me. 371, 64 Atl. 648.

Massachusetts. — Dudley *v.* Kingsbury, (Mass. 1908) 85 N. E. 76.

Michigan. — Warren *v.* Porter, 144 Mich. 699, 108 N. W. 435; Ladd *v.* Germain, 145 Mich. 225, 108 N. W. 679; Allen *v.* Bainbridge, 145 Mich. 366, 108 N. W. 732; Barnum *v.* Grand Trunk Western R. Co., 148 Mich. 370, 111 N. W. 1036; Rollo *v.* City Electric R. Co., (Mich. 1908) 115 N. W. 727.

Minnesota. — Raasch *v.* Elite Laundry Co., 98 Minn. 357, 108 N. W. 477; Monsen *v.* Crane, 99 Minn. 186, 108 N. W. 933; Smith *v.* Twin City Rapid Transit Co., 102 Minn. 4, 112 N. W. 1001.

Missouri. — Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354; Latson *v.* St. Louis Transit Co., 192 Mo. 449, 91 S. W. 109; Browning *v.* Chicago, etc., R. Co., 118 Mo. App. 449, 94 S. W. 315; Loehring *v.* Westlake Constr. Co., 118 Mo. App. 163, 94 S. W. 747; Dakan *v.* G. W. Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Politowitz *v.* Citizens Telephone Co., 123 Mo. App. 77, 99 S. W. 756; Rhinehart *v.* St. Louis, etc., R. Co., (Mo. App. 1908) 108 S. W. 103; Brubaker *v.* Kansas City Electric Light Co., (Mo. App. 1908) 110 S. W. 12.

Nebraska. — Hicks *v.* Union Pac. R. Co., (Neb. 1906) 107 N. W. 798.

New Hampshire. — Hewett *v.* Woman's Hospital Aid Assoc., 73 N. H. 556, 64 Atl. 190; Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404; Leazotte *v.* Jackson Mfg. Co., (N. H. 1908) 69 Atl. 640.

New Jersey. — Ferguson *v.* Central R. Co., 74 N. J. L. 691, 67 Atl. 602; Migans *v.* Jersey City, etc., R. Co., (N. J. 1908) 70 Atl. 168.

New York. — Conway *v.* Rheims, 107 N. Y. App. Div. 289, 95 N. Y. Supp. 119; Horning *v.* Hudson River Telephone Co., 111 N. Y. App. Div. 122, 97 N. Y. Supp. 625; West *v.* Woodruff, 112 N. Y. App. Div. 133, 97 N. Y. Supp. 1054; Fischel *v.* Metropolitan St. R. Co., 113 N. Y. App. Div. 116, 99 N. Y. Supp. 90; Davis *v.* Bouton Motor Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 359.

North Carolina. — Jones *v.* American Warehouse Co., 138 N. Car. 546, 51 S. E. 106; Fuller *v.* Atlantic Coast Line R. Co., 140 N. Car. 480, 53 S. E. 297; Horton *v.* Seaboard Air Line R. Co., 145 N. Car. 132, 58 S. E. 993.

Oregon. — Wolf *v.* City R. Co., (Oregon 1907) 91 Pac. 460.

Pennsylvania. — Riegert *v.* Thackery, 212 Pa. St. 86, 61 Atl. 614; Ackley *v.* Bradford Tp., 32 Pa. Super. Ct. 487.

South Carolina. — Bamberg *v.* Atlantic Coast Line R. Co., 72 S. Car. 389, 51 S. E. 988; Richardson *v.* Augusta, etc., R. Co., (S. Car. 1908) 61 S. E. 83.

Tennessee. — Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319.

Texas. — Texas Short Line R. Co. *v.* Waymire, (Tex. Civ. App. 1905) 89 S. W. 452; St. Louis, etc., R. Co. *v.* Bussong, (Tex. Civ. App. 1905) 90 S. W. 73; Davis *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1906) 92 S. W. 831; Houston, etc., R. Co. *v.* Beard, (Tex. Civ. App. 1906) 93 S. W. 532; Galveston, etc., R. Co. *v.* Parish, (Tex. Civ. App. 1906) 93 S. W. 682; Missouri, etc., R. Co. *v.* Hagan, (Tex. Civ. App. 1906) 93 S. W. 1014; Metropolitan St. R. Co. *v.* Kirkpatrick, (Tex. Civ. App. 1906) 94 S. W. 1092; St. Louis, etc., R. Co. *v.* Ames, (Tex. Civ. App. 1906) 94 S. W. 1112; St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1906) 97 S. W. 534; Consolidated Kansas City Smelting, etc., Co. *v.* Binkley, (Tex. Civ. App. 1906) 99 S. W. 181; Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408; St. Louis Southwestern R. Co. *v.* Moore, (Tex. Civ. App. 1908) 107 S. W. 658; International, etc., R. Co. *v.* Vallejo, (Tex. Civ. App. 1908) 108 S. W. 1187; Houston, etc., R. Co. *v.* Patrick, (Tex. Civ. App. 1908) 109 S. W. 1097.

Vermont. — McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124.

Virginia. — Richmond *v.* Pemberton, (Va. 1908) 61 S. E. 787.

Washington. — Boyle *v.* Anderson, etc., Lumber Co., (Wash. 1907) 90 Pac. 433; Welch *v.* Fransioli, (Wash. 1907) 90 Pac. 644.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016; Mahaffey *v.* J. L. Rumbarger Lumber Co., 61 W. Va. 571, 56 S. E. 893.

"In every case involving the law of negligence the jury should, in the light of the facts of that case, take the mould of a prudent man." Brown Store Co. *v.* Chattahoochee Lumber Co., 1 Ga. App. 609, 57 S. E. 1043.

2. *United States.* — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709; Denver, etc., R. Co. *v.* Norgate, (C. C. A.) 141 Fed. 247, 5 Ann. Cas. 448; Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Klutt *v.* Philadelphia, etc., R. Co., 145 Fed. 965, *affirming* (C. C. A.) 148 Fed. 818; International Mercantile Marine Co. *v.* Smith, (C. C. A.) 145 Fed. 891; Boston, etc., R. Co. *v.* Stockwell, (C. C. A.) 146 Fed. 505; Coney Island Co. *v.* Dennan, (C. C. A.) 149 Fed. 687; Citizens' Gas, etc., Co. *v.* Nicholson, (C. C. A.) 152 Fed. 389; Memphis Consol. Gas, etc., Co. *v.* Bell, (C. C. A.) 152 Fed. 677; New England Telephone, etc., Co. *v.* Butler, (C. C. A.) 156 Fed. 321; Columbia Box, etc., Co. *v.* Drown, (C. C. A.) 156 Fed. 459; Pennsylvania Steel Co. *v.* Jacobsen, (C. C. A.) 157 Fed. 656; Delaware, etc., R. Co. *v.* Larnard, (C. C. A.) 161 Fed. 520.

Alabama. — Alabama G. S. R. Co. *v.* Clarke, 145 Ala. 459, 39 So. 816; Louisville, etc., R. Co. *v.* Mulder, (Ala. 1906) 42 So. 742.

Arkansas. — Tiffin *v.* St. Louis, etc., R. Co., 78 Ark. 55, 93 S. W. 564; St. Louis, etc., R. Co. *v.* Jackson, 78 Ark. 100, 93 S. W. 746.

California. — Bird *v.* Utica Gold Min. Co., 2 Cal. App. 674, 84 Pac. 256.

Delaware. — Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589.

District of Columbia. — Georgetown, etc., R. Co. *v.* Smith, 25 App. Cas. (D. C.) 259.

Georgia. — Atlanta, etc., R. Co. *v.* Hudson,

123 Ga. 108, 51 S. E. 29; Southern R. Co. *v.* Reynolds, 126 Ga. 657, 55 S. E. 1039; Lyndon *v.* Georgia R., etc., Co., (Ga. App. 1908) 60 S. E. 278.

Illinois. — Chicago R. Co. *v.* Schmidt, 217 Ill. 396, 75 N. E. 383; Chicago, etc., R. Co. *v.* Kimmel, 221 Ill. 547, 77 N. E. 936; Chicago City R. Co. *v.* Shreve, 226 Ill. 530, 80 N. E. 1049; Chicago Consol. Traction Co. *v.* Schritter, 124 Ill. App. 578; Chicago, etc., Electric R. Co. *v.* Barrows, 128 Ill. App. 11; Palestine *v.* Siler, 128 Ill. App. 309.

Indiana. — Indianapolis St. R. Co. *v.* James, 35 Ind. App. 543, 74 N. E. 536; Grand Trunk Western R. Co. *v.* Melrose, 166 Ind. 658, 78 N. E. 190.

Iowa. — Arenschield *v.* Chicago, etc., R. Co., 128 Iowa 677, 105 N. W. 200; Blumenthal *v.* Union Electric Co., 129 Iowa 322, 105 N. W. 588; Heinmiller *v.* Winston, 131 Iowa 132, 107 N. W. 1102; Hartman *v.* Chicago, etc., R. Co., 132 Iowa 582, 110 N. W. 10; Garnetz *v.* Carroll, (Iowa 1907) 114 N. W. 57.

Kansas. — Chute *v.* Moeser, (Kan. 1908) 95 Pac. 398.

Kentucky. — Illinois Cent. R. Co. *v.* Proctor, (Ky. 1905) 89 S. W. 714; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Southern R. Co. *v.* Scanlon, (Ky. 1907) 105 S. W. 152.

Massachusetts. — Torphy *v.* Fall River, 188 Mass. 310, 74 N. E. 465; McCormack *v.* Boston El. R. Co., 188 Mass. 342, 74 N. E. 599; Mahan *v.* Newton, etc., St. R. Co., 189 Mass. 1, 75 N. E. 59; Bennett *v.* Everett, 191 Mass. 364, 77 N. E. 886; Bates *v.* Dr. King Co., 191 Mass. 585, 77 N. E. 1154; Woodall *v.* Boston El. R. Co., 192 Mass. 308, 78 N. E. 446; Pickwick *v* McCauliff, 193 Mass. 70, 78 N. E. 730; Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740; Wills *v.* Taylor, 193 Mass. 113, 78 N. E. 774; Kuhlen *v.* Boston, etc., St. R. Co., 193 Mass. 341, 79 N. E. 815; Marshall *v.* Boston, etc., St. R. Co., (Mass. 1907) 81 N. E. 195; French *v.* Boston Coal Co., 195 Mass. 334, 81 N. E. 265; Saures *v.* Stevens Mfg. Co., (Mass. 1907) 82 N. E. 694; Cammett *v.* Haverhill, (Mass. 1908) 83 N. E. 331; Jordan *v.* New England Structural Co., (Mass. 1908) 83 N. E. 332; Plummer *v.* Boston El. R. Co., (Mass. 1908) 84 N. E. 849.

Michigan. — Warren *v.* City Electric R. Co., 141 Mich. 298, 104 N. W. 613; Foster *v.* East Jordan Lumber Co., 141 Mich. 316, 104 N. W. 617; Wright *v.* Crane, 142 Mich. 508, 106 N. W. 71; McWilliams *v.* Lake Shore, etc., R. Co., 146 Mich. 216, 109 N. W. 272; Rogers *v.* Fowler, (Mich. 1908) 115 N. W. 469; Cousineau *v.* Muskegon Traction, etc., Co., (Mich. 1908) 115 N. W. 987; Meyer *v.* Detroit, etc., R. Co., (Mich. 1908) 116 N. W. 429; Pecard *v.* Menominee River Sugar Co., (Mich. 1908) 116 N. W. 532.

Minnesota. — Sumner *v.* Northfield, 96 Minn. 107, 104 N. W. 686; Svendsen *v.* Alden, 101 Minn. 158, 112 N. W. 10.

Mississippi. — Hopson *v.* Kansas City, etc., R. Co., 87 Miss. 789, 40 So. 872.

Missouri. — Rigsby *v.* Oil Well Supply Co., 115 Mo. App. 297, 91 S. W. 460; Richmond *v.* Metropolitan St. R. Co., 123 Mo. App. 495, 100 S. W. 54; Mack *v.* Chicago, etc., R. Co., 123 Mo. App. 531, 101 S. W. 142; Cytron *v.* St. Louis Transit Co., 205 Mo. 692, 104 S. W. 109.

Montana. — Riley *v.* Northern Pac. R. Co., (Mont. 1908) 93 Pac. 948.

Nebraska. — Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368; Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285.

New Hampshire. — Yeaton *v.* Boston, etc., R. Co., 73 N. H. 285, 61 Atl. 522.

New Jersey. — Guinn *v.* Delaware, etc., Telephone Co., 72 N. J. L. 276, 62 Atl. 412; Snyer *v.* New York, etc., Telephone Co., 73 N. J. L. 535, 64 Atl. 122; Germanus *v.* Lehigh Valley R. Co., 74 N. J. L. 662, 67 Atl. 79.

New York. — McCoy *v.* New York Cent., etc., R. Co., 185 N. Y. 276, 77 N. E. 1174; Weitzmann *v.* A. L. Barber Asphalt Co., 190 N. Y. 452, 83 N. E. 477; Schoeller *v.* Metropolitan Express Co., 108 N. Y. App. Div. 226, 95 N. Y. Supp. 744; Wood *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 770, 96 N. Y. Supp. 419; Horning *v.* Hudson River Telephone Co., 111 N. Y. App. Div. 122, 97 N. Y. Supp. 625; Freemont *v.* Boston, etc., R. Co., 111 N. Y. App. Div. 831, 98 N. Y. Supp. 179; Windels *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 646, 98 N. Y. Supp. 854; Johnson *v.* Terry, etc., Co., 113 N. Y. App. Div. 762, 99 N. Y. Supp. 375; Ryan *v.* Delaware, etc., Co., 114 N. Y. App. Div. 268, 99 N. Y. Supp. 794; Froelich *v.* Interborough Rapid Transit Co., 120 N. Y. App. Div. 474, 104 N. Y. Supp. 910; Conaway *v.* Martin, 121 N. Y. App. Div. 551, 106 N. Y. Supp. 194; Lynch *v.* American Linseed Co., 122 N. Y. App. Div. 428, 107 N. Y. Supp. 458; Ward *v.* Edison Electric Illuminating Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 608; McGarry *v.* Edison Electric Illuminating Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 611.

Oregon. — Geldard *v.* Marshall, 47 Oregon 271, 83 Pac. 867; Kunz *v.* Oregon R., etc., Co., (Oregon 1908) 94 Pac. 504.

Pennsylvania. — Hickey *v.* Solid Steel Casting Co., 212 Pa. St. 255, 61 Atl. 798; Miller *v.* Lewiston Electric Light, etc., Co., 212 Pa. St. 593, 62 Atl. 32; Hughes *v.* Fayette Mfg. Co., 214 Pa. St. 282, 63 Atl. 692; Eagle Hose Co. *v.* Priceburg Electric Light Co., 33 Pa. Super. Ct. 581.

Rhode Island. — Desautelle *v.* Nasonville Woolen Co., (R. I. 1907) 66 Atl. 579.

South Carolina. — Talbert *v.* Charleston, etc., R. Co., 72 S. Car. 137, 51 S. E. 564; Willis *v.* Cherokee Falls Mfg. Co., 72 S. Car. 126, 51 S. E. 538.

Texas. — Missouri, etc., R. Co. *v.* Sisson, (Tex. Civ. App. 1905) 88 S. W. 371; St. Louis, etc., R. Co. *v.* Bussong, (Tex. Civ. App. 1905) 90 S. W. 73; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 90 S. W. 185; Pullman Co. *v.* Norton, (Tex. Civ. App. 1905) 91 S. W. 841; San Antonio Traction Co. *v.* Flory, (Tex. Civ. App. 1907) 100 S. W. 200; Ft. Worth, etc., R. Co. *v.* Work, (Tex. Civ. App. 1907) 100 S. W. 962; Texarkana, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1907) 101 S. W. 1167; Texas, etc., R. Co. *v.* Tucker, (Tex. Civ. App. 1907) 106 S. W. 764; Galveston, etc., R. Co. *v.* Wafer, (Tex. Civ. App. 1907) 106 S. W. 897; St. Louis Southwestern R. Co. *v.* Moore, (Tex. Civ. App. 1908)

107 S. W. 658; St. Louis, etc., R. Co. *v.* Wiggins, (Tex. Civ. App. 1908) 107 S. W. 899; St. Louis, etc., R. Co. *v.* Summers, (Tex. Civ. App. 1908) 111 S. W. 211.

Utah. — Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402; Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Vermont. — McKane *v.* Marr, 79 Vt. 13, 63 Atl. 944.

Virginia. — Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373; Southern R. Co. *v.* Blanford, 105 Va. 373, 54 S. E. 1.

West Virginia. — Bowles *v.* Chesapeake, etc., R. Co., 61 W. Va. 272, 57 S. E. 131.

Wisconsin. — Olwell *v.* Skobis, 126 Wis. 308, 105 N. W. 777; Baxter *v.* Krainik, 126 Wis. 421, 105 N. W. 803; McGowan *v.* Watertown, 130 Wis. 555, 110 N. W. 402.

Canada. — Preston *v.* Toronto R. Co., 11 Ont. L. Rep. 56.

Inspection of Appliances, etc. — *United States.* — Martin *v.* Wabash R. Co., (C. C. A.) 142 Fed. 650, 6 Ann. Cas. 582.

California. — Fogarty *v.* Southern Pac. Co., 151 Cal. 785, 91 Pac. 650.

Colorado. — Denver, etc., R. Co. *v.* Warring, 37 Colo. 122, 86 Pac. 305.

Massachusetts. — Mulvaney *v.* Peck, (Mass. 1907) 81 N. E. 874.

Minnesota. — Cederburg *v.* Minneapolis, etc., R. Co., 101 Minn. 100, 111 N. W. 953; Murphy *v.* South St. Paul, 101 Minn. 341, 112 N. W. 250.

Missouri. — Morton *v.* William Barr Dry Goods Co., 126 Mo. App. 377, 103 S. W. 588.

New Jersey. — Timlan *v.* Dillworth, (N. J. 1907) 67 Atl. 433.

New York. — Henson *v.* Lehigh Valley R. Co., 122 N. Y. App. Div. 160, 106 N. Y. Supp. 602.

Pennsylvania. — Lamb *v.* Philadelphia, etc., R. Co., 217 Pa. St. 564, 66 Atl. 762.

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Texas. — Missouri, etc., R. Co. *v.* Hogan, (Tex. Civ. App. 1906) 93 S. W. 1014; Galveston, etc., R. Co. *v.* Stevens, (Tex. Civ. App. 1906) 94 S. W. 395; Galveston, etc., R. Co. *v.* Cherry, (Tex. Civ. App. 1906) 98 S. W. 898; Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932; Texas Mexican R. Co. *v.* Lewis, (Tex. Civ. App. 1906) 99 S. W. 577; Missouri, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1907) 101 S. W. 506; San Antonio Gas, etc., Co. *v.* Badders, (Tex. Civ. App. 1907) 103 S. W. 229; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 910; Missouri, etc., R. Co. *v.* Blachley, (Tex. Civ. App. 1908) 109 S. W. 995.

When for the Court. — Alves *v.* New York, etc., R. Co., 27 R. I. 581, 65 Atl. 261.

Actual or Constructive Notice of Defective Conditions — *United States.* — Grand Forks *v.* Allman, (C. C. A.) 153 Fed. 532.

Alabama. — Birmingham Rolling Mills Co. *v.* Rockhold, 143 Ala. 115, 42 So. 96; Montgomery *v.* Comer, (Ala. 1908) 46 So. 761.

Colorado. — Diamond Rubber Co. *v.* Harryman, (Colo. 1907) 92 Pac. 922; Hotchkiss Mt. Min., etc., Co. *v.* Bruner, (Colo. 1908) 94 Pac. 331.

Connecticut. — Crotty *v.* Danbury, 79 Conn. 379, 65 Atl. 147.

Delaware. — Anderson *v.* Wilmington, (Del. 1908) 70 Atl. 204.

Illinois. — Goddard *v.* Enzler, 222 Ill. 462, 78 N. E. 805; Chicago *v.* Loebel, 228 Ill. 52, 81 N. E. 796; Illinois Cent. R. Co. *v.* Heath, 228 Ill. 312, 81 N. E. 1022; Gronlund *v.* Forsman, 124 Ill. App. 362; Bethany *v.* Lee, 124 Ill. App. 397; Hapavy *v.* Chicago, 133 Ill. App. 452; Farmington *v.* Wallace, 134 Ill. App. 366.

Iowa. — Brusseau *v.* Lower Brick Co., 133 Iowa 245, 110 N. W. 577; Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555; Cutter *v.* Des Moines, (Iowa 1907) 113 N. W. 1081.

Kentucky. — Mergenthaler-Horton Basket Co. *v.* Taylor, (Ky. 1906) 90 S. W. 968; Louisville *v.* Romer, (Ky. 1906) 97 S. W. 348; Covington *v.* Whitney, (Ky. 1907) 99 S. W. 337; South Covington, etc., St. R. Co. *v.* Brown, (Ky. 1907) 104 S. W. 703; Henderson *v.* Sizemore, (Ky. 1907) 104 S. W. 722.

Massachusetts. — Finnegan *v.* Samuel Winslow Skate Mfg. Co., 189 Mass. 580, 76 N. E. 192; McGuinness *v.* Lehan, 193 Mass. 241, 79 N. E. 265; Ladd *v.* New York, etc., R. Co., 193 Mass. 359, 79 N. E. 742; Lynch *v.* Lynn Box Co., 194 Mass. 307, 80 N. E. 580; Harrigan *v.* Worcester, (Mass. 1908) 84 N. E. 467.

Michigan. — Hendershott *v.* Grand Rapids, 142 Mich. 140, 105 N. W. 140; Barschow *v.* Lake Shore, etc., R. Co., 147 Mich. 226, 110 N. W. 1057; Abbott *v.* Detroit, 150 Mich. 245, 113 N. W. 1121.

Minnesota. — Sprague *v.* Wisconsin Cent. R. Co., (Minn. 1908) 116 N. W. 104.

Missouri. — Hach *v.* St. Louis, etc., R. Co., 117 Mo. App. 11, 93 S. W. 825; Dunphy *v.* St. Joseph Stockyards Co., 118 Mo. App. 506, 95 S. W. 301; Kremer *v.* Eagle Mfg. Co., 120 Mo. App. 247, 96 S. W. 726; York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604.

Montana. — O'Flynn *v.* Butte, (Mont. 1908) 93 Pac. 643.

New York. — Dickerman *v.* Weeks, 108 N. Y. App. Div. 257, 95 N. Y. Supp. 714; Mansfield *v.* New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386; Bayley *v.* Curtis Bros. Lumber Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 937; Orser *v.* New York, (Supm. Ct. App. Div.) 111 N. Y. Supp. 670.

North Carolina. — Fitzgerald *v.* Concord, 140 N. Car. 110, 52 S. E. 309; Brewster *v.* Elizabeth, 142 N. Car. 9, 54 S. E. 784; Sibbert *v.* Scotland Cotton Mills, 145 N. Car. 308, 59 S. E. 79.

North Dakota. — Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243.

Ohio. — Walton *v.* Ensign, 27 Ohio Cir. Ct. 505.

Pennsylvania. — Goff *v.* Philadelphia, 214 Pa. St. 172, 63 Atl. 431; Meyers *v.* Philadelphia, 217 Pa. St. 159, 66 Atl. 251; Moore *v.* Wilkes-Barre, 218 Pa. St. 302, 67 Atl. 619; Combs *v.* Delaware, etc., Tel., etc., Co., 218 Pa. St. 440, 67 Atl. 751; Milliren *v.* Sandy Tp., 29 Pa. Super. Ct. 580; Meachem *v.* Coraopolis, 31 Pa. Super. Ct. 150; Brown *v.* Milligan, 33 Pa. Super. Ct. 244.

South Dakota. — Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 631.

Utah. — Jones *v.* Ogden City, (Utah 1907) 89 Pac. 1006.

Washington. — Patten *v.* Auburn, 41 Wash. 644, 84 Pac. 594; Johnson *v.* Griffith-Sprague Stevedoring Co., 45 Wash. 278, 88 Pac. 193; Bull *v.* Spokane, (Wash. 1907) 89 Pac. 555; Larsen *v.* Sedro-Woolley, (Wash. 1908) 94 Pac. 938.

Wisconsin. — Wilbert *v.* F. Zurheide Brick Co., 129 Wis. 1, 106 N. W. 1058; Fleming *v.* Northern Tissue Paper Mill, (Wis. 1908) 114 N. W. 841.

When for the Court. — Brown *v.* Durham, 141 N. Car. 249, 53 S. E. 513; Dory *v.* Duluth, (Minn. 1908) 114 N. W. 465.

Negligence in Failing to Know Question of Fact. — Feeney *v.* York Mfg. Co., 189 Mass. 336, 75 N. E. 733; Ness *v.* Escanaba, 142 Mich. 404, 105 N. W. 879; Fox *v.* Manchester, 183 N. Y. 141, 75 N. E. 1116.

Whether Place or Thing Likely to Attract Children. — Belt R. Co. *v.* Charters, 123 Ill. App. 322; Falkenberg *v.* Stout, 75 Kan. 172, 88 Pac. 874; Gates *v.* Northern Pac. R. Co., (Mont. 1908) 94 Pac. 751; Wheeling, etc., R. Co. *v.* Harvey, 27 Ohio Cir. Ct. 672; Brown *v.* Salt Lake City, (Utah 1908) 93 Pac. 570; McAllister *v.* Seattle Brewing, etc., Co., 44 Wash. 179, 87 Pac. 68.

Whether Selling Gunpowder to Boy Negligence. — McEloon *v.* Drew, (Iowa 1908) 116 N. W. 147.

Whether Reason to Anticipate Presence of Trespassers. — Macon, etc., R. Co. *v.* Parker, 127 Ga. 471, 56 S. E. 616.

502. 1. Plummer *v.* Boston El. R. Co., (Mass. 1908) 84 N. E. 849; Norfolk, etc., Traction Co. *v.* Ellington, (Va. 1908) 61 S. E. 779.

Jury May Not Go Beyond Evidence. — Stark *v.* Lancaster Light, etc., Co., 218 Pa. St. 575, 67 Atl. 909; Southern R. Co. *v.* Hansbrough, 107 Va. 733, 60 S. E. 58.

Thing Not Presumed Dangerous. — Loewe *v.* New York City R. Co., 121 N. Y. App. Div. 729, 106 N. Y. Supp. 488.

It Is a Question for the Court whether the matter of precautions should be submitted to the jury. Atherton *v.* London, etc., R. Co., 93 L. T. N. S. 464.

2. Southern R. Co. *v.* McGowan, (Ala. 1907) 43 So. 378; Burns *v.* Dunham, etc., Co., 148 Cal. 208, 82 Pac. 959; Bilton *v.* Southern Pac. Co., 148 Cal. 443, 83 Pac. 440; Maxwell *v.* Fresno City R. Co., 4 Cal. App. 745, 89 Pac. 367; Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337; Arenschield *v.* Chicago, etc., R. Co., 128 Iowa 677, 105 N. W. 200; Johnson *v.* Veneman, 75 Kan. 278, 89 Pac. 677; Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Rubinovitch *v.* Boston El. R. Co., 192 Mass. 119, 77 N. E. 895; Chicago, etc., R. Co. *v.* Harley, 74 Neb. 462, 104 N. W. 862; Rochester *v.* Bull, 78 S. Car. 249, 58 S. E. 766.

3. *United States.* — Canadian Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595; J. W. Bishop Co. *v.* Shelhorse, (C. C. A.) 141 Fed. 643; Whitehouse *v.* Edwards, (C. C. A.) 152 Fed. 72.

Alabama. — Alabama G. S. R. Co. *v.* Fulton, 144 Ala. 332, 39 So. 282; Louisville, etc., R. Co. *v.* Mertz, (Ala. 1905) 40 So. 60; Birmingham R., etc., Co. *v.* Taylor, (Ala. 1907) 44 So. 580.

Arkansas. — Kansas City Southern R. Co. *v.* Edwards, 80 Ark. 273, 96 S. W. 1061; St. Louis, etc., R. Co. *v.* Fisher, 80 Ark. 376, 97 S. W. 279.

California. — Bowen *v.* Sierra Lumber Co., 3 Cal. App. 312, 84 Pac. 1010.

Colorado. — Union Pac. R. Co. *v.* Shovall, 39 Colo. 436, 89 Pac. 764.

Connecticut. — Bradbury *v.* South Norwalk, (Conn. 1907) 68 Atl. 321.

Georgia. — Wheeler *v.* Albany, etc., R. Co., (Ga. App. 1908) 61 S. E. 839.

Illinois. — West Chicago St. R. Co. *v.* Schulz, 217 Ill. 322, 75 N. E. 495; Joseph Taylor Coal Co. *v.* Dawes, 220 Ill. 145, 77 N. E. 131; Frank Parmelee Co. *v.* Wheelock, 224 Ill. 194, 79 N. E. 652; McCarthy *v.* Spring Valley Coal Co., 232 Ill. 473, 83 N. E. 957; Chicago Union Traction Co. *v.* Lundahl, 117 Ill. App. 220; Wabash R. Co. *v.* Barrett, 117 Ill. App. 315; Fisk *v.* Chicago Water Chute Co., 119 Ill. App. 536; United Breweries Co. *v.* O'Donnell, 124 Ill. App. 24.

Indiana. — New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804; Columbian Enameling, etc., Co. *v.* O'Burke, 37 Ind. App. 518, 77 N. E. 409; Southern R. Co. *v.* Limback, (Ind. 1908) 85 N. E. 354.

Iowa. — Dodge *v.* Lamont, 130 Iowa 721, 107 N. W. 948; Farrell *v.* Citizens' Light, etc., Co., (Iowa 1908) 114 N. W. 1063.

Kansas. — Kansas City, etc., R. Co. *v.* Rockwell, 74 Kan. 840, 85 Pac. 802; Metropolitan St. R. Co. *v.* Fawcett, (Kan. 1907) 92 Pac. 543.

Kentucky. — Louisville R. Co. *v.* Hutchcraft, (Ky. 1907) 105 S. W. 983; Campbell *v.* Dreher, (Ky. 1908) 110 S. W. 353.

Maryland. — Western Maryland R. Co. *v.* Shivers, 101 Md. 391, 61 Atl. 618; Philadelphia, etc., R. Co. *v.* McGugan, 102 Md. 270, 62 Atl. 752.

Massachusetts. — Torphy *v.* Fall River, 188 Mass. 310, 74 N. E. 465; Smith *v.* Thomson-Houston Electric Co., 188 Mass. 371, 74 N. E. 664; Hennessey *v.* Taylor, 189 Mass. 583, 76 N. E. 224; Logan *v.* Old Colony St. R. Co., 190 Mass. 115, 76 N. E. 510; Erb *v.* Boston El. R. Co., 191 Mass. 482, 78 N. E. 117; Owens *v.* Harvard Brewing Co., 194 Mass. 498, 80 N. E. 509; Fitzhugh *v.* Boston, etc., R. Co., 195 Mass. 202, 80 N. E. 792; McLaren *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 1088.

Michigan. — Line *v.* Grand Rapids, etc., R. Co., 143 Mich. 163, 106 N. W. 719.

Mississippi. — T. B. Bonner Co. *v.* New Orleans, etc., R. Co., (Miss. 1906) 40 So. 65.

Missouri. — Gharst *v.* St. Louis Transit Co., (Mo. App. 1905) 91 S. W. 453; Lindsay *v.* Kansas City, 195 Mo. 166, 93 S. W. 273; Kupke *v.* St. Louis Transit Co., 122 Mo. 355, 99 S. W. 472; Jaffi *v.* Missouri Pac. R. Co., 205 Mo. 450, 103 S. W. 1026; Ghere *v.* Zey, (Mo. App. 1908) 107 S. W. 418.

New Hampshire. — Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404.

New Jersey. — Goodwin *v.* Central R. Co., 73 N. J. L. 576, 64 Atl. 134; Graves *v.* Baltimore, etc., R. Co., (N. J. 1908) 69 Atl. 971.

New York. — Di Stefeno *v.* Peekskill Light-

ing, etc., Co., 107 N. Y. App. Div. 293, 95 N. Y. Supp. 179; Reilly *v.* Interurban St. R. Co., 108 N. Y. App. Div. 254, 95 N. Y. Supp. 721; Salcinger *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 179, 101 N. Y. Supp. 804.

Pennsylvania. — Pyne *v.* Delaware, etc., R. Co., 212 Pa. St. 143, 61 Atl. 817; Raymer *v.* Standard Steel Works, 216 Pa. St. 101, 64 Atl. 902.

South Carolina. — Bamberg *v.* Atlantic Coast Line R. Co., 72 S. Car. 389, 51 S. E. 988; McCarley *v.* Glenn-Lowry Mfg. Co., 75 S. Car. 390, 56 S. E. 1.

South Dakota. — Edwards *v.* Chicago, etc., R. Co., (S. Dak. 1907) 110 N. W. 832.

Texas. — Latimer *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 90 S. W. 665; International, etc., R. Co. *v.* Edwards, (Tex. Civ. App. 1905) 91 S. W. 640; Galveston, etc., R. Co. *v.* Paschall, (Tex. Civ. App. 1906) 92 S. W. 446.

Washington. — Peterson *v.* Seattle, 40 Wash. 33, 82 Pac. 141; Smith *v.* Michigan Lumber Co., 43 Wash. 402, 86 Pac. 652; Tergeson *v.* Robinson Mfg. Co., (Wash. 1908) 93 Pac. 428.

Wisconsin. — Montayne *v.* Northern Electrical Mfg. Co., 127 Wis. 22, 105 N. W. 1043; Smith *v.* Milwaukee Electric R., etc., Co., 127 Wis. 253, 106 N. W. 829; Hardt *v.* Chicago, etc., R. Co., 130 Wis. 512, 110 N. W. 427.

Finding of Jury Not Disturbed. — Bundy *v.* Sierra Lumber Co., 149 Cal. 772, 87 Pac. 622; McKissick *v.* Oregon Short Line R. Co., 13 Idaho 195, 89 Pac. 629; Chicago City R. Co. *v.* Foster, 128 Ill. App. 571; Flint *v.* Illinois Cent. R. Co., (Ky. 1905) 88 S. W. 1055; Nashville, etc., R. Co. *v.* Higgins, (Ky. 1906) 92 S. W. 549; Louisville, etc., R. Co. *v.* Eaden, (Ky. 1906) 93 S. W. 7; Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368; Curry *v.* Rhode Island Co., (R. I. 1908) 68 Atl. 725; Norfolk, etc., R. Co. *v.* Spencer, 104 Va. 657, 52 S. E. 310; Truckers' Mfg., etc., Co. *v.* White, (Va. 1908) 60 S. E. 630; Norman *v.* Bellingham, (Wash. 1907) 89 Pac. 559.

Verdict for Plaintiff Not Disturbed. — Kentucky, etc., Bridge, etc., Co. *v.* Nuttall, (Ky. 1906) 96 S. W. 1131; Pickens *v.* Metropolitan St. R. Co., 125 Mo. App. 669, 103 S. W. 124; Gerding *v.* Standard Pressed Steel Co., (Pa. 1908) 69 Atl. 672.

503. 1. Columbian Enameling, etc., Co. *v.* O'Burke, 37 Ind. App. 518, 77 N. E. 409; Baltimore, etc., R. Co. *v.* Kleespies, 39 Ind. App. 151, 78 N. E. 252; Jones *v.* American Warehouse Co., 138 N. Car. 546, 51 S. E. 106.

2. Columbian Enameling, etc., Co. *v.* O'Burke, 37 Ind. App. 518, 77 N. E. 409.

For Cases Decided on Particular Facts. — Finnick *v.* Boston, etc., St. R. Co., 190 Mass. 382, 77 N. E. 500; Shall *v.* Detroit, etc., R. Co., (Mich. 1908) 116 N. W. 432; Burleigh *v.* St. Louis Transit Co., 124 Mo. App. 724, 102 S. W. 621; Blue Grass Traction Co. *v.* Skillman, (Ky. 1907) 102 S. W. 809; Kurt *v.* Lake Shore, etc., R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 859; Texas Mexican R. Co. *v.* Higgins, (Tex. Civ. App. 1906) 99 S. W. 200; Swift *v.* Murphy (Tex. Civ. App. 1907) 100 S. W. 997; International, etc., R. Co. *v.* Munn, (Tex. Civ. App. 1907) 102 S. W. 442.

3. Birmingham R., etc., Co. *v.* Rutledge, 142 Ala. 195, 39 So. 338; Lang *v.* Missouri Pac. R. Co., 115 Mo. 489, 91 S. W. 1012.

4. Black-Laird Co. *v.* Vandiver, (Ala. 1908) 46 So. 524; Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213; Hanchett *v.* Haas, 125 Ill. App. 111; Louisville, etc., R. Co. *v.* Hall, (Ky. 1906) 94 S. W. 26; Rand *v.* Boston El. R. Co., (Mass. 1908) 84 N. E. 841; Lindsay *v.* Kansas City, 195 Mo. 166, 93 S. W. 273; Ackley *v.* Bradford Tp., 32 Pa. Super. Ct. 487; Howard *v.* Beldenville Lumber Co., 129 Wis. 98, 108 N. W. 48.

5. *Arkansas.* — St. Louis, etc., R. Co. *v.* Mize, 79 Ark. 629, 95 S. W. 488.

California. — De Witt *v.* Floriston Pulp, etc., Co., (Cal. App. 1908) 96 Pac. 397.

Colorado. — Burnside *v.* Peterson, (Colo. 1908) 96 Pac. 256.

Florida. — Atlantic Coast Line R. Co. *v.* Beazley, (Fla. 1907) 45 So. 761.

Illinois. — Chicago, etc., R. Co. *v.* Walker, 118 Ill. App. 397; Fisk *v.* Chicago Water Chute Co., 119 Ill. App. 536; Faulkner *v.* Birch, 120 Ill. App. 281; Chicago, etc., Electric R. Co. *v.* Freeman, 125 Ill. App. 318; Chicago, etc., Electric R. Co. *v.* Wanic, 132 Ill. App. 477.

Indiana. — Indianapolis, etc., R. Co. *v.* Bennett, 39 Ind. App. 141, 79 N. E. 389; Southern R. Co. *v.* Limback, (Ind. 1908) 85 N. E. 354.

Iowa. — Madden *v.* Saylor Coal Co., 133 Iowa 699, 111 N. W. 57; Rhodes *v.* Des Moines, etc., R. Co., (Iowa 1908) 115 N. W. 503.

Kentucky. — Kentucky, etc., Bridge, etc., Co. *v.* Nuttall, (Ky. 1906) 96 S. W. 1131; Louisville R. Co. *v.* Bohon, (Ky. 1907) 99 S. W. 915; Chesapeake, etc., R. Co. *v.* Niff, (Ky. 1907) 100 S. W. 246; Louisville, etc., R. Co. *v.* Mount, (Ky. 1907) 101 S. W. 1182.

Minnesota. — Holden *v.* Great Northern R. Co., (Minn. 1908) 114 N. W. 365.

Missouri. — Dees *v.* St. Louis, etc., R. Co., 127 Mo. App. 353, 104 S. W. 485; Cartlich *v.* Metropolitan St. R. Co., (Mo. App. 1908) 108 S. W. 584; Roe *v.* Metropolitan St. R. Co., (Mo. App. 1908) 110 S. W. 611.

Nebraska. — Todd *v.* Crete, (Neb. 1907) 113 N. W. 172.

New York. — Lawrence *v.* Metropolitan St. R. Co., 114 N. Y. App. Div. 16, 99 N. Y. Supp. 735; Phenix Ins. Co. *v.* New York Cent., etc., R. Co., 122 N. Y. App. Div. 113, 106 N. Y. Supp. 696.

Pennsylvania. — Bickel *v.* Pennsylvania R. Co., 217 Pa. St. 456, 66 Atl. 756; Newman *v.* Bullskin Tp., 28 Pa. Super. Ct. 170.

Texas. — Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Missouri, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1907) 101 S. W. 506; El Paso Foundry, etc., Co. *v.* De Guereque, (Tex. Civ. App. 1907) 101 S. W. 814.

Washington. — Hageness *v.* Tacoma R., etc., Co., (Wash. 1908) 96 Pac. 6.

Wisconsin. — Hardt *v.* Chicago, etc., R. Co., 130 Wis. 512, 110 N. W. 427.

8. Huntt *v.* McNamee, (C. C. A.) 141 Fed. 293; Hasting *v.* Southern R. Co., (C. C. A.) 143 Fed. 260; Parks *v.* Southern R. Co., (C. C. A.) 143 Fed. 276; Watson *v.* Manitou, etc., R. Co., (Colo. 1907) 92 Pac. 17; Davis *v.* People's R. Co., 5 Penn. (Del.) 253, 64 Atl. 70; Messing

v. Wilmington City R. Co., 5 Penn. (Del.) 526, 64 Atl. 247; Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; Keiser *v.* Lehigh Valley R. Co., 212 Pa. St. 409, 61 Atl. 903; Wood *v.* Southern R. Co., 104 Va. 650, 52 S. E. 371; Wenzel *v.* City, etc., R. Co., (W. Va. 1908) 61 S. E. 1001.

But as Holding that Where the Evidence Is Conflicting. — Libby *v.* Cook, 222 Ill. 206, 78 N. E. 599; Chicago Union Traction Co. *v.* Lowenrosen, 222 Ill. 506, 78 N. E. 813; Fish *v.* Utica Steam, etc., Cotton Mills, 109 N. Y. App. Div. 326, 95 N. Y. Supp. 673; Robbins *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 625, 98 N. Y. Supp. 198; Powers *v.* Miller, 123 N. Y. App. Div. 396, 107 N. Y. Supp. 960; Williams *v.* Atlantic Coast Line R. Co., 140 N. Car. 623, 53 S. E. 448; Weir *v.* Seattle Electric Co., 41 Wash. 657, 84 Pac. 597.

504. 1. *United States.* — American Bridge Co. *v.* Bainum, (C. C. A.) 146 Fed. 367; Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397.

Alabama. — Birmingham Rolling Mill Co. *v.* Rockhold, 143 Ala. 115, 42 So. 96; Southern R. Co. *v.* Stewart, (Ala. 1907) 45 So. 51.

Arkansas. — Waters-Pierce Oil Co. *v.* Knisel, 79 Ark. 608, 96 S. W. 342; St. Louis, etc., R. Co. *v.* Oleson, 81 Ark. 405, 99 S. W. 385; St. Louis, etc., R. Co. *v.* London, 82 Ark. 267, 102 S. W. 212; St. Louis, etc., R. Co. *v.* Rusk, (Ark. 1908) 111 S. W. 263.

California. — Newton *v.* United Electric, Gas, etc., Co., 3 Cal. App. 701, 86 Pac. 901.

Colorado. — Chicago, etc., R. Co. *v.* Campbell, 34 Colo. 380, 83 Pac. 138.

Illinois. — Graham Transp. Co. *v.* Chicago, 126 Ill. App. 113.

Indiana. — Lake Erie, etc., R. Co. *v.* Fike, 35 Ind. App. 554, 74 N. E. 636.

Indian Territory. — Missouri, etc., R. Co. *v.* Webb, 6 Indian Ter. 280, 97 S. W. 1010; Missouri, etc., R. Co. *v.* McCoy, (Indian Ter. 1907) 104 S. W. 620.

Iowa. — Graham *v.* Chicago, etc., R. Co., 131 Iowa 741, 107 N. W. 595.

Kansas. — Chicago, etc., R. Co. *v.* Clinkenbeard, 72 Kan. 559, 84 Pac. 142.

Kentucky. — Louisville R. Co. *v.* Edelen, (Ky. 1906) 96 S. W. 901; Cumberland Telephone, etc., Co. *v.* Tally, (Ky. 1907) 101 S. W. 307; Louisville, etc., R. Co. *v.* Gilmore, (Ky. 1908) 109 S. W. 321.

Louisiana. — Wood *v.* New Orleans R., etc., Co., 117 La. 119, 41 So. 436.

Maine. — Frederickson *v.* Central Wharf Towboat Co., 101 Me. 406, 64 Atl. 666.

Massachusetts. — McDonald *v.* Dutton, 190 Mass. 391, 76 N. E. 1055; Dacey *v.* Boston, etc., R. Co., 191 Mass. 44, 77 N. E. 523; Hilborn *v.* Boston, etc., St. R. Co., 191 Mass. 14, 77 N. E. 646.

Michigan. — Seigel *v.* United Electric Heating Co., 143 Mich. 484, 106 N. W. 1127; Boisen *v.* Cobbs, 147 Mich. 429, 111 N. W. 82.

Minnesota. — Martyn *v.* Minnesota, etc., R. Co., 95 Minn. 333, 104 N. W. 133; Gendeau *v.* Minneapolis, etc., R. Co., 99 Minn. 38, 108 N. W. 814; Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264.

Mississippi. — Mobile, etc., R. Co. *v.* Jackson, (Miss. 1908) 46 So. 142.

Missouri. — Higgins *v.* St. Louis, etc., R. Co., 197 Mo. 300, 95 S. W. 863; Lovell *v.* Kansas City Southern R. Co., 121 Mo. App. 466, 97 S. W. 193; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Price *v.* St. Louis Transit Co., 125 Mo. App. 67, 102 S. W. 626.

Nebraska. — Lincoln Gas, etc., Co. *v.* Thomas, 74 Neb. 257, 104 N. W. 153.

New Jersey. — Eissing *v.* Erie R. Co., 73 N. J. L. 343, 63 Atl. 856; Griffin *v.* Jersey City, etc., R. Co., 73 N. J. L. 389, 63 Atl. 863; Whilt *v.* Public Service Corp., (N. J. 1906) 64 Atl. 972; Piver *v.* Pennsylvania R. Co., (N. J. 1907) 67 Atl. 109.

New York. — Pearsall *v.* New York Cent., etc., R. Co., 189 N. Y. 474, 82 N. E. 752; Carney *v.* Minnesota Dock Co., 191 N. Y. 301, 84 N. E. 62; Burnos *v.* American Sugar Refining Co., 107 N. Y. App. Div. 286, 94 N. Y. Supp. 1104; Matulewicz *v.* Metropolitan St. R. Co., 107 N. Y. App. Div. 230, 95 N. Y. Supp. 7; Poland *v.* United Traction Co., 107 N. Y. App. Div. 561, 95 N. Y. Supp. 498; Freeland *v.* Brooklyn Heights R. Co., 109 N. Y. App. Div. 651, 96 N. Y. Supp. 251; Dooley *v.* Booth, (Supm. Ct. App. Div.) 96 N. Y. Supp. 253; Reeves *v.* Fourteenth St. Store, 110 N. Y. App. Div. 735, 96 N. Y. Supp. 448; Mosesco *v.* Interborough Rapid Transit Co., 113 N. Y. App. Div. 517, 99 N. Y. Supp. 345; Coogan *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 562, 99 N. Y. Supp. 382; Truesdell *v.* Erie R. Co., 114 N. Y. App. Div. 34, 99 N. Y. Supp. 694; Creswell *v.* United Shirt, etc., Co., 115 N. Y. App. Div. 12, 100 N. Y. Supp. 497; Adams *v.* New York City R. Co., 116 N. Y. App. Div. 315, 101 N. Y. Supp. 510; Grathwohl *v.* New York Cent., etc., R. Co., 116 N. Y. App. Div. 176, 101 N. Y. Supp. 667; Sticht *v.* Buffalo Cereal Co., 116 N. Y. App. Div. 632, 101 N. Y. Supp. 905; Titus *v.* Tangeman, 116 N. Y. App. Div. 487, 101 N. Y. Supp. 1000; Priolo *v.* Southard, (Supm. Ct. Tr. T.) 103 N. Y. Supp. 593; Gelderman *v.* Curtis, 120 N. Y. App. Div. 400, 105 N. Y. Supp. 221; Winchell *v.* New York Cent., etc., R. Co., 121 N. Y. App. Div. 52, 105 N. Y. Supp. 425; Rogers *v.* Macbeth, (Supm. Ct. App. Div.) 108 N. Y. Supp. 74; McDonald *v.* Degnon-McLean Contracting Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 519; Seaman *v.* Mott, (Supm. Ct. App. Div.) 110 N. Y. Supp. 1040; Brundage *v.* Fonda, etc., R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 80.

North Dakota. — Cumming *v.* Great Northern R. Co., 15 N. Dak. 611, 108 N. W. 798.

Pennsylvania. — McGregor *v.* Pennsylvania R. Co., 212 Pa. St. 482, 61 Atl. 1017; Dalton *v.* Towanda, 215 Pa. St. 402, 64 Atl. 547; M'Guire *v.* Lehigh Valley R. Co., 215 Pa. St. 618, 64 Atl. 825; Small *v.* Pittsburg R. Co., 216 Pa. St. 584, 66 Atl. 76; Leister *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 652, 66 Atl. 866; Brebony *v.* Pottsville Union Traction Co., 218 Pa. St. 123, 66 Atl. 1006.

Texas. — Texas Cent. R. Co. *v.* Harbison, (Tex. Civ. App. 1905) 88 S. W. 414; San Antonio, etc., R. Co. *v.* McMillan, (Tex. 1907) 102 S. W. 103.

Virginia. — Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731; Blue Ridge

Light, etc., Co. *v.* Tutwiler, 106 Va. 54, 55 S. E. 539; Norfolk, etc., R. Co. *v.* McDonald, 106 Va. 207, 55 S. E. 554; Berkley St. R. Co. *v.* Simpson, 106 Va. 548, 56 S. E. 331; Norfolk, etc., R. Co. *v.* Dean, 107 Va. 505, 59 S. E. 389; Chesapeake, etc., R. Co. *v.* Paris, 107 Va. 408, 59 S. E. 398.

2. Dodd *v.* Read, 81 Ark. 13, 98 S. W. 703; St. Louis, etc., R. Co. *v.* Price, 83 Ark. 437, 104 S. W. 157; McIntyre *v.* Orner, 166 Ind. 57, 76 N. E. 750; Central Consumers Co. *v.* Booher, (Ky. 1908) 107 S. W. 198; Mills *v.* Missouri Pac. R. Co., 199 Mo. 56, 94 S. W. 973; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Edwards *v.* Carolina, etc., R. Co., 140 N. Car. 49, 52 S. E. 234; Texas, etc., R. Co. *v.* Cotts, (Tex. Civ. App. 1906) 95 S. W. 602; Houston, etc., R. Co. *v.* Rutland, (Tex. Civ. App. 1907) 101 S. W. 529; El Paso, etc., R. Co. *v.* Murtle, (Tex. Civ. App. 1908) 108 S. W. 998.

When a Duty Is Plain the court may instruct that certain acts or omissions, if found, constitute negligence. Central of Georgia R. Co. *v.* Main, 143 Ala. 149, 42 So. 108; Savannah Electric Co. *v.* Bennett, (Ga. 1908) 61 S. E. 529; Crauf *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 235; Baltimore, etc., R. Co. *v.* Kleespies, 39 Ind. App. 151, 78 N. E. 252; Illinois Cent. R. Co. *v.* Coley, (Ky. 1905) 89 S. W. 234; Louisville R. Co. *v.* Pulliam, (Ky. 1907) 101 S. W. 295; Neitge *v.* Chicago, etc., R. Co., (Minn. 1908) 114 N. W. 467; McDowell *v.* Preston, (Minn. 1908) 116 N. W. 470; McCaffery *v.* St. Louis, etc., R. Co., 192 Mo. 144, 90 S. W. 816; Miller *v.* Metropolitan St. R. Co., 125 Mo. App. 414, 102 S. W. 592; Davis *v.* Camden, etc., R. Co., 73 N. J. L. 415, 63 Atl. 843; Burns *v.* Lehigh Valley R. Co., (N. J. 1906) 65 Atl. 186; Brown *v.* Durham, 141 N. Car. 249, 53 S. E. 513; Isley *v.* Virginia Bridge, etc., Co., 141 N. Car. 220, 53 S. E. 841; Anderson *v.* South Carolina, etc., R. Co., (S. Car. 1908) 61 S. E. 1096; St. Louis Southwestern R. Co. *v.* Cunningham, (Tex. Civ. App. 1907) 106 S. W. 407.

So an Instruction that a Certain Act Was "Prima Facie Unlawful" has been held proper. Southern Indiana R. Co. *v.* Norman, 165 Ind. 126, 74 N. E. 896.

When the Court May Instruct that precautions in certain respects are necessary. See Louisville, etc., R. Co. *v.* Sights, (Ky. 1905) 89 S. W. 132.

3. *United States.* — Leonard *v.* Miami Min. Co., (C. C. A.) 148 Fed. 827; Pennsylvania R. Co. *v.* McCaffrey, (C. C. A.) 149 Fed. 404.

Alabama. — Southern R. Co. *v.* Johnson, 144 Ala. 361, 39 So. 376.

California. — Thompson *v.* California Constr. Co., 148 Cal. 35, 82 Pac. 367.

Delaware. — Shuster *v.* Philadelphia, etc., R. Co., (Del. 1906) 62 Atl. 689.

Illinois. — Goodman *v.* Bigler, 133 Ill. App. 301.

Indian Territory. — Missouri, etc., R. Co. *v.* Webb, 6 Indian Ter. 280, 97 S. W. 1010; Brunson *v.* Southwestern Development Co., (Indian Ter. 1907) 104 S. W. 593.

Iowa. — McNaughton *v.* Illinois Cent. R. Co., (Iowa 1907) 113 N. W. 844; Heinze *v.* Interurban R. Co., (Iowa 1908) 114 N. W. 534; Sharpnack *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 475.

Kentucky. — Edwards *v.* Chesapeake, etc., R. Co., (Ky. 1908) 108 S. W. 303; Clarke *v.* Louisville, etc., R. Co., (Ky. 1908) 111 S. W. 344.

Maryland. — Gans Salvage Co. *v.* Byrnes, 102 Md. 230, 62 Atl. 155; Baltimore, etc., R. Co. *v.* State, (Md. 1908) 69 Atl. 439.

Michigan. — Sweet *v.* Detroit United R. Co., 141 Mich. 650, 105 N. W. 132; Sheon *v.* Kerr-Murray Mfg. Co., 146 Mich. 99, 109 N. W. 40; Vincent *v.* Clements, 150 Mich. 406, 114 N. W. 330.

Missouri. — Chrismer *v.* Bell Telephone Co., 194 Mo. 189, 92 S. W. 378.

New Jersey. — Butler *v.* Easton, etc., R. Co., (N. J. 1907) 65 Atl. 872; Holmes *v.* Pennsylvania R. Co., (N. J. 1907) 66 Atl. 412.

New York. — Miller *v.* Manhattan R. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 524, 96 N. Y. Supp. 270.

North Carolina. — Hollingsworth *v.* Skelding, 142 N. Car. 246, 55 S. E. 212.

Pennsylvania. — Allen *v.* Kingston Coal Co., 212 Pa. St. 54, 61 Atl. 572; Leitzel *v.* Harrisburg Traction Co., 212 Pa. St. 608, 62 Atl. 102; Sontgen *v.* Kittanning, etc., R. Co., 213 Pa. St. 114, 62 Atl. 523; Weatherbee *v.* Philadelphia, etc., R. Co., 214 Pa. St. 12, 63 Atl. 367; Wilson *v.* Atlantic Crushed Coke Co., (Pa. 1908) 68 Atl. 671.

Texas. — Graham *v.* Chicago, etc., R. Co., 99 Tex. 589, 91 S. W. 1081; Jones *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1907) 105 S. W. 1007; Halbert *v.* Texas Tie, etc., Co., (Tex. Civ. App. 1908) 107 S. W. 592.

Vermont. — Guilmont *v.* Central Vermont R. Co., 78 Vt. 185, 62 Atl. 54; Powers *v.* Grand Trunk R. Co., 78 Vt. 436, 63 Atl. 139.

Washington. — Woodman *v.* Seattle Electric Co., 42 Wash. 406, 85 Pac. 23; Johnson *v.* Great Northern R. Co., (Wash. 1908) 94 Pac. 895.

505. 1. Atherton *v.* London, etc., R. Co., 93 L. T. N. S. 464; Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009; Chicago, etc., R. Co. *v.* Kimmel, 221 Ill. 547, 77 N. E. 936; Seymour *v.* Union Stockyards, etc., Co., 224 Ill. 579, 79 N. E. 950; Casey *v.* Daugherty, 118 Ill. App. 134; Columbus St. R., etc., Co. *v.* Reap, (Ind. App. 1907) 82 N. E. 977; Hummer *v.* Lehigh Valley R. Co., (N. J. 1907) 67 Atl. 1061; Kearns *v.* Southern R. Co., 139 N. Car. 470, 52 S. E. 131; Bannon *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 231; Thomasson *v.* Southern R. Co., 72 S. Car. 1, 51 S. E. 443; Murphy *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 96 S. W. 940.

Matters Unsupported by the Evidence should be withdrawn from the jury.

United States. — Wilmington Star Min. Co. *v.* Fulton, 205 U. S. 60, 27 U. S. Sup. Ct. 412; Citizens' Gas, etc., Co. *v.* Nicholson, (C. C. A.) 152 Fed. 389; Southern R. Co. *v.* Hardin, (C. C. A.) 157 Fed. 645.

Arkansas. — St. Louis, etc., R. Co. *v.* Cain, 79 Ark. 225, 95 S. W. 137.

Georgia. — Shields *v.* Georgia R., etc., Co., 1 Ga. App. 172, 57 S. E. 980.

Illinois. — Aurora, etc., R. Co. *v.* Gary, 221 Ill. 29, 77 N. E. 465.

Indian Territory. — Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182.

Iowa. — Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593; Needy *v.* Littlejohn, (Iowa 1908) 115 N. W. 483.

Kentucky. — Owensboro Wagon Co. *v.* Boling, (Ky. 1908) 107 S. W. 264; Lexington R. Co. *v.* Van Laden, (Ky. 1908) 107 S. W. 740; Louisville, etc., R. Co. *v.* Joshlin, (Ky. 1908) 110 S. W. 382.

Missouri. — Dakan *v.* G. W. Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944; Roscoe *v.* Metropolitan St. R. Co., 202 Mo. 576, 101 S. W. 32; Flanery *v.* St. Louis, etc., R. Co., (Mo. App. 1908) 108 S. W. 575.

New York. — Severson *v.* Hill-Warner-Fitch Co., 116 N. Y. App. Div. 108, 101 N. Y. Supp. 808; Robinson *v.* Crimmins, 120 N. Y. App. Div. 250, 104 N. Y. Supp. 1076.

Texas. — Galveston, etc., R. Co. *v.* Parish, (Tex. Civ. App. 1906) 93 S. W. 682; Missouri, etc., R. Co. *v.* Harrison, (Tex. Civ. App. 1906) 99 S. W. 124.

Wisconsin. — Montayne *v.* Northern Electrical Mfg. Co., 127 Wis. 22, 105 N. W. 1043.

2. Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077.

3. If Fair-minded Men May Honestly Draw Different Conclusions, the question is for the jury.

United States. — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709; Chunn *v.* City, etc., Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63; Burton *v.* Texas, etc., R. Co., (C. C. A.) 149 Fed. 388; O'Connor *v.* Armour Packing Co., (C. C. A.) 158 Fed. 241.

Colorado. — Rimmer *v.* Wilson, (Colo. 1908) 97 Pac. 1110.

Delaware. — Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

District of Columbia. — Barstow *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362.

Florida. — German-American, etc., Co. *v.* Brock, (Fla. 1908) 46 So. 740.

Illinois. — Illinois Cent. R. Co. *v.* Johnson, 221 Ill. 42, 77 N. E. 592; Chicago City R. Co. *v.* Hyndshaw, 116 Ill. App. 367; McLean *v.* Dow, 125 Ill. App. 174.

Indiana. — Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510.

Maine. — Jensen *v.* Kyer, 101 Me. 106, 63 Atl. 389.

Michigan. — Higgins *v.* Peninsular Portland Cement Co., (Mich. 1908) 116 N. W. 397.

Minnesota. — Witta *v.* Interstate Iron Co., (Minn. 1908) 115 N. W. 169.

Missouri. — Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655; Williamson *v.* St. Louis Transit Co., 202 Mo. 345, 100 S. W. 1072; Cartlich *v.* Metropolitan St. R. Co., (Mo. App. 1908) 108 S. W. 584.

Nebraska. — Lincoln Traction Co. *v.* McCarty, (Neb. 1906) 107 N. W. 1021; Perrine *v.* Union Stock Yards Co., (Neb. 1908) 116 N. W. 776.

New Jersey. — Hummer *v.* Lehigh Valley R. Co., (N. J. 1906) 65 Atl. 126; Daggett *v.* North Jersey St. R. Co., (N. J. 1907) 68 Atl. 179.

New York. — Durr *v.* New York Cent., etc., R. Co., 184 N. Y. 320, 77 N. E. 397; Dickerman *v.* Weeks, 108 N. Y. App. Div. 257, 95 N. Y. Supp. 714; Morroney *v.* New York, (Supm. Ct. Tr. T.) 49 Misc. (N. Y.) 307, 97 N. Y. Supp. 642.

North Dakota. — Johnson *v.* Fargo, 15 N. Dak. 525, 108 N. W. 243; Carr *v.* Minneapolis, etc., R. Co., (N. Dak. 1907) 112 N. W. 972.

Oklahoma. — Missouri, etc., R. Co. *v.* Shepherd, (Okla. 1908) 95 Pac. 243.

Tennessee. — Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319.

Texas. — Hutchens *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 89 S. W. 24; Drake *v.* San Antonio, etc., R. Co., 99 Tex. 240, 89 S. W. 407; Latimer *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 90 S. W. 665; Johnson *v.* Texas Cent. R. Co., (Tex. Civ. App. 1906) 93 S. W. 433; Anson *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 94 S. W. 94; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563; Galveston, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 98 S. W. 932.

Mere Scintilla Not Sufficient. — Baltimore, etc., R. Co. *v.* Baldwin, (C. C. A.) 144 Fed. 53; Georgia R., etc., Co. *v.* Harris, 1 Ga. App. 714, 57 S. E. 1076.

As Holding a Scintilla Sufficient, see Rader *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 774; Rochester *v.* Bull, 78 S. Car. 249, 58 S. E. 766. But a scintilla where sufficient to take a case to the jury may not be sufficient to sustain the verdict on appeal, Louisville, etc., R. Co. *v.* Hall, (Ky. 1906) 94 S. W. 26; nor will it sustain a verdict against overwhelming evidence, Cincinnati, etc., R. Co. *v.* Zachary, (Ky. 1908) 106 S. W. 842.

4. Evidence Held Not Sufficient to Justify Submission to Jury. — Parks *v.* Southern R. Co., (C. C. A.) 143 Fed. 276; Springer *v.* St. Louis Southwestern R. Co., (C. C. A.) 161 Fed. 801; Harris *v.* Nashville, etc., R. Co., (Ala. 1907) 44 So. 962; Caddagan *v.* Chicago, 130 Ill. App. 472; Southern Indiana R. Co. *v.* Messick, 35 Ind. App. 676, 74 N. E. 1097; Cooper *v.* Cashman, 190 Mass. 75, 76 N. E. 461; Kupiec *v.* Warren, etc., St. R. Co., (Mass. 1907) 82 N. E. 676; McGowan *v.* Monahan, (Mass. 1908) 85 N. E. 105; Quick *v.* Wyandotte, etc., R. Co., 143 Mich. 443, 107 N. E. 104; Blundell *v.* William A. Miller Elevator Mfg. Co., 189 Mo. 552, 88 S. W. 103; Griffin *v.* Interurban St. R. Co., (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 328, 94 N. Y. Supp. 854; Baltimore, etc., R. Co. *v.* Lockwood, 72 Ohio St. 586, 74 N. E. 1071; Sack *v.* Ralston, (Pa. 1908) 69 Atl. 671; Cardwell *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 422; Fanshaw *v.* Norfolk, etc., Traction Co., (Va. 1908) 61 S. E. 790.

Evidence Held Sufficient to Justify and Require Submission — *England.* — Atherton *v.* London, etc., R. Co., 93 L. T. N. S. 464.

United States. — Davidson Steamship Co. *v.* U. S., 205 U. S. 187, 27 U. S. Sup. Ct. 480; Chunn *v.* City, etc., R. Co., 207 U. S. 302, 28 U. S. Sup. Ct. 63; Bainum *v.* American Bridge Co., 141 Fed. 179; Guild *v.* Pringle, (C. C. A.) 145 Fed. 312.

Arkansas. — St. Louis, etc., R. Co. *v.* Shannon, 76 Ark. 166, 88 S. W. 851; St. Louis, etc.,

R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613; Waters-Pierce Oil Co. *v.* Burrows, 77 Ark. 74, 96 S. W. 336.

California. — Kramm *v.* Stockton Electric R Co., 3 Cal. App. 606, 86 Pac. 738; Johnson *v.* Center, 4 Cal. App. 616, 88 Pac. 727.

Colorado. — Colorado, etc., R. Co. *v.* Webb, 36 Colo. 224, 85 Pac. 683.

Georgia. — Georgia, etc., R. Co. *v.* Lasseter, 122 Ga. 679, 51 S. E. 15; Wilox *v.* Evans, 127 Ga. 580, 56 S. E. 635.

Idaho. — Adams *v.* Bunker Hill, etc., Min. Co., 12 Idaho 637, 89 Pac. 624.

Illinois. — Chicago City R. Co. *v.* McCaughna, 216 Ill. 202, 74 N. E. 819; Alton Light, etc., Co. *v.* Oller, 217 Ill. 75, 75 N. E. 419; Baltimore, etc., R. Co. *v.* Mullen, 217 Ill. 203, 75 N. E. 474; Chicago, etc., R. Co. *v.* Walker, 217 Ill. 605, 75 N. E. 520; Libby *v.* Cook, 222 Ill. 206, 78 N. E. 599; Illinois Terminal R. Co. *v.* Mitchell, 116 Ill. App. 90; Sandberg *v.* Brink's Chicago City Express Co., 126 Ill. App. 175; Chicago, etc., R. Co. *v.* O'Leary, 126 Ill. App. 311.

Iowa. — Beardsley *v.* Murray Iron Works Co., 129 Iowa 675, 106 N. W. 180; Connell *v.* Keokuk Electric R., etc., Co., 131 Iowa 622, 109 N. W. 177; Christopherson *v.* Chicago, etc., R. Co., (Iowa 1906) 109 N. W. 1077; Meier *v.* Way, (Iowa 1907) 111 N. W. 420.

Kansas. — Hurdle *v.* Missouri Pac. R. Co., 73 Kan. 769, 85 Pac. 287.

Kentucky. — Illinois Cent. R. Co. *v.* Proctor, (Ky. 1905) 89 S. W. 714; Louisville R. Co. *v.* Welker, (Ky. 1906) 94 S. W. 635; Louisville, etc., Packet Co. *v.* Hazzard, (Ky. 1908) 107 S. W. 270.

Louisiana. — Harvey *v.* Louisiana Western R. Co., 114 La. 1065, 38 So. 859.

Maine. — Haynes *v.* Waterville, etc., St. R. Co., 101 Me. 335, 64 Atl. 614.

Maryland. — Baltimore, etc., R. Co. *v.* Belinski, (Md. 1907) 67 Atl. 249; Chambers *v.* Woodbury Mfg. Co., (Md. 1907) 68 Atl. 290; Chesapeake, etc., Telephone Co. *v.* Lysher, (Md. 1908) 68 Atl. 619.

Massachusetts. — Kerr *v.* Boston El. R. Co., 188 Mass. 434, 74 N. E. 669; Dawson *v.* Lawrence Gas Light Co., 188 Mass. 481, 74 N. E. 912; Moylon *v.* D. S. McDonald Co., 188 Mass. 499, 74 N. E. 929; Carroll *v.* Metropolitan Coal Co., 189 Mass. 159, 75 N. E. 84; Chambers *v.* Wampanoag Mills, 189 Mass. 529, 75 N. E. 1093; Moeckel *v.* Cross, 190 Mass. 280, 76 N. E. 447; Jordan *v.* Old Colony St. R. Co., 190 Mass. 330, 76 N. E. 909; Silva *v.* Davis, 191 Mass. 47, 77 N. E. 525; Le Baron *v.* Old Colony St. R. Co., (Mass. 1908) 83 N. E. 674; Donahue *v.* Buck, (Mass. 1908) 83 N. E. 1090.

Minnesota. — Smith *v.* Minneapolis St. R. Co., 95 Minn. 254, 104 N. W. 16; Meyer *v.* Kenyon-Rosing Mach. Co., 95 Minn. 329, 104 N. W. 132; Gomulak *v.* C. A. Smith Lumber Co., 98 Minn. 149, 107 N. W. 542.

Mississippi. — Farmer *v.* Cumberland Telephone, etc., Co., 86 Miss. 55, 38 So. 775; Anderson *v.* Cumberland Telephone, etc., Co., 86 Miss. 341, 38 So. 786.

Missouri. — Wise *v.* St. Louis Transit Co., 189 Mo. 546, 95 S. W. 898; Berry *v.* St. Louis Transit Co., (Mo. 1908) 109 S. W. 661; Huff *v.* St. Joseph R., etc., Co., (Mo. 1908) 111 S. W. 1145.

Montana. — Storm *v.* Butte, 35 Mont. 395, 89 Pac. 726.

New Hampshire. — Hewett *v.* Woman's Hospital Aid Assoc., 73 N. H. 556, 64 Atl. 190; Boucher *v.* Larochelle, (N. H. 1908) 68 Atl. 870.

New Jersey. — Sparks *v.* River, etc., Imp. Co., (N. J. 1907) 67 Atl. 600.

New York. — Loomis *v.* Lake Shore, etc., R. Co., 182 N. Y. 380, 75 N. E. 228; Mullins *v.* Siegel-Cooper Co., 183 N. Y. 129, 75 N. E. 1112; Reilly *v.* Troy Brick Co., 184 N. Y. 399, 77 N. E. 385; Motzing *v.* Excelsior Brewing Co., 107 N. Y. App. Div. 275, 94 N. Y. Supp. 1118; Fruhauf *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 135, 101 N. Y. Supp. 781; France *v.* New York Cent., etc., R. Co., 118 N. Y. App. Div. 550, 102 N. Y. Supp. 991; Young *v.* Herrmann, 119 N. Y. App. Div. 445, 104 N. Y. Supp. 72; Truesdell *v.* Erie R. Co., 119 N. Y. App. Div. 371, 104 N. Y. Supp. 243; Ellis *v.* New York City R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 544; Obenland *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 686.

North Carolina. — Ray *v.* Aberdeen, etc., R. Co., 141 N. Car. 84, 53 S. E. 622; Cox *v.* High Point, etc., R. Co., (N. Car. 1908) 61 S. E. 183.

Ohio. — Hydell *v.* Toledo, etc., R. Co., 74 Ohio St. 138, 77 N. E. 1066.

Pennsylvania. — Winterbottom *v.* Philadelphia, etc., R. Co., 217 Pa. St. 574, 66 Atl. 861.

Texas. — Chicago, etc., R. Co. *v.* Jones, (Tex. Civ. App. 1905) 88 S. W. 445; Alexander *v.* McGaffey, (Tex. Civ. App. 1905) 88 S. W. 462; International, etc., R. Co. *v.* Cruseturner, (Tex. Civ. App. 1906) 98 S. W. 423; Puppovich *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 99 S. W. 1143.

Utah. — Davis *v.* Oregon Short Line R. Co., 31 Utah 307, 88 Pac. 2.

Vermont. — Place *v.* Grand Trunk R. Co., 80 Vt. 196, 67 Atl. 545.

Washington. — Melse *v.* Alaska Commercial Co., 42 Wash. 356, 84 Pac. 1127.

Wisconsin. — Zentner *v.* Oshkosh Gaslight Co., 126 Wis. 196, 105 N. W. 911; Bartholomaus *v.* Milwaukee Electric R., etc., Co., 129 Wis. 388, 109 N. W. 143.

506. 1. Braunton *v.* Southern Pac. Co., 2 Cal. App. 173, 83 Pac. 265; Cleveland, etc., R. Co. *v.* Haas, 35 Ind. App. 626, 74 N. E. 1003. *Compare* New York, etc., R. Co. *v.* Callahan, (Ind. App. 1907) 81 N. E. 670.

3. Carlson *v.* Cucamonga Water Co., (Cal. App. 1908) 94 Pac. 399; Grogan *v.* Brooklyn Heights R. Co., 107 N. Y. App. Div. 254, 95 N. Y. Supp. 23.

4. Birmingham R., etc., Co. *v.* Livingston, 144 Ala. 313, 39 So. 374; Louisville, etc., R. Co. *v.* Mertz, (Ala. 1905) 40 So. 60; Maxwell *v.* Fresno City R. Co., 4 Cal. App. 745, 89 Pac. 367; Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337; Union Pac. R. Co. *v.* Shovall, 39 Colo. 436, 89 Pac. 764; Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285; Henry *v.* Omaha Packing Co., (Neb. 1908) 115 N. W. 777; Smith *v.* Mountain Ice Co., (N. J. 1906) 64 Atl. 956; Mumma *v.* Easton, etc., R. Co., 73 N. J. L. 653, 65 Atl. 208; Sharp *v.* Erie R. Co., 184 N. Y. 100, 76 N. E. 923.

5. *Alabama.* — Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238.

Georgia. — Macon R., etc., Co. *v.* Vining, 123 Ga. 770, 51 S. E. 719; Augusta R., etc., Co. *v.* Weekly, 124 Ga. 384, 52 S. E. 444.

Illinois. — Postal Tel. Cable Co. *v.* Likes, 124 Ill. App. 459; Harley *v.* Aurora, etc., R. Co., 128 Ill. App. 643.

Kansas. — Metropolitan St. R. Co. *v.* Warren, 74 Kan. 244, 86 Pac. 131.

Massachusetts. — Plummer *v.* Boston El. R. Co., (Mass. 1908) 84 N. E. 849.

Missouri. — Gessner *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 30.

New York. — Schechwitz *v.* New York City R. Co., (Supm. Ct. App. T.) 103 N. Y. Supp. 781; Johnston *v.* New York City R. Co., 120 N. Y. App. Div. 456, 104 N. Y. Supp. 1039; Bubnow *v.* New York City R. Co., 122 N. Y. App. Div. 723, 107 N. Y. Supp. 729; Ahrens *v.* Union R. Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 590; Draper *v.* Interborough Rapid Transit Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 686.

North Carolina. — Fuller *v.* Atlantic Coast Line R. Co., 140 N. Car. 480, 53 S. E. 297; Ruffin *v.* Atlantic, etc., P. Co., 142 N. Car. 120, 55 S. E. 86; Wright *v.* Fries Mfg., etc., Co., (N. Car. 1908) 61 S. E. 380.

Pennsylvania. — Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877.

Texas. — Texas, etc., R. Co. *v.* Buch, (Tex. 1907) 105 S. W. 987; Northern Texas Traction Co. *v.* Moberly, (Tex. Civ. App. 1908) 109 S. W. 483.

Vermont. — Strong *v.* Burlington Traction Co., 80 Vt. 34, 66 Atl. 786.

An instruction authorizing a recovery if certain facts are found is erroneous unless it includes every fact, not conclusively established, necessary to sustain a verdict for the plaintiff. Standard Distilling, etc., Co. *v.* Harris, 75 Neb. 480, 106 N. W. 582.

507. 2. *United States.* — Caldwell *v.* Kerbaugh, 144 Fed. 443; Bartlett *v.* Farrell, (C. C. A.) 152 Fed. 150; Delaware, etc., R. Co. *v.* Larnard, (C. C. A.) 161 Fed. 520.

Alabama. — Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822; Mobile Light, etc., Co. *v.* Walsh, 146 Ala. 290, 40 So. 559; Higgins *v.* Southern R. Co., 148 Ala. 153, 41 So. 856; Southern Coal, etc., Co. *v.* Swinney, (Ala. 1907) 42 So. 808; Mobile, etc., R. Co. *v.* Glover, (Ala. 1907) 43 So. 719.

Colorado. — Union Pac. R. Co. *v.* Shovall, 39 Colo. 436, 89 Pac. 764.

Delaware. — Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

Idaho. — Adams *v.* Bunker Hill, etc., Min. Co., 12 Idaho 637, 89 Pac. 624.

Indiana. — Southern Indiana R. Co. *v.* Baker, 37 Ind. App. 405, 77 N. E. 64; Columbian Enameling, etc., Co. *v.* O'Burke, 37 Ind. App. 518, 77 N. E. 409; Evansville, etc., R. Co. *v.* Mills, 37 Ind. App. 598, 77 N. E. 608; Lake Erie, etc., R. Co. *v.* Hobbs, (Ind. App. 1907) 81 N. E. 90.

Kansas. — Atchison, etc., R. Co. *v.* Colliati, 75 Kan. 56, 88 Pac. 534.

Kentucky. — Martin *v.* South Covington, etc., R. Co., (Ky. 1906) 92 S. W. 571; Southern R. Co. *v.* McGeoughey, (Ky. 1907) 102 S. W. 270.

Massachusetts. — O'Neil *v.* Ginn, 188 Mass. 346, 74 N. E. 668; Moylon *v.* D. S. McDonald Co., 188 Mass. 499, 74 N. E. 929; Fountaine *v.* Wampanoag Mills, 189 Mass. 498, 75 N. E. 738; Woodall *v.* Boston El. R. Co., 192 Mass. 308, 78 N. E. 446; Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740.

Michigan. — Barschow *v.* Lake Shore, etc., R. Co., 147 Mich. 226, 110 N. W. 1057.

Minnesota. — Samuelson *v.* Hennepin Paper Co., 101 Minn. 443, 112 N. W. 537.

Missouri. — Wagoner *v.* Wabash R. Co., 197 Mo. 196, 94 S. W. 293.

Nebraska. — Stading *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 460.

New Hampshire. — Yeaton *v.* Boston, etc., R. Co., 73 N. H. 285, 61 Atl. 522; Boucher *v.* Larochelle, (N. H. 1908) 68 Atl. 870.

New Jersey. — King *v.* Zierz, 73 N. J. L. 134, 62 Atl. 287; Gottlob *v.* North Jersey St. R. Co., 73 N. J. L. 305, 62 Atl. 1003; Weinberger *v.* North Jersey St. R. Co., 73 N. J. L. 694, 64 Atl. 1059; Applegate *v.* West Jersey, etc., R. Co., 73 N. J. L. 722, 65 Atl. 127; Mumma *v.* Eastern, etc., R. Co., 73 N. J. L. 653, 65 Atl. 208; Napurana *v.* Young, (N. J. 1907) 65 Atl. 1052.

New York. — Sharp *v.* Erie R. Co., 184 N. Y. 100, 76 N. E. 923; Durr *v.* New York Cent., etc., R. Co., 184 N. Y. 320, 77 N. E. 397; Grogan *v.* Brooklyn Heights R. Co., 107 N. Y. App. Div. 254, 95 N. Y. Supp. 23; Frank *v.* Simon, 109 N. Y. App. Div. 38, 95 N. Y. Supp. 666; Spaeth *v.* Manhattan R. Co., 109 N. Y. App. Div. 819, 96 N. Y. Supp. 861; Walsh *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 637, 98 N. Y. Supp. 656; Dittman *v.* Edison Electric Illuminating Co., 125 N. Y. App. Div. 691, 110 N. Y. Supp. 87; Davis *v.* Bouton Motor Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 359.

North Carolina. — Horton *v.* Seaboard Air Line R. Co., 145 N. Car. 132, 58 S. E. 993.

North Dakota. — Hall *v.* Northern Pac. R. Co., (N. Dak. 1907) 111 N. W. 609.

Ohio. — Warren First Nat. Bank *v.* Gillen, 27 Ohio Cir. Ct. 609.

Oregon. — Manning *v.* Portland Steel Ship Bldg. Co., (Oregon 1908) 96 Pac. 545.

Pennsylvania. — McCoy *v.* Ohio Valley Gas Co., 213 Pa. St. 367, 62 Atl. 858; Hughes *v.* Fayette Mfg. Co., 214 Pa. St. 282, 63 Atl. 692; Towner *v.* Public Ledger Co., 215 Pa. St. 624, 64 Atl. 787; Jordan *v.* Philadelphia, 29 Pa. Super. Ct. 502.

South Carolina. — Weaver *v.* Southern R. Co., 76 S. Car. 49, 56 S. E. 657.

Texas. — Guaranty Trust Co. *v.* Diltz, (Tex. Civ. App. 1906) 91 S. W. 596.

Virginia. — Fisher *v.* Chesapeake, etc., R. Co., 104 Va. 635, 52 S. E. 373.

Washington. — Pachko *v.* Wilkeson Coal, etc., Co., (Wash. 1907) 90 Pac. 436.

Wisconsin. — Ritter *v.* Chicago, etc., R. Co., 128 Wis. 276, 106 N. W. 1103.

But whether any facts have been established by evidence from which negligence may be reasonably inferred, is for the court. Hummer *v.* Lehigh Valley R. Co., (N. J. 1907) 67 Atl. 1061.

3. Kansas City Southern R. Co. *v.* Lewis, 80 Ark. 396, 97 S. W. 56; Bartlett *v.* Wabash R.

Co., 220 Ill. 163, 77 N. E. 96; Union Pac. R. Co. *v.* Brown, 73 Kan. 233, 84 Pac. 1026; Ulseth *v.* Crookston Lumber Co., 97 Minn. 178, 106 N. W. 307; Ferguson *v.* St. Louis, etc., R. Co., 123 Mo. App. 590, 100 S. W. 537; Graf *v.* West Jersey, etc., R. Co., (N. J. 1905) 62 Atl. 333; Chybowski *v.* Bucyrus Co., 127 Wis. 332, 106 N. W. 833.

508. 1. Otis Steel Co. *v.* Wingle, (C. C. A.) 152 Fed. 914; Grimm *v.* Omaha Electric Light, etc., Co., (Neb. 1907) 112 N. W. 620; Chicago, etc., R. Co. *v.* Poore, (Tex. Civ. App. 1908) 108 S. W. 504.

Only where both the facts and the inferences to be drawn from them are indisputable, may the court direct a verdict for the plaintiff. Brower *v.* Public Service Corp., (N. J. 1906) 64 Atl. 1052.

3. *Arkansas.* — Kansas City Southern R. Co. *v.* Cash, 80 Ark. 284, 96 S. W. 1062; Kansas City Southern R. Co. *v.* Wayt, 80 Ark. 382, 97 S. W. 656; St. Louis Southwestern R. Co. *v.* Graham, 83 Ark. 61, 102 S. W. 700; St. Louis, etc., R. Co. *v.* Thompson, 83 Ark. 631, 104 S. W. 223; St. Louis, etc., R. Co. *v.* Minor, (Ark. 1908) 107 S. W. 171.

California. — Fowden *v.* Pacific Coast Steamship Co., 149 Cal. 151, 86 Pac. 178.

Florida. — Louisville, etc., R. Co. *v.* Goulding, 52 Fla. 327, 42 So. 854.

Georgia. — Southern R. Co. *v.* Harrington, 128 Ga. 438, 57 S. E. 694; Wrightsville, etc., R. Co. *v.* Gornto, 129 Ga. 204, 58 S. E. 769; Southern R. Co. *v.* Elliott, 129 Ga. 705, 59 S. E. 786; Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213; Atlanta, etc., R. Co. *v.* Clute, (Ga. App. 1908) 60 S. E. 277.

Illinois. — Chicago City R. Co. *v.* Pural, 224 Ill. 324, 79 N. E. 686; Goddard *v.* Enzler, 123 Ill. App. 108; Field *v.* Winheim, 123 Ill. App. 227; Illinois Cent. R. Co. *v.* Bailey, 127 Ill. App. 41; Chicago Union Traction Co. *v.* Roberts, 131 Ill. App. 476; Springfield Consol. R. Co. *v.* Johnson, 134 Ill. App. 536.

Iowa. — Mitchell *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 622.

Kansas. — Chicago, etc., R. Co. *v.* Brandon, (Kan. 1908) 95 Pac. 573.

Kentucky. — Louisville, etc., R. Co. *v.* Board, (Ky. 1906) 90 S. W. 944; Illinois Cent. R. Co. *v.* Stanley, (Ky. 1906) 96 S. W. 846; Louisville St. R. Co. *v.* Brownfield, (Ky. 1906) 96 S. W. 912; Troutwine *v.* Louisville, etc., R. Co., (Ky. 1907) 105 S. W. 142; Louisville Lighting Co. *v.* Owens, (Ky. 1907) 105 S. W. 435.

Maryland. — Norfolk, etc., R. Co. *v.* Smith, 104 Md. 72, 64 Atl. 317.

Massachusetts. — Gilmore *v.* Milford, etc., St. R. Co., 193 Mass. 44, 78 N. E. 744.

Minnesota. — Continental Ins. Co. *v.* Chicago, etc., R. Co., 97 Minn. 467, 107 N. W. 548.

Mississippi. — Yazoo, etc., R. Co. *v.* Landrum, 89 Miss. 399, 42 So. 675.

Missouri. — Arkansas, etc., R. Co. *v.* Sanders, 81 Ark. 604, 99 S. W. 1109; O'Gara *v.* St. Louis Transit Co., 204 Mo. 724, 103 S. W. 54; Bell *v.* Central Electric R. Co., 125 Mo. App. 660, 103 S. W. 144.

New York. — Scheller *v.* Silbermints, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 175, 98 N. Y. Supp. 230; Weir *v.* Union R. Co., 112 N. Y. App. Div. 109, 98 N. Y. Supp. 268; Samuels *v.* McKesson, 113 N. Y. App. Div. 497, 99 N. Y. Supp. 294; Braun *v.* Union R. Co., 115 N. Y. App. Div. 566, 100 N. Y. Supp. 1012; Glassman *v.* Surpless, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 586, 103 N. Y. Supp. 789.

North Carolina. — Briggs *v.* Durham Traction Co., (N. Car. 1908) 61 S. E. 373.

Rhode Island. — Simone *v.* Rhode Island Co., (R. I. 1907) 66 Atl. 202; Gorman *v.* Hand Brewing Co., 28 R. I. 180, 66 Atl. 209.

Tennessee. — Illinois Cent. R. Co. *v.* Porter, 117 Tenn. 13, 94 S. W. 666.

Texas. — Davis *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 222; Ross *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1907) 103 S. W. 708; Ft. Worth, etc., R. Co. *v.* Day, (Tex. Civ. App. 1908) 111 S. W. 663.

Washington. — Firebaugh *v.* Seattle Electric Co., 40 Wash. 658, 82 Pac. 995.

West Virginia. — Bice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

Where the Defendant Offers No Evidence it is still for the jury to say whether the plaintiff's own evidence may not have overcome the presumption. Metropolitan St. R. Co. *v.* Warren, 74 Kan. 244, 86 Pac. 131.

Where the Presumption Is Clearly Overcome, a verdict for the plaintiff will not be sustained on appeal. Mobile, etc., R. Co. *v.* Morrow, (Ky. 1906) 97 S. W. 389.

When Question for Court. — Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577; Shankweiler *v.* Baltimore, etc., R. Co., (C. C. A.) 148 Fed. 195; Farley *v.* Mobile, etc., R. Co., (Ala. 1907) 42 So. 747; Lane *v.* Kansas City Southern R. Co., 78 Ark. 234, 95 S. W. 460; Korter *v.* Gulf, etc., R. Co., 87 Miss. 482, 40 So. 258; Riley *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 847; Atlantic Coast Line R. Co. *v.* Miller, 53 Fla. 246, 44 So. 247; Dolph *v.* Lake Shore, etc., R. Co., 149 Mich. 278, 112 N. W. 981; White *v.* Owosso Sugar Co., 149 Mich. 473, 112 N. W. 1125; Southern R. Co. *v.* Murry, (Miss. 1905) 39 So. 478; Brown *v.* Consolidated Light, etc., Co., (Mo. App. 1908) 109 S. W. 1032; Green *v.* Urban Contracting, etc., Co., 106 N. Y. App. Div. 460, 94 N. Y. Supp. 743; Beckman *v.* Meadville, etc., St. R. Co., (Pa. 1907) 67 Atl. 983.

4. Michigan Headlining, etc., Co. *v.* Wheeler, (C. C. A.) 141 Fed. 61; Central of Georgia R. Co. *v.* Harper, 124 Ga. 836, 53 S. E. 391; Christy *v.* Elliott, 216 Ill. 31, 74 N. E. 1035; Joseph Taylor Coal Co. *v.* Dawes, 220 Ill. 145, 77 N. E. 131; Madison Coal Co. *v.* Hayes, 116 Ill. App. 94; Illinois Southern R. Co. *v.* Hayer, 128 Ill. App. 315; Nashville, etc., R. Co. *v.* Higgins, (Ky. 1906) 92 S. W. 549; Louisville, etc., R. Co. *v.* Ueltschin, (Ky. 1906) 97 S. W. 14; Nashville, etc., R. Co. *v.* Russell, (Ky. 1908) 110 S. W. 317; Louisville, etc., R. Co. *v.* Joshlin, (Ky. 1908) 110 S. W. 382; Morgan *v.* C. Hager, etc., Hinge Mfg. Co., 120 Mo. App. 590, 97 S. W. 638; Wilmot *v.* Oregon R. Co., 48 Oregon 494, 87 Pac. 528; Erickson *v.* McNeeley, 41 Wash. 509, 84 Pac. 3; Rector *v.* Bryant Lumber, etc., Co., 41 Wash. 556, 84 Pac. 7; Campbell *v.* Wheelihan-Weidauer Co., 45 Wash. 675, 89 Pac. 161; Barclay *v.* Puget Sound Lumber Co., (Wash. 1908) 93 Pac. 430.

For Jury Where Question in Doubt. — St. Louis, etc., R. Co. *v.* Delk, (C. C. A.) 158

Fed. 931; Jefferson Theatre Program Co. *v.* Crejczyk, 125 Ill. App. 1; Illinois Cent. R. Co. *v.* Stewart, 130 Ill. App. 197; Braasch *v.* Michigan Stove Co., 147 Mich. 676, 111 N. W. 197; Rosenberg *v.* Chicago, etc., R. Co., (Neb. 1906) 110 N. W. 641; Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3; Vosberg *v.* Michigan Lumber Co., 45 Wash. 670, 89 Pac. 168; Noren *v.* Larson Lumber Co., (Wash. 1907) 89 Pac. 563; Boyle *v.* Anderson, etc., Lumber Co., (Wash. 1907) 90 Pac. 433; Adams *v.* Peterman Mfg. Co., (Wash. 1907) 92 Pac. 339; Van De Bogart *v.* Marinette, etc., Paper Co., (Wis. 1907) 112 N. W. 443.

Where the Application of the Statute to the Circumstances involves matters of fact, the question of violation is for the jury. Johnson *v.* Onondaga Paper Co., 112 N. Y. App. Div. 667, 98 N. Y. Supp. 602.

5. Bensel Constr. Co. *v.* Homer, 2 Ga. App. 369, 58 S. E. 489; Ward *v.* Meredith, 220 Ill. 66, 77 N. E. 118; Dix *v.* Union Ice Co., (N. J. 1908) 68 Atl. 1101; Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279.

6. Kellyville Coal Co. *v.* Strine, 217 Ill. 516, 75 N. E. 375; Joseph Taylor Coal Co. *v.* Dawes, 220 Ill. 145, 77 N. E. 131; Burns *v.* Delaware, etc., Co., 110 N. Y. App. Div. 592, 96 N. Y. Supp. 509; Schramme *v.* Lewinson, (Supm. Ct. App. Div.) 110 N. Y. Supp. 599; Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279; St. Louis Southwestern R. Co. *v.* Cockrill, (Tex. Civ. App. 1908) 111 S. W. 1092.

7. Leathers *v.* Blackwell's Durham Tobacco Co., 144 N. Car. 330, 57 S. E. 11.

Where Burden on Defendant. — Illinois Cent. R. Co. *v.* Watson, (Miss. 1905) 39 So. 69.

8. *United States.* — Rickerd *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 905; National Refining Co. *v.* Willis, (C. C. A.) 143 Fed. 107; Shellaberger *v.* Fisher, (C. C. A.) 143 Fed. 937; Castner Electrolytic Alkali Co. *v.* Davies, (C. C. A.) 154 Fed. 938; Pennsylvania R. Co. *v.* Forstall, (C. C. A.) 159 Fed. 893; San Francisco, etc., Steamship Co. *v.* Carlson, (C. C. A.) 161 Fed. 851.

Alabama. — Southern R. Co. *v.* Jones, 143 Ala. 328, 39 So. 118; Western R. Co. *v.* Stone, 145 Ala. 663, 39 So. 723; Birmingham R., etc., Co. *v.* Moore, 148 Ala. 115, 42 So. 1024; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 627; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 631; Alabama G. S. R. Co. *v.* McWhorter, (Ala. 1908) 47 So. 84.

Arkansas. — St. Louis, etc., R. Co. *v.* Hook, 83 Ark. 584, 104 S. W. 217.

California. — Bird *v.* Utica Gold Min. Co., 2 Cal. App. 674, 84 Pac. 256; Fogarty *v.* Southern Pac. Co., 151 Cal. 785, 91 Pac. 650; Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122.

Colorado. — Colorado Midland R. Co. *v.* Snider, 38 Colo. 351, 88 Pac. 453; Union Pac. R. Co. *v.* Shovall, 39 Colo. 436, 89 Pac. 764.

Connecticut. — Deming *v.* Johnson, (Conn. 1908) 69 Atl. 347.

Delaware. — Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589.

Florida. — Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516; German-American Lumber Co. *v.* Brock, (Fla. 1908) 46 So. 740.

Georgia. — Southern R. Co. *v.* Reynolds, 126 Ga. 657, 55 S. E. 1039; Madison *v.* Thomas, (Ga. 1908) 60 S. E. 461; Macon R., etc., Co. *v.* Carger, (Ga. App. 1908) 61 S. E. 882.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Illinois. — Chicago Union Traction Co. *v.* Sawusch, 218 Ill. 130, 75 N. E. 797; Athens Min. Co. *v.* Carnduff, 221 Ill. 354, 77 N. E. 571; Illinois Cent. R. Co. *v.* Johnson, 221 Ill. 42, 77 N. E. 592; Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; Chicago, etc., R. Co. *v.* Averill, 224 Ill. 516, 79 N. E. 654; East St. Louis Connecting R. Co. *v.* Meeker, 229 Ill. 98, 82 N. E. 202; Illinois Cent. R. Co. *v.* Siler, 229 Ill. 390, 82 N. E. 362; Donnelly *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 233; American Car, etc., Co. *v.* Armentraut, 116 Ill. App. 121; Toledo, etc., R. Co. *v.* Smart, 116 Ill. App. 523; Toledo, etc., R. Co. *v.* Farris, 117 Ill. App. 108; Atchison, etc., R. Co. *v.* Pitts, 123 Ill. App. 607.

Indiana. — New York, etc., R. Co. *v.* Hamlin, (Ind. 1907) 79 N. E. 1040, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 508; Cleveland, etc., R. Co. *v.* Patterson, 37 Ind. App. 617, 75 N. E. 857; Chicago, etc., R. Co. *v.* Pritchard, 168 Ind. 398, 79 N. E. 509; Tucker, etc., Mfg. Co. *v.* Staley, (Ind. App. 1907) 80 N. E. 975; U. S. Cement Co. *v.* Cooper, (Ind. App. 1907) 82 N. E. 981; Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Wilder *v.* Great Western Cereal Co., 134 Iowa 451, 109 N. W. 789; Heise *v.* Chicago G. W. R. Co., (Iowa 1907) 114 N. W. 180; Needy *v.* Littlejohn, (Iowa 1908) 115 N. W. 483; McEldon *v.* Drew, (Iowa 1908) 116 N. W. 147; Burger *v.* Omaha, etc., St. R. Co., (Iowa 1908) 117 N. W. 35.

Kansas. — Metropolitan St. R. Co. *v.* Fawcett, (Kan. 1907) 92 Pac. 543.

Kentucky. — McCabe *v.* Maysville, etc., R. Co., (Ky. 1905) 89 S. W. 683; Snydor *v.* Arnold, (Ky. 1906) 92 S. W. 289; Cincinnati, etc., R. Co. *v.* Falconer, (Ky. 1906) 97 S. W. 727; Covington *v.* Billeter, (Ky. 1907) 99 S. W. 318.

Maryland. — Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202; Pennsylvania Steel Co. *v.* Wilkinson, (Md. 1908) 69 Atl. 412; Philadelphia, etc., R. Co. *v.* Mitchell, (Md. 1908) 69 Atl. 422.

Massachusetts. — Fountaine *v.* Wampanoag Mills, 189 Mass. 498, 75 N. E. 738; Byrne *v.* Learnard, 191 Mass. 269, 77 N. E. 316; Butler *v.* New England Structural Co., 191 Mass. 397, 77 N. E. 764; Bates *v.* Dr. King Co., 191 Mass. 585, 77 N. E. 1154; Ladd *v.* New York, etc., R. Co., 193 Mass. 359, 79 N. E. 742; Smith *v.* Edison Electric Illuminating Co., (Mass. 1908) 84 N. E. 434.

Michigan. — Logan *v.* Lake Shore, etc., R. Co., 148 Mich. 603, 112 N. W. 506.

Minnesota. — Crandall *v.* Minneapolis, etc., R. Co., 96 Minn. 434, 105 N. W. 185; Mattes *v.* Great Northern R. Co., 100 Minn. 34, 110 N. W. 98; Decker *v.* Chicago, etc., R. Co., 102 Minn. 99, 112 N. W. 901.

Mississippi. — Illinois Cent. R. Co. *v.* Bethea,

88 Miss. 119, 40 So. 813; Hopson *v.* Kansas City, etc., R. Co., 87 Miss. 789, 40 So. 872; Leeke *v.* Gulf, etc., R. Co., (Miss. 1908) 46 So. 68.

Missouri. — Phelan *v.* Granite Co., 115 Mo. App. 423, 91 S. W. 440; Seeger *v.* St. Louis Silver Co., 193 Mo. 400, 91 S. W. 1030; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Ballentine *v.* Kansas City, 126 Mo. App. 130, 103 S. W. 564; Beave *v.* St. Louis Transit Co., (Mo. 1907) 111 S. W. 52.

Montana. — Birsch *v.* Citizens' Electric Co., (Mont. 1908) 93 Pac. 940.

Nebraska. — Cudahy Packing Co. *v.* Wesolowski, 75 Neb. 786, 106 N. W. 1007.

New Jersey. — Hayward *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 737; Batton *v.* Public Service Corp., (N. J. 1908) 69 Atl. 164.

New York. — Stenger *v.* Buffalo Union Furnace Co., 186 N. Y. 323, 78 N. E. 1068; Winter *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 131, 96 N. Y. Supp. 1009; Sallie *v.* New York City R. Co., 110 N. Y. App. Div. 665, 97 N. Y. Supp. 491; Wendell *v.* Leo, 115 N. Y. App. Div. 850, 101 N. Y. Supp. 51; Mayhood *v.* New York, 119 N. Y. App. Div. 100, 103 N. Y. Supp. 856; Sembler *v.* Cowperthwait, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 28, 103 N. Y. Supp. 979; Schell *v.* German Flatts, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 445, 104 N. Y. Supp. 116; Johnson *v.* Stevens, 123 N. Y. App. Div. 208, 108 N. Y. Supp. 407.

North Carolina. — Fuller *v.* Atlantic Coast Line R. Co., 140 N. Car. 480, 53 S. E. 297; Fisher *v.* Newbern, 140 N. Car. 506, 53 S. E. 342; Goforth *v.* Southern R. Co., 144 N. Car. 569, 57 S. E. 209; Sibbert *v.* Scotland Cotton Mills, 145 N. Car. 308, 59 S. E. 79; Freeland *v.* North Carolina R. Co., (N. Car. 1907) 59 S. E. 990; Beck *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 1015.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076; Waters-Pierce Oil Co. *v.* Deselms, 18 Okla. 107, 89 Pac. 21[illegible].

Oregon. — Hawley *v.* Sumpter Valley R. Co., (Oregon 1907) 90 Pac. 1106; Manning *v.* Portland Steel Ship Bldg. Co., (Oregon 1908) 96 Pac. 545.

Pennsylvania. — Boop *v.* Laurelton Lumber Co., 212 Pa. St. 523, 61 Atl. 1021; Dannenhower *v.* Western Union Tel. Co., 218 Pa. St. 216, 67 Atl. 207.

Rhode Island. — Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584; Weeks *v.* Fletcher, (R. I. 1908) 69 Atl. 294.

South Carolina. — Mayrant *v.* Columbia, 77 S. Car. 281, 57 S. E. 857; Martin *v.* Southern R. Co., 77 S. Car. 370, 58 S. E. 3; Thompson *v.* Seaboard Air Line R. Co., 78 S. Car. 384, 58 S. E. 1094.

Texas. — Southern Constr. Co. *v.* Hinkle, (Tex. Civ. App. 1905) 89 S. W. 300; St. Louis Southwestern R. Co. *v.* Everett, (Tex. Civ. App. 1905) 89 S. W. 457; St. Louis, etc., R. Co. *v.* Bessong, (Tex. Civ. App. 1905) 90 S. W. 73; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 90 S. W. 185; Missouri, etc., R. Co. *v.* Dickson, (Tex. Civ. App. 1905) 90 S. W. 507; Gulf, etc., R. Co. *v.* Coopwood, (Tex. Civ. App. 1906) 96 S. W. 102; St. Louis, etc., R. Co. *v.* Wiggins, (Tex. Civ. App. 1908) 107 S. W. 899; Missouri, etc., R. Co. *v.* Morgan, (Tex. Civ. App. 1908) 108 S. W. 724; Chicago, etc., R. Co. *v.* Johnson, (Tex. 1908) 108 S. W. 964; Hillsboro Cotton Mills *v.* King, (Tex. Civ. App. 1908) 109 S. W. 484; Ft. Worth, etc., R. Co. *v.* Finley, (Tex. Civ. App. 1908) 110 S. W. 531.

Utah. — Stone *v.* Union Pac. R. Co., (Utah 1907) 89 Pac. 715.

Vermont. — Place *v.* Grand Trunk R. Co., 80 Vt. 196, 67 Atl. 545.

Virginia. — American Tobacco Co. *v.* Polisco, 104 Va. 777, 52 S. E. 563; Southern R. Co. *v.* Blanford, 105 Va. 373, 54 S. E. 1; Black *v.* Virginia Portland Cement Co., 106 Va. 121, 55 S. E. 587.

Washington. — Peterson *v.* Seattle, 40 Wash. 33, 82 Pac. 141; Sullivan *v.* Wood, 43 Wash. 259, 86 Pac. 629; Ranous *v.* Seattle Electric Co., (Wash. 1907) 92 Pac. 382; Tergeson *v.* Robinson Mfg. Co., (Wash. 1908) 93 Pac. 428.

Wisconsin. — Stork *v.* Charles Stolper Cooperage Co., 127 Wis. 318, 106 N. W. 841; Wilbert *v.* F. Zurheide Brick Co., 129 Wis. 1, 106 N. W. 1058; Polaski *v.* Pittsburgh Coal Dock Co., (Wis. 1908) 114 N. W. 437.

Canada. — Dumphy *v.* Montreal Light, etc., Co., 28 Quebec Super. Ct. 18.

Conclusiveness of Finding.—Cincinnati, etc., R. Co. *v.* Cecil, (Ky. 1906) 90 S. W. 585; Union Pac. R. Co. *v.* Fickenscher, 74 Neb. 497, 105 N. W. 39; Wick *v.* Tacoma Eastern R. Co., 40 Wash. 408, 82 Pac. 711.

But there must be some evidence to sustain a finding as to the proximate cause. Atchison, etc., R. Co. *v.* Seeger, (Tex. Civ. App. 1906) 98 S. W. 892.

509. 1. *United States.* — Adams Express Co. *v.* Adams, (C. C. A.) 159 Fed. 62; Force *v.* Standard Silk Co., (C. C. A.) 160 Fed. 992.

Alabama. — Montgomery Traction Co. *v.* Whatley, (Ala. 1907) 44 So. 538.

Colorado. — Farrier *v.* Colorado Springs Rapid Transit R. Co., (Colo. 1908) 95 Pac. 294.

Illinois. — Siegel *v.* Trcka, 218 Ill. 559, 75 N. E. 1053.

Indiana. — Draper *v.* Evansville, etc., R. Co., 165 Ind. 117, 74 N. E. 889. But see Richmond, etc., R. Co. *v.* Beverley, (Ind. App. 1908) 84 N. E. 558.

Massachusetts. — Sullivan *v.* Old Colony St. R. Co., (Mass. 1908) 83 N. E. 1091; Smith *v.* Edison Electric Illuminating Co., (Mass. 1908) 84 N. E. 434.

Michigan. — Trombley *v.* McAfee, (Mich. 1908) 116 N. W. 191.

Minnesota. — Wolfe *v.* Minneapolis, etc., R. Co., 100 Minn. 306, 111 N. W. 5.

Missouri. — Feddeck *v.* St. Louis Car Co., 125 Mo. App. 24, 102 S. W. 675.

Nebraska. — Bemis *v.* Omaha, (Neb. 1908) 116 N. W. 31.

New Hampshire. — Yeaton *v.* Boston, etc., R. Co., 73 N. H. 285, 61 Atl. 522; Lydston *v.* Rockingham County Light, etc., Co., (N. H. 1908) 70 Atl. 385.

New York. — Horning *v.* Hudson River Telephone Co., 111 N. Y. App. Div. 122, 97 N. Y. Supp. 625; Wallace *v.* New Albion, 121

N. Y. App. Div. 66, 105 N. Y. Supp. 524; Lynch *v.* American Linseed Co., 122 N. Y. App. Div. 428, 107 N. Y. Supp. 458; Vincenzo *v.* Delaware, etc., Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 589.

North Carolina. — Harton *v.* Forest City Telephone Co., 141 N. Car. 455, 54 S. E. 299.

Oregon. — Trickey *v.* Clark, (Oregon 1908) 93 Pac. 457.

Pennsylvania. — Miller *v.* Lewiston Electric Light, etc., Co., 212 Pa. St. 593, 62 Atl. 32; Towner *v.* Public Ledger Co., 215 Pa. St. 624, 64 Atl. 787.

Texas. — St. Louis Southwestern R. Co. *v.* Pope, (Tex. Civ. App. 1906) 97 S. W. 534; Galveston, etc., R. Co. *v.* Cochran, (Tex. Civ. App. 1908) 109 S. W. 261.

Utah. — Gesas *v.* Oregon Short Line R. Co., (Utah 1907) 93 Pac. 274.

Wisconsin. — Stork *v.* Charles Stolper Cooperage Co., 127 Wis. 318, 106 N. W. 841.

2. *United States.* — Gwyn *v.* Cincinnati, etc., R. Co., (C. C. A.) 155 Fed. 88; Teis *v.* Smuggler Min. Co., (C. C. A.) 158 Fed. 260.

Alabama. — Woodward Iron Co. *v.* Curl, (Ala. 1907) 44 So. 969.

Arkansas. — Ultima Thule, etc., R. Co. *v.* Benton, (Ark. 1908) 110 S. W. 1037.

Colorado. — Snyder *v.* Colorado Springs, etc., R. Co., 36 Colo. 288, 85 Pac. 686.

Illinois. — Burke *v.* Hulett, 216 Ill. 545, 75 N. E. 240; Seymour *v.* Union Stockyards, etc., Co., 224 Ill. 579, 79 N. E. 950; East St. Louis R. Co. *v.* Hessling, 116 Ill. App. 125; Reddick *v.* General Chemical Co., 124 Ill. App. 31; Yunkes *v.* Latrobe Steel, etc., Co., 131 Ill. App. 292.

Indiana. — New York, etc., R. Co. *v.* Hamlin, (Ind. 1907) 79 N. E. 1040, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 509; Haskell, etc., Car Co. *v.* Prezezdziankowski, (Ind. 1908) 83 N. E. 626; Spencer *v.* Mayfield, (Ind. App. 1908) 85 N. E. 23.

Iowa. — Andrews *v.* Chicago, etc., R. Co., 129 Iowa 162, 105 N. W. 404; Cavanaugh *v.* Centerville Block Coal Co., 131 Iowa 700, 109 N. W. 303.

Kentucky. — Cincinnati, etc., R. Co. *v.* Zachary, (Ky. 1908) 106 S. W. 842.

Maryland. — Cumberland, etc., Electric R. Co. *v.* Thompson, 102 Md. 193, 62 Atl. 243.

Massachusetts. — Higgins *v.* Higgins, 188 Mass. 113, 74 N. E. 471.

Michigan. — Briggs *v.* Pine River Tp., 150 Mich. 381, 114 N. W. 221.

Minnesota. — Vik *v.* Red Cliff Lumber Co., 99 Minn. 88, 108 N. W. 469.

Missouri. — Foley *v.* McMahon, 114 Mo. 442, 90 S. W. 113; Luehrmann *v.* Laclede Gaslight Co., 127 Mo. App. 213, 104 S. W. 1128.

Nebraska. — Benson *v.* Peters, (Neb. 1908) 117 N. W. 347.

North Carolina. — Harton *v.* Forest City Telephone Co., (N. Car. 1907) 59 S. E. 1022.

Pennsylvania. — Merrigan *v.* Evans, (Pa. [illegible] Atl. 1113; Bannon *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 231.

Texas. — International, etc., R. Co. *v.* Rieden, (Tex. Civ. App. 1908) 107 S. W. 661; Southwestern Tel., etc., Co. *v.* Keys, (Tex. Civ. App. 1908) 110 S. W. 767.

The Court Should Not Submit to the jury any question as to which there is no causal connection with the injury. Harris Lumber Co. *v.* Morris, 80 Ark. 260, 96 S. W. 1067; Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880; Huston *v.* Quincy, etc., R. Co., (Mo. App. 1908) 107 S. W. 1045; Glasgow *v.* Jordan, (Supm. Ct. App. Div.) 108 N. Y. Supp. 814; Paris, etc., R. Co. *v.* Calvin, (Tex. Civ. App. 1906) 98 S. W. 222; Wells, etc., Co. Express *v.* Boyle, (Tex. 1907) 102 S. W. 107.

Where There Is No Evidence of Any Independent Cause Intervening between the alleged negligent acts of the defendant and the injury, it is error for the court to instruct the jury as to the law of intervening causes. Smith *v.* Ogden, etc., R. Co., (Utah 1907) 93 Pac. 185.

Exclusion of Evidence. — Chicago Union Traction Co. *v.* Daly, 129 Ill. App. 519; Hope *v.* Longley, 27 R. I. 579, 65 Atl. 300; Tergeson *v.* Robinson Mfg. Co., (Wash. 1908) 93 Pac. 428.

510. 1. *Massachusetts.* — Brodie *v.* Rockport Granite Co., (Mass. 1908) 83 N. E. 321; Childs *v.* American Express Co., (Mass. 1908) 84 N. E. 128.

Michigan. — Powers *v.* Pere Marquette R. Co., 143 Mich. 379, 106 N. W. 1117.

Missouri. — Funk *v.* Quincy, etc., R. Co., 123 Mo. App. 169, 100 S. W. 504; Byerly *v.* Consolidated Light, etc., Co., (Mo. App. 1908) 109 S. W. 1065.

Nebraska. — Union Pac. R. Co. *v.* H. Fickenscher, (Neb. 1906) 110 N. W. 561; Union Pac. R. Co. *v.* Westlund, (Neb. 1906) 110 N. W. 567; Union Pac. R. Co. *v.* Fosberg, (Neb. 1906) 110 N. W. 567; Union Pac. R. Co. *v.* Fickenscher, (Neb. 1906) 110 N. W. 567.

New Jersey. — Rhobovsky *v.* New Jersey, etc., R. Co., (N. J. 1908) 70 Atl. 170.

North Carolina. — Byrd *v.* Southern Express Co., 139 N. Car. 273, 51 S. E. 851.

Pennsylvania. — Green *v.* Pittsburg, etc., St. R. Co., (Pa. 1908) 68 Atl. 675; Ott *v.* Boggs, (Pa. 1908) 69 Atl. 61; Stewart *v.* De Noon, (Pa. 1908) 69 Atl. 587; Lewis *v.* Pennsylvania R. Co., (Pa. 1908) 69 Atl. 821; Ginn *v.* Pennsylvania R. Co., (Pa. 1908) 69 Atl. 992.

Rhode Island. — Davis *v.* Joslin Mfg. Co., (R. I. 1908) 69 Atl. 65.

South Carolina. — Green *v.* Southern R. Co., 72 S. Car. 398, 52 S. E. 45.

Texas. — Missouri, etc., R. Co. *v.* Greenwood, (Tex. Civ. App. 1905) 89 S. W. 810; Southwestern Tel., etc., Co. *v.* Morris, (Tex. Civ. App. 1907) 106 S. W. 426.

Washington. — Olmstead *v.* Hastings Shingle Mfg. Co., (Wash. 1908) 94 Pac. 474.

2. Snyder *v.* Colorado Springs, etc., R. Co., 36 Colo. 288, 85 Pac. 686; Fanizzi *v.* New York, etc., R. Co., 113 N. Y. App. Div. 440, 99 N. Y. Supp. 281; McCann *v.* Interurban St. R. Co., 117 N. Y. App. Div. 188, 102 N. Y. Supp. 296.

4. Pittsburgh, etc., R. Co. *v.* Wise, 36 Ind. App. 59, 74 N. E. 1107; Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66.

Construction of Contract. — Brunelle *v.* Lowell Electric Light Corp., 188 Mass. 493, 74 N. E. 676.

The Question of What the Relations of the

Parties Were, on which the duty would depend, is for the jury. Giacomini *v.* Pacific Lumber Co., 5 Cal. App. 218, 89 Pac. 1059; Pennsylvania Co. *v.* Chapman, 220 Ill. 428, 77 N. E. 248; Overhouser *v.* American Cereal Co., 128 Iowa 580, 105 N. W. 113; Mississippi Valley Traction Co. *v.* Coburn, 132 Ill. App. 624; Cumberland Telephone, etc., Co. *v.* Adams, (Ky. 1906) 91 S. W. 739; Dugan *v.* Blue Hill St. R. Co., 193 Mass. 431, 79 N. E. 748; Heffernan *v.* Fall River Iron Works Co., (Mass. 1907) 83 N. E. 5; Anderson *v.* Missouri Pac. R. Co., 196 Mo. 442, 93 S. W. 394; Maxon *v.* J. I. Case Threshing Mach. Co., (Neb. 1908) 116 N. W. 281; Atlantic City R. Co. *v.* Kiefer, (N. J. 1907) 66 Atl. 930; Wilkes *v.* Buffalo, etc., R. Co., 216 Pa. St. 355, 65 Atl. 787; Powell *v.* Philadelphia, etc., R. Co., (Pa. 1908) 70 Atl. 268; Texas Short Line R. Co. *v.* Waymire, (Tex. Civ. App. 1905) 89 S. W. 452; St. Louis Southwestern R. Co. *v.* Fowler, (Tex. Civ. App. 1906) 93 S. W. 484; Missouri, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1908) 109 S. W. 1126; McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124; Meyers *v.* Syndicate Heat, etc., Co., (Wash. 1907) 91 Pac. 549.

But if the relation is clearly established the court may so state. Georgia, etc., Co. *v.* Cole, 1 Ga. App. 33, 57 S. E. 1026.

5. Chicago, etc., R. Co. *v.* Kimmel, 221 Ill. 547, 77 N. E. 936; Central Granaries Co. *v.* Ault, 75 Neb. 249, 106 N. W. 418; Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66.

6. Reid *v.* Atlantic, etc., Air Line R. Co., 140 N. Car. 146, 52 S. E. 307; Missouri, etc., R. Co. *v.* Malone, (Tex. Civ. App. 1908) 110 S. W. 958; Wiest *v.* Coal Creek R. Co., 42 Wash. 176, 84 Pac. 725.

7. Manning *v.* App Consol. Gold Min. Co., 149 Cal. 35, 84 Pac. 657; Pittsburgh, etc., R. Co. *v.* Wise, 36 Ind App. 59, 74 N. E. 1107.

10. Manning *v.* App Consol. Gold Min. Co., 149 Cal. 35, 84 Pac. 657; Atlanta, etc., R. Co. *v.* Hudson, 123 Ga. 108, 51 S. E. 29; Southern Cotton Oil Co. *v.* Skipper, 125 Ga. 368, 54 S. E. 110; Augusta R., etc., Co. *v.* Lyle, (Ga. App. 1908) 60 S. E. 1075; St. Louis Southwestern R. Co. *v.* Elledge, (Tex. Civ. App. 1906) 93 S. W. 499; Metropolitan St. R. Co. *v.* Kirkpatrick, (Tex. Civ. App. 1906) 94 S. W. 1092.

The court should not state what facts would relieve the defendant from the charge of negligence. Southern R. Co. *v.* Sheffield, 127 Ga. 569, 56 S. E. 838.

On the other hand it has been held to be reversible error to submit the issue of negligence to the jury without in any manner instructing them as to what facts if found would constitute negligence. Casey *v.* Hoover, 114 Mo. App. 47, 89 S. W. 330.

11. *United States.* — Looney *v.* Metropolitan R. Co., 200 U. S. 480, 26 U. S. Sup. Ct. 303; Huntt *v.* McNamee, (C. C. A.) 141 Fed. 293; Parks *v.* Southern R. Co., (C. C. A.) 143 Fed. 276; Omaha Packing Co. *v.* Sanduski, (C. C. A.) 155 Fed. 897; Diggs *v.* Louisville, etc., R. Co., 156 Fed. 564.

Alabama. — Louisville, etc., R. Co. *v.* Mertz, (Ala. 1905) 40 So. 60.

Arkansas. — St. Louis, etc., R. Co. *v.* Andrews, 79 Ark. 437, 96 S. W. 183; Waters-Pierce Oil Co. *v.* Knisel, 79 Ark. 608, 96 S. W. 342; St. Louis, etc., R. Co. *v.* Wells, 82 Ark. 372, 101 S. W. 738.

Colorado. — Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815; Denver, etc., R. Co. *v.* Coulter, (Colo. 1907) 92 Pac. 906.

Delaware. — Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Barker *v.* Collins, (Del. 1906) 63 Atl. 686; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Wood *v.* Wilmington City R. Co., 5 Penn. (Del.) 369, 64 Atl. 246; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148; Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153; Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173; Anderson *v.* Wilmington, (Del. 1908) 70 Atl. 204.

Illinois. — Chicago Union Traction Co. *v.* Mee, 218 Ill. 9, 75 N. E. 800; Baltimore, etc., R. Co. *v.* Friend, 119 Ill. App. 306; McCormick Harvesting Mach. Co. *v.* Gabris, 130 Ill. App. 624; Goodman *v.* Bigler, 133 Ill. App. 301; Union Wire Mattress Co. *v.* Wiegref, 133 Ill. App. 506.

Indiana. — Southern Indiana R. Co. *v.* Messick, 35 Ind. App. 676, 74 N. E. 1097; Southern Indiana R. Co. *v.* Baker, 37 Ind. App. 405, 77 N. E. 64; Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510.

Iowa. — Rush *v.* Thos. D. Murphy Co., (Iowa 1907) 112 N. W. 814.

Kansas. — Atchison, etc., R. Co. *v.* Colliati, 75 Kan. 56, 88 Pac. 534.

Kentucky. — Dana *v.* Blackburn, (Ky. 1906) 90 S. W. 237; Groves *v.* Louisville, etc., R. Co., (Ky. 1906) 96 S. W. 439; Cincinnati, etc., R. Co. *v.* Zachary, (Ky. 1908) 106 S. W. 842.

Louisiana. — McDonnell *v.* New Orelans Cypress Co., 115 La. 67, 38 So. 896; Meyers *v.* Ruddock Orleans Cypress Co., 118 La. 805, 43 So. 448.

Maryland. — Miller *v.* United R., etc., Co., (Md. 1908) 69 Atl. 636.

Massachusetts. — Moran *v.* Milford, etc., St. R. Co., 193 Mass. 52, 78 N. E. 736.

Michigan. — Renders *v.* Grand Trunk R. Co., 144 Mich. 387, 108 N. W. 368.

Minnesota. — Ulseth *v.* Crookston Lumber Co., 97 Minn. 178, 106 N. W. 307; Binewicz *v.* Haglin, (Minn. 1908) 115 N. W. 271.

Missouri. — Schmitt *v.* St. Louis Transit Co., 115 Mo. App. 445, 90 S. W. 421; Hall *v.* St. Louis, etc., R. Co., 124 Mo. App. 661, 101 S. W. 1137; Frye *v.* St. Louis, etc., R. Co., 200 Mo. 377, 98 S. W. 566.

Nebraska. — Kennedy *v.* Chicago, etc., R. Co., (Neb. 1907) 114 N. W. 165.

New Jersey. — Bobbink *v.* Erie R. Co., (N. J. 1908) 69 Atl. 204; Stumpf *v.* Delaware, etc., R. Co., (N. J. 1908) 69 Atl. 207.

New York. — Cunningham *v.* Dry Dock, etc.,

R. Co. (Supm. Ct. App. T.) 96 N. Y. Supp. 1070; Craft *v.* Peekskill Lighting, etc., Co., 121 N. Y. App. Div. 549, 106 N. Y. Supp. 232.

Oklahoma. — Oklahoma City *v.* Reed, 17 Okla. 518, 87 Pac. 645.

Oregon. — Fredenthal *v.* Brown, (Oregon 1907) 93 Pac. 1114.

Pennsylvania. — Allen *v.* Kingston Coal Co., 212 Pa. St. 54, 61 Atl. 572; Hanna *v.* Philadelphia, etc., R. Co., 213 Pa. St. 157, 62 Atl. 643; Hoffman *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 87, 63 Atl. 409; Morgan *v.* United Gas Imp. Co., 214 Pa. St. 109, 63 Atl. 417; Sandt *v.* North Wales Foundry Co., 214 Pa. St. 215, 63 Atl. 596; Sowers *v.* McManus, 214 Pa. St. 244, 63 Atl. 601.

Texas. — Missouri, etc., R. Co. *v.* Greenwood, (Tex. Civ. App. 1905) 89 S. W. 810; Texas, etc., R. Co. *v.* Langham, (Tex. Civ. App. 1906) 95 S. W. 686; International, etc., R. Co. *v.* Hall, (Tex. Civ. App. 1907) 102 S. W. 740; Jones *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1907) 105 S. W. 1007.

Vermont. — Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807; Kiley *v.* Rutland R. Co., 80 Vt. 536, 68 Atl. 713.

Virginia. — Southern R. Co. *v.* Moore, (Va. 1908) 61 S. E. 747; Richmond *v.* Pemberton, (Va. 1908) 61 S. E. 787.

Washington. — Breckenridge *v.* American Eagle Consol. Min. Co., 42 Wash. 279, 84 Pac. 858.

But as to Railroads under Florida Statute, see Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183.

511. 1. Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528; Cryder *v.* Chicago, etc., R. Co., (C. C. A.) 152 Fed. 417; Davis *v.* People's R. Co., 5 Penn. (Del.) 253, 64 Atl. 70; Warren *v.* Porter, 144 Mich. 699, 108 N. W. 435; Keiser *v.* Lehigh Valley R. Co., 212 Pa. St. 409, 61 Atl. 903; Hanna *v.* Philadelphia, etc., R. Co., 213 Pa. St. 157, 62 Atl. 643; Keller *v.* Philadelphia, etc., R. Co., 214 Pa. St. 82, 63 Atl. 413.

512. 1. Freels *v.* Louisville, etc., R. Co., (Ky. 1905) 89 S. W. 143; O'Bannon *v.* Southern R. Co., (Ky. 1908) 110 S. W. 329; Bouthillier *v.* Old Colony St. R. Co., 189 Mass. 537, 75 N. E. 960; Hamilton *v.* Detroit, etc., R. Co., 142 Mich. 56, 105 N. W. 82; Johnston *v.* New Omaha Thompson-Houston Electric Light Co., (Neb. 1907) 110 N. W. 711; Wiszginda *v.* Schuylkill Traction Co., 212 Pa. St. 360, 61 Atl. 943; Thompson *v.* Baltimore, etc., R. Co., 218 Pa. St. 444, 67 Atl. 768; Coley *v.* Canadian Pac. R. Co., 29 Quebec Super. Ct. 282.

2. **Circumstances Warranting Presumption.** — *United States.* — The W. G. Mason, (C. C. A.) 142 Fed. 913; The Harry Hudson Smith, (C. C. A.) 142 Fed. 724; The Degama, (C. C. A.) 150 Fed. 323; Leyland *v.* Holmes, (C. C. A.) 153 Fed. 557; Jefferys *v.* Nebraska Bridge Supply, etc., Co., 157 Fed. 932; Swenson *v.* Snare, (C. C. A.) 160 Fed. 459.

California. — Bowley *v.* Mangrum, 3 Cal. App. 220, 84 Pac. 996.

Georgia. — Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213.

Illinois. — Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232.

Indiana. — Knoefel *v.* Atkins, (Ind. App. 1907) 81 N. E. 600.

Kentucky. — Louisville R. Co. *v.* Esselman, (Ky. 1906) 93 S. W. 50.

Louisiana. — Willis *v.* Vicksburg, etc., R. Co., 115 La. 53, 38 So. 892; Bentz *v.* Page, 115 La. 560, 39 So. 599.

Maryland. — United R., etc., Co. *v.* Cloman, (Md. 1908) 69 Atl. 379.

Minnesota. — Gould *v.* Winona Gas Co., 100 Minn. 265, 111 N. W. 254.

New Jersey. — Mumma *v.* Easton, etc., R. Co., 73 N. J. L. 653, 65 Atl. 208.

New York. — Weber *v.* Lieberman, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 593, 94 N. Y. Supp. 460; Schnizer *v.* Phillips, 108 N. Y. App. Div. 17, 95 N. Y. Supp. 478; Central Brewing Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 523, 97 N. Y. Supp. 1025; Eugene C. Lewis Co. *v.* Metropolitan Realty Co., 112 N. Y. App. Div. 385, 98 N. Y. Supp. 391; Bellinger *v.* Broadhead, (County Ct.) 52 Misc. (N. Y.) 57, 102 N. Y. Supp. 381; Eaton *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 419; Silverberg *v.* New York, (Supm. Ct. App. T.) 110 N. Y. Supp. 992.

Rhode Island. — Corbett *v.* Lymansville Co., (R. I. 1908) 69 Atl. 69; Brown *v.* Batchellor, (R. I. 1908) 69 Atl. 295.

Tennessee. — Martin *v.* McCrary, 115 Tenn. 316, 89 S. W. 324.

Leaving Horse and Wagon Unattended. — Stevenson *v.* U. S. Express Co., (Pa. 1908) 70 Atl. 275. But the rule is otherwise if a team be attached to a weight. Caughlin *v.* Campbell-Sell Baking Co., 39 Colo. 148, 89 Pac. 53.

Falling Things in General — *United States.* — Stair *v.* Kane, (C. C. A.) 156 Fed. 100; The Chicago, 156 Fed. 374.

Arkansas. — Gurdon, etc., R. Co. *v.* Calhoun, (Ark. 1908) 109 S. W. 1017.

Iowa. — Connolly *v.* Des Moines Invest. Co., 130 Iowa 633, 105 N. W. 400.

Maryland. — Decola *v.* Cowan, 102 Md. 551, 62 Atl. 1026.

Minnesota. — Waller *v.* Ross, 100 Minn. 7, 110 N. W. 252.

Missouri. — Scharff *v.* Southern Illinois Constr. Co., 115 Mo. App. 157, 92 S. W. 126.

New York. — Crowley *v.* Rochester Fireworks Co., 183 N. Y. 353, 76 N. E. 470, *reversing* 95 N. Y. App. Div. 13, 88 N. Y. Supp. 483; Lubelsky *v.* Silverman, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 133, 96 N. Y. Supp. 1056; Papazian *v.* Baumgartner, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 244, 97 N. Y. Supp. 390; Scheller *v.* Silvermintz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 175, 98 N. Y. Supp. 230; Higgins *v.* Ruppert, (Supm. Ct. App. Div.) 108 N. Y. Supp. 919; McNulty *v.* Ludwig, (Supm. Ct. App. Div.) 109 N. Y. Supp. 703; O'Rourke *v.* Guy B. Waite Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 170.

Tennessee. — McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

Washington. — Anderson *v.* McCarthy Dry Goods Co., (Wash. 1908) 95 Pac. 325.

Accidents from Electricity and Wires. — Jacks *v.* Reeves, 78 Ark. 426, 95 S. W. 781; Wood *v.* Wilmington City R. Co., 5 Penn.

(Del.) 369, 64 Atl. 246; Quincy Gas, etc., Co. *v.* Schmitt, 123 Ill. App. 647; Von Trebra *v.* Laclede Gaslight Co., (Mo. 1908) 108 S. W. 559; O'Leary *v.* Glens Falls Gas, etc., Co., 107 N. Y. App. Div. 505, 95 N. Y. Supp. 232; Wheeler *v.* Northern Ohio Traction Co., 27 Ohio Cir. Ct. 517; Sullivan *v.* Brooklyn Heights R. Co., 117 N. Y. App. Div. 784, 102 N. Y. Supp. 982; Moglia *v.* Nassau Electric R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 70; Shawnee Light, etc., Co. *v.* Sears, (Okla. 1908) 95 Pac. 449; Delahunt *v.* United Telephone, etc., Co., 215 Pa. St. 241, 64 Atl. 515; Drown *v.* New England Telephone, etc., Co., 80 Vt. 1, 66 Atl. 801; Brice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

Circumstances Not Warranting Presumption — *California.* — Sauer *v.* Eagle Brewing Co., 3 Cal. App. 127, 84 Pac. 425.

Colorado. — Denver *v.* Spencer, 34 Colo. 270, 82 Pac. 590; Atchison, etc., R. Co. *v.* Adcock, 38 Colo. 369, 88 Pac. 180; Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815.

Illinois. — Goodman *v.* Bigler, 133 Ill. App. 301.

Maryland. — Miller *v.* United R., etc., Co., (Md. 1908) 69 Atl. 636.

Massachusetts. — Johnson *v.* J. M. Guffey Petroleum Co., (Mass. 1908) 83 N. E. 874.

Missouri. — Luecke *v.* Graham, 123 Mo. App. 212, 100 S. W. 505.

New Jersey. — Bobbink *v.* Erie R. Co., (N. J. 1908) 69 Atl. 204; Stumpf *v.* Delaware, etc., R. Co., (N. J. 1908) 69 Atl. 207; Dentz *v.* Pennsylvania R. Co., (N. J. 1908) 70 Atl. 164.

New York. — Duhme *v.* Hamburg-American Packet Co., 184 N. Y. 404, 77 N. E. 386; Cunningham *v.* Dady, 191 N. Y. 152, 83 N. E. 689; Hammerschmidt *v.* Municipal Gas Co., 114 N. Y. App. Div. 290, 99 N. Y. Supp. 890; Bruckel *v.* Milhau, 116 N. Y. App. Div. 832, 102 N. Y. Supp. 395; Robinson *v.* Empire City Subway Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 593, 103 N. Y. Supp. 717.

Pennsylvania. — Sowers *v.* McManus, 214 Pa. St. 244, 63 Atl. 601; Green *v.* Baltimore, etc., R. Co., 214 Pa. St. 240, 63 Atl. 603; Aument *v.* Pennsylvania Telephone Co., 28 Pa. Super. Ct. 610.

Rhode Island. — Hope *v.* Longley, 27 R. I. 579, 65 Atl. 300.

West Virginia. — Hanley *v.* West Virginia Cent., etc., R. Co., 59 W. Va. 419, 53 S. E. 625; Marshall Window Glass Co. *v.* Cameron Oil, etc., Co., (W. Va. 1907) 59 S. E. 959.

Wisconsin. — Morrison *v.* Superior Water, etc., Co., (Wis. 1908) 114 N. W. 434.

Wyoming. — Martin *v.* Chicago, etc., R. Co., 15 Wyo. 493, 89 Pac. 1025.

Canada. — Guardian F., etc., Assur. Co. *v.* Quebec R., etc., Co., 37 Can. Sup. Ct. 676.

513. 1. **Dependent on Circumstances** — *California.* — Renfro *v.* Fresno City R. Co., 2 Cal. App. 317, 84 Pac. 357.

Illinois. — Pittsburg, etc., R. Co. *v.* Campbell, 116 Ill. App. 356; Illinois Steel Co. *v.* Zolnowski, 118 Ill. App. 209; Wolf *v.* Chicago Union Traction Co., 119 Ill. App. 481.

Indiana. — Cleveland, etc., R. Co. *v.* Hadley, (Ind. 1908) 84 N. E. 13.

Louisiana. — McGinn *v.* New Orleans R., etc., Co., 118 La. 811, 43 So. 450.

Massachusetts. — Cummings *v.* Grand Lodge, (Mass. 1907) 81 N. E. 189.

Minnesota. — Gomulak *v.* C. A. Smith Lumber Co., 98 Minn. 149, 107 N. W. 542.

Missouri. — Trotter *v.* St. Louis, etc., R. Co., 122 Mo. App. 405, 99 S. W. 508; Sipple *v.* Laclede Gaslight Co., 125 Mo. App. 81, 102 S. W. 608; Beebe *v.* St. Louis Transit Co., 206 Mo. 419, 103 S. W. 1019; Leffler *v.* Anheuser-Busch Brewing Assoc., 127 Mo. App. 488, 106 S. W. 105.

New Jersey. — Pascell *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 171, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 513; Dentz *v.* Pennsylvania R. Co., (N. J. 1908) 70 Atl. 164.

New York. — Andrews *v.* Reiners, 112 N. Y. App. Div. 378, 98 N. Y. Supp. 658; Uggla *v.* Brokaw, 117 N. Y. App. Div. 586, 102 N. Y. Supp. 857; Ristau *v.* E. Frank Coe Co., 120 N. Y. App. Div. 478, 104 N. Y. Supp. 1059; Guiliano *v.* F. W. Seagrist, Jr., Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 577; Eaton *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 419; Stubley *v.* Allison Realty Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 759; Crane *v.* Miller, (Supm. Ct. App. T.) 108 N. Y. Supp. 1015; Dittman *v.* Edison Electric Illuminating Co., 125 N. Y. App. Div. 691, 110 N. Y. Supp. 87; Van Suwegen *v.* Erie R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 959.

Oregon. — Goss *v.* Northern Pac. R. Co., 48 Oregon 439, 87 Pac. 149.

Pennsylvania. — Dalton *v.* Towanda, 215 Pa. St. 402, 64 Atl. 547; Connolly *v.* Union League, (Pa. 1908) 69 Atl. 1125.

Vermont. — Drown *v.* New England Telephone, etc., Co., 80 Vt. 1, 66 Atl. 801.

Washington. — Anderson *v.* McCarthy Dry Goods Co., (Wash. 1908) 95 Pac. 325, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 512, 513.

West Virginia. — Marshall Window Glass Co. *v.* Cameron Oil, etc., Co., (W. Va. 1907) 59 S. E. 959.

Contractual Relation Unnecessary.—Illinois Cent. R. Co. *v.* McCollum, 122 Ill. App. 531.

Inconsistent Theories Should Be Reasonably Excluded. — Allen *v.* Kingston Coal Co., 212 Pa. St. 54, 61 Atl. 572; McGrath *v.* St. Louis Transit Co., 197 Mo. 97, 94 S. W. 872.

Inherently Dangerous Instrumentalities afford a common and proper consideration for the application of the doctrine. Gould *v.* Winona Gas Co., 100 Minn. 265, 111 N. W. 254.

The Inference Is of Negligence, Not of Physical Cause. — Wilbur *v.* Rhode Island Co., 27 R. I. 205, 61 Atl. 601.

Waiver. — Kennedy *v.* Metropolitan St. R. Co., (Mo. App. 1907) 107 S. W. 16; Tighe *v.* Atchison, etc., R. Co., (Mo. App. 1908) 107 S. W. 1034; Roscoe *v.* Metropolitan St. R. Co., 202 Mo. 576, 101 S. W. 32. See also Strasburger *v.* Vogel, 103 Md. 85, 63 Atl. 202; Walters *v.* Seattle, etc., R. Co., (Wash. 1908) 93 Pac. 419.

2. *United States.* — Leyland *v.* Holmes, (C. C. A.) 153 Fed. 557, *quoting* 21 Am. and Eng.

Encyc. of Law (2d ed.) 513. The W. G. Mason, (C. C. A.) 142 Fed. 913.

California. — Renfro *v.* Fresno City R. Co., 2 Cal. App. 317, 84 Pac. 357.

Delaware. — Wood *v.* Wilmington City R. Co., 5 Penn. (Del.) 369, 64 Atl. 246.

Illinois. — Hill *v.* Chicago City R. Co., 126 Ill. App. 153; McDonnell *v.* Chicago City R. Co., 131 Ill. App. 227.

Maryland. — Decola *v.* Cowan, 102 Md. 551, 62 Atl. 1026.

Massachusetts. — Magee *v.* New York, etc., R. Co., 195 Mass. 111, 80 N. E. 689; Chaffe *v.* Consolidated R. Co., (Mass. 1907) 82 N. E. 497; Minihan *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 871.

Missouri. — Brod *v.* St. Louis Transit Co., 115 Mo. App. 202, 91 S. W. 993; Chadwick *v.* St. Louis Transit Co., 195 Mo. 517, 93 S. W. 798; St. Clair *v.* St. Louis, etc., R. Co., 123 Mo. App. 519, 99 S. W. 775.

Montana. — Hardesty *v.* Largey Lumber Co., 34 Mont. 151, 86 Pac. 29.

New York. — Lomas *v.* New York City R. Co., 111 N. Y. App. Div. 332, 97 N. Y. Supp. 658; Konigsberg *v.* Davis, (Supm. Ct. App. T.) 108 N. Y. Supp. 595; Stubley *v.* Allison Realty Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 759; Crane *v.* Miller, (Supm. Ct. App. T.) 108 N. Y. Supp. 1015; Silverberg *v.* New York, (Supm. Ct. App. T.) 110 N. Y. Supp. 992; Elliott *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 358.

North Carolina. — Fitzgerald *v.* Southern R. Co., 141 N. Car. 530, 54 S. E. 391; Overcash *v.* Charlotte Electric R. Light, etc., Co., 144 N. Car. 572, 57 S. E. 377.

Ohio. — Cincinnati Traction Co. *v.* Holzenkamp, 74 Ohio St. 379, 78 N. E. 529.

Rhode Island. — Gorman *v.* Hand Brewing Co., 28 R. I. 180, 66 Atl. 209.

Washington. — La Bee *v.* Sultan Logging Co., (Wash. 1907) 91 Pac. 560; Anderson *v.* McCarthy Dry Goods Co., (Wash. 1908) 95 Pac. 325.

West Virginia. — Bice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

Conversely, where the danger of the work renders accidents probable, no presumption arises from the fact of an accident. Thompson *v.* National Fireworks Co., (Mass. 1907) 81 N. E. 256.

Under Defendant's Control. — Many of the cases lay down the rule that the cause or instrumentality of the accident must be under the defendant's control or under his "exclusive" control.

United States. — Jefferys *v.* Nebraska Bridge Supply, etc., Co., 157 Fed. 932.

Illinois. — Chicago Union Traction Co. *v.* Mee, 218 Ill. 9, 75 N. E. 800; Schaller *v.* Independent Brewing Assoc., 225 Ill. 492, 80 N. E. 334; Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232; Pittsburg, etc., R. Co. *v.* Campbell, 116 Ill. App. 356; Loehner *v.* North Chicago St. R. Co., 116 Ill. App. 365; Wolf *v.* Chicago Union Traction Co., 119 Ill. App. 481; Illinois Cent. R. Co. *v.* McCollum, 122 Ill. App. 531; Field *v.* Winheim, 123 Ill. App. 227; Quincy Gas, etc., Co. *v.* Schmitt, 123 Ill. App. 647.

Indiana. — Knoefel *v.* Atkins, (Ind. App. 1907) 81 N. E. 600.

Kentucky. — Louisville Lighting Co. *v.* Owens, (Ky. 1907) 105 S. W. 435.

Maine. — Frederickson *v.* Central Wharf Towboat Co., 101 Me. 406, 64 Atl. 666.

Minnesota. — Ulseth *v.* Crookston Lumber Co., 97 Minn. 178, 106 N. W. 307.

Missouri. — Jorden *v.* St. Louis, etc., R. Co., 122 Mo. App. 330, 99 S. W. 492.

New York. — Weber *v.* Lieberman, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 593, 94 N. Y. Supp. 460; Bradford *v.* Bankers Bros Co., 122 N. Y. App. Div. 523, 107 N. Y. Supp. 450; Eaton *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 419.

Pennsylvania. — Delahunt *v.* United Telephone, etc., Co., 215 Pa. St. 241, 64 Atl. 515.

Virginia. — Peters *v.* Lynchburg, etc., Light Co., (Va. 1908) 61 S. E. 745.

Rule under Various Statutes — *United States.* — Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577.

Alabama. — Central of Georgia R. Co. *v.* Turner, 145 Ala. 441, 40 So. 355.

Arkansas. — St. Louis, etc., R. Co. *v.* Evans, 80 Ark. 19, 96 S. W. 616; St. Louis, etc., R. Co. *v.* Standifer, 81 Ark. 275, 99 S. W. 81; St. Louis Southwestern R. Co. *v.* Graham, 83 Ark. 61, 102 S. W. 700; St. Louis, etc., R. Co. *v.* Thompson, 83 Ark. 631, 104 S. W. 223; St. Louis, etc., R. Co. *v.* Minor, (Ark. 1908) 107 S. W. 171; St. Louis, etc., R. Co. *v.* Ewing, (Ark. 1908) 107 S. W. 191.

Florida. — Louisville, etc., R. Co. *v.* Jones, 50 Fla. 225, 39 So. 485; Seaboard Air Line R. Co. *v.* Barwick, 51 Fla. 304, 41 So. 70; Seaboard Air Line R. Co. *v.* Smith, 53 Fla. 375, 43 So. 235; Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318; Florida East Coast R. Co. *v.* Welch, 53 Fla. 145, 44 So. 250; Jones *v.* Jacksonville Electric Co., (Fla. 1908) 47 So. 1.

Georgia. — White *v.* Southern R. Co., 123 Ga. 353, 51 S. E. 411; Georgia R., etc., Co. *v.* Reeves, 123 Ga. 679, 51 S. E. 610; Atlantic Coast Line R. Co. *v.* Waycross Electric Light, etc., Co., 123 Ga. 613, 51 S. E. 621; Georgia, etc., Banking Co. *v.* Andrews, 125 Ga. 85, 54 S. E. 76; Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948; Gainesville, etc., Electric R. Co. *v.* Austin, 127 Ga. 120, 56 S. E. 254; Southern R. Co. *v.* Sheffield, 127 Ga. 569, 56 S. E. 838; Southern R. Co. *v.* Gore, 128 Ga. 627, 58 S. E. 180; King *v.* Seaboard Air Line R. Co., 1 Ga. App. 88, 58 S. E. 252; Central of Georgia R. Co. *v.* North, 129 Ga. 106, 58 S. E. 647; Wrightsville, etc., R. Co. *v.* Gornto, 129 Ga. 204, 58 S. E. 769; Southern R. Co. *v.* Thompson, 129 Ga. 367, 58 S. E. 1044; Bryson *v.* Southern R. Co., 3 Ga. App. 407, 59 S. E. 1124.

Illinois. — Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; Ward *v.* Meredith, 220 Ill. 66, 77 N. E. 118; Illinois Cent. R. Co. *v.* Andrews, 116 Ill. App. 8; Cleveland, etc., R. Co. *v.* Dukeman, 130 Ill. App. 105.

Iowa. — Mikesell *v.* Wabash R. Co., 134 Iowa 736, 112 N. W. 201.

Kentucky. — Louisville, etc., R. Co. *v.* Rhoads, (Ky. 1906) 90 S. W. 219; Illinois Cent. R. Co. *v.* Stanley, (Ky. 1906) 96 S. W. 846; Cincin-

nati, etc., R. Co. *v.* Falconer, (Ky. 1906) 97 S. W. 727; Mobile, etc., R. Co. *v.* Morrow, (Ky. 1906) 97 S. W. 389; Troutwine *v.* Louisville, etc., R. Co., (Ky. 1907) 105 S. W. 142.

Louisiana. — Mongogna *v.* Illinois Cent. R. Co., 115 La. 597, 39 So. 699.

Maryland. — Norfolk, etc., R. Co. *v.* Smith, 104 Md. 72, 64 Atl. 317.

Michigan. — Dolph *v.* Lake Shore, etc., R. Co., 149 Mich. 278, 112 N. W. 981.

Minnesota. — Continental Ins. Co. *v.* Chicago, etc., R. Co., 97 Minn. 467, 107 N. W. 548.

Mississippi. — Johnson *v.* Illinois Cent. R. Co., (Miss. 1906) 39 So. 780; Korter *v.* Gulf, etc., R. Co., 87 Miss. 482, 40 So. 258; Young *v.* Illinois Cent. R. Co., 88 Miss. 446, 40 So. 870; Yazoo, etc., R. Co. *v.* Landrum, 89 Miss. 399, 42 So. 675; Combs *v.* Mobile, etc., R. Co., (Miss. 1908) 46 So. 168; Mobile, etc., R. Co. *v.* Hicks, (Miss. 1908) 46 So. 360; Southern R. Co. *v.* Murray, (Miss. 1907) 44 So. 785.

Missouri. — Arkansas, etc., R. Co. *v.* Sanders, 81 Ark. 604, 99 S. W. 1109; McNulty *v.* St. Louis, etc., R. Co., 203 Mo. 475, 101 S. W. 1082; Midgett *v.* St. Louis, etc., R. Co., 124 Mo. App. 540, 102 S. W. 56.

Montana. — Poindexter, etc., Live Stock Co. *v.* Oregon Short Line R. Co., 33 Mont. 338, 83 Pac. 886.

New York. — Michael *v.* Standard Concrete Steel Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 255, 105 N. Y. Supp. 131.

North Dakota. — Carr *v.* Minneapolis, etc., R. Co., (N. Dak. 1907) 112 N. W. 972.

Ohio. — Klunk *v.* Hocking Valley R. Co., 74 Ohio St. 125, 77 N. E. 752; Lake Shore, etc., R. Co. *v.* Anderson, 27 Ohio Cir. Ct. 577; Shankweiler *v.* Baltimore, etc., R. Co., (C. C. A.) 148 Fed. 195.

Statutory Presumption. — Louisville, etc., R. Co. *v.* Christian Moerlein Brewing Co., (Ala. 1907) 43 So. 723; Stewart *v.* Iowa Cent. R. Co., (Iowa 1907) 113 N. W. 764.

3. Not Conclusive Presumption or Inference — *United States.* — Leyland *v.* Holmes, (C. C. A.) 153 Fed. 557.

Alabama. — Central of Georgia R. Co. *v.* Turner, 145 Ala. 441, 40 So. 355; Alabama G. S. R. Co. *v.* Sanders, 145 Ala. 449, 40 So. 402.

Arkansas. — Jacks *v.* Reeves, 78 Ark. 426, 95 S. W. 781.

California. — Cody *v.* Market St. R. Co., 148 Cal. 90, 82 Pac. 666; Bonneau *v.* North Shore R. Co., (Cal. 1907) 93 Pac. 106.

Georgia. — Augusta R., etc., Co. *v.* Weekly, 124 Ga. 384, 52 S. E. 444; Gainesville, etc., Electric R. Co. *v.* Austin, 127 Ga. 120, 56 S. E. 254; Southern R. Co. *v.* Elliott, 129 Ga. 705, 59 S. E. 786.

Illinois. — Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232; Greinke *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 327; Alton Light, etc., Co. *v.* Oller, 119 Ill. App. 181; Goddard *v.* Enzler, 123 Ill. App. 108; Field *v.* Winheim, 123 Ill. App. 227; Chicago Union Traction Co. *v.* Roberts, 131 Ill. App. 476; Elgin, etc., Traction Co. *v.* Hench, 132 Ill. App. 535.

Indiana. — Pittsburgh, etc., R. Co. *v.* Higgs, 165 Ind. 694, 76 N. E. 299; Evansville, etc., R. Co. *v.* Mills, 37 Ind. App. 598, 77 N. E. 608.

Kansas. — Metropolitan St. R. Co. *v.* Warren, 74 Kan. 244, 86 Pac. 131; Chicago, etc., R. Co. *v.* Brandon, (Kan. 1908) 95 Pac. 573.

Mississippi. — Young *v.* Illinois Cent. R. Co., 88 Miss. 446, 40 So. 870.

Missouri. — Brod *v.* St. Louis Transit Co., 115 Mo. App. 202, 91 S. W. 993; Evers *v.* Wiggins Ferry Co., 116 Mo. App. 130, 92 S. W. 118; Bell *v.* Central Electric R. Co., 125 Mo. App. 660, 103 S. W. 144.

New York. — Cunningham *v.* Dady, 191 N. Y. 152, 83 N. E. 689; Eaton *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 419; McNulty *v.* Ludwig, (Supm. Ct. App. Div.) 109 N. Y. Supp. 703; Moglia *v.* Nassau Electric R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 70.

North Carolina. — Fitzgerald *v.* Southern R. Co., 141 N. Car. 530, 54 S. E. 391; Overcash *v.* Charlotte Electric R., etc., Co., 144 N. Car. 572, 57 S. E. 377.

Ohio. — Klunk *v.* Hocking Valley R. Co., 74 Ohio St. 125, 77 N. E. 752.

Rhode Island. — Enos *v.* Rhode Island Suburban R. Co., (R. I. 1907) 67 Atl. 5.

Tennessee. — Illinois Cent. R. Co. *v.* Porter, 117 Tenn. 13, 94 S. W. 666.

Texas. — Davis *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 222.

Utah. — Dearden *v.* San Pedro, etc., R. Co., (Utah 1907) 93 Pac. 271; Paul *v.* Salt Lake City R. Co., (Utah 1908) 95 Pac. 363.

West Virginia. — Newhouse *v.* Kanawha, etc., Co., (W. Va. 1907) 59 S. E. 1071.

4. Defendant to Rebut — *United States.* — The W. G. Mason, (C. C. A.) 142 Fed. 913; North Jersey St. R. Co. *v.* Purdy, (C. C. A.) 142 Fed. 955; Southern Pac. Co. *v.* Cavin, (C. C. A.) 144 Fed. 348; Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577; The Chicago, 156 Fed. 374.

Arkansas. — Jacks *v.* Reeves, 78 Ark. 426, 95 S. W. 781; St. Louis, etc., R. Co. *v.* Evans, 80 Ark. 19, 96 S. W. 616.

California. — Renfro *v.* Fresno City R. Co., 2 Cal. App. 317, 84 Pac. 357; Fowden *v.* Pacific Coast Steamship Co., 149 Cal. 151, 86 Pac. 178; Kline *v.* Santa Barbara Consol. R. Co., 150 Cal. 741, 90 Pac. 125.

Colorado. — Colorado Springs, etc., R. Co. *v.* Petit, 37 Colo. 326, 86 Pac. 121.

District of Columbia. — Washington, etc., R. Co. *v.* Chapman, 26 App. Cas. (D. C.) 472, 6 Ann. Cas. 721.

Florida. — Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318.

Georgia. — Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213.

Illinois. — Greinke *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 327; Illinois Cent. R. Co. *v.* McCollum, 122 Ill. App. 531; McDonnell *v.* Chicago City R. Co., 131 Ill. App. 227; Chicago Union Traction Co. *v.* Roberts, 131 Ill. App. 476; Illinois Cent. R. Co. *v.* Rothschild, 134 Ill. App. 504; Springfield Consol. R. Co. *v.* Johnson, 134 Ill. App. 536.

Indiana. — Cincinnati, etc., R. Co. *v.* Bravard, 38 Ind. App. 422, 76 N. E. 899; Evansville, etc., R. Co. *v.* Mills, 37 Ind. App. 598, 77 N. E. 608; Indiana Union Traction Co. *v.* McKinney, 39 Ind. App. 86, 78 N. E. 203.

Iowa. — Mikesell *v.* Wabash R. Co., 134 Iowa

736, 112 N. W. 201; Mitchell *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 622.

Kansas. — Chicago, etc., R. Co. *v.* Brandon, (Kan. 1908) 95 Pac. 573.

Kentucky. — Louisville St. R. Co. *v.* Brownfield, (Ky. 1906) 96 S. W. 912.

Maine. — Heberi *v.* Portland R. Co., (Me. 1907) 69 Atl. 266.

Michigan. — Dolph *v.* Lake Shore, etc., R. Co., 149 Mich. 278, 112 N. W. 981.

Missouri. — Evers *v.* Wiggins Ferry Co., 116 Mo. App. 130, 92 S. W. 118; Goodloe *v.* Metropolitan St. R. Co., 120 Mo. App. 194, 96 S. W. 482; Orcutt *v.* Century Bldg. Co., 201 Mo. 424, 99 S. W. 1062; Bussell *v.* Quincy, etc., R. Co., 125 Mo. App. 441, 102 S. W. 613; McRae *v.* Metropolitan St. R. Co., 125 Mo. App. 562, 102 S. W. 1032; O'Gara *v.* St. Louis Transit Co., 204 Mo. 724, 103 S. W. 54; Bell *v.* Central Electric R. Co., 125 Mo. App. 660, 103 S. W. 144; Skiles *v.* St. Louis, etc., R. Co., (Mo. App. 1908) 108 S. W. 1082.

Montana. — Dempster *v.* Oregon Short Line R. Co., (Mont. 1908) 96 Pac. 717.

New York. — Papazian *v.* Baumgartner, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 244, 97 N. Y. Supp. 399; Bellinger *v.* Broadhead, (County Ct.) 52 Misc. (N. Y.) 57, 102 N. Y. Supp. 381; Sullivan *v.* Brooklyn Heights R. Co., 117 N. Y. App. Div. 784, 102 N. Y. Supp. 982.

North Carolina. — Briggs *v.* Durham Traction Co., (N. Car. 1908) 61 S. E. 373.

Oklahoma. — Shawnee Light, etc., Co. *v.* Sears, (Okla. 1908) 95 Pac. 449.

Pennsylvania. — Beckman *v.* Meadville, etc., St. R. Co., (Pa. 1907) 67 Atl. 983; Stevenson *v.* U. S. Express Co., (Pa. 1908) 70 Atl. 275.

Rhode Island. — Simone *v.* Rhode Island Co., (R. I. 1907) 66 Atl. 202; Gorman *v.* Hand Brewing Co., 28 R. I. 180, 66 Atl. 209.

Texas. — Ross *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1907) 103 S. W. 708; Galveston, etc., R. Co. *v.* Harris, (Tex. Civ. App. 1908) 107 S. W. 108; Morgan *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1908) 110 S. W. 978.

Utah. — Dearden *v.* San Pedro, etc., R. Co., (Utah 1907) 93 Pac. 271.

Washington. — Anderson *v.* McCarthy Dry Goods Co., (Wash. 1908) 95 Pac. 325, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513; Russell *v.* Seattle, etc., R. Co., (Wash. 1907) 92 Pac. 288.

Doctrine that Statement of Shifting Burden Technically Inaccurate — *United States.* — Shankweiler *v.* Baltimore, etc., R. Co., (C. C. A.) 148 Fed. 195; Leyland *v.* Holmes, (C. C. A.) 153 Fed. 557.

California. — Valente *v.* Sierra R. Co., 151 Cal. 534, 91 Pac. 481; Bonneau *v.* North Shore R. Co., (Cal. 1907) 93 Pac. 106.

Illinois. — Goddard *v.* Enzler, 123 Ill. App. 108; Elgin, etc., Traction Co. *v.* Hench, 132 Ill. App. 535.

Indiana. — Pittsburgh, etc., R. Co. *v.* Higgs, 165 Ind. 694, 76 N. E. 299; Cleveland, etc., R. Co. *v.* Hadley, (Ind. 1907) 82 N. E. 1025.

Iowa. — Connolly *v.* Des Moines Invest. Co., 130 Iowa 633, 105 N. W. 400.

Minnesota. — Gould *v.* Winona Gas Co., 100 Minn. 268, 111 N. W. 254, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513.

Missouri. — Brown *v.* Consolidated Light, etc., Co., (Mo. App. 1908) 109 S. W. 1032.

Nebraska. — Omaha St. R. Co. *v.* Boesen, 74 Neb. 764, 105 N. W. 303; Lincoln Traction Co. *v.* Shepherd, 74 Neb. 369, 107 N. W. 764; Shipman *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 535.

New York. — Cunningham *v.* Dady, 191 N. Y. 152, 83 N. E. 689; Dean *v.* Tarrytown, etc., R. Co., 113 N. Y. App. Div. 437, 99 N. Y. Supp. 250; Greer *v.* Union R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 560, 99 N. Y. Supp. 428; Baum *v.* New York, etc., R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 265.

North Carolina. — Lyles *v.* Brannon Carbonating Co., 140 N. Car. 25, 52 S. E. 233; Overcash *v.* Charlotte Electric R., etc., Co., 144 N. Car. 572, 57 S. E. 377; Winslow *v.* Norfolk Hardwood Co., (N. Car. 1908) 60 S. E. 1130.

Ohio. — Klunk *v.* Hocking Valley R. Co., 74 Ohio St. 125, 77 N. E. 752.

Texas. — Womack *v.* International, etc., R. Co., (Tex. Civ. App. 1907) 102 S. W. 936; St. Louis Southwestern R. Co. *v.* Starks, (Tex. Civ. App. 1908) 109 S. W. 1003; Ft. Worth, etc., R. Co. *v.* Day, (Tex. Civ. App. 1908) 111 S. W. 663.

As indicating the view that the defendant's evidence may shift the burden to the plaintiff, see Casper *v.* New Orleans R., etc., Co., (La. 1908) 46 So. 666.

Explanation. — Many of the cases say that an "explanation" is called for or that it is for the defendant "to explain."

United States. — Cincinnati, etc., R. Co. *v.* South Fork Coal Co., (C. C. A.) 139 Fed. 528.

District of Columbia. — Kehan *v.* Washington R., etc., Co., 28 App. Cas. (D. C.) 108.

Illinois. — Alton Light, etc., Co. *v.* Oller, 119 Ill. App. 181; Harley *v.* Aurora, etc., R. Co., 128 Ill. App. 643.

Indiana. — Knoefel *v.* Atkins, (Ind. App. 1907) 81 N. E. 600.

Kentucky. — Louisville, etc., R. Co. *v.* Board, (Ky. 1906) 90 S. W. 944.

Louisiana. — Willis *v.* Vicksburg, etc., R. Co., 115 La. 53, 38 So. 892.

Maryland. — Decola *v.* Cowan, 102 Md. 551, 62 Atl. 1026.

Massachusetts. — Magee *v.* New York, etc., R. Co., 195 Mass. 111, 80 N. E. 689.

Mississippi. — Brown *v.* Yazoo, etc., R. Co., 88 Miss. 687, 41 So. 383.

Missouri. — Brod *v.* St. Louis Transit Co., 115 Mo. 202, 91 S. W. 993.

New Jersey. — Mumma *v.* Easton, etc., R. Co., 73 N. J. L. 653, 65 Atl. 208.

New York. — O'Leary *v.* Glens Falls Gas, etc., Co., 107 N. Y. App. Div. 505, 95 N. Y. Supp. 232; Schnizer *v.* Phillips, 108 N. Y. App. Div. 17, 95 N. Y. Supp. 478; Lomas *v.* New York City R. Co., 111 N. Y. App. Div. 332, 97 N. Y. Supp. 658; Weir *v.* Union R. Co., 112 N. Y. App. Div. 109, 98 N. Y. Supp. 268; Paine *v.* Geneva, etc., Traction Co., 115 N. Y. App. Div. 729, 101 N. Y. Supp. 204; Glassman *v.* Surpless, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 586, 103 N. Y. Supp. 789; Eaton *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 419; Konigsberg *v.* Davis, (Supm.

Ct. App. T.) 108 N. Y. Supp. 595; Moglia *v.* Nassau Electric R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 70.

North Carolina. — Marable *v.* Southern R. Co., 142 N. Car. 557, 55 S. E. 355.

Ohio. — Wheeler *v.* Northern Ohio Traction Co., 27 Ohio Cir. Ct. 517.

Rhode Island. — O'Clair *v.* Rhode Island Co., 27 R. I. 448, 63 Atl. 238; Brown *v.* Batchellor, (R. I. 1908) 69 Atl. 295.

West Virginia. — Bice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

The defendant may make its explanation, if possible, from the plaintiff's own evidence. Metropolitan St. R. Co. *v.* Warren, 74 Kan. 244, 86 Pac. 131; Goss *v.* Northern Pac. R. Co., 48 Oregon 439, 87 Pac. 149.

514. 1. *United States.* — Northern Pac. R. Co. *v.* Dixon, (C. C. A.) 139 Fed. 737; McDonnell *v.* Oceanic Steam Nav. Co., (C. C. A.) 143 Fed. 480; Southern R. Co. *v.* Stutts, (C. C. A.) 144 Fed. 948; Leonard *v.* Miami Min. Co., (C. C. A.) 148 Fed. 827; Pennsylvania R. Co. *v.* McCaffrey, (C. C. A.) 149 Fed. 404; Carnegie Steel Co. *v.* Byers, (C. C. A.) 149 Fed. 667; Ozanne *v.* Illinois Cent. R. Co., 151 Fed. 900; Southern R. Co. *v.* Carr, (C. C. A.) 153 Fed. 106; Omaha Packing Co. *v.* Sanduski, (C. C. A.) 155 Fed. 897.

Alabama. — Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822; Tutwiler Coal, etc., Co. *v.* Farrington, 144 Ala. 157, 39 So. 898; Redus *v.* Milner Coal, etc., Co., (Ala. 1906) 41 So. 634; Birmingham Rolling Mill Co. *v.* Rockhold, 143 Ala. 115, 42 So. 96; Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238.

Arkansas. — St. Louis, etc., R. Co. *v.* Andrews, 79 Ark. 437, 96 S. W. 183; Waters-Pierce Oil Co. *v.* Knisel, 79 Ark. 608, 96 S. W. 342; Perdue *v.* St. Louis Southwestern R. Co., 82 Ark. 172, 100 S. W. 901; St. Louis, etc., R. Co. *v.* Wells, 82 Ark. 372, 101 S. W. 738; St. Louis, etc., R. Co. *v.* Raines, (Ark. 1908) 111 S. W. 262.

California. — Thompson *v.* California Constr. Co., 148 Cal. 35, 82 Pac. 367; Valente *v.* Sierra R. Co., 151 Cal. 534, 91 Pac. 481.

Connecticut. — Garfield *v.* Hartford, etc., St. R. Co., (Conn. 1907) 67 Atl. 890.

Delaware. — Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874; Green *v.* Newark, 5 Penn. (Del.) 316, 62 Atl. 792; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Barker *v.* Collins, (Del. 1906) 63 Atl. 686; Robinson *v.* Huber, (Del. 1906) 63 Atl. 873; White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Davis *v.* People's R. Co., 5 Penn. (Del.) 253, 64 Atl. 70; Graboski *v.* New Castle Leather Co., (Del. 1906) 64 Atl. 74; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589; Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148; Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153; Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173; Anderson *v.* Wilmington, (Del. 1907) 70 Atl. 204.

District of Columbia. — Butler *v.* Frazee, 25 App. Cas. (D. C.) 392.

Georgia. — Southern R. Co. *v.* Reynolds, 126 Ga. 657, 55 S. E. 1039; Taylor *v.* American Clay Co., 3 Ga. App. 295, 59 S. E. 829.

Illinois. — Illinois Cent. R. Co. *v.* Heath, 228 Ill. 312, 81 N. E. 1022; Goodman *v.* Bigler, 133 Ill. App. 301.

Indiana. — Indianapolis St. R. Co. *v.* James, 35 Ind. App. 543, 74 N. E. 536; Fletcher *v.* Kelly, 37 Ind. App. 254, 76 N. E. 813; Indianapolis *v.* Mullally, 38 Ind. App. 125, 77 N. E. 1132; Baltimore, etc., Southwestern R. Co. *v.* O'Brien, 38 Ind. App. 143, 77 N. E. 1131; Adams *v.* Central Indiana R. Co., 38 Ind. App. 607, 78 N. E. 687.

Indian Territory. — Brunson *v.* Southwestern Development Co., (Indian Ter. 1907) 104 S. W. 593; Missouri, etc., R. Co. *v.* McCoy, (Indian Ter. 1907) 104 S. W. 620; Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182.

Iowa. — Neal *v.* Chicago, etc., R. Co., 129 Iowa 5, 105 N. W. 197; Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359; Tobin *v.* Waterloo, 131 Iowa 75, 107 N. W. 1031; Gibson *v.* Iowa Cent. R. Co., (Iowa 1907) 113 N. W. 927.

Kentucky. — Cincinnati, etc., R. Co. *v.* Zachary, (Ky. 1908) 106 S. W. 842.

Louisiana. — Harris *v.* Tremont Lumber Co., 115 La. 973, 40 So. 374; Meyers *v.* Ruddock Orleans Cypress Co., 118 La. 805, 43 So. 448.

Maine. — Towle *v.* Morse, (Me. 1907) 68 Atl. 1044.

Maryland. — Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202; Miller *v.* United R., etc., Co., (Md. 1908) 69 Atl. 636; Merchants', etc., Transp. Co. *v.* State, (Md. 1908) 70 Atl. 413.

Massachusetts. — Saxe *v.* Walworth Mfg. Co., 191 Mass. 338, 77 N. E. 883; Halloran *v.* Worcester Consol. St. R. Co., 192 Mass. 104, 78 N. E. 381; Johnson *v.* J. M. Guffey Petroleum Co., (Mass. 1908) 83 N. E. 874.

Michigan. — Warren *v.* Porter, 141 Mich. 699, 108 N. W. 435; Allen *v.* Bainbridge, 145 Mich. 366, 108 N. W. 732.

Minnesota. — Ulseth *v.* Crookston Lumber Co., 97 Minn. 178, 106 N. W. 307; Rogers *v.* Minneapolis, etc., R. Co., 99 Minn. 34, 108 N. W. 868; Cederberg *v.* Minneapolis, etc., R. Co., 101 Minn. 100, 111 N. W. 953.

Missouri. — Kennedy *v.* Kansas City, etc., R. Co., 190 Mo. 424, 89 S. W. 370; Schmitt *v.* St. Louis Transit Co., 115 Mo. App. 445, 90 S. W. 421; Devoy *v.* St. Louis Transit Co., 192 Mo. 107, 91 S. W. 141; Dakan *v.* G. W. Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944; Kremer *v.* Eagle Mfg. Co., 120 Mo. App. 247, 96 S. W. 726; Woas *v.* St. Louis Transit Co., 198 Mo. 664, 96 S. W. 1017; Lovell *v.* Kansas City Southern R. Co., 121 Mo. App. 466, 97 S. W. 193; Burke *v.* St. Louis Southwestern R. Co., 120 Mo. App. 683, 97 S. W. 981; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Luecke *v.* Graham, 123 Mo. App. 212, 100 S. W. 505.

Montana. — Nord *v.* Boston, etc., Consol. Copper, etc., Min. Co., 33 Mont. 464, 84 Pac. 1116.

Nebraska. — Lincoln Traction Co. *v.* Shepherd, 74 Neb. 369, 104 N. W. 882; Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182; Lincoln Traction Co. *v.* Brookover, (Neb. 1906) 109 N. W. 168; Struble *v.* DeWitt, (Neb. 1908) 116 N. W. 154; Maxson *v.* J. I. Case Threshing Mach. Co., (Neb. 1908) 116 N. W. 281.

New Jersey. — Stumpf *v.* Delaware, etc., R. Co., (N. J. 1908) 69 Atl. 207.

New York. — Dubme *v.* Hamburg American Packet Co., 184 N. Y. 404, 77 N. E. 386; Pearsall *v.* New York Cent., etc., R. Co., 189 N. Y. 474, 82 N. E. 752; Babbitt *v.* Erie R. Co., 108 N. Y. App. Div. 74, 95 N. Y. Supp. 429; Morhard *v.* Richmond Light, etc., Co., 111 N. Y. App. Div. 353, 98 N. Y. Supp. 124; Molloy *v.* Starin, 113 N. Y. App. Div. 852, 99 N. Y. Supp. 603; Reynolds *v.* Strong, (Supm. Ct. App. T.) 103 N. Y. Supp. 106.

North Carolina. — Pegram *v.* Seaboard Air Line R. Co., 139 N. Car. 303, 51 S. E. 975; Kearns *v.* Southern R. Co., 139 N. Car. 470, 52 S. E. 131; Duffy *v.* Atlantic, etc., R. Co., 144 N. Car. 26, 56 S. E. 557; Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945; Horton *v.* Seaboard Air Line R. Co., 145 N. Car. 132, 58 S. E. 993; Wagner *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 61 S. E. 171.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076.

Oregon. — Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389; Finn *v.* Oregon Water Power, etc., Co., (Oregon 1908) 93 Pac. 690; Fredenthal *v.* Brown, (Oregon 1908) 95 Pac. 1114.

Pennsylvania. — Weaver *v.* Pennsylvania R. Co., 212 Pa. St. 632, 61 Atl. 1117; Hanna *v.* Philadelphia, etc., R. Co., 213 Pa. St. 157, 62 Atl. 643; Sowers *v.* McManus, 214 Pa. St. 244, 63 Atl. 601; Dalton *v.* Towanda, 215 Pa. St. 402, 64 Atl. 547; Davis *v.* Pennsylvania R. Co., 218 Pa. St. 463, 67 Atl. 777.

South Carolina. — Green *v.* Southern R. Co., 72 S. Car. 398, 52 S. E. 45; Horn *v.* Southern R. Co., 78 S. Car. 67, 58 S. E. 963.

Texas. — McCabe *v.* San Antonio Traction Co., (Tex. Civ. App. 1905) 88 S. W. 387; Hutchens *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 89 S. W. 24; Beaty *v.* El Paso Electric R. Co., (Tex. Civ. App. 1906) 91 S. W. 365; El Paso Electric R. Co. *v.* Boer, (Tex. Civ. App. 1908) 108 S. W. 198.

Vermont. — Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807; Kiley *v.* Rutland R. Co., 80 Vt. 536, 68 Atl. 713; McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124.

Virginia. — Norfolk, etc., R. Co. *v.* McDonald, 106 Va. 207, 55 S. E. 554; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321; Southern R. Co. *v.* Moore, (Va. 1908) 61 S. E. 747; Norfolk, etc., Traction Co. *v.* Ellington, (Va. 1908) 61 S. E. 779.

West Virginia. — Hanley *v.* West Virginia Cent., etc., R. Co., 59 W. Va. 419, 53 S. E. 625; Comer *v.* Ritter Lumber Co., 59 W. Va. 688, 53 S. E. 906.

Wisconsin. — Eichmann *v.* Buchheit, 128 Wis. 385, 107 N. W. 325; Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88.

Where the plaintiff's evidence is as consistent with the absence as with the existence of negligence on the part of the defendant, no question for the jury is presented, Hummer *v.* Lehigh Valley R. Co., (N. J. 1907) 67 Atl. 1061.

515. 3. St. Louis, etc., R. Co. *v.* Jones, 76 Ark. 344, 88 S. W. 961; Sterns Coal Co. *v.* Evans, (Ky. 1908) 111 S. W. 308.

4. Rio Grande Western R. Co. *v.* Boyd, (Colo. 1908) 96 Pac. 781; Jager *v.* Metropolitan St. R. Co., 114 Mo. App. 10, 89 S. W. 62.

5. Chicago, etc., R. Co. *v.* Steckman, 125 Ill. App. 299; Rietveld *v.* Wabash R. Co., 129 Iowa 249, 105 N. W. 515; Wagoner *v.* Wabash R. Co., 197 Mo. 196, 94 S. W. 293; Lange *v.* Missouri Pac. R. Co., 208 Mo. 458, 106 S. W. 660; Daggett *v.* North Jersey St. R. Co., (N. J. 1907) 68 Atl. 179; Geoghegan *v.* Union R. Co., 122 N. Y. App. Div. 646, 107 N. Y. Supp. 503; Delahunt *v.* United Telephone, etc., Co., 215 Pa. St. 241, 64 Atl. 515; Tilden *v.* Rhode Island Co., 27 R. I. 482, 63 Atl. 675; International, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 595; St. Louis, etc., R. Co. *v.* Hooser, (Tex. Civ. App. 1906) 97 S. W. 708.

6. Dougherty *v.* Chicago, etc., R. Co., (S. Dak. 1905) 104 N. W. 672; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 910.

Doctrine that Statement of Shifting Burden Technically Inaccurate. — Chicago Union Traction Co. *v.* Mee, 218 Ill. 9, 75 N. E. 800; Lincoln Traction Co. *v.* Brookover, (Neb. 1906) 109 N. W. 168; St. Louis, etc., R. Co. *v.* Hooser, (Tex. Civ. App. 1906) 97 S. W. 708.

516. 1. Cody *v.* Market St. R. Co., 148 Cal. 90, 82 Pac. 666; Valente *v.* Sierra R. Co., 151 Cal. 534, 91 Pac. 481; Bonneau *v.* North Shore R. Co., (Cal. 1907) 93 Pac. 106; Chicago Union Traction Co. *v.* Leonard, 126 Ill. App. 189; Elgin, etc., Traction Co. *v.* Hench, 132 Ill. App. 535; Lincoln Traction Co. *v.* Shepherd, 74 Neb. 369, 104 N. W. 882; Wood *v.* Wyeth, 106 N. Y. App. Div. 21, 94 N. Y. Supp. 360; Winslow *v.* Norfolk Hardwood Co., (N. Car. 1908) 60 S. E. 1130; Klunk *v.* Hocking Valley R. Co., 74 Ohio St. 125, 77 N. E. 752; St. Louis, etc., R. Co. *v.* Hooser, (Tex. Civ. App. 1906) 97 S. W. 708.

It seems to be the rule in *West Virginia* that the presumption where the maxim of *res ipsa loquitur* applies must be overbalanced. Bice *v.* Wheeling Electrical Co., (W. Va. 1907) 59 S. E. 626.

Question for Jury. — Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389.

2. *United States.* — Omaha Packing Co. *v.* Sanduski, (C. C. A.) 155 Fed. 897.

Alabama. — Creola Lumber Co. *v.* Mills, (Ala. 1906) 42 So. 1019; Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238.

Arkansas. — Little Rock R., etc., Co. *v.* Newman, 77 Ark. 599, 92 S. W. 864; St. Louis, etc., R. Co. *v.* Stites, 80 Ark. 72, 95 S. W. 1004.

Delaware. — Bowring *v.* Wilmington Malleable Iron Co., 5 Penn. (Del.) 594, 66 Atl. 369; Coughlan *v.* Philadelphia, etc., R. Co., (Del. 1907) 67 Atl. 148; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Florida. — Gracy *v.* Atlantic Coast Line R. Co., 53 Fla. 350, 42 So. 903.

Illinois. — Burke *v.* Hulett, 216 Ill. 545, 75 N. E. 240; Chicago R. Co. *v.* Schmidt, 217 Ill. 396, 75 N. E. 383; Rosan *v.* Big Muddy Coal, etc., Co., 128 Ill. App. 128; Goodman *v.* Bigler, 133 Ill. App. 301; Wilson *v.* Chicago City R. Co., 133 Ill. App. 433.

Indiana. — Indianapolis St. R. Co. *v.* James, 35 Ind. App. 543, 74 N. E. 536; Southern Indiana R. Co. *v.* Messick, 35 Ind. App. 676, 74 N. E. 1097; Indianapolis *v.* Mullally, 38 Ind. App. 125, 77 N. E. 1132; Grand Trunk Western R. Co. *v.* Melrose, 166 Ind. 658, 78 N. E. 190; Louisville, etc., R. Co. *v.* Vinyard, 39 Ind. App. 628, 79 N. E. 384.

Indian Territory. — Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182.

Iowa. — Neal *v.* Chicago, etc., R. Co., 129 Iowa 5, 105 N. W. 197; O'Connor *v.* Chicago, etc., R. Co., 129 Iowa 636, 106 N. W. 161; Martin *v.* Des Moines Edison Light Co., 131 Iowa 724, 106 N. W. 359; Gibson *v.* Iowa Cent. R. Co., (Iowa 1907) 113 N. W. 927.

Louisiana. — Whitworth *v.* South Arkansas Lumber Co., (La. 1908) 46 So. 912.

Maine. — Towle *v.* Morse, (Me. 1907) 68 Atl. 1044.

Maryland. — Strasburger *v.* Vogel, 103 Md. 85, 63 Atl. 202; Geiselman *v.* Schmidt, (Md. 1907) 68 Atl. 202; Mattingly *v.* Montgomery, (Md. 1907) 68 Atl. 205.

Massachusetts. — Childs *v.* American Express Co., (Mass. 1908) 84 N. E. 128.

Michigan. — Warren *v.* Porter, 144 Mich. 699, 108 N. W. 435.

Minnesota. — Rogers *v.* Minneapolis, etc., R. Co., 99 Minn. 34, 108 N. W. 868; Cederberg *v.* Minneapolis, etc., R. Co., 101 Minn. 100, 111 N. W. 953.

Missouri. — Kennedy *v.* Kansas City, etc., R. Co., 190 Mo. 424, 89 S. W. 370; Schmitt *v.* St. Louis Transit Co., 115 Mo. App. 445, 90 S. W. 421; Devoy *v.* St. Louis Transit Co., 192 Mo. 197, 91 S. W. 140; Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453; McFern *v.* Gardner, 121 Mo. App. 1, 97 S. W. 972.

Montana. — Nord *v.* Boston, etc., Consol. Copper, etc., Min. Co., 33 Mont. 464, 84 Pac. 1116.

Nebraska. — Lincoln Traction Co. *v.* Shepherd, 74 Neb. 369, 104 N. W. 882.

New Hampshire. — Hamel *v.* Newmarket Mfg. Co., 73 N. H. 386, 62 Atl. 592.

New Jersey. — Stumpf *v.* Delaware, etc., R. Co., (N. J. 1908) 69 Atl. 207.

New York. — Cunningham *v.* Dady, 191 N. Y. 152, 83 N. E. 689; Cobb *v.* United Engineering, etc., Co., 191 N. Y. 475, 84 N. E. 395; Menzies *v.* Interstate Paving Co., 106 N. Y. App. Div. 107, 94 N. Y. Supp. 492; Burnos *v.* American Sugar Refining Co., 107 N. Y. App. Div. 286, 94 N. Y. Supp. 1104; Morhard *v.* Richmond Light, etc., Co., 111 N. Y. App. Div. 353, 98 N. Y. Supp. 124; Lane *v.* New York Contracting Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 91.

North Carolina. — Byrd *v.* Southern Express Co., 139 N. Car. 273, 51 S. E. 851; Pegram *v.* Seaboard Air Line R. Co., 139 N. Car. 303, 51 S. E. 975; Kearns *v.* Southern R. Co., 139 N. Car. 470, 52 S. E. 131; Duffy *v.* Atlantic, etc., R. Co., 144 N. Car. 26, 56 S. E. 557; Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945; Wagner *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 61 S. E. 171.

North Dakota. — Morrison *v.* Lee, (N. Dak. 1907) 113 N. W. 1025.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076.

Pennsylvania. — Stewart *v.* De Noon, (Pa. 1908) 69 Atl. 587; Bannon *v.* Pennsylvania R. Co., 29 Pa. Super. Ct. 231.

South Carolina. — Horn *v.* Southern R. Co., 78 S. Car. 67, 58 S. E. 963.

Texas. — Missouri, etc., R. Co. *v.* Greenwood, (Tex. Civ. App. 1905) 89 S. W. 810; Missouri, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 702; Beaty *v.* El Paso Electric R. Co., (Tex. Civ. App. 1905) 91 S. W. 365; El Paso Electric R. Co. *v.* Kitt, (Tex. Civ. App. 1907) 99 S. W. 587.

Vermont. — McDuffee *v.* Boston, etc., R. Co., (Vt. 1908) 69 Atl. 124.

Virginia. — Southern R. Co. *v.* Moore, (Va. 1908) 61 S. E. 747.

Washington. — Shannon *v.* Tacoma, 41 Wash. 220, 83 Pac. 186.

West Virginia. — Bare *v.* Crane Creek Coal, etc., Co., 61 W. Va. 28, 55 S. E. 907.

But it has been held that where the negligence, if any, is necessarily the proximate cause of the injury, it is error for the court to charge that the plaintiff must prove both that the damage was through the defendant's negligence and that such negligence was the proximate cause thereof. McFarland *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 450.

4. *Illinois.* — Koshinski *v.* Illinois Steel Co., 231 Ill. 198, 83 N. E. 149.

Iowa. — Neal *v.* Chicago, etc., R. Co., 129 Iowa 5, 105 N. W. 197; O'Connor *v.* Chicago, etc., R. Co., 129 Iowa 636, 106 N. W. 161; Tibbitts *v.* Mason City, etc., R. Co., (Iowa 1908) 115 N. W. 1021.

Kentucky. — Dana *v.* Blackburn, (Ky. 1906) 90 S. W. 237; Hollon *v.* Campton Fuel, etc., Co., (Ky. 1907) 105 S. W. 426; Louisville, etc., R. Co. *v.* Guest, (Ky. 1908) 106 S. W. 817; Black *v.* Southern R. Co., (Ky. 1908) 108 S. W. 856; Louisville, etc., R. Co. *v.* Scalf, (Ky. 1908) 110 S. W. 862.

Massachusetts. — Saxe *v.* Walworth Mfg. Co., 191 Mass. 338, 77 N. E. 883.

Michigan. — Clark *v.* Goldie, 146 Mich. 303, 109 N. W. 1044.

Missouri. — Young *v.* Missouri Pac. R. Co., 113 Mo. App. 636, 88 S. W. 767; Caudle *v.* Kirkbridge, 117 Mo. App. 412, 93 S. W. 868; DeMalt *v.* Fidelity Storage, etc., Co., 121 Mo. App. 92, 96 S. W. 1045; Thornberry *v.* Old Judge Min. Co., 126 Mo. App. 660, 105 S. W. 659; Byerly *v.* Consolidated Light, etc., Co., (Mo. App. 1908) 109 S. W. 1065.

Nebraska. — Shipman *v.* Chicago, etc., R. Co., (Neb. 1907) 110 N. W. 535.

New Jersey. — Stumpf *v.* Delaware, etc., R. Co., (N. J. 1908) 69 Atl. 207.

New York. — Rayner *v.* Metropolitan St. R. Co., 106 N. Y. App. Div. 449, 94 N. Y. Supp. 632; Jones *v.* Ryan, (Supm. Ct. App. Div.) 109 N. Y. Supp. 156.

Pennsylvania. — Ott *v.* Boggs, (Pa. 1908) 69 Atl. 61.

Washington. — Imeson *v.* Tacoma R., etc.,

Co., 42 Wash. 74, 84 Pac. 624; Gardner *v.* Porter, 45 Wash. 158, 88 Pac. 121.

Wisconsin. — Schell *v.* Chicago, etc., R. Co., (Wis. 1907) 113 N. W. 657.

But this Rule Does Not Apply, it has been held, "unless the existence of a sufficient cause or causes for the injury, aside from the negligence charged, is conceded or conclusively proved." Boucher *v.* Larochelle, (N. H. 1908) 68 Atl. 870.

5. Eriksson *v.* Goodwin, (C. C. A.) 154 Fed. 351; Choctaw, etc., R. Co. *v.* Doughty, 77 Ark. 1, 91 S. W. 768; Florala Sawmill Co. *v.* Smith, (Fla. 1908) 46 So. 332; Illinois Cent. R. Co. *v.* Leisure, (Ky. 1906) 90 S. W. 269; Covington *v.* Webster, (Ky. 1908) 110 S. W. 878; Moerman *v.* Clark-Rutka-Weaver Co., 145 Mich. 540, 108 N. W. 988; Wilson *v.* Escanaba Woodenware Co., (Mich. 1908) 116 N. W. 198; Engle *v.* La Crosse Dredging Co., (Minn. 1908) 117 N. W. 242; Dunphy *v.* St. Joseph Stockyards Co., 118 Mo. App. 506, 95 S. W. 301; Mack *v.* Chicago, etc., R. Co., 123 Mo. App. 531, 101 S. W. 142; Sproule *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1906) 91 S. W. 657; Virginia Iron, etc., Co. *v.* Tomlinson, 104 Va. 249, 51 S. E. 362; Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973.

The precise intervening immediate cause need not be shown when it is clear that the proximate cause of the accident was the negligence of the defendant. Webster *v.* Stewart Iron Works Co., (Ky. 1907) 104 S. W. 708.

It is important to determine as between two acts or omissions of the defendant, which was the proximate cause of the injury, in those cases where the plaintiff has pleaded only one of them. Cameron *v.* Citizens' Traction Co., 216 Pa. St. 191, 65 Atl. 534.

6. *United States.* — Northern Pac. R. Co. *v.* Wendel, (C. C. A.) 156 Fed. 336.

Connecticut. — Garfield *v.* Hartford, etc., St. R. Co., (Conn. 1907) 67 Atl. 890.

Delaware. — Waller *v.* Wilmington City R. Co., 5 Penn. (Del.) 374, 61 Atl. 874; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Hannigan *v.* Wright, 5 Penn. (Del.) 537, 63 Atl. 234; Barker *v.* Collins, (Del. 1906) 63 Atl. 686; Jemnienski *v.* Lobdell Car Wheel Co., 5 Penn. (Del.) 385, 63 Atl. 935; Wood *v.* Wilmington City R. Co., 5 Penn. (Del.) 369, 64 Atl. 246.

Florida. — Jacksonville Electric Co. *v.* Sloan, 52 Fla. 257, 42 So. 516.

Illinois. — Chicago R. Co. *v.* Schmidt, 217 Ill. 396, 75 N. E. 383; Chicago Union Traction Co. *v.* Mee, 218 Ill. 9, 75 N. E. 800; Harvey *v.* Chicago, etc., R. Co., 221 Ill. 242, 77 N. E. 569; Illinois Cent. R. Co. *v.* Warriner, 229 Ill. 91, 82 N. E. 246; Davis *v.* Illinois Collieries Co., 232 Ill. 284, 83 N. E. 836; Chicago City R. Co. *v.* Nelson, 116 Ill. App. 609; Libby *v.* Kearney, 124 Ill. App. 339; Illinois Steel Co. *v.* Koshinski, 135 Ill. App. 587.

Indiana. — Pittsburgh, etc., R. Co. *v.* Collins, 168 Ind. 467, 80 N. E. 415; Cleveland, etc., R. Co. *v.* Henry, (Ind. App. 1907) 80 N. E. 636; Indianapolis St. R. Co. *v.* James, 35 Ind. App. 543, 74 N. E. 536; Baltimore, etc., R. Co. *v.* Kleespies, 39 Ind. App. 151, 76 N. E. 1015; Southern Indiana R. Co. *v.* Baker, 37 Ind. App. 405, 77 N. E. 64; Indianapolis Traction, etc., Co. *v.* Holtsclaw, (Ind. App. 1907) 82 N. E. 986; Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510; Hammond, etc., Electric R. Co. *v.* Antonia, (Ind. App. 1908) 83 N. E. 766.

Iowa. — O'Connor *v.* Chicago, etc., R. Co., 129 Iowa 636, 106 N. W. 161; Madden *v.* Saylor Coal Co., 133 Iowa 699, 111 N. W. 57.

Louisiana. — McDonnell *v.* New Orleans Cypress Co., 115 La. 67, 38 So. 896; Harris *v.* Tremont Lumber Co., 115 La. 973, 40 So. 374.

Massachusetts. — Woodall *v.* Boston El. R. Co., 192 Mass. 308, 78 N. E. 446; Soebel *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 3; Sullivan *v.* Old Colony St. R. Co., (Mass. 1908) 83 N. E. 1091.

Michigan. — Miller *v.* Detroit United R. Co., 144 Mich. 1, 107 N. W. 714; Warren *v.* Porter, 144 Mich. 699, 108 N. W. 435; Allen *v.* Bainbridge, 145 Mich. 366, 108 N. W. 732.

Minnesota. — Lee *v.* Wild Rice Lumber Co., 102 Minn. 74, 112 N. W. 887.

Missouri. — Thein *v.* Gus V. Brecht Butchers' Supply Co., 116 Mo. App. 1, 91 S. W. 953; Barrie *v.* St. Louis Transit Co., 119 Mo. App. 38, 96 S. W. 233; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737.

Nebraska. — Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182; Lincoln Traction Co. *v.* Brookover, (Neb. 1906) 109 N. W. 168; Struble *v.* DeWitt, (Neb. 1908) 116 N. W. 154.

New Jersey. — Brink *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 705.

New York. — Cunningham *v.* Dady, 191 N. Y. 152, 83 N. E. 689; Mosesco *v.* Interborough Rapid Transit Co., 113 N. Y. App. Div. 517, 99 N. Y. Supp. 345; Nocera *v.* Brooklyn Heights R. Co., 113 N. Y. App. Div. 419, 99 N. Y. Supp. 349.

North Carolina. — Kearns *v.* Southern R. Co., 139 N. Car. 470, 52 S. E. 131; Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Oklahoma. — Oklahoma Gas, etc., Co. *v.* Lukert, 16 Okla. 397, 84 Pac. 1076.

South Carolina. — Montgomery *v.* Seaboard Air Line R. Co., 73 S. Car. 503, 53 S. E. 987; Horn *v.* Southern R. Co., 78 S. Car. 67, 58 S. E. 963.

Texas. — Missouri, etc., R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 89 S. W. 991; Beaty *v.* El Paso Electric Co., (Tex. Civ. App. 1905) 91 S. W. 365; Houston, etc., R. Co. *v.* Beard, (Tex. Civ. App. 1906) 93 S. W. 532; Gulf, etc., R. Co. *v.* Archambault, (Tex. Civ. App. 1906) 94 S. W. 1108; El Paso Electric R. Co. *v.* Kitt, (Tex. Civ. App. 1907) 99 S. W. 587; International, etc., R. Co. *v.* Tasby, (Tex. Civ. App. 1907) 100 S. W. 1030; St. Louis Southwestern R. Co. *v.* Smith, (Tex. Civ. App. 1908) 107 S. W. 638.

Utah. — Hickey *v.* Rio Grande Western R. Co., 29 Utah 392, 82 Pac. 29.

Virginia. — Virginia Iron, etc., Co. *v.* Kiser, 105 Va. 695, 54 S. E. 889; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321; Richmond *v.* Pemberton, (Va. 1908) 61 S. E. 787.

Washington. — Schwaninger *v.* McNeeley, 44 Wash. 447, 87 Pac. 514.

Wisconsin. — Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88; Hardt *v.*

Chicago, etc., R. Co., 130 Wis. 512, 110 N. W. 427.

As intimating some doubt as to whether a "fair" preponderance of the evidence is sufficient, see Rimmer *v.* Wilson, (Colo. 1908) 93 Pac. 1110.

7. *California.* — Hersberger *v.* Pacific Lumber Co., 4 Cal. App. 460, 88 Pac. 587.

Connecticut. — Bradbury *v.* South Norwalk, (Conn. 1907) 68 Atl. 321.

Illinois. — Chicago Consol. Traction Co. *v.* Schritter, 222 Ill. 364, 78 N. E. 820.

Indian Territory. — Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Massachusetts. — Woodall *v.* Boston El. R. Co., 192 Mass. 308, 78 N. E. 446; McNicholas *v.* New England Telephone, etc., Co., (Mass. 1907) 81 N. E. 889.

Michigan. — Harker *v.* Detroit United R. Co., 150 Mich. 697, 114 N. W. 657.

Mississippi. — Brister *v.* Illinois Cent. R. Co., 88 Miss. 431, 40 So. 325.

Missouri. — Dakan *v.* G. W. Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944.

Virginia. — Wood *v.* Southern R. Co., 104 Va. 650, 52 S. E. 371.

Washington. — Rowe *v.* Whatcom County R., etc., Co., 44 Wash. 658, 87 Pac. 921; Garretson *v.* Tacoma R., etc., Co., (Wash. 1908) 96 Pac. 511.

Wisconsin. — Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 809.

Reasonable Satisfaction of Jury Sufficient. — Birmingham R., etc., Co. *v.* Martin, (Ala. 1906) 42 So. 618; Mobile, etc., R. Co. *v.* Glover, (Ala. 1907) 43 So. 719; Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844.

But it is often said that the jury should be "satisfied." Simeone *v.* Lindsay, (Del. 1907) 65 Atl. 778; Reiss *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 153; Smithers *v.* Wilmington City R. Co., (Del. 1907) 67 Atl. 167; Pearce *v.* Quincy Min. Co., 149 Mich. 112, 112 N. W. 739; Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077; Eichmann *v.* Buchheit, 128 Wis. 385, 107 N. W. 325.

And it has been intimated that an instruction which uses the expression "fair" preponderance of the evidence should direct that the jury must be satisfied. Parker *v.* Fairbank-Morse Mfg. Co., 130 Wis. 525, 110 N. W. 400.

Every Other Reasonable Hypothesis Should Be Negatived. — Gibson *v.* Iowa Cent. R. Co., (Iowa 1907) 113 N. W. 927.

517. 1. Baker *v.* Harrington, (Mass. 1907) 82 N. E. 33.

2. *United States.* — Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397; Shankweiler *v.* Baltimore, etc., R. Co., (C. C. A.) 148 Fed. 195; Leonard *v.* Miami Min. Co., (C. C. A.) 148 Fed. 827; Pennsylvania R. Co. *v.* McCaffrey, (C. C. A.) 149 Fed. 404; Carnegie Steel Co. *v.* Byers, (C. C. A.) 149 Fed. 667; Moit *v.* Illinois Cent. R. Co., (C. C. A.) 153 Fed. 354; Payne *v.* Illinois Cent. R. Co., (C. C. A.) 155 Fed. 73; Chicago, etc., R. Co. *v.* Donaldson, (C. C. A.) 157 Fed. 821; Virginia, etc., R. Co. *v.* Hawk, 160 Fed. 348.

Alabama. — Johnson *v.* Birmingham R., etc., Co., (Ala. 1907) 43 So. 33.

Arkansas. — Walker *v.* Louis-Werner Sawmill Co., 76 Ark. 436, 88 S. W. 988.

Colorado. — Cyle *v.* Denver, etc., R. Co., 37 Colo. 298, 86 Pac. 1010.

Georgia. — Carter *v.* Central of Georgia R. Co., 3 Ga. App. 222, 59 S. E. 603.

Illinois. — Independent Brewing Assoc. *v.* Schaller, 128 Ill. App. 533; McCormick Harvesting Mach. Co. *v.* Gabris, 130 Ill. App. 624.

Iowa. — Neal *v.* Chicago, etc., R. Co., 129 Iowa 5, 105 N. W. 197; O'Connor *v.* Chicago, etc., R. Co., 129 Iowa 636, 106 N. W. 161.

Kentucky. — Louisville, etc., R. Co. *v.* Jolly, (Ky. 1906) 90 S. W. 977; Langhorn *v.* Nelson, (Ky. 1907) 99 S. W. 223; Hollon *v.* Campton Fuel, etc., Co., (Ky. 1907) 105 S. W. 426.

Maine. — Wells *v.* Northeastern Telephone Co., 101 Me. 371, 64 Atl. 648.

Maryland. — Baltimore, etc., R. Co. *v.* State, (Md. 1908) 69 Atl. 439.

Massachusetts. — Saxe *v.* Walworth Mfg. Co., 191 Mass. 338, 77 N. E. 883; Thomas *v.* Boston El. R. Co., 193 Mass. 438, 79 N. E. 749; Jameson *v.* Boston El. R. Co., 193 Mass. 560, 79 N. E. 750; Curtin *v.* Boston El. R. Co., 194 Mass. 260, 80 N. E. 522; Thompson *v.* National Fireworks Co., (Mass. 1907) 81 N. E. 256; Brodie *v.* Rockport Granite Co., (Mass. 1908) 83 N. E. 321.

Michigan. — Powers *v.* Pere Marquette R. Co., 143 Mich. 379, 106 N. W. 1117; Dolbee *v.* Detroit, etc., R. Co., 144 Mich. 656, 108 N. W. 99.

Minnesota. — Martyn *v.* Minnesota, etc., R. Co., 95 Minn. 333, 104 N. W. 133; Lehman *v.* Dwyer Plumbing, etc., Co., (Minn. 1908) 116 N. W. 352.

Missouri. — Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Leffler *v.* Anheuser-Busch Brewing Assoc., 127 Mo. App. 488, 106 S. W. 105.

Nebraska. — Kennedy *v.* Chicago, etc., R. Co., (Neb. 1907) 114 N. W. 165.

New Jersey. — Brink *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 705.

New York. — Duhme *v.* Hamburg-American Packet Co., 184 N. Y. 404, 77 N. E. 386; Kelly *v.* Delaware, etc., R. Co., 192 N. Y. 203, 84 N. E. 801; Rayner *v.* Metropolitan St. R. Co., 106 N. Y. App. Div. 449, 94 N. Y. Supp. 632; Gibbons *v.* Lehigh Valley R. Co., 122 N. Y. App. Div. 87, 106 N. Y. Supp. 543; Lane *v.* New York Contracting Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 91.

North Carolina. — Byrd *v.* Southern Express Co., 139 N. Car. 273, 51 S. E. 851; Kearns *v.* Southern R. Co., 139 N. Car. 470, 52 S. E. 131.

Pennsylvania. — Wagner *v.* Lehigh Traction Co., 212 Pa. St. 132, 61 Atl. 814; Sandt *v.* North Wales Foundry Co., 214 Pa. St. 215, 63 Atl. 596; Sowers *v.* McManus, 214 Pa. St. 244, 63 Atl. 601; Welch *v.* Carlucci Stone Co., 215 Pa. St. 34, 64 Atl. 392; Small *v.* Pittsburg R. Co., 216 Pa. St. 584, 66 Atl. 76; Clark *v.* A. Garrison Foundry Co., (Pa. 1908) 68 Atl. 974.

South Carolina. — Green *v.* Southern R. Co., 72 S. Car. 398, 52 S. E. 45.

Texas. — Missouri, etc., R. Co. *v.* Greenwood, (Tex. Civ. App. 1905) 89 S. W. 810; English *v.* International, etc., R. Co., (Tex. Civ. App. 1906) 98 S. W. 913.

Utah. — Edgar *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 745.

Virginia. — Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731; Virginia Iron, etc., Co. *v.* Kiser, 105 Va. 695, 54 S. E. 889; Norfolk, etc., R. Co. *v.* McDonald, 106 Va. 207, 55 S. E. 554; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

Washington. — Petersen *v.* Union Iron Works, (Wash. 1908) 93 Pac. 1077.

Wisconsin. — Chybowski *v.* Bucyrus Co., 127 Wis. 332, 106 N. W. 833; Hamann *v.* Milwaukee Bridge Co., 127 Wis. 550, 106 N. W. 1081.

3. *United States.* — Richerd *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 905; Kern *v.* Snider, (C. C. A.) 145 Fed. 327; Omaha Water Co. *v.* Schamel, (C. C. A.) 147 Fed. 502; Northern Pac. R. Co. *v.* Wendel, (C. C. A.) 156 Fed. 336; Grand Trunk R. Co. *v.* Flagg, (C. C. A.) 156 Fed. 359; Byers *v.* Carnegie Steel Co., (C. C. A.) 159 Fed. 347; American Smelting, etc., Co. *v.* McGee, (C. C. A.) 157 Fed. 69.

Arkansas. — St. Louis, etc., R. Co. *v.* Dawson, 77 Ark. 434, 92 S. W. 27; St. Louis, etc., R. Co. *v.* Clements, 82 Ark. 3, 99 S. W. 1106.

Colorado. — Colorado Midland R. Co. *v.* Snider, 38 Colo. 351, 88 Pac. 453; Hotchkiss Mt. Min., etc., Co. *v.* Bruner, (Colo. 1908) 94 Pac. 331.

Connecticut. — Bradbury *v.* South Norwalk, (Conn. 1907) 68 Atl. 321.

Idaho. — Adams *v.* Bunker Hill, etc., Min. Co., 12 Idaho 637, 89 Pac. 624.

Illinois. — Chicago Union Traction Co. *v.* Sawusch, 218 Ill. 130, 75 N. E. 797; Elgin, etc., R. Co. *v.* Hoadley, 220 Ill. 462, 77 N. E. 151; Chicago Union Traction Co. *v.* May, 221 Ill. 530, 77 N. E. 933.

Indiana. — Cleveland, etc., R. Co. *v.* Patterson, 37 Ind. App. 617, 75 N. E. 857; Baltimore, etc., Southwestern R. Co. *v.* O'Brien, 38 Ind. App. 143, 77 N. E. 1131; Toledo, etc., R. Co. *v.* Sullivan, (Ind. App. 1908) 83 N. E. 1024.

Iowa. — Huggard *v.* Glucose Sugar Refining Co., 132 Iowa 724, 109 N. W. 475; Ellis *v.* Republic Oil Co., 133 Iowa 11, 110 N. W. 20.

Kansas. — St. Louis, etc., R. Co. *v.* Johnson, 74 Kan. 83, 86 Pac. 156; St. Louis, etc., R. Co. *v.* Noland, 75 Kan. 691, 90 Pac. 273.

Kentucky. — Louisville, etc., R. Co. *v.* Clark, (Ky. 1908) 106 S. W. 1184; Moseley *v.* Black Diamond Coal, etc., Co., (Ky. 1908) 109 S. W. 306.

Massachusetts. — Woodall *v.* Boston El. R. Co., 192 Mass. 308, 78 N. E. 446; Erickson *v.* American Steel, etc., Co., 193 Mass. 119, 78 N. E. 761; Highland Foundry Co. *v.* New York, etc., R. Co., (Mass. 1908) 85 N. E. 437.

Michigan. — Brockmiller *v.* Industrial Works, 148 Mich. 642, 112 N. W. 688.

Minnesota. — Rogers *v.* Minneapolis, etc., R. Co., 99 Minn. 34, 108 N. W. 868; Smith *v.* Twin City Rapid Transit Co., 102 Minn. 4, 112 N. W. 1001; Neitge *v.* Chicago, etc., R. Co., (Minn. 1908) 114 N. W. 467.

Missouri. — Payne *v.* Quincy, etc., R. Co., 113 Mo. App. 609, 88 S. W. 164; England *v.* Wabash R. Co., (Mo. App. 1905) 90 S. W. 111; Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621; Dakan *v.* G. W. Chase, etc., Mercantile Co., 197 Mo. 238, 94 S. W. 944; Longree *v.* Jackson-Evans Mfg. Co., 120 Mo. App. 478, 97 S. W. 272; Big River Lead Co. *v.* St. Louis, etc., R. Co., 123 Mo. App. 394, 101 S. W. 636.

Nebraska. — Kearney County *v.* Chicago, etc., R. Co., (Neb. 1906) 108 N. W. 131.

New Hampshire. — Boucher *v.* Larochelle, (N. H. 1908) 68 Atl. 870; Staples *v.* Boston, etc., R. Co., (N. H. 1908) 69 Atl. 890.

New Jersey. — Minard *v.* West Jersey, etc., R. Co., (N. J. 1906) 64 Atl. 1054.

New York. — Kopper *v.* Yonkers, 110 N. Y. App. Div. 747, 97 N. Y. Supp. 425; Sallie *v.* New York City R. Co., 110 N. Y. App. Div. 665, 97 N. Y. Supp. 491; Morhard *v.* Richmond Light, etc., Co., 111 N. Y. App. Div. 353, 98 N. Y. Supp. 124; Kelly *v.* Wills, 116 N. Y. App. Div. 758, 102 N. Y. Supp. 223; Henson *v.* Lehigh Valley R. Co., 122 N. Y. App. Div. 160, 106 N. Y. Supp. 602; John Simmons Co. *v.* Piercy, (Supm. Ct. App. T.) 109 N. Y. Supp. 730.

North Carolina. — Fitzgerald *v.* Southern R. Co., 141 N. Car. 530, 54 S. E. 391.

Oklahoma. — Waters-Pierce Oil Co. *v.* Deselms, 18 Okla. 107, 89 Pac. 212.

Oregon. — Meier *v.* Northern Pac. R. Co., (Oregon 1908) 93 Pac. 691; Manning *v.* Portland Steel Ship Bldg. Co., (Oregon 1908) 96 Pac. 545.

Pennsylvania. — Morgan *v.* Westmoreland Electric Co., 213 Pa. St. 151, 62 Atl. 638; McCoy *v.* Ohio Valley Gas Co., 213 Pa. St. 367, 62 Atl. 858; Bardsley *v.* Gill, 218 Pa. St. 56, 66 Atl. 1112.

South Carolina. — Keys *v.* Winnsboro Granite Co., 72 S. Car. 97, 51 S. E. 549; Davis *v.* Charleston, etc., R. Co., 72 S. Car. 112, 51 S. E. 552; Devlin *v.* Charleston, etc., R. Co., (S. Car. 1908) 60 S. E. 1123.

Texas. — Galveston, etc., R. Co. *v.* Smith, (Tex. 1906) 98 S. W. 240; Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1907) 99 S. W. 743.

Virginia. — Virginia Iron, etc., Co. *v.* Tomlinson, 104 Va. 249, 51 S. E. 362.

Washington. — Jancko *v.* West Coast Mfg., etc., Co., 40 Wash. 230, 82 Pac. 284; Wick *v.* Tacoma Eastern R. Co., 40 Wash. 408, 82 Pac. 711; Harris *v.* Mt. Vernon, 41 Wash. 444, 83 Pac. 1023; Garretson *v.* Tacoma R., etc., Co., (Wash. 1908) 96 Pac. 511.

Wisconsin. — Zoesch *v.* Flambeau Paper Co., (Wis. 1908) 114 N. W. 485.

Canada. — Wallman *v.* Canadian Pac. R. Co., 16 Manitoba 82.

4. **Direct Proof Unnecessary as to Negligence or Causal Connection** — *United States.* — Puget Sound Nav. Co. *v.* Lavender, (C. C. A.) 160 Fed. 851.

Alabama. — Farley *v.* Mobile, etc., R. Co., (Ala. 1907) 42 So. 747.

Arkansas. — St. Louis, etc., R. Co. *v.* Stiles, 80 Ark. 72, 95 S. W. 1004; St. Louis, etc., R. Co. *v.* Clements, 82 Ark. 3, 99 S. W. 1106.

California. — Murray *v.* Llewellyn Iron Works Co., 4 Cal. App. 41, 87 Pac. 202.

Colorado. — Union Pac. R. Co. *v.* Shovall, 39 Colo. 436, 89 Pac. 764.

Georgia. — Swindell *v.* Alabama Midland R. Co., 123 Ga. 311, 51 S. E. 386; Southern R. Co. *v.* Herrington, 128 Ga. 438, 57 S. E. 694.

Indiana. — Baltimore, etc., Southwestern R.

Co. *v.* O'Brien, 38 Ind. App. 143, 77 N. E. 1131; Cleveland, etc., R. Co. *v.* Hayes, 167 Ind. 454, 79 N. E. 448; Toledo, etc., R. Co. *v.* Sullivan, (Ind. App. 1908) 83 N. E. 1024.

Iowa. — O'Connor *v.* Chicago, etc., R. Co., 129 Iowa 636, 106 N. W. 161; Helverson *v.* Chicago, etc., R. Co., (Iowa 1908) 116 N. W. 699.

Kansas. — St. Louis, etc., R. Co. *v.* Johnson, 74 Kan. 83, 86 Pac. 156; Atchison, etc., R. Co. *v.* Colliati, 75 Kan. 56, 88 Pac. 534.

Kentucky. — Cincinnati, etc., R. Co. *v.* Falconer, (Ky. 1906) 97 S. W. 727; Louisville, etc., R. Co. *v.* Bell, (Ky. 1908) 108 S. W. 355.

Maryland. — Western Maryland R. Co. *v.* Shivers, 101 Md. 391, 61 Atl. 618.

Minnesota. — Rogers *v.* Minneapolis, etc., R. Co., 99 Minn. 34, 108 N. W. 868.

Mississippi. — Brister *v.* Illinois Cent. R. Co., 88 Miss. 431, 40 So. 325.

Missouri. — Fields *v.* Missouri Pac. R. Co., 113 Mo. App. 642, 88 S. W. 134; Dunphy *v.* St. Joseph Stockyards Co., 118 Mo. App. 506, 95 S. W. 301; Dees *v.* St. Louis, etc., R. Co., 127 Mo. App. 353, 104 S. W. 485; Lynch *v.* Chicago, etc., R. Co., 208 Mo. 1, 106 S. W. 68.

Nebraska. — Kearney County *v.* Chicago, etc., R. Co., (Neb. 1906) 108 N. W. 131.

New York. — Jacobs *v.* New York Cent., etc., R. Co., 107 N. Y. App. Div. 134, 94 N. Y. Supp. 954; Babbitt *v.* Erie R. Co., 108 N. Y. App. Div. 74, 95 N. Y. Supp. 429.

North Carolina. — Fitzgerald *v.* Southern R. Co., 141 N. Car. 530, 54 S. E. 391.

Oklahoma. — Waters-Pierce Oil Co. *v.* Deselms, 18 Okla. 107, 89 Pac. 212.

Oregon. — Hawley *v.* Sumpter Valley R. Co., (Oregon 1907) 90 Pac. 1106; Meier *v.* Northern Pac. R. Co., (Oregon 1908) 93 Pac. 691.

Pennsylvania. — Hughes *v.* Fayette Mfg. Co., 214 Pa. St. 282, 63 Atl. 692; Bardsley *v.* Gill, 218 Pa. St. 56, 66 Atl. 1112; Stewart *v.* De Noon, (Pa. 1908) 69 Atl. 587.

Texas. — International, etc., R. Co. *v.* Trump, (Tex. Civ. App. 1906) 94 S. W. 903; Gulf, etc., R. Co. *v.* Blackeney-Stevens-Jackson Co., (Tex. Civ. App. 1908) 106 S. W. 1140.

Virginia. — Southern R. Co. *v.* Patterson, 105 Va. 6, 52 S. E. 694.

Washington. — Manning *v.* Portland Steel Ship Bldg. Co., (Oregon 1908) 96 Pac. 545.

5. *Alabama.* — Southern R. Co. *v.* Douglass, 144 Ala. 351, 39 So. 268; Alabama G. S. R. Co. *v.* Clarke, 145 Ala. 459, 39 So. 816.

Connecticut. — Bradbury *v.* South Norwalk, (Conn. 1907) 68 Atl. 321.

Delaware. — Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

Illinois. — Aurora, etc., R. Co. *v.* Gary, 123 Ill. App. 163; Swift *v.* O'Brien, 127 Ill. App. 26.

Iowa. — Walkup *v.* Beebe, (Iowa 1908) 116 N. W. 321; La Barge *v.* Union Electric Co., (Iowa 1908) 116 N. W. 816.

Missouri. — Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566; Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 90.

New York. — Moore *v.* Westchester Electric Co., 115 N. Y. App. Div. 62, 100 N. Y. Supp. 610.

North Carolina. — Davis *v.* Atlantic Coast Line R. Co., 145 N. Car. 95, 58 S. E. 798.

Ohio. — Cleveland, etc., Traction Co. *v.* Ward, 27 Ohio Cir. Ct. 761.

South Carolina. — Harbert *v.* Atlanta, etc., R. Co., 78 S. Car. 537, 59 S. E. 644.

Texas. — Hickey *v.* Texas, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 763.

Vermont. — Smith *v.* Central Vermont R. Co., 80 Vt. 208, 67 Atl. 535.

Virginia. — Stokes *v.* Southern R. Co., 104 Va. 817, 52 S. E. 855.

Other Casualties in Same Disaster. — Sterns Coal Co. *v.* Evans, (Ky. 1908) 111 S. W. 308; Kansas City, etc., R. Co. *v.* Young, (Tex. Civ. App. 1908) 111 S. W. 764.

7. *Alabama.* — Redus *v.* Milner Coal, etc., R. Co., (Ala. 1906) 41 So. 634.

Arkansas. — Stecher Cooperage Works *v.* Steadman, 78 Ark. 381, 94 S. W. 41.

District of Columbia. — Bissell *v.* District of Columbia, 28 App. Cas. (D. C.) 38.

Illinois. — Swift *v.* Rennard, 119 Ill. App. 173.

Iowa. — Edwards *v.* Cedar Rapids, (Iowa 1908) 116 N. W. 323.

Maryland. — Columbia, etc., R. Co. *v.* State, 105 Md. 34, 65 Atl. 625.

Massachusetts. — Hodde *v.* Attleboro Mfg. Co., 193 Mass. 237, 79 N. E. 252; McCafferty *v.* Lewando's French Dyeing, etc., Co., 194 Mass. 412, 80 N. E. 460.

Michigan. — Culver *v.* South Haven, etc., R. Co., 144 Mich. 254, 107 N. W. 908.

Missouri. — Root *v.* Kansas City Southern R. Co., 195 Mo. 348, 92 S. W. 621; Leffler *v.* Anheuser-Busch Brewing Assoc., 127 Mo. App. 488, 106 S. W. 105.

North Carolina. — Sibbert *v.* Scotland Cotton Mills, 145 N. Car. 308, 59 S. E. 79.

Texas. — Alexander *v.* McGaffey, (Tex. Civ. App. 1905) 88 S. W. 462; Walling *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 417; Missouri, etc., R. Co. *v.* Dunbar, (Tex. Civ. App. 1908) 108 S. W. 500.

Vermont. — Dunbar *v.* Central Vermont R. Co., 79 Vt. 474, 65 Atl. 528.

Washington. — Pachko *v.* Wilkeson Coal, etc., Co., (Wash. 1907) 90 Pac. 436.

518. 1. Chicago *v.* Hutchinson, 129 Ill. App. 239; Sprague *v.* Wisconsin Cent. R. Co., (Minn. 1908) 116 N. W. 104; Reich *v.* Ironclad Mfg. Co., 120 N. Y. App. Div. 445, 104 N. Y. Supp. 1069; Arras *v.* Standard Plaster Co., 121 N. Y. App. Div. 61, 105 N. Y. Supp. 440; Dallas *v.* McCullough, (Tex. Civ. App. 1906) 95 S. W. 1121; Hughes *v.* Chicago, etc., R. Co., 126 Wis. 525, 106 N. W. 526; Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 650, 110 N. W. 809.

Unchanged or Similar Condition Must Be Shown. — Porter *v.* Buckley, (C. C. A.) 147 Fed. 140; Goddard *v.* Engler, 123 Ill. App. 108; Crandall *v.* Dubuque, (Iowa 1907) 112 N. W. 555.

Prior Defects — Continuous Condition. — Thompson *v.* Poplar-Bluff, 124 Mo. App. 430, 101 S. W. 709; Bemis *v.* Omaha, (Neb. 1908) 116 N. W. 31; Staples *v.* Rhode Island Sub-

urban R. Co., (R. I. 1906) 67 Atl. 431; Carr *v.* American Locomotive Co., (R. I. 1908) 70 Atl. 196.

Previous Failures of an Appliance. — Casterton *v.* American Blower Co., 142 Mich. 407, 106 N. W. 61.

Prior Condition Admissible on Question of Notice. — McCarthy *v.* Spring Valley Coal Co., 232 Ill. 473, 83 N. E. 957; Hanousek *v.* Marshalltown, 130 Iowa 550, 107 N. W. 603; Sterns Coal Co. *v.* Evans, (Ky. 1908) 111 S. W. 308; Union Pac. R. Co. *v.* Edmondson, (Neb. 1906) 110 N. W. 650; Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924.

2. *United States.* — Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577; Chicago G. W. R. Co. *v.* McDonough, (C. C. A.) 161 Fed. 657.

Alabama. — Foley *v.* Pioneer Min., etc., Co., 144 Ala. 183, 40 So. 273, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 517, 518.

California. — Brunger *v.* Pioneer Roll Paper Co., (Cal. App. 1907) 92 Pac. 1043.

Illinois. — Chicago *v.* Jarvis, 226 Ill. 614, 80 N. E. 1079; Elgin, etc., Traction Co. *v.* Wilson, 120 Ill. App. 371.

Iowa. — Clark *v.* Cedar Rapids, 129 Iowa 358, 105 N. W. 651; Snyder *v.* Mutual Telephone Co., (Iowa 1907) 112 N. W. 776.

Kentucky. — Frankfort, etc., Traction Co. *v.* Hulette, (Ky. 1908) 106 S. W. 1193.

Michigan. — Barker *v.* Kalamazoo, 146 Mich. 257, 109 N. W. 427.

Minnesota. — Hillary *v.* Minneapolis St. R. Co., (Minn. 1908) 116 N. W. 933.

Missouri. — Miller *v.* Canton, 123 Mo. App. 325, 100 S. W. 571; Lynch *v.* Chicago, etc., R. Co., 208 Mo. 1, 106 S. W. 68.

Nebraska. — Union Pac. R. Co. *v.* Edmondson, (Neb. 1906) 110 N. W. 650.

New York. — Gray *v.* Siegel-Cooper Co., 187 N. Y. 376, 80 N. E. 201.

South Carolina. — McCarley *v.* Glenn-Lowry Mfg. Co., 75 S. Car. 390, 56 S. E. 1.

Wisconsin. — Olwell *v.* Skobis, 126 Wis. 308, 105 N. W. 777.

Photographs. — Kirkpatrick *v.* Metropolitan St. R. Co., (Mo. 1908) 109 S. W. 682; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 910.

3. Standard Cotton Mills *v.* Cheatham, 125 Ga. 649, 54 S. E. 650; Bailey *v.* Swallow, 98 Minn. 104, 107 N. W. 727; Thompson *v.* Poplar Bluff, 124 Mo. App. 439, 101 S. W. 709; Lamb *v.* Philadelphia, etc., R. Co., 217 Pa. St. 564, 66 Atl. 762, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 518; Harris *v.* Mt. Vernon, 41 Wash. 444, 83 Pac. 1023.

Limits of Rule. — Fountaine *v.* Wampanoag Mills, 189 Mass. 498, 75 N. E. 738; Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182; Fox *v.* Manchester, 183 N. Y. 141, 75 N. E. 1116.

Admissible as Showing Notice. — Southern R. Co. *v.* Sittasen, (Ind. App. 1905) 74 N. E. 898; Farrell *v.* Dubuque, 129 Iowa 447, 105 N. W. 696; Hunter *v.* Ithaca, 141 Mich. 539, 105 N. W. 9; Epelett *v.* Sault Ste. Marie, 144 Mich. 392, 108 N. W. 360; Williams *v.* Lansing, (Mich. 1908) 115 N. W. 961; Roswell *v.* Davenport, (N. Mex. 1907) 89 Pac. 256; Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 631; Rockwall *v.* Heath, (Tex. Civ. App. 1905) 90 S. W. 514.

5. Evidence of Actual or Constructive Notice — *United States.* — Stair *v.* Kane, (C. C. A.) 156 Fed. 100.

California. — Bundy *v.* Sierra Lumber Co., 149 Cal. 772, 87 Pac. 622.

Colorado. — Stratton Cripple Creek Min., etc., Co. *v.* Ellison, (Colo. 1908) 94 Pac. 303.

Illinois. — East St. Louis, etc., R. Co. *v.* Zink, 229 Ill. 180, 82 N. E. 283; Elgin, etc., Traction Co. *v.* Hench, 132 Ill. App. 535.

Iowa. — Woods *v.* Lisbon, (Iowa 1908) 116 N. W. 143.

Kansas. — Cudahy Packing Co. *v.* Hays, 74 Kan. 124, 85 Pac. 811.

Kentucky. — Meade *v.* Ashland Steel Co., (Ky. 1907) 100 S. W. 821.

Michigan. — Warren *v.* Porter, 144 Mich. 699, 108 N. W. 435.

Minnesota. — Bailey *v.* Swallow, 98 Minn. 104, 107 N. W. 727.

New York. — Mansfield *v.* New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386.

North Carolina. — Fowle *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 61 S. E. 262.

Oklahoma. — Waters-Pierce Oil Co. *v.* Deselms, 18 Okla. 107, 89 Pac. 212.

Tennessee. — Louisville, etc., R. Co. *v.* Bohan, 116 Tenn. 271, 94 S. W. 84.

Texas. — Beaumont Traction Co. *v.* Dilworth, (Tex. Civ. App. 1906) 94 S. W. 352.

Evidence of Similar Occurrences may be competent on the question of constructive notice. Hanselman *v.* Broad, 113 N. Y. App. Div. 447, 99 N. Y. Supp. 404.

6. Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167; Fox *v.* Manchester, 183 N. Y. 141, 75 N. E. 1116; Hawley *v.* Sumpter Valley R Co., (Oregon 1907) 90 Pac. 1106; Virginia Iron, etc., Co. *v.* Tomlinson, 104 Va. 249, 51 S. E. 362. See also Nichols *v.* Baltimore, etc., R. Co., 33 Ind. App. 242, 71 N. E. 170, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 518.

519. 1. Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; Brucker *v.* Gainesboro Telephone Co., (Ky. 1907) 100 S. W. 240; Calcaterra *v.* Iovaldi, 123 Mo. App. 347, 100 S. W. 675; Kupfersmith *v.* Hopper, 122 N. Y. App. Div. 31, 106 N. Y. Supp. 797.

2. Hayes *v.* Brandt, 80 Ark. 592, 98 S. W. 368; Murray *v.* Llewellyn Iron Works Co., 4 Cal. App. 41, 87 Pac. 202; Central of Georgia R. Co. *v.* Cox, 124 Ga. 143, 52 S. E. 161; West Chicago St. R. Co. *v.* Muttschall, 131 Ill. App. 639; Gay *v.* Siegel-Cooper Co., 187 N. Y. 376, 80 N. E. 201; Anson *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 94 S. W. 94; Smith *v.* Dow, 43 Wash. 407, 86 Pac. 555.

Evidence of Speed of Cars after the accident. Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213.

Evidence of Repeated Violations of a Speed Statute by an engineer of a mine elevator is admissible as tending to strengthen proof that he wilfully violated the statute upon the occasion of the injury. Joseph Taylor Coal Co. *v.* Dawes, 220 Ill. 145, 77 N. E. 131.

Careless Methods of Defendant. — Standard Oil Co. *v.* Parrish, (C. C. A.) 145 Fed. 829.

5. Evidence of Prior Accidents — *United States.* — Chicago G. W. R. Co. *v.* McDonough, (C. C. A.) 161 Fed. 657.

Alabama. — Southern Coal, etc., Co. *v.* Swinney, (Ala. 1907) 42 So. 808.

Colorado. — Hotchkiss Mt. Min., etc., Co. *v.* Bruner, (Colo. 1908) 94 Pac. 331.

District of Columbia. — District of Columbia *v.* Duryee, 29 App. Cas. (D. C.) 327, 10 Ann. Cas. 675.

Illinois. — Chicago *v.* Jarvis, 226 Ill. 614, 80 N. E. 1079; Kankakee *v.* Phipps, 135 Ill. App. 585.

Indiana. — Falender *v.* Blackwell, 39 Ind. App. 121, 79 N. E. 393.

Iowa. — Heinmiller *v.* Winston, 131 Iowa 132, 107 N. W. 1102.

Kansas. — Chicago, etc., R. Co. *v.* Brandon, (Kan. 1908) 95 Pac. 573.

Kentucky. — Finley *v.* Louisville R. Co., (Ky. 1907) 103 S. W. 343.

Louisiana. — Weber *v.* Union Development, etc., Co., 118 La. 77, 42 So. 652.

Michigan. — Mayer *v.* Detroit, etc., R. Co., 142 Mich. 459, 105 N. W. 888; Woodworth *v.* Detroit United R. Co., (Mich. 1908) 116 N. W. 549, *overruling* Gregory *v.* Detroit, etc., R. Co., 138 Mich. 368, 101 N. W. 546.

Minnesota. — Wiita *v.* Interstate Iron Co., (Minn. 1908) 115 N. W. 169.

Mississippi. — Vicksburg R., etc., Co. *v.* Miles, 88 Miss. 204, 40 So. 748.

Missouri. — Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; McGinnes *v.* R. M. Rigby Printing Co., 122 Mo. App. 227, 99 S. W. 4.

Montana. — O'Flynn *v.* Butte, (Mont. 1908) 93 Pac. 643.

Nevada. — Powell *v.* Nevada, etc., R. Co., 28 Nev. 305, 82 Pac. 96.

New York. — Corcoran *v.* New York, 188 N. Y. 131, 80 N. E. 660; Walker *v.* Newton Falls Paper Co., 111 N. Y. App. Div. 19, 97 N. Y. Supp. 521; Corson *v.* New York, 113 N. Y. App. Div. 679, 99 N. Y. Supp. 921; Glassman *v.* Surpless, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 586, 103 N. Y. Supp. 789.

North Carolina. — Leathers *v.* Blackwell's Durham Tobacco Co., 144 N. Car. 330, 57 S. E. 11.

Texas. — Dallas *v.* McCullough, (Tex. Civ. App. 1906) 95 S. W. 1121.

Same Accident — Injuries to Another. — Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1907) 101 S. W. 453.

Simultaneous Mishaps. — Where the plaintiff's suit was for injuries due to a defective crosswalk it was held proper to prove that her companions fell at the same time, as showing the nature of the defects. Abbott *v.* Detroit, 150 Mich. 245, 113 N. W. 1121.

Prior Vicious Acts of Horse. — Henry *v.* Omaha Packing Co., (Neb. 1908) 115 N. W. 777.

As Showing that the Accident Could Have Occurred in the Manner Claimed. — Newvahner *v.* Wabash R. Co., 126 Mo. App. 643, 105 S. W. 21.

But as Maintaining a Doctrine Contrary to that Announced Above, see Stout *v.* Columbia, 118 Mo. App. 439, 94 S. W. 307, *disapproving* Golden *v.* Clinton, 54 Mo. App. 100, cited in the original note; Diamond Rubber Co. *v.* Harryman, (Colo. 1907) 92 Pac. 922; Bobbink *v.* Erie R. Co., (N. J. 1908) 69 Atl. 204.

520. 1. Southern Coal, etc., Co. *v.* Swinney, (Ala. 1907) 42 So. 808.

The Cause of the Injury must be shown to be the same. Stenger *v.* Buffalo Union Furnace Co., 199 N. Y. App. Div. 183, 95 N. Y. Supp. 793.

2. Where the plaintiff was injured by an explosion in a mine, evidence of subsequent explosions therein was held inadmissible. Black Diamond Coal, etc., Co. *v.* Price, (Ky. 1908) 108 S. W. 345.

3. Carty *v.* Boeseke-Dawe Co., 2 Cal. App. 646, 84 Pac. 267; Colorado Midland R. Co. *v.* McGarry, (Colo. 1907) 92 Pac. 915; Chicago, etc., R. Co. *v.* Johnson, 128 Ill. App. 20; Mueller *v.* Northwestern Iron Co., 125 Wis. 326, 104 N. W. 67.

4. The Southside, 155 Fed. 364; Stewart *v.* Harman, (Md. 1908) 70 Atl. 333; Butler *v.* Oxford, 186 N. Y. 444, 79 N. E. 712; Frank *v.* Warsaw, 116 N. Y. App. Div. 618, 101 N. Y. Supp. 938; Henry *v.* New York, 119 N. Y. App. Div. 432, 104 N. Y. Supp. 440; King *v.* Reid, (Supm. Ct. App. Div.) 108 N. Y. Supp. 615.

It has been held that the defendant might show that an appliance had been used after the accident and had "worked perfectly." Hoseth *v.* Preston Mill Co., (Wash. 1908) 96 Pac. 1033.

Similarity of Circumstance and Condition. — Mobile Light, etc., Co. *v.* Walsh, 146 Ala. 295, 40 So. 560.

5. Motzing *v.* Excelsior Brewing Co., 107 N. Y. App. Div. 275, 94 N. Y. Supp. 1118.

521. 2. *United States.* — Lake *v.* Shenango Furnace Co., (C. C. A.) 160 Fed. 887.

Alabama. — Alabama Consol. Coal, etc., Co. *v.* Heald, (Ala. 1907) 45 So. 686.

Arkansas. — St. Louis Southwestern R. Co. *v.* Plumlee, 78 Ark. 147, 95 S. W. 442; Bodcaw Lumber Co. *v.* Ford, 82 Ark. 555, 102 S. W. 896.

Colorado. — Diamond Rubber Co. *v.* Harryman, (Colo. 1907) 92 Pac. 922.

District of Columbia. — Scott *v.* District of Columbia, 27 App. Cas. (D. C.) 413.

Illinois. — Libby *v.* Kearney, 124 Ill. App. 339; Normal *v.* Bright, 125 Ill. App. 478.

Iowa. — Fitter *v.* Iowa Telephone Co., 129 Iowa 610, 106 N. W. 7.

Kentucky. — Louisville, etc., R. Co. *v.* Morton, (Ky. 1905) 89 S. W. 243.

Michigan. — Moon *v.* Pere Marquette R. Co., 143 Mich. 125, 106 N. W. 715.

Missouri. — Smoot *v.* Kansas City, 194 Mo. 513, 92 S. W. 363; Bokamp *v.* Chicago, etc., R. Co., 123 Mo. App. 270, 100 S. W. 689; Tetrick *v.* Kansas City, (Mo. App. 1908) 107 S. W. 418.

Nebraska. — Pribbeno *v.* Chicago, etc., R. Co., (Neb. 1908) 116 N. W. 494.

New York. — Loughlin *v.* Brassil, 187 N. Y. 128, 79 N. E. 854; Wilkes *v.* Gallagher, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 654, 99 N. Y. Supp. 866; Mackey *v.* New York, 121 N. Y. App. Div. 473, 106 N. Y. Supp. 114; Burns *v.* Crow, 123 N. Y. App. Div. 251, 107 N. Y. Supp. 944; Schultz *v.* Barber Asphalt Paving

Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 281.

North Carolina. — Aiken *v.* Rhodhiss Mfg. Co., (N. Car. 1907) 59 S. E. 696.

South Carolina. — Worthy *v.* Jonesville Oil Mill, 77 S. Car. 69, 57 S. E. 634.

Texas. — St. Louis, etc., R. Co. *v.* Andrews, (Tex. Civ. App. 1906) 99 S. W. 871.

West Virginia. — Lay *v.* Elk Ridge Coal, etc., Co., (W. Va. 1908) 61 S. E. 156, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 521.

Wisconsin. — Odegan *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 809.

522. 1. Diamond Rubber Co. *v.* Harryman, (Colo. 1907) 92 Pac. 922; Louisville, etc., R. Co. *v.* Morton, (Ky. 1905) 89 S. W. 243.

2. Diamond Rubber Co. *v.* Harryman, (Colo. 1907) 92 Pac. 922.

3. But it has been held to be a harmless error to admit evidence that a servant was discharged a year after the accident without any connection having been shown between the accident and the discharge. Armour *v.* Skene, (C. C. A.) 153 Fed. 241.

4. Brunger *v.* Pioneer Roll Paper Co., (Cal. App. 1907) 92 Pac. 1043; Kath *v.* East St. Louis, etc., R. Co., 232 Ill. 126, 83 N. E. 533; Patton *v.* Sanborn, 133 Iowa 650, 110 N. W. 1032; Woodworth *v.* Detroit United R. Co., (Mich. 1908) 116 N. W. 549; Union Pac. R. Co. *v.* Edmondson, (Neb. 1906) 110 N. W. 650; Plunkett *v.* Clearwater Bleachery, etc., Co., (S. Car. 1908) 61 S. E. 431; Barrett *v.* Banner Shingle Co., 45 Wash. 12, 87 Pac. 919.

The plaintiff cannot be prevented from proving the condition of a walk, although it necessarily appears that the information of his witnesses was gained by observations made during repairs. Miller *v.* Canton, 123 Mo. App. 325, 100 S. W. 571.

Rebuttal — Cross-examination, etc. — Sample *v.* Chicago, etc., R. Co., 233 Ill. 564, 84 N. E. 643; Clemens *v.* Gem Fibre Package Co., (Mich. 1908) 117 N. W. 187; Schloemer *v.* St. Louis Transit Co., 204 Mo. 99, 102 S. W. 565; Hughes *v.* Chicago, etc., R. Co., 126 Wis. 525, 106 N. W. 526.

To Prove a Collateral Fact in Issue, evidence of subsequent repairs may be received when restricted to that question. McKenzie *v.* Boutwell, 79 Vt. 383, 65 Atl. 99.

523. 1. See Diamond Rubber Co. *v.* Harryman, (Colo. 1907) 92 Pac. 922.

2. Southern Coal, etc., Co. *v.* Swinney, (Ala. 1907) 42 So. 808; Thomson *v.* Issaquah Shingle Co., 43 Wash. 253, 86 Pac. 588.

To Show Violation of Statute. — Erickson *v.* McNeeley, 41 Wash. 509, 84 Pac. 3.

To Show Practicality. — Beverley *v.* Boston El. R. Co., 194 Mass. 450, 80 N. E. 507.

4. Alder Co. *v.* Fleming, (C. C. A.) 159 Fed. 503; Alabama G. S. R. Co. *v.* Vail, (Ala. 1908) 46 So. 587; Staunton Coal Co. *v.* Bub, 218 Ill. 125, 75 N. E. 770; Rush *v.* Thos. D. Murphy Co., (Iowa 1907) 112 N. W. 814; Cooney *v.* Commonwealth Ave. St. R. Co., (Mass. 1907) 81 N. E. 905; El Paso, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1908) 108 S. W. 988; Ragley Lumber Co. *v.* Parks, (Tex. Civ. App. 1907) 103 S. W. 424; Kansas City Consol. Smelting, etc., Co. *v.* Taylor, (Tex. Civ. App. 1908) 107 S. W. 889.

That Servant Was Epileptic. — Tucker *v.* Missouri, etc., Telephone Co. (Mo. App. 1908) 112 S. W. 6.

Evidence of Specific Acts of Negligence by the servant, of which the master had actual or constructive notice, is admissible. Montgomery First Nat. Bank *v.* Chandler, 144 Ala. 286, 39 So. 822; Louisville, etc., R. Co. *v.* Wyatt, (Ky. 1906) 93 S. W. 601; McCalls Ferry Power Co. *v.* Price, (Md. 1908) 69 Atl. 832; Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29; Dossett *v.* St. Paul, etc., Lumber Co., 40 Wash. 376, 82 Pac. 273; Young *v.* Milwaukee Gaslight Co., (Wis. 1907) 113 N. W. 59.

524. 1. Seaboard Air Line R. Co. *v.* Wright, (Ala. 1906) 41 So. 461; Evans *v.* Pearson, 125 N. Y. App. Div. 666, 110 N. Y. Supp. 69; Geldard *v.* Marshall, 47 Oregon 271, 83 Pac. 867; Dossett *v.* St. Paul, etc., Lumber Co., 40 Wash. 376, 82 Pac. 273.

Nor May Ordinary Care Require that a customary practice or method be followed. Kirby Lumber Co. *v.* Dickerson, (Tex. Civ. App. 1906) 94 S. W. 153.

2. *United States.* — Rickerd *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 905.

Arkansas. — Ultima Thule, etc., R. Co. *v.* Calhoun, 83 Ark. 318, 103 S. W. 726.

Georgia. — Southern States Portland Cement Co. *v.* Helms, 2 Ga. App. 308, 58 S. E. 524.

Illinois. — Chicago, etc., R. Co. *v.* Daugaard, 118 Ill. App. 67.

Indiana. — National Biscuit Co. *v.* Wilson, (Ind. App. 1906) 78 N. E. 251; Columbus *v.* Allen, (Ind. App. 1907) 81 N. E. 114.

Kentucky. — Roy Lumber Co. *v.* Donnelly, (Ky. 1907) 103 S. W. 255.

Missouri. — Heberling *v.* Warrensburgh, 204 Mo. 604, 103 S. W. 36; Saller *v.* Friedman Bros. Shoe Co., (Mo. App. 1908) 109 S. W. 794; Peterson *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 37.

Rhode Island. — Wilson *v.* New York, etc., R. Co., (R. I. 1908) 69 Atl. 364.

South Carolina. — Jennings *v.* Edgefield Mfg. Co., 72 S. Car. 411, 52 S. E. 113.

Texas. — Houston, etc., R. Co. *v.* Turner, 99 Tex. 547, 91 S. W. 562; International, etc., R. Co. *v.* Cruseturner, (Tex. Civ. App. 1906) 98 S. W. 423; Continental Fruit Express *v.* Leas, (Tex. Civ. App. 1908) 110 S. W. 129; Morgan *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1908) 110 S. W. 978.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

The Test of Negligence is the ordinary use of the business. Law *v.* Central Dist. Printing, etc., Co., 140 Fed. 558; Central of Georgia R. Co. *v.* Ray, 129 Ga. 349, 58 S. E. 844; Chrismer *v.* Bell Telephone Co., 194 Mo. 189, 92 S. W. 378; Central Granaries Co. *v.* Ault, 75 Neb. 240, 106 N. W. 418; Vallaster *v.* Atlantic City R. Co., 72 N. J. L. 334, 62 Atl. 993; Bobbink *v.* Erie R. Co., (N. J. 1908) 69 Atl. 204; Wilson *v.* Atlantic Crushed Coke Co., (Pa. 1908) 68 Atl. 671.

3. Union Wire Mattress Co. *v.* Wiegref, 133 Ill. App. 506. See also McDermott *v.* Severe, 25 App. Cas. (D. C.) 276.

A Custom of the Defendant does not make its nonperformance negligence. White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931;

Falender *v.* Blackwell, 39 Ind. App. 121, 79 N. E. 393.

4. **Evidence of Usage and Custom.** — Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815; Louisville, etc., R. Co. *v.* Morton, (Ky. 1905) 89 S. W. 243; Cederberg *v.* Minneapolis, etc., R. Co., 101 Minn. 100, 111 N. W. 953; Hyatt *v.* Murray, 101 Minn. 507, 112 N. W. 881; Wiita *v.* Interstate Iron Co., (Minn. 1908) 115 N. W. 169; Stone *v.* Clyde Steam Ship Co., 139 N. Car. 193, 51 S. E. 894; Olwell *v.* Skobis, 126 Wis. 308, 105 N. W. 777; Noren *v.* Larson Lumber Co., (Wash. 1907) 89 Pac. 563.

Custom as to Respective Duties of Two Defendants. — Chicago City R. Co. *v.* Sugar, 117 Ill. App. 578.

Defendant's Previous Employment of Precaution May Be Shown. — Hartman *v.* Chicago, etc., R. Co., 132 Iowa 582, 110 N. W. 10; Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 100 S. W. 302; Fitzpatrick *v.* Michigan Cent. R. Co., 149 Mich. 194, 112 N. W. 915; Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115; Kesterson *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 871; Cleveland, etc., R. Co. *v.* Sivey, 27 Ohio Cir. Ct. 248.

Evidence of a Breach of the Defendant's Rules by its servants has been held admissible on the question of negligence. Hayward *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 737; St. Louis, etc., R. Co. *v.* Andrews, (Tex. Civ. App. 1906) 99 S. W. 871.

But as intimating that the defendant's usual and customary method may be an unreasonably high standard for him, see St. Louis, etc., R. Co. *v.* Boyer, (Tex. Civ. App. 1906) 97 S. W. 1070.

5. Lake *v.* Shenango Furnace Co., (C. C. A.) 160 Fed. 887; Shandrew *v.* Chicago, etc., R. Co., (C. C. A.) 142 Fed. 320; Farley *v.* Mobile, etc., R. Co., (Ala. 1907) 42 So. 747; National Biscuit Co. *v.* Wilson, (Ind. App. 1906) 78 N. E. 251; Hall *v.* Chicago, etc., R. Co., (Iowa 1908) 116 N. W. 113; Pitcher *v.* Old Colony St. R. Co., (Mass. 1907) 81 N. E. 876; Lynch *v.* Saginaw Valley Traction Co., (Mich. 1908) 116 N. W. 983; Brown *v.* Musser-Sauntry, etc., Co., (Minn. 1908) 116 N. W. 218; Spencer *v.* Bruner, 126 Mo. App. 94, 103 S. W. 578; Wilson *v.* New York, etc., R. Co., (R. I. 1908) 69 Atl. 364; Keys *v.* Winnsboro Granite Co., 76 S. Car. 284, 56 S. E. 949; Hover *v.* Chicago, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1084; Yazdzewski *v.* Barker, 131 Wis. 494, 111 N. W. 689.

525. 1. *United States.* — Chicago G. W. R. Co. *v.* McDonough, (C. C. A.) 161 Fed. 657.

Iowa. — Wilder *v.* Great Western Cereal Co., 134 Iowa 451, 109 N. W. 789.

Minnesota. — Carlin *v.* Kennedy, 97 Minn. 141, 106 N. W. 340; Monsen *v.* Crane, 99 Minn. 186, 108 N. W. 933.

Missouri. — Obermeyer *v.* F. H. Logeman Chair Mfg. Co., 120 Mo. App. 59, 96 S. W. 673; Ahlfeldt *v.* Mexico, (Mo. App. 1908) 108 S. W. 122.

New York. — Lynch *v.* American Linseed Co., 122 N. Y. App. Div. 428, 107 N. Y. Supp. 458.

North Carolina. — Jones *v.* R. J. Reynolds Tobacco Co., 141 N. Car. 202, 53 S. E. 849; Stewart *v.* Raleigh, etc., Air Line R. Co., 141 N. Car. 253, 53 S. E. 877; Phillips *v.* Salem Iron Works, (N. Car. 1907) 59 S. E. 660.

Oregon. — Warner *v.* De Armond, (Oregon 1907) 89 Pac. 373.

Pennsylvania. — Bardsley *v.* Gill, 218 Pa. St. 56, 66 Atl. 1112; Hollis *v.* Widener, (Pa. 1908) 78 Atl. 287.

Virginia. — Norfolk, etc., R. Co. *v.* Bell, 104 Va. 836, 52 S. E. 700.

Washington. — Thomson *v.* Issaquah Shingle Co., 43 Wash. 253, 86 Pac. 588.

Wisconsin. — Berg *v.* U. S. Leather Co., 125 Wis. 262, 104 N. W. 60; Zentner *v.* Oshkosh Gaslight Co., 126 Wis. 196, 105 N. W. 911; Hamann *v.* Milwaukee Bridge Co., (Wis. 1908) 116 N. W. 854.

But the Standard of Care is that of the ordinarily prudent or careful person. Chicago G. W. R. Co. *v.* Egan, (C. C. A.) 159 Fed. 40; Louisville Belt, etc., Co. *v.* Hart, (Ky. 1906) 92 S. W. 951.

NEIGHBORING.

528. 1. **Neighboring Relative Term.** — Millville Imp. Co. *v.* Pitman, etc., Gas Co., (N. J. 1907) 67 Atl. 1005, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 528.

NEPHEW — NIECE.

528. 2. Leask *v.* Richards, 116 N. Y. App. Div. 274, 101 N. Y. Supp. 652, *affirmed* Leask *v.* Hoagland, 188 N. Y. 291, 80 N. E. 919.

529. 1. Leask *v.* Richards, 116 N. Y. App. Div. 274, 101 N. Y. Supp. 652, *affirmed* Leask *v.* Hoagland, 188 N. Y. 291, 80 N. E. 919.

Illegitimates. — Children of a natural sister held ***nephews*** and ***nieces***. *In re* Corsellis, (1906) 2 Ch. 316, 75 K. J. Ch. 607.

NET.

529. 2. **The Term "Net Receipts"** as used in a statute taxing foreign insurance companies means "the amount remaining after the operating expenses of foreign insurance companies doing business in this state had been deducted from the gross receipts of such companies, that is, the legislature intended that all foreign insurance companies doing business in this state should be assessed, not upon their ***net*** profits, which would be the difference between their gross receipts and all sums paid out by them for operating expenses, fire losses, etc., but upon the amount remaining after deducting from their total receipts their operating expenses." National F. Ins. Co. *v.* Hanberg, 215 Ill. 378, 74 N. E. 377.

NET INCOME.

530. 2. **"The Net Income of a Railroad,** when necessary to be determined for the purposes of taxation, is the difference between the gross receipts and necessary expense under reasonably economical and prudent management." State *v.* Nevada Cent. R. Co., 28 Nev. 186, 81 Pac. 99.

NEW.

531. 3. **New Route.** — An extension of an existing street railway is not a ***new*** route.

Cleveland Electric R. Co. *v.* Cleveland, 137 Fed. 111, *affirmed* 204 U. S. 116.

NEWSPAPERS.

533. 1. Ruth *v.* Ruth, 39 Ind. App. 293, 79 N. E. 523, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 533; Merrill *v.* Conroy, (Neb. 1906) 109 N. W. 175.

Official Newspapers. — Continental Trust Co. *v.* Link, (Neb. 1907) 112 N. W. 352; Troy Press Co. *v.* Troy, 114 N. Y. App. Div. 354, 99 N. Y. Supp. 1045; Troy Press Co. *v.* Mann, 115 N. Y. App. Div. 25, 100 N. Y. Supp. 516; People *v.* Roberts, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 308, 102 N. Y. Supp. 1110; North Yahima *v.* Scudder, (Wash. 1905) 82 Pac. 1022.

Newspaper of General Circulation. — Warner *v.* Miner, (Wash. 1905) 82 Pac. 1033; Brown *v.* West Seattle, 43 Wash. 26, 85 Pac. 854.

NEXT OF KIN.

538. 6. Atchison, etc., R. Co. *v.* Townsend, 71 Kan. 524, 81 Pac. 205; Raburn *v.* Bradshaw, 124 Ga. 552, 52 S. E. 922.

539. 1. Johnson *v.* Phillips, (Ark. 1908) 107 S. W. 170; Smith *v.* McDonald, 69 N. J. Eq. 765, 61 Atl. 453, *affirmed* (N. J. 1907) 65 Atl. 840; *In re* Titterington, 130 Iowa 356, 106 N. W. 761; *In re* Ebbets, (Surrogate Ct.) 43 Misc. (N. Y.) 575, 89 N. Y. Supp. 544; *In re* Prote, (Surrogate Ct.) 54 Misc. (N. Y.) 495, 104 N. Y. Supp. 581; Obecuy *v.* Goetz, 116 N. Y. App. Div. 807, 102 N. Y. Supp. 232.

540. 1. Grinnell *v.* Howland, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 132, 100 N. Y. Supp. 765.

NIGHT — NIGHTTIME.

540. 4. State *v.* Richards, 29 Utah 310, 81 Pac. 142.

NONSUIT.

548. 1. **Nonsuit and Dismissal Equivalent.** — Souders *v.* Carolina Portland Cement Co., 3 Ga. App. 99, 59 S. E. 467.

NOT.

550. 2. **Not under Command.** — See The Bellanoch, (1907) P. 170, 76 L. J. P. 83, 97 L. T. N. S. 315.

NOTARY PUBLIC.

555. 1. Nolan *v.* Labatut, 117 La. 431, 41 So. 713; Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453.

2. Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555; *In re* Opinion of Justices, 73 N. H. 621, 62 Atl. 969.

3. Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555.

4. Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555.

8. Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453, *quoting* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555.

9. Pack *v.* U. S., 41 Ct. Cl. 414, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555; *In re* Opinion of Justices, 73 N. H. 621, 62 Atl. 969.

556. 1. *In re* Butler, (Neb. 1906) 107 N. W. 572.

Notary Does Not Act Judicially in Taking Deposition. — *In re* Butler, (Neb. 1906) 107 N. W. 572.

5. **Appointment by Governor.** — *In re* Opinion of Justices, 73 N. H. 621, 62 Atl. 969.

557. 3. *In re* Opinion of Justices, 73 N. H. 621, 62 Atl. 969.

11. Pack *v.* U. S., 41 Ct. Cl. 414; McNulty *v.* State, 37 Ind. App. 612, 76 N. E. 547.

Notary and County Attorney. — Figures *v.* State, (Tex. Civ. App. 1907) 99 S. W. 412.

12. **Term under Alabama Statute.** — Sandlin *v.* Dowdell, 143 Ala. 518, 39 So. 279.

Term under California Statute. — People *v.* Edleman, (Cal. 1907) 92 Pac. 846.

558. 8. **Extent of Jurisdiction under Kentucky Statute of 1903, § 3721.** — Com. *v.* Schwieters, (Ky. 1906) 93 S. W. 592.

559. 3. Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 559.

6. Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453, *citing* 4 AM. AND ENG. ENCYC. OF LAW (2d ed.) 559.

561. 8. Gharst *v.* St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453.

563. 11. Barnard *v.* Schuler, 100 Minn. 289, 110 N. W. 966.

566. 1. **Power of Statutory Origin.** — *In re* Butler, (Neb. 1906) 107 N. W. 572.

10. **Extent of Power to Punish as for Contempt under Nebraska Statute.**—*In re* Butler, (Neb. 1906) 107 N. W. 572.

568. 9. **Judicial Notice of Seal of Domestic Notary.** — Pardee *v.* Schanzlin, 3 Cal. App. 597, 86 Pac. 812.

Judicial Notice of Signature and Seal. — McDonald *v.* People, 123 Ill. App. 346.

Judicial Notice of Seal of Foreign Notary. — Brown Mfg. Co. *v.* Gilpin, 120 Mo. App. 130, 96 S. W. 669.

Presumption of Regularity in Exercise of Official Functions. — Pardee *v.* Schanzlin, 3 Cal. App. 597, 86 Pac. 812.

11. **Indirect Pecuniary Interest Not a Disqualification.** — Patton *v.* Lafayette Bank, 124 Ga. 965, 53 S. E. 664.

569. 1. Kee *v.* Ewing, 17 Okla. 410, 87 Pac. 297.

Notary Not Disqualified by Reason of Being Employee of Interested Party. — Smith *v.* Ayden Lumber Co., 144 N. Car. 47, 56 S. E. 555; Scott *v.* Thomas, 104 Va. 330, 51 S. E. 829.

10. **Contra.** — Kee *v.* Ewing, 17 Okla. 410, 87 Pac. 297.

12. Smith *v.* Ayden Lumber Co., 144 N. Car. 47, 56 S. E. 555.

570. 1. Roane *v.* Murphy, (Tex. Civ. App. 1906) 96 S. W. 782; Scott *v.* Thomas, 104 Va. 330, 51 S. E. 829.

2. McNulty *v.* State, 37 Ind. App. 612, 76 N. E. 547.

572. 3. Nolan *v.* Labatut, 117 La. 431, 41 So. 713.

5. Nolan *v.* Labatut, 117 La. 431, 41 So. 713.

6. Nolan *v.* Labatut, 117 La. 431, 41 So. 713.

576. 6. Pack *v.* U. S., 41 Ct. Cl. 414.

9. **Court of Faculties May Strike from Rolls.** — Matter of Champion, (1906) P. 86.

Proceedings under Kentucky Statute for Usurpation of Office. — Palmer *v.* Com., (Ky. 1906) 92 S. W. 588.

577. 7. McNulty *v.* State, 37 Ind. App. 612, 76 N. E. 547.

When Notary May Act as De Facto Officer. — Sandlin *v.* Dowdell, 143 Ala. 518, 39 So. 279; Davenport *v.* Davenport, 116 La. 1009, 41 So. 240.

9. Sandlin *v.* Dowdell, 143 Ala. 518, 39 So. 279.

10. Pack *v.* U. S., 41 Ct. Cl. 414; McNulty *v.* State, 37 Ind. App. 612, 76 N. E. 547.

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581. 4. **Notice Defined.** — Cheney *v.* State, 165 Ind. 121, 74 N. E. 892.

5. Trerise *v.* Bottego, 32 Mont. 244, 79 Pac. 1057.

582. 1. Trerise *v.* Bottego, 32 Mont. 244, 79 Pac. 1057.

3. Eastwood *v.* Standard Mines, etc., Co., 11 Idaho 195, 81 Pac. 382; Trerise *v.* Bottego, 32 Mont. 244, 79 Pac. 1057; Reed *v.* Bachman, 61 W. Va. 452, 57 S. E. 769, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 582.

583. 3. State *v.* Ross, 42 Wash. 439, 85 Pac. 29, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583.

4. Elson *v.* Waterford, 138 Fed. 1004; Cheney *v.* State, 165 Ind. 121, 74 N. E. 892; Boland *v.* Sokolski, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 333, 106 N. Y. Supp. 766.

584. 1. *United States.* — U. S. *v.* Union Bridge Co., 143 Fed. 377, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; Coder *v.* McPherson, (C. C. A.) 152 Fed. 951; Castner Electrolytic Alkali Co. *v.* Davies, (C. C. A.) 154 Fed. 938.

Alabama. — Kendrich *v.* Colyar, 143 Ala. 597, 42 So. 110.

Georgia. — Austin *v.* Southern Home Bldg., Assoc., 122 Ga. 439, 50 S. E. 382.

Illinois. — Gallagher *v.* Northrup, 215 Ill. 563, 74 N. E. 711.

Minnesota. — McPheeters *v.* Ronning, 95 Minn. 164, 103 N. W. 888.

New Jersey. — Hemsley *v.* Marlborough House, 68 N. J. Eq. 596, 61 Atl. 455.

North Dakota. — Johnson *v.* Erlandson, 14 N. Dak. 518, 105 N. W. 722.

South Dakota. — Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 630.

Tennessee. — Schink *v.* Haynie, 2 Tenn. Ch. App. 571.

West Virginia. — Reed *v.* Bachman, 61 W. Va. 452, 57 S. E. 769, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584.

585. 5. Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 630.

7. Johnson *v.* Erlandson, 14 N. Dak. 518, 105 N. W. 722, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 585.

587. 9. Kendrich *v.* Colyar, 143 Ala. 597, 42 So. 110, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 587; Strickland *v.* Capital City Mills, 74 S. Car. 16, 54 S. E. 220, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 587.

10. Rohde *v.* Rohn, 232 Ill. 180, 83 N. E. 465, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 587.

588. 4. Niles *v.* Cooper, 98 Minn. 39, 107 N. W. 744, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 588.

589. 3. Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52.

590. 2. Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 590.

NOTICE OF PENDENCY AND LIS PENDENS.

595. 1. *United States.* — Rickey Land, etc., Co. *v.* Miller, (C. C. A.) 152 Fed. 11.

Arkansas. — Boynton *v.* Chicago Mill, etc., Co., 84 Ark. 203, 105 S. W. 77.

Indiana. — Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. App. 1907) 82 N. E. 1013.

Kentucky. — Tippenhauer *v.* Newport Rolling Mill Co., (Ky. 1907) 105 S. W. 440.

Louisiana. — Scovel *v.* Levy, 118 La. 982, 43 So. 642.

Missouri. — Tice *v.* Hamilton, 188 Mo. 298, 87 S. W. 497; Polliham *v.* Reveley, 116 Mo. App. 711, 93 S. W. 829; Scharff *v.* McGaugh, 205 Mo. 344, 103 S. W. 550.

New York. — Pennsylvania Steel Co. *v.* Title Guaranty, etc., Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 51, 100 N. Y. Supp. 299; Kranin *v.* Coffey, 119 N. Y. App. Div. 516, 104 N. Y. Supp. 174.

South Dakota. — McVay *v.* Tousley, (S. Dak. 1905) 105 N. W. 932.

Texas. — Sparks *v.* Taylor, 99 Tex. 411, 90 S. W. 485; Latta *v.* Wiley, (Tex. Civ. App. 1905) 92 S. W. 433; Mayes *v.* Rust, (Tex. Civ. App. 1906) 94 S. W. 110.

Wisconsin. — Siedschlag *v.* Griffin, (Wis. 1907) 112 N. W. 18.

596. 3. Calkins *v.* Custer City First Nat. Bank, (S. Dak. 1906) 107 N. W. 675, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 596.

597. 1. Simmons *v.* Rowe, 4 Cal. App. 752, 89 Pac. 621; Alabama, etc., R. Co. *v.* Thomas, 86 Miss. 27, 38 So. 770; McVay *v.* Tousley, (S. Dak. 1905) 105 N. W. 932; Latta *v.* Wiley, (Tex. Civ. App. 1905) 92 S. W. 433; Wright *v.* Jessup, 44 Wash. 618, 87 Pac. 930; Portland, etc., R. Co. *v.* Ladd, (Wash. 1907) 91 Pac. 573; McCord *v.* Akeley, (Wis. 1907) 111 N. W. 1100.

598. 3. Ætna L. Ins. Co. *v.* Stryker, (Ind. App. 1908) 83 N. E. 647; Werner *v.* Jackson, 115 N. Y. App. Div. 176, 100 N. Y. Supp. 763; Behrens *v.* Sturges, 121 N. Y. App. Div. 746, 106 N. Y. Supp. 501.

4. Woodward *v.* Johnson, (Ky. 1906) 90 S. W. 1076.

600. 2. Bannard *v.* Duncan, (Neb. 1907) 112 N. W. 353; Siedschlag *v.* Griffin, (Wis. 1907) 112 N. W. 18.

601. 1. Bank *v.* Doherty, 42 Wash. 317, 84 Pac. 872.

3. Ackerman *v.* True, 120 N. Y. App. Div. 172, 105 N. Y. Supp. 12; Hyde *v.* Heaton, 43 Wash. 433, 86 Pac. 664.

603. 1. Harrod *v.* Burke, (Kan. 1907) 92

Pac. 1128; Pennsylvania Steel Co. *v.* Title Guaranty, etc., Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 51, 100 N. Y. Supp. 299.

607. 2. Hall *v.* Louisville, etc., R. Co., 157 Fed. 464, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 607.

3. Begley *v.* Combs, (Ky. 1907) 106 S. W. 246.

608. 1. Hall *v.* Louisville, etc., R. Co., 157 Fed. 464; Moragne *v.* Doe, 143 Ala. 459, 39 So. 161; Harrod *v.* Burke, (Kan. 1907) 92 Pac. 1128; Bannard *v.* Duncan, (Neb. 1907) 112 N. W. 353; Hulen *v.* Chilcoat, (Neb. 1907) 113 N. W. 122; Munger *v.* Beard, (Neb. 1907) 113 N. W. 214.

610. 2. Humphrey *v.* Beaumont Irrigating Co., (Tex. Civ. App. 1906) 93 S. W. 180.

612. 1. Wahlheimer *v.* Truslow, 106 N. Y. App. Div. 73, 94 N. Y. Supp. 137.

613. 2. Wahlheimer *v.* Truslow, 106 N. Y. App. Div. 73, 94 N. Y. Supp. 137; May *v.* Sutherlin, 41 Wash. 609, 84 Pac. 585.

The *Virginia* statute providing for the filing of *lis pendens* has no application to the federal courts. King *v.* Davis, 137 Fed. 222.

4. McVay *v.* Tousley, (S. Dak. 1905) 105 N. W. 932.

5. Humphrey *v.* Beaumont Irrigating Co., (Tex. Civ. App. 1906) 93 S. W. 180.

614. 2. McCord *v.* Akeley, (Wis. 1907) 111 N. W. 1100.

615. 1. Steele *v.* Robertson, 73 Ark. 228, 87 S. W. 117; Bridger *v.* Exchange Bank, 126 Ga. 821, 56 S. E. 97.

3. Lipschitz *v.* Watson, 113 N. Y. App. Div. 408, 99 N. Y. Supp. 418.

4. **Filing Notice Before Service of Process.** — Lipschutz *v.* Horton, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 44, 104 N. Y. Supp. 850; Cohen *v.* Biber, 123 N. Y. App. Div. 528, 108 N. Y. Supp. 249.

616. 2. Armstrong *v.* Ashley, 204 U. S. 272, 27 U. S. Sup. Ct. 270.

4. **New Parties Defendant.** — Munger *v.* Beard, (Neb. 1907) 113 N. W. 214.

Property. — Hulen *v.* Chilcoat, (Neb. 1907) 113 N. W. 122.

618. 4. Hyde *v.* Heaton, 43 Wash. 433, 86 Pac. 664; Dunfee *v.* Childs, 59 W. Va. 225, 53 S. E. 209, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; Perkins *v.* Pfalzgraff, 60 W. Va. 121, 53 S. E. 913, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618.

620. 3. Barbour *v.* Patterson, 145 Mich. 459, 108 N. W. 973.

621. 2. Kennedy *v.* Afdal, 229 Ill. 295, 82 N. E. 291.

622. 2. Boice *v.* Conover, 69 N. J. Eq. 580, 61 Atl. 159.

623. 1. Seibert *v.* Louisville, (Ky. 1907) 101 S. W. 325, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623.

2. Seibert *v.* Louisville, (Ky. 1907) 101 S. W. 325, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623.

3. Seibert *v.* Louisville, (Ky. 1907) 101 S. W. 325, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623.

624. 4. Bresel *v.* Browning, 100 N. Y. App. Div. 588, 96 N. Y. Supp. 402; McCrum *v.* Lex Realty Co., 113 N. Y. App. Div. 58, 98 N. Y. Supp. 1021; Steinmetz *v.* Kindred, 121 N. Y. App. Div. 260, 105 N. Y. Supp. 676.

625. 1. Levy *v.* Kon, 114 N. Y. App. Div. 795, 100 N. Y. Supp. 205; Tishman *v.* Acitelli, 111 N. Y. App. Div. 237, 97 N. Y. Supp. 668.

3. **Grounds for Canceling Notice.** — Lindheim *v.* Central Nat. Realty, etc., Co., 111 N. Y. App. Div. 275, 97 N. Y. Supp. 619; Kennedy *v.* Hall, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 78, 99 N. Y. Supp. 162; Schenkein *v.* Horowitz, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 80, 99 N. Y. Supp. 161; Mishkind-Feinberg Realty Co. *v.* Sidorsky, 115 N. Y. App. Div. 115, 100 N. Y. Supp. 714; Salter *v.* Grannemann, (Supm. Ct. App. Div.) 108 N. Y. Supp. 363; New York *v.* Unsafe Building, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 146, 107 N. Y. Supp. 749; Whalen *v.* Stuart, 123 N. Y. App. Div. 446, 108 N. Y. Supp. 355; Wolinsky *v.* Okum, 111 N. Y. App. Div. 536, 97 N. Y. Supp. 943.

626. 3. Hall *v.* Louisville, etc., R. Co., 157 Fed. 464.

4. Calkins *v.* Custer City First Nat. Bank, (S. Dak. 1906) 107 N. W. 675, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 626.

627. 1. **Doctrine Applies to Both Real and Personal Property.** — Hall *v.* Louisville, etc., R. Co., 157 Fed. 464; Missouri, etc., R. Co. *v.* Murphy, 75 Kan. 707, 90 Pac. 290; Portland, etc., R. Co. *v.* Ladd, (Wash. 1907) 91 Pac. 573.

5. Calkins *v.* Custer City First Nat. Bank, (S. Dak. 1906) 107 N. W. 675, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 627.

628. 2. Dent *v.* Pickens, 59 W. Va. 274, 53 S. E. 154, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 628.

629. 1. Bank *v.* Doherty, 42 Wash. 317, 84 Pac. 872.

3. Begley *v.* Combs, (Ky. 1907) 106 S. W. 246.

4. Dent *v.* Pickens, 59 W. Va. 274, 53 S. E. 154, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 629; Wingfield *v.* Neall, 60 W. Va. 106, 54 S. E. 47.

5. **Lis Pendens Does Not Apply** to the holder of an equitable assignment of a devisee's share in realty as against prior judgment creditors of the assignor. Thompson *v.* Stiltz, (Ky. 1906) 96 S. W. 884.

630. 4. Moragne *v.* Doe, 143 Ala. 459, 39 So. 161, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 630.

639. 5. Baum *v.* Roper, 1 Cal. App. 435, 82 Pac. 390.

642. 5. Munger *v.* Beard, (Neb. 1907) 113 N. W. 214.

6. Bryson *v.* Boyce, (Tex. Civ. App. 1906) 92 S. W. 820.

645. 5. Deskins *v.* Big Sandy Co., (Ky. 1905) 89 S. W. 695; Kaston *v.* Storey, 47 Oregon 150, 80 Pac. 217, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645.

6. **Judgment Creditors.** — Matteson *v.* Wagoner, 147 Cal. 739, 82 Pac. 436; Bridger *v.* Exchange Bank, 126 Ga. 821, 56 S. E. 97, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645.

646. 1. Bridger *v.* Exchange Bank, 126 Ga. 821, 56 S. E. 97, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 646; Wright *v.* Jessup, 44 Wash. 618, 87 Pac. 930.

3. Neff *v.* Elder, 84 Ark. 277, 105 S. W. 260.

647. 2. Hall *v.* Manns, (Ky. 1907) 100 S. W. 222.

4. Williams *v.* Jones, 74 S. Car. 258, 54 S. E. 558; Bennett *v.* Giles, 220 Ill. 393, 77 N. E. 214.

648. 2. Allen *v.* Ellis, 125 Wis. 565, 104 N. W. 739.

3. Sparks *v.* Taylor, 99 Tex. 411, 90 S. W. 485; Larsen *v.* Gasberg, 30 Utah 470, 86 Pac. 412, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 648; Wingfield *v.* Neall, 60 W. Va. 106, 54 S. E. 47.

650. 2. Under the *Ohio* statute *lis pendens* does not apply to the sale of land for taxes. Security Trust Co. *v.* Root, 72 Ohio St. 535, 74 N. E. 1077.

3. Moulton *v.* Kolodzik, 97 Minn. 423, 107 N. W. 154, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650.

5. Moulton *v.* Kolodzik, 97 Minn. 423, 107 N. W. 154, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650; Payson *v.* Jacobs, 38 Wash. 203, 80 Pac. 429.

A Claimant under an Unrecorded Instrument is bound by the judgment of foreclosure to the same extent as if he were a party to the action when the *lis pendens* is filed. Wright *v.* Jessup, 44 Wash. 618, 87 Pac. 930; Caldwell *v.* Bigger, (Kan. 1907) 90 Pac. 1095.

651. 3. Payson *v.* Jacobs, 38 Wash. 203, 80 Pac. 429, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 651.

654. 5. Catholic University *v.* Boyd, 227 Ill. 281, 81 N. E. 363, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 654.

NOVATION.

660. 1. Miles *v.* Bowers, (Oregon 1907) 90 Pac. 905, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 660; Gimbell *v.* King, (Tex. Civ. App. 1906) 95 S. W. 7; Chenoweth *v.* National Bldg. Assoc., 59 W. Va. 653, 53 S. E. 559.

662. 2. Miles *v.* Bowers, (Oregon 1907) 90 Pac. 905, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 662.

663. 2. American Mortg. Co. *v.* Rawlings, 127 Ga. 82, 56 S. E. 110, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 663; Piehl *v.* Piehl, 138 Mich. 515, 101 N. W. 628, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 663.

665. 1. San Antonio Light Pub. Co. *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 867.

3. Miller *v.* Prudential Banking, etc., Co., (W. Va. 1907) 59 S. E. 977, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665.

666. 3. Seattle First Nat. Bank *v.* Fish, 2 Alaska 344; Fitzgerald *v.* Thompson Towing, etc., Assoc., 143 Mich. 171, 106 N. W. 853; Wierman *v.* Bay City-Michigan Sugar Co., 142 Mich. 422, 106 N. W. 75, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 666; Inman *v.* F. N. Burt Co., 124 N. Y. App. Div. 73, 108 N. Y. Supp. 210; Clark *v.* Delaware, etc., R. Co., 138 N. Car. 25, 50 S. E. 446; Wyss-Thalman *v.* Beaver Valley Brewing Co., 216 Pa. St. 435, 65 Atl. 811; H. Midwood's Sons Co. *v.* Alaska-Portland Packers' Assoc., 28 R. I. 303, 67 Atl. 61; Hemrich Bros. Brewing Co. *v.* Kitsap County, 45 Wash. 454, 88 Pac. 838.

668. 1. Sucker State Drill Co. *v.* Loewer, 114 La. 403, 38 So. 399.

669. 5. Lane *v.* United Oilcloth Co., 103 N. Y. App. Div. 378, 92 N. Y. Supp. 1061; Globe Ins. Co. *v.* Wayne, 75 Ohio St. 451, 80 N. E. 13.

670. 2. Lemon *v.* Little, (S. Dak. 1908) 114 N. W. 1001, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 670.

671. 1. Lemon *v.* Little, (S. Dak. 1908) 114 N. W. 1001, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 670 [671].

3. Miles *v.* Bowers, (Oregon 1907) 90 Pac. 905, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671.

5. Davis *v.* Dunn, 121 Mo. App. 490, 97 S. W. 226.

675. 5. Palmetto Mfg. Co. *v.* Parker, 123 Ga. 798, 51 S. E. 714; Sherer *v.* Rubedew, 11 Idaho 536, 83 Pac. 512.

676. 5. Grimmett *v.* Owsley, 78 Ark. 304, 94 S. W. 694.

NOW.

676. 8. Fuehrman *v.* McCord, 107 N. Y. App. Div. 12, 95 N. Y. Supp. 489.

NUISANCES.

682. 1. **Anything Which Causes Hurt or Damage** to the lands or tenements of another, or interferes with the reasonable employment of the same, is a ***nuisance.*** Stokes *v.* Pennsylvania R. Co., 214 Pa. St. 415, 63 Atl. 1028.

2. Johnson *v.* New York, 109 N. Y. App. Div. 825, 96 N. Y. Supp. 754, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682; Thomason *v.* Seaboard Air Line R. Co., 142 N. Car. 306, 55 S. E. 198, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682.

Statutory Definitions. — People *v.* Hoffman, 118 N. Y. App. Div. 862, 103 N. Y. Supp. 1000.

3. Melker *v.* New York, 190 N. Y. 481, 83 N. E. 565.

5. Hogle *v.* H. H. Franklin Mfg. Co., (Supm. Ct. Tr. T.) 105 N. Y. Supp. 1094.

683. 1. State *v.* Coler, 75 Kan. 424, 89 Pac. 693; State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 202, 92 S. W. 153, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683.

6. Remsberg *v.* Iola Portland Cement Co., 73 Kan. 69, 84 Pac. 548, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683; Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289; Loth *v.* Columbia Theatre Co., 197 Mo. 355, 94 S. W. 847, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683.

7. State *v.* Nease, 46 Oregon 433, 80 Pac. 897, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683.

684. 2. State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 202, 92 S. W. 153, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684.

3. **A Building Used as a Hospital** for the treatment of contagious and infectious diseases is not *per se* a nuisance. State *v.* Trenton, (N. J. 1906) 63 Atl. 897.

6. Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684.

Planing Mill. — New Orleans *v.* Lagasse, [illegible], 38 So. [illegible].

686. 1. Remsberg *v.* Iola Portland Cement Co., 73 Kan. 69, 84 Pac. 548, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684 [686].

3. Thomason *v.* Seaboard Air Line R. Co., 142 N. Car. 306, 55 S. E. 198, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 686.

6. Wade *v.* Miller, 188 Mass. 6, 73 N. E. 849.

7. Phillips *v.* Lawrence Vitrified Brick, etc., Co., 72 Kan. 643, 82 Pac. 787.

9. Perrin *v.* Crescent City Stock Yard, etc., Co., 119 La. 83, 43 So. 943, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 286 [686].

688. 2. Bradbury Marble Co. *v.* Laclede Gas Light Co., (Mo. App. 1907) 106 S. W. 594, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 658 [688].

10. *United States.* — Exley *v.* Southern Cotton Oil Co., 151 Fed. 103, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

Alabama. — Vernon *v.* Edgeworth, (Ala. 1906) 42 So. 749.

District of Columbia. — New York Continental Jewell Filtration Co. *v.* Wynkoop, 29 App. Cas. (D. C.) 594.

Georgia. — Georgia, etc., R. Co. *v.* Jernigan, 128 Ga. 503, 57 S. E. 791, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

Missouri. — Casey *v.* Hoover, 114 Mo. App. 47, 89 S. W. 330; Frick *v.* Kansas City, 117 Mo. App. 488, 93 S. W. 351.

New York. — Opper *v.* Darega, 116 N. Y. App. Div. 268, 101 N. Y. Supp. 621; Hogle *v.* H. H. Franklin Mfg. Co., (Supm. Ct. Tr. T.) 105 N. Y. Supp. 1094. *Compare* Uggla *v.* Brokaw, 117 N. Y. App. Div. 586, 102 N. Y. Supp. 857.

Pennsylvania. — Stokes *v.* Pennsylvania R. Co., 214 Pa. St. 415, 63 Atl. 1028; Whaley *v.* Citizens' Nat. Bank, 28 Pa. Super. Ct. 531; Green *v.* Sun Co., 32 Pa. Super. Ct. 521.

South Carolina. — Drews *v.* Burton, 76 S. Car 366, 57 S. E. 176.

Texas. — McFadden *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 989; Sun Co. *v.* Wyatt, (Tex. Civ. App. 1908) 107 S. W. 934.

689. 1. Mountain Copper Co. *v.* U. S., 142 Fed. 625, 73 C. C. A. 621; Exley *v.* Southern Cotton Oil Co., 151 Fed. 103, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688; Over *v.* Dehne, 38 Ind. App. 433, 75 N. E. 664, 76 N. E. 883, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689; Ft. Wayne Cooperage Co. *v.* Page, (Ind. App. 1907) 82 N. E. 83; Kuhl *v.* St. Bernard Rendering, etc., Co., 117 La. 86, 41 So. 361; King *v.* Vicksburg R., etc., Co., 88 Miss 456, 42 So. 204.

5. Green *v.* Sun Co., 32 Pa. Super. Ct. 521.

690. 4. Roessler, etc., Chemical Co. *v.* Doyle, 73 N. J. L. 521, 64 Atl. 156.

691. 3. Bowman *v.* Humphrey, 132 Iowa 239, 109 N. W. 714, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 691; Richards *v.* Ohio River R. Co., 56 W. Va. 593, 49 S. E. 385, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 691.

4. **Question of Nuisance Held to Be One of Fact.** — Remsberg *v.* Iola Portland Cement Co., 73 Kan. 69, 84 Pac. 548; King *v.* Vicksburg R., etc., Co., 88 Miss. 456, 42 So. 204; Johnson *v.* New York, 186 N. Y. 139, 78 N. E. 715; Melker *v.* New York, 190 N. Y. 481, 83 N. E. 565.

692. 1. Myers *v.* State, (Ind. 1907) 82 N. E. 763; Vaughan *v.* Bridgham, 193 Mass. 392, 79 N. E. 739.

Dead Animals Left on Premises. — Yazoo, etc., R. Co. Sanders, 87 Miss. 607, 40 So. 163.

Sulphuric Acid Plant. — Holman *v.* Mineral Point Zinc Co., (Wis. 1908) 115 N. W. 327.

2. McCarty *v.* Natural Carbonic Gas Co., 189 N. Y. 46, 81 N. E. 549, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692; Downs *v.* Greer Beatty Clay Co., 29 Ohio Cir. Ct. 331, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692.

693. 1. **Slaughter House.** — Wright *v.* Ulrich, (Colo. 1907) 91 Pac. 43; Portland *v.* Cook, 48 Oregon 550, 87 Pac. 772.

694. 1. **Market Place.** — Asia *v.* Pool, (Wash. 1907) 92 Pac. 351.

Privies. — Vernon *v.* Edgeworth, (Ala. 1906) 42 So. 749.

5. King *v.* Vicksburg R., etc., Co., 88 Miss. 456, 42 So. 204.

695. 1. Downs *v.* Greer Beatty Clay Co., 29 Ohio Cir. Ct. 328.

696. 3. Taylor *v.* Seaboard Air Line R. Co., 145 N. Car. 400, 59 S. E. 129; St. Louis, etc., R. Co. *v.* Shaw, 99 Tex. 559, 92 S. W. 30.

4. **Locomotive Works.** — Austin *v.* Converse, (Pa. 1907) 67 Atl. 921.

7. Froelicher *v.* Southern Marine Works, 118 La. 1077, 43 So. 882.

697. 3. Polsue *v.* Rushmer, (1907) A. C. 121.

9. Herring *v.* Wilton, 106 Va. 171, 55 S. E. 546.

698. 1. **The Noise from a Skating Rink** may be a nuisance. Cape May First Methodist Episcopal Church *v.* Cape May Grain, etc., Co., (N. J. 1907) 67 Atl. 613.

Shooting Gallery and Musical Instruments may be a nuisance. Grantham *v.* Gibson, 41 Wash. 125, 83 Pac. 14.

4. Seligman *v.* Victor Talking Mach. Co., (N. J. 1906) 63 Atl. 1093; Ganster *v.* Metropolitan Electric Co., 214 Pa. St. 628, 64 Atl. 91; Colwell *v.* St. Pancras Borough Council, (1904) 1 Ch. 707, 73 L. J. Ch. 275, 90 L. T. N. S. 153, 52 W. R. 523, 68 J. P. 286, 20 Times L. Rep. 236; Knight *v.* Isle of Wight Electric Light, etc., Co., 90 L. T. N. S. 410, 73 L. J. Ch. 299, 68 J. P. 266, 20 Times L. Rep. 173.

699. 3. **Storage or Use of Gasoline in Garage Restrained.** — O'Hara *v.* Nelson, (N. J. 1906) 63 Atl. 836.

701. 1. **Overhanging Trees a Nuisance.** — Smith *v.* Giddy, (1904) 2 K. B. 448.

703. 6. Flynn *v.* Butler, 189 Mass. 377, 75 N. E. 730; Caskey *v.* Edwards, (Mo. App. 1908) 107 S. W. 37.

704. 1. George *v.* Peckham, 73 Neb. 794, 103 N. W. 664.

2. State *v.* Canty, 207 Mo. 439, 105 S. W. 1078, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 704.

4. Lewis *v.* Sandell, 118 La. 859, 43 So. 526, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 704.

705. 1. Hickory *v.* Southern R. Co., 143 N. Car. 451, 55 S. E. 840, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 705; Winsor *v.*

Hanson, 40 Wash. 427, 82 Pac. 710, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 704 [705].

706. 1. Lewis *v.* Sandell, 118 La. 859, 43 So. 526, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 706.

3. Bentley *v.* Empire Portland Cement Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 457, 96 N. Y. Supp. 831.

707. 1. Bangs *v.* Dworak, (Neb. 1906) 106 N. W. 780; Royce *v.* Carpenter, 80 Vt. 37, 66 Atl. 888.

708. 6. Augusta *v.* Reynolds, 122 Ga. 754, 50 S. E. 998; Chicago, etc., R. Co. *v.* People, 120 Ill. App. 306; State *v* Missouri Pac. R. Co., 71 Kan. 613, 81 Pac. 212; State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 203, 92 S. W. 153, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 708; State *v.* Canty, 207 Mo. 439, 105 S. W. 1078.

709. 2. Tedescki *v.* Berger, (Ala. 1907) 43 So. 960; Birmingham R., etc., Co. *v.* Moran, (Ala. 1907) 44 So. 152; Buskirk *v.* O. J. Gude Co., 115 N. Y. App. Div. 330, 100 N. Y. Supp. 777; Pedrick *v.* Raleigh, etc., R. Co., 143 N. Car. 485, 55 S. E. 877.

3. George *v.* Peckham, 73 Neb. 794, 103 N. W. 664; Letherman *v.* Hauser, (Neb. 1906) 110 N. W. 745; Liermann *v.* Milwaukee, (Wis. 1907) 113 N. W. 65; Anthony Wilkinson Live Stock Co. *v.* McIlquam, 14 Wyo. 209, 83 Pac. 364, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 709.

710. 2. Houlton *v.* Titcomb, 102 Me. 272, 66 Atl. 733.

711. 9. Ehrlick *v.* Com., (Ky. 1907) 102 S. W. 289.

712. 13. Exley *v.* Southern Cotton Oil Co., 151 Fed. 105, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 712.

713. 1. Louisville, etc., R. Co. *v.* Higginbotham, (Ala. 1907) 44 So. 872; Viebahn *v.* Crow Wing County, 96 Minn. 276, 104 N. W. 1089; Roessler, etc., Chemical Co. *v.* Doyle, 73 N. J. L. 521, 64 Atl. 156; Drews *v.* Burton, 76 S. Car. 366, 57 S. E. 176, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 713.

714. 1. Donahue *v.* Stockton Gas, etc., Co., (Cal. App. 1907) 92 Pac. 196.

3. Montgomery First Nat. Bank *v.* Tyson, 144 Ala. 457, 39 So. 560.

6. Cushing-Wetmore Co. *v.* Gray, (Cal. 1907) 92 Pac. 70; Harniss *v.* Bulpitt, 1 Cal. App. 140, 81 Pac. 1022.

715. 3. Davis *v.* Baltimore, etc., R. Co., 102 Md. 371, 62 Atl. 572.

716. 11. Bradbury Marble Co. *v.* Laclede Gas Light Co., (Mo. App. 1907) 106 S. W. 597, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 716.

717. 11. Frick *v.* Kansas City, 117 Mo. App. 488, 93 S. W. 351; Murray *v.* Butte, 35 Mont. 161, 88 Pac. 789.

719. 1. Ganster *v.* Metropolitan Electric Co., 214 Pa. St. 628, 64 Atl. 91.

7. McFadden *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 989.

8. Sun Co. *v.* Wyatt. (Tex. Civ. App. 1908) 107 S. W. 934, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719.

9. Southern Salt Co. *v.* Roberson, (Tex. Civ. App. 1906) 97 S. W. 107.

720. 5. Graham *v.* Chicago, etc., R. Co., (Ind. App. 1905) 74 N. E. 541.

But an Act in Defiance of a Statute is essentially unlawful, and not within the principle requiring notice to the purchasers of land upon which a private nuisance exists. Graham *v.* Chicago, etc., R. Co., (Ind. App. 1906) 77 N. E. 1055.

721. 1. Central's Consumers' Co. *v.* Pinkert, 92 S. W. 957, 29 Ky. L. Rep. 273.

5. Pickens *v.* Coal River Boom, etc., Co., 58 W. Va. 14, 50 S. E. 872, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721.

7. Southern R. Co. *v.* Com., 101 S. W. 882, 31 Ky. L. Rep. 122; Chosen Freeholders *v.* Woodcliffe Land Imp. Co., 74 N. J. L. 355, 65 Atl. 844.

10. Bly *v.* Edison Electric Illuminating Co., 111 N. Y. App. Div. 170, 97 N. Y. Supp. 592.

722. 6. Green *v.* Sun Co., 32 Pa. Super. Ct. 521.

9. Knisely *v.* Dively, 15 Pa. Dist. 883, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 722.

723. 1. Woodard *v.* West Side Mill Co., 43 Wash. 308, 86 Pac. 570.

724. 4. Donahue *v.* Stockton Gas, etc., Co., (Cal. App. 1907) 92 Pac. 196; Wright *v.* Ulrich, (Colo. 1907) 91 Pac. 43; Pickens *v.* Coal River Boom, etc., Co., 58 W. Va. 11, 50 S. E. 872.

7. Virginia Hot Springs Co. *v.* McCray, 106 Va. 461, 56 S. E. 216.

8. Over *v.* Dehne, 38 Ind. App. 434, 75 N. E. 664, 76 N. E. 883, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 724.

725. 6. Coates *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640.

726. 3. Huntington *v.* Stemeh, (Ind. App. 1906) 77 N. E. 407; Madisonville *v.* Hardman, 92 S. W. 930, 29 Ky. L. Rep. 253; Central Consumers' Co. *v.* Pinkert, 92 S. W. 957, 29 Ky. L. Rep. 273.

727. 2. Van Veghten *v.* Hudson River Power Transmission Co., 103 N. Y. App. Div. 130, 92 N. Y. Supp. 956.

729. 5. Yazoo, etc., R. Co. *v.* Sanders, 87 Miss. 607, 40 So. 163.

7. Ganster *v.* Metropolitan Electric Co., 214 Pa. St. 628, 64 Atl. 91.

730. 8. Ganster *v.* Metropolitan Electric Co., 214 Pa. St. 628, 64 Atl. 91.

731. 3. Van Veghten *v.* Hudson River Power Transmission Co., 103 N. Y. App. Div. 130, 92 N. Y. Supp. 956.

733. 4. Hynes *v.* Brewer, 194 Mass. 435, 80 N. E. 503; Warwick *v.* Baril, 14 Quebec K. B. 470, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733.

734. 5. Bradbury Marble Co. *v.* Laclede Gas Light Co., (Mo. App. 1907) 106 S. W. 599, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 734.

735. 2. Over *v.* Dehne, 38 Ind. App. 434, 75 N. E. 664, 76 N. E. 883, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 735.

736. 5. Sopher *v.* State, (Ind. 1907) 81 N. E. 913.

737. 5. Ganster *v.* Metropolitan Electric Co., 214 Pa. St. 632, 64 Atl. 91, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 737.

6. Thomason *v.* Seaboard Air Line R. Co.,

142 N. Car. 318, 55 S. E. 205, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 737.

738. 3. Townsend *v.* Norfolk R., etc., Co., 105 Va. 22, 52 S. E. 970.

739. 1. Richmond *v.* Caruthers, 103 Va. 774, 50 S. E. 265.

2. Weaver *v.* Kuchler, 17 Okla. 189, 87 Pac. 600.

4. Houlton *v.* Titcomb, 102 Me. 272, 66 Atl. 733.

5. Levin *v.* Goodwin, 191 Mass. 341, 77 N. E. 718.

7. Sultan *v.* Parker-Washington Co., 117 Mo. App. 636, 93 S. W. 289; State *v.* St. Louis, 207 Mo. 354, 105 S. W. 748.

8. Coates *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640; Laird *v.* Atlantic Coast Sanitary Co., (N. J. 1907) 67 Atl. 387; Montreal Water, etc., Co. *v.* Davie, 35 Can. Sup. Ct. 255.

740. 2. Glucose Refining Co. *v.* Chicago, 138 Fed. 213, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 740.

OATHS AND AFFIRMATIONS.

748. 7. National Cash Register Co. *v.* Kirkpatrick, 16 Pa. Dist. 258, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 748.

749. 2. Southern R. Co. *v.* Hundley, (Ala. 1907) 44 So. 195; State *v.* Mercer, 101 Md. 535, 61 Atl. 220, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 749.

5. **Practice Not to Be Commended in Bills Seeking Injunction.** — Savage *v.* Parker, 53 Fla. 1002, 43 So. 507.

751. 6. **Oath Need Not Be Formal.** — McCain *v.* Bonner, 122 Ga. 842, 51 S. E. 36.

OBLIGATION.

757. 1. **Check Not an Obligation for the Payment of Money.** — U. S. *v.* Green, 136 Fed. 618.

2. **Consideration.** — The meaning of the word ***obligations*** as used in section 1 of article 10 of the constitution, is a debt contracted to be paid or a duty to be performed by the purchaser as the consideration of the purchase of the property. Platt *v.* Platt, 50 Fla. 594, 39 So. 536.

OBLIGATORY, WRITING.

758. 1. **A Subscription Paper Is a Writing Obligatory** so as to be the subject of forgery. State *v.* Hazzard, 168 Ind. 163, 80 N. E. 149.

OBSCENITY.

760. 7. People *v.* Eastman, 188 N. Y. 478, 81 N. E. 459, *affirming* 116 N. Y. App. Div. 922, 101 N. Y. Supp. 1137.

8. Finch *v.* State, 124 Ga. 657, 52 S. E. 890; Gunn *v.* Territory, (Okla. 1907) 91 Pac. 861.

Bad Character of Female Does Not Justify Use of Obscene and Vulgar Language to Her. — Kelly *v.* State, 126 Ga. 547, 55 S. E. 482.

A Boarding House is not a public place within the meaning of the Texas statute prohibiting the use of obscene, vulgar, and indecent language in public places. Huffman *v.* State, 49 Tex. Crim. 319, 92 S. W. 419.

761. 1. See State *v.* Zurhorst, 75 Ohio St. 232, 79 N. E. 238.

2. Burton *v.* U. S., (C. C. A.) 142 Fed. 57; People *v.* Eastman, 188 N. Y. 478, 81 N. E. 459, *affirming* 116 N. Y. App. Div. 922, 101 N. Y. Supp. 1137.

Oklahoma — Act Must Be Committed Openly and Affect Public. — Gunn *v.* Territory, (Okla. 1907) 91 Pac. 861.

4. **Language Held Obscene.** — The words "Have sexual intercourse with me," addressed to a female, are vulgar and obscene. Kelly *v.* State, 126 Ga. 547, 55 S. E. 482.

6. See *contra*, Mercer *v.* State, (Tex. Crim. 1907) 106 S. W. 365.

8. **Presumption of Knowledge Attaches to Corporation Same as to Individual.** — U. S. *v.* New York Herald Co., 159 Fed. 296.

762. 1. Burton *v.* U. S., (C. C. A.) 142 Fed. 57.

4. State *v.* Zurhorst, 75 Ohio St. 232, 79 N. E. 238.

9. State *v.* Hill, 73 N. J. L. 77, 62 Atl. 936, *affirmed* 65 Atl. 1119.

11. Com. *v.* Herald Pub. Co., (Ky. 1908) 108 S. W. 892.

13. Burton *v.* U. S., (C. C. A.) 142 Fed. 57.

14. **Aiding and Abetting Publication of Obscene Literature Punishable in England.** — Rex *v.* De Marny, (1907) 1 K. B. 388, 7 Ann. Cas. 254.

16. See *contra*, Burton *v.* U. S., (C. C. A.) 142 Fed. 57.

763. 1. **Testimony as to Handwriting.** — Rinker *v.* U. S., (C. C. A.) 151 Fed. 755.

3. Com. *v.* Herald Pub. Co., (Ky. 1908) 108 S. W. 892.

OBVIOUS.

765. 1. **Obvious Error — Gross Increase in Aggregate Valuation.** — See Board of Equalization *v.* Hughes, 84 Ark. 347, 105 S. W. 577.

OCCUPANCY — OCCUPY — OCCUPANT — OCCUPIER.

766. 3. **Occupier of Road.** — Persons entitled to a right of passage by way of easement or license over a driftway or other private road are not ***occupiers*** of the way within the meaning of section 36 of the Highway Act, 1862, and their consent is not necessary to an application to justices for a declaration converting the way into a public highway. Rex *v.* Somers, (1906) 1 K. B. 326, 75 L. J. K. B. 144.

OCCUPATION.

769. 2. **Accident Insurance Policy.** — "The term ***occupation***, as employed in the policy, implies simply that which at the time of the accident giving the cause of action constituted the assured's principal business or pursuit; that which engages his attention and time, as distinguished from that which is incidentally connected with the life of men in any or all ***occupations***. Ætna L. Ins. Co. *v.* Dunn, (C. C. A.) 138 Fed. 629.

OCCUPATION, BUSINESS, AND PRIVILEGE TAXES.

774. 3. Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 774.

4. Kittanning *v.* Consolidated Natural Gas Co., (Pa. 1908) 68 Atl. 728.

775. 4. Phœbus *v.* Manhattan Social Club, 105 Va. 147, 52 S. E. 839, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 773, 775.

776. 1. Lebanon *v.* Zanditon, 75 Kan. 273, 89 Pac. 10; State *v.* Chaney, 36 Wash. 350, 78 Pac. 915.

7. *California.* — *Ex p.* Lemon, 143 Cal. 558, 77 Pac. 455; Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909; *Ex p.* Sweetman, 5 Cal. App. 577, 90 Pac. 1069.

Kansas. — Topeka *v.* Jones, 74 Kan. 164, 86 Pac. 162; Emporia *v.* Endelman, 75 Kan. 428, 89 Pac. 685; Emporia *v.* Becker, (Kan. 1907) 90 Pac. 798.

Kentucky. — Hager *v.* Walker, (Ky. 1908) 107 S. W. 254.

Missouri. — State *v.* Doerring, 194 Mo. 398, 92 S. W. 489; *Ex p.* Helton, 117 Mo. App. 609, 93 S. W. 913; State *v.* Koock, (Mo. App. 1906) 96 S. W. 721.

New Hampshire. — Emerson Troy Granite Co. *v.* Pearson, (N. H. 1906) 64 Atl. 582.

Oregon. — State *v.* Briggs, 45 Oregon 366, 77 Pac. 750.

Texas. — Fouts *v.* State, (Tex. Crim. 1907) 101 S. W. 223.

Washington. — Garfinkle *v.* Sullivan, 37 Wash. 650, 80 Pac. 188; *Ex p.* Camp, 38 Wash. 393, 80 Pac. 547.

777. 3. Kehrer *v.* Stewart, 197 U. S. 60, 25 U. S. Sup. Ct. 403, *affirming* 117 Ga. 969, 44 S. E. 854; Grainger *v.* Douglas Park Jocky Club, (C. C. A.) 148 Fed. 513, 8 Ann. Cas. 997, *reversing* 146 Fed. 414; State *v.* Cederaski, (Conn. 1908) 69 Atl. 19; Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; State *v.* Merchants' Trading Co., 114 La. 529, 38 So. 443; Coca-Cola Co. *v.* Skillman, (Miss. 1907) 44 So. 985; McCarter *v.* Lexington, (Neb. 1908) 115 N. W. 303; State *v.* Cohen, 73 N. H. 543, 63 Atl. 928.

4. State *v.* Looney, (Mo. App. 1906) 97 S. W. 934, *reversing* (Mo. App. 1906) 96 S. W. 316.

778. 4. Montgomery *v.* Kelly, 142 Ala. 556, 38 So. 67, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 778; Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044.

5. Garfinkle *v.* Sullivan, 37 Wash. 650, 80 Pac. 188; Wisconsin Telephone Co. *v.* Milwaukee, 126 Wis. 1, 104 N. W. 1009.

779. 1. Fairfield *v.* Shallenberger, (Iowa 1907) 113 N. W. 459, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 778.

6. Monett *v.* Hall, (Mo. 1907) 106 S. W. 579; British-American Mortg. Co. *v.* Jones, 77 S. Car. 443, 58 S. E. 417; Producers' Oil Co. *v.* Stephens, (Tex. Civ. App. 1906) 99 S. W. 157; Texas Co. *v.* Stephens, (Tex. 1907) 103 S. W. 481.

10. People *v.* Tax Com'rs, 199 U. S. 1, 53, 25 Supm. Ct. 705 and 715, *affirming* 174 N. Y. 417, 67 N. E. 69, and *reversing* 79 N. Y. App. Div. 183, 80 N. Y. Supp. 85.

780. 4. Home Telephone, etc., Co. *v.* Los Angeles, 155 Fed. 554; State *v.* Cederaski, (Conn. 1908) 69 Atl. 19; Otting *v.* Bellevue, (Ky. 1907) 105 S. W. 375; Louisville *v.* Roberts, (Ky. 1908) 106 S. W. 1197; Lake Charles *v.* Roy, 115 La. 939, 40 So. 362; Monett *v.* Hall, (Mo. App. 1907) 106 S. W. 580; Atlantic City *v.* Brown, 71 N. J. L. 81, 58 Atl. 110; Portland *v.* Cook, 48 Oregon 550, 87 Pac. 772; *Ex p.* Heuson, 49 Tex. Crim. 177, 90 S. W. 874.

5. Hager *v.* Walker, (Ky. 1908) 107 S. W. 254.

781. 2. Stone *v.* Fritts, (Ind. 1907) 82 N. E. 792; Douglas *v.* People, 225 Ill. 536, 80 N. E. 341; State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594; State *v.* Hovorka, 100 Minn. 249, 110 N. W. 870; Munk *v.* Frink, 75 Neb. 172, 106 N. W. 425; State *v.* Cohen, 73 N. H. 543, 63 Atl. 928; Buck *v.* Douglass, (N. J. 1907) 65 Atl. 848.

11. Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909; Sierra County *v.* Flanigan, 149 Cal. 769, 87 Pac. 913; State *v.* Cobb, 113 Mo. App. 156, 87 S. W. 551.

782. 3. Placer County *v.* Whitney Estate Co., 2 Cal. App. 614, 84 Pac. 277.

8. Cumberland Telephone, etc., Co. *v.* Hopkins, (Ky. 1906) 90 S. W. 594.

10. People *v.* Van De Carr, 199 U. S. 552, 26 U. S. Supm. Ct. 144, *affirming* 175 N. Y. 440, 67 N. E. 913, and 81 N. Y. App. Div. 128, 80 N. Y. Supp. 1108; Kennedy *v.* State Board of Registration, 145 Mich. 241, 108 N. W. 730; State *v.* Adcock, 206 Mo. 550, 105 S. W. 270.

11. Hewitt *v.* Medical Examiners, 148 Cal. 590, 84 Pac. 39; Spurgeon *v.* Rhodes, 167 Ind. 1, 78 N. E. 228; State *v.* Briggs, 45 Oregon 366, 77 Pac. 750; State *v.* Walker, (Wash. 1907) 92 Pac. 775.

12. Meffood *v.* Sheffield, (Ala. 1906) 41 So. 970; Yantis *v.* Lexington, (Ky. 1906) 94 S. W. 653; Louisville *v.* Roberts, (Ky. 1907) 105 S. W. 431; New Orleans *v.* Fargot, 116 La. 360, 40 So. 735; State *v.* Bates, 101 Minn. 301, 112 N. W. 67.

13. Meyer *v.* Mobile, 147 Fed. 843, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 782.

783. 1. Cambridge *v.* Cambridge Water Co., 99 Md. 503, 58 Atl. 442, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 782, 783; *Ex p.* Jackson, 143 Cal. 564, 77 Pac. 457; Munson *v.* Colorado Springs, 35 Colo. 506, 84 Pac. 683; Thrower *v.* Atlanta, 124 Ga. 1, 52 S. E. 76; Southern Express Co. *v.* R. M. Rose Co., 124 Ga. 581, 53 S. E. 185; Gray *v.* Omaha, (Neb. 1908) 114 N. W. 600; Com. *v.* Real Estate Trust Co., 211 Pa. St. 51, 60 Atl. 551; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382; Wisconsin Telephone Co. *v.* Milwaukee, 126 Wis. 1, 104 N. W. 1009.

4. **The Limits of the Application of a Statute** are generally held to be coextensive with the evil or the purpose it was intended to suppress or effectuate. Charleston *v.* Charleston Brewing Co., 61 W. Va. 34, 56 S. E. 198.

784. 2. State *v.* Calloway, 11 Idaho 719, 84 Pac. 28; Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; Sandys *v.* Williams, 46 Oregon 327, 80 Pac. 642; Kruse *v.* Williams, 46 Oregon 632, 80 Pac. 648.

3. Watertown *v.* Rodenbaugh, 112 N. Y.

App. Div. 726, 98 N. Y. Supp. 885, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 783, 784; La Junta *v.* Heath, 38 Colo. 372, 88 Pac. 459; Buffalo *v.* Linsman, 113 N. Y. App. Div. 584, 98 N. Y. Supp. 737.

4. Standard Oil Co. *v.* Fredericksburg, 105 Va. 92, 52 S. E. 817, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 784; *Ex p.* Hull, 153 Fed. 459; Waters-Pierce Oil Co. *v.* Hot Springs, (Ark. 1908) 109 S. W. 293; *Ex. p.* Woods, (Tex. Crim. 1908) 108 S. W. 1171.

5. *Ex p.* Lemon, 143 Cal. 558, 77 Pac. 455; Des Moines *v.* Bolton, 128 Iowa 108, 102 N. W. 1045; Hager *v.* Walker, (Ky. 1908) 107 S. W. 254; People *v.* Smith, 147 Mich. 391, 110 N. W. 1102; State *v.* Hazelton, 78 Vt. 467, 63 Atl. 305.

785. 1. Robinson *v.* Norfolk, (Va. 1908) 60 S. E. 762.

7. Augusta *v.* Clark, 124 Ga. 254, 52 S. E. 881.

788. 2. Titusville *v.* Gahan, 34 Pa. Super. Ct. 613.

789. 12. State *v.* Hovorka, 100 Minn. 252, 110 N. W. 870, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 789.

790. 1. Waters-Pierce Oil Co. *v.* Hot Springs, (Ark. 1908) 109 S. W. 293.

791. 8. Meyer *v.* Mobile, 147 Fed. 843; Western Union Tel. Co. *v.* State, 82 Ark. 309, 101 S. W. 748; Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811.

792. 1. State *v.* Briggs, 45 Oregon 366, 77 Pac. 750.

2. Gatewood *v.* State, 203 U. S. 531, 27 U. S. Sup. Ct. 167, *affirming* 138 N. Car. 749, 51 S. E. 53; Kennedy *v.* State Board of Registration, 145 Mich. 241, 108 N. W. 730; *Ex. p.* Heuson, 49 Tex. Crim. 177, 90 S. W. 874; State *v.* Walker, (Wash. 1907) 92 Pac. 775; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

3. *Ex p.* Deeds, 75 Ark. 542, 87 S. W. 1030; Com. *v.* Hana, 195 Mass. 262, 81 N. E. 149.

4. American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; Augusta *v.* Clark, 124 Ga. 254, 52 S. E. 881; Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; State *v.* McIntosh, 205 Mo. 589, 103 S. W. 1078; State *v.* Barr, 78 Vt. 97, 62 Atl. 43; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

5. Com. *v.* Hana, 195 Mass. 262, 81 N. E. 149.

793. 3. Kendrick *v.* State, 142 Ala. 43, 39 So. 203.

4. Ware *v.* Mobile County, 146 Ala. 163, 41 So. 153.

5. *In re* Home Discount Co., 147 Fed. 538; State *v.* Wickenhoefer, (Del. 1906) 64 Atl. 273; Augusta *v.* Clark, 124 Ga. 254, 52 S. E. 881; *Ex p.* Berger, 193 Mo. 16, 90 S. W. 759.

6. Western Union Tel. Co. *v.* State, 82 Ark. 309, 101 S. W. 748; American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; State *v.* Western Union Tel. Co., 75 Kan. 609, 90 Pac. 236.

8. Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168.

794. 2. **Goods Brought from Another State and Not from a Foreign Country** are subject to state taxation after reaching their destination and whilst held in the state for sale in the original packages. Meyer *v.* Mobile, 147 Fed. 843.

3. Rearick *v.* Com., 203 U. S. 507, 27 U. S. Sup. Ct. 159, *reversing* 26 Pa. Super. Ct. 384; Lee *v.* La Fayette, (Ala. 1907) 45 So. 294; State *v.* Nelson, 128 Iowa 740, 105 N. W. 327; State *v.* Trotman, 142 N. Car. 662, 55 S. E. 599.

795. 1. Milburn Wagon Co. *v.* Com., (Ky. 1907) 104 S. W. 323; State *v.* Intoxicating Liquors, 102 Me. 385, 67 Atl. 312; Parks *v.* Nez Perce County, 13 Idaho 298, 89 Pac. 940; American Book Co. *v.* Shelton, 117 Tenn. 745, 100 S. W. 725; Loverin, etc., Co. *v.* Tansil, 118 Tenn. 717, 102 S. W. 77.

2. Kehrer *v.* Stewart, 197 U. S. 60, 25 U. S. Sup. Ct. 403, *affirming* 117 Ga. 969, 44 S. E. 854; Armour Packing Co. *v.* Lacy, 200 U. S. 226, 26 U. S. Sup. Ct. 232, *affirming* 134 N. Car. 567, 47 S. E. 53; Simoyan *v.* Rohan, 36 Ind. App. 495, 76 N. E. 176; Alma *v.* Clow, 146 Mich. 443, 109 N. W. 853; People *v.* Smith, 147 Mich. 391, 110 N. W. 1102; Com. *v.* Cover, 215 Pa. St. 556, 64 Atl. 686; Territory *v.* Russell, 13 N. Mex. 558, 86 Pac. 551.

3. Com. *v.* Caldwell, 190 Mass. 355, 76 N. E. 955; Bacon *v.* Locke, 42 Wash. 215, 83 Pac. 721.

796. 1. Chicago Portrait Co. *v.* Macon, 147 Fed. 967; *Ex p.* Hull, 153 Fed. 459.

2. State *v.* Looney, (Mo. 1906) 97 S. W. 934, *reversing* (Mo. App. 1906) 96 S. W. 316.

5. Galveston, etc., R. Co. *v.* Davidson, (Tex. Civ. App. 1906) 93 S. W. 436; State *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 460; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 461; Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 462; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 462; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Galveston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 464; International, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; Ft. Worth, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; San Antonio, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; Chicago, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; State *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 467; Gulf, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 467; Texas Midland R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 468.

6. Savannah, etc., R. Co. *v.* Savannah, 198 U. S. 392, 25 Supm. Ct. 690, *affirming* 115 Ga. 137, 41 S. E. 592; Bird *v.* Beadle, 145 Mich. 416 108 N. W. 646; State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71, *reversing* (Tex. Civ. App. 1906) 93 S. W. 464; State *v.* Missouri, etc., R. Co., (Tex. 1907) 100 S. W. 146; State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594; State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 515.

7. Topeka *v.* Jones, 74 Kan. 164, 86 Pac. 162; Com. *v.* Beck, 194 Mass. 14, 79 N. E. 744.

798. 5. State *v.* Leeck, 119 La. 522, 44 So. 285.

12. State *v.* Smith, 42 Wash. 237, 84 Pac. 851.

799. 7. Reser *v.* Umatilla County, 48 Oregon 330, 86 Pac. 595, *citing* 21 Am. and

ENG. ENCYC. OF LAW (2d ed.) 799; Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168.

8. Brown-Foreman Co. *v.* Com., (Ky. 1907) 101 S. W. 321.

800. 5. *Ex p.* Hutchinson, 137 Fed. 949; Humes *v.* Little Rock, 138 Fed. 929; Montgomery *v.* Kelly, 142 Ala. 552, 38 So. 67; *Ex p.* Deeds, 75 Ark. 542, 87 S. W. 1030. *Compare* Gamble *v.* Montgomery, 147 Ala. 682, 39 So. 353.

Trading Stamps. — A tax on merchants using trading stamps is void for discrimination. *Ex p.* Hutchinson, 137 Fed. 950.

801. 4. Com. *v.* Boyd, 188 Mass. 79, 74 N. E. 255.

Some Occupations subject to license and regulation under the police power of municipalities are those of:

Private Detective. — Fox *v.* Smith, 123 N. Y. App. Div. 369, 108 N. Y. Supp. 181.

Junk Dealers. — State *v.* Cohen, 73 N. H. 543, 63 Atl. 928; New York *v.* Vandewater, 113 N. Y. App. Div. 456, 99 N. Y. Supp. 306.

Automobilist. — Emerson Troy Granite Co. *v.* Pearson, (N. H. 1906) 64 Atl. 582.

Fishing. — State *v.* Hanlon, 77 Ohio St. 19, 82 N. E. 662.

Oleomargarine Selling. — Com. *v.* Andrews, 211 Pa. St. 110, 60 Atl. 554.

Theatres. — People *v.* Steele, 231 Ill. 340, 83 N. E. 236.

5. Bacon *v.* Walker, 204 J. S. 311, 27 U. S. Sup. Ct. 289, *affirming* 11 Idaho 127, 81 Pac. 155; Bown *v.* Walling, 204 U. S. 320, 27 U. S. Sup. Ct. 292, *affirming* 9 Idaho 740, 76 Pac. 318; Spiegler *v.* Chicago, 216 Ill. 114, 74 N. E. 718; People *v.* City Prison, 183 N. Y. 223, 76 N. E. 11, *affirming* 107 N. Y. App. Div. 617, 95 N. Y. Supp. 1152; Reser *v.* Umatilla County, 48 Oregon 326, 86 Pac. 595.

Plumbers may be required to take out a license and pass an examination. Douglas *v.* People, 225 Ill. 536, 80 N. E. 341; Felton *v.* Atlanta, (Ga. App. 1908) 61 S. E. 27.

6. *California.* — Hewitt *v.* Medical Examiners, 148 Cal. 590, 84 Pac. 39; Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909; Sierra County *v.* Flanigan, 149 Cal. 769, 87 Pac. 913.

Indiana. — Spurgeon *v.* Rhodes, 167 Ind. 1, 78 N. E. 228.

Iowa. — State *v.* Kendig, 133 Iowa 164, 110 N. W. 463; Fairfield *v.* Shallenberger, (Iowa 1907) 113 N. W. 459.

Louisiana. — State *v.* Kumpfert, 115 La. 950, 40 So. 365.

Maryland. — Watson *v.* State, 105 Md. 650, 66 Atl. 635.

Minnesota. — State *v.* Hovorka, 100 Minn. 249, 110 N. W. 870.

Missouri. — State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071; State *v.* McIntosh, 205 Mo. 589, 103 S. W. 1078.

Ohio. — State *v.* Marble, 72 Ohio St. 21, 73 N. E. 1063.

Rhode Island. — State *v.* Heffernan, (R. I. 1906) 65 Atl. 284.

Washington. — State *v.* Walker, (Wash. 1907) 92 Pac. 775; State *v.* Thompson, (Wash. 1908) 94 Pac. 667.

803. 2. People *v.* Van De Carr, 199 U. S. 552, 26 U. S. Sup. Ct. 144, *affirming* 175 N. Y. 440, 67 N. E. 913, and 81 N. Y. App. Div. 128, 80 N. Y. Supp. 1108; John *v.* New York, 201 U. S. 633, 26 U. S. Sup. Ct. 554, *affirming* 178 N. Y. 617, 70 N. E. 1104; Kendrick *v.* State, 142 Ala. 43, 39 So. 203; Kennamer *v.* State, (Ala. 1907) 43 So. 482; Birmingham *v.* Goldstein, (Ala. 1907) 44 So. 113; Augusta *v.* Clark, 124 Ga. 254, 52 S. E. 881; Iowa Mut. Tornado Ins. Assoc. *v.* Gilbertson, 129 Iowa 658, 106 N. W. 153; Watson *v.* State, 105 Md. 650, 66 Atl. 635; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811.

Population as a Basis for Legislation. — Douglas *v.* People, 225 Ill. 536, 80 N. E. 341.

804. 1. State *v.* Pinckard, 119 La. 228, 43 So. 1015.

2. Cumberland Telephone, etc., Co. *v.* Hopkins, (Ky. 1906) 90 S. W. 594; Covington *v.* Dalheim, (Ky. 1907) 102 S. W. 829; Read *v.* Graham, (Ky. 1907) 102 S. W. 860; Sterling *v.* Bowling Green, 26 Ohio Cir. Ct. 581.

805. 3. Grainger *v.* Douglas Park Jockey Club, (C. C. A.) 148 Fed. 513, 8 Ann. Cas. 997, *reversing* 146 Fed. 414; State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483; State *v.* Hanlon, 77 Ohio St. 19, 82 N. E. 662; Texas Co. *v.* Stephens, (Tex. 1907) 103 S. W. 481; Needham *v.* State, (Tex. Crim. 1907) 103 S. W. 857.

4. Coca-Cola Co. *v.* Skillman, (Miss. 1907) 44 So. 985.

5. Atlanta *v.* Jacobs, 125 Ga. 523, 54 S. E. 534; Brown *v.* Stuart, 145 Mich. 413, 108 N. W. 717; Rodge *v.* Kelly, 88 Miss. 209, 40 So. 552; Hyland *v.* Sharp, 88 Miss. 567, 41 So. 264; Laurens *v.* Anderson, 75 S. Car. 62, 55 S. E. 136; *Ex p.* Woods, (Tex. Crim. 1908) 108 S. W. 1171; *Ex p.* Camp, 38 Wash. 393, 80 Pac. 547.

806. 1. **The Legislature May Determine** whether a law which it enacts shall be coextensive with the state, or be operative only within a certain political subdivision thereof, but it must be uniform in its operation on all the citizens of such subdivision. State *v.* Wickenhoefer, (Del. 1906) 64 Atl. 273.

2. Com. *v.* Petri, (Ky. 1906) 90 S. W. 987.

6. Schiller *v.* State, 49 Fla. 25, 38 So. 706.

807. 8. Stamps *v.* Burk, 83 Ark. 351, 104 S. W. 153; Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909; Sierra County *v.* Flanigan, 149 Cal. 769, 87 Pac. 913.

808. 7. Texas Co. *v.* Stephens, (Tex. 1907) 103 S. W. 481.

809. 8. Lockwood *v.* District of Columbia, 24 App. Cas. (D. C.) 569; District of Columbia *v.* Chapman, 25 App. Cas. (D. C.) 95; State *v.* Koock, 202 Mo. 223, 100 S. W. 630.

Federal Courts Will Follow the construction given to state laws by the highest court of the state, and the constitutionality of such laws will be tested under that view. Gatewood *v.* North Carolina, 203 U. S. 531, 27 U. S. Sup. Ct. 167, *affirming* 138 N. Car. 746, 51 S. E. 53; State *v.* Intoxicating Liquors, 102 Me. 385, 67 Atl. 312.

11. Hodkins *v.* McDonald, 123 Mo. App. 566, 100 S. W. 508.

810. 2. **Bricklayer Not Liable for Tax Imposed on "Building Contractor."** — Wilson *v.* District of Columbia, 26 App. Cas. (D. C.) 110.

Social Club Held Liable to Assessment for "Business Tax." — Rideau Club *v.* Ottawa, 12 Ont. L. Rep. 275.

811. 10*a*. A foreign loan company which pays in New York a draft for a loan to a resident of South Carolina on real estate there does business in South Carolina. British-American Mortg. Co. *v.* Jones, 77 S. Car. 443, 58 S. E. 417, *reversing* 76 S. Car. 218, 56 S. E. 983.

813. 5. State *v.* Orfila, 116 La. 972, 41 So. 227.

6. Dothan *v.* Hornsby, (Ala. 1907) 43 So. 714.

814. 5. Bailey *v.* Opelika, 146 Ala. 171, 40 So. 968; Washington *v.* Eureka Lumber Co., 145 N. Car. 13, 58 S. E. 436.

7. Conklin Lumber Co. *v.* Chicago, 127 Ill. App. 103; Com. *v.* Childs Dining Hall Co., 32 Pa. Super. Ct. 467.

815. 4. Fairfield *v.* Shallenberger, (Iowa 1907) 113 N. W. 459, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 778, 815.

816. 4. People *v.* Tax Com'rs, 199 U. S. 1, 53, 25 Sup. Ct. 705 and 715, 67 N. E. 69, *affirming* 174 N. Y. 417, and *reversing* 79 N. Y. App. Div. 183, 80 N. Y. Supp. 85.

5. Coatesville *v.* Coatesville Electric Light, etc., Co., 32 Pa. Super. Ct. 513.

817. 11. Phœbus *v.* Manhattan Social Club, 105 Va. 144, 52 S. E. 839.

818. 2. American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; State Nat. Bank *v.* Memphis, 116 Tenn. 641, 94 S. W. 606; Norfolk, etc., News Co. *v.* Norfolk, 105 Va. 139, 52 S. E. 851.

3. Spira *v.* State, 146 Ala. 177, 41 So. 465; State *v.* New Orleans R., etc., Co., 116 La. 144, 40 So. 597.

4. Stamps *v.* Burk, 83 Ark. 351, 104 S. W. 153.

9. Southern Car, etc., Co. *v.* Calhoun County, 141 Ala. 250, 37 So. 425.

820. 1. Francis *v.* Robinson, (Tex. Civ. App. 1905) 89 S. W. 803; Stephens *v.* Texas, etc., R. Co., (Tex. 1906) 97 S. W. 309.

Injunction Proceedings to Restrain the collection of an unlawful tax may be resorted to in the absence of any other adequate remedy. Atlanta *v.* Jacobs, 125 Ga. 523, 54 S. E. 534; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811. *Compare* Western Union Tel. Co. *v.* Winnsboro, 71 S. Car. 231, 50 S. E. 870.

821. 4. Cole *v.* State, (Miss. 1907) 45 So. 11; People *v.* Gilman, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 954; State *v.* Matthews, 77 S. Car. 357, 57 S. E. 1099; Rosenkrans *v.* State Board of Registration, (R. I. 1907) 67 Atl. 367.

7. State *v.* Adcock, 206 Mo. 550, 105 S. W. 270; People *v.* State City Trotting Club, 190 N. Y. 31, 82 N. E. 723, *affirming* 120 N. Y. App. Div. 484, 105 N. Y. Supp. 528, and *reversing* (Supm. Ct. Spec. T.) 103 N. Y. Supp. 955; People *v.* Metz, 123 N. Y. App. Div. 269, 107 N. Y. Supp. 970.

12. Rothchild *v.* Semonin, (Ky. 1907) 101 S. W. 977.

822. 6. State *v.* Nease, 46 Oregon 433, 80 Pac. 897.

11. Pile *v.* Carpenter, 118 Tenn. 288, 99 S. W. 360.

823. 2. Gilley *v.* Harrell, 118 Tenn. 115, 101 S. W. 424.

5. Reeder *v.* Jones, (Del. 1902) 65 Atl. 571; Bronold *v.* Engler, 121 N. Y. App. Div. 123, 105 N. Y. Supp. 508; Fossett *v.* Rock Island Lumber, etc., Co., (Kan. 1907) 92 Pac. 833.

7. *Contra.* — Fox *v.* Smith, 123 N. Y. App. Div. 369, 108 N. Y. Supp. 181.

824. 7. Topeka *v.* Jones, 74 Kan. 164, 86 Pac. 162.

825. 5. Producers' Oil Co. *v.* Stephens, (Tex. Civ. App. 1906) 99 S. W. 157; Fouts *v.* State, (Tex. Crim. 1907) 101 S. W. 223.

11. Com. *v.* Lavery, 188 Mass. 13, 73 N. E. 884.

826. 3. Portland *v.* Cook, 48 Oregon 550, 87 Pac. 772; Galloway *v.* Memphis, 116 Tenn. 736, 94 S. W. 75; Littleton *v.* Burgess, 14 Wyo. 173, 82 Pac. 864.

Executive or Administrative Officials having delegated power to grant licenses are not thereby inherently given power to revoke them in the absence of an ordinance or resolution of general application providing for such revocation. People *v.* Health Dept., 117 N. Y. App. Div. 856, 103 N. Y. Supp. 275.

4. State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

5. Stone *v.* Fritts, (Ind. 1907) 82 N. E. 792, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 826; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044; Atlantic City *v.* Brown, 72 N. J. L. 207, 62 Atl. 428; Metropolitan Milk, etc., Co. *v.* New York, 113 N. Y. App. Div. 377, 98 N. Y. Supp. 894.

9. Spiegler *v.* Chicago, 216 Ill. 114, 74 N. E. 718.

10. Hewitt *v.* Medical Examiners, 148 Cal. 590, 84 Pac. 39; Macomber *v.* State Board of Health, (R. I. 1906) 65 Atl. 263.

11. Stone *v.* Fritts, (Ind. 1907) 82 N. E. 792, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 826.

827. 4. District of Columbia *v.* Chapman, 25 App. Cas. (D. C.) 95.

7. Lowell *v.* Archambault, 189 Mass. 70, 75 N. E. 65.

828. 5. *Ex p.* Ackerman, (Cal. App. 1907) 91 Pac. 429; Com. *v.* Petri, (Ky. 1906) 90 S. W. 987.

6. Placer County *v.* Whitney Estate Co., 2 Cal. App. 614, 84 Pac. 277; Pratt Institute *v.* New York, 183 N. Y. 151, 75 N. E. 1119, *affirming* 99 N. Y. App. Div. 525, 91 N. Y. Supp. 136.

9. Monett *v.* Hall, (Mo. App. 1907) 106 S. W. 579.

OFFAL.

830. 2. **House Offal.** — See State *v.* Robb, 100 Me. 184, 60 Atl. 874, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 830.

OFFENSE — OFFENDER — OFFENDING.

831. 1. **Offenses against the United States.** — See Thomas *v.* U. S., (C. C. A.) 156 Fed. 897.

OFFICER.

832. **Officer of United States.** — Assistant district attorneys of the United States are *officers* of the United States courts. *In re* Leaken, 137 Fed. 680.

OFFICERS AND AGENTS OF PRIVATE CORPORATIONS.

836. 1. Cazier *v.* Mackie-Lovejoy Mfg. Co., (C. C. A.) 138 Fed. 654; Greenfield *v.* Stout, 122 Ga. 303, 50 S. E. 111; Lloyd *v.* Matthews, 223 Ill. 477, 79 N. E. 172, *affirming* 119 Ill. App. 565; Cudahy Packing Co. *v.* Hays, 74 Kan. 124, 85 Pac. 811; Southern Electric Securities Co. *v.* State, (Miss. 1907) 44 So. 785; Chilcott *v.* Washington State Colonization Co., 45 Wash. 148, 88 Pac. 113.

3. Vardeman *v.* Penn. Mut. L. Ins. Co., 125 Ga. 117, 54 S. E. 66, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 836.

837. 1. Sylvania, etc., R. Co. *v.* Hoge, 129 Ga. 734, 59 S. E. 806.

4. **One Company May Be Sole Director of Another Company.** — *In re* Bulawayo Market, etc., Co., (1907) 2 Ch. 458, 23 Times L. Rep. 714.

8. **Eligibility for Re-election.** — It requires a wilful refusal to file the report of the election of directors within thirty days after an annual election to make the directors so failing to file the same ineligible to re-election at the next succeeding annual meeting. *In re* Election of Directors, (N. J. 1907) 66 Atl. 1051.

839. 1. *In re* Hammond, 139 Fed. 898.

2. Matter of Keller, 116 N. Y. App. Div. 58, 101 N. Y. Supp. 133.

Notice May Be Waived. — J. W. Butler Paper Co. *v.* Cleveland, 220 Ill. 128, 77 N. E. 69, *affirming* 121 Ill. App. 491.

Failure to Give Notice, required by statute, renders an election of directors invalid. Woolf *v.* East Nigel Gold Min. Co., 21 Times L. Rep. [illegible].

841. 2. *In re* P. B. Mathiason Mfg. Co. 122 Mo. App. 437, 99 S. W. 502.

9. Eagle Iron Co. *v.* Colyar, (C. C. A.) 156 Fed. 954.

843. 7. Crow *v.* Florence Ice, etc., Co., 143 Ala. 541, 39 So. 401.

844. 5. Barna *v.* Kirczow, (N. J. Ch. 1906) 63 Atl. 611; Hankins *v.* Newell, (N. J. 1907) 66 Atl. 929; Com. *v.* Straus, 32 Pa. Super. Ct. 580.

845. 2. **Filing of Transcript.** — *In re* Westchester Trust Co., 186 N. Y. 215, 78 N. E. 875, *reversing* 114 N. Y. App. Div. 856, 100 N. Y. Supp. 249.

848. 2. Strange *v.* Williams, 15 Pa. Dist. 156, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847 [848].

3. Potwin *v.* Grunewald, 123 Ill. App. 34.

7. See Glossop *v.* Glossop, 97 L. T. N. S. 372.

849. 8. **The Directors Cannot Remove One of Their Own Number.** — Laughlin *v.* Geer, 121 Ill. App. 534.

850. 1. Berlin *v.* Cusachs, 114 La. 744, 38 So. 539; Daspit *v.* D. H. Holmes Co., (La. 1907) 44 So. 903, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 850.

2. Lloyd *v.* Matthews, 223 Ill. 477, 79 N. E. 172.

Malfeasance in Office Is a Sufficient Ground for Removal. — Fitzgerald *v.* State Mut. Bldg., etc., Assoc., (N. J. 1908) 69 Atl. 564.

6. People *v.* Lyon, 119 N. Y. App. Div. 361, 104 N. Y. Supp. 319.

Removal under New York Statute. — See People *v.* Lyon, 189 N. Y. 544, 82 N. E. 1130, order *affirmed* 119 N. Y. App. Div. 361, 104 N. Y. Supp. 319.

851. 10. Rosehill Cemetery Co. *v.* Dempster, 223 Ill. 567, 79 N. E. 276; Cann *v.* Church of the Redeemer, 111 Mo. App. 164, 85 S. W. 994; Cann *v.* Church of Holy Redeemer, 121 Mo. App. 201, 98 S. W. 781.

Ratification of Unauthorized Appointment. — See Colpe *v.* Jubilee Min. Co., 2 Cal. App. 393, 84 Pac. 324.

852. 3. Taylor *v.* Sutherlin-Meade Tobacco Co., (Va. 1908) 60 S. E. 132.

7. Mandel *v.* Fidelity Trust Co., (Ky. 1908) 107 S. W. 775; Sedalia *v.* Montgomery, 109 Mo. App. 197, 88 S. W. 1014.

A Station Agent has no power to contract for carrying the mail from the station to the post office. Silver *v.* Missouri, etc., R. Co., 125 Mo. App. 402, 102 S. W. 621.

853. 1. **De Facto Directors** may act for the corporation while continuing on the position. Lord *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 108 N. Y. Supp. 67.

2. Collins Ice Cream Co. *v.* Normandie, 121 Ill. App. 140; Tevis *v.* Hammersmith, (Ind. App. 1907) 81 N. E. 614; Clement *v.* Young-McShea Amusement Co., 69 N. J. Ch. 347, 60 Atl. 419; Roberts *v.* Hilton Land Co., 45 Wash. 464, 88 Pac. 946.

3. Jack *v.* National Bank, 17 Okla. 430, 89 Pac. 219, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 853.

4. *United States.* — Love *v.* Export Storage Co., (C. C. A.) 143 Fed. 1. See also Freygang *v.* Vera Cruz, etc., R. Co., 154 Fed. 640, 83 C. C. A. 414.

California. — West *v.* Prather, (Cal. App. 1907) 93 Pac. 892.

Georgia. — Johnson *v.* Waxelbaum Co., 1 Ga. App. 511, 58 S. E. 56; Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., 3 Ga. App. 212, 59 S. E. 713.

Illinois. — Merchants' Nat. Bank *v.* Nichols, etc., Co., 223 Ill. 41, 79 N. E. 38, *affirming judgment* 123 Ill. App. 430.

Iowa. — Sherwood *v.* Home Sav. Bank, 131 Iowa 528, 109 N. W. 9.

Kentucky. — Licking Valley Bldg. Assoc. *v.* Com., 89 S. W. 682, 28 Ky. L. Rep. 543.

Maryland. — Carrington *v.* Turner, 101 Md. 437, 61 Atl. 324.

New York. — Ring *v.* Long Island Real Estate Exch., etc., Co., 93 N. Y. App. Div. 442, 87 N. Y. Supp. 682, *affirmed* 184 N. Y. 553, 76 N. E. 1107; Binghamton First Nat. Bank *v.* Commercial Travelers Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454, *affirmed* 185 N. Y. 575, 78 N. E. 1103. See also Gause *v.* Commonwealth Trust Co., 124 N. Y. App. Div. 438, 108 N. Y. Supp. 1080.

North Dakota. — Portage First Nat. Bank *v.* State Bank, 15 N. Dak. 594, 109 N. W. 61.

Oklahoma. — Jack *v.* National Bank, 17 Okla. 430, 89 Pac. 219, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 853.

South Carolina. — See Hagins *v.* Ætna L. Ins. Co., 75 S. Car. 225, 55 S. E. 323.

Vermont. — Lyndon Sav. Bank *v.* International Co., 78 Vt. 169, 62 Atl. 50.

5. *California.* — Riley *v.* Loma Vista Ranch Co., 1 Cal. App. 488, 82 Pac. 686. See also Pacific Vinegar, etc., Works *v.* Smith, (Cal. 1907) 93 Pac. 85.

Illinois. — Rosehill Cemetery Co. *v.* Dempster, 223 Ill. 567, 79 N. E. 276; Fred K. Higbie Co. *v.* Charles Weeghman Co., 126 Ill. App. 97.

Indiana. — Tevis *v.* Hammersmith, (Ind. App. 1907) 81 N. E. 614.

Iowa. — Johnson *v.* Des Moines, etc., R. Co., 129 Iowa 281, 105 N. W. 509; Kellenberger *v.* Oskaloosa Nat. Bldg., etc., Assoc., 129 Iowa 582, 105 N. W. 836; Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13.

Maine. — Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523.

Maryland. — Carrington *v.* Turner, 101 Md. 437, 61 Atl. 324.

Massachusetts. — New England Mut. L. Ins. Co. *v.* Wing, 191 Mass. 192, 77 N. E. 376.

Michigan. — Cascarella *v.* National Grocer Co., (Mich. 1908) 114 N. W. 857.

Missouri. — See Birch *v.* Glasgow Sav. Bank, 114 Mo. App. 711, 90 S. W. 746.

Nebraska. — Bishop *v.* Fuller, (Neb. 1907) 110 N. W. 715.

New York. — McVity *v.* E. D. Albro Co., 180 N. Y. 554, 73 N. E. 1126, *judgment affirmed* 90 N. Y. App. Div. 109, 86 N. Y. Supp. 144; Curtis *v.* Natalie Anthracite Coal Co., 181 N. Y. 543, 73 N. E. 1122, *affirming* 89 N. Y. App. Div. 61, 85 N. Y. Supp. 413; Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 185 N. Y. 575, 78 N. E. 1103, *affirming* 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454; Braxmar *v.* Stanton, 110 N. Y. App. Div. 167, 96 N. Y. Supp. 1096.

Oregon. — Marsters *v.* Umpqua Valley Oil Co., (Oregon 1907) 90 Pac. 151.

Pennsylvania. — Pannebaker *v.* Tuscarora Valley R. Co., (Pa. 1907) 67 Atl. 923.

South Dakota. — Davis *v.* Brown County Coal Co., (S. Dak. 1906) 110 N. W. 113.

Texas. — Hayward Lumber Co. *v.* Cox, (Tex. Civ. App. 1907) 104 S. W. 403.

Wisconsin. — Peterson *v.* Elholm, 130 Wis. 1, 109 N. W. 76, *rehearing denied* 130 Wis. 1, 109 N. W. 1034.

Wyoming. — See Matthews *v.* Nefsy, 13 Wyo. 458, 81 Pac. 305.

As to Acts Constituting Ratification, see Arkansas Southwestern R. Co. *v.* Dickinson, 78 Ark. 483, 95 S. W. 802.

Ratification of an Arbitration and Award. — See White Star Min. Co. *v.* Hultberg, 220 Ill. 578, 77 N. E. 327.

Ratification of Contract of Employment. — See Bernstein *v.* Lispenard Realty Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 273, 103 N. Y. Supp. 210.

6. Lincoln Mountain Gold Min. Co. *v.* Williams, 37 Colo. 193, 85 Pac. 844; Mutual L. Ins. Co. *v.* Granniss, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 926; Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139; Peach River Lumber Co. *v.* Ayers, (Tex. Civ. App. 1906) 91 S. W. 387.

7. **Acts Prior to Organization.** — Teeple *v.* Hawkeye Gold Dredging Co., (Iowa 1908) 114 N. W. 906, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 853.

8. Guillaume *v.* K. S. D. Fruit Land Co., 48 Oregon 400, 86 Pac. 883.

A Personal Letter written by an officer of a corporation cannot bind the corporation as a ratification. Mexican Nat. Coal, etc., Co. *v.* Frank, 154 Fed. 217.

Ratification by Directors. — See Massachusetts Constr. Co. *v.* Kidd, 142 Fed. 285.

854. 1. Consolidated Fruit Jar Co. *v.* Wisner, 103 N. Y. App. Div. 453, 93 N. Y. Supp. 128.

3. West End *v.* Eaves, (Ala. 1907) 44 So. 588; Clement *v.* Young-McShea Amusement Co., 69 N. J. Eq. 347, 60 Atl. 419.

4. **As to What Does or Does Not Amount to a Ratification,** see Brown *v.* Crown Gold Milling Co., 150 Cal. 376, 89 Pac. 86; Kennedy *v.* Supreme Lodge, etc., 124 Ill. App. 55; Kansas City Star Co. *v.* Standard Warehouse Co., 123 Mo. App. 13, 99 S. W. 765; Guillaume *v.* K. S. D. Fruit Land Co., 48 Oregon 400, 86 Pac. 883; Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338.

The Acceptance of the Benefits of a Contract binds the corporation. St. Louis Fourth Nat. Bank *v.* Camden Lumber Co., 142 Fed. 257; Bauersmith *v.* Extreme Gold Min., etc., Co., 146 Fed. 95.

Ratification Must Be with Knowledge of Material Facts. — Conqueror Gold Min., etc., Co. *v.* Ashton, 39 Colo. 133, 90 Pac. 1124; Von Arnim *v.* American Tubeworks, 188 Mass. 515, 74 N. E. 680; Bowers *v.* Male, 111 N. Y. App. Div. 209, 97 N. Y. Supp. 722, *affirmed* 186 N. Y. 28, 78 N. E. 577; Hurlbut *v.* Gainor, (Tex. Civ. App. 1907) 103 S. W. 409. See also Butler *v.* Standard Guaranty, etc., Co., 122 Ga. 371, 50 S. E. 132.

5. Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 84 Pac. 321; Crossley *v.* St. Philip Neri, (N. J. 1907) 67 Atl. 27.

As to Evidence of Authority. — See Arkansas Southwestern R. Co. *v.* Dickinson, 78 Ark. 483, 95 S. W. 802; Brown *v.* British Amer. Mortg. Co., 86 Miss. 388, 38 So. 312; C. F. Blanke Tea, etc., Co. *v.* Eager, (Neb. 1906) 106 N. W. 603; St. Louis, etc., R. Co. *v.* Daugherty, 72 Kan. 678, 83 Pac. 821; La Plant *v.* Pratt-Ford Greenhouse Co., 102 Minn. 93, 112 N. W. 889; Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698.

A Seal Is Prima Facie Evidence of Authority. — Kirkpatrick *v.* Eastern Milling, etc., Co., 135 Fed. 144.

The Burden of Showing Restrictions upon the authority of an agent is upon the principal. Southwest Missouri Electric R. Co. *v.* Missouri Pac. R. Co., 110 Mo. App. 300, 85 S. W. 966.

855. 4. *Arkansas.* — See Walnut Ridge Mercantile Co. *v.* Cohn, 79 Ark. 338, 96 S. W. 413.

Colorado. — Golden Age No. 2 Min., etc., Co. *v.* Langridge, 39 Colo. 157, 88 Pac. 1070.

Georgia. — Raleigh, etc., R. Co. *v.* Pullman Co., 122 Ga. 700, 50 S. E. 1008; Nelson *v.* Spence, 129 Ga. 35, 58 S. E. 697.

Illinois. — Merchants Nat. Bank *v.* Nichols, etc., Co., *223* Ill. 41, 79 N. E. 38, *affirming* 123 Ill. App. 430; Lloyd *v.* Matthews, 119 Ill. App. 546.

New Jersey. — Clement *v.* Young-McShea Amusement Co., 69 N. J. Ch. 347, 60 Atl. 419.

West Virginia. — Deepwater Council, etc., *v.* Renick, 59 W. Va. 343, 53 S. E. 552.

Effect of Seal. — Presumption of authority is indulged in with respect to contracts bearing the seal of the corporation and otherwise regular in form. Maroney *v.* Cole, (N. Y. City Ct. Tr. T.) 52 Misc. (N. Y.) 451, 103 N. Y. Supp. 560.

7. Conqueror Gold Min., etc., Co. *v.* Ashton, 39 Colo. 133, 90 Pac. 1124; Gause *v.* Commonwealth Trust Co., 124 N. Y. App. Div. 438, 108 N. Y. Supp. 1080; Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139.

8. Johnson *v.* Waxelbaum Co., 1 Ga. App. 511, 58 S. E. 56; Green *v.* Star F. Ins. Co., 190 Mass. 586, 77 N. E. 649; Tres Palacios Rice, etc., Co. *v.* Eidman, (Tex. Civ. App. 1906) 93 S. W. 698; Hayward Lumber Co. *v.* Cox, (Tex. Civ. App. 1907) 104 S. W. 403; Pine Beach Invest. Corp. *v.* Columbia Amusement Co., 106 Va. 810, 56 S. E. 822.

856. 1. Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454.

Ministerial Duties May Be Delegated. — Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 185 N. Y. 575, 78 N. E. 1103, *affirming* 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454.

2. Employment of Agents by Officers. — Kennedy *v.* Supreme Lodge, etc., 124 Ill. App. 55; Teele *v.* Consolidated Amusement Co., (Supm. Ct. App. T.) 102 N. Y. Supp. 666.

Employment of Attorneys. — Dublin, etc., R. Co. *v.* Akerman, 2 Ga. App. 746, 59 S. E. 10.

Delegation of Right to Exercise Power of Eminent Domain. — Bridwell *v.* Gate City Terminal Co., 127 Ga. 520, 56 S. E. 624.

3. Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454.

4. Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70.

Calling a Meeting of the Directors Suspends the Powers of the Executive Committee. — Commercial Wood, etc., Co. *v.* Northampton Portland Cement Co., 190 N. Y. 1, 82 N. E. 730.

857. 2. **The Absence of One Member** of an executive committee of three does not render a contract by the other members invalid. Canada-Atlantic, etc., Steamship Co. *v.* Flanders, 145 Fed. 875, 76 C. C. A. 1.

858. 1. Lloyd *v.* Matthews, 223 Ill. 477, 79 N. E. 172; Lewiston Water, etc., Co. *v.* Brown, 42 Wash. 555, 85 Pac. 47.

2. Loyd *v.* Matthews, 119 Ill. App. 546; Cann *v.* Church of The Redeemer, 111 Mo. App. 164, 85 S. W. 994; Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

3. Mausert *v.* Christian Feigenspan, 68 N. J. Eq. 671, 63 Atl. 610.

7. Freyberg *v.* Los Angeles Brewing Co., 4 Cal. App. 403, 88 Pac. 378; Tevis *v.* Hammersmith, (Ind. App. 1907) 81 N. E. 614; Curtis *v.* Natalie Anthracite Coal Co., 181 N. Y. 543, 73 N. E. 1122, *affirming* 89 N. Y. App. Div. 61, 85 N. Y. Supp. 413; Wood *v.* Saginaw Gold Min., etc., Co., (S. Dak. 1905) 105 N. W. 101.

859. 2. Johnson *v.* Des Moines, etc., R. Co., 129 Iowa 281, 105 N. W. 509; Ward *v.* City Trust Co., 117 N. Y. App. Div. 130, 102 N. Y. Supp. 50.

"The Management of the Entire Business of a Corporation may be intrusted to its president either by express resolution of the directors or by their acquiescence in a course of dealing." Watson *v.* Proximity Mfg. Co., (N. Car. 1908) 61 S. E. 273.

Employment of Agents.—Berlin *v.* Cusachs, 114 La. 744, 38 So. 539.

President May Take Security for Corporation. — Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454.

"The Implied Authority of the president of a private corporation does not authorize him, by virtue of his office, to appropriate the property of the corporation, even for payment of salary or other indebtedness due him." Collins Ice Cream Co. *v.* Normandie, 121 Ill. App. 140.

3. Northwestern Packing Co. *v.* Whitney, 5 Cal. App. 105, 89 Pac. 981.

President Cannot Lease Property. — *In re* Cullman Fruit, etc., Assoc., 155 Fed. 372.

4. Ansley Land Co. *v.* H. Weston Lumber Co., 152 Fed. 841; Ft. Smith Wagon Co. *v.* Baker, 84 Ark. 444, 105 S. W. 591; Northwestern Packing Co. *v.* Whitney, 5 Cal. App. 105, 89 Pac. 981; Giebler Mfg. Co. *v.* Kranenberg, 102 N. Y. App. Div. 471, 92 N. Y. Supp. 8[illegible].

Appointment of Agent to Sell. — The president of a private corporation may be presumed to have authority to employ agents to negotiate the sale of property owned by it. Skinner Mfg. Co. *v.* Douville, (Fla. 1907) 44 So. 1014.

President Cannot Foreclose a Mortgage. — New England Mut. L. Ins. Co. *v.* Wing, 191 Mass. 192, 77 N. E. 376.

Dedication of Corporate Property. — See West Point *v.* Bland, 106 Va. 792, 56 S. E. 802.

An Assignment, Pledge, or Disposition of the Company's Property cannot be made by the president in the absence of authority from the directors. Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

Collection and Sale of Accounts may be made by the president under his general authority. Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 816, 65 Atl. 484.

5. Owego Gas Light Co. *v.* Boyer, 111 N. Y. App. Div. 140, 96 N. Y. Supp. 486.

7. Capital City Brick Co. *v.* Jackson, 2 Ga. App. 771, 59 S. E. 92; Woodward *v.* Beasley, 2 Tenn. Ch. App. 330.

As to the Effect of Particular Instruments executed by the president of a corporation, see Bigelow Co. *v.* Automatic Gas Producer Co., (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 389, 107 N. Y. Supp. 804.

860. 2. Wickersham Banking Co. *v.* Nicholas, 2 Cal. App. 18, 82 Pac. 1124; National Union Bank *v.* Hollingsworth, 143 N. Car. 520, 55 S. E. 809.

3. National Bank *v.* H. P. Snyder Mfg. Co., 107 N. Y. App. Div. 95, 94 N. Y. Supp. 982.

4. **Authority to Indorse Implied.** — Milwaukee Trust Co. *v.* Van Valkenburgh, (Wis. 1907) 112 N. W. 1083.

6. Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017.

7. Martin *v.* Logan, 99 S. W. 648, 30 Ky. L. Rep. 709.

9. **Confession of Judgment.** — See Fred R. Hesse Co. *v.* Charles Weighman Co., 126 Ill. App. 97; Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932; Frederick Milling Co. *v.* Frederick Farmers' Alliance Co., (S. Dak. 1906) 106 N. W. 298.

10. **"The Authorization to Bring an Action by the President of a Corporation,** subsequently ratified by the board of directors, is sufficient, although such ratification takes place after the commencement of the suit, and after the authority of counsel has been challenged." Massachusetts Constr. Co. *v.* Kidd, 142 Fed. 285.

11. Bell *v.* Standard Quicksilver Co., 146 Cal. 699, 81 Pac. 17.

No Authority to Borrow Money. — Dreeban *v.* McKinney Fist Nat. Bank, (Tex. 1907) 99 S. W. 850, *reversing* (Tex. Civ. App. 1906) 93 S. W. 510.

861. 3. Riley *v.* Loma Vista Ranch Co., 1 Cal. App. 488, 82 Pac. 686; Oscar Bonner Oil Co. *v.* Pennsylvania Oil Co., 150 Cal. 658, 89 Pac. 613; Abraham Lincoln Bldg., etc., Assoc. *v.* Walsh, 126 Ill. App. 76; Ross Oil, etc., Co. *v.* Eastham, 73 Kan. 464, 85 Pac. 531.

No Implied Authority. — Farrell *v.* Gold Flint Min. Co., 32 Mont. 416, 80 Pac. 1027.

Apparent Authority. — See Ring *v.* Howell, 184 N. Y. 553, 76 N. E. 1107, *affirming* 93 N. Y. App. Div. 442, 87 N. Y. Supp. 682.

No Power to Execute Promicsory Notes. — Tombstone First Nat. Bank *v.* Abilene Hotel Co., (Tex. Civ. App. 1907) 103 S. W. 1120.

A note issued by the secretary and treasurer for an individual debt is not binding on the corporation. El Dorado Imp. Co. *v.* Citizens' Bank, (Ark. 1908) 107 S. W. 676.

No Power to Include Notes. —Wheeling Ice, etc., Co. *v.* Connor, 61 W. Va. 111, 55 S. E. 982.

Proof of Authority.— Proof that a person is secretary of a corporation is not sufficient alone to establish his authority to make contracts for the corporation. Donaldson *v.* Orchard Crude Oil Co., (Cal. App. 1907) 92 Pac. 1046.

Power and Authority of a Treasurer in General. — Indiana Trust Co. *v.* International Bldg., etc., Assoc., 36 Ind. App. 685, 74 N. E. 611.

4. **Power to Borrow Money.** — Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454; Dreeben *v.* McKinney First Nat. Bank, (Tex. 1907) 99 S. W. 850.

Execution or Indorsement of Negotiable Paper. — See Pelton *v.* Spider Lake Sawmill, etc., Co., (Wis. 1907) 112 N. W. 29.

Two Corporations May Have the Same Treasurer. — Elk Brewing Co. *v.* Neubert, 213 Pa. St. 171, 62 Atl. 782; Jennie Clarkson Home for Children *v.* Missouri, etc., R. Co., 182 N. Y. 47, 74 N. E. 571; Maroney *v.* Cole, (N. Y. City Ct. Tr. T.) 52 Misc. (N. Y.) 451, 103 N. Y. Supp. 560.

6. **Power and Authority of General Agents** — *Alabama.* — Alston *v.* Broadus Cotton Mill, (Ala. 1907) 44 So. 654.

Arkansas. — Phœnix Assur. Co. *v.* Boyett, 77 Ark. 41, 90 S. W. 284; Arkansas Southwestern R. Co. *v.* Dickinson, 78 Ark. 483, 95 S. W. 802.

Colorado. — Orphan Belle Min., etc., Co. *v.* Pinto Min. Co., 35 Colo. 564, 85 Pac. 323.

Georgia. — Raleigh, etc., R. Co. *v.* Pullman Co., 122 Ga. 700, 50 S. E. 1008.

Illinois. — Continental Casualty Co. *v.* Johnson, 119 Ill. App. 93.

Kentucky. — Buffalo Coal Creek Min. Co. *v.* Troendle, 99 S. W. 622, 30 Ky. L. Rep. 740.

Massachusetts. — Richardson *v.* Devine, 193 Mass. 336, 79 N. E. 771; Metropolitan Coal Co. *v.* Boutell Transp., etc., Co., (Mass. 1907) 81 N. E. 645.

Michigan. — Grand Rapids Electric Co. *v.* Walsh Mfg. Co., 142 Mich. 4, 105 N. W. 1.

Pennsylvania. — McCullough *v.* Ford Natural Gas Co., 213 Pa. St. 110, 62 Atl. 521; American Car, etc., Co. *v.* Alexandria Water Co., 218 Pa. St. 542, 67 Atl. 861.

Rhode Island. — Cook *v.* American Tubing, etc., Co., (R. I. 1905) 65 Atl. 641.

Texas. — Manhattan Liquor Co. *v.* Magnus, (Tex. Civ. App. 1906) 94 S. W. 1117.

Washington. — Rowland *v.* P. P. Carrol Loan, etc., Co., 44 Wash. 413, 87 Pac. 482; Chilcott *v.* Washington State Colonization Co., 45 Wash. 148, 88 Pac. 113; Harvey *v.* Sparks, 45 Wash. 578, 88 Pac. 1108.

Canada. — National Malleable Castings Co. *v.* Smith's Falls Malleable Castings Co., 14 Ont. L. Rep. 22.

Employment of Agents or Laborers. — Lewiston Lumber, etc., Co. *v.* Garvey, 13 Idaho 257, 89 Pac. 940; Kelly *v.* Jersey City Water Supply Co., (N. J. 1907) 67 Atl. 108; Thomas *v.* International Silver Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 509, 96 N. Y. Supp. 218.

Employment of Medical Aid. — Freeman *v.* Junge Baking Co., 126 Mo. App. 124, 103 S. W. 505.

Conveyance of Real Estate. — West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666.

General Superintendent of Railroad Company. — See Hall *v.* New York, etc., R. Co., 27 R. I. 525, 65 Atl. 278.

The Managing Agent of a Mining Corporation has no implied power to pledge the credit of his principal by changing and cashing bills of exchange. Bank of Commerce *v.* Baird Min. Co., (N. Mex. 1906) 85 Pac. 970.

862. 1. Vardeman *v.* Penn Mut. L. Ins. Co., 125 Ga. 117, 54 S. E. 66.

2. **Authority and Powers of Bank Cashier.** — See generally the following cases: Emmetsburg First Nat. Bank *v.* Gunhus, 133 Iowa 409, 110 N. W. 611; Home Sav. Bank *v.* Otterbach, (Iowa 1907) 112 N. W. 760; Citizens' Bank *v.* Waddy's Bank Receiver, 103 S. W. 249, 31 Ky. L. Rep. 365; Vanderford *v.* Farmers', etc., Nat. Bank, 105 Md. 164, 66 Atl. 47; Cope *v.* Westbay, 188 Mo. 638, 87 S. W. 504; Sing Sing First Nat. Bank *v.* Sing Sing Gas Mfg. Co., 120 N. Y. App. Div. 542, 104 N. Y. Supp. 1040;

Arnold *v.* Waupaca Nat. Bank, 126 Wis. 362, 105 N. W. 828.

No Authority to Lend Money to Himself. — McGregor *v.* Witham, 126 Ga. 702, 56 S. E. 55.

863. 3. Kidd *v.* New Hampshire Traction Co., 74 N. H. 160, 66 Atl. 127, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 863; Rascovor *v.* American Linseed Co., 135 Fed. 341, 68 C. C. A. 11; *In re* Beaver Knitting Mills, 154 Fed. 320, 83 C. C. A. 240; Free Home Bldg., Loan, etc., Assoc. *v.* Edwards, 124 Ill. App. 191, *affirmed* 223 Ill. 126, 79 N. E. 64; Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82; Préfontaine *v.* Grenier, 95 L. T. N. S. 623.

Disposal of Corporate Property. — Union Trust Co. *v.* Carter, 139 Fed. 717.

Powers of Bank Directors. — Daugherty *v.* Poundstone, 120 Mo. App. 300, 96 S. W. 728; Mason *v.* Moore, 73 Ohio St. 275, 76 N. E. 932.

Mortgage of Corporate Property. — Cummings *v.* Consolidated Mineral Water Co., 27 R. I. 195, 61 Atl. 353.

Board of Directors May Appoint Agent. — York *v.* Mathis, (Me. 1907) 68 Atl. 746.

Directors of Manufacturing Corporation. — Carlsbad Water Co. *v.* New, 33 Colo. 389, 81 Pac. 34

Directors of Mutual Benefit Association. — Van Atten *v.* Modern Brotherhood of America, 131 Iowa 232, 108 N. W. 313.

A Director Cannot Speak for His Board without Express Authority. — Dockstader *v.* Young Men's Christian Assoc., (Iowa 1906) 109 N. W. 906.

864. 2. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 864; Stiewell *v.* Webb Press Co., 79 Ark. 45, 94 S. W. 915; Chicago Heights First Presb. Church *v.* McColly, 126 Ill. App. 333; Cann *v.* Church of The Redeemer, 111 Mo. App. 164, 85 S. W. 994; Farrell *v.* Gold Flint Min. Co., 32 Mont. 416, 80 Pac. 1027; Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82.

865. 2. Siegman *v.* Electric Vehicle Co., 140 Fed. 117; Schell *v.* Alston Mfg. Co., 149 Fed. 439.

3. Chicago Heights First Presb. Church *v.* McColly, 126 Ill. App. 333; Brinkerhoff Zinc Co. *v.* Boyd, 192 Mo. 597, 91 S. W. 523.

866. 2. Brinkerhoff Zinc Co. *v.* Boyd, 192 Mo. 597, 91 S. W. 523.

869. 1. Stafford Springs St. R. Co. *v.* Middle River Mfg. Co., 80 Conn. 37, 66 Atl. 775.

10. **Notice Will Be Presumed** where the minutes set forth the resolution and that the meeting was called by the president. Robinson *v.* Blood, 151 Cal. 504, 91 Pac. 258.

870. 1. Dickason *v.* Grafton Sav. Bank Co., 27 Ohio Cir. Ct. 357.

871. 5. Gumaer *v.* Cripple Creek Tunnel, etc., Co., (Colo. 1907) 90 Pac. 81.

873. 8. *United States.* — McCourt *v.* Singers-Bigger, (C. C. A.) 145 Fed. 103, 7 Ann. Cas. 287; *In re* Castle Braid Co., 145 Fed. 224.

Florida. — Jacksonville Cigar Co. *v.* Dozier, 53 Fla. 1059, 43 So. 523.

Iowa. — Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629.

Missouri. — Brinkerhoff Zinc Co. *v.* Boyd, 192 Mo. 597, 91 S. W. 523.

Montana. — Barker *v.* Montana Gold, etc., Min. Co., 35 Mont. 351, 89 Pac. 66.

New York. — Miller *v.* Crown Perfumery Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 383, 109 N. Y. Supp. 760.

North Carolina. — McIver *v.* Young Hardware Co., 144 N. Car. 478, 57 S. E. 169.

Ohio. — Yeiser *v.* U. S. Board, etc., Co., 28 Ohio Cir. Ct. 44.

West Virginia. — Elliott *v.* Farmers' Bank, 61 W. Va. 641, 57 S. E. 242.

Power to Purchase Stock of Stockholder. — Hooker *v.* Midland Steel Co., 215 Ill. 444, 74 N. E. 445, *affirming* 117 Ill. App. 441.

874. 1. Mobile Land Imp. Co. *v.* Gass, 143 Ala. 520, 39 So. 229; Hart *v.* Evanson, 14 N. Dak. 570, 105 N. W. 942.

4. Paxton *v.* Heron, (Colo. 1907) 92 Pac. 15; Steele *v.* Gold Fissure Gold Min. Co., (Colo. 1908) 95 Pac. 349; Jackson *v.* Brooklyn Lumber Co., 184 N. Y. 152, 76 N. E. 1075; Madden *v.* Dimond, 12 British Columbia 80.

7. Holmes *v.* McDonald, 226 Ill. 169, 80 N. E. 714, *reversing* McDonald *v.* Holmes, (1906) 128 Ill. App. 560, and *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 874–876.

875. 3. See Fletcher *v.* Eagle, 74 Ark. 585, 86 S. W. 810.

5. David Reus Permanent Loan, etc., Co. *v.* Conrad, 101 Md. 224, 60 Atl. 737; Cuero First Nat. Bank *v.* Commercial Nat. Bank, (Tex. 1905) 87 S. W. 1032, (Tex. Civ. App. 1905) 89 S. W. 418.

876. 2. Elliott *v.* Farmers' Bank, 61 W. Va. 641, 57 S. E. 242.

4. David Reus Permanent Loan, etc., Co. *v.* Conrad, 101 Md. 224, 60 Atl. 737.

6. Brinckerhoff *v.* Roosevelt, 143 Fed. 478, *affirming* (C. C. A.) 131 Fed. 955; Pepper *v.* Addicks, 153 Fed. 383; Acker, etc., Co. *v.* McGaw, (Md. 1907) 68 Atl. 17; Heineman *v.* Marshall, 117 Mo. App. 546, 92 S. W. 1131; Barker *v.* Montana Gold, etc., Min. Co., 35 Mont. 351, 89 Pac. 66; Bowers *v.* Male, 186 N. Y. 28, 78 N. E. 577; McIver *v.* Young Hardware Co., 144 N. Car. 478, 57 S. E. 169; Lindemann *v.* Rusk, 125 Wis. 210, 104 N. W. 119. See also *In re* Ireland, (1905) 1 Ir. R. 133.

Director Must Have Participated in Fraud. — Murphy *v.* Penniman, 105 Md. 452, 66 Atl. 282; Thomas *v.* Penniman, 105 Md. 452, 66 Atl. 291.

The Treasurer of a corporation is liable for money distributed to himself and other stockholders without authority of the directors. Cheat Valley R. Co. *v.* Humes, 211 Pa. St. 287, 60 Atl. 908.

Conversion of Assets. — Corn *v.* Skillern, 75 Ark. 148, 87 S. W. 142.

Power to Engage in Other Business. — New York Automobile Co. *v.* Franklin, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 8, 97 N. Y. Supp. 781.

877. 2. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 877.

878. 5. Brooklyn Heights Realty Co. *v.* Kurtz, 115 N. Y. App. Div. 74, 100 N. Y. Supp. 723.

8. Donald *v.* Manufacturers' Export Co., 142 Ala. 578, 38 So. 841; Hingston *v.* Montgomery,

121 Mo. App. 451, 97 S. W. 202; Michel *v.* Betz, 108 N. Y. App. Div. 241, 95 N. Y. Supp. 844.

A Receiver May Maintain the Action. — Bowers *v.* Male, 186 N. Y. 28, 78 N. E. 577, *affirming* 111 N. Y. App. Div. 209, 97 N. Y. Supp. 722.

879. 2. Robinson *v.* New York, etc., R. Co., 123 N. Y. App. Div. 339, 108 N. Y. Supp. 91.

4. Davidson *v.* Witthaus, 106 N. Y. App. Div. 182, 94 N. Y. Supp. 428.

5. Hall's Safe Co. *v.* Herring-Hall-Marvin Safe Co., (C. C. A.) 146 Fed. 37, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 879.

Directors Liable on Contract to Pay Taxes. — State *v.* Limburg, (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 404, 105 N. Y. Supp. 1016.

880. 1. Love *v.* Ramsey, 139 Mich. 47, 102 N. W. 279, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 879, 880; De Soto Bank *v.* Reed, (Tex. Civ. App. 1908) 109 S. W. 256.

Promoters of a corporation are not its agents in such a sense as to bind it by their acts and engagements when it comes into existence. State *v.* People's U. S. Bank, 197 Mo. 574, 94 S. W. 953.

4. **Liability to Corporation for Nonfeasance.** — Cooley *v.* Curran, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 572, 104 N. Y. Supp. 751.

5. Savage *v.* Shaw, (Mass. 1907) 81 N. E. 303.

6. Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 494.

As to What Constitutes Deceit, see Hart *v.* Evanson, 14 N. Dak. 570, 105 N. W. 942.

881. 3. See Maine *v.* Midland Invest. Co., 132 Iowa 272, 109 N. W. 801.

4. Worthington *v.* Herrmann, 180 N. Y. 559, 73 N. E. 1134, *affirming* 89 N. Y. App. Div. 627, 88 N. Y. Supp. 76; Lyon *v.* James, 181 N. Y. 512, 73 N. E. 1126, *affirming* 97 N. Y. App. Div. 385, 90 N. Y. Supp. 28.

7. Hart *v.* Evanson, 14 N. Dak. 570, 105 N. W. 942.

882. 1. Donovan *v.* Purtell, 216 Ill. 629, 75 N. E. 334, *affirming* 119 Ill. App. 116.

4. Hilliard *v.* Lyman, 138 Fed. 469.

883. 1. Hoboken Beef Co. *v.* Hand, 104 N. Y. App. Div. 390, 93 N. Y. Supp. 834.

884. 5. **Liability as Partners.** — Mandeville *v.* Courtwright, 142 Fed. 97, 73 C. C. A. 321.

Liability for Making Notes. — See Woodward *v.* Beasley, 2 Tenn. Ch. App. 339.

7. Cavanaugh *v.* Patterson, (Colo. 1907) 91 Pac. 1117; Ford River Lumber Co. *v.* Perron, 148 Mich. 399, 111 N. W. 1074; Boynton *v.* Sprague, 183 N. Y. 505, 76 N. E. 1089, *affirming* 100 N. Y. App. Div. 443, 91 N. Y. Supp. 839; Hoboken Beef Co. *v.* Hand, 104 N. Y. App. Div. 390, 93 N. Y. Supp. 834; Winthrop Press *v.* Perkins, (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 460, 95 N. Y. Supp. 931.

Commencement of Action — Statute of Limitations. — Davidson *v.* Witthaus, 106 N. Y. App. Div. 182, 94 N. Y. Supp. 428.

President Need Not Make the Report Personally. — Myar *v.* Poe, 79 Ark. 465, 95 S. W. 1005.

886. 1. Hoboken Beef Co. *v.* Hand, 104 N. Y. App. Div. 390, 93 N. Y. Supp. 834; Hill *v.* Weidinger, 110 N. Y. App. Div. 683, 97 N. Y. Supp. 473.

887. 2. Costello *v.* Outterson, 112 N. Y. App. Div. 680, 98 N. Y. Supp. 880.

5. Yates *v.* Jones Nat. Bank, 74 Neb. 734, 105 N. W. 287.

What Constitutes Falsity. — Penfold *v.* Charlevoix Sav. Bank, 140 Mich. 126, 103 N. W. 572.

888. 4. Harvey-Watts Co. *v.* Worcester Umbrella Co., 193 Mass. 138, 78 N. E. 886.

890. 5. **The Liability of Officers for Signing a False Report** extends only to debts contracted after the filing of the report. Beekman Lumber Co. *v.* Ahern, 75 Ark. 107, 86 S. W. 842.

893. 1. Swartley *v.* Oak Leaf Creamery Co., (Iowa 1907) 113 N. W. 496; Torrey *v.* Toledo Portland Cement Co., (Mich. 1907) 113 N. W. 580; Jacobson *v.* Brooklyn Lumber Co., 184 N. Y. 152, 76 N. E. 1075. See also Westinghouse Electric, etc., Co. *v.* Reed, 194 Mass. 590, 80 N. E. 621.

3. Frank P. Miller Paper Co. *v.* York Coated Paper Co., 34 Pa. Super. Ct. 315.

The Dissolution of a Corporation renders a prior judgment unnecessary. Lilienthal *v.* Betz, 108 N. Y. App. Div. 222, 95 N. Y. Supp. 849.

8. **Directors of Membership Corporation** are liable for debts contracted by the corporation while they are directors. Thistle *v.* Jones, (Supm. Ct. App. Div.) 107 N. Y. Supp. 840.

894. 1. Black *v.* Sullivan Timber Co., 147 Ala. 327, 40 So. 667; Moody *v.* Chicago Title, etc., Co., 126 Ill. App. 68.

2. Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542.

A Declaration of Dividends, made in good faith and under a mere mistake of judgment, renders each director responsible for what he receives, but they are not jointly liable for the whole sum. Ebelhar *v.* German American Security Co., 91 S. W. 262, 28 Ky. L. Rep. 1144.

Transfers of Corporate Property Void. — Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542.

3. **Actual Fraud Held Necessary.** — Ellis *v.* French-Canadian Co-Op. Assoc., 189 Mass. 566, 76 N. E. 207.

5. Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434; Daugherty *v.* Poundstone, 120 Mo. App. 300, 96 S. W. 728. See also Hercules Oil Refining Co. *v.* Hocknell, 5 Cal. App. 702, 91 Pac. 341.

895. 4. Swartley *v.* Oak Leaf Creamery Co., (Iowa 1907) 113 N. W. 496; Pennsylvania Iron Works *v.* Mackenzie, 190 Mass. 61, 76 N. E. 228.

5. **Paying in Capital Stock at Unfair Valuation.** — Anthony, etc., Co. *v.* Metropolitan Art Co., 190 Mass. 35, 76 N. E. 289.

896. 2. Moody *v.* Chicago Title, etc., Co., 126 Ill. App. 68.

Rule Designed for Protection of Third Persons. — Pacific Vinegar, etc., Works *v.* Smith, (Cal. 1907) 93 Pac. 85.

3. **The Directors of a Bank** are not held, as a matter of law, to know all its affairs. Mason *v.* Moore, 73 Ohio St. 275, 76 N. E. 932.

897. 3. **Making False Entries** in the books

of the corporation is made a criminal offense. Com. *v.* Dewhirst, 190 Mass. 293, 76 N. E. 1052.

4. Jacobson *v.* Brooklyn Lumber Co., 184 N. Y. 152, 76 N. E. 1075, *reversing* 101 N. Y. App. Div. 609, 92 N. Y. Supp. 1130, and *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897–910; *In re* Castle Braid Co., 145 Fed. 224; Steele *v.* Gold Fissure Gold Min. Co., (Colo. 1908) 95 Pac. 349.

5. Savage *v.* Madelia Farmer's Warehouse Co., 98 Minn. 343, 108 N. W. 296; Gund *v.* Ballard, 73 Neb. 547, 103 N. W. 309; Vorhees *v.* Nixon, (N. J. Eq. 1907) 66 Atl. 192; Giveen *v.* Gans, 181 N. Y. 538, 73 N. E. 1124, *affirming* 91 N. Y. App. Div. 37, 86 N. Y. Supp. 450.

899. 1. Hiles *v.* Hiles, 120 Ill. App. 617; City Nat. Bank *v.* Merchants', etc., Nat. Bank, (Tex. Civ. App. 1907) 105 S. W. 338.

Contracts between Two Corporations Are Presumed to Be Fraudulent where the directory and chief officers of both corporations are practically identical. Barrie *v.* United R. Co., 125 Mo. App. 96, 102 S. W. 1078.

The Right to Avoid a Contract made by common directors is in the corporation, not in minority stockholders. Continental Ins. Co. *v.* New York, etc., R. Co., 187 N. Y. 225, 79 N. E. 1026, *affirming* 103 N. Y. App. Div. 282, 93 N. Y. Supp. 27.

Directors on Both Sides of an Agreement Must Justify It. — Teller *v.* Tonopah, etc., R. Co., 155 Fed. 482.

3. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 899; Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781, *affirming* Gatch *v.* Burnes, 132 Fed. 485; Mobile Land Imp. Co. *v.* Gass, 143 Ala. 520, 39 So. 229; Shively *v.* Eureka Tellurium Gold Min. Co., 5 Cal. App. 236, 89 Pac. 1073; Mitchell *v.* United Box Board, etc., Co., (N. J. Eq. 1907) 66 Atl. 938; Jacobson *v.* Brooklyn Lumber Co., 184 N. Y. 152, 76 N. E. 1075; Vonnoh *v.* Sixty-Seventh St. Atelier Bldg., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 222, 105 N. Y. Supp. 155; Marsters *v.* Umpqua Valley Oil Co., (Oregon 1907) 90 Pac. 151.

Contracts with Directors and Officers Are Not Forbidden by Law. — Savage *v.* Madelia Farmer's Warehouse Co., 98 Minn. 343, 108 N. W. 296.

Purchase by Director from Trustees. — Kessler *v.* Ensley Co., 141 Fed. 130.

900. 2. *In re* Castle Braid Co., 145 Fed. 224; Figge *v.* Bergenthal, 130 Wis. 594, 110 N. W. 798.

4. Mobile Land Imp. Co. *v.* Gass, 143 Ala. 520, 39 So. 229; Yeiser *v.* U. S. Board, etc., Co., 28 Ohio Cir. Ct. 44.

901. 2. Mobile Land Imp. Co. *v.* Gass, 143 Ala. 520, 39 So. 229; Binghamton First Nat. Bank *v.* Commercial Travelers' Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454.

3. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 901; Giebler Mfg. Co. *v.* Kranenberg, 102 N. Y. App. Div. 471, 92 N. Y. Supp. 843.

6. Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434; Arispe Mercantile Co. *v.* Capital Ins. Co., 133 Iowa 272, 110 N. W. 593; Heineman *v.* Marshall, 111 Mo. App. 546, 92 S. W. 1131; Jacobson *v.* Brooklyn Lumber Co., 184 N. Y. 152, 76 N. E. 1075; Rickert *v.* White, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 114, 105 N. Y. Supp. 653; Haines Mercantile Co. *v.* Highland Gold Mines Co., (Oregon 1907) 88 Pac. 865.

Purchase of Corporate Property by President. — Consolidated Fruit Jar Co. *v.* Wisner, 103 N. Y. App. Div. 453, 93 N. Y. Supp. 128.

902. 3. Waters *v.* American Finance Co., 102 Md. 212, 62 Atl. 357.

4. Figge *v.* Bergenthal, 130 Wis. 594, 110 N. W. 798.

903. 1. Old Dominion Copper Min., etc., Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 653.

3. Union Trust Co. *v.* Carter, 139 Fed. 717; Dacovich *v.* Canizas, (Ala. 1907) 44 So. 473. See Consolidated Fruit Jar Co. *v.* Wisner, 103 N. Y. App. Div. 453, 93 N. Y. Supp. 128.

A Director May Purchase Stock from a Stockholder. — Hooker *v.* Midland Steel Co., 215 Ill. 444, 74 N. E. 445, *affirming* 117 Ill. App. 441.

9. Nixon *v.* Goodwin, 3 Cal. App. 358, 85 Pac. 169; Savage *v.* Madelia Farmer's Warehouse Co., 98 Minn. 343, 108 N. W. 296; Pitman *v.* Chicago-Joplin Lead, etc., Co., 113 Mo. App. 513, 87 S. W. 10; Binghamton First Nat. Bank *v.* Commercial Travelers Home Assoc., 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454.

A Loan to a Director Is Valid. — Garrison Canning Co. *v.* Stanley, 133 Iowa 57, 110 N. W. 171.

904. 1. Savage *v.* Madelia Farmer's Warehouse Co., 98 Minn. 343, 108 N. W. 296.

President May Take Security. — Binghamton First Nat. Bank *v.* Commercial Travelers Home Assoc., 185 N. Y. 575, 78 N. E. 1103, *affirming* 108 N. Y. App. Div. 78, 95 N. Y. Supp. 454.

2. **An Officer Cannot Acquire Interests Adverse to the Company.** — Fricker *v.* Americus Mfg., etc., Co., 124 Ga. 165, 52 S. E. 65.

3. Snediker *v.* Ayers, 146 Cal. 407, 80 Pac. 511; Marr *v.* Marr, (N. J. 1907) 66 Atl. 182; Law *v.* Fuller, 217 Pa. St. 430, 66 Atl. 754.

905. 1. Snediker *v.* Ayers, 146 Cal. 407, 80 Pac. 511.

Where Corporation Has Ceased to Do Business. — Stanton *v.* Gilpin, 38 Wash. 191, 80 Pac. 290.

2. Henry *v.* Michigan Sanitarium, etc., Assoc., 147 Mich. 142, 110 N. W. 523.

3. Steele *v.* Gold Fissure Gold Min. Co., (Colo. 1908) 95 Pac. 349; Home Mixture Guano Co. *v.* Tillman, 125 Ga. 172, 53 S. E. 1019; Brophy *v.* American Brewing Co., 211 Pa. St. 596, 61 Atl. 123.

4. Home Mixture Guano Co. *v.* Tillman, 125 Ga. 172, 53 S. E. 1019, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905, 906; Metropolitan Rubber Co. *v.* Place, 147 Fed. 90, 77 C. C. A. 262; Caho *v.* Norfolk, etc., R. Co., (N. Car. 1908) 60 S. E. 640.

Application of Rule. — Rosehill Cemetery Co. *v.* Dempster, 223 Ill. 567, 79 N. E. 276, *affirming* 121 Ill. App. 143.

906. 2. Mills *v.* Hendershot, 70 N. J. Eq.

258, 62 Atl. 542; Boschoek Proprietary Co. *v.* Fuke, 94 L. T. N. S. 398.

3. Miller *v.* Crown Perfumery Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 383, 109 N. Y. Supp. 760. See also Metropolitan Rubber Co. *v.* Place, (C. C. A.) 147 Fed. 90.

An Express Provision for Compensation Includes Traveling Expenses, etc. — Young *v.* Naval, etc., Co-operative Soc., (1905) 1 K. B. 687, 74 L. J. K. B. 302, 92 L. T. N. S. 458, 53 W. R. 447, 12 Manson 212, 21 Times L. Rep. 293.

Director's Fees. — A director gets his fees, not by use of his shares, but by acting as director. *Re* Dover Coalfield Extension, 96 L. T. N. S. 837.

907. 2. **Acceptance of Benefits Must Be with Knowledge of Circumstances.** — *In re* Bodega Co., (1904) 1 Ch. 276, 73 L. J. Ch. 198, 89 L. T. N. S. 694, 52 W. R. 249, 11 Manson 95.

3. Fillebrown *v.* Hayward, 190 Mass. 472, 77 N. E. 45.

Salary Must Be Fixed at the Time of Election. — Caho *v.* Norfolk, etc., R. Co., (N. Car. 1908) 60 S. E. 640.

908. 6. Porch *v.* Agnew Co., 70 N. J. Eq. 328, 61 Atl. 721.

7. Monmouth Invest. Co. *v.* Means, 151 Fed. 159, 80 C. C. A. 527; Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434.

909. 2. Huntington Fuel Co. *v.* McIllwaine, (Ind. App. 1907) 82 N. E. 1001; Henry *v.* Michigan Sanitarium, etc., Assoc., 147 Mich. 142, 110 N. W. 523; Bell *v.* Peper Tobacco Warehouse Co., 205 Mo. 475, 103 S. W. 1014; Bogart *v.* New York, etc., R. Co., 118 N. Y. App. Div. 50, 102 N. Y. Supp. 1093; Ashton *v.* Honey, 23 Times L. Rep. 253. See also Williams *v.* Little Falls Water Power Co., 99 Minn. 4, 108 N. W. 289.

910. 2. Von Arnim *v.* American Tubeworks, 188 Mass. 515, 74 N. E. 680; Central Consumers' Wine, etc., Co. *v.* Madden, (N. J. Eq. 1908) 68 Atl. 777. See also Young *v.* Naval, etc., Co-operative Soc., (1905) 1 K. B. 687, 92 L. T. N. S. 458.

3. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 910; Schaffhauser *v.* Arnholt, etc., Brewing Co., 218 Pa. St. 298, 67 Atl. 417, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 910; Miller *v.* Crown Perfumery Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 383, 109 N. Y. Supp. 760; Greathouse *v.* Martin, (Tex. Civ. App. 1906) 94 S. W. 322, *affirming* 91 S. W. 385.

A Majority of a Quorum of a Board of Directors Must Be Disinterested with respect to the matter voted upon in order to render it valid and binding upon the corporation. Steele *v.* Gold Fissure Gold Min. Co., (Colo. 1908) 95 Pac. 349.

6. **The Burden of Proof** is on the officer to show that the salary voted him is just. Francis *v.* Brigham-Hopkins Co., (Md. 1908) 70 Atl. 95.

911. 3. **Payment by Percentage on Business Obtained.** — Rollins *v.* Co-operative Bldg. Bank, 184 N. Y. 525, 76 N. E. 1107, *affirming* 98 N. Y. App. Div. 606, 90 N. Y. Supp. 631.

8. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 911. See also Fillebrown *v.* Hayward, 190 Mass. 472, 77 N. E. 45.

912. 2. Hanks Foundry Co. *v.* Woodstock Iron Works, 127 Ga. 108, 56 S. E. 106; Rosehill Cemetery Co. *v.* Dempster, 223 Ill. 567, 79 N. E. 276; Fidelity Ins. Co. *v.* German Sav. Bank, 127 Iowa 591, 103 N. W. 958; Citizens' Ins. Co. *v.* Henderson Elevator Co., 96 S. W. 601, 29 Ky. L. Rep. 976, *rehearing denied* 97 S. W. 810, 30 Ky. L. Rep. 225; Holder *v.* Cannon Mfg. Co., 138 N. Car. 308, 50 S. E. 681; Empire Implement Mfg. Co. *v.* Hench, 219 Pa. St. 135, 67 Atl. 995; Lynchburg Telephone Co. *v.* Bokker, 103 Va. 594, 50 S. E. 148; Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262.

Liability of Bank for Acts of President. — See Humboldt First Nat. Bank *v.* Heim, (Neb. 1906) 107 N. W. 1019.

Representations of President. — Marshall *v.* Columbia, etc., St. R. Co., 73 S. Car. 241, 53 S. E. 417.

Contracts of a Promoter, having been adopted by the corporation, are binding. Chilcott *v.* Washington State Colonization Co., 45 Wash. 148, 88 Pac. 113.

Acceptance of Contract. — McKinley *v.* Mineral Hill Consol. Min. Co., (Wash. 1907) 89 Pac. 495.

3. Dixie Cotton Oil Co. *v.* Morris, 79 Ark. 113, 94 S. W. 933; Arkadelphia Lumber Co. *v.* Asman, (Ark. 1907) 107 S. W. 1171; Wickersham Banking Co. *v.* Nicholas, 2 Cal. App. 18, 82 Pac. 1124; Com. *v.* F. W. Cook Brewing Co., 104 S. W. 255, 31 Ky. L. Rep. 818; Jackson Brewing Co. *v.* Canton, 118 La. 823, 43 So. 454; Mausert *v.* Christian Feigenspan, 68 N. J. Eq. 671, 63 Atl. 610; Reid *v.* Alaska Packing Co., 47 Oregon 215, 83 Pac. 139; Guarantee Sav., etc., Co. *v.* Mitchell, (Tex. Civ. App. 1906) 87 S. W. 184; Ruben *v.* Great Fingall Consol. Co., (1904) 2 K. B. 712, 73 L. J. K. B. 872, 91 L. T. N. S. 619, 53 W. R. 100, 11 Manson 353, 20 Times L. Rep. 720.

A Fraudulent Agreement made by officers of a corporation is not enforceable. National Hollow Brake-Beam Co. *v.* Chicago R. Equipment Co., 226 Ill. 28, 80 N. E. 556, *reversing* 123 Ill. App. 533.

An Agent Acting for Himself cannot bind the corporation. Rogers *v.* Southern Fiber Co., 119 La. 714, 44 So. 442.

Contracts by Promoters, made before the organization of the corporation, are not binding, but they may be ratified. Bond *v.* Pike, 101 Minn. 127, 111 N. W. 916.

Unauthorized Contracts Are Not Binding on Third Party. — American Brewing Assoc. *v.* Gossett, (Tex. Civ. App. 1908) 107 S. W. 357.

Special Stipulation in Contract. — Butler *v.* Standard Guaranty, etc., Co., 122 Ga. 371, 50 S. E. 132.

913. 5. *United States.* — Dennis *v.* Atlanta Nat. Bldg., etc., Assoc., 136 Fed. 539, 69 C. C. A. 315; Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

Alabama. — Lea *v.* Iron Belt Mercantile Co., 147 Ala. 412, 42 So. 415.

Arkansas. — Baker *v.* Brown Shoe Co., 78 Ark. 501, 95 S. W. 808.

California. — Wickersham Banking Co. *v.* Nicholas, 2 Cal. App. 18, 82 Pac. 1124.

Georgia. — Elberton *v.* Pearle Cotton Mills, 123 Ga. 1, 50 S. E. 977; Johnson *v.* Ætna Ins. Co., 123 Ga. 404, 51 S. E. 339.

Idaho. — California Consol. Min. Co. *v.* Manley, 10 Idaho 786, 81 Pac. 50.

Illinois. — Schumacher *v.* Wolf, 125 Ill. App. 81.

Kentucky. — Baries *v.* Louisville Electric Light Co., 118 Ky. 830, 85 S. W. 1186.

Maryland. — Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70.

Michigan. — Zeigler *v.* Valley Coal Co., (Mich. 1907) 113 N. W. 775.

Minnesota. — Kelly *v.* Citizens' Mut. F. Assoc., 96 Minn. 477, 105 N. W. 675; Robertson Lumber Co. *v.* Anderson, 96 Minn. 527, 105 N. W. 972.

Missouri. — Council *v.* St. Louis, etc., R. Co., 123 Mo. App. 432, 100 S. W. 57.

New Jersey. — Vulcan Detinning Co. *v.* American Can Co., 70 N. J. Eq. 588, 62 Atl. 881; Vulcan Detinning Co. *v.* American Can Co., (N. J. 1907) 67 Atl. 339.

New York. — National Discount Co. *v.* U. S. Fidelity, etc., Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 678, 94 N. Y. Supp. 457.

Wisconsin. — Peterson *v.* Elhohn, 130 Wis. 1, 109 N. W. 76.

Knowledge Acquired Where Officer's Interests Are Adverse. — Woodworth *v.* Carroll, (Minn. 1907) 112 N. W. 1054; Baker *v.* Orme, 27 Ohio Cir. Ct. 465.

Knowledge Acquired in Private Capacity. — Aycock Bros. Lumber Co. *v.* Dothan First Nat. Bank, (Fla. 1907) 45 So. 501; Brookhouse *v.* Union Pub. Co., 73 N. H. 368, 62 Atl. 219; Brooklyn Distilling Co. *v.* Standard Distilling, etc., Co., 120 N. Y. App. Div. 237, 105 N. Y. Supp. 264; Wardlaw *v.* Troy Oil Mill, 74 S. Car. 368, 54 S. E. 658; Grayson County Nat. Bank *v.* Hall, (Tex. Civ. App. 1906) 91 S. W. 807; Foreman *v.* German Alliance Ins. Assoc., 104 Va. 694, 52 S. E. 337; *In re* Payne, (1904) 2 Ch. 608, 73 L. J. Ch. 849, 91 L. T. N. S. 777, 11 Manson 437, 20 Times L. Rep. 590.

Corporation and Partnership Dealing through Common Officer. — Taylor *v.* Felder, 3 Ga. App. 287, 59 S. E. 844.

OFFICIAL ACT.

914. 1. **Official Act.** — The character of the act, whether official or not, does not depend upon its lawfulness, but upon the fact that the person who performs it is in fact an officer and purports to act in his official capacity and does act by virtue of authority conferred by law. King *v.* Brown, (Tex. 1906) 94 S. W. 328.

ONE.

917. 1. **One Dwelling.** — See Sanders *v.* Dixon, 114 Mo. App. 229, 89 S. W. 577.

OPEN.

918. 3. **An Open and Obvious Defect** is one which is manifest to the sense of observation, *open* and readily discernible, whether it arises from the nature of the business, the particular manner in which it is conducted, or the use of defective and unsafe appliances. New Omaha Thomson-Houston Electric Light Co. *v.* Rombold, 73 Neb. 259, 106 N. W. 213.

OPENING STREET OR HIGHWAY.

920. 1. La Corporation, etc., *v.* Dumoulin, 31 Quebec Super. Ct. 77, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 920.

In Sense of Throwing Open to Public. — See La Corporation, etc., *v.* Dumoulin, 31 Quebec Super. Ct. 77, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 920.

OPTIONS.

924. 1. **Definition.** — Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754; Trogden *v.* Williams, 144 N. Car. 192, 56 S. E. 865, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 924; Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 971; Bates *v.* Woods, 225 Ill. 126, 80 N. E. 84, *affirming* Woods *v.* Bates, (1906) 126 Ill. App. 180; Pomeroy *v.* Newell, 117 N. Y. App. Div. 800, 102 N. Y. Supp. 1098, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 924, 925; Montgomery *v.* Waldeck, 2 Alaska 581; Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645; Cameron *v.* Shumway, (Mich. 1907) 113 N. W. 287; Barnes *v.* Rea, 219 Pa. St. 279; Neeson *v.* Smith, (Wash. 1907) 92 Pac. 133; Pollock *v.* Brookover, 60 W. Va. 75, 53 S. E. 796.

Elements of Option Contract. — Couch *v.* McCoy, 138 Fed. 696.

925. 2. **For Arguments, etc.,** see Lumber, etc., Co. *v.* Pharr, 82 Ark. 573, 102 S. W. 686; Gottlieb *v.* Rinaldo, 78 Ark. 123, 93 S. W. 750.

California. — Stein *v.* Archibald, 151 Cal. 220, 90 Pac. 536; White *v.* Hanford Bank, 148 Cal. 552, 83 Pac. 698.

Idaho. — Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965.

Kentucky. — Noble *v.* Mann, (Ky. 1907) 105 S. W. 152.

Louisiana. — Smith *v.* Ivey, 119 La. 357, 44 So. 126; Capo *v.* Bugdahl, 117 La. 992, 42 So. 478.

Massachusetts. — Thacher *v.* Weston, (Mass. 1908) 83 N. E. 360.

Minnesota. — Libby *v.* Parry, 98 Minn. 366, 108 N. W. 299.

Nebraska. — Moise *v.* Rock Springs Distilling Co., (Neb. 1907) 112 N. W. 372.

Pennsylvania. — Barnes *v.* Rea, 219 Pa. St. 279.

Lease with Option to Purchase. — Slaughter *v.* Mallet Land, etc., Co., 141 Fed. 282, 72 C. C. A. 430; Wellmaker *v.* Wheatley, 123 Ga. 201, 51 S. E. 436; West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666.

Lease with Option to Renew. — I. X. L. Furniture, etc., Installment House *v.* Berets, (Utah 1907) 91 Pac. 270.

Agency for Sale of Land. — Tate *v.* Aitken, 5 Cal. App. 505, 90 Pac. 836.

3. John *v.* Elkins, (W. Va. 1907) 59 S. E. 961, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 925, 926.

4. Adams *v.* Peabody Coal Co., 230 Ill. 460, 82 N. E. 645; Sprague *v.* Schotte, 48 Oregon 611, 87 Pac. 1046, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 925.

"Option Contracts Are Not All Alike." — Guss *v.* Nelson, 200 U. S. 298, 26 U. S. Sup. Ct. 260.

8. O'Reilly *v.* Kluender, 193 Mo. 576, 91 S. W. 1035, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 925.

926. 4. Kirby-Carpenter Co. *v.* Burnett, (C. C. A.) 144 Fed. 635; Couch *v.* McCoy, 138 Fed. 696; Overall *v.* Madisonville, 102 S. W. 278, 31 Ky. L. Rep. 278; Comstock *v.* North, 88 Miss. 754, 41 So. 374, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926.

6. Trogden *v.* Williams, 144 N. Car. 192, 56 S. E. 868, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 868; Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830; Pollock *v.* Brookover, 60 W. Va. 75, 53 S. E. 796.

927. 9. Montgomery *v.* Waldeck, 2 Alaska 581; Esslinger *v.* Pascoe, 129 Iowa 86, 105 N. W. 362, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 927.

928. 3. Woodward *v.* Davidson, 150 Fed. 843; Pittsburg Vitrified Paving, etc., Brick Co. *v.* Bailey, (Kan. 1907) 90 Pac. 803, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 928; Conner *v.* Clapp, 42 Wash. 642, 85 Pac. 342, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 928; Seyferth *v.* Groves, etc., R. Co., 217 Ill. 483, 75 N. E. 522, *affirming* 119 Ill. App. 275.

929. 1. Castle Creek Water Co. *v.* Aspen. 146 Fed. 8, 76 C. C. A. 516, 8 Ann. Cas. 660; Connersville Wagon Co. *v.* McFarlan Carriage Co., 166 Ind. 123, 76 N. E. 294; Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 929; Murphy *v.* Reid, 101 S. W. 964, 31 Ky. L. Rep. 176; Barnes *v.* Rea, 219 Pa. St. 279; Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830; Pollock *v.* Brookover, 60 W. Va. 75, 53 S. E. 795. See also Taber *v.* Dallas County, (Tex. 1908) 106 S. W. 332.

3. Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645.

A Nominal Consideration is insufficient to prevent a withdrawal. Murphy *v.* Reid, 101 S. W. 964, 31 Ky. L. Rep. 176.

Notice of Termination of Option. — See Beckman *v.* Waters, 3 Cal. App. 734, 86 Pac. 997.

Notice must be communicated to the optionee in order to revoke the option before acceptance. Smith *v.* Russell, 20 Colo. App. 554, 80 Pac. 474.

Surrender of Option. — See K. P. Min. Co. *v.* Jacobson, 30 Utah 115, 83 Pac. 728.

4. Couch *v.* McCoy, 138 Fed. 696; Noble *v.* Mann, (Ky. 1907) 105 S. W. 152; Comstock *v.* North, 88 Miss. 754, 41 So. 374; Moise *v.* Rock Springs Distilling Co., (Neb. 1907) 112 N. W. 372; Pomeroy *v.* Newell, 117 N. Y. App. Div. 800, 102 N. Y. Supp. 1098, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 929; Carton *v.* Wilson, 13 Ont. L. Rep. 412.

930. 1. Thiry *v.* Edson, 129 Ill. App. 128.

Forfeiture. — Equity may relieve the optionee from a forfeiture caused by his failure to give notice. Doepfner *v.* Bowers, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 7, 102 N. Y. Supp. 920.

Holding over by a Lessee is a sufficient exercise of his option to extend the term. Quinn *v.* Valiquette, 80 Vt. 434, 68 Atl. 515.

2. Indiana, etc., Lumber, etc., Co. *v.* Pharr, 82 Ark. 573, 102 S. W. 686; Parker *v.* Gortatowsky, 127 Ga. 560, 56 S. E. 846.

Notice to Husband and Wife. — See Thompson *v.* Willard, (Pa. 1907) 68 Atl. 46.

4. Barnes *v.* Rea, 219 Pa. St. 279; Henry *v.* Black, 213 Pa. St. 620, 63 Atl. 250; Millard *v.* Martin, (R. I. 1907) 68 Atl. 420; Tilton *v.* Sterling Coal, etc., Co., 28 Utah 173, 179, 77 Pac. 758, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 930; Vanderlip *v.* Peterson, 16 Manitoba 341.

5. **The Sending of a Letter or Telegram** is not sufficient notice unless actually received. Kibler *v.* Caplis, 140 Mich. 28, 103 N. W. 531.

7. Carpenter *v.* Thornburn, 76 Ark. 578, 89 S. W. 1047.

931. 3. **Waiver.** — Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

5. Indiana, etc., Lumber, etc., Co. *v.* Pharr, 82 Ark. 573, 102 S. W. 686, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 931; Jennings-Haywood Oil Syndicate *v.* Houssiere-Latreille Oil Co., 119 La. 793, 44 So. 502; Atlantic Product Co. *v.* Dunn, 142 N. Car. 471, 55 S. E. 299; Alston *v.* Connell, 140 N. Car. 485, 53 S. E. 292, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 931; Commercial Bank *v.* Weldon, 148 Cal. 601, 84 Pac. 171; Jeffreys *v.* Charlton, (N. J. 1907) 65 Atl. 711; Barnes *v.* Rea, 219 Pa. St. 287; Herman *v.* Winter, (S. Dak. 1905) 105 N. W. 457; Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

Time Is Material in a contract for an option, and it is not necessary to expressly stipulate that it shall be of its essence. Neeson *v.* Smith, (Wash. 1907) 92 Pac. 131.

Tenant's Option to Purchase. — Thomas *v.* Gottlieb Bauernschmidt Straus Brewing Co., 102 Md. 417, 62 Atl. 633.

932. 2. Montgomery *v.* Hundley, 205 Mo. 138, 103 S. W. 531, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 933, 934; Doepfuer *v.* Bowers, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 531, 106 N. Y. Supp. 932, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 931, 932.

6. Standiford *v.* Thompson, (C. C. A.) 135 Fed. 991.

933. 3. Hollis *v.* Libby, 101 Me. 302, 64 Atl. 621; Peirson *v.* Canada Permanent, etc., Mortg. Corp., 11 British Columbia 139.

4. Taylor *v.* Newton, (Ala. 1907) 44 So. 583; Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 756; Thomas *v.* Gottlieb Bauernschmidt Straus Brewing Co., 102 Md. 417, 62 Atl. 633; Boston, etc., St. R. Co. *v.* Rose, 194 Mass. 142, 80 N. E. 498; Goldberg *v.* Drake, 145 Mich. 50, 108 N. W. 367; Barnes *v.* Rea, 219 Pa. St. 287; Henry *v.* Black, 213 Pa. St. 620, 63 Atl. 250.

934. 5. **Assignment.** — An option, supported by a valuable consideration and given to one and his assigns, may be assigned. Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

8. Thacher *v.* Weston, (Mass. 1908) 83 N. E. 360, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934.

935. 1. **A Reasonable Time** is allowed for the delivery of title after the contingency happens and a demand has been made. Lumaghi *v.* Abt, 126 Mo. App. 221, 103 S. W. 104.

4. Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645.

5. Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645.

8. Woodward *v.* Davidson, 150 Fed. 843, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 935; Marthinson *v.* King, (C. C. A.) 150 Fed. 48; Couch *v.* McCoy, 138 Fed. 696; Solomon Mier Co. *v.* Hadden, 148 Mich. 488, 111 N. W. 1040.

Where Time Was of the Essence of the Contract and the property has increased in value, specific performance will not be decreed. Standiford *v.* Thompson, (C. C. A.) 135 Fed. 691.

936. 1. **A Gratuitous Option** will not sustain an action for a breach thereof. Kirby-Carpenter Co. *v.* Burnett, (C. C. A.) 144 Fed. 635.

ORDERS.

940. 2. **Orders Drawn on Particular Funds.** — Brady *v.* Ranch Min. Co., (Cal. App. 1907) 94 Pac. 85; Wamsley *v.* Ward, 61 W. Va. 65, 55 S. E. 998.

3. **Revocability.** — An order by an employee, directing his employer to pay a certain part of his weekly salary to a third person, is revocable at will, it not having been delivered to the third person. Schreiber *v.* Keller Mechanical Engraving Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 658.

ORDINANCES.

947. 3. **Contract.** — An ordinance, under which water is to be supplied to a city, is a contract. Lackey *v.* Fayetteville Water Co., 80 Ark. 108, 96 S. W. 622.

Distinction between a Constitution and an Ordinance. — See Frantz *v.* Antry, 18 Okla. 561, 91 Pac. 193.

4. Victoria *v.* Weston, 11 British Columbia 341.

6. **Resolution.** — State *v.* Superior Ct., (Wash. 1906) 87 Pac. 521, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 947.

8. **Distinction between Ordinance and Resolution.** — Pensacola *v.* Southern Bell Telephone Co., 49 Fla. 173, 37 So. 820, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 947.

948. 4. Haughawont *v.* Raymond, 148 Cal. 311, 83 Pac. 53.

6. **Legislative Grant.** — Ligonier Valley R. Co. *v.* Latrobe, 216 Pa. St. 221, 65 Atl. 548.

Police Juries Can Pass Only Such Ordinances as Are Warranted by Law. — State *v.* Denoist, 115 La. 949, 40 So. 365.

949. 1. U. S. *v.* MacFarland, 28 App. Cas. (D. C.) 552, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 949; Porter *v.* Vinzant, 49 Fla. 213, 38 So. 607; Chicago *v.* Reinschreiber, 121 Ill. App. 114; Tremblay *v.* Montreal, 28 Quebec Super. Ct. 411.

2. Luther *v.* Wheeler, 73 S. Car. 83, 52 S. E. 871.

Appeals Cannot Be Regulated by Ordinance. — Paducah *v.* Ragsdale, (Ky. 1906) 92 S. W. 13.

The Power to Regulate does not authorize a municipality to suppress or prohibit a trade or business. State *v.* McMonies, 75 Neb. 443, 106 N. W. 454.

4. *Ex p.* Heidleberg, (Tex. Crim. 1907) 103 S. W. 395.

5. **Exclusion by Implication.** — Gates *v.* Crandall, 123 Mo. App. 414, 100 S. W. 51.

950. 3. **Reasonable Construction.** — Taylor *v.* District of Columbia, 24 App. Cas. (D. C.) 392.

4. Lockwood *v.* Muhlberg, 124 Ga. 660, 53 S. E. 92, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 950; U. S. *v.* MacFarland, 28 App. Cas. (D. C.) 552; Crittenden *v.* Booneville, (Miss. 1908) 45 So. 723; State *v.* McMonies, 75 Neb. 443, 106 N. W. 454; Richmond *v.* Lynch, 106 Va. 324, 56 S. E. 139.

5. *Georgia.* — Fincher *v.* Collum, 2 Ga. App. 740, 59 S. E. 22.

Kentucky. — Stone *v.* Paducah, 120 Ky. 322, 86 S. W. 531.

Nebraska. — *Ex p.* Sapp, (Neb. 1907) 113 N. W. 261.

New Jersey. — Sproul *v.* Stockton, 73 N. J. L. 158, 62 Atl. 275.

Ohio. — Sterling *v.* Bowling Green, 26 Ohio Cir. Ct. 581.

Texas. — *Ex p.* Heidleberg, (Tex. Crim. 1907) 103 S. W. 395.

Wisconsin. — Wisconsin Telephone Co. *v.* Milwaukee, 126 Wis. 1, 104 N. W. 1009.

Canada. — *Re* Fisher, 16 Manitoba 560; Rex *v.* Nunn, 15 Manitoba 288; *In re* Campbell, 14 Ont. L. Rep. 184; Rex *v.* Chisholm, 14 Ont. L. Rep. 178; Rex *v.* Woollatt, 11 Ont. L. Rep. 544; La Corporation, etc., *v.* Reid, 26 Quebec Super. Ct. 379.

951. 2. See Cleary *v.* Windsor, 10 Ont. L. Rep. 333.

952. 4. Hull *v.* Roxboro, 142 N. Car. 453, 55 S. E. 351; Mansfield *v.* Bristor, 76 Ohio St. 270, 81 N. E. 631. See also Johnson *v.* New York, 186 N. Y. 139, 78 N. E. 715.

6. Rogers *v.* Binghamton, 101 N. Y. App. Div. 352, *affirmed* 186 N. Y. 595, 79 N. E. 1115; Hull *v.* Roxboro, 142 N. Car. 453, 55 S. E. 351; Mansfield *v.* Bristor, 76 Ohio St. 270, 81 N. E. 631.

10. **The Discretionary Powers of a City Council** to enact ordinances under the police power are very broad. Com. *v.* Price, 94 S. W. 32, 29 Ky. L. Rep. 593.

Trading Stamps. — The giving of trading stamps cannot be prevented by an ordinance. Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 389.

953. 1. Patterson *v.* Taylor, 51 Fla. 275, 40 So. 493.

Regulating Gambling. — White *v.* Com., 122 Ky. 408, 92 S. W. 285.

2. See Passaic *v.* Paterson Bill Posting, etc., Co., 72 N. J. L. 285, 62 Atl. 267.

3. Avoca *v.* Heller, 129 Iowa 227, 105 N. W. 444; Esch *v.* Elyria, 27 Ohio Cir. Ct. 446.

5. California Reduction Co. *v.* Sanitary Reduction Works, 199 U. S. 306, 26 U. S. Sup. 100; State *v.* Robb, 100 Me. 180, 60 Atl. 874.

Regulating Collection and Removal of Garbage. — People *v.* Gardner, 143 Mich. 104, 106 N. W. 541; Atlantic City *v.* Abbott, 73 N. J. L. 281, 62 Atl. 990.

Regulating Keeping of Hogs. — Comfort *v.* Kosciusko, 88 Miss. 611, 41 So. 268.

6. *In re* Zhizhuzza, 147 Cal. 328, 81 Pac. 955; Elkhart *v.* Lipschitz, 164 Ind. 671, 74 N. E. 528; Portland *v.* Cook, (Oregon 1906) 87 Pac. 771.

7. Carpenter *v.* Yeadon, 151 Fed. 879.

954. 1. Tannenbaum *v.* Rehm, (Ala. 1907) 44 So. 532; *In re* Newell, 2 Cal. App. 767, 84 Pac. 226; Ironside *v.* Vinita, 6 Indian Ter. 485, 98 S. W. 167; Seattle *v.* Hinckley, 40 Wash. 468, 82 Pac. 747.

2. Billington *v.* Miller, (N. J. 1907) 67 Atl. 935; Hinman *v.* Clarke, 121 N. Y. App. Div. 105, 105 N. Y. Supp. 725; Pottsville Borough *v.* Pottsville Gas Co., 33 Pa. Super. Ct. 480.

Paving Ordinance. — Guyer *v.* Rock Island, 215 Ill. 444, 74 N. E. 105.

3. **Regulating Speed of Automobiles.** — Bellingham *v.* Cissna, (Wash. 1906) 87 Pac. 481.

4. Atlantic City *v.* Brown, 72 N. J. L. 207, 62 Atl. 428.

Street Cars operated by electricity are not governed by an ordinance regulating the speed of carts and wagons. Robinson *v.* Metropolitan St. R. Co., 103 N. Y. App. Div. 243, 92 N. Y. Supp. 1010.

6. **Regulating Wages on Public Work.** — Gies *v.* Broad, 41 Wash. 448, 83 Pac. 1025.

7. U. S. *v.* Ashford, 29 App. Cas. (D. C.) 350; O'Donnell *v.* Riter-Conley Mfg. Co., 124 Ill. App. 544; Fellows *v.* Charleston, (W. Va. 1907) 59 S. E. 623.

955. 2. Paducah *v.* Ragsdale, (Ky. 1906) 92 S. W. 13; Chapman *v.* Mayfield, (Ky. 1907) 104 S. W. 376; Coreil *v.* Welsh, (La. 1908) 45 So. 438; Thomason *v.* Brownwood, (Tex. Civ. App. 1906) 98 S. W. 938; Dickie *v.* Gordon, 39 Nova Scotia 311.

Impounding Stock. — Evans *v.* Holman, 202 Mo. 284, 100 S. W. 624; Red Lodge *v.* Maryott, 33 Mont. 299, 83 Pac. 485.

Prevention of Cruelty to Animals. — Porter *v.* Vinzant, 49 Fla. 213, 38 So. 607.

3. Bowers *v.* Indianapolis, (Ind. 1907) 81 N. E. 1097; New Orleans *v.* Lagarse, 114 La. 1055, 38 So. 828; Naccari *v.* Rappelet, 119 La. 272, 44 So. 13; Micks *v.* Mason, 145 Mich. 212, 108 N. W. 707; Brown *v.* Carrollton, 122 Mo. App. 276, 99 S. W. 37; Atlantic City *v.* France, (N. J. 1907) 65 Atl. 894; *Ex p.* Glass, (Tex. Crim. 1905) 90 S. W. 1108.

An Ordinance Cannot Declare to Be a Nuisance That Which Is Not So in Fact. — Montgomery *v.* West, (Ala. 1907) 42 So. 1000; Miller *v.* Syracuse, 168 Ind. 230, 80 N. E. 411; Hagerstown *v.* Baltimore, etc., R. Co., (Md. 1908) 68 Atl. 490; Portland *v.* Cook, (Oregon 1906) 87 Pac. 772.

Erection of Bill-boards. — Bryan *v.* Chester, 212 Pa. St. 259, 61 Atl. 894.

Removal of Dead Animals. — Richmond *v.* Caruthers, 103 Va. 774, 50 S. E. 265.

5. Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; Avoca *v.* Heller, 129 Iowa 227, 105 N. W. 444; Blodgett *v.* McVey, 131 Iowa 552, 108 N. W. 239; Neola *v.* Reichart, 131 Iowa 492, 109 N. W. 5; St. Louis *v.* De Lassus, 205 Mo. 578, 104 S. W. 12; Seattle *v.* MacDonald, (Wash. 1907) 91 Pac. 952; Oceana *v.* Cook, (W. Va. 1908) 60 S. E. 145.

Ordinance Cannot Cover Same Ground as Statute. — See *Ex p.* Hughes, (Tex. Crim. 1907) 100 S. W. 160; Hudson, etc., R. Co. *v.* Hoboken, (N. J. 1907) 68 Atl. 60; *Ex p.* McHenry, (Tex. Crim. 1907) 103 S. W. 390.

Statutory Prohibition. — State *v.* Thurston, 28 R. I. 265, 66 Atl. 580.

956. 1. **Express Legislative Enactment Necesary.** — Littlejohn *v.* Stells, 123 Ga. 427, 51 S. E. 390; Thrower *v.* Atlanta, 124 Ga. 1, 52 S. E. 76; Augusta *v.* Clark, 124 Ga. 254, 52 S. E. 881.

957. 2. Hallock *v.* Lebanon, 215 Pa. St. 1, 64 Atl. 362.

3. **Power to Suspend.** — Sedalia *v.* Montgomery, 109 Mo. App. 197, 88 S. W. 1014.

7. Cox *v.* Mignery, 126 Mo. App. 669, 105 S. W. 675.

8. See Shugars *v.* Hamilton, (Ky. 1906) 92 S. W. 564.

958. 1. **Notice of Special Meeting.** — See Elliott *v.* Newark, 8 Del. Ch. 64, 68 Atl. 400.

Sufficiency of Call for Special Meeting. — Richardson *v.* Omaha, 74 Neb. 297, 104 N. W. 172.

6. See North Yakima *v.* Scudder, 41 Wash. 15, 82 Pac. 1022.

11. **Sufficiency of Notice or Publication.** — Smith *v.* Atlanta, 123 Ga. 877, 51 S. E. 741; Owens *v.* Marion, 127 Iowa 469, 103 N. W. 381.

959. 3. Manhattan, etc., Electric Co. *v.* Fornes, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 209, 95 N. Y. Supp. 851.

7. McLean *v.* East St. Louis, 222 Ill. 510, 78 N. E. 815; People *v.* Rhodes, 231 Ill. 270, 83 N. E. 176; Com. *v.* Williams, 120 Ky. 314, 86 S. W. 553; Latonia *v.* Hedger, (Ky. 1907) 100 S. W. 267; Reed *v.* Woodcliff, (N. J. 1905) 60 Atl. 1128; Salem *v.* Wachovia L. & T. Co., 143 N. Car. 110, 55 S. E. 442; Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141.

An Ordinance Is Defective if passed by unqualified or unauthorized voters. MacLean *v.* Fernie, 12 British Columbia 61.

960. 1. McLean *v.* East St. Louis, 222 Ill. 510, 78 N. E. 815; Reed *v.* Woodcliff, (N. J. 1905) 60 Atl. 1128; Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141.

4. Paterson, etc., R. Co. *v.* Paterson, (N. J. 1907) 68 Atl. 76.

5. Paterson, etc., R. Co. *v.* Paterson, (N. J. 1907) 68 Atl. 76.

961. 3. **An Amendment of the Record May Be Made** so as to show the suspension of the requirement. White *v.* Clarksville, 75 Ark. 340, 87 S. W. 630.

962. 2. **Passage at Adjourned Meeting.** — State *v.* Ross, (Wash. 1907) 89 Pac. 158.

7. South Jersey Tel. Co. *v.* Woodbury, 73 N. J. L. 276, 63 Atl. 4.

9. McLean *v.* East St. Louis, 222 Ill. 510, 78 N. E. 815.

963. 10. State *v.* Nebraska Telephone Co., 127 Iowa 194, 103 N. W. 120.

964. 2. People *v.* Rhodes, 231 Ill. 270, 83 N. E. 176.

3. Sturr *v.* Elmer, (N. J. 1907) 67 Atl. 1059.

965. 1. Com. *v.* Williams, 120 Ky. 314, 86 S. W. 553, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 964, 965.

2. Com. *v.* Williams, 120 Ky. 314, 86 S. W. 553, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 965.

Presentment Must Be Made to the Mayor. — Farwell *v.* Boston, 192 Mass. 15, 78 N. E. 303.

3. Com. *v.* Williams, 120 Ky. 314, 86 S. W. 553, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 965.

8. Mulligan *v.* Lexington, 126 Mo. App. 715, 105 S. W. 1104.

967. 3. Hardwick *v.* Independence, (Iowa 1907) 114 N. W. 14.

7. Reasons for Disapproval Must Be Given. — Lowell *v.* Dadman, 191 Mass. 370, 77 N. E. 717.

968. 1. People *v.* Buffalo, 123 N. Y. App. Div. 141, 108 N. Y. Supp. 331.

3. See *Re* Dewar, 10 Ont. L. Rep. 463, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 968.

969. 2. **An Unrecorded Ordinance** cannot affect the rights of third persons. Mt. Pleasant *v.* Eversole, 96 S. W. 478, 29 Ky. L. Rep. 830.

3. Elliott *v.* Newark, 8 Del. Ch. 64, 68 Atl. 400; Hardwick *v.* Independence, (Iowa 1907) 114 N. W. 14.

Thus, the failure of the clerk to copy an ordinance into the record book correctly does not render the ordinance invalid. Kenaston *v.* Riker, 146 Mich. 163, 109 N. W. 278.

10. Louisville *v.* Roberts, (Ky. 1907) 105 S. W. 431; Cartwright *v.* Napanee, 11 Ont. L. Rep. 69.

970. 1. Sturr *v.* Elmer, (N. J. 1907) 67 Atl. 1059.

971. 2. Latonia *v.* Hedger, 100 S. W. 267, 30 Ky. L. Rep. 1091.

8. Essentials of Publication. — The setting out of the name of the presiding officer of the city council is not an essential part of the publication. Bumb *v.* Evansville, 168 Ind. 272, 80 N. E. 625.

972. 2. Chicago, etc., R. Co. *v.* Wilson, 225 Ill. 50, 80 N. E. 56.

973. 2. **Publication on Sunday Valid.** — Hallett *v.* U. S. Security, etc., Co., (Colo. 1907) 90 Pac. 683; Denver *v.* Londoner, 33 Colo. 104, 80 Pac. 117.

974. 2. Muir *v.* Bardstown, 120 Ky. 739, 87 S. W. 1096.

975. 1. Scanlon *v.* Denver, 38 Colo. 401, 88 Pac. 156; Harris *v.* People, 218 Ill. 439, 75 N. E. 1012; Bowers *v.* Indianapolis, (Ind. 1907) 81 N. E. 1097; Tuggles *v.* Com., 100 S. W. 235, 30 Ky. L. Rep. 1071.

2. Duluth *v.* Abrahamson, 96 Minn. 39, 104 N. W. 682; St. Louis *v.* Liessing, 190 Mo. 464, 89 S. W. 611; St. Louis *v.* Grafeman Dairy Co., 190 Mo. 492, 89 S. W. 617; Heffner *v.* Toledo, 75 Ohio St. 413, 80 N. E. 8; Belle *v.* Glenville, 27 Ohio Cir. Ct. 181. See also Paducah *v.* Ragsdale, (Ky. 1906) 92 S. W. 13; Winfield *v.* Jackson, 89 Miss. 272, 42 So. 183.

Matters of Detail need not be specified in the title. State *v.* Calloway, 11 Idaho 719, 84 Pac. 27.

Ordinances Having Sufficient Titles. — State *v.* Nebraska Telephone Co., 127 Iowa 194, 103 N. W. 120; Healy *v.* Johnson, 127 Iowa 221, 103 N. W. 92; Com. *v.* Larkin, 27 Pa. Super. Ct. 397.

4. State *v.* Several Parcels of Land, (Neb. 1907) 113 N. W. 810.

5. Shugars *v.* Hamilton, (Ky. 1906) 92 S. W. 564; Mt. Sterling *v.* King, (Ky. 1907) 104 S. W. 322; Crowley *v.* Ellsworth, 114 La. 308, 38 So. 199; Saal *v.* South Brooklyn R. Co., 122 N. Y. App. Div. 364, 106 N. Y. Supp. 996. See also Chicago, etc., R. Co. *v.* People, 218 Ill. 463, 75 N. E. 1021.

976. 7. **Penal Ordinance Must Be Definite and Certain.** — Chicago, etc., R. Co. *v.* Salem, 166 Ind. 71, 76 N. E. 633.

The Description in a Resolution need not be as complete as in an ordinance. McLennan *v.* Chicago, 218 Ill. 62, 75 N. E. 762.

Parol Evidence is admissible to explain the local or trade meaning of a word used in an ordinance. Chicago Union Traction Co. *v.* Chicago, 223 Ill. 37, 79 N. E. 67.

9. Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780; Chicago Union Traction Co. *v.* Chicago, 215 Ill. 410, 74 N. E. 449; Gage *v.* Chicago, 223 Ill. 602, 79 N. E. 294; Ogden *v.* Chicago, 224 Ill. 294, 79 N. E. 699; Rowe *v.* Reneer, 99 S. W. 250, 30 Ky. L. Rep. 545; Joplin *v.* Hollingshead, 123 Mo. App. 602, 100 S. W. 506; Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86.

Ordinances Void for Uncertainty. — Lamm *v.* Danville, 221 Ill. 119, 77 N. E. 422; Homer *v.* Brown, 117 La. 425, 41 So. 711; St. Paul *v.* Schleh, 101 Minn. 425, 112 N. W. 532.

977. 1. **A City Council** in the exercise of its legislative powers is not subject to judicial control. State *v.* Gates, 190 Mo. 540, 89 S. W. 881.

2. **Grant Subject to Judicial Construction.** — New Orleans, etc., R. Co. *v.* Vidalia, 117 La. 568, 42 So. 139, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 976 *et seq.*

Whether a particular regulation lies within the power of a municipality is a judicial question; but whether a regulation within the power of a municipality is unreasonable is not a judicial question. Brunson *v.* Youmans, 76 S. Car. 128, 56 S. E. 651.

The Power of the Courts Will Be Exercised with Care and Caution. — Clark *v.* Chicago, 229 Ill. 363, 82 N. E. 370.

3. People *v.* Grand Trunk Western R. Co., 232 Ill. 292, 83 N. E. 839; Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632; People *v.* Gardner, 143 Mich. 104, 106 N. W. 541.

4. Lackey *v.* Fayetteville Water Co., 80 Ark. 108, 96 S. W. 622; *In re* Twenty-First St., 196 Mo. 498, 96 S. W. 201, *followed* in *In re* Oak St., 196 Mo. 515, 96 S. W. 206. See also Wiesenthal *v.* Atlantic City, 73 N. J. L. 245, 63 Atl. 759.

5. **A Smoke Ordinance,** being a penal statute, is to be strictly construed. People *v.* Sturgis, 121 N. Y. App. Div. 407, 106 N. Y. Supp. 61.

7. **Construction.** — Chicago Cold Storage Warehouse Co. *v.* People, 127 Ill. App. 179, *affirmed* 224 Ill. 287, 79 N. E. 692.

8. California Reduction Co. *v.* Sanitary Reduction Works, 199 U. S. 306, 26 U. S. Sup. Ct. 100; *In re* Zhizhuzza, 147 Cal. 328, 81 Pac. 955; People *v.* Keeper of Prison, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 611, 106 N. Y. Supp. 960.

9. Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615; Gage *v.* Wilmette, 230 Ill. 428, 82 N. E. 656; Sedalia *v.* Smith, 206 Mo. 346, 104 S. W. 15; Montreal *v.* Tremblay, 15 Quebec K. B. 425.

978. 1. North American Cold Storage Co. *v.* Chicago, 151 Fed. 120, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 978.

2. *Alabama.* — Miller *v.* Birmingham, (Ala. 1907) 44 So. 388.

California. — *In re* Newell, 2 Cal. App. 767, 84 Pac. 226.

Florida. — Pensacola *v.* Southern Bell Telephone Co., 49 Fla. 172, 37 So. 820, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 978.

Illinois. — Chicago, etc., R. Co. *v.* Averill, 224 Ill. 516, 79 N. E. 654, *affirming* 127 Ill. App. 275; Ringelstein *v.* Chicago, 128 Ill. App. 483.

Indiana. — Schmidt *v.* Indianapolis, 168 Ind. 631, 80 N. E. 632.

Nebraska. — Peterson *v.* State, (Neb. 1907) 112 N. W. 306.

New Jersey. — North Jersey St. R. Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 1072.

Pennsylvania. — Pottsville Borough *v.* Pottsville Gas Co., 33 Pa. Super. Ct. 480.

Authority to Enact Ordinances Will Not Be Presumed. — Chicago *v.* Reinschreiber, 121 Ill. App. 114; Gage *v.* Wilmette, 230 Ill. 428, 82 N. E. 656.

4. *California.* — *Ex p.* Berry, 147 Cal. 523, 82 Pac. 44.

Illinois. — Marshall *v.* People, 219 Ill. 99, 76 N. E. 70; Chicago, etc., R. Co. *v.* Averill, 224 Ill. 516, 79 N. E. 654.

Kentucky. — Com. *v.* Price, (Ky. 1906) 94 S. W. 32; Wells *v.* Mt. Olivet, 102 S. W. 1182, 31 Ky. L. Rep. 576.

Missouri. — Sedalia *v.* Smith, 206 Mo. 363, 104 S. W. 15.

Pennsylvania. — West Conshohocken Borough *v.* Conshohocken Electric Light, etc., Co., 29 Pa. Super. Ct. 7; Pottsville Borough *v.* Pottsville Gas Co., 33 Pa. Super. Ct. 480.

Virginia. — Norfolk, etc., Co. *v.* Norfolk, 105 Va. 139, 52 S. E. 851.

5. Sedalia *v.* Smith, 206 Mo. 363, 104 S. W. 15.

8. Morwitz *v.* Atlantic City, 73 N. J. L. 254, 62 Atl. 996.

979. 3. Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 979.

7. Bass *v.* Milledgeville, 122 Ga. 177, 50 S. E. 59.

11. Moody *v.* Williamsburg, 28 Ky. L. Rep. 60, 88 S. W. 1075.

A Writ of Prohibition is not the proper remedy where an ordinance is attacked on the ground that it provides for the taking of property without compensation. Riley *v.* Greenwood, 72 S. Car. 90, 51 S. E. 532.

980. 1. **Certiorari.** — Lewis *v.* Newark, (N. J. 1907) 65 Atl. 1039.

Section 71 of the Act of 1899, p. 313, which provides that no certiorari shall be allowed to set aside any ordinance for any improvement after the contract therefor shall have been awarded, does not apply to an ordinance to build a fire house. Lockwood *v.* East Orange, 73 N. J. L. 518, 64 Atl. 144.

2. Tenny *v.* Columbia, (Wash. 1907) 92 Pac. 895.

6. Asphalt, etc., Constr. Co. *v.* Hauessler, 201 Mo. 400, 100 S. W. 14.

9. Crittenden *v.* Booneville, (Miss. 1908) 45 So. 723; St. Louis *v.* Liessing, 190 Mo. 464, 89 S. W. 611; Watertown *v.* Rodenbaugh, 112 N. Y. App. Div. 723, 98 N. Y. Supp. 885; Block *v.* Crockett, 61 W. Va. 421, 56 S. E. 826.

The Taxation of Omitted Property may be provided for by a city ordinance. Muir *v.* Bardstown, 120 Ky. 739, 87 S. W. 1096.

982. 1. Richmond *v.* Caruthers, 103 Va. 774, 50 S. E. 265; Shook *v.* Sexton, 37 Wash. 509, 79 Pac. 1093. See also South Jersey Tel. Co. *v.* Woodbury, 73 N. J. L. 276, 63 Atl. 4.

An Ordinance Regulating the Storage of Explosive Oils is not a taking of private property without due process of law. Crowley *v.* Ellsworth, 114 La. 308, 38 So. 199.

3. *In re* Kelso, 147 Cal. 609, 82 Pac. 241; Crittenden *v.* Booneville, (Miss. 1908) 45 So. 723; Passaic *v.* Paterson Bill Posting, etc., Co., 72 N. J. L. 285, 62 Atl. 267; Bauer *v.* Casey, 26 Ohio Cir. Ct. 598; Riley *v.* Greenwood, 72 S. Car. 90, 51 S. E. 532.

6. Stone *v.* Paducah, 120 Ky. 322, 86 S. W. 531.

983. 7. Crumpler *v.* Vicksburg, 89 Miss. 214, 42 So. 673, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983; Fulton *v.* Norteman, 60 W. Va. 562, 55 S. E. 658, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983; New Orleans *v.* Lagasse, 144 La. 1055, 38 So. 828.

Discrimination. — Crowley *v.* Ellsworth, 114 La. 308, 38 So. 199.

984. 7. **Closing Barber Shops on Sunday.** — McClelland *v.* Denver, 36 Colo. 486.

985. 1. Belleville *v.* Pfingsten, 225 Ill. 293, 80 N. E. 266.

2. State *v.* Nelson, 10 Idaho 522, 79 Pac. 79, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985; Southern Indiana R. Co. *v.* Bedford, 165 Ind. 272, 75 N. E. 268, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985; Hume *v.* Laurel Hill Cemetery, 142 Fed. 552; Heylman *v.* District of Columbia, 27 App. Cas. (D. C.) 563; People *v.* Grand Trunk Western R. Co., 232 Ill. 292, 83 N. E. 839; Tilford *v.* Belknap, (Ky. 1907) 103 S. W. 289; State *v.* Robb, 100 Me. 180, 60 Atl. 874.

Presumption. — An ordinance is presumed to be reasonable. Scranton City *v.* Straff, 28 Pa. Super. Ct. 258.

986. 1. Fulton *v.* Norteman, 60 W. Va. 562, 55 S. E. 658, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 986.

Test of Reasonability. — Heylman *v.* District of Columbia, 27 App. Cas. (D. C.) 563.

5. St. Louis *v.* St. Louis Theatre Co., 202 Mo. 690, 100 S. W. 627; Scranton City *v.* Straff, 28 Pa. Super. Ct. 258; Com *v.* Jackson, 34 Pa. Super. Ct. 178.

8. *California.* — *In re* Berry, 147 Cal. 523, 82 Pac. 44.

Connecticut. — State *v.* Wightman, 78 Conn. 86, 61 Atl. 56.

Illinois. — Washington Park Club *v.* Chicago, 219 Ill. 323, 76 N. E. 383; Chicago Union Traction Co. *v.* Chicago, 223 Ill. 37, 79 N. E. 67; Flynn *v.* Springfield, 120 Ill. App. 266; Chicago, etc., Electric R. Co. *v.* Freeman, 125 Ill. App. 318; Ringelstein *v.* Chicago, 128 Ill. App. 483.

Indiana. — Miller *v.* Syracuse, 168 Ind. 230, 80 N. E. 411; Greencastle *v.* Thompson, 168 Ind. 493, 81 N. E. 497.

Kansas. — Lebanon *v.* Zanditon, 75 Kan. 273, 89 Pac. 10.

Kentucky. — Rowe *v.* Reneer, 99 S. W. 250, 30 Ky. L. Rep. 545.

Louisiana. — Crowley *v.* Ellsworth, 114 La. 308, 38 So. 199; New Orleans *v.* Fargot, 116 La. 369, 40 So. 735; Shreveport *v.* Dantes, 118 La. 113, 42 So. 716.

Maine. — State *v.* Robb, 100 Me. 180, 60 Atl. 874.

Missouri. — St. Louis *v.* St. Louis Theatre Co., 202 Mo. 690, 100 S. W. 627.

New Jersey. — Harris *v.* Atlantic City, 73 N. J. L. 251, 62 Atl. 995; North Jersey St. R. Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 1072.

North Carolina. — Small *v.* Edenton, (N. Car. 1908) 60 S. E. 413.

Ohio. — Chittenden *v.* Columbus, 26 Ohio Cir. Ct. 531.

Texas. — *Ex p.* Glass, (Tex. Crim. 1905) 90 S. W. 1108.

An Ordinance Will Be Held Reasonable when its adoption is expressly authorized by the legislature, and when the power so granted is not in conflict with a constitutional prohibition or fundamental principles. Miller *v.* Syracuse, 168 Ind. 230, 80 N. E. 411.

Drumming for Hotels. — Emerson *v.* McNeil, 84 Ark. 552, 106 S. W. 479.

Billiard Halls. — Goytino *v.* McAleer, 4 Cal. App. 655, 88 Pac. 991; Burlingame *v.* Thompson, 74 Kan. 393, 86 Pac. 449.

Building Regulations. — Tenbusch Realty Co. *v.* Vorce, 29 Ohio Cir. Ct. 145.

Cemeteries. — Laurel Hill Cemetery *v.* San Francisco, (Cal. 1907) 93 Pac. 70.

Gaming. — Lane *v.* Springfield, 120 Ill. App. 5.

Separation of Races on Street Cars. — Patterson *v.* Taylor, 51 Fla. 275, 40 So. 493; Crooms *v.* Schad, 51 Fla. 168, 40 So. 497.

License Fee for Use of Streets. — Sterling *v.* Bowling Green, 26 Ohio Cir. Ct. 581.

Speed of Automobiles. — Eichmann *v.* Buchheit, 128 Wis. 385, 107 N. W. 325.

988. 1. Montgomery *v.* West, (Ala. 1907) 42 So. 1000; Munson *v.* Colorado Springs, 35 Colo. 506, 84 Pac. 683; Blackshear *v.* Strickland, 126 Ga. 492, 54 S. E. 966; Chicago *v.* Gunning System, 114 Ill. App. 377, *affirmed* 214 Ill. 628, 73 N. E. 1035; Hagerstown *v.* Baltimore, etc., R. Co., (Md. 1908) 68 Atl. 490.

Building Regulations. — Tilford *v.* Belknap, 103 S. W. 289, 31 Ky. L. Rep. 662; State *v.* Withnell, (Neb. 1907) 110 N. W. 680.

Cemeteries. — Hume *v.* Laurel Hill Cemetery, 142 Fed. 552.

Laundries. — *In re* Song Lee, 5 N. W. Ter. 466.

989. 1. Flynn *v.* Springfield, 120 Ill. App. 266; Lebanon *v.* Zanditon, 75 Kan. 273, 89 Pac. 10; St. Louis *v.* Liessing, 190 Mo. 464, 89 S. W. 611; Small *v.* Edenton, (N. Car. 1908) 60 S. E. 413.

The Reasonableness of an Ordinance Is a Question of Fact. — North Jersey St. R. Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 1072.

3. Southern Indiana R. Co. *v.* Bedford, 165 Ind. 272, 75 N. E. 268, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980.

990. 3. **"An Ordinance Is against Common Right** when it denies to one citizen or class of citizens what is permitted to others, or imposes burdens upon one person or class of persons, to which others similarly situated are not subjected." Fulton *v.* Norteman, 60 W. Va. 562, 55 S. E. 658.

992. 3. Munson *v.* Colorado Springs, 35 Colo. 506, 84 Pac. 683; Wilder *v.* Aurora, etc., Electric Traction Co., 216 Ill. 493, 75 N. E. 194; Baltimore *v.* Gahan, 104 Md. 145, 64 Atl. 716; Ramsey *v.* Field, 115 Mo. App. 620, 92 S. W. 350; Lambertville *v.* Applegate, 73 N. J. L. 110, 62 Atl. 270. See also Hampton *v.* Chicago, etc., R. Co., 118 Ill. App. 621; Hinman *v.* Clarke, 121 N. Y. App. Div. 105, 105 N. Y. Supp. 725.

A Delegation of Legislative Power Subject to the Approval of the Council Is Valid. — *Ex p.* Paducah, 89 S. W. 302, 28 Ky. L. Rep. 412.

993. 3. *Georgia.* — Augusta *v.* Clark, 124 Ga. 254, 52 S. E. 881; Fichtenberg *v.* Atlanta 126 Ga. 62, 54 S. E. 933.

Idaho. — Johnston *v.* Savidge, 11 Idaho 204, 81 Pac. 616, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 993.

Illinois. — Chicago Consol. Traction Co. *v.* Oak Park, 225 Ill. 9, 80 N. E. 42; Chicago, etc., Electric R. Co. *v.* Freeman, 125 Ill. App. 318.

Kansas. — Clearwater *v.* Bowman, 72 Kan. 92, 82 Pac. 526, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 993.

Kentucky. — Moody *v.* Williamsburg, (Ky. 1905) 88 S. W. 1075.

Maine. — State *v.* Robb, 100 Me. 180, 60 Atl. 874, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 993.

Minnesota. — State *v.* McFarland, 96 Minn. 482, 105 N. W. 187.

Missouri. — St. Louis *v.* Liessing, 190 Mo. 464, 89 S. W. 611.

New Jersey. — North Jersey St. R. Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 1072.

Ohio. — Chittenden *v.* Columbus, 26 Ohio Cir. Ct. 531; Sterling *v.* Bowling Green, 26 Ohio Cir. Ct. 581.

Pennsylvania. — *In re* Wheeler Ave. Sewer, 214 Pa. St. 504, 63 Atl. 894; Com. *v.* Jackson, 34 Pa. Super. Ct. 174.

Texas. — *Ex p.* Henson, 49 Tex. Crim. 177, 90 S. W. 874.

Utah. — Brummitt *v.* Ogden Waterworks Co., (Utah 1908) 93 Pac. 828.

A Provision Providing for a Fine may be declared void without affecting the other provisions of the ordinance. Shook *v.* Sexton, 37 Wash. 509, 79 Pac. 1093.

994. 1. St. Louis *v.* Grafeman Dairy Co., 190 Mo. 492, 89 S. W. 617.

2. Southern Indiana R. Co. *v.* Bedford, 165 Ind. 272, 75 N. E. 268, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 993, 994.

3. Blackshear *v.* Strickland, 126 Ga. 492, 54 S. E. 966; Cratty *v.* Chicago, 217 Ill. 453, 75 N. E. 343; Chicago *v.* Burke, 226 Ill. 191, 80 N. E. 720; Ramsey *v.* Field, 115 Mo. App. 620, 92 S. W. 350.

995. 1. Bauer *v.* Casey, 26 Ohio Cir. Ct. 508.

2. **Provisions of Separate Ordinances.** — Harris *v.* People, 218 Ill. 439, 75 N. E. 1012.

8. Low *v.* Dallas, 165 Ind. 392, 75 N. E. 822.

996. 2. Chicago, etc., R. Co. *v.* Salem, 166 Ind. 71, 76 N. E. 633.

4. *In re* Zhizhuzza, 147 Cal. 328, 81 Pac. 955; Commonwealth Electric Co. *v.* Rose, 214 Ill. 545, 73 N. E. 780; People *v.* Health Dept., 117 N. Y. App. Div. 856, 103 N. Y. Supp. 275, 288.

5. *Contra.* — Gower *v.* Agee, (Mo. App. 1908) 107 S. W. 999.

6. Emporia *v.* Becker, (Kan. 1907) 90 Pac. 798; O'Donnell *v.* Riter-Conley Mfg. Co., 124 Ill. App. 544.

7. Deneen *v.* Houghton County St. R. Co., 150 Mich. 235, 113 N. W. 1126, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 996.

997. 1. St. Louis *v.* Liessing, 190 Mo. 464, 89 S. W. 611.

2. Paducah *v.* Ragsdale, 92 S. W. 13, 28 Ky. L. Rep. 1057.

3. New Orleans *v.* Murat, 119 La. 1093, 44 So. 898.

4. **Fire Ordinance Held Retrospective.** — Seattle *v.* Hinckley, 40 Wash. 468, 82 Pac. 747.

998. 1. Greer *v.* Jackson, 127 Ga. 47, 56 S. E. 73; Com. *v.* Williams, 120 Ky. 314, 86 S. W. 553.

2. New Orleans *v.* Murat, 119 La. 1093, 44 So. 898.

9. Kappes *v.* Chicago, 119 Ill. App. 436; New Orleans Baseball, etc., Co. *v.* New Orleans, 118 La. 228, 42 So. 784; Jackson *v.* Miller, (N. J. 1905) 60 Atl. 1019; Angle *v.* Stroudsburg Borough, 29 Pa. Super. Ct. 601; Block *v.* Crockett, 61 W. Va. 421, 56 S. E. 826; Fellows *v.* Charleston, (W. Va. 1907) 59 S. E. 623.

"A Court of Equity does not generally look with favor on bills to prevent the enforcement of municipal ordinances." Cuba *v.* Mississippi Cotton Oil Co., (Ala. 1907) 43 So. 706. See also Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890.

Complainant Must Be Affected. — Brummitt *v.* Ogden Waterworks Co., (Utah 1908) 93 Pac. 828.

999. 1. Adams *v.* Chesapeake Oyster, etc., Co., 34 Colo. 219, 82 Pac. 528.

Adequate Remedy at Law. — Galveston *v.* Mistrot, (Tex. Civ. App. 1907) 104 S. W. 417.

Invalidity of an Ordinance is not sufficient ground for enjoining its enforcement. Princess Amusement Co. *v.* Metzger, (Ind. 1907) 82 N. E. 758.

A Prosecution for Violating an Ordinance Will Not Be Enjoined. — Montgomery *v.* West, 146 Ala. 680, 40 So. 215; Salter *v.* Columbus, 125 Ga. 96, 54 S. E. 74.

Injunction Denied. — Sylvania *v.* Hilton, 123 Ga. 754, 51 S. E. 744.

4. New York *v.* O. J. Gude Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 484.

5. Little *v.* Ft. Valley, 123 Ga. 503, 51 S. E. 501; Hampton *v.* Chicago, etc., R. Co., 125 Ill. App. 412; Lebanon *v.* Zanditon, 75 Kan. 273, 89 Pac. 10.

Cumulative Penalties. — Hampton *v.* Chicago, etc., R. Co., 118 Ill. App. 621.

7. Emporia *v.* Becker, (Kan. 1907) 90 Pac. 798.

1001. 2. Hearst's Chicago American *v.* Spiss, 117 Ill. App. 436.

4. Hearst's Chicago American *v.* Spiss, 117 Ill. App. 436; Bloomington, etc., R., etc., Co. *v.* Bloomington, 123 Ill. App. 639; Chicago, etc., R. Co. *v.* Salem, 166 Ind. 71, 76 N. E. 633; Victoria *v.* Meston, 11 British Columbia 341.

6. **An Amendment of an Invalid Ordinance Is Valid** where the amendment is complete in itself. Wilder *v.* Aurora, etc., Electric Traction Co., 216 Ill. 493, 75 N. E. 194.

9. Ferrell *v.* Opelika, 144 Ala. 135, 39 So. 249.

1002. 2. Lewis *v.* Newark, (N. J. 1907) 65 Atl. 1039.

4. Santa Barbara *v.* Davis, (Cal. App. 1907) 92 Pac. 308.

1003. 2. Bloomington, etc., R., etc., Co. *v.* Bloomington, 123 Ill. App. 639.

4. **Repeal.** — Public Service Corp. *v.* De Grote, 70 N. J. Eq. 454, 62 Atl. 65. See also *Ex p.* Ackerman, (Cal. App. 1907) 91 Pac. 429.

A Special Ordinance is repealed by a subsequent general ordinance covering the same subject. Crowley *v.* Ellsworth, 114 La. 308, 38 So. 199.

5. Block *v.* Crockett, 61 W. Va. 421, 56 S. E. 826.

6. Monett *v.* Hall, (Mo. App. 1907) 106 S. W. 579.

1004. 5. **Parol Evidence** is admissible to establish the passage of ordinances where the clerk has failed to make a record of their passage. Weatherhead *v.* Cody, 85 S. W. 1099, 27 Ky. L. Rep. 631.

7. Robinson *v.* Gregory, 92 L. T. N. S. 171.

The Filing of Attested Copies of ordinances raises a presumption that they were duly and regularly passed. Weatherhead *v.* Cody, 85 S. W. 1099, 27 Ky. L. Rep. 631.

8. La Fitte *v.* Ft. Collins, (Colo. 1908) 93 Pac. 1098; Mt. Pleasant *v.* Eversole, 96 S. W. 478, 29 Ky. L. Rep. 830; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563.

9. Com. *v.* Williams, 120 Ky. 314, 86 S. W. 553.

10. La Fitte *v.* Ft. Collins, (Colo. 1908) 93 Pac. 1098; Ft. Worth, etc., St. R. Co. *v.* Hawes, (Tex. Civ. App. 1908) 107 S. W. 556.

Book Must Be Published by Authority of City. — Illinois R. Co. *v.* Minnihan, 129 Ill. App. 432.

ORDINARY — ORDINARILY.

1005. 1. **Ordinary Time Equivalent to Regular Customary Time — Carriage of Goods.** — Jenkins *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 663.

ORIGINAL — ORIGINALLY — ORIGINALITY.

1008. 3. **Original Jurisdiction.** — Chicago, etc., R. Co. *v.* Railroad Commission, 38 Ind. App. 464, 78 N. E. 338, dissenting opinion *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1009.

ORNAMENTAL.

1010. 2. **Ornamental Feathers — Revenue Laws.** — See Brodie *v.* U. S., 135 Fed. 914; Spero *v.* U. S., 135 Fed. 915.

OSTEOPATHY.

1011. 3. **Practicing Osteopathy** held to be practicing medicine within a statute prohibiting practicing medicine without a certificate. Ligon *v.* State, 145 Ala. 659, 39 So. 662.

OTHER.

1012. 1. St. Paul F. & M. Ins. Co. *v.* Penman, (C. C. A.) 151 Fed. 969, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1012; Schwab *v.* Oatman, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741; Hanks *v.* State, (Tex. Civ. App. 1907) 99 S. W. 1011, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1012.

Other Valuable Mineral Deposits. — Nephi Plaster, etc., Co. *v.* Juab County, (Utah 1907) 93 Pac. 53.

1014. 1. Matter of City of New York, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 54, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1014; State Mut. Ins. Co. *v.* Clevenger, 17 Okla. 48, 86 Pac. 583.

2. Com. *v.* Chicago, etc., R. Co., 99 S. W. 596, 30 Ky. L. Rep. 673.

OUSTER.

1018. 4. Lamb *v.* Lamb, 139 Mich. 169, 102 N. W. 645, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1018.

OUTGOING.

1020. 2. **Outgoing.** — See Greaves *v.* Whitmarsh, (1906) 2 K. B. 340, 75 L. J. K. B. 633; *Re* McClure, 95 L. T. N. S. 704, 76 L. J. Ch. 52, 23 Times L. Rep. 42; *In re* Hamilton Bank, 12 British Columbia 207.

OVERDRAFT — OVERDRAW.

1023. 2. State *v.* Jackson, (S. Dak. 1907) 113 N. W. 880.

OWN — OWNED.

1025. 1. **Owning Railroad — Statute Regulating Equipment.** — See Chicago, etc., R. Co. *v.* State, 84 Ark. 140, 106 S. W. 199.

PAPER.

1028. 8. **Papers of Estate.** — The word *papers* in a statute authorizing the public administrator to take charge of an estate where *papers* are left exposed to danger or loss, refers to *papers* which constitute the assets or a part of the assets of the estate; in other words, *papers* in which there is a property value. Richardson *v.* Busch, 198 Mo. 174, 95 S. W. 894; De La Vergne *v.* Richardson, 198 Mo. 189, 95 S. W. 898.

PAR.

1029. 1. **Par Value in the Sense of Face Value.** — Security Trust Co. *v.* Ford, 75 Ohio St. 324, 79 N. E. 474.

Par Includes Accrued Interest. — Diefenderfer *v.* State, 13 Wyo. 405, 80 Pac. 667, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029.

PARENT AND CHILD.

1035. 1. **Child Defined.** — Child, in law, means legitimate offspring. Landry *v.* American Creosote Works, 119 La. 231, 43 So. 1016.

1036. 2. Van Auken *v.* Wieman, 128 Iowa 476, 104 N. W. 464; Fortinberry *v.* Holmes, 89 Miss. 373, 42 So. 709.

3. **A Parent Is Guilty of Assault and Battery** where he compels his child to walk barefooted for three or four miles along a country road, while he rides behind on horseback occasionally striking the boy with a whip. State *v.* Koonse, 123 Mo. App. 655, 101 S. W. 139.

5. *United States.* — *Ex p.* Bakley, 148 Fed. 56; *Ex p.* Lisk, 145 Fed. 860.

Delaware. — *Ex p.* Maris, (Del. 1906) 63 Atl. 197.

Florida. — Hernandez *v.* Thomas, 50 Fla. 522, 39 So. 641.

Georgia. — Looney *v.* Martin, 123 Ga. 209, 51 S. E. 304; Richards *v.* McHan, 129 Ga. 275, 58 S. E. 839.

Indiana. — Gilmore *v.* Kitson, 165 Ind. 402, 74 N. E. 1083.

Kentucky. — Barlow *v.* Barlow, (Ky. 1906) 90 S. W. 216.

Minnesota. — State *v.* Martin, 95 Minn. 121, 103 N. W. 888.

Nebraska. — Terry *v.* Johnson, 73 Neb. 653, 103 N. W. 319.

New Jersey. — Titus *v.* McGloskey, 67 N. J. Eq. 709, 63 Atl. 244.

New York. — People *v.* Bishop, 117 N. Y. App. Div. 445, 102 N. Y. Supp. 592; People *v.* Sinclair, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 230, 95 N. Y. Supp. 861.

North Carolina. — Newsome *v.* Bunch, 144 N. Car. 15, 56 S. E. 509, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1036.

South Carolina. — *Ex p.* Davidge, 72 S. Car. 16, 51 S. E. 269.

1037. 3. See Carter *v.* Botts, (Kan. 1908) 93 Pac. 584.

The Mother Is Entitled as against the Father to the custody of a child one and one-half years old. Patterson *v.* Patterson, (Ark. 1908) 109 S. W. 1168.

Mother Entitled to Custody of Illegitimate Children. — Moore *v.* Dozier, 128 Ga. 90, 57 S. E. 110.

A Mother Cannot by Will Deprive the Father of his right to the custody of their minor child. Gilmore *v.* Kitson, 165 Ind. 402, 74 N. E. 1083.

1038. 1. *Alabama.* — Harrist *v.* Harrist, (Ala. 1907) 43 So. 962.

Arkansas. — Coulter *v.* Sypert, 78 Ark. 193, 95 S. W. 457.

Delaware. — *Ex p.* Maris, (Del. 1906) 63 Atl. 197.

Florida. — Robertson *v.* Bass, 52 Fla. 420, 42 So. 243; Hernandez *v.* Thomas, 50 Fla. 522, 39 So. 641.

Georgia. — Hollenbeck *v.* Glover, 128 Ga. 52, 57 S. E. 108.

Idaho. — Andrino *v.* Yates, 12 Idaho 618, 87 Pac. 787.

Illinois. — Cohn *v.* Scott, 231 Ill. 556, 83 N. E. 101.

Iowa. — Smiley *v.* McIntosh, 129 Iowa 337, 105 N. W. 577.

Kansas. — Collins v. Collins, (Kan. 1907) 90 Pac. 809; Brown v. Brown, 71 Kan. 868, 81 Pac. 199.

Kentucky. — Barlow v. Barlow, (Ky. 1906) 90 S. W. 216.

Michigan. — Carpenter v. Carpenter, 149 Mich. 138, 112 N. W. 748.

Missouri. — *In re* Redmond, 113 Mo. App. 351, 88 S. W. 129.

Nebraska. — Terry v. Johnson, 73 Neb. 653, 103 N. W. 319.

New Jersey. — Francisco v. Francisco, (N. J. 1907) 67 Atl. 687; Schultze v. Schultze, (N. J. 1907) 66 Atl. 950; Dixon v. Dixon, (N. J. 1907) 66 Atl. 597.

New York. — People v. Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787; People v. Lawson, 111 N. Y. App. Div. 473, 98 N. Y. Supp. 130.

North Carolina. — Newsome v. Bunch, 144 N. Car. 15, 56 S. E. 509.

South Carolina. — *Ex p.* Davidge, 72 S. Car. 16, 51 S. E. 269; *Ex p.* Reynolds, 73 S. Car. 302, 53 S. E. 490.

Washington. — Curtis v. Curtis, (Wash. 1907) 91 Pac. 188; Chappell v. Chappell, 45 Wash. 652, 89 Pac. 166.

Wyoming. — Tytler v. Tytler, 15 Wyo. 319, 89 Pac. 1.

Canada. — *Re* Faulds, 12 Ont. L. Rep. 245.

Limitation of Rule. — Gilmore v. Kitson, 165 Ind. 402, 74 N. E. 1083.

2. Sullivan v. People, 224 Ill. 468, 79 N. E. 695, *citing* 10 [2d] Am. and Eng. Encyc. of Law (2d ed.) 1038. See also Willingham v. Mattox, 125 Ga. 106, 53 S. E. 607.

3. Illustrations — Sufficient Grounds — *Father Rendered Unfit by Inebriety.* — Hoskins v. Hoskins, (Ky. 1905) 89 S. W. 478; Wright v. Wright, (Tex. Civ. App. 1908) 110 S. W. 158.

By Abandonment. — Coulter v. Sypert, 78 Ark. 193, 95 S. W. 457; *Ex p.* Maris, (Del. 1906) 63 Atl. 197; *In re* Brown, 117 Ill. App. 332; Workman v. Watts, 74 S. Car. 546, 54 S. E. 775.

By Failure to Provide for Child. — Peese v. Gellerman, (Tex. Civ. App. 1908) 110 S. W. 166.

1039. 1. Grounds Held Insufficient — *Immorality.* — State v. Martin, 95 Minn. 121, 103 N. W. 888.

Rudeness to Wife's Parents. — *Ex p.* Davidge, 72 S. Car. 16, 51 S. E. 269.

Former Intemperance. — *Ex p.* Reynolds, 73 S. Car. 302, 53 S. E. 490.

2. Harrist v. Harrist, (Ala. 1907) 43 So. 962; Robertson v. Bass, 52 Fla. 420, 42 So. 243; Andrino v. Yates, 12 Idaho 618, 87 Pac. 787; Purinton v. Jamrock, (Mass. 1907) 80 N. E. 802; Bakley v. Bakley, (N. J. 1907) 65 Atl. 440; People v. Lawson, 111 N. Y. App. Div. 473, 98 N. Y. Supp. 130; People v. Rubin, (Supm. Ct. Spec. T.) 98 N. Y. Supp. 787; Mills v. Mills, 47 Oregon 246, 83 Pac. 390.

3. *Ex p.* Reynolds, 73 S. Car. 302, 53 S. E. 490, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1039; Robertson v. Bass, 52 Fla. 420, 42 So. 243; Hernandez v. Thomas, 50 Fla. 522, 39 So. 641.

Contract Awarding Custody Must Be Clearly Established. — Looney v. Martin, 123 Ga. 209, 51 S. E. 304; Richards v. McHan, 129 Ga. 275, 58 S. E. 839.

An Agreement between the Father and Mother, upon separation, as to the custody of their child is valid, but will not be carried out to the child's detriment. Carpenter v. Carpenter, 149 Mich. 138, 112 N. W. 748.

4. Quirk v. Quirk, 155 Fed. 199; Farrar v. Wheeler, (C. C. A.) 145 Fed. 482; King v. Southern R. Co., 126 Ga. 794, 55 S. E. 965; Wilder v. Great Western Cereal Co., 134 Iowa 451, 109 N. W. 789; Soper v. Igo, (Ky. 1905) 89 S. W. 538; Merrill v. Hussey, 101 Me. 439, 64 Atl. 819; Page v. Page, 73 N. H. 305, 61 Atl. 356; Doyle v. Carney, 190 N. Y. 386, 83 N. E. 37; Galligan v. Woonsocket St. R. Co., 27 R. I. 363, 62 Atl. 376; Harper v. Utsey, (Tex. Civ. App. 1906) 97 S. W. 508.

A Contract to Support a Parent by a child is supported by the consideration of natural affection. Worth v. Daniel, 1 Ga. App. 15, 57 S. E. 898.

1040. 1. Culberson v. Alabama Constr. Co., 127 Ga. 599, 56 S. E. 765.

1041. 1. Vance v. Calhoun, 77 Ark. 35, 90 S. W. 619; Culberson v. Alabama Constr. Co., 127 Ga. 599, 56 S. E. 765.

An Action for Enticing a Minor Son from the Father's Service cannot be maintained where it does not appear that, at the time of the employment, there was an actual subsisting state of service from the minor to the father and an attempt by the father to reclaim the child. Kenney v. Baltimore, etc., R. Co., 101 Md. 490, 61 Atl. 581.

1042. 1. Swift v. Johnson, (C. C. A.) 138 Fed. 867. See also McMorrow v. Dowell, 116 Mo. App. 289, 90 S. W. 728.

4. See Soper v. Igo, (Ky. 1905) 89 S. W. 538; Tuite v. Tuite, (N. J. 1907) 66 Atl. 1090.

5. The Mother Cannot Recover for Loss of Services where the father is living with her. Soper v. Igo, (Ky. 1905) 89 S. W. 538.

1043. 2. Father Entitled to Services of Illegitimate Child. — Williams v. Halford, 73 S. Car. 119, 53 S. E. 88.

7. Harper v. Utsey, (Tex. Civ. App. 1906) 97 S. W. 508.

1044. 2. Shoemaker v. Jackson, 128 Iowa 488, 104 N. W. 503, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1044; Withey v. Pere Marquette R. Co., 141 Mich. 412, 104 N. W. 773.

3. Sorrells v. Matthews, 129 Ga. 319, 58 S. E. 819; Pattison v. Gulf Bag Co., 116 La. 963, 41 So. 224; Tennessee Cent. R. Co. v. Doak, 115 Tenn. 720, 92 S. W. 853.

Where Child Emancipated, Parent Cannot Recover for Injuries to Child. — Pecos, etc., R. Co. v. Blasengame, (Tex. Civ. App. 1906) 93 S. W. 187.

4. Shoemaker v. Jackson, 128 Iowa 488, 104 N. W. 503, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1044; Drogmund v. Metropolitan St. R. Co., 122 Mo. App. 154, 98 S. W. 1091; Texas, etc., R. Co. v. Hervey, (Tex. Civ. App. 1905) 89 S. W. 1095; Dean v. Oregon R., etc., Co., 44 Wash. 564, 87 Pac. 824.

Nonresident Aliens may recover damages for the negligent killing of their minor child. Atchison, etc., R. Co. v. Fajardo, 74 Kan. 314, 86 Pac. 301.

Where the Father Has Consented to the employment of his son by another at hazardous work, he cannot, in event of injury to the son, hold the employer for damages for loss of services. Louisville, etc., R. Co. *v.* Davis, (Ky. 1907) 105 S. W. 455.

Sale of Intoxicants to Adult Son. — Danley *v.* Hibbard, 222 Ill. 88, 78 N. E. 39.

1045. 1. **An Action for the Death of a Child,** brought by a parent, is not based on the theory of master and servant. Bellamy *v.* Whitsell, 123 Mo. App. 610, 100 S. W. 514.

1046. 11. Washburn *v.* Abram, (Ky. 1906) 90 S. W. 997.

1047. 2. King *v.* Southern R. Co., 126 Ga. 794, 55 S. E. 965.

3. **Under a Pennsylvania Statute** giving the mother, who contributes to the support of her minor child, equal rights of custody and control with the father, a mother, who has been deserted by her husband and is supporting her child, may sue for the loss of the services of the child through the negligence of another. O'Brien *v.* Philadelphia, 215 Pa. St. 407, 64 Atl. 551.

4. Brinkman *v.* St. Landry Cotton Oil Co., 118 La. 835, 43 So. 458; Drogmund *v.* Metropolitan St. R. Co., 122 Mo. App. 154, 98 S. W. 1091; Galligan *v.* Woonsocket St. R. Co., 27 R. I. 363, 62 Atl. 376; Gulf, etc., R. Co. *v.* Johnson, 99 Tex. 337, 90 S. W. 164; Texas, etc., R. Co. *v.* Hervey, (Tex. Civ. App. 1905) 89 S. W. 1095; Johnson *v.* St. Paul, etc., Coal Co., 131 Wis. 627, 111 N. W. 722.

Nursing. — Simone *v.* Rhode Island Co., (R. I. 1907) 66 Atl. 202.

Proof of Damage. — Vanderveer *v.* Moran, (Feb. 1907) 112 N. W. 581.

1048. 1. **Substantial Damages Recoverable.** — Black *v.* Michigan Cent. R. Co., 146 Mich. 568, 109 N. W. 1052.

2. Sperier *v.* Ott, 116 La. 1087, 41 So. 323; Brinkman *v.* St. Landry Cotton Oil Co., 118 La. 835, 43 So. 458.

Mental Anguish. — Long *v.* Chicago, etc., R. Co., 15 Okla. 512, 86 Pac. 289.

3. **Damages Recoverable for Mental Distress.** — Kelley *v.* Ohio River R. Co., 58 W. Va. 316, 52 S. E. 520.

Compensatory Damages, only, can be recovered by a parent in an action for the death of a child under *Pennsylvania* Act, April 4, 1868. Palmer *v.* Philadelphia, etc., R. Co., 218 Pa. St. 114, 66 Atl. 1127.

Measure of Damages. — One thousand dollars is not an excessive verdict in an action for the death of a child of seven years. Indianapolis Traction, etc., Co. *v.* Beckman, (Ind. App. 1907) 81 N. E. 82.

4. Atchison, etc., R. Co. *v.* Fajardo, 74 Kan. 314, 86 Pac. 301.

The Total Earning Capacity of the child and not merely the net result of his labor is the proper measure of damages. Galligan *v.* Woonsocket St. R. Co., 27 R. I. 363, 62 Atl. 376.

1049. 3. Sullivan *v.* People, 224 Ill. 468, 79 N. E. 695; Guthrie County *v.* Conrad, 133 Iowa 171, 110 N. W. 454; Bittier *v.* Myers, (Ky. 1908) 109 S. W. 1181; McAllen *v.* McAllen, 97 Minn. 82, 106 N. W. 100, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1049; Maxwell *v.* Boyd, 123 Mo. App. 334, 100 S. W. 540; Wright *v.* Leupp, 70 N. J. Eq. 130, 62 Atl. 464; Titus *v.* McGloskey, 67 N. J. Eq. 709, 63 Atl. 244.

5. *In re* Ross, (Cal. App. 1907) 92 Pac. 671; Alvey *v.* Hartwig, (Md. 1907) 67 Atl. 132.

Father Not Bound Where Child's Estate Sufficient to Support It. — Clay *v.* Clay, (Ky. 1905) 87 S. W. 807.

1050. 2. Paxton *v.* Paxton, 150 Cal. 667, 89 Pac. 1083.

3. **Grandmother Not Bound to Support Child.** — Jackson *v.* State, 1 Ga. App. 723, 58 S. E. 272.

1052. 1. State *v.* Redmile, 5 Penn. (Del.) 520, 63 Atl. 575; Alvey *v.* Hartwig, (Md. 1907) 67 Atl. 132; Ligon *v.* Ligon, (Tex. Civ. App. 1905) 87 S. W. 838.

Effect of Removing Children from State. — Feinberg *v.* Feinberg, (N. J. 1907) 66 Atl. 619.

6. State *v.* Redmile, 5 Penn. (Del.) 520, 63 Atl. 575.

8. Com. *v.* Acker, (Mass. 1908) 83 N. E. 312; State *v.* Teal, (Ohio 1907) 83 N. E. 304.

Abandonment. — Mays *v.* State, 123 Ga. 507, 51 S. E. 503; Moore *v.* State, 1 Ga. App. 502, 57 S. E. 1016.

9. **Medical Services.** — Best *v.* McAuslan, 27 R. I. 107, 60 Atl. 774.

1053. 1. Howell *v.* Blesh, (Okla. 1907) 91 Pac. 893.

1054. 4. Smith *v.* Gilbert, 80 Ark. 525, 98 S. W. 115; *In re* Ross, (Cal. App. 1907) 92 Pac. 671, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1054.

1057. 2. **Child Cannot Sue Parent for Tort Unless Emancipated.** — Taubert *v.* Taubert, (Minn. 1908) 114 N. W. 763.

10. **Father May Control Child's Religious Training.** — Hernandez *v.* Thomas, 50 Fla. 522, 39 So. 641.

On the Adoption of a Child the child's welfare, and not the wish of the parents, is the first consideration upon the question of religious training, and the courts will not interfere to compel the child to be reared in the religion of its parents where the adopting parents adhere to a different belief and it appears that the adoption will work for the best interests of the child. Purinton *v.* Jamrock, (Mass. 1907) 80 N. E. 802.

11. Mirick *v.* Suchy, 74 Kan. 715, 87 Pac. 1141, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1057; Maher *v.* Benedict, 123 N. Y. App. Div. 579, 108 N. Y. Supp. 228; Turner *v.* Snider, 16 Manitoba 79; Deschamps *v.* Berthiaume, 30 Quebec Super. Ct. 135.

1058. 1. Maher *v.* Benedict, 123 N. Y. App. Div. 579, 108 N. Y. Supp. 228.

2. See Mirick *v.* Suchy, 74 Kan. 715, 87 Pac. 1141.

1059. 8. Vance *v.* Calhoun, 77 Ark. 35, 90 S. W. 619, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1059.

9. Swift *v.* Johnson, (C. C. A.) 138 Fed. 867; Bowring *v.* Wilmington Malleable Iron Co., (Del. 1907) 67 Atl. 160; Donk Bros. Coal, etc., Co. *v.* Rezloff, 229 Ill. 194, 82 N. E. 214; Bristor *v.* Chicago, etc., R. Co., 128 Iowa 479, 104 N. W. 487; Jacobs *v.* Jacobs, 130 Iowa 10, 104 N. W. 480; Merrill *v.* Hussey, 101 Me. 439, 64 Atl. 819; McMorrow *v.* Dowell, 116 Mo. App.

289, 90 S. W. 728; Harper *v.* Utsey, (Tex. Civ. App. 1906) 97 S. W. 508.

Presumption. — Where a married daughter is divorced and is living apart from her husband it will be presumed that she is emancipated and not a minor. *In re* Slaughenwhite, 38 Nova Scotia 47.

1060. 1. **An Offer to Allow the Child Part of His Earnings** does not operate as an emancipation. Smith *v.* Gilbert, 80 Ark. 525, 98 S. W. 115.

The Fact that the Infant Remains at Home is not inconsistent with emancipation. Bristor *v.* Chicago, etc., R. Co., 128 Iowa 479, 104 N. W. 487.

Mere Waiver of Earnings Does Not Constitute Emancipation.—Taubert *v.* Taubert, (Minn. 1908) 114 N. W. 763.

2. Vance *v.* Calhoun, 77 Ark. 35, 90 S. W. 619, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060.

3. Vance *v.* Calhoun, 77 Ark. 35, 90 S. W. 619, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060.

5. Vanatta *v.* Carr, 229 Ill. 47, 82 N. E. 267, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060.

6. Vanatta *v.* Carr, 229 Ill. 47, 82 N. E. 267, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060.

7. Jackson *v.* Banister, (Tex. Civ. App. 1907) 105 S. W. 66.

1061. 1. Dean *v.* Oregon R., etc., Co., 44 Wash. 564, 87 Pac. 824.

3. Bowring *v.* Wilmington Malleable Iron Co., (Del. 1907) 67 Atl. 160; Merrill *v.* Hussey, 101 Me. 439, 64 Atl. 819.

4. Merrill *v.* Hussey, 101 Me. 439, 64 Atl. 819; Livesley *v.* Heise, 48 Oregon 147, 85 Pac. 500.

5. *In re* Slaughenwhite, 38 Nova Scotia 47.

6. Patterson *v.* Carter, 147 Ala. 522, 41 So. 133; Griffith *v.* Robertson, 73 Kan. 666, 85 Pac. 748; Wallace *v.* Denny, (Ky. 1906) 90 S. W. 1046; Einolf *v.* Thompson, 95 Minn. 230, 103 N. W. 1026, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1061; McMorrow *v.* Dowell, 116 Mo. App. 289, 90 S. W. 728; Fennimore *v.* Wagner, (N. J. 1906) 64 Atl. 698; Winkler *v.* Killian, 141 N. Car. 575, 54 S. E. 540, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1061; Dunn *v.* Currie, 141 N. Car. 127, 53 S. E. 533, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1061; Voss *v.* Voss, (Wis. 1907) 113 N. W. 1097; *In re* Taylor, (Wis. 1907) 111 N. W. 229.

Services of Illegitimate Child Presumptively Gratuitous. — Williams *v.* Halford, 73 S. Car. 119, 53 S. E. 88.

1063. 1. Patteson *v.* Carter, 147 Ala. 522, 41 So. 133, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063; Phinazee *v.* Bunn, 123 Ga. 230, 51 S. E. 300; Einolf *v.* Thompson, 95 Minn. 230, 103 N. W. 1026, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063; Winkler *v.* Killian, 141 N. Car. 575, 54 S. E. 540, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063; Dunn *v.* Currie, 141 N. Car. 127, 53 S. E. 533, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063; *In re* Taylor, (Wis. 1907) 111 N. W. 229; Voss *v.* Voss, (Wis. 1907) 113 N. W. 1097; *In re* Slaughenwhite, 38 Nova Scotia 47.

Express Contract. — Griffith *v.* Robertson, 73 Kan. 666, 85 Pac. 748.

2. Page *v.* Page, 73 N. H. 305, 61 Atl. 356; Winkler *v.* Killian, 141 N. Car. 575, 54 S. E. 540, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063; Brown *v.* Cummings, 27 R. I. 369, 62 Atl. 378.

3. Page *v.* Page, 73 N. H. 305, 61 Atl. 356.

5. People *v.* Protestant Episcopal House of Mercy, (Supm. Ct. Spec. T.) 110 N. Y. Supp. 172.

PARKS AND PUBLIC SQUARES.

1066. 8. Whitney *v.* Com., 190 Mass. 531, 77 N. E. 516.

11. Kucera *v.* West Chicago Park Com'rs, 221 Ill. 488, 77 N. E. 912.

1067. 3. Union *v.* Fessler, (N. J. 1905) 60 Atl. 1134, *affirming* 67 N. J. Eq. 14, 56 Atl. 272; Louisville, etc., R. Co. *v.* Cincinnati, 76 Ohio St. 481, 81 N. E. 983.

10. Union *v.* Fessler, (N. J. 1905) 60 Atl. 1134, *affirming* 67 N. J. Eq. 14, 56 Atl. 272; Louisville, etc., R. Co. *v.* Cincinnati, 76 Ohio St. 481, 81 N. E. 983.

1070. 10. Under a statute authorizing the improvement of parks it has been held that the erection of a building adapted to public purposes comes within the statute. Ross *v.* Long Branch, 73 N. J. L. 292, 63 Atl. 609.

1071. 7. **Commissioners Are Agents of the Municipality** in exercising jurisdiction over parks owned by the city, and not state officers. Denver *v.* Spencer, 34 Colo. 270, 82 Pac. 590.

11. **Can Make Only Reasonable Regulations.** — Whitney *v.* Com., 190 Mass. 531, 77 N. E. 516, holding that the reasonableness of a regulation is a question for the court.

Power to Authorize Display of Advertising Signs. — Thompkins *v.* Pallas, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 309, 95 N. Y. Supp. 875.

12. **Power to Issue Bonds** is sometimes given. Kucera *v.* West Chicago Park Com'rs, 221 Ill. 488, 77 N. E. 912.

1072. 2. Union *v.* Fessler, (N. J. 1905) 60 Atl. 1134, *affirming* 67 N. J. Eq. 14, 56 Atl. 272.

3. **Public Library.** — Spires *v.* Los Angeles, 150 Cal. 64, 11 Ann. Cas., 87 Pac. 1026.

9. See Louisville, etc., R. Co. *v.* Cincinnati, 76 Ohio St. 481, 81 N. E. 983.

Abutting Owner Who Objects Must Show Special Damage. — Bayard *v.* Bancroft, (Del. 1905) 62 Atl. 6.

1074. 1. **Taxpayer May Sue.** — Thompkins *v.* Pallas, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 309, 95 N. Y. Supp. 875.

1075. 7. **Must Not Violate Private Rights.** — Ocean City Land Co. *v.* Ocean City, 73 N. J. L. 493, 63 Atl. 1112.

PAROL EVIDENCE.

1079. 4. *California.* — Peterson *v.* Chaix, 5 Cal. App. 525, 90 Pac. 948.

Colorado. — Fox *v.* Denargo Land Co., 37 Colo. 203, 86 Pac. 344.

Georgia. — Butler *v.* Standard Guaranty, etc., Co., 122 Ga. 371, 50 S. E. 132; Andrews *v.* John Church Co., 1 Ga. App. 560, 58 S. E. 130; Carroll *v.* Hutchinson, 2 Ga. App. 60, 58 S. E. 309; Capps *v.* Edwards, (Ga. 1908) 60 S. E. 455.

Illinois. — Boylan *v.* Cameron, 126 Ill. App. 432.

Indiana. — Purse *v.* Bronnenberg, (Ind. App. 1907) 81 N. E. 739, *rehearing denied* (Ind. App. 1907) 82 N. E. 126, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1079.

Iowa. — Houts *v.* Sioux City Brass Works, 134 Iowa 484, 110 N. W. 166.

Massachusetts. — Smith *v.* Vose, etc., Piano Co., 194 Mass. 193, 80 N. E. 527.

Michigan. — Haas *v.* Malto-Grapo Co., 148 Mich. 358, 111 N. W. 1059; Chicago, etc., R. Co. *v.* Lane, (Mich. 1907) 113 N. W. 22.

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North Carolina. — Orion Knitting Mills *v.* U. S. Fidelity, etc., Co., 137 N. Car. 565, 50 S. E. 304.

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South Carolina. — Prince *v.* State Mut. L. Ins. Co., 77 S. Car. 187, 57 S. E. 766.

South Dakota. — Bowen *v.* Mutual L. Ins. Co., (S. Dak. 1905) 104 N. W. 1040; Schriner *v.* Dickinson, (S. Dak. 1906) 107 N. W. 536; Gardner *v.* Welch, (S. Dak. 1906) 110 N. W. 110.

Virginia. — Trout *v.* Norfolk, etc., R. Co., 107 Va. 576, 59 S. E. 394.

Washington. — Moran Bros. Co. *v.* Pacific Coast Casualty Co., (Wash. 1908) 94 Pac. 106.

West Virginia. — Home Gas Co. *v.* Mannington Co-operative Window Glass Co., (W. Va. 1907) 61 S. E. 329.

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Georgia. — Edwards *v.* Capps, 122 Ga. 827, 50 S. E. 943; Wellmaker *v.* Wheatley, 123 Ga. 201, 51 S. E. 436; Pennington *v.* Avera, 124 Ga. 147, 52 S. E. 324; Williams *v.* Walden, 124 Ga. 913, 53 S. E. 564; Biggers *v.* Equitable Mfg. Co., 124 Ga. 1045, 53 S. E. 674; Cobb *v.* Johnson, 126 Ga. 618, 55 S. E. 935; Burton *v.* O'Neill Mfg. Co., 126 Ga. 805, 55 S. E. 933; Byrd *v.* Marietta Fertilizer Co., 127 Ga. 30, 56 S. E. 86; Townsend *v.* Southern Product Co., 127 Ga. 342, 56 S. E. 436; Smith *v.* Green, 128 Ga. 90, 57 S. E. 98; Crankshaw *v.* Schweizer Mfg. Co., 1 Ga. App. 363, 58 S. E. 222; Bowen *v.* Waxelbaum, 2 Ga. App. 521, 58 S. E. 784; Southern Bell Telephone, etc., Co. *v.* Smith, 129 Ga. 558, 59 S. E. 215; Branan *v.* Warfield, (Ga. App. 1908) 60 S. E. 325; Flemming *v.* Satterfield, (Ga. App. 1908) 61 S. E. 518; Ramsey *v.* Pilcher, (Ga. 1908) 61 S. E. 538; Pennsylvania Casualty Co. *v.* Thompson, (Ga. 1908) 61 S. E. 829.

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Iowa. — Western Electric Co. *v.* Barthel, 127 Iowa 467, 103 N. W. 475; State Security Bank *v.* Hoskins, 130 Iowa 339, 106 N. W. 764; Mosnat *v.* Uchytil, 129 Iowa 274, 105 N. W. 519; Chariton Ice Co. *v.* Spring Lake Ice Co., 129 Iowa 523, 105 N. W. 1014; City Deposit Bank *v.* Green, 130 Iowa 384, 106 N. W. 942; Kelsey *v.* Continental Casualty Co., 131 Iowa 207, 108 N. W. 221; Bounanni *v.* White Bronze Monument Co., 131 Iowa 304, 108 N. W. 524; Chapman *v.* Chapman, 132 Iowa 5, 109 N. W. 300; Inman Mfg. Co. *v.* American Cereal Co., 133 Iowa 71, 110 N. W. 287; Kitzman *v.* Carl, 133 Iowa 340, 110 N. W. 587; *In re* Shield, 134 Iowa 559, 111 N. W. 963; Doolittle *v.* Murray, 134 Iowa 536, 111 N. W. 999; McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; Scott *v.* Scott, (Iowa 1908) 114 N. W. 881; Cochran *v.* Zachery, (Iowa 1908) 115 N. W. 486; Electric Storage Battery Co. *v.* Waterloo, (Iowa 1908) 116 N. W. 144.

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Mississippi. — Columbia Star Mill. Co. *v.* A. G. Russell Co., 89 Miss. 437, 42 So. 233; Rogers *v.* Rogers, (Miss. 1907) 43 So. 434; Panola County *v.* Carrier, (Miss. 1908) 45 So. 426; Ballard *v.* Brown, (Miss. 1908) 46 So. 137.

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Nebraska. — Harnett *v.* Holdrege, 73 Neb. 570, 103 N. W. 277; Apking *v.* Hoffer, (Neb. 1905) 104 N. W. 177; Gandy *v.* Wiltse, (Neb. 1907) 112 N. W. 569; Waters *v.* Phelps, (Neb. 1908) 116 N. W. 783.

New Hampshire. — Lauze *v.* New York L. Ins. Co., (N. H. 1907) 68 Atl. 31.

New Jersey. — Grueber Engineering Co. *v.* Waldron, 71 N. J. L. 597, 60 Atl. 386; Ramsey *v.* Perth Amboy Shipbuilding, etc., Co., (N. J. 1906) 65 Atl. 461; Green *v.* Green, (N. J. 1908) 68 Atl. 1070.

New York. — Beadleston *v.* Furrer, 102 N. Y. App. Div. 544, 92 N. Y. Supp. 879; Cooper *v.* Payne, 103 N. Y. App. Div. 118, 93 N. Y. Supp. 69; Daly *v.* Piza, 105 N. Y. App. Div. 496, 94 N. Y. Supp. 154; Greene *v.* Ker, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 609, 95 N. Y. Supp. 569; David Belasco Co. *v.* Klaw, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 597, 97 N. Y. Supp. 712; Bristol Hotel Co. *v.* Pegram, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 535, 98 N. Y. Supp. 512; Solomon *v.* Lighte, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 541, 99 N. Y. Supp. 540; Sturndorf *v.* Saunders, 117 N. Y. App. Div. 762, 102 N. Y. Supp. 1042, *affirmed* 190 N. Y. 555, 83 N. E. 1132; Gilroy *v.* Everson-Hickok Co., 118 N. Y. App. Div. 733, 103 N. Y. Supp. 620; Wightman *v.* New York L. Ins. Co., 119 N. Y. App. Div. 496, 104 N. Y. Supp. 214; McKee *v.* Owen, (Supm. Ct. App. T.) 104 N. Y. Supp. 373; McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342; Butler *v.* De Villers, (Supm. Ct. App. T.) 107 N. Y. Supp. 125; Wehrenberg *v.* Seiferd, (Supm. Ct. App. Div.) 109 N. Y. Supp. 896; McCaskey Register Co. *v.* Green, (County Ct.) 57 Misc. (N. Y.) 549, 109 N. Y. Supp. 970.

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North Dakota. — Houghton Implement Co. *v.* Doughty, 14 N. Dak. 331, 104 N. W. 516.

Ohio. — Toledo Paper Box Co. *v.* American Roll Wrapping Paper Co., 26 Ohio Cir. Ct. 27; Cowden *v.* Cowden, 28 Ohio Cir. Ct. 71; Fitch *v.* Gottschalk, 28 Ohio Cir. Ct. 811; Watson *v.* Lamb, 75 Ohio St. 481, 79 N. E. 1075.

Oklahoma. — Deming Invest. Co. *v.* Shawnee F. Ins. Co., 16 Okla. 1, 83 Pac 918; Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 869; Page *v.* Geiser Mfg. Co., 17 Okla. 110, 87 Pac. 851; Buxton *v.* Alton-Dawson Mercantile Co., 18 Okla. 287, 90 Pac. 19.

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Virginia. — Oriental Lumber Co. *v.* Blades Lumber Co., 103 Va. 730, 50 S. E. 270; Metropolitan L. Ins. Co. *v.* Hall, 104 Va. 572, 52 S. E. 345; Carlin *v.* Fraser, 105 Va. 216, 53 S. E. 145; Watkins *v.* Robertson, 105 Va. 269, 54 S. E. 33; Trout *v.* Norfolk, etc., R. Co., 107 Va. 576, 59 S. E. 394; Roanoke *v.* Blair, (Va. 1907) 60 S. E. 75.

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West Virginia. — King *v.* Thompson, 58 W. Va. 455, 52 S. E. 487; Armstrong *v.* Ross, 61 W. Va. 38, 55 S. E. 895; Duty *v.* Sprinkle, (W. Va. 1908) 60 S. E. 882; Myers *v.* Taylor, (W. Va. 1908) 61 S. E. 358.

Wisconsin. — Patterson *v.* Cappon, 125 Wis. 198, 102 N. W. 1083; Midland Linseed Co. *v.* Remington Drug Co., 127 Wis. 242, 106 N. W. 115; Rief *v.* Continental Casualty Co., 131 Wis. 368, 111 N. W. 502; U. S. Gypsum Co. *v.* Gleason, (Wis. 1908) 116 N. W. 238; Kruse *v.* Koelzer, 124 Wis. 536, 102 N. W. 1072.

1082. 1. *Alabama.* — Brassell *v.* Fisk, (Ala. 1907) 45 So. 70.

California. — Jersey Island Dredging Co. *v.* Whitney, (Cal. App. 1905) 86 Pac. 509; Womble *v.* Wilbur, 3 Cal. App. 535, 86 Pac. 916.

District of Columbia. — Hutchins *v.* Langley, 27 App. Cas. (D. C.) 234.

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Iowa. — Fraser *v.* Means, (Iowa 1908) 115 N. W. 577.

Michigan. — Wallace *v.* Kelly, 148 Mich. 336, 111 N. W. 1049.

Missouri. — Bass *v.* Sanborn, 119 Mo. App. 103, 95 S. W. 955.

North Carolina. — J. F. White Co. *v.* Carroll, (N. Car. 1908) 61 S. E. 196.

Texas. — Morrison *v.* Hazzard, (Tex. Civ. App. 1905) 88 S. W. 385.

West Virginia. — Crawford *v.* Workman, (W. Va. 1908) 61 S. E. 319.

1083. 1. Appleby *v.* Barrett, 28 Pa. Super. Ct. 349; Rouseville Borough School Dist. *v.* Cornplanter Tp. School Dist., 29 Pa. Super. Ct. 214.

2. Phillips Gas, etc., Co. *v.* Pittsburg Plate Glass Co., 213 Pa. St. 183, 62 Atl. 830; Miller *v.* Wise, 33 Pa. Super. Ct. 589.

3. Com. *v.* Cashman, 32 Pa. Super. Ct. 459.

1084. 3. U. S. *v.* Fidelity, etc., Co., 152 Fed. 596, 81 C. C. A. 586; Poe *v.* Ulrey, 233 Ill. 56, 84 N. E. 46; Levine *v.* Carroll, 121 Ill. App. 105.

1085. 4. McCusker *v.* Geiger, 195 Mass. 46, 80 N. E. 648; Evans *v.* Freeman, 142 N. Car. 61, 54 S. E. 847.

1086. 5. Wright *v.* Anderson, 191 Mass. 148, 77 N. E. 704; Pettey *v.* Benoit, 193 Mass. 233, 79 N. E. 245; Picard *v.* Beers, (Mass. 1907) 81 N. E. 246; Grath *v.* Mound City Roofing Tile Co., 121 Mo. App. 245, 98 S. W. 812.

Bill of Lading. — Foley *v.* Lehigh Valley R. Co., (Supm. Ct. App. T.) 96 N. Y. Supp. 182; Leary *v.* Moore, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 551, 96 N. Y. Supp. 266; Perry *v.* Bates, 115 N. Y. App. Div. 337, 100 N. Y. Supp. 881; Kneipper *v.* Richards, 26 Ohio Cir. Ct. 245; Pennsylvania Co. *v.* Loftis, 72 Ohio St. 288, 74 N. E. 179; Bade *v.* Hibberd, (Oregon 1908) 93 Pac. 364.

1087. 2. North Packing, etc., Co. *v.* Lynch, (Mass. 1907) 81 N. E. 891; Leavitt *v.* Fiberloid, (Mass. 1907) 82 N. E. 682.

Bill for Work Done. — Wheat *v.* Van Tine, 149 Mich. 314, 112 N. W. 933.

3. Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682; West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488; Electrical Appliance Co. *v.* Standard Electric Co., (Mich. 1908) 115 N. W. 982; De Jonge *v.* Printz, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 112, 96 N. Y. Supp. 750; Johnson County Sav. Bank *v.* Rapp, (Wash. 1907) 91 Pac. 382.

4. **Of This Class Are Letters.** — Electrical Appliance Co. *v.* Standard Electric Co., (Mich. 1908) 115 N. W. 982; Perry *v.* Bates, 115 N. Y. App. Div. 337, 100 N. Y. Supp. 881.

1088. 3. Herrin *v.* Abbe, (Fla. 1908) 46 So. 183; Poe *v.* Ulrey, 233 Ill. 56, 84 N. E. 46. See also Redmond *v.* Cass, 226 Ill. 120, 80 N. E. 708; Farquhar *v.* Farquhar, 194 Mass. 400, 80 N. E. 654.

1089. 3. *United States.* — McConnell *v.* Camors-McConnell Co., 152 Fed. 321, 81 C. C. A. 429.

Alabama. — Dorough *v.* Harrington, (Ala. 1906) 42 So. 557.

Arkansas. — St. Louis, etc., R. Co. *v.* Wynne Hoop, etc., Co., 81 Ark. 373, 99 S. W. 375.

District of Columbia. — Landvoigt *v.* Ford, 27 App. Cas. (D. C.) 423.

Florida. — McNair, etc., Land Co. *v.* Adams, (Fla. 1907) 45 So. 492.

Iowa. — Blake *v.* Miller, (Iowa 1907) 112 N. W. 158.

Massachusetts. — Picard *v.* Beers, (Mass. 1907) 81 N. E. 246.

Missouri. — Goodwin Mfg. Co. *v.* Arthur Fritsch Foundry, etc., Co., 115 Mo. App. 382, 89 S. W. 911.

New York. — Niles *v.* Sire, 108 N. Y. App. Div. 366, 95 N. Y. Supp. 1149, *affirming* (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 321, 94 N. Y. Supp. 586; Leary *v.* Moore, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 551, 96 N. Y. Supp. 266; Taylor *v.* Elmira Storage, etc., Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 363, 104 N. Y. Supp. 557.

North Carolina. — Evans *v.* Freeman, 142 N. Car. 61, 54 S. E. 847; Smith Premier Typewriter Co. *v.* Rowan Hardware Co., 143 N. Car. 97, 55 S. E. 417.

Oregon. — Schwarz *v.* Lee Gon, 46 Oregon 219, 80 Pac. 110; Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

Texas. — Texas, etc., R. Co. *v.* Coggin, (Tex. Civ. App. 1906) 99 S. W. 1052; Davis *v.* Sisk, (Tex. Civ. App. 1908) 108 S. W. 472.

Virginia. — Trout *v.* Norfolk, etc., R. Co., 107 Va. 576, 59 S. E. 394.

Washington. — Allen *v.* Treat, (Wash. 1908) 94 Pac. 102.

Wisconsin. — Agnew *v.* Baldwin, (Wis. 1908) 116 N. W. 641.

1090. 2. Taylor *v.* Elmira Storage, etc., Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 363, 104 N. Y. Supp. 557.

3. Albright *v.* State Ins. Co., (Neb. 1907) 113 N. W. 793.

4. *California.* — Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964.

Illinois. — McConnell *v.* Pierce, 116 Ill. App. 103.

Massachusetts. — Smith *v.* Vose, etc., Piano Co., 194 Mass. 193, 80 N. E. 527; Budro *v.* Burgess, (Mass. 1907) 83 N. E. 318.

Michigan. — Kibler *v.* Caplis, 140 Mich. 28, 103 N. W. 531.

Minnesota. — McNaughton *v.* Wahl, 99 Minn. 92, 108 N. W. 467.

Mississippi. — Patten-Worsham Drug Co. *v.* Planters' Mercantile Co., 86 Miss. 423, 38 So. 209; Ballard *v.* Brown, (Miss. 1908) 46 So. 137.

Missouri. — Koons *v.* St. Louis Car Co., 203 Mo. 227, 101 S. W. 49.

Nebraska. — Apking *v.* Hoffer, (Neb. 1905) 104 N. W. 177.

New York. — McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342; Sturmdorf *v.* Saunders, 117 N. Y. App. Div. 762, 102 N. Y. Supp. 1042; Solomon *v.* Lighte, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 541, 99 N. Y. Supp. 540; David Belasco Co. *v.* Klaw, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 597, 97 N. Y. Supp. 712; Daly *v.* Piza, 105 N. Y. App. Div. 496, 94 N. Y. Supp. 154. See also Byars *v.* Bennington, etc., R. Co., 184 N. Y. 554, 76 N. E. 1090, *affirming* 99 N. Y. App. Div. 34, 90 N. Y. Supp. 736.

West Virginia. — Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770, *quoting* 21 Am. and Eng. Encyc. of Law (2d ed.) 1090.

1091. 1. *Alabama.* — Roquemore *v.* Vulcan Iron Works Co., (Ala. 1907) 44 So. 557, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1091.

Iowa. — Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935; Hall *v.* Barnard, (Iowa 1908) 116 N. W. 604.

Louisiana. — Davies *v.* Bierce, 114 La. 663, 38 So. 488.

Michigan. — Harrison Wagon Co. *v.* Brown, 145 Mich. 621, 108 N. W. 1109; Beld *v.* Darst, 146 Mich. 143, 109 N. W. 275; Electrical Appliance Co. *v.* Standard Electric Co., (Mich. 1908) 115 N. W. 982.

Minnesota. — St. Anthony, etc., Elevator Co. *v.* Princeton Roller Mill Co., (Minn. 1908) 116 N. W. 935.

Missouri. — Zerr *v.* Klug, 121 Mo. App. 286, 98 S. W. 822.

Nebraska. — Fairbanks *v.* Burgert, (Neb. 1908) 116 N. W. 35.

New York. — Cooper *v.* Payne, 186 N. Y. 334, 78 N. E. 1076; Natelsohn *v.* Reich, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 585, 99 N. Y. Supp. 327; Niles *v.* Sire, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 321, 94 N. Y. Supp. 586; De Jonge *v.* Printz, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 112, 96 N. Y. Supp. 750; Winter *v.* Friedman, 111 N. Y. App. Div. 306, 97 N. Y. Supp. 733; National Drill, etc., Co. *v.* Maher, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 640, 97 N. Y. Supp. 1029; Perry *v.* Bates, 115 N. Y. App. Div. 337, 100 N. Y. Supp. 881; Kohn *v.* Meyer, 113 N. Y. App. Div. 919, 100 N. Y. Supp. 1124; McCaskey Register Co. *v.* Green, (County Ct.) 57 Misc. (N. Y.) 549, 109 N. Y. Supp. 970.

North Carolina. — Brown *v.* Hobbs, (N. Car. 1908) 60 S. E. 716.

Virginia. — Trout *v.* Norfolk, etc., R. Co., 107 Va. 576, 59 S. E. 394.

West Virginia. — Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1091.

Wisconsin. — Mueller *v.* Cook, 126 Wis. 504, 105 N. W. 1054.

1092. 1. Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1092.

1093. 1. *California.* — Dodd *v.* Pasch, 5 Cal. App. 686, 91 Pac. 166; Peterson *v.* Chaix, 5 Cal. App. 525, 90 Pac. 948.

Colorado. — Whitehead *v.* Emmerich, 38 Colo. 13, 87 Pac. 790; Torbert *v.* Montague, 38 Colo. 325, 87 Pac. 1145.

Iowa. — Kelsey *v.* Continental Casualty Co., 131 Iowa 207, 108 N. W. 221.

Massachusetts. — Edison Electric Illuminating Co. *v.* Gibby Foundry Co., 194 Mass. 258, 80 N. E. 479; McCusker *v.* Geiger, 195 Mass 46, 80 N. E. 648.

New York. — Daly *v.* Piza, 105 N. Y. App. Div. 496, 94 N. Y. Supp. 154; Taylor *v.* Elmira Storage, etc., Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 363, 104 N. Y. Supp. 557; Cooper *v.* Payne, 186 N. Y. 334, 78 N. E. 1076.

Oklahoma. — Page *v.* Geiser Mfg. Co., 17 Okla. 110, 87 Pac. 851.

Pennsylvania. — Scientific American Compiling Dept. *v.* Creighton, 32 Pa. Super. Ct. 146.

Washington. — Hubenthal *v.* Spokane, etc., R. Co., 43 Wash. 677, 86 Pac. 955; Newell *v.* Lamping, 45 Wash. 304, 88 Pac. 195; Victor Safe, etc., Co. *v.* O'Neil, (Wash. 1908) 93 Pac. 214.

West Virginia. — Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1093.

Wisconsin. — Corbett *v.* Joannes, 125 Wis. 370, 104 N. W. 69.

5. Hinsdale *v.* McCune, (Iowa 1907) 113 N. W. 478; Cavanagh *v.* Iowa Beer Co., (Iowa 1907) 113 N. W. 856.

6. Read Phosphate Co. *v.* S. Weichselbaum Co., 1 Ga. App. 420, 58 S. E. 122; Hester *v.* Gairdner, 128 Ga. 531, 58 S. E. 165.

7. Shenandoah Land, etc., Co. *v.* Clarke, 106 Va. 100, 55 S. E. 561.

1094. 3. *Alabama.* — Roquemore *v.* Vulcan Iron Works Co., (Ala. 1907) 44 So. 557, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1094; Gates *v.* O'Gara, (Ala. 1905) 39 So. 729; Florence Wagon Works *v.* Trinidad Asphalt Mfg. Co., 145 Ala. 677, 40 So. 49.

Arkansas. — Mayo *v.* Mayo, 79 Ark. 570, 96 S. W. 165.

California. — Pierce *v.* Edwards, 150 Cal. 650, 89 Pac. 600; Gabel *v.* Page, (Cal. App. 1907) 92 Pac. 749.

Iowa. — Wells *v.* Hocking Valley Coal Co., (Iowa 1908) 114 N. W. 1076.

Kentucky. — Martin *v.* Ferguson, 103 S. W. 257, 31 Ky. L. Rep. 590.

Louisiana. — Davies *v.* Bierce, 114 La. 663, 38 So. 488.

Mississippi. — Green *v.* Booth, (Miss. 1907) 44 So. 784.

New York. — Schweig *v.* Manhattan Leasing Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 233, 104 N. Y. Supp. 371; Blair *v.* Minzesheimer, (Supm. Ct. App. Div.) 108 N. Y. Supp. 799; Benedict *v.* Pincus, 109 N. Y. App. Div. 20, 95 N. Y. Supp. 1042.

North Carolina. — Bourne *v.* Sherrill, 143 N. Car. 381, 55 S. E. 799; Brown *v.* Hobbs, (N. Car. 1908) 60 S. E. 716.

Oregon. — Peterson *v.* Creason, 47 Oregon 69, 81 Pac. 574.

South Carolina. — Williams *v.* Salmond, (S. Car. 1908) 61 S. E. 79; Robert Buist Co. *v.* Lancaster Mercantile Co., 73 S. Car. 48, 52 S. E. 789, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1094.

Texas. — Thompson *v.* Fitzgerald, (Tex. Civ. App. 1907) 105 S. W. 334.

Virginia. — Emerson *v.* Stratton, 107 Va. 303, 58 S. E. 577; Trout *v.* Norfolk, etc., R. Co., 107 Va. 576, 59 S. E. 394.

Washington. — Buckeye Buggy Co. *v.* Montana Stables, 43 Wash. 49, 85 Pac. 1077.

1096. 1. New York L. Ins. Co. *v.* Thomas, (Tex. Civ. App. 1907) 104 S. W. 1074; Moran Bros. Co. *v.* Pacific Coast Casualty Co., (Wash. 1908) 94 Pac. 106.

2. Payne *v.* Mutual L. Ins. Co., 141 Fed. 339, 72 C. C. A. 487; Lincoln First Nat. Bank *v.* Penn Mut. L. Ins. Co., 147 Fed. 519, 77 C. C. A. 215; Lower *v.* Hickman, 80 Ark. 505, 97 S. W. 681; Johnson *v.* Hughes, 83 Ark. 105, 103 S. W. 184; Arden Lumber Co. *v.* Henderson Iron Works, etc., Co., 83 Ark. 240, 103 S. W. 185; Barry-Wehmiller Machinery Co. *v.* Thompson, 83 Ark. 283, 104 S. W. 137; Ord *v.* Waller, (Tex. Civ. App. 1908) 107 S. W. 1166.

1097. 1. Daly *v.* Piza, 105 N. Y. App. Div. 496, 94 N. Y. Supp. 154; Greene *v.* Ker, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 609, 95 N. Y. Supp. 569.

3. Metzger *v.* Roberts, 26 Ohio Cir. Ct. 675, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097; Clemens *v.* Crane, 234 Ill. 215, 84 N. E. 884; Minneapolis Threshing Mach. Co. *v.* Otis, (Neb. 1907) 110 N. W. 550.

4. *California.* — Fresno Canal, etc., Co. *v.* Hart, (Cal. 1907) 92 Pac. 1010.

Illinois. — Van Norman *v.* Young, 228 Ill. 425, 81 N. E. 1060.

Iowa. — McCormick *v.* Merritt, 131 Iowa 160, 105 N. W. 428, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097; Hinsdale *v.* McCune, (Iowa 1907) 113 N. W. 478; Cavanagh *v.* Iowa Beer Co., (Iowa 1907) 113 N. W. 856; McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858.

Massachusetts. — Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831; Way *v.* Greer, (Mass. 1907) 81 N. E. 1002. See also McCusker *v.* Geiger, 195 Mass. 46, 80 N. E. 648.

Michigan. — Acme Food Co. *v.* Tousey, 148 Mich. 697, 112 N. W. 484. See also Mail, etc., Co. *v.* Wood, 140 Mich. 505, 103 N. W. 864.

Nebraska. — Dodd *v.* Kemnitz, (Neb. 1905) 104 N. W. 1069.

New York. — Manhattan Guide Co. *v.* Gluck, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 652, 101 N. Y. Supp. 528; National Park Bank *v.* Saitta, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 93, 106 N. Y. Supp. 328; Hamlin *v.* Hamlin, 117 N. Y. App. Div. 493, 102 N. Y. Supp. 571; Middleworth *v.* Ordway, 191 N. Y. 404, 84 N. E. 291; Gilroy *v.* Everson-Hicklock Co., 190 N. Y. 551, 83 N. E. 1125, *affirming* 118 N. Y. App. Div. 733, 103 N. Y. Supp. 620.

North Carolina. — Waters *v.* Security Life, etc., Co., 144 N. Car. 663, 57 S. E. 437.

South Carolina. — Burns *v.* Goddard, 72 S. Car. 355, 51 S. E. 915.

Virginia. — Blair *v.* Security Bank, 103 Va. 762, 50 S. E. 262.

Wisconsin. — Hodge *v.* Smith, 130 Wis. 326, 110 N. W. 192.

1098. 1. Creveling *v.* Banta, (Iowa 1908) 115 N. W. 598; Burnette *v.* Young, 107 Va. 184, 57 S. E. 641.

Time of Delivery. — Pratt *v.* Frasier, 72 S. Car. 368, 51 S. E. 983.

1099. 1. Drinkwater *v.* Hollar, (Cal. App. 1907) 91 Pac. 664; Creveling *v.* Banta, (Iowa 1908) 115 N. W. 598.

3. France *v.* Munro, (Iowa 1908) 115 N. W. 577; Twentieth Century Co. *v.* Quilling, 130 Wis. 318, 110 N. W. 174.

1100. 1. *United States.* — Cook *v.* Sterling Electric Co., 150 Fed. 766, 80 C. C. A. 502.

Georgia. — McLendon *v.* Finch, 2 Ga. App. 421, 58 S. E. 600.

Illinois. — Dillard *v.* Jones, 229 Ill. 119, 82 N. E. 206.

Indiana. — Nichols, etc., Co. *v.* Berning, 37 Ind. App. 109, 76 N. E. 776.

Kentucky. — Martin *v.* Ferguson, 104 S. W. 308, 31 Ky. L. Rep. 1005.

Maryland. — Somerville *v.* Coppage, 101 Md. 519, 61 Atl. 318.

Minnesota. — Northwest Thresher Co. *v.* Hulburt, (Minn. 1908) 115 N. W. 159.

Missouri. — Gottfried *v.* Bray, 208 Mo. 652, 106 S. W. 639.

Pennsylvania. — Rouseville Borough School Dist. *v.* Cornplanter Tp. School Dist., 29 Pa. Super. Ct. 214.

South Carolina. — Smith *v.* Allmon, 74 S. Car. 502, 54 S. E. 1014.

Texas. — Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057; Getzendaner *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 102 S. W. 161; Openshaw *v.* Rickmeyer, (Tex. Civ. App. 1907) 102 S. W. 467.

Virginia. — Beach *v.* Bellwood, 104 Va. 170, 51 S. E. 184.

1101. 2. Mudge *v.* Varner, (N. Car. 1907) 59 S. E. 540; Trout *v.* Norfolk, etc., R. Co., 107 Va. 576, 59 S. E. 394.

1102. 3. Winton *v.* McGraw, 60 W. Va. 98, 54 S. E. 506.

4. Leffler Co. *v.* Dickerson, 1 Ga. App. 63, 57 S. E. 911; Ehrmann *v.* Stitzel, 90 S. W. 275, 28 Ky. L. Rep. 728; Dunn *v.* Taylor, (Tex. Civ. App. 1908) 107 S. W. 952.

5. *Alabama.* — Roquemore *v.* Vulcan Iron Works Co., (Ala. 1907) 44 So. 557.

Arkansas. — Von Berg *v.* Goodman, (Ark. 1908) 109 S. W. 1006.

California. — Pearsall *v.* Henry, (Cal. 1907) 95 Pac. 154, 159.

Georgia. — Sparks Imp. Co. *v.* Jones, (Ga. App. 1908) 60 S. E. 810.

Illinois. — Snow *v.* Griesheimer, 120 Ill. App. 516, 220 Ill. 106, 77 N. E. 110.

Indiana. — American Food Co. *v.* Halstead, 165 Ind. 633, 76 N. E. 251.

Iowa. — Fleming *v.* Linder, (Iowa 1906) 109 N. W. 771.

Kansas. — Hill *v.* Maxwell, 71 Kan. 72, 79 Pac. 1088.

Maine. — Hilton *v.* Hanson, 101 Me. 21, 62 Atl. 797.

Massachusetts. — Taylor *v.* Finnigan, 189 Mass. 568, 76 N. E. 203.

New York. — Morrison *v.* Stember, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 464, 98 N. Y. Supp. 850; Haight *v.* Cohen, (Supm. Ct. App. Div.) 108 N. Y. Supp. 502.

Pennsylvania. — Reber *v.* Brownback, 27 Pa. Super. Ct. 471; Phillips *v.* American Cement Tile Mfg. Co., 220 Pa. St. 141, 69 Atl. 589.

Texas. — Southern Kansas R. Co. *v.* J. W. Burgess Co., (Tex. Civ. App. 1905) 90 S. W. 189.

Wisconsin. — Jost *v.* Wolf, 130 Wis. 37, 110 N. W. 232.

1103. 2. Martin *v.* Trainer, 125 Ill. App. 474, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1103; Good *v.* Central Coal, etc., Co., (Indian Ter. 1907) 104 S. W. 613; *In re* Shield, 134 Iowa 559, 111 N. W. 963; Shreve *v.* Crosby, 72 N. J. L. 491, 63 Atl. 333; Goodman *v.* Reinowitz, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 404, 95 N. Y. Supp. 534; Bright *v.* Hanover F. Ins. Co., (Wash. 1907) 92 Pac. 779.

1104. 1. Aultman Engine, etc., Co. *v.* Greenlee, 134 Iowa 368, 111 N. W. 1007.

4. Current *v.* Muir, 99 Minn. 1, 108 N. W. 870.

5. *Iowa.* — Morrison Mfg. Co. *v.* Bryson, 129 Iowa 645, 103 N. W. 1016; Kitzman *v.* Carl, 133 Iowa 340, 110 N. W. 587.

Kentucky. — McSurley *v.* Venters, (Ky. 1907) 104 S. W. 365.

Massachusetts. — West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488.

Michigan. — Obenauer *v.* Solomon, (Mich. 1908) 115 N. W. 696.

New York. — Middleworth *v.* Ordway, 191 N. Y. 404, 84 N. E. 291.

Pennsylvania. — Rouseville Borough School Dist. *v.* Cornplanter Tp. School Dist., 29 Pa. Super. Ct. 214.

Utah. — O'Neill *v.* Ogden Ærie No. 118, (Utah 1907) 89 Pac. 464.

Virginia. — Prudential F. Ins. Co. *v.* Alley, 104 Va. 356, 51 S. E. 812.

Washington. — Moran Bros. Co. *v.* Pacific Coast Casualty Co., (Wash. 1908) 94 Pac. 106.

Wisconsin. — Loree *v.* Webster Mfg. Co., (Wis. 1908) 114 N. W. 449.

1105. 5. *Colorado.* — San Miguel Consol. Gold Min. Co. *v.* Stubbs, 39 Colo. 359, 90 Pac. 842.

Georgia. — Daniel *v.* Maddox-Rucker Banking Co., 124 Ga. 1063, 53 S. E. 573; Brackett *v.* American Grocery Co., 127 Ga. 672, 56 S. E. 762.

Illinois. — Steidtman *v.* Joseph Lay Co., 234 Ill. 84, 84 N. E. 640.

Missouri. — Moran Bolt, etc., Mfg. Co. *v.* St. Louis Car Co., (Mo. 1908) 109 S. W. 47.

New York. — Britton *v.* Marks, 105 N. Y. App. Div. 85, 93 N. Y. Supp. 828; Sholl *v.* Prince Line, 109 N. Y. App. Div. 591, 96 N. Y. Supp. 368; Lossing *v.* Cushman, (Supm. Ct. App. Div.) 108 N. Y. Supp. 368.

Pennsylvania. — Lovering *v.* Miller, 218 Pa. St. 212, 67 Atl. 209; A. T. Hagen Co. *v.* Greenwood, 27 Pa. Super. Ct. 239.

Vermont. — Trow *v.* Preferred Acc. Ins. Co., (Vt. 1907) 67 Atl. 821.

Virginia. — Pine Beach Invest. Corp. *v.* Columbia Amusement Co., 106 Va. 810, 56 S. E. 822.

Washington. — Schultz *v.* Simmons Fur Co., (Wash. 1907) 90 Pac. 917.

1106. 7. Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13; Elam *v.* Western Union Tel. Co., 113 Mo. App. 538, 88 S. W. 115; Kneisley Lumber Co. *v.* Edward B. Stoddard Co., 113 Mo. App. 306, 88 S. W. 774; Oneal *v.* Weisman, (Tex. Civ. App. 1905) 88 S. W. 290.

1107. 1. Kentucky Vermilion Min., etc., Co. *v.* Norwich Union F. Ins. Soc., 146 Fed. 695, 77 C. C. A. 121; Peterson *v.* Chaix, 5 Cal. App. 525, 90 Pac. 948; Whipple *v.* Geddis, 25 App. Cas. (D. C.) 333; Long *v.* Furnas, 130 Iowa 504, 107 N. W. 432; Obenauer *v.* Solomon, (Mich. 1908) 115 N. W. 696; Beardmore *v.* Barry, 118 N. Y. App. Div. 334, 103 N. Y. Supp. 353; Com. *v.* Cashman, 32 Pa. Super. Ct. 459; Morrison *v.* Hazzard, 99 Tex. 583, 92 S. W. 33; West *v.* Hermann, (Tex. Civ. App. 1907) 104 S. W. 428; Reagan *v.* Bruff, (Tex. Civ. App. 1908) 108 S. W. 185.

2. Morrison Mfg. Co. *v.* Bryson, 129 Iowa 645, 103 N. W. 1016; Wolverine Lumber Co. *v.* Phenix Ins. Co., 145 Mich. 558, 108 N. W. 1088.

1108. 2. *United States.* — Donner *v.* Alford, 136 Fed. 750, 69 C. C. A. 402; North American Transp., etc., Co. *v.* Samuels, 146 Fed. 48, 76 C. C. A. 506.

Alabama. — Weir *v.* Long, (Ala. 1906) 39 So. 974; Southern R. Co. *v.* Cofer, (Ala. 1907) 43 So. 102; Hanna *v.* Espalla, (Ala. 1906) 42 So. 443.

Arkansas. — Dugan *v.* Kelly, 75 Ark. 55, 86 S. W. 831; Massey *v.* Dixon, 81 Ark. 337, 99 S. W. 383.

California. — Shafer *v.* Sloan, 3 Cal. App. 335, 85 Pac. 162; Hale *v.* Milliken, 5 Cal. App. 344, 90 Pac. 365; Pearsall *v.* Henry, (Cal. 1907) 95 Pac. 154.

Colorado. — San Miguel Consol. Gold Min. Co. *v.* Stubbs, 39 Colo. 359, 90 Pac. 842; Prowers *v.* Nowles, (Colo. 1908) 94 Pac. 347.

Connecticut. — Lambert Hoisting Engine Co. *v.* Carmody, 79 Conn. 419, 65 Atl. 141.

Florida. — Jacobs *v.* Parodi, 50 Fla. 541, 39 So. 833.

Illinois. — Walker *v.* Johnson, 116 Ill. App. 145; Brockmeyer *v.* Sanitary Dist., 118 Ill. App. 49; American Ins. Co. *v.* Meyers, 118 Ill. App. 484; McLean County Coal Co. *v.* Bloomington, 234 Ill. 90, 84 N. E. 624.

Indiana. — Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972.

Iowa. — Blake *v.* Miller, (Iowa 1907) 112 N. W. 158.

Kansas. — Mayberry *v.* Beck, 71 Kan. 609, 81 Pac. 191.

Kentucky. — Fidelity, etc., Co. *v.* Southern R. News Co., 103 S. W. 297, 31 Ky. L. Rep. 725; Versailles *v.* Brown, 96 S. W. 1108, 29 Ky. L. Rep. 1223.

Massachusetts. — Old Colony R. Co. *v.* Boston, 189 Mass. 116, 75 N. E. 134; Garfield *v.* Peerless Motor Car Co., 189 Mass. 395, 75 N. E. 695; Germania F. Ins. Co. *v.* Lange, 193 Mass. 67, 78 N. E. 746; Smith *v.* Vose, etc., Piano Co., 194 Mass. 193, 80 N. E. 527; Fullam *v.* Wright, etc., Wire Cloth Co., (Mass. 1907) 82 N. E. 711; Garfield, etc., Coal Co. *v.* Pennsylvania Coal, etc., Co., (Mass. 1908) 84 S. E. 1020.

Michigan. — Ver Duyn *v.* Detroit, etc., Plank Road Co., 141 Mich. 450, 104 N. W. 612.

Mississippi. — Kansas City, etc., R. Co. *v.* Chiles, 86 Miss. 361, 38 So. 498.

Missouri. — Webb *v.* Steiner, 113 Mo. App. 482, 87 S. W. 618; Bertig-Smythe *v.* Bonsack Lumber Co., 112 Mo. App. 259, 86 S. W. 870; Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894.

New York. — New York House Wrecking Co. *v.* O'Rourke, 181 N. Y. 564, 74 N. E. 1121, 92 N. Y. App. Div. 217, 86 N. Y. Supp. 1116; Middleworth *v.* Ordway, 191 N. Y. 404, 84 N. E. 291.

Oregon. — Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

Pennsylvania. — Edmonds *v.* Connellsville First Nat. Bank, 215 Pa. St. 547, 64 Atl. 671.

South Carolina. — Crawford *v.* Owens, (S. Car. 1908) 60 S. E. 236.

Texas. — International, etc., R. Co. *v.* Jones, (Tex. Civ. App. 1906) 91 S. W. 611.

Utah. — O'Neill *v.* Ogden Ærie No. 118, (Utah 1907) 89 Pac. 464.

Virginia. — Shenandoah Land, etc., Co. *v.* Clarke, 106 Va. 100, 55 S. E. 561.

West Virginia. — Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890; Clayton *v.* Gilmer County Ct., 5 W. Va. 253, 52 S. E. 103; Winton *v.* McGraw, 60 W. Va. 98, 54 S. E. 506.

Wisconsin. — McCourt *v.* Peppard, 126 Wis. 326, 105 N. W. 809; Loree *v.* Webster Mfg. Co., (Wis. 1908) 114 N. W. 449.

1109. 1. Morrison *v.* Dickey, 122 Ga. 417, 50 S. E. 178.

1110. 1. *United States.* — Bowers Hydraulic Dredging Co. *v.* U. S., 41 Ct. Cl. 498, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1110; Davis *v.* Carlisle, 142 Fed. 106, 73 C. C. A. 330.

Alabama. — Louisville, etc., R. Co. *v.* Higginbotham, (Ala. 1907) 44 So. 872.

Arkansas. — Soudan Planting Co. *v.* Stevenson, 83 Ark. 163, 102 S. W. 1114; Dalhoff Constr. Co. *v.* Maurice, (Ark. 1908) 110 S. W. 218.

California. — Hawley *v.* Kafitz, 148 Cal. 393, 83 Pac. 248; Peterson *v.* Chaix, 5 Cal. App. 525, 90 Pac. 948; Willmon *v.* Peck, 5 Cal. App. 665, 91 Pac. 164.

Georgia. — Edwards *v.* Capps, 122 Ga. 827, 50 S. E. 943; Burton *v.* O'Neill Mfg. Co., 126 Ga. 805, 55 S. E. 933; Townsend *v.* Southern Product Co., 127 Ga. 342, 56 S. E. 436; Wheeler *v.* Fidelity, etc., Co., 129 Ga. 237, 58 S. E. 709.

Indiana. — Bergan *v.* Co-operative Ice, etc., Co., (Ind. App. 1908) 84 N. E. 833.

Iowa. — Willis *v.* Weeks, 129 Iowa 525, 105 N. W. 1012; Long *v.* Furnas, 130 Iowa 504, 107 N. W. 432; Inman Mfg. Co. *v.* American Cereal Co., 133 Iowa 71, 110 N. W. 287.

Kentucky. — Licking Rolling Mill Co. *v.* Snyder, 89 S. W. 249, 28 Ky. L. Rep. 357; Fairbanks *v.* Guilfoyle, (Ky. 1908) 110 S. W. 233.

Maryland. — Lemmert *v.* Lemmert, 103 Md. 57, 63 Atl. 380.

Massachusetts. — Strong *v.* Carver Cotton Gin Co., (Mass. 1907) 83 N. E. 328; O'Brien *v.* Peck, (Mass. 1908) 84 N. E. 325.

Michigan. — Mail, etc., Co. *v.* Wood, 140 Mich. 505, 103 N. W. 864; Kibler *v.* Caplis, 114 Mich. 28, 103 N. W. 531; Miller *v.* Smith, 140 Mich. 524, 103 N. W. 872.

Missouri. — Strother *v.* American Cooperage Co., 116 Mo. App. 518, 92 S. W. 758.

New Hampshire. — Herbert *v.* Steele, (N. H. 1907) 68 Atl. 411.

New Jersey. — Northeastern Telephone, etc., Co. *v.* Hepburn, (N. J. 1907) 65 Atl. 747.

New York. — Williams *v.* Gridley, 187 N. Y. 527, 79 N. E. 1119, *affirming* 110 N. Y. App. Div. 525, 96 N. Y. Supp. 978; Thomas W. Finucane Co. *v.* Board of Education, 190 N. Y. 76, 82 N. E. 737.

North Carolina. — Weddington *v.* Piedmont F. Ins. Co., 141 N. Car. 234, 54 S. E. 271.

Oklahoma. — Deming Invest. Co. *v.* Shawnee F. Ins. Co., 16 Okla. 1, 83 Pac. 918; Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 869.

South Dakota. — Bermardy *v.* Colonial, etc., Mortg. Co., (S. Dak. 1905) 105 N. W. 737.

Texas. — Rogers *v.* Tompkins, (Tex. Civ. App. 1905) 87 S. W. 379.

Washington. — Bartlett Estate C. *v.* Fairhaven Land Co., (Wash. 1908) 94 Pac. 900.

West Virginia. — Armstrong *v.* Ross, 61 W. Va. 38, 55 S. E. 895; Myers *v.* Taylor, (W. Va. 1908) 61 S. E. 358.

Wisconsin. — Kruse *v.* Koelzer, 124 Wis. 536, 102 N. W. 1072.

1111. 4. *Alabama.*—Ladd *v.* Lookout Distilling Co., 147 Ala. 173, 40 So. 610.

Colorado. — San Miguel Consol. Gold Min. Co. *v.* Stubbs, 39 Colo. 359, 90 Pac. 842.

Iowa. — *In re* Shield, 134 Iowa 559, 111 N. W. 963; Doolittle *v.* Murray, 134 Iowa 536, 111 N. W. 999; State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500.

Maryland. — Birely *v.* Dodson, (Md. 1908) 68 Atl. 488; Miller *v.* Miller, 101 Md. 600, 61 Atl. 210.

New Jersey. — O'Brien *v.* Paterson Brewing, etc., Co., 69 N. J. Eq. 117, 61 Atl. 437; Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

Ohio. — Highland Buggy Co. *v.* Parker, 27 Ohio Cir. Ct. 115.

Pennsylvania. — Fidelity, etc., Co. *v.* Harder, 212 Pa. St. 96, 61 Atl. 880.

South Carolina. — Earle *v.* Owings, 72 S. Car. 362, 51 S. E. 980; Marshall *v.* Columbia, etc., Electric St. R. Co., 73 S. Car. 241, 53 S. E. 417; Mee *v.* Mee, 113 Tenn. 453, 82 S. W. 830, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1111.

1112. 1. Taylor *v.* Elmira Storage, etc., Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 363, 104 N. Y. Supp. 557, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1112.

2. Taylor *v.* Elmira Storage, etc., Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 363, 104 N. Y. Supp. 557, *quoting* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1112.

3. Hester *v.* Gairdner, 128 Ga. 531, 58 S. E. 165; Krebs *v.* Lauser, 133 Iowa 241, 110 N. W. 443; Doolittle *v.* Murray, 134 Iowa 536, 111 N. W. 999; Rester *v.* Powell, (La. 1907) 45 So. 372; Eames *v.* Woodson, (La. 1908) 46 So. 13.

1113. 1. Easton *v.* Woodbury, 71 S. Car. 250, 50 S. E. 790.

2. Scott *v.* Scott, (Iowa 1908) 114 N. W. 881; Hill *v.* Hill, 74 N. H. 288, 67 Atl. 406; Gardner *v.* Welch, (S. Dak. 1906) 110 N. W. 110.

3. Doolittle *v.* Murray, 134 Iowa 536, 111 N. W. 999.

4. Edins *v.* Murphree, 142 Ala. 617, 38 So. 639; Capital City Carriage Co. *v.* Moody, (Iowa 1907) 110 N. W. 903; Strong *v.* Carver Cotton Gin Co., (Mass. 1907) 83 N. E. 328; Obenauer *v.* Solomon, (Mich. 1908) 115 N. W. 696; Beardmore *v.* Barry, 118 N. Y. App. Div. 334, 103 N. Y. Supp. 353; Orion Knitting Mills *v.* U. S. Fidelity, etc., Co., 137 N. Car. 565, 50 S. E. 304; Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 869.

1114. 1. *Arkansas.* — Thomas *v.* Johnson, 78 Ark. 574, 95 S. W. 468.

California. — Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435; Riley *v.* North Star Min. Co., (Cal. 1907) 93 Pac. 194.

Georgia. — Smith *v.* Smith, (Ga. 1908) 61 S. E. 114.

Iowa. — Willis *v.* Weeks, 129 Iowa 525, 105 N. W. 1012; Board of Park Com'rs *v.* Taylor, 133 Iowa 453, 108 N. W. 927.

Minnesota. — McAlpine *v.* Mullen, (Minn. 1908) 116 N. W. 583.

New York. — Middleworth *v.* Ordway, 191 N. Y. 404, 84 N. E. 291; Butler *v.* De Villers, (Supm. Ct. App. T.) 107 N. Y. Supp. 125; Wehrenberg *v.* Seiferd, (Supm. Ct. App. Div.) 109 N. Y. Supp. 896.

South Dakota. — Bernardy *v.* Colonial, etc., Mortg. Co., (S. Dak. 1905) 105 N. W. 737.

West Virginia. — Crawford *v.* Workman, (W. Va. 1908) 61 S. E. 319.

4. Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Inman Mfg. Co. *v.* American Cereal Co., 133 Iowa 71, 110 N. W. 287; Wilbur *v.* Grover, 140 Mich. 187, 103 N. W. 583; Sanborn *v.* Loud, 150 Mich. 154, 113 N. W. 309; Clark *v.* Delaware, etc., R. Co., 138 N. Car. 25, 50 S. E. 446.

1115. 1. *United States.* — Lowrey *v.* Hawaii, 206 U. S. 206, 27 U. S. Sup. Ct. 622.

Arkansas. — Boyd *v.* Lloyd, (Ark. 1908) 110 S. W. 596.

Colorado. — San Miguel Consol. Gold Min. Co. *v.* Stubbs, 39 Colo. 359, 90 Pac. 842.

Indiana. — Semon *v.* Coppes, etc., Co., 35 Ind. App. 351, 74 N. E. 41.

Kansas. — Mayberry *v.* Beck, 71 Kan. 609, 81 Pac. 191; Nichols, etc., Co. *v.* Maxon, (Kan. 1907) 92 Pac. 545.

Maryland. — Chesapeake Brewing Co. *v.* Goldberg, (Md. 1908) 69 Atl. 37.

Massachusetts. — Old Colony R. Co. *v.* Boston, 189 Mass. 116, 75 N. E. 134.

Missouri. — New Amsterdam Casualty Co. *v.* Mesker, (Mo. App. 1907) 106 S. W. 561.

Ohio. — Hartman *v.* Midland Traction Co., 27 Ohio Cir. Ct. 664.

Virginia. — Pine Beach Invest. Corp. *v.* Columbia Amusement Co., 106 Va. 810, 56 S. E. 822; Albert *v.* Tidewater R. Co., 107 Va. 256, 58 S. E. 575.

Washington. — Johnson County Sav. Bank *v.* Rapp, (Wash. 1907) 91 Pac. 382.

2. Lossing *v.* Cushman, (Supm. Ct. App. Div.) 108 N. Y. Supp. 368.

1116. 1. Rock Island Sash, etc., Works *v.* Moore, etc., Hardware Co., 147 Ala. 581, 41 So. 806; Lanier *v.* Hebard, 123 Ga. 626, 51 S. E. 632; Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Wright *v.* Computing Scale Co., (Wash. 1907) 91 Pac. 571.

2. Emerson *v.* Knight, (Ga. 1908) 60 S. E. 255.

1117. 1. Pierse *v.* Bronnenberg, (Ind. App. 1907) 81 N. E. 739, *rehearing denied* (Ind. App. 1907) 82 N. E. 126, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1116, 1117.

4. Western Grocer Co. *v.* Lackman, 75 Kan. 34, 88 Pac. 527; Schuster *v.* Snawder, 101 S. W. 1194, 31 Ky. L. Rep. 254; Bagley's Succession, (La. 1908) 45 So. 942; Wuertz *v.* Braun, 113 N. Y. App. Div. 459, 99 N. Y. Supp. 340; Dunbar Box, etc., Co. *v.* Martin, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 312, 103 N. Y. Supp. 91; Rankin *v.* Blaine County Bank, (Okla. 1908) 93 Pac. 536.

1118. 2. Woolsey *v.* Henke, 125 Wis. 134, 103 N. W. 267.

4. Russell *v.* Broadus Cotton Mills, (Ala. 1905) 39 So. 712. See also Chambers *v.* Roseland, (S. Dak. 1907) 112 N. W. 148.

7. Ottumwa Mill, etc., Co. *v.* Manchester, (Iowa 1908) 115 N. W. 911.

1119. 6. *United States.* — Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

Alabama. — Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101.

Arkansas. — Barton-Parker Mfg. Co. *v.* Taylor, 78 Ark. 586, 94 S. W. 713; Little Rock Cooperage Co. *v.* Gunnels, 82 Ark. 286, 101 S. W. 729.

District of Columbia. — Harten *v.* Loffler, 29 App. Cas. (D. C.) 490.

Florida. — Jacobs *v.* Parodi, 50 Fla. 541, 39 So. 833.

Georgia. — Garmany *v.* Lawton, 124 Ga. 876, 53 S. E. 669.

Illinois. — Bennett *v.* Palmer, 128 Ill. App. 626; Clayton *v.* Lemen, 233 Ill. 435, 84 N. E. 691.

Indiana. — Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972.

Kentucky. — Jackson *v.* Hardin, (Ky. 1905) 87 S. W. 1119; Com. *v.* American Tobacco Co., 96 S. W. 466, 29 Ky. L. Rep. 745; Covington *v.* Regenthal, (Ky. 1908) 109 S. W. 341.

Massachusetts. — Harris *v.* North American Ins. Co., 190 Mass. 361, 77 N. E. 493; Smith *v.* Vose, etc., Piano Co., 194 Mass. 193, 80 N. E. 527.

Michigan. — People *v.* Messer, 148 Mich. 168, 111 N. W. 854.

Mississippi. — Traders' Ins. Co. *v.* E. D. Edwards Post, 86 Miss. 135, 38 So. 779.

Missouri. — Haynor *v.* Excelsior Springs Light, etc., Co., (Mo. App. 1908) 108 S. W. 580; Lauderdale *v.* King, (Mo. App. 1908) 109 S. W. 852.

New Hampshire. — Kimball *v.* Waterman, 73 N. H. 348, 61 Atl. 595.

New York. — Bowman *v.* Poppenberg, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 373, 103 N. Y. Supp. 245.

North Carolina. — Davis *v.* Evans, 142 N. Car. 464, 55 S. E. 344.

Pennsylvania. — Ranney *v.* Byers, 219 Pa. St. 332, 68 Atl. 971; A. T. Hagen Co. *v.* Greenwood, 27 Pa. Super. Ct. 239.

Texas. — Selkirk *v.* Watkins, (Tex. Civ. App. 1907) 105 S. W. 1161; Armstrong *v.* Wilson, (Tex. Civ. App. 1908) 109 S. W. 955.

1120. 1. *Alabama.* — Brannan *v.* Henry, 142 Ala. 698, 39 So. 92.

California. — Hill *v.* McCoy, 1 Cal. App. 159, 81 Pac. 1015; *In re* Garnier, 147 Cal. 457, 82 Pac. 68; Willmon *v.* Peck, 5 Cal. App. 665, 91 Pac. 164.

Georgia. — Union Cent. L. Ins. Co. *v.* Wynne, 123 Ga. 470, 51 S. E. 389;; Walden *v.* Walden, 128 Ga. 126, 57 S. E. 323; Read Phosphate Co. *v.* S. Weichselbaum Co., 1 Ga. App. 420, 58 S. E. 122.

Illinois. — Dillard *v.* Jones, 229 Ill. 119, 82 N. E. 206; Bennett *v.* Palmer, 128 Ill. App. 626.

Indiana. — Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Hornet *v.* Dumbeck, 39 Ind. App. 482, 78 N. E. 691; McFarland *v.* Stansifer, 36 Ind. App. 486, 76 N. E. 124.

Iowa. — McCash *v.* Penrod, 131 Iowa 631, 109 N. W. 180.

Kansas. — Mayberry *v.* Beck, 71 Kan. 609, 81 Pac. 191.

Kentucky. — Ball *v.* Loughridge, 100 S. W. 275, 30 Ky. L. Rep. 1123.

Louisiana. — Pharr *v.* Shadel, 115 La. 92, 38 So. 914; Young *v.* Guess, 115 La. 230, 38 So. 975.

Massachusetts. — Haskell *v.* Friend, (Mass. 1907) 81 N. E. 962; Richstein *v.* Welch, (Mass. 1908) 83 N. E. 417.

North Carolina. — Hinton *v.* Moore, 139 N. Car. 44, 51 S. E. 787; Broadwell *v.* Morgan, 142 N. Car. 475, 55 S. E. 340.

Tennessee. — Staub *v.* Hampton, 117 Tenn. 706, 101 S. W. 776.

Texas. — Couch *v.* Texas, etc., R. Co., 99 Tex. 464, 90 S. W. 860; Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665; St. Louis, etc., R. Co. *v.* Payne, (Tex. Civ. App. 1907) 104 S. W. 1077.

West Virginia. — Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890; Crawford *v.* Workman, (W. Va. 1908) 61 S. E. 319.

1122. 1. State *v.* Jackson, 128 Iowa 543, 105 N. W. 51; Watson *v.* Lamb, 75 Ohio St. 481, 79 N. E. 1075; Houston Transfer Co. *v.* Lee, (Tex. Civ. App. 1906) 97 S. W. 842.

3. Blackstock *v.* Robertson, (Colo. 1908) 94 Pac. 336; Davis *v.* Horne, (Fla. 1907) 45 So. 476; Emerson *v.* Knight, (Ga. 1908) 60 S. E. 255; Alexander *v.* Cleland, 13 N. Mex. 524, 86 Pac. 425; Boyes *v.* Masters, 17 Okla. 460, 89 Pac. 198, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1122.

PARTITION.

1131. 1. Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709; Noecker *v.* Wallingford, 133 Iowa 605, 111 N. W. 37.

Partition operates only upon the possession, and not upon the title; it serves to sever the unity of possession before existing. Kennedy *v.* Rainey, 145 Ala. 572, 39 So. 813.

Confers No New Title or Additional Estate in Land. — Foster *v.* Hobson, 131 Iowa 58, 107 N. W. 1101.

6. Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1131.

1132. 3. **Consent of Others Sufficient Consideration.** — Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709.

8. Colby-Hinkley Co. *v.* Jordan, 146 Ala. 634, 41 So. 962.

1136. 1. Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709; Bryson *v.* Biggs, (Ky. 1907) 104 S. W. 982.

5. **Effect of Award.** — Bryson *v.* Biggs, (Ky. 1907) 104 S. W. 982.

Award Binding in Absence of Fraud or Mistake. — Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709.

8. Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1136.

1137. 1. Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1136.

3. Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709.

8. As the statute of frauds was enacted to prevent and not to foster injustice, possession, the payment of taxes, and permanent improvement under a parol agreement, with knowledge and acquiescence, remove the contract from the operation of the statute. McCullough *v.* Finley, 69 Kan. 705, 77 Pac. 696, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1137 *et seq.*

1138. 3. **Same Rule in Iowa.** — Sires *v.* Melvin, (Iowa 1907) 113 N. W. 106.

4. Brown *v.* Humphrey, (Tex. Civ. App. 1906) 95 S. W. 23.

1139. 2. Ellis *v.* Campbell, 84 Ark. 584, 106 S. W. 939.

3. Ellis *v.* Campbell, 84 Ark. 584, 106 S. W. 939.

7. Seawell *v.* Young, 77 Ark. 309, 91 S. W. 544, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1139; Ellis *v.* Campbell, 84 Ark. 584, 106 S. W. 939.

1142. 6. Gibson *v.* Fuller, 74 S. Car. 535, 54 S. E. 778.

1143. 3. Field *v.* Leiter, (Wyo. 1907) 90 Pac. 378.

6. Parkinson *v.* Parkinson, 139 Mich. 530, 102 N. W. 1002.

1145. 2. Parkinson *v.* Parkinson, 139 Mich. 530, 102 N. W. 1002; Field *v.* Leiter, (Wyo. 1907) 90 Pac. 378.

3. Parkinson *v.* Parkinson, 139 Mich. 530, 102 N. W. 1002; Field *v.* Leiter, (Wyo. 1907) 90 Pac. 378.

1146. 1. Goodrich *v.* Goodrich, 219 Ill. 426, 76 N. E. 575; Brand *v.* Consolidated Coal Co., 219 Ill. 543, 76 N. E. 849; Preston *v.* Virginia Min. Co., (Va. 1907) 57 S. E. 651.

A Grantee of a Right to Drill for Oil or Gases has been held not to have any interest in the land which will entitle him to partition. Watford Oil, etc., Co. *v.* Shipman, 233 Ill. 9, 84 N. E. 53.

Owner of Bare Legal Title Not Entitled to Partition as against Usufructuary. — Smith *v.* Nelson, (La. 1908) 46 So. 200.

3. Finch *v.* Green, 225 Ill. 304, 80 N. E. 318; Paine *v.* Sackett, 27 R. I. 300, 61 Atl. 753.

4. Fitts *v.* Craddock, 144 Ala. 437, 39 So. 506; Kinkead *v.* Maxwell, 75 Kan. 50, 88 Pac. 523, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1146; Morris *v.* Morris, (Tex. Civ. App. 1907) 99 S. W. 872. See also O'Donaghue *v.* Smith, 184 N. Y. 365, 77 N. E. 621; Becnel's Succession, 117 La. 744, 42 So. 256; Roberts *v.* Roberts, 143 N. Car. 309, 55 S. E. 721.

1147. 1. **Right to Partition an Equitable One.** — Noecker *v.* Wallingford, 133 Iowa 605, 111 N. W. 37.

7. Clark *v.* Roller, 199 U. S. 541, 26 U. S. Sup. Ct. 141; Warren *v.* Warren, (Mich. 1908) 114 N. W. 867; Shepperd *v.* Fisher, 206 Mo. 208, 103 S. W. 989.

Controversies as to Title may be litigated in the same proceeding. Leidenthal *v.* Leidenthal, 121 N. Y. App. Div. 269, 105 N. Y. Supp. 807.

8. Harrison *v.* International Silver Co., 78 Conn. 417, 62 Atl. 342; Fry *v.* Hare, 166 Ind. 415, 77 N. E. 803; Shetterly *v.* Axt, 37 Ind. App. 689, 77 N. E. 865, *affirming* 37 Ind. App. 687, 76 N. E. 901; Henderson *v.* Henderson, (Iowa 1907) 114 N. W. 178; Shepperd *v.* Fisher, 206 Mo. 208, 103 S. W. 989; Chamberlain *v.* Waples, 193 Mo. 96, 91 S. W. 934, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1147, 1148; Wicker *v.* Moore, (Neb. 1907) 113 N. W. 148.

Actual Possession Not Necessary. — Leidenthal *v.* Leidenthal, 121 N. Y. App. Div. 269, 105 N. Y. Supp. 807.

1148. 1. **Mere Denial of Complainant's Title Not Sufficient.** — Carlson *v.* Sullivan, (C. C. A.) 146 Fed. 476; Apple *v.* Owens, 1 Tenn. Ch. App. 135; Morgan *v.* Haley, 107 Va. 331, 58 S. E. 564.

2. Harrison *v.* International Silver Co., 78 Conn. 417, 62 Atl. 342.

3. **The Right to Possession** cannot be tried. Mounts *v.* Mounts, 61 W. Va. 178, 56 S. E. 358.

4. Harrison *v.* International Silver Co., 78 Conn. 417, 62 Atl. 342; Roll *v.* Everett, (N. J. 1907) 65 Atl. 732.

1149. 2. Forderer *v.* Schmidt, (C. C. A.) 146 Fed. 480; Woglom *v.* Kant, 69 N. J. Eq. 489, 61 Atl. 9.

3. Goodnough *v.* Webber, 75 Kan. 209, 88 Pac. 879.

1152. 6. Lawson *v.* Bonner, 88 Miss. 235, 40 So. 488; Green *v.* Head, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 454, 104 N. Y. Supp. 383; Rutherford *v.* Rutherford, 116 Tenn. 383, 92 S. W. 1112; Field *v.* Leiter, (Wyo. 1907) 90 Pac. 378.

7. Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592.

1153. 2. Henderson *v.* Henderson, (Iowa 1907) 114 N. W. 178.

7. Rutherford *v.* Rutherford, 116 Tenn. 383, 92 S. W. 1112; Plano Mfg. Co. *v.* Kindschi, 131 Wis. 590, 111 N. W. 680; Field *v.* Leiter, (Wyo. 1907) 90 Pac. 378. See also Fitts *v.* Craddock, 144 Ala. 437, 39 So. 506; Johnson *v.* Brown, 74 Kan. 346, 86 Pac. 503.

1154. 2. Craddock *v.* Smythe, (Ky. 1907) 99 S. W. 216; Field *v.* Leiter, (Wyo. 1907) 90 Pac. 378.

8. Serena *v.* Moore, 69 N. J. Eq. 687, 60 Atl. 953.

In *Louisiana* heirs are not entitled to a partition of the property of the decedent until the succession is closed by the filing of the administrator's account and his discharge. Landry's Succession, 117 La. 193, 41 So. 490.

Suit Before Settlement of Estate. — Reubel *v.* Reubel, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 474, 95 N. Y. Supp. 966.

An Heir Born after the Execution of the Will may maintain partition against a grantee of one taking under the will. Oheny *v.* Goetz, 116 N. Y. App. Div. 807, 102 N. Y. Supp. 222.

9. Myers *v.* Myers, 29 Ohio Cir. Ct. 396.

1156. 8. Mason *v.* Mason, 219 Ill. 609, 76 N. E. 692.

1158. 3. Henderson *v.* Henderson, (Iowa 1907) 114 N. W. 178; Roberts *v.* Wallace, 100 Minn. 359, 111 N. W. 289, *citing* 21 Am. and Eng. Encyc. of Law (2d ed.) 1158.

7. Dunn *v.* Dobson, (Mass. 1908) 84 N. E. 327; Wicker *v.* Moore, (Neb. 1907) 113 N. W. 148; Steinman *v.* Steinman, 27 Ohio Cir. Ct. 460.

8. Roberts *v.* Herron, 78 S. Car. 115, 58 S. E. 968.

1159. 8. **Undivided Property Subject to Usufruct May Be Partitioned.** — Thornton *v.* Thornton, 7 Quebec Pr. 277.

1160. 2. Johnson *v.* Brown, 74 Kan. 346, 86 Pac. 503.

6. White *v.* Smith, 70 N. J. Eq. 418, 62 Atl. 560.

1161. 2. **Right to Plant Oyster Beds Not Subject to Partition.** — Darbee, etc., Oyster, etc., Co. *v.* Pacific Oyster Co., 150 Cal. 392, 88 Pac. 1090.

3. **Under the Alaska Code** actual division must be made unless great prejudice will thereby result. Manley *v.* Boone, (C. C. A.) 159 Fed. 633.

Coal under the Surface has been held not subject to partition except by sale and division of the proceeds, for the reason that its quantity is conjectural. Robertson Consol. Land Co. *v.* Paull, (W. Va. 1907) 59 S. E. 1085.

4. Dangerfield *v.* Caldwell, (C. C. A.) 151 Fed. 554; Robertson Consol. Land Co. *v.* Paull, (W. Va. 1907) 59 S. E. 1085.

6. Roberts *v.* Claremont R., etc., Co., (N. H. 1907) 66 Atl. 485.

1162. 4. **A Burial Lot in a Cemetery** cannot be subject to partition. Sharp *v.* Sharp, 148 Mich. 278, 111 N. W. 767.

8. **Partial Partition of Succession by Consent of Heirs Permissible.** — Carrollton Land, etc., Co. *v.* Eureka Homestead Soc., 119 La. 692, 44 So. 434.

10. **In the Absence of Occupancy** by the widow or minor children the homestead may be partitioned. Williams *v.* Jones, (Tex. Civ. App. 1907) 106 S. W. 755.

12. Stickles *v.* Oviatt, 212 Pa. St. 219, 61 Atl. 908; Ferguson *v.* Stringfellow, (Tex. Civ. App. 1907) 106 S. W. 762.

1164. 7. Ferguson *v.* Stringfellow, (Tex. Civ. App. 1907) 106 S. W. 762.

12. **Assignment by Court Where Provisions of Will Insufficient.** — *In re* King, 216 Pa. St. 483, 65 Atl. 942.

1170. 9. Lester *v.* Kirtley, 83 Ark. 554, 104 S. W. 213; Thames *v.* Mangum, 87 Miss. 575, 40 So. 327.

1171. 1. Sharp *v.* Zeller, 114 La. 549, 38 So. 449; Rutherford *v.* Rutherford, 116 Tenn. 383, 92 S. W. 1112; Mateer *v.* Jones, (Tex. Civ. App. 1907) 102 S. W. 734; Olschewske *v.* Summerville, (Tex. Civ. App. 1906) 95 S. W. 1.

4. Dangerfield *v.* Caldwell, (C. C. A.) 151 Fed. 554; Barnett *v.* Thomas, 36 Ind. App. 441, 75 N. E. 868, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1171; Sharp *v.* Zeller, 114 La. 549, 38 So. 449; Faure *v.* Faure, 117 La. 204, 41 So. 494.

Accounting Required Where One Cotenant Uses More than His Equitable Share. — Roberts *v.* Claremont R., etc., Co., (N. H. 1907) 66 Atl. 485.

Cotenant Not Liable for Rents and Profits When His Occupancy for Benefit of All. — Owings *v.* Owings, (Mich. 1908) 114 N. W. 393; White *v.* Smith, (N. J. 1905) 60 Atl. 399.

1172. 5. Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151; White *v.* Smith, 70 N. J. Eq. 418, 62 Atl. 560.

1173. 2. Bozone *v.* Daniel, (Ala. 1905) 39 So. 774; Barnett *v.* Thomas, 36 Ind. App. 441, 75 N. E. 868, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1173; McCoy *v.* McCoy, 105 Va. 829, 54 S. E. 995.

1174. 1. The right to partition is not barred because the estate of one cotenant who has been absent for sixteen years has not been administered. Chapman *v.* Kullman, 191 Mo. 237, 89 S. W. 924.

2. An action is premature when brought before it could be known whether the personalty is sufficient to pay the debts or whether the realty is clear of liens. Fischer *v.* Butz, 224 Ill. 379, 79 N. E. 659.

Heirs May Legally Proceed to Partition Before Settlement of Estate. — Smith *v.* Smith, 132 Iowa 700, 109 N. W. 194; O'Keefe *v.* Behrens, 73 Kan. 469, 85 Pac. 555; Owings *v.* Owings, (Mich. 1908) 114 N. W. 393; *In re* Reifsnyder, 214 Pa. St. 637, 63 Atl. 1075; Hinman *v.* Hinman, 126 Wis. 191, 105 N. W. 788.

A homestead may be partitioned before the debts of the estate are paid, a homestead not being subject to debts. Hild *v.* Hild, 129 Iowa 649, 106 N. W. 159.

4. Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453.

Right May Be Lost by Apparent Abandonment of Any Claim on Property and Laches. — Warner *v.* Hamill, 134 Iowa 279, 111 N. W. 939; *In re* King, 216 Pa. St. 483, 65 Atl. 942.

5. **When Statute Begins to Run.** — Jones *v.* Weires, 134 Iowa 47, 111 N. W. 453.

1175. 5. Barbour *v.* Patterson, 145 Mich. 459, 108 N. W. 973, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1175.

Raising Issues Necessitating Investigation has been held a proper ground for deducting from the share of the party raising them the costs thus made necessary. Williams *v.* Jones, 74 S. Car. 258, 54 S. E. 558.

1176. 1. McGuire *v.* Luckey, 129 Iowa 559, 105 N. W. 1004.

2. McGuire *v.* Luckey, 129 Iowa 559, 105 N. W. 1004.

5. It has been held that the entire costs should be assessed against a defendant whose hostile and persistent contention has caused substantially all of the expense. McMullin *v.* Doughty, 69 N. J. Eq. 649, 61 Atl. 265.

6. **Reasonable Grounds for Defense** have been held to be sufficient cause for relieving the unsuccessful defendant of adverse counsel fees. Jones *v.* Young, 228 Ill. 374, 81 N. E. 1042.

7. McGuire *v.* Luckey, 129 Iowa 559, 105 N. W. 1004; Cooper *v.* Trout, (Ky. 1907) 102 S. W. 798; Mead *v.* Mead, (Ky. 1907) 101 S. W. 330.

Costs Not Taxable against Persons Improperly Made Parties. — Lawson *v.* Bonner, 88 Miss. 235, 40 So. 488.

1177. 1. Mead *v.* Mead, (Ky. 1907) 101 S. W. 330.

2. Barbour *v.* Patterson, 145 Mich. 459, 108 N. W. 973, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1177, 1178; Padgett *v* Smith, 206 Mo. 303, 103 S. W. 943; Liles *v.* Liles, 116 Mo. App. 413, 91 S. W. 983; Buttlar *v.* Buttlar, 70 N. J. Eq. 675, 64 Atl. 110.

Counsel Fees Not Allowable Out of Common Fund. — Butler *v.* Butler, 73 S. Car. 402, 53 S. E. 646.

Counsel Fee Divided in Proportion to Interest. — Johnson *v.* Emerick, 74 Neb. 303, 104 N. W. 169.

3. Cowling *v.* Nelson, 76 Ark. 146, 88 S. W. 913, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1177, 1178; Bowles *v.* Wood, (Miss. 1907) 44 So. 169.

1184. 1. Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Carrollton Land, etc., Co. *v.* Eureka Homestead Soc., 119 La. 692, 44 So. 434; Parkinson *v.* Parkinson, 139 Mich. 530, 102 N. W. 1002.

Conclusive Only as to Matters within Material Issue.—Schuler *v.* Murphy, (Miss. 1907) 44 So. 810.

2. **Failure to Comply with Prescribed Forms — Provisional Partition.** — Rhodes *v.* Cooper, 118 La. 299, 42 So. 943.

1185. 3. Sweatman *v.* Dean, 86 Miss. 641, 38 So. 231; Rye *v.* J. M. Guffey Petroleum Co., (Tex. Civ. App. 1906) 95 S. W. 622.

1186. 2. Gunter *v.* Fallaw, (S. Car. 1907) 59 S. E. 70.

1197. 2. *United States.* — Forderer *v.* Schmidt, (C. C. A.) 146 Fed. 480.

Alabama. — Bozone *v.* Daniel, (Ala. 1905) 39 So. 774; Finch *v.* Smith, 146 Ala. 644, 41 So. 819, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1197.

Arkansas. — Cowling *v.* Nelson, 76 Ark. 146, 88 S. W. 913; Moore *v.* Willey, 77 Ark. 317, 91 S. W. 184.

Connecticut. — Harrison *v.* International Silver Co., 78 Conn. 417, 62 Atl. 342.

Kentucky. — Stine *v.* Goodman, (Ky. 1906) 92 S. W. 612; Craddock *v.* Smythe, (Ky. 1907) 99 S. W. 216; Wormald *v.* Heinze, (Ky. 1906) 90 S. W. 1064.

Missouri. — Joerger *v.* Joerger, 193 Mo. 133, 91 S. W. 918.

New Jersey. — Campbell *v.* Cole, (N. J. 1906) 64 Atl. 461; White *v.* Smith, 70 N. J. Eq. 418, 62 Atl. 560.

Tennessee. — Rutherford *v.* Rutherford, 116 Tenn. 383, 92 S. W. 1112.

Texas. — Olschewske *v.* Summerville, (Tex. Civ. App. 1906) 95 S. W. 1.

West Virginia. — Herold *v.* Craig, 59 W. Va. 353, 53 S. E. 466.

Impossibility of Division Not Necessary. — Contaldi *v.* Errichetti, 79 Conn. 276, 64 Atl. 219.

Impracticability Must Be Shown by Record. — Herold *v.* Craig, 59 W. Va. 353, 53 S. E. 466.

Life Estate May Be Sold. — Campbell *v.* Cole, (N. J. 1906) 64 Atl. 461.

1199. 5. Idema *v.* Comstock, 131 Wis. 16, 110 N. W. 786. See also Boone *v.* Manley, 2 Alaska 552.

Affirmative Showing Necessary. — Moore *v.* Willey, 77 Ark. 317, 91 S. W. 184.

6. White *v.* Smith, 70 N. J. Eq. 418, 62 Atl. 560.

A court of equity has power to make a decree of sale without issuing a writ in partition, where from the evidence it appears that a sale is impracticable. Green *v.* Cannady, 77 S. Car. 193, 57 S. E. 832.

The Offer of a Higher Bid may be ground for bringing the property to sale in case of dissatisfaction with the commissioners' valuation, but for this purpose the unsecured bid of a stranger is insufficient. Aldrich *v.* Aldrich, 75 S. Car. 369, 55 S. E. 887.

1200. 9. Finch *v.* Smith, 146 Ala. 644, 41 So. 819.

1201. 1. Finch *v.* Smith, 146 Ala. 644, 41 So. 819, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1201.

1202. 3. Campbell *v.* Cole, (N. J. 1906) 64 Atl. 461.

1203. 4. **An Attorney in the Case** may not be a purchaser unless in good faith, which he must affirmatively prove. Mansfield *v.* Wallace, 217 Ill. 610, 75 N. E. 683.

7. Vaughn *v.* Newman, 221 Ill. 576, 77 N. E. 1106.

1205. 7. Clark *v.* Sires, 193 Mo. 502, 92 S. W. 224.

1206. 3. Abbott *v.* Beebe, 226 Ill. 417, 80 N. E. 991; Compton *v.* McCaffree, 220 Ill. 137, 77 N. E. 129.

4. Kiebel *v.* Leick, 216 Ill. 474, 75 N. E. 187; Compton *v.* McCaffree, 220 Ill. 137, 77 N. E. 129.

Discretion Not Arbitrary. — Abbott *v.* Beebe, 226 Ill. 417, 80 N. E. 991.

Order Setting Aside Sale Appealable. — Barnes *v.* Henshaw, 226 Ill. 605, 80 N. E. 1076.

13. Mansfield *v.* Wallace, 217 Ill. 610, 75 N. E. 682; Tuttle *v.* Tuttle, (N. Car. 1907) 59 S. E. 1008.

1207. 13. Mansfield *v.* Wallace, 217 Ill. 610, 75 N. E. 682.

14. Schulz *v.* Haase, 227 Ill. 156, 81 N. E. 50; Abbott *v.* Beebe, 226 Ill. 417, 80 N. E. 991.

1209. 1. Kiebel *v.* Leick, 216 Ill. 474, 75 N. E. 187; Compton *v.* McCaffree, 220 Ill. 137, 77 N. E. 129.

Advance Must Be Substantial. — Abbott *v.* Beebe, 226 Ill. 417, 80 N. E. 991.

A Guaranty that Resale Will Bring a Higher Price should be given by the parties objecting to the first sale. Barnes *v.* Henshaw, 226 Ill. 605, 80 N. E. 1076.

3. **Acceptance of Benefits a Bar.** — *Ex p.* Pittinger, 142 N. Car. 85, 54 S. E. 845.

5. Wanser *v.* De Nyse, 188 N. Y. 378, 80 N. E. 1088, *reversing* 116 N. Y. App. Div. 796, 102 N. Y. Supp. 36; Sonn *v.* Kennedy, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 234, 100 N. Y. Supp. 885.

1210. 2. **Omission to Announce Existence of Restrictive Covenants.** — Conlen *v.* Rizer, 109 N. Y. App. Div. 537, 96 N. Y. Supp. 566.

1212. 10. Tobin *v.* U. S. Safe Deposit, etc., Bank, 115 La. 366, 39 So. 33; Wanser *v.* De Nyse, 116 N. Y. App. Div. 796, 102 N. Y. Supp. 36.

1213. 4. **Lien on Land Transferred to Fund.** — Morgan *v.* Morgan, (N. J. 1906) 64 Atl. 155.

1214. 4. **An Allowance for Taxes and Improvements** necessarily made and interest thereon should be made. White *v.* Smith, 70 N. J. Eq. 418, 62 Atl. 560.

1215. 4. Green *v.* Cannady, 77 S. Car. 193, 57 S. E. 832.

1216. 13. **The Successor of a Sheriff** ordered to execute a deed, but failing to do so, may be directed to execute it. Gallitzin Bldg., etc., Assoc. *v.* Steigers, 28 Pa. Super. Ct. 336.

PARTNERSHIP.

13. 1. Herman Kahn Co. *v.* Bowden, 80 Ark. 23, 96 S. W. 126, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 13.

For Further Definitions, see Swannell *v.* Byers, 123 Ill. App. 545; Breinig *v.* Sparrow, 39 Ind. App. 455, 702, 80 N. E. 37, 40; McDonald *v.* Campbell, 96 Minn. 87, 104 N. W. 760; Norton *v.* Brink, 75 Neb. 566, 106 N. W. 668, 110 N. W. 669; Williamson *v.* Nigh, 58 W. Va. 629, 53 S. E. 124; Coons *v.* Coons, 106 Va. 572, 56 S. E. 576.

3. **Statutory Definitions.** — Edwards *v.* Hale, 129 Ga. 302, 58 S. E. 817; Beasley *v.* Berry, 33 Mont. 477, 84 Pac. 791; Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067.

4. Herman Kahn Co. *v.* Bowden, 80 Ark. 23, 96 S. W. 126; Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787.

14. 2*a*. Lefevre *v.* Silo, 112 N. Y. App. Div. 464, 98 N. Y. Supp. 321, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 14.

3. Savannah Rail, etc., Co. *v.* Sabel, 145 Ala. 681, 40 So. 88; Brotherton *v.* Gilchrist, 144 Mich. 274, 107 N. W. 890; McDonald *v.* Campbell, 96 Minn. 87, 104 N. W. 760; Diamond Creek Consol. Gold, etc., Min. Co. *v.* Swope, 204 Mo. 48, 102 S. W. 561; Manhattan Oil Co. *v.* Gill, 118 N. Y. App. Div. 17, 103 N. Y. Supp. 364; Providence Mach. Co. *v.* Browning, 72 S. Car. 424, 52 S. E. 117; Coons *v.* Coons, 106 Va. 572, 56 S. E. 576; Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770.

Contract for Definite Time Not Essential. — Fruin *v.* Chotzianoff, 79 Conn. 65, 63 Atl. 782.

15. 3. Savannah Rail, etc., Co. *v.* Sabel, 145 Ala. 681, 40 So. 88.

18. 1. McDonald *v.* Campbell, 96 Minn. 87, 104 N. W. 760.

20. 3. Belch *v.* Big Store Co., 46 Wash. 1, 89 Pac. 174, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 20.

21. 1. Sain *v.* Rooney, 125 Mo. App. 176, 101 S. W. 1127; Diamond Creek Consol. Gold, etc., Min. Co. *v.* Swope, 204 Mo. 48, 102 S. W. 561; Nugent *v.* Armour Packing Co., 208 Mo. 480, 106 S. W. 648; Beasley *v.* Berry, 33 Mont. 477, 84 Pac. 791; Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156; Belch *v.* Big Store Co., 46 Wash. 1, 89 Pac. 174, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 21.

2. McDonald *v.* Campbell, 96 Minn. 87, 104 N. W. 760.

22. 5. Leeds *v.* Townsend, 228 Ill. 451, 81 N. E. 1069; ; Brotherton *v.* Gilchrist, 144 Mich. 274, 107 N. W. 890; Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22.

23. 1. Beatz *v.* Cressman, 31 Pa. Co. Ct. 652, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23.

4. Harris *v.* Zier, 43 Wash. 573, 86 Pac. 928, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 23.

5. Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156.

7. Brotherton *v.* Gilchrist, 144 Mich. 274, 107 N. W. 890.

24. 5. Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770.

25. 2. *Alabama.* — Brooke *v.* Tucker, (Ala. 1907) 43 So. 141.

Colorado. — Ramsay *v.* Meade, 37 Colo. 465, 86 Pac. 1018.

Delaware. — Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149.

Illinois. — Leeds *v.* Townsend, 228 Ill. 451, 81 N. E. 1069.

Indiana. — Breinig *v.* Sparrow, 39 Ind. App. 455, 702, 80 N. E. 37, 40.

Michigan. — Brotherton *v.* Gilchrist, 144 Mich. 274, 107 N. W. 890.

Minnesota. — McDonald *v.* Campbell, 96 Minn. 87, 104 N. W. 760.

Missouri. — Sain *v.* Rooney, 125 Mo. App. 176, 101 S. W. 1127; Diamond Creek Consol. Gold, etc., Min. Co. *v.* Swope, 204 Mo 48, 102 S. W. 561; Steckman *v.* Gault State Bank, 126 Mo. App. 664, 105 S. W. 674; Nugent *v.* Armour Packing Co., 208 Mo. 480, 106 S. W. 648.

Montana. — Beasley *v.* Berry, 33 Mont. 477, 84 Pac. 791.

Nebraska. — Norton *v.* Brink, 75 Neb. 566, 106 N. W. 668, 110 N. W. 669.

New Jersey. — Tuite *v.* Tuite, (N. J. 1907) 66 Atl. 1090.

South Carolina. — Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156; Davidson *v.* Copeland, 77 S. Car. 108, 57 S. E. 620.

Texas. — Kelley Island Lime, etc., Co. *v.* Masterson, (Tex. 1906) 93 S. W. 427.

West Virginia. — Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770.

26. 2. Brooke *v.* Tucker, (Ala. 1907) 43 So. 141, *citing* 24 [22] AM. AND ENG. ENCYC. OF LAW (2d ed.) 26; Breinig *v.* Sparrow, 39 Ind. App. 455, 702, 80 N. E. 37, 40; Monson *v.* Ray, 123 Mo. App. 1, 99 S. W. 475; Sain *v.* Rooney, 125 Mo. App. 176, 101 S. W. 1127; Nugent *v.* Armour Packing Co., 208 Mo. 480, 106 S. W. 648; Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156.

27. 5. Lefevre *v.* Silo, 112 N. Y. App. Div. 464, 98 N. Y. Supp. 321, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 27.

6. *United States.* — *In re* Neasmith, 147 Fed. 160, 77 C. C. A. 402.

Alabama. — Dorough *v.* Harrington, (Ala. 1906) 42 So. 557; Brooke *v.* Tucker, (Ala. 1907) 43 So. 141.

Alaska. — Miners' Co-operative Assoc. *v.* The Monarch, 2 Alaska 383; Marks *v.* Gates, 2 Alaska 519.

Connecticut. — Fruin *v.* Chotzianoff, 79 Conn. 65, 63 Atl. 782.

Georgia. — Hand Trading Co. *v.* Jones, 129 Ga. 853, 60 S. E. 154; Michael Bros. Co. *v.* Davidson, (Ga. App. 1908) 60 S. E. 362.

Maryland. — Morgart *v.* Smouse, 103 Md. 463, 63 Atl. 1070, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 27.

Massachusetts. — Gay *v.* Ray, 189 Mass. 112, 75 N. E. 138; Estabrook *v.* Woods, 192 Mass. 499, 78 N. E. 538.

Minnesota. — McDonald *v.* Campbell, 96 Minn. 87, 104 N. W. 760.

Missouri. — McNealy *v.* Bartlett, 123 Mo. App. 58, 99 S. W. 767; Steckman *v.* Gault State Bank, 126 Mo. App. 664, 105 S. W. 674.

Nebraska. — Norton *v.* Brink, 75 Neb. 566, 106 N. W. 668, 110 N. W. 669.

New York. — Fefevre *v.* Silo, 112 N. Y. App. Div. 464, 98 N. Y. Supp. 321, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 27; Jones *v.* Walker, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 624, 101 N. Y. Supp. 22; Doncourt *v.* Denton, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 594, 105 N. Y. Supp. 906.

South Carolina. — Providence Mach. Co. *v.* Browning, 72 S. Car. 424, 52 S. E. 117; Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156.

Texas. — Kelley Island Lime, etc., Co. *v.* Masterson, (Tex. 1906) 93 S. W. 427.

Virginia. — Jackson *v.* Haynie, 106 Va. 365, 56 S. E. 148; Miller *v.* Simpson, 107 Va. 476, 59 S. E. 378.

West Virginia. — Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770.

Wisconsin. — Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787; Briere *v.* Searls, 126 Wis. 347, 105 N. W. 820.

29. 5. Zuber *v.* Roberts, 147 Ala. 512, 40 So. 319; Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 29; Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770.

30. 1. Sain *v.* Rooney, 125 Mo. App. 176, 101 S. W. 1127.

2. Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30.

4. Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30.

31. 1. *United States.* — Corbin *v.* Holmes, 154 Fed. 593, 83 C. C. A. 367.

Alabama. — Zuber *v.* Roberts, 147 Ala. 512, 40 So. 319.

California. — Phillips *v.* Mires, 2 Cal. App. 274, 83 Pac. 300.

Illinois. — Street *v.* Thompson, 229 Ill. 613, 82 N. E. 367.

Indiana. — Bond *v.* May, 38 Ind. App. 396, 78 N. E. 260.

Massachusetts. — Estabrook *v.* Woods, 192 Mass. 499, 78 N. E. 538.

Mississippi. — Van Duzer *v.* W. F. Zimmerman Lumber Co., (Miss. 1907) 43 So. 177.

Montana. — Michener *v.* Fransham, 33 Mont. 108, 81 Pac. 953; Beasley *v.* Berry, 33 Mont. 477, 84 Pac. 791, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 31.

New York. — Larzelere *v.* Taber, 119 N. Y. App. Div. 81, 103 N. Y. Supp. 970.

Pennsylvania. — Hays *v.* Colonial Trust Co., 217 Pa. St. 53, 66 Atl. 143.

South Carolina. — Providence Mach. Co. *v.* Browning, 72 S. Car. 424, 52 S. E. 117; Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156.

Texas. — Kelley Island Lime, etc., Co. *v.* Masterson, (Tex. 1906) 93 S. W. 427.

Virginia. — Jackson *v.* Haynie, 106 Va. 365, 56 S. E. 148.

Washington. — Belch *v.* Big Store Co., 46 Wash. 1, 89 Pac. 174.

West Virginia. — Clark *v.* Emery, 58 W. Va. 637, 52 S. E. 770.

Wisconsin. — Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787.

32. 1. Hays *v.* Colonial Trust Co., 217 Pa. St. 53, 66 Atl. 143.

33. 1. Herman Kahn Co. *v.* Bowden, 80 Ark. 23, 96 S. W. 126; Kelley Island Lime, etc., Co. *v.* Masterson, (Tex. 1906) 93 S. W. 427; Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787.

4. Larzelere *v.* Taber, 119 N. Y. App. Div. 91, 103 N. Y. Supp. 970.

34. 2. Lefevre *v.* Silo, 112 N. Y. App. Div. 464, 98 N. Y. Supp. 321, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34.

4. W. G. Duncan Coal Co. *v.* Duncan, 97 S. W. 43, 29 Ky. L. Rep. 1249; Wisotzkey *v.* Niagara F. Ins. Co., 112 N. Y. App. Div. 599, 98 N. Y. Supp. 760; Larzelere *v.* Taber, 119 N. Y. App. Div. 81, 103 N. Y. Supp. 970.

36. 4. Bond *v.* May, 38 Ind. App. 396, 78 N. E. 260, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36; Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36.

5. Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36.

37. 7. Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787.

38. 1. Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149.

Registration in Accordance with Statutory Provisions as Evidence of Partnership. — Gibson *v.* Le Temps Pub. Co., 8 Ont. L. Rep. 707.

Evidence of Partner Admissible to Show Existence of Partnership. — Franklin *v.* Hoadley, 115 N. Y. App. Div. 538, 101 N. Y. Supp. 374.

Evidence of Employees as to Existence of Partnership Admissible. — Clark *v.* Hoffman, 128 Ill. App. 422.

Method of Proof under Nebraska Statute. — Hanfek *v.* Held, (Neb. 1905) 106 N. W. 171.

Sufficiency of Evidence to Show Partnership. — Pennsylvania Steel Co. *v.* Title Guaranty, etc., Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 51, 100 N. Y. Supp. 299; James *v.* Sitomer, 123 N. Y. App. Div. 545, 108 N. Y. Supp. 115; Schardt *v.* Stopper, 29 Ohio Cir. Ct. 715; Ontario Bank *v.* O'Reilly, 12 Ont. L. Rep. 420.

4. Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149; Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 38.

39. 2. Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149; Clark *v.* Hoffman, 128 Ill. App. 422; Hart *v.* Foley, 6 Indian Ter. 237, 91 S. W. 33; Schneider *v.* Fuchs, (Supm. Ct. App. T.) 107 N. Y. Supp. 33.

5. Dorough *v.* Harrington, (Ala. 1906) 42 So. 557.

6. Dorough *v.* Harrington, (Ala. 1906) 42 So. 557.

40. 4. **Parol Evidence Admissible to Show Verbal Agreement.** — Miller *v.* Ferguson, (Va. 1907) 57 S. E. 649.

7. Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149; Morgart *v.* Smouse, 103 Md. 463, 63 Atl. 1070; Baremore *v.* Selover, 100 Minn. 23, 110 N. W. 66; Briere *v.* Searls, 126 Wis. 347, 105 N. W. 817.

41. 3. Bloom *v.* Farmers' Bank, 97 S. W.

756, 30 Ky. L. Rep. 150; Nugent v. Armour Packing Co., 208 Mo. 480, 106 S. W. 648.

4. Herman Kahn Co. *v.* Bowden, 80 Ark. 23, 96 S. W. 126; Leeds *v.* Townsend, 228 Ill. 451, 81 N. E. 1069; Morgart *v.* Smouse, 103 Md. 463, 63 Atl. 1070; Nugent *v.* Armour Packing Co., 208 Mo. 480, 106 S. W. 648; Lefevre *v.* Silo, 112 N. Y. App. Div. 464, 98 N. Y. Supp. 321, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 41; Miller *v.* Simpson, 107 Va. 476, 59 S. E. 378; Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787.

43. 1. Lefevre *v.* Silo, 112 N. Y. App. Div. 464, 98 N. Y. Supp. 321, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 43.

3. Lefevre *v.* Silo, 112 N. Y. App. Div. 464, 98 N. Y. Supp. 321, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 43.

4. Ramsay *v.* Meade, 37 Colo. 465, 86 Pac. 1018.

44. 2. Baldwin *v.* Patrick, (Colo. 1907) 91 Pac. 828.

46. 6. Brooke *v.* Tucker, (Ala. 1907) 43 So. 141; Herman Kahn Co. *v.* Bowden, 80 Ark. 23, 96 S. W. 126; Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156; Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787.

Effect of Failure to Pay in Capital. — Brady *v.* Powers, 112 N. Y. App. Div. 845, 98 N. Y. Supp. 237.

47. 1. Brotherton *v.* Gilchrist, 144 Mich. 274, 107 N. W. 890; McDonald *v.* Campbell, 96 Minn. 87, 104 N. W. 760; Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156.

3. Baldwin *v.* Patrick, (Colo. 1907) 91 Pac. 828.

6. Fruin *v.* Chotzianoff, 79 Conn. 65, 63 Atl. 782; Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149; Thomas *v.* Mosher, 128 Ill. App. 479; Leeds *v.* Townsend, 228 Ill. 451, 81 N. E. 1069; Bloom *v.* Farmers' Bank, 97 S. W. 756, 30 Ky. L. Rep. 159; Chase *v.* Angell, 148 Mich. 1, 108 N. W. 1105; Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156; Hoskins *v.* Velasco Nat. Bank, (Tex. Civ. App. 1907) 107 S. W. 598.

49. 2. Fruin *v.* Chotzianoff, 79 Conn. 65, 63 Atl. 782; Dublin, etc., R. Co. *v.* Akerman, 2 Ga. App. 746, 59 S. E. 10; Michael Bros. Co. *v.* Davidson, (Ga. App. 1908) 60 S. E. 362; Norris *v.* Anthony, 193 Mass. 225, 79 N. E. 258; Doncourt *v.* Denton, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 594, 105 N. Y. Supp. 906.

4. Barth *v.* Paul, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 600, 99 N. Y. Supp. 425.

50. 1. Donnelly *v.* McArdle, 120 N. Y. App. Div. 871, 105 N. Y. Supp. 331.

5. Clark *v.* Hoffman, 128 Ill. App. 422; Bell *v.* Dougherty, 99 S. W. 922, 30 Ky. L. Rep. 853.

When General Reputation Admissible. — Grey *v.* Callan, 133 Iowa 500, 110 N. W. 909.

51. 1. Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149; Headley *v.* Rice, 96 S. W. 903, 29 Ky. L. Rep. 1102; Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067.

2. *In re* Neasmith, 147 Fed. 160, 77 C. C. A. 402.

3. Davidson *v.* Copeland, 77 S. Car. 108, 57 S. E. 620.

4. Nevers Lumber Co. *v.* Fields, (Ala. 1907) 44 So. 81; Hardman *v.* Putnam, 1 Can. Sup. Ct. Cas. 112.

7. **Recovery for Breach of Contract for Future Partnership.** — Hobbs *v.* Ray, 96 S. W. 589, 29 Ky. L. Rep. 999.

52. 4. Ehrhardt *v.* Stevenson, (Mo. App. 1907) 106 N. W. 1118.

5. Ehrhardt *v.* Stevenson, (Mo. App. 1907) 106 S. W. 1118.

53. 5. Harris *v.* Umsted, 79 Ark. 499, 96 S. W. 146; Whittingham *v.* Darrin, (Supm. Ct. Spec. T.) 45 Misc. (N. Y. 478, 92 N. Y. Supp. 752.

6. Beaumont Rice Mills *v.* Bridges, (Tex. Civ. App. 1907) 101 S. W. 511.

54. 2. Harris *v.* Umsted, 79 Ark. 499, 96 S. W. 146.

55. 4. *Arkansas.* — Herman Kahn Co. *v.* Bowden, 80 Ark. 23, 96 S. W. 126.

Georgia. — Mims *v.* Brook, 3 Ga. App. 247, 59 S. E. 711; Michael Bros. Co. *v.* Davidson, (Ga. App. 1908) 60 S. E. 362.

Indiana. — Breinig *v.* Sparrow, 39 Ind. App. 455, 702, 80 N. E. 37, 40.

Massachusetts. — Fay *v.* Walsh, 190 Mass. 374, 77 N. E. 44.

Missouri. — Nugent *v.* Armour Packing Co., 208 Mo. 480, 106 S. W. 648.

New York. — Pritz *v.* Smyth, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 540, 97 N. Y. Supp. 1003; Gertner *v.* Merker, (Supm. Ct. App. T.) 104 N. Y. Supp. 873.

Oregon. — Morback *v.* Young, (Oregon 1908) 94 Pac. 35.

South Carolina. — Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156.

Virginia. — Coons *v.* Coons, 106 Va. 572, 56 S. E. 576.

Canada. — Oakville *v.* Andrew, 10 Ont. L. Rep. 709.

Sufficiency of Evidence. — Morback *v.* Young, (Oregon 1908) 94 Pac. 35.

56. 3. Smart *v.* Breckinridge Bank, (Ky. 1906) 90 S. W. 5.

57. 5. **Sufficiency of Evidence to Show Holding Out.** — Smart *v.* Breckinridge Bank, (Ky. 1906) 90 S. W. 5.

Bill Heads as Evidence of Holding Out. — Mims *v.* Brook, 3 Ga. App. 247, 59 S. E. 711.

6. Brotherton *v.* Gilchrist, 144 Mich. 274, 107 N. W. 890.

58. 1. Churchill *v.* Thompson Electric Co., 119 Ill. App. 430; Manlove *v.* Metzger, 124 Ill. App. 383; Brotherton *v.* Gilchrist, 144 Mich. 274, 107 N. W. 890.

2. Manlove *v.* Metzger, 124 Ill. App. 383.

3. Herman Kahn Co. *v.* Bowden, 80 Ark. 23, 96 S. W. 126, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 58; Smart *v.* Breckinridge Bank, (Ky. 1906) 90 S. W. 5.

59. 1. Herman Kahn Co. *v.* Bowden, 80 Ark. 23, 96 S. W. 126, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 59; Mims *v.* Brook, 3 Ga. App. 247, 59 S. E. 711; Smart *v.* Breckinridge Bank, (Ky. 1906) 90 S. W. 5; Beasley *v.* Berry, 33 Mont. 477, 84 Pac. 791; Hanrahan *v.* Freeman, 35 Mont. 584, 90 Pac. 793; Morback *v.* Young, (Oregon 1908) 94 Pac. 35; Oakville *v.* Andrew, 10 Ont. L. Rep. 709. See also Curtis *v.* Sexton, 201 Mo. 217, 100 S. W. 17.

2. Breinig *v.* Sparrow, 39 Ind. App. 455, 702, 80 N. E. 37, 40.

3. Herman Kahn Co. *v.* Bowden, 80 Ark. 23, 96 S. W. 126.

60. 8. Williamson *v.* Nigh, 58 W. Va. 629, 53 S. W. 124.

61. 2. Williamson *v.* Nigh, 58 W. Va. 629, 53 S. E. 124.

3. Williamson *v.* Nigh, 58 W. Va. 629, 53 S. E. 124.

9. **Trading Partnership Defined as One Requiring Capital and Credit.** — Hatchett *v.* Sunset Brick, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 174.

63. 11. **Sufficiency of Evidence to Establish Relation.** — Buford *v.* Sontheimer, 116 La. 500, 40 So. 851.

65. 3. Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156.

8. Fruin *v.* Chotzianoff, 79 Conn. 65, 63 Atl. 782; McNealy *v.* Bartlett, 123 Mo. App. 58, 99 S. W. 767.

66. 2. Koyer *v.* Willmon, 150 Cal. 785, 90 Pac. 135; Morgart *v.* Smouse, 103 Md. 463, 63 Atl. 1070; Stitt *v.* Rat Portage Lumber Co., 98 Minn. 52, 107 N. W. 824; Miller *v.* Ferguson, (Va. 1907) 57 S. E. 649.

4. Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787.

67. 2. **Partnership Realty Considered as Personalty with Regard to Statute of Frauds.** — Tillis *v.* Folmer, 145 Ala. 176, 39 So. 913.

68. 3. McNealy *v.* Bartlett, 123 Mo. App. 58, 99 S. W. 767.

4. **Right of Execution Debtor to Enter into Partnership.** — Canadian Pac. R. Co. *v.* Rat Portage Lumber Co., 10 Ont. L. Rep. 273.

69. 9. Norwood *v.* Francis, 25 App. Cas. (D. C.) 463, 4 Ann. Cas. 865.

70. 1. Anderson *v.* Citizens' Nat. Bank, 38 Ind. App. 190, 76 N. E. 811.

2. Norwood *v.* Francis, 25 App. Cas. (D. C.) 463, 4 Ann. Cas. 865.

3. Dixie Cotton Oil Co. *v.* Morris, 79 Ark. 113, 94 S. W. 933; Breinig *v.* Sparrow, 39 Ind. App. 455, 702, 80 N. E. 37, 40; White Star Line *v.* Star Line, 141 Mich. 604, 105 N. W. 135.

74. 4. Leeds *v.* Townsend, 228 Ill. 451, 81 N. E. 1069.

75. 2. Leeds *v.* Townsend, 228 Ill. 451, 81 N. E. 1069.

5. Frankel *v.* Hillier, (N. Dak. 1907) 113 N. W. 1067, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 75.

7. Bergstrom *v.* Ridgway-Thayer Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 95, 103 N. Y. Supp. 1093, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 75; State *v.* Krasher, (Ind. 1908) 83 N. E. 498, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 75; Browne *v.* Taylor, 28 Quebec Super. Ct. 462.

9. State *v.* Krasher, (Ind. 1908) 83 N. E. 498, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 75.

76. 4. State *v.* Krasher, (Ind. 1908) 83 N. E. 498, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76.

5. State *v.* Krasher, (Ind. 1908) 83 N. E. 498, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76.

6. State *v.* Krasher, (Ind. 1908) 83 N. E. 498.

80. 10. Johnson *v.* Wynne, 76 Ark. 563, 89 S. W. 1049.

81. 3. Meyer *v.* Lovdal, (Cal. App. 1907) 92 Pac. 322; Nicholson *v.* Auburn Gold Min., etc., Co., (Cal. App. 1907) 92 Pac. 651; Elgin Jewelry Co. *v.* Wilson, (Colo. 1908) 93 Pac. 1107; Walker *v.* Stimmel, 15 N. Dak. 484, 107 N. W. 1081.

Fictitious Names under Oklahoma Statute. — Patterson *v.* Byers, 17 Okla. 633, 89 Pac. 1114.

83. 1. Meyer *v.* Lovdal, (Cal. App. 1907) 92 Pac. 322; Nicholson *v.* Auburn Gold Min., etc., Co., (Cal. App. 1907) 92 Pac. 651; Elgin Jewelry Co. *v.* Wilson, (Colo. 1908) 93 Pac. 1107; Walker *v.* Stimmel, 15 N. Dak. 484, 107 N. W. 1081;; Patterson *v.* Byers, 17 Okla. 633, 89 Pac. 1114; Daniel *v.* Lance, 29 Pa. Super. Ct. 454.

Name Composed of Surnames of Partners Not Fictitious within Meaning of North Dakota Statute. — Walker *v.* Stimmel, 15 N. Dak. 484, 107 N. W. 1081.

Time of Filing. — Nicholson *v.* Auburn Gold Min., etc., Co., (Cal. App. 1907) 92 Pac. 651.

Construction of British Columbia Statute. — Smith *v.* Finch, 12 British Columbia 186.

4. Walker *v.* Stimmel, 15 N. Dak. 484, 107 N. W. 1081; Patterson *v.* Byers, 17 Okla. 633, 89 Pac. 1114.

Time of Publication. — Nicholson *v.* Auburn Gold Min., etc., Co., (Cal. App. 1907) 92 Pac. 651.

What Publication Sufficient. — Meyer *v.* Lovdal, (Cal. App. 1907) 92 Pac. 322.

6. **Effect of Agreement Giving Partner Continuing in Business Exclusive Use of Firm Name.** — McDonald *v.* Miller, 37 Nova Scotia 46.

84. 1. **Right to Firm Name upon Dissolution.** — Read *v.* Mackay, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 435, 95 N. Y. Supp. 935.

3. Kram *v.* Sayer, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 539.

85. 4. Hillock *v.* Grape, 111 N. Y. App. Div. 720, 97 N. Y. Supp. 823.

5. Kelley Island Lime, etc., Co. *v.* Masterson, (Tex. 1906) 93 S. W. 427.

6. Kelley Island Lime, etc., Co. *v.* Masterson, (Tex. 1906) 93 S. W. 427.

86. 8. McCandless *v.* Crouse, 220 Ill. 344, 77 N. E. 202.

Partner Cannot Withdraw Contracts Contributed by Him. — Arthur *v.* Sire, 105 N. Y. App. Div. 454, 94 N. Y. Supp. 346.

Rights as to Bonus Paid for Membership in Firm. — Crouse *v.* McCandless, 121 Ill. App. 237, *affirmed* 220 Ill. 344.

87. 1. **Advances Made by a Partner** to the firm are not to be included in its assets, and he becomes a creditor. Wilson *v.* Wilson, 74 S. Car. 30, 54 S. E. 227.

4. Wilson *v.* Wilson, 74 S. Car. 30, 54 S. E. 227.

88. 5. Humes *v.* Higman 145 Ala. 215, 40 So. 128; Jenkins *v.* Jenkins, 81 Ark. 68, 98 S. W. 685; Reemsnyder *v.* Reemsnyder, 75 Kan. 565, 89 Pac. 1014, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88.

Agreement to Use Realty for Partnership Purposes Not Sufficient to Convert It into Partnership Property. — Clark *v.* Lyster, (C. C. A.) 155 Fed. 513.

Mere Use for Firm Purposes of Realty Belonging to Partners Not Sufficient to Convert

It into Partnership Property. — Taber-Prang Art Co. *v.* Durant, 189 Mass. 173, 75 N. E. 221.

89. 1. Jenkins *v.* Jenkins, 81 Ark. 68, 98 S. W. 685; Reemsnyder *v.* Reemsnyder, 75 Kan. 565, 89 Pac. 1014, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 89; Bennett *v.* Hough, 141 Mich. 162, 104 N. W. 414.

Evidence Admissible to Show Character of Property. — Rankin *v.* Trickett, 75 Kan. 306, 89 Pac. 698.

90. 1. Bennett *v.* Hough, 141 Mich. 162, 104 N. W. 414.

91. 3. Hill *v.* Fearis, (1905) 1 Ch. 466, 74 L. J. Ch. 237, 53 W. R. 457, 21 Times L. Rep. 187; Griffith *v.* Kirley, 189 Mass. 522, 76 N. E. 201; *In re* Silkman, 121 N. Y. App. Div. 202, 105 N. Y. Supp. 872.

When Goodwill Excepted from Assets. — Scott *v.* Scott, 89 L. T. N. S. 582; Smith *v.* Nelson, 92 L. T. N. S. 313.

4. Jenkins *v.* Jenkins, 81 Ark. 68, 98 S. W. 685; Payne *v.* Martin, 39 Colo. 265, 89 Pac. 46; Taber-Prang Art Co. *v.* Durant, 189 Mass. 173, 75 N. E. 221.

No Presumption Where Purchase Charged to Partner on Firm Books. — Jenkins *v.* Jenkins, 81 Ark. 68, 98 S. W. 685.

5. Payne *v.* Martin, 39 Colo. 265, 89 Pac. 46.

6. Payne *v.* Martin, 39 Colo. 265, 89 Pac. 46; Bennett *v.* Hough, 141 Mich. 162, 104 N. W. 414; Wilson *v.* Wilson, 74 S. Car. 30, 54 S. E. 227.

92. 1. Jenkins *v.* Jenkins, 81 Ark. 68, 98 S. W. 685; Higgins *v.* Higgins, 216 Pa. St. 397, 65 Atl. 804.

3. Lizee *v.* Robert, 96 Minn. 169, 104 N. W. 836; Waisner *v.* Waisner, 15 Wyo. 420, 89 Pac. 580.

4. Taber-Prang Art Co. *v.* Durant, 189 Mass. 173, 75 N. E. 221.

6. Reemsnyder *v.* Reemsnyder, 75 Kan. 565, 89 Pac. 1014, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 92.

93. 5. Close *v.* O'Brien, (Iowa 1907) 112 N. W. 800, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 93.

6. Close *v.* O'Brien, (Iowa 1907) 112 N. W. 800, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 93.

7. Stone *v.* Fowlkes, 29 App. Cas. (D. C.) 379; Close *v.* O'Brien, (Iowa 1907) 112 N. W. 800.

Parol Evidence to Identify Grantee Admissible. — Close *v.* O'Brien, (Iowa 1907) 112 N. W. 800.

A Conveyance to a Firm Containing the Name of a Deceased Partner passes the legal estate to the partners as joint tenants. Wray *v.* Wray, (1905) 2 Ch. 349, 93 L. T. N. S. 304, 74 L. J. Ch. 687, 54 W. R. 136.

8. Stone *v.* Fowlkes, 29 App. Cas. (D. C.) 379; Close *v.* O'Brien, (Iowa 1907) 112 N. W. 800.

Equitable Title Passes by Deed to Partnership. — Walker *v.* Miller, 139 N. Car. 448, 52 S. E. 125.

10. McMahon *v.* Meehan, 2 Alaska 278; Bennett *v.* Hough, 141 Mich. 162, 104 N. W. 414; Chase *v.* Angell, 148 Mich. 1, 108 N. W. 1105; Stitt *v.* Rat Portage Lumber Co., 98 Minn. 52, 107 N. W. 824.

96. 1. Dickens *v.* Dickens, (Ala. 1908) 45 So. 630; Evans *v.* Silvey, 144 Ala. 398, 42 So. 62; Harrah *v.* State, 38 Ind. App. 495, 76 N. E. 443, 77 N. E. 747; *In re* Curlee, 118 La. 563, 43 So. 165; Callanan *v.* Keeseville, etc., R. Co., (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 476, 95 N. Y. Supp. 513; Matter of Thieriot, 117 N. Y. App. Div. 686, 102 N. Y. Supp. 952; Miller *v.* Berry, 19 S. Dak. 625, 104 N. W. 311.

2. Dickens *v.* Dickens, (Ala. 1908) 45 So. 630; Lowenstein *v.* Lowenstein, 114 N. Y. App. Div. 65, 99 N. Y. Supp. 730.

97. 1. Dickens *v.* Dickens, (Ala. 1908) 45 So. 630.

5. Close *v.* O'Brien, (Iowa 1907) 112 N. W. 800.

Freehold Interest of Partners. — Tattersal *v.* Nevels, (Neb. 1906) 110 N. W. 708.

98. 4. *In re* Holland, (1907) 2 Ch. 88; Lellman *v.* Mills, 15 Wyo. 149, 87 Pac. 985.

100. 2. Chase *v.* Angell, 148 Mich. 1, 108 N. W. 1105.

102. 3. Lizee *v.* Robert, 96 Minn. 169, 104 N. W. 836.

4. Fleisher *v.* Hinde, (Mo. App. 1906) 93 S. W. 1126; Ritchie *v.* Law, 37 N. Bruns. 36; Canadian Pac. R. Co. *v.* Rat Portage Lumber Co., 10 Ont. L. Rep. 273.

Power to Attach under Arkansas Statute. — Noble *v.* Knobel Hoop Co., (Ark. 1908) 107 S. W. 988.

Under Texas Statute. — Seal *v.* Holcomb, (Tex. Civ. App. 1908) 107 S. W. 916.

104. 6. Carlisle Gas, etc., Co. *v.* Carlisle, 218 Pa. St. 554, 67 Atl. 844.

105. 2. Day *v.* Stafford, (Mo. App. 1908) 107 S. W. 433; Carlisle Gas, etc., Co. *v.* Carlisle, 218 Pa. St. 554, 67 Atl. 844; Dockery *v.* Faulkner, (Tex. Civ. App. 1907) 101 S. W. 501.

Overdraft by Partner Passes on Sale of Partnership Property. — Hoey *v.* Fechtenberg, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 576, 106 N. Y. Supp. 1090.

Effect of Transfer by Executor of Interest of Deceased Partner. — *In re* Silkman, 121 N. Y. App. Div. 202, 105 N. Y. Supp. 872.

Effect of Mortgage of Interest. — Lellman *v.* Mills, 15 Wyo. 149, 87 Pac. 985,

3. Day *v.* Stafford, (Mo. App. 1908) 107 S. W. 433.

106. 1. *In re* Law, (1905) 1 Ch. 140, 74 L. J. Ch. 169, 92 L. T. N. S. 1, 53 W. R. 227, 21 Times L. Rep. 102; Goldsmith *v.* Koopman, 152 Fed. 173, 81 C. C. A. 465; Burgess *v.* Deierling, 113 Mo. App. 383, 88 S. W. 771; Gilbert *v.* Anderson, (N. J. 1907) 66 Atl. 926; Seal *v.* Holcomb, (Tex. Civ. App. 1908) 107 S. W. 916; Finn *v.* Young, (Wash. 1907) 89 Pac. 400, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 106; Thorne *v.* Brown, (W. Va. 1908) 60 S. E. 614.

2. *In re* Law, (1905) 1 Ch. 140, 74 L. J. Ch. 169, 92 L. T. N. S. 1, 53 W. R. 227, 21 Times L. Rep. 102; Goldsmith *v.* Koopman, 152 Fed. 173, 81 C. C. A. 465; Gilbert *v.* Anderson, (N. J. 1907) 66 Atl. 926; Seal *v.* Holcomb, (Tex. Civ. App. 1908) 107 S. W. 916; Finn *v.* Young, (Wash. 1907) 89 Pac. 400.

Waiver of Right to Repudiate Sale. — *In re* Law, (1905) 1 Ch. 140, 92 L. T. N. S. 1, 53 W. R. 227, 74 L. J. Ch. 169, 21 Times L. Rep. 102.

4. *In re* Bourne, (1906) 2 Ch. 427, 6 Ann. Cas. 33.

9. Patrick *v.* Patrick, (N. J. 1906) 63 Atl. 848; Tattersal *v.* Nevels, (Neb. 1906) 110 N. W. 708, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 106; Butts *v.* Cooper, (Ala. 1907) 44 So. 616.

Effect of Agreement as to Conversion. — Even between the heir and personal representative a conversion will be regarded as having been worked when such was the intent of the partners, either as evidenced by express agreement or fairly deducible from facts and circumstances. Buckley *v.* Doig, 188 N. Y. 238, 80 N. E. 913.

107. 1. Schlichter Jute Cordage Co. *v.* Mulqueen, 142 Fed. 583; Tillis *v.* Folmar, 145 Ala. 176, 39 So. 913; Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Tattersal *v.* Nevels, (Neb. 1906) 110 N. W. 708, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107; Patrick *v.* Patrick, (N. J. 1906) 63 Atl. 848; Buckley *v.* Doig, 115 N. Y. App. Div. 413, 100 N. Y. Supp. 869.

108. 1. Patrick *v.* Patrick, (N. J. 1906) 63 Atl. 848.

109. 5. Patrick *v.* Patrick, (N. J. 1906) 63 Atl. 848; Buckley *v.* Doig, 188 N. Y. 238, 80 N. E. 913.

Sufficiency of Evidence to Show Agreement. — Buckley *v.* Doig, 188 N. Y. 238, 80 N. E. 913.

Statute of Frauds Not Applicable to Agreement. — Buckley *v.* Doig, 188 N. Y. 238, 80 N. E. 913.

114. 7. Wiggins *v.* Markham, 131 Iowa 102, 108 N. W. 113; Burgess *v.* Deierling, 113 Mo. App. 383, 88 S. W. 770; Gilbert *v.* Anderson, (N. J. 1907) 66 Atl. 926; David Belasco Co. *v.* Klaw, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 597, 97 N. Y. Supp. 712; Miller *v.* Ferguson, (Va. 1907) 57 S. E. 649; Finn *v.* Young, (Wash. 1907) 89 Pac. 400, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 114; Thorne *v.* Brown, (W. Va. 1908) 60 S. E. 614.

Protection Afforded against Fraud of Partner. — Whipple *v.* Lee, (Wash. 1907) 89 Pac. 712.

115. 1. Crawford *v.* Stainback, 76 Ark. 346, 88 S. W. 991; Mattern *v.* Canavan, 3 Cal. App. 493, 86 Pac. 618; Koyer *v.* Willmon, 150 Cal. 785, 90 Pac. 135; David Belasco Co. *v.* Klaw, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 597, 97 N. Y. Supp. 712; Finn *v.* Young, (Wash. 1907) 89 Pac. 400, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 115; Lellman *v.* Mills, 15 Wyo. 149, 87 Pac. 985.

2. Mattern *v.* Canavan, 3 Cal. App. 493, 86 Pac. 618; Thorne *v.* Brown, (W. Va. 1908) 60 S. E. 614.

6. See Crockett *v.* Burleson, 60 W. Va. 252, 54 S. E. 341.

7. Crawford *v.* Stainback, 76 Ark. 346, 88 S. W. 991; Deaner *v.* O'Hara, 36 Colo. 476, 85 Pac. 1123; Koyer *v.* Willmon, 150 Cal. 785, 90 Pac. 135; Burgess *v.* Deierling, 113 Mo. App. 383, 88 S. W. 771; David Belasco Co. *v.* Klaw, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 597, 97 N. Y. Supp. 712; Van Deusen *v.* Crysell, 114 N. Y. App. Div. 361, 99 N. Y. Supp. 874.

116. 3. Crawford *v.* Stainback, 76 Ark. 346, 88 S. W. 991.

Rule Applies to Purchase at Judicial Sale. — Cresse *v.* Loper, (N. J. 1907) 65 Atl. 1001.

117. 1. **Right to Renew Lease after Dissolution of Partnership.** — Browne *v.* Scull, 27 Pa. Super. Ct. 513.

Rule Applies to Purchase of Options Held by Firm. — Gaddie *v.* Mann, 147 Fed. 960.

2. Deaner *v.* O'Hara, 36 Colo. 476, 85 Pac. 1123.

3. Mattern *v.* Canavan, 3 Cal. App. 493, 86 Pac. 618; Van Deusen *v.* Crysell, 114 N. Y. App. Div. 361, 99 N. Y. Supp. 874.

5. Deaner *v.* O'Hara, 36 Colo. 476, 85 Pac. 1123.

118. 1. Miller *v.* Ferguson, (Va. 1907) 57 S. E. 649.

3. Van Deusen *v.* Crysell, 114 N. Y. App. Div. 361, 99 N. Y. Supp. 874.

Right to Take Subcontract under Partnership. — Condon *v.* Callahan, 115 Tenn. 285, 89 S. W. 400.

5. Trimble *v.* Goldberg, (1906) A. C. 494; Koyer *v.* Willmon, 150 Cal. 785, 90 Pac. 135; Rutan *v.* Huck, 30 Utah 217, 83 Pac. 833.

119. 1. Gillespie *v.* Salmon, 2 Cal. App. 501, 84 Pac. 310; Moran Bros. Co. *v.* Watson, 44 Wash. 392, 87 Pac. 508.

Contribution Enforceable after Settlement of Partnership. — Schnell *v.* Schnell, 39 Ind. App. 556, 80 N. E. 432.

3. Gillespie *v.* Salmon, 2 Cal. App. 501, 84 Pac. 310; Stark *v.* Howcott, 118 La. 489, 43 So. 61.

Expenditures Must Have Related to Common Undertaking. — Van Tine *v.* Hilands, 142 Fed. 613.

120. 1. Johnston *v.* Steele, (Tex. Civ. App. 1908) 107 S. W. 631.

6. Lee *v.* Kirby, 80 Ark. 366, 97 S. W. 298.

7. **Effect of Mutual Mistake as to Firm Assets.** — Davis *v.* Ferguson, 92 S. W. 968, 29 Ky. L. Rep. 214.

121. 3. A partner who participates without objection in dividends paid to the members of a firm by an employee, such dividend being diverted from the firm capital without authority, has not a cause of action against the other partners for the funds so diverted. Campbell *v.* Rich Oil Co., (Ky. 1906) 96 S. W. 442.

10. Peck *v.* Alexander, (Colo. 1907) 91 Pac. 38; Stone *v.* Fowlkes, 29 App. Cas. (D. C.) 379; Street *v.* Thompson, 229 Ill. 613, 82 N. E. 367; Caldwell *v.* Lang, (Ky. 1907) 101 S. W. 972; Williams *v.* Pedersen, (Wash. 1907) 92 Pac. 287.

Recovery for Services Allowed When Partnership Contract Rescinded for Fraud. — Caplen *v.* Cox, (Tex. Civ. App. 1906) 92 S. W. 1048.

122. 3. Williams *v.* Pedersen, (Wash. 1907) 92 Pac. 287.

123. 1. Clausen *v.* Purvogel, 114 N. Y. App. Div. 455, 100 N. Y. Supp. 49.

5. Williams *v.* Pedersen, (Wash. 1907) 92 Pac. 287.

124. 4. Goodwill *v.* Heim, 212 Pa. St. 595, 62 Atl. 24.

5. Blun *v.* Mayer, 189 N. Y. 153, 81 N. E. 780.

125. 2. Young *v.* Potter, 150 Mich. 375, 114 N. W. 215; Condon *v.* Callahan, 115 Tenn. 285, 89 S. W. 400.

11. Goodwill *v.* Heim, 212 Pa. St. 595, 62 Atl. 24.

When Interest Allowed. — Forsyth *v.* Butler, (Cal. 1907) 93 Pac. 90.

126. 3. Blun *v.* Mayer, 113 N. Y. App. Div. 247, 99 N. Y. Supp. 25; Stiles *v.* Haight, 124 N. Y. App. Div. 60, 108 N. Y. Supp. 136.

Where an Amount Is Left in the Hands of a Firm to Meet a Contingent Liability after the withdrawal of a partner from the firm, the withdrawing partner cannot recover interest thereon until after the firm has been relieved from the contingent obligation; but where the amount is retained in the hands of the firm after it has been relieved from its obligation, interest may be recovered for the latter period. Young *v.* Potter, 150 Mich. 375, 114 N. W. 215.

Interest Allowed from Date of Writ in Suit for Accounting. — Young *v.* Winkley, 191 Mass. 570, 78 N. E. 377.

Circumstances Warranting Refusal to Allow Interest on Profits Retained by Surviving Partner. — Clausen *v.* Purvogal, 114 N. Y. App. Div. 455, 100 N. Y. Supp. 49.

127. 4. **No Presumption Where Firm Authorized Insufficient Method of Bookkeeping.** — Shoemaker *v.* Shoemaker, 92 S. W. 546, 29 Ky. L. Rep. 134.

128. 3. **Recovery for Loss of Prospective Profits Denied.** — Burdall *v.* Johnson, 122 Mo. App. 119, 99 S. W. 2.

5. **Amount Recoverable.** — McConnell *v.* Stubbs, 124 Ga. 1038, 53 S. E. 698.

6. Houston *v.* Polk, 124 Ga. 103, 52 S. E. 83, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 128.

130. 5. **Division at Short Intervals an Ordinary Incident of Equal Partnership.** — Oram *v.* Peirce, (N. J. 1907) 67 Atl. 1053.

131. 1. Donnelly *v.* McArdle, 120 N. Y. App. Div. 871, 105 N. Y. Supp. 331.

8. *United States.* — Blake *v.* Sargent, 152 Fed. 263.

Arkansas. — French *v.* Vanatta, 83 Ark. 306, 104 S. W. 141, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 131; Parker *v.* Wells, 84 Ark. 172, 105 S. W. 75; Noble *v.* Knobel Hoop Co., (Ark. 1908) 107 S. W. 988.

Illinois. — Veneman *v.* Ruckle, 120 Ill. App. 251.

Kentucky. — Merkley *v.* Gravel Switch Roller Mill Co., (Ky. 1906) 90 S. W. 1059; Harlan *v.* Bennett, (Ky. 1907) 106 S. W. 287.

Minnesota. — Thorpe *v.* Pennock Mercantile Co., 99 Minn. 22, 108 N. W. 940.

New Jersey. — Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062.

South Dakota. — Miller *v.* Berry, 19 S. Dak. 625, 104 N. W. 311.

Partners Cannot Claim Exemptions Out of Partnership Property as against Partnership Creditor. — Elkins *v.* Briscoe, (Ky. 1907) 105 S. W. 412.

Lien May Be Terminated by Agreement. — Thorpe *v.* Pennock Mercantile Co., 99 Minn. 22, 108 N. W. 940.

132. 1. French *v.* Vanatta, 83 Ark. 306, 104 S. W. 141, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed) 132.

4. Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062.

133. 2. Harlan *v.* Bennett, (Ky. 1907) 106 S. W. 287.

134. 1. Thorpe *v.* Pennock Mercantile Co., 99 Minn. 22, 108 N. W. 940.

3. Blake *v.* Sargent, 152 Fed. 263; Eady *v.* Newton Coal, etc., Co., 123 Ga. 557, 51 S. E. 661; Gloor *v.* Allen, (Tex. Civ. App. 1907) 105 S. W. 539, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 134.

136. 3. Clark *v.* Ball, 34 Colo. 223, 82 Pac. 529; Hatchett *v.* Sunset Brick, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 174.

Acts Partially in Excess of Authority. — Taylor *v.* Felder, 3 Ga. App. 287, 59 S. E. 844.

4. Durden *v.* Dekle, 3 Ga. App. 97, 59 S. E. 315; Taylor *v.* Felder, 3 Ga. App. 287, 59 S. E. 844; Taylor *v.* Herron, 72 Kan. 652, 82 Pac. 1104; Mathis *v.* Taylorsville Bank, (Ky. 1908) 106 S. W. 1174; Sedalia Third Nat. Bank *v.* Fults, 115 Mo. App. 42, 90 S. W. 755; Moran Bros. Co. *v.* Watson, 44 Wash. 392, 87 Pac. 508.

Extent of Authority under Michigan Statute. — Rhoades *v.* Malta Vita Pure Food Co. 149 Mich. 235, 112 N. W. 940.

137. 1. Hatchett *v.* Sunset Brick, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 174; Mathis *v.* Taylorsville Bank, (Ky. 1908) 106 S. W. 1174; Moran Bros. Co. *v.* Watson, 44 Wash. 392, 87 Pac. 508.

Sufficiency of Evidence to Show Ratification. — Johnson *v.* Wynne, 76 Ark. 563, 89 S. W. 1049.

2. Michigan Shoe Co. *v.* Paul, 149 Mich. 695, 113 N. W. 310.

3. See Eady *v.* Newton Coal, etc., Co., 123 Ga. 557, 51 S. E. 661.

4. Smith, etc., Co. *v.* Schmidt, 142 Mich. 1, 105 N. W. 39; Browerville First Nat. Bank *v.* Stadden, (Minn. 1908) 115 N. W. 198; Shapek *v.* Oak Creek Valley Bank, (Okla. 1907) 91 Pac. 1129.

138. 1. Merrill *v.* O'Bryan, (Wash. 1908) 93 Pac. 917.

139. 7. Ferry *v.* Mattox, 2 Ga. App. 104, 58 S. E. 291.

140. 1. Jones *v.* Draper, 26 Ohio Cir. Ct. 785.

3. Franklin *v.* Hoadley, 115 N. Y. App. Div. 538, 101 N. Y. Supp. 374; Merrill *v.* O'Bryan, (Wash. 1908) 93 Pac. 917, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140.

142. 1. Thomas *v.* Hardsocg, (Iowa 1908) 115 N. W. 210; Shapek *v.* Oak Creek Valley Bank, (Okla. 1907) 91 Pac. 1129; Kensington Nat. Bank *v.* Ware, 32 Pa. Super. Ct. 247; Merrill *v.* O'Bryan, (Wash. 1908) 93 Pac. 917, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 142.

4. Browerville First Nat. Bank *v.* Stadden, (Minn. 1908) 115 N. W. 198.

143. 1. Browerville First Nat. Bank *v.* Stadden, (Minn. 1908) 115 N. W. 198; Slayden *v.* Palmo, (Tex. Civ. App. 1905) 90 S. W. 908.

2. Browerville First Nat. Bank *v.* Stadden, (Minn. 1908) 115 N. W. 198; Boylston Nat. Bank *v.* Kilburn, (N. H. 1907) 68 Atl. 335; Merrill *v.* O'Bryan, (Wash. 1908) 93 Pac. 917.

144. 2. Slayden *v.* Palmo, (Tex. Civ. App. 1905) 90 S. W. 908.

3. Dunnett *v.* Gibson, 78 Vt. 430, 63 Atl. 141.

145. 1. Sedalia Third Nat. Bank *v.* Fults, 115 Mo. App. 42, 90 S. W. 755.

146. 1. Sedalia Third Nat. Bank *v.* Fults, 115 Mo. App. 42, 90 S. W. 755.

3. Murphey *v.* Bush, 122 Ga. 715, 50 S. E. 1004; Eady *v.* Newton Coal, etc., Co., 123 Ga. 557, 51 S. E. 661; Dunnett *v.* Gibson, 78 Vt. 439, 63 Atl. 141.

148. 6. **Power to Assign Book Debts.** — *In re* Briggs, (1906) 2 K. B. 699.

149. 8. Smith, etc., Co. *v.* Schmidt, 142 Mich. 1, 105 N. W. 39; Merrill *v.* O'Bryan, (Wash. 1908) 93 Pac. 917.

9. Sullivan *v.* Franklin Bank, 28 Ohio Cir. Ct. 813; Lellman *v.* Mills, 15 Wyo. 149, 87 Pac. 985.

150. 1. **Partner Not Authorized to Dispose of Good Will.** — Kelly *v.* Pierce, (N. Dak. 1907) 112 N. W. 995.

151. 5. *United States.* — Union Nat. Bank *v.* Neill, (C. C. A.) 149 Fed. 711, *reversing* 143 Fed. 553.

Georgia. — Hand Trading Co. *v.* Jones, 129 Ga. 853, 60 S. E. 154.

Illinois. — Lemke *v.* Faustmann, 124 Ill. App. 624.

Iowa. — Thomas *v.* Hardsocg, (Iowa 1908) 115 N. W. 210.

Kansas. — Taylor *v.* Herron, 72 Kan. 652, 82 Pac. 1104.

Kentucky. — Brite *v.* Guy, (Ky. 1905) 88 S. W. 1069; Mitchell *v.* Whaley, 92 S. W. 556, 29 Ky. L. Rep. 125.

Michigan. — Webber *v.* Webber, 146 Mich. 31, 109 N. W. 50.

Minnesota. — Browerville First Nat. Bank *v.* Stadden, (Minn. 1908) 115 N. W. 198.

New Hampshire. — Boylston Nat. Bank *v.* Kilburn, (N. H. 1907) 68 Atl. 335.

Pennsylvania. — Kensington Nat. Bank *v.* Ware, 32 Pa. Super. Ct. 247.

Texas. — Hatchett *v.* Sunset Brick, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 174; Dockery *v.* Faulkner, (Tex. Civ. App. 1907) 101 S. W. 501.

Authority to Give Renewal Note. — Shapek *v.* Oak Creek Valley Bank, (Okla. 1907) 91 Pac. 1129.

152. 1. Union Nat. Bank *v.* Neill, (C. C. A.) 149 Fed. 711, *reversing* 143 Fed. 553; Boylston Nat. Bank *v.* Kilburn, (N. H. 1907) 68 Atl. 335.

2. Mitchell *v.* Whaley, 92 S. W. 556, 29 Ky. L. Rep. 125; Calvert Bank *v.* Katz, 102 Md. 56, 61 Atl. 411; Kensington Nat. Bank *v.* Ware, 32 Pa. Super. Ct. 247.

153. 4. Perry *v.* Britt-Carson Shoe Co., 129 Ga. 560, 59 S. E. 216, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153.

6. Sedalia Third Nat. Bank *v.* Fults, 115 Mo. App. 42, 90 S. W. 755.

Mail Contractors. — Sedalia Third Nat. Bank *v.* Fults, 115 Mo. App. 42, 90 S. W. 755.

Acceptance of Bill by Partner in Firm of Auctioneers Unauthorized. — Wheatley *v.* Smithers, (1906) 2 K. B. 321; *compare,* however, the same case in the Court of Appeal, (1907) 2 K. B. 684.

7. **Sufficiency of Evidence to Show Authorization.** — Sedalia Third Nat. Bank *v.* Fults, 115 Mo. App. 42, 90 S. W. 755.

154. 2. Alley *v.* Bowen-Merrill Co., 76 Ark. 4, 88 S. W. 838, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 154.

8. Alley *v.* Bowen-Merrill Co., 76 Ark. 4, 88 S. W. 838.

9. Lemke *v.* Faustmann, 124 Ill. App. 624.

10. **Power to Execute Chattel Mortgage.** — Odom *v.* Clark, (N. Car. 1908) 60 S. E. 513.

Power to Execute Chattel Mortgage under Wyoming Statute.—Lellman *v.* Mills, 15 Wyo. 149, 87 Pac. 985; Thomas *v.* Schmitz, 15 Wyo. 181, 87 Pac. 996; Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624.

157. 1. Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062; Stone *v.* Fowlkes, 29 App. Cas. (D. C.) 379.

2. Durden *v.* Dekle, 3 Ga. App. 97, 59 S. E. 315.

3. Durden *v.* Dekle, 3 Ga. App. 97, 59 S. E. 315.

159. 1. Cowan *v.* Cunningham, (N. Car. 1907) 59 S. E. 992.

161. 1. Hand Trading Co. *v.* Jones, 129 Ga. 853, 60 S. E. 154; Smallhouse *v.* Morris, (Ky. 1908) 107 S. W. 708; Hatchett *v.* Sunset Brick, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 174.

162. 1. Williamson *v.* Nigh, 58 W. Va. 629, 53 S. E. 124.

2. Lellman *v.* Mills, 15 Wyo. 149, 87 Pac. 985.

163. 3. Dixie Cotton Oil Co. *v.* Morris, 79 Ark. 113, 94 S. W. 933.

4. Van Zuuk *v.* Pothoven, 132 Iowa 19, 109 N. W. 288; New York Fireproof Tenement Assoc. *v.* Stanley, 105 N. Y. App. Div. 432, 94 N. Y. Supp. 160.

164. 1. *In re* Speer, 144 Fed. 912, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 164.

2. *In re* Speer, 144 Fed. 912, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 164.

3. *In re* Speer, 144 Fed. 912, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 164.

Partnership Retaining Payment Cannot Deny Power of Partner to Bind It. — Cashmar-King Supply Co. *v.* Dowd, (N. Car. 1907) 59 S. E. 685.

6. Smallhouse *v.* Morris, (Ky. 1908) 107 S. W. 708; Dockery *v.* Faulkner, (Tex. Civ. App. 1907) 101 S. W. 501.

166. 4. **Question as to Which Firm Liable One of Fact.** — Danks *v.* Park, 1 Can. Sup. Ct. Cas. 200.

9. Barfield *v.* Coker, 73 S. Car. 181, 53 S. E. 170; Thomas *v.* Tucker, (Tex. Civ. App. 1905) 89 S. W. 802; Spokane *v.* Patterson, (Wash. 1907) 89 Pac. 402.

Partners Liable for Torts of Copartnership. — Grissom *v.* Hofins, 39 Wash. 51, 80 Pac. 1002.

167. 3. **Firm Liable for False Imprisonment.** — Barfield *v.* Coker, 73 S. Car. 181, 53 S. E. 170.

168. 6. Tendring Hundred Waterworks Co. *v.* Jones, (1903) 2 Ch. 615, 73 L. J. Ch. 41, 52 W. R. 61; Bartles *v.* Courtney, 6 Indian Ter. 379, 98 S. W. 133; Fox *v.* Clemmons, 99 S. W. 641, 30 Ky. L. Rep. 805.

169. 4. Clark *v.* Ball, 34 Colo. 223, 82 Pac. 529; Interurban Constr. Co. *v.* Hayes, 191 Mo. 248, 89 S. W. 927.

5. Fox *v.* Clemmons, 99 S. W. 641, 30 Ky. L. Rep. 805; Oakville *v.* Andrew, 10 Ont. L. Rep. 709.

170. 5. Brandt *v.* Hall, (Ind. App. 1907) 82 N. E. 929.

Liability Joint and Several under N. Y.

Code Civ. Pro., § 1942. — Kaplan *v.* Shapiro, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 606, 103 N. Y. Supp. 922.

171. 6. Interurban Constr. Co. *v.* Hayes, 191 Mo. 248, 89 S. W. 927.

173. 3. Esterbrook *v.* Woods, 192 Mass. 499, 78 N. E. 538.

174. 1. James Reilly Repair, etc., Co. *v.* Gallagher, (Supm. Ct. App. T.) 108 N. Y. Supp. 655.

175. 3. **Promise in Name of New Firm by Partner in Old Firm Not Binding.** — Meinhard *v.* Folsom, 3 Ga. App. 251, 59 S. E. 830.

176. 3. Dixie Cotton Oil Co. *v.* Morris, 79 Ark. 113, 94 S. W. 933; Osborn *v.* Wood, 125 Mo. App. 250, 102 S. W. 580; Harris *v.* Zier, 43 Wash. 573, 86 Pac. 928.

Effect of Agreement Fixing Rights and Liabilities of Retiring Partner. — Schuyler *v.* Cullen, 120 N. Y. App. Div. 637, 105 N. Y. Supp. 544.

177. 2. Smart *v.* Breckinridge Bank, (Ky. 1906) 90 S. W. 5.

4. Smith, etc., Co. *v.* Schmidt, 142 Mich. 1, 105 N. W. 39, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 177.

5. *United States.* — Easton *v.* Wostenholm, (C. C. A.) 137 Fed. 524.

Georgia. — Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430; Mims *v.* Brook, 3 Ga. App. 247, 59 S. E. 711.

Illinois. — Sprague *v.* Keltie Stone Co., 123 Ill. App. 616.

Kentucky. — Smart *v.* Breckinridge Bank, (Ky. 1906) 90 S. W. 5.

Michigan. — Smith, etc., Co. *v.* Schmidt, 142 Mich. 1, 105 N. W. 39, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 177.

Missouri. — Dunham *v.* France, 127 Mo. App. 708, 106 S. W. 1077.

New York. — Akin *v.* Van Wirt, 124 N. Y. App. Div. 83, 108 N. Y. Supp. 327.

Pennsylvania. — Daniel *v.* Lance, 29 Pa. Super. Ct. 454.

Canada. — Oakville *v.* Andrew, 10 Ont. L. Rep. 709.

179. 3. Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430, Mims *v.* Brook, 3 Ga. App. 247, 59 S. E. 711; Sprague *v.* Keltie Stone Co., 123 Ill. App. 616; Miller *v.* Pfeiffer, 168 Ind. 219, 80 N. E. 409; Smart *v.* Breckinridge Bank, (Ky. 1906) 90 S. W. 5; Smith, etc., Co. *v.* Schmidt, 142 Mich. 1, 105 N. W. 39.

Who Are Creditors Entitled to Notice within Meaning of Georgia Statute. — Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430.

Notice to Agent as Notice to Principal. — Mims *v.* Brook, 3 Ga. App. 247, 59 S. E. 711.

180. 2. Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430.

4. Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430; Miller *v.* Pfeiffer, 168 Ind. 219, 80 N. E. 409; Robertson Lumber Co. *v.* Anderson, 96 Minn. 527, 105 N. W. 972.

5. Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430; Smart *v.* Breckinridge Bank, (Ky. 1906) 90 S. W. 5; Robertson Lumber Co. *v.* Anderson, 96 Minn. 527, 105 N. W. 972.

Notice to Agent as Notice to Principal. — Miller *v.* Pfeiffer, 168 Ind. 219, 80 N. E. 409.

6. Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430.

Burden of Proving Notice on Defendant. — Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430; Mims *v.* Brook, 3 Ga. App. 247, 59 S. E. 711.

Sufficiency a Question of Fact. — Robertson Lumber Co. *v.* Anderson, 96 Minn. 527, 105 N. W. 972; Osborn *v.* Wood, 125 Mo. App. 250, 102 S. W. 580.

Notice to Mercantile Agency. — Where a person, relying on a statement made by one to a mercantile agency that he was a partner in a firm, dealt with such firm, the person representing himself as partner is liable as such, although three months before the sale he notified the agency that he had withdrawn from the partnership, as such notice is not sufficient to charge the seller. Drewry-Hughes Co. *v.* McDougall, 145 N. Car. 285, 59 S. E. 73.

7. Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430; Mims *v.* Brook, 3 Ga. App. 247, 59 S. E. 711.

181. 1. Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430; Mims *v.* Brook, 3 Ga. App. 247, 59 S. E. 711; Sprague *v.* Keltie Stone Co., 123 Ill. App. 616.

2. Bank of Commerce *v.* Ada County Abstract Co., 11 Idaho 756, 85 Pac. 919.

183. 1. Frye *v.* Phillips, (Wash. 1907) 89 Pac. 559, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 183; Bank of Commerce *v.* Ada County Abstract Co., 11 Idaho 756, 85 Pac. 919.

New Firm Not Liable in Absence of Agreement. — Bank of Commerce *v.* Ada County Abstract Co., 11 Idaho 756, 85 Pac. 919.

8. Bank of Commerce *v.* Ada County Abstract Co., 11 Idaho 756, 85 Pac. 919.

184. 1. Dean *v.* Collins, 15 N. Dak. 535, 108 N. W. 242.

Effect of Notice to Creditor of Agreement. — Morrisey *v.* Berman, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 586, 94 N. Y. Supp. 596.

7. Moon Bros. Carriage Co. *v.* Devenish, 42 Wash. 415, 85 Pac. 17, *quoting* 22 Am. and Eng. Encyc. of Law (2d ed.) 184; Burdett *v.* Greer, (W. Va. 1908) 60 S. E. 497, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 184.

10. Fish *v.* Seattle First Nat. Bank, 150 Fed. 524, 80 C. C. A. 266; Alexander *v.* McPeck, 189 Mass. 34, 75 N. E. 88.

185. 3. **Sale of Interest as Affecting Accounts between Partners.** — Milloy *v.* Hoyt, 123 Ill. App. 568.

4. Tillis *v.* Folmar, 145 Ala. 176, 39 So. 913; Morrisey *v.* Berman, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 586, 94 N. Y. Supp. 596; Dean *v.* Collins, 15 N. Dak. 535, 108 N. W. 242.

Liability as Partner Continues as to Nonassenting Creditor. — Dean *v.* Collins, 15 N. Dak. 535, 108 N. W. 242.

5. **Effect of Indemnity Agreement by Continuing Partner.** — Price *v.* Parker, (Mass. 1907) 83 N. E. 323.

6. See La Montagne *v.* New York Nat. Banking Assoc. Bank, 183 N. Y. 173, 76 N. E. 33.

186. 3. **Effect of Nonresidence of Some Partners on Application of Rule.** — Fleming *v.* Ross, 225 Ill. 149, 80 N. E. 92, 8 Ann. Cas. 314.

5. Culberson *v.* Alabama Constr. Co., 127 Ga. 599, 56 S. E. 765, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186; Merkley *v.* Gravel Switch Roller Mill Co., (Ky. 1906) 90 S. W. 1059.

6. Culberson *v.* Alabama Constr. Co., 127 Ga. 599, 56 S. E. 765, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 186.

7. Blake *v.* Sargent, 152 Fed. 263; Thorpe *v.* Pennock Mercantile Co., 99 Minn. 22, 108 N. W. 940.

187. 1. Indianola First Nat. Bank *v.* Brubaker, 128 Iowa 587, 105 N. W. 116; Mitchell *v.* Whaley, 92 S. W. 556, 29 Ky. L. Rep. 125.

188. 1. Indianola First Nat. Bank *v.* Brubaker, 128 Iowa 587, 105 N. W. 116.

5. Humes *v.* Higman, 145 Ala. 215, 40 So. 128; Indianola First Nat. Bank *v.* Brubaker, 128 Iowa 587, 105 N. W. 116, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 188.

189. 2. Indianola First Nat. Bank *v.* Brubaker, 128 Iowa 587, 105 N. W. 116.

192. 6. Ault *v.* Bradley, 191 Mo. 709, 90 S. W. 775.

7. Blake *v.* Sargent, 152 Fed. 263; Indianola First Nat. Bank *v.* Brubaker, 128 Iowa 587, 105 N. W. 116; Campbell *v.* J. I. Campbell Co., 117 La. 402, 41 So. 696; Thorpe *v.* Pennock Mercantile Co., 99 Minn. 22, 108 N. W. 940; Ault *v.* Bradley, 191 Mo. 709, 90 S. W. 775; Case *v.* McGill, 69 N. J. Eq. 354, 60 Atl. 569; *In re* Hallock, (County Ct.) 47 Misc. (N. Y.) 571, 96 N. Y. Supp. 105.

194. 1. Blake *v.* Sargent, 152 Fed. 263.

2. Thorpe *v.* Pennock Mercantile Co., 99 Minn. 22, 108 N. W. 940.

3. Thorpe *v.* Pennock Mercantile Co., 99 Minn. 22, 108 N. W. 940.

196. 4. Case *v.* McGill, 69 N. J. Eq. 354, 60 Atl. 569.

7. Thorpe *v.* Pennock Mercantile Co., 99 Minn. 22, 108 N. W. 940.

9. Ault *v.* Bradley, 191 Mo. 709, 90 S. W. 775.

199. 3. McElroy *v.* Allfree, 131 Iowa 518, 108 N. W. 119.

9. Lowenstein *v.* Lowenstein, 114 N. Y. App. Div. 65, 99 N. Y. Supp. 730.

201. 2. *In re* Marx, 106 N. Y. App. Div. 212, 94 N. Y. Supp. 151.

3. **Sufficiency of Evidence to Show Agreement.** — Williams *v.* Brookline, (Mass. 1907) 79 N. E. 779.

202. 4. Meinhard *v.* Folsom, 3 Ga. App. 251, 59 S. E. 830, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 202.

203. 6. Goodfellow *v.* Kelsey, (S. Dak. 1907) 111 N. W. 555.

7. **Ratification by One Partner of Unauthorized Agreement by the Other.** — Lee *v.* Kirby, 80 Ark. 366, 97 S. W. 298.

204. 1. **Construction of Provision in Articles for Dissolution.** — Carmichael *v.* Evans, (1904) 1 Ch. 486, 74 L. J. Ch. 329, 90 L. T. N. S. 573, 20 Times L. Rep. 267.

Construction of Dissolution Agreement. — Parks *v.* Webster, 29 Quebec Super. Ct. 519.

10. Stitt *v.* Rat Portage Lumber Co., 98 Minn. 52, 107 N. W. 824, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 204.

Sufficiency of Evidence to Show Election to Dissolve. — Brady *v.* Powers, 112 N. Y. App. Div. 845, 98 N. Y. Supp. 237.

205. 3. **Where the Partnership Agreement Provides for a Three-months' Notice** before dissolution, it seems that if a partner wrongfully dissolves the partnership without giving the stipulated notice, recovery may be had for the loss of profits during the three months. Edwards *v.* Hale, 129 Ga. 302, 58 S. E. 817.

5. Mitchell *v.* Tonkin, 109 N. Y. App. Div. 165, 95 N. Y. Supp. 669.

206. 5. Price *v.* Middleton, 75 S. Car. 105, 55 S. E. 156.

208. 5. Mitchell *v.* Tonkin, 109 N. Y. App. Div. 165, 95 N. Y. Supp. 669.

Power to Appoint Receiver under Texas Statute. — Rische *v.* Rische, (Tex. Civ. App. 1907) 101 S. W. 849.

Grounds for Appointment of Receiver. — Meyer *v.* Meyer, 116 La. 456, 40 So. 794.

7. **When Appointment of Receiver Warranted.** — Campbell *v.* Rich Oil Co., (Ky. 1906) 96 S. W. 442.

Receiver Not Appointed Where Dissolution Not Sought. — Shubert *v.* Laughlin, 122 N. Y. App. Div. 701, 107 N. Y. Supp. 708.

Appointment of Receiver Pending Dissolution Denied. — Bimberg *v.* Wagenhals, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 13, 102 N. Y. Supp. 925.

209. 2. Jones *v.* Weir, 217 Pa. St. 321, 66 Atl. 550, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209; Peterson *v.* Barrow, (Tex. Civ. App. 1907) 105 S. W. 212.

3. Jones *v.* Weir, 217 Pa. St. 321, 66 Atl. 550, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209.

4. Jones *v.* Weir, 217 Pa. St. 321, 66 Atl. 550, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209; Peterson *v.* Burrow, (Tex. Civ. App. 1907) 105 S. W. 212; Caplen *v.* Cox, (Tex. Civ. App. 1906) 92 S. W. 1048, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209.

Amount Recoverable on Rescission. — Caplen *v.* Cox, (Tex. Civ. App. 1906) 92 S. W. 1048.

5. Jones *v.* Weir, 217 Pa. St. 321, 66 Atl. 550, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209.

7. Cresse *v.* Loper, (N. J. 1907) 65 Atl. 1001.

8. Cresse *v.* Loper, (N. J. 1907) 65 Atl. 1001.

10. A partnership for the cultivation of a plantation is dissolved by the seizure of an undivided interest in the plantation, whereby the partnership is deprived of the control of the plantation. Borah *v.* O'Niell, 116 La. 672, 41 So. 29.

210. 1. Gaddie *v.* Mann, 147 Fed. 960.

Failure to Furnish Share of Expenses Misconduct Warranting Dissolution. — Borah *v.* O'Niell, 116 La. 672, 41 So. 29.

4. Rische *v.* Rische, (Tex. Civ. App. 1907) 101 S. W. 849.

211. 5. *In re* Dunn, 115 La. 1084, 40 So. 466; Bessie *v.* Northern Pac. Ry. Co., 14 N. Dak. 614, 105 N. W. 936, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211; Harris *v.* Zier, 43 Wash. 573, 86 Pac. 928.

214. 6. **Expense of Settling Partnership Accounts as Partnership Liability.**—Swafford *v.* White, (Ky. 1905) 89 S. W. 129.

8. Osborn *v.* Wood, 125 Mo. 250, 102 S. W. 580; Burdett *v.* Greer, (W. Va. 1908) 60 S. E. 497, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 214.

217. 3. Burdett *v.* Greer, (W. Va. 1908) 60 S. E. 497.

Partnership May Sue on Contract. — American Cotton Co. *v.* Whitfield, (Tex. Civ. App. 1905) 88 S. W. 300.

Liability of Partner for Misapplication of Funds by Copartner after Dissolution. — Powell *v.* Roberts, 116 Mo. App. 629, 92 S. W. 752.

5. Bessie *v.* Northern Pac. R. Co., 14 N. Dak. 614, 105 N. W. 936.

7. Burdett *v.* Greer, (W. Va. 1908) 60 S. E. 497, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 217.

218. 5. O'Meara *v.* Ouellet, 28 Quebec Super. Ct. 418.

6. Fiduciary Relation of Liquidating Partner. — Dixon *v.* Paddock, 104 Va. 387, 51 S. E. 841.

220. 1. Consaul *v.* Cummings, 24 App. Cas. (D. C.) 36.

Partner Acting as Receiver. — Davy *v.* Scarth, (1906) 1 Ch. 55.

Expenses of Litigation. — Murphey *v.* Bush, 122 Ga. 715, 50 S. E. 1004.

2. Evans *v.* Silvey, 144 Ala. 398, 42 So. 62; Dickens *v.* Dickens, (Ala. 1908) 45 So. 630; French *v.* Vanatta, 83 Ark. 306, 104 S. W. 141; *In re* Curlee, 118 La. 563, 43 So. 165; Lowenstein *v.* Lowenstein, 114 N. Y. App. Div. 65, 99 N. Y. Supp. 730; Matter of Thieriot, 117 N. Y. App. Div. 686, 102 N. Y. Supp. 952.

3. Dickens *v.* Dickens, (Ala. 1908) 45 So. 630; Harrah *v.* State, 38 Ind. App. 495, 76 N. E. 443, 77 N. E. 747; Meriwether *v.* Quincy, etc., R. Co., (Mo. App. 1908) 107 S. W. 434.

Administration by Administrator When Right Waived by Surviving Partner. — Barnes *v.* Stone, 198 Mo. 471, 95 S. W. 915.

221. 1. Dickens *v.* Dickens, (Ala. 1908) 45 So. 630.

2. Harrah *v.* State, 38 Ind. App. 495, 76 N. E. 443, 77 N. E. 747.

5. Emrich *v.* Heilbrun, 74 Kan. 282, 86 Pac. 145, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221; Meriwether *v.* Quincy, etc., R. Co., (Mo. App. 1908) 107 S. W. 434.

6. *In re* Bourne, (1906) 2 Ch. 427, 6 Ann. Cas. 33.

222. 1. **Power to Continue under Permission.** — McElroy *v.* Whitney, 12 Idaho 512, 88 Pac. 349.

2. McElroy *v.* Whitney, 12 Idaho 512, 88 Pac. 349.

What Expenses May Be Incurred. — *In re* Curlee, 118 La. 563, 43 So. 165.

5. American Bonding Co. *v.* State, (Ind. App. 1907) 82 N. E. 548.

No Power to Pay Individual Debts. — The surviving partner of a commercial partnership liquidating its affairs is without authority to pay out of the partnership funds debts alleged to be due by the deceased individually. *In re* Curlee, 118 La. 563, 43 So. 165.

Right to Prefer Creditors. — American Bonding Co. *v.* State, (Ind. App. 1907) 82 N. E. 548.

223. 2. French *v.* Vanatta, 83 Ark. 306, 104 S. W. 141.

3. *In re* Bourne, (1906) 2 Ch. 427, 6 Ann. Cas. 33.

4. Jackson *v.* Gunton, 218 Pa. St. 275, 67 Atl. 467.

Surviving Partner Cannot Alone Convey Realty. — Anderson *v.* Goodwin, 125 Ga. 663, 54 S. E. 679.

5. American Bonding Co. *v.* State, (Ind. App. 1907) 82 N. E. 548.

224. 1. Evans *v.* Silvey, 144 Ala. 398, 42 So. 62.

8. Flynn *v.* Seale, 2 Cal. App. 665, 84 Pac. 263.

225. 2. Swafford *v.* White, (Ky. 1905) 89 S. W. 129.

Liability on Bond for Paying Unallowed Claims. — State *v.* Shacklett, 115 Mo. App. 715, 91 S. W. 956.

6. Swafford *v.* White, (Ky. 1905) 89 S. W. 129.

9. McElroy *v.* Whitney, 12 Idaho 512, 88 Pac. 349, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 225; *In re* Curlee, 118 La. 563, 43 So. 165; Clausen *v.* Purvogel, 114 N. Y. App. Div. 455, 100 N. Y. Supp. 49.

226. 1. McElroy *v.* Whitney, 12 Idaho 512, 88 Pac. 349, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 226.

2. McElroy *v.* Whitney, 12 Idaho 512, 88 Pac. 349, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 226.

Ground for Allowing. — Condon *v.* Callahan, 115 Tenn. 285, 89 S. W. 400.

5. Marks *v.* Gates, 2 Alaska 519; Madar *v.* Norman, 13 Idaho 585, 92 Pac. 572; Kirchner *v.* Smith, 61 W. Va. 434, 58 S. E. 614.

Grubstake Contract Defined. — Marks *v.* Gates, 2 Alaska 519.

227. 2. **Partnership Not Created by "Grubstake" Contract.** — Costello *v.* Scott, (Nev. 1908) 93 Pac. 1.

6. Kirchner *v.* Smith, 61 W. Va. 434, 58 S. E. 614.

228. 5. Madar *v.* Norman, 13 Idaho 585, 92 Pac. 572.

Joint Interest in Mining Lease as Partnership. — Kirchner *v.* Smith, 61 W. Va. 434, 58 S. E. 614.

Effect of Agreement for Joint Location. — Windmiller *v.* Clarkson, 2 Alaska 298.

Relation Where Title to Location Is in One Partner. — McMahon *v.* Meehan, 2 Alaska 278.

7. Marks *v.* Gates, 2 Alaska 519; Madar *v.* Norman, 13 Idaho 585, 92 Pac. 572.

Actual Working by All of Cotenants Not Essential. — Madar *v.* Norman, 13 Idaho 585, 92 Pac. 572.

8. Thompson *v.* Walsh, 140 Fed. 83.

PARTY.

233. 2. **Party.** — Under a statute requiring the signature of a *party* to a contract for the sale of land, the vendees need not sign. McPheeters *v.* Ronning, 95 Minn. 164, 103 N. W. 889.

Party Accounting. — See Goss Printing Press Co. *v.* Scott, 148 Fed. 393.

PARTY WALLS.

237. 2. Lederer *v.* Colonial Invest. Co., 130 Iowa 157, 106 N. W. 357.

What Is and What Is Not Party Wall. — Kiefer *v.* Dickson, (Ind. App. 1908) 84 N. E. 523.

3. Coggins *v.* Carey, (Md. 1907) 66 Atl. 673, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 237, and supporting also the preceding clause of the text.

To the same effect as Fettretch *v.* Leamy, 9 Bosw. (N. Y.) 510, stated in the original note, is Bellenot *v.* Laube, 104 Va. 842, 52 S. E. 698.

238. 1. Scott *v.* Baird, 145 Mich. 116, 108 N. W. 737, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 237.

3. Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371.

4. Bellenot *v.* Laube, 104 Va. 842, 52 S. E. 698.

6. Consideration Essential to Valid Grant. — Trulock *v.* Parse, 83 Ark. 149, 103 S. W. 166.

Agreement May Grant Certain Rights without Creating Party Wall for All Purposes. — Miller *v.* Stuart, (Md. 1907) 68 Atl. 273.

239. 4. See Trulock *v.* Parse, 83 Ark. 149, 103 S. W. 166.

5. Lederer *v.* Colonial Invest. Co., 130 Iowa 157, 106 N. W. 357.

A Reciprocal Conveyance for the Purpose of Building a Party Wall creates merely an easement. Scottish-American Mortg. Co. *v.* Russell, (S. Dak. 1905) 104 N. W. 607.

240. 2. **May Be Created Only by Contract, by Statute, or by Prescription.** — Kiefer *v.* Dickson, (Ind. App. 1908) 84 N. E. 523.

3. Howell *v.* Goss, 128 Iowa 569, 105 N. W. 61; Pier *v.* Salot, 134 Iowa 357, 111 N. W. 989, *modifying* (Iowa 1906) 107 N. W. 420.

Under the Pennsylvania Statute it has been held that the building of a party wall will not be enjoined even though it involves interference with and possible removal of the adjoining owner's wall. Heron *v.* Houston, 217 Pa. St. 1, 66 Atl. 108.

Statute May Require Walls to Be of Certain Thickness. — U. S. *v.* Ashford, 29 App. Cas. (D. C.) 350.

5. Heron *v.* Houston, 217 Pa. St. 1, 66 Atl. 108.

6. Lederer *v.* Colonial Invest. Co., 130 Iowa 157, 106 N. W. 357; Heron *v.* Houston, 217 Pa. St. 1, 66 Atl. 108.

8. For an Agreement Held to Import a Party Wall, in the sale of an interest in a standing wall, see Coggins *v.* Carey, (Md. 1907) 66 Atl. 673.

241. 3. **Use of Wall Limited by Grant.** — Miller *v.* Stuart, (Md. 1907) 68 Atl. 273.

6. Schwalm *v.* Beardsley, 106 Va. 411, 56 S. E. 135, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 241, and supporting the whole text paragraph.

242. 4. Bright *v.* Morgan, 218 Pa. St. 178, 67 Atl. 58.

6. Bright *v.* Morgan, 218 Pa. St. 178, 67 Atl. 58.

243. 1. Heron *v.* Houston, 217 Pa. St. 1, 66 Atl. 108. And see *supra*, this title, 240. 3

13. **Party Wall Held to Fix Property Line after Sixteen Years.** — Roberts *v.* Fellman Dry Goods Co., (Tex. Civ. App. 1906) 92 S. W. 1060.

244. 6. Schwalm *v.* Beardsley, 106 Va. 411, 56 S. E. 135.

8. Must Not Permit Damage by Clogged Gutters. — Pier *v.* Salot, 134 Iowa 357, 111 N. W. 989, *modifying* (Iowa 1906) 107 N. W. 420.

245. 1. **May Not Extend Beams Beyond Centre of Wall.** — Lederer *v.* Colonial Invest. Co., 130 Iowa 157, 106 N. W. 357.

3. Mathis *v.* Strunk, 73 Kan. 595, 85 Pac. 590; Miller *v.* Stuart, (Md. 1907) 68 Atl. 273.

246. 7. Kiefer *v.* Dickson, (Ind. App. 1908) 84 N. E. 523, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 246, and holding further that the presence of windows is a good indication that the wall is not a party wall.

8. Kiefer *v.* Dickson, (Ind. App. 1908) 84 N. E. 523; Coggins *v.* Carey, (Md. 1907) 66 Atl. 673.

10. Coggins *v.* Carey, (Md. 1907) 66 Atl. 673.

247. 11. Pier *v.* Salot, 134 Iowa 357, 111 N. W. 989, *modifying* (Iowa 1906) 107 N. W. 420.

12. Bellenot *v.* Laube, 104 Va. 842, 52 S. E. 698. *Compare* Miller *v.* Stuart, (Md. 1907) 68 Atl. 273.

Under Statute in Iowa, if the existing wall be not sufficiently strong to permit of being raised, it may be torn down and a new wall built. Howell *v.* Goss, 128 Iowa 569, 105 N. W. 61.

248. 1. **Where Part of the Adjoining Owner's Roof Was Removed,** by consent, for the purpose of raising a party wall, it was held that the removal by itself gave no right of action for damages from water leaking into the building. Rüff *v.* Garvey, 74 Neb. 522, 104 N. W. 1143.

2. Howell *v.* Goss, 128 Iowa 569, 105 N. W. 61.

4. Miller *v.* Stuart, (Md. 1907) 68 Atl. 273.

10. Lederer *v.* Colonial Invest. Co., 130 Iowa 157, 106 N. W. 357 (by statute).

249. 1. **Contra.** — Howell *v.* Goss, 128 Iowa 569, 105 N. W. 61 (under statute); Bellenot *v.* Laube, 104 Va. 842, 52 S. E. 698.

250. 2. *Contra*, Spaulding *v.* Grundy, (Ky. 1907) 104 S. W. 293.

7. Miller *v.* Stuart, (Md. 1907) 68 Atl. 273.

8. Berry *v.* Godfrey, (Mass. 1908) 84 N. E. 304.

251. 1. **Where the Amount Is Fixed by Contract,** it is not necessary for the builder to show that he has paid the contractor who did the work to entitle him to maintain an action for contribution. Watkins *v.* Glas, 5 Cal. App. 68, 89 Pac. 840.

2. *Compare* Berry *v.* Godfrey, (Mass. 1908) 84 N. E. 304, where the driving of nails into a wall was held to give a right to nominal damages.

252. 1. See Jabeles, etc., Confectionery Co. *v.* Brown, 147 Ala. 593, 41 So. 626.

253. 8. Howell *v.* Goss, 128 Iowa 569, 105 N. W. 61.

254. 8. **Where No Rent Has Been Paid,** the statute begins to run from the time of beginning use of the wall. Pier *v.* Salot, 134 Iowa

357, 111 N. W. 989, *modifying* (Iowa 1906) 107 N. W. 420.

9*a*. **Venue — Action for Contribution Is Personal.** — Anaheim Odd Fellows' Hall Assoc. *v.* Mitchell, (Cal. App. 1907) 92 Pac. 331.

10. Bellenot *v.* Laube, 104 Va. 842, 52 S. E. 698 (*obiter*), declaring also that the necessity of rebuilding must be established by expert judgment and that due notice must be given.

255. 4. See Scottish-American Mortg. Co. *v.* Russell, (S. Dak. 1905) 104 N. W. 607.

7. Southworth *v.* Perring, 71 Kan. 755, 81 Pac. 481, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 255, 256, *rehearing denied* (Kan. 1905) 82 Pac. 785; Ferguson *v.* Worrall, (Ky. 1907) 101 S. W. 966, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 255.

9. Ferguson *v.* Worrall, (Ky. 1907) 101 S. W. 966, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 255.

10. Jabeles, etc., Confectionery Co. *v.* Brown, 147 Ala. 593, 41 So. 626; Southworth *v.* Perring, 71 Kan. 755, 81 Pac. 481, *rehearing denied* (Kan. 1905) 82 Pac. 785.

11. Southworth *v.* Perring, 71 Kan. 755, 81 Pac. 481, *rehearing denied* (Kan. 1905) 82 Pac. 785; Hoffman *v.* Dickson, (Wash. 1907) 92 Pac. 272.

256. 3. Crawford *v.* Krollpfeiffer, (Supm. Ct. App. Div.) 107 N. Y. Supp. 891.

6. Percival *v.* Colonial Invest. Co., (Iowa 1908) 115 N. W. 941.

8. Crawford *v.* Krollpfeiffer, (Supm. Ct. App. Div.) 107 N. Y. Supp. 891.

9. Rugg *v.* Lemly, 78 Ark. 65, 93 S. W. 570; Hoffman *v.* Dickson, (Wash. 1907) 92 Pac. 272, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 256.

Agreement Held Not Technically Covenant Running with Land. — Crawford *v.* Krollpfeiffer, (Supm. Ct. App. Div.) 107 N. Y. Supp. 891, even though it contained the express words that it should be construed as running with the land.

257. 5. See Percival *v.* Colonial Invest. Co., (Iowa 1908) 115 N. W. 941.

7. **Agreement to Contribute to Cost of Rebuilding or Repairing Is Incumbrance.** — Oppenheimer *v.* Knepper Realty Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 186, 98 N. Y. Supp. 294.

Party-wall Agreement Not Incumbrance. — Hoffman *v.* Dickson, (Wash. 1907) 92 Pac. 272.

PATENTS.

271. 9. Kuhn *v.* Lock Stub Check Co., 157 Fed. 235.

12. Rubber Tire Wheel Co. *v.* Milwaukee Rubber Works Co., 154 Fed. 358, 83 C. C. A. 376.

272. 9. Westcott Chuck Co. *v.* Oneida Nat. Chuck Co., 122 N. Y. App. Div. 260, 106 N. Y. Supp. 1016.

10. Hartman *v.* John D. Park, etc., Co., 145 Fed. 358.

275. 3. Cameron Septic Tank Co. *v.* Saratoga Springs, 151 Fed. 242.

276. 4. Wagner Typewriter Co. *v.* F. S. Webster Co., 144 Fed. 405; Williams Calk Co. *v.* Kemmerer, 145 Fed. 928, 76 C. C. A. 466.

6. Cameron Septic Tank Co. *v.* Saratoga Springs, 151 Fed. 242.

277. 6. Conroy *v.* Penn Electrical, etc., Co., 155 Fed. 42.

278. 1. Forsyth *v.* Garlock, 142 Fed. 461, 73 C. C. A. 577.

279. 3. Kuhn *v.* Lock Stub Check Co., 157 Fed. 235.

280. 1. *In re* Garrett, 27 App. Cas. (D. C.) 19; *In re* Hayes, 27 App. Cas. (D. C.) 393; *In re* Welch, 28 App. Cas. (D. C.) 362; *In re* Volkmann, 28 App. Cas. (D. C.) 441.

281. 9. *In re* Baker, 26 App. Cas. (D. C.) 363; Smyth Mfg. Co. *v.* Sheridan, 149 Fed. 208, 79 C. C. A. 166.

282. 3. Connors *v.* Ormsby, 148 Fed. 13, 78 C. C. A. 181.

287. 5. Streit *v.* Kaiper, (C. C. A.) 143 Fed. 981.

288. 3. *In re* Hodges, 28 App. Cas. (D. C.) 525; Van Epps *v.* United Box Board, etc., Co., (C. C. A.) 143 Fed. 869.

289. 5. Smyth Mfg. Co. *v.* Sheridan, 149 Fed. 208, 79 C. C. A. 166.

290. 1. Hogan *v.* Westmoreland Specialty Co., 145 Fed. 199; Harder *v.* U. S. Steel Piling Co., 149 Fed. 434; New York Belting, etc., Co. *v.* Sierer, 149 Fed. 756.

3. Houghton *v.* Whitin Mach. Works, 153 Fed. 740, 83 C. C. A. 84; Ajax Metal Co. *v.* Brady Brass Co., 155 Fed. 409; Western Tube Co. *v.* Rainear, 156 Fed. 49.

291. 2. Kelsey Heating Co. *v.* James Spear Stove, etc., Co., 155 Fed. 976; Western Tube Co. *v.* Rainear, 156 Fed. 49.

10. *In re* Thurston, 26 App. Cas. (D. C.) 315; Robins Conveying Belt Co. *v.* American Road Mach. Co., 145 Fed. 923, 76 C. C. A. 461.

292. 2. **One Element Supplanting Three Elements.** — Lambert Hoisting Engine Co. *v.* Lidgerwood Mfg. Co., 154 Fed. 372, 83 S. C. A. 350.

3. Dey Time Register Co. *v.* Syracuse Time Recorder Co., 152 Fed. 440.

293. 2. United Shirt, etc., Co. *v.* Beattie, 149 Fed. 736, 79 C. C. A. 442; Barnes *v.* Lingo, 151 Fed. 59; Consolidated Rubber Tire Co. *v.* Firestone Tire, etc., Co., 151 Fed. 237, 80 C. C. A. 589; Blake, etc., Steam Pump Works *v.* Warren Steam Pump Co., 155 Fed. 285; Maunula *v.* Sunell, 155 Fed. 535; St. Louis Street Flushing Mach. Co. *v.* American Street Flushing Mach. Co., (C. C. A.) 156 Fed. 574.

295. 1. *In re* Hawley, 26 App. Cas. (D. C.) 324; Millett *v.* Allen, 27 App. Cas. (D. C.) 70; American Chocolate Machinery Co. *v.* Helmstetter, (C. C. A.) 142 Fed. 978; Salem Electric Co. *v.* Thomson-Houston Electric Co., (C. C. A.) 144 Fed. 974; Voigtmann *v.* Weis, etc., Cornice Co., 148 Fed. 848, 78 C. C. A. 538.

2. **It Is No Longer Held** that, in order to constitute a valid combination patent, each element must directly co-act upon each of the others to produce the result. Where all are necessary to obtain the desired end, a combination may be implied. Dayton Malleable Iron Co. *v.* Forster, 153 Fed. 201.

296. 1. Baker *v.* F. A. Duncombe Mfg. Co., 146 Fed. 744, 77 C. C. A. 234.

298. 1. General Electric Co. *v.* Bullock

Electric Mfg. Co., 152 Fed. 427, 81 C. C. A. 509.

299. 1. Seeberger *v.* Russel, 26 App. Cas. (D. C.) 344; Robinson *v.* Thresher, 28 App. Cas. (D. C.) 22; Wickers *v.* McKee, 29 App. Cas. (D. C.) 4, 21, 28; Wickers *v.* Albert, 29 App. Cas. (D. C.) 23; Wickers *v.* Upham, 29 App. Cas. (D. C.) 30; Feinberg *v.* Cowan, 29 App. Cas. (D. C.) 80; Expanded Metal Co. *v.* General Fireproofing Co., 157 Fed. 564.

3. Wagner Typewriter Co. *v.* Wyckoff, 151 Fed. 585, 81 C. C. A. 129.

6. Lowrie *v.* Taylor, 27 App. Cas. (D. C.) 522; Burson *v.* Vogel, 29 App. Cas. (D. C.) 388; Brunswick-Balke-Collender Co. *v.* Backus Automatic Pin Setter Co., 153 Fed. 288.

300. 3. O'Connell *v.* Schmidt, 27 App. Cas. (D. C.) 77.

10. New York Belting, etc., Co. *v.* Sierer, 149 Fed. 756; Cameron Septic Tank Co. *v.* Saratoga Springs, 151 Fed. 242.

301. 4. Smyth Mfg. Co. *v.* Sheridan, 144 Fed. 423; American Caramel Co. *v.* Mills, 149 Fed. 743, 79 C. C. A. 449.

8. Kuhn *v.* Lock Stub Check Co., 157 Fed. 235.

303. 4. *In re* Thomson, 26 App. Cas. (D. C.) 419; Robins Conveying Belt Co. *v.* American Road Mach. Co., 145 Fed. 923, 76 C. C. A. 461; Heywood Bros., etc., Co. *v.* Syracuse Rapid Transit R. Co., 152 Fed. 453.

5. *In re* Thurston, 26 App. Cas. (D. C.) 315; *In re* Garrett, 27 App. Cas. (D. C.) 19; Millett *v.* Allen, 27 App. Cas. (D. C.) 70; *In re* Hoey, 28 App. Cas. (D. C.) 416.

304. 2. Voigtmann *v.* Weis, etc., Cornice Co., 148 Fed. 848, 78 C. C. A. 538.

7. U. S. Fastener Co. *v.* Bradley, 149 Fed. 222, 79 C. C. A. 180.

307. 2. Couch *v.* Allen Mfg. Co., (C. C. A.) 140 Fed. 856, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 307.

308. 6. Ajax Metal Co. *v.* Brady Brass Co., 155 Fed. 409; Western Tube Co. *v.* Rainear, 156 Fed. 49.

309. 6. Bryce Bros. Co. *v.* Seneca Glass Co., 140 Fed. 161.

310. 3. American Writing Mach. Co. *v.* Wagner Typewriter Co., 151 Fed. 576, 81 C. C. A. 120.

9. Sherwood *v.* Drewson, 29 App. Cas. (D. C.) 161; American Caramel Co. *v.* Mills, 149 Fed. 743, 79 C. C. A. 449; Conroy *v.* Penn Electrical, etc., Co., 155 Fed. 421.

311. 2. Standard Sanitary Mfg. Co. *v.* J. L. Mott Iron Works, 152 Fed. 635.

312. 1. Richards *v.* Burkholder, 29 App. Cas. (D. C.) 485; Universal Adding Mach. Co. *v.* Comptograph Co., 146 Fed. 981, 77 C. C. A. 227; Buser *v.* Novelty Tufting Mach. Co., 151 Fed. 478, 81 C. C. A. 16; United Shoe Machinery Co. *v.* Greenman, 153 Fed. 283, 82 C. C. A. 581.

4. United Shirt, etc., Co. *v.* Beattie, 149 Fed. 736, 79 C. C. A. 442.

313. 6. Gunn *v.* Bridgeport Brass Co., 148 Fed. 239.

314. 2. *In re* Wickers, 29 App. Cas. (D. C.) 71; Steel Protected Concrete Co. *v.* Central Imp., etc., Co., 155 Fed. 279.

315. 8. Westinghouse Electric, etc., Co. *v.* Electric Appliance Co., 142 Fed. 545.

10. Steiner *v.* Schwarz, 148 Fed. 868.

316. 1. Columbus Chain Co. *v.* Standard Chain Co., 148 Fed. 622, 78 C. C. A. 394.

322. 2. Daylight Glass Mfg. Co. *v.* American Prismatic Light Co., (C. C. A.) 142 Fed. 454.

7. Baker *v.* F. A. Duncombe Mfg. Co., 146 Fed. 744, 77 C. C. A. 234.

323. 5. *Compare* Forsyth *v.* Garlock, 142 Fed. 461, 73 C. C. A. 577.

329. 6. Maunula *v.* Sunell, 155 Fed. 535.

7. Empire Cream Separator Co. *v.* Sears, 157 Fed. 238.

8. Consolidated Rubber Tire Co. *v.* Firestone Tire, etc., Co., 151 Fed. 237, 80 C. C. A. 589.

9. Kuhn *v.* Lock Stub Check Co., 157 Fed. 235.

330. 12. Baker *v.* F. A. Duncombe Mfg. Co., 146 Fed. 744, 77 C. C. A. 234.

331. 4. Sipp Electric, etc., Co. *v.* Atwood-Morrison Co., 142 Fed. 149, 73 C. C. A. 367; Ajax Metal Co. *v.* Brady Brass Co., 155 Fed. 409.

10. United Shirt, etc., Co. *v.* Beattie, 149 Fed. 736, 79 C. C. A. 442.

333. 1. **Appearance Tested by Eyes of Ordinary Man.** — *In re* Schraubstadter, 26 App. Cas. (D. C.) 331.

338. 2. Conroy *v.* Penn Electrical, etc., Co., 155 Fed. 421.

5. National Phonograph Co. *v.* Lambert Co., 142 Fed. 164, 73 C. C. A. 382.

343. 3. Appert *v.* Brownsville Plate Glass Co., 144 Fed. 115.

346. 7. Killeen *v.* Buffalo Furnace Co., 140 Fed. 33.

347. 2. Ball *v.* Flora, 26 App. Cas. (D. C.) 394; Parkes *v.* Lewis, 28 App. Cas. (D. C.) 1.

4. Gilman *v.* Hinson, 26 App. Cas. (D. C.) 409; Anderson *v.* Wells, 27 App. Cas. (D. C.) 115.

348. 4. United Shirt, etc., Co. *v.* Beattie, 149 Fed. 736, 79 C. C. A. 442.

349. 8. Kreag *v.* Geen, 28 App. Cas. (D. C.) 437; Larkin *v.* Richardson, 28 App. Cas. (D. C.) 471; Pardy *v.* J. D. Hooker Co., 148 Fed. 631, 78 C. C. A. 403.

350. 1. Orcutt *v.* McDonald, 27 App. Cas. (D. C.) 228.

351. 2. Quincey Min. Co. *v.* Krause, 151 Fed. 1012, 81 C. C. A. 290.

353. 2. American Lava Co. *v.* Stewart, (C. C. A.) 155 Fed. 731.

6. **Error in Reference to Prior Art.** — Babcock, etc., Co. *v.* North American Dredging Co., 151 Fed. 265.

357. 8. Wold *v.* Thayer, 148 Fed. 227, 78 C. C. A. 350.

364. 4. Cutler-Hammer Mfg. Co. *v.* Union Electric Mfg. Co., 147 Fed. 266.

366. 9. *In re* Duncan, 28 App. Cas. (D. C.) 457.

367. 2. American Lava Co. *v.* Stewart, (C. C. A.) 155 Fed. 731.

370. 11. Lowrie *v.* Taylor, 27 App. Cas. (D. C.) 522; Burson *v.* Vogel, 29 App. Cas. (D. C.) 388.

12. Parkes *v.* Lewis, 28 App. Cas. (D. C.) 1.

15. Sobey *v.* Holsclaw, 28 App. Cas. (D. C.) 65; Johnson *v.* Mueser, 29 App. Cas. (D. C.) 61.

371. 2. Orcutt *v.* McDonald, *27* App. Cas. (D. C.) *228*; Parkes *v.* Lewis, *28* App. Cas. (D. C.) 1.

13. **Irrelevant and Immaterial Matter.** — The practice followed in equity cases whereby all irrelevant and immaterial matter offered by either side must be admitted to the record, has not been adopted by the patent office. Lacroix *v.* Tyberb, 149 Fed. *782*.

372. 2. Lewis *v.* Cronemeyer, *29* App. Cas. (D. C.) 174.

3. Fowler *v.* Dyson, *27* App. Cas. (D. C.) *52*; Orcutt *v.* McDonald, *27* App. Cas. (D. C.) *228*; Cleveland *v.* Wilkin, *27* App. Cas. (D. C.) 311; Shuman *v.* Beall, *27* App. Cas. (D. C.) *324*, *329*; Gibbons *v.* Peller, *28* App. Cas. (D. C.) 530; Munster *v.* Ashworth, *29* App. Cas. (D. C.) 84.

8. Andrews *v.* Nilson, *27* App. Cas. (D. C.) 451.

9. French *v.* Halcomb, *26* App. Cas. (D. C.) 307.

373. 8. *In re* Heroult, *29* App. Cas. (D. C.) 42; Hildreth *v.* Curtis, etc., Co., 157 Fed. *394*.

9. Palmer *v.* Wilcox Mfg. Co., 141 Fed. 378; Laas *v.* Scott, 145 Fed. 195; American Caramel Co. *v.* Mills, 149 Fed. 743, 79 C. C. A. 449; Kelsey Heating Co. *v.* James Spear Stove, etc., Co., 155 Fed. 976.

374. 1. Bauer *v.* Crone, *26* App. Cas. (D. C.) 352; Fowler *v.* McBerty, *27* App. Cas. (D. C.) 41, 46; Orcutt *v.* McDonald, *27* App. Cas. (D. C.) *228*; Turnbull *v.* Curtis, *27* App. Cas. (D. C.) 567; Parkes *v.* Lewis, *28* App. Cas. (D. C.) 1; Wickers *v.* McKee, *29* App. Cas. (D. C.) *4*, *21*, *28*; Johnson *v.* Mueser, *29* App. Cas. (D. C.) 61; Richards *v.* Burkholder, *29* App. Cas. (D. C.) 485.

2. Bourn *v.* Hill, *27* App. Cas. (D. C.) *291*.

6. Automatic Racking Mach. Co. *v.* White Racker Co., 145 Fed. 643.

375. 3. Empire Cream Separator Co. *v.* Sears, 157 Fed. *238*.

5. Kilbourn *v.* Hirner, *29* App. Cas. (D. C.) 54.

376. 1. *In re* Frasch, *27* App. Cas. (D. C.) *25*.

380. 12. Hillard *v.* Fisher Book Typewriter Co., 151 Fed. 34.

383. 6. United Shoe Machinery Co. *v.* Duplessis Shoe Machinery Co., (C. C. A.) 155 Fed. *842*.

8. United Shoe Machinery Co. *v.* Duplessis Shoe Machinery Co., 148 Fed. 31; Thomson-Houston Electric Co. *v.* McLean, 153 Fed. 883, 82 C. C. A. 629.

386. 10. Houghton *v.* Whitin Mach. Works, 153 Fed. 740, 83 C. C. A. 84.

388. 4. *In re* Heroult, *29* App. Cas. (D. C.) 42.

389. 15. *In re* Briede, *27* App. Cas. (D. C.) 298; Milloy Electric Co. *v.* Thompson-Houston Electric Co., 148 Fed. 843, 78 C. C. A. 533; Thomson-Houston Electric Co. *v.* Sterling-Meaker Co., 150 Fed. 589.

390. 3. *In re* Ams, *29* App. Cas. (D. C.) 91.

391. 7. *In re* Hoey, *28* App. Cas. (D. C.) 416.

395. 5. *In re* Heroult, *29* App. Cas. (D. C.) 42.

397. 1. *In re* Heroult, *29* App. Cas. (D. C.) 42.

402. 4. American Electrical Novelty, etc., Co. *v.* Stanley, (C. C. A.) 142 Fed. 754.

403. 7. Mica Insulator Co. *v.* Commercial Mica Co., 157 Fed. 90.

404. 7. O. H. Jewell Filter Co. *v.* Jackson, (C. C. A.) 140 Fed. 340.

405. 2. Electric Candy Mach. Co. *v.* Morris, 156 Fed. *972*.

407. 1. Cincinnati R. Supply Co. *v.* American Hoist, etc., Co., (C. C. A.) 143 Fed. *322*; Dunlap *v.* Willbrandt Surgical Mfg. Co., 151 Fed. *223*, 80 C. C. A. 575; Edison General Electric Co. *v.* Crouse-Hinds Electric Co., 152 Fed. 437, 81 C. C. A. 579; Good Form Mfg. Co. *v.* White, 153 Fed. 759; Universal Brush Co. *v.* Sonn, 154 Fed. 665, 83 C. C. A. *422*.

408. 2. Wagner Typewriter Co. *v.* Wyckoff, 151 Fed. 585, 81 C. C. A. *129*.

4. Barnes *v.* Lingo, 151 Fed. 59.

409. 1. Robins Conveying Belt Co. *v.* American Road Mach. Co., 145 Fed. 923, 76 C. C. A. 461.

410. 2. Kelsey Heating Co. *v.* James Spear Stove, etc., Co., 155 Fed. 976.

3. Williams Calk Co. *v.* Kemmerer, 145 Fed. 928, 76 C. C. A. 466; Smyth Mfg. Co. *v.* Sheridan, 149 Fed. 208, 79 C. C. A. 166; Downes *v.* Teter-Heany Development Co., (C. C. A.) 150 Fed. *122*; Dunlap *v.* Willbrandt Surgical Mfg. Co., 151 Fed. *223*, 80 C. C. A. 575; Dayton Malleable Iron Co. *v.* Forster, 153 Fed. 201; Good Form Mfg. Co. *v.* White, 153 Fed. 759; Ajax Forge Co. *v.* Morden Frog, etc., Works, 156 Fed. 591.

411. 1. Los Angeles Art Organ Co. *v.* Æolian Co., (C. C. A.) 143 Fed. 880; Hillard *v.* Fisher Book Typewriter Co., 151 Fed. 34; Electric Candy Mach. Co. *v.* Morris, 156 Fed. *972*.

2. Eclipse Bicycle Co. *v.* Farrow, 199 U. S. 581, *26* U. S. Sup. Ct. 150; Columbia Wire Co. *v.* Kokomo Steel, etc., Co., (C. C. A.) 143 Fed. 116; Cumming *v.* Baker, (C. C. A.) 144 Fed. 395; Stirling Co. *v.* Rust Boiler Co., 144 Fed. 849; American Can Co. *v.* McGinnis, 156 Fed. 784; Hardison *v.* Brinkman, (C. C. A.) 156 Fed. *962*.

413. 1. Heywood Bros., etc., Co. *v.* Syracuse Rapid Transit R. Co., 152 Fed. 453; St. Louis St. Flushing Mach. Co. *v.* American St. Flushing Mach. Co., (C. C. A.) 156 Fed. 574; Hardison *v.* Brinkman, (C. C. A.) 156 Fed. *962*.

416. 4. Robinson *v.* McCormick, *29* App. Cas. (D. C.) 98, 10 Ann. Cas. 548.

418. 9. Clancy *v.* Troy Belting, etc., Co., 152 Fed. 188.

Acknowledgment Relates Back to Date of Assignment. — Murray Co. *v.* Continental Gin Co., 149 Fed. 989, 79 C. C. A. 499.

11. Shelby Steel Tube Co. *v.* Delaware Seamless Tube Co., 151 Fed. 64, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 418.

424. 3. *Compare* Mississippi Glass Co. *v.* Franzen, (C. C. A.) 143 Fed. 501, 6 Ann. Cas. 707; Wright *v.* Vocalion Organ Co., 148 Fed. 200, 79 C. C. A. 183.

425. 3. Comer *v.* Byars, (Tex. Civ. App. 1905) 89 S. W. 80.

426. 4. Reece Folding Mach. Co. *v.* Fenwick, (C. C. A.) 140 Fed. 287.

429. 2. Aberthaw Constr. Co. *v.* Ransome, 192 Mass. 434, 78 N. E. 485, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 429; Mellor *v.* Carroll, 141 Fed. 992; Wold *v.* Thayer, 148 Fed. 227, 78 C. C. A. 350; Mathews Gravity Carrier Co. *v.* Lister, 154 Fed. 490.

3. Aberthaw Constr. Co. *v.* Ransome, 192 Mass. 434, 78 N. E. 485. *Compare* Siemens-Halske Electric Co. *v.* Duncan Electric Mfg. Co., 142 Fed. 157, 73 C. C. A. 375.

432. 1. Cook *v.* Sterling Electric Co., 150 Fed. 766, 80 C. C. A. 502.

3. Thomson-Houston Electric Co. *v.* Illinois Telephone Constr. Co., 152 Fed. 631, 81 C. C. A. 473; O'Rourke Engineering Constr. Co. *v.* McMullen, 150 Fed. 338.

436. 2. Bowers *v.* Lake Superior Contracting, etc., Co., 149 Fed. 983, 79 C. C. A. 493.

437. 5. New Jersey Patent Co. *v.* Schaefer, 144 Fed. 437.

439. 1. Brazel *v.* Smith, 141 Mich. 628, 104 N. W. 1097.

5. Cummings *v.* Standard Harrow Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 601, 105 N. Y. Supp. 646.

8. **Royalties on Goods Made Pending Appeal.** — Bennett *v.* Iron Clad Mfg. Co., 110 N. Y. App. Div. 443, 96 N. Y. Supp. 968.

440. 6. Strong *v.* Carver Cotton Gin Co., (Mass. 1907) 83 N. E. 328.

12. Strong *v.* Carver Cotton Gin Co., (Mass. 1907) 83 N. E. 328.

443. 1. Sullivan *v.* Compressed Air Renovator, etc., Mfg. Co., 131 Wis. 134, 111 N. W. 73.

446. 2. Allen *v.* Riley, 71 Kan. 378, 80 Pac. 952, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 446; Wood *v.* Carl, 203 U. S. 358, 27 U. S. Sup. Ct. 99, 21 U. S. (L. ed.) 219; Allen *v.* Riley, 203 U. S. 347, 27 U. S. Sup. Ct. 95, 51 U. S. (L. ed.) 216; Nyhart *v.* Kubach, (Kan. 1907) 90 Pac. 796; *In re* Opinion of the Justices, 193 Mass. 605, 81 N. E. 142.

451. 1. Columbia Wire Co. *v.* Kokomo Steel, etc., Co., (C. C. A.) 143 Fed. 116.

452. 1. Ferry-Hallock Co. *v.* Hallock, 142 Fed. 172; Shelby Steel Tube Co. *v.* Delaware Seamless Tube Co., 151 Fed. 64; Maunula *v.* Sunell, 155 Fed. 535.

455. 4. Hillard *v.* Fisher Book Typewriter Co., 151 Fed. 34.

5. Central Foundry Co. *v.* Coughlin, 141 Fed. 91, 72 C. C. A. 93; Wagner Typewriter Co. *v.* Wyckoff, 151 Fed. 585, 81 C. C. A. 129; Dey Time Register Co. *v.* Syracuse Time Recorder Co., 152 Fed. 440; Maunula *v.* Sunell, 155 Fed. [illegible]

459. 1. Rubber Tire Wheel Co. *v.* Milwaukee Rubber Works Co., 154 Fed. 358, 83 C. C. A. 336.

8. Underwood Typewriter Co. *v.* Elliott-Fisher Co., 156 Fed. 588.

13. Benbow-Brammer Mfg. Co. *v.* Heffron-Tanner Co., 144 Fed. 429.

460. 1. Johnson *v.* Foos Mfg. Co., 141 Fed. 73, 72 C. C. A. 105.

461. 3. O'Rourke Engineering Constr. Co. *v.* McMullen, 150 Fed. 338.

4. Morrin *v.* Robert White Engineering Works, (C. C. A.) 143 Fed. 510.

462. 3. Cutler-Hammer Mfg. Co. *v.* Union Electric Mfg. Co., 147 Fed. 266; National Cash Register Co. *v.* Grobet, 153 Fed. 905, 82 C. C. A. 651; Leeds, etc., Co. *v.* Victor Talking Mach. Co., 154 Fed. 58, 83 C. C. A. 170.

4. Cortelyou *v.* Johnson, 145 Fed. 933, 76 C. C. A. 455; A. B. Dick Co. *v.* Henry, 149 Fed. 424; Æolian Co. *v.* Harry H. Juelg Co., (C. C. A.) 155 Fed. 119.

463. 5. International Time Recording Co. *v.* Dey, (C. C. A.) 142 Fed. 736; Nathan *v.* Howard, (C. C. A.) 143 Fed. 889.

6. American Can Co. *v.* McGinnis, 156 Fed. 784.

464. 2. Russell *v.* Winchester Repeating Arms Co., 148 Fed. 388.

4. Ajax Forge Co. *v.* Morden Frog, etc., Works, 156 Fed. 591.

466. 1. Lidgerwood Mfg. Co. *v.* Lambert Hoisting Engine Co., 150 Fed. 364.

468. 8. Dover *v.* Greenwood, 143 Fed. 136; Smyth Mfg. Co. *v.* Sheridan, 144 Fed. 423; Wagner Typewriter Co. *v.* Wyckoff, 151 Fed. 585, 81 C. C. A. 129.

470. 12. American Electrical Novelty, etc., Co. *v.* Stanley, (C. C. A.) 142 Fed. 754.

472. 9. **Action at Law Does Not Lie for Sole Purpose of Recovering Profits.** — Brown *v.* Lanyon, 148 Fed. 838, 78 C. C. A. 528.

473. 3. **Patent Expiring Immediately after Suit Brought.** — Western Electrical Instrument Co. *v.* Vallee Bros. Electrical Co., 145 Fed. 534.

474. 3. Elite Pottery Co. *v.* Dececo Co, 150 Fed. 581, 80 C. C. A. 567.

479. 3. Aberthaw Constr. Co. *v.* Ransome, 192 Mass. 434, 78 N. E. 485, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 479.

480. 1. Moore *v.* Coyne, etc., Mfg. Co., 113 N. Y. App. Div. 52, 98 N. Y. Supp. 892; Clancy *v.* Troy Belting, etc., Co., (C. C. A.) 157 Fed. 554.

484. 7. Western Electric Co. *v.* Robertson, (C. C. A.) 142 Fed. 471.

485. 1. Lorain Steel Co. *v.* New York Switch, etc., Co., 153 Fed. 205.

486. 6. American Graphophone Co. *v.* International Record Co., 155 Fed. 427; Hildreth *v.* Curtis, etc., Co., 157 Fed. 394.

488. 9. *In re* Heroult, 29 App. Cas. (D. C.) 42.

494. 2. Empire Cream Separator Co. *v.* Sears, 157 Fed. 238.

495. 1. Plecker *v.* Poorman, 147 Fed. 528.

2. Maunula *v.* Sunell, 155 Fed. 535.

12. Fox *v.* Knickerbocker Engraving Co., 140 Fed. 714.

The Defendant's Profits and Complainant's Damages Are Distinct from and independent of each other, are governed by different principles, and cannot be said to be the measure of the other in an accounting. Beach *v.* Hatch, 153 Fed. 763.

14. Mast *v.* Superior Drill Co., 154 Fed. 45, 83 C. C. A. 157.

496. 1. Beach *v.* Hatch, 153 Fed. 763; Mast *v.* Superior Drill Co., 154 Fed. 45, 83 C. C. A. 157.

2. Diamond Stone Sawing Mach. Co. *v.* Brown, 155 Fed. 753.

497. 4. McCune *v.* Baltimore, etc., R. Co., 151 Fed. 63, 83 C. C. A. 175.

500. 6. Diamond Stone Sawing Mach. Co. *v.* Brown, 155 Fed. 753.

502. 8. Canda *v.* Michigan Malleable Iron Co., 152 Fed. 178, 81 C. C. A. 420.

503. 2. Westinghouse *v.* New York Air Brake Co., (C. C. A.) 140 Fed. 545; Force *v.* Sawyer-Boss Mfg. Co., (C. C. A.) 143 Fed. 934; Canda *v.* Michigan Malleable Iron Co., 152 Fed. 178, 81 C. C. A. 420.

504. 3. Mast *v.* Superior Drill Co., 154 Fed. 45, 83 C. C. A. 157.

505. 1. Canda *v.* Michigan Malleable Iron Co., 152 Fed. 178, 81 C. C. A. 420.

PAVE — PAVEMENT — PAVING, ETC.

507. 3. **Curbing Part of Pavement.** — Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701.

PAWN AND PAWNBROKER.

508. 2. **One Who Carries on the Business of Receiving Goods in Pledge** for loans, exacting an interest for those loans, is a pawnbroker. Levison *v.* Boas, 150 Cal. 185, 88 Pac. 825.

The Fact that One Deals in a Particular Class of Goods, or carries on another business in connection, or requires a chattel mortgage or promissory note in connection with the transaction, does not render him the less a pawnbroker. Levison *v.* Boas, 150 Cal. 185, 88 Pac. 825.

A Single Act of Receiving in Pawn has been held to be sufficient to support a conviction for pawnbroking without a license, where the act was in the regular course of business. Levison *v.* Boas, 150 Cal. 185, 88 Pac. 825; Com. *v.* Schwartz, (Mass. 1908) 83 N. E. 326.

509. 1. Levison *v.* Boas, 150 Cal. 185, 88 Pac. 825.

California Statute — Requisites of Receipt Delivered to Pledgee. — See Levison *v.* Boas, 150 Cal. 185, 88 Pac. 825.

3. Levison *v.* Boas, 150 Cal. 185, 88 Pac. 825.

4. Harrison *v.* People, 121 Ill. App. 189; Levison *v.* Boas, 150 Cal. 185, 88 Pac. 825.

Mere Clerk Not Liable for Failure to Report. — Schane *v.* Atlanta, 127 Ga. 36, 56 S. E. 1.

5. **California Statute — Taking in Excess of Ten Per Cent. Misdemeanor.** — Levison *v.* Boas, 150 Cal. 185, 88 Pac. 825.

6. **No Lien on Property Wrongfully Pawned by Special Agent.** — Collateral Loan Co. *v.* Sallinger, (Mass. 1907) 80 N. E. 811.

510. 2. **No Recovery of Money Loaned on Return of Property Wrongfully Pledged.** — Collateral Loan Co. *v.* Sallinger, (Mass. 1907) 80 N. E. 811.

PAY — PAYABLE — PAID.

511. 1. **Pay Proper and Pay of Army Officers.** — In construing the federal statute providing for compensation for officers in the United States army, the court said: "The words '*pay* proper' we see no reason to think are to be construed differently from the word *pay*. The term means compensation, which may properly be described or designated as *pay*, as distinguished from allowances, commutations for rations, or other methods of compensation not specifically described as *pay*. U. S. *v.* Mills, 197 U. S. 223, 38 Ct. Cl. 87.

PAYMENT.

517. 1. White *v.* Black, 115 Mo. App. 28, 90 S. W. 1153; Persons *v.* Gardner, 122 N. Y. App. Div. 167, 106 N. Y. Supp. 616; Steel *v.* Island Milling Co., 47 Oregon 297, 83 Pac. 783, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 517.

518. 3. Good *v.* Central Coal, etc., Co., (Indian Ter. 1907) 104 S. W. 613.

4. Brown *v.* Grady, (Wyo. 1907) 92 Pac. 622.

7. Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13.

519. 2. Hayne *v.* Van Epps, 114 N. Y. App. Div. 278, 99 N. Y. Supp. 772.

522. 8. Robb *v.* Gow, Sc. Ct. Sess. 8 F. 9. If the agent receives the money on the check the payment is good. Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13.

11. Dunnett *v.* Gibson, 78 Vt. 439, 63 Atl. 141.

530. 3. Bradley *v.* Lehigh Valley R. Co., 153 Fed. 350, 82 C. C. A. 426.

531. 2. Trinity County Bank *v.* Haas, 151 Cal. 553, 91 Pac. 385.

533. 7. **Right of Creditor to Require Payment at Bank.** — Shrewsbury *v.* Shrewsbury, 23 Times L. Rep. 277.

534. 7. Gaar *v.* Taylor, 128 Iowa 636, 105 N. W. 125.

537. 1. McGlew *v.* McDade, 146 Cal. 553, 80 Pac. 695.

Payment of Another's Taxes. — Mitchell *v.* Danielson, 38 Colo. 63, 89 Pac. 823.

2. Hathaway *v.* Delaware County, 103 N. Y. App. Div. 179, 93 N. Y. Supp. 436; Sire *v.* Long Acre Square Bldg. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 29, 100 N. Y. Supp. 307; Friedlander *v.* Lehman, (Supm. Ct. App. T.) 101 N. Y. Supp. 252; Sheldon Canal Co. *v.* Miller, (Tex. Civ. App. 1905) 90 S. W. 206.

Payment of Another's Taxes. — Bateson *v.* Phelps, 145 Mich. 605, 108 N. W. 1079.

4. Craig *v.* Dowie, 4 Cal. App. 176, 87 Pac. 250; Foster *v.* Gordon, 96 Minn. 142, 104 N. W. 765; Locker *v.* Knechtmeister, 120 Mo. App. 701, 98 S. W. 92; Donovan-McCormick Co. *v.* Sparr, 34 Mont. 237, 85 Pac. 1029; Menasha Wooden Ware Co. *v.* Nelson, 45 Wash. 543, 88 Pac. 1018.

538. 1. Shreve *v.* McGowin, 143 Ala. 665, 42 So. 94.

7. Tucker *v.* Denton, (Ky. 1907) 106 S. W. 280.

8. Enscoe *v.* Fletcher, 1 Cal. App. 659, 82 Pac. 1075 (payment by joint debtor); Fry *v.* Talbott, (Md. 1907) 66 Atl. 664; Interurban Constr. Co. *v.* Hayes, 191 Mo. 248, 89 S. W. 927.

539. 1. **Porto Rican Contracts.** — Construction of contract in view of Act of Congress April 12, 1900, fixing rate for payment in United States money. Serralles *v.* Esbri, 200 U. S. 103, 26 U. S. Sup. Ct. 176.

8. Hill *v.* Fuller, 188 Mass. 195, 74 N. E. 361; Brockman *v.* Otsdiek, (Neb. 1907) 113 N. W. 529.

543. 7. Harris *v.* Sheffel, 117 Mo. App. 514, 94 S. W. 738.

550. 5. Kinard *v.* Sylvester First Nat. Bank, 125 Ga. 228, 53 S. E. 1018; Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 550; Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

555. 1. *United States.* — Farmers' L. & T. Co. *v.* Madison Mfg. Co., 153 Fed. 310.

Alabama. — Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855.

Arkansas. — Daniel *v.* Gordy, 84 Ark. 218, 105 S. W. 256.

California. — Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754.

Iowa. — Griffin *v.* Erskine, 131 Iowa 444, 109 N. W. 13.

Kentucky. — Crenshaw *v.* Duff, 103 S. W. 287, 31 Ky. L. Rep. 773.

Massachusetts. — Moore *v.* Jacobs, 190 Mass. 424, 76 N. E. 1041.

Nebraska. — Jones *v.* Danforth, 71 Neb. 732, 99 N. W. 495, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555.

New York. — Hilderbrandt *v.* Fallot, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 615, 92 N. Y. Supp. 804; St. Albans Beef Co. *v.* Aldridge, 112 N. Y. App. Div. 803, 99 N. Y. Supp. 398; Hoar *v.* Union Mut. L. Ins. Co., 118 N. Y. App. Div. 416, 103 N. Y. Supp. 1059.

Pennsylvania. — Philadelphia *v.* Neill, etc., Sav., etc., Co., 211 Pa. St. 353, 60 Atl. 1033; Hummelstown Brownstone Co. *v.* Knerr, 25 Pa. Super. Ct. 465; Adair *v.* Decker, 34 Pa. Super. Ct. 153.

557. 1. Spiro *v.* Maiman, (Supm. Ct. App. T.) 94 N. Y. Supp. 358.

559. 2. McLean *v.* Griot, 118 N. Y. App. Div. 100, 103 N. Y. Supp. 129.

3. American Malting Co. *v.* Souther Brewing Co., 194 Mass. 89, 80 N. E. 526.

561. 1. McLean *v.* Griot, 118 N. Y. App. Div. 100, 103 N. Y. Supp. 129; Belknap *v.* Billings, 78 Vt. 214, 62 Atl. 56.

562. 2. Crow *v.* Burgin, (Miss. 1905) 38 So. 625.

566. 4. Taylor *v.* Wahl, 72 N. J. L. 10, 60 Atl. 63. But see Hilderbrandt *v.* Fallot, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 615, 92 N. Y. Supp. 804 (want of consideration for extension); Hummelstown Brownstone Co. *v.* Knerr, 25 Pa. Super. Ct. 465, *following* Buck *v.* Wilson, 113 Pa. St. 423.

567. 2. McLean *v.* Griot, 118 N. Y. App. Div. 100, 103 N. Y. Supp. 129.

3. Moore *v.* Jacobs, 190 Mass. 424, 76 N. E. 1041.

4. Where a creditor receiving a check from his debtor proceeds to have the check certified it amounts to a payment to the extent thereof. St. Regis Paper Co. *v.* Tonawanda Board, etc., Co., 107 N. Y. App. Div. 90, 94 N. Y. Supp. 946; Dunn *v.* Whalen, 120 N. Y. App. Div. 729, 105 N. Y. Supp. 588.

570. 1. *United States.* — Pflueger *v.* Lewis Foundry, etc., Co., 134 Fed. 28, 67 C. C. A. 102.

Arkansas. — Sharp *v.* E. Nathan Mercantile Co., 75 Ark. 556, 88 S. W. 305.

Iowa. — Dille *v.* White, 132 Iowa 327, 109 N. W. 909.

Kansas. — Chapple *v.* Kansas Vitrified Brick Co., 70 Kan. 723, 79 Pac. 666; Inter-State Nat. Bank *v.* Ringo, 72 Kan. 122, 83 Pac. 119, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 572.

Mississippi. — Citizens' Bank *v.* Kretschmar, (Miss. 1907) 44 So. 932, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 569.

Wisconsin. — Jacobson *v.* Bentzler, 127 Wis. 568, 107 N. W. 7, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 569.

571. 2. Rines *v.* New York, etc., Brewing Co., (Supm. Ct. App. T.) 45 Misc. (N. Y.) 415, 90 N. Y. Supp. 362.

3. Baughman *v.* Lowe, (Ind. App. 1908) 83 N. E. 255. See also Citizens' Bank *v.* Kretschmar, (Miss. 1907) 44 So. 930.

4. Cochran *v.* Slomkowski, 29 Pa. Super. Ct. 385.

572. 4. Inter-state Nat. Bank *v.* Ringo, 72 Kan. 122, 83 Pac. 119, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 569.

5. Inter-state Nat. Bank *v.* Ringo, 72 Kan. 123, 83 Pac. 119, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 572.

7. Conde *v.* Dreisam Gold Min. Co., 3 Cal. App. 583, 86 Pac. 825; R. H. Herron Co. *v.* Mawby, 5 Cal. App. 39, 89 Pac. 872; Noble *v.* Doughten, 72 Kan. 336, 83 Pac. 1048, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 572; Manitoba Mortg., etc., Co. *v.* Weiss, 18 S. Dak. 459, 101 N. W. 37. See also Sharp *v.* E. Nathan Mercantile Co., 75 Ark. 556, 88 S. W. 305.

573. 1. Lester-Whitney Shoe Co. *v.* Oliver Co., 1 Ga. App. 244, 58 S. E. 212.

2. Langridge *v.* Dauenhauer, (La. 1908) 45 So. 387, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 573; Upson *v.* Mt. Morris Bank, 103 N. Y. App. Div. 367, 92 N. Y. Supp. 1101; Jacobson *v.* Bentzler, 127 Wis. 566, 107 N. W. 7.

576. 3. Riddle *v.* McLester-Van Hoose Co., 145 Ala. 312, 40 So. 101, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576; Meyer *v.* Johnson, 122 Ill. App. 87, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576.

578. 3. Millhiser *v.* Leatherwood, 140 N. Car. 231, 52 S. E. 782.

579. 2. Iowa-Minnesota Land Co. *v.* Conner, (Iowa 1907) 112 N. W. 820.

582. 2. Devencenzi *v.* Cassinelli, 28 Nev. 232, 81 Pac. 41, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 582.

583. 1. Decker *v.* Laws, 74 Ark. 286, 85 S. W. 425; Connelly *v.* Sullivan, 119 Ill. App. 460.

2. Fitzgerald *v.* Coleman, 114 Ill. App. 25; Hartford L. Ins. Co. *v.* Sherman, 123 Ill. App. 202; Reikes *v.* Sullivan, (Supm. Ct. App. T.) 99 N. Y. Supp. 318; *In re* McPherran, 212 Pa. St. 425, 61 Atl. 954; Brodhead *v.* Pullman Ventilator Co., 29 Pa. Super. Ct. 19.

585. 4. Lewis *v.* England, 14 Wyo. 128, 82 Pac. 869.

7. Boothe *v.* Scriber, 48 Oregon 561, 87 Pac. 887, *judgment affirmed* on rehearing 48 Oregon 568, 90 Pac. 1002.

586. 5. Coulter *v.* Goulding, 98 Minn. 68, 8 Ann. Cas. 778, 107 N. W. 823.

6. Hasper *v.* Wietcamp, 167 Ind. 371, 79 N. E. 191.

587. 3. *California.* — Sanguinetti *v.* Pelligrini, 2 Cal. App. 294, 83 Pac. 293.

Florida. — International Harvester Co. *v.* Smith, 51 Fla. 220, 40 So. 840.

Illinois. — Robinson *v.* Bailey, 113 Ill. App. 123; Lasswell *v.* Gahan, 122 Ill. App. 513.

Kentucky. — Tom's Creek Coal Co. *v.* Skeene, 90 S. W. 993, 28 Ky. L. Rep. 962.

Louisiana. — Houeye *v.* Henkel, 115 La. 1066, 40 So. 460. But see Kuhn *v.* Bercher, 114 La. 602, 38 So. 468.

Maine. — Putnam *v.* Grant, 101 Me. 240, 63 Atl. 816.

Massachusetts. — Temple *v.* Hughes, 193 Mass. 297, 79 N. E. 482.

New York. — Schuchman *v.* Hochstim, (Supm. Ct. App. T.) 104 N. Y. Supp. 374.

Pennsylvania. — Miller's Estate, 33 Pa. Super. Ct. 20.

Wisconsin. — *In re* Marx, (Wis. 1907) 111 N. W. 1103; Bossi *v.* Baehr, (Wis. 1907) 113 N. W. 433.

588. 4. Murto *v.* Lemon, 19 Colo. App. 316, 75 Pac. 160, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 588.

591. 5. Luther *v.* Crawford, 116 Ill. App. 351.

592. 1. *In re* De Haven, 215 Pa. St. 549, 64 Atl. 779 (discharge of ground rent).

3. **Certificate of Deposit.** — Rosenstock *v.* Dessar, 109 N. Y. App. Div. 10, 95 N. Y. Supp. 1064.

594. 1. Berger *v.* Waldbaum, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 4, 93 N. Y. Supp. 352.

2. Doty *v.* Jameson, 93 S. W. 638, 29 Ky. L. Rep. 507.

3. Mathews *v.* Kelly, 70 N. J. Eq. 796, 67 Atl. 1075.

597. 3. Love *v.* Love, 72 Kan. 658, 83 Pac. 201.

598. 1. People *v.* Freeman, 110 N. Y. App. Div. 605, 97 N. Y. Supp. 343; O'Hara *v.* Corr, 210 Pa. St. 341, 59 Atl. 1099; Allison *v.* Wood, 104 Va. 765, 52 S. E. 559.

599. 5. Luther *v.* Crawford, 116 Ill. App. 351.

601. 8. O'Hara *v.* Corr, 210 Pa. St. 341, 59 Atl. 1099.

603. 8. Cobb *v.* Houston, 117 Mo. App. 645, 94 S. W. 299 (statutory presumption).

605. 5. Allison *v.* Wood, 104 Va. 765, 52 S. E. 559, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

606. 1. Outlaw *v.* Garner, 139 N. Car. 190, 51 S. E. 925.

5. Downs *v.* Downs, (Iowa 1905) 102 N. W. 431.

607. 1. Downs *v.* Downs, (Iowa 1905) 102 N. W. 431.

609. 3. *England.* — Finck *v.* Tranter, (1905) 1 K. B. 427, 74 L. J. K. B. 345, 92 L. T. N. S. 297.

United States. — Knudson-Ferguson Fruit Co. *v.* Chicago, etc., R. Co., 149 Fed. 973, 79 C. C. A. 483.

Arkansas. — Connerly *v.* Inman, 79 Ark. 629, 95 S. W. 138.

California. — Maskey *v.* Lackmann, 146 Cal. 777, 81 Pac. 115.

Georgia. — Strange *v.* Franklin, 126 Ga. 715, 55 S. E. 943.

Iowa. — New York L. Ins. Co. *v.* Chittenden, 134 Iowa 613, 112 N. W. 96; Kellenberger *v.* Oskaloosa Nat. Bldg., etc., Assoc., 129 Iowa 582, 105 N. W. 836; Carter *v.* Iowa State Business Men's Bldg., etc., Assoc., (Iowa 1907) 112 N. W. 828.

Kentucky. — Morrison *v.* Payton, 104 S. W. 685, 31 Ky. L. Rep. 992.

Maine. — Ash *v.* McLellan, 101 Me. 17, 62 Atl. 598.

Michigan. — Bateson *v.* Phelps, 145 Mich. 605, 108 N. W. 1079.

Missouri. — American Brewing Co. *v.* St. Louis, 187 Mo. 367, 2 Ann. Cas. 821, 86 S. W. 129, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 609.

New York. — Consolidated Fruit Jar Co. *v.* Wisner, 103 N. Y. App. Div. 453, 93 N. Y. Supp., 128; Seymour *v.* Warren, (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 316, 93 N. Y. Supp. 651; Herald Square Cloak, etc., Co. *v.* Rocca, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 650, 96 N. Y. Supp. 189; Buck *v.* Houghtaling, 110 N. Y. App. Div. 52, 96 N. Y. Supp. 1034; F. H. Mills Co. *v.* State, 110 N. Y. App. Div. 843, 97 N. Y. Supp. 676; Clausen *v.* Puvogel, 114 N. Y. App. Div. 455, 100 N. Y. Supp. 49.

Pennsylvania. — Oliver *v.* Bredl, 25 Pa. Super. Ct. 653.

South Dakota. — C. & J. Michel Brewing Co. *v.* State, 19 S. Dak. 309, 103 N. W. 40, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 609.

Texas. — Gaither *v.* Lindsey, 37 Tex. Civ. App. 149, 83 S. W. 225; First State Bank *v.* Barnett, (Tex. Civ. App. 1907) 106 S. W. 182.

Wisconsin. — Shirley *v.* Waukesha, 124 Wis. 242, 102 N. W. 576, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 609.

Voluntary Payments by a Public Officer of Public Funds are to be distinguished from voluntary payments by an individual and are recoverable. State *v.* Young, 134 Iowa 505, 110 N. W. 292.

612. 1. People *v.* New York Bldg. Loan Banking Co., (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 4, 90 N. Y. Supp. 809 (payment to receiver).

8. Consolidated Fruit Jar Co. *v.* Wisner, 110 N. Y. App. Div. 99, 97 N. Y. Supp. 52.

10. Chicago *v.* Northwestern Mut. L. Ins. Co., 120 Ill. App. 497; C. & J. Michel Brewing Co. *v.* State, 19 S. Dak. 309, 103 N. W. 40, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 612; Chicago *v.* Malkan, 119 Ill. App. 542.

613. 3. American Brewing Co. *v.* St. Louis, 187 Mo. 367, 2 Ann. Cas. 821, 86 S. W. 129, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 613.

4. American Brewing Co. *v.* St. Louis, 187 Mo. 379, 2 Ann. Cas. 821, 86 S. W. 129, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 613.

614. 1. Steffen *v.* State, 19 S. Dak. 317, 103 N. W. 44, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 614.

615. 2. Paulson *v.* Barger, 132 Iowa 547, 109 N. W. 1081; Ash *v.* McLellan, 101 Me. 17, 62 Atl. 598; C. & J. Michel Brewing Co. *v.* State, 19 S. Dak. 302, 103 N. W. 40.

3. Foster *v.* Central Nat. Bank, (Supm. Ct. Tr. T.) 93 N. Y. Supp. 603.

616. 8. Southern R. Co. *v.* Florence, 141 Ala. 496, 37 So. 844, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 616.

617. 5. Southwestern Alabama R. Co. *v.* Maddox, 146 Ala. 539, 41 So. 9, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 617.

618. 6. Rowland *v.* Watson, 4 Cal. App. 476, 88 Pac. 495; Teeter *v.* Veitch, (N. J. 1905) 61 Atl. 14.

8. Wheeler *v.* Plumas County, 149 Cal. 787, 87 Pac. 802, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; White *v.* Tifton, 1 Ga. App. 569, 57 S. E. 1039, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618.

619. 3. Lewis *v.* San Francisco, 2 Cal. App. 112, 82 Pac. 1106, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 619; Trower *v.* San Francisco, (Cal. 1907) 92 Pac. 1025 (payment exacted under unconstitutional statute).

8. Seattle Brewing, etc., Co. *v.* Campbell, 17 Hawaii 364, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 612 *et seq.* (payment of license fee by foreign corporation); Chicago *v.* Northwestern Mut. L. Ins. Co., 218 Ill. 40, 75 N. E. 803 (payment of water rates to prevent shutting off of water); Chicago *v.* Northwestern Mut. L. Ins. Co., 120 Ill. App. 497 (payment of water rents under threat of shutting off water); American Brewing Co. *v.* St. Louis, 187 Mo. 367, 2 Ann. Cas. 821, 86 S. W. 129 (payment of water rates).

Expulsion from Trade Union. — In Fuerst *v.* Musical Mut. Protective Union, (N. Y. City Ct. Tr. T.) 95 N. Y. Supp. 155, the payment of an illegal fine imposed by a trade union upon a member under threat of expulsion from the union and fear of inability to secure further employment was held payment under duress and recoverable.

621. 2. **Civil Right — Payment Required by Unconstitutional Statute as Prerequisite to Right to Vote** held recoverable. Johnson *v.* Grand Forks County, (N. Dak. 1907) 113 N. W. 1071.

4. Buck *v.* Houghtaling, 110 N. Y. App. Div. 52, 96 N. Y. Supp. 1034.

10. *England.* — Continental Caoutchouc, etc., Co. *v.* Kleinwort, 90 L. T. N. S. 474, 52 W. R. 489, 9 Com. Cas. (Eng.) 240, 20 Times L. Rep. 403.

Georgia. — Sheppard *v.* Lang, 122 Ga. 607, 50 S. E. 371.

Iowa. — New York L. Ins. Co. *v.* Chittenden, 134 Iowa 613, 112 N. W. 96; Johnson *v.* Saum, (Iowa 1908) 114 N. W. 618.

Kentucky. — Tucker *v.* Denton, (Ky. 1907) 106 S. W. 280.

Massachusetts. — Moors *v.* Bird, 190 Mass. 400, 77 N. E. 643.

Michigan. — Truax *v.* Bliss, 139 Mich. 153, 102 N. W. 635; Stowell *v.* Ames, 148 Mich. 439, 111 N. W. 1070.

New Jersey. — Egan *v.* Abbett, (N. J. 1906) 64 Atl. 991.

New York. — Hudson River Water Power Co. *v.* Glens Falls Portland Cement Co., 107 N. Y. App. Div. 548, 95 N. Y. Supp. 421; Armour Packing Co. *v.* Edison Electric Illuminating Co., 115 N. Y. App. Div. 51, 100 N. Y. Supp. 605; Kessler *v.* Herklotz, 115 N. Y. App. Div. 522, 101 N. Y. Supp. 418.

Oregon. — Scott *v.* Ford, 45 Oregon 531, 78 Pac. 742, *rehearing denied* 45 Oregon 550, 80 Pac. 899; Thorsen *v.* Hooper, (Oregon 1908) 93 Pac. 361.

Pennsylvania. — Dotterer *v.* Scott, 29 Pa. Super. Ct. 553.

624. 5. German Security Bank *v.* Columbia Finance, etc., Co., 85 S. W. 761, 27 Ky. L. Rep. 581; Hathaway *v.* Delaware County, 185 N. Y. 368, 78 N. E. 153.

625. 5. Drainage Commission *v.* National Contracting Co., 136 Fed. 780 (*Louisiana* law); Hathaway *v.* Delaware County, 185 N. Y. 368, 78 N. E. 153.

Though the payor was induced to make the payment through the fraudulent representations of the payee, he may still recover the money paid in an action *ex contractu*. Derk P. Yonkerman Co. *v.* Charles H. Fuller's Advertising Agency, 135 Fed. 613.

6. Belloff *v.* Dime Sav. Bank, 118 N. Y. App. Div. 20, 103 N. Y. Supp. 273.

7. Cleveland-Cliffs Iron Co. *v.* East Itasca Min. Co., 146 Fed. 232, 76 C. C. A. 598; Consolidated Fruit Jar Co. *v.* Wisner, 103 N. Y. App. Div. 453, 93 N. Y. Supp. 128.

8. Kessler *v.* Herklotz, 190 N. Y. 24, 82 N. E. 739.

626. 1. Dickey County *v.* Hicks, 14 N. Dak. 73, 103 N. W. 423.

627. 11. Lee *v.* Laprade, 106 Va. 601, 56 S. E. 719, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 627; Johnson *v.* Rex, (1904) A. C. 817, 73 L. J. P. C. 113, 91 L. T. N. S. 234, 20 Times L. Rep. 697.

628. 1. Sheppard *v.* Lang, 122 Ga. 607, 50 S. E. 371.

4. German Security Bank *v.* Columbia Finance, etc., Co., 85 S. W. 761, 27 Ky. L. Rep. 581.

6. American Brewing Co. *v.* St. Louis, 187 Mo. 367, 2 Ann. Cas. 821, 86 S. W. 129; Belloff *v.* Dime Sav. Bank, 118 N. Y. App. Div. 20, 103 N. Y. Supp. 273; Metzger *v.* Greiner, 29 Ohio Cir. Ct. 447; Scott *v.* Ford, 45 Oregon 531, 78 Pac. 742, *rehearing denied* 45 Oregon 550, 80 Pac. 899; Thorsen *v.* Hooper, (Oregon 1908) 93 Pac. 361; Bobst *v.* Gring, 32 Pa. Super. Ct. 541.

635. 1. Strange *v.* Franklin, 126 Ga. 715, 55 S. E. 943, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635; Strange *v.* Franklin, 126 Ga. 717, 55 S. E. 943, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635.

5. Chambliss *v.* Hass, 125 Iowa 484, 101 N. W. 153.

636. 5. Horton *v.* Hayden, 74 Neb. 339, 104 N. W. 757.

PEACEABLE POSSESSION.

638. 3. Logan *v.* Meade, (Tex. Civ. App. 1906) 98 S. W. 210.

PEACE OFFICER.

638. 4. **A Chief of Police is a *peace officer*** within *Texas* statute prohibiting the bribery of ***peace officers.*** Lee *v.* State, 47 Tex. Crim. 620, 85 S. W. 804.

PECUNIARY.

638. 7. **Pecuniary Investments.** — Money on deposit with a banker subject to ten days' notice of withdrawal will not pass under a bequest of *pecuniary* investments. *In re* Price, (1905) 2 Ch. 55, 74 L. J. Ch. 437, 93 L. T. N. S. 44, 53 W. R. 600.

PEDIGREE.

640. 1. Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72.

3. Taylor *v.* Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 640; *In re* McClellan, (S. Dak. 1906) 107 N. W. 681.

642. 1. Scheidegger *v.* Terrell, 149 Ala. 338, 43 So. 26; Scott *v.* Herrell, 27 App. Cas. (D. C.) 395; Lanier *v.* Hebard, 123 Ga. 626, 51 S. E. 632; Champion *v.* McCarthy, 228 Ill. 87, 10 Ann. Cas. 517, 81 N. E. 808; Bernards Tp. *v.* Bedminster Tp., 74 N. J. L. 92, 64 Atl. 960; *In re* McClellan, (S. Dak. 1906) 107 N. W. 681.

Relationship Necessary Where Recital Stands Alone but Not Where Made Credible by Supporting Testimony. — Rollins *v.* Atlantic City R. Co., 73 N. J. L. 64, 62 Atl. 929.

Only Slight Proof of Relationship Required. — Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72.

Membership or Intimate Relationship and Opportunity for Knowledge Declared Sufficient. — Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665.

643. 3. Overby *v.* Johnston, (Tex. Civ. App. 1906) 94 S. W. 131.

644. 4. Kirby *v.* Boaz, (Tex. Civ. App. 1905) 91 S. W. 642.

6. Scheidegger *v.* Terrell, 149 Ala. 338, 43 So. 26; Lanier *v.* Hebard, 123 Ga. 626, 51 S. E. 632; Champion *v.* McCarthy, 228 Ill. 87, 10 Ann. Cas. 517, 81 N. E. 808; State *v.* Miller, 71 Kan. 205, 80 Pac. 51, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 644; Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72; *In re* McClellan, (S. Dak. 1906) 107 N. W. 681; Overby *v.* Johnston, (Tex. Civ. App. 1906) 94 S. W. 131.

Declarant Must Be Dead or Testimony Inaccessible. — Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665.

645. 2. Taylor *v.* Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919; *In re* McClellan, (S. Dak. 1906) 107 N. W. 681; Kirby *v.* Boaz, (Tex. Civ. App. 1905) 91 S. W. 642; Overby *v.* Johnston, (Tex. Civ. App. 1906) 94 S. W. 131; Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665.

4. **Self-serving Declarations Inadmissible.** — Kirby *v.* Boaz, (Tex. Civ. App. 1905) 91 S. W. 642.

646. 1. Champion *v.* McCarthy, 228 Ill. 87, 10 Ann. Cas. 517, 81 N. E. 808.

4. Taylor *v.* Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919; *In re* Imboden, 111 Mo. App. 220, 86 S. W. 263; Topper *v.* Perry, 197 Mo. 531, 95 S. W. 203; *In re* Imboden, (Mo. App. 1908) 107 S. W. 400; Bernards Tp. *v.* Bedminster Tp., 74 N. J. L. 92, 64 Atl. 960; Cramsey *v.* Sterling, 111 N. Y. App. Div. 568, 97 N. Y. Supp. 1082.

6. Hoyt *v.* Lightbody, 98 Minn. 189, 108 N. W. 843.

7. *In re* Kelly, (Surrogate Ct.) 46 Misc. (N. Y.) 541, 95 N. Y. Supp. 57.

647. 1. *In re* Fail, (Surrogate Ct.) 56 Misc. (N. Y.) 217, 107 N. Y. Supp. 224; Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665.

Letter Held Insufficient Proof of Heirship under Statute. — Moore *v.* Flack, (Neb. 1906) 108 N. W. 143.

Supposition Incompetent to Prove Heirship. — Keith *v.* Keith, (Tex. Civ. App. 1905) 87 S. W. 384.

Heirship of Persons Not Shown to Be Deceased Not Proven by Recitals in Deed. — Mace *v.* Duffy, 39 Wash. 597, 81 Pac. 1053.

2. Hoyt *v.* Lightbody, 98 Minn. 189, 108 N. W. 843.

3. **Declarations as to Race Admitted.** — Gilliand *v.* Board of Education, 141 N. Car. 482, 54 S. E. 413.

4. Mutual Reserve L. Ins. Co. *v.* Jay, (Tex. Civ. App. 1907) 101 S. W. 545.

5. Levels *v.* St. Louis, etc., R. Co., 196 Mo. 606, 94 S. W. 275; Mutual Reserve L. Ins. Co. *v.* Jay, (Tex. Civ. App. 1907) 101 S. W. 545.

Declaration Not Conclusive. — Maher *v.* Empire L. Ins. Co., 110 N. Y. App. Div. 723, 96 N. Y. Supp. 496.

7. **Application for Insurance Policy Stating Age Admissible.** — Taylor *v.* Grand Lodge, etc., 101 Minn. 72, 111 N. W. 919.

648. 1. Brisbin *v.* Huntington, 128 Iowa 166, 103 N. W. 144; Smith *v.* Fuller, (Iowa 1906) 108 N. W. 765; Hoyt *v.* Lightbody, 98 Minn. 189, 108 N. W. 843; *In re* Imboden, 111 Mo. App. 220, 86 S. W. 263; *In re* Imboden, (Mo. App. 1908) 107 S. W. 400; Sparks *v.* Ross, (N. J. 1907) 65 Atl. 977; *In re* Kelly, (Surrogate Ct.) 46 Misc. (N. Y.) 541, 95 N. Y. Supp. 57; Reaves *v.* Reaves, 15 Okla. 240, 82 Pac. 490; *In re* Thewlis, 217 Pa. St. 307, 66 Atl. 519.

Evidence Received without Objection. — Darling *v.* Dent, 82 Ark. 76, 100 S. W. 747.

2. Middleton *v.* Middleton, 221 Ill. 623, 77 N. E. 1123; Champion *v.* McCarthy, 228 Ill. 87, 10 Ann. Cas. 517, 81 N. E. 808; Stein *v.* Stein, (Ky. 1908) 106 S. W. 860; Sorensen *v.* Sorensen, 68 Neb. 510, 103 N. W. 455; Ortley *v.* Ross, (Neb. 1907) 110 N. W. 982.

Oral Acknowledgment by Intestate Sufficient under Statutes. — Townsend *v.* Meneley, 37 Ind. App. 127, 74 N. E. 274; Miller *v.* Pennington, 218 Ill. 220, 75 N. E. 919; Townsend *v.* Mendeley, 37 Ind. App. 127, 71 N. E. 271, 76 N. E. 321; Daggy *v.* Wells, 38 Ind. App. 27, 76 N. E. 524; Morin *v.* Holliday, 39 Ind. App. 201, 77 N. E. 861; Houghton *v.* Dickinson, (Mass. 1907) 82 N. E. 481; Breidenstein *v.* Bertram, 198 Mo. 358, 95 S. W. 828.

Legitimated Issue Not "Lawful Issue." — Brisbin *v.* Huntington, 128 Iowa 166, 103 N. W. 141.

Legitimation by Statutory Acknowledgment. — Davenport *v.* Davenport, 116 La. 1009, 41 So. 240.

Legitimation by Written Acknowledgment — Instrument Not Necessarily for that Purpose. — *In re* Pederson, 97 Minn. 491, 106 N. W. 958.

Uncorroborated Recitals in Will Insufficient to Sustain Legitimacy. — *In re* Wharton, 218 Pa. St. 296, 67 Atl. 414.

Declarations Acknowledging Paternity Competent Where Legitimating. — *In re* Garr, 31 Utah 57, 86 Pac. 757.

3. Hoyt *v.* Lightbody, 98 Minn. 189, 108 N. W. 843; Kirby *v.* Hayden, (Tex. Civ. App. 1906) 99 S. W. 746.

649. 5. Kirby *v.* Hayden, (Tex. Civ. App. 1906) 99 S. W. 746.

Declaration of Weak-minded Person Knowing and Remembering Relatives and Friends Competent. — Champion *v.* McCarthy, 228 Ill. 87, 10 Ann. Cas. 517, 81 N. E. 808.

650. 2. Scheidegger *v.* Terrell, 149 Ala. 338, 43 So. 26; Bernards Tp. *v.* Bedminster Tp., 74 N. J. L. 92, 64 Atl. 960.

Inadmissible as to Pedigree of Money. — Bispham *v.* Turner, 83 Ark. 331, 103 S. W. 1135.

651. 1. Morgan *v.* Strand, 133 Iowa 299, 110 N. W. 596; Reaves *v.* Reaves, 15 Okla. 240, 82 Pac. 490.

652. 1. Swift *v.* Rennard, 119 Ill. App. 173; State *v.* Hazlett, 14 N. Dak. 490, 105 N. W. 617.

Copy Entry in Irregular Place and Bearing Evidence of Improbability Inadmissible. — Bryant *v.* McKinney, (Ky. 1905) 96 S. W. 809.

4. Finer *v.* Nichols, 122 Mo. App. 497, 99 S. W. 808; Johnston *v.* Hazen, 3 N. Bruns. Eq. Rep. 147; Reaves *v.* Reaves, 15 Okla. 240, 82 Pac. 490.

Certificate of Baptism Admissible — Birth Prior to Baptism Judicially Noticed. — Collins *v.* German-American Mut. L. Assoc., 112 Mo. App. 209, 86 S. W. 891.

Marriage Certificate Not Identifying Parties Insufficient. — Bowman *v.* Little, 101 Md. 273, 61 Atl. 223.

School Register Kept According to Statute Admissible. — Levels *v.* St. Louis, etc., R. Co., 196 Mo. 606, 94 S. W. 275.

United States Census Certificate Admissible as to Age. — Priddy *v.* Boice, 201 Mo. 309, 99 S. W. 1055.

Record of Marriages. — Sparks *v.* Ross, (N. J. 1907) 65 Atl. 977.

Proof Must Be Made of Authority for Keeping Record and if Statutory Code of Civil Procedure Regulates Same in New York. — Pirrung *v.* Supreme Council, etc., 104 N. Y. App. Div. 571, 93 N. Y. Supp. 575.

Foreign Census Returns Defective and at Variance on Inspection Not Admissible. — Maher *v.* Empire L. Ins. Co., 110 N. Y. App. Div. 723, 96 N. Y. Supp. 496.

No Proof of Handwriting or Rule of Church Required. — Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72.

Census Reports Competent as to Facts of Public Nature, Not as to Details Concerning Individuals. — Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201.

United States Census Roll Inadmissible. — Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665.

5. Reaves *v.* Reaves, 15 Okla. 240, 82 Pac. 490.

Secondary Evidence Admissible after Loss. — Moore *v.* Flack, (Neb. 1906) 108 N. W. 143.

653. 2. Travers *v.* Reinhardt, 205 U. S. 423, 27 U. S. Sup. Ct. 563; Phillips *v.* Collinsville Granite Co., 123 Ga. 830, 51 S. E. 667; Brisbin *v.* Huntington, 128 Iowa 166, 103 N. W. 144; Smith *v.* Fuller, (Iowa 1906) 108 N. W. 765; Rollins *v.* Atlantic City R. Co., 73 N. J. L. 64, 62 Atl. 929; Reaves *v.* Reaves, 15 Okla. 240, 82 Pac. 490; *In re* Thewlis, 217 Pa. St. 307, 66 Atl. 519; Brewer *v.* Cochran, (Tex. Civ. App. 1907) 99 S. W. 1033; Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

Possession or Corroborative Circumstances Must Be Shown. — Lanier *v.* Hebard, 123 Ga. 626, 51 S. E. 632.

Recital in Lease Sufficient Where Legitimation Effected by Written Acknowledgment. — *In re* Pederson, 97 Minn. 491, 106 N. W. 958.

Declarant Must Be Proven Member of Family. — Lowenfeld *v.* Ditchett, 114 N. Y. App. Div. 56, 99 N. Y. Supp. 724.

Heirship Not Proven as against Strangers by Recitals in Deeds Executed by Persons Not Shown to Be Deceased. — Mace *v.* Duffy, 39 Wash. 597, 81 Pac. 1053.

3. **Uncorroborated Recital in Will Insufficient to Sustain Legitimacy.** — *In re* Wharton, 219 Pa. St. 296, 67 Atl. 414.

4. **Articles of Separation.** — Bechtel *v.* Barton, 147 Mich. 318, 110 N. W. 935.

5. Bechtel *v.* Barton, 147 Mich. 318, 110 N. W. 935.

Probate Decree in Alaska Determining Heirs Not Binding against Strangers as to Real Property in Washington. — Mace *v.* Duffy, 39 Wash. 597, 81 Pac. 1053.

6. McDonald *v.* White, (Wash. 1907) 89 Pac. 891.

PENDING.

655. 2. **Pending Proceeding.** — A forcible entry is, after service of the notice therein required, a *pending* proceeding. Ellis *v.* Stewart, 123 Ga. 242, 51 S. E. 321.

PENSIONS AND BOUNTIES.

658. 3. Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174, *citing* 26 [22] Am. and Eng. Encyc. of Law (2d ed.) 658.

9. Logue *v.* Fenning, 29 App. Cas. (D. C.) 519.

660. 6. **Police Officers — Pension for Injuries Received in Line of Duty.** — Hutchens *v.* Covert, 39 Ind. App. 382, 78 N. E. 1061.

663. 7. Miller *v.* U. S., (C. C. A.) 136 Fed. 581.

668. 9. Pinson *v.* Sanders, (Ky. 1906) 96 S. W. 444.

Accrued Pension Money Not Liable for Debts of Living Incompetent. — *In re* Strohm, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 481, 101 N. Y. Supp. 688.

669. 11. Leffingwell *v.* Kiersted, (N. J. 1907) 65 Atl. 1029.

670. 2. Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174; Eddy *v.* People, 218 Ill. 611, 75 N. E. 1071; Hutchens *v.* Covert, 39 Ind. App. 382, 78 N. E. 1061; Friel *v.* McAdoo, 181 N. Y. 558, 74 N. E. 1117; People *v.* McAdoo, 184 N. Y. 268, 77 N. E. 17, *affirming* 109 N. Y. App. 892, 96 N. Y. Supp. 868, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 420, 95 N. Y. Supp. 511;

People *v.* Bingham, 113 N. Y. App. Div. 921, 100 N. Y. Supp. 1136; McGann *v.* Harris, 114 Ill App. 308; People *v.* Police Pension Fund Com'rs, 116 Ill. App. 252.

3. Nicols *v.* Police Pension Fund Com'rs, 1 Cal. App. 494, 82 Pac. 557; State *v.* Firemen's Pension, etc., Fund, 117 La. 1071, 42 So. 506; Ramsay *v.* Hayes, 187 N. Y. 367, 80 N. E. 193, *reversing* 112 N. Y. App. Div. 442, 98 N. Y. Supp. 394; Ramsay *v.* Lantry, (Supm. Ct. App. Div.) 107 N. Y. Supp. 828.

State statute creating firemen's pension fund held unconstitutional. Ætna F. Ins. Co. *v.* Jones, 78 S. Car. 445, 59 S. E. 148.

9. Reynolds *v.* U. S., 39 Ct. Cl. 74; Mahan *v.* U. S., 39 Ct. Cl. 97.

672. 1. *In re* Opinion of Justices, 190 Mass. 611, 77 N. E. 820.

PEPPER.

676. 2. **Pepper — Revenue Laws.** — See Frame *v.* U. S., 143 Fed. 692, *affirmed* (C. C. A.) 149 Fed. 1022.

PERIODICAL.

679. 1. **Periodical Payments.** — See Rochester *v.* Le Fanu, (1906) 2 Ch. 513, 75 L. J. Ch. 743.

2. **Revenue Laws.** — See Schmidt *v.* U. S., 150 Fed. 238.

PERJURY.

681. 1. U. S. *v.* Richards, 149 Fed. 443. See also McDonough *v.* State, 47 Tex. Crim. 227, 84 S. W. 594.

Perjury under Federal Statutes. — U. S. *v.* Richards, 149 Fed. 443; Scott *v.* State, 77 Ark. 455, 92 S. W. 241; Goslin *v.* Com., (Ky. 1906) 90 S. W. 223; McDonough *v.* State, 47 Tex. Crim. 227, 84 S. W. 594; Wilson *v.* State, 49 Tex. Crim. 496, 93 S. W. 547, showing the distinction between false swearing and perjury.

6. U. S. *v.* Eddy, 134 Fed. 114; U. S. *v.* Hardison, 135 Fed. 419; Moore *v.* U. S., (C. C. A.) 144 Fed. 962; U. S. *v.* Richards, 149 Fed. 443; U. S. *v.* Brace, 149 Fed. 869.

False Testimony Before Land Office Is Perjury. — Van Gesner *v.* U. S., (C. C. A.) 153 Fed. 46. See also Nurnberger *v.* U. S., (C. C. A.) 156 Fed. 721.

7. See U. S. *v.* Hardison, 135 Fed. 419.

682. 1. Stamper *v.* Com., (Ky. 1907) 100 S. W. 286; State *v.* Coleman, 117 La. 973, 42 So. 471; State *v.* Mercer, 101 Md. 535, 61 Atl. 220; Adams *v.* State, 49 Tex. Crim. 361, 91 S. W. 225; Wilson *v.* State, 49 Tex. Crim. 496, 93 S. W. 547.

7. **False Oath May Be Made Orally or in Writing.** — State *v.* Woolridge, 45 Oregon 389, 78 Pac. 333, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 682.

9. Markey *v.* State, 47 Fla. 38, 37 So. 53.

10. Rex *v.* Lai Ping, 11 British Columbia 102, 8 Can. Crim. Cas. 467.

683. 1. U. S. *v.* Eddy, 134 Fed. 114; U. S. *v.* Brace, 149 Fed. 869; Nurnberger *v.* U. S., (C. C. A.) 156 Fed. 721; Com. *v.* Combs, (Ky. 1907) 101 S. W. 312; State *v.* Mercer, 101 Md. 535, 61 Atl. 220; State *v.* Woolridge, 45 Oregon 389, 78 Pac. 333; Com. *v.* Coakley, (Ky. 1906) 96 S. W. 876 (a case of a contested election, in which the indictment was sustained).

2. Markey *v.* State, 47 Fla. 38, 37 So. 53.

3. State *v.* Harter, 131 Iowa 199, 108 N. W. 232.

5. **The Burden of Proving** that the officer before whom the oath was taken was duly qualified and had jurisdiction is on the prosecution. Com. *v.* Schwieters, (Ky. 1906) 93 S. W. 593.

7. People *v.* Ellenbogen, 186 N. Y. 603, 79 N. E. 1112, *affirming* 114 N. Y. App. Div. 182, 99 N. Y. Supp. 897.

684. 1. State *v.* Pratt, (S. Dak. 1907) 112 N. W. 152.

2. People *v.* Ellenbogen, 186 N. Y. 603, 79 N. E. 1112, *affirming* 114 N. Y. App. Div. 182, 99 N. Y. Supp. 897.

4. Crow *v.* State, 49 Tex. Crim. 103, 90 S. W. 650.

5. **Deputy Superintendent of Elections.** — People *v.* Ellenbogen, 114 N. Y. App. Div. 182, 99 N. Y. Supp. 897, *affirmed* 186 N. Y. 603, 79 N. E. 1112.

Notary Public and Ex-officio Justice of Peace. — U. S. *v.* Hardison, 135 Fed. 419 (a proceeding in the federal court).

7. **Oath Administered on Examination for Discovery.** — Rex *v.* T., 12 British Columbia 223.

9. People *v.* Froehlich, 185 N. Y. 615, 78 N. E. 1108, *affirming* 110 N. Y. App. Div. 873, 96 N. Y. Supp. 488; People *v.* Davis, 122 N. Y. App. Div. 569, 107 N. Y. Supp. 426.

A False Oath Regarding Property to secure acceptance as surety on a replevin bond is perjury. Stamper *v.* Com., (Ky. 1907) 100 S. W. 286.

685. 1. Adams *v.* State, 49 Tex. Crim. 361, 91 S. W. 225.

Where a Defective Information was used on the trial to prove perjury, the accused cannot avail himself of that fact as a defense. Kelley *v.* State, (Tex. Crim. 1907) 103 S. W. 188.

2. Gardner *v.* State, 80 Ark. 264, 97 S. W. 48; State *v.* Mercer, 101 Md. 535, 61 Atl. 220.

3. Boren *v.* U. S., (C. C. A.) 144 Fed. 801; Gardner *v.* State, 80 Ark. 264, 97 S. W. 48; People *v.* Collins, (Cal. App. 1907) 92 Pac. 513; People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 384; Markey *v.* State, 47 Fla. 38, 37 So. 53, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 683.

Jury Not Sworn. — Schooler *v.* State, (Tex. Crim. 1907) 106 S. W. 359.

In Proceedings on a Defective Information, perjury may be committed by a defendant where he has waived the defect. State *v.* Brown, 128 Iowa 24, 102 N. W. 799.

4. People *v.* Ellenbogen, 186 N. Y. 603, 79 N. E. 1112, *affirming* 114 N. Y. App. Div. 182, 99 N. Y. Supp. 897; State *v.* Mercer, 101 Md. 535, 61 Atl. 220; Williams *v.* State, (Tex. Crim. 1906) 96 S. W. 47.

5. Rex *v.* Moraes, 12 Can. Crim. Cas. (British Columbia) 145.

686. 2. Lewis *v.* State, 78 Ark. 567, 94 S. W. 613; State *v.* Dineen, 203 Mo. 628, 102 S. W. 480; People *v.* Davis, 122 N. Y. App. Div. 569, 107 N. Y. Supp. 426; State *v.* Harris, 145 N. Car. 456, 59 S. E. 115; Barton *v.* State, (Tex. Crim. 1906) 95 S. W. 110.

Knowledge of Materiality Not Essential. — State *v.* Sargood, 80 Vt. 415, 68 Atl. 49.

4. Lewis *v.* State, 78 Ark. 567, 94 S. W. 613; People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 389.

Testimony Held Material. — People *v.* Collins, (Cal. App. 1907) 92 Pac. 513.

687. 2. State *v.* Mercer, 101 Md. 535, 61 Atl. 220.

3. State *v.* Brown, 128 Iowa 24, 102 N. W. 799.

6. **"Testimony Which Would Merely Impeach** a witness, concerning facts occurring sixteen years before the witness is being examined, is too remote, and therefore immaterial, and hence not a proper predicate for perjury." Busby *v.* State, 48 Tex. Crim. 83, 86 S. W. 1022.

688. 5. Wilkinson *v.* People, 226 Ill. 135, 80 N. E. 699; State *v.* Brown, 128 Iowa 24, 102 N. W. 799; State *v.* Dineen, 203 Mo. 628, 102 S. W. 480.

9. Askew *v.* State, 3 Ga. App. 79, 59 S. E. 311.

689. 3. State *v.* Smith, 47 Oregon 485, 83 Pac. 865, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689; Rex *v.* Doyle, 12 Can. Crim. Cas. 69.

4. U. S. *v.* Richards, 149 Fed. 443; Smith *v.* Hubbell, 142 Mich. 637, 106 N. W. 547.

5. **Where the Unsound Mental Condition** of the accused, at time of offense, is shown, the same becomes matter of investigation and inquiry. Leaptrot *v.* State, 51 Fla. 57, 40 So. 616.

6. Porter *v.* State, 48 Tex. Crim. 301, 88 S. W. 359.

690. 8. **Application for Civil Service Examination.** — Johnson *v.* U. S., 26 App. Cas. (D. C.) 128.

Application for Marriage License. — Field *v.* State, 29 Ohio Cir. Ct. 302.

691. 3. People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 389.

5. Com. *v.* Bray, (Ky. 1906) 96 S. W. 522.

9. Scott *v.* State, 77 Ark. 455, 92 S. W. 241.

10. State *v.* Horine, 70 Kan. 256, 78 Pac. 411; People *v.* Sturgis, 110 N. Y. App. Div. 1, 96 N. Y. Supp. 1046; People *v.* Ellenbogen, 186 N. Y. 603, 79 N. E. 1112, *affirming* 114 N. Y. App. Div. 182, 99 N. Y. Supp. 897; State *v.* Smith, 47 Oregon 485, 83 Pac. 865; Lamar *v.* State, 49 Tex. Crim. 563, 95 S. W. 509; Weems *v.* State, (Tex. Crim. 1906) 95 S. W. 513.

A Tract Book Kept by the Register of the Land Office was held to be admissible to prove the materiality of false testimony given in an application for locating homesteads under the United States statutes, where the indictment charged subornation of perjury. Nurnberger *v.* U. S., (C. C. A.) 156 Fed. 721.

A Notary's Certificate, together with proof of the signatures of that officer and the affiant, is *prima facie* evidence of the proper execution of an affidavit. Komp *v.* State, 129 Wis. 20, 108 N. W. 46.

692. 1. People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 389; Markey *v.* State, 47 Fla. 38, 37 So. 53; Nance *v.* State, 126 Ga. 95, 54 S. E. 932; Stamper *v.* Com., (Ky. 1907) 100 S. W. 286; State *v.* Pratt, (S. Dak. 1907) 112 N. W. 152; Kelley *v.* State, (Tex. Crim. 1907) 103 S. W. 189; Rex *v.* Drummond, 10 Ont. L. Rep. 516.

693. 2. **Record of Conviction Held Admissible.** — State *v.* Sargood, 80 Vt. 415, 68 Atl. 49.

3. **Witness Must Be Credible.** — State *v.* Pratt, (S. Dak. 1907) 112 N. W. 152.

As to Testimony of Accomplice, see Holmgren *v.* U. S., (C. C. A.) 156 Fed. 439; Leaptrot *v.* State, 51 Fla. 57, 40 So. 616; People *v.* Nichols, 108 N. Y. App. Div. 362, 95 N. Y. Supp. 736; State *v.* Pratt, (S. Dak. 1907) 112 N. W. 152.

4. Holmgren *v.* U. S., (C. C. A.) 156 Fed. 439; Goslin *v.* Com., (Ky. 1906) 90 S. W. 223; Howell *v.* Com., (Ky. 1907) 104 S. W. 685; Hambright *v.* State, 49 Tex. Crim. 162, 91 S. W. 232.

694. 1. Martinatis *v.* People, 223 Ill. 117, 79 N. E. 55; State *v.* Gordon, 196 Mo. 185, 95 S. W. 420.

2. State *v.* Taylor, 202 Mo. 1, 100 S. W. 41.

4. Boren *v.* U. S., (C. C. A.) 144 Fed. 801.

7. Boren *v.* U. S., (C. C. A.) 144 Fed. 801; Cook *v.* U. S., 26 App. Cas. (D. C.) 427, 6 Ann. Cas. 819, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 694; Parham *v.* State, 3 Ga. App. 468, 60 S. E. 123; Goslin *v.* Com., (Ky. 1906) 90 S. W. 223; Howell *v.* Com., (Ky. 1907) 104 S. W. 685; State *v.* Pratt, (S. Dak. 1907) 112 N. W. 152; Foreman *v.* State, 47 Tex. Crim. 179, 85 S. W. 809.

695. 1. People *v.* Smith, 3 Cal. App. 68, 84 Pac. 452; People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 384; Nance *v.* State, 126 Ga. 95, 54 S. E. 932; Stamper *v.* Com., (Ky. 1907) 100 S. W. 286; Billingsley *v.* State, 49 Tex. Crim. 620, 95 S. W. 520; Cleveland *v.* State, (Tex. Crim. 1906) 95 S. W. 521; Kelley *v.* State, (Tex. Crim. 1907) 103 S. W. 189; Conant *v.* State, (Tex. Crim. 1907) 103 S. W. 899; State *v.* Sargood, 80 Vt. 415, 68 Atl. 49.

2. State *v.* Pratt, (S. Dak. 1907) 112 N. W. 152.

4. Adams *v.* State, 49 Tex. Crim. 361, 91 S. W. 225.

6. Sweat *v.* Com., (Ky. 1906) 96 S. W. 843; Stamper *v.* Com., (Ky. 1907) 100 S. W. 286; Adams *v.* State, 49 Tex. Crim. 361, 91 S. W. 225.

7. People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 384; Holt *v.* State, 48 Tex. Crim. 559, 89 S. W. 838; Grady *v.* State, 49 Tex. Crim. 3, 90 S. W. 38; Adams *v.* State, 49 Tex. Crim. 361, 91 S. W. 225.

8. People *v.* Smith, 3 Cal. App. 68, 84 Pac. 452; Stamper *v.* Com., (Ky. 1907) 100 S. W. 286; State *v.* Gordon, 196 Mo. 185, 95 S. W. 420; People *v.* Sturgis, 110 N. Y. App. Div. 1, 96 N. Y. Supp. 1046; Grady *v.* State, 49 Tex. Crim. 3, 90 S. W. 38; Billingsley *v.* State, 49 Tex. Crim. 620, 95 S. W. 520; Cleveland *v.* State, (Tex. Crim. 1906) 95 S. W. 521; State *v.* Rutledge, 37 Wash. 523, 79 Pac. 1123.

10. Nance *v.* State, 126 Ga. 95, 54 S. E. 932.

696. 3. Parham *v.* State, 3 Ga. App. 468, 60 S. E. 123.

9. Komp *v.* State, 129 Wis. 20, 108 N. W. 46.

697. 3. U. S. *v.* Richards, 149 Fed. 443; U. S. *v.* Brace, 149 Fed. 869.

Statutory Definition. — State *v.* Jewett, 48 Oregon 577, 85 Pac. 994; State *v.* Pratt, (S. Dak. 1907) 112 N. W. 152.

4. Henderson *v.* Com., (Ky. 1906) 91 S. W. 1141.

5. State *v.* Lomack, 130 Iowa 83, 106 N. W. 386, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 697, notes 4 and 5.

6. People *v.* Nichols, 108 N. Y. App. Div. 362, 95 N. Y. Supp. 736.

7. Boren *v.* U. S., (C. C. A.) 144 Fed. 801.

8. Boren *v.* U. S., (C. C. A.) 144 Fed. 801.

9. Boren *v.* U. S., (C. C. A.) 144 Fed. 801.

10. People *v.* Nichols, 108 N. Y. App. Div. 362, 95 N. Y. Supp. 736. *Compare* People *v.* Gilhooley, 108 N. Y. App. Div. 234, 95 N. Y. Supp. 636, *affirmed* in 187 N. Y. 551, 80 N. E. 1116, wherein corroboration of the person suborned was apparently regarded as necessary, but it was held that the testimony of such person's husband, also charged with being an accomplice, was sufficient corroboration.

PERMANENT — PERMANENTLY, ETC.

698. 4. **The Phrase "Permanent Inability to Labor,"** as used in an instruction on the measure of damages in an action for personal injuries, is not the precise equivalent of '*permanent* reduction in his power to earn money.' Louisville, etc., R. Co. *v.* Sights, (Ky. 1905) 89 S. W. 132.

Permanent Door. — A door intended to be maintained as long as coal remains to be mined and removed is not a temporary door, within the meaning of a statute providing that "all *permanent* doors in mines used in guiding and directing the ventilating currents shall be so hung and adjusted as to close automatically." Madison Coal Co. *v.* Hayes, 215 Ill. 625, 74 N. E. 755, *affirming* 116 Ill. App. 94.

PERMIT — PERMISSION.

700. 2. Vulcan Detinning Co. *v.* American Can Co., (N. J. 1907) 67 Atl. 339, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 700.

3. Pittsburg, etc., R. Co. *v.* Richardson, (Ind. App. 1907) 82 N. E. 536.

PERPETUITIES AND TRUSTS FOR ACCUMULATION.

703. 6. Starcher *v.* Duty, 61 W. Va. 373, 56 S. E. 524.

704. 7. Coston *v.* Coston, 118 N. Y. App. Div. 1, 103 N. Y. Supp. 307; Higgins *v.* Round Bottom Coal, etc., Co., (W. Va. 1907) 59 S. E. 1064.

705. 1. Dwyer *v.* Cahill, 228 Ill. 617, 81 N. E. 1142, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 704; Shepperd *v.* Fisher, 206 Mo. 208, 103 S. W. 989; Starcher *v.* Duty, 61 W. Va. 373, 56 S. E. 524; Starcher *v.* Duty, 61 W. Va. 371, 56 S. E. 527.

2. *In re* Campbell, 149 Cal. 712, 87 Pac. 573; Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695; *In re* Durand, (Surrogate Ct.) 56 Misc. (N. Y.) 235, 107 N. Y. Supp. 393; *In re* Smith, 210 Pa. St. 604, 60 Atl. 255.

No Application to Vested Remainders unless by Statute. — Shepperd *v.* Fisher, 206 Mo. 208, 103 S. W. 989.

3. *In re* Kountz, 213 Pa. St. 390, 62 Atl. 1103.

4. *In re* Campbell, 149 Cal. 712, 87 Pac. 573; *In re* Perry, (Surrogate Ct.) 48 Misc. (N. Y.) 285, 96 N. Y. Supp. 879; Graham *v.* Graham, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 4, 97 N. Y. Supp. 779; Thieler *v.* Rayner, 115 N. Y. App. Div. 626, 100 N. Y. Supp. 993; Wells *v.* Squires, 117 N. Y. App. Div. 502, 102 N. Y. Supp. 597; Matter of Bray, 118 N. Y. App. Div. 533, 102 N. Y. Supp. 989. See also Streit *v.* Fay, 230 Ill. 319, 82 N. E. 648; Whitfield *v.* Whitefield, 123 N. Y. App. Div. 233, 108 N. Y. Supp. 110, *affirming* 55 Misc. (N. Y.) 468, 106 N. Y. Supp. 630.

Possibility of Release of Contingent Interest by Persons in Being Does Not Avoid Rule. — Starcher *v.* Duty, 61 W. Va. 373, 56 S. E. 524.

5. **Under the Kentucky Statute** the provision of a deed for bidding sale of real property for reinvestment has been held not to create a perpetuity. Chenault *v.* Burgess, (Ky. 1906) 93 S. W. 664.

Perpetual Donation of Real Estate to Pious Uses Void. — Female Orphan Soc. *v.* Young Men's Christian Assoc., 119 La. 278, 44 So. 15.

Estate Alienable Although Vested, Where Power of Sale Given Executors. — Keyser *v.* Mead, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 114, 103 N. Y. Supp. 1091.

706. 4. *In re* Hubbell, (Iowa 1907) 113 N. W. 512; Hoff *v.* Royal Metal Furniture Co., 117 N. Y. App. Div. 884, 103 N. Y. Supp. 371; Hudgins *v.* Bowes, (Tex. Civ. App. 1908) 110 S. W. 178.

707. 2. Mills *v.* Smith, 193 Mass. 11, 78 N. E. 765.

3. Starcher *v.* Duty, 61 W. Va. 373, 56 S. E. 524; Starcher *v.* Duty, 61 W. Va. 371, 56 S. E. 527.

5. *In re* Mount, 185 N. Y. 162, 77 N. E. 999; People's Trust Co. *v.* Flynn, 188 N. Y. 385, 80 N. E. 1098, *reversing* 106 N. Y. App. Div. 78, 94 N. Y. Supp. 436; New York L. Ins., etc., Co. *v.* Cary, 120 N. Y. App. Div. 264, 105 N. Y. Supp. 125, *reversed* on other grounds 191 N. Y. 33, 83 N. E. 598; Morton Trust Co. *v.* Sands, 122 N. Y. App. Div. 691, 107 N. Y. Supp. 698.

6. Quinlan *v.* Wickman, 233 Ill. 39, 84 N. E. 38.

8. *In re* Swain, (1905) 1 Ch. 669, 92 L. T. N. S. 715, 74 L. J. Ch. 354; *In re* Ashforth, (1905) 1 Ch. 535, 74 L. J. Ch. 361, 92 L. T. N. S. 534, 53 W. R. 328, 21 Times L. Rep. 329; Whitby *v.* Von Luedecke, (1906) 1 Ch. 783; Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541; Brown *v.* Columbia Finance, etc., Co., (Ky. 1906) 97 S. W. 421; Preston *v.* Preston, (Ky. 1908) 107 S. W. 723; Shepperd *v.* Fisher, 206 Mo. 208, 103 S. W. 989; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; *In re* Perry, (Surrogate Ct.) 48 Misc. (N. Y.) 285, 96 N. Y. Supp. 879; *In re* Hurlbut, (Surrogate Ct.) 51 Misc. (N. Y.) 263, 100 N. Y. Supp. 1098.

In *Connecticut* it has been held that a devise of a life tenancy with limitation over to the tenant's "heirs" is void, a living person

having no heirs. Gerard *v.* Ives, 78 Conn. 485, 62 Atl. 607.

Devise in Trust to Vest in Executor from and after Probate Void. — Johnson *v.* Preston, 226 Ill. 447, 80 N. E. 1001.

708. 1. *In re* Bowles, (1905) 1 Ch. 371, 74 L. J. Ch. 338, 92 L. T. N. S. 556.

2. Brown *v.* Wright, 194 Mass. 540, 80 N. E. 612.

3. Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 708.

4. Robinson *v.* Bonaparte, 102 Md. 63, 61 Atl. 212; Shepperd *v.* Fisher, 206 Mo. 208, 103 S. W. 989; Lembeck *v.* Lembeck, (N. J. 1907) 68 Atl. 337, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 708.

Common-law Rule in Kansas. — Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 708.

The Kentucky Statute embraces the period of a life or lives in being and twenty-one years and ten months. Brown *v.* Columbia Finance, etc., Co., (Ky. 1906) 97 S. W. 421.

Restraint upon Alienation for Life in Being Valid. — Berry *v.* Spivey, (Tex. Civ. App. 1906) 97 S. W. 511.

709. 1. Dwyer *v.* Cahill, 228 Ill. 617, 81 N. E. 1142.

2. See Hill *v.* Gianelli, 221 Ill. 286, 77 N. E. 458.

3. Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 709.

6. New York L. Ins., etc., Co. *v.* Cary, 191 N. Y. 33, 83 N. E. 598.

7. *In re* Lux, 149 Cal. 200, 85 Pac. 147; Ennen *v.* Air, (Ky. 1907) 104 S. W. 960; Morton Trust Co. *v.* Sands, 122 N. Y. App. Div. 691, 107 N. Y. Supp. 698.

710. 4. Ennen *v.* Air, (Ky. 1907) 104 S. W. 960; Minot *v.* Doggett, 190 Mass. 435, 77 N. E. 629.

5. Pitzel *v.* Schneider, 216 Ill. 87, 74 N. E. 779; Quinlan *v.* Wickman, 233 Ill. 39, 84 N. E. 38; *In re* Kountz, 213 Pa. St. 390, 62 Atl. 1103; *In re* Kountz, 213 Pa. St. 399, 62 Atl. 1106.

711. 1. *In re* Smith, 210 Pa. St. 604, 60 Atl. 255.

2. Minot *v.* Doggett, 190 Mass. 435, 77 N. E. 629.

6. Minot *v.* Doggett, 190 Mass. 435, 77 N. E. 629.

7. Shepperd *v.* Fisher, 206 Mo. 208, 103 S. W. 989.

712. 3. Angell *v.* Angell, (R. I. 1908) 68 Atl. 583.

713. 1. *In re* De Witt, 113 N. Y. App Div. 790, 99 N. Y. Supp. 415, *affirmed* 188 N. Y. 567, 80 N. E. 1108.

2. See Iglehart *v.* Iglehart, 204 U. S. 478, 27 U. S. Sup. Ct. 329 (Laws N. Y., 1839, c. 156, § 6); *In re* Waldron, (Surrogate Ct.) 57 Misc. (N. Y.) 275, 109 N. Y. Supp. 681 (Laws N. Y. 1906, c. 362).

4. **Appointment by Will under Power of Beneficiary Not in Existence at Death of Donor Invalid.** — Matter of Pillsbury's Will, 113 N. Y. App. Div. 893, 99 N. Y. Supp. 62, *affirmed* 186 N. Y. 545, 79 N. E. 1114.

Estate Not Creatable by Devise May Not Be Created through Power. — Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

5. Stone *v.* Forbes, 189 Mass. 163, 75 N. E. 141; Ogden *v.* McClane, (N. J. 1907) 67 Atl. 695.

Possibility of Non-exercise Does Not Vitiate Power. — Keyes *v.* Northern Trust Co., 227 Ill. 354, 81 N. E. 384.

Invalid Appointment of Life Tenancy by Life Tenant Does Not Vitiate Power, but Vests Title in Appointee. — Brown *v.* Columbia Finance, etc., Co., (Ky. 1906) 97 S. W. 421; Preston *v.* Preston, (Ky. 1908) 107 S. W. 723.

6. **Naked Power of Sale Does Not Affect Beneficiaries' Power to Alienate.** — *In re* Campbell, 149 Cal. 712, 87 Pac. 573.

Power of Sale Not Void Because of Possibility of Non-exercise. — Keyser *v.* Mead, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 114, 103 N. Y. Supp. 1091.

714. 1. **Suspension for Term of Five Years Not Measured by Lives Renders Power Void.** — Stewart *v.* Woolley, 121 N. Y. App. Div. 531, 106 N. Y. Supp. 99.

2. It has been held that the possibility of issue of the surviving husband after the decease of the donor of the power does not affect the exercise of power, as the estate becomes vested on appointment. Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695.

3. Brown *v.* Columbia Finance, etc., Co., (Ky. 1906) 97 S. W. 421.

4. **Power of Sale Does Not Avoid Statute Where Proceeds Subject to Trust.** — Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

715. 7. Matter of Pillsbury, 113 N. Y. App. Div. 893, 99 N. Y. Supp. 62, *affirmed* 186 N. Y. 545, 79 N. E. 1114; Keenan *v.* Keenan, 122 N. Y. App. Div. 435, 107 N. Y. Supp. 152; *In re* Phillips, (Surrogate Ct.) 56 Misc. (N. Y.) 96, 107 N. Y. Supp. 388.

Trust Deed and Will Operating Together to Violate Statute Sustained. — New York L. Ins., etc., Co. *v.* Cary, 191 N. Y. 33, 83 N. E. 598, *reversing* 120 N. Y. App. Div. 264, 105 N. Y. Supp. 125.

8. *In re* Perry, (Surrogate Ct.) 48 Misc. (N. Y.) 285, 96 N. Y. Supp. 879.

716. 1. **Trust for Conveyance upon Death of Beneficiary Void.** — Sacramento Bank *v.* Montgomery, 146 Cal. 745, 81 Pac. 138.

4. **"Her" Decease Substituted for "My" Decease to Effectuate Suspension for Ten Years Subsequent to Expiration of One of Two Lives.** — Liebmann *v.* Liebmann, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 488, 105 N. Y. Supp. 403.

5. **Trust for One Beneficiary for Term of Years.** — Keenan *v.* Keenan, 122 N. Y. App. Div. 435, 107 N. Y. Supp. 152.

6. **Three Separable Trusts.** — Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258.

717. 1. **Devise to Daughter for Life, and Income to Her Issue during Minority, Title Vesting at Majority, Void.** — Matter of Wilcox, 125 N. Y. App. Div. 152, 109 N. Y. Supp. 564.

4. Liebmann *v.* Liebmann, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 488, 105 N. Y. Supp. 403.

6. Guental *v.* Guental, 113 N. Y. App. Div. 310, 98 N. Y. Supp. 1002; New York L. Ins., etc., Co. *v.* Cary, 120 N. Y. App. Div. 264, 105 N. Y. Supp. 125, *reversed* on facts 191 N. Y. 33, 83 N. E. 598; Farmers' L. & T. Co. *v.* Bostwick, 120 N. Y. App. Div. 271, 105 N. Y. Supp. 130; Morton Trust Co. *v.* Sands, 122 N. Y. App. Div. 691, 107 N. Y. Supp. 698; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; *In re* Bruchaeser, (Surrogate Ct.) 49 Misc. (N. Y.) 194, 98 N. Y. Supp. 937; Farmers' L. & T. Co. *v.* Kip, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 407, 102 N. Y. Supp. 137, *affirmed* 120 N. Y. App. Div. 347, 104 N. Y. Supp. 1092; Mee *v.* Gordon, 187 N. Y. 400, 80 N. E. 353, *reversing* 104 N. Y. App. Div. 520, 93 N. Y. Supp. 675.

7. People's Trust Co. *v.* Flynn, 188 N. Y. 385, 80 N. E. 1098, *reversing* 113 N. Y. App. Div. 683, 99 N. Y. Supp. 979; Liebmann *v.* Liebmann, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 488, 105 N. Y. Supp. 403.

8. Cole *v.* Lee, 143 Mich. 267, 106 N. W. 855.

Trust to Pay Annuities for Seven Lives Invalid. — Robb *v.* Washington, etc., College, 185 N. Y. 485, 78 N. E. 359, *affirming* and *modifying* 103 N. Y. App. Div. 327, 93 N. Y. Supp. 92.

Life of Annuitant under Trust Not Included. — People's Trust Co. *v.* Flynn, 188 N. Y. 385, 80 N. E. 1098, *reversing* 113 N. Y. App. Div. 683, 99 N. Y. Supp. 979.

Annuities Payable from Principal and Income Are Assignable and Not within Statute. — Wells *v.* Squires, 117 N. Y. App. Div. 502, 102 N. Y. Supp. 597.

9. Two Successive Life Estates to Persons in Being, with Vested Remainder in Real Property, Valid. — Tonnele *v.* Wetmore, 124 N. Y. App. Div. 686, 109 N. Y. Supp. 349.

10. Appointment Void Where Beneficiary Not in Being in Lifetime of Donor. — Matter of Pillsbury, 113 N. Y. App. Div. 893, 99 N. Y. Supp. 62, *affirmed* 186 N. Y. 545, 79 N. E. 1114.

718. 3. Morton Trust Co. *v.* Sands, 122 N. N. App. Div. 691, 107 N. Y. Supp. 698.

7. Central Trust Co. *v.* Egleston, 185 N. Y. 23, 77 N. E. 989, *reversing* 110 N. Y. App. Div. 893, 96 N. Y. Supp. 1117 (*affirming* (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 475, 95 N. Y. Supp. 945).

Devise of Income to Eight Persons in Being, Directing Distribution Three Years after Death of Survivor, Void. — Farmers' L. & T. Co. *v.* Cummings, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 882.

719. 1. Foster *v.* Stevens, 146 Mich. 131, 109 N. W. 265 (*distinguishing* People's Trust Co. *v.* Flynn, 106 N. Y. App. Div. 78, 94 N. Y. Supp. 436); Fischer *v.* Langlotz, 114 N. Y. App. Div. 903, 100 N. Y. Supp. 578.

Passive Trust to Begin at Termination of Life Estate Vests Legal Title. — Denison *v.* Denison, 185 N. Y. 438, 78 N. E. 162, *affirming* 103 N. Y. App. Div. 523, 86 N. Y. Supp. 604, 93 N. Y. Supp. 1128.

2. Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; Bascom *v.* Weed, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 496, 105 N. Y. Supp. 459.

3. *In re* Mount, 185 N. Y. 162, 77 N. E. 999, *affirming* 107 N. Y. App. Div. 1, 95 N. Y. Supp. 490; Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258; Farmers' L. & T. Co. *v.* Shaw, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 201, 107 N. Y. Supp. 337.

4. **Suspension for Minority Is Suspension for Statutory Life.** — Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

9. Whitefield *v.* Whitefield, 123 N. Y. App. Div. 233, 108 N. Y. Supp. 110; Whitefield *v.* Crissman, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 468, 106 N. Y. Supp. 630.

720. 3. Jacoby *v.* Jacoby, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 427, 94 N. Y. Supp. 260, *affirmed* 113 N. Y. App. Div. 913, 100 N. Y. Supp. 1122, 188 N. Y. 124, 80 N. E. 676; Toher *v.* Crounse, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 990. See also Burke *v.* O'Brien, 115 N. Y. App. Div. 574, 100 N. Y. Supp. 1048.

"Last of My Children." — Matter of Bray, 118 N. Y. App. Div. 533, 102 N. Y. Supp. 989.

Suspension Valid Where Age of Twenty-five Specified. — Coston *v.* Coston, 118 N. Y. App. Div. 1, 103 N. Y. Supp. 307.

4. Election of Dower by Widow Does Not Validate Void Testamentary Disposition. — People's Trust Co. *v.* Flynn, 113 N. Y. App. Div. 683, 99 N. Y. Supp. 979, *reversed* on other grounds 188 N. Y. 385, 80 N. E. 1098.

Provision for Change in Trustees for Definite Term Creates No Undue Suspension. — Clark *v.* Goodridge, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 140, 100 N. Y. Supp. 824.

11. *In re* Lux, 149 Cal. 200, 85 Pac. 147; *In re* Fay, 5 Cal. App. 188, 89 Pac. 1065; Campbell-Kawannanakoa *v.* Campbell, (Cal. 1907) 92 Pac. 184.

721. 1. *In re* Fay, 5 Cal. App. 188, 89 Pac. 1065; Campbell-Kawannanakoa *v.* Campbell, (Cal. 1907) 92 Pac. 184.

Trust for Conveyance upon Death of Beneficiary Void. — Sacramento Bank *v.* Montgomery, 146 Cal. 745, 81 Pac. 138.

3. *In re* Fay, 5 Cal. App. 188, 89 Pac. 1065.

4. **Iowa Statute.** — Hubbird *v.* Goin, (C. C. A.) 137 Fed. 822.

Kentucky Statute. — Ennen *v.* Air, (Ky. 1907) 104 S. W. 960; Forsman *v.* Hofstetter, (Ky. 1908) 107 S. W. 796; Holt *v.* Deshon, (Ky. 1907) 103 S. W. 281; Brumley *v.* Brumley, (Ky. 1905) 89 S. W. 182; Robsion *v.* Gray, (Ky. 1906) 7 S. W. 347.

10. **Limitation to Heirs of Life Tenant Void.** — Gerard *v.* Ives, 78 Conn. 485, 62 Atl. 607; Gerard *v.* Beecher, (Conn. 1908) 68 Atl. 438; Grant *v.* Stimpson, 79 Conn. 617, 66 Atl. 166; Harmon *v.* Harmon, (Conn. 1907) 66 Atl. 771; Cody *v.* Staples, (Conn. 1907) 67 Atl. 1.

Limitation to Legal Representatives Void. — Lepard *v.* Clapp, (Conn. 1907) 66 Atl. 780.

722. 1. Gray *v.* Whittemore, 102 Mass. 367, 78 N. E. 422; Hull *v.* Osborn, (Mich. 1907) 113 N. W. 784; Lembeck *v.* Lembeck, (N. J. 1907) 68 Atl. 337; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; *In re* Perry, (Surrogate Ct.) 48 Misc. (N. Y.) 285, 96 N. Y. Supp. 879; Toher *v.* Crounse, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 990.

2. Bascom *v.* Weed, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 496, 105 N. Y. Supp. 459.

4. *In re* Roberts, 112 N. Y. App. Div. 732, 98 N. Y. Supp. 809.

7. **Possession at Certain Age.** — Stone *v.* Forbes, 189 Mass. 163, 75 N. E. 141.

Devisees. — Matter of Bray, 118 N. Y. App. Div. 533, 102 N. Y. Supp. 989.

8. **Death of One Designated Person.** — Stringer *v.* Young, 191 N. Y. 157, 83 N. E. 690; Orange County Trust Co. *v.* Morrison, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 88, 106 N. Y. Supp. 940.

9. Orange County Trust Co. *v.* Morrison, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 88, 106 N. Y. Supp. 940; Clark *v.* Goodridge, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 140, 100 N. Y. Supp. 824.

10. Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258; Keenan *v.* Keenan, 122 N. Y. App. Div. 435, 107 N. Y. Supp. 152.

723. 1. St. John *v.* Andrews Institute for Girls, 117 N. Y. App. Div. 698, 102 N. Y. Supp. 808.

Executory Devise Vesting in Class upon Decease of Equitable Remainderman. — Storrs *v.* Burgess, (R. I. 1907) 67 Atl. 731.

6. Cody *v.* Staples, (Conn. 1907) 67 Atl. 1; Denison *v.* Denison, 185 N. Y. 438, 78 N. E. 162; New York L. Ins., etc., Co. *v.* Cary, 120 N. Y. App. Div. 264, 105 N. Y. Supp. 125, *reversed* on facts 119 N. Y. 33, 83 N. E. 598; Farmers' L. & T. Co. *v.* Bostwick, 120 N. Y. App. Div. 271, 105 N. Y. Supp. 130; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; *In re* Perry, (Surrogate Ct.) 48 Misc. (N. Y.) 285, 96 N. Y. Supp. 879.

Devise Excepted from General Scheme Sustained. — Landram *v.* Jordan, 203 U. S. 56, 27 U. S. Sup. Ct. 17.

Valid Devises Fall with Invalid Devises Where Their Maintenance Would Defeat General Plan of Disposition. — Shepperd *v.* Fisher, 206 Mo. 208, 103 S. W. 989; Pitzel *v.* Schneider, 216 Ill. 87, 74 N. E. 779; Reid *v.* Voorhees, 216 Ill. 236, 74 N. E. 804; Central Trust Co. *v.* Egleston, 185 N. Y. 23, 77 N. E. 980, *reversing* 110 N. Y. App. Div. 893, 96 N. Y. Supp. 1117 (*affirming* (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 475, 95 N. Y. Supp. 945).

Deed Subject to Restriction against Alienation for Twenty-one Years from Date Valid — Restriction Void. — Booker *v.* Booker, 119 N. Y. App. Div. 482, 104 N. Y. Supp. 21.

Elimination of Void Term for Exercise of Imperative Power of Sale Leaves Power and Plan of Distribution Intact. — Stewart *v.* Woolley, 121 N. Y. App. Div. 531, 106 N. Y. Supp. 99.

7. Quinlan *v.* Wickman, 233 Ill. 39, 84 N. E. 38; Matter of Wilcox, 125 N. Y. App. Div. 152, 109 N. Y. Supp. 564.

9. Lepard *v.* Clapp, (Conn. 1907) 66 Atl. 780; Quinlan *v.* Wickman, 233 Ill. 39, 84 N. E. 38; Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

Life Estates Defeated by Remoteness of Limitation. — *In re* Kountz, 213 Pa. St. 390, (Val. 1905).

10. It has been held in *Illinois* that the absolute estate vests in devisees where such intent appeared, a trust for a term of years prior to possession being found void. Johnson *v.* Preston, 226 Ill. 447, 80 N. E. 1001.

724. 1. **Suspension of Alienation for Five Years Void — Title Held Vested Subject to Limitation.** — *In re* Phillips, (Surrogate Ct.) 56 Misc. (N. Y.) 96, 107 N. Y. Supp. 388.

725. 1. Reid *v.* Voorhees, 216 Ill. 236, 74 N. E. 804. *Compare In re* Game, (1907) 1 Ch. 276.

3. Pitzel *v.* Schneider, 216 Ill. 87, 74 N. E. 779.

5. Shepperd *v.* Fisher, 206 Mo. 208, 103 S. W. 989; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

726. 1. *Re* Barker, 92 L. T. N. S. 831.

4. *In re* Campbell, 149 Cal. 712, 87 Pac. 573; Campbell-Kawannanakoa *v.* Campbell, (Cal. 1907) 92 Pac. 184.

5. In Absence of Proof Law of Other States Presumed Same as That of California. — *In re* Dunphy, 147 Cal. 95, 81 Pac. 315.

727. 1. **Trust Deed.** — Robb *v.* Washington, etc., College, 185 N. Y. 485, 78 N. E. 359, *affirming* and *modifying* 103 N. Y. App. Div. 327, 93 N. Y. Supp. 92.

3. Whitefield *v.* Whitefield, 123 N. Y. App. Div. 233, 108 N. Y. Supp. 110; Clark *v.* Goodridge, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 140, 100 N. Y. Supp. 824.

7. Payment of Vested Principal in Instalments Not within Statute. — Hull *v.* Osborn, (Mich 1907) 113 N. W. 785.

Accretion to Stock Values and Undistributed Earnings Thereon Not Income. — *In re* Stevens, (Surrogate Ct.) 46 Misc. (N. Y.) 623, 95 N. Y. Supp. 297, *affirmed* 111 N. Y. App. Div. 773, 98 N. Y. Supp. 28.

Direction that No Interest Be Paid on Mortgage if Property Left to Charity Not Accumulation. — *In re* Harteau, (Supm. Ct. App. Div.) 110 N. Y. Supp. 59.

729. 2. **Trust to Lease, Collect Rents, and Pay Net Rentals Authorized by California Statute.** — Sacramento Bank *v.* Montgomery, 146 Cal. 745, 81 Pac. 138; *In re* Dunphy, 147 Cal. 95, 81 Pac. 315; *In re* Lux, 149 Cal. 200, 85 Pac. 147.

4. **Suggestion in Will.** — Morgan *v.* Durand, (Supm. Ct. Eq. T.) 51 Misc. (N. Y.) 523, 101 N. Y. Supp. 1002.

7. Robb *v.* Washington, etc., College, 185 N. Y. 485, 78 N. E. 359, *affirming* and *modifying* 103 N. Y. App. Div. 327, 93 N. Y. Supp. 92; St. John *v.* Andrews Institute for Girls, 191 N. Y. 254, 83 N. E. 981.

730. 7. It has been held in *New York* that a direction to accumulate for children "who shall attain the age of twenty-five years or marry under that age" does not limit the trust for payment of income by a term other than lives and is valid. Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

731. 6. Colquhoun *v.* Colquhoun, (1907) Sc. Ct. Sess. 346.

15. **Accumulation for Adults.** — Bosworth *v.* Stockbridge, 189 Mass. 266, 75 N. E. 712.

Direction in Will for Payment of Surplus

Income upon Mortgages Unlawful Accumulation. — Kirk *v.* McCann, 117 N. Y. App. Div. 56, 101 N. Y. Supp. 1093.

Accumulation by Temporary Withholding of Income in Discretion of Trustee in Interest of Trust Valid. — *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

732. 2. **Provision for Payment of Part Income to Infant's Use during Minority Valid.** — Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

5. **Under this Provision** a testator may validly direct accumulation during the minority of a person not born until after his death. *In re* Cattell, (1907) 1 Ch. 567 (overruling dictum to the contrary in Haley *v.* Bannister, 4 Madd. 277).

733. 4. *In re* Phillips, (Surrogate Ct.) 56 Misc. (N. Y.) 96, 107 N. Y. Supp. 388; *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

5. *In re* Haines, 150 Cal. 640, 89 Pac. 606; Kirk *v.* McCann, 117 N. Y. App. Div. 56, 101 N. Y. Supp. 1093; Stewart *v.* Woolley, 121 N. Y. App. Div. 531, 106 N. Y. Supp. 99; Endress *v.* Willey, 122 N. Y. App. Div. 110, 106 N. Y. Supp. 726; Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

Accumulation During Minority to Constitute Part of Trust Fund Thereafter Void. — Cochrane *v.* Alexander, (Surrogate Ct.) 56 Misc. (N. Y.) 212, 107 N. Y. Supp. 587.

11. Central Trust Co. *v.* Egleston, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 475, 95 N. Y. Supp. 945, *reversed* on other grounds 185 N. Y. 23, 77 N. E. 989.

734. 1. *In re* Haines, 150 Cal. 640, 89 Pac. 606.

3. See Stewart *v.* Woolley, 121 N. Y. App. Div. 531, 106 N. Y. Supp. 99.

8. Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; Central Trust Co. *v.* Egleston, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 475, 95 N. Y. Supp. 945, *reversed* on other grounds 185 N. Y. 23, 77 N. E. 989; Cochrane *v.* Alexandre, (Surrogate Ct.) 56 Misc. (N. Y.) 212, 107 N. Y. Supp. 587.

California Statute. — *In re* Haines, 150 Cal. 640, 89 Pac. 606.

735. 2. **Where Direction for Accumulation Void Representatives Take Unexpended Income.** — Matter of Hoyt, 116 N. Y. App. Div. 217, 101 N. Y. Supp. 557.

7. Tincher *v.* Arnold, (C. C. A.) 147 Fed. 665, 8 Ann. Cas. 917; St. John *v.* Andrews Institute for Girls, 117 N. Y. App. Div. 698, 102 N. Y. Supp. 808.

Perpetual Annuities to Charities Valid. — Merrill *v.* American Baptist Missionary Union, 73 N. H. 414, 62 Atl. 647.

736. 4. *In re* Harteau, (Surrogate Ct.) 53 Misc. (N. Y.) 201, 104 N. Y. Supp. 586.

6. Endress *v.* Willey, 122 N. Y. App. Div. 110, 106 N. Y. Supp. 726.

8. *In re* Harteau, (Supm. Ct. App. Div.) 110 N. Y. Supp. 59.

Next of Kin Take Where Nonexistent Corporation Entitled to Next Eventual Estate. — St. John *v.* Andrews Institute for Girls, 191 N. Y. 254, 83 N. E. 981, *modifying* and *affirming* 117 N. Y. App. Div. 698, 102 N. Y. Supp. 808.

PERSON.

738. 2. **Estate of Deceased Person.** — *In re* Howard, 802 Vt. 489, 68 Atl. 513; Barry *v.* Minahan, 127 Wis. 570, 107 N. W. 488.

Person Held to Include Minor. — State *v.* Stroschein, 99 Minn. 248, 109 N. W. 235.

Person Held Not to Include Pupil. — State *v.* Packenham, 49 Wash. 403, 82 Pac. 597.

"Person" in the Delaware Statute forbidding the counseling of "any person so intending to procure a miscarriage," means a person other than the woman to be operated upon. State *v.* Parm, 5 Penn. (Del.) 556, 60 Atl. 977.

Persons Concerned or Affected by Commerce. — See Snead *v.* Central of Georgia R. Co., 151 Fed. 608, and see generally the title INTERSTATE COMMERCE.

740. 1. People *v.* Bennett, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 160, 107 N. Y. Supp. 406.

3. Litchfield *v.* Pond, 186 N. Y. 66, 78 N. E. 719.

742. 2. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; State *v.* Williams, 74 Kan. 180, 85 Pac. 938; Sommese *v.* Florence Distilling Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 670, 107 N. Y. Supp. 630; State *v.* Mudie, (S. Dak. 1908) 115 N. W. 107; Norwich Pharmacal Co. *v.* Abaly, (Wis. 1907) 113 N. W. 963.

743. 1. American De Forest Wireless Tel. Co. *v.* Superior Ct., (Cal. 1908) 96 Pac. 15; *In re* Avery, (Surrogate Ct.) 45 Misc. (N. Y.) 529, 92 N. Y. Supp. 974.

2. American De Forest Wireless Tel. Co. *v.* Superior Ct., (Cal. 1908) 96 Pac. 15; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Lewis *v.* Northern Pac. R. Co., (Mont. 1907) 92 Pac. 469; Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031.

PERSONAL.

743. 3. **Personally Unoccupied — Fire Insurance Policy.** — See Knowlton *v.* Patrons' Androscoggin Mut. F. Ins. Co., 100 Me. 481, 62 Atl. 289.

PERSONAL ACTION.

745. 1. **Personal Action.** — See Montreal Brewing Co. *v.* Montreal, 15 Quebec K. B. 298, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744.

PERSONAL LIBERTY.

745. 6. **Personal Liberty** includes not only freedom from physical restraint, but also the right "to be let alone;" to determine one's mode of life, whether it shall be a life of publicity or of privacy; and to order one's life and manage one's affairs in a manner that may be most agreeable to him so long as he does not violate the rights of others or of the public. Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68.

PERSONAL PROPERTY.

747. 1. **Notes, Bonds, and Drafts.** — State *v.* Fidelity, etc., Co., 35 Tex. Civ. App. 214, 80 S. W. 544, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747.

3. Shannon *v.* Sims, 146 Ala. 673, 40 So. 871.

748. 7. Wilson *v.* Maxon, 56 W. Va. 194, 49 S. E. 123, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 748.

749. 4. **Strawberry Plants** growing in the soil have been held to be personal property. Cannon *v.* Mathews, 75 Ark. 336, 87 S. W. 428.

6. **Natural Gas** when extracted and put into a pipe line is personalty. Crystal Ice, etc., Co. *v.* Marion Gas Co., 35 Ind. App. 295, 74 N. E. 15. See generally the title NATURAL GAS.

750. 3. Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 750.

752. 7. **Title to Personalty Presumed to Be with Possession.** — Hannis Distilling Co. *v.* Berkeley County Ct., (W. Va. 1908) 59 S. E. 1051, 1054. And see the title PRESUMPTIONS, **1287.** 4.

PERSONAL SECURITY.

757. 8. **Personal Security** includes the right to exist, and the right to the enjoyment of life while existing, and is invaded not only by a deprivation of life, but also by a deprivation of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual. Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68.

PERSONAL SERVICE.

757. 9. "**The Term Personal Service** has a fixed and definite meaning in law. It is service by delivering the writ, notice, or order to the defendant personally, as contradistinguished from other modes of service, and hence does not include service by leaving a copy at the defendant's last-known place of abode, or by mailing a copy to him." Dalton *v.* St. Louis, etc., R. Co., 113 Mo. App. 71, 87 S. W. 610.

PERSONAL TRANSACTIONS OR COMMUNICATIONS.

758. 3. See Davidson *v.* Bardin, 139 N. Car. 1, 51 S. E. 779.

PERSON OR PARTY AGGRIEVED.

758. 4. **For Other Definitions and Illustrations,** see Coughtry *v.* Haupt, (Tex. Civ. App. 1907) 105 S. W. 516; Ghersin *v.* Thuor, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 465, 107 N. Y. Supp. 195.

Failure of Street Railway to Issue Transfers. — Under the New York Railroad Act providing for penalties to a *party* aggrieved by the refusal of a transfer from one line of railroad operated by a corporation, to another line also operated by it, it has been held that the aggrieved *party* was a passenger paying one fare, as described by a previous section of the act. McLaughlin *v.* New York City R. Co., 106 N. Y. App. Div. 1, 94 N. Y. Supp. 653, *followed* in Van Zandt *v.* New York City R. Co., 106 N. Y. App. Div. 614, 94 N. Y. Supp. 660; Fox *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 42 Misc. (N. Y.) 538, 86 N. Y. Supp. 64; Carpenter *v.* New York City R. Co., (Supm. Ct. App. T.) 93 N. Y. Supp. 600; *In re* Stevens, 114 N. Y. App. Div. 607, 99 N. Y. Supp. 1070.

PHOTOGRAPHS.

772. 3. Porter *v.* Buckley, (C. C. A.) 147 Fed. 140.

773. 5. State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966.

Physical Injuries of Plaintiff. — Davis *v.* Adrian, 147 Mich. 300, 110 N. W. 1084; Powell *v.* State, (Tex. Crim. 1907) 99 S. W. 1005.

Photograph of Murdered Person Admitted. — State *v.* Roberts, 28 Nev. 350, 82 Pac. 100; Young *v.* State, 49 Tex. Crim. 207, 92 S. W. 841.

But the Habits of a Horse cannot be shown by photographs. Morgan *v.* Hendricks, 80 Vt. 284, 67 Atl. 702.

774. 2. Porter *v.* Buckley, (C. C. A.) 147 Fed. 140; Higgs *v.* Minneapolis, etc., R. Co., (N. Dak. 1908) 114 N. W. 722, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 774.

Scene of Accident. — Kansas City Southern R. Co. *v.* Morris, 80 Ark. 528, 98 S. W. 363; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Illinois Southern R. Co. *v.* Hayner, 225 Ill. 613, 80 N. E. 316; New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804; Edge *v.* Southwest Missouri Electric R. Co., 206 Mo. 471, 104 S. W. 90; Thompson *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 910.

Scene of Murder. — People *v.* Mahatch, 148 Cal. 200, 82 Pac. 779; State *v.* Rogers, 129 Iowa 229, 105 N. W. 455; Kornig *v.* Western L. Indemnity Co., 102 Minn. 31, 112 N. W. 1039.

775. 2. **Magnifying Glass May Be Used by Jury in Examining Photographs.** — State *v.* Wallace, 78 Conn. 677, 63 Atl. 448.

3. Chicago City R. Co. *v.* Smith, 226 Ill. 178, 80 N. E. 716, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 755 [775]; Elzig *v.* Bales, (Iowa 1907) 112 N. W. 540.

4. Porter *v.* Buckley, (C. C. A.) 147 Fed. 140; People *v.* Maughs, 149 Cal. 253, 86 Pac. 187; People *v.* Grill, 151 Cal. 592, 91 Pac. 515; *In re* McClellan, (S. Dak. 1906) 107 N. W. 681; Newcomb *v.* State, 49 Tex. Crim. 550, 95 S. W. 1048; Hupfer *v.* National Distilling Co., 127 Wis. 306, 106 N. W. 831.

Photograph Should Show Appearance of Locus in Quo at Time of Occurrence Complained of. — Columbia, etc., R. Co. *v.* State, 105 Md. 34, 65 Atl. 625.

776. 1. McKarren *v.* Boston, etc., St. R. Co., 194 Mass. 179, 80 N. E. 477; Smith *v.* Central Vermont R. Co., 80 Vt. 208, 67 Atl. 535.

3. Willis *v.* State, 49 Tex. Crim. 139, 90 S. W. 1100.

777. 5. See Von Thodorovich *v.* Franz Josef Beneficial Assoc., 154 Fed. 911.

In New York a statute has been passed to prevent the unauthorized use of the picture of any person for the purposes of trade. See Rhodes *v.* Sperry, etc., Co., 120 N. Y. App. Div. 467, 104 N. Y. Supp. 1102.

PHYSICIANS AND SURGEONS.

780. 1. **Definition of "Practitioner" under Iowa Statute.** — State *v.* Kendig, 133 Iowa 164, 110 N. W. 463.

6. Statutes to Be Reasonably Construed. — State *v.* Oredson, 96 Minn. 509, 105 N. W. 188; State *v.* Hicks, 143 N. Car. 689, 57 S. E. 441.

7. *Arkansas.* — Thompson *v.* Van Lear, 77 Ark. 506, 92 S. W. 773, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 780; State *v.* McCrary, 77 Ark. 611, 92 S. W. 775.

Illinois. — Kettles *v.* People, 221 Ill. 221, 77 N. E. 472.

Indiana. — Spurgeon *v.* Rhodes, 167 Ind. 1, 78 N. E. 228, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 780.

Iowa. — Fairfield *v.* Shallenberger, (Iowa 1907) 113 N. W. 459.

Kentucky. — Wilson *v.* Com., 119 Ky. 769, 82 S. W. 427.

Maryland. — Watson *v.* State, 105 Md. 650, 66 Atl. 635.

Massachusetts. — Com. *v.* Porn, (Mass. 1907) 82 N. E. 31.

New York. — People *v.* Allcutt, 189 N. Y. 517, 81 N. E. 1171, *affirming* 117 N. Y. App. Div. 546, 102 N. Y. Supp. 678.

North Carolina. — State *v.* Hicks, 143 N. Car. 689, 57 S. E. 441.

Ohio. — State *v.* Marble, 72 Ohio St. 21, 73 N. E. 1063.

Oklahoma. — Gulley *v.* Territory, (Okla. 1907) 91 Pac. 1037.

Pennsylvania. — Com. *v.* Densten, 30 Pa. Super. Ct. 631.

Washington. — *In re* Thompson, 36 Wash. 377, 78 Pac. 899; State *v.* Dental Examiners, (Wash. 1908) 93 Pac. 515.

Wisconsin. — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

Statute Prohibiting Soliciting of Patients Constitutional. — Thompson *v.* Van Lear, 77 Ark. 506, 92 S. W. 773.

The "Medical Profession Act," 6 Edw. VII., c. 28, is *intra vires* of the legislative jurisdiction of the legislature of Alberta. Lafferty *v.* Lincoln, 38 Can. Sup. Ct. 620.

781. 1. *Indiana.* — Spurgeon *v.* Rhodes, 167 Ind. 1, 78 N. E. 228, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 781.

Iowa. — State *v.* Wilhite, 132 Iowa 226, 109 N. W. 730; State *v.* Kendig, 133 Iowa 164, 110 N. W. 463.

Maryland. — Watson *v.* State, 105 Md. 650, 66 Atl. 635.

Massachusetts. — Com. *v.* Porn, (Mass. 1907) 82 N. E. 31.

Pennsylvania. — Com. *v.* Densten, 30 Pa. Super. Ct. 631.

Washington. — *In re* Thompson, 36 Wash. 377, 78 Pac. 899.

Wisconsin. — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

2. State *v.* Doerring, 194 Mo. 398, 92 S. W. 489; State *v.* Schaeffer, 129 Wis. 459, 109 N. W. 522.

782. 1. **Requirement that Certain Proportion of Board Be Selected from Medical Society Valid.** — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

2. Watson *v.* State, 105 Md. 650, 66 Atl. 635; State *v.* Marble, 72 Ohio St. 21, 73 N. E. 1063.

3. Kettles *v.* People, 221 Ill. 221, 77 N. E. 472.

4. State *v.* Davis, 194 Mo. 485, 92 S. W. 484; State *v.* Dental Examiners, 26 Ohio Cir. Ct. 369.

6. Statute Not Unconstitutional as Conferring Judicial Powers.—Spurgeon *v.* Rhodes, 167 Ind. 1, 78 N. E. 228, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 782; State *v.* Doerring, 194 Mo. 398, 92 S. W. 489.

Statute Not Unconstitutional as Delegating Legislative Power. — Arwine *v.* Medical Examiners, (Cal. 1907) 91 Pac. 319; *In re* Thompson, 36 Wash. 377, 78 Pac. 899; State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

Requirement that Applicant Shall Have Diploma Not Unreasonable. — *In re* Thompson, 36 Wash. 377, 78 Pac. 899.

Does Not Confer Arbitrary Powers on Board. — Kettles *v.* People, 221 Ill. 221, 77 N. E. 472.

Not an Interference with Religious Liberty. — State *v.* Marble, 72 Ohio St. 21, 73 N. E. 1063.

Compensation of Officers. — Munk *v.* Frink, 75 Neb. 172, 106 N. W. 425.

783. 1. **Appointment by Dental Societies.** — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

4. Brooks *v.* State, 146 Ala. 153, 41 So. 156.

Necessity for Notice and Hearing. — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

Board Not Granted Judicial Powers. — State *v.* Goodier, 195 Mo. 551, 93 S. W. 928; State *v.* Adcock, 206 Mo. 550, 105 S. W. 270.

Judicial Powers Granted by New Hampshire Statute of 1901. — Brown *v.* Grenier, 73 N. H. 426, 62 Atl. 590.

Functions of Board Quasi-Judicial. — Raaf *v.* State Board of Medical Examiners, 11 Idaho 707, 84 Pac. 33; State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

5. Appeal from Decision of Board. — Raaf *v.* State Board of Medical Examiners, 11 Idaho 707, 84 Pac. 33.

Mandamus to Compel Issue of License Arbitrarily Refused. — State *v.* Adcock, 206 Mo. 550, 105 S. W. 270.

Physician Practicing after Unwarranted Refusal of License Not Guilty of Crime. — State *v.* Cooper, 11 Idaho 219, 81 Pac. 374.

6. Arwine *v.* Medical Examiners, (Cal. 1907) 91 Pac. 319; State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071; People *v.* Somme, 120 N. Y. App. Div. 20, 104 N. Y. Supp. 946; State *v.* Hicks, 143 N. Car. 689, 57 S. E. 441; *In re* Thompson, 36 Wash. 377, 78 Pac. 899; State *v.* Dental Examiners, (Wash. 1908) 93 Pac. 515.

Power of Board under Alabama Statute. — Brooks *v.* State, 146 Ala. 153, 41 So. 156.

Failure of Officers to Perform Duties Not Excuse for Practicing without License. — State *v.* Hicks, 143 N. Car. 689, 57 S. E. 441.

7. State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071.

What Constitutes Reputability. — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

Power of Board to Determine Reputability of School. — Kettles *v.* People, 221 Ill. 221, 77 N. E. 472.

Reputability of College Issuing Diploma — How Determined. — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

Burden of Proof on Person Seeking License. — Arwine *v.* Medical Examiners, (Cal. 1907) 91 Pac. 319.

Effect of Finding as to Reputability of College. — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

Arbitrary Disqualification of School Not Allowed. — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

Certiorari to Review Decision of Board as to Reputability. — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

784. 2. State *v.* Hicks, 143 N. Car. 689, 57 S. E. 441.

Persons Entitled to Exemption. — State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071; Com. *v.* Densten, 30 Pa. Super. Ct. 631.

Applicability of Statutes to Persons Practicing Before Enactment. — Sherburne *v.* Dental Examiners, 13 Idaho 105, 88 Pac. 762; State *v.* Cooper, 11 Idaho 219, 81 Pac. 374; People *v.* Langdon, 219 Ill. 189, 76 N. E. 387; **Exemption of Student Assistants under New Jersey Statute.** — State Board of Registration, etc., *v.* Terry, 73 N. J. L. 156, 62 Atl. 193.

Exemption Not Applicable to Person Practicing Illegally. — Kettles *v.* People, 221 Ill. 221, 77 N. E. 472; State *v.* Dental Examiners, 26 Ohio Cir. Ct. 369.

Manner of Securing Exemption under Idaho Statute. — Sherburne *v.* Dental Examiners, 13 Idaho 105, 88 Pac. 762.

Power of Board to Refuse Exemption under Idaho Statute. — Sherburne *v.* Dental Examiners, 13 Idaho 105, 88 Pac. 762.

Exemption by Kansas Statute of Persons Prescribing "Domestic Medicine." — State *v.* Huff, 75 Kan. 585, 90 Pac. 279.

3. Com. *v.* Neville, (Ky. 1906) 92 S. W. 550; State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071; State *v.* Hicks, 143 N. Car. 689, 57 S. E. 441; State *v.* Lawson, 40 Wash. 455, 82 Pac. 750.

Statute Making Failure to Record License Prima Facie Evidence of Practicing without License, Constitutional. — State *v.* Lawson, 40 Wash. 455, 82 Pac. 750.

Countersigning of Certificate under Alabama Statute. — Brooks *v.* State, 146 Ala. 153, 41 So. 156.

4. Arwine *v.* Medical Examiners, (Cal. 1907) 91 Pac. 319.

6. Spurgeon *v.* Rhodes, 167 Ind. 1, 78 N. E. 228, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 784; *In re* Telford, 11 British Columbia 355.

What Constitutes "Unprofessional or Dishonorable Conduct" under United States Statute (29 Stat. at L. 198). — Czarra *v.* Medical Supervisors, 24 App. Cas. (D. C.) 251.

"Infamous and Disgraceful Conduct" as Ground for Revocation under Ontario Statute. — *Re* Crichton, 13 Ont. L. Rep. 271.

Retroactive Effect of Wisconsin Statute. — State *v.* Schaeffer, 129 Wis. 459, 109 N. W. 522.

Power to Revoke License under Missouri Statute. — State *v.* Goodier, 195 Mo. 551, 93 S. W. 928.

Method of Revocation under New Hampshire Statute of 1901. — Brown *v.* Grenier, 73 N. H. 426, 62 Atl. 590.

Review by Courts, under Nebraska Statute, of Action of Board. — Munk *v.* Frink, 75 Neb. 172, 106 N. W. 425.

Writ of Prohibition Will Not Issue against Investigation by Board. — State *v.* Goodier, 195 Mo. 551, 93 S. W. 928.

785. 1. Hewitt *v.* Medical Examiners, 148 Cal. 590, 84 Pac. 39; Spurgeon *v.* Rhodes, 167 Ind. 1, 78 N. E. 228, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 785; State *v.* Davis, 194 Mo. 485, 92 S. W. 484; State *v.* McIntosh, 205 Mo. 616, 103 S. W. 1071; State *v.* Schaeffer, 129 Wis. 459, 109 N. W. 522.

Proper Grounds for Revocation. — Hewitt *v.* Medical Examiners, 148 Cal. 590, 84 Pac. 39.

Statute Must Be Reasonable. — Hewitt *v.* Medical Examiners, 148 Cal. 590, 84 Pac. 39.

Statute Not Defining Offense Void for Uncertainty. — Hewitt *v.* Medical Examiners, 148 Cal. 590, 84 Pac. 39.

2. Hewitt *v.* Medical Examiners, 148 Cal. 590, 84 Pac. 39; Czarra *v.* Medical Supervisors, 24 App. Cas. (D. C.) 251; Macomber *v.* State Board of Health, 28 R. I. 3, 65 Atl. 263.

Jurisdiction of District Court to Revoke under Oklahoma Statute. — Gulley *v.* Territory, (Okla. 1907) 91 Pac. 1037.

4. Gulley *v.* Territory, (Okla. 1907) 91 Pac. 1037.

7. *Alabama.* — Brooks *v.* State, 146 Ala. 153, 41 So. 156.

Idaho. — State *v.* Cooper, 11 Idaho 219, 81 Pac. 374.

Illinois. — People *v.* Langdon, 219 Ill. 189, 76 N. E. 387; Kettles *v.* People, 221 Ill. 221, 77 N. E. 472.

Kansas. — State *v.* Huff, 75 Kan. 585, 90 Pac. 279.

Maryland. — Watson *v.* State, 105 Md. 650, 66 Atl. 635.

New Hampshire. — Brown *v.* Grenier, 73 N. H. 426, 62 Atl. 590.

Washington. — State *v.* Newton, 39 Wash. 491, 81 Pac. 1002.

Canada. — Rex *v.* Rondeau, 9 Can. Crim. Cas. (N. W. Ter.) 523.

Statutory Criminal Liability. — State *v.* Hicks, 143 N. Car. 689, 57 S. E. 441; State *v.* Bresee, (Iowa 1907) 114 N. W. 45.

8. Foo Lun *v.* State, 84 Ark. 475, 106 S. W. 946; State *v.* Bresee, (Iowa 1907) 114 N. W. 45; People *v.* Allcutt, 189 N. Y. 517, 81 N. E. 1171, *affirming* 117 N. Y. App. Div. 546, 102 N.

Y. Supp. 678; State *v.* Heffernan, 28 R. I. 20, 65 Atl. 284.

What Constitutes "Practicing Medicine" within Statutes. — State *v.* Bresee, (Iowa 1907) 114 N. W. 45; State *v.* Wilhite, 132 Iowa 226, 109 N. W. 730; State *v.* Kendig, 133 Iowa 164, 110 N. W. 463; State *v.* Huff, 75 Kan. 585, 90 Pac. 279; *In re* Ontario Medical Act, 13 Ont. L. Rep. 501, 7 Ann. Cas. 369.

Medicine Defined. — State *v.* Heffernan, 28 R. I. 20, 65 Atl. 284.

Administration of Drugs Not Essential. — People *v.* Allcutt, 189 N. Y. 517, 81 N. E. 1171, *affirming* 117 N. Y. App. Div. 546, 102 N. Y. Supp. 678.

Acts Must Be Done Repeatedly to Constitute "Practicing" within Meaning of Arkansas Statute. — Foo Lun *v.* State, 84 Ark. 475, 106 S. W. 946.

What Constitutes Prescribing Medicine. — State *v.* Lawson, (Del. 1907) 65 Atl. 593; State *v.* Oredson, 96 Minn. 509, 105 N. W. 188; State *v.* Davis, 194 Mo. 485, 92 S. W. 484.

Hypnotism and Massage as Prescribing Medicine. — State *v.* Lawson, (Del. 1907) 65 Atl. 593.

Practice of Dermatology as Practicing. — State *v.* Heffernan, 28 R. I. 20, 65 Atl. 284.

Admissibility of Evidence to Show Practicing. — State *v.* Heffernan, 28 R. I. 20, 65 Atl. 284.

Sufficiency of Evidence to Show Practicing. — Springer *v.* District of Columbia, 23 App. Cas. (D. C.) 59; State *v.* Kendig, 133 Iowa 164, 110 N. W. 463; State *v.* Bresee, (Iowa 1907) 114 N. W. 45; State *v.* Huff, 75 Kan. 585, 90 Pac. 279; State *v.* Heffernan, 28 R. I. 20, 65 Atl. 284.

Sufficiency of Uncorroborated Evidence of Employees of Dental Society to Show Practicing Without License. — People *v.* Stein, 112 N. Y. App. Div. 896, 97 N. Y. Supp. 923.

What Constitutes "Practicing Medicine" Question for Court. — Springer *v.* District of Columbia, 23 App. Cas. (D. C.) 59.

What Constitutes Practicing Dentistry. — State *v.* Newton, 39 Wash. 491, 81 Pac. 1002.

786. 2. State *v.* Wilhite, 132 Iowa 226, 109 N. W. 730; State *v.* Bresee, (Iowa 1907) 114 N. W. 45; People *v.* Somme, 120 N. Y. App. Div. 20, 104 N. Y. Supp. 946; People *v.* Allcutt, 189 N. Y. 517, 81 N. E. 1171, *affirming* 117 N. Y. App. Div. 546, 102 N. Y. Supp. 678; State *v.* Marble, 72 Ohio St. 21, 73 N. E. 1063.

Sufficiency of Evidence to Warrant Conviction under Iowa Statute. — State *v.* Wilhite, 132 Iowa 226, 109 N. W. 730.

5. Com. *v.* Porn, (Mass. 1907) 82 N. E. 31.

Midwifery Not Practicing Medicine under Northwest Territories Ordinance. — Rex *v.* Rondeau, 9 Can. Crim. Cas. (N. W. Ter.) 523.

6. Com. *v.* Porn, (Mass. 1907) 82 N. E. 31.

8. People *v.* Somme, 120 N. Y. App. Div. 20, 104 N. Y. Supp. 946.

10. As to Whether Christian Scientist Is Practitioner, see *In re* Ontario Medical Act, 13 Ont. L. Rep. 501, 7 Ann. Cas. 369.

14. Christian Science Treatment Constitutes Practicing under Ohio Statute. — State *v.* Marble, 72 Ohio St. 21, 73 N. E. 1063.

15. Ligon *v.* State, 145 Ala. 659, 39 So. 662.

As to Whether Osteopathist is Practitioner, see *In re* Ontario Medical Act, 13 Ont. L. Rep. 501, 7 Ann. Cas. 369.

Osteopathists within Purview of New York Statute of 1893. — People *v.* Allcutt, 189 N. Y. 517, 81 N. E. 1171, *affirming* 117 N. Y. App. Div. 546, 102 N. Y. Supp. 678.

Mechano-Neural Therapy as Practicing under New York Statute. — People *v.* Allcutt, 117 N. Y. App. Div. 546, 102 N. Y. Supp. 678.

787. 5. Kettles *v.* People, 221 Ill. 221, 77 N. E. 472; State *v.* Doerring, 194 Mo. 398, 92 S. W. 439; People *v.* Somme, 120 N. Y. App. Div. 20, 104 N. Y. Supp. 946, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 787.

Burden of Proving Time of Offense on State. — State *v.* Newton, 39 Wash. 491, 81 Pac. 1002.

790. 2. **Right of Third Person to Recover for Medical Attention and Nursing.** — Molt *v.* Hoover, (Ind. App. 1907) 81 N. E. 221.

3. **Benefit Received from Services Not Test of Reasonable Worth.** — Cotnam *v.* Wisdom, 83 Ark. 601, 104 S. W. 164.

791. 1. Burton *v.* Fletcher Mfg. Co., (R. I. 1907) 67 Atl. 366.

2. **Promise Implied from Request of Traction Company to Attend Person Injured by It.** — Chicago Consol. Traction Co. *v.* Mathews, 117 Ill. App. 174.

5. Morrell *v.* Lawrence, 203 Mo. 363, 101 S. W. 571.

792. 3. **Ratification of Agent's Contract.** — Hall *v.* New York, etc., R. Co., 27 R. I. 525, 65 Atl. 278.

793. 6. Coyne *v.* Baker, 2 Cal. App. 640, 84 Pac. 269; Vandenberg *v.* Slagh, 150 Mich. 225, 114 N. W. 72; Logan *v.* Field, 192 Mo. 54, 90 S. W. 127.

794. 4. Sills *v.* Cochems, 36 Colo. 524, 85 Pac. 1007; Marshall *v.* Bahnsen, 1 Ga. App. 485, 57 S. E. 1006; Morrell *v.* Lawrence, 203 Mo. 363, 101 S. W. 571.

What Evidence Admissible to Show Reasonable Value of Services. — Morrell *v.* Lawrence, 203 Mo. 363, 101 S. W. 571.

Sufficiency of Evidence to Show Implied Contract. — Pryor *v.* Milburn, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 596, 101 N. Y. Supp. 34.

7. See Marshall *v.* Bahnsen, 1 Ga. App. 485, 57 S. E. 1006.

8. Sills *v.* Cochems, 36 Colo. 524, 85 Pac. 1007; Marshall *v.* Bahnsen, 1 Ga. App. 485, 57 S. E. 1006; Morrell *v.* Lawrence, 203 Mo. 363, 101 S. W. 571.

795. 4. Marshall *v.* Bahnsen, 1 Ga. App. 485, 57 S. E. 1006.

798. 4. Leggat *v.* Gerrick, 35 Mont. 91, 88 P. 788.

6. **Admissibility of Evidence to Show Intent.** — Willard *v.* Norcross, 79 Vt. 546, 65 Atl. 755.

7. Champion *v.* Kieth, 17 Okla. 204, 87 Pac. 845; Stamper *v.* Rhindress, 41 Nova Scotia 45.

799. 1. Thompson *v.* Martin, 127 Mo. App. 24, 106 S. W. 535.

2. *Iowa.* — Ferrell *v.* Ellis, 129 Iowa 614, 105 N. W. 993.

Kentucky. — Dorris *v.* Warford, (Ky. 1907) 100 S. W. 312.

Missouri. — Ghere *v.* Zey, (Mo. App. 1908) 107 S. W. 418.

Oklahoma. — Champion *v.* Kieth, 17 Okla. 204, 87 Pac. 845.

Vermont. — Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807.

Washington. — Peterson *v.* Wells, 41 Wash. 693, 84 Pac. 608; Froman *v.* Ayars, 42 Wash. 385, 85 Pac. 14.

West Virginia. — Dye *v.* Corbin, 59 W. Va. 266, 53 S. E. 147, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 799.

Canada. — Stamper *v.* Rhindress, 41 Nova Scotia 45.

Sufficiency of Evidence to Show Requisite Degree of Care. — Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264.

800. 1. *Iowa.* — Ferrell *v.* Ellis, 129 Iowa 64, 105 N. W. 993.

Kentucky. — Dorris *v.* Warford, (Ky. 1907) 100 S. W. 312.

Missouri. — Ghere *v.* Zey, (Mo. App. 1908) 107 S. W. 418.

Washington. — Peterson *v.* Wells, 41 Wash. 693, 84 Pac. 608.

West Virginia. — Dye *v.* Corbin, 59 W. Va. 266, 53 S. E. 147, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 800.

"In Same General Neighborhood." — Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807.

2. Dye *v.* Corbin, 59 W. Va. 266, 53 S. E. 147, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 800.

3. *Minnesota.* — Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264.

Missouri. — Logan *v.* Field, 192 Mo. 54, 90 S. W. 127.

Oklahoma. — Champion *v.* Kieth, 17 Okla. 204, 87 Pac. 845.

Washington. — Peterson *v.* Wells, 41 Wash. 693, 84 Pac. 608.

West Virginia. — Dye *v.* Corbin, 59 W. Va. 266, 53 S. E. 147, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 800.

Canada. — Stamper *v.* Rhindress, 41 Nova Scotia 45.

801. 4. Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264.

Liability for Death from Pneumonia. — Red Cross Medical Service Co. *v.* Green, 126 Ill. App. 214.

In Performing Operation. — Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264.

802. 6. **Liability for Negligent Use of Appliance.** — Ball *v.* Skinner, 134 Iowa 298, 111 N. W. 1022.

803. 1. Blackburn *v.* Curd, (Ky. 1908) 106 S. W. 1186.

Physician Cannot Substitute Another without Patient's Consent. — Ghere *v.* Zey, (Mo. App. 1908) 107 S. W. 418.

804. 3. Baute *v.* Haynes, 104 S. W. 272, 31 Ky. L. Rep. 876.

5. Staloch *v.* Holm, 100 Minn. 276, 111 N. W. 264, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 804; Champion *v.* Kieth, 17 Okla. 204, 87 Pac. 845; Dye *v.* Corbin, 59 W. Va. 266, 53 S. E. 147.

805. 1. Dye *v.* Corbin, 59 W. Va. 266, 53 S. E. 147, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 805.

7. **Liability of Dental Corporation for Injuries Caused by Unskilled Practitioner.** — Mandeville *v.* Courtright, 142 Fed. 97, 73 C. C. A. 321.

806. 4. Blackburn *v.* Curd, (Ky. 1908) 106 S. W. 1186.

Where Disobedience Shown, Burden on Plaintiff to Show Injury Not Caused Thereby. — McIlwain *v.* Gaebe, 128 Ill. App. 209.

808. 7. Dorris *v.* Warford, (Ky. 1907) 100 S. W. 312.

Recovery for Pain and Suffering. — Albertson *v.* Lewis, 132 Iowa 243, 109 N. W. 705; Dorris *v.* Warford, (Ky. 1907) 100 S. W. 312.

809. 2. **Burden of Proof on Plaintiff.** — Dye *v.* Corbin, 59 W. Va. 266, 53 S. E. 147.

Negligence Not Presumed. — Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807.

Sufficiency of Evidence to Show Negligence. — McGehee *v.* Schiffman, 4 Cal. App. 50, 87 Pac. 290; Peterson *v.* Wells, 41 Wash. 693, 84 Pac. 608.

5. Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807.

810. 3. Hampton *v.* State, 50 Fla. 55, 39 So. 421, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 810, as to entire paragraph.

6. Hampton *v.* State, 50 Fla. 55, 39 So. 421, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 810, as to all points in the paragraph.

811. 1. Hampton *v.* State, 50 Fla. 55, 39 So. 421, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 811, as to all points in the paragraph.

8. Hampton *v.* State, 50 Fla. 55, 39 So. 421, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 811, as to entire paragraph.

13*a*. **Liability for Operation Performed without Authority.** — Pratt *v.* Davis, 224 Ill. 300, 79 N. E. 562; Bakker *v.* Welsh, 144 Mich. 632, 108 N. W. 94.

PIER.

812. 6. Western Maryland Tidewater R. Co. *v.* Baltimore, (Md. 1907) 68 Atl. 6, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 812.

PILOTS.

814. 4. **Waters Wholly within State** are not under the control of Congress or of another state in the matter of licensing pilots. State *v.* Leech, 119 La. 522, 44 So. 285.

6. State *v.* Ames, (Wash. 1907) 92 Pac. 137.

815. 7. State *v.* Ames, (Wash. 1907) 92 Pac. 137.

816. 3. **A Requirement that Pilots Must Be Qualified Voters** is not a discrimination. State *v.* Ames, (Wash. 1907) 92 Pac. 137.

817. 2. **The Virginia Statute** requiring compulsory pilotage does not violate the United States Constitution. Thompson *v.* Darden, 198 U. S. 310, 25 U. S. Sup. Ct. 660.

Vessels Exempted. — There is no discrimination in not requiring coasting vessels having pilots' licenses to secure pilotage. Thompson *v.* Darden, 198 U. S. 310, 25 U. S. Sup. Ct. 660.

All Vessels are included in the *Washington* statutes. State *v.* Ames, (Wash. 1907) 92 Pac. 137.

Vessels Exempted — Under Canada Statute. — St. John Pilot Com'rs *v.* Cumberland R.,

etc., Co., 38, Can. Sup. Ct. 169, *affirming* 37 N. Bruns. 406.

821. 1. **Members of Pilot Association Not Jointly Liable for Negligence of Member.** — Guy *v.* Donald, 203 U. S. 399, 27 U. S. Sup. Ct. 63.

2. Donald *v.* Guy, 135 Fed. 429; Guy *v.* Donald, (C. C. A.) 157 Fed. 527, *affirming* 135 Fed. 429.

3. **Where Damages, Caused by a Collision** due to the pilot's negligence, are paid by his employers, he is liable for the full amount paid. Guy *v.* Donald, (C. C. A.) 157 Fed. 527.

7. Guy *v.* Donald, (C. C. A.) 157 Fed. 527.

Compensation for Detention. — The Cervantes, 135 Fed. 573.

Extra Compensation Allowed for Moving when such service has no legal connection with the pilotage. The Cervantes, 135 Fed. 573.

822. 4. The master may bind the ship for extra pilotage and resort may be had to the owner or master. The Cervantes, 135 Fed. 573.

PISTOL.

828. 7. **Air-gun.** — The Pistols Act, 1903, does not apply to a mere toy, but it does apply to an air-gun if it is a weapon from which a shot, bullet, or other missile can be discharged, although it is not a firearm. Bryson *v.* Gamage, (1907) 2 K. B. 630, 76 L. J. K. B. 936.

PLACE.

829. 3. **Definite Locality Required.** — Audubon *v.* Hand, 231 Ill. 334, 83 N. E. 196, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 829.

The Words "Place or Places," Occurring in Connection with the Words "Port or Ports," mean ***place*** or ***places*** at which the vessel might arrive with some other object than that of merely passing on her way to some other point. Maritime Ins. Co. *v.* Alianza Ins. Co., (1907) 2 K. B. 660, 97 L. T. N. S. 606, 77 L. J. K. B. 69.

Intoxicating Liquors. — The word ***place***, as used in statute prohibiting keeping a ***place*** where intoxicating liquors are sold, means the particular building or apartment where the unlawful sale is made or the intoxicating beverages are kept for sale. State *v.* Poull, 14 N. Dak. 557, 105 N. W. 717.

830. 1. **The Words "Place of Destination,"** as used in a stipulation in a shipping contract, requiring the giving of notice of injuries to stock before its removal from the ***place*** of destination, refer to the town, village, or city to which the shipment is made. Hatch *v.* Minneapolis, etc., R. Co., 15 N. Dak. 490, 107 N. W. 1087.

PLANT.

834. 4. **A Hulk,** which had formerly been a sailing-ship, but which had been dismantled and had had its rudder removed and was used as a floating warehouse for coal, was held to be a ***plant*** within the meaning of the Customs and Revenue Act. Hall *v.* Rickman, (1906) 1 K. B. 311, 75 L. J. K. B. 178.

5. **Electric Company.** — The word ***plant*** in the charter of an electric light and power company held to include its pole and wire lines. Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785.

PLANTS.

835. 3*a*. **Revenue Laws.** — Sprouted lily of the valley roots held ***plants*** used for forcing under the Tariff Act. McAllister *v.* U. S., 147 Fed. 773.

PLEA.

837. 1. **Pleas Equivalent to Actions in Conspiracy Statute.** — State *v.* Bacon, 27 R. I. 252, 61 Atl. 653.

Plead. — In construing the Wisconsin statute providing that the examination of an adverse party may be taken before issue joined to enable the party to ***plead***, the court said: "The word ***plead***, as thus used in the statute is not to be limited to a complaint, answer, or reply, but may extend to a claim urged in defense of a proceeding instituted by either party in aid of an action or defense, and which may be put in issue and tried." Ellinger *v.* Equitable L. Assur. Soc., 125 Wis. 643, 104 N. W. 811.

PLEDGE AND COLLATERAL SECURITY.

842. 1. **Pledge or Conditional Sale — Question for Jury.** — Smith *v.* Nixon, 145 Mich. 593, 108 N. W. 971.

844. 2. Marsh *v.* Keating, 78 Conn. 13, 60 Atl. 689.

845. 3. **Statutory Distinctions.** — But see Puckhaber *v.* Henry, (Cal. 1907) 93 Pac. 114.

846. 2. Philadelphia Warehouse Co. *v.* Winchester, 156 Fed. 600.

After-acquired Property May Be Pledged. — Samuel Morganstein *v.* Commercial Nat. Bank, 125 Ill. App. 397.

3. **Pledge of Pledgee's Special Interest in Pledged Property.** — Wright Steam Engine Works *v.* McAdam, 113 N. Y. App. Div. 872, 99 N. Y. Supp. 577.

6. **Note and Mortgage on Land May Be Pledged.** — See Munson *v.* American Sav. Bank, etc., Co., 43 Wash. 540, 86 Pac. 1047.

Policy of Insurance May Be Pledged. — Du Brutz *v.* Visalia Bank, 4 Cal. App. 201, 87 Pac. 467.

Negotiable Instruments May Be Pledged. — Brown *v.* James, (Neb. 1908) 114 N. W. 591; Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303; Montreal Bank *v.* Howard, 44 Wash. 10, 80 Pac. 1115.

847. 2. Western Supply, etc., Co. *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1906) 92 S. W. 986.

848. 1. **Pledge of Note and Collateral Security Valid.** — Eddy *v.* Fogg, 192 Mass. 543, 78 N. E. 549.

3. Robinson *v.* Ralph, 74 Neb. 55, 103 N. W. 1044.

5. Beken *v.* Kingsbury, 113 N. Y. App. Div. 555, 100 N. Y. Supp. 323. *Compare* Farmers' L. & T. Co. *v.* Madison Mfg. Co., 153 Fed. 310; Chickering-Chase Bros. Co. *v.* Moulton, (Iowa 1906) 107 N. W. 434.

850. 2. **Larceny by Bailee.** — The good faith of a pledgee of goods pledged by a bailee is immaterial. Newton *v.* Cardwell Blue Print, etc., Co., (Colo. 1907) 92 Pac. 914.

7. Tuttle *v.* Greenfield First Nat. Bank, 187 Mass. 533, 73 N. E. 560; Kenworthy *v.* Levi, 214 Pa. St. 235, 63 Atl. 690.

851. 3. **Pledgee Estopped to Deny Corporate Character of Pledgor.** — Blanc *v.* Germania Nat. Bank, 114 La. 739, 38 So. 537.

4. In Ladd *v.* Myers, 4 Cal. App. 352, 87 Pac. 1110, the transaction was held an actual pledge and not an agreement for a pledge.

5. **Instruments Construed to Be Pledge.** — Daly *v.* Spiller, 222 Ill. 421, 78 N. E. 782.

852. 3. Mitchell *v.* McLeod, 127 Iowa 733, 104 N. W. 349.

Writing Necessary with Regard to Third Persons. — Millot *v.* Conrad, 114 La. 193, 38 So. 139.

4. Waterloo First Nat. Bank *v.* Bacon, 113 N. Y. App. Div. 612, 98 N. Y. Supp. 717.

5. Blanc *v.* Germania Nat. Bank, 114 La. 739, 38 So. 537; Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

6. Waterloo First Nat. Bank *v.* Bacon, 113 N. Y. App. Div. 612, 98 N. Y. Supp. 717; *Compare* Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

Pledge May Include Future Indebtedness. — Brown *v.* James, (Neb. 1908) 114 N. W. 571.

Uncertain Debt. — Marsh *v.* Keating, 78 Conn. 13, 60 Atl. 689.

8. The surrender of other instruments held as collateral security is a good consideration. Chesapeake Steamship Co. *v.* Merchant's Nat. Bank, 102 Md. 589, 63 Atl. 113.

853. 1. Millot *v.* Conrad, 114 La. 193, 38 So. 139; Blanc *v.* Germania Nat. Bank, 114 La. 739, 38 So. 537.

Failure to Describe Bonds Cured by Delivery Thereof. — Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

3. Mitchell *v.* McLeod, 127 Iowa 733, 104 N. W. 349.

4. **Parol Evidence to Vary Contract of Pledge Inadmissible.** — Buxton *v.* Alton-Dawson Mercantile Co., 17 Okla. 287, 90 Pac. 19.

Parol Evidence Not Admissible as against Third Persons. — Millot *v.* Conrad, 114 La. 193, 38 So. 139.

6. Philadelphia Warehouse Co. *v.* Winchester, 156 Fed. 600; Interurban Constr. Co. *v.* Hayes, 191 Mo. 248, 89 S. W. 927; Cotton *v.* Arnold, 118 Mo. App. 596, 95 S. W. 280.

854. 1. **Oral Evidence** is not admissible to show a delivery of bonds to another than the one entitled by the written contract to receive them. Interurban Constr. Co. *v.* Hayes, 191 Mo. 248, 89 S. W. 927.

2. **Possession of First Pledgee as Agency for Second.** — Waterloo First Nat. Bank *v.* Bacon, 113 N. Y. App. Div. 612, 98 N. Y. Supp. 717.

855. 3. **No Pledge but Mere Lien Exists.** — Philadelphia Warehouse Co. *v.* Winchester, 156 Fed. 600.

856. 3. See Interurban Constr. Co. *v.* Hayes, 191 Mo. 248, 89 S. W. 927.

4. Philadelphia Warehouse Co. *v.* Winchester, 156 Fed. 600.

5. Farson *v.* Gilbert, 114 Ill. App. 17.

7. Bush *v.* Export Storage Co., 136 Fed. 918; Philadelphia Warehouse Co. *v.* Winchester, 156 Fed. 600; Waterloo First Nat. Bank *v.* Bacon, 113 N. Y. App. Div. 612, 98 N. Y. Supp. 717.

857. 3. Bush *v.* Export Storage Co., 136 Fed. 918.

Transfer of Receipt Real Delivery. — Union Trust Co. *v.* Wilson, 198 U. S. 530, 25 U. S. Sup. Ct. 766.

858. 1. Bush *v.* Export Storage Co., 136 Fed. 918, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 858.

859. 1. Robinson *v.* Ralph, 74 Neb. 55, 103 N. W. 1044; *Ex p.* Powell, 74 S. Car. 193, 54 S. E. 236.

2. *Ex p.* Powell, 74 S. Car. 193, 54 S. E. 236.

860. 1. Puckhaber *v.* Henry, (Cal. 1907) 93 Pac. 114. *Compare* Knoll *v.* Melone, 1 Cal. App. 637, 82 Pac. 982, to the effect that the same limitation applies to the lien as to the pledge.

2. Philadelphia Warehouse Co. *v.* Winchester, 156 Fed. 600; Goodrich *v.* Dore, 194 Mass. 493, 80 N. E. 480.

862. 2. **Broker Need Not Retain Identical Pledged Stock.** — Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

3. Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 862.

Broker as Pledgee of Stocks Not Liable for Taxes Thereon. — Chase *v.* Boston, 193 Mass. 522, 79 N. E. 736.

Rights of Pledgee of Water Stock. — Mabb *v.* Stewart, 147 Cal. 413, 81 Pac. 1073.

864. 5. Knoll *v.* Melone, 1 Cal. App. 637, 82 Pac. 982; Capital Nat. Bank *v.* Wilkerson, 36 Ind. App. 467, 75 N. E. 837, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 864; Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932; Chase *v.* Boston, 193 Mass. 522, 79 N. E. 736; Hershey *v.* Welch, 96 Minn. 145, 104 N. W. 821; Dickey *v.* Porter, 203 Mo. 1, 101 S. W. 586, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 864; Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 507, 95 N. Y. Supp. 966.

Pledgor May Redeem from Purchaser of Property Stolen from Pledgee. — Treadwell *v.* Clark, 190 N. Y. 51, 82 N. E. 505.

865. 1. Groeltz *v.* Cole, 128 Iowa 340, 103 N. W. 977; Dickey *v.* Porter, 293 Mo. 1, 101 S. W. 586, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 865; Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 507, 95 N. Y. Supp. 966.

3. Lake *v.* Little Rock Trust Co., 77 Ark. 53, 90 S. W. 847. *Compare* National Exchange Bank *v.* Kilpatric, 204 Mo. 110, 102 S. W. 499.

866. 3. **Rights Similar to Those of Ownership.** — Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

867. 3. But see Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

6. Ladd *v.* Myers, 4 Cal. App. 352, 87 Pac. 1110; Atlanta Sav. Bank *v.* Downing, 122 Ga. 692, 51 S. E. 38. See also Cotton *v.* Arnold, 118 Mo. App. 596, 95 S. W. 280.

In Equity, where it was impossible to separate the proceeds of wool pledged for a loan

from the proceeds of wool on which another creditor had a lien, it was held that the claims should abate in proportion to their amount. Smith *v.* Moors, 215 Pa. St. 421, 64 Atl. 593.

868. 3. Love *v.* Export Storage Co., (C. C. A.) 143 Fed. 1.

Loss of Possession Defeats Priority. — Goodrich *v.* Dore, 194 Mass. 493, 80 N. E. 480.

869. 3. Smith *v.* Shipper's Oil Co., (La. 1907) 45 So. 533; Union Trust Co. *v.* Preston Nat. Bank, 144 Mich. 106, 107 N. W. 1109; Brown *v.* James, (Neb. 1908) 114 N. W. 591.

Joint Pledge of Husband and Wife Does Not Secure Husband's Note. — Litchfield First Nat. Bank *v.* Southworth, 215 Ill. 640, 74 N. E. 771.

870. 4. The pledgee is not entitled to interest as a bonus on a mortgage pledged as security for a guaranty. Ruberg *v.* Brown, 71 S Car. 287, 51 S. E. 96.

5. Hickson Lumber Co. *v.* Pollock, 139 N. Car. 174, 51 S. E. 855.

Assessment on Stock Recoverable by Pledgee. — Mabb *v.* Stewart, 147 Cal. 413, 81 Pac. 1073.

Right of Pledgee to Deduct Sums Paid for Taxes. — Milwaukee *v.* Wakefield, (Wis. 1907) 113 N. W. 34.

6. Ruberg *v.* Brown, 71 S. Car. 287, 51 S. E. 96.

Where a suit was brought in the pledgor's name unnecessarily attorneys' fees were denied. Graham *v.* Light, 4 Cal. App. 400, 88 Pac. 373.

871. 1. Emmetsburg First Nat. Bank *v.* Gunhus, 133 Iowa 409, 110 N. W. 611.

872. 1. Jones *v.* Evans, (Cal. App. 1907) 91 Pac. 532; Hutchinson *v.* Evans, (Cal. App. 1907) 92 Pac. 1135; Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

By Special Contract the pledgee may have only a right of action against the pledgor for a deficiency. Kerr *v.* Frauerman, 210 Pa. St. 533, 60 Atl. 157.

2. See Hudson *v.* Pine Bluff Bank, 75 Ark. 493, 87 S. W. 1177.

6. **Insolvent Pledgor May Not Alter without His Assignee's Consent.** — Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214.

873. 1. Rhomberg *v.* Avenarius, (Iowa 1907) 112 N. W. 548; Interurban Constr. Co. *v.* Hayes, 191 Mo. 248, 89 S. W. 927; Furber *v.* National Metal Co., 119 N. Y. App. Div. 263, 103 N. Y. Supp. 490; Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

3. Furber *v.* National Metal Co., 119 N. Y. App. Div. 263, 103 N. Y. Supp. 490.

5. Rhomberg *v.* Avenarius, (Iowa 1907) 112 N. W. 548.

Larceny by Pledgee's Agent. — Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1.

6. Gregg *v.* Columbia Bank, 72 S. Car. 458, 52 S. E. 195.

Waiver of Tort by Suing for Accounting. — Demars *v.* Hudon, 33 Mont. 170, 82 Pac. 952.

Pledgor's Option to Bring Accounting. — Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 507, 95 N. Y. Supp. 966.

874. 2. Davis *v.* Hardwick, (Tex. Civ. App. 1906) 94 S. W. 359.

Shares in Reorganized Company May Be Substituted. — Horton *v.* McCafferty, 42 Wash. 221, 84 Pac. 733.

3. **Demand on Purchaser Unnecessary.** — Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1.

4. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Furber *v.* National Metal Co., 119 N. Y. App. Div. 263, 103 N. Y. Supp. 490; Austin *v.* Vanderbilt, 48 Oregon 206, 85 Pac. 519, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 874.

5. See Demars *v.* Hudon, 33 Mont. 170, 82 Pac. 952.

875. 2. **Highest Market Value.** — Gregg *v.* Columbia Bank, 72 S. Car. 458, 52 S. E. 195.

Value at Time of Conversion. — Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

5. **Damages for Conversion of Corporate Stock.** — Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1.

876. 1. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Austin *v.* Vanderbilt, 48 Oregon 206, 85 Pac. 519.

4. *Ex p.* Powell, 74 S. Car. 193, 54 S. E. 236, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 876.

Insolvent Pledgor's Assignee May Redeem. — Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214.

877. 3. Groeltz *v.* Cole, 128 Iowa 340, 103 N. W. 977; Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 507, 95 N. Y. Supp. 966; Treadwell *v.* Clark, 190 N. Y. 51, 82 N. E. 505; Eichbaum *v.* Sample, 213 Pa. St. 216, 62 Atl. 837.

Laches No Defense Where Rights Still Recognized as Existing. — Daly *v.* Spiller, 222 Ill. 421, 78 N. E. 782.

6. Treadwell *v.* Clark, 190 N. Y. 51, 82 N. E. 505.

7. Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 507, 95 N. Y. Supp. 966; Treadwell *v.* Clark, 190 N. Y. 51, 82 N. E. 505. See also Demars *v.* Hudon, 33 Mont. 170, 82 Pac. 952; Hebblethwaite *v.* Flint, 115 N. Y. App. Div. 597, 101 N. Y. Supp. 43.

8. **Where Stock Has Been Pledged.** — Eichbaum *v.* Sample, 213 Pa. St. 216, 62 Atl. 837.

878. 1. Du Brutz *v.* Visalia Bank, 4 Cal. App. 201, 87 Pac. 467.

Limitations against Debt No Excuse. — Puckhaber *v.* Henry, (Cal. 1907) 93 Pac. 114.

Subsequent Tenders do not affect the right of redemption under a prior valid tender. Chapman *v.* Benedict, 3 Cal. App. 399, 86 Pac. 736.

5. The *bona fide* purchaser of a note obtained by fraud has been held to secure a good title by assignment to a collateral note and mortgage. White *v.* Dodge, 187 Mass. 449, 73 N. E. 549.

Assignment Carriers Account for Advances Made. — Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

7. Eddy *v.* Fogg, 192 Mass. 543, 78 N. E. 549; Wright Steam Engine Works *v.* McAdam, 113 N. Y. App. Div. 872, 99 N. Y. Supp. 577.

879. 2. Folmar *v.* Lehman-Durr Co., 147 Ala. 472, 41 So. 750.

3. Hershey *v.* Welch, 96 Minn. 145, 104 N. W. 821.

4. Ladd *v.* Myers, 4 Cal. App. 352, 87 Pac. 1110.

5. Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214.

8. Gregg *v.* Columbia Bank, 72 S. Car. 458, 52 S. E. 195, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 879.

880. 5. Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425; Eichbaum *v.* Sample, 213 Pa. St. 216, 62 Atl. 837.

Refusal to Return Collateral Is Justification for Nonpayment. — Schlesinger *v.* Wise, 106 N. Y. App. Div. 587, 94 N. Y. Supp. 718.

881. 2. Knoll *v.* Melone, 1 Cal. App. 637, 82 Pac. 982; Capital Nat. Bank *v.* Wilkerson, 36 Ind. App. 467, 75 N. E. 837; Munson *v.* American Sav. Bank, etc., Co., 43 Wash. 549, 86 Pac. 1047.

Payment by Other Than Principal Debtor — Subrogation. — Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

3. Schlesinger *v.* Wise, 106 N. Y. App. Div. 587, 94 N. Y. Supp. 718; Schlesinger *v.* Wise, 107 N. Y. App. Div. 615, 94 N. Y. Supp. 721; Hershey *v.* Welch, 96 Minn. 145, 104 N. W. 821.

Partial Payment Does Not Entitle Pledgor to Possession. — *Ex p.* Powell, 74 S. Car. 193, 54 S. E. 236, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 882.

Right to Property Foreclosed by Pledgee of Mortgage. — Munson *v.* American Sav. Bank, etc., Co., 43 Wash. 549, 86 Pac. 1047.

882. 1. **Limitations Run When Debt Is Due.** — Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 507, 95 N. Y. Supp. 966.

4. Schlesinger *v.* Wise, 106 N. Y. App. Div. 587, 94 N. Y. Supp. 718.

5. Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533.

6. Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425; Smith *v.* Becker, 129 Wis. 396, 109 N. W. 131.

Pledgor Entitled to Return of Bonds Purchased with Pledged Stock. — Hebblethwaite *v.* Flint, 115 N. Y. App. Div. 597, 101 N. Y. Supp. 43.

7. Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 882.

883. 1. Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 883; Dickey *v.* Porter, 203 Mo. 1, 101 S. W. 586; Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 95 N. Y. Supp. 966.

884. 1. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 884.

885. 1. **Pledgee Not Liable for Depreciation of Stock Retained.** — Lake *v.* Little Rock Trust Co., 77 Ark. 53, 90 S. W. 847.

But where the pledgee failed to sell upon request by the pledgor the former was held liable for depreciation in its value. National Exchange Bank *v.* Kilpatric, 204 Mo. 119, 102 S. W. 499.

3. Lake *v.* Little Rock Trust Co., 77 Ark. 53, 90 S. W. 847; Jennings *v.* Moore; 189 Mass. 197, 75 N. E. 214; Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 507, 95 N. Y. Supp. 966.

Application on Debt Without Sale. — Du Brutz *v.* Visalia Bank, 4 Cal. App. 201, 87 Pac. 467.

886. 1. Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 885; Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533; Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214; Farmers' Nat. Bank *v.* Venner, 192 Mass. 531, 78 N. E. 540.

2. Farmers' Nat. Bank *v.* Venner, 192 Mass. 531, 78 N. E. 540.

5. Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 507, 95 N. Y. Supp. 966.

6. Option to Bring Accounting. — Wheeler *v.* Breslin, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 507, 95 N. Y. Supp. 966.

8. Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533.

887. 2. **Remedy by Action to Foreclose.** — Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1.

4. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533; Farmers' Nat. Bank *v.* Venner, 192 Mass. 531, 78 N. E. 540; Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1; Furber *v.* National Metal Co., 119 N. Y. App. Div. 263, 103 N. Y. Supp. 490.

888. 1. Tarber *v.* National Metal Co., 119 N. Y. App. Div. 263, 103 N. Y. Supp. 490; Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1.

3. Farmers' Nat. Bank *v.* Venner, 192 Mass. 531, 78 N. E. 540.

5. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

889. 1. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

2. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

Description of Property. — The misdescription in a notice of 5% bonds as 6% bonds has been held not to invalidate the sale. Farmers' Nat. Bank *v.* Venner, 192 Mass. 531, 78 N. E. 540.

5. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

7. Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533.

9. *In re* Mertens, (C. C. A.) 144 Fed. 818; Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

Authority to Sell "Without Further Notice" implies previous actual notice. Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533.

890. 1. Smith *v.* Shippers' Oil Co., (La. 1907) 45 So. 533; Furber *v.* National Metal Co., 119 N. Y. App. Div. 263, 103 N. Y. Supp. 490.

7. Real Estate Salesroom. — The New York Real Estate Salesroom has been held a proper place at which to sell bonds. Farmers' Nat. Bank *v.* Venner, 192 Mass. 531, 78 N. E. 540.

8. Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1; Atlantic, etc., R. Co. *v.* De Galindez, 14 Quebec K. B. 165, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 890; Toronto General Trusts Corp. *v.* Central Ontario R. Co., 10 Ont. L. Rep. 353, 4 Ann. Cas. 1163, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 891 [890].

891. 1. Lowe *v.* Osmun, 3 Cal. App. 387, 86 Pac. 729.

2. But the mere taking over of the property by the pledgee without agreement with an-

other is not a private sale. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

Estoppel to Repudiate Private Sale. — Rose *v.* Doe, 4 Cal. App. 680, 89 Pac. 135.

3. Farmers' Nat. Bank *v.* Venner, 192 Mass. 531, 78 N. E. 540; Smith *v.* Becker, 129 Wis. 396, 109 N. W. 131.

6. *In re* Mertens, (C. C. A.) 144 Fed. 818; Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723; Reeves *v.* Bruening, (N. Dak. 1907) 114 N. W. 313, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 891.

In California the pledgee or pledge holder may buy the property at public auction. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

892. 1. Reeves *v.* Bruening, (N. Dak. 1907) 114 N. W. 313, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 892.

2. But see Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

4. **Delay of Three Years No Bar.** — Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723.

5. Reeves *v.* Bruening, (N. Dak. 1907) 114 N. W. 313, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 892.

893. 1. *In re* Mertens, (C. C. A.) 144 Fed. 818; Farmers' Nat. Bank *v.* Venner, 192 Mass. 531, 78 N. E. 540; Munson *v.* American Sav. Bank, etc., Co., 43 Wash. 549, 86 Pac. 1047. See also Perkins *v.* Applegate, (Ky. 1905) 85 S. W. 723.

Pledgee as Trustee. — King *v.* Sullivan, (Tex. Civ. App. 1906) 92 S. W. 51.

4. Munson *v.* American Sav. Bank, etc., Co., 43 Wash. 549, 86 Pac. 1047.

5. Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1; Reeves *v.* Bruening, (N. Dak. 1907) 114 N. W. 313.

894. 1. **Ratification of Sale without Notice.** — Violett *v.* Horbach, 119 N. Y. App. Div. 373, 104 N. Y. Supp. 249.

4. Commercial Nat. Bank *v.* Grant, 73 Neb. 435, 103 N. W. 68.

5. **Pledgee May Sue in His Name as Owner of Pledge.** — Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

896. 1. **Pledgor Has No Authority to Receive Payment of Collaterals.** — Jennings *v.* Wyzanski, 188 Mass. 285, 74 N. E. 347; Ruberg *v.* Brown, 71 S. Car. 287, 51 S. E. 96.

7. **Acquiescence by Pledgee in Action by Pledgor.** — Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932.

897. 2. The lien of a pledged mortgage remains after it has been satisfied before the principal debt becomes due. Ruberg *v.* Brown, 71 S. Car. 287, 51 S. E. 96.

5. Knickerbocker Trust Co. *v.* Coyle, 139 Fed. 792, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897; Jones *v.* Evans, (Cal. App. 1907) 91 Pac. 532; Hutchinson *v.* Evans, (Cal. App. 1907) 92 Pac. 1135; Capital Nat. Bank *v.* Wilkerson, 36 Ind. App. 467, 75 N. E. 837, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897–904; Eddy *v.* Yogg, 192 Mass. 543, 78 N. E. 549; Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303; Glee *v.* Trauerman, 210 Pa. St. 533, 60 Atl. 157.

Collaterals Must Be Exhausted Before Proceeding against Assignee of Debt Only. — Folmar *v.* Lehman-Durr Co., 147 Ala. 472, 41 So. 750.

898. 5. **One Action on Guaranty and to Foreclose Pledged Mortgage Maintainable.** — Ruberg *v.* Brown, 71 S. Car. 287, 51 S. E. 96.

6. Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357; Camden Nat. Bank *v.* Fries-Breslin Co., 214 Pa. St. 395, 63 Atl. 1022.

899. 3. *Ex p.* Powell, 74 S. Car. 193, 54 S. E. 236; Montreal Bank *v.* Howard, 44 Wash. 10, 86 Pac. 1115.

4. Roberts *v.* Farmers' Bank, 118 Ky. 80, 80 S. W. 441, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 899; National Exchange Bank *v.* Kilpatric, 204 Mo. 119, 102 S. W. 499, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 899.

902. 1. Johnson *v.* Downing, 76 Ark. 128, 88 S. W. 825, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 901, 902.

7. Johnson *v.* Downing, 76 Ark. 128, 88 S. W. 825, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 902; Scott *v.* Tulsa First Nat. Bank, 5 Indian Ter. 292, 82 S. W. 751, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 902; National Exchange Bank *v.* Kilpatric, 204 Mo. 119, 102 S. W. 499; Buxton *v.* Alton-Dawson Mercantile Co., 17 Okla. 287, 90 Pac. 19.

903. 1. Scott *v.* Tulsa First Nat. Bank, 5 Indian Ter. 292, 82 S. W. 751, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 903; Roberts *v.* Farmers' Bank, 118 Ky. 80, 80 S. W. 441, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 903; National Exchange Bank *v.* Kilpatric, 204 Mo. 119, 102 S. W. 499.

2. Scott *v.* Tulsa First Nat. Bank, 5 Indian Ter. 292, 82 S. W. 751, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 903. But see Johnson *v.* Downing, 76 Ark. 128, 88 S. W. 825.

3. **Failure to Record Mortgage.** — Buxton *v.* Alton-Dawson Mercantile Co., 17 Okla. 287, 90 Pac. 19.

4. Rhomberg *v.* Wenarius, (Iowa 1907) 112 N. W. 548, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) and notes; Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

904. 1. **Renewal Not Release of Collateral.** — Emmetsburg First Nat. Bank *v.* Gunhus, 133 Iowa 409, 110 N. W. 611.

3. See Emmetsburg First Nat. Bank *v.* Gunhus, 133 Iowa 409, 110 N. W. 611.

6. Capital Nat. Bank *v.* Wilkerson, 36 Ind. App. 467, 75 N. E. 837, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897–904; Jennings *v.* Wyzanski, 188 Mass. 285, 74 N. E. 347.

7. Capital Nat. Bank *v.* Wilkerson, 36 Ind. App. 467, 75 N. E. 837, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897–904.

Accountability to Pledgor's Assignee. — Tharp *v.* Porter, (Tex. Civ. App. 1906) 93 S. W. 530.

905. 5. Bosler *v.* McShane, (Neb. 1907) 113 N. W. 998.

906. 1. Steel *v.* Island City Mercantile, etc., Co., 47 Oregon 293, 83 Pac. 783.

3. **Statute Requiring Recording of Transfer Not Applicable to Pledge of Stock.** — Hudson *v.* Pine Bluff Bank, 75 Ark. 493, 87 S. W. 1177.

4. Bosler *v.* McShane, (Neb. 1907) 113 N. W. 998, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 906.

907. 1. Andrews Co. *v.* National Bank, 129 Ga. 53, 58 S. E. 633, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 907.

2. Bosler *v.* McShane, (Neb. 1907) 113 N. W. 998, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 906 *et seq.*; Maxwell *v.* National Bank, 70 S. Car. 532, 50 S. E. 195, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 907; Steel *v.* Island City Mercantile, etc., Co., 47 Oregon 293, 83 Pac. 783, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 907.

5. Bosler *v.* McShane, (Neb. 1907) 113 N. W. 998.

Pledgee's Assignee Not Liable for Dividends Subsequently Collected by Pledgee. — Maxwell *v.* National Bank, 70 S. Car. 532, 50 S. E. 195.

908. 2. See Iowa Nat. Bank *v.* Cooper, 131 Iowa 556, 107 N. W. 625.

Pledgee Liable for Taxes on Stock in First Instance. — Milwaukee *v.* Wakefield, (Wis. 1907) 113 N. W. 34.

POLICE JUSTICE OR MAGISTRATE.

913. 3. **Police Judge and Recorded Synonymous.** — *Ex p.* Baxter, 3 Cal. App. 716, 86 Pac. 998.

POLICE POWER.

915. 1. New York *v.* M. Wineburgh Advertising Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 478.

916. 2. Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792.

The State Itself Cannot Exempt any individual or corporation from the valid exercise of the police power. Cincinnati, etc., R. Co. *v.* Connersville, (Ind. 1908) 83 N. E. 503; Portland *v.* Cook, 48 Oregon 550, 87 Pac. 772; State *v.* Johnson, 76 S. Car. 39, 56 S. E. 544, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 916; State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

3. Chicago, etc., R. Co. *v.* People, 212 Ill. 103, 72 N. E. 219, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 916; Cincinnati, etc., R. Co. *v.* Connersville, (Ind. 1908) 83 N. E. 503.

The Principles of Appropriation and Expropriation. — See State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261.

Reducing Grade of Railway to Street Level. — Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648.

918. 8. Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745; State *v.* Redmon, (Wis. 1907) 114 Mo. 137.

11. See Bacon *v.* Walker, 204 U. S. 311, 27 U. S. Sup. Ct. 289, *affirming* 76 Pac. 318, 81 Pac. 155.

14. Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 389; Cincinnati, etc., R. Co. *v.* Connersville, (Ind. 1908) 83 N. E. 503.

919. 1. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 389; Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745; Litchfield *v.* Pond, 186 N. Y. 66, 78 N. E. 719, 105 N. Y. App. Div. 229, *reversing* 93 N. Y. Supp. 1016.

3. Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745; Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919.

8. Home Telephone, etc., Co. *v.* Los Angeles, 155 Fed. 554; Taylor *v.* District of Columbia, 24 App. Cas. (D. C.) 392; Crum *v.* Bray, 121 Ga. 709, 49 S. E. 686; Portland *v.* Cook, 48 Oregon 550, 87 Pac. 772; *Ex p.* Hughes, (Tex. Crim. 1905) 100 S. W. 160; Carty *v.* Winooski, 78 Vt. 104, 62 Atl. 45.

Police Power of Municipalities. — Fellows *v.* Charleston, (W. Va. 1907) 59 S. E. 623, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 919.

920. 1. **Telephone Rates.** — Home Telephone, etc., Co. *v.* Los Angeles, 155 Fed. 554.

2. Tilford *v.* Belknap, (Ky. 1907) 103 S. W. 289.

921. 2. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 921; State *v.* Northern Pac. R. Co., 98 Minn. 429, 108 N. W. 269; Portland *v.* Cook, 48 Oregon 550, 87 Pac. 772; Coatesville *v.* Coatesville Electric Light, etc., Co., 32 Pa. Super. Ct. 513; Chicago, etc., R. Co. *v.* Douglas County, (Wis. 1908) 114 N. W. 511.

922. 6. Thompson *v.* Van Lear, 77 Ark. 506, 92 S. W. 773, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922; State *v.* Robb, 100 Me. 180, 60 Atl. 874, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922.

923. 7. Sprague *v.* Dorr, 185 Mass. 10, 69 N. E. 344; Van Cleve *v.* Passaic Valley Sewerage Com'rs, 71 N. J. L. 574, 60 Atl. 214.

8. Chicago, etc., R. Co. *v.* People, 200 U. S. 561, 26 U. S. Sup. Ct. 341, *affirming* 212 Ill. 103, 72 N. E. 219.

13. Carpenter *v.* Yeadon, 151 Fed. 879.

924. 5. **Crowding of Street and Elevated Cars.** — Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890.

6. Bryan *v.* Chester, 212 Pa. St. 259, 61 Atl. 894.

925. 6. **Use of National Flag Prohibited.** — Halter *v.* State, 74 Neb. 757, 105 N. W. 298.

926. 6. Com. *v.* Price, (Ky. 1906) 94 S. W. 32.

8. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; Mullen *v.* Mosley, 13 Idaho 457, 90 Pac. 986.

927. 1. Meyer *v.* Mobile, 147 Fed. 843.

Importation of Malt Liquors into State. — Pabst Brewing Co. *v.* Crenshaw, 198 U. S. 17, 25 U. S. Sup. Ct. 552.

2. Equitable Loan, etc., Co. *v.* Edwardsville, 143 Ala. 182, 38 So. 1016; Meehan *v.* Excise Com'rs, 73 N. J. L. 382, 64 Atl. 689.

5. Porter *v.* Vinzant, 49 Fla. 213, 38 So. 607.

7. People *v.* McGuire, 113 N. Y. App. Div. 631, 99 N. Y. Supp. 91.

8. Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 927.

9. See Mier *v.* Phillips Fuel Co., 130 Iowa 570, 107 N. W. 621, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926 [927].

11. Chicago, etc., R. Co. *v.* People, 200 U. S.

561, 26 U. S. Sup. Ct. 341, *affirming* 212 Ill. 103, 72 N. E. 219; Goytino *v.* McAleer, 4 Cal. App. 655, 88 Pac. 991; Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745; State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261; State *v.* Marble, 72 Ohio St. 21, 73 N. E. 1064.

928. 2. State *v.* McFarland, 96 Minn. 482, 105 N. W. 187.

3. Tilford *v.* Belknap, (Ky. 1907) 103 S. W. 289.

4. Tannenbaum *v.* Rehm, (Ala. 1907) 44 So. 532; Crowley *v.* Ellsworth, 114 La. 308, 38 So. 199.

6. Patterson *v.* Johnson, 214 Ill. 481, 73 N. E. 761; Welch *v.* Swasey, 193 Mass. 364, 79 N. E. 745; New York *v.* M. Wineburgh Advertising Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 478; Fellows *v.* Charleston, (W. Va. 1907) 59 S. E. 623.

7. Wichita *v.* Missouri, etc., Telephone Co., 70 Kan. 441, 78 Pac. 886.

Diversion and Use of Public Waters. — McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 525, 61 Atl. 710.

929. 2. **Regulating Speed of Street Cars and Other Vehicles.** — State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483; North Jersey St. R. Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 1072; Hinman *v.* Clark, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 252, 100 N. Y. Supp. 1068; Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 929.

3. State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261.

6. **Game Laws.** — Where the prohibition regarding the shipping of fish taken from inland waters was limited to certain specified quantities, held that same was a valid exercise of police power. State *v.* Nergaard, 124 Wis. 414, 102 N. W. 899.

7. State *v.* Dolan, 13 Idaho 693, 92 Pac. 995.

930. 3. Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 930.

5. **Police Regulation of Domestic Animals.** — Crum *v.* Bray, 121 Ga. 709, 49 S. E. 686; *Ex p.* Glass, 49 Tex. Crim. 87, 90 S. W. 1108.

Hitching of Horses. — Wells *v.* Mt. Olivet, (Ky. 1907) 102 S. W. 1182.

7. *Ex p.* Ackerman, (Cal. App. 1907) 91 Pac. 429.

931. 1. Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909; Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648; State *v.* Cary, 126 Wis. 135, 105 N. W. 792.

Regulation of Sheep Grazing. — Bacon *v.* Walker, 204 U. S. 311, 27 U. S. Sup. Ct. 289.

Police Power Exercised in Relation to Trading Stamp Business. — Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 389; State *v.* Ramseyer, 73 N. H. 31, 58 Atl. 958.

2. **Licensing Private Detectives.** — Fox *v.* Smith, 123 N. Y. App. Div. 369, 108 N. Y. Supp. 181.

Theatres. — People *v.* Steele, 231 Ill. 340, 83 N. E. 236.

Dairies. — New Orleans *v.* Murat, 119 La. 1093, 44 So. 898.

3. Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648.

6. Elkhart *v.* Lipschitz, 164 Ind. 671, 74 N. E. 528; Portland *v.* Cook, 48 Oregon 550, 87 Pac. 772.

932. 1. State *v.* Cohen, 73 N. H. 543, 63 Atl. 928; People *v.* McGuire, 113 N. Y. App. Div. 631, 99 N. Y. Supp. 91; Phillips *v.* State, 77 Ohio St. 214, 82 N. E. 1064.

2. Emporia *v.* Becker, 76 Kan. 181, 90 Pac. 798.

7. See *Ex p.* Snyder, 10 Idaho 682, 79 Pac. 819.

8. Goytino *v.* McAleer, 4 Cal. App. 655, 88 Pac. 991.

The power given to a village to regulate billiard rooms does not give the power to suppress them. State *v.* McMonies, 75 Neb. 443, 106 N. W. 454.

9. Com. *v.* Shaleen, 14 Pa. Dist. 413, *quoting* 22 Am. and Eng. Encyc. of Law (2d ed.) 932.

10. Thompson *v.* Van Lear, 77 Ark. 506, 92 S. W. 773; Fairfield *v.* Shallenberger (Iowa 1907) 113 N. W. 459; State *v.* Marble, 72 Ohio St. 21, 73 N. E. 1064.

Regulating Practice of Dentistry. — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500. See also State *v.* Brown, 37 Wash. 97, 79 Pac. 635.

Barbers. — State *v.* Walker, (Wash. 1907) 92 Pac. 775.

933. 3. State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261; Schnaier *v.* Navarre Hotel, etc., Co., 182 N. Y. 83, 74 N. E. 561.

4. State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085.

5. Cincinnati, etc., R. Co. *v.* Connersville, (Ind. 1908) 83 N. E. 503.

Arrangement of Sleeping Car Berths. — State *v.* Redmon, (Wis. 1907) 114 N. W. 137.

934. 3. Cincinnati, etc., R. Co. *v.* Connersville, (Ind. 1908) 83 N. E. 503. See also State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261, where it was shown that the highway that intersected the railway was constructed after the railway; it was there held that this fact could not be asserted as a defense to prevent the operation of the police power to require the railway to provide a suitable crossing.

Viaducts at Crossings. — State *v.* Northern Pac. R. Co., 98 Minn. 429, 108 N. W. 269; Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648.

4. *Ex p.* Snyder, 10 Idaho 682, 79 Pac. 819.

5. People *v.* Health Dept., 117 N. Y. App. Div. 856, 103 N. Y. Supp. 275.

10. Bazemore *v.* State, 121 Ga. 619, 49 S. E. 701.

935. 7. Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909; People *v.* Steele, 231 Ill. 340, 83 N. E. 236; Standard Oil Co. *v.* Com., 119 Ky. 75, 82 S. W. 1021; State *v.* Cohen, 73 N. H. 543, 63 Atl. 928; Buffalo *v.* Linsman, 113 N. Y. App. Div. 584, 98 N. Y. Supp. 737.

8. Meyer *v.* Mobile, 147 Fed. 843, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 935.

936. 1. Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909.

2. State *v.* Ramseyer, 73 N. H. 31, 58 Atl. 958; Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648; State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500; State *v.* Redmon, (Wis. 1907) 114 N. W. 137.

3. State *v.* Ramseyer, 73 N. H. 31, 58 Atl. 958; New York *v.* Wineburgh Advertising Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 478; State *v.* Brown, 37 Wash. 97, 79 Pac. 635, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 931; State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 936; State *v.* Redmon, (Wis. 1907) 114 N. W. 137.

5. Daly *v.* Elton, 195 U. S. 242, 25 U. S. Sup. Ct. 22; Dobbins *v.* Los Angeles, 195 U. S. 223, 25 U. S. Sup. Ct. 18; Equitable Loan, etc., Co. *v.* Edwardsville, 143 Ala. 182, 38 So. 1016; Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909; People *v.* Steele, 231 Ill. 340, 83 N. E. 236; State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261; State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483; New York *v.* M. Wineburgh Advertising Co., (Supm. Ct. App. Div.) 107 N. Y. Supp. 478.

6. Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 389; State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085; State *v.* Ramseyer, 73 N. H. 31, 58 Atl. 958; Pottsville *v.* Pottsville Gas Co., 33 Pa. Super. Ct. 480; Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648; State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

7. Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648.

937. 1. Bacon *v.* Walker, 204 U. S. 311, 27 U. S. Sup. Ct. 289.

Presumption in Favor of Police Regulations. — Wells *v.* Mt. Olivet, (Ky. 1907) 102 S. W. 1182; Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648.

2. Daly *v.* Elton, 195 U. S. 242, 25 U. S. Sup. Ct. 22; Dobbins *v.* Los Angeles, 195 U. S. 223, 25 U. S. Sup. Ct. 18; Plumas County *v.* Wheeler, 149 Cal. 758, 87 Pac. 909; Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 389.

3. Chicago, etc., R. Co. *v.* People, 200 U. S. 561, 26 U. S. Sup. Ct. 341, *affirming* 212 Ill. 103, 72 N. E. 219; *Ex p.* Ackerman (Cal. App. 1907) 91 Pac. 429; State *v.* Ramseyer, 73 N. H. 31, 58 Atl. 958; Van Cleve *v.* Passaic Valley Sewerage Com'rs, 71 N. J. L. 183, 58 Atl. 571, *citing* in dissenting opinion 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 937, (*reversed* in 71 N. J. L. 574, 60 Atl. 214); Litchfield *v.* Pond, 186 N. Y. 66, 78 N. E. 719, *reversing* 105 N. Y. App. Div. 229, 93 N. Y. Supp. 1016; State *v.* Marble, 72 Ohio St. 21, 73 N. E. 1064; State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500; State *v.* Walker, (Wash. 1907) 92 Pac. 775; State *v.* Redmon, (Wis. 1907) 114 N. W. 137.

Statute Provisionally Prohibiting Importation of Malt Liquors into State. — Pabst Brewing Co. *v.* Crenshaw, 198 U. S. 17, 25 U. S. Sup. Ct. 552.

4. State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085; Com. *v.* Price, (Ky. 1906) 94 S. W. 32; Tilford *v.* Belknap, (Ky. 1907) 103 S. W. 289.

5. State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085.

Legislation to Prohibit Excessive Automobile Speeding. — State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483.

938. 1. State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085.

4. Bazemore *v.* State, 121 Ga. 619, 49 S. E. 701; State *v.* Ramseyer, 73 N. H. 31, 58 Atl. 958.

Rates of Interest. — State *v.* Cary, 126 Wis. 135, 105 N. W. 792.

5. Halter *v.* State, 74 Neb. 757, 105 N. W. 298; State *v.* Ramseyer, 73 N. H. 31, 58 Atl. 958; Houston, etc., R. Co. *v.* Dalles, 98 Tex. 396, 84 S. W. 648.

939. 1. **Difference of Opinion** between courts and legislature. Com. *v.* Pear, 183 Mass. 242, 66 N. E. 719.

5. Daly *v.* Elton, 195 U. S. 242, 25 U. S. Sup. Ct. 22; Dobbins *v.* Los Angeles, 195 U. S. 223, 25 U. S. Sup. Ct. 18; State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085; Buffalo *v.* Linsman, 113 N. Y. App. Div. 584, 98 N. Y. Supp. 737; Ætna F. Ins. Co. *v.* Jones, 78 S. Car. 445, 59 S. E. 148, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 938, and quoting the whole text paragraph.

6. Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648.

940. 1. **Personal and Property Rights Subject to Police Power.** — Tannenbaum *v.* Rehm, (Ala. 1907) 44 So. 532.

Exercise of Police Power Involving Hardship and Expense. — State *v.* Richcreek, 167 Ind. 217, 77 N. E. 1085.

Exercise of Police Power Affecting Patents and Trademarks. — Halter *v.* State, 74 Neb. 757, 105 N. W. 298.

POOL.

943. 2. **Pool Room.** — "Conceding that the term ***pool*** or ***pool*** room has, according to lexicographers, several meanings, we are of opinion that the legislation on the subject, the direct result of the decisions of this court, show that the term ***pool*** room was used to designate a room in which betting on races is carried on." State *v.* Maloney, 115 La. 498, 39 So. 539.

POOR AND POOR LAWS.

947. 1. Monroe County *v.* Abegglen, 129 Iowa 53, 105 N. W. 350; Otoe County *v.* Lancaster County, (Neb. 1907) 111 N. W. 132.

Conclusiveness of Determination by Poor Officer. — The determination by the overseer of the poor that persons are entitled to relief, is an official act which binds the county in favor of those who, in good faith, furnish medical attendance or supplies in reliance upon that order. Rock Island County *v.* Rankin, 118 Ill. App. 499.

948. 1. Superintendents of Poor *v.* Superintendents of Poor, 141 Mich. 667, 104 N. W. 978.

2. Rock Island County *v.* Rankin, 118 Ill. App. 499; Ripton *v.* Brandon, 80 Vt. 234, 67 Atl. 541.

949. 2. *In re* Bigelow, 17 S. Dak. 331, 96 N. W. 698, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 949.

5. Washington County *v.* Polk County, (Iowa

1907) 113 N. W. 833, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 949.

950. 3. See Turbett Tp. *v.* Port Royal, 33 Pa. Super. Ct. 520.

951. 6. Highland Tp. Poor Dist. *v.* Jefferson County Poor Dist., 25 Pa. Super. Ct. 601; South Burlington *v.* Cambridge, 77 Vt. 289, 59 Atl. 1013.

7. Woolwich Union *v.* Fulham Union, (1905) 2 K. B. 203, 74 L. J. K. B. 556.

952. 2. Jericho *v.* Morristown, 77 Vt. 367, 60 Atl. 233.

6. Southwark Union *v.* London Union, 93 L. T. N. S. 134.

953. 6. **Place of Residence Whose Dividing Line Passes through Dwelling.** — East Montpelier *v.* Barre, 79 Vt. 542, 66 Atl. 100.

954. 4. Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48.

955. 10. Jericho *v.* Huntington, 79 Vt. 329, 65 Atl. 87.

956. 8. Newark Union *v.* Maidstone Union, 93 L. T. N. S. 602.

957. 2. Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48.

4. Great Yarmouth Guardians *v.* Bethnal Green Guardians, 97 L. T. N. S. 440.

6. **Absence on Military Service,** though with intention of returning, held to break the continuity of residence. Newark Union *v.* Maidstone Union, 93 L. T. N. S. 602.

7. Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48.

964. 5. Shrewsbury Tp. Poor Dist. *v.* Penn, Tp. Poor Dist., 33 Pa. Super. Ct. 378;

965. 12. Highland Tp. Poor Dist. *v.* Jefferson County Poor Dist., 25 Pa. Super. Ct. 601.

973. 5. West Ham Union *v.* Poplar Union, 94 L. T. N. S. 769, 70 J. P. 255.

974. 3. Sheboygan *v.* Sheboygan Falls, 130 Wis. 93, 109 N. W. 1030.

10. *In re* Kelly, (County Ct.) 46 Misc. (N. Y.) 548, 95 N. Y. Supp. 53.

975. 7. See *In re* Kelly, (County Ct.) 46 Misc. (N. Y.) 548, 95 N. Y. Supp. 53.

976. 1. Support of a person while under imprisonment upon conviction of a crime is not to be regarded as paupers' supplies furnished him so as to prevent his acquisition of a settlement. Whately *v.* Hatfield, (Mass. 1907) 82 N. E. 48.

977. 16. Antigonish *v.* Overseers of Poor, 38 Nova Scotia 112; Peterson *v.* Emardville, 101 Minn. 24, 111 N. W. 652, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 977.

978. 2. Peterson *v.* Emardville, 101 Minn. 24, 111 N. W. 652; Poor Overseers *v.* Poor Overseers, 29 Pa. Super. Ct. 181.

979. 6. Rex *v.* Middlesex Justices, (1906) 2 K. B. 365, 75 L. J. K. B. 784.

980. 5. Antigonish *v.* Overseers of Poor, 38 Nova Scotia 112, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 980.

982. 4. See Jericho *v.* Morristown, 77 Vt. 367, 60 Atl. 233.

6. It is otherwise under the *Iowa* statute. Washington County *v.* Polk County, (Iowa 1907) 113 N. W. 833.

984. 7. Highland Tp. Poor Dist. *v.* Jefferson County Poor Dist., 25 Pa. Super. Ct. 601.

988. 3. Nicholson Tp. *v.* Nicholson, 33 Pa. Super. Ct. 358.

989. 6. Woolwich Union *v.* Fulham Union, (1905) 2 K. B. 203, 74 L. J. K. B. 556; West Ham Union *v.* Holbeach Union, (1905) A. C. 450, 74 L. J. K. B. 868; Guardians of Poor *v.* Guardians of Poor, (1907) A. C. 255, 76 L. J. K. B. 739.

7. Schuylkill County *v.* Jackson Tp., 29 Pa. Super. Ct. 567.

992. 4. Bernards Tp. *v.* Bedminster Tp., 74 N. J. L. 92, 64 Atl. 960; Jericho *v.* Huntington, 79 Vt. 329, 65 Atl. 87. See also Rockland *v.* Union, 100 Me. 67, 60 Atl. 705.

12. Washington County *v.* Polk County, (Iowa 1907) 113 N. W. 833; Hewitt *v.* Hubbard County, (Minn. 1907) 114 N. W. 261 (sufficiency of evidence).

994. 5. Tewksbury Union *v.* Birmingham, (1904) 2 K. B. 395; Maidstone Union *v.* Wandsworth Union, 95 L. T. N. S. 125, 70 J. P. 403; Wantage Union *v.* Bristol Union, (1907) 1 K. B. 68, 76 L. J. K. B. 25.

999. 2. Nicholson Tp. *v.* Nicholson, 33 Pa. Super. Ct. 358.

1000. 5. Martin *v.* Fon du Lac County, 127 Wis. 586, 106 N. W. 1095.

1001. 1. Superintendents of Poor *v.* Superintendents of Poor, 141 Mich. 667, 104 N. W. 978.

1002. 2. Bradford *v.* Cambridge, (Mass. 1907) 80 N. E. 610.

1003. 2. Bury, etc., Hospital Board *v.* Chorlton Union, 70 J. P. 31; Otoe County *v.* Lancaster County, (Neb. 1907) 111 N. W. 132; Delaware County *v.* Delaware, 105 N. Y. App. Div. 129, 93 N. Y. Supp. 954; Antigonish *v.* Overseers of Poor, 38 Nova Scotia 112.

3. Suffolk County Asylum *v.* Nottingham Union, 69 J. P. 120; Superintendents of Poor *v.* Superintendents of Poor, 141 Mich. 667, 104 N. W. 978; Rock County *v.* Holt County, (Neb. 1907) 111 N. W. 366.

1004. 1. Brushvalley Tp. Poor Directors *v.* Allegheny County Poor Directors, 25 Pa. Super. Ct. 595.

1005. 1. Otoe County *v.* Lancaster County, (Neb. 1907) 111 N. W. 132.

Expense of confining lunatic to prevent injury to third persons is not recoverable. Casco *v.* Limington, 102 Me. 37, 65 Atl. 523.

3. Ripton *v.* Brandon, 80 Vt. 234, 67 Atl. 541.

5. Cowanshannock Poor Dist. *v.* Armstrong County, 31 Pa. Super. Ct. 386. See, however, Highland Grove *v.* Clay County, 101 Minn. 11, 111 N. W. 651.

1007. 4. Brookfield *v.* West Brookfield, 186 Mass. 524, 72 N. E. 86 (notice signed by only one overseer).

1008. 7. Copple *v.* Davie County, 138 N. Car. 127, 50 S. E. 574; Hittner *v.* Outagamie County, 126 Wis. 430, 105 N. W. 950.

1009. 2. Farmer *v.* Salisbury, 77 Vt. 161, 59 Atl. 201.

5. Robbins *v.* Homer, 95 Minn. 201, 103 N. W. 1023, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1009; Sheridan County *v.* Denebrink, 15 Wyo. 342, 89 Pac. 7.

Funeral Expenses. — But see Marshall County *v.* Rivers, 84 Miss. 45, 40 So. 1007.

1010. 1. Randolph *v.* Greenwood, 122 Ill. App. 23.

The rule of the county board fixing one dollar per visit as the fee to be paid physicians rendering medical services to poor persons, as required by the *Illinois* statute (Rev. Stat. 1903, p. 1369), is, as a matter of law, unreasonable, applying as it does to all cases regardless of the nature of the ailments to be treated. Dieffenbacher *v.* Mason County, 117 Ill. App. 103.

2. Dieffenbacher *v.* Mason County, 117 Ill. App. 103.

1011. 6. In *Illinois*, where a pauper is removed by the town officers from the town in which he was domiciled, the town remains still liable for supplies furnished to such pauper at the place where he was removed to. Randolph *v.* Greenwood, 122 Ill. App. 23.

7. Chariton County *v.* Hartman, 190 Mo. 75, 88 S. W. 617.

8. *In re* Carroll, (Surrogate Ct.) 55 Misc. (N. Y.) 496, 105 N. Y. Supp. 681, *following* Albany *v.* McNamara, 117 N. Y. 173, 22 N. E. 931.

1012. 1. Birkenhead Union *v.* Brookes, 95 L. T. N. S. 359; *Re* Williams, 96 L. T. N. S. 563.

Contagious Diseases — "If Able." — Greenville *v.* Beauto, 99 Me. 214, 58 Atl. 1026.

5. Wandsworth Union *v.* Worthington, (1906) 1 K. B. 420, 75 L. J. K. B. 285.

6. Melvin *v.* Summerville, 210 Pa. St. 41, 59 Atl. 483.

1013. 6. What Constitutes "Misbehavior" on Part of Pauper. — Mile End Guardians *v.* Sims, (1905) 2 K. B. 200, 74 L. J. K. B. 647.

8. Officers Are Liable for Personal Injuries to pauper through negligence in providing safe place to work. Tozeland *v.* Guardians of Poor, (1906) 1 K. B. 538, 4 Ann. Cas. 475, 75 L. J. K. B. 353.

9. Rex *v.* Baddeley, 70 J. P. 346.

Prosecution of Pauper for Refusal to Work. — Poplar Union *v.* Martin, 91 L. T. N. S. 550.

1014. 9. Coulson *v.* Davidson, 96 L. T. N. S. 20.

10. People *v.* Chamberlain, (Supm. Ct. Spec. T.) 106 N. Y. Supp. 149 (bastard).

12. Monroe County *v.* Abegglen, 129 Iowa 53, 105 N. W. 350.

1015. 6. Pontypool Union *v.* Buck, (1906) 2 K. B. 896, 76 L. J. K. B. 66 (married woman with separate estate is under no liability to support her mother); Cole *v.* Brown, (1907) 2 K. B. 301, 76 L. J. K. B. 847; Henry's Estate, 28 Pa. Super. Ct. 541.

9. Multnomah County *v.* Faling, (Oregon 1907) 91 Pac. 21; Com. *v.* Neese, 15 Pa. Dist. 87, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 1015.

1017. 1. Monroe County *v.* Abegglen, 129 Iowa 53, 105 N. W. 350.

4. Faling *v.* Multnomah County, 46 Oregon 460, 80 Pac. 1009; Saxville *v.* Bartlett, 126 Wis. 655, 105 N. W. 1052; Henry's Estate, 28 Pa. Super. Ct. 541, 544.

1019. 8. **Former Conviction.** — Bannister *v.* Sullivan, 20 Cox C. C. 685.

1022. 9. Com. *v.* Bowditch, 217 Pa. St. 527, 66 Atl. 867; Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762; Chadduck *v.* Burke, 103 Va. 694, 49 S. E. 976.

Disqualification for Office. — Rex *v.* Rowlands, (1906) 2 K. B. 292, 75 L. J. K. B. 501; Bradfield *v.* Cheltenham Guardians, (1906) 2 Ch. 371, 75 L. J. Ch. 618.

Contesting Election — Costs. — Watts *v.* Hemming, 71 J. P. 504.

10. Nissley *v.* Lancaster County, 215 Pa. St. 562, 64 Atl. 794; Reeve's Appeal, 33 Pa. Super. Ct. 196.

1023. 6. In People *v.* Chamberlain, (Supm. Ct. Spec. T.) 106 N. Y. Supp. 149, the superintendent of the poor was compelled by mandamus to receive a pauper into the almshouse.

9. Irvine *v.* Stanley, 37 N. Bruns. 572.

POPULAR.

1027. 2. Laurin *v.* Raymond, 29 Quebec Super. Ct. 102, *quoting* 22 Am. and Eng. Encyc. of Law (2d ed.) 1027.

POPULATION.

1027. 4. **Population of Entire State.** — See Brown *v.* Moss, (Ky. 1907) 105 S. W. 139.

POSSESSORY WARRANTS.

1032. 1. **Grounds for Obtaining Warrant Need Not Be Alleged** in an action by a landlord against a cropper. Visage *v.* Bowers, 122 Ga. 760, 50 S. E. 952.

Title Not Involved. — Dennard *v.* Butler, 2 Ga. App. 198, 58 S. E. 297.

1033. 1. **A Possessory Warrant** will not issue to recover possession of animals lawfully impounded by the owner of premises in a stock-law district. Dew *v.* Smith, (Ga. 1908) 61 S. E. 232.

Crops. — A possessory warrant will issue in favor of a landlord in cases of an unlawful disposition of a crop. Landrum *v.* Smith, 1 Ga. App. 215, 57 S. E. 913.

2. **Landlord's Possession of Tenant's Fixtures.** — Raymond *v.* Strickland, 124 Ga. 504, 52 S. E. 619.

4. **Possession Lawfully Acquired,** but subsequently changed to a wrongful, tortious, and fraudulent one, is a proper case for a possessory warrant. Goodwill *v.* Peeples, 2 Ga. App. 673, 58 S. E. 1115.

Possession by Agent. — Monk *v.* Gay, 3 Ga. App. 356, 59 S. E. 1117.

5. **Consent.** — Dennard *v.* Butler, 2 Ga. App. 198, 58 S. E. 297.

Possession by Virtue of Contract. — Brown *v.* Todd, 124 Ga. 939, 53 S. E. 678.

POSTAL LAWS.

1040. 1. Lewis Pub. Co. *v.* Wyman, 152 Fed. 787.

2. Lewis Pub. Co. *v.* Wyman, 152 Fed. 787.

9. People's U. S. Bank *v.* Gilson, 140 Fed. 1.

10. Lewis Pub. Co. *v.* Wyman, 152 Fed. 787.

1041. 4. U. S. *v.* Cortelyou, 28 App. Cas. (D. C.) 570.

6. Provision Restraining Its Exercise. — U. S. *v.* Cortelyou, 26 App. Cas. (D. C.) 298.

1042. 7. **The Determination of the Class to Which Certain Mail Matter Belongs** is not binding on a successor where no vested rights have been created by such determination. Columbian Correspondence College *v.* Wynne, 25 App. Cas. (D. C.) 149.

1045. 3. Benson *v.* Bawden, 149 Mich. 584, 113 N. W. 20.

1053. 6. **A Railway Postal Clerk** cannot recover expenses of board in addition to his salary. Parshall *v.* U. S., (C. C. A.) 147 Fed. 433.

1055. 6. People's U. S. Bank *v.* Gilson, 140 Fed. 1.

1057. 5. **Control of Letter in Mail.** — U. S. *v.* Thayer, 154 Fed. 508, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1057.

1058. 2. See Central Trust Co. *v.* Central Trust Co., (C. C. A.) 152 Fed. 427; National L. Ins. Co. *v.* National L. Ins. Co., 209 U. S. 317, 28 U. S. Sup. Ct. 541.

1060. 3. **Construction.** — U. S. *v.* Utah, etc., Stage Co., 199 U. S. 414, 26 U. S. Sup. Ct. 69.

1062. 8. **The Penalty for Breach of the Bond** is held to be liquidated damages, and actual damages are disregarded. U. S. *v.* U. S. Fidelity, etc., Co., 151 Fed. 534.

Bond an Absolute Undertaking. — U. S. *v.* Alcorn, 145 Fed. 995.

1064. 1. **Readjustment of Compensation.** — Chicago, etc., R. Co. *v.* U. S., 198 U. S. 385, 25 U. S. Sup. Ct. 665.

Additional Compensation for Services clearly not intended by either of the parties to be rendered may be recovered, notwithstanding an additional service clause in the contract. U. S. *v.* Utah, etc., Stage Co., 199 U. S. 414, 26 U. S. Sup. Ct. 69.

1073. 2. **"Scheme or Artifice" Defined.** — U. S. *v.* Dexter, 154 Fed. 890.

4. U. S. *v.* White, 150 Fed. 379.

5. **Scheme or Artifice to Defraud.** — Brooks *v.* U. S., (C. C. A.) 146 Fed. 223; Brown *v.* U. S., (C. C. A.) 143 Fed. 60; Preferred Mercantile Co. *v.* Hibbard, 142 Fed. 877; U. S. *v.* Dexter, 154 Fed. 890; U. S. *v.* White, 150 Fed. 379; Brown *v.* U. S., (C. C. A.) 146 Fed. 219.

Term "Scheme or Artifice to Defraud" Construed. — Rosenberger *v.* Harris, 136 Fed. 1001.

6. Brown *v.* U. S., (C. C. A.) 143 Fed. 60; U. S. *v.* Dexter, 154 Fed. 890; U. S. *v.* White, 150 Fed. 379.

7. **Deposit by Defendant or His Agent an Essential Element of the Offense.** — U. S. *v.* Dexter, 154 Fed. 890.

For Evidence from Which the Jury May Infer that letters were mailed by the defendant, see Brooks *v.* U. S., (C. C. A.) 146 Fed. 223.

Each Letter Deposited Constitutes a Distinct Offense. — Francis *v.* U. S., (C. C. A.) 152 Fed. 155.

1074. 3. **Intent May Be Inferred** from the nature of the scheme, and express assertions are unnecessary. Walker *v.* U. S., (C. C. A.) 152 Fed. 111.

6. Rosenberger *v.* Harris, 136 Fed. 1001.

8. **Intent a Question for the Jury.** — U. S. *v.* Conrad, 156 Fed. 248.

9. Francis *v.* U. S., (C. C. A.) 152 Fed. 155.

1077. 1. **Test of Obscenity.** — Burton *v.* U. S., (C. C. A.) 142 Fed. 57.

8. **Deposit by a Corporation.** — U. S. *v.* New York Herald Co., 159 Fed. 296.

Deposit by Partner. — Burton *v.* U. S., (C. C. A.) 142 Fed. 57.

Deposit in Mail. — Demolli *v.* U. S., (C. C. A.) 144 Fed. 363, 7 Ann. Cas. 121.

1078. 3. **Knowledge Implied from the Fact of Mailing Obnoxious Literature by a Corporation.** — U. S. *v.* New York Herald Co., 159 Fed. 296.

POWER.

1083. 6. **Power or Authority Synonymous with Jurisdiction.** — Lee *v.* State, 143 Ala. 93, 39 So. 366.

POWERS.

1095. 1. Burnett *v.* Piercy, 149 Cal. 178, 86 Pac. 603, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1095.

A power of sale may lawfully reside in one who has no legal or equitable interest in the property which is to be the subject of sale. Coleman *v.* Cabaniss, 121 Ga. 281, 48 S. E. 927.

1096. 4. Papin *v.* Piednoir, 205 Mo. 521, 104 S. W. 63.

1097. 3. Rutledge *v.* Crampton, (Ala. 1906) 43 So. 822 (statute); Burnett *v.* Piercy, 149 Cal. 178, 86 Pac. 603, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097; Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875.

1098. 1. Price *v.* Cherbonnier, 103 Md. 107, 63 Atl. 209.

1099. 2. Trogden *v.* Williams, 144 N. Car. 192, 56 S. E. 869, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1099. But see Hill *v.* Peoples, 80 Ark. 15, 95 S. W. 990 (exercise of power by two of three joint donees).

1101. 9. Burnett *v.* Piercy, 149 Cal. 178, 86 Pac. 603.

1102. 2. *In re* Bacon, (1907) 1 Ch. 475.

1103. 8. Smith *v.* Floyd, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 196, 101 N. Y. Supp. 231, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1103.

1104. 2. Coleman *v.* Cabaniss, 121 Ga. 281, 48 S. E. 927.

1105. 1. Stamper *v.* Venable, 117 Tenn. 557, 97 S. W. 812.

1107. 12. Rutledge *v.* Crampton, (Ala. 1906) 43 So. 822 (statutory restrictions must be complied with).

1108. 3. Grace *v.* Perry, 197 Mo. 567, 95 S. W. 875, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1108.

1114. 5. *In re* Waterhouse, 77 L. J. Ch. 30.

1115. 3. *In re* Weston, (1906) 2 Ch. 620; Thom *v.* Thom, 101 Md. 444, 61 Atl. 193.

1116. 3. Stone *v.* Forbes, 189 Mass. 163, 75 N. E. 141; Tudor *v.* Vail, (Mass. 1907) 80 N. E. 590.

8. Papin *v.* Piednoir, 205 Mo. 521, 104 S. W. 63, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1116.

1117. 5. Papin *v.* Piednoir, 205 Mo. 521, 104 S. W. 63.

7. Middlebrooks *v.* Ferguson, 126 Ga. 232, 55

S. E. 34; Kirkman *v.* Wadsworth, 137 N. Car. 453, 49 S. E. 962; J. M. Guffey Petroleum Co. *v.* Hooks, (Tex. Civ. App. 1907) 106 S. W. 690.

1118. 2. Walters *v.* Bristow, 77 Ark. 182, 91 S. W. 305.

1119. 1. Vines *v.* Clark, 111 N. Y. App. Div. 12, 97 N. Y. Supp. 532.

2. *In re* Jacob, (1907) 1 Ch. 445; *In re* Salvin, (1906) 2 Ch. 459; *In re* Weston, (1906) 2 Ch. 620.

5. See Vines *v.* Clark, 111 N. Y. App. Div. 12, 97 N. Y. Supp. 532, *distinguishing* Weinstein *v.* Weber, 58 N. Y. App. Div. 112, 68 N. Y. Supp. 570; Mutual L. Ins. Co. *v.* Shipman, 119 N. Y. 324, 24 N. E. 177.

1120. 6. See Stone *v.* Forbes, 189 Mass. 163, 75 N. E. 141 (dictum).

1121. 4. Rutledge *v.* Crampton, (Ala. 1906) 43 So. 822, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.), title *Powers;* Sayer *v.* Humphrey, 216 Ill. 426, 75 N. E. 170; Cameron *v.* Hicks, 141 N. Car. 21, 53 S. E. 728.

Testamentary Powers of Sale. — Eisenbrown *v.* Burns, 30 Pa. Super. Ct. 46.

5. Koch *v.* Robinson, 83 S. W. 111, 26 Ky. L. Rep. 969.

1122. 3. Wells *v.* Brooklyn Union El. R. Co., 121 N. Y. App. Div. 491, 106 N. Y. Supp. 79; Cameron *v.* Hicks, 141 N. Car. 29, 53 S. E. 728, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1122.

4. In New York by Recent Statute, etc. — The statute does not have a retroactive effect so as to apply to powers created before the passage of the act. Wills *v.* Brooklyn Union, etc., R. Co., 121 N. Y. App. Div. 496, 106 N. Y. Supp. 77.

1123. 5. See Kirkman *v.* Wadsworth, 137 N. Car. 453, 49 S. E. 962.

1124. 4. Thom *v.* Thom, 101 Md. 444, 61 Atl. 193.

1125. 1. Price *v.* Cherbonnier, 103 Md. 107, 63 Atl. 209.

9. *In re* Rogers, 218 Pa. St. 431, 67 Atl. 762.

1126. 2. Brown *v.* Columbia Finance, etc., Co., 97 S. W. 421, 30 Ky. L. Rep. 110; Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695; Stone *v.* Forbes, 189 Mass. 163, 75 N. E. 141.

1127. 7. Sayer *v.* Humphrey, 216 Ill. 426, 75 N. E. 170, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1127.

1129. 3. *In re* Rogers, 218 Pa. St. 431, 67 Atl. 762; Rogers' Estate, 31 Pa. Super. Ct. 620.

15. Charlton *v.* Charlton, (1906) 2 Ch. 523.

1131. 1. Control of Orphans' Court over Testamentary Powers of Sale. — Brittain's Estate, 28 Pa. Super. Ct. 144.

1132. 2. Baggett *v.* Edwards, 126 Ga. 463, 55 S. E. 250; Frank *v.* Colonial, etc., Mortg. Co., 86 Miss. 103, 38 So. 340; Fisher *v.* Southern Loan, etc., Co., 138 N. Car. 100, 50 S. E. 592, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1132.

8. Tucker *v.* Baldwin, (N. J. 1907) 66 Atl. 929, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1132.

1133. 3. Harrison *v.* Rice, (Neb. 1907) 111 N. W. 594; Wilmington *v.* Bryan, 141 N. Car. 666, 54 S. E. 543.

6. Grace *v.* Perry, 197 Mo. 566, 95 S. W. 875, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1133.

7. Papin *v.* Piednoir, 205 Mo. 521, 104 S. W. 63, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1133, 1134.

8. Taylor *v.* Allhusen, (1905) 1 Ch. 529, 74 L. J. Ch. 350, 92 L. T. N. S. 382, 53 W. R. 523.

1134. 2. Papin *v.* Piednoir, 205 Mo. 536, 104 S. W. 63, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1133, 1134.

4. Sayer *v.* Humphrey, 216 Ill. 426, 75 N. E. 170; Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695; *In re* Rogers, 218 Pa. St. 431, 67 Atl. 762.

5. In case of a power to appoint amongst the grandchildren of the donor, the donee a grandchild of the donor, may appoint in her own favor. Taylor *v.* Allhusen, (1905) 1 Ch. 529.

1137. 2. Inglis *v.* McCook, 68 N. J. Eq. 27, 59 Atl. 630.

3. *In re* Tenny, 104 N. Y. App. Div. 290, 93 N. Y. Supp. 811.

6. Power to appoint by will to the donees' "direct descendants" is properly executed by the appointment to his "children." Stone *v.* Forbes, 189 Mass. 163, 75 N. E. 141.

9. *In re* Adams, 54 W. R. 42; *Re* Beckett, 93 L. T. N. S. 746.

1138. 2. *In re* Tenny, 104 N. Y. App. Div. 290, 93 N. Y. Supp. 811.

4. Appointment of Life Estate with Superadded Power of Appointment upheld. Mays *v.* Beech, 114 Tenn. 544, 86 S. W. 713.

5. Monjo *v.* Woodhouse, 111 N. Y. App. Div. 80, 97 N. Y. Supp. 653, *judgment affirmed* 185 N. Y. 295, 78 N. E. 71.

6. Papin *v.* Piednoir, 205 Mo. 521, 104 S. W. 63; *In re* McNeile, 217 Pa. St. 179, 66 Atl. 328.

1139. 2. Butler *v.* Blackhall, (1907) 1 Ir. R. 405.

4. *Re* Adams, 94 L. T. N. S. 720; Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695.

1144. 5. Inglis *v.* McCook, 68 N. J. Eq. 27, 59 Atl. 630; Cameron *v.* Crowley, (N. J. 1907) 65 Atl. 875.

1147. 4. Price *v.* Cherbonnier, 103 Md. 107, 63 Atl. 209.

6. Lewis *v.* Lewis, 3 Cal. App. 727, 86 Pac. 994.

1148. 2. Cameron *v.* Crowley, (N. J. 1907) 65 Atl. 875.

1149. 3. Inglis *v.* McCook, 68 N. J. Eq. 27, 59 Atl. 630.

4. Cameron *v.* Crowley, (N. J. 1907) 65 Atl. 875 ("to and among").

1151. 3. Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695.

4. Rogers' Estate, 31 Pa. Super. Ct. 620.

1153. 3. See Sounders *v.* Shafto, (1905) 1 Ch. 126.

1156. 2. Funkhouser *v.* Porter, (Ky. 1908) 107 S. W. 202 (extent of interest conveyable).

Option. — A power conferred on executors to sell real estate of the testator does not give the executors power to give an option to purchase. Trogden *v.* Williams, 144 N. Car. 192, 56 S. E. 869.

5. Dougherty *v.* Dougherty, 204 Mo. 228, 102 S. W. 1099.

7. Funkhouser *v.* Porter, (Ky. 1908) 107 S. W. 202.

An instrument conferring on the donee "full

power and authority to dispose of the absolute estate in fee simple" confers a power to mortgage. Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875.

9. Bartlett *v.* Buckland, 78 Conn. 517, 63 Atl. 350.

1157. 3. Whitfield *v.* Burke, 86 Miss. 435, 38 So. 550.

PRACTICE OF MEDICINE.

1161. 3. **Practice of Medicine.** — Giving nerve food and osteopathic treatment held to be ***practice*** of medicine. State *v.* Hefferman, 28 R. I. 20, 65 Atl. 284.

One engaged in fitting glasses to the eye and using Dr. before his name, held ***practicing*** medicine within the South Dakota statute. State *v.* Yegge, 19 S. Dak. 234, 103 N. W. 17.

PRECATORY TRUSTS.

1163. 2. **"The Essence of the Doctrine** of precatory trusts is that the words creating them, while in form the expression of a request, * * * are in fact intended * * * as a positive direction or command." Hillsdale College *v.* Wood, 145 Mich. 257, 108 N. W. 675.

10. McCurdy *v.* McCallum, 186 Mass. 464, 72 N. E. 75.

1164. 3. McCurdy *v.* McCallum, 186 Mass. 464, 72 N. E. 75; Poor *v.* Bradbury, (Mass. 1907) 81 N. E. 882; Post *v.* Moore, 181 N. Y. 15, 73 N. E. 482.

4. Hume *v.* McHaffie, (Ind. App. 1907) 81 N. E. 117.

1165. 1. Russell *v.* U. S. Trust Co., (C. C. A.) 136 Fed. 758; Wood *v.* Wood, (Ky. 1907) 106 S. W. 226; Raymond *v.* Com., 192 Mass. 486, 78 N. E. 514; *In re* Thistlethwaite, (Surrogate Ct.) 104 N. Y. Supp. 264.

2. Wood *v.* Wood, (Ky. 1907) 106 S. W. 226; Raymond *v.* Com., 192 Mass. 486, 78 N. E. 514; Rector *v.* Alcorn, 88 Miss. 788, 41 So. 370; Post *v.* Moore, 181 N. Y. 15, 73 N. E. 482; *In re* Thistlethwaite, (Surrogate Ct.) 104 N. Y. Supp. 264.

4. Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781; Hume *v.* McHaffie, (Ind. App. 1907) 81 N. E. 117; Wood *v.* Wood, (Ky. 1907) 106 S. W. 226; Courtnay *v.* Courtnay, (Miss. 1907) 43 So. 68; Post *v.* Moore, 181 N. Y. 15, 73 N. E. 482; *In re* Thistlethwaite, (Surrogate Ct.) 104 N. Y. Supp. 264; Wolbert *v.* Beard, 128 Wis. 391, 107 N. W. 663.

6. Comiskey *v.* Bowring-Hanbury, (1905) A. C. 84; Poor *v.* Bradbury, (Mass. 1907) 81 N. E. 882; Carroll *v.* Adams, (Supm. Ct. Spec. T.) 105 N. Y. Supp. 967; Wolbert *v.* Beard, 128 Wis. 391, 107 N. W. 663.

7. Russell *v.* U. S. Trust Co., (C. C. A.) 136 Fed. 758; Hume *v.* McHaffie, (Ind. App. 1907) 81 N. E. 117; McCurdy *v.* McCallum, 186 Mass. 464, 72 N. E. 75; Rector *v.* Alcorn, 88 Miss. 788, 41 So. 370; Courtnay *v.* Courtnay, (Miss. 1907) 43 So. 68; *In re* Thistlethwaite, (Surrogate Ct.) 104 N. Y. Supp. 264; Carroll *v.* Adams, (Supm. Ct. Spec. T.) 105 N. Y. Supp. 967.

1166. 1. **Foreign Will — Law of Domicil Governs.** — McCurdy *v.* McCallum, 186 Mass. 464, 72 N. E. 75.

3. McCurdy *v.* McCallum, 186 Mass. 464, 72 N. E. 75.

7. Poor *v.* Bradbury, (Mass. 1907) 81 N. E. 882.

1167. 1. See McCurdy *v.* McCallum, 186 Mass. 464, 72 N. E. 75; *In re* Thistlethwaite, (Surrogate Ct.) 104 N. Y. Supp. 264.

1169. 3. Wood *v.* Wood, (Ky. 1907) 106 S. W. 226.

1170. 5. Wood *v.* Wood, (Ky. 1907) 106 S. W. 226.

Requirement of Receipt from Legatee Showing Intent. — McCurdy *v.* McCallum, 186 Mass. 464, 72 N. E. 75.

7. Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781; Wood *v.* Wood, (Ky. 1907) 106 S. W. 226; Courtnay *v.* Courtnay, (Miss. 1907) 43 So. 68; Post *v.* Moore, 181 N. Y. 15, 73 N. E. 482.

1171. 2. *In re* Thistlethwaite, (Surrogate Ct.) 104 N. Y. Supp. 264.

3. Poor *v.* Bradbury, (Mass. 1907) 81 N. E. 882.

4. Raymond *v.* Com., 192 Mass. 486, 78 N. E. 514; Carroll *v.* Adams, (Supm. Ct. Spec. T.) 105 N. Y. Supp. 967.

PREMEDITATE — PREMEDITATED, ETC.

1174. 5. Dunn *v.* State, 143 Ala. 67, 39 So. 147; Green *v.* State, 143 Ala. 2, 39 So. 362; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Prolow, 98 Minn. 459, 108 N. W. 873; State *v.* Daniel, 139 N. Car. 549, 51 S. E. 858.

PREMISES.

1175. 6. **Premises Equivalent to Farm — Fire Insurance.** — Home Ins. Co. *v.* Gagen, 38 Ind. App. 680, 76 N. E. 927.

Land Intended to Be Used for Building Purposes Not Included in Term Premises. — Metropolitan Water Board *v.* Paine, (1907) 1 K. B. 285, 76 L. J. K. B. 151.

PRESCRIBE.

1179. 2. **Prescribed by Law Equivalent to Prescribed by Statute.** — People *v.* Santa Clara Lumber Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 507, 106 N. Y. Supp. 624.

PRESCRIPTION.

1182. 1. Cross *v.* State, 147 Ala. 125, 41 So. 875.

1183. 6. *California.* — Alper *v.* Tormey, (Cal. App. 1907) 93 Pac. 402, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1183.

Kentucky. — Smoot *v.* Wainscott, 89 S. W. 176, 28 Ky. L. Rep. 233; McPherson *v.* Thompson, 89 S. W. 195, 28 Ky. L. Rep. 266; Ray *v.* Nally, 89 S. W. 486, 28 Ky. L. Rep. 421; Crigler *v.* Newman, 91 S. W. 706, 29 Ky. L. Rep. 27; Sparks *v.* Rogers, 97 S. W. 11, 29 Ky. L. Rep. 1170; Schwer *v.* Martin, 97 S. W. 12, 29 Ky. L. Rep. 1221; Boyd *v.* Morris, (Ky. 1908) 106 S. W. 867.

Missouri. — Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921.

New York. — Winne *v.* Winne, 95 N. Y. App. Div. 48, 82 N. Y. Supp. 647, *affirmed* 184 N. Y. 584, 77 N. E. 1198; Hindley *v.* Manhattan R. Co., 185 N. Y. 335, 78 N. E. 276, *reversing* 103 N. Y. App. Div. 504, 93 N. Y. Supp. 53.

Ohio. — Holtsberry *v.* Bounds, 29 Ohio Cir. Ct. 257, *affirmed* 75 Ohio St. 636, 80 N. E. 1123.

West Virginia. — Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

1184. 5. Fidler *v.* Rehmeyer, 34 Pa. Super. Ct. 275; Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

1185. 3. Loggie *v.* Montgomery, 38 N. Bruns. 112.

4. Graham *v.* Walker, 78 Conn. 130, 61 Atl. 98; Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1185.

6. Davis *v.* Bonaparte, (Iowa 1908) 114 N. W. 896; Tise *v.* Whitaker-Harvey Co., (N. Car. 1907) 59 S. E. 1012; Montgomery *v.* Somers, (Oregon 1907) 90 Pac. 675.

1186. 2. *Compare* Frederic *v.* Mayers, 89 Miss. 127, 43 So. 677.

10. *Compare* Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

1187. 3. Johnson *v.* Philadelphia, etc., R. Co., (Del. 1905) 62 Atl. 86; Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

6. Clay *v.* Penzel, 79 Ark. 11, 94 S. W. 705, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1187.

7. Alabama Consol. Coal, etc., Co. *v.* Turner, 145 Ala. 651, 39 So. 603, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1187.

1188. 8. Gifford *v.* Westport, 190 Mass. 323, 76 N. E. 1042.

11. McCleery *v.* Alton, 29 Ohio Cir. Ct. 97.

1189. 4. Ft. Worth *v.* Mansfield, (Tex. Civ. App. 1906) 99 S. W. 436.

Elevated Railroads May Prescribe. — Goldstrom *v.* Interborough Rapid Transit Co., 115 N. Y. App. Div. 323, 100 N. Y. Supp. 911; Mullen *v.* Manhattan R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 852, *affirming* (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 133, 102 N. Y. Supp. 454.

1190. 4. Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

6. Agnew *v.* Pawnee City, (Neb. 1907) 113 N. W. 236.

Right to Maintain Water Pipes under Highway. — Terre Haute, etc., R. Co. *v.* Zehner, (Ind. 1905) 76 N. E. 169.

7. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205; Eble *v.* State, (Kan. 1908) 93 Pac. 803; Covington *v.* Hall, 98 S. W. 317, 30 Ky. L. Rep. 356; State *v.* Godwin, 145 N. Car. 461, 59 S. E. 132; Christian *v.* Eugene, (Oregon 1907) 89 Pac. 419; Cocke *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 407. *Compare* Lighton *v.* Syracuse, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 134, 96 N. Y. Supp. 692.

8. Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1190.

1191. 1. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071; Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921; Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

1192. 5. Loggie *v.* Montgomery, 3 N. Bruns. Eq. Rep. 238; Gaynor *v.* Bauer, 144 Ala. 448, 39 So. 749; Clouse *v.* Fain, (Ky. 1908) 107 S. W. 701; Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921; Zerbey *v.* Allan, 215 Pa. St. 383, 64 Atl. 587; Fidler *v.* Rehmeyer, 34 Pa. Super. Ct. 275.

1194. 2. Burnley *v.* Mullens, 86 Miss. 441, 38 So. 635; Wills *v.* Reid, 86 Miss. 446, 38 So. 793; Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

5. Jobling *v.* Tuttle, 75 Kan. 351, 89 Pac. 699.

6. McBride *v.* Bair, 134 Iowa 661, 112 N. W. 169; Jobling *v.* Tuttle, 75 Kan. 351, 89 Pac. 699, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1194.

Immaterial Whether Claimed as Matter of Right or Convenience. — Boyd *v.* Morris, (Ky. 1908) 106 S. W. 867.

1195. 2. Lamb *v.* Pontiac, etc., R. Co., (Mich. 1907) 113 N. W. 1110; Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921.

7. Prewitt *v.* Houstonville Cemetery Co., 101 S. W. 892, 31 Ky. L. Rep. 125.

8. Mills *v.* Reid, 86 Miss. 446, 38 So. 793; Petterson *v.* Waske, 45 Wash. 307, 88 Pac. 206.

1196. 6. *Alabama.* — Gosdin *v.* Williams, (Ala. 1907) 44 So. 611.

Indiana. — Null *v.* Williamson, 166 Ind. 547, 78 N. E. 76.

Iowa. — McBride *v.* Bair, 134 Iowa 661, 112 N. W. 169.

Kansas. — Jobling *v.* Tuttle, 75 Kan. 351, 89 Pac. 699.

Kentucky. — Crabtree Coal Min. Co. *v.* Hamby, 90 S. W. 226, 28 Ky. L. Rep. 687; Smith *v.* Pennington, 91 S. W. 730, 28 Ky. L. Rep. 1282; Potter *v.* Magruder, 97 S. W. 732, 30 Ky. L. Rep. 276; Boyd *v.* Morris, (Ky. 1908) 106 S. W. 867.

New York. — Staples *v.* Cornwall, 114 N. Y. App. Div. 596, 99 N. Y. Supp. 1009.

Pennsylvania. — Zerbey *v.* Allan, 215 Pa. St. 383, 64 Atl. 587; Woodbury *v.* Allan, 215 Pa. St. 390, 64 Atl. 590.

Canada. — Rogers *v.* Duncan, 1 Can. Sup. Ct. Cas. 352.

1197. 5. **Permissive Use Defined.** — Alper *v.* Tormey, (Cal. App. 1907) 93 Pac. 402; Township Com'rs *v.* Charleston Min., etc., Co., 76 S. Car. 382, 57 S. E. 201.

1198. 1. Gyra *v.* Windler, 40 Colo. 366, 91 Pac. 36; Toney *v.* Knapp, 142 Mich. 652, 106 N. W. 552; Lechman *v.* Mills, (Wash. 1907) 91 Pac. 11.

3. Franz *v.* Mendonca, 146 Cal. 640, 80 Pac. 1078; Frederic *v.* Mayers, 89 Miss. 127, 43 So. 677; Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

5. Lechman *v.* Mills, (Wash. 1907) 91 Pac. 11, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1198; Alper *v.* Tormey, (Cal. App. 1907) 43 Pac. 402; Gyra *v.* Windler, 40 Colo. 366, 91 Pac. 36; Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071; Settle *v.* Cox, 89 S. W. 534, 28 Ky. L. Rep. 510; Wells *v.* Parker, 74 N. H. 193, 66 Atl. 121.

1199. 1. Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

Necessity Must Clearly Appear. — Wills *v.* Reid, 86 Miss. 446, 38 So. 793.

3. Jones *v.* Jones, 101 S. W. 980, 31 Ky. L. Rep. 183; Thuot *v.* Ménard, 16 Quebec K. B. 174.

4. Bullock *v.* Phelps, 27 R. I. 164, 61 Atl. 589.

5. Loggie *v.* Montgomery, 3 N. Bruns. Eq. Rep. 238.

8. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071; Winne *v.* Winne, 95 N. Y. App. Div. 48, 82 N. Y. Supp. 647, *affirmed* 184 N. Y. 584, 77 N. E. 1198; Miller *v.* Hoeschler, 126 Wis. 263, 105 N. W. 790.

1200. 1. **Easement Established for Benefit of Landowner.** — Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921.

2. **Use Presumed to Be Permissive.** — Null *v.* Williamson, 166 Ind. 547, 78 N. E. 76.

4. Wait *v.* Brock, (Iowa 1906) 109 N. W. 471; Jensen *v.* Showalter, (Neb. 1907) 113 N. W. 202.

When Mutual Use Not Adverse. — Wilkinson *v.* Hutzel, 142 Mich. 674, 106 N. W. 207.

5. Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

7. Gosdin *v.* Williams, (Ala. 1907) 44 So. 611, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1200, 1220, 1221; Null *v.* Williamson, 166 Ind. 547, 78 N. E. 76, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1200; Watson *v.* Adams County, 38 Wash. 662, 80 Pac. 201.

Woodland Used in Connection with Improved Land is subject to the prescription applicable to improved land. Hopkins *v.* Roach, 127 Ga. 153, 56 S. E. 303.

8. Schwer *v.* Martin, 97 S. W. 12, 29 Ky. L. Rep. 1221.

1202. 2. Nugent *v.* Watkins, 129 Ga. 382, 58 S. E. 888.

4. **Competent to Show Relationship of Landowner and Party through Whom Easement Is Claimed.** — Fidler *v.* Rehmeyer, 34 Pa. Super. Ct. 275.

6. Fleming *v.* Howard, 150 Cal. 28, 87 Pac. 908; Alper *v.* Tormey, (Cal. App. 1907) 93 Pac. 402; Southern Indiana R. Co. *v.* Norman, 165 Ind. 126, 74 N. E. 896; Schwer *v.* Martin, 97 S. W. 12, 29 Ky. L. Rep. 122; Hey *v.* Collman, 78 N. Y. App. Div. 584, 79 N. Y. Supp. 778, *affirmed* 180 N. Y. 560, 73 N. E. 1125; Winne *v.* Winne, 95 N. Y. App. Div. 48, 82 N. Y. Supp. 647, *affirmed* 184 N. Y. 584, 77 N. E. 1198; Lechman *v.* Mills, (Wash. 1907) 91 Pac. 11, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1202.

7. Null *v.* Williamson, 166 Ind. 547, 78 N. E. 76.

10. Wells *v.* Parker, 74 N. H. 193, 66 Atl. 121.

11. *California.* — Fleming *v.* Howard, 150 Cal. 28, 87 Pac. 908.

Indiana. — Null *v.* Williamson, 166 Ind. 547, 78 N. E. 76.

Kentucky. — Smoot *v.* Wainscott, 89 S. W. 176, 28 Ky. L. Rep. 233; McPherson *v.* Thompson, 89 S. W. 195, 28 Ky. L. Rep. 266; Ray *v.* Nally, 89 S. W. 486, 28 Ky. L. Rep. 421; Sparks *v.* Rogers, 97 S. W. 11, 29 Ky. L. Rep. 1170; Smith *v.* Pennington, 91 S. W. 730, 28 Ky. L. Rep. 1282; Jones *v.* Jones, 101 S. W. 980, 31 Ky. L. Rep. 183; Cincinnati Southern R. Co. *v.* Slaughter, (Ky. 1907) 104 S. W. 291, 293; Atterberry *v.* McClure, (Ky. 1907) 104 S. W. 958; Boyd *v.* Morris, (Ky. 1908) 106 S. W. 867.

Missouri. — Anthony *v.* Kennard Bldg. Co., 186 Mo. 704, 87 S. W. 921.

New York. — Winne *v.* Winne, 95 N. Y. App. Div. 48, 82 N. Y. Supp. 647, *affirmed* 184 N. Y. 584, 77 N. E. 1198.

1203. 1. Alper *v.* Tormey, (Cal. App. 1907) 93 Pac. 402; Seitz *v.* People's Sav. Bank, 140 Mich. 106, 103 N. W. 545; Wells *v.* Parker, 74 N. H. 193, 66 Atl. 121.

3. Null *v.* Williamson, 166 Ind. 547, 78 N. E. 76; Ramsgate *v.* Debling, 4 Local Gov. Rep. 495, 70 J. P. 132, 22 Times L. Rep. 369.

5. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071.

1204. 1. Use for other purposes which does not interfere with the easement does not constitute a break in the continuity. Power *v.* Dean, 112 Mo. App. 288, 86 S. W. 1100.

4. Franz *v.* Mendonca, 146 Cal. 640, 80 Pac. 1078.

7. Collins *v.* Gray, 3 Cal. App. 723, 86 Pac. 1078.

11. Horne *v.* Horne, 38 Nova Scotia 404.

12. Gifford *v.* Westport, 190 Mass. 323, 76 N. E. 1042; Tudor Boiler Mfg. Co. *v.* I. & E. Greenwald Co., 26 Ohio Cir. Ct. 556.

1205. 2. Horne *v.* Horne, 38 Nova Scotia 404.

8. Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

4. Morris Canal, etc., Co. *v.* Diamond Mills Paper Co., (N. J. 1906) 64 Atl. 746; Hume *v.* Rogue River Packing Co., (Oregon 1907) 92 Pac. 1065.

8. **Suit by Tenant Does Not Interrupt Prescription as to Landlord.** — Goldstrom *v.* Interborough Rapid Transit Co., 115 N. Y. App. Div. 323, 100 N. Y. Supp. 911.

Settling Suit of Landlord Does Not Affect Prescription as to Tenant. — Burke *v.* Manhattan R. Co., 120 N. Y. App. Div. 684, 105 N. Y. Supp. 828.

9. Aiken *v.* New York, etc., R. Co., 188 Mass. 547, 74 N. E. 929.

Forcible Interruption Insufficient Where Party Sues Promptly to Enjoin It. — Franz *v.* Mendonca, 146 Cal. 640, 80 Pac. 1078.

13. Berner *v.* Sappington, 102 Md. 185, 62 Atl. 365; Woodbury *v.* Allan, 215 Pa. St. 390, 64 Atl. 590.

1206. 3. Wells *v.* Parker, 74 N. H. 193, 66 Atl. 121; Zerbey *v.* Allan, 215 Pa. St. 383, 64 Atl. 587; McClellan *v.* Powassan Lumber Co., 15 Ont. L. Rep. 67.

Purchase of One of Two Tracts over Which a Party Uses a Right of Way will not interrupt prescription as to the other tract. Bullock *v.* Phelps, 27 R. I. 164, 61 Atl. 589.

9. Crigler *v.* Newman, 91 S. W. 706, 29 Ky. L. Rep. 27; Toney *v.* Knapp, 142 Mich. 652, 106 N. W. 552; Agnew *v.* Pawnee City, (Neb. 1907) 113 N. W. 236.

1207. 2. Horne *v.* Horne, 38 Nova Scotia 404.

1208. 10. Rogers *v.* Duncan, 1 Can. Sup. Ct. Cas. 352.

Right of Way Limited to Beaten Track. Gyro *v.* Windler, 40 Colo. 366, 91 Pac. 36.

1209. 1. Crigler *v.* Newman, 91 S. W. 706, 29 Ky. L. Rep. 27; Cincinnati Southern R. Co. *v.* Slaughter, (Ky. 1907) 104 S. W. 291, 293.

2. Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

3. Boyd *v.* Morris, (Ky. 1908) 106 S. W. 867.

9. Puroto *v.* Chieppa, 78 Conn. 401, 62 Atl. 664.

1210. 3. Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921; Wells *v.* Parker, 74 N. H. 193, 66 Atl. 121; Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

Placing a Gate in a Fence Crossing the Way is evidence of knowledge and acquiescence. Smith *v.* Pennington, 91 S. W. 730, 28 Ky. L. Rep. 1282.

5. Watson *v.* Adams County, 38 Wash. 662, 80 Pac. 201.

6. Puroto *v.* Chieppa, 78 Conn. 401, 62 Atl. 664.

1211. 6. Muller *v.* Manhattan R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 852, *affirming* (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 133, 102 N. Y. Supp. 454.

12. Johnson *v.* Philadelphia, etc., R. Co., (Del. 1905) 62 Atl. 86; Louisville, etc., R. Co. *v.* Smith, 101 S. W. 317, 31 Ky. L. Rep. 1.

1212. 6. Muller *v.* Manhattan R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 852, *affirming* (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 133, 102 N. Y. Supp. 454.

8. Arnold *v.* Limeburger, 122 Ga. 79, 49 S. E. 812, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1212.

1213. 1. Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

3. **Ten Years.** — Power *v.* Dean, 112 Mo. App. 288, 86 S. W. 1100; Roe *v.* Howard County, 75 Neb. 448, 106 N. W. 587.

1214. 7. Roe *v.* Howard County, 75 Neb. 448, 106 N. W. 587; Muller *v.* Manhattan R. Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 133, 102 N. Y. Supp. 454, *affirmed* (Supm. Ct. App. Div.) 108 N. Y. Supp. 852.

1215. 1. Smoot *v.* Wainscott, 89 S. W. 176, 28 Ky. L. Rep. 233.

5. McPherson *v.* Thompson, 89 S. W. 195, 28 Ky. L. Rep. 266.

1216. 1. Owensboro *v.* Brocking, 89 S. W. 1086, 27 Ky. L. Rep. 1086.

Right to Increased Use May Be Acquired by Prescription. — Bullock *v.* Phelps, 27 R. I. 164, 61 Atl. 589.

5. **For Evidence Held Sufficient to Show a Right by Prescription.** — Byars *v.* Rash, 100 S. W. 306, 30 Ky. L. Rep. 1153; Cincinnati Southern R. Co. *v.* Slaughter, (Ky. 1907) 104 S. W. 291, 293; Boyd *v.* Morris, (Ky. 1908) 106 S. W. 867; Toney *v.* Knapp, 142 Mich. 652, 106 N. W. 552; Hindley *v.* Manhattan R. Co., 185 N. Y. 335, 78 N. E. 276, *reversing* 103 N. Y. App. Div. 504, 93 N. Y. Supp. 53.

Evidence Held Insufficient. — Null *v.* Williamson, 166 Ind. 547, 78 N. E. 76; Roberts *v.* Williams, 90 S. W. 565, 28 Ky. L. Rep. 1084; Kolpack *v.* Kolpack, 128 Wis. 169, 107 N. W. 457.

6. Fidler *v.* Rehmeyer, 34 Pa. Super. Ct. 275.

1217. 2. *Arkansas.* — Clay *v.* Penzel, 79 Ark. 11, 94 S. W. 705.

Georgia. — Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508; Johnson *v.* State, 1 Ga. App. 195, 58 S. E. 265.

Idaho. — Juliaetta *v.* Smith, 12 Idaho 288, 85 Pac. 923; Meservey *v.* Gulliford, (Idaho 1908) 93 Pac. 780.

Indiana. — McClaskey *v.* McDaniel, 37 Ind. App. 59, 74 N. E. 1023; Gillespie *v.* Duling, (Ind. App. 1908) 83 N. E. 728.

Iowa. — Whetstone *v.* Hill, 130 Iowa 637, 105 N. W. 193.

Kansas. — Meade *v.* Topeka, 75 Kan. 61, 88 Pac. 574.

Kentucky. — Smoot *v.* Wainscott, 89 S. W. 176, 28 Ky. L. Rep. 233; Ray *v.* Nally, 89 S. W. 486, 28 Ky. L. Rep. 421.

Massachusetts. — Com. *v.* Henchey, (Mass. 1907) 82 N. E. 4.

Minnesota. — Meyer *v.* Petersburg, 99 Minn. 450, 109 N. W. 840.

Missouri. — Power *v.* Dean, 112 Mo. App. 288, 86 S. W. 1100; Mitchell *v.* St. Louis, etc., R. Co., 116 Mo. App. 81, 92 S. W. 111; Dow *v.* Kansas City Southern R. Co., 116 Mo. App. 555, 92 S. W. 744; Sikes *v.* St. Louis, etc., R. Co., 127 Mo. App. 326, 105 S. W. 700.

Montana. — Pope *v.* Alexander, (Mont. 1907) 92 Pac. 203.

New Hampshire. — Harriman *v.* Moore, 74 N. H. 277, 67 Atl. 225.

New Jersey. — Riverside Tp. *v.* Pennsylvania R. Co., 74 N. J. L. 433, 66 Atl. 433.

North Carolina. — Milliken *v.* Denny, 141 N. Car. 224, 53 S. E. 867.

Oregon. — Ridings *v.* Marion County, (Oregon 1907) 91 Pac. 22.

South Carolina. — State *v.* Toale, 74 S. Car. 425, 54 S. E. 608.

Wisconsin. — Milwaukee Boiler Co. *v.* Wadhams Oil, etc., Co., 126 Wis. 32, 105 N. W. 312; State *v.* Lloyd, (Wis. 1907) 113 N. W. 964.

Municipal Corporation May Assert Right to a Street which the public has acquired by prescription. Ft. Worth *v.* Mansfield, (Tex. Civ. App. 1906) 99 S. W. 436.

1218. 1. Gillespie *v.* Duling, (Ind. App. 1908) 83 S. W. 728; Brandt *v.* Olson, (Neb. 1907) 113 N. W. 151.

2. Falter *v.* Packard, 219 Ill. 356, 76 N. E. 495.

1219. 3. Meyer *v.* Petersburg, 99 Minn. 450, 109 N. W. 840; Brandt *v.* Olson, (Neb. 1908) 114 N. W. 587; State *v.* Lloyd, (Wis. 1907) 113 N. W. 964.

1220. 5. Rice *v.* Pershall, 41 Wash. 73, 82 Pac. 1038.

6. Montgomery *v.* Somers, (Oregon 1907) 90 Pac. 674; Okanogan County *v.* Cheetham, 37 Wash. 682, 80 Pac. 262. *Contra*, Cross *v.* State, 147 Ala. 125, 41 So. 875.

9. *Contra*, Johnson *v.* Philadelphia, etc., R. Co., (Del. 1905) 62 Atl. 86; Peotone *v.* Illinois Cent. R. Co., 224 Ill. 101, 79 N. E. 678; Louisville, etc., R. Co. *v.* Smith, 101 S. W. 317, 31 Ky. L. Rep. 1. *Compare* Cincinnati Southern R. Co. *v.* Slaughter, (Ky. 1907) 104 S. W. 291, 293.

1221. 2. Falter *v.* Packard, 219 Ill. 356,

76 N. E. 495; Chicago *v.* Galt, 224 Ill. 421, 79 N. E. 701; Dickerman *v.* Marion, 122 Ill. App. 154; Davis *v.* Bonaparte, (Iowa 1908) 114 N. W. 896; Bleck *v.* Keller, 73 Neb. 826, 103 N. W. 674; Kansas City, etc., R. Co. *v.* State, 74 Neb. 868, 105 N. W. 713; Nelson *v.* Sneed, (Neb. 1906) 107 N. W. 255; Cincinnati, etc., R. Co. *v.* Roseville, 76 Ohio St. 108, 81 N. E. 178; Petterson *v.* Waske, 45 Wash. 307, 88 Pac. 206.

For Evidence Held Insufficient to Show a Highway by Prescription, see Burnley *v.* Mullens, 86 Miss. 441, 38 So. 635; Wills *v.* Reid, 86 Miss. 446, 38 So. 793.

Evidence Held Sufficient. — Haan *v.* Meester, 132 Iowa 709, 109 N. W. 211; Parkey *v.* Galloway, 147 Mich. 693, 111 N. W. 348.

3. Johnson *v.* State, 1 Ga. App. 195, 58 S. E. 265; Aiken *v.* New York, etc., R. Co., 188 Mass. 547, 74 N. E. 929.

4. Small *v.* Binford, (Ind. App. 1908) 83 N. E. 507; Gillespie *v.* Duling, (Ind. App. 1908) 83 N. E. 728; Dow *v.* Kansas City Southern R. Co., 116 Mo. App. 555, 92 S. W. 744.

6. Lieber *v.* People, 33 Colo. 493, 81 Pac. 270; Haan *v.* Meester, 132 Iowa 709, 109 N. W. 211.

7. Bethel *v.* Pruett, 215 Ill. 162, 74 N. E. 111.

1222. 1. Johnson *v.* State, 1 Ga. App. 195, 58 S. E. 265; Burnley *v.* Mullens, 86 Miss. 441, 38 So. 635; Wills *v.* Reid, 86 Miss. 446, 38 So. 793; Terry *v.* McClung, 104 Va. 599, 52 S. E. 355; Rice *v.* Pershall, 41 Wash. 73, 82 Pac. 1038; Petterson *v.* Waske, 45 Wash. 307, 88 Pac. 206.

3. **Unimproved Land.** — Brumley *v.* State, 83 Ark. 236, 103 S. W. 615.

4. Lieber *v.* People, 33 Colo. 493, 81 Pac. 270; Falter *v.* Packard, 219 Ill. 356, 76 N. E. 495; Van Wanning *v.* Deeter, (Neb. 1907) 112 N. W. 902.

5. Bully Hill Copper Min., etc., Co. *v.* Bruson, 4 Cal. App. 180, 87 Pac. 237, 239; Palmer *v.* Northern Pac. R. Co., 11 Idaho 583, 83 Pac. 947; Cincinnati, etc., R. Co. *v.* Roseville, 76 Ohio St. 108, 81 N. E. 178. *Compare* Bolo Tp. *v.* Liszewski, 116 Ill. App. 135.

6. Dickerman *v.* Marion, 122 Ill. App. 154.

7. Bethel *v.* Pruett, 215 Ill. 162, 74 N. E. 111; Pope *v.* Alexander, (Mont. 1907) 92 Pac. 203; Montgomery *v.* Somers, (Oregon 1907) 90 Pac. 674.

1223. 1. Potter *v.* Magruder, 97 S. W. 732, 30 Ky. L. Rep. 276; Petterson *v.* Waske, 45 Wash. 307, 88 Pac. 206.

2. Small *v.* Binford, (Ind. App. 1908) 83 N. E. 507; Gillespie *v.* Duling, (Ind. App. 1908) 83 N. E. 728; Portland, etc., R. Co. *v.* Clarke County, (Wash. 1908) 93 Pac. 1083.

Change by Landowner Does Not Affect Operation of Prescription. — Berry *v.* St. Louis, etc., R. Co., 124 Mo. App. 436, 101 S. W. 714.

4. Dickerman *v.* Marion, 122 Ill. App. 154.

5. State *v.* Cipra, 71 Kan. 714, 81 Pac. 488. *Compare* Sikes *v.* St. Louis, etc., R. Co., 127 Mo. App. 326, 105 S. W. 700.

6. Bolo Tp. *v.* Liszewski, 116 Ill. App. 135.

8. Bethel *v.* Pruett, 215 Ill. 162, 74 N. E. 111; Dickerman *v.* Marion, 122 Ill. App. 151; Van Manning *v.* Deeter, (Neb. 1907) 112 N. W. 169; Kansas City, etc., R. Co. *v.* State, 74 Neb. 868, 105 N. W. 713.

Knowledge Will Not Be Presumed from Use Alone. — Davis *v.* Bonaparte, (Iowa 1908) 114 N. W. 896.

9. Chicago *v.* Galb, 224 Ill. 421, 79 N. E. 701. *Contra,* Meservey *v.* Gulliford, (Idaho 1908) 93 Pac. 780.

10. Peotone *v.* Illinois Cent. R. Co., 224 Ill. 101, 79 N. E. 678; Meyer *v.* Petersburg, 99 Minn. 450, 109 N. W. 840.

11. Road Dist. No. 1 *v.* Beebe, 231 Ill. 147, 83 N. E. 131; Neal *v.* Gilmore, 141 Mich. 519, 104 N. W. 609; Dow *v.* Kansas City Southern R. Co., 116 Mo. App. 555, 92 S. W. 744.

In Missouri where a statute requires the working of a road at public expense to perfect the right by prescription, it was held that the statute did not apply, where the right was vested at the time of its adoption. Sikes *v.* St. Louis, etc., R. Co., 127 Mo. App. 326, 105 S. W. 700.

12. Palmer *v.* Northern Pac. R. Co., 11 Idaho 583, 83 Pac. 947; Juliaetta *v.* Smith, 12 Idaho 288, 85 Pac. 923; Meservey *v.* Gulliford, (Idaho 1908) 93 Pac. 780; Kansas City, etc., R. Co. *v.* State, 74 Neb. 868, 105 N. W. 713. *Compare* Brandt *v.* Olson, (Neb. 1907) 113 N. W. 151.

1224. 1. Neal *v.* Gilmore, 141 Mich. 519, 104 N. W. 609.

2. **Evidence that Notices Warning Off Trespassers Were Posted on the Land** is competent to show use was permissive only. Gordin *v.* Williams, (Ala. 1907) 44 So. 611, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1224.

3. Johnson *v.* State, 1 Ga. App. 195, 58 S. E. 265; Tise *v.* Whitaker-Harvey Co., (N. Car. 1907) 59 S. E. 1012; Vogler *v.* Anderson, 46 Wash. 202, 89 Pac. 551.

4. Meade *v.* Topeka, 75 Kan. 61, 88 Pac. 574.

6. Anderson *v.* Huntington, (Ind. App. 1907) 81 N. E. 223; Haan *v.* Meester, 132 Iowa 709, 109 N. W. 211; Davis *v.* Bonaparte, (Iowa 1908) 114 N. W. 896; Meade *v.* Topeka, 75 Kan. 61, 88 Pac. 574.

7. Montgomery *v.* Somers, (Oregon 1907) 90 Pac. 674.

8. *Compare* Montgomery *v.* Somers, (Oregon 1907) 90 Pac. 674. *Contra,* Meservey *v.* Gulliford, (Idaho 1908) 93 Pac. 780.

1225. 3. Lieber *v.* People, 33 Colo. 493, 81 Pac. 270.

4. Harriman *v.* Moore, 74 N. H. 277, 67 Atl. 225; Portland, etc., R. Co. *v.* Clarke County, (Wash. 1908) 93 Pac. 1083.

6. **Road Official Employing Another to Remove Obstructions.** — Parkey *v.* Galloway, 147 Mich. 693, 111 N. W. 348.

13. Davis *v.* Bonaparte, (Iowa 1908) 114 N. W. 896.

15. Van Wanning *v.* Deeter, (Neb. 1907) 112 N. W. 902.

The Burden of Proof Is Shifted after public use for the required period has been shown. Meade *v.* Topeka, 75 Kan. 61, 88 Pac. 574; Byars *v.* Rash, 100 S. W. 306, 30 Ky. L. Rep. 1157.

1226. 1. Bolo Tp. *v.* Liszewski, 116 Ill. App. 135.

PRESUME.

1231. 3. **Presume Synonymous with Assume.** — Com. *v.* Lavery, 188 Mass. 13, 73 N. E. 884.

PRESUMPTIONS.

1234. 1. Rodan *v.* St. Louis Transit Co., 207 Mo. 392, 105 S. W. 1061.

2. Merchants Nat. Bank *v.* Nichols, etc., Co., 123 Ill. App. 436, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1234; Sears *v.* Vaughan, 230 Ill. 572, 82 N. E. 881.

3. Indianapolis *v.* Keeley, 167 Ind. 516, 79 N. E. 499.

4. Hope *v.* Alton, 116 Ill. App. 116, *judgment affirmed* 214 Ill. 102; Cain *v.* State, 36 Ind. App. 57, 74 N. E. 1102, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1234; State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500; Plattsmouth *v.* Murphy, 74 Neb. 749, 105 N. W. 293.

1235. 3. State *v.* Virginia-Carolina Chemical Co., 71 S. Car. 569, 51 S. E. 455, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1235.

5. People *v.* Wong Sang Lung, 3 Cal. App. 221, 84 Pac. 843; Indianapolis *v.* Keeley, 167 Ind. 516, 79 N. E. 499; Sowders *v.* St. Louis, etc., R. Co., 127 Mo. App. 119, 104 S. W. 1122, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1134–1136; Williams *v.* Fourth Nat. Bank, (Okla. 1905) 82 Pac. 496 (statutory presumption of fraud in sales in bulk).

1236. 1. **Presumptions Arising Out of Burden of Proof.** — Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807.

2. Georgia R., etc., Co. *v.* Harris, 1 Ga. App. 714, 57 S. E. 1076; Bycyznski *v.* Illinois Steel Co., 115 Ill. App. 326; Atchison, etc., R. Co. *v.* Baumgartner, 74 Kan. 151, 85 Pac. 822, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1236; Haynie *v.* Hammond Packing Co., 126 Mo. App. 88, 103 S. W. 581; Tull *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 87 S. W. 910; Jones *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1907) 105 S. W. 1007.

3. See Salzer Lumber Co. *v.* Claflin, (N. Dak. 1907) 113 N. W. 1036.

7. Coffman *v.* Christenson, 102 Minn. 460, 113 N. W. 1064, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1236.

1237. 2. State *v.* Durein, 70 Kan. 10, 78 Pac. 152, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1237; Bowman *v.* Little, 101 Md. 273, 61 Atl. 1084.

1238. 1. Williams *v.* Ellis, 101 Me. 247, 63 Atl. 818 (pendency of action commenced); Dean *v.* Kansas City, etc., R. Co., 199 Mo. 398, 97 S. W. 910, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1238; State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500 (status of dental college). See also Alabama Nat. Bank *v.* Parker, 146 Ala. 513, 40 So. 987.

4. Anglo-Californian Bank *v.* Field, 146 Cal. 644, 80 Pac. 1080.

1239. 5. *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695 (insanity); State *v.* Durein, 70 Kan. 8, 78 Pac. 152, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1239. But see Compbell *v.* Park, 128 Iowa 181, 101 N. W. 861.

In Sandiford *v.* Hempstead, 97 N. Y. App. Div. 163, 90 N. Y. Supp. 76, where it was shown that the beach inlets at Rockaway Beach, Long Island, were constantly shifting, it was presumed that the same state of facts were going on in 1725.

10. Thornton-Thomas Mercantile Co. *v.* Bretherton, 32 Mont. 80, 80 Pac. 10; Jensen *v.* Montgomery, 29 Utah 89, 80 Pac. 504.

11. Cleage *v.* Laidley, 149 Fed. 346, 79 C. C. A. 284.

1240. 8. See Stafford Springs St. R. Co. *v.* Middle River Mfg. Co., 80 Conn. 37, 66 Atl. 775.

1241. 1. State *v.* Nethken, 60 W. Va. 675, 55 S. E. 742, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1241.

3. Rogers *v.* Rogers, (Del. 1907) 66 Atl. 374 (presumption in favor of sanity); Ireland *v.* White, 102 Me. 233, 66 Atl. 477 (presumption in favor of sanity); Beard *v.* Southern R. Co., 143 N. Car. 137, 55 S. E. 505; State *v.* Snell, (Wash. 1907) 89 Pac. 931; McPeck *v.* Graham, 56 W. Va. 200, 49 S. E. 125.

7. Stoutenborough *v.* Rammel, 123 Ill. App. 487.

8. *In re* Colton, 129 Iowa 547, 105 N. W. 1008, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1241; State *v.* Jackson, 79 Vt. 504, 65 Atl. 657 (citizenship).

1242. 2. *In re* Fisher, 128 Iowa 18, 102 N. W. 797; Marsters *v.* Umpqua Valley Oil Co., (Oregon 1907) 90 Pac. 151 (mortgage); Collins *v.* Denny Clay Co., 41 Wash. 136, 82 Pac. 1012 (corporate stock).

5. Burgener *v.* Lippold, 128 Ill. App. 590.

6. Sanford *v.* Millikin, 144 Mich. 311, 107 N. W. 884.

1243. 3. Murto *v.* Lemon, 19 Colo. App. 317, 75 Pac. 160, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1243.

1245. 3. *England.—In re* Aldersey, (1905) 2 Ch. 181, 74 L. J. Ch. 548, 92 L. T. N. S. 826.

Louisiana. — See Iberia Cypress Co. *v.* Thorgeson, 116 La. 218, 40 So. 682.

Minnesota. — Spahr *v.* Mutual L. Ins. Co., 98 Minn. 471, 108 N. W. 4.

Missouri. — Chapman *v.* Kullman, 191 Mo. 237, 89 S. W. 924.

Nebraska. — Holdredge *v.* Livingston, (Neb. 1907) 112 N. W. 341.

New York. — *In re* Losse, (Surrogate Ct.) 46 Misc. (N. Y.) 363, 94 N. Y. Supp. 1082.

Rhode Island. — *In re* Truman, 27 R. I. 209, 61 Atl. 598; Hackett's Appeal, 27 R. I. 587, 65 Atl. 268.

1246. 2. Hackett's Appeal, 27 R. I. 587, 65 Atl. 268.

Specific Performance. — In Van Williams *v.* Elias, 106 N. Y. App. Div. 288, 94 N. Y. Supp. 611, the court refused to decree specific performance of a contract for the sale of land where the title of the vendor depended upon the death of a third person, and the only proof of such death was such person's absence without tidings.

3. *In re* Truman, 27 R. I. 209, 61 Atl. 598.

1247. 1. Gilroy *v.* Brady, 195 Mo. 205, 93 S. W. 279.

7. The San Rafael, 141 Fed. 270 (collision of vessels).

1248. 2. Spiltoir *v.* Spiltoir, (N. J. 1906) 64 Atl. 96.

Proper inquiry must have been made in order to give rise to the presumption of death. Modern Woodmen of America *v.* Gerdom, (Kan. 1905) 82 Pac. 1100.

3. Policemen's Benev. Assoc. *v.* Ryce, 115 Ill. App. 95; Modern Woodmen of America *v.* Graber, 128 Ill. App. 585; Renard *v.* Bennett, (Kan. 1907) 93 Pac. 261.

6. Policemen's Benev. Assoc. *v.* Ryce, 115 Ill. App. 95; Renard *v.* Bennett, (Kan. 1907) 93 Pac. 261; Ironton F. Brick Co. *v.* Tucker, (Ky. 1904) 82 S. W. 241, 26 Ky. L. Rep. 532, *rehearing denied* (Ky. 1904) 82 S. W. 1009, 26 Ky. L. Rep. 1021 (*Kentucky* statute), *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1248; Donovan *v.* Twist, 105 N. Y. App. Div. 171, 93 N. Y. Supp. 990; Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665.

1249. 2. Spahr *v.* Mutual L. Ins. Co., 98 Minn. 471, 108 N. W. 4; Chapman *v.* Kullman, 191 Mo. 237, 89 S. W. 924, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1249; *In re* Losse, (Surrogate Ct.) 46 Misc. (N. Y.) 363, 94 N. Y. Supp. 1082.

3. *In re* Aldersey, (1905) 2 Ch. 181, 74 L. J. Ch. 548, 92 L. T. N. S. 826.

4. The San Rafael, 141 Fed. 270, 72 C. C. A. 388; Spahr *v.* Mutual L. Ins. Co., 98 Minn. 471, 108 N. W. 4.

1250. 5. Policemen's Benev. Assoc. *v.* Ryce, 115 Ill. App. 95.

8. The presumption of death after seven years may arise though there is strong evidence that the person had reason to keep his identity concealed. Wills *v.* Palmer, 53 W. R. 169.

1251. 1. Harris *v.* State Bank, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 458, 97 N. Y. Supp. 1044.

1252. 4. *In re* Gerdes, (Surrogate Ct.) 50 Misc. (N. Y.) 88, 100 N. Y. Supp. 440; St. John *v.* Andrews Institute, 117 N. Y. App. Div. 698, 102 N. Y. Supp. 808; *In re* McInnes, 119 N. Y. App. Div. 440, 104 N. Y. Supp. 147.

5. *In re* Gerdes, (Surrogate Ct.) 50 Misc. (N. Y.) 88, 100 N. Y. Supp. 440; St. John *v.* Andrews Institute, 117 N. Y. App. Div. 698, 102 N. Y. Supp. 808; *In re* McInnes, 119 N. Y. App. Div. 440, 104 N. Y. Supp. 147.

6. Sherrod *v.* Farmers' Mut. F. Ins. Assoc., 139 N. Car. 167, 51 S. E. 910; Reynolds *v.* Maryland Casualty Co., 30 Pa. Super. Ct. 456; Pink Front Bankrupt Store *v.* Mistrot, (Tex. Civ. App. 1905) 90 S. W. 75; Opet *v.* Denzer, (Tex. Civ. App. 1906) 93 S. W. 527.

1253. 1. *United States.* — Davidson Steamship Co. *v.* U. S., 142 Fed. 315, 73 C. C. A. 425.

Arkansas. — Merchants' Exch. Co. *v.* Sanders, 74 Ark. 16, 84 S. W. 786.

Illinois. — Clark *v.* People, 224 Ill. 562, 79 N. E. 941, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1252; Smith *v.* Berz, 125 Ill. App. 122.

Michigan. — Long Bell Lumber Co. *v.* Nyman, 145 Mich. 477, 108 N. W. 1019.

Missouri. — Ward *v.* Morr Transfer, etc., Co., 119 Mo. App. 83, 95 S. W. 964.

New York. — Mishkind-Feinberg Realty Co. *v.* Sidorsky, 189 N. Y. 402, 82 N. E. 448.

North Carolina. — Beard *v.* Southern R. Co., 143 N. Car. 137, 55 S. E. 505.

1254. 1. Cagliostro *v.* Indelli, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 44, 102 N. Y. Supp. 918; Beeman *v.* Supreme Lodge, etc., 215 Pa. St. 627, 64 Atl. 792.

3. Davidson Steamship Co. *v.* U. S., 142 Fed. 315, 73 C. C. A. 425; Long Bell Lumber Co. *v.* Nyman, 145 Mich. 477, 108 N. W. 1019.

1255. 3. Robinson *v.* Union Cent. L. Ins. Co., 144 Fed. 1005; Ward *v.* Morr Transfer, etc., Co., 119 Mo. App. 83, 95 S. W. 964.

11. Westheimer *v.* Howard, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 145, 93 N. Y. Supp. 518; Cagliostro *v.* Indelli, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 44, 102 N. Y. Supp. 918.

14. Bankers' Mut. Casualty Co. *v.* Peoples Bank, 127 Ga. 326, 56 S. E. 429; Reynolds *v.* Maryland Casualty Co., 30 Pa. Super. Ct. 459.

1256. 2. Pink Front Bankrupt Store *v.* Mistrot, (Tex. Civ. App. 1905) 90 S. W. 75; Opet *v.* Denzer, (Tex. Civ. App. 1906) 93 S. W. 527.

3. Beeman *v.* Supreme Lodge, etc., 215 Pa. St. 627, 64 Atl. 792.

4. American Bonding Co. *v.* Ensey, 105 Md. 211, 65 Atl. 921, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1256.

There is no presumption that a letter received through the mails was in fact written by the person whose name is signed thereto. Beard *v.* Southern R. Co., 143 N. Car. 137, 55 S. E. 505.

5. Long Bell Lumber Co. *v.* Nyman, 145 Mich. 477, 108 N. W. 1019.

1257. 2. Isabella Gold Min. Co. *v.* Glenn, 37 Colo. 165, 86 Pac. 349.

3. *United States.* — Choctaw, etc., R. Co. *v.* Newton, (C. C. A.) 140 Fed. 225; The Luckenbach, 144 Fed. 980; Murray *v.* Joseph, 146 Fed. 260.

Illinois. — East St. Louis Connecting R. Co. *v.* Altgen, 112 Ill. App. 471, *judgment affirmed* 210 Ill. 213; Chicago, etc., R. Co. *v.* Newell, 113 Ill. App. 263; Chicago Junction R. Co. *v.* McAnrow, 114 Ill. App. 501.

Indiana. — Western Union Tel. Co. *v.* McClelland, 38 Ind. App. 578, 78 N. E. 672; Southern Indiana R. Co. *v.* Osborn, (Ind. App. 1907) 79 N. E. 1067.

Missouri. — Abney *v.* Marshall, 124 Mo. App. 483, 101 S. W. 694.

Oregon. — Williams *v.* Commercial Nat. Bank, (Oregon 1907) 90 Pac. 1012, *rehearing denied* (Oregon 1907) 91 Pac. 443.

Pennsylvania. — Breen *v.* Brooks, 215 Pa. St. 492, 64 Atl. 672.

Texas. — Houston Electric Co. *v.* Lawson, (Tex. Civ. App. 1904) 85 S. W. 459; Gulf, etc., R. Co. *v.* Booth, (Tex. Civ. App. 1906) 97 S. W. 128 (refusal to submit to physician's examination as to extent of personal injuries); Galveston, etc., R. Co. *v.* Young, (Tex. Civ. App. 1907) 100 S. W. 993.

West Virginia. — Stout *v.* Sands, 56 W. Va. 663, 49 S. E. 428.

1258. 1. Wilson *v.* Griswold, 79 Conn. 18, 63 Atl. 659.

Where the failure to produce documentary evidence is properly accounted for no unfavor-

able presumption arises. Roberts *v.* Francis, 123 Wis. 78, 100 N. W. 1076.

2. F. R. Patch Mfg. Co. *v.* Protection Lodge No. 215, 77 Vt. 294, 60 Atl. 74.

6. Rochester German Ins. Co. *v.* Monumental Sav. Assoc., 107 Va. 701, 60 S. E. 93.

1259. 1. F. R. Patch Mfg. Co. *v.* Protection Lodge No. 215, 77 Vt. 294, 60 Atl. 74; Stout *v.* Sands, 56 W. Va. 663, 49 S. E. 428.

2. Belknap Hardware Co. *v.* Sleeth, (Kan. 1908) 93 Pac. 580; State *v.* Jahraus, 117 La. 286, 41 So. 575; Blackman *v.* Andrews, 150 Mich. 322, 114 N. W. 218; Walker *v.* Dickey, (Tex. Civ. App. 1906) 98 S. W. 658; Locust *v.* Randle, (Tex. Civ. App. 1907) 102 S. W. 946; Aragon Coffee Co. *v.* Rogers, 105 Va. 51, 52 S. E. 843.

1260. 12. Blackman *v.* Andrews, 150 Mich. 322, 114 N. W. 218.

1261. 1. *District of Columbia.* — Alexander *v.* Blackman, 26 App. Cas. (D. C.) 541.

Illinois. — Hartford L. Ins. Co. *v.* Sherman, 123 Ill. App. 202, *judgment affirmed* 223 Ill. 320.

Indiana. — Southern Indiana R. Co. *v.* Osborn, (Ind. App. 1907) 79 N. E. 1067; Closson *v.* Bligh, (Ind. App. 1908) 83 N. E. 263.

Louisiana. — Iberia Cypress Co. *v.* Thorgeson, 116 La. 218, 40 So. 682.

Mississippi. — Anderson *v.* Cumberland Telephone, etc., Co., 86 Miss. 341, 38 So. 786.

Montana. — McGowan *v.* Nelson, (Mont. 1907) 92 Pac. 40 (co-employee).

New York. — Kirkpatrick *v.* Allemannia F. Ins. Co., 102 N. Y. App. Div. 327, 92 N. Y. Supp. 466; Ferrari *v.* Interurban St. R. Co., 118 N. Y. App. Div. 155, 103 N. Y. Supp. 134.

Pennsylvania. — Green *v.* Brooks, 215 Pa. St. 492, 64 Atl. 672.

Texas. — Galveston, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1905) 85 S. W. 28; Texas, etc., R. Co. *v.* Harrington, (Tex. Civ. App. 1906) 98 S. W. 653.

West Virginia. — Nichols *v.* Camden Interstate R. Co., (W. Va. 1907) 59 S. E. 968.

Privileged Communication. — Arnold *v.* Maryville, 110 Mo. App. 254, 85 S. W. 107 (physician and patient); Pennsylvania R. Co. *v.* Durkee, 147 Fed. 99, 8 Ann Cas. 790, 78 C. C. A. 107 (physician and patient), *disapproving* Deutschman *v.* Third Ave. R. Co., 87 N. Y. App. Div. 503.

Witness Having Mere Possibility of Knowledge. — Tauger *v.* New York City R. Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 681.

1262. 3. Wood *v.* Los Angeles Traction Co., 1 Cal. App. 474, 82 Pac. 547 (physician called in consultation); Shields *v.* Georgia R., etc., Co., 1 Ga. App. 172, 57 S. E. 980; Baldwin *v.* Brooklyn Heights R. Co., 99 N. Y. App. Div. 496, 91 N. Y. Supp. 59; Richter *v.* Solomon, (Supm. Ct. App. T.) 104 N. Y. Supp. 405.

8. Johnson *v.* Leyland, (C. C. A.) 153 Fed. 573, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 1262; Mutual Industrial Indemnity Co. *v.* Perkins, 81 Ark. 87, 98 S. W. 709; Naughton Co. *v.* American Horse Exch., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 227, 97 N. Y. Supp. 387; Reynolds *v.* International, etc., R. Co., (Tex. Civ. App. 1905) 85 S. W. ...

9. Mutual Industrial Indemnity Co. *v.* Perkins, 81 Ark. 87, 98 S. W. 709.

1263. 4. Macon R., etc., Co. *v.* Mason, 123 Ga. 773, 51 S. E. 569; Warth *v.* Loewenstein, 219 Ill. 222, 76 N. E. 379, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 1260; McDonald *v.* City Electric R. Co., 144 Mich. 379, 108 N. W. 85; Lichtenstein *v.* Case, 99 N. Y. App. Div. 570, 91 N. Y. Supp. 57; Western Union Tel. Co. *v.* Waller, (Tex. Civ. App. 1904) 84 S. W. 695; Brewster *v.* State, (Tex. Civ. App. 1905) 88 S. W. 858.

6. Southern Express Co. *v.* B. R. Electric Co., 126 Ga. 472, 55 S. E. 254.

7. William Grace Co. *v.* Larson, 129 Ill. App. 290, *judgment affirmed* 227 Ill. 101; Sullivan *v.* Sullivan, 188 Mass. 380, 74 N. E. 608.

8. Mastin *v.* Noble, (C. C. A.) 157 Fed. 506.

1264. 2. Ferrari *v.* Interurban St. R. Co., 117 N. Y. App. Div. 155, 103 N. Y. Supp. 134.

1266. 4. State *v.* Pitkin, (Iowa 1908) 114 N. W. 550 (clerk of grand jury); State *v.* Jackson, 79 Vt. 504, 65 Atl. 657.

1267. 24. *United States.* — Erhardt *v.* Ballin, 150 Fed. 529, 80 C. C. A. 271.

California. — Shepard *v.* Mace, (Cal. 1905) 82 Pac. 1046.

Colorado. — Bliss *v.* Harris, 38 Colo. 72, 87 Pac. 1076.

Georgia. — Floyd *v.* Ricketson, 129 Ga. 668, 59 S. E. 909.

Florida. — Taylor *v.* State, 49 Fla. 91, 38 So. 380, *quoting* 22 Am. and Eng. Encyc. of Law (2d ed.) 1267, *per* Taylor, J., *dissenting*.

Illinois. — People *v.* Chicago, 127 Ill. App. 118 (civil service commissioners).

Iowa. — State *v.* Pitkin, (Iowa 1908) 114 N. W. 550 (clerk of grand jury).

Kentucky. — Porter *v.* Eastern Kentucky Insane Asylum, (Ky. 1906) 90 S. W. 263, 28 Ky. L. Rep. 796; Eversole *v.* Eastern Kentucky Insane Asylum, 100 S. W. 300, 30 Ky. L. Rep. 989; Louisville, etc., R. Co. *v.* Schwab, (Ky. 1907) 105 S. W. 110 (jury commissioners).

Louisiana. — Wood *v.* Frickie, (La. 1907) 45 So. 96.

Michigan. — Metropolitan Lumber Co. *v.* McColeman, 140 Mich. 333, 103 N. W. 809, 12 Detroit Leg. N. 172.

Mississippi. — Day *v.* Smith, 87 Miss. 395, 39 So. 526.

New York. — *In re* Webster, 106 N. Y. App. Div. 360, 94 N. Y. Supp. 1050; Craft *v.* Lent, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 481, 103 N. Y. Supp. 366.

Oklahoma. — Greer County *v.* Gregory, 15 Okla. 208, 81 Pac. 422.

South Carolina. — Rice *v.* Bamberg, 72 S. Car. 385, 51 S. E. 987, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 1267.

Texas. — San Antonio *v.* Tobin, (Tex. Civ. App. 1907) 101 S. W. 269, writ of error dismissed 102 S. W. 403.

1269. 1. Houseman *v.* International Nav. Co., 214 Pa. St. 552, 64 Atl. 379, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 1267.

2. State *v.* Green, 124 Mo. App. 88, 100 S. W. 1115, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 1269.

1270. 6. Taylor *v.* State, 49 Fla. 92, 38 So. 380, *quoting* 22 Am. and Eng. Encyc. of

LAW (2d ed.) 1270, *per* Taylor, J., *dissenting;* Ontlaw *v.* Garner, 139 N. Car. 192, 51 S. E. 925, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1270.

7. Drennen *v.* People, 222 Ill. 592, 78 N. E. 937; Lauve *v.* Wilson, 114 La. 699, 38 So. 522, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1270.

12. State *v.* Harter, 131 Iowa 199, 108 N. W. 232; Stone *v.* Missouri Pac. R. Co., 75 Kan. 600, 90 Pac. 251.

1271. 1. State *v.* Switzer, (Neb. 1907) 112 N. W. 297.

2. Motley *v.* Wilson, 82 S. W. 1023, 26 Ky. L. Rep. 1011.

4. Jenner *v.* Murphy, (Cal. App. 1907) 92 Pac. 405; Bowman *v.* Powell, 127 Ill. App. 114; Moore *v.* Hanscom, (Tex. 1908) 106 S. W. 876.

1272. 2. Manitou *v.* Colorado Springs First Nat. Bank, 37 Colo. 344, 86 Pac. 75; Connor *v.* Marshfield, 128 Wis. 280, 107 N. W. 639.

3. Pardee *v.* Schanzlin, 3 Cal. App. 597, 86 Pac. 812.

8. Smithers *v.* Lowrance, (Tex. Civ. App. 1906) 91 S. W. 606, *judgment reversed* 93 S. W. 1064.

9. Kimball *v.* McKee, 149 Cal. 435, 86 Pac. 1089; Christ *v.* Fent, 16 Okla. 375, 84 Pac. 1074; Waterhouse *v.* Corbett, (Tex. Civ. App. 1906) 96 S. W. 651.

10. Goodnough Mercantile Co. *v.* Galloway, 48 Oregon 239, 84 Pac. 1049 (trustee in bankruptcy).

1273. 2. Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374.

3. Patterson *v.* Drake, 126 Ga. 478, 55 S. E. 175.

5. State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005; People *v.* O'Donnel, 106 N. Y. App. Div. 526, 94 N. Y. Supp. 884, 47 Misc. (N. Y.) 267, *judgment reversed* People *v.* O'Donnel, 183 N. Y. 9, 75 N. E. 540; Bandow *v.* Wolven, (S. Dak. 1906) 107 N. W. 204.

1274. 3. Remington *v.* State, 116 N. Y. App. Div. 522, 101 N. Y. Supp. 952.

4. Duniway *v.* Portland, 47 Oregon 103, 81 Pac. 945; State *v.* Mutty, 39 Wash. 624, 82 Pac. 118.

5. Van Winkle *v.* Blackford, 54 W. Va. 634, 46 S. E. 589, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1274.

1275. 9. Gehlert *v.* Quinn, 35 Mont. 451, 90 Pac. 168.

1276. 1. **Incomplete Instruments.**—Amos-Richia *v.* Northwestern Mut. L. Ins. Co., 143 Mich. 684, 107 N. W. 707.

Date of Letter.—Dowie *v.* Sutton, 126 Ill. App. 47.

2. Where it is shown that a person's eyesight is good the law presumes that she must have seen that which was within the range of her vision if she gave attention and looked. Lowden *v.* Pennsylvania Co., (Ind. App. 1907) 82 N. E. 941.

1278. 1. Lipphard *v.* Humphrey, 28 App. Cas. (D. C.) 355.

From the fact that a person signs his name with a crossmark to an instrument the presumption arises that he cannot read. Interstate Coal, etc., Co. *v.* Clintwood Coal, etc., Co., 105 Va. 574, 54 S. E. 593.

3. The fact that the word "Daily" is part of the name of a newspaper does not give rise to the presumption that the paper was published daily. Fox. *v.* Wright, (Cal. 1907) 91 Pac. 1005.

There is no presumption that the price which property brought at a public auction was a fair cash market value theroef. Gibson *v.* People, 122 Ill. App. 217.

Property sold at auction is presumed to have brought its true value. Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241.

As banks do not usually discount paper of an insolvent party, it will be presumed that a person whose note was discounted by the bank was solvent at the time. German Security Bank *v.* Columbia Finance, etc., Co., (Ky. 1905) 85 S. W. 761.

4. East St. Louis Connecting R. Co. *v.* Altgen, 112 Ill. App. 471, *judgment affirmed* 210 Ill. 213; Jennings *v.* Brooklyn Heights R. Co., 121 N. Y. App. Div. 587, 106 N. Y. Supp. 279.

5. See United Breweries Co. *v.* Bass, 121 Ill. App. 299.

1279. 4. Grand Lodge, etc., *v.* Banister, 80 Ark. 190, 96 S. W. 742; Ross-Lewin *v.* Germania L. Ins. Co., 20 Colo. App. 262, 78 Pac. 305; Hardinger *v.* Modern Brotherhood of America, 72 Neb. 860, 103 N. W. 74; Clemens *v.* Royal Neighbors of America, 14 N. Dak. 116, 103 N. W. 402.

1280. 1. Davenport, etc., R. Co. *v.* De Yaeger, 112 Ill. App. 537; Indianapolis *v.* Keeley, 167 Ind. 516, 79 N. E. 499; Cahill *v.* Chicago, etc., R. Co., 205 Mo. 393, 103 S. W. 532; Rodan *v.* St. Louis Transit Co., 207 Mo. 392, 105 S. W. 1061; Savage *v.* Rhode Island Co., 28 R. I. 391, 67 Atl. 633.

9. Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371; Best *v.* Seaboard Air Line R. Co., 72 S. Car. 488, 52 S. E. 223, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1280.

1282. 5. Henshall *v.* Marsh, 151 Cal. 289, 90 Pac. 693; Bowman *v.* Little, 101 Md. 273, 61 Atl. 1084, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1282. See also Hammond *v.* Hammond, (Tex. Civ. App. 1906) 94 S. W. 1067.

1283. 2. *Re* Thompson, 91 L. T. N. S. 680; Bowman *v.* Little, 101 Md. 273, 61 Atl. 1084.

1284. 12. Creeden *v.* Mahoney, 193 Mass. 402, 79 N. E. 776.

1285. 1. **Physicians.**—In an action against a physician for malpractice there is no presumption one way or the other as to whether he exercised due skill. Sheldon *v.* Wright, 80 Vt. 298, 67 Atl. 807.

3. Gibson *v.* Brown, 214 Ill. 330, 73 N. E. 578.

4. Rome *v.* Whitestown Water Works Co., 113 N. Y. App. Div. 550, 100 N. Y. Supp. 357, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1285; State *v.* Jackson, 79 Vt. 504, 65 Atl. 657.

1287. 4. Montgomery First Nat. Bank *v.* Taylor, 142 Ala. 456, 37 So. 695.

1289. 1. Cape *v.* Plymouth Congregational

Church, 130 Wis. 185, 109 N. W. 928, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 1280.

2. Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945.

4. Jones *v.* Rogers, 85 Miss. 802, 38 So. 742.

1290. 1. Logan *v.* Ward, 58 W. Va. 375, 52 S. E. 398, *quoting* 22 Am. and Eng. Encyc. of Law (2d ed.) 1290.

2. Simpson *v.* Atty.-Gen., (1904) A. C. 476, 74 L. J. Ch. 1, 91 L. T. N. S. 610, 3 Local Gov. Rep. 190, 69 J. P. 85, 20 Times L. Rep. 761.

1291. 5. Montz *v.* Schwabacher, 119 Ky. 260, 83 S. W. 569, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 1291; Seitz *v.* Messerschmitt, 117 N. Y. App. Div. 405, 406, 102 N. Y. Supp. 732, *quoting* 22 Am. and Eng Encyc. of Law (2d ed.) 1291, *per* Laughlin, J., *dissenting*.

9. Lynch *v.* Chicago, etc., R. Co., 208 Mo. 1, 106 S. W. 68.

10. *In re* Jackson, (1907) 2 Ch. 354.

PRIMA FACIE CASE OR EVIDENCE.

1294. 2. Gilpin *v.* Missouri, etc., R. Co., 197 Mo. 325, 94 S. W. 869, *citing* 22 Am. and Eng. Encyc. of Law (2d ed.) 1294.

3. Gilpin *v.* Missouri, etc., R. Co., 197 Mo. 325, 94 S. W. 869.

4. McCombs *v.* State, (Tex. Crim. 1906) 99 S. W. 1017, *quoting* 22 Am. and Eng. Encyc. of Law (2d ed.) 1294.

PRINT — PRINTER, ETC.

1297. 1. **Printed Matter.** — Paper bags with advertising matter printed thereon not *printed* matter within the Tariff Act. Kraut *v.* U. S., 142 Fed. 1037, 71 C. C. A. 684, *affirming* 134 Fed. 701.

PRISONS AND PRISONERS.

1299. 9. **Any Jail in District May Be Designated.** — Johnson *v.* Crawford, 154 Fed. 761.

1300. 2. **Compensation of Sheriff for Keeping Jail and Maintaining Prisoners.** — Starr *v.* Delaware County, (Ind. App. 1906) 76 N. E. 1025, *overruled* on rehearing (Ind. App. 1906) 79 N. E. 390.

Salary and Fees of Jailer. — Mitchell *v.* Henry County, (Ky. 1907) 100 S. W. 220.

The Court May Take Judicial Notice that the sheriff is the legal keeper of the jail. *Ex p.* Bargagliotti, (Cal App. 1907) 92 Pac. 96.

1301. 1. *Ex p.* Wood, 5 Cal. App. 471, 90 Pac. 961; Irvin *v.* State, 52 Fla. 51, 41 So. 785; Davis *v.* Com., (Ky. 1907) 101 S. W. 352; Lemmon *v.* State, 77 Ohio St. 427, 83 N. E. 608; Leiby *v.* State, (Neb. 1907) 113 N. W. 125; *Ex p.* Tani, (Nev. 1907) 91 Pac. 137; *Ex p.* Marlow, (N. J. 1907) 68 Atl. 171; People *v.* Champlin, 120 N. Y. App. Div. 509, 105 N. Y. Supp. 349.

2. Walden *v.* State, 50 Fla. 151, 39 So. 151.

A Sentence imposing primarily a money fine and costs, and in default thereof imprisonment in the state prison instead of the county jail, is improper. Thompson *v.* State, 52 Fla. 113, 41 So. 899.

But where the statute provides for imprisonment in state prison or a money fine, a sentence to imprisonment in the county jail is unauthorized except as an alternative penalty in default of payment of a fine imposed. Irvin *v.* State, 52 Fla. 51, 41 So. 785.

3. **Transfer of Incorrigible Prisoner from Reformatory to Board of Control — Statute Valid.** — *In re* Harrington, 127 Wis. 241, 106 N. W. 851.

4. **A Prisoner under Sentence for Assault** may, after the death of his victim, be removed on habeas corpus from the penitentiary to the county jail to await trial for murder. Com. *v.* Ramunno, (Pa. 1907) 68 Atl. 184; Com. *v.* Mezzanotti, (Pa. 1907) 68 Atl. 186.

7. Brown County *v.* Lampert, (Neb. 1906) 107 N. W. 746; Lenhart *v.* Cambria County, 216 Pa. St. 25, 64 Atl. 876.

The County Is Liable for Sheriff's Fees for Mileage in conveying prisoners to the penitentiary and returning therefrom as well as for the expenses of transportation. Peeling *v.* York County, 212 Pa. St. 245, 61 Atl. 911.

1302. 6. State *v.* Young, 138 N. Car. 571, 50 S. E. 213.

"Crime" Includes Misdemeanor. — Stone *v.* Paducah, 120 Ky. 322, 86 S. W. 531.

7. Hamby *v.* Georgia Iron, etc., Co., 127 Ga. 792, 56 S. E. 1033.

8. **An Individual Taxpayer** has no standing to enjoin the superintendent of the state penitentiary from receiving the labor of prisoners for his own profit. Sears *v.* James, 47 Oregon 50, 82 Pac. 14.

1303. 1. Ossie *v.* State, 147 Ala. 152, 41 So. 945; People *v.* Hahn, 232 Ill. 416, 83 N. E. 937; Henry *v.* State, 87 Miss. 1, 39 So. 856; State *v.* Henry, 87 Miss. 125, 40 So. 152.

Application of Proceeds of Convict Labor. — Barron *v.* Terrell, 124 Ga. 1077, 53 S. E. 181; Sapp *v.* De Lacy, 127 Ga. 659, 56 S. E. 754; Randolph County *v.* Ellis, (Ga. 1908) 60 S. E. 458.

Modes in Which Convict Bond May Be Discharged. — See Salyer *v.* Wilcox, (Tex. Civ. App. 1908, 107 S. W. 654.

1304. 1. Hamby *v.* Georgia Iron, etc., Co., 127 Ga. 792, 56 S. E. 1033.

Statutory Provision for Vacating Lease. — Ossie *v.* State, 147 Ala. 152, 41 So. 945.

2. See F. H. Mills Co. *v.* State, 110 N. Y. App. Div. 843, 97 N. Y. Supp. 676, where the contract itself provided for legislative interference.

3. **In Alabama** the contract may be terminated or annulled if the bond becomes insufficient or if any convict is treated cruelly by the hirer. Ossie *v.* State, 147 Ala. 152, 41 So. 945.

4. **Where the Contract Provides against Damages** to the lessee in a contingency which actually happens, no claim for loss accrues. F. H. Mills Co. *v.* State, 110 N. Y. App. Div. 843, 97 N. Y. Supp. 676.

9. **By Statute in Georgia** convicts may be sublet with the approval and consent of the prison commission. Hamby *v.* Georgia Iron, etc., Co., 127 Ga. 792, 56 S. E. 1033.

1306. 5. Carty *v.* Winooski, 78 Vt. 104, 62 Atl. 45.

1307. 2. State *v.* Barr, 133 Iowa 132, 110 N. W. 280.

Good Conduct Statute Constitutional. — Fite *v.* State, 114 Tenn. 646, 88 S. W. 941.

Forfeiture of Credits. — *In re* Terrill, (C. C. A.) 144 Fed. 616.

Violation of the Terms of a Conditional Pardon does not work a forfeiture of the deduction allowed for good behavior prior to the pardon. *Ex p.* McKenna, 79 Vt. 34, 64 Atl. 77.

3. *In re* Naples, 142 Fed. 781.

Federal Prisoners Confined in County Jails. — Woodward *v.* Bridges, 144 Fed. 156.

Act Cong. June 21, 1902, 32 U. S. Stat. at L. 397, makes the rate of commutation uniform whether confinement is in state or federal prisons, or jails, but is not retroactive. U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783; U. S. *v.* Farrar, (C. C. A.) 139 Fed. 260.

4. Behnke *v.* People, 222 Ill. 540, 78 N. E. 889; People *v.* Cook, 147 Mich. 127, 110 N. W. 514. See also State *v.* Horne, 52 Fla. 125, 42 So. 388; *Ex p.* Prout, 12 Idaho 494, 86 Pac. 275;; *Ex p.* Houghton, (Oregon 1907) 89 Pac. 801; *Ex p.* McKenna, 79 Vt. 34, 64 Atl. 77; Scott *v.* Chichester, (Va. 1908) 60 S. E. 95; Spencer *v.* Kees, (Wash. 1907) 91 Pac. 963. And see the title REPRIEVE, PARDON, AND AMNESTY, **566.** 3, **580.** 2 *et seq.*

Federal Prisoners. — The prison authorities of the state prison or jail where a federal prisoner is confined have power under Rev. Stat. Ohio (1892), § 2102, to grant him parole. *In re* Naples, 142 Fed. 781.

Statute Authorizing Indeterminate Sentences Valid. — Manaca *v.* Ionia Circuit Judge, 146 Mich. 697, 110 N. W. 75; *Ex p.* Fox 147 Mich. 189, 110 N. W. 517. And see the title SENTENCE AND PUNISHMENT, **303.** 4 *et seq.*, and the Supplements thereto.

1308. 2. **Statutes Held Unconstitutional.** — Fite *v.* State, 114 Tenn. 646, 88 S. W. 941.

5. People *v.* Monaco, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 25, 105 N. Y. Supp. 401.

9. **Violator of Game Law Entitled to Jail Liberties.** — People *v.* Monaco, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 25, 105 N. Y. Supp. 401.

1309. 8. **Expiration of Sentence.** — *Ex p.* Patterson, (Nev. 1906) 87 Pac. 2.

Costs of Prosecution to Be Paid Before Discharge. — In *Mississippi* the amount due the county contractor for clothing furnished the convict must also be paid before discharge. *Ex p.* Diggs, 86 Miss. 597, 38 So. 730.

1310. 2. **Fine and Costs Paid.** — See Peed *v.* Brewster, 168 Ind. 51, 79 N. E. 1039.

3. Holloway *v.* Holloway, 126 Ga. 459, 55 S. E. 191; Trust Co. of America *v.* State Safe Deposit Co., 187 N. Y. 178, 79 N. E. 996; Trust Co. of America *v.* State Safe Deposit Co., 109 N. Y. App. Div. 665, 96 N. Y. Supp. 585. See also Gulf, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1905) 86 S. W. 34, where the court sustained objections to the deposition of a person convicted of a felony and still under sentence when deposition was taken.

4. **Prosecution for Other Crime.** — See Russell *v.* State, (Ala. 1905) 38 So. 291; State *v.* Dowden, (Iowa 1908) 115 N. W. 211, holding the Habitual Criminal Act (Code Supp. 1902, § 5091*a*) constitutional; State *v.* Finch, 73 Kan. 582, 89 Pac. 922; Huffaker *v.* Com., (Ky. 1906) 98 S. W. 331; Rigor *v.* State, 101 Md. 465, 61 Atl. 631; Brown *v.* State, (Tex. Crim. 1906) 95 S. W. 1039.

PRIVACY, RIGHT OF.

1311. 2. **Right Personal to Person Injured.** — Von Thodorovich *v.* Franz Josef Beneficial Assoc., 154 Fed. 911.

1312. 2. **Unauthorized Use of Name or Picture of Another Enjoinable.** — Edison *v.* Edison Polyform Mfg. Co., (N. J. 1907) 67 Atl. 392, *disapproving* Roberson *v.* Rochester Folding-Box Co., 171 N. Y. 538, 64 N. E. 442, stated in the original note.

By Statute in New York, enacted since the decision in Roberson *v.* Rochester Folding-Box Co., 171 N. Y. 538, stated in the original note, the unauthorized use of a person's photograph gives a right to an injunction and damages. Rhodes *v.* Sperry, etc., Co., 120 N. Y. App. Div. 467, 104 N. Y. Supp. 1102.

Arrest — Photograph of Accused. — In *Louisiana*, unless it be evident that a picture should be taken to identify the person or to detect crime, it cannot be taken against his will. Schulman *v.* Whitaker, 117 La. 704, 42 So. 227; Itzkovitch *v.* Whitaker, 117 La. 708, 42 So. 228.

6. **Equity Will Not Relieve against Breach of Privacy.** — Von Thodorovich *v.* Franz Josef Beneficial Assoc., 154 Fed. 911.

PRIVATE.

1312. 7. "**The Term 'Private Sale'** comprehends something more than a mere taking over of the property by the pledgee at such price as he may elect to consider an offer." Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

PRIVATE INTERNATIONAL LAW.

1319. 5. Chandler *v.* St. Louis, etc., R. Co., 127 Mo. App. 34, 106 S. W. 553; Snuffer *v.* Karr, 197 Mo. 182, 94 S. W. 983.

7. *In re* Romero, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 310, 107 N. Y. Supp. 621, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1319; Abbott *v.* Goodall, 100 Me. 231, 60 Atl. 1030; Gorham *v.* Gorham, 100 Me. 562, 62 Atl. 631.

1320. 6. Lewisohn *v.* Stoddard, 78 Conn. 575, 63 Atl. 621.

1321. 9. Morris *v.* Linton, 74 Neb. 411, 104 N. W. 927.

1322. 1. Lees *v.* Harding, (N. J. 1905) 60 Atl. 352.

Title to Tangible Personal Property Subject to Law of Situs. — Schmidt *v.* Perkins, (N. J. 1907) 67 Atl. 77.

6. *United States.* — Adler *v.* Galbraith, 156 Fed. 259; Jenkins, etc., Co. *v.* Alfena Portland Cement Co., (C. C. A.) 147 Fed. 641; The Fri, (C. C. A.) 154 Fed. 333. And see Ramsden *v.* Knowles, (C. C. A.) 151 Fed. 721.

Arkansas. — Franklin L. Ins. Co. *v.* Morrell, 84 Ark. 511, 106 S. W. 680.

District of Columbia. — Croissant *v.* Empire State Realty Co., 29 App. Cas. (D. C.) 538.

Georgia. — Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77.

Illinois. — Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1322; McCoy *v.* Griswold, 114 Ill. App. 556.

Indiana. — Garrigue *v.* Keller, 164 Ind. 676, 74 N. E. 523.

Iowa. — See Dorr Cattle Co. *v.* Des Moines Nat. Bank, 127 Iowa 153, 98 N. W. 918.

Maine. — Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131.

Massachusetts. — Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214.

Michigan. — Cole *v.* Summers, 143 Mich. 117, 106 N. W. 707. And see Douglass *v.* Paine, 141 Mich. 485, 104 N. W. 781.

Missouri. — F. W. Brockman Commission Co. *v.* Kilbourne, 111 Mo. App. 542, 86 S. W. 275.

Oklahoma. — Western Union Tel. Co. *v.* Pratt, 18 Okla. 274, 89 Pac. 237.

New York. — Barnes *v.* Long Island R. Co., (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 318, 93 N. Y. Supp. 616; Mock *v.* Supreme Council, etc., 121 N. Y. App. Div. 474, 106 N. Y. Supp. 155; Parsons *v.* Teller, 111 N. Y. App. Div. 637, 97 N. Y. Supp. 808.

North Carolina. — Hall *v.* Western Union Tel. Co., 139 N. Car. 369, 52 S. E. 50; Johnson *v.* Western Union Tel. Co., 144 N. Car. 439, 57 S. E. 122.

Rhode Island. — Leonard *v.* State Mut. L. Assur. Co., 27 R. I. 121, 61 Atl. 52.

South Carolina. — Equitable Bldg., etc., Assoc. *v.* Corley, 72 S. Car. 404, 52 S. E. 48; Galletley *v.* Strickland, 74 S. Car. 394, 54 S. E. 576.

Texas. — St. Louis, etc., R. Co. *v.* Hambrick, (Tex. Civ. App. 1906) 97 S. W. 1072; Sparks *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 740.

Virginia. — Middle States Loan, etc., Co. *v.* Miller, 104 Va. 464, 51 S. E. 846.

Washington. — Bank *v.* Doherty, 42 Wash. 317, 84 Pac. 872; Clark *v.* Eltinge, 38 Wash. 376, 80 Pac. 556.

Wisconsin. — See Presbyterian Ministers' Fund *v.* Thomas, 126 Wis. 281, 105 N. W. 801.

1324. 4. Equitable L. Assur. Soc. *v.* Perkins, (Ind. 1907) 80 N. E. 682.

5. Guaranty Becomes Contract at Place Where Accepted and Acted Upon. — Irving Nat. Bank *v.* Ellis, 74 N. J. L. 42, 64 Atl. 1071.

Where Condition Added by Acceptor, Contract Made Where Condition Approved. — New York Architectural Terra-Cotta Co. *v.* Williams, 102 N. Y. App. Div. 1, 92 N. Y. Supp. 808.

7. Home Land, etc., Co. *v.* M'Namara, (C. C. A.) 145 Fed. 17.

1325. 4. Missouri State L. Ins. Co. *v.* Lovelace, 1 Ga. App. 446, 58 S. E. 93; Napier *v.* Bankers' L. Ins. Co., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 283, 100 N. Y. Supp. 1072; Miller *v.* Southern R. Co., 141 N. Car. 45, 53 S. E. 726.

5. *United States.* — Easton *v.* Wostenholm, (C. C. A.) 137 Fed. 524; Home Land, etc., Co. *v.* M'Namara, (C. C. A.) 145 Fed. 17; Kirby-Carpenter Co. *v.* Burnett, (C. C. A.) 144 Fed. 635; Union Trust Co. *v.* Bulkeley, (C. C. A.) 150 Fed. 510.

Alabama. — Allen *v.* Pierce, (Ala. 1906) 42 So. 858, *following* Allen *v.* Caldwell, 149 Ala. 293, 42 So. 855.

Arkansas. — Midland Valley R. Co. *v.* Moran Nut, etc., Mfg. Co., 80 Ark. 399, 97 S. W. 679.

Georgia. — Carter *v.* Southern R. Co., 3 Ga. App. 34, 59 S. E. 209.

Massachusetts. — See American Malting Co. *v.* Souther Brewing Co., 194 Mass. 89, 80 N. E. 526.

Michigan. — Douglass *v.* Paine, 141 Mich. 485, 104 N. W. 781.

New York. — Manhattan L. Ins. Co. *v.* Johnson, 188 N. Y. 108, 80 N. E. 658.

South Dakota. — Barry *v.* Stover, (S. Dak. 1906) 107 N. W. 672.

Wisconsin. — Presbyterian Ministers' Fund *v.* Thomas, 126 Wis. 281, 105 N. W. 801.

6. Midland Sav., etc., Co. *v.* Solomon, 71 Kan. 185, 79 Pac. 1077, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1325; Williams *v.* Mutual Reserve Fund L. Assoc., 145 N. Car. 128, 58 S. E. 802, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1325; Michaelson *v.* Security Mut. L. Ins. Co., 150 Fed. 224; Palmer *v.* Hill, 140 Mich. 468, 103 N. W. 838; Burns *v.* Burns, 109 N. Y. App. Div. 98, 95 N. Y. Supp. 797; Equitable Bldg., etc., Assoc. *v.* Corley, 72 S. Car. 404, 52 S. E. 48.

7. Atlanta, etc., R. Co. *v.* Broome, (Ga. App. 1908) 60 S. E. 355; Finnes *v.* Selover, 102 Minn. 334, 113 N. W. 883; Cannaday *v.* Atlantic Coast Line R. Co., 143 N. Car. 439, 55 S. E. 836.

1327. 4. Garrigue *v.* Keller, 164 Ind. 676, 74 N. E. 523.

8. Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1327.

1328. 1. Missouri State L. Ins. Co. *v.* Lovelace, 1 Ga. App. 446, 58 S. E. 93; Colonial Nat. Bank *v.* Duerr, 108 N. Y. App. Div. 215, 95 N. Y. Supp. 810; Napier *v.* Bankers' L. Ins. Co., (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 283, 100 N. Y. Supp. 1072; Cannaday *v.* Atlantic Coast Line R. Co., 143 N. Car. 439, 55 S. E. 836.

3. Berry *v.* Chase, (C. C. A.) 146 Fed. 625.

1329. 2. Whitlock *v.* Cohn, 72 Ark. 83, 80 S. W. 141, *citing* and *approving* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1329.

3. Kaufman *v.* Gerson, (1904) 1 K. B. 591, 73 L. J. K. B. 320; Atlanta, etc., R. Co. *v.* Broome, (Ga. App. 1908) 60 S. E. 355; Lake Shore, etc., R. Co. *v.* Teeters, 166 Ind. 335, 77 N. E. 599; Corbin *v.* Houlehan, 100 Me. 246, 61 Atl. 131; St. Louis, etc., R. Co. *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 1176.

5. Arden Lumber Co. *v.* Henderson Iron Works, etc., Co., 83 Ark. 240, 103 S. W. 185.

1330. 2. **Law of State Where Champertous Suits Brought Governs Validity of Contract.** — Roller *v.* Murray, 107 Va. 527, 59 S. E. 421.

8. Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

1331. 2. See Midland Sav., etc., Co. *v.* Solomon, 71 Kan. 185, 79 Pac. 1077.

3. Whitlock *v.* Cohn, 72 Ark. 83, 80 S. W. 141. And see Manhattan L. Ins. Co. *v.* Johnson, 188 N. Y. 108, 80 N. E. 658.

1332. 3. Bank *v.* Doherty, 42 Wash. 317, 84 Pac. 872.

1335. 1. Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028.

1336. 3. Dolan *v.* Royal Neighbors of America, 123 Mo. App. 147, 100 S. W. 498, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed). 1336.

4. Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77.

1337. 2. Kirkendall *v.* Weatherley, (Neb. 1906) 109 N. W. 757; Dal *v.* Fischer, (S. Dak. 1906) 107 N. W. 534. But see Daniels *v.* Rogers, 109 N. Y. App. Div. 338, 96 N. Y. Supp. 642.

3. Crane *v.* Blackman, 126 Ill. App. 631.

1338. 2. **Option for Purchase of Land.** — Kirby-Carpenter Co. *v.* Burnett, (C. C. A.) 144 Fed. 635.

Where Contract for Purchase of Land in Another State requires the money to be paid in the state in which the contract was made, the *lex loci contractus* governs as to the rights of the parties. Finnes *v.* Selover, 102 Minn. 334, 113 N. W. 883.

9. Embiricos *v.* Anglo-Austrian Bank, (1905) 1 K. B. 677, 2 Ann. Cas. 703, 74 L. J. K. B. 326.

1339. 4. Globe Elevator Co. *v.* Andrew, 144 Fed. 871, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1339; Canton *v.* McDaniel, 188 Mo. 207, 86 S. W. 1092; Sinclair *v.* State, 45 Tex. Crim. 487, 77 S. W. 621, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1339.

Sale on Approval of Agent's Principal — Law of Place of Approval Governs. — P. J. Bowlin Liquor Co. *v.* Brandenburg, 130 Iowa 320, 106 N. W. 497.

1341. 9. Lees *v.* Harding, (N. J. 1905) 60 Atl. 352.

10. See National Cash Register Co. *v.* Paulson, 16 Okla. 204, 83 Pac. 793.

1342. 1. Lees *v.* Harding, (N. J. 1905) 60 Atl. 352.

3. Studebaker Bros. Co. *v.* Mau, 13 Wyo. 358, 80 Pac. 151, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1342.

4. Bridges *v.* Barrett, 126 Ill. App. 122; Studebaker Bros. Co. *v.* Mau, 13 Wyo. 358, 80 Pac. 151, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1342; Yund *v.* Shawnee First Nat. Bank, 14 Wyo. 81, 82 Pac. 6, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1342.

1344. 5. Columbia Finance, etc., Co. *v.* Purcell, 142 Fed. 984; Bailey *v.* Devine, 123 Ga. 653, 51 S. E. 603; Bank *v.* Doherty, 42 Wash. 317, 84 Pac. 872.

1345. 3. Garrigue *v.* Keller, 164 Ind. 676, 74 N. E. 523.

6. Barry *v.* Stover, (S. Dak. 1906) 107 N. W. 672.

1346. 2. Amsinck *v.* Rogers, 189 N. Y. 252, 82 N. E. 134, *affirming* 103 N. Y. App. Div. 428, 93 N. Y. Supp. 87.

3. Amsinck *v.* Rogers, 103 N. Y. App. Div. 428, 93 N. Y. Supp. 87, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1346.

1347. 2. **Method of Payment Regulated by Law of Place of Acceptance.** — Hammond *v.* American Express Co., (Md. 1908) 68 Atl. 496.

4. Embiricos *v.* Anglo-Austrian Bank, (1905) 1 K. B. 677, 2 Ann. Cas. 703; Colonial Nat. Bank *v.* Duerr, 108 N. Y. App. Div. 215, 95 N. Y. Supp. 810, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1347; Columbia Finance, etc., Co. *v.* Purcell, 142 Fed. 984; Amsinck *v.* Rogers, 103 N. Y. App. Div. 428, 93 N. Y. Supp. 87.

Indorsement Presumed to Be at Place Where Instrument Is Dated. — Chemical Nat. Bank *v.* Kellogg, 183 N. Y. 92, 75 N. E. 1103.

1349. 3. **Contract Completed Where Policy Delivered and First Premium Collected.** — Lake Charles *v.* Equitable L. Assur. Soc., 114 La. 836, 38 So. 578.

4. Supreme Lodge, etc., *v.* Meyer, 194 U. S. 508, 25 U. S. Sup. Ct. 754; Swing *v.* Dayton, 124 N. Y. App. Div. 58, 108 N. Y. Supp. 155.

5. Equitable L. Assur. Soc. *v.* Perkins, (Ind. 1907) 80 N. E. 682; Swing *v.* Brister, 87 Miss. 516, 40 So. 146.

1350. 1. Pool *v.* New England Mut. L. Ins. Co., 123 N. Y. App. Div. 885, 108 N. Y. Supp. 431. And see Plant *v.* Mutual L. Ins. Co., 26 Ohio Cir. Ct. 499.

3. Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq. 570, 61 Atl. 26; Hardiman *v.* Fire Assoc., 212 Pa. St. 383, 61 Atl. 990, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1350.

6. Burns *v.* Burns, 109 N. Y. App. Div. 98, 95 N. Y. Supp. 797, *affirmed* 190 N. Y. 211, 82 N. E. 1107.

1351. 6. Hubbard *v.* Mobile, etc., R. Co., 112 Mo. App. 459, 87 S. W. 52.

7. Hurst *v.* St. Louis, etc., R. Co., 117 Mo. App. 25, 94 S. W. 794; Cappel *v.* Weir, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 441, 92 N. Y. Supp. 365, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1351. But see Cincinnati, etc., R. Co. *v.* Hansford, (Ky. 1907) 100 S. W. 251.

1352. 2. Barnes *v.* Long Island R. Co., (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 318, 93 N. Y. Supp. 616.

3. Stipulation Limiting Liability for Negligence Construed by Lex Loci Delicti. — Trexler *v.* Baltimore, etc., R. Co., 28 Pa. Super. Ct. 207.

4. Lake Shore, etc., R. Co. *v.* Teeters, 166 Ind. 335, 77 N. E. 599.

7. Johnson *v.* Western Union Tel. Co., 144 N. Car. 439, 57 S. E. 122; Walker *v.* Western Union Tel. Co., 75 S. Car. 512, 56 S. E. 38; Ligon *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 102 S. W. 429; Western Union Tel. Co. *v.* Garrett, (Tex. Civ. App. 1907) 102 S. W. 456; Western Union Tel. Co. *v.* Sloss, (Tex. Civ. App. 1907) 100 S. W. 354. But see Western Union Tel. Co. *v.* Lacer, (Ky. 1906) 93 S. W. 34; Howard *v.* Western Union Tel. Co., 119 Ky. 625, 84 S. W. 764, 86 S. W. 982.

1355. 7. *In re* Titterington, 130 Iowa 356, 106 N. W. 761; *In re* Riesenberg, 116 Mo. App. 308, 90 S. W. 1170, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1355; Ehrhart's Estate, 31 Pa. Super. Ct. 120; *In re* Beaumont, 216 Pa. St. 350, 65 Atl. 799.

1356. 3. Hartley *v.* Hartley, 71 Kan. 691, 81 Pac. 505.

1359. 1. Montgomery *v.* Montgomery, (Tex. Civ. App. 1907) 99 S. W. 1145.

1365. 6. Castens *v.* Murray, 122 Ga. 396, 50 S. E. 131; Hasling's Succession, 114 La. 293, 38 So. 174, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1365.

1366. 2. Pierce's Succession, 119 La. 727,

44 So. 447; Putnam *v.* Lincoln Safe Deposit Co., 118 N. Y. App. Div. 468, 104 N. Y. Supp. 4.

In Maryland the statute provides that a will is valid when executed in conformity to the law of the place where made, or by the law of the place where testator was domiciled when the will was made. Lindsay *v.* Wilson, 103 Md. 252, 63 Atl. 566.

1367. 3. Peet *v.* Peet, 229 Ill. 341, 82 N. E. 376; Pierce's Succession, 119 La. 727, 44 So. 447.

1368. 4. *In re* Riesenberg, 116 Mo. App. 308, 90 S. W. 1170, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1368.

1369. 6. Lanius *v.* Fletcher, (Tex. 1907) 101 S. W. 1076, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1369.

7. Lanius *v.* Fletcher, (Tex. 1907) 101 S. W. 1076, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1369.

1378. 5. Gregory *v.* Southern Pac. Co., 157 Fed. 113; Watford *v.* Alabama, etc., Lumber Co., (Ala. 1907) 44 So. 567; Moore *v.* Pywell, 29 App. Cas. (D. C.) 312; Christiansen *v.* William Graver Tank Works, 223 Ill. 142, 79 N. E. 97; Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210; La Bar *v.* New York, etc., R. Co., 218 Pa. St. 261, 67 Atl. 413; Southern Pac. Co. *v.* Allen, (Tex. Civ. App. 1907) 106 S. W. 441.

6. Christiansen *v.* William Graver Tank Works, 223 Ill. 142, 79 N. E. 97; Dorr Cattle Co. *v.* Des Moines Nat. Bank, 127 Iowa 153, 98 N. W. 918, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1378 *et seq.*

Character in Which Plaintiff Sues Determined by Lex Loci. — La Bar *v.* New York, etc., R. Co., 218 Pa. St. 261, 67 Atl. 413.

7. Chandler *v.* St. Louis, etc., R. Co., 127 Mo. App. 34, 106 S. W. 553, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1378; Gregory *v.* Southern Pac. Co., 157 Fed. 113; Watford *v.* Alabama, etc., Lumber Co., (Ala. 1907) 44 So. 567; *In re* Coe, 130 Iowa 307, 106 N. W. 743; Gurofsky *v.* Lehigh Valley R. Co., 121 N. Y. App. Div. 126, 105 N. Y. Supp. 514; Morrison *v.* San Pedro, etc., R. Co., (Utah 1907) 88 Pac. 908. But see Harrison *v.* Western Union Tel. Co., 71 S. Car. 386, 51 S. E. 119; Hughes *v.* Western Union Tel. Co., 72 S. Car. 516, 52 S. E. 107.

1379. 7. Christensen *v.* Floriston Pulp, etc., Co., (Nev. 1907) 92 Pac. 210; Missouri, etc., R. Co. *v.* Kellerman, (Tex. Civ. App. 1905) 87 S. W. 401, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1379, 1380; Southern Pac. Co. *v.* Allen, (Tex. Civ. App. 1907) 106 S. W. 441.

1380. 1. Wabash R. Co. *v.* Hassett, (Ind. 1908) 83 N. E. 705, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1380; Powell *v.* Great Northern R. Co., 102 Minn. 448, 113 N. W. 1017; Missouri, etc., R. Co. *v.* Kellerman, (Tex. Civ. App. 1905) 87 S. W. 401, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1380. And see Southern Pac. Co. *v.* Allen, (Tex. Civ. App. 1907) 106 S. W. 441.

2. Dorr Cattle Co. *v.* Des Moines Nat. Bank, 127 Iowa 153, 98 N. W. 918.

1381. 2. La Bourgogne, (C. C. A.) 139 Fed. 433. And see The Eagle Point, 136 Fed. 1010.

1383. 3. *United States.* — Covell *v.* Fowler, 144 Fed. 535; Gregory *v.* Southern Pac. Co., 157 Fed. 113; The Eagle Point, 136 Fed. 1010. And see The Saginaw, 139 Fed. 906.

Alabama. — Galliher *v.* State Mut. L. Ins. Co., (Ala. 1907) 43 So. 833.

Arkansas. — Stone *v.* Drake, 79 Ark. 384, 96 S. W. 197; Western Union Tel. Co. *v.* Ford, 77 Ark. 531, 92 S. W. 528.

California. — *Ex. p.* Horwitz, 2 Cal. App. 752, 84 Pac. 229.

Georgia. — Atlanta, etc., R. Co. *v.* Broome, (Ga. App. 1908) 60 S. E. 355; Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77.

Illinois. — McCoy *v.* Griswold, 114 Ill. App. 556.

Indiana. — Garrigue *v.* Keller, 164 Ind. 676, 74 N. E. 523.

Iowa. — Dorr Cattle Co. *v.* Des Moines Nat. Bank, 127 Iowa 153, 98 N. W. 918.

Kentucky. — Austin *v.* Pittsburg, etc., R. Co., (Ky. 1906) 91 S. W. 742.

Maine. — Abbott *v.* Goodall, 100 Me. 23, 60 Atl. 1030.

Minnesota. — Fryklund *v.* Great Northern R. Co., 101 Minn. 37, 111 N. W. 727, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1383.

Missouri. — Creston Nat. Bank *v.* Salmon, 117 Mo. App. 506, 93 S. W. 288.

New York. — *In re* Kucielski, (Surrogate Ct.) 49 Misc. (N. Y.) 404, 99 N. Y. Supp. 828.

Texas. — Missouri, etc., R. Co. *v.* Godair Commission Co., (Tex. Civ. App. 1905) 87 S. W. 871; St. Louis R. Co. *v.* Hambrick, (Tex. Civ. App. 1906) 97 S. W. 1072.

Washington. — Clark *v.* Eltinge, 38 Wash. 376, 80 Pac. 556, *quoting* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1383; Bank *v.* Doherty, 42 Wash. 317, 84 Pac. 872.

West Virginia. — National Tube Co. *v.* Smith, 57 W. Va. 210, 50 S. E. 717.

Wisconsin. — Disconto Gesellschaft *v.* Terlinden, 127 Wis. 651, 106 N. W. 821, *citing* in dissenting opinion 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1383.

1384. 1. Michaelsen *v.* Security Mut. L. Ins. Co., 150 Fed. 224.

1385. 1. Michaelsen *v.* Security Mut. L. Ins. Co., 150 Fed. 224; Garrigue *v.* Keller, 164 Ind. 676, 74 N. E. 523; Ferguson *v.* Central R. Co., 71 N. J. L. 647, 60 Atl. 382.

4. Gregory *v.* Southern Pac. R. Co., 157 Fed. 113; Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77, *citing* 22 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1385; Michaelsen *v.* Security Mut. L. Ins. Co., 150 Fed. 224; Ramsden *v.* Knowles, (C. C. A.) 151 Fed. 721; Murray *v.* Farrell, 2 Alaska 360; Grose *v.* Watts, 206 Mo. 373, 104 S. W. 30; Missouri, etc., R. Co. *v.* Godair Commission Co., (Tex. Civ. App. 1905) 87 S. W. 871; Southern Kansas R. Co. *v.* J. W. Burgess Co., (Tex. Civ. App. 1905) 90 S. W. 189.

1386. 2. Dolan *v.* Royal Neighbors of America, 123 Mo. App. 147, 100 S. W. 498.

3. See Ramsden *v.* Knowles, (C. C. A.) 151 Fed. 721.

PRIVATE WAYS.

4. **1. Definition.** — Bitello *v.* Lipson, (Conn. 1908) 69 Atl. *21*; Poole *v.* Greer, (Del. 1907) 65 Atl. *767*; Rice *v.* Wade, (Mo. App. 1908) 111 S. W. 594, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 4; Bunch *v.* Wheeler, (Mo. 1908) 109 S. W. 654.

2. Corea *v.* Higuera, (Cal. 1908) 95 Pac. 882.

3. Moye *v.* Thurber, 146 Ala. 180, 40 So. 822.

4. Samples *v.* Smythe, (Ky. 1907) 105 S. W. 415; Clayton *v.* Eilmer County Ct., 58 W. Va. 253, 52 S. E. 103.

Ownership of Abutting Owner Usque Ad Medium Filum Viæ. — Gray *v.* Kelley, 194 Mass. 534, 80 N. E. 651; Gould *v.* Wagner, (Mass. 1907) 82 N. E. 10; Johnson *v.* Grenell, 112 N. Y. App. Div. 620, 98 N. Y. Supp. 629.

5. **1.** Miller *v.* Hoeschler, 126 Wis. 263, 105 N. W. 790.

2. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071.

4. Stevens *v.* Headley, 69 N. J. Eq. 533, 62 Atl. 887.

Cul-de-Sac No Private Way. — Stevens *v.* Headley, 69 N. J. Eq. 533, 62 Atl. 887.

6. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071.

8. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071.

6. **1.** Whitelaw *v.* Rodney, (Mo. 1908) 111 S. W. 560; Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071.

Contra. — Graham *v.* Walker, 78 Conn. 130, 61 Atl. 98, also *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 6.

2. Graham *v.* Walker, 78 Conn. 130, 61 Atl. 98.

3. Corea *v.* Higuera, (Cal. 1908) 95 Pac. 882; Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071; Reed *v.* Gasser, 130 Iowa 87, 106 N. W. 383; Big Sandy R. Co. *v.* Bays, (Ky. 1907) 102 S. W. 302.

5. Lipsky *v* Heller, (Mass. 1908) 85 N. E. 453.

7. Corea *v.* Higuera, (Cal. 1908) 95 Pac. 882; Martin *v.* Murphy, 221 Ill. 632, 77 N. E. 1126; Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071; Bentley *v.* Hampton, (Ky. 1906) 91 S. W. 266; Sparks *v.* Rogers, (Ky. 1906) 97 S. W. 11; McCauley *v.* Twyman, (Ky. 1908) 110 S. W. 892; Brown *v.* Kemp, 46 Oregon 517, 81 Pac. 236; Liquid Carbonic Co. *v.* Wallace, (Pa. 1908) 68 Atl. 1021.

Application of Rule to Private Stairways. — Powers *v.* Heffernan, 233 Ill. 597, 84 N. E. 661; Portman *v.* Topliff, (Iowa 1908) 115 N. W. 508.

7. **1.** Ray *v.* Nally, (Ky. 1905) 89 S. W. 487; Schwer *v.* Martin, (Ky. 1906) 97 S. W. 12; Big Sandy R. Co. *v.* Bays, (Ky. 1907) 102 S. W. 302.

Sufficiency of Notice — Open and Apparent Way Sufficient Notice. — Jones *v.* Jones, (Ky. 1907) 101 S. W. 980.

Notice by Record. — Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921.

5. Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 453; Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728; Proudfoot *v.* Saffle, (W. Va. 1907) 57 S. E. 256.

6. Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728; Proudfoot *v.* Saffle, (W. Va. 1907) 57 S. E. 256.

8. **3.** Gardner *v.* San Gabriel Valley Bank, (Cal. App. 1908) 93 Pac. 900; Nugent *v.* Watkins, 124 Ga. 150, 52 S. E. 158; Thompson *v.* Germania L. Ins. Co., 97 Minn. 89, 106 N. W. 102.

In Partition. — See Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

5. Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 453.

Under Statutes. — Teachout *v.* Capital Lodge, 128 Iowa 380, 104 N. W. 440; Schaefer *v.* Thompson, 116 N. Y. App. Div. 775, 102 N. Y. Supp. 121.

8. Kirkland *v.* Pitman, 122 Ga. 256, 50 S. E. 117; Neal *v.* Neal, 122 Ga. 804, 50 S. E. 929; Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728; Stevens *v.* Headley, 69 N. J. Eq. 533, 62 Atl. 887; Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

9. **1.** Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921.

Prescription Presumptive Evidence of Grant. — Graham *v.* Walker, 78 Conn. 130, 61 Atl. 98; Ray *v.* Nally, (Ky. 1905) 89 S. W. 486; Crigler *v.* Newman, (Ky. 1906) 91 S. W. 706; Smith *v.* Pennington, 122 Ky. 355, 91 S. W. 730; Sparks *v.* Rogers, (Ky. 1906) 97 S. W. 11; Schwer *v.* Martin, (Ky. 1906) 97 S. W. 12; Cincinnati Southern R. Co. *v.* Slaughter, (Ky. 1907) 104 S. W. 291, 293; Boyd *v.* Morris, (Ky. 1908) 106 S. W. 867; McCauley *v.* Twyman, (Ky. 1908) 110 S. W. 892; Goldberg *v.* Cleveland, (Ky. 1908) 111 S. W. 682. *Contra*, Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

3. Big Sandy R. Co. *v.* Bays, (Ky. 1907) 102 S. W. 302; Bunch *v.* Wheeler, (Mo. 1908) 109 S. W. 654; Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 453; Schaefer *v.* Thompson, 116 N. Y. App. Div. 775, 102 N. Y. Supp. 121.

10. **1.** Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728; Jensen *v.* Shouwalter, (Neb. 1907) 113 N. W. 202; Burrell *v.* Middleton, (N. J. 1907) 65 Atl. 978.

2. Gyra *v.* Windler, 40 Colo. 366, 91 Pac. 36; Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071; Settle *v.* Cox, (Ky. 1905) 89 S. W. 534; Jones *v.* Jones, (Ky. 1907) 101 S. W. 980.

6. Clay *v.* Penzel, 79 Ark. 5, 94 S. W. 705, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 10.

As to Prescription in General. — Hofherr *v.* Mede, 226 Ill. 320, 80 N. E. 893.

Must Be Adverse, Continuous, and Exclusive. — Jobling *v.* Tuttle, 75 Kan. 351, 89 Pac. 699.

Instances of Title to Private Ways by Prescription — *Arkansas.* — Scott *v.* Dishough, 83 Ark. 369, 103 S. W. 1153.

California. — Franz *v.* Mendonca, 146 Cal. 640, 80 Pac. 1078; Fleming *v.* Howard, 150 Cal. 28, 87 Pac. 908.

Georgia. — Kirkland *v.* Pitman, 122 Ga. 256, 50 S. E. 117; Nugent *v.* Watkins, 124 Ga. 150, 52 S. E. 158.

Illinois. — See Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071.

Kentucky. — McKinney *v.* Thompson, (Ky. 1905) 86 S. W. 543; Smoot *v.* Wainscott, (Ky. 1905) 89 S. W. 176; McPherson *v.* Thompson,

(Ky. 1905) 89 S. W. 103; Ray *v.* Nall, (Ky. 1905) 89 S. W. 480; Settle *v.* Cox, (Ky. 1905) 89 S. W. 534; Crigler *v.* Newman, (Ky. 1906) 91 S. W. 706; Smith *v.* Pennington, 122 Ky. 355, 91 S. W. 730; Bryars *v.* Rash, (Ky. 1907) 100 S. W. 306; Cincinnati Southern R. Co. *v.* Slaughter, (Ky. 1907) 103 S. W. 291, 293; Boyd *v.* Morris, (Ky. 1908) 106 S. W. 867; McCauley *v.* Twyman, (Ky. 1908) 110 S. W. 892; Goldberg *v.* Cleveland, (Ky. 1908) 111 S. W. 682. See also Johnson *v.* Allen, (Ky. 1908) 110 S. W. 851.

Michigan. — Toney *v.* Knapp, 142 Mich. 652, 106 N. W. 552.

Missouri. — See Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921; Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

Nebraska. — Jensen *v.* Showalter, (Neb. 1907) 113 N. W. 202.

Rhode Island. — Bullock *v.* Phelps, 27 R. I. 164, 61 Atl. 589.

West Virginia. — Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

Evidence Insufficient to Show Title by Prescription or Adverse User — *California.* — Cassin *v.* Cole, (Cal. 1908) 96 Pac. 277.

Indiana. — Null *v.* Williamson, 166 Ind. 537, 78 N. E. 76.

Iowa. — McBride *v.* Bair, 134 Iowa 661, 112 N. W. 169.

Kentucky. — Roberts *v.* Williams, (Ky. 1906) 90 S. W. 565; Potter *v.* Magruder, (Ky. 1906) 97 S. W. 732; Prewitt *v.* Hustonville Cemetery Co., (Ky. 1907) 101 S. W. 892; Berea College *v.* Burnell, (Ky. 1908) 111 S. W. 332.

Michigan. — Moore *v.* Bulgreen, (Mich. 1908) 116 N. W. 1005.

Missouri. — Rice *v.* Wade, (Mo. App. 1908) 111 S. W. 594.

New York. — Staples *v.* Cornwall, 114 N. Y. App. Div. 596, 99 N. Y. Supp. 1009.

Pennsylvania. — Wilson *v.* Cather, 214 Pa. St. 3, 63 Atl. 190; Zerbey *v.* Allan, 215 Pa. St. 383, 64 Atl. 587; Woodbury *v.* Allan, 215 Pa. St. 390, 64 Atl. 590.

Wisconsin. — Kolpack *v.* Kolpack, 128 Wis. 169, 107 N. W. 457.

Way May Be Acquired over Uninclosed and Uncultivated Lands. — Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

Ways by Prescription Across Location of Railroad. — Louisville, etc., R. Co. *v.* Carter, (Ky. 1905) 86 S. W. 685; Louisville, etc., R. Co. *v.* Smith, (Ky. 1907) 101 S. W. 317.

Way by Prescription over or under Railroad. — Lamb *v.* Pontiac, etc., R. Co., 150 Mich. 340, 113 N. W. 1110.

Occasional Variations from Route to avoid muddy or worn places do not destroy acquisition by prescription. Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

Substituted Private Ways. — See Thompson *v.* Madsen, 29 Utah 326, 81 Pac. 160.

Prescription May Be Acquired in Homestead Property. — Jensen *v.* Showalter, (Neb. 1907) 113 N. W. 202.

11. 3. Stairways. — Teachout *v.* Capital Lodge, 128 Iowa 380, 104 N. W. 440.

12. 2. Empire Bridge Co. *v.* Larkin Soap Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 1062.

3. Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

5. **Land Sold as Bounded by Street — Grantor Estopped to Deny Way.** — Poole *v.* Greer, (Del. 1907) 65 Atl. 767; New England Structural Co. *v.* Everett Distilling Co., 189 Mass. 145, 75 N. E. 85; Bliss *v.* Mayer, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 119, 103 N. Y. Supp. 1077; Lewisohn *v.* Lansing Co., 119 N. Y. App. Div. 393, 104 N. Y. Supp. 543.

Nonuser of Street by Public Immaterial. — Swedish Evangelist Lutheran Church *v.* Jackson, 229 Ill. 506, 82 N. E. 348; Lewisohn *v.* Lansing Co., 119 N. Y. App. Div. 393, 104 N. Y. Supp. 543.

13. 1. Miller *v.* Hoeschler, 126 Wis. 263, 105 N. W. 790.

2. Bentley *v.* Hampton, (Ky. 1906) 91 S. W. 266; Proudfoot *v.* Saffle, (W. Va. 1907) 57 S. E. 256.

Defined. — A way of necessity arises from necessity alone, and continues only while the necessity exists. Cassin *v.* Cole, (Cal. 1908) 96 Pac. 277.

Hall Elevators and Stairways. — See Georke Co. *v.* Wadsworth, (N. J. 1907) 68 Atl. 71.

Right Cannot Exist Except in Cases of Strict Necessity. — Bully Hill Copper, etc., Co. *v.* Bruson, 4 Cal. App. 180, 87 Pac. 237, 239.

14. 1. Bentley *v.* Hampton, (Ky. 1906) 91 S. W. 266; Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 453; Wills *v.* Reid, 86 Miss. 446, 38 So. 793; Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728; Empire Bridge Co. *v.* Larkin Soap Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 1062; Brown *v.* Kemp, 46 Oregon 517, 81 Pac. 236.

15. 2. Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728; Mullins *v.* Metropolitan St. R. Co., 126 Mo. App. 507, 104 S. W. 890.

3. Mullins *v.* Metropolitan St. R. Co., 126 Mo. App. 507, 104 S. W. 890.

4. Proudfoot *v.* Saffle, (W. Va. 1907) 57 S. E. 256.

5. Jones *v.* Jones, (Ky. 1907) 101 S. W. 980; Johnson *v.* Allen, (Ky. 1908) 110 S. W. 851; Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

Alienation under Devise. — Whitelaw *v.* Rodney, (Mo. 1908) 111 S. W. 560.

16. 1. **Judicial Sale under Decree.** — Proudfoot *v.* Saffle, (W. Va. 1907) 57 S. E. 256.

4. "The mere fact that all of the land was originally part of the public domain and hence owned by a common grantor cannot confer the peculiar right out of which a way from necessity arises." *Per* McLaughlin, J., in Bully Hill Copper Min., etc., Co. *v.* Bruson, 4 Cal. App. 180, 87 Pac. 237.

6. Wilkinson *v.* Hutzel, 142 Mich. 674, 106 N. W. 207.

17. 2. Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

3. Corea *v.* Higuera, (Cal. 1908) 95 Pac. 882; Bully Hill Copper, etc., Co. *v.* Bruson, 4 Cal. App. 180, 87 Pac. 237, 239; Wilk *v.* Reid, 86 Miss. 446, 38 So. 793; Rice *v.* Wade, (Mo. App. 1908) 111 S. W. 594.

No Way Where Other Access Possible. — O'Brien *v.* Murphy, 180 Mass. 353, 75 N. E. 700.

4. Staples *v.* Cornwall, 114 N. Y. App. Div. 596, 99 N. Y. Supp. 1009.

18. 3. Bully Hill Copper Min., etc., Co. *v.* Bruson, 4 Cal. App. 180, 87 Pac. 237, 239.

19. 1. **In Maryland Statute Is Said to Be Unconstitutional.** — Arnsperger *v.* Crawford, 101 Md. 247, 61 Atl. 413.

Establishment of Private Road Justified under Eminent Domain. — Pippin *v.* May, 78 Ark. 18, 93 S. W. 64.

2. Pippin *v.* May, 78 Ark. 18, 93 S. W. 64.

4. **Statute Must Be Strictly Construed,** and it must appear that the road proposed is a way of necessity. Chandler *v.* Reading, (Mo. App. 1908) 107 S. W. 1039.

6. **Locating Private Road to Public Road Not Authorized.** — Arnsperger *v.* Crawford, 101 Md. 247, 61 Atl. 413.

20. 3. See Wills *v.* Reid, 86 Miss. 446, 38 So. 793.

6. See Chandler *v.* Reading, (Mo. App. 1908) 107 S. W. 1039.

Court Decides All Issues Except Damages. — Allen *v.* Welch, 125 Mo. App. 278, 102 S. W. 665.

7. Neal *v.* Neal, 122 Ga. 804, 50 S. E. 929; Chandler *v.* Reading, (Mo. App. 1908) 107 S. W. 1039.

Where Old Way Becoming Impracticable and Insufficient. — Pippin *v.* May, 78 Ark. 18, 93 S. W. 64.

Cartway. — See Cook *v.* Vickers, 144 N. Car. 312, 57 S. E. 1.

21. 5. Allen *v.* Welch, 125 Mo. App. 278, 102 S. W. 665.

Waiver of Notice. — Allen *v.* Welch, 125 Mo. App. 278, 102 S. W. 665.

7. **Issue of Damages Only for Jury to Decide.** — Allen *v.* Welch, 125 Mo. App. 278, 102 S. W. 665.

22. 11. Bowling *v.* Rouse, (Ky. 1906) 90 S. W. 1073.

13. Cleckler *v.* Morrow, (Ala. 1907) 43 So. 784.

14. Cleckler *v.* Morrow, (Ala. 1907) 43 So. 784.

23. 3. See Cleckler *v.* Morrow, (Ala. 1907) 43 So. 784.

5. Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 453; Staples *v.* Cornwall, 114 N. Y. App. Div. 596, 99 N. Y. Supp. 1009.

24. 1. Thompson *v.* Madsen, 29 Utah 326, 81 Pac. 160.

2. Null *v.* Williamson, 166 Ind. 537, 78 N. E. 76; Smith *v.* Pennington, 122 Ky. 355, 91 S. W. 730; Wilkinson *v.* Hutzel, 142 Mich. 674, 106 N. W. 207. See also Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

3. Galletly *v.* Bockins, 1 Cal. App. 724, 82 Pac. 1109; Sweeney *v.* Landers, (Conn. 1908) 69 Atl. 566; Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 453; Thompson *v.* Germania L. Ins. Co., 97 Minn. 89, 106 N. W. 102; Bunch *v.* Wheeler, (Mo. 1908) 109 S. W. 654; Empire Bridge Co. *v.* Larkin Soap Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 1062; Clayton *v.* Gilmer County Ct., 58 W. Va. 253, 52 S. E. 103; Flaherty *v.* Fleming, 58 W. Va. 669, 52 S. E. 857.

25. 3. Moye *v.* Thurber, 146 Ala. 180, 40 So. 822, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 25.

4. Moye *v.* Thurber, 146 Ala. 180, 40 So. 822, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 25; Samples *v.* Smythe, (Ky. 1907) 105 S. W. 415; Griffin *v.* Gilchrist, (R. I. 1908) 69 Atl. 683.

5. Moye *v.* Thurber, 146 Ala. 180, 40 So. 822, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 25; Galletly *v.* Bockins, 1 Cal. App. 724, 82 Pac. 1109; Sweeney *v.* Landers, (Conn. 1908) 69 Atl. 566; Thompson *v.* Germania L. Ins. Co., 97 Minn. 89, 106 N. W. 102.

9. *Compare* Thompson *v.* Germania L. Ins. Co., 97 Minn. 89, 106 N. W. 102.

26. 2. Thompson *v.* Germania L. Ins. Co., 97 Minn. 89, 106 N. W. 102.

3. Harris *v.* Flower, 91 L. T. N. S. 816; Galletly *v.* Bockins, 1 Cal. App. 724, 82 Pac. 1109; Thompson *v.* Germania L. Ins. Co., 97 Minn. 89, 106 N. W. 102; Schmoele *v.* Betz, 212 Pa. St. 32, 61 Atl. 525; Griffin *v.* Gilchrist, (R. I. 1908) 69 Atl. 683; Watts *v.* C. I. Johnson, etc., Real Estate Corp., 105 Va. 519, 54 S. E. 317.

4. Dewire *v.* Hanley, 79 Conn. 454, 65 Atl. 573.

27. 1. Watts *v.* C. I. Johnson, etc., Real Estate Corp., 105 Va. 519, 54 S. E. 317; Meighen *v.* Pacaud, 31 Quebec Super. Ct. 406, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 27.

2. Sweeney *v.* Landers, (Conn. 1908) 69 Atl. 566.

3. Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 453.

4. Milner's Safe Co. *v.* Great Northern, etc., R. Co., (1907) 1 Ch. 208.

28. 1. Dewire *v.* Hanley, 79 Conn. 454, 65 Atl. 573. But see Cleaves *v.* Braman, (Me. 1907) 68 Atl. 857.

3. Cleaves *v.* Braman, (Me. 1907) 68 Atl. 857; Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 453; O'Beirne *v.* Gildersleeve, 116 N. Y. App. Div. 902, 102 N. Y. Supp. 391; Hale *v.* Jenkins, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 119, 106 N. Y. Supp. 283; Clayton *v.* Gilmer County Ct., 58 W. Va. 253, 52 S. E. 103. See Bunch *v.* Wheeler, (Mo. 1908) 109 S. W. 654.

What Is Suitable Width Question of Fact. — Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 453.

7. **Wayowner Must Not Leave Gates Unclosed.** — Griffin *v.* Gilchrist, (R. I. 1908) 69 Atl. 683.

29. 5. Espenscheid *v.* Bauer, (Ill. 1908) 85 N. E. 230.

10. Kirkland *v.* Pitman, 122 Ga. 256, 50 S. E. 117; Neal *v.* Neal, 122 Ga. 804, 50 S. E. 929. See Cleckler *v.* Morrow, (Ala. 1907) 43 So. 784.

30. 1. Galletly *v.* Bockins, 1 Cal. App. 724, 82 Pac. 1109; Bunch *v.* Wheeler, (Mo. 1908) 109 S. W. 654.

7. **Parties May Agree by Parol as to Location.** — Lamb *v.* Pontiac, etc., R. Co., 150 Mich. 340, 113 N. W. 1110.

8. Bentley *v.* Hampton, (Ky. 1906) 91 S. W. 266; Bunch *v.* Wheeler, (Mo. 1908) 109 S. W. 654.

31. 7. Peduzzi *v.* Restelli, 79 Vt. 349, 64 Atl. 1128.

Fences and Walls Evidence of Location. — Bowling *v.* Rouse, (Ky. 1906) 90 S. W. 1073.

32. 1. Berg *v.* Neal, (Ind. App. 1907) 82 N. E. 802.

2. **Location by Parties Is Conclusive.** — Bowling *v.* Rouse, (Ky. 1906) 90 S. W. 1073.

3. Bentley *v.* Hampton, (Ky. 1906) 91 S. W. 700.

Acquiescence in Way Explained by Deed. — Berg *v.* Neal, (Ind. App. 1907) 82 N. E. 802.

5. Johnson *v.* Allen, (Ky. 1908) 110 S. W. 851.

6. Miller *v.* Pettit, (Ky. 1907) 105 S. W. 892.

33. 2. Thompson *v.* Madsen, 29 Utah 326, 81 Pac. 160.

3. Thompson *v.* Madsen, 29 Utah 326, 81 Pac. 160.

7. Walton *v.* Knight, (W. Va. 1907) 58 S. E. 1025.

34. 1. Berg *v.* Neal, (Ind. App. 1907) 82 N. E. 802; Reed *v.* Gasser, 130 Iowa 87, 106 N. W. 383; Miller *v.* Pettit, (Ky. 1907) 105 S. W. 892; Griffin *v.* Gilchrist, (R. I. 1908) 69 Atl. 683, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34.

2. Berg *v.* Neal, (Ind. App. 1907) 82 N. E. 802; Bowling *v.* Rouse, (Ky. 1906) 90 S. W. 1073; Bunch *v.* Wheeler, (Mo. 1908) 109 S. W. 654; Griffin *v.* Gilchrist, (R. I. 1908) 69 Atl. 683, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34; Watson *v.* Hoke, 73 S. Car. 361, 53 S. E. 537.

3. Where the Way Is Acquired by Prescription. — See Smith *v.* Pennington, 122 Ky. 355, 91 S. W. 730; Miller *v.* Pettit, (Ky. 1907) 105 S. W. 892, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34.

4. Watson *v.* Hoke, 73 S. Car. 361, 53 S. E. 537.

An Ordinary Gate Is Not an Unreasonable Obstruction. — Berg *v.* Neal, (Ind. App. 1907) 82 N. E. 802.

35. 1. Miller *v.* Pettit, (Ky. 1907) 105 S. W. 892; Gray *v.* Kelley, 194 Mass. 534, 80 N. E. 651; Flaherty *v.* Fleming, 58 W. Va. 669, 52 S. E. 857.

2. Watson *v.* Hoke, 73 S. Car. 361, 53 S. E. 537.

3. Lipsky *v.* Heller, (Mass. 1908) 85 N. E. 452.

Erection of Window Projecting on Way, but Not Interfering with Passage. — Bitello *v.* Lipson, (Conn. 1908) 69 Atl. 21.

4. Watts *v.* C. I. Johnson, etc., Real Estate Corp., 105 Va. 519, 54 S. E. 317.

Where Fire Escape Doors, etc., Are Obstructions. — Schmoele *v.* Betz, 212 Pa. St. 32, 61 Atl. 525; Mershon *v.* Walker, 215 Pa. St. 41, 64 Atl. 403.

37. 1. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071; O'Brien *v.* Murphy, 189 Mass. 353, 75 N. E. 700.

3. Nugent *v.* Watkins, 124 Ga. 150, 52 S. E. 158. See Griffin *v.* Sanborn, 127 La. 17, 56 S. E. 71; Nugent *v.* Watkins, 129 Ga. 382, 58 S. E. 888.

Exception to Fifteen-foot Rule. — Kirkland *v.* Pitman, 122 Ga. 256, 50 S. E. 117.

"Improved Lands" Comprehends Entire Tract, though only part thereof be in actual cultivation. Hopkins *v.* Roach, 127 Ga. 153, 56 S. E. 303.

4. Moye *v.* Thurber, 146 Ala. 180, 40 So. 822; Bale *v.* Todd, 123 Ga. 99, 50 S. E. 990.

38. 2. **Denial of Preliminary Injunction Where Right Is Disputed.** — Burrell *v.* Middleton, (N. J. 1907) 65 Atl. 978.

3. Bale *v.* Todd, 123 Ga. 99, 50 S. E. 990.

4. Ejectment Not the Remedy. — Moye *v.* Thurber, 146 Ala. 180, 40 So. 822; Bale *v.* Todd, 123 Ga. 99, 50 S. E. 990.

Forcible Entry and Detainer Will Not Lie. — Moye *v.* Thurber, 146 Ala. 180, 40 So. 822.

5. *Alabama.* — Moye *v.* Thurber, 146 Ala. 180, 40 So. 822.

Arkansas. — Clay *v.* Penzel, 79 Ark. 5, 94 S. W. 705.

Colorado. — Gyra *v.* Windler, 40 Colo. 366, 91 Pac. 36.

Connecticut. — Dewire *v.* Hanley, 79 Conn. 454, 65 Atl. 573, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 38.

Georgia. — Bale *v.* Todd, 123 Ga. 99, 50 S. E. 990.

Illinois. — Espenscheid *v.* Bauer, (Ill. 1908) 85 N. E. 230.

Kentucky. — Jones *v.* Jones, (Ky. 1907) 101 S. W. 980.

Massachusetts. — O'Brien *v.* Murphy, 189 Mass. 353, 75 N. E. 700; Bailey *v.* Agawam Nat. Bank, 190 Mass. 20, 76 N. E. 449.

Missouri. — Downing *v.* Corcoran, 112 Mo. App. 645, 87 S. W. 114; Sultzman *v.* Branham, (Mo. App. 1908) 108 S. W. 1074.

New York. — Bliss *v.* Mayer, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 119, 103 N. Y. Supp. 1077.

Pennsylvania. — Schmoele *v.* Betz, 212 Pa. St. 32, 61 Atl. 525; Wilson *v.* Cather, 214 Pa. St. 3, 63 Atl. 190; Mershon *v.* Walker, 215 Pa. St. 41, 64 Atl. 403.

West Virginia. — Flaherty *v.* Fleming, 58 W. Va. 669, 52 S. E. 857; Bent *v.* Trimboli, 61 W. Va. 509, 56 S. E. 881.

39. 2. Bernei *v.* Sappington, 102 Md. 185, 62 Atl. 365; Morin *v.* Lefebvre, 73 N. H. 605, 61 Atl. 675.

Where Obstruction Is Reasonable Injunction Will Not Lie. — Bitello *v.* Lipson, (Conn. 1908) 69 Atl. 21.

3. Dewire *v.* Hanley, 79 Conn. 454, 65 Atl. 573; Hershman *v.* Stafford, 58 W. Va. 459, 52 S. E. 533.

4. Clayton *v.* Gilmer County Ct., 58 W. Va. 253, 52 S. E. 103.

40. 1. Brown *v.* Kemp, 46 Oregon 517, 81 Pac. 236.

3. Bunch *v.* Wheeler, (Mo. 1908) 109 S. W. 654.

4. Anthony *v.* Kennard Bldg. Co., 188 Mo. 704, 87 S. W. 921; Schmoele *v.* Betz, 212 Pa. St. 32, 61 Atl. 525.

9. Poole *v.* Greer, (Del. 1907) 65 Atl. 767.

41. 1. **Measure of Damages — Difference in Value of Land before and after Obstruction.** — Big Sandy R. Co. *v.* Bays, (Ky. 1907) 102 S. W. 302.

3. Dewire *v.* Hanley, 79 Conn. 454, 65 Atl. 573.

11. Spencer *v.* Lighthouse, 114 N. Y. App. Div. 591, 99 N. Y. Supp. 1015.

42. 1. **Question of Abandonment One of Fact.** — New England Structural Co. *v.* Everett Distilling Co., 189 Mass. 145, 75 N. E. 85.

2. Reed *v.* Gasser, 130 Iowa 87, 106 N. W. 383.

3. Dewire *v.* Hanley, 79 Conn. 454, 65 Atl. 573; Hofherr *v.* Mede, 226 Ill. 320, 80 N. E.

893; Swedish Evangelist Lutheran Church *v.* Jackson, 229 Ill. 506, 82 N. E. 348; Teachout *v.* Capital Lodge, 128 Iowa 380, 104 N. W. 440; New England Structural Co. *v.* Everett Distilling Co., 189 Mass. 145, 75 N. E. 85; Spencer *v.* Lighthouse, 114 N. Y. App. Div. 591, 99 N. Y. Supp. 1015; Lewisohn *v.* Lansing Co., 119 N. Y. App. Div. 393, 104 N. Y. Supp. 543; Watts *v.* C. I. Johnson, etc., Real Estate Corp., 105 Va. 519, 54 S. E. 317. See also Oney *v.* West Buena Vista Land Co., 104 Va. 580, 52 S. E. 343.

The Nonuser of a Way Acquired by Adverse User. — Hofherr *v.* Mede, 226 Ill. 320, 80 N. E. 893; Crigler *v.* Newman, (Ky. 1906) 91 S. W. 706.

There Must Be Evidence of Adverse User. — Lamb *v.* Pontiac, etc., R. Co., 150 Mich. 340, 113 N. W. 1110.

4. Boyd *v.* Morris, (Ky. 1908) 106 S. W. 867.

5. Lewisohn *v.* Lansing Co., 119 N. Y. App. Div. 393, 104 N. Y. Supp. 543. See also Oney *v.* West Buena Vista Land Co., 104 Va. 580, 52 S. E. 343.

Nonuser by Adverse Possession for Twenty Years Extinguishes Right. — Swedish Evangelist Lutheran Church *v.* Jackson, 229 Ill. 506, 82 N. E. 348.

Adverse Possession for Twenty-one Years Bars the Right. — Woodbury *v.* Allan, 215 Pa. St. 390, 64 Atl. 591.

43. 2. Swedish Evangelist Lutheran Church *v.* Jackson, 229 Ill. 506, 82 N. E. 348.

Obstruction by Adverse Possession must be for same length of time required to acquire the way. Crigler *v.* Newman, (Ky. 1906) 91 S. W. 706.

4. Obstruction on Other Portions of Way no Evidence. — New England Structural Co. *v.* Everett Distilling Co., 189 Mass. 145, 75 N. E. 85.

5. Schmidt *v.* Brown, 226 Ill. 590, 80 N. E. 1071; Hall *v.* Morton, 125 Mo. App. 315, 102 S. W. 570; Zerbey *v.* Allan, 215 Pa. St. 383, 64 Atl. 587; McClellan *v.* Powassan Lumber Co., 15 Ont. L. Rep. 67.

Ownership in Two Estates Must Be Equal in Duration, Quality, and Other Circumstances of Right. — Thompson *v.* De Snyder, (N. Mex. 1908) 94 Pac. 1014.

Partial Merger Does Not Destroy Right. — Bullock *v.* Phelps, 27 R. I. 164, 61 Atl. 589.

6. Schmoele *v.* Betz, 212 Pa. St. 32, 61 Atl. 525.

7. Private Merged in Public Way Laid Out under Eminent Domain. — Clayton *v.* Gilmer County Ct., 58 W. Va. 253, 52 S. E. 103.

44. 3. Proudfoot *v.* Saffle, (W. Va. 1907) 57 S. E. 256.

4. Cassin *v.* Cole, (Cal. 1908) 96 Pac. 277; Graham *v.* Olson, 116 Mo. App. 272, 92 S. W. 728.

PRIVILEGE.

45. 4. **Privileges and Immunities.** — See Atty.-Gen. *v.* Electric Storage Battery Co., 188 Mass. 239, 74 N. E. 467; Allen *v.* Labsap, 188 Mo. 692, 87 S. W. 926; Cramer *v.* Southern Ohio L. & T. Co., 72 Ohio St. 395, 74 N. E. 200; Sandys *v.* Williams, 46 Oregon 327, 80 Pac. 642.

Right to Sell Intoxicating Liquors Not Privilege or Immunity. — State *v.* Durien, 70 Kan. 13, 80 Pac. 987.

PRIVILEGED COMMUNICATIONS.

51. 1. *In re* Reid, 155 Fed. 933, *citing* 17 [2d] Am. and Eng. Encyc. of Law (2d ed.) 51.

52. 3. **Testimony May Be Excluded by Court.** — Noland *v.* People, 33 Colo. 322, 80 Pac. 887.

53. 6. *Arkansas.* — Fox *v.* Spears, 78 Ark. 71, 93 S. W. 560.

California. — People *v.* Heart, 1 Cal. App. 166, 81 Pac. 1018; Hardy *v.* Martin, 150 Cal. 341, 89 Pac. 111; *In re* Dominici, 151 Cal. 181, 90 Pac. 448.

Colorado. — *In re* Shapter, 35 Colo. 578, 85 Pac. 688.

Idaho. — Later *v.* Haywood, 12 Idaho 78, 85 Pac. 494.

Illinois. — Holmes *v.* Horn, 120 Ill. App. 359.

Iowa. — Gabriel *v.* McMullin, 127 Iowa 426, 103 N. W. 355; Mueller *v.* Batcheler, 131 Iowa 650, 109 N. W. 186; Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504.

Missouri. — Pinson *v.* Campbell 124 Mo. App. 268, 101 S. W. 621.

Montana. — Mackel *v.* Bartlett, 33 Mont. 123, 82 Pac. 795.

Nebraska. — Brown *v.* Brown, (Neb. 1906) 108 N. W. 180; *In re* Parker, (Neb. 1907) 111 N. W. 119.

New York. — People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843; *In re* Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 1103.

South Carolina. — Strickland *v.* Capital City Mills, 74 S. Car. 21, 54 S. E. 220.

Texas. — Yardley *v.* State, (Tex. Crim. 1907) 100 S. W. 399.

West Virginia. — Kirchner *v.* Smith, 61 W. Va. 434, 58 S. E. 614.

55. 1. Hardy *v.* Martin, 150 Cal. 341, 89 Pac. 111.

56. 1. Strickland *v.* Capital City Mills, 74 S. Car. 21, 54 S. E. 220.

57. 3. A letter from general counsel to local attorney is privileged. Missouri, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1906) 96 S. W. 1087.

58. 2. Foreman *v.* Archer, 130 Iowa 49, 106 N. W. 372.

4. Aaron *v.* U. S., (C. C. A.) 155 Fed. 833; Frederick *v.* State, (Ala. 1905) 39 So. 915; Baker *v.* Jackson, 146 Ala. 688, 40 So. 348; Turner *v.* Turner, 123 Ga. 5, 50 S. E. 969; Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504; State *v.* Cummings, 189 Mo. 626, 88 S. W. 706; Mackel *v.* Bartlett, 33 Mont. 123, 82 Pac. 795; People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843; State *v.* Smith, 138 N. Car. 703, 50 S. E. 859; Brown *v.* Moosic Mountain Coal Co., 211 Pa. St. 580, 61 Atl. 76; Phelps *v.* Root, 78 Vt. 493, 63 Atl. 941; State *v.* Louanis, 79 Vt. 463, 65 Atl. 532.

59. 1. Turner *v.* Turner, 123 Ga. 5, 50 S.

E. 969; Champion *v.* McCarthy, 228 Ill. 87, 81 N. E. 808.

2. Brown *v.* Moosic Mountain Coal Co., 211 Pa. St. 580, 61 Atl. 76.

3. Gabriel *v.* McMullin, 127 Iowa 426, 103 N. W. 355.

60. 1. See State *v.* Cummings, 189 Mo. 626, 88 S. W. 706.

2. Later *v.* Haywood, 12 Idaho 78, 85 Pac. 494; State *v.* Smith, 138 N. Car. 703, 50 S. E. 859.

6. People *v.* Heart, 1 Cal. App. 166, 81 Pac. 1018; Turner *v.* Turner, 123 Ga. 5, 50 S. E. 969; Smart *v.* N. C. Lodge No. 2, 27 Ohio Cir. Ct. 273.

61. 1, Later *v.* Haywood, 12 Idaho 78, 85 Pac. 494; Mueller *v.* Batcheler, 131 Iowa 650, 109 N. W. 186; Boyle *v.* Robinson, 129 Wis. 567, 109 N. W. 623.

62. 1. Frederick *v.* State, (Ala. 1905) 39 So. 915.

2. Aaron *v.* U. S., (C. C. A.) 155 Fed. 833; Hardy *v.* Martin, 150 Cal. 341, 89 Pac. 111; Turner *v.* Turner, 123 Ga. 5, 50 S. E. 969; Champion *v.* McCarthy, 228 Ill. 87, 81 N. E. 808; Bischoff *v.* Com., (Ky. 1906) 96 S. W. 538; Bankers' Money Order Assoc. *v.* Nachod, 120 N. Y. App. Div. 732, 105 N. Y. Supp. 773.

63. 2. State *v.* Smith, 138 N. Car. 703, 50 S. E. 859.

3. Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 63.

5. Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 63.

64. 3. Rester *v.* Powell, (La. 1907) 45 So. 372.

6. Hardy *v.* Martin, 150 Cal. 341, 89 Pac. 111; Rogers *v.* Daniels, 116 Ill. App. 515.

65. 1. Mueller *v.* Batcheler, 131 Iowa 650, 109 N. W. 186; Brown *v.* Moosic Mountain Coal Co., 211 Pa. St. 580, 61 Atl. 76, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 65; Mitchell *v.* Mitchell, 212 Pa. St. 62, 61 Atl. 570; Wilson *v.* Gordon, 73 S. Car. 155, 53 S. E. 79; Kirchner *v.* Smith, 61 W. Va. 434, 58 S. E. 614, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 65, paragraph in full.

66. 1. Missouri, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1906) 96 S. W. 1087; Rosebud *v.* State, (Tex. Crim. 1906) 98 S. W. 858.

67. 2. Baker *v.* Jackson, 146 Ala. 688, 40 So. 348; Wilson *v.* Ohio Farmers' Ins. Co., 164 Ind. 462, 73 N. E. 892; Mueller *v.* Batcheler, 131 Iowa 650, 109 N. W. 186; State *v.* Blydenburg, (Iowa 1907) 112 N. W. 634; *In re* Elliott, 73 Kan. 156, 84 Pac. 750, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 67; Bischoff *v.* Com., (Ky. 1906) 96 S. W. 538; Temple *v.* Phelps, 193 Mass. 297, 79 N. E. 482; Bankers' Money Order Assoc. *v.* Nachod, 120 N. Y. App. Div. 732, 105 N. Y. Supp. 773; Atlantic, etc., R. Co. *v.* Atlantic, etc., Co., (N. Car. 1908) 61 S. E. 185, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 67.

3. *In re* Elliott, 73 Kan. 156, 84 Pac. 750, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 67.

4. Wilson *v.* Ohio Farmers' Ins. Co., 164 Ind. 462, 73 N. E. 892; *In re* Elliott, 73 Kan. 156, 84 Pac. 750, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 67, paragraph in full.

68. 4. Lindahl *v.* Supreme Ct., etc., 100 Minn. 87, 110 N. W. 358.

69. 3. The contents of an answer the substance of which has been permitted to be published in a newspaper, are not priviliged. *In re* Elliott, 73 Kan. 156, 84 Pac. 750.

Where the contents of an unfiled pleading have been published by the procurement of the client, it is no longer a privileged communication. *In re* Burnette, 73 Kan. 609, 85 Pac. 575.

5. The privilege does not extend to letters which contain no confidential communications. Aaron *v.* U. S., (C. C. A.) 155 Fed. 833; Hardy *v.* Martin, 150 Cal. 341, 89 Pac. 111; Dukes *v.* Davis, (Ky. 1907) 101 S. W. 390; Stern *v.* Daniel, (Wash. 1907) 91 Pac. 552; Winn *v.* Itzel, 125 Wis. 19, 103 N. W. 220.

The report of the superintendent of a corporation, of an accident, sent and addressed to its attorneys is not a privileged communication in a suit by the person injured against the corporation. Virginia-Carolina Chemical Co. *v.* Knight, 106 Va. 674, 56 S. E. 725.

7. **Newspaper Containing Privileged Letter Excluded.** — Lindahl *v.* Supreme Ct., etc., 100 Minn. 87, 110 N. W. 358.

70. 2. Bankers' Money Order Assoc. *v.* Nachod, 120 N. Y. App. Div. 732, 105 N. Y. Supp. 773.

3. Le Prohon's Appeal, 102 Me. 455, 67 Atl. 317; Emerson *v.* Scott, (Tex. Civ. App. 1905) 87 S. W. 369.

6. Ehrhardt *v.* Stevenson, (Mo. App. 1907) 106 S. W. 1118.

8. Stern *v.* Daniel, (Wash. 1907) 91 Pac. 552.

71. 4. Bankers' Money Order Assoc. *v.* Nachod, 120 N. Y. App. Div. 732, 105 N. Y. Supp. 773.

6. Mackel *v.* Bartlett, 33 Mont. 123, 82 Pac. 795.

7. People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843; State *v.* Smith, 138 N. Car. 703, 50 S. E. 859, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 71; Strickland *v.* Capital City Mills, 74 S. Car. 21, 54 S. E. 220.

72. 1. Foreman *v.* Archer, 130 Iowa 49, 106 N. W. 372; State *v.* Smith, 138 N. Car. 703, 50 S. E. 859, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 72.

3. State *v.* Falsetta, 43 Wash. 162, 86 Pac. 168, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 72.

73. 1. Champion *v.* McCarthy, 228 Ill. 87, 81 N. E. 808; Mueller *v.* Batcheler, 131 Iowa 650, 109 N. W. 186; Rester *v.* Powell, (La. 1907) 45 So. 372; *In re* Simmons, (Surrogate Ct.) 48 Misc. (N. Y.) 484, 96 N. Y. Supp. 1103; Atlantic, etc., R. Co. *v.* Atlantic, etc., Co., (N. Car. 1908) 61 S. E. 185.

3. Myers *v.* Kenyon, (Cal. App. 1907) 93 Pac. 888.

5. Lindahl *v.* Supreme Ct., etc., 100 Minn. 87, 110 N. W. 358.

An attorney may be asked if he advised his client respecting an instrument received from him, and this does not involve a privileged communication. Nixon *v.* Goodwin, 3 Cal. App. 358, 85 Pac. 169.

7. Myers *v.* Kenyon, (Cal. App. 1907) 93 Pac. 888.

74. 1. Attorney may testify as to client's condition of mind. Bischoff *v.* Com., (Ky. 1906) 96 S. W. 538.

5. **Contra.** — Champion *v.* McCarthy, 228 Ill. 87, 81 N. E. 808.

6. Strickland *v.* Capital City Mills, 74 S. Car. 21, 54 S. E. 220, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 74.

7. Strickland *v.* Capital City Mills, 74 S. Car. 21, 54 S. E. 220, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 74.

10. Dukes *v.* Davis, (Ky. 1907) 101 S. W. 390.

75. 6. The privilege, after the death of the client, does not apply to statements made by the client on a former proceeding in open court during her lifetime. Foreman *v.* Archer, 130 Iowa 49, 106 N. W. 372.

76. 4. Strickland *v.* Capital City Mills, 74 S. Car. 21, 54 S. E. 220.

6. Strickland *v.* Capital City Mills, 74 S. Car. 21, 54 S. E. 220; Boyle *v.* Robinson, 129 Wis. 567, 109 N. W. 623.

13. Strickland *v.* Capital City Mills, 74 S. Car. 21, 54 S. E. 220, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76.

77. 2. *In re* Dominici, 151 Cal. 181, 90 Pac. 448; *In re* Shapter, 35 Colo. 578, 85 Pac. 688; Champion *v.* McCarthy, 228 Ill. 87, 81 N. E. 808; Le Prohon's Appeal, 102 Me. 455, 67 Atl. 317.

Devisee Claiming Title Superior to Testator. — Emerson *v.* Scott, (Tex. Civ. App. 1905) 87 S. W. 369.

3. Brown *v.* Brown, (Neb. 1906) 108 N. W. 180.

79. 2. **Contra.** — Hardy *v.* Martin, 150 Cal. 341, 89 Pac. 111.

6. Stern *v.* Daniel, (Wash. 1907) 91 Pac. 552, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 79.

7. *In re* Shapter, 35 Colo. 578, 85 Pac. 688; Ehrhardt *v.* Stevenson, (Mo. App. 1907) 106 S. W. 1118; *In re* Parker, (Neb. 1907) 111 N. W. 119; People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843; Bankers' Money Order Assoc. *v.* Nachod, 120 N. Y. App. Div. 732, 105 N. Y. Supp. 773. See also Gulf, etc., R. Co. *v.* Gibson, (Tex. Civ. App. 1906) 93 S. W. 469.

80. 2. Fox *v.* Spears, 78 Ark. 71, 93 S. W. 560; State *v.* Falsetta, 43 Wash. 162, 86 Pac. 168.

Though the attorney had testified in a former trial as to confidential communication, yet on second trial the client may assert his privilege. Wilson *v.* Ohio Farmers' Ins. Co., 164 Ind. 462, 73 N. E. 892.

3. Emerson *v.* Scott, (Tex. Civ. App. 1905) 87 S. W. 369.

81. 2. State *v.* Blydenburg, (Iowa 1907) 112 N. W. 634.

5. Wood *v.* Etiwanda Water Co., 147 Cal. 228, 81 Pac. 512; Lindahl *v.* Supreme Ct., etc., 100 Minn. 87, 110 N. W. 358; *In re* Parker, (Neb. 1907) 111 N. W. 119; Strickland *v.* Capital City Mills, 74 S. Car. 21, 54 S. E. 220.

A waiver of the privilege in a former trial may be withdrawn at any time in a succeeding action. Herpolsheimer *v.* Citizens' Ins. Co., (Neb. 1907) 113 N. W. 152.

82. 2. Le Prohon's Appeal, 102 Me. 455, 67 Atl. 317; Emerson *v.* Scott, (Tex. Civ. App. 1905) 87 S. W. 369.

3. Emerson *v.* Scott, (Tex. Civ. App. 1905) 87 S. W. 369.

4. Le Prohon's Appeal, 102 Me. 455, 67 Atl. 317; *In re* Parker, (Neb. 1907) 111 N. W. 119; Twaddell *v.* Weidler, 109 N. Y. App. Div. 443, 96 N. Y. Supp. 90; Emerson *v.* Scott, (Tex. Civ. App. 1905) 87 S. W. 369.

5. By not interposing an objection to an order for a deposition to take testimony involving privileged communications, the privilege is lost. Bankers' Money Order Assoc. *v.* Nachod, 120 N. Y. App. Div. 732, 105 N. Y. Supp. 773.

83. 2. Pinson *v.* Campbell, 124 Mo. App. 268, 101 S. W. 621, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 82; People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843; Yardley *v.* State, (Tex. Crim. 1907) 100 S. W. 399.

The testimony must be voluntary to accomplish waiver by client. Union Pac. R. Co. *v.* Thomas, (C. C. A.) 152 Fed. 365.

3. Pinson *v.* Campbell, 124 Mo. App. 268, 101 S. W. 621, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 82; Ehrhardt *v.* Stevenson, (Mo. App. 1907) 106 S. W. 1118.

Allowing Attorney to Testify Without Objection. — Lindahl *v.* Supreme Ct., etc., 100 Minn. 87, 110 N. W. 358.

9. *United States.* — Nebraska statute construed in Union Pac. R. Co. *v.* Thomas, (C. C. A.) 152 Fed. 365.

California. — McRae *v.* Erickson, 1 Cal. App. 326, 82 Pac. 209; Murphy *v.* Police Pension Fund Com'rs, 2 Cal. App. 468, 83 Pac. 577.

Colorado. — Colorado Midland R. Co. *v.* McGarry, (Colo. 1907) 92 Pac. 915; *In re* Shapter, 35 Colo. 578, 85 Pac. 688.

Idaho. — Trull *v.* Modern Woodmen of America, 12 Idaho 318, 85 Pac. 1081.

Indiana. — Towles *v.* McCurdy, 163 Ind. 14, 71 N. E. 129; Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. App. 48, 76 N. E. 560; Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805; Scott *v.* Smith, (Ind. App. 1907) 82 N. E. 556.

Iowa. — Long *v.* Garey Invest. Co., (Iowa 1906) 110 N. W. 26; State *v.* Bennett, (Iowa 1907) 110 N. W. 150.

Michigan. — Krapp *v.* Metropolitan L. Ins. Co., 143 Mich. 369, 106 N. W. 1107; *In re* Mansbach, 150 Mich. 348, 114 N. W. 65.

Minnesota. — McKenzie *v.* Banks, 94 Minn. 499, 103 N. W. 497; Olson *v.* Court of Honor, 100 Minn. 117, 110 N. W. 374.

Missouri. — Smoot *v.* Kansas City, 194 Mo. 513, 92 S. W. 363; Obermeyer *v.* F. H. Logeman Chair Mfg. Co., 120 Mo. App. 59, 96 S. W. 673; Elliott *v.* Kansas City, 198 Mo. 593, 96 S. W. 1023; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297; Smart *v.* Kansas City, 208 Mo. 162, 105 S. W. 709; Hartley *v.* Calbreath, 127 Mo. App. 559, 106 S. W. 570.

Montana. — May *v.* Northern Pac. R. Co., 32 Mont. 522, 81 Pac. 328.

Nebraska. — Western Travelers' Acc. Assoc. *v.* Munson, 73 Neb. 858, 103 N. W. 688; *In re* Parker, (Neb. 1907) 111 N. W. 119.

New York. — Doll *v.* Equitable L. Assur.

Soc., (C. C. A.) 138 Fed. 705; Powers *v.* Metropolitan St. R. Co., 105 N. Y. App. Div. 358, 94 N. Y. Supp. 184; Benjamin *v.* Tupper Lake, 110 N. Y. App. Div. 426, 97 N. Y. Supp. 512; Clifford *v.* Denver, etc., R. Co., 111 N. Y. App. Div. 513, 97 N. Y. Supp. 707; Geis *v.* Geis, 112 N. Y. App. Div. 362, 101 N. Y. Supp. 845; Travis *v.* Hahn, 119 N. Y. App. Div. 138, 103 N. Y. Supp. 973; People *v.* Brecht, 120 N. Y. App. Div. 769, 105 N. Y. Supp. 436; Dambmann *v.* Metropolitan St. R. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 60, 106 N. Y. Supp. 221; *In re* Preston, 113 N. Y. App. Div. 732, 99 N. Y. Supp. 312; *In re* Myers, 184 N. Y. 54, 76 N. E. 920; Roche *v.* Nason, 185 N. Y. 128, 77 N. E. 1007; Clifford *v.* Denver, etc., R. Co., 188 N. Y. 349, 80 N. E. 1094, *reversing* 111 N. Y. App. Div. 513, 97 N. Y. Supp. 707.

North Carolina. — North Carolina statute construed. Smith *v.* John L. Roper Lumber Co., (N. Car. 1908) 60 S. E. 717.

North Dakota. — State *v.* Werner, (N. Dak. 1907) 112 N. W. 60.

Washington. — Noelle *v.* Hoquiam Lumber, etc., Co., (Wash. 1907) 92 Pac. 372; State *v.* Winnett, (Wash. 1907) 92 Pac. 904.

84. 1. Smoot *v.* Kansas City, 194 Mo. 513, 92 S. W. 363; Smart *v.* Kansas City, 208 Mo. 162, 105 S. W. 709; Dambmann *v.* Metropolitan St. R. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 60, 106 N. Y. Supp. 221; State *v.* Winnett, (Wash. 1907) 92 Pac. 904.

85. 1. Smart *v.* Kansas City, 208 Mo. 162, 105 S. W. 709.

2. Union Pac. R. Co. *v.* Thomas, (C. C. A.) 152 Fed. 365; Colorado Midland R. Co. *v.* McGarry, (Colo. 1907) 92 Pac. 915, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 85; Obermeyer *v.* F. H. Logeman Chair Mfg. Co., 120 Mo. App. 59, 96 S. W. 673.

4. People *v.* Furlong, 187 N. Y. 198, 79 N. E. 978. See also McRae *v.* Erickson, 1 Cal. App. 326, 82 Pac. 209; State *v.* Winnett, (Wash. 1907) 92 Pac. 904.

7. Krapp *v.* Metropolitan L. Ins. Co., 143 Mich. 369, 106 N. W. 1107; Smart *v.* Kansas City, 208 Mo. 162, 105 S. W. 709; Boyle *v.* Robinson, 129 Wis. 567, 109 N. W. 623.

86. 4. McRae *v.* Erickson, 1 Cal. App. 326, 82 Pac. 209; Towles *v.* McCurdy, 163 Ind. 14, 71 N. E. 129; State *v.* Blydenburg, (Iowa 1907) 112 N. W. 634; Perry *v.* John Hancock Mut. L. Ins. Co., 143 Mich. 290, 106 N. W. 860; Smoot *v.* Kansas City, 194 Mo. 513, 92 S. W. 363; Smart *v.* Kansas City, 208 Mo. 162, 105 S. W. 709; Dambmann *v.* Metropolitan St. R. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 60, 106 N. Y. Supp. 221; *In re* Myers, 184 N. Y. 54, 76 N. E. 920; State *v.* Werner, (N. Dak. 1907) 112 N. W. 60.

5. See *In re* Preston, 113 N. Y. App. Div. 732, 99 N. Y. Supp. 312.

87. 1. Benjamin *v.* Tupper Lake, 110 N. Y. App. Div. 426, 97 N. Y. Supp. 512; Travis *v.* Hahn, 179 N. Y. App. Div. 138, 103 N. Y. Supp. 973; Smith *v.* John L. Roper Lumber Co., (N. Car. 1908) 60 S. E. 717.

2. McRae *v.* Erickson, 1 Cal. App. 326, 82 Pac. 209.

7. Dambmann *v.* Metropolitan St. R. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 60, 106 N. Y. Supp. 221; Smith *v.* John L. Roper Lumber Co., (N. Car. 1908) 60 S. E. 717.

Information concerning patients not parties to proceeding or interested therein, and dead, is privileged. *In re* Myer, 184 N. Y. 54, 76 N. E. 920.

9. Dambmann *v.* Metropolitan St. R. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 60, 106 N. Y. Supp. 221.

88. 3. *In re* Shapter, 35 Colo. 578, 85 Pac. 688. See also *In re* Preston, 113 N. Y. App. Div. 732, 99 N. Y. Supp. 312.

Contra. — Towles *v.* McCurdy, 163 Ind. 14, 71 N. E. 129, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88.

4. Roche *v.* Nason, 185 N. Y. 128, 77 N. E. 1007.

5. McKenzie *v.* Banks, 94 Minn. 499, 103 N. W. 497, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88.

7. Towles *v.* McCurdy, 163 Ind. 14, 71 N. E. 129, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 88, note 7.

8. See Murphy *v.* Police Pension Fund Com'rs, 2 Cal. App. 468, 83 Pac. 577.

89. 1. Consulting and attendant physicians at a public hospital are within the rule. Smart *v.* Kansas City, 208 Mo. 162, 105 S. W. 709.

2. **Contra.** — People *v.* Griffith, 146 Cal. 339, 80 Pac. 68.

The statute is not applicable in a prosecution of a physician for the murder of his patient. Long *v.* Garey Invest. Co., (Iowa 1906) 110 N. W. 26.

3. State *v.* Bennett, (Iowa 1907) 110 N. W. 150; People *v.* Brecht, 120 N. Y. App. Div. 769, 105 N. Y. Supp. 436; State *v.* Werner, (N. Dak. 1907) 112 N. W. 60.

5. Krapp *v.* Metropolitan L. Ins. Co., 143 Mich. 369, 106 N. W. 1107.

8. This is limited to the physician sued, and does not apply to others. Hartley *v.* Calbreath, 127 Mo. App. 559, 106 S. W. 570.

10. Smith *v.* John L. Roper Lumber Co., (N. Car. 1908) 60 S. E. 717.

But an administrator, sued for waste, cannot waive the privilege, as he is then acting as an individual, not as representative of decedent. Scott *v.* Smith, (Ind. App. 1907) 82 N. E. 556.

The privilege is not waived by a patient bringing suit for personal injuries against a municipality, as to physicians in public hospital where she was an inmate. Smart *v.* Kansas City, 208 Mo. 162, 105 S. W. 709.

90. 3. *In re* Parker, (Neb. 1907) 111 N. W. 119; *In re* Shapter, 35 Colo. 578, 85 Pac. 688.

4. State *v.* Bennett, (Iowa 1907) 110 N. W. 150; Olson *v.* Court of Honor, 100 Minn. 117, 110 N. W. 374, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 90; Ross *v.* Great Northern R. Co., 101 Minn. 122, 111 N. W. 951; Elliott *v.* Kansas City, 198 Mo. 593, 96 S. W. 1023; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297; Western Travelers' Acc. Assoc. *v.* Munson, 73 Neb. 858, 103 N. W. 688; *In re* Parker, (Neb. 1907) 111 N. W. 119; Geis *v.* Geis, 116 N. Y. App. Div. 362, 101 N. Y. Supp. 845.

There is no waiver where the patient does not object to the issuance of a commission to

take the testimony of his physician, but he may object on the trial to using the deposition in evidence. Clifford *v.* Denver, etc., R. Co., 111 N. Y. App. Div. 513, 97 N. Y. Supp. 707.

6. Clifford *v.* Denver, etc., R. Co., 188 N. Y. 349, 80 N. E. 1094, *reversing* 111 N. Y. App. Div. 513, 97 N. Y. Supp. 707; Geis *v.* Geis, 116 N. Y. App. Div. 362, 101 N. Y. Supp. 845.

9. Towles *v.* McCurdy, 163 Ind. 14, 71 N. E. 129; Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805; Scott *v.* Smith, (Ind. App. 1907) 82 N. E. 556; *In re* Mansbach, 150 Mich. 348, 114 N. W. 65; Olson *v.* Court of Honor, 100 Minn. 117, 110 N. W. 374, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 90; *In re* Parker, (Neb. 1907) 111 N. W. 119; Twaddell *v.* Weidler, 109 N. Y. App. Div. 444, 96 N. Y. Supp. 90. See also Long *v.* Garey Invest. Co., (Iowa 1906) 110 N. W. 26.

91. 1. Olson *v.* Court of Honor, 100 Minn. 117, 110 N. W. 374.

Contra. — Long *v.* Garey Invest. Co., (Iowa 1906) 110 N. W. 26.

2. The privilege cannot be waived by the executor named in a will, though it is alleged to have been revoked by a later will, and the proceeding is for the probate of such alleged later will. Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805.

The privilege of waiver does not extend to a contestant of a will. *In re* Mansbach, 150 Mich. 348, 114 N. W. 65.

5. Clifford *v.* Denver, etc., R. Co., 111 N. Y. App. Div. 513, 97 N. Y. Supp. 707; Geis *v.* Geis, 116 N. Y. App. Div. 362, 101 N. Y. Supp. 845; Clifford *v.* Denver, etc., R. Co., 188 N. Y. 349, 80 N. E. 1094, *reversing* 111 N. Y. App. Div. 513, 97 N. Y. Supp. 707.

6. Trull *v.* Modern Woodmen of America, 12 Idaho 318, 85 Pac. 1081; Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. App. 48, 76 N. E. 560; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297; Western Travelers' Acc. Assoc. *v.* Munson, 73 Neb. 858, 103 N. W. 688.

8. Trull *v.* Modern Woodmen of America, 12 Idaho 318, 85 Pac. 1081; Metropolitan L. Ins. Co. *v.* Willis, 37 Ind. App. 48, 76 N. E. 560; Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297; Western Travelers' Acc. Assoc. *v.* Munson, 73 Neb. 858, 103 N. W. 688.

10. Noelle *v.* Hoquiam Lumber, etc., Co., (Wash. 1907) 92 Pac. 372, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 91.

The testimony must be voluntary to accomplish waiver by the patient. Union Pac. R. Co. *v.* Thomas, (C. C. A.) 152 Fed. 365.

11. Powers *v.* Metropolitan St. R. Co., 105 N. Y. App. Div. 358, 94 N. Y. Supp. 184; Clifford *v.* Denver, etc., R. Co., 188 N. Y. 349, 80 N. E. 1094, *reversing* 111 N. Y. App. Div. 513, 97 N. Y. Supp. 707.

Contra. — Indianapolis, etc., Rapid Transit Co. *v.* Hall, 165 Ind. 557, 76 N. E. 242.

12. Noelle *v.* Hoquiam Lumber, etc., Co., (Wash. 1907) 92 Pac. 372. See also May *v.* Northern Pac. R. Co., 32 Mont. 522, 81 Pac. 328.

92. 1. An apparent waiver by the patient before opportunity to advise with counsel and in ignorance of his legal right is no waiver and may be withdrawn. Ross *v.* Great Northern R. Co., 101 Minn. 122, 111 N. W. 951.

3. Elliott *v.* Kansas City, 198 Mo. 593, 96 S. W. 1023.

5. Colbert *v.* State, 125 Wis. 423, 104 N. W. 61.

7. Colbert *v.* State, 125 Wis. 423, 104 N. W. 61.

93. 3. Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314.

4. Humphrey *v.* Pope, 1 Cal. App. 374, 82 Pac. 223; People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 384; Wickes *v.* Walden, 228 Ill. 56, 81 N. E. 798; State *v.* Mathews, 133 Iowa 398, 109 N. W. 616; Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314 (*Iowa* statute construed); Marshall *v.* Marshall, 71 Kan. 313, 80 Pac. 629; *In re* Mansbach, 150 Mich. 348, 114 N. W. 65; Strode *v.* Frommeyer, 115 Mo. App. 220, 91 S. W. 167; Hicks *v.* Hicks, 142 N. Car. 231, 55 S. E. 106; Connella *v.* Territory, 16 Okla. 365, 86 Pac. 72; Cole *v.* State, 48 Tex. Crim. 439, 88 S. W. 341; Cole *v.* State, (Tex. Crim. 1907) 101 S. W. 218; Lurty's Curator *v.* Lurty, 107 Va. 466, 59 S. E. 405. See also State *v.* Winnett, (Wash. 1907) 92 Pac. 904.

94. 1. Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314.

3. Illinois L. Ins. Co. *v.* Lang, (Ky. 1907) 99 S. W. 616; Strode *v.* Frommeyer, 115 Mo. App. 220, 91 S. W. 167.

5. State *v.* Mathews, 133 Iowa 398, 109 N. W. 616; State *v.* Nelson, 39 Wash. 221, 81 Pac. 721.

7. De Leon *v.* Territory, 9 Ariz. 161, 80 Pac. 348; Hammons *v.* State, 73 Ark. 498, 84 S. W. 718; Bunker *v.* United Order of Foresters, 97 Minn. 363, 107 N. W. 392; Cole *v.* State, 48 Tex. Crim. 439, 88 S. W. 341; Hearne *v.* State, (Tex. Crim. 1906) 97 S. W. 1050; Lurty's Curator *v.* Lurty, 107 Va. 466, 59 S. E. 405.

Such a letter, not containing confidential or private communication, and identified by a third person as having been delivered by post in his sight, is not privileged. Caldwell *v.* State, 146 Ala. 141, 41 So. 473.

95. 2. Caldwell *v.* State, 146 Ala. 141, 41 So. 473; Hammons *v.* State, 73 Ark. 498, 84 S. W. 718; Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314; Cole *v.* State, 48 Tex. Crim. 439, 88 S. W. 341.

4. People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 384; Connella *v.* Territory, 16 Okla. 365, 86 Pac. 72; State *v.* Winnett, (Wash. 1907) 92 Pac. 904.

5. Lurty's Curator *v.* Lurty, 107 Va. 466, 59 S. E. 405.

Nor where testimony goes to extenuate or justify the offense for which either is on trial. Cole *v.* State, 48 Tex. Crim. 439, 88 S. W. 341.

96. 3. Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314.

4. M— *v.* M—, 2 Tenn. Ch. App. 463.

5. Hammons *v.* State, 73 Ark. 498, 84 S. W. 718; Cole *v.* State, (Tex. Crim. 1907) 101 S. W. 218.

10. Hammons *v.* State, 73 Ark. 498, 84 S. W. 718; People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 384; Com. *v.* Everson, (Ky. 1906) 96 S. W. 460; Connella *v.* Territory, 16 Okla. 365, 86 Pac. 72.

97. 1. Hammons *v.* State, 73 Ark. 499, 84 S. W. 718.

2. De Leon *v.* Territory, 9 Ariz. 161, 80 Pac. 348; Hammons *v.* State, 73 Ark. 498, 84 S. W. 718, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 97; Connella *v.* Territory, 16 Okla. 365, 86 Pac. 72; State *v.* Nelson, 39 Wash. 221, 81 Pac. 721.

3. Bunker *v.* United Order of Foresters, 97 Minn. 363, 107 N. W. 392, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 97; Bunker *v.* United Order of Foresters, 97 Minn. 363, 107 N. W. 392.

9. Hannaford *v.* Dowdle, 75 Ark. 127, 86 S. W. 818; Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314.

98. 1. Marshall *v.* Marshall, 71 Kan. 313, 80 Pac. 629; Lurty's Curator *v.* Lurty, 107 Va. 466, 59 S. E. 405.

3. Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314; Bright *v.* Com., 120 Ky. 298, 86 S. W. 527.

6. Humphrey *v.* Pope, 1 Cal. App. 374, 82 Pac. 223.

8. Humphrey *v.* Pope, 1 Cal. App. 374, 82 Pac. 223.

10. Percival *v.* Jack, 4 Cal. App. 199, 90 Pac. 555.

13. Wickes *v.* Walden, 228 Ill. 56, 81 N. E. 798.

99. 1. Interstate Commerce Commission *v.* Harriman, 157 Fed. 432; *Ex p.* Schoepf, 74 Ohio St. 15, 77 N. E. 276, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 99; *Ex p.* Parker, 74 S. Car. 466, 55 S. E. 122.

100. 1. *Ex p.* Schoepf, 74 Ohio St. 15, 77 N. E. 276, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 100, note 1.

PROBABILITY.

107. 15. **Probability of Innocence Equivalent to Reasonable Doubt of Guilt.** — Sanders *v.* Davis, (Ala., 1907) 44 So. 979.

PROBATE AND LETTERS OF ADMINISTRATION.

112. 6. *In re* Davis, (Cal. 1906) 86 Pac. 183; McKenna *v.* Garvey, 191 Mass. 96, 77 N. E. 782; Bradford *v.* Blossom, 207 Mo. 177, 105 S. W. 289; State *v.* District Ct., 34 Mont. 96, 85 Pac. 866.

113. 6. Stout *v.* Young, 217 Pa. St. 427, 66 Atl. 659.

11. **A Justice's Court** has no jurisdiction to probate an Indian's will. Peters *v.* Tallchief, (County Ct.) 52 Misc. (N. Y.) 617, 102 N. Y. Supp. 972.

115. 1. *In re* Clark, 148 Cal. 108, 82 Pac. 760, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 114; Godwin *v.* Godwin, 129 Ga. 67, 58 S. E. 652.

Probate of Foreign Wills. — See Davis *v.* Upson, 230 Ill. 327, 82 N. E. 824.

Domicil — What Constitutes. — See Oberlander *v.* Emmel, 104 Md. 259, 64 Atl. 1025; *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

7. *In re* Walker, (Surrogate Ct.) 54 Misc. (N. Y.) 177, 105 N. Y. Supp. 890.

116. 4. See *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

12. Schofield *v.* Thomas, 231 Ill. 114, 83 N. E. 121; Knight *v.* Holings, 73 N. H. 495, 63 Atl. 38.

In Kansas the probate court has no jurisdiction of a will contest, but witnesses may be examined in opposition. Wright *v.* Young, 75 Kan. 287, 89 Pac. 694.

117. 3. *In re* Wilcox, (Surrogate Ct.) 55 Misc. (N. Y.) 170, 106 N. Y. Supp. 468; *In re* Murray, 141 N. Car. 588, 54 S. E. 435. See also *In re* Mount, 185 N. Y. 162, 77 N. E. 999.

"Probate Logically Precedes Construction, for otherwise there is no will to construe." *In re* Pilsbury, 113 N. Y. App. Div. 893, 50 Misc. (N. Y.) 367, 99 N. Y. Supp. 62.

5. Mackey *v.* Mackey, (N. J. 1906) 63 Atl. 984, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 117.

6. Chidsey *v.* Brookes, (Ga. 1908) 60 S. E. 529.

118. 2. Mackey *v.* Mackey, (N. J. 1906) 63 Atl. 984.

121. 7. See Palmer *v.* Owen, 229 Ill. 115, 82 N. E. 275.

Probate of Two Duly Executed Wills, the privity of which is uncertain. Townsend *v.* Moore, 92 L. T. N. S. 335.

123. 6. **How Soon after Death Will May Be Proved.** — Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784.

124. 3. **Effect of Delay in Probating Will.** — See *In re* Duffy, (Surrogate Ct.) 51 Misc. (N. Y.) 543, 101 N. Y. Supp. 974.

5. Mullins *v.* Fidelity, etc., Co., 100 S. W 256, 30 Ky. L. Rep. 1077.

125. 3. **Death Presumed from Absence of Testator.** — *In re* Sternkopf, (N. J. 1906) 65 Atl. 177.

5. **Matters Essential to Probate.** — Neimand *v.* Seemann, (Iowa 1907) 114 N. W. 48. See also Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950.

6. **An Attestation Clause** is not necessary to entitle a will to probate. *In re* Diener, (Neb. 1907) 113 N. W. 149.

7. **Knowledge of Contents Presumed Where Will Properly Executed and Testator Competent.** — Lipphard *v.* Humphrey, 28 App. Cas. (D. C.) 355; Todd *v.* Todd, 221 Ill. 410, 77 N. E. 680.

126. 1. **In Illinois** it is provided by statute that on a hearing in the County Court to admit a will to probate no evidence can be heard on the subject of testamentary capacity except that of the subscribing witnesses to the will. State *v.* Glaser, 223 Ill. 316, 79 N. E. 105.

5. *In re* Shapter, 35 Colo. 578, 85 Pac. 688.

In Illinois it is provided by statute that two witnesses must testify as to the testator's signature or acknowledgment in order that the will may be admitted to probate. Hill *v.* Kehr, 228 Ill. 204, 81 N. E. 848.

127. 4. Brown *v.* McBride, 129 Ga. 92, 58 S. E. 702; *In re* Foley, (Surrogate Ct.) 55 Misc. (N. Y.) 162, 106 N. Y. Supp. 474.

128. 1. Hayes *v.* Willis, 75 L. J. P. 86.

2. Mead *v.* Presbyterian Church, 229 Ill. 526, 82 N. E. 371.

3. **Arkansas Statute.** — Arendt *v.* Arendt, 80 Ark. 204, 96 S. W. 982.

4. **Evidence Held Irrelevant.** — Sibley *v.* Morse, 146 Mich. 463, 109 N. W. 858.

129. 1. *In re* Shapter, 35 Colo. 578, 85 Pac. 688.

4. *In re* Dowell, (Mich. 1908) 115 N. W. 972; Linebarger *v.* Linebarger, 143 N. Car. 229, 55 S. E. 709.

5. Mueller *v.* Pew, 127 Wis. 288, 106 N. W. 840.

8. *In re* Shelton, 143 N. Car. 218, 55 S. E. 705. See also *In re* Kah, (Iowa 1907) 113 N. W. 563.

"Declarations and conduct of a testator after a will is made are often admitted to prove lack of testamentary capacity." Leffingwell *v.* Bettinghouse, (Mich. 1908) 115 N. W. 731.

130. 5. Bean *v.* Bean, 144 Mich. 599, 108 N. W. 369.

6. **Admissions of a Legatee** are admissible if but one person is interested. Bean *v.* Bean, 144 Mich. 599, 108 N. W. 369.

11. *In re* Robertson, (Neb. 1906) 109 N. W. 506.

131. 5. **A Will with No Atestation Clause** is not admissible to probate. *In re* Plumel, 151 Cal. 77, 90 Pac. 192.

7. *California.* — *In re* Hayden, 149 Cal. 680, 87 Pac. 275.

Colorado. — Snodgrass *v.* Smith, (Colo. 1908) 94 Pac. 312.

Connecticut. — *In re* Lockwood, (Conn. 1908) 69 Atl. 8.

Georgia. — Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69.

Indiana. — Steinkuehler *v.* Wempner, (Ind. 1907) 81 N. E. 482.

Kansas. — Wright *v.* Young, 75 Kan. 287, 89 Pac. 694; McConnell *v.* Keir, (Kan. 1907) 92 Pac. 540.

Kentucky. — Bottom *v.* Bottom, (Ky. 1907) Y. Supp. 69.

Missouri. — Cowan *v.* Shaver, 197 Mo. 203, 95 S. W. 200; Goodfellow *v.* Shannon, 197 Mo. 271, 94 S. W. 979; Bradford *v.* Blossom, 207 Mo. 177, 105 S. W. 289.

New York. — *In re* Small, 118 N. Y. App. Div. 502, 103 N. Y. Supp. 705.

Texas. — Locust *v.* Randle, (Tex. Civ. App. 1907) 102 S. W. 946.

Washington. — *In re* Sullivan, 40 Wash. 202, 82 Pac. 297.

Evidence Held Sufficient to Establish Will. — Bowe *v.* Naughton, (N. J. 1907) 67 Atl. 184; *In re* Wyman, 118 N. Y. App. Div. 116, 103 N. Y. Supp. 69.

Evidence Held Not Sufficient to Establish Will. — *In re* Rogers, (Surrogate Ct.) 52 Misc. (N. Y.) 412, 103 N. Y. Supp. 423; *In re* Baldwin, (N. Car. 1907) 59 S. E. 163.

132. 1. **A Prima Facie Case** is sufficient to admit a will to probate. McConnell *v.* Keir, (Kan. 1907) 92 Pac. 540.

2. See Mowry *v.* Norman, 204 Mo. 173, 103 S. W. 15.

3. Steinkuhler *v.* Wempner, (Ind. 1907) 81 N. E. 482; *In re* Mansbach, 150 Mich. 348, 114 N. W. 65.

4. **The Effect of an Order** admitting a will to probate goes no farther than to establish the will as an instrument of evidence. Neimand *v.* Seemann, (Iowa 1907) 114 N. W. 48.

5. *Illinois.* — Kemmerer *v.* Kemmerer, 233 Ill. 327, 84 N. E. 256.

Indiana. — Steinkuehler *v.* Wemper, (Ind. 1907) 81 N. E. 482.

Iowa. — Neimand *v.* Seemann, (Iowa 1907) 114 N. W. 48.

Kansas. — Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541.

Kentucky. — P. Simer *v.* Steele, (Ky. 1908) 106 S. W. 851.

Missouri. — Cohen *v.* Herbert, 205 Mo. 537, 104 S. W. 84.

Nebraska. — Byron Reed Co. *v.* Klabunde, (Neb. 1906) 108 N. W. 133.

Pennsylvania. — Stout *v.* Young, 217 Pa. St. 427, 66 Atl. 659.

Texas. — Locust *v.* Randle, (Tex. Civ. App. 1907) 102 S. W. 946.

A Foreign Probate cannot be attacked collaterally. Stevens *v.* Oliver, 200 Mo. 492, 98 S. W. 492.

133. 1. **A Probate in Common Form Is Valid until Set Aside.** — *In re* Beauchamp, (N. Car. 1907) 59 S. E. 687. See also Hooks *v.* Brown, 125 Ga. 122, 53 S. E. 583.

4. *In re* Dunsmuir, 149 Cal. 67, 84 Pac. 657; Tracy *v.* Muir, 151 Cal. 363, 90 Pac. 832; Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541; Cohen *v.* Herbert, 205 Mo. 537, 104 S. W. 84; Smith *v.* Beales, 33 Pa. Super. Ct. 570.

8. **In Florida** the statute makes the probate of wills conclusive as to personalty and *prima facie* evidence of the validity of wills of real property. Thomas *v.* Williamson, 51 Fla. 332, 40 So. 831.

134. 2. See Young *v.* Norris Peters Co., 27 App. Cas. (D. C.) 140.

3. Smith *v.* Ryan, 116 N. Y. App. Div. 397, 101 N. Y. Supp. 1011; Drake *v.* Pechin, 58 Misc. (N. Y.) 449, 109 N. Y. Supp. 474.

4. Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541.

135. 3. Palmer *v.* Bradley, 142 Fed. 193.

7. **Prima Facie Evidence of Validity.** — A certified copy of a will, when duly attached, is *prima facie* evidence of the validity of the will, but it is not conclusive. Grier *v.* Canada, (Tenn. 1907) 107 S. W. 970.

136. 2. **Probate Not Necessary to Pass Title to Real Estate.** — Smith *v.* Ryan, 116 N. Y. App. Div. 397, 101 N. Y. Supp. 1011.

4. Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784.

A Probate May Relate Back to a Prior Conveyance. — Tudor *v.* Tudor, 80 Vt. 220, 67 Atl. 539.

6. **Effect of Refusal of Probate.** — See Matter of Goldsticker, 123 N. Y. App. Div. 474, 108 N. Y. Supp. 489.

137. 5. **The Burden of Proof** rests upon the contestant to prove want of jurisdiction. *In re* Glandt, (Neb. 1906) 107 N. W. 248.

6. **Constructive Fraud.** — Parsons *v.* Balson, 129 Wis. 311, 109 N. W. 136.

11. **What Is Not Sufficient Cause.** — That the will is contrary to the statute relating to charitable uses. *In re* Lennon, (Cal. 1907) 92 Pac. 870.

138. 1. Steinhuehler *v.* Wempner, (Ind. 1907) 81 N. E. 482; Scott *v.* Wagstaff, (Tenn. 1908) 107 S. W. 976.

2. *In re* Mann, (Surrogate Ct.) 51 Misc. (N. Y.) 315, 100 N. Y. Supp. 1100.

4. *In re* Paige, 12 Idaho 410, 86 Pac. 273; Roth *v.* Siefert, (Ohio 1908) 83 N. E. 611. See

also Waldron *v.* Layton, (N. J. 1906) 63 Atl. 1105; Bovee *v.* Johnson, 130 Wis. 447, 110 N. W. 212.

Questions Raised on Appeal. — An appeal from the probate court is limited to the single question of the validity of the will. Schofield *v.* Thomas, 231 Ill. 114, 83 N. E. 121.

A Decree Refusing Probate will not be reversed on appeal unless it is clearly wrong. Gunn *v.* Early, (N. J. 1906) 64 Atl. 111.

"A Wife has no right to appeal from the order probating her husband's will." Mercer *v.* Smith, (Ky. 1908) 107 S. W. 1196.

5. O'Brien *v.* Bonfield, 220 Ill. 219, 77 N. E. 167; Waters *v.* Waters, 225 Ill. 559, 80 N. E. 337; Kemmerer *v.* Kemmerer, 223 Ill. 327, 84 N. E. 256.

140. 1. Palmer *v.* Bradley, 142 Fed. 193, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 139, 140.

8. Palmer *v.* Bradley, 142 Fed. 193, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140.

141. 8. Catholic University of America *v.* Boyd, 227 Ill. 281, 81 N. E. 363; Kiernan *v.* Casey, 116 Tenn. 245, 93 S. W. 576.

Recording — Proof on Application. — See *In re* Coope, (Surrogate Ct.) 53 Misc. (N. Y.) 509, 103 N. Y. Supp. 431.

142. 3. Stevens *v.* Oliver, 200 Mo. 492, 98 S. W. 492; State *v.* District Ct., 34 Mont. 96, 85 Pac. 866.

Sufficiency of Authentication. — The foreign probate must be authenticated or attested in the manner prescribed by statute. *In re* Box, 127 Wis. 264, 106 N. W. 1063.

143. 6. State *v.* District Ct., 34 Mont. 91, 85 Pac. 866, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 143; *In re* Gertsen, 127 Wis. 602, 106 N. W. 1096.

7. State *v.* District Ct., 34 Mont. 96, 85 Pac. 866, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 143.

144. 6. *In re* Dunahugh, 130 Iowa 692, 107 N. W. 925; Bradshaw *v.* Butler, 100 S. W. 837, 30 Ky. L. Rep. 1249.

145. 2. *In re* Johnson, (Cal. 1908) 93 Pac. 1015.

146. 8. **The Handwriting** of the testator and of the witnesses must be proven. *In re* Halstead, (Surrogate Ct.) 51 Misc. (N. Y.) 542, 101 N. Y. Supp. 971.

147. 5. *In re* Dunahugh, 130 Iowa 692, 107 N. W. 925.

6. *In re* Dunahugh, 130 Iowa 692, 107 N. W. 925, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 147.

7. *In re* Miller, (Oregon 1907) 90 Pac. 1002, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 147.

8. Michell *v.* Low, 213 Pa. St. 526, 63 Atl. 246, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 147.

148. 5. *In re* Miller, (Oregon 1907) 90 Pac. 1002, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 148; *In re* Wikman, 148 Cal. 642, 84 Pac. 212; *In re* McCoy, (Oregon 1907) 90 Pac. 1105; *In re* Fallon, 214 Pa. St. 584, 63 Atl. 889.

6. **"The Presumption Is Strengthened** by rather unusual testimony to testator's methodical habits, tending to show the improbability of the will having been accidentally lost." *In re* Fallon, 214 Pa. St. 584, 63 Atl. 889.

149. 9. *In re* Miller, (Oregon 1907) 90 Pac. 1002; *In re* McCoy, (Oregon 1907) 90 Pac. 1105.

10. *In re* Miller, (Oregon 1907) 90 Pac. 1002, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 149; *In re* McCoy, (Oregon 1907) 90 Pac. 1105.

Declarations of a Testator to Show Intent in Destroying His Will Are Admissible. — Coghlin *v.* Coghlin, 29 Ohio Cir. Ct. 251.

152. 8. **Proof of Contents** cannot be made by one interested witness. *In re* Fallon, 214 Pa. St. 584, 63 Atl. 889.

153. 1. Michell *v.* Low, 213 Pa. St. 526, 63 Atl. 246; *In re* Fallon, 214 Pa. St. 584, 63 Atl. 889.

154. 4. See Parker *v.* Hill, (Ark. 1908) 108 S. W. 208.

PROCEEDING.

155. 4. **Resolution for Improvement of Street Constitutes Proceeding.** — Toledo *v.* Marlow, 28 Ohio Cir. Ct. 298.

Third Party Notice is a ***proceeding.*** Montgomery *v.* Saginaw Lumber Co., 12 Ont. L. Rep. 144.

Garnishment Equivalent to Proceeding. — Tatum *v.* Geist, 40 Wash. 575, 82 Pac. 902.

PROCEEDS.

158. 2. **Proceeds of Sale Equivalent to Net Proceeds.** — *In re* Garner, (1906) 2 K. B. 213, 75 L. J. K. B. 584.

PRODUCE — PRODUCTS, ETC.

164. 4. **Produce Equivalent to Manufacture.** — Ottawa Electric Light Co. *v.* Ottawa, 12 Ont. L. Rep. 290.

PRODUCTION OF DOCUMENTS.

169. 1. State *v.* Standard Oil Co., 194 Mo. 124, 91 S. W. 1062; *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790, *affirmed* 207 U. S. 541, 28 U. S. Sup. Ct. 178.

3. Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32.

4. **Equity Has Inherent Power to Compel Production of Books and Papers.** — U. S. *v.* Terminal R. Assoc., 148 Fed. 486.

9. Carter *v.* Southern R. Co., 3 Ga. App. 34, 59 S. E. 209; Columbian Bldg., etc., Assoc. *v.* Leeds, 128 Ill. App. 195; Mills *v.* Biscoe Lumber Co., 139 N. Car. 524, 52 S. E. 200; Ellinger *v.* Equitable L. Assur. Soc., 125 Wis. 643, 104 N. W. 811.

170. 1. Banks *v.* Connecticut R., etc., Co., 79 Conn. 116, 64 Atl. 14; Mills *v.* Biscoe Lumber Co., 139 N. Car. 524, 52 S. E. 200; Whitten *v.* Western Union Tel. Co., 141 N. Car. 361, 54 S. E. 289; Lawson *v.* Black Diamond Coal Min. Co., 44 Wash. 26, 86 Pac. 1120; Ellinger *v.* Equitable L. Assur. Soc., 125 Wis. 643, 104 N. W. 811.

2. Mutual L. Ins. Co. *v.* Griesa, 156 Fed. 398; Pina Maya-Sisal Co. *v.* Leo L. Squire Mfg. Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 325, 105 N. Y. Supp. 482.

A Picture bearing a signature is not a "document or other paper" within the meaning of Code Civ. Pro. N. Y., § 803, authorizing inspection. Wilson *v.* Collins, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 365, 109 N. Y. Supp. 662.

3. Statutes Authorizing Reasonable Order Are Constitutional. — Hammond Packing Co. *v.* State, 81 Ark. 519, 100 S. W. 407, 1199.

6. American Banana Co. *v.* United Fruit Co., 153 Fed. 943; Central of Georgia R. Co. *v.* Lewis, 2 Ga. App. 428, 58 S. E. 674.

Discretion Should Be Liberally Exercised. — People *v.* American Ice Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 67, 105 N. Y. Supp. 650.

7. Alabama Girls' Industrial School *v.* Reynolds, 143 Ala. 579, 42 So. 114; Moore *v.* Central of Georgia R. Co., 1 Ga. App. 514, 58 S. E. 63.

171. 3. See Cutten *v.* Mitchel, 10 Ont. L. Rep. 734.

6. Harbaugh *v.* Middlesex Securities Co., 110 N. Y. App. Div. 633, 97 N. Y. Supp. 350.

172. 7. Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32. *Contra*, U. S. *v.* Terminal R. Assoc., 148 Fed. 486.

173. 1. Alabama Girls' Industrial School *v.* Reynolds, 143 Ala. 579, 42 So. 114; Muller *v.* Philadelphia, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 28, 104 N. Y. Supp. 781, *affirmed* 118 N. Y. App. Div. 276, 103 N. Y. Supp. 387.

8. Nelson *v.* U. S., 201 U. S. 92, 26 U. S. Sup. Ct. 358; *Ex p.* Hedden, (Nev. 1907) 90 Pac. 737.

174. 4. Ellinger *v.* Equitable L. Assur. Soc., 125 Wis. 643, 104 N. W. 811.

5. Ellinger *v.* Equitable L. Assur. Soc., 125 Wis. 643, 104 N. W. 811.

7. Ellinger *v.* Equitable L. Assur. Soc., 125 Wis. 643, 104 N. W. 811.

9. Edmonds *v.* Attucks Music Pub. Co., 117 N. Y. App. Div. 486, 102 N. Y. Supp. 636; People *v.* American Ice Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 67, 105 N. Y. Supp. 650.

10. Kamber *v.* Ben Franklin Transp. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 640, 102 N. Y. Supp. 804.

175. 1. Newcomb *v.* Burbank, 159 Fed. 568.

3. Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32.

4. American Banana Co. *v.* United Fruit Co., 153 Fed. 943; Shaefer *v.* International Power Co., 157 Fed. 896.

176. 4. Consolidated Coal Co. *v.* Jones, etc., Co., 120 Ill. App. 139; State *v.* Standard Oil Co., 194 Mo. 124, 91 S. W. 1062; Dorris *v.* Morrisdale Coal Co., 215 Pa. St. 638, 64 Atl. 855; Lawson *v.* Black Diamond Coal Min. Co., 44 Wash. 26, 86 Pac. 1120; Boyd *v.* Marchment, 13 Ont. L. Rep. 468.

5. Sivins *v.* Mooney, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 66, 104 N. Y. Supp. 503.

177. 3. U. S. *v.* Terminal R. Assoc., 148 Fed. 486.

4. Nelson *v.* U. S., 201 U. S. 92, 26 U. S. Sup. Ct. 358.

Question of Relevancy Must Be Passed upon at Trial. — International Coal Min. Co. *v.* Pennsylvania R. Co., 152 Fed. 557.

5. Central of Georgia R. Co. *v.* Lewis, 2 Ga. App. 428, 58 S. E. 674.

8. Dorris *v.* Morrisdale Coal Co., 215 Pa. St. 638, 64 Atl. 855.

179. 2. Hammond Packing Co. *v.* State, 81 Ark. 519, 100 S. W. 407; *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790, *affirmed* in 207 U. S. 541, 28 U. S. Sup. Ct. 178.

Notice Is Unnecessary where the party is bound to know from the nature of the action that he is charged with the possession of the document, and will be required to produce it on the trial. Maffi *v.* Stephens, (Tex. Civ. App. 1906) 93 S. W. 158.

4. Dorris *v.* Morrisdale Coal Co., 215 Pa. St. 638, 64 Atl. 855.

180. 2. Knickerbocker Trust Co. *v.* Schroeder, (Supm. Ct. App. Div.) 109 N. Y. Supp. 1024.

4. American Banana Co. *v.* United Fruit Co., 153 Fed. 943.

181. 1. Affidavit of Ship's Papers May Be Compelled by Underwriter. — Harding *v.* Russell, (1905) 2 K. B. 83.

2. Sivins *v.* Mooney, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 66, 104 N. Y. Supp. 503.

7. National Distilling Co. *v.* Van Emden, 120 N. Y. App. Div. 746, 105 N. Y. Supp. 657.

12. Caldwell *v.* Mutual Reserve L. Ins. Co., 114 N. Y. App. Div. 377, 99 N. Y. Supp. 984; Mills *v.* Biscoe Lumber Co., 139 N. Car. 524, 52 S. E. 200. *Contra*, U. S. Casualty Co. *v.* John M. Robins Co., 108 N. Y. App. Div. 361, 95 N. Y. Supp. 726.

Business Books of Going Concern Will Not Be Compelled to Be Deposited in Court for Space of Time. — Harbaugh *v.* Middlesex Securities Co., 110 N. Y. App. Div. 633, 97 N. Y. Supp. 350.

182. 2. Harbaugh *v.* Middlesex Securities Co., 110 N. Y. App. Div. 633, 97 N. Y. Supp. 350.

183. 1. Harbaugh *v.* Middlesex Securities Co., 110 N. Y. App. Div. 633, 97 N. Y. Supp. 350; Crompton *v.* Dobbs, 119 N. Y. App. Div. 331, 104 N. Y. Supp. 698; Ryan *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 371.

3. Ormerod *v.* St. George's Ironworks, (1905) 1 Ch. 505.

Applicant Allowed to Photograph Documents. — Newcomb *v.* Burbank, 159 Fed. 568.

7. Injunction against Destruction of Documents. — U. S. Casualty Co. *v.* John M. Robins Co., 108 N. Y. App. Div. 361, 95 N. Y. Supp. 726.

8. Caldwell *v.* Mutual Reserve L. Ins. Co., 114 N. Y. App. Div. 377, 99 N. Y. Supp. 984.

10. Schlesinger *v.* Ellinger, (Wis. 1908) 114 N. W. 825.

12. Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32; Hammond Packing Co. *v.* State, 81 Ark. 519, 100 S. W. 407.

13. Cassatt *v.* Mitchell Coal, etc., Co., (C. C. A.) 150 Fed. 32.

14. Carter *v.* Southern R. Co., 3 Ga. App. 34, 59 S. E. 200.

184. 5. Officers of Corporation Are Not in Contempt When They Rely on Information Given by Subordinates. — Despeaux *v.* Pennsylvania R. Co., 149 Fed. 798.

PROFESSION — PROFESSIONAL.

185. 6. **The Profession of a Barrister** is a ***profession*** within a Canadian statute imposing a license tax. Victoria *v.* Belyea, 12 British Columbia 112.

Professional Instruments. — A safe, desk, and candelabra employed by an undertaker in his business are not ***professional*** instruments within a statute exempting such from execution. O'Reilly *v.* Erlanger, 108 N. Y. App. Div. 318, 95 N. Y. Supp. 760.

PROFITS.

189. 2. **Profits and Gains — English Income Tax.** — See Cooper *v.* Blakiston, (1907) 2 K. B. 688, 76 L. J. K. B. 1041.

190. 1. **Net Profits of Business.** — "As a simple and well-settled proposition, it may be said that the expression 'net ***profits*** of a business' is what remains after all legitimate expenses of the business have been paid." Arthur Jordan Co. *v.* Caylor, 36 Ind. App. 640, 76 N. E. 419.

PROHIBITION.

195. 1. Goodwin *v.* Wakefield, 145 Ala. 536, 40 So. 122; Goodwin *v.* State, 145 Ala. 536, 40 So. 123; Reese *v.* Steele, 73 Ark. 66, 83 S. W. 335; Stein *v.* Morrison, 9 Idaho 426, 75 Pac. 246; Tehan *v.* Brown, 191 Mass. 92, 77 N. E. 313; People *v.* Milliken, 185 N. Y. 35, 77 N. E. 872.

3. Stein *v.* Morrison, 9 Idaho 426, 75 Pac. 246; Tehan *v.* Brown, 191 Mass. 92, 77 N. E. 313; Taylor *v.* Bliss, 26 R. I. 16, 57 Atl. 939, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 195.

196. 2. Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

5. *Ex p.* State, (Ala. 1907) 43 So. 490; Port Huron Sav. Bank *v.* Law, 147 Mich. 551, 111 N. W. 202; State *v.* Sale, 188 Mo. 493, 87 S. W. 967; Turner *v.* Langan, (Nev. 1907) 88 Pac. 1088; People *v.* Smith, 184 N. Y. 96, 76 N. E. 925; People *v.* Goff, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 72, 98 N. Y. Supp. 66; State *v.* Fiske, 15 N. Dak. 219, 107 N. W. 191.

6. Johnston *v.* Superior Ct., 4 Cal. App. 90, 87 Pac. 211; Turner *v.* Langan, (Nev. 1907) 88 Pac. 1088; Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

7. Tehan *v.* Brown, 191 Mass. 92, 77 N. E. 313.

10. Beaulien Vineyard *v.* Superior Ct., (Cal. App. 1907) 91 Pac. 1015; Bragaw *v.* Gooding, (Idaho 1908) 94 Pac. 438; People *v.* Wyatt, 186 N. Y. 383, 79 N. E. 330; State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191; Davenport *v.* Elrod, (S. Dak. 1906) 107 N. W. 833; State *v.* Ross, 39 Wash. 399, 81 Pac. 865, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 196; State *v.* Superior Ct., (Wash. 1908) 94 Pac. 472.

11. Stein *v.* Morrison, 9 Idaho 426, 75 Pac. 246, *overruling* Williams *v.* Lewis, 6 Idaho 184, 54 Pac. 619.

197. 2. People *v.* Wyatt, 186 N. Y. 383, 79 N. E. 330.

4. Goodwin *v.* State, 145 Ala. 540, 40 So. 122, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 197.

Distinguished from Quo Warranto. — Davenport *v.* Elrod, (S. Dak. 1906) 107 N. W. 833.

6. *Arkansas.* — Reese *v.* Steele, 73 Ark. 66, 83 S. W. 335.

California. — Glide *v.* Superior Ct., 147 Cal. 21, 81 Pac. 225; Raini *v.* Lawlor, 1 Cal. App. 483, 82 Pac. 688; Dakan *v.* Superior Ct., 2 Cal. App. 52, 82 Pac. 1129; Cross *v.* Superior Ct., 2 Cal. App. 342, 83 Pac. 815; Johnston *v.* Superior Ct., 4 Cal. App. 90, 87 Pac. 211; McAneny *v.* Superior Ct., 150 Cal. 6, 87 Pac. 1020; Murphy *v.* Bantel, (Cal. App. 1907) 91 Pac. 805; Beaulien Vineyard *v.* Superior Ct., (Cal. App. 1907) 91 Pac. 1015.

Colorado. — People *v.* District Ct., 33 Colo. 293, 80 Pac. 908.

Idaho. — Stein *v.* Morrison, 9 Idaho 426, 75 Pac. 246; Gunderson *v.* District Ct., (Idaho 1908) 94 Pac. 166; Bragaw *v.* Gooding, (Idaho 1908) 94 Pac. 438.

Kentucky. — Bardstown *v.* Hurst, (Ky. 1902) 89 S. W. 147.

Massachusetts. — Tehan *v.* Brown, 191 Mass. 92, 77 N. E. 313.

Minnesota. — State *v.* Craig, 100 Minn. 352, 111 N. W. 3.

Missouri. — State *v.* Sale, 188 Mo. 493, 87 S. W. 967; State *v.* Hough, 193 Mo. 654, 92 S. W. 905; State *v.* Taylor, 193 Mo. 654, 91 S. W. 917; State *v.* Williams, 117 Mo. App. 564, 92 S. W. 151; State *v.* McElhinney, 199 Mo. 67, 97 S. W. 159; State *v.* Fort, (Mo. 1908) 109 S. W. 737; State *v.* Riley, 127 Mo. App. 469, 105 S. W. 696.

Montana. — State *v.* District Ct., 32 Mont. 394, 80 Pac. 673.

Nevada. — Turner *v.* Langan, (Nev. 1907) 88 Pac. 1088.

New York. — People *v.* Milliken, 185 N. Y. 35, 77 N. E. 872; People *v.* Wyatt, 186 N. Y. 383, 79 N. E. 330; People *v.* Butler, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 366, 103 N. Y. Supp. 329.

North Dakota. — State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191; Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

Washington. — State *v.* Superior Ct., 45 Wash. 248, 88 Pac. 207; Hindman *v.* Great Western Coal Development, etc., Co., (Wash. 1907) 89 Pac. 894; State *v.* Hinkle, (Wash. 1907) 91 Pac. 640.

West Virginia. — Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257.

Wyoming. — Keefe *v.* District Ct., (Wyo. 1908) 94 Pac. 459.

198. 1. *Alabama.* — *Ex p.* State, (Ala. 1907) 43 So. 490.

California. — Huntington *v.* Superior Ct., 5 Cal. App. 288, 90 Pac. 141; Lane *v.* Superior Ct., 5 Cal. App. 762, 91 Pac. 405.

Minnesota. — State *v.* Craig, 100 Minn. 352, 111 N. W. 3.

Missouri. — State *v.* Stobie, 194 Mo. 14, 92 S. W. 191; Carter *v.* Bolster, 122 Mo. App. 135, 98 S. W. 105; State *v.* Mortoni, 201 Mo. 1, 98 S. W. 554; State *v.* Hough, 193 Mo. 615, 91 S. W. 905; State *v.* Taylor, 193 Mo. 654, 91 S. W. 917.

New York. — People *v.* Davy, 105 N. Y. App. Div. 598, 94 N. Y. Supp. 1037; People *v.* Dunning, 113 N. Y. App. Div. 35, 98 N. Y. Supp.

1067; People *v.* Dayton, 120 N. Y. App. Div. 814, 105 N. Y. Supp. 809.

North Dakota. — State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191; Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

West Virginia. — Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 256; Bice *v.* Boothsville Telephone Co., (W. Va. 1907) 59 S. E. 501.

Wisconsin. — *In re* Potter, (Wis. 1907) 112 N. W. 1087.

199. 1. State *v.* Riley, 127 Mo. App. 469, 105 S. W. 696.

3. *United States.* — Alexander *v.* Crollett, 199 U. S. 580, 26 U. S. Sup. Ct. 161.

Alabama. — *Ex p.* State, (Ala. 1907) 43 So. 490.

California. — Kinard *v.* Police Ct., 2 Cal. App. 179, 83 Pac. 175; Beaulien Vineyard *v.* Superior Ct., (Cal. App. 1907) 91 Pac. 1015.

Idaho. — Gunderson *v.* District Ct., (Idaho 1908) 94 Pac. 166.

Missouri. — State *v.* Sale, 188 Mo. 493, 87 S. W. 967; State *v.* Hough, 193 Mo. 615, 91 S. W. 905; State *v.* Taylor, 193 Mo. 654, 91 S. W. 917. See also dissenting opinion of Marshall, J., in State *v.* Stobie, 194 Mo. 14, 92 S. W. 191, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 199.

New York. — People *v.* Court of General Sessions, 185 N. Y. 504, 78 N. E. 149; People *v.* Davy, 105 N. Y. App. Div. 598, 94 N. Y. Supp. 1037; People *v.* Court of General Sessions, 112 N. Y. App. App. Div. 424, 98 N. Y. Supp. 557.

North Dakota. — State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191; Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

Rhode Island. — Taylor *v.* Bliss, 26 R. I. 16, 57 Atl. 939.

West Virginia. — Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257.

200. 5. *Arkansas.* — Dunbar *v.* Wallace, 84 Ark. 231, 105 S. W. 257.

California. — Kitts *v.* Superior Ct., 5 Cal. App. 462, 90 Pac. 977; Woodworth *v.* Superior Ct., (Cal. 1908) 94 Pac. 232.

Idaho. — Bragaw *v.* Gooding, (Idaho 1908) 94 Pac. 438.

Kentucky. — Thomas *v.* Thompson, (Ky. 1907) 102 S. W. 849.

Louisiana. — Martel *v.* Jennings-Heywood Oil Syndicate, 115 La. 615, 39 So. 705.

Missouri. — State *v.* Stobie, 194 Mo. 14, 92 S. W. 191; State *v.* Riley, 203 Mo. 175, 101 S. W. 567; State *v.* Riley, 127 Mo. App. 469, 105 S. W. 696.

North Dakota. — Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 200.

Washington. — State *v.* Superior Ct., 45 Wash. 248, 88 Pac. 207.

West Virginia. — Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257.

Canada. — Vidal *v.* The Bar of Quebec, 27 Quebec Super. Ct. 115; Rex *v.* Phillips, 11 Ont. L. Rep. 478.

201. 1. *California.* — Hubbard *v.* Justices Ct., 5 Cal. App. 90, 89 Pac. 865.

Minnesota. — State *v.* Craig, 100 Minn. 352, 111 N. W. 3.

Missouri. — State *v.* Hough, 193 Mo. 615, 91 S. W. 905; State *v.* Taylor, 193 Mo. 654, 91 S. W. 917; State *v.* Williams, 117 Mo. App. 564, 92 S. W. 151.

Montana. — State *v.* District Ct., 32 Mont. 394, 80 Pac. 673.

Nevada. — Turner *v.* Langan, (Neb. 1907) 88 Pac. 1088.

New York. — People *v.* Smith, 184 N. Y. 96, 76 N. E. 925; Lenham Mercantile Co. *v.* Herke, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 310, 105 N. Y. Supp. 472.

North Dakota. — Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 200 [201].

Washington. — State *v.* Superior Ct., 40 Wash. 555, 82 Pac. 877.

202. 2. Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 200 [202].

203. 2. Kastor *v.* Elliott, 77 Ark. 148, 91 S. W. 8; Raine *v.* Lawlor, 1 Cal. App. 483, 82 Pac. 688; Johnston *v.* Superior Ct., 4 Cal. App. 90, 87 Pac. 211; State *v.* Craig, 100 Minn. 352, 111 N. W. 3; People *v.* Wyatt, 186 N. Y. 383, 79 N. E. 330; People *v.* Wyatt, 113 N. Y. App. Div. 111, 99 N. Y. Supp. 114; State *v.* Superior Ct., 45 Wash. 248, 88 Pac. 207; Hindman *v.* Great Western Coal Development, etc., Co., (Wash. 1907) 89 Pac. 894.

6. Goodwin *v.* Wakefield, 145 Ala. 536, 40 So. 122; Goodwin *v.* State, 145 Ala. 536, 40 So. 122; Washington County *v.* State, (Ala. 1907) 44 So. 465, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203; Reese *v.* Steele, 73 Ark. 66, 83 S. W. 335; Kalbfell *v.* Wood, 193 Mo. 675, 92 S. W. 230; State *v.* Witthoeft, 117 Mo. App. 625, 93 S. W. 284; State *v.* Goodier, 105 Mo. 551, 93 S. W. 928; State *v.* Ross, 39 Wash. 399, 81 Pac. 865; McWhorter *v.* Dorr, 57 W. Va. 608, 50 S. E. 838; Virginia-Pocahontas Coal Co. *v.* McDowell County Ct., 58 W. Va. 86, 51 S. E. 1; Campbell *v.* Doolittle, 58 W. Va. 317, 52 S. E. 260.

204. 3. Goodwin *v.* State, 145 Ala. 536, 40 So. 122; Washington County *v.* State, (Ala. 1907) 44 So. 465, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 204; Reese *v.* Steele, 73 Ark. 66, 83 S. W. 335, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 204; Stern *v.* Morrison, 9 Idaho 426, 75 Pac. 249; Kalbfell *v.* Wood, 193 Mo. 675, 92 S. W. 230; State *v.* Hawkins, (Mo. App. 1908) 109 S. W. 77; People *v.* Milliken, 185 N. Y. 35, 77 N. E. 872; State *v.* Ross, 39 Wash. 399, 81 Pac. 865; Virginia-Pocahontas Coal Co. *v.* McDowell County Ct., 58 W. Va. 86, 51 S. E. 1; Campbell *v.* Doolittle, 58 W. Va. 317, 52 S. E. 260.

5. Washington County *v.* State, (Ala. 1906) 44 So. 465, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 204; People *v.* Milliken, 185 N. Y. 35, 77 N. E. 872; McWhorter *v.* Dorr, 57 W. Va. 608, 50 S. E. 838.

205. 6. People *v.* District Ct., 33 Colo. 293, 80 Pac. 908; Taylor *v.* Bliss, 26 R. I. 16, 57 Atl. 939; McWhorter *v.* Dorr, 57 W. Va. 608, 50 S. E. 838; Keefe *v.* District Ct., (Wyo. 1908) 94 Pac. 459.

206. 3. Reese *v.* Steele, 73 Ark. 66, 83 S.

W. 335, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203.

4. Where it is shown that the city authorities are acting within the scope of their statutory authority the writ will be denied. Denning *v.* Moscow, 11 Idaho 415, 83 Pac. 339.

7. *In re* Theriot, (La. 1906) 42 So. 93; People *v.* Wyatt, 113 N. Y. App. Div. 111, 99 N. Y. Supp. 114.

207. 3. *United States.* — Alexander *v.* Crollott, 199 U. S. 580, 26 U. S. Sup. Ct. 161.

Alabama. — Goodwin *v.* Wakefield, 145 Ala. 536, 40 So. 122.

California. — Raine *v.* Lawlor, 1 Cal. App. 483, 82 Pac. 688; Cross *v.* Superior Ct., 2 Cal. App. 342, 83 Pac. 815; Dungan *v.* Superior Ct., 149 Cal. 98, 84 Pac. 767; Johnston *v.* Superior Ct., 4 Cal. App. 90, 87 Pac. 211; McAneny *v.* Superior Ct., 150 Cal. 6, 87 Pac. 1020; Hubbard *v.* Justices Ct., 5 Cal. App. 90, 89 Pac. 865; Reclamation Dist. No. 551 *v.* Superior Ct., 151 Cal. 263, 90 Pac. 545; Murphy *v.* Bantal, (Cal. App. 1907) 91 Pac. 805.

District of Columbia. — U. S. *v.* Scott, 25 App. Cas. (D. C.) 88; U. S. *v.* Barnard, 29 App. Cas. (D. C.) 431.

Michigan. — Port Huron Sav. Bank *v.* Law, 147 Mich. 551, 111 N. W. 202.

Missouri. — State *v.* Williams, 117 Mo. App. 564, 92 S. W. 151.

Nevada. — Bell *v.* First Judicial District Ct., 28 Nev. 280, 81 Pac. 875; Turner *v.* Langan, (Nev. 1907) 88 Pac. 1088.

New York. — People *v.* Wyatt, 186 N. Y. 383, 79 N. E. 330; People *v.* Wyatt, 113 N. Y. App. Div. 111, 99 N. Y. Supp. 114; People *v.* Butler, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 366, 103 N. Y. Supp. 329.

South Carolina. — Riley *v.* Greenwood, 72 S. Car. 90, 51 S. E. 532.

Washington. — State *v.* Superior Ct., 40 Wash. 555, 82 Pac. 877; State *v.* Superior Ct., 41 Wash. 128, 83 Pac. 14; State *v.* Hinkle, (Wash. 1907) 91 Pac. 640; State *v.* Superior Ct., (Wash. 1908) 94 Pac. 472.

Wyoming. — Keefe *v.* District Ct., (Wyo. 1908) 94 Pac. 459.

208. 1. Keefe *v.* District Ct., (Wyo. 1908) 94 Pac. 459.

2. Cross *v.* Superior Ct., 2 Cal. App. 342, 83 Pac. 815; Dungan *v.* Superior Ct., 149 Cal. 98, 84 Pac. 767; Johnston *v.* Superior Ct., 4 Cal. App. 90, 87 Pac. 211; State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191.

3. State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191; State *v.* Superior Ct., (Wash. 1907) 91 Pac. 639; State *v.* Superior Ct., (Wash. 1908) 94 Pac. 472.

209. 3. *United States.* — Alexander *v.* Crollott, 199 U. S. 580, 26 U. S. Sup. Ct. 161.

Alabama. — *Ex p.* State, (Ala. 1907) 43 So. 490.

Arkansas. — Kastor *v.* Elliott, 77 Ark. 148, 91 S. W. 8.

California. — Carr *v.* Superior Ct., 147 Cal. 227, 81 Pac. 515; Kinard *v.* Police Ct., 2 Cal. App. 179, 83 Pac. 175; Cross *v.* Superior Ct., 2 Cal. App. 342, 83 Pac. 815; Johnston *v.* Superior Ct., 4 Cal. App. 90, 87 Pac. 211; McAneny *v.* Superior Ct., 150 Cal. 6, 87 Pac. 1020; Hubbard *v.* Justices Ct., 5 Cal. App. 90, 89 Pac. 865; Herbert *v.* Superior Ct., (Cal. 1907) 91 Pac. 800.

Colorado. — People *v.* District Ct., 37 Colo. 440, 86 Pac. 322.

Kentucky. — Dupoyster *v.* Clarke, (Ky. 1906) 90 S. W. 1; Com. *v.* Peter, (Ky. 1908) 106 S. W. 206.

Louisiana. — Martel *v.* Jennings-Heywood Oil Syndicate, 115 La. 615, 39 So. 705; Josephson *v.* Powers, (La. 1908) 46 So. 206.

Missouri. — State *v.* Sale, 188 Mo. 493, 87 S. W. 967; State *v.* Hough, 193 Mo. 615, 91 S. W. 905; State *v.* Taylor, 193 Mo. 615, 91 S. W. 917; State *v.* Williams, 117 Mo. App. 564, 92 S. W. 151; State *v.* Stobie, 194 Mo. 14, 92 S. W. 191; State *v.* McElhinney, 199 Mo. 67, 97 S. W. 159; State *v.* Riley, 127 Mo. App. 469, 105 S. W. 696.

Nevada. — Turner *v.* Langan, (Nev. 1907) 88 Pac. 1088.

New York. — People *v.* Trial Term Part I., 184 N. Y. 30, 76 N. E. 732; People *v.* Wyatt, 186 N. Y. 383, 79 N. E. 330; People *v.* Wyatt, 113 N. Y. App. Div. 111, 99 N. Y. Supp. 114; People *v.* Butler, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 366, 103 N. Y. Supp. 329; Lenham Mercantile Co. *v.* Herke, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 310, 105 N. Y. Supp. 472.

Washington. — State *v.* Superior Ct., 40 Wash. 555, 82 Pac. 877; State *v.* Superior Ct., 41 Wash. 128, 83 Pac. 14; State *v.* Superior Ct., (Wash. 1907) 91 Pac. 639; State *v.* Hinkle, (Wash. 1907) 91 Pac. 640; State *v.* Superior Ct., (Wash. 1908) 94 Pac. 472.

West Virginia. — Grafton *v.* Holt, 58 W. Va. 182, 52 S. E. 21.

Canada. — Bastien *v.* Amyot, 15 Quebec K. B. 22.

210. 1. Hayes *v.* Oceanside, (Cal. App. 1907) 92 Pac. 492; People *v.* District Ct., 37 Colo. 440, 86 Pac. 322; State *v.* Sale, 188 Mo. 493, 87 S. W. 967; State *v.* Stobie, 194 Mo. 14, 92 S. W. 191; State *v.* McElhinney, 199 Mo. 67, 97 S. W. 159; People *v.* Smith, 184 N. Y. 96, 76 N. E. 925; Grafton *v.* Holt, 58 W. Va. 182, 52 S. E. 21.

2. State *v.* Stobie, 194 Mo. 14, 92 S. W. 191; People *v.* Butler, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 366, 103 N. Y. Supp. 329.

3. Carter *v.* Bolster, 122 Mo. App. 135, 98 S. W. 105.

211. 1. See dissenting opinion of Marshall, J., in State *v.* Stobie, 194 Mo. 14, 92 S. W. 191, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 210 [211].

3. Glide *v.* Superior Ct., 147 Cal. 21, 81 Pac. 225; Ophir Silver Min. Co. *v.* Superior Ct., (Cal. 1905) 82 Pac. 70; Dungan *v.* Superior Ct., 149 Cal. 98, 84 Pac. 767; Primm *v.* Superior Ct., 3 Cal. App. 208, 84 Pac. 786; State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191; Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

The right to an appeal is not always an adequate remedy, and does not always prevent relief by prohibition. Carter *v.* Bolster, 122 Mo. App. 135, 98 S. W. 105.

4. Primm *v.* Superior Ct., 3 Cal. App. 208, 84 Pac. 786; State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191; Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

212. 2. State *v.* Sale, 188 Mo. 493, 87 S. W. 967; Turner *v.* Langan, (Neb. 1907) 88 Pac. 1088; People *v.* Wyatt, 186 N. Y. 383, 79 N. E. 330; People *v.* Goff, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 72, 98 N. Y. Supp. 66; People *v.* Butler, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 366, 103 N. Y. Supp. 329; State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191; Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475; State *v.* Superior Ct., 43 Wash. 225, 86 Pac. 632. See also People *v.* West Shore Traction Co. *v.* Bauer, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 28, 103 N. Y. Supp. 1081.

213. 1. Turner *v.* Langan, (Neb. 1907) 88 Pac. 1088; People *v.* Goff, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 72, 98 N. Y. Supp. 66; State *v.* Fisk, 15 N. Dak. 219, 107 N. W. 191; Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

2. Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

3. Johnston *v.* Superior Ct., 4 Cal. App. 90, 87 Pac. 211; People *v.* District Ct., 37 Colo. 440, 86 Pac. 322; Turner *v.* Langan, (Nev. 1907) 88 Pac. 1088; People *v.* Smith, 184 N. Y. 96, 76 N. E. 925; People *v.* Wyatt, 186 N. Y. 383, 79 N. E. 330; People *v.* Goff, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 72, 98 N. Y. Supp. 66; People *v.* Wyatt, 113 N. Y. App. Div. 111, 99 N. Y. Supp. 114; People *v.* Butler, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 366, 103 N. Y. Supp. 329; Gaynor *v.* Greene, 9 Can. Crim. Cas. 240.

214. 3. Hickson *v.* Wilson, 2 N. W. Ter. 426.

215. 7. **District Courts.** — Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

9. People *v.* District Ct., 37 Colo. 443, 86 Pac. 87; Zinn *v.* District Ct., (N. Dak. 1908) 114 N. W. 475.

217. 2. Dunn *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 88 S. W. 532.

6. McWhorter *v.* Dorr, 57 W. Va. 608, 50 S. E. 838.

218. 4. The practice in issuing and enforcing the writ is regulated by statute, but its nature, object, and function, as well as the facts governing the issue thereof, are regulated by the common law. People *v.* Wyatt, 186 N. Y. 383, 79 N. E. 330.

221. 1. Primm *v.* Superior Ct., 3 Cal. App. 208, 84 Pac. 786.

8. **Court Commissioners** are subject to the writ to prevent them hearing any particular matter for want of jurisdiction. *In re* Potter, (Wis. 1907) 112 N. W. 1087.

10. Powhatan Coal, etc., Co. *v.* Ritz, 60 W. Va. 395, 56 S. E. 257, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221.

223. 1. Glide *v.* Superior Ct., 147 Cal. 21, 81 Pac. 225; Lane *v.* Superior Ct., 5 Cal. App. 762, 91 Pac. 405.

3. McWhorter *v.* Dorr, 57 W. Va. 608, 50 S. E. 838.

8. State *v.* Stobie, 194 Mo. 14, 92 S. W. 191, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 223.

224. 7. *Ex p.* State, (Ala. 1907) 43 So. 490.

225. 1. Glide *v.* Superior Ct., 147 Cal. 21, 81 Pac. 225; State *v.* Stobie, 194 Mo. 14, 92 S. W. 191.

2. State *v.* Riley, 127 Mo. App. 469, 105 S. W. 696.

3. Prohibition will not lie to prevent the suspension of an injunction pending an appeal. State *v.* Superior Ct., 43 Wash. 225, 86 Pac. 632.

227. 8. State *v.* Stobie, 194 Mo. 14, 92 S. W. 191.

229. 3. Dungan *v.* Superior Ct., 149 Cal. 98, 84 Pac. 767; Bardstown *v.* Hurst, (Ky. 1905) 89 S. W. 147.

6. State *v.* McElhinney, 199 Mo. 67, 97 S. W. 159; Baca *v.* Parker, 13 N. Mex. 466, 87 Pac. 465.

PROMISE.

231. 3. **Agreement and Promise Used Synonymously.** — Stern *v.* Smith, 225 Ill. 433, 80 N. E. 307, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 231.

PROMOTERS.

232. 1. Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; South Missouri Pine Lumber Co. *v.* Crommer, 202 Mo. 518, 101 S. W. 21, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 232; Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 494.

233. 2. South Missouri Pine Lumber Co. *v.* Crommer, 202 Mo. 518, 101 S. W. 22, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 233.

234. 2. State *v.* People's U. S. Bank, 197 Mo. 574, 94 S. W. 953.

5. A. J. Cranor Co. *v.* Miller, 147 Ala. 268, 41 So. 678; Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523; Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; Old Dominion Copper Min., etc., Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 653; Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722; Cuba Colony Co. *v.* Kirby, 149 Mich. 453, 112 N. W. 1133.

235. 2. **No Deception Where Promoters and Corporation Are the Same.** — Old Dominion Copper Min. Co. *v.* Lewisohn, 136 Fed. 915, *affirmed* in (C. C. A.) 148 Fed. 1020.

3. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523; Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; Old Dominion Copper Min., etc., Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 653; See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843; Hall *v.* Grayson County Nat. Bank, 36 Tex. Civ. App. 330, 81 S. W. 762, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 239.

May Buy Property upon Which Corporation's Option Has Expired. — Gillett *v.* Dodge, (Oregon 1907) 89 Pac. 741.

4. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523; Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; Old Dominion Copper Min., etc., Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 653; Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722; Cuba Colony Co. *v.* Kirby, 149 Mich. 453, 112 N. W. 1133; See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843; Groel *v.* United Electric Co., 70 N. J. Eq. 616,

61 Atl. 1061; Arnold *v.* Searing, (N. J. 1907) 67 Atl. 831.

236. 8. **When Expenses Cannot Be Retained.** — Where the promoters represented to their associates that there was to be no allowance for promotion expenses, and such representations were believed, they are not entitled to them. Cuba Colony Co. *v.* Kirby, 149 Mich. 453, 112 N. W. 1133.

237. 7. Marshalltown First Nat. Bank *v.* Church Federation of America, 129 Iowa 268, 105 N. W. 578.

239. 4. Hall *v.* Grayson County Nat. Bank, 36 Tex. Civ. App. 330, 81 S. W. 762, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 239.

9. Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 494.

241. 3. Robbins *v.* Bangor R., etc., Co., 100 Me. 501, 62 Atl. 136, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 241.

242. 1. **Compensation Cannot Be Enforced** by promoters for advancements made, or services rendered, to a corporation, before organization, when rendered with no view to such reimbursement or compensation. Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629.

Corporation Not Bound by Contract between Promoters Prior to Organization. — Miser Gold Min., etc., Co. *v.* Moody, 37 Colo. 310, 86 Pac. 335.

6. Wasser *v.* Western Land Securities Co., 97 Minn. 460, 107 N. W. 160; Bond *v.* Pike, 101 Minn. 129, 111 N. W. 916, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 242; Chilcott *v.* Washington State Colonization Co., 45 Wash. 148, 88 Pac. 113.

Claim for Services as Trustee Not Inconsistent with Claim for Promotion. — Boice *v.* Jones, 106 N. Y. App. Div. 547, 94 N. Y. Supp. 896.

Corporation Not Liable unless It Adopts Contract. — Jones *v.* Smith, (Tex. Civ. App. 1905) 87 S. W. 210.

7. Central Trust Co. *v.* Lappe, 216 Pa. St. 549, 65 Atl. 1111; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 666, 50 S. E. 890, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 242.

Adoption and Ratification Necessary to Bond Corporation. — Tuttle *v.* George A. Tuttle Co., 101 Me. 287, 64 Atl. 496.

243. 1. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523.

6. Marshalltown First Nat. Bank *v.* Church Federation of America, 129 Iowa 268, 105 N. W. 578.

244. 2. Bonsall *v.* Platt, (C. C. A.) 153 Fed. 126; Streator Independent Telephone Co. *v.* Continental Telephone Constr. Co., 217 Ill. 577, 75 N. E. 546; Pearsall *v.* Tennessee Cent. R. Co., 2 Tenn. Ch. App. 682; Jones *v.* Smith, (Tex. Civ. App. 1905) 87 S. W. 210.

4. Possell *v.* Smith, 39 Colo. 127, 88 Pac. 1064; Mulvihill *v.* Vicksburg R., etc., Co., 88 Miss. 689, 40 So. 647.

PROMOTION.

245. 3. **Promotion.** — An increase in compensation though the character of the work is not changed is a *promotion* within a constitutional provision that *promotions* in civil service must be for merit. *In re* Dryer, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 612, 102 N. Y. Supp. 922.

PROMPTLY.

245. 6. **Promptly Equivalent to Reasonable Time — Shipment of Cotton.** — McCleskey *v.* Howell Cotton Co., 147 Ala. 573, 42 So. 67.

PROOF OF OTHER CRIMES.

247. 4. *United States.* — Williamson *v.* U. S., 28 U. S. Sup. Ct. 163, 207 U. S. 425.

District of Columbia. — Ryan *v.* U. S., 26 App. Cas. (D. C.) 74, 6 Ann. Cas. 633.

Georgia. — Nesbit *v.* State, 125 Ga. 51, 54 S. E. 195; Alsobrook *v.* State, 126 Ga. 100, 54 S. E. 805.

Illinois. — Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310.

Indian Territory. — Clampitt *v.* U. S., 6 Indian Ter. 92, 89 S. W. 666.

Iowa. — State *v.* Levich, 128 Iowa 372, 104 N. W. 334.

Kentucky. — Raymond *v.* Com., 96 S. W. 515, 29 Ky. L. Rep. 785; Meadows *v.* Com., (Ky. 1907) 104 S. W. 954.

Nebraska. — Nickolizack *v.* State. (Neb. 1905) 105 N. W. 895; State *v.* Sparks, (Neb. 1907) 113 N. W. 154.

New Jersey. — State *v.* Newman, 73 N. J. L. 202, 64 Atl. 1008.

New York. — People *v.* Sekeson, 111 N. Y. App. Div. 490, 97 N. Y. Supp. 917; People *v.* Dixon, 118 N. Y. App. Div. 593, 103 N. Y. Supp. 186; People *v.* Spier, 120 N. Y. App. Div. 786, 105 N. Y. Supp. 741.

North Carolina. — State *v.* Hazlett, (N. Dak. 1907) 113 N. W. 374.

Oklahoma. — Cecil *v.* Territory, 16 Okla. 197, 82 Pac. 654.

Texas. — Baughman *v.* State, 49 Tex. Crim. 33, 90 S. W. 166; Swalm *v.* State, 49 Tex. Crim. 241, 91 S. W. 575; Bryan *v.* State, 49 Tex Crim. 200, 91 S. W. 581; Jordan *v.* State, (Tex. Crim. 1906) 96 S. W. 35; Johnson *v.* State, (Tex. Crim. 1906) 96 S. W. 45; Harris *v.* State, (Tex. Crim. 1906) 97 S. W. 704; Lightfoot *v.* State, (Tex. Crim. 1907) 106 S. W. 347.

Virginia. — Haynes *v.* Com., 104 Va. 854, 52 S. E. 358; Devine *v.* Com., (Va. 1907) 60 S. E. 37.

248. 2. State *v.* Lancaster, 10 Idaho 413, 78 Pac. 1081, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 248.

Connection between Crimes Must Clearly Appear. — People *v.* Cook, 148 Cal. 334, 83 Pac. 43; Hinson *v.* State, (Tex. Crim. 1907) 100 S. W. 939.

Connection Not Established. — State *v.* Oppenheimer, 41 Wash. 630, 84 Pac. 588.

249. 4. People *v.* Cook, 148 Cal. 334, 83 Pac. 43.

250. 9. **Aiding and Abetting a Criminal Offense.** — Brown *v.* U. S., 142 Fed. 1, 73 C. C. A. 187.

Attempting to Poison Animals. — State *v.* Sargood, 80 Vt. 412, 68 Atl. 51.

Burglary. — State *v.* Toohey, 203 Mo. 674, 102 S. W. 530.

Conspiracy to Blackmail. — Sacock *v.* State, (Ind. 1907) 82 N. E. 1039.

Extortion. — People *v.* Weinseimer, 117 N. Y. App. Div. 603, 102 N. Y. Supp. 579; State *v.* Louanis, 79 Vt. 463, 65 Atl. 532.

False Pretences. — State *v.* Gibson, 132 Iowa 53, 106 N. W. 270; State *v.* Sparks, (Neb. 1908) 114 N. W. 598.

Forgery. — Dillard *v.* U. S., 141 Fed. 303, 72 C. C. A. 451; Pittman *v.* State, 51 Fla. 94, 41 So. 385; State *v.* Calhoun, 75 Kan. 259, 88 Pac. 1079; State *v.* Stark, 202 Mo. 210, 100 S. W. 642; People *v.* Dolan, 186 N. Y. 4, 78 N. E. 560.

Fraud. — State *v.* Roberts, 201 Mo. 702, 100 S. W. 484; State *v.* Talley, 77 S. Car. 99, 57 S. E. 618.

Fraud Effected by Means of Post-office Department. — U. S. *v.* Dexter, 154 Fed. 890.

Illegal Registration. — Com. *v.* Valverdi, 218 Pa. St. 7, 66 Atl. 877.

Keeping Intoxicating Liquors. — Taggart *v.* State, (Tex. Crim. 1906) 97 S. W. 95.

Kidnapping. — See *contra*, State *v.* Holland, (La. 1907) 45 So. 380.

Larceny. — Johnson *v.* State, 75 Ark. 427, 88 S. W. 905; Young *v.* U. S., (Indian Ter. 1907) 103 S. W. 771; State *v.* Rea, 46 Oregon 620, 81 Pac. 822; Reagan *v.* State, 49 Tex. Crim. 442, 93 S. W. 733; Watters *v.* State, (Tex. Crim. 1906) 94 S. W. 1038; Penrice *v.* State, (Tex. Crim. 1907) 105 S. W. 797.

251. 1. State *v.* Conlin, 45 Wash. 478, 88 Pac. 932.

252. 1. Rex *v.* Wyatt, (1904) 1 K. B. 188, 73 L. J. K. B. 15, 52 W. R. 285, 68 J. P. 31, 20 Cox Cr. Cas. 462, 20 Times L. Rep. 68; Rex *v.* Smith, 92 L. T. N. S. 208, 69 J. P. 51.

253. 4. Thompson *v.* U. S., (C. C. A.) 144 Fed. 18, 7 Ann. Cas. 62, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 253; Van Gesner *v.* U. S., 153 Fed. 46, 82 C. C. A. 180; Thomas *v.* U. S., (C. C. A.) 156 Fed. 897; Sanderson *v.* State, (Ind. 1907) 82 N. E. 525; Eacock *v.* State, (Ind. 1907) 82 N. E. 1039; Carpenter *v.* Com., 92 S. W. 553, 29 Ky. L. Rep. 100; Com. *v.* Everson, 96 S. W. 460, 29 Ky. L. Rep. 760; Greenwell *v.* Com., 100 S. W. 852, 30 Ky. L. Rep. 1282; State *v.* Dickerson, 77 Ohio St. 34, 82 S. E. 969; Menefee *v.* State, (Tex. Crim. 1906) 97 S. W. 486; Grabowski *v.* State, 126 Wis. 447, 105 N. W. 805.

254. 3. Untreiner *v.* State, 146 Ala. 133, 41 So. 170; Dillard *v.* State, (Ala. 1907) 44 So. 537; People *v.* Harben, 5 Cal. App. 29, 91 Pac. 398; State *v.* Bailey, 190 Mo. 257, 88 S. W. 733; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55; State *v.* Roberts, 28 Nev. 350, 82 Pac. 100.

255. 1. Cook *v.* State, 80 Ark. 495, 97 S. W. 683.

2. People *v.* Harben, 5 Cal. App. 29, 91 Pac. 308; State *v.* Peterson, 98 Minn. 210, 108 N. W. 6; State *v.* Bailey, 190 Mo. 257, 88 S. W. 733; State *v.* Newman, 34 Mont. 434, 87 Pac. 462; Walker *v.* State, 49 Tex. Crim. 345, 94 S. W. 230; Holland *v.* State, (Tex. Crim. 1907) 101 S. W. 1005; Rex *v.* Wyatt, (1904) 1 K. B. 188, 73 L. J. K. B. 15, 52 W. R. 285, 68 J. P. 31, 20 Cox Cr. Cas. 462, 20 Times L. Rep. 53.

256. 1. Echols *v.* State, 147 Ala. 700, 41 So. 298; Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310; State *v.* Anderson, (La. 1907) 45 So. 267; State *v.* Sykes, 191 Mo. 62, 89 S. W. 851; State *v.* Cavin, 199 Mo. 154, 97 S. W. 573; State *v.* Vaughan, 200 Mo. 1, 98 S. W. 2; Alarcon *v.* State, (Tex. Crim. 1905) 90 S. W. 179; Davis *v.* State, (Tex. Crim. 1905) 90 S. W. 646; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100; Nelson *v.* State, (Tex. Crim. 1907) 101 S. W. 1012.

2. Bradford *v.* State, 147 Ala. 95, 41 So. 462; Stapleton *v.* State, 80 Ark. 617, 97 S. W. 296; Renfroe *v.* State, 84 Ark. 16, 104 S. W. 542; People *v.* McClure, 148 Cal. 418, 83 Pac. 437; McKinney *v.* State, 49 Tex. Crim. 591, 96 S. W. 48.

PROPER.

257. 1. **Proper Time for Avoiding Option Equivalent to Reasonable Time.** — City Nat. Bank *v.* Merchants', etc., Nat. Bank, (Tex. Civ. App. 1907) 105 S. W. 338.

PROPERTY.

260. 2. Crocker *v.* Scott, 149 Cal. 575, 87 Pac. 102; Terrace Water Co. *v.* San Antonio Light, etc., Co., 1 Cal. App. 511, 82 Pac. 562; Daly Bank, etc., Co. *v.* Silver Bow County, 33 Mont. 101, 81 Pac. 950.

Under a Transfer Tax Act the term includes all property over which the state has jurisdiction for the purposes of taxation. *In re* Stanton, 142 Mich. 491, 105 N. W. 1122.

Includes Everything of Exchangeable Value. — Fishburn *v.* Londershausen, (Oregon 1907) 92 Pac. 1060.

Term Does Not Mean Earning Capacity within Meaning of Alimony Statute. — Jackson *v.* Burns, 116 La. 695, 41 So. 40.

Debtor's Right to Earn Wages in Future Not Property under Bankruptcy Act. — *In re* Home Discount Co., 147 Fed. 538.

A Slot Machine incapable of use for any purpose except in violation of the anti-gambling law has been held not to be property within a constitutional provision against deprivation of property without due process of law. Mullen *v.* Mosley, 13 Idaho 457, 90 Pac. 986.

262. 2. Young *v.* Norris Peters Co., 27 App. Cas. (D. C.) 140.

Term Means Real as Well as Personal Property under Statute Governing Supplementary Proceedings. — Mede *v.* Meyer, (N. Y. City Ct. Spec. T.) 55 Misc. (N. Y.) 621, 105 N. Y. Supp. 957.

264. 1. **Lessee's Term Considered Property.** — Detroit *v.* C. H. Little Co., 141 Mich. 637, 104 N. W. 1108.

5. Richards *v.* Riverside Ironworks, 56 W. Va. 510, 49 S. E. 437; Clawson *v.* State, 129 Wis. 650, 109 N. W. 578.

265. 3. Clawson *v.* State, 129 Wis. 650, 109 N. W. 578.

Draft Property within Meaning of Garnishment Law. — Washington Brick, etc., Co. *v.* Traders' Nat. Bank, 46 Wash. 23, 89 Pac. 157.

5. Crocker *v.* Scott, 149 Cal. 575, 87 Pac. 102; Daly Bank, etc., Co. *v.* Silver Bow County, 33 Mont. 101, 81 Pac. 950.

8. Crocker *v.* Scott, 149 Cal. 575, 87 Pac. 102; Daly Bank, etc., Co. *v.* Silver Bow County, 33 Mont. 101, 81 Pac. 950.

PROSECUTE — PROSECUTION.

269. 1. Johnson *v.* Seaboard Air Line R. Co., 73 S. Car. 36, 52 S. E. 644.

PROSECUTING AND DISTRICT ATTORNEYS.

271. 2. Fleming *v.* Hance, (Cal. 1908) 94 Pac. 620; State *v.* Labry, (La. 1908) 45 So. 382.

272. 6. **United States Assistant District Attorneys** appointed under statute are officers of the courts of the United States for their respective districts. *In re* Leaken, 137 Fed. 680.

8. Cook County *v.* Healy, 222 Ill. 310, 78 N. E. 623.

12. State *v.* Miller, 132 Iowa 587, 109 N. W. 1087.

15. People *v.* Lindsley, 37 Colo. 476, 86 Pac. 352.

273. 2. U. S. *v.* Mitchell, 136 Fed. 896.

5. **Where the State Attorney Refuses to Act** the court may appoint another attorney to appear before the grand jury and act as state attorney. Taylor *v.* State, 49 Fla. 69, 38 So. 380.

Under the Iowa Statute an attorney may be appointed by the court to act in place of the county attorney in a matter in which the latter is personally interested, but not in a matter in which no such interest exists. State *v.* Miller, 132 Iowa 587, 109 N. W. 1087.

7. **Verbal Authority to Represent County Attorney.** — Murrey *v.* State, 48 Tex. Crim. 219, 87 S. W. 349.

274. 5. **A District Attorney Engaged in the Undisturbed Conduct of His Office** cannot be attacked as to his right to hold that office in a collateral proceeding. U. S. *v.* Mitchell, 136 Fed. 896.

16. State *v.* Hays, (W. Va. 1908) 61 S. E. 355.

Power of Removal Lodged in Governor by Constitution. — Taylor *v.* State, 49 Fla. 69, 38 So. 380.

For an Example of Suspension for misconduct in making a misleading statement in court, the suspension, however, not applying to official duties, see *In re* Maestretti, (Nev. 1908) 93 Pac. 1004.

18. **Indictment and Conviction Not Necessary before Removal.** — State *v.* Hays, (W. Va. 1908) 61 S. E. 355.

275. 8. Logan County *v.* State Capital Co., 16 Okla. 625, 86 Pac. 518.

9. Taylor *v.* State, 49 Fla. 69, 38 So. 380; County Com'rs *v.* Bassett, (Idaho 1908) 93 Pac. 774; State *v.* Labry, (La. 1908) 45 So. 382; Howth *v.* Greer, (Tex. Civ. App. 1905) 90 S. W. 211; Upton *v.* San Angelo, (Tex. Civ. App. 1906) 94 S. W. 436.

276. 2. See People *v.* Neff, 121 N. Y. App. Div. 44, 105 N. Y. Supp. 559, *affirmed* 191 N. Y. 286, 84 N. E. 63.

9. Gray *v.* District Ct., (Colo. 1908) 94 Pac. 287; Taylor *v.* State, 49 Fla. 69, 38 So. 380, *per* Taylor, J., *dissenting, citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 276.

12. Adams *v.* State, (Ala. 1907) 45 So. 494; White *v.* State, 127 Ga. 273, 56 S. E. 425; Isaac *v.* U. S., (Indian Ter. 1907) 104 S. W. 588; Jamison *v.* U. S., (Indian Ter. 1907) 104 S. W. 872; People *v.* Peck, 147 Mich. 84, 110 N. W. 495; Richberger *v.* State, (Miss. 1907) 44 So. 772; Schultz *v.* State, (Wis. 1907) 113 N. W. 428;. See also Browning *v.* State, 84 Ark. 131, 104 S. W. 1099; Carroll *v.* Com., (Ky. 1906) 92 S. W. 308.

13. Renfroe *v.* State, 84 Ark. 16, 104 S. W. 542; Griffith *v.* State, (Ga. App. 1908) 60 S. E. 277; Lake *v.* Com., (Ky. 1907) 104 S. W. 1003; Begley *v.* Com., (Ky. 1908) 107 S. W. 243; State *v.* Bennett, (S. Dak. 1907) 113 N. W. 78; State *v.* Landers, (S. Dak. 1908) 114 N. W. 717.

277. 10. Teague *v.* State, 144 Ala. 42, 40 So. 312; State *v.* Mathews, 133 Iowa 398, 109 N. W. 616.

11. County Com'rs *v.* Bassett, (Idaho 1908) 93 Pac. 774; Logan County *v.* State Capital Co., 16 Okla. 625, 86 Pac. 518; Upton *v.* San Angelo, (Tex. Civ. App. 1906) 94 S. W. 436.

12. **Not Required to Appear in Federal Courts or Courts of Other States.** — Slayton *v.* Rogers, (Ky. 1908) 107 S. W. 696.

13. County Com'rs *v.* Bassett, (Idaho 1908) 93 Pac. 774; Breckinridge County *v.* Rhodes, (Ky. 1907) 105 S. W. 903, holding that no order of the county or fiscal court was necessary to authorize the county attorney to appeal from an award of damages in a highway proceeding.

278. 7. Kerby *v.* Clay County, 71 Kan. 683, 81 Pac. 503.

21. Figures *v.* State, (Tex. Civ. App. 1907) 99 S. W. 412 (notary public).

May Be Appointed to Settle Sheriff's Accounts and County Indebtedness. — Slayton Rogers, (Ky. 1908) 107 S. W. 696 (in absence of statute providing otherwise).

22. State *v.* Labry, (La. 1908) 45 So. 382.

279. 4. **Cannot Bind County by Offering Reward for Evidence.** — McNeil *v.* Suffolk County, 114 N. Y. App. Div. 761, 100 N. Y. Supp. 239.

11. State *v.* Wilson, 200 Mo. 23, 98 S. W. 68.

Arkansas — Deputy's Duties Lie Wholly within Courts of Justices of Peace. — Cobb *v.* Scoggin, (Ark. 1908) 107 S. W. 188.

Deputy May Sign Principal's Name to Indictment. — State *v.* Mathews, 133 Iowa 398, 109 N. W. 616.

12. **Oath Not Necessary.** — State *v.* Cato, 116 La. 195, 40 So. 633, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 279.

14. **Legislature May Provide against Compensation in Certain Courts.** — Howth *v.* Greer, (Tex. Civ. App. 1905) 90 S. W. 211; Upton *v.* San Angelo, (Tex. Civ. App. 1906) 94 S. W. 436.

Unconstitutional Statute. — An *Ohio* statute fixing the compensation of prosecuting attorneys throughout the state was held unconstitutional for want of uniformity. State *v.* Lucas County, 28 Ohio Cir. Ct. 170.

280. 2. See State *v.* Miller, 132 Iowa 587, 109 N. W. 1087.

8. Prosecuting Attorney Held to Be State Officer within Constitutional Provision Limiting Compensation. — Griffin *v.* Rhoton, (Ark. 1907) 107 S. W. 380.

Both Salary and Fees — Rights of State Attorney of Cook County, Ill. — See Cook County *v.* Healy, *222* Ill. 310, 78 N. E. 623.

The Louisiana Statute of 1880 regulates the whole matter of compensation of district attorneys and limits them to one fee in a case. State *v.* Henderson, (La. 1907) 45 So. 430.

282. 5. No Commissions on Collections under Judgment Recovered by Predecessor. — Hernn *v.* Sharp County, 81 Ark. 33, 98 S. W. [illegible].

283. 1. May Receive Pay for Services Outside of Official Duties. — Slayton *v.* Rogers, (Ky. 1908) 107 S. W. 696; People *v.* Delaware County, 108 N. Y. App. Div. 83, 95 N. Y. Supp. 458; Bates *v.* School Dist. No. 10, 45 Wash. 498, 88 Pac. 944.

Extra Pay Allowed for Appearing in Federal Court on Behalf of County. — Nichols *v.* Shawnee County, 76 Kan. 266, 91 Pac. 79.

3. Hill *v.* Butler County, 195 Mo. 511, 94 S. W. 518; People *v.* Neff, 121 N. Y. App. Div. 44, 105 N. Y. Supp. 559, *affirmed* 191 N. Y. 286, 84 N. E. 63; Nelson *v.* Beaver County, (Pa. 1908) 68 Atl. 832.

5. Teller County *v.* Trowbridge, (Colo. 1908) 95 Pac. 554.

6. On the Removal of a Case out of the county in which the indictment was found, it has been held that the judge of the county of trial had no authority to fix the compensation of an assistant appointed in the county of indictment. People *v.* Neff, 191 N. Y. 286, 84 N. E. 63.

7. Elliott *v.* Jackson County, 194 Mo. 532, 92 S. W. 480.

No Compensation for Acts Done under Invalid Appointment. — State *v.* Miller, 132 Iowa 587, 109 N. W. 1087.

Where a Deputy Was Authorized to Appear Only in Magistrates' Courts, it was held that an agreement between him and his principal for the performance of services generally and for a division of all fees accruing to the principal was void. Cobb *v.* Scoggin, (Ark. 1908) 107 S. W. 188.

15. Payment Out of City Treasury — California Statute Discussed. — See Fleming *v.* Hance, (Cal. 1908) 94 Pac. 620.

PROSTITUTE — PROSTITUTION.

287. 2. Van Dalsen *v.* Com., (Ky. 1905) 89 S. W. 255.

PROVISO — PROVIDED.

292. 1. Proviso. — See State *v.* Bryan, 50 Fla. 293, 39 So. 929.

PROXIES.

297. 7. A seal is not necessary to give a proxy validity. Hankins *v.* Newell, (N. J. 1907) 66 Atl. 929.

298. 9. *In re* P. B. Mathiason Mfg. Co., 122 Mo. App. 437, 99 S. W. 502.

299. 7. *In re* P. B. Mathiason Mfg. Co., 122 Mo. App. 437, 99 S. W. 502.

8. *In re* P. B. Mathiason Mfg. Co., 122 Mo. App. 437, 99 S. W. 502.

PUBLIC.

304. 1. Public Service Corporation — Gas Company. — See Vanderberg *v.* Kansas City Mo. Gas. Co., 126 Mo. App. 600, 105 S. W. 17.

PUBLICATION.

308. 5. Designation of Particular Newspaper. — The designation of a paper as the "Pittsburg Gazette" authorizes publication in the "Pittsburg Gazette Times," there being no paper of the former name. Sheraden Borough, 34 Pa. Super. Ct. 639.

309. 5. "The General Rule of Law is that when a statute designates the mode in which due publication of a notice shall be proved, this mode is the only one for making the proof." Harbert *v.* Durden, 116 Mo. App. 512, 92 S. W. 746.

PUBLIC OFFICERS.

322. 1. The definition given in the original text has been cited and quoted in the following cases: Rouse *v.* Thompson, *228* Ill. 522, 81 N. E. 1109 (dissenting opinion); State *v.* Theus, 114 La. 1097, 38 So. 870; State *v.* Maroney, 191 Mo. 531, 90 S. W. 141. For other cases to the same effect, see *In re* Opinion of Justices, 73 N. H. 621, 62 Atl. 969; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

Blackstone's Definition. — See State *v.* Corcoran, 206 Mo. 1, 103 S. W. 1044.

Justice Swayne's Definition. — See Porter *v.* Murphy, (Indian Ter. 1907) 104 S. W. 658.

Other Definitions. — Lucas *v.* Futrall, 84 Ark. 540, 106 S. W. 667; Monette *v.* State, (Miss. 1907) 44 So. 989; Yerger *v.* State, (Miss. 1908) 45 So. 849; State *v.* Harter, 188 Mo. 516, 87 S. W. 941; People *v.* Warner, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 279; Wootton *v.* Smith, (N. Car. 1907) 59 S. E. 649; State *v.* McGonagle, 26 Ohio Cir. Ct. 685; Com. *v.* Booth, 16 Pa. Dist. 929; State *v.* Graham, (S. Car. 1908) 60 S. E. 431.

Office Defined. — Tanner *v.* Edwards, 31 Utah 80, 86 Pac. 765.

Public Officer Agent of Public. — Kloeb *v.* Mercer County, 26 Ohio Cir. Ct. 152.

2. State *v.* Theus, 114 La. 1097, 38 So. 870, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 322; State *v.* Maroney, 191 Mo. 531, 90 S. W. 141, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 322.

3. Smith *v.* Van Buren County, 125 Iowa 454, 101 N. W. 186, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 322; State *v.* Theus, 114 La. 1097, 38 So. 870, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 322; People *v.* Cahill, 188 N. Y. 489, 81 N. E. 453, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 322; Palmer *v.* Zeigler, 76 Ohio St. 210, 81 N. E. 234; Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 322.

4. State *v.* Theus, 114 La. 1097, 38 So. 870, *citing* 23 Am. and Eng. Encyc. of Law (2d

ed.) 322; State *v.* Coon, 26 Ohio Cir. Ct. 241, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 322, 323; State *v.* Grant, 12 Wyo. 1, 73 Pac. 470.

323. 3. *In re* Members of Legislature, (Fla. 1905) 39 So. 63. See also dissenting opinion in Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 322.

5. Lucas *v.* Futrall, 84 Ark. 540, 106 S. W. 667, *citing* 21 [23] AM. AND ENG. ENCYC. OF LAW (2d ed.) 322–324.

7. State *v.* Coon, 26 Ohio Cir. Ct. 241, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 322, 323.

8. Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762.

324. 1. Lucas *v.* Futrall, 84 Ark. 540, 106 S. W. 667; Porter *v.* Murphy, (Indian Ter. 1907) 104 S. W. 658; Yerger *v.* State, (Miss. 1908) 45 So. 849; Padden *v.* New York, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 517, 92 N. Y. Supp. 926; People *v.* Warner, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 279; Wootton *v.* Smith, (N. Car. 1907) 59 S. E. 649; State *v.* Gilfillan, 15 Ohio Dec. 756; State *v.* McGonagle, 26 Ohio Cir. Ct. 685; Com. *v.* Booth, 16 Pa. Dist. 929; Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762.

2. *In re* Opinion of Justices, 73 N. H. 621, 62 Atl. 969; People *v.* Cahill, 188 N. Y. 489, 81 N. E. 453; Wootton *v.* Smith, (N. Car. 1907) 59 S. E. 649; Hutchinson *v.* Lima, 16 Ohio Dec. 309; Greenough *v.* Lucey, (R. I. 1907) 66 Atl. 300.

3. **Who Are Public Officers** — *Assistant District Attorneys.* — *In re* Leaken, 137 Fed. 680.

Chief Inspector of Grain. — State *v.* Knott, 207 Mo. 167, 105 S. W. 1040.

City Comptroller. — People *v.* Miles, (Supm. Ct. App. Div.) 108 N. Y. Supp. 510.

Clerk of Board of Education. — State *v.* Coon, 26 Ohio Cir. Ct. 241.

Clerk of Board of Trustees of Penitentiary. — Yerger *v.* State, (Miss. 1908) 45 So. 849.

Coroner. — People *v.* Warner, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 279.

County Auditor. — Kloeb *v.* Mercer County, 26 Ohio Cir. Ct. 152; Wyoming County Auditors, 14 Pa. Dist. 539.

County Commissioners. — Campbell County *v.* Overby, (S. Dak. 1906) 108 N. W. 247.

County Superintendent of Schools. — State *v.* Huegle, (Iowa 1907) 112 N. W. 234.

County Supervisor of Assessment. — State *v.* Samuelson, 131 Wis. 499, 111 N. W. 712.

Court Clerk. — State *v.* Williams, 39 Ind. App. 376, 77 N. E. 1137.

Court Stenographer. — Dull *v.* Mammoth Min. Co., 28 Utah 467, 79 Pac. 1050.

Deputy Sheriff. — State *v.* Seagle, 115 Tenn. 336, 89 S. W. 326.

Dog-Catcher. — Casey *v.* Scott, 82 Ark. 362, 101 S. W. 1152.

Highway Agent and Town Selectman. — O'Brien *v.* Derry, 73 N. H. 198, 60 Atl. 843.

Judges and Clerks of Election. — State *v.* Maroney, 191 Mo. 531, 90 S. W. 141.

Jury Commissioners. — State *v.* McClendon, 118 La. 792, 43 So. 417.

Member of Fire Department. — Padden *v.* New York, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 517, 92 N. Y. Supp. 926; Lynch *v.* North Yakima, 37 Wash. 657, 80 Pac. 79.

Notary Public. — *In re* Opinion of Justices, 73 N. H. 621, 62 Atl. 969.

Parish Superintendent of Public Education. — State *v.* Theus, 114 La. 1097, 38 So. 870, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 324.

Policeman. — Monette *v.* State, (Miss. 1907) 44 So. 989.

Poorhouse Superintendent. — Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762.

Public Administrator. — Los Angeles Co. *v.* Kellogg, 146 Cal. 590, 80 Pac. 861.

Register. — State *v.* Green, 124 Mo. App. 80, 100 S. W. 1115; State *v.* McClellan, 113 Tenn. 616, 85 S. W. 267.

School Committeeman. — Morse *v.* Ashley, 193 Mass. 294, 79 N. E. 481.

School Director. — State *v.* Fasse, 189 Mo. 532, 88 S. W. 1.

School District Trustee. — State *v.* Kitchens, (Ala. 1906) 41 So. 871.

Sheriff. — Dickinson *v.* Oliver, 112 N. Y. App. Div. 806, 99 N. Y. Supp. 432.

State's Attorney. — People *v.* Williams, 232 Ill. 519, 83 N. E. 1047.

Superintendent of School for Blind. — Lucas *v.* Futrall, 84 Ark. 540, 106 S. W. 667.

Superintendent of Schools. — McKenzie *v.* Board of Education, 1 Cal. App. 406, 82 Pac. 392.

Superintendent of Streets. — Stephens *v.* Oldtown, 102 Me. 115, 65 Atl. 115.

Superintendent of Water Division. — State *v.* Grant, 14 Wyo. 41, 81 Pac. 795, 82 Pac. 2.

Transfer Tax Appraiser. — People *v.* Glynn, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 35, 106 N. Y. Supp. 956.

Treasurer of School District. — State *v.* Harter, 188 Mo. 516, 87 S. W. 941.

United States Marshal. — Layne *v.* Sharp, (Ky. 1907) 105 S. W. 373.

Who Are Not Public Officers — *Assistant District Attorney.* — Com. *v.* Booth, 16 Pa. Dist. 929.

Attorney at Law. — See McKannay *v.* Horton, 151 Cal. 711, 91 Pac. 598.

Chairman of Party Executive Committee. — Walker *v.* Mobley, (Tex. 1907) 103 S. W. 490.

Coroner's Clerk. — People *v.* Cahill, 188 N. Y. 489, 81 N. E. 453.

Democratic Ward Committeeman. — Greenough *v.* Lucey, (R. I. 1907) 66 Atl. 300.

Grand Juror. — State *v.* Graham, (S. Car. 1908) 60 S. E. 431.

Jury Commissioner. — State *v.* Corcoran, 206 Mo. 1, 103 S. W. 1044.

Local Executive Committeeman of Party. — Atty.-Gen. *v.* Barry, (N. H. 1907) 68 Atl. 192.

Police Station Janitor. — Sims *v.* O'Meara, 193 Mass. 547, 79 N. E. 824.

Public Administrator. — Wootton *v.* Smith, (N. Car. 1907) 59 S. E. 649.

Secretary of Board of Waterworks Trustees. — Hutchinson *v.* Lima, 16 Ohio Dec. 309.

Secretary of Fire Department Relief Fund. — People *v.* Hayes, 106 N. Y. App. Div. 563, 94 N. Y. Supp. 754.

Superintendent of County Children's Home. — State *v.* McGonagle, 26 Ohio Cir. Ct. 685.

Superintendent of County Infirmary. — Palmer *v.* Zeigler, 76 Ohio St. 210, 81 N. E. 234.

Tax Inquisitor. — State *v.* Gilfillan, 15 Ohio Dec. 756.

Teacher of Gymnastics. — Munnally *v.* Board of Education, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 477, 92 N. Y. Supp. 286.

Temporary Investigator of Complaints in Board of Public Improvements. — Deering *v.* New York, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 934.

For Other Decisions upon This Question, see State *v.* Higginbotham, 84 Ark. 537, 106 S. W. 484; Porter *v.* Murphy, (Indian Ter. 1907) 104 S. W. 658; Smith *v.* Van Buren County, 125 Iowa 454, 101 N. W. 186; Oklahoma *v.* Oklahoma R. Co. (Okla. 1907) 93 Pac. 48; *In re* Opinion of Justices, (N. H. 1907) 68 Atl. 873.

Delegates to Constitutional Convention State Officers. — Fyfe *v.* Mosher, 149 Mich. 349, 112 N. W. 725.

327. 4. **De Facto Officer in General Usurper.** — Tanner *v.* Edwards, 31 Utah 80, 86 Pac. 765.

5. Palmer *v.* Com., (Ky. 1906) 92 S. W. 588.

One Holding Office to Which He Is Ineligible a Usurper. — Hill *v.* Anderson, (Ky. 1906) 90 S. W. 1071.

11. **Officers for a Full State Government,** under the Oklahoma Enabling Act, include not only state officers whose powers and duties are coextensive with the limits of the state, but all the officers provided for in the constitution, whose duties are in any way connected with the administration of the state government. Frantz *v.* Autry, 18 Okla. 561, 91 Pac. 193.

328. 1. State *v.* Higginbotham, 84 Ark. 537, 106 S. W. 484; State *v.* Samuelson, 131 Wis. 499, 111 N. W. 712.

4. State *v.* Bryan, 50 Fla. 293, 39 So. 929; Moon *v.* Champaign, 214 Ill. 40, 73 N. E. 408.

Right of Municipality to Create Limited by Charter. — Beresford *v.* Donaldson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 138, 103 N. Y. Supp. 600.

7. Sumpter *v.* State, 81 Ark. 60, 98 S. W. 719, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 328; Aurora *v.* Schoeberlein, (Ill. 1907) 82 N. E. 860; Paoli *v.* Charles, 164 Ind. 690, 74 N. E. 508; State *v.* Sheppard, 192 Mo. 497, 91 S. W. 477; Fortune *v.* Buncombe County, 140 N. Car. 322, 52 S. E. 950; State *v.* Stedman, 141 N. Car. 448, 54 S. E. 269; Hutchinson *v.* Lima, 16 Ohio Dec. 309; State *v.* Grant, 14 Wyo. 41, 81 Pac. 795, 82 Pac. 2.

Public Office Cannot Be Created by Concurrent Resolution. — Columbus First Nat. Bank *v.* State, (Neb. 1908) 114 N. W. 772.

No Property Right in Public Office. — Metz *v.* Maddox, 189 N. Y. 460, 82 N. E. 507.

330. 1. **Doctrine Apparently Adopted in Ohio and Tennessee.** — See State *v.* Cave, 26 Ohio Cir. Ct. 301; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

2. State *v.* Bryan, 50 Fla. 293, 39 So. 929; State *v.* Huegle, (Iowa 1907) 112 N. W. 234.

4. People *v.* Election Com'rs, 221 Ill. 9, 77 N. E. 321; Richmond *v.* Lynch, 106 Va. 324, 56 E. E. 139.

In Absence of Constitutional Prohibition Legislature May Alter or Add to Qualifications. — State *v.* Huegle, (Iowa 1907) 112 N. W. 234.

10. State *v.* Huegle, (Iowa 1907) 112 N. W. 234. And see State *v.* Collister, 27 Ohio Cir. Ct. 529.

331. 10. State *v.* Donworth, 127 Mo. App. 377, 105 S. W. 1055; State *v.* Fasse, 189 Mo. 532, 88 S. W. 1; State *v.* Samuelson, 131 Wis. 499, 111 N. W. 712.

Citizenship for Certain Period Sometimes Made Qualification. — State *v.* Matthews, (Ala. 1907) 45 So. 307.

332. 8. *In re* Opinion of Justices, 73 N. H. 621, 62 Atl. 969.

333. 3. Frost *v.* State, (Ala. 1907) 45 So. 203.

4. Frost *v.* State, (Ala. 1907) 45 So. 203; State *v.* Collister, 27 Ohio Cir. Ct. 529; State *v.* Samuelson, 131 Wis. 499, 111 N. W. 712.

8. **Compatibility or Incompatibility Immaterial.** — Wootton *v.* Smith, (N. Car. 1907) 59 S. E. 649.

Justice of Peace Excepted from Inhibition of North Carolina Constitution. — State *v.* Lord, 145 N. Car. 479, 59 S. E. 656.

Where Incompatible Offices Enumerated in Constitution Other Inhibitions Cannot Be Added. — Richmond *v.* Lynch, 106 Va. 324, 56 S. E. 139.

20*a*. **Office of Deputy Sheriff a Lucrative Office.** — State *v.* Seagle, 115 Tenn. 336, 89 S. W. 326.

334. 2. State *v.* Theus, 114 La. 1097, 38 So. 870, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 344.

11*a*. **County Judge and Justice of the Peace.** — State *v.* Jones, 130 Wis. 572, 110 N. W. 431.

335. 1*a*. **City Clerk and Assessor.** — Blades *v.* Falmouth, (Ky. 1907) 98 S. W. 1017.

Councilman and County Health Officer. — Vickers *v.* Sory, (Ky. 1907) 102 S. W. 272.

Policeman and Deputy Constable. — Paris *v.* Cabiness, (Tex. Civ. App. 1906) 98 S. W. 925.

3. *In re* Members of Legislature, (Fla. 1905) 39 So. 63.

23. **Executive Board Cannot Exercise Judicial Power.** — Aurora *v.* Schoberlein, (Ill. 1907) 82 N. E. 860.

336. 29*a*. **Alderman and Member of Equalization Board.** — Houston *v.* Stewart, 99 Tex. 67, 87 S. W. 663.

Attorney and Notary Public. — Figures *v.* State, (Tex. Civ. App. 1907) 99 S. W. 412.

Councilman and Member of Political Committee. — Richmond *v.* Lynch, 106 Va. 324, 56 S. E. 139.

Governor and Secretary of State. — State *v.* Grant, 12 Wyo. 1, 73 Pac. 470.

Marshal and Supervisor of Streets. — Conwell *v.* Culdesac, 12 Idaho 575, 92 Pac. 535.

337. 4. Dodson *v.* Bowlby, (Neb. 1907) 110 N. W. 698.

338. 12. Hoy *v.* State, 168 Ind. 506, 81 N. E. 509.

14. **Ineligibility Because of Official Defalcation Not Removed upon Payment by Sureties.** — State *v.* Reid, 118 La. 106, 42 So. 662.

340. 1. But see State *v.* Plasters, 74 Neb. 652, 105 N. W. 1092.

8. **A Statute Imposing Appointive Powers on the Judiciary Is Unconstitutional** where such powers belong to another department of the government. State *v.* Brill, 100 Minn. 499, 111 N. W. 294.

341. 4. *In re* Terrett, 34 Mont. 325, 86 Pac. 6.

342. 5. State *v.* Bryan, 50 Fla. 293, 39 So. 929.

8. State *v.* Wagner, (Ind. 1907) 82 N. E. 466.

344. 1. State *v.* Rosewater, (Neb. 1907) 113 N. W. 206.

4. State *v.* Vincent, (S. Dak. 1905) 104 N. W. 914.

345. 10. **When Appointment by Ballot Act Incomplete before Result Ascertained.** — State *v.* Starr, 78 Conn. 636, 63 Atl. 512.

347. 5. State *v.* Robeson, 15 Ohio Dec. 471, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347.

6. Yerger *v.* State, (Miss. 1908) 45 So. 849, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347.

7. Yerger *v.* State, (Miss. 1908) 45 So. 849, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347.

348. 11. **Legislature May Provide Who Shall Make Appointments to Fill Vacancies.** — State *v.* Herring, (Mo. 1907) 106 S. W. 984.

349. 1. See dissenting opinion in Rice *v.* Palmer, (Ark. 1906) 96 S. W. 396, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 348, 349.

Vacancy May Be Anticipated and Prospective Appointment Made. — Yerger *v.* State, (Miss. 1908) 45 So. 849.

Question as to Existence of Vacancy a Judicial One. — State *v.* Hays, (Miss. 1908) 45 So. 728.

2. State *v.* Hays, (Miss. 1908) 45 So. 728, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 348; Palmer *v.* Stubley, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 500; State *v.* Grant, 12 Wyo. 1, 73 Pac. 470. See also dissenting opinion in Rice *v.* Palmer, (Ark. 1906) 96 S. W. 396, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 348, 349.

7. Smith *v.* Ritchie, (Ky. 1906) 98 S. W. 330; Com. *v.* Wise, 216 Pa. St. 152, 65 Atl. 535.

350. 3. **Mere Nonuser Does Not Vacate Office Without Judicial Determination.** — Atty.-Gen. *v.* Maybury, 141 Mich. 31, 104 N. W. 324.

Abandonment Implies Volition. — Bergerow *v.* Parker, 4 Cal. App. 169, 87 Pac. 248.

4. Blades *v.* Falmouth, (Ky. 1907) 98 S. W. 1017; Vickers *v.* Sory, (Ky. 1907) 102 S. W. 272; State *v.* Donworth, 127 Mo. App. 377, 105 S. W. 1055; Paris *v.* Cabiness, (Tex. Civ. App. 1906) 98 S. W. 925; State *v.* Jones, 130 Wis. 572, 110 N. W. 431.

6. **Resignation Does Not Create Vacancy until Accepted.** — State *v.* Superior Ct., (Wash. 1907) 91 Pac. 4.

8. **Legislature May Declare Office Vacant.** — State *v.* Huegle, (Iowa 1907) 112 N. W. 234.

11. Atty.-Gen. *v.* Stratton, 194 Mass. 50, 79 N. E. 1073; Com. *v.* Topper, (Pa. St. 1908) 68 Atl. 666.

351. 8. *Alabama.* — State *v.* Kitchens, (Ala. 1906) 41 So. 871.

Colorado. — Lawson *v.* Hays, 39 Colo. 250, 89 Pac. 968.

Indiana. — Couch *v.* State, (Ind. 1907) 82 N. E. 457; Hoy *v.* State, 168 Ind. 506, 81 N. E. 509.

Kansas. — State *v.* Lawrence, (Ky. 1907) 92 Pac. 1131.

Kentucky. — Hill *v.* Anderson, (Ky. 1906) 90 S. W. 1071.

Michigan. — Murta *v.* Carr, 140 Mich. 606, 104 N. W. 27.

Mississippi. — Yerger *v.* State, (Miss. 1908) 45 So. 849.

New Jersey. — Bumsted *v.* Blair, 73 N. J. L. 378, 64 Atl. 691; Du Four *v.* State Superintendent, 72 N. J. L. 371, 61 Atl. 258; Magner *v.* Yore, (N. J. 1907) 66 Atl. 948. And see Decker *v.* Daudt, (N. J. 1907) 67 Atl. 375.

New Mexico. — Baca *v.* Parker, 13 N. Mex. 466, 87 Pac. 465; Hubbell *v.* Armigo, 13 N. Mex. 482, 85 Pac. 1046; Vigil *v.* Stroup, 13 N. Mex. 48, 85 Pac. 1048.

New York. — People *v.* McAdoo, 110 N. Y. App. Div. 432, 96 N. Y. Supp. 362.

Ohio. — State *v.* Collister, 27 Ohio Cir. Ct. 529; State *v.* Harris, (Ohio 1908) 83 N. E. 912.

Pennsylvania. — Hayes *v.* Sturges, 215 Pa. St. 605, 64 Atl. 828; Meadville Com'rs *v.* Meadville, 14 Pa. Dist. 892; Strange *v.* Williams, 15 Pa. Dist. 155.

Rhode Island. — See Greenough *v.* Lucey, (R. I. 1907) 66 Atl. 300.

South Carolina. — Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762.

Wisconsin. — State *v.* Raisler, (Wis. 1907) 114 N. W. 118; State *v.* Zuehlke, (Wis. 1907) 114 N. W. 120.

Wyoming. — State *v.* Grant, 14 Wyo. 41, 81 Pac. 705, 82 Pac. 2.

Certiorari Not Proper Remedy. — State *v.* Ansel, 76 S. Car. 395, 57 S. E. 185.

Prohibition Not Proper Remedy. — Goodwin *v.* State, 145 Ala. 536, 40 So. 122.

Quo Warranto Will Not Lie Where Office Has no Existence. — Hedrick *v.* People, 221 Ill. 374, 77 N. E. 441.

Mere Claim of Office or Threatened Usurpation Not Reached By Quo Warranto. — State *v.* Ensley, 142 Ala. 661, 38 So. 802.

9. McKannay *v.* Horton, 151 Cal. 711, 91 Pac. 598; State *v.* Fabrick, (N. Dak. 1907) 112 N. W. 74. And see State *v.* Grant, 14 Wyo. 41, 81 Pac. 795, 82 Pac. 2.

10. Lawson *v.* Hays, 39 Colo. 250, 89 Pac. 968; Hill *v.* Anderson, (Ky. 1906) 90 S. W. 1071; School District No. 77 *v.* Cowgill, (Neb. 1906) 107 N. W. 584; Meadville Com'rs *v.* Meadville, 14 Pa. Dist. 892; Strange *v.* Williams, 15 Pa. Dist. 155; Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762.

352. 1. U. S. *v.* Mitchell, 136 Fed. 896; Monahan *v.* Lynch, 2 Alaska 132; Montezuma County *v.* Wheeler, 39 Colo. 207, 89 Pac. 50; Hoy *v.* State, 168 Ind. 506, 81 N. E. 509; State *v.* Sutherlin, 165 Ind. 339, 75 N. E. 642; Thompson *v.* Couch, 144 Mich. 671, 108 N. W. 363; Hubbell *v.* Armijo, 13 N. Mex. 482, 85 Pac.

1046; Vigil *v.* Stroup, 13 N. Mex. 481, 85 Pac. 1048; *In re* Sherill, 188 N. Y. 185, 81 N. E. 124. And see Metz *v.* Maddox, 189 N. Y. 460, 82 N. E. 507.

2. State *v.* Superior Ct., (Wash. 1908) 95 Pac. 488.

4. Metz *v.* Maddox, 189 N. Y. 460, 82 N. E. 507.

354. 5. **Statutory Provision Requiring Bond Held Not Mandatory.** — *In re* Supervisor of Nether Providence Tp., 215 Pa. St. 119, 64 Atl. 443.

355. 3. **One Who Has Failed to Qualify Nevertheless Regarded as Incumbent.** — Campbell *v.* Santa Clara County, (Cal. App. 1908) 93 Pac. 1061.

357. 4. State *v.* Bunnell, 131 Wis. 198, 110 N. W. 177, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 357.

359. 2. **State Has Right to Require Officers to Take Oath.** — Boyett *v.* Cowling, 78 Ark. 494, 94 S. W. 682.

5. **Form of Oath Prescribed by Constitution Must Be Followed.** — State *v.* McClendon, 118 La. 792, 43 So. 417.

361. 8. **Delay in Recording of Bond Does Not Ipso Facto Work Forfeiture.** — State *v.* Bunnell, 131 Wis. 198, 110 N. W. 177.

363. 11. Com. *v.* Central Consumers' Co., (Ky. 1906) 91 S. W. 711; *Ex p.* Farrell, (Mont. 1907) 92 Pac. 785; State *v.* Toledo, etc., R. Co., 15 Ohio Dec. 728; Ritchie *v.* State, 42 Wash. 653, 85 Pac. 417.

365. 1. Christner *v.* Hayes County, (Neb. 1907) 112 N. W. 347, *quoting* 3 [23] AM. AND ENG. ENCYC. OF LAW (2d ed.) 364; Wyoming County Auditors, 14 Pa. Dist. 539, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 364; State *v.* Toledo, etc., R. Co., 15 Ohio Dec. 728.

366. 1. Green County *v.* Shortell, 116 Ky. 108, 75 S. W. 251, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 365, 366.

7. Lucas *v.* Futrall, 84 Ark. 540, 106 S. W. 667; Monnier *v.* Godbold, 116 La. 165, 40 So. 604.

Individual Action Held Invalid. — Highlands *v.* Michie, (Ky. 1908) 107 S. W. 216.

8. **In Absence of Provision that Majority May Act Entire Body Must Participate.** — State *v.* Frazier, 114 Tenn. 516, 86 S. W. 319.

367. 1. McManus *v.* Police Com'rs, 73 N. J. L. 307, 62 Atl. 997.

All Must Have Notice. — Damon *v.* Walsh, (Mass. 1907) 80 N. E. 644.

370. 11. Taylor *v.* Democratic Committee, 120 Ky. 672, 87 S. W. 786, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 370.

371. 8. Davis *v.* Howell, 84 Ark. 29, 104 S. W. 550; State *v.* Bryan, 50 Fla. 293, 39 So. 929; Chicago *v.* People, 114 Ill. App. 145; Ross *v.* Sioux City, (Iowa 1907) 113 N. W. 474; Clay City *v.* Roberts, (Ky. 1907) 99 S. W. 651; State *v.* Switzer, (Neb. 107) 112 N. W. 297; People *v.* McClellan, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 609, 102 N. Y. Supp. 946; Ward *v.* Beaufort County, (N. Car. 1908) 60 S. E. 418; *In re* Lawrence Tp. School Directors, 16 Pa. Dist. 641; State *v.* Ansel, 76 S. Car. 395, 57 S. E. 185; Taylor County Ct. *v.* Holt, 61 W. Va. 154, 56 S. E. 205. And see Nathan *v.* O'Brien, 117 N. Y. App. Div. 664, 102 N. Y. Supp. 947.

372. 1. People *v.* Healy, 220 Ill. 280, 82 N. E. 599; People *v.* State Racing Commission, 190 N. Y. 31, 82 N. E. 723.

2. Smith *v.* McCutchen, 146 Ala. 455, 41 So. 619; State *v.* Richards, 50 Fla. 284, 39 So. 152; *In re* North American Mercantile Agency Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 165; Kelsey *v.* Church, 112 N. Y. App. Div. 408, 98 N. Y. Supp. 535; People *v.* Armstrong, 116 N. Y. App. Div. 103, 101 N. Y. Supp. 712; People *v.* Brush, 110 N. Y. App. Div. 720, 96 N. Y. Supp. 500; People *v.* Edgcomb, 112 N. Y. App. Div. 604, 98 N. Y. Supp. 965; People *v.* Lewis, 102 N. Y. App. Div. 408, 92 N. Y. Supp. 642; People *v.* McWilliams, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 296, 106 N. Y. Supp. 459; Bishop *v.* Valley Falls Mfg. Co., 78 S. Car. 312, 58 S. E. 939; Ehrlich *v.* Jennings, 78 S. Car. 269, 58 S. E. 922; Taylor County Ct. *v.* Holt, 61 W. Va. 154, 56 S. E. 205.

8. **Public Officers Liable Personally for Their Torts.** — O'Reilly De Camara *v.* Brooke, 135 Fed. 384.

9. Annis *v.* McNulty, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 121, 100 N. Y. Supp. 951, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.)

374. 1. State *v.* Reed, 116 Tenn. 110, 95 S. W. 809.

375. 7. Gray *v.* Batesville, 74 Ark. 519, 86 S. W. 295, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 376, 377; Blake *v.* Brothers, 79 Conn. 676, 66 Atl. 501; Varner *v.* Thompson, (Ga. App. 1908) 60 S. E. 216; Beeks *v.* Dickinson County, 131 Iowa 244, 108 N. W. 311; Monnier *v.* Godbold, 116 La. 165, 40 So. 604; Barry *v.* Smith, 191 Mass. 78, 77 N. E. 1099; Black *v.* Linn, 17 S. Dak. 335, 96 N. W. 697, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 375; Garff *v.* Smith, 31 Utah 102, 86 Pac. 772.

376. 2. Monnier *v.* Godbold, 116 La. 165, 40 So. 604, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 376; Black *v.* Linn, 17 S. Dak. 335, 96 N. W. 697.

377. 1. Garff *v.* Smith, 31 Utah 102, 86 Pac. 772, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 376; State *v.* McClellan, 113 Tenn. 616, 85 S. W. 267; State *v.* Brooks, 14 Wyo. 393, 84 Pac. 488.

9. **Members of Board of Liquidation of City Debt Quasi-Judicial Officers.** — State *v.* Briede, 117 La. 183, 41 So. 487.

11. Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268; State *v.* Green, 124 Mo. App. 80, 100 S. W. 1115, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 377; Steadley *v.* Stuckey, 113 Mo. App. 582, 87 S. W. 1014; State *v.* Griffith, 74 Ohio St. 80, 77 N. E. 686; State *v.* McClellan, 113 Tenn. 616, 85 S. W. 267. And see Garff *v.* Smith, 31 Utah 102, 86 Pac. 772.

378. 1. Monnier *v.* Godbold, 116 La. 165, 40 So. 604, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 377; Steadley *v.* Stuckey, 113 Mo. App. 582, 87 S. W. 1014; State *v.* McClellan, 113 Tenn. 616, 85 S. W. 267.

379. 4. Monnier *v.* Godbold, 116 La. 165, 40 So. 604, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 379.

380. 1. Aachen, etc., F. Ins. Co. *v.* Morton, (C. C. A.) 156 Fed. 654, *citing* 23 AM.

AND ENG. ENCYC. OF LAW (2d ed.) 379, 380; State *v.* McClellan, 113 Tenn. 616, 85 S. W. 267, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 379, 380.

2. Monnier *v.* Godbold, 116 La. 165, 40 So. 604.

382. 1. Casey *v.* Scott, 82 Ark. 362, 101 S. W. 1152, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 382.

3. Public Officer Liable for Negligence of One Acting under His Direction. — Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268.

6. State *v.* McClellan, 113 Tenn. 616, 85 S. W. 267.

7. State *v.* Shuman, 101 Me. 158, 63 Atl. 665.

383. 2. Corker *v.* Pence, 12 Idaho 152, 85 Pac. 388; Corker *v.* Ward, 12 Idaho 165, 85 Pac. 392.

384. 7. Sheibley *v.* Cooper, (Neb. 1907) 112 N. W. 363.

8. Terrell County *v.* York, 127 Ga. 166, 56 S. E. 309; Woodward *v.* Grangeville, 13 Idaho 652, 92 Pac. 840; Chicago *v.* Hannon, 115 Ill. App. 183; Hope *v.* Alton, 214 Ill. 102, 73 N. E. 406; May *v.* Chicago, 222 Ill. 595, 78 N. E. 912; Gormly *v.* Mt. Vernon, 134 Iowa 394, 108 N. W. 465; Independent School District *v.* McClure, (Iowa 1907) 113 N. W. 554; Bartlett *v.* Paducah, (Ky. 1906) 91 S. W. 264; Ritchie *v.* State, 42 Wash. 653, 85 Pac. 417.

City Not Liable for Torts of Public Officers. — Park Com'rs *v.* Priuz, (Ky. 1907) 105 S. W. 948; Johnson *v.* Somerville, (Mass. 1907) 81 N. E. 268; Shaw *v.* Charleston, 57 W. Va. 433, 50 S. E. 527. See also Fisher *v.* Newbern, 140 N. Car. 506, 53 S. E. 342.

City Not Liable for Tortious Acts of Health Officer. — Bodewig *v.* Port Huron, 141 Mich. 564, 104 N. W. 769.

County Not Liable for Negligent Acts of Officers unless Made So by Statute. — Hopper *v.* Douglas County, 75 Neb. 329, 106 N. W. 330.

387. 1. State *v.* Grant, 12 Wyo. 1, 73 Pac. 470, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 387.

7. Los Angeles Co. *v.* Kellogg, 146 Cal. 590, 80 Pac. 861; Whittemore *v.* People, 227 Ill. 453, 81 N. E. 427; Paoli *v.* Charles, 164 Ind. 690, 74 N. E. 508; McChesney *v.* Hager, (Ky. 1907) 104 S. W. 714; Power *v.* Douglas County, 75 Neb. 734, 106 N. W. 782.

9. No Compensation Allowed Where no Services Performed. — Stephens *v.* Oldtown, 102 Me. 115, 65 Atl. 115.

388. 1. Fitzsimmons *v.* O'Neill, 214 Ill. 494, 73 N. E. 797; Whittemore *v.* People, 227 Ill. 453, 81 N. E. 427; Calbreath *v.* Dunbar, 46 Oregon 580, 81 Pac. 366.

No Appropriation Necessary for Payment of Annual Salaries of City Officers. — San Antonio *v.* Serva, (Tex. Civ. App. 1907) 99 S. W. 875.

389. 7. State *v.* Carlisle, 15 Ohio Dec. 287.

390. 2. Young *v.* Jefferson County, (Ky. 1907) 100 S. W. 335; Stephens *v.* Oldtown, 102 Me. 115, 65 Atl. 115; Power *v.* Douglas County, 75 Neb. 734, 106 N. W. 782; State *v.* Carlisle, 15 Ohio Dec. 287.

3. Waddick *v.* Merrell, 26 Ohio Cir. Ct. 437.

9. Rouse *v.* Pima County, (Ariz. 1906) 85 Pac. 1075; Franklin County *v.* Crow, 128 Ga. 458, 57 S. E. 784; Parker *v.* Richland County, 214 Ill. 165, 73 N. E. 451; Parker *v.* People, 214 Ill. 225, 73 N. E. 452; Whittemore *v.* People, 227 Ill. 453, 81 N. E. 427; Annis *v.* McNulty, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 121, 100 N. Y. Supp. 951; People *v.* Sippell, 116 N. Y. App. Div. 753, 102 N. Y. Supp. 69; People *v.* Steuben County, 183 N. Y. 114, 75 N. E. 1108; Somerset Bank *v.* Edmund, (Ohio 1907) 81 N. E. 641; Brown *v.* Scranton, 15 Pa. Dist. 981; Gilreath *v.* Greenville County, 70 S. Car. 389, 50 S. E. 18. And see State *v.* Vasaly, 98 Minn. 46, 107 N. W. 818.

391. 2. Dull *v.* Mammoth Min. Co., 28 Utah 467, 79 Pac. 1050, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 391.

392. 3. Parker *v.* Richland County, 214 Ill. 165, 73 N. E. 451; People *v.* Neff, 121 N. Y. App. Div. 44, 105 N. Y. Supp. 559; Broaddus *v.* Pawnee County, 16 Okla. 473, 88 Pac. 250.

9. State *v.* Grant, 12 Wyo. 1, 73 Pac. 470.

393. 4. Slayton *v.* Rogers, (Ky. 1908) 107 S. W. 696; State *v.* Vasaly, 98 Minn. 46, 107 N. W. 818; People *v.* Monroe County Ct., 105 N. Y. App. Div. 1, 93 N. Y. Supp. 452.

394. 5. *Sheriff.* — Dallas County *v.* Hanes, (Iowa 1907) 113 N. W. 345.

Town Clerk. — Annis *v.* McNulty, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 121, 100 N. Y. Supp. 951.

395. 5. Tout *v.* Blair, 3 Cal. App. 180, 84 Pac. 671.

12. Arnett *v.* State, 168 Ind. 180, 80 N. E. 153, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 394.

396. 15. Cobb *v.* Hammock, 82 Ark. 584, 102 S. W. 382; Bergerow *v.* Parker, 4 Cal. App. 169, 87 Pac. 248; Merkley *v.* Williams, 3 Cal. App. 268, 84 Pac. 1015; Doty *v.* Williams, (Cal. App. 1906) 84 Pac. 1018; Sweeney *v.* Doyle, (Cal. App. 1906) 84 Pac. 1017; Arnett *v.* State, 168 Ind. 180, 80 N. E. 153; Smith *v.* Van Buren County, 125 Iowa 454, 101 N. W. 186; Eubank *v.* Montgomery County, (Ky. 1907) 105 S. W. 418; Tanner *v.* Edwards, 31 Utah 80, 86 Pac. 765, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 396, 397.

Legislature May Establish Different Rule. — Tout *v.* Blair, 3 Cal. App. 180, 84 Pac. 671.

One Lawfully Holding over Entitled to Compensation. — State *v.* Fabrick, (N. Dak. 1907) 112 N. W. 74.

Salary Mere Incident to Office — Not Necessary Element in Determination of Character. — *In re* Members of Legislature, (Fla. 1905) 39 So. 63.

397. 4. Chubbuck *v.* Wilson, 151 Cal. 162, 90 Pac. 524; Merkley *v.* Williams, 3 Cal. App. 268, 84 Pac. 1015; El Paso County *v.* Rhode, (Colo. 1908) 95 Pac. 551.

6. Tanner *v.* Edwards, 31 Utah 80, 86 Pac. 765.

14. Tout *v.* Blair, 3 Cal. App. 180, 84 Pac. 671.

398. 1. People *v.* Sipple, 109 N. Y. App. Div. 788, 96 N. Y. Supp. 897.

399. 1. U. S. *v.* Wickersham, 201 U. S. 390, 26 U. S. Sup. Ct. 469.

5. Hawkins *v.* Bay City, 149 Mich. 268, 112 N. W. 997.

400. 11. Chicago *v.* Wolf, 221 Ill. 130, 77 N. E. 414; People *v.* Williams, 232 Ill. 519, 83 N. E. 1047; Whittemore *v.* People, 227 Ill. 453, 81 N. E. 427; Bailey *v.* Kelly, 70 Kan. 869, 79 Pac. 735, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 400, 401; Skeen *v.* Craig, 31 Utah 20, 86 Pac. 487; State *v.* Clausen, (Wash. 1907) 92 Pac. 453; State *v.* Grant, 12 Wyo. 1, 73 Pac. 470.

401. 3. **Constitutional Provision Determined to Be for Temporary Purposes Only.** — State *v.* Fabrick, (N. Dak. 1907) 112 N. W. 74.

6. State *v.* Stedman, 141 N. Car. 448, 54 S. E. 269.

402. 1. Orahood *v.* Denver, (Colo. 1907) 91 Pac. 1116.

5. When Term of Office Ends Salary Ceases. — Orahood *v.* Denver, (Colo. 1907) 91 Pac. 1116.

403. 11. Sandoval *v.* Albright, (N. Mex. 1908) 93 Pac. 717; Annis *v.* McNulty, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 121, 100 N. Y. Supp. 951; Campbell County *v* Overby, (S. Dak. 1906) 108 N. W. 247.

13. Sandoval *v.* Albright, (N. Mex. 1908) 93 Pac. 717, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 403, 404.

404. 6. State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

12. State *v.* Huegle, (Iowa 1907) 112 N. W. 234; State *v.* Offill, 74 Neb. 669, 105 N. W. 1099; State *v.* Plasters, 74 Neb. 652, 105 N. W. 1092.

405. 3. Robertson *v.* Coughlin, (Mass. 1907) 82 N. E. 678, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405.

407. 1. State *v.* Offill, 74 Neb. 669, 105 N. W. 1099; State *v.* Plasters, 74 Neb. 652, 105 N. W. 1092.

410. 5. Farrell *v.* Police Com'rs, 1 Cal. App. 5) 81 Pac. 674; Conwell *v.* Cudesac, 12 Idaho 575, 92 Pac. 535; Parsons *v.* Breed, (Ky. 1907) 104 S. W. 766; Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 410.

411. 1. **Term Runs from Date of Ascertainment of Result of Election.** — Prowell *v.* State, 142 Ala. 80, 39 So. 164.

8. Yerger *v.* State, (Miss. 1908) 45 So. 849.

412. 3. Kenneally *v.* Chicago, 220 Ill. 485, 77 N. E. 155; State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

413. 1. Kenneally *v.* Chicago, 220 Ill. 485, 77 N. E. 155, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 412; Scholl *v.* Bell. (Ky. 1907) 102 S. W. 248; O'Neal *v.* Barth, (Ky. 1907) 102 S. W. 263; State *v.* Hays, (Miss. 1908) 45 So. 728; State *v.* Fabrick, (N. Dak. 1907) 112 N. W. 74.

6. Kenneally *v.* Chicago, 220 Ill. 485, 77 N. E. 155, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 413.

8. Hill *v.* Goodwin, 82 Ark. 341, 101 S. W. 752; State *v.* Herring, (Mo. 1907) 106 S. W. 984; State *v.* Cave, 26 Ohio Cir. Ct. 301.

The Words "Until His Successor Is Elected and Qualified" do not prolong the term of office beyond a reasonable time after the election to enable the newly-elected officer to qualify. State *v.* Thompson, 142 Ala. 98, 38 So. 679; Miller *v.* State, (Ala. 1905) 38 So. 1036; Prowell *v.* State, 142 Ala. 80, 39 So. 164; State *v.* Holcombe, (Ala. 1905) 38 So. 1038; Walton *v.* State, (Ala. 1905) 38 So. 1039.

415. 2. State *v.* Fabrick, (N. Dak. 1907) 112 N. W. 74.

Holding over Does Not Change Term of Incumbent but Shortens Successor's Term. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

6. Where Election Void Contestees Hold Office until Successors Appointed and Qualified. — Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248.

416. 8. State *v.* Hays, (Miss. 1908) 45 So. 728, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 416.

419. 1. State *v.* Bunnell, 131 Wis. 198, 110 N. W. 177, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 419.

421. 3. McBride *v.* Bayonne, (N. J. 1907) 65 Atl. 895; McCann *v.* New Brunswick, 73 N. J. L. 161, 62 Atl. 191.

7. Officers Have Right to Resign. — State *v.* Popejoy, 165 Ind. 177, 74 N. E. 994, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421.

422. 15. State *v.* Popejoy, 165 Ind. 177, 74 N. E. 994, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422.

423. 2. State *v.* Stickley, (S. Car. 1908) 61 S. E. 211; State *v.* Superior Ct., (Wash. 1907) 91 Pac. 4.

424. 2. Murray *v.* State, 115 Tenn. 303, 89 S. W. 101.

3. *Contra.* — State *v.* Stockley, (S. Car. 1908) 61 S. E. 211.

11. Acceptance of Resignation Creates Vacancy. — State *v.* Popejoy, 165 Ind. 177, 74 N. E. 994, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 424.

425. 7. Blades *v.* Falworth, (Ky. 1907) 98 S. W. 1017; Vickers *v.* Sory, (Ky. 1907) 102 S. W. 272; State *v.* Donworth, 127 Mo. App. 377, 105 S. W. 1055; State *v.* Jones, 130 Wis. 572, 110 N. W. 431.

427. 4. Paris *v.* Cabiness, (Tex. Civ. App. 1906) 98 S. W. 925.

428. 7. Conwell *v.* Culdesac, 12 Idaho 575, 92 Pac. 535; Aurora *v.* Schoberlein, 230 Ill. 406, 82 N. E. 860.

429. 1. **Power of Temporary Suspension Included in Power of Removal.** — Griner *v.* Thomas, (Tex. 1907) 104 S. W. 1058.

5. No Review Without Constitutional Provision that Removal Shall Be after Hearing, etc. — State *v.* Ansel, 76 S. Car. 395, 57 S. E.

6. Campbell *v.* Doolittle, 58 W. Va. 317, 52 S. E. 260.

430. 1. Gaw *v.* Ashley, (Mass. 1907) 80 N. E. 790.

431. 5. Griner *v.* Thomas, (Tex. 1907) 104 S. W. 1058.

Until Abolishment of Office Tenure of Rightful Incumbent Cannot Be Abolished. — Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 797.

6. Lucas *v.* Futrall, 84 Ark. 540, 106 S. W. 667.

432. 6. **Suspension Pending Indictment No Taking of Property within Constitutional**

Provision. — Sumpter *v.* State, 81 Ark. 60, 98 S. W. 719.

433. 9. Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762.

11. **Appointment Unrevocable unless Permitted under Power of Appointment.** — State *v.* Starr, 78 Conn. 636, 63 Atl. 512.

434. 6. Neuls *v.* Scranton, 211 Pa. St. 581, 61 Atl. 77.

435. 6. **Historical Development of Exercise of Power.** — Territory *v.* Armijo, (N. Mex. 1907) 89 Pac. 267.

10. French *v.* Senate, 146 Cal. 604, 80 Pac. 1031; Conwell *v.* Culdesac, 12 Idaho 575, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 435; Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177; Parsons *v.* Breed, (Ky. 1907) 104 S. W. 766; Sanders *v.* Belue, 78 S. Car. 171, 58 S. E. 762.

437. 8. Yerger *v.* State, (Miss. 1908) 45 So. 849, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 435 [437]; State *v.* Maroney, 191 Mo. 531, 90 S. W. 141.

438. 1. Lucas *v.* Futrall, 84 Ark. 540, 106 S. W. 667, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 437, 438; Porter *v.* Murphy, (Indian Ter. 1907) 104 S. W. 658, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 438; Lattime *v.* Hunt, (Mass. 1907) 81 N. E. 1001; Yerger *v.* State, (Miss. 1908) 45 So. 849, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 435 [438]; People *v.* Woodbury, 112 N. Y. App. Div. 79, 98 N. Y. Supp. 142. And see Kendrick *v.* Nelson, 13 Idaho 244, 89 Pac. 755.

2. State *v.* Maroney, 191 Mo. 531, 90 S. W. 141, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 438; State *v.* Knott, 207 Mo. 167, 105 S. W. 1040.

Removal at Discretion. — Hertel *v.* Boismenue, 229 Ill. 474, 82 N. E. 298.

439. 1. Rockford *v.* Compton, 115 Ill. App. 406; McCann *v.* New Brunswick, 73 N. J. L. 169, 62 Atl. 191; O'Neil *v.* Mansfield, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 516, 95 N. Y. Supp. 1009. But see French *v.* Senate, 146 Cal. 604, 80 Pac. 1031.

Officers May Be Removed Without Notice Where Statute so Provides. — State *v.* Grant, 14 Wyo. 41, 81 Pac. 795, 82 Pac. 2.

2. Stebbins *v.* Police Commission, (Mass. 1907) 82 N. E. 42. And see Yerger *v.* State, (Miss. 1908) 45 So. 849.

442. 3. Thomas *v.* Thompson, (Ky. 1907) 102 S. W. 849; State *v.* Sheppard, 192 Mo. 497, 91 S. W. 477.

Cause Must Warrant Removal. — People *v.* Bingham, 189 N. Y. 104, 81 N. E. 776.

7. **Accusations for Removal for Malfeasance Must Be Presented by Grand Jury.** — State *v.* Richardson, (N. Dak. 1906) 109 N. W. 1026.

444. 7. State *v.* Sheppard, 192 Mo. 497, 91 S. W. 477.

Removal Must Be Based upon Statutory Causes Where Such Exist. — Kendrick *v.* Nelson, 13 Idaho 244, 89 Pac. 755.

445. 1. **Ineligibility No Ground for Removal.** — Magner *v.* Yore, (N. J. 1907) 66 Atl. 948.

3. But see Tibbs *v.* Atlanta, 125 Ga. 18, 53 S. E. 811.

446. 11. Riggins *v.* Waco, (Tex. Civ. App. 1905) 90 S. W. 657.

13. **Unintentional Neglect of Duty Insufficient Ground for Removal.** — *In re* Adam, 113 N. Y. App. Div. 534, 99 N. Y. Supp. 273.

450. 5. **Proceeding for Removal in Effect or Results Purely Civil.** — Skeen *v.* Paine, (Utah 1907) 90 Pac. 440.

451. 3. Sumpter *v.* State, 81 Ark. 60, 98 S. W. 719.

Suspension Does Not Take Office Itself Away, but only disables the incumbent from discharging the duties of the office. Remley *v.* Matthews, 84 Ark. 598, 106 S. W. 482.

452. 1. **Power of Temporary Suspension Included in Power of Removal.** — Griner *v.* Thomas, (Tex. 1907) 104 S. W. 1058.

3. **Notice and Hearing Not Required before Suspension.** — Griner *v.* Thomas, (Tex. 1907) 104 S. W. 1058.

PUBLIC PLACE.

454. 5. **Addition to Public Park.** — *In re* Robbins, 189 N. Y. 422, 82 N. E. 501.

A Licensed Saloon and Billiard Hall is a ***public place*** within a statute prohibiting disorderly conduct in ***public place***. Rex *v.* Kearney, 12 Can. Crim. Cas. 349.

PUBLIC POLICY.

456. 1. Pike's Peak Paint Co. *v.* Masury, 19 Colo. App. 290, 74 Pac. 796, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 455 [456].

PUBLIC ROADS.

458. 3. **Highways.** — See Southern R. Co. *v.* Combs, 124 Ga. 1004, 53 S. E. 508.

PUBLIC USE.

458. 5. **Public Use — Eminent Domain.** — See Potlatch Lumber Co. *v.* Peterson, 12 Idaho 769, 88 Pac. 426.

Taking Property for Irrigation Purposes. — Nash *v.* Clark, 27 Utah 158, 75 Pac. 371.

PUBLIC WORKS.

459. 2. **Sea-going Dredge Not Public Works.** — Penn Iron Co. *v.* William R. Trigg Co., 106 Va. 560, 56 S. E. 329, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 459.

PUBLISHER.

460. 4. **Publisher of Newspaper Proprietor or Manager — Service of Process.** — Stuart *v.* Cole, (Tex. Civ. App. 1906) 92 S. W. 1040.

PUNISHABLE.

461. 4. State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

PURCHASE — PURCHASER.

462. 1. **Trustee of Bankrupt Not Purchaser.** — *In re* Beede, 138 Fed. 441.

463. 1. **Taking Mortgage Not Purchase of Property.** — Anglo-Californian Bank *v.* Field, 146 Cal. 644, 80 Pac. 1080.

464. 1. Devise. — See Clark *v.* Strong, 105 N. Y. App. Div. 179, 93 N. Y. Supp. 514, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 464.

PURCHASE-MONEY MORTGAGES.

466. 2. Flack *v.* Braman, (Tex. Civ. App. 1907) 101 S. W. 537.

4. Boggs *v.* O. S. Kelly Mfg. Co., 76 Kan. 9, 90 Pac. 765.

467. 6. Flowers *v.* Moorman, (Ky. 1905) 86 S. W. 545.

468. 5. **Acknowledgment of Purchase-money Mortgage Not Essential as between Parties.** — Lynch *v.* Cade, 41 Wash. 216, 83 Pac. 118.

9. Plummer *v.* Ilse, 41 Wash. 5, 82 Pac. 1009.

469. 5. Williams *v.* J. P. Williams Co., 122 Ga. 178, 50 S. E. 52.

A Deed and Purchase-money Mortgage Must Be Delivered Simultaneously in order to prevent a mechanic's lien from attaching prior to the mortgage. Libbey *v.* Tidden, 192 Mass. 175, 78 N. E. 313.

8. See Harrow *v.* Grogan, 219 Ill. 288, 76 N. E. 350.

470. 3. Boggs *v.* O. S. Kelly Mfg. Co., 76 Kan. 9, 90 Pac. 765, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 470; Libbey *v.* Tidden, 192 Mass. 175, 78 N. E. 313.

471. 3. Nicholson *v.* Aney, 127 Iowa 278, 103 N. W. 201.

PURCHASERS FOR VALUE AND WITHOUT NOTICE.

475. 3. Martin *v.* Thomas, 56 W. Va. 220, 49 S. E. 119, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 475.

4. White *v.* McSorley, (Wash. 1907) 91 Pac. 243.

476. 3. Scoggin *v.* Hudgins, 78 Ark. 531, 94 S. W. 684; Blake *v.* Boye, 38 Colo. 55, 88 Pac. 470; Waterman *v.* Buckingham, 79 Conn. 286, 64 Atl. 212; Galloway *v.* Galloway, 76 S. Car. 524, 57 S. E. 528.

Conveyance of Land in Trust for Vendor Not Purchase for Value. — Black *v.* Skinner Mfg. Co., 53 Fla. 1090, 43 So. 919.

Devisee May Be Regarded as Bona Fide Purchaser. — Clark *v.* Strong, 105 N. Y. App. Div. 179, 93 N. Y. Supp. 514.

4. Parsons *v.* Crocker, 128 Iowa 641, 105 N. W. 162; Glenn *v.* Glenn, (Neb. 1907) 112 N. W. 321; Gilcreast *v.* Bartlett, (N. H. 1906) 64 Atl. 767; Swanstrom *v.* Day, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 311, 93 N. Y. Supp. 192.

477. 4. Byron Reed Co. *v.* Klabunde, (Neb. 1906) 108 N. W. 133; Woody *v.* Strong, (Tex. Civ. App. 1907) 100 S. W. 801.

5. Mead *v.* Chesbrough Bldg. Co., (C. C. A.) 151 Fed. 998; Ford *v.* Axelson, 74 Neb. 92, 103 N. W. 1039; Williams *v.* Jones, 74 S. Car. 258, 54 S. E. 558; Allen *v.* Anderson, (Tex. Civ. App. 1906) 96 S. W. 54; Laffare *v.* Knight, (Tex. Civ. App. 1907) 101 S. W. 1034.

478. 1. **Purchaser at Own Execution Sale Not Innocent Purchaser for Value.** — Sturdivant *v.* Cook, 81 Ark. 279, 98 S. W. 964.

2. Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

4. Tyner *v.* Baines, 142 N. Car. 110, 54 S. E. 1008.

5. Green *v.* Clyde, 80 Ark. 391, 97 S. W. 437; Coombs *v.* Aborn, (R. I. 1908) 68 Atl. 81[illegible].

479. 1. Williams *v.* Smith, 128 Ga. 306, 57 S. E. 801; Henry *v.* Black, 213 Pa. St. 620, 63 Atl. 250.

2. Robinson *v.* Muir, 151 Cal. 118, 90 Pac. 521; Waterman *v.* Buckingham, 79 Conn. 286, 64 Atl. 212.

4. Lufkin Land, etc., Co. *v.* Beaumont Timber Co., (C. C. A.) 151 Fed. 740.

6. Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651.

480. 2. Banton *v.* Herrick, 101 Me. 134, 63 Atl. 671.

The Holder of an Option to purchase land is not a *bona fide* purchaser. Storms *v.* Mundy, (Tex. Civ. App. 1907) 101 S. W. 258.

482. 3. Eisenhauer *v.* Quinn, (Mont. 1907) 93 Pac. 38, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 482.

6. Lindblom *v.* Rocks, (C. C. A.) 146 Fed. 660.

If the Vendor Subsequently Acquires Title it passes at once to the vendee. Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469.

487. 5. Ward *v.* City Trust Co., 117 N. Y. App. Div. 130, 102 N. Y. Supp. 50; Clark *v.* Bell, (Tex. Civ. App. 1905) 89 S. W. 38; Wasserman *v.* Metzger, 105 Va. 744, 54 S. E. 893; Deskins *v.* Big Sandy Co., (Ky. 1905) 89 S. W. 695.

488. 1. Black *v.* Skinner Mfg. Co., 53 Fla. 1090, 43 So. 919, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488; Deen *v.* Williams, 128 Ga. 265, 57 S. E. 427; Wisconsin River Land Co. *v.* Selover, (Wis. 1908) 116 N. W. 265.

2. Reed *v.* Munn, (C. C. A.) 148 Fed. 737; Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497; Strong *v.* Whybark, 204 Mo. 341, 102 S. W. 968.

4. Interstate Invest. Co. *v.* Bailey, (Ky. 1906) 93 S. W. 578.

6. Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

489. 6. Wasserman *v.* Metzger, 105 Va. 744, 54 S. E. 893, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 489.

490. 1. Wasserman *v.* Metzger, 105 Va. 744, 54 S. E. 893, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 490.

4. Russell, etc., Mfg. Co. *v.* E. C. Faitoute Hardware Co., (N. J. Eq. 1905) 62 Atl. 421; Scoggin *v.* Mason. (Tex. Civ. App. 1907) 103 S. W. 831; Sparks *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 740; Holland *v.* Ferris, (Tex. Civ. App. 1907) 107 S. W. 102; J. S. Brown Hardware Co. *v.* Catrett, (Tex. Civ. App. 1907) 101 S. W. 559.

491. 7. Jennings *v.* Salmon, (Ky. 1907) 98 S. W. 1026.

492. 2. **Voluntary Assignee for Creditors Not Bona Fide Purchaser.** — Smith *v.* Equitable Trust Co., 215 Pa. St. 418, 64 Atl. 594.

494. 1. De Leonis *v.* Hammel, 1 Cal. App. 290, 82 Pac. 349.

5. Vallely *v.* Grafton First Nat. Bank, 14 N. D. [illegible], 104 N. W. 127.

495. 2. *United States.* — Elliot *v.* Atlantic City, 149 Fed. 849.

Florida. — Ivey *v.* Dawley, 50 Fla. 537, 39 So. 498.

Georgia. — Parker *v.* Gortatowsky, 127 Ga. 560, 56 S. E. 846.

Idaho. — Froman *v.* Madden, 13 Idaho 138, 88 Pac. 894.

Indiana. — Pierce *v.* Vansell, 35 Ind. App. 525, 74 N. E. 554.

Kentucky. — Jones *v.* Jones, (Ky. 1907) 101 S. W. 980; Salyer *v.* Johnson, (Ky. 1908) 107 S. W. 210.

Mississippi. — Illinois Cent. R. Co. *v.* Sanders, (Miss. 1908) 46 So. 241.

Missouri. — Sicher *v.* Rambousek, 193 Mo. 113, 91 S. W. 68.

New Jersey. — Harrison *v.* Fleishman, 70 N. J. Eq. 301, 61 Atl. 1025; Russell, etc., Mfg. Co. *v.* E. C. Faitoute Hardware Co., (N. J. Eq. 1905) 62 Atl. 421; Saldutti *v.* Flynn, (N. J. Eq. 1906) 65 Atl. 246; Smith *v.* Umstead, (N. J. Eq. 1906) 65 Atl. 442; Wahl *v.* Stoy, (N. J. Eq. 1907) 66 Atl. 176; Booth *v.* Yenney, (N. J. Eq. 1907) 66 Atl. 1092; Hemsley *v.* Marlborough House Co., 68 N. J. Eq. 596, 61 Atl. 455.

South Carolina. — Harman *v.* Southern R. Co., 72 S. Car. 228, 51 S. E. 689.

Texas. — Diffie *v.* Thompson, (Tex. Civ. App. 1905) 90 S. W. 193; Allen *v.* Anderson, (Tex. Civ. App. 1906) 96 S. W. 54; Haines *v.* West, (Tex. Civ. App. 1907) 102 S. W. 436; Scoggin *v.* Mason, (Tex. Civ. App. 1907) 103 S. W. 831.

Wisconsin. — Gall *v.* Gall, 126 Wis. 390, 105 N. W. 953.

Joint Purchaser Charged with Notice of Other's Fraud. — Kendrick *v.* Colyar, 143 Ala. 597, 42 So. 110.

No Constructive Notice under Unconstitutional Statute. — Blake *v.* Boye, 38 Colo. 55, 88 Pac. 470.

A Recital in a Deed that the grantor is the "only heir and legatee" is sufficient notice to put a purchaser on inquiry. Weigel *v.* Green, 218 Ill. 227, 75 N. E. 913.

496. 3. Reed *v.* Munn, (C. C. A.) 148 Fed. 737; Kendrick *v.* Colyar, 143 Ala. 597, 42 So. 110; Froman *v.* Madden, 13 Idaho 138, 88 Pac. 894; Warner *v.* Hamill, 134 Iowa 279, 111 N. W. 939.

497. 1. Van Slyck *v.* Woodruff, 118 N. Y. App. Div. 47, 103 N. Y. Supp. 139.

2. Goerz *v.* Barstow, (C. C. A.) 148 Fed. 562; Boddie *v.* Ward, (Ala. 1907) 44 So. 105; Hall *v.* Kary, 133 Iowa 465, 110 N. W. 930; Grand Rapids Nat. Bank *v.* Ford, 143 Mich. 402, 107 N. W. 76; Smith *v.* Lockwood, 100 Minn. 221, 110 N. W. 980; Noe *v.* Headley, 118 Mo. App. 722, 96 S. W. 309; Trombly *v.* Turner, 116 N. Y. App. Div. 74, 101 N. Y. Supp. 27; Johnson *v.* Erlandson, 14 N. Dak. 518, 105 N. W. 722; Milby *v.* Hester, (Tex. Civ. App. 1906) 94 S. W. 179; Attebery *v.* O'Neil, 42 Wash. 487, 85 Pac. 270.

3. Chaffe *v.* Minden Lumber Co., 118 La. 753, 43 So. 397; Mississippi River Logging Co. *v.* Blue Grass Land Co., 131 Wis. 10, 110 N. W. 796.

5. Williams *v.* Smith, 128 Ga. 306, 57 S. E. 801.

498. 1. Dunfee *v.* Childs, 59 W. Va. 225, 53 S. E. 209.

4. *Alabama.* — City Loan, etc., Co. *v.* Poole, (Ala. 1907) 43 So. 13.

Arkansas. — Sproull *v.* Miles, 82 Ark. 455, 102 S. W. 204.

Georgia. — Austin *v.* Southern Home Bldg., etc., Assoc., 122 Ga. 439, 50 S. E. 382; Bridger *v.* Exchange Bank, 126 Ga. 821, 56 S. E. 97; Parker *v.* Gortatowsky, 127 Ga. 560, 56 S. E. 846; Garbutt *v.* Mayo, 128 Ga. 269, 57 S. E. 495.

Indiana. — Adams *v.* Betz, 167 Ind. 161, 78 N. E. 649.

Kentucky. — Martin *v.* Hall, (Ky. 1907) 100 S. W. 343; Chandler *v.* Dixon, (Ky. 1907) 101 S. W. 939.

Michigan. — Bartlett *v.* Smith, 146 Mich. 188, 109 N. W. 260.

Minnesota. — Niles *v.* Cooper, 98 Minn. 39, 107 N. W. 744.

Missouri. — Squires *v.* Kimball, 208 Mo. 110, 106 S. W. 502; Shaffer *v.* Detie, 191 Mo. 377, 90 S. W. 131.

New Jersey. — Atlantic City R. Co. *v.* Johanson, (N. J. Eq. 1907) 65 Atl. 719.

Rule Not Affected by Failure to Record. — Denton *v.* Cumberland Telephone, etc., Co., (Ky. 1906) 96 S. W. 1112.

501. 6. Walker *v.* Johnson, 53 Fla. 1076, 43 So. 771; Peck *v.* Bartelme, 220 Ill. 199, 77 N. E. 216.

Where an Agent Holds Possession, it is to be presumed that inquiry will show under what right the agent holds. Parker *v.* Gortatowsky, 127 Ga. 560, 56 S. E. 846.

502. 4. Shiff *v.* Andress, 147 Ala. 690, 40 So. 824.

504. 3. See Austin *v.* Southern Home Bldg., etc., Assoc., 122 Ga. 439, 50 S. E. 382.

505. 1. Kendrick *v.* Colyar, 143 Ala. 597, 42 So. 110; O'Neal *v.* Prestwood, (Ala. 1907) 45 So. 251; Nagelspach *v.* Shaw, 146 Mich. 493, 109 N. W. 843.

Possession by One Claiming to Be the Vendor's Agent does not give constructive notice of adverse rights. Causey *v.* Handley, (Tex. Civ. App. 1906) 98 S. W. 431.

5. Jennings *v.* Salmon, (Ky. 1907) 98 S. W. 1026.

506. 6. Kendrick *v.* Colyar, 143 Ala. 597, 42 So. 110, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 506; Swanstrom *v.* Day, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 311, 93 N. Y. Supp. 192.

508. 3. *United States.* — Cooper *v.* Burns, 133 Fed. 398.

Alabama. — Creel *v.* Keith, (Ala. 1906) 41 So. 780.

Arizona. — Costello *v.* Graham, 9 Ariz. 257, 80 Pac. 336.

Arkansas. — Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609.

California. — Rogers *v.* McCartney, 3 Cal. App. 34, 84 Pac. 215.

Connecticut. — Street *v.* Leete, 79 Conn. 352, 65 Atl. 373.

Florida. — Walker *v.* Johnson, 53 Fla. 1076, 43 So. 771.

Idaho. — Froman *v.* Madden, 13 Idaho 138, 88 Pac. 894.

Illinois. — Phelps *v.* Nazworthy, 226 Ill. 254, 80 N. E. 756.

Indiana. — Oglebay *v.* Todd, 166 Ind. 250, 76 N. E. 239, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 508.

Kansas. — Kuhn *v.* Holton Nat. Bank, 74 Kan. 456, 87 Pac. 551.

Kentucky. — Deskins *v.* Big Sandy Co., (Ky. 1905) 89 S. W. 695; Tom's Creek Coal Co. *v.* Skeene, (Ky. 1906) 90 S. W. 993; Waller *v.* Ward, (Ky. 1907) 101 S. W. 341.

Louisiana. — Bordelon *v.* Gumbel, 118 La. 645, 43 So. 264.

Minnesota. — Smith *v.* Lockwood, 100 Minn. 221, 110 N. W. 980.

Missouri. — Gross *v.* Watts, 206 Mo. 373, 104 S. W. 30.

Nebraska. — Bazelman Lumber Co. *v.* Hinton, (Neb. 1907) 112 N. W. 603.

New York. — Maurer *v.* Friedman, (Supm. Ct. App. Div.) 110 N. Y. Supp. 320; Schnitzer *v.* Bernstein, 119 N. Y. App. Div. 47, 103 N. Y. Supp. 860.

North Carolina. — Tremaine *v.* Williams, 144 N. Car. 114, 56 S. E. 694.

Texas. — Houston Ice, etc., Co. *v.* Henson, (Tex. Civ. App. 1906) 93 S. W. 713; Whitaker *v.* Farris, (Tex. Civ. App. 1907) 101 S. W. 456.

Virginia. — Wasserman *v.* Metzger, 105 Va. 744, 54 S. E. 893, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 508.

Washington. — Schmidt *v.* Olympia Light, etc., Co., 40 Wash. 131, 82 Pac. 184; Schmidt *v.* Olympia Light, etc., Co., (Wash. 1907) 90 Pac. 212; Attebery *v.* O'Neil, 42 Wash. 487, 85 Pac. 270.

West Virginia. — Reed *v.* Bachman, 61 W. Va. 452, 57 S. E. 769, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 508.

Wisconsin. — Friend *v.* Yahr, 126 Wis. 291, 104 N. W. 997; Boyden *v.* Roberts, 131 Wis. 659, 111 N. W. 701.

Notice of the Contents of a Will is imputed to a purchaser from the residuary legatee. Equitable Loan, etc., Co. *v.* Lewman, 124 Ga. 190, 52 S. E. 599.

"Notice of an Invalid or Worthless Title will not affect a title subsequently acquired by a purchaser for value." Osmer *v.* Sheasley, (Pa. 1908) 68 Atl. 965. See also Rainey *v.* Lamb Hardwood Lumber Co., (Miss. 1908) 45 So. 367.

Palpable Clerical Errors in an instrument will not excuse a failure to make inquiry. Trerise *v.* Bottego, 32 Mont. 244, 79 Pac. 1057; Gray *v.* Maier, etc., Brewery, 2 Cal. App. 653, 84 Pac. 280.

509. 2. Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017.

510. 3. Equitable Bldg., etc., Assoc. *v.* Corley, 72 S. Car. 404, 52 S. E. 48; Merritt *v.* Bunting, 107 Va. 174, 57 S. E. 567.

5. Williams *v.* Smith, 128 Ga. 306, 57 S. E. 801; Messmore *v.* Maerz, 149 Mich. 331, 112 N. W. 980; Meacham *v.* Blaess, 141 Mich. 258, 104 N. W. 579; Gross *v.* Watts, 206 Mo. 373, 104 S. W. 30.

Actual Notice of a deed outside the chain of title is binding on the purchaser. Eversole *v.* Virginia Iron, etc., Co., (Ky. 1906) 92 S. W. 593.

6. O'Neal *v.* Prestwood, (Ala. 1907) 45 So. 251; Black *v.* Skinner Mfg. Co., 53 Fla. 1090, 43 So. 919, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 510; Ætna L. Ins. Co. *v.* Stryker, 38 Ind. App. 327, 78 N. E. 245; Cobe *v.* Lovan, 193 Mo. 235, 92 S. W. 93; Schmidt *v.* Musson, (S. Dak. 1906) 107 N. W. 367.

511. 1. Allen *v.* Anderson, (Tex. Civ. App. 1906) 96 S. W. 54; Dunfee *v.* Childs, 59 W. Va. 225, 53 S. E. 209.

3. Bannard *v.* Duncan, (Neb. 1907) 112 N. W. 353; Wynne *v.* Ward, (Tex. Civ. App. 1905) 91 S. W. 237.

512. 1. Wynne *v.* Ward, (Tex. Civ. App. 1905) 91 S. W. 237.

8. Bannard *v.* Duncan, (Neb. 1907) 112 N. W. 353; Williams *v.* White Castle Lumber, etc., Co., 114 La. 448, 38 So. 414; Baecht *v.* Hevesy, 115 N. Y. App. Div. 509, 101 N. Y. Supp. 413; Strong *v.* Whybark, 204 Mo. 341, 102 S. W. 968; Swanstrom *v.* Washington Trust Co., 41 Wash. 561, 83 Pac. 1112.

514. 7. White *v.* White, (Tex. Civ. App. 1906) 95 S. W. 733.

516. 4. Kendrick *v.* Colyar, 143 Ala. 597, 42 So. 110; Strickland *v.* Capital City Mills, 74 S. Car. 16, 54 S. E. 220, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 516.

517. 1. Bowen *v.* Dawley, 116 N. Y. App. Div. 568, 101 N. Y. Supp. 878, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 517.

518. 1. Sparks *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 740.

522. 3. Williams *v.* Smith, 128 Ga. 306, 57 S. E. 801; Boltz *v.* Boain, (Ky. 1906) 90 S. W. 593; Bartlett *v.* Smith, 146 Mich. 188, 109 N. W. 260; Ladnier *v.* Stewart, (Miss. 1905) 38 So. 748; Smith *v.* Umstead, (N. J. Eq. 1906) 65 Atl. 442; Baecht *v.* Hevesy, 115 N. Y. App. Div. 509, 101 N. Y. Supp. 413; Bova *v.* Norigian, (R. I. 1907) 67 Atl. 326; Equitable Bldg., etc., Assoc. *v.* Corley, 72 S. Car. 404, 52 S. E. 48; Grigsby *v.* Wolven, (S. Dak. 1906) 108 N. W. 250; Hunter *v.* Eastham, (Tex. Civ. App. 1904) 81 S. W. 336; Hamilton *v.* Green, (Tex. Civ. App. 1907) 101 S. W. 280; Chadwick *v.* Arnold, (Utah 1908) 95 Pac. 527; Latham *v.* Scribner, 45 Wash. 266, 88 Pac. 203; Gall *v.* Gall, 126 Wis. 390, 105 N. W. 953.

4. Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469; Jackson *v.* Grissom, 106 Mo. 624, 94 S. W. 263; Dent *v.* Pickens, 59 W. Va. 274, 53 S. E. 154.

5. Kendrick *v.* Colyar, 143 Ala. 597, 42 So. 110; Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609; Williams *v.* Smith, 128 Ga. 306, 57 S. E. 801; Lowden *v.* Wilson, 233 Ill. 340, 84 N. E. 245; Kimball *v.* Houston Oil Co., (Tex. Civ. App. 1906) 94 S. W. 423; Davis *v.* Ragland, (Tex. Civ. App. 1906) 93 S. W. 1099; Whitaker *v.* Farris, (Tex. Civ. App. 1907) 101 S. W. 450; J. S. Brown Hardware Co. *v.* Catrett, (Tex. Civ. App. 1907) 101 S. W. 559; Laffare *v.* Knight, (Tex. Civ. App. 1907) 101 S. W. 1034; Lodwick Lumber Co. *v.* Robertson, (Tex. Civ. App. 1907) 102 S. W. 141.

Where Two Parties Claim under a **Common Source of Title,** the burden is on the party claiming under the junior purchase. McAllen *v.* Alonzo, (Tex. Civ. App. 1907) 102 S. W. 475.

523. 4. West *v.* Hermann, (Tex. Civ. App. 1907) 104 S. W. 428.

5. Williams *v.* Smith, 128 Ga. 306, 57 S. E. 801, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 523.

524. 1. Johnson *v.* Georgia L. & T. Co., (C. C. A.) 141 Fed. 593.

PURPORT.

527. 2. McCraney *v.* Glos, 222 Ill. 632, 78 N. E. 921, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 527.

PURPRESTURE.

528. 3. Whittaker *v.* Stangvick, 100 Minn. 391, 111 N. W. 295, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 528.

QUARANTINE.

535. 2. Adams *v.* Lytle, 154 Fed. 876; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294.

536. 4. **Regulations Respecting Inspection and Transportation of Sheep Held to Be Reasonable.** — Adams *v.* Lytle, 154 Fed. 876.

Establishment of Quarantine Districts for Cattle Upheld. — State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294.

An Information for violation of a health ordinance relating to quarantine should recite that quarantine laws have been established and that the defendant, with notice thereof, violated them. Haney *v.* State, (Tex. Crim. 1908) 107 S. W. 836.

539. 1. **For Failure to Give Information to a Passenger** as to a quarantine, known to the carrier, which would manifestly make the passenger's uninterrupted journey impossible, the carrier is liable. Hasseltine *v.* Southern R. Co., 75 S. Car. 141, 55 S. E. 142.

2. Adams *v.* Lytle, 154 Fed. 876; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294.

QUESTIONS OF LAW AND FACT.

545. 1. Louisville, etc., R. Co. *v.* Hall, (Ky. 1906) 94 S. W. 26.

4. Pilmer *v.* Boise Traction Co., (Idaho 1908) 94 Pac. 432; Louisville, etc., R. Co. *v.* Mounce, (Ky. 1906) 90 S. W. 956; Ghio *v.* Metropolitan St. R. Co., 125 Mo. App. 710, 103 S. W. 142; Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 495.

546. 3. People *v.* Williamson, (Cal. App. 1907) 92 Pac. 313; Lebanon *v.* Zanditon, 75 Kan. 273, 89 Pac. 10.

550. 4. **Provinces of Court and Jury** — *Alabama.* — Mills *v.* State, 148 Ala. 633, 42 So. 816; Hays *v.* Lemoine, (Ala. 1908) 47 So. 97.

California. — People *v.* Crane, 4 Cal. App. 142, 87 Pac. 239; Doyle *v.* Eschen, 5 Cal. App. 55, 89 Pac. 836; People *v.* Williamson, (Cal. App. 1907) 92 Pac. 313.

Georgia. — Dorsey *v.* State, 2 Ga. App. 228, 58 S. E. 477.

Idaho. — State *v.* Phinney, (Idaho 1907) 89 Pac. 634.

Illinois. — Klofski *v.* Railroad Supply Co., (Ill. 1908) 85 N. E. 274.

Indiana. — Siebe *v.* Heilman Mach. Works, 38 Ind. App. 37, 77 N. E. 300; Erie Crawford Oil Co. *v.* Meeks, (Ind. App. 1907) 81 N. E. 518.

Kentucky. — Cincinnati, etc., R. Co. *v.* Evans, (Ky. 1908) 110 S. W. 844.

Montana. — State *v.* Allen, 34 Mont. 403, 87 Pac. 177; State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

New York. — Winchell *v.* Camillus, 109 N. Y. App. Div. 341, 95 N. Y. Supp. 688; Outhouse *v.* Baird, 121 N. Y. App. Div. 556, 106 N. Y. Supp. 246.

North Carolina. — Kearns *v.* Southern R. Co., 139 N. Car. 470, 52 S. E. 131; Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201; State *v.* Simmons, 143 N. Car. 613, 56 S. E. 701; Universal Metal Co. *v.* Durham, etc., R. Co., 145 N. Car. 293, 59 S. E. 50; Harton *v.* Forest City Telephone Co., (N. Car. 1907) 59 S. E. 1022; State *v.* Seaboard Air Line R. Co., (N. Car. 1907) 59 S. E. 1048.

Utah. — State *v.* James, (Utah 1907) 89 Pac. 460.

Binding Instructions Being Requested by Both Parties, the matters at issue become questions of law, and the right of submission to the jury is waived.

United States. — Love *v.* Scatcherd, (C. C. A.) 146 Fed. 1; Empire State Cattle Co. *v.* Atchison, etc., R. Co., (C. C. A.) 147 Fed. 457; Anderson *v.* Messenger, (C. C. A.) 158 Fed. 250.

Illinois. — Wolf *v.* Chicago Sign Printing Co., 233 Ill. 501, 84 N. E. 614.

New York. — Griffin *v.* Interurban St. R. Co., (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 328, 94 N. Y. Supp. 854; Zeller *v.* Leiter, 114 N. Y. App. Div. 148, 99 N. Y. Supp. 624; Dilcher *v.* Nellany, (Supm. Ct. Tr. T.) 52 Misc. (N. Y.) 364, 102 N. Y. Supp. 264; Sturmdorf *v.* Saunders, 117 N. Y. App. Div. 762, 102 N. Y. Supp. 1042; Solomon *v.* Levine, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 270, 104 N. Y. Supp. 443; Colaneri *v.* General Acc. Assur. Corp., (Supm. Ct. App. Div.) 110 N. Y. Supp. 678; Hamrah *v.* Maloof, (Supm. Ct. App. Div.) 111 N. Y. Supp. 509.

North Dakota. — Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103; Aber *v.* Twichell, (N. Dak. 1908) 116 N. W. 95.

South Dakota. — Lindquist *v.* Northwestern Port Huron Co., (S. Dak. 1908) 117 N. W. 365.

Before Action Is Taken by the Court, and upon proper request, a party is entitled to submission to the jury of any question of fact which will support a verdict. Empire State Cattle Co. *v.* Atchison, etc., R. Co., 210 U. S. 1, 28 U. S. Sup. Ct. 607; Baker *v.* Appleton, 107 N. Y. App. Div. 358, 95 N. Y. Supp. 125; Cravath *v.* Baylis, 113 N. Y. App. Div. 666, 99 N. Y. Supp. 973; Zajic *v.* Elian, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 289, 98 N. Y. Supp. 652; Brown *v.* Joy Steamship Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 201, 105 N. Y. Supp. 81.

551. 1. Anniston City Land Co. *v.* Edmondson, 145 Ala. 557, 40 So. 505; State *v.*

McGee, (Mo. 1908) 110 S. W. 699; Tracewell *v.* Wood County Ct., 58 W. Va. 283, 52 S. E. 185.

4. Doyle *v.* Eschen, 5 Cal. App. 55, 89 Pac. 836.

552. 1. Meyers *v.* Syndicate Heat, etc., Co., (Wash. 1907) 91 Pac. 549.

4. Winchell *v.* Camillus, 109 N. Y. App. Div. 341, 95 N. Y. Supp. 688; Thomasson *v.* Southern R. Co., 72 S. Car. 1, 51 S. E. 443 (ordinance).

Foreign Laws Must Be Interpreted and Applied by the Court. — White *v.* Reitz, (Mo. App. 1908) 108 S. W. 601.

What the Foreign Law Is, Is a Question of Fact. — Electric Fireproofing Co. *v.* Smith, 113 N. Y. App. Div. 615, 99 N. Y. Supp. 37; St. Louis, etc., R. Co. *v.* Conrad, (Tex. Civ. App. 1906) 99 S. W. 209.

5. McPherson *v.* Hattich, (Ariz. 1906) 85 Pac. 731; Storm *v.* Territory, (Ariz. 1908) 94 Pac. 1099; Williams Mfg. Co. *v.* Warner Sugar Refining Co., 125 Ga. 408, 54 S. E. 95; Chicago, etc., R. Co. *v.* Walker, 127 Ill. App. 212; Shields *v.* Johnson, 12 Idaho 329, 85 Pac. 972; Peck *v.* Springfield Traction Co., (Mo. App. 1908) 110 S. W. 659; Ryon *v.* Starr, 214 Pa. St. 310, 63 Atl. 701.

553. 2. Staunton *v.* Smith, (Del. 1906) 65 Atl. 593; Upchurch *v.* Mizell, 50 Fla. 456, 40 So. 29; Fernald *v.* Shepard, (Mass. 1907) 81 N. E. 274; Freifeld *v.* Groh, 116 N. Y. App. Div. 409, 101 N. Y. Supp. 863; Ryon *v.* Starr, 214 Pa. St. 310, 63 Atl. 701; Ellis *v.* Littlefield, (Tex. Civ. App. 1906) 93 S. W. 171; Veitch *v.* Jenkins, 107 Va. 68, 57 S. E. 574.

555. 1. Turner *v.* Osgood Art Colortype Co., 223 Ill. 629, 79 N. E. 306, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555; Carp *v.* Queen Ins. Co., 116 Mo. App. 528, 92 S. W. 1137.

7. McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; Belknap *v.* Belknap, (S. Dak. 1906) 107 N. W. 692.

556. 3. Glover *v.* State, 129 Ga. 717, 59 S. E. 816; Higgs *v.* Minneapolis, etc., R. Co., (N. Dak. 1908) 114 N. W. 722; Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389.

557. 3. Western Union Tel. Co. *v.* Baker, (C. C. A.) 140 Fed. 315; First Nat. Gold Min. Co. *v.* Altvater, (C. C. A.) 149 Fed. 393; Crookston Lumber Co. *v.* Boutin, (C. C. A.) 149 Fed. 680; Norfolk, etc., R. Co. *v.* Gardner, (C. C. A.) 162 Fed. 114; Wolf *v.* Chicago Sign Painting Co., 233 Ill. 501, 84 N. E. 614; Cleveland, etc., R. Co. *v.* Sparks, 122 Ill. App. 400; Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Mears *v.* Smith, (Mass. 1908) 85 N. E. 165; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144.

558. 1. *United States.* — McGuire *v.* Blount, 199 U. S. 142, 26 U. S. Sup. Ct. 1; Western Union Tel. Co. *v.* Baker, (C. C. A.) 140 Fed. 315; Huntt *v.* McNamee, (C. C. A.) 141 Fed. 293; Turnbull *v.* Ross, (C. C. A.) 141 Fed. 649; Northern Pac. R. Co. *v.* Jones, (C. C. A.) 144 Fed. 47; Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577; First Nat. Gold Min. Co. *v.* Altvater, (C. C. A.) 149 Fed. 393; Ozanne *v.* Illinois Cent. R. Co., 151 Fed. 900; St. Louis, etc., R. Co. *v.* Dewees, (C. C. A.) 153 Fed. 56; Russell *v.* Oregon Short Line R. Co., (C. C. A.) 155 Fed. 22; National Assoc. *v.* Scott, (C. C. A.) 155 Fed. 92; Feis *v.* Smuggler Min. Co., (C. C. A.) 158 Fed. 260; U. S. *v.* American Surety Co., 161 Fed. 149.

Alabama. — Tutwiller Coal, etc., Co., (Ala. 1907) 43 So. 15; Hatch *v.* Varner, (Ala. 1907) 43 So. 481.

Arizona. — Ewing *v.* U. S., (Ariz. 1907) 89 Pac. 593.

Arkansas. — American Cent. Ins. Co. *v.* Noe, 75 Ark. 406, 88 S. W. 572.

California. — Braunton *v.* Southern Pac. Co., 2 Cal. App. 173, 83 Pac. 265; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 616, 86 Pac. 903, *affirming* 3 Cal. App. 606, 86 Pac. 738.

Colorado. — Snyder *v.* Colorado Springs, etc., R. Co., 36 Colo. 288, 85 Pac. 686; Livesay *v.* Denver First Nat. Bank, 36 Colo. 526, 86 Pac. 102; Israel *v.* Day, (Colo. 1907) 92 Pac. 698; Mageon *v.* Alkire, (Colo. 1907) 92 Pac. 720; Schon-Klingstein Meat, etc., Co. *v.* Snow, (Colo. 1908) 96 Pac. 182; King Powder Co. *v.* Dillon, (Colo. 1908) 96 Pac. 439.

Connecticut. — Crotty *v.* Danbury, 79 Conn. 379, 65 Atl. 147.

District of Columbia. — Barstow *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362.

Florida. — Mugge *v.* Jackson, 53 Fla. 323, 43 So. 91; Tedder *v.* Fraleigh-Lines-Smith Co., (Fla. 1908) 46 So. 419; Loeffler *v.* West Tampa, (Fla. 1908) 46 So. 426.

Georgia. — Kirk *v.* Kirk, 123 Ga. 104, 50 S. E. 928; Hood *v.* Hendrickson, 122 Ga. 795, 50 S. E. 994; Steele *v.* Georgia Iron, etc., Co., 124 Ga. 957, 52 S. E. 1038; Kern *v.* Kansas City Southern R. Co., 125 Ga. 496, 54 S. E. 355; Home Ins. Co. *v.* Chattahoochee Lumber Co., 126 Ga. 334, 55 S. E. 11; Hughes *v.* Georgia R., etc., Co., 126 Ga. 462, 55 S. E. 229; Skinner *v.* Braswell, 126 Ga. 761, 55 S. E. 914; Caudell *v.* Caudell, 127 Ga. 1, 55 S. E. 1028; Shumate *v.* Ryan, 127 Ga. 118, 56 S. E. 103; Smith *v.* Green, 128 Ga. 90, 57 S. E. 98; Blackburn *v.* Woodward, 128 Ga. 226, 57 S. E. 318; Reynolds *v.* Nevin, 1 Ga. App. 269, 57 S. E. 918; Brockhan *v.* Hirsch, 128 Ga. 819, 58 S. E. 468; Walker *v.* O'Neill Mfg. Co., 128 Ga. 831, 58 S. E. 475; McCook *v.* Dublin, etc., R. Co., 2 Ga. App. 474, 58 S. E. 491; Carter *v.* Central of Georgia R. Co., 3 Ga. App. 222, 59 S. E. 603; McDaniel *v.* Swift Mfg. Co., 129 Ga. 711, 59 S. E. 800; Willingham *v.* Huguenin, (Ga. 1908) 60 S. E. 186; Johnson *v.* Rycroft, (Ga. 1908) 61 S. E. 1052.

Idaho. — Mills Novelty Co. *v.* Dunbar, 11 Idaho 671, 83 Pac. 932.

Illinois. — Bartlett *v.* Wabash R. Co., 220 Ill. 163, 77 N. E. 96; Lasher *v.* Colton, 225 Ill. 234, 80 N. E. 122; Montgomery *v.* Robertson, 229 Ill. 466, 82 N. E. 396; Illinois Cent. R. Co. *v.* Ring, 119 Ill. App. 294; Smith *v.* Chicago Junction R. Co., 127 Ill. App. 89.

Indian Territory. — Brunson *v.* Southwestern Development Co., (Indian Ter. 1907) 104 S. W. 593; Taylor *v.* Southerland, (Indian Ter. 1907) 104 S. W. 874.

Iowa. — Cragun *v.* Todd, 131 Iowa 250, 108 N. W. 450; Johnson *v.* Buffalo Center State

Bank, 134 Iowa 731, 112 N. W. 165; Mattauch *v.* Riddell Automobile Co., (Iowa 1908) 115 N. W. 509.

Kentucky. — Miller *v.* Metropolitan L. Ins. Co., (Ky. 1905) 89 S. W. 183; Schonbachler *v.* Mischell, (Ky. 1905) 89 S. W. 525; Louisville, etc., R. Co. *v.* Mounce, (Ky. 1906) 90 S. W. 956; Hall *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 275; Hollon *v.* Campton Fuel, etc., Co., (Ky. 1907) 105 S. W. 426; Central Consumers Co. *v.* Booker, (Ky. 1908) 107 S. W. 198; Wildharber *v.* Lunkenheimer, (Ky. 1908) 108 S. W. 327.

Michigan. — Fuller *v.* Ann Arbor R. Co., 141 Mich. 66, 104 N. W. 414; Alex *v.* Matzke, (Mich. 1908) 115 N. W. 251.

Mississippi. — Bridges *v.* Jackson Electric R., etc., Co., 86 Miss. 584, 38 So. 788.

Missouri. — Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Milliken *v.* Thyson Commision Co., 202 Mo. 637, 100 S. W. 604; Dow *v.* Kansas City Southern R. Co., 116 Mo. App. 555, 92 S. W. 744; Kennedy *v.* Metropolitan St. R. Co., (Mo. App. 1907) 107 S. W. 16.

Montana. — Coulter *v.* Union Laundry Co., 34 Mont. 590, 87 Pac. 973.

Nebraska. — Keckler *v.* Modern Brotherhood of America, (Neb. 1906) 109 N. W. 157; Baker *v.* Swift, (Neb. 1906) 110 N. W. 654; Hibner *v.* Westover, (Neb. 1907) 110 N. W. 732; Carlile *v.* Bentley, (Neb. 1908) 116 N. W. 772.

New Jersey. — Loper *v.* Somers, 71 N. J. L. 657, 61 Atl. 85; U. S. Fidelity, etc., Co. *v.* Donnelly, 72 N. J. L. 295, 61 Atl. 445; Vandegrift Constr. Co. *v.* Camden, etc., R. Co., (N. J. 1907) 65 Atl. 986; Ryle *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 87; Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303; Belcher *v.* Manchester Bldg., etc., Assoc., (N. J. 1907) 67 Atl. 399.

New Mexico. — Home Sav. Bank *v.* Woodruff, (N. Mex. 1908) 94 Pac. 957.

New York. — Harding *v.* Roman Catholic Church, 113 N. Y. App. Div. 685, 99 N. Y. Supp. 945; Crecelius *v.* New York, 114 N. Y. App. Div. 801, 100 N. Y. Supp. 314; National City Bank *v.* Pacific Co., 117 N. Y. App. Div. 12, 101 N. Y. Supp. 1098; White *v.* Prudential Ins. Co., 120 N. Y. App. Div. 260, 105 N. Y. Supp. 87; Smith *v.* New York Anti-Saloon League, 121 N. Y. App. Div. 600, 106 N. Y. Supp. 251; Lambert *v.* Elmendorf, (Supm. Ct. App. Div.) 109 N. Y. Supp. 574; Standard Supply, etc., Co. *v.* Merritt, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 498, 96 N. Y. Supp. 181; McKee *v.* Owen, (Supm. Ct. App. T.) 104 N. Y. Supp. 373; Oppenheimer *v.* Mittenthal, (Supm. Ct. App. T.) 107 N. Y. Supp. 48; Porpeglia *v.* Beam, (Supm. Ct. App. T.) 108 N. Y. Supp. 1072.

North Carolina. — Kearns *v.* Southern R. Co., 130 N. Car. 470, 52 S. E. 131.

Oklahoma. — Pringey *v.* Guss, 16 Okla. 82, 86 Pac. 292; Choctaw, etc., R. Co. *v.* Garrison, (Okla. 1907) 90 Pac. 730; Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017; Kerl *v.* New York L. Ins. Co., (Okla. 1908) 94 Pac. 177; Cockrell *v.* Schmitt, (Okla. 1908) 94 Pac. 521.

Rhode Island. — Tuck *v.* Earle, etc., Express Co., (R. I. 1907) 67 Atl. 428; Marsh *v.* Babcock, (R. I. 1908) 68 Atl. 475.

South Carolina. — Uzzell *v.* Horn, 71 S. Car. 426, 51 S. E. 523; John Slaughter Co. *v.* King Lumber Co., (S. Car. 1908) 60 S. E. 705; McLean *v.* Atlantic Coast Line R. Co., (S. Car. 1908) 61 S. E. 900.

Tennessee. — Norman *v.* Southern R. Co., (Tenn. 1907) 104 S. W. 1088.

Texas. — Moore *v.* Snell, (Tex. Civ. App. 1905) 88 S. W. 270; St. Louis Southwestern R. Co. *v.* Demsey, (Tex. Civ. App. 1905) 89 S. W. 786; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698; Murphy *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 96 S. W. 940; Collins *v.* Kelsey, (Tex. Civ. App. 1906) 97 S. W. 122; St. Louis Southwestern R. Co. *v.* Groves, (Tex. Civ. App. 1906) 97 S. W. 1084; Texas, etc., R. Co. *v.* Willard, (Tex. Civ. App. 1906) 98 S. W. 220; Kampmann *v.* McCormick, (Tex. Civ. App. 1907) 99 S. W. 1147; Missouri, etc., R. Co. *v.* Plunkett, (Tex. Civ. App. 1907) 103 S. W. 663; Walker *v.* Edwin, (Tex. Civ. App. 1907) 106 S. W. 164; Southern Pac. Co. *v.* Godfrey, (Tex. Civ. App. 1908) 107 S. W. 1135; Chicago, etc., R. Co. *v.* Poore, (Tex. Civ. App. 1908) 108 S. W. 504; Pierce *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 979.

Washington. — Crane Co. *v.* Ætna Indemnity Co., 43 Wash. 516, 86 Pac. 849; Sessions *v.* Warwick, (Wash. 1907) 89 Pac. 482.

West Virginia. — Dye *v.* Corbin, 59 W. Va. 266, 53 S. E. 147; Kuykendall *v.* Fisher, 61 W. Va. 87, 56 S. E. 48; La Rue *v.* Lee, (W. Va. 1908) 60 S. E. 388.

Wisconsin. — Chybowski *v.* Bucyrus Co., 127 Wis. 332, 106 N. W. 833; Russell *v.* Scofield, (Wis. 1907) 113 N. W. 1094; Kersten *v.* Weickman, (Wis. 1908) 114 N. W. 499.

Wyoming. — Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624.

560. 1. Southern R. Co. *v.* Hill, (Ala. 1905) 39 So. 987.

2. *United States.* — Jenkins, etc., Co. *v.* Alpena Portland Cement Co., (C. C. A.) 147 Fed. 641; Williams *v.* Choctaw, etc., R. Co., (C. C. A.) 149 Fed. 104; Crookston Lumber Co. *v.* Boutin, (C. C. A.) 149 Fed. 680; Detroit Southern R. Co. *v.* Lambert, (C. C. A.) 150 Fed. 555; Ozanne *v.* Illinois Cent. R. Co., 151 Fed. 900.

Arkansas. — Thomas *v.* State, (Ark. 1908) 108 S. W. 224.

California. — Wagner *v.* Wedell, 3 Cal. App. 274, 85 Pac. 126; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Doyle *v.* Eschen, 5 Cal. App. 55, 89 Pac. 836; Archibald *v.* Matteson, 5 Cal. App. 441, 90 Pac. 723; Nonrefillable Bottle Co. *v.* Robertson, (Cal. App. 1908) 96 Pac. 324.

Idaho. — Later *v.* Haywood, 12 Idaho 78, 85 Pac. 494; Pilmer *v.* Boise Traction Co., (Idaho 1908) 94 Pac. 432; Colvin *v.* Lyons, (Idaho 1908) 96 Pac. 572.

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229 Ill. 466, 82 N. E. 396; McKenzie Furnace Co. *v.* Mallers, 231 Ill. 561, 83 N. E. 451; Gibson *v.* Fidelity, etc., Co., 232 Ill. 49, 83 N. E. 539; O'Leary *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 233; Wyckoff *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 237.

Indiana. — Compton *v.* Benham, (Ind. App. 1908) 85 N. E. 365.

Iowa. — Hamilton *v.* Jos. Schlitz Brewing Co., 129 Iowa 172, 105 N. W. 438; Hartman *v.* Chicago G. W. R. Co., 132 Iowa 582, 110 N. W. 10; Hansen *v.* Kline, (Iowa 1907) 113 N. W. 504.

Kansas. — Missouri Can Co. *v.* Ross, 72 Kan. 669, 83 Pac. 616; Duncan *v.* Huse, 73 Kan. 432, 85 Pac. 589; Jones *v.* Adair, (Kan. 1907) 91 Pac. 78.

Kentucky. — Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Hobbs *v.* Ray, (Ky. 1906) 96 S. W. 589; J. I. Case Threshing Mach. Co. *v.* Sanford, (Ky. 1906) 97 S. W. 805.

Maryland. — United Railways, etc., Co. *v.* Weir, 102 Md. 286, 62 Atl. 588; Sunderland *v.* Cowan, (Md. 1907) 67 Atl. 141.

Mississippi. — Farmer *v.* Cumberland Telephone, etc., Co., 86 Miss. 55, 38 So. 775.

Missouri. — Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Hollweg *v.* Bell Telephone Co., 195 Mo. 149, 93 S. W. 262; Gilpin *v.* Missouri, etc., R. Co., 197 Mo. 319, 94 S. W. 869; Forbes *v.* Dunnavant, 198 Mo. 193, 95 S. W. 934; Charlton *v.* St. Louis, etc., R. Co., 200 Mo. 413, 98 S. W. 529; Jordan *v.* St. Louis Transit Co., 202 Mo. 418, 101 S. W. 11; Hach *v.* St. Louis, etc., R. Co., 208 Mo. 581, 106 S. W. 525; Koerner *v.* St. Louis Car Co., (Mo. 1907) 107 S. W. 481; Von Trebra *v.* Laclede Gaslight Co., (Mo. 1908) 108 S. W. 559; Phelan *v.* Granite Bituminous Paving Co., 115 Mo. App. 425, 91 S. W. 440; Robertson *v.* George A. Fuller Constr. Co., 115 Mo. App. 456, 92 S. W. 130; Ferguson *v.* St. Louis, etc., R. Co., 123 Mo. App. 590, 100 S. W. 537; Bensiek *v.* St. Louis Transit Co., 125 Mo. App. 121, 102 S. W. 587; Hall *v.* Compton, (Mo. App. 1908) 108 S. W. 1122; National Live Stock Commission Co. *v.* Marian State Bank, (Mo. App. 1908) 110 S. W. 34.

Nebraska. — Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

New Hampshire. — Stevens *v.* United Gas, etc., Co., 73 N. H. 159, 60 Atl. 848.

New Jersey. — Hayward *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 737.

New York. — Volosko *v.* Interurban St. R. Co., 113 N. Y. App. Div. 747, 99 N. Y. Supp. 484; Janvey *v.* Loketz, 122 N. Y. App. Div. 411, 106 N. Y. Supp. 690; Lewine *v.* Potar, (Supm. Ct. App. T.) 102 N. Y. Supp. 536; Konigsberg *v.* Davis, (Supm. Ct. App. T.) 108 N. Y. Supp. 595; Berlin *v.* Weir, (Supm. Ct. App. T.) 108 N. Y. Supp. 1063; Kinsella *v.* Gallagher, (Supm. Ct. App. T.) 111 N. Y. Supp. 732.

Nevada. — Fox *v.* Myers, (Nev. 1906) 86 Pac. 793.

North Carolina. — Gerock *v.* Western Union Tel. Co., 142 N. Car. 22, 54 S. E. 782; Biles *v.* Seaboard Air Line R. Co., 143 N. Car. 78, 55 S. E. 512; McCaskill *v.* Walker, 145 N. Car. 252, 58 S. E. 1073.

Oklahoma. — Conklin *v.* Yates, 16 Okla. 266, 83 Pac. 910; Ziska *v.* Ziska, (Okla. 1908) 95 Pac. 254; Shawnee Light, etc., Co. *v.* Sears, (Okla. 1908) 95 Pac. 449.

Oregon. — Putnam *v.* Stalker, (Oregon 1907) 91 Pac. 363; Dillard *v.* Olalla Min. Co., (Oregon 1908) 96 Pac. 678.

Texas. — Chicago, etc., R. Co. *v.* Cleaver, (Tex. Civ. App. 1907) 106 S. W. 721; Harpold *v.* Moss, (Tex. 1908) 109 S. W. 928.

Utah. — Tuckett *v.* American Steam, etc., Laundry, 30 Utah 273, 84 Pac. 500.

Virginia. — Pendleton *v.* Richmond, etc., R. Co., 104 Va. 813, 52 S. E. 574.

Wisconsin. — McCune *v.* Badger, 126 Wis. 186, 105 N. W. 667; Gessner *v.* Roeming, (Wis. 1908) 116 N. W. 171.

3. Brunson *v.* Southwestern Development Co., (Indian Ter. 1907) 104 S. W. 593; Zink *v.* Lahart, (N. Dak. 1907) 110 N. W. 931.

561. 1. Birmingham Rolling Mill Co. *v.* Rockhold, 143 Ala. 115, 42 So. 96; Doyle *v.* Eschen, 5 Cal. App. 55, 89 Pac. 836; Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337; Pilmer *v.* Boise Traction Co., (Idaho 1908) 94 Pac. 432; Meade *v.* Ashland Steel Co., (Ky. 1907) 100 S. W. 821; United Railways, etc., Co. *v.* Weir, 102 Md. 286, 62 Atl. 588; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655; Brady *v.* Kansas City, etc., R. Co., 206 Mo. 509, 102 S. W. 978; Cooke *v.* Union R. Co., (Supm. Ct. App. T.) 111 N. Y. Supp. 708. See generally this article **562.** 3; **565.** 3.

2. Berry *v.* Chase, (C. C. A.) 146 Fed. 625; Ozanne *v.* Illinois Cent. R. Co., 151 Fed. 900; Georgia R., etc., Co. *v.* Harris, 1 Ga. App. 714, 57 S. E. 1076; Cromley *v.* Pennsylvania R. Co., 211 Pa. St. 420, 60 Atl. 1007.

While a Scintilla of Evidence Is Sufficient to take a case to the jury, it does not follow that it is sufficient to support a verdict. Louisville, etc., R. Co. *v.* Hall, (Ky. 1906) 94 S. W. 26.

3. *United States.* — Empire State Cattle Co. *v.* Atchison, etc., R. Co., 210 U. S. 1, 28 U. S. Sup. Ct. 607; Woodward *v.* Chicago, etc., R. Co., (C. C. A.) 145 Fed. 577; Crookston Lumber Co. *v.* Boutin, (C. C. A.) 149 Fed. 680; Ozanne *v.* Illinois Cent. R. Co., 151 Fed. 900; Russell *v.* Oregon Short Line R. Co., (C. C. A.) 155 Fed. 22; U. S. *v.* American Surety Co., 161 Fed. 149.

California. — Meyer *v.* Lovdal, (Cal. App. 1907) 92 Pac. 322.

Colorado. — Watson *v.* Manitou, etc., R. Co., (Colo. 1907) 92 Pac. 17.

Illinois. — Chicago, etc., R. Co. *v.* Steckman, 224 Ill. 500, 79 N. E. 602.

Indiana. — Green *v.* Macy, 36 Ind. App. 560, 76 N. E. 264; Gipe *v.* Pittsburgh, etc., R. Co., (Ind. App. 1907) 82 N. E. 471.

New Jersey. — Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295.

Mississippi. — Wooten *v.* Mobile, etc., R. Co., 89 Miss. 322, 42 So. 131.

Oklahoma. — Guss *v.* Federal Trust Co., (Okla. 1907) 91 Pac. 1045.

Contra, Bailey *v.* Robison, 233 Ill. 614, 84 N. E. 660; Dowling *v.* Brooklyn Heights R. Co., 107 N. Y. App. Div. 312, 95 N. Y. Supp. 105;

Schmal *v.* Rothschild, (Supm. Ct. App. T.) 96 N. Y. Supp. 179.

4. *United States.* — Berry *v.* Chase, (C. C. A.) 146 Fed. 625; Newburger Cotton Co. *v.* York Cotton Mills, (C. C. A.) 152 Fed. 398.

California. — Doyle *v.* Escheu, 5 Cal. App. 55, 89 Pac. 830.

Illinois. — Elgin, etc., R. Co. *v.* Hoadley, 220 Ill. 462, 77 N. E. 151; Bailey *v.* Robison, 233 Ill. 614, 84 N. E. 660.

Kansas. — Acker *v.* Norman, 72 Kan. 586, 84 Pac. 531; Avery *v.* Union Pac. R. Co., 73 Kan. 563, 85 Pac. 600; Coon *v.* Atchison, etc., R. Co., (Kan. 1907) 89 Pac. 682; Missouri, etc., R. Co. *v.* L. A. Watkins Merchandise Co., (Kan. 1907) 92 Pac. 1102.

Kentucky. — Louisville, etc., R. Co. *v.* Fowler, (Ky. 1906) 96 S. W. 568; Meade *v.* Ashland Steel Co., (Ky. 1907) 100 S. W. 821; Champion Ice Mfg., etc., Co. *v.* Delsignore, (Ky. 1907) 105 S. W. 1181; Supreme Lodge, etc., *v.* Bradley, (Ky. 1908) 107 S. W. 209; Creech *v.* Com., (Ky. 1908) 107 S. W. 212; Hovius *v.* Cincinnati, etc., R. Co., (Ky. 1908) 107 S. W. 214.

New York. — Fish *v.* Utica Steam, etc., Cotton Mills, 109 N. Y. App. Div. 326, 95 N. Y. Supp. 673; Drake *v.* Baker, (Supm. Ct. App. T.) 96 N. Y. Supp. 1057; Dorsett *v.* Doubleday, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 598, 103 N. Y. Supp. 792.

North Carolina. — Stewart *v.* Raleigh, etc., Air Line R. Co., 137 N. Car. 687, 50 S. E. 312, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 561.

Oklahoma. — Ziska *v.* Ziska, (Okla. 1908) 95 Pac. 254; Shawnee Light, etc., Co. *v.* Sears, (Okla. 1908) 95 Pac. 449.

Oregon. — Carroll *v.* Grande Ronde Electric Co., (Oregon 1907) 90 Pac. 903.

Tennessee. — Norman *v.* Southern R. Co., (Tenn. 1907) 104 S. W. 1088.

Texas. — Domenico *v.* El Paso Electric R. Co., (Tex. Civ. App. 1905) 90 S. W. 60; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144.

Washington. — Morris *v.* Warwick, 42 Wash. 480, 85 Pac. 42.

Utah. — Tuckett *v.* American Steam, etc., Laundry, 30 Utah 273, 84 Pac. 500.

562. 3. *United States.* — J. W. Bishop Co. *v.* Shelhorse, (C. C. A.) 141 Fed. 643; Semet-Solway Co. *v.* Wilcox, (C. C. A.) 143 Fed. 839; Guild *v.* Pringle, (C. C. A.) 145 Fed. 312; Berry *v.* Chase, (C. C. A.) 146 Fed. 625; Jenkins, etc., Co. *v.* Alpena Portland Cement Co., (C. C. A.) 147 Fed. 641; Crookston Lumber Co. *v.* Boutin, (C. C. A.) 149 Fed. 680; Newburger Cotton Co. *v.* York Cotton Mills, (C. C. A.) 152 Fed. 398; Kallas *v.* Worth Bros. Co., 158 Fed. 1018; Southern R. Co. *v.* Hopkins, (C. C. A.) 161 Fed. 266; Norfolk, etc., R. Co. *v.* Gardner, (C. C. A.) 162 Fed. 114.

Alabama. — Holladay *v.* Rutledge, (Ala. 1905) 39 So. 613; Southern R. Co. *v.* Hill, (Ala. 1905) 39 So. 987; Gates *v.* Morton Hardware Co., 146 Ala. 692, 40 So. 509; Coker *v.* State, 147 Ala. 701, 41 So. 303; Birmingham Rolling Mill Co. *v.* Rockhold, 143 Ala. 115, 42 So. 96; Mobile, etc., R. Co. *v.* Glover, (Ala. 1907) 43 So. 719; Robinson *v.* Green, (Ala. 1906) 43 So. 797; McCormick Harvesting Mach. Co. *v.* Lowe, (Ala. 1907) 44 So. 47; Roquemore *v.* Vulcan Iron Works Co., (Ala. 1907) 44 So. 557; Neff *v.* Williamson, (Ala. 1908) 46 So. 238; Harden *v.* Troy, (Ala. 1908) 46 So. 753.

California. — Archibald *v.* Matteson, 5 Cal. App. 441, 90 Pac. 723; Nonrefillable Bottle Co. *v.* Robertson, (Cal. App. 1908) 96 Pac. 324.

Colorado. — Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337; Atchison, etc., R. Co. *v.* Adcock, 38 Colo. 369, 88 Pac. 180.

Connecticut. — Pigeon *v.* Lane, (Conn. 1907) 67 Atl. 886.

District of Columbia. — Barstow *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362.

Florida. — Hillsborough Grocery Co. *v.* Leman, 51 Fla. 203, 40 So. 680; Florala Sawmill Co. *v.* Smith, (Fla. 1908) 46 So. 332.

Georgia. — Sheppard *v.* Lang, 122 Ga. 607, 50 S. E. 371; Jesup *v.* Atlantic, etc., R. Co., 123 Ga. 269, 51 S. E. 315; Central of Georgia R. Co. *v.* Gortatowsky, 123 Ga. 366, 51 S. E. 469; Bowden *v.* Bowden, 125 Ga. 107, 53 S. E. 606; Bullard *v.* Hudson, 125 Ga. 393, 54 S. E. 132; Harriss *v.* Howard, 126 Ga. 325, 55 S. E. 59; Connelly *v.* Connelly, 126 Ga. 656, 55 S. E. 916; Southern R. Co. *v.* Reynolds, 126 Ga. 657, 55 S. E. 1039; McFarland *v.* Darien, etc., R. Co., 127 Ga. 97, 56 S. E. 74; Joiner *v.* Stallings, 127 Ga. 203, 56 S. E. 304; Hogg *v.* Gammon, 127 Ga. 296, 56 S. E. 404; Malcolm *v.* Dobbs, 127 Ga. 487, 56 S. E. 622; Wilcox *v.* Evans, 127 Ga. 580, 56 S. E. 635; Jennings *v.* Stripling, 127 Ga. 778, 56 S. E. 1026; Rounsaville *v.* Leonard Mfg. Co., 127 Ga. 735, 56 S. E. 1030; Smallwood *v.* Jones, 128 Ga. 41, 57 S. E. 99; Beeland *v.* Standard Brick Co., 1 Ga. App. 194, 57 S. E. 983; Meager *v.* Linder Lumber Co., 1 Ga. App. 426, 57 S. E. 1004; Hester *v.* Gairdner, 128 Ga. 531, 58 S. E. 165; Jenkins *v.* Jones, 128 Ga. 801, 58 S. E. 354; Davis *v.* Kirkland, 1 Ga. App. 5, 58 S. E. 209; Adams *v.* Haigler, 2 Ga. App. 99, 58 S. E. 330; Pendleton *v.* Atlantic Lumber Co., (Ga. App. 1908) 60 S. E. 377; Southern R. Co. *v.* Hardeman, (Ga. 1908) 60 S. E. 539.

Idaho. — Adams *v.* Bunker Hill, etc., Min. Co., 12 Idaho 637, 89 Pac. 624; Pilmer *v.* Boise Traction Co., (Idaho 1908) 94 Pac. 432.

Illinois. — Blakeslie's Express, etc., Co. *v.* Ford, 215 Ill. 230, 74 N. E. 135; Illinois Third Vein Coal Co. *v.* Cioni, 215 Ill. 583, 74 N. E. 751; Chicago City R. Co. *v.* McCaughna, 216 Ill. 202, 74 N. E. 819; Kellyville Coal Co. *v.* Strine, 217 Ill. 516, 75 N. E. 375; Elgin, etc., R. Co. *v.* Hoadley, 220 Ill. 462, 77 N. E. 151; Libby *v.* Cook, 222 Ill. 206, 78 N. E. 599; Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; Frank Parmelee Co. *v.* Wheelock, 224 Ill. 194, 79 N. E. 652; Wilmington, etc., Coal Co. *v.* Sloan, 225 Ill. 467, 80 N. E. 265; Chicago City R. Co. *v.* Hagenback, 228 Ill. 290, 81 N. E. 1014; Clark *v.* Chicago, etc., R. Co., 231 Ill. 548, 83 N. E. 286; Gibson *v.* Fidelity, etc., Co., 232 Ill. 49, 83 N. E. 539; Wolf *v.* Chicago Sign Printing Co., 233 Ill. 501, 84 N. E. 614; Bowen *v.* Chicago, etc., R. Co., 117 Ill. App. 9; W. W. Kimball Co. *v.* Cruikshank, 123 Ill. App. 580.

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39 Ind. App. 682, 79 N. E. 534; Indianapolis Traction, etc., Co. *v.* Romans, (Ind. App. 1907) 79 N. E. 1068; Valparaiso *v.* Schwerdt, (Ind. App. 1907) 82 N. E. 923; Parry Mfg. Co. *v.* Eaton, (Ind. App. 1908) 83 N. E. 510; Nelson *v.* Chicago, etc., R. Co., (Ind. App. 1908) 83 N. E. 1019; Compton *v.* Benham, (Ind. App. 1908) 85 N. E. 365.

Iowa. — Fleming *v.* Linder, (Iowa 1906) 109 N. W. 771; Ayrhart *v.* Wilhelmy, (Iowa 1907) 112 N. W. 782; McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; Cahill *v.* Illinois Cent. R. Co., (Iowa 1908) 115 N. W. 216; Calwell *v.* Minneapolis, etc., R. Co., (Iowa 1908) 115 N. W. 605.

Kansas. — Marion Mfg. Co. *v.* Bowers, 71 Kan. 260, 80 Pac. 565; Taylor *v.* Modern Woodmen of America, 72 Kan. 443, 83 Pac. 1099; Hall *v.* Davidson, 73 Kan. 88, 84 Pac. 556; Avery *v.* Union Pac. R. Co., 73 Kan. 563, 85 Pac. 600; Coon *v.* Atchison, etc., R. Co., (Kan. 1907) 89 Pac. 682; Missouri, etc., R. Co. *v.* L. A. Watkins Merchandise Co., (Kan. 1907) 92 Pac. 1102; Darling *v.* Atchison, etc., R. Co., (Kan. 1907) 93 Pac. 612.

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Michigan. — Harrison Granite Co. *v.* Pennsylvania R. Co., 145 Mich. 712, 108 N. W. 1081.

Minnesota. — Krenz *v.* Lee, (Minn. 1908) 116 N. W. 832; Rundlett *v.* G. Heileman Brewing Co., (Minn. 1908) 116 N. W. 833.

Mississippi. — Farmer *v.* Cumberland Telephone, etc., Co., 86 Miss. 55, 38 So. 775; Fore *v.* Alabama, etc., R. Co., 87 Miss. 213, 39 So. 493; Romano *v.* Vicksburg R., etc., Co., (Miss. 1906) 39 So. 781; Gibson *v.* W. C. Wood Lumber Co., (Miss. 1908) 45 So. 834.

Missouri. — Harrison *v.* Lakeman, 189 Mo. 581, 88 S. W. 53; Hollweg *v.* Bell Telephone Co., 195 Mo. 149, 93 S. W. 262; Gordon *v.* Park, 202 Mo. 236, 100 S. W. 621; Williamson *v.* St. Louis Transit Co., 202 Mo. 345, 100 S. W. 1072; Reynolds *v.* Hood, (Mo. 1908) 108 S. W. 86; Fields *v.* Missouri Pac. R. Co., 113 Mo. App. 642, 88 S. W. 134; Dysart-Cook Mule Co. *v.* Reed, 114 Mo. App. 296, 89 S. W. 591; McManus *v.* Oregon Short Line R. Co., 118 Mo. App. 152, 94 S. W. 743; Missouri Real Estate Syndicate *v.* Sims, 121 Mo. App. 156, 98 S. W. 783; Cobb *v.* Holloway, (Mo. App. 1908) 108 S. W. 109; Crawford *v.* Stayton, (Mo. App. 1908) 110 S. W. 665; Smith *v.* Lyle Rock Co., (Mo. App. 1908) 111 S. W. 831; Stevens *v.* Stevens, (Mo. App. 1908) 112 S. W. 35.

Nebraska. — Gillis *v.* Paddock, (Neb. 1906) 109 N. W. 734; Continental Lumber Co. *v.* Munshan, (Neb. 1906) 109 N. W. 760; Wells *v.* Cochran, (Neb. 1907) 111 N. W. 381; Plant *v.* Chicago, etc., R. Co., (Neb. 1907) 112 N. W. 561; Fredrickson *v.* Schmittroth, (Neb. 1907) 112 N. W. 564; Fitch *v.* Martin, (Neb. 1907) 113 N. W. 796; Farmers', etc., Irrigation Co. *v.* Brumbaugh, (Neb. 1908) 116 N. W. 512.

New Jersey. — Hummer *v.* Lehigh Valley R. Co., (N. J. 1906) 65 Atl. 126; Mumma *v.* Easton, etc., R. Co., 73 N. J. L. 653, 65 Atl. 208; Nolan *v.* Bridgeton, etc., Traction Co., (N. J. 1907) 65 Atl. 992; Weston *v.* Pennsylvania R. Co., (N. J. 1907) 65 Atl. 1015; Kelly *v.* Bergen County Gas Co., (N. J. 1970) 67 Atl. 21; Rand *v.* Armm, (N. J. 1907) 67 Atl. 71; Bennett *v.* Busch, (N. J. 1907) 67 Atl. 188; McCarthy *v.* Metropolitan L. Ins. Co., (N. J. 1908) 69 Atl. 170; Kearns *v.* Waldron, (N. J. 1908) 69 Atl. 960; Martin *v.* Kelley, (N. J. 1908) 69 Atl. 969.

New York. — Reilly *v.* Troy Brick Co., 184 N. Y. 399, 77 N. E. 385; Martin *v.* Wermann, 107 N. Y. App. Div. 482, 95 N. Y. Supp. 284; Conte *v.* New York, 116 N. Y. App. Div. 356, 101 N. Y. Supp. 491; Powers *v.* Miller, 123 N. Y. App. Div. 396, 107 N. Y. Supp. 960; Hayne *v.* Van Epps, (Supm. Ct. App. Div.) 108 N. Y. Supp. 278; Ellis *v.* New York City R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 544; Festa *v.* New York City R. Co., (Supm. Ct. App. T.) 95 N. Y. Supp. 595; Schmal *v.* Rothschild, (Supm. Ct. App. T.) 96 N. Y. Supp. 179; Cohen *v.* Mincoff, (Supm. Ct. App. T.) 96 N. Y. Supp. 412; Central Brewing Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 102 N. Y. Supp. 509; Lewine *v.* Potar, (Supm. Ct. App. T.) 102 N. Y. Supp. 536; Klein *v.* New York City R. Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 571, 103 N. Y. Supp. 751; Schechwitz *v.* New York City R. Co., (Supm. Ct. App. T.) 103 N. Y. Supp. 781; Dorsett *v.* Doubleday, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 598, 103 N. Y. Supp. 792; New York Evening Journal Pub. Co. *v.* William F. Simpson Advertising Agency, (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 347, 106 N. Y. Supp. 858; Lekas *v.* Schwartz, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 594, 107 N. Y. Supp. 145; Konigsberg *v.* Davis, (Supm. Ct. App. T.) 108 N. Y. Supp. 595; Gachot *v.* Heidelburger, (Supm. Ct. App. T.) 109 N. Y. Supp. 803; Kanevsky *v.* Klein, (Supm. Ct. App. T.) 109 N. Y. Supp. 816; Kornfeld *v.* David Stevenson Brewing Co., (Supm. Ct. App. T.) 111 N. Y. Supp. 641; Moreland *v.* Delhaye, (Supm. Ct. App. T.) 111 N. Y. Supp. 641.

North Carolina. — Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201; Cox *v.* High Point, etc., R. Co., (N. Car. 1908) 61 S. E. 183.

North Dakota. — Higgs *v.* Minneapolis, etc., R. Co., (N. Dak. 1908) 114 N. W. 722.

Oklahoma. — Sovereign Camp, etc., *v.* Welch, 16 Okla. 188, 83 Pac. 547; Folley *v.* Chicago, etc., R. Co., 16 Okla. 32, 84 Pac. 1090; Lane

v. Choctaw, etc., R. Co., (Okla. 1907) 91 Pac. 883; Cole *v.* Missouri, etc., R. Co., (Okla. 1908) 94 Pac. 540; St. Louis, etc., R. Co. *v.* Jamieson, (Okla. 1908) 95 Pac. 417; Citizens' Bank *v.* Garnett, (Okla. 1908) 95 Pac. 755.

Oregon. — Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389; Jackson *v.* Sumpter Valley R. Co., (Oregon 1908) 93 Pac. 356; Dillard *v.* Olalla Min. Co., (Oregon 1908) 96 Pac. 678.

Pennsylvania. — Raymer *v.* Standard Steel Works, 216 Pa. St. 101, 64 Atl. 902; Mortimer *v.* Beaver Valley Traction Co., 216 Pa. St. 326, 65 Atl. 758; Crothers *v.* Philadelphia Electric Co., 218 Pa. St. 214, 67 Atl. 206.

Rhode Island. — Dunbar *v.* Bristol County Gas, etc., Co., (R. I. 1908) 69 Atl. 925.

South Carolina. — Machen *v.* Western Union Tel. Co., 72 S. Car. 256, 51 S. E. 697; Barfield *v.* Coker, 73 S. Car. 181, 53 S. E. 170; Carter *v.* Western Union Tel. Co., 73 S. Car. 430, 53 S. E. 539; Roberts *v.* Western Union Tel. Co., 76 S. Car. 275, 56 S. E. 960; Jonesville Mfg. Co. *v.* Southern R. Co., 77 S. Car. 480, 58 S. E. 422.

South Dakota. — Hawley *v.* Bond, (S. Dak. 1905) 105 N. W. 464; Aultman Engine, etc., Co. *v.* Boyd, (S. Dak. 1907) 112 N. W. 151; Roberts *v.* Ruh, (S. Dak. 1908) 114 N. W. 1097.

Texas. — St. Louis Southwestern R. Co. *v.* Demsey, (Tex. Civ. App. 1905) 89 S. W. 786; Sanders *v.* Houston, etc., R. Co., (Tex. Civ. App. 1905) 91 S. W. 245; Clark *v.* Wilson, (Tex. Civ. App. 1906) 91 S. W. 627; Merritt *v.* State, (Tex. Civ. App. 1906) 94 S. W. 372; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563; Titterington *v.* Harry, (Tex. Civ. App. 1906) 97 S. W. 840; Buchanan *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 100 S. W. 974; Red River Nat. Bank *v.* De Berry, (Tex. Civ. App. 1907) 105 S. W. 998; Walker *v.* Erwin, (Tex. Civ. App. 1907) 106 S. W. 164; Allen *v.* Camp, (Tex. 1908) 106 S. W. 315; Gray *v.* Fussell, (Tex. Civ. App. 1907) 106 S. W. 454; St. Louis Southwestern R. Co. *v.* Thompson, (Tex. Civ. App. 1907) 108 S. W. 453; Gulf, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1908) 109 S. W. 478; Harpold *v.* Moss, (Tex. 1908) 109 S. W. 928; Citizens' R. Co. *v.* Griffin, (Tex. Civ. App. 1908) 109 S. W. 999; Texas Brokerage Co. *v.* Barkley, (Tex. Civ. App. 1908) 109 S. W. 1001; Craver *v.* Ragon, (Tex. Civ. App. 1908) 110 S. W. 489.

Vermont. — Lewes *v.* Crane, 78 Vt. 216, 62 Atl. 60; Scofield *v.* Metropolitan L. Ins. Co., 79 Vt. 161, 64 Atl. 1107.

Washington. — Weir *v.* Seattle Electric Co., 41 Wash. 657, 84 Pac. 597; McCowan *v.* Northeastern Siberian Co., 41 Wash. 675, 84 Pac. 614; Menasha Wooden Ware Co. *v.* Nelson, 45 Wash. 543, 88 Pac. 1018.

West Virginia. — Williamson *v.* Nigh, 58 W. Va. 629, 53 S. E. 124; Kenneweg Co. *v.* Miley, 59 W. Va. 360, 53 S. E. 556; Newhouse *v.* Kanawha, etc., R. Co., (W. Va. 1907) 59 S. E. 1071; Null *v.* Bowman, (W. Va. 1908) 61 S. E. 154.

Wisconsin. — Zentner *v.* Oshkosh Gaslight Co., 126 Wis. 196, 105 N. W. 911; Faulus *v.* O'Neill, 131 Wis. 69, 111 N. W. 333; Kortendick *v.* Waterford, (Wis. 1908) 115 N. W. 331; Gessner *v.* Roeming, (Wis. 1908) 116 N. W. 171.

In Criminal Cases. — State *v.* York, (Iowa 1907) 113 N. W. 324; State *v.* Halvorson, (Minn. 1908) 114 N. W. 957; People *v.* Stillman, 117 N. Y. App. Div. 170, 102 N. Y. Supp. 351; State *v.* Hunskor, (N. Dak. 1908) 114 N. W. 996.

564. 4. State *v.* Phinney, (Idaho 1907) 89 Pac. 634; State *v.* McNamara, (Mo. 1908) 110 S. W. 1067; State *v.* Koch, 33 Mont. 490, 85 Pac. 272; State *v.* Sloan, 35 Mont. 367, 89 Pac. 829; State *v.* Hill, 141 N. Car. 769, 53 S. E. 311; State *v.* Godwin, 145 N. Car. 461; 59 S. E. 132; Wilson *v.* State, (Tex. Crim. 1908) 110 S. W. 904.

5. Burley *v.* State, (Ga. 1908) 60 S. E. 1006.

The Proper Form of Instruction is "If the jury find certain facts to be true" they may find defendant guilty or not guilty. An instruction that "if the jury believe the *evidence*" is error. State *v.* Seaboard Air Line R. Co., (N. Car. 1907) 59 S. E. 1048.

6. Schultz *v.* State, (Wis. 1907) 113 N. W. 428.

565. 3. *United States.* — Cascade Foundry Co. *v.* L. J. Mueller Furnace Co., 140 Fed. 791.

California. — Copriviza *v.* Rilovich, 4 Cal. App. 26, 87 Pac. 398.

Colorado. — Williams *v.* Sleepy Hollow Min. Co., 37 Colo. 62, 86 Pac. 337.

Idaho. — Adams *v.* Bunker Hill, etc., Co., 12 Idaho 637, 89 Pac. 624; Pilmer *v.* Boise Traction Co., (Idaho 1908) 94 Pac. 432.

Kentucky. — Meade *v.* Ashland Steel Co., (Ky. 1907) 100 S. W. 821.

Massachusetts. — Lindenbaum *v.* New York, etc., R. Co., (Mass. 1908) 84 N. E. 129.

Missouri. — Holmes *v.* Missouri Pac. R. Co., 190 Mo. 98, 88 S. W. 623; Reynolds *v.* Hood, (Mo. 1908) 108 S. W. 86; Jones *v.* St. Louis, etc., R. Co., 124 Mo. App. 246, 101 S. W. 615; Corwith First State Bank *v.* Hammond, 124 Mo. App. 177, 101 S. W. 677.

Nebraska. — Allen *v.* American Beet Sugar Co., 75 Neb. 423, 106 N. W. 469; Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 113 N. W. 524; Henry *v.* Omaha Packing Co., (Neb. 1908) 115 N. W. 777.

New Hampshire. — Seely *v.* Manhattan L. Ins. Co., 73 N. H. 339, 61 Atl. 585.

New Jersey. — Hummer *v.* Lehigh Valley R. Co., (N. J. 1906) 65 Atl. 126; Mumma *v.* Easton, etc., R. Co., 73 N. J. L. 653, 65 Atl. 208; Dederick *v.* Central R. Co., (N. J. 1906) 65 Atl. 833; Nolan *v.* Bridgeton, etc., Traction Co., (N. J. 1907) 65 Atl. 992; Weston *v.* Pennsylvania R. Co., (N. J. 1907) 65 Atl. 1015; McCarthy *v.* Metropolitan L. Ins. Co., (N. J. 1908) 69 Atl. 170.

New York. — Fuller Buggy Co. *v.* Waldron, 112 N. Y. App. Div. 814, 99 N. Y. Supp. 561; Moreland *v.* Delhaye, (Supm. Ct. App. T.) 111 N. Y. Supp. 641.

North Carolina. — Stewart *v.* Raleigh, etc., Air Line R. Co., 137 N. Car. 687, 50 S. E. 312, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 565.

Oregon. — State *v.* Doris, (Oregon 1908) 94 Pac. 44.

Pennsylvania. — Perkiomen R. Co. *v.* Kremer, 218 Pa. St. 641, 67 Atl. 913.

Tennessee. — Norman *v.* Southern R. Co., (Tenn. 1907) 104 S. W. 1088.

Texas. — Hutchens *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 89 S. W. 24; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698; St. Louis Southwestern R. Co. *v.* Thompson, (Tex. Civ. App. 1907) 103 S. W. 684; Ross *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1907) 103 S. W. 708; Walker *v.* Erwin, (Tex. Civ. App. 1907) 106 S. W. 164; Craver *v.* Ragon, (Tex. Civ. App. 1908) 110 S. W. 489.

Washington. — Meyers *v.* Syndicate Heat, etc., Co., (Wash. 1907) 91 Pac. 549.

Wisconsin. — Roedler *v.* Chicago, etc., R. Co., 129 Wis. 270, 109 N. W. 88.

566. 1. *United States.* — Minahan *v.* Grand Trunk Western R. Co., (C. C. A.) 138 Fed. 37; Western Union Tel. Co. *v.* Baker, (C. C. A.) 140 Fed. 315.

Alabama. — Speakman *v.* Vest, (Ala. 1907) 44 So. 1021.

Arkansas. — Deal *v.* Beck, 83 Ark. 631, 103 S. W. 736; Ong Chair Co. *v.* Cook, (Ark. 1908) 108 S. W. 203.

Colorado. — Mayhew *v.* Smith, (Colo. 1908) 95 Pac. 549.

Delaware. — Staunton *v.* Smith, (Del. 1906) 65 Atl. 593.

District of Columbia. — Jennings *v.* Philadelphia, etc., R. Co., 29 App. Cas. (D. C.) 219, 10 Ann. Cas. 761; Barstow *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362.

Georgia. — Dobbs *v.* Woodstock Iron Works, 122 Ga. 833, 50 S. E. 914; Central of Georgia R. Co. *v.* Gortatowsky, 123 Ga. 366, 51 S. E. 469; Mann *v.* State, 124 Ga. 760, 53 S. E. 324; King Mfg. Co. *v.* Walton, 1 Ga. App. 403, 58 S. E. 115.

Illinois. — Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709; Illinois Cent. R. Co. *v.* Bailey, 222 Ill. 480, 78 N. E. 833; Frank Parmelee Co. *v.* Wheelock, 224 Ill. 194, 79 N. E. 652; Yezner *v.* Roberts, etc., Shoe Co., 116 Ill. App. 40; Chicago, etc., R. Co. *v.* Wightman, 119 Ill. App. 263.

Iowa. — American L. Ins. Co. *v.* Melcher, 132 Iowa 324, 109 N. W. 805; Capital City Carriage Co. *v.* Moody, (Iowa 1907) 110 N. W. 903; Sheker *v.* Machovec, (Iowa 1907) 110 N. W. 1055; Scow *v.* Farmers', etc., Sav. Bank, (Iowa 1907) 111 N. W. 32; Arnd *v.* Aylesworth, (Iowa 1907) 111 N. W. 407; Webster *v.* Armstrong, (Iowa 1907) 113 N. W. 549; Calwell *v.* Minneapolis, etc., R. Co., (Iowa 1908) 115 N. W. 605.

Kansas. — Robinson *v.* Lamoureaux, 71 Kan. 850, 80 Pac. 595; Taylor *v.* Modern Woodmen of America, 72 Kan. 443, 83 Pac. 1099.

Kentucky. — Thomas *v.* Stickler, (Ky. 1906) 93 S. W. 648; Forbes *v.* Hunter, (Ky. 1907) 102 S. W. 246; Owensboro City R. Co. *v.* Allen, (Ky. 1908) 108 S. W. 357.

Massachusetts. — Osborne *v.* Boston Ice Co., 191 Mass. 596, 77 N. E. 1033; Paine *v.* Kelley, (Mass. 1907) 83 N. E. 8.

Missouri. — Peery *v.* Quincy, etc., R. Co., 122 Mo. App. 177, 99 S. W. 14; Pumphrey *v.* Fowler, 124 Mo. App. 61, 100 S. W. 1101; Scott County Milling Co. *v.* St. Louis, etc., R. Co., 127 Mo. App. 80, 104 S. W. 924.

Nebraska. — Ogden *v.* Sovereign Camp, etc., (Neb. 1907) 113 N. W. 524.

New York. — Anderson *v.* Walsh, 189 N. Y. 159, 81 N. E. 764; Lewis *v.* Erie R. Co., 105 N. Y. App. Div. 292, 94 N. Y. Supp. 765; Heckmuller *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc (N. Y.) 541, 104 N. Y. Supp. 679; Hann *v.* Brettler, (Supm. Ct. App. T. 107 N. Y. Supp. 78.

North Carolina. — Harton *v.* Forest City Telephone Co., (N. Car. 1907) 59 S. E. 1022.

North Dakota. — Zink *v.* Lahart, (N. Dak. 1907) 110 N. W. 931; Propper *v.* Wohlwend, (N. Dak. 1907) 112 N. W. 967.

Pennsylvania. — Kitler *v.* People's St. R. Co., 27 Pa. Super. Ct. 602; Jacobs *v.* Heppe, 29 Pa. Super. Ct. 406; Barley *v.* Beegle, 29 Pa. Super. Ct. 635.

Rhode Island. — Quinn *v.* Rhode Island Co., (R. I. 1907) 67 Atl. 364.

South Carolina. — Robert Buist Co. *v.* Lancaster Mercantile Co., 73 S. Car. 48, 52 S. E. 789; Dobson *v.* Postal Tel.-Cable Co., (S. Car. 1908) 60 S. E. 948.

South Dakota. — Edwards *v.* Chicago, etc., R. Co., (S. Dak. 1907) 110 N. W. 832.

Tennessee. — Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319; Kinney *v.* Yazoo, etc., R. Co., 116 Tenn. 450, 92 S. W. 1116.

Texas. — Parker *v.* Stroud, (Tex. Civ. App. 1905) 87 S. W. 734; Ellis *v.* Littlefield, (Tex. Civ. App. 1906) 93 S. W. 171; Wagoner *v.* Wyatt, (Tex. Civ. App. 1906) 94 S. W. 1076; Openshaw *v.* Rickmeyer, (Tex. Civ. App. 1907) 102 S. W. 467; Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 495.

Washington. — Dossett *v.* St. Paul, etc., Lumber Co., 40 Wash. 376, 82 Pac. 273; State *v.* Gohl, (Wash. 1907) 90 Pac. 259; Tergeson *v.* Robinson Mfg. Co., (Wash. 1908) 93 Pac. 428; Crowley *v.* Taylor, (Wash. 1908) 95 Pac. 1016; Garretson *v.* Tacoma R., etc., Co., (Wash. 1908) 96 Pac. 511.

West Virginia. — Kenneweg Co. *v.* Miley, 59 W. Va. 360, 53 S. E. 556; Johnson *v.* Bank, 60 W. Va. 320, 55 S. E. 394.

Wisconsin. — Clark *v.* Slaughter, 129 Wis. 642, 109 N. W. 556; Gallaway *v.* Massee, (Wis. 1907) 113 N. W. 1098.

Wyoming. — Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624; Chicago, etc., Co. *v.* Pollock, (Wyo. 1908) 93 Pac. 847.

572. 2. *United States.* — Waters-Pierce Oil Co. *v.* Van Elderew, (C. C. A.) 137 Fed. 557; Semet-Solway Co. *v.* Wilcox, (C. C. A.) 143 Fed. 839; Waters *v.* Davis, (C. C. A.) 145 Fed. 912; Erie R. Co. *v.* Farrell, (C. C. A.) 147 Fed. 220.

Alabama. — Southern Industrial Institute *v.* Hellier, 142 Ala. 686, 39 So. 163.

Arkansas. — Mallory *v.* Brademyer, 76 Ark. 538, 89 S. W. 551; Skillern *v.* Baker, 82 Ark. 86, 100 S. W. 764.

California. — Zipperlen *v.* Southern Pac. R. Co., (Cal. App. 1907) 93 Pac. 1049.

Colorado. — Boles *v.* People, 37 Colo. 41, 86 Pac. 1030.

Illinois. — Chicago, etc., R. Co. *v.* Jennings,

217 Ill. 494, 75 N. E. 560; Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 303, 76 N. E. 341; Krahn *v.* Bickford, 118 Ill. App. 511.

Indiana. — Southern R. Co. *v.* Limback, (Ind. 1908) 85 N. E. 354; Siebe *v.* Heilman Mach. Works, 38 Ind. App. 37, 77 N. E. 300.

Iowa. — Murphy *v.* Hiltibridle, 132 Iowa 114, 109 N. W. 471; McKnight *v.* Parsons, (Iowa 1907) 113 N. W. 858; Rhodes *v.* Des Moines, etc., R. Co., (Iowa 1908) 115 N. W. 503; Calwell *v.* Minneapolis, etc., R. Co., (Iowa 1908) 115 N. W. 605.

Kansas. — Acker *v.* Norman, 72 Kan. 586, 84 Pac. 531.

Kentucky. — Louisville, etc., R. Co. *v.* Hall, (Ky. 1906) 94 S. W. 26; Louisville, etc., R. Co. *v.* Mount, (Ky. 1907) 101 S. W. 1182; Musselam *v.* Cincinnati, etc., R. Co., (Ky. 1907) 104 S. W. 337; Louisville Bridge Co. *v.* Allen, (Ky. 1908) 107 S. W. 1191; Cincinnati, etc., R. Co. *v.* Evans, (Ky. 1908) 110 S. W. 844.

Massachusetts. — Lindenbaum *v.* New York, etc., R. Co., (Mass. 1908) 84 N. E. 129.

Michigan. — Harris *v.* Neal, (Mich. 1908) 116 N. W. 535.

Minnesota. — Krenz *v.* Lee, (Minn. 1908) 116 N. W. 832.

Mississippi. — Mobile, etc., R. Co. *v.* Jackson, (Miss. 1908) 46 So. 142.

Missouri. — Harrison *v.* Lakenan, 189 Mo. 581, 88 S. W. 53; McCaffery *v.* St. Louis, etc., R. Co., 192 Mo. 144, 90 S. W. 816; Dysart-Cook Mule Co. *v.* Reed, 114 Mo. App. 296, 89 S. W. 591; McReynolds *v.* Quincy, etc., R. Co., 115 Mo. App. 676, 91 S. W. 446; Pickens *v.* Metropolitan St. R. Co., 125 Mo. App. 669, 103 S. W. 124; Roe *v.* Metropolitan St. R. Co., (Mo. App. 1908) 110 S. W. 611; Peck *v.* Springfield Traction Co., (Mo. App. 1908) 110 S. W. 659.

Nebraska. — Husenetter *v.* Little, (Neb. 1907) 110 N. W. 541; Neeley *v.* Trautwein, (Neb. 1907) 113 N. W. 141.

New Jersey. — Hayward *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 737; Kearns *v.* Waldron, (N. J. 1908) 69 Atl. 960.

New York. — Martin *v.* Wermann, 107 N. Y. App. Div. 482, 95 N. Y. Supp. 284; Gelderman *v.* Curtis, (Supm. Ct. App. Div.) 108 N. Y. Supp. 681; Segaloff *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 102 N. Y. Supp. 509; Dorsett *v.* Doubleday, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 598, 103 N. Y. Supp. 792; New York Evening Journal Pub. Co. *v.* William F. Simpson Advertising Agency, (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 347, 106 N. Y. Supp. 858.

North Carolina. — Smith *v.* Atlantic, etc., Air Line R. Co., (N. Car. 1908) 61 S. E. 575.

North Dakota. — Zink *v.* Lahart, (N. Dak. 1907) 110 N. W. 931.

Oklahoma. — Folley *v.* Chicago, etc., R. Co., 16 Okla. 32, 84 Pac. 1090.

Pennsylvania. — Snyder *v.* Bougher, 214 Pa. St. 453, 63 Atl. 893; Perkiomen R. Co. *v.* Kremer, 218 Pa. St. 641, 67 Atl. 913; Kitler *v.* People's St. R. Co., 27 Pa. Super. Ct. 602; Barley *v.* Beegle, 29 Pa. Super. Ct. 635.

Texas. — Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000; Houston, etc., R. Co. *v.* Davis, (Tex. Civ. App. 1907) 100 S. W. 1013; Walker *v.* Erwin, (Tex. Civ. App. 1907) 106 S. W. 164; Williams *v.* Burke, (Tex. Civ. App. 1908) 108 S. W. 160; Harpold *v.* Moss, (Tex. 1908) 109 S. W. 928.

Washington. — Adams *v.* Peterman Mfg. Co., (Wash. 1907) 92 Pac. 339; Herbert *v.* Hillman, (Wash. 1908) 96 Pac. 837.

Wisconsin. — Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120.

Wyoming. — Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624; Chicago, etc., R. Co. *v.* Pollock, (Wyo. 1908) 93 Pac. 847.

When Evidence Cannot Possibly Be True, it should not be submitted to the jury. Wolf *v.* City R. Co., (Oregon 1907) 91 Pac. 460.

Question for Jury as to Credibility of Expert Witnesses. — People *v.* Buck, 151 Cal. 667, 91 Pac. 529; Sun Ins. Office *v.* Western Woolen Mill Co., 72 Kan. 41, 82 Pac. 513; Ayrhart *v.* Wilhelmy, (Iowa 1907) 112 N. W. 782; State *v.* Daly, (Mo. 1908) 109 S. W. 53; Wiley *v.* St. Joseph Gas Co., (Mo. App. 1908) 111 S. W. 1185.

Question of Fact as to Credibility of Expert Witnesses in Criminal Prosecutions — *Alabama.* — Kenedy *v.* State, 147 Ala. 687, 40 So. 658.

California. — People *v.* Waysman, 1 Cal. App. 246, 81 Pac. 1087; People *v.* King, 4 Cal. App. 213, 87 Pac. 400; People *v.* White, 5 Cal. App. 329, 90 Pac. 471.

Colorado. — Boles *v.* People, 37 Colo. 41, 86 Pac. 1030.

Delaware. — State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Samuels, (Del. 1904) 67 Atl. 164; State *v.* Stewart, (Del. 1907) 67 Atl. 786.

Florida. — Hisler *v.* State, 52 Fla. 30, 42 So. 692.

Georgia. — Moody *v.* State, 1 Ga. App. 772, 58 S. E. 262; Cothran *v.* State, 2 Ga. App. 437, 58 S. E. 544; Barber *v.* State, 3 Ga. App. 598, 60 S. E. 285.

Idaho. — State *v.* Simes, 12 Idaho 310, 85 Pac. 914.

Kansas. — State *v.* Bursau, 74 Kan. 473, 87 Pac. 183.

Kentucky. — Dowell *v.* Com., (Ky. 1908) 108 S. W. 847.

Missouri. — Gallatin *v.* Fannin, (Mo. App. 1908) 107 S. W. 479.

Montana. — State *v.* Allen, 34 Mont. 403, 87 Pac. 177; State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

Nebraska. — Carson *v.* State, (Neb. 1908) 114 N. W. 938.

New Jersey. — State *v.* Rosa, 72 N. J. L. 462, 62 Atl. 695.

Oregon. — State *v.* Doris, (Oregon 1908) 94 Pac. 44.

Texas. — Banks *v.* State, (Tex. Crim. 1908) 108 S. W. 693.

Washington. — State *v.* Mann, 39 Wash. 144, 81 Pac. 561; State *v.* McPhail, 39 Wash. 199, 81 Pac. 683; State *v.* Hill, 45 Wash. 694, 89 Pac. 160.

573. 3. State *v.* York, (Iowa 1907) 113 N. W. 324; Amber Petroleum Co. *v.* Breech, (Tex. Civ. App. 1908) 111 S. W. 668; Hoffman *v.* Titlou, (Wash. 1907) 92 Pac. 888; Strandell

v. Moran, (Wash. 1908) 95 Pac. 1106; Kaley *v.* Van Ostrand, (Wis. 1908) 114 N. W. 817.

4. Smith *v.* Humphreyville, (Tex. Civ. App. 1907) 104 S. W. 495.

574. 2. Reynolds *v.* State, (Ala. 1908) 45 So. 894; Central of Georgia R. Co. *v.* Harper, 124 Ga. 836, 53 S. E. 391; Gesas *v.* Oregon Short Line R. Co., (Utah 1907) 93 Pac. 274.

575. 1. Goff *v.* Philadelphia, 214 Pa. St. 1; 2, 63 Atl. 431.

3. Jenkins, etc., Co. *v.* Alpena Portland Cement Co., (C. C. A.) 147 Fed. 641; Copriviza *v.* Rilovich, 4 Cal. App. 26, 87 Pac. 398; Hoyt *v.* Duluth, etc., R. Co., (Minn. 1908) 115 N. W. 263; Carson *v.* Milwaukee Produce Co., (Wis. 1907) 113 N. W. 393.

576. 1. State *v.* Harris, (Mo. 1908) 108 S W. 28; State *v.* Bailey, (W. Va. 1908) 60 S. E. 785.

3. People *v.* Fossetti, (Cal. App. 1908) 95 Pac. 384; Robinson *v.* State, 129 Ga. 336, 58 S. E. 842.

577. 1. People *v.* Bunkers, 2 Cal. App. 197, 84 Pac. 364; Gathman *v.* Chicago, 127 Ill. App. 150.

2. **Photographs** are to be considered by the jury under the same tests as other evidence. Higgs *v.* Minneapolis, etc., R. Co., (N. Dak. 1908) 114 N. W. 722; Allen *v.* State, 146 Ala. 61, 42 So. 1006.

579. 1. Sullivan *v.* Franklin Bank, 28 Ohio Cir. Ct. 813.

580. 2. State *v.* Lichtman-Goodman, (Mo. App. 1908) 109 S. W. 819.

3. **Mixed Question of Law and Fact as to Waiver.** — Hooe *v.* U. S., 41 Ct. Cl. 378.

581. 3. *Rate of Speed at Which Train Was Being Run.* — Wabash R. Co. *v.* Barrett, 117 Ill. App. 315.

582. 1. Harrison *v.* Franklin, 126 Mo. App. 366, 103 S. W. 585.

4. American Cent. Ins. Co. *v.* Noe, 75 Ark. 406, 88 S. W. 572; Carson *v.* State, (Neb. 1908) 114 N. W. 938; Campbell *v.* Ludin, (Supm. Ct. App. T.) 104 N. Y. Supp. 372; Lekas *v.* Schwartz, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 594, 107 N. Y. Supp. 145; Cantelou *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 1017.

5. Western Underwriters' Assoc. *v.* Hankins, 221 Ill. 304, 77 N. E. 447; Gibson *v.* Fidelity, etc., Co., 232 Ill. 49, 83 N. E. 539; Pritchard *v.* Hooker, 114 Mo. App. 605, 90 S. W. 415; Snyder *v.* Bougher, 214 Pa. St. 453, 63 Atl. 893.

6. Propper *v.* Wohlwend, (N. Dak. 1907) 112 N. W. 967.

7. Propper *v.* Wohlwend, (N. Dak. 1907) 112 N. W. 967.

583. 1. Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Currie *v.* Gilchrist, (N. Car. 1908) 61 S. E. 581; Propper *v.* Wohlwend, (N. Dak. 1907) 112 N. W. 967.

3. Stallworth *v.* State, 146 Ala. 8, 41 So. 184; Boyd *v.* State, (Ala. 1907) 43 So. 204; People *v.* Wong Sang Lung, 3 Cal. App. 221, 84 Pac. 843; Boles *v.* People, 37 Colo. 41, 86 Pac. 1030; Lindenbaum *v.* New York, etc., R. Co., (Mass. 1908) 84 N. E. 129; American Nat. Bank *v.* San Marcos First Nat. Bank, (Tex. Civ. App. 1906) 92 S. W. 439.

584. 1. Chapman *v.* Newmarket Mfg. Co., (N. H. 1908) 68 Atl. 868.

585. 2. American Window Glass Co. *v.* Indiana Natural Gas, etc., Co., 37 Ind. App. 439, 76 N. E. 1006.

586. 1. Creagh *v.* State, (Ala. 1907) 43 So. 112; Fleming *v.* State, (Ala. 1907) 43 So. 219.

Question of Fact as to Reasonableness of Charges. — Lenhart *v.* Cambria County, 29 Pa. Super. Ct. 350.

2. *United States.* — Southern R. Co. *v.* Hopkins, (C. C. A.) 161 Fed. 266.

Alabama. — Smith *v.* State, 142 Ala. 14, 39 So. 329; Alabama G. S. R. Co. *v.* Bonner, (Ala. 1905) 39 So. 619; Kennedy *v.* State, 147 Ala. 687, 40 So. 658; Allen *v.* State, 146 Ala. 61, 41 So. 624; Hanners *v.* State, 147 Ala. 27, 41 So. 973; Boyd *v.* State, (Ala. 1908) 45 So. 591.

California. — People *v.* Wong Sang Lung, 3 Cal. App. 221, 84 Pac. 843.

Georgia. — Johnson *v.* State, 2 Ga. App. 405, 58 S. E. 684.

Indiana. — Siebe *v.* Heilman Mach. Works, 38 Ind. App. 37, 77 N. E. 300; Erie Crawford Oil Co. *v.* Meeks, (Ind. App. 1907) 81 N. E. 518.

Iowa. — State *v.* Willing, 129 Iowa 72, 105 N. W. 355.

Missouri. — State *v.* McNamara, (Mo. 1908) 110 S. W. 1067; McReynolds *v.* Quincy, etc., R. Co., 115 Mo. App. 676, 91 S. W. 446.

Montana. — State *v.* Allen, 34 Mont. 403, 87 Pac. 177; State *v.* Paisley, (Mont. 1907) 92 Pac. 566.

North Carolina. — Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201.

North Dakota. — Zink *v.* Lahart, (N. Dak. 1907) 110 N. W. 931.

New Jersey. — State *v.* Rosa, 72 N. J. L. 462, 62 Atl. 695.

New York. — Cooke *v.* Union R. Co., (Supm. Ct. App. T.) 111 N. Y. Supp. 708.

Texas. — Wright *v.* State, (Tex. Crim. 1908) 107 S. W. 822; Harpold *v.* Moss, (Tex. 1908) 109 S. W. 928; Kansas City Southern R. Co. *v.* Williams, (Tex. Civ. App. 1908) 111 S. W. 196.

Utah. — State *v.* James, (Utah 1907) 89 Pac. 460.

QUORUM.

589. 3. McManus *v.* Police Com'rs, 73 N. J. L. 307, 62 Atl. 997.

590. 2. See Lemoyne Borough Councilmen, 15 Pa. Dist. 244, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 590.

4. Dismukes *v.* Jones, (Ala. 1907) 44 So. 182, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 590.

591. 1. Shugars *v.* Hamilton, (Ky. 1906) 92 S. W. 564.

3. Com. *v.* King, 34 Pa. Co. Ct. 235, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 591.

4. McManus *v.* Police Com'rs, 73 N. J. L. 307, 62 Atl. 997; New York Electrical Workers' Union *v.* Sullivan, (Supm. Ct. App. Div.) 107 N. Y. Supp. 886.

592. 3. Com. *v.* Garvey, 217 Pa. St. 425, 66 Atl. 652.

593. 3. **Concurrent Action of Two Boards.** — A statute providing that a majority of both

of two boards shall constitute a quorum, refers to a majority of both boards construed as a whole. Davis *v.* Claus, (Ky. 1907) 100 S. W. 263.

QUO WARRANTO.

596. 1. Moody *v.* Lowrimore, 74 Ark. 421, 86 S. W. 400; State *v.* Kent, 96 Minn. 255, 104 N. W. 948; State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 596.

3. People *v.* Healy, 230 Ill. 280, 82 N. E. 599; State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; State *v.* Kent, 96 Minn. 255, 104 N. W. 948.

4. State *v.* Kent, 96 Minn. 255, 104 N. W. 948.

597. 2. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; State *v.* Kent, 96 Minn. 255, 104 N. W. 948.

598. 5. People *v.* Healy, 230 Ill. 280, 82 N. E. 599.

6. State *v.* Noble, (N. Dak. 1907) 112 N. W. 141.

599. 3. State *v.* Norcross, (Wis. 1907) 112 N. W. 40.

5. People *v.* Healy, 230 Ill. 280, 82 N. E. 599; State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; Painter *v.* U. S., 6 Indian Ter. 505, 98 S. W. 352.

6. People *v.* Healy, 230 Ill. 280, 82 N. E. 599; State *v.* Taylor, 208 Mo. 442, 106 S. W. 1023.

600. 3. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867.

6. State *v.* Matthews, (Ala. 1907) 45 So. 307; State *v.* Norcross, (Wis. 1907) 112 N. W. 40.

601. 1. Caffrey *v.* Caffrey, 28 Pa. Super. Ct. 22.

3. *In re* Smith, 116 N. Y. App. Div. 665, 101 N. Y. Supp. 992.

10. State *v.* Raisler, (Wis. 1907) 114 N. W. 118.

602. 1. State *v.* Kent, 96 Minn. 255, 104 N. W. 948.

3. State *v.* Kent, 96 Minn. 255, 104 N. W. 948.

4. State *v.* Bryan, 50 Fla. 293, 39 So. 929, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 602; State *v.* Kent, 96 Minn. 255, 104 N. W. 948.

603. 4. Painter *v.* U. S., 6 Indian Ter. 505, 98 S. W. 352, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 603.

6. Toncray *v.* Budge, (Idaho 1908) 95 Pac. 26; State *v.* Kent, 96 Minn. 255, 104 N. W. 948; State *v.* McClain, 187 Mo. 409, 86 S. W. 135; State *v.* Noble, (N. Dak. 1907) 112 N. W. 141.

604. 2. State *v.* Bryan, 50 Fla. 293, 39 So. 929; People *v.* Drainage Com'rs, 123 Ill. App. 604.

3. Toncray *v.* Budge, (Idaho 1908) 95 Pac. 26; State *v.* Burr, (N. Dak. 1907) 113 N. W. 705.

4. Painter *v.* U. S., 6 Indian Ter. 505, 98 S. W. 352, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 604; Toncray *v.* Budge, (Idaho 1908) 95 Pac. 26.

5. Painter *v.* U. S., 6 Indian Ter. 505, 98 S. W. 352, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 604.

12. State *v.* Noble, (N. Dak. 1907) 112 N. W. 141.

605. 1. State *v.* Burr, (N. Dak. 1907) 113 N. W. 705; State *v.* Noble, (N. Dak. 1907) 112 N. W. 141.

4. Toncray *v.* Budge, (Idaho 1908) 95 Pac. 26.

10. State *v.* Kent, 96 Minn. 255, 104 N. W. 948.

12. State *v.* Taylor, 208 Mo. 442, 106 S. W. 1023.

Duty of Attorney-General to Sign and Present a Petition Is an Absolute One. — People *v.* Healy, 230 Ill. 280, 82 N. E. 599.

606. 1. **Mandamus a Proper Remedy for Refusal of Attorney-General to Act.** — People *v.* Healy, 230 Ill. 280, 82 N. E. 599.

607. 2. State *v.* Alexander, 129 Iowa 538, 105 N. W. 1021.

3. State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

6. Dunton *v.* People, 36 Colo. 128, 87 Pac. 540.

7. State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

8. Malone *v.* New York, etc., R. Co., (Mass. 1907) 83 N. E. 408.

609. 9. People *v.* Horan, 34 Colo. 304, 86 Pac. 252.

12. Stack *v.* Com., 118 Ky. 481, 81 S. W. 917, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 609.

610. 6. State *v.* Bryan, 50 Fla. 293, 39 So. 929, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 610; State *v.* Highby Co., 130 Iowa 69, 106 N. W. 382; Baughman *v.* Nation, (Kan. 1907) 92 Pac. 548.

611. 2. Painter *v.* U. S., 6 Indian Ter. 505, 98 S. W. 352.

4. Toncray *v.* Budge, (Idaho 1908) 95 Pac. 26; State *v.* Burr, (N. Dak. 1907) 113 N. W. 705.

612. 5. State *v.* Sams, 81 Ark. 39, 98 S. W. 955.

613. 1. **Collateral Attack.** — State *v.* Alexander, 129 Iowa 538, 105 N. W. 1021.

614. 7. State *v.* Taylor, 208 Mo. 442, 106 S. W. 1023.

8. State *v.* Taylor, 208 Mo. 442, 106 S. W. 1023.

615. 4. State *v.* Taylor, 208 Mo. 442, 106 S. W. 1023.

7. State *v.* Point Roberts Reef Fish Co., 42 Wash. 409, 85 Pac. 22.

616. 5. State *v.* Shufford, (Kan. 1908) 94 Pac. 137; State *v.* Small, (Mo. App. 1908) 109 S. W. 1079, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 616; State *v.* Point Roberts Reef Fish Co., 42 Wash. 409, 85 Pac. 22; State *v.* Samuelson, 131 Wis. 499, 111 N. W. 712.

6. Decker *v.* Daudt, (N. J. 1907) 67 Atl. 375; State *v.* Anson, (Wis. 1907) 112 N. W. 475; State *v.* Lindemann, (Wis. 1907) 111 N. W. 214; State *v.* Milwaukee Independent Telephone Co., (Wis. 1907) 114 N. W. 108.

618. 1. Com. *v.* Crow, 218 Pa. St. 234, 67 Atl. 355.

3. **A Private Claimant** who stands as a wrongdoer in respect to the very question in

issue cannot maintain the proceedings. Pomeroy *v.* Kelton, 78 Vt. 230, 62 Atl. 56.

5. See State *v.* Bell, (Ind. 1907) 82 N. E. 69.

6. King *v.* Kahne, (Ky. 1905) 87 S. W. 807.

10. State *v.* Small, (Mo. App. 1908) 109 S. W. 1079; State *v.* Samuelson, 131 Wis. 499, 111 N. W. 712.

619. 8. County Supervisor of Assessment. — State *v.* Samuelson, 131 Wis. 499, 111 N. W. 712.

10. McWilliams *v.* Jacobs, 128 Ga. 375, 57 S. E. 509.

620. 3. Atty.-Gen. *v.* Booth, 143 Mich. 89, 106 N. W. 868, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 620.

622. 1. Com. *v.* Altoona, etc., R. Co., 15 Pa. Dist. 814, 31 Pa. Co. Ct. 650, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 621 [622].

6. State *v.* McClain, 187 Mo. 409, 86 S. W. 135, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622.

7. State *v.* McClain, 187 Mo. 409, 86 S. W. 135, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622.

8. State *v.* McClain, 187 Mo. 409, 86 S. W. 135, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622.

9. State *v.* McClain, 187 Mo. 409, 86 S. W. 135, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622.

623. 2. School Dist. No. 2 *v.* Pace, 113 Mo. App. 134, 87 S. W. 580.

3. State *v.* Louisiana, etc., Gravel Road Co., 187 Mo. 439, 86 S. W. 170, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623; State *v.* McClain, 187 Mo. 409, 86 S. W. 135, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623; State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422; Gardner *v.* State, (Kan. 1908) 95 Pac. 588.

4. State *v.* Louisiana, etc., Gravel Road Co., 187 Mo. 439, 86 S. W. 170, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

5. State *v.* Louisiana, etc., Gravel Road Co., 187 Mo. 439, 86 S. W. 170, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623; Gardner *v.* State, (Kan. 1908) 95 Pac. 588.

Corporation and Not Individual Corporators is a proper defendant against whom an action may be maintained where it is fraudulently incorporated in pursuance of an unlawful combination. State *v.* Inner Belt R. Co., 74 Kan. 413, 87 Pac. 696.

624. 7. State *v.* Bryan, 50 Fla. 293, 39 So. 929; Moody *v.* Lowrimore, 74 Ark. 421, 86 S. W. 400; Malone *v.* New York, etc., R. Co., (Mass. 1907) 83 N. E. 408.

625. 5. Stack *v.* Com., 118 Ky. 481, 81 S. W. 917, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 625; People *v.* Stratton, 33 Colo. 464, 81 Pac. 245; Dunton *v.* People, 36 Colo. 128, 87 Pac. 540.

626. 4. State *v.* Johnson, 28 Ohio Cir. Ct. 793, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 626.

8. Merritt *v.* State, (Tex. Civ. App. 1906) 94 S. W. 372.

627. 5. Hall *v.* Tarner, 128 Ga. 410, 57 S. E. 720; Com. *v.* Potter County Water Co., 212 Pa. St. 463, 61 Atl. 1099; State *v.* Norcross, (Wis. 1907) 112 N. W. 40.

628. 2. Malone *v.* New York, etc., R. Co., (Mass. 1907) 83 N. E. 408.

629. 2. State *v.* Cahill, 131 Iowa 286, 108 N. W. 453, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 629.

8. State *v.* Cahill, 131 Iowa 286, 108 N. W. 453, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 629.

630. 1. Jackson *v.* State, 143 Ala. 145, 42 So. 61.

3. Moody *v.* Lowrimore, 74 Ark. 421, 86 S. W. 400; Beaumont *v.* Samson, 5 Cal. App. 491, 90 Pac. 839; Hill *v.* Anderson, (Ky. 1906) 90 S. W. 1071; School *v.* Bell, (Ky. 1907) 102 S. W. 248; School Dist. No. 2 *v.* Pace, 113 Mo. App. 134, 87 S. W. 580; People *v.* McAdoo, 110 N. Y. App. Div. 432, 96 N. Y. Supp. 362; Greenough *v.* Lucey, (R. I. 1907) 66 Atl. 300.

632. 8. State *v.* Ensley, 142 Ala. 661, 38 So. 802.

633. 1. Hedrick *v.* People, 221 Ill. 374, 77 N. E. 441, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 632.

635. 2. Member of Village Council. — State *v.* Callister, 27 Ohio Cir. Ct. 529.

School District Trustee. — State *v.* Kitchens, (Ala. 1906) 41 So. 871.

Road Commissioner. — State *v.* Sams, 81 Ark. 39, 98 S. W. 955.

School Officers. — State *v.* McClain, 187 Mo. 409, 86 S. W. 135.

Managers for the Relief and Employment of the Poor. — Com. *v.* Bowditch, 217 Pa. St. 527, 66 Atl. 867.

636. 1. Public Administrator. — Wootton *v.* Smith, (N. Car. 1907) 59 S. E. 649.

County Infirmary Superintendent. — Palmer *v.* Zeigler, 76 Ohio St. 210, 81 N. E. 234.

Members of a Committee of a Political Party. — Greenough *v.* Lucey, (R. I. 1907) 66 Atl. 300.

2. State *v.* Raisler, (Wis. 1907) 114 N. W. 118.

637. 5. People *v.* Stratton, 33 Colo. 464, 81 Pac. 245; State *v.* Alexander, 129 Iowa 538, 105 N. W. 1021; Gardner *v.* State, (Kan. 1908) 95 Pac. 588; State *v.* McDonald, 101 Minn. 349, 112 N. W. 278; State *v.* Bellflower, (Mo. App. 1908) 108 S. W. 117; School Dist. No. 2 *v.* Pace, 113 Mo. App. 134, 87 S. W. 580; State *v.* Clark, 75 Neb. 620, 106 N. W. 971.

639. 2. Uniontown *v.* State, 145 Ala. 471, 39 So. 814.

6. People *v.* Chicago Telephone Co., 220 Ill. 238, 77 N. E. 245; State *v.* Inner Belt R. Co., 74 Kan. 413, 87 Pac. 696; Malone *v.* New York, etc., R. Co., (Mass. 1907) 83 N. E. 408; State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185; State *v.* Louisiana, etc., Gravel Road Co., 187 Mo. 439, 86 S. W. 170.

640. 3. Atty.-Gen. *v.* Booth, 143 Mich. 89, 106 N. W. 868.

4. State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 640; State *v.* Milwaukee Independent Telephone Co., (Wis. 1907) 114 N. W. 108.

641. 2. State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 641.

5. People *v.* Healy, 230 Ill. 280, 82 N. E. 599; Barna *v.* Kirczow, (N. J. 1906) 63 Atl. 611; Hankins *v.* Newell, (N. J. 1907) 66 Atl. 129; Com. *v.* Jankovic, 216 Pa. St. 615, 65 Atl. 1099; Com. *v.* Straus, 32 Pa. Super. Ct. 389.

643. 4. State *v.* Louisiana, etc., Gravel Road Co., 187 Mo. 439, 86 S. W. 170.

9. Heidelberg Garden Co. *v.* People, 124 Ill. App. 331 (dramshop license).

11. Thirteenth, etc., Sts. Pass. R. Co. *v.* Broad St. Rapid Transit R. Co., 219 Pa. St. 10, 67 Atl. 901.

Contra. — State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867.

644. 2. State *v.* Bryan, 50 Fla. 293, 39 So. 920.

RAILROAD — RAILWAY.

646. 2. **Railroad Includes Logging Railroad.** — Lodwick Lumber Co. *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 358.

3. **Elevated Railroads Included in Railroad Corporations.** — Manhattan R. Co. *v.* Astor, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 353, 107 N. Y. Supp. 666.

648. 6. **Railway Synonymous with Tramway.** — Blackpool, etc., Tramroad Co. *v.* Thornton Urban Dist. Council, (1907) 1 K. B. 568, 76 L. J. K. B. 492.

RAILROAD COMMISSIONERS.

651. 1. **Police Power.** — Railroad Com'rs *v.* Atlantic Coast Line R. Co., 71 S. Car. 130, 50 S. E. 641.

Legislature Possesses Power to Supervise, Regulate, and Control. — North Carolina Corp. Commission *v.* Atlantic Coast Line R. Co., 139 N. Car. 126, 51 S. E. 793.

2. State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213; People *v.* Chicago, etc., R. Co., 223 Ill. 581, 79 N. E. 144; State *v.* Missouri Pac. R. Co., (Kan. 1907) 92 Pac. 606; North Carolina Corp. Commission *v.* Atlantic Coast Line R. Co., 139 N. Car. 126, 51 S. E. 793; Winchester, etc., R. Co. *v.* Com., 106 Va. 264, 55 S. E. 692.

7. Winchester, etc., R. Co. *v.* Com., 106 Va. 264, 55 S. E. 692.

652. 2. North Carolina Corp. Commission *v.* Atlantic Coast Line R. Co., 139 N. Car. 126, 51 S. E. 793.

653. 1. *In re* Alexandra Docks, etc., Co. *v.* Taff Vale R. Co., (1907) 1 K. B. 356.

2. Illinois Cent. R. Co. *v.* Mississippi Commission, (C. C. A.) 138 Fed. 327; Southern R. Co. *v.* Hunt, (Ind. App. 1908) 83 N. E. 721; State *v.* Missouri Pac. R. Co., (Kan. 1907) 92 Pac. 606.

5. **As to Powers of Railroad Commissioners** — *United States.* — Cumberland Telephone, etc., Co. *v.* Louisiana Commission, 156 Fed. 823.

Florida. — State *v.* Atlantic Coast Line R. Co., 52 Fla. 646, 41 So. 705.

Illinois. — People *v.* Chicago, etc., R. Co., 223 Ill. 581, 79 N. E. 144.

Indiana. — Southern R. Co. *v.* Hunt, (Ind. App. 1908) 83 N. E. 721.

Kansas. — Kansas City, etc., R. Co. *v.* Railroad Com'rs, 73 Kan. 168, 84 Pac. 755; State *v.* Missouri Pac. R. Co., (Kan. 1907) 92 Pac. 606.

Mississippi. — Mississippi Cent. R. Co. *v.* Butler, (Miss. 1908) 46 So. 558.

New York. — *In re* Ticonderoga Union Terminal R. Co., 116 N. Y. App. Div. 56, 101 N. Y. Supp. 107; *In re* Terminal R. Co., 122 N. Y. App. Div. 896, 106 N. Y. Supp. 659; *In re* Terminal R. Co., 122 N. Y. App. Div. 59, 106 N. Y. Supp. 655.

North Carolina. — Dewey *v.* Atlantic Coast Line, 142 N. Car. 392, 55 S. E. 292; North Carolina Corp. Commission *v.* Atlantic Coast Line R. Co., 139 N. Car. 126, 51 S. E. 793; North Carolina Corp. Commission *v.* Seaboard Air Line R. Co., 140 N. Car. 239, 52 S. E. 941; North Carolina Corp. Commission *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 271.

South Carolina. — Jones *v.* Southern R. Co., 76 S. Car. 67, 56 S. E. 666; Railroad Com'rs *v.* Atlantic Coast Line R. Co., 71 S. Car. 130, 50 S. E. 641.

Texas. — International, etc., R. Co. *v.* Railroad Commission, (Tex. Civ. App. 1905) 86 S. W. 16, *affirmed* 99 Tex. 361, 89 S. W. 961.

Vermont. — Stimets *v.* Highgate, (Vt. 1908) 69 Atl. 878.

Virginia. — Louisville, etc., R. Co. *v.* Interstate R. Co., (Va. 1907) 57 S. E. 654; Norfolk, etc., R. Co. *v.* Tidewater R. Co., 105 Va. 129, 52 S. E. 852; Winchester, etc., R. Co. *v.* Com., 106 Va. 264, 55 S. E. 692.

654. 2. North Carolina Corp. Commission *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 271.

Power to Investigate Accidents. — *In re* Rutland R. Co., 78 Vt. 53, 64 Atl. 233.

3. Illinois Cent. R. Co. *v.* Mississippi Commission, (C. C. A.) 138 Fed. 327 (construing Mississippi statute).

5. North Carolina Corp. Commission *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 271; Railroad Com'rs *v.* Atlantic Coast Line R. Co., 71 S. Car. 130, 50 S. E. 641; Winchester, etc., R. Co. *v.* Com., 106 Va. 264, 55 S. E. 692.

655. 1. State *v.* Atlantic Coast Line R. Co., 52 Fla. 646, 41 So. 705; Southern R. Co. *v.* Hunt, (Ind. App. 1908) 83 N. E. 721; State *v.* Missouri Pac. R. Co., (Kan. 1907) 92 Pac. 606; *In re* Delaware, etc., R. Co., 116 N. Y. App. Div. 62, 101 N. Y. Supp. 9; *In re* Rochester, etc., Traction Co., 118 N. Y. App. Div. 521, 102 N. Y. Supp. 1112; International, etc., R. Co. *v.* Railroad Commission, (Tex. Civ. App. 1905) 86 S. W. 16, *affirmed* 99 Tex. 361, 89 S. W. 961.

4. Southern R. Co. *v.* Hunt, (Ind. App. 1908) 83 N. E. 721.

658. 2. Southern R. Co. *v.* Hunt, (Ind. App. 1908) 83 N. E. 721.

7. State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213.

659. 1. **For Construction of Peculiar Provisions of Certain Statutes.** — Southern R. Co. *v.* Hunt, (Ind. App. 1908) 83 N. E. 721.

660. 2. **Establishment, Location, and Discontinuance of Stations Matters for Rail-**

road Commissioners. — *In re* Atlantic, etc., R. Co., 100 Me. 430, 62 Atl. 141; State *v.* Nashville, etc., R. Co., (Ala. 1905) 39 So. 984; North Carolina Corp. Commission *v.* Atlantic Coast Line R. Co., 139 N. Car. 126, 51 S. E. 793; *In re* Railroad Com'rs, 79 Vt. 266, 65 Atl. 82.

661. 3. Spencer's Appeal, 78 Conn. 310, 61 Atl. 1010.

5. Stimets *v.* Highgate, (Vt. 1908) 69 Atl. 878.

Power to Eliminate Crossings Includes Power to Eliminate Sidings or Switches. — *In re* Terminal R. Co., 122 N. Y. App. Div. 59, 106 N. Y. Supp. 655; *In re* Terminal R. Co., 122 N. Y. App. Div. 896, 106 N. Y. Supp. 659.

7. **New Hampshire Statute Construed.** — Blake *v.* Concord, etc., R. Co., 73 N. H. 597, 64 Atl. 202.

8. As to the power of the railroad commissioners under the *Wisconsin* statute, see *In re* Eastern Wisconsin R., etc., Co., 127 Wis. 641, 107 N. W. 496.

662. 4. Railroad Com'rs *v.* Atlantic Coast Line R. Co., 71 S. Car. 130, 50 S. E. 641, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 662; North Carolina Corp. Commission *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 271.

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674. 1. Cozard *v.* Kanawha Hardwood Co., 139 N. Car. 283, 51 S. E. 932.

3. Amos Kent Lumber, etc., Co. *v.* Tax Assessor, 114 La. 862, 38 So. 587, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 674.

Only Two Kinds of Railroads Recognized in South Carolina — Public and Private. — D. W. Alderman, etc., Co. *v.* Wilson Lumber Co., 77 S. Car. 165, 57 S. E. 756, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 673, 674.

7. Olanta Coal Min. Co. *v.* Beech Creek R. Co., 144 Fed. 150; Litchfield & Madison R. Co. *v.* People, 222 Ill. 242, 78 N. E. 589; Amos Kent Lumber, etc., Co. *v.* Tax Assessor, 114 La. 862, 38 So. 587; Kansas City, etc., R. Co. *v.* Louisiana Western R. Co., 116 La. 178, 40 So. 627; Roby *v.* State, (Neb. 1906) 107 N. W. 766; Reading Co. *v.* Seip, 30 Pa. Super. Ct. 330; Mays *v.* Seaboard Air Line R. Co., 75 S. Car. 455, 56 S. E. 30; Caretta R. Co. *v.* Virginia-Pocahontas Coal Co., (W. Va. 1907) 57 S. E. 401.

Railroads Public Highways. — Seaboard Air Line R. Co. *v.* Olive, 142 N. Car. 257, 55 S. E. 263.

Rules of Law Applicable to Public Highways Generally Apply to Railroads. — Whalen *v.* Baltimore, etc., R. Co., (Md. 1908) 69 Atl. 390.

9. Clemans *v.* Chicago, etc., R. Co., 128 Iowa 394, 104 N. W. 431.

675. 7. American Lumber Co. *v.* Tombigbee Valley R. Co., (Ala. 1908) 45 So. 911; State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213; Atchison, etc., R. Co. *v.* Armstrong, 71 Kan. 366, 80 Pac. 978; Staton *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 61 S. E. 455; Thomason *v.* Seaboard Air Line R. Co., 142 N. Car. 300, 55 S. E. 198; Enid Right of Way, etc., Co. *v.* Lile, 15 Okla. 317, 82 Pac. 810; Piper *v.* Choctaw Northern Townsite, etc., Co., 16 Okla. 436, 85 Pac. 965; Schaghticoke Powder Co. *v.* Greenwich, etc., R. Co., 183 N. Y. 306, 76 N. E. 153.

676. 1. Beltz *v.* Baltimore, etc., R. Co., 137 Fed. 1016; Olanta Coal Min. Co. *v.* Beech Creek R. Co., 144 Fed. 150; State *v.* Atlantic Coast Line R. Co., 52 Fla. 646, 41 So. 705; State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213; People *v.* Illinois Cent. R. Co., 233 Ill. 378, 84 N. E. 368; Cincinnati, etc., R. Co. *v.* Slaughter, (Ky. 1907) 104 S. W. 293; Louisville, etc., R. Co. *v.* Sanders, (Ky. 1906) 92 S. W. 937; Cincinnati Southern R. Co. *v.* Slaughter, (Ky. 1907) 104 S. W. 291; Amos-Kent Lumber, etc., Co. *v.* Tax Assessor, 114 La. 862, 38 So. 587; Reading Co. *v.* Seif, 30 Pa. Super. Ct. 330.

8. McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; State *v.* Missouri Pac. R. Co., (Kan. 1907) 92 Pac. 606; Efland *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 355; State *v.* Atlantic, etc., R. Co., 141 N. Car. 736, 53 S. E. 290.

677. 6. Memphis, etc., R. Co. *v.* Union R. Co., 116 Tenn. 500, 95 S. W. 1019; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

8. Madera R. Co. *v.* Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27; People *v.* Railroad Com'rs, (Supm. Ct. App. Div.) 108 N. Y. Supp. 914.

Necessity Question of Law. — Worden *v.* Madisonville, etc., R. Co., (Ky. 1907) 101 S. W. 914.

9. Union R. Co. *v.* Canton R. Co., 105 Md. 12, 65 Atl. 409; Kansas City Interurban R. Co. *v.* Davis, 197 Mo. 669, 95 S. W. 881; New York, etc., R. Co. *v.* O'Brien, 121 N. Y. App. Div. 819, 106 N. Y. Supp. 909.

679. 2. D. W. Alderman, etc., Co. *v.* Wilson Lumber Co., 77 S. Car. 165, 57 S. E. 756.

680. 3. Graham *v.* Chicago, etc., R. Co., 39 Ind. App. 294, 77 N. E. 1055.

682. 4. State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261; Norfolk, etc., R. Co. *v.* Lynchburg Cotton Mill Co., 106 Va. 376, 56 S. E. 146; Norfolk, etc., R. Co. *v.* Schein, 106 Va. 382, 56 S. E. 148.

685. 1. Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

687. 7. White River R. Co. *v.* Batesville, etc., Telephone Co., 81 Ark. 195, 98 S. W. 721; Kansas City Interurban R. Co. *v.* Davis, 197 Mo. 669, 95 S. W. 881; Fayetteville St. R. Co. *v.* Aberdeen, etc., R. Co., 142 N. Car. 423, 55 S. E. 345; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

Right of Way Not Acquired until Preliminary Survey and Plat Made and Filed. — Steele *v.* Tanana Mines R. Co., 2 Alaska 451.

9. Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

689. 1. Enid Right of Way, etc., Co. *v.* Lile, 15 Okla. 317, 82 Pac. 810, *quoting* in *dissenting* opinion 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

9. Beaver *v.* Beaver Valley R. Co., 217 Pa St. 280, 66 Atl. 520.

Power to Acquire Land for Switches or Sidetracks Continuing Power. — State Board

of Equalization *v.* People, 229 Ill. 430, 82 N. E. 324.

690. 6. Brown *v.* Atlantic, etc., R. Co., 126 Ga. 248, 55 S. E. 24, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 690; Atlantic, etc., R. Co. *v.* Kirkland, 129 Ga. 552, 59 S. E. 220; Cairo, etc., R. Co. *v.* Woodyard, 226 Ill. 331, 80 N. E. 882.

7. Brown *v.* Atlantic, etc., R. Co., 126 Ga. 248, 55 S. E. 24, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 690; Atlantic, etc., R. Co. *v.* Kirkland, 129 Ga. 552, 59 S. E. 220.

No Right to Wilfully Abandon Portion of Chartered Route. — Kansas City Interurban R. Co. *v.* Davis, 197 Mo. 669, 95 S. W. 881.

8. Brown *v.* Atlantic, etc., R. Co., 126 Ga. 248, 55 S. E. 24, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 690.

691. 1. Dolfield *v.* Western Maryland R. Co., (Md. 1908) 69 Atl. 582; Memphis, etc., R. Co. *v.* Union R. Co., 116 Tenn. 500, 95 S. W. 1019.

692. 2. Brown *v.* Atlantic, etc., R. Co., 126 Ga. 248, 55 S. E. 24, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682 [692].

693. 1. Fayetteville St. R. *v.* Aberdeen, etc., R. Co., 142 N. Car. 423, 55 S. E. 345; Chesapeake, etc., R. Co. *v.* Deepwater R. Co., 57 W. Va. 641, 50 S. E. 890.

2. Cumberland R. Co. *v.* Pine Mountain R. Co., (Ky. 1905) 96 S. W. 199.

6. **Statutes Construed.** — Union R. Co. *v.* Canton R. Co., 105 Md. 12, 65 Atl. 409; Jennings *v.* Delaware, etc., R. Co., 103 N. Y. App. Div. 164, 93 N. Y. Supp. 374; Ft. Edward *v.* Hudson Valley R. Co., 192 N. Y. 139, 84 N. E. 962; International, etc., R. Co. *v.* Railroad Commission, (Tex. Civ. App. 1905) 86 S. W. 16; *In re* Eastern Wisconsin R., etc., Co., 127 Wis. 641, 107 N. W. 496.

Owners of Mills and Factories May of Right Compel Siding Connection — Pennsylvania Statute. — Reeser *v.* Philadelphia, etc., R. Co., 215 Pa. St. 136, 64 Atl. 376.

694. 2. **Intersecting Is Enforceable Public Duty.** — Ft. Edward *v.* Hudson Valley R. Co., 192 N. Y. 139, 84 N. E. 962.

695. 10. Clark *v.* Wabash R. Co., 132 Iowa 11, 109 N. W. 309; Reading Co. *v.* Seip, 30 Pa. Super. Ct. 330.

697. 10. See Lilley *v.* Pittsburg, etc., R. Co., 213 Pa. St. 247, 62 Atl. 852.

698. 5. Moss *v.* Chappell, 126 Ga. 196, 54 S. E. 968.

6. Speer *v.* Erie R. Co., 70 N. J. Eq. 318, 62 Atl. 943; Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200.

Right of Passage over Land Conveyed May Be Reserved. — Chesapeake, etc., R. Co. *v.* Richardson, (Ky. 1907) 98 S. W. 1042.

8. **Breach of Condition Subsequent Works Forfeiture.** — Moss *v.* Chappell, 126 Ga. 196, 54 S. E. 968.

699. 2. Satterly *v.* Erie R. Co., 113 N. Y. App. Div. 462, 99 N. Y. Supp. 309.

3. McDowell *v.* Blue Ridge, etc., R. Co., 144 N. Car. 721, 57 S. E. 520; Thomas *v.* Blue Ridge, etc., R. Co., 144 N. Car. 729, 57 S. E. 522.

700. 1. Johanson *v.* Atlantic City R. Co., 73 N. J. L. 767, 64 Atl. 1061.

2. Wollard *v.* Fisher, 48 Oregon 479, 84 Pac. 850.

5. Zimmerman *v.* Kansas City Northwestern R. Co., (C. C. A.) 144 Fed. 622.

701. 1. Mobile, etc., R. Co. *v.* Fowl River Lumber Co., (Ala. 1907) 44 So. 471.

Owner May Compel Removal of Tracks. — Northern Cent. R. Co. *v.* Canton Co., 104 Md. 682, 65 Atl. 337.

2. Kakeldy *v.* Columbia, etc., R. Co., 37 Wash. 675, 80 Pac. 205. But see Johanson *v.* Atlantic City R. Co., 73 N. J. L. 767, 64 Atl. 1061.

702. 1. Seaboard Air Line R. Co. *v.* Olive, 142 N. Car. 257, 55 S. E. 263, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 701; Com. *v.* Delaware, etc., R. Co., 215 Pa. St. 149, 64 Atl. 417.

3. See Leidigh *v.* Philadelphia R. Co., 215 Pa. St. 342, 64 Atl. 539.

9. Spierling *v.* Ohl, 232 Ill. 581, 83 N. E. 1068; Seaboard Air Line R. Co. *v.* Olive, 142 N. Car. 257, 55 S. E. 263.

Company Acquires Easement and Not Title to Land. — Seaboard Air Line R. Co. *v.* Olive, 142 N. Car. 257, 55 S. E. 263.

10. South Penn Oil Co. *v.* Calf Creek Oil, etc., Co., 140 Fed. 507; Walker *v.* Illinois Cent. R. Co., 215 Ill. 610, 74 N. E. 812.

703. 1. Spierling *v.* Ohl, 232 Ill. 581, 83 N. E. 1068.

7. State *v.* Atlantic, etc., R. Co., 141 N. Car. 736, 53 S. E. 290.

8. Louisville, etc., R. Co. *v.* Smith, (Ky. 1907) 101 S. W. 317.

Public May Extend Highway over Right of Way. — *In re* Atlantic, etc., R. Co., 100 Me. 430, 62 Atl. 141.

704. 2. Seaboard Air Line R. Co. *v.* Olive, 142 N. Car. 257, 55 S. E. 263.

6. Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934; Seaboard Air Line R. Co. *v.* Olive, 142 N. Car. 257, 55 S. E. 263; Connellsville Gas Coal Co. *v.* Baltimore, etc., R. Co., 216 Pa. St. 309, 65 Atl. 669.

705. 1. Georgia R., etc., Co. *v.* Haas, 127 Ga. 187, 56 S. E. 313, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 706 [705]; Hamlin *v.* Kansas R. Co., 73 Kan. 565, 85 Pac. 602, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 705; Stannard *v.* Aurora, etc., R. Co., 220 Ill. 469, 77 N. E. 254. See also Kansas City Interurban R. Co. *v.* Davis, 197 Mo. 669, 95 S. W. 881.

Private Individual Cannot Acquire Title by Adverse Possession to Right of Way. — Missouri R. Co. *v.* Watson, 74 Kan. 494, 87 Pac. 687.

2. **Abandonment Partly Question of Intention.** — Enfield Mfg. Co. *v.* Ward, 190 Mass. 314, 76 N. E. 1053.

3. **Abandonment Question of Fact.** — Chambers *v.* Great Northern Power Co., 100 Minn. 214, 110 N. W. 1128.

7. Kansas City Interurban R. Co. *v.* Davis, 197 Mo. 669, 95 S. W. 881.

706. 2. Chambers *v.* Great Northern Power Co., 100 Minn. 214, 110 N. W. 1128.

3. Chambers *v.* Great Northern Power Co., 100 Minn. 214, 110 N. W. 1128; Mobile, etc., R. Co. *v.* Kamper, 88 Miss. 817, 41 So. 513.

7. Madera R. Co. *v.* Raymond Granite Co., 3

Cal. App. 668, 87 Pac. 27; State *v.* Wabash R. Co., 206 Mo. 251, 103 S. W. 1137.

9. **Power May Be Given by Implication.** — Northern Coal, etc., Co. *v.* Wilkes-Barre, (Pa. 1907) 67 Atl. 352.

10. Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

707. 2. Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934; Louisville, etc., R. Co. *v.* New Orleans Terminal Co., (La. 1908) 45 So. 962; Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

3. State *v.* Wabash R. Co., 206 Mo. 251, 103 S. W. 1137.

5. Madera R. Co. *v.* Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27; Cincinnati, etc., R. Co. *v.* Connersville, (Ind. 1908) 83 N. E. 503; Southern Indiana R. Co. *v.* Corps, 27 Ind. App. 586, 76 N. E. 902; Atchison, etc., R. Co. *v.* Townsend, 71 Kan. 524, 81 Pac. 205; Highway Com'r *v.* Wabash R. Co., 148 Mich. 436, 111 N. W. 1090; Logan *v.* Lake Shore, etc., R. Co., 148 Mich. 603, 112 N. W. 506; State *v.* St. Paul, etc., R. Co., 98 Minn. 380, 108 N. W. 261; State *v.* Wabash R. Co., 206 Mo. 251, 103 S. W. 1137; Durr *v.* New York Cent., etc., R. Co., (N. Y. 1906) 77 N. E. 397; St. Louis Southwestern R. Co. *v.* Smith, (Tex. Civ. App. 1908) 107 S. W. 638.

8. Little Rock, etc., R. Co. *v.* Greer, 77 Ark. 387, 96 S. W. 129; Atlanta, etc., R. Co. *v.* Atlanta, etc., R. Co., 125 Ga. 529, 54 S. E. 736; Atchison, etc., R. Co. *v.* Armstrong, 71 Kan. 366, 80 Pac. 978; Staton *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 61 S. E. 455; Smith *v.* St. Paul, etc., R. Co., 39 Wash. 355, 81 Pac. 840.

708. 2. See also D. W. Alderman, etc., Co. *v.* Wilson Lumber Co., 77 S. Car. 165, 57 S. E. 756.

710. 6. Louisville, etc., R. Co. *v.* Scomp, (Ky. 1907) 98 S. W. 1025; Richards *v.* Ferguson Implement Co., 125 Mo. App. 428, 102 S. W. 606.

Reasonable Changes May Be Made in Tracks for Advantageous Use. — Townsend *v.* New York Cent., etc., R. Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 253, 106 N. Y. Supp. 381.

714. 3. Stafford *v.* Big Sandy R. Co., (Ky. 1907) 105 S. W. 389.

6. Little Rock, etc., R. Co. *v.* Greer, 77 Ark. 387, 96 S. W. 129, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714; St. Louis, etc., R. Co. *v.* Hanks, 80 Ark. 417, 97 S. W. 666; Louisville, etc., R. Co. *v.* Scomp, (Ky. 1907) 98 S. W. 1024; Gordon *v.* Ellenville, etc., R. Co., 119 N. Y. App. Div. 797, 104 N. Y. Supp. 702; Johnson *v.* Charleston, etc., R. Co., 71 S. Car. 241, 50 S. E. 775; Lampley *v.* Atlantic Coast Line R. Co., 71 S. Car. 156, 50 S. E. 773; Cantelou *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 1017; Schueller *v.* San Antonio, etc., R. Co., (Tex. Civ. App. 1907) 102 S. W. 922. But see Houston, etc., R. Co. *v.* Davis, (Tex. Civ. App. 1907) 100 S. W. 1013.

Contra. — Gossett *v.* Southern R. Co., 115 Tenn. 376, 89 S. W. 738.

715. 4. Bigham *v.* Pittsburg Constr. Co., 29 Pa. Super. Ct. 86.

7. Tetherington *v.* St. Louis, etc., R. Co., 128 Ill. App. 139; Fairbury Brick Co. *v.* Chicago, etc., R. Co., (Neb. 1907) 113 N. W. 535; Lawton *v.* Seaboard Air Line R. Co., 75 S. Car. 82, 55 S. E. 128; Shores *v.* Southern R. Co., 72 S. Car. 244, 51 S. E. 699; Gulf, etc., R. Co. *v.* Roberts, (Tex. Civ. App. 1905) 86 S. W. 1052; Texas Cent. R. Co. *v.* Brown, (Tex. Civ. App. 1905) 86 S. W. 659.

9. *Alabama.* — Southern R. Co. *v.* Leard, 146 Ala. 349, 39 So. 449.

Indian Territory. — Foreman *v.* Midland Valley R. Co., (Indian Ter. 1907) 104 S. W. 806.

Iowa. — Blunck *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 1013.

Missouri. — Standley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244.

Nebraska. — Chicago, etc., R. Co. *v.* Mitchell, 74 Neb. 563, 104 N. W. 1144; Chicago, etc., R. Co. *v.* Ely, (Neb. 1906) 110 N. W. 539; Smith *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 755.

New Jersey. — Metuchen *v.* Pennsylvania R. Co., (N. J. 1906) 64 Atl. 484.

New York. — Strong *v.* Rutland R. Co., 121 N. Y. App. Div. 391, 106 N. Y. Supp. 85.

Texas. — Gulf, etc., R. Co. *v.* Harbison, (Tex. Civ. App. 1905) 88 S. W. 452; Gulf, etc., R. Co. *v* Oates, (Tex. Civ. App. 1905) 88 S. W. 457; Gulf, etc., R. Co. *v.* Pearce, (Tex. Civ. App. 1906) 95 S. W. 1133; Gulf, etc., R. Co. *v.* Wetherly, (Tex. Civ. App. 1905) 88 S. W. 456; Houston, etc., R. Co. *v.* Darwin, (Tex. Civ. App. 1907) 105 S. W. 825; International, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1906) 97 S. W. 1081; Missouri, etc., R. Co. *v.* Dubose, (Tex. Civ. App. 1906) 95 S. W. 588; Moss *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 221; St. Louis Southwestern R. Co. *v.* Jenkins, (Tex. Civ. App. 1905) 89 S. W. 1106; St. Louis Southwestern R. Co. *v.* Rollins, (Tex. Civ. App. 1905) 89 S. W. 1099; St. Louis Southwestern R. Co. *v.* Selman, (Tex. Civ. App. 1905) 89 S. W. 1101; San Antonio, etc., R. Co. *v.* Dickson, (Tex. Civ. App. 1906) 93 S. W. 481.

716. 1. *Alabama.* — Central of Georgia R. Co. *v.* Keyton, (Ala. 1906) 41 So. 918.

Arkansas. — Little Rock, etc., R. Co. *v.* Wallis, 82 Ark. 447, 102 S. W. 390; St. Louis Southwestern R. Co. *v.* Morris, 76 Ark. 542, 89 S. W. 846; St. Louis, etc., R. Co. *v.* Saunders, 78 Ark. 589, 94 S. W. 709.

Indian Territory. — Foreman *v.* Midland Valley R. Co., (Indian Ter. 1907) 104 S. W. 806.

Kentucky. — Wallingford *v.* Maysville, etc., R. Co., (Ky. 1908) 107 S. W. 781.

Missouri. — Cooper *v.* St. Louis, etc., R. Co., 123 Mo. App. 141, 100 S. W. 494; Gebhardt *v.* St. Louis, etc., R. Co., 122 Mo. App. 503, 99 S. W. 773; Standley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244; Williamson *v.* Missouri, etc., R. Co., 115 Mo. App. 72, 90 S. W. 401.

South Carolina. — Johnson *v.* Charleston, etc., R. Co., 71 S. Car. 241, 50 S. E. 775.

Tennessee. — Tyrus *v.* Kansas City, etc., R. Co., 114 Tenn. 579, 86 S. W. 1074.

Texas. — Baugh *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 958; Chicago, etc., R. Co. *v.* Seale, (Tex. Civ. App. 1905) 89 S. W. 997; Galveston, etc., R. Co. *v.* Riggs, (Tex.

Civ. App. 1908) 107 S. W. 589; Gulf, etc., R. Co. *v.* McClerran, (Tex. Civ. App. 1906) 91 S. W. 653; Gulf, etc., R. Co. *v.* Pearce, (Tex. Civ. App. 1906) 95 S. W. 1133; Houston, etc., R. Co. *v.* Barr, (Tex. Civ. App. 1906) 99 S. W. 437; International, etc., R. Co. *v.* Foster, (Tex. Civ. App. 1907) 100 S. W. 1017; International, etc., R. Co. *v.* Slusher, (Tex. Civ. App. 1906) 95 S. W. 717; International, etc., R. Co. *v.* Stewart, (Tex. Civ. App. 1907) 101 S. W. 282; International, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1906) 97 S. W. 1081; McFadden *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 989; Missouri, etc., R. Co. *v.* Arey, (Tex. Civ. App. 1907) 100 S. W. 963; Missouri, etc., R. Co. *v.* Crow, (Tex. Civ. App. 1906) 95 S. W. 743; Missouri, etc., R. Co. *v.* Green, (Tex. Civ. App. 1906) 99 S. W. 573; Schier *v.* Cane Belt R. Co., (Tex. Civ. App. 1907) 100 S. W. 360; St. Louis Southwestern R. Co. *v.* Terhune, (Tex. Civ. App. 1906) 94 S. W. 381.

717. 5. Illinois Cent. R. Co. *v.* Taylor, (Ky. 1905) 89 S. W. 121; Louisville, etc., R. Co. *v.* Ponder, (Ky. 1907) 104 S. W. 279; Louisville, etc., R. Co. *v.* Whitsell, (Ky. 1907) 101 S. W. 334; Eastern Texas R. Co. *v.* Moore, (Tex. Civ. App. 1906) 94 S. W. 394; St. Louis Southwestern R. Co. *v.* Terhune, (Tex. Civ. App. 1906) 94 S. W. 381; Cook *v.* Seaboard Air Line R. Co., 107 Va. 32, 57 S. E. 564.

Railroad Company May Not Pollute Stream. — Benjamin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 408.

719. 1. *United States.* — Tennis Bros. Co. *v.* Wetzel, etc., R. Co., 140 Fed. 193 (*West Virginia* statute).

Arkansas. — Midland Valley R. Co. *v.* Moran Nut, etc., Mfg. Co., 80 Ark. 399, 97 S. W. 679; St. Louis, etc., R. Co. *v.* Love, 74 Ark. 528, 86 S. W. 395.

Colorado. — Barnes *v.* Colorado Springs, etc., R. Co., (Colo. 1908) 94 Pac. 570.

Indiana. — Fleming *v.* Greener, (Ind. App. 1908) 83 N. E. 354.

Kentucky. — Carson *v.* Shelton, (Ky. 1908) 107 S. W. 793.

Missouri. — Dalton *v.* St. Louis, etc., R. Co., 113 Mo. App. 71, 87 S. W. 610; Indiana Powder Co. *v.* St. Louis, etc., R. Co., 116 Mo. App. 364, 92 S. W. 150; Little Rock Trust Co. *v.* Southern Missouri, etc., R. Co., 195 Mo. 669, 93 S. W. 944; Williams *v.* Dittenhoefer, 188 Mo. 134, 86 S. W. 242.

Ohio. — Pennsylvania Co. *v.* Mehaffey, 75 Ohio St. 432, 80 N. E. 177.

Tennessee. — Norman *v.* Edington, 115 Tenn. 309, 89 S. W. 744; Luttrell *v.* Knoxville, etc., R. Co., (Tenn. 1907) 105 S. W. 565.

Texas. — Jasper, etc., R. Co. *v.* Peek, (Tex. Civ. App. 1907) 102 S. W. 776; U. S., etc., Trust Co. *v.* Western Supply, etc., Co., (Tex. Civ. App. 1908) 109 S. W. 377.

Under the *Missouri* statute laborers, who perform work in the operation or repair of a railroad, are given a prior lien. Missouri, etc., R. Co. *v.* Bryan, (Tex. Civ. App. 1908) 107 S. W. 572.

4. Johnson *v.* Des Moines, etc., R. Co., 129 Iowa 281, 105 N. W. 509.

7. *Indiana.* — Pere Marquette R. Co. *v.* Baertz, 36 Ind. App. 408, 74 N. E. 51; Pere Marquette R. Co. *v.* Smith, 36 Ind. App. 43, 74 N. E. 545.

720. 1. Westinghouse Air Brake Co. *v.* Kansas City Southern R. Co., (C. C. A.) 137 Fed. 26 (*Missouri* statute); Indiana Powder Co. *v.* St. Louis, etc., R. Co., 116 Mo. App. 364, 92 S. W. 150; Schaghticoke Powder Co. *v.* Greenwich, etc., R. Co., 183 N. Y. 306, 76 N. E. 153.

Materials Furnished to Subcontractors. — Midland Valley R. Co. *v.* Moran Nut, etc., Mfg. Co., 80 Ark. 399, 97 S. W. 679; Luttrell *v.* Knoxville, etc., R. Co., (Tenn. 1907) 105 S. W. 565.

Coal and Oil Not Materials. — Waters-Pierce Oil Co. *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1906) 99 S. W. 212.

4. Ozark R. Co. *v.* Moran Bolt, etc., Mfg. Co., 75 Ark. 106, 86 S. W. 848; St. Louis, etc., R. Co. *v.* Henry, (Ark. 1905) 86 S. W. 841; St. Louis, etc., R. Co. *v.* Love, 74 Ark. 528, 86 S. W. 395.

5. Carson *v.* Shelton, (Ky. 1908) 107 S. W. 793.

Hay, Grain, and Feed Not Materials. — Pennsylvania Co. *v.* Mehaffey, 75 Ohio St. 432, 80 N. E. 177.

7. Luttrell *v.* Knoxville, etc., R. Co., (Tenn. 1907) 105 S. W. 565.

721. 3. Fleming *v.* Greener, (Ind. App. 1908) 83 N. E. 354.

4. Dalton *v.* St. Louis, etc., R. Co., 113 Mo. App. 71, 87 S. W. 610; U. S., etc., Trust Co. *v.* Western Supply, etc., Co., (Tex. Civ. App. 1908) 109 S. W. 377.

722. 2. Little Rock Trust Co. *v.* Southern Missouri, etc., R. Co., 195 Mo. 669, 93 S. W. 944.

3. Fleming *v.* Greener, (Ind. App. 1908) 83 N. E. 354; Norman *v.* Edington, 115 Tenn. 309, 89 S. W. 744.

724. 9. **Where Act Silent as to Motive Power Railroad Company May Exercise Its Judgment as to Kind.** — Howley *v.* Central Valley R. Co., 213 Pa. St. 36, 62 Atl. 109.

727. 3. **Performance of Duty to Public Enforceable by Mandamus.** — State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 727.

4. Litchfield & Madison R. Co. *v.* People, 222 Ill. 242, 78 N. E. 589; Collier *v.* Great Northern R. Co., 40 Wash. 639, 82 Pac. 935.

728. 1. State *v.* Atlantic Coast Line R. Co., 53 Fla. 650, 44 So. 213.

729. 3. State *v.* Atlantic, etc., R. Co., 141 N. Car. 736, 53 S. E. 290; Railroad Com'rs *v.* Atlantic Coast Line R. Co., 71 S. Car. 130, 50 S. E. 641.

730. 1. Hollins *v.* New Orleans, etc., R. Co., 119 La. 418, 44 So. 159; Whalen *v.* Baltimore, etc., R. Co., (Md. 1908) 69 Atl. 390; State *v.* Northern Pac. R. Co., 98 Minn. 429, 108 N. W. 269; Choctaw, etc., R. Co. *v.* Wilker, 16 Okla. 384, 84 Pac. 1086; Tyler *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 87 S. W. 238.

3. Seaboard Air Line R. Co. *v.* Randolph, 126 Ga. 238, 55 S. E. 47.

731. 1. St. Louis, etc., R. Co. *v.* Chappell, 83 Ark. 941, 102 S. W. 893; O'Bannion *v.*

Southern R. Co., (Ky. 1908) 110 S. W. 329; Harbert *v.* Atlanta, etc., Air Line R. Co., 74 S. Car. 13, 53 S. E. 1001; Smalley *v.* Atlanta, etc., Air Line R. Co., 73 S. Car. 572, 53 S. E. 1000.

Contra. — Yeates *v.* Illinois Cent. R. Co., 137 Fed. 943.

2. Risque *v.* Chesapeake, etc., R. Co., 104 Va. 476, 51 S. E. 730, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 731.

4. Brady *v.* Kansas City, etc., R. Co., 206 Mo. 509, 102 S. W. 978.

732. 3. **Employee within Protection of Statute.** — Kansas City Southern R. Co. *v.* Morris, 80 Ark. 528, 98 S. W. 363.

733. 6. New York Cent., etc., R. Co. *v.* Price, (C. C. A.) 159 Fed. 330; Martin *v.* Chicago, etc., R. Co., 15 Wyo. 493, 89 Pac. 1025; Mangold *v.* St. Louis, etc., R. Co., 116 Mo. App. 606, 92 S. W. 753.

734. 4. Bischof *v.* Illinois Southern R. Co., 232 Ill. 446, 83 N. E. 948; Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827.

6. Mattes *v.* Great Northern R. Co., 95 Minn. 386, 104 N. W. 234.

8. Paquin *v.* Wisconsin Cent. R. Co., 99 Minn. 170, 108 N. W. 882; Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827; Mattes *v.* Great Northern R. Co., 100 Minn. 34, 110 N. W. 98.

9. **Station Grounds.** — Acord *v.* St. Louis Southwestern R. Co., 113 Mo. App. 84, 87 S. W. 537; McGuire *v.* St. Louis, etc., R. Co., 113 Mo. App. 79, 87 S. W. 564; Welch *v.* St. Louis, etc., R. Co., (Mo. App. 1908) 109 S. W. 1074.

Yard Limits Need Not Be Fenced. — Burtram *v.* Michigan Cent. R. Co., 148 Mich. 166, 111 N. W. 749.

11. Illinois Cent. R. Co. *v.* Schultz, 87 Miss. 321, 39 So. 1005.

735. 1. *United States.* — Grand Trunk R. Co. *v.* Flagg, (C. C. A.) 156 Fed. 359; Hasting *v.* Southern R. Co., (C. C. A.) 143 Fed. 260; New York Cent., etc., R. Co. *v.* Price, (C. C. A.) 159 Fed. 330; Southern R. Co. *v.* Fisk, (C. C. A.) 159 Fed. 373.

Alabama. — Southern R. Co. *v.* Stewart, (Ala. 1907) 45 So. 51.

Arkansas. — Adams *v.* St. Louis, etc., R. Co., 83 Ark. 300, 103 S. W. 725; St. Louis Southwestern R. Co. *v.* Underwood, 74 Ark. 610, 86 S. W. 804.

Georgia. — Southern R. Co. *v.* Chatman, 124 Ga. 1026, 53 S. E. 692; Southern R. Co. *v.* Mouchet, 3 Ga. App. 266, 59 S. E. 927.

Illinois. — Ahern *v.* Chicago, etc., R. Co., 124 Ill. App. 36; Bartlett *v.* Wabash R. Co., 116 Ill. App. 67; Bartlett *v.* Wabash R. Co., 220 Ill. 163, 77 N. E. 96; Deakin *v.* Illinois Cent. R. Co., 127 Ill. App. 258; McLain *v.* Chicago, etc., R. Co., 121 Ill. App. 614; McLaughlin *v.* Chicago, etc., R. Co., 115 Ill. App. 262.

Indiana. — Chicago, etc., R. Co. *v.* McCandish, 164 Ind. 648, 79 N. E. 903; Pittsburgh, etc., R. Co. *v.* Simons, (Ind. 1906) 76 N. E. 883, *affirmed* 68 Ind. 333, 79 N. E. 911.

Iowa. — Clemans *v.* Chicago, etc., R. Co., 128 Iowa 394, 104 N. W. 431.

Kentucky. — Chesapeake, etc., R. Co. *v.* Barbour, (Ky. 1906) 93 S. W. 24; Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745; Louisville, etc., R. Co. *v.* Hathaway, (Ky. 1905) 89 S. W. 724; Louisville, etc., R. Co. *v.* Daniel, (Ky. 1906) 91 S. W. 691; Skirvin *v.* Louisville, etc., R. Co., (Ky. 1907) 100 S. W. 308; Starett *v.* Chesapeake, etc., R. Co., (Ky. 1908) 110 S. W. 282; Thomas *v.* Cincinnati, etc., R. Co., (Ky. 1907) 105 S. W. 379; Yates *v.* Illinois Cent. R. Co., (Ky. 1905) 89 S. W. 161.

Louisiana. — Davis *v.* Arkansas Southern R. Co., 117 La. 320, 41 So. 587, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 735.

Maine. — Copp *v.* Maine Cent. R. Co., 100 Me. 568, 62 Atl. 735; Russell *v.* Maine Cent. R. Co., 100 Me. 406, 61 Atl. 899.

Maryland. — Sheridan *v.* Baltimore, etc., R. Co., 101 Md. 50, 60 Atl. 280.

Massachusetts. — Anternoitz *v.* New York, etc., R. Co., (Mass. 1907) 79 N. E. 789.

Minnesota. — Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827; Gibbons *v.* Northern Pac. R. Co., 99 Minn. 142, 108 N. W. 471; Paquin *v.* Wisconsin Cent. R. Co., 99 Minn. 170, 108 N. W. 882.

Mississippi. — Barmore *v.* Vicksburg, etc., R. Co., 85 Miss. 426, 38 So. 210.

New York. — Clarke *v.* New York Cent., etc., R. Co., 104 N. Y. App. Div. 167, 93 N. Y. Supp. 525; Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 431, 98 N. Y. Supp. 476; Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 436, 98 N. Y. Supp. 479.

Pennsylvania. — Bailey *v.* Lehigh Valley R. Co., (Pa. 1908) 69 Atl. 998; Metzler *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 180.

Texas. — Tull *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 87 S. W. 910.

Utah. — Hern *v.* Southern Pac. R. Co., 29 Utah 127, 81 Pac. 902; Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

Washington. — Dotta *v.* Northern Pac. R. Co., 36 Wash. 506, 79 Pac. 32.

West Virginia. — Ray *v.* Chesapeake, etc., R. Co., 57 W. Va. 333, 50 S. E. 413.

Want of Ordinary Care When Trespasser Exercises Such Care — New Hampshire Rule. — Brown *v.* Boston, etc., R. Co., 73 N. H. 568, 64 Atl. 194.

2. *United States.* — Chicago G. W. R. Co. *v.* Smith, (C. C. A.) 141 Fed. 930; Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397; Davis *v.* Chicago, etc., R. Co., (C. C. A.) 159 Fed. 10; Rich *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 79; St. Louis, etc., R. Co. *v.* Chapman, (C. C. A.) 140 Fed. 129; Southern R. Co. *v.* Fisk, (C. C. A.) 159 Fed. 373.

Arkansas. — Choctaw, etc., R. Co. *v.* Baskins, 78 Ark. 355, 93 S. W. 757.

Georgia. — Georgia R., etc., Co. *v.* Williams, 2 Ga. App. 272, 59 S. E. 846.

Illinois. — Chicago Terminal Transfer Co. *v.* Helbreg, 124 Ill. App. 113; Kahl *v.* Chicago, etc., R. Co., 125 Ill. App. 294.

Indiana. — Cleveland, etc., R. Co. *v.* Wuest, (Ind. App. 1908) 83 N. E. 620; Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030; Lake Shore, etc., R. Co. *v.* Brown, (Ind. App. 1908) 84 N. E. 25; Lowden *v.* Pennsylvania Co., (Ind. App. 1907) 82 N. E. 941; Van Winkle *v.* New York, etc., R. Co., 34 Ind. App. 476, 73 N. E. 157.

Indian Territory. — Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182.

Iowa. — Swanger *v.* Chicago, etc., R. Co., 132 Iowa 32, 109 N. W. 308.

Kansas. — Union Pac. R. Co. *v.* Entsminger, (Kan. 1907) 92 Pac. 1095.

Massachusetts. — Allen *v.* Boston, etc., R. Co., (Mass. 1908) 83 N. E. 863.

Minnesota. — Carlson *v.* Chicago, etc., R. Co., 96 Minn. 504, 105 N. W. 555.

Missouri. — Holland *v.* Missouri Pac. R. Co., (Mo. 1908) 109 S. W. 19; Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012; Sanguinette *v.* Mississippi River, etc., R. Co., 196 Mo. 466, 95 S. W. 386; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Stotler *v.* Chicago, etc., R. Co., 204 Mo. 619, 103 S. W. 1.

Nebraska. — Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285.

New York. — Cranch *v.* Brooklyn Heights R. Co., 107 N. Y. App. Div. 341, 95 N. Y. Supp. 169.

North Carolina. — Beach *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 669.

Texas. — Texas, etc., R. Co. *v.* McDonald, (Tex. 1905) 88 S. W. 201.

Virginia. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211; Seaboard, etc., R. Co. *v.* Vaughan, 104 Va. 113, 51 S. E. 452; Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56; Stoke *v.* Southern R. Co., 104 Va. 817, 52 S. E. 855.

Wisconsin. — Marshall *v.* Green Bay, etc., R. Co., 125 Wis. 96, 103 N. W. 249.

3. Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246.

736. 1. Hasting *v.* Southern R. Co., (C. C. A.) 143 Fed. 260; Hamilton *v.* Detroit, etc., R. Co., 142 Mich. 56, 105 N. W. 82; Katzinski *v.* Grand Trunk R. Co., 141 Mich. 75, 104 N. W. 409; Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827.

4. *Arkansas.* — St. Louis, etc., R. Co. *v.* Dooley, 77 Ark. 561, 92 S. W. 789; St. Louis, etc., R. Co. *v.* Reed, 76 Ark. 106, 88 S. W. 836.

Colorado. — Watson *v.* Manitou, etc., R. Co., (Colo. 1907) 92 Pac. 17.

Illinois. — Ahern *v.* Chicago, etc., R. Co., 124 Ill. App. 36; Deakin *v.* Illinois Cent. R. Co., 127 Ill. App. 258; Illinois Cent. R. Co. *v.* McMillion, 129 Ill. App. 27; McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111; McLaughlin *v.* Chicago, etc., R. Co., 115 Ill. App. 262; Thompson *v.* Cleveland, etc., R. Co., 123 Ill. App. 47.

Indiana. — Baltimore, etc., R. Co. *v.* Slaughter, 167 Ind. 330, 79 N. E. 186; Chicago, etc., R. Co. *v.* McCandish, 167 Ind. 648, 79 N. E. 903; Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883, *affirmed* 168 Ind. 133, 79 N. E. 911.

Iowa. — See Croft *v.* Chicago, etc., R. Co., 132 Iowa 687, 108 N. W. 1053.

Kentucky. — Illinois Cent. R. Co. *v.* Willis, (Ky. 1906) 97 S. W. 21.

Maine. — Copp *v.* Maine Cent. R. Co., 100 Me. 568, 62 Atl. 735.

Massachusetts. — Burke *v.* Boston, etc., R. Co., 195 Mass. 179, 80 N. E. 695; Creeden *v.* Boston, etc., R. Co., (Mass. 1906) 79 N. E. 344.

Mississippi. — Illinois Cent. R. Co. *v.* Lucas, 89 Miss. 411, 42 So. 607.

Missouri. — Carr *v.* Missouri Pac. R. Co., 195 Mo. 214, 92 S. W. 874.

New York. — Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 431, 98 N. Y. Supp. 476; Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 436, 98 N. Y. Supp. 479.

North Carolina. — Peterson *v.* South, etc., R. Co., 143 N. Car. 260, 55 S. E. 618.

Tennessee. — Kansas City, etc., R. Co. *v.* Williford, 115 Tenn. 108, 88 S. W. 178.

Virginia. — Chesapeake, etc., R. Co. *v.* Farrow, 106 Va. 137, 55 S. E. 569; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321; Norfolk, etc., R. Co. *v.* Stegall, 105 Va. 538, 54 S. E. 19; Williamson *v.* Southern R. Co., 104 Va. 146, 51 S. E. 195.

Wisconsin. — Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865.

In the Absence of Warning of the Probable Presence of a Bare Licensee trains may be run in the usual way without special precautions. Delaware, etc., R. Co. *v.* Wilkins, (C. C. A.) 153 Fed. 845 (applying the *Vermont* rule as laid down in the state decisions).

5. St. Louis, etc., R. Co. *v.* Dooley, 77 Ark. 561, 92 S. W. 789; Louisville, etc., R. Co. *v.* Goulding, 52 Fla. 327, 42 So. 854; Baltimore, etc., R. Co. *v.* Slaughter, 167 Ind. 330, 79 N. E. 186; Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883, *affirmed* 168 Ind. 333, 79 N. E. 911; Croft *v.* Chicago, etc., R. Co., 132 Iowa 687, 108 N. W. 1053; Johnson *v.* Louisville, etc., R. Co., (Ky. 1906) 91 S. W. 707; Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Carr *v.* Missouri Pac. R. Co., 195 Mo. 214, 92 S. W. 874; Cowans *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 1116; Johnson *v.* Great Northern R. Co., (Wash. 1908) 94 Pac. 895; Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865.

Licensee Bound to Exercise Ordinary Care. — International, etc., R. Co. *v.* Ploeger, (Tex. Civ. App. 1906) 96 S. W. 56.

Implied Licensee Only Protected from Wanton or Wilful Injury. — Thompson *v.* Cleveland, etc., R. Co., 226 Ill. 542, 80 N. E. 1054.

6. St. Louis Southwestern R. Co. *v.* Underwood, 74 Ark. 610, 86 S. W. 804; Illinois Terminal R. Co. *v.* Mitchell, 116 Ill. App. 90; McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111; Davis *v.* Louisville, etc., R. Co., (Ky. 1906) 97 S. W. 1122; Maysville, etc., R. Co. *v.* McCabe, (Ky. 1907) 100 S. W. 219; Jaffi *v.* Missouri Pac. R. Co., 205 Mo. 450, 103 S. W. 1026; Metzler *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 180; Rio Grande, etc., R. Co. *v.* Martinez, (Tex. Civ. App. 1905) 87 S. W. 853.

Duty of Railroad to Keep Lookout for Travelers on Parallel Roadway. — Johnson *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 206.

737. 4. Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182; Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729.

5. *Arkansas.* — St. Louis Southwestern R. Co. *v.* Underwood, 74 Ark. 610, 86 S. W. 804.

Connecticut. — Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020.

Illinois. — McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111.

Indiana. — Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934.

Kentucky. — Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745; Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Louisville, etc., R. Co. *v.* Redmon, 122 Ky. 385, 91 S. W. 722.

Missouri. — Haley *v.* Missouri Pac. R. Co., 197 Mo. 15, 93 S. W. 1120; Holland *v.* Missouri Pac. R. Co., (Mo. 1908) 109 S. W. 19; Jaffi *v.* Missouri Pac. R. Co., 205 Mo. 450, 103 S. W. 1026; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256.

Pennsylvania. — Bickel *v.* Pennsylvania R. Co., 217 Pa. St. 456, 66 Atl. 756.

Texas. — International, etc., R. Co. *v.* Glover, (Tex. Civ. App. 1905) 88 S. W. 515; Rio Grande, etc., R. Co. *v.* Martinez, (Tex. Civ. App. 1905) 87 S. W. 853.

6. Cowles *v.* New York, etc., R. Co., (Conn. 1907) 66 Atl. 1020; McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111; Louisville, etc., R. Co. *v.* Redmon, 122 Ky. 385, 91 S. W. 722; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256; International, etc., R. Co. *v.* Glover, (Tex. Civ. App. 1905) 88 S. W. 515.

7. Bailey *v.* Lehigh Valley R. Co., (Pa. 1908) 69 Atl. 998.

8. Employee Acting in Scope of Employment and Authority Not Trespasser. — Lake Shore, etc., R. Co. *v.* Enright, 227 Ill. 403, 81 N. E. 374.

Employee Using Railroad Velocipede Not Trespasser. — Trinity, etc., R. Co. *v.* Simpson, (Tex. Civ. App. 1905) 86 S. W. 1034.

738. 3. Pittsburgh, etc., R. Co. *v.* Cozatt, 39 Ind. App. 682, 79 N. E. 534.

5. Railroad Owes Reasonable Care to One in Its Yard as Employee of Independent Contractor. — Caffi *v.* New York Cent., etc., R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 620, 96 N. Y. Supp. 835.

10. Central of Georgia R. Co. *v.* Hunter, 128 Ga. 600, 58 S. E. 154; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918.

11. **Absolute Safety Required.** — Colorado, etc., R. Co. *v.* Sonne, 34 Colo. 206, 83 Pac. 383.

Ordinary Care Required as to Person Transacting Business at Depot. — Louisville, etc., R. Co. *v.* Brown, (Ky. 1908) 107 S. W. 321; Missouri, etc., R. Co. *v.* Taylor, 73 Kan. 482, 85 Pac. 528.

739. 5. Elgin, etc., R. Co. *v.* Thomas, 115 Ill. App. 508, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 739; Little Rock, etc., R. Co. *v.* McQueeney, 78 Ark. 22, 92 S. W. 1120; Cincinnati, etc., R. Co. *v.* Rodes, (Ky. 1907) 102 S. W. 321; Louisville, etc., R. Co. *v.* Farris, (Ky. 1907) 100 S. W. 870; Lovell *v.* Kansas City Southern R. Co., 121 Mo. App. 466, 97 S. W. 193; Wheeling, etc., R. Co. *v.* Rupp, 27 Ohio Cir. Ct. 212; Dooley *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1908) 110 S. W. 135; Missouri, etc., R. Co. *v.* Thomas, (Tex. Civ. App. 1908) 107 S. W. 868; Texas, etc., R. Co. *v.* McDonald, (Tex. 1905) 88 S. W. 201.

One Loading Cars Must Exercise Ordinary Care. — Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675.

Consignee Unloading Car Entitled to Protection against Negligence. — Santa Fe, etc., R. Co. *v.* Ford, (Ariz. 1906) 85 Pac. 1072.

Duty to Furnish Safe Cars. — St. Louis, etc., R. Co. *v.* Fritts, (Ark. 1908) 108 S. W. 841.

7. Dooley *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1908) 110 S. W. 13.

8. Hasting *v.* Southern R. Co., (C. C. A.) 143 Fed. 260; McLain *v.* Chicago, etc., R. Co., 121 Ill. App. 614; Clemans *v.* Chicago, etc., R. Co., 128 Iowa 394, 104 N. W. 431; Atchison, etc., R. Co. *v.* Fuller, 72 Kan. 527, 84 Pac. 140; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246; Woods *v.* Wabash R. Co., 188 Mo. 229, 86 S. W. 1082; Clarke *v.* New York Cent., etc., R. Co., 104 N. Y. App. Div. 167, 93 N. Y. Supp. 525.

9. McLain *v.* Chicago, etc., R. Co., 121 Ill. App. 614; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246; Elliott *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 233; Hoback *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 241.

740. 1. *Arkansas.* — Missouri, etc., R. Co. *v.* Bratton, (Ark. 1908) 108 S. W. 518; St. Louis, etc., R. Co. *v.* Hudson, (Ark. 1908) 110 S. W. 590.

Illinois. — St. Louis Nat. Stock Yards *v.* Brennan, 126 Ill. App. 601.

Iowa. — Calwell *v.* Minneapolis, etc., R. Co., (Iowa 1908) 115 N. W. 605.

Kentucky. — Davis *v.* Louisville, etc., R. Co., (Ky. 1906) 97 S. W. 1122; Louisville, etc., R. Co. *v.* Gilmore, (Ky. 1908) 109 S. W. 321.

Nebraska. — Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

New York. — Best *v.* New York Cent., etc., R. Co., 117 N. Y. App. Div. 739, 102 N. Y. Supp. 957.

Texas. — San Antonio, etc., R. Co. *v.* Mertink, (Tex. Civ. App. 1907) 102 S. W. 153; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563.

Utah. — Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

West Virginia. — Ray *v.* Chesapeake, etc., R. Co., 57 W. Va. 333, 50 S. E. 413.

Acquiescence a Question of Fact. — Gulf, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 99 S. W. 162.

2. Baltimore, etc., R. Co. *v.* Slaughter, 167 Ind. 330, 79 N. E. 186.

3. *United States.* — Butler *v.* New York Cent., etc., R. Co., (C. C. A.) 152 Fed. 976, applying the New York statute which prohibits track-walking by persons not connected with or employed by a railroad; Texas, etc., R. Co. *v.* Modawell, (C. C. A.) 151 Fed. 421.

Arkansas. — Chicago, etc., R. Co. *v.* Bunch, 82 Ark. 522, 102 S. W. 360; St. Louis Southwestern R. Co. *v.* Bryant, 81 Ark. 368, 99 S. W. 693.

Georgia. — Hall *v.* Western, etc., R. Co., 123 Ga. 213, 51 S. E. 311.

Illinois. — Bartlett *v.* Wabash R. Co., 116 Ill. App. 67; Bartlett *v.* Wabash R. Co., 220 Ill. 163, 77 N. E. 96; Janowicz *v.* Pittsburgh, etc., R. Co., 124 Ill. App. 140; McGuire *v.* Chicago,

etc., R. Co., 120 Ill. App. 111; McLaughlin *v.* Chicago, etc., R. Co., 115 Ill. App. 262; Thompson *v.* Cleveland, etc., R. Co., 123 Ill. App. 47.

Iowa. — Clemans *v.* Chicago, etc., R. Co., 128 Iowa 394, 104 N. W. 431.

Kentucky. — Adams *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 363; Hulsey *v.* Louisville, etc., R. Co., (Ky. 1905) 87 S. W. 302; Nashville, etc., R. Co. *v.* Bean, (Ky. 1908) 110 S. W. 328; O'Bannion *v.* Southern R. Co., (Ky. 1908) 110 S. W. 329; Thomas *v.* Cincinnati, etc., R. Co., (Ky. 1907) 105 S. W. 379.

Maine. — Copp *v.* Maine Cent. R. Co., 100 Me. 568, 62 Atl. 735.

Massachusetts. — Durbin *v.* New York, etc., R. Co., 194 Mass. 181, 80 N. E. 219.

Missouri. — Burde *v.* Chicago, etc., R. Co., 123 Mo. App. 629, 100 S. W. 509; Carr *v.* Missouri Pac. R. Co., 195 Mo. 214, 92 S. W. 874; Woods *v.* Wabash R. Co., 188 Mo. 229, 86 S. W. 1082.

New York. — Keller *v.* Erie R. Co., 183 N. Y. 67, 75 N. E. 965.

West Virginia. — Kelley *v.* Ohio River R. Co., 58 W. Va. 216, 52 S. E. 520; Melton *v.* Chesapeake, etc., R. Co., (W. Va. 1908) 61 S. E. 39.

Railroad in City Street. — Manion *v.* Lake Erie, etc., R. Co., (Ind. App. 1907) 80 N. E. 166.

Unlawfully Riding Railroad Tricycle on Tracks. — Illinois Cent. R. Co. *v.* Tyson, (Ky. 1908) 108 S. W. 863.

Sitting on Cross-tie of Track. — Starett *v.* Chesapeake, etc., R. Co., (Ky. 1908) 110 S. W. 282.

Want of Ordinary Care Toward Trespasser. — Brown *v.* Boston, etc., R. Co., 73 N. H. 568, 64 Atl. 194; Duggan *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 829.

741. 1. *United States.* — Northern Pac. R. Co. *v.* Jones, (C. C. A.) 144 Fed. 47; Rich *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 79.

Georgia. — Macon, etc., R. Co. *v.* Parker, 127 Ga. 471, 56 S. E. 616; Southern R. Co. *v.* Hill, 125 Ga. 354, 54 S. E. 113.

Illinois. — Illinois Terminal R. Co. *v.* Mitchell, 214 Ill. 151, 73 N. E. 449.

Indiana. — Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883, *affirmed* 168 Ind. 333, 79 N. E. 911.

Kentucky. — Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Louisville, etc., R. Co. *v.* Daniel, (Ky. 1906) 91 S. W. 691; Louisville, etc., R. Co. *v.* McNary, (Ky. 1908) 108 S. W. 898.

Missouri. — Frye *v.* St. Louis, etc., R. Co., 200 Mo. 377, 98 S. W. 566.

Pennsylvania. — Metzler *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 180.

South Carolina. — Ruddell *v.* Seaboard Air Line R. Co., 75 S. Car. 290, 55 S. E. 528.

Texas. — Gulf, etc., R. Co. *v.* Matthews, 99 Tex. 160, 88 S. W. 192; Gulf, etc., R. Co. *v.* Matthews, (Tex. Civ. App. 1905) 89 S. W. 983; Houston, etc., R. Co. *v.* Garcia, (Tex. Civ. App. 1905) 90 S. W. 713; Hutchens *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 89 S. W. 24; International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560; Missouri, etc., R. Co. *v.* Briscoe, (Tex. Civ. App. 1908) 109 S. W. 453; Missouri, etc., R. Co. *v.* Snowden, (Tex. Civ. App. 1906) 99 S. W. 865; Missouri, etc., R. Co. *v.* Wall, (Tex. Civ. App. 1908) 110 S. W. 453; Missouri, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1908) 109 S. W. 1126.

Utah. — Christensen *v.* Oregon Short Line R. Co., 29 Utah 192, 80 Pac. 746; Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

Virginia. — Norfolk, etc., R. Co. *v.* Carr, 106 Va. 508, 56 S. E. 276; Williamson *v.* Southern R. Co., 104 Va. 146, 51 S. E. 195.

But see Keller *v.* Erie R. Co., 183 N. Y. 67, 75 N. E. 965.

Contra. — Copp *v.* Maine Cent. R. Co., 100 Me. 568, 62 Atl. 735.

Occasional Use Does Not Impose Additional Obligation. — Chesapeake Beach R. Co. *v.* Donahue, (Md. 1908) 68 Atl. 507.

2. Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883, *affirmed* 168 Ind. 333, 79 N. E. 411; Bamberg *v.* Atlantic Coast Line R. Co., 72 S. Car. 389, 51 S. E. 988; Ruddell *v.* Seaboard Air Line R. Co., 75 S. Car. 290, 55 S. E. 528.

3. Curtis *v.* Southern R. Co., (Ga. 1908) 61 S. E. 539; Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883, *affirmed* 168 Ind. 333, 79 N. E. 411; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246; Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745; Louisville, etc., R. Co. *v.* Redmon, 122 Ky. 385, 91 S. W. 722; Chesapeake Beach R. Co. *v.* Donahue, (Md. 1908) 68 Atl. 507; Carr *v.* Missouri Pac. R. Co., 195 Mo. 214, 92 S. W. 874; Bailey *v.* Lehigh Valley R. Co., (Pa. 1908) 69 Atl. 998; Dotta *v.* Northern Pac. R. Co., 36 Wash. 506, 79 Pac. 32.

Acquiescence Does Not Create Easement in Public. — Atchison, etc., R. Co. *v.* Fuller, 72 Kan. 527, 84 Pac. 140.

Mere Use by Public as Convenience Does Not Constitute License. — International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560.

742. 1. International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560.

2. Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883, *affirmed* 168 Ind. 333, 79 N. E. 911.

3. Adams *v.* St. Louis, etc., R. Co., 83 Ark. 300, 103 S. W. 725; Beiser *v.* Chesapeake, etc., R. Co., (Ky. 1906) 92 S. W. 928; Chesapeake, etc., R. Co. *v.* Barbour, (Ky. 1906) 93 S. W. 24; Flint *v.* Illinois Cent. R. Co., (Ky. 1905) 88 S. W. 1055; Louisville, etc., R. Co. *v.* Bell, (Ky. 1908) 108 S. W. 335; Louisville, etc., R. Co. *v.* Woolfork, (Ky. 1907) 99 S. W. 294; Prince *v.* Illinois Cent. R. Co., (Ky. 1906) 99 S. W. 293; Smith *v.* Illinois Cent. R. Co., (Ky. 1906) 90 S. W. 254; Sanders *v.* Texas, etc., R. Co., 118 La. 174, 42 So. 764; Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 431, 98 N. Y. Supp. 476; Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 436, 98 N. Y. Supp. 479; Dotta *v.* Northern Pac. R. Co., 36 Wash. 506, 79 Pac. 32.

4. Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1908) 110 S. W. 199; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 90 S. W. 185.

Contra. — Adams *v.* St. Louis, etc., R. Co., 83 Ark. 300, 103 S. W. 725; Chesapeake, etc., R. Co. *v.* Barbour, (Ky. 1906) 93 S. W. 24;

Louisville, etc., R. Co. *v.* Woolfork, (Ky. 1907) 99 S. W. 294.

5. **Wilfulness Not Inferable from Mere Knowledge of Presence of Injured Person.** — Pittsburgh, etc., R. Co. *v.* Ferrell, 39 Ind. App. 515, 78 N. E. 988.

6. Louisville, etc., R. Co. *v.* Eaden, (Ky. 1906) 93 S. W. 7.

7. Pittsburgh, etc., R. Co. *v.* Warrum, (Ind. App. 1907) 82 N. E. 934; Maysville, etc., R. Co. *v.* Willis, (Ky. 1907) 104 S. W. 1016; Willis *v.* Maysville, etc., R. Co., (Ky. 1906) 92 S. W. 604.

743. 9. Ft. Worth, etc., R. Co. *v.* Morris, (Tex. Civ. App. 1907) 101 S. W. 1038.

Negligence a Mixed Question of Law and Fact. — Baltimore, etc., R. Co. *v.* Slaughter, 167 Ind. 330, 79 N. E. 186.

10. Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 374; Whistenant *v.* Southern States Portland Cement Co., 2 Ga. App. 598, 59 S. E. 920; Louisville, etc., R. Co. *v.* McCandless, (Ky. 1906) 93 S. W. 1041; Louisville, etc., R. Co. *v.* Sights, (Ky. 1905) 89 S. W. 132; Everett *v.* Great Northern R. Co., 100 Minn. 309, 111 N. W. 281; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Clinebell *v.* Chicago, etc., R. Co., (Neb. 1906) 110 N. W. 347; Wieber *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 81, 96 N. Y. Supp. 28; Galveston, etc., R. Co. *v.* Graham, (Tex. Civ. App. 1907) 101 S. W. 846.

Unusual but Necessary Noises. — Brunswick, etc., R. Co. *v.* Hoodenpyle, 129 Ga. 174, 58 S. E. 705.

744. 1. But see Johnson *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 206.

3. Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776.

Starting Engine without First Giving Warning. — Atchison, etc., R. Co. *v.* Wilkie, (Kan. 1907) 90 Pac. 775.

4. Lake Erie, etc., R. Co. *v.* Fike, 35 Ind. App. 554, 74 N. E. 636; Atchison, etc., R. Co. *v.* Walkenshaw, 71 Kan. 742, 81 Pac. 463; Berry *v.* Boston, etc., R. Co., 102 Me. 213, 66 Atl. 386; Gendreau *v.* Minneapolis, etc., R. Co., 99 Minn. 38, 108 N. W. 814; Galveston, etc., R. Co. *v.* Graham, (Tex. Civ. App. 1907) 101 S. W. 846; Gulf, etc., R. Co. *v.* Hord, (Tex. Civ. App. 1905) 87 S. W. 848.

5. Columbia, etc., R. Co. *v.* State, 105 Md. 34, 65 Atl. 625; Powers *v.* Grand Trunk R. Co., 78 Vt. 436, 63 Atl. 139.

6. Louisville, etc., R. Co. *v.* McCandless, (Ky. 1906) 93 S. W. 1041; Stewart *v.* Cary Lumber Co., (N. Car. 1907) 59 S. E. 545.

7. Chicago, etc., R. Co. *v.* Steekman, 125 Ill. App. 299; Paris, etc., R. Co. *v.* Calvin, (Tex. Civ. App. 1907) 103 S. W. 428; St. Louis Southwestern R. Co. *v.* Kilman, (Tex. Civ. App. 1905) 86 S. W. 1050; St. Louis Southwestern R. Co. *v.* Moore, (Tex. Civ. App. 1908) 107 S. W. 658.

Negligently Emitting Steam. — Cincinnati, etc., R. Co. *v.* Rodes, (Ky. 1907) 102 S. W. 321; Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596; Hickey *v.* Rio Grande Western R. Co., 29 Utah 302, 82 Pac. 29; Fay *v.* Minneapolis, etc., R. Co., 131 Wis. 639, 111 N. W. 683.

8. Choctaw R. Co. *v.* Coker, (Ark. 1905) 90 S. W. 999; Southern R. Co. *v.* Hill, 125 Ga. 354, 54 S. E. 113; Foster *v.* East Jordan Lumber Co., 141 Mich. 316, 104 N. W. 617; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Missouri, etc., R. Co. *v.* Sanders, (Tex. Civ. App. 1906) 94 S. W. 149; Puppovich *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 99 S. W. 1143.

Other Unnecessary Noises. — Houston, etc., R. Co. *v.* Beard, (Tex. Civ. App. 1906) 93 S. W. 532.

Unnecessary Emission of Steam. — Chicago, etc., R. Co. *v.* Jones, (Tex. Civ. App. 1905) 88 S. W. 445; Hickey *v.* Rio Grande Western R. Co., 29 Utah 392, 82 Pac. 29.

9. Hickey *v.* Rio Grande Western R. Co., 29 Utah 392, 82 Pac. 29, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 744; Alabama G. S. R. Co. *v.* Fulton, 144 Ala. 332, 39 So. 282; Chicago, etc., R. Co. *v.* Steckman, 22 Ill. 500, 79 N. E. 602; Foster *v.* East Jordan Lumber Co., 141 Mich. 316, 104 N. W. 617.

10. Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 374; Whistenant *v.* Southern States Portland Cement Co., 2 Ga. App. 598, 59 S. E. 920; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477.

Contra. — Johnson *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 206.

745. 1. Alabama G. S. R. Co. *v.* Fulton, 144 Ala. 332, 39 So. 282, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 744, 745; Alabama G. S. R. Co. *v.* Fulton, (Ala. 1907) 43 So. 832; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477.

2. Alabama G. S. R. Co. *v.* Fulton, (Ala. 1907) 43 So. 832; Zipperlen *v.* Southern Pac. Co., (Cal. App. 1907) 93 Pac. 1049; Brunswick, etc., R. Co. *v.* Hoodenpyle, 129 Ga. 174, 58 S. E. 705; Chicago, etc., R. Co. *v.* Clinkenbeard, 72 Kan. 559, 84 Pac. 142; Chesapeake, etc., R. Co. *v.* Pace, (Ky. 1908) 106 S. W. 1176.

3. Jonesboro, etc., R. Co. *v.* Moody, 82 Ark. 603, 102 S. W. 375; Pittsburgh, etc., R. Co. *v.* Bovard, 223 Ill. 176, 79 N. E. 128; Davis *v.* Michigan Cent. R. Co., 142 Mich. 382, 105 N. W. 877; Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012; Hudson *v.* Atlantic Coast Line R. Co., 142 N. Car. 198, 55 S. E. 103; Missouri, etc., R. Co. *v.* Balliet, (Tex. Civ. App. 1908) 107 S. W. 906.

Rule Not Applicable Where Cars Set in Motion without Knowledge of Company. — Keeney *v.* Campbell, 215 Pa. St. 530, 64 Atl. 687.

Question of Wanton and Wilful Misconduct for Jury. — Lacey *v.* Louisville, etc., R. Co., (C. C. A.) 152 Fed. 134.

Where Train Cut to Open Crossing — Starting Engine without Warning. — Illinois Cent. R. Co. *v.* Morris, (Ky. 1906) 90 S. W. 970.

4. Lange *v.* Missouri Pac. R. Co., 115 Mo. App. 582, 91 S. W. 980.

5. Wilson *v.* Atlantic Coast Line R. Co., 142 N. Car. 333, 55 S. E. 257.

12. Illinois Cent. R. Co. *v.* Coley, (Ky. 1905) 89 S. W. 224; Oliver *v.* Roach, (Ky. 1907) 102 S. W. 274; Hollins *v.* New Orleans, etc., R. Co., 119 La. 418, 44 So. 159; Willis *v.* Vicks-

burg, etc., R. Co., 115 La. 53, 38 So. 892; Dixon *v.* Southern R. Co., 140 N. Car. 201, 52 S. E. 673; Gerringer *v.* North Carolina R. Co., (N. Car. 1907) 59 S. E. 152; Ray *v.* Aberdeen, etc., R. Co., 141 N. Car. 84, 53 S. E. 622; Reid *v.* Atlanta, etc., Air Line R. Co., 140 N. Car. 146, 52 S. E. 307; Louisville, etc., R. Co. *v.* Martin, 113 Tenn. 266, 87 S. W. 418; Bowles *v.* Chesapeake, etc., R. Co., 61 W. Va. 272, 57 S. E. 131.

746. 1. Southern R. Co. *v.* Daves, (Va. 1908) 61 S. E. 748, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 745; Chesapeake, etc., R. Co. *v.* Perkins, (Ky. 1907) 105 S. W. 148; Louisville, etc., R. Co. *v.* Daniel, (Ky. 1907) 104 S. W. 344; Jaffi *v.* Missouri Pac. R. Co., 205 Mo. 450, 103 S. W. 1026; Byron *v.* Central R. Co., 215 Pa. St. 82, 64 Atl. 328.

Signals or Watchmen Not Required on Backing Train Elsewhere than at Public Crossings. — Melton *v.* Chesapeake, etc., R. Co., (W. Va. 1908) 61 S. E. 39.

2. **Contributory Negligence.** — Nauss *v.* Boston, etc., R. Co., (Mass. 1907) 81 N. E. 280.

4. Southern R. Co. *v.* Chatman, 124 Ga. 1026, 53 S. E. 692, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746; Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827.

747. 1. *United States.* — Grand Trunk R. Co. *v.* Flagg, (C. C. A.) 156 Fed. 359; Russell *v.* Oregon Short Line R. Co., (C. C. A.) 155 Fed. 22.

Alabama. — Alabama G. S. R. Co. *v.* Fulton, (Ala. 1907) 43 So. 832; Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Johnson *v.* Birmingham R., etc., Co., (Ala. 1907) 43 So. 33; Southern R. Co. *v.* Stewart, (Ala. 1907) 45 So. 51.

Arkansas. — Little Rock, etc., R. Co. *v.* McQueeney, 78 Ark. 22, 92 S. W. 1120; St. Louis Southwestern R. Co. *v.* Bryant, 81 Ark. 368, 99 S. W. 693.

Georgia. — Hall *v.* Western, etc., R. Co., 123 Ga. 213, 51 S. E. 311; Southern R. Co. *v.* Chatman, 124 Ga. 1026, 53 S. E. 692; Southern R. Co. *v.* Hill, 125 Ga. 354, 54 S. E. 113.

Illinois. — Bartlett *v.* Wabash R. Co., 220 Ill. 163, 77 N. E. 96.

Kentucky. — Adams *v.* Louisville, etc., Co., (Ky. 1907) 104 S. W. 363; Beiser *v.* Chesapeake, etc., R. Co., (Ky. 1906) 92 S. W. 928; Chesapeake, etc., R. Co. *v.* Barbour, (Ky. 1906) 93 S. W. 24; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246; Elliott *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 233; Fouels *v.* Louisville, etc., R. Co., (Ky. 1905) 89 S. W. 143; Hoback *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 241; Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745; Illinois Cent. R. Co. *v.* Tyson, (Ky. 1908) 108 S. W. 863; Louisville, etc., R. Co. *v.* Hathaway, (Ky. 1905) 89 S. W. 724; Louisville, etc., R. Co. *v.* McNary, (Ky. 1908) 108 S. W. 898; Louisville, etc., R. Co. *v.* Redmon, 122 Ky. 385, 91 S. W. 722; Louisville, etc., R. Co. *v.* Woolfork, (Ky. 1907) 99 S. W. 294; Nashville, etc., R. Co. *v.* Bean, (Ky. 1908) 110 S. W. 328; Smith *v.* Illinois Cent. R. Co., (Ky. 1906) 90 S. W. 254; Southern R. Co. *v.* Clark, (Ky. 1907) 105 S. W. 384; Yates *v.* Illinois Central R. Co., (Ky. 1905) 89 S. W. 161.

Louisiana. — Davis *v.* Arkansas Southern R. Co., 117 La. 320, 41 So. 587, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747.

Missouri. — Burde *v.* Chicago, etc., R. Co., 123 Mo. App. 629, 100 S. W. 509.

New York. — Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 431, 98 N. Y. Supp. 476; Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 436, 98 N. Y. Supp. 479; Thayer *v.* New York Cent., etc., R. Co., 117 N. Y. App. Div. 318, 102 N. Y. Supp. 135.

Texas. — Houston, etc., R. Co. *v.* Garcia, (Tex. Civ. App. 1905) 90 S. W. 713; Houston, etc., R. Co. *v.* Ramsey, (Tex. Civ. App. 1906) 97 S. W. 1067; International, etc., R. Co. *v.* Ploeger, (Tex. Civ. App. 1906) 96 S. W. 56; Kelley *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 1166.

Virginia. — Chesapeake, etc., R. Co. *v.* Farrow, 106 Va. 137, 55 S. E. 569; Seaboard, etc., R. Co. *v.* Vaughan, 104 Va. 113, 51 S. E. 452.

2. Texas, etc., R. Co. *v.* Modawell, (C. C. A.) 151 Fed. 421; Barry *v.* Kansas City, etc., R. Co., 77 Ark. 401, 91 S. W. 748; Southern R. Co. *v.* Chatman, 124 Ga. 1026, 53 S. E. 692, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747; Smith *v.* Wabash R. Co., (Mo. App. 1908) 107 S. W. 22; Ray *v.* Aberdeen, etc., R. Co., 141 N. Car. 84, 53 S. E. 622; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

3. New York Cent., etc., R. Co. *v.* Price, (C. C. A.) 159 Fed. 330; Southern R. Co. *v.* Chatman, 124 Ga. 1026, 53 S. E. 692, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747; Etheredge *v.* Central of Georgia R. Co., 122 Ga. 853, 50 S. E. 1003.

748. 2. *United States.* — Chicago, etc., R. Co. *v.* Donovan, (C. C. A.) 160 Fed. 826; Southern R. Co. *v.* Fisk, (C. C. A.) 139 Fed. 373.

Alabama. — Alabama G. S. R. Co. *v.* Guest, 144 Ala. 373, 39 So. 654; Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Mobile, etc., R. Co. *v.* Smith, (Ala. 1907) 45 So. 57.

Georgia. — Harden *v.* Georgia R. Co., 3 Ga. App. 344, 59 S. E. 1122; Macon, etc., R. Co. *v.* Parker, 127 Ga. 471, 56 S. E. 616; Shaw *v.* Georgia R. Co., 127 Ga. 8, 55 S. E. 960; Southern R. Co. *v.* Chatman, 124 Ga. 1026, 53 S. E. 692; Southern R. Co. *v.* Hill, 125 Ga. 354, 54 S. E. 113; Williams *v.* Southern R. Co., 126 Ga. 710, 55 S. E. 948.

Kentucky. — Davis *v.* Louisville, etc., R. Co., (Ky. 1906) 97 S. W. 1122; Hoback *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 241 Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Louisville, etc., R. Co. *v.* Hoskins, (Ky. 1908) 108 S. W. 305; Louisville, etc., R. Co. *v.* McNary, (Ky. 1908) 108 S. W. 898.

Missouri. — Eppstein *v.* Missouri Pac. R. Co., 197 Mo. 720, 94 S. W. 967; Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256; Smith *v.* Wabash R. Co., (Mo. App. 1908) 107 S. W. 22.

New Hampshire. — Brown *v.* Boston, etc., R. Co., 73 N. H. 568, 64 Atl. 194.

Pennsylvania. — Metzler *v.* Philadelphia, etc., R. Co., 28 Pa. Super. Ct. 180.

Texas. — Gulf, etc., R. Co. *v.* Matthews, (Tex. Civ. App. 1905) 89 S. W. 983; Hutchens *v.* St. Louis Southwestern R. Co., (Tex. Civ. App. 1905) 89 S. W. 24; Houston, etc., R. Co. *v.* Kauffmann, (Tex. Civ. App. 1907) 101 S. W. 817; International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560; Rio Grande, etc., R. Co. *v.* Martinez, (Tex. Civ. App. 1905) 87 S. W. 853; San Antonio, etc., R. Co. *v.* Mertiank, (Tex. Civ. App. 1907) 102 S. W. 153; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1908) 110 S. W. 199.

Utah. — Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

Virginia. — Norfolk, etc., R. Co. *v.* Carr, 106 Va. 508, 56 S. E. 276; Williamson *v.* Southern R. Co., 104 Va. 146, 51 S. E. 195.

4. *United States.* — Parks *v.* Southern R. Co., (C. C. A.) 143 Fed. 276; Texas, etc., R. Co. *v.* Modawell, (C. C. A.) 151 Fed. 421.

Alabama. — Birmingham Southern R. Co. *v.* Kendrick, (Ala. 1908) 46 So. 588; Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Kansas City, etc., R. Co. *v.* Ferguson, 143 Ala. 512, 39 So. 348; Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238; Southern R. Co. *v.* Gullatt, (Ala. 1907) 43 So. 577; Southern R. Co. *v.* Stewart, (Ala. 1907) 45 So. 51.

Arkansas. — Adams *v.* St. Louis, etc., R. Co., 83 Ark. 300, 103 S. W. 725; Chicago, etc., R. Co. *v.* Bunch, 82 Ark. 522, 102 S. W. 369; Griffie *v.* St. Louis, etc., R. Co., 80 Ark. 186, 96 S. W. 750; St. Louis Southwestern R. Co. *v.* Bryant, 81 Ark. 368, 99 S. W. 693; St. Louis, etc., R. Co. *v.* Cain, 84 Ark. 623, 104 S. W. 533; St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613.

California. — Johnson *v.* Center, 4 Cal. App. 616, 88 Pac. 727.

Georgia. — Central of Georgia R. Co. *v.* Brandenburg, 129 Ga. 115, 58 S. E. 658; Charleston, etc., R. Co. *v.* Johnson, 1 Ga. App. 441, 57 S. E. 1064; Hall *v.* Western, etc., R. Co., 123 Ga. 213, 51 S. E. 311; Harden *v.* Georgia R. Co., 3 Ga. App. 344, 59 S. E. 1122; Southern R. Co. *v.* Mouchet, 3 Ga. App. 266, 59 S. E. 927.

Illinois. — Bartlett *v.* Wabash R. Co., 116 Ill. App. 67; McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111; Thompson *v.* Cleveland, etc., R. Co., 123 Ill. App. 47.

Indiana. — Pittsburgh, etc., R. Co. *v.* Simons, (Ind. App. 1906) 76 N. E. 883, *affirmed* 168 Ind. 333, 79 N. E. 911.

Indian Territory. — Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182.

Iowa. — Clemans *v.* Chicago, etc., R. Co., 128 Iowa 394, 104 N. W. 431.

Kansas. — Hurdle *v.* Missouri Pac. R. Co., 73 Kan. 769, 85 Pac. 287.

Kentucky. — Adams *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 363; Beiser *v.* Chesapeake, etc., R. Co., (Ky. 1906) 92 S. W. 928; Chesapeake, etc., R. Co. *v.* Barbour, (Ky. 1906) 93 S. W. 24; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246; Glenn *v.* Louisville, etc., R. Co., (Ky. 1906) 90 S. W. 975; Hovins *v.* Cincinnati, etc., R. Co., (Ky. 1908) 107 S. W. 214; Hulsey *v.* Louisville, etc., R. Co., (Ky. 1905) 87 S. W. 302; Hummer *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 885; Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745; Illinois Cent. R. Co. *v.* Tyson, (Ky. 1908) 108 S. W. 863; Johnson *v.* Louisville, etc., R. Co., (Ky. 1906) 91 S. W. 707; Louisville, etc., R. Co. *v.* Bell, (Ky. 1908) 108 S. W. 335; Louisville, etc., Co. *v.* McNary, (Ky. 1908) 108 S. W. 898; Louisville, etc., R. Co. *v.* Woolfork, (Ky. 1907) 99 S. W. 294; Nashville, etc., R. Co. *v.* Bean, (Ky. 1908) 110 S. W. 328; O'Bannion *v.* Southern R. Co., (Ky. 1908) 110 S. W. 329; Prince *v.* Illinois Cent. R. Co., (Ky. 1906) 99 S. W. 293; Rader *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 774; Starett *v.* Chesapeake, etc., R. Co., (Ky. 1908) 110 S. W. 282.

Louisiana. — Davis *v.* Arkansas Southern R. Co., 117 La. 320, 41 So. 587; Ross *v.* Sibley, etc., R. Co., 116 La. 789, 41 So. 93.

Maryland. — Chesapeake Beach R. Co. *v.* Donahue, (Md. 1908) 68 Atl. 507.

Minnesota. — Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827.

Mississippi. — Barmore *v.* Vicksburg, etc., R. Co., 85 Miss. 426, 38 So. 210.

Missouri. — Burde *v.* Chicago, etc., R. Co., 123 Mo. App. 629, 100 S. W. 509; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624; King *v.* Wabash R. Co., (Mo. 1908) 109 S. W. 671; Lange *v.* Missouri Pac. R. Co., 115 Mo. App. 582, 91 S. W. 989; Lange *v.* Missouri Pac. R. Co., 208 Mo. 458, 106 S. W. 660; Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566; Reyburn *v.* Missouri Pac. R. Co., 187 Mo. 565, 86 S. W. 174; Sites *v.* Knott, 197 Mo. 684, 96 S. W. 206; Smith *v.* Wabash R. Co., (Mo. App. 1908) 107 S. W. 22; Woods *v.* Wabash R. Co., 188 Mo. 229, 86 S. W. 1082.

New York. — Rosenthal *v.* New York, etc., R. Co., 112 N. Y. App. Div. 431, 436, 98 N. Y. Supp. 476, 479; Smentanka *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 323, 107 N. Y. Supp. 973; Thayer *v.* New York Cent., etc., R. Co., 117 N. Y. App. Div. 318, 102 N. Y. Supp. 135.

Texas. — Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Hendrix *v.* Texas, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 461; Houston, etc., R. Co. *v.* Finn, (Tex. Civ. App. 1908) 107 S. W. 94; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918; International, etc., R. Co. *v.* Munn, (Tex. Civ. App. 1907) 102 S. W. 442; International, etc., R. Co. *v.* Ploeger, (Tex. Civ. App. 1906) 96 S. W. 56; Johnson *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 206; Missouri, etc., R. Co. *v.* Hendricks, (Tex. Civ. App. 1908) 108 S. W. 745; Missouri, etc., R. Co. *v.* Saunders, (Tex. Civ. App. 1907) 103 S. W. 457; Nacogdoches, etc., R. Co. *v.* Beene, (Tex. Civ. App. 1907) 106 S. W. 456; St. Louis Southwestern R. Co. *v.* Hunt, (Tex. Civ. App. 1907) 100 S. W. 968; San Antonio, etc., R. Co. *v.* McMillan, (Tex. 1907) 102 S. W. 103; Texas, etc., R. Co. *v.* Brannon, (Tex. Civ. App. 1906) 96 S. W. 1095; Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408; Texas, etc.,

R. Co. *v.* Patterson, (Tex. Civ. App. 1907) 102 S. W. 138; Whitney *v.* Texas Cent. R. Co., (Tex. Civ. App. 1908) 110 S. W. 70.

Virginia. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211; Chesapeake, etc., R. Co. *v.* Farrow, 106 Va. 137, 55 S. E. 569; Norfolk, etc., R. Co. *v.* Dean, 107 Va. 505, 59 S. E. 389; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321; Norfolk, etc., R. Co. *v.* Johnson, 103 Va. 787, 50 S. E. 268; Norfolk, etc., R. Co. *v.* Stegall, 105 Va. 538, 54 S. E. 19; Southern R. Co. *v.* Hansbrough, 105 Va. 527, 54 S. E. 17.

West Virginia. — Kelley *v.* Ohio River R. Co., 58 W. Va. 216, 52 S. E. 520.

When Danger to Traveler on Adjacent Highway Discovered Care Must Be Exercised to Avert Injury. — Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 374.

749. 1. *Arkansas.* — St. Louis, etc., R. Co. *v.* Sparks, 81 Ark. 187, 99 S. W. 73.

Kentucky. — Cincinnati, etc., R. Co. *v.* Com., (Ky. 1907) 104 S. W. 771; Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745; Johnson *v.* Louisville, etc., R. Co., (Ky. 1906) 91 S. W. 707; Louisville, etc., R. Co. *v.* McNary, (Ky. 1908) 108 S. W. 898; McCabe *v.* Maysville, etc., R. Co., (Ky. 1905) 89 S. W. 683; Perkins *v.* Chesapeake, etc., R. Co., (Ky. 1906) 94 S. W. 636; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167; Willis *v.* Maysville, etc., R. Co., (Ky. 1906) 92 S. W. 604.

Missouri. — Boyce *v.* Chicago, etc., R. Co., 120 Mo. App. 168, 96 S. W. 670; Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624.

Nebraska. — Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285.

Ohio. — Weaver *v.* Columbus, etc., R. Co., 76 Ohio St. 164, 81 N. E. 180.

Texas. — Missouri, etc., R. Co. *v.* Sanders, (Tex. Civ. App. 1906) 94 S. W. 149.

4. *United States.* — Bookman *v.* Seaboard Air Line R. Co., (C. C. A.) 152 Fed. 686; Butler *v.* New York Cent., etc., R. Co., (C. C. A.) 152 Fed. 976; Illinois Cent. R. Co. *v.* Ackerman, (C. C. A.) 144 Fed. 959.

Alabama. — Southern R. Co. *v.* Gullatt, (Ala. 1907) 43 So. 577.

Arkansas. — St. Louis, etc., R. Co. *v.* Cain, 84 Ark. 623, 104 S. W. 533; St. Louis, etc., R. Co. *v.* Evans, 74 Ark. 407, 86 S. W. 426; St. Louis, etc., R. Co. *v.* London, 82 Ark. 267, 102 S. W. 212.

California. — Lambert *v.* Southern Pac. R. Co., 146 Cal. 231, 79 Pac. 873; Matteson *v.* Southern Pac. Co., (Cal. App. 1907) 92 Pac. 101; Rowe *v.* Southern California R. Co., 4 Cal. App. 1, 87 Pac. 220.

Florida. — Atlantic Coast Line R. Co. *v.* Miller, 53 Fla. 246, 44 So. 247.

Illinois. — Bartlett *v.* Wabash R. Co., 220 Ill. 163, 77 N. E. 96; Chicago, etc., R. Co. *v.* Sack, 129 Ill. App. 58; McLaughlin *v.* Chicago, etc., R. Co., 115 Ill. App. 262.

Indiana. — Pittsburgh, etc., R. Co. *v.* Ferrell, 39 Ind. App. 515, 78 N. E. 988.

Indian Territory. — Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182.

Kentucky. — Cox *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 282; Edwards *v.* Chesapeake, etc., R. Co., (Ky. 1908) 108 S. W. 303; Illinois Cent. R. Co. *v.* Willis, (Ky. 1906) 97 S. W. 21; Louisville, etc., R. Co. *v.* Gilmore, (Ky. 1908) 109 S. W. 321; Louisville, etc., R. Co. *v.* Hathaway, (Ky. 1905) 89 S. W. 724; Louisville, etc., R. Co. *v.* Redmond, 122 Ky. 385, 91 S. W. 722; Nashville, etc., R. Co. *v.* Bean, (Ky. 1908) 110 S. W. 328.

Maryland. — Chesapeake Beach R. Co. *v.* Donahue, (Md. 1908) 68 Atl. 507.

Missouri. — Burde *v.* Chicago, etc., R. Co., 123 Mo. App. 629, 100 S. W. 509; Copp *v.* Maine Cent. R. Co., 100 Me. 568, 62 Atl. 735; Lange *v.* Missouri Pac. R. Co., 208 Mo. 458, 106 S. W. 660; Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880; Sanguinette *v.* Mississippi River, etc., R. Co., 196 Mo. 466, 95 S. W. 386; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Sites *v.* Knott, 197 Mo. 684, 96 S. W. 206; Smith *v.* Wabash R. Co., (Mo. App. 1908) 107 S. W. 22; Woods *v.* Wabash R. Co., 188 Mo. 229, 86 S. W. 1082.

New York. — Keller *v.* Erie R. Co., 183 N. Y. 67, 75 N. E. 965.

North Carolina. — Beach *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 664, 669.

Pennsylvania. — Bailey *v.* Lehigh Valley R. Co., (Pa. 1908) 69 Atl. 998; Keller *v.* Philadelphia, etc., R. Co., 214 Pa. St. 82, 63 Atl. 413.

Texas. — Houston, etc., R. Co. *v.* Ramsey, (Tex. Civ. App. 1906) 97 S. W. 1067; International, etc., R. Co. *v.* Munn, (Tex. Civ. App. 1907) 102 S. W. 442; International, etc., R. Co. *v.* Ploeger, (Tex. Civ. App. 1906) 93 S. W. 226; International, etc., R. Co. *v.* Vallejo, (Tex. Civ. App. 1908) 108 S. W. 1187; San Antonio, etc., R. Co. *v.* McMillan, (Tex. 1907) 102 S. W. 103; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1908) 110 S. W. 199; Texas, etc., R. Co. *v.* Patterson, (Tex. Civ. App. 1907) 102 S. W. 138; Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408.

Virginia. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211; Norfolk, etc., R. Co. *v.* Dean, 107 Va. 505, 59 S. E. 389; Southern R. Co. *v.* Daves, (Va. 1908) 61 S. E. 748.

Washington. — Woolf *v.* Washington R., etc., Co., 37 Wash. 491, 79 Pac. 997.

No Presumption in Absence of Warning. — Kelley *v.* Ohio River R. Co., 58 W. Va. 216, 52 S. E. 520.

No Presumption Where Use of Track as Footpath Was Anticipated. — International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560.

750. 1. Atlantic Coast Line R. Co. *v.* Miller, 53 Fla. 246, 44 So. 247; Starett *v.* Chesapeake, etc., R. Co., (Ky. 1908) 110 S. W. 282; Smith *v.* Wabash R. Co., (Mo. App. 1908) 107 S. W. 22; International, etc., R. Co. *v.* Munn, (Tex. Civ. App. 1907) 102 S. W. 445.

751. 1. **Child of Tender Age.** — International, etc., R. Co. *v.* Vallejo, (Tex. Civ. App. 1908) 108 S. W. 1187; Sites *v.* Knott, 197 Mo. 684, 96 S. W. 206 (dictum); Southern R. Co. *v.*

Daves, (Va. 1908) 61 S. E. 748 (different rule applied as to child eight years of age).

2. *Arkansas.* — St. Louis, etc., R. Co. *v.* Ferrell, 84 Ark. 270, 105 S. W. 263; St. Louis Southwestern R. Co. *v.* Graham, 83 Ark. 61, 102 S. W. 700; St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613.

Georgia. — Hall *v.* Western, etc., R. Co., 123 Ga. 213, 51 S. E. 311.

Iowa. — Hoffard *v.* Illinois Cent. R. Co., (Iowa 1907) 110 N. W. 446.

Minnesota. — Anderson *v.* Minneapolis, etc., R. Co., (Minn. 1908) 114 N. W. 1123.

Missouri. — Ayers *v.* Wabash R. Co., 190 Mo. 228, 88 S. W. 608.

North Carolina. — Beach *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 664; Beach *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 669.

Pennsylvania. — See Keller *v.* Philadelphia, etc., R. Co., 214 Pa. St. 82, 63 Atl. 413.

Texas. — Houston, etc., R. Co. *v.* Adams, (Tex. Civ. App. 1906) 98 S. W. 222; Houston, etc., R. Co. *v.* Kauffmann, (Tex. Civ. App. 1907) 101 S. W. 817; International, etc., R. Co. *v.* Vallejo, (Tex. Civ. App. 1908) 108 S. W. 1187.

Vermont. — Powers *v.* Grand Trunk R. Co., 78 Vt. 436, 63 Atl. 139.

Contributory Negligence as Defense. — St. Louis Southwestern R. Co. *v.* Cochran, 77 Ark. 398, 91 S. W. 747.

Negligence a Question for Jury. — St. Louis Southwestern R. Co. *v.* Elledge, (Tex. Civ. App. 1906) 93 S. W. 499.

Lookout Not Required on Parallel Highways Remote from Stations and Crossings. — Atchison, etc., R. Co. *v.* Walkenshaw, 71 Kan. 742, 81 Pac. 463.

Failure to Discover Child Sleeping on Station Platform. — Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566.

752. 3. **In Tennessee.** — Rogers *v.* Cincinnati, etc., R. Co., (C. C. A.) 136 Fed. 573 (applying *Tennessee* statute); Chesapeake, etc., R. Co. *v.* Crews, 118 Tenn. 52, 99 S. W. 368.

Duty of Maintaining Lookout Imposed by Statute. — Little Rock, etc., R. Co. *v.* McQueeney, 78 Ark. 22, 92 S. W. 1120; St. Louis Southwestern R. Co. *v.* Bryant, 81 Ark. 368, 99 S. W. 693.

Statute Not Applicable Where Train Is Being Made Up in Depot Grounds. — Payne *v.* Illinois Cent. R. Co., (C. C. A.) 155 Fed. 73.

753. 1. *United States.* — Texas, etc., R. Co. *v.* Modawell, (C. C. A.) 151 Fed. 421.

Alabama. — Alabama G. S. R. Co. *v.* Fulton, (Ala. 1907) 43 So. 832; Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Southern R. Co. *v.* Gullatt, (Ala. 1907) 43 So. 577; Southern R. Co. *v.* Stewart, (Ala. 1907) 45 So. 51.

Illinois. — Janowicz *v.* Pittsburgh, etc., R. Co., 124 Ill. App. 149.

Kentucky. — Adams *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 363; Beiser *v.* Chesapeake, etc., R. Co., (Ky. 1096) 92 S. W. 928; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246; Davis *v.* Louisville, etc., R. Co., (Ky. 1906) 97 S. W. 1122; Elliott *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 233; Flint *v.* Illinois Cent. R. Co., (Ky. 1905) 88 S. W. 1055; Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745; Johnson *v.* Louisville, etc., R. Co., (Ky. 1906) 91 S. W. 707; Louisville, etc., R. Co. *v.* Hathaway, (Ky. 1905) 89 S. W. 724; Louisville, etc., R. Co. *v.* Woolfork, (Ky. 1907) 99 S. W. 294; Nashville, etc., R. Co. *v.* Bean, (Ky. 1908) 110 S. W. 328; O'Bannion *v.* Southern R. Co., (Ky. 1908) 110 S. W. 329; Smith *v.* Illinois Cent. R. Co., (Ky. 1906) 90 S. W. 254; Starett *v.* Chesapeake, etc., R. Co., (Ky. 1908) 110 S. W. 282; Yates *v.* Illinois Cent. R. Co., (Ky. 1905) 89 S. W. 161.

Minnesota. — Ellington *v.* Great Northern R. Co., 96 Minn. 176, 104 N. W. 827, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

Missouri. — Frye *v.* St. Louis, etc., R. Co., 200 Mo. 377, 98 S. W. 566.

South Carolina. — Cook *v.* Southern R. Co., 78 S. Car. 527, 59 S. E. 361.

Utah. — Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

Virginia. — Norfolk, etc., R. Co. *v.* Stegall, 105 Va. 538, 54 S. E. 19.

Lookout Not Required as to Employee Using Railroad Tricycle. — Louisville, etc., R. Co. *v.* Jolly, (Ky. 1906) 90 S. W. 977.

754. 1. See Byron *v.* Central R. Co., 215 Pa. St. 82, 64 Atl. 328.

2. Elliott *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 233; O'Bannion *v.* Southern R. Co., (Ky. 1908) 110 S. W. 329.

3. *Alabama.* — Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Mobile, etc., R. Co. *v.* Smith, (Ala. 1907) 45 So. 57.

Georgia. — Macon, etc., R. Co. *v.* Parker, 127 Ga. 471, 56 S. E. 616; Shaw *v.* Georgia R. Co., 127 Ga. 8, 55 S. E. 960.

Illinois. — St. Louis Nat. Stock Yards *v.* Brennan, 126 Ill. App. 601.

Indiana. — Chicago, etc., R. Co. *v.* Pritchard, 168 Ind. 398, 79 N. E. 508; Manion *v.* Lake Erie, etc., R. Co., (Ind. App. 1907) 80 N. E. 166.

Kentucky. — Cross *v.* Illinois Cent. R. Co., (Ky. 1908) 110 S. W. 290; Hummer *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 885; Illinois Cent. R. Co. *v.* Coley, (Ky. 1905) 89 S. W. 234; Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Louisville, etc., R. Co. *v.* Hoskins, (Ky. 1908) 108 S. W. 305; Louisville, etc., R. Co. *v.* McNary, (Ky. 1908) 108 S. W. 898; McCabe *v.* Maysville, etc., R. Co., (Ky. 1905) 89 S. W. 683; Rader *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 774; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167.

Missouri. — Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624.

Texas. — Louisiana, etc., Lumber Co. *v.* Brown, (Tex. Civ. App. 1908) 109 S. W. 959; Missouri, etc., R. Co. *v.* Saunders, (Tex. Civ. App. 1907) 103 S. W. 457; San Antonio, etc., R. Co. *v.* Mertink, (Tex. Civ. App. 1907) 102 S. W. 153; Texas Mexican R. Co. *v.* De Hernandez, (Tex. Civ. App. 1908) 108 S. W. 765; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563.

Utah. — Gesas *v.* Oregon Shore Line R. Co., (Utah 1907) 93 Pac. 274.

Virginia. — Norfolk, etc., R. Co. *v.* Carr, 106 Va. 508, 56 S. E. 276; Norfolk, etc., R. Co. *v.* Denny, 106 Va. 383, 56 S. E. 321.

4. Duggan *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 829.

7. Harden *v.* Georgia R. Co., 3 Ga. App. 344, 59 S. E. 1122; Thompson *v.* Cleveland, etc., R. Co., 123 Ill. App. 47; Thompson *v.* Cleveland, etc., R. Co., 226 Ill. 542, 80 N. E. 1054; Chesapeake, etc., R. Co. *v.* Nipp, (Ky. 1907) 100 S. W. 246; Flint *v.* Illinois Cent. R. Co., (Ky. 1905) 88 S. W. 1055; Hoback *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 241; Nashville, etc., R. Co. *v.* Bean, (Ky. 1908) 110 S. W. 328; Ayers *v.* Wabash R. Co., 190 Mo. 228, 88 S. W. 608; Houston, etc., R. Co. *v.* Garcia, (Tex. Civ. App. 1905) 90 S. W. 713; Missouri, etc., R. Co. *v.* Snowden, (Tex. Civ. App. 1906) 99 S. W. 865; Bowles *v.* Chesapeake, etc., R. Co., 61 W. Va. 272, 57 S. E. 131.

No Duty to Give Warning to Traveler on Adjacent Highway. — Southern R. Co. *v.* Flynt, 2 Ga. App. 162, 58 S. E. 374.

755. 2. St. Louis, etc., R. Co. *v.* Cain, 84 Ark. 623, 104 S. W. 533; St. Louis, etc., R. Co. *v.* Evans, 74 Ark. 407, 86 S. W. 426; Illinois Cent. R. Co. *v.* Murphy, (Ky. 1906) 97 S. W. 729; Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1906) 97 S. W. 14; Ross *v.* Sibley, etc., R. Co., 116 La. 789, 41 So. 93; Engelking *v.* Kansas City, etc., R. Co., 187 Mo. 158, 86 S. W. 89; Reyburn *v.* Missouri Pac. R. Co., 187 Mo. 565, 86 S. W. 174; Kelley *v.* Ohio River R. Co., 58 W. Va. 216, 52 S. E. 520.

3. *California.* — Martin *v.* Southern Pac. Co., 150 Cal. 124, 88 Pac. 701; Matteson *v.* Southern Pac. Co., (Cal. App. 1907) 92 Pac. 101.

Illinois. — Elgin, etc., R. Co. *v.* Hoadley, 122 Ill. App. 165.

Kansas. — Bressler *v.* Chicago, etc., R. Co., 74 Kan. 256, 86 Pac. 472; Missouri Pac. R. Co. *v.* Trahern, (Kan. 1907) 91 Pac. 48.

Massachusetts. — Byrnes *v.* New York, etc., R. Co., (Mass. 1907) 81 N. E. 187.

Missouri. — Green *v.* Missouri Pac. R. Co., 192 Mo. 131, 90 S. W. 805.

Nebraska. — Clinebell *v.* Chicago, etc., R. Co,. (Neb. 1906) 110 N. W. 347.

New York. — Grathwohl *v.* New York Cent., etc., R. Co., 116 N. Y. App. Div. 176, 101 N. Y. Supp. 667.

Texas. — Galveston, etc., R. Co. *v.* Vollrath, (Tex. Civ. App. 1905) 89 S. W. 279.

Utah. — Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075.

Virginia. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211; Southern R. Co. *v.* Daves, (Va. 1908) 61 S. E. 748.

Washington. — Baker *v.* Tacoma Eastern R. Co., 44 Wash. 575, 87 Pac. 826.

Wisconsin. — Kujawa *v.* Chicago, etc., R. Co., (Wis. 1908) 116 N. W. 249.

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4. Lambert *v.* Southern Pac. R. Co., 146 Cal. 231, 79 Pac. 873; Seaboard Air Line R. Co. *v.* Barwick, 51 Fla. 304, 41 So. 70; Illinois Cent. R. Co. *v.* Willis, (Ky. 1906) 97 S. W. 21; Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 219, 91 S. W. 685; Hutchinson *v.* Missouri Pac. R. Co., 195 Mo. 546, 93 S. W. 931; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256; Milliman *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 139, 95 N. Y. Supp. 1097.

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Rule Applicable to Train Crossing Highway on Overhead Trestle. — Louisville, etc., R. Co. *v.* Sawyer, 114 Tenn. 84, 86 S. W. 386.

4. St. Louis, etc., R. Co. *v.* Johnson, 74 Ark. 372, 86 S. W. 282; Perkins *v.* Chesapeake, etc., R. Co., (Ky. 1906) 94 S. W. 636; Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285.

5. Hasting *v.* Southern R. Co., (C. C. A.) 143 Fed. 260; Georgia R., etc., Co. *v.* Williams, 2 Ga. App. 272, 59 S. E. 846; Illinois Cent. R. Co. *v.* Willis, (Ky. 1906) 97 S. W. 21; Louisville, etc., R. Co. *v.* Redmon, 122 Ky. 385, 91 S. W. 722; Everett *v.* Great Northern R. Co., 100 Minn. 309, 111 N. W. 281; Morrow *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 621; Pyne *v.* Delaware, etc., R. Co., 212 Pa. St. 143, 61 Atl. 817; Gulf, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 99 S. W. 162; Melton *v.* Chesapeake, etc., R. Co., (W. Va. 1908) 61 S. E. 139.

Persons Lawfully in Vicinity of Crossing. — Morey *v.* Lake Superior Terminal, etc., R. Co., 125 Wis. 148, 103 N. W. 271.

Crossing Signals Intended to Notify Travelers on Highway. — Baltimore, etc., R. Co. *v.* Abbegglen, (Ind. App. 1908) 84 N. E. 566.

Signals Need Not Be Given at Private Crossing. — Annapolis, etc., R. Co. *v.* State, 104 Md. 659, 65 Atl. 434.

No Legal Duty to Signal for Benefit of Driver on Parallel Roadway. — Everett *v.* Great Northern R. Co., 100 Minn. 309, 111 N. W. 281.

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Failure to Give Signal at Street Crossing. — Chicago Terminal Transfer R. Co. *v.* Walton, 165 Ind. 642, 74 N. E. 988.

Failure to Signal at Public Crossing Negligence as to Persons Using Private Crossing Nearby. — Wilson *v.* Chesapeake, etc., R. Co., (Ky. 1905) 86 S. W. 690.

Duty to Signal Dependent upon What Prudent Railroad Would Do. — Bamberg *v.* Atlantic Coast Line R. Co., 72 S. Car. 389, 51 S. E. 988.

3. Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397; Cowen *v.* Dietrick, 101 Md. 46, 60 Atl. 282.

4. **Violation of Statute Negligence** — *Alabama.* — Southern R. Co. *v.* Williams, 143 Ala. 212, 38 So. 1013.

Arkansas. — St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613.

Illinois. — Elgin, etc., R. Co. *v.* Hoadley, 122 Ill. App. 165; Elgin, etc., R. Co. *v.* Hoadley, 220 Ill. 462, 77 N. E. 151.

Indiana. — Greenawaldt *v.* Lake Shore, etc., R. Co., (Ind. 1905) 73 N. E. 910; New York, etc., R. Co. *v.* Robbins, 38 Ind. App. 172, 76 N. E. 804.

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(Iowa 1907) 114 N. W. 180; Hoffard *v.* Illinois Cent. R. Co., (Iowa 1907) 110 N. W. 446.

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Mississippi. — Louisville, etc., R. Co. *v.* Crominarity, 86 Miss. 464, 38 So. 633.

Missouri. — Mitchell *v.* St. Louis, etc., R. Co., 122 Mo. App. 50, 97 S. W. 552; Weinstein *v.* Toledo, etc., R. Co., (Mo. App. 1908) 106 S. W. 1125.

South Carolina. — Drawdy *v.* Atlantic Coast Line R. Co., 78 S. Car. 374, 58 S. E. 980.

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Virginia. — Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56; Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155.

West Virginia. — Bowles *v.* Chesapeake, etc., R. Co., 61 W. Va. 272, 57 S. E. 131.

Wisconsin. — Kujawa *v.* Chicago, etc., R. Co., (Wis. 1908) 116 N. W. 249.

Failure to Give Signals Required by Statute. — Louisville, etc., R. Co. *v.* Joshlin, (Ky. 1908) 110 S. W. 382.

Jury May Infer Negligence Contributing to Injury from Failure to Give Statutory Signals. — Kelsall *v.* New York, etc., R. Co., (Mass. 1907) 82 N. E. 674.

Disobedience of Statute Requiring Signals Evidence of Negligence. — Corbs *v.* Michigan Cent. R. Co., 144 Mich. 73, 107 N. W. 892.

Disobedience of Statute Constitutes Statutory Negligence. — Clinebell *v.* Chicago, etc., R. Co., (Neb. 1906) 110 N. W. 347.

5. Violation of Ordinance. — McNamara *v.* Chicago, etc., R. Co., 126 Mo. App. 152, 103 S. W. 1093; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563.

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Absence of Headlight Not Cause of Accident. — Wade *v.* Louisville, etc., R. Co., (Fla. 1907) 45 So. 472.

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2. Adkisson *v.* Louisville, etc., R. Co., (Ky. 1908) 110 S. W. 284; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167; Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368; Weaver *v.* Columbus, etc., R. Co., 76 Ohio St. 164, 81 N. E. 180; Bickel *v.* Pennsylvania R. Co., 217 Pa. St. 456, 66 Atl. 756; Bowles *v.* Chesapeake, etc., R. Co., 61 W. Va. 272, 57 S. E. 131.

6. *California.* — Bilton *v.* Southern Pac. R. Co., 148 Cal. 443, 83 Pac. 440; Wyckoff *v.* Southern Pac. Co., 4 Cal. App. 94, 87 Pac. 203.

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Missouri. — Haley *v.* Missouri Pac. R. Co., 197 Mo. 15, 93 S. W. 1120; Walker *v.* Wabash R. Co., 193 Mo. 453, 92 S. W. 83.

Pennsylvania. — Burns *v.* Pennsylvania R. Co., 210 Pa. St. 98, 59 Atl. 687; Keiser *v.* Lehigh Valley R. Co., 212 Pa. St. 409, 61 Atl. 903; Schwarz *v.* Delaware, etc., R. Co., 218 Pa. St. 187, 67 Atl. 213.

Rhode Island. — Vizacchero *v.* Rhode Island Co., 26 R. I. 392, 59 Atl. 105.

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Duty to Exercise Care According to Circumstances. — Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877.

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2. *Alabama.* — Alabama G. S. R. Co. *v.* Guest, 144 Ala. 373, 39 So. 654.

Florida. — Seaboard Air Line R. Co. *v.* Smith, 53 Fla. 375, 43 So. 235.

Georgia. — Shaw *v.* Georgia R. Co., 127 Ga. 8, 55 S. E. 960.

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Missouri. — Haley *v.* Missouri Pac. R. Co., 197 Mo. 15, 93 S. W. 1120.

New York. — Serano *v.* New York Cent., etc., R. Co., 188 N. Y. 156, 80 N. E. 1025.

3. Atchison, etc., R. Co. *v.* McElroy, (Kan. [illegible] 91 Pac. 785.

Speed of Train Approaching Depot. — Harvey *v.* Louisiana Western R. Co., 114 La. 1065, 38 So. 859.

5. *Alabama.* — Louisville, etc., R. Co. *v.* Christian Moerlein Brewing Co., (Ala. 1907) 43 So. 723.

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Indiana. — Smith *v.* Michigan Cent. R. Co., 35 Ind. App. 188, 73 N. E. 928; Wamsley *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 82 N. E. 490.

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Wisconsin. — Morey *v.* Lake Superior Terminal, etc., R. Co., 125 Wis. 148, 103 N. W. 271.

Violation of Speed Ordinance Not Actionable Negligence unless Proximate Cause of Injury. — International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918.

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Statutory Presumption Not Available to Trespasser. — McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111.

2. Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 760; Erie R. Co. *v.* Farrell, (C. C. A.) 147 Fed. 220; Greenwood *v.* Chicago, etc., R. Co., 95 Minn. 284, 104 N. W. 3; Bracken *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 22; Southern R. Co. *v.* Stockdon, 106 Va. 693, 56 S. E. 713; Louisville, etc., R. Co. *v.* Redmon, 122 Ky. 385, 91 S. W. 722.

4. Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 760; St. Louis, etc., R. Co. *v.* Ferrell, 84 Ark. 270, 105 S. W. 263; Illinois Cent. R. Co. *v.* Watson, (Miss. 1905) 39 So. 69; Green *v.* Missouri Pac. R. Co., 192 Mo. 131, 90 S. W. 805; King *v.* Wabash R. Co., (Mo. 1908) 109 S. W. 671; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Southern R. Co. *v.* Hansbrough, 107 Va. 733, 60 S. E. 58.

761. 4. *Alabama.* — Louisville, etc., R. Co. *v.* Young, (Ala. 1907) 45 So. 238; Southern R. Co. *v.* Gullatt, (Ala. 1907) 43 So. 577.

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Louisiana. — Sanders *v.* Texas, etc., R. Co., 118 La. 174, 42 So. 764.

Maine. — Copp *v.* Maine Cent. R. Co., 100 Me. 568, 62 Atl. 735.

Missouri. — Lange *v.* Missouri Pac. R. Co., 208 Mo. 458, 106 S. W. 660; Woods *v.* Wabash R. Co., 188 Mo. 229, 86 S. W. 1082.

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App. 1907) 104 S. W. 408; Texas, etc., R. Co. *v.* Brannon, (Tex. Civ. App. 1906) 96 S. W. 1095; Texas, etc., R. Co. *v.* Patterson, (Tex. Civ. App. 1907) 102 S. W. 138.

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Question for Jury. — Hummer *v.* Lehigh Valley R. Co., (N. J. 1906) 65 Atl. 126.

763. 1. Rogers *v.* Cincinnati, etc., R. Co., (C. C. A.) 136 Fed. 573.

3. Harris *v.* Nashville, etc., R. Co., (Ala. 1907) 44 So. 962.

4. *United States.* — Delaware, etc., R. Co. *v.* Wilkins, (C. C. A.) 153 Fed. 845; St. Louis, etc., R. Co. *v.* Chapman, (C. C. A.) 140 Fed. 129.

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Michigan. — Johnson *v.* Minneapolis, etc., R. Co., 140 Mich. 292, 103 N. W. 594.

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Texas. — International, etc., R. Co. *v.* Hall, (Tex. Civ. App. 1905) 92 S. W. 996; Whitney *v.* Texas Cent. R. Co., (Tex. Civ. App. 1908) 110 S. W. 70.

Washington. — Dotta *v.* Northern Pac. R. Co., 36 Wash. 506, 79 Pac. 32.

Negligence Question of Fact for Jury. — Heise *v.* Chicago G. W. R. Co., (Iowa 1907) 114 N. W. 180; Northern Cent. R. Co. *v.* State, 100 Md. 404, 60 Atl. 19; Olson *v.* Minneapolis, etc., R. Co., 102 Minn. 395, 113 N. W. 1010; Hummer *v.* Lehigh Valley R. Co., (N. J. 1906) 65 Atl. 126; Loomis *v.* Lake Shore, etc., R. Co., 182 N. Y. 380, 75 N. E. 228; Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877; Meyers *v.* Central R. Co., 218 Pa. St. 305, 67 Atl. 620.

Contributory Negligence a Question for Jury. — Howard *v.* Baltimore, etc., R. Co., (Pa. 1908) 68 Atl. 848.

Conduct of Infant Not Measured by Standard of Care Required of Adult. — Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566.

Child of Tender Years Merely Required to Exercise Care Commensurate with Age and Intelligence. — Serano *v.* New York Cent., etc., R. Co., 188 N. Y. 156, 80 N. E. 1025.

764. 1. Ayers *v.* Wabash R. Co., 190 Mo. 228, 88 S. W. 608.

3. Jones *v.* Illinois Cent. R. Co., (Ky. 1907) 104 S. W. 258.

4. Southern R. Co. *v.* Mouchet, 3 Ga. App. 266, 59 S. E. 927; Southern R. Co. *v.* Clark, (Ky. 1907) 105 S. W. 384; Sites *v.* Knott, 197 Mo. 684, 96 S. W. 206.

Circumstances Making Negligence of Company Question of Fact. — Walker *v.* Southern R. Co., 77 S. Car. 161, 57 S. E. 764.

6. Sheridan *v.* Baltimore, etc., R. Co., 101 Md. 50, 60 Atl. 280; Boyce *v.* Chicago, etc., R. Co., 120 Mo. App. 168, 96 S. W. 670.

7. Due and Reasonable Care in View of Infirmity Required. — Toledo, etc., R. Co. *v.* Hammett, 220 Ill. 9, 77 N. E. 72.

765. 3. Dyerson *v.* Union Pac. R. Co., 74 Kan. 528, 87 Pac. 680, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 765; Fitzhugh *v.* Boston, etc., R. Co., 195 Mass. 202, 80 N. E. 792.

Diligent Use of Faculties Required. — Fuchs *v.* Lehigh Valley R. Co., (N. J. 1905) 61 Atl. 1.

Active and Intelligent Exercise of Faculties Required — Massachusetts Rule. — Allen *v.* Boston, etc., R. Co., (Mass. 1908) 83 N. E. 863.

Care to Be Expected of Person of Common Prudence and Intelligence — *United States.* — Baltimore, etc., R. Co. *v.* Connell, (C. C. A.) 137 Fed. 8; Farrell *v.* Erie R. Co., (C. C. A.) 138 Fed. 28.

Connecticut. — Metcalf *v.* Central Vermont R. Co., 78 Conn. 614, 63 Atl. 633; Norris *v.* New York, etc., R. Co., 78 Conn. 314, 61 Atl. 1075.

Illinois. — Chicago, etc., R. Co. *v.* Louderback, 125 Ill. App. 323; Kahl *v.* Chicago, etc., R. Co., 125 Ill. App. 294.

Indiana. — Baltimore, etc., R. Co. *v.* Rosborough, (Ind. App. 1907) 80 N. E. 869.

Kentucky. — Chesapeake, etc., R. Co. *v.* Wilson, (Ky. 1907) 102 S. W. 810; Cincinnati, etc., R. Co. *v.* Champ, (Ky. 1907) 104 S. W. 988; Cross *v.* Illinois Cent. R. Co., (Ky. 1908) 110 S. W. 290; Louisville, etc., R. Co. *v.* Cleaver, (Ky. 1905) 89 S. W. 494; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308; Louisville, etc., R. Co. *v.* McNary, (Ky. 1908) 108 S. W. 898; Louisville, etc., R. Co. *v.* Onan, (Ky. 1908) 110 S. W. 380; Louisville, etc., R. Co. *v.* Sanders, (Ky. 1906) 92 S. W. 937; Louisville, etc., R. Co. *v.* Ueltschi, (Ky. 1906) 97 S. W. 14; Southern R. Co. *v.* Winchester, (Ky. 1907) 105 S. W. 167.

Missouri. — Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012.

Texas. — Boyd *v.* St. Louis Southwestern R. Co., (Tex. 1908) 108 S. W. 813; Gulf, etc., R. Co. *v.* Matthews, (Tex. 1906) 93 S. W. 1068; Missouri, etc., R. Co. *v.* Balliet, (Tex. Civ. App. 1908) 107 S. W. 906; Missouri, etc., R. Co. *v.* Wall, (Tex. Civ. App. 1908) 110 S. W. 453; St. Louis Southwestern R. Co. *v.* Elledge, (Tex. Civ. App. 1906) 93 S. W. 499.

Canada. — Champagne *v.* Grand Trunk R. Co., 4 Can. R. Cas. 207.

Failure to Use Senses Not Negligence as Matter of Law. — Johnson *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 205.

Less Care Required of Infant than of Adult. — St. Louis, etc., R. Co. *v.* Sparks, 81 Ark. 187, 99 S. W. 73; Baltimore, etc., R. Co. *v.* Hickman, (Ind. App. 1907) 81 N. E. 1086; Holmes *v.* Missouri Pac. R. Co., 207 Mo. 149, 105 S. W. 624.

Child Must Exercise Care to Be Expected of Ordinarily Prudent Child of Same Age. — Adkisson *v.* Louisville, etc., R. Co., (Ky. 1908) 110 S. W. 284.

Degree of Care Required of Child of Tender Years Question for Jury. — Sunkoff *v.* Lehigh Valley R. Co., 190 N. Y. 256, 83 N. E. 15.

Entering Crossing While Gates Down Not Negligence Per Se. — Galveston, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1908) 106 S. W. 705.

Presumption Obtains that Diligent Use of Senses Was Made. — Baker *v.* Philadelphia, etc., R. Co., 149 Fed. 882; Choctaw, etc., R. Co. *v.* Baskins, 78 Ark. 355, 93 S. W. 757; Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880; E. Bradford Clarke Co. *v.* Baltimore, etc., R. Co., (Pa.) 27 Pa. Super. Ct. 251; Galveston, etc., R. Co. *v.* Murray, (Tex. Civ. App. 1906) 99 S. W. 144; Hancock *v.* Gulf, etc., R. Co., 99 Tex. 613, 92 S. W. 456; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563.

Contra. — Wright *v.* Boston, etc., R. Co., (N. H. 1907) 65 Atl. 687, holding that exercise of due care will not be presumed.

Presumption Cannot Exist Where Incompatible with Conduct of Person. — Chicago G. W. R. Co. *v.* Smith, (C. C. A.) 141 Fed. 930.

Presumption of Exercise of Due Care Destroyed by Force of Physical Facts. — Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397; Rich *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 79; Rollins *v.* Chicago, etc., R. Co., (C. C. A.) 139 Fed. 639.

Whether Presumption of Due Care Rebutted Question for Jury. — Unger *v.* Philadelphia, etc., R. Co., 217 Pa. St. 106, 66 Atl. 235.

Exercise of Requisite Care and Prudence Question for Jury. — Gulf, etc., R. Co. *v.* Garrett, (Tex. Civ. App. 1906) 99 S. W. 162.

4. *United States.* — Buckley *v.* New York, etc., R. Co., 148 Fed. 460; Casey *v.* Chicago, etc., R. Co., (C. C. A.) 157 Fed. 66; Chicago G. W. R. Co. *v.* Smith, (C. C. A.) 141 Fed. 930; Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397; Chicago, etc., R. Co. *v.* Donaldson, (C. C. A.) 157 Fed. 821; Davis *v.* Chicago, etc., R. Co., (C. C. A.) 159 Fed. 10; Detroit Southern R. Co. *v.* Lambert, (C. C. A.) 150 Fed. 555; Gipson *v.* Southern R. Co., 140 Fed. 410; Illinois Cent. R. Co. *v.* Ackerman, (C. C. A.) 144 Fed. 959; Rich *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 79; Southern R. Co. *v.* Carroll, (C. C. A.) 138 Fed. 638; Southern R. Co. *v.* King, (C. C. A.) 160 Fed. 332.

Alabama. — Central of Georgia R. Co. *v.* Barnett, (Ala. 1907) 44 So. 392; Duncan *v.* St. Louis, etc., R. Co., (Ala. 1907) 44 So. 418; Louisville, etc., R. Co. *v.* Pearce, 142 Ala. 680, 39 So. 72.

Arkansas. — Burns *v.* St. Louis Southwestern R. Co., 76 Ark. 10, 88 S. W. 824; Choctaw, etc., R. Co. *v.* Baskins, 78 Ark. 355, 93 S. W. 757; Griffie *v.* St. Louis, etc., R. Co., 80 Ark. 186, 96 S. W. 750; St. Louis, etc., R. Co. *v.* Dillard, 78 Ark. 520, 94 S. W. 617; St. Louis, etc., R. Co. *v.* Hitt, 76 Ark. 227, 88 S. W. 908; St. Louis, etc., R. Co. *v.* Hitt, 76 Ark. 224, 88 S. W. 911; St. Louis, etc., R. Co. *v.* Hudson, (Ark. 1908) 110 S. W. 590; St. Louis, etc., R. Co. *v.* Johnson, 74 Ark. 372, 86 S. W. 282; St. Louis, etc., R. Co. *v.* Tomlinson, 78 Ark. 251, 94 S. W. 613; St. Louis, etc., R. Co. *v.* Portis, 81 Ark. 325, 99 S. W. 66; St. Louis, etc., R. Co. *v.* Wyatt, 79 Ark. 241, 96 S. W. 376; St. Louis Southwestern R. Co. *v.* Graham, 83 Ark. 61, 102 S. W. 700; Tiffin *v.* St. Louis, etc., R. Co., 78 Ark. 55, 93 S. W. 564.

California. — Koch *v.* Southern California R. Co., 148 Cal. 677, 84 Pac. 176; Lambert *v.* Southern Pac. R. Co., 146 Cal. 231, 79 Pac. 873; Martin *v.* Southern Pac. Co., 150 Cal. 124, 88 Pac. 701; Matteson *v.* Southern Pac. Co., (Cal. App. 1907) 92 Pac. 101; Rome *v.* Southern California R. Co., 4 Cal. App. 1, 87 Pac. 220.

Colorado. — Colorado, etc., R. Co. *v.* Sonne, 34 Colo. 206, 83 Pac. 383; Colorado, etc., R. Co. *v.* Thomas, 33 Colo. 517, 81 Pac. 801; Westerkamp *v.* Chicago, etc., R. Co., (Colo. 1907) 92 Pac. 687.

Delaware. — Queen Anne's R. Co. *v.* Reed, 5 Penn. (Del.) 226, 59 Atl. 860.

Illinois. — Chicago, etc., R. Co. *v.* Hirsch, 132 Ill. App. 656; Cleveland, etc., R. Co. *v.* Sparks, 122 Ill. App. 400; Illinois Cent. R. Co. *v.* McMillion, 129 Ill. App. 27; Pittsburgh, etc., R. Co. *v.* Puszdrakiewicz, 129 Ill. App. 295.

Indiana. — Cleveland, etc., R. Co. *v.* Wuest, (Ind. App. 1908) 83 N. E. 620; Lake Shore, etc., R. Co. *v.* Barnes, 166 Ind. 72, 76 N. E. 629; Lake Shore, etc., Co. *v.* Brown, (Ind. App. 1908) 84 N. E. 25; Wamsley *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 82 N. E. 490.

Indian Territory. — Atchison, etc., R. Co. *v.* Baker, (Indian Ter. 1907) 104 S. W. 1182.

Iowa. — Swanger *v.* Chicago, etc., R. Co., 132 Iowa 32, 109 N. W. 308.

Kansas. — Dyerson *v.* Union Pac. R. Co., 74 Kan. 528, 87 Pac. 680, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 765; Bressler *v.* Chicago, etc., R. Co., 74 Kan. 256, 86 Pac. 472; Chicago, etc., R. Co. *v.* Assman, 72 Kan. 378, 83 Pac. 1091; Chicago, etc., R. Co. *v.* Wheelbarger, 75 Kan. 811, 88 Pac. 531; Missouri, etc., R. Co. *v.* Jenkins, 74 Kan. 487, 87 Pac. 702.

Maine. — Shepard *v.* Lewiston, etc., R. Co., 101 Me. 591, 65 Atl. 20.

Maryland. — Anderson *v.* Baltimore, etc., R. Co., 101 Md. 487, 61 Atl. 575; Annapolis, etc., R. Co. *v.* State, 104 Md. 659, 65 Atl. 434; Baltimore, etc., R. Co. *v.* State, (Md. 1908) 69 Atl. 439; Columbia, etc., R. Co. *v.* State, 105 Md. 34, 65 Atl. 625; Cowen *v.* Dietrick, 101 Md. 46, 60 Atl. 282; Hattcher *v.* McDermott, 103 Md. 78, 63 Atl. 214; Phillips *v.* Washington, etc., R. Co., 104 Md. 455, 65 Atl. 422; State *v.* Western Maryland R. Co., 102 Md. 257, 62 Atl. 754.

Massachusetts. — Byrnes *v.* New York, etc., R. Co., (Mass. 1907) 81 N. E. 187; Hamblin *v.* New York, etc., R. Co., 195 Mass. 555, 81 N. E. 258; O'Connor *v.* New York, etc., R. Co., 189 Mass. 361, 75 N. E. 614.

Michigan. — Renders *v.* Grand Trunk R. Co., 144 Mich. 387, 108 N. W. 368; Schwartz *v.* Mineral Range R. Co., (Mich. 1908) 116 N. W. 540.

Minnesota. — Wardner *v.* Great Northern R. Co., 96 Minn. 382, 104 N. W. 1084.

Mississippi. — Jackson *v.* Mobile, etc., R. Co., 89 Miss. 32, 42 So. 236.

Missouri. — Green *v.* Missouri Pac. R. Co., 192 Mo. 131, 90 S. W. 805; Lange *v.* Missouri Pac. R. Co., 208 Mo. 458, 106 S. W. 660; Mackowik *v.* Kansas City, etc., R. Co., 196 Mo. 550, 94 S. W. 256; Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880; Sanguinette *v.* Mississippi River, etc., R. Co., 196 Mo. 466, 95 S. W. 386; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Sims *v.* St. Louis, etc., R. Co., 116 Mo. App. 572, 92 S. W. 909; Stotler *v.* Chicago, etc., R. Co., 204 Mo. 619, 103 S. W. 1; Walker *v.* Wabash R. Co., 193 Mo. 453, 92 S. W. 83.

Nebraska. — Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

New Jersey. — Cranbuck *v.* Delaware, etc., R. Co., (N. J. 1907) 65 Atl. 1031; Gehring *v.* Atlantic City R. Co., (N. J. 1907) 68 Atl. 61; Van Riper *v.* New York, etc., R. Co., 71 N. J. L. 345, 59 Atl. 26.

New York. — Cranch *v.* Brooklyn Heights R. Co., 186 N. Y. 310, 78 N. E. 1078; Cranch *v.* Brooklyn Heights R. Co., 107 N. Y. App. Div. 341, 95 N. Y. Supp. 169; Fisher *v.* Central Vermont R. Co., 109 N. Y. App. Div. 449, 95 N. Y. Supp. 693; Grathwohl *v.* New York Cent., etc., R. Co., 116 N. Y. App. Div. 176, 101 N. Y. Supp. 667; Hood *v.* Lehigh Valley R. Co., 109 N. Y. App. Div. 418, 96 N. Y. Supp. 431; Noakes *v.* New York Cent., etc., R. Co., 121 N. Y. App. Div. 716, 106 N. Y. Supp. 522; Read *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 228, 107 N. Y. Supp. 1068; Serano *v.* New York Cent., etc., R. Co., 114 N. Y. App. Div. 684, 99 N. Y. Supp. 1103; Spencer *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 789, 108 N. Y. Supp. 245; Turck *v.* New York Cent., etc., R. Co., 108 N. Y. App. Div. 142, 95 N. Y. Supp. 1100; York *v.* New York, etc., R. Co., 108 N. Y. App. Div. 126, 95 N. Y. Supp. 1105.

North Carolina. — Allen *v.* Atlantic, etc., Air Line R. Co., 141 N. Car. 340, 53 S. E. 866; Cooper *v.* North Carolina R. Co., 140 N. Car. 209, 52 S. E. 932; Heavener *v.* North Carolina R. Co., 141 N. Car. 245, 53 S. E. 513; Morrow *v.* North Carolina R. Co., (N. Car. 1907) 59 S. E. 158; Reid *v.* Atlantic, etc., Air Line R. Co., 140 N. Car. 146, 52 S. E. 307; Royster *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 179.

Ohio. — Norfolk, etc., R. Co. *v.* Great China Tea Co., 26 Ohio Cir. Ct. 547.

Oregon. — Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141.

Pennsylvania. — Beach *v.* Pennsylvania R. Co., 212 Pa. St. 567, 61 Atl. 1106; Bickel *v.* Pennsylvania R. Co., 217 Pa. St. 456, 66 Atl. 756; Burns *v.* Pennsylvania R. Co., 210 Pa. St. 90, 59 Atl. 687; Crane *v.* Pennsylvania R. Co., 218 Pa. St. 560, 67 Atl. 877; Dryden *v.* Pennsylvania R. Co., 211 Pa. St. 620, 61 Atl. 249; Ihrig *v.* Erie R. Co., 210 Pa. St. 98, 59 Atl. 686; Messinger *v.* Pennsylvania R. Co., 215 Pa. St. 497, 64 Atl. 682; Pyne *v.* Delaware, etc., R. Co., 212 Pa. St. 143, 61 Atl. 817; Salathe *v.* Delaware, etc., R. Co., 28 Pa. Super. Ct. 1; Sellers *v.* Philadelphia, etc., R. Co., 214 Pa. St. 298, 63 Atl. 606.

Texas. — Houston, etc., R. Co. *v.* Kauffmann, (Tex. Civ. App. 1907) 101 S. W. 817; International, etc., R. Co. *v.* Edwards, (Tex. 1906) 93 S. W. 106; Missouri, etc., R. Co. *v.* Sissom, (Tex. Civ. App. 1905) 92 S. W. 271; St. Louis Southwestern R. Co. *v.* Boyd, (Tex. Civ. App. 1907) 105 S. W. 519; St. Louis Southwestern R. Co. *v.* Hunt, (Tex. Civ. App. 1907) 100 S. W. 968; Texas, etc., R. Co. *v.* Huber, (Tex. Civ. App. 1906) 95 S. W. 568; Texas, etc., R. Co. *v.* Shivers, (Tex. Civ. App. 1907) 106 S. W. 894; Texas, etc., R. Co. *v.* Stoker, (Tex. Civ. App. 1907) 103 S. W. 1183.

Utah. — Rogers *v.* Rio Grande Western R. Co., (Utah 1907) 90 Pac. 1075; Steed *v.* Rio Grande Western R. Co., 29 Utah 448, 82 Pac. 476; Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

Vermont. — Shum *v.* Rutland R. Co., (Vt. 1908) 69 Atl. 945.

Virginia. — Brammer *v.* Norfolk, etc., R. Co., 104 Va. 50, 51 S. E. 211; Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56; Southern R. Co. *v.* Hansbrough, 107 Va. 733, 60 S. E. 58; Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155; Stoke *v.* Southern R. Co., 104 Va. 817, 52 S. E. 855.

Washington. — Baker *v.* Tacoma Eastern R. Co., 44 Wash. 575, 87 Pac. 826; Gregg *v.* Northern Pac. R. Co., (Wash. 1908) 94 Pac. 911; Woolf *v.* Washington R., etc., Co., 37 Wash. 491, 79 Pac. 997.

Wisconsin. — Hain *v.* Chicago, etc., R. Co., (Wis. 1908) 116 N. W. 20; Marshall *v.* Green Bay, etc., R. Co., 125 Wis. 96, 103 N. W. 249.

Reliance on Giving of Warning Will Not Excuse Due Care. — Larsen *v.* U. S. Mortgage, etc., Co., 104 N. Y. App. Div. 76, 93 N. Y. Supp. 610.

Rule Not Complied with by Stopping at Place Where View Obstructed. — Mankewicz *v.* Lehigh Valley R. Co., 214 Pa. St. 386, 63 Atl. 604.

No Precise Distance at Which One Must Look and Listen. — Baltimore, etc., R. Co. *v.* Rosborough, (Ind. App. 1907) 80 N. E. 869; Greenawaldt *v.* Lake Shore, etc., R. Co., (Ind. 1905) 73 N. E. 910; Wendell *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 82 N. E. 469.

Rule Applies to Persons Driving over Overhead Crossing. — Black *v.* Bessemer, etc., R. Co., 216 Pa. St. 173, 65 Atl. 405.

Duty of Passengers in Public Conveyance Crossing Tracks. — Wood *v.* Maine Cent. R. Co., 100 Me. 460, 64 Atl. 833.

Open Gates No Excuse for Not Looking and Listening. — Shafer *v.* Lehigh Valley R. Co., (N. J. 1907) 66 Atl. 1072.

Drivers of Fire Engines and Hose Car-

riages Not Excepted from Operation of Rule. Thompson *v.* Pennsylvania R. Co., 215 Pa. St. 113, 64 Atl. 323.

Duty Not Performed by Looking Only in One Direction. — Harvey *v.* Erie R. Co., 210 Pa. St. 95, 59 Atl. 691; Harvey *v.* Erie R. Co., 210 Pa. St. 95, 59 Atl. 691.

Effect of Reliance on Signals. — Chesapeake, etc., R. Co. *v.* Vaughn, (Ky. 1906) 97 S. W. 774; Davis *v.* Louisville, etc., R. Co., (Ky. 1906) 97 S. W. 1122; Davis *v.* Louisville, etc., R. Co., (Ky. 1907) 99 S. W. 930.

Traveler Not Bound to Stop in Daylight. — Gorton *v.* Harmon, (Mich. 1908) 116 N. W. 443.

Absence of Flagman from Post. — Hodgin *v.* Southern R. Co., 143 N. Car. 93, 55 S. E. 413.

Rule Not Applicable Where Train Could Not Reasonably Have Been Expected. — Scott *v.* St. Louis, etc., R. Co., 79 Ark. 137, 95 S. W. 490.

Ordinary Care Required in Looking and Listening. — Meyer *v.* Chicago, etc., R. Co., 134 Iowa 722, 112 N. W. 194.

Mere Failure to Hear Train Not Negligence. — Birmingham Southern R. Co. *v.* Lintner, 141 Ala. 420, 38 So. 363.

Failure to Look and Listen Not Negligence Where to Do So Would Be Useless. — Central of Georgia R. Co. *v.* Hyatt, (Ala. 1907) 43 So. 867.

As to Whether Person Listened Question for Jury. — Potter *v.* Pere Marquette R. Co., 140 Mich. 362, 103 N. W. 808.

Whether Reasonable Care Requires One to Look and Listen Question for Jury. — Hartman *v.* Chicago G. W. R. Co., 132 Iowa 582, 110 N. W. 10.

Traveler Not Always Bound to Stop — Necessity a Question for Jury. — Kuyawa *v.* Chicago, etc., R. Co., (Wis. 1908) 116 N. W. 249.

Rule Not Adopted in Nebraska. — Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285.

Presumption that One Looked and Listened. — Cleveland, etc., R. Co. *v.* Schneider, (Ind. App. 1907) 80 N. E. 985; Pittsburgh, etc., R. Co. *v.* Reed, 36 Ind. App. 64, 75 N. E. 50; Southern Indiana R. Co. *v.* Corps, 37 Ind. App. 586, 76 N. E. 902; Atchison, etc., R. Co. *v.* Baumgartner, 74 Kan. 148, 85 Pac. 822; Baltimore, etc., R. Co. *v.* State, 104 Md. 76, 64 Atl. 304; Schrems *v.* Pere Marquette R. Co., 145 Mich. 190, 108 N. W. 698; Corrigan *v.* Pennsylvania Co., 218 Pa. St. 336, 67 Atl. 619; Patterson *v.* Pittsburg, etc., R. Co., 210 Pa. St. 47, 59 Atl. 318; Schwarz *v.* Delaware, etc., R. Co., 211 Pa. St. 625, 61 Atl. 255; Missouri, etc., R. Co. *v.* Wall, (Tex. Civ. App. 1908) 110 S. W. 453.

Presumption Not Conclusive. — Rietveld *v.* Wabash R. Co., 129 Iowa 240, 105 N. W. 515.

Presumption Can Only Be Overcome by Testimony Showing Nonobservance of Precautions. — Hanna *v.* Philadelphia, etc., R. Co., 213 Pa. St. 157, 62 Atl. 643.

Whether Presumption Rebutted Question for Jury. — Kreamer *v.* Perkiomen R. Co., 214 Pa. St. 219, 63 Atl. 597.

Where the Train Was within Observation if One Had Looked and Listened, the presumption obtains either that he did not look and listen, or that he heedlessly disregarded the knowledge obtained by looking and listening. Carlson *v.* Chicago, etc., R. Co., 96 Minn. 504, 105 N. W. 555.

766. 1. Bradley *v.* Louisville, etc., R. Co., (Ala. 1906) 42 So. 818; Arkansas Cent. R. Co. *v.* Fain, (Ark. 1908) 109 S. W. 515; Chicago Terminal Transfer R. Co. *v.* Korando, 129 Ill. App. 620; Coy *v.* Missouri Pac. R. Co., 74 Kan. 853, 86 Pac. 468; Hoopes *v.* Atchison, etc., R. Co., 72 Kan. 422, 83 Pac. 987; Eppstein *v.* Missouri Pac. R. Co., 197 Mo. 720, 94 S. W. 967; Keeler *v.* New York Cent., etc., R. Co., 114 N. Y. App. Div. 807, 100 N. Y. Supp. 235; Missouri, etc., R. Co. *v.* Briscoe, (Tex. Civ. App. 1908) 109 S. W. 453; Wise Terminal Co. *v.* McCormick, 104 Va. 400, 51 S. E. 731.

Sitting on Track as Negligence. — Texas, etc., R. Co. *v.* McDonald, (Tex. 1905) 88 S. W. 201.

Whether One Standing Beside Track Negligent a Question for Jury. — Pittsburgh, etc., R. Co. *v.* O'Donnell, 118 Ill. App. 335.

2. *United States.* — Northern Pac. R. Co. *v.* Jones, (C. C. A.) 144 Fed. 47.

Alabama. — Williams *v.* Central of Georgia R. Co., 146 Ala. 680, 40 So. 143.

Arkansas. — Chicago, etc., R. Co. *v.* Bunch, 82 Ark. 522, 102 S. W. 369.

Illinois. — Chicago, etc., R. Co. *v.* Wilson, 128 Ill. App. 88; McGuire *v.* Chicago, etc., R. Co., 120 Ill. App. 111.

Kansas. — Coy *v.* Missouri Pac. R. Co., 74 Kan. 853, 86 Pac. 468; Limb *v.* Kansas City, etc., R. Co., 73 Kan. 220, 84 Pac. 136.

Louisiana. — Jones *v.* Sibley, etc., R. Co., (La. 1908) 46 So. 61; White *v.* Illinois Cent. R. Co., 114 La. 825, 38 So. 574.

Maryland. — Chesapeake Beach R. Co. *v.* Donahue, (Md. 1908) 68 Atl. 507.

Minnesota. — Gibbons *v.* Northern Pac. R. Co., 99 Minn. 142, 108 N. W. 471; International, etc., R. Co. *v.* Munn, (Tex. Civ. App. 1907) 102 S. W. 442.

Missouri. — Engelking *v.* Kansas City, etc., R. Co., 187 Mo. 158, 86 S. W. 89.

North Carolina. — Beach *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 664, 669.

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Utah. — Teakle *v.* San Pedro, etc., R. Co., (Utah 1907) 90 Pac. 402.

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Washington. — Hamlin *v.* Columbia, etc., R. Co., 37 Wash. 448, 79 Pac. 991.

West Virginia. — Kelley *v.* Ohio River R. Co., 58 W. Va. 276, 52 S. E. 520.

Negligence a Question of Fact — *United States.* — Sealey *v.* Southern R. Co., (C. C. A.) 151 Fed. 736.

Alabama. — Central of Georgia R. Co. *v.* Hyatt, (Ala. 1907) 43 So. 867.

Arkansas. — Missouri, etc., R. Co. *v.* Bratton, (Ark. 1908) 108 S. W. 518; St. Louis, etc., R. Co. *v.* Sparks, 81 Ark. 187, 99 S. W.

73; Scott *v.* St. Louis, etc., R. Co., 79 Ark. 137, 95 S. W. 490.

Georgia. — Atlantic Coast Line R. Co. *v.* Taylor, 125 Ga. 454, 54 S. E. 622; Bryson *v.* Southern R. Co., 3 Ga. App. 407, 59 S. E. 1124; Southern R. Co. *v.* Tankersley, (Ga. App. 1908) 60 S. E. 297.

Illinois. — Elgin, etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407; Illinois Cent. R. Co. *v.* Johnson, 123 Ill. App. 300; Lake Shore, etc., R. Co. *v.* Enright, 129 Ill. App. 223; Michigan Cent. R. Co. *v.* Cudahy, 119 Ill. App. 328; Ravatt *v.* Cleveland, etc., R. Co., 128 Ill. App. 220; Toledo, etc., R. Co. *v.* Hammett, 220 Ill. 9, 77 N. E. 72.

Indiana. — Lowden *v.* Pennsylvania Co., (Ind. App. 1907) 82 N. E. 941.

Kentucky. — Louisville Bridge Co. *v.* Moroney, (Ky. 1908) 106 S. W. 870; Louisville, etc., R. Co. *v.* Joshlin, (Ky. 1908) 110 S. W. 382; Louisville, etc., R. Co. *v.* Lucas, (Ky. 1906) 98 S. W. 308, *affirming* 120 Ky. 359, 86 S. W. 682; Louisville, etc., R. Co. *v.* McNary, (Ky. 1908) 108 S. W. 898; Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776; Louisville, etc., R. Co. *v.* Wilson, (Ky. 1907) 100 S. W. 302; Perkins *v.* Chesapeake, etc., R. Co., (Ky. 1906) 94 S. W. 636; Wilson *v.* Chesapeake, etc., R. Co., (Ky. 1905) 86 S. W. 690.

Michigan. — Welch *v.* Michigan Cent. R. Co., 147 Mich. 207, 110 N. W. 1069.

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Nebraska. — Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285.

New Hampshire. — Minot *v.* Boston, etc., R. Co., 73 N. H. 317, 61 Atl. 509.

New Jersey. — Goodwin *v.* Central R. Co., 73 N. J. L. 576, 64 Atl. 134.

New York. — Lewis *v.* Erie R. Co., 105 N. Y. App. Div. 292, 94 N. Y. Supp. 765; Tingley *v.* Long Island R. Co., 109 N. Y. App. Div. 793, 96 N. Y. Supp. 865.

North Carolina. — Ray *v.* Aberdeen, etc., R. Co., 141 N. Car. 84, 53 S. E. 622.

Ohio. — Cleveland, etc., R. Co. *v.* Sivey, 27 Ohio Cir. Ct. 248.

Oregon. — Kunz *v.* Oregon R. Co., (Oregon 1907) 93 Pac. 141.

Pennsylvania. — Bracken *v.* Pennsylvania R. Co., 32 Pa. Super. Ct. 22; Cohen *v.* Philadelphia, etc., R. Co., 211 Pa. St. 227, 60 Atl. 729.

South Carolina. — Bamberg *v.* Atlantic Coast Line R. Co., 72 S. Car. 389, 51 S. E. 988; Asteen *v.* Southern R. Co., 76 S. Car. 368, 57 S. E. 196.

Texas. — Gulf, etc., R. Co. *v.* Melville, (Tex. Civ. App. 1905) 87 S. W. 863; International, etc., R. Co. *v.* Edwards, (Tex. Civ. App. 1905) 91 S. W. 640; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918; International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560; Missouri, etc., R. Co. *v.* Balliet, (Tex. Civ. App. 1908) 107 S. W. 906; Missouri, etc., R. Co. *v.* Wall, (Tex. Civ. App. 1908) 110 S. W. 453; Texarkana, etc., R. Co. *v.* Frugia, (Tex. Civ. App. 1906) 95 S. W. 563.

View Obstructed. — Mitchell *v.* St. Louis, etc., R. Co., 122 Mo. App. 50, 97 S. W. 552.

Rule Applies to Person Riding Railroad Velocipede. — Vaundry *v.* Chicago, etc., R. Co., 130 Wis. 233, 109 N. W. 926.

Failure to Continue Looking and Listening. — Boyd *v.* St. Louis Southwestern R. Co., (Tex. 1908) 108 S. W. 813.

Whether Failure to Look and Listen at Certain Point Negligence Question for Jury. — Southern R. Co. *v.* Stockdon, 106 Va. 693, 56 S. E. 713.

767. 1. Greenwood *v.* Chicago, etc., R. Co., 95 Minn. 284, 104 N. W. 3; Holland *v.* Missouri Pac. R. Co., (Mo. 1908) 109 S. W. 19; Missouri, etc., R. Co. *v.* Briscoe, (Tex. Civ. App. 1908) 109 S. W. 453.

Intoxication of Person Injured. — Gillian *v.* Texas, etc., R. Co., 114 La. 272, 38 So. 166.

3. Southern R. Co. *v.* Carroll, (C. C. A.) 138 Fed. 638; Anderson *v.* Minneapolis, etc., R. Co., (Minn. 1908) 114 N. W. 1123.

6. Keller *v.* Erie R. Co., 183 N. Y. 67, 75 N. E. 965; Smetanka *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 323, 107 N. Y. Supp. 973.

Greater Care Necessary When View Is Obstructed. — Eager *v.* Lehigh, etc., R. Co., 122 N. Y. App. Div. 905, 106 N. Y. Supp. 1124.

7. Northern Pac. R. Co. *v.* Jones, (C. C. A.) 144 Fed. 47; Beach *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 664; Beach *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 669; Houston, etc., R. Co. *v.* Kauffmann, (Tex. Civ. App. 1907) 101 S. W. 817. But see Ray *v.* Aberdeen, etc., R. Co., 141 N. Car. 84, 53 S. E. 622.

Deaf Persons. — Toledo, etc., R. Co. *v.* Smart, 116 Ill. App. 523; Hummer *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 885; Sutton *v.* Lee Logging Co., (La. 1908) 46 So. 649; Schmidt *v.* Missouri Pac. R. Co., 191 Mo. 215, 90 S. W. 136; Shum *v.* Rutland R. Co., (Vt. 1908) 69 Atl. 945.

That One Is Dazzled by Headlight Immaterial. — Holland *v.* Missouri Pac. R. Co., (Mo. 1908) 109 S. W. 19.

768. 1. **Rule Applies Where Impediment Is Self-created.** — Missouri, etc., R. Co. *v.* Jenkins, 74 Kan. 487, 87 Pac. 702.

Noise of Wagon Driven Necessitates Greater Alertness on Part of Driver. — Allen *v.* Boston, etc., R. Co., (Mass. 1908) 83 N. E. 863.

2. Atchison, etc., R. Co. *v.* McElroy, (Kan. 1907) 91 Pac. 785.

3. Dyerson *v.* Union Pac. R. Co., 74 Kan. 528, 87 Pac. 680, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 768; Missouri Pac. R. Co. *v.* Bentley, (Kan. 1907) 93 Pac. 150, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 768.

4. Missouri Pac. R. Co. *v.* Bentley, (Kan. 1907) 93 Pac. 150.

5. *United States.* — Buckley *v.* New York, etc., R. Co., 148 Fed. 460; Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397; Gipson *v.* Southern R. Co., 140 Fed. 410; Robbins *v.* Chicago, etc., R. Co., (C. C. A.) 139 Fed. 639.

Alabama. — Tuscaloosa Belt R. Co. *v.* Fuller, (Ala. 1907) 45 So. 156.

Arkansas. — St. Louis, etc., R. Co. *v.* Ferrell, 84 Ark. 270, 105 S. W. 263.

California. — Lambert *v.* Southern Pac. R. Co., 146 Cal. 231, 79 Pac. 873.

Florida. — Atlantic Coast Line R. Co. *v.* Miller, 53 Fla. 246, 44 So. 247; Seaboard Air Line R. Co. *v.* Barwick, 51 Fla. 304, 41 So. 70.

Georgia. — Harris *v.* Southern R. Co., 129 Ga. 388, 58 S. E. 873.

Illinois. — Chicago, etc., R. Co. *v.* Blake, 125 Ill. App. 336; Illinois Cent. R. Co. *v.* McMillion, 129 Ill. App. 27.

Indiana. — Baltimore, etc., R. Co. *v.* Abbegglen, (Ind. App. 1908) 84 N. E. 566; Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030; Lake Shore, etc., R. Co. *v.* Brown, (Ind. App. 1908) 84 N. E. 25; Pere Marquette R. Co. *v.* Strange, (Ind. 1908) 84 N. E. 819.

Kansas. — Chicago, etc., R. Co. *v.* Laughlin, 74 Kan. 567, 87 Pac. 749; Missouri Pac. R. Co. *v.* Trahern, (Kan. 1907) 91 Pac. 48.

Kentucky. — Illinois Cent. R. Co. *v.* Willis, (Ky. 1906) 97 S. W. 21; Louisville, etc., R. Co. *v.* Gilmore, (Ky. 1908) 109 S. W. 321; Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 219, 91 S. W. 685; Louisville, etc., R. Co. *v.* Onan, (Ky. 1908) 110 S. W. 380.

Louisiana. — Sutton *v.* Lee Logging Co., (La. 1908) 46 So. 649.

Michigan. — Storrs *v.* Grand Trunk Western R. Co., 142 Mich. 375, 105 N. W. 764.

Minnesota. — Wardner *v.* Great Northern R. Co., 96 Minn. 382, 104 N. W. 1084.

Mississippi. — Korter *v.* Gulf, etc., R. Co., 87 Miss. 482, 40 So. 258; Sledge *v.* Yazoo, etc., R. Co., 87 Miss. 566, 40 So. 13.

Missouri. — Holland *v.* Missouri Pac. R. Co., (Mo. 1908) 109 S. W. 19; Hutchinson *v.* Missouri Pac. R. Co., 195 Mo. 546, 93 S. W. 931; Porter *v.* Missouri Pac. R. Co., 199 Mo. 82, 97 S. W. 880; Stotler *v.* Chicago, etc., R. Co., 204 Mo. 619, 103 S. W. 1. But see Newvahuer *v.* Wabash R. Co., 126 Mo. App. 643, 105 S. W. 21, where it was held not to be contributory negligence, as a matter of law, for one twenty-five feet from the crossing to attempt to clear it while the approaching train was yet a quarter of a mile distant.

New York. — Gaffney *v.* New York Cent., etc., R. Co., 123 N. Y. App. Div. 674, 108 N. Y. Supp. 169; Hood *v.* Lehigh Valley R. Co., 109 N. Y. App. Div. 418, 96 N. Y. Supp. 431; Milliman *v.* New York Cent., etc., R. Co., 109 N. Y. App. Div. 139, 95 N. Y. Supp. 1097; Paige *v.* New York Cent., etc., R. Co., 111 N. Y. App. Div. 828, 98 N. Y. Supp. 183; Turck *v.* New York Cent., etc., R. Co., 108 N. Y. App. Div. 142, 95 N. Y. Supp. 1100.

North Carolina. — Royster *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 179.

Pennsylvania. — Ellis *v.* Pennsylvania R. Co., 216 Pa. St. 415, 65 Atl. 803.

South Carolina. — Drawdy *v.* Atlantic Coast Line R. Co., 78 S. Car. 374, 58 S. E. 980.

Texas. — Houston, etc., R. Co. *v.* Kauffmann, (Tex. Civ. App. 1907) 101 S. W. 817; International, etc., R. Co. *v.* Ploeger, (Tex. Civ. App. 1906) 96 S. W. 56.

Virginia. — Smith *v.* Norfolk, etc., R. Co., 107 Va. 725, 60 S. E. 56; Southern R. Co. *v.* Jones, 106 Va. 412, 56 S. E. 155; Stoke *v.* Southern R. Co., 104 Va. 817, 52 S. E. 855.

Washington. — Woolf *v.* Washington R., etc., Co., 37 Wash. 491, 79 Pac. 997.

Wisconsin. — Fay *v.* Minneapolis, etc., R. Co., 131 Wis. 639, 111 N. W. 683.

Rule Applies Only to Clear Cases. — Corrigan *v.* Pennsylvania Co., 218 Pa. St. 336, 67 Atl. 619.

Rule Does Not Apply to Person Attempting to Cross in Front of Engine. — Williams *v.* Chicago, etc., R. Co., (Neb. 1907) 111 N. W. 596; Fay *v.* Minneapolis, etc., R. Co., 131 Wis. 639, 111 N. W. 683.

Not Negligence Per Se to Drive over Crossing in Front of Standing Engine. — Atchison, etc., R. Co. *v.* Wilkie, (Kan. 1907) 90 Pac. 775.

Attempting to Cross Tracks While Gates Down Negligence. — Ludolph *v.* Chicago, etc., R. Co., 116 Ill. App. 239.

A Child Nine Years Old Crossing the Track in Front of an Approaching Train is not chargeable with contributory negligence as a matter of law. Duggan *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 829.

769. 4. Vizacchero *v.* Rhode Island Co., 26 R. I. 392, 59 Atl. 105.

One Imperiling Life to Rescue Another Not Chargeable with Contributory Negligence as Matter of Law. — Texas, etc., R. Co. *v.* Scarborough, (Tex. Civ. App. 1907) 104 S. W. 408.

5. Morrow *v.* Southern R. Co., (N. Car. 1908) 61 S. E. 621.

11. *California.* — Bilton *v.* Southern Pac. R. Co., 148 Cal. 443, 83 Pac. 440.

Delaware. — McFeat *v.* Philadelphia, etc., R. Co., (Del. 1908) 69 Atl. 744.

Georgia. — Central of Georgia R. Co. *v.* Motz, (Ga. 1908) 61 S. E. 1.

Illinois. — Illinois Southern R. Co. *v.* Hamill, 226 Ill. 88, 80 N. E. 745.

Indiana. — Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030.

Kansas. — McCallion *v.* Missouri Pac. R. Co., 74 Kan. 785, 88 Pac. 50.

Kentucky. — Louisville, etc., R. Co. *v.* Molloy, (Ky. 1908) 107 S. W. 217; Louisville, etc., R. Co. *v.* Molloy, 122 Ky. 319, 91 S. W. 685; Louisville, etc., R. Co. *v.* Taylor, (Ky. 1907) 104 S. W. 776; Maysville, etc., R. Co. *v.* McCabe, (Ky. 1907) 100 S. W. 219.

Missouri. — Feeney *v.* Wabash R. Co., 123 Mo. App. 420, 99 S. W. 477; Lang *v.* Missouri Pac. R. Co., 115 Mo. App. 489, 91 S. W. 1012.

New York. — Sherwood *v.* New York Cent., etc., R. Co., 120 N. Y. App. Div. 639, 105 N. Y. Supp. 547.

Pennsylvania. — Mosten *v.* Lake Shore, etc., R. Co., 218 Pa. St. 392, 67 Atl. 740.

Texas. — Ft. Worth, etc., R. Co. *v.* Morris, (Tex. Civ. App. 1907) 101 S. W. 1038; Gulf, etc., R. Co. *v.* Tullis, (Tex. Civ. App. 1905) 91 S. W. 317; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1908) 110 S. W. 199; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 90 S. W. 185.

Utah. — Christensen *v.* Oregon Short Line R. Co., 29 Utah 192, 80 Pac. 746.

Rule Not Applicable Where Emergency Is Emergency Self-created. — Hood *v.* Lehigh Valley R. Co., 109 N. Y. App. Div. 418, 96 N. Y. Supp. 431.

Rule Not Applicable Where Voluntary Choice of Obviously Unsafe Way Is Made. —

Hoopes *v.* Atchison, etc., R. Co., 72 Kan. 422, 83 Pac. 987.

770. 1. McCallion *v.* Missouri Pac. R. Co., 74 Kan. 785, 88 Pac. 50.

2. Bailey *v.* Lehigh Valley R. Co., (Pa. 1908) 69 Atl. 998.

Finding Injured Person Beside Track No Evidence of Negligence. — Southern R. Co. *v.* Back, 103 Va. 778, 50 S. E. 257.

3. Parks *v.* Southern R. Co., (C. C. A.) 143 Fed. 276; St. Louis, etc., R. Co. *v.* Chapman, (C. C. A.) 140 Fed. 129; Hancock *v.* Gulf, etc., R. Co., 99 Tex. 613, 92 S. W. 456.

7. Georgia, etc., R. Co. *v.* Haas, 127 Ga. 187, 56 S. E. 313.

771. 2. Spierling *v.* Ohl, 232 Ill. 581, 83 N. E. 1068.

5. Clinger *v.* Chesapeake, etc., R. Co., (Ky. 1908) 109 S. W. 315.

772. 1. Illinois State Trust Co. *v.* St. Louis, etc., R. Co., 217 Ill. 504, 75 N. E. 562.

774. 1. **Purchasers at a Judicial Sale Are Not Answerable for the General Debts** of the railroad corporation whose property and franchises are acquired, Lincoln *v.* Kansas City, etc., R. Co., (Neb. 1906) 108 N. W. 140.

4. Porter *v.* Illinois Southern R. Co., 116 Mo. App. 526, 92 S. W. 744.

8. Hukle *v.* Atchison, etc., R. Co., 71 Kan. 251, 80 Pac. 603.

775. 4. Karn *v.* Illinois Southern R. Co., 114 Mo. App. 162, 89 S. W. 346; Lawson *v.* Illinois Southern R. Co., 116 Mo. App. 690, 94 S. W. 807.

777. 1. American Lumber Co. *v.* Tombigbee Valley R. Co., (Ala. 1908) 45 So. 911; Georgia R., etc., Co. *v.* Haas, 127 Ga. 187, 56 S. E. 313; Smalley *v.* Atlanta, etc., Air Line R. Co., 73 S. Car. 572, 53 S. E. 1000.

4. American Lumber Co. *v.* Tombigbee Valley R. Co., (Ala. 1908) 45 So. 911.

778. 2. Georgia R., etc., Co. *v.* Haas, 127 Ga. 187, 56 S. E. 313; Travis *v.* Kansas City, etc., R. Co., 119 La. 489, 44 So. 274; Harbert *v.* Atlanta, etc., Air Line R. Co., 74 S. Car. 13, 53 S. E. 1001; Smalley *v.* Atlanta, etc., Air Line R. Co., 73 S. Car. 572, 53 S. E. 1000.

6. Chicago, etc., R. Co. *v.* Weber, 219 Ill. 372, 76 N. E. 489; State Board of Equalization *v.* People, 229 Ill. 430, 82 N. E. 324; Ackerman *v.* Cincinnati, etc., R. Co., 143 Mich. 58, 106 N. W. 558; Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

779. 2. Kaufman *v.* Pittsburg, etc., R. Co., 217 Pa. St. 599, 66 Atl. 1108.

6. Kaufman *v.* Pittsburg, etc., R. Co., 217 Pa. St. 599, 66 Atl. 1108.

780. 10. Louisiana, etc., R. Co. *v.* State, 75 Ark. 435, 88 S. W. 559.

781. 14. Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 781.

783. 1. St. Louis Police Relief Assoc. *v.* Tierney, 116 Mo. App. 447, 91 S. W. 968, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 783.

784. 3. Ryerson *v.* Morris Canal, etc., Co., 71 N. J. L. 381, 59 Atl. 29, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 784.

4. **Lessor Not Liable for Lessee's Failure to Maintain.** — Ackerman *v.* Cincinnati, etc., R. Co., 143 Mich. 58, 106 N. W. 558.

5. Harris *v.* Quincy, etc., R. Co., 124 Mo. App. 45, 101 S. W. 601.

785. 1. Chicago, etc., R. Co. *v.* Weber, 219 Ill. 372, 76 N. E. 489; Wabash R. Co. *v.* Keeler, 127 Ill. App. 265; Clinger *v.* Chesapeake, etc., R. Co., (Ky. 1908) 109 S. W. 315; Illinois Cent. R. Co. *v.* Lucas, 89 Miss. 411, 42 So. 607; Harris *v.* Quincy, etc., R. Co., 124 Mo. App. 45, 101 S. W. 601; Mayfield *v.* Atlanta, etc., Air Line R. Co., (S. Car. 1908) 61 S. E. 106; Reed *v.* Southern R. Co., 75 S. Car. 162, 55 S. E. 218; Smalley *v.* Atlanta, etc., Air Line R. Co., 73 S. Car. 572, 53 S. E. 1000.

Conflict of Authority as to Whether Lessor of Railroad Liable for Negligence of Lessee. — Moorshead *v.* United R. Co., 119 Mo. App. 541, 96 S. W. 261, *quoting* in dissenting opinion 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 784.

Statute Making Lessor Liable Applies Only to Liabilities as Common Carrier. — Axline *v.* Toledo, etc., R. Co., 138 Fed. 169; Beltz *v.* Baltimore, etc., R. Co., 137 Fed. 1016.

2. Jackson *v.* Southern R. Co., 77 S. Car 550, 58 S. E. 605.

7. Curtis *v.* Cleveland, etc., R. Co., 140 Fed. 777; Yeates *v.* Illinois Cent. R. Co., 137 Fed. 943.

786. 2. Illinois Cent. R. Co. *v.* Sheegog, (Ky. 1907) 103 S. W. 323.

787. 5. **Lessee Liable for Negligently Constructing Addition to Culvert.** — Shores *v.* Southern R. Co., 72 S. Car. 244, 51 S. E. 699.

8. **Lessee Bound to Maintain Closets at Stations.** — State *v.* Southern Kansas R. Co., (Tex. Civ. App. 1906) 99 S. W. 167.

9. **Lessee Liable to Statutory Penalty for Failure to Erect Stock Gaps.** — St. Louis, etc., R. Co. *v.* Hale, 82 Ark. 175, 100 S. W. 1148.

788. 2. Seaboard Air Line R. Co. *v.* Randolph, 126 Ga. 238, 55 S. E. 47; Chicago, etc., R. Co. *v.* Weber, 219 Ill. 372, 76 N. E. 489; Mayfield *v.* Atlanta, etc., Air Line R. Co., (S. Car. 1908) 61 S. E. 106.

4. Chicago, etc., R. Co. *v.* Weber, 219 Ill. 372, 76 N. E. 489; Wabash R. Co. *v.* Keeler, 127 Ill. App. 265; Illinois Cent. R. Co. *v.* Sheegog, (Ky. 1907) 103 S. W. 323.

792. 7. **Georgia Statute Construed.** — Alsobrook *v.* State, 126 Ga. 100, 54 S. E. 805.

794. 12. **No Offense to Attempt to Break and Enter Car under Texas Statute.** — Summers *v.* State, 49 Tex. Crim. 90, 90 S. W. 310.

RAILROAD SECURITIES.

805. 14. Guaranty Trust Co. *v.* Atlantic Coast Electric R. Co., 132 Fed. 68.

15. **Nor a Hotel.** — Guaranty Trust Co. *v.* Atlantic Coast Electric R. Co., 132 Fed. 68.

808. 8. Guaranty Trust Co. *v.* Atlantic Coast Electric R. Co., 132 Fed. 68.

810. 1. Ingram *v.* Cincinnati, etc., R. Co., (Ky. 1908) 107 S. W. 239.

813. 3. Fordyce *v.* Kansas City, etc., Connecting R. Co., 145 Fed. 566.

8. **Priority between Mortgage and Lien for Materials Furnished for Construction or Repair.** — Waters-Pierce Oil Co. *v.* U. S., etc., Trust Co., (Tex. 1907) 99 S. W. 212.

814. 2. **Operation of Road by Bondholders.** — Queen Anne's Ferry, etc., Co. *v.* Queen Anne's R. Co., 148 Fed. 41.

4. Atchison, etc., R. Co. *v.* Osborn, 148 Fed. 606, 78 C. C. A. 378.

815. 3. Kansas City Southern R. Co. *v.* King, 74 Ark. 366, 85 S. W. 1131.

816. 1. Atchison, etc., R. Co. *v.* Osborn, 148 Fed. 606, 78 C. C. A. 378.

2. Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., 154 Fed. 629.

3. Fordyce *v.* Kansas City, etc., Connecting R. Co., 145 Fed. 566; Queen Anne's Ferry, etc., Co. *v.* Queen Anne's R. Co., 148 Fed. 41; Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., 154 Fed. 629, 83 C. C. A. 403; Waters-Pierce Oil Co. *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 99 S. W. 212.

5. Westinghouse Air-Brake Co. *v.* Kansas City Southern R. Co., (C. C. A.) 137 Fed. 26; Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., 154 Fed. 629, 83 C. C. A. 403.

817. 2. Queen Anne's Ferry, etc., Co. *v.* Queen Anne's R. Co., 148 Fed. 41.

10. Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., 154 Fed. 629, 83 C. C. A. 403.

818. 1. Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., 154 Fed. 629, 83 C. C. A. 403.

819. 1. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237; Waters-Pierce Oil Co. *v.* U. S., etc., Trust Co., (Tex. 1907) 99 S. W. 212.

820. 2. Knickerbocker Trust Co. *v.* Oneonta, etc., R. Co., 116 N. Y. App. Div. 78, 101 N. Y. Supp. 241, *order affirmed* 188 N. Y. 38, 80 N. E. 568; Farmers' L. & T. Co. *v.* New York, etc., R. Co., (Supm. Ct. Spec. T.) 94 N. Y. Supp. 928.

821. 1. Bowling Green Trust Co. *v.* Virginia Pass., etc., Co., 132 Fed. 921 (substituted trustee); Farmers' L. & T. Co. *v.* New York, etc., R. Co., (Supm. Ct. Spec. T.) 94 N. Y. Supp. 928; Knickerbocker Trust Co. *v.* Oneonta, etc., R. Co., 116 N. Y. App. Div. 78, 101 N. Y. Supp. 241.

822. 6. Cochran *v.* Pittsburg, etc., R. Co., 150 Fed. 682.

7. Cochran *v.* Pittsburg, etc., R. Co., 150 Fed. 682.

823. 9. Bowling Green Trust Co. *v.* Virginia Pass., etc., R. Co., 132 Fed. 921.

825. 2. Prather Engineering Co. *v.* Genesee Circuit Judge, 149 Mich. 53, 112 N. W. 502.

826. 8. U. S., etc., Trust Co. *v.* Young, (Tex. Civ. App. 1907) 101 S. W. 1045.

829. 3. Crouch *v.* Dakota, etc., R. Co., 18 S. Dak. 540, 101 N. W. 722.

8. Raphael *v.* Rio Grande Western R. Co., 132 Fed. 12, 65 C. C. A. 632.

830. 5. Real Estate Trust Co. *v.* Perry County R. Co., 213 Pa. St. 57, 62 Atl. 25.

831. 4. Atchison, etc., R. Co. *v.* Osborn, 148 Fed. 606, 78 C. C. A. 378.

The Arkansas Statute. — Kansas City Southern R. Co. *v.* King, 74 Ark. 366, 85 S. W. 1131.

832. 1. Atchison, etc., R. Co. *v.* Osborn, 148 Fed. 606, 78 C. C. A. 378; Kansas City Southern R. Co. *v.* King, 74 Ark. 366, 85 S. W. 1131.

3. Union Pac. R. Co. *v.* Mason City, etc., R. Co., 199 U. S. 160, 26 U. S. Sup. Ct. 19.

5. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

833. 4. **Right of Way Interests.** — Barker *v.* Southern R. Co., 137 N. Car. 206, 49 S. E. 115.

834. 1. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

836. 10. Shellenberger *v.* Altoona, etc., Connecting R. Co., 212 Pa. St. 413, 61 Atl. 1000.

838. 1. Kissel *v.* Chicago, etc., R. Co., (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 89 N. Y. Supp. 796; Shellenberger *v.* Altoona, etc., Connecting R. Co., 212 Pa. St. 413, 61 Atl. 1000.

839. 1. Shellenberger *v.* Altoona, etc., Connecting R. Co., 212 Pa. St. 413, 61 Atl. 1000, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 839.

840. 2. **Exchange for Stock.** — Carpenter *v.* Chicago, etc., R. Co., 119 N. Y. App. Div. 169, 104 N. Y. Supp. 152.

Provision in Bond for Its Conversion into Stock. — Bratten *v.* Catawissa R. Co., 211 Pa. St. 21, 60 Atl. 319.

4. Schmidt *v.* Louisville, etc., R. Co., 119 Ky. 287, 84 S. W. 314.

841. 9. Western Maryland R. Co. *v.* Blue Ridge Hotel Co., 102 Md. 307, 62 Atl. 351.

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847. 1. State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790.

848. 8. Barrett *v.* People, 220 Ill. 304, 77 N. E. 224; Hubert *v.* State, (Neb. 1906) 106 N. W. 774.

10. State *v.* Fisk, 15 N. Dak. 589, 108 N. W. 485 (infant under fourteen years of age).

11. State *v.* Bartlett, 127 Iowa 689, 104 N. W. 285.

849. 1. State *v.* Sykes, 191 Mo. 62, 89 S. W. 851.

3. **Proof of Impotency.** — Refusal to allow the jury to examine the defendant's private parts is not error. State *v.* Stevens, 133 Iowa 684, 110 N. W. 1037.

5. State *v.* Fisk, 15 N. Dak. 589, 108 N. W. 485.

Appearance of Defendant as Evidence of Age. — See Com. *v.* Walker, 33 Pa. Super. Ct. 167.

6. Garner *v.* State, 73 Ark. 487, 84 S. W. 623; Frazier *v.* State, 48 Tex. Crim. 142, 86 S. W. 754, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 849.

Sufficiency of Proof that Defendant Was Not the Husband of Prosecutrix. — People *v.* Gonzalez, (Cal. App. 1907) 91 Pac. 1013 (child under age of consent); Brenton *v.* Territory, 15 Okla. 6, 78 Pac. 83.

Sufficiency of Instructions as to Relation of Husband and Wife between Prosecutrix and Defendant. — People *v.* Jailles, 146 Cal. 301, 79 Pac. 965.

8. Barrett *v.* People, 220 Ill. 304, 77 N. E. 224; State *v.* Grove, 61 W. Va. 697, 57 S. E. 266.

850. 7. Pitman *v.* State, 148 Ala. 612, 42 So. 993.

8. Jones *v.* Com., (Ky. 1906) 97 S. W. 1118.

851. 2. State *v.* DeWitt, 186 Mo. 61, 84 S. W. 956.

Chastity as Distinguished from Reputation

is alone involved and evidence of reputation for unchastity is inadmissible. Woodruff *v.* State, 72 Neb. 815, 101 N. W. 1114.

Previous Intercourse with the Defendant Alone within the state will not render the female unchaste. Blair *v.* State, 72 Neb. 501, 101 N. W. 17, *approving* dicta in Bailey *v.* State, 57 Neb. 706, 78 N. W. 284.

Girl Need Not Be a Virgin. — Jamison *v.* State, 117 Tenn. 58, 94 S. W. 675.

Ignorance that Defendant Was Married. — Woodruff *v.* State, 72 Neb. 815, 101 N. W. 1114.

Proof of Chastity. — Burk *v.* State, (Neb. 1907) 112 N. W. 573.

Presumption in Favor of Chastity and Evidence to Prove Unchastity. — State *v.* Keeley, 191 Mo. 680, 90 S. W. 834.

3. People *v.* Fong Chung, 5 Cal. App. 587, 91 Pac. 105; State *v.* Blackburn, (Iowa 1908) 114 N. W. 531; State *v.* Bricker, (Iowa 1907) 112 N. W. 645; Harris *v.* State, (Neb. 1907) 114 N. W. 168.

6. Sims *v.* State, 146 Ala. 109, 41 So. 413; Williams *v.* State, 53 Fla. 84, 43 So. 431; People *v.* Rivers, 147 Mich. 643, 111 N. W. 201; State *v.* Newman, 93 Minn. 393, 101 N. W. 499; State *v.* Dilts, 191 Mo. 665, 90 S. W. 782.

"Abusing." — See State *v.* Hummer, 72 N. J. L. 328, 62 Atl. 388; State *v.* Hummer, 73 N. J. L. 714, 65 Atl. 249, *rehearing denied* (N. J. 1907) 67 Atl. 294.

852. 2. State *v.* Andrews, 130 Iowa 609, 105 N. W. 215.

3. Occupation of Same Room. — People *v.* Morris, 3 Cal. App. 1, 84 Pac. 463.

Inoculation of Prosecutrix with Venereal Disease. — State *v.* Mejovich, 118 La. 1013, 43 So. 660.

4. State *v.* Fowler, 13 Idaho 317, 89 Pac. 757.

5. State *v.* Bateman, 198 Mo. 212, 94 S. W. 843.

6. State *v.* Forshee, 199 Mo. 142, 97 S. W. 93.

853. 1. Williams *v.* State, 53 Fla. 84, 43 So. 431.

3. Rucker *v.* People, 224 Ill. 131, 79 N. E. 606.

4. State *v.* Falsetta, 43 Wash. 159, 86 Pac. 168 (a female child under the age of eighteen years).

5. Vanderford *v.* State, 126 Ga. 753, 55 S. E. 1025; Rahke *v.* State, 168 Ind. 615, 81 N. E. 584.

854. 7. Rucker *v.* State, 224 Ill. 131, 79 N. E. 606; People *v.* Green, 103 N. Y. App. Div. 79, 92 N. Y. Supp. 508.

855. 2. State *v.* Barkley, 129 Iowa 484, 105 N. W. 506.

3. State *v.* Welch, 191 Mo. 179, 89 S. W. 945.

7. Posey *v.* State, 143 Ala. 54, 38 So. 1019; State *v.* Welch, 191 Mo. 179, 89 S. W. 945.

856. 1. State *v.* Crouch, 130 Iowa 478, 107 N. W. 173 (statute).

858. 1. See Dickey *v.* State, 86 Mass. 525, 38 So. 776.

3. Evidence that the prosecutrix was a young child (about ten) is admissible as tending to show want of consent. Dickey *v.* State, 86 Miss. 525, 38 So. 776.

4. *Arkansas.* — Plunkett *v.* State, 72 Ark. 409, 82 S. W. 845; Carothers *v.* State, 75 Ark. 574, 88 S. W. 585.

Delaware. — State *v.* Cunningham, 5 Penn. (Del.) 294, 63 Atl. 30.

Florida. — Wilson *v.* State, 50 Fla. 164, 39 So. 471 (child under ten years of age).

Illinois. — Dalton *v.* People, 224 Ill. 333, 79 N. E. 669.

Iowa. — State *v.* Blackburn, (Iowa 1907) 110 N. W. 275; State *v.* Bricker, (Iowa 1907) 112 N. W. 645.

Kansas. — State *v.* Tinkler, 72 Kan. 262, 83 Pac. 830.

Louisiana. — State *v.* Mchojovich, 118 La. 1013, 43 So. 660.

Michigan. — People *v.* Chamblin, 149 Mich. 653, 113 N. W. 27.

Missouri. — State *v.* Day, 188 Mo. 359, 87 S. W. 465.

Texas. — Brown *v.* State, 48 Tex. Crim. 158, 87 S. W. 159; Taylor *v.* State, (Tex. Crim. 1906) 97 S. W. 94; Robertson *v.* State, (Tex. Crim. 1907) 102 S. W. 1130.

Washington. — State *v.* Griffin, 43 Wash. 591, 86 Pac. 951.

Evidence of the use of force is admissible as part of the *res gestæ* though it is not a necessary element of the crime. State *v.* Falsetta, 43 Wash. 159, 86 Pac. 168.

859. 3. Robertson *v.* State, (Tex. Crim. 1907) 102 S. W. 1130.

4. Record of Physician as to Confinement of Mother of Prosecutrix. — State *v.* Palenberg, 199 Mo. 233, 97 S. W. 566; Neill *v.* State, 49 Tex. Crim. 219, 91 S. W. 791.

Parish Record of Foreign Country. — State *v.* Miller, 71 Kan. 200, 80 Pac. 51.

Family Bible. — State *v.* Hazlett, 14 N. Dak. 490, 105 N. W. 617.

6. State *v.* Miller, 71 Kan. 200, 80 Pac. 51; Curry *v.* State, (Tex. Crim. 1906) 94 S. W. 1058.

12. Cecil *v.* Territory, 16 Okla. 197, 82 Pac. 654; Curry *v.* State, (Tex. Crim. 1906) 94 S. W. 1059.

13. Rogers *v.* State, 47 Tex. Crim. 195, 82 S. W. 1041.

860. 1. Clark *v.* Com., 92 S. W. 573, 29 Ky. L. Rep. 154; Blackwell *v.* State, (Tex. Crim. 1907) 100 S. W. 774.

4. Posey *v.* State, 143 Ala. 54, 38 So. 1019; Vanderford *v.* State, 126 Ga. 753, 55 S. E. 1025; Rahke *v.* State, 168 Ind. 615, 81 N. E. 584; Smith *v.* Com., 83 S. W. 647, 26 Ky. L. Rep. 1229; State *v.* Grove, 61 W. Va. 697, 57 S. E. 296.

5. Darrell *v.* Com., 88 S. W. 1060, 28 Ky. L. Rep. 27; State *v.* Cowing, 99 Minn. 123, 108 N. W. 851, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 860–862; Perez *v.* State, 48 Tex. Crim. 225, 87 S. W. 350; Elliott *v.* State, 49 Tex. Crim. 435, 93 S. W. 742; Perez *v.* State, (Tex. Crim. 1906) 94 S. W. 1036.

6. State *v.* Cowing, 99 Minn. 123, 108 N. W. 851, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 860; Brown *v.* State, 127 Wis. 193, 106 N. W. 536.

8. Elliott *v.* State, 49 Tex. Crim. 435, 93 S. W. 742.

Every Resistance within Her Power. — Perez *v.* State, 48 Tex. Crim. 225, 87 S. W. 350.

Every Exertion in Her Power. — Perez *v.* State, (Tex. Crim. 1906) 94 S. W. 1036.

861. 1. People *v.* Lambert, 144 Mich. 578, 108 N. W. 345; Vaughn *v.* State, (Neb. 1907) 110 N. W. 992.

2. State *v.* Neil, 13 Idaho 539, 90 Pac. 860, 91 Pac. 318.

862. 5. People *v.* Fong Chung, 5 Cal. App. 587, 91 Pac. 105; Champagne *v.* Hamey, 189 Mo. 709, 88 S. W. 92; Vaughn *v.* State, (Neb. 1907) 110 N. W. 992; State *v.* Smith, 138 N. Car. 700, 50 S. E. 859, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 862; State *v.* Griffin, 43 Wash. 591, 86 Pac. 951.

6. Darrell *v.* Com., (Ky. 1904) 82 S. W. 289; State *v.* Miller, 191 Mo. 587, 90 S. W. 767; Smith *v.* State, (Tex. Crim. 1908) 106 S. W. 1161.

8. Champagne *v.* Hamey, 189 Mo. 709, 88 S. W. 92; State *v.* Griffin, 43 Wash. 591, 86 Pac. 951.

11. Donaldson *v.* People, 33 Colo. 333, 80 Pac. 906; State *v.* Mejovich, 118 La. 1013, 43 So. 660 (child under age of consent); Champagne *v.* Hamey, 189 Mo. 709, 88 S. W. 92; Vaughn *v.* State, (Neb. 1907) 110 N. W. 992; State *v.* Stines, 138 N. Car. 686, 50 S. E. 851; State *v.* Griffin, 43 Wash. 591, 86 Pac. 951.

Child under Statutory Age of Consent. — State *v.* Oswalt, 72 Kan. 84, 82 Pac. 586, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 862; State *v.* Palenberg, 109 Mo. 233, 97 S. W. 566.

863. 2. State *v.* Icenbice, 126 Iowa 16, 101 N. W. 273; Darrell *v.* Com., (Ky. 1904) 82 S. W. 289; State *v.* Miller, 191 Mo. 587, 90 S. W. 767; State *v.* Dilts, 191 Mo. 665, 90 S. W. 782.

5. State *v.* Shouse, 188 Mo. 473, 87 S. W. 480; Champagne *v.* Hamey, 189 Mo. 709, 88 S. W. 92.

9. State *v.* Fowler, 13 Idaho 317, 89 Pac. 757.

864. 4. Donovan *v.* People, 215 Ill. 520, 74 N. E. 772; Rahke *v.* State, 168 Ind. 615, 81 N. E. 584; State *v.* Riseling, 186 Mo. 521, 85 S. W. 372; Hudson *v.* State, 49 Tex. Crim. 24, 90 S. W. 177; Fewox *v.* State, 49 Tex. Crim. 172, 90 S. W. 178.

5. Cotton *v.* State, (Tex. Crim. 1907) 105 S. W. 185.

Consent of Infants — General Rule in United States. — Tuttle *v.* State, 83 Ark. 379, 104 S. W. 135; People *v.* Collins, 5 Cal. App. 654, 91 Pac. 158; Gibbs *v.* People, 36 Colo. 452, 85 Pac. 425; State *v.* Johnson, 133 Iowa 38, 110 N. W. 170; People *v.* Chamblin, 149 Mich. 653, 113 N. W. 27; Taylor *v.* State, (Tex. Crim. 1906) 97 S. W. 94; State *v.* Riseling, 186 Mo. 521, 85 S. W. 372; Ross *v.* State, (Wyo. 1908) 93 Pac. 299.

865. 1. *Delaware.* — State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790.

Georgia. — Sutton *v.* State, 123 Ga. 125, 51 S. E. 316; Horseford *v.* State, 124 Ga. 784, 53 S. E. 322; Fields *v.* State, 2 Ga. App. 41, 58 S. E. 327.

Indiana. — Rahke *v.* State, 168 Ind. 615, 81 N. E. 584.

North Carolina. — State *v.* Smith, 136 N. Car. 684, 49 S. E. 336.

Texas. — Lee *v.* State, 47 Tex. Crim. 612, 85 S. W. 798; Hudson *v.* State, 49 Tex. Crim. 24, 90 S. W. 177; Henderson *v.* State, 49 Tex. Crim. 511, 93 S. W. 550; Bawcom *v.* State, 49 Tex. Crim. 417, 94 S. W. 462; Scott *v.* State, (Tex. Crim. 1907) 100 S. W. 159; Cotton *v.* State, (Tex. Crim. 1907) 105 S. W. 185.

Virginia. — Woodson *v.* Com., 107 Va. 895, 59 S. E. 1097.

2. People *v.* Davis, (Cal. App. 1907) 91 Pac. 810; State *v.* Neil, 13 Idaho 539, 90 Pac. 860, 91 Pac. 318; Newman *v.* People, 223 Ill. 324, 79 N. E. 80.

Evidence of Intoxication held competent to disprove intent to rape. State *v.* Truitt, 5 Penn. (Del.) 466, 62 Atl. 790.

4. State *v.* Neil, 13 Idaho 539, 90 Pac. 860, 91 Pac. 318; Newman *v.* People, 223 Ill. 324, 79 N. E. 80.

5. *Arkansas.* — Tuttle *v.* State, 83 Ark. 379, 104 S. W. 135.

California. — People *v.* Collins, 5 Cal. App. 654, 91 Pac. 158; People *v.* Bowman, (Cal. App. 1907) 93 Pac. 198.

Idaho. — State *v.* Neil, 13 Idaho 539, 90 Pac. 860, 91 Pac. 318, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 865, 866.

Missouri. — State *v.* Urspruch, 191 Mo. 43, 90 S. W. 451; State *v.* Payne, 194 Mo. 442, 92 S. W. 461; State *v.* Platner, 196 Mo. 128, 93 S. W. 403.

Texas. — Castle *v.* State, 49 Tex. Crim. 1, 90 S. W. 32; Bourland *v.* State, 49 Tex. Crim. 197, 93 S. W. 115; Washington *v.* State, (Tex. Crim. 1907) 103 S. W. 879.

Wyoming. — Ross *v.* State, (Wyo. 1908) 93 Pac. 299.

866. 1. *Arkansas.* — Quinn *v.* State, 73 Ark. 625, 84 S. W. 505; State *v.* Anderson, 77 Ark. 37, 90 S. W. 846.

Georgia. — Horseford *v.* State, 124 Ga. 784, 53 S. E. 322.

Illinois. — Newman *v.* People, 223 Ill. 324, 79 N. E. 80.

Missouri. — State *v.* Hahn, 189 Mo. 241, 87 S. W. 1006.

North Carolina. — State *v.* Smith, 136 N. Car. 684, 49 S. E. 336, Clark, J., *dissenting*.

Texas. — Dusek *v.* State, 48 Tex. Crim. 510, 89 S. W. 271; Scott *v.* State, (Tex. Crim. 1907) 100 S. W. 159; Warren *v.* State, (Tex. Crim. 1907) 103 S. W. 888; Cotton *v.* State, (Tex. Crim. 1907) 105 S. W. 185.

Virginia. — Woodson *v.* Com., 107 Va. 895, 59 S. E. 1097.

Burglary with Intent to Rape. — Mason *v.* State, 47 Tex. Crim. 403, 83 S. W. 689.

867. 1. People *v.* Bowman, (Cal. App. 1907) 93 Pac. 198; State *v.* Sheets, 127 Iowa 73, 102 N. W. 415.

2. State *v.* Bell, 194 Mo. 264, 91 S. W. 898.

868. 1. People *v.* Ah Lung, 2 Cal. App. 278, 83 Pac. 296; State *v.* Marselle, 43 Wash. 273, 86 Pac. 586.

8. Hogan *v.* State, 50 Fla. 86, 39 So. 464.

869. 4. Bowman *v.* Com., 104 S. W. 263, 31 Ky. L. Rep. 828; Gibson *v.* Com., (Ky. 1907) 104 S. W. 351; Copenhaver *v.* Com., (Ky. 1907) 104 S. W. 750.

What Amounts to "Taking" under Pennsylvania Statute. — Com. *v.* Walker, 34 Pa. Super. Ct. 14.

5. Sims *v.* State, 146 Ala. 100, 41 So. 413 (character of mud on defendant's clothes); Pitman *v.* State, 148 Ala. 612, 42 So. 993; People *v.* Ah Lung, 2 Cal. App. 278, 83 Pac. 296; State *v.* Huff, 136 N. Car. 679, 49 S. E. 339; Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533; State *v.* Patchen, 37 Wash. 24, 79 Pac. 479 (full cross-examination of infant witnesses).

Statements and Complaints by Members of Prosecutrix's Family Inadmissible. — State *v.* Fowler, 13 Idaho 317, 89 Pac. 757.

Evidence that the Defendant's Brother Took Prosecutrix from the State held inadmissible. Jeffries *v.* State, 89 Miss. 643, 42 So. 801.

Evidence of the Condition of Scene of Crime is admissible as *res gestæ*. Fletcher *v.* Com., 96 S. W. 855, 29 Ky. L. Rep. 955; Lyon *v.* Com., 96 S. W. 857, 29 Ky. L. Rep. 1020.

Evidence of the Status of the Prosecutrix, such as that she was a married woman, separated from her husband and supporting herself by work, is admissible. People *v.* Murphy, 145 Mich. 524, 108 N. W. 1009.

Clothing of Defendant — Blood Stains, etc. — Roszczyniala *v.* State, 125 Wis. 414, 104 N. W. 113.

870. 1. *Kansas.* — State *v.* Stone, 74 Kan. 189, 85 Pac. 808 (attempt to abort, flight, and subsequent promise of marriage).

Missouri. — State *v.* Kelley, 191 Mo. 680, 90 S. W. 834; State *v.* Mathews, 202 Mo. 143, 100 S. W. 420.

Nebraska. — Blair *v.* State, 72 Neb. 501, 101 N. W. 17; Woodruff *v.* State, 72 Neb. 815, 101 N. W. 1114.

Texas. — Ricks *v.* State, 48 Tex. Crim. 229, 87 S. W. 345; Shults *v.* State, 49 Tex. Crim. 351, 91 S. W. 786; Curry *v.* State, (Tex. Crim. 1906) 94 S. W. 1059; Smith *v.* State, (Tex. Crim. 1908) 106 S. W. 1161.

Wisconsin. — Roszczyniala *v.* State, 125 Wis. 414, 104 N. W. 113.

Evidence that Mother of Prosecutrix Used Opium Excluded. — Neill *v.* State, 49 Tex. Crim. 219, 91 S. W. 791.

Evidence of Offer of Money by Defendant to father of prosecutrix to stop prosecution held inadmissible. Sanders *v.* State, (Ala. 1906) 41 So. 466. See also Cecil *v.* Territory, 16 Okla. 197, 82 Pac. 654.

2. State *v.* Barrett, 5 Penn. (Del.) 147, 59 Atl. 45.

3. Dickey *v.* State, 86 Miss. 525, 38 So. 776 (attempt to bribe witness and flight); State *v.* Brady, 71 N. J. L. 360, 59 Atl. 6; State *v.* Hummer, 72 N. J. L. 328, 62 Atl. 388; Brown *v.* State, 127 Wis. 193, 106 N. W. 536.

4. State *v.* Grove, 61 W. Va. 697, 57 S. E. 296.

Evidence as to character of defendant as a peaceful and quiet citizen held inadmissible. Wistrand *v.* People, 218 Ill. 323, 75 N. E. 891.

Accused May Show Good Character for Chastity. — Lake *v.* Com., (Ky. 1907) 104 S. W. 1003; State *v.* Brady, 71 N. J. L. 360, 59 Atl. 6.

Effect of Evidence of Good Character. — State *v.* Jones, 32 Mont. 442, 80 Pac. 1095.

5. **Alibi in Iowa.** — State *v.* Blackburn, (Iowa 1908) 114 N. W. 531.

6. People *v.* Ryno, 148 Mich. 137, 111 N. W. 740; State *v.* Barrick, 60 W. Va. 576, 55 S. E. 652; State *v.* Detwiler, 60 W. Va. 583, 55 S. E. 654, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 870.

Evidence of the reputation of the prosecutrix's race (negro) for chastity is not to be considered. Sanders *v.* State, (Ala. 1906) 41 So. 466.

871. 3. State *v.* Blackburn, (Iowa 1908) 114 N. W. 531; State *v.* Deleviler, 60 W. Va. 583, 55 S. E. 654.

872. 3. State *v.* Blackburn, (Iowa 1907) 110 N. W. 275; State *v.* Bricker, (Iowa 1907) 112 N. W. 645. See also Clark *v.* Com., 92 S. W. 573, 29 Ky. L. Rep. 154. See also People *v.* Fong Chung, 5 Cal. App. 587, 91 Pac. 105.

4. Plunkett *v.* State, 72 Ark. 409, 82 S. W. 845; Renfroe *v.* State, 84 Ark. 16, 104 S. W. 541.

6. State *v.* Griffin, 43 Wash. 591, 86 Pac. 951.

873. 1. People *v.* Fong Chung, 5 Cal. App. 587, 91 Pac. 105.

3. Plunkett *v.* State, 72 Ark. 409, 82 S. W. 845; State *v.* Bebb, 125 Iowa 494, 101 N. W. 189; State *v.* Blackburn, (Iowa 1907) 110 N. W. 275; State *v.* Gerike, 74 Kan. 196, 87 Pac. 759; State *v.* Mobley, 44 Wash. 549, 87 Pac. 815.

Newly Discovered Evidence of such character held no ground for new trial. State *v.* Danforth, 73 N. H. 215, 60 Atl. 839.

4. State *v.* Day, 188 Mo. 359, 87 S. W. 465.

9. State *v.* Bateman, 198 Mo. 212, 94 S. W. 843. But see Lake *v.* Com., (Ky. 1907) 104 S. W. 1003.

In Curry *v.* State, (Tex. Crim. 1906) 94 S. W. 1058, it was held not to be reversible error to permit the prosecutrix, a child under the age of consent, to testify that she had never had sexual intercourse with any other man.

10. Rex *v.* Clarke, 38 New Brunswick 11; Rex *v.* Spuzzum, 12 British Columbia 291; Posey *v.* State, 143 Ala. 54, 38 So. 1019; State *v.* Fowler, 13 Idaho 317, 89 Pac. 757; State *v.* Barkley, 129 Iowa 484, 105 N. W. 506; Dickey *v.* State, 86 Miss. 525, 38 So. 776; State *v.* Stines, 138 N. Car. 686, 50 S. E. 851; Smith *v.* State, (Tex. Crim. 1907) 100 S. W. 924; Adams *v.* State, (Tex. Crim. 1907) 105 S. W. 197.

Children under Age of Consent. — Rex *v.* Osborne, (1905) 1 K. B. 551, 2 Ann. Cas. 830, *approving* Com. *v.* Cleary, 172 Mass. 175, 51 N. E. 746, and explaining earlier English cases.

Answer to Question. — The fact that the statement of the female is made in answer to a question, does not necessarily render it inadmissible as a complaint. Rex *v.* Osborne, (1905) 1 K. B. 551, 2 Ann. Cas. 830, 74 L. J. K. B. 311, 92 L. T. N. S. 393, 53 W. R. 494, 69 J. P. 189, 21 Times L. Rep. 288.

Explaining Pregnant Condition in Response to Inquiry is not a complaint so as to render it admissible in evidence. State *v.* Bebb, 125 Iowa 494, 101 Iowa 189.

874. 5. People *v.* Estell, 106 N. Y. App. 516, 106 N. Y. Supp. 748 (child under age of consent).

6. Posey *v.* State, 143 Ala. 54, 38 So. 1019; State *v.* Fowler, 13 Idaho 317, 89 Pac. 757; State *v.* Egbert, 125 Iowa 443, 101 N. W. 191; Dickey *v.* State, 86 Miss. 525, 38 So. 776; State *v.* Bateman, 198 Mo. 212, 94 S. W. 843. *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 874; Kearse *v.* State, (Tex. Crim. 1905) 88 S. W. 363; State *v.* Griffin, 43 Wash. 591, 86 Pac. 951. See also Donaldson *v.* People, 33 Colo. 333, 80 Pac. 906; State *v.* Andrews, 130 Iowa 609, 105 N. W. 215.

875. 1. State *v.* Werner, (N. Dak. 1907) 112 N. W. 60, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 874, 875.

2. Younger *v.* State, (Neb. 1907) 114 N. W. 170.

876. 3. Rex *v.* Osborne, (1905) 1 K. B. 551, 2 Ann. Cas. 830.

6. *Alabama.* — Posey *v.* State, 143 Ala. 54, 38 So. 1019; Sanders *v.* State, (Ala. 1906) 41 So. 466.

Colorado. — Donaldson *v.* People, 33 Colo. 333, 80 Pac. 906.

Idaho. — State *v.* Fowler, 13 Idaho 317, 89 Pac. 757.

Iowa. — State *v.* Egbert, 125 Iowa 443, 101 N. W. 191.

Mississippi. — Jeffries *v.* State, 89 Miss. 643, 42 So. 801; Dickey *v.* State, 86 Miss. 525, 38 So. 776.

Vermont. — State *v.* Willett, 78 Vt. 157, 62 Atl. 48 (curing inadvertent error).

Washington. — State *v.* Griffin, 43 Wash. 591, 86 Pac. 951, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 876.

8. State *v.* Andrews, 130 Iowa 609, 105 N. W. 215.

9. Donaldson *v.* People, 33 Colo. 333, 80 Pac. 906.

11. Posey *v.* State, 143 Ala. 54, 38 So. 1019; Donaldson *v.* People, 33 Colo. 333, 80 Pac. 906.

877. 7. State *v.* Bebb, 125 Iowa 494, 101 N. W. 189.

9. People *v.* Gonzalez, (Cal. App. 1907) 91 Pac. 1013 (child under age of consent); Cowles *v.* State, (Tex. Crim. 1907) 102 S. W. 1128; State *v.* Griffin, 43 Wash. 591, 86 Pac. 951.

12. *Contra,* People *v.* Bianchino, 5 Cal. App. 633, 91 Pac. 112, *following* People *v.* Figueroa, 134 Cal. 159, 66 Pac. 202.

878. 1. Kearse *v.* State, (Tex. Crim. 1905) 88 S. W. 363; Adams *v.* State, (Tex. Crim. 1907) 99 S. W. 1015.

2. Younger *v.* State, (Neb. 1907) 114 N. W. 170; Thomas *v.* State, 47 Tex. Crim. 403, 84 S. W. 823.

5. State *v.* Neil, 13 Idaho 539, 90 Pac. 860, 91 Pac. 318; State *v.* Griffin, 43 Wash. 591, 86 Pac. 951.

12. State *v.* Fowler, 13 Idaho 317, 89 Pac. 757; State *v.* Neil, 13 Idaho 539, 90 Pac. 860, 91 Pac. 318.

879. 2. Sanders *v.* State, (Ala. 1906) 41 So. 466; People *v.* Ah Lung, 2 Cal. App. 278, 83 Pac. 296; People *v.* Bianchino, 5 Cal. App. 633, 91 Pac. 112; Smith *v.* State, (Tex. Crim. 1908) 106 S. W. 1161.

Inoculation of Prosecutrix with Venereal Disease. — Lam Yee *v.* State, (Wis. 1907) 112 N. W. 425.

9. Sims *v.* State, 146 Ala. 109, 41 So. 413; State *v.* Dilts, 191 Mo. 665, 90 S. W. 782; Kearse *v.* State, (Tex. Crim. 1905) 88 S. W. 363; Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533; State *v.* Griffin, 43 Wash. 591, 86 Pac. 951.

10. State *v.* Fowler, 13 Idaho 317, 89 Pac. 757.

880. 7. **Infants Considered to Be Competent.** — People *v.* Collins, 5 Cal. App. 654, 91 Pac. 158 (ten years of age); State *v.* Werner, (N. Dak. 1907) 112 N. W. 60; Moore *v.* State, (Tex. Crim. 1906) 96 S. W. 327.

8. Smith *v.* State, (Tex. Crim. 1907) 100 S. W. 924; Brown *v.* State, 127 Wis. 193, 106 N. W. 536.

Delay in Instituting Prosecution. — Com. *v.* Mtynarczyk, 34 Pa. Super. Ct. 256.

881. 1. Evidence that prosecutrix had instituted a charge for assault and battery held immaterial. State *v.* Barrett, 5 Penn. (Del.) 147, 59 Atl. 45.

2. People *v.* Ah Lung, 2 Cal. App. 278, 83 Pac. 296; State *v.* Sheets, 127 Iowa 73, 102 N. W. 415; State *v.* Crouch, 130 Iowa 478, 107 N. W. 173.

3. Bawcom *v.* State, 49 Tex. Crim. 417, 94 S. W. 462.

4. State *v.* Winnett, (Wash. 1907) 92 Pac. 904.

5. **Whether Defendant May Demand Examination of Prosecutrix.** — People *v.* Bianchino, 5 Cal. App. 633, 91 Pac. 112.

7. State *v.* Blackburn, (Iowa 1907) 110 N. W. 275; State *v.* Blackburn, (Iowa 1908) 114 N. W. 531; State *v.* Miller, 71 Kan. 200, 80 Pac. 51; Woodruff *v.* State, 72 Neb. 815, 101 N. W. 1114; State *v.* Winnett, (Wash. 1907) 92 Pac. 904.

Prosecutrix Bringing Child into Court when testifying held not reversible error. Plunkett *v.* State, 72 Ark. 409, 82 S. W. 845.

Prosecutrix Allowed to Exhibit Child to Jury. — State *v.* Palenberg, 199 Mo. 233, 97 S. W. 566; State *v.* Danforth, 73 N. H. 215, 60 Atl. 839.

Prosecutrix Holding Child, Alleged Result of Intercourse Charged, While on Witness Stand. — Alcorn *v.* State, (Tex. Crim. 1905) 94 S. W. 468.

Act of State's Attorney in Kissing Child, the result of the intercourse charged, held not ground for reversal. State *v.* Danforth, 73 N. H. 215, 60 Atl. 839.

Effect as Evidence of Likeness to Defendant of Child of Prosecutrix, the Result of Intercourse Charged. — State *v.* Danforth, 73 N. H. 215, 60 Atl. 839.

9. Sims *v.* State, 146 Ala. 109, 41 So. 413; People *v.* Fong Chung, 5 Cal. App. 587, 91 Pac. 105; Darrell *v.* Com., 82 S. W. 289, 26 Ky. L. Rep. 541; Henderson *v.* State, 49 Tex. Crim. 511, 93 S. W. 550.

Evidence of Prior Attempt on Another Held Inadmissible. — Nickolizack *v.* State, (Neb. 1905) 105 N. W. 895.

Evidence of the Defendant's Seduction or Attempt to Seduce Another Girl is inadmissible. State *v.* Marselle, 43 Wash. 273, 86 Pac. 586.

882. 1. Renfroe *v.* State, 84 Ark. 16, 104 S. W. 542; State *v.* Bebb, 125 Iowa 494, 101

N. W. 189; State *v.* Hummer, 72 N. J. L. 328, 62 Atl. 388; Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533. See also State *v.* Sheets, 127 Iowa 73, 102 N. W. 415; Harmon *v.* Territory, 15 Okla. 147, 79 Pac. 765; Woodruff *v.* State, 72 Neb. 815, 101 N. W. 1114.

2. *California.* — People *v.* Morris, 3 Cal. App. 1, 84 Pac. 463.

Iowa. — State *v.* Johnson, 133 Iowa 38, 110 N. W. 170.

Kansas. — State *v.* Stone, 74 Kan. 189, 85 Pac. 808.

Nebraska. — Blair *v.* State, 72 Neb. 501, 101 N. W. 17; Woodruff *v.* State, 72 Neb. 815, 101 N. W. 1114.

New Jersey. — State *v.* Cannon, 72 N. J. L. 46, 60 Atl. 177.

New York. — See People *v.* Estell, 106 N. Y. App. Div. 516, 94 N. Y. Supp. 748.

Ohio. — See State *v.* Lawrence, (Ohio 1906) 77 N. E. 266.

Vermont. — State *v.* Willett, 78 Vt. 157, 62 Atl. 48.

Washington. — Henson *v.* State, 39 Wash. 548, 81 Pac. 1096; State *v.* Mobley, 44 Wash. 549, 87 Pac. 815; State *v.* Conlin, 45 Wash. 478, 88 Pac. 932.

Wisconsin. — Grabowski *v.* State, 126 Wis. 447, 105 N. W. 805.

4. State *v.* Palmberg, 199 Mo. 233, 97 S. W. 566; Cecil *v.* Territory, 16 Okla. 197, 82 Pac. 654. But see Shults *v.* State, 49 Tex. Crim. 351, 91 S. W. 786.

5. State *v.* Oswalt, 72 Kan. 84, 82 Pac. 586 (when such evidence is only brought out incidentally it is not ground for reversal); People *v.* Brown, 142 Mich. 622, 106 N. W. 149; State *v.* Palmberg, 199 Mo. 233, 97 S. W. 566; Cecil *v.* Territory, 16 Okla. 197, 82 Pac. 654.

6. State *v.* Palmberg, 199 Mo. 233, 97 S. W. 566; Blair *v.* State, 72 Neb. 501, 101 N. W. 17; Jamison *v.* State, 117 Tenn. 58, 94 S. W. 675; Henderson *v.* State, 49 Tex. Crim. 511, 93 S. W. 550; State *v.* Willett, 78 Vt. 157, 62 Atl. 48.

883. 1. Blackwell *v.* State, (Tex. Crim. 1907) 100 S. W. 774.

5. State *v.* Morris, 127 Iowa 683, 104 N. W. 282; Barra *v.* State, (Tex. Crim. 1906) 97 S. W. 94; Smith *v.* State, (Tex. Crim. 1907) 100 S. W. 924.

7. State *v.* Waters, 132 Iowa 481, 109 N. W. 1013; Blair *v.* State, 72 Neb. 501, 101 N. W. 17.

8. It is otherwise where prosecutrix was under the age of consent. Smith *v.* State, (Tex. Civ. App. 1907) 100 S. W. 924.

10. Com. *v.* Mtynarczyk, 34 Pa. Super. Ct. 256; State *v.* Marselle, 43 Wash. 273, 86 Pac. 586.

Failure to Instruct as to such caution held not error. Johnson *v.* State, 128 Ga. 102, 57 S. E. 353.

Instruction as to Such Caution Not Error. — Harmon *v.* Territory, 15 Okla. 147, 79 Pac. 765.

Evidence Held Sufficient — *Florida.* — Williams *v.* State, 53 Fla. 84, 43 So. 431.

Georgia. — Ryals *v.* State, 125 Ga. 266, 54 S. E. 168; Vanderford *v.* State, 126 Ga. 753, 55 S. E. 1025; Johnson *v.* State, 128 Ga. 102, 57 S. E. 353; Canida *v.* State, (Ga. 1908) 60 S. E. 104; Scott *v.* State, (Ga. App. 1908) 60 S. E. 112.

Illinois. — Crocker *v.* People, 213 Ill. 287, 72 N. E. 743; Barrett *v.* People, 220 Ill. 304, 77 N. E. 224.

Iowa. — State *v.* Barkley, 129 Iowa 484, 105 N. W. 506; State *v.* Crouch, 130 Iowa 478, 107 N. W. 173.

Kansas. — State *v.* Hamilton, 74 Kan. 461, 87 Pac. 363.

Kentucky. — Smith *v.* Com., 83 S. W. 647, 26 Ky. L. Rep. 1229; Webb *v.* Com., 99 S. W. 909, 30 Ky. L. Rep. 841.

Louisiana. — State *v.* Mejovich, 118 La. 1013, 43 So. 660.

Mississippi. — Dickey *v.* State, 86 Miss. 525, 38 So. 776.

Missouri. — State *v.* Day, 188 Mo. 359, 87 S. W. 465; State *v.* Welch, 191 Mo. 179, 89 S. W. 945; State *v.* Miller, 191 Mo. 587, 90 S. W. 767; State *v.* Dilts, 191 Mo. 665, 90 S. W. 782; State *v.* Bateman, 198 Mo. 212, 94 S. W. 843; State *v.* Mathews, 202 Mo. 143, 100 S. W. 420; State *v.* Smith, 203 Mo. 695, 102 S. W. 526.

Nebraska. — Loar *v.* State, (Neb. 1906) 107 N. W. 229; Harris *v.* State, (Neb. 1907) 114 N. W. 168; Younger *v.* State, (Neb. 1907) 114 N. W. 170.

Texas. — Rodgers *v.* State, 47 Tex. Crim. 195, 82 S. W. 1041; Thomas *v.* State, 47 Tex. Crim. 403, 80 S. W. 823; Ricks *v.* State, 48 Tex. Crim. 229, 87 S. W. 345; Young *v.* State, 49 Tex. Crim. 434, 93 S. W. 743; Freeney *v.* State, (Tex. Crim. 1907) 102 S. W. 113; Brown *v.* State, (Tex. Crim. 1907) 106 S. W. 368.

Virginia. — Thomas *v.* Com., 106 Va. 855, 56 S. E. 705.

Washington. — State *v.* Katon, (Wash. 1907) 91 Pac. 250.

Wisconsin. — Roszczyniala *v.* State, 125 Wis. 414, 104 N. W. 113; Lam Yee *v.* State, (Wis. 1907) 112 N. W. 425.

Evidence Held Insufficient — *Illinois.* — Rucker *v.* People, 224 Ill. 131, 79 N. E. 606.

Minnesota. — State *v.* Cowing, 99 Minn. 123, 108 N. W. 851.

Missouri. — Champagne *v.* Hamey, 189 Mo. 709, 88 S. W. 92; State *v.* Forshee, 199 Mo. 142, 97 S. W. 933.

Nebraska. — Klawitter *v.* State, (Neb. 1906) 107 N. W. 121; Livinghouse *v.* State, (Neb. 1906) 107 N. W. 854; Vaughn *v.* State, (Neb. 1907) 110 N. W. 992.

Texas. — Elliott *v.* State, 49 Tex. Crim. 435, 93 S. W. 742; Alcorn *v.* State, (Tex. Crim. 1905) 94 S. W. 468; Perez *v.* State, (Tex. Crim. 1906) 94 S. W. 1036; Skeen *v.* State, (Tex. Crim. 1907) 100 S. W. 770; Cowles *v.* State, (Tex. Crim. 1907) 102 S. W. 1128.

Virginia. — Harvey *v.* Com., 103 Va. 850, 49 S. E. 481.

884. 1. *California.* — People *v.* Ah Lung, 2 Cal. App. 278, 83 Pac. 296.

Georgia. — Vanderford *v.* State, 126 Ga. 753, 55 S. E. 1025; Fields *v.* State, 2 Ga. App. 41, 58 S. E. 327; Parker *v.* State, 3 Ga. App. 336, 59 S. E. 823.

Kansas. — State *v.* Tinkler, 72 Kan. 262, 83 Pac. 830, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 884.

Missouri. — State *v.* Day, 188 Mo. 250, 87 S. W. 465; Champagne *v.* Hamey, 189 Mo. 709, 88 S. W. 92; State *v.* Welch, 191 Mo. 179, 89 S. W. 945; State *v.* Dilts, 191 Mo. 665, 90 S. W. 782; State *v.* Kelley, 191 Mo. 680, 90 S. W. 784.

Montana. — State *v.* Jones, 32 Mont. 442, 80 Pac. 1095.

Nebraska. — Klawitter *v.* State, (Neb. 1906) 107 N. W. 121; Livinghouse *v.* State, (Neb. 1906) 107 N. W. 854.

Texas. — Wallace *v.* State, 48 Tex. Crim. 548, 89 S. W. 827.

Washington. — State *v.* Mobley, 44 Wash. 549, 87 Pac. 815; State *v.* Conlin, 45 Wash. 478, 88 Pac. 932; State *v.* Katon, (Wash. 1907) 91 Pac. 250.

Wisconsin. — Brown *v.* State, 127 Wis. 193, 106 N. W. 536.

3. Dickey *v.* State, 86 Miss. 525, 38 So. 776 (conviction of white man on testimony of young ignorant negro child sustained); State *v.* Patchen, 37 Wash. 24, 79 Pac. 479.

5. Brenton *v.* Territory, 15 Okla. 6, 78 Pac. 83; Harmon *v.* Territory, 15 Okla. 147, 79 Pac. 765, *overruling* Sowers *v.* Territory, 6 Okla. 436, 50 Pac. 257.

885. 2. State *v.* Bartlett, 127 Iowa 689, 104 N. W. 285 (twenty years — assault with intent to rape).

3. McConnell *v.* State, (Neb. 1906) 110 N. W. 666; Burk *v.* State, (Neb. 1907) 112 N. W. 573.

Failure to Instruct. — In the absence of a request it is not error to fail to instruct as to the necessity for corroboration. People *v.* Biglizen, 112 N. Y. App. Div. 225, 98 N. Y. Supp. 361.

6. State *v.* Blackburn, (Iowa 1907) 110 N. W. 275; State *v.* Bricker, (Iowa 1907) 112 N. W. 645; State *v.* Blackburn, (Iowa 1908) 114 N. W. 531; Fitzgerald *v.* State, (Neb. 1907) 110 N. W. 676.

That the Prosecutrix Made Complaint, etc. — People *v.* Green, 103 N. Y. App. Div. 79, 92 N. Y. Supp. 508.

Other Cases Wherein Corroboration Was Held to Be Sufficient — *Iowa.* — State *v.* Norris, 127 Iowa 683, 104 N. W. 282; State *v.* Bartlett, 127 Iowa 689, 104 N. W. 285; State *v.* Stevens, 133 Iowa 684, 110 N. W. 1037; State *v.* Waters, 132 Iowa 481, 109 N. W. 1013; State *v.* Johnson, 133 Iowa 38, 110 N. W. 170.

New York. — People *v.* Biglizen, 112 N. Y. App. Div. 225, 98 N. Y. Supp. 361.

North Dakota. — State *v.* Werner, (N. Dak. 1907) 112 N. W. 60.

Texas. — Austin *v.* State, (Tex. Crim. 1907) 101 S. W. 1162.

Washington. — State *v.* Jonas, (Wash. 1907) 92 Pac. 899.

Corroboration Held Insufficient. — State *v.* Egbert, 125 Iowa 443, 101 N. W. 191.

7. State *v.* Marselle, 43 Wash. 273, 86 Pac. 586.

8. Misenheimer *v.* State, 73 Ark. 407, 84 S. W. 494; People *v.* Darr, 3 Cal. App. 50, 84 Pac. 457; State *v.* Icenbice, 126 Iowa 16, 101 N. W. 273.

886. 2. *Iowa.* — State *v.* Norris, 127 Iowa 683, 104 N. W. 282 (life sentence reduced to twenty years); State *v.* Andrews, 130 Iowa 609, 105 N. W. 215 (life sentence sustained — child eight years of age); State *v.* Johnson, 133 Iowa 38, 110 N. W. 170.

Missouri. — State *v.* Mathews, 202 Mo. 143, 100 S. W. 420.

Texas. — Castle *v.* State, 49 Tex. Crim. 1, 90 S. W. 32; Moore *v.* State, (Tex. Crim. 1906) 96 S. W. 327; Brown *v.* State, (Tex. Crim. 1907) 106 S. W. 368.

Washington. — State *v.* Patchen, 37 Wash. 24, 79 Pac. 479.

Instances of Punishment Held Excessive on Appeal. — State *v.* Spears, 130 Iowa 294, 106 N. W. 746; State *v.* Young, (Iowa 1907) 113 N. W. 325.

887. 2. State *v.* Fowler, 13 Idaho 317, 89 Pac. 757 (acceptance of money from defendant).

Subsequent Marriage of the Accused, etc. — State *v.* Falsetta, 143 Wash. 159, 86 Pac. 168.

4. Palmer *v.* Baum, 123 Ill. App. 584 (action by father of female); Champagne *v.* Hamey, 189 Mo. 709, 88 S. W. 92; Linville *v.* Green, 125 Mo. App. 289, 102 S. W. 67.

5. Linville *v.* Green, 125 Mo. App. 280, 102 S. W. 67 (consent to the act of sexual intercourse held to condone the assault).

13. Palmer *v.* Baum, 123 Ill. App. 584 (not authorized under the circumstances).

RATE.

888. 4. **"The Word 'rate,' as Used in the Interstate Commerce Law,** means the net cost to the shipper of the transportation of his property, that is to say, the net amount the carrier receives from the shipper and retains." U. S. *v.* Chicago, etc., R. Co., 148 Fed. 646.

REAL ESTATE.

893. 3. Westchester Trust Co. *v.* Hobbey Bottling Co., 102 N. Y. App. Div. 464, 92 N. Y. Supp. 482, *affirmed* 185 N. Y. 577, 78 N. E. 1114.

REAL ESTATE BROKERS.

898. 1. Brown *v.* Gilpin, (Kan. 1907) 90 Pac. 267.

899. 1. Com. *v.* Real Estate Trust Co., 26 Pa. Super. Ct. 153; Com. *v.* Samuel W. Block Co., 34 Pa. Super. Ct. 431; Pile *v.* Carpenter, 118 Tenn. 288, 99 S. W. 360.

A Broker of Another Jurisdiction who comes into a state for the purpose of negotiating a single sale is not required to take out a license. Callaway *v.* Prettyman, 218 Pa. St. 293, 67 Atl. 418.

See also *infra*, **912.** 4.

2. Madler *v.* Pozorski, 124 Wis. 477, 102 N. W. 892. See also Wright *v.* Isaacks, (Tex. Civ. App. 1906) 95 S. W. 55.

3. Groscup *v.* Downey, 105 Md. 273, 65 Atl. 930; Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213; Southack *v.* Ireland, 109 N. Y. App. Div. 45, 95 N. Y. Supp. 621.

4. See Colloty *v.* Schuman, (N. J. 1907) 66 Atl. 933; J. B. Watkins Land Mortg. Co. *v.* Thetford, (Tex. Civ. App. 1906) 96 S. W. 72.

5. See Grien *v.* Brady, (Ala. 1907) 44 So. 408.

Written Authorization Necessary. Blood good *v.* Short, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 286, 98 N. Y. Supp. 775; Hochbaum *v.* Rotter, (Supm. Ct. App. T.) 101 N. Y. Supp. 531.

6. Shanks *v.* Michael, 4 Cal. App. 553, 88 Pac. 596; Tate *v.* Aitken, 5 Cal. App. 505, 90 Pac. 836.

7. Nonjoinder of Wife in Contract for Sale of Homestead. — Kepner *v.* Ford, (N. Dak. 1907) 111 N. W. 619.

900. 1. The Owner of an Undivided Interest in a tract of land may bind himself personally to pay a commission on the sale of the whole thereof. Anderson *v.* Lewis, (W. Va. 1908) 61 S. E. 160.

2. See Lamb *v.* Prettyman, 33 Pa. Super. Ct. 190; Varn *v.* Pelot, (Fla. 1908) 45 So. 1015; Stephens *v.* Bailey, (Ala. 1906) 42 So. 741; Fay *v.* Sullens, 15 Okla. 171, 81 Pac. 426; Bassford *v.* West, 124 Mo. App. 248, 101 S. W. 610; Harris *v.* Reynolds, (N. Dak. 1907) 114 N. W. 369; Weaver *v.* Snively, 73 Neb. 35, 102 N. W. 77.

Estoppel to Deny Employment. — Northup *v.* Bathrick, (Neb. 1907) 113 N. W. 808.

4. Writing Necessary — *California.* — Logan *v.* McMullen, 4 Cal. App. 154, 87 Pac. 285; Shanks *v.* Michael, 4 Cal. App. 554, 88 Pac. 596; Davis *v.* Trachsler, 3 Cal. App. 554, 86 Pac. 610.

Michigan. — Stuart *v.* Mattern, 141 Mich. 686, 105 N. W. 35.

Montana. — Marshall *v.* Therise, 33 Mont. 28, 81 Pac. 400; Blankenship *v.* Decker, 34 Mont. 292, 85 Pac. 1035.

Nebraska. — Lucas *v.* County Recorder, 75 Neb. 351, 106 N. W. 217; Tracy *v.* Dean, (Neb. 1906) 109 N. W. 505; Myers *v.* Moore, (Neb. 1907) 110 N. W. 989; Smith *v.* Aultz, (Neb. 1907) 110 N. W. 1015.

New Jersey. — Mendles *v.* Danish, (N. J. 1907) 65 Atl. 888.

New York. — Flower *v.* Kassel, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 341, 93 N. Y. Supp. 563.

Washington. — Keith *v.* Smith, 46 Wash. 131, 89 Pac. 473; Briggs *v.* Bounds, (Wash. 1908) 94 Pac. 101.

Conflict of Laws. — Callaway *v.* Prettyman, 218 Pa. St. 293, 67 Atl. 418.

Written Authority to One Partner is a sufficient authorization to the firm to support an action by the firm for commission. Cox *v.* Hawke, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 106, 96 N. Y. Supp. 433.

The Burden Is on the Broker to prove that at the time he made the sale he had the written authority required by the statute. Turner *v.* Lane, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 387, 93 N. Y. Supp. 1084.

Terms and Description. — Gault Lumber Co. *v.* Pyles, (Okla. 1907) 92 Pac. 175.

Specific Performance May Be Enforced although the contract of employment was not in writing. Roberts *v.* Hilton Land Co., 45 Wash. 464, 88 Pac. 947.

Subscription of Contract by Parties Required. — Myers *v.* Moore, (Neb. 1907) 110 N. W. 989.

Necessity for Sale. — Alpern *v.* Klein, (N. J. 1908) 68 Atl. 799.

Written Contract Required by Statute May Be Evidenced by Letters Passing between Parties. — Isphording *v.* Wolf, 36 Ind. App. 250, 75 N. E. 598; Holbrook-Blackwelder Real Estate, etc., Co. *v.* Hartman, (Mo. App. 1908) 106 S. W. 1115; Holliday *v.* McWilliams, (Neb. 1906) 107 N. W. 578; Getzelsohn *v.* Donnelly, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 164, 98 N. Y. Supp. 213.

Missouri Statute. — Rothwell *v.* Gibson, 121 Mo. App. 279, 98 S. W. 802; Finley *v.* Handley, 121 Mo. App. 358, 98 S. W. 803; Mercantile Trust Co. *v.* Niggeman, 119 Mo. App. 56, 96 S. W. 293; Holbrook-Blackwelder Real Estate, etc., Co. *v.* Hartman, (Mo. App. 1908) 106 S. W. 1115; Stoehlin *v.* Hoffmeister, 121 Mo. App. 24, 97 S. W. 970.

New York. — The section of the Penal Code (Laws 1901, p. 312, c. 128) which made it an offense to offer to sell real property without written authority was held unconstitutional by the Appellate Division in the Second Department, but was sustained in the First Department. Turner *v.* Lane, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 387, 93 N. Y. Supp. 1083; Cox *v.* Hawke, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 106, 96 N. Y. Supp. 433; Tieck *v.* McKenna, 115 N. Y. App. Div. 701, 101 N. Y. Supp. 319; Hochbalm *v.* Rotter, (Supm. Ct. App. T.) 101 N. Y. Supp. 531. See also Strunski *v.* Geiger, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 134, 101 N. Y. Supp. 786; Levy *v.* Timble, (Supm. Ct. App. T.) 94 N. Y. Supp. 4; Lovejoy *v.* Weil, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 611, 95 N. Y. Supp. 552; Imperato *v.* Wasboe, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 150, 93 N. Y. Supp. 490; Hough *v.* Baldwin, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 546, 99 N. Y. Supp. 545. See also Smyth *v.* Sichel, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 643, 97 N. Y. Supp. 1008; Larkin *v* Radosta, 119 N. Y. App. Div. 515, 104 N. Y. Supp. 165.

Right to Recover Compensation under Oral Contract. — See *infra*, **913.** 1.

Right to Recover Sums Retained by Broker. — See *infra*, **905.** 8.

Writing Not Necessary. — Friedman *v.* Suttle, (Ariz. 1906) 85 Pac. 726; McCurry *v.* Hawkins, 83 Ark. 202, 103 S. W. 600; Long *v.* Thompson, 73 Kan. 76, 84 Pac. 552; Kepner *v.* Ford, (N. Dak. 1907) 111 N. W. 619; Dal *v.* Fischer, (S. Dak. 1906) 107 N. W. 535; Kaley *v.* Van Ostrand, (Wis. 1908) 114 N. W. 819.

5. Thuman *v.* Best, 97 L. T. N. S. 239; Bell *v.* Rokeby, 15 Manitoba 327; Crosthwaite *v.* Lebus, 146 Ala. 525, 41 So. 853; Brown *v.* Gilpin, (Kan. 1907) 90 Pac. 267; Rowland *v.* Hall, 121 N. Y. App. Div. 459, 106 N. Y. Supp. 55; Raleigh Real Estate, etc., Co. *v.* Adams, 145 N. Car. 161, 58 S. E. 1008; Goder *v.* Randol, 16 Okla. 310, 16 Pac. 537, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 900. See also Louis Bergdoll Brewing Co. *v.* Babe, 33 Pa. Super. Ct. 490. See also Wiggins *v.* Wilson, (Fla. 1908) 45 So. 1011.

6. **Parol Evidence to Vary Written Contract.** — Loxley *v.* Studebacker, (N. J. 1907) 68 Atl. 98.

8. Stuart *v.* Mattern, 141 Mich. 686, 105 N.

W. 35; Ross *v.* Moskowitz, (Tex. Civ. App. 1906) 95 S. W. 86.

10. Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372; Braden *v.* Randles, 128 Iowa 653, 105 N. W. 195; Quinn *v.* Burton, (Mass. 1907) 81 N. E. 251; Remple *v.* Hopkins, 101 Minn. 3, 111 N. W. 385; Van Kuelt *v.* Epstein, 202 Mo. 173, 99 S. W. 1077; Anderson *v.* Wheeler, 125 Mo. App. 406, 102 S. W. 628; Low *v.* Woodbury, 107 N. Y. App. Div. 298, 95 N. Y. Supp. 336; Lease *v.* Christy, 28 Pa. Super. Ct. 507;; Henderson *v.* Sonneborn, 30 Pa. Super. Ct. 182; Lee *v.* Patillo, 105 Va. 10, 52 S. E. 696.

901. 2. Bradley *v.* Elliott, 11 Ont. L. Rep. 398.

3. Jasper *v.* Wilson, (N. Mex. 1908) 94 Pac. 951.

4. *England.* — Thuman *v.* Best, 97 L. T. N. S. 239.

Canada. — Gilmour *v.* Simon, 37 Can. Sup. Ct. 422, *affirming* 15 Manitoba 205.

District of Columbia. — Dotson *v.* Milliken, 27 App. Cas. (D. C.) 500.

Kansas. — Sullivant *v.* Jahren, 71 Kan. 127, 79 Pac. 1071; Brown *v.* Gilpin, (Kan. 1907) 90 Pac. 267.

Minnesota. — Larson *v.* O'Hara, 98 Minn. 71, 107 N. W. 821.

New Jersey. — Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1107.

New York. — Rowland *v.* Hall, 121 N. Y. App. Div. 459, 106 N. Y. Supp. 55.

Ohio. — Weatherhead *v.* Ettinger, (Ohio 1908) 84 N. E. 598.

Washington. — Sylliaasen *v.* Hanson, (Wash. 1908) 94 Pac. 187.

8. Brown *v.* Gilpin, (Kan. 1907) 90 Pac. 267; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228; Frahm *v.* Metcalf, 75 Neb. 241, 106 N. W. 227.

Ratification. — A contract made by a broker without written authority may be ratified by the owner orally. Gregg *v.* Carey, 4 Cal. App. 354, 88 Pac. 282.

9. Colvin *v.* Blanchard, (Tex. 1908) 106 S. W. 323, *affirming* (Tex. Civ. App. 1907) 103 S. W. 1118.

10. Boyle *v.* Grassick, 2 West. L. Rep. (Can.) 284, *reversing* 2 West. L. Rep. (Can.) 99; Brown *v.* Gilpin, (Kan. 1907) 90 Pac. 257; Larson *v.* O'Hara, 98 Minn. 71, 107 N. W. 821; Gault Lumber Co. *v.* Pyles, (Okla. 1907) 92 Pac. 175; Ettinger *v.* Weatherhead, 29 Ohio Cir. Ct. 137.

902. 2. See J. B. Watkins Land Mortg. Co. *v.* Campbell, (Tex. 1907) 101 S. W. 1078.

3. Smith *v.* Merrill (Wis. 1908) 114 N. W. 508.

4. Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213.

5. Mercantile Trust Co. *v.* Niggeman, 119 Mo. App. 56, 96 S. W. 293 (construing Acts 1903, p. 161, see *supra* **900.** 4); Ettinger *v.* Weatherhead, 29 Ohio Cir. Ct. 137; Roberts *v.* Hilton Land Co., 45 Wash. 464, 88 Pac. 947.

Contract Made by Owner. — Sharp *v.* Hoopes, (N. J. 1906) 64 Atl. 989.

Where Authority to Contract Sale Must Be in Writing, Ratification Must Be in Writing. — Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651.

9. Oliver *v.* Sattler, 233 Ill. 536, 84 N. E. 652; Hunt *v.* Tuttle, 133 Iowa 647, 110 N. W. 1026; Winders *v.* Hill, 141 N. Car. 694, 54 S. E. 440; Colvin *v.* Blanchard, (Tex. 1908) 106 S. W. 323, *affirming* (Tex. Civ. App. 1907) 103 S. W. 1118.

903. 2. Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1107.

6. Millard *v.* Smith, 119 Mo. App. 701, 95 S. W. 940.

7. Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82.

Ignoring Transaction Not a Ratification. — Colvin *v.* Blanchard, (Tex. 1908) 106 S. W. 323, *affirming* (Tex. Civ. App. 1907) 103 S. W. 1118.

9. *California.* — Title Ins., etc., Co. *v.* Grider, (Cal. 1908) 94 Pac. 601.

Georgia. — Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259.

Iowa. — Ryan *v.* Page, 134 Iowa 60, 111 N. W. 405.

Kentucky. — Hurst *v.* Williams, (Ky. 1907) 102 S. W. 1176.

Michigan. — Horton *v.* Immen, 145 Mich. 438, 108 N. W. 746; Dekker *v.* Klingman, 149 Mich. 96, 112 N. W. 727; Beadle *v.* Sage Land, etc., Co., 140 Mich. 199, 103 N. W. 554.

New Jersey. — Loxley *v.* Studebacker, (N. J. 1908) 68 Atl. 98.

New York. — Donovan *v.* Weed, 182 N. Y. 43, 74 N. E. 563, *reversing* 86 N. Y. App. Div. 630, 83 N. Y. Supp. 682.

North Carolina. — Satterthwaite *v.* Goodyear, 137 N. Car. 302.

South Dakota. — Ewing *v.* Lunn, (S. Dak. 1908) 115 N. W. 527.

West Virginia. — Ice *v.* Maxwell, 61 W. Va. 9, 55 S. E. 899.

Wisconsin. — Grieb *v.* Koeffler, 127 Wis. 314, 106 N. W. 113.

Waiver of Performance within Agreed Time. — Holbrook-Blackwelder Real Estate, etc., Co. *v.* Hartman, (Mo. App. 1908) 106 S. W. 1115; Ice *v.* Maxwell, 61 W. Va. 9, 55 S. E. 899.

Extension of Time Should Be Pleaded. — Leuschner *v.* Patrick, (Tex. Civ. App. 1907) 103 S. W. 664.

904. 1. See Loxley *v.* Studebacker, (N. J. 1907) 68 Atl. 98.

3. Hanna *v.* Espalla, (Ala. 1906) 42 So. 443; Hurst *v.* Williams, (Ky. 1907) 102 S. W. 1176; Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; Staehlin *v.* Kramer, 118 Mo. App. 329, 94 S. W. 785; Bassford *v.* West, 124 Mo. App. 248, 101 S. W. 610; Donovan *v.* Weed, 182 N. Y. 43, 74 N. E. 563, *reversing* 86 N. Y. App. Div. 630, 83 N. Y. Supp. 682; Mengis *v.* Fitzgerald, 108 N. Y. App. Div. 24, 95 N. Y. Supp. 436. See Kauffman *v.* Baillie, (Wash. 1907) 89 Pac. 548; Grieb *v.* Koeffler, 127 Wis. 314, 106 N. W. 113; Oliver *v.* Katz, 131 Wis. 409, 111 N. W. 509.

Broker Suing for Commission Must Prove Sale within Reasonable Time. — Harris *v.* Moore, 134 Iowa 704, 112 N. W. 163.

A Sale Made Ten Years after the creation

of the agency to sell has been held to entitle the broker to recover commission. Hartford *v.* McGillicuddy, (Me. 1907) 68 Atl. 860.

Where the Owner Has Consummated the Sale which was brought about by the broker, he is in no position to claim that it was not made within a reasonable time. Morgan *v.* Keller, 194 Mo. 663, 92 S. W. 75.

4. Wiggins *v.* Wilson, (Fla. 1908) 45 So. 1011; Girardeau *v.* Gibson, 122 Ga. 313, 50 S. E. 91; Hill *v.* Wheeler, 2 Ga. App. 349, 58 S. E. 502; Walker *v.* Baldwin, (Md. 1907) 68 Atl. 25; Smith *v.* Kimball, 193 Mass. 582, 79 N. E. 800; Staehlin *v.* Kramer, 118 Mo. App. 329, 94 S. W. 785; Donovan *v.* Weed, 182 N. Y. 43, 74 N. E. 563, *reversing* 86 N. Y. App. Div. 630, 83 N. Y. Supp. 682; Stone *v.* Plant, (Supm. Ct. App. T.) 96 N. Y. Supp. 1030.

The Lapse of Four or Five Months between the time of the agreement and the date of the sale does not warrant a conclusion that the contract has been abandoned by the parties. Burd *v.* Webster, 128 Wis. 118, 107 N. W. 23.

Evidence. — Clements *v.* Stapleton, (Iowa 1907) 113 N. W. 546.

8. See Bowersox *v.* Hall, 73 Kan. 99, 84 Pac. 557; Wells *v.* Cochran, (Neb. 1907) 111 N. W. 381.

905. 8. Borst *v.* Lynch, 133 Iowa 567, 110 N. W. 1031; Deter *v.* Jackson, (Kan. 1907) 92 Pac. 546. See also Buchanan *v.* Randall, (S. Dak. 1906) 109 N. W. 513.

Profits Made by Broker by Breach of Duty Belong to Principal. — Remple *v.* Hopkins, 101 Minn. 3, 111 N. W. 385.

That the Contract of Employment was Not in Writing, as required by the statute, will not enable the broker to retain the difference between the purchase price and the amount represented to owner. Merriman *v.* Thompson, (Wash. 1908) 93 Pac. 1075.

906. 1. See Owen *v.* Matthews, 123 Mo. App. 463, 100 S. W. 492.

2. Mabry *v.* Randolph, (Cal. App. 1908) 94 Pac. 403; Kingsley *v.* Wheeler, 95 Minn. 360, 104 N. W. 543. See also Pomeroy *v.* Werner, 167 Ind. 440, 78 N. E. 235; Guidetti *v.* Tuoti, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 657, 102 N. Y. Supp. 490.

Broker Considered as Trustee for Principal. — Johnson *v.* Hayward, 74 Neb. 157, 103 N. W. [illegible].

Conveyance to Broker May Be Canceled. — Holtzman *v.* Linton, 27 App. Cas. (D. C.) 241.

Necessity of Vigilance by Owner. — Bartleson *v.* Vanderhoff, 96 Minn. 184, 104 N. W. 820.

3. **A Broker, by Whose Negligence** his principal is compelled to pay off incumbrances on the property, is liable for the amount so paid. Hinricks *v.* Brady, (S. Dak. 1906) 108 N. W. [illegible].

8. **If the Broker Practice a Deceit** while acting within the scope of his authority and his principal accepts the benefits derived from the misrepresentations, the principal is liable. Krolik *v.* Curry, 148 Mich. 214, 111 N. W. 761.

907. 1. Bloodgood *v.* Short, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 286, 98 N. Y. Supp. 775; Rowland *v.* Hall, 121 N. Y. App. Div. 459, 106 N. Y. Supp. 55. See also Doolittle *v.* Murray, 134 Iowa 536, 111 N. W. 999.

[illegible] McClure, (C. C. A.) 154 Fed. 647.

Alabama. — Green *v.* Southern States Lumber Co., 141 Ala. 686, 37 So. 670, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 907.

Arkansas. — Featherston *v.* Trone, 82 Ark. 381, 102 S. W. 196, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 907.

California. — Rauer's Law, etc., Co. *v.* Bradbury, 3 Cal. App. 256, 84 Pac. 1007.

Georgia. — Gann *v.* Zettler, 3 Ga. App. 589, 60 S. E. 283; Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372.

Iowa. — Redmond *v.* Henke, (Iowa 1908) 114 N. W. 885.

Massachusetts. — Quinn *v.* Burton, (Mass. 1907) 81 N. E. 257.

Missouri. — Corder *v.* O'Neill, 207 Mo. 32, 106 S. W. 10; Owen *v.* Matthews, 123 Mo. App. 463, 100 S. W. 492; Winter *v.* Carey, 127 Mo. App. 601, 106 S. W. 539.

New York. — Perkins *v.* Underhill, 118 N. Y. App. Div. 170, 103 N. Y. Supp. 25; Bellin *v.* Wein, (Supm. Ct. App. T.) 104 N. Y. Supp. 360; Hann *v.* Brettler, (Supm. Ct. App. T.) 107 N. Y. Supp. 78; Nekarda *v.* Presberger, 123 N. Y. App. Div. 418, 107 N. Y. Supp. 897; Richtberg *v.* Carlton, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 186, 108 N. Y. Supp. 1067.

Pennsylvania. — Evans *v.* Rockett, 32 Pa. Super. Ct. 365.

Texas. — Shropshire *v.* Adams, (Tex. Civ. App. 1905) 89 S. W. 448.

Washington. — [illegible] (Wash. [illegible]) Wash. 284, 84 Pac. 861.

West Virginia. — Truslow *v.* Parkersburg Bridge, etc., R. Co., 61 W. Va. 628, 57 S. E. 51.

Wisconsin. — Tasse *v.* Kindt, 125 Wis. 631, 104 N. W. 703.

3. McLure *v.* Luke, (C. C. A.) 154 Fed. 647; Featherston *v.* Trone, 82 Ark. 381, 102 S. W. 196, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 907; Quinn *v.* Burton, (Mass. 1907) 81 N. E. 257.

4. Mitchell *v.* Duke, 134 Fed. 999; Keach *v.* Bunn, 116 Ill. App. 307, *affirmed* 214 Ill. 250, 73 N. E. 419; Quinn *v.* Burton, (Mass. 1907) 81 N. E. 257; Wasser *v.* Western Land Securities Co., 97 Minn. 460, 107 N. W. 160; Cook *v.* Piatt, 126 Mo. App. 553, 104 S. W. 1131; Tieck *v.* M'Kenna, 115 N. Y. App. Div. 701, 101 N. Y. Supp. 317; Shropshire *v.* Adams, (Tex. Civ. App. 1905) 89 S. W. 448.

Burden of Proving Consent Is on Broker. — McClure *v.* Luke, (C. C. A.) 154 Fed. 647.

Consent Not Inferred from Silence or Failure to Dissent. — Evans *v.* Rockett, 32 Pa. Super. Ct. 365.

908. 3. Steele *v.* Lawyer, (Wash. 1907) 91 Pac. 958. See also Northup *v.* Bathrick, (Neb. 1907) 113 N. W. 808.

909. 1. Rankin *v.* Cardillo, 38 Colo. 216, 88 Pac. 170; Witherbee *v.* Walker, (Colo. 1908) 93 Pac. 1118; Peck *v.* Slifer, 122 Ill. App. 21; Walker *v.* Baldwin, (Md. 1907) 68 Atl. 25; Hudson Real Estate Co. *v.* Bauer, (N. J. 1906) 64 Atl. 954; Lord *v.* Citizens' Steamboat Co., 106 N. Y. App. Div. 610, 94 N. Y. Supp. 98; Perkins *v.* Underhill, 118 N. Y. App. Div. 170, 103 N. Y. Supp. 25; Dickinson *v.* Hahn, 19 S. Dak. 525, 104 N. W. 247; Nance

v. Smyth, 118 Tenn. 349, 99 S. W. 698, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 909, 910, 911; O'Keefe *v.* Stephenson, (Wis. 1908) 115 N. W. 805.

Evidence as to Whether Broker Was Procuring Cause. — Morris *v.* McDaniel, 127 Mo. App. 689, 106 S. W. 1107; Lockhart *v.* Hamlin, 190 N. Y. 132, 82 N. E. 1094, *reversing* 116 N. Y. App. Div. 921, 101 N. Y. Supp. 1129; Hawes *v.* Corporation Liquidation Co., 103 N. Y. App. Div. 602, 93 N. Y. Supp. 8; Osorio *v.* Burlington Realty, etc., Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 745; Coogan *v.* Beller, (Supm. Ct. App. T.) 109 N. Y. Supp. 966. See also Fenimore *v.* White, (Neb. 1907) 111 N. W. 204.

2. *Alabama.* — Lunsford *v.* Bailey, 142 Ala. 319, 38 So. 362.

Arkansas. — Hunton *v.* Marshall, 76 Ark. 375, 88 S. W. 963.

Idaho. — Wood *v.* Broderson, 12 Idaho 190, 85 Pac. 490.

Illinois. — McCann *v.* Mayer, 232 Ill. 507, 83 N. E. 1042.

Iowa. — Murphy *v.* Hiltibridle, 132 Iowa 114, 109 N. W. 471; Wallick *v.* Lynch, (Iowa 1906) 106 N. W. 617.

Massachusetts. — Carnes *v.* Finigan, (Mass. 1908) 84 N. E. 324.

Minnesota. — Goodspeed *v.* Miller, 98 Minn. 457, 108 N. W. 817.

Missouri. — Harrison *v.* Lakeman, 189 Mo. 581, 88 S. W. 53.

New York. — O'Shea *v.* Brill, (Supm. Ct. App. T.) 108 N. Y. Supp. 1020; Schubert *v.* Kaplan, (Supm. Ct. App. T.) 109 N. Y. Supp. 720.

Washington. — Gault *v.* Bradshaw, (Wash. 1908) 93 Pac. 534.

Wisconsin. — Bowe *v.* Gage, 127 Wis. 245, 106 N. W. 1074.

910. 1. *Illinois.* — Rigdon *v.* More, 226 Ill. 382, 80 N. E. 901, *reversing* 128 Ill. App. 447; Finkelstein *v.* Spurck, 115 Ill. App. 521.

Iowa. — Lewis *v.* Susmilch, 130 Iowa 203, 106 N. W. 624.

Missouri. — Morgan *v.* Keller, 194 Mo. 663, 92 S. W. 75; Sallee *v.* McMurray, 113 Mo. App. 253, 88 S. W. 157; Staehlin *v.* Kramer, 118 Mo. App. 329, 94 S. W. 785; Bassford *v.* West, 124 Mo. App. 248, 101 S. W. 610; Glade *v.* Eastern Illinois Min. Co., (Mo. App. 1908) 107 S. W. 1002.

New York. — Southwick *v.* Smavienski, 114 N. Y. App. Div. 681, 99 N. Y. Supp. 1079.

Texas. — Ross *v.* Moskowitz, (Tex. Civ. App. 1905) 95 S. W. 86; Hahl *v.* Wickes, (Tex. Civ. App. 1906) 97 S. W. 838; Gray *v.* Carroll, (Tex. Civ. App. 1907) 105 S. W. 214.

Formal Introduction of Purchaser by Broker Not Necessary. — McCroy *v.* Pfost, 118 Mo. App. 672, 94 S. W. 998. See also Grieb *v.* Koeffler, 127 Wis. 314, 106 N. W. 113.

2. Shannon *v.* Potts, 117 Ill. App. 80; Storer *v.* Markley, 164 Ind. 535, 73 N. E. 1081; Coates *v.* Locust Point Co., 102 Md. 291, 62 Atl. 625; Wolverton *v.* Tuttle, (Oregon 1908) 94 Pac. 961.

3. Maloon *v.* Barrett, 192 Mass. 552, 78 N. E. 560; Elmendorf *v.* Golden, 37 Wash. 664, 80 Pac. 264.

4. Mitchell *v.* Duke, 134 Fed. 999; Hill *v.* McCoy, 1 Cal. App. 159, 81 Pac. 1015; Enochs *v.* Paxton, 87 Miss. 660, 40 So. 14; Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; Staehlin *v.* Kramer, 118 Mo. App. 329, 94 S. W. 785; Bassford *v.* West, 124 Mo. App. 248, 101 S. W. 610; Holland *v.* Vinson, 124 Mo. App. 417, 100 S. W. 1131; Gilmour *v.* Freshaur, 126 Mo. App. 299, 102 S. W. 1107; Kinsland *v.* Grimshawe, (N. Car. 1907) 59 S. E. 1000; Bowman *v.* Hartman, 27 Ohio Cir. Ct. 309, *affirmed* 74 Ohio St. 509, 78 N. E. 1126. See *infra* **915.** 2, **919.** 1.

911. 1. Indiana Fruit Co. *v.* Sandlin, 125 Ga. 222, 54 S. E. 65; Painter *v.* Kilgore, (Tex. Civ. App. 1907) 101 S. W. 809; West *v.* Thompson, (Tex. Civ. App. 1908) 106 S. W. 1134; Walker *v.* Baldwin, (Md. 1907) 68 Atl. 25.

2. Hudson Real Estate Co. *v.* Bauer, (N. J. 1906) 64 Atl. 954; Nance *v.* Smyth, 118 Tenn. 349, 99 S. W. 698, *citing* 23 Am. and Eng. Encyc. of Law 2d ed.) 909, 910, 911.

3. Hill *v.* McCoy, 1 Cal. App. 159, 81 Pac. 1015; Rothenburger *v.* Schoniger, (Ky. 1907) 99 S. W. 1150; Walker *v.* Baldwin, (Md. 1907) 68 Atl. 25; Cadigan *v.* Crabtree, 192 Mass. 233, 78 N. E. 412; Hudson Real Estate Co. *v.* Bauer, (N. J. 1906) 64 Atl. 954; Lockhart *v.* Hamlin, 190 N. Y. 132, 82 N. S. 1094, *reversing* 116 N. Y. App. Div. 921, 101 N. Y. Supp. 1129; Geoghegan *v.* Chatterton, 113 N. Y. App. Div. 835, 99 N. Y. Supp. 702; Kirwan *v.* Pizer, (Supm. Ct. App. T.) 109 N. Y. Supp. 739.

5. Stephens *v.* Bailey, (Ala. 1906) 42 So. 740, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 911, 912; Kaake *v.* Griswold, 104 N. Y. App. Div. 137, 93 N. Y. Supp. 459; Shapiro *v.* Shapiro, 117 N. Y. App. Div. 817, 103 N. Y. Supp. 305; Harris *v.* Reynolds, (N. Dak. 1907) 114 N. W. 369; Henderson *v.* Sonneborn, 30 Pa. Super. Ct. 182; Calloway *v.* Stobart, 35 Can. Sup. Ct. 301, *affirming* 14 Manitoba 650.

Admissibility of Evidence on Question of Employment. — Wefel *v.* Stillman, (Ala. 1907) 44 So. 203; Heyman *v.* Singer, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 18, 99 N. Y. Supp. 942; Denton *v.* Howell, (Tex. Civ. App. 1905) 87 S. W. 221; St. Louis Southern R. Co. *v.* Irvine, (Tex. Civ. App. 1905) 89 S. W. 428.

Facts or Evidence Sufficient to Show Employment. — Gamble *v.* Cleveland Cliffs Iron Co., (C. C. A.) 158 Fed. 49; Rigdon *v.* More, 226 Ill. 382, 80 N. E. 901; Luckett Land, etc., Co. *v.* Brown, 118 La. 943, 43 So. 628; Warren Commission, etc., Co. *v.* Leon L. Hull Real Estate Co., 120 Mo. App. 432, 96 S. W. 1038; Lifschitz *v.* Schwartz, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 579.

Facts Not Showing Employment — *Alabama.* — Wefel *v.* Stillman, (Ala. 1907) 44 So. 203.

Colorado. — Clammer *v.* Eddy, (Colo. 1907) 92 Pac. 722.

Maryland. — Walker *v.* Baldwin, (Md. 1907) 68 Atl. 25.

Massachusetts. — Quinn *v.* Burton, 188 Mass. 466, 74 N. E. 942.

New York. — Kaake *v.* Griswold, 104 N. Y. App. Div. 137, 93 N. Y. Supp. 459; Neumann *v.* Welkowitz, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 632, 97 N. Y. Supp. 980; Lederer *v.* McElroy, 112 N. Y. App. Div. 205, 98 N. Y. Supp. 247; Davenport *v.* Corbett, 112 N. Y.

App. Div. 382, 98 N. Y. Supp. 403; Morris *v.* Doundt, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 6, 99 N. Y. Supp. 844; Lotz *v.* Levy, 120 N. Y. App. Div. 477, 104 N. Y. Supp. 1058; Denton *v.* Abrams, 120 N. Y. App. Div. 593, 102 N. Y. Supp. 2; Osorio *v.* Burlington Realty, etc., Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 745; Hodge *v.* Appelles, 122 N. Y. App. Div. 437, 107 N. Y. Supp. 170; Mengis *v.* Fitzgerald, 108 N. Y. App. Div. 24, 95 N. Y. Supp. 436; Peace *v.* Ross, 123 N. Y. App. Div. 611, 108 N. Y. Supp. 48; Coogan *v.* Beller, (Supm. Ct. App. T.) 109 N. Y. Supp. 966.

Texas. — Fordtran *v.* South End Land Co., (Tex. Civ. App. 1907) 105 S. W. 323.

Washington. — Krug *v.* Hendricks, 41 Wash. 410, 83 Pac. 417; Steele *v.* Lawyer, (Wash. 1907) 91 Pac. 958.

6. Stephens *v.* Bailey, (Ala. 1906) 42 So. 740, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 911, 912; Quale *v.* Hazel, 19 S. Dak. 483, 104 N. W. 215; Ice *v.* Maxwell, 61 W. Va. 9, 55 S. E. 899.

912. 2. Stephens *v.* Bailey, (Ala. 1906) 42 So. 740, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 911, 912; Staehlin *v.* Kramer, 118 Mo. App. 329, 94 S. W. 785; Ballentine *v.* Mercer, (Mo. App. 1908) 109 S. W. 1037; Tuck *v.* M'Kenna, 115 N. Y. App. Div. 701, 101 N. Y. Supp. 317; Fleming *v.* Withrow, 38 Nova Scotia 492.

3. Stephens *v.* Bailey, (Ala. 1906) 42 So. 740, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 911, 912; British American Land, etc., Co. *v.* Western Land, etc., Co., 99 Minn. 429, 109 N. W. 826; Ballentine *v.* Mercer, (Mo. App. 1908) 109 S. W. 1037; Carter *v.* Moss, 210 Pa. St. 612, 60 Atl. 310; Miller *v.* Mosely, (Tex. Civ. App. 1905) 91 S. W. 648; Oliver *v.* Katz, 131 Wis. 409, 111 N. W. 509; Schultz *v.* Eberle, 124 Wis. 594, 102 N. W. 1055; Kaley *v.* Van Ostrand, (Wis. 1908) 114 N. W. 819. See also Mestler *v.* Jeffries, 145 Mich. 598, 108 N. W. 994; Bartleson *v.* Vanderhoff, 96 Minn. 184, 104 N. W. 820.

4. Reeder *v.* Jones, (Del. 1902) 65 Atl. 571; Sprague *v.* Reilly, 34 Pa. Super. Ct. 332; Pile *v.* Carpenter, 118 Tenn. 288, 99 S. W. 360.

The fact that the broker was not licensed when an option is exercised and the sale consummated does not prevent his recovering commissions on the sale, which is the result of work done by him when he was licensed. Coates *v.* Locust Point Co., 102 Md. 291, 62 Atl. 625.

5. Coates *v.* Locust Point Co., 102 Md. 291, 62 Atl. 625; Walker *v.* Baldwin, 103 Md. 352, 63 Atl. 362; J. B. Watkins Land Mortg. Co. *v.* Thetford, (Tex. Civ. App. 1906) 96 S. W. 72; Cobb *v.* Dunlevie, (W. Va. 1908) 60 S. E. 384.

Plaintiff Not in Business as Broker. — Packer *v.* Sheppard, 127 Ill. App. 601.

7. Wood *v.* Palmer, (Mich. 1908) 115 N. W. 242; Myers *v.* Coleman, (Miss. 1908) 46 So. 249; Bayles *v.* Robinson, (Supm. Ct. App. T.) 102 N. Y. Supp. 755. See also Knotts *v.* Midkiff, 114 La. 234, 38 So. 153; Sterling *v.* De Laune, (Tex. Civ. App. 1907) 105 S. W. 1169.

8. See Campbell *v.* Lombardo, (Ala. 1907) 44 So. 862.

913. 1. **Necessity that Contract Be in Writing.** — Rothwell *v.* Gibson, 121 Mo. App. 279, 98 S. W. 801; Finley *v.* Handley, 121 Mo. App. 358, 98 S. W. 803; Turner *v.* Lane, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 387, 93 N. Y. Supp. 1083; Bloodgood *v.* Short, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 286, 98 N. Y. Supp. 775; Strunski *v.* Geiger, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 134, 101 N. Y. Supp. 786 (both giving effect to Penal Code, § 640*d*). But see Cox *v.* Hawke, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 106, 96 N. Y. Supp. 433; Tieck *v.* M'Kenna, 115 N. Y. App. Div. 701, 101 N. Y. Supp. 319. See also Provident Trust Co. *v.* Darrough, 168 Ind. 29, 78 N. E. 1030; Phillips *v.* Jones, 39 Ind. App. 626, 80 N. E. 555; Zimmerman *v.* Zehender, 164 Ind. 466, 73 N. E. 920; Tracy *v.* Dean, (Neb. 1906) 109 N. W. 505; Barney *v.* Lasbury, (Neb. 1906) 107 N. W. 989; Rodenbrock *v.* Gress, 74 Neb. 409, 104 N. W. 758.

2. *Illinois.* — Ballard *v.* Shea, 121 Ill. App. 135

Iowa. — See Stotts *v.* Miller, 128 Iowa 633, 105 N. W. 127.

Michigan. — Keating *v.* Haley, 147 Mich. 279, 110 N. W. 943.

Missouri. — Ballentine *v.* Mercer, (Mo. App. 1908) 109 S. W. 1037.

New York. — McVickar Gaillard Realty Co. *v.* Garth, 111 N. Y. App. Div. 924, 97 N. Y. Supp. 640; Freeman *v.* Polstein, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 644, 97 N. Y. Supp. 1032; Shapiro *v.* Nadler, (Supm. Ct. App. T.) 99 N. Y. Supp. 879; Greenfield *v.* Koplan, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 132, 101 N. Y. Supp. 567.

South Dakota. — Ball *v.* Dolan, (S. Dak. 1908) 114 N. W. 998.

Texas. — Winters *v.* Portwood, (Tex. Civ. App. 1908) 109 S. W. 388.

Canada. — Calloway *v.* Stobart, 35 Can. Sup. Ct. 301, *affirming* 14 Manitoba 650.

5. Ross *v.* Moskowitz, (Tex. Civ. App. 1906) 95 S. W. 86; McDonald *v.* Cabiness, (Tex. Civ. App. 1906) 98 S. W. 943; Southwick *v.* Swavienski, 114 N. Y. App. Div. 681, 99 N. Y. Supp. 1079.

7. See Peek *v.* Slifer, 122 Ill. App. 21.

914. 1. *Illinois.* — Woolf *v.* Sullivan, 224 Ill. 509, 79 N. E. 646.

Kansas. — Helling *v.* Darby, 71 Kan. 107, 79 Pac. 1073.

Massachusetts. — Smith *v.* Kimball, 193 Mass. 582, 79 N. E. 800.

Minnesota. — Quist *v.* Goodfellow, 99 Minn. 509, 110 N. W. 65.

Mississippi. — Jayne *v.* Drake, (Miss. 1906) 41 So. 372.

New York. — Ettinghoff *v.* Horowitz, 115 N. Y. App. Div. 571, 100 N. Y. Supp. 1002; Cords *v.* Ruth, 115 N. Y. App. Div. 568, 100 N. Y. Supp. 1043; Hodge *v.* Appelles, 122 N. Y. App. Div. 437, 107 N. Y. Supp. 170; Root *v.* Spence, (Supm. Ct. App. T.) 109 N. Y. Supp. 786. See also Wright *v.* Fulling, 104 N. Y. App. Div. 49, 93 N. Y. Supp. 228.

Tennessee. — Nance *v.* Smyth, 118 Tenn. 349, 99 S. W. 608

Texas. — Burch *v.* Hester, (Tex. Civ. App. 1908) 109 S. W. 309.

Lease by Owner. — Prescia *v.* Haims, (Supm.

Ct. App. T.) 50 Misc. (N. Y.) 550, 99 N. Y. Supp. 321.

Sale Through Auctioneer Not Breach of Contract with Broker. — Ingold *v.* Symonds, 134 Iowa 206, 111 N. W. 802.

2. *Arizona.* — Crowe *v.* Trickey, 204 U. S. 228, 27 U. S. Sup. Ct. 275, *affirming* (Ariz. 1903) 71 Pac. 965.

Arkansas. — Hunton *v.* Marshall, 76 Ark. 375, 88 S. W. 963; Branch *v.* Moore, 84 Ark. 462, 105 S. W. 1178.

California. — Hill *v.* McCoy, 1 Cal. App. 159, 81 Pac. 1015.

Georgia. — Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259; Hill *v.* Wheeler, 2 Ga. App. 349, 58 S. E. 502.

Illinois. — Finkelstein *v.* Spurck, 115 Ill. App. 521.

Massachusetts. — Maloon *v.* Barrett, 192 Mass. 552, 78 N. E. 560.

Michigan. — Hubbard *v.* Leiter, 145 Mich. 387, 108 N. W. 735; McGovern *v.* Bennett, 146 Mich. 558, 109 N. W. 1055.

Minnesota. — Coon *v.* St. Paul Park Realty Co., 101 Minn. 391, 112 N. W. 526; Holcomb *v.* Stafford, 102 Minn. 233, 113 N. W. 449.

Missouri. — Bassford *v.* West, 124 Mo. App. 248, 101 S. W. 610; Holland *v.* Vinson, 124 Mo. App. 417, 100 S. W. 1131; Glade *v.* Eastern Illinois Min. Co., (Mo. App. 1908) 107 S. W. 1002. See also Haven *v.* Tartar, 124 Mo. App. 691, 100 S. W. 21.

Texas. — McDonald *v.* Cabiness, (Tex. Civ. App. 1906) 98 S. W. 943; Bowman *v.* Southwestern Land Co., (Tex. Civ. App. 1908) 107 S. W. 585.

Washington. — Norris *v.* Byrne, 38 Wash. 592, 80 Pac. 808.

Wisconsin. — Bowe *v.* Gage, (Wis. 1907) 112 N. W. 469; Wells *v.* Andreas, (Wis. 1908) 115 N. W. 792.

Where Broker Has Been Unsuccessful. — Brandon *v.* Hanna, (1907) 2 Ir. R. 212; Johnson *v.* Appleton, 11 British Columbia 128; Arnold *v.* Woollacott, 4 Cal. App. 500, 88 Pac. 504; Wiggins *v.* Wilson, (Fla. 1908) 45 So. 1011; Walker *v.* Baldwin, (Md. 1907) 68 Atl. 25; Miller *v.* Vining, 112 N. Y. App. Div. 304, 98 N. Y. Supp. 466; Schano *v.* Storch, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 484, 107 N. Y. Supp. 27.

4. **The Fact of Sole Agency Alone** does not give the broker a right to commission on a sale effected by the owner. Davis *v.* Van Tassel, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 910.

915. 1. Logan *v.* McMullen, 4 Cal. App. 154, 87 Pac. 285; Pinch *v.* Morford, 142 Mich. 63, 105 N. W. 22.

The Principal and the Purchaser Need Not Actually Be Brought Face to Face, but the principal must be notified that such a purchaser has been found and afforded a full opportunity to make a binding contract with him for the sale of the land on the terms authorized. McDonald *v.* Smith, 99 Minn. 42, 108 N. W. 291.

Fulfilling Terms. — Hunt *v.* Tuttle, 133 Iowa 647, 110 N. W. 1026.

Under an Allegation of Full Performance recovery cannot be had by showing that the negotiations failed because of a defect in the owner's title. Stone *v.* Goodstein, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 482, 97 N. Y. Supp. 1035.

2. *United States.* — Crowe *v.* Trickey, 204 U. S. 228, 27 U. S. Sup. Ct. 275, *affirming* (Ariz. 1903) 71 Pac. 965; Crowe *v.* Harmon, 204 U. S. 241, 27 U. S. Sup. Ct. 280, *affirming* (Ariz. 1903) 71 Pac. 1125.

Alabama. — Crosthwaite *v.* Lebus, 146 Ala. 525, 41 So. 853; Worthington *v.* McGarry, (Ala. 1907) 42 So. 988; Sharpley *v.* Moody, (Ala. 1907) 44 So. 650.

Arkansas. — Boyson *v.* Frink, 80 Ark. 254, 96 S. W. 1056.

California. — Hill *v.* McCoy, 1 Cal. App. 159, 81 Pac. 1015; E. P. Vandercook Co. *v.* Wilmans Co., 4 Cal. App. xiii., 87 Pac. 1116; Shanks *v.* Michael, 4 Cal. App. 553, 88 Pac. 596.

Colorado. — Bunks *v.* Pierce, 33 Colo. 440, 80 Pac. 1036; Wagner *v.* Norris, 39 Colo. 106, 88 Pac. 973; Talcott *v.* Mastin, 20 Colo. App. 488, 79 Pac. 973; Innes *v.* Bogan, (Colo. 1907) 91 Pac. 1108.

Georgia. — Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259.

Idaho. — Spotswood *v.* Morris, 12 Idaho 360, 85 Pac. 1094.

Illinois. — Close *v.* Browne, 230 Ill. 228, 82 N. E. 629; Oliver *v.* Sattler, 233 Ill. 536, 84 N. E. 652; Marcy *v.* Whallon, 115 Ill. App. 435; Wolber *v.* Chambers, 128 Ill. App. 624.

Iowa. — Sherburn Land Co. *v.* Sexton, 130 Iowa 85, 106 N. W. 378; Ryan *v.* Page, 134 Iowa 60, 111 N. W. 405; Snyder *v.* Fidler, (Iowa 1907) 112 N. W. 546; McDermott *v.* Mahoney, (Iowa 1908) 115 N. W. 32, *affirming* (1906) 106 N. W. 925.

Kansas. — Stanton *v.* Barnes, 72 Kan. 541, 84 Pac. 116; Long *v.* Thompson, 73 Kan. 76, 84 Pac. 552; Morris *v.* Francis, 75 Kan. 580, 89 Pac. 901.

Louisiana. — Denis *v.* Tilton, (La. 1907) 45 So. 112.

Maine. — Hartford *v.* McGillicuddy, (Me. 1907) 68 Atl. 860.

Maryland. — Riggs *v.* Turnbull, 105 Md. 135, 66 Atl. 13.

Michigan. — Keating *v.* Haley, 147 Mich. 279, 110 N. W. 943.

Minnesota. — McDonald *v.* Smith, 99 Minn. 42, 108 N. W. 291; Coon *v.* St. Paul Park Realty Co., 101 Minn. 391, 112 N. W. 526; Holcomb *v.* Stafford, (Minn. 1907) 113 N. W. 449.

Missouri. — [illegible] 672, 94 S. W. 998; Bailey *v.* Moorhead, 122 Mo. App. 268, 99 S. W. 39.

New York. — Ward *v.* Kennedy, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 422, 101 N. Y. Supp. 524; Hough *v.* Baldwin, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 284, 103 N. Y. Supp. 133; Kahn *v.* Verschleiser, (N. Y. City Ct. Tr. T.) 57 Misc. (N. Y.) 381, 109 N. Y. Supp. 663; Weiss *v.* Rubinson, 112 N. Y. App. Div. 276, 98 N. Y. Supp. 429; Shapiro *v.* Nadler, (Supm. Ct. App. T.) 99 N. Y. Supp. 870; Kronenberger *v.* Teschemacher, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 130, 101 N. Y. Supp. 764; Meader *v.* Brown, 116 N. Y. App. Div. 734, 102 N. Y. Supp. 32; Behrmann *v.* Marcus, (Supm. Ct. App. T.) 102 N. Y. Supp. 467; Kampf *v.*

Dreyer, 119 N. Y. App. Div. 134, 103 N. Y. Supp. 962; Behrmann *v.* Marcus, (Supm. Ct. App. T.) 107 N. Y. Supp. 12; Ernst *v.* Loeb, (Supm. Ct. App. T.) 108 N. Y. Supp. 631; Acropolis Realty Co. *v.* Froelich, (Supm. Ct. App. T.) 109 N. Y. Supp. 153. See also Fleet *v* Barker, 120 N. Y. App. Div. 455, 104 N. Y. Supp. 940.

North Carolina. — Raleigh Real Estate, etc., Co. *v.* Adams, 145 N. Car. 161, 58 S. E. 1008.

North Dakota. — Anderson *v.* Johnson, (N. Dak. 1907) 112 N. W. 139.

Oklahoma. — Yoder *v.* Randol, 16 Okla. 308, 83 Pac. 5[illegible]

South Dakota. — Steere *v.* Gingery, (S. Dak. 1907) 110 N. W. 774; Ball *v.* Dolan, (S. Dak. 1908) 114 N. W. 998.

Texas. — Clark *v.* Wilson, (Tex. Civ. App. 1906) 91 S. W. 627.

Washington. — Neely *v.* Lewis, 38 Wash. 699, 80 Pac. 175; Neely *v.* Schultz, 38 Wash. 699, 80 Pac. 176; Muir *v.* Moeller, (Wash. 1907) 90 Pac. 1042.

West Virginia. — Cooper *v.* Upton, 60 W. Va. 650, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 915–916.

Wisconsin. — McCune *v.* Badger, 126 Wis. 186, 105 N. W. 667; Arnold *v.* Waupaca Nat. Bank, 126 Wis. 362, 105 N. W. 828; Stearns *v.* Jennings, 128 Wis. 379, 107 N. W. 327; Hensel *v.* Witt, (Wis. 1907) 113 N. W. 1093.

Wyomoing. — Frost *v.* Houx, 15 Wyo. 353, 89 Pac. 568.

Canada. — Rogers *v.* Braun, 16 Manitoba 580.

Procuring Option Contract Not Sufficient. — Fox *v.* Denargo Land Co., 37 Colo. 203, 86 Pac. 344; Keach *v.* Bunn, 116 Ill. App. 397, *affirmed* 214 Ill. 259, 73 N. E. 419; Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1107; Hough *v.* Baldwin, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 546, 99 N. Y. Supp. 545; Cole *v.* Kosch, 116 N. Y. App. Div. 715, 102 N. Y. Supp. 14; Benedict *v.* Pincus, 109 N. Y. App. Div. 20, 95 N. Y. Supp. 1042; Wilson *v.* Ellis, (Tex. Civ. App. 1908) 106 S. W. 1152.

Broker Not Entitled to Pro Tanto Commission. — See Carpenter *v.* Atlas Imp. Co., 123 N. Y. App. Div. 706, 108 N. Y. Supp. 547.

Unexpired Term. — Mears *v.* Jones, 102 Me. 48[illegible]

Buyer and Seller Must Be Brought Together and Sale Negotiated. — Northwestern Packing Co. *v.* Whitney, 5 Cal. App. 105, 89 Pac. 982.

Financial Ability of the Purchaser will not be presumed. It must be proven by the broker. Tracy *v.* Fobes, 132 Iowa 250, 109 N. W. 772.

Price Not Fixed by Seller. — Burdon *v.* Briquelet, 125 Wis. 341, 104 N. W. 85.

Purchaser Not Having Title at Time Agreement to Exchange Is Made. — Gormley *v.* Mt. Vernon, 134 Iowa 394, 108 N. W. 465.

Brokers to Sell and Brokers to Find Purchasers Differentiated. — Wiggins *v.* Wilson, [illegible]

Loan Broker and Broker to Sell Distinguished. — Mitterwallner *v.* Supreme Lodge, etc., 109 N. Y. App. Div. 70, 95 N. Y. Supp. 1090.

916. 1. *California.* — Chatfield *v.* Continental Bldg., etc., Assoc., (Cal. App. 1907) 92 Pac. 1040.

Colorado. — Silverberg *v.* Chipman, (Colo. 1908) 93 Pac. 1130.

Delaware. — Tebo *v.* Mitchell, 5 Penn. (Del.) 356, 63 Atl. 327.

District of Columbia. — Dotson *v.* Milliken, 27 App. Cas. (D. C.) 500.

Georgia. — Indiana Fruit Co. *v.* Sandlin, 125 Ga. 222, 54 S. E. 65.

Illinois. — Lemon *v.* Carter, 116 Ill. App. 421; Whalen *v.* Gore, 116 Ill. App. 504; Oldham *v.* Howser, 125 Ill. App. 543.

Indiana. — Isphording *v.* Wolfe, 36 Ind. App. 250, 75 N. E. 598.

[illegible] 113 N. W. 546.

Missouri. — Morgan *v.* Keller, 194 Mo. 663, 92 S. W. 75; Nichols *v.* Whitacre, 112 Mo. App. 692, 87 S. W. 594; Brown *v.* Smith, 113 Mo. App. 59, 87 S. W. 556; Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228; Glade *v.* Eastern Illinois Min. Co., (Mo. App. 1908) 107 S. W. 1002; Purdy *v.* Wilson, (Mo. App. 1908) 108 S. W. 1124.

New York. — Moore *v.* Maguire, (Supm. Ct. App. T.) 98 N. Y. Supp. 752; Lovett *v.* Clench, 115 N. Y. App. Div. 635, 101 N. Y. Supp. 174; McGill *v.* Gargonla, (Supm. Ct. App. T.) 103 N. Y. Supp. 113; King *v.* Knowles, 122 N. Y. App. Div. 414, 106 N. Y. Supp. 760; Lifschitz *v.* Schwartz, (Supm. Ct. Tr. T.) 107 N. Y. Supp. 579; Frank *v.* Connor, (Supm. Ct. App. T.) 107 N. Y. Supp. 132; Goodman *v.* Hess, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 482, 107 N. Y. Supp. 112; Martin *v.* Wermann, 107 N. Y. App. Div. 482, 95 N. Y. Supp. 284; Strout *v.* Kenny, (Supm. Ct. App. T.) 107 N. Y. Supp. 92; Rosenstein *v.* Bogel, 124 N. Y. App. Div. 527, 108 N. Y. Supp. 957; Taubenblatt *v.* Galewski, (Supm. Ct. App. T.) 108 N. Y. Supp. 589; Neftelberger *v.* Garner, (Supm. Ct. App. Div.) 109 N. Y. Supp. 747. See also Veit *v.* Schlachter, 120 N. Y. App. Div. 550, 104 N. Y. Supp. 1052. See also Getzelsohn *v.* Donnelly, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 164, 98 N. Y. Supp. 213.

North Carolina. — Reams *v.* Wilson, (N. Car. 1908) 60 S. E. 1124.

North Dakota. — Kepner *v.* Ford, (N. Dak 1907) 111 N. W. 610.

Texas. — Newton *v.* Conness, (Tex. Civ. App. 1907) 106 S. W. 892.

Vermont. — Reynolds-McGinniss Co. *v.* Green, 78 Vt. 28, 61 Atl. 556.

West Virginia. — Hugill *v.* Weekley, (W. Va. 1908) 61 S. E. 360.

Wisconsin. — Grieb *v.* Koeffler, 127 Wis. 314, 106 N. W. 113.

Canada. — Marriott *v.* Brennan, 14 Ont. L. Rep. 508; Bell *v.* Rokeby, 15 Manitoba 327.

Broker as Middleman Only. — Johnson *v.* Hayward, 74 Neb. 157, 107 N. W. 284.

Whether Contract Is in Writing or Parol Is Immaterial. — Scott *v.* Stuart, 115 Ill. App. [illegible]

Recovery May Be Had on Common Counts. [illegible]

Validity of Subsequent Agreement. — Taubenblatt *v.* Galewski, (Supm. Ct. App. T.) 108 N. Y. Supp. 589.

2. Haase *v.* Schneider, 112 N. Y. App. Div. 336, 98 N. Y. Supp. 587; Lucas *v.* Smith, 113

N. Y. App. Div. 31, 98 N. Y. Supp. 1037; Prescia *v.* Haims, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 550, 99 N. Y. Supp. 421; Cole *v.* Kosch, 116 N. Y. App. Div. 715, 102 N. Y. Supp. 14; Hess *v.* Bloch, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 480, 107 N. Y. Supp. 86; Peace *v.* Ross, 123 N. Y. App. Div. 611, 108 N. Y. Supp. 48.

917. 1. *Alabama.* — Hanna *v.* Espalla, (Ala. 1906) 42 So. 443.

California. — E. P. Vandercook Co. *v.* Wilmans Co., 4 Cal. App. xiii., 87 Pac. 1116.

Illinois. — Dennis *v.* Walters, 123 Ill. App. 93; Packer *v.* Sheppard, 127 Ill. App. 601.

Kansas. — Long *v.* Thompson, 73 Kan. 76, 84 Pac. 552.

Maryland. — Riggs *v.* Turnbull, 105 Md. 135, 66 Atl. 13, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 917.

Michigan. — See Weaver *v.* Richards, (Mich. 1907) 113 N. W. 867.

Minnesota. — McDonald *v.* Smith, 99 Minn. 42, 108 N. W. 291.

Missouri. — Morgan *v.* Keller, 194 Mo. 663, 92 S. W. 75; Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; O'Neil *v.* Printz, 115 Mo. App. 215, 91 S. W. 174; McCray *v.* Pfost, 118 Mo. App. 672, 94 S. W. 998.

New York. — Perry *v.* Bates, 115 N. Y. App. Div. 337, 100 N. Y. Supp. 881; Tieck *v.* M'Kenna, 115 N. Y. App. Div. 701, 101 N. Y. Supp. 317.

Oklahoma. — Yoder *v.* Randol, 16 Okla. 308, 83 Pac. 537, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 917.

Texas. — J. B. Watkins Land Mortg. Co. *v.* Thetford, (Tex. Civ. App. 1906) 96 S. W. 72; Brunson *v.* Blair, (Tex. Civ. App. 1906) 97 S. W. 337; Leuschner *v.* Patrick, (Tex. Civ. App. 1907) 103 S. W. 664.

West Virginia. — Hugill *v.* Weekley, (W. Va. 1908) 61 S. E. 360.

Contract Must Be Binding. — Pope *v.* Caddell, (Ky. 1907) 102 S. W. 327; Mason *v.* Small, (Mo. App. 1908) 109 S. W. 822; Bolton *v.* Coburn, (Neb. 1907) 111 N. W. 780.

Property Not Owned by Employer. — Stanton *v.* Barnes, 72 Kan. 541, 84 Pac. 116; Taubenblatt *v.* Galewski, (Supm. Ct. App. T.) 108 N. Y. Supp. 589. See also McDonald *v.* Cabiness, (Tex. Civ. App. 1906) 98 S. W. 943.

Contract Relating to Homestead Entry. — Hoyle *v.* Johnson, 18 Okla. 330, 89 Pac. 1119.

918. 3. *Georgia.* — Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259.

Iowa. — Blackledge *v.* Davis, 129 Iowa 591, 105 N. W. 1000; Sherburn Land Co. *v.* Sexton, 130 Iowa 85, 106 N. W. 378.

Missouri. — Staehlin *v.* Kramer, 118 Mo. App. 329, 94 S. W. 785; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228.

New York. — Prescia *v.* Haims, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 550, 99 N. Y. Supp. 421; Corbin *v.* Mechanics', etc., Bank, 121 N. Y. App. Div. 744, 106 N. Y. Supp. 573. See also Gray *v.* Izard, 123 N. Y. App. Div. 566, 108 N. Y. Supp. 309.

North Dakota. — Anderson *v.* Johnson, (N. Dak. 1907) 112 N. W. 139.

Texas. — Clark *v.* Wilson, (Tex. Civ. App. 1906) 91 S. W. 627.

4. Reid *v.* McNerney, 128 Iowa 350, 103 N. W. 1001; Davis *v.* Weber, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 590, 92 N. Y. Supp. 823.

5. *England.* — Chapman *v.* Winson, 91 L. T. N. S. 17.

Arkansas. — Boyson *v.* Frink, 80 Ark. 254, 96 S. W. 1056; Lewis *v.* Briggs, 81 Ark. 96, 98 S. W. 683.

California. — Cutlen *v.* Pearsall, 146 Cal. 690, 81 Pac. 25.

Iowa. — McDermott *v.* Mahoney, (Iowa 1908) 115 N. W. 32, *affirming* (Iowa 1906) 106 N. W. 925. See also Tracy Land Co. *v.* Polk County Land, etc., Co., 131 Iowa 40, 107 N. W. 1029.

Massachusetts. — Munroe *v.* Taylor, 191 Mass. 483, 78 N. E. 106.

New York. — Couper *v.* O'Neill, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 319, 103 N. Y. Supp. 122; Greenfield *v.* Koplan, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 132, 101 N. Y. Supp. 567; Janpol *v.* Gold, 122 N. Y. App. Div. 401, 106 N. Y. Supp. 891.

Texas. — Wilson *v.* Ellis, (Tex. Civ. App. 1908) 106 S. W. 1152; Burch *v.* Hester, (Tex. Civ. App. 1908) 109 S. W. 399.

Virginia. — Murray *v.* Rickard, 103 Va. 132, 48 S. E. 871.

Contract to Pay Commission Is Executed When Sale Is Made. — Hubbard *v.* Leiter, 145 Mich. 387, 108 N. W. 735.

When the Commission Is to Be Paid "Out of" Purchase Price, payment of such price is a condition precedent to the broker's right to commission. Nekarda *v.* Presberger, 123 N. Y. App. Div. 418, 107 N. Y. Supp. 897.

7. Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259; Coon *v.* St. Paul Park Realty Co., 101 Minn. 391, 112 N. W. 526; Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; O'Shea *v.* Brill, (Supm. Ct. App. T.) 108 N. Y. Supp. 1020; McDonald *v.* Cabiness, (Tex. 1907) 102 S. W. 721; Gray *v.* Carroll, (Tex. Civ. App. 1907) 105 S. W. 214; Newton *v.* Conness, (Tex. Civ. App. 1907) 106 S. W. 892; Muir *v.* Moeller, (Wash. 1907) 90 Pac. 1042.

Exchange Instead of Sale. — Southwick *v.* Swavienski, 114 N. Y. App. Div. 681, 99 N. Y. Supp. 1079.

919. 1. *Arkansas.* — Hunton *v.* Marshall, 76 Ark. 375, 88 S. W. 963.

California. — Levy *v.* Wolf, 2 Cal. App. 491, 81 Pac. 313.

Georgia. — Hill *v.* Wheeler, 2 Ga. App. 349, 58 S. E. 502.

Iowa. — Ryan *v.* Page, 134 Iowa 60, 111 N. W. 405.

Kansas. — Morris *v.* Francis, (Kan. 1907) 89 Pac. 901.

Massachusetts. — Carnes *v.* Finigan, (Mass. 1908) 84 N. E. 324.

Missouri. — Staehlin *v.* Kramer, 118 Mo. App. 329, 94 S. W. 785; Holland *v.* Vinson 124 Mo. App. 417, 100 S. W. 1131; Glade *v.* Eastern Illinois Min. Co., (Mo. App. 1908) 107 S. W. 1002.

Ohio.—Bowman *v.* Hartman, 27 Ohio Cir. Ct. 309, *affirmed* 74 Ohio St. 569, 78 N. E. 1126.

South Dakota. — *Compare* Ball *v.* Dolan, (S. Dak. 1908) 114 N. W. 908.

Texas. — Hahl *v.* Wickes, (Tex. Civ. App. 1906) 97 S. W. 838.

West Virginia. — Ice *v.* Maxwell, 61 W. Va. 9, 55 S. E. 899.

Wisconsin. — Oliver *v.* Katz, 131 Wis. 409, 111 N. W. 509; Bowe *v.* Gage, (Wis. 1907) 112 N. W. 469.

Broker Employed to Effect Sale. — Varn *v.* Pelot, (Fla. 1908) 45 So. 1015.

5. *United States.* — Crowe *v.* Harmon, 204 U. S. 241, 27 U. S. Sup. Ct. 280, *affirming* (Ariz. 1903) 71 Pac. 1125; Crowe *v.* Trickey, 204 U. S. 228, 27 U. S. Sup. Ct. 275, *affirming* (Ariz. 1903) 71 Pac. 965; Dotson *v.* Milliken, 209 U. S. 237, 28 U. S. Sup. Ct. 489, *affirming* 27 App. Cas. (D. C.) 500.

Alabama. — Sharpley *v.* Moody, (Ala. 1907) 44 So. 650.

California. — Carlin *v.* Lifur, 2 Cal. App. 590, 84 Pac. 292; Chatfield *v.* Continental Bldg., etc., Assoc., (Cal. App. 1907) 92 Pac. 1040.

Colorado. — Silberberg *v.* Chipman, (Colo. 1908) 93 Pac. 1130.

District of Columbia. — Dotson *v.* Milliken, 27 App. Cas. (D. C.) 500.

Georgia. — Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259.

Illinois. — Whalen *v.* Gore, 116 Ill. App. 504; Newman *v.* Lumley, 125 Ill. App. 382.

Iowa. — Ryan *v.* Page, 134 Iowa 60, 111 N. W. 405; McDermott *v.* Mahoney, (Iowa 1908) 115 N. W. 32, *affirming* (1906) 106 N. W. 925.

Kansas. — Staley *v.* Hufford, 73 Kan. 686, 85 Pac. 763, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 919, 920.

Louisiana. — Denis *v.* Tilton, (La. 1907) 45 So. 112.

Maine. — Hartford *v.* McGillicuddy, (Me. 1907) 68 Atl. 860.

Missouri. — Brown *v.* Smith, 113 Mo. App. 79, 87 S. W. 556; Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; O'Neil *v.* Printz, 115 Mo. App. 215, 91 S. W. 174; Warren Commission, etc., Co. *v.* Leon L. Hull Real Estate Co., 120 Mo. App. 432, 96 S. W. 1038; Purdy *v.* Wilson, (Mo. App. 1908) 108 S. W. 1124.

New York. — Lucas *v.* Smith, 113 N. Y. App. Div. 31, 98 N. Y. Supp. 1037; Seidman *v.* Rauber, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 10, 99 N. Y. Supp. 862; McGill *v.* Gargoula, (Supm. Ct. App. T.) 103 N. Y. Supp. 113; Finck *v.* Pierce, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 554, 103 N. Y. Supp. 765; Milne *v.* Ingersoll-Sergeant Drill Co., 120 N. Y. App. Div. 465, 104 N. Y. Supp. 1053; Frank *v.* Connor, (Supm. Ct. App. T.) 107 N. Y. Supp. 132; Martin *v.* Wermann, 107 N. Y. App. Div. 482, 95 N. Y. Supp. 284; Neftelberger *v.* Garner, (Supm. Ct. App. Div.) 109 N. Y. Supp. 747; Brand *v.* Nagle, 122 N. Y. App. Div. 490, 107 N. Y. Supp. 156. See also Goodman *v.* Linetzky, (Supm. Ct. App. T.) 107 N. Y. Supp. 50.

Texas. — Albritton *v.* Mexia First Nat. Bank, (Tex. Civ. App. 1905) 86 S. W. 646.

Vermont. — Reynolds-McGinness Co. *v.* Green, 78 Vt. 28, 61 Atl. 556.

Washington. — Foster *v.* Taylor, 44 Wash. 213, 87 Pac. 358.

West Virginia. — Hugill *v.* Weekley, (W. Va. 1908) 61 S. E. 360.

Canada. — Marriott *v.* Brennan, 14 Ont. L. Rep. 508.

Refusal of Owner's Wife to Release Dower. — Tebo *v.* Mitchell, 5 Penn. (Del.) 356, 63 Atl. 327.

Refusal of Owner's Wife to Convey Homestead. — Staley *v.* Hufford, 73 Kan. 686, 85 Pac. 763; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228.

Defect in Owner's Title. — Reiger *v.* Merrill, 125 Mo. App. 541, 102 S. W. 1072; Godley *v.* Haley, 27 Ohio Cir. Ct. 606; Yoder *v.* Randol, 16 Okla. 308, 83 Pac. 537; Arnold *v.* Waupaca Nat. Bank, 126 Wis. 362, 105 N. W. 828.

Misrepresentation of Rental Value. — Goodman *v.* Hess, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 482, 107 N. Y. Supp. 113.

921. 1. Hensel *v.* Witt, (Wis. 1907) 113 N. W. 1093.

4. Strout *v.* Kenny, (Supm. Ct. App. T.) 107 N. Y. Supp. 92. See also Weaver *v.* Richards, 144 Mich. 395, 108 N. W. 382.

5. Reade *v.* Haak, 147 Mich. 42, 110 N. W. 130.

6. Reid *v.* McNerney, 128 Iowa 350, 103 N. W. 1001; Wells *v.* Hocking Valley Coal Co., (Iowa 1908) 114 N. W. 1076; Ballentine *v.* Mercer, (Mo. App. 1908) 109 S. W. 1037; Thiel *v.* Schonzeit, 104 N. Y. App. Div. 151, 93 N. Y. Supp. 383; Cox *v.* Hawke, (Supm. Ct. App. T.) 93 N. Y. Supp. 1117; Bloch *v.* Lowe, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 8, 99 N. Y. Supp. 951; Benedict *v.* Pincus, 109 N. Y. App. Div. 20, 95 N. Y. Supp. 1042; Henderson *v.* Sonneborn, 30 Pa. Super. Ct. 182; Ewing *v.* Lunn, (S. Dak. 1908) 115 N. W. 527; Burden *v.* Briqueler, 125 Wis. 341, 104 N. W. 83; Kaley *v.* Van Ostrand, (Wis. 1908) 114 N. W. 817.

7. *Florida.* — Wiggins *v.* Wilson, (Fla. 1908) 45 So. 1011.

Georgia. — Williams *v.* Moore-Gaunt Co., 3 Ga. App. 756, 60 S. E. 372.

Illinois. — Keach *v.* Bunn, 116 Ill. App. 397, *affirmed* 214 Ill. 259, 73 N. E. 419; Woolf *v.* Sullivan, 128 Ill. App. 62, *affirmed* 224 Ill. 509, 79 N. E. 646.

Indiana. — McAfee *v.* Bending, 36 Ind. App. 628, 76 N. E. 412; Trees *v.* Millikin, (Ind. App. 1908) 85 N. E. 123.

Iowa. — Braden *v.* Randles, 128 Iowa 653, 105 N. W. 195.

Kansas. — Deter *v.* Jackson, (Kan. 1907) 92 Pac. 546.

Missouri. — Harrison *v.* Craven, 188 Mo. 590, 87 S. W. 962.

New York. — Low *v.* Woodbury, 107 N. Y. App. Div. 298, 95 N. Y. Supp. 336. See also Rabinowitz *v.* Pizer, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 994.

Pennsylvania. — Fulton *v.* Walters, 28 Pa. Super. Ct. 269; Lease *v.* Christy, 28 Pa. Super. Ct. 507.

Texas. — Hahl *v.* Kellogg, (Tex. Civ. App. 1906) 94 S. W. 389.

923. 1. Weiss *v.* Bleier, 112 N. Y. App. Div. 533, 98 N. Y. Supp. 539; Corbin *v.* Mechanics, etc., Bank, 121 N. Y. App. Div. 744, 106 N. Y. Supp. 573. See also Jacobson *v.* Fraade, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 631, 107 N. Y. Supp. 706.

7. Morgan *v.* Keller, 194 Mo. 663, 92 S. W. 75.

The Commission Is Not Earned when the contract therefor provides that it will be paid if the contract of purchase is performed by mak-

ing of a deferred cash payment, which is not made. Van Norman *v.* Fitchette, 100 Minn. 145, 110 N. W. 851.

924. 3. Stephens *v.* Tomlinson, (Tex. Civ. App. 1905) 88 S. W. 304. See also Madler *v.* Pozorski, 124 Wis. 477, 102 N. W. 892.

6. Enochs *v.* Paxton, 87 Miss. 660, 40 So. 14.

925. 6. Hanna *v.* Espalla, (Ala. 1906) 42 So. 443; McGovern *v.* Bennett, 146 Mich. 558, 109 N. W. 1055; Ryon *v.* Starr, 214 Pa. St. 318, 64 Atl. 704; Fulton *v.* Walters, 216 Pa. St. 56, 64 Atl. 860; Dal *v.* Fischer, (S. Dak. 1906) 107 N. W. 534; Reynolds-McGinniss Co. *v.* Green, 78 Vt. 28, 61 Atl. 556, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 925. See also Gaume *v.* Horgan, 122 Mo. App. 700, 99 S. W. 457; Moore *v.* Simpson, 122 N. Y. App. Div. 843, 107 N. Y. Supp. 803.

Having agreed on the value of the services, the parties are bound thereby, no matter what their actual value. Tuffree *v.* Binford, 130 Iowa 532, 107 N. W. 425.

8. Stewart *v.* Soubral, 119 La. 211, 43 So. 1009; Walker *v.* Baldwin, (Md. 1907) 68 Atl. 25; Lockhart *v.* Hamlin, 190 N. Y. 132, 82 N. E. 1094, *reversing* 116 N. Y. App. Div. 921, 101 N. Y. Supp. 1129; De Kremen *v.* Clothier, 109 N. Y. App. Div. 481, 96 N. Y. Supp. 525; Dal *v.* Fischer, (S. Dak. 1906) 107 N. W. 534; Stephens *v.* Tomlinson, (Tex. Civ. App. 1905) 88 S. W. 304; McDonald *v.* Cabiness, (Tex. Civ. App. 1906) 98 S. W. 943; Burdon *v.* Briquelet, 125 Wis. 341, 104 N. W. 83.

Custom Respecting Commissions. — Cobb *v.* Dunlevie, (W. Va. 1908) 60 S. E. 384; Penland *v.* Ingle, 138 N. Car. 456, 50 S. E. 850.

926. 1. Love *v.* Scatcherd, (C. C. A.) 146 Fed. 1; Gamble *v.* Cleveland Cliffs Iron Co., (C. C. A.) 158 Fed. 49; Chambers *v.* Herring, (Tex. Civ. App. 1905) 88 S. W. 371; Wallace *v.* Shapard, (Tex. Civ. App. 1906) 94 S. W. 151.

2. **Evidence as to Rate of Compensation — Admissibility of Prior Contract.** — Cobb *v.* Dunlevie, (W. Va. 1908) 60 S. E. 384

3. Davidson *v.* Wills, (Tex. Civ. App. 1906) 96 S. W. 634.

4. **Mortgage Part of Purchase Price.** — Hobart *v.* Stewart, 99 Minn. 394, 109 N. W. 704.

7. Strout *v.* Kenny, (Supm. Ct. App. T.) 107 N. Y. Supp. 92; Arnold *v.* Waupaca Nat. Bank, 126 Wis. 362, 105 N. W. 828.

927. 1. Geoghegan *v.* Chatterton, 113 N. Y. App. Div. 835, 99 N. Y. Supp. 702; Reams *v.* Wilson, (N. Car. 1908) 60 S. E. 1124. See also Ewart *v.* Young, 119 Mo. App. 483, 96 S. W. 420.

Broker Commits No Fraud by Not Disclosing Amount of Excess. — Deming Invest. Co. *v.* Meyer, (Okla. 1907) 91 Pac. 846.

2. Holcomb *v.* Stafford, (Minn. 1907) 113 N. W. 449; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228; Matter of French, (Surrogate Ct.) 51 Misc. (N. Y.) 457, 101 N. Y. Supp. 734; Wolverton *v.* Tuttle, (Oregon 1908) 94 Pac. 961.

3. **When No Demand Was Made** prior to filing suit interest should be allowed only from the commencement of the action. Warren Commission, etc., Co. *v.* Leon L. Hull Real Estate Co., 120 Mo. App. 432, 96 S. W. 1038.

4. Munson *v.* Mabon, (Iowa 1907) 112 N. W. 775; Hopkins *v.* Moseley, (Ky. 1907) 105 S. W. 104; Holland *v.* Vinson, 124 Mo. App. 417, 100 S. W. 1131; Gilmour *v.* Freshaur, 126 Mo. App. 299, 102 S. W. 1107; Freeman *v.* Polstein, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 644, 97 N. Y. Supp. 1032; Hodge *v.* Appelles, 122 N. Y. App. Div. 437, 107 N. Y. Supp. 170; Edwards *v.* Pike, (Tex. Civ. App. 1908) 107 S. W. 586; Johnson *v.* Appleton, 11 British Columbia 128.

Sale Due to Joint Efforts. — Votaw *v.* McKeever, (Kan. 1907) 92 Pac. 1120.

5. Northrup *v.* Diggs, (Mo. App. 1908) 106 S. W. 1123.

929. 1. Witherbee *v.* Walker, (Colo. 1908) 93 Pac. 1118; Loxley *v.* Studebacker, (N. J. 1907) 68 Atl. 98; Cole *v.* Kosch, 116 N. Y. App. Div. 715, 102 N. Y. Supp. 14; William P. Rae Co. *v.* Kane, 121 N. Y. App. Div. 494, 106 N. Y. Supp. 47; Johnson *v.* Appleton, 11 British Columbia 128.

2. Rothenburger *v.* Schoniger, (Ky. 1907) 99 S. W. 1150; Bell *v.* Rokeby, 15 Manitoba 327. See also Weisels-Gerhart Real Estate Co. *v.* Wainwright, 127 Mo. App. 514, 105 S. W. 1096; Ettinghoff *v.* Horowitz, 115 N. Y. App. Div. 571, 100 N. Y. Supp. 1002.

3. **Broker Having Exclusive Right.** — Rothenburger *v.* Schoniger, (Ky. 1907) 99 S. W. 1151.

5. Sain *v.* Rooney, 125 Mo. App. 176, 101 S. W. 1127.

7. Lindheim *v.* Central Nat. Realty, etc., Co., 111 N. Y. App. Div. 275, 97 N. Y. Supp. 619.

8. **The Burden of Proof** is on the broker to show that he had the legal right to retain his principal's money as commissions. Knotts *v.* Midkiff, 114 La. 234, 38 So. 153.

930. 1. **Such a Contract Need Not Be Signed by the Owner** under the Indiana statute. Provident Trust Co. *v.* Darrough, 168 Ind. 29, 78 N. E. 1030.

See *supra*, **913.** 1.

2. Graves *v.* White, (Colo. 1908) 95 Pac. 347; Triplett *v.* Jackson, 130 Iowa 408, 106 N. W. 954; Alden *v.* Robinson, (Supm. Ct. App. T.) 98 N. Y. Supp. 675.

7. J. B. Watkins Land Mortg. Co. *v.* Thetford, (Tex. Civ. App. 1906) 96 S. W. 72.

When the Owner Recognizes the Assisting Broker, the latter may recover of the former directly. Warren Commission, etc., Co. *v.* Leon L. Hull Real Estate Co., 120 Mo. App. 432, 96 S. W. 1038.

9. *Arkansas.* — Branch *v.* Moore, 84 Ark. 462, 105 S. W. 1178.

Delaware. — McGonigal *v.* Raughley, (Del. 1906) 63 Atl. 801.

Illinois. — Wolber *v.* Chambers, 128 Ill. App. 624.

Massachusetts. — Cadigan *v.* Crabtree, 192 Mass. 233, 78 N. E. 412; Smith *v.* Kimball, 193 Mass. 582, 79 N. E. 800.

Missouri. — Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; Staehlin *v.* Kramer, 118 Mo. App. 329, 94 S. W. 785.

Nebraska. — Miller *v.* Wehrman, (Neb. 1908) 115 N. W. 1078.

New York. — Donovan *v.* Weed, 182 N. Y. 43, 74 N. E. 563, *reversing* 86 N. Y. App. Div.

630, 83 N. Y. Supp. 682; Prescia *v.* Haims, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 550, 99 N. Y. Supp. 421.

North Carolina. — Raleigh Real Estate, etc., Co. *v.* Adams, 145 N. Car. 161, 58 S. E. 1008.

Texas. — Newton *v.* Conness, (Tex. Civ. App. 1907) 106 S. W. 892.

Employer May Revoke Though Employment Is in Terms Irrevocable. — McMahan *v.* Burns, 216 Pa. St. 448, 65 Atl. 806.

Sale to Broker's Customer. — Loxley *v.* Studebacker, (N. J. 1907) 68 Atl. 98. See also Hurst *v.* Williams, (Ky. 1907) 102 S. W. 1176.

Death of Principal Terminates Authority of Broker. — Crowe *v.* Trickey, 204 U. S. 228, 27 U. S. Sup. Ct. 275, *affirming* (Ariz. 1903) 71 Pac. 965.

Evidence of Bad Faith in Attempting to Terminate Agency. — Sewell *v.* Collison, 123 N. Y. App. Div. 586, 108 N. Y. Supp. 25.

931. 1. Hanna *v.* Espalla, (Ala. 1906) 42 So. 443; Harrison *v.* Augerson, 115 Ill. App. 226; Luckett Land, etc., Co. *v.* Brown, 118 La. 943, 43 So. 628; Sallee *v.* McMurry, 113 Mo. App. 253, 88 S. W. 157; Finck *v.* Schmitt, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 503, 96 N. Y. Supp. 197; Reams *v.* Wilson, (N. Car. 1908) 60 S. E. 1124; Burd *v.* Webster, 128 Wis. 118, 107 N. W. 23.

2. Clark *v.* Dalziel, 3 Cal. App. 127, 84 Pac. 429. See also Harrison *v.* Augerson, 115 Ill. App. 226; Norton *v.* Sjolseth, 43 Wash. 327, 86 Pac. 573.

4. Richardson *v.* McClary, 16 Manitoba 74.

7. Clements *v.* Stapleton, (Iowa 1907) 113 N. W. 546.

Rescission Question of Fact. — Larson *v.* Lorer, (Wash. 1908) 94 Pac. 109.

REAL PROPERTY.

934. 2. **What Is Real Property within Statutes Providing for Taxation** — *Colorado.* — Wood *v.* McCombe, 37 Colo. 174, 86 Pac. 319.

Kansas. — Kansas Natural Gas Co. *v.* Neosho County, 75 Kan. 335, 89 Pac. 750.

Massachusetts. — Brooks *v.* West Springfield, 193 Mass. 190, 79 N. E. 337.

Michigan. — Lever *v.* Grant, 139 Mich. 273, 102 N. W. 848, *rehearing denied* 139 Mich. 277, 103 N. W. 843; Ward *v.* Echo Tp., 145 Mich. 56, 108 N. W. 364.

New York. — People *v.* Wells, 181 N. Y. 245, 73 N. E. 1025, *affirming* 99 N. Y. App. Div. 455, 91 N. Y. Supp. 219; People *v.* Feitner, 99 N. Y. App. Div. 274, 90 N. Y. Supp. 904, *affirmed* 181 N. Y. 549, mem., 74 N. E. 1124; People *v.* Gass, 120 N. Y. App. Div. 147, 104 N. Y. Supp. 884, *affirming* (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 363.

Tennessee. — Hadley *v.* Hadley, 114 Tenn. 156, 87 S. W. 250.

Washington. — West Seattle *v.* West Seattle Land, etc., Co., 38 Wash. 359, 80 Pac. 549; Doe *v.* Tenino Coal, etc., Co., 43 Wash. 523, 86 Pac. 938; Moeller *v.* Gormley, 44 Wash. 465, 87 Pac. 507.

West Virginia. — Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928.

939. 8. State Bank *v.* Cox, (C. C. A.) 143 Fed. 91. See also Cornelius *v.* Boling, 18 Okla. 469, 90 Pac. 874.

940. 1. Hiscock *v.* Varick Bank, 206 U. S. 28, 27 U. S. Sup. Ct. 681, *affirming* 144 Fed. 818; Lindeke *v.* Associates Realty Co., (C. C. A.) 146 Fed. 630; *In re* Fulton, 153 Fed. 664; Simpson *v.* Miller, (Cal. App. 1908) 94 Pac. 252. See also Ledoux *v.* Samuels, 116 N. Y. App. Div. 726, 102 N. Y. Supp. 43.

2. *In re* Chantler Cloak, etc., Co., 151 Fed. 952; *In re* Coffin, (C. C. A.) 152 Fed. 381; Crosby *v.* Ridout, 27 App. Cas. (D. C.) 481; Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450; Merrill *v.* Hussey, 101 Me. 439, 64 Atl. 810; Beer *v.* Wisner, (Neb. 1905) 104 N. W. 757; Waterloo First Nat. Bank *v.* Bacon, 113 N. Y. App. Div. 612, 98 N. Y. Supp. 717, *affirmed* 8[illegible] N. E. 1126.

3. *In re* Franklin Lumber Co., 147 Fed. 85[illegible].

9. Swedish Evangelist Lutheran Church [illegible] Jackson, 229 Ill. 506, 82 N. E. 348; Spencer Wabash R. Co., 132 Iowa 129, 109 N. W. 453; Barrett *v.* Kansas, etc., Coal Co., 70 Kan. 655, 75 Pac. 155; Hamel *v.* Minneapolis, etc., R. Co., 97 Minn. 334, 107 N. W. 139; Chamber[illegible] *v.* Great Northern Power Co., 100 Minn. 211, 110 N. W. 1128; Mobile, etc., R. Co. *v.* Kamper, 88 Miss. 817, 41 So. 513; Lewisohn *v.* Lansing Co., 119 N. Y. App. Div. 393, 104 N. Y. Supp. 543, *reversing* (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 274, 100 N. Y. Supp. 1077; Tudor Boiler Mfg. Co. *v.* I. & E. Greenwald Co., 26 Ohio Cir. Ct. 556; Corr *v.* Philadelphia, 21[illegible] Pa. St. 123, 61 Atl. 808; Oney *v.* West Buena Vista Land Co., 104 Va. 580, 52 S. E. 343.

10. Brown *v.* Gurney, 201 U. S. 184, 26 U. S. Sup. Ct. 509, *affirming* 32 Colo. 472, 77 Pac. 357; Hoyle *v.* Mann, 144 Ala. 516, 41 So. 835; Noyes *v.* Douglas, 39 Wash. 314, 81 Pac. 721. See also Lindblom *v.* Rocks, (C. C. A.) 146 Fed. 660.

11. Barrett *v.* Kansas, etc., Coal Co., 70 Kan. 655, 75 Pac. 155.

941. 1. Barrett *v.* Kansas, etc., Coal Co., 70 Kan. 655, 75 Pac. 155, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 940; Enfield Mfg. Co. *v.* Ward, 190 Mass. 314, 76 N. E. 1053; Sharkey *v.* Candiani, 48 Oregon 112, 85 Pac. 219; Kreamer *v.* Voneida, 213 Pa. St. 80, 62 Atl. 518.

944. 7. Crossman *v.* Keister, 223 Ill. 69, 79 N. E. 58.

REASON.

945. 9. **By Reason of Fire.** — Damage by smoke and by water used in putting out a fire is damage "by *reason* of" fire within the meaning of the statute by which the owner of a British [illegible] ship is not liable to make good [illegible] damage happening "without the actual fault or privity" to goods damaged "by reason of the [illegible] ship." The Diamond, (1906) P. 282, 75 L. J. P. 90.

REASONABLE CAUSE.

947. 2. **Reasonable Cause to Believe Debtor to Be Insolvent.** — See Capital Nat. Bank *v.* Wilkerson, 36 Ind. App. 550, 76 N. E. 258.

REASONABLE DOUBT.

948. 1. *United States.* — Browne *v.* U. S., (C. C. A.) 145 Fed. 1; U. S. *v.* Dexter, 154 Fed. 890.

Alabama. — Mills *v.* State, 148 Ala. 633, 42 So. 816; Griffin *v.* State, (Ala. 1907) 43 So. 104.

California. — People *v.* Wong Sang Lung, 3 Cal. App. 221, 84 Pac. 843.

Delaware. — State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Fleetwood, (Del. 1906) 65 Atl. 772; State *v.* Uzzo, (Del. 1907) 65 Atl. 775; State *v.* Wright, (Del. 1907) 66 Atl. 364; State *v.* Wolf, (Del. 1907) 66 Atl. 730; State *v.* Cephus, (Del. 1906) 67 Atl. 150; State *v.* Briscoe, (Del. 1907) 67 Atl. 154; State *v.* Samuels, (Del. 1904) 67 Atl. 164.

Georgia. — McBeth *v.* State, 122 Ga. 737, 50 S. E. 931; Mill *v.* State, 2 Ga. App. 398, 58 S. E. 673; Ransom *v.* State, 2 Ga. App. 826, 59 S. E. 101; Thomas *v.* State, 129 Ga. 419, 59 S. E. 246.

Indian Territory. — Jamison *v.* U. S., (Indian Ter. 1907) 104 S. W. 872.

Kansas. — State *v.* Wolfley, (Kan. 1907) 93 Pac. 337.

Kentucky. — Watkins *v.* Com., (Ky. 1906) 97 S. W. 740; Ball *v.* Com., (Ky. 1907) 99 S. W. 326; Gatliff *v.* Com., (Ky. 1908) 107 S. W. 739.

Mississippi. — Windham *v.* State, (Miss. 1908) 45 So. 861.

Nebraska. — Kennison *v.* State, (Neb. 1908) 115 N. W. 289.

New Mexico. — Tais *v.* Territory, (N. Mex. 1908) 94 Pac. 947.

New York. — People *v.* Hummel, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 136, 98 N. Y. Supp. 713; People *v.* Gluck, 188 N. Y. 167, 80 N. E. 1022.

North Carolina. — State *v.* Adams, 138 N. Car. 688, 50 S. E. 765.

Oklahoma. — Abbott *v.* Territory, (Okla. 1908) 94 Pac. 179.

South Carolina. — State *v.* Reeder, 72 S. Car. 223, 51 S. E. 702.

Texas. — Jordt *v.* State, (Tex. Crim. 1906) 95 S. W. 514; Dobbs *v.* State, (Tex. Crim. 1907) 100 S. W. 946; Godsoe *v.* State, (Tex. Crim. 1908) 108 S. W. 388.

Utah. — State *v.* Hutchings, 30 Utah 319, 84 Pac. 893.

Wisconsin. — Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237; Lipscomb *v.* State, 130 Wis. 238, 109 N. W. 986; Duthey *v.* State, 131 Wis. 178, 111 N. W. 222.

The Credibility of Witnesses in Criminal Cases. — Colbert *v.* State, 125 Wis. 423, 104 N. W. 61.

950. 1. Mill *v.* State, 2 Ga. App. 398, 58 S. E. 673; Howell *v.* Com., (Ky. 1907) 104 S. W. 685; Gatliff *v.* Com., (Ky. 1908) 107 S. W. 739; Redman *v.* State, (Tex. Crim. 1908) 108 S. W. 365.

3. Ransom *v.* State, 2 Ga. App. 826, 59 S. E. 101; Stuart *v.* Com., (Ky. 1907) 105 S. W. 170; Rice *v.* State, (Tex. Crim. 1907) 103 S. W. 1156; Smith *v.* State, (Tex. Crim. 1907) 105 S. W. 182; Tinsley *v.* State, (Tex. Crim. 1907) 106 S. W. 347; Moore *v.* State, (Tex. Crim. 1908) 107 S. W. 355.

951. 2. Young *v.* State, (Ala. 1907) 43 So. 100; Griffin *v.* State, (Ala. 1907) 43 So. 197; Williams *v.* State, 123 Ga. 138, 51 S. E. 322; Murray *v.* State, 2 Ga. App. 620, 58 S. E. 1060; Moore *v.* State, (Ga. 1908) 60 S. E. 544; Johnson *v.* State, (Tex. Crim. 1908) 107 S. W. 845; Colbert *v.* State, 125 Wis. 423, 104 N. W. 61.

952. 1. Howard *v.* State, (Ala. 1907) 44 So. 95.

2. See Parham *v.* State, (Ala. 1906) 42 So. 1, and Pitman *v.* State, 148 Ala. 612, 42 So. 993.

3. Galloway *v.* State, 47 Fla. 32, 36 So. 168, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 952; Watkins *v.* Com., (Ky. 1906) 97 S. W. 740; Tinsley *v.* State, (Tex. Crim. 1907) 106 S. W. 347. See also Green *v.* State, (Tex. Crim. 1907) 105 S. W. 205.

953. 1. State *v.* Cephus, (Del. 1906) 67 Atl. 150; Tais *v.* Territory, (N. Mex. 1908) 94 Pac. 947. See also Redman *v.* State, (Tex. Crim. 1908) 108 S. W. 365; Battles *v.* State, (Tex. Crim. 1908) 109 S. W. 195.

Intent. — But see Teague *v.* State, 144 Ala. 42, 40 So. 312.

Intent Circumstantial Evidence. — Cooper *v.* State, 2 Ga. App. 730, 59 S. E. 20.

2. People *v.* Wong Sang Lung, 3 Cal. App. 221, 84 Pac. 843; State *v.* Harmon, 4 Penn. (Del.) 580, 60 Atl. 866.

State *v.* Fisk. (Ind. 1908) 83 N. E. 995.

Fact Inconsistent with Guilt. — But see Walker *v.* State, (Ala. 1908) 45 So. 640.

954. 1. Lasater *v.* State, 77 Ark. 468, 94 S. W. 59; Olson *v.* People, 125 Ill. App. 460. See also Butt *v.* State, 81 Ark. 173, 98 S. W. 723.

2. Charge Need Not Be Specific on Each Proposition. — Smith *v.* State, 124 Ga. 213, 52 S. E. 329; Nance *v.* State, 126 Ga. 95, 54 S. E. 932; Harris *v.* State, 1 Ga. App. 136, 57 S. E. 937.

955. 2. Leonard *v.* State, (Ala. 1907) 43 So. 214; Com. *v.* Campbell, 31 Pa. Super. Ct. 9; State *v.* Thompson, 31 Utah 228, 87 Pac. 709. See also Boyd *v.* State, (Ala. 1907) 43 So. 204.

3. Howard *v.* State, (Ala. 1907) 44 So. 95.

6. *Arkansas.* — Bell *v.* State, 81 Ark. 16, 98 S. W. 705, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 955.

Georgia. — Nelms *v.* State, 123 Ga. 575, 51 S. E. 588, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 955; Barker *v.* State, 1 Ga. App. 286, 57 S. E. 989; Clay *v.* State, (Ga. App. 1908) 60 S. E. 1028; Nash *v.* State, 126 Ga. 549, 55 S. E. 405.

Tennessee. — Frazier *v.* State, 117 Tenn. 430, 100 S. W. 94.

Vermont. — State *v.* Blay, 77 Vt. 56, 58 Atl. 794, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 955.

956. 3. U. S. *v.* Greene, 146 Fed. 803; People *v.* Murphy, 146 Cal. 502, 80 Pac. 709; State *v.* Samuels, (Del. 1904) 67 Atl. 164; Vasquez *v.* State, (Fla. 1907) 44 So. 739; Foglia *v.* People, 229 Ill. 286, 82 N. E. 262; State *v.* De Lea, (Mont. 1908) 93 Pac. 814.

957. 1. Alabama — *Approved.* — Sims *v.* State, (Fla. 1907) 44 So. 737; Bluett *v.* State, (Ala. 1907) 44 So. 84; Boyd *v.* State, (Ala. 1907) 43 So. 204; Griffin *v.* State, (Ala. 1907)

43 So. 197; Gregory *v.* State, 148 Ala. 566, 42 So. 829; Mills *v.* State, 148 Ala. 633, 42 So. 816; Wright *v.* State, (Ala. 1907) 42 So. 745.

Disapproved.—Bardin *v.* State, 143 Ala. 74, 38 So. 833; Toliver *v.* State, 142 Ala. 3, 38 So. 801; Carwile *v.* State, 148 Ala. 576, 39 So. 220; Little *v.* State, 145 Ala. 662, 39 So. 674; Teague *v.* State, 144 Ala. 42, 40 So. 312; Miller *v.* State, 146 Ala. 686, 40 So. 342; Barden *v.* State, 145 Ala. 1, 40 So. 948; Glass *v.* State, 147 Ala. 50, 41 So. 727; Gordon *v.* State, 147 Ala. 42, 41 So. 847; Griffin *v.* State, (Ala. 1907) 43 So. 197; Leonard *v.* State, (Ala. 1907) 43 So. 214; Lawson *v.* State, (Ala. 1907) 44 So. 50; Burkett *v.* State, (Ala. 1908) 45 So. 682.

Arizona — *Disapproved.* — Prior *v.* Territory, (Ariz. 1907) 89 Pac. 412.

Arkansas — *Disapproved.* — Bell *v.* State, 81 Ark. 16, 98 S. W. 705.

Florida — *Approved.* — Vasquez *v.* State, (Fla. 1907) 44 So. 739.

Disapproved. — Hampton *v.* State, 50 Fla. 55, 39 So. 421.

Georgia — *Approved.* — Cole *v.* State, 125 Ga. 276, 53 S. E. 958; McGirt *v.* State, 125 Ga. 269, 54 S. E. 171; Johnson *v.* State, 128 Ga. 71, 57 S. E. 84; Robinson *v.* State, 129 Ga. 336, 58 S. E. 842; Thomas *v.* State, 129 Ga. 419, 59 S. E. 246; Riley *v.* State, (Ga. App. 1908) 60 S. E. 274.

Disapproved. — Williams *v.* State, 123 Ga. 138, 51 S. E. 322.

Illinois — *Approved.* — People *v.* Buettner, 233 Ill. 272, 84 N. E. 218.

Disapproved. — Parsons *v.* People, 218 Ill. 386, 75 N. E. 993.

Indiana — *Approved.* — Guy *v.* State, 37 Ind. App. 691, 77 N. E. 855; Cook *v.* State, (Ind. 1907) 82 N. E. 1047.

Disapproved. — State *v.* Fisk, (Ind. 1908) 83 N. E. 995.

Kansas — *Approved.* — State *v.* Wolfley, (Kan. 1907) 93 Pac. 337.

Kentucky — *Approved.* — Tetterton *v.* Com., 89 S. W. 8, 28 Ky. L. Rep. 146.

Michigan — *Approved.* — People *v.* Hoffmann, 142 Mich. 531, 105 N. W. 838.

Mississippi — *Disapproved.* — Taylor *v.* State, 89 Miss. 671, 42 So. 608; Murphy *v.* State, 89 Miss. 827, 42 So. 877.

Missouri — *Approved.* — State *v.* Temple, 194 Mo. 228, 92 S. W. 494.

Montana — *Approved.* — State *v.* De Lea, (Mont. 1908) 93 Pac. 814.

Nebraska — *Disapproved.* — Kennison *v.* State, (Neb. 1908) 115 N. W. 289.

[illegible] Adams, 138 N. Car. 688, 50 S. E. 765.

South Carolina — *Approved.* — State *v.* Reeder, 72 S. Car. 223, 51 S. E. 702; State *v.* Thomas, 75 S. Car. 477, 55 S. E. 893; State *v.* Hampton, 79 S. Car. 170, 60 S. E. 669.

Tennessee — *Disapproved.* — Frazier *v.* State, 117 Tenn. 430, 100 S. W. 94.

Texas — *Approved.* — Wylie *v.* State, (Tex. Crim. 1908) 109 S. W. 186; Adams *v.* State, 48 Tex. Crim. 452, 93 S. W. 116.

959. 2. U. S. *v.* Richards, 149 Fed. 443; Brown *v.* State, 142 Ala. 287, 38 So. 268; Tribble *v.* State, 145 Ala. 23, 40 So. 938; Parham *v.* State, (Ala. 1906) 42 So. 1; Wright *v.* State, (Ala. 1907) 42 So. 745; Gregory *v.* State, 148 Ala. 566, 42 So. 829; Bluett *v.* State, (Ala. 1907) 44 So. 84.

6. Com. *v.* Rider, 29 Pa. Super. Ct. 621.

9. Carter *v.* State, 145 Ala. 679, 40 So. 82; Patterson *v.* State, 146 Ala. 39, 41 So. 157; Creagh *v.* State, (Ala. 1907) 43 So. 112. But see Frazier *v.* State, 117 Tenn. 430, 100 S. W. 94.

10. *Alabama.*—Toliver *v.* State, 142 Ala. 3, 38 So. 801; Little *v.* State, 145 Ala. 662, 39 So. 674; Carter *v.* State, 145 Ala. 679, 40 So. 82; Shirley *v.* State, 144 Ala. 35, 40 So. 269; Gordon *v.* State, 147 Ala. 42, 41 So. 847; Wright *v.* State, (Ala. 1907) 42 So. 745; Brown *v.* State, (Ala. 1907) 43 So. 194; Thomas *v.* State, (Ala. 1907) 43 So. 371; Kirby *v.* State, (Ala. 1907) 44 So. 38; Davis *v.* State, (Ala. 1907) 44 So. 561.

Arizona. — Prior *v.* Territory, (Ariz. 1907) 89 Pac. 412.

New York. — People *v.* Reiss, 114 N. Y. App. Div. 431, 99 N. Y. Supp. 1002.

960. 1. *United States.* — U. S. *v.* Richards, 149 Fed. 443.

Alabama. — Brown *v.* State, 142 Ala. 287, 38 So. 268; Tribble *v.* State, 145 Ala. 23, 40 So. 938; Parham *v.* State, (Ala. 1906) 42 So. 1; Wright *v.* State, (Ala. 1907) 42 So. 745; Gregory *v.* State, 148 Ala. 566, 42 So. 829; Bluett *v.* State, (Ala. 1907) 44 So. 84.

Delaware. — State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Uzzo, (Del. 1907) 65 Atl. 775; State *v.* Wolf, (Del. 1907) 66 Atl. 739; State *v.* Cephus, (Del. 1906) 67 Atl. 150; State *v.* Briscoe, (Del. 1907) 67 Atl. 154.

Missouri. — State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55.

Pennsylvania. — Com. *v.* Rider, 29 Pa. Super. Ct. 621.

But see Frazier *v.* State, 117 Tenn. 430, 100 S. W. 94.

2. U. S. *v.* Richards, 149 Fed. 443; Jordan *v.* State, (Ga. 1908) 60 S. E. 1063; Com. *v.* Campbell, 31 Pa. Super. Ct. 9; State *v.* Grant, (S. Dak. 1905) 105 N. W. 97, citing 23 Am. [illegible] also People *v.* Manasse, (Cal. 1908) 94 Pac. 92; Vasquez *v.* State, (Fla. 1907) 44 So. 739; State *v.* Neil, 13 Idaho 539, 90 Pac. 860, 91 Pac. 418.

3. Abbott *v.* Territory, (Okla. 1908) 94 Pac. [illegible]

4. Griggs *v.* U. S., (C. C. A.) 158 Fed. 572. See also State *v.* Woltley, 75 Kan. 406, 89 Pac. 1046, 93 Pac. 237.

Neither Giving Nor Refusing Such Instruction Is Reversible Error. — Smith *v.* State, 142 Ala. 14, 39 So. 329; Hammond *v.* State, 147 Ala. 79, 41 So. 761; Rose *v.* State, 144 Ala. 114, 42 So. 21; Allen *v.* State, 146 Ala. 61, 42 So. 1006; Howard *v.* State, (Ala. 1907) 44 So. 95.

961. 1. **Fully Satisfied.** — State *v.* Adams, 138 N. Car. 688, 50 S. E. 765.

2. **Fully Satisfied of Guilt.** — The addition of the word "fully" is not prejudicial to the defendant, but more favorable to him than to the state. Wheeler *v.* State, (Neb. 1907) 113 N. W. 253.

7. State *v.* Adams, (Del. 1906) 65 Atl. 510;

State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Uzzo, (Del. 1907) 65 Atl. 775; State *v.* Wright, (Del. 1907) 66 Atl. 364; State *v.* Cephus, (Del. 1906) 67 Atl. 150.

8. U. S. *v.* Greene, 146 Fed. 803; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Wright, (Del. 1907) 66 Atl. 364; Com. *v.* Campbell, 31 Pa. Super. Ct. 9.

9. Bluett *v.* State, (Ala. 1907) 44 So. 84; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Adams, (Del. 1906) 65 Atl. 510; State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Fleetwood, (Del. 1906) 65 Atl. 772; State *v.* Uzzo, (Del. 1907) 65 Atl. 775; State *v.* Wolf, (Del. 1907) 66 Atl. 739; State *v.* Cephus, (Del. 1906) 67 Atl. 150; State *v.* Briscoe, (Del. 1907) 67 Atl. 154.

10. People *v.* Murphy, 146 Cal. 502, 80 Pac. 709. See also Jones *v.* State, (Ark. 1908) 108 S. W. 223.

11. Neilson *v.* State, 146 Ala. 683, 40 So. 221; Morris *v.* State, 146 Ala. 66, 41 So. 274; Fleming *v.* State, (Ala. 1907) 43 So. 219; Nordan *v.* State, 143 Ala. 13, 39 So. 406; Carter *v.* State, 145 Ala. 679, 40 So. 82.

962. 2. Sykes *v.* State, (Ala. 1907) 44 So. 398; State *v.* Harmon, 4 Penn. (Del.) 580, 60 Atl. 866; Cole *v.* State, 125 Ga. 276, 53 S. E. 958. See also People *v.* Coulon, (Mich. 1908) 114 N. W. 1013.

Phrases Distinguished. — Toliver *v.* State, 142 Ala. 3, 38 So. 801.

3. Harrison *v.* State, 144 Ala. 20, 40 So. 568; Dempsey *v.* State, 83 Ark. 81, 102 S. W. 704.

963. 1. Parkham *v.* State, (Ala. 1906) 42 So. 1.

2. *United States.* — U. S. *v.* Greene, 146 Fed. 803; U. S. *v.* Dexter, 154 Fed. 890.

Alabama. — Brown *v.* State, 142 Ala. 287, 38 So. 268; Tribble *v.* State, 145 Ala. 23, 40 So. 938; Barden *v.* State, 145 Ala. 1, 40 So. 948; Parham *v.* State, (Ala. 1906) 42 So. 1; Wright *v.* State, (Ala. 1907) 42 So. 745; Gregory *v.* State, 148 Ala. 566, 42 So. 829; Bluett *v.* State, (Ala. 1907) 44 So. 84.

Arkansas. — Dempsey *v.* State, 83 Ark. 81, 102 S. W. 704.

Delaware. — State *v.* Uzzo, (Del. 1907) 65 Atl. 775; State *v.* Wright, (Del. 1907) 66 Atl. 364; State *v.* Wolf, (Del. 1907) 66 Atl. 739; State *v.* Briscoe, (Del. 1907) 67 Atl. 154; State *v.* Samuels, (Del. 1904) 67 Atl. 164.

Florida. — Vasquez *v.* State, (Fla. 1907) 44 So. 739.

Missouri. — State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55.

New Mexico. — Territory *v.* Price, (N. Mex. 1907) 91 Pac. 733.

Pennsylvania. — Com. *v.* Rider, 29 Pa. Super. Ct. 621.

964. 1. Howard *v.* State, (Ala. 1907) 44 So. 95.

4. State *v.* Harmon, 4 Penn. (Del.) 580, 60 Atl. 866; State *v.* Fleetwood, (Del. 1906) 65 Atl. 772.

7. U. S. *v.* Dexter, 154 Fed. 890; State *v.* Fleetwood, (Del. 1906) 65 Atl. 772.

965. 1. Davis *v.* State, (Ala. 1907) 44 So. 561; State *v.* Krug, (Iowa 1907) 113 N. W. 822; Com. *v.* Miller, 31 Pa. Super. Ct. 309. *Compare* Browne *v.* U. S., (C. C. A.) 145 Fed. 1; Burkett *v.* State, (Ala. 1908) 45 So. 682; Carwile *v.* State, 148 Ala. 576, 39 So. 220.

To Be Considered with All Other Evidence. — Teague *v.* State, 144 Ala. 42, 40 So. 312.

2. Johnson *v.* State, 128 Ga. 71, 57 S. E. 84.

3. Regan *v.* State, 87 Miss. 422, 39 So. 1002.

The word "conscientiously" in an instruction has been treated as surplusage. Moore *v.* State, 86 Miss. 160, 38 So. 504.

4. Taylor *v.* State, 89 Miss. 671, 42 So. 608.

5. Perry *v.* People, 38 Colo. 23, 87 Pac. 796; People *v.* Zajicek, 233 Ill. 198, 84 N. E. 249.

7. Clements *v.* State, (Neb. 1907) 114 N. W. 271.

8. Dempsey *v.* State, 83 Ark. 81, 102 S. W. 704.

10. Clay *v.* State, (Ga. App. 1908) 60 S. E. 1028. See also U. S. *v.* Dexter, 154 Fed. 890.

Act or Decline to Act When Own Concerns Involved. — U. S. *v.* Richards, 149 Fed. 443.

966. 1. Parker *v.* State, 3 Ga. App. 336, 59 S. E. 823; Roszczniala *v.* State, 125 Wis. 414, 104 N. W. 113.

2. Kirby *v.* State, (Ala. 1907) 44 So. 38; Vaughn *v.* State, 52 Fla. 122, 41 So. 881; Nelms *v.* State, 123 Ga. 575, 51 S. E. 588.

3. Toliver *v.* State, 142 Ala. 3, 38 So. 801; Shirley *v.* State, 144 Ala. 35, 40 So. 269; Brown *v.* State, (Ala. 1907) 43 So. 194; Parker *v.* State, (Ala. 1907) 45 So. 248; Mason *v.* State, (Ala. 1907) 45 So. 472; Lacy *v.* State, (Ala. 1908) 45 So. 680.

4. State *v.* Collins, 5 Penn. (Del.) 263, 62 Atl. 224.

5. **Lack of Evidence.** — State *v.* Kelley, 191 Mo. 680, 90 S. W. 834.

967. 1. Tribble *v.* State, 145 Ala. 23, 40 So. 938; Thomas *v.* State, (Ala. 1907) 43 So. 371; Williams *v.* State, 123 Ga. 138, 51 S. E. 322; State *v.* Adams, 138 N. Car. 688, 50 S. E. 765; Com. *v.* Campbell, 31 Pa. Super. Ct. 9; Com. *v.* Striepeke, 32 Super. Ct. 82.

3. Gordon *v.* State, 147 Ala. 42, 41 So. 847, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 42.

4. Territory *v.* Livingston, 13 N. Mex. 318, 84 Pac. 1021; State *v.* Hampton, 79 S. Car. 179, 60 S. E. 669; State *v.* King, (Wash. 1908) 94 Pac. 663; Davis *v.* State, (Wis. 1908) 115 N. W. 150.

All the Instructions Given Should Be Read Together. — Clark *v.* State, (Neb. 1907) 113 N. W. 211.

968. 1. *United States.* — Browne *v.* U. S., (C. C. A.) 145 Fed. 1.

Alabama. — Du Bose *v.* State, (Ala. 1906) 42 So. 862; Young *v.* State, (Ala. 1907) 43 So. 100; Griffin *v.* State, (Ala. 1907) 43 So. 197; Howard *v.* State, (Ala. 1907) 44 So. 95.

Illinois. — Parsons *v.* People, 218 Ill. 386, 75 N. E. 993.

Nebraska. — Sweet *v.* State, (Neb. 1905) 106 N. W. 31.

New Mexico. — Territory *v.* Price, (N. Mex. 1907) 91 Pac. 733.

Texas. — Searles *v.* State, (Tex. Crim. 1907) 105 S. W. 191.

West Virginia. — State *v.* Detwiler, 60 W. Va. 583, 55 S. E. 654.

See also Roszczyniala *v.* State, 125 Wis. 414, 104 N. W. 113.

REASONABLE TIME.

971. 1. McCleskey *v.* Howell Cotton Co., 147 Ala. 580, 42 So. 67, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 971.

RECAPTION.

973. 2. Stevens *v.* Friedman, 58 W. Va. 73, 51 S. E. 132, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 973.

RECEIPTS.

977. 3. California Packers' Co. *v.* Merritt Fruit Co., (Cal. App. 1907) 92 Pac. 509

978. 1. **Instruments Held to Be Receipts and Not Contracts.** — Meierwachter *v.* Supreme Lodge, etc., 109 N. Y. App. Div. 70, 95 N. Y. Supp. 1090; Winter *v.* Friedman, 111 N. Y. App. Div. 306, 97 N. Y. Supp. 733; Duffy *v.* Meyer, (Supm. Ct. App. Div.) 107 N. Y. Supp. 672; Lazier *v.* Cady, 44 Wash. 339, 87 Pac. 344.

2. Southern Bell Telephone, etc., Co. *v.* Smith, 129 Ga. 558, 59 S. E. 215; Miller *v.* Smith, 140 Mich. 524, 103 N. W. 872; Lauze *v.* New York L. Ins. Co., (N. H. 1907) 68 Atl. 31; Earle *v.* Berry, 27 R. I. 221, 61 Atl. 671.

3. Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101; Illinois Cent. R. Co. *v.* Heath, (Ky. 1904) 80 S. W. 502; Miller *v.* Smith, 140 Mich. 524, 103 N. W. 872.

Instruments Held to Constitute Contract and Not Merely Receipt. — Lefkovits *v.* Gadsden First National Bank, (Ala. 1907) 44 So. 613; Southern Bell Telephone, etc., Co. *v.* Smith, 129 Ga. 558, 59 S. E. 215; Interurban Constr. Co. *v.* Hayes, 191 Mo. 291, 89 S. W. 927, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 978, the whole text paragraph; Lauze *v.* New York L. Ins. Co., (N. H. 1907) 68 Atl. 31.

979. 1. Jersey Island Dredging Co. *v.* Whitney, 149 Cal. 269, 86 Pac. 691; Schlessinger *v.* Schlessinger, 39 Colo. 44, 88 Pac. 970; Allen *v.* Ruland, 79 Conn. 405, 65 Atl. 138; Southern Bell Telephone, etc., Co. *v.* Smith, 129 Ga. 558, 59 S. E. 215; Illinois Cent. R. Co. *v.* Heath, (Ky. 1904) 80 S. W. 502; Reedy Elevator Co. *v.* Berman, (Supm. Ct. App. T.) 107 N. Y. Supp. 59.

3. Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101; Dreyfus *v.* Roberts, 75 Ark. 354, 87 S. W. 641; Jersey Island Dredging Co. *v.* Whitney, 149 Cal. 269, 86 Pac. 691; Schlessinger *v.* Schlessinger, 39 Colo. 44, 88 Pac. 970.

7. Redmond *v.* Atlanta, etc., Air Line R. Co., 129 Ga. 133, 58 S. E. 874.

980. 2. **Conclusive Presumption in Favor of Ancient Receipts.** — Chastang *v.* Chastang, 141 Ala. 461, 37 So. 799.

8. Redmond *v.* Atlanta, etc., Air Line R. Co., 129 Ga. 133, 58 S. E. 874.

By Code Ala. 1896, § 1805, a receipt must have effect according to the intention of the parties thereto. Murphy *v.* Black, (Ala. 1906) 41 So. 877.

981. 2. California Packers' Co. *v.* Merritt Fruit Co., (Cal. App. 1907) 92 Pac. 509.

Receipt Evidence of Agency. — Lauze *v.* New York L. Ins. Co., (N. H. 1907) 68 Atl. 31.

3. Chastang *v.* Chastang, 141 Ala. 461, 37 So. 799, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 981; Allen *v.* Ruland, 79 Conn. 405, 65 Atl. 138.

7. Chastang *v.* Chastang, 141 Ala. 461, 37 So. 799, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 981.

982. 4. Lauze *v.* New York L. Ins. Co., (N. H. 1907) 68 Atl. 31.

5. Lazier *v.* Cady, 44 Wash. 339, 87 Pac. 344.

983. 1. Devencenzi *v.* Cassinelli, 28 Nev. 222, 81 Pac. 41.

2. Strawn *v.* Missouri, etc., R. Co., 120 Mo. App. 142, 96 S. W. 488, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983 *et seq.*; Devencenzi *v.* Cassinelli, 28 Nev. 222, 81 Pac. 41.

A receipt is the best evidence of the purpose for which it is given. Holcomb-Lobb Co. *v.* Kaufman, (Ky. 1906) 96 S. W. 813.

3. Strawn *v.* Missouri, etc., R. Co., 120 Mo. App. 142, 96 S. W. 488, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983 *et seq.*

4. Fidelity, etc., Co. *v.* Tinsley, (Ky. 1907) 100 S. W. 272; Strawn *v.* Missouri, etc., R. Co., 120 Mo. App. 142, 96 S. W. 488, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983 *et seq.*; Devencenzi *v.* Cassinelli, 28 Nev. 232, 81 Pac. 41, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983.

Where Receipt Contains Contract. — California Packers' Co. *v.* Merritt Fruit Co., (Cal. App. 1907) 92 Pac. 509; Brixen *v.* Jorgensen, (Utah 1907) 92 Pac. 1004; Murphy *v.* Black, (Ala. 1906) 41 So. 877; Lefkovits *v.* Gadsden First Nat. Bank, (Ala. 1907) 44 So. 613.

984. 1. California Packers' Co. *v.* Merritt Fruit Co., (Cal. App. 1907) 92 Pac. 509; Schlessinger *v.* Schlessinger, 39 Colo. 44, 88 Pac. 970; Hartford L. Ins. Co. *v.* Sherman, 223 Ill. 329, 78 N. E. 923; Fidelity Co. *v.* Tinsley, (Ky. 1907) 100 S. W. 272; Strawn *v.* Missouri, etc., R. Co., 120 Mo. App. 142, 96 S. W. 488, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983 *et seq.*; Wegmann *v.* Rothwell, 121 Mo. App. 413, 99 S. W. 59; Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971; Reedy Elevator Co. *v.* Berman, (Supm. Ct. App. T.) 107 N. Y. Supp. 59; Duffy *v.* Meyer, (Supm. Ct. App. Div.) 107 N. Y. Supp. 672; Brodhead *v.* Pullman Ventilator Co., 29 Pa. Super. Ct. 19; House *v.* Holland, (Tex. Civ. App. 1906) 94 S. W. 153; Brixen *v.* Jorgensen, (Utah 1907) 92 Pac. 1004.

2. *Alabama.* — Murphy *v.* Black, (Ala. 1906) 41 So. 877.

California. — Jersey Island Dredging Co. *v.* Whitney, 149 Cal. 269, 86 Pac. 691; California Packers' Co. *v.* Merritt Fruit Co., (Cal. App. 1907) 92 Pac. 509.

Connecticut. — Allen *v.* Ruland, 79 Conn. 405, 65 Atl. 138.

Georgia. — Southern Bell Telephone, etc., Co. *v.* Smith, 129 Ga. 558, 59 S. E. 215.

Missouri. — Strawn *v.* Missouri, etc., R. Co., 120 Mo. App. 142, 96 S. W. 488, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983 *et seq.*; Wegmann *v.* Rothwell, 121 Mo. App. 413, 99 S. W. 59.

Nevada. — Devencenzi *v.* Cassinelli, 28 Nev. 222, 81 Pac. 41.

New York. — Duffy *v.* Meyer, (Supm. Ct. App. Div.) 107 N. Y. Supp. 672; Reedy Ele-

vator Co. *v.* Berman, (Supm. Ct. App. T.) 107 N. Y. Supp. 59; Winter *v.* Friedman, 111 N. Y. App. Div. 306, 97 N. Y. Supp. 733.

Texas. — House *v.* Holland, (Tex. Civ. App. 1906) 94 S. W. 153.

Utah. — Brixen *v.* Jorgensen, (Utah 1907) 92 Pac. 1004.

Washington. — Lazier *v.* Cady, 44 Wash. 339, 87 Pac. 344.

985. 1. Redmond *v.* Atlanta, etc., Air Line R. Co., 129 Ga. 133, 58 S. E. 874.

2. Murphy *v.* Black, (Ala. 1906) 41 So. 877; California Packers' Co. *v.* Merritt Fruit Co., (Cal. App. 1907) 92 Pac. 509; Strawn *v.* Missouri, etc., R. Co., 120 Mo. App. 142, 96 S. W. 488; Duffy *v.* Meyer, (Supm. Ct. App. Div.) 107 N. Y. Supp. 672; Earle *v.* Berry, 27 R. I. 221, 61 Atl. 671; Smith *v.* Allmon, 74 So. Car. 502, 54 S. E. 1014.

3. Southern Bell Telephone, etc., Co. *v.* Smith, 129 Ga. 558, 59 S. E. 215; Strawn *v.* Missouri, etc., R. Co., 120 Mo. App. 142, 96 S. W. 488.

5. Murphy *v.* Black, (Ala. 1906) 41 So. 877; California Packers' Co. *v.* Merritt Fruit Co., (Cal. App. 1907) 92 Pac. 509; Illinois Cent. R. Co. *v.* Heath, (Ky. 1904) 80 S. W. 502; Strawn *v.* Missouri, etc., R. Co., 120 Mo. App. 142, 96 S. W. 488; Sawyer *v.* Walker, 204 Mo. 133, 102 S. W. 550; Earle *v.* Berry, 27 R. I. 221, 61 Atl. 671.

6. Earle *v.* Berry, 27 R. I. 221, 61 Atl. 671.

7. Earle *v.* Berry, 27 R. I. 221, 61 Atl. 671.

986. 1. McGahren *v.* Royal Union Mut. L. Ins. Co., 28 Pa. Super. Ct. 47.

2. Reedy Elevator Co. *v.* Berman, (Supm. Ct. App. T.) 107 N. Y. Supp. 59.

Alabama Statute. — Civ. Code Ala. 1896, § 1805, provides that receipts must have effect according to the intention of the parties. Stegall *v.* Wright, 143 Ala. 204, 38 So. 844; Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101.

3. Smith *v.* Allmon, 74 S. Car. 502, 54 S. E. 1014.

6. Devencenzi *v.* Cassinelli, 28 Nev. 232, 81 Pac. 41, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 986.

987. 1. **Where a Receipt Is Unambiguous,** it is "the duty of the trial court to interpret it and declare its effect to the jury." Murphy *v.* Black, (Ala. 1906) 41 So. 877.

2. Hartford L. Ins. Co. *v.* Sherman, 223 Ill. 329, 78 N. E. 923; Swift *v.* Mutter, 115 Ill. App. 379, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987; Halcomb-Lobb Co. *v.* Kaufman, (Ky. 1906) 96 S. W. 813; Devencenzi *v.* Cassinelli, 28 Nev. 222, 81 Pac. 41; Duffy *v.* Meyer, (Supm. Ct. App. Div.) 107 N. Y. Supp. 672; Earle *v.* Berry, 27 R. I. 221, 61 Atl. 671.

4. Devencenzi *v.* Cassinelli, 28 Nev. 222, 81 Pac. 41; Earle *v.* Berry, 27 R. I. 221, 61 Atl. 671.

5. Stegall *v.* Wright, 143 Ala. 204, 38 So. 844; Connelly *v.* Sullivan, 119 Ill. App. 469.

988. 1. Stegall *v.* Wright, 143 Ala. 204, 38 So. 844; Redmond *v.* Atlanta, etc., Air Line R. Co., 129 Ga. 133, 58 S. E. 874.

2. California Packers' Co. *v.* Merritt Fruit Co., (Cal. App. 1907) 92 Pac. 509; Wegmann *v.* Rothwell, 121 Mo. App. 413, 99 S. W. 59; Devencenzi *v.* Cassinelli, 28 Nev. 222, 81 Pac. 41.

The acceptance of a less sum than that due and receipts given therefor, if induced by fraud, are no bar to an action to recover the balance actually due. Sawyer *v.* Walker, 204 Mo. 133, 102 S. W. 544.

989. 1. Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101; Dreyfus *v.* Roberts, 75 Ark. 354, 87 S. W. 641; Southern Bell Telephone, etc., Co. *v.* Smith, 129 Ga. 558, 59 S. E. 215; Reedy Elevator Co. *v.* Berman, (Supm. Ct. App. T.) 107 N. Y. Supp. 59; Fitch *v.* Gottschalk, 28 Ohio Cir. Ct. 811; Earle *v.* Berry, 27 R. I. 221, 61 Atl. 671.

5. Redmond *v.* Atlanta, etc., Air Line R. Co., 129 Ga. 133, 58 S. E. 874.

6. Redmond *v.* Atlanta, etc., Air Line R. Co., 129 Ga. 133, 58 S. E. 874.

7. Insurance Premiums, Lauze *v.* New York L. Ins. Co., (N. H. 1907) 68 Atl. 31.

RECEIVERS.

1001. 1. Hall *v.* Stulb, 126 Ga. 524, 55 S. E. 172.

Statutory Definition. — Ballinger's Ann. Codes and St. Wash., § 5455. Libert *v.* Unfried, (Wash. 1907) 91 Pac. 774.

3. West *v.* Mercer, (Ga. 1908) 60 S. E. 859.

5. Hobson *v.* Pacific States Mercantile Co., 5 Cal. App. 94, 89 Pac. 866; Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828; People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 107 N. Y. Supp. 247; Slover *v.* Coal Creek Coal Co., 113 Tenn. 421, 82 S. W. 1131, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1001.

7. See Haight, etc., Co. *v.* Weiss, (C. C. A.) 156 Fed. 328.

Receivership an Equitable Attachment. — Adamian *v.* Hassanoff, 189 Mass. 194, 75 N. E. 126.

Equitable Quo Warranto. — Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

1002. 3. Atlantic Trust Co. *v.* Chapman, 208 U. S. 360, 28 U. S. Sup. Ct. 406; *In re* T. E. Hill Co., (C. C. A.) 159 Fed. 73; Decker *v.* Berners Bay Min., etc., Co., 2 Alaska 504; Horner *v.* Bell, 105 Md. 113, 66 Atl. 39; Dow *v.* Nealis, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 153, 93 N. Y. Supp. 379.

6. Pierce *v.* Old Dominion Copper Min., etc., Co., 67 N. J. Eq. 399, 58 Atl. 319; McCarter *v.* Clavin, (N. J. 1907) 66 Atl. 599; Slover *v.* Coal Creek Coal Co., 113 Tenn. 421, 82 S. W. 1131.

Probate Court Cannot Appoint. — Garrett *v.* London, etc., F. Ins. Co., 15 Okla. 222, 81 Pac. 421; Garrett *v.* National F. Ins. Co., 15 Okla. 226, 81 Pac. 422.

1003. 1. Sylvester *v.* Wilson, 2 Alaska 325; Damers *v.* Sternberger, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 532, 102 N. Y. Supp. 740; Whilden *v.* Chapman, (S. Car. 1908) 61 S. E. 249.

The Indiana Statute does not require exhaustion of remedies at law. Sallee *v.* Soules, 168 Ind. 624, 81 N. E. 587.

5. **Rule in Supplementary Proceedings.** — McKee *v.* Murphy, (Iowa 1907) 113 N. W. 499.

1004. 4. Hobson *v.* Pacific States Mercantile Co., 5 Cal. App. 94, 89 Pac. 866; People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 107 N. Y. Supp. 247; Slover *v.* Coal Creek Coal Co., 113 Tenn. 421, 82 S. W. 1131.

5. Slover *v.* Coal Creek Coal Co., 113 Tenn. 421, 82 S. W. 1131.

6. People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 107 N. Y. Supp. 247.

1005. 4. *United States.* — Horn *v.* Pere Marquette R. Co., 151 Fed. 626.

Alabama. — Black *v.* Sullivan Lumber Co., 147 Ala. 327, 40 So. 667.

Arkansas. — Corn *v.* Skillern, 75 Ark. 148, 87 S. W. 142.

California. — McAneny *v.* Superior Ct., 150 Cal. 6, 87 Pac. 1020; Hobson *v.* Pacific States Mercantile Co., 5 Cal. App. 94, 89 Pac. 866.

Colorado. — Hendrie, etc., Mfg. Co. *v.* Parry, 37 Colo. 359, 86 Pac. 113.

Connecticut. — Ray *v.* Robert Price Coal Co., (Conn. 1908) 69 Atl. 355.

Georgia. — Wheatley *v.* Glover, 125 Ga. 410, 54 S. E. 626; Virginia-Carolina Chemical Co. *v.* Provident Sav. L. Assur. Soc., 126 Ga. 50, 54 S. E. 929.

Idaho. — Hall *v.* Menkirk, 12 Idaho 33, 85 Pac. 485.

Illinois. — People *v.* Milwaukee Ave. State Bank, 230 Ill. 505, 82 N. E. 853; Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434.

Indiana. — McDaniel *v.* Osborn, (Ind. App. 1904) 72 N. E. 601; Sallee *v.* Soules, 168 Ind. 624, 81 N. E. 587.

Iowa. — Platner *v.* Kirby, (Iowa 1908) 115 N. W. 1032.

Kansas. — Henley *v.* Myers, (Kan. 1907) 93 Pac. 168.

Kentucky. — Murray *v.* Murray, (Ky. 1907) 99 S. W. 301; Ingram *v.* Cincinnati, etc., R. Co., (Ky. 1908) 107 S. W. 239, *reversing* (Ky. 1907) 105 S. W. 978; McClure *v.* McGee, (Ky. 1908) 108 S. W. 341.

Louisiana. — *In re* Eckhardt Mfg. Co., 114 La. 119, 38 So. 78; Bartlett *v.* Fourton, 115 La. 26, 38 So. 882; Oil City Ironworks *v.* Pelican Oil, etc., Co., 115 La. 265, 38 So. 987; Russell *v.* Citizens' Ice Co., 118 La. 442, 43 So. 44; Winterhaler *v.* Hoffman, 119 La. 125, 43 So. 980; Perkins *v.* Crystal Ice, etc., Mfg. Co., 119 La. 519, 44 So. 284; *In re* Louisiana Driving, etc., Club, (La. 1907) 45 So. 127; *In re* Dugdamonia Shingle, etc., Co., 118 La. 242, 42 So. 789.

Maryland. — Monumental Mut. L. Ins. Co. *v.* Wilkinson, 100 Md. 31, 59 Atl. 125.

Massachusetts. — Atty.-Gen. *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 966; Cutting *v.* American Ins. Co., (Mass. 1908) 83 N. E. 306.

Nebraska. — Andrews *v.* Holcomb, (Neb. 1907) 113 N. W. 204.

New Jersey. — Pierce *v.* Old Dominion Copper Min., etc., Co., 67 N. J. Eq. 399, 58 Atl. 319; Gallagher *v.* Asphalt Co., 67 N. J. Eq. 441, 58 Atl. 403; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408; Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq. 570, 61 Atl. 26; Hoopes *v.* Basic Co., 69 N. J. Eq. 679, 61 Atl. 970; Reinhardt *v.* Interstate Telephone Co., (N. J. 1906) 63 Atl. 1097; McCarter *v.* Vineland Light, etc., Co., (N. J. 1907) 65 Atl. 1041; Catlin *v.* Vichachi Min. Co., (N. J. 1907) 67 Atl. 191; Squire *v.* Princeton Lighting Co., (N. J. 1907) 68 Atl. 176, *reversing* 64 Atl. 474.

New York. — Raymond *v.* Security Trust, etc., Ins. Co., (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 31, 89 N. Y. Supp. 753; Boynton *v.* Sprague, 100 N. Y. App. Div. 443, 91 N. Y. Supp. 839; Acken *v.* Coughlin, 103 N. Y. App. Div. 1, 92 N. Y. Supp. 700; *In re* Stafford, 105 N. Y. App. Div. 46, 94 N. Y. Supp. 195; Port Jefferson Bank *v.* Darling, 108 N. Y. App. Div. 48, 95 N. Y. Supp. 492, *reversing* 102 N. Y. App. Div. 431, 92 N. Y. Supp. 483; Fawcett *v.* New York, 112 N. Y. App. Div. 155, 98 N. Y. Supp. 286; Jones *v.* Arkenburgh, 112 N. Y. App. Div. 483, 98 N. Y. Supp. 532; Trowbridge *v.* Troy, etc., R. Co., 113 N. Y. App. Div. 325, 99 N. Y. Supp. 435; Damers *v.* Sternberger, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 532, 102 N. Y. Supp. 740; Bimberg *v.* Wagenhals, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 13, 102 N. Y. Supp. 925; Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237; People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 107 N. Y. Supp. 247; People *v.* Hasbrouck, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 257; People *v.* Oriental Bank, (Supm. Ct. App. Div.) 109 N. Y. Supp. 509; Logan *v.* Logan, (Supm. Ct. App. Div.) 110 N. Y. Supp. 174.

North Carolina. — Talbot *v.* Tyson, (N. Car. 1908) 60 S. E. 1125.

Rhode Island. — Hazlett *v.* Woodhead, (R. I. 1907) 67 Atl. 736.

South Carolina. — Whilden *v.* Chapman, (S. Car. 1908) 61 S. E. 429.

Tennessee. — Slover *v.* Coal Creek Coal Co., 113 Tenn. 421, 82 S. W. 1131.

Texas. — Rische *v.* Rische, (Tex. Civ. App. 1907) 101 S. W. 849.

Washington. — Flood *v.* Libby, 38 Wash. 366, 80 Pac. 533; Libert *v.* Unfried, (Wash. 1907) 91 Pac. 774.

West Virginia. — U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

5. Starr *v.* Bankers' Union of the World, (Neb. 1908) 116 N. W. 61; People *v.* Hasbrouck, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 257; Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874. See also Jones *v.* Gould, (C. C. A.) 149 Fed. 153; Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq. 570, 61 Atl. 26.

1006. 1. Pennsylvania Steel Co. *v.* New York City R. Co., 157 Fed. 440; Culver Lumber Co. *v.* Culver, 81 Ark. 102, 99 S. W. 391; Starr *v.* Bankers' Union of the World, (Neb. 1908) 116 N. W. 61.

2. Starr *v.* Bankers' Union of the World, (Neb. 1908) 116 N. W. 61.

4. **Where the Foreign Corporation Is a Mutual Insurance Company,** having no assets within the state except unpaid assessments, no receiver will be appointed. Blackwell *v.* Mutual Reserve Fund L. Assoc., 141 N. Car. 117, 53 S. E. 833.

5. Eureka Min., etc., Co. *v.* Lewiston Nav. Co., 12 Idaho 172, 86 Pac. 49.

1007. 2. International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78; Mann *v.* Gaddie, (C. C. A.) 158 Fed. 42; Murray *v.* Murray, (Ky. 1907) 99 S. W. 301; Summers Fiber Co. *v.* Walker, (Ky. 1908) 109 S. W. 883; Chandler Mortg. Co. *v.* Loring, 113 Ill. App. 423; Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828; Hastings *v.* Tousey, 121 N. Y. App. Div. 815, 106 N. Y.

Supp. 639, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1007; Miller *v.* Herrick, 122 N. Y. App. Div. 327, 106 N. Y. Supp. 1055; Harding *v.* Garber, (Okla. 1907) 93 Pac. 541; Whilden *v.* Chapman, (S. Car. 1908) 61 S. E. 249.

3. Meyer *v.* Meyer, 116 La. 456, 40 So. 794.

1008. 2. Bimberg *v.* Wagenhals, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 13, 102 N. Y. Supp. 925; Hastings *v.* Tousey, 121 N. Y. App. Div. 815, 106 N. Y. Supp. 639.

3. **Distinction between Equitable and Statutory Receivers.** — Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

1009. 3. **In Supplementary Proceedings** a receiver will be appointed when title to property in the hands of a third party is in dispute. Thompson *v.* Sage, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 357, 94 N. Y. Supp. 31.

4. Nutter *v.* Brown, 58 W. Va. 237, 52 S. E. 88. See also West *v.* Hermann, (Tex. Civ. App. 1907) 104 S. W. 428.

7. Horner-Gaylord Co. *v.* Miller, 147 Fed. 295; Gaddie *v.* Mann, 147 Fed. 960; Weiss *v.* Haight, etc., Co., 148 Fed. 399; Bird *v.* People's Gas, etc., Co., 158 Fed. 903; Burgess *v.* Simpson Grocery Co., 128 Ga. 423, 57 S. E. 717; Chandler Mortg. Co. *v.* Loring, 113 Ill. App. 423; Sallee *v.* Soules, 168 Ind. 624, 81 N. E. 587; Barron *v.* Meyers, 140 Mich. 431, 103 N. W. 842; Jones *v.* Weir, 217 Pa. St. 321, 66 Atl. 550.

1010. 3. West *v.* Mercer, (Ga. 1908) 60 S. E. 859; Chemung Min. Co. *v.* Hanley, 11 Idaho 302, 81 Pac. 619; McClure *v.* McGee, (Ky. 1908) 108 S. W. 341; Dickens *v.* Dickens, (Ala. 1908) 45 So. 630; Horner *v.* Bell, 105 Md. 113, 66 Atl. 39; Stern *v.* Shapiro, 99 N. Y. App. Div. 405, 91 N. Y. Supp. 249; Webb *v.* Manheim, 109 N. Y. App. Div. 63, 95 N. Y. Supp. 1003; People *v.* Oriental Bank, (Supm. Ct. App. Div.) 109 N. Y. Supp. 509.

1011. 1. Smith *v.* Zachry, 128 Ga. 290, 57 S. E. 513. See also Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828.

1012. 4. Baltimore Bargain House *v.* St. Clair, 58 W. Va. 565, 52 S. E. 660.

6. Bauer *v.* Haggerty, 42 Wash. 313, 84 Pac. 871; Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1907) 57 S. E. 249.

1014. 2. West *v.* Mercer, (Ga. 1908) 60 S. E. 859. See also Dickens *v.* Dickens, (Ala. 1908) 45 So. 630.

1015. 9. See Thompson *v.* Sage, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 357, 94 N. Y. Supp. 31.

Receiver of Property of Absentee. — George *v.* Clark, 186 Mass. 426, 71 N. E. 809.

10. Slover *v.* Coal Creek Coal Co., 113 Tenn. 421, 82 S. W. 1131, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1015; McCarter *v.* Clavin, (N. J. 1907) 66 Atl. 599. See also Sallee *v.* Soules, 168 Ind. 624, 81 N. E. 587; Dickens *v.* Dickens, (Ala. 1908) 45 So. 630.

1016. 2. Slover *v.* Coal Creek Coal Co., 113 Tenn. 421, 82 S. W. 1131, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1016.

3. Preston *v.* American Surety Co., 104 Md. 40, 64 Atl. 292. See also Phillips *v.* Williams, 118 Ky. 757, 82 S. W. 379.

4. Slover *v.* Coal Creek Coal Co., 113 Tenn. 421, 82 S. W. 1131, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1016.

9. **To Enforce Payment of Alimony.** — McAneny *v.* Superior Ct., 150 Cal. 6, 87 Pac. 1020; Stallings *v.* Stallings, 124 Ga. 464, 56 S. E. 469; Harding *v.* Harding, 120 Ill. App. 389; Logan *v.* Logan, (Supm. Ct. App. Div.) 110 N. Y. Supp. 174.

1017. 1. Platt *v.* Elias, 101 N. Y. App. Div. 518, 91 N. Y. Supp. 1079, *reversing* (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 401, 89 N. Y. Supp. 1015.

7. Mann *v.* Gaddie, (C. C. A.) 158 Fed. 42; West *v.* Mercer, (Ga. 1908) 60 S. E. 859. See also Stern *v.* Shapiro, 99 N. Y. App. Div. 405, 91 N. Y. Supp. 249.

The Filing of a Bond on Appeal effects a stay of receivership proceedings. McAneny *v.* Superior Ct., 150 Cal. 6, 87 Pac. 1020.

8. Gaddie *v.* Mann, 147 Fed. 960.

9. Nesbit *v.* North Georgia Electric Co., 156 Fed. 979; Benton *v.* Peck, (Tex. Civ. App. 1905) 87 S. W. 899.

1018. 2. Bimberg *v.* Wagenhals, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 13, 102 N. Y. Supp. 925.

3. Jones *v.* Weir, 217 Pa. St. 321, 66 Atl. 550.

4. Greenwald *v.* Gotham-Attucks Music Co., 118 N. Y. App. Div. 29, 103 N. Y. Supp. 123; Shubert *v.* Laughlin, (Supm. Ct. App. Div.) 107 N. Y. Supp. 708; Rische *v.* Rische, (Tex. Civ. App. 1907) 101 S. W. 849.

5. Sarásohn *v.* Kanearky, 110 N. Y. App. Div. 713, 97 N. Y. Supp. 529.

6. Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828.

1019. 1. Brooke *v.* Tucker, (Ala. 1907) 43 So. 141; Jones *v.* Weir, 217 Pa. St. 321, 66 Atl. 550.

6. Campbell *v.* Rich Oil Co., (Ky. 1906) 96 S. W. 442; Shubert *v.* Laughlin, (Supm. Ct. App. Div.) 107 N. Y. Supp. 708. See also Conover *v.* Tansey, (N. J. 1907) 67 Atl. 1013.

8. Gaddie *v.* Mann, 147 Fed. 960; Rische *v.* Rische, (Tex. Civ. App. 1907) 101 S. W. 849; Whipple *v.* Lee, (Wash. 1907) 89 Pac. 712. See also Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828.

1020. 2. Dickens *v.* Dickens, (Ala. 1908) 45 So. 630.

5. Brooke *v.* Tucker, (Ala. 1907) 43 So. 141; Jones *v.* Weir, 217 Pa. St. 321, 66 Atl. 550; Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874.

1021. 4. Gaddie *v.* Mann, 147 Fed. 960; Wotring *v.* Indemnity Imp. Co., (Tex. Civ. App. 1907) 100 S. W. 358; Rische *v.* Rische, (Tex. Civ. App. 1907) 101 S. W. 849.

8. Bimberg *v.* Wagenhals, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 13, 102 N. Y. Supp. 925, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021.

10. People *v.* District Ct., 33 Colo. 293, 80 Pac. 908; Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434; Cantwell *v.* Columbia Lead Co., 199 Mo. 1, 97 S. W. 167; Brookshire *v.* Farmers' Alliance Exch., 73 S. Car. 131, 52 S. E. 867, *quoting* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1021.

Corporation Winding Up Affairs — Receivership Refused. — Russell *v.* Citizens Ice Co., 118 La. 442, 43 So. 44.

1022. 2. Hastings *v.* Tousey, 121 N. Y. App. Div. 815, 106 N. Y. Supp. 639.

Receiver for Municipal Corporation. — An

illegal debt will not support an application for a receiver. Wadley *v.* Lancaster, 124 Ga. 354, 52 S. E. 335.

4. **Texas.** — Under Rev. St. Tex. 1895, art. 1465, the forfeiture of corporate rights is a conclusive ground for the appointment of a receiver of a corporation. Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1907) 105 S. W. 851; Ripy *v.* Redwater Lumber Co., (Tex. Civ. App. 1907) 106 S. W. 474. See Commercial Telephone Co. *v.* Territorial Bank, etc., Co., (Tex. Civ. App. 1905) 86 S. W. 66.

5. *In re* Eckhardt Mfg. Co., 114 La. 119, 38 So. 78; Ripy *v.* Redwater Lumber Co., (Tex. Civ. App. 1907) 106 S. W. 474.

Cessation of Business for Twenty-five Years. — Greenleaf *v.* Land, etc., Co., (N. Car. 1908) 60 S. E. 424.

1023. 3. Black *v.* Sullivan Timber Co., 147 Ala. 327, 40 So. 667; Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1023; Stokes *v.* Knickerbocker Invest. Co., 70 N. J. Eq. 518, 61 Atl. 736; Watkins *v.* State Mut. Bldg., etc., Assoc., (N. J. 1907) 66 Atl. 920; Brookshire *v.* Farmers' Alliance Exch., 73 S. Car. 131, 52 S. E. 867, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1022 [1023]. See also Leigh *v.* National Hollow Brake-Beam Co., 224 Ill. 76, 79 N. E. 318.

4. Hayes *v.* Jasper Land Co., 147 Ala. 340, 41 So. 909; State *v.* People's U. S. Bank, 197 Mo. 574, 94 S. W. 953, *affirmed* 197 Mo. 605, 95 S. W. 867; Acken *v.* Coughlin, 103 N. Y. App. Div. 1, 92 N. Y. Supp. 100; State *v.* Dearing, 184 Mo. 647, 84 S. W. 21.

5. Brookshire *v.* Farmers' Alliance Exch., 73 S. Car. 131, 52 S. E. 867, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 1023. See also Green *v.* Felton, (Ind. App. 1908) 84 N. E. 166.

1024. 1. Hastings *v.* Tousey, 121 N. Y. App. Div. 815, 106 N. Y. Supp. 639; Brookshire *v.* Farmers' Alliance Exch., 73 S. Car. 131, 52 S. E. 867, *quoting* 23 Am. and Eng. Encyc. of Law (2d ed.) 1023 [1024].

2. Bird *v.* People's Gas, etc., Co., 158 Fed. 903; Ray *v.* Robert Price Coal Co., (Conn. 1908) 69 Atl. 355; Hall *v.* Nieukirk, 12 Idaho 33, 85 Pac. 485; Chandler Mortg. Co. *v.* Loring, 113 Ill. App. 423; Lamont *v.* Lamont Crystallized Egg Co., 109 Mo. App. 46, 81 S. W. 1269; Cantwell *v.* Columbia Lead Co., 199 Mo. 1, 97 S. W. 167.

3. Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434; Platner *v.* Kirby, (Iowa 1908) 115 N. W. 1032; Meyer *v.* Meyer, 116 La. 456, 40 So. 794; State *v.* Dearing, 184 Mo. 647, 84 S. W. 21.

6. Wood, etc., Co. *v.* American Mach., etc., Co., (N. J. 1906) 62 Atl. 768; Catlin *v.* Vichachi Min. Co., (N. J. 1907) 67 Atl. 104; Commercial Telephone Co. *v.* Territorial Bank, etc., Co., (Tex. Civ. App. 1905) 86 S. W. 66; Ripy *v.* Redwater Lumber Co., (Tex. Civ. App. 1907) 106 S. W. 474; Davis *v.* Consolidated Coal Co., 41 Wash. 480, 84 Pac. 22. See also People *v.* Oriental Bank, (Supm. Ct. App. Div.) 109 N. Y. Supp. 509.

7. Hobson *v.* Pacific States Mercantile Co., 5 Cal. App. 94, 89 Pac. 866; Brenton *v.* Peck, (Tex. Civ. App. 1905) 87 S. W. 899.

1025. 1. Reinhardt *v.* Interstate Telephone Co., (N. J. 1906) 63 Atl. 1097; McMullin *v.* McArthur Electric Mfg. Co., (N. J. 1907) 68 Atl. 97; Squire *v.* Princeton Lighting Co., (N. J. 1907) 68 Atl. 176, *reversing* 64 Atl. 474.

2. Culver Lumber Co. *v.* Culver, 81 Ark. 102, 99 S. W. 391; Hall *v.* Nieukirk, 12 Idaho 33, 85 Pac. 485; Lamont *v.* Lamont Crystallized Egg Co., 109 Mo. App. 46, 81 S. W. 1269; Stokes *v.* Knickerbocker Invest. Co., 70 N. J. Eq. 518, 61 Atl. 736; Fitzgerald *v.* State Mut. Bldg., etc., Assoc., (N. J. 1908) 69 Atl. 564; Glover *v.* Manila Gold Min., etc., Co., 19 S. Dak. 559, 104 N. W. 261.

Insolvency and Illegality of Business. — Haight, etc., Co. *v.* Weiss, (C. C. A.) 156 Fed. 328.

3. Brenton *v.* Peck, (Tex. Civ. App. 1905) 87 S. W. 899. See also Cutting *v.* American Ins. Co., (Mass. 1908) 83 N. E. 396.

5. Brenton *v.* Peck, (Tex. Civ. App. 1905) 87 S. W. 899.

7. People *v.* District Ct., 33 Colo. 293, 80 Pac. 908.

8. Commercial Telephone Co. *v.* Territorial Bank, etc., Co., (Tex. Civ. App. 1905) 86 S. W. 66.

1026. 1. Fitzgerald *v.* State Mut. Bldg., etc., Assoc., (N. J. 1908) 69 Atl. 564.

2. See Lamont *v.* Lamont Crystallized Egg Co., 109 Mo. App. 46, 81 S. W. 1269; State *v.* Dearing, 184 Mo. 647, 84 S. W. 21.

3. Moncrieff *v.* Hare, 38 Colo. 221, 87 Pac. 1082.

4. Ray *v.* Carlisle, 125 Ga. 316, 54 S. E. 119; Union Trust Co. *v.* Charlotte General Electric Co., (Mich. 1908) 116 N. W. 379.

1027. 2. De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476. See also Ætna L. Ins. Co. *v.* Broecker, 166 Ind. 576, 77 N. E. 1092; Cotulia *v.* American Freehold Land Mortg. Co., (Tex. Civ. App. 1905) 86 S. W. 339.

4. Walker *v.* Kersten, 115 Ill. App. 130. See also Pringle *v.* James, 109 Ill. App. 100.

5. Daley *v.* Nelson, 119 Ill. App. 627; Pringle *v.* James, 109 Ill. App. 100; Ætna L. Ins. Co. *v.* Broecker, 166 Ind. 576, 77 N. E. 1092; Land Title, etc., Co. *v.* Kellogg, (N. J. 1907) 68 Atl. 80; De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476.

1028. 2. *Contra*, Welche *v.* Schoenberg, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 126, 91 N. Y. Supp. 880.

3. Moncrieff *v.* Hare, 38 Colo. 221, 87 Pac. 1082.

4. Ætna L. Ins. Co. *v.* Broecker, 166 Ind. 576, 77 N. E. 1092.

1029. 1. Woodland Bank *v.* Stephens, [illegible] Cal. 659, 79 Pac. 379; Cotulla *v.* American Freehold Land Mortg. Co., (Tex. Civ. App. 1905) 86 S. W. 339.

2. Handman *v.* Volk, (Ky. 1907) 99 S. W. 660; Wisconsin Nat. Loan, etc., Assoc. *v.* Pride, (Wis. 1908) 116 N. W. 637.

Acts Not Amounting to Waste. — Eureka Min., etc., Co. *v.* Lewiston Nav. Co., 12 Idaho 472, 86 Pac. 49.

3. Schaeppi *v.* Bartholomae, 217 Ill. 105, 75 N. E. 447.

4. Farmers' L. & T. Co. *v.* Meridian Waterworks Co., 139 Fed. 661.

5. Harding *v.* Garber, (Okla. 1907) 93 Pac.

1030. 3. Wisconsin Nat. Loan, etc., Assoc. *v.* Pride, (Wis. 1908) 116 N. W. 637.

5. Union Trust Co. *v.* Charlotte General Electric Co., (Mich. 1908) 116 N. W. 379; Fisholler *v.* Peoples, 120 N. Y. App. Div. 449, 105 N. Y. Supp. 506; Pizer *v.* Herzig, 121 N. Y. App. Div. 609, 106 N. Y. Supp. 370; Paier *v.* Kelley, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 368, 106 N. Y. Supp. 552. See also Ruprecht *v.* Henrici, 113 Ill. App. 398.

6. Ætna L. Ins. Co. *v.* Broecker, 166 Ind. 576, 77 N. E. 1092.

9. Woodland Bank *v.* Stephens, 144 Cal. 659, 79 Pac. 379; Union Trust Co. *v.* Charlotte General Electric Co., (Mich. 1908) 116 N. W.

1032. 7. Atlantic Trust Co. *v.* Chapman, 208 U. S. 360, 28 U. S. Sup. Ct. 406; Coy *v.* Title Guarantee, etc., Co., 157 Fed. 794; Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172; Fitzgerald *v.* State Mut. Bldg., etc., Assoc., (N. J. 1908) 69 Atl. 564; Roller *v.* Paul, 106 Va. 214, 55 S. E. 558.

9. Birmingham Coal, etc., Co. *v.* Southern Steel Co., 160 Fed. 212; Decker *v.* Berners Bay Min., etc., Co., 2 Alaska 504.

1033. 1. Jenkins *v.* Purcell, 29 App. Cas. (D. C.) 209; Patterson *v.* Northern Trust Co., 230 Ill. 334, 82 N. E. 837; Sallee *v.* Soules, 168 Ind. 624, 81 N. E. 587.

1034. 3. See Defiance *v.* McGonigale, (C. C. A.) 150 Fed. 689, *affirming* 140 Fed. 621.

9. Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1907) 57 S. E. 249.

13. Lotte *v.* American Silk Co., 159 Fed. 499; Jenkins *v.* Purcell, 29 App. Cas. (D. C.) 209.

1035. 7. Patterson *v.* Northern Trust Co., 230 Ill. 334, 82 N. E. 837, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1035.

8. Patterson *v.* Northern Trust Co., 230 Ill. 334, 82 N. E. 837, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1035.

1036. 1. Coy *v.* Title Guarantee, etc., Co., 157 Fed. 794.

2. Coy *v.* Title Guarantee, etc., Co., 157 Fed. 794.

1037. 1. International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1036; Baker *v.* Starling, (Ala. 1905) 39 So. 775; Ray *v.* Carlisle, 125 Ga. 316, 54 S. E. 119; Sallee *v.* Soules, 168 Ind. 624, 81 N. E. 587; Murray *v.* Murray, (Ky. 1907) 99 S. W. 301; Summers Fiber Co. *v.* Walker, (Ky. 1908) 109 S. W. 883; Bimberg *v.* Wagenhals, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 13, 102 N. Y. Supp. 925; Jones *v.* Weir, 217 Pa. St. 321, 66 Atl. 550; Whilden *v.* Chapman, (S. Car. 1908) 61 S. E. 249; Rische *v.* Rische, (Tex. Civ. App. 1907) 101 S. W. 849; Merrell *v.* Moore, (Tex. Civ. App. 1907) 104 S. W. 514; Spies *v.* Butts, 59 W. Va. 385, 53 S. E. 897; Thompson *v.* Adams, 60 W. Va. 463, 55 S. E. 668. See also Hayes *v.* Jasper Land Co., 147 Ala.

Kentucky Statute. — Rule stated in Bullitt's Civ. Code Ky., § 298. Campbell *v.* Rich Oil Co., (Ky. 1906) 96 S. W. 442; Handman *v.* Volk, (Ky. 1907) 99 S. W. 660; Ingram *v.* Cincinnati, etc., R. Co., (Ky. 1908) 107 S. W. 239, *reversing* (Ky. 1907) 105 S. W. 978; McClure *v.* McGee, (Ky. 1908) 108 S. W. 341.

2. Henderson *v.* Reynolds, 168 Ind. 522, 81 N. E. 494.

6. A party who has received benefits from a part of a decree appointing a receiver cannot take an appeal to reverse another part of the decree unfavorable to him. Thomson *v.* Midland Portland Cement Co., 37 Ind. App. 459, 77 N. E. 299.

1038. 3. Horner *v.* Bell, 105 Md. 113, 66 Atl. 39.

4. Hayes *v.* Jasper Land Co., 147 Ala. 340, 41 So. 909; Sylvester *v.* Willson, 2 Alaska 325.

5. Horner-Gaylord Co. *v.* Miller, 147 Fed. 295; Ruprecht *v.* Henrici, 113 Ill. App. 398.

6. Horner-Gaylord Co. *v.* Miller, 147 Fed. 295; Sylvester *v.* Willson, 2 Alaska 325; Anderson *v.* Hultberg, 117 Ill. App. 231; Bartlett *v.* Fourton, 115 La. 26, 38 So. 883; Horner *v.* Bell, 105 Md. 113, 66 Atl. 39; Baltimore Bargain House *v.* St. Clair, 58 W. Va. 565, 52 S. E. 660; Sult *v.* A. Hochstetter Oil Co., (W. Va. 1908) 61 S. E. 307.

7. Rich *v.* Mulloney, 121 Ill. App. 503; Meyer *v.* Meyer, 116 La. 456, 40 So. 794; Sult *v.* A. Hochstetter Oil Co., (W. Va. 1908) 61 S. E. 307.

10. Smith *v.* U. S., 142 Fed. 225.

1039. 1. See De Leonis *v.* Walsh, 148 Cal. 254, 82 Pac. 1047.

4. Rich *v.* Mulloney, 121 Ill. App. 503.

5. Nesbit *v.* North Georgia Electric Co., 156 Fed. 979; Hayes *v.* Jasper Land Co., 147 Ala. 340, 41 So. 909; Sylvester *v.* Willson, 2 Alaska 325; McClure *v.* McGee, (Ky. 1908) 108 S. W. 341; De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476; Wotring *v.* Indemnity Imp. Co., (Tex. Civ. App. 1907) 100 S. W. 358.

8. *United States.* — Atlantic Trust Co. *v.* Chapman, 208 U. S. 360, 28 U. S. Sup. Ct. 406; Harrington *v.* Union Oil Co., 144 Fed. 235; Horner-Gaylord Co. *v.* Miller, 147 Fed. 295.

Alaska. — Sylvester *v.* Willson, 2 Alaska 325.

Connecticut. — Ray *v.* Robert Price Coal Co., (Conn. 1908) 69 Atl. 355.

Georgia. — Virginia-Carolina Chemical Co. *v.* Provident Sav. L. Assur. Soc., 126 Ga. 50, 54 S. E. 929; Burgess *v.* Simpson Grocery Co., 128 Ga. 423, 57 S. E. 717; West *v.* Mercer, (Ga. 1908) 60 S. E. 859.

Illinois. — Anderson *v.* Hultberg, 117 Ill. App. 231.

Kentucky. — McClure *v.* McGee, (Ky. 1908) 108 S. W. 341.

Louisiana. — *In re* Eckhardt Mfg. Co., 114 La. 119, 38 So. 78.

Missouri. — Donaldson *v.* Allen, 182 Mo. 626, 81 S. W. 1151.

Texas. — Rische *v.* Rische, (Tex. Civ. App. 1907) 101 S. W. 849; West *v.* Hermann, (Tex. Civ. App. 1907) 104 S. W. 428.

West Virginia. — Baltimore Bargain House

v. St. Clair, 58 W. Va. 565, 52 S. E. 660; Spies *v.* Butts, 59 W. Va. 385, 53 S. E. 897; Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1904) 57 S. E. 249; Sult *v.* A. Hochstetter Oil Co., (W. Va. 1908) 61 S. E. 307.

1040. 1. Anderson *v.* Hultberg, 117 Ill. App. 231; McClure *v.* McGee, (Ky. 1908) 108 S. W. 341; Krotz *v.* Louisiana Constr. Co., (La. 1907) 45 So. 276.

2. Ray *v.* Robert Price Coal Co., (Conn. 1908) 69 Atl. 355.

3. See Spies *v.* Butts, 59 W. Va. 385, 53 S. E. 897.

1041. 2. See Thornton-Thomas Mercantile Co. *v.* Bretherton, 32 Mont. 80, 80 Pac. 10.

6. Zugalla *v.* International Mercantile Agency, (C. C. A.) 142 Fed. 927; Horner-Gaylord Co. *v.* Miller, 147 Fed. 295; Mann *v.* Gaddie, (C. C. A.) 158 Fed. 42, *reversing* 147 Fed. 960; Sallee *v.* Soules, 168 Ind. 624, 81 N. E. 587; Hoopes *v.* Basic Co., 69 N. J. Eq. 679, 61 Atl. 979; Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828; Stern *v.* Shapiro, 99 N. Y. App. Div. 405, 91 N. Y. Supp. 249; Platt *v.* Elias, 101 N. Y. App. Div. 518, 91 N. Y. Supp. 1079, *reversing* (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 401, 89 N. Y. Supp. 1015; Miller *v.* Herrick, 122 N. Y. App. Div. 327, 106 N. Y. Supp. 1055; Spies *v.* Butts, 59 W. Va. 385, 53 S. E. 897.

7. **Injunction and Receivership Ancillary Remedies.** — Gaddie *v.* Mann, 147 Fed. 960.

8. *In re* Wilk, 155 Fed. 943; *In re* Lutfy, 156 Fed. 873.

9. Virginia-Carolina Chemical Co. *v.* Provident Sav. L. Assur. Soc., 126 Ga. 50, 54 S. E. 929; West *v.* Mercer, (Ga. 1908) 60 S. E. 859. See also Walker County Coal, etc., Co. *v.* Long, (Ala. 1905) 39 So. 770.

10. Whilden *v.* Chapman, (S. Car. 1908) 61 S. E. 249.

11. West *v.* Mercer, (Ga. 1908) 60 S. E. 859.

1042. 1. Polk *v.* Johnson, (Ind. App. 1906) 76 N. E. 634, *appeal dismissed* 164 Ind. 548, 78 N. E. 652.

3. *In re* John L. Nelson, etc., Co., 149 Fed. 560.

4. West *v.* Mercer, (Ga. 1908) 60 S. E. 859.

5. Polk *v.* Johnson, (Ind. App. 1906) 76 N. E. 634, *appeal dismissed* 167 Ind. 548, 78 N. E. 652; Dow *v.* Nealis, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 153, 93 N. Y. Supp. 379; Hillyer *v.* Le Roy, 179 N. Y. 369, 72 N. E. 237. See also Smith *v.* Texas, etc., R. Co., (Tex. 1908) 108 S. W. 819.

6. Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

7. *United States.* — Atlantic Trust Co. *v.* Chapman, 208 U. S. 360, 28 U. S. Sup. Ct. 406; Fowler *v.* Osgood, (C. C. A.) 141 Fed. 20; *In re* John L. Nelson, etc., Co., 149 Fed. 590; *In re* Renda, 140 Fed. 614; Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736; *In re* T. E. Hill Co., (C. C. A.) 159 Fed. 73.

Colorado. — People *v.* Finch, 19 Colo. App. 512, 76 Pac. 1120.

Illinois. — Shedd *v.* Seefeld, 230 Ill. 118, 82 N. E. 580.

Indiana. — Polk *v.* Johnson, 164 Ind. 548, (Ind. App. 1906) 76 N. E. 634, *appeal dismissed* 78 N. E. 652.

Maine. — Chalmers *v.* Littlefield, (Me. 1907) 69 Atl. 100.

Maryland. — Baker *v.* Hill, 100 Md. 130, 59 Atl. 275.

Massachusetts. — Adamian *v.* Hassanoff, 189 Mass. 194, 75 N. E. 126.

Missouri. — Donaldson *v.* Allen, 182 Mo. 626, 81 S. W. 1151; State *v.* Reynolds, (Mo. 1907) 107 S. W. 487.

Pennsylvania. — Davis Coal, etc., Co. *v.* Hess, 30 Pa. Super. Ct. 193.

West Virginia. — U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

Wisconsin. — Bekkedal *v.* Johnson, 127 Wis. 624, 107 N. W. 5.

Wyoming. — *In re* Newcastle Bank, (Wyo. 1907) 89 Pac. 1035.

1043. 4. People *v.* Finch, 19 Colo. App. 512, 76 Pac. 1120.

8. See Hillyer *v.* Le Roy, 179 N. Y. 369, 72 N. E. 237.

9. People *v.* Finch, 19 Colo. App. 512, 76 Pac. 1120, [illegible] (2d ed.) 1043; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

11. See Atty.-Gen. *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 966; McGregor *v.* Witham, 126 Ga. 702, 56 S. E. 55; Mortimer *v.* Potter, 213 Ill. 178, 72 N. E. 817; Baer *v.* Erie R. Co., (Supm. Ct. Tr. T.) 95 N. Y. Supp. 486.

The Statute Begins to Run against an action by a receiver to enforce stockholders' liability when the decree of assessment is rendered and the receiver appointed. Goss *v.* Carter, (C. C. A.) 156 Fed. 746; Schofield *v.* Turner, 28 Pa. Super. Ct. 177.

Upon the Appointment of a Receiver for a Building and Loan Association a practical dissolution results and the statute of limitations commences to run upon mortgage debts of its members due the corporation. Graves *v.* Seifried, 31 Utah 203, 87 Pac. 674.

For Illegal Dividends paid more than six years before the receiver's appointment, he cannot maintain an action. Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542.

1044. 3. Venner *v.* Denver Union Water Co., 40 Colo. 212, 90 Pac. 623; Atty.-Gen. *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 966; U. S., etc., Trust Co. *v.* Western Supply, etc., Co., (Tex. Civ. App. 1908) 109 S. W. 377.

6. Venner *v.* Denver Union Water Co., 40 Colo. 212, 90 Pac. 623.

1045. 2. People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 107 N. Y. Supp. 247.

3. People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 107 N. Y. Supp. 247.

5. Venner *v.* Denver Union Water Co., 40 Colo. 212, 90 Pac. 623; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

7. Venner *v.* Denver Union Water Co., 40 Colo. 212, 90 Pac. 623.

1046. 2. McIver *v.* Young Hardware Co., 144 N. Car. 478, 57 S. E. 169; Brenton *v.* Peck, (Tex. Civ. App. 1905) 87 S. W. 890. See also Conklin *v.* U. S. Shipbuilding Co., 148 Fed. 129; Goss *v.* Carter, (C. C. A.) 156 Fed.

740; Marion Trust Co. v. Bleh, (Ind. 1908) 84 N. E. 814.

1047. 5. Venner *v.* Denver Union Water Co., 40 Colo. 212, 90 Pac. 623, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1047.

1048. 5. **In Supplementary Proceedings.** — Damers *v.* Sternberger, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 532, 102 N. Y. Supp. 740; Hall *v.* Senior, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 463, 106 N. Y. Supp. 29.

An Award by a Municipality for property of the inhabitant does not vest in the receiver. Van Loan *v.* New York, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 482, 92 N. Y. Supp. 734; Fawcett *v.* New York, 112 N. Y. App. Div. 155, 98 N. Y. Supp. 286.

The Salary of the Debtor of a municipal officer does not pass to the receiver. People *v.* Grout, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 505, 92 N. Y. Supp. 742.

Debtor's Claim against Corporation Passes to Receiver. — Boynton *v.* Sprague, 100 N. Y. App. Div. 443, 91 N. Y. Supp. 839.

8. Jenkins *v.* Purcell, 29 App. Cas. (D. C.) 209.

1049. 2. **May Be Substituted as Plaintiff in Replevin.** — Stearns *v.* Early, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 614, 96 N. Y. Supp. 837.

3. Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

11. Smith *v.* Zachry, 128 Ga. 290, 57 S. E. 513; McCarter *v.* Clavin, (N. J. 1907) 66 Atl. 740.

1051. 6. **Where Title Is in Dispute between Husband and Wife.** — Thompson *v.* Thompson, 125 Ga. 103, 53 S. E. 607.

In an Action for Reconveyance on the ground of fraudulent misrepresentation. Barron *v.* Meyers, 140 Mich. 431, 103 N. W. 842.

In a Suit for an Accounting for real property fraudulently conveyed. Hillyer *v.* Le Roy, 179 N. Y. 369, 72 N. E. 237.

1052. 4. See Davis *v.* Atkinson, 75 Ark. 302, 87 S. W. 432; Murray *v.* Murray, (Ky. 1907) 99 S. W. 301; Cotulla *v.* American Freehold Land Mortg. Co., (Tex. Civ. App. 1905) 86 S. W. 339; Spies *v.* Butts, 59 W. Va. 385, 53 S. E. 897.

5. Horner *v.* Bell, 105 Md. 113, 66 Atl. 39.

1053. 1. Baker *v.* Starling, (Ala. 1905) 39 So. 775.

3. McClure *v.* McGee, (Ky. 1908) 108 S. W. 341; De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476; Watring *v.* Indemnity Imp. Co., (Tex. Civ. App. 1907) 100 S. W. 358.

5. Hendrie, etc., Mfg. Co. *v.* Parry, 37 Colo. 359, 86 Pac. 113; Glover *v.* Manila Gold Min., etc., Co., 19 S. Dak. 559, 104 N. W. 261.

Power Must Be Expressly Conferred. — Dalliba *v.* Riggs, 11 Idaho 364, 82 Pac. 107.

1054. 1. Dalliba *v.* Riggs, 11 Idaho 364, 82 Pac. 107.

5. **The Texas Statute** permits a receiver of joint property where an interest in the property is established by the plaintiff and there is danger of loss. Merrell *v.* Moore, (Tex. Civ. App. 1907) 104 S. W. 514.

6. Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828; Thompson *v.* Silverthorne, 142 N. Car. 12, 54 S. E. 782.

Dispute over Contract for Farming on Shares. — Conover *v.* Tansey, (N. J. 1907) 67 Atl. 1013.

7. Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828.

1055. 1. **Timber Lands.** — Spies *v.* Butts, 59 W. Va. 385, 53 S. E. 897.

3. Donaldson *v.* Allen, 182 Mo. 626, 81 S. W. 1151; Horn *v.* Horn, 115 N. Y. App. Div. 292, 100 N. Y. Supp. 790; Thompson *v.* Silverthorne, 142 N. Car. 12, 54 S. E. 782; Laing *v.* Williams, (Wis. 1908) 115 N. W. 821.

6. Growing Crops. — Talbot *v.* Tyson, (N. Car. 1908) 60 S. E. 1125.

Seat in Exchange. — Wolf *v.* Lovering, (C. C. A.) 159 Fed. 91.

Catch of Fish. — Jones *v.* North Pacific Fish, etc., Co., 42 Wash. 332, 84 Pac. 1122.

Quantity of Oil. — Nutter *v.* Brown, 58 W. Va. 237, 52 S. E. 88.

Oil Wells. — Sult *v.* A. Hochstetter Oil Co., (W. Va. 1908) 61 S. E. 307.

1056. 1. *United States.* — Atlantic Trust Co. *v.* Chapman, 208 U. S. 360, 28 U. S. Sup. Ct. 406; Fowler *v.* Osgood, (C. C. A.) 141 Fed. 20; International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78; Coy *v.* Title Guarantee, etc., Co., 157 Fed. 794; Bird *v.* People's Gas, etc., Co., 158 Fed. 903; *In re* T. E. Hill Co., (C. C. A.) 159 Fed. 73.

Alaska. — Decker *v.* Berners Bay Min., etc., Co., 2 Alaska 504.

Arkansas. — Cook *v.* Martin, 75 Ark. 40, 87 S. W. 625.

Colorado. — Hendrie, etc., Mfg. Co. *v.* Parry, 37 Colo. 359, 86 Pac. 113.

Florida. — McKinnon-Young Co. *v.* Stockton, (Fla. 1908) 46 So. 87.

Georgia. — Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172; Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851.

Illinois. — Shedd *v.* Seefeld, 230 Ill. 118, 82 N. E. 580.

Missouri. — State *v.* Reynolds, (Mo. 1907) 107 S. W. 487.

New Jersey. — Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

New York. — Dow *v.* Nealis, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 153, 93 N. Y. Supp. 379; Prince *v.* Schlesinger, 116 N. Y. App. Div. 500, 101 N. Y. Supp. 1031; Stannard *v.* Reid, 118 N. Y. App. Div. 304, 103 N. Y. Supp. 521.

Oregon. — Egan *v.* North American Sav., etc., Co., 45 Oregon 131, 76 Pac. 774.

Pennsylvania. — Davis Coal, etc., Co. *v.* Hess, 30 Pa. Super. Ct. 103.

Texas. — Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328.

West Virginia. — U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

Wyoming. — *In re* Newcastle Bank, (Wyo. 1907) 89 Pac. 1035, *citing* 28 [23] AM. AND ENG. ENCYC. OF LAW (2d ed.) 1056.

3. McKinnon-Young Co. *v.* Stockton, (Fla. 1908) 46 So. 87; Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172; Shedd *v.* Seefeld, 230 Ill. 118, 82 N. E. 580; State *v.* Reynolds, (Mo. 1907) 107 S. W. 487; Cunningham *v.* Alryan Woolen Mills, 69 N. J. Eq. [illegible], 61 Atl. [illegible]; Hammond *v.* Knox, (Supm. Ct. App. Div.) 109 N. Y.

Supp. 367; Egan *v.* North American Sav., etc., Co., 45 Oregon 131, 76 Pac. 774.

1057. 1. People *v.* Staten Island Bank, 112 N. Y. App. Div. 791, 99 N. Y. Supp. 486; U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

The Court Will Not Cancel a Lease made by a receiver of mortgaged property, acting within his powers. Witthaus *v.* Capstick, 117 N. Y. App. Div. 212, 102 N. Y. Supp. 166.

2. See Texas *v.* Palmer, (C. C. A.) 158 Fed. 705.

3. Shedd *v.* Seefeld, 230 Ill. 118, 82 N. E. 580; Davis Coal, etc., Co. *v.* Hess, 30 Pa. Super. Ct. 193.

1058. 5. See Adamian *v.* Hassanoff, 189 Mass. 194, 75 N. E. 126.

6. McKinnon-Young Co. *v.* Stockton, 53 Fla. 734, 44 So. 237; McCarter *v.* Clavin, (N. J. 1907) 66 Atl. 599; Squire *v.* Princeton Lighting Co., (N. J. 1907) 68 Atl. 176, *reversing* 64 Atl. 474.

1059. 3. **Injunction against Receiver.** — American Can Co. *v.* Williams, (C. C. A.) 149 Fed. 200.

4. Royal Trust Co. *v.* Washburn, etc., R. Co., (C. C. A.) 139 Fed. 865; *In re* Wilk, 155 Fed. 943; *In re* Lutfy, 156 Fed. 873; McKinnon-Young Co. *v.* Stockton, 53 Fla. 734, 44 So. 237; Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172; Shedd *v.* Seefeld, 230 Ill. 118, 82 N. E. 580; Kemp *v.* Earp, 118 Mo. App. 134, 93 S. W. 342; Beardslee *v.* Ingraham, 106 N. Y. App. Div. 506, 94 N. Y. Supp. 937.

5. See American Mortg Co. *v.* Sire, 103 N. Y. App. Div. 396, 92 N. Y. Supp. 1082.

A Chemical Formula Is Property and must be disclosed even though the original document be destroyed, or punishment for contempt will follow. Lawson *v.* Tyler, 98 N. Y. App. Div. 10, 90 N. Y. Supp. 188.

1060. 2. See *In re* Holbert, (Minn. 1908) 114 N. W. 961.

No Contempt Is Committed by interfering with property, collecting its rents, etc., where the receiver is simply empowered to sell the property. Wardlaw *v.* Herrington, 125 Ga. 828, 54 S. E. 699.

6. *In re* Wilk, 155 Fed. 943.

Formal Service of Order Necessary. — American Mortg. Co. *v.* Sire, 103 N. Y. App. Div. 396, 92 N. Y. Supp. 1082.

10. **By Statute in New Jersey** a receiver has the right to have a person punished for contempt, who fails to obey a subpœna to testify before him. Fidelity, etc., Co. *v.* MacAfee Co., (N. J. 1907) 65 Atl. 879.

1061. 2. Conklin *v.* U. S. Shipbuilding Co., 148 Fed. 129; Pennsylvania Steel Co. *v.* New York City R. Co., 157 Fed. 440; Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172.

4. U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

8. State *v.* Germania Bank, (Minn. 1908) 114 N. W. 651, *citing* 28 [23] Am. and Eng. Encyc. of Law (2d ed.) 1061.

1062. 10. Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172.

1063. 1. Gutterson *v.* Lebanon Iron, etc., Co., 151 Fed. 72.

4. Atlantic Trust Co. *v.* Chapman, 208 U. S. 360, 28 U. S. Sup. Ct. 406; Hendrie, etc., Mfg. Co. *v.* Parry, 37 Colo. 359, 86 Pac. 113; *In re* Eckhardt Mfg. Co., 114 La. 119, 38 So. 78; Preston *v.* American Surety Co., 104 Md. 40, 64 Atl. 292; Mason *v.* Hubner, 104 Md. 554, 65 Atl. 367; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408; Stannard *v.* Reid, 118 N. Y. App. Div. 304, 103 N. Y. Supp. 521; Dow *v.* Nealis, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 153, 93 N. Y. Supp. 379.

1064. 3. Mason *v.* Hubner, 104 Md. 554, 65 Atl. 367.

5. Alexander *v.* Maryland Trust Co., (Md. 1907) 66 Atl. 836, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1064. See also Mason *v.* Hubner, 104 Md. 554, 65 Atl. 367.

8. Wenar *v.* Schwartz, 117 La. 81 41 So. 360, *affirming* 116 La. 151, 40 So. 599; *In re* Witte, (Supm. Ct. App. T.) 45 Misc. (N. Y.) 336, 90 N. Y. Supp. 444.

9. **Receiver May with Approval of Court Change His Attorney.** — People *v.* Staten Island Bank, 112 N. Y. App. Div. 791, 99 N. Y. Supp. 486.

1065. 1. Roller *v.* Paul, 106 Va. 214, 55 S. E. 558.

2. Bird *v.* People's Gas, etc., Co., 158 Fed. 903; Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172; Stannard *v.* Reid, 118 N. Y. App. Div. 304, 103 N. Y. Supp. 521.

4. Hammond *v.* Cline, (Ind. 1908) 84 N. E. 827; Converse *v.* Stewart, 105 N. Y. App. Div. 478, 94 N. Y. Supp. 310. See also Blumer *v.* Ulmer, (Miss. 1907) 44 So. 161.

All the creditors are represented by the receiver, and not any particular class. Marion Trust Co. *v.* Blish, (Ind. 1908) 84 N. E. 814.

1066. 3. Alexander *v.* Maryland Trust Co., (Md. 1907) 66 Atl. 836, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1066; Dalliba *v.* Riggs, 11 Idaho 364, 82 Pac. 107.

1067. 1. See Tennis Bros. Co. *v.* Wetzel, etc., R. Co., 140 Fed. 193. See also Williamson County Banking, etc., Co. *v.* Roberts-Buford Dry Goods Co., 118 Tenn. 340, 101 S. W. 421.

5. Berry *v.* Rood, (Mo. 1907) 108 S. W. 22.

May Employ Counsel in Foreign State. — Strauss *v.* Casey Machine, etc., Co., (N. J. 1907) 66 Atl. 958.

6. Drey *v.* Watson, (C. C. A.) 138 Fed. 792; *In re* Oppenheimer, 146 Fed. 140; Berry *v.* Rood, (Mo. 1907) 108 S. W. 22; Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874.

1068. 1. **Attorneys' Fees Will Not Be Allowed** where the attorneys simply assisted the receiver in carrying on a proceeding in excess of the permission granted by the court. Campau *v.* Detroit Driving Club, 144 Mich. 80, 107 N. W. 1063.

1069. 4. People *v.* Brooklyn Bank, (Supm. Ct. App. Div.) 109 N. Y. Supp. 534.

5. *In re* T. E. Hill Co., (C. C. A.) 159 Fed. 73. See also People *v.* Brooklyn Bank, (Supm. Ct. App. Div. 106 N. Y. Supp. 534.

7. Daniel *v.* Citizens' Mut. F. Ins. Co., 149 Mich. 626, 113 N. W. 17.

9. *In re* T. E. Hill Co., (C. C. A.) 159 Fed. 73; State *v.* Germania Bank, (Minn. 1908) 114 N. W. 651, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1069; Berry *v.* Rood, (Mo. 1907) 108 S. W. 22.

1070. 4. Roller *v.* Paul, 106 Va. 214, 55 S. E. 558.

5. Gutterson *v.* Lebanon Iron, etc., Co., 151 Fed. 72. But see Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874.

7. Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874.

Salary of Officer of Corporation Employed by Receiver.—Conklin *v.* U. S. Shipbuilding Co., 143 Fed. 631.

Accountant Employee of Receiver.—Grable *v.* Moffit, 133 Iowa 54, 110 N. W. 142.

1071. 2. Dalliba *v.* Riggs, 11 Idaho 364, 82 Pac. 107, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1068 [1071]. See also Brazelton *v.* J. I. Campbell Co., (Tex. Civ. App. 1908) 108 S. W. 770.

3. *In re* Krause, 155 Fed. 702.

1072. 4. Orchard *v.* National Exch. Bank, 121 Mo. App. 338, 98 S. W. 824.

6. See Standish *v.* Musgrove, 223 Ill. 500, 79 N. E. 161.

10. Gutterson *v.* Lebanon Iron, etc., Co., 151 Fed. 72; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

1073. 4. Marion Trust Co. *v.* Blish, (Ind. 1908) 84 N. E. 814, *citing* 23 AM. AND ENG. ENCYC. OF LAW (2d ed.) 827 [1073]; Carter *v.* Samuel Hano Co., 73 N. H. 588, 64 Atl. 201, *overruling* 72 N. H. 549, 58 Atl. 243; McMaster *v.* Drew, 70 N. J. Eq. 6, 62 Atl. 559; Richardson *v.* Agnew, (Wash. 1907) 89 Pac. 404.

By Statute in Kentucky a receiver may proceed against creditors who have received payments within six months before the action is commenced. Industrial Mut. Deposit Co. *v.* Taylor, 118 Ky. 851, 82 S. W. 574.

A Receiver May Foreclose a Mortgage against borrowers from a building and loan association. Mercantile Co-operative Bank *v.* Goodspeed, 68 N. J. Eq. 305, 59 Atl. 802.

1074. 3. Aldrich *v.* Gray, (C. C. A.) 147 Fed. 453, 8 Ann. Cas. 832; Hammond *v.* Cline, (Ind. 1908) 84 N. E. 827; Swing *v.* Cameron, 145 Mich. 175, 108 N. W. 506.

Not Limited to Matters Arising after His Appointment.—Pryor *v.* Gray, 70 N. J. Eq. 413, 62 Atl. 439.

4. See Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542.

7. Marion Trust Co. *v.* Blish, (Ind. 1908) 84 N. E. 814; Swing *v.* Cameron, 145 Mich. 175, 108 N. W. 506; Citizens' Bank *v.* Kretschmar, (Miss. 1907) 44 So. 930; Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237. See also Converse *v.* Ætna Nat. Bank, 79 Conn. 163, 64 Atl. 341; Atty.-Gen. *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 966.

Mutual Insurance — Action for Assessment. — Hammond *v.* Knox, (Supm. Ct. App. Div.) 100 N. Y. Supp. 367.

Action to Enforce Stock Subscriptions. — Cox *v.* Dickie, (Wash. 1908) 93 Pac. 523.

1075. 1. Allen *v.* Luke, 141 Fed. 694; McGregor *v.* Witham, 126 Ga. 702, 56 S. E. 55; Emerson *v.* Gaither, 103 Md. 564, 64 Atl. 26; Murphy *v.* Penniman, 105 Md. 452, 66 Atl. 282; Gaither *v.* Bauernschmidt, (Md. 1908) 69 Atl. 425; Michael *v.* Betz, 108 N. Y. App. Div. 241, 95 N. Y. Supp. 844; Lilienthal *v.* Betz, 108 N. Y. App. Div. 222, 95 N. Y. Supp. 849; Bowers *v.* Male, 186 N. Y. 28, 78 N. E. 577; McIver *v.* Young Hardware Co., 144 N. Car. 478, 57 S. E. 169; Latta *v.* Catawba Electric, etc., Co., (N. Car. 1907) 59 S. E. 1028.

May Institute Suit to Recover Penalty from Directors.—Boynton *v.* Sprague, 100 N. Y. App. Div. 443, 91 N. Y. Supp. 839.

Receiver as Defendant in Suit by Creditors against Officers. — Blumer *v.* Ulmer, (Miss. 1907) 44 So. 161.

2. Hays *v.* Pierson, 65 N. J. Eq. 353, 58 Atl. 728; Raymond *v.* Security Trust, etc., Ins. Co. (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 31, 89 N. Y. Supp. 753; Miller *v.* Doyle, 211 Pa. St. 59, 60 Atl. 496; Richardson *v.* Agnew, (Wash. 1907) 89 Pac. 404.

Preferential Payments to Officers as creditors in contemplation of insolvency may be recovered. Jessup *v.* Thomason, 68 N. J. Eq. 443, 59 Atl. 226.

4. *United States.* — Bernheimer *v.* Converse, 206 U. S. 516, 27 U. S. Sup. Ct. 755; Covell *v.* Fowler, 144 Fed. 535; Goss *v.* Carter, (C. C. A.) 156 Fed. 746.

Connecticut. — Converse *v.* Ætna Nat. Bank, 79 Conn. 163, 64 Atl. 341.

Georgia. — Sterling Electric Co. *v.* Augusta Telephone, etc., Co., 124 Ga. 371, 52 S. E. 541; Wheatley *v.* Glover, 125 Ga. 710, 54 S. E. 626; Reid *v.* Jones, 127 Ga. 114, 56 S. E. 128; Walters *v.* Porter, 3 Ga. App. 73, 59 S. E. 452.

Illinois. — Mortimer *v.* Potter, 213 Ill. 178, 72 N. E. 817; Hynes *v.* Illinois Trust, etc., Bank, 226 Ill. 95, 80 N. E. 753.

Iowa. — Elson *v.* Wright, 134 Iowa 634, 112 N. W. 105.

Kansas. — Henley *v.* Myers, (Kan. 1907) 93 Pac. 168.

Louisiana. — Winterhaler *v.* Hoffman, 119 La. 125, 43 So. 980.

Massachusetts. — Francis *v.* Hazlett, 192 Mass. 137, 78 N. E. 405; Converse *v.* Ayer, (Mass. 1908) 84 N. E. 98.

Minnesota. — Neff *v.* Lamm, 99 Minn. 115, 108 N. W. 849.

Mississippi. — Kretschmar *v.* Stone, (Miss. 1907) 43 So. 177.

Missouri. — Berry *v.* Rood, (Mo. 1907) 108 S. W. 22.

New Hampshire. — Carter *v.* Samuel Hano Co., 73 N. H. 588, 64 Atl. 201, *overruling* 72 N. H. 549, 58 Atl. 243.

New York. — Converse *v.* Stewart, 105 N. Y. App. Div. 478, 94 N. Y. Supp. 310.

A Receiver of a Mutual Insurance Company may sue to recover assessment from members. Swing *v.* Consolidated Fruit Jar Co., (N. J. 1906) 63 Atl. 899; Van Dyke *v.* Baker, 214 Pa. St. 168, 63 Atl. 594.

6. Hammond *v.* Cline, (Ind. 1908) 84 N. E. 827; Dilzell Engineering, etc., Co. *v.* Lehmann, (La. 1907) 45 So. 138; Union Nat. Bank *v.* Halley, 19 S. Dak. 474, 104 N. W. 213. See also Converse *v.* Ætna Nat. Bank, 79 Conn. 163, 64 Atl. 341; Childs *v.* Blethen, 40 Wash. 340, 82 Pac. 405.

1076. 2. Goss *v.* Carter, (C. C. A.) 156 Fed. 746; Hammond *v.* Cline, (Ind. 1908) 84 N. E. 827; Converse *v.* Ayer, (Mass. 1908) 84 N. E. 98. See also Elson *v.* Wright, 134 Iowa 634, 112 N. W. 105; McMaster *v.* Drew,

70 N. J. Eq. 6, 62 Atl. 559; Andrews *v.* Holcomb, (Neb. 1907) 113 N. W. 204.

3. *United States.* — Brown *v.* Allebach, 156 Fed. 697.

Indiana. — Marion Trust Co. *v.* Blish, (Ind. 1908) 84 N. E. 814.

Iowa. — Elson *v.* Wright, 134 Iowa 634, 112 N. W. 105.

Missouri. — Lamont *v.* Lamont Crystallized Egg Co., 109 Mo. App. 46, 81 S. W. 1269.

New Jersey. — French *v.* Millville Mfg. Co., 70 N. J. L. 699, 59 Atl. 214; See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843; Easton Nat. Bank *v.* American Brick, etc., Co., (N. J. 1906) 64 Atl. 1095.

New York. — Myers *v.* Sturges, (Supm. Ct. App. Div.) 108 N. Y. Supp. 528.

Rhode Island. — See Hazlett *v.* Woodhead, (R. I. 1907) 67 Atl. 736.

Washington. — Cox *v.* Dickie, (Wash. 1908) 93 Pac. 523.

1077. 1. Marion Trust Co. *v.* Blish, (Ind. 1908) 84 N. E. 814; Bostwick *v.* Young, 118 N. Y. App. Div. 490, 103 N. Y. Supp. 607.

2. Bostwick *v.* Young, 118 N. Y. App. Div. 490, 103 N. Y. Supp. 607.

3. Covell *v.* Fowler, 144 Fed. 535.

4. Covell *v.* Fowler, 144 Fed. 535. See also Brown *v.* Allebach, 156 Fed. 697.

Mutual Insurance Company — Assessment by Court upon Members. — Hammond *v.* Knox, (Supm. Ct. App. Div.) 109 N. Y. Supp. 367.

Assessment Accident Insurance Company — Assessment by Direction of Court upon Members. — Stone *v.* Penn Yan, etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 374.

5. See Bostwick *v.* Young, 118 N. Y. App. Div. 490, 103 N. Y. Supp. 607.

6. Corn *v.* Skillern, 75 Ark. 148, 87 S. W. 142; Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542.

1078. 1. *United States.* — Aldrich *v.* Gray, (C. C. A.) 147 Fed. 453, 8 Ann. Cas. 832. See also Fowler *v.* Palmer, (C. C. A.) 160 Fed. 1.

Georgia. — McGregor *v.* Witham, 126 Ga. 702, 56 S. E. 55.

Indiana. — Marion Trust Co. *v.* Blish, (Ind. 1908) 84 N. E. 814; Hammond *v.* Cline, (Ind. 1908) 84 N. E. 827.

Maryland. — Mowen *v.* Nitsch, 103 Md. 685, 62 Atl. 582.

Minnesota. — *In re* Holbert, (Minn. 1908) 114 N. W. 961.

New Jersey. — Pryor *v.* Gray, 70 N. J. Eq. 413, 62 Atl. 439; Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542; Pryor *v.* Gray, (N. J. 1907) 65 Atl. 1016, *affirming* 70 N. J. Eq. 413, 62 Atl. 439.

New York. — North Side Bank *v.* John Good Cordage, etc., Co., 97 N. Y. App. Div. 79, 89 N. Y. Supp. 656.

Ohio. — Sayle *v.* Guarantee Sav., etc., Co., 25 Ohio Cir. Ct. 503.

Washington. — Tait *v.* Pigott, 38 Wash. 59, 80 Pac. 172; Tait *v.* Hofins, 38 Wash. 699, 80 Pac. 173.

May Sue or Defend as May Be Necessary. — Brockhurst *v.* Cox, (N. J. 1906) 64 Atl. 182.

Must First Tender Amount Actually Paid. — Kidder *v.* Wittler-Corbin Machinery Co., 38 Wash. 179, 80 Pac. 301.

2. **Receiver May Contest Validity of Chattel Mortgage.** — Fidelity Trust Co. *v.* Staten Island Clay Co., 70 N. J. Eq. 550, 67 Atl. 1078.

A Suit in Equity to Ascertain the Stockholders Eventually Liable under a void conveyance to the corporation of property paid for by the issuance of stock, may be maintained by the receiver. McMaster *v.* Drew, 70 N. J. Eq. 6, 62 Atl. 559.

1080. 3. McGregor *v.* Atlanta Third Nat. Bank, 124 Ga. 554, 53 S. E. 93; Alexander *v.* Maryland Trust Co., (Md. 1907) 66 Atl. 836, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1080; Murphy *v.* Penniman, 105 Md. 452, 66 Atl. 282.

7. International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78; *In re* Garner, 153 Fed. 914; Nutter *v.* Brown, 58 W. Va. 237, 52 S. E. 88.

Property of Third Persons cannot be sold by the receiver under an order of court directing the sale of the property in his hands. Brazelton *v.* J. I. Campbell Co., (Tex. Civ. App. 1908) 108 S. W. 770.

8. **Receiver Appointed with Power of Sale Only — No Power of Possession.** — Wardlaw *v.* Herrington, 125 Ga. 828, 54 S. E. 699.

1081. 2. Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 327, 56 S. E. 158. See also Culver Lumber Co. *v.* Culver, 81 Ark. 102, 99 S. W. 391.

Summary Sale of Perishable Property in Discretion of Court. — *In re* Harris, 156 Fed. 875.

Sale of a Corporate Franchise will not be ordered where against public policy. State *v.* Savings Bank, 102 Minn. 199, 113 N. W. 268.

May Authorize Sale in County Other than that Where Property Situated. — Stith *v.* Moore, (Tex. Civ. App. 1906) 95 S. W. 587.

3. **Private Instead of Public Sale.** — Mason *v.* Hubner, 104 Md. 554, 65 Atl. 367.

4. Watrous *v.* Hilliard, 38 Colo. 255, 88 Pac. 185.

5. **New Jersey — Franchise of Public Service Corporation May Be Sold to Individual.** — McCarter *v.* Vineland Light, etc., Co., (N. J. 1907) 65 Atl. 1041.

7. **A Creditor May Buy** his debtor's equity of redemption in real estate, with the approval of the court, at such price as he and the receiver mutually agree upon. Pitzele *v.* Cohn, 217 Ill. 30, 75 N. E. 392.

10. **For His Reimbursement a Purchaser** must rely upon a court of equity to do equity. People *v.* New York Bldg.-Loan Banking Co., 189 N. Y. 233, 82 N. E. 184.

1082. 2. French *v.* Jones, 191 Mass. 522, 78 N. E. 118; People *v.* New York Bldg.-Loan Banking Co., 189 N. Y. 233, 82 N. E. 184; McNeill *v.* Thompson, (Ky. 1905) 84 S. W. 1145; Middlesborough *v.* Coal, etc., Bank, (Ky. 1908) 110 S. W. 355; Boswell *v.* Laramie First Nat. Bank, (Wyo. 1908) 93 Pac. 661.

Only Such Property as Is Included in the Inventory filed of the assets included in the sale passes to the purchaser. Crawford *v.* Stainback, 76 Ark. 346, 88 S. W. 991; Illinois Steel Co. *v.* Preble Mach. Works Co., 219 Ill. 403, 76 N. E. 574.

Sale of Unassignable Property — Purchaser

Gets No Rights. — Sargent Glass Co. *v.* Matthews Land Co., 35 Ind. App. 45, 72 N. E. 474.

5. Watrous *v.* Hilliard, 38 Colo. 255, 88 Pac. 185.

6. **Order of Resale.** — Watrous *v.* Hilliard, 38 Colo. 255, 88 Pac. 185.

1083. 6. Culver Lumber Co. *v.* Culver, 81 Ark. 102, 99 S. W. 391; Pitzele *v.* Cohn, 217 Ill. 30, 75 N. E. 392; Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 324, 56 S. E. 158.

7. Fleming *v.* Fleming Hotel Co., 70 N. J. L. 500, 61 Atl. 730.

Inadequacy of Price Held Not Valid Objection to Confirmation. — Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 324, 56 S. E. 158.

Private Sale Unauthorized. — Mason *v.* Hubner, 104 Md. 554, 65 Atl. 367.

1084. 1. Sengel *v.* Patrick, 80 Ark. 384, 97 S. W. 448; Middlesborough *v.* Coal, etc., Bank, (Ky. 1908) 110 S. W. 355; *In re* Red River Line, 115 La. 867, 40 So. 250; Cameron *v.* Jones, (Tex. Civ. App. 1905) 90 S. W. 1129; Baldwin *v.* Spear, 79 Vt. 43, 64 Atl. 235. See also Duplex Printing Press Co. *v.* Clipper Pub. Co., 213 Pa. St. 207, 62 Atl. 841.

2. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237. See also Fordyce *v.* Omaha, etc., R. Co., 145 Fed. 544.

3. Camden Safe Deposit, etc., Co. *v.* Citizens' Ice, etc., Co., (N. J. 1907) 65 Atl. 980; Baer *v.* Erie R. Co., (Supm. Ct. Tr. T.) 95 N. Y. Supp. 486.

Sale Made Subject to Claims Arising Prior to Receivership. — Atchison, etc., R. Co. *v.* Osborn, (C. C. A.) 148 Fed. 606.

4. Johnson *v.* Lehigh Valley Traction Co., 138 Fed. 601; Harned *v.* Rowand, (N. J. 1908) 69 Atl. 181; Richmond First Nat. Bank *v.* William R. Trigg Co., 106 Va. 327, 56 S. E. 158; Baldwin *v.* Spear Bros., 79 Vt. 43, 64 Atl. 235.

The Court Will Protect the Purchasers at a receiver's sale, free and clear of liens and incumbrances, from any action by a lienor or creditor thus cut off. Settegast *v.* Houston, etc., R. Co., (Tex. Civ. App. 1905) 87 S. W. 197.

5. Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736.

1085. 1. Cook *v.* Martin, 75 Ark. 40, 87 S. W. 625, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1085; Jackson *v.* Clark First State Bank, (S. Dak. 1907) 113 N. W. 876; Roller *v.* Paul, 106 Va. 214, 55 S. E. 558.

2. Jackson *v.* Clark First State Bank, (S. Dak. 1907) 113 N. W. 876.

4. Cook *v.* Martin, 75 Ark. 40, 87 S. W. 625; Jackson *v.* Clark First State Bank, (S. Dak. 1907) 113 N. W. 876.

Purchase at Discount. — Roller *v.* Paul, 106 Va. 214, 55 S. E. 558.

A Brother of a Receiver may purchase claims against the estate, where there is no suggestion that the receiver himself is interested in the transaction. L. Luderbach Plumbing Co. *v.* Its Creditors, (La. 1908) 46 So. 359.

6. Jackson *v.* Clark First State Bank, (S. Dak. 1907) 113 N. W. 876.

1086. 6. Bien *v.* Robinson, 208 U. S. 423, 28 U. S. Sup. Ct. 379; Bowker *v.* Haight, etc., Co., 146 Fed. 257.

1087. 7. Prince *v.* Schlesinger, 116 N. Y. App. Div. 500, 101 N. Y. Supp. 1031.

1088. 1. **A Receiver Without Title to** the land of a decedent may not bring an action to remove a cloud from the title. Gibson *v.* Tuttle, 53 Fla. 979, 43 So. 310.

2. Goss *v.* Carter, (C. C. A.) 156 Fed. 746; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408; Squire *v.* Princeton Lighting Co., (N. J. 1907) 68 Atl. 176, *reversing* 64 Atl. 474; Raymond *v.* Security Trust, etc., Ins. Co., (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 31, 89 N. Y. Supp. 753; Ullman *v.* Cameron, 105 N. Y. App. Div. 159, 93 N. Y. Supp. 976; Prince *v.* Schlesinger, 116 N. Y. App. Div. 500, 101 N. Y. Supp. 1031.

3. See Covell *v.* Fowler, 144 Fed. 525.

1090. 4. **Secret Formulas.** — Lawson *v.* Tyler, 98 N. Y. App. Div. 10, 90 N. Y. Supp. 188.

7. *In re* John L. Nelson, etc., Co., 149 Fed. 590; *In re* Renda, 149 Fed. 614; Malott *v.* Mapes, 111 Ill. App. 340.

1091. 2. Chalmers *v.* Littlefield, (Me. 1907) 69 Atl. 100; Beardslee *v.* Ingraham, 106 N. Y. App. Div. 506, 94 N. Y. Supp. 937.

3. Chalmers *v.* Littlefield, (Me. 1907) 69 Atl. 100.

7. Hubbard *v.* Security Trust Co., 38 Ind. App. 156, 78 N. E. 79.

11. *United States.* — Michigan Steamship Co. *v.* Thornton, (C. C. A.) 136 Fed. 134.

Colorado. — People *v.* Finch, 19 Colo. App. 512, 76 Pac. 1120.

Illinois. — Hynes *v.* Illinois Trust, etc., Bank, 226 Ill. 95, 80 N. E. 753.

Indiana. — Hubbard *v.* Security Trust Co., 38 Ind. 156, 78 N. E. 79; Shopert *v.* Indiana Nat. Bank, (Ind. App. 1908) 83 N. E. 515.

Louisiana. — Fitzner *v.* Noullet, 114 La. 167, 38 So. 94; *In re* Red River Line, 115 La. 867, 40 So. 250.

New Jersey. — Lembeck *v.* Jarvis Terminal Cold Storage Co., 68 N. J. Eq. 352, 59 Atl. 565; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408; Russel *v.* Myers Excursion, etc., Co., (N. J. 1907) 67 Atl. 1016; Fidelity Trust Co. *v.* Staten Island Clay Co., 70 N. J. Eq. 550, 67 Atl. 1078; Squire *v.* Princeton Lighting Co., (N. J. 1907) 68 Atl. 176, *reversing* 64 Atl. 474.

New York. — Foster *v.* Foster, 98 N. Y. App. Div. 24, 90 N. Y. Supp. 451; Voss *v.* Smith, 110 N. Y. App. Div. 104, 97 N. Y. Supp. 3.

Vermont. — Baldwin *v.* Spear, 79 Vt. 43, 64 Atl. 235.

West Virginia. — U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345; Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874.

Wyoming. — Butler *v.* Conwell, 14 Wyo. 166, 82 Pac. 950.

1093. 1. Betts *v.* Connecticut L. Ins. Co., 78 Conn. 442, 62 Atl. 345; National L. Ins. Co. *v.* Mather, 118 Ill. App. 491; Shapert *v.* Indiana Nat. Bank, (Ind. App. 1908) 83 N. E. 515; Marion Trust Co. *v.* Blish, (Ind. 1908) 84 N. E. 814; Baker *v.* Hill, 100 Md. 130, 59

Atl. 275; Citizens' Bank *v.* Kretschmar, (Miss. 1907) 44 So. 930; Perrin, etc., Printing Co. *v.* Cook Hotel, etc., Co., 118 Mo. App. 44, 93 S. W. 337; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 809, 64 Atl. 973; Russel *v.* Myers Excursion, etc., Co., (N. J. 1907) 67 Atl. 1016. See also Duplex Printing Press Co. *v.* Clipper Pub. Co., 213 Pa. St. 207, 62 Atl. 841; Bekkedal *v.* Johnson, 127 Wis. 624, 107 N. W. 5.

2. Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874.

3. See Cunningham *v.* Miryan Woolen Mills, 69 N. J. Eq. 710, 61 Atl. 372.

5. Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874.

6. Vollkommer *v.* Frank, 107 N. Y. App. Div. 594, 95 N. Y. Supp. 324.

7. **The Landlord May Dispossess** the receiver of the lessee upon nonpayment of the rent. Foster *v.* Foster, 98 N. Y. App. Div. 24, 90 N. Y. Supp. 451.

8. Hubbard *v.* Security Trust Co., 38 Ind. 156, 78 N. E. 79; Beardslee *v.* Ingraham, 106 N. Y. App. Div. 506, 94 N. Y. Supp. 937. See also People *v.* Finch, 19 Colo. App. 512, 76 Pac. 1120.

1094. 5. Betts *v.* Connecticut L. Ins. Co., 78 Conn. 442, 62 Atl. 345; Citizens' Bank *v.* Kretschmar, (Miss. 1907) 44 So. 930; Miller *v.* Doyle, 211 Pa. St. 59, 60 Atl. 496. See also Houts *v.* Sioux City Brass Works, 134 Iowa 484, 110 N. W. 166; Derby *v.* Brandt, 99 N. Y. App. Div. 257, 90 N. Y. Supp. 980.

A Set-off Will Not Be Allowed if creditors neglect to prove their claims before the receiver and become barred by a decree. See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843.

In the Municipal Court of the City of New York the counterclaim cannot exceed plaintiff's demand, as no affirmative judgment on a counterclaim can be had against a receiver. Schlesinger *v.* Rachmil, (Supm. Ct. App. T.) 94 N. Y. Supp. 12.

7. State *v.* Corning State Sav. Bank, 128 Iowa 597, 105 N. W. 159; Schlesinger *v.* Goldberg, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 149, 93 N. Y. Supp. 592.

8. See State *v.* Corning State Sav. Bank, (Iowa 1908) 115 N. W. 937.

1095. 3. Horn *v.* Pere Marquette R. Co., 151 Fed. 626; See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843; Jones *v.* Arkenburgh, 112 N. Y. App. Div. 483, 98 N. Y. Supp. 532; People *v.* Merchants' Trust Co., 116 N. Y. App. Div. 41, 101 N. Y. Supp. 255; Baldwin *v.* Spear, 79 Vt. 43, 64 Atl. 235.

4. Horn *v.* Pere Marquette R. Co., 151 Fed. 626, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1095.

7. Squire *v.* Princeton Lighting Co., (N. J. 1907) 68 Atl. 176, *reversing* 64 Atl. 474.

1096. 6. See Jones *v.* Arkenburgh, 112 N. Y. App. Div. 483, 98 N. Y. Supp. 532; Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq. 570, 61 Atl. 26; Hall *v.* Senior, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 463, 106 N. Y. Supp. 29.

7. Gutterson *v.* Lebanon Iron, etc., Co., 151 Fed. 72, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1096; Atlantic Trust Co. *v.* Chapman, 208 U. S. 360, 28 U. S. Sup. Ct. 406; Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736; Wolf *v.* Lovering, (C. C. A.) 159 Fed. 91; Robinson *v.* Arkansas L. & T. Co., 74 Ark. 292, 85 S. W. 413, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1096; Stannard *v.* Reid, 118 N. Y. App. Div. 304, 103 N. Y. Supp. 521; U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345; Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874.

8. Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736; Malott *v.* Mapes, 111 Ill. App. 340; Stannard *v.* Reid, 118 N. Y. App. Div. 304, 103 N. Y. Supp. 521; Coe *v.* Patterson, 122 N. Y. App. Div. 76, 106 N. Y. Supp. 659, *reversing* (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 412, 103 N. Y. Supp. 472; U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

9. Gutterson *v.* Lebanon Iron, etc., Co., 151 Fed. 72; Sengel *v.* Patrick, 80 Ark. 384, 97 S. W. 448; Prudential Ins. Co. *v.* Guild, (N. J. 1906) 64 Atl. 694; Brazelton *v.* J. I. Campbell Co., (Tex. Civ. App. 1908) 108 S. W. 770; Plisson *v.* Duncan, 36 Can. Sup. Ct. 647.

A Receiver Is Personally Responsible for a payment made pending an appeal affecting the distribution of the funds in his hands. He pays at his peril, and must look to the persons to whom he paid it for reimbursement. Johnson *v.* Joslyn, (Wash. 1907) 92 Pac. 413.

1097. 3. Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851; State *v.* Corning State Sav. Bank, 128 Iowa 597, 105 N. W. 159, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1097; Groesbeck Cotton Oil Gin, etc., Co. *v.* Oliver, (Tex. Civ. App. 1906) 97 S. W. 1092; U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

4. **Money Loaned in Receiver's Individual Name — Liability Contingent on Loss.** U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

5. Brazelton *v.* J. I. Campbell Co., (Tex. Civ. App. 1908) 108 S. W. 770.

Wrongful Collection of Rents. — St. Paul Hotel Co. *v.* Segrave, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 657, 96 N. Y. Supp. 308.

1098. 11. Wolf *v.* Lovering, (C. C. A.) 159 Fed. 91.

12. Atlantic Trust Co. *v.* Chapman, 208 U. S. 360, 28 U. S. Sup. Ct. 406.

1099. 1. Gutterson *v.* Lebanon Iron, etc., Co., 151 Fed. 72.

7. The receiver has a reasonable time in which to elect whether to adopt an existing lease or repudiate it. Perrin, etc., Printing Co. *v.* Cook Hotel, etc., Co., 118 Mo. App. 44, 93 S. W. 337.

9. *In re* Grignard Lithographic Co., 155 Fed. 699.

Difference in Liability for rent of chancery receiver and statutory receiver. Prince *v.* Schlesinger, 116 N. Y. App. Div. 500, 101 N. Y. Supp. 1031.

10. Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

1100. 1. Gutterson *v.* Lebanon Iron, etc., Co., 151 Fed. 72.

7. Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328.

Compound Interest — When Allowed. — U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

8. See Rosenthal *v.* McGraw, (C. C. A.) 138 Fed. 721.

1101. 1. Rosenthal *v.* McGraw, (C. C. A.) 138 Fed. 721; U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345 (Code W. Va., 1906, § 3506).

Beneficiaries Entitled to Both Interest and Profits. — Roller *v.* Paul, 106 Va. 214, 55 S. E. 559.

2. Rosenthal *v.* McGraw, (C. C. A.) 138 Fed. 721.

3. See Roller *v.* Paul, 106 Va. 214, 55 S. E. 558.

5. Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736. See also Ansley *v.* McLoud, 5 Indian Ter. 563, 82 S. W. 908.

8. Receiver Continuing to Manage a Railroad. — Larsen *v.* U. S. Mortgage, etc., Co., 104 N. Y. App. Div. 76, 93 N. Y. Supp. 610.

1102. 2. *In re* T. E. Hill Co., (C. C. A.) 159 Fed. 73; Ruprecht *v.* Henrici, 127 Ill. App. 350; Berry *v.* Rood, (Mo. 1907) 108 S. W. 22.

3. See *In re* Newcastle Bank, (Wyo. 1907) 89 Pac. 1035.

1103. 2. *In re* Kirkpatrick, (C. C. A.) 148 Fed. 811; McIntosh *v.* Ward, (C. C. A.) 159 Fed. 66; Berry *v.* Rood, (Mo. 1907) 108 S. W. 22; Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328; Nutter *v.* Brown, 58 W. Va. 237, 52 S. E. 88; *In re* Newcastle Bank, (Wyo. 1907) 89 Pac. 1035.

3. Drey *v.* Watson, (C. C. A.) 138 Fed. 792; Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172; State *v.* People's U. S. Bank, 197 Mo. 574, 95 S. W. 867, *affirming* 107 Mo. 605, 94 S. W. 953.

Reversal Where Discretion Abused. — People *v.* Federal Bank, 114 N. Y. App. Div. 374, 100 N. Y. Supp. 44.

4. *In re* Rogers, 156 Fed. 267; Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172; Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328; *In re* Newcastle Bank, (Wyo. 1907) 89 Pac. 1035.

1104. 3. Drey *v.* Watson, (C. C. A.) 138 Fed. 792; Nutter *v.* Brown, 58 W. Va. 237, 52 S. E. 88.

1105. 7. *In re* Rogers, 156 Fed. 267; Davis *v.* Atkinson, 75 Ark. 302, 87 S. W. 432; Campau *v.* Detroit Driving Club, 144 Mich. 80, 107 N. W. 1063; State *v.* Germania Bank, (Minn. 1908) 114 N. W. 651, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1105; Forrester *v.* Boston, etc., Consol. Copper, etc., Min. Co., 30 Mont. 181, 76 Pac. 2.

9. A receiver is not allowed compensation out of the funds of the receivership for services rendered to a third party. Rosenthal *v.* McGraw, (C. C. A.) 138 Fed. 721.

1106. 1. Roller *v.* Paul, 106 Va. 214, 55 S. E. 558.

4. Ruprecht *v.* Muhlke, 225 Ill. 188, 80 N. E. 106.

5. Sullivan *v.* Gage, 145 Cal. 759, 79 Pac. 537; Joslin *v.* Williams, (Neb. 1907) 112 N. W. 343, *affirming* on rehearing (Neb. 1906) 107 N. W. 837.

1107. 1. Strain *v.* Palmer, (C. C. A.) 159 Fed. 628; Middlesborough *v.* Coal, etc., Bank, (Ky. 1908) 110 S. W. 355; Horn *v.* Horn, 115 N. Y. App. Div. 292, 100 N. Y. Supp. 790.

3. See Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172.

6. See Hall *v.* Stulb, 126 Ga. 521, 55 S. E. 172; Tabor *v.* Leadville Bank, 35 Colo. 1, 83 Pac. 1060.

7. Edwards *v.* National Window Glass Jobbers' Assoc., 139 Fed. 795; *In re* Benedict, 140 Fed. 55; Fowler *v.* Osgood, (C. C. A.) 141 Fed. 20; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; Hazlett *v.* Woodhead, (R. I. 1907) 67 Atl. 736; Malone *v.* Johnson, (Tex. Civ. App. 1907) 101 S. W. 503. See also Jenkins *v.* Purcell, 29 App. Cas. (D. C.) 209.

1108. 1. Edwards *v.* National Window Glass Jobbers' Assoc., 139 Fed. 795; Choctaw Coal, etc., Co. *v.* Williams-Echols Dry Goods Co., 75 Ark. 365, 87 S. W. 632; Egan *v.* North American Sav., etc., Co., 45 Oregon 131, 76 Pac. 774, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1108. See also Acken *v.* Coughlin, 103 N. Y. App. Div. 1, 92 N. Y. Supp. 700.

2. Childs *v.* Blethen, 40 Wash. 340, 82 Pac. 405, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1108.

3. See Illingham *v.* Traders' Ins. Co., (Tenn. 1908) 108 S. W. 1148.

4. Childs *v.* Blethen, 40 Wash. 340, 82 Pac. 405, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1108.

5. See Edwards *v.* National Window Glass Jobbers' Assoc., 139 Fed. 795.

Statutory and Equitable Receivers. — Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408.

6. Edwards *v.* National Window Glass Jobbers' Assoc., 139 Fed. 795; *In re* John L. Nelson, etc., Co., 149 Fed. 590; Isom *v.* Rex Crude Oil Co., 147 Cal. 663, 82 Pac. 319; Jenkins *v.* Purcell, 29 App. Cas. (D. C.) 209; Eureka Min., etc., Co. *v.* Lewiston Nav. Co., 12 Idaho 472, 86 Pac. 49; Edwards *v.* National Window Glass Jobbers' Assoc., (N. J. 1908) 68 Atl. 800; Pruyn *v.* Black, 105 N. Y. App. Div. 302, 93 N. Y. Supp. 995; Beardslee *v.* Ingraham, 106 N. Y. App. Div. 506, 94 N. Y. Supp. 937; People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 107 N. Y. Supp. 247; Hazlett *v.* Woodhead, (R. I. 1907) 67 Atl. 736. See also Coe *v.* Patterson, 122 N. Y. App. Div. 76, 106 N. Y. Supp. 659, *reversing* (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 412, 103 N. Y. Supp. 472; Childs *v.* Blethen, 40 Wash. 340, 82 Pac. 405.

Foreign Corporation. — Beardslee *v.* Ingraham, 106 N. Y. App. Div. 506, 94 N. Y. Supp. 937.

1109. 2. Choctaw Coal, etc., Co. *v.* Williams-Echols Dry Goods Co., 75 Ark. 365, 87 S. W. 632.

Permission to Sue must be obtained from the court of the sister state. Egan *v.* North American Sav., etc., Co., 45 Oregon 131, 76 Pac. 774.

An Ancillary Receiver will not be appointed to collect and turn funds over to a foreign receiver to the detriment of domestic creditors. Clark *v.* Supreme Council, etc., 146 Cal. 598, 80 Pac. 931.

1110. 4. *In re* Benedict, 140 Fed. 55; Parks *v.* U. S. Bankers' Corp., 140 Fed. 160; Fowler *v.* Osgood, (C. C. A.) 141 Fed. 20; *In re* John L. Nelson, etc., Co., 149 Fed. 590; Haydock *v.* Fisheries Co., 156 Fed. 988; Chicago Title, etc., Co. *v.* German Ins. Co., 119 N. Y.

App. Div. 347, 104 N. Y. Supp. 253. See also Clark *v.* Supreme Council, etc., 146 Cal. 598, 80 Pac. 931; People *v.* Hasbrouck, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 257; Ripy *v.* Redwater Lumber Co., (Tex. Civ. App. 1907) 106 S. W. 474.

1111. 2. See *In re* Benedict, 140 Fed. 55.

1112. 3. Frees *v.* John Shields Constr. Co., 145 Fed. 1020; Cochran *v.* Pittsburg, etc., R. Co., 158 Fed. 549; Texas *v.* Palmer, (C. C. A.) 158 Fed. 705; Worden *v.* Pruter, (Tex. Civ. App. 1905) 88 S. W. 434; Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 836.

4. State *v.* Reynolds, (Mo. 1907) 107 S. W. 487. See also People *v.* Hasbrouck, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 257.

7. Royal Trust Co. *v.* Washburn, etc., R. Co., (C. C. A.) 139 Fed. 865; Cochran *v.* Pittsburg, etc., R. Co., 158 Fed. 549; Texas *v.* Palmer, (C. C. A.) 158 Fed. 705; State *v.* Reynolds, (Mo. 1907) 107 S. W. 487; Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 836; Winchester, etc., R. Co. *v.* Com., 106 Va. 264, 55 S. E. 692. See also *In re* Rogers, 156 Fed. 267.

1113. 4. See People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 107 N. Y. Supp. 247; People *v.* Hasbrouck, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 257.

5. Texas *v.* Palmer, (C. C. A.) 158 Fed. 705; Cochran *v.* Pittsburg, etc., R. Co., 158 Fed. 549; Krotz *v.* Louisiana Constr. Co., (La. 1907) 45 So. 276. See also Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 836.

1114. 1. Royal Trust Co. *v.* Washburn, etc., R. Co., (C. C. A.) 139 Fed. 865; Winchester, etc., R. Co. *v.* Com., 106 Va. 264, 55 S. E. 692. See also Gallagher *v.* Asphalt Co., 67 N. J. Eq. 441, 58 Atl. 403; Davis Coal, etc., Co. *v.* Hess, 30 Pa. Super. Ct. 193.

2. See People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 107 N. Y. Supp. 247; People *v.* Hasbrouck, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 257.

5. Cochran *v.* Pittsburg, etc., R. Co., 158 Fed. 549. See also Royal Trust Co. *v.* Washburn, etc., R. Co., (C. C. A.) 139 Fed. 865.

1115. 4. U. S. Blowpipe Co. *v.* Spencer, 61 W. Va. 191, 56 S. E. 345.

1116. 3. State *v.* Germania Bank, (Minn. 1908) 114 N. W. 651.

A decree, on settlement of the receiver's accounts, finding him chargeable with a certain sum and ordering him to pay it, is conclusive upon the sureties as to the liability and its amount. State *v.* Abbott, (W. Va. 1907) 61 S. E. 369.

7. American Surety Co. *v.* Campbell, etc., Co., (C. C. A.) 138 Fed. 531; State *v.* Spittler, 79 Conn. 470, 65 Atl. 949; Preston *v.* American Surety Co., 104 Md. 40, 64 Atl. 292; Coe *v.* Patterson, 122 N. Y. App. Div. 76, 106 N. Y. Supp. 659, *reversing* (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 412, 103 N. Y. Supp. 472.

1117. 7. See State *v.* Spittler, 79 Conn. 470, 65 Atl. 949.

12. Receiver and Claimant May Stipulate for Reference upon Rejected Claim. — Eustace *v.* New York Bldg. Loan Banking Co., 98 N. Y. App. Div. 97, 90 N. Y. Supp. 784.

1118. 7. **Interest Allowed on Bank Deposits.** — People *v.* Merchants' Trust Co., 116 N. Y. App. Div. 41, 101 N. Y. Supp. 255.

1119. 2. International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78; Orchard *v.* National Exch. Bank, 121 Mo. App. 338, 98 S. W. 824; Berry *v.* Rood, (Mo. 1907) 108 S. W. 22; Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328; Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874.

3. Conklin *v.* U. S. Shipbuilding Co., 148 Fed. 129; Taylor *v.* Lutherlin-Meade Tobacco Co., (Va. 1908) 60 S. E. 132.

4. **A Franchise Tax** is not entitled to priority over the lien of a mortgagee who obtained the appointment of the receiver. Loring *v.* American Transp. Co., 138 Fed. 600.

Where the State Is a Simple Contract Creditor, it has no preference over other creditors of the same class. State *v.* Williams, 101 Ind. 529, 61 Atl. 297.

5. **Priority of Mortgage Lien over Labor Claims.** — Cunningham *v.* Alryan Woolen Mills, 69 N. J. Eq. 710, 61 Atl. 372.

Lien in Admiralty Enforced by court of equity and given preference. Russel *v.* Myers Excursion, etc., Co., (N. J. 1907) 67 Atl. 1016.

Mechanic's Lien Filed Prior to Appointment of Receiver Given Priority over Charges of Receiver. — Baldwin *v.* Spear, 79 Vt. 43, 64 Atl. 235.

1120. 1. Hulings *v.* Jones, (W. Va. 1908) 60 S. E. 874. See also Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328.

Damages for Injuries Have Priority over Operating Expenses. — Robinson *v.* New York, etc., Electric Co., 99 N. Y. App. Div. 509, 91 N. Y. Supp. 153.

8. *In re* John L. Nelson, etc., Co., 149 Fed. 590; *In re* Erie Lumber Co., 150 Fed. 817; McDaniel *v.* Osborn, (Ind. App. 1904) 72 N. E. 601; Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 60 Atl. 408; Mould *v.* Mould, 28 Pa. Super. Ct. 318; Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328; Nisbet *v.* Great Northern Clay Co., 41 Wash. 107, 83 Pac. 15. See also Cunningham *v.* Alryan Woolen Mills, 69 N. J. Eq. 710, 61 Atl. 372.

Equitable Doctrine. — L'Hote *v.* Boyet, 85 Miss. 636, 38 So. 1.

9. Harrington *v.* Union Oil Co., 144 Fed. 235; International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78.

1121. 7. Bernard *v.* Union Trust Co., (C. C. A.) 159 Fed. 620.

8. International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78; Wiggins *v.* Neversink Light, etc., Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 315, 93 N. Y. Supp. 853. See also Bernard *v.* Union Trust Co., (C. C. A.) 159 Fed. 620.

9. International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78; Perrin, etc., Printing Co. *v.* Cook Hotel, etc., Co., 118 Mo. App. 44, 93 S. W. 337; Wiggins *v.* Neversink Light, etc., Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 315, 93 N. Y. Supp. 853.

12. International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78; Perrin, etc., Printing Co. *v.* Cook Hotel, etc., Co., 118 Mo. App. 44, 93 S. W. 337; Nisbet *v.* Great Northern Clay Co., 41 Wash. 107, 83 Pac. 15.

1122. 1. See Bernard *v.* Union Trust Co., (C. C. A.) 159 Fed. 620.

2. See Perrin, etc., Printing Co. *v.* Cook Hotel, etc., Co., 118 Mo. App. 44, 93 S. W. 337.

5. Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427; Sterling Electric Co. *v.* Augusta Telephone, etc., Co., 124 Ga. 371, 52 S. E. 541; Wheatley *v.* Glover, 125 Ga. 710, 54 S. E. 626; Tiger Shoe Mfg. Co. *v.* Shanklin, (Ky. 1907) 102 S. W. 295, *citing* 23 Am. and Eng. Encyc. of Law [illegible], Winterhalter *v.* Hoffman, 119 La. 125, 43 So. 980; Kretschmar *v.* Stone, (Miss. 1907) 43 So. 177.

Where a Suit Is Brought Without Leave by a receiver, he may enter an order *nunc pro tunc* granting him leave to bring it. De La Fleur *v.* Barney, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 515, 92 N. Y. Supp. 926.

1123. 3. See Backenstol *v.* Kline, 31 Pa. Super. Ct. 268.

4. Guaranty Title, etc., Co. *v.* Pearlman, 144 Fed. 550; Walters *v.* Porter, 3 Ga. App. 73, 59 S. E. 452.

7. *United States.* — Great Western Min., etc., Co. *v.* Harris, 198 U. S. 561, 25 U. S. Sup. Ct. 770; Bernheimer *v.* Converse, 206 U. S. 516, 27 U. S. Sup. Ct. 755; Edwards *v.* National Window Glass Jobbers' Assoc., 139 Fed. 795; *In re* Benedict, 140 Fed. 55; Fowler *v.* Osgood, (C. C. A.) 141 Fed. 20; Covell *v.* Fowler, 144 Fed. 535. See also Goss *v.* Carter, (C. C. A.) 156 Fed. 746.

Florida. — See Ray *v.* Trice, 53 Fla. 864, 42 So. 901.

Massachusetts. — See Converse *v.* Ayer, (Mass. 1908) 84 N. E. 98.

Tennessee. — See Dillingham *v.* Traders' Ins. Co., (Tenn. 1908) 108 S. W. 1148.

8. Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736; Ray *v.* Trice, 53 Fla. 864, 42 So. 901; Chalmers *v.* Littlefield, (Me. 1907) 69 Atl. 100; American Steel, etc., Co. *v.* Bearse, 194 Mass. 596, 80 N. E. 623; Prather Engineering Co. *v.* Detroit, etc., R. Co., (Mich. 1908) 116 N. W. 376.

1124. 1. Atlantic Realty Co. *v.* Wlodar, 119 N. Y. App. Div. 850, 104 N. Y. Supp. 843.

2. Payson *v.* Jacobs, 38 Wash. 203, 80 Pac. 429.

3. Payson *v.* Jacobs, 38 Wash. 203, 80 Pac. 429.

1125. 1. McGregor *v.* Atlanta Third Nat. Bank, 124 Ga. 557, 53 S. E. 93.

3. Fox River Paper Co. *v.* Western Envelope Co., 109 Ill. App. 393; Pruyn *v.* Black, 105 N. Y. App. Div. 302, 93 N. Y. Supp. 995.

6. Fox River Paper Co. *v.* Western Envelope Co., 109 Ill. App. 393; Pruyn *v.* Black, 105 N. Y. App. Div. 302, 93 N. Y. Supp. 995; Payson *v.* Jacobs, 38 Wash. 203, 80 Pac. 429, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1125.

Waived by Voluntary Submission of Receiver to Jurisdiction of Court. — American Steel, etc., Co. *v.* Bearse, 194 Mass. 596, 80 N. E. 623.

8. Colonial Trust Co. *v.* Pacific Packing, etc., Co., 142 Fed. 298; Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736; John C. Orr Co. *v.* Cushman, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 121, 104 N. Y. Supp. 510; Hallowell *v.* Williams, 217 Pa. St. 501, 66 Atl. 864; Davis Coal, etc., Co. *v.* Hess, 30 Pa. Super. Ct. 193.

State Courts Should Conform to Rule of Federal Courts. — Shedd *v.* Seefeld, 230 Ill. 118, 82 N. E. 580.

1126. 1. Hallowell *v.* Williams, 217 Pa. St. 501, 66 Atl. 864.

4. McGregor *v.* Atlanta Third Nat. Bank, 124 Ga. 557, 53 S. E. 93; Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851; Hynes *v.* Illinois Trust, etc., Bank, 226 Ill. 95, 80 N. E. 753; Hutchinson *v.* Bien, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 302, 93 N. Y. Supp. 189, *affirmed* 104 N. Y. App. Div. 214, 93 N. Y. Supp. 216. See also North Side Bank *v.* John Good Cordage, etc., Co., 97 N. Y. App. Div. 79, 89 N. Y. Supp. 656.

5. See Atty.-Gen. *v.* Supreme Council, etc., (Mass. 1907) 81 N. E. 966.

The Judgment Is Payable out of the funds of the trust estate, and a judgment creditor has no preference over other creditors of the same class. Coe *v.* Patterson, 122 N. Y. App. Div. 76, 106 N. Y. Supp. 659, *reversing* (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 412, 103 N. Y. Supp. 472.

7. Broch *v.* French, 116 Ill. App. 15; Converse *v.* Ayer, (Mass. 1908) 84 N. E. 98; Boynton *v.* Sprague, 100 N. Y. App. Div. 443, 91 N. Y. Supp. 839; Backenstal *v.* Kline, 31 Pa. Super. Ct. 268; Threadgill *v.* Colcord, 16 Ala. 447, 85 Pac. 703.

1127. 3. See Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq. 570, 61 Atl. 26.

6. Lawson *v.* Tyler, 98 N. Y. App. Div. 10, 90 N. Y. Supp. 188.

7. Gila Bend Reservoir, etc., Co. *v.* Gila Water Co., 205 U. S. 279, 27 U. S. Sup. Ct. 495; McEwen *v.* Harriman Land Co., (C. C. A.) 138 Fed. 797; Threadgill *v.* Colcord, 16 Okla. 447, 85 Pac. 703.

1128. 1. Texas *v.* Palmer, (C. C. A.) 158 Fed. 705; Heyman *v.* Heyman, 117 Ill. App. 542; Waters-Pierce Oil Co. *v.* State, (Tex. 1907) 106 S. W. 326. See also State *v.* Reynolds, (Mo. 1907) 107 S. W. 487; Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 911.

2. See Eichert *v.* Eichert, 28 Ohio Cir. Dec. 796, *citing* 23 Am. and Eng. Encyc. of Law (2d ed.) 1128.

8. State *v.* Reynolds, (Mo. 1907) 107 S. W. 487.

11. *In re* Irish, (Minn. 1908) 116 N. W. 656; State *v.* Reynolds, (Mo. 1907) 107 S. W. 487.

The Court Cannot Discharge a receiver except upon an accounting for such funds as he may have received. Strauss *v.* Casey Mach., etc., Co., (N. J. 1905) 60 Atl. 402.

1129. 6. See Jordan *v.* Electrical Supply Co., (Iowa 1905) 105 N. W. 160.

1130. 8. Bird *v.* People's Gas, etc., Co., 158 Fed. 903.

By Implication. — Gila Bend Reservoir, etc., Co. *v.* Gila Water Co., 202 U. S. 270, 26 U. S. Sup. Ct. 615.

9. See *In re* Rieger, 157 Fed. 609.

1131. 1. Katz *v.* Tobias, 114 N. Y. App. Div. 124, 99 N. Y. Supp. 613; People *v.* Hamilton Bank, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 345, 108 N. Y. Supp. 461.

7. Stokes *v.* Knickerbocker Invest. Co., 70 N. J. Eq. 518, 61 Atl. 736.

8. **Receiver's Title to Property Not Divested by Discharge.** — Michel *v.* Betz, 108 N. Y. App. Div. 241, 95 N. Y. Supp. 844; Lilienthal *v.* Betz, 108 N. Y. App. Div. 222, 95 N. Y. Supp. 849.

1132. 5. See *In re* Townsend, (Supm. Ct. Spec. T.) 44 Misc. (N. Y.) 415, 89 N. Y. Supp. 1012.

The succession of one receiver to another does not alter the character of a trespass against the property, since it is in the custody of the court all the while. McKinnon-Young Co. *v.* Stockton, (Fla. 1908) 46 So. 87.

The Legal Custody of the Property is not [illegible] receiver and the appointment of another. State *v.* Reynolds, (Mo. 1907) 107 S. W. 487.

RECEIVERS OF RAILROADS.

4. 5. Horn *v.* Pere Marquette R. Co., 151 Fed. 626.

6. Larsen *v.* U. S. Mortgage, etc., Co., 104 N. Y. App. Div. 76, 93 N. Y. Supp. 610.

7. See *In re* Reisenberg, 208 U. S. 90, 28 U. S. Supm. Ct. 219.

5. 2. **Insolvency, Nonpayment of Taxes and Interest on Mortgage Debt, and Inadequacy of Security.** — Cole *v.* Philadelphia, etc., [illegible]

Insolvency and Inability to Meet Obligations on Bonds. — Pennsylvania Steel Co. *v.* New York City R. Co., 157 Fed. 440.

Insolvency and Impending Ruin of Property. — Ingram *v.* Cincinnati, etc., R. Co., (Ky. [illegible]) 107 S. W. 239, *reversing* (Ky. 1907) 105 S. W. 978.

Railroad Running in Private Timber Lands. — Spies *v.* Butts, 59 W. Va. 385, 53 S. E. 897.

6. 4. See Pennsylvania Steel Co. *v.* New York City R. Co., 157 Fed. 440.

7. 3. People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 114, 107 N. Y. Supp. 247. See also Cole *v.* Philadelphia, etc., R. Co., 140 Fed. 944.

4. People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 114, 107 N. Y. Supp. 247; People *v.* Hasbrouck, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 130, 107 N. Y. Supp. 257. See also Ingram *v.* Cincinnati, etc., R. Co., (Ky. 1908) 107 S. W. 239, *reversing* (Ky. 1907) 105 S. W. 978.

May Appoint Receiver in Suit by State for Forfeiture of Franchise. — People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 114, 107 N. Y. Supp. 247.

8. 4. *In re* Reisenberg, 208 U. S. 90, 28 U. S. Sup. Ct. 219.

5. Cole *v.* Philadelphia, etc., R. Co., 140 Fed. 944; Spies *v.* Butts, 59 W. Va. 385, 53 S. E. [illegible]

10. 1. Monnett *v.* Columbus, etc., R. Co., 26 Ohio Cir. Ct. 469.

2. People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 118, 107 N. Y. Supp. 247, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 10.

4. People *v.* New York City R. Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 114, 107 N. Y. [illegible]

13. 1. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

14. 1. **May Be Embodied in Instructions Given by Court.** — Pennsylvania Steel Co. *v.* New York City R. Co., 157 Fed. 440.

15. 1. Spies *v.* Butts, 59 W. Va. 385, 53 S. E. 897.

9. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

10. **Right to Condemn Land Not Divested on Appointment of Receiver.** — Detroit, etc., R. Co. *v.* Campbell, 140 Mich. 384, 103 N. W. [illegible]

11. See Detroit, etc., R. Co. *v.* Campbell, 140 Mich. 384, 103 N. W. 857.

16. 3. Northern Pac. R. Co. *v.* American Trading Co., 195 N. S. 439, 25 U. S. Sup. Ct. 84.

7. Perrin, etc., Printing Co. *v.* Cook Hotel etc., Co., 118 Mo. App. 44, 93 S. W. 337. See also Tennis Bros. Co. *v.* Wetzel, etc., R. Co., 140 Fed. 193; Johnson *v.* Lehigh Valley Traction Co., 130 Fed. 932.

17. 4. **Lease by Receivers to Reorganized Company.** — Merchant's L. & T. Co. *v.* Chicago R. Co., (C. C. A.) 158 Fed. 923.

7. Larsen *v.* U. S. Mortgage, etc., Co., 104 N. Y. App. Div. 76, 93 N. Y. Supp. 610.

18. 7. **Purchaser Protected against Lienors and Creditors.** — Settegast *v.* Houston, etc., R. Co., (Tex. Civ. App. 1905) 87 S. W. 197.

Transfer to Reorganized Company. — Guaranty Trust Co. *v.* Chicago Union Traction Co., 158 Fed. 913, 1015.

Where a Sale Is Made Subject to Certain Claims against the receiver and the property is purchased by a committee of reorganization, the new company is liable for such claims. Baer *v.* Erie R. Co., (Supm. Ct. Tr. T.) 95 N. Y. Supp. 486.

Massachusetts — Failure of Purchaser to Operate. — French *v.* Jones, 191 Mass. 522, 78 N. E. 118.

19. 1. See Kansas City Southern R. Co. *v.* King, 74 Ark. 366, 85 S. W. 1131.

20. 2. Horn *v.* Pere Marquette R. Co., 151 Fed. 626.

5. **Suits by Railroad Receivers.** — Smith *v.* Texas, etc., R. Co., (Tex. 1908) 108 S. W. 819.

10. See Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736.

11. Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736; Baer *v.* Erie R. Co., (Supm. Ct. Tr. T.) 95 N. Y. Supp. 486.

21. 5. Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736.

7. Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736.

23. 6. See Perrin, etc., Printing Co. *v.* Cook Hotel, etc., Co., 118 Mo. App. 44, 93 S. W. 337.

25. 1. Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736.

Violation of Interstate Commerce Act. — Western New York, etc., R. Co. *v.* Penn Refining Co., (C. C. A.) 137 Fed. 343.

If the Receiver Continues to Manage the Road after the confirmation of the sale thereof by him, he is individually liable for injuries caused by the negligence of his employees. Larsen *v.* U. S. Mortgage, etc., Co., 104 N. Y. App. Div. 76, 93 N. Y. Supp. 610.

8. Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328.

26. 4. Chicago City R. Co. *v.* People, 116 Ill. App. 641, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 26.

5. **That the Receiver Will Not Be Disturbed,** nor the operation of the road under his management interfered with, by any court other than that which appointed him, is the established doctrine of both the state and federal courts. Winchester, etc., R. Co. *v.* Com., 106 Va. 264, 55 S. E. 692.

7. See People *v.* Hasbrouck, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 130, 107 N. Y. Supp. 257.

9. See People *v.* Hasbrouck, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 130, 107 N. Y. Supp. 257.

27. 2. **Texas — Priorities Fixed by Statute.** — Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328 (Sayles' Rev. Civ. St. Tex., art. 1472).

6. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

29. 1. Atchison, etc., R. Co. *v.* Osborn, (C. C. A.) 148 Fed. 606.

2. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

3. U. S., etc., Trust Co. *v.* Western Supply, etc., Co., (Tex. Civ. App. 1908) 109 S. W. 377. See also Fordyce *v.* Omaha, etc. R. Co., 145 Fed. 544.

30. 4. Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328.

6. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

8. Fordyce *v.* Omaha, etc., R. Co., 145 Fed. 544.

31. 6. Atchison, etc., R. Co. *v.* Osborn, (C. C. A.) 148 Fed. 606.

32. 2. Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., (C. C. A.) 154 Fed. 629; Merchants' L. & T. Co. *v.* Chicago R. Co., (C. C. A.) 158 Fed. 923.

3. Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., (C. C. A.) 154 Fed. 629.

33. 4. See Fordyce *v.* Kansas City, etc., Connecting R. Co., 145 Fed. 566.

6. Fordyce *v.* Omaha, etc., R. Co., 145 Fed. 544; Pennsylvania Steel Co. *v.* New York City R. Co., 157 Fed. 440.

34. 1. Jones *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1907) 105 S. W. 328.

Equitable Doctrine. — L'Hote *v.* Boyet, 85 Miss. 636, 38 So. 1.

6. Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., (C. C. A.) 154 Fed. 629.

35. 2. Fordyce *v.* Omaha, etc., R. Co., 145 Fed. 544; Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., (C. C. A.) 154 Fed. 629.

An Amount Due for Ties, supplied within six months, is not a preferential debt prior to a mortgage debt, in the absence of any other fact except their use by the receiver. Gregg *v.* Metropolitan Trust Co., 197 U. S. 183, 25 U. S. Sup. Ct. 415.

A Claim for Rails Sold to a company before the receivership is not entitled to a preference. U. S., etc., Trust Co. *v.* Western Supply, etc., Co., (Tex. Civ. App. 1908) 109 S. W. 377.

36. 6. Gregg *v.* Metropolitan Trust Co., 197 U. S. 183, 25 U. S. Sup. Ct. 415; Rodger Ballast Car Co. *v.* Omaha, etc., R. Co., (C. C. A.) 154 Fed. 629.

37. 4. Waters-Pierce Oil Co. *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1906) 99 S. W. 212.

5. Waters-Pierce Oil Co. *v.* U. S., etc., Trust Co., (Tex. Civ. App. 1906) 99 S. W. 212.

38. 1. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

6. Fisher *v.* Southern L. & T. Co., 138 N. Car. 90, 50 S. E. 592. See also International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78; Perrin, etc., Printing Co. *v.* Cook Hotel, etc., Co., 118 Mo. App. 44, 93 S. W. 337.

39. 2. Bernard *v.* Union Trust Co., (C. C. A.) 159 Fed. 620; Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

3. Effect of Hepburn Act. — Central Trust Co. *v.* Pittsburg, etc., R. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 195, 101 N. Y. Supp. 837 (construing Act Cong. June 29, 1906; 34 U. S. St. at L. 584, c. 3591).

5. Merchant's L. & T. Co. *v.* Chicago R. Co., (C. C. A.) 158 Fed. 923; International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78; Wiggins *v.* Neversink Light, etc., Co., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 315, 93 N. Y. Supp. 853.

6. May Be Issued for Labor Claims within Prescribed Limits as to Time. — International Trust Co. *v.* Decker, (C. C. A.) 152 Fed. 78.

40. 2. Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

10. Estoppel by Consent. — Rochester Trust, etc., Co. *v.* Oneonta, etc., R. Co., 122 N. Y. App. Div. 193, 107 N. Y. Supp. 237.

41. 3. Bernard *v.* Union Trust Co., (C. C. A.) 159 Fed. 620.

4. Bernard *v.* Union Trust Co., (C. C. A.) 159 Fed. 620.

42. 2. Gray *v.* Grand Trunk Western R. Co., (C. C. A.) 156 Fed. 736. See also Ansley *v.* McLoud, 5 Indian Ter. 563, 82 S. W. 908.

RECEIVING STOLEN PROPERTY.

44. 5. State *v.* Fields, 70 Kan. 391, 78 Pac. 833, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 44.

6. Wright *v.* State, 1 Ga. App. 158, 57 S. E. 1050.

45. 2. **Punishable as Larceny.** — Moss *v.* State, (Ala. 1905) 39 So. 830; Booker *v.* State, (Ala. 1907) 44 So. 56.

4. **Where the Offense Is That of Being an Accessory to Larceny** the value of the property must be alleged and proved. Wright *v.* State, 1 Ga. App. 158, 57 S. E. 1050.

6. Boyd *v.* State, (Ala. 1907) 43 So. 204.

46. 4. State *v.* Pray, (Nev. 1908) 94 Pac. 218.

6. Rex *v.* Payne, (1906) 1 K. B. 97, 75 L. J. K. B. 114, 94 L. T. N. S. 288, 54 W. R. 200.

9. Golden *v.* State, 2 Ga. App. 440, 58 S. E. 557, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 46.

10. Golden *v.* State, 2 Ga. App. 440, 58 S. E. 557, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 46.

14. Boyd *v.* State, (Ala. 1907) 43 So. 204; Harris *v.* State, 53 Fla. 37, 43 So. 311; Minor *v.* State, (Fla. 1908) 45 So. 818, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 46; State *v.* Levich, 128 Iowa 372, 104 N. W. 334; State *v.* Mayer, (Mo. 1908) 107 S. W. 1085; People *v.* Jaffe, 185 N. Y. 497, 78 N. E. 169, *reversing* 112 N. Y. App. Div. 516, 98 N. Y. Supp. 486; State *v.* Bannister, 79 Vt. 524, 65 Atl. 586.

47. 1. Com. *v.* Phelps, 192 Mass. 591, 78 N. E. 741.

Purchasing or Aiding in Concealing property after the accused learns that it is stolen is sufficient. Com. *v.* Kronick, (Mass. 1907) 82 N. E. 35.

2. **Suspicion Not Sufficient.** — State *v.* Feiss, (N. J. 1907) 66 Atl. 418.

Such Knowledge as Would Put a Person of Ordinary Intelligence and caution on inquiry is sufficient. Minor *v.* State, (Fla. 1908) 45 So. 818, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 46.

Where the Property Was Not in Fact Stolen Such a Belief Is Not Enough. — People *v.* Jaffe, 185 N. Y. 497, 78 N. E. 169, *reversing* 112 N. Y. App. Div. 516, 98 N. Y. Supp. 468.

3. Boyd *v.* State, (Ala. 1907) 43 So. 204; State *v.* Pray, (Nev. 1908) 94 Pac. 218; People *v.* Jaffe, 185 N. Y. 497, 78 N. E. 169, *reversing* 112 N. Y. App. Div. 516, 98 N. Y. Supp. 486; State *v.* Bannister, 79 Vt. 524, 65 Atl. 586.

48. 5. Boyd *v.* State, (Ala. 1907) 43 So. 204; State *v.* Pray, (Nev. 1908) 94 Pac. 218; People *v.* Jaffe, 185 N. Y. 497, 78 N. E. 169, *reversing* 112 N. Y. App. Div. 516, 98 N. Y. Supp. 486.

6. **Goods Found.** — Dalton *v.* State, (Tex. Crim. 1907) 103 S. W. 935.

9. Booker *v.* State, (Ala. 1907) 44 So. 56. See also *Ex p.* Goldman, (Cal. App. 1906) 88 Pac. 819, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 48.

50. 10. Oddo *v.* State, (Ala. 1907) 44 So. 646; Miller *v.* State, 165 Ind. 566, 76 N. E. 245, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50.

51. 4. **Testimony of Owner as to Value Admissible.** — State *v.* Feiss, (N. J. 1907) 66 Atl. 418.

7. Boyd *v.* State, (Ala. 1907) 43 So. 204; Com. *v.* Woll, 32 Pa. Co. Ct. 477.

Mere Possession Is Not Alone Sufficient evidence to sustain a conviction. Minor *v.* State, (Fla. 1908) 45 So. 818, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 51.

52. 1. Beuchert *v.* State, 165 Ind. 523, 76 N. E. 111.

3. State *v.* Rabens, (S. Car. 1908) 60 S. E. 442.

53. 2. Com. *v.* Phelps, 192 Mass. 591, 78 N. E. 741.

3. Gasseheimer *v.* U. S. 26 App. Cas. (D. C.) 432; Lipsey *v.* People, 227 Ill. 364, 81 N. E. 348; Beuchert *v.* State, 165 Ind. 523, 76 N. E. 111; State *v.* Levich, 128 Iowa 372, 104 N. W. 334.

Must Be Evidence of Other Property Having Been Stolen. — Rex *v.* Girod, 70 J. P. 514, 22 Times L. Rep. 720.

4. **Not Essential that Goods Be Received from Same Embezzler.** — Gassenheimer *v.* U. S., 26 App. Cas. (D. C.) 432.

54. 7. Com. *v.* Woll, 32 Pa. Co. Ct. 477, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 54.

RECITALS.

57. 1. Havel *v.* Decatur County Abstract Co., (Kan. 1907) 91 Pac. 798, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 57.

2. Havel *v.* Decatur County Abstract Co., (Kan. 1907) 91 Pac. 790, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 57.

58. 3. McLemore *v.* Anderson, (Miss. 1907) 43 So. 878.

60. 2. Weigel *v.* Green, 218 Ill. 227, 75 N. E. 913.

3. Robertson *v.* Rock Island Lumber, etc., Co., 74 Kan. 117, 85 Pac. 799, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 60; Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 60; Hagan *v.* Holderby, (W. Va. 1907) 57 S. E. 289.

61. 2. Williams *v.* Cessna, (Tex. Civ. App. 1906) 95 S. W. 1106; Wilson *v.* Braden, 56 W. Va. 372, 49 S. E. 409, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 61.

3. Pere Marquette R. Co. *v.* Graham, 136 Mich. 444, 99 N. W. 408, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 61.

62. 12. Frugia *v.* Trueheart, (Tex. Civ. App. 1907) 106 S. W. 736.

64. 4. Baird *v.* Monroe, 150 Cal. 560, 89 Pac. 352; Bobidoux *v.* Munson, 75 Kan. 207, 88 Pac. 1085; Beverlin *v.* Casto, (W. Va. 1907) 57 S. E. 411.

5. Watkins *v.* Robertson, 105 Va. 269, 54 S. E. 33, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 64.

67. 6. McCarthy *v.* Alphons Custodis Chimney Constr. Co., 219 Ill. 616, 76 N. E. 850, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 67.

68. 1. Platt *v.* Hitchcock County, (C. C. A.) 139 Fed. 929; Bradford *v.* Cameron, (C. C. A.) 145 Fed. 21; Superior *v.* Marble Sav. Bank, (C. C. A.) 148 Fed. 7; Fidelity, etc., Co. *v.* McLaughlin, (Neb. 1906) 109 N. W. 390.

RECORDING ACTS.

80. 3. Hymer *v.* Holyfield, (Tex. Civ. App. 1905) 87 S. W. 722.

82. 1. Safe Deposit, etc., Guaranty Co. *v.* Linton, 213 Pa. St. 105, 62 Atl. 566.

4. Huitink *v.* Thompson, 95 Minn. 392, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 82; State *v.* Coughran, 19 S. Dak. 271, 103 N. W. 31.

85. 7. Leominster Gaslight Co. *v.* Hillery, (Mass. 1908) 83 N. E. 870.

10. Westchester Trust Co. *v.* Kelly, 102 N. Y. App. Div. 464, 92 N. Y. Supp. 482.

88. 1. *United States.* — Dolle *v.* Cassell, (C. C. A.) 135 Fed. 52; *In re* Franklin, 151 Fed. 642; Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545.

Iowa. — National Cash Register Co. *v.* Zangs, 127 Iowa 710, 104 N. W. 360.

Nebraska. — Starr *v.* Dow, (Neb. 1906) 108 N. W. 1065; Johns *v.* Reed, (Neb. 1906) 109 N. W. 738.

New York. — McLean *v.* Bloch, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 545, 102 N. Y. Supp. 838; Kirk *v.* Crystal, 118 N. Y. App. Div. 32, 103 N. Y. Supp. 17.

Oklahoma. — Shafer *v.* National Cash Register Co., 16 Okla. 117, 82 Pac. 646.

South Dakota. — Pringle *v.* Canfield, 19 S. Dak. 506, 104 N. W. 223; Webber *v.* Conklin, (S. Dak, 1905) 104 N. W. 675.

Wyoming.—Studebaker Bros. Co. *v.* Mau, 14 Wyo. 68, 82 Pac. 2.

6. *United States.*—*In re* Cutting, 145 Fed. 388.

Alabama.—Howard *v.* Deens, 143 Ala. 143, 39 So. 346; Worthington *v.* Rhodes, etc., Co., 145 Ala. 656, 39 So. 614; Rike *v.* Ryan, 147 Ala. 497, 41 So. 959.

Arkansas.—Honey Grove First Nat. Bank *v.* Bedingfield, 83 Ark. 109, 102 S. W. 683.

Georgia.—Hirsh *v.* Beverly, 125 Ga. 657, 54 S. E. 678.

Kansas.—Youngberg *v.* Walsh, 72 Kan. 220, 83 Pac. 972.

Kentucky.—Swafford *v.* Asher, (Ky. 1907) 105 S. W. 164.

Missouri.—Strop *v.* Hughes, 123 Mo. App. 547, 101 S. W. 146; Strop *v.* Smoote, (Mo. App. 1907) 101 S. W. 149; Saunders *v.* Ohlhausen, 127 Mo. App. 546, 106 S. W. 541.

New Jersey.—Brockhurst *v.* Cox, (N. J. 1906) 64 Atl. 182; Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062.

South Carolina.—Bryant *v.* Thigpen, 73 S. Car. 223, 51 S. E. 535, 53 S. E. 368; Wardlaw *v.* Troy Oil Mill, 74 S. Car. 368, 54 S. E. 658; Burriss *v.* Owen, 76 S. Car. 481, 57 S. E. 542.

Texas.—McCarthy *v.* North Texas Loan Co., (Tex. Civ. App. 1907) 101 S. W. 835.

Wisconsin.—Eastman *v.* Parkinson, (Wis. 1907) 113 N. W. 649.

Wyoming.—Yund *v.* Shawnee First Nat. Bank, 14 Wyo. 81, 82 Pac. 6.

The Recording of an Assignment of a Chattel Mortgage is authorized under the statute of *Wyoming.* Chicago First Nat. Bank *v.* Baird, (C. C. A.) 141 Fed. 862.

Whether an Unrecorded Conditional Sale or Chattel Mortgage Is Valid is a question to be determined exclusively by the local law. *In re* Newton, (C. C. A.) 153 Fed. 841.

90. 7. Tarrant *v.* Core, 106 Va. 161, 56 S. E. 228.

91. 4. Stark *v.* Harris (Tex. Civ. App. 1907) 106 S. W. 887.

92. 6. Harding *v.* Thuet, 124 Ill. App. 437.

93. 3. Hopper *v.* Keys, (Cal. 1907) 92 Pac. 1017.

4. Himmels *v.* Sentons, (Cal. 1907) 91 Pac. 327; National Bank of Commerce *v.* Jones, 18 Okla. 555, 91 Pac. 191; Yund *v.* Shawnee First Nat. Bank, 14 Wyo. 81, 82 Pac. 6, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 93.

95. 4. Edmonston *v.* Wilbur, 99 Minn. 495, 110 N. W. 3; Reynolds *v.* Smith, 123 Mo. App. 229, 100 S. W. 535.

5. North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290.

97. 7. Chapman *v.* Johnson, 142 Ala. 633, 38 So. 797; Greenfield *v.* Stout, 122 Ga. 303, 50 S. E. 111; Glos *v.* Bain, 223 Ill. 343, 79 N. E. 111; Masterson *v.* Southern R. Co., (Ind. App. 1907) 82 N. E. 1021; Bade *v.* Hibberd, (Oregon 1908) 93 Pac. 364; Bonstein *v.* Schweyer, 212 Pa. St. 19, 61 Atl. 447; Prouty *v.* Marshall, 16 Pa. Dist. 608, 33 Pa. Co. Ct. 311; J. M. Guffey Petroleum Co. *v.* Hooks, (Tex. Civ. App. 1907) 106 S. W. 690.

98. 4. Whitaker *v.* Thayer, (Tex. Civ. App. 1905) 86 S. W. 364.

99. 1. Wilding *v.* Hoglund, 127 Wis. 135,

2. Barber Asphalt Paving Co. *v.* O'Brien, (Mo. App. 1908) 107 S. W. 25.

5. Lepine *v.* Montero, 116 La. 941, 41 So.

100. 2. Randall Co. *v.* Glendenning, (Okla.

3. Randall Co. *v.* Glendenning, (Okla. 1907) 92 Pac. 158, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 100.

101. 2. Ligon *v.* Barton, 88 Miss. 135, 40 So. 555; Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062; Leavitt *v.* Thornton, (Supm. Ct. App. Div.) 108 N. Y. Supp. 162; Kee *v.* Ewing, 17 Okla. 410, 87 Pac. 297; Williams *v.* Ontario First Nat. Bank, 48 Oregon 571, 87 Pac. 890; Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717; Simmons *v.* Hewitt, (Tex. Civ. App. 1905) 87 S. W. 188; Williams *v.* Cessna, (Tex. Civ. App. 1906) 95 S. W. 1106; Stark *v.* Harris, (Tex. Civ. App. 1907) 106 S. W. 887; Tarrant *v.* Core, 106 Va. 161, 56 S. E. 228.

102. 1. Oklahoma.—Conditional Sale.—S. Twichell Co. *v.* Lawton First Nat. Bank, 18 Okla. 375, 90 Pac. 14.

4. Randall *v.* Glendenning, (Okla. 1907) 92 Pac. 158.

103. 1. Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 103.

106. 6. Slover *v.* Bailey, (Oregon 1907) 90 Pac. 665, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 106.

7. Ivey *v.* Dawley, 50 Fla. 537, 39 So. 498, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 106.

107. 1. Stanislaus Water Co. *v.* Bachman, (Cal. 1908) 93 Pac. 858.

3. Barnett *v.* Williams, (Ky. 1907) 101 S. W. 1101; Grand Rapids Nat. Bank *v.* Ford, 143 Mich. 402, 107 N. W. 76.

108. 6. **Recorder Cannot Be Compelled to Keep General Indexes without Compensation.**—State *v.* Wickham, 77 Ohio St. 1, 82 N. E. 517.

109. 1. Dirks *v.* Collin, 37 Wash. 620, 79 Pac. 1112; Chase *v.* Maxcy, (Wis. 1908) 114 N. W. 832.

112. 2. Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797.

113. 2. Youngberg *v.* Walsh, 72 Kan. 220, 83 Pac. 972; Robertson *v.* Columbus Ins., etc., Co., 85 Miss. 234, 38 So. 100, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 113.

114. 3. Bank of America *v.* Waggoner, (C. C. A.) 143 Fed. 33; Chapman *v.* Johnson, 142 Ala. 633, 38 So. 707, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 114; Prouty *v.* Marshall, 16 Pa. Dist. 608; J. M. Guffey Petroleum Co. *v.* Hooks, (Tex. Civ. App. 1907)

115. 1. Townsend *v.* Penrose, 84 Ark. 316, 105 S. W. 588; Koger *v.* Koger, (Ky. 1906)

116. 1. North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 116; Board of Improvement *v.* Offenhauser, 84 Ark. 257, 105

S. W. 265; Janney *v.* Blackwell, 138 N. Car. 437, 50 S. E. 857, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 110.

118. 2. Ward *v.* Ward, 131 Fed. 946; Rhea *v.* Planters' Mut. Ins. Assoc., 77 Ark. 57, 90 S. W. 850; Black *v.* Skinner Mfg. Co., 53 Fla. 1090, 43 So. 919; Robertson *v.* Sebastian, (Ky. 1907) 99 S. W. 933; Girard Trust Co. *v.* Baird, 212 Pa. St. 41, 61 Atl. 507.

119. 2. Grimmer *v.* Nolen, 146 Ala. 466, [illegible] Hurtark *v.* Thompson, 95 Minn. [illegible] 104 N. W. 237; Webber *v.* Conklin, (S. Dak. 1905) 104 N. W. 675; Montesano Nat. Bank *v.* Graham, 40 Wash. 490, 82 Pac. 881; Christenson *v.* Raggio, (Wash. 1907) 92 Pac. [illegible]

[illegible] 6. **Purchaser from Heir Not Protected.** — Henderson *v.* Armstrong, 128 Ga. [illegible], 58 S. E. 624.

123. 1. Hawes *v.* Glover, 126 Ga. 305, 55 [illegible]

2. State *v.* Coughran, 19 S. Dak. 271, 103 N. W. 31; Marling *v.* Nommensen, 127 Wis. 363, 7 Ann. Cas. 364, 106 N. W. 844.

124. 2. Black *v.* Skinner Mfg. Co., 53 Fla. 1090, 43 So. 919; American Book Co. *v.* Chapman, 119 Mo. App. 275, 95 S. W. 957.

126. 1. *In re* Franklin, 151 Fed. 642.

129. 1. Kendrick *v.* Colyar, 143 Ala. 597, 42 So. 110; Atkinson *v.* McNider, 130 Iowa 281, 105 N. W. 504.

131. 3. Lindley *v.* Blumberg, (Cal. App. 1907) 93 Pac. 894; Flowers *v.* Moorman, (Ky. 1905) 86 S. W. 545; Deskins *v.* Big Sandy Co., (Ky. 1905) 89 S. W. 695; Brown *v.* Matthews, (Miss. 1906) 40 So. 66; Ligon *v.* Barton, 88 Miss. 135, 40 So. 555; Girard Trust Co. *v.* Baird, 212 Pa. St. 41, 61 Atl. 507; Peterson *v.* Sloss, 39 Wash. 207, 81 Pac. 744.

137. 3. Wilkins *v.* McCorkle, 112 Tenn. 688, 80 S. W. 834, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 137.

140. 5. Swanstrom *v.* Washington Trust Co., 41 Wash. 561, 83 Pac. 1112, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140.

142. 3. Loeser *v.* Savings Deposit Bank, etc., Co., (C. C. A.) 148 Fed. 975, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 142; Sjoblom *v.* Mark, (Minn. 1908) 114 N. W. 746; Jordan *v.* Pence, 123 Mo. App. 321, 100 S. W. 529; Security Trust Co. *v.* Ford, 75 Ohio St. 322, 79 N. E. 474, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 142; Tisdale *v.* John H. Pray Sons Co., 73 N. H. 357, 62 Atl. 168.

143. 4. *United States.* — Clark *v.* Lyster, (C. C. A.) 155 Fed. 513.

Alabama. — Howard *v.* Deens, 143 Ala. 423, 39 So. 346; Haynes *v.* Gray, (Ala. 1906) 41 So. 615.

California. — Rogers *v.* McCartney, 3 Cal. App. 34, 84 Pac. 215.

Idaho. — Eastwood *v.* Standard Mines, etc., Co., 11 Idaho 195, 81 Pac. 382.

Indiana. — Embree *v.* Emerson, 37 Ind. App. 16, 74 N. E. 44, 1110; Pierce *v.* Vansell, 35 Ind. App. 525, 74 N. E. 554.

Kentucky. — Eversole *v.* Virginia Iron, etc., Co., (Ky. 1906) 92 S. W. 593.

Minnesota. — McPheeters *v.* Ronning, 95 Minn. 162, 103 N. W. 889; Smith *v.* Lockwood, 100 Minn. 221, 110 N. W. 980.

Nebraska. — Stewart *v.* Walker, (Neb. 1907) 113 N. W. 814.

Nevada. — State *v.* Grimes, (Nev. 1906) 84 Pac. 1061.

New York. — De Camp *v.* Wallace, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 436, 92 N. Y. Supp. 746.

Pennsylvania. — Mohr *v.* Scherer, 30 Pa. Super. Ct. 509.

Texas. — Frugia *v.* Trueheart, (Tex. Civ. App. 1907) 106 S. W. 736.

Washington. — Peterson *v.* Sloss, 39 Wash. 207, 81 Pac. 744.

Wisconsin. — Friend *v.* Yahr, 126 Wis. 291, 104 N. W. 997.

145. 3. Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062; Brayton *v.* Beall, 73 S. Car. 308, 53 S. E. 641; Sweeney *v.* Taylor, (Tex. Civ. App. 1906) 92 S. W. 442.

6. Black *v.* Skinner Mfg. Co., 53 Fla. 1090, 43 So. 919, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 145.

146. 5. Greer *v.* Newland, 70 Kan. 315, 78 Pac. 835, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146.

6. Houston Ice, etc., Co. *v.* Henson, (Tex. Civ. App. 1906) 93 S. W. 713.

147. 2. New England Mortg. Security Co. *v.* Fry, 143 Ala. 637, 42 So. 57.

148. 5. Meacham *v.* Blaess, 141 Mich. 258, 104 N. W. 579.

151. 5. See dissenting opinion in Bonanza Consol. Min. Co. *v.* Golden Head Min. Co., 29 Utah 159, 80 Pac. 736, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 151.

RECORDS.

159. 2. McInerney *v.* U. S., (C. C. A.) 143 Fed. 729.

3. McInerney *v.* U. S., (C. C. A.) 143 Fed. 729; Scott *v.* Williams, 74 Kan. 448, 87 Pac. 550.

160. 8. State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

161. 5. Fountain Head Drainage Dist. *v.* Wright, 228 Ill. 208, 81 N. E. 849, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 161.

6. Fountain Head Drainage Dist. *v.* Wright, 228 Ill. 208, 81 N. E. 849, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 161.

162. 1. Chicago, etc., R. Co. *v.* Grantham, 165 Ind. 279, 75 N. E. 265.

163. 1. Chicago, etc., R. Co. *v.* Grantham, 165 Ind. 279, 75 N. E. 265.

2. Barnes *v.* Plessner, 121 Mo. App. 677, 97 S. W. 626; Pointer *v.* Jones, 15 Wyo. 1, 85 Pac. 1050.

164. 4. Berry *v.* Equitable Gold Min. Co., (Nev. 1907) 91 Pac. 537; Schrader *v.* Fraenckel, 113 N. Y. App. Div. 395, 99 N. Y. Supp. 137. See also Cressler *v.* Asheville, 138 N. Car. 482, 51 S. E. 53.

5. Berry *v.* Equitable Gold Min. Co., (Nev. 1904) 91 Pac. 537.

6. McInerney *v.* U. S., (C. C. A.) 143 Fed. 729; Fountain Head Drainage Dist. *v.* Wright, 228 Ill. 208, 81 N. E. 849; Cressler *v.* Asheville, 138 N. Car. 482, 51 S. E. 53; Pointer *v.* Jones, 15 Wyo. 1, 85 Pac. 1050.

Motions in a Chancery Case are a part of the record though no certificate of evidence is

recorded. McReynolds *v.* Brown, 121 Ill. App. 261.

Affidavits and Notice of a Motion for Reference have no place in the record. Schrader *v.* Fraenckel, 113 N. Y. App. Div. 395, 99 N. Y. Supp. 137.

A Notice of an Intention to Move for a New Trial is no part of the record. Mendocino County *v.* Peters, 2 Cal. App. 24, 82 Pac. 1122.

165. 4. Cressler *v.* Asheville, 138 N. Car. 482, 51 S. E. 53.

5. Cressler *v.* Asheville, 138 N. Car. 482, 51 S. E. 53, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 118.

166. 8. Schrader *v.* Fraenckel, 113 N. Y. App. Div. 395, 99 N. Y. Supp. 137; Cressler *v.* Asheville, 138 N. Car. 482, 51 S. E. 53.

167. 1. Williams *v.* State, 168 Ind. 87, 79 N. E. 1070.

That the Indictment Was Found as a True Bill must appear in the record. Jeremy Imp. Co. *v.* Com., 106 Va. 482, 56 S. E. 224.

2. Williams *v.* State, 168 Ind. 87, 79 N. E. 1079; Thurman *v.* Com., (Va. 1908) 60 S. E. 99.

7. See State *v.* Suttles, 13 Idaho 88, 88 Pac. 238.

168. 2. State *v.* De Lea, (Mont. 1908) 93 Pac. 814.

7. **Minutes Considered as Record.** — Dilzell Engineering, etc., Co. *v.* Lehmann, (La. 1907) 45 So. 138.

169. 15. State *v.* Savings Bank, 79 Conn. 141, 64 Atl. 5.

170. 3. **Subject to Some Qualifications.** — McInerney *v.* U. S., (C. C. A.) 143 Fed. 729.

4. See Watts *v.* River Forest, 227 Ill. 31, 81 N. E. 12, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 170.

A Record of Marriage Licenses and returns is a public record, it being a record required by law. Kalamazoo Gazette Co. *v.* Vosburg, 148 Mich. 460, 111 N. W. 1070; State *v.* Kniffen, 44 Wash. 485, 87 Pac. 837.

171. 1. **Daily Register in Public School.** — Levels' *v.* St. Louis, etc., R. Co., 196 Mo. 606, 94 S. W. 275.

20. Taylor *v.* Jackson, (Mich. 1908) 115 N. W. 977.

172. 2*a*. **Records of Naturalization** kept in a United States court are not technical common-law records. McInerney *v.* U. S., (C. C. A.) 143 Fed. 729.

13. **Vouchers on file** with the state auditor are also public records. Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

173. 3. **Quadrennial Appraisal a Public Document.** — Ripton *v.* Brandon, 80 Vt. 234, 67 Atl. 541.

9. **A Survey Made for a Temporary Purpose** and placed in a record office is not a public record. Mercer *v.* Denne, (1905) 2 Ch. 538, 74 L. J. Ch. 723, 93 L. T. N. S. 412, 3 Local Gov. Rep. 1293.

10. Austin *v.* Whitcher, (Iowa 1907) 110 N. W. 910. See also Camp *v.* League, (Tex. Civ. App. 1906) 92 S. W. 1062.

11. **The Original Papers of the Survey** placed in a volume of the county records are parts of the public record. Scott *v.* Williams, 74 Kan. 448, 87 Pac. 550.

174. 3. **Correspondence** relating to the business of the office is a part of the record. Williams *v.* Cessna, (Tex. Civ. App. 1906) 95 S. W. 1106.

5. **Census Returns Are Public Record.** — Priddy *v.* Boice, 201 Mo. 309, 99 S. W. 1055.

175. 5*a*. **Clerk Is Proper Custodian.** — Jaqua *v.* Harkins, (Ind. App. 1907) 82 N. E. 920.

176. 4. *Compare* McInerney *v.* U. S., (C. C. A.) 143 Fed. 729.

177. 1. Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72.

2. Coker *v.* State, 144 Ala. 28, 40 So. 516; York *v.* Stigall, 204 Mo. 407, 102 S. W. 987; Collier *v.* Catherine Lead Co., (Mo. 1907) 106 S. W. 971.

Delay in Making an Entry does not invalidate a judgment if made during the term. Gallaway *v.* Rochester Loan, etc., Co., 74 Neb. 695, 104 N. W. 922.

3. **While the Proceeding Is in Fieri** the record may be amended although the term has expired. Boonville Nat. Bank *v.* Blakey, 166 Ind. 427, 76 N. E. 529.

A Sentence Cannot Be Increased by an amendment of the record of the judgment in a criminal case after the expiration of six years. Smith *v.* District Ct., 132 Iowa 603, 109 N. W. 1085.

4. Evans *v.* Freeman, 140 Fed. 419; People *v.* O'Brien, 4 Cal. App. 723, 89 Pac. 438; West Chicago Park Com'rs *v.* Boal, 232 Ill. 248, 83 N. E. 824; Martindale *v.* Battey, 73 Kan. 92, 84 Pac. 527; Christisen *v.* Bartlett, 73 Kan. 404, 84 Pac. 530, 85 Pac. 594; State *v.* Curry, 74 Kan. 624, 87 Pac. 745; *In re* Tolman, 101 Me. 559, 64 Atl. 952; Richberger *v.* State, (Miss. 1907) 44 So. 772; *In re* McQuown, (Okla. 1907) 91 Pac. 689; Day County *v.* State, (Okla. 1907) 91 Pac. 699; Ashaway Nat. Bank *v.* Superior Ct., 28 R. I. 355, 67 Atl. 523; School Dist. No. 3 *v.* Western Tube Co., 13 Wyo. 304, 80 Pac. 155.

Date of Entry May Be Corrected at Any Time. — Greazel *v.* Price, (Iowa 1907) 112 N. W. 827.

Where the Clerk Makes an Unauthorized Entry of a judgment the court may correct it at a subsequent term. Kansas City Pump Co. *v.* Jones, 126 Mo. App. 536, 104 S. W. 1136.

178. 4. **When the Amendment Is Based on Extrinsic Evidence** notice should be given to the other parties. *In re* Tolman, 101 Me. 559, 64 Atl. 952.

179. 1. **Without Reference to the Time** of making the application it has been held that the record must supply the evidence. Henry County *v.* Salmon, 201 Mo. 136, 100 S. W. 20; York *v.* Stigall, 204 Mo. 407, 102 S. W. 987; Collier *v.* Catherine Lead Co., (Mo. 1907) 106 S. W. 971; Wicker *v.* Jenkins, (Tex. Civ. App. 1908) 108 S. W. 188.

Evidence Must Be Clear and Unequivocal. — Murphy *v.* Citizens' Bank, 84 Ark. 100, 104 S. W. 187, 934.

2. See *In re* Tolman, 101 Me. 559, 64 Atl. [illegible]

The Presumption is that the amendment was

based on sufficient evidence. Boonville Nat. Bank *v.* Blakey, 166 Ind. 427, 76 N. E. 529.

181. 8. School Dist. No. 3 *v.* Western Tube Co., 13 Wyo. 304, 80 Pac. 155.

Judge May Amend from Memory. — State *v.* West, (La. 1908) 45 So. 594; *In re* McQuown, (Okla. 1907) 91 Pac. 689.

182. 4. Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

183. 5. Davis *v.* Abstract Constr. Co., 121 Ill. App. 121; Kalamazoo Gazette Co. *v.* Vosburg, 148 Mich. 460, 111 N. W. 1070. See also Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

185. 4. **The Right to Make a Substantial Copy of the Entire Record** does not follow from the right to inspect. Davis *v.* Abstract Constr. Co., 121 Ill. App. 121.

7. **Tract Indices and Other Books** which are lawfully kept by the recorder for his private use in making abstracts are not a part of the public record which is subject to inspection. Davis *v.* Abstract Constr. Co., 121 Ill. App. 121.

187. 1. **A Record of Births Kept Pursuant to Statute** is admissible in evidence. Finer *v.* Nichols, 122 Mo. App. 497, 99 S. W. 808.

A Record Need Not Be Expressly Authorized or Required by Law in order to be admissible in evidence. McInerney *v.* U. S., (C. C. A.) 143 Fed. 729.

188. 5. West *v.* Houston Oil Co., (Tex. Civ. App. 1907) 102 S. W. 927.

Census Returns Made in Ireland, a certified copy of which contains irreconcilable statements and teems with untruths is properly excluded as evidence of facts stated therein. Maher *v.* Empire L. Ins. Co., 110 N. Y. App. Div. 723, 96 N. Y. Supp. 496.

189. 3. **It Is Presumed** that interlineations were made before the record was approved. Cox *v.* Mignery, 126 Mo. App. 669, 105 S. W. 675.

Where the Copy Carries with It a Complete Explanation of erasures and interlineations it is admissible. Gage *v.* Chicago, 225 Ill. 218, 80 N. E. 127.

An Entry of the Word "Dismissed" on the court calendar is no evidence of an actual judgment entry dismissing the action. Ledbetter *v.* Mandell, (Supm. Ct. App. Div.) 109 N. Y. Supp. 602.

5. Mercer *v.* Denne, (1905) 2 Ch. 538, 74 L. Ch. 723, 93 L. T. N. S. 412, 3 Local Gov. Rep. 1293; Wilson *v.* Johnson, (Ala. 1907) 44 So. 539,; Big Thompson, etc., Ditch Co. *v.* Mayne, 36 Colo. 355, 91 Pac. 44; Bower *v.* Cohen, 126 Ga. 35, 54 S. E. 918; Globe Mut. L. Ins. Assoc. *v.* Meyer, 118 Ill. App. 155; *In re* Jones, 130 Iowa 177, 106 N. W. 610; Ball *v.* Longbridge, 100 S. W. 275, 30 Ky. L. Rep. 1123; Allen *v.* Kidd, (Mass. 1908) 84 N. E. 122; Stumpe *v.* Kopp, 201 Mo. 412, 99 S. W. 1073; Gorham *v.* Settegast, (Tex. Civ. App. 1906) 98 S. W. 665; Cabb *v.* Dunlevie, (W. Va. 1908) 60 S. E. 38.

A Memorandum Made by the Clerk at the time of recording a deed is an unofficial statement and inadmissible in evidence. Dutton *v.* Stoughton, 79 Vt. 361, 65 Atl. 91.

7. Teague *v.* Swasey, (Tex. Civ. App. 1907) 102 S. W. 458.

192. 3. Rafley *v.* McKinney, 143 Mich. 508, 107 N. W. 101.

193. 4. Louisville, etc., R. Co. *v.* Perkins, (Ala. 1907) 44 So. 602; Hanley *v.* State, 50 Fla. 82, 39 So. 149; Atkinson *v.* Maris, (Ind. App. 1907) 81 N. E. 745; York *v.* Stigall, 204 Mo. 407, 102 S. W. 987; Goodnough Mercantile Co. *v.* Galloway, 48 Oregon 239, 84 Pac. 1049; Davis *v.* Ragland, (Tex. Civ. App. 1906) 93 S. W. 1099; Honesdale Shoe Co. *v.* Montgomery, 56 W. Va. 397, 49 S. E. 437, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193.

Docket Entries Are Likewise Conclusive until the record entry is made up. Warburton *v.* Gourse, 193 Mass. 203, 79 N. E. 270.

The Record of a Judgment of a Justice of the Peace is only *prima facie* evidence of its recitals, and can be impeached by competent evidence. Albie *v.* Jones, 82 Ark. 414, 102 S. W. 222.

A Nunc Pro Tunc Order is not subject to collateral attack because it does not appear on what evidence it is based. Collier *v.* Catherine Lead Co., (Mo. 1907) 106 S. W. 971.

194. 1. Martin *v.* Todd, 121 Ill. App. 230; Ferriman *v.* People, 128 Ill. App. 230; Grimes *v.* Ellyson, 130 Iowa 286, 105 N. W. 418; Howland *v.* Prentice, 143 Mich. 347, 106 N. W. 1105; Fogg *v.* Ocean City Sewer Co., (N. J. 1907) 66 Atl. 609; *In re* Ollschlager, (Oregon 1907) 89 Pac. 1049; Honesdale Shoe Co. *v.* Montgomery, 56 W. Va. 397, 49 S. E. 439, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193 *et seq.*

Affidavit Inadmissible to Contradict Record. — Atkinson *v.* Maris, (Ind. App. 1907) 81 N. E. 745.

195. 1. Honesdale Shoe Co. *v.* Montgomery, 56 W. Va. 397, 49 S. E. 439, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 193 *et seq.*

Omissions May Be Supplied in Some Instances. — Howland *v.* Prentice, 143 Mich. 347, 106 N. W. 1105.

197. 1. Jonesboro, etc., R. Co. *v.* Board of Directors, 80 Ark. 316, 97 S. W. 281; Overstreet *v.* Levee Dist. No. 1, 80 Ark. 462, 97 S. W. 676; Daniels *v.* Newbold, 125 Iowa 193, 100 N. W. 1119; Finer *v.* Nichols, 122 Mo. App. 497, 99 S. W. 808; Chrast *v.* O'Connor, 41 Wash. 360, 83 Pac. 238.

The minutes of a corporation are *prima facie* evidence of facts recited therein. Rose *v.* Independent Chevra Kadisho, 215 Pa. St. 60, 64 Atl. 401.

2. Daniels *v.* Newbold, 125 Iowa 193, 100 N. W. 1119; Levels *v.* St. Louis, etc., R. Co., 196 Mo. 606, 94 S. W. 275; Phillips *v.* Welts, 40 Wash. 501, 82 Pac. 737.

198. 2. **Facts Not Properly Belonging in the Record** may be proved by parol, without violating the rule against extrinsic evidence. Dunn *v.* Youmans, 224 Ill. 34, 79 N. E. 321.

3. Cox *v.* Mignery, 126 Mo. App. 669, 105 S. W. 675, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 198.

4. Wilson *v.* Calculagraph Co., 153 Fed. 961, 83 C. C. A. 77; Hancock *v.* Diamond Plate Glass Co., 37 Ind. App. 351, 75 N. E. 659; Sawyer *v.* Knox First Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 151; Edgar *v.* McDonald, (Tex. Civ. App. 1908) 106 S. W. 1135.

Courts Cannot Take Judicial Notice of Their Own Records in Other Causes pending therein, even between the same parties. Murphy *v.* Citizens' Bank, 82 Ark. 131, 100 S. W. 894; Allison *v.* Fidelity Mut. F. Ins. Co., 44 Neb. 366, 104 N. W. 753.

The Court Will Take Judicial Notice of the Official Weather Reports for a certain day if properly brought to its notice. Bell *v.* Flora, 26 App. Cas. (D. C.) 394.

5. Court Will Not Take Judicial Notice of Original Journals. — Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374.

10. Parol Proof Inadmissible. — State *v.* True, 116 Tenn. 294, 95 S. W. 1028; Patterson *v.* Knapp, (Tex. Civ. App. 1907) 99 S. W. 125, *affirmed* (Tex. 1907) 102 S. W. 97.

199. 1. Sellers *v.* Page, 127 Ga. 633, 56 S. E. 1011; Glos *v.* Holmes, 228 Ill. 436, 81 N. E. 1064; Scott *v.* Williams, 74 Kan. 448, 87 Pac. 550.

2. **An Instrument Which Is Offered in Evidence as a Part of a Record** must appear to have been produced from the lawful custodian. Tully *v.* Lewitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 350, 98 N. Y. Supp. 829; *In re* Webster, 106 N. Y. App. Div. 360, 94 N. Y. Supp. 1050, *affirmed* 186 N. Y. 549, 79 N. E. 1118.

5. Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78.

200. 5. Jonesboro, etc., R. Co. *v.* Board of Directors, 80 Ark. 316, 97 S. W. 281; Overstreet *v.* Levee Dist. No. 1, 80 Ark. 462, 97 S. W. 676; Mansfield *v.* Johnson, 51 Fla. 239, 40 So. 196; Austin *v.* Whitcher, (Iowa 1907) 110 N. W. 910; Priddy *v.* Boice, 201 Mo. 309, 99 S. W. 1055; Bruce *v.* Wanzer, (S. Dak. 1905) 105 N. W. 282; *In re* McClellan, (S. Dak. 1906) 107 N. W. 681; Kirby *v.* Hayden, (Tex. Civ. App. 1906) 99 S. W. 746; Lamar *v.* State, 49 Tex. Crim. 563, 95 S. W. 509; Clement *v.* Graham, 78 Vt. 290, 63 Atl. 146.

Copy Must Be Certified. — *Ex p.* Brown, 166 Ind. 607, 78 N. E. 553, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 200.

Examined Copy Admissible. — Glos *v.* Holmes, 228 Ill. 436, 81 N. E. 1064; Layton *v.* Kraft, 111 N. Y. App. Div. 842, 98 N. Y. Supp. 72; Smithers *v.* Lawrance, (Tex. 1906) 93 S. W. 1064, *reversing* (Tex. Civ. App. 1906) 91 S. W. 606; West *v.* Houston Oil Co., (Tex. Civ. App. 1907) 102 S. W. 927; Wolf *v.* King, (Tex. Civ. App. 1908) 107 S. W. 617.

A Certified Copy of a Letter or Instrument duly on record is admissible in evidence. Trimble *v.* Burroughs, (Tex. Civ. App. 1906) 95 S. W. 614; Pearce *v.* Greek Boys' Min. Co., (Wash. 1907) 92 Pac. 773.

In Kentucky a certified copy of the record of the inspector of mines is admissible in evidence. Andricus *v.* Pineville Coal Co., 90 S. W. 233, 28 Ky. L. Rep. 704.

In Illinois the records of any corporation or association may be proved by a certified copy thereof. Chicago, etc., R. Co. *v.* Weber, 219 Ill. 372, 76 N. E. 489; Grand Lodge, etc., *v.* Young, 123 Ill. App. 628.

201. 1. **Certified Copy of Records in General Land Office Admissible.** — Howard *v.* Perrin, 200 U. S. 71, 26 U. S. Sup. Ct. 195, *affirming* 8 Ariz. 347, 76 Pac. 460.

3. Chicago, etc., R. Co. *v.* Weber, 219 Ill. 372, 76 N. E. 489.

A Copy of a Patent Taken from the Land Office is secondary evidence and inadmissible without laying the proper foundation. Carpenter *v.* Smith, 76 Ark. 447, 88 S. W. 976; Covington *v.* Berry, 76 Ark. 460, 88 S. W. 1005; Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 1011, *modification denied* 75 Ark. 415, 91 S. W. 20; Clawson *v.* Wilkins, (Tex. Civ. App. 1906) 93 S. W. 1086.

A copy of the books of the town clerk is secondary evidence. *In re* Webster, 106 N. Y. App. Div. 360, 94 N. Y. Supp. 1050, *affirmed* 186 N. Y. 549, 79 N. E. 1118.

202. 6. **An Officer Making a Copy of an Execution May Explain** that it is correct and that another copy from which it differs is incorrect, in that he had omitted from the other copy an interlineation appearing in the original record. Peeples *v.* Slayden-Kirksey Woolen Mills. (Tex. Civ. App. 1905) 90 S. W. 61.

203. 2. **In the Absence of Statute or a Rule of Court** a copy of a record of a proceeding in a court of another state is not admissible in evidence; the original must be produced. Wilcox *v.* Bergman, 96 Minn. 219, 104 N. W. 955.

4. Seymour *v.* DuBois, 145 Fed. 1003; Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101; Brown *v.* Baxter, (Kan. 1908) 94 Pac. 155; Wilcox *v.* Bergman, 96 Minn. 219, 104 N. W. 955; Wolf *v.* King, (Tex. Civ. App. 1908) 107 S. W. 617.

Courts of Limited Jurisdiction do not come within the provisions of this statute. Strecker *v.* Railson, (N. Dak. 1907) 111 N. W. 612.

The Certificate of the Clerk must be that of the court in which the action was tried. Van Deventer *v.* Mortimer, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 650, 107 N. Y. Supp. 564.

7. **As to the Requirements of Various Statutes,** see Thomas *v.* Williamson, 51 Fla. 332, 40 So. 831; Ayres *v.* Deering, (Kan. 1907) 90 Pac. 794; Brecker *v.* Fillingham, (Mo. 1908) 108 S. W. 41.

In Florida and North Dakota these statutes do not apply to judgments rendered by justices of the peace. Palmer *v.* Parker, 52 Fla. 389, 42 So. 398; Strecker *v.* Railson, (N. Dak. 1907) 111 N. W. 612.

In New York the statute (Code Civ. Pro., §§ 952, 953) providing for the proof of foreign records by authenticated copies has no relation to the records of the courts of the state. Van Deventer *v.* Mortimer, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 650, 107 N. Y. Supp. 564.

204. 1. Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101; Murphy *v.* Cady, 145 Mich. 33, 108 N. W. 493.

2. Foster *v.* People, 121 Ill. App. 165.

The Absence of the "L. S." from a copy of a recorded deed is presumed to be the mistake of the recorder. Hubbard *v.* Swofford Bros. Dry Goods Co., (Mo. 1907) 108 S. W. 15.

4. Chapman *v.* Chapman, 74 Neb. 388, 104 N. W. 880; Hagan *v.* Snider, (Tex. Civ. App. 1906) 98 S. W. 213; Wolf *v.* King, (Tex. Civ. App. 1908) 107 S. W. 617.

Where the Judge Is Clerk of His Own Court his signature authenticates a certificate

of the record, it affirmatively appearing therein that he has no clerk. Sellers *v.* Page, 127 Ga. 633, 56 S. E. 1011.

8. Jordan *v.* McDonnell, (Ala. 1907) 44 So. 1011.

205. 2. **The Name of the Record from Which the Copy Is Taken** may be stated in the certificate of the clerk, and it is at least *prima facie* evidence of the truth of the statement. Mansfield *v.* Johnson, 51 Fla. 239, 40 So. 196.

5. **Nebraska.** — Gordon *v.* Wageman, (Neb. 1906) 108 N. W. 1067.

6. Chrast *v.* O'Connor, 41 Wash. 360, 83 Pac. 318.

7. Stewart *v.* Lead Belt Land Co., 200 Mo. 281, 98 S. W. 707.

9. **The Custodian Must Certify as to His Capacity** under the federal statute (§ 906, Rev. Stat.). State *v.* Kniffen, 44 Wash. 485, 87 Pac. 8.

206. 3. Hagan *v.* Holderby, 62 W. Va. 106, 57 S. E. 289. *Compare* Smithers *v.* Lowrance, (Tex. 1906) 93 S. W. 1064, *reversing,* (Tex. Civ. App. 1906) 91 S. W. 606.

That a Deed Is Contained in the Record may be certified by the clerk. Frugia *v.* Trueheart, (Tex. Civ. App. 1907) 106 S. W. 736.

207. 1. Chicago, etc., R. Co. *v.* Grantham, 165 Ind. 279, 75 N. E. 265.

3. Beall *v.* Chatham, (Tex. Civ. App. 1906) 94 S. W. 1086.

208. 1. **Where It Is Sought Only to Prove that a Judgment Has Been Rendered,** a copy of the judgment alone is sufficient; it is otherwise when the judgment is to be used as an estoppel. Patterson *v.* Drake, 126 Ga. 478, 55 S. E. 175.

209. 1. Ormond *v.* Shaw, 50 Fla. 445, 39 So. 108.

The Presence of Seals on Documents need not be indicated in certified copies. East Coast Lumber Co. *v.* Ellis-Young Co., (Fla. 1908) 45 So. 826.

211. 2. **The Federal Statute** (Rev. Stat., § 5403, 6 Fed. St. Ann. 764) providing for the punishment of persons destroying records applies to records of naturalization kept in a United States court, though they do not constitute technical common-law records. McInerney *v.* U. S., (C. C. A.) 143 Fed. 729.

REDEEM — REDEMPTION.

215. 2. *In re* United Educational Co., (C. C. A.) 153 Fed. 171, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 214; Williams *v.* Hoffman, 39 Ind. App. 315, 76 N. E. 440.

REFEREES.

219. 1. **Creditor Defined.** — San Jacinto Oil Co. *v.* Culbertson, (Tex. 1907) 101 S. W. 1[illegible].

220. 1. **Distinction between Master and Referee.** — Collins *v.* Poole, 190 Mass. 579, 77 N. E. 484.

Purely a Ministerial Officer. — Coel *v.* Glos, 232 Ill. 142, 83 N. E. 529.

221. 3. Russell Hardware, etc., Mfg. Co. *v.* Utica Drop Forge, etc., Co., 112 N. Y. App. Div. 703, 98 N. Y. Supp. 777.

222. 1. **Right to Jury Trial Cannot Be Denied.** — U. S. *v.* Ramsey, 158 Fed. 488; Russell *v.* Alt, 12 Idaho 789, 88 Pac. 416; Dreveskracht *v.* First State Bank, (N. Dak. 1907) 113 N. W. 1032; Puffer *v.* American Cent. Ins. Co., 48 Oregon 478, 87 Pac. 523; Independent Steam Fire Engine Co. *v.* Richland Lodge No. 39, 73 S. Car. 533, 53 S. E. 993; Central Nat. Bank *v.* Duncan, 77 S. Car. 1, 57 S. E. 531; American Can Co. *v.* Grimm, 79 Vt. 494, 65 Atl. 531.

2. Smith *v.* Kunert, (N. Dak. 1908) 115 N. W. 76.

3. Barlow *v.* Hitzler, (Colo. 1907) 90 Pac. 90; Hanson *v.* Hanson, (Neb. 1907) 111 N. W. 368; Starin *v.* Fonda, 107 N. Y. App. Div. 539, 95 N. Y. Supp. 379; Roome *v.* Smith, (Supm. Ct. App. Div.) 107 N. Y. Supp. 1088; Smith *v.* London Assur. Corp., 114 N. Y. App. Div. 868, 100 N. Y. Supp. 194; Kindberg *v.* Chapman, 115 N. Y. App. Div. 154, 100 N. Y. Supp. 686; Greenwood Granite, etc., Co. *v.* Ware Shoals Mfg. Co., 78 S. Car. 169, 58 S. E. 765; Cornell *v.* Yost, 62 W. Va. 66, 57 S. E. 299; Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483; Fowler *v.* Metzger Seed, etc., Co., 131 Wis. 633, 111 N. W. 677.

A Court Has No Power to Refer a Particular Issue to a referee leaving the remainder of the issues to be tried by a jury. Claffey *v.* Madison Ave. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 1.

223. 1. Smith *v.* London Assur. Corp., 114 N. Y. App. Div. 868, 100 N. Y. Supp. 194; Dreveskracht *v.* First State Bank, (N. Dak. 1907) 113 N. W. 1032; Puffer *v.* American Cent. Ins. Co., 48 Oregon 478, 87 Pac. 523; Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483.

Contra. — Russell *v.* Alt, 12 Idaho 789, 88 Pac. 416.

2. Smith *v.* London Assur. Corp., 114 N. Y. App. Div. 868, 100 N. Y. Supp. 194; Hill *v.* Reynolds, 119 N. Y. App. Div. 689, 104 N. Y. Supp. 303; Aronin *v.* Philadelphia Casualty Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 630, 104 N. Y. Supp. 810; Dreveskracht *v.* First State Bank, (N. Dak. 1907) 113 N. W. 1032; Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483.

224. 5. Speakman *v.* Vest, (Ala. 1908) 45 So. 667; Hottel *v.* Poudre Valley Reservoir Co., (Colo. 1907) 92 Pac. 918; Smith *v.* Kunert, (N. Dak. 1908) 115 N. W. 76; Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483; Fowler *v.* Metzger Seed, etc., Co., 131 Wis. 633, 111 N. W. 677.

Sufficient if One Court Requires Examination of Long Account. — Hill *v.* Reynolds, 119 N. Y. App. Div. 689, 104 N. Y. Supp. 303.

6. Hoff *v.* Reid, 110 N. Y. App. Div. 95, 97 N. Y. Supp. 107; Smith *v.* London Assur. Corp., 114 N. Y. App. Div. 868, 100 N. Y. Supp. 194; Fowler *v.* Peck, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 645, 99 N. Y. Supp. 816; Lustgarten *v.* Harlan, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 606, 107 N. Y. Supp. 612; Dreveskracht *v.* First State Bank, (N. Dak. 1907) 113 N. W. 1032.

225. 1. Hoff *v.* Reid, 110 N. Y. App. Div. 95, 97 N. Y. Supp. 107; Moyer *v.* Nelliston, 110 N. Y. App. Div. 602, 96 N. Y. Supp. 485.

2. Hoff *v.* Reid, 110 N. Y. App. Div. 95, 97 N. Y. Supp. 107. See also Sullivan *v.* McCann, (Supm. Ct. App. Div.) 108 N. Y. Supp. 909.

227. 2. See Blun *v.* Mayer, 113 N. Y. App. Div. 242, 247, 99 N. Y. Supp. 22, 25, *affirmed* 189 N. Y. 153, 81 N. E. 780.

Reference to Determine Question of Fact Arising upon Motion. — Neal *v.* Gilleran, (Supm. Ct. App. Div.) 108 N. Y. Supp. 118.

Allowed in Action to Remove Cloud on Title. — Shute *v.* Shute, (S. Car. 1908) 60 S. E. 961.

Action to Review Assessments on Valuable Property. — People *v.* Feitner, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 334, 104 N. Y. Supp. 794.

In New York a surrogate may refer a question of fact arising in regard to the probate or revocation of a will. Matter of Bishop, 111 N. Y. App. Div. 545, 97 N. Y. Supp. 1098.

228. 1. Puffer *v.* American Cent. Ins. Co., 48 Oregon 475, 87 Pac. 523.

2. *Compare* Puffer *v.* American Cent. Ins. Co., 48 Oregon 478, 87 Pac. 523.

229. 1. My Laundry Co. *v.* Schmeling, 129 Wis. 597, 109 N. W. 540.

3. Puffer *v.* American Cent. Ins. Co., 48 Oregon 475, 87 Pac. 523.

9. **A Referee Cannot Hear a Motion to Dismiss a Complaint,** which motion has already been denied, unless authority is contained in the order of his appointment. Eastern R. Co. *v.* Tuteur, 127 Wis. 382, 105 N. W. 1067.

An Item Not Coming within the Issues of the case cannot be allowed by a referee. Moore *v.* Martine, (Supm. Ct. App. T.) 107 N. Y. Supp. 652.

232. 2. **An Objection to the Taking of Testimony** by a referee without the jurisdiction is waived by the action of the party objecting, in cross examining the witnesses. Sharkey *v.* Candiani, 48 Oregon 112, 85 Pac. 219.

3. **Viewing Locality or Subject-matter.** — Phillips *v.* Collinsville Granite Co., 123 Ga. 839, 51 S. E. 666; Clark *v.* Baker, 192 Mass. 226, 78 N. E. 455.

Ex Parte Affidavits Inadmissible. — Crane *v.* Stafford, 217 Ill. 21, 75 N. E. 424.

The Report of an Auditor is admissible as evidence in a hearing before a master. Collins *v.* Poole, 190 Mass. 599, 77 N. E. 484.

In Proceedings Before a Referee to Review a Tax Assessment the strict rules of evidence applicable to trials does not apply. People *v.* Ouderkirk, 120 N. Y. App. Div. 650, 105 N. Y. Supp. 134.

4. **Need Not Be in Handwriting of Master.** — O'Neil *v.* Taylor, 59 W. Va. 370, 53 S. E. 471.

233. 6. **In New York** the referee must state separately the facts found and the conclusions of law (Code, § 1022), and a report which fails in this respect is insufficient to constitute the basis of a valid judgment. Moore *v.* Martine, (Supm. Ct. App. T.) 107 N. Y. Supp. 652; Lederer *v.* Lederer, 108 N. Y. App. Div. 228, 95 N. Y. Supp. 623; Matter of Schroeder, 113 N. Y. App. Div. 221, 99 N. Y. Supp. 174; Matter of Jones, 117 N. Y. App. Div. 775, 102 N. Y. Supp. 983.

234. 4. Hottel *v.* Poudre Valley Reservoir Co., (Colo. 1907) 92 Pac. 918; McElroy *v.* Whitney, 12 Idaho 529, 88 Pac. 349, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 234.

6. **In Georgia** auditors must report the evidence. First State Bank *v.* Avera, 123 Ga. 598, 51 S. E. 665; Gottschalk *v.* Noyes, 225 Ill. 94, 80 N. E. 72, *modifying* 128 Ill. App. 565; Guarantee Gold Bond Loan, etc., Co. *v.* Edwards, (Indian Ter. 1907) 104 S. W. 624; Taber *v.* Breck, 192 Mass. 355, 78 N. E. 472; American Circular Loom Co. *v.* Wilson, (Mass. 1908) 84 N. E. 133.

When Ordered to Report Both the Evidence and His Conclusion the referee [illegible] not report evidence which is irrelevant, but the rule is otherwise where he is ordered to take the testimony only. Matter of Jones, 117 N. Y. App. Div. 775, 102 N. Y. Supp. 983.

235. 4. **Statutory Requirement May Be Waived.** — Matter of Robinson, (Surrogate Ct.) 53 Misc. (N. Y.) 171, 104 N. Y. Supp. 588.

5. Lederer *v.* Lederer, 108 N. Y. App. Div. 228, 95 N. Y. Supp. 623.

6. Poole *v.* Poindexter, 72 Kan. 654, 83 Pac. 1076.

236. 6. U. S. *v.* Ramsey, 158 Fed. 488; Kansas City Hydraulic Press Brick Co. *v.* Pratt, 114 Mo. App. 643, 93 S. W. 300; Iralson *v.* Stang, 18 Okla. 423, 90 Pac. 446; Allen *v.* Allen, 79 Vt. 173, 64 Atl. 1110.

Contra. — Kilduff *v.* John A. Roebling's Sons Co., 150 Fed. 240.

7. *United States.* — Kilduff *v.* John A. Roebling's Sons Co., 150 Fed. 240; U. S. *v.* Ramsey, 158 Fed. 488.

Colorado. — Peck *v.* Alexander, (Colo. 1907) 91 Pac. 38.

Maine. — Piscataquis Sav. Bank *v.* Herrick, 100 Me. 494, 62 Atl. 214.

Missouri. — Kansas City Hydraulic Press Brick Co. *v.* Pratt, 114 Mo. App. 643, 93 S. W. 300.

Nebraska. — State *v.* Omaha Elevator Co., (Neb. 1906) 110 N. W. 874.

New Jersey. — Harper Mach. Co. *v.* Sinclair, (N. J. 1908) 68 Atl. 890.

Oklahoma. — Shannon *v.* Petterbridge, 17 Okla. 507, 87 Pac. 668; Iralson *v.* Stang, 18 Okla. 423, 90 Pac. 446.

Oregon. — Puffer *v.* American Cent. Ins. Co., 48 Oregon 478, 87 Pac. 523.

Pennsylvania. — Ausley *v.* Scranton, 218 Pa. St. 131, 67 Atl. 51.

[illegible] Vt. [illegible]; Atl. 941; Allen *v.* Allen, 79 Vt. 173, 64 Atl. 1110.

Wisconsin. — Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483; Bossik *v.* [illegible].

Force and Effect of Auditor's Report. — Beers *v.* Wardwell, (Mass. 1908) 84 N. E. 306.

Treated as Decision by Court. Wood *v.* Saginaw Gold Min., etc., Co., (S. Dak. 1905) 105 N. W. 101.

Finding of Referee Equivalent to Special [illegible] Shaw, 2 Cal. App. [illegible], 84 Pac. 232.

Finding of Referee Advisory Only. [illegible] *v.* Schulz, 128 Wis. 28, 107 N. W. 302.

Auditor's Report Prima Facie Only. — First State Bank *v.* Avera, 123 Ga. 598, 51 S. E. 665.

Estimate by Referee without Evidence to Support It Cannot Stand. — Baldwin *v.* Patrick, (Colo. 1907) 91 Pac. 828.

A Reviewing Court Will Not Disturb the findings as reported unless in an exceptional case if there is any evidence to sustain them. Orr *v.* Cooledge, 125 Ga. 496, 54 S. E. 618; Young *v.* Winkley, 191 Mass. 570, 78 N. E. 377.

237. 1. Gottschalk *v.* Noyes, 225 Ill. 94, 80 N. E. 72, *modifying* 128 Ill. App. 565. See also Touhy *v.* McCagg, 121 Ill. App. 93.

3. **Allowance of Stenographer Fees.** — Bottome *v.* Neely, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 258, 104 N. Y. Supp. 429.

In New York a referee forfeits his fees by failing to report within the time required by law. Bottome *v.* Neeley, 124 N. Y. App. Div. 600, 109 N. Y. Supp. 120, *affirming* (Supm. Ct. App. T.) 54 Misc. (N. Y.) 258, 104 N. Y. Supp. 429.

4. **Administrator May Stipulate against Personal Liability.** — Bottome *v.* Neeley, 124 N. Y. App. Div. 600, 109 N. Y. Supp. 120, *affirming* (Supm. Ct. App. T.) 54 Misc. (N. Y.) 258, 104 N. Y. Supp. 429.

238. 7. **All Parties Liable for Fees.** — Bottome *v.* Neeley, 124 N. Y. App. Div. 600, 109 N. Y. Supp. 120, *affirming* (Supm. Ct. App. T.) 54 Misc. (N. Y.) 258, 104 N. Y. Supp. 429; Keeler *v.* Bell, (Supm. Ct. Spec T.) 48 Misc. (N. Y.) 427, 95 N. Y. Supp. 841.

REFUSAL — REFUSE.

240. 2. **Refusal to Serve — Resignation** of Referee. — See Brooklyn Heights R. Co. *v.* Brooklyn City R. Co., 105 N. Y. App. Div. 88, 93 N. Y. Supp. 849.

REFUSE.

240. 3. **Trade Refuse — House Refuse — Public Health (London) Act.** — See Westminster *v.* Gordon Hotels, (1906) 2 K. B. 39, 75 L. J. K. B. 438.

REGULAR.

241. 8. **Regular Clerk.** — See People *v.* McAdoo, 101 N. Y. App. Div. 183, 91 N. Y. Supp. 553, *affirmed* 181 N. Y. 548, 74 N. E. 1119.

Regular Term of Court. — See State *v.* Foster, 14 N. Dak. 561, 105 N. W. 938.

REINSURANCE.

248. 2. Allemannia F. Ins. Co. *v.* Fireman's Ins. Co., 28 App. Cas. (D. C.) 330.

Contra. — Nelson *v.* Empress Assur. Corp., 93 L. T. N. S. 62.

249. 6. **Contracts of Insurance and Reinsurance Are Independent of Each Other.** — Nelson *v.* Empress Assur. Corp., 93 L. T. N. S. 62.

252. 1. See Cass County *v.* Mercantile Town Mut. Ins. Co., 188 Mo. 1, 86 S. W. 237.

254. 1. See Delaware Ins. Co. *v.* Pennsylvania F. Ins. Co., 126 Ga. 380, 55 S. E. 330.

4. **In Illinois,** under the statute, it is held that a contract of reinsurance transfers all members actually in good standing. Brown *v.* Mutual Reserve Fund L. Assoc., 224 Ill. 576, 79 N. E. 949, *reversing* 124 Ill. App. 277.

257. 6. Home Ins. Co. *v.* Victoria, etc., F. Ins. Co., 27 Quebec Super. Ct. 494, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 257, *reversed* on other grounds in 35 Can. Sup. Ct. 208; Home Ins. Co. *v.* Victoria-Montreal F. Ins. Co., 95 L. T. N. S. 627; Home Ins. Co. *v.* Victoria-Montreal F. Ins. Co., 16 Quebec K. B. 31.

265. 6. **Liability of Reinsured Depends upon Terms of Contract of Reinsurance.** — Fireman's Fund Ins. Co. *v.* Aachen, etc., F. Ins. Co., 2 Cal. App. 690, 84 Pac. 253.

267. 2. **Effect of Reinsurance Contract.** — See Hayden *v.* Franklin L. Ins. Co., (C. C. A.) 136 Fed. 285.

270. 2. Allemannia F. Ins. Co. *v.* Fireman's Ins. Co., 28 App. Cas. (D. C.) 330.

RELATION.

275. 4. **Application.** — "The doctrine of relation is of ancient origin, and has always been applied, both at law and in equity, to meet the requirements of justice, to protect purchasers, and to effectuate the intent of the parties to contracts." Scott *v.* Stone, 72 Kan. 545, 84 Pac. 117, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 275.

276. 1. Evans *v.* Crawford County Farmers' Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 276.

277. 8. Evans *v.* Crawford County Farmers' Mut. F. Ins. Co., 130 Wis. 189, 109 N. W. 952.

RELATIVE — RELATION — RELATIONSHIP.

279. 2. Bernhardt *v.* Bernhardt, 28 Ohio Cir. Ct. 686; Gross *v.* Nickum, 34 Pa. Co. Ct. 502, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 278.

RELEASE AND DISCHARGE.

283. 5. Hartford L. Ins. Co. *v.* Sherman, 123 Ill. App. 202, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 283; Allen *v.* Ruland, 79 Conn. 405, 65 Atl. 138. See also Farmers', etc., L. Assoc. *v.* Caine, 123 Ill. App. 419, *affirmed* 224 Ill. 599, 79 N. E. 956.

284. 6. Hand Lumber Co. *v.* Hall, 147 Ala. 561, 41 So. 78, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 284.

No Particular Form of Words Necessary. — Grand Lodge, etc., *v.* Peiffer, 129 Ill. App. 208.

285. 12. Memphis St. R. Co. *v.* Giardino, 116 Tenn. 369, 92 S. W. 855.

286. 9. **A Seal Imports a Consideration.** — Probate Ct. *v.* Enright, 79 Vt. 416, 65 Atl. 530.

287. 12. **An Unpaid Draft Is Not a Sufficient Consideration.** — Kirby Lumber Co. *v.* Chambers, (Tex. Civ. App. 1906) 95 S. W. 607.

"An Agreement to Pay One Liquidated

Debt is not a sufficient consideration to sustain a release by the creditor of another liquidated or unliquidated debt." Siewing *v.* Tacke, 112 Mo. App. 414, 86 S. W. 1103.

Money Paid to an Employer is sufficient consideration for a release signed by an employee "although he did not receive a penny." Strode *v.* St. Louis Transit Co., 197 Mo. 616, 95 S. W. 851.

Consideration for Release of a Note. — See Rockfeller *v.* Wedge, (C. C. A.) 149 Fed. 130.

288. 6. Zuelly *v.* Casper, 37 Ind. App. 186, 76 N. E. 646; Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

8. Hand Lumber Co. *v.* Hall, 147 Ala. 561, 41 So. 78, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 288; Allen *v.* Ruland, 79 Conn. 405, 65 Atl. 138.

289. 3. Bowers *v.* Detroit Southern R. Co., 26 Ohio Cir. Ct. 518.

Promise of Employment Falsely Made Is Not a Good Consideration. — Southwestern Tel., etc., Co. *v.* James, (Tex. Civ. App. 1906) 91 S. W. 654.

8. See Pennsylvania Co. *v.* Chapman, 118 Ill. App. 201, *affirmed* 220 Ill. 428, 77 N. E. 248.

9. Louisville, etc., R. Co. *v.* Helm, (Ky. 1905) 89 S. W. 709.

290. 10. Vindicator Consol. Gold Min. Co. *v.* Firstbrook, 36 Colo. 498, 86 Pac. 313; Wallace *v.* Skinner, 15 Wyo. 233, 88 Pac. 221.

12. **Burden of Proof.** — A release, being in writing, is itself presumptive of a consideration, and if a party would avoid it for want of consideration, the burden is upon him to make such proof. Castor *v.* Bernstein, 2 Cal. App. 703, 84 Pac. 244.

13. U. S. *v.* William Cramp, etc., Ship, etc., Bldg. Co., 206 U. S. 118, 27 U. S. Sup. Ct. 676; Jordan *v.* McDonnell, (Ala. 1907) 44 So. 101; Taylor *v.* Godfrey, (W. Va. 1907) 59 S. E. 631.

Particular Demands need not be in the minds of the parties at the time of the execution of the release if they are embraced by the terms that were used. Klopot *v.* Metropolitan Stock Exch., 188 Mass. 335, 74 N. E. 596.

291. 1. St. Louis Southwestern R. Co. *v.* Stringer, 74 Ark. 425, 86 S. W. 280.

Words Not Extended Beyond the Consideration. — Releases, absolute and unequivocal in their terms, must be construed according to the language which the parties have seen fit to use. Klopot *v.* Metropolitan Stock Exch., 188 Mass. 335, 74 N. E. 596.

292. 8. **In Georgia** an agreement or covenant made anterior to or contemporaneously with the contract must be in writing to be equivalent to a release. Crooker *v.* Hamilton, 3 Ga. App. 190, 59 S. E. 722.

293. 6. Will A. Watkin Music Co. *v.* Basham, (Tex. Civ. App. 1907) 106 S. W. 734, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 293.

294. 3. Texas, etc., R. Co. *v.* Dashiell, 198 U. S. 521, 25 U. S. Sup. Ct. 737; Murphy *v.* New York, 190 N. Y. 413, 83 N. E. 39. See also Klopot *v.* Metropolitan Stock Exch., 188 Mass. 335, 74 N. E. 596.

A General Intent will not be defeated or limited by subsequent expressions more restricted in their application, where it appears that it was the intention of the parties to pass the larger rather than the more limited interest. Chicago Union Traction Co. *v.* O'Connell, 224 Ill. 428, 79 N. E. 622.

11. See Herrman *v.* Laemmle, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 549, 107 N. Y. Supp. 73.

295. 4. Hirschfield *v.* Alsberg, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 141, 93 N. Y. Supp. 617.

296. 13. Van Kannell Revolving Door Co. *v.* Astor, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 378, 105 N. Y. Supp. 683.

297. 8. Kilmartin *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 522.

303. 4. **The Mental Condition of the Releaser** at the time of executing a release may be shown in an action where the release is set up as a defense. Gould *v.* John Hancock Mut. L. Ins. Co., 114 N. Y. App. Div. 312, 99 N. Y. Supp. 833.

6. Banking House *v.* Rose, (Neb. 1907) 111 N. W. 590; Robinson *v.* St. Johnsbury, etc., R. Co., 80 Vt. 129, 66 Atl. 814.

304. 5. **The Reason of the Rule** is that there is one demand against all, and that that demand is satisfied. Robinson *v.* St. Johnsbury, etc., R. Co., 80 Vt. 129, 66 Atl. 814.

6. Bogart *v.* Robertson, 11 Ont. L. Rep. 306, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 304.

305. 4. Enscoe *v.* Fletcher, 1 Cal. App. 659, 82 Pac. 1075.

The Release of One or More Joint Makers of a Promissory Note does not operate to discharge other joint makers, except as to the full proportional amount which would be payable by those released. Smith *v.* White, 73 Kan. 607, 85 Pac. 588.

306. 8. Jones *v.* Chism, 73 Ark. 14, 83 S. W. 315, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 306; The St. Cuthbert, 157 Fed. 799; Ducey *v.* Patterson, 37 Colo. 216, 86 Pac. 109; Allen *v.* Ruland, 79 Conn. 405, 65 Atl. 138; Ryan *v.* Becker, (Iowa 1907) 111 N. W. 426; Brewer *v.* Casey, (Mass. 1907) 82 N. E. 45; Bailey *v.* Delta Electric Light, etc., Co., 86 Miss. 634, 38 So. 354; Chicago Herald Co. *v.* Bryan, 195 Mo. 574, 92 S. W. 902.

A Binding Settlement, relieving the joint tortfeasor from further liability, is necessary. Home Sav. Bank *v.* Otterbach, (Iowa 1907) 112 N. W. 760.

The Party Released Must Be One against Whom an Action Would Lie, and it should appear that a claim has been made for or on account of the alleged tort. Pickwick *v.* McCauliff, 193 Mass. 78, 78 N. E. 730.

A Covenant Not to Sue does not release a joint tortfeasor. Chicago, etc., R. Co. *v.* Averill, 127 Ill. App. 275.

Right to Sue One Tortfeasor May Be Reserved. — Snyder *v.* Mutual Telephone Co., (Iowa 1907) 112 N. W. 776. See also Morris *v.* North American Mercantile Agency Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 574, 103 N. Y. Supp. 761. To the same effect, see Hirschfield *v.* Alsberg, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 141, 93 N. Y. Supp. 617; El Paso, etc., R. Co. *v.* Darr, (Tex. Civ. App. 1906) 93 S. W. 166.

307. 1. Reason of Rule. Bailey *v.* Delta Electric Light, etc., Co., 86 Miss. 634, 38 So. 381.

2. Home Telephone Co. *v.* Fields, (Ala. 1907) 43 So. 711, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 307. See also Brennan *v.* Electrical Installation Co., 120 Ill. App. 461.

308. 1. Pickwick *v.* McCauliff, 193 Mass. 70, 78 N. E. 730.

8. **Contra.** — Snyder *v.* Mutual Telephone Co., (Iowa 1907) 112 N. W. 776.

10. See Hoerger *v.* Citizens' St. R. Co., 36 Ind. App. 662, 76 N. E. 328.

In Missouri a husband or father who suffers injuries cannot by his contract of release deprive his widow or children of the right which the statute gives them. Strode *v.* St. Louis Transit Co., (Mo. 1905) 87 S. W. 976.

11. Springfield Consol. R. Co. *v.* Pickett, 125 Ill. App. 519; Austin *v.* St. Louis Transit Co., 115 Mo. App. 146, 91 S. W. 450; Robertson *v.* George A. Fuller Constr. Co., 115 Mo. App. 456, 92 So. W. 130.

Misrepresentations by Physician to Patient. — See Viallet *v.* Consolidated R., etc., Co., 30 Utah 260, 84 Pac. 496.

309. 2. Hartley *v.* Chicago, etc., R. Co., 116 Ill. App. 277.

3. Wallace *v.* Skinner, 15 Wyo. 233, 88 Pac. 221, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 309; Gipe *v.* Pittsburgh, etc., R. Co., (Ind. App. 1907) 82 N. E. 471; McNamara *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 878; Bennett *v.* Himmelberger-Harrison Lumber Co., 116 Mo. App. 699, 94 S. W. 808; Schenfeld *v.* Hochman, (Supm. Ct. App. T.) 100 N. Y. Supp. 1020.

Failure to Read Release. — Bennett *v.* Himmelberger-Harrison Lumber Co., 116 Mo. App. 699, 94 S. W. 808.

4. Austin *v.* St. Louis Transit Co., 115 Mo. App. 146, 91 S. W. 450; Galveston, etc., R. Co. *v.* Cade, (Tex. Civ. App. 1906) 93 S. W. 124; Viallet *v.* Consolidated R., etc., Co., 30 Utah 260, 84 Pac. 496.

310. 7. See Crisman *v.* Lanterman, 149 Cal. 647, 87 Pac. 89.

11. Sherman *v.* Matthieu, 106 N. Y. App. Div. 368, 94 N. Y. Supp. 565.

313. 1. **The Release of a Reinsurance Policy** may be avoided on the ground of mistake. Traders' Ins. Co. *v.* Aachen, etc., F. Ins. Co., 150 Cal. 370, 89 Pac. 109.

6. Sovereign Camp, etc., *v.* Bridges, (Indian Ter. 1907) 104 S. W. 672.

314. 5. **Undue Influence and Duress Vitiate a Release.** — Puff *v.* Puff, (Ky. 1907) 104 S. W. 332.

Questions of Fact. — The validity of a release is a question of fact where it was executed under peculiar circumstances. Illinois Steel Co. *v.* Ferguson, 129 Ill. App. 396.

Validity of Release by Seamen. — See Caffyn *v.* Peabody, 149 Fed. 294.

9. Great Northern R. Co. *v.* Fowler, 136 Fed. 118, 69 C. C. A. 106.

10. Great Northern R. Co. *v.* Fowler, 136 Fed. 118, 69 C. C. A. 106.

315. 1. St. Louis, etc., R. Co. *v.* Brown, 73 Ark. 42, 83 S. W. 332, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 315; Kelly *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 536; Southern R. Co. *v.* Brewer, (Ky. 1907) 105 S. W. 160; State *v.* Stuart, 111 Mo. App. 478, 86 S. W. 471; State *v.* Stuart, 111 Mo. App. 478, 86 S. W. 471. See also McNicholas *v.* Prudential Ins. Co., (Mass. 1907) 82 N. E. 692; Erickson *v.* Northwest Paper Co., 95 Minn. 356, 104 N. W. 291.

2. Glisson *v.* Paducah R., etc., Co., 87 S. W. 305, 27 Ky. L. Rep. 965; Carlston *v.* Ryan, (Mich. 1908) 114 N. W. 852; Gulf, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 720. See also Hot Springs R. Co. *v.* McMillan, 76 Ark. 88, 88 S. W. 846.

Proof of Incompetency. — See Galveston, etc., R. Co. *v.* Green, (Tex. Civ. App. 1905) 91 S. W. 380.

6. Kansas City, etc., R. Co. *v.* Chiles, 86 Miss. 361, 38 S. 498.

A Release Obtained by Fraud Is Voidable. — Rapid Transit R. Co. *v.* Smith, 98 Tex. 553, 86 S. W. 322.

7. Davis *v.* Weatherly, 119 Ill. App. 238; Bruns *v.* Welte, 126 Ill. App. 541; Kilmartin *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 522; Perry *v.* Michigan Alkali Co., 150 Mich. 537, 114 N. W. 315; Hicks *v.* Harbison-Walker Co., 212 Pa. St. 437, 61 Atl. 958; Conroy *v.* Equitable Acc. Co., 27 R. I. 467, 63 Atl. 356; St. Louis Southwestern R. Co. *v.* Demsey, (Tex. Civ. App. 1905) 89 S. W. 786. See also Murphy *v.* Black, (Ala. 1906) 41 So. 877.

Release Obtained by Fraud Not a Bar to Recovery. — Spring Valley Coal Co. *v.* Buzis, 115 Ill. App. 196, *affirmed* 213 Ill. 341, 72 N. E. 1060.

Thus, a release fraudulently executed by an administrator is not a bar to an action by a succeeding administrator. Aho *v.* Jesmore, 101 Minn. 449, 112 N. W. 538.

Effect of Release of Some Where Others Are Liable. — See Pecos, etc., R. Co. *v.* Lovelady, (Tex. Civ. App. 1905) 87 S. W. 710.

12. **Damage Caused by Raising Grade.** — Yazoo, etc., R. Co. *v.* Smith, (Miss. 1907) 43 So. 611.

317. 1. **Release Imports Full Payment.** — Robinson *v.* St. Johnsbury, etc., R. Co., 80 Vt. 129, 66 Atl. 814.

6. **A Release Executed by a Landlord** for injuries received is not a bar to an action against the tenant, where the release was in the nature of a covenant not to sue. Hirschfield *v.* Alsberg, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 141, 93 N. Y. Supp. 617.

11. Pennsylvania Co. *v.* Chapman, 118 Ill. App. 201, *affirmed* 220 Ill. 428, 77 N. E. 248.

318. 1. Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198; Galveston, etc., R. Co. *v.* Cade, (Tex. Civ. App. 1906) 93 S. W. 124. See also Chicago, etc., R. Co. *v.* Williams, (Tex. Civ. App. 1906) 99 S. W. 141.

Release of Insurance Policy Obtained by Fraud — Sufficiency of Evidence. — Capital F. Ins. Co. *v.* Montgomery, 81 Ark. 508, 99 S. W. 687.

Surrounding Conditions. — Kansas City, etc., R. Co. *v.* Chiles, 86 Miss. 361, 38 So. 498.

2. Hayes *v.* Atlanta, etc., Air Line R. Co., 143 N. Car. 125, 55 S. E. 437, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 318; Valley *v.* Boston, etc., R. Co., (Me. 1907) 68 Atl. 625; Lomax *v.* Southwest Missouri Electric R. Co.,

119 Mo. App. 192, 95 S. W. 945. See also Chicago, etc., R. Co. *v.* Jennings, 217 Ill. 494, 75 N. E. 560.

Intent to Defraud. — Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

The Burden of Proof is on the party seeking to impeach the release. Kilmartin *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 522.

Fraudulent Misrepresentation. — McNamara *v.* Boston El. R. Co., (Mass. 1908) 82 N. E. 878.

319. 3. See State *v.* Stuart, 111 Mo. App. 478, 86 S. W. 471.

Fraud in Procuring a Release may be set up as a defense in an action at law. Memphis St. R. Co. *v.* Giardino, 116 Tenn. 369, 92 S. W. 855.

4. **"The Mistake Which Will Avoid a Release** is not necessarily a mistake of fact, but there are frequent instances in which a mistake of law on the legal effect of the written instrument has been held sufficient ground for its repudiation." Rauen *v.* Prudential Ins. Co., 129 Iowa 725, 106 N. W. 198.

The Ignorance of a Party as to the contents of a release will not avoid it. Missouri, etc., R. Co. *v.* Craig, (Tex. Civ. App. 1906) 98 S. W. 907.

6. See Creshkoff *v.* Schwartz, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 576, 103 N. Y. Supp. 782.

Intentional Misrepresentations should be shown in order to set aside a release on the ground of fraud. Kelly *v.* Pioneer Press Co., 94 Minn. 448, 103 N. W. 330.

False Representations of the Releasee's Agent. — See Gulf, etc., R. Co. *v.* Huyett, 99 Tex. 630, 92 S. W. 454.

320. 2. Memphis St. R. Co. *v.* Giardino, 116 Tenn. 369, 92 S. W. 855.

Laches is not evidence of a waiver where the rights of the defendant and of innocent third parties have not been prejudiced. Galveston, etc., R. Co. *v.* Cade, (Tex. Civ. App. 1906) 93 S. W. 124.

5. *United States.* — Price *v.* Connor, (C. C. A.) 146 Fed. 503; Heck *v.* Missouri Pac. R. Co., 147 Fed. 775.

Alabama. — Harrison *v.* Alabama Midland R. Co., 144 Ala. 246, 40 So. 394. See also Harrison *v.* Alabama Midland R. Co., 144 Ala. 246, 40 So. 394.

District of Columbia. — Rockwell *v.* Capital Traction Co., 25 App. Cas. (D. C.) 98, 4 Ann. Cas. 648.

Georgia. — Harley *v.* Riverside Mills, 129 Ga. 214, 58 S. E. 711.

Maine. — Valley *v.* Boston, etc., R. Co., (Me. 1907) 68 Atl. 635.

Massachusetts. — McNicholas *v.* Prudential Ins. Co., 191 Mass. 304, 77 N. E. 756.

Missouri. — Lomax *v.* Southwest Missouri Electric R. Co., 119 Mo. App. 192, 95 S. W. 945.

New York. — See Ambellan *v.* Barcolo Mfg. Co., 118 N. Y. App. Div. 547, 102 N. Y. Supp. 993.

Rhode Island. — Conroy *v.* Equitable Acc. Co., 27 R. I. 467, 63 Atl. 556.

The Identical Money Received Need Not Be Returned. — Louisville, etc., R. Co. *v.* Helm, (Ky. 1905) 89 S. W. 709.

Tender May Be Made to an Agent of the Employer. — Louisville, etc., R. Co. *v.* Helm, (Ky. 1905) 89 S. W. 709.

As to the Necessity of a Return of Money by an Infant before bringing an action for damages, see Worthy *v.* Jonesville Oil Mill, 77 S. Car. 69, 57 S. E. 634.

Pleading. — The complaint, in an action to rescind a lease on the ground of fraud, must show a return or tender of the amount received. Supreme Council, etc., *v.* Apman, 39 Ind. App. 670, 80 N. E. 640.

Verdict. — The court will not direct a verdict [illegible] plaintiff testified that he received no money. Sargent Co. *v.* Baublis, 215 Ill. 428, 74 N. E. 455.

6. St. Louis, etc., R. Co. *v.* Sandidge, 81 Ark. 264, 99 S. W. 68, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 320; St. Louis, etc., R. Co. *v.* Brown, 73 Ark. 42, 83 S. W. 332; St. Louis, etc., R. Co. *v.* Smith, 82 Ark. 105, 100 S. W. 884; McNicholas *v.* Prudential Ins. Co., 191 Mass. 304, 77 N. E. 756.

Gifts and Wages need not be returned where the alleged release was procured by fraud and unknown to the plaintiff. Ingram *v.* Covington, etc., R. Co., (Ky. 1905) 89 S. W. 541.

321. 1. Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200; Rockwell *v.* Capital Traction Co., 25 App. Cas. (D. C.) 98, 4 Ann. Cas. 648; Hayes *v.* Atlanta, etc., Air Line R. Co., 143 N. Car. 125, 55 S. E. 437; Galveston, etc., R. Co. *v.* Cade, (Tex. Civ. App. 1906) 93 S. W. 124; Doyle *v.* Diamond Flint Glass Co., 10 Ont. L. Rep. 567.

A Tender with the Replication Is Sufficient. — Memphis St. R. Co. *v.* Giardino, 116 Tenn. 369, 92 S. W. 855.

3. Allen *v.* Ruland, 79 Conn. 405, 65 Atl. 138; Lanham *v.* Louisville, etc., R. Co., 120 Ky. 351, 86 S. W. 680; Rapid Transit R. Co. *v.* Smith, 98 Tex. 553, 86 S. W. 322; Moran Bros. Co. *v.* Pacific Coast Casualty Co., (Wash. 1908) 94 Pac. 106.

The Surrounding Circumstances may be shown by parol evidence. Jersey Island Dredging Co. *v.* Whitney, 149 Cal. 269, 86 Pac. 509, 6[illegible].

The Intention of the parties to a release of a wrongdoer may be shown by parol evidence. El Paso, etc., R. Co. *v.* Darr, (Tex. Civ. App. 1906) 93 S. W. 166.

Parol Evidence may be received to show that a release was to one not in fact liable, that the money was not in fact received as compensation, and that there was in fact no satisfaction or attempt at satisfaction. Ryan *v.* Becker, (Iowa 1907) 111 N. W. 426.

RELIGIOUS SOCIETIES.

327. 1. Miller *v.* Riddle, 227 Ill. 53, 81 N. E. 48, *reversing* 130 Ill. App. 392.

329. 1. *In re* African M. E. Union Church, 28 Pa. Super. Ct. 193.

6. Wallace *v.* Snodgrass, 34 Pa. Super. Ct. 551. See also Miller *v.* Riddle, 227 Ill. 53, 81 N. E. 48, *reversing* 130 Ill. App. 392.

7. **Laws of West Virginia Expressly Forbid Incorporation of Church Organization.** Miller *v.* Ahrens, 150 Fed. 644.

8. *In re* Polish Nat. Catholic Church, 31 Pa. Super. Ct. 87.

330. 4. Miller *v.* Riddle, 227 Ill. 53, 81 N. E. 48, *reversing* 130 Ill. App. 392.

In Pennsylvania, an unincorporated religious association is recognized as having a legal entity separate and apart from its members. Wallace *v.* Snodgrass, 34 Pa. Super. Ct. 551.

7. **New York.** — A corporation organized under an act authorizing incorporation of benevolent, charitable, scientific, and missionary societies is not a religious corporation. Selkir *v.* Klein, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 194, 100 N. Y. Supp. 449.

8. **Where Once Incorporated, Corporate Existence Is Not Destroyed by Formation of New Corporation by Other Persons.** — Polk *v.* State, (Ala. 1908) 45 So. 652.

331. 1. **Corporation Comes into Existence on Recording of Certificate.** — Spiritual, etc., Temple *v.* Vincent, 127 Wis. 93, 105 N. W. 1026.

3. **One Religious Organization Has Inherent Right to Unite with Another.** — Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421.

A German Evangelical Lutheran Church is entitled to affiliate itself with any council or synod of the denomination, and to change its affiliation from time to time. Duessel *v.* Proch, 78 Conn. 343, 62 Atl. 152.

4. **Membership Corporation Cannot Consolidate with Religious Society.** — Selkir *v.* Klein, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 194, 100 N. Y. Supp. 449.

7. Selkir *v.* Klein, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 194, 100 N. Y. Supp. 449.

334. 7. Kelsey *v.* Jackson, 123 Ga. 113, 50 S. E. 951.

335. 15. Duessel *v.* Proch, 78 Conn. 343, 62 Atl. 152; Rex *v.* Wasyl Kapij, 15 Manitoba 110, 9 Can. Crim. Cas. 186.

336. 4. Wallace *v.* Snodgrass, 34 Pa. Super. Ct. 551.

5. Wallace *v.* Snodgrass, 34 Pa. Super. Ct. 551.

8. **Essential Change of Doctrine.** — Duessel *v.* Proch, 78 Conn. 343, 62 Atl. 152.

337. 6. Wallace *v.* Snodgrass, 34 Pa. Super. Ct. 551.

7. Duessel *v.* Proch, 78 Conn. 343, 62 Atl. 152.

338. 3. Cape *v.* Plymouth Cong. Church, 130 Wis. 174, 109 N. W. 928.

6. Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184.

8. Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184.

339. 2. Hughes *v.* North Clinton Baptist Church, (N. J. 1907) 67 Atl. 66.

Fraudulent Expulsion Is Void. — Hendryx *v.* People's United Church, 42 Wash. 336, 84 Pac. 1123.

7. **Contra, Where Expulsion Has Been Fraudulent.** — Hendryx *v.* People's United Church, 42 Wash. 336, 84 Pac. 1123.

340. 4. **Mandamus for Reinstatement Will Lie.** — Hughes *v.* North Clinton Baptist Church, (N. J. 1907) 67 Atl. 66.

6. Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421.

10. State *v.* Rombotis, (La. 1907) 45 So. 43; Firestone *v.* First Slavish Roman Catholic Greek Rite Church, 215 Pa. St. 8, 63 Atl. 1038.

341. 6. **Alabama — Register in Chancery Has Authority to Appoint in Case of Vacancy.** — Malone *v.* Lacroix, 143 Ala. 657, 41 So. 724.

11. **Trustees Continue in Office until Successors Are Elected.** — State *v.* Rombotis, (La. 1907) 45 So. 43.

343. 4. See Lee *v.* M. E. Church, 193 Mass. 47, 78 N. E. 646.

8. Malone *v.* Lacroix, 143 Ala. 657, 41 So. 724.

344. 5. Chicago Heights First Presb. Church *v.* McColly, 126 Ill. App. 333.

7. Cann *v.* Church of Holy Redeemer, 121 Mo. App. 201, 98 S. W. 981.

346. 5. Condon *v.* St. Augustine Church, 112 N. Y. App. Div. 168, 98 N. Y. Supp. 253.

347. 6. **Deacon of Baptist Church Cannot Sue in Behalf of Church.** — Drew *v.* Hogan, 26 App. Cas. (D. C.) 55, 6 Ann. Cas. 589.

348. 1. Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184; Christian Church *v.* Church of Christ, 219 Ill. 503, 76 N. E. 703; Fussell *v.* Hail, 233 Ill. 73, 84 N. E. 42; Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421; Marien *v.* Evangelical Creed Congregation, (Wis. 1907) 113 N. W. 66.

Where Parties Constitute the Ecclesiastical Court an Arbitrator between them and agree to abide by its decision as an award, the civil courts will enforce the award made. Poggenborg *v.* Conniff, (Ky. 1906) 96 S. W. 547.

2. Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184; Fussell *v.* Hail, 233 Ill. 73, 84 N. E. 42; Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421.

Courts Will Judicially Notice Separation of Methodist Episcopal Church into Two Divisions. — Malone *v.* Lacroix, 143 Ala. 657, 41 So. 724.

349. 5. **The German Evangelical Lutheran Church** has no church tribunal with jurisdiction to determine any matters of faith or church organization. Duessel *v.* Proch, 78 Conn. 343, 62 Atl. 152.

7. Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184; Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421.

350. 1. Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421.

2. **English Decisions Not Followed in United States.** — Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184.

3. Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184; Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421; Hendryx *v.* People's United Church, 42 Wash. 336, 84 Pac. 1123; Cape *v.* Plymouth Cong. Church, 130 Wis. 174, 109 N. W. 928; Marien *v.* Evangelical Creed Congregation, (Wis. 1907) 113 N. W. 66.

5. See Hayes *v.* Franklin, 141 N. Car. 599, 54 S. E. 432.

351. 1. Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421.

7. Hayes *v.* Franklin, 141 N. Car. 599, 54 S. E. 432.

352. 7. M. E. Church South *v.* Clifton, 34 Tex. Civ. App. 248, 78 S. W. 732, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 352.

10. Cape *v.* Plymouth Cong. Church, 130 Wis. 174, 109 N. W. 928; Marien *v.* Evangelical Creed Congregation, (Wis. 1907) 113 N. W. 66.

353. 9. Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421; Marien *v.* Evangelical Creed Congregation, (Wis. 1907) 113 N. W. 66.

Single Individual, Legally Interested, May Sue. — Cape *v.* Plymouth Cong. Church, 130 Wis. 174, 109 N. W. 928.

10. Cape *v.* Plymouth Cong. Church, 130 Wis. 174, 109 N. W. 928.

354. 1. Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421.

6. Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184; Christian Church *v.* Church of Christ, 219 Ill. 503, 76 N. E. 703; Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421; Rex *v.* Wasyl Kapij, 15 Manitoba 110, 9 Can. Crim. Cas. 186.

358. 11. **Formation of New Corporation by Different Persons Does Not Dissolve Old Corporation.** — Polk *v.* State, (Ala. 1908) 45 So. 652.

359. 1. **Contra, Where Individual Church Does Not Consent to Union.** — Clark *v.* Brown, (Tex. Civ. App. 1908) 108 S. W. 421.

Under the New York Statute, where two religious societies consolidate according to law, the consolidated society succeeds to the property of the original societies. Selkir *v.* Klein, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 194, 100 N. Y. Supp. 449.

2. *In re* African M. E. Union Church, 28 Pa. Super. Ct. 193.

Where There Are No By-laws fixing the time of the annual meetings, and there was no established custom that fixed a time for holding meetings, the minutes of a portion of the congregation after its division are not admissible to show on what date certain meetings were held. Firestone *v.* First Slavish Roman Catholic Greek Rite Church, 215 Pa. St. 8, 63 Atl. 1038.

A Regular Meeting of the society, held according to its custom, is not rendered irregular by the circumstance that a part of the members saw fit to assemble at some other place. Spiritual, etc., Temple *v.* Vincent, 127 Wis. 93, 105 N. W. 1026.

3. State *v.* Rombotis, (La. 1907) 45 So. 43.

5. *In re* Williams, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 1105.

6. *In re* Williams, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 1105.

360. 6. Duessel *v.* Proch, 78 Conn. 343, 62 Atl. 152.

Two-thirds Vote of All Members Is Required in Adopting Amendment to Constitution. — *In re* African M. E. Union Church, 28 Pa. Super. Ct. 193.

9. **Maryland — Consent of Legislature to Purchase of Property Is Required.** — Dickerson *v.* Kirk, 105 Md. 638, 66 Atl. 494.

Congregation of Baptist Church Controls Use of Property. — Drew *v.* Hogan, 26 App. Cas. (D. C.) 55, 6 Ann. Cas. 589.

11. **In Massachusetts,** for the purpose of taking, holding, and transmitting property, a voluntary religious society possesses all the qualifying attributes of a duly organized corporation. Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778.

361. 2. **A Deed to a Church Community,** the community not being incorporated, and no individuals being named in the deed, passes no title. Rixford *v.* Zeigler, 150 Cal. 435, 88 Pac. 1092.

3. Hayes *v.* Franklin, 141 N. Car. 599, 54 S. E. 432.

Valid Grant May Be Made to Trustees of Unincorporated Religious Association. — Penny *v.* Central Coal, etc., Co., (C. C. A.) 138 Fed. 769.

4. Lee *v.* M. E. Church, 193 Mass. 47, 78 N. E. 646.

11. Christian Church *v.* Church of Christ, 219 Ill. 503, 76 N. E. 703.

362. 1. Christian Church *v.* Church of Christ, 219 Ill. 503, 76 N. E. 703.

9. Dangerfield *v.* Williams, 26 App. Cas. (D. C.) 508; Regents *v.* Calvary M. E. Church, 104 Md. 635, 65 Atl. 398; Dickerson *v.* Kirk, 105 Md. 638, 66 Atl. 494. See also Davis *v.* Owen, 107 Va. 283, 58 S. E. 581.

Title May Be Acquired by Possession Adverse to Members of Society. — Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778.

363. 4. **Contra in West Virginia.** — Miller *v.* Abrams, 150 Fed. 644.

No Power to Take in New York. — Fralick *v.* Syford, 187 N. Y. 524, 79 N. E. 1105, *affirming* 107 N. Y. App. Div. 543, 95 N. Y. Supp. 433.

12. **Statute Applies to Unincorporated Society.** — Miller *v.* Ahrens, 150 Fed. 644.

364. 3. **Statute Applies to Nonresident Religious Corporation.** — Miller *v.* Ahrens, 150 Fed. 644.

4. Dangerfield *v.* Williams, 26 App. Cas. (D. C.) 508.

5. State *v.* Amana Soc., 132 Iowa 304, 109 N. W. 894; Regents *v.* Calvary M. E. Church, 104 Md. 635, 65 Atl. 398.

7. **Lease.** — In *Massachusetts* a parish may lease an old meeting house and the land on which it stands to a lessee who agrees to buy the meeting house, which has been superseded, the parish agreeing to pay, on the termination of the lease, a reasonable sum for all buildings and improvements put upon the lands during the lease. Hollywood *v.* First Parish, 192 Mass. 269, 78 N. E. 124.

9. **A Street Railway Consent,** signed by one who is not an officer of the religious society and who is without authority to sign, is invalid. Day *v.* Forest City R. Co., 27 Ohio Cir. Ct. 60.

365. 3. Associate Presb. Congregation *v.* Hanna, 113 N. Y. App. Div. 12, 98 N. Y. Supp. 1082; Edelstein *v.* Hayes, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 130, 100 N. Y. Supp. 403.

9. **Leave of Court Unnecessary, Where Society Is Bound to Convey as Trustee.** — Edelstein *v.* Hays, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 130, 100 N. Y. Supp. 403.

366. 1. Hayes *v.* Franklin, 141 N. Car. 599, 54 S. E. 432.

8. **Where Society Is Unincorporated, Deed Must Be from Society and Not from Trustees.** — Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778.

370. 7. Cann *v.* Church of Holy Redeemer, 121 Mo. App. 201, 98 S. W. 791.

8. Condon *v.* St. Augustine Church, 112 N. Y. App. Div. 168, 98 N. Y. Supp. 253.

371. 2. **Trustees Cannot Recover for**

Physical Suffering on Part of Pastor, His Family, or Individuals Composing Congregation. — Taylor *v.* Seaboard Air Line R. Co., 145 N. Car. 400, 59 S. E. 129.

372. 4. **Nonuser.** — Miller *v.* Riddle, 227 Ill. 53, 81 N. E. 48, *reversing* 130 Ill. App. 392.

REMAIN — REMAINING, ETC.

372. 8. **Remaining Children.** — See Smith *v.* Myers, 212 Pa. St. 51, 61 Atl. 573.

REMAINDERS, REVERSIONS, AND EXECUTORY INTERESTS.

378. 4. Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929; Mitchell *v.* Cleveland, 76 S. Car. 432, 57 S. E. 33.

8. Toombs *v.* Spratlin, 127 Ga. 766, 57 S. E. 59.

379. 2. **An Estate in Remainder Cannot Rest upon an Estate in Remainder** when the latter is given to one and his heirs, for the whole estate is exhausted. Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929.

4. See Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846.

380. 11. Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929.

14. *Contra,* Tyler *v.* Theilig, 124 Ga. 204, 52 S. E. 606.

Defeasible Fee. — Morgan *v.* Long, (Ky. 1906) 90 S. W. 1042.

381. 7. Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929.

382. 3. Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929.

6. Irvin *v.* Porterfield, 126 Ga. 729, 55 S. E. 946; May *v.* Walter, (Ky. 1906) 97 S. W. 423; Ball *v.* Holland, 189 Mass. 369, 75 N. E. 713; Crapo *v.* Price, 190 Mass. 317, 76 N. E. 1043; Barnes Cycle Co. *v.* Haines, 69 N. J. Eq. 651, 61 Atl. 515; French *v.* Logan, (Va. 1908) 60 S. E. 622; Harkness *v.* Harkness, 9 Ont. L. Rep. 705; *Re* Sharon, 12 Ont. L. Rep. 605. See also Brownback *v.* Keister, 220 Ill. 544, 77 N. E. 75.

383. 1. Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929; Minot *v.* Purrington, 190 Mass. 336, 77 N. E. 630; Greenlaw *v.* Dillon, (Tex. Civ. App. 1908) 108 S. W. 705.

2. Crapo *v.* Price, 190 Mass. 317, 76 N. E. 1043.

3. *In re* Wetherill, 214 Pa. St. 150, 63 Atl. 406; Greenlaw *v.* Dillon, (Tex. Civ. App. 1908) 108 S. W. 705.

4. *Re* Sharon, 12 Ont. L. Rep. 605.

5. Minot *v.* Purrington, 190 Mass. 336, 77 N. E. 630.

8. Irvin *v.* Porterfield, 126 Ga. 729, 55 S. E. 946; Ball *v.* Holland, 189 Mass. 369, 75 N. E. 713; *In re* Wetherill, 214 Pa. St. 150, 63 Atl. 406.

384. 1. Hebberd *v.* Lese, 107 N. Y. App. Div. 425, 95 N. Y. Supp. 333.

385. 1. Honywood *v.* Honywood, 92 L. T. N. S. 814.

3. Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 385; Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929; McCreary *v.* Coggeshall, 74 S. Car. 42, 53 S. E. 978.

387. 6. Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; Voorhees *v.* Singer, (N. J. 1907) 68 Atl. 217; *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887. See also Vogt *v.* Vogt, 26 App. Cas. (D. C.) 46.

388. 1. Schell *v.* Carpenter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 400, 100 N. Y. Supp. 554.

Same Statutory Definition in Wisconsin. — Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

3. Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; Weil *v.* King, (Ky. 1907) 104 S. W. 380; *In re* Kountz, 213 Pa. St. 390, 62 Atl. 1103.

389. 2. Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453; Vorhees *v.* Singer, (N. J. 1907) 68 Atl. 217.

3. Weil *v.* King, (Ky. 1907) 104 S. W. 380; Vorhees *v.* Singer, (N. J. 1907) 68 Atl. 217; Storrs *v.* Burgess, (R. I. 1907) 67 Atl. 731; Roberts *v.* Herron, 78 S. Car. 115, 58 S. E. 968.

5. Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 389; Steiff *v.* Seibert, 128 Iowa 746, 105 N. W. 328; Pedigo *v.* Bootts, (Ky. 1905) 89 S. W. 164.

390. 6. See Sears *v.* Palmer, 109 N. Y. App. Div. 126, 95 N. Y. Supp. 1023.

Remainder Is Legal Estate. — Toombs *v.* Spratlin, 127 Ga. 766, 57 S. E. 59.

7. Robinson *v.* Mitchell, 99 Md. 50, 57 Atl. 625; Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161.

8. Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161.

9. Perkins *v.* Gibbs, (C. C. A.) 153 Fed. 952; Robinson *v.* Mitchell, 99 Md. 50, 57 Atl. 625; Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161; Vorhees *v.* Singer, (N. J. 1907) 68 Atl. 217.

Kentucky. — Lilly *v.* Clay, (Ky. 1907) 102 S. W. 278.

10. May *v.* May, (Ky. 1906) 96 S. W. 840; Weil *v.* King, (Ky. 1907) 104 S. W. 380; Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161; Roberts *v.* Herron, 78 S. Car. 115, 58 S. E. 968; Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

391. 1. **Vested Remainder Subject to Execution.** — Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453; Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161.

7. **The Estate of a Remainderman Is Distinct** from that of a tenant of a preceding particular estate, and cannot be, in any way, affected by any act of the particular tenant or his grantee. Pryor *v.* Winter, 147 Cal. 554, 82 Pac. 202.

8. Perry First Nat. Bank *v.* Pilger, (Neb. 1907) 110 N. W. 704; Hobson *v.* Huxtable, (Neb. 1907) 112 N. W. 658.

9. Muller *v.* Manhattan R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 852; Latham *v.* Roanoke R., etc., Co., 139 N. Car. 9, 51 S. E. 780.

10. Yeager *v.* State Bank, (Ky. 1908) 106

S. W. 806; Goggin *v.* Manhattan R. Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 472, 104 N. Y. Supp. 548; Muller *v.* Manhattan R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 852; Elcan *v.* Childress, (Tex. Civ. App. 1905) 89 S. W. 84.

12. Glore *v.* Scoggins, 124 Ga. 922, 53 S. E. 690; Davis *v.* Dyer, (Ky. 1906) 93 S. W. 629; Bush *v.* Halsted, 121 N. Y. App. Div. 538, 106 N. Y. Supp. 133.

392. 1. *United States.* — Rich *v.* Victoria Copper Min. Co., 147 Fed. 380.

Alabama. — Bolen *v.* Hoven, 143 Ala. 652, 39 So. 379.

California. — Pryor *v.* Winter, 147 Cal. 554, 82 Pac. 202.

Georgia. — Glore *v.* Scroggins, 124 Ga. 922, 53 S. E. 690.

Illinois. — Bechdoldt *v.* Bechdoldt, 217 Ill. 537, 75 N. E. 557; Schroeder *v.* Bozarth, 224 Ill. 310, 79 N. E. 583; Willhite *v.* Berry, 232 Ill. 331, 83 N. E. 852.

Kentucky. — Penn *v.* Rhoades, (Ky. 1907) 100 S. W. 288; Gholson *v.* Desha, (Ky. 1908) 107 S. W. 330. But see Yeager *v.* State Bank, (Ky. 1908) 106 S. W. 806.

Nebraska. — *Contra,* Perry First Nat. Bank *v.* Pilger, (Neb. 1907) 110 N. W. 704; Hobson *v.* Huxtable, (Neb. 1907) 112 N. W. 658.

New York. — Putnam *v.* Lincoln Safe Deposit Co., 191 N. Y. 166, 83 N. E. 789; Putnam *v.* Lincoln Safe Deposit Co., 118 N. Y. App. Div. 468, 104 N. Y. Supp. 4.

Texas. — Meurin *v.* Kopplin, (Tex. Civ. App. 1907) 100 S. W. 984.

Contra, Where Possessor Is Stranger to Title of Both Life Tenant and Remainderman. — Elcan *v.* Childress, (Tex. Civ. App. 1905) 89 S. W. 84.

2. *Illinois.* — Remaindermen owning interests in fee in land subject to an unexpired life estate are entitled to partition. Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592.

3. *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887.

4. *Alabama.* — Crawford *v.* Engram, (Ala. 1907) 45 So. 584.

Indiana. — Campbell *v.* Bradford, 166 Ind. 451, 77 N. E. 849.

Iowa. — Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453.

Maryland. — Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161; Reilly *v.* Bristow, 105 Md. 326, 66 Atl. 262.

Massachusetts. — Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

New York. — Davidson *v.* Jones, 112 N. Y. App. Div. 254, 98 N. Y. Supp. 265; *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887, *affirmed* in (Supm. Ct. App. Div.) 107 N. Y. Supp. 1119.

North Carolina. — Freeman *v.* Freeman, 141 N. Car. 97, 53 S. E. 620.

Pennsylvania. — Ferguson's Estate, 31 Pa. Super. Ct. 422; Ackerman *v.* Ackerman, 34 Pa. Super. Ct. 162.

Virginia. — French *v.* Logan, (Va. 1908) 60 S. E. 622.

6. Cummings *v.* Hamilton, 220 Ill. 480, 77 N. E. 264; Brechbeller *v.* Wilson, 228 Ill. 502, 81 N. E. 1094; Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161; Reilly *v.* Bristow, 105 Md. 326, 66 Atl. 262; Crapo *v.* Price, 190 Mass. 317, 76 N. E. 1043; *In re* Keogh, (Surrogate Ct.) 47 Misc. (N. Y.) 37, 95 N. Y. Supp. 191, *modified* in 112 N. Y. App. Div. 414, 98 N. Y. Supp. 433; Schell *v.* Carpenter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 400, 100 N. Y. Supp. 554; *In re* Murphy, 121 N. Y. App. Div. 426, 106 N. Y. Supp. 183.

393. 1. Campbell *v.* Bradford, 166 Ind. 451, 77 N. E. 849; Minot *v.* Purrington, 190 Mass. 336, 77 N. E. 630; Hooker *v.* Bryan, 140 N. Car. 402, 53 S. E. 130; Ferguson's Estate, 31 Pa. Super. Ct. 422; Williams *v.* Williams, (Wis. 1908) 115 N. W. 342. See also *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887.

2. Jonas *v.* Wieres, 134 Iowa 47, 111 N. W. 453. *Contra,* Train *v.* Davis, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 162, 98 N. Y. Supp. 816; Hess *v.* Zahn, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 951.

3. Cummings *v.* Hamilton, 220 Ill. 480, 77 N. E. 264; Brechbeller *v.* Wilson, 228 Ill. 502, 81 N. E. 1094; Morgan *v.* Long, (Ky. 1906) 90 S. W. 1042.

4. Hebberd *v.* Lese, 107 N. Y. App. Div. 425, 95 N. Y. Supp. 333; Runyon *v.* Grubb, 119 N. Y. App. Div. 17, 103 N. Y. Supp. 949.

Same Rule Applies to Deed, in Which Grantor Reserves Life Estate. — Cosby *v.* Newby, (Ky. 1906) 101 S. W. 306.

6. Hebberd *v.* Lese, 107 N. Y. App. Div. 425, 95 N. Y. Supp. 333; Davidson *v.* Jones, 112 N. Y. App. Div. 254, 98 N. Y. Supp. 265; *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887; Runyon *v.* Grubb, 119 N. Y. App. Div. 17, 103 N. Y. Supp. 949.

394. 1. Brownback *v.* Keister, 220 Ill. 544, 77 N. E. 75; Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453; *In re* Keogh, (Surrogate Ct.) 47 Misc. (N. Y.) 37, 95 N. Y. Supp. 191, *modified* in 112 N. Y. App. Div. 414, 98 N. Y. Supp. 433.

3. **Issue According to Statute of Descents.** — French *v.* Logan, (Va. 1908) 60 S. E. 622. See also Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

5. Robinson *v.* Mitchell, 99 Md. 50, 57 Atl. 625, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 394.

7. Robinson *v.* Mitchell, 99 Md. 50, 57 Atl. 625, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 394.

395. 3. Hebberd *v.* Lese, 107 N. Y. App. Div. 425, 95 N. Y. Supp. 333; Hooker *v.* Bryan, 140 N. Car. 402, 53 S. E. 130.

396. 1. See Brownback *v.* Keister, 220 Ill. 544, 77 N. E. 75; Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846.

2. Collins *v.* Crawford, (Mo. 1907) 103 S. W. 537; Schell *v.* Carpenter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 400, 100 N. Y. Supp. 554.

397. 2. Brownback *v.* Keister, 220 Ill. 544, 77 N. E. 75; Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; Simpson *v.* Adams, (Ky 1908) 110 S. W. 819; Summet *v.* City Realty, etc., Co., 208 Mo. 501, 106 S. W. 614; *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887.

4. Perkins *v.* Gibbs, (C. C. A.) 153 Fed. 952; Tubb *v.* Fowler, 118 Tenn. 325, 99 S. W. 988.

See also Trenton Trust, etc., Co. *v.* Armstrong, 70 N. J. Eq. 572, 62 Atl. 456.

398. 4. Robinson *v.* Blankenship, 116 Tenn. 394, 92 S. W. 854, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 398.

399. 1. Vorhees *v.* Singer, (N. J. 1907) 68 [illegible].

Uncertainty During Particular Estate. — *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887, *affirmed* in (Supm. Ct. App. Div.) 107 N. Y. Supp. 1119.

6. Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453; Whallen *v.* Kellner, (Ky. 1907) 104 S. W. 1018; Simpson *v.* Adams, (Ky. 1908) 106 S. W. 810; Coffin *v.* Jernegan, 189 Mass. 503, 75 N. E. 958; *In re* Keogh, (Surrogate Ct.) 47 Misc. (N. Y.) 37, 95 N. Y. Supp. 191, *modified* in 112 N. Y. App. Div. 414, 98 N. Y. Supp. 433; Latham *v.* Roanoke R., etc., Co., 139 N. Car. 9, 51 S. E. 780; Blaney *v.* Sinclair, 216 Pa. St. 258, 65 Atl. 662; Cooper *v.* Cooper, 78 S. Car. 317, 58 S. E. 950; *In re* Edwards, (1906) 1 Ch. 570. See also Twaites *v.* Waller, 133 Iowa 84, 110 N. W. 279.

400. 3. *In re* Yerks, 107 N. Y. App. Div. 240, 94 N. Y. Supp. 1121; Richards *v.* Hartshorne, 110 N. Y. App. Div. 650, 97 N. Y. Supp. 754; Schell *v.* Carpenter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 400, 100 N. Y. Supp. 554; Cushman *v.* Cushman, 116 N. Y. App. Div. 763, 102 N. Y. Supp. 258.

402. 8. Moore *v.* Deyo, 212 Pa. St. 102, 61 Atl. 884.

403. 4. **An Uncertainty Which Must Be Resolved at or Before the Expiration of a Life in Being** is not too remote. Storrs *v.* Burgess, (R. I. 1907) 67 Atl. 731.

8. Honywood *v.* Honywood, 92 L. T. N. S. 814.

404. 1. *In re* Mortimer, (1905) 2 Ch. 502.

4. Ennen *v.* Air, (Ky. 1907) 104 S. W. 960; Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422; *In re* Kountz, 213 Pa. St. 390, 62 Atl. 1103; Storrs *v.* Burgess, (R. I. 1907) 67 Atl. 731.

5. Landram *v.* Jordan, 25 App. Cas. (D. C.) 291.

405. 2. Ortmayer *v.* Elcock, 225 Ill. 342, 80 N. E. 339.

3. Taylor *v.* Harvey, (Ky. 1907) 100 S. W. 258; Latham *v.* Roanoke R., etc., Co., 139 N. Car. 9, 51 S. E. 780.

4. Latham *v.* Roanoke R., etc., Co., 139 N. Car. 9, 51 S. E. 780.

5. **Judicial Sale of Contingent Remainder May Be Had.** — Kenyon *v.* Davis, (Pa. 1908) 69 Atl. 62.

406. 2. Mattox *v.* Deadwyler, (Ga. 1908) 60 S. E. 1066.

4. Storrs *v.* Burgess, (R. I. 1907) 67 Atl. 731.

5. **Mortgage of Contingent Interest Created No Lien.** — Hess *v.* Zahn, (Supm. Ct. Spec. T.) 107 N. Y. Supp. 951.

6. **Missouri — Contingent Remainder Alienable Same as Other Estates.** — Summet *v.* City Realty, etc., Co., 208 Mo. 501, 106 S. W. [illegible].

407. 1. Ortmayer *v.* Elcock, 225 Ill. 342, 80 N. E. 339.

4. Ortmayer *v.* Elcock, 225 Ill. 342, 80 N. E. 339.

6. Ortmayer *v.* Elcock, 225 Ill. 342, 80 N. E. 339, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 407.

7. Ortmayer *v.* Elcock, 225 Ill. 342, 80 N. E. 339.

8. McAffee *v.* Green, 143 N. Car. 411, 55 S. E. 828; *In re* Kingston, 130 Wis. 560, 110 N. W. 417.

Kentucky — Remainder May Be Sold on Petition of Person Having Present or Vested Interest. — Scheirich *v.* Maxwell, (Ky. 1905) 89 S. W. 4.

Transfer by Quit-claim Deed Is Authorized in Illinois. — Ortmayer *v.* Elcock, 225 Ill. 342, 80 N. E. 339.

408. 1. Voorhees *v.* Singer, (N. J. 1907) 68 Atl. 217.

2. See *contra*, Twaites *v.* Waller, 133 Iowa 84, 110 N. W. 279; Denison *v.* Denison, 96 N. Y. App. Div. 418, 89 N. Y. Supp. 126, *affirmed* in 183 N. Y. 505, 76 N. E. 1093.

4. Ortmayer *v.* Elcock, 225 Ill. 342, 80 N. E. 339.

409. 2. Baxter *v.* Bryan, (Ky. 1906) 94 S. W. 633.

4. Baxter *v.* Bryan, (Ky. 1906) 94 S. W. 633.

411. 8. Baxter *v.* Bryan, (Ky. 1906) 94 S. W. 633.

412. 9. **Contra, Where Tenant for Life Has Power of Absolute Disposition.** — Webb *v.* Webb, 130 Iowa 457, 104 N. W. 438.

413. 3. McCreary *v.* Coggeshall, 74 S. Car. 42, 53 S. E. 978.

414. 3. See Whallen *v.* Kellner, (Ky. 1907) 104 S. W. 1018.

415. 1. **In North Carolina,** it is provided by statute that no estate in remainder shall be defeated by any deed of feoffment with livery of seizin. McCreary *v.* Coggeshall, 74 S. Car. 42, 53 S. E. 978.

416. 4. Tebow *v.* Dougherty, 205 Mo. 315, 103 S. W. 985; Graham *v.* Graham, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 4, 97 N. Y. Supp. 779.

417. 6. Tebow *v.* Dougherty, 205 Mo. 315, 103 S. W. 985; Matter of Farmers' L. & T. Co., 189 N. Y. 202, 82 N. E. 181.

418. 2. Toombs *v.* Spratlin, 127 Ga. 766, 57 S. E. 59, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 418.

5. **Life Estate Must Be Destroyed — Conveyance Not Sufficient.** — Cummings *v.* Hamilton, 220 Ill. 480, 77 N. E. 264; Brownback *v.* Keister, 220 Ill. 544, 77 N. E. 75.

Transfer of Life Tenant's Interest to Remainderman Gives Latter Estate in Fee Simple. — Hunt *v.* Phillips, (Ky. 1907) 105 S. W. 445.

Particular Estate, as Whole, Must Terminate. — Toombs *v.* Spratlin, 127 Ga. 766, 57 S. E. 59.

7. Toombs *v.* Spratlin, 127 Ga. 766, 57 S. E. 59.

420. 1. Mosca Town Co. *v.* Wellington, (Colo. 1907) 89 Pac. 783, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 420.

421. 2. **Reversion Does Not Become Remainder by Calling It Such in Instrument Creating It.** — Robinson *v.* Blankenship, 116 Tenn. 394, 92 S. W. 854.

4. Robinson *v.* Blankenship, 116 Tenn. 394, 92 S. W. 854.

6. Dooley *v.* Goodwin, (Ky. 1906) 93 S. W. 47.

422. 1. State *v.* Probate Ct., 102 Minn. 268, 113 N. W. 888, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422.

6. Reversioner Has Right of Possession upon Death of Life Tenant. — Robinson *v.* Blankenship, 116 Tenn. 394, 92 S. W. 854.

423. 5. Dooley *v.* Goodwin, (Ky. 1906) 93 S. W. 47.

424. 8. **Reversioner May Waive a Condition.** — Mesa Town Co. *v.* Wellington, (Colo. 1907) 89 Pac. 783.

426. 2. **Descent.** — Where a will creates a life estate, but clearly does not dispose of the reversionary interest, it will pass by inheritance to the heirs of the testator. Glore *v.* Scroggins, 124 Ga. 922, 53 S. E. 690.

428. 3. See Sessoms *v.* Sessoms, 144 N. Car. 121, 56 S. E. 687.

7. Anderson *v.* Messenger, (C. C. A.) 146 Fed. 929. See also Sessoms *v.* Sessoms, 144 N. Car. 121, 56 S. E. 687.

430. 3. Storrs *v.* Burgess, (R. I. 1907) 67 Atl. 731.

Where a Gift Would Have Failed under the rule of the common law, as a remainder, for the want of a particular estate to support it, it was still good at common law as an executory devise. Irvin *v.* Porterfield, 126 Ga. 729, 55 S. E. 946.

431. 3. *In re* Wiley, 111 N. Y. App. Div. 590, 97 N. Y. Supp. 1017.

6. Simpson *v.* Adams, (Ky. 1908) 106 S. W. 819; Tyndall *v.* Fleming, (Supm. Ct. App. Div.) 108 N. Y. Supp. 239; Sessoms *v.* Sessoms, 144 N. Car. 121, 56 S. E. 687; Storrs *v.* Burgess, (R. I. 1907) 67 Atl. 731.

432. 2. Van Houten *v.* Hall, (N. J. 1906) 64 Atl. 460.

4. Green *v.* Head, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 454, 104 N. Y. Supp. 383.

433. 3. Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875.

434. 4. Irwin *v.* Porterfield, 126 Ga. 729, 55 S. E. 946.

436. 4. **Principles Governing Remainders Are Applicable to Personal Property.** — Vorhees *v.* Singer, (N. J. 1907) 68 Atl. 217.

5. Hall *v.* Brownlee, 164 Ind. 238, 72 N. E. 131, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436, 437.

437. 1. Green *v.* Head, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 454, 104 N. Y. Supp. 383.

8. State *v.* Probate Ct., 102 Minn. 268, 113 N. W. 888.

438. 4. State *v.* Probate Ct., 102 Minn. 268, 113 N. W. 888.

443. 1. Hall *v.* Brownlee, 164 Ind. 238, 72 N. E. 131, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 442–445.

445. 1. Johnson *v.* Buck, 220 Ill. 226, 77 N. E. 163.

446. 1. Steuer *v.* Steuer, 28 Ohio Cir. Ct. 145.

448. 1. O'Day *v.* O'Day, 193 Mo. 62, 91 S. W. 921; Steuer *v.* Steuer, 28 Ohio Cir. Ct. 145.

449. 2. Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 449; Steiff *v.* Seibert, 128 Iowa 746, 105 N. W. 328; Webb *v.* Webb, 130 Iowa 457, 104 N. W. 438; Steuer *v.* Steuer, 28 Ohio Cir. Ct. 145.

3. **Estate for Life in Express Terms.** — Steuer *v.* Steuer, 28 Ohio Cir. Ct. 145.

453. 7. Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

455. 2. Walsh *v.* Fleming, 10 Ont. L. Rep. 226.

3. Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

457. 4. See *contra,* Green *v.* Head, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 454, 104 N. Y. Supp. 383.

5. Ripperdan *v.* Weldy, 149 Cal. 667, 87 Pac. 276; Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; Schell *v.* Carpenter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 400, 100 N. Y. Supp. 554.

6. Ripperdan *v.* Weldy, 149 Cal. 667, 87 Pac. 276.

7. Prior *v.* Winter, 147 Cal. 554, 82 Pac. 202; Green *v.* Head, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 454, 104 N. Y. Supp. 383.

458. 3. **Vested Remainder May Be Supported by Term of Years.** — Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846.

RENEW — RENEWAL.

465. 2. **Bills and Notes — Substitution of New Obligation for Old.** — Lowry Nat. Bank *v.* Fickett, 122 Ga. 489, 50 S. E. 396, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 465.

RENUNCIATION.

470. 3. **Renunciation Equivalent to Release.** — See Baldwin *v.* Daly, 41 Wash. 416, 83 Pac. 724.

REPAIR.

471. 2. Bush *v.* Peoria, 215 Ill. 517, 74 N. E. 797, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 471; Walker *v.* Detroit, 143 Mich. 427, 106 N. W. 1123, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 471.

REPEAL.

473. 3. **The Repeal of a Statute** imports that it has been recalled or revoked. Jessee *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011.

REPLEVIN.

479. 1. Fry *v.* Shafor, 164 Ind. 699, 74 N. E. 503; Barnes *v.* Plessner, 121 Mo. App. 677, 97 S. W. 626.

3. Central Nat. Bank *v.* Brooke, 71 Kan. 767, 81 Pac. 498; Brown *v.* Cogdell, 136 N. Car. 32, 48 S. E. 515.

480. 9. Vasey *v.* Campbell, 4 Cal. App. 451, 88 Pac. 509 (property adapted to gaming); Robertson *v.* Porter, 1 Ga. App. 223, 57 S. E. 993 (replevin not maintainable for implements used for unlawful gaming).

Replevin will not lie to recover gambling devices known as "slot machines," the same being incapable of use for any purpose except in violation of the anti-gambling law. Mullen *v.* Mosley, 13 Idaho 457, 90 Pac. 986.

11. Richbourg *v.* Rose, 53 Fla. 189, 44 So. 69, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 480.

481. 4. Adams *v.* Tully, 164 Ind. 292, 73 N. E. 595; Lieberman *v.* Clark, 114 Tenn. 128, 85 S. W. 258, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 481.

Turpentine in Box. — Turpentine in the box cut into the tree and ready to be dipped therefrom is personalty and may be recovered in replevin. Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69.

7. **Growing Strawberry Plant Held Replevinable.** — Cannon *v.* Mathews, 75 Ark. 336, 87 S. W. 428.

482. 1. St. Paul Boom Co. *v.* Kemp, 125 Wis. 138, 103 N. W. 259.

2. Though the secretary of the corporation may be the lawful custodian of the seal and records of the corporation, still the corporation itself may maintain an action of replevin to recover the same. Stovell *v.* Alert Gold Min. Co., 38 Colo. 80, 87 Pac. 1071.

7. In replevin for lumber sawed from logs wrongfully taken from the plaintiff, the defendant is not entitled to a lien on the lumber for the expense of manufacturing the lumber. Dresser *v.* Lemma, 122 Wis. 387, 100 N. W. 844.

12. Phelan *v.* Terry, 101 Minn. 454, 112 N. W. 872 (person who has perfected his thresher's lien); Jos. Schlitz Brewing Co. *v.* Grimmon, 28 Nev. 235, 81 Pac. 43 (sufficient evidence).

16. McDonald *v.* Daniels, (Kan. 1907) 92 Pac. 51; McCarty *v.* Key, 87 Miss. 248, 39 So. 780.

483. 1. Clerks' Benev. Union *v.* Knights of Columbus, 70 S. Car. 543, 50 S. E. 206.

An equitable right to possession is not sufficient. Fisher *v.* Alsten, 186 Mass. 549, 72 N. E. 78.

4. *Arkansas.* — Carpenter *v.* Ingram, 77 Ark. 299, 91 S. W. 24.

Illinois. — Morganstein *v.* Commercial Nat. Bank, 125 Ill. App. 397; La Salle Pressed Brick Co. *v.* Coe, 126 Ill. App. 308.

Maine. — Clark *v.* Anderson, (Me. 1907) 68 Atl. 633.

Michigan. — Raber *v.* Hyde, 138 Mich. 101, 101 N. W. 61; Metropolitan Lumber Co. *v.* McColeman, 140 Mich. 333, 103 N. W. 809.

Montana. — Ettien *v.* Drum, 32 Mont. 311, 80 Pac. 369.

Nebraska. — Northup *v.* Bathrick, (Neb. 1907) 113 N. W. 808.

New York. — Chandless *v.* Globe Storage, etc., Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 562, 98 N. Y. Supp. 511; Gilroy *v.* Everson-Hickok Co., 118 N. Y. App. Div. 733, 103 N. Y. Supp. 620.

Rhode Island. — See Schultz *v.* Grimwood, 27 R. I. 137, 60 Atl. 1065.

Effect of Giving Redelivery Bonds. — Boyce *v.* Augusta Camp, etc., 14 Okla. 642, 78 Pac. 322.

5. Kelly *v.* Lewis, 38 Colo. 18, 88 Pac. 388; Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69; Van Buren *v.* Stubbings, 149 Mich. 206, 112 N. W. 706; Gallick *v.* Bordeaux, 31 Mont. 328, 78 Pac. 583; Robb *v.* Dobrinski, 14 Okla. 563, 78 Pac. 101.

6. *Alabama.* — Beal *v.* McKee, 145 Ala. 659, 39 So. 664.

Arkansas. — Schenck *v.* Griffith, 74 Ark. 557, 86 S. W. 850; Lundee *v.* Talbot, 83 Ark. 315, 103 S. W. 731.

Colorado. — Crowley *v.* Shepard, 38 Colo. 345, 88 Pac. 177; Austin *v.* Terry, 38 Colo. 407, 88 Pac. 189.

Delaware. — Staunton *v.* Smith, (Del. 1906) 65 Atl. 593.

Idaho. — Mills Novelty Co. *v.* Dunbar, 11 Idaho 671, 83 Pac. 932; Idaho Placer Min. Co. *v.* Green, (Idaho 1908) 93 Pac. 954.

Illinois. — Fabian *v.* Traeger, 215 Ill. 220, 74 N. E. 131; Monmouth Second Nat. Bank *v.* Thuet, 124 Ill. App. 501; La Salle Pressed Brick Co. *v.* Coe, 126 Ill. App. 308.

Louisiana. — Daniels *v.* Taubenblatt, (La. 1907) 45 So. 273.

Montana. — Gallick *v.* Bordeaux, 31 Mont. 328, 78 Pac. 583; Woods *v.* Latta, 35 Mont. 9, 88 Pac. 402; Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561. See also Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657; Osmers *v.* Furey, 32 Mont. 581, 81 Pac. 345.

North Dakota. — Pease *v.* Magill, (N. Dak. 1908) 115 N. W. 260.

New York. — Hoffman House *v.* Barkley, 111 N. Y. App. Div. 564, 97 N. Y. Supp. 1095.

Oklahoma. — Robb *v.* Dobrinski, 14 Okla. 563, 78 Pac. 101; Harrison Bank *v.* Porter, 17 Okla. 256, 87 Pac. 585; State Bank *v.* City National Bank, 18 Okla. 10, 89 Pac. 206.

Rhode Island. — Kebabian *v.* Adams Express Co., 27 R. I. 564, 65 Atl. 271.

484. 1. *Arkansas.* — McWhirter *v.* Penny, 82 Ark. 244, 101 S. W. 742; American Soda Fountain Co. *v.* Futrall, 73 Ark. 464, 84 S. W. 505.

Delaware. — Staunton *v.* Smith, (Del. 1906) 65 Atl. 593.

Idaho. — Idaho Placer Min. Co. *v.* Green, (Idaho 1908) 93 Pac. 954.

Iowa. — American Soda Fountain Co. *v.* Deam Drug Co., (Iowa 1907) 111 N. W. 534.

Massachusetts. — Field *v.* Fletcher, 191 Mass. 494, 78 N. E. 107.

Missouri. — American Metal Co. *v.* Daugherty, 204 Mo. 71, 102 S. W. 538.

New Jersey. — Bierman *v.* Reinhorn, 71 N. J. L. 422, 58 Atl. 1083.

New York. — County Armagh Ladies' Social, etc., Assoc. *v.* Lennon, (Supm. Ct. App. T.) 102 N. Y. Supp. 522.

Oregon. — Freeman *v.* Trummer, (Oregon 1907) 91 Pac. 1077.

Rhode Island. — Kebabian *v.* Adams Express Co., (R. I. 1907) 66 Atl. 201.

2. Woods *v.* Latta, 35 Mont. 9, 88 Pac. 402; Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657; Casto *v.* Murray, 47 Oregon 57, 81 Pac. 883; Manti City Sav. Bank *v.* Peterson, 30 Utah 475, 86 Pac. 414.

485. 2. Haehnel *v.* Trostler, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 262, 104 N. Y. Supp. 533.

4. Sanford *v.* Millikin, 144 Mich. 311, 107 N. W. 884; Casto *v.* Murray, 47 Oregon 57, 81 Pac. 883; Taylor *v.* Brown, (Oregon 1907) 90 Pac. 673; Lieberman *v.* Clark, 114 Tenn. 117, 85 S. W. 258; Dresser *v.* Lemma, 122 Wis. 387, 100 N. W. 844; Cheeseman *v.* Fenton, 13 Wyo. 445, 80 Pac. 823, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485.

Mere prior possession will not support replevin as against one not a trespasser, as where an officer takes possession of the property as stolen property. Murray *v.* Lyons, (Tex. Civ. App. 1906) 95 S. W. 621.

486. 7. Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69; Lieberman *v.* Clark, 114 Tenn 117, 85 S. W. 258, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486.

487. 1. Lieberman *v.* Clark, 114 Tenn. 146, 85 S. W. 258, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 486, *per* Wilkes, J., *dissenting*.

488. 5. Lieberman *v.* Clark, 114 Tenn. 117, 85 S. W. 258.

11. Adams *v.* Wallace, 122 Ill. App. 550.

13. Ely *v.* Williams, (Cal. App. 1907) 92 Pac. 393; Culver *v.* Randle, 45 Oregon 491, 78 Pac. 394.

An Equitable Mortgagee cannot maintain replevin to recover possession of the chattel subject to his lien. Morganstein *v.* Commercial Nat. Bank, 125 Ill. App. 397.

489. 2. Manti City Sav. Bank *v.* Peterson, 30 Utah 475, 86 Pac. 414.

3. Longerbeam *v.* Huston, (S. Dak. 1905) 105 N. W. 743.

490. 4. Monmouth Second Nat. Bank *v.* Thuet, 124 Ill. App. 501.

6. Gilroy *v.* Everson-Hickok Co., 103 N. Y. App. Div. 574, 93 N. Y. Supp. 132.

7. Dunham *v.* H. D. Williams Cooperage Co., 83 Ark. 595, 103 S. W. 386; American Metal Co. *v.* Daugherty, 204 Mo. 71, 102 S. W. 538.

The insolvency of the vendor is immaterial. Collins *v.* Beckley, 96 S. W. 479, 29 Ky. L. Rep. 813.

491. 1. Coleman *v.* Reynolds, 207 Mo. 463, 105 S. W. 1070; Frech *v.* Lewis, 32 Pa. Super. Ct. 279. See also Anderson Carriage Co. *v.* Bartley, 102 Me. 492, 67 Atl. 567.

3. Ware *v.* Souders, 120 Ill. App. 209.

5. Samaha *v.* Mason, 27 App. Cas. (D. C.) 470; Crawford *v.* Hurd, (Ky. 1908) 106 S. W. [illegible]

492. 3. Schwarz *v.* Lee Gon, 46 Oregon 219, 80 Pac. 110.

493. 2. See Schwarz *v.* Leezon, 46 Oregon 219, 80 Pac. 110.

3. Manti City Sav. Bank *v.* Peterson, (Utah 1908) 93 Pac. 566, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 493.

8. Steckman *v.* Gault State Bank, 126 Mo. App. 664, 105 S. W. 674.

494. 2. Newberry *v.* Gibson, 125 Iowa 575, 101 N. W. 428; Brunfield *v.* Hoover, (Miss. 1907) [illegible]

495. 5. Miller *v.* Hackbarth, 126 Wis. 50, 105 N. W. 311.

6. Ludwig Piano Co. *v.* Browne, 33 Pa. Super. Ct. 81.

7. *Arkansas.* — Casey *v.* Scott, 82 Ark. 362, 101 S. W. 1152.

Connecticut. — Norman Printers Supply Co. *v.* Ford, 77 Conn. 461, 59 Atl. 499.

Missouri. — Barnes *v.* Plessner, 121 Mo. App. 677, 97 S. W. 626; Morrow *v.* Pryor, 125 Mo. App. 344, 102 S. W. 582; Maloney *v.* Neville, (Mo. App. 1908) 107 S. W. 4; Clark *v.* Sublette, 117 Mo. App. 519, 94 S. W. 733.

Montana. — See Gallick *v.* Bourdeaux, 31 Mont. 328, 78 Pac. 583.

New York. — Mahr *v.* Livingstone, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 133, 106 N. Y. Supp. 308.

North Carolina. — Bowen *v.* Harris, (N. Car. 1907) 59 S. E. 1044.

Oklahoma. — Robb *v.* Dobrinski, 14 Okla. 563, 78 Pac. 101, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 495.

South Dakota. — Longerbeam *v.* Huston, (S. Dak. 1905) 105 N. W. 743; Kierbow *v.* Young, (S. Dak. 1906) 107 N. W. 371; American Nat. Bank *v.* Strong, (Mo. App. 1905) 85 S. W. 639.

496. 2. Mahr *v.* Livingstone, (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 133, 106 N. Y. Supp. 308.

497. 8. Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624.

9. McGinley *v.* Wirthele, 72 Neb. 602, 101 N. W. 244.

11. Strahorn-Hutton-Evans Commission Co. *v.* Heffner, 74 Ark. 340, 85 S. W. 784; Indiana Union Traction Co. *v.* Bick, (Ind. App. 1907) 81 N. E. 617; Boyce *v.* Augusta Camp, etc., 14 Okla. 642, 78 Pac. 322.

12. *Iowa.* — Newberry *v.* Gibson, 125 Iowa 575, 101 N. W. 428.

New York. — Tyler *v.* Young, (Supm. Ct. App. T.) 46 Misc. (N. Y.) 575, 92 N. Y. Supp. 818; Hitchcock *v.* Wimpleberg, 103 N. Y. App. Div. 53, 92 N. Y. Supp. 997; Jones *v.* Richards, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 645, 98 N. Y. Supp. 698; Merriam *v.* Johnson, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 661, 99 N. Y. Supp. 425, *reversed* on other grounds 116 N. Y. App. Div. 336, 101 N. Y. Supp. 627.

South Carolina. — Murdouch *v.* Tuten, 76 S. Car. 502, 57 S. E. 547.

Washington. — Andrews *v.* Hoeslich, (Wash. 1907) 91 Pac. 772.

499. 1. Greentree *v.* Wallace, (Kan. 1908) 93 Pac. 598.

2. Karr *v.* Stahl, 75 Kan. 387, 89 Pac. 669.

7. Burden of Proving Detention by Defendant. — Beal *v.* McKee, 145 Ala. 659, 39 So. 664.

500. 1. Upp *v.* Neuhring, 127 Iowa 713, 104 N. W. 350.

3. Baltimore, etc., R. Co. *v.* Klaff, 103 Md. 357, 63 Atl. 360, *applying* Cromwell *v.* Owings, 7 Har. & J. (Md.) 55, and referring to 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 500, but adhering to the older rule.

5. *Colorado.* — Lemmon *v.* Beattie, (Colo. 1907) 91 Pac. 1102.

Illinois. — Greenberg *v.* Stevens, 212 Ill. 606, 72 N. E. 722, *affirming judgment* 114 Ill. App. 483.

Iowa. — Mitchell *v.* McLeod, 127 Iowa 733, 104 N. W. 349.

Missouri. — Kansas City Wholesale Grocery Co. *v.* McDonald, 118 Mo. App. 471, 95 S. W. 279; American Storage, etc., Co. *v.* Harding, 126 Mo. App. 489, 104 S. W. 484.

New York. — Francese *v.* Geraty, (Supm. Ct. App. T.) 104 N. Y. Supp. 358.

North Carolina. — Bowen *v.* Harris, (N. Car. 1907) 59 S. E. 1044.

Oklahoma. — Dunn *v.* Overton, 15 Okla. 670, 83 Pac. 715.

Oregon. — Taylor *v.* Brown, (Oregon 1907) 90 Pac. 673; Brown *v.* Lewis, (Oregon 1907) 92 Pac. 1058.

South Dakota. — Longobeam v. Huston, (S. Dak. 1905) 105 N. W. 743.

Cheeseman v. Fenton, 13 Wyo. 463, 80 Pac. 823.

501. 1. Webster v. Sherman, 33 Mont. 448, 84 Pac. 878.

5. Druhe Hardwood Lumber Co. v. Fishbein, 101 Minn. 83, 111 N. W. 950, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 501.

502. 4. Williams v. Finlayson, 49 Fla. 264, 38 So. 50; Taylor v. Brown, (Oregon 1907) 90 Pac. 673; Cheeseman v. Fenton, 13 Wyo. 445, 80 Pac. 823, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 502.

6. Dunn v. Overton, 15 Okla. 670, 83 Pac. 715; Taylor v. Brown, (Oregon 1907) 90 Pac. 673; Cheeseman v. Fenton, 13 Wyo. 436, 80 Pac. 823.

8. Kierbow v. Young, (S. Dak. 1906) 107 N. W. 371.

503. 8. Coleman v. Reynolds, 207 Mo. 463, 105 S. W. 1070.

504. 10. The allegation in the affidavit that the property was not taken for a tax assessment or fine is not conclusive. Wisconsin Oak Lumber Co. v. Laursen, 126 Wis. 484, 105 N. W. 906.

505. 7. Wisconsin Oak Lumber Co. v. Laursen, 126 Wis. 484, 105 N. W. 906.

506. 1. Marigliano v. O'Connor, (Supm. Ct. App. T.) 99 N. Y. Supp. 544 (property held by police property clerk after conviction of prisoner).

2. Northwestern State Bank v. Silberman, 154 Fed. 809, 83 C. C. A. 525; Central Nat. Bank v. Brooks, 71 Kan. 767, 81 Pac. 498.

Warehouseman. — Hazlett v. Hamilton Storage, etc., Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 660, 94 N. Y. Supp. 580.

5. *Colorado.* — King v. Munce, (Colo. 1907) 90 Pac. 603.

Illinois. — Greenberg v. Stevens, 212 Ill. 606, 72 N. E. 722, *affirming judgment* 114 Ill. App. 483; Adams v. Wallace, 122 Ill. App. 550.

Indiana. — Indiana Union Traction v. Bick, (Ind. App. 1907) 81 N. E. 617.

Indian Territory. — Sellers v. Catron, 5 Indian Ter. 263, 82 S. W. 742.

Oregon. — Brown v. Lewis, (Oregon 1907) 92 Pac. 1058.

507. 1. Adams v. Wallace, 122 Ill. App. 550.

5. Rosenbaum v. King, 114 Ill. App. 648.

7. But see Norman Printers' Supply Co. v. Ford, 77 Conn. 461, 59 Atl. 499.

Provision in Bill of Sale for Waiver of Demand. — Standard Furniture Co. v. Anderson, 38 Wash. 582, 80 Pac. 813.

508. 5. Greenberg v. Stevens, 212 Ill. 606, 72 N. E. 722, *affirming judgment* 114 Ill. App. 483.

509. 4. Stovell v. Alert Gold Min. Co., 38 Colo. 80, 87 Pac. 1071 (demand by general manager of corporation).

7. **Demand on Husband, Statutory Manager of the Personal Community Property.** — Standard Furniture Co. v. Anderson, 38 Wash. 582, 80 Pac. 813.

510. 4. Churchill v. More, 4 Cal. App. 219, 88 Pac. 290; Copeland v. Kilpatrick, 38 Colo. 208, 88 Pac. 472; Denver Live Stock Commission Co. v. Parks, (Colo. 1907) 91 Pac. 1110; Smith v. French, 141 N. Car. 4, 53 S. E. 435, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 510.

5. Dawson v. Thigpen, 137 N. Car. 462, 49 S. E. 959.

Substitution for Plaintiff Denied. — Meyer v. Omaha Furniture, etc., Co., (Neb. 1906) 107 N. W. 767, *following* Flanders v. Lyon, 51 Neb. 102.

6. Denver Live Stock Commission Co. v. Parks, (Colo. 1907) 91 Pac. 1110; Sellers v. Catron, 5 Indian Ter. 263, 82 S. W. 742; Kuykendall v. Fisher, 61 W. Va. 87, 56 S. E. 48.

511. 6. See Jones v. Messenger, (Colo. 1907) 90 Pac. 64.

11. Pedrick v. Keummell, 74 N. J. L. 379, 65 Atl. 846.

Exclusiveness of Remedy. — Bowen v. Harris, (N. Car. 1907) 59 S. E. 1044.

512. 1. Racine-Sattley Co. v. Meinen, (Neb. 1908) 114 N. W. 602.

2. Ludwig Piano Co. v. Browne, 33 Pa. Super. Ct. 81.

3. Bowen v. Harris, (N. Car. 1907) 59 S. E. 1044.

6. Hyde v. Elmer, (N. Mex. 1907) 88 Pac. 1132, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 512.

513. 2. Racine-Sattley Co. v. Meinen, (Neb. 1907) 112 N. W. 321, (Neb. 1908) 114 N. W. 602.

4. Staunton v. Smith, (Del. 1906) 65 Atl. 593.

514. 1. Smith v. Stevens, 33 Colo. 427, 81 Pac. 35 (cows); Ocala Foundry, etc., Works v. Lester, 49 Fla. 208, 38 So. 51, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 514; Cunningham v. Stoner, 10 Idaho 549, 79 Pac. 228 (sheep); Haggerty v. Lash, 34 Mont. 517, 87 Pac. 907.

Property Not Used. — Ocala Foundry, etc., Works v. Lester, 49 Fla. 199, 38 So. 51.

5. Gregory v. Woodbery, 53 Fla. 566, 43 So. 504, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 514.

515. 1. **In Claim and Delivery under the South Carolina Statute** punitive damages are not recoverable. Tittle v. Kennedy, 71 S. Car. 3, 50 S. E. 544, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 515.

3. Gregory v. Woodbery, 53 Fla. 566, 43 So. 504.

Contra. — Tittle v. Kennedy, 71 S. Car. 1, 50 S. E. 544.

4. Hyde v. Elmer, (N. Mex. 1907) 88 Pac. 1132.

6. **Time of Exercising Election.** — Sheffield v. Hanna, (Iowa 1907) 114 N. W. 24.

516. 3. See Pauls v. Mundine, (Tex. Civ. App. 1905) 85 S. W. 43 (entire property must be returned).

It is otherwise in *Colorado.* Jones v. Messenger, (Colo. 1907) 90 Pac. 64.

6. Hollenbeck v. Greene, 120 N. Y. App. Div. 671, 105 N. Y. Supp. 915.

517. 5. The loss or destruction of the property before the time of trial does not change the rule. Burke v. Graham, 106 N. Y. App. Div. 108, 94 N. Y. Supp. 559 (death of horse).

6. Sheffield v. Hanna, (Iowa 1907) 114 N. W. 24; Osmers v. Furey, 32 Mont. 581, 81 Pac.

345; Webster *v.* Sherman, 33 Mont. 448, 84 Pac. 878.

7. Kulzer *v.* Simonton, 41 Wash. 587, 84 Pac. 582 (freight paid).

9. Gustin *v.* Embury Clark Lumber Co., 145 Mich. 101, 108 N. W. 650.

518. 1. Haehnel *v.* Trostler, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 262, 104 N. Y. Supp. 533.

519. 1. Boyce *v.* Augusta Camp, etc., 14 Okla. 642, 78 Pac. 322.

520. 8. Pabst's Brewing Co. *v.* Rapid Safety Filter Co., (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 305, 105 N. Y. Supp. 962; Pabst Brewing Co. *v.* Rapid Safety Filter Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 445, 107 N. Y. Supp. 163.

521. 10. Campbell *v.* Rexburg First Nat. Bank, 13 Idaho 95, 88 Pac. 639.

Damages to the chattel while in the possession of the plaintiff must be recovered by the defendant in the action of replevin, and cannot be brought therefor subsequently, as the matter has become *res adjudicata*. Pabst Brewing Co. *v.* Rapid Safety Filter Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 445, 107 N. Y. Supp. 163.

522. 15. McGrath *v.* Wilder, 77 Vt. 431, 60 Atl. 801, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 522, 523.

523. 1. Colean Implement Co. *v.* Strong, 126 Iowa 598, 102 N. W. 506. But see Newberry *v.* Gibson, 125 Iowa 575, 101 N. W. 428.

3. Gregory *v.* Woodbery, 53 Fla. 566, 43 So. 505.

4. Gregory *v.* Woodbery, 53 Fla. 566, 43 So. 504.

8. Campbell *v.* Rexburg First Nat. Bank, 13 Idaho 95, 88 Pac. 639; Blaul *v.* Wandel, (Iowa 1908) 114 N. W. 899; Gilroy *v.* Everson-Hickok Co., 103 N. Y. App. Div. 574, 93 N. Y. Supp. 132.

Destruction of Property, etc. — Three States Lumber Co. *v.* Blanks, (C. C. A.) 133 Fed. 479.

524. 1. But see Cheeseman *v.* Fenton, 13 Wyo. 436, 80 Pac. 823.

4. Whitehill *v.* Schwartz, 27 Pa. Super Ct. 526 (decided under statute in force prior to Act April 19, 1901).

525. 2. Gallick *v.* Bordeaux, 31 Mont. 328, 78 Pac. 583; Pedrick *v.* Keummell, 74 N. J. L. 379, 65 Atl. 846, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 525.

Where two defendants in an action of replevin have a lien or special property in the goods replevied, the court may render a separate judgment in favor of each to the extent of the value of their special interests. Duke *v.* Beatty, 147 Mich. 665, 111 N. W. 176.

526. 1. Gilroy *v.* Everson-Hickok Co., 118 N. Y. App. Div. 733, 103 N. Y. Supp. 620.

4. Osmers *v.* Furey, 32 Mont. 581, 81 Pac. 345.

5. Gilroy *v.* Everson-Hickok Co., 103 N. Y. App. Div. 574, 93 N. Y. Supp. 132; Martin *v.* Berry, (Tex. Civ. App. 1905) 87 S. W. 712.

6. See Gilroy *v.* Everson-Hickok Co., 118 N. Y. App. Div. 733, 103 N. Y. Supp. 620.

11. Newberry *v.* Gibson, 125 Iowa 575, 101 N. W. 428; Gilroy *v.* Everson Hickok Co., 103 N. Y. App. Div. 574, 93 N. Y. Supp. 132; Pabst's Brewing Co. *v.* Rapid Safety Filter Co., (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 305, 105 N. Y. Supp. 962.

528. 2. Patterson *v.* Spooner, 143 Mich. 698, 107 N. W. 450.

529. 5. Three States Lumber Co. *v.* Blanks, 133 Fed. 479, 66 C. C. A. 353, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 529; Southern Orchard Planting Co. *v.* Gore, 83 Ark. 78, 102 S. W. 709; Parker *v.* Young, 188 Mass. 600, 75 N. E. 98; McAleenan *v.* Dickmann, (Mo. App. 1908) 107 S. W. 444.

530. 5. W. W. Kimball Co. *v.* Tasca, 26 R. I. 565, 59 Atl. 919, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 530.

531. 8. W. W. Kimball Co. *v.* Tasca, 26 R. I. 565, 59 Atl. 919, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 531.

533. 4. Parker *v.* Young, 188 Mass. 600, 75 N. E. 98.

8. W. W. Kimball Co. *v.* Tasca, 26 R. I. 565, 59 Atl. 919 (omission of date).

534. 3. **Count in Replevin and One in Trover** cannot be joined. King *v.* Morris, 73 N. J. L. 270, 62 Atl. 1006.

16. See McBrayer *v.* Jordan, 73 Neb. 483, 103 N. W. 50; Haas *v.* Cook, (Ala. 1906) 41 So. 731; De Veaux *v.* Holliday, (Supm. Ct. App. T.) 107 N. Y. Supp. 747.

535. 7. Stafford *v.* Baker, 141 Mich. 44, 104 N. W. 321.

536. 5. Cummings *v.* Masterson, (Tex. Civ. App. 1906) 93 S. W. 500.

7. Mounts *v.* Murphy, (Ky. 1907) 104 S. W. 978.

13. Three States Lumber Co. *v.* Blanks, (C. C. A.) 133 Fed. 479, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 536 (sinking of barge on which property is stored); Martin *v.* Hertz, 118 Ill. App. 297.

537. 1. Franks *v.* Matson, 211 Ill. 338, 71 N. E. 1011.

3. Martin *v.* Hertz, 224 Ill. 84, 79 N. E. 538.

9. See Hock *v.* Magerstadt, 124 Ill. App. 140.

538. 3. Franks *v.* Matson, 211 Ill. 338, 71 N. E. 1011.

7. Martin *v.* Hertz, 118 Ill. App. 297; Jackson *v.* Morgan, 167 Ind. 528, 78 N. E. 633.

539. 4. Franks *v.* Matson, 211 Ill. 338, 71 N. E. 1011; Martin *v.* Hertz, 224 Ill. 91, 79 N. E. 558, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 539.

5. Farson *v.* Gilbert, 114 Ill. App. 17.

7. Siebolt *v.* Konatz Saddlery Co., 15 N. Dak. 87, 106 N. W. 564.

9. Parker *v.* Young, 188 Mass. 600, 75 N. E. 98.

12. Kentucky Land, etc., Co. *v.* Crabtree, 118 Ky. 402, 80 S. W. 1161, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 539.

540. 4. Kentucky Land, etc., Co. *v.* Crabtree, 118 Ky. 401, 80 S. W. 1161, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 540.

10. Kentucky Land, etc., Co. *v.* Crabtree, 118 Ky. 401, 80 S. W. 1161, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 540; Siebolt *v.* Konatz Saddlery Co., 15 N. Dak. 87, 106 N. W. 564.

541. 6. Dickson *v.* Bickershoff, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 353, 95 N. Y. Supp. 585.

7. Mount v. Murphy, (Ky. 1907) 104 S. W. 978.

544. 6. Spencer *v.* Davidson, 5 Indian Ter. 231, 82 S. W. 731.

10. Gerlaugh *v.* Ryan, 127 Iowa 226, 103 N. W. 128.

545. 6. See American Soda Fountain Co. *v.* Dean Drug Co., (Iowa 1907) 111 N. W. 534.

REPRIEVE, PARDON, AND AMNESTY.

560. 1. Ex parte Hite, 14 Penn. 616, 88 S. W. 911.

566. 3. *Ex p.* Houghton, (Oregon 1907) [illegible] *In re* Prout, 12 Idaho 198, 86 Pac. 275, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 566.

571. 3. Cole *v.* State, 84 Ark. 473, 106 S. W. 673.

575. 6. Miller *v.* State, 46 Tex. Crim. 61, 79 S. W. 567, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 575.

581. 2. *In re* Prout, 12 Idaho 494, 86 Pac.

582. 1. **Condition that Relatives Should Support Prisoner as Long as He Should Live.** — Spencer *v.* Kees, (Wash. 1907) 91 Pac. 963.

595. 1. Alvarez *v.* State, 50 Fla. 32, 39 So. 481, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 595.

3. Henderson *v.* State, (Fla. 1908) 46 So. 151.

5. State *v.* Horne, 52 Fla. 133, 42 So. 388, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 595; *Ex p.* Houghton, (Oregon 1907) 89 Pac. 801, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 595.

REPUTABLE.

599. 1. **Reputable Dental College.** — State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

REPUTATION — REPUTE.

599. 2. **Reputation** is what is generally said of a person by the people of the community where he is known. State *v.* Brown, (Utah 1907) 93 Pac. 52.

REQUIRE — REQUIRED, ETC.

601. 2. **A Contract to Purchase Requirements** means what the purchaser needs in the regular course of business. Russell *v.* Excelsior Stove, etc., Co., 120 Ill. App. 23.

RESCISSION, CANCELLATION, AND REFORMATION.

610. 2. *United States.* — Powell *v.* Louisville, (C. C. A.) 141 Fed. 960; Mastin *v.* Noble, (C. C. A.) 157 Fed. 506.

California. — Swan *v.* Talbot, (Cal. 1907) 94 Pac. 238.

Kentucky. — Leigh *v.* Citizens' Sav. Bank, (Ky. 1907) 102 S. W. 233; Kennedy *v.* Fulton Mercantile Co., (Ky. 1908) 108 S. W. 948.

Massachusetts. — Russo *v.* Chapin, (Mass. 1907) 83 N. E. 308.

Michigan. — Fred Macey Co. *v.* Macey, 143 Mich. 138, 106 N. W. 722; Beaton *v.* Inland Tp., (Mich. 1907) 113 N. W. 361.

Minnesota. — Thompson *v.* E. I. Dupont Co., 100 Minn. 367, 111 N. W. 302.

Missouri. — Haydon *v.* St. Louis, etc., R. Co., 117 Mo. App. 76, 93 S. W. 833; Champion Funding, etc., Co. *v.* Heskett, 125 Mo. App. 516, 102 S. W. 1050.

Nebraska. — Miller *v.* Bradford, (Neb. 1907) 113 N. W. 994.

New Hampshire. — Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

Virginia. — Garett *v.* Finch, 107 Va. 25, 57 S. E. 604.

West Virginia. — Taylor *v.* Godfrey, (W. Va. 1907) 59 S. E. 631; Isner *v.* Nydegger, (W. Va. 1908) 60 S. E. 793.

611. 3. Openhym *v.* Blake, (C. C. A.) 157 Fed. 536; Spencer *v.* Merwin, (Conn. 1907) 68 Atl. 370; Capps *v.* Edwards, (Ga. 1908) 60 S. E. 455; Russo *v.* Chapin, (Mass. 1907) 83 N. E. 308; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Aldrich *v.* Peckham, (N. J. 1907) 68 Atl. 345; Garrett *v.* Finch, 107 Va. 25, 57 S. E. 604; Taylor *v.* Godfrey, (W. Va. 1907) 59 S. E. 631.

613. 1. Burk *v.* Johnson, (C. C. A.) 146 Fed. 209; Capps *v.* Edwards, (Ga. 1908) 60 S. E. 455; Thompson *v.* E. I. Dupont Co., 100 Minn. 367, 111 N. W. 302; Maass *v.* Rosenthal, 125 N. Y. App. Div. 452, 109 N. Y. Supp. 917; Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46; Johnson *v.* Connor, (Wash. 1908) 93 Pac. 914; Bruner *v.* Miller, 59 W. Va. 36, 52 S. E. 995, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 613; Isner *v.* Nydegger, (W. Va. 1908) 60 S. E. 793.

3. Parker *v.* Anderson, (Tex. Civ. App. 1905) 85 S. W. 856.

614. 6. Wilson *v.* Maxon, 56 W. Va. 194, 49 S. E. 123, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 614.

615. 2. Mallory *v.* Globe-Boston Copper Min. Co., (Ariz. 1908) 94 Pac. 1116; Swan *v.* Talbot, (Cal. 1907) 94 Pac. 238; Russo *v.* Chapin, (Mass. 1907) 83 N. E. 308; Bowman *v.* Poppenberg, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 373, 103 N. Y. Supp. 245.

617. 1. Bruner *v.* Miller, 59 W. Va. 36, 52 S. E. 995, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 617.

2. Bush *v.* Prescott, etc., R. Co., 76 Ark. 497, 89 S. W. 86.

618. 3. Steinmeyer *v.* Schroeppel, 226 Ill. 9, 80 N. E. 564, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; Farquhar *v.* Farquhar, 194 Mass. 400, 80 N. E. 654; Atkins *v.* Atkins, (Mass. 1907) 80 N. E. 806; Flynn *v.* Smith, 111 N. Y. App. Div. 870, 98 N. Y. Supp. 56, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; Bench *v.* Travelers' Ins. Co., 14 N. Dak. 39, 103 N. W. 405; White *v.* C. & G. Cooper Co., 27 Ohio Cir. Ct. 703; Bruner *v.* Miller, 59 W. Va. 36, 52 S. E. 995, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811; Taylor *v.* Godfrey, (W. Va. 1907) 59 S. E. 631.

8. Morgan *v.* Owens, 228 Ill. 598, 81 N. E. 1135, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; Redding *v.* Badger Lumber Co., 127 Mo. App. 625, 106 S. W. 557; Chelsea Nat. Bank *v.* Smith, (N. J. 1908) 69 Atl. 533.

619. 4. Roy *v.* Harney Peak Tin Min., etc., Co., (S. Dak. 1906) 110 N. W. 106.

620. 3. Sapp *v.* Williamson, 128 Ga. 743, 58 S. E. 447.

8. Drovers' Live Stock Commission Co. *v.* Charles Wolff Packing Co., 74 Kan. 330, 86 Pac. 128, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 620.

621. 1. Richards *v.* Farmers', etc., Bank, (Cal. App. 1908) 94 Pac. 393; Fairbanks *v.* Walker, (Kan. 1907) 92 Pac. 1129, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 620; Barron *v.* Myers, 146 Mich. 510, 109 N. W. 862; Guilfoyle *v.* Pierce, 121 N. Y. App. Div. 923, 109 N. Y. Supp. 924; Clark *v.* O'Toole, (Okla. 1908) 94 Pac. 547.

2. Peck *v.* Bartelme, 220 Ill. 199, 77 N. E. 216; Dille *v.* White, 132 Iowa 327, 109 N. W. 909; Allen *v.* Riley, 71 Kan. 378, 80 Pac. 952, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 621; Champion Funding, etc., Co. *v.* Heskett, 125 Mo. App. 516, 102 S. W. 1050; Maass *v.* Rosenthal, 125 N. Y. App. Div. 452, 109 N. Y. Supp. 917; Clark *v.* O'Toole, (Okla. 1908) 94 Pac. 547; Hammond *v.* Erickson, (Wis. 1908) 116 N. W. 173.

Must Be within Reasonable Time. — Althoff *v.* St. Louis Transit Co., 204 Mo. 166, 102 S. W. 642.

624. 1. Isom *v.* Rex Crude Oil Co., 147 Cal. 663, 82 Pac. 319; Louisville, etc., R. Co. *v.* Helm, (Ky. 1905) 89 S. W. 709; Murray *v.* Barnhart, 117 La. 1023, 42 So. 489; Woods *v.* Thompson, 114 Mo. App. 38, 88 S. W. 1126; Haydon *v.* St. Louis, etc., R. Co., 117 Mo. App. 76, 93 S. W. 833.

4. Baskerville *v.* Johnson, (S. Dak. 1905) 104 N. W. 913.

625. 2. Venable *v.* Burton, 129 Ga. 537, 59 S. E. 253; Scoggin *v.* Mason, (Tex. Civ. App. 1907) 103 S. W. 831, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 625.

5. Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781; Graybill *v.* Drennen, (Ala. 1907) 43 So. 568; Collins *v.* Abel, (Ala. 1907) 44 So. 109; Tracy *v.* Wheeler, 15 N. Dak. 248, 107 N. W. 68.

6. Des Allemands Lumber Co. *v.* Morgan City Timber Co., 117 La. 1, 41 So. 332, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 625.

626. 7. Manning *v.* Berdan, 135 Fed. 159.

629. 3. Stone *v.* Moody, 41 Wash. 680, 84 Pac. 617.

630. 7. Harpold *v.* Moss, (Tex. Civ. App. 1907) 106 S. W. 1131.

631. 1. McElroy *v.* Masterson, (C. C. A.) 156 Fed. 36.

632. 1. Dorris *v.* McManus, 3 Cal. App. 576, 86 Pac. 909; Fludd *v.* Equitable L. Assur. Soc., 75 S. Car. 315, 55 S. E. 762, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 632.

634. 9. Dorman *v.* McDonald, 47 Fla. 252, 36 So. 52, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 634.

635. 3. Dorman *v.* McDonald, 47 Fla. 252, 36 So. 52, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635.

4. Madison Coal Co. *v.* Caveglia, 122 Ill. App. 415.

637. 1. *United States.* — Mastin *v.* Noble, (C. C. A.) 157 Fed. 506.

California. — Richards *v.* Farmers', etc., Bank, (Cal. App. 1908) 94 Pac. 393.

Indiana. — Studabaker *v.* Faylor, (Ind. 1908) 83 N. E. 747.

Kentucky. — Western Mfg. Co. *v.* Cotton, (Ky. 1907) 104 S. W. 758; Baker *v.* Cooper, (Ky. 1908) 109 S. W. 900.

Louisiana. — Fontenette *v.* Kling, 118 La. 152, 42 So. 756.

Massachusetts. — Busiere *v.* Reilly, 189 Mass. 518, 75 N. E. 958.

Michigan. — Burchell *v.* Collier, 148 Mich. 248, 111 N. W. 748.

Minnesota. — Thompson *v.* E. I. Dupont Co., 100 Minn. 367, 111 N. W. 302; Skajewski *v.* Skaya, (Minn. 1907) 114 N. W. 247.

Missouri. — Modern Woodmen of America *v.* Angle, 127 Mo. App. 94, 104 S. W. 297; Wann *v.* Scullin, (Mo. 1908) 109 S. W. 688.

New Hampshire. — Thorpe *v.* Packard, 73 N. H. 235, 60 Atl. 432; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

New Jersey. — Smith *v.* Krueger, (N. J. 1906) 63 Atl. 850.

New York. — Pruyn *v.* McCreary, 105 N. Y. App. Div. 302, 93 N. Y. Supp. 995; U. S. Trust Co. *v.* Baker, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 657, 102 N. Y. Supp. 194; Pritz *v.* Jones, 117 N. Y. App. Div. 643, 102 N. Y. Supp. 549; Hunter *v.* McCammon, 119 N. Y. App. Div. 326, 104 N. Y. Supp. 402.

North Carolina. — Hodge *v.* Hudson, 139 N. Car. 358, 51 S. E. 954; Sprinkle *v.* Wellborn, 140 N. Car. 163, 52 S. E. 666.

Oklahoma. — Clark *v.* O'Toole, (Okla. 1908) 94 Pac. 547.

Oregon. — Jennings *v.* Jennings, 48 Oregon 69, 85 Pac. 65.

Pennsylvania. — Miller *v.* Piatt, 33 Pa. Super. Ct. 547.

Texas. — Texas, etc., R. Co. *v.* Jowers, (Tex. Civ. App. 1908) 110 S. W. 946.

West Virginia. — Burrow *v.* Fitch, (W. Va. 1907) 57 S. E. 283; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811; Hale *v.* Hale, (W. Va. 1907) 59 S. E. 1056.

An Insurance Policy will not be canceled on the ground of fraud, when the bill is not filed until after the death of the insured. Mutual L. Ins. Co. *v.* Griesa, 156 Fed. 398.

638. 7. Cutler *v.* Fitzgibbons, 148 Cal. 562, 83 Pac. 1075.

642. 2. Duke *v.* Stuart, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 120, 91 N. Y. Supp. 885.

3. Mexican Nat. Coal, etc., Co. *v.* Frank, 154 Fed. 217; Cheney *v.* McWhorter, 125 Ga. 168, 53 S. E. 1003.

5. Wagner *v.* Fehr, 211 Pa. St. 435, 60 Atl. 1043, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 642; Bruner *v.* Miller, 59 W. Va. 36, 52 S. E. 995.

643. 1. Bruner *v.* Miller, 59 W. Va. 36, 52 S. E. 995, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 643.

6. American Sulphur, etc., Co. *v.* Brennan, 20 Colo. App. 439, 79 Pac. 750, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 643.

7. Silvey *v.* Tift, 123 Ga. 804, 51 S. E. 748, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 643; Wilson *v.* Maxon, 56 W. Va. 194, 49 S. E. 123, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 643; Urwan *v.* Northwestern Nat. L. Ins. Co., 125 Wis. 349, 103 N. W. 1102,

citing 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 643.

644. 7. Hobson *v.* Anderson, 34 Colo. 444, 83 Pac. 631; Garretson *v.* Witherspoon, 15 Okla. 473, 83 Pac. 415.

645. 4. California Farm, etc., Co. *v.* Schiappa-Pietra, 151 Cal. 732, 91 Pac. 593; Kenova Transfer Co. *v.* Monongahela River Consol. Coal, etc., Co., 56 W. Va. 545, 49 S. E. 452, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645.

5. Timmerman *v.* Stanley, 123 Ga. 850, 51 S. E. 760, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645, note 5; Drovers' Live Stock Commission Co. *v.* Charles Wolff Packing Co., 74 Kan. 330, 86 Pac. 128, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645. See also *dissenting* opinion in Sonnesyn *v.* Akin, 14 N. Dak. 248, 104 N. W. 1026, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645.

6. Timmerman *v.* Stanley, 123 Ga. 850, 51 S. E. 760, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645.

7. Silvey *v.* Tift, 123 Ga. 804, 51 S. E. 748; Olson *v.* Brison, 129 Iowa 604, 106 N. W. 14, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645.

646. 1. *Illinois.* — Keeley *v.* Sayles, 217 Ill. 589, 75 N. E. 567.

Indiana. — Studabaker *v.* Faylor, (Ind. 1908) 83 N. E. 747.

Kentucky. — C. L. Flaccus Glass Co. *v.* Alvey-Ferguson Co., (Ky. 1907) 102 S. W. 870, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 645.

Mississippi. — German-American Provision Co. *v.* Jones, 87 Miss. 277, 39 So. 521.

New York. — Guilfoyle *v.* Pierce, 121 N. Y. App. Div. 923, 109 N. Y. Supp. 924.

Ohio. — Palmer *v.* Cowie, 27 Ohio Cir. Ct. 617.

Oklahoma. — Clark *v.* O'Toole, (Okla. 1908) 94 Pac. 547.

Oregon. — Pierson *v.* Fisher, 48 Oregon 223, 85 Pac. 621.

South Dakota. — Wolfinger *v.* Thomas, (S. Dak. 1908) 115 N. W. 100.

Texas. — Texas, etc., R. Co. *v.* Jowers, (Tex. Civ. App. 1908) 110 S. W. 946.

4. Memphis St. R. Co. *v.* Giardino, 116 Tenn. 368, 92 S. W. 855, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 646.

647. 1. Mason *v.* Edward Thompson Co., 94 Minn. 472, 103 N. W. 507, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 647.

2. Bales *v.* Williamson, 128 Iowa 127, 103 N. W. 150, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 647; McCain *v.* Columbia Finance, etc., Co., (Ky. 1906) 97 S. W. 343; Alvey *v.* Alvey, (Ky. 1906) 97 S. W. 1106; Gallagher *v.* O'Neill, (Neb. 1907) 111 N. W. 582.

5. *United States.* — Western Loan, etc., Co. *v.* Thibodeau, (C. C. A.) 159 Fed. 370.

Alabama. — Peacock *v.* Bethea, (Ala. 1907) 43 So. 864.

California. — Home, etc., Co. *v.* Freitas, (Cal. 1908) 96 Pac. 308.

Florida. — Horne *v.* J. C. Turner Cypress Lumber Co., (Fla. 1908) 45 So. 1016.

Georgia. — Venable *v.* Burton, 129 Ga. 537, 59 S. E. 253.

Illinois. — Braithwaite *v.* Henneberry, 222 Ill. 50, 78 N. E. 34; Dillard *v.* Jones, 229 Ill. 119, 82 N. E. 206; Teel *v.* Dunnihoo, 230 Ill. 476, 82 N. E. 844.

Iowa. — Flynn *v.* Finch, (Iowa 1908) 114 N. W. 1058; Fullerton *v.* Des Moines, (Iowa 1908) 115 N. W. 607.

Kentucky. — Morgan *v.* Combs, (Ky. 1908) 108 S. W. 272; Fuson *v.* Chestnut, (Ky. 1908) 109 S. W. 1192.

Maryland. — Cohen *v.* Numsen, 104 Md. 676, 65 Atl. 432; Miller *v.* Stuart, (Md. 1907) 68 Atl. 273.

Massachusetts. — Eustis Mfg. Co. *v.* Saco Brick Co., (Mass. 1908) 84 N. E. 449.

Minnesota. — Northwestern Mut. L. Ins. Co. *v.* Murphy, (Minn. 1908) 114 N. W. 360.

Missouri. — Sicher *v.* Rambousek, 193 Mo. 113, 91 S. W. 68; Moran Bolt, etc., Mfg. Co. *v.* St. Louis Car Co., (Mo. 1908) 109 S. W. 47.

New York. — Tautphoeus *v.* Harbor, etc., Bldg., etc., Assoc., 104 N. Y. App. Div. 451, 93 N. Y. Supp. 916.

North Carolina. — Webb *v.* Borden, 145 N. Car. 188, 58 S. E. 1083; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610.

Texas. — Reagan *v.* Bruff, (Tex. Civ. App. 1908) 108 S. W. 185.

West Virginia. — Isner *v.* Nydegger, (W. Va. 1908) 60 S. E. 793.

648. 3. *United States.* — Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 648; North Chicago St. R. Co. *v.* Chicago Union Traction Co., 150 Fed. 612; Western Loan, etc., Co. *v.* Thibodeau, (C. C. A.) 159 Fed. 370; U. S. *v.* Milliken Imprinting Co., 202 U. S. 168, 26 U. S. Sup. Ct. 572.

Alabama. — Pearson *v.* Dancer, 144 Ala. 427, 39 So. 474.

Arkansas. — Smith *v.* Smith, 80 Ark. 458, 97 S. W. 439; Arkansas Mut. F. Ins. Co. *v.* Witham, 82 Ark. 226, 101 S. W. 721; Turner *v.* Todd, (Ark. 1908) 107 S. W. 181.

California. — Los Angeles, etc., R. Co. *v.* New Liverpool Salt Co., 150 Cal. 21, 87 Pac. 1029; Walters *v.* Mitchell, (Cal. App. 1907) 92 Pac. 315.

Florida. — Jacobs *v.* Parodi, 50 Fla. 541, 39 So. 833; Horne *v.* J. C. Turner Cypress Lumber Co., (Fla. 1908) 45 So. 1016; Griffin *v.* Société etc., 53 Fla. 801, 44 So. 342; Indian River Mfg. Co. *v.* Wooten, (Fla. 1907) 46 So. 185.

Georgia. — Caudell *v.* Caudell, 127 Ga. 1, 55 S. E. 1028; Venable *v.* Burton, 129 Ga. 537, 59 S. E. 253; Capps *v.* Edwards, (Ga. 1908) 60 S. E. 455.

Illinois. — Keeley *v.* Sayles, 217 Ill. 589, 75 N. E. 567; Braithwaite *v.* Henneberry, 222 Ill. 50, 78 N. E. 34; Morgan *v.* Owens, 228 Ill. 598, 81 N. E. 1135; Dillard *v.* Jones, 229 Ill. 119, 82 N. E. 206; Boone *v.* Graham, 215 Ill. 511, 74 N. E. 559.

Indiana. — Nichols, etc., Co. *v.* Berning, 36 Ind. App. 109, 76 N. E. 776; Radebaugh *v.* Scanlan, (Ind. App. 1907) 82 N. E. 544.

Iowa. — Merchants' Nat. Bank *v.* Murphy, 125 Iowa 607, 101 N. W. 441; Stelpflug *v.* Wolfe, 127 Iowa 192, 102 N. W. 1130; Frey *v.* Camp, 131 Iowa 109, 107 N. W. 1106.

Kansas. — Hardy *v.* Ladow, 72 Kan. 174, 83 Pac. 401.

Kentucky. — Thomas *v.* Robinson, (Ky. 1906) 96 S. W. 459; Pickett *v.* Taylor, (Ky. 1906) 96 S. W. 1111; Swinebroad *v.* Wood, (Ky. 1906) 97 S. W. 25; Karl *v.* Conner, (Ky. 1906) 97 S. W. 1111; Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908; Dean *v.* Hall, (Ky. 1907) 105 S. W. 98; Patterson *v.* Skaggs, (Ky. 1907) 105 S. W. 889; Crossley *v.* Newman, (Ky. 1907) 105 S. W. 954; White *v.* Glazer, (Ky. 1908) 106 S. W. 289; Hill *v.* Clark, (Ky. 1908) 106 S. W. 805; Gregory *v.* Copeland, (Ky. 1908) 107 S. W. 768; Morgan *v.* Combs, (Ky. 1908) 108 S. W. 272.

Louisiana. — Coleman *v.* Thibodaux, 119 La. 474, 44 So. 269.

Maryland. — Cohen *v.* Numsen, 104 Md. 676, 65 Atl. 432.

Minnesota. — Northwestern Mut. L. Ins. Co. *v.* Murphy, (Minn. 1908) 114 N. W. 360.

Mississippi. — Barataria Canning Co. *v.* Ott, 88 Miss. 771, 41 So. 378.

Missouri. — Franklin *v.* Cunningham, 187 Mo. 184, 86 S. W. 79; McAdow *v.* Wight, (Mo. App. 1908) 107 S. W. 421; Moran Bolt, etc., Mfg. Co. *v.* St. Louis Car Co., (Mo. 1908) 109 S. W. 47.

Nebraska. — Baker *v.* Montgomery, (Neb. 1907) 110 N. W. 695.

New Jersey. — Ziobro *v.* Bialos, (N. J. 1906) 63 Atl. 346; Urich *v.* Watts, (N. J. 1905) 66 Atl. 432.

New York. — Uihlein *v.* Matthews, 93 N. Y. App. Div. 57, 86 N. Y. Supp. 924; Schuessler *v.* Fire Ins. Co., 103 N. Y. App. Div. 12, 92 N. Y. Supp. 649; Brennan *v.* Thompson, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 317, 94 N. Y. Supp. 684.

North Carolina. — Lehew *v.* Hewett, 138 N. Car. 6, 50 S. E. 459; King *v.* Hobbs, 139 N. Car. 170, 51 S. E. 911; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610.

North Dakota. — Benesh *v.* Travelers' Ins. Co., 14 N. Dak. 39, 103 N. W. 405.

Ohio. — Hartman *v.* Midland Traction Co., 27 Ohio Cir. Ct. 664.

Oregon. — Smith *v.* Interior Warehouse Co., (Oregon 1908) 94 Pac. 508.

Pennsylvania. — Graham *v.* Carnegie Steel Co., 217 Pa. St. 34, 66 Atl. 103; National Bank *v.* Shaw, 218 Pa. St. 612, 67 Atl. 875; Gailey *v.* New Castle Elastic Pulp Plaster Co., 34 Pa. Super Ct. 533.

Texas. — Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057; Laufer *v.* Moppins, (Tex. Civ. App. 1906) 99 S. W. 109; Reagan *v.* Bruff, (Tex. Civ. App. 1908) 108 S. W. 185.

Virginia. — Reid *v.* Rhodes, 106 Va. 701, 56 S. E. 722.

Washington. — Clutter *v.* Strange, 41 Wash. 86, 82 Pac. 1028.

West Virginia. — King *v.* Thompson, 58 W. Va. 455, 52 S. E. 487, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 648; Harner *v.* Combs, 61 W. Va. 561, 56 S. E. 902; Smith *v.* Owens, (W. Va. 1907) 59 S. E. 762; Isner *v.* Nydegger, (W. Va. 1908) 60 S. E. 793.

Wisconsin. — Gilbert *v.* Auster, (Wis. 1908) 116 N. W. 177.

Wyoming. — Grieve *v.* Grieve, 15 Wyo. 358, 89 Pac. 569.

649. 1. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 649; McCain *v.* Columbia Finance, etc., Co., (Ky. 1906) 97 S. W. 343; Bronk *v.* Standard Mfg. Co., 141 Mich. 680, 105 N. W. 33; Siling *v.* Hendrickson, 193 Mo. 365, 92 S. W. 105; Smith *v.* Owens, (W. Va. 1907) 59 S. E. 762.

2. *United States.* — Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 649; Shields *v.* Mongollon Exploration Co., (C. C. A.) 137 Fed. 539.

Alabama. — Folmar *v.* Lehman-Durr Co., 147 Ala. 472, 41 So. 750; Peacock *v.* Bethea, (Ala. 1907) 43 So. 864; Merritt *v.* Coffin, (Ala. 1907) 44 So. 622.

Arkansas. — Greenhaw *v.* Combs, 74 Ark. 336, 85 S. W. 768; Stinson *v.* Ray, 79 Ark. 592, 96 S. W. 141; Varner *v.* Turner, 83 Ark. 131, 102 S. W. 1111; Stephenson *v.* Garner, 84 Ark. 623, 105 S. W. 572.

California. — Travelli *v.* Bowman, 150 Cal. 587, 89 Pac. 347; Union Ice Co. *v.* Doyle, (Cal. App. 1907) 92 Pac. 112; Home, etc., Co. *v.* Freitas, (Cal. 1908) 96 Pac. 310.

Georgia. — Quiggle *v.* Vining, 125 Ga. 98, 54 S. E. 74; Nelson *v.* Spence, 129 Ga. 35, 58 S. E. 697.

Illinois. — Koch *v.* Strueter, 218 Ill. 546, 75 N. E. 1049; Matthews *v.* Whitethorn, 220 Ill. 36, 77 N. E. 89; Cullison *v.* Connor, 222 Ill. 135, 78 N. E. 14; Rundle *v.* Bohrer, 222 Ill. 475, 78 N. E. 831; Gray *v.* Merchants' Ins. Co., 125 Ill. App. 370.

Iowa. — Pyne *v.* Knight, 130 Iowa 113, 106 N. W. 505; Bushert *v.* A. W. Stevenson Co., (Iowa 1907) 113 N. W. 916; Flickinger *v.* Farmers' Mut. F., etc., Ins. Assoc., (Iowa 1907) 113 N. W. 824; Flynn *v.* Finch, (Iowa 1908) 114 N. W. 1058; Fullerton *v.* Des Moines, (Iowa 1908) 115 N. W. 607.

Kansas. — Huber Mfg. Co. *v.* Claudel, 71 Kan. 441, 80 Pac. 960; Cox *v.* Beard, 75 Kan. 369, 89 Pac. 671.

Kentucky. — East Jellico Coal Co. *v.* Carter, (Ky. 1906) 97 S. W. 768.

Maryland. — Cohen *v.* Numsen, 104 Md. 676, 65 Atl. 432; Miller *v.* Stuart, (Md. 1907) 68 Atl. 273.

Massachusetts. — Eustis Mfg. Co. *v.* Saco Brick Co., (Mass. 1908) 84 N. E. 449.

Michigan. — Fitch *v.* Vatter, 143 Mich. 568, 107 N. W. 106; Kinyon *v.* Cunningham, 146 Mich. 430, 109 N. W. 675.

Minnesota. — Massey *v.* Lindeni, 98 Minn. 133, 107 N. W. 146; Lockwood *v.* Geir, 99 Minn. 317, 109 N. W. 245.

Missouri. — Owens *v.* Carthage, etc., R. Co., 110 Mo. App. 320 85 S. W. 987, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 648 [649]; Griffin *v.* Miller, 188 Mo. 327, 87 S. W. 455; Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213; Turner *v.* Wabash R. Co., 114 Mo. App. 530, 90 S. W. 391; Williamson *v.* Brown, 195 Mo. 313, 93 S. W. 791; Dougherty *v.* Dougherty, 204 Mo. 228, 102 S. W. 1099; Redding *v.* Badger Lumber Co., 127 Mo. App. 625, 106 S. W. 557; Weissenfels *v.* Cable, 208 Mo. 515, 106 S. W. 1028.

New Jersey. — Chelsea Nat. Bank *v.* Smith, (N. J. 1908) 69 Atl. 533.

New York. — House *v.* Wechsler, 104 N. Y. App. Div. 124, 93 N. Y. Supp. 593; Ranalli *v.* Zeppetelli, (Supm. Ct. App. T.) 94 N. Y. Supp. 561; Hackett *v.* View, 109 N. Y. App. Div. 351, 95 N. Y. Supp. 675; Waterloo First Nat. Bank *v.* Bacon, 113 N. Y. App. Div. 612, 98 N. Y. Supp. 717.

North Carolina. — Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610.

Ohio. — Reep *v.* Lyman, 27 Ohio Cir. Ct. [illegible]

Oregon. — Stein *v.* Phillips, 47 Oregon 545, 84 Pac. 793; Bower *v.* Bowser, (Oregon 1907) [illegible] Pac. 1064; Nolan *v.* Hughes, (Oregon 1908) [illegible] Pac. 302; Smith *v.* Interior Warehouse Co., (Oregon 1908) 94 Pac. 508.

Texas. — Ætna Ins. Co. *v.* Brannon, (Tex. Civ. App. 1908) 91 S. W. 614; Mattox *v.* Davis, (Tex. Civ. App. 1907) 106 S. W. 169.

Virginia. — Burton *v.* Haden, (Va. 1908) 60 S. E. 736.

Washington. — Jones *v.* New England Mortg. Security Co., 38 Wash. 637, 80 Pac. 796.

Wisconsin. — Auer *v.* Mathews, 129 Wis. 143, 108 N. W. 45; Scheuer *v.* Chloupek, 130 Wis. 72, 109 N. W. 1035; Gilbert *v.* Auster, (Wis. 1908) 116 N. W. 177.

Wyoming. — Stoll *v.* Nagle, 15 Wyo. 86, 86 Pac. 26; Grieve *v.* Grieve, 15 Wyo. 358, 89 Pac. 569.

650. 2. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650.

3. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650; Eustis Mfg. Co. *v.* Saco Brick Co., (Mass. 1908) 84 N. E. 449; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610; Burton *v.* Haden, (Va. 1908) 60 S. E. 736; Abbott *v.* Flint, 78 Vt. 274, 62 Atl. 721, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650.

4. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650; Dorris *v.* Morrisdale Coal Co., 215 Pa. St. 638, 64 Atl. 855, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650.

5. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650; Paterson *v.* Hannan, (Ala. 1907) 43 So. 192; Griffin *v.* Société, etc., 53 Fla. 801, 44 So. 342; Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908; Moran Bolt, etc., Mfg. Co. *v.* St. Louis Car Co., (Mo. 1908) 109 S. W. 47; Richardson *v.* Griggs, (Oregon 1908) 94 Pac. 561.

651. 1. *United States.* — Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 651.

Alabama. — Paterson *v.* Hannan, (Ala. 1907) 43 So. 192; Sellers *v.* Grace, (Ala. 1907) 43 So. 716.

Arkansas. — Tellar *v.* Wilson, 79 Ark. 256, 96 S. W. 381; Davenport *v.* Hudspeth, 81 Ark. 116, 98 S. W. 699; Marquette Timber Co. *v.* Abeles, (Ark. 1907) 99 S. W. 684; Arkansas Mut. F. Ins. Co. *v.* Witham, 82 Ark. 226, 101 S. W. 721; Mitchell Mfg. Co. *v.* Kempner, 84 Ark. 349, 105 S. W. 880; Turner *v.* Todd, (Ark. 1908) 107 S. W. 181.

Iowa. — Wilcox *v.* Sweeker, 129 Iowa 151, 105 N. W. 392.

Kentucky. — Crabtree *v.* Sisk, (Ky. 1907) 99 S. W. 268.

Maryland. — Coggins *v.* Carey, (Md. 1907) 66 Atl. 673; Miller *v.* Stuart, (Md. 1907) 68 Atl. 273.

Mississippi. — Jones *v.* Jones, 88 Miss. 784, 41 So. 373.

Missouri. — Williamson *v.* Brown, 195 Mo. 313, 93 S. W. 791; Brown *v.* Givin, 197 Mo. 499, 95 S. W. 208; Cunningham *v.* Edsall, 200 Mo. 192, 98 S. W. 545.

Nebraska. — Baker *v.* Montgomery, (Neb. 1907) 110 N. W. 695.

Oregon. — Stein *v.* Phillips, 47 Oregon 545, 84 Pac. 793; Richardson *v.* Griggs, (Oregon 1908) 94 Pac. 561.

Pennsylvania. — Graham *v.* Carnegie Steel Co., 217 Pa. St. 34, 66 Atl. 103; National Bank *v.* Shaw, 218 Pa. St. 612, 67 Atl. 875; Miller *v.* Piatt, 33 Pa. Super. Ct. 547.

Vermont. — Abbott *v.* Flint, 78 Vt. 274, 62 Atl. 721.

West Virginia. — Brown *v.* Click, 59 W. Va. 172, 53 S. E. 16; Isner *v.* Nydegger, (W. Va. 1908) 60 S. E. 793.

Wyoming. — Stoll *v.* Nagle, 15 Wyo. 86, 86 Pac. 26.

652. 1. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652.

2. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Marshall *v.* Lane, 27 App. Cas. (D. C.) 276; Radebaugh *v.* Scanlan, (Ind. App. 1907) 82 N. E. 544; Harper *v.* Combs, 61 W. Va. 561, 56 S. E. 902.

3. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652.

4. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Mitchell Mfg. Co. *v.* Kempner, 84 Ark. 349, 105 S. W. 880; Morgan *v.* Combs, (Ky. 1908) 108 S. W. 272; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Hurley *v.* Walter, 129 Wis. 508, 109 N. W. 558.

5. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652.

6. Carrell *v.* McMurray, 136 Fed. 661, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652.

8. *Alabama.* — Paterson *v.* Hannan, (Ala. 1907) 43 So. 192.

Arkansas. — Perry *v.* Sadler, 76 Ark. 43, 88 S. W. 832; Smith *v.* Smith, 80 Ark. 458, 97 S. W. 439.

Illinois. — Teel *v.* Dunnihoo, 230 Ill. 476, 82 N. E. 844; Boone *v.* Graham, 215 Ill. 511, 74 N. E. 559.

Indiana. — Pierce *v.* Vansell, 35 Ind. App. 525, 74 N. E. 554.

Louisiana. — Coco v. Board, [illegible], (La.) 1908) 46 So. 671, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652.

Kentucky. — Dean *v.* Hall, (Ky. 1907) 105 S. W. 98; Crossley *v.* Newman, (Ky. 1907) 105 S. W. 954; Hill *v.* Clark, (Ky. 1908) 106 S. W. 805; Gregory *v.* Copeland, (Ky. 1908) 107 S. W. 768.

Missouri. — Scott *v.* Gordon, 109 Mo. App. 695, 83 S. W. 550; Crawley *v.* Crafton, 193 Mo. 421, 91 S. W. 1027; Siling *v.* Hendrickson, 193 Mo. 365, 92 S. W. 105.

Nebraska. — Austin *v.* Brown, 75 Neb. 345, 106 N. W. 30.

North Carolina. — King *v.* Hobbs, 139 N. Car. 170, 51 S. E. 911; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652.

Oregon. — Nolan *v.* Hughes, (Oregon 1908) 93 Pac. 362.

Texas. — Horwitz *v.* La Roche, (Tex. Civ. App. 1908) 107 S. W. 1148.

A Voluntary Deed will generally not be reformed upon the petition of the grantee. Turner *v.* Newell, 129 Ga. 89, 58 S. E. 657.

9. Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Carrigg *v.* Mechanics' Sav. Bank, (Iowa 1907) 111 N. W. 329; Hagan *v.* McDermott, (Wis. 1908) 115 N. W. 138.

10. Travelli *v.* Bowman, 150 Cal. 587, 89 Pac. 347; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652; Harper *v.* Combs, 61 W. Va. 561, 56 S. E. 902.

653. 1. State *v.* Delaney, 122 Mo. 239, 99 S. W. 1; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

2. Vardeman *v.* Penn. Mut. L. Ins. Co., 125 Ga. 117, 54 S. E. 66; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653; Ætna Ins. Co. *v.* Brannon, 99 Tex. 391, 89 S. W. 1057.

3. Reep *v.* Lyman, 27 Ohio Cir. Ct. 293; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

4. Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

5. Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

6. Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

7. Nichols, etc., Co. *v.* Berning, 36 Ind. App. 109, 76 N. E. 776; Sykes *v.* Life Ins. Co., (N. Car. 1908) 61 S. E. 610, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

9. Smith *v.* Smith, 80 Ark. 458, 97 S. W. 439, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 653.

654. 3. Rodebaugh *v.* Scanlan, (Ind. App. 1907) 82 N. E. 544.

9. *Alabama.* — Paterson *v.* Hannan, (Ala. 1907) 43 So. 192.

Arkansas. — Smith *v.* Smith, 80 Ark. 458, 97 S. W. 439; Davenport *v.* Hudspeth, 81 Ark. 166, 98 S. W. 699; Stephenson *v.* Garner, 84 Ark. 623, 105 S. W. 512.

Illinois. — Dillard *v.* Jones, 229 Ill. 119, 82 N. E. 206.

Kentucky. — Hill *v.* Clark, (Ky. 1908) 106 S. W. 805.

Louisiana. — Coleman *v.* Thibodaux, 119 La. 474, 44 So. 269.

Missouri. — Scott *v.* Gordon, 109 Mo. App. 695, 83 S. W. 550; Williams *v.* Husky, 192 Mo. 533, 90 S. W. 425; Crawley *v.* Crafton, 193 Mo. 421, 91 S. W. 1027.

Nebraska. — Austin *v.* Brown, 75 Neb. 345, 106 N. W. 30.

Oregon. — Nolan *v.* Hughes, (Oregon 1908) 93 Pac. 362.

Texas. — Laufer *v.* Moppins, (Tex. Civ. App. 1906) 99 S. W. 109.

Vermont. — Abbott *v.* Flint, 78 Vt. 274, 62 Atl. 721.

Virginia. — Reid *v.* Rhodes, 106 Va. 701, 56 S. E. 722.

Washington. — Hapeman *v.* McNeal, (Wash. 1908) 93 Pac. 1076.

West Virginia. — Smith *v.* Owens, (W. Va. 1907) 59 S. E. 762.

11. Horwitz *v.* La Roche, (Tex. Civ. App. 1908) 107 S. W. 1148.

655. 2. Thalheimer *v.* Lockhart, 76 Ark. 25, 88 S. W. 591; Bonvillain *v.* Bodenheimer, 117 La. 793, 42 So. 273; Burner *v.* Higman, etc., Co., 133 Iowa 315, 110 N. W. 580; Lloyd *v.* Hulick, 69 N. J. Eq. 784, 63 Atl. 616; Mattox *v.* Davis, (Tex. Civ. App. 1907) 106 S. W. 169, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 655.

656. 5. **Circumstances Not Showing Laches.** — Detweiler *v.* Swartley, 74 Kan. 855, 86 Pac. 141; Sicher *v.* Rambousek, 193 Mo. 113, 91 S. W. 68.

657. 6. Burner *v.* Higman, etc., Co., 133 Iowa 315, 110 N. W. 580, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 657.

RES GESTÆ.

662. 1. *United States.* — Northern Pac. R. Co. *v.* Kempton, (C. C. A.) 138 Fed. 992.

Alabama. — Wallace *v.* North Alabama Traction Co., 145 Ala. 682, 40 So. 89; Terry *v.* Williams, 148 Ala. 468, 41 So. 804; Napier *v.* Elliott, (Ala. 1907) 44 So. 552.

Arkansas. — Little Rock R., etc., Co. *v.* Newman, 77 Ark. 599, 92 S. W. 864.

Kentucky. — Southern R. Co. *v.* Thurman, (Ky. 1906) 90 S. W. 240.

Missouri. — State *v.* Gordon, 196 Mo. 185, 95 S. W. 420.

Nebraska. — Horst *v.* Lewis, 71 Neb. 365, 103 N. W. 460.

New Jersey. — State *v.* Simon, 71 N. J. L. 144, 58 Atl. 107, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 662.

New York. — Twaddell *v.* Weidler, 109 N. Y. App. Div. 444, 96 N. Y. Supp. 90; People *v.* Hart, 114 N. Y. App. Div. 9, 99 N. Y. Supp. 758.

Texas. — Alarcon *v.* State, (Tex. Crim. 1905) 90 S. W. 179; Missouri, etc., R. Co. *v.* Stanfield, (Tex. Civ. App. 1905) 90 S. W. 517; Texas, etc., R. Co. *v.* Scoggin, (Tex. Civ. App.

1905) 90 S. W. 521; Houston, etc., R. Co. *v.* O'Donnell, (Tex. Civ. App. 1905) 90 S. W. 880, *reversed* on other grounds 99 Tex. 636, 92 S. W. 409; Neblett *v.* McGraw, (Tex. Civ. App. 1905) 91 S. W. 309; Paraffine Oil Co. *v.* Berry, (Tex. Civ. App. 1906) 93 S. W. 1089; Gulf, etc., R. Co. *v.* Batte, (Tex. Civ. App. 1906) 94 S. W. 345; St. Louis, etc., R. Co. *v.* Watkins, (Tex. Civ. App. 1907) 100 S. W. 162; Huff *v.* State, (Tex. Crim. 1907) 103 S. W. 629.

Washington. — State *v.* Falsetta, 43 Wash. [illegible]

Wisconsin. — Johnson *v.* St. Paul, etc., Coal Co., 126 Wis. 492, 105 N. W. 1048.

It Is a Question of Law for the Court whether acts or declarations claimed to be a part of the *res gestæ* are really such. Southern R. Co. *v.* Brown, 126 Ga. 1, 54 S. E. 911.

663. 1. Pool *v.* Warren County, 123 Ga. 205, 51 S. E. 328.

4. Upton *v.* State, 48 Tex. Crim. 289, 88 S. W. 212.

5. Van Gesner *v.* U. S., (C. C. A.) 153 Fed. 56; Singer Mfg. Co. *v.* Bryant, 105 Va. 403, 54 S. E. 320.

9. Williams *v.* State, 147 Ala. 10, 41 So. 992; Montgomery Traction Co. *v.* Fitzpatrick, (Ala. 1907) 43 So. 136; Walnut Ridge Mercantile Co. *v.* Cohn, 79 Ark. 338, 96 S. W. 413; Twaddell *v.* Weidler, 186 N. Y. 601, 79 N. E. 1117; Standford *v.* A. F. Messick Grocery Co., 143 N. Car. 419, 55 S. E. 815; Jericho *v.* Huntington, 79 Vt. 329, 65 Atl. 87; Chilcott *v.* Washington State Colonization Co., 45 Wash. 148, 88 Pac. 113.

664. 4. Nashville, etc., R. Co. *v.* Moore, (Ala. 1906) 41 So. 984; Fuller *v.* State, 127 Ga. 47, 55 S. E. 1047; Dunn *v.* Chicago, etc., R. Co., 130 Iowa 580, 107 N. W. 616; *In re* Murray, 141 N. Car. 588, 54 S. E. 435; Trexler *v.* Baltimore, etc., R. Co., 28 Pa. Super. Ct. 198.

5. Nashville, etc., R. Co. *v.* Moore, (Ala. 1906) 41 So. 984.

6. Locks *v.* Butler County Bank, 204 Mo. 455, 102 S. W. 1007; State *v.* Way, 76 S. Car. 91, 56 S. E. 653.

7. Clark *v.* People, 224 Ill. 554, 79 N. E. 941; Falender *v.* Blackwell, 39 Ind. App. 121, 79 N. E. 393; State *v.* Kapelino, (S. Dak. 1906) 108 N. W. 335.

8. The Theodore Roosevelt, 154 Fed. 155; Morris *v.* State, 146 Ala. 66, 41 So. 274; Chicago City R. Co. *v.* McDonough, 221 Ill. 69, 77 N. E. 577; McIntosh *v.* Fisher, 125 Ill. App. 511; Witmer *v.* Buffalo, etc., Electric Light, etc., Co., 112 N. Y. App. Div. 698, 98 N. Y. Supp. 781; Witmer *v.* Buffalo, etc., Electric Light, etc., Co., 187 N. Y. 572, 80 N. E. 1122; Northern Texas Traction Co. *v.* Caldwell, (Tex. Civ. App. 1906) 99 S. W. 869.

665. 1. *United States.* — Norfolk, etc., R. Co. *v.* Gesswine, (C. C. A.) 144 Fed. 56; Inman *v.* Dudley, etc., Lumber Co., (C. C. A.) 146 Fed. 449.

Alabama. — Seaboard Air Line R. Co. *v.* Hubbard, 142 Ala. 546, 38 So. 750; Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207; Fowler *v.* Prichard, (Ala. 1906) 41 So. 667.

California. — Wieland *v.* Southern Pac. Co., 1 Cal. App. 343, 82 Pac. 226; Quint *v.* Dimond, 147 Cal. 707, 82 Pac. 310; Waldeck *v.* Pacific Coast Steamship Co., 2 Cal. App. 167, 83 Pac. 158; Murphy *v.* Police Pension Fund Com'rs, 2 Cal. App. 468, 83 Pac. 577.

Delaware. — State *v.* Uzzo, (Del. 1907) 65 Atl. 775.

Georgia. — McBride *v.* Georgia R., etc., Co., 125 Ga. 515, 54 S. E. 674; Park *v.* State, 126 Ga. 575, 55 S. E. 489.

Illinois. — Aurora *v.* Plummer, 122 Ill. App. 143.

Kentucky. — Horine *v.* New York L. Ins. Co., (Ky. 1905) 87 S. W. 274; Illinois Cent. R. Co. *v.* Houchins, (Ky. 1905) 89 S. W. 530; Martin *v.* South Covington, etc., St. R. Co., (Ky. 1906) 92 S. W. 571; Louisville, etc., R. Co. *v.* Williamson, (Ky. 1906) 96 S. W. 1130; Davis *v.* Louisville, etc., R. Co., (Ky. 1906) 97 S. W. 1122, *rehearing denied* (Ky. 1907) 99 S. W. 930.

Missouri. — State *v.* Birks, 199 Mo. 263, 97 S. W. 578; Frye *v.* St. Louis, etc., R. Co., 200 Mo. 377, 98 S. W. 566.

Montana. — Poindexter, etc., Live Stock Co. *v.* Oregon Short Line R. Co., 33 Mont. 338, 83 Pac. 886.

Nevada. — *In re* Kelly, 28 Nev. 491, 83 Pac. 223.

New York. — Dorry *v.* Union R. Co., 104 N. Y. App. Div. 309, 93 N. Y. Supp. 637; Weinstein *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 468, 102 N. Y. Supp. 512.

Oklahoma. — Regnier *v.* Territory, 15 Okla. 652, 82 Pac. 509.

Pennsylvania. — Trexler *v.* Baltimore, etc., R. Co., 28 Pa. Super. Ct. 198.

Rhode Island. — Bowen *v.* White, 26 R. I. 73, 58 Atl. 254, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665.

Texas. — Paraffine Oil Co. *v.* Berry, (Tex. Civ. App. 1906) 93 S. W. 1089; St. Louis, etc., R. Co. *v.* Boyer, (Tex. Civ. App. 1906) 97 S. W. 1070; Parnell *v.* State, (Tex. Crim. 1906) 98 S. W. 269.

Utah. — Leach *v.* Oregon Short Line R. Co., 29 Utah 296, 81 Pac. 90, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665.

Washington. — Harris *v.* Carstens Packing Co., 43 Wash. 647, 86 Pac. 1125; Moritz *v.* Herskovitz, (Wash. 1907) 89 Pac. 560.

Wisconsin. — Zentner *v.* Oshkosh Gaslight Co., 126 Wis. 196, 105 N. W. 911; Brown *v.* State, 127 Wis. 193, 106 N. W. 536; Johnson *v.* State, 129 Wis. 146, 108 N. W. 55.

2. *United States.* — Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397.

Alabama. — Nordan *v.* State, 143 Ala. 13, 39 So. 406; Southern R. Co. *v.* Reeder, (Ala. 1907) 44 So. 699.

Arkansas. — Kansas City Southern R. Co. *v.* Morris, 80 Ark. 528, 98 S. W. 363.

District of Columbia. — Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46; Kehan *v.* Washington R., etc., Co., 28 App. Cas. (D. C.) 108.

Florida. — Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318.

Georgia. — Southern R. Co. *v.* Brown, 126 Ga. 1, 54 S. E. 911; Fuller *v.* State, 127 Ga. 47, 55 S. E. 1047.

Illinois. — Chicago City R. Co. *v.* Lowitz, 119 Ill. App. 360, *affirmed* 218 Ill. 24, 75 N. E. 755.

Indiana. — Cincinnati, etc., Electric St. R. Co. *v.* Stahle, 37 Ind. App. 545, 76 N. E. 551, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665, *rehearing denied* 37 Ind. App. 539, 77 N. E. 363; Pittsburgh, etc., R. Co. *v.* Haislup, 39 Ind. App. 394, 79 N. E. 1035.

Iowa. — Rothrock *v.* Cedar Rapids, 128 Iowa 252, 103 N. W. 475; Christopherson *v.* Chicago, etc., R. Co., (Iowa 1906) 109 N. W. 1077; Meier *v.* Way, (Iowa 1907) 111 N. W. 420.

Kentucky. — Lexington St. R. Co. *v.* Strader, (Ky. 1905) 89 S. W. 158; Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348; Illinois Cent. R. Co. *v.* Houchins, (Ky. 1907) 101 S. W. 924; Illinois Cent. R. Co. *v.* Cotter, (Ky. 1907) 103 S. W. 279.

Minnesota. — State *v.* Williams, 96 Minn. 351, 105 N. W. 265.

Nebraska. — Lexington *v.* Fleharty, 74 Neb. 626, 104 N. W. 1056; Union Pac. R. Co. *v.* Edmondson, (Neb. 1906) 110 N. W. 650.

New Hampshire. — Robinson *v.* Stahl, (N. H. 1907) 67 Atl. 577.

South Carolina. — Young *v.* Seaboard Air Line R. Co., 75 S. Car. 190, 55 S. E. 225.

Texas. — Austin *v.* Nuchols, (Tex. Civ. App. 1906) 94 S. W. 336, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 660–690 [665]; Moore *v.* State, 49 Tex. Crim. 499, 96 S. W. 321; Adams *v.* State, (Tex. Crim. 1907) 99 S. W. 1015; International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000; Pars, etc., R. Co. *v.* Calvin, (Tex. Civ. App. 1907) 103 S. W. 428, *affirmed* (Tex. 1908) 106 S. W. 879; St. Louis Southwestern R. *v.* Coats, (Tex. Civ. App. 1907) 103 S. W. 662.

Utah. — Leach *v.* Oregon Short Line R. Co., 29 Utah 296, 81 Pac. 90, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665.

Washington. — Starr *v.* Ætna L. Ins. Co., 41 Wash. 199, 83 Pac. 113.

Immediately Subsequent Act. — It is incumbent on a party seeking to introduce evidence as part of the *res gestæ* to prove that the declarations testified to were so nearly connected with the transaction under investigation, in point of time, as to be free from any suspicion of device or afterthought. Pool *v.* Warren County, 123 Ga. 205, 51 S. E. 328.

666. 1. Benjamin *v.* State, (Ala. 1906) 41 So. 739; Bundy *v.* Sierra Lumber Co., 149 Cal. 772, 87 Pac. 622; Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709; State *v.* Mickler, 73 N. J. L. 513, 64 Atl. 148; Gulf, etc., R. Co. *v.* Batte, (Tex. Civ. App. 1906) 94 S. W. 345; Fuller *v.* State, (Tex. Crim. 1906) 95 S. W. 541; Leach *v.* Oregon Short Line R. Co., 29 Utah 285, 81 Pac. 90.

2. Birmingham Trust, etc., Co. *v.* Whitney, 95 N. Y. App. Div. 280, 88 N. Y. Supp. 578, *affirmed* 183 N. Y. 522, 76 N. E. 1089.

3. Inman *v.* Dudley, etc., Lumber Co., (C. C. A.) 146 Fed. 440; Echols *v.* State, 147 Ala. 700, 41 So. 298; Morello *v.* People, 226 Ill. 388, 80 N. E. 903; Illinois Cent. R. Co. *v.* Cotter, (Ky. 1907) 103 S. W. 279; Scott *v.* State, 49 Tex. Crim. 386, 93 S. W. 112; Gulf, etc., Co. *v.* Coopwood, (Tex. Civ. App. 1906) 96 S. W. 102; St. Louis, etc., R. Co. *v.* Watkins, (Tex. Civ. App. 1907) 100 S. W. 162. *Compare* Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496.

7. Lawrence *v.* State, 103 Md. 17, 63 Atl. 96; Smith *v.* State, 48 Tex. Crim. 233, 89 S. W. 817.

667. 1. State *v.* Jarrell, 141 N. Car. 722, 53 S. E. 127; Parnell *v.* State, (Tex. Crim. 1906) 98 S. W. 269.

2. Wilson *v.* State, 49 Tex. Crim. 50, 90 S. W. 312.

3. Grant *v.* State, 124 Ga. 757, 53 S. E. [illegible].

6. *United States.* — Armour *v.* Skene, (C. C. A.) 153 Fed. 241.

Alabama. — Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207; Birmingham R., etc., Co. *v.* Rutledge, 142 Ala. 195, 39 So. 338.

Illinois. — Chicago City R. Co. *v.* Lowitz, 119 Ill. App. 360, *affirmed* 218 Ill. 24, 75 N. E. 755; Aurora *v.* Plummer, 122 Ill. App. 143.

Massachusetts. — Weeks *v.* Boston El. R. Co., 190 Mass. 563, 77 N. E. 654.

Michigan. — O'Dea *v.* Michigan Cent. R. Co., 142 Mich. 265, 105 N. W. 746.

Missouri. — McHugh *v.* St. Louis Transit Co., 190 Mo. 85, 88 S. W. 853; Lindsay *v.* Kansas City, 195 Mo. 166, 93 S. W. 273.

Texas. — St. Louis Southwestern R. Co. *v.* Haynes, (Tex. Civ. App. 1905) 86 S. W. 934; St. Louis, etc., R. Co. *v.* Boyer, (Tex. Civ. App. 1906) 97 S. W. 1070.

668. 2. Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46; Patton *v.* Sanborn, 133 Iowa 650, 110 N. W. 1032.

Statement as to Locality of Malady Held Admissible. — Texas Southwestern R. Co. *v.* Coats, (Tex. Civ. App. 1907) 103 S. W. 662.

669. 3. Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207.

670. 1. Birmingham R., etc., Co. *v.* Moore, (Ala. 1907) 43 So. 841; Gilmore *v.* American Tube, etc., Co., 79 Conn. 408, 66 Atl. 4; Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46; Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23; Orlando *v.* Syracuse Rapid Transit R. Co., 109 N. Y. App. Div. 356, 95 N. Y. Supp. 898; St. Louis Southwestern R. Co. *v.* Demsey, (Tex. Civ. App. 1905) 89 S. W. 786; Dublin Gas, etc., Co. *v.* Frazier, (Tex. Civ. App. 1907) 103 S. W. 197.

2. Gregory *v.* State, (Ala. 1906) 42 So. 829; State *v.* Barber, 13 Idaho 65, 88 Pac. 418.

5. Aurora *v.* Plummer, 122 Ill. App. 143.

A Declaration Made Immediately after the Declarant Regains Consciousness. — Christopherson *v.* Chicago, etc., R. Co., (Iowa 1906) 100 N. W. 1077.

671. 2. Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23.

3. Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23; O'Dea *v.* Michigan Cent. R. Co., 142 Mich. 265, 105 N. W. 746.

4. Chicago *v.* McNally, 227 Ill. 14, 81 N. E. 23.

7. Birmingham R., etc., Co. *v.* Enslen, 144 Ala. 343, 39 So. 74; Kansas City, etc., R. Co. *v.* Matthews, 142 Ala. 298, 39 So. 207; McHugh *v.* St. Louis Transit Co., 190 Mo. 85, 88

S. W. [illegible] Stevens v. Friedman, [illegible] W. Va. 51 S. E. 132.

672. 1. Chicago *v.* McNally, *227* Ill. 14, 81 N. E. 23.

2. Western Union Tel. Co. *v.* Manker, 145 Ala. 418, 41 So. 850; Gulf, etc., R. Co. *v.* Luther, (Tex. Civ. App. 1905) 90 S. W. 44.

3. Van Gesner *v.* U. S. (C. C. A.) 153 Fed. 46; U. S. *v.* Dexter, 154 Fed. 890; Dennie *v.* Clark, 3 Cal. App. 760, 87 Pac. 59; Ferguson *v.* Boyd, (Ind. 1907) 81 N. E. 71; Renshaw *v.* Dignan, 128 Iowa 722, 105 N. W. 209; State *v.* Stark, 202 Mo. 210, 100 S. W. 642; People *v.* Levin, 119 N. Y. App. Div. 233, 104 N. Y. Supp. 647; Com. *v.* Valverdi, 218 Pa. St. 7, 66 Atl. 877.

675. 1. Williams *v.* State, 147 Ala. 10, 41 So. 992; Herd *v.* State, (Tex. Crim. 1907) 99 S. W. 1119.

2. Renshaw *v.* Degnan, 128 Iowa *722*, 105 N. W. 209.

11. State *v.* Cavin, 199 Mo. 154, 97 S. W. 573.

Subsequent Condition of Body and Clothing. — Gray *v.* State, (Tex. Crim. 1905) 86 S. W. 764.

Whatever the Scene of the Transaction Showed may be proved as *res gestæ*. Thus in a prosecution for rape books and papers belonging to the accused and found on the ground after the commission of the offense are admissible. Fletcher *v.* Com., (Ky. 1906) 96 S. W. 855; Lyon *v.* Com., (Ky. 1906) 96 S. W. 857.

676. 1. Sprinkle *v.* U. S., (C. C. A.) 141 Fed. 811, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 675 [676]; State *v.* Cavin, 199 Mo. 154, 97 S. W. 573; Gray *v.* State, (Tex. Crim. 1905) 86 S. W. 764.

2. *Alabama.* — Shirley *v.* State, 144 Ala. 35, 40 So. 269; Smith *v.* State, 147 Ala. 692, 40 So. 959; Morris *v.* State, 146 Ala. 66, 41 So. 274.

Arkansas. — Vasser *v.* State, 75 Ark. 373, 87 S. W. 635.

California. — People *v.* Woods, 147 Cal. 265, 81 Pac. 652; People *v.* Lee, 1 Cal. App. 169, 81 Pac. 969.

Georgia. — Warrick *v.* State, 125 Ga. 134, 53 S. E. 1027.

Missouri. — State *v.* Woodward, 191 Mo. 617 90 S. W. 90.

North Carolina. — State *v.* Jarrell, 141 N Car. 722, 53 S. E. 127.

Oklahoma. — Baysinger *v.* Territory, 15 Okla 386, 82 Pac. 728.

Texas. — Scott *v.* State, 49 Tex. Crim. 386, 93 S. W. 112.

3. Fleming *v.* State, (Ala. 1907) 43 So. 219; McKinney *v.* State, 49 Tex. Crim. 591, 96 S. W. 48; Lahue *v.* State, (Tex. Crim. 1907) 101 S. W. 1008. But see Logan *v.* State, (Ala. 1907) [illegible]

4. **A Distinct Altercation between Deceased and Third Person Is Inadmissible.** — Porch *v.* State, (Tex. Crim. 1906) 99 S. W. 102.

677. 1. Williams *v.* State, 147 Ala. 10, 41 So. 992; Patterson *v.* Ocean Acc., etc., Corp., 25 App. Cas. (D. C.) 46; Herd *v.* State, (Tex. Crim. 1907) 99 S. W. 1119; Nelson *v.* State, (Tex. Crim. 1907) 101 S. W. 1012.

2. Williams *v.* State, 147 Ala. 10, 41 So. 992; Puryear *v.* State, (Tex. Crim. 1906) 98 S. W. 258; Herd *v.* State, (Tex. Crim. 1907) 99 S. W. 1119.

3. Morris *v.* State, 146 Ala. 66, 41 So. 274; Williams *v.* State, 147 Ala. 10, 14 So. 992; Hull *v.* State, (Tex. Crim. 1907) 100 S. W. 403.

Threats Made Shortly Before Homicide. — Parham *v.* State, 147 Ala. 57, 42 So. 1; McCorquodale *v.* State, (Tex. Crim. 1905) 98 S. W. 879; Manning *v.* State, (Tex. Crim. 1906) 98 S. W. 251; Armstrong *v.* State, (Tex. Crim. 1906) 98 S. W. 844.

Indefinite Declarations as to Intended Use of Pistol. — Barbee *v.* State, (Tex. Crim. 1906) 97 S. W. 1058.

4. Young *v.* State, (Ala. 1907) 43 So. 100; Pate *v.* State, (Ala. 1907) 43 So. 343; Wakefield *v.* State, (Tex. Crim. 1906) 94 S. W. 1046.

5. Mitchell *v.* State, 82 Ark. 324, 101 S. W. 763; State *v.* Uzzo, (Del. 1907) 65 Atl. 775; Vickery *v.* State, 50 Fla. 144, 38 So. 907; Cole *v.* State, 125 Ga. 276, 53 S. E. 958; Warrick *v.* State, 125 Ga. 134, 53 S. E. 1027; Park *v.* State, 126 Ga. 575, 55 S. E. 489; Little *v.* State, 87 Miss. 512, 40 So. 165.

678. 3. Fuller *v.* State, 127 Ga. 47, 55 S. E. 1047.

5. Hammond *v.* State, 147 Ala. 79, 41 So. 761; Powers *v.* Com., (Ky. 1906) 92 S. W. 975; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55; Lyles *v.* State, 48 Tex. Crim. 119, 86 S. W. 763; Campos *v.* State, (Tex. Crim. 1906) 95 S. W. 1042.

7. Clark *v.* People, 224 Ill. 554, 79 N. E. 941.

679. 1. **Declaration of Deceased Explanatory of Departure to Place of Homicide.** — Warrick *v.* State, 125 Ga. 134, 53 S. E. 1027.

4. *Kentucky.* — Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680 [679].

Mississippi. — Moore *v.* State, 86 Miss. 160, 38 So. 504.

Missouri. — State *v.* Kelleher, 201 Mo. 614, 100 S. W. 470, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679; Starks *v.* Birks, 199 Mo. 263, 97 S. W. 578.

North Carolina. — State *v.* Worley, 141 N. Car. 764, 53 S. E. 128.

Oklahoma. — Regnier *v.* Territory, 15 Okla. 652, 82 Pac. 509.

Texas. — Fuller *v.* State, (Tex. Crim. 1906) 95 S. W. 541.

Wisconsin. — Johnson *v.* State, 129 Wis. 146, 108 N. W. 55.

680. 1. Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680; State *v.* Kelleher, 201 Mo. 633, 100 S. W. 470, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680.

2. *Alabama.* — Walker *v.* State, 146 Ala. 45, 41 So. 878.

Arizona. — Sheehy *v.* Territory, 9 Ariz. 269, 80 Pac. 356.

District of Columbia. — Grant *v.* U. S., 28 App. Cas. (D. C.) 169.

Florida. — Marlow *v.* State, 49 Fla. 7, 38 So. 653.

Kentucky. — Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680.

Minnesota. — State *v.* Williams, 96 Minn. 351, 105 N. W. 265.

Missouri. — State *v.* Kelleher, 201 Mo. 633, 100 S. W. 470, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680; Starks *v.* Birks, 199 Mo. 263, 97 S. W. 578.

Texas. — Craven *v.* State, 49 Tex. Crim. 78, 90 S. W. 311; Wilson *v.* State, 49 Tex. Crim. 50, 90 S. W. 312; Moore *v.* State, 49 Tex. Crim. 499, 96 S. W. 321; Mahoney *v.* State, (Tex. Crim. 1906) 98 S. W. 854; Bice *v.* State, (Tex. Crim. 1907) 100 S. W. 949.

Wisconsin. — Johnson *v.* State, 129 Wis. 146, 108 N. W. 55.

Canada. — Gilbert *v.* Rex, 38 Can. Sup. Ct. 284.

681. 2. Davis *v.* State, (Tex. Crim. 1905) 90 S. W. 646.

3. Simmons *v.* State, 145 Ala. 61, 40 So. 660.

4. Chilcott *v.* Washington State Colonization Co., 45 Wash. 148, 88 Pac. 113.

6. Teague *v.* State, 144 Ala. 42, 40 So. 312. *Compare* Chambless *v.* State, 49 Tex. Crim. 354, 94 S. W. 220.

8. Echols *v.* State, 147 Ala. 700, 41 So. 298; Bradford *v.* State, 147 Ala. 95, 41 So. 462; People *v.* Colmey, 188 N. Y. 573, 80 N. E. 1115; People *v.* Colmey, 117 N. Y. App. Div. 462, 102 N. Y. Supp. 714; Bailey *v.* State, (Tex. Crim. 1906) 97 S. W. 694.

10. Nelson *v.* State, 48 Tex. Crim. 471, 88 S. W. 807.

11. Smith *v.* People, 39 Colo. 202, 88 Pac. 1072.

682. 2. State *v.* Cavin, 199 Mo. 154, 97 S. W. 573; State *v.* Vaughan, 200 Mo. 1, 98 S. W. 2; *In re* Kelly, 28 Nev. 491, 83 Pac. 223; Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100; Menefee *v.* State, (Tex. Crim. 1906) 97 S. W. 486; Herndon *v.* State, (Tex. Crim. 1907) 99 S. W. 558; Brown *v.* State, 127 Wis. 193, 106 N. W. 536.

4. State *v.* Falsetta, 43 Wash. 159, 86 Pac. 168; State *v.* Jones, 77 S. Car. 385, 58 S. E. 8.

5. Chicago Union Traction Co. *v.* Lowenrosen, 125 Ill. App. 194, *affirmed* 222 Ill. 506, 78 N. E. 813; Ft. Wayne, etc., Traction Co. *v.* Crosbie, (Ind. 1907) 81 N. E. 474; Parnell *v.* State, (Tex. Crim. 1906) 98 S. W. 269.

7. Benjamin *v.* State, (Ala. 1906) 41 So. 739; Fuller *v.* State, 127 Ga. 47, 55 S. E. 1047; Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496.

683. 1. Benjamin *v.* State, (Ala. 1906) 41 So. 739; Fuller *v.* State, 127 Ga. 47, 55 S. E. 1047; Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496; Roberts *v.* State, (Tex. Crim. 1907) 100 S. W. 150.

2. *Alabama.* — Scott *v.* State, (Ala. 1907) 43 So. 181; Dillard *v.* State, (Ala. 1907) 44 So. 537.

Arkansas. — Stapleton *v.* State, 80 Ark. 617.

Illinois. — Dahlberg *v.* People, 225 Ill. 485, 80 N. E. 310.

Indian Territory. — Young *v.* U. S., (Indian Ter. 1907) 103 S. W. 771.

Kentucky. — Greenwell *v.* Com., (Ky. 1907) 100 S. W. 852.

Missouri. — State *v.* Stark, 202 Mo. 210, 100 S. W. 642; State *v.* Toohey, 203 Mo. 674, 102 S. W. 530.

New York. — People *v.* Dixon, 118 N. Y. App. Div. 593, 103 N. Y. Supp. 186; People *v.* Spier, 120 N. Y. App. Div. 786, 105 N. Y. Supp. 741.

South Carolina. — State *v.* Talley, 77 S. Car. 99, 57 S. E. 618; State *v.* Kenny, 77 S. Car. 236, 57 S. E. 859.

Texas. — Stevison *v.* State, 48 Tex. Crim. 601, 89 S. W. 1072; Davis *v.* State, (Tex. Crim. 1905) 90 S. W. 646; Irvin *v.* State, (Tex. Crim. 1907) 100 S. W. 779; Harris *v.* State, (Tex. Crim. 1906) 100 S. W. 920; Smith *v.* State, (Tex. Crim. 1907) 100 S. W. 924; Hinson *v.* State, (Tex. Crim. 1907) 100 S. W. 939; Smith *v.* State, (Tex. Crim. 1906) 100 S. W. 953; Nelson *v.* State, (Tex. Crim. 1907) 101 S. W. 1012.

West Virginia. — Stevens *v.* Friedman, 58 W. Va. 84, 51 S. E. 132, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 681–683.

3. Chicago Union Traction Co. *v.* McClevey, 126 Ill. App. 21; Smith *v.* Birge, 126 Ill. App. 596; Multnomah County *v.* Willamette Towing Co., (Oregon 1907) 89 Pac. 389.

4. *Georgia.* — White *v.* Southern R. Co., 123 Ga. 353, 51 S. E. 411; McBride *v.* Georgia R., etc., Co., 125 Ga. 515, 54 S. E. 674.

Illinois. — Aurora *v.* Plummer, 122 Ill. App. 143; Chicago Union Traction Co. *v.* Brethauer, 125 Ill. App. 204, *affirmed* 223 Ill. 521, 79 N. E. 287.

Kentucky. — Louisville, etc., R. Co. *v.* Williamson, (Ky. 1906) 96 S. W. 1130.

Missouri. — Frye *v.* St. Louis, etc., R. Co., 200 Mo. 377, 98 S. W. 566.

New York. — Weinstein *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 468, 102 N. Y. Supp. 512.

Washington. — Harris *v.* Carstens Packing Co., 43 Wash. 647, 86 Pac. 1125.

684. 1. Louisville, etc., R. Co. *v.* Williamson, (Ky. 1906) 96 S. W. 1130; White *v.* Marquette, 140 Mich. 310, 103 N. W. 698.

2. Witmer *v.* Buffalo, etc., Electric Light, etc., Co., 112 N. Y. App. Div. 698, 98 N. Y. Supp. 781.

4. *United States.* — Chicago, etc., R. Co. *v.* Clarkson, (C. C. A.) 147 Fed. 397.

Arkansas. — Kansas City Southern R. Co. *v.* Morris, 80 Ark. 528, 98 S. W. 363.

Florida. — Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 445, 43 So. 318, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684.

Georgia. — Southern R. Co. *v.* Brown, 126 Ga. 1, 54 S. E. 911.

Illinois. — Muren Coal, etc., Co. *v.* Howell, 217 Ill. 190, 75 N. E. 469, *affirming* 119 Ill. App. 209.

Indiana. — Pittsburgh, etc., R. Co. *v.* Haislup, 39 Ind. App. 394, 79 N. E. 1035.

Iowa. — Hutcheis *v.* Cedar Rapids, etc., R. Co., 128 Iowa 279, 103 N. W. 779; Christopherson *v.* Chicago, etc., R. Co., (Iowa 1906) 109 N. W. 1077.

Kentucky. — Louisville, etc., R. Co. *v.* Molloy, (Ky. 1906) 91 S. W. 685; Illinois Cent. R. Co. *v.* Houchins, (Ky. 1907) 101 S. W. 924.

Michigan. — White *v.* Marquette, 140 Mich. 310, 103 N. W. 698.

Missouri. — Mills *v.* Missouri Pac. R. Co., 199 Mo. 56, 94 S. W. 973.

New Hampshire. — Robinson *v.* Stahl, (N. H. 1907) 67 Atl. 577.

South Carolina. — Young *v.* Seaboard Air Line R. Co., 75 S. Car. 190, 55 S. E. 225.

Texas. — Austin *v.* Nuchols, (Tex. Civ. App. 1906) 94 S. W. 336; International, etc., R. Co. *v.* Hugen, (Tex. Civ. App. 1907) 100 S. W. 1000; Paris, etc., R. Co. *v.* Calvin, (Tex. Civ. App. 1907) 103 S. W. 428, *affirmed* (Tex. 1908) 106 S. W. 879.

685. 3. Christopherson *v.* Chicago, etc., R. Co., (Iowa 1906) 109 N. W. 1077; White *v.* Marquette, 140 Mich. 315, 103 N. W. 698, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 685.

4. Rothrock *v.* Cedar Rapids, 128 Iowa 252, 103 N. W. 475; Western Travelers' Acc. Assoc. *v.* Munson, 73 Neb. 858, 103 N. W. 688.

5. International, etc., R. Co. *v.* Munn, (Tex. Civ. App. 1907) 102 S. W. 442.

8. Gulf, etc., R. Co. *v.* Tullis, (Tex. Civ. App. 1905) 91 S. W. 317.

Repairs Subsequent to Accident Held Inadmissible as to Res Gestæ to Show Negligence. — Fitter *v.* Iowa Telephone Co., 129 Iowa 610, 106 N. W. 7.

686. 1. Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318; Dale *v.* Colfax Consol. Coal Co., 131 Iowa 67, 107 N. W. 1096; St. Louis Southwestern R. Co. *v.* Schuler, (Tex. Civ. App. 1907) 102 S. W. 783; Leach *v.* Oregon Short Line R. Co., 29 Utah 285, 81 Pac. 90. *Compare* Kuperschmidt *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 352, 94 N. Y. Supp. 17.

Exclamations of Witnesses of an Assault. — Nashville, etc., R. Co. *v.* Moore, (Ala. 1906) 41 So. 984.

4. Dobbins *v.* Little Rock R., etc., Co., 79 Ark. 85, 95 S. W. 794; Kehan *v.* Washington R., etc., Co., 28 App. Cas. (D. C.) 108; Chicago Union Traction Co. *v.* Lowenrosen, 125 Ill. App. 194, *affirmed* 222 Ill. 506, 78 N. E. 813; Ft. Wayne, etc., Traction Co. *v.* Crosbie, (Ind. 1907) 81 N. E. 474; Wojtylak *v.* Kansas, etc., Coal Co., 188 Mo. 260, 87 S. W. 506; International, etc., R. Co. *v.* Munn, (Tex. Civ. App. 1907) 102 S. W. 442.

6. Rahn *v.* Bunger, (Ky. 1906) 90 S. W. 257; Beckwith *v.* Mace, 140 Mich. 157, 103 N. W. 559.

687. 3. Beckwith *v.* Mace, 140 Mich. 157, 103 N. W. 559.

4. Walnut Ridge Mercantile Co. *v.* Cohn, 79 Ark. 338, 96 S. W. 413; Glisson *v.* Paducah R., etc., Co., (Ky. 1905) 87 S. W. 305; Twaddell *v.* Weidler, 186 N. Y. 601, 79 N. E. 1117; Pacific Express Co. *v.* Needham, (Tex. Civ. App. 1906) 94 S. W. 1070; Grout *v.* Moulton, 79 Vt. 122, 64 Atl. 453.

688. 3. Drefahl *v.* Security Sav. Bank, 132 Iowa 563, 107 N. W. 179; San Antonio Brewing Assoc. *v.* Magoffin, (Tex. Civ. App. 1906) 99 S. W. 187.

4. Rogers *v.* Krumrei, 143 Mich. 15, 106 N. W. 279; Jaro *v.* Holstein, 73 S. Car. 113, 52 S. E. 870, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

A Memorandum Made by a Detective while watching a railroad depot for violations of a law requiring the posting of trains was not a part of the *res gestæ*. Southern R. Co. *v.* State, 165 Ind. 613, 75 N. E. 272.

7. *Alabama.* — Roberts *v.* Ringemann, 145 Ala. 678, 40 So. 81; Holman *v.* Clark, (Ala. 1906) 41 So. 765.

District of Columbia. — Lamaha *v.* Mason, 27 App. Cas. (D. C.) 470.

Montana. — Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657.

New York. — New York Water Co. *v.* Crow, 187 N. Y. 516, 79 N. E. 1112.

North Carolina. — Piedmont Sav. Bank *v.* Levy, 138 N. Car. 277, 50 S. E. 657, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688.

West Virginia. — Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688–690 [688].

Wisconsin. — Griswold *v.* Nichols, 126 Wis. 401, 105 N. W. 815; Vagts *v.* Ultman, 125 Wis. 265, 104 N. W. 88.

689. 1. Campbell *v.* Eichorst, 122 Ill. App. 609; Collins *v.* Taylor, 101 Me. 542, 64 Atl. 946; Sharon First Baptist Church *v.* Harper, 191 Mass. 196, 77 N. E. 778; Erbes *v.* Smith, 35 Mont. 38, 88 Pac. 568; Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784.

3. **Declarations Admitted after Declarant's Decease.** — New York Water Co. *v.* Crow, 110 N. Y. App. Div. 32, 96 N. Y. Supp. 899.

4. Baker *v.* Drake, (Ala. 1906) 41 So. 845; Lamaha *v.* Mason, 27 App. Cas. (D. C.) 470; Smiley *v.* Padgett, 123 Ga. 39, 50 S. E. 927; San Antonio Brewing Assoc. *v.* Magoffin, (Tex. Civ. App. 1906) 99 S. W. 187; Griswold *v.* Nichols, 126 Wis. 401, 105 N. W. 815.

690. 2. *Alabama.* — Henry *v.* Brown, 142 Ala. 446, 39 So. 325; Lawrence *v.* Doe, 144 Ala. 524, 41 So. 612. See also Doe *v.* Edmondson, 145 Ala. 557, 40 So. 505.

Arkansas. — Seawell *v.* Young, 77 Ark. 316, 91 S. W. 544, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 690; Davies *v.* Epstein, 77 Ark. 221, 92 S. W. 19.

Maine. — Emmet *v.* Perry, 100 Me. 139, 60 Atl. 872.

Missouri. — Farmers' Bank *v.* Barbee, 198 Mo. 465, 95 S. W. 225.

Montana. — Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657.

New York. — Cole *v.* Lester, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 13, 96 N. Y. Supp. 67; New York Water Co. *v.* Crow, 187 N. Y. 516, 79 N. E. 1112.

North Carolina. — Bivings *v.* Gosnell, 141 N. Car. 341, 53 S. E. 861.

West Virginia. — Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688–690 [690].

4. Farmers' Bank *v.* Barbee, 198 Mo. 465, 95 S. W. 225; Matador Land, etc., Co. *v.* Cooper, (Tex. Civ. App. 1905) 87 S. W. 235.

691. 1. Lamaha *v.* Mason, 27 App. Cas. (D. C.) 470.

3. Baker *v.* Drake, (Ala. 1906) 41 So. 845. See also Campbell *v.* Bates, 143 Ala. 338, 39 So. 144.

4. Wiggins *v.* Wilson, 123 Ill. App. 663; Hill *v.* Hill, (Ky. 1906) 92 S. W. 924; Wright *v.* Chicago, etc., R. Co., 118 Mo. App. 392, 94 S. W. 555; Moore *v.* Rohrbacker, 30 Pa. Super. Ct. 568.

RESIDENCE, RESIDENT, ETC.

693. 1. Terrill *v.* Terrill, 2 Alaska 475.

2. White *v.* Martin, 2 Alaska 495.

697. 3. Canadian Pac. R. Co. *v.* Wenham, 146 Fed. 207; *In re* Mulford, 217 Ill. 242, 75 N. E. 345, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 697; Shirk *v.* Monmouth, (Iowa 1908) 114 N. W. 884; State *v.* Wurdeman, (Mo. App. 1908) 108 S. W. 144.

698. 1. Gaddie *v.* Mann, 147 Fed. 956, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 698; *In re* Colton, 129 Iowa 542, 105 N. W. 1008; Cover *v.* Hatten, (Iowa 1907) 113 N. W. 470.

2. Brookover *v.* Kase, (Ind. App. 1908) 83 N. E. 524.

699. 2. See *In re* Franklin, 151 Fed. 645, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 699.

4. Barfield *v.* Coker, 73 S. Car. 181, 53 S. E. 170.

700. 1. Taylor *v.* Wilson, (Tex. Civ. App. 1906) 93 S. W. 108, 109; McCord *v.* Rosene, 39 Wash. 1, 80 Pac. 793.

RESIDUE — RESIDUARY.

702. 2. **Residuary — Realty and Personalty.** — *In re* Gibbs, (1907) 1 Ch. 465, 76 L. J. Ch. 238.

RES JUDICATA.

709. 2. Womach *v.* St. Joseph, 201 Mo. 467, 100 S. W. 443.

3. Womach *v.* St. Joseph, 201 Mo. 467, 100 S. W. 443.

710. 1. Brown *v.* Banks, (Fla. 1907) 44 So. 1011; Black *v.* Thomson, 120 Ill. App. 424; Becker *v.* Linton, (Neb. 1908) 114 N. W. 928.

4. *United States.* — U. S. *v.* McConnaaghey, (C. C. A.) 135 Fed. 350; The J. R. Langdon, 145 Fed. 64; Coram *v.* Ingersoll, (C. C. A.) 148 Fed. 169, *reversing* 136 Fed. 689; Hight *v.* Hirsch, 149 Fed. 890; Stewart *v.* Park College, 156 Fed. 773; Gunning System *v.* Buffalo, 157 Fed. 249; Robinson *v.* American Car, etc., Co., (C. C. A.) 159 Fed. 131; Johnson *v.* Herold, 161 Fed. 598; Rymarkiewicz *v.* U. S., 42 Ct. Cl. 1.

California. — Meeker *v.* Shuster, 4 Cal. App. 294, 87 Pac. 1102.

Colorado. — Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 710.

Illinois. — Pratt *v.* Griffin, 223 Ill. 349, 79 N. E. 102, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 710; Keith *v.* Ray, 231 Ill. 213, 83 N. E. 152.

Indiana. — American Steel Dredge Works *v.* Putnam County, (Ind. App. 1907) 82 N. E. 995.

Kansas. — Gerdom *v.* Durein, 74 Kan. 704, 87 Pac. 1137.

Kentucky. — Bowen *v.* Highbough, (Ky. 1907) 100 S. W. 221.

Minnesota. — McLean *v.* Hughes, 102 Minn. 174, 112 N. W. 1013.

Missouri. — *In re* Boutelle, 124 Mo. App. 450, 101 S. W. 1096; Holmes *v.* Kansas City, (Mo. 1908) 108 S. W. 1134.

Nebraska. — Yates *v.* Jones Nat. Bank, 74 Neb. 734, 105 N. W. 287, *modified* on other points in 206 U. S. 158, 27 U. S. Sup. Ct. 646.

New Hampshire. — State *v.* Corron, 73 N. H. 434, 62 Atl. 1044; *Ex p.* Moebus, (N. H. 1907) 66 Atl. 641.

New Jersey. — Strickland *v.* National Salt Co., (N. J. 1906) 64 Atl. 982; Elizabeth *v.* Central R. Co., (N. J. 1907) 66 Atl. 418.

New Mexico. — Sandoval *v.* Albright, (N. Mex. 1908) 93 Pac. 717.

North Carolina. — John L. Roper Lumber Co. *v.* Elizabeth City Lumber Co., 140 N. Car. 437, 53 S. E. 134; Herring *v.* Atlantic Coast Line R. Co., 144 N. Car. 208, 56 S. E. 873.

Ohio. — Baker *v.* Connor, 29 Ohio Cir. Ct. 711 (*citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 710), *affirmed* (Ohio 1906) 78 N. E. 1116.

Oregon. — Heilner *v.* Smith, (Oregon 1907) 88 Pac. 299; Roots *v.* Boring Junction Lumber Co., (Oregon 1907) 92 Pac. 811.

Pennsylvania. — Camden Nat. Bank *v.* Fries-Breslin Co., 214 Pa. St. 395, 63 Atl. 1022; *In re* Shortlidge, 214 Pa. St. 620, 64 Atl. 318; Roney *v.* Westlake, 216 Pa. St. 374, 65 Atl. 807; Bruner *v.* Finley, 217 Pa. St. 127, 66 Atl. 159.

Texas. — Love *v.* McGill, (Tex. Civ. App. App. 1906) 91 S. W. 246; Kempner *v.* Crockett First Nat. Bank, (Tex. Civ. App. 1906) 99 S. W. 112; Kruegel *v.* Daniels, (Tex. Civ. App. 1908) 109 S. W. 1108.

Washington. — Spokane Valley Land, etc., Co. *v.* Madsen, (Wash. 1907) 91 Pac. 1.

Canada. — Fontaine *v.* Payette, 36 Can. Sup. Ct. 613.

711. 1. *United States.* — Central Indiana R. Co. *v.* Grantham, (C. C. A.) 143 Fed. 43; Jackson *v.* Wilkerson, (C. C. A.) 160 Fed. 623; Hartiens *v.* U. S., 42 Ct. Cl. 42.

Alabama. — Stallings *v.* Gilbreath, 146 Ala. 483, 41 So. 423.

Arkansas. — National Surety Co. *v.* Coates, 83 Ark. 545, 104 S. W. 219.

Connecticut. — Dime Sav. Bank *v.* McAlenney, 78 Conn. 208, 61 Atl. 476.

District of Columbia. — Horine *v.* Wende, 29 App. Cas. (D. C.) 415.

Illinois. — Barker *v.* Smiley, 218 Ill. 68, 75 N. E. 787; Single *v.* Chicago, 221 Ill. 519, 77 N. E. 924; Leigh *v.* Nat. Hollow Brake-Beam Co., 224 Ill. 76, 79 N. E. 318; *In re* Stahl's Estate, 227 Ill. 529, 81 N. E. 531; Teel *v.* Dunnihoo, 230 Ill. 476, 82 N. E. 844; Chicago Title & T. Co. *v.* Moody, 233 Ill. 634, 84 N. E. 656; Kidder *v.* Walker, 121 Ill. App. 546.

Indiana. — Smith *v.* Smith, 35 Ind. App. 610, 74 N. E. 1008.

Iowa. — Crockett *v.* Crockett, 132 Iowa 388, 106 N. W. 944.

Kansas. — Bleakley *v.* Barclay, 75 Kan. 462, 89 Pac. 906.

Kentucky. — Cain *v.* Union Cent. L. Ins. Co., (Ky. 1906) 93 S. W. 622; Cecil *v.* Robertson, (Ky. 1907) 105 S. W. 926.

Mississippi. — Miller *v.* Buckley, 85 Miss. 706, 38 So. 99.

Missouri. — Miller *v.* Kelsay, 114 Mo. App. 598, 90 S. W. 395; Haughawaut *v.* Royse, 122 Mo. App. 72, 98 S. W. 101.

Nebraska. — Plattsmouth First Nat. Bank *v.* Gibson, 74 Neb. 232, 104 N. W. 174.

Nevada. — Gulling *v.* Washoe County Bank, (Nev. 1907) 89 Pac. 25, *reversing* 28 Nev. 450, 82 Pac. 800.

New York. — Ferguson *v.* Bien, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 88, 104 N. Y. Supp. 718; Limpano *v.* David Stevenson Brewing Co., 123 N. Y. App. Div. 903, 107 N. Y. Supp. 317.

North Carolina. — McArthur *v.* Griffith, (N. Car. 1908) 61 S. E. 519.

Texas. — State *v.* Ortiz, 99 Tex. 475, 90 S. W. 1084, *affirming* (Tex. Civ. App. 1905) 86 S. W. 45; Texas, etc., R. Co. *v.* Scoggin, (Tex. Civ. App. 1906) 95 S. W. 651; Clement *v.* Clement, (Tex. Civ. App. 1906) 99 S. W. 138.

713. 1. Stewart *v.* Park College, (C. C. A.) 156 Fed. 773; *In re* Bell, (Cal. 1908) 95 Pac. 372; *In re* Stahl's Estate, 227 Ill. 529, 81 N. E. 531; Black *v.* Thomson, 120 Ill. App. 424; Womach *v.* St. Joseph, 201 Mo. 467, 100 S. W. 443; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044.

714. 3. Delaware, etc., R. Co. *v.* Kutter, (C. C. A.) 147 Fed. 51; Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714. See also Kidder *v.* Walker, 121 Ill. App. 546.

715. 1. **Decisions by a Divided Court.** — Cain *v.* Union Cent. L. Ins. Co., (Ky. 1906) 93 S. W. 622.

717. 2. South *v.* Back, (Ky. 1908) 108 S. W. 230; Minor *v.* New Orleans, 115 La. 301, 38 So. 999. *Compare* Com. *v.* Stearns Lumber Co., (Ky. 1907) 102 S. W. 836.

6. Smith *v.* Vandepeer, 3 Cal. App. 300, 85 Pac. 136; People *v.* Wilson, (Cal. App. 1907) 91 Pac. 661; Laguna Canal Co. *v.* Rocky Ford Ditch Co., (Colo. 1908) 95 Pac. 287; Chicago *v.* Gage, 232 Ill. 169, 83 N. E. 663; Pinkney *v.* Weaver, 115 Ill. App. 582, *affirmed* 216 Ill. 185, 74 N. E. 714; Mudgett's Appeal, (Me. 1907) 69 Atl. 575; Corbett *v.* Craven, (Mass. 1907) 82 N. E. 37; Shaaf *v.* Bradley, 146 Mich. 504, 109 N. W. 1061; Irish *v.* Daniels, 100 Minn. 189, 110 N. W. 968; Becker *v.* Linton, (Neb. 1908) 114 N. W. 928.

Jurisdiction of Inferior Courts. — Baltimore, etc., R. Co. *v.* Freeze, (Ind. 1906) 82 N. E. 761.

Jurisdictional Facts Must Appear of Record. — Cohen *v.* Portland Lodge, 140 Fed. 774.

718. 1. Estudillo *v.* Security Loan, etc., Co., 149 Cal. 556, 87 Pac. 19 (order refusing to set aside adjudication).

2. *United States.* — Groton Bridge Co. *v.* Clark Pressed Brick Co., (C. C. A.) 136 Fed. 27, *affirming* 126 Fed. 552; *In re* Belle Fourche First Nat. Bank, (C. C. A.) 152 Fed. 64.

Alabama. — Wilkinson *v.* Lehman-Durr Co., (Ala. 1906) 43 So. 857. See also Montgomery *v.* Walker, (Ala. 1908) 45 So. 586.

Arkansas. — Jeffers *v.* Davis, (Ark. 1908) 107 S. W. 1175.

California. — Smith *v.* Vandepeer, 3 Cal. App. 300, 85 Pac. 136; Page *v.* Garver, 5 Cal. App. 383, 90 Pac. 481; Gable *v.* Page, (Cal. App. 1907) 91 Pac. 339.

Colorado. — Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20; Laguna Canal Co. *v.* Rocky Ford Ditch Co., (Colo. 1908) 95 Pac. 287.

Illinois. — Healy *v.* Deering, 231 Ill. 423, 83 N. E. 226.

Kentucky. — Cain *v.* Union Cent. L. Ins. Co., (Ky. 1906) 93 S. W. 622; Havens *v.* Ahlering, (Ky. 1906) 97 S. W. 344; Raymer *v.* White School Dist. No. 18, (Ky. 1906) 98 S. W. 323; Dixon *v.* Harris, (Ky. 1907) 105 S. W. 456.

Nevada. — Gulling *v.* Washoe County Bank, (Nev. 1907) 89 Pac. 25.

New York. — O'Donaghue *v.* Smith, 84 N. Y. 365, 77 N. E. 621, *affirming* 83 N. Y. Supp. 398; Barber *v.* Barnum, 117 N. Y. App. Div. 325, 101 N. Y. Supp. 1065; Roach *v.* Curtis, (County Ct.) 50 Misc. (N. Y.) 122, 100 N. Y. Supp. 411, *affirmed* 115 N. Y. App. Div. 765, 101 N. Y. Supp. 333.

Rhode Island. — H. F. Watson Co. *v.* Citizens' Concrete Co., (R. I. 1907) 68 Atl. 310.

Wisconsin. — Tio *v.* Brown, 131 Wis. 573, 111 N. W. 679; *In re* Clark, (Wis. 1908) 115 N. W. 387.

719. 1. Toronto R. Co. *v.* Toronto, (1904) A. C. 809; Bartteson *v.* Feidler, 149 Fed. 299; Parr *v.* U. S., 153 Fed. 462; Rymarkiewicz *v.* U. S., 42 Ct. Cl. 1; Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719; Sullivan *v.* Yazoo, etc., R. Co., 85 Miss. 649, 38 So. 33; Theobald *v.* Deslonde, (Miss. 1908) 46 So. 712; State *v.* Belleflower, (Mo. App. 1908) 108 S. W. 117; Logan *v.* Flattau, (N. J. 1907) 67 Atl. 1007.

720. 1. Pratt *v.* Griffin, 223 Ill. 349, 79 N. E. 102, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720.

Contra. — B. F. Johnson Pub. Co. *v.* Com., (Ky. 1906) 97 S. W. 749.

2. Pratt *v.* Griffin, 223 Ill. 349, 79 N. E. 102, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720; Bleakley *v.* Barclay, 75 Kan. 462, 89 Pac. 906; Dodge *v.* Knapp, 112 Mo. App. 513, 87 S. W. 47. *Compare* Rymarkiewicz *v.* U. S., 42 Ct. Cl. 1; Hartiens *v.* U. S., 42 Ct. Cl. 42.

721. 2. Strauss *v.* Strauss, 122 N. Y. App. Div. 729, 107 N. Y. Supp. 842; Herring *v.* Atlantic Coast Line R. Co., 144 N. Car. 208, 56 S. E. 873.

Federal Judgments Conclusive in State Courts. — Gunning System *v.* Buffalo, 157 Fed. 249; Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498.

4. Robinson *v.* American Car, etc., Co., (C. C. A.) 159 Fed. 131; Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721; Kaspar *v.* People, 230 Ill. 342, 82 N. E. 816; Black *v.* Thomson, 120 Ill. App. 424; Hoboken Manufacturers' R. Co. *v.* Hoboken, (N. J. 1908) 68 Atl. 1098, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721.

722. 3. Forrest *v.* McBee, 78 S. Car. 105, 58 S. E. 955.

4. **Probate Courts** — *United States.* — Goodrich *v.* Ferris, 145 Fed. 844.

Alabama. — Finch *v.* Smith, 146 Ala. 644, 41 So. 819.

California. — Smith *v.* Vandepeer, 3 Cal. App. 300, 85 Pac. 136.

Iowa. — Neimand *v.* Seemann, (Iowa 1907) 114 N. W. 48; *In re* Brown, (Iowa 1908) 117 N. W. 260.

Maine. — Mudgett's Appeal, (Me. 1907) 69 Atl. 575.

New Hampshire. — Kent *v.* Hunt, (N. H. 1906) 65 Atl. 386.

New Jersey. — Wyckoff *v.* O'Niel, (N. J. 1906) 63 Atl. 982.

New York. — Kirk *v.* McCann, 117 N. Y. App. Div. 56, 101 N. Y. Supp. 1093; Matter of Menzie, (Surrogate Ct.) 54 Misc. (N. Y.) 188, 105 N. Y. Supp. 925; *In re* Heaney, 125 N. Y. App. Div. 619, 110 N. Y. Supp. 80.

Ohio. — Jones *v.* Willis, 72 Ohio St. 189, 74 N. E. 166.

South Carolina. — Gaston *v.* Gaston, (S. Car. 1908) 61 S. E. 393.

Washington. — Meeker *v.* Winyer, (Wash. 1907) 92 Pac. 883.

In New York the decision of the surrogate rejecting the probate of a will is conclusive as to personalty but not as to realty. *In re* Goldsticker's Will, 192 N. Y. 35, 84 N. E. 581, *affirming* 108 N. Y. Supp. 489.

Court of Claims. — Rymarkiewicz *v.* U. S., 42 Ct. Cl. 1.

723. 1. Justice of the Peace. — Koehler *v.* Holt Mfg. Co., 146 Cal. 335, 80 Pac. 73.

2. State *v.* Corron, 73 N. H. 434, 62 Atl. 1044.

3. **County Boards.** — Todd *v.* Crail, 167 Ind. 48, 77 N. E. 402.

Land Department Decisions. — Le Fevre *v.* Amonson, 11 Idaho 45, 81 Pac. 71.

Miscellaneous. — *Ex p.* Lung Wing Wun, 161 Fed. 211; *Ex p.* Lee Kow, 161 Fed. 592; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044 (liquor license commissioners); People *v.* McClellan, 118 N. Y. App. Div. 177, 103 N. Y. Supp. 146.

725. 1. *United States.* — Fowler *v.* Stebbins, (C. C. A.) 136 Fed. 365; McCaslin *v.* Link Belt Machinery Co., 139 Fed. 393, *affirmed* (C. C. A.) 147 Fed. 243; Coram *v.* Ingersoll, (C. C. A.) 148 Fed. 169, *reversing* 136 Fed. 689; Kessler *v.* Armstrong Cork Co., (C. C. A.) 158 Fed. 744; Brinckerhoff *v.* Holland Trust Co., 159 Fed. 191.

Alabama. — Milam *v.* Coby, 144 Ala. 535, 39 So. 511; Daniel *v.* Jordan, 146 Ala. 229, 40 So. 940; Posey *v.* Gamble, (Ala. 1906) 41 So. 416; Ryan *v.* Young, 147 Ala. 660, 41 So. 954; Sims *v.* Mobile, etc., R. Co., (Ala. 1908) 46 So. 494.

Arkansas. — Bradbury *v.* Dumond, 80 Ark. 82, 96 S. W. 390.

California. — Morris *v.* Hay, 149 Cal. 695, 87 Pac. 380; Page *v.* Garver, 5 Cal. App. 383, 90 Pac. 481; Silva *v.* Hawkins, (Cal. 1907) 92 Pac. 72.

Colorado. — Graham *v.* Graham, 38 Colo. 453, 88 Pac. 852.

Georgia. — Kennedy *v.* Meara, 127 Ga. 68, 56 S. E. 243.

Idaho. — Schuler *v.* Ford, 10 Idaho 739, 80 Pac. 219; *Ex p.* Sharp, (Idaho 1908) 96 Pac. 563; Hilton *v.* Stewart, (Idaho 1908) 96 Pac. 579.

Illinois. — Stecher *v.* People, 217 Ill. 348, 75 N. E. 501; Sill *v.* Pate, 230 Ill. 39, 82 N. E. 356; Strong *v.* People, 119 Ill. App. 79, *affirmed* 217 Ill. 348.

Indiana. — Fleming *v.* Anderson, 39 Ind. App. 343, 76 N. E. 266.

Iowa. — Busse *v.* Schaeffer, 128 Iowa 319, 103 N. W. 947; Dittmer *v.* Mierandorf, 129 Iowa 643, 106 N. W. 158; American Express Co. *v.* Des Moines Nat. Bank, (Iowa 1907) 111 N. W. 31.

Kansas. — Brandon *v.* Ard, 75 Kan. 424, 87 Pac. 366; Power *v.* Snow, 75 Kan. 182, 88 Pac. 1083.

Kentucky. — Hyslop *v.* Johnson, (Ky. 1907) 98 S. W. 993; Jones *v.* Jones, (Ky. 1907) 101 S. W. 980; Dixon *v.* Harris, (Ky. 1907) 105 S. W. 451; Combs *v.* Virginia Iron, etc., Co., (Ky. 1908) 106 S. W. 815.

Louisiana. — Minor *v.* New Orleans, 115 La. 301, 38 So. 999.

Massachusetts. — Duffee *v.* Boston Elevated R. Co., 191 Mass. 563, 77 N. E. 1036.

Michigan. — Olds *v.* State Land Office, 150 Mich. 134, 112 N. W. 952; Bigelow *v.* Sheehan, 150 Mich. 507, 114 N. W. 389.

Minnesota. — Minnesota Debenture Co. *v.* Johnson, 94 Minn. 150, 102 N. W. 381.

Mississippi. — French *v.* Rogillio, (Miss. 1906) 40 So. 68; Southern Electric Securities Co. *v.* State, (Miss. 1907) 44 So. 785; Taltavall *v.* Marigny, (Miss. 1908) 45 So. 465.

Missouri. — Wood *v.* Smith, 193 Mo. 484, 91 S. W. 85; Carthage *v.* Weesner, 116 Mo. App. 118, 92 S. W. 178; Daugherty *v.* Poundstone, 120 Mo. App. 300, 96 S. W. 728; Womach *v.* St. Joseph, 201 Mo. 467, 100 S. W. 443; Sawyer *v.* Walker, 204 Mo. 133, 102 S. W. 544; McLauren *v.* International Real Estate, etc., Co., 126 Mo. App. 254, 102 S. W. 1105; Coleman *v.* Reynolds, 207 Mo. 463, 105 S. W. 1070; Summet *v.* City Realty, etc., Co., 208 Mo. 501, 106 S. W. 614; State *v.* Bellflower, (Mo. App. 1908) 108 S. W. 117; Taylor *v.* Sartorious, (Mo. App. 1908) 108 S. W. 1089; Shannon *v.* Mastin, (Mo. App. 1908) 108 S. W. 1116; Gillilan *v.* Schmidt, (Mo. App. 1908) 111 S. W. 611.

Montana. — Butte Land, etc., Co. *v.* Merriman, 32 Mont. 402, 80 Pac. 675, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 724 [725].

Nebraska. — Plattsmouth First Nat. Bank *v.* Gibson, 74 Neb. 232, 104 N. W. 174.

New Hampshire. — Hutchins *v.* Berry, (N. H. 1907) 66 Atl. 1046.

New Jersey. — J. C. Vreeland Bldg. Co. *v.* Knickerbocker Sugar Refining Co., (N. J. 1907) 68 Atl. 215.

New York. — Clark *v.* Durland, 104 N. Y. App. Div. 615, 93 N. Y. Supp. 249; Monroe *v.* Turner, 114 N. Y. App. Div. 634, 100 N. Y. Supp. 27, *affirmed* (N. Y. 1907) 82 N. E. 1129; Eisert *v.* Bowen, 117 N. Y. App. Div. 488, 102 N. Y. Supp. 707.

North Carolina. — Fisher *v.* Southern L. & T. Co., 138 N. Car. 90, 50 S. E. 592; Millhiser *v.* Leatherwood, 140 N. Car. 231, 52 S. E. 782; Moseley *v.* Johnson, 144 N. Car. 277, 56 S. E. 929; Harris *v.* Dudley Lumber Co., (N. Car. 1908) 61 S. E. 604.

North Dakota. — Clarke *v.* Doyle, (N. Dak. 1908) 116 N. W. 348.

Ohio. — Oehler *v.* Walsh, 28 Ohio Cir. Ct. 446.

Oregon. — Parkersville Drainage Dist. *v.* Wattier, 48 Oregon 332, 86 Pac. 775, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 724 [725].

Pennsylvania. — Hess's Estate, 27 Pa Super. Ct. 498; Arnold's License, 30 Pa. Super. Ct. 02.

Rhode Island. — Richmond *v.* James, 27 R. I. 154, 61 Atl. 54.

South Dakota. — State *v.* Coughran, 19 S. Dak. 271, 103 N. W. 31; McLennon *v.* Fenner, 19 S. Dak. 492, 104 N. W. 218; Gilman *v.* Carpenter, (S. Dak. 1908) 115 N. W. 659.

Texas. — Parlin, etc., Co. *v.* Vawter, (Tex. Civ. App. 1905) 88 S. W. 407; Miles *v.* Dorn, (Tex. Civ. App. 1905) 90 S. W. 707; Sawyer *v.* Hico First Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 151; McKinley *v.* Wilson, (Tex. Civ. App. 1906) 96 S. W. 112; Storms *v.* Mundy, (Tex. Civ. App. 1907) 101 S. W. 258; Haines *v.* West, (Tex. Civ. App. 1907) 102 S. W. 436; Cocke *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 407; Sullivan *v.* Fant, (Tex. Civ. App. 1908) 110 S. W. 507.

Utah. — Larsen *v.* Gasberg, 30 Utah 470, 86 Pac. 412.

Washington. — Collins *v.* Denny Clay Co., 41 Wash. 136, 82 Pac. 1012; Wheeler *v.* Aberdeen, 45 Wash. 63, 87 Pac. 1061; Schmidt *v.* Olympia Light, etc., Co., (Wash. 1907) 90 Pac. 212; Seattle *v.* Northern Pac. R. Co., (Wash. 1907) 92 Pac. 411.

West Virginia. — Dent *v.* Pickens, 59 W. Va. 274, 53 S. E. 154; Tolley *v.* Poteet, (W. Va. 1907) 57 S. E. 811; Smith *v.* White, (W. Va. 1908) 60 S. E. 404; Blake *v.* O'Neal, (W. Va. 1908) 61 S. E. 410.

730. 1. B. Roth Tool Co. *v.* New Amsterdam Casualty Co., (C. C. A.) 161 Fed. 709; MacDonald *v.* Dexter, (Ill. 1908) 85 N. E. 209; Adams *v.* Sigman, 89 Miss. 844, 43 So. 877; Sbarbero *v.* Miller, (N. J. 1907) 65 Atl. 472; Parkersville Drainage Dist. *v.* Wattier, 48 Oregon 332, 86 Pac. 775.

Exceptions to Rule. — Williford *v.* Kansas City, etc., R. Co., 154 Fed. 514; Portland Gold Min. Co. *v.* Stratton's Independence, (C. C. A.) 158 Fed. 63.

731. 5. Gouwens *v.* Gouwens, 222 Ill. 223, 78 N. E. 597; Comstock *v.* Keating, 115 Mo. App. 372, 91 S. W. 416; Shannon *v.* Mastin, (Mo. App. 1908) 108 S. W. 1116.

732. 2. Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733 [732]; Comstock *v.* Keating, 115 Mo. App. 372, 91 S. W. 416; Gulling *v.* Washoe County Bank, (Neb. 1907) 89 Pac. 25, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 732, and *reversing* 28 Nev. 450, 82 Pac. 800.

3. Gouwens *v.* Gouwens, 222 Ill. 223, 78 N. E. 597; Whitesell *v.* Strickler, 164 Ind. 602, 78 N. E. 845, *affirming* 73 N. E. 153; McCollum *v.* Chisholm, (N. Car. 1907) 59 S. E. 160.

733. 4. **Same Rule in Admiralty.** — Rhodes *v.* Interlake Transp. Co., 144 Fed. 205.

6. Rohn *v.* Rohn, 117 Ill. App. 512; School Tp. *v.* Independent School Dist., 134 Iowa 349, 112 N. W. 5, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733. See also Fowler *v.* Stebbins, (C. C. A.) 136 Fed. 365.

734. 2. Yates *v.* Utica Banks, 206 U. S. 181, 27 U. S. Sup. Ct. 646, *modifying* 74 Neb. 734, 105 N. W. 287; Bowring *v.* Wilmington Malleable Iron Co., (Del. 1907) 67 Atl. 160; Mageau *v.* Great Northern R. Co., (Minn. 1908) 115 N. W. 651; Sbarbero *v.* Miller, (N. J. 1907) 65 Atl. 472; Matter of Durand, (Surrogate Ct.) 56 Misc. (N. Y.) 235, 107 N. Y. Supp. 293.

Actual Capacity and Not Mere Formal Designation the Test. — Similar in legal effect to the original note is *In re* Bell, (Cal. 1908) 95 Pac. 372.

735. 2. **Suing under Assumed Name.** — Clark *v.* Wyche, 126 Ga. 24, 54 S. E. 909.

3. Northwestern State Bank *v.* Silberman, (C. C. A.) 154 Fed. 809; Hilton *v.* Stewart, (Idaho 1908) 96 Pac. 579, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 735; Rohn *v.* Rohn, 117 Ill. App. 512; Perkins *v.* Goddin, 111 Mo. App. 429, 85 S. W. 936, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 735; Womach *v.* St. Joseph, 201 Mo. 467, 100 S. W. 443; Hubbard *v.* Gould, (N. H. 1906) 64 Atl. 668; *In re* Alexander, 214 Pa. St. 369, 63 Atl. 799.

4. Perkins *v.* Goddin, 111 Mo. App. 429, 85 S. W. 936, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 735.

736. 1. Murphy *v.* Cole, (Md. 1908) 68 Atl. 615; Taltavall *v.* Marigny, (Miss. 1908) 45 So. 465.

3. Converse *v.* Ætna Nat. Bank, 79 Conn. 163, 64 Atl. 341. See also Seattle *v.* Northern Pac. R. Co., (Wash. 1907) 92 Pac. 411.

4. **Special Appearance.** — Kellogg *v.* Maloney, (C. C. A.) 152 Fed. 405.

737. 1. Parsons *v.* Urie, 104 Md. 238, 64 Atl. 927; American Bonding Co. *v.* Loeb, (Wash. 1907) 92 Pac. 282.

4. Hemenway *v.* Thompson, 227 Ill. 146, 81 N. E. 52, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 737; Thompson *v.* Hemenway, 218 Ill. 46, 75 N. E. 791, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 737.

5. See International, etc., R. Co. *v.* Brisenio, (Tex. Civ. App. 1906) 92 S. W. 998.

738. 1. Champlin *v.* Butler, 124 Ill. App. 41; Greenfield Gas Co. *v.* Trees, 165 Ind. 209, 75 N. E. 2 (mandamus by party in name of state); Cornett *v.* Moore, (Ky. 1906) 97 S. W. 380; Carthage *v.* Weesner, 116 Mo. App. 118, 92 S. W. 178; Alexander County Nat. Bank *v.* Foster, 124 Mo. App. 344, 101 S. W. 685; Pew *v.* Johnson, 35 Mont. 173, 88 Pac. 770; Kolpack *v.* Kolpack, 128 Wis. 169, 107 N. W. 457.

Party Must Control the Litigation. — Australian Knitting Co. *v.* Gormly, 138 Fed. 92.

Where Several Insurance Companies United in making a common defense to suits brought against them severally it was held that each had such an interest that a judgment against one would be *res judicata* as to the others. Greenwich Ins. Co. *v.* Friedman, (C. C. A.) 142 Fed. 944.

739. 4. **The Rule Applies** even though the counsel assists the attorney for one of the parties. Mankato *v.* Barber Asphalt Paving Co., (C. C. A.) 142 Fed. 329.

5. Perkins *v.* Goddin, 111 Mo. App. 429, 85 S. W. 936, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 739.

6. Jefferson Electric Light, etc., Co. *v.* Westinghouse Electric, etc., Co., (C. C. A.) 139 Fed. 385.

740. 1. **"Directly Interested."** — Australian Knitting Co. *v.* Gormly, 138 Fed. 92.

741. 1. B. Roth Tool Co. *v.* New Amster-

dam Casualty Co., (C. C. A.) 161 Fed. 709; Kosower *v.* Sandler, (Supm. Ct. App T.) 49 Misc. (N. Y.) 443, 98 N. Y. Supp. 65, *reversing* (Supm. Ct. App. T.) 96 N. Y. Supp. 734; Port Jervis *v.* Erie R. Co., (Supm. Ct. Spec. T.) 111 N. Y. Supp. 851; Seattle *v.* Saulez, (Wash. 1907) 92 Pac. 140.

742. 1. **Sufficiency of Notice.** — Seyfried *v.* Knoblauch, (Colo. 1908) 96 Pac. 993.

4. **Under a Contract of Indemnity** where it was provided that the insurance company might defend the action in behalf of the assured, it was held that the fact that the employee recovered judgment against the indemnitee did not estop the indemnitor from denying liability when subsequently sued on the judgment. Carter *v.* Ætna L. Ins. Co., (Kan. 1907) 91 Pac. 178.

744. 5. Hickox *v.* Eastman, (S. Dak. 1908) 114 N. W. 706.

745. 9. **Res Judicata Applicable to Infants.** — McSwegin *v.* Howard, (W. Va. 1907) 59 S. E. 894.

746. 6. Deusch *v.* Questa, 116 Ky. 474, 76 S. W. 329, *quoting* entire paragraph 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746.

7. Marengo County *v.* Matkin, 144 Ala. 574, 42 So. 33, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746; Beh *v.* Bay, 127 Iowa 246, 103 N. W. 119, *citing* 24 AM. AND ENG ENCYC. OF LAW (2d ed.) 746; Perkins *v.* Goddin, 111 Mo. App. 429, 85 S. W. 936, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746; Williams *v.* Husky, 192 Mo. 533, 90 S. W. 425; Carthage *v.* Weesner, 116 Mo. App. 118, 92 S. W. 178; Womach *v.* St. Joseph, 201 Mo. 467, 100 S. W. 443; Smith *v.* White, (W. Va. 1908) 60 S. E. 404.

747. 1. Minnesota Debenture Co. *v.* Johnson, 94 Minn. 150, 102 N. W. 381, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746 [747].

2. Northwestern State Bank *v.* Silberman, (C. C. A.) 154 Fed. 809; Schuler *v.* Ford, 10 Idaho 739, 80 Pac. 219, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746 [747]; Sill *v.* Pate, 230 Ill. 39, 82 N. E. 356; Smith *v.* White, (W. Va. 1908) 60 S. E. 404.

6. Duffee *v.* Boston Elevated R. Co., 191 Mass. 563, 77 N. E. 1036; Ortiz *v.* Las Vegas First Nat. Bank, 12 N. Mex. 519, 78 Pac. 529, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747.

9. Womach *v.* St. Joseph, 201 Mo. 467, 100 S. W. 443.

748. 1. Carthage *v.* Weesner, 116 Mo. App. 118, 92 S. W. 178.

4. South Penn Oil Co. *v.* Calf Creek Oil, etc., Co., 140 Fed. 507; Williams *v.* Husky, 192 Mo. 533, 90 S. W. 425; Summet *v.* City Realty, etc., Co., 208 Mo. 501, 106 S. W. 614; Cameron *v.* Jones, (Tex. Civ. App. 1905) 90 S. W. 1120.

5. Schuler *v.* Ford, 10 Idaho 739, 80 Pac. 219 (vendee in possession under contract to purchase); Sill *v.* Pate, 230 Ill. 39, 82 N. E. 356; Combs *v.* Virginia Iron, etc., Co., (Ky. 1908) 106 S. W. 815; Bristow *v.* Thackston, 187 Mo. 332, 86 S. W. 91; Costello *v.* Scott, (Nev. 1908) 93 Pac. 1; Little *v.* Greenleaf-Johnston, etc., Co., (N. Car. 1907) 59 S. E. 1028; Harris *v.* Dudley Lumber Co., (N. Car. 1908) 61 S. E. 604; McKinley *v.* Wilson, (Tex. Civ. App. 1906) 96 S. W. 112.

6. Jones *v.* Hubbard, 193 Mo. 147, 90 S. W. 1137; Jones *v.* Rose, (Mo. 1906) 90 S. W. 1142.

749. 1. Butterly *v.* Deering, 102 N. Y. App. Div. 395, 92 N. Y. Supp. 675.

2. Friedman *v.* New York Cent., etc., R. Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 20, 100 N. Y. Supp. 981; Giblin *v.* North Wisconsin Lumber Co., 131 Wis. 261, 111 N. W. 499; Tio *v.* Brown, 131 Wis. 573, 111 N. W. 679; Parker *v.* Galbraith, (Wash. 1907) 89 Pac. 712; Ryan *v.* Malone, (Wis. 1908) 114 N. W. 517.

3. Calculagraph Co. *v.* Automatic Time Stamp Co., 154 Fed. 166; Marengo County *v.* Matkin, 144 Ala. 574, 42 So. 33, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 749. See also Nicholas *v.* Lord, 118 N. Y. App. Div. 800, 103 N. Y. Supp. 681.

5. See Carthage *v.* Weesner, 116 Mo. App. 118, 92 S. W. 178.

Different Claims against Same Defendant. — Nathan *v.* Uhlmann, 101 N. Y. App. Div. 388, 92 N. Y. Supp. 13, *affirmed* 184 N. Y. 606, 77 N. E. 1192.

6. Elkhart Paper Co. *v.* Fulkerson, 36 Ind. App. 219, 75 N. E. 283; Minnesota Debenture Co. *v.* Johnson, 96 Minn. 91, 107 N. W. 740.

No Privity between Lessor and Sublessee. — Wray-Austin Machinery Co. *v.* Flower, 140 Mich. 452, 103 N. W. 873.

7. **Lessee Concluded.** — Farmers' High Line Canal, etc., Co. *v.* New Hampshire Real Estate Co., (Colo. 1907) 92 Pac. 290.

8. *Contra.* — Muntz *v.* Algiers, etc., St. R. Co., 116 La. 236, 40 So. 688.

750. 2. Crane *v.* Cameron, 71 Kan. 880, 81 Pac. 480.

6. Farmers' L. & T. Co. *v.* Meridian Waterworks Co., 139 Fed. 661.

11. Rowe *v.* Granger, 118 N. Y. App. Div. 459, 103 N. Y. Supp. 439.

Conversely. — A recovery by the bailee prevents a further recovery by the owner. American Storage, etc., Co. *v.* St. Louis Transit Co., 120 Mo. App. 410, 97 S. W. 184.

12. Mundell *v.* Greeley, (Kan. 1907) 92 Pac. 1117; Duffee *v.* Boston Elevated R. Co., 191 Mass. 563, 77 N. E. 1036; Perkins *v.* Goddin, 111 Mo. App. 429, 85 S. W. 936, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 750; Womach *v.* St. Joseph, 201 Mo. 467, 100 S. W. 443 (action by husband for injuries to his wife); Canterbury *v.* Kansas City, (Mo. App. 1908) 108 S. W. 574. See also Henry *v.* Vaughan, (Tex. Civ. App. 1907) 103 S. W. 192.

751. 1. See Stitt *v.* Smith, 102 Minn. 253, 113 N. W. 632.

Where Ejectment Was Brought against the Husband for property belonging to the wife who died after judgment but before execution, leaving the husband a life estate, it was held that the judgment was not *res judicata* as to the life estate. King *v.* Davis, 137 Fed.

2. **Authority of Husband to Represent Wife**

in Actions Concerning Community Property. – Breath *v.* Flowers, (Tex. Civ. App. 1906) 95 S. W. 26; Gustin *v.* Crockett, 44 Wash. 536, 87 Pac. 839 (neither husband nor wife bound unless both are parties).

3. Walden *v.* Walden, 128 Ga. 126, 57 S. E. 323 (represented by next friend); Lansing *v.* Michigan Cent. R. Co., 143 Mich. 48, 106 N. W. 692; McCreary *v.* Creighton, (Neb. 1906) 107 N. W. 240; Galveston, etc., R. Co. *v.* Gillespie, (Tex. Civ. App. 1907) 106 S. W. 707.

c. Krolik *v.* Curry, 148 Mich. 214, 111 N. W. 761; Jacob *v.* Oyster Bay, 109 N. Y. App. Div. 630, 96 N. Y. Supp. 626, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 751.

Rule Applied to Municipal Officers and the Municipality. — Lighton *v.* Syracuse, 112 N. Y. App. Div. 589, 98 N. Y. Supp. 792, *affirming* (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 134, 96 N. Y. Supp. 692.

A Judgment against the Agent in his individual capacity is not conclusive against the principal. Harvey *v.* Sparks, 45 Wash. 578, 88 Pac. 1108.

752. 1. Jacob *v.* Oyster Bay, 109 N. Y. App. Div. 630, 96 N. Y. Supp. 626, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 751 [752].

3. Davidson *v.* Baldwin, 2 Cal. App. 733, 84 Pac. 238; Hayes *v.* Chicago Telephone Co., 218 Ill. 414, 75 N. E. 1003.

9. *In re* Holbert, (Minn. 1908) 114 N. W.

Trustee and Cestui Que Trust in Privity. — Letcher *v.* Letcher, (Ky. 1907) 99 S. W. 628; Van Etten *v.* Passumpsic Sav. Bank, (Neb. 1907) 113 N. W. 163; Sawyer *v.* Hico First Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 151.

Trustee in Bankruptcy in Privity with Bankrupt. — O'Sullivan *v.* Douglass, (Ky. 1907) 98 S. W. 990.

756. 3. Page *v.* Garver, 5 Cal. App. 383, 90 Pac. 481. See also Stuber *v.* Louisville, etc., R. Co., 113 Tenn. 305, 87 S. W. 411.

Heirs Taking Title Pendente Lite are bound by the proceedings and orders made in a cause begun against their intestate. Shields *v.* Lorg, 129 Ill. App. 266.

4. **Death of Decedent Before Judgment.** — Brammer *v.* Norfolk, etc., R. Co., (Va. 1907) 57 S. E. 593.

5. Coram *v.* Ingersoll, (C. C. A.) 148 Fed. 169, *reversing* 136 Fed. 689; Jewett *v.* Schmidt, 108 N. Y. App. Div. 322, 95 N. Y. Supp. 631.

7. Carlisle *v.* Farrow, 74 S. Car. 527, 54 S. E. 766; *In re* Pearce, (Tex. Civ. App. 1906) 96 S. W. 1094.

8. Ogleboy *v.* Tippecanoe L. & T. Co., (Ind. App. 1907) 82 N. E. 494; Brock *v.* Kirkpatrick, 72 S. Car. 491, 52 S. E. 592.

754. 1. Pryor *v.* Winter, 147 Cal. 554, 82 Pac. 202.

5. **Trustees under a Will with Power of Sale.** — McDevitt *v.* Bryant, 104 Md. 187, 64 Atl. 931.

6. Matter of Catlin, (Surrogate Ct.) 57 Misc. (N. Y.) 269, 109 N. Y. Supp. 542.

9. McSwain *v.* Ricketson, 129 Ga. 176, 58 S. E. 655; Deal *v.* Sexton, 144 N. Car. 157, 56 S. E. 691 (posthumous child).

755. 1. Wheatley *v.* Glover, 125 Ga. 710, 54 S. E. 626; Francis *v.* Hazlett, 192 Mass. 137, 78 N. E. 405; Converse *v.* Ayer, (Mass. 1908) 84 N. E. 98; Williams *v.* Jones, (Tex. Civ. App. 1907) 106 S. W. 755.

Judgments Obtained by Fraud or Collusion are not conclusive against the stockholders even in collateral proceedings. Gund *v.* Ballard, 73 Neb. 547, 103 N. W. 309.

2. Central of Georgia R. Co. *v.* Alabama Commission, 161 Fed. 926 (judgment against railroad commissioners binding on the public); Montgomery *v.* Walker, (Ala. 1908) 45 So. 586. See also Adel *v.* Woodall, 122 Ga. 535, 50 S. E. 481; Baker *v.* Cartersville, 127 Ga. 221, 56 S. E. 249 (validity of bond issue); Sampson *v.* Highway Com'rs, 115 Ill. App. 443; Sheibley *v.* Fales, (Neb. 1908) 116 N. W. 1035; Giblin *v.* North Wisconsin Lumber Co., 131 Wis. 261, 111 N. W. 499.

Constitutionality of Laws Regulating Public Corporations. — Richman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 216, 100 N. Y. Supp. 81, *affirmed* 186 N. Y. 209, 78 N. E. 871; Grossman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 242, 100 N. Y. Supp. 100.

3. Healey *v.* Deering, 231 Ill. 423, 83 N. E. 226; *In re* Gurdy, (Me. 1907) 69 Atl. 546.

5. Wheeler *v.* Aberdeen, 45 Wash 63, 87 Pac. 1061, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 751 [755].

8. Seattle *v.* Sanlez, (Wash. 1907) 92 Pac. 140.

757. 6. Chapman *v.* Moore, 151 Cal. 509, 91 Pac. 324, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 757; Calkins *v.* Custer City First Nat. Bank, (S. Dak. 1906) 107 N. W. 675; McMillan *v.* Walker, (Wash. 1908) 93 Pac. 520.

When Admissible. — See Minnesota Debenture Co. *v.* Johnson, 94 Minn. 150, 102 N. W. 381.

758. 2. Kaufer *v.* Ford, 100 Minn. 49, 110 N. W. 364.

5. American Percheron Horse Breeders Assoc. *v.* American Percheron Horse Breeders, etc., Assoc., 114 Ill. App. 136; Kaufer *v.* Ford, 100 Minn. 49, 110 N. W. 364. See also Wabash R. Co. *v.* Adelbert College, 208 U. S. 38, 28 U. S. Sup. Ct. 182, *reversing* (Ohio 1906) 78 N. E. 1141.

Must Be Honest Prosecution of Suit. — Simpson County *v.* Buckley, 85 Miss. 713, 38 So. 104. *Compare* Healy *v.* Deering, 231 Ill. 423, 83 N. E. 226.

759. 3. Davenport *v.* Bearden, (Tex. Civ. App. 1908) 108 S. W. 474.

5. Downey *v.* Seib, 185 N. Y. 427, 78 N. E. 66, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 759.

7. Pinkney *v.* Weaver, 115 Ill. App. 582, *affirmed* 216 Ill. 185, 74 N. E. 714; Bernard *v.* Bernard, (S. Car. 1908) 60 S. E. 700; Hunt *v.* Gower, (S. Car. 1908) 61 S. E. 218. *Contra,* Murphy *v.* Cole, (Md. 1908) 68 Atl. 615; Downey *v.* Seib, 185 N. Y. 427, 78 N. E. 66; Tonnele *v.* Wetmore, (Supm. Ct. App. Div.) 109 N. Y. Supp. 349.

8. Suburban Co. *v.* Turner, 105 Va. 456, 54 S. E. 20.

760. 1. Fleming *v.* Ross, 225 Ill. 149, 80

N. E. 92, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 760, and *affirming* 125 Ill. App. 265.

761. 3. Blythe *v.* Cordingly, 20 Colo. App. 508, 80 Pac. 495; Fleming *v.* Ross, 225 Ill. 149, 80 N. E. 92, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.), and *affirming* 125 Ill. App. 265; Fox *v.* Clemmons, (Ky. 1907) 99 S. W. 641.

762. 5. **Evidence of Plaintiff's Claim.** — Hofferberth *v.* Nash, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 328, 98 N. Y. Supp. 684.

763. 4. Moore *v.* Chattanooga Electric R. Co., (Tenn. 1908) 109 S. W. 497.

A Judgment against One Joint Maker for the interest due on a note is not a bar to a subsequent action against all the makers for the amount of the note itself. Davis *v.* Schmidt, 126 Wis. 461, 106 N. W. 119.

5. Davis *v.* Schmidt, 126 Wis. 461, 106 N. W. 119.

764. 1. King *v.* Arney, 114 Ill. App. 141.

3. See Taylor *v.* Sartorious, (Mo. App. 1908) 108 S. W. 1089, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 764.

5. Johnson *v.* McKenna, (N. J. 1907) 67 Atl. 395; Johnston *v.* O'Reilly, (N. J. 1908) 70 Atl. 312; Parks *v.* New York, 111 N. Y. App. Div. 836, 98 N. Y. Supp. 94.

765. 1. McCoy *v.* Louisville, etc., R. Co., 146 Ala. 333, 40 So. 106; Jones *v.* Allen, 38 Colo. 512, 88 Pac. 387; Reno *v.* Thompson, 111 N. Y. App. Div. 316, 97 N. Y. Supp. 744; Parks *v.* New York, 111 N. Y. App. Div. 836, 98 N. Y. Supp. 94, *affirmed* 187 N. Y. 555, 80 N. E. 1115.

2. Three States Lumber Co. *v.* Blanks, 118 Tenn. 627, 102 S. W. 79.

3. *United States.* — Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314.

California. — Koehler *v.* Holt Mfg. Co., 146 Cal. 335, 80 Pac. 73; *In re* Harrington, 147 Cal. 124, 81 Pac. 546; Davidson *v.* Baldwin, 2 Cal. App. 733, 84 Pac. 238; Stockton Sav., etc., Soc. *v.* Saddlemire, 3 Cal. App. 525, 86 Pac. 723; People *v.* Wilson, (Cal. App. 1907) 91 Pac. 661; Nemo *v.* Farrington, (Cal. App. 1908) 94 Pac. 874, *rehearing denied* (Cal. 1908) 94 Pac. 877.

Colorado. — Hinsdale County *v.* Mineral County, 38 Colo. 433, 88 Pac. 436; O'Brien *v* King, (Colo. 1907) 92 Pac. 945.

District of Columbia. — Blachford *v.* Wilder, 28 App. Cas. (D. C.) 535.

Georgia. — Brown *v.* Bonds, 125 Ga. 833, 54 S. E. 933; McLendon *v.* Shumate, 128 Ga. 526, 57 S. E. 886.

Illinois. — Wilcoxon *v.* Wilcoxon, 230 Ill. 93, 82 N. E. 584; Galt *v.* Nevitt, 116 Ill. App. 308; Keeley Brewing Co. *v.* Mason, 116 Ill. App. 603.

Indiana. — Whitesell *v.* Strickler, 167 Ind. 602, 78 N. E. 845, *affirming* 73 N. E. 153.

Iowa. — Beh *v.* Bay, 127 Iowa 246, 103 N. W. 119; Potter *v.* Ft. Madison L. & T. Bldg. Assoc., 133 Iowa 367, 110 N. W. 616.

Kansas. — State *v.* Leavenworth, (Kan. 1907) 90 Pac. 237; Greenwell *v.* Moffett, (Kan. 1908) 93 Pac. 609.

Louisiana. — Froelicher *v.* Southern Marine Works, (La. 1908) 46 So. 570; Metropolitan Bank *v.* Times-Democrat Pub. Co., (La. 1908) 46 So. 622.

Michigan. — Hall *v.* Kalamazoo, 141 Mich. 503, 104 N. W. 689, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 765.

Minnesota. — Kaufer *v.* Ford, 100 Minn. 49, 110 N. W. 364.

Nebraska. — Lincoln *v.* Lincoln St. R. Co., 75 Neb. 523, 106 N. W. 317; Lowe *v.* Prospect Hill Cemetery Assoc., 75 Neb. 85, 106 N. W. 429, *adhered to* in 108 N. W. 978; S. D. Mercer Co. *v.* Omaha, (Neb. 1906) 107 N. W. 565.

New Hampshire. — State *v.* Corron, 73 N. H. 434, 62 Atl. 1044.

New York. — Sutherland *v.* Rochester, 189 N. Y. 198, 82 N. E. 171, *reversing* 112 N. Y. App. Div. 712, 98 N. Y. Supp. 970; Roach *v.* Curtis, (County Ct.) 50 Misc. (N. Y.) 122, 100 N. Y. Supp. 411, *affirmed* 115 N. Y. App. Div. 765, 101 N. Y. Supp. 333; Ferguson *v.* Bien, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 88, 104 N. Y. Supp. 715; Jacob *v.* Columbia Storage Warehouses, (Supm. Ct. App. Div.) 109 N. Y. Supp. 1015.

Ohio. — Simpson *v.* Simpson, 29 Ohio Cir. Ct. 503.

Oklahoma. — Day County *v.* State, (Okla. 1907) 91 Pac. 699.

Texas. — Delaney *v.* West, (Tex. Civ. App. 1905) 88 S. W. 275.

Utah. — Jensen *v.* Montgomery, 29 Utah 89, 80 Pac. 504.

Washington. — Vulcan Iron Works *v.* Kent Lumber Co., 39 Wash. 435, 81 Pac. 913; Cuschner *v.* Longbehn, 44 Wash. 546, 87 Pac. 817; State *v.* Fairley, 45 Wash. 52, 87 Pac. 1052.

So Matter Pleaded as a Set-off or Counterclaim. — Hogle *v.* Smith, (Iowa 1907) 113 N. W. 556.

Decisions on Question of Jurisdiction Are within the Doctrine of Res Judicata. — Baltimore, etc., R. Co. *v.* Freeze, (Ind. 1906) 82 N. E. 761.

Matters Admitted because not put in issue by the answer are *res judicata*. Hughes *v.* Chicago, etc., R. Co., 126 Wis. 525, 106 N. W. 526.

Judgment Must Be Antagonistic. — A judgment can only be pleaded as a bar to a claim which is antagonistic to it. Clark *v.* Raison, (Ky. 1907) 104 S. W. 342.

766. 1. Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477; Cotter *v.* Boston, etc., R. Co., 190 Mass. 302, 76 N. E. 910; Hubbard *v.* Gould, (N. H. 1906) 64 Atl. 668; Meyerhoffer *v.* Baker, 121 N. Y. App. Div. 797, 106 N. Y. Supp. 718, *reversing* (Supm. Ct. App. T.) 51 Misc. (N. Y.) 598, 101 N. Y. Supp. 24, on another point; Pierson *v.* Hughes, (Supm. Ct. App. T.) 102 N. Y. Supp. 528.

2. *United States.* — Delaware, etc., R. Co. *v.* Kutter, (C. C. A.) 147 Fed. 51; *In re* Beele *v.* Fourche First Nat. Bank, (C. C. A.) 152 Fed. 64.

Alabama. — Wilkinson *v.* Lehman-Durr Co., (Ala. 1906) 43 So. 857.

California. — *In re* Bell, (Cal. 1908) 95 Pac. 372.

District of Columbia. — Horine *v.* Wende, 29 App. Cas. (D. C.) 415.

Georgia. — Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 766; Kelly, etc., Co. *v.* Moore, 128 Ga. 683, 58 S. E. 181, *quoting* 24 AM. AND

Eng. Encyc. of Law (2d ed.) 766; Baker *v.* Carterville, 127 Ga. 221, 56 S. E. 249.

Illinois. — People *v.* Schafer, 228 Ill. 17, 81 N. E. 785.

Iowa. — School Tp. *v.* Independent School Dist., 134 Iowa 349, 112 N. W. 5.

Kansas. — Bleakley *v.* Barclay, 75 Kan. 462, 89 Pac. 1076.

Michigan. — Hall *v.* Kalamazoo, 141 Mich. 503, 104 N. W. 689, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 766.

New York. — Hudson Valley R. Co. *v.* Boston, etc., R. Co., 106 N. Y. App. Div. 375, 94 N. Y. Supp. 545, *affirming* (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 520, 92 N. Y. Supp. 928; Jacob *v.* Oyster Bay, 109 N. Y. App. Div. 630, 96 N. Y. Supp. 626; Ferguson *v.* Bien, (N. Y. City Ct. Spec. T.) 54 Misc. (N. Y.) 88, 104 N. Y. Supp. 715; Meyerhoffer *v.* Baker, 121 N. Y. App. Div. 797, 106 N. Y. Supp. 718, *reversing* (Supm. Ct. App. T.) 51 Misc. (N. Y.) 598, 101 N. Y. Supp. 24, on another point.

Ohio. — Dayton, etc., R. Co. *v.* Dayton, etc., Traction Co., 26 Ohio Cir. Ct. 1.

South Carolina. — Mitchell *v.* Cleveland, 76 S. Car. 432, 57 S. E. 33; Sarratt *v.* Gaffney Carpet Mfg. Co., 77 S. Car. 85, 57 S. E. 616.

Vermont. — Dietrich *v.* Deavitt, (Vt. 1908) 69 Atl. 661.

767. 1. **Adjudication that Civil Service Employee Had Not Acquiesced in His Discharge.** — Ransom *v.* Boston, (Mass. 1907) 81 N. E. 998.

Amount of Deficiency in Performance of Contract. — Bryant *v.* Turner, (Supm. Ct. App. Div.) 110 N. Y. Supp. 596.

Authority of Executor to Foreclose Mortgage Given to Testator. — Power *v.* Snow, 75 Kan. 182, 88 Pac. 1083.

Breach of Warranty. — Fosdick *v.* Forbes, 120 Ill. App. 226.

Character of Indebtedness in Bankruptcy. — Harper *v.* Rankin, (C. C. A.) 141 Fed. 626, *affirming* (C. C. A.) 133 Fed. 670.

Character of Work Done under Contract. — Martin *v.* Rockland Lake Trap Rock Co., (Supm. Ct. Tr. T.) 103 N. Y. Supp. 947; Weisinger *v.* Rosenberg, (Supm. Ct. App. T.) 108 N. Y. Supp. 1065.

Contruction of Contract. — Tanenbaum *v.* Federal Match Co., 111 N. Y. App. Div. 416, 97 N. Y. Supp. 1101.

Existence and Validity of Debts or Demands. — Goldstein *v.* Drysdale, (Ala. 1906) 42 So. 744; Turk *v.* Ritchie, 104 Va. 587, 52 S. E. 361.

Knowledge of Illegality of Contract. — People *v.* Mercantile Co-operative Bank, 104 N. Y. App. Div. 219, 93 N. Y. Supp. 521.

Ownership of Bond and Mortgage. — Ellis *v.* Cole, 105 N. Y. App. Div. 48, 94 N. Y. Supp. 1 [illegible].

Performance of Contract. — Taylor *v.* Silliman, (Tex. Civ. App. 1908) 108 S. W. 1011.

Rate of Commissions under Contract. — Potash *v.* Utopia Land Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 402, 95 N. Y. Supp. 571.

Right to Redeem. — Sturgeon *v.* Mudd, 190 Mo. 200, 88 S. W. 630.

Validity of Attachment. — McGill *v.* Fuller, 45 Wash. 615, 88 Pac. 1038.

Validity of Contract with a Town. — McKie *v.* Rose, 140 Fed. 145.

Validity of Lease. — Harvin *v.* Blackman, (La. 1908) 46 So. 525.

Validity of a Marriage. — Burgess *v.* Stribling, 144 Mich. 532, 108 N. W. 421.

Validity of Municipal and County Bonds — Judgments Sustaining Validity. — Baker *v.* Cartersville, 127 Ga. 221, 56 S. E. 249 (action to enjoin issuing of bonds).

Validity of Notes. — Simpson *v.* Adams, (Ky. 1908) 106 S. W. 819.

Validity of Will. — *In re* Brown, (Iowa 1908) 117 N. W. 260.

Want of Knowledge of Mental Capacity of Grantor. — Sbarbero *v.* Miller, (N. J. 1907) 65 Atl. 472.

772. 1. Linton *v.* Safe Deposit, etc., Co., 147 Fed. 824; *In re* Wilson, 147 Cal. 108, 81 Pac. 313; Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Herring *v.* Mosher, 144 Mich. 152, 107 N. W. 917; Gilcreast *v.* Bartlett, (N. H. 1906) 64 Atl. 767; *In re* Locust Ave., (N. Y. 1906) 77 N. E. 1012, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 768 [772]; Brown *v.* McKie, 185 N. Y. 303, 78 N. E. 64, *affirming* 98 N. Y. App. Div. 554, 90 N. Y. Supp. 250; Heilner *v.* Smith, (Oregon 1907) 88 Pac. 299; Jackson *v.* Thompson, 215 Pa. St. 209, 64 Atl. 421; Brown *v.* Hollister, (S. Dak. 1907) 111 N. W. 564.

A Verdict and Judgment Are Conclusive only as to facts without the existence and proof or admission of which they could not have been rendered. Sbarbero *v.* Miller, (N. J. 1907) 65 Atl. 472.

2. Excelsior Coal Co. *v.* Gildersleeve, (C. C. A.) 160 Fed. 47; Emerson *v.* Yosemite Gold Min., etc., Co., 149 Cal. 50, 85 Pac. 122; Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Krause *v.* Nolte, 217 Ill. 298, 75 N. E. 362; Jackson *v.* Thompson, 215 Pa. St. 209, 64 Atl. 421.

773. 1. *United States.* — Doyle *v.* Cincinnati, etc., R. Co., 148 Fed. 322.

Alabama. — Mobile Transp. Co. *v.* Mobile, (Ala. 1907) 44 So. 976.

California. — Shively *v.* Eureka Tellurium Gold Min. Co., 5 Cal. App. 236, 89 Pac. 1073.

Idaho. — Kester *v.* Schuldt, 11 Idaho 663, 85 Pac. 974.

Illinois. — Chicago *v.* McCartney, 216 Ill. 377, 75 N. E. 117; Schroeder *v.* Bozarth, 224 Ill. 310, 79 N. E. 583; Teel *v.* Dunnihoo, 230 Ill. 476, 82 N. E. 844; Bradford *v.* Abbott, 127 Ill. App. 6; Abbott *v.* Abbott, 127 Ill. App. 11.

Louisiana. — Arcadia Cotton Oil, etc., Co. *v.* Fisher, (La. 1908) 46 So. 28.

Maryland. — Horner *v.* Bell, 105 Md. 113, 66 Atl. 39.

Massachusetts. — Harrington *v.* Harrington, 189 Mass. 281, 75 N. E. 632.

Michigan. — Port Huron *v.* Wright, 150 Mich. 279, 114 N. W. 76.

New York. — Roach *v.* Curtis, 191 N. Y. 387, 84 N. E. 283, *affirming* 115 N. Y. App. Div. 765, 101 N. Y. Supp. 333, *which affirmed* (County Ct.) 50 Misc. (N. Y.) 122, 100 N. Y. Supp. 411; New York *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 913.

North Dakota. — Carter *v.* Carter, 14 N. Dak. 66, 103 N. W. 425.

Pennsylvania. — Piro *v.* Shipley, 33 Pa. Super. Ct. 278.

South Dakota. — Brown *v.* Hollister, (S. Dak. 1907) 111 N. W. 564.

775. 1. Schwarz *v.* Kennedy, 142 Fed. 1027; Hooper *v.* Pierce, (Ala. 1907) 44 So. 108; Laws *v.* Newkirk, 39 Colo. 78, 88 Pac. 861. See also Parrish *v.* Mills, (Tex. Civ. App. 1907) 102 S. W. 184.

So When Several Defenses Pleaded. — Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 775.

2. Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 775.

3. *United States.* — Werckmeister *v.* American Tobacco Co., 138 Fed. 162, *affirmed* (C. C. A.) 148 Fed. 1022; Bagley *v.* General Fire Extinguisher Co., (C. C. A.) 150 Fed. 284; West *v.* Octoraro Water Co., 159 Fed. 528.

California. — Visalia Bank *v.* Smith, 146 Cal. 398, 81 Pac. 542; *In re* Wells, (Cal. App. 1908) 94 Pac. 856; *In re* Wickersham, (Cal. 1908) 96 Pac. 311.

Connecticut. — *In re* Nichols, 78 Conn. 429, 62 Atl. 610.

Georgia. — Halliday *v.* Stewart County Bank, 128 Ga. 639, 58 S. E. 169.

Illinois. — Krause *v.* Nolte, 217 Ill. 298, 75 N. E. 362, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 775; Connolly *v.* Dammann, 232 Ill. 175, 83 N. E. 531.

Indiana. — Elkhart Paper Co. *v.* Fulkerson, 36 Ind. App. 219, 75 N. E. 283; Roberts *v.* Lentzke, (Ind. App. 1906) 78 N. E. 635.

Iowa. — Stern *v.* Selleck, (Iowa 1907) 111 N. W. 451.

Kentucky. — Home Ins. Co. *v.* Ballew, (Ky. 1906) 96 S. W. 878; Wilson *v.* Tye, (Ky. 1907) 102 S. W. 856.

Louisiana. — Sharp *v.* Zeller, 114 La. 549, 38 So. 449.

Michigan. — Reed *v.* Whipple, 140 Mich. 7, 103 N. W. 548.

Minnesota. — Alexander *v.* Thompson, 101 Minn. 5, 111 N. W. 385.

Nebraska. — State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422; Wetherell *v.* Adams, (Neb. 1908) 116 N. W. 861.

New Hampshire. — Winnipiseogee Lake Cotton, etc., Mfg. Co. *v.* Lacoma, 74 N. H. 82, 65 Atl. 378.

New York. — Griffen *v.* Reese, 187 N. Y. 454, 80 N. E. 367, *modifying* 115 N. Y. App. Div. 264, 100 N. Y. Supp. 903; Genet *v.* Delaware, etc., Canal Co., 109 N. Y. App. Div. 733, 96 N. Y. Supp. 406; Gutfreund *v.* Standard L., etc., Ins. Co., (Supm. Ct. App. T.) 98 N. Y. Supp. 699; Frank *v.* Miller, 116 N. Y. App. Div. 855, 102 N. Y. Supp. 277; Rothstein *v.* Steinbugler, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 552, 102 N. Y. Supp. 470; Vogt *v.* Vogt, 119 N. Y. App. Div. 518, 104 N. Y. Supp. 164; Lewisohn *v.* Lansing Co., 119 N. Y. App. Div. 393, 104 N. Y. Supp. 543, *reversing* (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 274, 100 N. Y. Supp. 1077, on other grounds; Matter of Froelich, 122 N. Y. App. Div. 440, 107 N. Y. Supp. 173, *modifying* (Surrogate Ct.) 50 Misc. (N. Y.) 103, 100 N. Y. Supp. 436; Cochrane *v.* Alexandre, (Surrogate Ct.) 56 Misc. (N. Y.) 212, 107 N. Y. Supp. 587; American Radiator Co. *v.* New York, 123 N. Y. App. Div. 483, 107 N. Y. Supp. 1098.

North Carolina. — Scott *v.* Mutual Reserve Fund L. Assoc., 137 N. Car. 515, 50 S. E. 221.

North Dakota. — Ross *v.* Prante, (N. Dak. 1908) 115 N. W. 833; Skeffington *v.* Prante, (N. Dak. 1908) 115 N. W. 834.

Oregon. — Roots *v.* Boring Junction Lumber Co., (Oregon 1907) 92 Pac. 811.

Texas. — Moore *v.* Snowball, 98 Tex. 16 81 S. W. 5, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 775; Morgan *v.* Tims, (Tex. Civ. App. 1906) 97 S. W. 832.

Washington. — Johnson *v.* Shuey, 40 Wash. 22, 82 Pac. 123; O'Brien *v.* Allen, 42 Wash. 393, 85 Pac. 8.

Wisconsin. — Seifen *v.* Racine, 129 Wis. 343, 109 N. W. 72; *In re* Hanlin, (Wis. 1907) 113 N. W. 411.

Matters Not Put in Issue by Pleadings but Litigated by Consent, Etc. — Howard *v.* Sontag, (Supm. Ct. App. T.) 110 N. Y. Supp. 933.

776. 1. Wadley *v.* Leggitt, 82 Ark. 262, 101 S. W. 720; *In re* Wickersham, (Cal. 1908) 96 Pac. 311; Krause *v.* Nolte, 217 Ill. 298, 75 N. E. 362, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 776; Chicago *v.* McCartney, 216 Ill. 377, 75 N. E. 117; McKenzie *v.* Donnell, 208 Mo. 46, 106 S. W. 40; *In re* Brown, (Iowa 1908) 117 N. W. 260; Sbarbero *v.* Miller, (N. J. 1907) 65 Atl. 472; Three States Lumber Co. *v.* Blanks, 118 Tenn. 627, 102 S. W. 70; Putney Bros. Co. *v.* Milwaukee Light, etc., Co., (Wis. 1908) 114 N. W. 809.

777. 1. Laguna Drainage Dist. *v.* Charles Martin Co., 5 Cal. App. 166, 89 Pac. 993; Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 777; Hudson *v.* Remington Paper Co., 71 Kan. 300, 80 Pac. 568, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 777; Mostetler *v.* Holborn, (S. Dak. 1908) 114 N. Dak. 693. See also Cockerline *v.* Fisher, 140 Mich. 95, 103 N. W. 522.

2. Glass *v.* Basin, etc., Min. Co., 35 Mont. 567, 90 Pac. 753, *reversing* 34 Mont. 88, 85 Pac. 746.

3. Vicksburg *v.* Vicksburg Waterworks Co., 206 U. S. 496, 27 U. S. Sup. Ct. 762; Chicago *v.* Gage, 232 Ill. 169, 83 N. E. 663; State *v.* Leavenworth, (Kan. 1907) 90 Pac. 237, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 777; Perrin *v.* Crescent City Stockyard, etc., Co., 119 La. 873, 44 So. 513, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 777; Buttlar *v.* Buttlar, (N. J. 1906) 65 Atl. 485; Carmer *v.* Still, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 443, 103 N. Y. Supp. 247; Roach *v.* Curtis, 115 N. Y. App. Div. 765, 101 N. Y. Supp. 333, *affirming* (County Ct.) 50 Misc. (N. Y.) 122, 100 N. Y. Supp. 411; Duke *v.* Postal Tel. Cable Co., 71 S. Car. 95, 50 S. E. 675; Richey *v.* Beus, 31 Utah 262, 87 Pac. 903, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 777.

Status Presumed to Continue. — Mayer *v.* Kornegay, (Ala. 1907) 44 So. 839.

778. 1. Whittle *v.* Whittle, 5 Cal. App. 696, 91 Pac. 170; Missouri State L. Ins. Co. *v.* Lovelace, 1 Ga. App. 446, 58 S. E. 93; American Percheron Horse Breeders' Assoc. *v.* American Percheron Horse Breeders', etc., Assoc.,

111 Ill. App. 130; Smith *v.* Smith, 35 Ind. App. 610, 74 N. E. 1008; Creegan *v.* Hyman, (Miss. 1908) 46 So. 952, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 778; Perkins *v.* Goddin, 111 Mo. App. 429, 85 S. W. 936; Lincoln Trust Co. *v.* Nathan, 122 Mo. App. 319, 99 S. W. 484; Couch *v.* Harp, 201 Mo. 457, 100 S. W. 9; Pennebaker *v.* Parker, 33 Pa. Super. Ct. 458; McLennon *v.* Fenner, 19 S. Dak. 492, 104 N. W. 218.

Things Claimed Must Be the Same. — Hubert *v.* New Orleans, 116 La. 507, 40 So. 853.

2. Title to Different Parcels of Land. — Bird *v.* Winyer, 44 Wash. 264, 87 Pac. 259; W. K. Henderson Iron Works, etc., Co. *v.* Howard, 119 La. 555, 44 So. 296.

Mortgages on Different Parcels of Land. — Bake *v.* French, (1907) 1 Ch. 428.

Thing Demanded and Object of Judgment Must Be Identical. — Scovel *v.* Levy, 118 La. 982, 43 So. 642.

4. Clark *v.* Knox, 32 Colo. 342, 76 Pac. 372, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 778.

6. Coran *v.* Ingersoll, (C. C. A.) 148 Fed. 169, *reversing* 136 Fed. 689; Stitt *v.* Rat Portage Lumber Co., 101 Minn. 93, 111 N. W. 948; Huntzicker *v.* Crocker, (Wis. 1908) 115 N. W. 510.

779. 1. Stitt *v.* Rat Portage Lumber Co., 101 Minn. 93, 111 N. W. 948; O'Keefe *v.* William M. Barry Benev., etc., Assoc., (N. J. 1907) 66 Atl. 601; Manchester Home Bldg., etc., Assoc. *v.* Porter, 106 Va. 528, 56 S. E. 337; Lindemann *v.* Rusk, 125 Wis. 210, 104 N. W. 119.

4. Rule Not Applicable to Lease from Year to Year. — Snowhill *v.* Diamond Plate Glass Co., (Ind. App. 1906) 77 N. E. 412.

780. 2. **Identity of Issues Necessary** — *Arkansas.* — Kraft *v.* Moore, 76 Ark. 391, 89 S. W. 51.

Colorado. — Hickey *v.* Anheuser-Busch Brewing Assoc., 36 Colo. 386, 85 Pac. 838; Schneider *v.* Schneider, 36 Colo. 518, 86 Pac. 347; Kerr *v.* Burns, (Colo. 1908) 93 Pac. 1120; Moorhead *v.* Erie Min., etc., Co., (Colo. 1908) 96 Pac. 253.

Georgia. — Virginia-Carolina Chemical Co. *v.* Roberts, 2 Ga. App. 375, 58 S. E. 502.

Idaho. — Hilton *v.* Stewart, (Idaho 1908) 96 Pac. 579.

Iowa. — Lemon *v.* Sigourney Sav. Bank, 131 Iowa 79, 108 N. W. 104.

Kansas. — Bushey *v.* Hardin, 74 Kan. 285, 86 Pac. 146; Haggart *v.* Kansas City, (Kan. 1908) 94 Pac. 789.

Louisiana. — Schlater *v.* Le Blanc, (La. 1908) 46 So. 921.

Minnesota. — Kaaterud *v.* Gilbertson, 96 Minn. 66, 104 N. W. 763.

Michigan. — Lansing *v.* Michigan Cent. R. Co., 143 Mich. 48, 106 N. W. 692.

Nebraska. — Gering *v.* School Dist. No. 28, (Neb. 1906) 107 N. W. 250.

New York. — Matter of New York, 113 N. Y. App. Div. 84, 98 N. Y. Supp. 1063; Roach *v.* Curtis, 115 N. Y. App. Div. 765, 101 N. Y. Supp. 333, *affirming* (County Ct.) 50 Misc. (N. Y.) 122, 100 N. Y. Supp. 411.

Pennsylvania. — Kay *v.* Gray, 30 Pa. Super. Ct. 450.

Tennessee. — Stockley *v.* Cissna, (Tenn. 1907) 104 S. W. 792, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 780.

Utah. — Bonanza Consol. Min. Co. *v.* Golden Head Min. Co., 29 Utah 159, 80 Pac. 736.

Constitutionality of Statute. — The matter of the constitutionality of a statute is not *res judicata* because in another action for different reasons it was held to be constitutional. Hall *v.* Tarver, 128 Ga. 410, 57 S. E. 720.

3. A Judgment on an Account Stated is not a bar to a subsequent action for goods sold and delivered. Mincer *v.* Green, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 374, 94 N. Y. Supp. 15.

Neither is it a bar to an action for services rendered. Tuck *v.* Rottkowsky, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 386, 93 N. Y. Supp. 1112.

781. 1. Kidder *v.* Walker, 121 Ill. App. 546.

2. Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; Page *v.* Garver, 5 Cal. App. 383, 90 Pac. 481; Perrin *v.* Crescent City Stockyard, etc., Co., 119 La. 873, 44 So. 513, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 781; Kaaterud *v.* Gilbertson, 96 Minn. 66, 104 N. W. 763; Barber Asphalt Paving Co. *v.* Field, (Mo. App. 1906) 97 S. W. 179; Albuquerque First Nat. Bank *v.* Lewinson, 12 N. Mex. 147, 76 Pac. 288, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 781; Jackson *v.* Thompson, 215 Pa. St. 209, 64 Atl. 421; Stockley *v.* Cissna, (Tenn. 1907) 104 S. W. 792, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 780. *Compare* Kennedy *v.* New York, (Supm. Ct. App. Div.) 111 N. Y. Supp. 61.

3. *United States.* — Northern Pac. R. Co. *v.* Slaght, 205 U. S. 122, 27 U. S. Sup. Ct. 442, *affirming* 39 Wash. 576, 81 Pac. 1062; Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; U. S. Fastener Co. *v.* Bradley, 143 Fed. 523, *affirmed* (C. C. A.) 149 Fed. 222; Delaware, etc., R. Co. *v.* Kutter, (C. C. A.) 147 Fed. 51; The San Rafael, 149 Fed. 893; St. Louis, etc., R. Co. *v.* Wabash R. Co., (C. C. A.) 152 Fed. 849.

Alabama. — Montgomery Iron Works *v.* Roman, 147 Ala. 434, 41 So. 811; Drinkard *v.* Oden, (Ala. 1907) 43 So. 578.

California. — *In re* Harrington, 147 Cal. 124, 81 Pac. 546; Keller *v.* McGilliard, 5 Cal. App. 395, 90 Pac. 483; *In re* Bell, (Cal. 1908) 95 Pac. 372.

Colorado. — Grand Valley Irrigation Co. *v.* Fruita Imp. Co., 37 Colo. 483, 86 Pac. 324; Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20.

District of Columbia. — Blackford *v.* Wilder, 28 App. Cas. (D. C.) 535.

Florida. — Peacock *v.* Feaster, 52 Fla. 565, 42 So. 889.

Georgia. — McLendon *v.* Shumate, 128 Ga. 526, 57 S. E. 886; Fowler *v.* Davis, (Ga. App. 1907) 57 S. E. 939.

Illinois. — Thompson *v.* Hemenway, 218 Ill. 46, 75 N. E. 791; Hemenway *v.* Thompson, 227 Ill. 146, 81 N. E. 52; Peacock *v.* Iron, etc., Pub. Co., 114 Ill. App. 463; Galt *v.* Nevitt, 116 Ill. App. 308.

Indiana. — Roberts *v.* Lentzke, (Ind. App. 1906) 78 N. E. 635; American Steel Dredge Works *v.* Com'rs, (Ind. App. 1907) 82 N. E. 1005.

Iowa. — Beh *v.* Bay, 127 Iowa 246, 103 N. W. 119; Crockett *v.* Crockett, 132 Iowa 388, 106 N. W. 944; Hogle *v.* Smith, (Iowa 1907) 113 N. W. [illegible]; Bowe *v.* Frink, (Iowa 1908) 114 N. W. 54[illegible].

Kentucky. — Hackney *v.* Hoover, (Ky. 1905) 87 S. W. 769; Havens *v.* Ahlerling, (Ky. 1906) 97 S. W. 344; Sumrall *v.* Maninni, (Ky. 1906) 98 S. W. 301; Brashears *v.* Frazier, (Ky. 1907) 99 S. W. 342; Reno *v.* Blackburn, (Ky. 1908) 106 S. W. 840.

Maryland. — Slingluff *v.* Hubner, 101 Md. 562, 61 Atl. 326; Hill *v.* McConnell, (Md. 1907) 68 Atl. 199.

Massachusetts. — Barnes *v.* Huntley, 188 Mass. 274, 74 N. E. 318; Cotter *v.* Boston, etc., R. Co., 190 Mass. 302, 76 N. E. 910; Corbett *v.* Craven, 193 Mass. 30, 78 N. E. 748.

Minnesota. — Kaufer *v.* Ford, 100 Minn. 49, 110 N. W. 364; Alexander *v.* Thompson, 101 Minn. 5, 111 N. W. 385.

Mississippi. — Thornton *v.* Natchez, 88 Miss. 1, 41 So. 498.

Missouri. — Barber Asphalt Paving Co. *v.* Field, (Mo. App. 1906) 97 S. W. 179; Spratt *v.* Early, 199 Mo. 491, 97 S. W. 925; Lincoln Trust Co. *v.* Nathan, 122 Mo. App. 319, 99 S. W. 484; Pond *v.* Huling, 125 Mo. App. 474, 101 S. W. 115, *distinguishing* Tootle *v.* Buckingham, 190 Mo. 183, 88 S. W. 619; Charles *v.* St. Louis, etc., R. Co., 124 Mo. App. 293, 101 S. W. 680; Summet *v.* City Realty, etc., Co., 208 Mo. 501, 100 S. W. 614; Ogden *v.* Chicago, etc., R. Co., (Mo. App. 1908) 111 S. W. 516. *Compare* Tootle *v.* Buckingham, 190 Mo. 183, 88 S. W. 619.

Nebraska. — Plattsmouth First Nat. Bank *v.* Gibson, 74 Neb. 232, 104 N. W. 174; *In re* Brown, (Iowa 1908) 117 N. W. 260.

New York. — Genet *v.* Delaware, etc., Canal Co., 109 N. Y. App. Div. 733, 96 N. Y. Supp. 406; Ziegler *v.* Freedman, 120 N. Y. App. Div. 344, 105 N. Y. Supp. 283; Matter of Menzie, (Surrogate Ct.) 54 Misc. (N. Y.) 188, 105 N. Y. Supp. 925; Maasch *v.* Grauer, (Supm. Ct. App. Div.) 108 N. Y. Supp. 54.

North Carolina. — Bunker *v.* Bunker, 140 N. Car. 18, 52 S. E. 237.

Oregon. — Roots *v.* Boring Junction Lumber Co., (Oregon 1907) 92 Pac. 811.

Pennsylvania. — Long *v.* Lebanon Nat. Bank, 211 Pa. St. 165, 60 Atl. 556.

Washington. — Compton *v.* Seattle, 38 Wash. 514, 80 Pac. 757, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 781; State *v.* Fairley, 45 Wash. 52, 87 Pac. 1052; Spokane Valley Land, etc., Co. *v.* Madsen, (Wash. 1907) 91 Pac. 1.

West Virginia. — Dent *v.* Pickens, 59 W. Va. 274, 53 S. E. 154.

Wisconsin. — Huntzicker *v.* Crocker, (Wis. 1908) 115 N. W. 340.

The Rule Applies only to such matters as might have been litigated under the issues as made by the pleadings in the case. Whitesell *v.* Strickler, 167 Ind. 602, 78 N. E. 845, *affirming* 73 N. E. 153.

782. 1. *United States.* — Gunter *v.* Atlantic Coast Line R. Co., 200 U. S. 273, 26 U. S. Sup. Ct. 252; Gila Bend Reservoir, etc., Co. *v.* Gila Water Co., 205 U. S. 279, 27 U. S. Supp. Ct. 495; U. S. Fastener Co. *v.* Bradley, Fed. 523, *affirmed* (C. C. A.) 149 Fed. 222; Estill County *v.* Embry, (C. C. A.) 144 Fed. 913; St. Louis, etc., R. Co. *v.* Wabash R. Co., (C. C. A.) 152 Fed. 849.

Arkansas. — Church *v.* Gallic, 76 Ark. 423, 88 S. W. 979; Livingston *v.* New England Mortg. Security Co., 77 Ark. 379, 91 S. W. 752; Hollingsworth *v.* McAndrews, 79 Ark. 185, 95 S. W. 485; Briggs *v.* Manning, 80 Ark. 304, 97 S. W. 289.

Georgia. — McLendon *v.* Shumate, 128 Ga. 526, 57 S. E. 886; Stewart *v.* Ellis, (Ga. 1908) 61 S. E. 597.

Kentucky. — Raymer *v.* White School Dist. No. 18, (Ky. 1906) 98 S. W. 323.

Louisiana. — Harvin *v.* Blackman, (La. 1908) 46 So. 525.

Maine. — Ætna L. Ins. Co. *v.* Tremblay, 101 Me. 585, 65 Atl. 22.

Minnesota. — Irish *v.* Daniels, 100 Minn. 189, 110 N. W. 968.

Missouri. — Lincoln Trust Co. *v.* Nathan, 122 Mo. App. 319, 99 S. W. 484.

Nebraska. — Lowe *v.* Prospect Hill Cemetery Assoc., 75 Neb. 85, 106 N. W. 429, *adhered to* in 108 N. W. 978.

New Hampshire. — Hubbard *v.* Gould, (N. H. 1906) 64 Atl. 668.

New York. — Goldberg *v.* Ziegler, (Supm. Ct. App. T.) 92 N. Y. Supp. 777.

Texas. — Cameron *v.* Jones, (Tex. Civ. App. 1905) 90 S. W. 1129.

West Virginia. — Dent *v.* Pickens, 59 W. Va. 274, 53 S. E. 154.

783. 1. Ætna L. Ins. Co. *v.* Tremblay, 101 Me. 585, 65 Atl. 22.

784. 1. **Failure to Claim Credit for Rents and Profits.** — Bradburn *v.* Roberts, (N. Car. 1908) 61 S. E. 617.

3. Nemo *v.* Farrington, (Cal. App. 1908) 94 Pac. 874, *rehearing denied* (Cal. 1908) 94 Pac. 877; Metropolitan Bank *v.* Times Democrat Pub. Co., (La. 1908) 46 So. 622; Keeney *v.* Fargo, 14 N. Dak. 423, 105 N. W. 93; Remilliard *v.* Anthier, (S. Dak. 1905) 105 N. W. 626.

Failure to Claim Prescriptive Water Rights. — Spring Hill Irrigation Co. *v.* Lake Irrigation Co., 42 Wash. 379, 85 Pac. 6.

4. *United States.* — Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; Delaware, etc., R. Co. *v.* Kutter, (C. C. A.) 147 Fed. 51; Water, etc., Co. *v.* Hutchinson, (C. C. A.) 160 Fed. 41, *reversing* 144 Fed. 256.

Colorado. — Grand Valley Irrigation Co. *v.* Fruita Imp. Co., 37 Colo. 483, 86 Pac. 324.

District of Columbia. — Blackford *v.* Wilder, 28 App. Cas. (D. C.) 535; Horine *v.* Wende, 29 App. Cas. (D. C.) 415.

Illinois. — Keeley Brewing Co. *v.* Mason, 116 Ill. App. 603.

Indiana. — Watt *v.* Barnes, (Ind. App. 1908) 84 N. E. 158.

Kansas. — Hudson *v.* Remington Paper Co., 71 Kan. 300, 80 Pac. 568, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 784.

Massachusetts. — Corbett *v.* Craven, 193 Mass. 30, 78 N. E. 748.

Michigan. — Burgess *v.* Stribling, 144 Mich. 532, 108 N. W. 421.

Missouri. — Barber Asphalt Paving Co. *v.*

Field, (Mo. App. 1906) 97 S. W. 179; Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202.

Nebraska. — Douglas *v.* Smith, 75 Neb. 109, 106 N. W. 173; Gering *v.* School Dist. No. 28, (Neb. 1906) 107 N. W. 250.

New York. — Griffen *v.* Keese, 184 N. Y. 454, 80 N. E. 367, *modifying* 100 N. Y. Supp. 1001.

North Dakota. — Carter *v.* Carter, 14 N. Dak. 66, 103 N. W. 425.

Oregon. — Heilner *v.* Smith, (Oregon 1907) 88 Pac. 299; Roots *v.* Boring Junction Lumber Co., (Oregon 1907) 92 Pac. 811.

South Carolina. — Kirven *v.* Virginia-Carolina Chemical Co., 77 S. Car. 493, 58 S. E. 424.

South Dakota. — Mostetter *v.* Holborn, (S. Dak. 1908) 114 N. W. 693.

Wisconsin. — Lindemann *v.* Rusk, 125 Wis. 210, 104 N. W. 119; Pereles *v.* Gross, 126 Wis. 122, 105 N. W. 217; Davis *v.* Schmidt, 126 Wis. 461, 106 N. W. 119; State *v.* Hinckel, 131 Wis. 103, 111 N. W. 217; Huntzicker *v.* Crocker, (Wis. 1908) 115 N. W. 340.

Where the Subject-matter Is Different the judgment is not a bar, but, the parties being the same, it is conclusive proof of any fact at issue and adjudged on the merits. Louisville Gas Co. *v.* Kentucky Heating Co., (Ky. 1908) 111 S. W. 374.

The Recovery of Damages as for Mesne Rents and Profits, in an action for possession and to declare a forfeiture, is no bar to an action for rents under the lease. Linke *v.* Walcutt, 26 Ohio Cir. Ct. 10, *affirmed* (Ohio 1903) 70 N. E. 1125.

Taxes. — A suit to enjoin the collection of taxes for one year is not a bar to a suit to enjoin similar taxes for another year. Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251.

But where the ground for the injunction was the impairment of a contract right the decision was held to be *res judicata* as to future taxes. Hartwell *v.* Havighorst, 196 U. S. 635, 25 U. S. Sup. Ct. 793, *affirming* 11 Okla. 189, 66 Pac. 337.

785. 2. Riddle *v.* McLester-Van Hoose Co., 145 Ala. 307, 40 So. 101; New England Mortg. Security Co. *v.* Fry, 143 Ala. 637, 42 So. 57; Ferguson *v.* Epperly, 127 Iowa 214, 103 N. W. 94; Conly *v.* Scanlin, (Iowa 1906) 109 N. W. 300; Truesdale *v.* Brady, (Ky. 1907) 105 S. W. 122; Summet *v.* City Realty, etc., Co., 208 Mo. 501, 106 S. W. 614; Shakespeare *v.* Caldwell Land, etc., Co., 144 N. Car. 516, 57 S. E. 213; Seiber *v.* Johnson Mercantile Co., (Tex. Civ. App. 1905) 90 S. W. 516.

Where the Defendant Pleads a Counterclaim but fails to appear at the trial and does not withdraw the plea thus putting the plaintiff to his proof it is held that the judgment is *res judicata* as to a subsequent action by the defendant upon the facts stated in the counterclaim. Groton Bridge, etc., Co. *v.* Clark Pressed Brick Co., (C. C. A.) 136 Fed. 27, *affirming* 126 Fed. 552.

Where the counterclaim is pleaded and judgment is given to the plaintiff for the full [illegible] bar to any further action by the defendant to recover on the counterclaim. Berman *v.* Henry N. Clark Co., 194 Mass. 248, 80 N. E. 480.

The Same Counterclaim cannot be pleaded in different actions. Case Mfg. Co. *v.* Moore, 144 N. Car. 527, 57 S. E. 213.

3. See concurring opinion of Woods, J., in Kirven *v.* Virginia-Carolina Chemical Co., 77 S. Car. 493, 58 S. E. 424, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 785.

786. 5. Sanders *v.* Hamilton, 96 L. T. N. 679, 23 Times L. Rep. 389; Hogle *v.* Smith, (Iowa 1907) 113 N. W. 556; Murray *v.* Butte, 35 Mont. 161, 88 Pac. 789; Darrow *v.* Clipper Mfg. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 635, 96 N. Y. Supp. 194; Maasch *v.* Grauer, (Supm. Ct. App. Div.) 108 N. Y. Supp. 54; Eller *v.* Carolina, etc., R. Co., 140 N. Car. 140, 52 S. E. 305; Texas, etc., R. Co. *v.* Scoggin, (Tex. Civ. App. 1906) 95 S. W. 651; Brechlin *v.* Night Hawk Min. Co., (Wash. 1908) 94 Pac. 928, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 786.

Action to Compel Listing of Property for Taxation. — Com. *v.* Bacon, (Ky. 1907) 102 S. W. 839.

Split Causes of Action by Consent. — Dickinson *v.* Tyson, 125 N. Y. App. Div. 735, 110 N. Y. Supp. 269.

787. 1. Chicago *v.* Duffy, 117 Ill. App. 261, *affirmed* 218 Ill. 242; Bircher *v.* Boemler, 204 Mo. 554, 103 S. W. 40; Paton *v.* Doyne, (N. J. 1907) 65 Atl. 843; Howard *v.* Hunter, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 576, 99 N. Y. Supp. 542; Dickinson *v.* Tyson, 125 N. Y. App. Div. 735, 110 N. Y. Supp. 269; Sweeney *v.* Waterhouse, 43 Wash. 613, 86 Pac. 946; Collins *v.* Gleason, (Wash. 1907) 91 Pac. 566.

Judgment on Part of Book Account Is Bar to Balance. — Williams-Abbott Electric Co. *v.* Model Electric Co., 134 Iowa 665, 112 N. W. 181.

2. Pakas *v.* Hollingshead, 184 N. Y. 211, 77 N. E. 40, *affirming* 99 N. Y. App. Div. 472, 86 N. Y. Supp. 560, 91 N. Y. Supp. 1105.

788. 1. Carmean *v.* North American Transp., etc., Co., 45 Wash. 446, 88 Pac. 834.

2. Linville *v.* Green, 125 Mo. App. 289, 102 S. W. 67; Painter *v.* Norfolk, etc., R. Co., 144 N. Car. 436, 57 S. E. 151.

Destruction of Property and Destruction of Life by Same Tortious Act. — Cole *v.* Illinois Cent. R. Co., 120 Ky. 686, 87 S. W. 1082.

A Recovery in Replevin. — Jackson *v.* Morgan, 167 Ind. 528, 78 N. E. 633.

3. Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 058.

789. 2. Riddle *v.* McLester-Van Hoose Co., 145 Ala. 307, 40 So. 101.

3. Johnson *v.* Herold, 161 Fed. 598; Mackenzie *v.* Porter, (Colo. 1907) 91 Pac. 916; Louisville Gas Co. *v.* Kentucky Heating Co., (Ky. 1908) 111 S. W. 374; H. W. Wilson Co. *v.* Farnham, 97 Minn. 153, 106 N. W. 342; Koppang *v.* Steenerson, 100 Minn. 239, 111 N. W. 153; Eisenberg *v.* Thorne, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 617, 96 N. Y. Supp. 1020.

Causes Arising from Both Contract and Tort. — Dodd *v.* Pittsburg, etc., R. Co., (Ky. 1908) 106 S. W. 787; Morgan *v.* Waters, 122 N. Y. App. Div. 340, 106 N. Y. Supp. 882; Woodman *v.* Blue Grass Land Co., 98 Minn.

27, 107 N. W. 1052; Linder *v.* Rowland, 122 Ga. 425, 50 S. E. 124.

Renewal Notes. — Ritchie County Bank *v.* Bee, (W. Va. 1907) 59 S. E. 181.

Where the Defendant Gave a Note for Part of an Account Due it was held that a recovery on the note was not a bar to a subsequent action for the balance of the account. Eberside *v.* Daniel, 146 Ala. 506, 40 So. 614.

In Kentucky an adjudication involving the taxes for one year cannot be pleaded as an estoppel in suits involving taxes for other years. Covington *v.* Highlands Dist., (Ky. 1908) 110 S. W. 338.

5. Wheless *v.* Serrano, 121 Mo. App. 17, 98 S. W. 108.

790. 1. Love *v.* Flitcraft, 149 Mich. 149, 112 N. W. 735; H. W. Wilson Co. *v.* Farnham, 97 Minn. 153, 106 N. W. 342; Paton *v.* Doyne, (N. J. 1907) 65 Atl. 843 (notes given at different times and all due).

2. Baumhoff *v.* St. Louis, etc., R. Co., 205 Mo. 248, 104 S. W. 5.

3. McKenzie *v.* Donnell, 208 Mo. 46, 106 S. W. 40; Braddock *v.* Boner, 29 Ohio Cir. Ct. 300; Jones *v.* Gammel Statesman Pub. Co., (Tex. 1907) 99 S. W. 701, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 790; Jones *v.* Gammel-Statesman Pub. Co., (Tex. Civ. App. 1906) 94 S. W. 191; Johnson *v.* Johnson, 31 Utah 408, 88 Pac. 230. See also Koehler *v.* Holt Mfg. Co., 146 Cal. 335, 80 Pac. 73.

Where Separate Notes Given for Purchase Price of Article. — Penney *v.* Corey, 147 Ala. 617, 41 So. 978, *approving* Felton *v.* Smith, 88 Ind. 149, cited in the original note.

Instalments of Salary. — American China Development Co. *v.* Boyd, 148 Fed. 258.

Each Instalment of Rent. — Curtis *v.* Hammond, (Colo. 1908) 95 Pac. 921; Baker *v.* Connor, 29 Ohio Cir. Ct. 711, *affirmed* (Ohio 1906) 78 N. E. 1116; Davidson *v.* Hirsh, (Tex. Civ. App. 1907) 101 S. W. 269. *Compare* Burckhardt *v.* Greene, 26 Ohio Cir. Ct. 315, *affirmed* (Ohio 1903) 70 N. E. 1116.

Principal and Interest Due on Bond or Note. — A judgment for the interest due on a note is not a bar to a subsequent action on the note. Davis *v.* Schmidt, 126 Wis. 461, 106 N. W. 119.

791. 1. Kieley *v.* Kahn, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 309, 98 N. Y. Supp. 774 (not included when suit pending); Welch *v.* Buchans Soap Corp., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 689, 107 N. Y. Supp. 616; Smith *v.* Cashie, etc., R., etc., Co., 142 N. Car. 26, 54 S. E. 788, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 791.

To the same effect as the second paragraph of the original note, see Kennedy *v.* New York, (Supm. Ct. App. Div.) 111 N. Y. Supp. 61.

3. Leet *v.* Gratz, 124 Mo. App. 394, 101 S. W. 696 (breach of covenant of seizin); Jones *v.* Gammel Statesman Pub. Co., (Tex. 1907) 99 S. W. 701, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 791.

5. Construction of Pipe Line. — Davis *v.* Southwest Pennsylvania Pipe Lines, 34 Pa. Super. Ct. 438; Sawyer *v.* Southwest Pennsylvania Pipe Lines, 34 Pa. Super. Ct. 446; Dicken *v.* Southwest Pennsylvania Pipe Lines, 34 Pa. Super. Ct. 445.

Damming of Surface Waters. — Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958.

Diversion of Stream. — Gulf, etc., R. Co. *v.* Moseley, 6 Indian Ter. 369, 98 S. W. 129.

Failure to Construct Railroad Crossings. — Wilson *v.* Illinois Cent. R. Co., (Ky. 1906) 92 S. W. 602.

Maintenance of Gas Plant. — Donahue *v.* Stockton Gas, etc., Co., (Cal. App. 1907) 92 Pac. 196.

Obstruction of Drainage Ditch. — Chicago, etc., R. Co. *v.* McCutchen, 80 Ark. 235, 96 S. W. 1054.

Pollution of Water Course. — Platt *v.* Waterbury, (Conn. 1907) 67 Atl. 508.

Refusal to Construct Undergrade Crossing. — Charles *v.* St. Louis, etc., R. Co., 124 Mo. App. 293, 101 S. W. 680.

792. 1. **Distinct Causes Arising from the Same Tort.** — Mahoning Valley R. Co. *v.* Van Alstine, 77 Ohio St. 395, 83 N. E. 601.

3. Visalia Bank *v.* Smith, 146 Cal. 398, 81 Pac. 542; Walden *v.* Walden, 124 Ga. 145, 52 S. E. 323; Brown *v.* Bonds, 125 Ga. 833, 54 S. E. 933; Gann *v.* Dearborn Mfg. Co., (Mo. App. 1907) 107 S. W. 15; Greitzer *v.* Ershowsky, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 653, 94 N. Y. Supp. 258 (opinion of court not admissible); O'Shea *v.* Moritz, (Supm. Ct. App. Div.) 110 N. Y. Supp. 885.

Judgment, Not Opinion, Concludes Parties. — Bleakley *v.* Barclay, 75 Kan. 462, 89 Pac. 906.

5. Oklahoma City *v.* McMaster, 196 U. S. 529, 25 U. S. Sup. Ct. 324, *reversing* 12 Okla. 570, 73 Pac. 1012; Hart *v.* Brierley, 189 Mass. 598, 76 N. E. 286; Ortiz *v.* Las Vegas First Nat. Bank, 12 N. Mex. 519, 78 Pac. 529, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 792; Wilson *v.* Hubbard, 39 Wash. 671, 82 Pac. 154, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 792.

A Settlement by an Administrator which has been approved by the court is not *res judicata* of the right of the administrator, in an action for the negligent death of the intestate, to show the fraud of the defendant in securing the settlement. Kelly *v.* Chicago, etc., R. Co., (Iowa 1908) 114 N. W. 536.

793. 6. Hills *v.* Hoover, 142 Fed. 904; Thomas *v.* Young, 79 Conn. 493, 65 Atl. 955; Brown *v.* Clark, (Conn. 1908) 68 Atl. 1001; Collins *v.* Metropolitan L. Ins. Co., 232 Ill. 37, 83 N. E. 542, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 793; Crovatt *v.* Baker, (Ga. 1908) 61 S. E. 127.

794. 1. Livingston *v.* New England Mortg. Security Co., 77 Ark. 379, 91 S. W. 752; Brown *v.* Clark, (Conn. 1908) 68 Atl. 1001; O'Shea *v.* Moritz, (Supm. Ct. App. Div.) 110 N. Y. Supp. 885; Carroll *v.* Grande Ronde Electric Co., (Oregon 1907) 90 Pac. 903; Howth *v.* Greer, (Tex. Civ. App. 1905) 90 S. W. 211.

1*a*. **Judgment Must Be Certain.** — *In re* Lappe, 215 Pa. St. 424, 64 Atl. 607.

2. *United States.* — U. S. Fastener Co. *v.* Bradley, 143 Fed. 523, *affirmed* 149 Fed. 222; Coram *v.* Ingersoll, (C. C. A.) 148 Fed. 169, *reversing* 136 Fed. 689; *Ex p.* Loung June, 160 Fed. 251.

Connecticut. — Crotty *v.* Danbury, 79 Conn. 379, 65 Atl. 147.

Illinois. — People *v.* Pederson, 220 Ill. 554, 77 N. E. 251.

Iowa. — McCullough *v.* Connelly, (Iowa 1907) 114 N. W. 301.

Kentucky. — Sevier *v.* Bowling, (Ky. 1906) 97 S. W. 806; Federal Chemical Co. *v.* Green, (Ky. 1908) 110 S. W. 859.

Louisiana. — Herber's Succession, 119 La. 1064, 44 So. 888.

Massachusetts. — Corbett *v.* Craven, (Mass. 1907) 82 N. E. 37.

Missouri. — Carp *v.* National Assur. Co., (Mo. App. 1907) 99 S. W. 523; Couch *v.* Harp, 201 Mo. 457, 100 S. W. 9; State *v.* Bellflower, (Mo. App. 1908) 108 S. W. 117.

Nebraska. — Yates *v.* Jones Nat. Bank, 74 Neb. 734, 105 N. W. 287.

New York. — U. S. Fidelity, etc., Co. *v.* Schiff, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 225, 104 N. Y. Supp. 396; Martz *v.* Press, 99 N. Y. App. Div. 443, 91 N. Y. Supp. 264, *affirmed* 184 N. Y. 530, 76 N. E. 1100.

North Carolina. — Brick *v.* Atlantic Coast Line R. Co., (N. Car. 1907) 58 S. E. 1073.

Ohio. — Barr *v.* Poor, 15 Ohio Dec., 218, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 794; Poor *v.* Barr, 28 Ohio Cir. Ct. 257, *affirmed* 76 Ohio 630, 81 N. E. 1193.

Pennsylvania. — Roney *v.* Westlake, 216 Pa. St. 374, 65 Atl. 807, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 794; Robb *v.* New York, etc., Gas Coal Co., 216 Pa. St. 418, 65 Atl. 938.

Rhode Island. — H. F. Watson Co. *v.* Citizen's Concrete Co., (R. I. 1907) 68 Atl. 310.

South Carolina. — Roberts *v.* Jones, 71 S. Car. 404, 51 S. E. 240.

South Dakota. — McPherson *v.* Swift, (S. Dak. 1908) 116 N. W. 76, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 794.

Tennessee. — Stuber *v.* Louisville, etc., R. Co., 113 Tenn. 305, 87 S. W. 411.

West Virginia. — Brown *v.* Beckwith, 58 W. Va. 140, 51 S. E. 977.

Wisconsin. — State *v.* Hinkel, 131 Wis. 103, 111 N. W. 217.

What Judgments Are on the Merits. — Bailey *v.* Ætna Indemnity Co., 5 Cal. App. 740, 91 Pac. 416; Glass *v.* Basin, etc., Min. Co., 35 Mont. 567, 90 Pac. 753, *reversing* 34 Mont. 88, 85 Pac. 746; Roney *v.* Westlake, 216 Pa. St. 374, 65 Atl. 807; Stuber *v.* Louisville, etc., R. Co., 113 Tenn. 305, 87 S. W. 411; Kaley *v.* Van Ostrand, (Wis. 1908) 114 N. W. 817; Glass *v.* Basin, etc., Min. Co., 35 Mont. 567, 90 Pac. 953, *reversing* 34 Mont. 88, 85 Pac. 746.

796. 3. Cain *v.* Union Cent. L. Ins. Co., (Ky. 1906) 93 S. W. 622, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 796. See also Bandy *v.* Cates, (Tex. Civ. App. 1906) 97 S. W. 710.

4. **Dissolution of Injunction.** — The granting of a motion to dissolve an injunction, before a final hearing, is not *res judicata.* Staley *v.* Big Sandy, etc., R. Co., (W. Va. 1907) 59 S. E. 946.

5. South Penn Oil Co. *v.* Calf Creek Oil, etc., Co., 140 Fed. 507; Jenkins *v.* Purcell, 29 App. Cas. (D. C.) 209; Baker *v.* Royal Lead, etc., Co., (Ky. 1908) 107 S. W. 704; Jones *v.* Hubbard, 193 Mo. 147, 90 S. W. 1137; Jones *v.* Rose, (Mo. 1906) 90 S. W. 1142; Robbins *v.* Hubbard, (Tex. Civ. App. 1908) 108 S. W. 773; Suburban Co. *v.* Turner, 105 Va. 456, 54 S. E. 29.

797. 5. Harding *v.* Harding, 198 U. S. 317, 25 U. S. Sup. Ct. 679, *reversing* 140 Cal. 690, 74 Pac. 284.

6. San Gabriel Valley Bank *v.* Lake View Town Co., 4 Cal. App. 630, 86 Pac. 727; Tootle *v.* McClellan, (Indian Ter. 1907) 103 S. W. 766; Watson *v.* McHenry, (Md. 1908) 68 Atl. 606; Morette *v.* Bostwick, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 140, 106 N. Y. Supp. 1102; Weisinger *v.* Rosenberg, (Supm. Ct. App. T.) 108 N. Y. Supp. 1065; Turnage *v.* Joyner, 145 N. Car. 81, 58 S. E. 757.

7. Wheeler *v.* Bennett, 79 Ark. 210, 95 S. W. 142; Horine *v.* Wende, 29 App. Cas. (D. C.) 415.

798. 1. Wylie *v.* Langhorne, (Tex. Civ. App. 1907) 101 S. W. 527; Pence *v.* Long, (Ind. App. 1906) 77 N. E. 961.

Default on Substituted Service. — Gesellschaft *v.* Terlinden, 127 Wis. 651, 106 N. W. 821.

Default Judgment Not Bar to Counterclaim Pleaded. — North Baltimore Bottle Glass Co. *v.* Altpeter, (Wis. 1907) 113 N. W. 435.

799. 1. Motes *v.* Gila Valley, etc., R. Co., (Ariz. 1907) 89 Pac. 410; Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20; Dolvin *v.* American Harrow Co., 125 Ga. 699, 54 S. E. 706; Missouri State L. Ins. Co. *v.* Lovelace, 1 Ga. App. 446, 58 S. E. 93; Yates *v.* Jones Nat. Bank, 74 Neb. 734, 105 N. W. 287, *modified* on another point in 206 U. S. 158, 27 U. S. Sup. Ct. 646; Barr *v.* Poor, 15 Ohio Dec. 218 (plea of statute of frauds).

Sustaining General Demurrer for Want of Equity Is Not Res Judicata. — Farmers' & Mechanics' Life Assoc. *v.* Caine, 224 Ill. 599, 79 N. E. 956, *affirming* 123 Ill. App. 419.

2. *United States.* — Northern Pac. R. Co. *v.* Slaght, 205 U. S. 122, 27 U. S. Sup. Ct. 442, *affirming* 39 Wash. 576, 81 Pac. 1062.

Arizona. — Motes *v.* Gila Valley, etc., R. Co., (Ariz. 1907) 89 Pac. 410.

Colorado. — Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20; Laguna Canal Co. *v.* Rocky Ford Ditch Co., (Colo. 1908) 95 Pac. 287.

District of Columbia. — Horine *v.* Wende, 29 App. Cas. (D. C.) 415.

Florida. — Burton *v.* McMillan, 52 Fla. 228, 42 So. 879.

Georgia. — Richmond Hosiery Mills *v.* Western Union Tel. Co., 123 Ga. 216, 51 S. E. 290; Sims *v.* Georgia R., etc., Co., 123 Ga. 643, 51 S. E. 573; Smith *v.* Smith, 125 Ga. 83, 54 S. E. 73; Dolvin *v.* American Harrow Co. 125 Ga. 699, 54 S. E. 706.

Indiana. — First Nat. Bank *v.* Goldsmith, (Ind. App. 1907) 82 N. E. 799; Watt *v.* Barnes, (Ind. App. 1908) 84 N. E. 158.

Kansas. — Holderman *v.* Hood, (Kan. 1908) 96 Pac. 71.

Kentucky. — Cain *v.* Union Cent. L. Ins. Co., (Ky. 1906) 93 S. W. 622.

Mississippi. — Weathersby *v.* Pearl River

Lumber Co., 88 Miss. 535, 41 So. 65; Shaw *v.* Laurel Oil, etc., Co., (Miss. 1908) 45 So. 878.

Montana. — Glass *v.* Basin, etc., Min. Co., 35 Mont. 567, 90 Pac. 753, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 799, *reversing* 34 Mont. 88, 85 Pac. 746.

Nebraska. — Yates *v.* Jones Nat. Bank, 74 Neb. 734, 105 N. W. 287, *modified* on other points in 206 U. S. 158, 27 U. S. Sup. Ct. 646.

Pennsylvania. — Megahey *v.* Farmers' etc., Sav. Fund, etc., Assoc., 215 Pa. St. 351, 64 Atl. 546.

Tennessee. — Moore *v.* Chattanooga Electric R. Co., (Tenn. 1908) 109 S. W. 497.

Washington. — Brechlin *v.* Night Hawk Min. Co., (Wash. 1908) 94 Pac. 928, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 799.

Judgment on General Demurrer Conclusive. — Kempner *v.* Crockett First Nat. Bank, (Tex. Civ. App. 1906) 99 S. W. 112; Carpenter *v.* Landry, (Tex. Civ. App. 1907) 101 S. W. 277.

800. 1. First Nat. Bank *v.* Goldsmith, (Ind. App. 1907) 82 N. E. 799; Herber's Succession, 119 La. 1064, 44 So. 888; Glass *v.* Basin, etc., Min. Co., 35 Mont. 567, 90 Pac. 753, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 800, *reversing* 34 Mont. 88, 85 Pac. 746.

2. Motes *v.* Gila Valley, etc., R. Co., (Ariz. 1907) 89 Pac. 410. *Contra,* Burton *v.* McMillan, 52 Fla. 228, 42 So. 879.

4. Dietrich *v.* Deavitt, (Vt. 1908) 69 Atl. 661.

801. 1. *United States. — Ex p.* Loung June, 160 Fed. 251.

Alabama. — Montgomery Iron Works *v.* Roman, 147 Ala. 434, 41 So. 811.

California. — Smith *v.* Superior Ct., 2 Cal. App. 529, 84 Pac. 54 (nonsuit by justice of the peace); San Francisco *v.* Brown, (Cal. 1908) 96 Pac. 281.

Colorado. — Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20.

Massachusetts. — Haskell *v.* Friend, (Mass. 1907) 81 N. E. 962.

Michigan. — Burkart *v.* Blaumann, 142 Mich. 41, 105 N. W. 81; Deneen *v.* Houghton County St. R. Co., 150 Mich. 235, 113 N. W. 1126.

Missouri. — Carp *v.* National Assur. Co., (Mo. App. 1907) 99 S. W. 523.

North Carolina. — Tussey *v.* Owen, (N. Car. 1908) 61 S. E. 180.

Oregon. — Carroll *v.* Grande Ronde Electric Co., (Oregon 1907) 90 Pac. 903.

Pennsylvania. — Roney *v.* Westlake, 216 Pa. St. 374, 65 Atl. 807.

West Virginia. — Brown *v.* Beckwith, 58 W. Va. 140, 51 S. E. 977.

802. 1. *Ex p.* Loung June, 160 Fed. 251; Carroll *v.* Grande Ronde Electric Co., (Oregon 1907) 90 Pac. 903, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 801 [802].

6. See State Medical Examining Board *v.* Stewart, (Wash. 1907) 89 Pac. 475.

803. 2. The San Rafael, 149 Fed. 893; Warrior River Coal, etc., Co. *v.* Alabama State Land Co., (Ala. 1907) 45 So. 53; School Tp. *v.* Independent School Dist., 134 Iowa 349, 112 N. W. 5; Smith *v.* Gowdy, (Ky. 1906) 96 S. W. 566; Roberts *v.* Moss, (Ky. 1907) 106 S. W. 297; *In re* Ward, (Mich. 1908) 116 N. W. 23; Pond *v.* Huling, 125 Mo. App. 474, 101 S. W. 115; Campbell *v.* Flannery, 32 Mont. 119, 79 Pac. 702, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 803; Whitney *v.* Whitney, (Neb. 1907) 110 N. W. 555; Kelsey *v.* Dilks, (N. J. 1908) 69 Atl. 448.

Dismissal on Hearing a Bar. — Mayer *v.* Kornegay, (Ala. 1907) 44 So. 839.

804. 1. Woodward *v.* Davidson, 150 Fed. 840, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 804; Korsstrom *v.* Barnes, 156 Fed. 280; Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20; Macon, etc., R. Co. *v.* Walton, 127 Ga. 294 56 S. E. 419; Randolph *v.* Cottage Hospital, (Iowa 1905) 103 N. W. 157; Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636; Shaw *v.* Laurel Oil, etc., Co., (Miss. 1908) 45 So. 878; Cohen *v.* Bachrach, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 524, 107 N. Y. Supp. 61; Costello *v.* Grant County Mut. F., etc., Ins. Co., (Wis. 1907) 113 N. W. 639 (dismissal for mistake in remedy); Brown *v.* Beckwith, 58 W. Va. 140, 51 S. E. 977.

Dismissal of Bill for Want of Equity Not a Bar. — Follett *v.* Brown, 114 Ill. App. 14.

Dismissal for Want of Parties Not a Bar. — *Ex p.* Loung June, 160 Fed. 251.

805. 1. *Ex p.* Loung June, 160 Fed. 251; *In re* Bump, (Cal. 1907) 92 Pac. 643; Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20; Lemon *v.* Sigourney Sav. Bank, 131 Iowa 79, 108 N. W. 104; Sevier *v.* Bowling, (Ky. 1906) 97 S. W. 806; Murphy *v.* Hoagland, (Ky. 1908) 107 S. W. 303; Roach *v.* Roach, 190 Mass. 253, 76 N. E. 651; Yates *v.* Jones Nat. Bank, 74 Neb. 734, 105 N. W. 287, *modified* on another point in 206 U. S. 158, 27 U. S. Sup. Ct. 646; McPherson *v.* Swift, (S. Dak. 1908) 116 N. W. 76, *citing* 24 Am. and Eng. Encyc. of Law (2d ed. 805.

Voluntary Dismissal Pending Appeal Not Bar. — Thornhill *v.* Hargreaves, (Neb. 1906) 107 N. W. 847.

806. 1. Woodward *v.* Davidson, 150 Fed. 840, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 804; Bilyen *v.* Pilcher, 16 Okla. 228, 83 Pac. 546; McPherson *v.* Swift, (S. Dak. 1908) 116 N. W. 76, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 806.

2. Indian Land, etc., Co. *v.* Schoenfeldt, (C. C. A.) 135 Fed. 484; Stratton *v.* Essex County Park Commission, 145 Fed. 436; *In re* Ward, (Mich. 1908) 116 N. W. 23; Huot *v.* Huot, 14 Quebec K. B. 522.

Presumption Conclusive. — Roach *v.* Roach, 190 Mass. 253, 76 N. E. 651.

Presumption Overcome by Parol Evidence. — Stratton *v.* Essex County Park Commission, 145 Fed. 436.

Under the New York Code of Civil Procedure there is no presumption that a dismissal was on the merits, but such fact must affirmatively appear on the record. (Code Civ. Pro. N. Y., § 1209.) Fogarty *v.* O'Reilly, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 192, 107 N. Y. Supp. 234, *affirmed* 123 N. Y. App. Div. 923, 107 N. Y. Supp. 1127.

Municipal Courts. — The above code provision does not apply to the Municipal Court of

New York city, the question in that court as to whether the dismissal was on the merits being a matter of proof upon which the judgment roll is not conclusive. Cohen *v.* Bachrach, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 524, 107 N. Y. Supp. 61.

3. *United States.* — Robinson *v.* American Car, etc., Co., (C. C. A.) 135 Fed. 693; Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; Lefmann *v.* Brill, (C. C. A.) 142 Fed. 74; Colusa Parrot Min., etc., Co. *v.* Monahan, (C. C. A.) 162 Fed. 276.

Alabama. — Collins *v.* Smith, (Ala. 1908) 46 So. 986.

Colorado. — Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20.

Indiana. — Zuelly *v.* Casper, 37 Ind. App. 186, 76 N. E. 646.

Kentucky. — Potter *v.* Redmon, (Ky. 1906) 96 S. W. 529; Weisenborn *v.* Evans, (Ky. 1907) 99 S. W. 629.

Maine. — Kittery Water Dist. *v.* Agamenticus Water Co., (Me. 1907) 67 Atl. 631.

Nebraska. — Morris *v.* Linton, 74 Neb. 411, 104 N. W. 927.

Washington. — Budlong *v.* Budlong, (Wash. 1908) 94 Pac. 478.

West Virginia. — Staley *v.* Big Sandy, etc., R. Co., (W. Va. 1907) 59 S. E. 946.

807. 1. McPherson *v.* Swift, (S. Dak. 1908) 116 N. W. 76, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 807.

3. State Medical Examining Board *v.* Stewart, (Wash. 1907) 89 Pac. 475.

4. *In re* Ward, (Mich. 1908) 116 N. W. 23.

5. Laguna Drainage Dist. *v.* Charles Martin Co., 5 Cal. App. 166, 89 Pac. 993; State Medical Examining Board *v.* Stewart, (Wash. 1907) 89 Pac. 475. See also *Ex p.* Loung June, 160 Fed. 251.

6. Dismissal for Want of Jurisdiction Res Judicata. — Daigle *v.* U. S., 42 Ct. Cl. 124.

7. Lemon *v.* Sigourney Sav. Bank, 131 Iowa 79, 108 N. W. 104. See also Crossman *v.* Griggs, 188 Mass. 217, 74 N. E. 359.

808. 1. See Montgomery Iron Works *v.* Roman, 147 Ala. 434, 41 So. 811 (discharge from garnishment proceedings).

2. Dittmer *v.* Mierandorf, 129 Iowa 643, 106 N. W. 158.

809. 3. Larman *v.* Klauenberg, 3 Cal. App. 183, 84 Pac. 776; Slaughter *v.* Cooper, (Tex. Civ. App. 1908) 107 S. W. 897.

Judgment Not Bar after Appeal Perfected. — Harter *v.* Curry, (Tex. 1907) 105 S. W. 988.

810. 1. Boynton *v.* Chicago Mill, etc., Co., 84 Ark. 203, 105 S. W. 77; Block *v.* Thomson, 120 Ill. App. 424.

812. 1. Adams *v.* Whitley County, 165 Ind. 530, 76 N. E. 113, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 811 [812].

2. People *v.* Cohen, 219 Ill. 200, 76 N. E. 388; Zerulla *v.* Supreme Lodge, 223 Ill. 518, 79 N. E. 160, *affirming* 118 Ill. App. 191; Stone *v.* Grand Lodge, etc., 117 Mo. App. 295, 92 S. W. 1143.

3. Larkins *v.* Terminal R. Assoc., 122 Ill. App. 246, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 812, *affirmed* 221 Ill. 428, 77 N. E. 678.

6. Wheeler *v.* Aberdeen, 45 Wash. 63, 87 Pac. 1061, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 812.

813. 1. Integrity Min., etc., Co. *v.* Moon, (Mo. App. 1908) 109 S. W. 1057.

814. 1. Montgomery Iron Works *v.* Roman, 147 Ala. 434, 41 So. 811, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 814; W. K. Syson Timber Co. *v.* Dickens, 146 Ala. 471, 40 So. 753; Smith *v.* Cowell, (Colo. 1907) 92 Pac. 20; Hilton *v.* Stewart, (Idaho 1908) 96 Pac. 579; Van Camp *v.* Huntingdon, 39 Ind. App. 28, 78 N. E. 1057; Roberts *v.* Moss, (Ky. 1907) 106 S. W. 297.

2. U. S. *v.* Johnson, 145 Fed. 1018; Water, etc., Co. *v.* Hutchinson, (C. C. A.) 160 Fed. 41, *reversing* 144 Fed. 256; Roberts *v.* Moss, (Ky. 1907) 106 S. W. 297; Maeder *v.* Wexler, 98 N. Y. App. Div. 68, 90 N. Y. Supp. 598, *affirmed* 182 N. Y. 519, 74 N. E. 1120; Carpenter *v.* Lancaster, 212 Pa. St. 581, 61 Atl. 1113. See the title ELECTION OF REMEDIES, 7 ENCYC. OF PL. AND PR. 360.

815. 2. Davis *v.* Schmidt, 126 Wis. 461, 106 N. W. 119.

4. Lemon *v.* Sigourney Sav. Bank, 131 Iowa 79, 108 N. W. 104.

Judgment on Express Contract Not Bar to Action on Quantum Meruit. — Water, etc., Co. *v.* Hutchinson, (C. C. A.) 160 Fed. 41, *reversing* 144 Fed. 256; Walar *v.* Rechnitz, (Supm. Ct. App. Div.) 110 N. Y. 777; Champion *v.* Johnson County, (Tex. Civ. App. 1908) 109 S. W. 1146.

816. 2. Water, etc., Co. *v.* Hutchinson, (C. C. A.) 160 Fed. 41, *reversing* 144 Fed. 256; Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Lemon *v.* Sigourney Sav. Bank, 131 Iowa 79, 108 N. W. 104.

817. 2. **Ex Parte Orders Not Res Judicata.** — Kealoha *v.* Castle, 210 U. S. 148, 28 U. S. Sup. Ct. 684.

6. Australian Knitting Co. *v.* Gormly, 138 Fed. 92; Hills *v.* Hoover, 142 Fed. 904; Harrah *v.* State, 38 Ind. App. 495, 76 N. E. 443, *modified* 77 N. E. 443; Winchester, etc., R. Co. *v.* Com., 106 Va. 264, 55 S. E. 692 (order denying writ of mandamus); Lamberton *v.* Lamberton, 125 Wis. 616, 104 N. W. 807.

818. 4. Gates *v.* Paul, 127 Wis. 628, 107 N. W. 492.

5. Long *v.* Lebanon Nat. Bank, 211 Pa. St. 165, 60 Atl. 556 (discharging rule to set aside writ of execution).

Order Denying Motion to Vacate Judgment. — Pierce County *v.* Alexander, (Wash. 1908) 96 Pac. 164.

Orders on Motions to Dissolve Attachment. — The decision of a justice of the peace on a motion to discharge an attachment was held not to be *res judicata* of the question of exemption in a replevin action subsequently brought. Brunson *v.* Merrill, 17 Okla. 44, 86 Pac. 431.

819. 1. **Order Denying Widow's Petition for Homestead Allowance.** — *In re* Harrington, 147 Cal. 124, 81 Pac. 546.

Order Refusing to Direct Person to Turn over to Trustee in Bankruptcy Property of Bankrupt. — Murray *v.* Joseph, 146 Fed. 260.

820. 2. **Landlord and Tenant Proceedings.** — Meyerhoffer *v.* Baker, 121 N. Y. App. Div. 797, 106 N. Y. Supp. 718, *reversing* (Supm. Ct. App. T.) 51 Misc. (N. Y.) 598, 101 N. Y.

Supp. 24; Von der Born *v.* Schultz, 111 N. Y. App. Div. 263, 97 N. Y. Supp. 738.

Petitions in Probate Courts. — Harrington v. Harrington, 189 Mass. 281, 75 N. E. 632.

Supplementary Proceedings. — Societa di Mutuo Socorso *v.* Mantel, 1 Cal. App. 107, 81 Pac. 659.

Habeas Corpus. — Willis *v.* Willis, 165 Ind. 332, 75 N. E. 655; Bleakley *v.* Barclay, 75 Kan. 462, 89 Pac. 906; *In re* Boutelle, 124 Mo. App. 450, 101 S. W. 1096; Dawson *v.* Dawson, 57 W. Va. 520, 50 S. E. 613.

Mandamus. — Greenfield Gas Co. *v.* Trees, 165 Ind. 209, 75 N. E. 2; Kaufer *v.* Ford, 100 Minn. 49, 110 N. W. 364.

Condemnation Proceedings. — Layura Drainage Dist. *v.* Charles Martin Co., 5 Cal. App. 166, 89 Pac. 993.

Proceedings for Injunction. — Lowe *v.* Prospect Hill Cemetery Assoc., 75 Neb. 85, 106 N. W. 429, *adhered* to in 108 N. W. 978.

Search Warrant Proceedings. — When both parties appear and litigate the question of ownership of the property the judgment is *res judicata.* Montgomery *v.* Alden, 133 Iowa 675, 108 N. W. 234.

Summary Proceedings. — Lane *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 211.

Quo Warranto. — Sandoval *v.* Albright, (N. Mex. 1908) 93 Pac. 717.

823. 1. **See Generally and for Miscellaneous Illustrations.** — W. K. Henderson Iron Works, etc., Co. *v.* Howard, 119 La. 555, 44 So. 296; Krabbenhoft *v.* Wright, 101 Minn. 356, 112 N. W. 421 (action determining boundary line determined title); Kline *v.* Stein, (Wash. 1907) 90 Pac. 1041.

2. **Actions of Forcible Entry and Detainer.** — Mackenzie *v.* Porter, (Colo. 1907) 91 Pac. 916; Connolly *v.* Omaha, (Neb. 1907) 112 N. W. 360; Pulliam *v.* Sells, (Ky. 1907) 99 S. W. 289; Burns *v.* Kennedy, (Oregon 1907) 90 Pac. 1102.

A Judgment on an Appeal Bond given in an action of forcible entry and detainer does not bar a subsequent action to recover double damages for holding over under a lease. Alexander *v.* Loeb, 230 Ill. 454, 82 N. E. 833.

Landlord and Tenant Proceedings. — Lewy *v.* Wolfman, (Supm. Ct. App. T.) 110 N. Y. Supp. 256.

Suits to Quiet Title. — Wetherell *v.* Adams, (Neb. 1908) 116 N. W. 861.

Replevin and Detinue. — Jackson *v.* Morgan, 167 Ind. 528, 78 N. E. 633; McLaren *v.* International Real Estate, etc., Co., 126 Mo. App. 254, 102 S. W. 1105; Caldwell *v.* Ryan, (Mo. 1908) 108 S. W. 533; Roach *v.* Curtis 191 N. N. 387, 84 N. E. 283, *affirming* 115 N. Y. App. Div. 765, 101 N. Y. Supp. 333, which *affirmed* (County Ct.) 50 Misc. (N. Y.) 122, 100 N. Y. Supp. 411; Three States Lumber Co. *v.* Blanks, 118 Tenn. 627, 102 S. W. 79.

Trespass. — Sumrall *v.* Maninni, (Ky. 1906) 98 S. W. 301.

Suit to Foreclose Tax Lien. — Wood *v.* Smith, 193 Mo. 484, 91 S. W. 85; Ball *v.* Carroll, (Tex. Civ. App. 1906) 92 S. W. 1023.

Application for Writ of Possession. — Jeffers *v.* Davis, (Ark. 1908) 107 S. W. 1175.

Eminent Domain. — Compton *v.* Seattle, 38 Wash. 514, 80 Pac. 757.

Statutory Proceedings to Fix Water Rights under Irrigation Laws. — Farmers' Union Ditch Co. *v.* Rio Grande Canal Co., 37 Colo. 512, 86 Pac. 1042.

825. 3. Crowl *v.* Crowl, 195 Mo. 338, 92 S. W. 890.

826. 1. Weigel *v.* Green, 221 Ill. 187, 77 N. E. 574.

Judgments by Agreement. — Reynolds *v.* Hood, (Mo. 1908) 108 S. W. 86.

2. Chatman *v.* Hodnett, 127 Ga. 360, 56 S. E. 439; Chicago, etc., R. Co. *v.* Grantham, 165 Ind. 279, 75 N. E. 265, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 826; Turnage *v.* Joyner, 145 N. Car. 81, 58 S. E. 757; Wade *v.* McDougle, 59 W. Va. 113, 52 S. E. 1026.

In Tennessee it is held that a judgment in ejectment is not a bar to a subsequent action of forcible entry and detainer. Stockley *v.* Cissna, (Tenn. 1907) 104 S. W. 792.

827. 3. Ely *v.* Hartford L. Ins. Co., (Ky. 1908) 110 S. W. 265; Griffen *v.* Keese, 187 N. Y. 454, 80 N. E. 367, *modifying* 100 N. Y. Supp. 903.

831. 3. Underwood *v.* Com., (Ky. 1907) 105 S. W. 151; State *v.* Sargood, 80 Vt. 415, 68 Atl. 49, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 831; State *v.* Sargood, 80 Vt. 415, 68 Atl. 51; Rex *v.* Quinn, 11 Ont. L. Rep. 242.

Perjury. — The former adjudication is not conclusive where the law requires a different amount of proof in the trial for perjury. State *v.* Sargood, 80 Vt. 415, 68 Atl. 49.

6. U. S. *v.* Bradford, 148 Fed. 427, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 831; U. S. *v.* Donaldson-Shultz Co., (C. C. A.) 148 Fed. 581, *reversing* 142 Fed. 300; U. S. Fidelity etc., Co. *v.* U. S., (C. C. A.) 150 Fed. 550; Seaboard Air Line R. Co. *v.* O'Quin, 124 Ga. 357, 52 S. E. 427, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 831; Powell *v.* Wiley, 125 Ga. 823, 54 S. E. 732; Micks *v.* Mason, 145 Mich. 212, 108 N. W. 707; Adams *v.* Sigman, 89 Miss. 844, 43 So. 877; Myers *v.* Maryland Casualty Co., 123 Mo. App. 682, 101 S. W. 124; State *v.* Corron, 73 N. H. 434, 62 Atl. 1044; Frierson *v.* Jenkins, 72 S. Car. 341, 51 S. E. 862, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 831.

An Acquittal of a Criminal Offense is a bar to an action to recover a penalty for the same act where the object of the second action is to punish the criminal and not to recover compensation for loss of property. U. S. *v.* Seattle Brewing, etc., Co., 135 Fed. 597.

832. 1. U. S. *v.* Bradford, (C. C. A.) 148 Fed. 427, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 832.

3. Gorham *v.* New Haven, 79 Conn. 670, 66 Atl. 505; Strait *v.* British, etc., Mortg. Co., (S. Car. 1907) 57 S. E. 1100.

833. 1. Kessler *v.* Armstrong Cork Co., (C. C. A.) 158 Fed. 744; Hilton *v.* Stewart, (Idaho 1908) 96 Pac. 579; MacDonald *v.* Dexter, (Ill. 1908) 85 N. E. 209; Bleakley *v.* Barclay, 75 Kan. 462, 89 Pac. 906; Converse *v.* Ayer, (Mass. 1908) 84 N. E. 98; Krolik *v.* Curry, 148 Mich. 214, 111 N. W. 761; Tillinghast *v.* U. S. Saving, etc., Co., 99 Minn. 62, 108 N. W. 472; Tootle *v.* Buckingham, 190 Mo. 183, 88 S. W. 619; Bailey *v.* Wilson, (N. Y.

City Ct. Spec. T.) 52 Misc. (N. Y.) 644, 103 N. Y. Supp. 1021; Strauss *v.* Strauss, 122 N. Y. App. Div. 729, 107 N. Y. Supp. 842.

3. **Pending Appeal.** — Church *v.* Gallic, 76 Ark. 423, 88 S. W. 979; Jenkins *v.* Jenkins, 78 Ark. 388, 94 S. W. 45.

4. Boatmen's Bank *v.* Fritzlen, 135 Fed. 650; Church *v.* Gallic, 76 Ark. 423, 88 S. W. 979; Jenkins *v.* Jenkins, 78 Ark. 388, 94 S. W. 45; MacDonald *v.* Dexter, (Ill. 1908) 85 N. E. 209.

834. 1. **No Presumption Where Record Is Present.** — Gulling *v.* Washoe County, 28 Nev. 450, 82 Pac. 800.

3. Schwarz *v.* Kennedy, 142 Fed. 1027; B. Roth Tool Co. *v.* New Amsterdam Casualty Co., (C. C. A.) 161 Fed. 709; Hume *v.* Burns, (Oregon 1907) 90 Pac. 1009; Sanford *v.* King, 19 S. Dak. 334, 103 N. W. 28.

4. Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; Grand Valley Irrigation Co. *v.* Fruita Imp. Co., 37 Colo. 483, 86 Pac. 324; Callaway *v.* Irvin, 123 Ga. 344, 51 S. E. 477; Harris *v.* Equitable Securities Co., 129 Ga. 241, 58 S. E. 831; Watt *v.* Barnes, (Ind. App. 1908) 84 N. E. 158; Hudson *v.* Remington Paper Co., 71 Kan. 300, 80 Pac. 568, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 834; Gulling *v.* Washoe County, 28 Nev. 450, 82 Pac. 800; Griffen *v.* Reese, 187 N. Y. 454, 80 N. E. 367, *modifying* 115 N. Y. App. Div. 264, 100 N. Y. Supp. 903; Bandy *v.* Cates, (Tex. Civ. App. 1906) 97 S. W. 710.

5. Sweeney *v.* Waterhouse, 43 Wash. 613, 86 Pac. 946.

835. 1. **Certified Copy of Judgment Highest Evidence of Adjudication.** — Page *v.* Garver, 5 Cal. App. 383, 90 Pac. 481.

The Plea of Res Judicata Must Be Tried by, and decided solely upon, the record as presented. Miller *v.* Buckley, 85 Miss. 706, 38 So. 99.

2. Schwarz *v.* Kennedy, 142 Fed. 1027; Hubbard *v.* Gould, (N. H. 1906) 64 Atl. 668; Hess's Estate, 27 Pa. Super. Ct. 498; Pennebaker *v.* Parker, 33 Pa. Super. Ct. 458.

The Opinion of the Court. — Carson *v.* Three States Lumber Co., 142 Fed. 893, *affirmed* (C. C. A.) 149 Fed. 377; Carson *v.* Three States Lumber Co., 149 Fed. 377, *affirming* 142 Fed. 893; Horine *v.* Wende, 29 App. Cas. (D. C.) 415; Moore *v.* Chattanooga Electric R. Co., (Tenn. 1908) 109 S. W. 497.

Pleadings, Instructions, and Verdict May Be Offered in Evidence. — B. Roth Tool Co. *v.* New Amsterdam Casualty Co., (C. C. A.) 161 Fed. 709.

Sufficiency of Evidence. — See Rumford Chemical Works *v.* Hygienic Chemical Co., (C. C. A.) 154 Fed. 65, *affirming* 148 Fed. 862.

Where Two Defenses Were Interposed and a general judgment was rendered, it was held to be proper to introduce extrinsic evidence to show which question was actually passed upon. Irvin *v.* Spratlin, 127 Ga. 240, 55 S. E. 1037; Irvin *v.* Callaway, 127 Ga. 246, 55 S. E. 1020.

836. 2. Ortiz *v.* Las Vegas First Nat. Bank, 12 N. Mex. 519, 78 Pac. 529, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 836.

RESTRAINT OF TRADE.

843. 2. Wolverton *v.* Bruce, (Indian Ter. 1905) 89 S. W. 1018; Jayne, etc., Bros. Lumber Co. *v.* Turner, 132 Iowa 7, 109 N. W. 307; Wilson *v.* Delaney, (Iowa 1907) 113 N. W. 842; Vandiver *v.* Robertson, 125 Mo. App. 307, 102 S. W. 659; Kradwill *v.* Thiesen, 131 Wis. 97, 111 N. W. 233.

844. 3. **Ten Miles.** — Harris *v.* Theus, (Ala. 1907) 43 So. 131, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 844.

846. 4. Angelica Jacket Co. *v.* Angelica, 121 Mo. App. 226, 98 S. W. 814.

847. 7. Harris *v.* Theus, (Ala. 1907) 43 So. 133, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847; Foss *v.* Roby, (Mass. 1907) 81 N. E. 199.

848. 6. **Five Years.** — My Laundry Co. *v.* Schmeling, 129 Wis. 597, 109 N. W. 540.

849. 2. Dr. Miles Medical Co. *v.* Platt, 142 Fed. 606; Dr. Miles Medical Co. *v.* Jaynes Drug Co., 149 Fed. 838; John D. Park, etc., Co. *v.* Hartman, (C. C. A.) 153 Fed. 24.

3. American Brake Beam Co. *v.* Pungs, (C. C. A.) 141 Fed. 923.

5. Clemons *v.* Meadows, (Ky. 1906) 94 S. W. 13.

850. 10. United Shoe Machinery Co. *v.* Kimball, 193 Mass. 351, 79 N. E. 790.

851. 1. Cottington *v.* Swan, 128 Wis. 321, 107 N. W. 336.

2. Merriman *v.* Cover, 104 Va. 428, 51 S. E. 817.

852. 1. Harris *v.* Theus, (Ala. 1907) 43 So. 133, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 852.

2. Camors-McConnell Co. *v.* McConnell, 140 Fed. 412, 987; Webb Press Co. *v.* Bierce, 116 La. 905, 41 So. 203.

853. 2. Harris *v.* Theus, (Ala. 1907) 43 So. 134, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 853.

855. 4. Heimbuecher *v.* Goff, 119 Ill. App. 373; Over *v.* Byram Foundry Co., 37 Ind. App. 458, 77 N. E. 302, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 854 [855]; Walter A. Wood Mowing, etc., Co. *v.* Greenwood Hardware Co., 75 S. Car. 378, 55 S. E. 973.

9. Georgia R., etc., Co. *v.* Postal Telegraph Cable Co., 152 Fed. 991.

856. 4. Bradford *v.* Montgomery Furniture Co., 115 Tenn. 610, 92 S. W. 1104.

859. 3. Broadbooks *v.* Tolles, 114 N. Y. App. Div. 646, 99 N. Y. Supp. 996.

10. Anderson *v.* Ross, 14 Ont. L. Rep. 685.

860. 4. Merica *v.* Burget, 36 Ind. App. 461, 75 N. E. 1083, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 860.

RESTRAINTS ON ALIENATION.

864. 1. Johnson *v.* Preston, 226 Ill. 447, 80 N. E. 1001; Female Orphan Soc. *v.* Young Men's Christian Assoc., 119 La. 278, 44 So. 16, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 864, 865.

872. 6. Booker *v.* Booker, 119 N. Y. App. Div. 482, 104 N. Y. Supp. 21.

873. 1. Burnett *v.* Piercy, 149 Cal. 178, 86 Pac. 603.

RETREATING TO WALL.

877. 2. Retreating to Wall — Application of Doctrine to Firearms. — State *v.* Gardner, 68 Atl. 968, 104 Me. 971.

RETURN DAY.

880. 2. Return Day Equivalent to Filing Day. — Everett *v.* Ferst, 126 Ga. 662, 55 S. E. 916.

REVENUE LAWS.

888. 1. U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961.

Liberally Construed. — U. S. *v.* Tiffany, (C. C. C.) 160 Fed. 408.

8. U. S. *v.* Tiffany, (C. C. A.) 160 Fed. 408; U. S. *v.* Boak Fish Co., 146 Fed. 104.

889. 4. Term Used to Designate Special Group of Articles. — Lueders *v.* U. S., 140 Fed. 970.

890. 6. Hayes *v.* U. S., (C. C. A.) 150 Fed. 63.

891. 5. Ceballos *v.* U. S., (C. C. A.) 146 Fed. 380, *affirming* 139 Fed. 705; United States *v.* Cerecedo Hermanos y Compañia, 209 U. S. 337; U. S. *v.* Kuttroff, 147 Fed. 758; U. S. *v.* Proctor, (C. C. A.) 145 Fed. 126, *affirming* 139 Fed. 586.

6*a*. Reciprocal Commercial Agreement with France Supersedes Section of Tariff Act. — La Manna *v.* U. S., (C. C. A.) 144 Fed. 683.

892. 9. U. S. *v.* Edwin S. Hartwell Lumber Co., (C. C. A.) 142 Fed. 432, *affirming* 128 Fed. 306.

10. U. S. *v.* Edwin S. Hartwell Lumber Co., (C. C. A.) 142 Fed. 432, *affirming* 128 Fed. 306.

893. 1. Ellison *v.* U. S., (C. C. A.) 142 Fed. 732, *affirming* 136 Fed. 969.

11*a*. Date Cuban Treaty Went into Effect. — U. S. *v.* American Sugar Refining Co., 202 U. S. 563, 26 U. S. Sup. Ct. 717.

894. 1. U. S. *v.* Amsinck, 140 Fed. 96.

895. 1. An Express Company whose local agent purchases beer with the company's money, brings it into a "dry" community, stores it on the company's premises, and distributes it, collecting the purchase price and express charges from those to whom he delivers it, is a retail dealer. Western Express Co. *v.* U. S., (C. C. A.) 141 Fed. 28.

6. Who Not Liable as Dealer in Oleomargarine. — Tucker *v.* Grier, (C. C. A.) 160 Fed. 611, *affirming* 150 Fed. 658.

6*a*. Extent to Which Internal Revenue Statutes Apply to Oleomargarine. — Tucker *v.* Grier, (C. C. A.) 160 Fed. 611, *affirming* 150 Fed. 658; Craft *v.* Schafer, (C. C. A.) 153 Fed. 175, *affirming* 144 Fed. 907, *petition for rehearing denied* 154 Fed. 1004.

896. 6. U. S. *v.* Lueder, (C. C. A.) 154 Fed. 1, *reversing* 146 Fed. 149; Wakem *v.* U. S., 147 Fed. 874.

Secretary of Treasury Cannot Abridge Free List. — Siegman *v.* U. S., 141 Fed. 491.

897. 1. U. S. *v.* Sandefuhr, 145 Fed. 49.

2. Kendall *v.* Lyman, 161 Fed. 652.

When Collector Not Liable. — Gulbenkian *v.* Stranahan, 158 Fed. 838.

898. 3. Agnew *v.* Haymes, (C. C. A.) 141 Fed. 631, *reversing* 132 Fed. 525.

6*a*. Canadian Revenue Officers receive a portion of the proceeds of the sale of goods seized. Bouchard *v.* Rex, 9 Can. Exch. 216.

899. 7. U. S. *v.* Browne, 11 Can. Crim. Cas. 167, 30 Quebec Super. Ct. 363, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 899; Cossel *v.* U. S., 146 Fed. 146.

900. 2. Importation Must Precede Entry. — U. S. *v.* Edwin S. Hartwell Lumber Co., (C. C. A.) 142 Fed. 432, *affirming* 128 Fed. 306.

4. After Forfeiture Has Accrued Government Is Not Estopped from Asserting Forfeiture by Subsequent Entry. — U. S. *v.* One Purple Cloth Costume, 158 Fed. 899.

7. No Fee Will Be Charged for storing packed packages, where a statute authorizes entry without invoice. U. S. *v.* American Express Co., 154 Fed. 996.

901. 2. What Not Fraudulent Invoice. — U. S. *v.* Seventy-five Bales of Tobacco, (C. C. A.) 147 Fed. 127; The Lace House *v.* U. S., (C. C. A.) 141 Fed. 869; U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961.

5. *Contra*, U. S. *v.* One Silk Rug, (C. C. A.) 158 Fed. 974.

902. 3. Morimura Bros. *v.* U. S., 160 Fed. 280; Wilmerding *v.* U. S., 139 Fed. 1004.

What Is Clerical Error. — U. S. *v.* Muller, (C. C. A.) 158 Fed. 405, *affirming* 152 Fed. 575.

903. 11. The Lace House *v.* U. S., (C. C. A.) 141 Fed. 869; Meyer *v.* U. S., 140 Fed. 334.

904. 3. Date of Consular Certification of Invoice Conclusive as to Date of Invoice. — U. S. *v.* Lawrence, (C. C. A.) 137 Fed. 466.

905. 3. Hayes *v.* U. S., (C. C. A.) 150 Fed. 63; Phelps *v.* U. S., 142 Fed. 213.

What Are Unusual Coverings. — U. S. *v.* Dieckerhoff, (C. C. A.) 160 Fed. 449.

906. 1. The Lace House *v.* U. S., (C. C. A.) 141 Fed. 869.

2. Meyer *v.* U. S., 140 Fed. 334.

907. 5. U. S. *v.* Curnen, (C. C. A.) 146 Fed. 45, *reversing* 136 Fed. 807.

9. U. S. *v.* Beer, (C. C. A.) 150 Fed. 566, *affirming* 142 Fed. 199.

11. U. S. *v.* Muller, (C. C. A.) 158 Fed. 405, *affirming* 152 Fed. 575; Erlanger *v.* U. S., (C. C. A.) 154 Fed. 949, *affirming* 152 Fed. 576; U. S. *v.* Beer, (C. C. A.) 150 Fed. 566, *affirming* 142 Fed. 199.

908. 6. Corrected Invoice Value Should Be Basis of Assessment of Duties. — U. S. *v.* Commercial Cable Co., 141 Fed. 473.

7. Stone *v.* Shallus, (C. C. A.) 143 Fed. 486.

8. Duties Estimated on Weight of Goods at Time of Entry. — Franklin Sugar Refining Co. *v.* U. S., (C. C. A.) 142 Fed. 376, *reversing* 137 Fed. 655.

10. Shaw *v.* U. S., 158 Fed. 648.

Rule as to Fruit Decaying During Voyage. — Stone *v.* Shallus, (C. C. A.) 143 Fed. 486; Courtin *v.* U. S., 143 Fed. 551.

Destruction of Goods Amounting to Non-importation — Provision of Statute as to Abandonment Not Applicable. — Villari *v.* U. S., 147 Fed. 766, *affirmed* (C. C. A.) 160 Fed. 55.

No Allowance for Leakage. — U. S. *v.* Shaw, (C. C. A.) 144 Fed. 320, *reversing* 141 Fed. 469.

Method of Ascertaining Percentage of Decayed Fruit. — Courtin *v.* U. S., 143 Fed. 551.

909. 2. **No Allowance Will Be Made for Impurities in Shelled Nuts** when importation does not vary from the ordinary standard of condition. Spencer *v.* U. S., 143 Fed. 916, *affirmed* (C. C. A.) 151 Fed. 1022.

3*a*. **No Duty for Abnormal Amount of Water in China Clay.** — Perkins *v.* U. S., 160 Fed. 272.

5. U. S. *v.* Downing, (C. C. A.) 146 Fed. 71.

Assessment of Additional Duties Must Be Based on Amount of Goods, Not on Invoice. — Franklin Sugar Refining Co. *v.* U. S., (C. C. A.) 142 Fed. 376, *reversing* 137 Fed. 655.

6. Migliavacca Wine Co. *v.* U. S., 148 Fed. 142; Eimer *v.* U. S., 146 Fed. 144.

910. 3. **Consular Certificate.** — U. S. *v.* Lawrence, (C. C. A.) 137 Fed. 466.

10. Buehne Steel Wool Co. *v.* U. S., (C. C. A.) 159 Fed. 107, *reversing* 154 Fed. 93.

11. Eckstein *v.* U. S., 160 Fed. 287.

911. 4. Leon Rheims Co. *v.* U. S., (C. C. A.) 160 Fed. 925.

6. Cassel *v.* U. S., 146 Fed. 146.

Reliquidation May Be Had after One Year from Entry Where Protest Has Been Filed. — Kendall *v.* Lyman, 161 Fed. 652; Gulbenkian *v.* Stranahan, 158 Fed. 836.

7. Louisville Pillow Co. *v.* U. S., (C. C. A.) 144 Fed. 386.

912. 1. U. S. *v.* Tiffany, (C. C. A.) 151 Fed. 473, *reversing* 137 Fed. 971; Louisville Pillow Co. *v.* U. S., (C. C. A.) 144 Fed. 386.

8. U. S. *v.* Dieckerhoff, 202 U. S. 302, 26 U. S. Sup. Ct. 604, *reversing* (C. C. A.) 136 Fed. 545.

913. 3*a*. **Date of Delivery Permit Is Date on Which Goods Withdrawn.** — Franklin Sugar Refining Co. *v.* U. S., 202 U. S. 580, 26 U. S. Sup. Ct. 720.

3*b*. **Duty Assessed on Weight at Time of Entry, Not at Time of Withdrawal.** — U. S. *v.* Falk, 204 U. S. 143, 27 U. S. Sup. Ct. 191, *reversing* (C. C. A.) 146 Fed. 484.

914. 1. U. S. *v.* Edwin S. Hartwell Lumber Co., (C. C. A.) 142 Fed. 432, *affirming* 128 Fed. 306.

915. 1. **Interest Recoverable in Action for Duties.** — U. S. *v.* Mexican International R. Co., 154 Fed. 519, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 914, 915.

916. 8. **What Not Manufacturing.** — Anheuser-Busch Brewing Assoc. *v.* U. S., 207 U. S. 556, *affirming* 41 Ct. Cl. 389.

918. 6*a*. **Proceeds of Sale of Forfeited Goods Applied to Payment of Tax — Surety Relieved of Liability.** — U. S. *v.* National Surety Co., (C. C. A.) 157 Fed. 174.

8. U. S. *v.* Guest, (C. C. A.) 143 Fed. 456, *affirmed* on rehearing (C. C. A.) 150 Fed. 121. But see Freeman *v.* U. S., (C. C. A.) 157 Fed. 105.

11. U. S. Fidelity, etc., Co. *v.* U. S., (C. C. A.) 158 Fed. 604, *reversing* 144 Fed. 866.

919. 6. Blacklock *v.* U. S., 41 Ct. Cl. 89.

Lien Enforceable in Court of Equity. — Blacklock *v.* U. S., 41 Ct. Cl. 89.

11*a*. **Statute of Limitation Does Not Run against United States.** — Pond *v.* Dougherty, (Cal. App. 1907) 92 Pac. 1035.

13. **An Assessment Regular in Form Will Make Prima Facie Case for the Government.** — Western Express Co. *v.* U. S., (C. C. A.) 141 Fed. 28.

920. 11. *Contra*, U. S. *v.* Hyams, (C. C. A.) 146 Fed. 15.

12*a*. **Replevin May Be Maintained** against the purchaser of property seized and sold by the government for the nonpayment of a tax, where the plaintiff is not the delinquent and claims title to the property. Sheridan *v.* Allen, (C. C. A.) 153 Fed. 568, *reversing* 145 Fed. 963.

922. 6. U. S. *v.* Wyman, (C. C. A.) 156 Fed. 97.

Rule Where Goods Are Tentatively Liquidated. — U. S. *v.* Franklin Sugar Refining Co., 137 Fed. 677.

8. **Notice Dated Incorrectly.** — U. S. *v.* Wyman, (C. C. A.) 156 Fed. 97.

923. 6. Hensel *v.* U. S., 160 Fed. 219; Leerburger *v.* U. S., 155 Fed. 146; Rosenberg *v.* U. S., 146 Fed. 84; U. S. *v.* Helmrath, (C. C. A.) 145 Fed. 36, *affirming* 135 Fed. 912; Fuld *v.* U. S., 143 Fed. 920; U. S. *v.* Dearberg, (C. C. A.) 143 Fed. 472, *reversing* 135 Fed. 245; Boker *v.* U. S., 140 Fed. 115, *affirmed* (C. C. A.) 145 Fed. 1022; U. S. *v.* Fleitmann, (C. C. A.) 137 Fed. 476, *reversing* 131 Fed. 396.

924. 9. U. S. *v.* Tiffany, (C. C. A.) 151 Fed. 473, *reversing* 137 Fed. 971.

10. **Payment to Obtain Possession of Goods Not Voluntary.** — Heinszen *v.* U. S., 42 Ct. Cl. 58.

925. 1*a*. **One Board of General Appraisers Cannot Transfer Case to Another Board.** — Prosser *v.* U. S., (C. C. A.) 158 Fed. 971.

7. U. S. *v.* Hensel, 158 Fed. 645.

8*a*. **When Evidence in Another Case Inadmissible.** — Knauth *v.* U. S., 155 Fed. 144.

926. 8. U. S. *v.* Proctor, (C. C. A.) 145 Fed. 126, *affirming* 139 Fed. 586.

11. **Weight Given to Decision of Board of Appraisers.** — U. S. *v.* Leigh, 159 Fed. 314.

Finding of Board of General Appraisers Presumed Correct. — The record was defective in that the evidence in support of the findings of the board had been lost. No other evidence was introduced. Schoellkopf *v.* U. S., 147 Fed. 855.

927. 6. **Incompetent Evidence Admitted by Board of General Appraisers Will Receive Little Consideration in Circuit Court.** — Knaugh *v.* U. S., 155 Fed. 144.

8. U. S. *v.* Hempstead, 159 Fed. 290. But see Plummer *v.* U. S., 160 Fed. 284.

Failure to Introduce Evidence Before the Board of Appraisers will prevent the importer from introducing evidence in the Circuit Court, although the importer received no notice of the hearing before the board. Maurer *v.* U. S., 160 Fed. 228.

10. U. S. *v.* Hartley, 140 Fed. 969.

928. 3. Baldwin *v.* U. S., 139 Fed. 1005.

8. **Acceptance of Principal Without Interest Waiver of Claim of Interest.** — Bidwell *v.* Preston, (C. C. A.) 160 Fed. 653.

12. **What Questions Supreme Court Will Review.** — U. S. *v.* Larkin, 208 U. S. 333.

13*a*. **Importer Cannot Raise Point that He Did Not Raise Below.** — U. S. *v.* Dieckerhoff, (C. C. A.) 160 Fed. 449.

On Appeal Government Cannot Dispute Point that It Conceded in Circuit Court. — U. S. *v.* Leerburger, (C. C. A.) 160 Fed. 651.

929. 1. Vandiver *v.* U. S., (C. C. A.) 156 Fed. 961.

Question of Fact May Be Reviewed. — U. S. *v.* Proctor, (C. C. A.) 145 Fed. 126, *affirming* 139 Fed. 586.

4. **Appeal to Commissioner Before Payment of Tax Obviates Necessity of Appeal to Him after Payment.** — Schwarzchild *v.* Rucker, 143 Fed. 656.

Tax Voluntarily Paid Cannot Be Recovered Back. — Newhall *v.* Jordan, (C. C. A.) 160 Fed. 661, *affirming* 149 Fed. 586.

4*a*. **When Cause of Action Accrues.** — Schwarzchild *v.* Rucker, 143 Fed. 656.

Provision of Internal Revenue Act Not Applicable to Oleomargarine. — Tucker *v.* Grier, (C. C. A.) 160 Fed. 611, *affirming* 150 Fed. 658.

10. Western Express Co. *v.* U. S., (C. C. A.) 141 Fed. 28.

930. 9. **Sale of Whiskey into Which, after Stamping, Nontaxable Substance Has Been Introduced.** — U. S. *v.* A. Graf Distilling Co., 208 U. S. 198.

Shipping Spirits with the Stamps Concealed is a violation of the regulation of the commissioner of internal revenue, but is no crime. U. S. *v.* Sandefuhr, 145 Fed. 49.

Shipping Liquors under Name or Brand Other than Known to Trade. — U. S. *v.* Liquor Dealers Supply Co., 156 Fed. 219.

Smuggling — Bringing Cattle Near Canada So that They Stray Across Line. — Spencer *v.* Rex, 10 Can. Exch. 79.

Changing Condition of Goods for Purpose of Defrauding Government. — Stone, etc., Co. *v.* U. S., 147 Fed. 603.

931. 8. U. S. *v.* 83 Sacks Wool, 147 Fed. 747.

9. Agnew *v.* Haymes, (C. C. A.) 141 Fed. 631.

10. See Agnew *v.* Haymes, (C. C. A.) 141 Fed. 631.

932. 5. Harts *v.* U. S., (C. C. A.) 140 Fed. 843.

Qualification of Rule. — U. S. *v.* One Silk Rug, (C. C. A.) 158 Fed. 974.

933. 7*a*. **Horse and Wagon Used in Smuggling Forfeitable Regardless of Innocence of Owner.** — U. S. *v.* One Black Horse, 147 Fed. 770.

8. **Stamped Spirits Forfeited.** — Harkins *v.* Williard, 146 Fed. 703.

13*a*. **Burden upon Defendant to Prove Payment of Tax.** — Morris *v.* U. S., (C. C. A.) 161 Fed. 672.

935. 5. Dorr Cattle Co. *v.* Des Moines Nat. Bank, 127 Iowa 153, 98 N. W. 918, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 935.

Failure to Stamp Does Not Render Deed Invalid. — Thompson *v.* Calhoun, 216 Ill. 161, 74 N. E. 775.

Question of Validity of Unstamped Instrument Cannot Be Raised in State Courts. — Wheaton *v.* Liverpool, etc., Ins. Co., (S. Dak. 1905) 104 N. W. 850.

936. 3. **Unpaid Tax Cannot Be Recovered in Action of Debt.** — U. S. *v.* Chamberlin, (C. C. A.) 156 Fed. 881.

5. **Voluntary Payment of Stamp Tax Cannot Be Recovered Back.** — U. S. *v.* New York, etc., Steamship Co., 200 U. S. 488, 26 U. S. Sup. Ct. 327.

REWARDS.

941. 1. **"A Reward for the Arrest of an Offender** is an offer or conditional promise to pay the person performing the required service a certain sum of money." McClaughry *v.* King, (C. C. A.) 147 Fed. 463, 8 Ann. Cas. 856.

942. 2. McClaughry *v.* King, (C. C. A.) 147 Fed. 463, 8 Ann. Cas. 856.

6. Felker *v.* Elk County, 70 Kan. 96, 78 Pac. 167.

10. **District Attorney Has No Power to Offer Reward.** — McNeil *v.* Suffolk County, 114 N. Y. App. Div. 761, 101 N. Y. Supp. 239.

943. 2. Arkansas Southwestern R. Co. *v.* Dickinson, 78 Ark. 483, 95 S. W. 802.

944. 2. Arkansas Southwestern R. Co. *v.* Dickinson, 78 Ark. 483, 95 S. W. 802.

8. **Statutory Authority of Governor.** — Felker *v.* Elk County, 70 Kan. 96, 78 Pac. 167.

13. Arkansas Southwestern R. Co. *v.* Dickinson, 78 Ark. 483, 95 S. W. 802.

945. 2. Felker *v.* Elk County, 70 Kan. 96, 78 Pac. 167, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 944.

3. Smith *v.* Vernon County, 188 Mo. 501, 87 S. W. 949, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 944, 945.

5. Felker *v.* Elk County, 70 Kan. 96 78 Pac. 167.

947. 12. See People *v.* Brower, 111 N. Y. App. Div. 915, 97 N. Y. Supp. 349.

948. 9. McClaughry *v.* King, (C. C. A.) 147 Fed. 463, 8 Ann. Cas. 856.

12. Moore *v.* Pease, (Ky. 1906) 97 S. W. 762.

950. 7. **Offer of Reward by Single Female to Marriage Broker for Procuring Husband for Her Is Illegal.** — Hermann *v.* Charlesworth, (1905) 2 K. B. 123, 1 Ann. Cas. 691.

952. 5. McClaughry *v.* King, (C. C. A.) 147 Fed. 463, 8 Ann. Cas. 856.

10. Broadnax *v.* Ledbetter, (Tex. 1907) 99 S. W. 1111.

12. Atwood *v.* Armstrong, 102 N. Y. App. Div. 601, 92 N. Y. Supp. 596.

953. 4. **Constable Cannot Accept Offer** — *For Arrest on Warrant within County.* — Com. *v.* Lane, 28 Pa. Super. Ct. 149.

For Arrest, Without Warrant, for Felony within Jurisdiction. — Somerset Bank *v.* Edmund, 76 Ohio St. 396, 81 N. E. 641.

Police Officer May Accept Offer — *For Arrest of Fugitive from Another State.* — Smith *v.* Vernon County, 188 Mo. 501, 87 S. W. 949, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 953.

Where Offer Is Made by Surety on Bail Bond. — Curran *v.* Collins, (Indian Ter. 1907) 104 S. W. 572.

955. 7. Felker *v.* Elk County, 70 Kan. 96, 78 Pac. 167; Cunningham *v.* Fiske, (N. Mex. 1906) 83 Pac. 789.

9. Smith *v.* Vernon County, 188 Mo. 501, 87 S. W. 949.

956. 3. Atwood *v.* Armstrong, 102 N. Y. App. Div. 601, 92 N. Y. Supp. 596.

4. McClaughry *v.* King, (C. C. A.) 147 Fed. 463, 8 Ann. Cas. 856.

12. McClaughry *v.* King, (C. C. A.) 147 Fed. 463, 8 Ann. Cas. 856.

957. 9. Broadnax *v.* Ledbetter, (Tex. 1907) 99 S. W. 1111, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 957; Smith *v.* Vernon County, 188 Mo. 501, 87 S. W. 949; Couch *v.* State, 14 N. Dak. 361, 103 N. W. 942.

959. 2. Mount *v.* Montgomery County, 168 Ind. 661, 80 N. E. 629, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 959.

960. 1. Atwood *v.* Armstrong, 102 N. Y. App. Div. 601, 92 N. Y. Supp. 596.

7. **Acceptance of Witness Fees Does Not Waive Right to Reward.** — Smith *v.* Vernon County, 188 Mo. 501, 87 S. W. 949.

961. 15. See Smith *v.* Vernon County, 188 Mo. 501, 87 S. W. 949.

962. 5. Arkansas Southwestern R. Co. *v.* Dickinson, 78 Ark. 483, 95 S. W. 802

RIGHT OF WAY.

968. 2. **Right of Way Equivalent to Track — Accident Insurance.** — Starr *v.* Ætna L. Ins. Co., 41 Wash. 199, 83 Pac. 113.

RIOT.

971. 1. **Riot a Misdemeanor.** — Field *v.* Metropolitan Police, (1907) 2 K. B. 853.

The Oregon Statute provides that "any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons acting together, and without authority of law, is riot." State *v.* Seeley, (Oregon 1908) 94 Pac. 37.

2. Field *v.* Metropolitan Police, (1907) 2 K. B. 853.

972. 2. Stanfield *v.* State, 1 Ga. App. 532, 57 S. E. 953.

3. Stanfield *v.* State, 1 Ga. App. 532, 57 S. E. 953; Field *v.* Metropolitan Police, (1907) 2 K. B. 853.

973. 2. Hunter *v.* State, 127 Ga. 43, 55 S. E. 1044; Stanfield *v.* State, 1 Ga. App. 532, 57 S. E. 953; Field *v.* Metropolitan Police, (1907) 2 K. B. 853.

3. State *v.* Seeley, (Oregon 1908) 94 Pac. 37.

974. 2. Lewis *v.* State, 2 Ga. App. 659, 58 S. E. 1070; Field *v.* Metropolitan Police, (1907) 2 K. B. 853.

976. 4. **Evidence that Prosecutor's Wife Fainted as Result of Fright Is Admissible.** — Johnson *v.* State, 124 Ga. 656, 52 S. E. 880.

6. **Statement of One Defendant, in Absence of Other, Thirty Minutes after Alleged Riot, Is Not Admissible.** — Shuler *v.* State, 126 Ga. 630, 55 S. E. 496.

7. **Acquittal of Assault with Intent to Murder Bars Prosecution for Riot.** — Lock *v.* State, 122 Ga. 730, 50 S. E. 932.

RIPARIAN RIGHTS.

979. 5. White *v.* White, (1906) A. C. 72; McCartney *v.* Londonderry, etc., R. Co., (1904) A. C. 301; Sharp *v.* Wilson, 93 L. T. N. S. 155; Leahy *v.* North Sydney, 37 Can. Sup. Ct. 464; Morris *v.* Bean, 146 Fed. 423; Alabama Consol. Coal, etc., Co. *v.* Turner, 145 Ala. 639, 39 So. 603; Gutierrez *v.* Wege, 151 Cal. 587, 91 Pac. 395; Hazard Powder Co. *v.* Somersville Mfg. Co., 78 Conn. 172, 61 Atl. 519; Oakland Woolen Co. *v.* Union Gas, etc., Co., 101 Me. 198, 63 Atl. 915; New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231; Mason *v.* Whitney, 193 Mass. 152, 78 N. E. 881; Roberts *v.* Claremont R., etc., Co., 74 N. H. 217, 66 Atl. 485; Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; Brown *v.* Gold Coin Min. Co., 48 Oregon 277, 86 Pac. 361; Nielson *v.* Sponer, 46 Wash. 14, 89 Pac. 155.

980. 3. **Liability for Pollution.** — Thropp *v.* Harpers' Ferry Paper Co., (C. C. A.) 142 Fed. 690; Alabama Consol. Coal, etc., Co. *v.* Vines, (Ala. 1907) 44 So. 377; Gorham *v.* New Haven, 79 Conn. 670, 66 Atl. 505; Tutwiler Coal, etc., Co. *v.* Nichols, (Ala. 1905) 39 So. 762; Munice Pulp Co. *v.* Keesling, (Ind. 1906) 76 N. E. 1002; Parker *v.* American Woolen Co., (Mass. 1907) 81 N. E. 468; MacNamara *v.* Taft, (Mass. 1908) 83 N. E. 310; Doremus *v.* Paterson, 70 N. J. Eq. 296, 62 Atl. 3; Markwaidt *v.* Guthrie, 18 Okla. 32, 90 Pac. 26; Teel *v.* Rio Bravo Oil Co., (Tex. Civ. App. 1907) 104 S. W. 420; St. John *v.* Barker, 3 N. Bruns. Eq. Rep. 358.

6. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453.

981. 2. Mobile Docks Co. *v.* Mobile, 146 Ala. 198, 40 So. 205, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 981; Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120.

No Rights Attach to Ownership of Land Beyond Watershed. — Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

5. Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

9. Henderson Estate Co. *v.* Carroll Electric Co., 113 N. Y. App. Div. 775, 99 N. Y. Supp. 365. See Minor *v.* New Orleans, 115 La. 307, 38 So. 999, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 981.

10. Doremus *v.* Paterson, 69 N. J. Eq. 775, 61 Atl. 396.

982. 8. Wood *v.* Etiwanda Water Co., 147 Cal. 228, 81 Pac. 512; Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Henderson Estate Co. *v.* Carroll Electric Co., 113 N. Y. App. Div. 775, 99 N. Y. Supp. 365.

RIVER.

984. 2. **In Speaking of a River as a Boundary** the stream in its ordinary state of high water is intended. Minor *v.* New Orleans, 115 La. 301, 38 So. 999.

ROAD.

985. 1. Griffin *v.* Sanborn, 127 Ga. 17, 56 S. E. 71.

The Term "Road Precinct" designates any *road* or part of a road apportioned to an overseer. Ward *v.* State, (Ala. 1905) 39 So. 923.

Bridle Path Not Road — Virginia Statute. — Terry *v.* McClung, 104 Va. 599, 52 S. E. 355.

ROADBED — ROADWAY.

988. 4. **The Term "Roadbed"** signifies the bed or foundation upon which rests the superstructure of rails and sleepers. *In re* United

New Jersey R., etc., Co., (N. J. 1907) 67 Atl. 1073.

Right of Way and Roadway Synonymous.— San Francisco, etc., R. Co. *v.* Stockton, 149 Cal. 83, 84 Pac. 771.

ROBBERY.

991. 1. See Weidner *v.* Standard L., etc., Ins. Co., 130 Wis. 16, 110 N. W. 246 (an accident insurance case), *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 991.

994. 4. A nickel is lawful currency of the United States and therefore of sufficient value to make the felonious taking thereof robbery. Barddell *v.* State, 144 Ala. 54, 39 So. 975.

10. Weidner *v.* Standard L., etc., Ins. Co., 130 Wis. 17, 100 N. W. 246 (an accident insurance case), *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 994.

995. 2. Com. *v.* Titsworth, (Ky. 1907) 98 S. W. 1028; Tones *v.* State, 48 Tex. Crim. 363, 88 S. W. 217.

4. Tones *v.* State, 48 Tex. Crim. 363, 88 S. W. 217.

5. Tones *v.* State, 48 Tex. Crim. 363, 88 S. W. 217; Harris *v.* State, 1 Ga. App. 136, 57 S. E. 937, *citing* 21 AM. AND ENG. ENCYC. OF LAW (2d ed.) 997.

7. See People *v.* White, 5 Cal. App. 329, 90 Pac. 471.

996. 2. Weidner *v.* Standard L., etc., Ins. Co., 130 Wis. 22, 110 N. W. 246, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 996 (dissenting opinion).

3. Grant *v.* State, 125 Ga. 259, 54 S. E. 191.

6. State *v.* Paisley, (Mont. 1907) 92 Pac. 566, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 996.

"The attempted larceny becomes robbery when force and violence is used to complete the unlawful act." Carter *v.* State, (Ga. App. 1908) 60 S. E. 216.

997. 1. State *v.* Parsons, 44 Wash. 299, 87 Pac. 349.

4. Tones *v.* State, 48 Tex. Crim. 363, 88 S. W. 217. See also Williams *v.* State, (Tex. Crim. 1907) 102 S. W. 1134; Reyes *v.* State, (Tex. Crim. 1907) 102 S. W. 1156.

The "sudden snatching" which is defined as robbery in the Georgia statute (Acts of 1903, p. 43) amending the Pen. Code 1885, § 1, is violence. Pride *v.* State, 125 Ga. 748, 54 S. E. 686.

998. 5. **Contra.** — Stockton *v.* Com., (Ky. 1907) 101 S. W. 298.

"Sudden snatching" is made robbery by statute in *Georgia*. Pride *v.* State, 125 Ga. 748, 54 S. E. 686.

6. **Illustrations.** — To snatch a watch from the owner's person with sufficient force to break the chain is violence. Perry *v.* Com., (Ky. 1905) 85 S. W. 732.

999. 2. **What Constitutes Fear.** — Johnson *v.* State, 1 Ga. App. 729, 57 S. E. 1056; Stewart *v.* People, 224 Ill. 434, 79 N. E. 636, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 991 and 993.

7. **Public Officers.** — Though police officers may have the right to take valuables from the person of a prisoner, yet, if this is done forcibly and with felonious intent, such taking constitutes robbery. Tones *v.* State, 48 Tex. 363, 88 S. W. 217.

Contra, if the arrest was made in good faith even though defendant had no authority to make it. Burnsides *v.* State, (Tex. Crim. 1907) 102 S. W. 118.

1001. 8. See State *v.* Nethercutt, (Wash. 1907) 92 Pac. 938, *quoting obiter* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1001.

Taking Property by Stealth. — Morris *v.* State, 125 Ga. 36, 53 S. E. 564.

Consent. — Tones *v.* State, 48 Tex. 363, 88 S. W. 217.

1002. 2. **Taking Property from the Person** of the owner by force is robbery even though the owner did not know that it was being taken. Moran *v.* State, 125 Ga. 33, 53 S. E. 806.

5. Hill *v.* State, 145 Ala. 58, 40 So. 654.

1003. 1. See Grant *v.* State, 125 Ga. 259, 54 S. E. 191.

4. O'Donnell *v.* People, 224 Ill. 218, 79 N. E. 639.

6. Triplett *v.* Com., (Ky. 1906) 91 S. W. 281; Glenn *v.* State, 49 Tex. Crim. 349, 92 S. W. 806; State *v.* McCoy, (W. Va. 1907) 59 S. E. 758.

1004. 4. Triplett *v.* Com., (Ky. 1906) 91 S. W. 281; Fanin *v.* State, (Tex. Crim. 1907) 100 S. W. 916, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1004; Glenn *v.* State, 49 Tex. Crim. 349, 92 S. W. 806.

5. *Contra*, Fanin *v.* State, (Tex. Crim. 1907) 100 S. W. 916, *disapproving* as too broad the rule laid down in the text.

12. **Actual Presence Necessary.** — *Contra*, Bollen *v.* State, 48 Tex. Crim. 70, 86 S. W. 1025.

1005. 9. **Dangerous Weapon.** — A piece of rubber hose in which lead has been inserted is a dangerous weapon within the meaning of Pen. Code N. Y., § 228. People *v.* Du Veau, 105 N. Y. App. Div. 381, 94 N. Y. 225.

13. **Intent** is shown by evidence that the defendants — police officers — almost immediately turned over to the jailer fifty-five cents, a purse, and two pints of whiskey, but retained $38 in bills, all of these articles having been taken by them from the person of their prisoner. Tones *v.* State, 48 Tex. 363, 88 S. W. 217.

14. See Toliver *v.* State, 142 Ala. 3, 38 So. 801; Delaney *v.* State, 48 Tex. Crim. 594, 90 S. W. 642.

1006. 2. People *v.* Castile, 3 Cal. App. 485, 86 Pac. 745; People *v.* Hallam, (Cal. App. 1907) 92 Pac. 190; State *v.* Finn, 199 Mo. 597, 98 S. W. 9. See also Clay *v.* State, 122 Ga. 136, 50 S. E. 56; State *v.* Gordon, 115 La. 571, 39 So. 625.

4. **For Cases Wherein the Evidence Was Held Sufficient** — *Alabama.* — Lewis *v.* State, (Ala. 1905) 39 So. 928.

Arkansas. — Shell *v.* State, 84 Ark. 344, 105 S. W. 575, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1006.

California. — People *v.* Castile, 3 Cal. App. 485, 86 Pac. 746; People *v.* Howard, 3 Cal. App. 36, 84 Pac. 462; People *v.* Kelly, 146 Cal. 119, 79 Pac. 846.

Colorado. — Smith *v.* People, 39 Colo. 202, 88 Pac. 1072.

Georgia. — Moran *v.* State, 125 Ga. 33, 53 S. E. 806; Hickey *v.* State, 125 Ga. 145, 53 S. E. 1026; Harris *v.* State, 1 Ga. App. 136, 57 S. E. 937.

Missouri. — State *v.* Alexander, 184 Mo. 266, 83 S. W. 753; State *v.* Swisher, 186 Mo. 1, 84 S. W. 911; State *v.* Vaughan, 119 Mo. 108, 97 S. W. 879.

Nebraska. — Buckley *v.* State, (Neb. 1907) 112 N. W. 283.

New York. — People *v.* McKenna, 118 N. Y. App. Div. 766, 118 N. Y. App. Div. 766, 103 N. Y. Supp. 870.

Texas. — Reyes *v.* State, (Tex. Crim. 1907) 102 S. W. 1156.

Wisconsin. — Lipscomb *v.* State, 130 Wis. 238, 109 N. W. 986.

For Cases Wherein the Evidence Was Held Insufficient to Convict, see Ramirez *v.* Territory, 9 Ariz. 177, 80 Pac. 391; State *v.* Waln, (Idaho 1905) 80 Pac. 221; Steward *v.* People, 224 Ill. 434, 79 N. E. 636; State *v.* Jamieson, 45 Wash. 314, 88 Pac. 214.

Where under an indictment for robbery charging the taking of two nickels and one dime, the taking of the nickels is proved and the court takes judicial notice that they are lawful currency of the United States, proof with reference to the dime need not be offered. Barddell *v.* State, 144 Ala. 54, 39 So. 975.

5. People *v.* Du Veau, 105 N. Y. App. Div. 381, 94 N. Y. Supp. 225.

ROOM.

1008. 1. **Room — Pool Selling.** — See State *v.* Oldham, 200 Mo. 538, 98 S. W. 497.

ROUND.

1008. 7. **Round Timber — Revenue Laws.** — Perfection Pile Preserving Co. *v.* U. S., 147 Fed. 922.

ROYALTIES.

1009. 5. Kissick *v.* Bolton, 134 Iowa 650, 112 N. W. 96, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1009.

RULE.

1010. 8. **The Definition of a Rule or Order,** which are synonymous terms, includes commands to lower courts or court officials to do ministerial acts. Carter *v.* Louisiana Purchase Exposition Co., 124 Mo. App. 530, 102 S. W. 6, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) [1010], 1016.

RUNNING ACCOUNTS.

1011. 7. Brock *v.* Wildey, 125 Ga. 82, 54 S. E. 195, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1011.

SAFE — SAFELY — SAFETY.

1013. 6. **Personal Injuries.** — See Davis *v.* Northwestern R. Co., 75 S. Car. 303, 55 S. E. 526.

A Brick Vault Open at One Side Is Not a Safe within an ordinance requiring explosives to be stored in a vault or *safe*. Smith *v.* Mine, etc., Supply Co., (Utah 1907) 88 Pac. 683.

SALES.

1022. 1. Giffen *v.* Selma Fruit Co., 5 Cal. App. 50, 89 Pac. 855; Stum *v.* Hadrich, (Cal. App. 1907) 94 Pac. 82; Yick Sung *v.* Herman, 2 Cal. App. 633, 83 Pac. 1089, *rehearing denied* 2 Cal. App. 637, 83 Pac. 1091; Close *v.* Browne, 230 Ill. 228, 82 N. E. 629; Bierce *v.* Davies, 116 La. 1059, 41 So. 314; Lombard Water-Wheel Gov. Co. *v.* Great Northern Paper Co., 101 Me. 114, 63 Atl. 555.

Essential Elements of a Contract of Sale. — *In re* Columbus Buggy Co., (C. C. A.) 143 Fed. 859.

3. Morgan *v.* Heitmann, 121 N. Y. App. Div. 568, 106 N. Y. Supp. 253.

5. Barber *v.* Andrews, (R. I. 1908) 69 Atl. 1.

1023. 3. Giffen *v.* Selma Fruit Co., 5 Cal. App. 50, 89 Pac. 855; Bloom *v.* Union Rice Milling Co., 118 La. 311, 42 So. 947; Thalman *v.* Giles, 116 N. Y. App. Div. 437, 101 N. Y. Supp. 980; Ravenna First State Bank *v.* Barnett, (Tex. Civ. App. 1907) 106 S. W. 182.

The Legal Intent Controls. — Star Drilling Mach. Co. *v.* McLeod, (Ky. 1906) 92 S. W. 558.

Bailment or Sale. — B. F. Sturtevant Co. *v.* Dugan, (Md. 1907) 68 Atl. 351.

4. Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69. See Gould *v.* Cates Chair Co., 147 Ala. 629, 41 So. 675; Inman *v.* Elk Cotton Mills, 116 Tenn. 141, 92 S. W. 760.

5. *United States.* — *In re* Wells, 140 Fed. 752; *In re* Wood, 140 Fed. 964; *In re* Columbus Buggy Co., (C. C. A.) 143 Fed. 859; *In re* Heckathorn, 144 Fed. 499; *In re* Angeny, 151 Fed. 959; *In re* Morris, 156 Fed. 597.

Connecticut. — Lambert Hoisting Engine Co. *v.* Carmody, 79 Conn. 419, 65 Atl. 141.

Kansas. — Concordia First Nat. Bank *v.* McIntosh, etc., Live Stock, etc., Co., 72 Kan. 603, 84 Pac. 535.

Maryland. — B. F. Sturtevant Co. *v.* Dugan, (Md. 1907) 68 Atl. 351.

North Dakota. — Morrison Mfg. Co. *v.* Fargo Storage, etc., Co., (N. Dak. 1907) 113 N. W. 605.

Ohio. — Clark *v.* Gault, 77 Ohio St. 497, 83 N. E. 900.

Oregon. — Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

Pennsylvania. — American Car, etc., Co. *v.* Altoona, etc., R. Co., 218 Pa. St. 519, 67 Atl. 838; Euwer *v.* Greer, 29 Pa. Super. Ct. 262.

Texas. — Ravenna First State Bank *v.* Barnett, (Tex. Civ. App. 1907) 106 S. W. 182.

Utah. — Rich *v.* Utah Commercial, etc., Bank, 30 Utah 334, 84 Pac. 1105; Manti City Sav. Bank *v.* Peterson, 30 Utah 475, 86 Pac. 414.

1024. 1. Gottlieb *v.* Rinaldo, 78 Ark. 123, 93 S. W. 750; Virginia-Carolina Lumber Co. *v.* Eisinger, 29 App. Cas. (D. C.) 531; Smith *v.* Texas, etc., R. Co., (Tex. 1908) 108 S. W. 819.

2. Guss *v.* Nelson, 200 U. S. 298, 26 U. S. Sup. Ct. 260, *affirming* 14 Okla. 296, 78 Pac. 170; Missouri Smoke Preventer Co. *v.* St. Louis, 205 Mo. 220, 103 S. W. 513; State *v.* Betz, 207 Mo. 589, 106 S. W. 64; Greacen *v.* Poehlman, 191 N. Y. 492, 84 N. E. 390, *reversing* 118 N. Y. App. Div. 910, 103 N. Y. Supp. 1127; Smith *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 105 S. W. 528.

As to "sale or return" in England under the "Sale of Goods Act," see Weiner *v.* Gill, (1905) 2 K. B. 172.

3. Gottlieb *v.* Rinaldo, 78 Ark. 123, 93 S. W. 750; State *v.* Betz, 207 Mo. 589, 106 S. W. 64.

1025. 1. **Where No Time Is Fixed** by the contract the goods must be returned in a reasonable time. Greacen *v.* Poehlman, 191 N. Y. 493, 84 N. E. 390, *reversing* 118 N. Y. App. Div. 910, 103 N. Y. Supp. 1127.

3. *In re* United Educational Co., (C. C. A.) 153 Fed. 169; Keifer *v.* Myers, (Cal. 1907) 91 Pac. 163.

5. Zussman *v.* Woodbridge, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 496, 97 N. Y. Supp. 973.

1026. 1. Concordia First Nat. Bank *v.* McIntosh, etc., Live Stock, etc., Co., 72 Kan. 603, 84 Pac. 535, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1026.

2. B. F. Sturtevant Co. *v.* Dugan, (Md.) 68 Atl. 351; Collyer *v.* Krakauer, 122 N. Y. App. Div. 797, 107 N. Y. Supp. 739; Cæsar Misch Incor. *v.* Mosheim, 123 N. Y. App. Div. 322, 107 N. Y. Supp. 1092.

3. *In re* Wells, 140 Fed. 752, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1026.

4. Brockman Commission, etc., Co. *v.* Pound, 77 Ark. 364, 91 S. W. 183; McKinney *v.* Grant, (Kan. 1907) 93 Pac. 180; Federal Chemical Co. *v.* Green, (Ky. 1906) 97 S. W. 803; Coun *v.* Reed, 73 N. J. L. 112, 62 Atl. 271; Campbell *v.* Emslie, 101 N. Y. 369, 91 N. Y. Supp. 1069, *affirmed* (N. Y. 1906) 77 N. E. 1183; American Seeding Mach. Co. *v.* Stearns *et al.*, 109 N. Y. App. Div. 192, 96 N. Y. Supp. 830.

1027. 5. Heywood *v.* Doernbecher Mfg. Co., 48 Oregon 359, 86 Pac. 357, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1027, where the contract was construed as one of sale.

1028. 2. Brown *v.* Trinidad Asphalt Mfg. Co., (Mo. 1908) 109 S. W. 22.

4. *United States.* — Baird *v.* Pratt, (C. C. A.) 148 Fed. 825.

Alabama. — Adair *v.* Stovall, (Ala. 1906) 42 So. 596.

Arkansas. — Barton-Parker Mfg. Co. *v.* Taylor, 78 Ark. 586, 94 S. W. 713.

California. — Wolf *v.* King, 1 Cal. App. 749, 82 Pac. 1055.

Georgia. — Atlanta Buggy Co. *v.* Hess Spring, etc., Co., 124 Ga. 338, 52 S. E. 613; Mountain City Mill Co. *v.* Cobb, 124 Ga. 937, 53 S. E. 458; Simpson *v.* Sanders, (Ga. 1908) 60 S. E. 541.

Indiana. — Indiana Fuel Supply Co. *v.* Indianapolis Basket Co., (Ind. App. 1908) 84 N. E. 776.

Iowa. — See Moench *v.* Howe, (Iowa 1908) 115 N. W. 229, where the contract is held not invalid for lack of mutuality.

Maryland. — Potomac Bottling Works *v.* Barber, 103 Md. 509, 63 Atl. 1068; J. H. Duker Box Co. *v.* Dixon, (Md. 1907) 66 Atl. 611; B. F. Sturtevant Co. *v.* Dugan, (Md. 1907) 68 Atl. 351.

Michigan. — Tri-State Milling Co. *v.* Briesch, 145 Mich. 232, 108 N. W. 657; Ayres *v.* Hinkle, 145 Mich. 283, 108 N. W. 702; Floyd *v.* Mann, 146 Mich. 356, 109 N. W. 679. See also Orr *v.* Kenny, 150 Mich. 159, 114 N. W. 228.

Missouri. — Price *v.* Atkinson, 117 Mo. App. 52, 94 S. W. 816.

Nebraska. — Shuman *v.* Heater, (Neb. 1906) 106 N. W. 1042, holding that the evidence showed a sale.

New York. — Wilentshik *v.* Messler, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 362, 95 N. Y. Supp. 500; Miller *v.* Idler, (Supm. Ct. App. Div.) 110 N. Y. Supp. 858.

North Carolina. — See Rankin *v.* Mitchem, 141 N. Car. 277, 53 S. E. 854; Charles Holmes Mach. Co. *v.* Chalkley, 143 N. Car. 181, 55 S. E. 524.

North Dakota. — Garland *v.* Keeler, 15 N. Dak. 548, 108 N. W. 484; P. J. Bowlin Liquor Co. *v.* Beaudoin, 15 N. Dak. 557, 108 N. W. 545.

Texas. — Bradshaw *v.* Terrell Foundry, etc., Co., (Tex. Civ. App. 1907) 104 S. W. 509, where, however, the contract was held to an extent enforceable.

Virginia. — Smokeless Fuel Co. *v.* Seaton, 105 Va. 170, 52 S. E. 829.

Washington. — William B. Scarfe, etc., Co. *v.* Standard Ice Co., (Wash. 1907) 89 Pac. 882.

8. Colean Mfg. Co. *v.* Blanchett, (N. Dak. 1907) 113 N. W. 614.

1029. 1. King-Keystone Oil Co. *v.* San Francisco Brick Co., 148 Cal. 87, 82 Pac. 849; Poliakoff *v.* Petry, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 602, 99 N. Y. Supp. 481. See also Cunningham *v.* Allen, (Wash. 1907) 90 Pac. 920.

2. Howell *v.* Maine, 127 Ga. 574, 56 S. E. 771; J. F. Bailey Co. *v.* West Lumber Co., 1 Ga. App. 398, 58 S. E. 120; Cable Co. *v.* Hancock, 2 Ga. App. 73, 58 S. E. 319; Ziehme *v.* Parish, 74 Kan. 542, 87 Pac. 685; Thedford *v.* Herbert, 118 N. Y. App. Div. 181, 102 N. Y. Supp. 1083; P. J. Bowlin Liquor Co. *v.* Blaudoin, 15 N. Dak. 557, 108 N. W. 545; Parks *v.* Morris, (W. Va. 1907) 59 S. E. 753, where, however, the subject-matter seems to have been chattels real.

Acceptance of Offer Constitutes an Executory Contract of Sale. — Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018.

4. *United States.* — Lestershire Lumber, etc., Co. *v.* W. M. Ritter Lumber Co. 144 Fed. 568.

Alabama. — Willman *v.* Alabama Brokerage Co., 145 Ala. 684, 40 So. 102.

Georgia. — Simpson *v.* Sanders, (Ga. 1908) 60 S. E. 541; Oak City Cooperage Co. *v.* Kennedy Stave, etc., Co., (Ga. App. 1908) 61 S. E. 490.

Kansas. — Bauman *v.* McManus, 75 Kan. 106, 89 Pac. 15. See also Crystal Case Co. *v.* Arnett, 73 Kan. 774, 85 Pac. 302.

Maine. — Hollis *v.* Libby, 101 Me. 302, 64 Atl. 621.

Maryland. — Noel Constr. Co. *v.* Atlas Portland Cement Co., 103 Md. 209, 63 Atl. 384.

Michigan. — Day Leather Co. *v.* Michigan Leather Co., 141 Mich. 533, 104 N. W. 797; Bialy *v.* Krause, 142 Mich. 158, 105 N. W. 140; McCaskey Register Co. *v.* Truettner, 149 Mich. 241, 112 N. W. 909.

New York. — Wilentshik *v.* Messler, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 362, 95 N. Y. Supp. 500; Rosenthal *v.* Empire Brick, etc., Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 347.

Rhode Island. — Beggs *v.* James Hanley Brewing Co., 27 R. I. 385, 62 Atl. 373.

South Carolina. — Greenwood Grocery Co. *v.* Canadian County Mill Elevator Co., 77 S. Car. 219, 57 S. E. 867.

Utah. — Bailey *v.* Leishman, (Utah 1907) 89 Pac. 78.

Wisconsin. — Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265.

6. Indefinite Offer. — Wheaton *v.* Cadillac Automobile Co., 143 Mich. 21, 106 N. W. 399; Buckberg *v.* Washburn-Crosby Co., 115 Mo. App. 701, 92 S. W. 733, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029; Cherokee Tanning Extract Co. *v.* Western Union Tel. Co., 143 N. Car. 376, 55 S. E. 777, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1029.

7. Jobst-Bethard Co. *v.* Glenwood Canning Co., 129 Iowa 117, 105 N. W. 385; Waco Mill, etc., Co. *v.* Allis-Chalmers Co., (Tex. Civ. App. 1908) 109 S. W. 224. See Abrohams *v.* Revillon Freres, 129 Wis. 235, 107 N. W. 656, where it was held that a memorandum was a continuing offer of sale and not a mere price list.

1030. 2. Atlanta Buggy Co. *v.* Hess Spring, etc., Co., 124 Ga. 338, 52 S. E. 613; Howell *v.* Maine, 127 Ga. 574, 56 S. E. 771; Bennett *v.* Cummings, 73 Kan. 647, 85 Pac. 755; Bradshaw *v.* Terrell Foundry, etc., Co., (Tex. Civ. App. 1907) 104 S. W. 509.

Acceptance Held Sufficient. — Minneapolis Threshing Mach. Co. *v.* Zemanek, 130 Iowa 120, 106 N. W. 512.

3. Gould *v.* Cates Chair Co., 147 Ala. 629, 41 So. 675; Cable Co. *v.* Hancock, 2 Ga. App. 73, 58 S. E. 319; Northwest Thrasher Co. *v.* Lesueur, 75 Kan. 150, 88 Pac. 541; Moise *v.* Rock Springs Distilling Co., (Neb. 1907) 112 N. W. 372; Ganss *v.* J. M. McGuffey Petroleum Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 176; Mayo *v.* Koller, 28 Pa. Super. Ct. 91; Edgeworth *v.* Talerico, (Tex. Civ. App. 1906) 95 S. W. 677.

Executory Contract May Be Revoked. — Dunham *v.* Crawford, 130 Iowa 363, 106 N. W. 930.

4. Mebius, etc., Co. *v.* Mills, 150 Cal. 229, 88 Pac. 917. See also Mayo *v.* Koller, 28 Pa. Super. Ct. 91, where an order was countermanded before acceptance, although it expressly stated that it was not subject to countermand.

5. Price *v.* Atkinson, 117 Mo. App. 52, 94 S. W. 816.

1031. 1. Price *v.* Atkinson, 117 Mo. App. 52, 94 S. W. 816.

2. Victor Safe, etc., Co. *v.* O'Neill, (Wash. 1908) 93 Pac. 214.

3. Price *v.* Atkinson, 117 Mo. App. 52, 94 S. W. 816; Moneyweight Scale Co. *v.* Loewenstein, (Supm. Ct. App. Div.) 103 N. Y. Supp. 80; Victor Safe, etc., Co. *v.* O'Neill, (Wash. 1908) 93 Pac. 214; Engeldinger *v.* Stevens, (Wis. 1907) 112 N. W. 507.

Where a Countermand of an Order for goods is not received until after the acceptance of the order and the shipment of the goods it does not work a revocation. Main *v.* Tracey, 76 Ark. 371, 88 S. W. 981.

5. Minneapolis Threshing Mach. Co. *v.* Evans, 139 Fed. 860.

Filling an Order for Goods within the Specified Time is a sufficient notice of acceptance. Minneapolis Threshing Mach. Co. *v.* Zemanek, 130 Iowa 120, 106 N. W. 512.

6. Simpson *v.* Sanders, (Ga. 1908) 60 S. E. 541; Paducah Packing Co. *v.* J. T. Polk Co., (Ky. 1907) 99 S. W. 929; Brewer *v.* Lepman, 127 Mo. App. 693, 106 S. W. 1107.

7. Minneapolis Threshing Mach. Co. *v.* Evans, 139 Fed. 860.

1032. 1. National Trading Co. *v.* Vulcanite Portland Cement Co., (C. C. A.) 159 Fed. 403; Babcock Bros. Lumber Co. *v.* Georgia, etc., R. Co., 127 Ga. 329, 56 S. E. 457; Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259; Hudson *v.* Arnold, (Ky. 1906) 93 S. W. 42; Epstein *v.* Shepard, etc., Lumber Co., 117 N. Y. App. Div. 467, 102 N. Y. Supp. 627; Rapp *v.* Jennings State Bank, 17 Okla. 449, 87 Pac. 598; Kaw City Mill, etc., Co. *v.* Purcell Mill, etc., Co., (Okla. 1907) 91 Pac. 1022, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1032; West Point Cotton Mills *v.* Blythe, 29 Pa. Super. Ct. 642; Smith *v.* Perry, 32 Pa. Super. Ct. 421; Lynchburg Hosiery Mills *v.* Chesterfield Mfg. Co., (Va. 1907) 57 S. E. 606. See also Crane *v.* Barron, 115 N. Y. App. Div. 196, 100 N. Y. Supp. 937, where the contract of sale was held complete.

2. Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648; L. Starks Co. *v.* Brewer, (Kan. 1908) 95 Pac. 402; H. Gaus, etc., Mfg. Co. *v.* Chicago Lumber, etc., Co., 115 Mo. App. 114, 92 S. W. 121; Cherokee Tanning Extract Co. *v.* Western Union Tel. Co., 143 N. Car. 376, 55 S. E. 777, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1031, 1032; Jacksboro Stone Co. *v.* Fairbanks Co., (Tex. Civ. App. 1908) 107 S. W. 567; Brigham *v.* American Bridge Co., 39 Wash. 3, 80 Pac. 788.

3. An Attempted Acceptance Proposing a Quantity different from the original offer, when acted on by the officer, creates a binding contract of sale. Louisville, etc., R. Co. *v.* Coyle, (Ky. 1906) 97 S. W. 772, *rehearing denied* (Ky. 1907) 99 S. W. 237.

1033. 1. Ennis Brown Co. *v.* Hurst, 1 Cal. App. 752, 82 Pac. 1056.

3. Baird *v.* Pratt, (C. C. A.) 148 Fed. 825; National Trading Co. *v.* Vulcanite Portland Cement Co., 159 Fed. 403; Babcock Bros. Lumber Co. *v.* Georgia, etc., R. Co., 127 Ga. 329, 56 S. E. 457; Smith *v.* Perry, 32 Pa. Super. Ct. 421; William B. Scaife, etc., Co. *v.* Standard Ice Co., (Wash. 1907) 89 Pac. 882; Cunningham *v.* Allen, (Wash. 1907) 90 Pac. 920; Lynchburg Hosiery Mills *v.* Chesterfield Mfg. Co., (Va. 1907) 57 S. E. 606; Bringham *v.* American Bridge Co., 39 Wash. 3, 80 Pac. 788.

Waiver of Condition. — Kubillus *v.* Ewert, 40 Wash. 38, 82 Pac. 147.

4. Phinizy *v.* Bush, 129 Ga. 479, 59 S. E. 259; Oak City Cooperage Co. *v.* Kennedy Stave, etc., Co., (Ga. App. 1908) 61 S. E. 499; Indiana Fuel Supply Co. *v.* Indianapolis Basket Co., (Ind. App. 1908) 84 N. E. 776, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1034; Louisville, etc., R. Co. *v.* Coyle, (Ky. 1906) 97 S. W. 772, *rehearing denied* (Ky. 1907) 99 S. W. 237; H. Gaus, etc., Mfg. Co. *v.* Chicago Lumber, etc., Co., 115 Mo. App. 114, 92 S. W. 121.

See also Lestershire Lumber, etc., Co. *v.* W. M. Ritter Lumber Co., 144 Fed. 568; Chase *v.* Rosenwald, (Supm. Ct. App. T.) 107 N. Y. Supp. 35.

Acceptance Imposing Condition. — Cunningham *v.* Allen, (Wash. 1907) 90 Pac. 920.

1034. 1. Jenkins, etc., Co. *v.* Alpena Portland Cement Co., (C. C. A.) 147 Fed. 641; Ennis Brown Co. *v.* Hurst, 1 Cal. App. 752, 82 Pac. 1056; Noel Constr. Co. *v.* Atlas Portland Cement Co., 103 Md. 209, 63 Atl. 384; Epstein *v.* Shepard, etc., Lumber Co., 117 N. Y. App. Div. 467, 102 N. Y. Supp. 627; Bailey *v.* Leishman, (Utah 1907) 89 Pac. 78. See King-Keystone Oil Co. *v.* San Francisco Brick Co., 148 Cal. 87, 82 Pac. 849.

What Constitutes Acceptance Evidence. — Gould *v.* Cates Chair Co., 147 Ala. 629, 41 So. 675; Ziehme *v.* Parish, 74 Kan. 542, 87 Pac. 685; Bauman *v.* McManus, 75 Kan. 106, 89 Pac. 15; Miller *v.* Tanners' Supply Co., 150 Mich. 292, 114 N. W. 61. See also H. Gaus, etc., Mfg. Co. *v.* Chicago Lumber, etc., Co., 115 Mo. App. 114, 92 S. W. 121; L. Starks Co. *v.* Brewer, (Kan. 1908) 95 Pac. 402.

2. Star Union Line *v.* Boston Medical Institute, 126 Ill. App. 106. See National Trading Co. *v.* Vulcanite Portland Cement Co., (C. C. A.) 159 Fed. 403.

4. Eldorado Jewelry Co. *v.* Darnell, (Iowa 1907) 113 N. W. 344; Buckberg *v.* Washburn-Crosby Co., 115 Mo. App. 701, 92 S. W. 733; Missouri, etc., Coal Co. *v.* Consolidated Coal Co., 127 Mo. App. 320, 105 S. W. 682; Charles Holmes Mach. Co. *v.* Chalkley, 143 N. Car. 181, 55 S. E. 524, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1034.

5. Steinmeyer *v.* Schroeppel, 226 Ill. 9, 80 N. E. 564.

6. Indiana Fuel Supply Co. *v.* Indianapolis Basket Co., (Ind. App. 1908) 84 N. E. 776, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1034; De Wolff *v.* Howe, 112 N. Y. App. Div. 104, 98 N. Y. Supp. 262.

7. Adkins *v.* Campbell, (Del. 1906) 64 Atl. 628.

8. **Where There Is a Mutual Mistake** as to the quantity delivered either party has upon discovery thereof a right to correction. Hasty *v.* Hampton Stave Co., 80 Ark. 405, 97 S. W. 675. See Bevins *v.* Coates, (Ky. 1906) 96 S. W. 585, where defendant's mistake in writing "great gross" instead of "gross" in ordering pins and needles was held no defense to an action for the price.

9. Ft. Smith Wagon Co. *v.* Baker, 84 Ark. 444, 105 S. W. 591.

1035. 4. Concordia First Nat. Bank *v.* McIntosh, etc., Live Stock, etc., Co., 72 Kan. 603, 84 Pac. 535; Stout *v.* Carruthersville Hardware Co., (Mo. App. 1908) 110 S. W. 619.

6. Moench *v.* Hower, (Iowa 1908) 115 N. W. 229.

1036. 1. Dowagiac Mfg. Co. *v.* Benson, 101 Minn. 54, 111 N. W. 924; Estey Organ Co. *v.* Lehman, (Wis. 1907) 111 N. W. 1097. See also Fagan *v.* Hook, 134 Iowa 381, 111 N. W. 981, where, however, the transaction was held an exchange and not a sale.

2. Stout *v.* Carruthersville Hardware Co., (Mo. App. 1908) 110 S. W. 619.

3. Hoffman *v.* White Sewing Mach. Co., 123 N. Y. App. Div. 166, 108 N. Y. Supp. 253.

5. Stout *v.* Carruthersville Hardware Co., (Mo. App. 1908) 110 S. W. 619.

The Law Will Not Imply an Agreement for a Reasonable Price where there is a clear misunderstanding as to the price between the parties. Estey Organ Co. *v.* Lehman, (Wis. 1907) 111 N. W. 1097.

1037. 12. See Staver Carriage Co. *v.* Park Steel Co., 220 Ill. 412, 77 N. E. 174; Martyn *v.* Hitchings, 192 Mass. 71, 78 N. E. 380.

1038. 2. McNaughton *v.* Wahl, 99 Minn. 92, 108 N. W. 467.

1039. 3. Swartz *v.* Suburban Realty Co., (Md. 1907) 67 Atl. 283, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1039, holding, however, that the doctrine does not apply to a sale of chattels real; Ford *v.* Erde, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 665, 99 N. Y. Supp. 487.

4. See Doddato *v.* Gatti-McQuade Co., (Supm. Ct. App. T.) 97 N. Y. Supp. 972.

5. *United States.* — Guss *v.* Nelson, 200 U. S. 298, 26 U. S. Sup. Ct. 260, *affirming* 14 Okla. 296, 78 Pac. 170; Alpena Portland Cement Co. *v.* Backus, (C. C. A.) 156 Fed. 944; Maydwell *v.* Rogers Lumber Co., (C. C. A.) 159 Fed. 930; Kentucky Distilleries, etc., Co. *v.* Lillard, (C. C. A.) 160 Fed. 34.

Alabama. — Byrne Mill Co. *v.* Robertson, (Ala. 1907) 42 So. 1008.

California. — Kennedy *v.* Lee, 147 Cal. 596, 82 Pac. 257.

Colorado. — Scott Supply, etc., Co. *v.* Roberts, (Colo. 1908) 93 Pac. 1123.

Florida. — Daniel *v.* Siegel-Cooper Co., (Fla. 1907) 44 So. 949.

Georgia. — Bearden Mercantile Co. *v.* Madison Oil Co., 128 Ga. 695, 58 S. E. 200.

Illinois. — Close *v.* Browne, 230 Ill. 228, 82 N. E. 629; McKenzie Furnace Co. *v.* Mallers, 231 Ill. 561, 83 N. E. 451; Consolidated Coal Co. *v.* Jones, etc., Co., 232 Ill. 326, 83 N. E. 851; McLean County Coal Co. *v.* Bloomington, 234 Ill. 90, 84 N. E. 624; Walker *v.* Johnson, 116 Ill. App. 145; Consolidated Coal Co. *v.* Jones, etc., Co., 120 Ill. App. 139; Jewell Belting Co. *v.* Hamilton Rubber Mfg. Co., 121 Ill. App. 13.

Kansas. — Case Thrashing Mach. Co. *v.* Mickley, 72 Kan. 372, 83 Pac. 970; Bennett *v.* Taylor, 72 Kan. 598, 84 Pac. 533; Hurst *v.* Altamont Mfg. Co., 73 Kan. 422, 85 Pac. 551; J. B. Ehrsam, etc., Co. *v.* Jackman, 73 Kan. 435, 85 Pac. 559.

Maryland. — Canton Lumber Co. *v.* Liller, (Md. 1908) 68 Atl. 500.

Massachusetts. — Garfield, etc., Coal Co. *v.* Pennsylvania Coal, etc., Co., (Mass. 1908) 84 N. E. 1020.

Michigan. — Detroit Southern R. Co. *v.* Malcolmson, 144 Mich. 172, 107 N. W. 915.

Minnesota. — Loveland *v.* Steenerson, 99 Minn. 14, 108 N. W. 831.

Missouri. — Elgin Jewelry Co. *v.* Withaup, 118 Mo. App. 126, 94 S. W. 572; Eaton *v.* Wear Coal Co., 125 Mo. App. 194, 101 S. W. 1140; Kimball-Fowler Cereal Co. *v.* Chapman, etc., Lumber Co., 125 Mo. App. 326, 102 S. W.

625; Moran Bolt, etc., Mfg. Co. *v.* St. Louis Car Co., (Mo. 1908) 109 S. W. 47.

Nebraska. — Parkins *v.* Missouri Pac. R. Co., (Neb. 1906) 107 N. W. 260.

New York. — M. & E. Solomon Tobacco Co. *v.* Cohen, 184 N. Y. 308, 77 N. E. 257; St. Regis Paper Co. *v.* Watson Page Lumber Co., 111 N. Y. App. Div. 108, 97 N. Y. Supp. 636; Haddam Granite Co. *v.* Brooklyn Heights R. Co., 186 N. Y. 247, 78 N. E. 858, *reversing* 107 N. Y. App. Div. 616, 95 N. Y. Supp. 1131; Rowland *v.* Ely, 120 N. Y. App. Div. 628, 105 N. Y. Supp. 211; Robert Gau Co. *v.* Armstrong, (Supm. Ct. App. T.) 107 N. Y. Supp. 5.

North Dakota. — Garland *v.* Keeler, 15 N. Dak. 548, 108 N. W. 484.

Ohio. — White *v.* C. & G., etc., Cooper Co., 27 Ohio Cir. Ct. 703.

Pennsylvania. — Duff *v.* Thrall, 35 Pa. Super. Ct. 136; Phillips *v.* Pilling, 215 Pa. St. 141, 64 Atl. 366.

South Carolina. — Stono Mines *v.* Southern States Phosphate, etc., Co., 76 S. Car. 327, 56 S. E. 982.

Texas. — Gaines *v.* Perry, (Tex. Civ. App. 1907) 102 S. W. 755.

Where the Parties Have Practically Construed the Contract their construction will prevail. Davis *v.* Alpha Portland Cement Co., (C. C. A.) 142 Fed. 74, *affirming* 134 Fed. 274.

6. *United States.* — Demarest *v.* Dunton Lumber Co., 151 Fed. 508; Lydia Cotton Mills *v.* Prairie Cotton Co., (C. C. A.) 156 Fed. 225.

Alabama. — Weir *v.* Long, 145 Ala. 328, 39 So. 974, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1039.

California. — Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964.

Illinois. — Windmuller *v.* Fleming, 129 Ill. App. 476.

Indiana. — Indiana Fuel Supply Co. *v.* Indianapolis Basket Co., (Ind. App. 1908) 84 N. E. 776.

Iowa. — W. E. Caldwell Co. *v.* Steckel, (Iowa 1907) 112 N. W. 229.

Kansas. — McKinney *v.* Grant, (Kan. 1907) 93 Pac 180.

Kentucky. — Morris *v.* Schaefers, (Ky. 1907) 100 S. W. 327.

Maryland. — Birely *v.* Dodson, (Md. 1908) 68 Atl. 488.

Missouri. — Ryley-Wilson Grocer Co. *v.* Seymour Canning Co., (Mo. App. 1908) 108 S. W. 628.

North Dakota. — Morrison Mfg. Co. *v.* Fargo Storage, etc., Co., (N. Dak. 1907) 113 N. W. 605.

Pennsylvania. — American Bridge Co. *v.* Duquesne Steel Foundry Co., 28 Pa. Super. Ct. 479.

Wisconsin. — Midland Linseed Co. *v.* Remington Drug Co., 127 Wis. 242, 106 N. W. 115.

Wyoming. — Bosler *v.* Coble, 14 Wyo. 423, 84 Pac. 895.

That the Surrounding Circumstances are to be considered in construing the contract of sale, see W. M. Ritter Lumber Co. *v.* Lestershire Lumber, etc. Co. (C. C. A.) 153 Fed. 575.

Unambiguous Contracts Are to Be Construed by Court. — Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182.

Where the Parties Have Practically Construed the Contract of sale, their construction thereof will be followed. Baldwin *v.* Napa, etc., Wine Co., 1 Cal. App. 215, 81 Pac. 1037.

7. Maydwell *v.* Rogers Lumber Co., (C. C. A.) 159 Fed. 930; Weir *v.* Long, 145 Ala. 328, 39 So. 974; Barton-Parker Mfg. Co. *v.* Taylor, 78 Ark. 586, 94 S. W. 713; Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964; Simpson *v.* Sanders, (Ga. 1908) 60 S. E. 541; Walker *v.* Johnson, 116 Ill. App. 145; Fullam *v.* Wright, etc., Wire Cloth Co., (Mass. 1907) 82 N. E. 711; West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488; Garfield, etc., Coal Co. *v.* Pennsylvania Coal, etc., Co., (Mass. 1908) 84 N. E. 1020. See also Moritz *v.* Herskovitz, (Wash. 1907) 89 Pac. 560.

1040. **1.** *United States.* — F. D. Cummer, etc., Co. *v.* Marine Sugar Co., (C. C. A.) 146 Fed. 240.

Arkansas. — Ward Furniture Mfg. Co. *v.* Isbell, 81 Ark. 549, 99 S. W. 845.

California. — Sterling *v.* Gregory, 149 Cal. 117, 85 Pac. 305.

District of Columbia. — Moran *v.* Wagner, 28 App. Cas. (D. C.) 317.

Georgia. — Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Bearden Mercantile Co. *v.* Madison Oil Co., 128 Ga. 695, 58 S. E. 200; Main *v.* Simmons, 2 Ga. App. 821, 59 S. E. 85.

Illinois. — Slayden-Kirksey Woolen Mills *v.* Spring, 116 Ill. App. 27.

Iowa. — Pacific Timber Co. *v.* Iowa Windmill, etc., Co., (Iowa 1907) 112 N. W. 771; Tuttle-Chapman Coal Co. *v.* Coaldale Fuel Co., (Iowa 1907) 113 N. W. 827.

Maine. — See also Pinkham *v.* Haynes, (Me. 1907) 68 Atl. 642, where the contract was construed as entire and the defendants were held not bound to deliver a part of the goods.

Maryland. — Canton Lumber Co. *v.* Liller, (Md. 1908) 68 Atl. 500.

Massachusetts. — Fullam *v.* Wright, etc., Wire Cloth Co., (Mass. 1907) 82 N. E. 711; West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488.

Mississippi. — See Floyd *v.* Arky, 89 Miss. 162, 42 So. 569, where the contract of sale was held entire and not severable.

Missouri. — Strother *v.* McMullen Lumber Co., 200 Mo. 647, 98 S. W. 34.

Nebraska. — See Peycke *v.* Shinn, (Neb. 1906) 107 N. W. 386, where the contract is construed as entire and not severable.

New York. — Moers *v.* Dietz, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 173, 101 N. Y. Supp. 590; Schwartz *v.* Hirsch, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 618, 107 N. Y. Supp. 796.

Pennsylvania. — McKeefry *v.* U. S. Radiator Co., 31 Pa. Super. Ct. 263; William P. Kelley Brick Co. *v.* Clay Product Supply Co., 32 Pa. Super. Ct. 408.

Washington. — See Buckeye Buggy Co. *v.* Montana Stables, 43 Wash. 49, 85 Pac. 1077.

West Virginia. — Buskirk *v.* Peck, 57 W. Va. 360, 50 S. E. 432.

Wisconsin. — Prautsch *v.* Rasmussen, (Wis. 1907) 113 N. W. 116.

1042. **5.** Robinson *v.* Stricklin, 73 Neb. 112, 102 N. W. 1, *on citing* 24 AM. AND ENG.

ENCYC. OF LAW (2d ed.) 1042; Wilson *v.* Maxon, 56 W. Va. 194, 49 S. E. 123, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1042; Mower *v.* McCarthy, 79 Vt. 142, 64 Atl. 578, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1043.

1044. 4. Block *v.* Shaw, 78 Ark. 511, 95 S. W. 806. See also Shafer *v.* Sloan, 3 Cal. App. 335, 85 Pac. 162, where it was held that the good will of the business was sold.

1046. 1. Windmuller *v.* Fleming, 129 Ill. App. 476; Atkins Bros. Co. *v.* Landa, 119 Mo. App. 119, 95 S. W. 949; Graham *v.* Burgiss, 78 S. Car. 404, 59 S. E. 29, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1046; Smith *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 105 S. W. 528.

2. American Soda Fountain Co. *v.* Blue, 146 Ala. 682, 40 So. 218; Prowers *v.* Nowles, (Colo. 1908) 94 Pac. 347; Rabinowitz *v.* Hall, 123 Ill. App. 65; Quaker Mfg. Co. *v.* Zucker, etc., Co., 124 Ill. App. 547; Swaney *v.* Alstott, 134 Iowa 63, 111 N. W. 406, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1046; Hunter Bros. Milling Co. *v.* Kramer, 71 Kan. 468, 80 Pac. 963; Murphy *v.* American Can Co., (Md. 1907) 67 Atl. 17; Sharp *v.* Hawkins, (Mo. App. 1908) 107 S. W. 1087; Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20; Schuyler *v.* Cullen, 120 N. Y. App. Div. 637, 105 N. Y. Supp. 544; Brown *v.* Reber, 30 Pa. Super. Ct. 111.

1047. 1. Hickey *v.* McDonald, (Ala. 1907) 44 So. 201.

2. Baars *v.* Mitchell, (C. C. A.) 154 Fed. 322; Dunham *v.* H. D. Williams Cooperage Co., 83 Ark. 395, 103 S. W. 386; Lake *v.* Combs, 84 Ark. 21, 104 S. W. 544; Hall *v.* Frick Co., (Ky. 1908) 106 S. W. 1186; Kessler *v.* Veio, 142 Mich. 471, 106 N. W. 73; Montant *v.* Johnson, (Supm. Ct. App. T.) 99 N. Y. Supp. 395.

That an Acceptance Is Necessary, see Giffen *v.* Selma Fruit Co., 5 Cal. App. 50, 89 Pac. 855.

Where Goods in a Bonded Warehouse were sold and the warehouse receipts delivered and the buyer gave his notes for the purchase price, the title passed. Kessler *v.* Lackie, 146 Mich. 384, 109 N. W. 671.

4. Weiner *v.* Gill, (1905) 2 K. B. 172; Massey *v.* Dixon, 81 Ark. 337, 99 S. W. 383; Grange Co. *v.* Farmer's Union, etc., Co., 3 Cal. App. 519, 86 Pac. 615; Giffen *v.* Selma Fruit Co., 5 Cal. App. 50, 89 Pac. 855; Prowers *v.* Nowles, (Colo. 1908) 94 Pac. 347; Concordia First Nat. Bank *v.* McIntosh, etc., Live Stock, etc., Co., 72 Kan. 603, 84 Pac. 535; Bunday *v.* Columbus Mach. Co., 143 Mich. 10, 106 N. W. 307; Watson *v.* E. E. Nangle Tie Co., 148 Mich. 675, 112 N. W. 752; Adlam *v.* McKnight, 32 Mont. 349, 80 Pac. 613; Barber *v.* Harper, 13 N. Mex. 506, 86 Pac. 546; Schwab *v.* Catman, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741; Rea *v.* Schow, (Tex. Civ. App. 1906) 93 S. W. 706; Hoeffler *v.* Carew, (Wis. 1908) 116 N. W. 241. See also Evans *v.* Barnett, (Del. 1906) 63 Atl. 770.

All Parts of a Contract Are to Be Considered as well as the circumstances surrounding its making in order to arrive at the intent of the parties. Mebius, etc., Co. *v.* Mills, 150 Cal. 229, 88 Pac. 917.

1048. 1. Massey *v.* Dixon, 81 Ark. 337, 99 S. W. 383; Prowers *v.* Nowles, (Colo. 1908) 94 Pac. 347; Windmuller *v.* Fleming, 129 Ill. App. 476; Wheelock *v.* Starkweather, 146 Mich. 53, 108 N. W. 1085; Adlam *v.* McKnight, 32 Mont. 349, 80 Pac. 613, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048; Rea *v.* Schow, (Tex. Civ. App. 1906) 93 S. W. 706; Buskirk *v.* Peck, 57 W. Va. 360, 50 S. E. 432, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048; Hoeffler *v.* Carew, (Wis. 1908) 116 N. W. 241.

1049. 1. Massey *v.* Dixon, 81 Ark. 337, 99 S. W. 383; Virginia-Carolina Lumber Co. *v.* Eisinger, 29 App. Cas. (D. C.) 531; Buskirk *v.* Peck, 57 W. Va. 360, 50 S. E. 432, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 432. See also Yick Sung *v.* Herman, 2 Cal. App. 633, 83 Pac. 1089; Stum *v.* Hadrich, (Cal. App. 1907) 94 Pac. 82.

2. Adair *v.* Stovall, (Ala. 1906) 42 So. 596, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048.

5. Delivery Necessary as against Bona Fide Purchasers. — Farmer *v.* Hughes, 38 Colo. 318, 88 Pac. 191.

6. Actual Delivery Not Necessary. — Kessler *v.* Veio, 142 Mich. 471, 106 N. W. 73.

Delivery Not Necessary to Pass Title as between the Parties. — Klein *v.* Patterson, 30 Pa. Super. Ct. 495.

8. Northwestern State Bank *v.* Silberman, (C. C. A.) 154 Fed. 809; Montgomery *v.* Thomson, (Cal. 1907) 92 Pac. 866; Prowers *v.* Nowles, (Colo. 1908) 94 Pac. 347; Ryan *v.* Kimberly, 118 Ill. App. 361; Semple *v.* Northern Hardwood Lumber Co., (Iowa 1908) 115 N. W. 899; Gibson *v.* Ray, (Ky. 1905) 89 S. W. 474; Collins *v.* Beckley, (Ky. 1906) 96 S. W. 479; Pabst Brewing Co. *v.* Com., (Ky. 1908) 107 S. W. 728, 729; Schuyler *v.* Cullen, 120 N. Y. App. Div. 637, 105 N. Y. Supp. 544; Parlin, etc., Co. *v.* Kittrell, (Tex. Civ. App. 1906) 95 S. W. 703; Gravity Canal Co. *v.* Sisk, (Tex. Civ. App. 1906) 95 S. W. 724; Young *v.* Edwards, (W. Va. 1908) 60 S. E. 992.

Where Nothing Remains to Be Done the contract of sale is an executed contract. Thomas *v.* Thomas, 146 Ala. 533, 41 So. 141.

1050. 1. Wheelock *v.* Starkweather, 146 Mich. 53, 108 N. W. 1085.

2. Smiley *v.* Hooper, 147 Ala. 646, 41 So. 660; Cathcart *v.* Webb, 144 Ala. 559, 42 So. 25; Hunter Bros. Milling Co. *v.* Kramer, 71 Kan. 468, 80 Pac. 963, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1050; Com. *v.* Adair, (Ky. 1906) 89 S. W. 1130; Tingle *v.* Kelly, (Ky. 1906) 92 S. W. 303.

1051. 1. Semple *v.* Northern Hardwood Lumber Co., (Iowa 1908) 115 N. W. 899.

1052. 2. In Barber *v.* Andrews, (R. I. 1908) 69 Atl. 1, it is said that retention of possession by the vendor "is prima facie proof that the transaction is an executory agreement to sell."

3. *England.* — Weiner *v.* Gill, (1905) 2 K. B. 172.

United States. — Sprague Canning Machinery Co. *v.* Fuller, 158 Fed. 588, *reversing* on other grounds *In re* Cullman Fruit, etc., Co., 155 Fed. 372.

Georgia. — Wilson *v.* Comer, 125 Ga. 500, 54 S. E. 355; Starnes *v.* Roberts, 128 Ga. 718, 58 S. E. 348.

Illinois. Ryan *v.* Kimberly, 118 Ill. App. 301.

Kentucky. — Hall *v.* Frick Co., (Ky. 1908) 106 S. W. 1186.

Missouri. — Strother *v.* McMullen Lumber Co., 200 Mo. 647, 98 S. W. 34; Sharp *v.* Hawkins, (Mo. App. 1908) 107 S. W. 1087, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1053 [1052]; Howard *v.* [illegible], (Mo. App. 1908) 109 S. W. 1076.

Oklahoma. — Mercer *v.* Williamson-Halsell-Frazier Co., (Okla. 1907) 92 Pac. 170.

Pennsylvania. — Frech *v.* Lewis, 218 Pa. St. 141, 67 Atl. 45; Brown *v.* Reber, 30 Pa. Super. Ct. 114.

Texas. — Ewing *v.* Slyvester, (Tex. Civ. App. 1906) 94 S. W. 405.

1053. 1. Com. *v.* Adair, (Ky. 1906) 89 S. W. 1130; Sharp *v.* Hawkins, (Mo. App. 1908) 107 S. W. 1087, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 1054 [1053], and stating that the doctrine of the state of *Missouri* is contrary to the passage quoted; Baker *v.* McDonald, 74 Neb. 595, 104 N. W. 923.

2. Frech *v.* Lewis, 218 Pa. St. 141, 67 Atl. 45; Barber *v.* Andrews, (R. I. 1908) 69 Atl. 1; Ewing *v.* Sylvester, (Tex. Civ. App. 1906) 94 S. W. 405.

1054. 1. Bennett *v.* Cummings, 73 Kan. 647, 85 Pac. 755.

2. *United States.* — Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545.

Alabama. — American Soda Fountain Co. *v.* Blue, 146 Ala. 682, 40 So. 218; Riley *v.* Dillon, 148 Ala. 283, 41 So. 768.

Arkansas. — Rex Buggy Co. *v.* Ross, 80 Ark. 388, 97 S. W. 291. See also Carpenter *v.* Crow, 77 Ark. 522, 92 S. W. 779.

Delaware. — Townsend *v.* Melvin, 5 Penn. (Del.) 495, 63 Atl. 330; Knowles Loom Works *v.* Knowles, (Del. 1906) 65 Atl. 26; Staunton *v.* Smith, (Del. 1906) 65 Atl. 593.

Georgia. — Susong *v.* McKenna, 126 Ga. 433, 55 S. E. 236.

Idaho. — Kester *v.* Schuldt, 11 Idaho 663, 85 Pac. 974.

Indiana. — Kilmer *v.* Moneyweight Scale Co., 36 Ind. App. 568, 76 N. E. 271.

Louisiana. — Smith *v.* Ivey, 119 La. 357, 44 So. 126.

Maine. — Anderson Carriage Co. *v.* Bartley, 102 Me. 492, 67 Atl. 567.

Massachusetts. — Whitney *v.* Abbott, 191 Mass. 59, 77 N. E. 524; Pels *v.* Cambridge Architectural Iron Works, 192 Mass. 13, 77 N. E. 1152; Haynes *v.* Temple, (Mass. 1908) 84 N. E. 467.

Michigan. — Bunday *v.* Columbus Mach. Co., 143 Mich. 10, 106 N. W. 397.

Missouri. — Coleman *v.* Reynolds, 207 Mo. 463, 105 S. W. 1070.

Nebraska. — Racine-Sattley Co. *v.* Meinen, (Neb. 1908) 114 N. W. 602, *reversing* (Neb. 1907) 112 N. W. 321.

New York. — Milicie *v.* Pearson, 110 N. Y. App. Div. 770, 97 N. Y. Supp. 431; Roach *v.* Curtis, 115 N. Y. App. Div. 765, 101 N. Y. Supp. 333, *affirming* (County Ct.) 50 Misc. (N. Y.) 122, 100 N. Y. Supp. 411; Kindelberger *v.* Kunow, 122 N. Y. App. Div. 158, 106 N. Y. Supp. 597.

North Dakota. — Colean Mfg. Co. *v.* Blanchett, (N. Dak. 1907) 113 N. W. 614.

South Dakota. — Baskerville *v.* Johnson, (S. Dak. 1905) 104 N. W. 913.

Tennessee. — Star Clothing Mfg. Co. *v.* Nordeman, 118 Tenn. 384, 100 S. W. 93.

Texas. — Slayton *v.* Horsey, (Tex. Civ. App. 1906) 91 S. W. 799; Ewing *v.* Sylvester, (Tex. Civ. App. 1906) 94 S. W. 405.

3. Martin *v.* Lesan, 129 Iowa 573, 105 N. W. 996; Pabst Brewing Co. *v.* Com., (Ky. 1908) 107 S. W. 728; Pabst Brewing Co. *v.* Com., (Ky. 1908) 107 S. W. 729; American Metal Co. *v.* Dougherty, 204 Mo. 71, 102 S. W. 538; Barber *v.* Andrews, (R. I. 1908) 69 Atl. 1; O'Keefe *v.* Leistikow, 14 N. Dak. 355, 104 N. W. 515.

1057. 1. Collins *v.* Beckley, (Ky. 1906) 96 S. W. 479; Conard *v.* Pennsylvania R. Co., 214 Pa. St. 98, 63 Atl. 424; Barber *v.* Andrews, (R. I. 1908) 69 Atl. 1.

1058. 2. See Schwab *v.* Oatman (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741, where it was held that the evidence showed a sufficient appropriation.

3. Croze *v.* St. Mary's Canal Mineral Land Co., 143 Mich. 521, 107 N. W. 313.

4. Yick Sung *v.* Herman, 2 Cal. App. 633, 83 Pac. 1089, *rehearing denied* 2 Cal. App. 637, 83 Pac. 1091; Semple *v.* Northern Hardwood Lumber Co., (Iowa 1908) 115 N. W. 899; Baker *v.* McDonald, 74 Neb. 595, 104 N. W. 923; Conard *v.* Pennsylvania R. Co., 214 Pa. St. 98, 63 Atl. 424.

1059. 4. Alabama Nat. Bank *v.* Parker, 146 Ala. 513, 40 So. 987.

1061. 2. Dilman *v.* Patterson Produce, etc., Co., 2 Ga. App. 213, 58 S. E. 365; Masoner *v.* Bell, (Okla. 1908) 95 Pac. 239; Brown *v.* Reber, 30 Pa. Super. Ct. 114; Frech *v.* Lewis, 32 Pa. Super. Ct. 279.

1063. 4. River Spinning Co. *v.* Atlantic Mills, 155 Fed. 466, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1063; Thomas D. Murphy Co. *v.* Exchange Nat. Bank, (Neb. 1906) 107 N. W. 845.

1065. 2. St. Louis Steel Range Co. *v.* Kline-Drummond Mercantile Co., 120 Mo. App. 438, 96 S. W. 1040.

5. Starnes *v.* Roberts, 128 Ga. 718, 58 S. E. 348, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1065.

1066. 4. Cragun *v.* Todd, 131 Iowa 250, 108 N. W. 450; Greenwood Grocery Co. *v.* Canadian County Mill, etc., Co., 72 S. Car. 450, 52 S. E. 191, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1066.

1068. 5. See Kubillus *v.* Ewert, 40 Wash. 38, 82 Pac. 147.

7. Acceptance Is Not Necessary to Constitute Delivery. — Main *v.* Jarrett, 83 Ark. 426, 104 S. W. 163.

8. Semple *v.* Northern Hardwood Lumber Co., (Iowa 1908) 115 N. W. 899; Kessler *v.* Manheim, 114 La. 619, 38 So. 473, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1068; Williams *v.* Wilson, etc., Co., 111 N. Y. App. Div. 442, 97 N. Y. Supp. 731, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 1068; Horst *v.* Montauk Brewing Co., 118 N. Y. App. Div. 300, 103 N. Y. Supp. 381; Sinclair *v.* State, 45 Tex. Crim. 487, 77 S. W. 621, on rehearing *quoting* 24 Am. and Eng. Encyc. of Law (2d

ed.) 1068; Colean Mfg. Co. *v.* Blanchett, (N. Dak. 1907) 113 N. W. 614, where it is held that there was no sufficient delivery.

Where the Contract Calls for Delivery f. o. b. the seller must procure the cars necessary to carry the goods. Hurst *v.* Altamont Mfg. Co., 73 Kan. 422, 85 Pac. 551.

1069. 1. Godkin *v.* Weber, (Mich. 1908) 114 N. W. 924.

5. What Constitutes Delivery — Illustrations. — William H. Perry Co. *v.* Klosters Aktie Bolag, (C. C. A.) 152 Fed. 967; North Pac. Lumber Co. *v.* Carroll, (Wash. 1908) 93 Pac. 212. See Tait *v.* McInnes, 3 Cal. App. 155, 84 Pac. 674. See also Farmer *v.* Hughes, 38 Colo. 318, 88 Pac. 191.

6. Olson *v.* Wabash Coal Co., 126 Ill. App. 253; Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648; Tuttle-Chapman Coal Co. *v.* Coaldale Fuel Co., (Iowa 1907) 113 N. W. 827; Bevins *v.* Coates, (Ky. 1906) 96 S. W. 585; Detroit Southern R. Co. *v.* Malcolmson, 144 Mich. 172, 107 N. W. 915; American Metal Co. *v.* Daugherty, 204 Mo. 71, 102 S. W. 538; Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20; Sackett, etc., Lithographing, etc., Co. *v.* Tilyou, 111 N. Y. App. Div. 300, 97 N. Y. Supp. 749; Catlin *v.* Jones, 48 Oregon 158, 85 Pac. 515; American Bridge Co. *v.* Duquesne Steel Foundry Co., 28 Pa. Super. Ct. 479; Young *v.* Edwards, (W. Va. 1908) 60 S. E. 992.

Where goods in transit were sold to be delivered "at ship's tackle" at a certain place, the words "at ship's tackle" did not annex a condition to the contract of sale so as to prevent the passing of title if not so delivered. Sweeney *v.* Waterhouse, 39 Wash. 507, 81 Pac. 1005.

7. Salmon *v.* Helena Box Co., (C. C. A.) 147 Fed. 408; Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964; Baxley Tie Co. *v.* Simpson, 1 Ga. App. 670, 57 S. E. 1090; Hefner *v.* Robert, (Neb. 1906) 107 N. W. 258; Scott *v.* Miller, 114 N. Y. App. Div. 6, 99 N. Y. Supp. 609, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1069; Halvordson *v.* Grossman, (Supm. Ct. App. T.) 107 N. Y. Supp. 627; Drumm-Flato Commission Co. *v.* Edmisson, 17 Okla. 344, 87 Pac. 311; Farmers' Cotton Oil Co. *v.* Wilson, (Tex. Civ. App. 1907) 103 S. W. 1184.

8. Sinclair *v.* State, 45 Tex. Crim. 487, 77 S. W. 621, *quoting* 24 Am. and Eng. Encyc. of Law (2d ed.) 1069.

1070. 3. Afflick *v.* Streeter, 125 Mo. App. 703, 103 S. W. 112.

1071. 1. *United States.* — U. S. *v.* Andrews, 207 U. S. 229, 28 U. S. Sup. Ct. 100, *affirming* 41 Ct. Cl. 48; Luhrig Coal Co. *v.* Jones, etc., Co., 141 Fed. 617.

Alabama. — See Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018.

Arkansas. — Templeton *v.* Equitable Mfg. Co., 79 Ark. 456, 96 S. W. 188; E. E. Sutherland Medicine Co. *v.* Baltimore, 81 Ark. 229, 98 S. W. 966; Main *v.* Jarrett, 83 Ark. 426, 104 S. W. 163.

California. — De Laval Dairy Supply Co. *v.* Steadman, (Cal. App. 1907) 92 Pac. 877.

Colorado. — Hill *v.* Fruita Mercantile Co., (Colo. 1908) 94 Pac. 354.

Georgia. — Rhodes *v.* Continental Furniture Co., 2 Ga. App. 111, 58 S. E. 293.

Illinois. — Rabinowitz *v.* Hall, 123 Ill. App. 65; F. H. Earl Mfg. Co. *v.* Summit Lumber Co., 125 Ill. App. 391; Star Union Line *v.* Boston Medical Institute, 126 Ill. App. 106; Olson *v.* Wabash Coal Co., 126 Ill. App. 253.

Indiana. — Kilmer *v.* Moneyweight Scale Co., 36 Ind. App. 568, 76 N. E. 271.

Kansas. — Hunter Bros. Milling Co. *v.* Kramer, 71 Kan. 468, 80 Pac. 963.

Kentucky. — Hardesty *v.* Pittsburg Steel Co., (Ky. 1905) 89 S. W. 260; Langan, etc., Storage, etc., Co. *v.* Tennelly, (Ky. 1906) 93 S. W. 1.

Maine. — Lombard Water-Wheel Governor Co. *v.* Great Northern Paper Co., 101 Me. 114, 63 Atl. 555.

Missouri. — Bloom's Son Co. *v.* Haas, (Mo. App. 1908) 108 S. W. 1078, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1071.

New York. — Moneyweight Scale Co. *v.* Loewenstein, (Supm. Ct. App. Div.) 103 N. Y. Supp. 80.

North Dakota. — P. J. Bowlin Liquor Co. *v.* Beaudoin, 15 N. Dak. 557, 108 N. W. 545.

Washington. — Chicago Lumber, etc., Co. *v.* McCann, (Wash. 1908) 93 Pac. 216.

2. Templeton *v.* Equitable Mfg. Co., 79 Ark. 456, 96 S. W. 188; Hamilton *v.* Jos. Schlitz Brewing Co., 129 Iowa 172, 105 N. W. 438, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1071; Sinclair *v.* State, 45 Tex. Crim. 487, 77 S. W. 621, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1071; Engeldinger *v.* Stevens, (Wis. 1907) 112 N. W. 507. *Compare* Garner *v.* St. Louis, etc., R. Co., 79 Ark. 353, 96 S. W. 187; Rounsaville *v.* Leonard Mfg. Co., 127 Ga. 735, 36 S. E. 1030.

5. American Standard Jewelry Co. *v.* Witherington, 81 Ark. 134, 98 S. W. 695; Keeler *v.* Paulus Mfg. Co., (Tex. Civ. App. 1906) 96 S. W. 1097; Schiller *v.* Blyth, etc., Co., 15 Wyo. 304, 88 Pac. 648. See also Conn *v.* Reed, 73 N. J. L. 112, 62 Atl. 271, where the principle is upheld although the transaction was the return of goods to the consignor in pursuance of a settlement made between him and the consignee.

1072. 1. Rounsaville *v.* Leonard Mfg. Co., 127 Ga. 735, 56 S. E. 1030.

Ratification of Unauthorized Delivery. — Murphy *v.* American Can Co., (Md. 1907) 67 Atl. 17.

2. Bloom's Son Co. *v.* Haas, (Mo. App. 1908) 108 S. W. 1078, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1072.

4. Sears *v.* Martin, 145 Ala. 663, 39 So. 722; Dilman *v.* Patterson Produce, etc., Co., 2 Ga. App. 213, 58 S. E. 365; Kitchin *v.* Clark, 120 Ill. App. 105; Harris *v.* Pellenz, 146 Mich. 529, 109 N. W. 1044.

5. U. S. *v.* Andrews, 207 U. S. 229, 28 U. S. Sup. Ct. 100, *affirming* 41 Ct. Cl. 48; Hill *v.* Fruita Mercantile Co., (Colo. 1908) 94 Pac. 354; Hunter Bros. Milling Co. *v.* Kramer, 71 Kan. 468, 80 Pac. 963; Taussig *v.* Southern Mill, etc., Co., 124 Mo. App. 209, 101 S. W. 602.

11. Consolidated Coal Co. *v.* Jones, etc., Co., 232 Ill. 326, 83 N. E. 851; Consolidated Coal Co. *v.* Jones, etc., Co., 120 Ill. App. 139; Olson

v. Wabash Coal Co., 126 Ill. App. 253; Tuttle Chapman Coal Co. *v.* Coaldale Fuel Co., (Iowa 1907) 113 N. W. 827.

1073. 1. Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018; Long *v.* Abeles, 77 Ark. 150, 91 S. W. 29; Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964; Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., 3 Ga. App. 212, 59 S. E. 713 (contract providing that the goods were to be hauled out as early as convenient); Gem Knitting Mills *v.* Empire Printing, etc., Co., (Ga. App. 1908) 60 S. E. 365; Bell *v.* Hatfield, (Ky. 1905) 89 S. W. 544 (contract to deliver on a certain day or within a few days); Glasgow Milling Co. *v.* Burgher, 122 Mo. App. 14, 97 S. W. 950; Aikman *v.* Wahnetah Silk Co., 110 N. Y. App. Div. 191, 96 N. Y. Supp. 1607; Crane *v.* Barron, 115 N. Y. App. Div. 196, 100 N. Y. Supp. 937; Robinson Clay Product Co. *v.* American Locomotive Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 589, 107 N. Y. Supp. 69; Standard Interlock Elevator Co. *v.* Wilson, 218 Pa. St. 280, 67 Atl. 463; Farmers' Cotton Oil Co. *v.* Wilson, (Tex. Civ. App. 1907) 103 S. W. 1184; Bailey *v.* Leishman, (Utah 1907) 89 Pac. 78; Duke *v.* Norfolk, etc., R. Co., 106 Va. 152, 55 S. E. 548; Norfolk, etc., R. Co. *v.* Duke, (Va. 1908) 60 S. E. 96. See also Williams *v.* Gridley, 110 N. Y. App. Div. 525, 96 N. Y. Supp. 978.

3. Gem Knitting Mills *v.* Empire Printing, etc., Co., (Ga. App. 1908) 60 S. E. 365; Thomas *v.* Burks, 120 Ill. App. 222; Olson *v.* Wabash Coal Co., 126 Ill. App. 253; Robinson Clay Product Co. *v.* American Locomotive Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 589, 107 N. Y. Supp. 69; Claus-Shear Co. *v.* E. Lee Hardware House, 140 N. Car. 552, 53 S. E. 433; Miller *v.* Mosely, (Tex. Civ. App. 1905) 91 S. W. 648; Duke *v.* Norfolk, etc., R. Co., 106 Va. 152, 55 S. E. 548; Norfolk, etc., R. Co. *v.* Duke, (Va. 1908) 60 S. E. 96.

4. Pratt *v.* Frasier, 72 S. Car. 368, 51 S. E. 983.

6. Gem Knitting Mills *v.* Empire Printing, etc., Co., (Ga. App. 1908) 60 S. E. 365; Powell *v.* Champion Iron Co., 144 Mich. 540, 108 N. W. 359. See Pittsburgh, etc., Min. Co. *v.* Scully, 145 Mich. 229, 108 N. W. 503; Frost-Trigg Lumber Co. *v.* Forrester, 124 Mo. App. 304, 101 S. W. 164; Afflick *v.* Streeter, 125 Mo. App. 703, 103 S. W. 112; Robert Gair Co. *v.* Armstrong, (Supm. Ct. App. T.) 107 N. Y. Supp. 5; Chase *v.* Rosenwald, (Supm. Ct. App. T.) 107 N. Y. Supp. 35; Robinson Clay Product Co. *v.* American Locomotive Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 589, 107 N. Y. Supp. 69; Halvordson *v.* Grossman, (Supm. Ct. App. T.) 107 N. Y. Supp. 627; Fountain City Drill Co. *v.* Lindquist, (S. Dak. 1908) 114 N. W. 1098; California Canneries Co. *v.* Pacific Sheet Metal Works, 144 Fed. 886.

1074. 2. Pinkham *v.* Haynes, (Me. 1907) 68 Atl. 642.

3. Alpena Portland Cement Co. *v.* Backus, 156 Fed. 944; Bearden Mercantile Co. *v.* Madison Oil Co., 128 Ga. 695, 58 S. E. 200 Bell *v.* Hatfield, (Ky. 1905) 89 S. W. 545; Pinkham *v.* Haynes, (Me. 1907) 68 Atl. 642; St. Louis Expanded Metal Fireproofing Co. *v.* Halliwell Cement Co., 123 Mo. App. 715, 101 S. W. 128.

The Buyer May Call for the Delivery of all the goods at any time within the specified period. American Linseed Co. *v.* Eberson, 126 Mo. App. 426, 104 S. W. 121.

5. Townes *v.* Oklahoma Mill Co., (Ark. 1908) 109 S. W. 548; Montgomery *v.* Thomson, (Cal. 1907) 92 Pac. 866; Bearden Mercantile Co. *v.* Madison Oil Co., 128 Ga. 695, 58 S. E. 200; Gude *v.* J. F. Bailey Co., (Ga. App. 1908) 61 S. E. 135; Bevins *v.* Coates, (Ky. 1906) 96 S. W. 585; American Linseed Co. *v.* Eberson, 126 Mo. App. 426, 104 S. W. 121; Zimmermann *v.* Timmermann, 120 N. Y. App. Div. 218, 105 N. Y. Supp. 443.

7. That the Seller Is Not Bound to Deliver before the time specified, see McBath *v.* Jones Cotton Co., (C. C. A.) 149 Fed. 383; Jacksboro Stone Co. *v.* Fairbanks Co., (Tex. Civ. App. 1908) 107 S. W. 567.

8. Gude *v.* J. F. Bailey Co., (Ga. App. 1908) 61 S. E. 135; Johnson *v.* North Baltimore Bottle Glass Co., 74 Kan. 762, 88 Pac. 52, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1074.

1075. 1. Fitzgerald Cotton Oil Co. *v.* Farmers' Supply Co., 3 Ga. App. 212, 59 S. E. 713; Pinkham *v.* Haynes, (Me. 1907) 68 Atl 642; Childs *v.* Omaha Paraphernalia House, (Neb. 1908) 114 N. W. 941; Robinson Clay Product Co. *v.* American Locomotive Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 589, 107 N. Y. Supp. 69; Claus-Shear Co. *v.* E. Lee Hardware House, 140 N. Car. 552, 53 S. W. 433.

2. Cincinnati Glass, etc., Co. *v.* Stephens, (Ga. App. 1908) 60 S. E. 360; Childs *v.* Omaha Paraphernalia House, (Neb. 1908) 114 N. W. 941; Victor Safe, etc., Co. *v.* O'Neill, (Wash. 1908) 93 Pac. 214.

1076. 1. McBath *v.* Jones Cotton Co., (C. C. A.) 149 Fed. 383.

2. Thomas D. Murphy Co. *v.* Exchange Nat. Bank, (Neb. 1906) 107 N. W. 845.

3. *United States.* — Northwestern State Bank *v.* Silberman, (C. C. A.) 154 Fed. 809.

Arkansas. — Felsberg *v.* Moore, 84 Ark. 399, 106 S. W. 197.

California. — Stum *v.* Hadrich, (Cal. App. 1907) 94 Pac. 82.

Colorado. — Hill *v.* Fruita Mercantile Co., (Colo. 1908) 94 Pac. 354.

Georgia. — McCarthy *v.* Nixon Grocery Co., 126 Ga. 762, 56 S. E. 72; Howard Supply Co. *v.* Bunn, 127 Ga. 663, 56 S. E. 757.

Massachusetts. — National Contracting Co. *v.* Vulcanite Portland Cement Co., 192 Mass. 247, 78 N. E. 414.

Michigan. — Lamb *v.* Utley, 146 Mich. 654, 110 N. W. 50.

Missouri. — Strother *v.* McMullen Lumber Co., 200 Mo. 647, 98 S. W. 34.

Nebraska. — Baker *v.* McDonald, 74 Neb. 595, 104 N. W. 923.

New York. — Williams *v.* Wilson, etc., Co., 111 N. Y. App. Div. 442, 97 N. Y. Supp. 731.

North Dakota. — Morrison Mfg. Co. *v.* Fargo Storage, etc., Co., (N. Dak. 1907) 113 N. W. 605.

Oklahoma. — McIver *v.* Williamson-Halsell-Frazier Co., (Okla. 1907) 92 Pac. 170; Masoner *v.* Bell, (Okla. 1908) 95 Pac. 230.

Oregon. — See Longfellow *v.* Huffman, (Ore-

1907) 90 Pac. 805, where the agreement was that upon delivery the purchase price should be credited upon a certain promissory note.

Texas. — Erb-Springall Co. *v.* Pittsburg Plate Glass Co., (Tex. Civ. App. 1907) 101 S. W. 1165.

Interest Is Recoverable from Date of Sale. Mary *v.* Riley, (Cal. 1907) 91 Pac. 510.

1077. 5. San Jacinto Oil Co. *v.* Texas Co., (Tex. Civ. App. 1907) 105 S. W. 1163. See Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451, holding that where a contract of sale covered several distinct items, having each an appropriate value, if some were of the kind and quality called for recovery could be had for the price of these.

1078. 2. **Where the Contract Is Entire** failure to deliver part is a breach of the contract. Rowland *v.* Ely, 120 N. Y. App. Div. 628, 105 N. Y. Supp. 211; Pratt *v.* Frasier, 72 S. Car. 368, 51 S. E. 983; Inman *v.* Elk Cotton Mills, 116 Tenn. 141, 92 S. W. 760; Langan, etc., Storage, etc., Co. *v.* Tennelly, (Ky. 1906) 93 S. W. 1, where, however, the contract in terms was that "all or none" should be delivered.

1079. 1. Mead *v.* Rat Portage Lumber Co., 93 Minn. 343, 101 N. W. 299, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1078; Bartlick *v.* Wortman, 216 Pa. St. 263, 65 Atl. 622.

3. U. S. *v.* Molloy, (C. C. A.) 144 Fed. 321; Canton Lumber Co. *v.* Liller, (Md. 1908) 68 Atl. 500.

1080. 1. Californian Canneries Co. *v.* Pacific Sheet Metal Works, 144 Fed. 886; Demarest *v.* Dunton Lumber Co., 151 Fed. 508; Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182; Bell *v.* Jordan, 102 Me. 67, 65 Atl. 759; Loeb *v.* Winnsboro Cotton Oil Co., (Tex. Civ. App. 1906) 93 S. W. 515. See Baldwin *v.* Napa, etc., Wine Co., 1 Cal. App. 215, 81 Pac. 1037.

2. Hadley Dean Plate Glass Co. *v.* Highland Glass Co., (C. C. A.) 143 Fed. 242; Inman *v.* Dudley, etc., Lumber Co., (C. C. A.) 146 Fed. 449; Loeb *v.* Winnsboro Cotton Oil Co., (Tex. Civ. App. 1906) 93 S. W. 515.

1081. 4. *United States.* — Hesser *v.* Chicago, etc., Coal Co., (C. C. A.) 151 Fed. 211.

Alabama. — Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018.

California. — De Laval Dairy Supply Co. *v.* Steadman, (Cal. App. 1907) 92 Pac. 877.

District of Columbia. — Moran *v.* Wagner, 28 App. Cas. (D. C.) 317.

Georgia. — Main *v.* Simmons, 2 Ga. App. 821, 59 S. E. 85.

Indiana. — Price *v.* Huddleston, 167 Ind. 536, 79 N. E. 496, *affirming* 36 Ind. App. 450, 75 N. E. 972.

Iowa. — Reeves *v.* Lamm, (Iowa 1907) 112 N. W. 642.

Kentucky. — Puritan Mfg. Co. *v.* Renaker, (Ky. 1908) 106 S. W. 813.

Massachusetts. — Fullam *v.* Wright, etc., Wire Cloth Co., (Mass. 1907) 82 N. E. 711; West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488.

Missouri. — Johnson County Sav. Bank *v.* Hutchinson, 121 Mo. App. 654, 97 S. W. 630; Missouri, etc., Coal Co. *v.* Consolidated Coal Co., 127 Mo. App. 320, 105 S. W. 682.

Nebraska. — Jakway *v.* Proudfit, (Neb. 1906) 109 N. W. 388, *affirming* (Neb. 1906) 106 N. W. 1039.

New York. — Stonehill Wine Co. *v.* Lupo, (Supm. Ct. App. T.) 110 N. Y. Supp. 408.

Pennsylvania. — Armour *v.* Beaver Valley Produce Co., 28 Pa. Super. Ct. 524.

Rhode Island. — Eddy *v.* Fay Fruit Co., (R. I. 1907) 67 Atl. 586.

Texas. — Gorham *v.* Dallas, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 551.

Virginia. — International Harvester Co. *v.* Smith, 105 Va. 683, 54 S. E. 859.

6. Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964; Mastin *v.* Bartholomew, (Colo. 1907) 92 Pac. 682; Armstrong *v.* Columbia Wagon Co., (Del. 1907) 66 Atl. 366; Harrison *v.* Russell, 12 Idaho 624, 87 Pac. 784; Starks *v.* Schlensky, 128 Ill. App. 1; Garvin *v.* Montenegro-Riehm Music Co., (Ky. 1907) 104 S. W. 964; Jones *v.* Bloomgarden, 143 Mich. 326, 106 N. W. 891; Avil Pub. Co. *v.* Bradford, 121 Mo. App. 577, 97 S. W. 238; Patrick *v.* Norfolk Lumber Co., (Neb. 1908) 115 N. W. 780; Hooven, etc., Co. *v.* Wirtz, 15 N. Dak. 477, 107 N. W. 1078; Catlin *v.* Jones, 48 Oregon 158, 85 Pac. 515; Conard *v.* Pennsylvania R. Co., 214 Pa. St. 98, 63 Atl. 424; Gorham *v.* Dallas, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 930, *affirming* (Tex. Civ. App. 1906) 95 S. W. 551; Schiller *v.* Blyth, etc., Co., 15 Wyo. 304, 88 Pac. 648.

Where the goods delivered are such as the contract calls for, the fact that no opportunity for inspection was afforded is of no importance. Gass *v.* Astoria Veneer Mills, 121 N. Y. App. Div. 182, 105 N. Y. Supp. 794.

1082. 2. Roach *v.* Warren, (Ala. 1907) 44 So. 103; Jackson *v.* Porter Land, etc., Co., 151 Cal. 32, 90 Pac. 122; Brooke *v.* Baker, 123 Ill. App. 493; Muncie Wheel, etc., Co. *v.* Finch, 150 Mich. 274, 113 N. W. 1107; Dowler *v.* Swift, 113 N. Y. App. Div. 260, 98 N. Y. Supp. 983. See also Wolfe Bros. Shoe Co. *v.* Bishop, 72 Kan. 687, 84 Pac. 133, where it was held that under all the circumstances the buyer was not obliged to inspect.

Failure to Make Seasonable Inspection and to notify the seller is deemed an acceptance. Ward Furniture Mfg. Co. *v.* Isbell, 81 Ark. 549, 99 S. W. 845.

Buyer Not Bound to Inspect Where the Goods Are Sold with Express Warranty. — Christian *v.* Knight, 128 Ga. 501, 57 S. E. 763; Pratt *v.* Nichols, (Ga. 1907) 58 S. E. 1060.

Refusal to Inspect Estops the buyer to complain of visible defects. McLeod *v.* Andrews, etc., Co., 116 Ill. App. 646.

3. Canton Lumber Co. *v.* Liller, (Md. 1908) 68 Atl. 500; North Baltimore Bottle Glass Co. *v.* Altpeter, (Wis. 1907) 113 N. W. 435; Floyd *v.* Arky, 89 Miss. 162, 42 So. 569.

4. Jackson *v.* Porter Land, etc., Co., 151 Cal. 32, 90 Pac. 122; Western Constr. Co. *v.* Romona Oölitic Stone Co., (Ind. App. 1907) 80 N. E. 810; Jones *v.* Bloomgarden, 143 Mich. 326, 106 N. W. 891; Buick Motor Co. *v.* Reid Mfg. Co., 150 Mich. 118, 113 N. W. 591; E. T. Burrowes Co. *v.* Rapid Safety Filter Co., (Supm. Ct. App.

T.) 49 Misc. (N. Y.) 539, 97 N. Y. Supp. 1048; Fiss, etc., Horse Co. *v.* Kiernan, (Supm. Ct. App. T.) 108 N. Y. Supp. 1105. See also Atkins Bros. Co. *v.* Landa, 119 Mo. App. 119, 95 S. W. 949; W. F. Main Co. *v.* Fields, 144 N. Car. 307, 56 S. E. 943.

5. Ark.-Mo. Zinc Co. *v.* Patterson, 79 Ark. 506, 96 S. W. 170; Western Constr. Co. *v.* Romona Oölitic Stone Co., (Ind. App. 1907) 80 N. E. 856.

6. See Gorham *v.* Dallas, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 551; Lehigh *v.* Standard Tie Co., 149 Mich. 102, 112 N. W. 181.

7. Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648. See also Laing *v.* Pelton Water Wheel Co., 122 N. Y. App. Div. 677, 107 N. Y. Supp. 686; Quaker Mfg. Co. *v.* Zucker, etc., Co., 124 Ill. App. 547; Fox *v.* Wilkinson, (Wis. 1907) 113 N. W. 669.

10. Jewell Belting Co. *v.* Hamilton Rubber Mfg. Co., 121 Ill. App. 13; Brooke *v.* Baker, 123 Ill. App. 493; Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648.

11. Garfield Proctor Coal Co. *v.* Pennsylvania Coal, etc., Co., (Mass. 1908) 84 N. E. 1020; Sackett, etc., Lithographing, etc., Co. *v.* Tilyou, 111 N. Y. App. Div. 300, 97 N. Y. Supp. 749.

1083. 2. Byrne Mill Co. *v.* Robertson, (Ala. 1907) 42 So. 1008; Braithwaite *v.* Foreign Hardwood Co., (1905) 2 K. B. 543; Schwartz *v.* Hirsch, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 618, 107 N. Y. Supp. 796; Prautsch *v.* Rasmussen, (Wis. 1907) 113 N. W. 416.

Where the Contract Is Entire and the first deliveries do not conform to the contract the purchaser on prompt notice may refuse further to perform. McDonald *v.* Kansas City Bolt, etc., Co., (C. C. A.) 149 Fed. 360.

1084. 2. Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50.

The buyer must pay promptly for instalments to protect himself against anticipated breach of contract. National Contracting Co. *v.* Vulcanite Portland Cement Co., 192 Mass. 247, 78 N. E. 414.

3. Rock Island Sash, etc., Works *v.* Moore, etc., Hardware Co., 147 Ala. 581, 41 So. 806; Williams *v.* Wilson, etc., Co., 111 N. Y. App. Div. 442, 97 N. Y. Supp. 731.

7. Horst *v.* Montauk Brewing Co., 118 N. Y. App. Div. 300, 103 N. Y. Supp. 381.

But Where the Property Represented by the Receipt is not in fact in the warehouse the seller must make actual delivery. Livingston *v.* Anderson, 2 Ga. App. 274, 58 S. E. 505.

1085. 3. U. S. *v.* Andrews, 207 U. S. 229, 28 U. S. Sup. Ct. 100, *affirming* 41 Ct. Cl. 48; Gem Knitting Mills *v.* Empire Printing, etc., Co., (Ga. App. 1908) 60 S. E. 365; Kitchin *v.* Clark, 120 Ill. App. 105; F. H. Earl Mfg. Co. *v.* Summit Lumber Co., 125 Ill. App. 391; Alson *v.* Wabash Coal Co., 126 Ill. App. 253; Murphy *v.* American Can Co., (Md. 1907) 67 Atl. 17, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1085; Teetzel *v.* Davidson Bros. Marble Co., 74 Neb. 529, 104 N. W. 1068; Gass *v.* Astoria Veneer Mills, 121 N. Y. App. Div. 182, 105 N. Y. Supp. 704.

1086. 7. **Repudiation Must Be Exact and Unequivocal.** — McBath *v.* Jones Cotton Co., (C. C. A.) 149 Fed. 383; Inman *v.* Elk Cotton Mills, 116 Tenn. 141, 92 S. W. 760.

1087. 1. Hanks Foundry Co. *v.* Woodstock Iron Works, 127 Ga. 108, 56 S. E. 106; Walker *v.* Kirwan, (Ky. 1906) 90 S. W. 244; Wilson *v.* Levi Cotton Mills, 140 N. Car. 52, 52 S. E. 250; Foote *v.* Heisig, (Tex. Civ. App. 1906) 94 S. W. 362; Aaron *v.* M. G. Smith Co., (Tex. Civ. App. 1907) 100 S. W. 347.

That the refusal must be a "distinct, absolute, and unequivocal refusal to receive performance," see Frohlich *v.* Independent Glass Co., 144 Mich. 278, 107 N. W. 889.

2. Demarest *v.* Dunton Lumber Co., 151 Fed. 508; Wood *v.* Senrich, 5 Cal. 252, 90 Pac. 51; Lachmund *v.* Moore, (Oregon 1908) 94 Pac. 510.

5. Crane *v.* Barron, 115 N. Y. App. Div. 196, 100 N. Y. Supp. 937; Wilson *v.* Levi Cotton Mills, 140 N. Car. 52, 52 S. E. 250.

Acceptance of a Loan of Goods to take the place of those undelivered is not a waiver of the delay. Biele *v.* Levy, (Supm. Ct. App. T.) 107 N. Y. Supp. 607.

6. Murmann *v.* Wissler, 116 Mo. App. 397, 92 S. W. 355; Sackett, etc., Lithographing, etc., Co. *v.* Tilyou, 111 N. Y. App. Div. 300, 97 N. Y. Supp. 749.

7. Townes *v.* Oklahoma Mill Co., (Ark. 1908) 109 S. W. 548; Frommel *v.* Foss, 102 Me. 176, 66 Atl. 382; Austin *v.* Langlois, (Vt. 1908) 69 Atl. 739; Wheeling Mold, etc., Co. *v.* Wheeling Steel, etc., Co., (W. Va. 1907) 57 S. E. 826. See also Birkett *v.* Nichols, 184 N. Y. 315, 77 N. E. 374, where the delay in delivery was at the buyer's request.

Waiver by Failure to Give Shipping Instructions. — Foote *v.* Heisig, (Tex. Civ. App. 1906) 94 S. W. 362.

8. San Jacinto Oil Co. *v.* Texas Co., (Tex. Civ. App. 1907) 105 S. W. 1163; Ryley-Wilson Grocer Co. *v.* Seymour Canning Co., (Mo. App. 1908) 108 S. W. 628.

9. Cottrell *v.* Smokeless Fuel Co., (C. C. A.) 148 Fed. 594, *reversing* 129 Fed. 174; Consolidated Coal Co. *v.* Jones, etc., Co., 232 Ill. 326, 83 N. E. 851.

Impossibility of Delivery. — J. H. Labaree Co. *v.* Crossman, 184 N. Y. 586, 77 N. E. 1189, *affirming* 102 N. Y. App. Div. 499, 92 N. Y. Supp. 565.

10. Garfield, etc., Coal Co. *v.* Pennsylvania Coal, etc., Co., (Mass. 1908) 84 N. E. 1020; Smokeless Fuel Co. *v.* Seaton, 105 Va. 170, 52 S. E. 829. See also Cottrell *v.* Smokeless Fuel Co., (C. C. A.) 148 Fed. 594, *reversing* 129 Fed. 174.

1088. 2. Mendel *v.* Miller, 126 Ga. 834, 56 S. E. 88.

Goods Delivered Must Conform to Contract. — Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018; Hutchinson Lumber Co. *v.* Dickerson, 127 Ga. 328, 56 S. E. 491.

If the Goods Tendered Conform to the Contract Requirements refusal to accept them is a breach of contract by the buyer. Aaron *v.* M. G. Smith Co., (Tex. Civ. App. 1907) 100 S. W. 347.

3. Semple *v.* Northern Hardwood Lumber Co., (Iowa 1908) 115 N. W. 899; Kupfer *v.* Michigan Clothing Co., 141 Mich. 325, 104 N.

W. 582; Fruit Dispatch Co. *v.* Le Seno, 147 Mich. 149, 110 N. W. 526.

6. Tri-State Milling Co. *v.* Breisch, 145 Mich. 232, 108 N. W. 657.

7. Long Bell Lumber Co. *v.* Nyman, 145 Mich. 477, 108 N. W. 1019; Goldstandt-Powell Hat Co. *v.* Cuff, (Okla. 1907) 91 Pac. 862, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1088.

Question of Acceptance Is One of Fact for the Jury. — Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018.

Facts Held Not to Constitute Acceptance. — Wolfe Bros. Shoe Co. *v.* Bishop, 72 Kan. 687, 84 Pac. 133.

8. William H. Perry Co. *v.* Klosters Aktie Bolag, (C. C. A.) 152 Fed. 967. See also Wolf *v.* Halliburton, 114 Mo. App. 685, 91 S. W. 467. See also Wolfe Bros. Shoe Co. *v.* Bishop, 72 Kan. 687, 84 Pac. 133; American Foundry, etc., Co. *v.* Board of Education, 131 Wis. 220, 110 N. W. 403.

1089. 2. *In re* Downing Paper Co., 147 Fed. 858; Western Constr. Co. *v.* Romona Oölitic Stone Co., (Ind. App. 1907) 80 N. E. 856; West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488; Nichols, etc., Co. *v.* Horstad, (S. Dak. 1906) 109 N. W. 509.

4. McDonald *v.* Kansas City Bolt, etc., Co., (C. C. A.) 149 Fed. 360; Jackson *v.* Porter Land, etc., Co., 151 Cal. 32, 90 Pac. 122; Day Leather Co. *v.* Michigan Leather Co., 141 Mich. 533, 104 N. W. 797; Harris *v.* Pellenz, 146 Mich. 529, 109 N. W. 1044; Goodwin Mfg. Co. *v.* Arthur Fritsch Foundry, etc., Co., 115 Mo. App. 382, 89 S. W. 911; Merriam Paper Co. *v.* New York Market Gardeners' Assoc., (Supm. Ct. App. T.) 108 N. Y. Supp. 1038; H. McCormick Lumber Co. *v.* Winans, 126 Wis. 649, 105 N. W. 945.

When upon inspection the buyer discovers defects in the goods it is his duty to reject them. Christian *v.* Knight, 128 Ga. 501, 57 S. E. 763.

1090. 1. Jackson *v.* Porter Land, etc., Co., 151 Cal. 32, 90 Pac. 122.

Where the Facts Are Undisputed, what is a reasonable time is a question for the court. Cunningham *v.* Wannamaker, 217 Pa. St. 497, 66 Atl. 748.

2. Promptness and Diligence Required. — Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018; Gilmore *v.* Meeker, 115 La. 849, 40 So. 244.

5. Moore *v.* H. B. Smith Mach. Co., (Ga. App. 1908) 60 S. E. 1035; Climax Tag Co. *v.* American Tag Co., 234 Ill. 179, 84 N. E. 873; Star Drilling Mach. Co. *v.* McLeod, (Ky. 1906) 92 S. W. 558; J. George Leyner Engineering Works Co. *v.* Newkirk, 117 Mo. App. 378, 93 S. W. 875; W. F. Main Co. *v.* Griffin-Bynum Co., 141 N. Car. 43, 53 S. E. 727.

8. Perkins Windmill Co. *v.* Kelly, 141 Mich. 459, 104 N. W. 663; Price *v.* Stanbra, 45 Wash. 143, 88 Pac. 115.

10. Christian *v.* Knight, 128 Ga. 501, 57 S. E. 763; McLeod *v.* Andrews, etc., Co., 116 Ill. App. 646; Western Constr. Co. *v.* Romona Oölitic Stone Co., (Ind. App. 1907) 80 N. E. 856; Central Mercantile Co. *v.* Graves, 74 Kan. 718, 88 Pac. 78; Noel *v.* Kauffman Buggy Co., (Ky. 1907) 106 S. W. 237; West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488; Kupfer *v.* Michigan Clothing Co., 141 Mich. 325, 104 N. W. 582; Williams *v.* Meagher, 146 Mich. 62, 109 N. W. 38; Fox *v.* Wilkinson, (Wis. 1907) 113 N. W. 669.

Where upon Inspection Goods Are Found Unsatisfactory delivering them to a carrier to be returned to the seller is not an acceptance. Price *v.* Stanbra, 45 Wash. 143, 88 Pac. 115.

1091. 1. Teetzel *v.* Davidson Bros. Marble Co., 74 Neb. 529, 104 N. W. 1068.

2. Borden, etc., Co. *v.* Fraser, 118 Ill. App. 655; Fuhrman *v.* Stackman, 28 Pa. Super. Ct. 154; Noel *v.* Kauffman Buggy Co., (Ky. 1907) 106 S. W. 237. See also Avil Pub. Co. *v.* Bradford, 121 Mo. App. 577, 97 S. W. 238, where, however, it is held that there was no such retention.

3. In Cunningham *v.* Wannamaker, 217 Pa. St. 497, 66 Atl. 748, the buyer authorized the seller to sell the goods for the buyer's account.

5. Robert Gair Co. *v.* Lyon, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 139, 101 N. Y. Supp. 787.

6. Ward Furniture Mfg. Co. *v.* Isbell, 81 Ark. 549, 99 S. W. 845; Pacific Timber Co. *v.* Iowa Windmill, etc., Co., (Iowa 1907) 112 N. W. 771; Buckeye Buggy Co. *v.* Montana Stables, 43 Wash. 49, 85 Pac. 1077.

1092. 2. McDonald *v.* Kansas City Bolt, etc., Co., (C. C. A.) 149 Fed. 360; Ward Furniture Mfg. Co. *v.* Isbell, 81 Ark. 549, 99 S. W. 845; Slayden-Kirksey Woolen Mills *v.* Spring, 116 Ill. App. 27; Canton Lumber Co. *v.* Liller, (Md. 1908) 68 Atl. 500; Schiller *v.* Blyth, etc., Co., 15 Wyo. 304, 88 Pac. 648.

3. Jackson *v.* Porter Land, etc., Co., 151 Cal. 32, 90 Pac. 122; Armstrong *v.* Columbia Wagon Co., (Del. 1907) 66 Atl. 366; Main *v.* Simmons, 2 Ga. App. 821, 59 S. E. 85; Starks *v.* Schlensky, 128 Ill. App. 1; Puritan Mfg. Co. *v.* The Emporium, 130 Iowa 526, 107 N. W. 428; Perkins Windmill Co. *v.* Kelly, 141 Mich. 459, 104 N. W. 663; Parkins *v.* Missouri Pac. R. Co., (Neb. 1906) 107 N. W. 260; Steinhardt *v.* Bingham, 182 N. Y. 326, 75 N. E. 403, *affirming* 90 N. Y. App. Div. 149, 85 N. Y. Supp. 1044; Robert Gair Co. *v.* Armstrong, (Supm. Ct. App. T.) 107 N. Y. Supp. 5; Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648.

4. Puritan Mfg. Co. *v.* Renaker, (Ky. 1908) 106 S. W. 813; Gloster Oil Works *v.* Buckeye Cotton Oil Co., 87 Miss. 618, 40 So. 225; Lehmaier *v.* Standard Specialty, etc., Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 402; Eddy *v.* Fay Fruit Co., (R. I. 1907) 67 Atl. 586. See also Kupfer *v.* Michigan Clothing Co., 141 Mich. 325, 104 N. W. 582.

9. Virginia-Carolina Lumber Co. *v.* Eisinger, 29 App. Cas. (D. C.) 531; Quaker Mfg. Co. *v.* Zucker, etc., Co., 124 Ill. App. 547. See Puritan Mfg. Co. *v.* The Emporium, 130 Iowa 526, 107 N. W. 428.

Where the Contract Provides that Notice Should Be Given in Five Days if the goods did not comply with the warranty failure to so notify was a waiver. Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451.

10. Carlsen *v.* Ziehme, 53 Fla. 235, 44 So. 181; Sizemore *v.* Woolard, 3 Ga. App. 261, 59 S. E. 833; Liquid Carbonic Acid Mfg. Co. *v.* Paulk, 3 Ga. App. 372, 59 S. E. 1125; Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648; E. T. Burrows Co. *v.* Rapid Safety Filter Co., (Supm.

Ct. App. T.) 49 Misc. (N. Y.) 539, 97 N. Y. Supp. 1048; Robert Gair Co. *v.* Lyon, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 139, 101 N. Y. Supp. 787; Forster *v.* F. MacKinnon Mfg. Co., 130 Wis. 281, 110 N. W. 226. See also Cincinnati Glass, etc., Co. *v.* Stephens, (Ga. App. 1908) 60 S. E. 360; Lucas E. Moore Stave Co. *v.* M. Mossom Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 883.

11. In Levy *v.* Redfern, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 575, 102 N. Y. Supp. 494, the goods were retained by the buyer for four months without objection, and it was held that the question whether or not there was a waiver of defects should have been submitted to the jury.

12. Montgomery *v.* Thomson, (Cal. 1907) 92 Pac. 866; Hill *v.* Fruita Mercantile Co., (Colo. 1908) 94 Pac. 354; Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648; Ginn *v.* W. C. Clark Coal Co., 143 Mich. 84, 106 N. W. 867, *rehearing denied*, 143 Mich. 88, 107 N. W. 904.

1093. 1. *United States.* — Victor Chemical Works *v.* Hill Clutch Co., (C. C. A.) 152 Fed. 303; Lestershire Lumber, etc., Co. *v.* W. M. Ritter Lumber Co., (C. C. A.) 153 Fed. 573.

California. — Jackson *v.* Porter Land, etc., Co., 151 Cal. 32, 90 Pac. 122, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1093.

Delaware. — Armstrong *v.* Columbia Wagon Co., (Del. 1907) 66 Atl. 366.

Georgia. — Carolina Portland Cement Co. *v.* Turpin, 126 Ga. 677, 55 S. E. 925; Christian *v.* Knight, 128 Ga. 501, 57 S. E. 763; Liquid Carbonic Acid Mfg. Co. *v.* Paulk, 3 Ga. App. 372, 59 S. E. 1125.

Illinois. — McLeod *v.* Andrews, etc., Co., 116 Ill. App. 646; Whiting Foundry Equipment Co. *v.* Hirsch, 121 Ill. App. 373.

Kansas. — Central Mercantile Co. *v.* Graves, 74 Kan. 718, 88 Pac. 78; Dougherty Bros. Tent, etc., Co. *v.* Peru-Van Zandt Implement Co., (Kan. 1907) 89 Pac. 900.

Kentucky. — Noel *v.* Kauffman Buggy Co., (Ky. 1907) 106 S. W. 237.

Mississippi. — American Steel Hoop Co. *v.* Searles, (Miss. 1908) 46 So. 411.

Nebraska. — Patrick *v.* Norfolk Lumber Co., (Neb. 1908) 115 N. W. 780.

New York. — Callahan *v.* O'Rourke, 110 N. Y. App. Div. 779, 96 N. Y. Supp. 1010; Budd *v.* McCann's Tours, (Supm. Ct. App. T.) 110 N. Y. Supp. 1051.

Pennsylvania. — Lenz *v.* Spencer, 28 Pa. Super. Ct. 31.

South Dakota. — Nichols, etc., Co. *v.* Horstad, (S. Dak. 1906) 109 N. W. 509.

Texas. — Gorham *v.* Dallas, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 551; Gorham *v.* Dallas, etc., R. Co., (Tex. Civ. App. 1907) 106 S. W. 930, *affirming* (Tex. Civ. App. 1906) 95 S. W. 551.

Wisconsin. — H. McCormick Lumber Co. *v.* Winans, 126 Wis. 649, 105 N. W. 945.

Where a Buyer Gave a Note for certain defective goods with knowledge of the defect, he was held to have waived them. Sizemore *v.* Woolard, 3 Ga. App. 261, 59 S. E. 833.

Where There Has Been No Acceptance the buyer is not liable in an action for the price of the goods. Tatum *v.* Geist, (Wash. 1907) 89 Pac. 547.

3. The Nimrod, 141 Fed. 215, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1903 [1093], *affirmed* Union Iron Works *v.* Spottswood, (C. C. A.) 141 Fed. 834; Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Central Mercantile Co. *v.* Graves, 74 Kan. 718, 88 Pac. 78; Scott *v.* Keith, (Mich. 1908) 116 N. W. 183; Atkins Bros. Co. *v.* Landa, 119 Mo. App. 119, 95 S. W. 949; Staiger *v.* Soht, 116 N. Y. App. Div. 874, 102 N. Y. Supp. 342; Heath Dry Gas Co. *v.* Hurd, (Supm. Ct. App. Div.) 108 N. Y. 410; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y Supp 796. See Callahan *v.* O'Rourke, 110 N. Y. App. Div. 779, 96 N. Y. Supp. 1010, where, however, it was held that the evidence did not show a breach of warranty. But see Electric Storage Battery Co. *v.* Waterloo, etc., R. Co., (Iowa 1908) 116 N. W. 144, where it is held that a buyer having accepted and used the goods furnished for many months without making any claim under the alleged warranty cannot set it up as a defense in an action for the price.

Acceptance with Knowledge of Defects. — Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53; Carolina Portland Cement Co. *v.* Turpin, 126 Ga. 677, 55 S. E. 925.

The Buyer Is Not Precluded from relying on an express warranty and pleading the breach thereof as a partial failure of consideration, even though the defects would have been apparent on inspection before delivery. Burr *v.* Atlanta Paper Co., 2 Ga. App. 52, 58 S. E. 373.

Where the Defect Is Known to the Purchaser he cannot recover for breach of warranty. Scott *v.* Geiser Mfg. Co., 70 Kan. 500, 80 Pac. 955.

But Where the Goods Have Been Retained for an unreasonable time without protest or notice of failure to comply with the warranty there is an acceptance which waives the warranty. Sprout *v.* Hunter, (Ky. 1907) 98 S. W. 1006.

Where the contract of sale provided that notice of breach of warranty should be given by registered mail and notice was actually given by unregistered mail there was no waiver. Nichols, etc., Co. *v.* Bryeans, 116 Mo. App. 693, 93 S. W. 827.

Breach of Contract undiscoverable by mere inspection is not waived. North Baltimore Bottle Glass Co. *v.* Altpeter, (Wis. 1907) 113 N. W. 435.

1094. 1. Gude *v.* J. F. Bailey Co., (Ga. App. 1908) 61 S. E. 135; Ledgerwood *v.* Bushnell, 128 Ill. App. 555; Johnson *v.* North Baltimore Bottle Glass Co., 74 Kan. 762, 88 Pac. 52; Garfield, etc., Coal Co. *v.* Pennsylvania Coal, etc., Co., (Mass. 1908) 84 N. E. 1020.

4. **The Question Whether an Acceptance in Discharge of the Contract** and waiver of the warranty has been made is one of fact for the jury. Atkins Bros. Co. *v.* Landa, 119 Mo. App. 119, 95 S. W. 949.

1095. 1. Felsberg *v.* Moore, 84 Ark. 399, 106 S. W. 197; Lamb *v.* Utley, 146 Mich. 654, 110 N. W. 50, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1095; Williams *v.* Wilson, etc., Co., 111 N. Y. App. Div. 442, 97 N. Y. Supp. 731.

5. Lavalley *v.* Ravenna, 78 Vt. 152, 62 Atl. 47. See also Montant *v.* Johnson, (Supm. Ct. App. T.) 99 N. Y. Supp. 395, where the title was held to have passed although the price had not been paid.

6. National Contracting Co. *v.* Vulcanite Portland Cement Co., 192 Mass. 247, 78 N. E. 414.

7. Frech *v.* Lewis, 218 Pa. St. 141, 67 Atl. 45.

10. Adams *v.* Stovall, (Ala. 1906) 42 So. 597, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1095; Bowles *v.* Rice, 107 Va. 51, 57 S. E. 575, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1095.

1096. 7. Ohio Valley Buggy Co. *v.* Anderson Forging Co., 168 Ind. 593, 81 N. E. 574; Taussig *v.* Southern Mill, etc., Co., 124 Mo. App. 209, 101 S. W. 602.

1097. 7. Peters, etc., Pottery Co. *v.* Folockemer, (Mo. App. 1908) 110 S. W. 598; Lipschutz *v.* Weatherly, 140 N. Car. 365, 53 S. E. 132; Russell *v.* Excelsior Stove, etc., Co., 120 Ill. App. 23; White *v.* C., etc., Cooper Co., 27 Ohio Cir. Ct. 703; Wilson *v.* Maxon, 56 W. Va. 194, 49 S. E. 123.

That a Contract of Sale May Be Rescinded or modified by mutual consent without any new or additional consideration, see Wellden *v.* Witt, 145 Ala. 605, 40 So. 126.

An Offer by the Seller to Accept a Return of the Goods for exchange does not rescind the contract. Johnson *v.* Hughes, 83 Ark. 105, 103 S. W. 184.

1098. 1. Pierce *v.* Staub, 78 Conn. 459, 62 Atl. 760; Greder *v.* Stahl, (S. Dak. 1908) 115 N. W. 1129, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097.

In R. T. Stone Tobacco Co. *v.* Allen, 1 Ga. App. 434, 57 S. E. 967, it was held that no rescission took place, there having been no acceptance by the seller of the buyer's offer to rescind.

Where the Seller Retook the property without right it was held that the buyer might treat his conduct as a rescission. Boggs *v.* Young, (Neb. 1908) 116 N. W. 501.

1099. 1. **Where It Appears from the Facts and Circumstances** of the agreement to rescind that it was not intended to be retroactive, that effect will not be given to it. Alabama Oil, etc., Co. *v.* Sun Co., (Tex. 1906) 92 S. W. 253.

5. Files *v.* Rankin, (C. C. A.) 153 Fed. 537; McGuire *v.* Bradley, 118 Ill. App. 59; Blaul *v.* Wandel, (Iowa 1908) 114 N. W. 899; Crawford *v.* Hurd, (Ky. 1908) 106 S. W. 849; Atlas Shoe Co. *v.* Bechard, 102 Me. 197, 66 Atl. 390, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1099; Kingman-Moore Implement Co. *v.* Ellis, 125 Mo. App. 692, 103 S. W. 127; Omaha Feed Co. *v.* Rushforth, 75 Neb. 340, 106 N. W. 25; James Music Co. *v.* Bridge, (Wis. 1908) 114 N. W. 1108; Smith *v.* Ryan, 191 N. Y. 452, 84 N. E. 402, *affirming* 116 N. Y. App. Div. 397, 101 N. Y. Supp. 1011, where the principle is asserted although the action was ejectment; Lilienthal *v.* Herren, 42 Wash. 209, 84 Pac. 829; German Nat. Bank *v.* Princeton State Bank, 128 Wis. 60, 107 N. W. 454.

1100. 1. Pelham *v.* Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12; Omaha Feed Co. *v.* Rushforth, 75 Neb. 340, 106 N. W. 25, where the fraudulent misrepresentation was that the paid-up capital of the buyer amounted to $50,000 when it in fact amounted to $1,000 only.

1101. 1. Blaul *v.* Wandel, (Iowa 1908) 114 N. W. 899; Atlas Shoe Co. *v.* Bechard, 102 Me. 197, 66 Atl. 390; German Nat. Bank *v.* Princeton State Bank, 128 Wis. 60, 107 N. W. 454.

3. Pelham *v.* Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12; Blaul *v.* Wandel, (Iowa 1908) 114 N. W. 899; Lowry *v.* Hitch, (Ky. 1908) 110 S. W. 833.

1102. 2. Curry *v.* Greffet, 115 Mo. App. 364, 90 S. W. 1166, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1102; Livingston *v.* Anderson, 2 Ga. App. 274, 58 S. E. 505.

1103. 3. Sterling *v.* Gregory, 149 Cal. 117, 85 Pac. 305.

7. Stafsky *v.* Southern R. Co., 143 Ala. 272, 39 So. 132; Rock Island Sash, etc., Works *v.* Moore, etc., Hardware Co., 147 Ala. 581, 41 So. 806.

1104. 1. Pierce *v.* Staub, 78 Conn. 459, 62 Atl. 760; Bownd *v.* Hollenbeck, (Neb. 1906) 108 N. W. 259.

4. Ohio Valley Buggy Co. *v.* Anderson Forging Co., 168 Ind. 593, 81 N. E. 574.

5. Stafsky *v.* Southern R. Co., 143 Ala. 272, 39 So. 132, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1104. See also Woldert Grocery Co. *v.* Bconville Elevator Co., (Tex. Civ. App. 1905) 94 S. W. 108.

Where the Buyer Is Required to Order the Shipment of Goods, giving the seller thirty days advance notice of each shipment, failure or refusal to so order and give notice is "equivalent to a failure to take and receive" and gives the seller a right to rescind. Alpena Portland Cement Co. *v.* Backus, (C. C. A.) 156 Fed. 941.

Where the Refusal to Accept the Thing Tendered is in good faith on the ground that it does not comply with the contract, such refusal does not afford ground for rescission. Hanley *v.* Combs, 48 Oregon 409, 87 Pac. 143.

6. Bownd *v.* Hollenbeck, (Neb. 1906) 108 N. W. 259; Peters Grocery Co. *v.* Collins Bag Co., 142 N. Car. 174, 55 S. E. 90; Hanley *v.* Combs, 48 Oregon 409, 87 Pac. 143, where, however, the acts of the buyer were held not to amount to a repudiation of the contract.

1105. 1. Wellden *v.* Witt, 145 Ala. 605, 40 So. 126; Samaha *v.* Mason, 27 App. Cas. (D. C.) 470; McGuire *v.* Bradley, 118 Ill. App. 59; Silvey *v.* Tift, 123 Ga. 804, 51 S. E. 748; German American Provision Co. *v.* Jones, 87 Miss. 277, 39 So. 521; Wagman *v.* Kessler, (Neb. 1907) 110 N. W. 545; James Music Co. *v.* Bridge, (Wis. 1908) 114 N. W. 1108; Kingman-Moore Implement Co. *v.* Ellis, 125 Mo. App. 692, 103 S. W. 127, where, however, an exception to the rule is noted. See also Roeder *v.* Robertson, 202 Mo. 522, 100 S. W. 1086, where the principle is laid down, although it is held that the contract of sale was void and no title passed to the vendee; Smith *v.* Ryan, 191 N. Y. 452, 84 N. E. 402, *affirming* 116 N. Y. App. Div. 397, 101 N. Y. Supp. 1011, where in an action of ejectment the rule as to rescission in

contracts of sale of personalty is stated; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789, wherein the *dissenting* opinion *cites* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1105.

Where the Rescission Is by Consent the seller must return the consideration. Greder *v.* Stahl, (S. Dak. 1908) 115 N. W. 1129.

3. Samaha *v.* Mason, 27 App. Cas. (D. C.) 470.

4. Kingman-Moore Implement Co. *v.* Ellis, 125 Mo. App. 692, 103 S. W. 127.

6. Kingman-Moore Implement Co. *v.* Ellis, 125 Mo. App. 692, 103 S. W. 127.

1106. 1. Cunningham *v.* Wannamaker, 217 Pa. St. 497, 66 Atl. 748; Goff-Kirby Coal Co. *v.* Marine Coal Co., 31 Pa. Super. Ct. 60; William P. Kelley Brick Co. *v.* Clay Product Supply Co., 32 Pa. Super. Ct. 408; Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46; James Music Co. *v.* Bridge, (Wis. 1908) 114 N. W. 1108.

3. See Frame *v.* Oregon Liquor Co., 48 Oregon 276, 86 Pac. 791, *denying rehearing* in 48 Oregon 275, 85 Pac. 1009, where the action of the seller was held rather an exercise of the right of stoppage *in transitu* than of the right of rescission.

1107. 1. Brennard Mfg. Co. *v.* Citronelle Mercantile Co., (Ala. 1906) 41 So. 671; Graybill *v.* Drennen, (Ala. 1907) 43 So. 568; Clark *v.* Wooster, 79 Conn. 126, 64 Atl. 10; Marietta Fertilizer Co. *v.* Beckwith, (Ga. App. 1908) 61 S. E. 149; Seeley *v.* Seeley-Howe-Le Van Co., 130 Iowa 626, 105 N. W. 380; Lyon *v.* Lindblad, 145 Mich. 588, 108 N. W. 969; Standard Interlock Elevator Co. *v.* Wilson, 218 Pa. St. 280, 67 Atl. 463; W. F. Main Co. *v.* Fields, 144 N. Car. 307, 56 S. E. 943; Allen *v.* Hass, 27 Ohio Cir. Ct. 727; Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46.

That Redress by Rescission Will Not Be Granted where the buyer has sustained no pecuniary damages by the fraud, see Marquise *v.* Tri-State Land Co., (Neb. 1906) 109 N. W. 397.

The Buyer May Rescind for Fraud even though he has not suffered damage. Rose *v.* Merchants Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946.

2. Pitcher *v.* Webber, (Me. 1907) 68 Atl. 593; Roebuck *v.* Wick, 98 Minn. 130, 107 N. W. 1054; International Harvester Co. *v.* Smith, 105 Va. 683, 54 S. E. 859.

Misrepresentations Made in Good Faith in a case where the rule of caveat emptor applies do not furnish ground for rescission. Dorsey *v.* Watkins, 151 Fed. 340.

That the Misrepresentations Must Be Material. — See Brennard Mfg. Co. *v.* Citronelle Mercantile Co., (Ala. 1906) 41 So. 671.

The Fraudulent Misrepresentations Need Not Have Been the sole inducement for entering into the contract. American Hardwood Lumber Co. *v.* Dent, 121 Mo. App. 108, 98 S. W. 814.

In order to entitle a buyer to rescind for false representations he must have been misled by them to his damage. Jakway *v.* Proudfit, (Neb. 1906) 109 N. W. 388, *affirming* (Neb. 1906) 106 N. W. 1039.

But Where the Purchaser Has Opportunity of Inspection he cannot rescind for false representations as to the quantity and quality of the goods sold. Hulet *v.* Achey, 39 Wash. 91, 80 Pac. 1105.

1108. 3. Walker, etc., Co. *v.* Ayer, (S. Car. 1908) 61 S. E. 557.

In Fullam *v.* Wright, etc., Wire Cloth Co., (Mass. 1907) 82 N. E. 711, it was held that failure on the part of the seller to deliver goods in conformity with the contract of sale was a failure of consideration.

5. Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018; Morris *v.* Persing, (Neb. 1906) 107 N. W. 218. See Standard Mfg. Co. *v.* Slaughter, 122 Ill. App. 479.

6. McSwegan *v.* Gatti-McQuade Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 338, 98 N. Y. Supp. 692.

7. Puritan Mfg. Co. *v.* Westermire, 47 Oregon 557, 84 Pac. 797.

Where the Seller Agreed to Furnish certain window displays and advertising matter "on request," in the absence of a request on the buyer's part there is no breach of the contract. Make-Man Tablet Co. *v.* Chapman, 119 Mo. App. 427, 95 S. W. 282; Dougall *v.* Chouillou, 15 Quebec K. B. 300; Moran *v.* Wagner, 28 App. Cas. (D. C.) 317.

9. Avil Pub. Co. *v.* Bradford, 121 Mo. App. 577, 97 S. W. 238; Columbia River Packers' Assoc. *v.* Springfield Grocer Co., (Mo. App. 1908) 108 S. W. 113; Fox *v.* Wilkerson, (Wis. 1907) 113 N. W. 669.

10. Fairbanks *v.* Walker, (Kan. 1907) 92 Pac. 1129. See also Helme *v.* Loveland, (Iowa 1907) 113 N. W. 1082, where the goods furnished were to be to the satisfaction of the buyer and proved unsatisfactory.

1109. 1. Dougherty Bros. Tent, etc., Co. *v.* Peru-Van Zandt Implement Co., (Kan. 1907) 89 Pac. 900.

2. Silverman *v.* National Butchers, etc., Bank, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 169, 98 N. Y. Supp. 209. See also Krebs Hop Co. *v.* Livesley, (Oregon 1907) 92 Pac. 1084, where, however, it was held that it was not sufficiently shown by the buyer that the plaintiff had rendered itself incapable of performance.

4. Clark *v.* Wooster, 70 Conn. 126, 64 Atl. 10; Hutchinson Lumber Co. *v.* Dickerson, 127 Ga. 328, 56 S. E. 491; Cook *v.* Lautz, 116 Ill. App. 472; Mayer *v.* Automobile Exch., 125 Ill. App. 648; Mulcahy *v.* Diendonne, (Minn. 1908) 115 N. W. 636; Staiger *v.* Soht, 116 N. Y. App. Div. 874, 102 N. Y. Supp. 342; Simonson *v.* Jenson, 14 N. Dak. 417, 104 N. W. 513; Allen *v.* Hass, 27 Ohio Cir. Ct. 727; Hulet *v.* Achey, 39 Wash. 91, 80 Pac. 1105. See also Gaar *v.* Halverson, 128 Iowa 603, 105 N. W. 108, holding that the breach of warranty was not shown.

In Beecroft *v.* Van Schaick, (Supm. Ct. App. T.) 104 N. Y. Supp. 458, the purchaser was allowed to recover the purchase price, having returned the goods as it appears "under the terms of the agreement."

5. Dorrance *v.* Dearborn Power Co., 233 Ill. 354, 84 N. E. 269; Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 131 Iowa 252, 111 N. W. 935; Mattouch *v.* Riddell Automobile Co., (Iowa 1908) 115 N. W. 509; Columbia River Packers' Assoc. *v.* Springfield Grocer Co., (Mo. App. 1908) 108 S. W. 113; Mundt *v.* Simpkins, (Neb. 1908) 115 N. W. 325; Walker,

etc., Co. *v.* Ayer, (S. Car. 1908) 61 S. E. 557; Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265; Rosenthal *v.* Rambo, 165 Ind. 584, 76 N. E. 404. In this case, however, the contract of sale provided for the return of the subject-matter of the sale upon breach of warranty.

6. Baskerville *v.* Johnson, (S. Dak. 1905) 104 N. W. 913.

1110. 1. Olson *v.* Wabash Coal Co., 126 Ill. App. 253.

2. Pinkiert *v.* Kornblum, 5 Cal. App. 522, 90 Pac. 969; Livingston *v.* Anderson, 2 Ga. App. 274, 58 S. E. 505.

Where Breach of Warranty Is the Ground for Rescission it has been held that even though a contract is severable if the breach of warranty goes to the entire consideration the contract may be rescinded for a breach as to some of the goods delivered. Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935.

5. McGinnis *v.* R. K. Johnson Co., 74 Neb. 356, 104 N. W. 869; Robinson Clay Product Co. *v.* American Locomotive Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 589, 107 N. Y. 69.

7. *Colorado.* — Stone *v.* Victor Electric Co., 36 Colo. 370, 85 Pac. 327.

Georgia. — Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50.

Iowa. — White *v.* Miller, 132 Iowa 144, 109 N. W. 465.

Kansas. — Frick Co. *v.* Fry, 75 Kan. 396, 89 Pac. 675.

Maine. — Pitcher *v.* Webber, (Me. 1907) 68 Atl. 593.

Missouri. — Phares *v.* Jaynes, 118 Mo. App. 546, 94 S. W. 585.

Nebraska. — Hefner *v.* Robert, (Neb. 1906) 107 N. W. 258; Acme Harvesting Co. *v.* Carroll, (Neb. 1908) 114 N. W. 780; Mundt *v.* Simpkins, (Neb. 1908) 115 N. W. 325.

New Jersey. — Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295; Erwin *v.* Detwiler, (N. J. 1907) 67 Atl. 932.

New York. — P. H., etc. Roots Co. *v.* New York Foundry Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 627, 101 N. Y. Supp. 104; P. H., etc., Roots Co. *v.* New York Foundry Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 687, 107 N. Y. Supp. 742.

North Carolina. — May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

North Dakota. — See J. I. Case Threshing Mach. Co. *v.* Balke, 15 N. Dak. 206, 107 N. W. 57; Houghton Implement Co. *v.* Vavrousky, 15 N. Dak. 308, 109 N. W. 1024; J. L. Owens Co. *v.* Doughty, (N. Dak. 1906) 110 N. W. 78.

Ohio. — Palmer *v.* Cowie, 27 Ohio Cir. Ct. 617.

Utah. — Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1110, in dissenting opinion.

Wisconsin. — Dunham *v.* Salmon, 130 Wis. 164, 109 N. W. 959; Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265.

1111. 1. The right to return of the property may be waived by the seller. Otto *v.* Braman, 142 Mich. 185, 105 N. W. 601.

2. Otto *v.* Braman, 142 Mich. 185, 105 N. W. 601; Fairbanks *v.* Walker, (Kan. 1907) 92 Pac. 1129.

3. Olson *v.* Brison, 129 Iowa 604, 106 N. W. 14; Pitcher *v.* Webber, (Me. 1907) 68 Atl. 593; Mundt *v.* Simpkins, (Neb. 1908) 115 N. W. 325; Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295.

4. Carroll *v.* Barry Bros. Transp. Co., 118 Ill. App. 230.

5. Silvey *v.* Tift, 123 Ga. 804, 51 S. E. 748; Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636; Phares *v.* Jaynes, 118 Mo. App. 546, 94 S. W. 585; May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728; J. L. Owens Co. *v.* Doughty, (N. Dak. 1906) 110 N. W. 78; Main *v.* Procknow, 131 Wis. 279, 111 N. W. 508.

6. That "one who is entitled to rescission of part of a divisible contract cannot rescind as to the whole," see Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11.

7. Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018; Dorrance *v.* Dearborn Power Co., 233 Ill. 354, 84 N. E. 269; Seeley *v.* Seeley-Howe-Le Van Co., 130 Iowa 626, 105 N. W. 380; Mattauch *v.* Riddell Automobile Co., (Iowa 1908) 115 N. W. 509; Salina Implement, etc., Co. *v.* Haley, (Kan. 1908) 93 Pac. 579; Rumsey, etc., Co. *v.* Jacob, (Miss. 1908) 46 So. 169; Goodwin Mfg. Co. *v.* Arthur Fritsch Foundry, etc., Co., 115 Mo. App. 382, 89 S. W. 911; Acme Harvesting Co. *v.* Carroll, (Neb. 1908) 114 N. W. 780; Rose *v.* Merchants' Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946; Trott *v.* Schmitt, 119 N. Y. App. Div. 474, 104 N. Y. Supp. 98; J. L. Owens Co. *v.* Doughty, (N. Dak. 1906) 110 N. W. 78; Armour *v.* Beaver Valley Produce Co., 28 Pa. Super. Ct. 524. See Woods *v.* Thompson, 114 Mo. App. 38, 88 S. W. 1126. See also Pitcher *v.* Webber, (Me. 1907) 68 Atl. 593; Hill *v.* Hall, 191 Mass. 253, 77 N. E. 831; Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000.

Where the Delay Is Made at the seller's suggestion the right to rescind is not waived. Rheinstrom *v.* Elk Brewing Co., 28 Pa. Super. Ct. 510.

1112. 1. Harding *v.* York Knitting Mills, 142 Fed. 228; Graybill *v.* Drennen, (Ala. 1907) 43 So. 568; Roach *v.* Warren, (Ala. 1907) 44 So. 193; Bernard *v.* Sloan, 2 Cal. App. 737, 84 Pac. 232; Wisdom *v.* Nichols, etc., Co., (Ky. 1906) 97 S. W. 18; E. T. Burrowes Co. *v.* Rapid Safety Filter Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 539, 97 N. Y. Supp. 1048; May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728; Houghton Implement Co. *v.* Doughty, 14 N. Dak. 331, 104 N. W. 516; J. L. Owens Co. *v.* Doughty, (N. Dak. 1906) 110 N. W. 78.

Request for Payment Not a Waiver of Right to Rescind. — Pelham *v.* Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12.

The Buyer May Waive Imperfections and yet upon the discovery of others be entitled to rescind. Pitcher *v.* Webber, (Me. 1907) 68 Atl. 593.

Waiver Is Question of Fact for Jury. — Walker *v.* Grout Bros. Automobile Co., 124 Mo. App. 628, 102 S. W. 25.

The Buyer May Waive His Right to Rescind by instituting an action to recover damages for the breach of the contract by the seller. Main *v.* Procknow, 131 Wis. 279, 111 N. W. 508.

1113. 1. Harding *v.* York Knitting Mills, 142 Fed. 228.

2. White *v.* Miller, (Iowa 1906) 105 N. W.

993. See Glasgow Milling Co. *v.* Burgher, 122 Mo. App. 14, 97 S. W. 950, where the seller, after receiving back the goods, sought to recover the purchase price.

Where the Seller Accepts a Return of the goods without objection, his consent to a rescission may be implied therefrom. Greder *v.* Stahl, (S. Dak. 1908) 115 N. W. 1129.

3. Russell *v.* Stewart, 78 Ark. 603, 94 S. W. 47; Rose *v.* Merchants' Trust Co., (Supm. Ct. Spec. T.) 96 N. Y. Supp. 946; Main *v.* Procknow, 131 Wis. 279, 111 N. W. 508; Rutter *v.* Dowagiac Mfg. Co., 102 Minn. 367, 113 N. W. 910; Woods *v.* Thompson, 114 Mo. App. 38, 88 S. W. 1126.

Notice to Seller Is Necessary. — Elliott *v.* Howison, 146 Ala. 568, 40 So. 1018.

4. Fletcher *v.* Southern, (Ind. App. 1908) 84 N. E. 526; Sherman Nursery Co. *v.* Augenbaugh, 93 Minn. 201, 100 N. W. 1101, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1113; Collenheimer *v.* Foley, (Tex. Civ. App. 1906) 95 S. W. 688.

6. Rounsaville *v.* Leonard Mfg. Co., 127 Ga. 735, 56 S. E. 1030; St. Louis Steel Range Co. *v.* Kline-Drummond Mercantile Co., 120 Mo. App. 438, 96 S. W. 1040; Sour Lake Townsite Co. *v.* B. Dentser Furniture Co., (Tex. Civ. App. 1906) 94 S. W. 188.

1114. 1. Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Ingram *v.* McCaskey Register Co., (Ga. App. 1908) 60 S. E. 291.

2. Loveland *v.* Beumer, 102 Minn. 1, 112 N. W. 864; Wilmerding *v.* Feldman, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 341, 98 N. Y. Supp. 688, where it is held that a slight violation on the part of the seller precluded his right to recover in damages; Armour *v.* Beaver Valley Produce Co., 28 Pa. Super. Ct. 524.

3. Braithwaite *v.* Foreign Hardwood Co., (1905) 2 K. B. 543; Pancoast *v.* Vail, (Del. 1906) 65 Atl. 512; Carolina Portland Cement Co. *v.* Columbia Imp. Co., (Ga. App. 1908) 60 S. E. 279; Ingram *v.* McCaskey Register Co., (Ga. App. 1908) 60 S. E. 291; Lekas *v.* Schwartz, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 594, 107 N. Y. 145.

6. Hanks Foundry Co. *v.* Woodstock Iron Works, 127 Ga. 108, 56 S. E. 106; Ketcham *v.* U. S., 40 Ct. Cl. 220.

United States. — Salmon *v.* Helena Box Co., (C. C. A.) 147 Fed. 408.

Alabama. — Stafsky *v.* Southern R. Co., 143 Ala. 272, 39 So. 132; Belote *v.* Wilcox, (Ala. 1906) 41 So. 673.

California. — Levis *v.* Royal Packing, etc., Co., 1 Cal. App. 241, 81 Pac. 1086; Wilson *v.* Gregory, 2 Cal. App. 312, 84 Pac. 356.

Colorado. — Hassell Iron Works Co. *v.* Cohen, 36 Colo. 353, 85 Pac. 89.

Delaware. — Pancoast *v.* Vail, (Del. 1906) 65 Atl. 512.

Georgia. — Hanks Foundry Co. *v.* Woodstock Iron Works, 127 Ga. 108, 56 S. E. 106; Rounsaville *v.* Leonard Mfg. Co., 127 Ga. 735, 56 S. E. 1030; Carolina Portland Cement Co. *v.* Columbia Imp. Co., (Ga. App. 1908) 60 S. E. 279.

Illinois. — Olson *v.* Wabash Coal Co., 126 Ill. App. 253.

Indiana. — Gaar *v.* Fleshman, 38 Ind. App. 490, 77 N. E. 744, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1115, *rehearing denied* 38 Ind. App. 494, 78 N. E. 348.

Kentucky. — Bell *v.* Hatfield, (Ky. 1905) 89 S. W. 544; Louisville, etc., R. Co. *v.* Coyle, (Ky. 1906) 97 S. W. 772, *rehearing denied* (Ky. 1907) 99 S. W. 237.

Louisiana. — Woodstock Iron Works *v.* Standard Pulley Mfg. Co., 115 La. 829, 40 So. 236.

Minnesota. — Schloss *v.* Josephs, 98 Minn. 442, 108 N. W. 474.

Missouri. — St. Louis Steel Range Co. *v.* Kline-Drummond Mercantile Co., 120 Mo. App. 438, 96 S. W. 1040; Brown *v.* Trinidad Asphalt Mfg. Co., (Mo. 1908) 109 S. W. 22.

Nebraska. — Parkins *v.* Missouri Pac. R. Co., (Neb. 1906) 107 N. W. 260; Allen *v.* Rushforth, (Neb. 1906) 110 N. W. 687.

New York. — Lekas *v.* Schwartz, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 594, 107 N. Y. 145; Perlman *v.* Levy, (Supm. Ct. App. T.) 109 N. Y. Supp. 785; Wolfsheim *v.* Ammann Mfg., etc., Co., (Supm. Ct. App. T.) 110 N. Y. Supp. 943.

Texas. — Sour Lake Townsite Co. *v.* B. Deutser Furniture Co., (Tex. Civ. App. 1906) 94 S. W. 188.

West Virginia. — Acme Food Co. *v.* Older, (W. Va. 1908) 61 S. E. 235.

1115. 1. *England.* — Braithwaite *v.* Foreign Hardwood Co., (1905) 2 K. B. 543.

1116. 2. See Fountain City Drill Co. *v.* Peterson, 126 Wis. 512, 106 N. W. 17, as to the right of the buyer to repudiate the contract and thereby limit liability.

4. Louisville, etc., R. Co. *v.* Coyle, (Ky. 1906) 97 S. W. 772, *rehearing denied* (Ky. 1907) 99 S. W. 237; St. Louis Steel Range Co. *v.* Kline Drummond Mercantile Co., 120 Mo. App. 438, 96 S. W. 1040; Allen *v.* Rushforth, (Neb. 1906) 110 N. W. 687; Fox *v.* Woods, (Supm. Ct. App. T.) 96 N. Y. Supp. 117.

Loss of Profits Held to Be the Measure of Damages. — Ketcham *v.* U. S., 40 Ct. Cl. 220.

5. Salmon *v.* Helena Box Co., (C. C. A.) 147 Fed. 408.

1117. 1. Hadley Dean Plate Glass Co. *v.* Highland Glass Co., (C. C. A.) 143 Fed. 242; Carolina Portland Cement Co. *v.* Columbia Imp. Co., (Ga. App. 1908) 60 S. E. 279; Thistle Coal Co. *v.* Rex Coal, etc., Co., 132 Iowa 592, 109 N. W. 1094; Nicola Bros. Co. *v.* Hurst, (Ky. 1905) 88 S. W. 1081; H. D. Taylor Co. *v.* Niagara Bedstead Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 356, 102 N. Y. Supp. 173; Lehmaier *v.* Standard Specialty, etc., Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 402; Isaacs *v.* Terry, etc., Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 792, *reversing* (Supm. Ct. App. T.) 56 Misc. (N. Y.) 586, 107 N. Y. Supp. 136, on the ground that a wrong measure of damages was adopted; Gardner *v.* Deeds, 116 Tenn. 128, 92 S. W. 518; Duke *v.* Norfolk, etc., R. Co., 106 Va. 152, 55 S. E. 548.

2. Penn Plate Glass Co. *v.* James H. Rice Co., 216 Ill. 567, 75 N. E. 246; Allen *v.* Rushforth, (Neb. 1906) 110 N. W. 687.

4. Brown *v.* Trinidad Asphalt Mfg. Co., (Mo. 1908) 109 S. W. 22; Hopedale Electric Co. *v.* Electric Storage Battery Co., 184 N. Y. 356, 77 N. E. 394, *affirming* 96 N. Y. App. Div. 344, 89 N. Y. Supp. 325.

6. Steinhardt *v.* Bingham, 182 N. Y. 326, 75 N. E. 403, *affirming* 90 N. Y. App. Div. 140, 85 N. Y. Supp. 1044; Wilmerding *v.* Feldman, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 341, 98 N. Y. Supp. 688.

Failure to Tender or Deliver Is a Good Defense. — Stemmerman *v.* Kelly, 122 N. Y. App. Div. 660, 107 N. Y. Supp. 379.

1118. 4. Brown *v.* Trinidad Asphalt Mfg. Co., (Mo. 1908) 109 S. W. 22.

Proof of the Amount of Money received from the auctioneer upon a sale of the property is inadmissible as showing the market value thereof. Perlman *v.* Levy, (Supm. Ct. App. T.) 109 N. Y. Supp. 785.

The Burden of Proof Is on the Plaintiff where the defendant by his plea denies that the contract was made. Feagan *v.* Barton-Parker Mfg. Co., (Tex. Civ. App. 1906) 93 S. W. 1076.

13. River Spinning Co. *v.* Atlantic Mills, 155 Fed. 466, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1118; Dilman *v.* Patterson Produce, etc., Co., 2 Ga. App. 213, 58 S. E. 365; Gaar *v.* Fleshman, 38 Ind. App. 490, 77 N. E. 744, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1118, *rehearing denied* 38 Ind. App. 494, 78 N. E. 348; Bauman *v.* McManus, 75 Kan. 106, 89 Pac. 15, on rehearing *citing* 25 [24] AM. AND ENG. ENCYC. OF LAW (2d ed.) 1118; Armstrong *v.* Poe, (Mont. 1907) 90 Pac. 758; Rapp *v.* Jennings State Bank, 17 Okla. 449, 87 Pac. 598; Acme Food Co. *v.* Older, (W. Va. 1908) 61 S. E. 235, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1118.

1119. 1. Carolina Portland Cement Co. *v.* Columbia Imp. Co., (Ga. App. 1908) 60 S. E. 279; Campbell *v.* Woods, 122 Mo. App. 719, 99 S. W. 468; Cambridge Soc. *v.* Elliot, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 159, 98 N. Y. Supp. 232; Isaacs *v.* Terry, etc., Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 586, 107 N. Y. Supp. 136, *reversed* (Supm. Ct. App. Div.) 109 N. Y. Supp. 792, on the theory that a wrong measure of damages was adopted; Lekas *v.* Schwartz, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 594, 107 N. Y. Supp. 145.

1120. 2. **That Both Remedies Are Open** where the seller has been required to manufacture goods especially for the purpose, see Bauman *v.* McManus, 75 Kan. 106, 89 Pac. 15, on rehearing.

4. Krebs Hop Co. *v.* Livesley, (Oregon 1907) 92 Pac. 1084.

5. Susong *v.* McKenna, 126 Ga. 433, 55 S. E. 236; Kilmer *v.* Moneyweight Scale Co., 36 Ind. App. 568, 76 N. E. 271.

The Vendor May Recover the Price even though the property is destroyed without fault of the vendee. Jessup *v.* Fairbanks, 38 Ind. App. 673, 78 N. E. 1050.

The right to recover the agreed price remains though in the meantime the property in possession of the vendee is destroyed. Lavalley *v.* Ravenna, 78 Vt. 152, 62 Atl. 47.

9. Cannon *v.* McKenzie, 3 Cal. App. 286, 85 Pac. 130; Wyandotte Portland Cement Co. *v.* Bruner, 147 Mich. 400, 110 N. W. 949; St. Louis Steel Range Co. *v.* Kline-Drummond Mercantile Co., 120 Mo. App. 438, 96 S. W. 1040; Graham *v.* Burgiss, 78 S. Car. 404, 59 S. E. 29, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1120; Fountain City Drill Co. *v.* Peterson, 126 Wis. 512, 106 N. W. 17.

1121. 1. Smith *v.* Eitel, 121 Ill. App. 464.

3. Kitchin *v.* Clark, 120 Ill. App. 105. See also Smith *v.* Perham, 33 Mont. 309, 83 Pac. 492.

1122. 3. Smith *v.* Eitel, 121 Ill. App. 464; F. H. Earl Mfg. Co. *v.* Summit Lumber Co., 125 Ill. App. 391; Watson *v.* E. E. Nangle Tie Co., 148 Mich. 675, 112 N. W. 752; Brown Mfg. Co. *v.* Gilpin, 120 Mo. App. 130, 96 S. W. 669; Horst *v.* Montauk Brewing Co., 118 N. Y. App. Div. 300, 103 N. Y. Supp. 381; Victor Safe, etc., Co. *v.* O'Neill, (Wash. 1908) 93 Pac. 214; Fountain City Drill Co. *v.* Peterson, 126 Wis. 512, 106 N. W. 17.

In Mississippi Lumber Co. *v.* Smith, (Ala. 1907) 44 So. 475, it was held that the evidence showed compliance on the part of the vendor with the terms of sale although no complete acceptance was shown.

Delivery Must Be in Accordance with the Contract. — E. E. Sutherland Medicine Co. *v.* Baltimore, 81 Ark. 229, 98 S. W. 966.

The Defendant Incurs No Liability under the contract until the plaintiff has delivered or tendered goods in accordance therewith. Price *v.* Huddleston, 167 Ind. 536, 79 N. E. 496, *affirming* 36 Ind. App. 450, 75 N. E. 972.

An Offer by the Seller to Deliver coupled with buyer's refusal to accept entitles the former to recover the price. Riley *v.* Stevenson, 118 Mo. App. 187, 94 S. W. 781.

If the Seller Receives the Goods Back as his own he cannot maintain an action for the price. Glasgow Milling Co. *v.* Burgher, 122 Mo. App. 14, 97 S. W. 950.

No Right to Demand Payment accrues to the seller until he has made or tendered a full delivery of the goods. Moers *v.* Dietz, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 173, 101 N. Y. Supp. 590.

Delivery Must Be Shown. — Brinn *v.* Cohen, (Supm. Ct. App. T.) 107 N. Y. Supp. 37.

An Action for the Price of Goods cannot be maintained unless there has been an acceptance thereof on the part of the buyer. Tatum *v.* Geist, (Wash. 1907) 89 Pac. 547.

4. Tatum *v.* Ackerman, 148 Cal. 357, 83 Pac. 151, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1122; U. S. Hat Co. *v.* Koch, (Mass. 1907) 80 N. E. 810; American Seeding Mach. Co. *v.* Stearns, 109 N. Y. App. Div. 192, 95 N. Y. Supp. 830.

1123. 2. **A Repudiation of the Contract by the Vendee** is not a waiver of credit. Tatum *v.* Ackerman, 148 Cal. 357, 83 Pac. 151.

6. Kelly *v.* Pierce, (N. Dak. 1907) 112 N. W. 995, *citing* 24 AM. AND ENG. ENCYC. OF LAW [illegible]

1125. 3. William P. Kelly Brick Co. *v.* Clay Product Supply Co., 32 Pa. Super. Ct. 408.

4. Bixby *v.* Bastady, 4 Cal. App. 527, 88 Pac. 493; Main *v.* Simmons, 2 Ga. App. 821, 59 S. E. 85; Equitable Mfg. Co. *v.* J. B. Davis Co., (Ga. 1908) 60 S. E. 262; Hollowell *v.* Smith Agricultural Chemical Co., (Ind. App. 1908) 83 N. E. 772; Lattner *v.* Interstate Telephone Co., (Iowa 1907) 112 N. W. 652; J. B. Ehrsam, etc., Co. *v.* Jackman, 73 Kan. 435, 85 Pac. 559;

Tri-State Milling Co. *v.* Breisch, 145 Mich. 232, 108 N. W. 657; Fountain City Drill Co. *v.* Lindquist, (S. Dak. 1908) 114 N. W. 1098. See Frontier Supply Co. *v.* Loveland, 15 Wyo. 313, 88 Pac. 651. See also Vio Chemical Co. *v.* Studholme, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 470, 103 N. Y. Supp. 463.

5. Tri-State Milling Co. *v.* Breisch, 145 Mich. 232, 108 N. W. 657.

Interest from the Date of Delivery is recoverable in addition to the agreed price. McCarthy *v.* Nixon Grocery Co., 126 Ga. 762, 56 S. E. 72.

Payments on Account Must Be Deducted from the Contract Price. — Zweifosh *v.* Weller, (Supm. Ct. App. T.) 102 N. Y. Supp. 503.

1126. 2. See Stewart *v.* Sachs, (Tex. Civ. App. 1906) 96 S. W. 1091; Bixby *v.* Bastady, 4 Cal. App. 527, 88 Pac. 493.

That the Seller May Recover the Value of goods which were received by the buyer though not of the value represented, see Price *v.* Huddleston, 167 Ind. 536, 79 N. E. 496, *affirming* 36 Ind. App. 450, 75 N. E. 972.

Where Plaintiff in an Action for the Price of wood had delivered green wood instead of dry wood as called for by the contract he was entitled to recover only the value of the goods delivered. Duvall *v.* Ferwerda, 146 Mich. 13, 108 N. W. 1115.

Where the Goods Have Been Retained by the Buyer and there is a conflict of evidence as to whether or not they are defective the seller is entitled to recover their value. Harris *v.* Gill, (Supm. Ct. App. T.) 102 N. Y. Supp. 665.

5. McCarthy *v.* Nixon Grocery Co., 126 Ga. 762, 56 S. E. 72, holding that interest from the date of delivery may also be recovered.

8. See Jones *v.* Emerson, 41 Wash. 33, 82 Pac. 1017.

1127. 1. Biele *v.* Levy, (Supm. Ct. App. T.) 107 N. Y. Supp. 607.

1128. 2. **To Support a Plea of Total Failure of Consideration** it must be shown that the goods furnished were entirely worthless. Clegg-Ray Co. *v.* Indiana Scale, etc., Co., 125 Ga. 558, 54 S. E. 538.

5. Main *v.* El Dorado Dry Goods Co., 83 Ark. 15, 102 S. W. 681; Boggs *v.* Young, (Neb. 1908) 116 N. W. 501.

8. **Quality or Condition of Goods.** — Fletcher *v.* Southern, (Ind. App. 1908) 84 N. E. 526.

1131. 1. Inman Mfg. Co. *v.* American Cereal Co., 133 Iowa 71, 110 N. W. 287.

3. Drake Coal Co. *v.* Croze, 149 Mich. 60, 112 N. W. 715.

6. Rosenstein *v.* Casein Mfg. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 345, 98 N. Y. Supp. 645; Armstrong *v.* Poe, (Mont. 1907) 90 Pac. 758.

7. De Laval Dairy Supply Co. *v.* Steadman, (Cal. App. 1907) 92 Pac. 877; Griner *v.* Baags, (Ga. App. 1908) 61 S. E. 147; Prizer-Painter Stove, etc., Co. *v.* Peaslee, 99 Minn. 275, 109 N. W. 232; Dunham *v.* Salmon, 130 Wis. 164, 109 N. W. 959.

Breach of Warranty. — Wyandotte Portland Cement Co. *v.* Bruner, 147 Mich. 400, 110 N. W. 949; Miller *v.* James Smith Woolen Machinery Co., (Pa. 1908) 69 Atl. 598.

1132. 4. Standard Mfg. Co. *v.* Slaughter, 122 Ill. App. 479.

5. **Reasonable Time a Question for the Jury.** — Greacen *v.* Poehlman, 191 N. Y. 493, 84 N. E. 390, *reversing* 118 N. Y. App. Div. 910, 103 N. Y. Supp. 1127.

Reasonable Time. — Portland Ice Co. *v.* Connor, 32 Pa. Super. Ct. 428.

Where There Are Disputed Questions of fact the case should be submitted to the jury. Altoona Concrete Constr., etc., Co. *v.* Knickerbocker Contracting Co., 29 Pa. Super. Ct. 512.

Whether or Not There Has Been a Sale is a question for the jury. Morris *v.* Schaefers, (Ky. 1907) 100 S. W. 327.

Whether Title Has Passed to the buyer is a question for the jury. Watson *v.* E. E. Nangle Tie Co., 148 Mich. 675, 112 N. W. 752.

Whether the Plaintiff Should Recover the contract price or a reasonable price is a question for the jury. McAfee *v.* Dix, 101 N. Y. App. Div. 69, 91 N. Y. Supp. 464.

In Chautauqua Lake Mills *v.* Hewes, (County Ct.) 55 Misc. (N. Y.) 634, 106 N. Y. Supp. 1026, the disputed question as to whether the buyers received the goods was held properly submitted to the jury.

The Construction of an Oral Contract as to the meaning of the words used is for the jury. Wise *v.* Wilby, 30 Pa. Super. Ct. 484.

1133. 1. Neal *v.* Cone, 76 Ark. 273, 88 S. W. 952.

6. **The Property Cannot Be Seized** in the hands of third persons who have purchased it even though they had knowledge that the purchase price had not been paid. Neal *v.* Cone, 76 Ark. 273, 88 S. W. 952.

1134. 9. American-German Nat. Bank *v.* Gray, etc., Hardware Co., (Ky. 1908) 110 S. W. 393; Coleman *v.* Reynolds, 207 Mo. 463, 105 S. W. 1070; Howard *v.* Haas, (Mo. App. 1908) 109 S. W. 1076; Frech *v.* Lewis, 32 Pa. Super. Ct. 279.

11. Staunton *v.* Smith, (Del. 1906) 65 Atl. 593; Scotch Mfg. Co. *v.* Carr, 53 Fla. 480, 43 So. 427; Strother *v.* McMullen Lumber Co., 200 Mo. 647, 98 S. W. 34; Berger *v.* Miller, (Ark. 1908) 109 S. W. 1015; American Soda Fountain Co. *v.* Dean Drug Co., (Iowa 1907) 111 N. W. 534.

12. Lamb *v.* Utley, 146 Mich. 654, 110 N. W. 50.

1135. 3. Watson *v.* E. E. Nangle Tie Co., 148 Mich. 675, 112 N. W. 752, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1135; Frech *v.* Lewis, 32 Pa. Super. Ct. 279.

5. Victor Safe, etc., Co. *v.* Texas State Trust Co., (Tex. Civ. App. 1907) 99 S. W. 1049.

7. Silvey *v.* Tift, 123 Ga. 804, 51 S. E. 748; Crawford *v.* Hurd, (Ky. 1908) 106 S. W. 840; Slayden-Kirksey Woolen Mills *v.* Weber, (Tex. Civ. App. 1907) 102 S. W. 471.

8. Wendling Lumber Co. *v.* Glenwood Lumber Co., (Cal. 1908) 95 Pac. 1029; Crawford *v.* Hurd, (Ky. 1908) 106 S. W. 840; American-German Nat. Bank *v.* Gray, etc., Hardware Co., (Ky. 1908) 110 S. W. 393, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1135; Atlas Shoe Co. *v.* Bechard, 102 Me. 197, 66 Atl. 390; Ayers *v.* Farwell, (Mass. 1907) 82 N. E. 35;

National Bank *v.* Chatfield, 118 Tenn. 481, 101 S. W. 765; Parlin, etc., Co. *v.* Glover, (Tex. Civ. App. 1907) 99 S. W. 592.

1136. 3. Manson *v.* Dayton, (C. C. A.) 153 Fed. 258; Silvey *v.* Tift, 123 Ga. 804, 51 S. E. 748; Gaar *v.* Fleshman, 77 N. E. 744, 38 Ind. App. 490, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1136, *rehearing denied* 38 Ind. App. 494, 78 N. E. 348; Elwood State Bank *v.* Mock, (Ind. App. 1907) 82 N. E. 1003; Seeley *v.* Seeley-Howe-Le Van Co., 130 Iowa 626, 105 N. W. 380; Haynes *v.* Temple, (Mass. 1908) 84 N. E. 467; Frederickson *v.* Schmittroth, (Neb. 1907) 112 N. W. 564; Cooper *v.* Payne, 111 N. Y. App. Div. 785, 97 N. Y. Supp. 863, *reversed* on other grounds 186 N. Y. 334, 78 N. E. 1076; Kirk *v.* Crystal, 118 N. Y. App. Div. 32, 103 N. Y. Supp. 17; Edmead *v.* Anderson, 118 N. Y. App. Div. 16, 103 N. Y. Supp. 369; Kelley Springfield Road Roller Co. *v.* Schlimme, (Pa. 1908) 69 Atl. 867; Jones *v.* Reynolds, 45 Wash. 371, 88 Pac. 577.

Seller Must Make His Election Promptly. — Brooke *v.* Robson, 3 Ga. App. 136, 59 S. E. 323.

1137. 5. R. T. Stone Tobacco Co. *v.* Allen, 1 Ga. App. 434, 57 S. E. 967.

1138. 1. Wendling Lumber Co. *v.* Glenwood Lumber Co., (Cal. 1908) 95 Pac. 1029; Parlin, etc., Co. *v.* Glover, (Tex. Civ. App. 1907) 99 S. W. 592.

4. Parlin, etc., Co. *v.* Glover, (Tex. Civ. App. 1907) 99 S. W. 592.

1139. 1. Wendling Lumber Co. *v.* Glenwood Lumber Co., (Cal. 1908) 95 Pac. 1029; Beacon Falls Rubber Shoe Co. *v.* Pratte, 190 Mass. 72, 76 N. E. 285.

The Burden of Proof is on the defendant to prove that he has suffered the damages pleaded by way of recoupment. Gem Knitting Mills *v.* Empire Printing, etc., Co., (Cal. App. 1908) 60 S. E. 365.

2. National Bank *v.* Chatfield, 118 Tenn. 481, 101 S. W. 765.

3. *United States.* — Ketcham *v.* U. S., 40 Ct. Cl. 220.

Delaware. — Reese *v.* Hoffecker, (Del. 1906) 65 Atl. 588.

Georgia. — Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Mendel *v.* Miller, 126 Ga. 834, 56 S. E. 88; Brooke *v.* Robson, 3 Ga. App. 136, 59 S. E. 323; North Georgia Milling Co. *v.* Henderson Elevator Co., (Ga. 1908) 60 S. E. 258.

Illinois. — Penn Plate Glass Co. *v.* James H. Rice Co., 216 Ill. 567, 75 N. E. 246; Olson *v.* Wabash Coal Co., 126 Ill. App. 253.

Maryland. — Swartz *v.* Suburban Realty Co., (Md. 1907) 67 Atl. 283, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1139.

Missouri. — See Anderson Carriage Co. *v.* Gilmore, 123 Mo. App. 19, 99 S. W. 766.

New York. — Fox *v.* Woods, (Supm. Ct. App. T.) 96 N. Y. Supp. 117; Isaacs *v.* Terry, etc., Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 792, *reversing* (Supm. Ct. App. T.) 56 Misc. (N. Y.) 586, 107 N. Y. Supp. 136; Wolfsheim *v.* Ammann Mfg., etc., Co. (Supm. Ct. App. T.) 110 N. Y. Supp. 943.

Pennsylvania. — Moody *v.* McTaggart, 29 Pa. Super. Ct. 465.

Tennessee. — Hardwick *v.* American Can Co., 113 Tenn. 657, 88 S. W. 797, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1139.

Texas. — Woldert Grocery Co. *v.* Boonville Elevator Co., (Tex. Civ. App. 1905) 94 S. W. 108; Foote *v.* Heisig, (Tex. Civ. App. 1906) 94 S. W. 362; Texas, etc., Lumber Co. *v.* Rose, (Tex. Civ. App. 1907) 103 S. W. 444; Carver *v.* Graves, (Tex. Civ. App. 1907) 106 S. W. 903.

3. *England.* — Braithwaite *v.* Foreign Hardwood Co., (1905) 2 K. B. 543.

The Right to Damages for a Wrongful Rejection is not waived by a resale to the defendant. Arkansas, etc., Grain Co. *v.* Young, etc., Grain Co., 79 Ark. 603, 96 S. W. 142.

The Seller Cannot Resell the goods at a profit and also retain the money paid as a deposit thereon by the buyer. Biescar *v.* Pratt, 4 Cal. App. 288, 87 Pac. 1101.

Resale May Be Made in the Market of the Place of Delivery. — Ginn *v.* W. C. Clark Coal Co., 143 Mich. 84, 106 N. W. 867, *rehearing denied* 143 Mich. 88, 107 N. W. 904.

1140. 1. Hardwick *v.* American Can Co., 113 Tenn. 657, 88 S. W. 797, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1140.

2. Mendel *v.* Miller, 126 Ga. 834, 56 S. E. 88; Woldert Grocery Co. *v.* Boonville Elevator Co., (Tex. Civ. App. 1905) 94 S. W. 108; Boggs *v.* Young, (Neb. 1908) 116 N. W. 501, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1140; Isaacs *v.* Terry, etc., Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 792, *reversing* (Supm. Ct. App. T.) 56 Misc. 586, 107 N. Y. Supp. 136, on the ground that a wrong measure of damages was adopted therein; Sour Lake Townsite Co. *v.* B. Deutser Furniture Co., (Tex. Civ. App. 1906) 94 S. W. 188, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1140.

3. Penn Plate Glass Co. *v.* James H. Rice Co., 216 Ill. 567, 75 N. E. 246.

4. See Fox *v.* Woods, (Supm. Ct. App. T.) 96 N. Y. Supp. 117; Ford *v.* Erde, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 665, 99 N. Y. Supp. 487.

Where the Resale Is Made to the Buyer no notice is necessary. Arkansas, etc., Grain Co. *v.* Young, etc., Grain Co., 79 Ark. 603, 96 S. W. 142.

1142. 2. North Georgia Milling Co. *v.* Henderson Elevator Co., (Ga. 1908) 60 S. E. 258; Texas, etc., Lumber Co. *v.* Rose, (Tex. Civ. App. 1907) 103 S. W. 444; Carver *v.* Graves, (Tex. Civ. App. 1907) 106 S. W. 903.

3. Brooke *v.* Robson, 3 Ga. App. 136, 59 S. E. 323; North Georgia Milling Co. *v.* Henderson Elevator Co., (Ga. 1908) 60 S. E. 258; Foote *v.* Heisig, (Tex. Civ. App. 1906) 94 S. W. 362; Carver *v.* Graves, (Tex. Civ. App. 1907) 106 S. W. 903.

4. See Woldert Grocery Co. *v.* Boonville Elevator Co., (Tex. Civ. App. 1905) 94 S. W. 108; Mendel *v.* Miller, 126 Ga. 834, 56 S. E. 88.

1143. 1. North Georgia Milling Co. *v.* Henderson Elevator Co., (Ga. 1908) 60 S. E. 258.

Whether the Resale Was Properly Con-

ducted is a question for the jury. Texas, etc., Lumber Co. *v.* Rose, (Tex. Civ. App. 1907) 103 S. W. 444.

2. Brooke *v.* Robson, 3 Ga. App. 136, 59 S. E. 323; Texas, etc., Lumber Co. *v.* Rose, (Tex. Civ. App. 1907) 103 S. W. 444.

1144. 1. See *In re* Burke, 140 Fed. 971, where it was held that title had not passed, there having been no sufficient delivery.

4. Barnard, etc., Mfg. Co. *v.* Smith, 77 Ark. 500, 92 S. W. 858. See Howell *v.* Crawford, 77 Ark. 12, 89 S. W. 1046.

1145. 2. See O'Neal *v.* Richardson, 78 Ark. 132, 93 S. W. 1117.

3. See Star Drilling Mach. Co. *v.* McLeod, (Ky. 1906) 92 S. W. 558; Neal *v.* Cone, 76 Ark. 273, 88 S. W. 952.

5. Witt *v.* Devsham, 146 Mich. 68, 109 N. W. 25.

1146. 6. Frame *v.* Oregon Liquor Co., 48 Oregon 272, 85 Pac. 1009, *rehearing denied* 48 Oregon 276, 86 Pac. 791. See also Grange Co. *v.* Farmers' Union, etc., Co., 3 Cal. App. 519, 86 Pac. 615.

The Right to Reclaim the property may be waived by extending the time for payment even though the buyer after such extension becomes insolvent. Victor Safe, etc., Co. *v.* Texas State Trust Co., (Tex. 1907) 104 S. W. 1040.

1147. 2. Pontiac Buggy Co. *v.* Skinner, 158 Fed. 858.

4. See Grange Co. *v.* Farmers' Union, etc., Co., 3 Cal. App. 519, 86 Pac. 615.

1149. 2. American Metal Co. *v.* Daugherty, 204 Mo. 71, 102 S. W. 538.

3. Block *v.* Shaw, 78 Ark. 511, 95 S. W. 806; O'Donnell *v.* Chamberlain, (Colo. 1906) 91 Pac. 39; Livesley *v.* Johnston, 48 Oregon 40, 84 Pac. 1044.

7. New Liverpool Salt Co. *v.* Western Salt Co., (Cal. 1907) 91 Pac. 152.

8. Gaar *v.* Fleshman, 38 Ind. App. 490, 77 N. E. 744, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1149, *rehearing denied* 38 Ind. App. 494, 78 N. E. 348; Greenwood Grocery Co. *v.* Canadian County Mill, etc., Co., 72 S. Car. 450, 52 S. E. 191, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1149, 1150.

9. Pinkiert *v.* Kornblum, 5 Cal. App. 522, 90 Pac. 969; Stum *v.* Hadrich, (Cal. App. 1907) 94 Pac. 82; Gude *v.* J. F. Bailey Co., (Ga. App. 1908) 61 S. E. 135; Denton *v.* Gill, 102 Md. 386, 62 Atl. 627; Beyer *v.* Henry Huber Co., 115 N. Y. App. Div. 657, 100 N. Y. Supp. 1029; Rosenthal *v.* Empire Brush, etc., Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 347. See also Fuller *v.* Christian, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 646, 98 N. Y. Supp. 638, where the seller's failure to deliver was held not excused; Greenwood Grocery Co. *v.* Canadian County Mill, etc., Co., 72 S. Car. 450, 52 S. E. 191, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1149, 1150; Austin *v.* Langlois, (Vt. 1908) 69 Atl. 739.

Damages for Nondelivery Not Allowed after Rescission. — Earnshaw *v.* Whittemore, 194 Mass. 187, 80 N. E. 520.

Where It Has Become Impossible for the seller to deliver according to the contract he is bound to make tender of the best delivery possible. J. H. Labaree Co. *v.* Crossman, 184 N. Y. 586, 77 N. E. 1189, *affirming* 102 N. Y. App. Div. 499, 92 N. Y. Supp. 565.

10. Bruner *v.* Kansas Moline Plow Co., (Indian Ter. 1907) 104 S. W. 816.

1150. 1. Wood *v.* Seurich, 5 Cal. App. 252, 90 Pac. 51; Sagola Lumber Co. *v.* Chicago Title, etc., Co., 121 Ill. App. 292; Longfellow *v.* Huffman, (Oregon 1907) 90 Pac. 907; Austin *v.* Langlois, (Vt. 1908) 69 Atl. 739.

2. Lachmund *v.* Moore, (Oregon 1908) 94 Pac. 510.

Expenditures in Running a Plant made necessary by failure to install it according to warranty are recoverable. Wilmington Candy Co. *v.* Remington Mach. Co., 5 Penn. (Del.) 543, 65 Atl. 74.

4. Longfellow *v.* Huffman, (Oregon 1907) 90 Pac. 907.

8. Russell *v.* Excelsior Stove, etc., Co., 120 Ill. App. 23, where, however, it was held that under the facts of the case the buyer was not precluded from recovering damages; Catlin *v.* Jones, 48 Oregon 158, 85 Pac. 515; Longfellow *v.* Huffman, (Oregon 1907) 90 Pac. 907.

9. Ennis Brown Co. *v.* Hurst, 1 Cal. App. 752, 82 Pac. 1056.

10. *United States.* — Davis *v.* Alpha Portland Cement Co., (C. C. A.) 142 Fed. 74.

Alabama. — Alabama Chemical Co. *v.* Geiss, 143 Ala. 591, 39 So. 255.

Arizona. — Porter *v.* Brown, (Ariz. 1907) 89 Pac. 408.

Arkansas. — Walnut Ridge Mercantile Co. *v.* Cohn, 79 Ark. 338, 96 S. W. 413.

Georgia. — Sizer *v.* Melton, 129 Ga. 143, 58 S. E. 1055.

Indiana. — Connersville Wagon Co. *v.* McFarlan Carriage Co., 166 Ind. 123, 76 N. E. 294. See Gaar *v.* Fleshman, 38 Ind. App. 490, 77 N. E. 744, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1150, *rehearing denied* 38 Ind. App. 494, 78 N. E. 348.

Iowa. — Tuttle-Chapman Coal Co. *v.* Coaldale Fuel Co., (Iowa 1907) 113 N. W. 827.

Kentucky. — Roberts *v.* Lee, (Ky. 1907) 102 S. W. 300.

Louisiana. — Bloom *v.* Union Rice Milling Co., 118 La. 311, 42 So. 947.

Maine. — Bell *v.* Jordan, 102 Me. 67, 65 Atl. 759.

Maryland. — United R., etc., Co. *v.* Wehr, (Md.) 63 Atl. 475; Potomac Bottling Works *v.* Barber, 103 Md. 509, 63 Atl. 1068; Canton Lumber Co. *v.* Liller, (Md. 1908) 68 Atl. 500.

Michigan. — Frohlich *v.* Independent Glass Co., 144 Mich. 278, 107 N. W. 889; Ginn *v.* W. C. Clark Coal Co., 143 Mich. 88, 107 N. W. 904, *denying rehearing* 143 Mich. 84, 106 N. W. 867; Floyd *v.* Mann, 146 Mich. 356, 109 N. W. 679; Orr *v.* Kenny, 150 Mich. 159, 114 N. W. 228.

Minnesota. — Alger-Fowler Co. *v.* Tracy, 98 Minn. 432, 107 N. W. 1124; Crowley *v.* Burns Boiler, etc., Co., 100 Minn. 178, 110 N. W. 969.

Missouri. — Murmann *v.* Wissler, 116 Mo. App. 397, 92 S. W. 355; Howard *v.* Haas, (Mo. App. 1908) 109 S. W. 1076.

New Jersey. — See Rhind *v.* Freedley, (N. J. [illegible] Atl. 963.

New York.—Moers *v.* Dietz, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 173, 101 N. Y. Supp. 590; Stecker *v.* Weaver Coal, etc., Co., 116 N. Y. App. Div. 773, 102 N. Y. Supp. 89; Haddam Granite Co. *v.* Brooklyn Heights R. Co., 186 N. Y. 247, 78 N. E. 858, *reversing* on other grounds 107 N. Y. App. Div. 616, 95 N. Y. Supp. 1131; Rosenthal *v.* Empire Brick, etc., Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 347; Brody *v.* Birnbaum, (Supm. Ct. App. T.) 108 N. Y. 581; Albert Gas Fixture Co. *v.* Kabat, (Supm. Ct. App. T.) 109 N. Y. Supp. 737; McManus *v.* American Woolen Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 680.

North Carolina.—Crescent Hosiery Co. *v.* Mobile Cotton Mills, 140 N. Car. 452, 53 S. E. 140; Tillinghast *v.* Providence Cotton Mills, 143 N. Car. 268. 55 S. E. 621; Riley *v.* Carpenter, 143 N. Car. 215, 55 S. E. 628.

South Carolina.—Leesville Mfg. Co. *v.* Morgan Wood, etc., Works, 75 S. Car. 342, 55 S. E. 768.

Texas.—McKay *v.* Elder, (Tex. Civ. App. 1906) 92 S. W. 268; Edgeworth *v.* Talerico, (Tex. Civ. App. 1906) 95 S. W. 677; Pierce *v.* Waller, (Tex. Civ. App. 1907) 102 S. W. 1173; Weatherford Mach., etc., Co. *v.* Tate, (Tex. Civ. App. 1908) 109 S. W. 406.

Canada.—McGrillis *v.* Huot, 29 Quebec Super. Ct. 350.

Where the goods were sold at wholesale, the market value is to be estimated at the wholesale and not at the retail price. Kilpatrick *v.* Whitmer, 118 N. Y. App. Div. 98, 103 N. Y Supp. 75.

1151. 1. Taylor *v.* McFatter, (Tex. Civ. App. 1908) 109 S. W. 395.

The Burden of Proving a Breach of Warranty is on the defendant. Elmore *v.* Booth, 83 Ark. 47, 102 S. W. 393.

1152. 1. McCleskey *v.* Howell Cotton Co., 147 Ala. 573, 42 So. 67; Waynesville Wood Mfg. Co. *v.* Berlin Mach. Works, 144 N. Car. 689, 57 S. E. 455; Gabriel *v.* Kildare El. Co., 18 Okla. 318, 90 Pac. 10; Miller *v.* Mosely, (Tex. Civ. App. 1905) 91 S. W. 648. See also Ellis *v.* Nowell, (Mass. 1908) 84 N. E. 435, where, however, it is not apparent that there was an executed contract of sale.

2. Sizer *v.* Melton, 129 Ga. 143, 58 S. E. 1055.

3. Connell *v.* Harron, (Cal. App. 1908) 95 Pac. 916; Sizer *v.* Melton, 129 Ga. 143, 58 S. E. 1055, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1153; Crowley *v.* Burns Boiler, etc., Co., 100 Minn. 178, 110 N. W. 969.

8. Thomas *v.* Burks, 120 Ill. App. 222; United R., etc., Co. *v.* Wehr, 103 Md. 323, 63 Atl. 475; National Coal Tar Co. *v.* Malden, etc. Gaslight Co., 189 Mass. 234, 75 N. E. 625; Frohlich *v.* Independent Glass Co., 144 Mich. 278, 107 N. W. 889; Aikman *v.* Wahnetah Silk Co., 110 N. Y. App. Div. 191, 96 N. Y. Supp. 1067; Leesville Mfg. Co. *v.* Morgan Wood, etc., Works, 75 S. Car. 342, 55 S. E. 768; Taylor *v.* McFatter, (Tex. Civ. App. 1908) 109 S. W. 395.

Time of Estimating the Market Value.—Walnut Ridge Mercantile Co. *v.* Cohn, 79 Ark. 338, 96 S. W. 413; Alger-Fowler Co. *v.* Tracy, 98 Minn. 432, 107 N. W. 1124; Crescent Hosiery Co. *v.* Mobile Cotton Mills, 140 N. Car. 452, 53 S. E. 140.

1153. 1. Sagola Lumber Co. *v.* Chicago Title, etc., Co., 121 Ill. App. 292; Crescent Hosiery Co. *v.* Mobile Cotton Mills, 140 N. Car. 452, 53 S. E. 140.

1154. 1. United R., etc., Co. *v.* Wehr, 103 Md. 323, 63 Atl. 475.

2. It has been held that where a buyer becomes entitled by the renunciation of the contract on the part of the seller to sue and recover damages as of the time of such renunciation, he must elect to do so within a reasonable time. Alger-Fowler Co. *v.* Tracy, 98 Minn. 432, 107 N. W. 1124.

3. Tuttle-Chapman Coal Co. *v.* Coaldale Fuel Co., (Iowa 1907) 113 N. W. 827; United R., etc., Co. *v.* Wehr, 103 Md. 323, 63 Atl. 475; National Coal Tar Co. *v.* Malden, etc., Gaslight Co., 189 Mass. 234, 75 N. E. 625; Leesville Mfg. Co. *v.* Morgan Wood, etc., Works, 75 S. Car. 342, 55 S. E. 768.

6. McCleskey *v.* Howell Cotton Co., 147 Ala. 573, 42 So. 67; Tuttle-Chapman Coal Co. *v.* Coaldale Fuel Co., (Iowa 1907) 113 N. W. 827; National Coal Tar Co. *v.* Malden, etc., Gaslight Co., 189 Mass. 234, 75 N. E. 625; Cleveland *v.* Rowe, 99 Minn. 444, 109 N. W. 817.

9. Albert Gas Fixture Co. *v.* Kabat, (Supm. Ct. App. T.) 109 N. Y. Supp. 737.

But the Burden Is on the Seller to show that the buyer could have procured the goods for a less price than he actually paid for them. Orr *v.* Kenny, 150 Mich. 159, 114 N. W. 228.

Where the Purchaser Proves the Contract Price and the market value no further burden rests on him. McKay *v.* Elder, (Tex. Civ. App. 1906) 92 S. W. 268.

1155. 2. D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 153 Fed. 817; Canton Lumber Co. *v.* Liller, (Md. 1908) 68 Atl. 500; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682; Sutton *v.* Wanamaker. (Supm. Ct. App. T.) 95 N. Y. Supp. 525; Fred W. Wolf Co. *v.* Galbraith, (Tex. Civ. App. 1906) 94 S. W. 1100; Pitman *v.* Bloch Queensware Co., (Tex. Civ. App. 1908) 106 S. W. 724.

Where by Reason of the Vendor's Failure to deliver goods the vendee's business is suspended, he is entitled to recover as damages the rent of the premises during the period of suspension together with six per cent. interest on his invested capital. Nicholls *v.* American Steel, etc., Co., 117 N. Y. App. Div. 21, 102 N. Y. Supp. 227.

Where the Goods Are Rejected by the buyer on the ground that they are unsatisfactory, freight charges paid by him are recoverable. Virginia-Carolina Lumber Co. *v.* Eisinger, 29 App. Cas. (D. C.) 531.

Freight Charges Advanced to the Seller are recoverable as damages. Rudolph Wurlitzer Co. *v.* Buford, (Tex. Civ. App. 1907) 101 S. W. 1060.

3. Alabama Chemical Co. *v.* Geiss, 143 Ala. 591, 39 So. 255; Ledgerwood *v.* Bushnell, 128 Ill. App. 555; Madill Oil, etc., Co. *v.* Sanger, (Tex. Civ. App. 1906) 95 S. W. 36; Gorham *v.* Dallas, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 515.

The purchaser cannot recover for charges and damages expressly excepted in the contract of sale. Barnard, etc., Mfg. Co. *v.* Smith, 77 Ark. 590, 92 S. W. 858.

Uncarned Profits Cannot Be Recovered. — Connersville Wagon Co. *v.* McFarlan Carriage Co., 166 Ind. 123, 76 N. E. 294.

5. Walker *v.* Johnson, 116 Ill. App. 145; Potomac Bottling Works *v.* Barber, 103 Md. 509, 63 Atl. 1068; Stecker *v.* Weaver Coal, etc., Co., 116 N. Y. App. Div. 773, 102 N. Y. Supp. 89; Rudolph Wurlitzer Co. *v.* Buford, (Tex. Civ. App. 1907) 101 S. W. 1060. See also D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 153 Fed. 817.

Profits on Contracts Which Were Lost by the buyer through the nondelivery of the goods are not recoverable as damages. Nicholls *v.* American Steel, etc., Co., 117 N. Y. App. Div. 21, 102 N. Y. Supp. 227.

In Louisiana the buyer may recover profits. Southern Sawmill Co. *v.* Ducote, (La. 1908) 46 So. 20.

1156. 2. Pitman *v.* Block Queensware Co., (Tex. Civ. App. 1908) 106 S. W. 724; Weatherford Mach., etc., Co. *v.* Tate, (Tex. Civ. App. 1908) 109 S. W. 406; Federal Iron, etc., Co. *v.* Hock, 42 Wash. 668, 85 Pac. 418. See also Eddy *v.* Fay Fruit Co., (R. I. 1907) 67 Atl. 586; Duvall *v.* Ferwerda, 146 Mich. 13, 108 N. W. 1115.

3. Roberts *v.* Lee, (Ky. 1907) 102 S. W. 300; Edgeworth *v.* Talerico, (Tex. Civ. App. 1906) 95 S. W. 677.

4. D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 153 Fed. 817.

5. Johnson *v.* North Baltimore Bottle Glass Co., 74 Kan. 762, 88 Pac. 52; Taussig *v.* Southern Mill, etc., Co., 124 Mo. App. 209, 101 S. W. 602; Tillinghast *v.* Providence Cotton Mills, 143 N. Car. 268, 55 S. E. 621.

6. Frohlich *v.* Independent Glass Co., 144 Mich. 278, 107 N. W. 889; Edgeworth *v.* Talerico, (Tex. Civ. App. 1906) 95 S. W. 677. See also Fred W. Wolf Co. *v.* Galbraith, (Tex. Civ. App. 1906) 94 S. W. 1100.

8. Porter *v.* Brown, (Ariz. 1907) 89 Pac. 408; Livingston *v.* Anderson, 2 Ga. App. 274, 58 S. E. 505; Whiting *v.* Derr, 121 N. Y. App. Div. 239, 105 N. Y. Supp. 854; Trauerman *v.* Nebraska Land, etc., Co., (Neb. 1906) 109 N. W. 379.

9. Thompson *v.* O'Neill, (Ala. 1908) 46 So. 229; Sierra Land, etc., Co. *v.* Bricker, 3 Cal. App. 190, 85 Pac. 665; Garvin *v.* Montenegro-Riehm Music Co., (Ky. 1907) 104 S. W. 964; Puritan Mfg. Co. *v.* Westermire, 47 Oregon 557, 84 Pac. 797; Strumpf *v.* Jordan, (Supm. Ct. App. T.) 104 N. Y. Supp. 766.

1157. 3. Marbury Lumber Co. *v.* Stearns Mfg. Co., (Ky. 1908) 107 S. W. 200; Avil Pub. Co. *v.* Bradford, 121 Mo. App. 577, 97 S. W. 238.

4. Staiger *v.* Soht, 116 N. Y. App. Div. 874, 102 N. Y. Supp. 342; Rouse *v.* Sarratt, 74 S. Car. 575, 54 S. E. 757, where notes were given to the full amount of the goods sold more than a month after delivery.

5. Marbury Lumber Co. *v.* Stearns Mfg. Co., (Ky. 1908) 107 S. W. 200; John E. Hall Commission Co. *v.* Crook, 87 Miss. 445, 40 So. 20, resubmitted on suggestion of error 87 Miss. 454, 40 So. 1006; Phares *v.* Jaynes, 118 Mo. App. 546, 94 S. W. 585; Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963; Mine Supply Co. *v.* Columbia Min. Co., 48 Oregon 391, 86 Pac. 789.

Where the Buyer Disaffirms the Contract he has no lien on the goods for his damages. Cincinnati Punch, etc., Co. *v.* Thompson, 72 Kan. 432, 83 Pac. 988.

6. Mitchell *v.* Henry Vogt Mach. Co., (Ga. App. 1908) 60 S. E. 295; Forster *v.* F. MacKinnon Mfg. Co., 130 Wis. 281, 110 N. W. 226.

7. Fox *v.* Wilkinson, (Wis. 1907) 113 N. W. 669.

8. John E. Hall Commission Co. *v.* Crook, 87 Miss. 445, 40 So. 20, resubmitted on suggestion of error 87 Miss. 454, 40 So. 1006; Mine Supply Co. *v.* Columbia Min. Co., 48 Oregon 391, 86 Pac. 789; Ellison *v.* Johnson, 74 S. Car. 202, 54 S. E. 202; Miller *v.* Mosely, (Tex. Civ. App. 1905) 91 S. W. 648; Forster *v.* F. MacKinnon Mfg. Co., 130 Wis. 281, 110 N. W. 226.

In Waynesville Wood Mfg. Co. *v.* Berlin Mach. Works, 144 N. Car. 689, 57 S. E. 455 this rule of damage is stated but is said to be inapplicable to the facts of the case.

9. See Cleveland Punch, etc., Works Co. *v.* Consumers' Carbon Co., 75 Ohio St. 153, 78 N. E. 1009.

10. *England.* — Bostock *v.* Nicholson, (1904) 1 K. B. 725.

United States. — Arkwright Mills *v.* Aultman, etc., Machinery Co., (C. C. A.) 145 Fed. 783.

Arkansas. — Pewett *v.* Richardson, 79 Ark. 66, 95 S. W. 787; Ward Furniture Mfg. Co. *v.* Isbell, 81 Ark. 549, 99 S. W. 845. See also Carpenter *v.* Crow, 77 Ark. 522, 92 S. W. 779.

California. — Erie City Iron Works *v.* Tatum, 1 Cal. App. 286, 82 Pac. 92; Moody *v.* Peirano, 4 Cal. App. 411, 82 Pac. 380.

Georgia. — Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53; Hutchinson Lumber Co. *v.* Dickerson, 127 Ga. 328, 56 S. E. 491.

Illinois. — Cook *v.* Lantz, 116 Ill. App. 472; Mayer *v.* Automobile Exch., 125 Ill. App. 648.

Iowa. — Hallowell *v.* McLaughlin, (Iowa 1907) 111 N. W. 428.

Kentucky. — Wisdom *v.* Nichols, etc., Co., (Ky. 1906) 97 S. W. 18.

Louisiana. — Payne *v.* Bowie Lumber Co., 117 La. 107, 41 So. 431.

Michigan. — Scott *v.* Keith, (Mich. 1908) 116 N. W. 183.

Missouri. — Lawson *v.* Williams Hardware Co., 122 Mo. App. 484, 99 S. W. 814; Atkins Bros. Co. *v.* Landa, (Mo. App. 1908) 109 S. W. 88.

New York. — Lichtenstein *v.* Rabolinsky, 184 N. Y. 520, 76 N. E. 1099, *affirming* 98 N. Y. App. Div. 516, 90 N. Y. Supp. 247; Isbell-Porter Co. *v.* Heineman, 113 N. Y. App. Div. 79, 98 N. Y. Supp. 1018; Staiger *v.* Soht, 116 N. Y. App. Div. 874, 102 N. Y. Supp. 342; Ames *v.* Norwich Light Co., 122 N. Y. App. Div. 319, 106 N. Y. Supp. 952; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co.,

(Supm. Ct. Spec. T.) 109 N. Y. Supp. 796; Diechmann *v.* Boyd, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 177, 98 N. Y. Supp. 292, where, however, it is held that the breach of warranty if it ever existed had been waived.

Ohio. — Allen *v.* Hass, 127 Ohio Cir. Ct. 727.

Texas. — Duncan-Hobson Electric Co. *v.* Coleman, (Tex. Civ. App. 1907) 100 S. W. 1004.

Virginia. — International Harvester Co. *v.* Smith, 105 Va. 683, 54 S. E. 859.

Wisconsin. — Lindsay *v.* Fricke, 130 Wis. 107, 109 N. W. 945.

Notes Given for the Purchase Price which though non-negotiable have been sold by the defendant are proper elements of damage in an action for a breach of warranty. Burgess *v.* Alcorn, (Kan. 1907) 90 Pac. 239.

Where title has not passed an action for damages for breach of warranty of quality cannot be maintained. Bunday *v.* Columbus Mach. Co., 143 Mich. 10, 106 N. W. 397.

Where a manufacturer undertook to remedy defects in the goods furnished he was entitled to a notification of defects before suit was brought. Monroe *v.* Hickox, etc., Co., 144 Mich. 30, 107 N. W. 719.

Breach of Warranty May Be Waived. — B. P. Ducas Co. *v.* American Silk Dyeing, etc., Co., (Supm. Ct. App. T.) 58 Misc. (N. Y.) 411, 95 N. Y. Supp. 590.

1158. 1. Cook *v.* Lantz, 116 Ill. App. 472; Hallowell *v.* McLaughlin, (Iowa 1907) 111 N. W. 428; McCrea *v.* Gotham Rubber Co., 113 N. Y. App. Div. 455, 99 N. Y. Supp. 373.

Where the Buyer Has Returned the Property and received other property in lieu thereof he can recover only nominal damages in a suit for breach of warranty. Smith *v.* Newberry, 140 N. Car. 385, 53 S. E. 234.

2. Stone *v.* Victor Electric Co., 36 Colo. 370, 85 Pac. 327; Gaar *v.* Hodges, (Ky. 1906) 90 S. W. 580; Walters *v.* Akers, (Ky. 1907) 101 S. W. 1179; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 796.

See Main *v.* El Dorado Dry Goods Co., 83 Ark. 15, 102 S. W. 681, holding that the buyer was not bound to exhaust the "terms of warranty and exchange" contained in the contract of sale but might reject the goods as unmerchantable and return or offer to return the same and successfully defend an action for the purchase price.

In Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11, "the contract made rescission or return of the defective machinery the exclusive remedy for breach of warranty."

In Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009, the contract imposed on the buyer as a condition precedent to the right of recovery for a failure of the warranty, the duty to return the goods.

3. *Arkansas.* — Ward Furniture Mfg. Co. *v.* Isbell, 81 Ark. 549, 99 S. W. 845.

California. — Erie City Iron Works *v.* Tatum, 1 Cal. App. 286, 82 Pac. 92.

Delaware. — Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591.

Georgia. — Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53; International Harvester Co. *v.* Dillon, 126 Ga. 672, 55 S. E. 1034.

Illinois. — Moyer *v.* Automobile Exch., 125 Ill. App. 648.

Indiana. — Glucose Sugar Refining Co. *v.* Climax Coffee, etc., Co., (Ind. App. 1907) 81 N. E. 589.

Kentucky. — Webb *v.* Milford Shoe Co., (Ky. 1908) 108 S. W. 229.

Michigan. — American Glue Co. *v.* Rayburn, 150 Mich. 616, 114 N. W. 395.

Mississippi. — German-American Provision Co. *v.* Jones, 87 Miss. 277, 39 So. 521.

New York. — Hamilton *v.* Pelonsky, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 554, 96 N. Y. Supp. 216; Isbell-Porter Co. *v.* Heineman, 113 N. Y. App. Div. 79, 98 N. Y. Supp. 1018; Ames *v.* Norwich Light Co., 122 N. Y. App. Div. 319, 106 N. Y. Supp. 952.

North Dakota. — Hooven, etc., Co. *v.* Wirtz, 15 N. Dak. 477, 107 N. W. 1078.

Pennsylvania. — Snyder *v.* Lingo, 30 Pa. Super. Ct. 651.

South Carolina. — Stono Mines *v.* Southern States Phosphate, etc., Co., 76 S. Car. 327, 56 S. E. 982.

Washington. — Fuller *v.* Harris, (Wash. 1908) 93 Pac. 1080. See also Jones *v.* Emerson, 41 Wash. 33, 82 Pac. 1017.

Where the Goods Have Been Accepted with knowledge of the defects the purchaser will not be permitted to recoup. Carolina Portland Cement Co. *v.* Turpin, 126 Ga. 677, 55 S. E. 925.

Where the Buyer after He Has Inspected the Goods and discovered the defects retains them and treats them as his own he cannot set up breach of warranty in reduction of the purchase price. Christian *v.* Knight, 128 Ga. 501, 57 S. E. 763.

The Fact that the First Instalment of the purchase price is not paid does not preclude the buyer from setting up a breach of the warranty when sued therefor. Campbell *v.* Lodge No. 99, (Kan. 1907) 92 Pac. 53.

Where the Article Is Sold under a Conditional Guaranty it must appear that the condition has been complied with. Payne *v.* Bowie Lumber Co., 117 La. 107, 41 So. 431.

The Breach of Warranty need not be set out as a counterclaim but may be set up as a defense. American Seeding Mach. Co. *v.* Slocum, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 1012.

Where Goods Were Sold with a Warranty that they would stand a certain test when delivered, the fact that the test was not made on delivery does not preclude the buyer from setting up a breach of the warranty in an action on notes given for the price. Gutta Percha, etc., Mfg. Co. *v.* Cleburne, (Tex. Civ. App. 1906) 95 S. W. 1131.

4. Bostock *v.* Nicholson, (1904) 1 K. B. 725; Drake *v.* Pope, 78 Ark. 327, 95 S. W. 774; Erie City Iron Works *v.* Tatum, 1 Cal. App. 286, 82 Pac. 92; Rosenthal *v.* Rambo, 165 Ind. 584, 76 N. E. 404; White *v.* Miller, (Iowa 1906) 105 N. W. 993; Phares *v.* Jaynes, 118 Mo. App. 546, 94 S. W. 585; Atkins Bros. Co. *v.* Landa, (Mo. App. 1908) 109 S. W. 88; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp.

796; Beecroft *v.* Van Schaick, (Supm. Ct. App. T.) 104 N. Y. Supp. 458; Snyder *v.* Lingo, 30 Pa. Super. Ct. 651; Lindsay *v.* Fricke, 130 Wis. 107, 109 N. W. 945.

See Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636, where it is said that a breach of warranty gives the vendee no right to rescind but that his remedy is an action for damages.

In Ohio the warranty must be fraudulent as well as false to entitle the buyer to rescind the contract of sale. Allen *v.* Hass, 27 Ohio Cir. Ct. 727.

7. *United States.* — The Nimrod, 141 Fed. 215, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1158, *affirmed* Union Iron Works *v.* Spottswood, (C. C. A.) 41 Fed. 834; Arkwright Mills *v.* Aultman, etc., Machinery Co., (C. C. A.) 145 Fed. 783; Petrified Bone Min. Co. *v.* Rogers, 150 Fed. 445.

Alabama. — See Florence Wagon Works *v.* Trinidad Asphalt Mfg. Co., 145 Ala. 677, 40 So. 49, where it is said that the measure of damages is the actual proximate injury sustained.

Arkansas. — Barry-Wehmiller Machinery Co. *v.* Thompson, 83 Ark. 283, 104 S. W. 137.

California. — Moody *v.* Peirano, (Cal. App. 1906) 84 Pac. 783; Erie City Iron Works *v.* Tatum, 1 Cal. App. 286, 82 Pac. 92, decided under the code provisions with reference to damages.

Connecticut. — Clark *v.* Wooster, 79 Conn. 126, 64 Atl. 10.

Delaware. — Wilmington Candy Co. *v.* Remington Mach. Co., 5 Penn. (Del.) 543, 65 Atl. 74; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591.

Illinois. — Wallace *v.* Tanner, 118 Ill. App. 639; Dooley *v.* Hasenwinkle Grain Co., 120 Ill. App. 43; Swartz *v.* Atchison, 120 Ill. App. 119; Miller *v.* Aldrich, 123 Ill. App. 464; Mayer *v.* Automobile Exch., 125 Ill. App. 648.

Kentucky. — Marbury Lumber Co. *v.* Stearns Mfg. Co., (Ky. 1908) 107 S. W. 200.

Louisiana. — Iberia Cypress Co. *v.* Von Schoeler, (La. 1908) 46 So. 105.

Massachusetts. — Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682.

Michigan. — Christie *v.* Crawford, (Mich. 1908) 116 N. W. 202, where the rule is laid down with some modifications.

Missouri. — Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20; Atkins Bros. Co. *v.* Landa, (Mo. App. 1908) 109 S. W. 88.

New York. — Isaacs *v.* Wanamaker, 189 N. Y. 122, 81 N. E. 763, *reversing* (Supm. Ct. App. Div.) 98 N. Y. Supp. 1105; Birdsinger *v.* McCormick Harvesting Mach. Co., 183 N. Y. 487, 76 N. E. 611, *affirming* 95 N. Y. App. Div. 621, 88 N. Y. Supp. 1092; McCrea *v.* Gotham Rubber Co., 113 N. Y. App. Div. 455, 99 N. Y. Supp. 373; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 796; Ames *v.* Norwich Light Co., 122 N. Y. App. Div. 319, 106 N. Y. Supp. 952.

North Carolina. — Wrenn *v.* Morgan, (N. Car. 1908) 61 S. E. 641.

North Dakota. — Hooven, etc., Co. *v.* Wirtz, 15 N. Dak. 477, 107 N. W. 1078, where the rule is laid down as the difference between the value of the goods furnished and the contract price.

Pennsylvania. — Shoe *v.* Maerky, 35 Pa. Super. Ct. 270.

Texas. — Duncan-Hobson Electric Co. *v.* Coleman, (Tex. Civ. App. 1907) 100 S. W. 1004.

Washington. — Walsh *v.* Meyer, 40 Wash. 650, 82 Pac. 938.

In Ferguson Implement Co. *v.* Parmer, (Mo. App. 1908) 107 S. W. 469, it is said that the measure of damages which a buyer is permitted to recoup in an action for the price is the difference between the purchase price and the actual value.

Where a buyer, entitled to damages for a breach of warranty, has exchanged with the seller the property covered by the warranty he can recover only nominal damages. Smith *v.* Newberry, 140 N. Car. 385, 53 S. E. 234.

Where There Is No Finished Evidence as to the value of the property if it had conformed to the warranty, such value will be held to be the contract price. Gutta Percha, etc., Mfg. Co. *v.* Cleburne, (Tex. Civ. App. 1908) 107 S. W. 157.

In England by statute (Sale of Goods Act 1893) the measure of damages is "the estimated loss directly and naturally resulting in the ordinary course of events from the breach of warranty." Bostock *v.* Nicholson, (1904) 1 K. B. 725.

1159. 2. California Canneries Co. *v.* Pacific Sheet Metal Works, 144 Fed. 886; The Nimrod, 141 Fed. 215, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1159, *affirmed* Union Iron Works *v.* Spottswood, (C. C. A.) 141 Fed. 834; McDonald *v.* Kansas City Bolt, etc., Co., (C. C. A.) 149 Fed. 360; Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Wallace *v.* Tanner, 118 Ill. App. 639; Tillinghast *v.* Providence Cotton Mills, 143 N. Car. 268, 55 S. E. 621; Waynesville Wood Mfg. Co. *v.* Berlin Mach. Works, 144 N. Car. 689, 57 S. E. 455; Mine Supply Co. *v.* Columbia Min. Co., 48 Oregon 391. 86 Pac. 789.

1160. 1. Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 28, 105 N. Y. Supp. 390.

6. The Nimrod, 141 Fed. 215, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1160, *affirmed* Union Iron Works *v.* Spottswood, (C. C. A.) 141 Fed. 834; Erie City Iron Works *v.* Tatum, 1 Cal. App. 286, 82 Pac. 92; Marbury Lumber Co. *v.* Stearns Mfg. Co., (Ky. 1908) 107 S. W. 200; Birdsinger *v.* McCormick Harvesting Mach. Co., 183 N. Y. 487, 76 N. E. 611, *affirming* 95 N. Y. App. Div. 621, 88 N. Y. Supp. 1092; Wright *v.* Computing Scale Co., (Wash. 1907) 91 Pac. 571. See also Bostock *v.* Nicholson, (1904) 1 K. B. 725, decided under the Scale of Goods Act 1893.

Special Damages for Breach of Warranty are not recoverable for humiliation and mental agony. Walsh *v.* Meyer, 40 Wash. 650, 82 Pac. 938.

7. Clark *v.* Wooster, 79 Conn. 126, 64 Atl. 10; White *v.* Miller, (Iowa 1906) 105 N. W. 903.

8. Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 28. 105 N. Y. 390; Rakestraw *v.* Woodward, 25 Pa. Super. Ct. 165.

That the Measure of Damages to the

Vendee for a breach of warranty is not dependent on a resale by him see Petrified Bone Min. Co. *v.* Rogers, 150 Fed. 445.

10. May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728.

See Goodman *v.* Beard Co., (Ky. 1906) 93 S. W. 666, where, however, it is held that the evidence showed no fraud on the part of the seller.

11. Carbonating Apparatus Co. *v.* Geary, 122 N. Y. App. Div. 410, 106 N. Y. Supp. 768.

1161. 1. W. F. Main Co. *v.* Fields, 144 N. Car. 307, 56 S. E. 943, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1161.

2. Johnson *v.* North Baltimore Bottle Glass Co., 74 Kan. 762, 88 Pac. 52, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1162 [1161]; Dougherty Bros. Tent, etc., Co. *v.* Peru-Van Zandt Implement Co., (Kan. 1907) 89 Pac. 900; Buick Motor Co. *v.* Reid Mfg. Co., 150 Mich. 118, 113 N. W. 591.

5. In Long *v.* Abeles, 77 Ark. 150, 91 S. W. 29, the measure of damages for delay in delivering building material was held to be the rental value of the building for the time its completion was thereby delayed.

6. Weiner *v.* Gill, (1905) 2 K. B. 172; O'Neill *v.* Thompson, (Mich. 1908) 116 N. W. 399; Unger *v.* Abbott, (Miss. 1908) 46 So. 68; Schwab *v.* Oatman, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741.

1162. 4. In Unger *v.* Abbott, (Miss. 1908) 46 So. 68, the rule is applied in the case of a purchase from one who being lawfully in the actual possession of the property as the owner's agent fraudulently converted it to his own use.

1163. 4. But see Bullard *v.* Stewart, (Tex. Civ. App. 1907) 102 S. W. 174.

7. Bennett *v.* Brooke, 146 Ala. 490, 41 So. 149; Heisley *v.* Economy Tool Mfg. Co., 33 Pa. Super. Ct. 218.

1164. 2. See Watts *v.* Ainsworth, 89 Miss. 40, 42 So. 672.

3. Huston *v.* Peterson, 38 Colo. 189, 87 Pac. 1074; W. W. Kimball Co. *v.* Cruikshank, 123 Ill. App. 580; Johns *v.* Reed, (Neb. 1906) 109 N. W. 738.

5. Gardiner *v.* McDonogh, 147 Cal. 313, 81 Pac. 964, *quoting* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1164; Runge *v.* Wilson, (Cal. App. 1908) 95 Pac. 178; Austin *v.* Terry, 38 Colo. 407, 88 Pac. 189.

1165. 6. McLean *v.* Girot, 118 N. Y. App. Div. 100, 103 N. Y. Supp. 129.

1166. 5. Hickey *v.* McDonald, (Ala. 1907) 44 So. 201; Wendling Lumber Co. *v.* Glenwood Lumber Co., (Cal. 1908) 95 Pac. 1029; American-German Nat. Bank *v.* Gray, etc., Hardware Co., (Ky. 1908) 110 S. W. 393.

1168. 6. Heisley *v.* Economy Tool Mfg. Co., 33 Pa. Super. Ct. 218.

1169. 1. See A. J. Cranor Co. *v.* Miller, 147 Ala. 268, 41 So. 678; Chandler *v.* Higgins, (Ala. 1905) 39 So. 576.

2. Eisenhauer *v.* Quinn, (Mont. 1907) 93 Pac. 38, *citing* 24 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1169.

7. But a pledgee may not retain the goods pledged with him by the sellers' agent as against the purchaser in an executed sale, the possession of the agent being in accordance with a custom of the trade. Schwab *v.* Oatman, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741.

1171. 1. Cox *v.* Andersen, 194 Mass. 136, 80 N. E. 236.

That One Who Is Making Payments in Instalments is not a purchaser in good faith until he has completed his payment, see Bowen *v.* Dawley, 116 N. Y. App. Div. 568, 101 N. Y. Supp. 878.

8. Sheeks-Stephens Store Co. *v.* Richardson, 76 Ark. 282, 88 S. W. 983.

1172. 4. Bradley *v.* Kingman Implement Co., (Neb. 1907) 112 N. W. 346.

Where the Consideration for a Transfer of property is a pre-existing indebtedness the transfer is for value. Virginia Timber, etc., Co. *v.* Glenwood Lumber Co., 5 Cal. App. 256, 90 Pac. 48.

1174. 4. See Pelham *v.* Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12.

11. W. W. Kimball Co. *v.* Cruikshank, 123 Ill. App. 580; Roeder *v.* Robertson, 202 Mo. 522, 100 S. W. 1086; Montant *v.* Johnson, (Supm. Ct. App. T.) 99 N. Y. Supp. 395; Bullard *v.* Stewart, (Tex. Civ. App. 1907) 102 S. W. 174.

One Who Purchases Goods after the dismissal of a suit to replevin them of which he had notice is not an innocent purchaser. Grooms *v.* Neff Harness Co., 79 Ark. 401, 96 S. W. 135.

1175. 1. **Means of Knowledge Insufficient to Charge a Purchaser with Bad Faith.** — Farmer *v.* Hughes, 38 Colo. 318, 88 Pac. 191.

1176. 10. Pelham *v.* Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12.

1177. 1. Pelham *v.* Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12.

SALOON.

1177. 7. State *v.* Baker, (Oregon 1907) 92 Pac. 1076.

SALVAGE.

1181. 1. The Robert S. Besnard, 144 Fed. 992; The City of Puebla, 153 Fed. 925; The Jefferson, 158 Fed. 358.

1182. 3. The Robert S. Besnard, 144 Fed. 992; The Jefferson, 158 Fed. 358.

Degree of Danger Not Important. — The I. W. Nicholas, 147 Fed. 793.

6. Scows Nos. 1 and 10, 141 Fed. 477.

1183. 1. Hartford, etc., Transp. Co. *v.* U. S., 138 Fed. 618.

5. Neel *v.* Iron City Sand Co., (C. C. A.) 149 Fed. 980; The Devonian, 150 Fed. 831; The Jefferson, 158 Fed. 358.

Extinguishing Fire on Shipboard. — The Jefferson, 158 Fed. 358.

Removing Vessel from Vicinity of Fire. — The Car Float No. 10, 138 Fed. 435; The Indian, (C. C. A.) 159 Fed. 20.

Protecting Vessel from Fire. — The River Belle, 153 Fed. 475.

1185. 4. The Arizonan, (C. C. A.) 144 Fed. 81; The Robert S. Besnard, 144 Fed. 992; The I. W. Nicholas, 147 Fed. 793; The Chief, 147 Fed. 875; The Rebecca Shepherd, 148 Fed. 727; The S. C. Schenk, (C. C. A.) 158 Fed. 54.

1186. 2. Standing by on Request. — The Priscilla, (C. C. A.) 149 Fed. 470.

4. The Myrtle Tunnel, 146 Fed. 324; The S. C. Schenk, (C. C. A.) 158 Fed. 54; The New Haven, 150 Fed. 708.

5. The August Korff, (1903) P. 166; The I. W. Nicholas, 147 Fed. 793.

6. **No Recovery Where Services Did Not Contribute to Rescue.** — The City of Puebla, 153 Fed. 925.

1187. 2. The Mannie Swan, 145 Fed. 747.

3. The August Korff, (1903) P. 166.

7. **Raising Sunken Vessel Held Not to Be Salvage.** — Merritt, etc., Derrick, etc., Co. *v.* Morris, etc., Dredging Co., (C. C. A.) 137 Fed. 780; The Paul L. Bleakley, 146 Fed. 570.

1188. 2. U. S. *v.* Cornell Steamboat Co., (C. C. A.) 137 Fed. 455.

1189. 6. The Marguerite Molinos, (1903) P. 160.

1190. 3. The Arizonan, (C. C. A.) 144 Fed. 81.

1194. 6. The Arizonan, (C. C. A.) 144 Fed. 81.

1195. 5. **Vessels under Charter.** — The owner is entitled to compensation for the risk to which his vessel was subjected, and the charterer to compensation for the services. The Arizonan, (C. C. A.) 144 Fed. 81.

1198. 2. **Life Savers.** — The Cayo Bonito, (1904) P. 310.

1201. 2. The Myrtle Tunnel, 146 Fed. 324,

1202. 1. **An Owner Cannot Bind the Master and Crew as to Future Services,** but he may as to past services. The Friesland, (1904) P. 345.

1204. 4. The Port Caledonia, [1903] P. 184.

1205. 7. The Peter White, 149 Fed. 594.

8. The Flora Rodgers, 152 Fed. 286; The Western Star, 157 Fed. 489.

1206. 3. **Extraordinary Efforts Should Be Regarded Liberally,** but "it should never be forgotten that a vessel in distress is not a prize of war." The Robert S. Besnard, 144 Fed. 992.

4. The Chief, 147 Fed. 875; The City of Puebla, 153 Fed. 925; The Western Star, 157 Fed. 489; The Sun, 161 Fed. 385.

1208. 6. The South Bay, 139 Fed. 273; The I. W. Nicholas, 147 Fed. 793; The Peter White, 149 Fed. 594; The Western Star, 157 Fed. 489; The Pelican, 158 Fed. 183.

1209. 4. The Edith L. Allen, 139 Fed. 888.

1210. 3. The Prince Llewellyn, (1904) P. 83; The Germania, (1904) P. 131; The South Bay, 139 Fed. 273; The Devonian, 150 Fed. 831.

1211. 12. The Devonian, 150 Fed. 831; The River Belle, 153 Fed. 475; The Priscilla, 153 Fed. 476.

1212. 1. The Devonian, 150 Fed. 831.

2. The Priscilla, 153 Fed. 476.

3. The Peter White, 149 Fed. 594.

5. The Rebecca Shepherd, 148 Fed. 727; The Launberga, 154 Fed. 959.

1214. 3. The Edith L. Allen, 139 Fed 888.

8. The City of Puebla, 153 Fed. 925; The Launberga, 154 Fed. 959.

1215. 2. The Prince Llewellyn, (1904) P. 83; The Banes, (C. C. A.) 147 Fed. 192; The Launberga, 154 Fed. 959.

3. Neel *v.* Iron City Sand Co., (C. C. A.) 149 Fed. 980; The Indian, (C. C. A.) 159 Fed. 20.

5. The Edith L. Allen, 139 Fed. 888; The Myrtle Tunnel, 146 Fed. 324.

7. The Launberga, 154 Fed. 959..

1216. 12. The Shawmut, 155 Fed. 476.

1218. 8. The Myrtle Tunnel, 146 Fed. 324; The Flora Rodgers, 152 Fed. 286; The Gibson, 160 Fed. 230.

1219. 1. The Edith L. Allen, 139 Fed. 888; The Shawmut, 155 Fed. 476.

1221. 5. The Myrtle Tunnel, 146 Fed. 324.

1224. 8. **An Assignment of the Salvage Lien,** in return for money advanced to pay off the salvage claim, has been held to take priority over other judgments. The Dredge No. 1, 137 Fed. 110.

Salvage Lien Superior to Bottomry Bond. — The Launberga, 154 Fed. 959.

9. **Lien May Be Lost by Laches.** — The Paul L. Bleakley, 146 Fed. 570.

1225. 2. **For a Contract Held to Be on an Insurance Company's Credit** and not to support a lien, see The Paul L. Bleakley, 146 Fed. 570.

1226. 5. The Shawmut, 155 Fed. 476; Lynch *v.* Chew, 159 Fed. 182.

1227. 1. The Banes, (C. C. A.) 147 Fed. 192; The Ragnarok, 158 Fed. 694; The Indian, (C. C. A.) 159 Fed. 20.

3. The Shawmut, 155 Fed. 476.

6. Merritt, etc., Derrick, etc., Co. *v.* About Four Hundred Barrels of Wine, (C. C. A.) 159 Fed. 406.

1228. 4. The Ragnarok, 158 Fed. 694.

5. The S. C. Schenk, (C. C. A.) 158 Fed. 54, holding that the salvor must use reasonable care, but is not liable for failure to prevent injury in the absence of clear evidence of culpable misconduct.

1229. 3. The Duc D'Aumale, (1904) P. 60.

SATISFY, SATISFACTION, ETC.

1234. 4. **Real and Tangible Indemnity Meant.** — Miller *v.* Grand Trunk R. Co., (1906) A. C. 187.

1236. 1. Cann *v.* Church of Redeemer, 111 Mo. App. 164, 85 S. W. 994; Meacham *v.* Gardner, 27 Pa. Super. Ct. 296.

Portrait. — Clausen *v.* Vonnoh, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 220, 105 N. Y. Supp. 102.

Persian Lamb Coat. — Haehnel *v.* Trostler, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 262, 104 N. Y. Supp. 533.

1237. 1. Carlile *v.* Corrigan, 83 Ark. 136, 103 S. W. 620; Cann *v.* Church of Redeemer, 111 Mo. App. 164, 85 S. W. 994; Haehnel *v.* Trostler, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 262, 104 N. Y. Supp. 533.

A Capricious Refusal to Be Satisfied will not avoid liability. Higgins Mfg. Co. *v.* Pearson, 146 Ala. 528, 40 So. 579.

1238. 1. **Where Parties Have Contracted with Special Reference to a Peculiar Standard,** no injustice results in permitting a recovery only where conformity to that standard is shown. Haehnel *v.* Trostler, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 262, 104 N. Y. Supp. 533.

SAVINGS BANKS.

1243. 1. **For Statements of the Nature and Functions of Savings Banks.** — See Campbell *v.* Schenectady Sav. Bank, 114 N. Y. App. Div. 337, 99 N. Y. Supp. 927.

1247. 3. State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500; Schippers *v.* Kempkes, (N. J. 1907) 67 Atl. 1042.

1255. 5. **Depositor Is Bound by the By-laws of the Bank.** — Vincent *v.* Port Huron Sav. Bank, 147 Mich. 437, 111 N. W. 90, *citing* 12 Am. and Eng. Encyc. of Law (2d ed.) 1255.

7. Rules and regulations prescribed by a savings bank and known to depositors form part of the contract under which the relations between the bank and depositor exist. Campbell *v.* Schenectady Sav. Bank, 114 N. Y. App. Div. 337, 99 N. Y. Supp. 927.

1258. 4. Campbell *v.* Schenectady Sav. Bank, 114 N. Y. App. Div. 337, 99 N. Y. Supp. 927.

1260. 5. **The Bank Having Exercised Caution** in making a payment to a third party who obtained possession of the pass book through the negligence of the depositor, was held not liable in an action for negligence. Campbell *v.* Schenectady Sav. Bank, 114 N. Y. App. Div. 337, 99 N. Y. Supp. 927.

1261. 6. Campbell *v.* Schenectady Sav. Bank, 114 N. Y. App. Div. 337, 99 N. Y. Supp. 927.

1263. 4. Anderson *v.* Hough Ave. Sav., etc., Co., 16 Ohio Dec. 490, *citing* 24 Am. and Eng. Encyc. of Law (2d ed.) 1262 [1263] *affirmed* 27 Ohio Cir. Ct. 357.

1266. 3. **A Pass Book Being Evidence of a Contract** between the bank and depositor, interest in a deposit may be assigned notwithstanding the transferee has not the possession of the pass book. Augsbury *v.* Shurtliff, 114 N. Y. App. Div. 626, 99 N. Y. Supp. 989.

1271. 1. **Savings Bank Is Not Prohibited by Statute from Receiving Special Deposits.** — Sherwood *v.* Home Sav. Bank, 131 Iowa 528, 109 N. W. 9.

5. **Ultra Vires.** — State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500.

1273. 2. **Loans Not Preferred.** — State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500.

1275. 2. Bank Com'rs *v.* New Hampshire Banking Co., (N. H. 1907) 67 Atl. 583.

4. **Colorado Statute — Depositors in a Building Loan Association** are not savings bank depositors, entitled to a preference in event of insolvency, within the meaning of the statute. Askey *v.* Fidelity Sav. Assoc., 37 Colo. 432, 86 Pac. 1025.

Colorado Statute. — Savings bank depositors are entitled to a preference over other creditors in the event of insolvency. Tabor *v.* Mullen, 37 Colo. 399, 86 Pac. 1007.

SAWMILL.

1. 1. **Term Sawmill Does Not Include Shed Covering Mill.** Alexander *v.* Beckman Lumber Co., 78 Ark. 169, 95 S. W. 449.

SCHEDULE.

2. 3. **"The Term 'Schedule' Implies Something Written,** and when used with reference to a train implies that its operation is governed by a rule, rather than a particular direction or agreement." Draper *v.* Evansville, etc., R. Co., 165 Ind. 117, 74 N. E. 889.

SCHOOLS.

8. 1. Harris *v.* Draper, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 297, 109 N. Y. Supp. 983.

2. Smith *v.* Simmons, (Ky. 1908) 110 S. W. 336; Board of Education *v.* Dick, 70 Kan. 434, 78 Pac. 812, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8.

3. Com. Connecticut Valley St. R. Co., (Mass. 1907) 82 N. E. 19.

5. Board of Education *v.* Hyatt, (Cal. 1907) 93 Pac. 117.

6. State *v.* Bryan, 50 Fla. 293, 39 So. 929.

7. Kester *v.* School Dist. No. 34, (Wash. 1907) 93 Pac. 907.

County Superintendent Not Empowered to Antedate Teacher's Certificate. — Van Dorn *v.* Anderson, 219 Ill. 32, 76 N. W. 53.

9. 2. Van Dorn *v.* Anderson, 219 Ill. 32, 76 N. E. 53.

11. 6. Brown *v.* Smith, (Ark. 1907) 106 S. W. 679.

12. 8. Denison *v.* Vinalhaven, 100 Me. 136, 60 Atl. 798; Drew *v.* Board of Education, 146 Mich. 64, 109 N. W. 39; Morris *v.* Board of Education, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 605, 104 N. Y. Supp. 979.

13. 1. School Dist. No. 23 *v.* Ozmer, 81 Ark. 194, 98 S. W. 974.

2. School District No. 68 *v.* Allen, 83 Ark. 491, 104 S. W. 172.

14. 1. **Name of Teacher May Be Signed by Authorized Third Party.** — Turner *v.* Hampton, (Ky. 1906) 97 S. W. 761.

7. **A Contract for a Teacher's Services** at the beginning of the second term at the rate of the annual salary is presumed to cease at the end of the school year. Denison *v.* Vinalhaven, 100 Me. 136, 60 Atl. 798.

15. 3. State *v.* Cartwright, 122 Mo. App. 257, 99 S. W. 48.

4. Southern Industrial Institute *v.* Hellier, 142 Ala. 686, 39 So. 163.

5. **A Receipt in Full for Salary** for services rendered is a waiver of any claim for salary attached to a different position. Sheehan *v.* Board of Education, 120 N. Y. App. Div. 557, 104 N. Y. Supp. 1002.

6. Hoefling *v.* Board of Education, 120 N. Y. App. Div. 545, 104 N. Y. Supp. 941; Beverstock *v.* Board of Education, 75 Ohio St. 144, 78 N. E. 1007.

16. 8. People *v.* Board of Education, 104 N. Y. App. Div. 162, 93 N. Y. Supp. 300; Grendon *v.* Board of Education, 114 N. Y. App. Div. 759, 100 N. Y. Supp. 253; Moore *v.* Board of Education, 121 N. Y. App. Div. 862, 106 N. Y. Supp. 983.

10. Barthel *v.* Board of Education, (Cal. 1908) 95 Pac. 892; O'Connor *v.* Hendrick, 184 N. Y. 421, 77 N. E. 612; O'Connor *v.* Hendrick, 109 N. Y. App. Div. 361, 96 N. Y. Supp. 161.

Reasons for Teacher's Dismissal Must Be Disclosed. — Underwood *v.* County School Com'rs, 103 Ind. 181, 63 Atl. 221.

11. Miller *v.* Harvey, 215 Pa. St. 103, 64 Atl. 330.

Status of Teacher on Consolidation of Municipalities. — People *v.* Board of Education, 106 N. Y. App. Div. 101, 94 N. Y. Supp. 61.

17. 4. Bradley *v.* Board of Education, 1 Cal. App. 212, 81 Pac. 1036; Turner *v.* Hampton, (Ky. 1906) 97 S. W. 761; Bogert *v.* Board of Education, (Supm. Ct. Tr. T.) 44 Misc. (N. Y.) 10, 89 N. Y. Supp. 737.

8. Stone *v.* Fritts, (Ind. 1907) 82 N. E. 792.

Making Temporary License Permanent. — People *v.* Board of Education, 106 N. Y. App. Div. 101, 94 N. Y. Supp. 61.

18. 4. Shaul *v.* Board of Education, 108 N. Y. App. Div. 19, 95 N. Y. Supp. 479.

19. 6. Hitchens *v.* School Dist. No. 180, 5 Penn. (Del.) 325, 62 Atl. 897.

20. 2. Underwood *v.* County School Com'rs, 103 Md. 181, 63 Atl. 221.

21. 1. **Injunction Is the Remedy** where a teacher under contract is refused permission to teach. Turner *v.* Hampton, (Ky. 1906) 97 S. W. 761.

22. 1. Underwood *v.* County School Com'rs, 103 Md. 181, 63 Atl. 221.

2. Morse *v.* Ashley, 193 Mass. 294, 79 N. E. 481.

3. Ireland *v.* Barnhart, 165 Ind. 377, 75 N. E. 872; Ricker Classical Institute *v.* Mapleton, 101 Me. 553, 64 Atl. 948; State *v.* Selleck, (Neb. 1906) 107 N. W. 1022; New Hampton Institution *v.* Northwood School Dist., (N. H. 1907) 68 Atl. 538; Town Dist. *v.* Town Dist., 78 Vt. 23, 61 Atl. 471; Wallingford *v.* Clarendon, (Vt. 1908) 69 Atl. 734.

The Abandonment of a School District does not impose upon a school board the duty to furnish free transportation to another school district. Nelson *v.* State, 168 Ind. 491, 81 N. E. 486.

"Domicil" Not Intended as Residence. — People *v.* Hendrickson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 337, 104 N. Y. Supp. 122.

Physical Presence of Pupil Does Not in Itself Constitute "Residence." — Com. *v.* Wenner, 211 Pa. St. 637, 61 Atl. 247.

5. State *v.* Bryan, 50 Fla. 293, 39 So. 929; Richardson *v.* Board of Education, 72 Kan. 620, 84 Pac. 538; Rowles *v.* Board of Education, (Kan. 1907) 91 Pac. 88; Berea College *v.* Com. (Ky. 1906) 94 S. W. 623; Cross *v.* Walton Graded Common School Dist., (Ky. 1905) 89 S. W. 506; State *v.* Cartwright, 122 Mo. App. 257, 99 S. W. 48; Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267.

23. 2. State *v.* Hall, (N. H. 1906) 64 Atl. 1102; Com. *v.* Connecticut Valley St. R. Co., (Mass. 1907) 82 N. E. 19.

3. Hammond *v.* Hyde Park, (Mass. 1907) 80 N. E. 650; Stull *v.* Reber, 215 Pa. St. 156, 64 Atl. 419; Com. *v.* Rowe, 218 Pa. St. 168, 67 Atl. 56.

5. State *v.* Board of Education, 76 Ohio St. 297, 81 N. E. 568.

24. 1. Auten *v.* Special School Dist., 83 Ark. 431, 104 S. W. 130.

4. State *v.* District Board, (Wis. 1908) 116 N. W. 232.

25. 5. Cross *v.* Walton Graded Common School, (Ky. 1908) 110 S. W. 346; Vermillion *v.* State, (Neb. 1907) 110 N. W. 736; Wayland *v.* Board of School Directors, 43 Wash. 441, 86 Pac. 642; State *v.* District Board, (Wis. 1908) 116 N. W. 232.

27. 2. McCaskill *v.* Bower, 126 Ga. 341, 54 S. E. 942; Cross *v.* Walton Graded Common School Dist, (Ky. 1905) 89 S. W. 506.

9. Kinzer *v.* Independent School Dist., 129 Iowa 441, 105 N. W. 686.

29. 4. Burton *v.* Maynard, (Ky. 1907) 105 S. W. 115; Harley *v.* Lindemann, 129 Wis. 514, 109 N. W. 570.

5. B. F. Johnson Pub. Co. *v.* Com., (Ky. 1906) 97 S. W. 749.

30. 3. McNees *v.* School Tp., 133 Iowa 120, 110 N. W. 325; Rand *v.* Turner, (Ky. 1906) 97 S. W. 643; Graziani *v.* Com., (Ky. 1906) 97 S. W. 409.

7. O'Connor *v.* Hendrick, 109 N. Y. App. Div. 361, 96 N. Y. Supp. 161. But see Church *v.* Bullock, (Tex. 1908) 109 S. W. 115.

31. 2. Smith *v.* Robersonville Graded School, 141 N. Car. 143, 53 S. E. 524.

A School Corporation or Board of School Trustees is not a "corporation" in the sense that its affairs may be investigated by the city council under a statute authorizing the council to investigate corporate affairs. Agar *v.* Pagin, 39 Ind. App. 567, 79 N. E. 379.

School District a Public Corporation. — School Dist. No. 2 *v.* Pace, 113 Mo. App. 134, 87 S. W. 580.

5. Los Angeles City School Dist. *v.* Longden, 148 Cal. 380, 83 Pac. 296; North Troy Graded School Dist. *v.* Troy, 80 Vt. 16, 66 Atl. 1033.

32. 2. Stone *v.* Fritts, (Ind. 1907) 82 N. E. 792; Rowles *v.* Board of Education, (Kan. 1907) 91 Pac. 88; State *v.* McClain, 187 Mo. 409, 86 S. W. 135; State *v.* Gill, 190 Mo. 79, 88 S. W. 628; Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462; Howe *v.* Board of Education, 72 N. J. L. 158, 60 Atl. 518; Smith *v.* Robersonville Graded School, 141 N. Car. 143, 53 S. E. 524; Boyce *v.* Board of Education, 76 Ohio St. 365, 81 N. E. 437; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

4. Mouser *v.* Spaulding, (Ky. 1906) 96 S. W. 882.

5. Bloomquist *v.* Washington County, 101 Minn. 163, 112 N. W. 253; State *v.* Board of Education, 760 Ohio St. 297, 81 N. E. 568; Wilsey *v.* Cornwall, 40 Wash. 250, 82 Pac. 303.

33. 2. **Contra in Indiana.** — Ireland *v.* Barnhart, 165 Ind. 377, 75 N. E. 872.

3. **The Domicil of a Child** is *prima facie* that of its parent in computing the census of a school district. Gividen *v.* Common School Dist. No. 54, (Ky. 1907) 102 S. W. 1191.

6. Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267.

34. 1. School Dist. No. 21 *v.* Freemont County, 15 Wyo. 73, 86 Pac. 24.

3. Bancroft *v.* Randall, 4 Cal. App. 306, 87 Pac. 805.

4. Independent School Dist. No. 2 *v.* District No. 37, (S. Dak. 1906) 106 N. W. 302.

5. Bourland *v.* Snyder, 224 Ill. 478, 79 N. E. 568; State *v.* Cummins, 114 Mo. App. 93, 89 S. W. 74.

A Special School District cannot be formed out of any part of a centralized district of a township. Fulks *v.* Wright, 72 Ohio St. 547, 75 N. E. 55.

The Territory of a Special School District cannot be taken either in whole or in part to form a new special school district. Scott *v.* McCullogh, 72 Ohio St. 538, 75 N. E. 52.

Where the Statute Provides that No Alteration of school districts shall be affected unless notice in writing shall be given, a notice in writing to the chairman of each board is sufficient. Gividen *v.* Common School Dist. No. 54, (Ky. 1907) 102 S. W. 1191.

35. 6. School Dist. No. 13 *v.* County Superintendent of Public Schools, 36 Colo. 393, 85 Pac. 696; First School Dist. *v.* Eighth School Dist., 78 Conn. 71, 61 Atl. 234; Eddy *v.* Omaha, 72 Neb. 550, 103 N. W. 692.

36. 1. Mooney *v.* Tulare County, 2 Cal. App. 65, 83 Pac. 165.

2. Gardner *v.* State, (Kan. 1908) 95 Pac. 588

Where Not All Districts Vote in Favor of Change. — State *v.* McClain, 187 Mo. 409, 86 S. W. 135.

3. Bourland *v.* Snyder, 224 Ill. 478, 79 N. E. 568; School Dist. No. 2 *v.* Pace, 113 Mo. App. 134, 87 S. W. 580.

37. 1. Molyneaux *v.* Molyneaux, 130 Iowa 100, 106 N. W. 370; State *v.* Job, 205 Mo. 1, 103 S. W. 493; Lowrance *v.* Schwab, (Tex. Civ. App. 1907) 101 S. W. 840.

Description of Territory Voted upon. — Molyneaux *v.* Molyneaux, 130 Iowa 100, 106 N. W. 370.

2. Calahan *v.* Handsaker, 133 Iowa 622, 111 N. W. 22; School District No. 2 *v.* Pace, 113 Mo. App. 134, 87 S. W. 580; State *v.* Job, 205 Mo. 1, 103 S. W. 493.

38. 1. Schmohl *v.* Williams, 215 Ill. 63, 74 N. E. 75; Black *v.* Early, 208 Mo. 281, 106 S. W. 1014.

3. State *v.* Job, 205 Mo. 1, 103 S. W. 493.

40. 1. **Town Charged with School Debts on Abolition of School District.** — Winsted Sav. Bank *v.* New Hartford, 78 Conn. 319, 62 Atl. 81.

4. Manahan *v.* Adams County, (Neb. 1906) 110 N. W. 860.

Statute Does Not Prevent Agreement between Districts Regarding Apportionment. - Rouseville Borough School Dist. *v.* Cornplanter Tp. School Dist., 29 Pa. Super. Ct. 214; Everson Borough, 31 Pa. Super. Ct. 170.

5. Riggs *v.* Polk County, (Oregon 1908) 95 Pac. 5.

41. 4. **A Majority of a School Board Which Has Ordered an Election,** and given notice thereof, on petition of the voters of a district, cannot thereafter order a withdrawal of the notice of election. State *v.* Gill, 190 Mo. 79, 88 S. W. 628.

6. Thompson *v.* School Trustees, 218 Ill. 540, 75 N. E. 1048; Calahan *v.* Handsaker, 133 Iowa 622, 111 N. W. 22; Amort *v.* School Dist. No. 80, 48 Oregon 522, 87 Pac. 761; Regan *v.* School Dist. No. 25, 44 Wash. 523, 87 Pac. 828.

Notice Immaterial Where Directors Attended Meeting. — School Dist. No. 68 *v.* Allen, 83 Ark. 491, 104 S. W. 172.

7. Schmutz *v.* Special School Dist., 78 Ark. 118, 95 S. W. 438; State *v.* Green, 131 Wis. 324, 111 N. W. 510.

42. 1. Arbuckle *v.* McKinney, (Ky. 1906) 97 S. W. 408; Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462; State *v.* Green, 131 Wis. 324, 111 N. W. 510.

Boundaries Other than Those Stated in a petition may be accepted by a meeting called for the purpose of organizing a school district. Wilsey *v.* Cornwall, 40 Wash. 250, 82 Pac. 303.

2. Kinney *v.* Howard, 133 Iowa 94, 110 N. W. 282.

9. Kinney *v.* Howard, 133 Iowa 94, 110 N. W. 282.

Ballot Must State Question to Be Voted upon. — Calahan *v.* Handsaker, 133 Iowa 622, 111 N. W. 22.

43. 3. Arbuckle *v.* McKinney, (Ky. 1906) 97 S. W. 408.

4. **The Record of the Meeting Should Be Construed** so as to give effect to the manifest intention of the voters. Quisenberry *v.* School Dist. No. 6, 75 Neb. 47, 105 N. W. 982.

5. **Records May Be Attacked for Fraud or Mistake Only.** — Creech *v.* Common School Dist. No. 15, (Ky. 1907) 102 S. W. 804.

The Recording of a Contract not made by the directors as a board does not constitute a ratification. Pugh *v.* School Dist. No. 5, 114 Mo. App. 688, 91 S. W. 471.

6. State *v.* Cahill, 131 Iowa 155, 105 N. W. 691; Kinney *v.* Howard, 133 Iowa 94, 110 N. W. 282.

9. Samson *v.* Grand Isle, 78 Vt. 383, 63 Atl. 180; School Dist. No. 3 *v.* Western Tube Co., 13 Wyo. 304, 80 Pac. 155.

44. 2. People *v.* Chicago, etc., R. Co., 223 Ill. 448, 79 N. E. 151; R. Connor Co. *v.* Olson, (Wis. 1908) 115 N. W. 811.

Contracts to Employ Critic Teachers Not Authorized by Statute. — Lindblad *v.* Board of Education, 221 Ill. 261, 77 N. E. 450.

3. Los Angeles City School Dist. *v.* Longden, 148 Cal. 380, 83 Pac. 246; People *v.* Peoria, etc., R. Co., 216 Ill. 221, 74 N. E. 734; Black *v.* Early, 208 Mo. 281, 106 S. W. 1014; Cox *v.* Pitt County, (N. Car. 1908) 60 S. E. 516; McLeod *v.* Carthage, (N. Car. 1908) 61 S. E. 605.

45. 3. Clarke *v.* School Dist. No. 16, 84 Ark. 516, 106 S. W. 677; Union Free School Dist. No. 1 *v.* Glen Park, 109 N. Y. App. Div. 414, 96 N. Y. Supp. 428.

5. **Witnesses Before Board of Arbitration Need Not Take Oath.** — State *v.* Job, 205 Mo. 1, 103 S. W. 493.

46. 3. Tefft *v.* Lewis, 27 R. I. 9, 60 Atl. 243.

5. Bancroft *v.* Randall, 4 Cal. App. 306, 87 Pac. 805; St. Louis, etc., R. Co. *v.* People, 224 Ill. 155, 79 N. E. 664.

Trustees Must Confer with Advisory Board on Building School. — Advisory Board *v.* State, 164 Ind. 295, 73 N. E. 700; Lincoln School Tp. *v.* Union Trust Co., 36 Ind. App. 113, 74 N. E. 272; Brooks *v.* School Dist., 73 N. H. 263, 61 Atl. 127.

Power Is Vested in the School Directors to make terms to build where a schoolhouse has been authorized by a vote of the people and the price of the building was not determined by a vote. People *v.* Peoria, etc., R. Co., 216 Ill. 221, 74 N. E. 734.

47. 1. Board of Education *v.* Montclair, (N. J. 1908) 68 Atl. 795.

48. 1. People *v.* Peoria, etc., R. Co., 216 Ill. 221, 74 N. E. 734.

3. Jacobson *v.* Board of Education, (N. J. 1906) 64 Atl. 609; School Dist. No. 3 *v.* Western Tube Co., 13 Wyo. 304, 80 Pac. 155.

6. Richards *v.* School Tp., 132 Iowa 612, 109 N. W. 1093; Denison *v.* Vinalhaven, 100 Me. 136, 60 Atl. 798; School Dist. No. 3 *v.* Western Tube Co., 13 Wyo. 304, 80 Pac. 155.

49. 2. School Dist. No. 71 *v.* Overholser, 17 Okla. 147, 87 Pac. 665.

4. Baggerly *v.* Lea, 37 Ind. App. 139, 73 N. E. 921.

50. 7. Thompson *v.* School Trustees, 218 Ill. 540, 75 N. E. 1048; McMahon *v.* School Dist. No. 66, (Neb. 1907) 113 N. W. 1046; Petersburg School Dist. *v.* Peterson, 14 N. Dak. 344, 103 N. W. 756; Stayton *v.* Butchee, (Okla. 1905) 82 Pac. 726; Nichols *v.* Board of Directors of School Dist. No. 10, 39 Wash. 137, 81 Pac. 325.

A Schoolhouse Erected on Leased Land is the property of the school district and may be removed within a reasonable time after the termination of the tenancy. Hayward *v.* School Dist. No. 9, 139 Mich. 539, 102 N. W. 999.

8. Independent School Dist. *v.* McClure, (Iowa 1907) 113 N. W. 554.

51. 6. Stayton *v.* Butchel, (Okla. 1905) 82 Pac. 726.

52. 2. Du Four *v.* State Superintendent of Public Instruction, 72 N. J. L. 371, 61 Atl. 258; O'Connor *v.* Hendrick, 184 N. Y. 421, 77 N. E. 612.

4. Van Dyke *v.* School Dist. No. 77, 43 Wash. 235, 86 Pac. 402.

5. Rand *v.* Turner, (Ky. 1906) 94 S. W. 643.

Additional Duties of Superintendent. — McKenzie *v.* Board of Education, 1 Cal. App. 406, 82 Pac. 392.

Graduated Salaries for County Superintendents. — Dickey County *v.* Denning, 14 N. Dak. 77, 103 N. W. 422.

53. 1. Doubet *v.* Board of Directors, (Iowa 1907) 111 N. W. 326.

Duty of County Superintendent. — McKenzie *v.* Board of Education, 1 Cal. App. 406, 82 Pac. 392.

County Superintendent Has No Control over Schools in Special Districts. — Dickey County *v.* Hicks, 14 N. Dak. 73, 103 N. W. 423.

County Commissioners. — The action of the county superintendent in organizing a school district may be reviewed on appeal to the county commissioners, whose decision shall be final. Wilsey *v.* Cornwall, 40 Wash. 250, 82 Pac. 303.

3. State *v.* Fabrick, (N. Dak. 1907) 112 N. W. 74.

5. State *v.* Huegle, (Iowa 1907) 112 N. W. 234.

6. State *v.* Fabrick, (N. Dak. 1907) 112 N. W. 74.

54. 2. State *v.* Lindemann, (Wis. 1907) 111 N. W. 214.

3. School Dist. No. 13 *v.* County Superintendent of Public Schools, 36 Colo. 393, 85 Pac. 696; Lindblad *v.* Board of Education, 221 Ill. 261, 77 N. E. 450; Underwood *v.* County School Com'rs, 103 Md. 181, 63 Atl. 221; Duncan *v.* Heyward, 74 S. Car. 560, 54 S. E. 760.

4. Gibson *v.* Mabrey, 145 Ala. 112, 40 So. 297; McKenzie *v.* Board of Education, 1 Cal. App. 410, 82 Pac. 394; Clark *v.* Cline, 123 Ga. 856, 51 S. E. 617; People *v.* Welsh, 225 Ill. 364, 80 N. E. 313; Latonia Graded School Dist. No. 12 *v.* Board of Education, (Ky. 1906) 93 S. W. 590; Farrell *v.* Board of Education, 113 N. Y. App. Div. 405, 98 N. Y. Supp. 1046.

Statutes Provide for County Board of Education. — State *v.* Thompson, 142 Ala. 98, 38 So. 679.

Taxes for Other than Building Purposes cannot be levied by a board of education. St. Louis, etc., R. Co. *v.* People, 224 Ill 155, 79 N. E. 664.

55. 1. **Board of Trustees of School City Not "Officers and Employees of Government of" a Civil City.** — Agar *v.* Pagin, 39 Ind. App. 567, 79 N. E. 379.

School Committees Are Public Officials and Not Town Agents. Morse *v.* Ashley, 193 Mass. 294, 79 N. E. 481.

Electors Have Constitutional Right to Elect School Boards. — State *v.* Lindemann, (Wis. 1907) 111 N. W. 214.

4. McGlone *v.* Zornes, (Ky. 1908) 107 S. W. 329.

7. State *v.* Fasse, 189 Mo. 532, 88 S. W. 1.

56. 1. State *v.* Lindemann, (Wis. 1907) 111 N. W. 214.

Temporary Removal from the District by a trustee will not forfeit his office. McGlone *v.* Zornes, (Ky. 1908) 107 S. W. 329.

4. Com. *v.* Parsons, 217 Pa. St. 435, 66 Atl. 657.

5. State *v.* Cave, 26 Ohio Cir. Ct. 301.

6. Hertel *v.* Boismenue, 229 Ill. 474, 82 N. E. 298; Common School Dist. No. 32 *v.* Kane, (Ky. 1905) 87 S. W. 321; Creech *v.* Common School Dist. No. 15, (Ky. 1907) 102 S. W. 804; Allentown *v.* Wagner, 214 Pa. St. 210, 63 Atl. 697.

Trustees Have Control of School Property. — Baggerly *v.* Lee, 37 Ind. App. 139, 73 N. E. 921.

The Words "Unless Free Transportation Is Provided" do not make it mandatory on the part of school board to provide free transportation. State *v.* Jackson, 168 Ind. 384, 81 N. E. 62.

The Courts Cannot Control the Action of a School Board in fixing the day for holding teachers' examinations. Cohn *v.* Townsend, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 47, 94 N. Y. Supp. 817.

7. Schmutz *v.* Special School Dist., 78 Ark. 118, 95 S. W. 438; Escondido Lumber, etc., Co. *v.* Baldwin, 2 Cal. App. 606, 84 Pac. 284; State *v.* Jackson, 168 Ind. 384, 81 N. E. 62; Ries *v.* Hemmer, 127 Iowa 408, 103 N. W. 346; Churchill *v.* Highland Park Graded School, (Ky. 1905) 89 S. W. 122; Treadway *v.* Daniels, (Ky. 1906) 92 S. W. 981; Howard *v.* School Dist. No. 27, (Ky. 1907) 102 S. W. 318; Board of Education *v.* Atwood, (N. J. 1907) 65 Atl. 999; Buckbee *v.* Board of Education, 115 N. Y. App. Div. 366, 100 N. Y. Supp. 943; State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

An Ultra Vires Act of a board of school commissioners in making a loan may be ratified by the legislature if there is no impairment of a contract or violation of vested rights. Courtner *v.* Etheredge, (Ala. 1907) 43 So. 369.

Transportation. — The duty of a school board "to provide suitable school facilities and accommodations" does not impose the duty to furnish free transportation for pupils. Board of Education *v.* Atwood, 73 N. J. L. 315, 62 Atl. 1130.

A Board of School Examiners is not prohibited from continuing beyond noon of Saturday an examination of applicants for school teachers, where the statute declares that Saturday afternoons shall be deemed a half holiday "for all purposes whatsoever as regards the transaction of business in the public offices of this state." Cohn *v.* Townsend, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 47, 94 N. Y. Supp. 817.

Board Has Power to Abolish Unnecessary Positions. — People *v.* Board of Education, 114 N. Y. App. Div. 1, 99 N. Y. Supp. 737.

9. McGinn *v.* Willey, (Cal. App. 1097) 91 Pac. 423; Mouser *v.* Spaulding, (Ky. 1906) 96 S. W. 882; Pugh *v.* School Dist. No. 5, 114 Mo. App. 688, 91 S. W. 471; State *v.* Cartwright, 122 Mo. App. 257, 99 S. W. 48; Rochford *v.* School Dist. No. 6, 19 S. Dak. 435, 103 N. W. 763.

57. 1. Hitchens *v.* School Dist. No. 180, 5 Penn. (Del.) 325, 62 Atl. 897; Saunders *v.* O'Bannon, (Ky. 1905) 87 S. W. 1105; Board of Education *v.* Newport Nat. Bank, (Ky. 1906) 90 S. W. 569; Short *v.* Langston, (Ky. 1907) 102 S. W. 236.

58. 2. Morse *v.* Ashley, 193 Mass. 294, 79 N. E. 481.

59. 1. Murray *v.* Wilkes-Barre Tp. School Dist., 33 Pa. Super. Ct. 373.

2. Schmutz *v.* Special School Dist., 78 Ark. 118, 95 S. W. 438.

60. 11. Richards *v.* School Tp., 132 Iowa 612, 109 N. W. 1093; Bishop *v.* Fuller, (Neb. 1907) 110 N. W. 715.

61. 2. Whitaker, etc., Co. *v.* Roberts, 155 Fed. 882; State *v.* Theus, 114 La. 1097, 38 So. 870.

3. State *v.* Black, 166 Ind. 138, 76 N. E. 882; Kinzer *v.* Independent School Dist., 129 Iowa 441, 105 N. W. 686; Kinney *v.* Howard, 133 Iowa 94, 110 N. W. 282; Queeny *v.* Higgins, (Iowa 1907) 114 N. W. 51; Montclair *v.* Baxter, (N. J. 1908) 68 Atl. 794.

An Appeal to the County Superintendent is the remedy for persons aggrieved by the refusal of a school board to furnish free transportation for children, as mandamus will not hold. Nelson *v.* State, (Ind. 1907) 81 N. E. 486.

62. 3. Redfield *v.* School Dist. No. 3, (Wash. 1907) 92 Pac. 770.

5. Clarke *v.* School Dist. No. 16, 84 Ark. 516, 106 S. W. 677; Clark *v.* Cline, 123 Ga. 856, 51 S. E. 617.

63. 3. Los Angeles *v.* Kirk, 148 Cal. 385, 83 Pac. 250; St. Louis, etc., R. Co. *v.* People,

224 Ill. 155, 80 N. E. 303; State *v.* Rice, 33 Mont. 365, 83 Pac. 874; State *v.* Knoxville, 115 Tenn. 175, 90 S. W. 289.

State Constitution Prohibits Appropriation of Education Funds in Aid of Sectarian Schools. — Hackett *v.* Brooksville Graded School Dist., 120 Ky. 608, 87 S. W. 792.

Mistake in Number of Taxable Properties. — Creech *v.* Common School Dist. No. 15, (Ky. 1907) 102 S. W. 804.

4. Los Angeles County *v.* Kirk, 148 Cal. 385, 83 Pac. 250; Board of Education *v.* Hyatt, (Cal. 1907) 93 Pac. 117; St. Louis, etc., R. Co. *v.* People, 224 Ill. 155, 80 N. E. 303.

School Fund a Continuing Fund. — State *v.* Gardner, (Neb. 1907) 112 N. W. 373; Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267.

Where the Voters of a District Have Power to Vote Tax Levies for school purposes, they have absolute discretion as to the amount appropriated. Lowrance *v.* Schwab, (Tex. Civ. App. 1907) 101 S. W. 840.

64. 1. Patterson *v.* Knapp, (Ky. 1907) 101 S. W. 379; Smith *v.* Robersonville Graded School, 141 N. Car. 143, 53 S. E. 524; Murph *v.* Landrum, 76 S. Car. 21, 56 S. E. 850.

2. State *v.* True, 116 Tenn. 294, 95 S. W. 1028.

3. Church *v.* Bullock, (Tex. 1908) 109 S. W. 115.

65. 1. Clark *v.* Cline, 123 Ga. 856, 51 S. E. 617; School Dist. No. 27 *v.* Twin Falls, 13 Idaho 471, 90 Pac. 735; Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267.

66. 3. State *v.* Clausen, 40 Wash. 95, 82 Pac. 187.

5. State *v.* Rice, 33 Mont. 365, 83 Pac. 874; Copelin *v.* School Directors, 215 Pa. St. 359, 64 Atl. 542; State *v.* Griffith, 74 Ohio St. 80, 77 N. E. 686.

School Treasurer a Public Officer. — State *v.* Harter, 188 Mo. 516, 87 S. W. 941.

City Treasurer May Be ex-Officio School Treasurer of School District. — Com. *v.* Middleton, 210 Pa. St. 582, 60 Atl. 297.

67. 3. **Failure of Authorities to Prosecute Bond.** — Any householder of the school district may prosecute on a breach of the condition of a treasurer's bond on failure of a school director to act. School Dist. No. 9 *v.* Brand, 71 Kan. 728, 81 Pac. 473.

SCINTILLA OF EVIDENCE.

68. 3. **Scintilla of Evidence.** — See Taylor *v.* Atlantic Coast Line R. Co., 78 S. Car. 531, 59 S. E. 641.

SCRAP STEEL.

69. 4. **Scrap Steel — Revenue Laws.** — Illinois Cent. R. Co. *v.* McCall, 147 Fed. 925; Ginsberg *v.* U. S., 147 Fed. 531.

SEALS.

74. 5. Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701.

6. Philip *v.* Stearns, 20 S. Dak. 220, 105 N. W. 467, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 74.

7. W. B. Conkey Co. *v.* Goldman, 125 Ill. App. 161.

75. 6. Philip *v.* Stearns, 20 S. Dak. 220, 105 N. W. 467.

76. 1. Jackson *v.* Security Mut. L. Ins. Co., 233 Ill. 161, 84 N. E. 198; Chamberlain *v.* Fernbach, 118 Ill. App. 149, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 76.

4. Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701; Burnette *v.* Young, 107 Va. 184, 57 S. E. 641.

77. 6. Rockwell *v.* Capital Traction Co., 25 App. Cas. (D. C.) 98, 4 Ann. Cas. 648.

78. 4. Langley *v.* Owens, 52 Fla. 302, 42 So. 457.

79. 1. Bliss *v.* Harris, 38 Colo. 72, 87 Pac. 1076; Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687; Morrill *v.* Catholic Order of Foresters, 79 Vt. 479, 65 Atl. 526, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 79; Stockland *v.* Hall, 45 Wash. 197, 88 Pac. 123.

80. 4. Jackson *v.* Security Mut. L. Ins. Co., 233 Ill. 161, 84 N. E. 198.

"(L. S.)" a Scrawl under Florida Statute. — Langley *v.* Owens, 52 Fla. 302, 42 So. 457.

7. Seal Unnecessary to Conveyance or Covenant in Georgia. — Atlanta, etc., R. Co. *v.* McKinney, 124 Ga. 929, 53 S. E. 701.

9. Where no Official Seal Is Required an instrument under the officer's hand and without his seal is valid. State *v.* Fogg, 206 Mo. 696, 105 S. W. 618.

A Summons Without the Official Seal is held in *Kansas* to be absolutely void. Kelso *v.* Morton, 74 Kan. 442, 87 Pac. 184. But in *North Carolina* the omission of the seal from a summons is held to be a mere irregularity, cured by subsequently affixing the proper seal. Vick *v.* Flournoy, (N. Car. 1908) 60 S. E. 978.

Tax Deed Without Official Seal Valid Where No Seal Prescribed. — State *v.* Olson, 45 Wash. 689, 89 Pac. 151.

81. 5. **Omission Cured by Statute.** — Barnes *v.* Multnomah County, 145 Fed. 695.

Legal Title Not Conveyed. — Burnette *v.* Young, 107 Va. 184, 57 S. E. 641.

8. A Tax Deed Not under the Official Seal has been held valid and admissible in evidence where no official seal was prescribed although required. Spokane Terminal Co. *v.* Stanford, 44 Wash. 45, 87 Pac. 37.

82. 1. **Comparison of Seals Permissible to Prove Forgery.** — Loring *v.* Jackson, (Tex. Civ. App. 1906) 95 S. W. 19.

SEAMEN.

87. 5. **Crew — Those on Board Aiding in Navigation.** — The Bound Brook, 146 Fed. 160.

88. 5. The Mars, (C. C. A.) 149 Fed. 729.

89. 1. The Sadie C. Sumner, 142 Fed. 611.

3. **Recovery Allowed for Charges by Others than Shipping Commissioners.** — It has been held that money advanced to ship brokers for securing a crew and expenses incurred are recoverable although payment made in violation of Rev. St. U. S., § 4592. Maffitt *v.* Hammerland, (N. Car. 1908) 60 S. E. 713.

7. Com. *v.* Bartlett, 190 Mass. 148, 76 N. E. 607.

92. 4. Board of Trade *v.* Baxter, (1907) . C. 373, 9 Ann. Cas. 501.

Parol Evidence Inadmissible to Vary Articles. — Turtle *v.* Northwestern Steamship Co., 154 Fed. 146.

93. 9. A stipulation that "The crew shall make no claim for wages or provisions while the vessel is detained by ice, prior to departure," has been held valid. The Joseph B. Thomas, 136 Fed. 693, *affirmed* (C. C. A.) 148 Fed. 762.

95. 6. The Grace Dollar, 149 Fed. 793.

10. Com. *v.* Bartlett, 190 Mass. 148, 76 N. E. 607.

11. The Neck, 138 Fed. 144; Com. *v.* Bartlett, 190 Mass. 148, 76 N. E. 607.

96. 1. **Judicial Notice.** — In the absence of evidence to the contrary the court will infer that the highest rate at the port of departure was not less than the usual rate at the port of destination. The Elihu Thompson, 139 Fed. 89.

97. 1. The Barbara Hernster, (C. C. A.) 146 Fed. 732.

98. 1. **A Clause Waiving Any Claim for Wages** while the vessel is detained by ice, prior to departure, has been sustained. The Joseph B. Thomas, 136 Fed. 693, *affirmed* (C. C. A.) 148 Fed. 762.

4. **Unlawful Payment Must Be Shown to Have Entered into Contract.** — The Bound Brook, 146 Fed. 163.

5. The August Belmont, 153 Fed. 639.

8. The Neck, 138 Fed. 144; The August Belmont, 153 Fed. 639.

102. 8. Sivewright *v.* Allen, (1906), 2 K. B. 81, 6 Ann. Cas. 65.

103. 5. **Absence Without Leave Precludes Recovery Where Incapacity from Illness Not Shown.** — The St. Louis, 137 Fed. 972.

105. 1. Palace Shipping Co. *v.* Caine, (1907) A. C. 386, 9 Ann. Cas. 526; Sibery *v.* Connelly, 96 L. T. N. S. 140.

4. **Seamen in Coastwise Vessels Not Entitled to Further Wages.** — The George B. Ferguson, 140 Fed. 955.

Allowance Made by Analogy Although Service Longer than Month. — Chaffyn *v.* Peabody, 149 Fed. 294.

No Recovery Allowed under Facts. — The August Belmont, 153 Fed. 639.

5. **Evidence Insufficient to Support Discharge as Justifiable.** — Caffyn *v.* Peabody, 149 Fed. 294.

Wages Antecedently Earned Not Forfeited and Are Recoverable. — The Sentinel, 152 Fed. 564.

Wrongful Discharge Question of Fact. — Boston *v.* Ocean Steamship Co., (Mass. 1908) 83 N. E. 1116.

7. **Consent Conditional upon Payment of Wages Not Paid No Defense to Action.** — Boston *v.* Ocean Steamship Co., (Mass. 1908) 83 N. E. 1116.

107. 5. The Amazon, 144 Fed. 153.

108. 12. The Grace Dollar, 149 Fed. 793.

111. 10. Turtle *v.* Northwestern Steamship Co., 154 Fed. 146.

112. 6. **A Whaling Vessel Is Liable** where the owner ships product without dividing lay. The Barbara Hernster, (C. C. A.) 146 Fed. 732.

114. 4. The Eva D. Rose, 151 Fed. 704.

6. The Gen. J. A. Dumont, 158 Fed. 312.

116. 1. **Priority over Mortgages under Indiana Statute.** — The Conveyor, 147 Fed. 586.

Seamen's Wages Have Priority over Collision Lien. — The C. J. Saxe, 145 Fed. 749.

Salvage Claims Precede Claims for Wages. — The Conveyor, 147 Fed. 586.

3. A mortgagee who takes possession and pays claims for wages is entitled to enforce the crew's lien therefor. The Pauline, 156 Fed. 815, *distinguishing* The Georgia, 46 Fed. 669.

117. 2. **An Agreement to Receive Wages from Insurance Is Effectuated** where the mortgagees agree to look to the sunken vessel for reimbursement. The Conveyor, 147 Fed. 586.

12. The Bound Brook, 146 Fed. 160; The August Belmont, 153 Fed. 639; The Baker, 157 Fed. 485.

118. 6. The Bound Brook, 146 Fed. 160.

Jurisdiction of Negligence Action Assumed as Not within Treaty. — The Baker, 157 Fed. 485.

7. The Neck, 138 Fed. 144, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 118.

119. 3. Boston *v.* Ocean Steamship Co., (Mass. 1908) 83 N. E. 1116.

5. Boston *v.* Ocean Steamship Co., (Mass. 1908) 83 N. E. 1116.

6. Boston *v.* Ocean Steamship Co., (Mass. 1908) 83 N. E. 1116.

9. The Elihu Thompson, 139 Fed. 89.

10. **Where Fair Question for Controversy, Statute Not Applicable.** — The Sadie C. Sumner, 142 Fed. 611; The Sentinel, 152 Fed. 564.

120. 1. Seamen in the coasting trade upon discharge and refusal of payment can commence suit immediately without proceeding under Rev. St. U. S., §§ 4546, 4547. The Elihu Thompson, 139 Fed. 89.

121. 1. The Marjory Brown, 134 Fed. 999.

Reduction of Mate's Wages for Neglect of Duty Denied Where Coastwise Voyage Completed. — The Sadie C. Sumner, 142 Fed. 611.

122. 6. Caffyn *v.* Peabody, 149 Fed. 294.

Release by Intoxicated Seaman Not Binding. — The Barbara Hernster, (C. C. A.) 146 Fed. 732.

7. The Marjory Brown, 134 Fed. 999.

8. **Settlement by an Illiterate,** without money, away from home and denied membership in the crew, held a question of fact. Boston *v.* Ocean Steamship Co., (Mass. 1908) 83 N. E. 1116.

9. **A Claim for Tort Is Not Released** by a written acknowledgment before a shipping commissioner of payment of wages, the tort arising from a violation of shipping articles. Turtle *v.* Nortwestern Steamship Co., 154 Fed. 146.

123. 4. **Damages Allowed for Deprivation of Food and Lodging.** — Pacific Mail Steamship Co. *v.* Iverson, (C. C. A.) 154 Fed. 450.

6. It has been held that a clause in the shipping articles waiving any claim for provisions while the vessel is detained by ice prior to departure is valid. The Joseph B. Thomas, 136 Fed. 693, *affirmed* (C. C. A.) 148 Fed. 762.

125. 11. The Amazon, 144 Fed. 153.

126. 8. The Henry B. Fiske, 141 Fed. 188; The Kenilworth, (C. C. A.) 144 Fed. 376, 7 Ann. Cas. 202.

Coastwise Vessel Not Exempt from Obligation. — The Mars, (C. C. A.) 149 Fed. 729.

127. 1. The Svealand, (C. C. A.) 136 Fed. 109, *affirming* 132 Fed. 932.

5. The Mars, (C. C. A.) 149 Fed. 729.

6. The Svealand, (C. C. A.) 136 Fed. 109, *affirming* 132 Fed. 932; The Chico, 140 Fed. 568; The Henry B. Fiske, 141 Fed. 188; The Mars, 145 Fed. 446.

128. 1. **Circumstances under Which Deviation Was Not Required.** — The Svealand, (C. C. A.) 136 Fed. 109, *affirming* 132 Fed. 932; The Kenilworth, 137 Fed. 1003; The Margharita, (C. C. A.) 140 Fed. 820; The Lyndhurst, 149 Fed. 900; The Cuzco, (C. C. A.) 154 Fed. 177, *reversing* 148 Fed. 914; The Drumelton, 158 Fed. 454.

3. The Mars, 138 Fed. 941, *continued* 145 Fed. 446, *affirmed* (C. C. A.) 149 Fed. 729.

Expense Allowed to Termination of Treatment by Physician. — The Henry B. Fiske, 141 Fed. 188.

Expenditures by Others Are Not Recoverable where made under no obligation for reimbursement and the cure is completed so far as ordinary medical means extend. The Kenilworth, (C. C. A.) 144 Fed. 376, 7 Ann. Cas. 202.

"Cure" Means Proper Care and Not Positive Cure. — The Mars, (C. C. A.) 149 Fed. 729.

4. The Kenilworth, 139 Fed. 59, *continuing* 137 Fed. 1003, *affirmed* (C. C. A.) 144 Fed. 376, 7 Ann. Cas. 202.

133. 1. Cunningham *v.* Frontier Steamship Co., (1906) 2 Ir. R. 12.

2. The Lowlands, 142 Fed. 888.

Breakage in Ordinary Use Without Adequate Inspection Raises Presumption of Negligence. — Recovery allowed although libelant guilty of contributory negligence. The Lyndhurst, 149 Fed. 900.

3. The Luckenbach, 144 Fed. 980; The Drumelton, 158 Fed. 454.

4. Smith *v.* Lehigh Valley R. Co., 141 Fed. 192, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 132, 133; The Mars, 138 Fed. 941; The Chico, 140 Fed. 568; The Margharita, (C. C. A.) 140 Fed. 820; The Henry B. Fiske, 141 Fed. 188; The Fulton, 143 Fed. 591.

5. **Mate and "Floatman" Fellow Servants.** — Smith *v.* Lehigh Valley R. Co., 141 Fed. 192, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 132, 133.

6. The Fulton, 143 Fed. 591.

Concurrent Negligence of Fellow Servant and Master Does Not Relieve Master from Liability. — The Luckenbach, 144 Fed. 980.

7. Woods *v.* Globe Nav. Co., 40 Wash. 376, 82 Pac. 401.

Recovery Sustained Where Defendant at Fault. — The Hamilton, (C. C. A.) 146 Fed. 724, *affirming* 139 Fed. 906.

10. **Collision Through Joint Negligence of Vessels — Recovery Sustained.** — The Hamilton, (C. C. A.) 146 Fed. 724, *affirming* 139 Fed. 906.

Collision with Unlawful Obstruction, Part of Vessel's Equipment. — The J. G. Lindauer, 158 Fed. 449.

134. 3. **Recovery Not Allowed.** — Johnson *v.* Holmes, 188 Mass. 170, 74 N. E. 364.

4. The Svealand, (C. C. A.) 136 Fed. 109, *affirming* 132 Fed. 932; The Cuzco, 148 Fed. 914, *reversed* on other grounds (C. C. A.) 154 Fed. 177.

Facts Insufficient to Support Recovery. — The Sarnia, (C. C. A.) 147 Fed. 106, *reversing* 137 Fed. 952.

8. **Recovery Allowed Although Libelant Guilty of Contributory Negligence.** — The Lyndhurst, 149 Fed. 900.

Libelant Entirely at Fault, No Recovery. — The Scandinavia, 156 Fed. 403.

135. 2. Boston *v.* Ocean Steamship Co., (Mass. 1908) 83 N. E. 1116.

4. **Receipt in Full and Settlement Bar to Action.** — The George B. Ferguson, 140 Fed. 955.

6. **Recovery Was Allowed for Hardships, Humiliation, Discomfort, and Bad Food** where the venture was one of extraordinary peril in carrying contraband of war and the master was guilty of deviation. Turtle *v.* Northwestern Steamship Co., 154 Fed. 146.

Recovery Not Allowed. — Johnson *v.* Holmes, 188 Mass. 170, 74 N. E. 364.

7. **Vessel Not Liable for Master's Failure to Protect Seaman from Assault by Officer.** — The Astral, 134 Fed. 1017, *citing* The Osceola, 189 U. S. 158, 23 U. S. Sup. Ct. 483, as *overruling* The Marion Chilcott, 95 Fed. 688, and The Lizzie Burrill, 115 Fed. 1015.

8. The Sallie Ion, 153 Fed. 659.

136. 1. **A Corporation Owner** is not liable in punitive damages where no consent or ratification is shown. Pacific Packing, etc., Co. *v.* Fielding, (C. C. A.) 136 Fed. 577.

6. **Recovery Was Allowed for Loss of Clothing** where, after confiscation of the vessel and shipment to the home port, seamen were allowed to go ashore at an infected port, were refused permission to return, and the loss was caused thereby. Pacific Mail Steamship Co. *v.* Iverson, (C. C. A.) 154 Fed. 450.

10. The Grace Dollar, 149 Fed. 793.

137. 7. The Neck, 138 Fed. 144.

138. 6. The Grace Dollar, 149 Fed. 793.

139. 7. **No Recovery by Foreign Nation of Amount of Bond Paid into Court on Default of Deserter.** — Tucker *v.* U. S., (C. C. A.) 157 Fed. 386.

140. 4. **Vessels in Coasting Trade within Act of December 21, 1898, 30 U. S. Stat. at L. 761, c. 28.** — See The Amazon, 144 Fed. 153.

7. **Massachusetts Statute.** — Com. *v.* Bartlett, 190 Mass. 148, 76 N. E. 607.

141. 11. **Under Treaty with France** (1853) and statutes applicable (Rev. St. U. S., §§ 4079–4081) an insubordinate seaman may be arrested by a marshal and confined not more than two months upon requisition of a French consul, an arrest by a police officer not being such an irregularity as to warrant discharge. Dallemagne *v.* Moisan, 197 U. S. 169, 25 U. S. Sup. Ct. 422.

SEARCHES AND SEIZURES.

145. 1. **An Act Requiring Books to Remain Open** so that they are accessible to the public is not unconstitutional. Parks *v.* Laurens Cotton Mills, 175 S. Car. 560, 56 S. E. 234.

4. Hammond Packing Co. *v.* State, 81 Ark. 519, 100 S. W. 407.

6. Imboden *v.* People, (Colo. 1907) 90 Pac. 608.

7. Hughes *v.* State, 2 Ga. App. 29, 58 S. E. 300.

A Subpœna Duces Tecum, requiring the production of books and papers, is not an unlawful seizure. *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

8. Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 145.

9. Pavesich *v.* New England L. Ins. Co., 122 Ga. 190, 50 S. E. 68, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 145.

146. 3. **A Statute Requiring the County Assessor to Inspect Books** for taxation purposes was held not unconstitutional. Washington Nat. Bank *v.* Daily, 166 Ind. 631, 77 N. E. 53.

4. North American Cold Storage Co. *v.* Chicago, 151 Fed. 120, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146; Mullen *v.* Mosley, 13 Idaho 457, 90 Pac. 986, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146; People *v.* Schneider, 139 Mich. 673, 103 N. W. 172; Beavers *v.* Goodwin, (Tex. Civ. App. 1905) 90 S. W. 930.

5. Mullen *v.* Mosley, 13 Idaho 457, 90 Pac. 986, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 146.

147. 1. Mullen *v.* Mosley, 13 Idaho 457, 90 Pac. 986.

8. **Seizure of Fish.** — Daniels *v.* Homer, 139 N Car. 219, 51 S. E. 992.

149. 5. Regan *v.* Harkey, (Tex. Civ. App. 1905) 87 S. W. 1164.

A Search by an Officer without a Warrant, compelling a person to strip naked, was held unauthorized. Hebrew *v.* Pulis, 73 N. J. L. 621, 64 Atl. 121.

6. Smith *v.* Jerome, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 22, 93 N. Y. Supp. 202.

9. **A Subpœna Duces Tecum** may by its terms be so unreasonable as to constitute an unconstitutional seizure of private papers. *In re* Hale, 139 Fed. 496.

150. 3. Moody *v.* McKinney, 73 S. Car. 438, 53 S. E. 543.

151. 1. Ton *v.* Stetson, 43 Wash. 471, 86 Pac. 668, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 151.

12. *Ex p.* Dupree, (Tex. 1907) 105 S. W. 493.

Statute Unconstitutional. — Beavers *v.* Goodwin, (Tex. Civ. App. 1905) 90 S. W. 930.

152. 1. **Nature of Action Under.** — White *v.* State, 80 Ark. 598, 98 S. W. 377; Meyers *v.* State, (Tex. Civ. App. 1907) 105 S. W. 48.

3. Osborne *v.* State, 77 Ark. 439, 92 S. W. 406; Agnew *v.* Haynes, (C. C. A.) 141 Fed. 631.

4. **Seizure of Liquors Owned by Municipality.** — State *v.* Intoxicating Liquors, etc., 101 Me. 161, 63 Atl. 666.

5. Jaro *v.* Holstein, 73 S. Car. 111, 52 S. E. 870.

12. **Warrant No Defense for Seizure under Invalid Statute.** — Beavers *v.* Goodwin, (Tex. Civ. App. 1905) 90 S. W. 930.

153. 13. State *v.* Intoxicating Liquors, etc., 101 Me. 161, 63 Atl. 666.

154. 1. **A Subpœna Duces Tecum** is not in conflict with the search and seizure clause of the constitution, provided it is reasonable in its requirements. Santa Fe Pac. R. Co. *v.* Davidson, 149 Fed. 603.

6. O'Neal *v.* Parker, 83 Ark. 133, 103 S. W. 165.

10. Lawrence *v.* State, 103 Md. 17, 63 Atl. 96, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 154; Imboden *v.* People, (Colo. 1907) 90 Pac. 608; Hammock *v.* State, 1 Ga. App. 126, 58 S. E. 66; Com. *v.* Tucker, 189 Mass. 457, 76 N. E. 127; State *v.* Fuller, 34 Mont. 12, 85 Pac. 369.

155. 2. Hammock *v.* State, 1 Ga. App. 126, 58 S. E. 66.

3. **Papers of a County Dispenser** were held not to be of a private nature. State *v.* Farnum, 73 S. Car. 165, 53 S. E. 83.

4. Osborne *v.* State, 77 Ark. 439, 92 S. W. 406.

SEASON, SEASONABLE, ETC.

155. 7. **Season — Boxing Turpentine Trees.** — Purdon Naval Stores Co. *v.* Knight, 129 Ga. 590, 59 S. E. 433.

SEAWORTHY.

160. 1. Corsar *v.* J. V. Spreckels, etc., Co., 141 Fed. 260, 72 C. C. A. 378.

SECONDARY EVIDENCE.

162. 1. A town clerk's record, certified to be a true copy from the original report of commissioners appointed to settle a question about the maintenance of a bridge, is secondary evidence. *In re* Webster, 106 N. Y. App. Div. 360, *affirmed* in 94 N. Y. Supp. 1050, 186 N. Y. 549, 79 N. E. 1118.

4. People *v.* Christian, 144 Mich. 247, 107 N. W. 919.

6. See Arbuckle *v.* Matthews, 73 Ark. 27, 83 S. W. 326; Franks *v.* Matson, 211 Ill. 338, 71 N. E. 1011.

9. *United States.* — Security Trust Co. *v.* Robb, (C. C. A.) 142 Fed. 78.

Arkansas. — Carpenter *v.* Dressler, 76 Ark. 400, 89 S. W. 89; Hope *v.* Shiver, (Ark. 1905) 90 S. W. 1003.

Georgia. — Bush *v.* W. A. McCarty Co., 127 Ga. 308, 56 S. E. 430; Allen *v.* Farmers', etc., Nat. Bank, 129 Ga. 748, 59 S. E. 813.

Illinois. — Baltimore, etc., R. Co. *v.* Brubaker, 217 Ill. 462, 75 N. E. 523; Glos *v.* Holberg, 220 Ill. 167, 77 N. E. 80; People *v.* Wiemers, 225 Ill. 17, 80 N. E. 45; Glos *v.* Wheeler, 229 Ill. 272, 82 N. E. 234; People *v.* Toledo, etc., R. Co., 231 Ill. 514, 83 N. E. 191.

Massachusetts. — Peaks *v.* Cobb, (Mass. 1906) 77 N. E. 881.

North Dakota. — Brynjolfson *v.* Dagner, 15 N. Dak. 332, 109 N. W. 320.

South Dakota. — Reeder *v.* Wilber, 18 S. Dak. 426, 100 N. W. 1099.

Texas. — Bryson *v.* Boyce, (Tex. Civ. App. 1906) 92 S. W. 820; Texas Cent. R. Co. *v.* Fowler, (Tex. Civ. App. 1907) 102 S. W. 738.

164. 1. *Alabama.* — Ryan *v.* Shaneyfelt, 146 Ala. 683, 40 So. 223.

Arkansas. — Arkansas Mut. F. Ins. Co. *v.* Woolverton, 82 Ark. 476, 102 S. W. 226.

California. — People *v.* Davidson, 2 Cal. App. 100, 83 Pac. 161; Luty *v.* Cresta, 4 Cal. App. 589, 88 Pac. 642.

Georgia. — Garmany *v.* Lawton, 124 Ga. 876, 53 S. E. 669; Patterson *v.* Drake, 126 Ga. 478, 55 S. E. 175.

Illinois. — North American Restaurant, etc., House *v.* McElligott, 227 Ill. 317, 81 N. E. 388; Meyer *v.* Purcell, 214 Ill. 62, 73 N. E. 392.

Indian Territory. — Choctaw R., etc., Co. *v.* McAlester, (Indian Ter. 1907) 104 S. W. 821.

Iowa. — Considine *v.* Dubuque, 126 Iowa 282, 102 N. W. 102.

Kansas. — Gulliford *v.* McQuillen, 75 Kan. 454, 89 Pac. 927.

Kentucky. — Interstate Invest. Co. *v.* Bailey, 93 S. W. 578, 29 Ky. L. Rep. 468; Smith *v.* Gowdy, 96 S. W. 566, 29 Ky. L. Rep. 832; Silva *v.* Newport, 104 S. W. 314, 31 Ky. L. Rep. 897; Fuller *v.* Keesee, 104 S. W. 700, 31 Ky. L. Rep. 1099.

Louisiana. — Moulierre *v.* Coco, 116 La. 845, 41 So. 113.

Mississippi. — McCaughn *v.* Young, 85 Miss. 277, 37 So. 839.

Missouri. — Graton *v.* Holliday-Klotz Land, etc., Co., 189 Mo. 322, 87 S. W. 37; Shultis *v.* Rice, 114 Mo. App. 274, 89 S. W. 357; Schaaf *v.* Peters, 111 Mo. App. 447, 90 S. W. 1037; Kries *v.* Holladay-Klotz Land, etc., Co., 121 Mo. App. 184, 98 S. W. 1086; Davis *v.* Montgomery, 205 Mo. 271, 103 S. W. 979.

Nebraska. — Williams *v.* Miles, 73 Neb. 193, 102 N. W. 482.

New York. — *In re* Webster, 106 N. Y. App. Div. 360, 94 N. Y. Supp. 1050, *affirmed* in 186 N. Y. 549, 79 N. E. 1118.

Oregon. — Manchester Assur. Co. *v.* Oregon R., etc., Co., 46 Oregon 162, 79 Pac. 60.

Pennsylvania. — Richardson *v.* Morris, 26 Pa. Super. Ct. 192.

South Dakota. — Nelson *v.* National Drill Mfg. Co., (S. Dak. 1905) 105 N. W. 630; Hallet *v.* Aggergaard, (S. Dak. 1908) 114 N. W. 696.

Tennessee. — Southern R. Co. *v.* Seymour, 113 Tenn. 523, 83 S. W. 674.

Texas. — Simmons *v.* Hewitt, (Tex. Civ. App. 1905) 87 S. W. 188; Garrett *v.* Spradling, (Tex. Civ. App. 1905) 88 S. W. 293; Western Union Tel. Co. *v.* Salter, (Tex. Civ. App. 1906) 95 S. W. 549; Williams *v.* Cessna, (Tex. Civ. App. 1906) 95 S. W. 1106; J. M. Guffey Petroleum Co. *v.* Hooks, (Tex. Civ. App. 1907) 106 S. W. 690; Frugia *v.* Trueheart, (Tex. Civ. App. 1908) 106 S. W. 736.

Vermont. — *In re* Rogers, 80 Vt. 259, 67 Atl. 726.

Wisconsin. — Bazelon *v.* Lyon, 128 Wis. 337, 107 N. W. 337; Dickinson *v.* Smith, (Wis. 1907) 114 N. W. 133.

165. 1. *Alabama.* — Marx *v.* Ely, (Ala. 1906) 41 So. 411; McEntyre *v.* Hairston, (Ala. 1907) 44 So. 417.

Arkansas. — Bagnell Tie, etc., Co. *v.* Goodrich, 82 Ark. 547, 102 S. W. 228; Crawford *v.* McDonald, 84 Ark. 415, 106 S. W. 206.

California. — King *v.* Samuel, (Cal. App. 1907) 93 Pac. 391.

Colorado. — Mortgage Trust Co. *v.* Elliott, 36 Colo. 238, 84 Pac. 980.

Georgia. — O'Neill Mfg. Co. *v.* Harris, 127 Ga. 640, 56 S. E. 739; Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69.

Illinois. — Tucker *v.* Duncan, 224 Ill. 453, 79 N. E. 613; McDonald *v.* Erbes, 231 Ill. 295, 83 N. E. 162.

New York. — Cullinan *v.* Hosmer, 100 N. Y. App. Div. 148, 91 N. Y. Supp. 607.

Texas. — Thompson *v.* Chaffee, (Tex. Civ. App. 1905) 89 S. W. 285; Cobb *v.* Bryan, (Tex. Civ. App. 1906) 97 S. W. 513; Taliaferro *v.* Rice, (Tex. Civ. App. 1907) 103 S. W. 464; Punchard *v.* Masterson, (Tex. Civ. App. 1907) 103 S. W. 826; Missouri, etc., R. Co. *v.* Morrison, (Tex. Civ. App. 1906) 94 S. W. 173; Smith *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 105 S. W. 528.

166. 1. Alabama Constr. Co. *v.* Meador, 143 Ala. 336, 39 So. 216; Butt *v.* Mastin, 143 Ala. 321, 39 So. 217; Owensboro Wagon Co. *v.* Hall, (Ala. 1907) 43 So. 71; Hogg *v.* Combs, 93 S. W. 670, 29 Ky. L. Rep. 559; McGill *v.* Fuller, 45 Wash. 615, 88 Pac. 1038.

2. Leesville Mfg. Co. *v.* Morgan Wood, etc., Works, 75 S. Car. 342, 55 S. E. 768.

3. Guilford Granite Co. *v.* Harrison Granite Co., 23 App. Cas. (D. C.) 1; Meyer *v.* Home Ins. Co., 127 Wis. 293, 106 N. W. 1087.

4. Saunders *v.* Tuscumbia Roofing, etc., Co., (Ala. 1906) 41 So. 982; Bower *v.* Cohen, 126 Ga. 35, 54 S. E. 918; Day *v.* State, (Tex. Crim. App. 1907) 101 S. W. 806.

5. Beard *v.* Southern R. Co., 143 N. Car. 137, 55 S. E. 505.

6. Mortgage Trust Co. *v.* Elliott, 36 Colo. 238, 84 Pac. 980.

167. 2. Alabama Constr. Co. *v.* Meador, 143 Ala. 336, 39 So. 216, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 167.

7. Bower *v.* Cohen, 126 Ga. 35, 54 S. E. 918; Prewitt *v.* Wilson, 128 Iowa 198, 103 N. W. 365; Leesville Mfg. Co. *v.* Morgan Wood, etc., Works, 75 S. Car. 342, 55 S. E. 768.

168. 3. Senterfeit *v.* Shealy, 71 S. Car. 259, 51 S. E. 142.

169. 3. Carter *v.* Wood, 103 Va. 68, 48 S. E. 553.

4. Cross *v.* Aby, (Fla. 1908) 45 So. 820.

5. *Arkansas.* — Chicago, etc., R. Co. *v.* Fitzhugh, 82 Ark. 179, 100 S. W. 1149.

Florida. — Norris *v.* Billingsley, 48 Fla. 102, 37 So. 564.

Georgia. — Sheffield *v.* Bainbridge Oil Co., 3 Ga. App. 200, 59 S. E. 725; Sims *v.* Scheussler, 2 Ga. App. 466, 58 S. E. 693.

Illinois. — Provident Sav. L. Assur. Soc. *v.* King, 216 Ill. 416, 75 N. E. 166; Baltimore, etc., R. Co. *v.* Brubaker, 217 Ill. 462, 75 N. E. 523; Hiss *v.* Hiss, 228 Ill. 414, 81 N. E. 1056; Dawes *v.* Dawes, 116 Ill. App. 36.

Iowa. — Stark *v.* Burke, 131 Iowa 684, 109 N. W. 206.

Kansas. White *v.* White, (Kan. 1908) 96 Pac. 1087.

Kentucky. — Mussellam *v.* Cincinnati, etc., R. Co., 104 S. W. 337, 31 Ky. L. Rep. 908.

Maryland. — Spring Garden Ins. Co. *v.* Whayland, 103 Md. 699, 64 Atl. 925; Dick *v.* Biddle, 105 Md. 308, 66 Atl. 21.

Minnesota. — Barnesville First Nat. Bank *v.* St. Anthony, etc., Elevator Co., (Minn. 1908) 114 N. W. 265.

Missouri. — Hoffman Heading, etc., Co. *v.* St. Louis, etc., R. Co., 119 Mo. App. 495, 94 S. W. 597.

New York. — Carr *v.* Prudential Ins. Co., 115 N. Y. App. Div. 755, 101 N. Y. Supp. 158.

South Carolina. — Thompson *v.* Piedmont Mut. Ins. Co., 77 S. Car. 294, 57 S. E. 848.

South Dakota. — Stephens *v.* Faus, (S. Dak. 1906) 106 N. W. 56.

Texas. — Sheldon Canal Co. *v.* Miller, (Tex. Civ. App. 1905) 90 S. W. 206; Bryson *v.* Boyce, (Tex. Civ. App. 1906) 92 S. W. 820; McGaughey *v.* American Nat. Bank, (Tex. Civ. App. 1906) 92 S. W. 1003; Higgins *v.* Matlock, (Tex. Civ. App. 1906) 95 S. W. 571; International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93.

Utah. — McCollum *v.* Southern Pac. Co., 31 Utah 494, 88 Pac. 663.

Washington. — Shine *v.* Culver, 42 Wash. 482, 85 Pac. 271.

West Virginia. — Loverin, etc., Co. *v.* Bumgarner, 59 W. Va. 46, 52 S. E. 1000.

Notice Excused Where No Opportunity to Give It. — Northern Alabama R. Co. *v.* Key, (Ala. 1907) 43 So. 794.

170. 1. Dick *v.* State, (Md. 1907) 68 Atl. 286.

171. 1. Hanson *v.* Lindstrom, 15 N. Dak. 584, 108 N. W. 798; Montgomery *v.* Seaboard Air Line R. Co., 73 S. Car. 503, 53 S. E. 987.

5. Hoyle *v.* Mann, 144 Ala. 516, 41 So. 835; McDonald *v.* Erbes, 231 Ill. 295, 83 N. E. 162, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 171; Wright *v.* Chicago, etc., R. Co., 118 Mo. 392, 94 S. W. 555.

172. 2. Interstate Invest. Co. *v.* Bailey, 93 S. W. 578, 29 Ky. L. Rep. 468; Pringey *v.* Guss, 16 Okla. 82, 86 Pac. 292; Bruger *v.* Princeton, etc., Mut. F. Ins. Co., 129 Wis. 281, 109 N. W. 65.

173. 3. *In re* McClellan, (S. Dak. 1906) 107 N. W. 681.

4. Cooley *v.* Collins, 186 Mass. 507, 71 N. E. 979.

5. State *v.* McKinnon, 99 Me. 166, 58 Atl. 1028, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 173.

174. 5. Bower *v.* Cohen, 126 Ga. 35, 54 S. E. 918; Patterson *v.* Drake, 126 Ga. 478, 55 S. E. 175.

SECTARIAN.

177. 2. **Sectarian School — Sectarian Book.** — See Hackett *v.* Brooksville Graded School Dist., 120 Ky. 608, 87 S. W. 792.

SEDUCTION.

190. 2. Greenman *v.* O'Riley, 144 Mich. 534, 108 N. W. 421.

191. 2. Breiner *v.* Nugent, (Iowa 1907) 111 N. W. 446.

196. 4. Welsund *v.* Schueller, 98 Minn. 475, 108 N. W. 483.

197. 3. Welsund *v.* Schueller, 98 Minn. 475, 108 N. W. 483.

4. Anderson *v.* Kirby, 125 Ga. 62, 54 S. E. 197; Sramek *v.* Sklenar, 73 Kan. 450, 85 Pac. 566. But see Wrynn *v.* Downey, 27 R. I. 454, 63 Atl. 401.

198. 1. Welsund *v.* Schueller, 98 Minn. 475, 108 N. W. 483.

4. Welsund *v.* Schueller, 98 Minn. 475, 108 N. W. 483.

5. Taylor *v.* Daniel, (Ky. 1907) 98 S. W. 986.

200. 3. Taylor *v.* Daniel, (Ky. 1907) 98 S. W. 986.

201. 6. Taylor *v.* Daniel, (Ky. 1907) 98 S. W. 986.

202. 2. Welsund *v.* Schueller, 98 Minn. 475, 108 N. W. 483.

206. 4. Greenman *v.* O'Riley, 144 Mich. 534, 108 N. W. 421.

207. 2. **Chastity Must Be Shown.** — Greenman *v.* O'Riley, 144 Mich. 534, 108 N. W. 421.

8. Breiner *v.* Nugent, (Iowa 1907) 111 N. W. 446.

212. 1. Breiner *v.* Nugent, (Iowa 1907) 111 N. W. 446.

6. See Greenman *v.* O'Riley, 144 Mich. 534, 108 N. W. 421.

214. 10. In Kesselring *v.* Hummer, 130 Iowa 145, 106 N. W. 501, the court regarded it as objectionable to allow a witness to testify that the plaintiff and defendant "acted like lovers," as calling for an opinion.

216. 1. State *v.* Brock, 186 Mo. 457, 85 S. W. 595.

227. 1. Cooper *v.* State, (Ark. 1908) 109 S. W. 1023.

228. 8. **Yielding to Gratify Desire.** — Weaver *v.* State, 142 Ala. 33, 39 So. 341.

229. 2. Cooper *v.* State, (Ark. 1908) 109 S. W. 1023; State *v.* Slattery, (N. J. 1907) 65 Atl. 866.

230. 2. In Nolan *v.* State, 48 Tex. Crim. 436, 88 S. W. 242, the court of appeal, in reviewing the charge of the trial judge, approved the same where the trial judge charged that if the jury believed beyond a reasonable doubt that the prosecutrix was moved to participate in the act of sexual intercourse complained of through fear or lust or both, as well as by the promise of marriage, the defendant must be acquitted.

3. State *v.* Slattery, (N. J. 1907) 65 Atl. 866.

8. Hill *v.* State, 122 Ga. 166, 50 S. E. 57.

231. 1. Neary *v.* People, 115 Ill. App. 157; Russell *v.* State, (Neb. 1906) 110 N. W. 380.

8. State *v.* Sortviet, 100 Minn. 12, 110 N. W. 100.

232. 2. Cooper *v.* State, (Ark. 1908) 109 S. W. 1023; Kerr *v.* U. S., (Indian Ter. 1907) 104 S. W. 809; State *v.* Whitley, 141 N. Car. 823, 53 S. E. 820; Washington *v.* State, 124 Ga. 423, 52 S. E. 910.

233. 5. State *v.* Whitley, 141 N. Car. 823, 53 S. E. 820.

6. State *v.* Whitley, 141 N. Car. 823, 53 S. E. 820.

234. 2. Washington *v.* State, 124 Ga. 423,

52 S. E. 910; State *v.* Whitley, 141 N. Car. 823, 53 S. E. 820.

Whether There Has Been Reformation is for the jury to decide, where unchastity has been shown. State *v.* Bennett, (Iowa 1907) 110 N. W. 150.

3. *Ex p.* Vandivcer, 4 Cal. App. 650, 88 Pac. 993.

5. State *v.* Fogg, 206 Mo. 696, 105 S. W. 618; Russell *v.* State, (Neb. 1906) 110 N. W. 380.

236. 4. **Eighteen Years.** — State *v.* Slattery, (N. J. 1908) 65 Atl. 866.

5. See State *v.* Brock, 186 Mo. 457, 85 S. W. 595.

11. **The Death of the Prosecutrix's Mother,** in a case where the defendant was on trial for the crime of seduction, was held to be a relevant and competent fact to show to what extent the prosecutrix was protected by home influences and surroundings. Pike *v.* State, 121 Ga. 604, 49 S. E. 680.

237. 8. Woolley *v.* State, (Tex. Crim. 1906) 96 S. W. 27.

Evidence of When Child Was Born. — The time when the birth of the child occurred is a relevant and competent inquiry in a criminal prosecution for seduction. Whatley *v.* State, 144 Ala. 68, 39 So. 1014.

238. 1. Pike *v.* State, 121 Ga. 604, 49 S. E. 680.

2. Woolley *v.* State, (Tex. Crim. 1906) 96 S. W. 27.

11. See Austin *v.* Barker, 110 N. Y. App. Div. 510, 96 N. Y. Supp. 814.

239. 3. Washington *v.* State, 124 Ga. 423, 52 S. E. 910. See also State *v.* Hummer, 128 Iowa 505, 104 N. W. 722.

4. Rucker *v.* State, 77 Ark. 23, 90 S. W. 151.

6. Lasater *v.* State, 77 Ark. 468, 94 S. W. 59, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 239; Whatley *v.* State, 144 Ala. 68, 39 So. 1014; State *v.* Drake, 128 Iowa 539, 105 N. W. 54.

Where the Circumstantial Evidence consists of acts and statements of the prosecutrix alone, the promise of marriage should be shown by direct evidence before the circumstantial evidence is admitted. State *v.* Sortviet, 100 Minn. 12, 110 N. W. 100.

In Faulkner *v.* State, (Tex. Crim. 1908) 109 S. W. 199, it was regarded as proper to ask the prosecutrix concerning the conduct of the defendant towards her and whether such conduct indicated that of the "true lover."

8. See Whatley *v.* State, 144 Ala. 68, 39 So. 1014; Weaver *v.* State, 142 Ala. 33, 39 So. 341.

9. State *v.* Raynor, 145 N. Car. 472, 59 S. E. 344.

10. **Promises Made after the Seduction.** — Whatley *v.* State, 144 Ala. 68, 39 So. 1014; State *v.* Ring, 142 N. Car. 596, 55 S. E. 194.

240. 2. **Marriage to Another Woman.** — Whatley *v.* State, 144 Ala. 68, 39 So. 1014.

5. Weaver *v.* State, 142 Ala. 33, 39 So. 341; Willhite *v.* State, 84 Ark. 67, 104 S. W. 531; Coper *v.* State, (Ark. 1908) 109 S. W. 1023; Washington *v.* State, 124 Ga. 423, 52 S. E. 910; State *v.* Drake, 128 Iowa 539, 105 N. W. 54.

6. Cooper *v.* State, (Ark. 1908) 109 S. W. 1023; Tedford *v.* U. S., (Indian Ter. 1907) 104 S. W. 608; Kerr *v.* U. S., (Indian Ter. 1907) 104 S. W. 809. See also Willhite *v.* State, 84 Ark. 67, 104 S. W. 531.

7. *Contra,* Kerr *v.* U. S., (Indian Ter. 1907) 104 S. W. 809.

241. 1. State *v.* Bennett, (Iowa 1907) 110 N. W. 150.

In Cooper *v.* State, (Ark. 1908) 109 S. W. 1023, the court approved a charge which stated that if it were shown that a woman had lapsed from "personal chastity," her reformation must be indicated by the fact that she has lived a chaste life for such a time as would warrant the jury in believing that she was chaste at the time of seduction.

2. *Contra,* Knight *v.* State, 147 Ala. 93, 41 So. 850.

3. **Conduct Subsequent to Seduction.** — Nolan *v.* State, 48 Tex. Crim. 436, 88 S. W. 242; Willhite *v.* State, 84 Ark. 67, 104 S. W. 531.

12. Knight *v.* State, 147 Ala. 93, 41 So. 850. But see State *v.* Hummer, 128 Iowa 505, 104 N. W. 722.

13. State *v.* Hummer, 128 Iowa 505, 104 N. W. 722.

242. 2. *Contra,* Tedford *v.* U. S., (Indian Ter. 1907) 104 S. W. 608.

3. State *v.* Dolan, 132 Iowa 196, 109 N. W. 609. But see State *v.* Slattery, (N. J. 1908) 65 Atl. 866.

243. 4. State *v.* Waterman, 75 Kan. 253, 88 Pac. 1074.

6. Whatley *v.* State, 144 Ala. 14, 39 So. 1014.

9. Washington *v.* State, 124 Ga. 423, 52 S. E. 910, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 243.

244. 1. Cooper *v.* State, (Ark. 1908) 109 S. W. 1023; Russell *v.* State, (Neb. 1906) 110 N. W. 380; State *v.* Fogg, 206 Mo. 696, 105 S. W. 618.

Letters Written by the Accused to the Prosecutrix do not furnish the corroboration necessary under the statute. Carrens *v.* State, 77 Ark. 16, 91 S. W. 30.

5. Russell *v.* State, (Neb. 1906) 110 N. W. 380; State *v.* Slattery, (N. J. 1908) 65 Atl. 866; Washington *v.* State, 124 Ga. 423, 52 S. E. 910.

245. 1. Burnett *v.* State, 76 Ark. 295, 88 S. W. 956.

2. Burnett *v.* State, 76 Ark. 295, 88 S. D. 956; Rucker *v.* State, 77 Ark. 23, 90 S. W. 151; Carrens *v.* State, 77 Ark. 16, 91 S. W. 30; Willhite *v.* State, 84 Ark. 67, 104 S. W. 531; Russell *v.* State, (Neb. 1906) 110 N. W. 380; Woolley *v.* State, (Tex. Crim. 1906) 96 S. W. 27.

4. Burnett *v.* State, 76 Ark. 295, 88 S. W. 956; Rucker *v.* State, 77 Ark. 23, 90 S. W. 151; Willhite *v.* State, 84 Ark. 67, 104 S. W. 531; State *v.* Waterman, 75 Kan. 253, 88 Pac. 1074; State *v.* Fogg, 206 Mo. 696, 105 S. W. 618; Russell *v.* State, (Neb. 1906) 110 N. W. 380; Woolley *v.* State, (Tex. Crim. 1906) 96 S. W. 27.

8. State *v.* Dolan, 132 Iowa 196, 109 N. W. 609; State *v.* Nugent, (Iowa 1907) 111 N. W. 927.

246. 1. *Contra,* Howe *v.* State, (Tex. Crim. 1907) 102 S. W. 409.

2. State *v.* Dolan, 132 Iowa 196, 109 N. W. 609.

5. *Contra*, State *v.* Nugent, (Iowa 1907) 111 N. W. 927.

6. Lasater *v.* State, 77 Ark. 468, 94 S. W. 59.

7. Lasater *v.* State, 77 Ark. 468, 94 S. W. 59; State *v.* Waterman, 75 Kan. 253, 88 Pac. 1074.

8. Lasater *v.* State, 77 Ark. 468, 94 S. W. 59.

In State *v.* Fogg, 206 Mo. 696, 105 S. W. 618, the court said that the rule regarding the exhibition of the infant did not extend to prohibiting the mother from having the child in court on the day of trial.

10. *Contra*, State *v.* Fogg, 206 Mo. 696, 105 S. W. 618.

11. Weaver *v.* State, 142 Ala. 33, 39 So. 341.

12. Weaver *v.* State, 142 Ala. 33, 39 So. 341; Kerr *v.* U. S., (Indian Ter. 1907) 104 S. W. 809; State *v.* Kincaid, 142 N. Car. 657, 55 S. E. 647; Rex *v.* Daun, 12 Ont. L. Rep. 227.

247. 4. Tedford *v.* U. S., (Indian Ter. 1907) 104 S. W. 608.

6. State *v.* Waterman, 75 Kan. 253, 88 Pac. 1074.

7. Rucker *v.* State, 77 Ark. 23, 90 S. W. 151.

248. 7. Elege *v.* State, (Tex. Crim. 1906) 96 S. W. 39.

New Jersey Statute. — State *v.* Slattery, (N. J. 1908) 65 Atl. 866.

The Arkansas Statute. — Carrens *v.* State, 77 Ark. 16, 91 S. W. 30; Lasater *v.* State, 77 Ark. 468, 94 S. W. 59.

Texas Statute Held Unconstitutional. — Waldon *v.* State, (Tex. Crim. 1906) 98 S. W. 848.

249. 4. **Arkansas Statute.** — Burnett *v.* State, 76 Ark. 295, 88 S. W. 956. But see Carrens *v.* State, 77 Ark. 16, 91 S. W. 30.

7. Williams *v.* State, (Miss. 1908) 45 So. 146, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 249; Carrens *v.* State, 77 Ark. 16, 91 S. W. 30; Lasater *v.* State, 77 Ark. 468, 94 S. W. 59.

The Texas Statute provides that the offer of marriage must be made to the woman who is injured by the act of seduction. Nolan *v.* State, 48 Tex. Crim. 436, 88 S. W. 242.

8. Com. *v.* Akers, (Ky. 1905) 88 S. W. 1108.

251. 6. **Where the Defilement Is of a Pupil by Her Teacher,** it is immaterial, under the *Missouri* statute, that the act took place after the closing of school for the day or that the pupil's mother had knowledge thereof. State *v.* Oakes, 202 Mo. 86, 100 S. W. 434.

SELF-DEFENSE.

258. 2. *Alabama.* — Ledbetter *v.* State, (Ala. 1905) 39 So. 618; Neilson *v.* State, 146 Ala. 683, 40 So. 221.

Arkansas. — Clingan *v.* State, 77 Ark. 141, 91 S. W. 12; Dempsey *v.* State, 83 Ark. 81, 102 S. W. 704.

Georgia. — Long *v.* State, 127 Ga. 350, 56 S. E. 444.

Illinois. — Flynn *v.* People, 222 Ill. 303, 78 N. E. 617.

Kentucky. — Ellis *v.* Com., 98 S. W. 278, 30 Ky. L. Rep. 348.

Louisiana. — State *v.* Lejeune, 116 La. 193, 40 So. 632.

Missouri. — State *v.* McCarver, 194 Mo. 717, 92 S. W. 684.

Nebraska. — Turley *v.* State, 74 Neb. 471, 104 N. W. 934.

North Carolina. — State *v.* Lilliston, 141 N. Car. 857, 54 S. E. 427.

South Carolina. — State *v.* Miller, 73 S. Car. 277, 53 S. E. 426.

Tennessee. — Frazier *v.* State, 117 Tenn. 430, 100 S. W. 94.

Texas. — Willis *v.* State, 49 Tex. Crim. 139, 90 S. W. 1100.; Fisher *v.* State, (Tex. Crim. 1906) 98 S. W. 852.

West Virginia. — State *v.* Hood, (W. Va. 1907) 59 S. E. 971.

Previously Formed Design. — Herring *v.* State, 87 Miss. 628, 40 So. 230; Prescott *v.* State, (Tex. Crim. 1907) 101 S. W. 215.

261. 1. *United States.* — Ball *v.* U. S., 147 Fed. 32, 78 C. C. A. 126.

Alabama. — Green *v.* State, 143 Ala. 2, 39 So. 362; Snyder *v.* State, 145 Ala. 33, 40 So. 978; Allen *v.* State, 146 Ala. 61, 42 So. 1006.

Arkansas. — Burton *v.* State, (Ark. 1907) 106 S. W. 942.

California. — People *v.* Feld, 149 Cal. 464, 86 Pac. 1100.

Georgia. — Lee *v.* State, 2 Ga. App. 481, 58 S. E. 676; Dotson *v.* State, 129 Ga. 727, 59 S. E. 774.

Illinois. — Kipley *v.* People, 215 Ill. 358, 74 N. E. 379; Morello *v.* People, 226 Ill. 388, 80 N. E. 903.

Indiana. — Eby *v.* State, 165 Ind. 112, 74 N. E. 890.

Kansas. — State *v.* Buffington, 71 Kan. 804, 81 Pac. 465.

Kentucky. — Brandenburgh *v.* Com., 91 S. W. 269, 28 Ky. L. Rep. 1050; Austin *v.* Com., 91 S. W. 267, 28 Ky. L. Rep. 1087; Ward *v.* Com., 91 S. W. 700, 29 Ky. L. Rep. 62; Stout *v.* Com., 94 S. W. 15, 29 Ky. L. Rep. 627; Dossenbach *v.* Com., 99 S. W. 626, 30 Ky. L. Rep. 749; Cleveland *v.* Com., 101 S. W. 931, 31 Ky. L. Rep. 115; Newton *v.* Com., 102 S. W. 264, 31 Ky. L. Rep. 327.

Michigan. — People *v.* Tubbs, 147 Mich. 1, 110 N. W. 132.

Missouri. — State *v.* Gordon, 191 Mo. 114, 89 S. W. 1025; State *v.* Darling, 202 Mo. 150, 100 S. W. 631.

New Jersey. — State *v.* Mount, 43 N. J. L. 582, 64 Atl. 124.

Ohio. — Wray *v.* State, 27 Ohio Cir. Ct. 1.

South Carolina. — State *v.* Williams, 76 S. Car. 135, 56 S. E. 783.

South Dakota. — State *v.* Lepine, (S. Dak. 1907) 113 N. W. 1076.

Texas. — Cooper *v.* State, 49 Tex. Crim. 28, 89 S. W. 1068; Goodman *v.* State, 49 Tex. Crim. 185, 91 S. W. 795; McMichael *v.* State, 49 Tex. Crim. 422, 93 S. W. 723; Watson *v.* State, (Tex. Crim. 1906) 95 S. W. 115; McKinney *v.* State, (Tex. Crim. 1906) 95 S. W. 504; Jones *v.* State, (Tex. Crim. 1906) 95 S. W. 1044; Newcomb *v.* State, 49 Tex. Crim. 550, 95 S. W. 1048; Pinson *v.* State, (Tex. Crim. 1906) 96 S. W. 23; Moore *v.* State, 49 Tex. Crim. 499, 96 S. W. 321; Mitchell *v.* State, (Tex. Crim. 1906) 96 S. W. 929; Ham *v.* State, (Tex. Crim. 1906) 98 S. W. 875; Fizini *v.* State, (Tex. Crim. 1906) 100 S. W. 394.

Appearance of Danger to Be Viewed from Slayer's Standpoint. — State *v.* Smith, 115 La. 801, 40 So. 171; People *v.* Wright, 144 Mich.

586, 108 N. W. 92; Johnson *v.* State, (Miss. 1906) 42 So. 166; Scott *v.* State, (Miss. 1906) 42 So. 184; State *v.* Hazlett, (N. Dak. 1907) 113 N. W. 374; Simpson *v.* State, 48 Tex. Crim. 328, 87 S. W. 826; Brownlee *v.* State, 48 Tex. Crim. 408, 87 S. W. 1153.

That "Circumstances Are Apparently Dangerous to a Reasonable Man" does not justify a person shooting in self-defense. Dawson *v.* State, (Ala. 1906) 41 So. 803.

262. 2. Smith *v.* State, 145 Ala. 17, 40 So. 957; Creagh *v.* State, (Ala. 1907) 43 So. 112; Weaver *v.* State, 83 Ark. 119, 102 S. W. 713; Tolbirt *v.* State, 124 Ga. 767, 53 S. E. 327; Green *v.* U. S., (Indian Ter. 1907) 104 S. W. 1159; Stuart *v.* Com., (Ky. 1907) 105 S. W. 170; People *v.* Regan, 107 N. Y. App. Div. 608, 94 N. Y. Supp. 841.

3. Nelson *v.* State, (Ala. 1907) 43 So. 18; Fleming *v.* State, (Ala. 1907) 43 So. 219; Kirby *v.* State, (Ala. 1907) 44 So. 38; Parker *v.* State, (Ala. 1907) 45 So. 248; Regan *v.* State, 87 Miss. 422, 39 So. 1002.

5. Danford *v.* State, 53 Fla. 4, 43 So. 593; Campbell *v.* State, 125 Ga. 752, 54 S. E. 666; State *v.* Beckner, 194 Mo. 281, 91 S. W. 892; State *v.* Blevins, 138 N. Car. 668, 50 S. E. 763.

Reasonableness of Slayer's Apprehension a Question for Jury. — State *v.* Gordon, 191 Mo. 114, 89 S. W. 1025.

263. 1. Bluett *v.* State, (Ala. 1907) 44 So. 84; Hoard *v.* State, 80 Ark. 87, 95 S. W. 1002, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 263; People *v.* Gallaner, 3 Cal. App. 431, 86 Pac. 814; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; Roseboro *v.* State, 127 Ga. 826, 56 S. E. 991; Kipley *v.* People, 215 Ill. 358, 74 N. E. 379; Bleich *v.* People, 227 Ill. 80, 81 N. E. 36; Robinson *v.* Territory, 16 Okla. 241, 85 Pac. 451; Com. *v.* Johnson, 213 Pa. St. 432, 62 Atl. 1064; State *v.* Houk, 34 Mont. 418, 87 Pac. 175; Lucas *v.* State, (Neb. 1907) 111 N. W. 145; Turner *v.* Territory, 15 Okla. 557, 82 Pac. 650.

2. Hoard *v.* State, 80 Ark. 87, 95 S. W. 1002, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 263; Holland *v.* State, (Ga. App. 1908) 60 S. E. 205; State *v.* Usher, (Iowa 1907) 111 N. W. 811.

5. Fuller *v.* State, (Tex. Crim 1906) 95 S. W. 1039.

264. 1. Green *v.* State, (Ala. 1907) 44 So. 194; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227; State *v.* Cephus, (Del. 1906) 67 Atl. 150; Carroll *v.* Com., 92 S. W. 308, 29 Ky. L. Rep. 33; Turley *v.* State, 74 Neb. 471, 104 N. W. 934; Coleman *v.* State, 49 Tex. Crim. 82, 90 S. W. 499; Newcomb *v.* State, 49 Tex. Crim. 550, 95 S. W. 1048.

2. George *v.* State, 145 Ala. 41, 40 So. 961; Grant *v.* U. S., 28 App. Cas. (D. C.) 169; State *v.* Ross, 75 S. Car. 533, 55 S. E. 977.

3. Taylor *v.* State, 89 Miss. 671, 42 So. 608; State *v.* Ross, 75 S. Car. 533, 55 S. E. 977, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 264.

4. Helton *v.* Com., 87 S. W. 1073, 27 Ky. L. Rep. 1163; Ivory *v.* State, 48 Tex. Crim. 279, 87 S. W. 699.

6. Pryer *v.* State, 128 Ga. 28, 57 S. E. 93.

7. Gregory *v.* State, 148 Ala. 566, 42 So. 829.

In Texas. — Fielding *v.* State, 48 Tex. Crim. 334, 87 S. W. 1044; Pratt *v.* State, (Tex. Crim. 1906) 96 S. W. 8; Mitchell *v.* State, (Tex. Crim. 1906) 96 S. W. 43.

266. 1. Clay *v.* State, 124 Ga. 795, 53 S. E. 179; Thomas *v.* State, 49 Tex. Crim. 633, 95 S. W. 1069.

4. Smith *v.* State, (Tex. Crim. 1906) 99 S. W. 100.

5. Raines *v.* State, 147 Ala. 691, 40 So. 932; George *v.* State, 145 Ala. 41, 40 So. 961; Patterson *v.* State, 146 Ala. 39, 41 So. 157; Morris *v.* State, 146 Ala. 66, 41 So. 274; Degg *v.* State, (Ala. 1907) 43 So. 484; Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166; State *v.* Whitnah, 129 Iowa 211, 105 N. W. 432, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 266; Wheeler *v.* Com., 120 Ky. 697, 87 S. W. 1106; Reese *v.* State, 49 Tex. Crim. 242, 91 S. W. 583.

6. *Alabama.* — Green *v.* State, 143 Ala. 2, 39 So. 362; Gray *v.* State, (Ala. 1905) 39 So. 621; Harrison *v.* State, 144 Ala. 20, 40 So. 568; Kennedy *v.* State, 147 Ala. 687, 40 So. 658; Tribble *v.* State, 145 Ala. 23, 40 So. 938; Smith *v.* State, 145 Ala. 17, 40 So. 957; Outler *v.* State, 147 Ala. 39, 41 So. 460; Rose *v.* State, 144 Ala. 114, 42 So. 21; Laws *v.* State, 144 Ala. 118, 42 So. 40; Jacobs *v.* State, 146 Ala. 103, 42 So. 70; Wright *v.* State, (Ala. 1907) 42 So. 745; Fleming *v.* State, (Ala. 1907) 43 So. 219; Bluett *v.* State, (Ala. 1907) 44 So. 84; McEwen *v.* State, (Ala. 1907) 44 So. 619.

Florida. — Marlow *v.* State, 49 Fla. 7, 38 So. 653; King *v.* State, (Fla. 1907) 44 So. 941.

Georgia. — Riley *v.* State, (Ga. App. 1908) 60 S. E. 274.

Iowa. — State *v.* Seery, 129 Iowa 259, 105 N. W. 511.

Kentucky. — Brandenburgh *v.* Com., 91 S. W. 269, 28 Ky. L. Rep. 1050; Crowe *v.* Com., 91 S. W. 663, 29 Ky. L. Rep. 12; Miller *v.* Com., 91 S. W. 710, 28 Ky. L. Rep. 1372.

Louisiana. — State *v.* Short, (La. 1907) 45 So. 98.

Mississippi. — Shields *v.* State, 87 Miss. 429, 39 So. 1010.

Missouri. — State *v.* Feeley, 194 Mo. 300, 92 S. W. 663; State *v.* Elsey, 201 Mo. 561, 100 S. W. 11; State *v.* Kelleher, 201 Mo. 614, 100 S. W. 470.

Nebraska. — Von Haller *v.* State, (Neb. 1906) 107 N. W. 233.

New Mexico. — Territory *v.* Price, (N. Mex. 1907) 91 Pac. 733.

North Carolina. — State *v.* Garland, 138 N. Car. 675, 50 S. E. 853.

South Carolina. — State *v.* Dean, 72 S. Car. 74, 51 S. E. 524.

Texas. — Laws *v.* State, (Tex. Crim. 1907) 101 S. W. 987.

268. 1. State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227.

2. State *v.* Taylor, 57 W. Va. 228, 50 S. E. 247, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 268.

3. State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; Sams *v.* State, 124 Ga. 25, 52 S. E. 18.

4. State *v.* Gordon, 191 Mo. 114, 89 S. W. 1025; State *v.* Rowell, 75 S. Car. 494, 56 S. E. 23.

269. 1. Stallworth *v.* State, 146 Ala. 8, 41

So. 184. See also Coleman *v.* State, 49 Tex. Crim. 355, 91 S. W. 783.

4. Carnes *v.* Com., (Ky. 1905) 87 S. W. 1123; Mathison *v.* State, 87 Mass. 739, 40 So. 801; Goodman *v.* State, 49 Tex. Crim. 185, 91 S. W. [illegible].

6. Garza *v.* State, 48 Tex. Crim. 382, 88 S. W. 231; Keith *v.* State, (Tex. Crim. 1906) 94 S. W. 1044.

8. Smith *v.* State, 48 Tex. Crim. 203, 87 S. W. 151; Barstado *v.* State, 48 Tex. Crim. 255, 87 S. W. 344; Carr *v.* State, 48 Tex. Crim. 287, 87 S. W. 346; Garza *v.* State, 48 Tex. Crim. 382, 88 S. W. 231; Pedro *v.* State, 48 Tex. Crim. 406, 88 S. W. 233; Crow *v.* State, 48 Tex. Crim. 419, 88 S. W. 814; Franks *v.* State, 47 Tex. Crim. 638, 88 S. W. 923; Reese *v.* State, 49 Tex. Crim. 242, 91 S. W. 583; Leito *v.* State, 49 Tex. Crim. 309, 92 S. W. 418; Sanders *v.* State, (Tex. Crim. 1906) 97 S. W. 1046; Kannmacher *v.* State, (Tex. Crim. 1907) 101 S. W. 238; Smart *v.* State, (Tex. Crim. 1907) 101 S. W. 989; Clark *v.* State, (Tex. Crim. 1907) 102 S. W. 1136; Harris *v.* State, (Tex. Crim. 1907) 105 S. W. 801.

270. 1. Craiger *v.* State, 48 Tex. Civ. 500, 88 S. W. 208; Maroney *v.* State, (Tex. Crim. 1906) 95 S. W. 108; State *v.* Bailey, 190 Mo. 257, 88 S. W. 733; State *v.* Zorn, 202 Mo. 12, 100 S. W. 591; Parnell *v.* State, (Tex. Crim. 1906) 98 S. W. 269; Bice *v.* State, (Tex. Crim. 1907) 100 S. W. 949.

2. Collock *v.* State, (Ala. 1906) 41 So. 727; Velvin *v.* State, 77 Ark. 97, 90 S. W. 851; Puryear *v.* State, (Tex. Crim. 1906) 98 S. W. 258.

271. 1. **Abandonment Need Not Have Been in Good Faith** to entitle the accused to the right of self defense. Renow *v.* State, 49 Tex. Crim. 281, 92 S. W. 801.

2. State *v.* Shockley, 29 Utah 25, 80 Pac. 865, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 271.

4. Stuart *v.* Com., (Ky. 1907) 105 S. W. 170.

272. 1. *Alabama.* — Bardin *v.* State, 143 Ala. 74, 38 So. 833; Dunn *v.* State, 143 Ala. 67, 39 So. 147; McCurley *v.* State, (Ala. 1905) 39 So. 1022; Hanners *v.* State, 147 Ala. 27, 41 So. 973; Wright *v.* State, (Ala. 1907) 42 So. 745; Fleming *v.* State, (Ala. 1907) 43 So. 219.

Delaware. — State *v.* Harmon, 4 Penn. (Del.) 580, 60 Atl. 866; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Honey, (Del. 1906) 65 Atl. 764; State *v.* Cephus, (Del. 1906) 67 Atl. 150.

New York. — People *v.* Mallon, 116 N. Y. App. Div. 425, 101 N. Y. Supp. 814.

North Carolina. — State *v.* Blevins, 138 N. Car. 668, 50 S. E. 763.

South Carolina. — State *v.* Rowell, 75 S. Car. 494, 56 S. E. 23.

2. Muldrow *v.* State, 81 Ark. 609, 99 S. W. 383; Crofton *v.* State, 84 Ark. 623, 106 S. W. 671; People *v.* Maughs, 149 Cal. 253, 86 Pac. 187; Austin *v.* Com., 91 S. W. 267, 28 Ky. L. Rep. 1087; State *v.* Gardner, 96 Minn. 318, 104 N. W. 971, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 272; State *v.* Gordon, 191 Mo. 114, 89 S. W. 1025; Cooper *v.* State, 49 Tex. Crim. 28, 89 S. W. 1068; Brown *v.* State, (Tex. Crim. 1906) 95 S. W. 126; Thomas *v.* State, 49 Tex. Crim. 633, 95 S. W. 1069.

273. 3. Bluett *v.* State, (Ala. 1907) 44 So. 84; Tribble *v.* State, 145 Ala. 23, 40 So. 938; George *v.* State, 145 Ala. 41, 40 So. 961; Patterson *v.* State, 146 Ala. 39, 41 So. 157; Hill *v.* State, 146 Ala. 51, 41 So. 621; Glass *v.* State, 147 Ala. 50, 41 So. 727.

Question One for Jury. — Jackson *v.* State, 147 Ala. 699, 41 So. 178.

5. Jacobs *v.* State, 146 Ala. 103, 42 So. 70; State *v.* Touri, 101 Minn. 370, 112 N. W. 422; Delaney *v.* State, 14 Wyo. 1, 81 Pac. 792.

6. Danford *v.* State, 53 Fla. 4, 43 So. 593; State *v.* Bennett, 128 Iowa 713, 105 N. W. 324. *Compare* State *v.* Rochester, 72 S. Car. 194, 51 S. E. 685.

274. 1. Dickey *v.* State, (Tex. Crim. 1906) 98 S. W. 269.

2. State *v.* Wilson, 5 Penn. (Del.) 77, 62 Atl. 227.

3. Mabry *v.* State, 80 Ark. 345, 97 S. W. 285; Greenwell *v.* Com., 100 S. W. 852, 30 Ky. L. Rep. 1282; Garza *v.* State, 48 Tex. Crim. 382, 88 S. W. 231.

4. McQueen *v.* Com., 88 S. W. 1047, 28 Ky. L. Rep. 20; State *v.* Hennessy, (Nev. 1907) 90 Pac. 221; Martinez *v.* State, (Tex. Crim. 1905) 88 S. W. 234; Woodrich *v.* State, (Tex. Crim. 1905) 90 S. W. 882; Adams *v.* State, 48 Tex. Crim. 452, 93 S. W. 116; State *v.* Cook, 78 S. Car. 253, 59 S. E. 862; Dobbs *v.* State, (Tex. Crim. 1907) 100 S. W. 946.

275. 3. Parnell *v.* State, (Tex. Crim. 1906) 98 S. W. 269; Morris *v.* State, (Tex. Crim. 1906) 98 S. W. 873; Dobbs *v.* State, (Tex. Crim. 1907) 100 S. W. 946.

5. Warnick *v.* State, (Ga. App. 1908) 60 S. E. 288; McIntosh *v.* Com., 96 S. W. 917, 29 Ky. L. Rep. 1100; Little *v.* State, 87 Miss. 512, 40 So. 165.

276. 1. Boykin *v.* State, 86 Miss. 481, 38 So. 725.

277. 4. Freeney *v.* State, 129 Ga. 759, 59 S. E. 788; Young *v.* State, 74 Neb. 346, 104 N. W. 867; Reed *v.* State, 75 Neb. 509, 106 N. W. 649; Patterson *v.* State, 49 Tex. Crim. 613, 95 S. W. 129.

278. 4. Williams *v.* State, 147 Ala. 10, 41 So. 992, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 278.

279. 4. Porter *v.* State, 124 Ga. 297, 52 S. E. 283; State *v.* Byrd, 72 S. Car. 104, 51 S. E. 542, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 279; Carles *v.* State, (Tex. Crim. 1905) 94 S. W. 464.

280. 1. State *v.* Blee, 133 Iowa 725, 111 N. W. 10.

5. Powers *v.* Com., 92 S. W. 975, 29 Ky. L. Rep. 277.

6. People *v.* Ryan, (Cal. 1907) 92 Pac. 853.

11. Logan *v.* State, (Ala. 1907) 43 So. 10; White *v.* Com., 102 S. W. 298, 31 Ky. L. Rep. 271. *Compare* State *v.* Boudoin, 115 La. 837, 40 So. 239.

Particulars of Previous Difficulty Not Admissible. — Dunn *v.* State, 143 Ala. 67, 39 So. 147.

281. 2. Dunn *v.* State, 143 Ala. 67, 39 So. 147; Warford *v.* People, (Colo. 1907) 92 Pac. 24; State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; Neathery *v.* People, 227 Ill. 110, 81 N. E. 16; State *v.* Blee, 133 Iowa 725, 111 N. W. 19; State *v.* Rideau, 116 La. 245, 40 So. 691; Sin-

clair *v.* State, 87 Miss. 330, 39 So. 522; State *v.* Scaduto, 74 N. J. L. 280, 65 Atl. 908; St. Clair *v.* State, 49 Tex. Crim. 479, 92 S. W. 1095; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804.

Rule under Texas Statute. — St. Clair *v.* State, 49 Tex. Crim. 479, 92 S. W. 1095.

Threats Not Admissible When Accused the Aggressor. — Martin *v.* State, 144 Ala. 8, 40 So. 275.

282. 1. People *v.* Lamar, 148 Cal. 564, 83 Pac. 993; Kipley *v.* People, 215 Ill. 258, 74 N. E. 379; State *v.* Roderick, 77 Ohio 301, 82 N. E. 1082; State *v.* Thompson, (Oregon 1907) 88 Pac. 583.

When Admissible under Texas Statute. — Cole *v.* State, 48 Tex. Crim. 439, 88 S. W. 341.

Evidence Confined to General Reputation. — *Compare* State *v.* Andrews, 73 S. Car. 257, 53 S. E. 423.

2. Kelly *v.* People, 229 Ill. 81, 82 N. E. 198, *quoting* 25 Am. and Eng. Encyc. of Law (2d ed.) 282. *Compare* State *v.* Rutledge, (Iowa 1907) 113 N. W. 461.

3. People *v.* Cook, 148 Cal. 334, 83 Pac. 43.

4. Moore *v.* State, 86 Miss. 160, 38 So. 504.

6. Dunn *v.* State, 143 Ala. 67, 39 So. 147; People *v.* Smith, 151 Cal. 619, 91 Pac. 511; State *v.* Barber, 13 Idaho 65, 88 Pac. 418; Humber *v.* Com., 102 S. W. 1179, 31 Ky. L. Rep. 606; State *v.* Gordon, 191 Mo. 114, 89 S. W. 1025; State *v.* Beckner, 194 Mo. 281, 91 S. W. 892; Keith *v.* State, (Tex. Crim. 1906) 94 S. W. 1044.

283. 1. Davis *v.* State, (Ala. 1907) 44 So. 561; Clay *v.* State, 124 Ga. 795, 53 S. E. 179; Com. *v.* Thomas, 104 S. W. 326, 31 Ky. L. Rep. 899; State *v.* King, 203 Mo. 560, 102 S. W. 515; State *v.* Williams, 141 N. Car. 827, 53 S. E. 823; Crowson *v.* State, (Tex. Crim. 1907) 100 S. W. 782.

2. *Alabama.* — Kennedy *v.* State, 147 Ala. 687, 40 So. 658; Stevenson *v.* State, (Ala. 1906) 41 So. 526; Wright *v.* State, (Ala. 1907) 42 So. 745; Allen *v.* State, 146 Ala. 61, 42 So. 1006; Bluett *v.* State, (Ala. 1907) 44 So. 84.

Delaware. — State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966; State *v.* Brown, 5 Penn. (Del.) 339, 61 Atl. 1077; State *v.* Cephus, (Del. 1906) 67 Atl. 150. *Compare* State *v.* Honey, (Del. 1906) 65 Atl. 764.

Florida. — Maloy *v.* State, 52 Fla. 101, 41 So. 791.

Iowa. — State *v.* Yates, 132 Iowa 475, 109 N. W. 1005.

Michigan. — People *v.* Tubbs, 147 Mich. 1, 100 N. W. 132.

North Dakota. — State *v.* Hazlett, (N. Dak. 1907) 113 N. W. 378, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 283.

South Carolina. — State *v.* Reeder, 72 S. Car. 223, 51 S. E. 702.

Tennessee. — Frazier *v.* State, 117 Tenn. 430, 100 S. W. 94.

Texas. — Pratt *v.* State, (Tex. Crim. 1906) 96 S. W. 8; Rice *v.* State, (Tex. Crim. 1907) 103 S. W. 1156.

SELL — SOLD.

284. 6. Duke *v.* State, 146 Ala. 140, 41 So. 170, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 284.

SENTENCE AND PUNISHMENT.

292. 5. **Though a Jury Determines the Sentence the Court Generally Pronounces Same.** — Saleen *v.* People, (Colo. 1907) 92 Pac. 731.

293. 6. U. S. *v.* Meldrum, 146 Fed. 390, *affirmed* (C. C. A.) 151 Fed. 177, 10 Ann. Cas. 324; State *v.* Gordon, 196 Mo. 189, 95 S. W. 420; State *v.* Knotts, 70 S. Car. 400, 50 S. E. 9.

294. 3. People *v.* Stokes, 5 Cal. App. 205, 89 Pac. 997; *Ex p.* Terry, 71 Kan. 362, 80 Pac. 586.

May Suspend to Await Determination of Trial of Accused for a Similar Offense. — People *v.* Robertson, (Cal. App. 1907) 92 Pac. 498.

4. Clampitt *v.* U. S., 6 Indian Ter. 92, 89 S. W. 666; Tuttle *v.* Lang, 100 Me. 123, 60 Atl. 892; *Ex p.* St. Hilaire, 101 Me. 522, 64 Atl. 882.

If, after Conviction and Sentence, the court permits the defendant to go at large without a day it cannot thereafter issue a mittimus for his commitment. Tuttle *v.* Lang, 100 Me. 123, 60 Atl. 892.

295. 4. **Montana Statute.** — State *v.* Lu Sing, 34 Mont. 31, 85 Pac. 521.

5. State *v.* Usher, (Iowa 1907) 111 N. W. 811.

297. 2. **Valid Sentence Cannot Be Rendered on Holiday.** — *Ex p.* Smith, (Cal. 1907) 93 Pac. 191.

4. **Judgment of Imprisonment — Presence of Defendant Necessary.** — State *v.* Dolan, 58 W. Va. 263, 52 S. E. 181.

It Is Unnecessary for the Defendant to Be Present in proceedings relating to the correction of the record, subsequent to the trial and sentence. Nagel *v.* People, 229 Ill. 598, 82 N. E. 315.

299. 2. Lamb *v.* People, 219 Ill. 399, 76 N. E. 576.

4. State *v.* Sims, 117 La. 1036, 42 So. 494.

301. 1. State *v.* Branton, (Oregon 1906) 87 Pac. 535.

4. **Immaterial Variance Not Fatal.** — State *v.* McLain, 43 Wash. 124, 86 Pac. 388.

9. **In New Jersey** it is not necessary that the judgment shall set forth the time, place, or manner of inflicting the death penalty. State *v.* Tomasi, (N. J. 1908) 69 Atl. 214.

303. 3. Moore *v.* State, (Ala. 1907) 42 So. 996; Scott *v.* State, (Ala. 1907) 43 So. 181; Freeman *v.* State, (Ala. 1907) 44 So. 46.

Where a Sentence Was Imprisonment for Seven Years, followed by the words "terms not to run together," it was held that it would be presumed that the words were used by the court in view of another sentence which was imposed against the same defendant on the same day, and that the statement did not render the sentence invalid for indefiniteness or uncertainty. State *v.* Webber, (N. J. 1908) 68 Atl. 1100.

4. **Sentence Not Rendered Indeterminate by the Phrase** "or until he shall be discharged according to law." Chicago, etc., R. Co. *v.* Gildersleeve, 114 Mo. App. 294, 89 S. W. 336.

6. **New York Statute.** — *In re* Jacobs, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 655, 109 N. Y. Supp. 1068.

11. Rigor *v.* State, 101 Md. 465, 61 Atl. 631, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 303.

307. 7. Chadwick *v.* U. S., (C. C. A.) 141 Fed. 225; *Ex p.* Peeke, 144 Fed. 1016; State *v.* Mahaney, 73 N. J. L. 53, 62 Atl. 265.

Convict Serving Life Imprisonment Sentence May Be Tried and Convicted of Murder. — Huffaker *v.* Com., (Ky. 1906) 98 S. W. 331.

308. 1. State *v.* Finch, 75 Kan. 582, 89 Pac. 922.

2. *Ex p.* Peeke, 144 Fed. 1016; Peed *v.* Brewster, 168 Ind. 51, 79 N. E. 1039.

6. See Washington *v.* State, 51 Fla. 137, 40 So. 765.

7. **Same Rule Applied to Distinct but Kindred Felonies.** — Washington *v.* State, 51 Fla. 137, 40 So. 765.

309. 4. State *v.* Kelley, 206 Mo. 685, 105 S. W. 606.

New York Statute. — People *v.* Frost, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 1121.

6. Chadwick *v.* U. S., (C. C. A.) 141 Fed. 225; *Ex p.* Peeke, 144 Fed. 1016, *affirmed* (C. C. A.) 153 Fed. 166.

312. 2. **The Court May in Its Discretion** either reverse the judgment and remand the case for a new trial or enter a proper judgment. Pittman *v.* State, 84 Ark. 292, 105 S. W. 874.

3. Wechsler *v.* U. S., (C. C. A.) 158 Fed. 57[illegible].

4. *Ex p.* Peeke, 144 Fed. 1016; *In re* Sullivan, 3 Cal. App. 193, 84 Pac. 781; *Ex p.* Johnson, (Cal. App. 1907) 93 Pac. 199; Brown *v.* Atlanta, 123 Ga. 497, 51 S. E. 507; *Ex. p.* Tani, (Nev. 1907) 91 Pac. 137.

Where Cumulative Sentences Are Imposed and one is illegal the defendant is not entitled to his discharge, but should be held to serve those which are valid. U. S. *v.* Carpenter, (C. C. A.) 151 Fed. 214, 10 Ann. Cas. 509, in which case the defendant was sentenced for three successive terms and the middle one declared void; it was held that the third term should begin at the expiration of the first, and that the defendant was not entitled to be discharged.

Excessive Sentence. — A defendant serving an excessive sentence will not be released on habeas corpus until the expiration of the valid portion. Connella *v.* Haskell, (C. C. A.) 158 Fed. 285.

313. 2. **Where a Defendant Was Sentenced for Two Different Offenses** to five years to run concurrently, the maximum punishment for each offense being seven years, the fact that the law of the territory in which he was sentence provided that, in such a case, the sentence should be cumulative, was no ground for release on habeas corpus by a federal court. Connella *v.* Haskell, (C. C. A.) 158 Fed. 285.

6. State *v.* Dibert, (Mo. App. 1908) 108 S. W. 600; State *v.* Jacobs, (Mo. App. 1908) 108 S. W. 601; State *v.* Hackett, (Mo. App. 1908) 108 S. W. 599.

7. People *v.* Flynn, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 639, 106 N. Y. Supp. 925. See also Schaefer *v.* State, 27 Ohio Cir. Ct. 791.

314. 2. See *In re* Barker, (Neb. 1907) 113 N. W. 197.

5. *Ex p.* Lee, 16 Ohio Dec. 262, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 313, as to suspending sentence generally. See Schaefer *v.* State, 27 Ohio Cir. Ct. 791.

6. People *v.* Flynn, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 639, 106 N. Y. Supp. 925.

7. Grundel *v.* People, 33 Colo. 191, 79 Pac. 1022.

315. 3. People *v.* Sullivan, (Ct. Gen. Sess.) 54 Misc. (N. Y.) 489, 106 N. Y. Supp. 143.

Power to Suspend Execution of Sentence Lawfully Imposed Limited. — Tanner *v.* Wiggins, (Fla. 1907) 45 So. 459.

316. 2. *Ex p.* Smith, (Cal. 1907) 93 Pac. 191; People *v.* Farrell, 146 Mich. 264, 109 N. W. 440.

6. State *v.* Pope, (S. Car. 1908) 60 S. E. 234, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 316.

317. 1. The object of inflicting punishment is the protection of society and the reformation of the culprit. State *v.* Neil, 13 Idaho 539, 90 Pac. 860, *rehearing denied* 91 Pac. 318.

320. 10. **It Is No Objection to a Criminal Statute** that it does not provide the minimum penalty which may be imposed for its violation. Siren *v.* State, (Neb. 1907) 111 N. W. 798.

322. 3. *In re* Jacobs, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 655, 109 N. Y. Supp. 1068.

Sentence to Reformatory Must State Defendant's Age. — Lewis *v.* State, (Tex. Crim. 1907) 99 S. W. 1011.

323. 2. **For the Construction of the Peculiar Provisions of Certain Statutes** relating to the place of imprisonment of convicted person, see People *v.* Champlin, 120 N. Y. App. Div. 509, 105 N. Y. Supp. 349.

3. Bolton *v.* State, 146 Ala. 691, 40 So. 409.

Sentence Less than Minimum Prescribed by Statute Valid. — People *v.* Oliver, (Cal. App. 1908) 95 Pac. 172; State *v.* Smith, 118 La. 248, 42 So. 791; *Ex p.* Richards, 150 Mich. 421, 114 N. W. 348; Hamilton *v.* State, (Ohio 1908) 84 N. E. 601.

Imprisonment Must Be at Place Prescribed by Particular Statute Governing Offense. — Irvin *v.* State, 52 Fla. 51, 41 So. 785; Thompson *v.* State, 52 Fla. 113, 41 So. 899; Lemmon *v.* State, 77 Ohio St. 427, 83 N. E. 608.

324. 2. **In Indian Territory Punishment Determined by Jury in Certain Cases.** — Taylor *v.* U. S., 6 Indian Ter. 350, 98 S. W. 123.

Under the North Dakota Statute authorizing trial judges to receive verdicts in criminal cases in which the jury has fixed the punishment higher or lower than prescribed by law, and to pronounce judgment thereon for the higher or lower punishment authorized by statute, it is the duty of the trial judge to receive such verdicts and to enter judgment thereon. State *v.* Barry, 14 N. Dak. 316, 103 N. W. 637.

3. U. S. *v.* Meldrum, 146 Fed. 390, *affirmed* (C. C. A.) 151 Fed. 177, 10 Ann. Cas. 324; Raymond *v.* U. S., 26 App. Cas. (D. C.) 250; Godwin *v.* State, 123 Ga. 569, 51 S. E. 598; Guthrie *v.* State, 125 Ga. 291, 54 S. E. 180; State *v.* Wykoff, (Iowa 1906) 107 N. W. 420; Pearsall *v.* Com., (Ky. 1906) 92 S. W. 589; People *v.* Champlin, 120 N. Y. App. Div. 509, 105 N. Y. Supp. 349.

4. **The Judge in the Exercise of His Discretion** may be influenced by outside knowl-

edge of the character of the accused and by information had by him before the trial. Donald *v.* State, (Miss. 1906) 41 So. 4.

5. U. S. *v.* Standard Oil Co., 155 Fed. 305; State *v.* Reeder, (S. Car. 1908) 60 S. E. 434.

Court May Hear Any Evidence in Aggravation or Mitigation. — State *v.* Reeder, (S. Car. 1908) 60 S. E. 434.

325. 2. **Where the Penalty Prescribed Is Imprisonment in the Penitentiary or a Fine** a primary sentence of imprisonment in the county jail is unauthorized, as such sentence may properly be imposed only as an alternative penalty upon failure to pay a money fine imposed. Irvin *v.* State, 52 Fla. 51, 41 So. 785.

326. 6. People *v.* Johnson, 114 N. Y. App. Div. 876, 100 N. Y. Supp. 256.

7. Time on Parol During Good Behavior Credited. — Scott *v.* Chichester, (Va. 1908) 60 S. E. 95.

327. 5. *Ex p.* Moebus, 137 Fed. 154; Scott *v.* Chichester, (Va. 1908) 60 S. E. 95. See also Rex *v.* Taylor, 12 Can. Crim. Cas. (N. W. Ter.) 249, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 327.

5a. Effect of Conditional Pardon Violated. — Where the condition of a pardon is violated, the pardon is void and the convict may be arrested to undergo so much of the original sentence as he had not suffered at the time of his release. State *v.* Horne, 52 Fla. 125, 42 So. 388.

6. *Ex p.* Moebus, 137 Fed. 154.

Where the Governor Has Power to Fix the Date for the execution of a death sentence, though by statute the fixing of the date becomes a part of the judgment, a subsequent date may be fixed where the execution does not take place on the date originally fixed. Bullitt *v.* Sturgeon, (Ky. 1907) 105 S. W. 468.

SEPARATE.

330. 2. **Separate Dwellings — English Revenue Act.** — See London County Council *v.* Cook, (1906) 1 K. B. 278, 75 L. J. K. B. 187.

SEPARATE PROPERTY OF MARRIED WOMEN.

337. 1. Bekins *v.* Dieterle, (Cal. App. 1907) 91 Pac. 173.

2. Bell *v.* Wyman, 147 Cal. 514, 82 Pac. 39; Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774.

3. Bohannon *v.* Bohannon, (Ky. 1906) 92 S. W. 597; Kleb *v.* Kleb, 70 N. J. Eq. 305, 62 Atl. 396; Farrow *v.* Farrow, (N. J. 1907) 65 Atl. 1009; Alford *v.* Williams, (Tex. Civ. App. 1906) 91 S. W. 636.

4. Carter *v.* McNeal, (Ark. 1908) 110 S. W. 222; Huot *v.* Reeder Bros. Shoe Co., 140 Mich. 162, 103 N. W. 569; Hamilton *v.* Parent, (Mich. 1908) 116 N. W. 367; Stark *v.* Kirchgraber, 186 Mo. 633, 85 S. W. 868; Funkhouser *v.* Fowler, 117 Tenn. 539, 101 S. W. 769; Sparks *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 740; Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751; Texas Southern R. Co. *v.* Harle, (Tex. 1907) 105 S. W. 1107; Sullivan *v.* Fant, (Tex. Civ. App. 1908) 110 S. W. 507.

Equitable Separate Estate Created by Limitation. — Heittelberg *v.* Behrens, (Tex. Civ. App. 1905) 85 S. W. 1029; Brunette *v.* Norber, 130 Wis. 632, 110 N. W. 785.

5. Smith *v.* Sheppard, 2 Ga. App. 144, 58 S. E. 303; Harrington *v.* Lowe, 73 Kan. 1, 84 Pac. 570; Hurst *v.* W. B. Thompson, 118 La. 57, 42 So. 645; Hester *v.* Stine, (Wash. 1907) 90 Pac. 594; Sawyer *v.* Metters, (Wis. 1907) 113 N. W. 682.

6. Yardley *v.* San Joaquin Valley Bank, 3 Cal. App. 651, 86 Pac. 978.

7. Bekins *v.* Dieterle, (Cal. App. 1907) 91 Pac. 173; Fretz *v.* Roth, 68 N. J. Eq. 516, 59 Atl. 676; Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751.

8. Farrow *v.* Farrow, (N. J. 1907) 65 Atl. 1009; Dietrich *v.* Deavitt, (Vt. 1908) 69 Atl. 661.

340. 1. Stark *v.* Kirchgraber, 186 Mo. 633, 85 S. W. 868; Welch *v.* Mann, 193 Mo. 304, 92 S. W. 98; Siling *v.* Hendrickson, 193 Mo. 365, 92 S. W. 105; Funkhouser *v.* Fowler, 117 Tenn. 539, 101 S. W. 769; McKinney *v.* McKinney, (Tex. Civ. App. 1905) 87 S. W. 217; Jones *v.* Humphreys, (Tex. Civ. App. 1905) 88 S. W. 403; Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 571; Parks *v.* Worthington, (Tex. Civ. App. 1907) 104 S. W. 921.

342. 7. Donovan *v.* Olsen, (Wash. 1907) 92 Pac. 276.

345. 1. Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 410.

8. Louisville Third Nat. Bank *v.* Tierney, (Ky. 1908) 110 S. W. 293; Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657; Lindly *v.* Lindly, (Tex. Civ. App. 1908) 109 S. W. 467.

346. 2. **The Montana Statute** applies only to property of the wife in the exclusive possession of the husband. Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657.

347. 10. St. Louis Southwestern R. Co. *v.* Purcell, 135 Fed. 499.

349. 1. St. Louis Southwestern R. Co. *v.* Purcell, (C. C. A.) 135 Fed. 499.

350. 4. Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657; Harrington *v.* Lowe, 73 Kan. 1, 84 Pac. 570; Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 410; Heckman *v.* Heckman, 215 Pa. St. 203, 64 Atl. 425.

The Husband Is Deemed to Hold in Trust for the benefit of his wife, in the absence of evidence of a gift, any separate property owned by her at her marriage and acquired by him. Barber *v.* Barber, 125 Ga. 226, 53 S. E. 1017.

5. Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 410.

352. 1. Patterson *v.* Patterson, (Mass. 1908) 83 N. E. 364.

2. Patterson *v.* Patterson, (Mass. 1908) 83 N. E. 364.

353. 3. Mayer *v.* Kane, 69 N. J. Eq. 733, 61 Atl. 374.

Where Land Was Bid in by the Husband, at a foreclosure sale under a purchase-money mortgage given to the wife, a trust in favor of the wife was held to result. Walt *v.* Walt, 113 Tenn. 189, 81 S. W. 228.

7. Tucker *v.* Curtin, (C. C. A.) 148 Fed. 929.

354. 5. Jackson *v.* Williams, 129 Ga. 755, 59 S. E. 776.

12. Barrow's Succession, 118 La. 1031, 43 So. 667; Collins *v.* Bryan, (Tex. Civ. App. 1905) 88 S. W. 432.

355. 5. Hester *v.* Stine, (Wash. 1907) 90 Pac. 594.

357. 2. Bekins *v.* Dieterle, (Cal. App. 1907) 91 Pac. 173; Georgia R., etc., Co. *v.* Tice, 124 Ga. 459, 52 S. E. 916; *In re* Smith, (Mich. 1908) 115 N. W. 1052; Bodkin *v.* Kerr, 97 Minn. 301, 107 N. W. 137; Fretz *v.* Roth, 68 N. J. Eq. 516, 59 Atl. 676; Standen *v.* Pennsylvania R. Co., 214 Pa. St. 189, 63 Atl. 467; Michael *v.* Rabe, (Tex. Civ. App. 1908) 109 S. W. 939.

3. Birmingham Southern R. Co. *v.* Lentner, 141 Ala. 420, 38 So. 363; Elba C. Bullard, (Ala. 1907) 44 So. 412; Kaltschmidt *v.* Weber, 145 Cal. 596, 79 Pac. 272; Kennedy *v.* Swisher, 34 Ind. App. 676, 73 N. E. 724; Green *v.* Forney, 134 Iowa 316, 111 N. W. 976; Harrington *v.* Lowe, 73 Kan. 1, 84 Pac. 570; Millmore *v.* Boston El. R. Co., (Mass. 1908) 84 N. E. 468; Hendricks *v.* St. Louis Transit Co., 124 Mo. App. 157, 101 S. W. 675; Schmelzer *v.* Chester Traction Co., 218 Pa. St. 29, 66 Atl. 1005.

358. 2. Green *v.* Forney, 134 Iowa 316, 111 N. W. 976.

4. Kennedy *v.* Swisher, 34 Ind. App. 676, 73 N. E. 724; Bodkin *v.* Kerr, 97 Minn. 301, 107 N. W. 137.

5. Georgia R., etc., Co. *v.* Trie, 124 Ga. 459, 52 S. E. 916; Kennedy *v.* Swisher, 34 Ind. App. 676, 73 N. E. 724.

7. Lodge *v.* Fraim, 5 Penn. (Del.) 352, 63 Atl. 233.

359. 3. Kaltschmidt *v.* Webber, 145 Cal. 596, 79 Pac. 272; Perry *v.* Blumenthal, 19 N. Y. App. Div. 663, 104 N. Y. Supp. 127.

361. 3. Martin *v.* Derenbecker, 118 La. 495, 40 So. 849.

362. 6. Fretz *v.* Roth, 68 N. J. Eq. 516, 59 Atl. 676.

10. Title Ins., etc., Co. *v.* Ingersoll, (Cal. 1908) 94 Pac. 94.

11. Wyatt *v.* Scott, 84 Ark. 355, 105 S. W. 871; Barber *v.* Barber, 125 Ga. 226, 53 S. E. 1017; Matador Land, etc., Co. *v.* Cooper, (Tex. Civ. App. 1905) 87 S. W. 235; Sparks *v.* Taylor, (Tex. Civ. App. 1905) 87 S. W. 740.

363. 3. Bohannon *v.* Bohannon, (Ky. 1906) 92 S. W. 597.

5. Wyatt *v.* Scott, 84 Ark. 355, 105 S. W. 871; Title Ins., etc., Co. *v.* Ingersoll, (Cal. 1908) 94 Pac. 94; Barber *v.* Barber, 125 Ga. 226, 53 S. E. 1017; Smith *v.* Settle, (Mo. App. 1908) 107 S. W. 430.

7. Title Ins., etc., Co. *v.* Ingersoll, (Cal. 1908) 94 Pac. 94.

364. 1. *In re* Foss, 147 Fed. 790.

7. Bekins *v.* Dieterle, (Cal. App. 1907) 91 Pac. 173.

365. 2. Oliver *v.* Sample, 72 Kan. 582, 84 Pac. 138; McKinney *v.* McKinney, (Tex. Civ. App. 1905) 87 S. W. 217.

3. Jackson *v.* Williams, 129 Ga. 716, 59 S. E. 776.

5. Mertens *v.* Schlemme, 68 N. J. Eq. 544, 59 Atl. 808.

366. 2. Siling *v.* Hendrickson, 193 Mo. 365, 92 S. W. 105.

7. Leonard *v.* Piggott, (Mich. 1908) 116 N. W. 366.

367. 1. Schneider *v.* Schneider, 122 N. Y. App. Div. 774, 107 N. Y. Supp. 792.

8. Walt *v.* Walt, 113 Tenn. 189, 81 S. W. 228. *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 367.

10. Walt *v.* Walt, 113 Tenn. 189, 81 S. W. 228, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 367.

368. 1. Barnes *v.* Plessner, 121 Mo. App. 677, 97 S. W. 626.

5. Bank of Commerce *v.* Baldwin, 12 Idaho 202, 85 Pac. 497.

369. 1. Duncan *v.* Duncan, (Cal. App. 1907) 92 Pac. 310.

5. Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651.

8. Elba *v.* Bullard, (Ala. 1907) 44 So. 412; Larson *v.* Carter, (Idaho 1908) 94 Pac. 825; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651; Barry *v.* Stover, (S. Dak. 1906) 107 N. W. 672.

370. 1. Larson *v.* Carter, (Idaho 1908) 94 Pac. 825.

2. Larson *v.* Carter, (Idaho 1908) 94 Pac.

371. 7. Nugent *v.* New York, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 453, 111 N. Y. Supp. 438.

372. 2. *In re* Berkebile, 144 Fed. 572.

7. Neumeister *v.* Goddard, 125 Wis. 82, 103 N. W. 241.

8. Alford *v.* Williams, (Tex. Civ. App. 1906) 91 S. W. 636.

373. 10. Larson *v.* Carter, (Idaho 1908) 94 Pac. 825.

374. 2. McClelland *v.* Lynch, (Supm. Ct. App. T.) 98 N. Y. Supp. 640.

8. Mahoney *v.* Roberts, (Ark. 1908) 110 S. W. 225.

375. 4. Wipfler *v.* Detroit Pattern Works, 140 Mich. 677, 104 N. W. 545.

378. 4. Harrington *v.* Lowe, 73 Kan. 1, 84 Pac. 570.

5. Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17.

6. Arkansas Stables *v.* Samstag, 78 Ark. 517, 94 S. W. 699.

7. Townsend *v.* Huntzinger, (Ind. App. 1908) 83 N. E. 619.

8. Booth Mercantile Co. *v.* Murphy, (Idaho 1908) 93 Pac. 777.

379. 1. Micou *v.* McDonald, (Fla. 1908) 46 So. 291.

10. Hackley Nat. Bank *v.* Jeannot, 143 Mich. 454, 106 N. W. 1121.

380. 1. Parsons *v.* Henry, (Mass. 1908) 83 N. E. 1110.

381. 4. Jordan *v.* Jackson, (Neb. 1906) 106 N. W. 999.

5. Mercantile Exch. Bank *v.* Taylor, 51 Fla. 473, 41 So. 22; Dunlap *v.* Hill, 145 N. Car. 312, 59 S. E. 112; Tannery *v.* McMinn, (Tex. Civ. App. 1905) 86 S. W. 640; Smith *v.* Vineyard, 58 W. Va. 98, 51 S. E. 871.

382. 8. Kimmey *v.* Abney, (Tex. Civ. App. 1908) 107 S. W. 885.

383. 6. Mercantile Exch. Bank *v.* Taylor, 51 Fla. 473, 41 So. 22.

384. 4. Dinkins *v.* Latham, (Ala. 1907) 45 So. 60; Campbell *v.* Virginia Iron, etc., Co., (Ky. 1907) 104 S. W. 770; Price *v.* Big Sandy Co., (Ky. 1908) 107 S. W. 725; O'Reilly *v.* Kluender, 193 Mo. 576, 91 S. W. 1033; Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 401; Insurance Co. *v.* Waller, 116 Tenn. 1, 95 S. W. 811; Mullins *v.* Shrewsbury, 60 W. Va. 694, 55 S. E. 736.

5. Zimpleman *v.* Portwood, (Tex. Civ. App. 1908) 107 S. W. 584 (under statute of 1846); Dietrich *v.* Deavitt, (Vt. 1908) 69 Atl. 661.

385. 2. Ball *v.* Paquin, 140 N. Car. 83, 52 S. E. 410;; Roos *v.* Basham, (Tex. Civ. App. 1906) 91 S. W. 656.

6. Eberhardt *v.* Wahl, (Ky. 1907) 98 S. W. 994.

Even a Deed by a Married Woman to Her Husband, in which he did not join, has been held not to divest her of her title. Smith *v.* Vineyard, 58 W. Va. 98, 51 S. E. 871.

9. Campbell *v.* Virginia Iron, etc., Co., (Ky. 1907) 104 S. W. 770.

10. Royal *v.* Goss, (Ala. 1907) 45 So. 231.

Husband under Guardianship — Joinder of Guardian Required. — Dooley *v.* Greening, 201 Mo. 343, 100 S. W. 43.

11. Vandiford *v.* Humphrey, 139 N. Car. 65, 51 S. E. 893.

386. 1. **Nonresidence of Husband Renders Assent Unnecessary.** — Collier *v.* Doe, 142 Ala. 422, 38 So. 244.

3. **Separate Instruments by Woman and Trustee Unnecessary.** — Kirkman *v.* Wadsworth, 137 N. Car. 453, 49 S. E. 962.

4. Webb *v.* Harris, 124 Ga. 723, 53 S. E. 247.

387. 1. Bell *v.* Blair, (Ky. 1905) 89 S. W. 732; O'Reilly *v.* Kluender, 193 Mo. 576, 91 S. W. 1033.

388. 8. Bull *v.* Paquin, 140 N. Car. 83, 52 S. E. 410.

389. 3. Pope *v.* Ludeman, (N. J. 1904) 59 Atl. 9; Mercantile Exch. Bank *v.* Taylor, 51 Fla. 473, 41 So. 22; Dietrich *v.* Deavitt, (Vt. 1908) 69 Atl. 661.

390. 2. Thompson *v.* Minnich, 227 Ill. 430, 81 N. E. 336.

392. 5. **Any Contract Valid Except Those Specifically Forbidden by Statute.** — Indianapolis Brewing Co. *v.* Behnke, (Ind. App. 1907) 81 N. E. 119.

393. 3. Thompson *v.* Minnich, 227 Ill. 430, 81 N. E. 336.

4. Micou *v.* McDonald, (Fla. 1908) 46 So. 291.

6. Micou *v.* McDonald, (Fla. 1908) 46 So. 291.

394. 1. Micou *v.* McDonald, (Fla. 1908) 46 So. 291.

2. Harrington *v.* Lowe, 73 Kan. 1, 84 Pac. 570.

3. Harrington *v.* Lowe, 73 Kan. 1, 84 Pac. 570.

4. Rice *v.* Cummings, 51 Fla. 535, 40 So. 889; Micou *v.* McDonald, (Fla. 1908) 46 So. 291.

7. Starkey *v.* Starkey, 166 Ind. 140, 76 N. E. 876.

10. Lane *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 211.

396. 1. Micou *v.* McDonald, (Fla. 1908) 46 So. 291; Bank of Commerce *v.* Baldwin, 12 Idaho 202, 85 Pac. 497; Equitable Trust Co. *v.* Torphy, 37 Ind. App. 220, 76 N. E. 639; Bank of Commerce *v.* Baldwin, (Idaho 1908) 93 Pac. 504; Black *v.* McCarley, (Ky. 1907) 104 S. W. 987; T. G. Northwall Co. *v.* Osgood, (Neb. 1908) 115 N. W. 308; Love *v.* McGill, (Tex. Civ. App. 1906) 91 S. W. 246; Littler *v.* Dielmann, (Tex. Civ. App. 1908) 106 S. W. 1137; Bailey *v.* Fink, 129 Wis. 373, 109 N. W. 86.

397. 1. Arnold *v.* McBride, 78 Ark. 275, 93 S. W. 989.

3. Bank of Commerce *v.* Baldwin, 12 Idaho 202, 85 Pac. 497; T. G. Northwall Co. *v.* Osgood, (Neb. 1908) 115 N. W. 308; *In re* Breed, 125 Wis. 100, 103 N. W. 271.

Intention to Bind Separate Estate Insufficient. — Bailey *v.* Fink, 129 Wis. 373, 109 N. W. 86.

398. 1. T. G. Worthwall Co. *v.* Osgood, (Neb. 1908) 115 N. W. 308; *In re* Breed, 125 Wis. 100, 103 N. W. 271.

402. 3. See Indianapolis Brewing Co. *v.* Behnke, (Ind. App. 1907) 81 N. E. 119.

5. Parratt *v.* Hartsuff, 75 Neb. 706, 106 N. W. 966.

403. 5. Bank of Commerce *v.* Baldwin, (Idaho 1908) 93 Pac. 504.

405. 2. Elba *v.* Bullard, (Ala. 1907) 44 So. 412; Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657; Perkins *v.* Morgan, 36 Colo. 360, 85 Pac. 640; Fitzmaurice *v.* Buck, 77 Conn. 390, 59 Atl. 45; Edminston *v.* Smith, (Idaho 1907) 92 Pac. 842, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 405; Bank of Commerce *v.* Baldwin, (Idaho 1908) 93 Pac. 504; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Martin *v.* Vertres, 130 Iowa 175, 106 N. W. 516; Vest *v.* Kramer, (Iowa 1908) 114 N. W. 886; Ashby *v.* Elsberry, etc., Gravel Road Co., 111 Mo. App. 79, 85 S. W. 957; Feiner *v.* Boynton, 73 N. J. L. 136, 62 Atl. 420; Valois *v.* Gardner, 122 N. Y. App. Div. 245, 106 N. Y. Supp. 808; Hild *v.* Hellman, (Tex. Civ. App. 1905) 90 S. W. 44; Lane *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 213.

3. Landgrof *v.* Tanner, (Ala. 1907) 44 So. 397; Edminston *v.* Smith, (Idaho 1907) 92 Pac. 842; Vanderberg *v.* Kansas City Missouri Gas Co., 126 Mo. App. 600, 105 S. W. 17; Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797.

406. 4. Fitzmaurice *v.* Buck, 77 Conn. 390, 59 Atl. 415; McCartney *v.* Carter, 129 Iowa 20, 105 N. W. 339; Russell *v.* Graumann, 40 Wash. 667, 82 Pac. 998.

407. 1. Perkins *v.* Morgan, 36 Colo. 360, 85 Pac. 640; Fitzmaurice *v.* Buck, 77 Conn. 390, 59 Atl. 415; Vest *v.* Kramer (Iowa 1908) 114 N. W. 886.

Funeral Expenses Necessaries. — *In re* Stardtmuller, 110 N. Y. App. Div. 76, 96 N. Y. Supp. 1101.

Feed for Live Stock Not Family Expense. — Martin *v.* Vertres, 130 Iowa 175, 106 N. W. 516.

3. **Servants Held Members of Family.** — Perkins *v.* Morgan, 36 Colo. 360, 85 Pac. 640.

408. 2. Townsend *v.* Huntzinger, (Ind. App. 1908) 83 N. E. 619.

5. Morreau Gas Fixture Co. *v.* Cox, 161 Fed. 381; Shreveport Nat. Bank *v.* Maples, 119 La. 41, 43 So. 905; Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797.

6. Shreveport Nat. Bank *v.* Maples, 119 La. 41, 43 So. 905.

409. 3. Morreau Gas Fixture Co. *v.* Cox, 161 Fed. 381.

4. Mercantile Exch. Bank *v.* Taylor, 51 Fla. 473, 41 So. 22; Hackley Nat. Bank *v.* Jeannot, 143 Mich. 454, 106 N. W. 1121; Righter *v.* Livingston, 214 Pa. St. 28, 63 Atl. 195; Duty *v.* Sprinkle, (W. Va. 1908) 60 S. E. 882.

5. Harper *v.* T. N. Hays Co., (Ala. 1907) 43

So. 360; Rood *v.* Wright, 124 Ga. 849, 53 S. E. 390, holding, however, that a wife may incur a valid indebtedness to a third person for the purpose of paying her husband's debt; Bank of Commerce *v.* Baldwin, 12 Idaho 202, 85 Pac. 497; Indianapolis Brewing Co. *v.* Behnke, (Ind. App. 1907) 81 N. E. 119; Equitable Trust Co. *v.* Torphy, 37 Ind. 220, 76 N. E. 639; Ludlow *v.* Colt, (Ind. App. 1908) 83 N. E. 643; Gilbert *v.* Brown, (Ky. 1906) 97 S. W. 40; Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361; Clark *v.* Whitaker, 117 La. 298, 41 So. 580; Beasley *v.* Jenkins, 117 La. 577, 42 So. 145; Keating *v.* Wilbert, 119 La. 461, 44 So. 265; Campbell *v.* Hughes, (La. 1908) 47 So. 45; Hover *v.* Mayley, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 430, 96 N. Y. Supp. 925; Bailey *v.* Fink, 129 Wis. 373, 109 N. W. 86.

410. 2. Townsend *v.* Huntzinger, (Ind. App. 1908) 83 N. E. 619.

7. Chickering-Chase Bros. Co. *v.* White, 127 Wis. 83, 106 N. W. 797.

412. 6. Scott *v.* Collier, (Ind. App. 1906) 77 N. E. 666.

415. 4. Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361; Goll *v.* Fehr, 131 Wis. 141, 111 N. W. 235.

416. 1. Jackson *v.* Williams, 129 Ga. 755, 59 S. E. 776.

417. 1. Sample *v.* Guyer, 143 Ala. 613, 42 So. 106; Indianapolis Brewing Co. *v.* Behnke, (Ind. App. 1907) 81 N. E. 119; Black *v.* McCarley, (Ky. 1907) 104 S. W. 987; Byerley *v.* Walker, 118 La. 265, 42 So. 931.

2. *Compare* Indianapolis Brewing Co. *v.* Behnke, (Ind. App. 1907) 81 N. E. 119.

3. Black *v.* McCarley, (Ky. 1907) 104 S. W. 987; Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361.

419. 4. Bank of Commerce *v.* Baldwin, (Idaho 1908) 93 Pac. 504; Louisville Third Nat. Bank *v.* Tierney, (Ky. 1908) 110 S. W. 293.

420. 1. See Indianapolis Brewing Co. *v.* Behnke, (Ind. App. 1907) 81 N. E. 119; Louisville Third Nat. Bank *v.* Tierney, (Ky. 1908) 110 S. W. 293.

421. 1. Louisville Third Nat. Bank *v.* Tierney, (Ky. 1908) 110 S. W. 293; Bailey *v.* Fink, 129 Wis. 373, 109 N. W. 86.

427. 1. Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657; Rogers *v.* McClure, 128 Ga. 393, 57 S. E. 692; Green *v.* Forney, 134 Iowa 316, 111 N. W. 976; George Adams, etc., Co. *v.* Cook, (Iowa 1908) 115 N. W. 478; Fite *v.* Bridenback, (Ky. 1907) 105 S. W. 1182; Chilton *v.* Hannah, 107 Va. 661, 60 S. E. 87; Mantle *v.* Dabney, 44 Wash. 193, 87 Pac. 122; Dueber *v.* Wolfe, (Wash. 1907) 92 Pac. 455; Hester *v.* Stine, (Wash. 1907) 90 Pac. 594; Bailey *v.* Fink, 129 Wis. 373, 109 N. W. 86.

2. Sharp *v.* Fitzhugh, 75 Ark. 562, 88 S. W. 929; Chilton *v.* Hannah, 107 Va. 661, 60 S. E. 87.

3. Sharp *v.* Fitzhugh, 75 Ark. 562, 88 S. W. 929; Yardley *v.* San Joaquin Valley Bank, 3 Cal. App. 651, 86 Pac. 978; George Adams, etc., Co. *v.* Cook, (Iowa 1908) 115 N. W. 478.

5. Chan *v.* Slater, 33 Mont. 155, 82 Pac. 657; Story, etc., Piano Co. *v.* Kropsch, 231 Ill. 419, 83 N. E. 190.

6. Mantle *v.* Dabney, 44 Wash. 193, 87 Pac. 122.

7. Sencerbox *v.* Idaho First Nat. Bank, (Idaho 1908) 93 Pac. 369; Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142.

428. 2. Sencenbox *v.* Idaho First Nat. Bank, (Idaho 1908) 93 Pac. 369, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 427; Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142.

3. Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142; De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476.

4. Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142.

6. Larson *v.* Carter, (Idaho 1908) 94 Pac. 825; De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476.

8. Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751.

11. Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751.

431. 1*a*. **Wife May Have Husband Removed from Trusteeship.** — Kirkman *v.* Wadsworth, 137 N. Car. 453, 49 S. E. 962, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 431.

432. 7. Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361.

435. 8. Duncan *v.* Duncan, (Cal. App. 1907) 92 Pac. 310.

16. Long *v.* Pennsylvania R. Co., 149 Fed. 598 (under the *New Jersey* statute); Harvey *v.* Sparks, 45 Wash. 578, 88 Pac. 1108.

436. 9. **Husband May Sue Alone for Damages to Wife's Jewelry in His Custody.** — Withey *v.* Pere Marquette R. Co., 141 Mich. 412, 104 N. W. 773.

SEPARATION (HUSBAND AND WIFE).

452. 2. Hill *v.* Hill, (N. H. 1907) 67 Atl. 406.

5. Buttlar *v.* Buttlar, (N. J. 1906) 65 Atl. 485; Effray *v.* Effray, 110 N. Y. App. Div. 545, 97 N. Y. Supp. 286; Maney *v.* Maney, 119 N. Y. App. Div. 765, 104 N. Y. Supp. 541.

456. 4. **In Illinois** it is expressly held that separate agreements are valid. Adams *v.* Adams, 32 Pa. Super. Ct. 353.

6. **Covenants Not to Molest or Annoy,** forming part of an agreement wherein the parties renounced their marital duties, are void. Hill *v.* Hill, (N. H. 1907) 67 Atl. 406.

457. 5. Clothier *v.* Sigle, 73 N. J. L. 419, 63 Atl. 865; Schneider *v.* Rosenbaum, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 143, 101 N. Y. Supp. 529; Weingreen *v.* Beckton, (Supm. Ct. App. T.) 102 N. Y. Supp. 520.

459. 4. Shirey *v.* Hill, 81 Ark. 137, 98 S. W. 731; Reardon *v.* Woerner, 111 N. Y. App. Div. 259, 97 N. Y. Supp. 747.

460. 1. **Intervention of Trustee Unnecessary** after actual separation. Effray *v.* Effray, 110 N. Y. App. Div. 545, 97 N. Y. Supp. 286.

Necessity for Trustees at Law, where the husband and wife are living together when the agreement is made. Sunderlin *v.* Sunderlin, 122 N. Y. App. Div. 421, 107 N. Y. Supp. 979.

462. 1. **Contract by a Wife Conveying Her Separate Property to Her Husband** in an agreement for separation, and not supported by adequate consideration, will be set aside in an

[illegible] v. Hartigan, 58 W. Va. 610, 52 S. E. 720.

2. Woodruff *v.* Woodruff, (Ky. 1906) 90 S. W. 266.

3. Buttlar *v.* Buttlar, (N. J. 1906) 65 Atl. 4.

463. 1. Shirey *v.* Hill, 81 Ark. 137, 98 S. W. 731; Rhoades *v.* Rhoades, (Neb. 1907) 111 N. W. 122; Effray *v.* Effray, 110 N. Y. App. Div. 545, 97 N. Y. Supp. 286.

Covenant Making Inadequate Provision for the Wife. — Kline *v.* Kline, (Ky. 1907) 105 S. W. 1189.

Agreement to Make Division of Property. — Siddens *v.* Siddens, (Ky. 1907) 101 S. W. 377.

466. 1. Gray *v.* Butler, 116 N. Y. App. Div. 816, 102 N. Y. Supp. 106.

2. Branch *v.* Branch, (Ky. 1907) 98 S. W. 1004.

Other Covenants and Considerations Generally. — Hiett *v.* Hiett, 74 Neb. 96, 103 N. W. 1051.

467. 1. **Nonperformance by Husband.** — Freund *v.* Freund, (N. J. 1906) 63 Atl. 756.

468. 2. Buttlar *v.* Buttlar, (N. J. 1906) 65 Atl. 485.

4. Smith *v.* Smith, 147 Cal. 143, 81 Pac. 411.

469. 1. **Wife May Bring Suit in Equity for Alimony,** without reference to whether the action is for divorce or not. Brewer *v.* Brewer, (Neb. 1907) 113 N. W. 161.

470. 4. *In re* Appleby, 100 Minn. 408, 111 N. W. 305; Dennison *v.* Dennison, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 37, 102 N. Y. Supp. 621.

472. 1. Watson *v.* Watson, 37 Ind. App. 548, 77 N. E. 355; Davis *v.* Hinman, 73 Neb. 850, 103 N. W. 668.

Reference to a Possible Future Divorce Will Not in Itself Invalidate an Agreement. — Trust Co. of America *v.* Nash, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 295, 98 N. Y. Supp. 734.

3. Dudley *v.* Fifth Ave. Trust Co., 115 N. Y. App. Div. 396, 100 N. Y. Supp. 934.

473. 2. **Death of Husband.** — *Re* Gilling, 92 L. T. N. S. 533.

475. 3. Adamson *v.* Adamson, 23 Times L. Rep. 434.

SERIOUS — SERIOUSLY.

477. 3. **Serious Neglect — Workmen's Compensation Act.** — See Hill *v.* Granby Consol. Mines, 12 British Columbia 118.

Serious and Wilful Misconduct — Workmen's Compensation Act. — See Bist *v.* London, etc., R. Co., (1907) A. C. 209, 8 Ann. Cas. 1, 76 L. J. K. B. 703.

SERVANT.

478. 1. **Other Definitions.** — See McColligan *v.* Pennsylvania R. Co., 214 Pa. St. 229, 63 Atl. 792.

SET — SETTING.

483. 1. **Set in Connection with Precious Stones** means to frame or mount in gold, silver, or other metal. Smith *v.* Computing Scale Co., 147 Fed. 890.

SET-OFF, RECOUPMENT, AND COUNTERCLAIM.

489. 1. Sawyer *v.* Van Deren, (N. J. 1907) 66 Atl. 397, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488 [489].

2. D'Amelio *v.* Abraham, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 386, 105 N. Y. Supp. 1019, *affirmed* (Supm. Ct. App. Div.) 108 N. Y. Supp. 1128.

491. 1. Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 302, 87 Pac. 80, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 484 [491].

492. 6. Sawyer *v.* Van Deren, (N. J. 1907) 66 Atl. 397, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 492.

495. 6. Lowndes *v.* City Nat. Bank, 79 Conn. 693, 66 Atl. 514.

9. New England Mortg. Security Co. *v.* Fry, 143 Ala. 637, 42 So. 57; Lowndes *v.* City Nat. Bank, 79 Conn. 693, 66 Atl. 514; Harmont *v.* Sullivan, 128 Iowa 309, 103 N. W. 951; De Laval Separator Co. *v.* Sharpless, 134 Iowa 28, 111 N. W. 438; Truesdale *v.* Brady, (Ky. 1907) 105 S. W. 122; Seiber *v.* Johnson Mercantile Co., (Tex. Civ. App. 1905) 90 S. W. 516; Morgan *v.* Tims, (Tex. Civ. App. 1906) 97 S. W. 832. *Compare* Goldberg *v.* Zeigler, (Supm. Ct. App. T.) 92 N. Y. Supp. 777.

496. 2. Betts *v.* Connecticut L. Ins. Co., 78 Conn. 442, 62 Atl. 345; Conly *v.* Scanlin, (Iowa 1906) 109 N. W. 300.

5. **In Montana** counterclaim must be pleaded in justice court. Walter *v.* Cox, (Mont. 1907) 91 Pac. 1063.

The New York Statute does not apply where the set-off is unliquidated. White *v.* Curtis, (County Ct.) 49 Misc. (N. Y.) 50, 98 N. Y. Supp. 319.

499. 4. Huffstutler *v.* Louisville Packing Co., (Ala. 1908) 45 So. 418; Doll *v.* Slaughter, 39 Colo. 51, 88 Pac. 848; Walker *v.* Hernandez, (Tex. Civ. App. 1906) 92 S. W. 1067; Fizburg *v.* Ramsey, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 216, 97 N. Y. Supp. 359; Block *v.* Ottenberg, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 647, 103 N. Y. Supp. 739; Gray *v.* Granger, (Wash. 1908) 93 Pac. 912.

5. **Nonsuit Cannot Be Taken after Accounting Before Referees.** — Boyle *v.* Stallings, 140 N. Car. 524, 53 S. E. 346.

6. **In Iowa.** — Houts *v.* Sioux City Brass Works, 134 Iowa 484, 110 N. W. 166. *Compare* Lanyon *v.* Chesney, (Mo. 1907) 106 S. W. 522.

Court May Reinstate Plaintiff's Case. — Boothe *v.* Armstrong, 80 Conn. 218, 67 Atl. 484.

Where Complaint Is Dismissed Because of Incapacity of Plaintiff to Sue, the counterclaim goes with it. McClellan *v.* Troendle, (Ky. 1907) 99 S. W. 329.

500. 6. Newport News, etc., Co. *v.* Bickford, 105 Va. 182, 52 S. E. 1011.

Set-off May Be Pleaded against a Foreign Judgment, although it was rendered in a state prohibiting set-off against judgments. Leathe *v.* Thomas, 218 Ill. 246, 75 N. E. 810.

Set-off cannot be pleaded to an action to recover wages exempt by statute. Bacon *v.* Laurentides Paper Co., 16 Quebec K. B. 97.

501. 5. **Parties May Waive the Statute.** — Puckett *v.* Page, (Tex. Civ. App. 1907) 100 S. W. 346.

7. Western R. Co. *v.* Russell, 144 Ala. 142, 39 So. 311; Caldwell *v.* Ryan, (Mo. 1908) 108 S. W. 533.

502. 4. Osmers *v.* Furey, 32 Mont. 581, 81 Pac. 345.

6. Van Zandt *v.* Hanover Nat. Bank, 149 Fed. 127, 79 C. C. A. 23.

504. 2. **Forcible Entry.** — Spellman *v.* Rhode, 33 Mont. 21, 81 Pac. 395.

5. **Contra.** — Spurgin *v.* Kruse, 125 Ill. App. 507.

7. **The United States May Claim Set-off** in actions authorized to be brought against them. Allen *v.* U. S., 204 U. S. 581, 27 U. S. Sup. Ct. 324.

505. 4. Lawrenceville Bank *v.* Rockmore, 129 Ga. 582, 59 S. E. 291; Rinker *v.* Lauer, 13 Idaho 163, 88 Pac. 1057; Harrington Lumber Co. *v.* Smith, (Tex. Civ. App. 1906) 99 S. W. 110.

8. Bramblett *v.* Slemp, (Ky. 1908) 108 S. W. 339; Clevenger *v.* Galloway, (Tex. Civ. App. 1907) 104 S. W. 914; Ottawa Northern, etc., R. Co. *v.* Dominion Bridge Co., 36 Can. Sup. Ct. 347, *affirming* 14 Quebec K. B. 197.

506. 2. W. T. Adams Mach. Co. *v.* Thomas, 87 Miss. 391, 39 So. 810; Godkin *v.* Bailey, (N. J. 1907) 65 Atl. 1032; Ostheimer *v.* Single, (N. J. 1907) 68 Atl. 231; Somerset Colliery Co. *v.* John, 219 Pa. St. 380, 68 Atl. 843.

Demands Ascertainable Only by Accounting cannot be used as set-off. Appleby *v.* Barrett, 28 Pa. Super. Ct. 349.

4. Muller *v.* Ocala Foundry, etc., Works, 49 Fla. 189, 38 So. 64; Singer Mfg. Co. *v.* Christian, 211 Pa. St. 534, 60 Atl. 1087; Wanamaker *v.* Quinn, 27 Pa. Super. Ct. 288.

507. 3. Erie City Iron Works *v.* Tatum, 1 Cal. App. 286, 82 Pac. 92; Newport News, etc., Co. *v.* Bickford, 105 Va. 182, 52 S. E. 1011.

508. 1. Hubbard *v.* Anderson, 50 Fla. 222, 39 So. 107; Porter *v.* Roseman, 165 Ind. 255, 74 N. E. 1105; Tidewater Quarry Co. *v.* Scott, 105 Va. 160, 52 S. E. 835.

5. *In re* Becker, 139 Fed. 366; Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687; Smith *v.* Green, 128 Ga. 90, 57 S. E. 98; McLendon *v.* Finch, 2 Ga. App. 421, 58 S. E. 690; Caldwell *v.* Ryan, (Mo. 1908) 108 S. W. 533; Story *v.* Richardson, 91 N. Y. App. Div. 381, 86 N. Y. Supp. 843, *affirmed* 181 N. Y. 584, 74 N. E. 1126; Quayle *v.* Brandow Printing Co., 116 N. Y. App. Div. 9, 101 N. Y. Supp. 323; Philadelphia *v.* Pierson, 211 Pa. St. 388, 60 Atl. 999; Snyder *v.* Lingo, 30 Pa. Super. Ct. 651.

509. 2. Clevenger *v.* Galloway, (Tex. Civ. App. 1907) 104 S. W. 914; Brooks Tire Mach. Co. *v.* Shields, (Tex. Civ. App. 1908) 108 S. W. 1005.

3. Harrington Lumber Co. *v.* Smith, (Tex. Civ. App. 1906) 99 S. W. 110.

510. 13. Joiner *v.* Trail, 86 S. W. 980, 27 Ky. L. Rep. 844.

511. 10. Birmingham Paint, etc., Co. *v.* Champton, (Ala. 1905) 39 So. 1020; Noble *v.* Anniston Nat. Bank, 147 Ala. 697, 41 So. 136; Morris *v.* Attallo Bank, (Ala. 1907) 45 So. 219.

512. 4. Stevens *v.* Worcester, (Mass. 1907) 81 N. E. 907; Farmers' United Tp. Mut. Hail Assoc. *v.* Dally, 98 Minn. 131, 107 N. W. 555.

514. 4. Case Mfg. Co. *v.* Moore, 144 N. Car. 527, 57 S. E. 213.

Demands Barred by Decree for Failure to Prove Them in Time Allowed. — See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843.

5. Walker *v.* Ludwig, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 272, 105 N. Y. Supp. 157.

10. Where the plaintiff has, by agreement, credited the set-off on his demand, he cannot afterwards insist that it is barred. Lowry *v.* Smith, (Tex. Civ. App. 1906) 94 S. W. 450.

515. 3. **Iowa Rule Similar to that of Alabama.** — Richardson *v.* Richardson, 134 Iowa 242, 111 N. W. 934.

4. Appleby *v.* Barrett, 28 Pa. Super. Ct. 349.

After Dissolution. — Swafford *v.* White, 89 S. W. 129, 28 Ky. L. Rep. 119.

A Member of a Mutual Insurance Company, being a *quasi* partner, cannot set off a claim for losses in an action by a receiver of the company to enforce payment of assessments against him. Stone *v.* New Jersey, etc., R. etc., Co., (N. J. 1907) 66 Atl. 1072.

516. 1. Allen *v.* U. S., 204 U. S. 581, 27 U. S. Sup. Ct. 324.

3. Slater *v.* Bonfiglio, (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 385, 106 N. Y. Supp. 861; Pocono Spring Water Ice Co. *v.* American Ice Co., 214 Pa. St. 640, 64 Atl. 398.

517. 8. **A Judgment Which Has Been Opened** is not available as a set-off against another judgment. Bowles *v.* Wright, 28 Pa. Super. Ct. 160.

12. Frank *v.* Mercantile Nat. Bank, 182 N. Y. 264, 74 N. E. 841, *affirming* 100 N. Y. App. Div. 449, 91 N. Y. Supp. 488.

518. 2. **A Claim Acquired by Assignment within Four Months of Bankruptcy** may be set off by the assignee against his debt to the bankrupt, assigned to a third party within the four months, although it could not have been set off against the bankrupt. Stich *v.* Berman, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 104, 96 N. Y. Supp. 743.

3. **Mutual Credit — What Does Not Constitute.** — Western Tie, etc., Co. *v.* Brown, 196 U. S. 502, 25 U. S. Sup. Ct. 339, *reversing* (C. C. A.) 129 Fed. 728.

4. *In re* Becker, 139 Fed. 366.

519. 3. Steinhardt *v.* National Park Bank, 120 N. Y. App. Div. 255, 105 N. Y. Supp. 23, *reversing* (Supm. Ct. App. T.) 52 Misc. (N. Y.) 464, 102 N. Y. Supp. 546; West *v.* Bank of Lahoma, 16 Okla. 328, 85 Pac. 469. *Compare* Bridges *v.* National Bank, 185 N. Y. 146, 77 N. E. 1005.

5. Hooker *v.* Forrester, 53 Fla. 392, 43 So. 241; State *v.* Dickmann, 124 Mo. App. 653, 102 S. W. 44.

520. 2. Douglas Planing Mill, etc., Co. *v.* Anderson, 127 Ga. 571, 56 S. E. 635; Borden, etc., Co. *v.* Fraser, 118 Ill. App. 655; Quigley *v.* Welter, 95 Minn. 386, 104 N. W. 236; Kipp *v.* Gates, 126 Wis. 566, 105 N. W. 947.

7. Foster *v.* Balch, 70 Conn. 449, 65 Atl. 571; Ross *v.* McIntosh, 7 Quebec Pr. 302. See also Honts *v.* Sioux City Brass Works, 134 Iowa 484, 110 N. W. 166.

521. 5. Reim *v.* Bissinger, (N. J. 1907) 68 Atl. 88; Steckbauer *v.* Leykom, 130 Wis. 438, 110 N. W. 217.

522. 1. *Compare* MacDonald *v.* Logan, 2 West. L. Rep. (Can.) 23.

2. Ives *v.* Sanguinetti, (Nev. 1906) 85 Pac. 480.

3. Flynn *v.* Seale, 2 Cal. App. 665, 84 Pac. 263; Doyle *v.* Nesting, 37 Colo. 522, 88 Pac. 862; Sale *v.* Crépeau, 28 Quebec Super. Ct. 423.

523. 9. Flynn *v.* Seale, 2 Cal. App. 665, 84 Pac. 263; Hooker *v.* Forrester, 53 Fla. 392, 43 So. 241; State *v.* Allen, 124 Mo. App. 465, 103 S. W. 1090.

524. 3. Turner *v.* Lawson, 144 Ala. 432, 39 So. 755; Blood *v.* La Serena Land, etc., Co., (Cal. 1907) 89 Pac. 1090. *Compare* Butler *v.* Delafield, 1 Cal. App. 367, 82 Pac. 260.

526. 1. American Guild *v.* Damon, 186 N. Y. 360, 78 N. E. 1081, *reversing* 107 N. Y. App. Div. 140, 94 N. Y. Supp. 985.

6. Richardson *v.* Richardson, 134 Iowa 242, 111 N. W. 934.

8. Flynn *v.* Seale, 2 Cal. App. 665, 84 Pac. 263.

11. A corporation cannot use as set-off a debt due to a partnership composed of all its stockholders. Davis *v.* Bakersfield Oil, etc., Exch., 2 Cal. App. 195, 83 Pac. 260.

527. 3. *Compare* Lowndes *v.* City Nat. Bank, 79 Conn. 693, 66 Atl. 514.

5. *Compare* Schnell *v.* Schnell, 39 Ind. App. 556, 80 N. E. 432.

528. 6. **Set-off against Liquidating Partner.** — Lupton *v.* Taylor, 39 Ind. App. 412, 78 N. E. 689, *modified* (Ind. App. 1906) 79 N. E. 523.

11. De Laval Separator Co. *v.* Sharpless, 134 Iowa 28, 111 N. W. 438.

12. Russell *v.* Deutschman, (Tex. Civ. App. 1907) 100 S. W. 1164; Sale *v.* Crépeau, 28 Quebec Super. Ct. 423.

Claims Acquired Subsequent to Suit Not Available. — Jump *v.* Leon, 192 Mass. 511, 78 N. E. 532.

13. An assigned claim is available, although signification of the act of sale has not been made. Sale *v.* Crépeau, 28 Quebec Super. Ct. 423.

529. 6. Brown *v.* Lapp, 89 S. W. 304, 28 Ky. L. Rep. 409.

7. Brown *v.* Lapp, 89 S. W. 304, 28 Ky. L. Rep. 409.

8. *United States.* — Michigan Yacht, etc., Co. *v.* Busch, (C. C. A.) 143 Fed. 929, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 529.

Colorado. — Hottel *v.* Pondre Valley Reservoir Co., (Colo. 1907) 92 Pac. 918.

Georgia. — Durant Lumber Co. *v.* Sinclair Lumber Co., 2 Ga. App. 209, 58 S. E. 485.

Kentucky. — Union Bank, etc., Co. *v.* Ford, 101 S. W. 347, 31 Ky. L. Rep. 8; Frankfort *v.* Brislan, (Ky. 1907) 104 S. W. 311, 1199; Clark *v.* Raison, 104 S. W. 342, 31 Ky. L. Rep. 905.

New York. — Foster *v.* Central Nat. Bank, (Supm. Ct. Tr. T.) 93 N. Y. Supp. 603; Thalmann *v.* Giles, 116 N. Y. App. Div. 437, 101 N. Y. Supp. 980.

Oregon. — Louie Chung *v.* Stephenson, (Oregon 1907) 89 Pac. 386.

Texas. — *Compare* Gage *v.* Hunter, (Tex. Civ. App. 1906) 94 S. W. 1104.

Canada. — Lillie *v.* Thomas, 1 West. L. Rep. (Can.) 467.

530. 1. Eastern Tube Co. *v.* Harrison, 140 Fed. 526, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 529 [530]; Michigan Sav. Bank *v.* Millar, 110 N. Y. App. Div. 670, 96 N. Y. Supp. 568, *affirmed* 186 N. Y. 606, 79 N. E. 1111; D'Amelio *v.* Abraham, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 386, 105 N. Y. Supp. 1019, *affirmed* (Supm. Ct. App. Div.) 108 N. Y. Supp. 1128.

Claims against Assignor Acquired after Notice of Assignment Cannot Be Set Off. — Bramblett *v.* Slemp, (Ky. 1908) 108 S. W. 339.

2. **Contra.** — Stich *v.* Berman, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 104, 96 N. Y. Supp. 743.

531. 4. Hynes *v.* Illinois Trust, etc., Bank, 226 Ill. 95, 80 N. E. 753, *affirming* 126 Ill. App. 409; Cripps *v.* Buffington, (Iowa 1906) 108 N. W. 231.

5. Craighead *v.* Swartz, 219 Pa. St. 149, 67 Atl. 1003.

Set-off Allowed Where Assignee Takes with Notice of Fraud. — Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964.

532. 1. Butler *v.* Mitchell, 128 Ga. 431, 57 S. E. 764; Butler *v.* Scandrett, 128 Ga. 432, 57 S. E. 764.

4. Butler *v.* Mitchell, 128 Ga. 431, 57 S. E. 764; Butler *v.* Scandrett, 128 Ga. 432, 57 S. E. 764.

6. Sykes Banking Co. *v.* Morris, 2 Tenn. Ch. App. 236.

533. 2. Jump *v.* Leon, 192 Mass. 511, 78 N. E. 532.

4. People *v.* German Bank, 116 N. Y. App. Div. 687, 101 N. Y. Supp. 917.

6. Smith *v.* Perry, 197 Mo. 438, 459, 95 S. W. 337, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 533.

7. *In re* Angle, 148 Cal. 102, 82 Pac. 668.

8. Rich *v.* Hayes, 101 Me. 324, 8 Ann. Cas. 304, 64 Atl. 656.

534. 1. Hatfield *v.* Mahoney, 39 Ind. App. 499, 79 N. E. 408, 1087, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 533 [534].

2. Rich *v.* Hayes, 101 Me. 330, 8 Ann. Cas. 304, 64 Atl. 656, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 534.

Maturity after Debtor's Death and Before Suit Sufficient. — Fishburne *v.* Merchants' Bank, 42 Wash. 473, 85 Pac. 38.

5. *Compare* Jump *v.* Leon, 192 Mass. 511, 78 N. E. 532.

6. Van Dusen *v.* Topeka Woolen Mills Co., 74 Kan. 437, 87 Pac. 74.

7. Fishburne *v.* Merchants' Bank, 42 Wash. 473, 85 Pac. 38.

Contra. — Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616.

535. 4. **Set-off against Legatee.** — Tilton *v.* Tilton, (Mass. 1907) 82 N. E. 704.

536. 9. In a suit by a partnership, alleged to be composed of a husband and wife, defendant may show that the husband alone constituted the alleged firm, and set off a demand due from him. Lawrenceville Bank *v.* Rockmore, 129 Ga. 582, 59 S. E. 291.

537. 2. Campbell *v.* Kerns, 13 Idaho 237, 90 Pac. 108.

4. Frazier *v.* Poindexter, 78 Ark. 241, 95 S. W. 464.

538. 9. **May Set Off Claim against Agent.** — Tyson *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 930.

539. 3. Durant Lumber Co. *v.* Sinclair Lumber Co., 2 Ga. App. 209, 58 S. E. 485.

540. 4. See Randolph *v.* Walker, 78 S. Car. 157, 59 S. E. 856.

6. Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 540; Marcy *v.* Whallon, 115 Ill. App. 435; North Baltimore Bottle Glass Co. *v.* Altpeter, (Wis. 1907) 113 N. W. 435.

8. Stimmel *v.* Benthall, (Va. 1908) 60 S. E. 765.

541. 2. Noble *v.* Anniston Nat. Bank, 147 Ala. 697, 41 So. 136; Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017.

In an Action by a Surety against His Obligee, a claim due from his principal is available as a set-off. Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328.

4. Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214.

542. 6. In proceedings against a county treasurer to compel the payment of a county warrant he may set off taxes due the county. Funk *v.* State, 166 Ind. 455, 77 N. E. 854.

9. Lilly *v.* Cox, 61 W. Va. 547, 56 S. E. 900.

543. 1. Whelan *v.* McMahan, 47 Oregon 38, 82 Pac. 19, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 543; Arnold *v.* Carter, 125 Ga. 319, 54 S. E. 177; Bramblett *v.* Slemp, (Ky. 1908) 108 S. W. 339; Willoughby *v.* Ball, 18 Okla. 535, 90 Pac. 1017; Missouri, etc., R. Co. *v.* Cassinoba, (Tex. Civ. App. 1907) 99 S. W. 888.

544. 2. *United States.* — Brown *v.* Pegram, 149 Fed. 515; *In re* Northrup, 152 Fed. 763.

Alabama. — Renfroe *v.* Yarbrough, 144 Ala. 496, 39 So. 660.

California. — Coonan *v.* Loewenthal, 147 Cal. 218, 81 Pac. 527.

Connecticut. — Betts *v.* Connecticut L. Ins. Co., 78 Conn. 442, 62 Atl. 345.

Georgia. — Butler *v.* Mitchell, 128 Ga. 431, 57 S. E. 764; Butler *v.* Scandrett, 128 Ga. 432, 57 S. E. 764.

Iowa. — De Laval Separator Co. *v.* Sharpless, 134 Iowa 28, 111 N. W. 438.

Massachusetts. — See Jump *v.* Leon, 192 Mass. 511, 78 N. E. 532.

Mississippi. — Citizens' Bank *v.* Kretschmar, (Miss. 1907) 44 So. 930.

Missouri. — Smith *v.* Perry, 197 Mo. 438, 95 S. W. 337; Walton *v.* Catron, 125 Mo. App. 501, 102 S. W. 1058.

Nebraska. — Tootle-Weakley Millinery Co. *v.* Billingsley, 74 Neb. 531, 105 N. W. 85.

Virginia. — Childress *v.* Jordan, 107 Va. 275, 58 S. E. 563.

546. 2. Assets Realization Co. *v.* Buffalo, 118 N. Y. App. Div. 571, 103 N. Y. Supp. 153.

Debt of Insolvent Cannot Be Set Off against Liability Accruing to His Assignee. — Bridges *v.* National Bank, 185 N. Y. 146, 77 N. E. 1005.

3. Abernathy *v.* Meyer-Bridges Coffee, etc., Co., (Ky. 1907) 103 S. W. 342.

Set-off Allowed Although Debt Not Due. — Holmes *v.* Pope, 1 Ga. App. 338, 58 S. E. 281.

4. Brown *v.* Pegram, 149 Fed. 515; Porter *v.* Roseman, 165 Ind. 255, 74 N. E. 1105; Abernathy *v.* Meyerbridges Coffee, etc., Co., (Ky. 1907) 99 S. W. 942, 100 S. W. 862. *Compare* Plattner Implement Co. *v.* Bradley, (Colo. 1907) 90 Pac. 86; Edgemoor Iron Co. *v.* Brown Hoisting Mach. Co., (Del. 1906) 62 Atl. 1054.

548. 8. Edgemoor Iron Co. *v.* Brown Hoisting Mach. Co., (Del. 1906) 62 Atl. 1054.

549. 2. Ashe-Carson Co. *v.* Bonifay, 147 Ala. 381, 41 So. 816; W. T. Adams Mach. Co. *v.* Thomas, 87 Miss. 391, 39 So. 810.

3. Michigan Yacht, etc., Co. *v.* Busch, (C. C. A.) 143 Fed. 929, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 549; Ashe-Carson Co. *v.* Bonifay, 147 Ala. 381, 41 So. 816; Arnold *v.* Carter, 125 Ga. 319, 54 S. E. 177; Smith *v.* Green, 128 Ga. 90, 57 S. E. 98; Weatherbee *v.* Lillybeck, 86 Miss. 156, 38 So. 284.

551. 4. Koch *v.* Sumner, 145 Mich. 358, 108 N. W. 725; Robins *v.* Goddard, (1905) 1 K. B. 294, 74 L. J. K. B. 167, 92 L. T. N. S. 10, 21 Times L. Rep. 120.

552. 1. Builders' Supply Depot *v.* O'Connor, 150 Cal. 265, 88 Pac. 982; Spears *v.* Du Rant, 76 S. Car. 19, 56 S. E. 652.

Contra. — Ottawa Northern, etc., R. Co. *v.* Dominion Bridge Co., 36 Can. Sup. Ct. 347, *affirming* 14 Quebec K. B. 197.

2. **In an Action by a Salesman** over-payments made to him may be claimed by way of set-off or recoupment. Wiseberg *v.* Novelty Hat Mfg. Co., 3 Ga. App. 362, 59 S. E. 1112.

553. 1. Mitchell *v.* Henry Vogt Mach. Co., (Ga. App. 1908) 60 S. E. 295.

3. Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Gem Knitting Mills *v.* Empire Printing, etc., Co., (Ga. App. 1908) 60 S. E. 365; Biele *v.* Levy, (Supr. Ct. App. T.) 107 N. Y. Supp. 607.

4. Erie City Iron Works *v.* Tatum, 1 Cal. App. 286, 82 Pac. 92; Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53; Dooley *v.* Hasenwinkle Grain Co., 120 Ill. App. 43; Ames *v.* Norwich Light Co., 122 N. Y. App. Div. 319, 106 N. Y. Supp. 952.

554. 3. Smith *v.* Werkheiser, (Mich. 1908) 115 N. W. 964; Steckbauer *v.* Leykom, 130 Wis. 438, 110 N. W. 217.

Rule Applied to Deceit in Sale of Corporate Stock. — Rumsey *v.* Shaw, 25 Pa. Super. Ct. 386.

557. 1. McConnell *v.* Stubbs, 124 Ga. 1038, 53 S. E. 698.

559. 1. Ashe-Carson Co. *v.* Bonifay, 147 Ala. 381, 41 So. 816, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 558 [559]; Spurgin *v.* Kruse, 125 Ill. App. 507.

560. 4. McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342.

5. D. A. Tompkins Co. *v.* Monticello Cotton Oil Co., 153 Fed. 817.

Damages Cannot Exceed Amount Proved. — McConnell *v.* Stubbs, 124 Ga. 1038, 53 S. E. 698.

561. 7. Aultman, etc., Co. *v.* Meade, [illegible] W. 137, 28 Ky. L. Rep. 208.

562. 4. Edgemoor Iron Co. *v.* Brown Hoisting Mach. Co., (Del. 1906) 62 Atl. 1054.

563. 10. Patten *v.* Iroquois Furnace Co., 1.; Ill. App. 1.

564. 2. Dalton *v.* Bunn, (Ala. 1907) 44 So. 625; Arnold *v.* Carter, 125 Ga. 319, 54 S. E. 177; Gem Knitting Mills *v.* Empire Printing, etc., Co., (Ga. App. 1908) 60 S. E. 365; Roth *v.* Reiter, 213 Pa. St. 400, 62 Atl. 1063,

3. Gem Knitting Mills *v.* Empire Printing, etc., Co., (Ga. App. 1908) 60 S. E. 365.

565. 3. Mountain City Mill Co. *v.* Cobb, 124 Ga. 937, 53 S. E. 458.

567. 1. Separate sales of similar articles are not necessarily the same transaction. Gem Knitting Mills *v.* Empire Printing, etc., Co., (Ga. App. 1908) 60 S. E. 365.

568. 4. **For Other Definitions.** — Smith *v.* French, 141 N. Car. 1, 53 S. E. 435.

571. 9. Excelsior Clay Works *v.* De Camp, (Ind. App. 1907) 80 N. E. 981; Smith *v.* French, 141 N. Car. 1, 53 S. E. 435; Gray *v.* Granger, (Wash. 1908) 93 Pac. 912.

572. 1. Neville *v.* Pennsylvania, etc., Co., 113 N. Y. App. Div. 768, 99 N. Y. Supp. 270; Pierson *v.* Hughes, (Supm. Ct. App. T.) 102 N. Y. Supp. 528; Edmead *v.* Anderson, 118 N. Y. App. Div. 16, 103 N. Y. Supp. 369.

573. 1. **Damages Too Remote Not Available.** — Elmore *v.* Booth, 83 Ark. 47, 102 S. W. 393.

574. 4. Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616; Woodworth *v.* Carroll, (Minn. 1907) 112 N. W. 1054.

6. Bannerot *v.* McClure, 39 Colo. 472, 90 Pac. 70; Osmers *v.* Furey, 32 Mont. 581, 81 Pac. 345; Nichols *v.* Riley, 118 N. Y. App. Div. 404, 103 N. Y. Supp. 554; Uvalde Asphalt Paving Co. *v.* Morgan Contracting Co., 120 N. Y. App. Div. 498, 104 N. Y. Supp. 1118.

575. 2. Osmers *v.* Furey, 32 Mont. 581, 81 Pac. 345; Mac Donald *v.* Logan, 2 West. L. Rep. (Can.) 23.

3. Osmers *v.* Furey, 32 Mont. 581, 81 Pac. 345.

6. Morrison Mfg. Co. *v.* Rimerman, 127 Iowa 719, 104 N. W. 279; Quayle *v.* Brandow Printing Co., 116 N. Y. App. Div. 9, 101 N. Y. Supp. 323. *Compare* Abernathy *v.* Meyer-Bridges Coffee, etc., Co., (Ky. 1907) 103 S. W. 342.

The rule does not apply to a counterclaim arising out of the contract sued on. Smith *v.* French, 141 N. Car. 1, 53 S. E. 435.

576. 1. **Wrongful Attachment.** — Abernathy *v.* Meyer-Bridges Coffee, etc., Co., 99 S. W. 942, 30 Ky. L. Rep. 844; Abernathy *v.* Meyer-Bridges Coffee, etc., Co., (Ky. 1907) 103 S. W. 342. See also Morrison Mfg. Co. *v.* Rimerman, 127 Iowa 719, 104 N. W. 279.

6. Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616; Thomas P. Beale Furniture Co. *v.* McGrorty, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 643, 103 N. Y. Supp. 221.

7. Elliott *v.* Brady, 118 N. Y. App. Div. 208, 103 N. Y. Supp. 156; Rogers *v.* Kelsey, (Supm. Ct. App. T.) 105 N. Y. Supp. 119.

577. 1. Tyson *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 930.

4. Heyward *v.* Maynard, 119 N. Y. App. Div. 66, 103 N. Y. Supp. 1028.

580. 4. **Contrary View.** — Linn *v.* Hagan, 92 S. W. 11, 28 Ky. L. Rep. 1292.

581. 1. Koch *v.* Sumner, 145 Mich. 358, 108 N. W. 725; Spears *v.* Du Rant, 76 S. Car. 19, 56 S. E. 652.

582. 1. Johnston *v.* O'Shea, 118 Mo. App. 287, 94 S. W. 783.

2. Jacobowitz *v.* Strasbourger, (Supm. Ct. App. T.) 108 N. Y. Supp. 698; Ruzeoski *v.* Wilrodt, (Tex. Civ. App. 1906) 94 S. W. 142; Halliman *v.* Levytansky, (Tex. Civ. App. 1907) 102 S. W. 463.

584. 1. Excelsior Clay Works *v.* De Camp, (Ind. App. 1907) 80 N. E. 984, *quoting* 25 Am. and Eng. Encyc. of Law (2d ed.) 584. *Compare* Lange *v.* Schile, 117 N. Y. App. Div. 233, 101 N. Y. Supp. 1080.

585. 1. Excelsior Clay Works *v.* De Camp, (Ind. App. 1907) 80 N. E. 984, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 585.

586. 1. **For Other Illustrations,** see Kneeland *v.* Pennell, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 94, 96 N. Y. Supp. 403; Forster *v.* F. MacKinnon Mfg. Co., 130 Wis. 281, 110 N. W. 226.

2. Webb *v.* Milford Shoe Co., (Ky. 1908) 108 S. W. 229; Isbell-Porter Co. *v.* Heineman, 113 N. Y. App. Div. 79, 98 N. Y. Supp. 1018; May *v.* Loomis, 140 N. Car. 350, 52 S. E. 728; Prautsch *v.* Rasmussen, (Wis. 1907) 113 N. W. 416.

In Suit by a Ward to Set Aside a Sale of His Guardian to Himself, plaintiff may set off rents against improvements. Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

587. 1. Jones *v.* Hoffman, 150 Mich. 129, 113 N. W. 316.

2. In action for rent, a tenant may counterclaim for overpayment for a growing crop purchased from the landlord. Lewis *v.* Muse, (Mo. App. 1908) 108 S. W. 1107.

6. A defendant may counterclaim for damages due to misconduct of the plaintiff in the transaction upon which the note is based. Kneeland *v.* Pennell, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 94, 96 N. Y. Supp. 403.

588. 6. Bannerot *v.* McClure, 39 Colo. 472, 90 Pac. 70; Boothe *v.* Armstrong, 80 Conn. 218, 67 Atl. 484; Tyson *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 930; McBurnett *v.* Lampkin, (Tex. Civ. App. 1907) 101 S. W. 864; Jesse French Piano, etc., Co. *v.* Williams, (Tex. Civ. App. 1907) 102 S. W. 948; Reynolds *v.* Dickson, (Wash. 1908) 93 Pac. 910; Gray *v.* Granger, (Wash. 1908) 93 Pac. 912; Telulah Paper Co. *v.* Patten Paper Co., (Wis. 1907) 112 N. W. 522.

589. 1. California Canneries Co. *v.* Pacific Sheet Metal Works, 144 Fed. 886; Barry-Wehmiller Machinery Co. *v.* Thompson, 83 Ark. 283, 104 S. W. 137; Daniel *v.* Gordy, 84 Ark. 218, 105 S. W. 256; Allen *v.* Hodge, (Ky. 1907) 106 S. W. 255; Hanson *v.* Byrnes, 96 Minn. 50, 104 N. W. 762; Lilienthal *v.* George Bechtel Brewing Co., 118 N. Y. App. Div. 205, 102 N. Y. Supp. 1051; Gage *v.* Hunter, (Tex. Civ. App. 1906) 94 S. W. 1104; Brahm *v.* M. C. Gehl Co., (Wis. 1907) 112 N. W. 1097.

2. Bannerot *v.* McClure, 39 Colo. 472, 90 Pac. 70; Excelsior Clay Works *v.* De Camp, (Ind. App. 1907) 80 N. E. 981; Kneeland *v.* Pennell, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 94, 96 N. Y. Supp. 403.

3. Excelsior Clay Works *v.* De Camp, (Ind. App. 1907) 80 N. E. 981.

590. 2. Bannerot *v.* McClure, 39 Colo. 472, 90 Pac. 70; Excelsior Clay Works *v.* De Camp, (Ind. App. 1907) 80 N. E. 981.

3. Baer *v.* Sleicher, 153 Fed. 129, 82 C. C. A. 281; Kneeland *v.* Pennell, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 94, 96 N. Y. Supp. 403; Vandervort *v.* Mink, 113 N. Y. App. Div. 601, 98 N. Y. Supp. 772.

4. Roberts *v.* Jones, 71 S. Car. 404, 51 S. E. 240.

591. 1. Excelsior Clay Works *v.* De Camp, (Ind. App. 1907) 80 N. E. 981.

592. 5. Abernathy *v.* Meyer-Bridges Coffee, etc., Co., (Ky. 1907) 99 S. W. 942.

6. Hutkoff *v.* Lauckhardt, (Supm. Ct. App. T.) 101 N. Y. Supp. 12.

593. 2. Uhlfelder *v.* Loughran, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 593, 104 N. Y. Supp. 891.

4. McHugh *v.* Regan, 28 Ohio Cir. Ct. 790; Wade *v.* Herndl, 127 Wis. 544, 107 N. W. 4.

8. Barfield *v.* Saunders, 116 La. 136, 40 So. 593.

594. 1. Crawford *v.* McDonald, 84 Ark. 415, 106 S. W. 206; Mixer *v.* Mixer, 2 Cal. App. 227, 83 Pac. 273; Hackett *v.* Kanne, 98 Minn. 240, 107 N. W. 1131.

Counterclaims Not Allowed. — Goldberger *v.* Leibowitz, (Colo. 1908) 93 Pac. 1108; Duff *v.* Bailey, 96 S. W. 577, 29 Ky. L. Rep. 919; Brooks Tire Mach. Co. *v.* Shields, (Tex. Civ. App. 1908) 108 S. W. 1005.

2. Reardon *v.* Higgins, 39 Ind. App. 363, 79 N. E. 208; Hall *v.* Ayer, etc., Tie Co., 102 S. W. 867, 31 Ky. L. Rep. 508; O'Connor *v.* Slatter, (Wash. 1908) 93 Pac. 1078.

3. Daniel *v.* Gordy, 84 Ark. 218, 105 S. W. 256; Novak *v.* Novak, (Iowa 1907) 111 N. W. 10; Allen *v.* Hodge, (Ky. 1907) 106 S. W. 255; Lehleuter *v.* Schano, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 99, 96 N. Y. Supp. 716; MacDonald *v.* Logan, 2 West. L. Rep. (Can.) 23.

Rule Applies in Admiralty Cases. — George D. Emery Co. *v.* Tweedie Trading Co., 143 Fed. 144; The Oceano, 148 Fed. 131.

595. 2. Ft. Miller Pulp, etc., Co. *v.* Bratt, 119 N. Y. App. Div. 685, 104 N. Y. Supp. 350; Ft. Miller Pulp, etc., Co. *v.* Bratt, 119 N. Y. App. Div. 927, 104 N. Y. Supp. 353.

596. 1. Steinmetz *v.* Cosmopolitan Range Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 611, 94 N. Y. Supp. 456.

597. 4. Citizens' Bank *v.* Jeansonne, (La. 1907) 45 So. 367.

598. 1. Hall *v.* Ayer, etc., Tie Co., 102 S. W. 867, 31 Ky. L. Rep. 508; Steiner *v.* Oliver, (Tex. Civ. App. 1907) 107 S. W. 359.

3. Reardon *v.* Higgins, 39 Ind. App. 363, 79 N. E. 208.

4. Goldberger *v.* Leibowitz, (Colo. 1908) 93 Pac. 1108.

In New York a claim arising in contract cannot be counterclaimed in an action for conversion. Thomas P. Beale Furniture Co. *v.* McGrorty, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 643, 103 N. Y. Supp. 221; McIntyre *v.* Smathers, 118 N. Y. App. Div. 776, 103 N. Y. Supp. 873.

599. 3. Lehleuter *v.* Schano, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 99, 96 N. Y. Supp. 716.

5. Smith *v.* Alvord, 31 Utah 346, 88 Pac. 16.

601. 3. Bloomgarden *v.* Hoffmann, 116 N. Y. App. Div. 719, 102 N. Y. Supp. 20.

In Action for Goods Sold and Delivered. — Pascal *v.* Goldstein, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 629, 100 N. Y. Supp. 1025.

In a Suit to Rescind a Contract of Purchase of Land the defendant may set off rent against purchase money paid. Gayle *v.* Troutman, 103 S. W. 342, 31 Ky. L. Rep. 718.

602. 1. **In an Action for Rent** a tenant may counterclaim for breach of covenant for quiet enjoyment. Harmont *v.* Sullivan, 128 Iowa 309, 103 N. W. 951; Uhlfelder *v.* Loughran, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 593, 104 N. Y. Supp. 891.

2. A lawyer may counterclaim for services rendered. Heyward *v.* Maynard, 119 N. Y. App. Div. 66, 103 N. Y. Supp. 1028.

An equitable lien on the property may be set up as a counterclaim. Reardon *v.* Higgins, 39 Ind. App. 363, 79 N. E. 208.

603. 1. A defendant may counterclaim for improvements made *bona fide*. New *v.* Young, (Ala. 1906) 41 So. 523; Hicks *v.* Webb, 127 Ga. 170, 56 S. E. 307.

But not for those made after notice of an adverse claim. Murray *v.* Barnes, 146 Ala. 688, 40 So. 348.

Rents and waste may be counterclaimed against improvements. Ingram *v.* Winters, (Tex. Civ. App. 1907) 102 S. W. 432.

3. Sunter *v.* Sunter, 190 Mass. 449, 77 N. E. 497.

Foreclosure of Mortgage. — Abernethy *v.* Uhlman, (Oregon 1908) 93 Pac. 936. *Compare* Moore *v.* Gould, 151 Cal. 723, 91 Pac. 616.

4. Danielson *v.* Rua, (S. Dak. 1906) 107 N. W. 680.

5. Hanson *v.* Skogman, 14 N. Dak. 445, 105 N. W. 90.

6. Hampton *v.* Christensen, (Cal. 1905) 84 Pac. 200; Builders' Supply Depot *v.* O'Connor, 150 Cal. 265, 88 Pac. 982; Koch *v.* Sumner, 145 Mich. 358, 108 N. W. 725; Spears *v.* Du Rant, 76 S. Car. 19, 56 S. E. 652.

In an Action by a Subcontractor the owner may set off damages caused by default of the chief contractor. Fossett *v.* Rock Island Lumber, etc., Co., (Kan. 1907) 92 Pac. 833.

604. 5. Iowa-Minnesota Land Co. *v.* Conner, (Iowa 1907) 112 N. W. 820.

Executors. — Ft. Miller Pulp, etc., Co. *v.* Bratt, 119 N. Y. App. Div. 685, 104 N. Y. Supp. 350; Ft. Miller Pulp, etc., Co. *v.* Bratt, 119 N. Y. App. Div. 927, 104 N. Y. Supp. 353.

607. 3. **Rejected Claim Not Sued on within Statutory Period Not Available as Counterclaim.** — Morissey *v.* Hill, 142 N. Car. 355, 55 S. E. 193.

608. 1. Com. *v.* Barker, 103 S. W. 303, 31 Ky. L. Rep. 648 [to follow Com. *v.* Todd, 9 Bush (Ky.) 708].

5. U. S. *v.* Gillies, 144 Fed. 991.

609. 1. Bannerot *v.* McClure, 39 Colo. 472, 90 Pac. 70.

6. Hanson *v.* Skogman, 14 N. Dak. 445, 105 N. W. 90.

7. Holmes *v.* McKennan, 120 Ill. App. 320.

8. Judgment Cannot Exceed Amount Demanded. — Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20.

610. 2. Jesse French Piano, etc., Co. *v.* Williams, (Tex. Civ. App. 1907) 102 S. W. 948.

3. Whelan *v.* McMahan, 47 Oregon 38, 82 Pac. 19, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 610; Coonan *v.* Loewenthal, 147 Cal. 218, 81 Pac. 527; Brown *v.* Lapp, 89 S. W. 304, 28 Ky. L. Rep. 409; Tootle-Weakley Millinery Co. *v.* Billingsley, 74 Neb. 531, 105 N. W. 85.

611. 1. Injunction Will Be Granted to Prevent Enforcement of Judgment. — De Laval Separator Co. *v.* Sharpless, 134 Iowa 28, 111 N. W. 438.

612. 1. Reed *v.* Smith, 158 Fed. 889.

4. Brown *v.* Lapp, 89 S. W. 304, 28 Ky. L. Rep. 409.

5. Caldwell *v.* Ryan, (Mo. 1908) 108 S. W. 533.

613. 1. Reed *v.* Smith, 158 Fed. 889.

614. 1. Reed *v.* Smith, 158 Fed. 889.

6. Walton *v.* Catron, 125 Mo. App. 501, 102 S. W. 1058.

615. 6. Brown *v.* Lapp, 89 S. W. 304, 28 Ky. L. Rep. 409.

616. 2. Louisville First Nat. Bank *v.* Krieger, 89 S. W. 733, 28 Ky. L. Rep. 612; McManus *v.* Cash, (Tex. 1908) 108 S. W. 800.

4. Miller *v.* Rosebrook, (Iowa 1907) 113 N. W. 771; Bramblett *v.* Slemp, (Ky. 1908) 108 S. W. 339; Walton *v.* Catron, 125 Mo. App. 501, 102 S. W. 1058; Greene *v.* Harris, 1 Can. Sup. Ct. Cas. 99, *reversing* 25 N. Bruns. 451. *Compare* Brown *v.* Lapp, 89 S. W. 304, 28 Ky. L. Rep. 409.

617. 1. Brown *v.* Lapp, 89 S. W. 304, 28 Ky. L. Rep. 409. *Compare* De Laval Separator Co. *v.* Sharpless, 134 Iowa 28, 111 N. W. 438; Van Cise *v.* Peterman, (Supm. Ct. Spec. T.) 100 N. Y. Supp. 536; Garrigan *v.* Huntimer, (S. Dak. 1907) 111 N. W. 563.

Attorney's Lien Must Be Perfected When Set-off Is Offered. — Park *v.* Hutchinson, 80 Ark. 183, 96 S. W. 751.

2. Coonan *v.* Loewenthal, 147 Cal. 218, 81 Pac. 527; Brown *v.* Lapp, 89 S. W. 304, 28 Ky. L. Rep. 409; McManus *v.* Cash, (Tex. 1908) 108 S. W. 800.

618. 1. Coonan *v.* Lowenthal, 147 Cal. 218, 81 Pac. 527.

2. Coonan *v.* Loewenthal, 147 Cal. 218, 81 Pac. 527.

619. 2. McManus *v.* Cash, (Tex. 1908) 108 S. W. 800.

3. Bowles *v.* Wright, 28 Pa. Super. Ct. 160.

620. 2. Jump *v.* Leon, 192 Mass. 511, 78 N. E. 532.

621. 5. Judgment Must Be Such that Execution Can Issue Thereon against Defendant's Property. — Frye-Bruhn Co. *v.* Meyer, 2 Alaska 77.

622. 13. Reed *v.* Smith, 158 Fed. 889.

623. 6. Tootle-Weakley Millinery Co. *v.* Billingsley, 74 Neb. 531, 105 N. W. 85.

624. 4. Reed *v.* Smith, 158 Fed. 889.

5. Caldwell *v.* Ryan, (Mo. 1908) 108 S. W. 533.

7. Serhant *v.* Haker, 73 Ohio St. 250, 76 N. E. 943.

625. 1. McManus *v.* Cash, (Tex. 1908) 108 S. W. 800. *Compare* Louisville First Nat. Bank *v.* Krieger, 89 S. W. 733, 28 Ky. L. Rep. 612; Frye-Bruhn Co. *v.* Meyer, 2 Alaska 77.

6. Judgment Purchased by an Administrator with Funds of the Estate to be used as a set-off cannot be set off against a judgment against him in his representative capacity. Rich *v.* Hayes, 101 Me. 324, 8 Ann. Cas. 304, 64 Atl. 656.

SHALL.

633. 2. **"Shall Have Testified"** in a statute can have no other meaning than "has previously testified." Foley *v.* Dillon, (Ky. 1907) 105 S. W. 461.

634. 3. Spencer's Appeal, 78 Conn. 310, 61 Atl. 1010.

635. 1. **The Words "Shall Stand Suspended,"** when used in respect to policies of insurance and death benefit certificates, are equivalent in their legal effect to "cease and determine" and "null and void." Beeman *v.* Supreme Lodge, etc., 29 Pa. Super. Ct. 389.

3. *In re* Gorringe, (1906) 2 Ch. 341, 75 L. J. Ch. 687, 95 L. T. N. S. 574, *reversing* 54 W. R. 267.

SHELLEY'S CASE (RULE IN).

639. 1. Wilson *v.* Rusk, (Iowa 1905) 103 N. W. 204; Tyson *v.* Sinclair, 138 N. Car. 23, 50 S. E. 450; Pitchford *v.* Limer, 139 N. Car. 13, 51 S. E. 789.

Other Statements. — Scott *v.* Brin, (Tex. Civ. App. 1908) 107 S. W. 565. See also Ahlfield *v.* Curtis, 229 Ill. 139, 82 N. E. 276; Perry *v.* Hackney, 142 N. Car. 368, 55 S. E. 289.

That the rule applies to wills as well as to deeds, see Brokaw *v.* Brokaw, (Iowa 1907) 113 N. W. 469.

A Devise to One for Life "and after that to his legal heirs * * *" carries a fee simple to the first taker under the rule in Shelley's Case. Garver *v.* Clouser, 218 Pa. St. 611, 67 Atl. 909.

Where the Use of One-half of an Estate was devised to one for life "and, at his death, to his legal heirs" the rule applied. Pease *v.* Davis, 225 Ill. 408, 80 N. E. 249.

640. 3. Hastings *v.* Engle, 217 Pa. St. 419, 66 Atl. 761; Rissman *v.* Wierth, 220 Ill. 181, 77 N. E. 108; Burton *v.* Carnahan, 38 Ind. App. 612, 78 N. E. 682; Thompson *v.* Crump, 138 N. Car. 32, 50 S. E. 457; Perry *v.* Hackney, 142 N. Car. 368, 55 S. E. 289.

641. 1. Kepler *v.* Larson, 131 Iowa 438, 108 N. W. 1033.

642. 1. **Application for Foregoing Principles.** — Miller *v.* Mowers, 227 Ill. 392, 81 N. E. 420, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 642.

643. 2. **In North Carolina** by statute a fee tail special is converted into a fee simple. Jones *v.* Ragsdale, 141 N. Car. 200, 53 S. E. 842.

644. 3. Johnson *v.* Buck, 220 Ill. 226, 77 N. E. 163.

5. Hastings *v.* Engle, 217 Pa. St. 419, 66 Atl. 761.

645. 1. Berry *v.* Spivey, (Tex. Civ. App. 1906) 97 S. W. 511.

646. 3. Walker *v.* Taylor, 144 N. Car. 175, 56 S. E. 877, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 646.

Husband and Wife. — Waller *v.* Pollitt, 104 Md. 172, 64 Atl. 1040.

648. 3. Walker *v.* Taylor, 144 N. Car. 175, 56 S. E. 877.

The Rule Applies where there is a conveyance in trust for the use of a person for life, remainder to her lineal heirs forever. Clark *v.* Neves, 76 S. Car. 484, 57 S. E. 614.

4. Slater *v.* Rudderforth, 25 App. Cas. (D. C.) 497; Vogt *v.* Vogt, 26 App. Cas. (D. C.) 46.

649. 4. **Rule Not Applicable to Personal Property in Massachusetts.** — Sands *v.* Old Colony Trust Co., (Mass. 1907) 81 N. E. 300.

650. 1. Faison *v.* Odum, 144 N. Car. 107, 56 S. E. 793, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650; Thompson *v.* Crump, 138 N. Car. 32, 50 S. E. 457.

Test. — *In re* Belcher, 211 Pa. St. 615, 61 61 Atl. 252. See also Scott *v.* Brin, (Tex. Civ. App. 1908) 107 S. W. 565, where the words "heirs of his body" were held to be used in their strict technical sense.

651. 2. Faison *v.* Odum, 144 N. Car. 107, 56 S. E. 793, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 651; Hoover *v.* Strauss, 215 Pa. St. 130, 64 Atl. 333; Hubbird *v.* Goin, (C. C. A.) 137 Fed. 822; King *v.* Savage Brick Co., 30 Pa. Super. Ct. 582.

Remainder to Children. — Reilly *v.* Bristow, 105 Md. 326, 66 Atl. 262; Clark *v.* Neves, 76 S. Car. 484, 57 S. E. 614.

3. **"Children" Construed as "Heirs."** — Strawbridge *v.* Strawbridge, 220 Ill. 61, 77 N. E. 78; Hastings *v.* Engle, 217 Pa. St. 419, 66 Atl. 761.

5. **Right Heirs.** — Tyson *v.* Sinclair, 138 N. Car. 23, 50 S. E. 450.

653. 3. **Illinois.** — Johnson *v.* Buck, 220 Ill. 226, 77 N. E. 163.

Indiana. — Burton *v.* Carnahan, 38 Ind. App. 612, 78 N. E. 682.

Iowa. — That the rule in Shelley's Case was in force in Iowa as a part of the common-law, see Kepler *v.* Larson, 131 Iowa 438, 108 N. W. 1033.

For a reference to the *Iowa* statute abolishing the rule in Shelley's Case, see Brokaw *v.* Brokaw, (Iowa 1907) 113 N. W. 469.

Maryland. — That the rule still exists in Maryland, see Waller *v.* Politt, 104 Md. 172, 64 Atl. 1040.

Massachusetts. — Sands *v.* Old Colony Trust Co., (Mass. 1907) 81 N. E. 300.

New York. — Webb *v.* Sweet, 187 N. Y. 172, 79 N. E. 1024.

North Carolina. — Tyson *v.* Sinclair, 138 N. Car. 123, 50 S. E. 450.

Pennsylvania. — Hastings *v.* Engle, 217 Pa. St. 419, 66 Atl. 761.

South Carolina. — Clark *v.* Neves, 76 S. Car. 484, 57 S. E. 614.

657. 2. Brokaw *v.* Brokaw, (Iowa 1907) 113 N. W. 469, where, however, the statute "expressly declares that it shall not be retroactive."

SHERIFFS AND CONSTABLES.

663. 4. **Statute Construed Not to Refer to Fragment of Term.** — Bozeman *v.* Laird, (Miss. 1908) 45 So. 722.

677. 2. **Shooting Escaped Misdemeanant.** — King *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 328.

4. Brown *v.* Wallis, (Tex. 1907) 101 S. W. 1070.

680. 5. Com. *v.* Osler, 34 Pa. Super. Ct. 1[illegible].

684. 11. **Statute Strictly Construed.** — Terry *v.* Webb, (Tex. Civ. App. 1906) 96 S. W. 70.

685. 1. **May Demand Bond after Attachment.** — Smith *v.* Rogers, 191 Mo. 334, 90 S. W. 1150.

2. Howard W. Middleton Co. *v.* Souder, (N. J. 1906) 64 Atl. 975.

690. 8. Crane *v.* Crane, (Ky. 1907) 105 S. W. 370.

691. 5. **Waiver of Right Not to Execute.** — Stewart *v.* Leonard, (Me. 1907) 68 Atl. 638.

692. 5. Bickham *v.* Kosminsky, 74 Ark. 413, 86 S. W. 292, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692.

701. 2. Albie *v.* Jones, 82 Ark. 414, 102 S. W. 222.

4. Jordan *v.* Henderson, (Tex. Civ. App. 1905) 86 S. W. 961.

702. 2. Rogers *v.* King, (Ala. 1907) 44 So. 655; Albie *v.* Jones, 82 Ark. 414, 102 S. W. 222; Gay *v.* Mitchell, (N. Car. 1908) 60 S. E. 426; O'Brien *v.* Quinn, 35 Mont. 441, 90 Pac. 166; Hill *v.* Page, 108 N. Y. App. Div. 71, 95 N. Y. Supp. 465; Feinberg *v.* Allen, 118 N. Y. App. Div. 497, 103 N. Y. Supp. 339; McCune *v.* Peters, (County Ct.) 54 Misc. (N. Y.) 165, 105 N. Y. Supp. 896; Nach *v.* Noble, (Tex. Civ. App. 1907) 102 S. W. 736; Shearer *v.* Taylor, 106 Va. 26, 55 S. E. 7.

703. 1. Zuehlke *v.* Stone, 148 Mich. 478, 111 N. W. 1065.

2. Shaw *v.* Tyrrell, 129 Iowa 556, 105 N. W. 1006.

705 9 State *v.* Dickmann, [illegible] Mo. App. 653, 102 S. W. 44; Gay *v.* Mitchell, (N. Car. 1908) 60 S. E. 426; Nash *v.* Noble, (Tex. Civ. App. 1907) 102 S. W. 736; Shearer *v.* Taylor, 106 Va. 26, 55 S. E. 7.

706. 3. Faroux *v.* Cornwell, (Tex. Civ. App. 1905) 90 S. W. 537.

4. Hearn *v.* Ayres, 77 Ark. 497, 92 S. W. 768; Turner *v.* Woodward, 123 Ga. 866, 51 S. E. 762; Phillips *v.* Eggert, (Wis. 1907) 113 N. W. 686.

708. 4. Fields *v.* Vallance, 27 Ky. L. Rep. 992, 87 S. W. 770.

712. 2. Fields *v.* Vallance, 27 Ky. L. Rep. 992, 87 S. W. 770.

Liable for Conversion to Own Use. — Christensen *v.* Beebe, (Utah 1907) 91 Pac. 129.

713. 5. Dickinson *v.* Oliver, 112 N. Y. App. Div. 806, 99 N. Y. Supp. 432, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 713.

714. 2. Michener *v.* Fransham, 33 Mont. 108, 81 Pac. 953.

715. 7. Craig *v.* Smith, 74 Ark. 364, 85 S. W. 1124.

719. 2. Parker *v.* Young, 188 Mass. 600, [illegible] N. E. 98.

720. 14. Ayers *v.* Casey, 72 N. J. L. 223, 61 Atl. 332.

723. 3. **Sheriff Held Liable for Failure to Produce Property.** — Kelley *v.* Tarbox, 102 Me. 119, 66 Atl. 9.

5. Jennings *v.* Bobe, 51 Fla. 229, 40 So. 194, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 723.

724. 6. State *v.* Dayton, 101 Md. 598, 61 Atl. 624.

13. Greenberg *v.* People, 225 Ill. 174, 80 N. E. 100; Cambridge *v.* Foster, (Mass. 1907) 81 N. E. 278; Wieters *v.* May, 71 S. Car. 9, 50 S. E. 547, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 724.

725. 1. Aultman Taylor Mach. Co. *v.* Burchett, 15 Okla. 490, 83 Pac. 719, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725.

726. 3. Albie *v.* Jones, 82 Ark. 422, 102 S. W. 222, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 726.

8. Gomez *v.* Scanlan, 2 Cal. App. 579, 87 Pac. 50.

727. 6. Rasco *v.* Jefferson, 142 Ala. 705, 38 So. 246.

730. 5. **Statute Construed to Give Salary in Lieu of Fees.** — Gilbreath *v.* Greenville County, 70 S. Car. 389, 50 S. E. 18.

736. 2. Brockhurst *v.* Kaiser, (N. J. 1907) 67 Atl. 75.

SHERIFFS' SALES.

746. 5. Hamilton *v.* Rogers, 126 Ga. 27, 54 S. E. 926.

748. 1. Fortin *v.* Sedgwick, 133 Iowa 233, 110 N. W. 460. *Compare* Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453.

749. 1. Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

3. Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 502.

755. 3. Patterson *v.* Drake, 126 Ga. 478, 55 S. E. 175.

11. Johnson *v.* McKinnon, (Fla. 1907) 45 So. 23; Caldwell *v.* Bigger, (Kan. 1907) 90 Pac. 1095.

759. 7. Farmers', etc., Leaf Tobacco Warehouse Co. *v.* Purdy, (Ky. 1907) 102 S. W. 303.

760. 5. Merrill *v.* Conroy, (Neb. 1906) 109 N. W. 175.

761. 8. Woods *v.* Hayes, (Ark. 1908) 107 S. W. 387.

762. 12. Woods *v.* Hayes, (Ark. 1908) 107 S. W. 387.

763. 6. Rhodes, etc., Furniture Co. *v.* Jenkins, 2 Ga. App. 475, 58 S. E. 897.

765. 8. Rhodes, etc., Furniture Co. *v.* Jenkins, 2 Ga. App. 475, 58 S. E. 897.

769. 7. Dimmitt *v.* Flinn, 229 Ill. 111, 82 N. E. 249.

771. 15. Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

775. 1. **In Montana** a certificate is required where personal property is sold. Raymond *v.* Blancgrass, (Mont. 1908) 93 Pac. 648.

Until the Full Amount of the Bid Has Been Paid in cash the sheriff cannot be required to issue his certificate of sale. Carlson *v.* Headline, 100 Minn. 327, 111 N. W. 259.

780. 6. Leppel *v.* Kus, 38 Colo. 292, 88 Pac. 448.

781. 4. Kenady *v.* Gilkey, 81 Ark. 147, 98 S. W. 969.

786. 2. Bechtel *v.* Wier, (Cal. 1907) 93 Pac. 75; Barnes *v.* Skiles, 30 Pa. Super. Ct. 418.

8. Dickson *v.* Sentell, 83 Ark. 385, 104 S. W. 148.

787. 3. Bechtel *v.* Wier, (Cal. 1907) 93 Pac. 75; Leppel *v.* Kus, 38 Colo. 292, 88 Pac. 448.

789. 1. Brady *v.* Carteret Realty Co., 67 N. J. Eq. 644, 60 Atl. 938, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 788 [789]; Nodine *v.* Richmond, 48 Oregon 527, 87 Pac. 775.

791. 1. Rosenberger *v.* Hawker, 127 Iowa 521, 103 N. W. 781.

4. State Sav. Bank *v.* Shinn, 130 Iowa 365, 106 N. W. 921; Fortin *v.* Sedgwick, 133 Iowa 233, 110 N. W. 460; Martin *v.* Castle, 193 Mo. 183, 91 S. W. 930; Nodine *v.* Richmond, 48 Oregon 527, 87 Pac. 775.

Price Less than Special Mortgage. — Peoples' Independent Rice Mill Co. *v.* Benoit, 117 La. 999, 42 So. 480.

793. 2. Odell *v.* Cox, 151 Cal. 70, 90 Pac. 194; State *v.* Elliott, 114 Mo. App. 562, 90 S. W. 122.

5. Misener *v.* Glasbrenner, 221 Ill. 384, 77 N. E. 467; Barnes *v.* Skiles, 30 Pa. Super. Ct. 418.

797. 7. **Sale for Amount Materially in Excess of Amount Due.** — Downs *v.* Dennis, 83 Ark. 71, 102 S. W. 699.

798. 1. Pederson *v.* Lease, (Wash. 1908) 93 Pac. 439.

804. 1. Baldwin *v.* Dreyfus, (Miss. 1908) 45 So. 428.

6. Francis *v.* Sheats, (Ala. 1907) 45 So. 241; Williams *v.* Bennett, 75 Ark. 312, 88 S. W. 600; Thomassen *v.* DeGoey, 133 Iowa 278, 110 N. W. 581; Schroeder *v.* Pehling, (S. Dak. 1906) 108 N. W. 252.

806. 2. **Void Judgment May Be Attacked in Collateral Proceedings.** — Davis *v.* Montgomery, 205 Mo. 271, 103 S. W. 979.

3. *Compare* Harris *v.* Stephenson, 147 Ala. 537, 41 So. 1008.

808. 11. Reeve *v.* North Carolina Land, etc., Co., 141 Fed. 821, 72 C. C. A. 287.

809. 1. Jackson *v.* Gunter, 218 Pa. St. 275, 67 Atl. 467; Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

10. Pogue *v.* Simon, 47 Oregon 6, 81 Pac. 567, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 809.

13. Johnson *v.* McKinnon, (Fla. 1907) 45 So. 23.

811. 2. Citizens' Bank *v.* Jeansonne, (La. 1907) 45 So. 367; Veatch *v.* Gray, (Tex. Civ. App. 1905) 91 S. W. 324.

814. 2. Howard *v.* Brown, 197 Mo. 36, 95 S. W. 191.

5. Martinovich *v.* Marsicano, 150 Cal. 597, 89 Pac. 333; Layne *v.* Layne, 90 S. W. 555, 28 Ky. L. Rep. 810.

816. 3. See *contra*, Rowe *v.* Granger, 118 N. Y. App. Div. 459, 103 N. Y. Supp. 439.

821. 2. Mawson *v.* Wermuth, 182 N. Y. 234, 74 N. E. 829; Houston Ice, etc., Co. *v.* Stratton, (Tex. Civ. App. 1905) 89 S. W. 1111. *Compare* Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 502.

7. Fuller *v.* Exchange Bank, 38 Ind. App. 570, 78 N. E. 206.

822. 9. Brady *v.* Carteret Realty Co., 67 N. J. Eq. 641, 60 Atl. 938.

823. 1. Hamant *v.* Creamer, 101 Me. 222, 63 Atl. 736; Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828; Norcum *v.* Savage, 140 N. Car. 472, 53 S. E. 289.

Land Held in Trust for Judgment Debtor. — Lyons *v.* Urgalones, 189 Mass. 424, 75 N. E. 950.

5. Jones *v.* Hubbard, 193 Mo. 147, 90 S. W. 1137.

829. 7. Rosenberger *v.* Hawker, 127 Iowa 521, 103 N. W. 781.

830. 5. McCalla *v.* Knight Invest. Co., (Kan. 1908) 94 Pac. 126.

831. 3. Bilder *v.* Robinson, (N. J. 1907) 67 Atl. 828.

832. 3. **In Wisconsin** a writ of assistance can be obtained. Schultz *v.* Schultz, (Wis. 1907) 113 N. W. 445.

834. 6. Wood *v.* Ogden, 124 Mo. App. 42, 101 S. W. 615.

835. 4. Johnson *v.* McKinnon, (Fla. 1907) 45 So. 23.

839. 6. Gerardi *v.* Carnolo, 27 R. I. 214, 61 Atl. 599.

846. 2. **The Assignee of a Judgment Creditor** will not be allowed to redeem under a statute granting such right to the judgment creditor. Chambers *v.* Pollak, 143 Ala. 438, 39 So. 316; Sloss *v.* Steiner, 146 Ala. 692, 40 So. 511.

847. 2. Wenham *v.* Schmitt, 219 Ill. 195, 76 N. E. 375; Howard *v.* Kelly, (Iowa 1908) 114 N. W. 544; Hardin *v.* Kelley, (C. C. A.) 144 Fed. 353.

2. Francis *v.* White, 142 Ala. 590, 39 So. 174.

848. 2. Dimmitt *v.* Flinn, 229 Ill. 111, 82 N. E. 249.

In Minnesota a statute exists allowing an extension of time on the giving of security. See Thompson *v.* E. I. Dupont Co., 100 Minn. 367, 111 N. W. 302.

SHIP.

851. 1. **Ship — Articles Necessary to Navigate — Chronometer.** — The Frolic, 148 Fed. 921.

SHIPS AND SHIPPING.

863. 2. The Chauncey M. Depew, (C. C. A.) 139 Fed. 236; International Mercantile Marine Co. *v.* Stranahan, 155 Fed. 428; U. S. *v.* Lavarrello, 149 Fed. 297.

3. Fleming *v.* Sloane, 147 Mich. 404, 110 N. W. 933.

865. 3. The Alta, (C. C. A.) 148 Fed. 663.

866. 4. **Violation of Chinese Exclusion Act.** — The Frolic, 148 Fed. 921.

868. 2. **Fugitives from Earthquake.** — The Charles Nelson, 149 Fed. 846.

6. U. S. *v.* Lavarrello, 149 Fed. 297.

869. 8. Deslions *v.* La Compagnie Générale Transatlantique, 210 U. S. 95, 28 U. S. Sup. Ct. 664; Van Schaick *v.* U. S., (C. C. A.) 159 Fed. 847.

The statute relative to equipment (life boats, floats, rafts, etc.) does not apply to "vessels of other countries." La Bourgogne, (C. C. A.) 139 Fed. 433.

870. 7. The Alta, (C. C. A.) 148 Fed. 663.

872. 2. Misner *v.* Strong, 181 N. Y. 163, 73 N. E. 965.

873. 4. **What Are Not Appurtenances** — *Duplicates of Machinery.* — Gazzam *v.* Moe, 40 Wash. 593, 82 Pac. 912.

874. 5. *In re* Red River Line, 115 La. 867, 40 So. 250.

6. The Clifton, (C. C. A.) 143 Fed. 460.

876. 8. The failure to record the mortgage as required by a state law does not affect its validity. Fleming *v.* Sloane, 147 Mich. 404, 110 N. W. 933.

885. 7. Briggs *v.* Barnett, (Va. 1907) 61 S. E. 797, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 885.

886. 2. Briggs *v.* Barnett, (Va. 1907) 61 S. E. 797; Rudolf *v.* Brown, 137 Fed. 106.

6. Great Lakes Towing Co. *v.* Mill Transp. Co., (C. C. A.) 155 Fed. 11, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 886.

889. 3. **Tenants in Common.** — Briggs *v.* Barnett, (Va. 1907) 61 S. E. 797.

890. 1. The Golden Rod, 145 Fed. 743.

2. Commercial Nat. Bank *v.* Sloman, 121 N. Y. App. Div. 874, 106 N. Y. Supp. 508.

893. 5. The Transfer No. 15, (C. C. A.) 145 Fed. 503.

7. Lake Erie Transp. Co. *v.* Gilchrist Transp. Co., (C. C. A.) 142 Fed. 89.

896. 5. The Mauch Chunk, (C. C. A.) 154 Fed. 182; The Monterey, (C. C. A.) 161 Fed. 95; Philadelphia, etc., R. Co. *v.* Klutt, (C. C. A.) 148 Fed. 818.

6. The Esparta, (C. C. A.) 160 Fed. 289; The Kaiserin Maria Theresa, (C. C. A.) 149 Fed. 97; The Mary P. Mosquito, 145 Fed. 960.

897. 4. The Transfer No. 10, (C. C. A.) 144 Fed. 676.

5. See The Golden Rod, 145 Fed. 840.

6. The Westhall, 153 Fed. 1010.

898. 14. The W. N. Bavier, (C. C. A.) 153 Fed. 970; The Gerry, 161 Fed. 413; Lake Erie Transp. Co. *v.* Gilchrist Transp. Co., (C. C. A.) [illegible]

899. 2. The Jumna, 140 Fed. 743; The Violetta, 141 Fed. 690.

3. The Benjamin Franklin, (C. C. A.) 145 Fed. 13.

900. 3. The W. N. Bavier, (C. C. A.) 153 Fed. 970.

4. Steamship Canning *v.* Steamship Bellanoch, (1907) A. C. 269; The Anselm, 94 L. T. N. S. 853.

5. The Ellis, (C. C. A.) 152 Fed. 981; The Henry O. Barrett, (C. C. A.) 161 Fed. 481.

901. 4. The Barque Birgitte *v.* Forward, 9 Can. Exch. 339; Canadian Lake, etc., Nav. Co. *v.* The Ship Dorothy, 10 Can. Exch. 163.

5. The Wrestler, (C. C. A.) 144 Fed. 334 (pilot).

902. 6. The Lowell M. Palmer, (C. C. A.) 142 Fed. 937.

10. The Pacific, (C. C. A.) 154 Fed. 943.

903. 1. Baltimore Steam Packet Co. *v.* Coastwise Transp. Co., 139 Fed. 777; The Gerry, 161 Fed. 413; The H. B. Rawson, 152 Fed. 1001; *In re* Eastern Dredging Co., 159 Fed. 541; The Lowell M. Palmer, (C. C. A.) 142 Fed. 937; The Pocomoke, 150 Fed. 193; U. S. *v.* Portland, 161 Fed. 193; The Westhall,

153 Fed. 1010; The William Chisholm, (C. C. A.) 153 Fed. 704.

10. The Henry O. Barrett, (C. C. A.) 161 Fed. 481.

904. 4. The J. G. Lindauer, 158 Fed. 449.

905. 1. The Furnessia, (C. C. A.) 154 Fed. 348; Gilchrist Transp. Co. *v.* Sicken, (C. C. A.) 147 Fed. 470; The Jumna, 140 Fed. 743; Palmer *v.* Merchants', etc., Transp. Co., 154 Fed. 683.

3. **Facts Held Not to Constitute Error in Extremis.** — The Mary P. Mosquito, 145 Fed. 6[illegible].

906. 3. New York, etc., Steamship Co. *v.* New York, etc., R. Co., 143 Fed. 991.

4. The Blackheath, 154 Fed. 758; The Jumna, (C. C. A.) 149 Fed. 171; The Kentonia, 141 Fed. 384; New York, etc., Steamship Co. *v.* New York, etc., R. Co., 143 Fed. 991.

907. 2. Brigham *v.* Luckenbach, 140 Fed. 322; The Jumna, (C. C. A.) 149 Fed. 171.

Collisions Held Inevitable Accidents. — The Wilkesbarre, 151 Fed. 501 (fainting of lookout); The Luzerne, (C. C. A.) 157 Fed. 391; The Wilkesbarre, (C. C. A.) 157 Fed. 1006.

Collisions Held Not Inevitable Accidents. — Steamship Christie *v.* Fane Co., (C. C. A.) 159 Fed. 648; The Luzerne, 148 Fed. 133.

908. 1. The William E. Reis, (C. C. A.) 152 Fed. 673.

909. 4. The Luzerne, 148 Fed. 133.

911. 3. The Martha E. Wallace, 148 Fed. 6[illegible].

912. 12. See The Metamora, (C. C. A.) 144 Fed. 936.

913. 5. The Fannie Hayden, 137 Fed. 280.

11. The Charles A. Campbell, 142 Fed. 996.

914. 6. The Charles A. Campbell, 142 Fed. 996; The Fannie Hayden, 137 Fed. 280.

7. **A Barge About to Anchor** after she has left the tow is not a steam vessel. The Violetta, (C. C. A.) 153 Fed. 1023.

8. The William Chisholm, (C. C. A.) 153 Fed. 704; The Gerry, 161 Fed. 413; The Islander, (C. C. A.) 152 Fed. 385; The Northman, 139 Fed. 692.

915. 8. Steamship Albano *v.* Allan Line Steamship Co., (1907) A. C. 193, *reversing* 37 Can. Sup. Ct. 284; The Cygnus, (C. C. A.) 142 Fed. 85; The Robert Dollar, (C. C. A.) 160 Fed. 876; The Pocomoke, 150 Fed. 193; The John H. Starin, 145 Fed. 723.

916. 8. The Pocomoke, 150 Fed. 193; The John H. Starin, 145 Fed. 723.

917. 1. The Pocomoke, 150 Fed. 193; The John H. Starin, 145 Fed. 723.

6. The Gladiator, (C. C. A.) 144 Fed. 681; The Taurus, 156 Fed. 838.

Steamer Approaching Pilot Boat. — A steamer approaching a pilot boat fulfils her entire duty by maintaining a reasonable speed and a fixed course. The Monterey, 153 Fed. 9[illegible].

918. 2. The Taurus, 156 Fed. 838.

5. Lake Erie Transp. Co. *v.* Gilchrist Transp. Co., (C. C. A.) 142 Fed. 89; The Westhall, 153 Fed. 1010.

919. 2. The Gladys, (C. C. A.) 144 Fed. 653; The Job H. Jackson, 144 Fed. 896; The Our Friend, 142 Fed. 274; Palmer *v.* Merchants', etc., Transp. Co., 154 Fed. 683.

920. 5. The Richmond, 143 Fed. 996.

6. The Our Friend, 142 Fed. 274.

921. 2. The International, (C. C. A.) 143 Fed. 468.

922. 10. Brigham *v.* Luckenbach, 140 Fed. 322; The Georg Dumois, (C. C. A.) 153 Fed. 833; The Job H. Jackson, 144 Fed. 896.

923. 2. **Drifting.** — The International, (C. C. A.) 143 Fed. 468.

925. 1. The Gladys, (C. C. A.) 144 Fed. 652.

926. 2. The Seneca, 159 Fed. 578; The Stamford, 148 Fed. 509.

4. The Gladys, (C. C. A.) 144 Fed. 653; The Scandinavia, (C. C. A.) 158 Fed. 96.

927. 2. The Luzerne, (C. C. A.) 157 Fed. 391; The Richmond, 143 Fed. 996; Bryce *v.* Canadian Pac. R. Co., 13 British Columbia 96.

8. Lake Shore Transit Co. *v.* Corrigan, (C. C. A.) 137 Fed. 484.

928. 1. Steamtug No. 15, 157 Fed. 142.

929. 11. The Transfer No. 10, (C. C. A.) 144 Fed. 676.

930. 6. The Eugene F. Moran, 143 Fed. 187; The Umbria, (C. C. A.) 153 Fed. 851.

931. 3. Gilchrist Transp. Co. *v.* Sicken, (C. C. A.) 147 Fed. 470; The Winnie, 137 Fed. 166.

4. The Overbrook, (C. C. A.) 142 Fed. 950.

5. Lind *v.* Pennsylvania R. Co., (C. C. A.) 139 Fed. 233.

7. The Genessee, (C. C. A.) 138 Fed. 549.

8. The E. T. Williams, (C. C. A.) 139 Fed. 231.

9. The De Gama, 140 Fed. 755; The Ship Wandrian *v.* Hatfield, 38 Can. Sup. Ct. 431.

932. 5. Lind *v.* Pennsylvania R. Co., (C. C. A.) 139 Fed. 233; Thames Towboat Co. *v.* Pennsylvania R. Co., 157 Fed. 305.

9. The Pencoyd, 157 Fed. 134.

13. The Henry O. Barrett, 156 Fed. 417.

933. 5. The E. T. Williams, (C. C. A.) 139 Fed. 231.

9. "It seems negligent to allow a dumper to be used without a serviceable anchor." The Scow No. 51 H, 140 Fed. 70.

934. 7. The W. N. Bavier, (C. C. A.) 153 Fed. 970; The Bee, (C. C. A.) 138 Fed. 303; The Gladys, (C. C. A.) 144 Fed. 653; The Jumna, 140 Fed. 743.

935. 1. Harbour Com'rs *v.* The Steamship Universe, 10 Can. Exch. 352.

936. 1. The De Gama, 140 Fed. 755; Rockland Lake Trap Rock Co. *v.* Lehigh Valley R. Co., 115 N. Y. App. Div. 628, 101 N. Y. Supp. 222.

6. The De Gama, 140 Fed. 755, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 936.

937. 2. The Knickerbocker, 138 Fed. 148; The Royal, 138 Fed. 416.

7. The Transfer No. 10, 138 Fed. 221.

11. The Violetta, 141 Fed. 600.

938. 11. The Eugene F. Moran, 143 Fed. 187.

939. 1. The Degama, (C. C. A.) 150 Fed. 323; The Westhall, 153 Fed. 1010.

2. The Henry O. Barrett, 156 Fed. 417.

940. 4. The Blackheath, 154 Fed. 758; The Job H. Jackson, 144 Fed. 896; The Ann J. Trainer, (C. C. A.) 152 Fed. 1021.

5. The Etruria, 139 Fed. 925.

6. Ross *v.* Cornell Steamboat Co., 143 Fed. 166.

7. The Caldy, (C. C. A.) 153 Fed. 837.

8. Muller *v.* New York, etc., R. Co., 144 Fed. 241.

941. 1. The Etruria, 139 Fed. 925; Ross *v.* Cornell Steamboat Co., 143 Fed. 166.

4. **Proper Anchorage Places.** — See The Job H. Jackson, 144 Fed. 896; The Ann J. Trainer, (C. C. A.) 152 Fed. 1021.

942. 3. The Santiago, 160 Fed. 742.

4. The Nellie, 139 Fed. 753.

Drifting Vessels. — *In re* Eastern Dredging Co., 159 Fed. 541.

5. The William E. Reis, (C. C. A.) 152 Fed. 673; The Rickmere, (C. C. A.) 142 Fed. 305.

12. The Etruria, 139 Fed. 925.

944. 1. Ross *v.* Cornell Steamboat Co., 143 Fed. 166; Ross *v.* Cornell Steamboat Co., (C. C. A.) 149 Fed. 196.

7. Bank Shipping Co. *v.* The Steamship City of Seattle, 9 Can. Exch. 146.

10. The City of Birmingham, (C. C. A.) 138 Fed. 555; The Wyomissing, 149 Fed. 238; The Wyomissing, 149 Fed. 241.

945. 3. The J. G. Lindauer, 158 Fed. 449; The Roma, 138 Fed. 218.

7. The Chauncey M. Depew, (C. C. A.) 139 Fed. 236; The Rosedale, 141 Fed. 1001.

946. 9. The William E. Reis, 143 Fed. 1013; Sharpsburg Sand Co. *v.* Monongahela River Consol. Coal, etc., Co., 145 Fed. 424.

948. 2. The Cuzco, 152 Fed. 283.

949. 4. **Anchor Should Be Stowed so as Not to Injure Other Vessels.** — The Overbrook, (C. C. A.) 142 Fed. 950; The William J. Quillin, 153 Fed. 1019.

952. 5. The Henry O. Barrett, (C. C. A.) 161 Fed. 481; The Blackheath, 154 Fed. 758; Christie *v.* Fane Steamship Co., (C. C. A.) 159 Fed. 648; The Degama, (C. C. A.) 150 Fed. 323; Hamburg-American Packet Co. *v.* Rich, (C. C. A.) 159 Fed. 667; The Pacific, (C. C. A.) 154 Fed. 943; The Persian, 159 Fed. 788; The William E. Reis, 143 Fed. 1013; The Wilkesbarre, 151 Fed. 501; The Wilkesbarre, (C. C. A.) 157 Fed. 1006.

953. 5. The Lake Shore, 149 Fed. 855.

954. 8. The Nugent, (C. C. A.) 145 Fed. 31.

10. The City of Portsmouth, (C. C. A.) 143 Fed. 856.

13. U. S. *v.* Portland, 161 Fed. 193.

955. 3. The Eugene F. Moran, 143 Fed. 187.

956. 2. **Vessel Dragging in Mud.** — The Bellanoch, (1907) P. 170.

6. The Job H. Jackson, 144 Fed. 896; Muller *v.* New York, etc., R. Co., 144 Fed. 242; The Ann J. Trainer, (C. C. A.) 152 Fed. 1021.

Rule Must Be Strictly Observed. — The Santiago, 160 Fed. 742.

957. 8. The Millville, 137 Fed. 974.

959. 12. The Baltimore, (C. C. A.) 155 Fed. 405; The John Bossert, 148 Fed. 903; Brigham *v.* Luckenbach, 140 Fed. 322; The Furnessia, 137 Fed. 955; The Kaiserin Maria Theresa, (C. C. A.) 149 Fed. 97.

960. 12. The Pacific, (C. C. A.) 154 Fed. 943; The Martha E. Wallace, 148 Fed. 94.

13. Brigham *v.* Luckenbach, 140 Fed. 322.

962. 1. Brigham *v.* Luckenbach, 140 Fed. 322.

4. The Nugent, (C. C. A.) 145 Fed. 31.

963. 1. Davidson Steamship Co. *v.* **U. S.,** (C. C. A.) 142 Fed. 315.

3. **Putting Up Wrong Light While in Extremis Held to Be Excusable Fault.** — The Furnessia, (C. C. A.) 154 Fed. 348.

5. Palmer *v.* Merchants', etc., Transp. Co., 154 Fed. 683.

964. 1. The Martha E. Wallace, 149 Fed. 94.

2. The Martha E. Wallace, 148 Fed. 94.

5. **Immaterial What Course Is Pursued.** — The Anselin, (1907) P. 151.

965. 14. **Steamers Meeting End On.** — The Islander, (C. C. A.) 152 Fed. 385; The Lake Shore, 149 Fed. 855.

15. The Transfer No. 10, (C. C. A.) 144 Fed. 676; The Winnie, (C. C. A.) 161 Fed. 101.

966. 6. Kelley Island Lime, etc., Co. *v.* Cleveland, 144 Fed. 207; The North Star, (C. C. A.) 151 Fed. 168.

7. The North Star, (C. C. A.) 151 Fed. 168.

968. 3. The Gerry, 161 Fed. 413.

6. The Gerry, 161 Fed. 413.

969. 2. The Luther C. Ward, 149 Fed. 787.

5. **Cross Signals Forbidden — Limitation of Rule.** — The Transfer No. 10, (C. C. A.) 145 Fed. 503.

6. The Atlantic City, (C. C. A.) 143 Fed. 451; The Robert Dollar, (C. C. A.) 160 Fed. 876; Gring *v.* Boyer, (C. C. A.) 157 Fed. 220; The Transfer Tug No. 9, 148 Fed. 456.

7. The Esparta, (C. C. A.) 160 Fed. 289.

9. The Electra, 139 Fed. 858; The Lowell M. Palmer, (C. C. A.) 142 Fed. 937; The S. S. Wyckoff, 138 Fed. 418.

970. 3. The Luther C. Ward, 149 Fed. 787.

971. 7. Carter *v.* Seaboard Air Line R. Co., 151 Fed. 531.

10. *In re* Eastern Dredging Co., 159 Fed. 541.

973. 1. New York, etc., Steamship Co. *v.* New York R. Co., 143 Fed. 991.

10. The Metamora, (C. C. A.) 144 Fed. 936; Richelieu Nav. Co. *v.* The Steamship Cape Breton, 9 Can. Exch. 67.

11. Brigham *v.* Luckenbach, 140 Fed. 322.

974. 1. The Pocomoke, 150 Fed. 193; The Vedamore, (C. C. A.) 137 Fed. 844.

7. The Mary P. Mosquito, 145 Fed. 960.

9. The Dreamland, 149 Fed. 910.

11. Brigham *v.* Luckenbach, 140 Fed. 322.

975. 6. Cadwell *v.* The Ship C. F. Bielman, 10 Can. Exch. 155.

18. The International, (C. C. A.) 143 Fed. 468; The Northman, 139 Fed. 692; The H. B. Rawson, 152 Fed. 1001; U. S. *v.* Portland, 161 Fed. 193; The Wilkesbarre, 151 Fed. 501; The Wilkesbarre, (C. C. A.) 157 Fed. 1006.

976. 1. The Georg Dumois, (C. C. A.) 153 Fed. 833; The Fannie Hayden, 137 Fed. 280; *In re* Eastern Dredging Co., 159 Fed. 541; The Kaiserin Maria Theresa, (C. C. A.) 149 Fed. 97; Muller *v.* New York, etc., R. Co., 144 Fed. 241; The Pocomoke, 150 Fed. 193; The Roma, 138 Fed. 218; The Wrestler, (C. C. A.) 144 Fed. 334; The Steamship Arranmore *v.* Rudolph, 38 Can. Sup. Ct. 176.

4. Klutt *v.* Philadelphia, etc., R. Co., (C. C. A.) 142 Fed. 394.

5. The Mauch Chunk, (C. C. A.) 154 Fed. 182.

977. 6. The City of Lowell, 139 Fed. 901; The City of Lowell, (C. C. A.) 152 Fed. 593.

978. 1. The City of Lowell, (C. C. A.) 152 Fed. 593.

2. The City of Lowell, 139 Fed. 901.

979. 4. The City of Lowell, 139 Fed. 901.

981. 3. Palmer *v.* Merchants', etc., Transp. Co., 154 Fed. 683.

11. The Kentucky, 148 Fed. 500.

982. 3. Baltimore Steam Packet Co. *v.* Coastwise Transp. Co., 139 Fed. 777.

8. The Titan, 96 L. T. N. S. 93.

983. 10. Smith *v.* Norfolk, etc., R. Co., 145 N. Car. 98, 58 S. E. 799.

984. 4. Palmer *v.* Merchants', etc., Transp. Co., 154 Fed. 683.

985. 2. "Her speed was excessive if it was true that she could not reverse her engines and come to a standstill before she should collide with a vessel which she ought to have seen." The Etruria, (C. C. A.) 147 Fed. 216.

6. Particular Speeds Held Excessive under the Circumstances of the Case. — Ten knots an hour in Seattle harbor, The Bellingham, 138 Fed. 619; six knots an hour fifteen miles east of Fire Island lightship, The Furnessia, 137 Fed. 955; ten knots an hour off Sable Island, La Bourgogne, (C. C. A.) 139 Fed. 433; ten to eleven knots an hour in South Channel off Cape Cod, Palmer *v.* Merchants', etc., Transp. Co., 154 Fed. 683; eight knots an hour off the New Jersey coast, The Seneca, 159 Fed. 578; six miles an hour in fog in Seattle harbor, The Tremont, 160 Fed. 1016.

986. 4. La Bourgogne, (C. C. A.) 139 Fed. 433.

987. 4. **Particular Instances of Immoderate Speed.** — Between five and six knots an hour near Sandy Hook lightship, The Sif, 157 Fed. 454.

988. 4. The John A. Hughes, 156 Fed. 879.

5. The City of Lowell, (C. C. A.) 152 Fed. 593; The Persian, 159 Fed. 788; The Seneca, 159 Fed. 578.

Rule Applies to Tug Towing Another Vessel. — The Challenge, (1905) P. 198.

6. The Oravia, 93 L. T. N. S. 278; Crawford *v.* Granite City Steamship Co., Sc. Ct. Sess. 8 F. 1013.

990. 4. **Narrow Channels.** — Upper New York bay has been held not to be a narrow channel within the meaning of rule 25 of the inland navigation rules. The Bee, (C. C. A.) 138 Fed. 303.

9. **Not Liable for Obstructing Channel.** — The Waverley, 155 Fed. 436.

991. 1. "**Any Vessel Backing Across a Channel** in the way of other vessels navigating it is bound to exercise extreme care to notify other vessels of her maneuver." The Sicilian Prince, (C. C. A.) 144 Fed. 951.

9. The Chester W. Chapin, 155 Fed. 854; The Benjamin Franklin, (C. C. A.) 145 Fed. 13; The Gerry, 161 Fed. 413; The Jumna, 140 Fed. 743; La Bretagne, 148 Fed. 477; The Taurus, 156 Fed. 838; The Umbria, (C. C. A.) 153 Fed. 851; Tucker *v.* The Ship Tecumseh, 10 Can. Exch. 44.

The rule has no application "to vessels going from one part of a harbor to another." The Phonix, (C. C. A.) 154 Fed. 474.

10. *Compare* Lovitt *v.* The Ship Calvin Austin, 9 Can. Exch. 160.

Hudson River Near Yonkers Included. — The Benjamin Franklin, (C. C. A.) 145 Fed. 13.

Hudson River Opposite New York. — La Bretagne, 148 Fed. 477.

Columbia River. — U. S. *v.* Portland, 161 Fed. 193.

Does Not Apply to East River or Its Locality. — The Bay State, 153 Fed. 973.

Does Not Apply to North River between Twenty-third Street and Upper Bay. — The Islander, (C. C. A.) 152 Fed. 385; The H. B. Rawson, 152 Fed. 1001.

992. 1. Wineman *v.* Drake, (C. C. A.) 154 Fed. 933.

6. The Transfer No. 10, 137 Fed. 666.

994. 1. **Bend Rule.** — The Transfer Tug No. 9, 148 Fed. 456.

996. 1. The Ellis, (C. C. A.) 152 Fed. 981.

998. 1. The Bay State, 153 Fed. 973; The Maine, 153 Fed. 635; The Lowell M. Palmer, (C. C. A.) 142 Fed. 937; The Transfer No. 10, 137 Fed. 666.

9. Steamtug No. 15, 157 Fed. 142.

999. 9. The Kaiser Wilhelm der Grosse, (1907) P. 259.

1000. 7. Carter *v.* Seaboard Air Line R. Co., 151 Fed. 531; The Fearless, 156 Fed. 428; The Golden Rod, 145 Fed. 840; The Viscaina, 156 Fed. 430.

1001. 2. The Mauch Chunk, (C. C. A.) 154 Fed. 182.

1002. 5. The Fearless, 156 Fed. 428; The Vizcaina, 156 Fed. 430.

11. Kelley Island Lime, etc., Co. *v.* Cleveland, 144 Fed. 207.

1003. 1. The North Star, (C. C. A.) 151 Fed. 168.

3. **Negligent Mooring — Obstruction.** — Gilliken *v.* Lake Drummond Canal, etc., Co., (N. Car. 1908) 60 S. E. 654.

1004. 4. The Asbury Park, 138 Fed. 617, 925; The Asbury Park, 144 Fed. 553; The Asbury Park, (C. C. A.) 147 Fed. 194; The Chester W. Chapin, 155 Fed. 859; Daniels *v.* Carney, (Ala. 1906) 42 So. 452; Ross *v.* Central R. Co., 146 Fed. 608; Ross *v.* Central R. Co., (C. C. A.) 157 Fed. 1004; Shewan *v.* New England Nav. Co., 155 Fed. 860; The Hendrick Hudson, 159 Fed. 581.

5. La Savoie, 157 Fed. 312.

1005. 2. See The Maine, 153 Fed. 635; The North Star, (C. C. A.) 151 Fed. 168.

3. **Six Miles an Hour in Anchorage Ground at Night Excessive.** — The Santiago, 160 Fed. 742.

1006. 6. Erie R. Co. *v.* Erie, etc., Transp. Co., 204 U. S. 220, 27 U. S. Sup. Ct. 246.

1008. 6. The Bulley, 138 Fed. 170.

7. Paul *v.* Rex, 9 Can. Exch. 245.

The port of Portland was held liable for a collision caused by the negligence of one of its employees. U. S. *v.* Portland, 147 Fed. 865.

1010. 3. The Blackheath, 154 Fed. 758.

1017. 1. The Kaiser Wilhelm der Grosse (C. C. A.) 145 Fed. 623.

6. Lake Erie Transp. Co. *v.* Gilchrist Transp. Co., (C. C. A.) 142 Fed. 89; The Lowell M. Palmer, (C. C. A.) 142 Fed. 937.

9. The Pocomoke, 150 Fed. 193.

10. New York Cent., etc., R. Co. *v.* Maine Steamship Co., 156 Fed. 984; Ross *v.* Central R. Co., 146 Fed. 608; Warn *v.* Starin, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 617, 95 N. Y. Supp. 550.

1018. 1. Meager and evasive entries in the log warrant the inference that the master knew that his vessel was at fault. The Seneca, 159 Fed. 578.

6. The Kentucky, 148 Fed. 500.

1019. 1. Davidson Steamship Co. *v.* U. S., (C. C. A.) 142 Fed. 315.

1020. 1. **Evidence of Witnesses Preferable to Records of Weather Bureau** taken from point several miles distant. The Winnie, 137 Fed. 166.

4. The Gerry, 161 Fed. 413; The Martha E. Wallace, 148 Fed. 94.

7. Admiralty courts look with suspicion on attempts to interfere with witnesses who were on the other vessel. Palmer *v.* Merchants', etc., Transp. Co., 154 Fed. 683.

1021. 6. Discrepancies which do not affect the material circumstances of the case are not regarded. The Metamora, (C. C. A.) 144 Fed. 936.

7. The Islander, (C. C. A.) 152 Fed. 385; The Metamora, (C. C. A.) 144 Fed. 936; U. S. *v.* Portland, 161 Fed. 193.

9. The Gladys, (C. C. A.) 144 Fed. 653.

1022. 2. The Rickmers, (C. C. A.) 142 Fed. 305.

5. The Asbury Park, (C. C. A.) 147 Fed. 194; The Loch Trool, 150 Fed. 429; The North Star, (C. C. A.) 151 Fed. 168.

1023. 8. **Findings of Commissioner Should Not Be Lightly Disregarded.** — The North Star, (C. C. A.) 151 Fed. 168.

1024. 2. Carter *v.* Seaboard Air Line R. Co., 151 Fed. 531; The W. C. Kirk, 143 Fed. 358.

1025. 1. The Jumna, (C. C. A.) 149 Fed. 171.

4. Smith *v.* Norfolk, etc., R. Co., 145 N. Car. 98, 58 S. E. 799, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 1025.

1026. 1. The J. G. Lindauer, 158 Fed. 449.

6. The Our Friend, 142 Fed. 274.

8. **Methods of Computing Amount Recoverable** when two tugs and two scows are injured. See The Eugene F. Moran, 143 Fed. 187, (C. C. A.) 154 Fed. 41.

1027. 7. Erie R. Co. *v.* Erie, etc., Transp. Co., 204 U. S. 220, 27 U. S. Sup. Ct. 246.

1029. 2. The Mobila, 147 Fed. 882, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 1029.

1031. 3. *Compare* The Racine, (1906) P. 273, 6 Ann. Cas. 129.

6. The North Star, 140 Fed. 263; The Rickmers, (C. C. A.) 142 Fed. 305.

1032. 10. The Loch Trool, 150 Fed. 429; The Rickmers, (C. C. A.) 142 Fed. 305.

1033. 1. **Findings of Commissioner Not Disturbed unless Clearly Erroneous.** — The William Chisholm, (C. C. A.) 153 Fed. 704.

5. The Bee, (C. C. A.) 138 Fed. 303.

1034. 5. Hamburg-American Packet Co. *v.* Rich, (C. C. A.) 159 Fed. 667.

7. The Sitka, 156 Fed. 427.

8. The William Chisholm, (C. C. A.) 153 Fed. 704.

9. The Rickmers, (C. C. A.) 142 Fed. 305.

11. The Loch Trool, 150 Fed. 429.

1036. 5. The Umbria, 148 Fed. 283.

8. The Loch Trool, 150 Fed. 429.

1040. 2. The Maine, 161 Fed. 401.

3. The Eagle Point, (C. C. A.) 142 Fed. 451.

6. Erie R. Co. *v.* Erie, etc., Transp. Co., 204 U. S. 220, 27 U. S. Sup. Ct. 246.

1041. 4. The United States will be allowed to recover for loss of personal clothing and effects of seamen employed on its work since it is its practice to reimburse them for such losses. U. S. *v.* Portland, 161 Fed. 193.

1043. 8. The Saginaw, 139 Fed. 906.

1044. 1. The Lotta, 150 Fed. 219.

1046. 3. The Our Friend, 142 Fed. 274.

1049. 1. Deslions *v.* La Compagnie Générale Transatlantique, 210 U. S. 95, 28 U. S. Sup. Ct. 664.

1050. 12. Deslions *v.* La Compagnie Générale Transatlantique, 210 U. S. 95, 28 U. S. Sup. Ct. 664.

1051. 1. The Buffalo, (C. C. A.) 154 Fed. 815.

2. **Derrick Used on Ship within Meaning of Act.** — The Buffalo, 148 Fed. 331.

4. The San Rafael, (C. C. A.) 141 Fed. 270.

5. Deslions *v.* La Compagnie Générale Transatlantique, 210 U. S. 95, 28 U. S. Sup. Ct. 664; La Bourgogne, (C. C. A.) 139 Fed. 433.

6. La Bourgogne, (C. C. A.) 139 Fed. 433.

1052. 6. Great Lakes Towing Co. *v.* Mill Transp. Co., (C. C. A.) 155 Fed. 11; The Mauch Chunk, 139 Fed. 747.

11. La Bourgogne, (C. C. A.) 139 Fed. 433; The Southside, 155 Fed. 364.

1053. 9. Deslions *v.* La Compagnie Générale Transatlantique, 210 U. S. 95, 28 U. S. Sup. Ct. 664; La Bourgogne, (C. C. A.) 139 Fed. 433; McGill *v.* Michigan Steamship Co., (C. C. A.) 144 Fed. 788; The Harry Hudson Smith, (C. C. A.) 142 Fed. 724; The Tommy, 142 Fed. 1034.

1054. 3. The Tommy, 142 Fed. 1034, (C. C. A.) 151 Fed. 570.

5. *In re* Eastern Dredging Co., 159 Fed. 541.

7. Ohio Transp. Co. *v.* Davidson Steamship Co., (C. C. A.) 148 Fed. 185.

1055. 5. The John K. Gilkinson, 150 Fed. 454; The John K. Gilkinson, 156 Fed. 868; The San Rafael, (C. C. A.) 141 Fed. 270; Seese *v.* Monongahela River Consol. Coal, etc., Co., 155 Fed. 507.

6. The City of Boston, 159 Fed. 257.

7. The John K. Gilkinson, 150 Fed. 454.

8. **All Claims** whether admiralty liens or not are recognized. The Hamilton, 207 U. S. 398, 28 U. S. Sup. Ct. 133.

11. The City of Boston, 150 Fed. 257; *In re* Eastern Dredging Co., 159 Fed. 549.

1056. 14. The Mauch Chunk, 139 Fed. 747.

SHORTAGE — SHORT DELIVERY.

1061. 1. **Shortage of Cars.** — See Phillips *v.* Pilling, 215 Pa. St. 64, 64 Atl. 396.

SHOW.

1061. 5. "Shown" in Sense of "Proven." — State *v.* Crofford, 133 Iowa 478, 110 N. W. 921.

SIGN—SIGNATURE.

1065. 3. Delaware Ins. Co. *v.* Pennsylvania F. Ins. Co., 126 Ga. 380, 55 S. E. 330; Bonewell *v.* Jacobson, 130 Iowa 170, 106 N. W. 614; Sears *v.* Sears, 77 Ohio St. 104, 82 N. E. 1067. *Compare* Irwin *v.* Jacques, 71 Ohio St. 395, 73 N. E. 683.

1066. 1. Penton *v.* Williams, (Ala. 1907) 43 So. 211; Garnett *v.* Foston, 28 Ky. L. Rep. 1119, 91 S. W. 668; Tierney's Estate, (Minn. 1908) 114 N. W. 838.

Words "Her Mark" Not Essential to Make Woman's Signature by Mark Effective. — Loyd *v.* Oates, 143 Ala. 231, 38 So. 1022.

2. Ford *v.* Ford, 7 Ann. Cas. 245, 27 App. Cas. (D. C.) 401; Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62; Isaac's Estate, (Neb. 1906) **107 N. W. 1016**; *In re* Pope, 139 N. Car. 484, 52 S. E. 235; *In re* Pickett, (Oregon 1907) 89 Pac. 377; Wood *v.* Rhode Island Hospital Trust Co., 27 R. I. 295, 61 Atl. 757.

SIMILAR.

1067. 10. Similar Property. — See Baltimore *v.* Gail, (Md. 1907) 68 Atl. 282.

SITUS.

1071. 4. Greene County *v.* Wright, 126 Ga. 510, 54 S. E. 951, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1071.

SLANDER OF TITLE OR PROPERTY.

1074. 1. See Wright *v.* Coules, 4 Cal. App. 343, 87 Pac. 809, where the action was for injury to the business of hotel keeping caused by a false publication tending to keep away guests.

1075. 3. **Publication that Plaintiff's House Was Haunted Held an Actionable Wrong.** — Nagy *v.* Manitoba Free Press Co., 16 Manitoba 619.

1077. 6. **Complaint Held to Contain Essential Elements.** — Wright *v.* Coules, 4 Cal. App. 343, 87 Pac. 809.

1085. 2. See Brady *v.* Carteret Realty Co., 67 N. J. Eq. 641, 60 Atl. 938.

4. Aberthaw Constr. Co. *v.* Ransome, 192 Mass. 434, 78 N. E. 485.

8. Posey *v.* Ducros, 115 La. 359, 39 So. 26. See also Ramos Lumber, etc., Co. *v.* Labarre, 116 La. 559, 40 So. 898, discussing the petitory action and the action of jactitation: Bossier *v.* Hollingsworth, 119 La. 500, 44 So. 278, holding that an action in jactitation, a petitory action, and an action for damages for trespass are improperly joined.

11. **Action Will Not Lie Without Charge of Slander of Title.** — Bossier *v.* Jackson, 114 La. 707, 38 So. 525.

1086. 2. See Williams *v.* Zengel, 117 La. 599, 42 So. 153.

3. **That the Plaintiff Must Be in Possession** to maintain an action for slander of title, see South Louisiana Land Co. *v.* Riggs Cypress Co., Limited, 119 La. 193, 43 So. 1003; Williams *v.* Zengel, 117 La. 599, 42 So. 153, holding further that joint owners may join in the action.

1087. 1. See Posey *v.* Ducros, 115 La. 359, 39 So. 26.

SLAVES AND SLAVERY.

1093. 4. **Slaves as Remainders.** — Mimms *v.* Lawrence, (Ky. 1906) 91 S. W. 715.

1097. 2. **Right to Hold Property — That a Slave Could Not Be the Beneficiary of a Trust,** in *Texas,* see Nona Mills Co. *v.* Wright, (Tex. 1907) 102 S. W. 1118.

1098. 4. **In Alabama** the legitimate child of former slaves cannot inherit from his illegitimate half-brother born in slavery. Johnson *v.* Shepard, 143 Ala. 325, 39 So. 223.

In Kentucky, unless the child born in slavery was the issue of a customary marriage, he cannot inherit from his father. Turner *v.* Terrill, (Ky. 1906) 97 S. W. 396.

That the Issue of a Customary Marriage Is Legitimated by the *Kentucky* statute, see Hardin *v.* Hardin, (Ky. 1905) 87 S. W. 284.

In North Carolina children of former slaves legitimated by statute are incapable of inheriting from illegitimate collaterals. Bettis *v.* Avery, 140 N. Car. 184, 52 S. E. 584.

A Child of Former Slaves legitimated by the *North Carolina* statutes inherits from his mother to the exclusion of her former children born in slavery and not so legitimated. Nelson *v.* Hunter, 140 N. Car. 598, 53 S. E. 439.

1100. 4. See Middleton *v.* Middleton, 221 Ill. 623, 77 N. E. 1123 (discussing the legitimacy of the issue of customary marriages under the *Kentucky* statute); Talbott *v.* Owen, (Ky. 1906) 93 S. W. 658; Johnson *v.* Raphael, 117 La. 967, 42 So. 470; Watson *v.* Ellerbe, 77 S. Car. 232, 57 S. E. 855.

1107. 6. **The Thirteenth Amendment** of the Constitution of the United States is not violated when the state takes under its control infants unable to care for themselves though they may be required to perform such labor as is proper. Kennedy *v.* Meara, 127 Ga. 68, 56 S. E. 243.

That the Statutes against Peonage, Rev. St. U. S., §§ 1990, 5526, are authorized by the Thirteenth Amendment, see Clyatt *v.* U. S., 197 U. S. 207, 25 U. S. Sup. Ct. 429; Peonage Cases, 136 Fed. 707; *In re* Peonage Charge, 138 Fed. 686; United States *v.* Cole *et al.*, 153 Fed. 801; Smith *v.* U. S., (C. C. A.) 157 Fed. 721.

SLEEPING CAR COMPANIES.

1110. 1. Calhoun *v.* Pullman Palace Car Co., 149 Fed. 546; Pullman Co. *v.* Lutz, (Ala. 1908) 45 So. 675.

2. **Not Innkeepers.** — Pullman Co. *v.* Lutz, (Ala. 1908) 45 So. 675.

1111. 3. Pullman Co. *v.* Norton, (Tex. Civ. App. 1905) 91 S. W. 841.

1112. 1. Calhoun *v.* Pullman Palace Car Co., 149 Fed. 546; Pullman Co. *v.* Lutz, (Ala. 1905) 45 So. 675.

2. Pullman Palace Car Co. *v.* Hocker, (Tex. Civ. App. 1906) 93 S. W. 1009.

3. Pullman Co. *v.* Kelly, 86 Miss. 87, 38 So. 317.

5. **Discrimination against Person with Infectious Disease Is Proper.** — Pullman Car Co. *v.* Krauss, 145 Ala. 395, 40 So. 398.

1113. 10. Pullman Co. *v.* Norton, (Tex. Civ. App. 1905) 91 S. W. 841.

11. St. Louis, etc., R. Co. *v.* Hatch, 116 Tenn. 580, 94 S. W. 671.

May Protect Passengers by Refusing to Carry Person with Infectious Disease. — Pullman Car Co. *v.* Krauss, 145 Ala. 395, 40 So. 398.

1115. 3. **To Notify a Passenger of the Train's Arrival** at his destination has been held to be a duty of a sleeping car company. Pullman Co. *v.* Lutz, (Ala. 1908) 45 So. 675; Pullman Co. *v.* Kelly, 86 Miss. 87, 38 So. 317.

1119. 3. Pullman Co. *v.* Schaffner, 126 Ga. 609, 55 S. E. 933; Pullman Co. *v.* Green, 128 Ga. 142, 57 S. E. 233. See also Pullman Palace Car Co. *v.* Woods, (Neb. 1906) 107 N. W. 85[illegible].

1120. 3. *Compare* Weingart *v.* Pullman Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 972.

Jewelry Regarded as Baggage. — Pullman Co. *v.* Vanderhoeven, (Tex. Civ. App. 1908) 107 S. W. 147. See generally the title BAGGAGE.

10. Pullman Co. *v.* Green, 128 Ga. 142, 57 S. E. 233.

11. Pullman Co. *v.* Schaffner, 126 Ga. 609, 55 S. E. 933.

1121. 11. **Negligence and Contributory Negligence Questions for Jury.** — Pullman Co. *v.* Haight, (C. C. A.) 151 Fed. 1009.

1122. 1. *Compare* Pullman Co. *v.* Green, 128 Ga. 142, 57 S. E. 233.

5. Pullman Co. *v.* Vanderhoeven, (Tex. Civ. App. 1908) 107 S. W. 147.

1123. 2. Pullman Co. *v.* Schaffner, 126 Ga. 609, 55 S. E. 933.

13. Ingraham *v.* Pullman Co., 190 Mass. 33, 76 N. E. 237.

1124. 2. **Damages for Mental Pain Are** not recoverable in the absence of physical injury, except in cases where punitive damages are properly assessed. Pullman Co. *v.* Kelly, 86 Miss. 87, 38 So. 317.

5. Aplington *v.* Pullman Co., 110 N. Y. App. Div. 250, 97 N. Y. Supp. 329; Pullman Co. *v.* Willett, 27 Ohio Cir. Ct. 649.

8. **Question of Ejection Is for Jury.** — Aplington *v.* Pullman Co., 110 N. Y. App. Div. 250, 97 N. Y. Supp. 329.

9. *Compare* Pullman Co. *v.* Lutz, (Ala. 1908) 45 So. 675; Pullman Palace Car Co. *v.* Hocker, (Tex. Civ. App. 1906) 93 S. W. 1009, wherein mental anguish, discomfort, and humiliation were held to be properly considered as elements of damage.

SO.

1128. 3. **So Long as Contract Remains in Force.** — See Magnolia Metal Co. *v.* Gale, 189 Mass. 124, 75 N. E. 219.

SOCIETIES, CLUBS, AND UNINCORPORATED ASSOCIATIONS.

1131. 1. Westbrook *v.* Griffin, 132 Iowa 185, 109 N. W. 608, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1130.

3. Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597; Rosenthal *v.* Reinfeld, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 652, 96 N. Y. Supp. 199.

1132. 12. Guild *v.* Allen, (R. I. 1907) 67 Atl. [illegible].

1133. 1. **May Hold Property in Common as Individuals.** — Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

5. *Compare* Parker *v.* Oliver, (Mass. 1908) 84 N. E. 860.

1134. 1. **Action of Assumpsit Will Not Lie However.** — Maisch *v.* Order of Americus, 34 Pa. Super. Ct. 436.

1135. 1. Doyle *v.* Burke, (R. I. 1908) 69 Atl. 362.

5. South Shore Country Club *v.* People, 228 Ill. 75, 81 N. E. 805.

1136. 12. **Penalty Must Conform to Offense Charged.** — Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597.

14. F. R. Patch Mfg. Co. *v.* Capeless, 79 Vt. 1, 63 Atl. 938.

1137. 2. South Shore Country Club *v.* People, 228 Ill. 75, 81 N. E. 805, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1137.

8. F. R. Patch Mfg. Co. *v.* Capeless, 79 Vt. 1, 63 Atl. 938.

1142. 1. See Rosenthal *v.* Reinfeld, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 652, 96 N. Y. Supp. 199.

3. **Amalgamation and Consolidation with Another Association** is a practical disbandment. Rosenthal *v.* Reinfeld, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 652, 96 N. Y. Supp. 199.

7. **The Charter of an Incorporated Club,** if secured for fraudulent purposes, may be revoked and annulled. Hanger *v.* Com., (Va. 1908) 60 S. E. 67.

1143. 4. Dingwall *v.* Amalgamated Assoc., etc., 4 Cal. App. 565, 88 Pac. 597; Hickey *v.* Baine, (Mass. 1907) 81 N. E. 201.

5. **Membership a Personal Right.** — Dingwall *v.* Amalgamated Assoc., etc., Ry. Employees, 4 Cal. App. 565, 88 Pac. 597.

SODOMY.

1144. 1. State *v.* Gage, (Iowa 1908) 116 N. W. 596, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1144.

2. State *v.* Gage, (Iowa 1908) 116 N. W. 596, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1144.

1145. 1. People *v.* Erwin, 4 Cal. App. 394, 88 Pac.

2. **In Iowa** sodomy is defined by Code Supp., § 4937*a*, as follows: "Whoever shall have carnal copulation in any opening of the body except sexual parts, with another human being, or shall have carnal copulation with a beast, shall be deemed guilty of sodomy." State *v.* Gage, (Iowa 1908) 116 N. W. 596.

5. Mitchell *v.* State, (Tex. Crim. 1906) 95 S. W. 500, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1145.

7. Means *v.* State, 125 Wis. 650, 104 N. W. 815.

1146. 1. Langford *v.* State, (Tex. Crim. 1905) 89 S. W. 830.

2. State *v.* Gage, (Iowa 1908) 116 N. W. 596.

12. Means *v.* State, 125 Wis. 650, 104 N. W. 815.

15. Means *v.* State, 125 Wis. 650, 104 N. W. 815.

1147. 1. People *v.* Erwin, 4 Cal. App. 394, 88 Pac. 371.

11. **Evidence as to Copulation with Animal.** — See Langford *v.* State, (Tex. Crim. 1905) 89 S. W. 830.

13. Means *v.* State, 125 Wis. 650, 104 N. W. 815.

14. **Same Rule as in Illinois Obtains in Wisconsin.** — Means *v.* State, 125 Wis. 650, 104 N. W. 815.

1148. 6. State *v.* Gage, (Iowa 1908) 116 N. W. 596; Brown *v.* State, (Tex. Crim. 1906) 99 S. W. 1001.

SOLE.

1149. 3. **Management by Husband of Wife's Separate Property.** — Bledsoe *v.* Fitts, (Tex. Civ. App. 1907) 105 S. W. 1142..

SOLICITATION TO COMMIT CRIME.

1153. 2. Com. *v.* Hartford, 193 Mass. 464, 79 N. E. 784; Rudolph *v.* State, 128 Wis. 222, 107 N. W. 466.

1154. 1. **Abortion.** — Distribution of cards and circulars conveying information as to where an operation will be performed, to a person seeking such treatment, is an offense. Com. *v.* Hartford, 193 Mass. 464, 79 N. E. 784.

Solicitation to Accept a Bribe is a crime. Rudolph *v.* State, 128 Wis. 222, 107 N. W. 466.

SOLID.

1155. 2. **Solid Rock.** — See Fruin-Bambrick Constr. Co. *v.* Ft. Smith, etc., R. Co., 140 Fed. 465.

SOON.

1158. 1. **As Soon as Possible — Equivalent to Reasonable Time.** — Williams *v.* Gridley, 110 N. Y. App. Div. 525, 96 N. Y. Supp. 978, *affirmed* 187 N. Y. 526, 79 N. E. 1119.

SORTING.

1158. 2. **Logs and Lumber.** — See McGuire *v.* J. Neils Lumber Co., 97 Minn. 293, 107 N. W. 130.

SOVEREIGN — SOVEREIGNTY.

1161. 1. **The Sovereignty of a State** embraces the power to execute its laws and the right to exercise supreme dominion and authority except as limited by the fundamental law. People *v.* Tool, 35 Colo. 225, 86 Pac. 224.

SPEAKING.

1161. 9. **Speaking and Saying Synonymous — Slander.** — Stutts *v.* State, 52 Fla. 110, 42 So. 51.

SPECIAL DAMAGE.

1164. 1. **Special Damages.** — See Jacksonville Electric Co. *v.* Batchis, (Fla. 1907) 44 So. 933.

SPECIAL FINDING.

1164. 6. **Special Finding and Decision Synonymous.** — See Major *v.* Miller, 165 Ind. 275, 75 N. E. 159.

SPECIAL OR LOCAL ASSESSMENTS.

1168. 1. Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469.

2. Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 1168, and quoting the text at length; Improvement Paving Dist. No. 5 *v.* Sisters of Mercy, (Ark. 1908) 109 S. W. 1165; City St. Imp. Co. *v.* Regents, (Cal. 1908) 96 Pac. 801; Denver *v.* Londoner, 33 Colo. 104, 80 Pac. 117; Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67; Nalle *v.* Austin, (Tex. Civ. App. 1907) 103 S. W. 825; Hinckley *v.* Seattle, 37 Wash. 269, 79 Pac. 779; McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

4. Owensboro *v.* Sweeney, (Ky. 1908) 111 S. W. 364; Edwards House Co. *v.* Jackson, (Miss. 1907) 45 So. 14; Sedalia *v.* Smith, 206 Mo. 346, 104 S. W. 15; Sedalia *v.* Dogherty, 206 Mo. 372, 104 S. W. 22; Sedalia *v.* Dugan, 206 Mo. 370, 104 S. W. 23; Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67; Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115; McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

10. Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 1168; Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67.

1169. 3. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Chicago *v.* Galt, 225 Ill. 368, 80 N. E. 285; Stone *v.* Street Com'rs, 192 Mass. 297, 78 N. E. 478; Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800; Perry *v.* Davis, (Okla. 1907) 90 Pac. 865; McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

4. *Indiana.* — Dyer *v.* Woods, 166 Ind. 44, 76 N. E. 624; New York, etc., R. Co. *v.* Hammond, (Ind. 1908) 83 N. E. 244.

Iowa. — Snouffer *v.* Grove, (Iowa 1908) 116 N. W. 1056.

Kentucky. — Owensboro *v.* Sweeney, (Ky. 1908) 111 S. W. 364.

Missouri. — Excelsior Springs *v.* Mississippi Valley Trust Co., (Mo. App. 1906) 96 S. W. 707; Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67; Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701; Porter *v.* R. J. Boyd Paving, etc., Co., (Mo. 1908) 112 S. W. 235; Fruin-Bambrick Constr. Co. *v.* St. Louis Shovel Co., (Mo. 1908) 111 S. W. 86.

New Jersey. — Shaler *v.* McAleese, (N. J. 1907) 68 Atl. 416.

North Carolina. — Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800.

Oklahoma. — Perry *v.* Davis, (Okla. 1907) 90 Pac. 865.

Wyoming. — McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

5. New York, etc., R. Co. *v.* Hammond, (Ind. 1908) 83 N. E. 244; Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800.

7. Hubbell *v.* Bennett, 130 Iowa 66, 106 N.

W. 375; Marion Trust Co. *v.* Indianapolis, 37 Ind. App. 672–706, 75 N. E. 834, 836; Stevens *v.* Port Huron, 149 Mich. 536, 113 N. W. 291; People *v.* Kingston, 189 N. Y. 66, 81 N. E. 557; Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1169.

1170. 1. *California.* — Chase *v.* Trout, 146 Cal. 350, 80 Pac. 81.

Colorado. — Wolff *v.* Denver, 20 Colo. App. 138, 77 Pac. 364; Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467; Denver *v.* Campbell, 33 Colo. 162, 80 Pac. 142.

Illinois. — Olney *v.* Conour, 230 Ill. 15, 82 N. E. 347.

Indiana. — Marion Trust Co. *v.* Indianapolis, 37 Ind. App. 672, 75 N. E. 834; Marion Trust Co. *v.* Indianapolis, 37 Ind. App. 706, 75 N. E. 836.

Kentucky. — Covington *v.* Noland, (Ky. 1905) 89 S. W. 216; Morton *v.* Sullivan, (Ky. 1906) 96 S. W. 807.

Missouri. — Sedalia *v.* Donohue, 190 Mo. 407, 89 S. W. 386.

New York. — Matter of New York, 114 N. Y. App. Div. 519, 100 N. Y. Supp. 140.

North Carolina. — Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800.

Oklahoma. — Perry *v.* Davis, (Okla. 1907) 90 Pac. 865.

Oregon. — St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

Pennsylvania. — Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115.

Washington. — Vreeland *v.* Tacoma, (Wash. 1908) 94 Pac. 192; *In re* Westlake Ave., 40 Wash. 144, 82 Pac. 279; Monk *v.* Ballard, 42 Wash. 35, 84 Pac. 397; McCurdy *v.* Ballard, 42 Wash. 697, 84 Pac. 399; State *v.* Moss, 44 Wash. 91, 86 Pac. 1129.

Wyoming. — McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

1171. 1. Siegel *v.* Chicago, 223 Ill. 428, 79 N. E. 280; Marion Trust Co. *v.* Indianapolis, 37 Ind. App. 672, 75 N. E. 834; Marion Trust Co. *v.* Indianapolis, 37 Ind. App. 706, 75 N. E. 836; Stevens *v.* Port Huron, 149 Mich. 536, 113 N. W. 291; Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800.

2. Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800.

6. *Arkansas.* — Craig *v.* Board of Improvement, 84 Ark. 390, 105 S. W. 867; Kirst *v.* Street Imp. Dist. No. 120, (Ark. 1908) 109 S. W. 526.

California. — O'Dea *v.* Mitchell, 144 Cal. 374, 77 Pac. 1020.

Colorado. — Jackson *v.* Denver, (Colo. 1907) 92 Pac. 690; Denver *v.* Londoner, 33 Colo. 104, 80 Pac. 117.

Illinois. — McChesney *v.* Chicago, 227 Ill. 450, 81 N. E. 435; McChesney *v.* Chicago, 226 Ill. 238, 80 N. E. 770; Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615; Hulbert *v.* Chicago, 217 Ill. 286, 75 N. E. 486.

Indiana. — Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620; Dyer *v.* Woods, 166 Ind. 44, 76 N. E. 624; Pittsburgh, etc., R. Co. *v.* Taber, (Ind. 1906) 77 N. E. 741.

Kansas. — Parker-Washington Co. *v.* Kansas City, 73 Kan. 722, 85 Pac. 781; Clarke *v.* Lawrence, 75 Kan. 26, 88 Pac. 735.

Minnesota. — Wolfe *v.* Moorhead, 98 Minn. 113, 107 N. W. 728.

Missouri. — Hund *v.* Rackliffe, 192 Mo. 312, 91 S. W. 500; Corrigan *v.* Kansas City, (Mo. 1908) 111 S. W. 115; Sedalia *v.* Smith, 206 Mo. 346, 104 S. W. 15; Sedalia *v.* Dogherty, 206 Mo. 372, 104 S. W. 22; Sedalia *v.* Dugan, 206 Mo. 370, 104 S. W. 23; State *v.* St. Louis, (Mo. 1908) 111 S. W. 89; Fruin-Bambrick Constr. Co. *v.* St. Louis Shovel Co., (Mo. 1908) 111 S. W. 86.

Nebraska. — State *v.* Hansen, (Neb. 1908) 117 N. W. 412.

New Jersey. — Simmons *v.* Millville, (N. J. 1907) 66 Atl. 895.

New York. — People *v.* Assessors, (Supm. Ct. App. Div.) 111 N. Y. Supp. 924.

North Dakota. — Skeffington *v.* Prante, (N. Dak. 1908) 115 N. W. 834; Ross *v.* Prante, (N. Dak. 1908) 115 N. W. 833.

Oklahoma. — Perry *v.* Davis, (Okla. 1907) 90 Pac. 865.

Pennsylvania. — Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115.

Tennessee. — Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1171.

Washington. — Monk *v.* Ballard, 42 Wash. 35, 84 Pac. 397; McCurdy *v.* Ballard, 42 Wash. 697, 84 Pac. 399; *In re* Westlake Ave., 40 Wash. 144, 82 Pac. 279.

Wyoming. — McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

1172. 1. Craig *v.* Board of Improvement, 84 Ark. 390, 105 S. W. 867; Lenon *v.* Brodie, 81 Ark. 208, 98 S. W. 979; Chicago *v.* Brede, 218 Ill. 528, 75 N. E. 1044; Chicago *v.* Galt, 225 Ill. 368, 80 N. E. 285.

2. Edwards House Co. *v.* Jackson, (Miss. 1907) 45 So. 14, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1172; Denver *v.* Campbell, 33 Colo. 162, 80 Pac. 142; Sedalia *v.* Smith, 206 Mo. 346, 104 S. W. 15; Sedalia *v.* Dogherty, 206 Mo. 372, 104 S. W. 22; Sedalia *v.* Dugan, 206 Mo. 370, 104 S. W. 23; O'Dea *v.* Mitchell, 144 Cal. 374, 77 Pac. 1020; Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620; Parker-Washington Co. *v.* Kansas City, 73 Kan. 722, 85 Pac. 781.

Provision for Attorney's Fees Constitutional. — Shirk *v.* Hupp, 167 Ind. 509, 78 N. E. 242.

Discrimination. — An assessment act which discriminates between residents and nonresidents is unconstitutional. District of Columbia *v.* Brooke, 29 App. Cas. (D. C.) 563.

3. Otter *v.* Barber Asphalt Paving Co., (Ky. 1906) 96 S. W. 862; Edwards House Co. *v.* Jackson, (Miss. 1907) 45 So. 14; Hund *v.* Rackliffe, 192 Mo. 312, 91 S. W. 500; State *v.* Hansen, (Neb. 1908) 117 N. W. 412; Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1172; Nalle *v.* Austin, (Tex. Civ. App. 1907) 103 S. W. 825.

4. James *v.* Seattle, (Wash. 1908) 95 Pac. 273; Kirst *v.* Street Imp. Dist. No. 120, (Ark. 1908) 109 S. W. 526.

1173. 2. Perry *v.* Davis, (Okla. 1907) 90 Pac. 865.

3. *Alabama.* — Hurton *v.* Avondale, 147 Ala. 458, 41 So. 934.

California. — Chase *v.* Trout, 146 Cal. 350, 80 Pac. 81.

Colorado. — Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1173; Denver *v.* Londoner, 33 Colo. 104, 80 Pac. 117.

Illinois. — McChesney *v.* Chicago, 227 Ill. 450, 81 N. E. 435; Gage *v.* Chicago, 225 Ill. 218, 80 N. E. 127; McChesney *v.* Chicago, 226 Ill. 238, 80 N. E. 770; People *v.* Cohen, 219 Ill. 200, 76 N. E. 388.

Indiana. — Dyer *v.* Woods, 166 Ind. 44, 76 N. E. 624.

Iowa. — Reed *v.* Cedar Rapids, (Iowa 1907) 111 N. W. 1013.

Massachusetts. — Morse *v.* Charles, (Mass. 1908) 83 N. E. 891.

Missouri. — Corrigan *v.* Kansas City, (Mo. 1908) 111 S. W. 115; Fruin-Bambrick Constr. Co. *v.* St. Louis Shovel Co., (Mo. 1908) 111 S. W. 86.

Nebraska. — State *v.* Hansen, (Neb. 1908) 117 N. W. 412.

Oregon. — St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

Tennessee. — Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469.

Wyoming. — McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

1174. 1. Gage *v.* Chicago, 225 Ill. 218, 80 N. E. 127; McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

2. Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467; Gage *v.* Chicago, 225 Ill. 218, 80 N. E. 127; McChesney *v.* Chicago, 226 Ill. 238, 80 N. E. 770.

Notice by Mail Sufficient under Statute. — Chicago *v.* Galt, 225 Ill. 368, 80 N. E. 285.

3. McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1174; Nalle *v.* Austin, (Tex. Civ. App. 1907) 103 N. W. 825; St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

4. Harrigan *v.* Jacksonville, 220 Ill. 134, 77 N. E. 85.

6. Edwards House Co. *v.* Jackson, (Miss. 1907) 45 So. 14, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1174; Owensboro *v.* Sweeney, (Ky. 1908) 111 S. W. 364; Sedalia *v.* Dogherty, 206 Mo. 372, 104 S. W. 22; Sedalia *v.* Dugan, 206 Mo. 370, 104 S. W. 23; Sedalia *v.* Smith, 206 Mo. 346, 104 S. W. 15; Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67; St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231; Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115; Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469; McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1174.

1175. 1. Edwards House Co. *v.* Jackson, (Miss. 1907) 45 So. 14, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1174; Burns *v.* Duluth, 96 Minn. 104, 104 N. W. 714.

1176. 1. Vreeland *v.* Tacoma, (Wash. 1908) 94 Pac. 192.

4. Vreeland *v.* Tacoma, (Wash. 1908) 94 Pac. 192, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1176: Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615.

8. Lexington *v.* Walby, (Ky. 1908) 109 S. W. 299.

9. Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582.

1177. 2. Morse *v.* Charles, (Mass. 1908) 83 N. E. 891.

A Statute Enacted after the Completion of the Work may be made the basis of a special assessment. Boston Water Power Co. *v.* Boston, 194 Mass. 571, 80 N. E. 598.

4. Kansas City *v.* Napiecek, (Kan. 1907) 92 Pac. 827; *In re* Locust Ave., 185 N. Y. 115, 77 N. E. 1012.

5. Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800.

9. Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1177–1183; Barnes *v.* Parsons, (Kan. 1908) 94 Pac. 151; Morton *v.* Sullivan, (Ky. 1906) 96 S. W. 807; Steinacker *v.* Gast, (Ky. 1905) 89 S. W. 481; Kerker *v.* Bocher, (Okla. 1908) 95 Pac. 981; Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800; Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470; Spokane *v.* Security Sav. Soc., (Wash. 1907) 89 Pac. 466.

1178. 1. Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620; Hubbell *v.* Bennett, 130 Iowa 66, 106 N. W. 375; Lindsey *v.* Brawner, (Ky. 1906) 97 S. W. 1; Morton *v.* Sullivan, (Ky. 1906) 96 S. W. 807; Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701; Excelsior Springs *v.* Mississippi Valley Trust Co., (Mo. App. 1906) 96 S. W. 707; Louisville *v.* Gast, (Ky. 1906) 91 S. W. 251; Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470.

2. Chicago *v.* Newberry Library, 224 Ill. 330, 79 N. E. 666.

4. Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1177–1183; Draper *v.* Atlanta, 126 Ga. 649, 55 S. E. 929; Barnes *v.* Parsons, (Kan. 1908) 94 Pac. 151.

1179. 1. San Francisco Paving Co. *v.* Egan, 146 Cal. 635, 80 Pac. 1076; McMillan *v.* Fond Du Lac County, (Wis. 1908) 114 N. W. 1119.

7. Lindsey *v.* Brawner, (Ky. 1906) 97 S. W. 1; Maysville *v.* Maysville St. R., etc., Co., (Ky. 1908) 108 S. W. 960.

8. **Reconstruction and Repair Distinguished.** — Covington *v.* Bullock, (Ky. 1907) 103 S. W. 276.

9. McMillan *v.* Fond Du Lac County, (Wis. 1908) 114 N. W. 1119.

10. Rackliffe *v.* Duncan, (Mo. App. 1908) 108 S. W. 1110: Covington *v.* Bullock, (Ky. 1907) 103 S. W. 276.

1180. 1. See also Lindsey *v.* Brawner, (Ky. 1906) 97 S. W. 1; Morton *v.* Sullivan, (Ky. 1906) 96 S. W. 807.

2. **Repairs by Contractor.** — A provision requiring the contractor to keep the street in repair for a certain time is valid. Sedalia *v.* Smith, 206 Mo. 346, 104 S. W. 15; Sedalia *v.* Dugan, 206 Mo. 370, 104 S. W. 23; Sedalia *v.* Dogherty, 206 Mo. 372, 104 S. W. 22.

Provision Requiring Contractor to Sustain All Loss or Damage Arising from the Work Invalid. — Hatch *v.* Nevills, (Cal. 1907) 95 Pac. 43; Glassell *v.* O'Dea, (Cal. App. 1908) 95 Pac. 44.

Provision Making Contractor Liable for

Damages Invalidates Assessment. — Van Loenen *v.* Gillespie, (Cal. 1907) 96 Pac. 87.

3. Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1177–1183; Heim *v.* Figg, (Ky. 1905) 89 S. W. 301; Excelsior Springs *v.* Mississippi Valley Trust Co., (Mo. App. 1906) 96 S. W. 707; Rackliffe *v.* Duncan, (Mo. App. 1908) 108 S. W. 1110; Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701; Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470.

4. But see Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701.

5. Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1177–1183; Mudge *v.* Walker, (Ky. 1906) 90 S. W. 1046; Jackson *v.* McHargue, (Ky. 1908) 106 S. W. 871.

6. Mudge *v.* Walker, (Ky. 1906) 90 S. W. 1046; Fayette *v.* Rich, 122 Mo. App. 145, 99 S. W. 8.

1181. 1. Marion Trust Co. *v.* Indianapolis, 37 Ind. App. 706, 75 N. E. 836; Marion Trust Co. *v.* Indianapolis, 37 Ind. App. 672, 75 N. E. 834; Mudge *v.* Walker, (Ky. 1906) 90 S. W. 1046; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130.

2. Kramer *v.* Los Angeles, 147 Cal. 668, 82 Pac. 334; McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353; Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615; Reed *v.* Cedar Rapids, (Iowa 1907) 111 N. W. 1013; Coates *v.* Nugent, (Kan. 1907) 92 Pac. 597; Taylor *v.* Haverhill, 192 Mass. 287, 78 N. E. 475; W. F. Stewart Co. *v.* Flint, 147 Mich. 697, 111 N. W. 353; Weeks *v.* Middletown, 107 N. Y. App. Div. 587, 95 N. Y. Supp. 352; Perry *v.* Davis, (Okla. 1907) 90 Pac. 865; Spokane *v.* Preston, (Wash. 1907) 89 Pac. 406; McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

5. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Taylor *v.* Haverhill, 192 Mass. 287, 78 N. E. 475.

1182. 1. Frank *v.* Rogers, 220 Ill. 206, 77 N. E. 221; Shreves *v.* Gibson, (Kan. 1907) 92 Pac. 584; State *v.* Hansen, (Neb. 1908) 117 N. W. 412.

3. State *v.* District Ct., 102 Minn. 482, 113 N. W. 697; Corrigan *v.* Kansas City, (Mo. 1908) 111 S. W. 115; Hart *v.* Omaha, 74 Neb. 836, 105 N. W. 546.

Construction of Statute. — State *v.* Smith, 99 Minn. 59, 108 N. W. 822.

4. Vreeland *v.* Tacoma, (Wash. 1908) 94 Pac. 192.

1183. 3. **Viaducts.** — Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467.

4. St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1183.

6. St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

7. Owensboro *v.* [illegible] (Ky. 1907) 111 S. W. 364.

An Assessment for Street Sprinkling without reference to benefits is invalid. Stevens *v.* Port Huron, 140 Mich. 526, 113 N. W. 291.

1184. 3. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348.

4. **A Lessee of State Lands** may be assessed, to the extent of his interest, for a local improvement. Rabel *v.* Seattle, 44 Wash. 482, 87 Pac. 520.

5. **A Life Tenant Is an Owner** within the meaning of an assessment statute. Meanor *v.* Goldsmith, 216 Pa. St. 489, 65 Atl. 1084.

6. Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469.

7. *Colorado.* — Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1184.

Connecticut. — Naugatuck R. Co. *v.* Waterbury, 78 Conn. 193, 61 Atl. 474.

Illinois. — Sheedy *v.* Chicago, 221 Ill. 111, 77 N. E. 539; Waukegan *v.* Burnett, 234 Ill. 460, 84 N. E. 1061.

Kansas. — Coates *v.* Nugent, (Kan. 1907) 92 Pac. 597.

Minnesota. — State *v.* District Ct., 102 Minn. 482, 113 N. W. 697.

Missouri. — *In re* Oak St., 196 Mo. 515, 96 S. W. 206; *In re* Twenty-First St., 196 Mo. 498, 96 S. W. 201.

New York. — *In re* Anthony Ave., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 525, 95 N. Y. Supp. 77; *In re* East 136th Street, (Supm. Ct. App. Div.) 111 N. Y. Supp. 916.

Washington. — Monk *v.* Ballard, 42 Wash. 35, 84 Pac. 397; McCurdy *v.* Ballard, 42 Wash. 697, 84 Pac. 399.

1185. 1. Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467; McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Kansas City *v.* Napiecek, (Kan. 1907) 92 Pac. 827; Hart *v.* Omaha, 74 Neb. 836, 105 N. W. 546.

2. Naugatuck R. Co. *v.* Waterbury, 78 Conn. 193, 61 Atl. 474.

Particular Benefit Not Necessary. — Otter *v.* Barber Asphalt Paving Co., (Ky. 1906) 96 S. W. 862.

3. Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467.

4. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Northern Pac. R. Co. *v.* Seattle, (Wash. 1907) 91 Pac. 244.

5. Seattle *v.* Seattle, etc., R. Co., (Wash. 1908) 96 Pac. 958.

7. **Warrants Drawn against a Fund Raised by Special Assessment** cannot be made a general charge against the city. State *v.* Tanner, 45 Wash. 348, 88 Pac. 321.

1186. 2. Board of Education *v.* People, 219 Ill. 83, 76 N. E. 75.

3. Edwards *v.* Cooper, 168 Ind. 54, 79 N. E. 1047.

Exempt under Statute. — Matter of Perry Ave., 118 N. Y. App. Div. 874, 103 N. Y. Supp. 1069.

Cemeteries Exempt under Statute. — *In re* White Plains Presb. Church, 112 N. Y. App. Div. 130, 98 N. Y. Supp. 63.

5. **Municipal Property May Be Assessed.** — People *v.* Reis, 109 N. Y. App. Div. 748, 96 N. Y. Supp. 597.

6. Spokane *v.* Security Sav. Soc., (Wash. 1907) 89 Pac. 466, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1186; City St. Imp. Co. *v.* Regents, (Cal. 1908) 96 Pac. 801.

Leasehold in State Lands Assessable. — Rabel *v.* Seattle, 44 Wash. 482, 87 Pac. 520.

1187. 1. Spokane *v.* Security Sav. Soc., (Wash. 1907) 89 Pac. 466, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1187.

5. *In re* Howard Ave., 44 Wash. 62, 86 Pac. 1117.

7. *In re* Howard Ave., 44 Wash. 62, 86 Pac. 1117.

9. **Land Used Solely for Railway Purposes** is not specially benefited by paving the street in front of it and it cannot be assessed for such improvement. Naugatuck R. Co. *v.* Waterbury, 78 Conn. 193, 61 Atl. 474.

1188. 1. Pittsburgh, etc., R. Co. *v.* Taber, (Ind. 1906) 77 N. E. 741; Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67; Northern Pac. R. Co. *v.* Seattle, (Wash. 1907) 91 Pac. 244; Seattle *v.* Seattle, etc., R. Co., (Wash. 1908) 96 Pac. 958.

Contra. — Southern California R. Co. *v.* Workman, 146 Cal. 80, 79 Pac. 586.

2. **Contra.** — *In re* Anthony Ave., (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 525, 95 N. Y. Supp. 77; *In re* East 133d Street, (Supm. Ct. Spec. T.) 95 N. Y. Supp. 76.

3. Seattle *v.* Seattle Electric Co., (Wash. 1908) 94 Pac. 194, 196.

1189. 2. Maysville *v.* Maysville St. R., etc., Co., (Ky. 1908) 108 S. W. 960; Seattle *v.* Seattle Electric Co., (Wash. 1908) 94 Pac. 194, 196.

4. Maysville *v.* Maysville St. R., etc., Co., (Ky. 1908) 108 S. W. 960.

Arkansas. — Lenon *v.* Brodie, 81 Ark. 208, 98 S. W. 979; Craig *v.* Board of Improvement, 84 Ark. 390, 105 S. W. 867.

Colorado. — Wolff *v.* Denver, 20 Colo. App. 138, 77 Pac. 364, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1189.

Idaho. — McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348.

7. *Indiana.* — Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1189.

Missouri. — Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67; Fruin-Bambrick Constr. Co. *v.* St. Louis Shovel Co., (Mo. 1908) 111 S. W. 86.

North Carolina. — Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800.

Oklahoma. — Kerker *v.* Bocher, (Okla. 1908) 95 Pac. 981.

Oregon. — St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

Tennessee. — Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469.

Wyoming. — McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

8. *Arkansas.* — Lenon *v.* Brodie, 81 Ark. 208, 98 S. W. 979.

California. — O'Dea *v.* Mitchell, 144 Cal. 374, 77 Pac. 1020.

Colorado. — Wolff *v.* Denver, 20 Colo. App. 138, 77 Pac. 364, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1189; Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467; Denver *v.* Campbell, 33 Colo. 162, 80 Pac. 142.

Idaho. — McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348.

Indiana. — Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1189.

Kansas. — Coates *v.* Nugent, (Kan. 1907) 92 Pac. 597; Kansas City *v.* Napiecek, (Kan. 1907) 92 Pac. 827.

North Carolina. — Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800.

Oklahoma. — Kerker *v.* Bocher, (Okla. 1908) 95 Pac. 981.

Oregon. — St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

Washington. — *In re* Harvard Ave., North, (Wash. 1907) 92 Pac. 410; *In re* Westlake Ave., 40 Wash. 144, 82 Pac. 279.

Wyoming. — McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

In the Absence of Statute the municipal authorities may exercise their discretion in laying out local improvement districts. Hallett *v.* U. S. Security, etc., Co., (Colo. 1907) 90 Pac. 683.

9. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1189; Kansas City *v.* Napiecek, (Kan. 1907) 92 Pac. 827, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1189; O'Dea *v.* Mitchell, 144 Cal. 374, 77 Pac. 1020; Spoon River Drainage Dist. *v.* Conner, 121 Ill. App. 450; Roberts *v.* Evanston, 218 Ill. 296, 75 N. E. 923; Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582; State *v.* District Ct., 102 Minn. 482, 113 N. W. 697; Hart *v.* Omaha, 74 Neb. 836, 105 N. W. 546; Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800; *In re* Westlake Ave., 40 Wash. 144, 82 Pac. 279.

10. Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1189.

11. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Kansas City *v.* Napiecek, (Kan. 1907) 92 Pac. 827.

1190. 7. Maysville *v.* Maysville St. R., etc., Co., (Ky. 1908) 108 S. W. 960.

Lots Abut on a Sidewalk where the lot owner also owns to the middle of the street, subject to the public easement, although there is a space between the edge of the sidewalk and the lot line. Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130.

1191. 2. Maysville *v.* Maysville St. R., etc., Co., (Ky. 1908) 108 S. W. 960.

7. McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

9. Improvement Dist. No. 5 *v.* Offenhauser, 84 Ark. 257, 105 S. W. 265.

1192. 1. **Contiguous to Be Given a Literal Meaning.** — *In re* West Lake Ave., 40 Wash. 144, 82 Pac. 279.

"Contiguous or Approximate." — Monk *v.* Ballard, 42 Wash. 35, 84 Pac. 397; McCurdy *v.* Ballard, 42 Wash. 697, 84 Pac. 399.

15. Frankfort *v.* Brislan, (Ky. 1907) 104 S. W. 311.

1193. 10. Improvement Paving Dist. No. 5 *v.* Sisters of Mercy, (Ark. 1908) 109 S. W. 1165; City St. Imp. Co. *v.* Regents, (Cal. 1908) 96 Pac. 801; *In re* Howard Ave., 44 Wash. 62, 86 Pac. 1117.

11. State *v.* Smith, 99 Minn. 59, 108 N. W. 822; *In re* White Plains Presb. Church, 112 N. Y. App. Div. 130, 98 N. Y. Supp. 63; Matter of Perry Ave., 118 N. Y. App. Div. 874, 103 N. Y. Supp. 1069.

1194. 1. Rackliffe *v.* Duncan, (Mo. App. 1908) 108 S. W. 1110.

3. *Alabama.* — Harton *v.* Avondale, 147 Ala. 458, 41 So. 934.

Arkansas. — Kirst *v.* Street Imp. Dist. No. 120, (Ark. 1908) 109 S. W. 526.

Colorado. — Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467; Spalding *v.* Denver, 33 Colo. 172, 80 Pac. 126.

Connecticut. — Naugatuck R. Co. *v.* Waterbury, 78 Conn. 193, 61 Atl. 474.

Illinois. — Chicago *v.* Galt, 225 Ill. 368, 80 N. E. 285.

Iowa. — Early *v.* Ft. Dodge, (Iowa 1907) 113 N. W. 766; Corey *v.* Ft. Dodge, 133 Iowa 666, 111 N. W. 6.

Kentucky. — Owensboro *v.* Sweeney, (Ky. 1908) 111 S. W. 364.

Michigan. — Stevens *v.* Port Huron, 149 Mich. 536, 113 N. W. 291.

Minnesota. — *In re* Davidson, 97 Minn. 378, 107 N. W. 151.

New Jersey. — Durrell *v.* Woodbury, (N. J. 1906) 65 Atl. 198; Burnett *v.* Boonton, 73 N. J. L. 453, 63 Atl. 995.

Oklahoma. — Perry *v.* Davis, (Okla. 1907) 90 Pac. 865.

Oregon. — St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

Tennessee. — Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1194.

Washington. — *In re* Seattle, (Wash. 1907) 91 Pac. 548; James *v.* Seattle, (Wash. 1908) 95 Pac. 273.

Wisconsin. — Spence *v.* Milwaukee, (Wis. 1907) 113 N. W. 38.

Assessment Not to Exceed Value of Property. — Otter *v.* Barber Asphalt Paving Co., (Ky. 1906) 96 S. W. 862.

1195. 1. Corey *v.* Ft. Dodge, 133 Iowa 666, 111 N. W. 6.

4. Naugatuck R. Co. *v.* Waterbury, 78 Conn. 193, 61 Atl. 474; *In re* Westlake Ave., 40 Wash. 144, 82 Pac. 279.

5. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348.

7. *Alabama.* — Harton *v.* Avondale, 147 Ala. 458, 41 So. 934.

Arkansas. — Kirst *v.* Street Imp. Dist. No. 120, (Ark. 1908) 109 S. W. 526; Improvement Dist. No. 5 *v.* Offenhauser, 84 Ark. 257, 105 S. W. 265.

Illinois. — Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615.

Iowa. — Corey *v.* Ft. Dodge, 133 Iowa 666, 111 N. W. 6; Bailey *v.* Sioux City, 133 Iowa 276, 110 N. W. 839; Rawson *v.* Des Moines, 133 Iowa 514, 110 N. W. 918; Higman *v.* Sioux City, 129 Iowa 291, 105 N. W. 524.

Kentucky. — Morton *v.* Sullivan, (Ky. 1906) 96 S. W. 807.

Michigan. — Corliss *v.* Highland Park, 146 Mich. 597, 110 N. W. 45.

Missouri. — Asphalt, etc., Constr. Co. *v.* Hauessler, 201 Mo. 400, 100 S. W. 14.

New York. — *In re* Avenue D., 122 N. Y. App. Div. 416, 106 N. Y. Supp. 889; Matter of New York, 103 N. Y. App. Div. 496, 93 N. Y. Supp. 84.

Washington. — James *v.* Seattle, (Wash. 1908) 95 Pac. 273.

1196. 3. Gault *v.* Glen Ellyn, 226 Ill. 520, 80 N. E. 1046; Cicero *v.* Skinner, 220 Ill. 82, 77 N. E. 137.

4. **Future Repairs May Be Included.** — Alexander *v.* Tacoma, 35 Wash. 366, 77 Pac. Pac. 686.

5. Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582.

1197. 5. Gage *v.* Wilmette, 230 Ill. 428, 82 N. E. 656; Gault *v.* Glen Ellyn, 226 Ill. 520, 80 N. E. 1046.

6. Gage *v.* Wilmette, 230 Ill. 428, 82 N. E. 656; Gault *v.* Glen Ellyn, 226 Ill. 520, 80 N. E. 1046

7. Higman *v.* Sioux City, 129 Iowa 291, 105 N. W. 524.

8. *In re* Hagenmeyer, 113 N. Y. App. Div. 472, 99 N. Y. Supp. 369.

1198. 1. Harton *v.* Avondale, 147 Ala. 458, 41 So. 934; Kramer *v.* Los Angeles, 147 Cal. 668, 82 Pac. 334; Beckett *v.* Chicago, 218 Ill. 97, 75 N. E. 747; Peoria *v.* Smith, 232 Ill. 561, 83 N. E. 1061; People *v.* Kingston, 189 N. Y. 66, 81 N. E. 557; Hemen *v.* Ballard, 40 Wash. 81, 82 Pac. 277; McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

3. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1198; Denver *v.* Dufars, 33 Colo. 94, 80 Pac. 114; Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469.

1199. 1. Kirst *v.* Street Imp. Dist. No. 120, (Ark. 1908) 109 S. W. 526; Shreves *v.* Gibson, (Kan. 1907) 92 Pac. 584; Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115.

2. People *v.* Hennessy, 234 Ill. 14, 84 N. E. 692; Owensboro *v.* Hope, (Ky. 1908) 110 S. W. 272; *In re* Davidson, 97 Minn. 378, 107 N. W. 151; People *v.* Kingston, 189 N. Y. 66, 81 N. E. 557.

3. **Contra.** — Spaulding *v.* Denver, 33 Colo. 172, 80 Pac. 126.

Presumption that Omitted Property Is Not Benefited. — Sheedy *v.* Chicago, 221 Ill. 111, 77 N. E. 539.

4. Sheedy *v.* Chicago, 221 Ill. 111, 77 N. E. 539; People *v.* Reis, 109 N. Y. App. Div. 919, 96 N. Y. Supp. 601; People *v.* Reis, 109 N. Y. App. Div. 748, 96 N. Y. Supp. 597; Spokane *v.* Security Sav. Soc., (Wash. 1907) 89 Pac. 466.

Presumption of Validity of Assessment. — Clark *v.* Chicago, 229 Ill. 363, 82 N. E. 370.

1200. 1. *California.* — O'Dea *v.* Mitchell, 144 Cal. 374, 77 Pac. 1020.

Colorado. — Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467; Denver *v.* Dumars, 33 Colo. 94, 80 Pac. 114.

Idaho. — Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353; McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348.

Illinois. — Roberts *v.* Evanston, 218 Ill. 296, 75 N. E. 923; Sheedy *v.* Chicago, 221 Ill. 111, 77 N. E. 530.

Indiana. — Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620; Pittsburgh, etc., R. Co. *v.* Taber, (Ind. 1906) 77 N. E. 741; Shirk *v.* Hupp, 167 Ind. 509, 78 N. E. 242.

Iowa. — Reed *v.* Cedar Rapids, (Iowa 1907) 111 N. W. 1013; Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582.

Kansas. — Kansas City *v.* Napiecek, (Kan. 1907) 92 Pac. 827; Coates *v.* Nugent, (Kan. 1907) 92 Pac. 597.

Massachusetts. — Taylor *v.* Haverhill, 192 Mass. 287, 78 N. E. 475.

Minnesota. — *In re* Davidson, 97 Minn. 378, 107 N. W. 151.

New Jersey. — Kirtland *v.* Parker, (N. J. 1908) 68 Atl. 913.

New York. — People *v.* Reis, 109 N. Y. App. Div. 748, 96 N. Y. Supp. 597; People *v.* Reis, 109 N. Y. App. Div. 919, 96 N. Y. Supp. 601; People *v.* Desmond, 111 N. Y. App. Div. 757, 97 N. Y. Supp. 795; People *v.* Kingston, 114 N. Y. App. Div. 326, 99 N. Y. Supp. 657; People *v.* Desmond, 186 N. Y. 232, 78 N. E. 857.

North Carolina. — Asheville *v.* Wachovia L. & T. Co., 143 N. Car. 360, 55 S. E. 800.

Oregon. — St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

Washington. — Alexander *v.* Tacoma, 35 Wash. 366, 77 Pac. 686; Felt *v.* Ballard, 38 Wash. 300, 80 Pac. 532; Johnson *v.* Tacoma, 41 Wash. 51, 82 Pac. 1092; *In re* Westlake Ave., 40 Wash. 144, 82 Pac. 279.

Wyoming. — McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

2. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1200; First *v.* Street Imp. Dist. No. 120, (Ark. 1908) 109 S. W. 526; Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67; Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469; *In re* Seattle, (Wash. 1907) 91 Pac. 548; Monk *v.* Ballard, 42 Wash. 35, 84 Pac. 397; McCurdy *v.* Ballard, 42 Wash. 697, 84 Pac. 390.

1201. 1. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1200; Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1201.

View. — In determining the value of property the view therefrom may be taken into consideration. *In re* Lakeview Ave., 46 Wash. 63, 89 Pac. 156.

2. Spaulding *v.* Denver, 33 Colo. 172, 80 Pac. 126; Denver *v.* Dumars, 33 Colo. 94, 80 Pac. 114; McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

3. *California.* — Beckett *v.* Morse, 4 Cal. App. 228, 87 Pac. 408; Southern California R. Co. *v.* Workman, 146 Cal. 80, 79 Pac. 586.

Colorado. — Denver *v.* Campbell, 33 Colo. 162, 80 Pac. 142.

Idaho. — Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353.

Illinois. — People *v.* Hennessy, 234 Ill. 14, 84 N. E. 692.

Kentucky. — Owensboro *v.* Sweeney, (Ky. 1908) 111 S. W. 364.

Missouri. — Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67.

New York. — People *v.* Buffalo, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 10, 107 N. Y. Supp. 689; Matter of New York, 106 N. Y. App. Div. 31, 94 N. Y. Supp. 146; People *v.* Desmond, 111 N. Y. App. Div. 757, 97 N. Y. Supp. 795; *In re* Phelps, 110 N. Y. App. Div. 69, 96 N. Y. Supp. 862; People *v.* Kingston, 114 N. Y. App. Div. 326, 99 N. Y. Supp. 657.

North Carolina. — Alvey *v.* Asheville, (N. Car. 1907) 59 S. E. 999.

Oregon. — Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470.

Pennsylvania. — Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115.

South Dakota. — Brandhuber *v.* Pierre, (S. Dak. 1907) 113 N. W. 569.

Tennessee. — Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469.

Washington. — Spokane *v.* Security Sav. Soc., (Wash. 1907) 89 Pac. 466; Northern Pac. R. Co. *v.* Seattle, (Wash. 1907) 91 Pac. 244.

Wyoming. — McGarvey *v.* Swan, (Wyo 1908) 96 Pac. 697.

1202. 1. Arnold *v.* Knoxville, 115 Tenn. 195, 90 S. W. 469.

1203. 1. See Harrigan *v.* Jacksonville, 220 Ill. 134, 77 N. E. 85.

3. People *v.* Reis, 109 N. Y. App. Div. 748, 96 N. Y. Supp. 597; People *v.* Reis, 109 N. Y. App. Div. 919, 96 N. Y. Supp. 601.

The Frontage May Be Considered in determining the benefits conferred. Reed *v.* Cedar Rapids, (Iowa 1907) 111 N. W. 1013.

1204. 1. Harton *v.* Avondale, 147 Ala. 458, 41 So. 934.

2. *In re* Davidson, 97 Minn. 378, 107 N. W. 151.

3. Lisbon Ave. Land Co. *v.* Lake, (Wis. 1907) 113 N. W. 1099.

4. *California.* — Sacramento Paving Co. *v.* Martyr, 1 Cal. App. xviii., 82 Pac. 1071; Sacramento Paving Co. *v.* Anderson, 1 Cal. App. 672, 82 Pac. 1069.

Colorado. — Denver *v.* Dunning, 33 Colo. 487, 81 Pac. 259.

Illinois. — Siegel *v.* Chicago, 223 Ill. 428, 79 N. E. 280; Nowlin *v.* People, 216 Ill. 543, 75 N. E. 209; People *v.* Patton, 223 Ill. 379, 79 N. E. 51; People *v.* Smythe, 232 Ill. 629, 83 N. E. 1086; People *v.* Smythe, 232 Ill. 621, 83 N. E. 1083; People *v.* Smythe, 232 Ill. 575, 83 N. E. 1066; People *v.* Smythe, 232 Ill. 567, 83 N. E. 1063; People *v.* Smythe, 232 Ill. 539, 83 N. E. 1054; People *v.* Smythe, 232 Ill. 348, 83 N. E. 858; People *v.* Smythe, 232 Ill. 259, 83 N. E. 828; People *v.* Smythe, 232 Ill. 242, 83 N. E. 821; Drennen *v.* People, 222 Ill. 592, 78 N. E. 937.

Indiana. — Marion Trust Co. *v.* Indianapolis, 37 Ind. App. 672, 75 N. E. 834; Leibole *v.* Traster, (Ind. App. 1908) 83 N. E. 781; Marion Trust Co. *v.* Indianapolis, 37 Ind. App. 706, 75 N. E. 836; Pittsburgh, etc., R. Co. *v.* Oglesby, 165 Ind. 542, 76 N. E. 165.

Iowa. — Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582.

Kentucky. — Owensboro *v.* Hope, (Ky. 1908) 110 S. W. 272.

Missouri. — Black *v.* Metropolitan St. R. Co., (Mo. App. 1908) 109 S. W. 86; Excelsior Springs *v.* Mississippi Valley Trust Co., (Mo. App. 1906) 96 S. W. 707; Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701.

New Jersey. — Simmons *v.* Millville, (N. J. 1907) 66 Atl. 895.

New York. — Weeks *v.* Middletown, 107 N. Y. App. Div. 587, 95 N. Y. Supp. 352.

Oregon. — Oregon Transfer Co. *v.* Portland, 47 Oregon 1, 81 Pac. 575.

Pennsylvania. — *In re* Wheeler Ave. Sewer, 214 Pa. St. 504, 63 Atl. 894.

Washington. *In re* Seattle, (Wash. 1908) 94 Pac. 1075.

Presumption of Compliance with Statute. — Harrington *v.* Jacksonville, 220 Ill. 134, 77 N. E. 85.

1205. 1. Howe *v.* Chicago, 224 Ill. 95, 79 N. E. 421; Chicago Union Traction Co. *v.* Chicago, 222 Ill. 144, 78 N. E. 54; Oregon Transfer Co. *v.* Portland, 47 Oregon 1, 81 Pac. 575; North Yakima *v.* Scudder, 41 Wash. 15, 82 Pac. 1022; Seattle Cedar Lumber Mfg. Co. *v.* Ballard, (Wash. 1908) 96 Pac. 956.

4. *Arizona.* — English *v.* Territory, (Ariz. 1907) 89 Pac. 501.

California. — Bates *v.* Adamson, 2 Cal. App. 574, 84 Pac. 51; O'Dea *v.* Mitchell, 144 Cal. 374, 77 Pac. 1020; Flinn *v.* Peters, 3 Cal. App. 235, 84 Pac. 995; Beckett *v.* Morse, 4 Cal. App. 228, 87 Pac. 408.

Colorado. — Hallett *v.* U. S. Security, etc., Co., (Colo. 1907) 90 Pac. 683; Denver *v.* Dumass, 33 Colo. 94, 80 Pac. 114; Spaulding *v.* Denver, 33 Colo. 172, 80 Pac. 126.

Georgia. — Draper *v.* Atlanta, 129 Ga. 649, 55 S. E. 929.

Illinois. — People *v.* Wiemers, 225 Ill. 17, 80 N. E. 45; Beckett *v.* Chicago, 218 Ill. 97, 75 N. E. 747.

Indiana. — Boswell *v.* Marion, (Ind. App. 1907) 79 N. E. 1056.

Iowa. — Mackay *v.* Hancock County, (Iowa 1908) 114 N. W. 552.

Kansas. — Barnes *v.* Parsons, (Kan. 1908) 94 Pac. 151.

Kentucky. — Noland *v.* Mildenberger, (Ky. 1906) 97 S. W. 24; Mudge *v.* Walker, (Ky. 1906) 90 S. W. 1046.

Michigan. — Shaw *v.* Ypsilanti, 146 Mich. 712, 110 N. W. 40; W. F. Stewart Co. *v.* Flint, 147 Mich. 697, 111 N. W. 353.

New Jersey. — Durrell *v.* Woodbury, (N. J. 1906) 65 Atl. 198.

New York. — People *v.* Kingston, 114 N. Y. App. Div. 326, 99 N. Y. Supp. 657; Untermyer *v.* Yonkers, 112 N. Y. App. Div. 308, 98 N. Y. Supp. 563.

Oklahoma. — Kerker *v.* Bocher, (Okla. 1908) 95 Pac. 981.

Washington. — Alexander *v.* Tacoma, 35 Wash. 366, 77 Pac. 686; Spokane *v.* Preston, (Wash. 1907) 89 Pac. 406.

1206. 1. People *v.* Owens, 231 Ill. 311, 83 N. E. 198; People *v.* Wiemers, 225 Ill. 17, 80 N. E. 45; Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582; Cox *v.* Mignery, 126 Mo. App. 669, 105 S. W. 675.

3. Invalid Ordinance. — Cox *v.* Mignery, 126 Mo. App. 669, 105 S. W. 675; Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582.

4. Edwards *v.* Cooper, 168 Ind. 54, 79 N. E. 1047, *quoting* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1206.

1207. 3. *California.* — Redondo Beach *v.* Barkley, 151 Cal. 176, 90 Pac. 452.

Colorado. — Spaulding *v.* Denver, 33 Colo. 172, 80 Pac. 126.

Kansas. — Tarman *v.* Atchison, 69 Kan. 483, 77 Pac. 111; Clarke *v.* Lawrence, 75 Kan. 26, 88 Pac. 735; Barnes *v.* Parsons, (Kan. 1908) 94 Pac. 151.

Kentucky. — Latonia *v.* Hedger, (Ky. 1907) 100 S. W. 267.

Minnesota. — Wolfe *v.* Moorhead, 98 Minn. 113, 107 N. W. 728.

Missouri. — Hund *v.* Rackliffe, 192 Mo. 312, 91 S. W. 500.

New York. — *In re* Locust Ave., 110 N. Y. App. Div. 774, 97 N. Y. Supp. 508; *In re* Locust Ave., 185 N. Y. 115, 77 N. E. 1012.

Oklahoma. — Perry *v.* Davis, (Okla. 1907) 90 Pac. 865.

Washington. — Spokane *v.* Preston, (Wash. 1907) 89 Pac. 406.

4. Craig *v.* Board of Improvement, 84 Ark. 390, 105 S. W. 867; Lenon *v.* Brodie, 81 Ark. 208, 98 S. W. 979; Chase *v.* Trout, 146 Cal. 350, 80 Pac. 81; Denver *v.* Londoner, 33 Colo. 104, 80 Pac. 117; Kansas City *v.* Silver, 74 Kan. 851, 85 Pac. 805; Carey Salt Co. *v.* Hutchinson, 72 Kan. 99, 82 Pac. 721; State *v.* Bury, 101 Minn. 424, 112 N. W. 534; Perry *v.* Davis, (Okla. 1907) 90 Pac. 865; Ponischil *v.* Hoquiam Sash, etc., Co., 41 Wash. 303, 83 Pac. 316.

5. Chase *v.* Trout, 146 Cal. 350, 80 Pac. 81.

1208. 1. **Omitting Nonresident Owners.** — Stack *v.* People, 217 Ill. 220, 75 N. E. 347.

Value of Improvements Not Considered. — Improvement Dist. No. 5 *v.* Offenhauser, 84 Ark. 257, 105 S. W. 265.

Majority of Owners Necessary. — State *v.* Bury, 101 Minn. 424, 112 N. W. 534.

Majority of Owners in Value. — Lenon *v.* Brodie, 81 Ark. 208, 98 S. W. 979.

Bishop of Catholic Church a Competent Petitioner. — S. D. Mercer Co. *v.* Omaha, (Neb. 1907) 112 N. W. 617.

Omitting the Date of Signature, as required by statute, is a mere irregularity which will not invalidate the proceedings. State *v.* Several Parcels of Land, (Neb. 1907) 110 N. W. 753.

5. Executor Not an Owner. — People *v.* Assessors, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 991.

6. Petition Not Binding on Municipality. — Carey Salt Co. *v.* Hutchinson, 72 Kan. 99, 82 Pac. 721.

7. James *v.* Seattle, (Wash. 1908) 95 Pac. 273.

1209. 2. **Petition Need Not Describe Improvement in Detail.** — Fayette *v.* Rich, 122 Mo. App. 145, 99 S. W. 8.

9. Gage *v.* Chicago, 225 Ill. 135, 80 N. E. 86; Doran *v.* Murphysboro, 225 Ill. 514, 80 N. E. 323; Gage *v.* Wilmette, 230 Ill. 428, 82 N. E. 656; Chicago, etc., R. Co. *v.* Chicago, 230 Ill. 9, 82 N. E. 399; Lyman *v.* Cicero, 222 Ill. 379, 78 N. E. 830; Boonville *v.* Rogers, 125 Mo. App. 142, 101 S. W. 1120; Boonville *v.* Braxton, (Mo. App. 1907) 101 S. W. 1123; Barber Asphalt Paving Co. *v.* O'Brien, (Mo. App. 1908) 107 S. W. 25; Fayette *v.* Rich, 122 Mo. App. 145, 99 S. W. 8; Boonville *v.* Stephens, (Mo. App. 1906) 95 S. W. 314.

Estimates Held Valid. — McChesney *v.* Chicago, 227 Ill. 450, 81 N. E. 435; McChesney *v.*

Chicago, 227 Ill. 215, 81 N. E. 410; Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615; East St. Louis *v.* Davis, 233 Ill. 553, 84 N. E. 674; Oak Park *v.* Galt, 231 Ill. 365, 83 N. E. 212; Mexico *v.* Lakenan, (Mo. App. 1908) 108 S. W. 141.

Estimate Need Not Be Made Prior to Resolution of Intention. — Sacramento Paving Co. *v.* Martyr, 1 Cal. App. xviii., 82 Pac. 1071; Sacramento Paving Co. *v.* Anderson, 1 Cal. App. 672, 82 Pac. 1069.

1210. 2. Fayette *v.* Rich, 122 Mo. App. 145, 99 S. W. 8.

6. Mulberry *v.* O'Dea, 4 Cal. App. 385, 88 Pac. 367; Flinn *v.* Strauss, 4 Cal. App. 245, 87 Pac. 414; Siegel *v.* Chicago, 223 Ill. 428, 79 N. E. 280; Rogne *v.* People, 224 Ill. 449, 79 N. E. 662; Elsberry *v.* Black, 120 Mo. App. 20, 96 S. W. 256; Elsberry *v.* Black, (Mo. App. 1906) 96 S. W. 257; Hellar *v.* Tacoma, 44 Wash. 250, 87 Pac. 130.

7. Beckett *v.* Morse, 4 Cal. App. 228, 87 Pac. 408; Zorn *v.* Warren-Scharf Asphalt Paving Co., (Ind. App. 1907) 81 N. E. 672; Siegel *v.* Chicago, 223 Ill. 428, 79 N. E. 280; Zorn *v.* Warren-Scharf Asphalt Paving Co., (Ind. App. 1908) 84 N. E. 509; Comstock *v.* Eagle Grove City, 133 Iowa 589, 111 N. W. 51; Porter *v.* R. J. Boyd Paving, etc., Co., (Mo. 1908) 112 S. W. 235; Mexico *v.* Lakeman, (Mo. App. 1908) 108 S. W. 141.

Act of Advertising May Be Delegated. — Fayette *v.* Rich, 122 Mo. App. 145, 99 S. W. 8.

1211. 2. Siegel *v.* Chicago, 223 Ill. 428, 79 N. E. 280; People *v.* Lamon, 232 Ill. 587, 83 N. E. 1070; Monaghan *v.* Indianapolis, (Ind. App. 1905) 75 N. E. 33; Monaghan *v.* Indianapolis, 37 Ind. App. 280, 76 N. E. 424; National Surety Co. *v.* Kansas City Hydraulic Press Brick Co., 73 Kan. 196, 84 Pac. 1034; Campbell *v.* Southern Bitulithic Co., (Ky. 1908) 106 S. W. 1189; Auditor-Gen. *v.* Stoddard, 147 Mich. 329, 110 N. W. 944; People *v.* Kingston, 189 N. Y. 66, 81 N. E. 557; Stocking *v.* Warren Bros. Co., (Wis. 1908) 114 N. W. 789.

4. Excelsior Springs *v.* Mississippi Valley Trust Co., (Mo. App. 1906) 96 S. W. 707; Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86; Springfield *v.* Schmook, 120 Mo. App. 41, 96 S. W. 257; Turner *v.* Springfield, 117 Mo. App. 418, 93 S. W. 867; Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701; Boonville *v.* Stephens, (Mo. App. 1906) 95 S. W. 314. See also Hund *v.* Rackliffe, 192 Mo. 312, 91 S. W. 500; Duniway *v.* Portland, 47 Oregon 103, 81 Pac. 945.

5. Comstock *v.* Eagle Grove City, 133 Iowa 589, 111 N. W. 51; Marshall *v.* People, 219 Ill. 99, 76 N. E. 70; Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701; Excelsior Springs *v.* Mississippi Valley Trust Co., (Mo. App. 1906) 96 S. W. 707.

7. *California.* — Redondo Beach *v.* Barkley, 151 Cal. 176, 90 Pac. 452; Dowling *v.* Hibernia Sav., etc., So., 143 Cal. 425, 77 Pac. 141; Chase *v.* Trout, 146 Cal. 350, 80 Pac. 81.

Colorado. — Spalding *v.* Denver, 33 Colo. 172, 80 Pac. 126.

Illinois. — People *v.* Patton, 223 Ill. 379, 79 N. E. 51; East St. Louis *v.* Davis, 233 Ill. 553, 84 N. E. 674; People *v.* Lyon, 218 Ill. 577, 75 N. E. 1017; Waukegan *v.* Burnett, 234 Ill. 460, 84 N. E. 1061.

Iowa. — Cook *v.* Independence, 133 Iowa 582, 110 N. W. 1029; Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582.

Kentucky. — Thomas *v.* Woods, (Ky. 1908) 108 S. W. 878.

Missouri. — Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86; Ramsey *v.* Field, 115 Mo. App. 620, 92 S. W. 350; Cox *v.* Mignery, 126 Mo. App. 669, 105 S. W. 675; Mulligan *v.* Lexington, 126 Mo. App. 715, 105 S. W. 1104.

New York. — Morey *v.* Buffalo, (Supm. Ct. Eq. T.) 111 N. Y. Supp. 463.

Washington. — North Yakima *v.* Scudder, 41 Wash. 15, 82 Pac. 1022; *In re* Seattle, (Wash. 1908) 94 Pac. 1075.

Ordinance Held Valid — *Illinois.* — Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615; Oak Park *v.* Galt, 231 Ill. 365, 83 N. E. 209; Gage *v.* Wilmette, 230 Ill. 428, 82 N. E. 656; Chicago *v.* Clark, 233 Ill. 404, 84 N. E. 363; Chicago *v.* Hulbert, 234 Ill. 321, 84 N. E. 922.

Iowa. — Hardwick *v.* Independence, (Iowa 1907) 114 N. W. 14.

Kentucky. — Nell *v.* Power, (Ky. 1907) 107 S. W. 694; Huesman *v.* Dersch, (Ky. 1908) 109 S. W. 319.

Missouri. — Gilsonite Constr. Co. *v.* Arkansas McAlester Coal Co., 205 Mo. 49, 103 S. W. 93; Sedalia *v.* Smith, 206 Mo. 346, 104 S. W. 15; Sedalia *v.* Dogherty, 206 Mo. 372, 104 S. W. 22; Sedalia *v.* Dugan, 206 Mo. 370, 104 S. W. 23; Mexico *v.* Lakenan, (Mo. App. 1908) 108 S. W. 141; Porter *v.* R. J. Boyd Paving, etc., Co., (Mo. 1908) 112 S. W. 235.

1212. 1. Sproul *v.* Stockton, 73 N. J. L. 158, 62 Atl. 275.

2. Kerker *v.* Bocher, (Okla. 1908) 95 Pac. 981.

3. Lisbon Ave. Land Co. *v.* Lake, (Wis. 1907) 113 N. W. 1099, *citing* 25 Am. and Eng. Encyc. of Law (2d ed.) 211 [1212]; Redondo Beach *v.* Barkley, 151 Cal. 176, 90 Pac. 452; Gardner *v.* Chicago, 224 Ill. 254, 79 N. E. 624; Lingle *v.* West Chicago Park Com'rs, 222 Ill. 384, 78 N. E. 794; Nixon *v.* Burlington, (Iowa 1908) 115 N. W. 239; Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582; Barnes *v.* Parsons, (Kan. 1908) 94 Pac. 151; Barber Asphalt Paving Co. *v.* O'Brien, (Mo. App. 1908) 107 S. W. 25; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130.

Notice of Intention to construct a public improvement is not necessary unless required by statute. Thayer Lumber Co. *v.* Muskegon, (Mich. 1908) 115 N. W. 957.

5. Publication of Notice. — The fact that a notice of the time when the city council will consider a resolution of necessity was published for the last time on Sunday does not invalidate the notice. Nixon *v.* Burlington, (Iowa 1908) 115 N. W. 239.

1213. 1. Mulberry *v.* O'Dea, 4 Cal. App. 385, 88 Pac. 367; Glos *v.* Cannata, 121 Ill. App. 215; Thomas *v.* Woods, (Ky. 1908) 108 S. W. 878.

Yeas and Nays. — Cook *v.* Independence, 133 Iowa 582, 110 N. W. 1029; Hardwick *v.* Independence, (Iowa 1907) 114 N. W. 14; [illegible]

v. Emmetsburg, (Iowa 1908) 115 N. W. 582; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130.

4. Siegel *v.* Chicago, 223 Ill. 428, 79 N. E. 280; Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582; Cox *v.* Mignery, 126 Mo. App. 669, 105 S. W. 675.

7. People *v.* Patton, 223 Ill. 379, 79 N. E. 51; Clos *v.* Cannata, 121 Ill. App. 215.

1214. 1. *California.* — Chase *v.* Trout, 146 Cal. 350, 80 Pac. 81.

Colorado. — Denver *v.* Dunning, 33 Colo. 487, 81 Pac. 259.

Illinois. — Chicago Union Traction Co. *v.* Chicago, 222 Ill. 144, 78 N. E. 54; Waukegan *v.* Burnett, 234 Ill. 460, 84 N. E. 1061; Connecticut Mut. L. Ins. Co. *v.* Chicago, 217 Ill. 352, 75 N. E. 365; People *v.* Brown, 218 Ill. 375, 75 N. E. 989; Close *v.* Chicago, 217 Ill. 216, 75 N. E. 479; Gardner *v.* Chicago, 224 Ill. 254, 79 N. E. 624; Gault *v.* Glen Ellyn, 226 Ill. 520, 80 N. E. 1046; Ogden *v.* Chicago, 224 Ill. 294, 79 N. E. 699; Linblad *v.* Normal, 224 Ill. 362, 79 N. E. 675.

Missouri. — Barber Asphalt Paving Co. *v.* O'Brien, (Mo. App. 1908) 107 S. W. 25.

Ohio. — Emmert *v.* Elyria, 74 Ohio St. 185, 78 N. E. 269.

2. Chase *v.* Trout, 146 Cal. 350, 80 Pac. 81; Chicago Union Traction Co. *v.* Chicago, 222 Ill. 144, 78 N. E. 54; Chicago Union Traction Co. *v.* Chicago, 223 Ill. 37, 79 N. E. 67; People *v.* Wiemers, 225 Ill. 17, 80 N. E. 45; Gage *v.* Chicago, 223 Ill. 602, 79 N. E. 294.

Ordinance Need Not Describe and Assess Each Lot Separately. — Spalding *v.* Denver, 33 Colo. 172, 80 Pac. 126.

4. Gardner *v.* Chicago, 224 Ill. 254, 79 N. E. 624.

1215. 1. Velhage *v.* Stanley, 78 Conn. 520, 63 Atl. 347; People *v.* Lyon, 218 Ill. 577, 75 N. E. 1017; Waukegan *v.* Burnett, 234 Ill. 460, 84 N. E. 1061; Shirk *v.* Hupp, 167 Ind. 509, 78 N. E. 242; Bennett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582; Thayer Lumber Co. *v.* Muskegon (Mich. 1908) 115 N. W. 957; Coulter *v.* Phœnix Brick, etc., Co., (Mo. App. 1908) 110 S. W. 655; *In re* Scranton Sewer, 213 Pa. St. 4, 62 Atl. 173.

Ordinance Must Follow Resolution. — Linblad *v.* Normal, 224 Ill. 362, 79 N. E. 675; Gage *v.* Chicago, 227 Ill. 137, 81 N. E. 11; McChesney *v.* Chicago, 227 Ill. 215, 81 N. E. 410; Howe *v.* Chicago, 224 Ill. 95, 79 N. E. 421; McChesney *v.* Chicago, 227 Ill. 450, 81 N. E. 435; Gage *v.* Chicago, 225 Ill. 135, 80 N. E. 86.

Immaterial Variance between Ordinance and Resolution. — Gage *v.* Chicago, 225 Ill. 218, 80 N. E. 127; Lyman *v.* Cicero, 222 Ill. 379, 78 N. E. 830.

2. People *v.* Bridgeman, 218 Ill. 568, 75 N. E. 1057; Porter *v.* R. J. Boyd Paving, etc., Co., (Mo. 1908) 112 S. W. 235; Lister *v.* Tacoma, 44 Wash. 222, 87 Pac. 126.

4. Sacramento Paving Co. *v.* Martyr, 1 Cal. App. xviii., 82 Pac. 1071; Sacramento Paving Co. *v.* Anderson, 1 Cal. App. 672, 82 Pac. 1069; Gage *v.* Chicago, 225 Ill. 218, 80 N. E. 127; McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 697.

5. McGarvey *v.* Swan, (Wyo. 1908) 96 Pac. 712.

1216. 1. *California.* — Mulberry *v.* O'Dea, 4 Cal. App. 385, 88 Pac. 367; Pepper *v.* Neiman, 4 Cal. App. 55, 87 Pac. 286; Chase *v.* Trout, 146 Cal. 350, 80 Pac. 81; Dowling *v.* Hibernia Sav., etc., Soc., 143 Cal. 425, 77 Pac. 141.

Illinois. — People *v.* Phinney, 231 Ill. 180, 83 N. E. 143; Phillips *v.* People, 218 Ill. 450, 75 N. E. 1016; Chicago *v.* Burkhardt, 223 Ill. 297, 79 N. E. 82; Lyman *v.* Cicero, 222 Ill. 379, 78 N. E. 830.

Indiana. — Low *v.* Dallas, 165 Ind. 392, 75 N. E. 822; Harmon *v.* Dallas, 165 Ind. 710, 75 N. E. 824; Nichols *v.* Dallas, 165 Ind. 710, 75 N. E. 824; Highlands *v.* Dallas, 165 Ind. 710, 75 N. E. 824.

Michigan. — Hinkley *v.* Bishop, (Mich. 1908) 114 N. W. 676; Thayer Lumber Co. *v.* Muskegon, (Mich. 1908) 115 N. W. 957.

Minnesota. — State *v.* District Ct., 95 Minn. 503, 104 N. W. 553.

Missouri. — St. Louis *v.* Brinckwirth, 204 Mo. 280, 102 S. W. 1091.

Nebraska. — Richardson *v.* Omaha, (Neb. 1907) 110 N. W. 648.

New Jersey. — Bye *v.* Atlantic City, 73 N. J. L. 402, 64 Atl. 1056; Sears *v.* Atlantic City, 73 N. J. L. 710, 64 Atl. 1062.

New York. — Weeks *v.* Middletown, 107 N. Y. App. Div. 587, 95 N. Y. Supp. 352.

Washington. — State *v.* Seattle, 42 Wash. 370, 85 Pac. 11, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1215; Lester *v.* Seattle, 42 Wash. 539, 85 Pac. 14.

2. People *v.* Cohen, 219 Ill. 200, 76 N. E. 388; Perry *v.* Davis, (Okla. 1907) 90 Pac. 865; St. Benedict's Abbey *v.* Marion County, (Oregon 1907) 93 Pac. 231; McCurdy *v.* Ballard, 42 Wash. 697, 84 Pac. 399; Monk *v.* Ballard, 42 Wash. 35, 84 Pac. 397.

3. Denver *v.* Dumars, 33 Colo. 94, 80 Pac. 114.

4. Hallett *v.* U. S. Security, etc., Co., (Colo. 1907) 90 Pac. 683; Marshall *v.* People, 219 Ill. 99, 76 N. E. 70; Lyman *v.* Cicero, 222 Ill. 379, 78 N. E. 830; Huntington *v.* Amiss, 167 Ind. 375, 79 N. E. 199; Dyer *v.* Woods, 166 Ind. 44, 76 N. E. 624; Hensley *v.* Butte, (Mont. 1907) 92 Pac. 34.

1217. 1. Denver *v.* Kennedy, 33 Colo. 80, 80 Pac. 122, 467; East St. Louis *v.* Davis, 233 Ill. 553, 84 N. E. 674.

2. Lotonia *v.* Hedger, (Ky. 1907) 100 S. W. 267.

3. Dowling *v.* Hibernia Sav., etc., Soc., 143 Cal. 425, 77 Pac. 141; People *v.* Smythe, 232 Ill. 629, 83 N. E. 1086; Denver *v.* Dumars, 33 Colo. 94, 80 Pac. 114.

Designation of Property Owners. — People *v.* Smythe, 232 Ill. 242, 83 N. E. 821; People *v.* Smythe, 232 Ill. 259, 83 N. E. 828; People *v.* Smythe, 232 Ill. 348, 83 N. E. 858; People *v.* Smythe, 232 Ill. 539, 83 N. E. 1054; People *v.* Smythe, 232 Ill. 567, 83 N. E. 1063; People *v.* Smythe, 232 Ill. 575, 83 N. E. 1066; People *v.* Smythe, 232 Ill. 621, 83 N. E. 1083.

4. Mulberry *v.* O'Dea, 4 Cal. App. 385, 88 Pac. 367.

1218. 2. Shanley *v.* People, 225 Ill. 579, 80 N. E. 277; Hinkley *v.* Bishop, (Mich. 1908) 114 N. W. 676.

5. Gage *v.* Chicago, 225 Ill. 218, 80 N. E. 127; McChesney *v.* Chicago, 226 Ill. 238, 80 N. E. 770.

Notice by Mail Sufficient. — Chicago *v.* Galt, 225 Ill. 368, 80 N. E. 285.

8. Howe *v.* Chicago, 224 Ill. 95, 79 N. E. 421; Gage *v.* Chicago, 223 Ill. 602, 79 N. E. 294.

1219. 8. Cicero *v.* Andren, 224 Ill. 617, 79 N. E. 962; St. Benedicts' Abbey *v.* Marion County, (Oregon 1907) 93 Pac. 231; *In re* Harvard Ave. North, (Wash. 1907) 92 Pac. 410.

1220. 1. Morey *v.* Buffalo, (Supm. Ct. Eq. T.) 111 N. Y. Supp. 463.

5. St. Benedicts' Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231; *In re* Harvard Ave. North, (Wash. 1907) 92 Pac. 410.

6. Patton *v.* Rome, 124 Ga. 525, 52 S. E. 742.

Appointment by President of Local Board. — Harrigan *v.* Jacksonville, 220 Ill. 134, 77 N. E. 85.

7. Shreves *v.* Gibson, (Kan. 1907) 92 Pac. 584, *citing* 25 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1220.

1221. 2. Batchelor *v.* Avon-by-the-Sea, (N. J. 1907) 68 Atl. 124.

4. Nutwood Drainage, etc., Dist. *v.* Reddish, 234 Ill. 130, 84 N. E. 750; Union Drainage Dist. *v.* Smith, 233 Ill. 417, 84 N. E. 376; Vandalia Levee, etc., Dist. *v.* Hutchins, 234 Ill. 31, 84 N. E. 715.

1222. 1. Gage *v.* Wilmette, 230 Ill. 428, 82 N. E. 656.

2. People *v.* Carr, 231 Ill. 502, 83 N. E. 269; People *v.* Warren, 231 Ill. 518, 83 N. E. 271.

3. Kirst *v.* Street Imp. Dist. No. 120, (Ark. 1908) 109 S. W. 526; Cicero *v.* Andren, 224 Ill. 617, 79 N. E. 962.

4. People *v.* Carr, 231 Ill. 502, 83 N. E. 269.

6. Ottis *v.* Sullivan, 219 Ill. 365, 76 N. E. 487; Watts *v.* River Forest, 227 Ill. 31, 81 N. E. 12; Pittsburgh, etc., R. Co. *v.* Oglesby, 165 Ind. 542, 76 N. E. 165; Parsons *v.* Grand Rapids, 141 Mich. 467, 104 N. W. 730.

7. Parsons *v.* Grand Rapids, 141 Mich. 467, 104 N. W. 730.

1223. 1. People *v.* Owens, 231 Ill. 311, 83 N. E. 198; People *v.* Wiemers, 225 Ill. 17, 80 N. E. 45; Wiemers *v.* People, 225 Ill. 82, 80 N. E. 68.

Not Necessary to Describe Each Lot Separately. — Spalding *v.* Denver, 33 Colo. 172, 80 Pac. 126.

1224. 5. Roberts *v.* Evanston, 218 Ill. 296, 75 N. E. 923; People *v.* Carr, 231 Ill. 502, 83 N. E. 269.

6. Lyman *v.* Cicero, 222 Ill. 379, 78 N. E. 830; Franklin Park *v.* Franklin, 231 Ill. 380, 83 N. E. 214; People *v.* McMahon, 224 Ill. 284, 79 N. E. 645.

1225. 2. Chicago *v.* Becker, 233 Ill. 189, 84 N. E. 242; Phillips *v.* People, 218 Ill. 450, 75 N. E. 1016; People *v.* Phinney, 231 Ill. 180, 83 N. E. 143.

4. Draper *v.* Atlanta, 126 Ga. 649, 55 S. E. 929; Lingle *v.* West Chicago Park Com'rs, 222 Ill. 384, 78 N. E. 794; People *v.* Judson, 233 Ill. 280, 84 N. E. 233; Huntington *v.* Amiss, 167 Ind. 375, 79 N. E. 199; Higman *v.* Sioux City, 129 Iowa 291, 105 N. W. 524; Mudge *v.* Walker, (Ky. 1906) 90 S. W. 1046; Leavenworth *v.* Jones, 69 Kan. 857, 77 Pac. 273; Sedalia *v.* Montgomery, 100 Mo. App. 197, 88 S. W. 1014; Hensley *v.* Butte, (Mont. 1907) 92 Pac. 34; Renard *v.* Spokane, (Wash. 1908) 93 Pac. 517.

5. Improvement Dist. No. 5 *v.* Offenhauser, 84 Ark. 257, 105 S. W. 265.

1223. 3. Bates *v.* Adamson, 2 Cal. App. 574, 84 Pac. 51.

5. English *v.* Territory, (Ariz. 1907) 89 Pac. 501; People *v.* Judson, 233 Ill. 280, 84 N. E. 233; Chicago *v.* Gage, 232 Ill. 169, 83 N. E. 663; Daly *v.* Gubbins, (Ind. 1907) 82 N. E. 659; Alexander *v.* Tacoma, 35 Wash. 366, 77 Pac. 686.

1227. 1. People *v.* Owens, 231 Ill. 311, 83 N. E. 198; Vreeland *v.* Tacoma, (Wash. 1908) 94 Pac. 192.

2. Harton *v.* Avondale, 147 Ala. 458, 41 So. 934; Peoria *v.* Smith, 232 Ill. 561, 83 N. E. 1061; Shreves *v.* Gibson, (Kan. 1907) 92 Pac. 584; Thayer Lumber Co. *v.* Muskegon, (Mich. 1908) 115 N. W. 957; *In re* Hagemeyer, 113 N. Y. App. Div. 472, 99 N. Y. Supp. 369; Renard *v.* Spokane, (Wash. 1908) 93 Pac. 517.

3. People *v.* Cohen, 219 Ill. 200, 76 N. E. 388; New York, etc., R. Co. *v.* Hammond, (Ind. 1908) 83 N. E. 244; Renard *v.* Spokane, (Wash. 1908) 93 Pac. 517.

4. New York, etc., R. Co. *v.* Hammond, (Ind. 1908) 83 N. E. 244; Taylor *v.* Haverhill, 192 Mass. 287, 78 N. E. 475.

6. *Illinois.* — Conway *v.* Chicago, 219 Ill. 295, 76 N. E. 384; Chicago *v.* Clark, 233 Ill. 404, 84 N. E. 363; Cicero *v.* Andren, 224 Ill. 617, 79 N. E. 962; Chicago *v.* Baldwin, 227 Ill. 534, 81 N. E. 542; Chicago *v.* Galt, 225 Ill. 368, 80 N. E. 285; Chicago *v.* Gage, 232 Ill. 169, 83 N. E. 663; Noyes *v.* Chicago, 218 Ill. 45, 75 N. E. 807; Goodrich *v.* Chicago, 218 Ill. 18, 75 N. E. 805.

Indiana. — Pittsburgh, etc., R. Co. *v.* Taber, (Ind. 1906) 77 N. E. 741.

Kansas. — Kansas City *v.* Silver, 74 Kan. 851, 85 Pac. 805.

Minnesota. — State *v.* District Ct., 95 Minn. 503, 104 N. W. 553; State *v.* District Ct., 98 Minn. 63, 107 N. W. 726; State *v.* District Ct., 102 Minn. 482, 113 N. W. 697.

Nebraska. — S. D. Mercer Co. *v.* Omaha, (Neb. 1906) 107 N. W. 565; Barkley *v.* Lincoln, (Neb. 1908) 117 N. W. 398.

New Jersey. — Batchelor *v.* Avon-by-the-Sea, (N. J. 1907) 68 Atl. 124.

Oregon. — Gaston *v.* Portland, 48 Oregon 82, 84 Pac. 1040; Dumway *v.* Portland, 47 Oregon 103, 81 Pac. 945.

Washington. — Alexander *v.* Tacoma, 35 Wash. 366, 77 Pac. 686; Spokane *v.* Security Sav. Soc., (Wash. 1907) 89 Pac. 466; Lester *v.* Seattle, 42 Wash. 539, 85 Pac. 14; State *v.* Seattle, 42 Wash. 370, 85 Pac. 11.

Wisconsin. — Cawker *v.* Milwaukee, (Wis. 1907) 113 N. W. 419; Dahlman *v.* Milwaukee, 131 Wis. 427, 110 N. W. 479.

1228. 1. **Reassessment Invalid for Delay of Eleven Years.** — Olympia *v.* Knox, (Wash. 1908) 95 Pac. 1090.

3. Cicero *v.* Skinner, 220 Ill. 82, 77 N. E. 137; Fountain Head Drainage Dist. *v.* Wright, 228 Ill. 208, 81 N. E. 849; Chicago *v.* Gage, 232 Ill. 169, 83 N. E. 663.

6. Daly *v.* Gubbins, (Ind. 1907) 82 N. E. 659; Kansas City *v.* Silver, 74 Kan. 851, 85 Pac. 805; Haggart *v.* Kansas City, (Kan.

1908) 94 Pac. 789; W. F. Stewart Co. *v.* Flint, 147 Mich. 697, 111 N. W. 353; Constantine *v.* Albion, 148 Mich. 403, 111 N. W. 1068; State *v.* District Ct., 102 Minn. 482, 113 N. W. 697; People *v.* Kingston, 189 N. Y. 66, 81 N. E. 557; *In re* Marshall Ave., 213 Pa. St. 516, 62 Atl. 1085.

1229. 3. **Curative Act Cannot Cure Jurisdictional Defects.** — Seattle Cedar Lumber Mfg. Co. *v.* Ballard, (Wash. 1908) 96 Pac. 956.

4. Lexington *v.* Walby, (Ky. 1908) 109 S. W. 299; English *v.* Territory, (Ariz. 1907) 89 Pac. 501.

5. English *v.* Territory, (Ariz. 1907) 89 Pac. 501; Page *v.* W. W. Chase Co., 145 Cal. 578, 79 Pac. 278; McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353; People *v.* Patton, 223 Ill. 379, 79 N. E. 51; Nell *v.* Power, (Ky. 1907) 107 S. W. 694; Cabell *v.* Henderson, (Ky. 1905) 88 S. W. 1095; St. Louis *v.* Brinckwirth, 204 Mo. 280, 102 S. W. 1091; Rochester *v.* Rochester R. Co., 109 N. Y. App. Div. 638, 96 N. Y. Supp. 152; Shirk *v.* Hupp, 167 Ind. 509, 78 N. E. 242; Wright *v.* Jessup, 44 Wash. 618, 87 Pac. 930.

6. Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353.

[illegible]. Page *v.* W. W. Chase Co., 145 Cal. 578, 79 Pac. [illegible].

1230. 6. People *v.* Patton, 223 Ill. 379, 79 N. E. 51.

8. Shirk *v.* Hupp, 167 Ind. 509, 78 N. E. 242; Pittsburgh, etc., R. Co. *v.* Taber, (Ind. 1906) 77 N. E. 741; Morton *v.* Sullivan, (Ky. 1906) 96 S. W. 807; Dahlman *v.* Milwaukee, 131 Wis. 427, 110 N. W. 483.

1231. 2. Waite *v.* People, 228 Ill. 173, 81 N. E. 837.

3. Daly *v.* Gubbins, (Ind. 1907) 82 N. E. 659.

Demand as a Nonresident may be made by registered letter. Marshall *v.* People, 219 Ill. 99, 76 N. E. 70.

5. Gage *v.* People, 219 Ill. 424, 76 N. E. 583; Conway *v.* Chicago, 219 Ill. 295, 76 N. E. 384; McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Pittsburgh, etc., R. Co. *v.* Taber, (Ind. 1906) 77 N. E. 741; Corliss *v.* Highland Park, 146 Mich. 597, 110 N. W. 45; Gilsonite Constr. Co. *v.* Arkansas McAlester Coal Co., 205 Mo. 49, 103 S. W. 93; Jaicks *v.* Merrill, 201 Mo. 91, 98 S. W. 753; *In re* Hagemeyer, 113 N. Y. App. Div. 472, 99 N. Y. Supp. 369.

7. *In re* Hagemeyer, 113 N. Y. App. Div. 472, 99 N. Y. Supp. 369.

1232. 1. People *v.* Smythe, 232 Ill. 242, 83 N. E. 821; People *v.* Smythe, 232 Ill. 259, 83 N. E. 828; People *v.* Smythe, 232 Ill. 348, 83 N. E. 858; People *v.* Smythe, 232 Ill. 539, 83 N. E. 1054; People *v.* Smythe, 232 Ill. 567, 83 N. E. 1063; People *v.* Smythe, 232 Ill. 575, 83 N. E. 1066; People *v.* Smythe, 232 Ill. 621, 83 N. E. 1083; People *v.* Smythe, 232 Ill. 629, 83 N. E. 1086; English *v.* Territory, (Ariz. 1907) 90 Pac. 601; McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Conway *v.* Chicago, 219 Ill. 295, 76 N. E. 384; Hulbert *v.* Chicago, 217 Ill. 286, 75 N. E. 486; Chicago *v.* People, 116 Ill. App. 564; St. Joseph *v.* Forsee, 115 Mo. App. 510, 91 S. W. 445; *In re* Hagemeyer, 113 N. Y. App. Div. 472, 99 N. Y. Supp. 369.

2. English *v.* Territory, (Ariz. 1907) 90 Pac. 601; Shirk *v.* Hupp, 167 Ind. 509, 78 N. E. 242; Cleveland, etc., R. Co. *v.* Porter, 38 Ind. App. 226, 76 N. E. 179; Pittsburgh, etc., R. Co. *v.* Taber, (Ind. 1906) 77 N. E. 741.

5. Kraut *v.* Dayton, (Ky. 1906) 97 S. W. 1101; Gilsonite Constr. Co. *v.* Arkansas McAlester Coal Co., 205 Mo. 49, 103 S. W. 93; Frye *v.* Mt. Vernon, 42 Wash. 268, 84 Pac. 864; Mathews *v.* Wagner, (Wash. 1908) 94 Pac. 759.

1233. 1. Mitchell *v.* Titus, 33 Colo. 385, 80 Pac. 1042; Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353; Smythe *v.* People, 219 Ill. 76, 76 N. E. 82; Mankato First Nat. Bank *v.* Hodapp, 98 Minn. 534, 107 N. W. 957; Willard *v.* Hodapp, 98 Minn. 269, 107 N. W. 954; Gaston *v.* Portland, 48 Oregon 82, 84 Pac. 1040; Wright *v.* Jessup, 44 Wash. 618, 87 Pac. 930; Loeb *v.* Asberry, 44 Wash. 427, 87 Pac. 510; Williams *v.* Eau Claire County, (Wis. 1908) 115 N. W. 140.

Place of Sale. — Lantz *v.* Fishburn, (Cal. App. 1906) 91 Pac. 816.

3. Gaston *v.* Portland, 48 Oregon 82, 84 Pac. 1040; Williams *v.* Eau Claire County, (Wis. 1908) 115 N. W. 140.

6. Lantz *v.* Fishburn, (Cal. App. 1906) 91 Pac. 816; Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353; Metz *v.* Dayton, (Ky. 1906) 91 S. W. 745; Loeb *v.* Asberry, 44 Wash. 427, 87 Pac. 510.

1234. 1. *Missouri.* — Barber Asphalt Co. *v.* O'Brien, (Mo. App. 1908) 107 S. W. 25; Sedalia *v.* Montgomery, 109 Mo. App. 197, 88 S. W. 1014; Marshall *v.* Wisdom, 127 Mo. App. 640, 106 S. W. 1078; St. Joseph *v.* Forsee, 115 Mo. App. 510, 91 S. W. 445; Kurtz *v.* Knapp, 127 Mo. App. 608, 106 S. W. 537; Ross *v.* Gates, 117 Mo. App. 237, 93 S. W. 856; Ross *v.* Oglebay, 117 Mo. App. 236, 93 S. W. 859; Adams *v.* Lewellen, 117 Mo. App. 319, 93 S. W. 874; Howard *v.* Brown, 197 Mo. 36, 95 S. W. 191; Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701; Mercantile Trust Co. *v.* Niggeman, 119 Mo. App. 56, 96 S. W. 293; Excelsior Springs *v.* Mississippi Valley Trust Co., (Mo. App. 1906) 96 S. W. 707; Boonville *v.* Braxton, (Mo. App. 1907) 101 S. W. 1123; Boonville *v.* Rogers, 125 Mo. App. 142, 101 S. W. 1120; Dickey *v.* Porter, 203 Mo. 1, 101 S. W. 586; Jaicks *v.* Middlesex Invest. Co., 201 Mo. 111, 98 S. W. 759; Jaicks *v.* Merrill, 201 Mo. 91, 98 S. W. 753.

Wisconsin. — Dahlman *v.* Milwaukee, 131 Wis. 427, 110 N. W. 483.

2. Jaicks *v.* Merrill, 201 Mo. 91, 98 S. W. 753; Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701; Sedalia *v.* Montgomery, 109 Mo. App. 197, 88 S. W. 1014.

4. Rayne *v.* Harrel, 119 La. 652, 44 So. 330.

6. McGilvery *v.* Lewiston, 13 Idaho 338, 90 Pac. 348; Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353; Shirk *v.* Hupp, 167 Ind. 509, 78 N. E. 242; Snouffer *v.* Grove, (Iowa 1908) 116 N. W. 1056; Holt *v.* Figg, (Ky. 1906) 94 S. W. 34; Owensboro *v.* Hope, (Ky. 1908) 110 S. W. 272; Mercantile Trust Co. *v.* Niggeman, 119 Mo. App. 56, 96 S. W. 293; *In re* Spring Valley Park, 208 Mo. 674, 106 S. W. 531; Shaler *v.* McAleese, (N. J. 1907) 68 Atl.

416; Wright *v.* Jessup, 44 Wash. 618, 87 Pac. 930.

1235. 5. Snonffer *v.* Grove, (Iowa 1908) 116 N. W. 1056; Mercantile Trust Co. *v.* Niggeman, 119 Mo. App. 56, 96 S. W. 293; Simmons *v.* Millville, (N. J. 1907) 66 Atl. 895; Knowles *v.* Temple, (Wash. 1908) 96 Pac. 1.

6. **A Lien Cannot Continue** after the assessment has been enjoined. Snouffer *v.* Grove, (Iowa 1908) 116 N. W. 1056.

8. Hartford *v.* Mechanics' Sav. Bank, 79 Conn. 38, 63 Atl. 658.

A Purchase by the City of land subject to an assessment lien does not affect the lien. Indianapolis *v.* City Bond Co., (Ind. App. 1908) 84 N. E. 20.

1236. 1. Page *v.* W. W. Chase Co., 145 Cal. 578, 79 Pac. 278; Ross *v.* Oglebay, 117 Mo. App. 236, 93 S. W. 859; Ross *v.* Gates, 117 Mo. App. 237, 93 S. W. 856; Hinckley *v.* Seattle, 37 Wash. 269, 79 Pac. 779; Mathews *v.* Wagner, (Wash. 1908) 94 Pac. 759.

5. O'Dea *v.* Mitchell, 144 Cal. 374, 77 Pac. 1020.

6. Shaler *v.* McAleese, (N. J. 1907) 68 Atl. 416.

1237. 7. Owensboro *v.* Hope, (Ky. 1908) 110 S. W. 272; Jackson *v.* McHargue, (Ky. 1908) 106 S. W. 871; Heman Constr. Co. *v.* Wabash R. Co., 206 Mo. 172, 104 S. W. 67.

1238. 1. Rochester *v.* Rochester R. Co., 109 N. Y. App. Div. 638, 96 N. Y. Supp. 152.

Personal Judgment against Corporation Authorized. — Pittsburgh, etc., R. Co. *v.* Taber, (Ind. 1906) 77 N. E. 741.

1239. 6. Pabst Brewing Co. *v.* Milwaukee, 126 Wis. 110, 105 N. W. 563.

Assumpsit Lies to Recover Rebate. — Chicago *v.* Singer, 116 Ill. App. 559.

1240. 5. **Void Assessment Paid under Protest Recoverable.** — Smith *v.* Boston, 194 Mass. 31, 79 N. E. 786.

1241. 3. Chicago *v.* Levy, 125 Ill. App. 652.

Assumpsit will lie to recover back the proportionate share due a property owner where there is a surplus in the hands of the city after paying for the improvement. Chicago *v.* Fisk, 123 Ill. App. 404; Chicago *v.* Singer, 116 Ill. App. 559; Chicago *v.* Paulsen, 125 Ill. App. 595; Chicago *v.* McCormick, 124 Ill. App. 639; Chicago *v.* McCormick, 125 Ill. App. 650.

9. Hubbell *v.* Bennett, 130 Iowa 66, 106 N. W. 375.

1242. 1. Hensley *v.* Butte, 33 Mont. 206, 83 Pac. 481.

3. Drainage Com'rs *v.* Kinney, 233 Ill. 67, 84 N. E. 34.

4. English *v.* Territory, (Ariz. 1907) 89 Pac. 501; O'Dea *v.* Mitchell, 144 Cal. 374, 77 Pac. 1020; Bates *v.* Adamson, 2 Cal. App. 574, 84 Pac. 51; Spalding *v.* Denver, 33 Colo. 172, 80 Pac. 126; Nixon *v.* Burlington, (Iowa 1908) 115 N. W. 239; Hensley *v.* Butte, 33 Mont. 206, 83 Pac. 481; Kerker *v.* Bocher, (Okla. 1908) 95 Pac. 981.

1243. 1. Brizzolara *v.* Ft. Smith, (Ark. 1908) 112 S. W. 181.

3. Matter of New York, 114 N. Y. App. Div. 519, 100 N. Y. Supp. 140.

4. Hallett *v.* U. S. Security, etc., Co., (Colo. 1907) 90 Pac. 683; Spalding *v.* Denver, 33 Colo. 172, 80 Pac. 126; Corey *v.* Ft. Dodge, 132 Iowa 666, 111 N. W. 6; Paola *v.* Russell, 75 Kan. 826, 89 Pac. 651; Boussneur *v.* Detroit, (Mich. 1908) 117 N. W. 220; Porter *v.* R. J. Boyd Paving, etc., Co., (Mo. 1908) 112 S. W. 235; Matthews *v.* Wagner, (Wash. 1908) 94 Pac. 759.

5. Woollacott *v.* Meekin, 151 Cal. 701, 91 Pac. 612.

6. W. F. Stewart Co. *v.* Flint, 147 Mich. 697, 111 N. W. 352; Untermyer *v.* Yonkers, 112 N. Y. App. Div. 308, 98 N. Y. Supp. 563.

7. Jackson *v.* Denver, (Colo. 1907) 92 Pac. 690; Blackwell *v.* Coeur D'Alene, 13 Idaho 357, 90 Pac. 353; Union Pac. R. Co. *v.* Kansas City, 73 Kan. 571, 85 Pac. 603; Kansas City *v.* McGrew, (Kan. 1908) 96 Pac. 484.

1244. 2. **Preventing Multiplicity of Suits.** — Brizzolara *v.* Ft. Smith, (Ark. 1908) 112 S. W. 181; Drainage Com'rs *v.* Kinney, 233 Ill. 67, 84 N. E. 34.

3. Gainesville *v.* Dean, 124 Ga. 750, 53 S. E. 183.

4. **Where There Is an Apparent Defect** in the instrument under which land is about to be sold to enforce the payment of an assessment equity will not enjoin the sale for the purpose of removing a cloud on title. Brizzolara *v.* Ft. Smith, (Ark. 1908) 112 S. W. 181.

5. Durrell *v.* Woodbury, (N. J. 1906) 65 Atl. 198; Tusting *v.* Asbury Park, 73 N. J. L. 102, 62 Atl. 183; People *v.* Reis, 109 N. Y. App. Div. 748, 96 N. Y. Supp. 597; People *v.* Assessors, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 991; People *v.* Reis, 109 N. Y. App. Div. 919, 96 N. Y. Supp. 601; People *v.* Buffalo. (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 10, 107 N. Y. Supp. 689; *In re* Phelps, 110 N. Y. App. Div. 69, 96 N. Y. Supp. 862; People *v.* Desmond, 186 N. Y. 232, 78 N. E. 857.

1245. 6. Browning *v.* Pensauken Tp., (N. J. 1908) 68 Atl. 1063; Tusting *v.* Asbury Park, 73 N. J. L. 102, 62 Atl. 183.

7. *Arizona.* — English *v.* Territory, (Ariz. 1907) 89 Pac. 501.

Arkansas. — Improvement Dist. No. 5 *v.* Offenhauser, 84 Ark. 257, 105 S. W. 264.

California. — Creed *v.* McCombs, 146 Cal. 449, 80 Pac. 679.

Illinois. — Vandalia Levee, etc., Dist. *v.* Hutchins, 234 Ill. 31, 84 N. E. 715.

Indiana. — New York, etc., R. Co. *v.* Hammond, (Ind. 1908) 83 N. E. 244.

Iowa. — Nixon *v.* Burlington, (Iowa 1908) 115 N. W. 239; Early *v.* Ft. Dodge, (Iowa 1907) 113 N. W. 766.

Kansas. — Shreves *v.* Gibson, (Kan. 1907) 92 Pac. 584.

Massachusetts. — Taylor *v.* Haverhill, 192 Mass. 287, 78 N. E. 475.

Pennsylvania. — *In re* Scranton Sewer, 213 Pa. St. 4, 62 Atl. 173.

Washington. — Harris *v.* Tacoma, 39 Wash. 185, 81 Pac. 691; State *v.* Seattle, 42 Wash. 370, 85 Pac. 11; Rowell *v.* Seattle, 39 Wash. 703, 81 Pac. 560; Greenus *v.* Seattle, 39 Wash. 703, 81 Pac. 560; Ahrens *v.* Seattle, 39 Wash. 168, 81 Pac. 558.

8. Nixon *v.* Burlington, (Iowa 1908) 115 N. W. 239.

Jurisdictional Errors Not Waived by Failure to Appeal. — Barnett *v.* Emmetsburg, (Iowa 1908) 115 N. W. 582.

SPECIAL TRAVERSE.

2. 6. Rogers *v.* Barth, 117 Ill. App. 323.

SPECIFIC PERFORMANCE.

14. 8. Day *v.* Mountin, (C. C. A.) 137 Fed. 756.

15. 1. Cella *v.* Brown, (C. C. A.) 144 Fed. 742; Chicago, etc., R. Co. *v.* Lane, 150 Mich. 162, 113 N. W. 22; Pillsbury *v.* J. B. Streeter, Jr., Co., 15 N. Dak. 174, 107 N. W. 40; Wilkins *v.* Somerville, 80 Vt. 48, 66 Atl. 893; Armstrong *v.* Ross, 61 W. Va. 38, 55 S. E. 895.

2. Webb *v.* Marlar, 83 Ark. 340, 104 S. W. 144; Whittier *v.* Gormley, 3 Cal. App. 489, 86 Pac. 726; Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574; Braithwaite *v.* Henneberry, 222 Ill. 50, 78 N. E. 34; Eppstein *v.* Kuhn, 225 Ill. 115, 80 N. E. 80; Messenger *v.* Chambers, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 117, 103 N. Y. Supp. 1100; Elliott *v.* Asiel, 120 N. Y. App. Div. 829, 105 N. Y. Supp. 655; Balleisen *v.* Schiff, 121 N. Y. App. Div. 285, 105 N. Y. Supp. 692; West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666; Lawrence *v.* Halversen, 41 Wash. 534, 83 Pac. 889; White *v.* Matzger, (Wash. 1907) 92 Pac. 341.

4. Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574; Tyler *v.* St. Louis Southwestern R. Co., 99 Tex. 491, 91 S. W. 1; Grubb *v.* Moore, (Va. 1908) 60 S. E. 757; Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200.

5. **No Injunction Will Be Granted** where the party to perform the agreement has not specifically agreed not to do the act sought to be enjoined. H. W. Gossard Co. *v.* Crosby, 132 Iowa 155, 109 N. W. 483.

6. *Compare* General Electric Co. *v.* Westinghouse Electric, etc., Co., 144 Fed. 458.

10. Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574; Whalen *v.* Baltimore, etc., R. Co., (Md. 1908) 69 Atl. 390; Hazard *v.* Hope Land Co., (R. I. 1908) 69 Atl. 602; Grubb *v.* Moore, (Va. 1908) 60 S. E. 757, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 15; Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200. *Compare* Josey *v.* Perlstein, (Tex. Civ. App. 1908) 107 S. W. 558.

16. 1. Lucas *v.* Milliken, 139 Fed. 816; Farnum *v.* Clarke, 148 Cal. 610, 84 Pac. 166; Fowler Utilities Co. *v.* Gray, 168 Ind. 1, 79 N. E. 897; Maryland Telephone, etc., Co. *v.* Charles Simons' Sons Co., 103 Md. 136, 63 Ala. 314; Thomas *v.* Baird, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 412, 94 N. Y. Supp. 47; Lawrence *v.* Dixey, 119 N. Y. App. Div. 295, 104 N. Y. Supp. 516.

3. Rau *v.* Seidenberg, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 386, 104 N. Y. Supp. 798.

5. Webster *v.* Gibson, (Cal. App. 1907) 93 Pac. 1040.

6. Jones *v.* Prewitt, (Ky. 1908) 108 S. W. 867; Gottfried *v.* Bray, 208 Mo. 652, 106 S. W. 639.

7. Riggins *v.* Trickley, (Tex. Civ. App. 1907) 102 S. W. 918.

Specific Performance Properly Refused after Rescission. — Weir Invest. Co. *v.* Scattergood, (Colo. 1908) 94 Pac. 19; Allen *v.* Treat, (Wash. 1908) 94 Pac. 102.

9. Messer *v.* Hibernia Sav., etc., Soc., 149 Cal. 122, 84 Pac. 835; Flynn *v.* Finch, (Iowa 1908) 114 N. W. 1058.

Where the Evidence Does Not Justify Reformation specific performance will be denied. Frey *v.* Camp, 131 Iowa 109, 107 N. W. 1106.

17. 1. Kaster *v.* Mason, 13 N. Dak. 107, 99 N. W. 1083.

3. *United States.* — Cella *v.* Brown, (C. C. A.) 144 Fed. 742; Marthinson *v.* King, (C. C. A.) 150 Fed. 48; Bernier *v.* Griscom-Spencer Co., 161 Fed. 438.

Alabama. — Brown *v.* E. Van Winkle Gin, etc., Works, 141 Ala. 580, 39 So. 243.

Arkansas. — Leonard *v.* Board of Directors, 79 Ark. 42, 94 S. W. 922.

California. — Flood *v.* Templeton, 148 Cal. 374, 83 Pac. 148; Kerr *v.* Moore, (Cal. App. 1907) 92 Pac. 107.

District of Columbia. — Hazelton *v.* Miller, 25 App. Cas. (D. C.) 337.

Florida. — Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574.

Idaho. — Ridenbaugh *v.* Thayer, 10 Idaho 662, 80 Pac. 229.

Illinois. — Brauer *v.* Laughlin, (Ill. 1908) 85 N. E. 283.

Indiana. — Fowler Utilities Co. *v.* Gray, 168 Ind. 1, 79 N. E. 897.

Iowa. — Robinson *v.* Luther, 134 Iowa 463, 109 N. W. 775.

Kentucky. — Edelen *v.* Samuels, (Ky. 1907) 103 S. W. 360.

Louisiana. — Girault *v.* Feucht, 117 La. 276, 41 So. 572.

Maine. — Telegraphone Corp. *v.* Canadian Telegraphone Co., (Me. 1908) 69 Atl. 767.

South Dakota. — Nelson *v.* Lybeck, (S. Dak. 1907) 111 N. W. 546, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 17.

Texas. — Lone Star Salt Co. *v.* Texas Short Line R. Co., 99 Tex. 434, 90 S. W. 863.

West Virginia. — Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200; Orr *v.* Cox, 61 W. Va. 361, 56 S. E. 522.

In Texas It Is Not Necessary to Show the Inadequacy of the Legal Remedy to have a decree of specific performance. Bishop *v.* Tartt, (Tex. Civ. App. 1908) 107 S. W. 359.

18. 1. Marthinson *v.* King, (C. C. A.) 150 Fed. 48.

5. Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695.

19. 1. Brauer *v.* Laughlin, (Ill. 1908) 85 N. E. 283; Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200.

4. Castle Creek Water Co. *v.* Aspen, (C. C. A.) 146 Fed. 8, 8 Ann. Cas. 660; Revere Water Co. *v.* Winthrop, 192 Mass. 455, 78 N. E. 497.

The Avoidance of a Multiplicity of Suits goes to the question of the adequacy of the remedy at law. Solomon Mier Co. *v.* Hadden, 148 Mich. 488, 111 N. W. 1040.

8. *Compare* Brown *v.* Van Winkle Gin, etc., Works, 141 Ala. 580, 39 So. 243.

20. 6. **The Complainant's Failure in a Suit at Law** does not bar him from bringing a bill in equity for specific performance. Wilson *v.* Knapp, 143 Mich. 64, 106 N. W. 695.

7. Girault *v.* Feucht, 117 La. 276, 41 So. 572.

8. Cella *v.* Brown, (C. C. A.) 144 Fed. 742;

Ryder *v.* Johnston, (Ala. 1907) 45 So. 181; Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450; Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695; Kaster *v.* Mason, 13 N. Dak. 107, 99 N. W. 1083; Chambers *v.* Roseland, (S. Dak. 1907) 112 N. W. 148; Neeson *v.* Smith, (Wash. 1907) 92 Pac. 131.

21. 2. Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995; Kaster *v.* Mason, 13 N. Dak. 111, 99 N. W. 1083, *citing* 28 [26] AM. AND ENG. ENCYC. OF LAW (2d ed.) 21; Miller *v.* Tjexlens, (S. Dak. 1905) 104 N. W. 519; Doyle *v.* Birdsell, (S. Dak. 1907) 112 N. W. 855; Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370.

7. Marvel *v.* Fralinger, 67 N. J. Eq. 622, 63 Atl. 166; Sire *v.* Long Acre Square Bldg. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 29, 100 N. Y. Supp. 307; Phelan *v.* Neary, (S. Dak. 1908) 117 N. W. 142, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 21. *Compare* Capo *v.* Bugdahl, 117 La. 992, 42 So. 478.

22. 3. Mundy *v.* Shellaberger, 153 Fed. 219; Sayer *v.* Brown, (Indian Ter. 1907) 104 S. W. 877; Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370.

Infant's Contract Not Enforceable. — White *v.* Sikes, 129 Ga. 508, 59 S. E. 228.

4. **Agreement to Sell Homestead.** — Prince *v.* Gosnell, (Okla. 1907) 92 Pac. 164.

5. Simpson *v.* Belcher, 61 W. Va. 157, 56 S. E. 211.

9. Revere Water Co. *v.* Winthrop, 192 Mass. 455, 78 N. E. 497. *Compare* Tucker *v.* Atlantic Coast Lumber Co., 78 S. Car. 134, 59 S. E. 850.

24. 5. McCullough *v.* Connelly, (Iowa 1907) 114 N. W. 301; Miiling *v.* Sulphur Timber, etc., Co., 119 La. 585, 44 So. 307; Kirkpatrick *v.* Pease, 202 Mo. 471. 101 S. W. 651; Hall. *v.* Hartford, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 133, 100 N. Y. Supp. 392; Trau *v.* Sloan, 213 Pa. St. 540, 62 Atl. 984; Hagler *v.* Ferguson (Tex. Civ. App. 1908) 111 S. W. 673; Foss Invest. Co. *v.* Ater, (Wash. 1908) 95 Pac. 1017.

A Contract Entered into by an Executor for the sale of lands of his testator, where the same was within his authority as such, will be enforced. Leeds *v.* Sparks, 8 Del. Ch. 280, 68 Atl. 239.

Where an Agent's Contract Is Ratified by his principal, the principal is thereafter estopped from setting up the agent's lack of authority to make the contract. Lutjeharms *v.* Smith, (Neb. 1906) 107 N. W. 256.

Agreement by an Officer of a Corporation Without Authority. — Jennings *v.* Brown, (Okla. 1908) 94 Pac. 557. See also Parmele *v.* Heenan, 75 Neb. 535, 106 N. W. 662.

Agreement of Employment Not in Writing. — Peirce *v.* Wheeler, 44 Wash. 326, 87 Pac. 361; Roberts *v.* Hilton Land Co., 45 Wash. 464, 88 Pac. 946; Littlefield *v.* Dawson, (Wash. 1907) 92 Pac. 428.

An Agreement Made by an Agent, having exclusive authority to sell certain land, may be specifically enforced against the principal. Littlefield *v.* Dawson, (Wash. 1907) 92 Pac. 428.

6. Detroit, etc., R. Co. *v.* Hartz, 147 Mich. 354, 110 N. W. 1089; Beattie *v.* Burt, 122 N. Y. App. Div. 473, 107 N. Y. Supp. 153; Free *v.* Little, 31 Utah 449, 88 Pac. 407.

Agreement to Convey Homestead. — Mundy *v.* Shellaberger, (C. C. A.) 161 Fed. 503.

A Life Tenant Cannot, in the Absence of Authority from the Remaindermen, make an agreement that will be specifically enforced against the remaindermen, notwithstanding that such life tenant agreed to secure their conveyance. Brustmann *v.* Motrie, 118 N. Y. App. Div. 395, 103 N. Y. Supp. 541.

7. Moore *v.* Gariglietti, 228 Ill. 147, 81 N. E. 826, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 24; Gault Lumber Co. *v.* Pyles, (Okla. 1907) 92 Pac. 175.

Partial Performance May Be Decreed. — Mellin *v.* Woolley, (Minn. 1908) 115 N. W. 654.

8. Moore *v.* Gariglietti, 228 Ill. 147, 81 N. E. 826, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 24.

25. 6. *Alabama.* — Dimmick *v.* Stokes (Ala. 1907) 43 So. 854; Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 83.

Arkansas. — Kelly *v.* Keith, 77 Ark. 31, 90 S. W. 150; Young *v.* Crawford, 82 Ark. 33, 100 S. W. 87.

California. — Flood *v.* Templeton, 148 Cal. 374, 83 Pac. 148; White *v.* Sage, 149 Cal. 613, 87 Pac. 193; Stein *v.* Archibald, 151 Cal. 220, 90 Pac. 536; Kaiser *v.* Barron, (Cal. 1908) 96 Pac. 806.

Florida. — Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243.

Illinois. — Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709.

Iowa. — Robinson *v.* Luther, 134 Iowa 463, 109 N. W. 775; Wilson *v.* Larsen, (Iowa 1908) 116 N. W. 703.

Kentucky. — Flege *v.* Covington, etc., R., etc., Co., ((Ky. 1906) 91 S. W. 738; Bridgewater *v.* Byasse, (Ky. 1906) 93 S. W. 35.

Missouri. — Lipscomb *v.* Adams, 193 Mo. 530, 91 S. W. 1046; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450.

New York. — Pomeroy *v.* Newell, 117 N. Y. App. Div. 800, 102 N. Y. Supp. 1098; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Tousey *v.* Hastings, (Supm. Ct. App. Div.) 111 N. Y. Supp. 344.

North Carolina. — Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995.

North Dakota. — Kaster *v.* Mason, 13 N. Dak. 107, 99 N. W. 1083.

Oregon. — Sprague *v.* Schotte, 48 Oregon 609, 87 Pac. 1046.

South Dakota. — Phelan *v.* Neary, (S. Dak. 1908) 117 N. W. 142.

Utah. — Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

Virginia. — Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370.

West Virginia. — Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200.

Promise to Devise Sufficient Consideration. — Mueller *v.* Batchelor, 131 Iowa 650, 109 N. W. 186.

26. 4. Kaiser *v.* Barron, (Cal. 1908) 96 Pac. 806.

6. Offutt *v.* Offutt, (Md. 1907) 67 Atl. 138.

8. Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

9. Howes *v.* Barmon, 11 Idaho 64, 81 Pac.

48; Hemisch *v.* Pennington, (N. J. 1907) 68 Atl. 233.

11. Mississippi Glass Co. *v.* Franzen, (C. C. A.) 143 Fed. 501, 6 Ann. Cas. 707.

27. 1. Marks *v.* Gates, (C. C. A.) 154 Fed. 481; Cox *v.* Burgess, (Ky. 1906) 96 S. W. 577; Lawson *v.* Mullinix, 104 Md. 156, 64 Atl. 938; Agens *v.* Koch, (N. J. 1908) 70 Atl. 348; Jersey City *v.* Flynn, (N. J. 1908) 70 Atl. 497; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 26–27.

2. Van Norsdall *v.* Smith, 141 Mich. 355, 104 N. W. 660.

Inadequacy of Consideration will not be considered as a defense where the sum agreed upon is paid and retained. Meridian Oil Co. *v.* Dunham, 5 Cal. App. 367, 90 Pac. 469.

4. Cox *v.* Burgess, (Ky. 1906) 96 S. W. 577; Van Norsdall *v.* Smith, 141 Mich. 355, 104 N. W. 660; Agens *v.* Koch, (N. J. 1908) 70 Atl. 348.

28. 1. Marks *v.* Gates, (C. C. A.) 154 Fed. 481; Jersey City *v.* Flynn, (N. J. 1908) 70 Atl. 497; Agens *v.* Koch, (N. J. 1908) 70 Atl. 348, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 28.

6. Sewell *v.* Norris, 128 Ga. 824, 58 S. E. 637.

7. Tucker *v.* Atlantic Coast Lumber Co., 78 S. Car. 134, 59 S. E. 859; Watkins *v.* Robertson, 105 Va. 269, 54 S. E. 33.

8. Rude *v.* Levy, (Colo. 1908) 96 Pac. 560.

10. *United States.* — Taussig *v.* Corbin, (C. C. A.) 142 Fed. 660; General Electric Co. *v.* Westinghouse Electric, etc., Co., 144 Fed. 458.

Alabama. — Dimmick *v.* Stokes, (Ala. 1907) 43 So. 854; Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88.

California. — Kerr *v.* Moore, (Cal. App. 1907) 92 Pac. 107; Pacific Electric R. Co. *v.* Campbell-Johnson, (Cal. 1908) 94 Pac. 623.

Illinois. — Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; Kuhn *v.* Eppstein, 219 Ill. 154, 76 N. E. 145; Oswald *v.* Nehls, 233 Ill. 438, 84 N. E. 619.

Indiana. — Migatz *v.* Steiglitz, 166 Ind. 361, 77 N. E. 400; Fowler Utilities Co. *v.* Gray, 168 Ind. 1, 79 N. E. 897.

Kentucky. — Ochs *v.* Kramer, (Ky. 1908) 107 S. W. 260.

Maryland. — Thomas *v.* Gottlieb Bauern-Schmidt Strauss Brewing Co., 102 Md. 417, 62 Atl. 633.

Michigan. — See Bridgman *v.* McIntyre, 150 Mich. 78, 113 N. W. 776.

New Jersey. — Public Service Corp. *v.* Hackensack Meadows Co., (N. J. 1906) 64 Atl. 976; Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1106.

New York. — Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695; Hall *v.* Hartford, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 133, 100 N. Y. Supp. 392; Pomeroy *v.* Newell, 117 N. Y. App. Div. 800, 102 N. Y. Supp. 1098; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Tousey *v.* Hastings, (Supm. Ct. App. Div.) 111 N. Y. Supp. 344; Wadick *v.* Mace, 191 N. Y. 1, 83 N. E. 571.

North Carolina. — Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 439, 55 S. E. 300.

North Dakota. — Kaster *v.* Mason, 13 N. Dak. 111, 99 N. W. 1083.

Ohio. — George Wiedemann Brewing Co. *v.* Maxwell, (Ohio 1908) 84 N. E. 595.

Oregon. — Sprague *v.* Schotte, 48 Oregon 609, 87 Pac. 1046; West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666; Deitz *v.* Stephenson, (Oregon 1908) 95 Pac. 803.

Pennsylvania. — Sherman *v.* Herr, (Pa. 1908) 69 Atl. 899.

South Dakota. — Chambers *v.* Roseland, (S. Dak. 1907) 112 N. W. 148; Phelan *v.* Neary (S. Dak. 1908) 117 N. W. 142.

Virginia. — Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370.

West Virginia. — Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200; Heflin *v.* Heflin, (W. Va. 1907) 59 S. E. 745.

30. 1. Mississippi Glass Co. *v.* Franzen, (C. C. A.) 143 Fed. 501, 6 Ann. Cas. 707; Kentucky Distilleries, etc., Co. *v.* Blanton, (C. C. A.) 149 Fed. 31; Meyer *v.* Jenkins, 80 Ark. 209, 96 S. W. 991; Johnson *v.* Higgins, (Neb. 1906) 108 N. W. 168.

Title in Vendor on Day of Performance Sufficient. — Day *v.* Mountin, (C. C. A.) 137 Fed. 756.

A Contract to Convey Land Is Not Lacking in Mutuality, where the vendee, in consideration of the conveyance, agreed to pay therefor, and to construct a railway with certain crossings and fencing. Detroit United R. Co. *v.* Smith, 144 Mich. 235, 107 N. W. 922.

2. Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88; Carter *v.* Gray, 79 Ark. 273, 96 S. W. 377; Oswald *v.* Nehls, 233 Ill. 438, 84 N. E. 619; Finlen *v.* Heinze, 32 Mont. 354, 80 Pac. 918. *Compare* H. W. Gossard Co. *v.* Crosby, 132 Iowa 155, 109 N. W. 483.

Mutuality Is to Be Determined as of the time of the making of the agreement. Ochs *v.* Kramer, (Ky. 1908) 107 S. W. 260.

3. Woodward *v.* Davidson, 150 Fed. 840, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30; Swanston *v.* Clark, (Cal. 1908) 95 Pac. 1117; Thomas *v.* Gottlieb Bauern-Schmidt Straus Brewing Co., 102 Md. 417, 62 Atl. 633; George Wiedemann Brewing Co. *v.* Maxwell, (Ohio 1908) 84 N. E. 595; Watkins *v.* Robertson, 105 Va. 269, 54 S. E. 33.

Part Payment of Purchase Money. — Taylor *v.* Newton, (Ala. 1907) 44 So. 583.

4. See Taylor *v.* Mathews, 53 Fla. 776, 44 So. 146, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30.

5. Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 439, 55 S. E. 300.

6. Levy *v.* Lyon, (Cal. 1908) 94 Pac. 881; Leuschner *v.* Duff, (Cal. App. 1908) 95 Pac. 914.

9. An Option Is Not Void for Want of Mutuality where one of the parties may elect to pursue a remedy at law or in equity, though the other party has not such right. Solomon Mier Co. *v.* Hadden, 148 Mich. 488, 111 N. W. 1040.

10. Murphy *v.* Hussey, 117 La. 390, 41 So. 692; Thomas *v.* Gottlieb Bauern-Schmidt Straus Brewing Co., 102 Md. 417, 62 Atl. 633; White *v.* Weaver, 68 N. J. Eq. 644, 61 Atl. 25.

It Is Not Enforceable where the lease provides in effect for a perpetual renewal. Drake

v. Board of Education, 208 Mo. 540, 106 S. W. 650.

11. **An Option to Cancel a Lease** upon the payment of one hundred dollars makes an agreement unenforceable unless the party seeking a performance puts himself in a position to compel performance. Watford Oil, etc., Co. *v.* Shipman, 233 Ill. 9, 84 N. E. 53.

31. 2. Winch *v.* Edmunds, 34 Colo. 359, 83 Pac. 632; Aiple-Hemmelmann Real Estate Co. *v.* Spelbrink, (Mo. 1908) 111 S. W. 480; Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1106. *Compare* Colt *v.* O'Connor, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 689.

3. Ochs *v.* Kramer, (Ky. 1908) 107 S. W. 260.

4. Stevens *v.* Kittredge, 44 Wash. 347, 87 Pac. 484; Pollock *v.* Brookover, 60 W. Va. 75, 53 S. E. 795. See also Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338.

7. Staples *v.* Mullen, (Mass. 1907) 81 N. E. 877.

32. 4. Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 447, 55 S. E. 300, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 32.

5. *United States.* — Hildreth *v.* Duff, 143 Fed. 139; Jones *v.* Byrne, 149 Fed. 457; Sharp *v.* West, 150 Fed. 458.

Alabama. — Howison *v.* Bartlett, 147 Ala. 408, 40 So. 757; Dimmick *v.* Stokes, (Ala. 1907) 43 So. 854.

Arkansas. — Fielder *v.* Warner, 78 Ark. 158, 95 S. W. 452; Meyer *v.* Jenkins, 80 Ark. 209, 96 S. W. 991; Fordyce Lumber Co. *v.* Wallace, (Ark. 1907) 107 S. W. 160.

California. — Reymond *v.* Laboudigue, 148 Cal. 691, 84 Pac. 189.

Florida. — Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243.

Georgia. — Bunting *v.* Dobson, 125 Ga. 447, 54 S. E. 102.

Idaho. — Robbins *v.* Porter, 12 Idaho 738, 88 Pac. 86.

Illinois. — Folsom *v.* Harr, 218 Ill. 369, 75 N. E. 987; Sugar *v.* Froehlich, 229 Ill. 397, 82 N. E. 414; Godwin *v.* Springer, 233 Ill. 229, 84 N. E. 234; Kingsbury *v.* Cornelison, 122 Ill. App. 495.

Iowa. — Kirkpatrick *v.* Pettis, 127 Iowa 611, 103 N. W. 956; Wilson *v.* Delaney, (Iowa 1907) 113 N. W. 842.

Kentucky. — Flege *v.* Covington, etc., R., etc., Co., (Ky. 1906) 91 S. W. 738.

Maryland. — Somerville *v.* Coppage, 101 Md. 519, 61 Atl. 318; Shipley *v.* Fink, 102 Md. 219, 62 Atl. 360; Dulaney *v.* Devries, 102 Md. 349, 62 Atl. 743; Offutt *v.* Offutt, (Md. 1907) 67 Atl. 138.

Missouri. — Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450.

Montana. — Finlen *v.* Heinze, 32 Mont. 354, 80 Pac. 918.

Nebraska. — Thompson *v.* Foken, (Neb. 1908) 115 N. W. 770.

New York. — Hall *v.* Hartford, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 133, 100 N. Y. Supp. 392; Pomeroy *v.* Newell, 117 N. Y. App. Div. 800, 102 N. Y. Supp. 1098; Wadick *v* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Sarasohn *v.* Kamaiky, 120 N. Y. App. Div. 110, 105 N. Y. Supp. 53; Pickett *v.* Michaels, 120 N. Y. App. Div. 357, 105 N. Y. Supp. 411; Tousey *v.* Hastings, (Supm. Ct. App. Div.) 111 N. Y. Supp. 344.

North Carolina. — Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 439, 55 S. E. 300; Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995.

Oregon. — Sprague *v.* Jessup, 48 Oregon 211, 84 Pac. 802; Portland Iron Works *v.* Willett, (Oregon 1907) 89 Pac. 421; West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666.

Pennsylvania. — Sherman *v.* Herr, (Pa. 1908) 69 Atl. 899.

Rhode Island. — Hazard *v.* Hope Land Co., (R. I. 1908) 69 Atl. 602.

South Carolina. — McMillan *v.* McMillan, 77 S. Car. 511, 58 S. E. 431.

South Dakota. — Chambers *v.* Roseland, (S. Dak. 1907) 112 N. W. 148.

Texas. — Penshorn *v.* Kunkel, (Tex. Civ. App. 1905) 90 S. W. 719; McAllen *v.* Raphael, (Tex. Civ. App. 1906) 96 S. W. 760; Cook *v.* Embrey, (Tex. Civ. App. 1907) 101 S. W. 844.

Utah. — Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

Virginia. — Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370; Grubb *v.* Moore, (Va. 1908) 60 S. E. 757.

West Virginia. — Meadows *v.* Meadows, 60 W. Va. 34, 53 S. E. 718; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345; Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200; Garrett *v.* Goff, 61 W. Va. 221, 56 S. E. 351; Heflin *v.* Heflin, (W. Va. 1907) 59 S. E. 745.

Wisconsin. — Buck *v.* Pond, 126 Wis. 382, 105 N. W. 909; Auer *v.* Matthews, 129 Wis. 143, 108 N. W. 45.

Wyoming. — Freeburgh *v.* Lamoureux, 15 Wyo. 22, 85 Pac. 1054.

33. 2. Reymond *v.* Laboudigue, 148 Cal. 691, 84 Pac. 189, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33.

34. 3. Folsom *v.* Harr, 218 Ill. 369, 75 N. E. 987.

5. Howe, etc., Ball Bearing Co., (C. C. A.) 154 Fed. 820.

6. Contracts Too Uncertain for Enforcement. — Fielder *v.* Warner, 78 Ark. 158, 95 S. W. 452; Fordyce Lumber Co. *v.* Wallace, (Ark. 1907) 107 S. W. 160; Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243; Bunting *v.* Dobson, 125 Ga. 447, 54 S. E. 102; Godwin *v.* Springer, 233 Ill. 229, 84 N. E. 234; Kirkpatrick *v.* Pettis, 127 Iowa 611, 103 N. W. 956; Laybourn *v.* Zinns, 95 Minn. 7, 103 N. W. 563; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450; Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 439, 55 S. E. 300; Hazard *v.* Hope Land Co., (R. I. 1908) 69 Atl. 602; Penshorn *v.* Kinkel, (Tex. Civ. App. 1905) 90 S. W. 719; Auer *v.* Matthews, 129 Wis. 143, 108 N. W. 45; Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370; Guinn *v.* Warbutton, (W. Va. 1908) 60 S. E. 1100; Freeburgh *v.* Lamoureux, 15 Wyo. 22, 85 Pac. 1054.

Contracts Sufficiently Certain for Enforcement. — Farmer *v.* Sellers, (Ala. 1905) 39 So. 772; Meyer *v.* Jenkins, 80 Ark. 209, 96 S. W. 991; Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574; Cumberledge *v.* Brooks, (Ill. 1908) 85 N. E. 197; McFarland *v.* Stansifer, 36 Ind. App. 486, 76 N. E. 124; Ochs *v.* Kramer,

(Ky. 1908) 107 S. W. 260; Girault *v.* Feucht, 117 La. 276, 41 So. 572; Berg *v.* Moreau, 199 Mo. 147, 97 S. W. 901; Bogard *v.* Barhan, (Oregon 1908) 96 Pac. 673; Sherman *v.* Herr, (Pa. 1908) 69 Atl. 899; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345; McAllen *v.* Raphael, (Tex. Civ. App. 1906) 96 S. W. 760; Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338; Peirce *v.* Wheeler, 44 Wash. 326, 87 Pac. 361; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345; Inglis *v.* Fohey, (Wis. 1908) 116 N. W. 857.

36. 1. Levin *v.* Dietz, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 593, 96 N. Y. Supp. 468; Van Allen *v.* Peabody, 112 N. Y. App. Div. 57, 97 N. Y. Supp. 1119.

Contract by Individual — Suit against Trustee. — Heenan *v.* Parmele, (Neb. 1908) 114 N. W. 639.

4. Howison *v.* Bartlett, 147 Ala. 408, 40 So. 757; Fordyce Lumber Co. *v.* Wallace, (Ark. 1907) 107 S. W. 160; Redman *v.* Mays, 129 Ga. 435, 59 S. E. 212; Kirkpatrick *v.* Pettis, 127 Iowa 611, 103 N. W. 956; Witte *v.* Koerner, 123 N. Y. App. Div. 824, 108 N. Y. Supp. 560; Cuban Production Co. *v.* Rodriguez, 124 N. Y. App. Div. 363, 108 N. Y. Supp. 785; Wadick *v.* Mace, 191 N. Y. 1, 83 N. E. 571; Baldridge *v.* George, 216 Pa. St. 231, 65 Atl. 662; Barnes *v.* Hustead, (Pa. 1908) 68 Atl. 839; Guinn *v.* Warbutton, (W. Va. 1908) 60 S. E. 1100.

A Contract to Convey Real Estate Belonging to a Partnership to a surviving partner was held to be enforceable notwithstanding there may be no description of the property to be conveyed within the contract. Graham *v.* Graham, (Ark. 1908) 108 S. W. 835.

5. Same Certainty as Required in Deed. — Fordyce Lumber Co. *v.* Wallace, (Ark. 1907) 107 S. W. 160.

6. Levin *v.* Dietz, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 593, 96 N. Y. Supp. 468; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345.

8. Koch *v.* Streuter, 218 Ill. 546, 75 N. E. 1049; Long *v.* Needham, (Mont. 1908) 96 Pac. 731; Pelletreau *v.* Brennan, 113 N. Y. App. Div. 806, 99 N. Y. Supp. 955.

9. Farmer *v.* Sellers, (Ala. 1905) 39 So. 772; Fordyce Lumber Co, *v.* Wallace, (Ark. 1907) 107 S. W. 160; Willmon *v.* Peck, 5 Cal. App. 665, 91 Pac. 164; Cumberledge *v.* Brooks, (Ill. 1908) 85 N. E. 197; McFarland *v.* Stansifer, 36 Ind. App. 486, 76 N. E. 124; Ochs *v.* Kramer, (Ky. 1908) 107 S. W. 260; Girault *v.* Feucht, 117 La. 276, 41 So. 572; Heenan *v.* Parmele, (Neb. 1908) 114 N. W. 639; Bogard *v.* Barhan, (Oregon 1908) 96 Pac. 673; Morrison *v.* Hazzard, 99 Tex. 583, 92 S. W. 33; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345; Auer *v.* Mathews, 129 Wis. 143, 108 N. W. 45; Freeburgh *v.* Lamoureux, 15 Wyo. 22; 85 Pac. 1054.

Occupation of the Premises in Dispute may render certain what would otherwise be vague in the descriptive clause of an agreement to convey lands. Gumaer *v.* Jackson, 37 Colo. 39, 86 Pac. 885.

Uncertainty May Be Remedied by Acts of Parties. — Chicago, etc., R. Co. *v.* Lane, 150 Mich. 162, 113 N. W. 22, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 36.

37. 2. Folsom *v.* Harr, 218 Ill. 369, 75 N. E. 987; Long *v.* Needham, (Mont. 1908) 96 Pac. 731; Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 439, 55 S. E. 300.

5. Lawson *v.* Mullinix, 104 Md. 156, 64 Atl. 938; White *v.* Poole, 73 N. H. 403, 62 Atl. 494; Wilkins *v.* Somerville, 80 Vt. 48, 66 Atl. 893; Inglis *v.* Fohey, (Wis. 1908) 116 N. W. 857. *Compare* Somerville *v.* Coppage, 101 Md. 519, 61 Atl. 318.

8. Howison *v.* Bartlett, 147 Ala. 408, 40 So. 757; Folsom *v.* Harr, 218 Ill. 369, 75 N. E. 987; Godwin *v.* Springer, 233 Ill. 229, 84 N. E. 234; Long *v.* Needham, (Mont. 1908) 96 Pac. 731; Levin *v.* Dietz, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 593, 96 N. Y. Supp. 468; Sarasohn *v.* Kamaiky, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 394, 103 N. Y. Supp. 320.

Where No Time Is Fixed for the Performance of an Act, if it is the payment of money only, "it must be performed immediately upon the thing to be done being exactly ascertained." Whittier *v.* Gormley, 3 Cal. App. 489, 86 Pac.

Where the Time Was Not Fixed for Deferred Payments the agreement was too uncertain to be specifically enforced. Buck *v.* Pond, 126 Wis. 382, 105 N. W. 909.

38. 1. Chicago, etc., R. Co. *v.* Lane, 150 Mich. 162, 113 N. W. 22.

3. Meyer *v.* Jenkins, 80 Ark. 209, 96 S. W. 991.

7. Chicago, etc., R. Co. *v.* Lane, 150 Mich. 162, 113 N. W. 22.

12. See Fordyce Lumber Co. *v.* Wallace, (Ark. 1907) 107 S. W. 160.

13. Davis, etc., Temperature Controlling Co. *v.* Tagliabue, 159 Fed. 712.

39. 1. Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 439, 55 S. E. 300; Phelan *v.* Neary, (S. Dak. 1908) 117 N. W. 142; Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200.

4. Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88.

9. Watford Oil, etc., Co. *v.* Shipman, 233 Ill. 9, 84 N. E. 53.

10. Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88; Whalen *v.* Baltimore, etc., R. Co., (Md. 1908) 69 Atl. 390; Ferguson *v.* Kelley, 16 Ohio Dec. 427, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 30.

40. 2. Farnum *v.* Clarke, 148 Cal. 610, 84 Pac. 166; Boone *v.* Graham, 215 Ill. 511, 74 N. E. 559; Riley *v.* Allen, 71 Kan. 628, 81 Pac. 186, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40; Booth *v.* Dingley, 148 Mich. 203, 111 N. W. 851, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40; Ferguson *v.* Kelley, 16 Ohio Dec. 427, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40.

Purchaser May Consent to Take Whatever Title Vendor Has. — Saxon *v.* White, (Okla. 1908) 95 Pac. 783.

3. Halseil *v.* Renfrow, 202 U. S. 287, 26 U. S. Sup. Ct. 610; Boone *v.* Graham, 215 Ill. 511, 74 N. E. 559.

4. Roche *v.* Osborne, (N. J. 1905) 69 Atl. 176.

5. Waddington *v.* Lane, 202 Mo. 387, 100 S. W. 1139; Salutti *v.* Flynn, (N. J. 1906) 65 Atl. 246; Wilkins *v.* Somerville, 80 Vt. 48, 66 Atl. 893; Reel *v.* Reel, 59 W. Va. 106, 52 S. E.

1023; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345; Nuttall *v.* McVey, (W. Va. 1908) 60 S. E. 251.

Where a Third Person Is to Convey the title upon payment to him of the purchase money, the volunteer thus agreed upon will be compelled to convey. Pearson *v.* Courson, 129 Ga. 656, 59 S. E. 907.

6. McDuffee *v.* Hestonville, etc., Pass. R. Co., 158 Fed. 827.

10. Lighton *v.* Syracuse, 188 N. Y. 499, 81 N. E. 464.

41. 3. Olympia Min. Co. *v.* Kerns, 13 Idaho [illegible], Clark *v.* Jackson, 232 Ill. 13, 78 N. E. 6; Revere Water Co. *v.* Winthrop, 192 Mass. 455, 78 N. E. 497; Portland Iron Works *v.* Willett, (Oregon 1907) 89 Pac. 421; Deitz *v.* Stephenson, (Oregon 1908) 95 Pac. 803, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 41; Cook *v.* Dane, 43 Wash. 588, 86 Pac. 947.

Where the Vendor Agreed to Furnish an Abstract "Showing Perfect Title," it was held that his failure to do so prevented specific enforcement on his part of the contract of sale, unless the requirement was waived. Lillienthal *v.* Bierkamp, 133 Iowa 42, 110 N. W. 152.

Where Complainant Has Performed All the Conditions imposed on him by the contract, the defendant will be required to perform — especially where the defendant has partially performed. Safford *v.* Barber, (N. J. 1908) 70 Atl. 371.

42. 2. Spencer *v.* McCament, (Cal. App. 1907) 93 Pac. 682.

6. Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965; Feist *v.* Block, 115 N. Y. App. Div. 211, 100 N. Y. Supp. 843; George Wiedemann Brewing Co. *v.* Maxwell, (Ohio 1908) 84 N. E. 595; Julte *v.* Pfeil, (Pa. 1908) 69 Atl. 59.

43. 2. Whiteside *v.* Winans, 29 Pa. Super. Ct. 244.

3. George Wiedemann Brewing Co. *v.* Maxwell, (Ohio 1908) 84 N. E. 595.

6. Marks *v.* Gates, (C. C. A.) 154 Fed. 481; Dimmick *v.* Stokes, (Ala. 1907) 43 So. 854; Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88; Flanders *v.* Rosoff, 111 N. Y. App. Div. 1, 97 N. Y. Supp. 514; Sire *v.* Long Acre Square Bldg. Co., (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 29, 100 N. Y. Supp. 307; Clutter *v.* Strange, 41 Wash. 86, 82 Pac. 1028.

44. 1. Bernier *v.* Griscom-Spencer Co., 161 Fed. 438; Brown *v.* Widen, (Iowa 1905) 103 N. W. 158; Horn *v.* Graffagnino, (La. 1908) 46 So. 305; Newman *v.* Johnson, (Md. 1908) 70 Atl. 116; Free *v.* Little, 31 Utah 449, 88 Pac. 407; Cleavenger *v.* Sturm, 59 W. Va. 667, 53 S. E. 593, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 44.

45. 3. White *v.* Sage, 149 Cal. 613, 87 Pac. 103; Webster *v.* Gibson, (Cal. App. 1907) 93 Pac. 1040; Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072; Wilson *v.* Larsen, (Iowa 1908) 116 N. W. 703; Washburn *v.* White, (Mass. 1908) 84 N. E. 106; George Gunther, Jr., Brewing Co. *v.* Brywczynski, (Md. 1908) 69 Atl. 514; Blondel *v.* Bolander, (Md. 1908) 114 N. W. 574; Riggins *v.* Trickey, (Tex. Civ. App. 1907) 102 S. W. 918; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

4. Jones *v.* Byrne, 149 Fed. 457, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 45; Bridgewater *v.* Byassee, (Ky. 1906) 93 S. W. 35; Cox *v.* Burgess, (Ky. 1906) 96 S. W. 577; Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995.

46. 1. Machold *v.* Farnan, (Idaho 1908) 94 Pac. 170; Blondel *v.* Bolander, (Neb. 1908) 114 N. W. 574; Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995; Chandler *v.* Chandler, (Pa. 1908) 69 Atl. 806; Riggins *v.* Trickey, (Tex. Civ. App. 1907) 102 S. W. 918.

4. Gottfried *v.* Bray, 208 Mo. 652, 106 S. W. 639; Blondel *v.* Bolander, (Neb. 1908) 114 N. W. 574; Miller *v.* Tjexhus, (S. Dak. 1905) 104 N. W. 519; Starcher *v.* Duty, 61 W. Va. 373, 56 S. E. 524.

8. Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

9. Sewell *v.* Norris, 128 Ga. 824, 58 S. E. 637.

47. 1. See Peterson *v.* Ramsey, (Neb. 1907) 110 N. W. 728.

3. Flynn *v.* Finch, (Iowa 1908) 114 N. W. 1058.

4. Riggins *v.* Trickey, (Tex. Civ. App. 1907) 102 S. W. 918; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345.

5. Arkadelphia Lumber Co. *v.* Thornton, 83 Ark. 403, 104 S. W. 169; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

7. Cleavenger *v.* Sturm, 59 W. Va. 659, 53 S. E. 593.

8. Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345.

9. Hay *v.* Kirk, 116 Ill. App. 45; Somerville *v.* Coppage, 101 Md. 519, 61 Atl. 318; Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995; Allen *v.* Kirk, (Pa. 1908) 69 Atl. 50. See also Cawley *v.* Jean, 189 Mass. 220, 75 N. E. 614.

48. 1. Van Norsdall *v.* Smith, 141 Mich. 355, 104 N. W. 660. And see Elliott *v.* Asiel, 120 N. Y. App. Div. 829, 105 N. Y. Supp. 655.

4. Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; McFarland *v.* Stansifer, 36 Ind. App. 486, 76 N. E. 124; Brownson *v.* Perry, 71 Kan. 578, 81 Pac. 197; Davis *v.* Martin, (N. Car. 1907) 59 S. E. 700; Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338. *Compare* Penshorn *v.* Kunkel, (Tex. Civ. App. 1905) 90 S. W. 719, where the signature to the memorandum was made by one of the defendants and held to be insufficient.

Verbal Authorization to Sign Sufficient. — Degginger *v.* Martin, (Wash. 1907) 92 Pac. 674.

5. Wright *v.* Vocalion Organ Co., (C. C. A.) 148 Fed. 209.

8. Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651.

49. 5. Cascaden *v.* Dunbar, 2 Alaska 408; Ruff Brewing Co. *v.* Schanz, 114 Ill. App. 508; Dillard *v.* Sanders, (Tex. Civ. App. 1906) 97 S. W. 108; Mertz *v.* Hubbard, 75 Kan. 1, 88 Pac. 529; Reel *v.* Reel, 59 W. Va. 106, 52 S. E. 1022.

Signature of Parties. — Bird *v.* Potter, 146 Cal. 286, 79 Pac. 970; Willmon *v.* Peck, 5 Cal. App. 665, 91 Pac. 164; East Jellico Coal Co. *v.* Carter, (Ky. 1906) 97 S. W. 768; Boehly *v.* Mansing, (Supm. Ct. Eq. T.) 52 Misc. (N. Y.) 382, 102 N. Y. Supp. 171.

Contracts to Make Testamentary Provision. — Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667.

50. 7. Pelletreau *v.* Brennan, 113 N. Y. App. Div. 806, 99 N. Y. Supp. 955.

8. *United States.* — Ferguson *v.* Blood, (C. C. A.) 152 Fed. 98, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50–52; Logue *v.* Langan, (C. C. A.) 151 Fed. 455; McCullough *v.* Sutherland, 153 Fed. 418; Franklin *v.* Matoa Gold Min. Co., (C. C. A.) 158 Fed. 941.

California. — Pearsall *v.* Henry, (Cal. 1907) 95 Pac. 154; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Meridian Oil Co. *v.* Dunham, 5 Cal. App. 367, 90 Pac. 469.

Illinois. — Quinn *v.* Stark County Telephone Co., 122 Ill. App. 133, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50.

Kansas. — Baldwin *v.* Baldwin, 73 Kan. 39, 84 Pac. 568.

Minnesota. — Veum *v.* Sheeran, 95 Minn. 315, 104 N. W. 135; Snow *v.* Snow, 98 Minn. 348, 108 N. W. 295.

Missouri. — Berg *v.* Moreau, 199 Mo. 416, 97 S. W. 901; Russell *v.* Sharp, 192 Mo. 270, 91 S. W. 134; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450.

New Jersey.—Titus *v.* Taylor, (N. J. 1907) 65 Atl. 1003.

Oklahoma. — Sutherland *v.* Taintor, 17 Okla. 427, 87 Pac. 900.

Oregon. — West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666.

Pennsylvania. — *In re* Fay, 213 Pa. St. 428, 62 Atl. 991.

South Dakota. — Stewart *v.* Tomlinson, (S. Dak. 1907) 112 N. W. 849.

Texas. — McKinley *v.* Wilson, (Tex. Civ. App. 1906) 96 S. W. 112.

Utah. — Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

Washington. — Jomsland *v.* Wallace, 39 Wash. 487, 81 Pac. 1094; McKay *v.* Calderwood, 37 Wash. 194, 79 Pac. 629; Case *v.* Perrigo, (Wash. 1907) 92 Pac. 432.

52. 2. McCullough *v.* Sutherland, 153 Fed. 418; Peterson *v.* Hicks, 43 Wash. 412, 86 Pac. 634.

53. 1. Miller *v.* Burt, (Mass. 1907) 82 N. E. 39.

2. Lay *v.* Lay, 75 Ark. 526, 87 S. W. 1026; Pearsall *v.* Henry, (Cal. 1907) 95 Pac. 154; Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243; Baldwin *v.* Baldwin, 73 Kan. 39, 84 Pac. 568; Berg *v.* Moreau, 199 Mo. 416, 97 S. W. 901; Jenning *v.* Miller, 48 Oregon 201, 85 Pac. 517; Crawford *v.* Crawford, 77 S. Car. 205, 57 S. E. 837.

3. Logue *v.* Langan, (C. C. A.) 151 Fed. 455; Ranson *v.* Ranson, 233 Ill. 369, 84 N. E. 210; Veum *v.* Sheeran, 95 Minn. 315, 104 N. W. 135; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450.

4. Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667. See also Case *v.* Perrigo, (Wash. 1907) 92 Pac. 432.

54. 8. Meridian Oil Co. Dunham, 5 Cal. App. 367, 90 Pac. 469; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Rogan *v.* Arnold, 233 Ill. 19, 84 N. E. 58; Ross *v.* Cook, 71 Kan. 119, 80 Pac. 38, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 54; Baldwin *v.* Baldwin, 73 Kan. 39, 84 Pac. 568; Grindling *v.* Rehyl, 149 Mich. 641, 113 N. W. 290; Clement *v.* Young Amusement Co., (N. J. 1906) 65 Atl. 185; Titus *v.* Taylor, (N. J. 1907) 65 Atl. 1003; Sutherland *v.* Taintor, 17 Okla. 427, 87 Pac. 900; Sprague *v.* Jessup, 48 Oregon 211, 83 Pac. 145; McMillan *v.* McMillan, 77 S. Car. 511, 58 S. E. 431.

55. 6. Jones *v.* Gainer, (Ala. 1908) 47 So. 511.

7. Cross *v.* Johnston, 76 Ark. 363, 88 S. W. 945; Phillips *v.* Jones, 79 Ark. 100, 95 S. W. 164; Webb *v.* Marlar, 83 Ark. 340, 104 S. W. 144; Arkadelphia Lumber Co. *v.* Thornton, 83 Ark. 403, 104 S. W. 169; Meridian Oil Co. *v.* Dunham, 5 Cal. App. 367, 90 Pac. 469; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Brown *v.* Sebastopol, (Cal. 1908) 96 Pac. 363; Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243; Robbins *v.* Porter, 12 Idaho 738, 88 Pac. 86; Stevens *v.* Trafton, (Mont. 1908) 93 Pac. 810; Starrett *v.* Boynton, (N. J. 1908) 70 Atl. 183; Sutherland *v.* Taintor, 17 Okla. 427, 87 Pac. 900; Gault Lumber Co. *v.* Pyles, (Okla. 1907) 92 Pac. 175; Sprague *v.* Jessup, 48 Oregon 211, 83 Pac. 145; West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666.

Need Not Have Paid Whole Purchase Price. — Taylor *v.* Mathews, 53 Fla. 776, 44 So. 146.

Payment of Earnest Money Sufficient. — Chouteau Land, etc., Co. *v.* Chrisman, 204 Mo. 371, 102 S. W. 973.

Possession and Full Payment of the Purchase Price Sufficient. — Watts *v.* Spencer, (Oregon 1908) 94 Pac. 39.

56. 1. *Compare* Steger *v.* Kosch, (Neb. 1906) 108 N. W. 165; Pence *v.* Life, 104 Va. 518, 52 S. E. 257.

Mere Possession Insufficient. — Phillips *v.* Jones, 79 Ark. 100, 95 S. W. 164; Muir *v.* Chandler, (N. Dak. 1907) 113 N. W. 1038; Sprague *v.* Jessup, 48 Oregon 211, 83 Pac. 145; Jenning *v.* Miller, 48 Oregon 201, 85 Pac. 517; West *v.* Webster, (Tex. Civ. App. 1905) 87 S. W. 196; Cobb *v.* Johnson, (Tex. 1908) 108 S. W. 811;; Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767; McKay *v.* Calderwood, 37 Wash. 194, 79 Pac. 629.

57. 1. **Acceptance of Deed Sufficient.** — Rogan *v.* Arnold, 233 Ill. 19, 84 N. E. 58.

2. Evins *v.* Sandefur Julian Co., 81 Ark. 70, 98 S. W. 677; McFarland *v.* Stansifier, 36 Ind. App. 486, 76 N. E. 124; Bevington *v.* Bevington, 133 Iowa 351, 110 N. W. 840; Grindling *v.* Rehyl, 149 Mich. 641, 113 N. W. 290; West *v.* Webster, (Tex. Civ. App. 1905) 87 S. W. 196; Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767; Peterson *v.* Hicks, 43 Wash. 412, 86 Pac. 634.

Possession, Part Payment of Purchase Price, and Improvements Sufficient. — Cross *v.* Johnston, 76 Ark. 363, 88 S. W. 945.

Must Be Reasonable Improvements. — McMillan *v.* McMillan, 77 S. Car. 511, 58 S. E. 431; Cobb *v.* Johnson, (Tex. 1908) 108 S. W. 811.

3. Phillips *v.* Jones, 79 Ark. 100, 95 S. W. 164. *Compare* Standard *v.* Standard, 223 Ill. 255, 79 N. E. 92.

Improvements Must Be Valuable and Beneficial. — Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

4. See Stewart *v.* Tomlinson, (S. Dak. 1907) 112 N. W. 849.

5. **Where the Improvements Are of Far Less Value** than the rental value of the land, it is a strong circumstance in determining whether any injustice is being done the complainant in denying him relief. Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

58. 2. **Possession of Part of Single Tract Not Sufficient.** — Cross *v.* Johnston, 76 Ark. 363, 88 S. W. 945.

3. Phillips *v.* Jones, 77 Ark. 100, 95 S. W. 164; Harper *v.* Gorley, 128 Ga. 444, 57 S. E. 695.

4. Baldwin *v.* Baldwin, 73 Kan. 39, 84 Pac. 568; Steger *v.* Kosch, (Neb. 1906) 108 N. W. 165; Jenning *v.* Miller, 48 Oregon 201, 85 Pac. 517.

6. Phillips *v.* Jones, 79 Ark. 100, 95 S. W. 164.

59. 2. Phillips *v.* Jones, 79 Ark. 100, 95 S. W. 164; Baldwin *v.* Baldwin, 73 Kan. 39, 84 Pac. 568; Muir *v.* Chandler, (N. Dak. 1907) 113 N. W. 1038; Gault Lumber Co. *v.* Pyles, (Okla. 1907) 92 Pac. 175.

3. Sutherland *v.* Taintor, 17 Okla. 427, 87 Pac. 900; Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767; McKay *v.* Calderwood, 37 Wash. 194, 79 Pac. 629; Jomsland *v.* Wallace, 39 Wash. 487, 81 Pac. 1094.

4. Lay *v.* Lay, 75 Ark. 526, 87 S. W. 1026.

5. Standard *v.* Standard, 223 Ill. 255, 79 N. E. 92.

6. Jones *v.* Patrick, 145 Fed. 440; McCullough *v.* Sutherland, 153 Fed. 418; Standard *v.* Standard, 223 Ill. 255, 79 N. E. 92; White *v.* White, 231 Ill. 298, 83 N. E. 234; Ranson *v.* Ranson, 233 Ill. 369, 84 N. E. 210; Baldwin *v.* Baldwin, 73 Kan. 39, 84 Pac. 568; Harrison *v.* Harrison, (Neb. 1907) 113 N. W. 1042; White *v.* Poole, (N. H. 1906) 65 Atl. 255; Russell *v.* Sharp, 192 Mo. 270, 91 S. W. 134; Berg *v.* Moreau, 199 Mo. 416, 97 S. W. 901; Crawford *v.* Crawford, 77 S. Car. 205, 57 S. E. 837; McMillan *v.* McMillan, 77 S. Car. 511, 58 S. E. 431; Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

7. Miller *v.* Burt, (Mass. 1907) 82 N. E. 39; Levin *v.* Dietz, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 593, 96 N. Y. Supp. 468.

60. 2. **Test of Definiteness Same as for Written Contracts.** — White *v.* Poole, (N. H. 1906) 65 Atl. 255.

11. Bentley *v.* Smith, 3 Ga. App. 242, 59 S. E. 720, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 60; Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

61. 2. Ranson *v.* Ranson, 233 Ill. 369, 84 N. E. 210.

4. Pearsall *v.* Henry, (Cal. 1907) 95 Pac. 154; Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574; Harrison *v.* Harrison, (Neb. 1907) 113 N. W. 1042; McKinney *v.* Wilson, (Tex. Civ. App. 1906) 96 S. W. 112.

5. Evins *v.* Sandefur Julian Co., 81 Ark. 70, 98 S. W. 677; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Stevens *v.* Trafton, (Mont. 1908) 93 Pac. 810; Jomsland *v.* Wallace, 39 Wash. 487, 81 Pac. 1094.

62. 4. *United States.* — Meehan *v.* Nelson, (C. C. A.) 137 Fed. 731; Day *v.* Mountin, (C. C. A.) 137 Fed. 756; Cella *v.* Brown (C. C. A.) 144 Fed. 742; Marks *v.* Gates, (C. C. A.) 154 Fed. 481.

District of Columbia. — Knott *v.* Giles, 27 App. Cas. (D. C.) 581.

Florida. — Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243; Hathcock *v.* Societe Anonyme, etc., (Fla. 1907) 45 So. 481; Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574.

Illinois. — Braithwaite *v.* Henneberry, 222 Ill. 50, 78 N. E. 34; Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709; Sugar *v.* Froehlich, 229 Ill. 397, 82 N. E. 414; Godwin *v.* Springer, 233 Ill. 229, 84 N. E. 234.

Iowa. — Robinson *v.* Luther, 134 Iowa 463, 109 N. W. 775; Noecker *v.* Wallingford, 133 Iowa 605, 111 N. W. 37.

Kansas. — Anderson *v.* Anderson, 75 Kan. 117, 88 Pac. 743.

Kentucky. — Bridgewater *v.* Byassee, (Ky. 1906) 93 S. W. 35; Jones *v.* Prewitt, (Ky. 1908) 108 S. W. 867.

Maryland. — Dulaney *v.* Devries, 102 Md. 349, 62 Atl. 743; North Ave. Land Co. *v.* Baltimore, 102 Md. 475, 63 Atl. 115; Maryland Telephone, etc., Co. *v.* Charles Simons' Sons Co., 103 Md. 136, 63 Atl. 314; Offutt *v.* Offutt, (Md. 1907) 67 Atl. 138; Whalen *v.* Baltimore, etc., R. Co., (Md. 1908) 69 Atl. 390; George Gunther, Jr., Brewing Co. *v.* Brywczynski, (Md. 1908) 69 Atl. 514; Newman *v.* Johnson, (Md. 1908) 70 Atl. 116; Shipley *v.* Fink, 102 Md. 219, 62 Atl. 360.

Massachusetts. — Revere Water Co. *v.* Winthrop, 192 Mass. 455, 78 N. E. 497.

Michigan. — Chicago, etc., R. Co. *v.* Lane, 150 Mich. 162, 113 N. W. 22.

Missouri. — Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450; Scharer *v.* Rantler, 127 Mo. App. 433, 105 S. W. 668; Gottfried *v.* Bray, 208 Mo. 652, 106 S. W. 639; Aiple-Hemmelmann Real Estate Co. *v.* Spelbrink, (Mo. 1908) 111 S. W. 480.

Montana. — Stevens *v.* Trafton, (Mont. 1908) 93 Pac. 810, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 62.

Nebraska. — *In re* Peterson, (Neb. 1906) 107 N. W. 993; Harrison *v.* Rice, (Neb. 1907) 111 N. W. 594; Thompson *v.* Foken, (Neb. 1908) 115 N. W. 770.

New York. — Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695; Davidson *v.* Cannabis Mfg. Co., 113 N. Y. App. Div. 664, 99 N. Y. Supp. 1018; Hall *v.* Hartford, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 133, 100 N. Y. Supp. 392; Byrne *v.* Fremont Realty Co., 120 N. Y. App. Div. 692, 105 N. Y. Supp. 838; Butler *v.* Wright, 186 N. Y. 259, 78 N. E. 1002.

North Caroline. — Hairston *v.* Bescherer, 141 N. Car. 205, 53 S. E. 845; Winders *v.* Hill, 141 N. Car. 694, 54 S. E. 440; Shakespeare *v.* Caldwell Land, etc., Co., 144 N. Car. 516, 57 S. E. 213; Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995.

South Dakota. — Hartshorn *v.* Smith, 19 S. Dak. 657, 104 N. W. 467; Miller *v.* Tjexhus, (S. Dak. 1905) 104 N. W. 519; Chambers *v.* Roseland, (S. Dak. 1907) 112 N. W. 148; Phelan *v.* Neary, (S. Dak. 1908) 117 N. W. 142; Nelson *v.* Lybeck, (S. Dak. 1907) 111 N. W. 546, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 62.

Texas. — Riggins *v.* Trickey, (Tex. Civ. App. 1907) 102 S. W. 918.

Virginia. — Gwens *v.* Clem, 107 Va. 435, 59 S. E. 413; Grubb *v.* Moore, (Va. 1908) 60 S. E. 757.

West Virginia. — Heflin *v.* Heflin, (W. Va. 1907) 59 S. E. 745.

63. 1. *United States.* — Taussig *v.* Corbin, (C. C. A.) 142 Fed. 660; Jones *v.* Byrne, 149 Fed. 457; Sharp *v.* West, 150 Fed. 458; McCullough *v.* Sutherland, 153 Fed. 418.

Alabama. — Thompson *v.* Jones, (Ala. 1905) 39 So. 983; Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88.

Florida. — Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243.

Illinois. — Sutton *v.* Miller, 219 Ill. 462, 76 N. E. 838; Cowan *v.* Currian, 216 Ill. 598, 75 N. E. 322; Baltimore, etc., R. Co. *v.* Brubaker, 217 Ill. 462, 75 N. E. 523; Chicago, etc., R. Co. *v.* Chipps, 226 Ill. 584, 80 N. E. 1069; Sanitary Dist. *v.* Martin, 227 Ill. 260, 81 N. E. 417.

Kentucky. — Watkins *v.* Pfeiffer, (Ky. 1906) 92 S. W. 562; Edelen *v.* Samuels, (Ky. 1907) 103 S. W. 360.

Maryland. — Somerville *v.* Coppage, 101 Md. 519, 61 Atl. 318; North Ave. Land Co. *v.* Baltimore, 102 Md. 475, 63 Atl. 115; George Gunther, Jr., Brewing Co. *v.* Brywczynski, (Md. 1908) 69 Atl. 514; Newman *v.* Johnson, (Md. 1908) 70 Atl. 116.

Missouri. — Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651.

Montana. — Stevens *v.* Trafton, (Mont. 1908) 93 Pac. 810.

New York. — Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371; Pickett *v.* Michaels, 120 N. Y. App. Div. 357, 105 N. Y. Supp. 411; Sprickerhoff *v.* Gordon, 120 N. Y. App. Div. 748, 105 N. Y. Supp. 586; Phalen *v.* U. S. Trust Co., 186 N. Y. 178, 78 N. E. 943; Rosenberg *v.* Haggerty, 189 N. Y. 481, 82 N. E. 503.

North Carolina. — Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995.

South Dakota. — Phelan *v.* Neary, (S. Dak. 1908) 117 N. W. 142.

Virginia. — Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370; Givens *v.* Clem, 107 Va. 435, 59 S. E. 413; Grubb *v.* Moore, (Va. 1908) 60 S. E. 757.

West Virginia. — Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200; Heflin *v.* Heflin, (W. Va. 1907) 59 S. E. 745.

64. 2. Flood *v.* Templeton, 148 Cal. 374, 83 Pac. 148.

3. Sugar *v.* Froehlich, 229 Ill. 397, 82 N. E. 414; Chicago, etc., R. Co. *v.* Lane, 150 Mich. 162, 113 N. W. 22; Free *v.* Little, 31 Utah 449, 88 Pac. 407; Voight *v.* Fidelity Invest. Co., (Wash. 1908) 96 Pac. 162.

65. 1. Cella *v.* Brown, (C. C. A.) 144 Fed. 742; Maryland Telephone, etc., Co. *v.* Charles Simons' Sons Co., 103 Md. 136, 63 Atl. 314; Givens *v.* Clem, 107 Va. 435, 59 S. E. 413.

2. Marks *v.* Gates, (C. C. A.) 154 Fed. 481; Cowan *v.* Curran 216 Ill. 598, 75 N. E. 322; Sugar *v.* Froehlich, 229 Ill. 397, 82 N. E. 414; Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072; Gottfried *v.* Bray, 208 Mo. 652, 106 S. W. 639; Miller *v.* Tjexhus, (S. Dak. 1905) 104 N. W. 519; Starcher *v.* Duty, 61 W. Va. 373, 56 S. E. 524.

3. Waterbury *v.* Rigney, 79 Conn. 60, 63 Atl. 775; White *v.* Sage, 149 Cal. 613, 87 Pac. 193; Anderson *v.* Anderson, 75 Kan. 117, 88 Pac. 743; George Gunther, Jr., Brewing Co. *v.* Brywczynski, (Md. 1908) 69 Atl. 514; Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 439, 55 S. E. 300; Free *v.* Little, 31 Utah 449, 88 Pac. 407.

4. Wright *v.* Vocalion Organ Co., (C. C. A.) 148 Fed. 209.

66. 1. Freeburgh *v.* Lamoureux, 15 Wyo. 22, 85 Pac. 1054, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 66.

3. Baltimore, etc., R. Co. *v.* Brubaker, 217 Ill. 462, 75 N. E. 523.

4. Fowler Utilities Co. *v.* Gray, 168 Ind. 1, 79 N. E. 897.

5. Braithwaite *v.* Henneberry, 222 Ill. 50, 78 N. E. 34.

7. Telegraphone Corp. *v.* Canadian Telegraphone Co., (Me. 1908) 69 Atl. 767; Spolek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75.

67. 1. Grand Trunk Western R. Co. *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 785.

2. Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574.

3. *United States.* — McCullough *v.* Sutherland, 153 Fed. 418; Marks *v.* Gates, (C. C. A.) 154 Fed. 481.

Alabama. — Thompson *v.* Jones, (Ala. 1905) 39 So. 983; Dimmick *v.* Stokes, (Ala. 1907) 43 So. 854; Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88.

California. — Flood *v.* Templeton, 148 Cal. 374, 83 Pac. 148; White *v.* Sage, 149 Cal. 613, 87 Pac. 193; Stein *v.* Archibald, 151 Cal. 220, 90 Pac. 536; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Herzog *v.* Atchison, etc., R. Co., (Cal. 1908) 95 Pac. 898; Kaiser *v.* Barron, (Cal. 1908) 96 Pac. 806.

Florida. — Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243.

Illinois. — Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322; Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709; Cumberledge *v.* Brooks, (Ill. 1908) 85 N. E. 197.

Iowa. — Noecker *v.* Wallingford, 133 Iowa 605, 111 N. W. 37; Wilson *v.* Larson, (Iowa 1908) 116 N. W. 703.

Kentucky. — Flege *v.* Covington, etc., R., etc., Co., (Ky. 1906) 91 S. W. 738; Bridgewater *v.* Byassee, (Ky. 1906) 93 S. W. 35; Jones *v.* Prewitt, (Ky. 1908) 108 S. W. 867.

Maine. — Telegraphone Corp. *v.* Canadian Telegraphone Co., (Me. 1908) 69 Atl. 767.

Maryland. — Whalen *v.* Baltimore, etc., R. Co., (Md. 1908) 69 Atl. 390; George Gunther, Jr., Brewing Co. *v.* Brywczynski, (Md. 1908) 69 Atl. 514.

Missouri. — Evans *v.* Evans, 196 Mo. 1, 93 S. W. 969; Berg *v.* Moreau, 199 Mo. 416, 97 S. W. 901; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450; Aiple-Hemmelmann Real Estate Co. *v.* Spelbrink, (Mo. 1908) 111 S. W. 480.

Nebraska. — Thompson *v.* Foken (Neb. 1908) 115 N. W. 770.

New Jersey. — Agens *v.* Koch, (N. J. 1908) 70 Atl. 348.

New York. — Hall *v.* Hartford, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 133, 100 N. Y.

Supp. 392; Sarasohn *v.* Kamaiky, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 394, 103 N. Y. Supp. 320; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Byrne *v.* Fremont Realty Co., 120 N. Y. App. Div. 692, 105 N. Y. Supp. 838.

North Carolina. — Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 439, 55 S. E. 300; Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995.

South Dakota. — Miller *v.* Tjexhus, (S. Dak. 1905) 104 N. W. 519; Chambers *v.* Roseland, (S. Dak. 1907) 112 N. W. 148; Phelan *v.* Neary, (S. Dak. 1908) 117 N. W. 142.

Texas. — Riggins *v.* Trickey, (Tex. Civ. App. 1907) 102 S. W. 918.

Virginia. — Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370.

West Virginia. — Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345; Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200; Starcher *v.* Duty, 61 W. Va. 373, 56 S. E. 524.

68. 1. Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Herzog *v.* Atchison, etc., R. Co., (Cal. 1908) 95 Pac. 898; Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072; Flege *v.* Covington, etc., R., etc., Co., (Ky. 1906) 91 S. W. 738; Whalen *v.* Baltimore, etc., R. Co., (Md. 1908) 69 Atl. 390; Aiple-Hemmelmann Real Estate Co. *v.* Spelbrink, (Mo. 1908) 111 S. W. 480; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Soloman *v.* Wilmington Sewerage Co., 142 N. Car. 439, 55 S. E. 300; Shakespeare *v.* Caldwell Land, etc., Co., 144 N. Car. 516, 57 S. E. 213; Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995; Latta *v.* Hax, (Pa. 1908) 68 Atl. 1016; Phelan *v.* Neary, (S. Dak. 1908) 117 N. W. 142; Riggins *v.* Trickey, (Tex. Civ. App. 1907) 102 S. W. 918; Heflin *v.* Heflin, (W. Va. 1907) 59 S. E. 745.

2. Messer *v.* Hibernia Sav., etc., Soc., 149 Cal. 122, 84 Pac. 835; Schwab *v.* Baremore, 95 Minn. 295, 104 N. W. 10; Thomas *v.* Gottlieb Bauern-Schmidt-Strauss Brewing Co., 102 Md. 417, 62 Atl. 633; Rudisill *v.* Whitener, (N. Car. 1907) 59 S. E. 995, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 68; Lone Star Salt Co. *v.* Texas Short Line R. Co., 99 Tex. 434, 90 S. W. 863. See also Jersey City *v.* Flynn, (N. J. 1908) 70 Atl. 497.

3. **Consent of Interested Persons Must Be Obtained.** — McDuffee *v.* Hestonville, etc., Pass. R. Co., 154 Fed. 201.

5. Marks *v.* Gates, (C. C. A.) 154 Fed. 481; Sugar *v.* Froehlich, 229 Ill. 397, 82 N. E. 414; Fowler Utilities Co. *v.* Gray, 168 Md. 1, 79 N. E. 897.

6. *United States.* — Jones *v.* Byrne, 149 Fed. 457, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 68; Marks *v.* Gates, (C. C. A.) 154 Fed. 481.

California. — White *v.* Sage, 149 Cal. 613, 87 Pac. 193.

Illinois. — Sutton *v.* Miller, 219 Ill. 462, 76 N. E. 838; Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072; Cumberledge *v.* Brooks, (Ill. 1908) 85 N. E. 197.

Iowa. — Noecker *v.* Wallingford, 123 Iowa 605, 111 N. W. 37; Wilson *v.* Larsen, (Iowa 1908) 116 N. W. 703.

Kentucky. — Cox *v.* Burgess, (Ky. 1906) 96 S. W. 577.

Michigan. — Van Norsdall *v.* Smith, 141 Mich. 355, 104 N. W. 660.

Missouri. — Berg *v.* Moreau, 199 Mo. 416, 97 S. W. 901; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450; Aiple-Hemmelmann Real Estate Co. *v.* Spelbrink, (Mo. 1908) 111 S. W. 480.

Nebraska. — Blondel *v.* Bolander, (Neb. 1908) 114 N. W. 574; Thompson *v.* Foken, (Neb. 1908) 115 N. W. 770.

New York. — Hall *v.* Hartford, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 133, 100 N. Y. Supp. 392; Byrne *v.* Fremont Realty Co., 120 N. Y. App. Div. 692, 105 N. Y. Supp. 838.

Pennsylvania. — Latta *v.* Hax, (Pa. 1908) 68 Atl. 1016.

Texas. — Riggins *v.* Trickey, (Tex. Civ. App. 1907) 102 S. W. 918.

Injury to Absent Party. — Howe *v.* Howe, etc., Ball Bearing Co., (C. C. A.) 154 Fed. 820.

That One of the Parties Was of Advanced Age is not of itself a defense. Eilis *v.* Keeler, (Supm. Ct. App. Div.) 110 N. Y. Supp. 542.

69. 1. Cumberledge *v.* Brooks, (Ill. 1908) 85 N. E. 197; Cox *v.* Burgess, (Ky. 1906) 96 S. W. 577.

That an Agreement Has Operated Harshly is no defense. Machold *v.* Farnan, (Idaho 1908) 94 Pac. 170.

2. Kilpatrick *v.* Wiley, 197 Mo. 123, 95 S. W. 213.

3. Spotts *v.* Eisenhauer, 31 Pa. Super. Ct. 89; Starcher *v.* Duty, 61 W. Va. 373, 56 S. E. 524.

4. Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88.

70. 1. Walton *v.* McKinney, (Ariz. 1908) 94 Pac. 1122; Hairston *v.* Bescherer, 141 N. Car. 205, 53 S. E. 845.

8. McMahon *v.* Meehan, 2 Alaska 278; Robbins *v.* Porter, 12 Idaho 738, 88 Pac. 86; Machold *v.* Farnan, (Idaho 1908) 94 Pac. 170; Hyden *v.* Perkins, (Ky. 1907) 99 S. W. 290; Pratt *v.* Clark, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 146, 98 N. Y. Supp. 700; Pratt *v.* Clark, 118 N. Y. App. Div. 633, 103 N. Y. Supp. 612; Leinhardt *v.* Solomon, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 238, 109 N. Y. Supp. 144; Chandler *v.* Chandler, (Pa. 1908) 69 Atl. 806; Grubb *v.* Moore, (Va. 1908) 60 S. E. 757, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 70; Cook *v.* Dane, 43 Wash. 588, 86 Pac. 947; Case *v.* Perrigo, (Wash. 1907) 92 Pac. 432; Voight *v.* Fidelity Invest. Co., (Wash. 1908) 96 Pac. 162.

71. 3. Hanschka *v.* Vodopich, (S. Dak. 1906) 108 N. W. 28.

4. Kissack *v.* Bourke, 224 Ill. 352, 79 N. E. 619; Bradley *v.* Union Pac. R. Co., (Neb. 1906) 107 N. W. 238; Hairston *v.* Bescherer, 141 N. Car. 205, 53 S. E. 845.

Extent and Materianty of Default to Be Considered. — Grubb *v.* Moore, (Va. 1908) 60 S. E. 757.

72. 2. Kissack *v.* Bourke, 224 Ill. 352, 79 N. E. 619; Thompson *v.* Colby, 127 Iowa 234, 103 N. W. 117; Hairston *v.* Bescherer, 141 N. Car. 205, 53 S. E. 845.

4. Wilson *v.* Knapp, 143 Mich. 64, 106 N. W. 695.

73. 3. Machold *v.* Farnan, (Idaho 1908) 94 Pac. 170.

5. Thompson *v.* Colby, 127 Iowa 234, 103 N. W. 117; Barnett *v.* Sussman, 116 N. Y. App. Div. 859, 102 N. Y. Supp. 287.

6. North Ave. Land Co. *v.* Baltimore, 102 Md. 475, 63 Atl. 115; Jeffries *v.* Charlton, (N. J. 1908) 70 Atl. 145; Davis *v.* Martin, (N. Car. 1907) 59 S. E. 700; Hanschka *v.* Vodopich, (S. Dak. 1906) 108 N. W. 28; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

7. Kentucky Distilleries, etc., Co. *v.* Blanton, (C. C. A.) 149 Fed. 31; Libby *v.* Parry, 98 Minn. 366, 108 N. W. 299; Saldutti *v.* Flynn, (N. J. 1906) 65 Atl. 246; Hairston *v.* Bescherer, 141 N. Car. 205, 53 S. E. 845.

74. 1. Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

2. Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965; Machold *v.* Farnan, (Idaho 1908) 94 Pac. 170; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

3. Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965; Bradley *v.* Union Pac. R. Co., (Neb. 1906) 107 N. W. 238; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

Extension of Time for Payment of Purchase Price Constitutes Waiver. — Spolek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75.

4. Staples *v.* Mullen, (Mass. 1907) 81 N. E. 877; Cughan *v.* Larson, 13 N. Dak. 382, 100 N. W. 1088; Zeimantz *v.* Blake, 39 Wash. 6, 80 Pac. 822.

5. **Time Not of the Essence unless so Agreed.** — Collins *v.* Delaney Co., (N. J. 1906) 64 Atl. 107.

6. Boston, etc., St. R. Co. *v.* Rose, 194 Mass. 142, 80 N. E. 498; Hanschka *v.* Vodopich, (S. Dak. 1906) 108 N. W. 28.

75. 1. Zeimantz *v.* Blake, 39 Wash. 6, 80 Pac. 822.

2. Veum *v.* Sheeran, 95 Minn. 315, 104 N. W. 135; Libby *v.* Parry, 98 Minn. 366, 108 N. W. 299; Bradley *v.* Union Pac. R. Co., (Neb. 1906) 107 N. W. 238.

Notice Must Be Clear, Express, Distinct, and Unequivocal. — Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

5. Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965; Cotton *v.* Butterfield, 14 N. Dak. 465, 105 N. W. 236; Hanschka *v.* Vodopich, (S. Dak. 1906) 108 N. W. 28.

76. 1. Boston, etc., St. R. Co. *v.* Rose, 194 Mass. 142, 80 N. E. 498; Bradley *v.* Union Pac. R. Co., (Neb. 1906) 107 N. W. 238.

2. Hartshorn *v.* Smith, 19 S. Dak. 657, 104 N. W. 467.

5. Hartshorn *v.* Smith, 19 S. Dak. 657, 104 N. W. 467; Voight *v.* Fidelity Invest. Co., (Wash. 1908) 96 Pac. 162.

Otherwise Where Performance Sought by Party Not Benefited. — East Jellico Coal Co. *v.* Carter, (Ky. 1906) 97 S. W. 768.

77. 3. Lawson *v.* Mullinix, 104 Md. 169, 64 Atl. 938, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 77; Veum *v.* Sheeran, 95 Minn. 315, 104 N. W. 135; Winders *v.* Hill, 141 N. Car. 694, 54 S. E. 440; Merrill *v.* Hexter, (Oregon 1908) 94 Pac. 972.

5. Merrill *v.* Hexter, (Oregon 1908) 94 Pac. 972.

6. Thurmond *v.* Chesapeake, etc., R. Co., (C. C. A.) 140 Fed. 697; Fielder *v.* Warner, 78 Ark. 158, 95 S. W. 452; Hathcock *v.* Societe Anonyme, etc., (Fla. 1907) 45 So. 481; Bradley *v.* Union Pac. R. Co., (Neb. 1906) 107 N. W. 238; Klingenstein *v.* Alexander, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 236, 109 N. Y. Supp. 143; Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370; Heflin *v.* Heflin, (W. Va. 1907) 59 S. E. 745.

78. 1. Harrison *v.* Rice, (Neb. 1907) 111 N. W. 594.

2. **Cases Where No Laches under Particular Circumstances.** — Howe *v.* Howe, etc., Ball Bearing Co., (C. C. A.) 154 Fed. 820; Jones *v.* Gainer, (Ala. 1908) 47 So. 142; Kerr *v.* Moore, (Cal. App. 1907) 92 Pac. 107; Schmidt *v.* Pritchard, (Iowa 1907) 112 N. W. 801; Detroit United R. Co. *v.* Smith, 144 Mich. 235, 107 N. W. 922; Jeffries *v.* Charlton, (N. J. 1908) 70 Atl. 145; Agens *v.* Koch, (N. J. 1908) 70 Atl. 348; Livesley *v.* Johnston, 48 Oregon 40, 84 Pac. 1044; McAllen *v.* Raphael, (Tex. Civ. App. 1906) 96 S. W. 760; Newell *v.* Lamping, 45 Wash. 304, 88 Pac. 195; Nuttall *v.* McVey, (W. Va. 1908) 60 S. E. 251.

Cases Where, under Particular Circumstances, Such Laches as Bars Relief. — Stevens *v.* McChrystal, (C. C. A.) 150 Fed. 85; Sharp *v.* West, 150 Fed. 458; Fielder *v.* Warner, 78 Ark. 158, 95 S. W. 452; Stewart *v.* Yesler, (Wash. 1907) 89 Pac. 705.

79. 6. Harrison *v.* Rice, (Neb. 1907) 111 N. W. 594.

80. 5. Whitney *v.* Dewey, (C. C. A.) 158 Fed. 385; McAllen *v.* Raphael, (Tex. Civ. App. 1906) 96 S. W. 760.

8. Fielder *v.* Warner, 78 Ark. 158, 95 S. W. 452.

9. Sharp *v.* West, 150 Fed. 458; Heflin *v.* Heflin, (W. Va. 1907) 59 S. E. 745.

Mere Increase in Value Not Sufficient to Bar Specific Performance. — Harrison *v.* Rice, (Neb. 1907) 111 N. W. 594.

81. 2. Agens *v.* Koch, (N. J. 1908) 70 Atl. 348.

3. Lawson *v.* Mullinix, 104 Md. 156, 64 Atl. 938; Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623.

The Vendee's Delay cannot be taken advantage of by the vendor unless a demand for payment has been made by the vendor and he is ready to perform. Jones *v.* Gainer, (Ala. 1908) 47 So. 142, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 81.

5. Jones *v.* Gainer, (Ala. 1908) 47 So. 142; Phillips *v.* Jones, 79 Ark. 100, 95 S. W. 164; Agens *v.* Koch, (N. J. 1908) 70 Atl. 348; Nuttall *v.* McVey, (W. Va. 1908) 60 S. E. 251.

It Must Appear that the Vendee Has the Right to have a conveyance made. Sayer *v.* Humphreys, (Ill. 1908) 84 N. E. 170.

6. Kerr *v.* Moore, (Cal. App. 1907) 92 Pac. 107; Kentucky Iron, etc., Mfg. Co. *v.* Adams, (Ky. 1908) 106 S. W. 1198; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 793; Stewart *v.* Yesler, (Wash. 1907) 89 Pac. 705; Heflin *v.* Heflin, (W. Va. 1907) 59 S. E. 745.

83. 2. Milleman *v.* Kavanaugh, 213 Pa. St. 240, 62 Atl. 907.

3. Walton *v.* McKinney, (Ariz. 1908) 94 Pac.

1122; Mellin *v.* Woolley, (Minn. 1908) 115 N. W. 654; Jasper *v.* Wilson, (N. Mex. 1908) 94 Pac. 953, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 83; West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 83.

4. Lutjeharms *v.* Smith, (Neb. 1906) 107 N. W. 256; White *v.* Weaver, 68 N. J. Eq. 644, 61 Atl. 25.

5. Farnum *v.* Clarke, 148 Cal. 610, 84 Pac. 166.

8. McCullough *v.* Sutherland, 153 Fed. 418; Kuhn *v.* Eppstein, 219 Ill. 154, 76 N. E. 145; Jersey City *v.* Flynn, (N. J. 1908) 70 Atl. 497; Cleavenger *v.* Sturm, 59 W. Va. 658, 53 S. E. 593.

Nonperformance of Immaterial Matters. — Merrill *v.* Hexter, (Oregon 1908) 94 Pac. 972.

84. 1. Missouri — **Purchaser Remitted to Remedy at Law.** — Aiple-Hemmelmann Real Estate Co. *v.* Spelbrink, (Mo. 1908) 111 S. W. 480.

2. Wannamaker *v.* Brown, 77 S. Car. 64, 57 S. E. 665. See also the *dissenting* opinion in Aiple-Hemmelman Real Estate Co. *v.* Spelbrink, (Mo. 1908) 111 S. W. 480, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 83.

3. Free *v.* Little, 31 Utah 449, 88 Pac. 407.

85. 2. Saxon *v.* White, (Okla. 1908) 95 Pac. 783.

3. Marks *v.* Gates, (C. C. A.) 154 Fed. 481; Walton *v.* McKinney, (Ariz. 1908) 94 Pac. 1122; Messer *v.* Hibernia Sav., etc., Soc., 149 Cal. 122, 84 Pac. 835; Gregg *v.* Carey, 4 Cal. App. 354, 88 Pac. 282; Sanitary Dist. *v.* Martin, 227 Ill. 268, 81 N. E. 417, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 85; Alfrey *v.* Colbert, (Indian Ter. 1907) 104 S. W. 638; Hagins *v.* Sewell, (Ky. 1907) 99 S. W. 673; Hopkins *v.* Baremore, 99 Minn. 413, 109 N. W. 831; Levy *v.* Knepper, 117 N. Y. App. Div. 163, 102 N. Y. Supp. 313; Messenger *v.* Chambers, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 117, 103 N. Y. Supp. 1100; Elliott *v.* Asiel, 120 N. Y. App. Div. 829, 105 N. Y. Supp. 655; Rosenberg *v.* Haggerty, 189 N. Y. 481, 82 N. E. 503; Remsen *v.* Wingert, 112 N. Y. App. Div. 234, 98 N. Y. Supp. 388; Balkwill *v.* Spencer, 45 Wash. 600, 88 Pac. 1029.

Compensatory Damages Only. — Lindley *v.* Blumberg, (Cal. App. 1907) 93 Pac. 894.

Measure of Damages. — Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371.

The Allowance of Interest is proper in such a case, though no provision is made for it in the contract of purchase. Pillsbury *v.* J. B. Streeter, Jr., Co., 15 N. Dak. 174, 107 N. W. 40.

Option. — See Hanschka *v.* Vodopich, (S. Dak. 1906) 108 N. W. 28.

4. McMillan *v.* McMillan, 77 S. Car. 511, 58 S. E. 431.

86. 3. Naylor *v.* Stene, 96 Minn. 60, 104 N. W. 685, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 86; Public Service Corp. *v.* Hackensack Meadows Co., (N. J. 1906) 64 Atl. 976; Logan *v.* Flattau, (N. J. 1907) 67 Atl. 1007.

6. Marks *v.* Gates, (C. C. A.) 154 Fed. 481; Ross *v.* Cook, 71 Kan. 117, 80 Pac. 38.

7. Baldwin *v.* Brown, (Wash. 1908) 93 Pac. 413.

Court May Require Abatement in Purchase Price. — Cotton *v.* Butterfield, 14 N. Dak. 465, 105 N. W. 236.

87. 1. Eppstein *v.* Kuhn, 225 Ill. 115, 80 N. E. 80; Mellin *v.* Woolley, (Minn. 1908) 115 N. W. 654; Baldwin *v.* Brown, (Wash. 1908) 93 Pac. 413; Garrett *v.* Goff, 61 W. Va. 221, 56 S. E. 351.

7. Pemberton *v.* Pemberton, (Neb. 1906) 107 N. W. 996. See also Smith *v.* Lull, (Mich. 1908) 115 N. W. 1002.

8. Chehak *v.* Battles, 133 Iowa 107, 110 N. W. 330.

88. 1. *Compare* Taylor *v.* Matthews, 53 Fla. 776, 44 So. 146.

4. Koch *v.* Streuter, 218 Ill. 546, 75 N. E. 1049. *Compare* Powell *v.* Dwyer, 149 Mich. 141, 112 N. W. 499.

5. Rule Does Not Apply to Party Not in Default. — Kettering *v.* Eastlack, 130 Iowa 498, 107 N. W. 177.

9. Mallory *v.* Globe-Boston Copper Min. Co., (Ariz. 1908) 94 Pac. 1116.

89. 1. Castle Creek Water Co. *v.* Aspen, (C. C. A.) 146 Fed. 8, 8 Ann. Cas. 660.

5. Castle Creek Water Co. *v.* Aspen, (C. C. A.) 146 Fed. 8, 8 Ann. Cas. 660.

7. Castle Creek Water Co. *v.* Aspen, (C. C. A.) 146 Fed. 8, 8 Ann. Cas. 660.

90. 1. *Compare* Orr *v.* Cox, 61 W. Va. 361, 56 S. E. 522.

4. Offutt *v.* Offutt, (Md. 1907) 67 Atl. 138; Phalen *v.* U. S. Trust Co., 186 N. Y. 178, 78 N. E. 943.

91. 2. **Compromise between Contestants of Will Enforceable.** — Blount *v.* Dillaway, (Mass. 1908) 85 N. E. 477.

6. Schaadt *v.* Mutual L. Ins. Co., 2 Cal. App. 715, 84 Pac. 249; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Cook *v.* Ely, (Iowa 1908) 116 N. W. 129; Kundinger *v.* Kundinger, 150 Mich. 630, 114 N. W. 408. See also Flood *v.* Templeton, 148 Cal. 374, 83 Pac. 148, (Cal. 1907) 92 Pac. 78.

92. 1. Bichel *v.* Oliver, (Kan. 1908) 95 Pac. 396.

2. Belt *v.* Lazenby, 126 Ga. 767, 56 S. E. 81, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 91, 92; Anderson *v.* Anderson, 75 Kan. 117, 88 Pac. 743.

3. Schaadt *v.* Mutual L. Ins. Co., 2 Cal. App. 715, 84 Pac. 249; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Anderson *v.* Anderson, 75 Kan. 117, 88 Pac. 743; Bichel *v.* Oliver, (Kan. 1908) 95 Pac. 396; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450.

4. Flood *v.* Templeton, 148 Cal. 374, 83 Pac. 148; Schaadt *v.* Mutual L. Ins. Co., 2 Cal. App. 715, 84 Pac. 249; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Bunting *v.* Dobson, 125 Ga. 447, 54 S. E. 102; Anderson *v.* Anderson, 75 Kan. 117, 88 Pac. 743; Bichel *v.* Oliver, (Kan. 1908) 95 Pac. 396; Offutt *v.* Offutt, (Md. 1907) 67 Atl. 138; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450; *In re* Peterson, (Neb. 1906) 107 N. W. 993; Rau *v.* Rau, (Neb. 1907) 113 N. W. 174; Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233; Sarasohn *v.* Kamarky, 120 N. Y. App. Div. 110, 105 N. Y. Supp. 53; Holt *v.* Tuite, 188 N. Y. 17, 80 N. E. 364; Freeman *v.* Morris, 131 Wis. 216, 109 N. W. 983.

6. Grindling *v.* Rehyl, 149 Mich. 641 113 N. W. 290.

93. 2. Powers *v.* Crandall, (Iowa 1907) 111 N. W. 1010; Bichel *v.* Oliver, (Kan. 1908) 95 Pac. 396; Lawson *v.* Mullinix, 104 Md. 160, 64 Atl. 938, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 93; Berg *v.* Moreau, 199 Mo. 416, 97 S. W. 901; White *v.* Poole, (N. H. 1906) 65 Atl. 255.

3. Bunting *v.* Dobson, 125 Ga. 447, 54 S. E. 102.

5. Schaadt *v.* Mutual L. Ins. Co., 2 Cal. App. 715, 84 Pac. 249; Collins *v.* Collins, (Iowa 1908) 114 N. W. 1069; Bichel *v.* Oliver, (Kan. 1908) 95 Pac. 396; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450; Rau *v.* Rau, (Neb. 1907) 113 N. W. 174; White *v.* Poole, (N. H. 1906) 65 Atl. 255; Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233; Killian *v.* Heinzerling, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 511, 95 N. Y. Supp. 969.

6. Chehak *v.* Battles, 133 Iowa 107, 110 N. W. 330; Powers *v.* Crandall, (Iowa 1907) 111 N. W. 1010, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 93. But see Oswald *v.* Nehls, 233 Ill. 438, 84 N. E. 619; Berg *v.* Moreau, 199 Mo. 416, 97 S. W. 901.

7. See Flege *v.* Covington, etc., R., etc., Co., (Ky. 1906) 91 S. W. 738.

94. 4. **A Contract to Construct and Maintain a System of Waterworks** is enforceable. Hubbard City *v.* Bounds, (Tex. Civ. App. 1905) 95 S. W. 69.

6. Ready *v.* Schmith, (Oregon 1908) 95 Pac. 817.

11. Morris *v.* McCutcheon, 213 Pa. St. 349, 62 Atl. 982.

95. 4. Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88; Edelen *v.* Samuels, (Ky. 1907) 103 S. W. 360; Yazoo, etc., R. Co. *v.* Payne, (Miss. 1908) 46 So. 405; Lone Star Salt Co. *v.* Texas Short Line R. Co., 99 Tex. 434, 90 S. W. 863.

5. Pacific Electric R. Co. *v.* Campbell-Johnston, (Cal. 1908) 94 Pac. 623.

6. **Agreement to Furnish Electric Power.** — Hudson River Water Power Co. *v.* Glens Falls Portland Cement Co., 107 N. Y. App. Div. 548, 95 N. Y. Supp. 421.

7. Gray *v.* Citizens' Gas Co., 212 Pa. St. 473, 61 Atl. 1004; Bounds *v.* Hubbard City, (Tex. Civ. App. 1907) 105 S. W. 56.

96. 1. Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574; Edelen *v.* Samuels, (Ky. 1907) 103 S. W. 360.

Contracts for Telephone Service are enforceable. Cumberland Telephone, etc., Co. *v.* Hickman, (Ky. 1908) 111 S. W. 311.

A Contract to Maintain a Waterworks System is enforceable. Bounds *v.* Hubbard City, (Tex. Civ. App. 1907) 105 S. W. 56.

3. Yazoo, etc., R. Co. *v.* Payne, (Miss. 1908) 46 So. 405, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 95.

8. Young *v.* Crawford, 82 Ark. 33, 100 S. W. 87; Coleman *v.* Larson, (Wash. 1908) 95 Pac. 262.

97. 2. Logue *v.* Langan, (C. C. A.) 151 Fed. 455; Young *v.* Crawford, 82 Ark. 33, 100 S. W. 87; Garbutt *v.* Mayo, 128 Ga. 269, 57 S. E. 495; Karren *v.* Raimey, 30 Utah 7, 83 Pac. 333; Coleman *v.* Larson, (Wash. 1908) 95 Pac. 262. *Compare* Meadows *v.* Meadows, 60 W. Va. 34, 53 S. E. 718.

Slight Improvements and Trivial Outlays are not sufficient. Young *v.* Crawford, 82 Ark. 33, 100 S. W. 87.

3. Young *v.* Crawford, 82 Ark. 33, 100 S. W. 87.

98. 3. Young *v.* Crawford, 82 Ark. 33, 100 S. W. 87; Meadows *v.* Meadows, 60 W. Va. 34, 53 S. E. 718.

5. **An Inchoate Right of Dower Is an Incumbrance,** and a contract to convey free of incumbrance will be enforced in equity as covering such inchoate right of dower. Saldutti *v.* Flynn, (N. J. 1906) 65 Atl. 246.

9. Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709; Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695.

10. **Sufficient if Wife Subsequently Joins.** — Kettering *v.* Eastlack, 130 Iowa 498, 107 N. W. 177.

99. 1. **Dower Right Adjusted According to Circumstances.** — Saldutti *v.* Flynn, (N. J. 1906) 65 Atl. 246.

3. Atkins *v.* Atkins, (Mass. 1907) 80 N. E. 806.

100. 6. **Annuity Agreement Enforceable.** — Harris *v.* Parry, 216 Pa. St. 174, 64 Atl. 334.

7. Marthinson *v.* King, (C. C. A.) 150 Fed. 48; Murphy *v.* Hussey, 117 La. 390, 41 So. 692; Solomon Mier Co. *v.* Hadden, 148 Mich. 488, 111 N. W. 1040; Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695; Conner *v.* Clapp, 42 Wash. 642, 85 Pac. 342.

101. 2. Pollock *v.* Brookover, 60 W. Va. 75, 53 S. E. 795.

4. Couch *v.* McCoy, 138 Fed. 696; O'Donnell *v.* Chamberlin, 36 Colo. 395, 91 Pac. 39; Bennett *v.* Giles, 220 Ill. 393, 77 N. E. 214; Frey *v.* Camp, 131 Iowa 109, 107 N. W. 1106; Davis *v.* Martin, (N. Car. 1907) 59 S. E. 700; George Wiedemann Brewing Co. *v.* Maxwell, (Ohio 1908) 84 N. E. 595; Henry *v.* Black, 213 Pa. St. 620, 63 Atl. 250; Herman *v.* Winter, (S. Dak. 1905) 105 N. W. 457; Hanschka *v.* Vodopich, (S. Dak. 1906) 108 N. W. 28; Watkins *v.* Robertson, 105 Va. 269, 54 S. E. 33; Neeson *v.* Smith, (Wash. 1907) 92 Pac. 131; Pollock *v.* Brookover, 60 W. Va. 75, 53 S. E. 795.

5. Pomeroy *v.* Newell, 117 N. Y. App. Div. 800, 102 N. Y. Supp. 1098.

6. Solomon Mier Co. *v.* Hadden, 148 Mich. 488, 111 N. W. 1040.

10. McDuffee *v.* Hestonville, etc., Pass. R. Co., 158 Fed. 827.

102. 5. Tombigbee Valley R. Co. *v.* Fairford Lumber Co., (Ala. 1908) 47 So. 88; Leonard *v.* Board of Directors, 79 Ark. 42, 94 S. W. 922; Taylor *v.* Florida East Coast R. Co., (Fla. 1907) 45 So. 574; H. W. Gossard Co. *v.* Crosby, 132 Iowa 155, 109 N. W. 483; Lawrence *v.* Dixey, 119 N. Y. App. Div. 295, 104 N. Y. Supp. 516; Deitz *v.* Stephenson, (Oregon 1908) 95 Pac. 803. *Compare* Henderson *v.* McRae, 148 Mich. 324, 111 N. W. 1057; Detroit Lubricator Co. *v.* Lavigne Mfg. Co., (Mich. 1908) 115 N. W. 988.

6. Dimmick *v.* Stokes, (Ala. 1907) 43 So. 854; Portland Iron Works *v.* Willett, (Oregon 1907) 89 Pac. 421.

Agreement that Employee's Inventions Belong to Employer Enforceable. — Detroit Lubricator Co. *v.* Lavigne Mfg. Co., (Mich. 1908) 115 N. W. 688.

7. Pressed Steel Car Co. *v.* Hansen, (C. C. A.) 137 Fed. 403; Taussig *v.* Corbin, (C. C. A.) 142 Fed. 650; Hildreth *v.* Pelt, 143 Fed. 139; H. W. Gossard Co. *v.* Crosby, 132 Iowa 155, 109 N. W. 483; Edelen *v.* Samuels, (Ky. 1907) 103 S. W. 360, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 102. *Compare* Mississippi Glass Co. *v.* Franzen, (C. C. A.) 143 Fed. 501, 6 Ann. Cas. 707.

Where There Is an Adequate Remedy at Law specific performance will not be decreed. Mallory *v.* Globe-Boston Copper Min. Co., (Ariz. 1908) 94 Pac. 1116.

Indenture of Apprenticeship. — Thomas *v.* Baird, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 412, 94 N. Y. Supp. 47.

8. H. W. Gossard Co. *v.* Crosby, 132 Iowa 155, 109 N. W. 483; Lawrence *v.* Dixey, 119 N. Y. App. Div. 295, 104 N. Y. Supp. 516.

103. 1. Marthinson *v.* King, (C. C. A.) 150 Fed. 48; Mutual L. Ins. Co. *v.* Griesa, 156 Fed. 398; Brown *v.* E. Van Winkle Gin, etc., Works, 141 Ala. 580, 39 So. 243; Bower *v.* Bowser, (Oregon 1907) 88 Pac. 1104; Strause *v.* Berger, (Pa. 1908) 69 Atl. 818; Johnson *v.* Ohio River R. Co., 61 W. Va. 141, 56 S. E. 200.

2. Bernier *v.* Griscom-Spencer Co., 161 Fed. 438.

3. O'Donnell *v.* Chamberlin, 36 Colo. 395, 91 Pac. 39; Telegraphone Corp. *v.* Canadian Telegraphone Co., (Me. 1908) 69 Atl. 767; Curtice Bros. Co. *v.* Catts, (N. J. 1907) 66 Atl. 935.

Execution of Promissory Notes Compelled. — Parr *v.* McGown, (Tex. Civ. App. 1906) 98 S. W. 950.

4. Lewman *v.* Ogden, 143 Ala. 351, 42 So. 102; Block *v.* Shaw, 78 Ark. 511, 95 S. W. 806; Graham *v.* Herlong, 50 Fla. 521, 39 So. 111; Ridenbaugh *v.* Thayer, 10 Idaho 671, 80 Pac. 229, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 103.

5. Sugar Beets Product Co. *v.* Lyons Beet Sugar Refining Co., 161 Fed. 215; O'Donnell *v.* Chamberlin, 36 Colo. 395, 91 Pac. 39; Ridenbaugh *v.* Thayer, 10 Idaho 662, 80 Pac. 229; Butler *v.* Wright, 186 N. Y. 259, 78 N. E. 1002.

104. 1. Curtice Bros. Co. *v.* Catts, (N. J. 1907) 66 Atl. 935.

2. Butler *v.* Wright, 186 N. Y. 259, 78 N. E. 1002.

3. Brown *v.* E. Van Winkle Gin, etc., Works, 141 Ala. 580, 39 So. 243; Lewman *v.* Ogden, 143 Ala. 351, 42 So. 102.

4. Mutual L. Ins. Co. *v.* Griesa, 156 Fed. 398.

5. Marthinson *v.* King, (C. C. A.) 150 Fed. 48.

10. *United States.* — Castle Creek Water Co. *v.* Aspen, (C. C. A.) 146 Fed. 8, 8 Ann. Cas. 660; Wilhite *v.* Skelton, (C. C. A.) 149 Fed. 67; Marthinson *v.* King, (C. C. A.) 150 Fed. 48.

Alabama. — Brown *v.* E. Van Winkle Gin, etc., Works, 141 Ala. 580, 39 So. 243.

Arkansas. — Kelly *v.* Keith, 76 Ark. 31, 90 S. W. 150.

Illinois. — Cumberledge *v.* Brooks, (Ill. 1908) 85 N. E. 197.

Indiana. — Migatz *v.* Stieglitz, 166 Ind. 361, 77 N. E. 400.

Louisiana. — Girault *v.* Feucht, 117 La. 276, 41 So. 572.

Minnesota. — Mellin *v.* Woolley, (Minn. 1908) 115 N. W. 654.

New Jersey. — Public Service Corp. *v.* Hackensack Meadows Co., (N. J. 1906) 64 Atl. 976.

New York. — Lighton *v.* Syracuse, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 134, 96 N. Y. Supp. 692; Belanewsky *v.* Gallaher, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 150, 105 N. Y. Supp. 77.

North Carolina. — See Shakespeare *v.* Caldwell Land, etc., Co., 144 N. Car. 516, 57 S. E. 213.

South Dakota. — See Nelson *v.* Lybeck, (S. Dak. 1907) 111 N. W. 546.

West Virginia. — Pearson *v.* West Virginia Lime, etc., Co., 56 W. Va. 661, 49 S. E. 418, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 104.

An Agreement for the Sale of Growing Timber is enforceable. Strause *v.* Berger, (Pa. 1908) 69 Atl. 818.

106. 2. McKinnon *v.* Johnson, (Fla. 1907) 45 So. 451; Boehly *v.* Mansing, (Supm. Ct. Eq. T.) 52 Misc. (N. Y.) 382, 102 N. Y. Supp. 171.

4. Migatz *v.* Stieglitz, 166 Ind. 364, 77 N. E. 400, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 106.

5. Taylor *v.* Newton, (Ala. 1907) 44 So. 583; Cowdery *v.* Greenlee, 126 Ga. 790, 55 S. E. 918, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 106; Watkins *v.* Pfeiffer, (Ky. 1906) 92 S. W. 562.

107. 5. Cowdery *v.* Greenlee, 126 Ga. 790, 55 S. E. 918, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107.

6. Cowdery *v.* Greenlee, 126 Ga. 790, 55 S. E. 918, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107.

108. 1. Jones *v.* Prewitt, (Ky. 1908) 108 S. W. 867. See also Walton *v.* McKinney, (Ariz. 1908) 94 Pac. 1122; Day *v.* Mountin, (C. C. A.) 137 Fed. 756. *Compare* Public Service Corp. *v.* Hackensack Meadows Co., (N. J. 1906) 64 Atl. 976; Van Keuren *v.* Siedler, (N. J. 1907) 66 Atl. 920.

3. Millard *v.* Martin, (R. I. 1907) 68 Atl. 420; McCullough *v.* Sutherland, 153 Fed. 418. *Compare* Lillienthal *v.* Bierkamp, 133 Iowa 42, 110 N. W. 152.

109. 3. Woodman *v.* Blue Grass Land Co., 125 Wis. 497, 104 N. W. 920, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 109.

5. Taylor *v.* Newton, (Ala. 1907) 44 So. 583; Whittier *v.* Gormley, 3 Cal. App. 489, 86 Pac. 726; Cowdery *v.* Greenlee, 126 Ga. 790, 55 S. E. 918, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 109; Brown *v.* Widen, (Iowa 1905) 103 N. W. 158; Salisbury *v.* Ryan, 105 N. Y. App. Div. 445, 94 N. Y. Supp. 352; Lighton *v.* Syracuse, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 134, 96 N. Y. Supp. 692; Davidson *v.* Jones, 112 N. Y. App. Div. 254, 98 N. Y. Supp. 265; Russell *v.* Wales, (Supm. Ct.) 100 N. Y. Supp. 785; Wadick *v.* Mace, 118 N. Y.

App. Div. 777, 103 N. Y. Supp. 889; Sprickerhoff *v.* Gordon, 120 N. Y. App. Div. 748, 105 N. Y. Supp. 586; Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623; Egle *v.* Morrison, 27 Ohio Cir. Ct. 497; Hobart *v.* Frederiksen, (S. Dak. 1905) 105 N. W. 168.

Restrictive Covenant Affects Marketability. — Goodrich *v.* Pratt, 114 N. Y. App. Div. 771, 100 N. Y. Supp. 187.

110. 1. Cowdery *v.* Greenlee, 126 Ga. 790, 55 S. E. 918, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 110; Hirth *v.* Zeller, 108 N. Y. App. Div. 198, 95 N. Y. Supp. 747.

2. Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072; Fisher *v.* Eggert, (N. J. 1906) 64 Atl. 957; Van Keuren *v.* Siedler, (N. J. 1907) 66 Atl. 920; Diamond State Iron Co. *v.* Husbands, 8 Del. Ch. 205, 68 Atl. 240; Salisbury *v.* Ryan, 105 N. Y. App. Div. 445, 94 N. Y. Supp. 352; Remsen *v.* Wingert, 112 N. Y. App. Div. 234, 98 N. Y. Supp. 388; Altman *v.* McMillin, 115 N. Y. App. Div. 234, 100 N. Y. Supp. 970.

111. 1. Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371.

2. Cowdery *v.* Greenlee, 126 Ga. 790, 55 S. E. 918, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 111.

5. Whittier *v.* Gormley, 3 Cal. App. 489, 86 Pac. 726; Bodcaw Lumber Co. *v.* White, (La. 1908) 46 So. 782; Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371; Russell *v.* Wales, (Supm. Ct.) 100 N. Y. Supp. 785; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Sprickerhoff *v.* Gordon, 120 N. Y. App. Div. 748, 105 N. Y. Supp. 586; Whalen *v.* Stuart, 123 N. Y. App. Div. 446, 108 N. Y. Supp. 355; Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623.

6. *Compare* Soniat *v.* Donovan, 118 La. 847, 43 So. 462.

8. Salisbury *v.* Ryan, 105 N. Y. App. Div. 445, 94 N. Y. Supp. 352.

Effect of Lis Pendens. — Woodenbury *v.* Spier, 122 N. Y. App. Div. 396, 106 N. Y. Supp. 817; Whalen *v.* Stuart, 123 N. Y. App. Div. 446, 108 N. Y. Supp. 355; Weissberger *v.* Wallach, 124 N. Y. App. Div. 382, 108 N. Y. Supp. 887.

112. 1. Buxbaum *v.* Devoe, 123 N. Y. App. Div. 653, 107 N. Y. Supp. 1053.

113. 2. Altman *v.* McMillin, 115 N. Y. App. Div. 234, 100 N. Y. Supp. 970.

3. New Orleans Real Estate Mortg., etc., Co. *v.* Carrollton Land Co., 118 La. 979, 43 So. 641; Davidson *v.* Jones, 112 N. Y. App. Div. 254, 98 N. Y. Supp. 265.

6. Spolek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75; Newell *v.* Lamping, 45 Wash. 304, 88 Pac. 195.

114. 3. Kentucky Distilleries, etc., Co. *v.* Blanton, (C. C. A.) 149 Fed. 31; McCullough *v.* Sutherland, 153 Fed. 418; Rankin *v.* Rankin, 216 Ill. 132, 74 N. E. 763; Nelson *v.* Chingren, 132 Iowa 386, 106 N. W. 936, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 114; Johnson *v.* Higgins, (Neb. 1906) 108 N. W. 168; Roche *v.* Osborne, (N. J. 1905) 69 Atl. 176; Inglis *v.* Fobey, (Wis. 1008) 116 N. W. 857.

8. McCullough *v.* Sutherland, 153 Fed. 418.

115. 1. Nelson *v.* Chingren, 132 Iowa 386, 106 N. W. 936, *quoting* 26 AM. AND ENG. [illegible] Commers, (Ky. 1906) 91 S. W. 261.

3. **Good Title at Time of Trial Sufficient.** — Hugel *v.* Habel, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 402, 106 N. Y. Supp. 581. See also Agens *v.* Koch, (N. J. 1908) 70 Atl. 348.

8. Latta *v.* Hax, (Pa. 1908) 68 Atl. 1016.

116. 2. Pearson *v.* Courson, 129 Ga. 656, 59 S. E. 907.

4. Gregg *v.* Carey, 4 Cal. App. 354, 88 Pac. 282.

5. Howe *v.* Howe, etc., Ball Bearing Co., (C. C. A.) 154 Fed. 820; Walton *v.* McKinney, (Ariz. 1908) 94 Pac. 1122; Gregg *v.* Carey, 4 Cal. App. 354, 88 Pac. 282; Webster *v.* Gibson, (Cal. App. 1907) 93 Pac. 1040; McKinnon *v.* Johnson, (Fla. 1907) 45 So. 451; Boone *v.* Graham, 215 Ill. 511, 74 N. E. 559; Public Service Corp. *v.* Hackensack Meadows Co., (N. J. 1906) 64 Atl. 976; Flattau *v.* Logan, (N. J. 1907) 65 Atl. 714; Rosenberg *v.* Haggerty, 189 N. Y. 481, 82 N. E. 503; Saxon *v.* White, (Okla. 1908) 95 Pac. 783; Sweeney Cattle Co. *v.* Erb, (S. Dak. 1906) 108 N. W. 32; Peters *v.* Van Horn, 37 Wash. 550, 79 Pac. 1110.

Previous Conveyance by Vendor. — Reynolds *v.* Condon, 110 N. Y. App. Div. 542, 97 N. Y. Supp. 1.

6. Walton *v.* McKinney, (Ariz. 1908) 94 Pac. 1122; Showalter *v.* Sorensen, 39 Wash. 621, 81 Pac. 1054.

Marketable Title at Time of Decree Sufficient. — North Ave. Land Co. *v.* Baltimore, 102 Md. 475, 63 Atl. 115. See also Rosenberg *v.* Haggerty, 189 N. Y. 481, 82 N. E. 503.

7. Clinton *v.* Shugart, 126 Iowa 188, 101 N. W. 785, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 116; Latta *v.* Hax, (Pa. 1908) 68 Atl. 1016.

8. Moseley *v.* Witt, (S. Car. 1908) 60 S. E. 520; Spolek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75.

Payment of the Purchase Money entitles the vendee to a deed. Chouteau Land, etc., Co. *v.* Chrisman, 204 Mo. 371, 102 S. W. 973.

Absence of Vendor as Excusing Tender. — Herman *v.* Winter, (S. Dak. 1905) 105 N. W. 457.

117. 3. Campbell *v.* Lombardo, (Ala. 1907) 44 So. 862.

5. Boston, etc., St. R. Co. *v.* Rose, 194 Mass. 142, 80 N. E. 498.

7. Cumberledge *v.* Brooks, (Ill. 1908) 85 N. E. 197; Roche *v.* Osborne, (N. Y. 1905) 69 Atl. 176; West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666; Bruggemann *v.* Converse, (Wash. 1907) 92 Pac. 429.

118. 1. Kerr *v.* Moore, (Cal. App. 1907) 92 Pac. 107; Gumaer *v.* Jackson, 37 Colo. 39, 86 Pac. 885; Murphy *v.* Hussey, 117 La. 390, 41 So. 692; Boston, etc., St. R. Co. *v.* Rose, 194 Mass. 142, 80 N. E. 498; Finlen *v.* Heinze, 32 Mont. 354, 80 Pac. 918.

When Tender to Agent Sufficient. — Degginger *v.* Martin, (Wash. 1907) 92 Pac. 674.

2. Staples *v.* Mullen, (Mass. 1907) 81 N. E. 875.

4. Riley *v.* Allen, 71 Kan. 625, 81 Pac. 186; Brownson *v.* Perry, 71 Kan. 578, 81 Pac. 197; Peters *v.* Van Horn, 37 Wash. 550, 79 Pac. 1110.

5. *Compare* Walton *v.* McKinney, (Ariz. 1908) 94 Pac. 1122.

6. Walton *v.* McKinney, (Ariz. 1908) 94 Pac. 1122.

119. 3. Lowe *v.* Walker, 77 Ark. 103, 91 S. W. 22.

5. **A Contract to Mortgage Is Not Enforceable** unless there is no adequate remedy at law, or the defendant is insolvent, or some peculiar ground for equitable interposition exists. Brown *v.* E. Van Winkle Gin, etc., Works, 141 Ala. 580, 39 So. 243.

120. 4. Bailey *v.* Agawam Nat. Bank, 190 Mass. 20, 76 N. E. 449.

121. 10. Schirmer *v.* Rehill, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 439, 109 N. Y. Supp. 745.

11. *Compare* Clement *v.* Young Amusement Co., (N. J. 1906) 65 Atl. 185.

122. 2. Jones *v.* Jones, 118 N. Y. App. Div. 148, 103 N. Y. Supp. 141.

3. Bernier *v.* Griscom-Spencer Co., 161 Fed. 438; Sherwood *v.* Wallin, 1 Cal. App. 532, 82 Pac. 566; Hills *v.* McMunn, 232 Ill. 488, 83 N. E. 963; Schmidt *v.* Pritchard, (Iowa 1907) 112 N. W. 801, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122; Baumhoff *v.* St. Louis, etc., R. Co., 205 Mo. 262, 104 S. W. 5, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122; Dennison *v.* Keaseby, 200 Mo. 408, 98 S. W. 546; Rau *v.* Seidenberg, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 386, 104 N. Y. Supp. 798; Deitz *v.* Stephenson, (Oregon 1908) 95 Pac. 803; Eichbaum *v.* Sample, 213 Pa. St. 216, 62 Atl. 837.

4. Bernier *v.* Griscom-Spencer Co., 161 Fed. 438.

5. Sherman *v.* Herr, (Pa. 1908) 69 Atl. 899, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122.

6. Bernier *v.* Griscom-Spencer Co., 161 Fed. 438; Graham *v.* Herlong, 50 Fla. 521, 39 So. 111; Hills *v.* McMunn, 232 Ill. 488, 83 N. E. 963; Safford *v.* Barber, (N. J. 1908) 70 Atl. 371, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 122; Clements *v.* Sherwood-Dunn, 108 N. Y. App. Div. 327, 95 N. Y. Supp. 766; Ehrich *v.* Grant, 111 N. Y. App. Div. 196, 97 N. Y. Supp. 600.

Denied Where Performance Impossible. — Deitz *v.* Stephenson, (Oregon 1908) 95 Pac. 803.

123. 5. **Contract to Organize Corporation Cannot Be Enforced.** — Rudiger *v.* Coleman, 112 N. Y. App. Div. 279, 98 N. Y. Supp. 461.

13. **Accounting May Be Ordered.** — Fowler *v.* De Lance, 146 Mich. 630, 110 N. W. 41.

Specific Performance Denied. — Nelson *v.* Lybeck, (S. Dak. 1907) 111 N. W. 546.

124. 1. **Evidence of Agreement Held Insufficient.** — Fowler *v.* De Lance, 146 Mich. 630, 110 N. W. 41; Boam *v.* Greenman, 147 Mich. 106, 110 N. W. 508.

Denied Where No Change of Possession. — Reel *v.* Reel, 59 W. Va. 106, 52 S. E. 1023.

2. Ayers *v.* Short, 142 Mich. 501, 105 N. W. 1115; Beam *v.* Beam, (Neb. 1906) 109 N. W. 741; Reel *v.* Reel, 59 W. Va. 106, 52 S. E. 1023.

4. Whitney *v.* Dewey, (C. C. A.) 158 Fed. 385; Stone *v.* Fowlkes, 29 App. Cas. (D. C.) 379; Colt *v.* O'Connor, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 689; Phalen *v.* U. S. Trust Co., 186 N. Y. 178, 78 N. E. 943; Sherman *v.* Herr, (Pa. 1908) 69 Atl. 899; Peterson *v.* Hicks, 43 Wash. 412, 86 Pac. 634. See also Safford *v.* Barber, (N. J. 1908) 70 Atl. 371.

11. McDuffee *v.* Hestonville, etc., Pass. R. Co., (C. C. A.) 162 Fed. 36; Cyrus *v.* Holbrook, (Ky. 1907) 106 S. W. 300; Givens *v.* Clem, 107 Va. 435, 59 S. E. 413.

12. **As to the Enforcement of Grub Stake Contracts,** see Cascaden *v.* Dunbar, 2 Alaska 408; McMahon *v.* Meehan, 2 Alaska 278.

125. 1. Tingue *v.* Patch, 93 Minn. 443, 101 N. W. 792, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 125. *Compare* Van Allen *v.* Peabody, 112 N. Y. App. Div. 57, 97 N. Y. Supp. 1119.

126. 2. Moore *v.* Gariglietti, 228 Ill. 146, 81 N. E. 826, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 126.

127. 2. Balkwill *v.* Spencer, 45 Wash. 600, 88 Pac. 1029; Nuttall *v.* McVey, (W. Va. 1908) 60 S. E. 251.

Must Be Bona Fide Purchaser. — Lindley *v.* Blumberg, (Cal. App. 1907) 93 Pac. 894.

3. **May Be Reimbursed for Improvements.** — Alston *v.* Connell, 145 N. Car. 1, 58 S. E. 441.

7. Downing *v.* Ernst, (Colo. 1907) 92 Pac. 230.

128. 9. Somerville *v.* Coppage, 101 Md. 519, 61 Atl. 318.

129. 1. **Admissible to Show Mistake.** — Gottfried *v.* Bray, 208 Mo. 652, 106 S. W. 639.

2. Carr *v.* Carr, (R. I. 1908) 68 Atl. 582; Phelan *v.* Neary, (S. Dak. 1908) 117 N. W. 142. See also Mertz *v.* Hubbard, 75 Kan. 1, 88 Pac. 529.

3. Farmer *v.* Sellers, (Ala. 1905) 39 So. 772; Howison *v.* Bartlett, 147 Ala. 408, 40 So. 757; Fordyce Lumber Co. *v.* Wallace, (Ark. 1907) 107 S. W. 160; Willmon *v.* Peck, 5 Cal. App. 665, 91 Pac. 164; Gumaer *v.* Jackson, 37 Colo. 39, 86 Pac. 885; Cumberledge *v.* Brooks, (Ill. 1908) 85 N. E. 197; Ochs *v.* Kramer, (Ky. 1908) 107 S. W. 260; Heenan *v.* Parmele, (Neb. 1908) 114 N. W. 639; Morrison *v.* Hazzard, 99 Tex. 583, 92 S. W. 33.

4. Fordyce Lumber Co. *v.* Wallace, (Ark. 1907) 107 S. W. 160.

5. Heenan *v.* Parmele, (Neb. 1908) 114 N. W. 639; Freeburgh *v.* Lamoureux, 15 Wyo. 22, 85 Pac. 1054.

6. See Armstrong *v.* Ross, 61 W. Va. 38, 55 S. E. 895.

7. Albert *v.* Tidewater R. Co., 107 Va. 256, 58 S. E. 575; Armstrong *v.* Ross, 61 W. Va. 38, 55 S. E. 895.

130. 3. Albert *v.* Tidewater R. Co., 107 Va. 256, 58 S. E. 575; Inglis *v.* Fohey, (Wis. 1908) 116 N. W. 857.

4. Jones *v.* Tennis Coal Co., (Ky. 1906) 94 S. W. 6.

6. Jones *v.* Patrick, 145 Fed. 440; Hildreth *v.* Duff, (C. C. A.) 148 Fed. 676; Fielder *v.* Warner, 78 Ark. 158, 95 S. W. 452; Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243; Casstevens *v.* Casstevens, 227 Ill. 547, 81 N. E. 709; Dulaney *v.* Devries, 102 Md. 349, 62 Atl. 743; Finlen *v.* Heinze, 32 Mont. 354, 80 Pac. 918; Haberman

v. Kaufer, 70 N. J. Eq. 381, 61 Atl. 976; McNichol *v.* Townsend, (N. J. 1907) 67 Atl. 938; Tousey *v.* Hastings, (Supm. Ct. App. Div.) 111 N. Y. Supp. 344; Garrett *v.* Goff, 61 W. Va. 221, 56 S. E. 351; Portland Iron Works *v.* Willett, (Oregon 1907) 89 Pac. 421; Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370.

The Complainant Must Prove his grounds for equitable relief; a mere allegation thereof is insufficient. Brauer *v.* Laughlin, (Ill. 1908) 85 N. E. 283.

7. Bell *v.* Whitesell, (W. Va. 1908) 60 S. E. 879; Boam *v.* Greenman, 147 Mich. 106, 110 N. W. 508.

131. 2. Bradley Real Estate Co. *v.* Robbins, (Indian Ter. 1907) 103 S. W. 777; Cobb *v.* Johnson, (Tex. 1908) 108 S. W. 811.

3. *Alabama.* — Thompson *v.* Jones, (Ala. 1905) 39 So. 983; Jones *v.* Jones, (Ala. 1908) 47 So. 80.

Arkansas. — Fielder *v.* Warner, 78 Ark. 158, 95 S. W. 452; Young *v.* Crawford, 82 Ark. 33, 100 S. W. 87.

Florida. — Maloy *v.* Boyett, 53 Fla. 956, 43 So. 243.

Georgia. — Redman *v.* Mays, 129 Ga. 435, 59 S. E. 212, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 130.

Illinois. — Standard *v.* Standard, 223 Ill. 255, 79 N. E. 92; Chicago, etc., R. Co. *v.* Chipps, 226 Ill. 584, 80 N. E. 1069; Ranson *v.* Ranson, 233 Ill. 369, 84 N. E. 210.

Iowa. — Bevington *v.* Bevington, 133 Iowa 351, 110 N. W. 840; Collins *v.* Collins, (Iowa 1908) 114 N. W. 1069.

Kansas. — Baldwin *v.* Baldwin, 73 Kan. 39, 84 Pac. 568; Bichel *v.* Oliver, (Kan. 1908) 95 Pac. 396.

Maryland. — Shipley *v.* Fink, 102 Md. 219, 62 Atl. 360, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 131.

Missouri. — Russell *v.* Sharp, 192 Mo. 270, 91 S. W. 134; Berg *v.* Moreau, 199 Mo. 416, 97 S. W. 901.

Nebraska. — Harrison *v.* Harrison, (Neb. 1907) 113 N. W. 1042.

Nevada. — Brandon *v.* West, 28 Nev. 500, 83 Pac. 327.

New Jersey. — Haberman *v.* Kaufer, 70 N. J. Eq. 381, 61 Atl. 976.

New York. — McGarahan *v.* Sheridan, 106 N. Y. App. Div. 532, 94 N. Y. Supp. 708.

North Carolina. — Winders *v.* Hill, 144 N. Car. 614, 57 S. E. 456.

Oregon. — West *v.* Washington, etc., R. Co., (Oregon 1907) 90 Pac. 666.

South Carolina. — Crawford *v.* Crawford, 77 S. Car. 205, 57 S. E. 837; McMillan *v.* McMillan, 77 S. Car. 511, 58 S. E. 431.

Texas. — Dillard *v.* Sanders, (Tex. Civ. App. 1906) 97 S. W. 108.

Utah. — Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

West Virginia. — Meadows *v.* Meadows, 60 W. Va. 34, 53 S. E. 718; Garrett *v.* Goff, 61 W. Va. 221, 56 S. E. 351; Bell *v.* Whitesell, (W. Va. 1908) 60 S. E. 879.

4. White *v.* White, 231 Ill. 298, 83 N. E. 234.

7. Cawley *v.* Jean, 189 Mass. 220, 75 N. E. 614.

10. **Evidence Held Insufficient to Warrant Decree** — *Alabama.* — Thompson *v.* Jones, (Ala. 1905) 39 So. 983.

Arkansas. — Fielder *v.* Warner, 78 Ark. 158, 95 S. W. 452; Young *v.* Crawford, 82 Ark. 33, 100 S. W. 87.

Georgia. — Redman *v.* Mays, 129 Ga. 435, 59 S. E. 212.

Illinois. — Ranson *v.* Ranson, 233 Ill. 369, 84 N. E. 210.

Iowa. — Collins *v.* Collins, (Iowa 1908) 114 N. W. 1069.

Kentucky. — Gum *v.* Isaacs, (Ky. 1906) 90 S. W. 963; Carter *v.* Estep, (Ky. 1907) 100 S. W. 309.

Michigan. — Smith *v.* Lull, (Mich. 1908) 115 N. W. 1002.

Missouri. — Russell *v.* Sharp, 192 Mo 270, 91 S. W. 134; Kirk *v.* Middlebrook, 201 Mo. 245, 100 S. W. 450.

Nebraska. — Thompson *v.* Marshall, (Neb. 1907) 110 N. W. 1104.

South Carolina. — McMillan *v.* McMillan, 77 S. Car. 511, 58 S. E. 431.

Texas. — Dillard *v.* Sanders, (Tex. Civ. App. 1906) 97 S. W. 108.

Utah. — Price *v.* Lloyd, 31 Utah 86, 86 Pac. 767.

Virginia. — Clinchfield Coal Co. *v.* Powers, 107 Va. 393, 59 S. E. 370.

West Virginia. — Bell *v.* Whitesell, (W. Va. 1908) 60 S. E. 879.

Cases in Which Evidence Held Sufficient. — Jones *v.* Jones, (Ala. 1908) 47 So. 80; Powers *v.* Crandall, (Iowa 1907) 111 N. W. 1010; Lawson *v.* Mullinix, 104 Md. 156, 64 Atl. 938; Waddington *v.* Lane, 202 Mo. 387, 100 S. W. 1139; Harrison *v.* Harrison, (Neb. 1907) 113 N. W. 1042; Merrill *v.* Hexter, (Oregon 1908) 94 Pac. 972; Ready *v.* Schmith, (Oregon 1908) 95 Pac. 817.

132. 1. Wilhite *v.* Skelton, (C. C. A.) 149 Fed. 67.

134. 6. Murphy *v.* Hussey, 117 La. 390, 41 So. 692.

135. 2. Swanson *v.* James, (Neb. 1908) 116 N. W. 780; Hanschka *v.* Vodopich, (S. Dak. 1906) 108 N. W. 28; Voight *v.* Fidelity Invest. Co., (Wash. 1908) 96 Pac. 162. See also May *v.* Getty, 140 N. Car. 310, 53 S. E. 75.

SPENDTHRIFTS AND SPENDTHRIFT TRUSTS.

138. 2. Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 137 *et seq.*; Hackley *v.* Fittell, (Mich. 1907) 113 N. W. 787; Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66; Wright *v.* Leupp, 70 N. J. Eq. 130, 62 Atl. 464; Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774.

139. 3. Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339.

4. Mason *v.* Rhode Island Hospital Trust Co., 78 Conn. 81, 61 Atl. 57; Pearson *v.* Hanson, 230 Ill. 610, 82 N. E. 813; Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 139; *In re* Fleming, (Pa. 1908) 68 Atl. 960.

140. 2. Kessner *v.* Phillips, 189 Mo. 515,

88 S. W. 66, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 140 *et seq.*

142. 1. Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 141; *In re* Shower, 211 Pa. St. 297, 60 Atl. 789.

Words Held Sufficient to Create Spendthrift Trusts. — Mason *v.* Rhode Island Hospital Trust Co., 78 Conn. 81, 61 Atl. 57; Sterling *v.* Ives, 78 Conn. 498, 62 Atl. 948; Olsen *v.* Youngerman, (Iowa 1907) 113 N. W. 938; Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774.

2. Mason *v.* Rhode Island Hospital Trust Co., 78 Conn. 81, 61 Atl. 57; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339.

143. 1. Mason *v.* Rhode Island Hospital Trust Co., 78 Conn. 81, 61 Atl. 57; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 142 *et seq.*; *In re* Shower, 211 Pa. St. 297, 60 Atl. 789.

2. Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645.

3. Mason *v.* Rhode Island Hospital Trust Co., 78 Conn. 81, 61 Atl. 57; Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645; *In re* Shower, 211 Pa. St. 297, 60 Atl. 789.

4. Parker *v.* Bushnell, (Conn. 1907) 67 Atl. 479; Linn *v.* Downing, 216 Ill. 64, 74 N. E. 729; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; *In re* Shower, 211 Pa. St. 297, 60 Atl. 789.

6. Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 142 *et seq.*; Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774.

Power of Appointment Does Not Render Trust Liable to Debts. — *In re* Fleming, (Pa. 1908) 68 Atl. 960.

7. Hackley *v.* Littell, (Mich. 1907) 113 N. W. 787, *distinguishing* the cases cited in the original note.

9. Mason *v.* Rhode Island Hospital Trust Co., 78 Conn. 81, 61 Atl. 57; Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774; Dubois *v.* Barbour, 27 R. I. 281, 61 Atl. 752.

10. Hackley *v.* Littell, (Mich. 1907) 113 N. W. 787.

144. 1. Parker *v.* Bushnell, (Conn. 1907) 67 Atl. 479.

2. Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 142 *et seq.*

3. Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645.

4. Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339.

5. Parker *v.* Bushnell, (Conn. 1907) 67 Atl. 479.

6. Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Ratliff *v.* Com., (Ky. 1907) 101 S. W. 978; Cecil's Trustee *v.* Robertson, (Ky. 1907) 105 S. W. 926; Ullman *v.* Cameron, 186 N. Y. 339, 78 N. E. 1074.

7. Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 144.

8. Contra: Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774, wherein a provision that the income should be for the beneficiary's sole and separate use, free from her husband's control, was treated as surplusage.

10. Huntress *v.* Allen, (Mass. 1907) 80 N. E. 949; Kessner *v.* Phillips, 189 Mo. 515, 88 S. W. 66, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 144.

12. **Where the Rights of Others Than the Husband Are Involved** his interests may not be reached by creditors. Linn *v.* Downing, 216 Ill. 64, 74 N. E. 729.

14. Mason *v.* Rhode Island Hospital Fund Co., 78 Conn. 81, 61 Atl. 57; Parker *v.* Bushnell, (Conn. 1907) 67 Atl. 479; Ratliff *v.* Com., (Ky. 1907) 101 S. W. 978; Cecil's Trustee *v.* Robertson, (Ky. 1907) 105 S. W. 926; Dubois *v.* Barbour, 27 R. I. 281, 61 Atl. 752.

145. 2. Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645; Dubois *v.* Barbour, 27 R. I. 281, 61 Atl. 752; Angell *v.* Angell, (R. I. 1908) 68 Atl. 583.

7. Dubois *v.* Barbour, 27 R. I. 281, 61 Atl. 752.

146. 1. Dubois *v.* Barbour, 27 R. I. 281, 61 Atl. 752. *Compare* Parker *v.* Bushnell, (Conn. 1907) 67 Atl. 479.

3. See Linn *v.* Downing, 216 Ill. 64, 74 N. E. 729.

147. 2. Ward *v.* Marie, (N. J. 1907) 68 Atl. 1084, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 147.

A Trust Where the Trustee Was One of Several Beneficiaries has been sustained as against creditors. Linn *v.* Downing, 216 Ill. 64, 74 N. E. 729.

4. Hackley *v.* Littell, (Mich. 1907) 113 N. W. 787, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 147; Ward *v.* Marie, (N. J. 1907) 68 Atl. 1084, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 147.

5. Hackley *v.* Littell, (Mich. 1907) 113 N. W. 787.

148. 5. Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774.

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153. 5. **Public Use.** — See Fessler *v.* Union, 67 N. J. Eq. 14, 56 Atl. 275.

STARE DECISIS.

159. 1. Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

2. Peters Grocery Co. *v.* Collins Bag Co., 142 N. Car. 174, 55 S. E. 90; Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

160. 2. Rhoads *v.* Chicago, etc., R. Co., 227 Ill. 328, 81 N. E. 371, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 170, 171 [160]. See also Spratt *v.* Helena Power Transmission Co., (Mont. 1908) 94 Pac. 631.

6. **When a Question Has Been Once Settled** it should be treated as no longer open for review unless the evil resulting from the principle established is manifest and mischievous. Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290; Hand *v.* Stapleton, 145 Ala. 118, 39 So. 651.

161. 5. Diamond Plate Glass Co. *v.* Knote, 38 Ind. App. 20, 77 N. E. 954; Caywood *v.* Supreme Lodge, etc., (Ind. App. 1908) 84 N. E. 782; State *v.* Manford, 97 Minn. 173, 106

N. W. 907; State *v.* Wilder, 199 Mo. 503, 97 S. W. 864; Coulter *v.* Phœnix Brick, etc., Co., (Mo. App. 1908) 110 S. W. 655; Bowman *v.* Chosen Freeholders, 73 N. J. L. 543, 64 Atl. 1010; Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 161; *Ex p.* Hollman, (S. Car. 1908) 60 S. E. 19; Hall *v.* Madison, 128 Wis. 132, 107 N. W. 31.

The Rule of Stare Decisis Should Not Be Departed from except in cases of grave necessity. State *v.* Ross, 43 Wash. 290, 86 Pac. 575.

162. 2. See Missouri, etc., R. Co. *v.* Wise, (Tex. 1908) 109 S. W. 112, *affirming* (Tex. Civ. App. 1907) 106 S. W. 465.

8. **In Cases Affecting the Constitutional Right of Personal Liberty** the doctrine has less force than in cases involving the fixedness of property rights and the regularity of procedure. *Ex p.* Hollman, (S. Car. 1908) 60 S. E. 19.

163. 1. **Constitutionality of Statutes Will Not Be Passed upon unless Necessary.** — Toledo *v.* Kiebler, 28 Ohio Cir. Ct. 782.

2. Murphy *v.* Willow Springs Brewing Co., (Neb. 1908) 115 N. W. 763.

3. Peters Grocery Co. *v.* Collins Bag Co., 142 N. Car. 174, 55 S. E. 90, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 163.

4. **Prior Decisions of Inferior Courts** cannot afford a basis for the doctrine of *stare decisis* in the courts of last resort. Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815; Sedalia *v.* Donohue, 190 Mo. 407, 89 S. W. 386; *In re* New York, 114 N. Y. App. Div. 519, 100 N. Y. Supp. 140.

6. Caywood *v.* Supreme Lodge, etc., (Ind. App. 1908) 84 N. E. 782; Chicago, etc., Electric R. Co. *v.* Freeman, 125 Ill. App. 318.

164. 2. Caywood *v.* Supreme Lodge, etc., (Ind. App. 1908) 84 N. E. 782.

3. Diamond Plate Glass Co. *v.* Knote, 38 Ind. App. 20, 77 N. E. 954.

165. 10. **Adoption of Opinion of Lower Court.** — Powers *v.* Smith, (S. Car. 1908) 61 S. E. 222.

11. People *v.* Dayton, 120 N. Y. App. Div. 814, 105 N. Y. Supp. 809; Whittaker *v.* Thayer, (Tex. Civ. App. 1908) 110 S. W. 787.

Texas. — Robinson *v.* Galveston, (Tex. Civ. App. 1908) 111 S. W. 1076.

12. **Conflicting Decisions.** — Henry E. Frankenberg Co. *v.* U. S., (C. C. A.) 146 Fed. 63, *affirming* 144 Fed. 704, *affirmed* 206 U. S. 224, 27 U. S. Sup. Ct. 628.

166. 1. Illinois Cent. R. Co. *v.* Hecker, 129 Ill. App. 375.

167. 1. Territory *v.* Gaines, (Ariz. 1908) 93 Pac. 280.

7. Hand *v.* Stapleton, 145 Ala. 118, 39 So. 651.

168. 3. Corn Exch. Bank *v.* Peabody, 111 N. Y. App. Div. 553, 98 N. Y. Supp. 78.

13. *In re* Sullivan, (C. C. A.) 148 Fed. 815; State *v.* Clinton County, 166 Ind. 162, 76 N. E. 986; State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153; Toher *v.* Crounse, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 252, 107 N. Y. Supp. 090; American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387; Littler *v.* Dielmann, (Tex. Civ. App. 1908) 106 S. W. 1137.

169. 2. See New York Cent., etc., R. Co. *v.* Price, (C. C. A.) 159 Fed. 330.

3. People's Lumber Co. *v.* Gillard, 5 Cal. App. 435, 90 Pac. 556; People *v.* Reed, 233 Ill. 351, 84 N. E. 214; Spratt *v.* Helena Power Transmission Co., (Mont. 1908) 94 Pac. 631.

5. Wyatt *v.* State Board of Equalization, (N. H. 1908) 70 Atl. 387, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 169; Evans *v.* Moore, 28 Ohio Cir. Ct. 1.

6. Logan *v.* Postal Tel., etc., Co., 157 Fed. 575, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 169.

7. Koerner *v.* St. Louis Car Co., (Mo. 1907) 107 S. W. 481; Broadwater *v.* Wabash R. Co., (Mo. 1908) 110 S. W. 1084; Schwanenfeldt *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 285.

8. Traer *v.* Fowler, (C. C. A.) 144 Fed. 810; Mason City, etc., R. Co. *v.* Wolf, (C. C. A.) 148 Fed. 961.

170. 1. Koerner *v.* St. Louis Car Co., (Mo. 1907) 107 S. W. 481.

7. Western Union Tel. Co. *v.* Schriver, (C. C. A.) 141 Fed. 538; Rhoads *v.* Chicago, etc., R. Co., 227 Ill. 328, 81 N. E. 371, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 170.

171. 1. See Pacific Coast Steamship Co. *v.* U. S., 42 Ct. Cl. 228.

2. Union Pac. R. Co. *v.* Mason City, etc., R. Co., 199 U. S. 160, 26 U. S. Sup. Ct. 19, *affirming* (C. C. A.) 128 Fed. 230.

3. Union Pac. R. Co. *v.* Mason City, etc., R. Co., 199 U. S. 160, 26 U. S. Sup. Ct. 19, *affirming* 128 Fed. 230.

6. Johnson *v.* Seattle Electric Co., 39 Wash. 211, 81 Pac. 705, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 171.

172. 1. State *v.* Intoxicating Liquors, 102 Me. 385, 67 Atl. 312; State *v.* Cudahy Packing Co., 33 Mont. 179, 82 Pac. 833; State *v.* Keerl, 33 Mont. 501, 85 Pac. 862; *Ex p.* Dennison, 72 Neb. 703, 101 N. W. 1045, *affirmed* 196 U. S. 637, 25 U. S. Sup. Ct. 795; State *v.* Insurance Co. of North America, 71 Neb. 320, 106 N. W. 767; Grant *v.* Cananea Consol. Copper Co., 117 N. Y. App. Div. 576, 102 N. Y. Supp. 642; Shelby Ice, etc., Co. *v.* Southern R. Co., (N. Car. 1908) 60 S. E. 721 (decision as to what is interstate commerce).

The Decisions of the Federal Courts are not binding upon the state courts except upon federal questions. Southern Pac. Co. *v.* Allen, (Tex. Civ. App. 1907) 106 S. W. 441.

2. Hill *v.* State, 89 Miss. 23, 42 So. 380.

173. 1. Spratlin *v.* St. Louis Southwestern R. Co., 76 Ark. 82, 88 S. W. 836; St. Louis, etc., R. Co. *v.* State, (Ark. 1908) 107 S. W. 989 (power of state to regulate interstate commerce by requiring the stopping of trains at certain places); State *v.* Great Northern R. Co., (N. Dak. 1908) 116 N. W. 89; State *v.* Minnesota, etc., R. Co., (N. Dak. 1908) 116 N. W. 91; State *v.* Northern Pac. R. Co., (N. Dak. 1908) 116 N. W. 92; Einstein *v.* Raritan Woolen Mills, (N. J. 1908) 70 Atl. 295 (impairing obligation of contracts); Kelly *v.* Gwatkin, (Va. 1908) 60 S. E. 749.

3. Merchants' Laclede Nat. Bank *v.* Troy

Grocery Co., 145 Ala. 605, 39 So. 476; Chicago, etc., R. Co. *v.* Walters, 120 Ill. App. 152, *affirmed* 217 Ill. 87, 75 N. E. 441; People *v.* Board of Supervisors, 122 Ill. App. 40; Western Union Tel. Co. *v.* State, 165 Ind. 492, 76 N. E. 100; State *v.* Intoxicating Liquors, 102 Me. 385, 67 Atl. 312; Texas, etc., R. Co. *v.* Huber, (Tex. 1906) 92 S. W. 832; Slaght *v.* Northern Pac. R. Co., 39 Wash. 576, 81 Pac. 1062; Hall *v.* Hall, 41 Wash. 186, 83 Pac. 108.

6. Spokane, etc., R. Co. *v.* Washington, etc., R. Co., (Wash. 1908) 95 Pac. 64.

8. United Land Assoc. *v.* Abrahams, 208 U. S. 614, 28 U. S. Sup. Ct. 569, *affirming* United Land Assoc. *v.* Pacific Lmp. Co., 139 Cal. 370, 69 Pac. 1064.

174. **9. Conflict between Federal Circuit Courts and State Courts.** — Gunter *v.* Atlantic Coast Line R. Co., 200 U. S. 273, 26 U. S. Sup. Ct. 252.

11. Dunham *v.* Hastings Pavement Co., 118 N. Y. App. Div. 127, 103 N. Y. Supp. 480.

175. **4.** *United States.* — Armour Packing Co. *v.* Lacy, 200 U. S. 226, 26 U. S. Sup. Ct. 232, *affirming* 134 N. Car. 567, 47 S. E. 53; Wicomico County Com'rs *v.* Bancroft, 203 U. S. 112, 27 U. S. Sup. Ct. 21; Gatewood *v.* North Carolina, 27 U. S. Sup. Ct. 167, *affirming* (N. Car. 1905) 51 S. E. 53; Montana *v.* Rice, 204 U. S. 291, 27 U. S. Sup. Ct. 281, *affirming* 83 Pac. 874; Stone *v.* Southern Illinois, etc., Bridge Co., 206 U. S. 267, 27 U. S. Sup. Ct. 615; Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541, 28 U. S. Sup. Ct. 178, *affirming* 80 Vt. 55, 66 Atl. 790; Ughbanks *v.* Armstrong, 208 U. S. 481, 28 U. S. Sup. Ct. 372; Lewis *v.* Herrera, 208 U. S. 309, 28 Sup. Ct. 412, *affirming* (Ariz. 1906) 85 Pac. 245 (construction of territorial statute); Kealoha *v.* Castle, 210 U. S. 148, 28 U. S. Sup. Ct. 684 (construction of statute by courts of Hawaii while an independent government); Paine *v.* Germantown Trust Co., (C. C. A.) 136 Fed. 527; Rogers *v.* Cincinnati, etc., R. Co., (C. C. A.) 136 Fed. 573; Sioux Falls *v.* Farmers' L. & T. Co., (C. C. A.) 136 Fed. 721, *reversing* 131 Fed. 890; *In re* Grissler, (C. C. A.) 136 Fed. 754; Consumers' Gas Trust Co. *v.* Quimby, (C. C. A.) 137 Fed. 882; Hughes *v.* Pflanz, (C. C. A.) 138 Fed. 980; Tennis Bros. Co. *v.* Wetzel, etc., R. Co., 140 Fed. 193; Harrison *v.* Remington Paper Co., 140 Fed. 385, 5 Ann. Cas. 314; *In re* Wood, 147 Fed. 877; *In re* Sullivan, (C. C. A.) 148 Fed. 815; Lyman *v.* Hilliard, (C. C. A.) 154 Fed. 339; San Jose-Los Gatos Interurban R. Co. *v.* San Jose R. Co., (C. C. A.) 156 Fed. 455; Zeiger *v.* Pennsylvania R. Co., (C. C. A.) 158 Fed. 809; U. S. *v.* Andem, 158 Fed. 996; Hager *v.* American Nat. Bank, (C. C. A.) 159 Fed. 396; *In re* Munger Vehicle Tire Co., (C. C. A.) 159 Fed. 901; Cheatham *v.* Evans, (C. C. A.) 160 Fed. 802.

California. — Crocker *v.* Scott, 149 Cal. 575, 87 Pac. 102.

Kentucky. — Louisville, etc., R. Co. *v.* Central Stockyards Co., (Ky. 1906) 97 S. W. 778.

When Federal Jurisdiction is Involved the federal courts are not bound by the construction placed on state statutes by the state courts. U. S. *v.* Tully, 140 Fed. 899.

In Matters of General Law the federal courts are not bound by a construction placed upon a state statute by a state court. King *v.* Davis, 137 Fed. 198; Yeates *v.* Illinois Cent. R. Co., 137 Fed. 943; Kansas City Hydraulic Press Brick Co. *v.* National Surety Co., 149 Fed. 507.

Construction Impairing Contract Rights. — Westinghouse Air Brake Co. *v.* Kansas City Southern R. Co., (C. C. A.) 137 Fed. 26; Hager *v.* American Nat. Bank, (C. C. A.) 159 Fed. 396; Fleischmann Co. *v.* Murray, 161 Fed. 162; Forest Products Co. *v.* Russell, 161 Fed. 1004.

5. Mead *v.* Portland, 200 U. S. 148, 26 U. S. Sup. Ct. 171, *affirming* 45 Oregon 1, 76 Pac. 347.

Decision Must Be by Highest State Court. — Federal Lead Co. *v.* Swyers, (C. C. A.) 161 Fed. 687.

176. **2.** *In re* Hopper-Morgan Co., 154 Fed. 249; Johnson *v.* Charles D. Morton Co., (C. C. A.) 159 Fed. 361; Chandler *v.* St. Louis, etc., R. Co., 127 Mo. App. 34, 106 S. W. 553 (relation of master and servant when unaffected by statute); Mollhoff *v.* Chicago, etc., R. Co., 15 Okla. 540, 82 Pac. 733.

177. **1.** Denver, etc., R. Co. *v.* Warring, 37 Colo. 122, 86 Pac. 305; Klages *v.* Kohl, 127 Ill. App. 70; Converse *v.* Ayer, (Mass. 1908) 84 N. E. 98; Lee *v.* Missouri Pac. R. Co., 195 Mo. 400, 92 S. W. 614; St. Louis, etc., R. Co. *v.* Conrad, (Tex. Civ. App. 1906) 99 S. W. 209.

5. St. Louis, etc., R. Co. *v.* Conrad, (Tex. Civ. App. 1906) 99 S. W. 209.

178. **1.** Costello *v.* Muheim, 9 Ariz. 422, 84 Pac. 906.

5. St. Louis, etc., R. Co. *v.* Conrad, (Tex. Civ. App. 1906) 99 S. W. 209.

7. Fish *v.* Hemple, 2 Alaska 175; Copper Queen Consol. Min. Co. *v.* Territorial Board of Equalization, 3 Ariz. 383, 84 Pac. 511; McNutt *v.* McNutt, 78 Ark. 346, 95 S. W. 778; *In re* Shapter, 35 Colo. 578, 85 Pac. 688; State *v.* Campbell, 73 Kan. 688, 85 Pac. 784; Preston Nat. Bank *v.* Brooke, 142 Mich. 272, 105 N. W. 757; Tyler *v.* St. Louis Southwestern R. Co., 99 Tex. 491, 91 S. W. 1, *affirmed* (Tex. 1906) 93 S. W. 997.

A Subsequent Construction by the courts of the state from which the statute was adopted is not binding on the courts of the adopting state. Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 984.

Adopted Statutes Containing Common Law. — Missouri, etc., R. Co. *v.* Wise, (Tex. 1908) 109 S. W. 112, *affirming* (Tex. Civ. App. 1907) 106 S. W. 465.

The Rule of the Text Is Subject to the Qualification that the judicial construction of the adopted statute by the state of its origin does not contravene the well-established policy prevailing on the subject in the adopting state. Smith *v.* Dayton Coal, etc., Co., 115 Tenn. 543, 92 S. W. 62.

179. **2.** Diehm *v.* Northwestern Mut. L. Ins. Co., (Mo. App. 1908) 108 S. W. 139.

3. Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 179.

5. Kirkley *v.* Parker, 27 Ohio Cir. Ct. 336, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 179.

180. 1. Sedalia *v.* Donohue, 190 Mo. 407, 89 S. W. 386; Grandjean *v.* Beyl, (Neb. 1907) 114 N. W. 414.

5. See Joyce *v.* Newmark, (Cal. App. 1907) 93 Pac. 1041.

181. 2. Schoonover *v.* Birnbaum, 148 Cal. 548, 83 Pac. 999; Gauthreaux *v.* Theriot, (La. 1908) 46 So. 892; Grandjean *v.* Beyl, (Neb. 1907) 114 N. W. 414; Hill *v.* Brown, 144 N. Car. 117, 56 S. E. 693; Union R. Co. *v.* Chickasaw Cooperage Co., 116 Tenn. 594, 95 S. W. 171.

4. *In re* Nigro, 149 Cal. 702, 87 Pac. 384.

182. 1. Fisher *v.* Lott, (Ky. 1908) 110 S. W. 822.

3. Vail *v.* Arizona, 207 U. S. 201, 28 U. S. Sup. Ct. 107, *affirming* (Ariz. 1906) 85 Pac. 652; Chase *v.* Superior, (Wis. 1908) 114 N. W. 437.

183. 5. Becker *v.* Superior Ct., 151 Cal. 313, 90 Pac. 689; Sedalia *v.* Donohue, 190 Mo. 407, 89 S. W. 386. See also Strauss *v.* Merchants' L. & T. Co., 119 Ill. App. 588.

185. 1. *United States.* — Smith *v.* Day, 136 Fed. 964; Mutual Reserve Fund L. Assoc. *v.* Ferrenbach, (C. C. A.) 144 Fed. 342; Central Trust Co. *v.* Wabash, etc., R. Co., 144 Fed. 476; Anderson *v.* Messenger, (C. C. A.) 158 Fed. 250.

Alabama. — Equitable Mfg. Co. *v.* Howard, (Ala. 1906) 41 So. 628; Western Union Tel. Co. *v.* Manker, 145 Ala. 418, 41 So. 850; Owensboro Wagon Co. *v.* Hall, (Ala. 1907) 43 So. 71.

Arizona. — Sherman *v.* Ward, (Ariz. 1905) 83 Pac. 356.

Arkansas. — Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393; Rankin *v.* Schofield, 81 Ark. 440, 98 S. W. 674; St. Louis, etc., R. Co. *v.* Neal, 83 Ark. 591, 98 S. W. 958; Boynton *v.* Chicago Mill, etc., Co., 84 Ark. 203, 105 S. W. 77; National Surety Co. *v.* Long, (Ark. 1908) 107 S. W. 384; McDonough *v.* Williams, (Ark. 1908) 112 S. W. 164.

California. — Franz *v.* Mendonca, 146 Cal. 640, 80 Pac. 1078; James *v.* E. G. Lyons Co., 147 Cal. 69, 81 Pac. 275; Lambert *v.* Bates, 148 Cal. 146, 82 Pac. 767; Prouty *v.* Adams, 1 Cal. App. xviii, 82 Pac. 1081; People's Lumber Co. *v.* Gillard, 5 Cal. App. 435, 90 Pac. 556; Adams *v.* Thornton, 5 Cal. App. 455, 90 Pac. 713; Tally *v.* Ganahl, 151 Cal. 418, 90 Pac. 1049; Gaffey *v.* Mann, 5 Cal. App. 712, 91 Pac. 172; Davis *v.* Pacific Imp. Co., (Cal. App. 1908) 94 Pac. 595.

District of Columbia. — Warner *v.* Grayson, 24 App. Cas. (D. C.) 55.

Florida. — Hoodless *v.* Jernegan, 51 Fla. 211, 41 So. 194.

Georgia. — Mitchell *v.* Schmidt, 123 Ga. 418, 51 S. E. 408; Western, etc., R. Co. *v.* Atlanta Third Nat. Bank, 125 Ga. 489, 54 S. E. 621; Dolvin *v.* American Harrow Co., 125 Ga. 699, 54 S. E. 706; Oliver *v.* House, 125 Ga. 637, 54 S. E. 732; Neal *v.* Conwell, 127 Ga. 238, 55 S. E. 936; Central of Georgia R. Co. *v.* Augusta Brokerage Co., 2 Ga. App. 511, 58 S. E. 904; Atlantic, etc., R. Co. *v.* Brown, 129 Ga. 622, 59 S. E. 278; Atlanta *v.* Hayes, (Ga. App. 1908) 60 S. E. 327.

Idaho. — Kerns *v.* Morgan, 11 Idaho 572, 83 Pac. 954; Steve *v.* Bonners Ferry Lumber Co., 13 Idaho 384, 92 Pac. 363; Ryan *v.* Rogers, (Idaho 1908) 94 Pac. 427.

Illinois. — Penn Plate Glass Co. *v.* James H. Rice Co., 216 Ill. 567, 75 N. E. 246, *affirming* 88 Ill. App. 407; Heimann *v.* Wilke, 219 Ill. 310, 76 N. E. 378; Weigel *v.* Green, 221 Ill. 187, 77 N. E. 574; Zerulla *v.* Supreme Lodge, etc., 223 Ill. 518, 79 N. E. 160, *affirming* 118 Ill. App. 191; Landis *v.* Wolf, 119 Ill. App. 88; Fry *v.* Radzinski, 121 Ill. App. 303, *affirmed* 219 Ill. 526, 76 N. E. 694.

Indiana. — Halstead *v.* Sigler, 35 Ind. App. 419, 74 N. E. 257; Hancock *v.* Diamond Plate Glass Co., 37 Ind. App. 351, 75 N. E. 659; Quelly *v.* Casper, 37 Ind. App. 186, 76 N. E. 646; Fifer *v.* Rachels, 37 Ind. App. 275, 76 N. E. 186; Curless *v.* Diamond Plate Glass Co., 37 Ind. App. 705, 77 N. E. 289; Hancock *v.* Diamond Plate Glass Co., 38 Ind. App. 699, 77 N. E. 413; Pittsburg, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Coppes *v.* Union Nat. Sav., etc., Assoc., (Ind. App. 1906) 79 N. E. 533; Pittsburg, etc., R. Co. *v.* Collins, 168 Ind. 467, 80 N. E. 415; Coppes *v.* Union Nat. Sav. Assoc., (Ind. App. 1907) 80 N. E. 984; Cleveland, etc., R. Co. *v.* Schneider, (Ind. App. 1907) 82 N. E. 538.

Iowa. — Vohs *v.* Shorthill, 130 Iowa 538, 107 N. W. 417; Oliver *v.* Iowa Cent. R. Co., (Iowa 1906) 109 N. W. 282; Phillips *v.* Hazen, 132 Iowa 628, 109 N. W. 1096; Burner *v.* Higman, etc., Co., 133 Iowa 315, 110 N. W. 580; Vogt *v.* Grinnell, 133 Iowa 363, 110 N. W. 603; Hensley *v.* Davidson Bros. Co., (Iowa 1907) 112 N. W. 227.

Kansas. — A. J. Harwi Hardware Co. *v.* Klippert, 73 Kan. 783, 85 Pac. 784, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 184 [1851]; State *v.* Campbell, 73 Kan. 688, 85 Pac. 784.

Kentucky. — Miller *v.* Metropolitan L. Ins. Co., (Ky. 1905) 89 S. W. 183; South Covington, etc., R. Co. *v.* Schilling, (Ky. 1905) 89 S. W. 220; Covington, etc., Bridge Co. *v.* Smith, (Ky. 1905) 89 S. W. 674; Dupoyster *v.* Ft. Jefferson Imp. Co., (Ky. 1905) 89 S. W. 509; Bardstown *v.* Nelson County, (Ky. 1906) 90 S. W. 246; Lexington R. Co. *v.* Fain, (Ky. 1906) 90 S. W. 574; Cumberland Telephone, etc., Co. *v.* Harp, (Ky. 1906) 90 S. W. 980; Hart *v.* Mayes, (Ky. 1906) 93 S. W. 616; Marcum *v.* Davidson, (Ky. 1906) 93 S. W. 1035; Harding *v.* Wooldridge, (Ky. 1906) 93 S. W. 1056; Western Bank *v.* Coldeway, (Ky. 1906) 94 S. W. 1; Malone *v.* Lebus, (Ky. 1906) 96 S. W. 519; Hocker *v.* Louisville, etc., R. Co., (Ky. 1906) 96 S. W. 526; Henry Vogt Mach. Co. *v.* Lingenfelser, (Ky. 1907) 99 S. W. 358; Cleaver *v.* Louisville, etc., R. Co., (Ky. 1907) 100 S. W. 223; Mead *v.* Mead, (Ky. 1907) 101 S. W. 330; Illinois Cent. R. Co. *v.* Houchins, (Ky. 1907) 101 S. W. 924; National L. Ins. Co. *v.* Anderson, (Ky. 1907) 102 S. W. 323; Fidelity, etc., Co. *v.* Southern R. News Co., (Ky. 1907) 103 S. W. 297; Louisville, etc., R. Co. *v.* Davis, (Ky. 1908) 106 S. W. 304; Sanders *v.* Herndon, (Ky. 1908) 108 S. W. 908; Ewell *v.* Jackson, (Ky. 1908) 110 S. W. 335; Middlesborough *v.* Coal, etc., Bank, (Ky. 1908) 110 S. W. 355.

Louisiana. — Campbell *v.* J. I. Campbell Co., 117 La. 418, 41 So. 702; Huntington *v.* Westerfield, 119 La. 615, 44 So. 317.

Maryland. — Gans Salvage Co. *v.* Byrnes, 102 Md. 230, 62 Atl. 155; Title Guarantee, etc., Co. *v.* McCulloh, (Md. 1908) 69 Atl. 434.

Massachusetts. — Tyndale *v.* Stanwood, (Mass. 1906) 77 N. E. 481.

Michigan. — Campau *v.* Detroit Driving Club, 144 Mich. 80, 107 N. W. 1063; Winkleman *v.* Adrian, (Mich. 1908) 115 N. W. 461; O'Dell *v.* Goff, (Mich. 1908) 117 N. W. 59; Anderson Carriage Co. *v.* Pungs, (Mich. 1908) 117 N. W. 162.

Minnesota. — Nelson *v.* Charles Betcher Lumber Co., 96 Minn. 76, 104 N. W. 833; Braucht *v.* Graves-May Co., 96 Minn. 387, 104 N. W. 1089, *affirmed* 96 Minn. 387, 106 N. W. 112; Kramer *v.* Northwestern Elevator Co., 97 Minn. 44, 106 N. W. 86.

Mississippi. — New York L. Ins. Co. *v.* McIntosh, (Miss. 1908) 46 So. 401.

Missouri. — Esler *v.* Wabash R. Co., 115 Mo. App. 574, 91 S. W. 400; Southern Illinois, etc., Bridge Co. *v.* Stone, 194 Mo. 175, 92 S. W. 475; McGrew *v.* Missouri Pac. R. Co., 118 Mo. App. 379, 94 S. W. 719; Barrie *v.* St. Louis Transit Co., 119 Mo. App. 38, 96 S. W. 233; Warren *v.* Chicago, etc., R. Co., 122 Mo. App. 254, 99 S. W. 76; Sublette *v.* St. Louis, etc., R. Co., 122 Mo. App. 389, 99 S. W. 467; Dunn *v.* Nicholson, 125 Mo. App. 725, 103 S. W. 114; State *v.* Allen, (Mo. App. 1908) 111 S. W. 622.

Montana. — Finlen *v.* Heinze, 32 Mont. 354, 80 Pac. 918; *In re* Klein, 35 Mont. 185, 88 Pac. 798; Glass *v.* Basin, etc., Min. Co., 35 Mont. 567, 90 Pac. 753; Easterly *v.* Jackson, (Mont. 1907) 92 Pac. 480.

Nebraska. — Ridgley *v.* U. S. Fidelity, etc., Co., 73 Neb. 874, 103 N. W. 669; Porter *v.* State, 73 Neb. 792, 103 N. W. 669; Plattsmouth First Nat. Bank *v.* Gibson, 74 Neb. 236, 105 N. W. 1081, *reversing* 74 Neb. 236, 104 N. W. 174; Korff *v.* Bueher, 75 Neb. 60, 105 N. W. 1099; Medland *v.* Van Etten, 75 Neb. 794, 106 N. W. 1022; Brewster *v.* Meng, (Neb. 1906) 107 N. W. 751; Hargadine *v.* Omaha Bridge, etc., R. Co., (Neb. 1906) 107 N. W. 864; Topping *v.* Cohn, (Neb. 1906) 109 N. W. 151; Hunt *v.* State Ins. Co., (Neb. 1907) 113 N. W. 807.

New Jersey. — Brady *v.* Carteret Realty Co., (N. J. 1907) 67 Atl. 606.

New Mexico. — Dye *v.* Crary, 13 N. Mex. 439, 85 Pac. 1038.

New York. — People *v.* Snyder, 106 N. Y. App. Div. 28, 94 N. Y. Supp. 541; People *v.* Wilson, 106 N. Y. App. Div. 609, 94 N. Y. Supp. 544; People's Trust Co. *v.* Flynn, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 62, 96 N. Y. Supp. 421; Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478; McBride *v.* New York Tunnel Co., 113 N. Y. App. Div. 821, 99 N. Y. Supp. 571, *affirmed* 187 N. Y. 573, 80 N. E. 1113; Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1; Jones *v.* Jones, 118 N. Y. App. Div. 148, 103 N. Y. Supp. 141; Ryan *v.* Brown, (Supm. Ct. App. T.) 104 N. Y. Supp. 871; Sullivan *v.* McCann, (Supm. Ct. App. Div.) 108 N. Y. Supp. 909; *In re* Cook, (Supm. Ct. App. Div.) 109 N. Y. Supp. 417; Czermak *v.* Wetzel, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 698; Niederstein *v.* Cusick, (Supm. Ct. App. Div.) 110 N. Y. Supp. 287; Ridgely *v.* Taylor, (Supm. Ct. App. Div.) 110 N. Y. Supp. 665.

North Carolina. — Green *v.* Green, 143 N. Car. 406, 55 S. E. 818; Gerock *v.* Western Union Tel. Co., (N. Car. 1908) 60 S. E. 637; Britt *v.* Carolina Northern R. Co., (N. Car. 1908) 61 S. E. 601.

Oklahoma. — Oklahoma City Electric, etc., Power Co. *v.* Baumhoff, (Okla. 1908) 96 Pac. 758.

Oregon. — Baker County *v.* Huntington, 48 Oregon 593, 87 Pac. 1036; Baines *v.* Coos Bay, etc., R., etc., Co., (Oregon 1907) 89 Pac. 371.

Pennsylvania. — Creachen *v.* Bromley Bros. Carpet Co., 214 Pa. St. 15, 63 Atl. 195; *In re* McMahon, 215 Pa. St. 10, 64 Atl. 321.

Rhode Island. — Carr *v.* American Locomotive Co., (R. I. 1908) 70 Atl. 196.

South Carolina. — Forrest *v.* McBee, 78 S. Car. 105, 58 S. E. 955; Elms *v.* Southern Power Co., (S. Car. 1908) 60 S. E. 1110.

Texas. — Galveston, etc., R. Co. *v.* Fitzpatrick, (Tex. Civ. App. 1905) 91 S. W. 355; Nashville, etc., R. Co. *v.* Grayson County Nat. Bank, (Tex. Civ. App. 1905) 91 S. W. 1106, *reversed* on other grounds in (Tex. 1906) 93 S. W. 431; Colorado Salt Co. *v.* San Jacinto Oil Co., (Tex. Civ. App. 1907) 105 S. W. 822.

Washington. — Jancko *v.* West Coast Mfg., etc., Co., 40 Wash. 230, 82 Pac. 284; Prescott *v.* Puget Sound Bridge, etc., Co., 40 Wash. 354, 82 Pac. 606; Cook *v.* Stimson Mill Co., 41 Wash. 314, 83 Pac. 419; Grant *v.* Walsh, 41 Wash. 542, 83 Pac. 1113; Hammock *v.* Tacoma, 44 Wash. 623, 87 Pac. 924; Canady *v.* Knox, (Wash. 1908) 94 Pac. 652; Moore *v.* National Acc. Soc., (Wash. 1908) 95 Pac. 268.

West Virginia. — Dent *v.* Pickens, 59 W. Va. 274, 53 S. E. 154; Johnson *v.* Gould, (W. Va. 1907) 59 S. E. 611.

Wisconsin. — Pautz *v.* Plankington Packing Co., 126 Wis. 37, 105 N. W. 482; Hughes *v.* Chicago, etc., R. Co., 126 Wis. 525, 106 N. W. 526; Halsey *v.* Waukesha Springs Sanitarium, 128 Wis. 438, 107 N. W. 1; Cape *v.* Plymouth Cong. Church, 130 Wis. 174, 109 N. W. 928; Horn *v.* La Crosse Box Co., 131 Wis. 384, 111 N. W. 522; Foster *v.* Rowe, (Wis. 1907) 111 N. W. 688; State *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 952; Habenicht *v.* Chicago, etc., R. Co., (Wis. 1908) 114 N. W. 497; Howard *v.* Beldenville Lumber Co., (Wis. 1908) 114 N. W. 1114.

If the Former Decision Is Ambiguous it will not be interpreted so as to work an injustice. Hasell *v.* Buckley, 118 N. Y. App. Div. 356, 103 N. Y. Supp. 377.

The Rule of the "Law of the Case" Will Not Be Applied where it would leave the appellant without a remedy to enforce the orders of the appellate court formerly made in his behalf. Johnson *v.* Joslyn, (Wash. 1907) 92 Pac. 413.

188. 1. **Alabama Statute.** — Smith *v.* Smith, (Ala. 1908) 47 So. 221.

2. **Conclusiveness of Decision on Former**

Appeal Stated as Res Judicata. — Burns *v.* Cooper, (C. C. A.) 153 Fed. 148; Cleveland, etc., R. Co. *v.* Alfred, 123 Ill. App. 477; Ruprecht *v.* Henrici, 127 Ill. App. 350; Mariner *v.* Ingraham, 127 Ill. App. 550; Mariner *v.* Ingraham, 230 Ill. 130, 82 N. E. 577, *affirming* 127 Ill. App. 542; Johnson *v.* Gould, (W. Va. 1907) 59 S. E. 611.

Res Judicata and Stare Decisis. — Alerding *v.* Allison, (Ind. 1908) 83 N. E. 1006, *affirming* (Ind. App. 1907) 82 N. E. 934.

3. **How Differs from Res Judicata.** — Alerding *v.* Allison, (Ind. 1908) 83 N. E. 1006, *affirming* (Ind. App. 1907) 82 N. E. 934.

189. 5. **Must Be Followed Whether Right or Wrong.** — National Surety Co. *v.* Long, (Ark. 1908) 107 S. W. 384; Cleveland, etc., R. Co. *v.* Alfred, 123 Ill. App. 477; Curless *v.* Diamond Plate Glass Co., 37 Ind. App. 705, 77 N. E. 289; Hancock *v.* Diamond Plate Glass Co., 38 Ind. 699, 77 N. E. 413; New York L. Ins. Co. *v.* McIntosh, (Miss. 1908) 46 So. 401.

The Rule Will Not Be Departed from unless clearly wrong, so that it cannot be supported upon reason or authority. Plattsmouth First Nat. Bank *v.* Gibson, 74 Neb. 236, 105 N. W. 1081, *reversing* 74 Neb. 236, 104 N. W. 174.

190. 1. Western, etc., R. Co. *v.* Atlanta Third Nat. Bank, 125 Georgia 489, 54 S. E. 621; Cain *v.* Union Cent. L. Ins. Co., (Ky. 1906) 93 S. W. 622.

4. Denver Consol. Electric Co. *v.* Walters, 39 Colo. 301, 89 Pac. 815.

A Decision by a Territorial Court is the law of the case on a subsequent appeal although the territory has in the meantime been admitted as a state. Oklahoma City Electric, etc., Power Co. *v.* Baumhoff, (Okla. 1908) 96 Pac. 758.

5. Zeralla *v.* Supreme Lodge, etc., 223 Ill. 518, 79 N. E. 160, *affirming* 118 Ill. App. 191.

6. Union Nat. Bank *v.* Leary, 183 N. Y. 546, 76 N. E. 1111, *affirming* 94 N. Y. App. Div. 381, 88 N. Y. Supp. 652. See also Zerulla *v.* Supreme Lodge, etc., 223 Ill. 518, 79 N. E. 160, *affirming* 118 Ill. App. 191.

7. **A Charge of the Trial Court** is the law of the case in the absence of exceptions thereto. York *v.* New York, etc., R. Co., 108 N. Y. App. Div. 126, 95 N. Y. Supp. 1105; Wheaton *v.* Liverpool, etc., Ins. Co., (S. Dak. 1905) 104 N. W. 850. See Lipschutz *v.* Horton, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 44, 104 N. Y. Supp. 850.

An Instruction Which Is Not Complained of becomes the law of the case on appeal. Skinner *v.* Wilson, (Neb. 1906) 107 N. W. 771; South Dakota Cent. R. Co. *v.* Smith, (S. Dak. 1908) 116 N. W. 1120.

8. **Decree of Surrogate.** — *In re* Hurlbut, (Surrogate Ct.) 51 Misc. (N. Y.) 263, 100 N. Y. Supp. 1098.

191. 1. Teel *v.* Dunnihoo, 230 Ill. 476, 82 N. E. 844; Terre Haute, etc., R. Co. *v.* Zehner, 166 Ind. 149, 76 N. E. 169.

2. Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393; Alerding *v.* Allison, (Ind. 1908) 83 N. E. 1006, *affirming* (Ind. App. 1907) 82 N. E. 934.

3. Hartford F. Ins. Co. *v.* Enoch, 79 Ark. 475, 96 S. W. 393; St. Louis, etc., R. Co. *v.* Neal, 83 Ark. 591, 98 S. W. 958; Ellis *v.* Witmer, 148 Cal. 528, 83 Pac. 800; Adams *v.* Thornton, 5 Cal. App. 455, 90 Pac. 713; Penn Plate Glass Co. *v.* James H. Rice Co., 216 Ill. 564, 75 N. E. 246, *affirming* 88 Ill. App. 407; Horn *v.* Arnold, 124 Ill. App. 185; Fifer *v.* Rachels, 37 Ind. App. 275, 76 N. E. 186; Nelson *v.* Charles Belcher Lumber Co., 96 Minn. 76, 104 N. W. 833; Reilly *v.* Troy Brick Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 476; Pacific Mill Co. *v.* Inman, (Oregon 1907) 90 Pac. 1099; Church of Jesus Christ *v.* Watson, 30 Utah 126, 83 Pac. 731.

Facts Must Be New and Not Merely Cumulative. — Alerding *v.* Allison, (Ind. 1908) 83 N. E. 1006, *affirming* (Ind. App. 1907) 82 N. E. 934.

192. 2. Anderson Carriage Co. *v.* Gilmore, (Mo. App. 1908) 108 S. W. 594; Porter *v.* State, 73 Neb. 792, 103 N. W. 669; Plattsmouth First Nat. Bank *v.* Gibson, 74 Neb. 236, 105 N. W. 1081, *reversing* 74 Neb. 236, 104 N. W. 174.

3. Louisville, etc., R. Co. *v.* Fowler, (Ky. 1908) 107 S. W. 703; McGrew *v.* Missouri Pac. R. Co., 118 Mo. App. 379, 94 S. W. 719; Matter of New York, 121 N. Y. App. Div. 702, 106 N. Y. Supp. 503.

193. 3. **Where the Case Is Remanded Generally** for a new trial and the same questions are presented on the second trial, the appellate court is not bound to follow opinions on questions of law presented on the first appeal. Eccles *v.* Walker, 75 Neb. 722, 106 N. W. 977.

4. Indianapolis, etc., R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436; Baltimore Belt R. Co. *v.* Sattler, (Md. 1906) 64 Atl. 507; Atwood *v.* Sault Ste Marie, 141 Mich. 295, 104 N. W. 649; Kramer *v.* Northwestern Elevator Co., 97 Minn. 44, 106 N. W. 86; Barth *v.* Borden's Condensed Milk Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 882; O'Brien *v.* New York, (Supm. Ct. App. T.) 57 Misc. (N. Y.) 639, 108 N. Y. Supp. 611.

Where the Law Was Simply Copied into the Record, but no point was made thereon, nor any mention made of it in the opinion, it was held not to be the law of the case on the second trial. Vincent *v.* Means, 207 Mo. 709, 106 S. W. 8.

5. Richardson *v.* Ainsa, (Ariz. 1908) 95 Pac. 103.

6. *United States.* — Toledo, etc., R. Co. *v.* Reardon, (C. C. A.) 159 Fed. 366.

California. — Ellis *v.* Witmer, 148 Cal. 528, 83 Pac. 800.

District of Columbia. — Warner *v.* Grayson, 24 App. Cas. (D. C.) 55.

Illinois. — Penn Plate Glass Co. *v.* James H. Rice & Co., 216 Ill. 567, 75 N. E. 246, *affirming* 88 Ill. App. 407; Gray *v.* Merchants' Ins. Co., 125 Ill. App. 370.

Iowa. — Hensley *v.* Davidson Bros. Co., (Iowa 1907) 112 N. W. 227.

Kentucky. — Louisville, etc., R. Co. *v.* Molloy, (Ky. 1908) 107 S. W. 217.

Michigan. — Kessler *v.* Veio, 148 Mich. 472, 111 N. W. 1085.

Minnesota. — International Boom Co. *v.* Rainy Lake River Boom Corp., (Minn. 1908) 116 N. W. 221.

New York. — Carpenter *v.* New York Journal Pub. Co., 111 N. Y. App. Div. 266, 97 N. Y. Supp. 478; Kiernan *v.* Eidlitz, 115 N. Y. App. Div. 141, 100 N. Y. Supp. 731; Merkel *v.* Lazard, (Supm. Ct. App. Div.) 109 N. Y. Supp. 577; Isbell-Porter Co. *v.* Heineman, (Supm. Ct. App. Div.) 111 N. Y. Supp. 332.

Wisconsin. — State *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 952.

194. 1. Oklahoma City Electric, etc., Power Co. *v.* Baumhoff, (Okla. 1908) 96 Pac. 758.

2. Alabama City, etc., R. Co. *v.* Bates, (Ala. 1908) 46 So. 776; Leeds *v.* Townsend, 124 Ill. App. 582; Chicago, etc., R. Co. *v.* Steckman, 125 Ill. App. 299, *affirmed* 224 Ill. 500, 79 N. E. 602.

195. 1. Muren Coal, etc., Co. *v.* Howell, 217 Ill. 190, 75 N. E. 469, *affirming* 119 Ill. App. 209; Lexington R. Co. *v.* Fain, (Ky. 1906) 90 S. W. 574; Drake *v.* Holbrook, (Ky. 1906) 92 S. W. 297; Warren *v.* Chicago, etc., R. Co., 122 Mo. App. 254, 99 S. W. 16.

STATE AND PUBLIC LANDS.

212. 1. Northern Lumber Co. *v.* O'Brien, (C. C. A.) 139 Fed. 614; U. S. *v.* Oregon, etc., R. Co., (C. C. A.) 143 Fed. 765; Stearns *v.* U. S., (C. C. A.) 152 Fed. 950; U. S. *v.* Grand Rapids, etc., R. Co., 154 Fed. 131; Union Pac. R. Co. *v.* Harris, (Kan. 1907) 91 Pac. 68; Van Wanning *v.* Deeter, (Neb. 1907) 112 N. W. 902.

2. Richard *v.* Perrodin, 116 La. 440, 40 So. 789.

214. 1. **Proprietary Mode of Passing Title.** — General Proprietor, etc., *v.* Force, 68 Atl. 914.

216. 4. **Authority to Devise by Will Lands Not Patented.** — Dean *v.* Jagoe, (Tex. Civ. App. 1907) 103 S. W. 195.

217. 2. Richard *v.* Perrodin, 116 La. 440, 40 So. 789.

218. 1. U. S. *v.* Shannon, 151 Fed. 863; U. S. *v.* Collett, (C. C. A.) 159 Fed. 932; Shannon *v.* U. S., (C. C. A.) 160 Fed. 870.

Congress Has No Power to Relinquish Its Jurisdiction by Compact with States. — Shannon *v.* U. S., (C. C. A.) 160 Fed. 870.

219. 1. U. S. *v.* Dalcour, 203 U. S. 408, 27 U. S. Sup. Ct. 58; Monterey *v.* Jacks, 203 U. S. 360, 27 U. S. Sup. Ct. 67.

3. Northern Lumber Co. *v.* O'Brien, 204 U. S. 190, 27 U. S. Sup. Ct. 249; Frederick *v.* Goodbee, (La. 1908) 45 So. 606; Dew *v.* Pyke, 145 N. Car. 300, 59 S. E. 76.

221. 2. Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 566; Janney *v.* Blackwell, 138 N. Car. 437, 50 S. E. 857; Robson *v.* State Land Office, 148 Mich. 16, 111 N. W. 906, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 221.

222. 3. Roberts *v.* Terrell, (Tex. 1908) 110 S. W. 733, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 222.

223. 1. **Land Reserved for Military Purposes.** — Gavigan *v.* Crary, 2 Alaska 370.

Forest Reservations. — U. S. *v.* Shannon, 151 Fed. 863.

Lands Reserved for Educational Purposes. — U. S. *v.* Chandler-Dunbar Water Power Co., (C. C. A.) 152 Fed. 25.

Reservation in Spanish Grant for Municipal Buildings. — Victoria *v.* Victoria County, (Tex. Civ. App. 1906) 94 S. W. 368.

224. 1. **Land Appropriated No Longer Vacant.** — Roberts *v.* Terrell, (Tex. 1908) 110 S. W. 733, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 224.

2. **Railroad Land Grants.** — Northern Lumber Co. *v.* O'Brien, (C. C. A.) 139 Fed. 614.

Lands Claimed under Spanish, Mexican, or Other Foreign Grants. — Allen *v.* Parmalee, (C. C. A.) 142 Fed. 354; State *v.* Ortiz, 99 Tex. 475, 90 S. W. 1084.

225. 3. **Mere Assertion of Claim to Land Unrecognized by Land Department Not a Reservation.** — U. S. *v.* Chicago, etc., R. Co., (C. C. A.) 160 Fed. 818.

4. **Lands Reverted to State.** — If the deed of the state is set aside the property reverts to the state. Powers *v.* Webster, (Wash. 1907) 91 Pac. 569.

226. 2. Williams *v.* San Pedro, (Cal. 1908) 94 Pac. 234; Ware *v.* Hager, (Ky. 1907) 103 S. W. 283; Stoner *v.* Royar, 200 Mo. 444, 98 S. W. 601; North Hempstead *v.* Eldridge, 111 N. Y. App. Div. 789, 98 N. Y. Supp. 157; Grant *v.* Oregon R., etc., Co., (Oregon 1907) 90 Pac. 178; Providence *v.* Comstock, 27 R. I. 537, 65 Atl. 307; Henry *v.* Seattle, 42 Wash. 420, 85 Pac. 24; State *v.* Ross, 42 Wash. 439, 85 Pac. 29; Hotchkin *v.* Bussell, 46 Wash. 7, 89 Pac. 183; U. S. *v.* Roth, 2 Alaska 257.

Embankment Built as Levee Not Subject to Entry and Sale as Public Land. — State *v.* Blanchard, 117 La. 91, 41 So. 363.

Congress Has Power to Grant Lands Below High-water Mark within United States Territory. — Kneeland *v.* Korter, (Wash. 1905) 82 Pac. 608.

3. Bradshaw *v.* Edelen, 194 Mo. 640, 92 S. W. 691; Roberts *v.* Terrell, (Tex. 1908) 110 S. W. 733.

227. 4. Johnson *v.* Pacific Coast Steamship Co., 2 Alaska 224; U. S. *v.* Berrigan, 2 Alaska 442.

Interference with Interior Department in Its Administration for Benefit of Indians. — Wisconsin *v.* Hitchcock, 201 U. S. 202, 26 U. S. Sup. Ct. 498.

228. 1. Crawford *v.* Burr, 2 Alaska 33.

Trespasser Acquires No Rights or Privileges in Property. — Darby *v.* Emmer, (La. 1908) 45 So. 548.

2. Helstrom *v.* Rodes, 30 Utah 122, 83 Pac. 730.

229. 1. Helstrom *v.* Rodes, 30 Utah 122, 83 Pac. 730.

If by Mistake a Person Erects a Building on the government property it becomes the property of neither the government nor a subsequent homesteader, but the builder has a reasonable time to remove it. Wallbrecht *v.* Blush, (Colo. 1908) 95 Pac. 927.

230. 2. U. S. *v.* Collett, (C. C. A.) 159 Fed. 932.

232. 1. Union Pac. R. Co. *v.* Harris, (Kan.

1907) 91 Pac. 68, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 232.

2. Carmichael *v.* Campodonico, (Cal. App. 1908) 95 Pac. 164; Le Fevre *v.* Amonson, 11 Idaho 45, 81 Pac. 71.

3. Trespasser Cannot Question Title of Actual Possessor. — Darby *v.* Emmer, (La. 1908) 45 So. 548.

233. 1. New England, etc., Oil Co. *v.* Congdon, (Cal. 1907) 92 Pac. 180; Carmichael *v.* Campodonico, (Cal. App. 1908) 95 Pac. 164.

Wrongfully Cutting, Destroying, or Removing Timber. — Nickelson *v.* Cameron Lumber Co., 39 Wash. 569, 81 Pac. 1059.

236. 3. Johnson *v.* Johnson, (Idaho 1908) 95 Pac. 499.

241. 5. Russian-American Packing Co. *v.* U. S., 199 U. S. 570, 26 U. S. Sup. Ct. 157; Royal Packing Co. *v.* U. S., 199 U. S. 579, 26 U. S. Sup. Ct. 159.

242. 4. Russian-American Packing Co. *v.* U. S., 39 Ct. Cl. 460.

5. Russian-American Packing Co. *v.* U. S., 199 U. S. 570, 26 U. S. Sup. Ct. 157; Royal Packing Co. *v.* U. S., 199 U. S. 579, 26 U. S. Sup. Ct. 159.

244. 3. Copper River Lumber Co. *v.* Humphreys, 2 Alaska 39.

245. 6. Waldron *v.* U. S., 143 Fed. 413.

246. 1. **Lapse of Entry Where Decedent Leaves No Heirs.** — Gould *v.* Tucker, (S. Dak. 1905) 105 N. W. 624.

11. McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988.

Mere Settlement Without Taking Other Steps Inoperative. — Russian-American Packing Co. *v.* U. S., 199 U. S. 570, 26 U. S. Sup. Ct. 157; Royal Packing Co. *v.* U. S., 199 U. S. 579, 26 U. S. Sup. Ct. 159.

247. 2. **Improvements Fixed Become Realty.** — McCullers *v.* Johnson, (Tex. Civ. App. 1907) 104 S. W. 502.

250. 5. Nicholson *v.* Congdon, 95 Minn. 188, 103 N. W. 1034.

6. Requirements Exacted at Final Hearing. — Williamson *v.* U. S., 204 U. S., 425, 28 U. S. Sup. Ct. 163.

251. 4. Russian-American Packing Co. *v.* U. S., 199 U. S. 570, 26 U. S. Sup. Ct. 157; Royal Packing Co. *v.* U. S., 199 U. S. 579, 26 U. S. Sup. Ct. 159; Fisher *v.* Owen, 144 N. Car. 649, 57 S. E. 393.

252. 1. Harvey *v.* Holles, 160 Fed. 531.

Entry Cannot Be Made on Land in Actual Possession of Another. — Le Marchel *v.* Teagarden, 152 Fed. 662; Harvey *v.* Holles. 160 Fed. 531; Linebeck *v.* Vos, 160 Fed. 540; Dockendorf *v.* Bassett, 160 Fed. 543; Lyle *v.* Patterson, 160 Fed. 545; McKenna *v.* Atherton, 160 Fed. 547; Gragg *v.* Cooper, 150 Cal. 584, 89 Pac. 346.

Not All Public Lands Subject to Entry. — Stearns *v.* U. S., (C. C. A.) 152 Fed. 900.

Meaning of Term "Entries." — Stearns *v.* U. S., (C. C. A.) 152 Fed. 900.

8. Jones *v.* Hoover, 144 Fed. 217; Huffman *v.* Smyth, 47 Oregon 573, 84 Pac. 80.

253. 2. **Location of Strip Referred to in Oklahoma Proclamation.** — Saylor *v.* Frantz, 17 Okla. 37, 86 Pac. 432.

Being within the Chilocco Reservation before the hour of twelve o'clock noon, September 16, 1893, and making the race therefrom into the Cherokee Outlet was not a disqualification from settling and filing upon said land a homestead entry. Lee *v.* Ellis, 15 Okla. 24, 83 Pac. 715.

3. Saylor *v.* Frantz, 17 Okla. 37, 86 Pac. 432.

5. U. S. *v.* Brace, 149 Fed. 869; U. S. *v.* Richards, 149 Fed. 443; McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988.

Remaining in Possession after Sale Does Not Create New Right of Entry. — Love *v.* Flahire, 206 U. S. 356, 27 U. S. Sup. Ct. 729.

Application Pending Appeal from Former Entry. — Holt *v.* Murphy, 207 U. S. 407, 28 U. S. Sup. Ct. 212.

Application to Enter Land Occupied Gives No Right to Maintain Suit. — Linebeck *v.* Vos, 160 Fed. 540.

Where Fees Were Refused because it was thought that the land was not subject to homestead entry, the government will not be precluded from recovering such fees upon completion of a homestead entry. McKenna *v.* Atherton, 160 Fed. 547.

Preference between Applications Filed Simultaneously will be given to the settler who preserves his right intact. Love *v.* Flahire, 33 Mont. 348, 83 Pac. 882.

6. Entryman Not Obliged to See Proper Entries Made in Register's Books. — Le Marchell *v.* Teagarden, 152 Fed. 662.

Occupant of Indemnity School Land, who contests the right of the state to the same, and attempts to make entry under the homestead laws, is not estopped from asserting his right to improvements of actual settlers upon lands so obtained by the state. State *v.* McCright, (Neb. 1906) 108 N. W. 138.

254. 2. **In Establishing Residence Combination of Act and Intent Necessary.** — U. S. *v.* Richards, 149 Fed. 443.

3. U. S. *v.* Richards, 149 Fed. 443; U. S. *v.* Collett, (C. C. A.) 159 Fed. 932.

Soldier May Enter Claim Without Ever Viewing It. — U. S. *v.* Richards, 149 Fed. 443.

4. Haney *v.* Atwood, (Tex. Civ. App. 1906) 93 S. W. 1093.

Mere "Final Proof" Not Sufficient. — Hamilton *v.* Foster, 16 Okla. 220, 82 Pac. 821.

5. Waisner *v.* Waisner, 15 Wyo. 420, 89 Pac. 580, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 254.

6. McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988; Fisher *v.* Owen, 144 N. Car. 649, 57 S. E. 393; Waisner *v.* Waisner, 15 Wyo. 420, 89 Pac. 580, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 254.

Segregation of Lands Settled upon. — Smith *v.* Crandall, 118 La. 1052, 43 So. 699.

Right to Lease. — Orvell *v.* Bay Mfg. Co., 87 Miss. 632, 40 So. 420.

A Homesteader Is Entitled to Damages for injury done to the premises, but the measure of damages is not the same as if he owned the land in fee simple. McLeod *v.* Spencer, (Okla. 1908) 95 Pac. 754.

7. Braun *v.* Mathieson, (Iowa 1908) 116 N. W. 789; Waisner *v.* Waisner, 15 Wyo. 420, 89 Pac. 580, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 254.

8. Waisner *v.* Waisner, 15 Wyo. [illegible] Pac. 580, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 254.

Lease by Homesteader Not Invalidated by Patent Issuing Few Weeks Later. — Walker *v.* Johnson, 53 Fla. 1076, 43 So. 771.

Land Cannot Be Sold until Final Receiver's Receipt Obtained. Wood *v.* Noel, 116 La. 516, 40 So. 857.

9. Braun *v.* Mathieson, (Iowa 1908) 116 N. W. 789; Bilyen *v.* Pilcher, 16 Okla. 228, 83 Pac. 546.

255. 3. Braun *v.* Mathieson, (Iowa 1908) 116 N. W. 789.

4. Dale *v.* Griffith, (Miss. 1908) 46 So. 543; Demars *v.* Hickey, 13 Wyo. 371, 80 Pac. 521.

5. Dale *v.* Griffith, (Miss. 1908) 46 So. 543.

Administrator Can Only Convey for Benefit of Heirs. — Demars *v.* Hickey, 13 Wyo. 371, 80 Pac. 521.

11. McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988.

256. 2. Stark *v.* Glaser, (Okla. 1907) 91 Pac. 1040.

Homestead Not Exempt from Liabilities for Torts. — Brun *v.* Mann, (C. C. A.) 151 Fed. 145.

Where One Has Made Final Proof and paid the purchase price for land, under the Timber and Stone Act, and received a certificate, the land becomes subject to a judgment lien. Budd *v.* Gallier, (Oregon 1907) 89 Pac. 638.

258. 11. **Status of Inchoate Right** — *On Death of Entryman.* — Braun *v.* Mathieson, (Iowa 1908) 116 N. W. 789.

Continuing in Possession after ceasing to be in the government employ is not equivalent to a new timber culture entry. Prosser *v.* Finn, 208 U. S. 67, 28 U. S. Sup. Ct. 225.

Special Agent of General Land Office Prohibited from Purchasing Public Land. — Prosser *v.* Finn, 208 U. S. 67, 28 U. S. Sup. Ct. 225.

Special Agent of Land Office Prevented from Acquiring Interest in Timber Culture Lands. — Prosser *v.* Finn, 208 U. S. 67, 28 U. S. Sup. Ct. 225.

Timber Culture Entryman May Contract to Sell Before He Secures His Patent. — Watkins Land Co. *v.* Creps, 72 Kan. 333, 83 Pac. 969.

Interest that Can Be Conveyed by Government. — Gould *v.* Tucker, (S. Dak. 1905) 105 N. W. 624.

Who May Make Entry. — Prosser *v.* Finn, 41 Wash. 604, 84 Pac. 404.

262. 1. Boggs *v.* Ganeard, 148 Cal. 711, 84 Pac. 195; Sanford *v.* Maxwell, 3 Cal. App. 242, 84 Pac. 1001.

6. Robinson *v.* Eberhart, 148 Cal. 495, 83 Pac. 452; Litland *v.* Eberhart, 148 Cal. xvii, 83 Pac. 455; Sanford *v.* Maxwell, 3 Cal. App. 242, 84 Pac. 1001.

7. Litland *v.* Eberhart, 148 Cal. xvii, 83 Pac. 455; Robinson *v.* Eberhart, 148 Cal. 495, 83 Pac. 452.

Application of Term "Suitable for Cultivation." — Sanford *v.* Maxwell, 3 Cal. App. 242, 84 Pac. 1001.

8. Litland *v.* Eberhart, 148 Cal. xvii, 83 Pac 455; Boggs *v.* Geneard, 148 Cal. 711, 84 Pac. 195.

Lands Which Necessitate Boring of Artesian Wells Not Fit for Cultivation. — Robinson *v.* Eberhart, 148 Cal. 495, 83 Pac. 452.

263. 1. **Evidence of Residence at Another Place** is admissible to prove the plaintiff is not an actual settler. Franklin L. Ins. Co. *v.* Blackwell, (Tex. Civ. App. 1905) 87 S. W. 360.

2. **There May Be a Bona Fide Settlement** on land without actual possession of more than the settler's house and its environs. Sanford *v.* Maxwell, 3 Cal. App. 242, 84 Pac. 1001.

7. Kleinsorge *v.* Burgbacher, (Cal. App. 1907) 92 Pac. 199; Blakeley *v.* Kingsbury, (Cal. App. 1907) 93 Pac. 129. See also Pardee *v.* Schanzlin, 3 Cal. App. 597, 86 Pac. 812; Henshall *v.* Marsh, 151 Cal. 289, 90 Pac. 693.

8. Kleinsorge *v.* Burbacher, (Cal. App. 1907) 92 Pac. 199. See also Pardee *v.* Schanzlin, 3 Cal. App. 597, 86 Pac. 812; Henshall *v.* Marsh, 151 Cal. 289, 90 Pac. 693.

264. 2. Blakely *v.* Kingsbury, (Cal. App. 1907) 93 Pac. 129.

3. **A Grant Failing to Show Where Land Is Intended to Be Located** is insufficient for indefiniteness and uncertainty. Merritt *v.* Bunting, 107 Va. 174, 57 S. E. 567.

267. 15. **Where a Call Survey Is Made by Protraction** without actually running the lines, and the purchaser applies for a patent in accordance with such survey, he takes the risk of all overlaps and loss by extension of boundaries and his grantee takes no greater rights. Bramblet *v.* Davis, (C. C. A.) 141 Fed. 776.

268. 8. Taulbee *v.* Buckner, (Ky. 1906) 91 S. W. 734; Green *v.* Pennington, 105 Va. 801, 54 S. E. 877.

272. 9. Robson *v.* State Land Office, 148 Mich. 16, 111 N. W. 906, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 272.

284. 9. Flores *v.* State, (Tex. 1907) 100 S. W. 916; Cuellar *v.* State, (Tex. 1907) 100 S. W. 915; Garza *v.* State, (Tex. 1907) 100 S. W. 915; Haynes *v.* State, (Tex. 1907) 100 S. W. 915; Benavides *v.* State, (Tex. 1907) 100 S. W. 915; Pena *v.* State, (Tex. 1907) 100 S. W. 915.

10. Corrigan *v.* State, (Tex. Civ. App. 1906) 94 S. W. 95, *affirmed* (Tex. 1906) 94 S. W. 101.

Survey under Act of Confirmation Held Void. — Sullivan *v.* State, (Tex. Civ. App. 1905) 95 S. W. 645.

286. 5. See Houston Oil Co. *v.* Gallup, (Tex. Civ. App. 1908) 109 S. W. 957.

7. **Statute Prohibiting Surveyor from Purchasing Does Not Invalidate Title Acquired by Surveyor.** — Tompkins *v.* Creighton-McShane Oil Co., (C. C. A.) 160 Fed. 363.

287. 1. Dugat *v.* Means, (Tex. Civ. App. 1905) 91 S. W. 363.

289. 7. **Commissioner May Not Reverse His Decision to Prejudice of Certificate Holder.** — Smith *v.* McClain, (Tex. Civ. App. 1905) 87 S. W. 212.

290. 1. Hulett *v.* Platt, (Tex. Civ. App. 1908) 109 S. W. 207; Roberts *v.* Terrell, (Tex. 1908) 110 S. W. 733.

291. 4. Flores *v.* Terrell, (Tex. 1906) 92 S. W. 32. See also Raoul *v.* Terrell, 99 Tex,

157, 87 S. W. 1146; Winans *v.* McCabe, (Tex. Civ. App. 1905) 92 S. W. 817; Smyth *v.* Saiglin, (Tex. Civ. App. 1908) 110 S. W. 550.

5. Haney *v.* Atwood, (Tex. Civ. App. 1906) 93 S. W. 1093.

An Application Made after Proof of Occupancy by another had been accepted by the commissioner and a certificate issued, precludes the applicant from controverting such occupancy. Smith *v.* McClain, (Tex. Civ. App. 1905) 87 S. W. 212.

Unofficial Surveys of No Effect until Certificates Applied and Approved. — Smyth *v.* Saigling, (Tex. Civ. App. 1908) 110 S. W. 550.

292. 3. **Equitable Relief Granted Where Location Made in Ignorance of Prior One.** — Williams *v.* Finley, (Tex. Civ. App. 1905) 87 S. W. 736.

A Patent Issued One Year Later than Another on field notes of a survey made prior to those of a later patent but not filed until patent issued, is superior to prior patent. Waterhouse *v.* Corbett, (Tex. Civ. App. 1906) 96 S. W. 651.

294. 2. **Actual Knowledge on the Part of a Subsequent Locator** of a previous location by another precludes him from denying any advantage from the fact that the surveyor's office contained no evidence thereof at the date of the subsequent location. Waterhouse *v.* Corbett, (Tex. Civ. App. 1906) 96 S. W. 651.

3. **Field Notes and Original Map Admissible to Cure Ambiguity.** — Goodson *v.* Fitzgerald, (Tex. Civ. App. 1905) 90 S. W. 898.

4. **Presumption that Action of Surveyor Regular.** — Waterhouse *v.* Corbett, (Tex. Civ. App. 1906) 96 S. W. 651.

Patent May Be Demanded upon Return of Field Notes. — Munson *v.* Terrell, (Tex. 1907) 105 S. W. 1114.

5. **Failure to Return Field Notes in Time Does Not Make Prior of Two Patents Superior.** — Waterhouse *v.* Corbett, (Tex. Civ. App. 1906) 96 S. W. 651.

295. 8. Munson *v.* Terrell, (Tex. 1907) 105 S. W. 1114.

296. 7. Houston Oil Co. *v.* Gallup, (Tex. Civ. App. 1908) 109 S. W. 957; Robson *v.* State Land Office, 148 Mich. 17, 111 N. W. 906, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 296.

8. **Abandonment for Fear Does Not Work Forfeiture.** — Jones *v.* Wright, (Tex. Civ. App. 1906) 92 S. W. 1010.

9. Jones *v.* Wright, (Tex. Civ. App. 1906) 92 S. W. 1010; Bumpass *v.* McLendon, (Tex. Civ. App. 1907) 101 S. W. 491.

10. **Commutation of Homestead Entry Not a Pre-emption and Abandonment.** — McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988.

As to What Constitutes Abandonment of Location, see Huffman *v.* Smyth, 47 Oregon 573, 84 Pac. 80.

298. 8. **County Cannot Divest Itself of School Lands Except by Sale.** — Abascosa County *v.* Alderman, (Tex. Civ. App. 1905) 91 S. W. 846.

299. 1. Sanford *v.* Terrell, (Tex. 1905) 87 S. W. 655.

3. **"Day" When Bids to Be Opened.** — Fessenden *v.* Terrell, (Tex. 1907) 98 S. W. 640.

4. Perry *v.* Rutherford, (Tex. Civ. App. 1905) 87 S. W. 1054; Smith *v.* Florence, (Tex. Civ. App. 1906) 96 S. W. 1096; Squares *v.* Terrell, (Tex. 1907) 99 S. W. 541; Roach *v.* Terrell, (Tex. 1907) 99 S. W. 542; Weyert *v.* Terrell, (Tex. 1907) 100 S. W. 133; Lufkin Land, etc., Co. *v.* Terrell, (Tex. 1907) 100 S. W. 134; Patton *v.* Terrell, (Tex. 1907) 105 S. W. 1115; Reininger *v.* Pannell, (Tex. Civ. App. 1907) 101 S. W. 816; Cameron *v.* Terrell, (Tex. 1908) 107 S. W. 46; Perry *v.* Rutherford, (Tex. Civ. App. 1905) 87 S. W. 1054.

6. Fellers *v.* McFatters, (Tex. Civ. App. 1907) 101 S. W. 1065.

One in Possession and Not Showing Title in Himself is not entitled to have the question of a vacancy between surveys litigated. Hickey *v.* Collyns, (Tex. Civ. App. 1905) 90 S. W. 716.

7. Ross *v.* Terrell, 99 Tex. 502, 90 S. W. 1093.

300. 2. Carter *v.* Clifton, (Tex. Civ. App. 1906) 98 S. W. 209.

Award of Additional Land to One Not Actual Settler of No Force. — Jones *v.* Wright, (Tex. Civ. App. 1906) 92 S. W. 1010.

Person Claiming No Interest in Home Section Cannot Attack Its Validity to Prevent Additional Purchase. — Murphy *v.* Terrell, (Tex. 1907) 100 S. W. 130.

Affidavit of Actual Settlement Not Required When Purchasing Additional Land. — Evans *v.* Terrell, (Tex. 1907) 105 S. W. 490.

Eight Sections May Be Purchased in Named Counties. — Cameron *v.* Terrell, (Tex. 1908) 107 S. W. 46.

3. **Lands Considered to Be in Absolute Leased District.** — Roper *v.* Terrell, (Tex. 1907) 99 S. W. 93.

4. Sanford *v.* Terrell, (Tex. 1905) 87 S. W. 655.

5. Linsey *v.* Terrell, (Tex. 1907) 101 S. W. 1073.

Making a Second Application does not waive the applicant's rights under the first. Perry *v.* Rutherford, (Tex. Civ. App. 1905) 87 S. W. 1054.

Abandonment Works Forfeiture of All Rights Acquired by Application. — Edwards *v.* Terrell, (Tex. 1906) 93 S. W. 426.

Requisites of Affidavit of Subsequent Patentee upon Forfeiture of Predecessor. — Haney *v.* Atwood, (Tex. Civ. App. 1906) 93 S. W. 1093.

Sale Canceled for Failure to File Affidavit of Settlement. — Jones *v.* Terrell, (Tex. 1907) 100 S. W. 136.

Application Takes Effect at Time of Filing. — Fellers *v.* McFatter. (Tex. Civ. App. 1907) 101 S. W. 1065.

Settleient by Mistake on Land Near That Applied for — Correction of Mistake. — Morgan *v.* Armstrong, (Tex. Civ. App. 1907) 102 S. W. 1164.

6. **Time of Making Application.** — Perry *v.* Rutherford, (Tex. Civ. App. 1905) 87 S. W. 1054; Williams *v.* Barnes, (Tex. Civ. App. 1906) 99 S. W. 127; Fellers *v.* McFatter, (Tex. Civ. App. 1907) 101 S. W. 1065.

7. **Consideration Other Than Money Invalid.** — San Augustine County *v.* Madden, (Tex. Civ. App. 1905) 87 S. W. 1056.

Request for Return of Cash Is Withdrawal of Application. — Hamilton *v.* Gouldy, (Tex. Civ. App. 1907) 103 S. W. 1117.

For the Interpretation of these provisions, see Rawls *v.* Terrell, (Tex. 1907) 105 S. W. 488.

Act of 1907 Construed to give consideration of an application where the cash payment is subsequently deposited. Buckley *v.* Terrell, (Tex. 1908) 109 S. W. 861.

301. 2. Andrus *v.* Davis, 99 Tex. 303, 89 S. W. 772.

Evidence Sufficient to Show Defendant Was Not Actual Settler. — Jones *v.* Wright, (Tex. Civ. App. 1906) 92 S. W. 1010.

There Is No Repugnancy between a Provision that a purchaser shall occupy the land for three years and another that a temporary absence for a brief time for a specified purpose shall not be deemed a break in the occupancy. Gaddis *v.* Terrell, (Tex. 1908) 110 S. W. 429.

6. **Authority of Commissioner to Fix Date for Receiving Bids.** — Estes *v.* Terrell, (Tex. 1906) 92 S. W. 407.

9. **Commissioner Cannot Prejudice Certificate Holder by Reversing Decision.** — Smith *v.* McClain, (Tex. Civ. App. 1905) 87 S. W. 212.

302. 5. Roberts *v.* Ward, 3 Cal. App. 101, 84 Pac. 430.

8. Smith *v.* Coble, (Tex. Civ. App. 1905) 87 S. W. 170.

9. Dugat *v.* Means, (Tex. Civ. App. 1905) 91 S. W. 363.

303. 1. Dugat *v.* Means, (Tex. Civ. App. 1905) 91 S. W. 363.

4. Mound Oil Co. *v.* Terrell, (Tex. 1906) 92 S. W. 451.

Sale Before Filing of Affidavit of Settlement Works Forfeiture. — Brown *v.* Terrell, (Tex. 1907) 99 S. W. 542; Good *v.* Terrell, (Tex. 1907) 98 S. W. 641.

Lands Must Be Legally Forfeited Before Being Put On Market Again. — Bumpass *v.* McLendon, (Tex. Civ. App. 1907) 101 S. W. 491.

6. **Reinstatement of Claim Prevented by Rights of Third Person Intervening.** — Mound Oil Co. *v.* Terrell, (Tex. 1906) 92 S. W. 451.

7. Andrus *v.* Davis, 99 Tex. 303, 89 S. W. 772; Carter *v.* Clifton, (Tex. Civ. App. 1906) 98 S. W. 209; Slaughter *v.* Terrell, (Tex. 1907) 102 S. W. 399; Overfelt *v.* Vinson, (Tex. Civ. App. 1907) 103 S. W. 1189; Evans *v.* Terrell, (Tex. 1907) 105 S. W. 490; Campbell *v.* Enochs, (Tex. Civ. App. 1908) 107 S. W. 878; Bumpass *v.* McLendon, (Tex. Civ. App. 1907) 101 S. W. 491; Cameron *v.* Terrell, (Tex. 1908) 107 S. W. 46.

Declaration of Forfeiture Must Be Made. — Adams *v.* Terrell, (Tex. 1908) 107 S. W. 537.

9. Sanford *v.* Terrell, (Tex. 1905) 87 S. W. 655.

304. 1. Sanford *v.* Terrell, (Tex. 1905) 87 S. W. 655.

9. McGill *v.* Sites, (Tex. Civ. App. 1907) 103 S. W. 695.

10. Necessary Parties in Mandamus Proceedings to Reinstate Lessee. — Nevell *v.* Terrell, 99 Tex. 355, 87 S. W. 659.

11. **After Forfeiture, Subsequent Leases to Original Lessee as Tenant in Common Valid.** — Rhea *v.* Terrell, (Tex. 1907) 103 S. W. 481.

12. Welhausen *v.* Terrell, (Tex. 1906) 97 S. W. 79. See also Slaughter *v.* Mallet Land. etc., Co., (C. C. A.) 141 Fed. 282.

Mandamus May Issue to Compel Recognition of Lessee. — McDowell *v.* Terrell, 99 Tex. 107, 87 S. W. 668.

After Expiration of Lease No Preference. — Murphy *v.* Terrell, (Tex. 1907) 100 S. W. 130 (Laws 1905); Patterson *v.* Crenshaw, (Tex. Civ. App. 1907) 105 S. W. 996.

Preference Right Not Unconstitutional. — Glasgow *v.* Terrell, (Tex. 1907) 102 S. W. 98.

Lessee May Purchase All Land Embraced in Lease. — Southwestern Oil Co. *v.* State, (Tex. 1907) 103 S. W. 489.

305. 1. Garza *v.* Terrell, 99 Tex. 506, 90 S. W. 1092; Trezevant *v.* Terrell, (Tex. 1907) 99 S. W. 94; Glasgow *v.* Terrell, (Tex. 1907) 102 S. W. 98; Ross *v.* Terrell, (Tex. 1907) 105 S. W. 1116.

2. McDowell *v.* Terrell, 99 Tex. 355, 87 S. W. 668.

4. Meerscheidt *v.* Gardner, (Tex. Civ. App. 1908) 107 S. W. 619.

5. Williams *v.* Barnes, (Tex. Civ. App. 1906) 99 S. W. 127; Ford *v.* Terrell, (Tex. 1908) 107 S. W. 40.

7. Glasgow *v.* Terrell, (Tex. 1907) 102 S. W. 98.

Right of Lessee to Purchase Lost. — Welhausen *v.* Terrell, (Tex. 1906) 97 S. W. 79.

Obligation as Purchaser Substituted for That of Lessee. — Patterson *v.* Knapp, (Tex. 1907) 102 S. W. 97.

307. 1. Janney *v.* Blackwell, 138 N. Car. 437, 50 S. E. 857.

3. See Fisher *v.* Owen, 144 N. Car. 649, 57 S. E. 393; Janney *v.* Blackwell, 138 N. Car. 437, 50 S. E. 857; Johnson *v.* Wescott, 139 N. Car. 29, 51 S. E. 784; Broadwell *v.* Morgan, 142 N. Car. 475, 55 S. E. 340; Walker *v.* Carpenter, 144 N. Car. 674, 57 S. E. 461; Dew *v.* Pyke, 145 N. Car. 300, 59 S. E. 76; Call *v.* Robinett, (N. Car. 1908) 61 S. E. 578; Bealmear *v.* Hutchins, (C. C. A.) 148 Fed. 545; North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290.

308. 3. **Failure to Make Full Payment Does Not Work Forfeiture.** — Frasier *v.* Gibson, 140 N. Car. 272, 52 S. E. 1035.

General Land Laws of State Do Not Apply to Cherokee Lands. — Johnson *v.* Eversole Lumber Co., 144 N. Car. 717, 57 S. E. 518.

7. **Word "Disposal" Means Distribution.** — Scully *v.* Squier, 13 Idaho 417, 90 Pac. 573.

Town Sites Not Subject to Homestead Entry. — White *v.* Whitcomb, 13 Idaho 490, 90 Pac. 1080.

309. 1. McCloskey *v.* Pacific Coast Co., (C. C. A.) 160 Fed. 794; Scully *v.* Squier, 13 Idaho 417, 90 Pac. 573.

4. McCloskey *v.* Pacific Coast Co., (C. C. A.) 160 Fed. 794; Scully *v.* Squier, 13 Idaho 417, 90 Pac. 573.

5. Scully *v.* Squier, 13 Idaho 417, 90 Pac. 573.

310. 4. Wilson *v.* Chicago Lumber, etc., Co., (C. C. A.) 143 Fed. 705.

7. Goble *v.* Slack, (Ariz. 1908) 95 Pac. 126.

10. Roberts *v.* Ward, 3 Cal. App. 101, 84 Pac. 430.

312. 6. Scully *v.* Squier, 13 Idaho 417, 90 Pac. 573.

313. 2. Globe *v.* Slack, (Ariz. 1908) 95 Pac. 126.

3. McCloskey *v.* Pacific Coast Co., (C. C. A.) 160 Fed. 794.

5. McCloskey *v.* Pacific Coast Co., (C. C. A.) 160 Fed. 794; Globe *v.* Slack, (Ariz. 1908) 95 Pac. 126; Scully *v.* Squier, 13 Idaho 417, 90 Pac. 573.

6. McCloskey *v.* Pacific Coast Co., (C. C. A.) 160 Fed. 794.

314. 9. Scully *v.* Squier, 13 Idaho 417, 90 Pac. 573.

318. 3. U. S. *v.* Oregon, etc., R. Co., 152 Fed. 473.

319. 6. **Sale Permitted after Four Years' Residence.** — Sylvester *v.* State, (Wash. 1907) 91 Pac. 15.

321. 5. **Under the Texas Statute** a lease for ninety-nine years of land located by virtue of a donation warrant is an alienation and is void. Overby *v.* Johnston, (Tex. Civ. App. 1906) 94 S. W. 131.

324. 13. **Grants Held Not Made upon Condition that Same Company Own Whole Line.** — State Board of Equalization *v.* People, 229 Ill. 430, 82 N. E. 324.

325. 2. Donohue *v.* St. Paul, etc., R. Co., 101 Minn. 239, 112 N. W. 413.

326. 1. *United States.* — Northern Lumber Co. *v.* O'Brien, 204 U. S. 190, 27 U. S. Sup. Ct. 249; Missouri Valley Land Co. *v.* Wiese, 208 U. S. 234, 28 U. S. Sup. Ct. 295; Minneapolis, etc., R. Co. *v.* Doughty, 208 U. S. 251, 28 U. S. Sup. Ct. 291; Missouri Valley Land Co. *v.* Wiese, 208 U. S. 234, 28 U. S. Sup. Ct. 294; Missouri Valley Land Co. *v.* Wrich, 208 U. S. 250, 28 U. S. Sup. Ct. 299; Northern Lumber Co. *v.* O'Brien, (C. C. A.) 139 Fed. 614; U. S. *v.* Oregon, etc., R. Co., (C. C. A.) 143 Fed. 765; U. S. *v.* Oregon, etc., R. Co., 152 Fed. 473; U. S. *v.* Grand Rapids, etc., R. Co., 154 Fed. 131.

Alaska. — Steele *v.* Tanana Mines R. Co., 2 Alaska 451.

Arizona. — Phœnix, etc., R. Co. *v.* Arizona Eastern R. Co., 9 Ariz. 434, 84 Pac. 1097.

California. — Southern Pac. R. Co. *v.* Lipman, 148 Cal. 480, 83 Pac. 445; Southern Pac. R. Co. *v.* Strauss, 148 Cal. xvii, 83 Pac. 451; Southern Pac. R. Co. *v.* Willard, 148 Cal. xvii, 83 Pac. 452.

Idaho. — Oregon Short Line R. Co. *v.* Stalker, (Idaho 1907) 94 Pac. 56.

Kansas. — Walbridge *v.* Russell County, 74 Kan. 341, 86 Pac. 473; Missouri, etc., R. Co. *v.* Watson, 74 Kan. 494, 87 Pac. 687.

Minnesota. — Donohue *v.* St. Paul, etc., R. Co., 101 Minn. 239, 112 N. W. 413.

Nebraska. — Wiese *v.* Union Pac. R. Co., (Neb. 1906) 108 N. W. 175.

Washington. — Slaght *v.* Northern Pac. R. Co., 39 Wash. 576, 81 Pac. 1062; Spokane, etc., R. Co. *v.* Washington, etc., R. Co., (Wash. 1908) 95 Pac. 64.

3. U. S. *v.* Oregon, etc., R. Co., 152 Fed.

4. Donohue *v.* St. Paul, etc., R. Co., 101 Minn. 239, 112 N. W. 413.

327. 1. **Approval of Definite Location Presumed from Facts in Case.** — Missouri, etc., R. Co. *v.* Watson, 74 Kan. 494, 87 Pac. 687.

8. Oregon Short Line R. Co. *v.* Stalker, (Idaho 1907) 94 Pac. 56; White, etc., Townsite Co. *v.* J. Neils Lumber Co., 100 Minn. 16, 110 N. W. 371; Columbia Valley R. Co. *v.* Portland, etc., R. Co., (Wash. 1908) 93 Pac. 1067.

328. 2. Columbia Valley R. Co. *v.* Portland, etc., R. Co., (Wash. 1908) 93 Pac. 1067.

4. Enid, etc., R. Co. *v.* Kephart, (Okla. 1906) 91 Pac. 1049.

6. **Reverted Lands Not Excepted from Operation of Granting Act of 1864.** — Ostrom *v.* Wood, 140 Fed. 294.

7. **Forfeiture Does Not Affect Lands Covered by Same Grant Not Included in Judgment.** — U. S. *v.* Southern Pac. R. Co., 152 Fed. 303.

329. 10. **Unauthorized Withdrawal by Commissioner.** — Brandon *v.* Ard, 74 Kan. 424, 87 Pac. 366.

11. Northern Lumber Co. *v.* O'Brien, (C. C. A.) 139 Fed. 614.

330. 7. Northern Lumber Co. *v.* O'Brien, 204 U. S. 190, 27 U. S. Sup. Ct. 249; Northern Lumber Co. *v.* O'Brien, (C. C. A.) 139 Fed. 614; U. S. *v.* Grand Rapids, etc., R. Co., 154 Fed. 131.

8. **Effect of Filing Lists of Indemnity Lands.** — Sjoli *v.* Dreschel, 199 U. S. 564, 26 U. S. Sup. Ct. 155.

9. Sjoli *v.* Dreschel, 199 U. S. 564, 26 U. S. Sup. Ct. 155; Northern Lumber Co. *v.* O'Brien, 204 U. S. 190, 27 U. S. Sup. Ct. 249; Minneapolis, etc., R. Co. *v.* Doughty, 208 U. S. 251, 28 U. S. Sup. Ct. 291; U. S. *v.* Oregon, etc., R. Co., (C. C. A.) 143 Fed. 765; Oregon, etc, R. Co. *v.* U. S., (C. C. A.) 148 Fed. 603; Lisso *v.* Devillier, 118 La. 559, 43 So. 163; *In re* Lisso, 118 La. 562, 43 So. 164; Donohue *v.* St. Paul, etc., R. Co., 101 Minn. 239, 112 N. W. 413.

Actual or Constructive Notice to Settlers Necessary. — Oregon Short Line R. Co. *v.* Stalker, (Idaho 1907) 94 Pac. 56.

331. 1. Slaght *v.* Northern Pac. R. Co., 39 Wash. 576, 81 Pac. 1062; Missouri, etc., R. Co. *v.* Watson, 74 Kan. 494, 87 Pac. 687.

Where Donation Claim Abandoned, Land Passed under Grant to Railroad. — U. S. *v.* Oregon, etc., R. Co., 152 Fed. 473.

3. Ayres *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 436.

332. 9. Enid, etc., R. Co. *v.* Kephart, (Okla. 1906) 91 Pac. 1049.

333. 4. Southern Pac. R. Co. *v.* Bovard, 4 Cal. App. 76, 87 Pac. 203; Oregon Short Line R. Co. *v.* Stalker, (Idaho 1907) 94 Pac. 56.

6. **Location in Alternate Sections.** — Williams *v.* Finley, (Tex. Civ. App. 1905) 87 S. W. 736.

334. 10. Southern Pac. R. Co. *v.* Bovard, 4 Cal. App. 76, 87 Pac. 203.

335. 1. Sjoli *v.* Dreschel, 199 U. S. 564, 26 U. S. Sup. Ct. 155; Phœnix, etc., R. Co. *v.* Arizona Eastern R. Co., 9 Ariz. 434, 84 Pac. 1097.

4. **Selection and Filing of Lists Does Not**

Prevent Passing of Grant in Aid of Railroad. — U. S. *v.* Chicago, etc., R. Co., 148 Fed. 884.

Lands Not Being Swamp Lands were not segregated by the making out of lists by the state, and title passed by a later grant to the railroad. U. S. *v.* Chicago, etc., R. Co., (C. C. A.) 160 Fed. 818.

5. **No Lands Either in Indemnity or Place Limits Passed** to the Southern Pacific Railroad Co. by the grant of March 3, 1871. U. S. *v.* Southern Pac. R. Co., 152 Fed. 314.

336. 1. U. S. *v.* Southern Pac. R. Co., 152 Fed. 303; Southern Pac. R. Co. *v.* Bovard, 4 Cal. App. 76, 87 Pac. 203.

7. Union Pac. R. Co. *v.* Harris, (Kan. 1907) 91 Pac. 68, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 336.

8. Oregon Short Line R. Co. *v.* Stalker, (Idaho 1907) 94 Pac. 56.

337. 1. Ayres *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1905) 88 S. W. 436.

3. Oregon Short Line R. Co. *v.* Stalker, (Idaho 1907) 94 Pac. 56.

5. Oregon Short Line R. Co. *v.* Stalker, (Idaho 1907) 94 Pac. 56; Union Pac. R. Co. *v.* Harris, (Kan. 1907) 91 Pac. 68, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 336 [337].

Only a Pre-emption Right Was Given to the claimants of the government lands by the Act of 1877. Little Rock, etc., R. Co. *v.* Greer, 77 Ark. 387, 96 S. W. 129.

338. 1. **Settler May Maintain Possessory Action to Secure Compensation for Lands.** — Slaght *v.* Northern Pac. R. Co., 39 Wash. 576, 81 Pac. 1062.

7. Alaska Pac. R., etc., Co. *v.* Copper River, etc., R. Co., (C. C. A.) 160 Fed. 862; Oregon Short Line R. Co. *v.* Stalker, (Idaho 1907) 94 Pac. 56; Donohue *v.* St. Paul, etc., R. Co., 101 Minn. 239, 112 N. W. 413; Doughty *v.* Minneapolis, etc., R. Co., 15 N. Dak. 290, 107 N. W. 971; Slaght *v.* Northern Pac. R. Co., 39 Wash. 576, 81 Pac. 1062.

A Railroad Company Becomes an Unlawful Trespasser in appropriating a right of way across a homestead entry, and obtains no right either in law or equity to the land. Enid, etc., R. Co. *v.* Kephart, (Okla. 1906) 91 Pac. 1070.

339. 1. Phœnix, etc., R. Co. *v.* Arizona Eastern R. Co., 9 Ariz. 434, 84 Pac. 1097.

6. Slattery *v.* Glassell, 117 La. 557, 42 So. 135, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 339.

341. 11. **Act of February 25, 1867.** — Eastern Oregon Land Co. *v.* Brosnan, 147 Fed. 807.

343. 5. **Grant to State for Governor's Residence.** — State *v.* Budge, 14 N. Dak. 532, 105 N. W. 724.

344. 1. Kittel *v.* Internal Imp. Fund, 139 Fed. 941; Kerns *v.* Lee, 142 Fed. 985; U. S. *v.* Chicago, etc., R. Co., (C. C. A.) 160 Fed. 818; Hibben *v.* Malone, (Ark. 1908) 109 S. W. 1008.

3. Kittel *v.* Internal Imp. Fund, 139 Fed. 941; U. S. *v.* Chicago, etc., R. Co., (C. C. A.) 160 Fed. 818.

6. U. S. *v.* Chicago, etc., R. Co., (C. C. A.) 160 Fed. 818.

Evidence Not Sufficient to Show Lands Were Swamp Lands in 1850. — Olds *v.* State Land Office, 150 Mich. 134, 112 N. W. 952.

346. 12. See Kerns *v.* Lee, 142 Fed. 985; U. S. *v.* Chicago, etc., R. Co., 148 Fed. 884.

347. 3. Chauvin *v.* Louisiana Oyster Commission, (La. 1907) 46 So. 38.

4. **Rights of Settlers under State Swamp Land Laws** are not affected where the lands are not alleged to be swamp or overflow lands. State *v.* Warner Valley Stock Co., (Oregon 1906) 86 Pac. 780.

5. **A Patent by the State Is Unauthorized** until the land is patented by the United States government or certified by the state as belonging to it. Henry *v.* Brannan, (Ala. 1906) 42 So. 995.

7. **Mere Selection and Filing of Lists Not Sufficient to Segregate Lands.** — U. S. *v.* Chicago, etc., R. Co., 148 Fed. 884.

8. **Selection by State Officers Must Be Approved and Confirmed by Secretary of Interior.** — Kerns *v.* Lee, 142 Fed. 985.

350. 4. Railroad Lands Co. *v.* Shreveport, 117 La. 140, 41 So. 443, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 350.

6. Railroad Lands Co. *v.* Shreveport, 117 La. 142, 41 So. 443, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 350.

352. 1. **Conveyance in Compromise of Claim against County.** — Wheeler *v.* Reynolds Land Co., 193 Mo. 279, 91 S. W. 1050; Ferguson *v.* Girard Trust Co., (Mo. 1906) 91 S. W. 1055.

5. **County Has No Authority to Enter into Executory Contract for Sale of Lands.** — Wheeler *v.* Reynolds Land Co., 193 Mo. 279, 91 S. W. 1050; Ferguson *v.* Girard Trust Co., (Mo. 1906) 91 S. W. 1055.

353. 5. **Preferential Rights May Be Waived by Failure to Make Application in Time.** — Waters *v.* Pool, 149 Cal. 795, 87 Pac. 617.

8. **When No Particular Lands Are Mentioned** in the contract, a patent to another will not be set aside to satisfy the claim of contractors. Himmelberger-Luce Land, etc., Co., 201 Mo. 296, 100 S. W. 1049.

12. **Application to Purchase.** — Waters *v.* Pool, 149 Cal. 795, 87 Pac. 617.

354. 3. **The Territory of Oklahoma Received No Title** to sections sixteen and thirty-six in each township by the Organic Act (May 2, 1890) and could not recover the value of such land appropriated for railway purposes. Territory *v.* Choctaw, etc., R. Co., (Okla. 1908) 95 Pac. 420.

5. State *v.* Irvine, 14 Wyo. 318, 84 Pac. 90.

355. 1. **Partial Survey Not Sufficient to Identify It.** — Clemmons *v.* Gillette, 33 Mont. 321, 83 Pac. 879.

4. **Approval by Federal Authorities Necessary to Effective Vesting of Title.** — Clemmons *v.* Gillette, 33 Mont. 321, 83 Pac. 879.

5. **Fractional Sections** in fractional townships did not pass to the state under the general grant by Congress of sixteenth sections for school purposes, and the sale of such a section by a parish treasurer conveyed no title. Lauve *v.* Wilson, 114 La. 699, 38 So. 522.

357. 7. Peterson *v.* Baker, 39 Wash. 278, 81 Pac. 681, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 357.

361. 2. **Sale Subject to a Lease Is Improper** when the sale must occur after the lease has expired. Bushey *v.* Hardin, 74 Kan. 285, 86 Pac. 146.

Sale of Leased Lands Prohibited Except to Lessee or His Assignee. — Trevy *v.* Lowrie, (Tex. Civ. App. 1905) 89 S. W. 981.

3. Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290.

Recording Assignments of Lease. — Hile *v.* Troupe, (Neb. 1906) 109 N. W. 218.

363. 3. Williams *v.* State, 76 Ark. 290, 88 S. W. 980.

5. **After Reference of a Contest** the surveyor-general has no power to receive the application of another person to purchase the land involved in the contest. Darlington *v.* Butler, 3 Cal. App. 448, 86 Pac. 194.

One Who First Makes Proper Application Has Prior Rights. — Bieber *v.* Lambert, (Cal. 1907) 93 Pac. 94.

Proceedings to Sell Land Are Proper after the lease has expired. Bushey *v.* Hardin, 74 Kan. 285, 86 Pac. 146.

Application Cannot Be Arbitrarily Rejected When Terms Complied with. — Knopp *v.* Patterson, (Tex. Civ. App. 1905) 87 S. W. 391.

9. State *v.* McCright, (Neb. 1906) 108 N. W. 138; Sanford *v.* Terrell, (Tex. 1905) 87 S. W. 655. See also State *v.* Eaton, (Neb. 1907) 110 N. W. 709.

Court May Reject Sale if Price Inadequate. — Williams *v.* State, 76 Ark. 290, 88 S. W. 980.

County Commissioners Must Consent to Appointment of Appraisers. — Bushey *v.* Hardin, 74 Kan. 285, 86 Pac. 146.

"Legal Subdivisions" in the statute applies only to the divisions of land which result from the application of the ordinary methods used in the making of the government survey, viz., forty-acre lots. Hopper *v.* Nation (Kan. 1908) 96 Pac. 77.

10. **Board of School Land Commissioners.** — De Laittre *v.* Board of Com'rs, 149 Fed. 800.

Commissioner of General Land Office. — Sanford *v.* Terrell, (Tex. 1905) 87 S. W. 655.

Officers of a County to Which an Unorganized County Is Attached may sell land situated in the latter. Spencer *v.* Smith, 74 Kan. 142, 85 Pac. 573.

364. 1. White, etc., Townsite Co. *v.* J. Neils Lumber Co., 100 Minn. 16, 110 N. W. 371.

3. **Intention and Good Faith Essential.** — Christensen *v.* Bartlett, (Kan. 1908) 95 Pac. 711.

Nebraska — Preferential Rights of Settlers. —State *v.* McCright, (Neb. 1906) 108 N. W. 138.

Preferential Right Cannot Be Acquired by Settling Thereon While Lease Is in Force. — Hopper *v.* Nation, (Kan. 1908) 96 Pac. 77.

4. **To Acquire a Preference Right to Lease School Lands** requires a person to be an actual and *bona fide* settler who has placed improvements thereon permanent in character. Schley *v.* Vail, (Ariz. 1908) 95 Pac. 113.

A Lessee Has a Preference Right to renew or release, and such right is a valuable one, subject to sale and purchase. Noel *v.* Barrett, 18 Okla. [illegible] P. [illegible]

365. 3. Sexton *v.* Coahoma County, 86 Miss. 380, 38 So. 636; Hopper *v.* Nation, (Kan. 1908) 96 Pac. 77.

Interest on Proceeds of Sale Cannot Be Used for Erection of Buildings. — Roach *v.* Gooding, 11 Idaho 244, 81 Pac. 642.

Minimum Price Per Acre Repealed by Revised Statutes of 1870. — Board of Directors *v.* Lanier, 117 La. 307, 41 So. 583.

366. 1. Sehlbrede *v.* State Land Board, 46 Oregon 615, 81 Pac. 702. See also Andrus *v.* Davis, 99 Tex. 303, 89 S. W. 772; Davis *v.* Benedict, 75 Kan. 47, 88 Pac. 536; Davis *v.* Bishop, 75 Kan. 855, 88 Pac. 537; Spencer *v.* Smith, 47 Kan. 142, 85 Pac. 573.

The Basis of a Forfeiture is the notice and return of service. Spencer *v.* Smith, 74 Kan. 142, 85 Pac. 573.

4. Phares *v.* Gleason, 73 Kan. 604, 85 Pac. 572.

7. Phares *v.* Gleason, 73 Kan. 604, 85 Pac. 572; Willoughby *v.* Terrell, 99 Tex. 488, 90 S. W. 1091.

Substituted Service by Posting Notice. — Spencer *v.* Smith, 74 Kan. 142, 85 Pac. 573.

Duty of County Treasurer to Accept Payment of Delinquent Interest. — Beatty *v.* Smith, 75 Kan. 803, 90 Pac. 272.

367. 1. Sehlbrede *v.* State Land Board, 46 Oregon 615, 81 Pac. 702.

2. Phares *v.* Gleason, 73 Kan. 604, 85 Pac. 572.

3. Spencer *v.* Smith, 74 Kan. 142, 85 Pac. 573; Hile *v.* Troupe, (Neb. 1906) 109 N. W. 218.

Waiver of Forfeiture. — Sehlbrede *v.* State Land Board, 46 Oregon 615, 81 Pac. 702.

7. Willoughby *v.* Terrell, 99 Tex. 488, 90 S. E. 1091. See also Hickert *v.* Van Doren, (Kan. 1907) 92 Pac. 593.

368. 1. **Resale Before Rights of Prior Purchaser Have Been Legally Forfeited Is Void.** — Hickert *v.* Van Doren, (Kan. 1907) 92 Pac. 593.

Lease Must Be Officially Canceled Before Resale. — Willoughby *v.* Terrell, 99 Tex. 488, 90 S. W. 1091.

371. 7. **Commissioners List Containing Purchaser's Name Not Evidence of Title.** — Knapp *v.* Patterson, (Tex. Civ. App. 1905) 87 S. W. 391.

372. 6. **Agreement to Convey Before Issuance of Certificate to Purchaser Is Valid.** — Bryan *v.* Graham, 5 Cal. App. 599, 91 Pac. 114.

374. 3. **Land Department May Make Reasonable Rules and Regulations.** — Van Gesner *v.* U. S., (C. C. A.) 153 Fed. 46.

7. Warner Valley Stock Co. *v.* Morrow, 48 Oregon 258, 86 Pac. 369.

375. 5. **Compensation Shall Not Exceed Three Thousand Dollars.** — Stewart *v.* U. S., 206 U. S. 185, 27 U. S. Sup. Ct. 631.

376. 3. U. S. *v.* Hitchcock, 28 App. Cas. (D. C.) 338; Williamson *v.* U. S., 207 U. S. 425, 28 U. S. Sup. Ct. 163; Stewart *v.* U. S., 206 U. S. 185, 27 U. S. Sup. Ct. 631.

Commissioner and Agents Not Agents of State. — Summers *v.* Geer, (Oregon 1907) 93 Pac. 133.

377. 3. Parryman *v.* Cunningham, 16 Okla. 94, 82 Pac. 822.

4. Stewart *v.* U. S., 206 U. S. 185, 27 U. S.

Sup. Ct. 631; Eastern Oregon Land Co. *v.* Andrews, 45 Oregon 208, 77 Pac. 117, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 377.

7. **A Finding of the Secretary of the Interior** that a subsequent contest is not a separate action, but merely a supplemental proceeding to the original case will, in a collateral action, be adopted and approved by the Supreme Court. Best *v.* Frazier, 16 Okla. 523, 85 [illegible].

Commissioner May Review Decision of Predecessor for Irregularity. — Morse *v.* Odell, (Oregon 1907) 89 Pac. 139.

379. 3. U. S. *v.* Shannon, 151 Fed. 863.

Commissioner of General Land Office cannot require an applicant after he has made his preliminary sworn statement, to additionally swear to his *bona fides*. Williamson *v.* U. S., 207 U. S. 425, 28 U. S. Sup. Ct. 163.

7. Love *v.* Flahive, 205 U. S. 195, 27 U. S. Sup. Ct. 486; Healey *v.* Forman, 14 N. Dak. 499, 105 N. W. 233, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 379.

No Rights Acquired by Stranger to Erroneous Cancellation Proceeding. — Martinson *v.* Marzolf, 15 N. Dak. 471, 108 N. W. 801; Polson *v.* Callvert, 38 Wash. 614, 80 Pac. 815.

380. 2. Budd *v.* Gallier, (Oregon 1907) 89 Pac. 638.

4. Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469; Budd *v.* Gallier, (Oregon 1907) 89 Pac. 638.

Cancellation for Fraud by State Board. — De Laittre *v.* Board of Com'rs, 149 Fed. 800.

381. 1. Love *v.* Flahive, 205 U. S. 195, 27 U. S. Sup. Ct. 486; Love *v.* Flahive, 33 Mont. 348, 83 Pac. 882; Gourley *v.* Countryman, (Okla. 1907) 90 Pac. [illegible].

Allegation of Abandonment Not Necessary. — Shepard *v.* Mace, 148 Cal. 270, 82 Pac. 1046.

Imprisonment for Crime Does Not Work Abandonment. — Huffman *v.* Smyth, 47 Oregon 573, 84 Pac. 89.

3. **Notice that Board Intended Changing Its Ruling Unnecessary.** — Polson *v.* Callvert, 38 Wash. 614, 80 Pac. 815.

5. Edwards *v.* Terrell, (Tex. 1906) 93 S. W. [illegible].

382. 5. **Refunding of Purchase Money Not Necessary upon Cancellation of Patent.** —U. S. *v.* Laam, 149 Fed. 581.

383. 5. U. S. *v.* Grand Rapids, etc., R. Co., 154 Fed. 131; Smith *v.* Crandall, 118 La. 1052, [illegible].

Cancellation of Patent for Mistake or Fraud. — Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469.

Cancellation of Patent Granted While Application for Entry Was Pending on Appeal. — Sage *v.* U. S., (C. C. A.) 140 Fed. 65.

6. U. S. *v.* Laam, 140 Fed. 581.

384. 2. **Patentee Cannot Profit by Mistake of Land Department.** — Gleason *v.* White, 199 U. S. 54, 25 U. S. Sup. Ct. 782.

5. Le Fevre *v.* Amonson, 11 Idaho 45, 81 Pac. 71.

385. 1. De Laittre *v.* Board of Com'rs, 149 Fed. 800; Wallula Pac. R. Co. *v.* Portland, etc., R. Co., 154 Fed. 902; Phœnix, etc., R. Co. *v.* Arizona Eastern R. Co., 9 Ariz. 434, 84 Pac. 1097; Thompson *v.* Basler, 148 Cal. 646, 84 Pac. 161.

386. 1. Jones *v.* Hoover, 144 Fed. 217; Zimmerman *v.* McCurdy, 15 N. Dak. 79, 106 N. W. 125.

Injunction to Enforce Possessory Rights. — Zimmerman *v.* McCurdy, 15 N. Dak. 79, 106 N. W. 125.

2. Lyle *v.* Patterson, 160 Fed. 545; Darby *v.* Emmer, (La. 1908) 45 So. 548.

4. **Protection of One Claimant under Preemption Laws against Another.** — Zimmerman *v.* McCurdy, 15 N. Dak. 79, 106 N. W. 125.

387. 3. Smith *v.* Roberts, 1 Cal. App. 148, 81 Pac. 1026.

In North Carolina It Is Statutory. — Walker *v.* Carpenter, 144 N. Car. 674, 57 S. E. 461.

One Not Interested in Land Nor Applicant to Purchase Cannot Initiate Contest. — Dollenmayer *v.* Pryor, 150 Cal. 1, 87 Pac. 616.

4. *In re* Entry No. 49 of Williams, (N. Car. 1907) 59 S. E. 608.

388. 1. *United States.* — Estes *v.* Timmons, 199 U. S. 391, 26 U. S. Sup. Ct. 85; Love *v.* Flahive, 205 U. S. 195, 27 U. S. Sup. Ct. 486; Sage *v.* U. S., (C. C. A.) 140 Fed. 65; Kerns *v.* Lee, 142 Fed. 985; Miller *v.* Margerie, (C. C. A.) 149 Fed. 694; Le Marchel *v.* Teagarden, 152 Fed. 662; Harvey *v.* Holles, 160 Fed. 531; Linebeck *v.* Vos, 160 Fed. 540; McKenna *v.* Atherton, 160 Fed. 547; U. S. *v.* Chicago, etc., R. Co., (C. C. A.) 160 Fed. 818.

Arizona. — Old Dominion Copper Min., etc., Co. *v.* Haverly, (Ariz. 1907) 90 Pac. 333.

California. — Thompson *v.* Basler, 148 Cal. 646, 84 Pac. 161; Cragie *v.* Roberts, (Cal. App. 1907) 92 Pac. 97.

Idaho. — Le Fevre *v.* Amonson, 11 Idaho 45, 81 Pac. 71; White *v.* Whitcomb, 13 Idaho 490, 90 Pac. 1080; Oregon Short Line R. Co. *v.* Stalker, (Idaho 1908) 94 Pac. 56.

Iowa. — Barringer *v.* Davis, (Iowa 1907) 112 N. W. 208.

Minnesota. — White, etc., Townsite Co. *v.* J. Neils Lumber Co., 100 Minn. 23, 110 N. W. 371, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 388.

Montana. — Love *v.* Flahive, 33 Mont. 348, 83 Pac. 882; Kennedy *v.* Dickie, 34 Mont. 205, 85 Pac. 982.

Nevada. — Hand *v.* Cook, (Nev. 1907) 92 Pac. 3.

North Dakota. — Martinson *v.* Marzolf, 15 N. Dak. 471, 108 N. W. 801.

Oklahoma. — Perryman *v.* Cunningham, 16 Okla. 94, 82 Pac. 822; Greenmey *v.* Coate, 18 Okla. 160, 88 Pac. 1054.

Oregon. — Warner Valley Stock Co. *v.* Morrow, 48 Oregon 258, 86 Pac. 369.

Conclusiveness of Adjudication of State Land Officials. — De Laittre *v.* Board of Com'rs, 149 Fed. 800.

389. 4. Cragie *v.* Roberts, (Cal. App. 1907) 92 Pac. 97.

11. Kennedy *v.* Dickie, 34 Mont. 205, 85 Pac. 982; U. S. *v.* Citizens' Trading Co., (Okla. 1907) 93 Pac. 448.

390. 1. *United States.* — Bealmear *v.* Hutchins, (C. C. A.) 148 Fed. 545.

Arizona. — Old Dominion Copper Min., etc., Co. *v.* Haverly, (Ariz. 1907) 90 Pac. 333.

Georgia. — Houston *v.* State, 124 Ga. 417, 52 S. E. 757.

Louisiana. — Frellsen *v.* Crandell, (La. 1908) 45 So. 558; Chauvin *v.* Louisiana Oyster Commission, (La. 1907) 46 So. 38.

Maryland. — See Carswell *v.* Swindell, 102 Md. 636, 62 Atl. 956.

Missouri. — Frank *v.* Goddin, 193 Mo. 390, 91 S. W. 1057.

North Carolina. — Call *v.* Robinett, (N. Car. 1908) 61 S. E. 578.

Oregon. — Warner Valley Stock Co. *v.* Morrow, 48 Oregon 264, 86 Pac. 369, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 390; Grant *v.* Oregon R., etc., Co., (Oregon 1907) 90 Pac. 178.

Texas. — Carter *v.* Clifton, (Tex. Civ. 1906) 98 S. W. 209.

Wyoming. — Demars *v.* Hickey, 13 Wyo. 371, 80 Pac. 521.

391. 2. Bealmear *v.* Hutchins, (C. C. A.) 148 Fed. 545; Frontroy *v.* Atkinson, (Tex. Civ. App. 1907) 100 S. W. 1023.

State Lands. — Janney *v.* Blackwell, 138 N. Car. 437, 50 S. E. 857.

3. Bealmear *v.* Hutchins, (C. C. A.) 148 Fed. 545.

392. 3. Miller *v.* Donovan, 3 Cal. App. 325, 85 Pac. 159.

5. Janney *v.* Blackwell, 138 N. Car. 437, 50 S. E. 857; Sampson's Heirs *v.* Chester's Heirs, (Tenn. 1904) 91 S. W. 43.

State Lands. — Berry *v.* W. M. Ritter Lumber Co., 141 N. Car. 386, 54 S. E. 278; Green *v.* Pennington, 105 Va. 801, 54 S. E. 877.

7. North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290.

State Lands. — Reeve *v.* North Carolina Land, etc., Co., (C. C. A.) 141 Fed. 821.

The Junior Enterer Has the Burden of proving that the senior entry was invalid for indefiniteness, in an action by the junior enterer to have the defendants declared to hold the legal title. Frasier *v.* Gibson, 140 N. Car. 272, 52 S. E. 1035.

393. 1. Kneeland *v.* Korter, (Wash. 1905) 82 Pac. 608.

395. 6. Reeve *v.* North Carolina Land, etc., Co., (C. C. A.) 141 Fed. 821; Bealmear *v.* Hutchins, (C. C. A.) 148 Fed. 545; Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 566; Ward *v.* Forrester, (Tex. Civ. App. 1905) 87 S. W. 751.

7. Call *v.* Robinett, (N. Car. 1908) 61 S. E. 578; Frontroy *v.* Atkinson, (Tex. Civ. App. 1907) 100 S. W. 1023.

396. 3. U. S. *v.* Laam, 149 Fed. 581.

5. Oregon, etc., R. Co. *v.* U. S., (C. C. A.) 144 Fed. 832.

7. Sage *v.* U. S., (C. C. A.) 140 Fed. 65; U. S. *v.* Laam, 149 Fed. 581; Budd *v.* Gallier, (Oregon 1907) 89 Pac. 638.

397. 1. U. S. *v.* Laam, 149 Fed. 581; Budd *v.* Gallier, (Oregon 1907) 89 Pac. 638; State *v.* Ross, 44 Wash. 249, 87 Pac. 262, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 397; Powers *v.* Webster, (Wash. 1907) 91 Pac. 569, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 397.

State Lands. — Janney *v.* Blackwell, 138 N. Car. 437, 50 S. E. 857.

7. McKenna *v.* Atherton, 160 Fed. 547; Green *v.* Clyde, 80 Ark. 391, 97 S. W. 437; Call *v.* Robinett, (N. Car. 1908) 61 S. E. 578; Gourley *v.* Countryman, (Okla. 1907) 90 Pac. 427.

398. 3. Southern Pac. R. Co. *v.* U. S., 200 U. S. 341, 26 U. S. Sup. Ct. 296.

4. Kerns *v.* Lee, 142 Fed. 985.

399. 1. Le Marchel *v.* Teagarden, 152 Fed. 662; Love *v.* Flahive, 33 Mont. 348, 83 Pac. 882.

3. Clear Case of Fraud Necessary. — U. S. *v.* Collett, (C. C. A.) 159 Fed. 932.

Large Number of Locations by Same Person Does Not Imply Fraud. — U. S. *v.* Richards, 149 Fed. 443.

400. 5. Miller *v.* Margerie, (C. C. A.) 149 Fed. 694; Kennedy *v.* Dickie, 34 Mont. 205, 85 Pac. 982; Hulett *v.* Platt, (Tex. Civ. App. 1908) 109 S. W. 207.

6. Le Marchel *v.* Teagarden, 152 Fed. 662.

7. Le Marchel *v.* Teagarden, 152 Fed. 662.

401. 3. Smith *v.* Crandall, 118 La. 1052, 43 So. 699; Kennedy *v.* Dickie, 34 Mont. 205, 85 Pac. 982; Warner-Valley Stock Co. *v.* Morrow, 48 Oregon 258, 86 Pac. 369; Powers *v.* Webster, (Wash. 1907) 91 Pac. 569.

402. 1. Miller *v.* Donovan, 3 Cal. App. 325, 85 Pac. 159.

403. 5. *Arkansas.* — Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469; Hibben *v.* Malone, (Ark. 1907) 109 S. W. 1008.

California. — Boggs *v.* Geneard, 148 Cal. 711, 84 Pac. 195; Miller *v.* Donavan, 3 Cal. App. 325, 85 Pac. 159.

Florida. — Walker *v.* Johnson, 53 Fla. 1076, 43 So. 771.

Kansas. — State *v.* Cipra, 71 Kan. 715, 81 Pac. 488, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 403.

Minnesota. — Nicholson *v.* Congdon, 95 Minn. 188, 103 N. W. 1034; Rogers *v.* Clark Iron Co., (Minn. 1908) 116 N. W. 739.

Missouri. — Wilcox *v.* Phillips, 199 Mo. 288, 97 S. W. 886.

North Carolina. — Fisher *v.* Owen, 144 N. Car. 649, 57 S. E. 393; Dew *v.* Pike, 145 N. Car. 300, 59 S. E. 76.

Oregon. — Huffman *v.* Smyth, 47 Oregon 573, 84 Pac. 80; Budd *v.* Gallier, (Oregon 1907) 89 Pac. 638.

Texas. — Bourn *v.* Robinson, (Tex. Civ. App. 1908) 107 S. W. 873.

Washington. — Peterson *v.* Sloss, 39 Wash. 207, 81 Pac. 744.

404. 2. Budd *v.* Gallier, (Oregon 1907) 89 Pac. 638.

5. Thompson *v.* Basler, 148 Cal. 646, 84 Pac. 161; Schwab *v.* Wilson, 72 Kan. 617, 84 Pac. 123.

406. 5. **Unnecessary for Grantee to Notify Land Office that It Is Successor to Prospective Patentee.**—Menasha Wooden Ware *v.* Nelson, 45 Wash. 543, 88 Pac. 1018.

6. Dale *v.* Griffith, (Miss. 1908) 46 So. 543; Peterson *v.* Sloss, 39 Wash. 207, 81 Pac. 744; Waring *v.* Loomis, (Wash. 1908) 93 Pac. 1088.

Option to Buy after Entryman Proves up Is Not in Violation of Law. — U. S. *v.* Richards, 149 Fed. 443.

7. Gilbert *v.* Auster, (Wis. 1908) 116 N. W. 177.

407. 2. Watkins Land Co. *v.* Creps, 72 Kan. 333, 83 Pac. 969; Nicholson *v.* Congdon, 95 Minn. 188, 103 N. W. 1034; Dale *v.* Griffith, (Miss. 1908) 46 So. 543.

408. 5. Wilson *v.* Nugent, (Tex. Civ. App. 1906) 91 S. W. 241; Alford *v.* Williams, (Tex. Civ. App. 1906) 91 S. W. 636.

7. Jackson *v.* Baker, 48 Oregon 155, 85 Pac. 512.

409. 1. U. S. *v.* Richards, 149 Fed. 443.

A Contract to Pay a Specified Sum in consideration of an advance to defray pre-emption expenses and to pay a further sum proportionate with the price obtained for the land if sold is valid. Hafemann *v.* Gross, 199 U. S. 342, 26 U. S. Sup. Ct. 80.

2. Jackson *v.* Baker, 48 Oregon 155, 85 Pac. 512.

410. 2. Hartman *v.* Butterfield Lumber Co., 199 U. S. 335, 26 U. S. Sup. Ct. 63.

An Option for the Purchase of a homestead after the entryman proves up is not illegal. U. S. *v.* Richards, 149 Fed. 443.

8. Wiasner *v.* Waisner, 15 Wyo. 420, 89 Pac. 580, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 410.

411. 4. Stark *v.* Morgan, 73 Kan. 461, 85 Pac. 567, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 411; Harwell *v.* Harbison, (Tex. Civ. App. 1906) 95 S. W. 30; Rogers *v.* Minneapolis Threshing Mach. Co., (Wash. 1907) 92 Pac. 774.

412. 2. Stark *v.* Morgan, 73 Kan. 453, 85 Pac. 567.

3. Stark *v.* Morgan, 73 Kan. 461, 85 Pac. 567, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 412.

5. See Stark *v.* Morgan, 73 Kan. 461, 85 Pac. 567, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 412, and *overruling* Brewster *v.* Madden, 15 Kan. 249.

6. Stark *v.* Morgan, 73 Kan. 453, 85 Pac. 567.

7. Stark *v.* Morgan, 73 Kan. 453, 85 Pac. 567, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 412; Crochet *v.* McCamant, 116 La. 6, 40 So. 474, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 412.

415. 4. Hamilton *v.* Foster, 16 Okla. 220, 82 Pac. 821.

Resulting Trust May Be Defeated by Waiver of Right of Entry. — Holt *v.* Murphy, 207 U. S. 407, 28 U. S. Sup. Ct. 212.

10. **Title Vests in United States upon Filing of Deed of Relinquishment.** — Territory *v.* Perrin, (Ariz. 1905) 83 Pac. 361.

417. 5. Wilcox *v.* Phillips, 199 Mo. 288, 97 S. W. 886.

Transfer of Original Bounty Warrant Passes Equitable Title. — Clark *v.* Hoover, (Tex. Civ. App. 1908) 110 S. W. 792.

418. 7. Kleinsorge *v.* Burgbacher, (Cal. App. 1907) 92 Pac. 199.

420. 8. **Patent Not Void for Failure to Describe Prior Grants Excluded.** — Fox *v.* Cornett, (Ky. 1906) 92 S. W. 959.

9. Le Marchel *v.* Teagarden, 152 Fed. 662; Hamilton *v.* Foster, 16 Okla. 220, 82 Pac. 821.

10. Smith *v.* Crandall, 118 La. 1052, 43 So. 699; Frellsen *v.* Crandall, (La. 1908) 45 So. 558; Rogers *v.* Clark Iron Co., (Minn. 1908) 116 N. W. 739.

Patent Held to Pass Estate in Fee. — Fordyce *v.* Woman's Christian Nat. Library Assoc., 79 Ark. 550, 96 S. W. 155.

The Question of Validity of land patents is one between the state and the patentee, or their assigns. Smith *v.* Crandall, 118 La. 1052, 43 So. 699.

421. 9. McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988.

Recitals in Patents Must Be Presumed to Refer to Dates of Entry. — Asher *v.* Brashear, (Ky. 1906) 90 S. W. 1060.

11. Rogers *v.* Clark Iron Co., (Minn. 1908) 116 N. W. 739; Warner Valley Stock Co. *v.* Morrow, 48 Oregon 264, 86 Pac. 369, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 421.

422. 14. **Patent Not Void for Failure to Exclude Prior Grants Without Describing Them.** — Kountze *v.* Hatfield, (Ky. 1907) 99 S. W. 262.

18. Budd *v.* Gallier, (Oregon 1970) 89 Pac. 638.

19. McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988; Janney *v.* Blackwell, 138 N. Car. 437, 50 S. E. 857.

20. Janney *v.* Blackwell, 138 N. Car. 437, 50 S. E. 857.

423. 1. Warner Valley Stock Co. *v.* Morrow, 48 Oregon 258, 86 Pac. 369.

8. **Particular Acts Held to Be Grants in Praesenti.** — Kneeland *v.* Korter, (Wash. 1905) 82 Pac. 608.

425. 5. Providence *v.* Comstock, 27 R. I. 537, 65 Atl. 307.

426. 6. Johnson *v.* Johnson, (Idaho 1908) 95 Pac. 499.

Grant Void for Want of Consideration. — Wheeler *v.* Reynolds Land Co., 193 Mo. 279, 91 S. W. 1050; Ferguson *v.* Girard Trust Co., (Mo. 1906) 91 S. W. 1055.

429. 3. **Land Department's Construction Cannot Legally Prevail against Correct Legal Interpretation.** — U. S. *v.* Grand Rapids, etc. R. Co., 154 Fed. 131.

6. Los Angeles *v.* Los Angeles Farming, etc., Co., (Cal. 1908) 93 Pac. 869.

430. 1. **Entry Not Indispensably Necessary to Validity of Grant.** — Sampson's Heirs *v.* Chester's Heirs, (Tenn. 1904) 91 S. W. 42.

432. 2. Gould *v.* Tucker, (S. Dak. 1908) 105 N. W. 624; Demars *v.* Hickey, 13 Wy. 371, 80 Pac. 521.

If No Heirs Exist, Land Open as Part of Public Domain. — Gould *v.* Tucker, (S. Dak. 1905) 105 N. W. 624.

436. 6. **Conditions Subsequent.** — Warrior River Coal, etc., Co. *v.* Alabama State Land Co., (Ala. 1907) 45 So. 53, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436.

437. 9. Warrior River Coal, etc., Co. *v.* Alabama State Land Co., (Ala. 1907) 45 So. 53, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 437; Spokane, etc., R. Co. *v.* Washington, etc., R. Co., (Wash. 1908) 95 Pac. 64.

439. 4. Warner Valley Stock Co. *v.* Morrow, 48 Oregon 258, 86 Pac. 360.

442. 4. Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469.

444. 1. U. S. *v.* Detroit Timber, etc., Co., 200 U. S. 321, 26 U. S. Sup. Ct. 282; U. S. *v.* Laam, 149 Fed. 581; Green *v.* Clyde, 80 Ark. 391, 97 S. W. 437; San Augustine County *v.* Madden, (Tex. Civ. App. 1905) 87 S. W. 1056.

3. De Laittre *v.* Board of Com'rs, 149 Fed. 800.

To Be Bona Fide Purchaser Acquisition of Legal Title Must Be Shown. — U. S. *v.* Laam, 149 Fed. 581.

4. U. S. *v.* Detroit Timber, etc., Co., 200 U. S. 321, 26 U. S. Sup. Ct. 282; U. S. *v.* Clark, 200 U. S. 601, 26 U. S. Sup. Ct. 340; U. S. *v.* Clark, (C. C. A.) 138 Fed. 294.

Bona Fide Purchaser Must Deny Notice of Fraud. — Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469.

445. 1. Hartman *v.* Butterfield Lumber Co., 199 U. S. 335, 26 U. S. Sup. Ct. 63; Ostrom *v.* Wood, 140 Fed. 294; McKenna *v.* Atherton, 160 Fed. 547; Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469; Walker *v.* Johnson, 53 Fla. 1076, 43 So. 771; Missouri, etc., R. Co. *v.* Watson, 74 Kan. 494, 87 Pac. 687; San Augustine County *v.* Madden, (Tex. Civ. App. 1905) 87 S. W. 1056; Peterson *v.* Sloss, 39 Wash. 207, 81 Pac. 744.

446. 3. Oregon, etc., R. Co. *v.* U. S., (C. C. A.) 144 Fed. 832.

447. 1. Hopper *v.* Nation, (Kan. 1908) 96 Pac. 77; Olds *v.* State Land Office, 150 Mich. 134, 112 N. W. 952; Willoughby *v.* Terrell, 99 Tex. 488, 90 S. W. 1091.

448. 3. **Acquiescence in Decision of Land Office for Six Years Bars Right to Relief.** — Harvey *v.* Holles, 160 Fed. 531.

Laches No Bar Where Land Wild and Unoccupied. — Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469.

Laches Held to Bar Purchase by Settler. — Smith *v.* Roberts, 1 Cal. App. 148, 81 Pac. 1026.

8. U. S. *v.* Chandler-Dunbar Water Power Co., (C. C. A.) 152 Fed. 25; Wiese *v.* Union Pac. R. Co., (Neb. 1906) 108 N. W. 175.

449. 3. Asher *v.* Howard, 122 Ky. 175, 91 S. W. 270; Wiese *v.* Union Pac. R. Co., (Neb. 1906) 108 N. W. 175; Pfeuffer *v.* Bondies, (Tex. Civ. App. 1906) 93 S. W. 221; Carter *v.* Clifton, (Tex. Civ. App. 1906) 98 S. W. 209.

A Patent, When Granted and Accepted, is conclusive as to the extent of the right passing under the grant. Barringer *v.* Davis, (Iowa 1907) 112 N. W. 208.

A State Patent to a tract of land as "swamp" does not *per se* prove that title passed to the state under the "swamp land grants." Moulierre *v.* Coco, 116 La. 845, 41 So. 113.

4. **Erroneous Recital of Facts Not Binding.** — McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988.

5. **Stranger to Title Cannot Object to Disclosure of Real Facts.** — McCorkell *v.* Herron, 128 Iowa 324, 103 N. W. 988.

6. Rozell *v.* Chicago Mill, etc., Co., 76 Ark. 525, 89 S. W. 469; Bradshaw *v.* Edelen, 194 Mo. 640, 92 S. W. 601; Budd *v.* Gallier, (Oregon 1907) 89 Pac. 628; Waterhouse *v.* Corbett, (Tex. Civ. App. 1906) 96 S. W. 651.

Conveyance by State Prima Facie Proof of Title. — Covington *v.* Berry, 76 Ark. 460, 88 S. W. 1005.

Abandoned Survey Cannot Be Set Up against Subsequent Patent. — Fuller *v.* Keesee, (Ky. 1907) 104 S. W. 700.

8. Patent Not Assertion of Title in Government. — Asher *v.* Howard, 122 Ky. 175, 91 S. W. 270.

450. 1. Boynton *v.* Ashabranner, 75 Ark. 415, 88 S. W. 566.

2. Covington *v.* Berry, 76 Ark. 460, 88 S. W. 1005.

3. Frellsen *v.* Crandell, (La. 1908) 45 So. 558.

4. Frellsen *v.* Crandell, (La. 1908) 45 So. 558.

451. 6. **Award of Commissioner of General Land Office Prima Facie Evidence of Validity.** — Hood *v.* Pursley, (Tex. Civ. App. 1905) 87 S. W. 870.

7. Bieber *v.* Lambert, (Cal. 1907) 93 Pac. 94.

452. 2. **Partial Survey by Government Insufficient to Relieve One Cutting Timber from Liability.** — U. S. *v.* Birdseye, (C. C. A.) 137 Fed. 516.

453. 4. **By Inclosing Government Lands with His Own,** one acquires no right of exclusive possession. Hardman *v.* King, 14 Wyo. 503, 85 Pac. 382.

454. 1. **Right to Cut Timber Extends to All Mineral Lands in State or Territory.** — U. S. *v.* Edgar, 140 Fed. 655.

Purposes for Which Timber May Be Cut. — U. S. *v.* Edgar, 140 Fed. 655.

Act Repealed. — That part of section 2461 relating to the cutting or removing of timber from the public lands with intent to export or dispose of the same was repealed by the second Act of June 3, 1878, as expanded by the Act of August 4, 1892. Morgan *v.* U. S., (C. C. A.) 148 Fed. 189.

2. **Intent Immaterial under Public Acts of 1903.** — People *v.* Christian, 144 Fich. 247, 107 N. W. 919.

5. Clemmons *v.* Gillette, 33 Mont. 321, 83 Pac. 879.

455. 9. **Double or Treble Damages Constitutional.** — State *v.* Shevlin-Carpenter Co., 102 Minn. 470, 113 N. W. 634.

Treble Damages Not Authorized. — People *v.* Bennett, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 160, 107 N. Y. Supp. 406.

456. 1. **Casual and Involuntary Trespass.** — State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935.

7. Anderson *v.* U. S., (C. C. A.) 152 Fed. 87.

8. Richards *v.* Perrodin, 116 La. 447, 40 So. 780, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 456.

Permit to Remove Timber Purchased Limited to Two Logging Seasons. — State *v.* Shevlin-Carpenter Co., 102 Minn. 470, 113 N. W. 634.

Time Must Be Cut and Removed During Life of Permit. — State *v.* Rat Portage Lumber Co., (Minn. 1908) 115 N. W. 162; State *v.* Lesure Lumber Co., (Minn. 1908) 115 N. W. 167.

458. 7. Anderson *v.* U. S., (C. C. A.) 152 Fed. 87.

11. What Are "Mineral" Lands. — Anderson *v.* U. S., (C. C. A.) 152 Fed. 87.

STATE OFFICER.

462. 4. State Officer. — See State *v.* Chittenden, 127 Wis. 468, 107 N. W. 500.

STATES.

465. 3. See State *v.* Southern R. Co., 145 N. Car. 495, 59 S. E. 570.

466. 6. Saucier *v.* New Orleans, 119 La. 179, 43 So. 999.

468. 2. Moore *v.* McGuire, 142 Fed. 787.

3. Louisiana *v.* Mississippi, 202 U. S. 1, 26 U. S. Sup. Ct. 408.

469. 1. Moore *v.* McGuire, 142 Fed. 787; State *v.* Muncie Pulp Co., (Tenn. 1907) 104 S. W. 437.

2. Louisiana *v.* Mississippi, 202 U. S. 1, 26 U. S. Sup. Ct. 408; Moore *v.* McGuire, 142 Fed. 787, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 469.

3. *Arkansas and Mississippi.* — Moore *v.* McGuire, 142 Fed. 787.

Arkansas and Tennessee. — State *v.* Muncie Pulp Co., (Tenn. 1907) 104 S. W. 437; Stockley *v.* Cissna, (Tenn. 1907) 104 S. W. 792.

Kansas and Missouri. — See McBride *v.* Steinweden, 72 Kan. 508, 83 Pac. 822; Fowler *v.* Wood, 73 Kan. 511, 85 Pac. 763.

Louisiana and Mississippi. — Louisiana *v.* Mississippi, 202 U. S. 1, 26 Sup. Ct. 408.

Missouri and Nebraska. — Missouri *v.* Nebraska, 197 U. S. 577, 25 U. S. Sup. Ct. 580.

4. **Compact Between Virginia and Kentucky — Right of Taxation.** — Eastern Kentucky Coal Lands Corp. *v.* Com., (Ky. 1907) 106 S. W. 260.

470. 7. **There Is No Impairment of Contract Obligation** by a statute calling in past due bonds for payment and declaring that they shall be invalid unless presented within six months. Tipton *v.* Smythe, 78 Ark. 392, 94 S. W. 678.

Option to Retire Bonds Vested in Legislature Only. — Colbert *v.* State, 86 Miss. 769, 39 So. 65.

A Bona Fide Holder of Stolen Bonds can assert his title against the state. Ehrlich *v.* Jennings, 78 S. Car. 269, 58 S. E. 922.

A State in Issuing Negotiable Paper incurs the same responsibilities as attach to individuals or private corporations in like cases. Ehrlich *v.* Jennings, 78 S. Car. 269, 58 S. E. 922.

471. 3. See Durbridge *v.* State, 117 La. 841, 42 So. 337.

472. 2. **Appropriation as Prerequisite.** — See Hager *v.* Shuck, 120 Ky. 574, 87 S. W. 300; Colbert *v.* State, 86 Miss. 769, 39 So. 65; State *v.* Eggers, (Nev. 1907) 91 Pac. 819; Calbreath *v.* Dunbar, 46 Oregon 580, 81 Pac. 366; State *v.* Washington Dredging, etc., Co., 43 Wash. 508, 86 Pac. 936.

Some Constitutions Require Specific Appropriation. — See Moore *v.* Alexander, (Ark. 1908) 107 S. W. 395; State *v.* Searle, (Neb. 1907) 112 N. W. 380.

Specific Appropriation Defined. — State *v.* Searle, (Neb. 1907) 112 N. W. 380.

Contingent Expenses of Legislature. See Russ *v.* Com., 210 Pa. St. 544, 60 Atl. 169.

Appropriation Must Be Warranted by Law. — State *v.* Houser, 125 Wis. 256, 104 N. W. 77.

Attending Dedication of Monument to General Grant. — Russ *v.* Com., 210 Pa. St. 544, 60 Atl. 169.

An Appropriation for the Maintenance of the State Guard is included in the necessary expenses of the government. State *v.* Moore, 76 Ark. 197, 88 S. W. 881.

3. Incurring Indebtedness. — Bryan *v.* Menefee, (Okla. 1908) 95 Pac. 471.

Duty of Auditor to Issue Warrants. — See State *v.* Searle, (Neb. 1907) 112 N. W. 380.

5. For Instances of what has been held to be an appropriation, or what not, see the following cases: State *v.* Moore, 76 Ark. 197, 88 S. W. 881; Colbert *v.* State, 86 Miss. 769, 39 So. 65; State *v.* Eggers, (Nev. 1907) 91 Pac. 819.

473. 2. **An Option to Pay Bonds at a Certain Period** is not an appropriation for payment. Colbert *v.* State, 86 Miss. 769, 39 So. 65.

3. Appropriation in Payment of Private Debts Prohibited. — State *v.* Houser, 125 Wis. 256, 104 N. W. 77.

Appropriation for Public Building for Joint Use of State and Parish. — Benedict *v.* New Orleans, 115 La. 645, 39 So. 792.

Right to Make Appropriations for Civil War Veterans. — Opinion of Justices, 190 Mass. 611, 77 N. E. 820.

Cannot Appropriate for Sugar Bounties. — Oxnard Beet Sugar Co. *v.* State, 73 Neb. 57, 105 N. W. 716.

An Appropriation to an Unincorporated Society for the improvement of "corn" is unconstitutional. Michigan Corn Imp. Assoc. *v.* Auditor Gen., 150 Mich. 69, 113 N. W. 582.

5. Appropriation for Agricultural and Mechanical College Valid. — Agricultural, etc., College *v.* Hager, (Ky. 1905) 87 S. W. 1125.

Appropriation to Cornell University to establish a school of forestry held valid. People *v.* Brooklyn Cooperage Co., 187 N. Y. 142, 79 N. E. 866, *affirming* 114 N. Y. App. Div. 723, 100 N. Y. Supp. 19.

474. 2. **In Alabama** an appropriation for such purposes can be made only by a two-thirds vote of all the members elected in each house. State *v.* Sowell, 143 Ala. 494, 39 So. 246.

6. **State Fairs.** — See State *v.* Holmes, (N. Dak. 1907) 112 N. W. 144.

7. **Oil Refinery as Work of Internal Improvement.** — See State *v.* Kelly, 71 Kan. 811, 81 Pac. 450.

The Maintenance of a Bridge in one town in part at the expense of another is not a work of internal improvement. Bloomer *v.* Bloomer, 128 Wis. 294, 107 N. W. 974.

10. Same in Wisconsin. — See State *v.* Houser, 125 Wis. 256, 104 N. W. 77.

475. 1. See Russ *v.* Com., 210 Pa. St. 544, 60 Atl. 169.

5. Appropriation Continuing Beyond Two Years Void. — Moore *v.* Alexander, (Ark. 1908) 107 S. W. 395.

Lapsing of Appropriation. — Colbert *v.* State, 86 Miss. 769, 39 So. 65.

A Forfeiture of an Appropriation will not be decreed unless the act clearly shows that such was the legislative intention. State *v.* Holmes, (N. Dak. 1907) 112 N. W. 144.

Time of Payment of Appropriation. — Maryland Agricultural College *v.* Atkinson, 102 Md. 557, 62 Atl. 1035.

6. Benedict *v.* New Orleans, 115 La. 645, 39 So. 792.

476. 3. **Meaning of "Evidence of Indebtedness."** — See Bryan *v.* Menefee, (Okla. 1908) 95 Pac. 431.

4. Crouter *v.* Bennett, 34 Colo. 120, 81 Pac. 761.

477. 6. Boston Molasses Co. *v.* Com., 193 Mass. 387, 79 N. E. 827.

478. 1. Quayle *v.* State, 192 N. Y. 47, 84 N. E. 583.

479. 8. Albin Co. *v.* Com., (Ky. 1908) 108 S. W. 299.

480. 2. See *dissenting* opinion of Whitfield, C. J., in Henry *v.* State, 87 Miss. 1, 39 So. 856, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 480.

4. Drainage Commission *v.* National Contracting Co., 136 Fed. 780; Moore *v.* McGuire, 142 Fed. 787; State *v.* Jahraus, 117 La. 286, 41 So. 575.

5. Moore *v.* McGuire, 142 Fed. 787.

7. State *v.* Young, 134 Iowa 505, 110 N. W. 292.

8. Elmore *v.* Fields, (Ala. 1907) 45 So. 66; State *v.* Jahraus, 117 La. 286, 41 So. 575; Claussen *v.* Luverne, (Minn. 1908) 115 N. W. 643; Spencer *v.* State, 110 N. Y. App. Div. 585, 97 N. Y. Supp. 154; Hopkins *v.* Clemson Agricultural College, 77 S. Car. 12, 57 S. E. 551, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 480–487.

Liability for Stranger's Negligence When Acquiesced in by State Officer. — Spencer *v.* State, 110 N. Y. App. Div. 585, 97 N. Y. Supp. 154.

481. 3. See Litchfield *v.* Bond, 186 N. Y. 66, 78 N. E. 719.

7. State *v.* Jahraus, 117 La. 286, 41 So. 575.

13. Durbridge *v.* State, 117 La. 841, 42 So. 337. See also Hord *v.* State, 167 Ind. 622, 79 N. E. 916.

482. 1. **The State Need Not Place a Party in Statu Quo** before bringing an action to cancel an illegal contract. State *v.* Washington Dredging, etc., Co., 43 Wash. 508, 86 Pac. 936; State *v.* Ross, 44 Wash. 698, 87 Pac. 1151.

2. See Van Dorn Iron Works *v.* State, (Neb. 1906) 107 N. W. 856.

3. Hord *v.* State, 167 Ind. 622, 79 N. E. 916; Hager *v.* Shuck, 120 Ky. 574, 87 S. W. 300.

State Not Liable for False Representation. — Albin Co. *v.* Com., (Ky. 1908) 108 S. W. 299.

6. **State Held Not Bound by Attorney-General's Employment of Attorney to Collect War Claims** for services rendered after the expiration of the officer's official term. Hord *v.* State, 167 Ind. 622, 79 N. E. 916.

8. Hord *v.* State, 167 Ind. 622 79 N. E. 916; People *v.* Brooklyn Cooperage Co., 187 N. Y. 142, 79 N. E. 866.

484. 1. **Strict Compliance with Requirement as to Letting Contracts Essential.** — Bunch *v.* Tipton, 76 Ark. 167, 88 S. W. 888.

4. Hord *v.* State, 167 Ind. 622, 79 N. E. 916; Durbridge *v.* State, 117 La. 841, 42 So. 337.

7. Hord *v.* State, 167 Ind. 622, 79 N. E. 916.

8. **Neither Can Successors or Other Officers Ratify.** — Hord *v.* State, 167 Ind. 622, 79 N. E. 916.

485. 9. State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485; State *v.* Moody, 202 Mo. 120, 100 S. W. 619.

486. 2. Georgia *v.* Tennessee Copper Co., 206 U. S. 230, 27 U. S. Sup. Ct. 618.

6. Alabama Girls' Industrial School *v.* Adler, 144 Ala. 555, 42 So. 116; Wilson *v.* Louisiana Purchase Exposition Commission 121 Iowa 386, 110 N. W. 1045; Com. *v.* Barker, (Ky. 1907) 103 S. W. 303; McArthur Bros. Co. *v.* Com., (Mass. 1908) 83 N. E. 334; Sanders *v.* Saxton, 182 N. Y. 477, 75 N. E. 529; Seitz *v.* Messerschmitt, 117 N. Y. App. Div. 401, 102 N. Y. Supp. 732; Nussbaum *v.* State, 119 N. Y. App. Div. 755, 104 N. Y. Supp. 527; Hopkins *v.* Clemson Agricultural College, 77 S. Car. 12, 57 S. E. 551; State *v.* Murray, (S. Car. 1908) 60 S. E. 928; Michel Brewing Co. *v.* State, 19 S. Dak. 302, 103 N. W. 40; Stephens *v.* Texas, etc., R. Co., (Tex. 1906) 97 S. W. 309; Producers' Oil Co. *v.* Stephens, (Tex. Civ. App. 1906) 99 S. W. 157.

7. McArthur Bros. Co. *v.* Com., (Mass. 1908) 83 N. E. 334.

487. 1. Lancaster County *v.* State, 74 Neb. 211, 104 N. W. 187.

4. McArthur Bros. Co. *v.* Com., (Mass. 1908) 83 N. E. 334.

5. See Bragaw *v.* Gooding, (Idaho 1908) 94 Pac. 438.

6. Must Follow Mode Prescribed by Statute. — Michel Brewing Co. *v.* State, 19 S. Dak. 302, 103 N. W. 40.

7. Durbridge *v.* State, 117 La. 841, 42 So. 337, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487; Hood *v.* State, (La. 1908) 45 So. 733. See also Alabama Girls' Industrial School *v.* Reynolds, 143 Ala. 579, 42 So. 114; Alabama Girls' Industrial School *v.* Adler, 144 Ala. 555, 42 So. 116.

8. Death of Appellant Does Not Abate Action. — Durbridge *v.* State, 117 La. 841, 42 So. 337, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 487.

9. Suits against the State for Breaches of Contract not authorized by Rev. Laws Mass., c. 201, as amended by Stat. 1905, p. 293, c. 370. McArthur Bros. Co. *v.* Com., (Mass. 1908) 83 N. E. 334.

Right to Include State as Party Defendant in Partition Action is expressly given by Code Civ. Pro. N. Y., § 1594. Haley *v.* Sheridan, 190 N. Y. 331, 83 N. E. 296.

The Charter of a College under the Control of the State authorizing it to "sue and be sued" gives no authority to bring actions against the state without its consent. Hopkins *v.* Clemson Agricultural College, 77 S. Car. 12, 57 S. E. 551, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 480–487.

488. 3. State *v.* Murray, (S. Car. 1908) 60 S. E. 928.

4. State *v.* Murray, (S. Car. 1908) 60 S. E. 928.

6. Alabama Girls' Industrial School *v.* Reynolds, 143 Ala. 579, 42 So. 114; Alabama Girls' Industrial School *v.* Adler, 144 Ala. 555, 42 So. 116; Wilson *v.* Louisiana Purchase Exposition Commission, 133 Iowa 586, 110 N. W. 1045; Sanders *v.* Saxton, 182 N. Y. 477, 75 N. E. 529; Hopkins *v.* Clemson Agricultural College, 77 S. Car. 12, 57 S. E. 551; Stephens *v.* Texas, etc., R. Co., (Tex. 1906) 97 S. W. 309; Producers' Oil Co. *v.* Stephens, (Tex. Civ. App. 1906) 99 S. W. 157.

A Tort Action against an Officer Is Not Transformed into an action against the state by the interposition of a plea that the officer was acting for and in behalf of the state. Elmore *v.* Fields, (Ala. 1907) 45 So. 66.

7. State *v.* Southern R. Co., 145 N. Car. 495, 59 S. E. 570; State *v.* Murray, (S. Car. 1908) 60 S. E. 928.

A Proceeding to Enjoin Officers from Unwarranted Destruction of Valuable Property and unwarranted expenditure of the funds of the state, is not a suit against the state. Christmas *v.* Warfield, 105 Md. 530, 66 Atl. 491.

Counterclaim Maintainable against State. — Com. *v.* Barker, (Ky. 1907) 103 S. W. 303.

Suits against County Officers to restrain the assessment and collection of taxes assessed by the state board of equalization are not of the inhibited class. Briscoe *v.* McMillan, 117 Tenn. 115, 100 S. W. 111.

For Other Cases wherein this general subject is discussed, see the following: State *v.* Southern R. Co., 145 N. Car. 495, 59 S. E. 570; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811; Ehrlich *v.* Jennings, 78 S. Car. 269, 58 S. E. 922; State *v.* Murray, (S. Car. 1908) 60 S. E. 928.

489. 3. See *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441.

490. 1. **The Amendment** "applies to a suit brought against a state by one of its own citizens, as well as to a suit brought by a citizen of another state." *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441.

2. See State *v.* Southern R. Co., 145 N. Car. 495, 59 S. E. 570.

4. See Kansas *v.* U. S., 204 U. S. 331, 27 U. S. Sup. Ct. 388.

7. See *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441; De Laittre *v.* Board of Com'rs, 149 Fed. 800.

11. *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; Western Union Tel. Co. *v.* Andrews, 154 Fed. 95; Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783.

491. 1. De Laittre *v.* Board of Com'rs, 149 Fed. 800.

2. Morrill *v.* American Reserve Bond Co., 151 Fed. 305.

3. *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441; De Laittre *v.* Board of Com'rs, 149 Fed. 800; Morrill *v.* American Reserve Bond Co., 151 Fed. 308; Western Union Tel. Co. *v.* Andrews, 154 Fed. 95; Southern R. Co. *v.* McNeill, 155 Fed. 756. See also State *v.* Murray, (S. Car. 1908) 60 S. E. 928.

4. *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; Western Union Tel. Co. *v.* Andrews, 154 Fed. 95; Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Chicago, etc., R. Co. *v.* Ludwig, 156 Fed. 152; Louisville, etc., R. Co. *v.* Railroad Commission, 157 Fed. 944. See also State *v.* Murray, (S. Car. 1908) 60 S. E. 928.

492. 4. Gunter *v.* Atlantic Coast Line R. Co., 200 U. S. 273, 26 U. S. Sup. Ct. 252.

7. **Suit against State Officers Merely to Test Constitutionality of State Statute Not Allowed.** — Western Union Tel. Co. *v.* Andrews, 154 Fed. 95.

Law Officers of State. — Western Union Tel. Co. *v.* Andrews, 154 Fed. 95.

A Proceeding to Enjoin an Attorney-General from Enforcing Penalties under an illegal act is not a suit against the state. *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441.

For Other Cases discussing the subject, see Gunter *v.* Atlantic Coast Line R. Co., 200 U. S. 273, 26 U. S. Sup. Ct. 252; Mississippi Railroad Commission *v.* Illinois Cent. R. Co., 203 U. S. 335, 27 U. S. Sup. Ct. 90; Scully *v.* Bird, 209 U. S. 481, 28 U. S. Sup. Ct. 597; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; Western Union Tel. Co. *v.* Andrews, 154 Fed. 95; Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783; Central of Georgia R. Co. *v.* McLendon, 157 Fed. 961; State *v.* Southern R. Co., 145 N. Car. 495, 59 S. E. 570; State *v.* Murray, (S. Car. 1908) 60 S. E. 928.

STATION.

493. 3. **The Word Station as Applied to an Electric Street Railway** includes not only such *stations* as may be established for the receipt and discharge of freight and passengers but also those points on the line after passing which an additional fare is charged to passengers. Street Railway Stations, 33 Pa. Co. Ct., 454.

Receipt and Discharge of Passengers and Freight Constitutes Station. — McGuire *v.* St. Louis, etc., R. Co., 113 Mo. App. 79, 87 S. W. 564.

Railroad Station Includes Tracks within Yard. — Morisette *v.* Canadian Pac. R. Co., 76 Vt. 267, 56 Atl. 1105.

STATIONERY.

493. 7. **Postage Not Stationery — Statutory Allowance of Probate Judge.** — Crook *v.* Commissioners' Ct., 144 Ala. 505, 39 So. 383.

STATIONS (RAILROAD).

496. 4. **Power to Determine Location Must Be Exercised with Reasonable Discretion.** — Chicago, etc., R. Co. *v.* People, 222 Ill. 396, 78 N. E. 784.

497. 4. State *v.* Missouri Pac. R. Co., (Neb. 1908) 115 N. W. 757.

6. State *v.* Missouri Pac. R. Co., (Neb. 1908) 115 N. W. 757.

498. 5. **Commission Without Power to Require Maintenance of Two Detached Departments in One Town.** — State *v.* Yazoo, etc., R. Co., 87 Miss. 679, 40 So. 263.

8. Chicago, etc., R. Co. *v.* Walker, 217 Ill. 605, 75 N. E. 520; Illinois Cent. R. Co. *v.* Com., (Ky. 1906) 90 S. W. 602.

Failure to Heat Station Renders Company Liable for Injuries Caused Thereby. — St.

Louis, etc., R. Co. *v.* Hook, 83 Ark. 584, 104 S. W. 217; Cincinnati, etc., R. Co. *v.* Mounts, (Ky. 1907) 104 S. W. 748; Chicago, etc., R. Co. *v.* Groner, (Tex. Civ. App. 1906) 95 S. W. 1118; International, etc., R. Co. *v.* Johnson, (Tex. Civ. App. 1906) 95 S. W. 595; St. Louis Southwestern R. Co. *v.* Lowe, (Tex. Civ. App. 1906) 97 S. W. 1087.

Duty to Heat Station Dependent upon Existing Necessity. — Gulf, etc., R. Co. *v.* Turner, (Tex. Civ. App. 1906) 93 S. W. 195.

499. 1. Sandifer *v.* Louisville, etc., R. Co., (Ky 1905) 89 S. W. 528 (to the same effect as Louisville, etc., R. Co. *v.* Com., 102 Ky. 300, cited in the original note) 43 S. W. 408.

Waiting Room Must Be Kept Open for Reasonable Time Before Departure of Train. — Cincinnati, etc., R. Co. *v.* Mounts, (Ky. 1907) 104 S. W. 748.

10. Chicago, etc., R. Co. *v.* People, 222 Ill. 396, 78 N. E. 784.

500. 5. Atlanta, etc., R. Co. *v.* Camp, (Ga. 1908) 60 S. E. 177, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 500; Dawson *v.* Western Maryland R. Co., (Md. 1907) 68 Atl. 301, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 500.

504. 3. Com. *v.* Grau, 16 Pa. Dist. 806, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 504; Union Depot, etc., Co. *v.* Meeking, (Colo. 1908) 94 Pac. 16.

8. Union Depot, etc., Co. *v.* Meeking, (Colo. 1908) 94 Pac. 16; Com. *v.* Grau, 16 Pa. Dist. 806, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 504; Oregon Short Line R. Co. *v.* Davidson, (Utah 1908) 94 Pac. 10.

505. 7. Com. *v.* Grau, 16 Pa. Dist. 806, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 505.

10. Union Depot, etc., Co. *v.* Meeking, (Colo. 1908) 94 Pac. 16; Oregon Short Line R. Co. *v.* Davidson, (Utah 1908) 94 Pac. 10.

11. Com. *v.* Grau, 16 Pa. Dist. 806.

506. 9. *Georgia.* — Central of Georgia R. Co. *v.* Hunter, 128 Ga. 600, 58 S. E. 154.

Illinois. — Toledo, etc., R. Co. *v.* Stevenson, 122 Ill. App. 654.

Indiana. — Pittsburg, etc., R. Co. *v.* Harris, 38 Ind. App. 77, 77 N. E. 1051.

Iowa. — Merryman *v.* Chicago G. W. R. Co., (Iowa 1907) 113 N. W. 357.

Kentucky. — Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216; Webster *v.* Chesapeake, etc., R. Co., (Ky. 1907) 105 S. W. 945.

Michigan. — Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395.

New Jersey. — Mason *v.* Erie R. Co., (N. J. 1907) 68 Atl. 105.

New York. — Eaton *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 419.

North Carolina. — Mangum *v.* North Carolina R. Co., 145 N. Car. 152, 58 S. E. 913; Pincus *v.* Atlantic Coast Line R. Co., 140 N. Car. 450, 53 S. E. 297.

Texas. — Houston, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1905) 89 S. W. 805; Johnson *v.* Texas Cent. R. Co., (Tex. Civ. App. 1906) 93 S. W. 433; Missouri, etc., R. Co. *v.* Criswell, (Tex. 1908) 108 S. W. 806.

Wisconsin. — Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738; Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865.

It is the duty of a railroad company to use reasonable care not to permit the station to become dangerous through the presence of an obstruction after a reasonable opportunity to discover and remove it. Scholtz *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 619, 95 N. Y. Supp. 557.

Ordinary Care Exacted of Railroad Company in Maintenance of Station. — McNaughton *v.* Illinois Cent. R. Co., (Iowa 1907) 113 N. W. 844.

507. 1. Central of Georgia R. Co. *v.* Hunter, 128 Ga. 600, 58 S. E. 154; Cincinnati, etc., R. Co. *v.* Mounts, (Ky. 1907) 104 S. W. 748; Legge *v.* New York, etc., R. Co., (Mass. 1908) 83 N. E. 367; MacLaren *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 1088; Evans *v.* Chicago, etc., R. Co., (Mo. App. 1908) 109 S. W. 79; Schlessinger *v.* Manhattan R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 504, 98 N. Y. Supp. 840.

6. Obligation Does Not Extend to Streets or Sidewalks Owned or Controlled by Municipality. — Webster *v.* Chesapeake, etc., R. Co., (Ky. 1907) 105 S. W. 945.

7. Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738.

508. 3. Central of Georgia R. Co. *v.* Hunter, 128 Ga. 600, 58 S. E. 154; Chicago, etc., R. Co. *v.* Walker, 118 Ill. App. 397; Illinois Cent. R. Co. *v.* Johnson, 123 Ill. App. 300; Atchison, etc., R. Co. *v.* Allen, 75 Kan. 190, 88 Pac. 966; Schlessinger *v.* Manhattan R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 504, 98 N. Y. Supp. 840; Pincus *v.* Atlantic Coast Line R. Co., 140 N. Car. 450, 53 S. E. 297; Missouri, etc., R. Co. *v.* Criswell, (Tex. 1908) 108 S. W. 806; Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738.

5*a*. "Good and Safe" Condition Required. — Toledo, etc., R. Co. *v.* Stevenson, 122 Ill. App. 654.

7. Merryman *v.* Chicago G. W. R. Co., (Iowa 1908) 113 N. W. 357; Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216; Louisville, etc., R. Co. *v.* Daugherty, (Ky. 1908) 108 S. W. 336; Webster *v.* Chesapeake, etc., R. Co., (Ky. 1907) 105 S. W. 945; MacLaren *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 1088; Truesdell *v.* Erie R. Co., 114 N. Y. App. Div. 34, 99 N. Y. Supp. 694; Mangum *v.* North Carolina R. Co., 145 N. Car. 152, 58 S. E. 913; Galveston, etc., R. Co. *v.* Matzdorf, (Tex. Civ. App. 1908) 107 S. W. 882; Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865.

13. Galveston, etc., R. Co. *v.* Matzdorf, (Tex. Civ. App. 1908) 107 S. W. 882.

509. 2. Pittsburg, etc., R. Co. *v.* Harris, 38 Ind. App. 77, 77 N. E. 1051.

6. Central of Georgia R. Co. *v.* Hunter, 128 Ga. 600, 58 S. E. 154; Pincus *v.* Atlantic Coast Line R. Co., 140 N. Car. 450, 53 S. E. 297; Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865.

510. 5. Atlantic, etc., R. Co. *v.* Owens, 123 Ga. 393, 51 S. E. 404, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 510; Cincinnati, etc.,

R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216; Galveston, etc., R. Co. *v.* Matzdorf, (Tex. Civ. App. 1908) 107 S. W. 882; Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738; Rowley *v.* Chicago, etc., R. Co., (Wis. 1908) 115 N. W. 865.

7. Watson *v.* Manitou, etc., R. Co., (Colo. 1907) 92 Pac. 17.

511. 1. Watson *v.* Manitou, etc., R. Co., (Colo. 1907) 92 Pac. 17.

5. Toledo, etc., R. Co. *v.* Stevenson, 122 Ill. App. 654; Merryman *v.* Chicago G. W. R. Co., (Iowa 1908) 113 N. W. 357; Wagner *v.* Atlantic Coast Line R. Co., (N. Car. 1908) 61 S. E. 171; Banderob *v.* Wisconsin Cent. R. Co., (Wis. 1907) 113 N. W. 738.

512. 2. **Obstruction Must Have Continued for Sufficient Time to Impute Notice.** — Kaplowitz *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 646, 103 N. Y. Supp. 721.

4. Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 512; Chicago, etc., R. Co. *v.* Walker, 118 Ill. App. 397; Cincinnati, etc., R. Co. *v.* Giboney, (Ky. 1907) 100 S. W. 216.

7. Truesdell *v.* Erie R. Co., 114 N. Y. App. Div. 34, 99 N. Y. Supp. 694; Riley *v.* Cincinnati Traction Co., 28 Ohio Cir. Ct. 626; Johnson *v.* Texas Cent. R. Co., (Tex. Civ. App. 1906) 93 S. W. 433.

513. 6. See Coogan *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 562, 99 N. S. Supp. 382.

514. 1. Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Georgia R., etc., Co. *v.* Adams, 127 Ga. 408, 56 S. E. 409; Illinois Cent. R. Co. *v.* Johnson, 123 Ill. App. 300; Ray *v.* Aberdeen, etc., R. Co., 141 N. Car. 84, 53 S. E. 622; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1905) 90 S. W. 918.

Highest Practicable Degree of Care Required. — Louisville, etc., R. Co. *v.* Brown, (Ky. 1908) 107 S. W. 321.

3. Atchison, etc., R. Co. *v.* McElroy, (Kan. 1907) 91 Pac. 785; Illinois Cent. R. Co. *v.* Proctor, 122 Ky. 92, 89 S. W. 714.

516. 3. Dieckmann *v.* Chicago, etc., R. Co., (Iowa 1906) 105 N. W. 526; Mann *v.* Missouri, etc., R. Co., 123 Mo. App. 486, 100 S. W. 566; Truesdell *v.* Erie R. Co., 114 N. Y. App. Div. 34, 99 N. Y. Supp. 694; Van Ostrand *v.* Delaware, etc., Co., 112 N. Y. App. Div. 783, 99 N. Y. Supp. 548; Pendleton *v.* Richmond, etc., R. Co., 104 Va. 813, 52 S. E. 574.

517. 2. Legge *v.* New York, etc., R. Co., (Mass. 1908) 83 N. E. 367.

4. Illinois Cent. R. Co. *v.* Johnson, 123 Ill. App. 300.

6. Question of Contributory Negligence for Jury. — Crowe *v.* Michigan Cent. R. Co., 142 Mich. 692, 106 N. W. 395.

518. 1. Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198; MacFeat *v.* Philadelphia, etc., R. Co., 5 Penn. (Del.) 52, 62 Atl. 898; Illinois Cent. R. Co. *v.* Johnson, 123 Ill. App. 300; Atchison, etc., R. Co. *v.* McElroy, (Kan. 1907) 91 Pac. 785; Illinois Cent. R. Co. *v.* Proctor, 122 Ky. 92, 89 S. W. 714; Karr *v.* Milwaukee Light, etc., Co., (Wis. 1907) 113 N. W. 62. But see Dieckmann *v.* Chicago, etc., R. Co., (Iowa 1906) 105 N. W. 526. See also Drawdy *v.* Atlantic Coast Line R. Co., 75 S. Car. 308, 55 S. E. 444.

2. Karr *v.* Milwaukee Light, etc., Co., (Wis. 1907) 113 N. W. 62.

4. Houston, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1905) 89 S. W. 805.

STATUARY.

519. 2. **Carved Cistern — Statuary — Customs Act.** — U. S. *v.* American Express Co., 139 Fed. 89.

STATUTES.

530. 6. People *v.* Crucible Steel Co., (Mich. 1908) 115 N. W. 705; Casey *v.* St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419.

532. 4. Boise City Irrigation, etc., Co. *v.* Stewart, 10 Idaho 51, 77 Pac. 25, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532; Farrell *v.* Port of Columbia, (Oregon 1907) 91 Pac. 546, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532; State *v.* Sayre, 142 Ala. 641, 39 So. 240.

6. State *v.* Sayre, 142 Ala. 646, 39 So. 240, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532; St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

7. Farrell *v.* Port of Columbia, (Oregon 1907) 91 Pac. 546, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532.

11. Farrell *v.* Port of Columbia, (Oregon 1907) 91 Pac. 546, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 532; *Ex p.* Massey, 49 Tex. Crim. 60, 92 S. W. 1083.

534. 1. Ducey *v.* Patterson, 37 Colo. 216, 86 Pac. 109; Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873; Haarstick *v.* Gabriel, 200 Mo. 237, 98 S. W. 760; Haynes *v.* State, (Tex. Civ. App. 1906) 99 S. W. 405.

9. *United States.* — Brooks *v.* Southern Pac. Co., 148 Fed. 986, *affirmed* 207 U. S. 463, 28 U. S. Sup. Ct. 141; Spain *v.* St. Louis, etc., R. Co., 151 Fed. 522.

Arizona. — Leatherwood *v.* Hill, (Ariz. 1906) 89 Pac. 521.

Arkansas. — Moore *v.* Alexander, (Ark. 1908) 107 S. W. 395.

Colorado. — People *v.* Earl, (Colo. 1908) 94 Pac. 294.

Delaware. — State *v.* Fountain, (Del. 1908) 69 Atl. 926.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929.

Idaho. — State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; *Ex p.* Jacobs, 13 Idaho 720, 92 Pac. 1003.

Iowa. — McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177.

Kansas. — Ratcliff *v.* Wichita Union Stockyards Co., 74 Kan. 1, 86 Pac. 150.

Kentucky. — Louisville, etc., R. Co. *v.* Herndon, (Ky. 1907) 104 S. W. 732; Bullitt *v.* Sturgeon, (Ky. 1907) 105 S. W. 468.

Louisiana. — State *v.* Michel, (La. 1908) 46 So. 430.

Maine. — *In re* Opinion of Justices, (Me. 1908) 69 Atl. 627.

Maryland. — Kenneweg *v.* Allegany County Com'rs, 102 Md. 119, 62 Atl. 249; Baltimore *v.* Flack, 104 Md. 107, 64 Atl. 702.

Mississippi. — State *v.* Henry, 87 Miss. 125, 40 So. 152.

Missouri. — State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483.

Montana. — Missouri River Power Co. *v.* Steele, 32 Mont. 433, 80 Pac. 1093; Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462.

Nebraska. — State *v.* Vinsonhaler, 74 Neb. 675, 105 N. W. 472; State *v.* Sheldon, (Neb. 1907) 111 N. W. 372.

Oregon. — Stevens *v.* Benson, (Oregon 1907) 91 Pac. 577.

Tennessee. — Wright *v.* Cunningham, 115 Tenn. 445, 91 S. W. 293; State *v.* Burrow, (Tenn. 1907) 104 S. W. 526.

Texas. — McLaury *v.* Watelsky, (Tex. Civ. App. 1905) 87 S. W. 1045; *Ex p.* Massey, 49 Tex. Crim. 60, 92 S. W. 1086.

Virginia. — Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

Washington. — State *v.* Ames, (Wash. 1907) 92 Pac. 137.

Plenary Legislative Power is, from the very nature of our institution, vested in the state legislature, except wherein restrained by the federal or state constitutions. Tift *v.* Southern R. Co., 138 Fed. 753.

536. 3. Chicago *v.* Becker, 233 Ill. 189, 84 N. E. 242.

5. **A Second Proclamation** may properly contain subjects omitted from the first. *In re* Pittsburg, 217 Pa. St. 227, 66 Atl. 348.

8. Larkin *v.* Simmons, (Ala. 1908) 46 So. 451; State *v.* Carter, 74 Kan. 156, 86 Pac. 138; State *v.* Davis, 74 Kan. 895, 86 Pac. 141.

The courts will not investigate an alleged failure to comply with some rules of procedure for the purpose of invalidating a statute. State *v.* Larkin, (Tex. Civ. App. 1905) 90 S. W. 912.

538. 5. **Notice Declared to Be Sufficient.** — State *v.* Sayre, 142 Ala. 641, 39 So. 240; Dudley *v.* Fitzpatrick, 143 Ala. 162, 39 So. 384; Uniontown *v.* State, 145 Ala. 471, 39 So. 814; *Ex p.* Black, 141 Ala. 1, 40 So. 133; State *v.* Tunstall, 145 Ala. 477, 40 So. 135; State *v.* Abernathy, 146 Ala. 689, 40 So. 353; Jacobs *v.* State, 144 Ala. 98, 40 So. 572; Ensley *v.* Cohn, (Ala. 1907) 42 So. 827; Ensley *v.* Goswick, (Ala. 1907) 42 So. 829; *Ex p.* Kelly, (Ala. 1907) 45 So. 290; *Ex p.* O'Neal, (Ala. 1908) 45 So. 712.

Insufficient Notice Renders Act Void. — State *v.* Speake, 144 Ala. 500, 39 So. 224; State *v.* Williams, (Ala. 1905) 39 So. 276; Norvell *v.* State, 143 Ala. 561, 30 So. 357; Larkin *v.* Simmons, (Ala. 1908) 46 So. 451.

Laws Held Not within Requirement of Notice. — Blakey *v.* Montgomery, 144 Ala. 481, 39 So. 745; Forman *v.* Hair, (Ala. 1907) 43 So. 827; Benedict *v.* Orleans, 115 La. 645, 39 So. 792; Snyder *v.* Baird Independent School Dist., (Tex. Civ. App. 1908) 109 S. W. 472.

6. State *v.* Weakley, (Ala. 1907) 45 So. 175.

539. 1. State *v.* Burrow, (Tenn. 1907) 104 S. W. 526.

4. Lynch *v.* Hutchinson, 219 Ill. 193, 4 Ann. Cas. 904, 76 N. E. 370; State *v.* Burrow, (Tenn. 1907) 104 S. W. 526.

541. 4. State *v.* Skeggs, (Ala. 1908) 46 So. 268.

7. People *v.* Reardon, 110 N. Y. App. Div. 821, 97 N. Y. Supp. 535.

8. People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970.

10. State *v.* New London Sav. Bank, 79 Conn. 141, 64 Atl. 5; People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970.

542. 1. State *v.* Sowell, 143 Ala. 494, 39 So. 246.

2. Rio Grande Sampling Co. *v.* Catlin, (Colo. 1907) 94 Pac. 323; Kelley *v.* Secretary of State, 149 Mich. 343, 112 N. W. 978; Dahlsten *v.* Anderson, 99 Minn. 340, 109 N. W. 697; Moore *v.* Neece, (Neb. 1908) 114 N. W. 767; State *v.* Burrow, (Tenn. 1907) 104 S. W. 526.

3. Palatine Ins. Co. *v.* Northern Pac. R. Co., 34 Mont. 268, 85 Pac. 1932.

4. *In re* Stickney, 110 N. Y. App. Div. 294, 97 N. Y. Supp. 336.

543. 6. Pueblo County *v.* Strait, 36 Colo. 137, 85 Pac. 178; Rio Grande Sampling Co. *v.* Catlin, (Colo. 1907) 94 Pac. 323; Palatine Ins. Co. *v.* Northern Pac. R. Co., 34 Mont. 268, 85 Pac. 1032.

7. School Dist. No. 11 *v.* Chapman, (C. C. A.) 152 Fed. 887; State *v.* Burrow, (Tenn. 1907) 104 S. W. 526.

544. 4. Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753, *affirming* 140 Fed. 89.

5. Salem *v.* Wachovia L. & T. Co., 143 N. Car. 110, 55 S. E. 442.

6. Erwin *v.* State, 116 Tenn. 71, 93 S. W. 73.

9. Chatham County *v.* Stafford, 138 N. Car. 453, 50 S. E. 862; Erwin *v.* State, 116 Tenn. 71, 93 S. W. 73.

10. Pueblo County *v.* Strait, 36 Colo. 137, 85 Pac. 178; People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970.

545. 2. Erwin *v.* State, 116 Tenn. 71, 93 S. W. 73.

3. School Dist. No. 11 *v.* Chapman, (C. C. A.) 152 Fed. 887; Pueblo County *v.* Strait, 36 Colo. 137, 85 Pac. 178.

An Amendment Changing the Purpose of the Statute makes it a new bill and subject to the same requirements. Erwin *v.* State, 116 Tenn. 71, 93 S. W. 73.

4. Mitchell *v.* Gadsden, 145 Ala. 132, 40 So. 350; Lee *v.* Gadsden, 146 Ala. 689, 40 So. 351; Adams *v.* Clark, 36 Colo. 65, 85 Pac. 642; State *v.* New London Sav. Bank, 79 Conn. 141, 64 Atl. 5; State *v.* Burrow, (Tenn. 1907) 104 S. W. 526.

5. El Paso, etc., R. Co. *v.* Foth, (Tex. Civ. App. 1907) 100 S. W. 171.

6. Lynch *v.* Hutchinson, 219 Ill. 194, 4 Ann. Cas. 904, 76 N. E. 370, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 545; State *v.* Skeggs, (Ala. 1908) 46 So. 268.

7. Home Tel. Co. *v.* Nashville, 118 Tenn. 1, 101 S. W. 770; State *v.* Swiggart, 118 Tenn. 556, 102 S. W. 75.

547. 3. Powell *v.* Hayes, 83 Ark. 448, 104

S. W. 177; State *v.* New London Sav. Bank, 79 Conn. 141, 64 Atl. 5; Carter *v.* Henry, 87 Miss. 411, 39 So. 690.

6. Wrede *v.* Richardson, 77 Ohio St. 182, 82 N. E. 1072.

8. State *v.* New London Sav. Bank, 79 Conn. 141, 64 Atl. 5; Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72.

548. 1. State *v.* New London Sav. Bank, 79 Conn. 141, 64 Atl. 5.

4. State *v.* New London Sav. Bank, 79 Conn. 141, 64 Atl. 5.

6. Carter *v.* Henry, 87 Miss. 411, 39 So. 690.

10. Powell *v.* Hayes, 83 Ark. 448, 104 S. W. 177; Carter *v.* Henry, 87 Miss. 411, 39 So. 690.

549. 2. Board of Control *v.* Auditor-Gen., 149 Mich. 388, 112 N. W. 1017, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 549.

5. **Withdrawal of Approval.** — Powell *v.* Hayes, 83 Ark. 448, 104 S. W. 177.

6. State *v.* New London Sav. Bank, 79 Conn. 141, 64 Atl. 5; Allegany County *v.* Warfield, 100 Md. 516, 60 Atl. 599.

11. Powell *v.* Hayes, 83 Ark. 448, 104 S. W. 177.

12. Carter *v.* Henry, 87 Miss. 411, 39 So. 690.

550. 4. Fellman *v.* Mercantile F. & M. Ins. Co., 116 La. 723, 41 So. 49; Carter *v.* Henry, 87 Miss. 411, 39 So. 690; Wrede *v.* Richardson, 77 Ohio St. 182, 82 N. E. 1072.

551. 1. Atlantic Coast Line R. Co. *v.* Mallard, 53 Fla. 515, 43 So. 755; Henry *v.* Carter, 88 Miss. 21, 40 So. 995.

5. Fellman *v.* Mercantile F. & M. Ins. Co., 116 La. 723, 41 So. 49; Carter *v.* Henry, 87 Miss. 411, 39 So. 690.

6. Carter *v.* Henry, 87 Miss. 411, 39 So. 690.

11. Carter *v.* Henry, 87 Miss. 411, 39 So. 690.

552. 2. Rio Grande Sampling Co. *v.* Catlin, (Colo. 1907) 94 Pac. 323; Belleville *v.* Wells, 74 Kan. 823, 88 Pac. 47; People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970; State *v.* Swiggart, 118 Tenn. 556, 102 S. W. 75.

3. School Dist. No. 11 *v.* Chapman, (C. C. A.) 152 Fed. 887; Uniontown *v.* State, 145 Ala. 471, 39 So. 814; State *v* Wilburn, (Ala. 1908) 39 So. 816; State *v.* Porter, 145 Ala. 541, 40 So. 144; State *v.* Skeggs, (Ala. 1908) 46 So. 268; Adams *v.* Clark, 36 Colo. 65, 85 Pac. 642; West *v.* State, 50 Fla. 154, 39 So. 412; Lee *v.* Tucker, (Ga. 1908) 60 S. E. 164; Belleville *v.* Wells, 74 Kan. 823, 88 Pac. 47; State *v.* Swiggart, 118 Tenn. 556, 102 S. W. 75.

4. Missouri, etc., R. Co. *v.* Simons, 75 Kan. 130, 88 Pac. 551; Stratton *v.* State, (Neb. 1907) 112 N. W. 361.

553. 1. Stetter *v.* State, (Neb. 1906) 110 N. W. 761.

3. Rio Grande Sampling Co. *v.* Catlin, (Colo. 1907) 94 Pac. 323; Palatine Ins. Co. *v.* Northern Pac. R. Co., 34 Mont. 268, 85 Pac. 1032; *In re* Stickney, 110 N. Y. App. Div. 294, 97 N. Y. Supp. 336.

4. Belleville *v.* Wells, 74 Kan. 823, 88 Pac. 47; Missouri, etc., R. Co. *v.* Simons, 75 Kan. 130, 88 Pac. 551.

6. *Ex p.* Kelly, (Ala. 1907) 45 So. 290; Belleville *v.* Wells, 74 Kan. 823, 88 Pac. 47; Palatine Ins. Co. *v.* Northern Pac. R. Co., 34 Mont. 268, 85 Pac. 1032; Stratton *v.* State, (Neb. 1907) 112 N. W. 361; Moore *v.* Neece, (Neb. 1908) 114 N. W. 767.

7. State *v.* Brodie, (Ala. 1906) 41 So. 180; Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72; Wrede *v.* Richardson, 77 Ohio St. 182, 82 N. E. 1072; El Paso, etc., R. Co. *v.* Foth, (Tex. Civ. App. 1907) 100 S. W. 171.

554. 3. *Ex p.* Kelly, (Ala. 1907) 45 So. 290.

4. Rio Grande Sampling Co. *v.* Catlin, (Colo. 1907) 94 Pac. 323; *In re* Stickney, 185 N. Y. 107, 77 N. E. 993.

555. 4. State *v.* Moore, 76 Ark. 197, 88 S. W. 881; Missouri, etc., R. Co. *v.* Simons, 75 Kan. 130, 88 Pac. 551; Stratton *v.* State, (Neb. 1907) 112 N. W. 361.

5. Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374.

556. 3. Sacramento Paving Co. *v.* Anderson, 1 Cal. App. 672, 82 Pac. 1069; Sacramento Paving Co. *v.* Martyr, 1 Cal. App. xvii, 82 Pac. 1071; Stetter *v.* State, (Neb. 1906) 110 N. W. 761; Bloomfield *v.* Chosen Freeholders, (N. J. 1907) 65 Atl. 890 [the court calls attention to the general statutes now regulating this practice]; El Paso, etc., R. Co. *v.* Foth, (Tex. Civ. App. 1907) 100 S. W. 171.

557. 3. State *v.* Swiggart, 118 Tenn. 556, 102 S. W. 75.

6. Lynch *v.* Hutchinson, 219 Ill. 193, 4 Ann. Cas. 904, 76 N. E. 370; Palatine Ins. Co. *v.* Northern Pac. R. Co., 34 Mont. 268, 85 Pac. 1032; People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970; *In re* Stickney, 185 N. Y. 107, 77 N. E. 993; *In re* Stickney, 110 N. Y. App. Div. 294, 97 N. Y. Supp. 337.

558. 2. Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72.

560. 4. Montgomery Amusement Co. *v.* Montgomery Traction Co., 139 Fed. 353, *affirmed* (C. C. A.) 140 Fed. 988; State *v.* Burrow, (Tenn. 1907) 104 S. W. 526.

561. 6. State *v.* Moore, 76 Ark. 197, 88 S. W. 881.

9. *In re* Weeks, 109 N. Y. App. Div. 859, 96 N. Y. Supp. 876; *In re* Stickney, 110 N. Y. App. Div. 294, 97 N. Y. Supp. 336.

11. Brannock *v.* St. Louis, etc., R. Co., 200 Mo. 561, 98 S. W. 604, *overruling* State *v.* Wray, 109 Mo. 594, 19 S. W. 86; *In re* Stickney, 110 N. Y. App. Div. 294, 97 N. Y. Supp. 337.

562. 1. Brannock *v.* St. Louis, etc., R. Co., 200 Mo. 561, 98 S. W. 604, *overruling* State *v.* Wray, 109 Mo. 594, 19 S. W. 86; Richman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 216, 100 N. Y. Supp. 81; Grossman *v.* Consolidated Gas Co., 114 N. Y. App. Div. 242, 100 N. Y. Supp. 100.

2. Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374; Wrede *v.* Richardson, 77 Ohio St. 182, 82 N. E. 1072.

3. Anderson *v.* Grand Valley Irrigation Dist., 35 Colo. 525, 85 Pac. 313; Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72; Morris *v.* Newark, 73 N. J. L. 368, 62 Atl. 1005.

564. 2. Harrison *v.* Colgan, 148 Cal. 69, 82 Pac. 674; *Ex p.* Sohncke, 148 Cal. 262, 82 Pac. 956; State *v.* Northern Pac. R. Co., (Mont. 1908) 93 Pac. 945.

565. 1. *In re* Alexander, 53 Fla. 647, 44 So. 175.

2. Harrison *v.* Colgan, 148 Cal. 69, 82 Pac. 674; Missouri, etc., R. Co. *v.* State, (Tex. 1907) 100 S. W. 766, *reversing* (Tex. Civ. App.

1906) 97 S. W. 720; Shook *v.* Laufer, (Tex. Civ. App. 1907) 100 S. W. 1042.

567. 1. Childers *v.* Shepherd, 142 Ala. 385, 39 So. 235; Chicago Terminal Transfer R. Co. *v.* Greer, 223 Ill. 104, 79 N. E. 46; McCall *v.* Calhoun Circuit Judge, 146 Mich. 319, 109 N. W. 601; Wright *v.* Cunningham, 115 Tenn. 445, 91 S. W. 293.

3. Atty.-Gen. *v.* Springwells Tp., 143 Mich. 523, 107 N. W. 87.

Contra. — Wright *v.* Cunningham, 115 Tenn. 445, 91 S. W. 293; *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086.

5. Fouts *v.* Hood River, 46 Oregon 492, 81 Pac. 370; Wright *v.* Cunningham, 115 Tenn. 445, 91 S. W. 293.

6. Eccles Lumber Co. *v.* Martin, 31 Utah 241, 87 Pac. 713.

8. State *v.* Pacific Express Co., (Neb. 1908) 115 N. W. 619; State *v.* American Express Co., (Neb. 1908) 115 N. W. 625; State *v.* Adams Express Co., (Neb. 1908) 115 N. W. 625; State *v.* Wells, (Neb. 1908) 115 N. W. 625; State *v.* U. S. Express Co., (Neb. 1908) 115 N. W. 625.

569. 1. *United States.* — Spain *v.* St. Louis, etc., R. Co., 151 Fed. 522.

Alabama. — State *v.* Patterson, 146 Ala. 128, 42 So. 19.

Georgia. — Southern R. Co. *v.* Schlittler, 1 Ga. App. 20, 58 S. E. 59; Edalgo *v.* Southern R. Co., 129 Ga. 258, 58 S. E. 846; Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343.

Indiana. — Chicago, etc., R. Co. *v.* Hunt, (Ind. App. 1907) 79 N. E. 927; McIntire *v.* State, (Ind. 1908) 83 N. E. 1005.

Mississippi. — Native Lumber Co. *v.* Harrison County, 89 Miss. 171, 42 So. 665.

New Jersey. — Woodbridge Tp. *v.* Middlesex Water Co., (N. J. 1907) 68 Atl. 464.

New York. — Wilcox *v.* McClellan, 110 N. Y. App. Div. 378, 97 N. Y. Supp. 311; Pettit *v.* McClellan, 110 N. Y. App. Div. 390, 97 N. Y. Supp. 320.

North Carolina. — State *v.* Lytle, 138 N. Car. 738, 51 S. E. 66.

South Carolina. — State *v.* Cain, 78 S. Car. 348, 58 S. E. 937; State *v.* Jennings, (S. Car. 1908) 60 S. E. 967.

Vermont. — Post *v.* Rutland R. Co., (Vt. 1908) 69 Atl. 156.

Washington. — State *v.* Snell, (Wash. 1908) 94 Pac. 926.

West Virginia. — State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

4. McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902.

5. *Alabama.* — State *v.* Skeggs, (Ala. 1908) 46 So. 268.

Delaware. — State *v.* Wickenhoefer, (Del. 1906) 64 Atl. 273.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929.

Idaho. — State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; *Ex p.* Jacobs, 13 Idaho 720, 92 Pac. 1003.

Illinois. — Christy *v.* Elliott, 216 Ill. 31, 74 N. E. 1035; People *v.* McBride, 234 Ill. 146, 84 N. E. 865.

Iowa. — McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902.

Kentucky. — Miller *v.* Louisville, (Ky. 1907) 99 S. W. 284.

Michigan. — Lohrstorfer *v.* Lohrstorfer, 140 Mich. 551, 104 N. W. 142; Rice *v.* Ionia Probate Judge, 141 Mich. 692, 105 N. W. 17; Preston Nat. Bank *v.* Brooke, 142 Mich. 272, 105 N. W. 757.

Minnesota. — State *v.* Duluth, etc., R. Co., 102 Minn. 26, 112 N. W. 897; State *v.* Minnesota, etc., R. Co., 102 Minn. 506, 112 N. W. 899.

Missouri. — State *v.* Wilder, 206 Mo. 541, 105 S. W. 272.

Montana. — Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197; State *v.* Drexel, 75 Neb. 614, 106 N. W. 791.

New Hampshire. — State *v.* Cohen, 73 N. H. 543, 63 Atl. 928.

New Jersey. — Jersey City *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 113.

New York. — People *v.* Board of Education, (Supm. Ct. App. Div.) 110 N. Y. Supp. 769.

North Carolina. — State *v.* McGinnis, 138 N. Car. 724, 51 S. E. 50; State *v.* Gatewood, 138 N. Car. 482, 51 S. E. 53; St. George *v.* Hardie, (N. Car. 1908) 60 S. E. 920.

Oregon. — Fouts *v.* Hood River, 46 Oregon 492, 81 Pac. 370.

South Carolina. — Brown *v.* Tharpe, 74 S. Car. 207, 54 S. E. 363.

Tennessee. — Maxey *v.* Powers, 117 Tenn. 381, 101 S. W. 181; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

6. State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483; Buttron *v.* El Paso Northeastern R. Co., (Tex. Civ. App. 1906) 93 S. W. 676.

7. State *v.* Moore, 76 Ark. 197, 88 S. W. 881; State *v.* Bryan, 50 Fla. 293, 39 So. 929; State *v.* Terre Haute, etc., R. Co., 166 Ind. 580, 77 N. E. 1077; McGuire *v.* Chicago, etc., R. Co., [illegible]

8. State *v.* Terre Haute, etc., R. Co., 166 Ind. 580, 77 N. E. 1077; State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

570. 1. Grainger *v.* Douglas Park Jockey Club, (C. C. A.) 148 Fed. 513, 8 Ann. Cas. 997; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483; Mill *v.* Brown, 31 Utah 473, 88 Pac. 609; *Ex p.* Sahlberg, 31 Utah 489, 88 Pac. 616.

2. *United States.* — Howard *v.* Illinois Cent. R. Co., 207 U. S. 463, 28 U. S. Sup. Ct. 141; Cella Commission Co. *v.* Bohlinger, (C. C. A.) 147 Fed. 419; Brooks *v.* Southern Pac. Co., 148 Fed. 986, *affirmed* 207 U. S. 463, 28 U. S. Sup. Ct. 141; Spain *v.* St. Louis, etc., R. Co., 151 Fed. 522.

Alabama. — Ensley *v.* Cohn, (Ala. 1907) 42 So. 827; Ensley *v.* Goswick, (Ala. 1907) 42 So. 829; Untreiner *v.* State, 146 Ala. 133, 41 So. 170; Chaney *v.* State, 146 Ala. 136, 41 So. 172; State *v.* Brackin, (Ala. 1908) 45 So. 841.

Arkansas. — Pryor *v.* Murphy, 80 Ark. 158, 96 S. W. 445.

California. — Robert *v.* Police Ct., 148 Cal.

131, 92 Pac. 838; *Ex p.* Spencer, 149 Cal. 396, 86 Pac. 896; Diepenbrock *v.* Superior Ct., (Cal. 1908) 95 Pac. 1121.

Connecticut. — State *v.* Dow, 78 Conn. 53, 60 Atl. 1063.

District of Columbia. — District of Columbia *v.* Green, 29 App. Cas. (D. C.) 296.

Florida. — State *v.* Patterson, (Fla. 1905) 39 So. 398; State *v.* Bryan, 50 Fla. 293, 39 So. 929; Hayes *v.* Walker, (Fla. 1907) 44 So. 747.

Georgia. — Glover *v.* State, 126 Ga. 594, 55 S. E. 592; Wright *v.* Southern Bell Telephone, etc., Co., 127 Ga. 227, 58 S. E. 116; Smith *v.* Macon, 129 Ga. 227, 58 S. E. 713; Lee *v.* Tucker, (Ga. 1908) 60 S. E. 164.

Idaho. — *Ex p.* Gale, (Idaho 1908) 95 Pac. 679.

Illinois. — Chicago *v.* Wolf, 221 Ill. 130, 77 N. E. 414; People *v.* Olsen, 222 Ill. 117, 78 N. E. 23; Cook County *v.* Healy, 222 Ill. 310, 78 N. E. 623; People *v.* Munroe, 227 Ill. 604, 81 N. E. 704; Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109; Smith *v.* Claussen Park Drainage, etc., Dist., 229 Ill. 155, 82 N. E. 278; People *v.* McBride, 234 Ill. 146, 84 N. E. 865.

Indiana. — Harlin *v.* Schafer, (Ind. 1907) 81 N. E. 721; Southern R. Co. *v.* Hunt, (Ind. App. 1908) 83 N. E. 721.

Kansas. — Smith *v.* Haney, 73 Kan. 506, 85 Pac. 550; Harrod *v.* Latham Mercantile, etc., Co., (Kan. 1908) 95 Pac. 11.

Kentucky. — Wiemer *v.* Sinking Fund Com'rs, (Ky. 1907) 99 S. W. 242; Brown *v.* Moss, (Ky. 1907) 105 S. W. 139.

Maryland. — Maryland Jockey Club *v.* State, (Md. 1907) 67 Atl. 239.

Massachusetts. — Wheelwright *v.* Boston, 188 Mass. 521, 74 N. E. 937; American Unitarian Assoc. *v.* Com., 193 Mass. 470, 79 N. E. 878; Scollard *v.* American Felt Co., 194 Mass. 127, 80 N. E. 233; Com. *v.* Hana, 195 Mass. 262, 81 N. E. 149.

Michigan. — Atty.-Gen. *v.* Loomis, 141 Mich. 547, 105 N. W. 4; Brown *v.* Stuart, 145 Mich. 413, 108 N. W. 717; Davidson *v.* Hine, (Mich. 1908) 115 N. W. 246; Robison *v.* Wayne Circuit Judges, (Mich. 1908) 115 N. W. 682; McDonald *v.* Springwells Tp., (Mich. 1908) 115 N. W. 1066.

Missouri. — State *v.* Heger, 194 Mo. 707, 93 S. W. 252; State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784; State *v.* Nast, (Mo. 1908) 108 S. W. 563.

Montana. — State *v.* Cudahy Packing Co., 33 Mont. 179, 82 Pac. 833; *In re* Terrett, 34 Mont. 325, 86 Pac. 266; State *v.* Ætna Banking, etc., Co., 34 Mont. 379, 87 Pac. 268.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197; State *v.* Drexel, 74 Neb. 776, 105 N. W. 174; State *v.* Malone, 74 Neb. 645, 105 N. W. 893; Allen *v.* Kennard, (Neb. 1908) 116 N. W. 63.

New Hampshire. — State *v.* Cohen, 73 N. H. 543, 63 Atl. 928.

New Jersey. — *In re* Port Reading R. Co., (N. J. 1907) 68 Atl. 219.

New York. — People *v.* Mensching, 187 N. Y. 8, 10 Ann. Cas. 101, 79 N. E. 884; *In re* Sherill, 188 N. Y. 185, 81 N. E. 124; Gause *v.* Boldt, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 340, 99 N. Y. Supp. 442; New York, etc., R. Co. *v.* O'Brien, 121 N. Y. App. Div. 819, 106 N. Y. Supp. 909; Brennan *v.* New York, 122 N. Y. App. Div. 477, 107 N. Y. Supp. 150; Saratoga Springs *v.* Saratoga Gas, etc., Co., 122 N. Y. App. Div. 203, 107 N. Y. Supp. 341.

North Carolina. — Lowery *v.* Graded School Trustees, 140 N. Car. 42, 52 S. E. 267, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 570; State *v.* McGinnis, 138 N. Car. 724, 51 S. E. 50; State *v.* Gatewood, 138 N. Car. 482, 51 S. E. 53; State *v.* Burns, 73 S. Car. 194, 52 S. E. 960.

North Dakota. — State *v.* Minneapolis, etc., Elevator Co., (N. Dak. 1908) 114 N. W. 482; State *v.* Minneapolis, etc., Elevator Co., (N. Dak. 1908) 114 N. W. 485.

Ohio. — Friend *v.* Levy, 76 Ohio St. 26, 80 N. E. 1036.

Pennsylvania. — Allentown *v.* Wagner, 214 Pa. St. 210, 63 Atl. 697; Employment Certificate, 34 Pa. Co. Ct. 18, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 570.

South Carolina. — State *v.* Johnson, 76 S. Car. 39, 56 S. E. 544; Murph *v.* Landrum, 76 S. Car. 21, 56 S. E. 850.

South Dakota. — Morrow *v.* Wipf, (S. Dak. 1908) 115 N. W. 1121.

Tennessee. — Fite *v.* State, 114 Tenn. 646, 88 S. W. 941; State Nat. Bank *v.* Memphis, 116 Tenn. 641, 94 S. W. 606; State *v.* Willett, 117 Tenn. 334, 97 S. W. 299; Franklin Turnpike Co. *v.* Long Distance Telephone, etc., Co., 118 Tenn. 88, 99 S. W. 373; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

Texas. — *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086; St. Louis Southwestern R. Co. *v.* Gentry, (Tex. Civ. App. 1906) 95 S. W. 74; St. Louis Southwestern R. Co. *v.* Peay, (Tex. Civ. App. 1906) 95 S. W. 75; State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71, *reversing* 93 S. W. 464; Allen *v.* Texas, etc., R. Co., (Tex. 1907) 101 S. W. 792; Meyers *v.* State, (Tex. Civ. App. 1907) 105 S. W. 48; Atchison, etc., R. Co. *v.* Mills (Tex. Civ. App. 1908) 108 S. W. 480; Joliff *v.* State, (Tex. Crim. 1908) 109 S. W. 176; Cummins *v.* Gaston, (Tex. Civ. App. 1908) 109 S. W. 476.

Utah. — Skeen *v.* Chambers, 31 Utah 36, 86 Pac. 492.

Vermont. — State *v.* Abraham, 78 Vt. 53, 61 Atl. 766; State *v.* Hazelton, 78 Vt. 467, 63 Atl. 305; Lawrence *v.* Rutland R. Co., 80 Vt. 370, 67 Atl. 1091; State *v.* Peet, 80 Vt. 449, 68 Atl. 661.

Virginia. — Campbell *v.* Bryant, 104 Va. 500, 52 S. E. 638.

Washington. — *In re* O'Neill, 41 Wash. 171, 83 Pac. 104; State *v.* Poole, 42 Wash. 192, 84 Pac. 727; State *v.* Superior Ct., 42 Wash. 491, 85 Pac. 264; State *v.* Ames, (Wash. 1907) 92 Pac. 137.

West Virginia. — State *v.* St. Mary's Franco-American Petroleum Co., 58 W. Va. 111, 51 S. E. 865, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 570; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

Wisconsin. — Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031, *affirmed* 127 Wis. 448, 105 N. W. 1135; Quiggle *v.* Herman, 131 Wis. 379, 111 N. W. 479.

Wyoming. — Koppala *v.* State, 15 Wyo. 398, 89 Pac. 576, 93 Pac. 662; State *v.* Schnitger, (Wyo. 1908) 95 Pac. 698.

571. 2. Yellow Pine Lumber Co. *v.* Randall, 145 Ala. 653, 39 So. 565; Green *v.* Hutchinson, 128 Ga. 379, 57 S. E. 353; State *v.* McIntosh, 205 Mo. 589, 103 S. W. 1078; State *v.* Galusha, 74 Neb. 188, 104 N. W. 197; State *v.* Several Parcels of Land, (Neb. 1907) 111 N. W. 601; United New Jersey R., etc., Co. *v.* Parker, (N. J. L. 1908) 69 Atl. 239; People *v.* Mensching, 187 N. Y. 8, 10 Ann. Cas. 101, 79 N. E. 884; State *v.* Stark County, 14 N. Dak. 368, 103 N. W. 913; Campbell *v.* Bryant, 104 Va. 509, 52 S. E. 638; Mill *v.* Brown, 31 Utah 473, 88 Pac. 609; *Ex p.* Sahlberg, 31 Utah 489, 88 Pac. 616.

3. **Contra.** — Lang *v.* Bayonne, (N. J. 1907) 68 Atl. 90, *affirming* 73 N. J. L. 90, 62 Atl. 270. *Compare* Shafford *v.* Brown, (Wash. 1908) 95 Pac. 270.

572. 1. Fleming *v.* Hance, (Cal. 1908) 94 Pac. 620.

3. *Alabama.* — Griffin *v.* Drennen, 145 Ala. 128, 40 So. 1016.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929; Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874.

Georgia. — Christie *v.* Miller, 128 Ga. 412, 57 S. E. 697.

Idaho. — Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873; State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; *Ex p.* Jacobs, 13 Idaho 720, 92 Pac. 1003.

Illinois. — Milne *v.* People, 224 Ill. 125, 79 N. E. 631; Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109; People *v.* McBride, 234 Ill. 146, 84 N. E. 865.

Indiana. — Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657.

Iowa. — Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

Kansas. — *Ex p.* Schley, 71 Kan. 266, 80 Pac. 631.

Kentucky. — Henderson Bridge Co. *v.* Alves, (Ky. 1906) 90 S. W. 995; *Ex p.* Paducah, (Ky. 1907) 101 S. W. 898.

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Michigan. — Detroit Real Estate Invest. Co. *v.* Frazer, 137 Mich. 108, 100 N. W. 271, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 572.

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Missouri. — State *v.* Doerring, 194 Mo. 398, 92 S. W. 489; O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150.

Montana. — Yegen *v.* Yellowstone County, 34 Mont. 79, 85 Pac. 740; Russell *v.* Chicago, etc., R. Co., (Mont. 1908) 94 Pac. 501.

Nebraska. — *Ex p.* Algoe, 74 Neb. 353, 104 N. W. 751.

New Jersey. — Sharp *v.* Sweeney, (N. J. 1907) 65 Atl. 850.

New York. — Elmira *v.* Seymour, 111 N. Y. App. Div. 199, 97 N. Y. Supp. 623; Tommasi *v.* Bolger, 114 N. Y. App. Div. 838, 100 N. Y. Supp. 367; Bonagur *v.* Orlandi, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 582, 101 N. Y. Supp. 115; Jimeson *v.* Lehley, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 352, 101 N. Y. Supp. 215.

North Dakota. — Powers Elevator Co. *v.* Pottner, (N. Dak. 1907) 113 N. W. 703; State *v.* Burr, (N. Dak. 1907) 113 N. W. 705.

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Tennessee. — Erwin *v.* State, 116 Tenn. 71, 93 S. W. 73; Samuelson *v.* State, 116 Tenn. 470, 95 S. W. 1012; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

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573. 4. State *v.* Bryan, 50 Fla. 293, 39 So. 929; Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72; Hayes *v.* Walker, (Fla. 1907) 44 So. 747; Harrod *v.* Latham Mercantile, etc., Co., (Kan. 1908) 95 Pac. 11; Powers Elevator Co. *v.* Pottner, (N. Dak. 1907) 113 N. W. 703; State *v.* Burr, (N. Dak. 1907) 113 N. W. 705; State *v.* Edwards, (Utah 1908) 95 Pac. 367.

574. 4. Jeffers *v.* Annapolis, (Md. 1908) 68 Atl. 553.

5. State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185; State *v.* Doerring, 194 Mo. 398, 92 S. W. 489; O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460; Felder *v.* State, (Tex. Crim. 1906) 97 S. W. 701; Newnom *v.* Williamson, (Tex. Civ. App. 1907) 103 S. W. 656.

6. *Colorado.* — Anderson *v.* Grand Valley Irrigation Dist., 35 Colo. 525, 85 Pac. 313; People *v.* Erbaugh, (Colo. 1908) 94 Pac. 349.

Delaware. — State *v.* Fountain, (Del. 1908) 69 Atl. 926.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929.

Illinois. — Christy *v.* Elliott, 216 Ill. 31, 74 N. E. 1035; Milne *v.* People, 224 Ill. 125, 79 N. E. 631; Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109; People *v.* McBride, 234 Ill. 146, 84 N. E. 865.

Indiana. — Smith *v.* State, 165 Ind. 180, 74 N. E. 983.

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Kansas. — *Ex p.* Schley, 71 Kan. 266, 80 Pac. 631; Harrod *v.* Latham Mercantile, etc., Co., (Kan. 1908) 95 Pac. 11.

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Montana. — Yegen *v.* Yellowstone County, 34 Mont. 50, 85 Pac. 740.

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North Dakota. — Powers Elevator Co. *v.* Pottner, (N. Dak. 1907) 113 N. W. 703; State *v.* Burr, (N. Dak. 1907) 113 N. W. 705.

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South Dakota. — Morrow *v.* Wipf, (S. Dak. 1908) 115 N. W. 1121.

Texas. — Joliff *v.* State, (Tex. Crim. 1908) 109 S. W. 176.

Washington. — State *v.* Moran, (Wash. 1907) 90 Pac. 1044.

7. *Florida.* — State *v.* Bryan, 50 Fla. 293, 39 So. 929; *Ex p.* Knight, 52 Fla. 144, 41 So. 786; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874; Hayes *v.* Walker, (Fla. 1907) 44 So. 747.

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Indiana. — McCleary *v.* Babcock, (Ind. 1907) 82 N. E. 453.

Iowa. — Beaner *v.* Lucas, (Iowa 1907) 112 N. W. 772.

Louisiana. — Amet *v.* Texas, etc., R. Co., 117 La. 454, 41 So. 721.

Maryland. — Fout *v.* Frederick County Com'rs, 105 Md. 545, 66 Atl. 487.

Missouri. — State *v.* Doerring, 194 Mo. 398, 92 S. W. 489.

New Jersey. — Sharp *v.* Sweeney, (N. J. 1907) 65 Atl. 859.

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Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355; State *v.* Edwards, (Utah 1908) 95 Pac. 367.

575. 2. Browne *v.* Providence, 114 La. 640, 38 So. 478, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 575.

5. Thornton *v.* Bramlett, (Ala. 1908) 46 So. 577; People *v.* McBride, 234 Ill. 146, 84 N. E. 865; Joliff *v.* State, (Tex. Crim. 1908) 109 S. W. 176.

7. State *v.* Moore, 76 Ark. 197, 88 S. W. 881.

8. *United States.* — Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427, *reversing* 132 Fed. 848.

Alabama. — Borck *v.* State, (Ala. 1905) 39 So. 580; Blakey *v.* Montgomery, 144 Ala. 481, 39 So. 745; Blue *v.* Everett, 145 Ala. 104, 40 So. 203; Chaney *v.* State, 146 Ala. 136, 41 So. 172; State *v.* Skeggs, (Ala. 1908) 46 So. 268.

Arkansas. — Johnson *v.* Johnson, 84 Ark. 307, 105 S. W. 869.

California. — Anglo-Californian Bank *v.* Field, 146 Cal. 644, 80 Pac. 1080; Murphy *v.* Bondshu, 2 Cal. App. 249, 83 Pac. 278; Robinson *v.* Kerrigan, 151 Cal. 40, 90 Pac. 129.

Colorado. — Anderson *v.* Grand Valley Irrigation Dist., 35 Colo. 525, 85 Pac. 313.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929; Hayes *v.* Walker, (Fla. 1907) 44 So. 747.

Georgia. — Banks *v.* State, 124 Ga. 15, 52 S. E. 74; James *v.* State, 124 Ga. 72, 52 S. E. 295; Bass *v.* Lawrence, 124 Ga. 75, 52 S. E. 296; Georgia R., etc., Co. *v.* Hutchinson, 125 Ga. 762, 54 S. E. 725; Barnesville *v.* Means, 128 Ga. 197, 57 S. E. 422.

Idaho. — State *v.* Doran, 13 Idaho 693, 92 Pac. 995, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 575; Nampa, etc., Irrigation Dist. *v.* Brose, 11 Idaho 474, 83 Pac. 499.

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Louisiana. — Levy's Succession, 115 La. 377, 39 So. 37.

Maryland. — Baltimore *v.* Flack, 104 Md. 107, 64 Atl. 702; Fout *v.* Frederick County Com'rs, 105 Md. 545, 66 Atl. 487; Jeffers *v.* Annapolis, (Md. 1908) 68 Atl. 553.

Michigan. — Robison *v.* Wayne Circuit Judges, (Mich. 1908) 115 N. W. 682.

Minnesota. — Berman *v.* Cosgrove, 95 Minn. 353, 104 N. W. 534.

Missouri. — State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185; State *v.* Doerring, 194 Mo. 398, 92 S. W. 489; O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150; Coffey *v.* Carthage, 200 Mo. 616, 98 S. W. 562.

Montana. — Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 575.

Nebraska. — Cathers *v.* Hennings, (Neb. 1906) 107 N. W. 586.

New Jersey. — State *v.* Davis, 72 N. J. L. 345, 61 Atl. 2, *affirmed* (N. J. 1906) 64 Atl. 1134; State *v.* Harned, 72 N. J. L. 353, 61 Atl. 5, *affirmed* (N. J. 1906) 64 Atl. 1134.

New York. — Elmira *v.* Seymour, 111 N. Y. App. Div. 199, 97 N. Y. Supp. 623; *In re* Lockitt, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 5, 110 N. Y. Supp. 32.

Pennsylvania. — Com. *v.* Fisher, 213 Pa. St. 48, 62 Atl. 198; Com. *v.* Clymer, 217 Pa. St. 302, 66 Atl. 560; Com. *v.* Fisher, 27 Pa. Super. Ct. 175; Com. *v.* Caulfield, 27 Pa. Super. Ct. 279.

South Carolina. — State *v.* O'Day, 74 S. Car. 448, 54 S. E. 607; Aycock-Little Co. *v.* Southern R. Co., 76 S. Car. 331, 57 S. E. 27; State

v. Hunter, (S. Car. 1908) 60 S. E. 226; State *v.* Franklin, (S. Car. 1908) 60 S. E. 953; Riley *v.* Charleston Union Station Co., 71 S. Car. 457, 51 S. E. 485.

South Dakota. — Davenport *v.* Elrod, (S. Dak. 1906) 107 N. W. 833; Morrow *v.* Wipf, (S. Dak. 1908) 115 N. W. 1121.

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Texas. — Raymond *v.* Kibbe, (Tex. Civ. App. 1906) 95 S. W. 727; Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 97 S. W. 720; Doeppenschmidt *v.* International, etc., R. Co., (Tex. 1907) 101 S. W. 1080; Newnom *v.* Williamson, (Tex. Civ. App. 1907) 103 S. W. 656; Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1908) 109 S. W. 867.

Utah. — State *v.* Edwards, (Utah 1908) 95 Pac. 367.

Virginia. — Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

Washington. — State *v.* Packenham, 40 Wash. 403, 82 Pac. 597; State *v.* Moran, (Wash. 1907) 90 Pac. 1044; *Ex p.* Donnellan, (Wash. 1908) 95 Pac. 1085.

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578. 19. Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 578; Christie *v.* Miller, 128 Ga. 412, 57 S. E. 697; Cook County *v.* Fairbank, 222 Ill. 578, 78 N. E. 895; Milne *v.* People, 224 Ill. 125, 79 N. E. 631; State *v.* Bristow, 131 Iowa 664, 109 N. W. 199.

579. 2. Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

4. Norvell *v.* State, 143 Ala. 561, 39 So. 357; Bass *v.* Lawrence, 124 Ga. 75, 52 S. E. 296; People *v.* McBride, 234 Ill. 146, 84 N. E. 865; Fout *v.* Frederick County Com'rs, 105 Md. 545, 66 Atl. 487; State *v.* Davis, 72 N. J. L. 345, 61 Atl. 2, *affirmed* (N. J. 1906) 64 Atl. 1134; State *v.* Harned, 72 N. J. L. 353, 61 Atl. 5, *affirmed* (N. J. 1906) 64 Atl. 1134; McLaury *v.* Watelsky, (Tex. Civ. App. 1905) 87 S. W. 1045; Gulf, etc., R. Co. *v.* Stokes, (Tex. Civ. App. 1905) 91 S. W. 328; Joliff *v.* State, (Tex. Crim. 1908) 109 S. W. 176.

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6. Browne *v.* Providence, 114 La. 640, 38 So. 478, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579; Morrow *v.* Wipf, (S. Dak. 1908) 115 N. W. 1121, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579; State *v.* Doerring, 194 Mo. 398, 92 S. W. 489; O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150; Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579; Nebraska Cent. Bldg., etc., Assoc. *v.* Board of Equalization, (Neb. 1907) 111 N. W. 147; Elmira *v.* Seymour, 111 N. Y. App. Div. 199, 97 N. Y. Supp. 623; Powers Elevator Co. *v.* Pottner, (N. Dak. 1907) 113 N. W. 703; *Ex p.* Allison, 99 Tex. 455, 90 S. W. 870; Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355; State *v.* Moran, (Wash. 1907) 90 Pac. 1044.

7. *Alabama.* — Griffin *v.* Drennen, 145 Ala. 128, 40 So. 1016; State *v.* Patterson, 146 Ala. 128, 42 So. 19; State *v.* Brackin, (Ala. 1908) 45 So. 841.

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Colorado. — People *v.* Crissman, (Colo. 1907) 92 Pac. 949.

Florida. — West *v.* State, 50 Fla. 154, 39 So. 412; State *v.* Bryan, 50 Fla. 293, 39 So. 929; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874; St. Petersburg *v.* English, (Fla. 1907) 45 So. 483.

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Idaho. — West *v.* Latah County, (Idaho 1908) 94 Pac. 445, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579; State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; *Ex p.* Jacobs, 13 Idaho 720, 92 Pac. 1003.

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Iowa. — Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; Newton *v.* Jasper County, (Iowa 1907) 112 N. W. 167.

Kansas. — Hutchinson First Nat. Bank *v.* Pearce, (Kan. 1907) 92 Pac. 53; Harrod *v.* Latham Mercantile, etc., Co., (Kan. 1908) 95 Pac. 11.

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Michigan. — McCall *v.* Calhoun Circuit Judge, 146 Mich. 319, 109 N. W. 601.

Minnesota. — State *v.* Shevelin-Carpenter Co., 99 Minn. 158, 108 N. W. 935; State *v.* Pioneer Press Co., 100 Minn. 173, 110 N. W. 867.

Missouri. — O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150; State *v.* Fulks, 207 Mo. 26, 105 S. W. 733; State *v.* Herring, (Mo. 1907) 106 S. W. 984.

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Oregon. — State *v.* Richardson, 48 Oregon 309, 85 Pac. 225.

Pennsylvania. — Com. *v.* Fisher, 213 Pa. St. 48, 62 Atl. 198; Berks County *v.* Linderman, 30 Pa. Super. Ct. 119; Com. *v.* Arow, 32 Pa. Super. Ct. 1; Wilson *v.* Edwards, 32 Pa. Super. Ct. 295; Com. *v.* Immel, 33 Pa. Super. Ct. 388.

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Virginia. — Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

Washington. — *In re* O'Neill, 41 Wash. 174, 83 Pac. 104; Shortall *v.* Puget Sound Bridge, etc., Co., 45 Wash. 290, 88 Pac. 212.

580. 1. *Alabama.* — Mobile Docks Co. *v.* Mobile, 146 Ala. 198, 40 So. 205; Louisville, etc., R. Co. *v.* Grant, (Ala. 1907) 45 So. 226.

Florida. — *Ex p.* Knight, 52 Fla. 144, 41 So. 786.

Illinois. — Milne *v.* People, 224 Ill. 125, 79 N. E. 631.

Louisiana. — Browne *v.* Providence, 114 La. 640, 38 So. 478, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 579.

Maryland. — State *v.* German Sav. Bank, 103 Md. 196, 63 Atl. 481; Fidelity Sav. Bank *v.* State, 103 Md. 206, 63 Atl. 484; Christmas *v.* Warfield, 105 Md. 530, 66 Atl. 491.

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South Carolina. — Croxton *v.* Truesdel, 75 S. Car. 418, 56 S. E. 45.

Tennessee. — Franklin Turnpike Co. *v.* Long Distance Telephone, etc., Co., 118 Tenn. 88, 99 S. W. 373.

Washington. — State *v.* Case, 39 Wash. 177, 81 Pac. 554; State *v.* Poole, 42 Wash. 192, 84 Pac. 727; State *v.* Clark, 43 Wash. 664, 86 Pac. 1067.

581. 2. *Colorado.* — Anderson *v.* Grand Valley Irrigation Dist., 35 Colo. 525, 85 Pac. 313.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874.

Idaho. — Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873.

Illinois. — People *v.* McBride, 234 Ill. 146, 84 N. E. 865.

Iowa. — Beaner *v.* Lucas, (Iowa 1907) 112 N. W. 772.

Kansas. — Harrod *v.* Latham Mercantile, etc., Co., (Kan. 1908) 95 Pac. 11.

Louisiana. — Browne *v.* Providence, 114 La. 640, 38 So. 478, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 581.

Maryland. — Jeffers *v.* Annapolis, (Md. 1908) 68 Atl. 553; State *v.* Cumberland, etc., R. Co., 105 Md. 478, 66 Atl. 458; Fout *v.* Frederick County Com'rs, 105 Md. 545, 66 Atl. 487; Jeffers *v.* Annapolis, (Md. 1908) 68 Atl. 361.

Missouri. — State *v.* Fulks, 207 Mo. 26, 105 S. W. 733.

North Dakota. — State *v.* Burr, (N. Dak. 1907) 113 N. W. 705.

Pennsylvania. — Yoho *v.* Allegheny County, 218 Pa. St. 401, 67 Atl. 648.

South Dakota. — Morrow *v.* Wipf, (S. Dak. 1908) 115 N. W. 1121.

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Washington. — Shortall *v.* Puget Sound Bridge, etc., Co., 45 Wash. 290, 88 Pac. 212; *Ex p.* Donnellan, (Wash. 1908) 95 Pac. 1085.

582. 1. *United States.* — Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427, *reversing* 132 Fed. 848.

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Idaho. — State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; *Ex p.* Jacobs, 13 Idaho 720, 92 Pac. 1003.

Illinois. — Milne *v.* People, 224 Ill. 125, 79 N. E. 631; Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109; People *v.* McBride, 234 Ill. 146, 84 N. E. 865.

Indiana. — Elkhart County *v.* Albright, 168 Ind. 564, 81 N. E. 578.

Montana. — Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 581 [582].

South Carolina. — State *v.* Hunter, (S. Car. 1908) 60 S. E. 226.

Texas. — Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1908) 109 S. W. 867.

Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

2. West *v.* Latah County, (Idaho 1908) 94 Pac. 445, *citing* 26 Am. and Eng. Encyc. of

LAW (2d ed.) 582, Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109; State *v.* Davis, 72 N. J. L. 345, 61 Atl. 2, *affirmed* (N. J. 1906) 64 Atl. 1134; State *v.* Harned, 72 N. J. L. 353, 61 Atl. 5, *affirmed* (N. J. 1906) 64 Atl. 1134; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

3. Dixon *v.* State, 117 Tenn. 79, 94 S. W. 936.

4. West *v.* Latah County, (Idaho 1908) 94 Pac. 445, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 582; State *v.* Bryan, 50 Fla. 293, 39 So. 929; Smith *v.* State, 165 Ind. 180, 74 N. E. 983; Leffmann *v.* Long Island R. Co., 120 N. Y. App. Div. 528, 105 N. Y. Supp. 487.

583. 3. *Florida.* — State *v.* Bryan, 50 Fla. 293, 39 So. 929.

Georgia. — Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

Indiana. — Hargis *v.* Perry County, 165 Ind. 194, 73 N. E. 915, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583; Elkhart County *v.* Albright, 168 Ind. 564, 81 N. E. 578, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583; Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583; Smith *v.* State, 165 Ind. 180, 74 N. E. 983.

Kentucky. — Brown-Foreman Co. *v.* Com., (Ky. 1907) 101 S. W. 321.

Minnesota. — Megins *v.* Duluth, 97 Minn. 23, 106 N. W. 89.

Missouri. — O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150.

North Dakota. — Powers Elevator Co. *v.* Pottner, (N. Dak. 1907) 113 N. W. 703.

Tennessee. — Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

Texas. — Newnom *v.* Williamson, (Tex. Civ. App. 1907) 103 S. W. 656.

Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355; State *v.* Edwards, (Utah 1908) 95 Pac. 367.

Virginia. — Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

4. State *v.* Twining, 73 N. J. L. 683, 64 Atl. 1073; Griffith *v.* Trenton, (N. J. 1908) 69 Atl. 29; Com. *v.* Kebort, 21 Pa. St. 289, 61 Atl. 895; *In re* White, 42 Wash. 360, 84 Pac. 831.

5. School Dist. No. 11 *v.* Chapman, (C. C. A.) 152 Fed. 887.

584. 1. Evers *v.* Hudson, (Mont. 1907) 92 Pac. 462, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; State *v.* Harter, 188 Mo. 516, 87 S. W. 941.

2. Croxton *v.* Truesdel, 75 S. Car. 418, 56 S. E. 45.

4. Banks *v.* State, 124 Ga. 15, 52 S. E. 74; Bass *v.* Lawrence, 124 Ga. 75, 52 S. E. 296; Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251; Smith *v.* Macon, 129 Ga. 227, 58 S. E. 713.

6. Elkhart County *v.* Albright, 168 Ind. 561, 81 N. E. 578.

7. *Alabama.* — Borck *v.* State, (Ala. 1905) 39 So. 580; State *v.* Abernathy, 146 Ala. 689, 40 So. 353; Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040; Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368; State *v.* Brackin, (Ala. 1908) 45 So. 841; State *v.* Skeggs, (Ala. 1908) 46 So. 268.

California. — Robinson *v.* Kerrigan, 151 Cal. 40, 90 Pac. 129.

Colorado. — American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; People *v.* Earl, (Colo. 1908) 94 Pac. 294; People *v.* Erbaugh, (Colo. 1908) 94 Pac. 349.

Delaware. — State *v.* Fountain, (Del. 1908) 69 Atl. 926.

Florida. — Ormond *v.* Shaw, 50 Fla. 445, 39 So. 108; State *v.* Bryan, 50 Fla. 293, 39 So. 929; Hayes *v.* Walker, (Fla. 1907) 44 So. 747.

Georgia. — Bonner *v.* Milledgeville R. Co., 123 Ga. 115, 50 S. E. 973; Poulan *v.* Atlantic Coast Line R. Co., 123 Ga. 605, 51 S. E. 657; Banks *v.* State, 124 Ga. 15, 52 S. E. 74; Bass *v.* Lawrence, 124 Ga. 75, 52 S. E. 296; Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E.

Idaho. — State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; *Ex p.* Jacobs, 13 Idaho 720, 92 Pac. 1003.

Illinois. — Christy *v.* Elliott, 216 Ill. 31, 74 N. E. 1035.

Iowa. — McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; State *v.* Bristow, 131 Iowa 664, 109 N. W. 199; Beaner *v.* Lucas, (Iowa 1907) 112 N. W. 772.

Kansas. — *Ex p.* Schley, 71 Kan. 266, 80 Pac. 631; State *v.* Kleinfield, 72 Kan. 674, 83 Pac. 831; Lincoln Mortg., etc., Co. *v.* Davis, (Kan. 1907) 92 Pac. 707.

Kentucky. — Shrader *v.* Semonin, (Ky. 1906) 96 S. W. 904; Diamond *v.* Com., (Ky. 1907) 99 S. W. 232; Brown *v.* Moss, (Ky. 1907) 105 S. W. 139.

Maryland. — State *v.* Cumberland, etc., R. Co., 105 Md. 478, 66 Atl. 458; Fout *v.* Frederick County Com'rs, 105 Md. 545, 66 Atl. 487; Jeffers *v.* Annapolis, (Md. 1908) 68 Atl. 361; Jeffers *v.* Annapolis, (Md. 1908) 68 Atl. 553.

Michigan. — Fornia *v.* Frazer, 140 Mich. 631, 104 N. W. 147; Rice *v.* Ionia Probate Judge, 141 Mich. 692, 105 N. W. 17; Atty.-Gen. *v.* Springwells Tp., 143 Mich. 523, 107 N. W. 87; Stambaugh Tp. *v.* Treasurer, (Mich. 1908) 116 N. W. 569.

Missouri. — State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185; O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150; Coffey *v.* Carthage, 200 Mo. 616, 98 S. W. 562; State *v.* Keating, 202 Mo. 197, 100 S. W. 648; State *v.* Weber, 205 Mo. 36, 102 S. W. 955; State *v.* Hamlett, (Mo. 1908) 110 S. W. 1082.

Montana. — Yegen *v.* Yellowstone County, 34 Mont. 79, 85 Pac. 740.

Nebraska. — Alperson *v.* Whalen, 74 Neb. 680, 105 N. W. 474.

New Jersey. — State *v.* Twining, 73 N. J. L. 3, 62 Atl. 402; Sharp *v.* Sweeney, (N. J. 1907) 65 Atl. 859.

New York. — Elmira *v.* Seymour, 111 N. Y. App. Div. 199, 97 N. Y. Supp. 623.

North Dakota. — Powers Elevator Co. *v.* Pottner, (N. Dak. 1907) 113 N. W. 703; State *v.* Burr, (N. Dak. 1907) 113 N. W. 705.

Oregon. — State *v.* Portland General Electric Co., (Oregon 1908) 95 Pac. 722.

South Carolina. — State *v.* O'Day, 74 S. Car. 448, 54 S. E. 607; Parks *v.* Laurens, Cotton Mills, 75 S. Car. 560, 56 S. E. 234; Buist *v.* Charleston, 77 S. Car. 260, 57 S. E. 862.

South Dakota. — Morrow *v.* Wipf, (S. Dak. 1908) 115 N. W. 1121.

Tennessee. — Samuelson *v.* State, 116 Tenn. 470, 95 S. W. 1012; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460; Knoxville *v.* Gass, (Tenn. 1907) 104 S. W. 1084.

Texas. — Joliff *v.* State, (Tex. Crim. 1908) 109 S. W. 176.

Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

Virginia. — Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

Washington. — State *v.* Moran, (Wash. 1907) 90 Pac. 1044; Piper *v.* Piper, (Wash. 1907) 91 Pac. 189; State *v.* Pierce County, (Wash. 1908) 93 Pac. 920.

588. 1. Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

2. *California.* — Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353.

Idaho. — State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; *Ex p.* Jacobs, 13 Idaho 720, 92 Pac. 1003.

Iowa. — Beaner *v.* Lucas, (Iowa 1907) 112 N. W. 772.

Kansas. — *Ex p.* Schley, 71 Kan. 266, 80 Pac. 631; *Ex p.* Ellis, (Kan. 1907) 91 Pac. 81.

Maryland. — State *v.* Cumberland, etc., R. Co., 105 Md. 478, 66 Atl. 458; Jeffers *v.* Annapolis, (Md. 1907) 68 Atl. 361; Jeffers *v.* Annapolis, (Md. 1907) 68 Atl. 553; Himmel *v.* Eichengreen, (Md. 1908) 69 Atl. 511.

Michigan. — McCall *v.* Calhoun Circuit Judge, 146 Mich. 319, 109 N. W. 601.

Montana. — Yegen *v.* Yellowstone County, 34 Mont. 79, 85 Pac. 740.

New York. — Elmira *v.* Seymour, 111 N. Y. App. Div. 199, 97 N. Y. Supp. 623.

North Dakota. — State *v.* Burr, (N. Dak. 1907) 113 N. W. 705, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 588.

South Dakota. — Davenport *v.* Elrod, (S. Dak. 1906) 107 N. W. 833; Morrow *v.* Wipf, (S. Dak. 1908) 115 N. W. 1121.

Tennessee. — Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

4. *Alabama.* — Borck *v.* State, (Ala. 1905) 39 So. 580.

Georgia. — James *v.* State, 124 Ga. 72, 52 S. E. 295.

Illinois. — People *v.* McBride, 234 Ill. 146, 84 N. E. 865.

Indiana. — Smith *v.* State, 165 Ind. 180, 74 N. E. 983.

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Montana. — *In re* Terrett, 34 Mont. 325, 86 Pac. 266.

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Pennsylvania. — Com. *v.* Clymer, 217 Pa. St. 302, 66 Atl. 560.

Texas. — Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1908) 109 S. W. 867.

Washington. — State *v.* Packenham, 40 Wash. 403, 82 Pac. 597; State *v.* Ames, (Wash. 1907) 92 Pac. 137; State *v.* Merchant, (Wash. 1907) 92 Pac. 890; *Ex p.* Donnellan, (Wash. 1908) 95 Pac. 1085.

589. 1. *Alabama.* — Walker *v.* State, 142 Ala. 7, 39 So. 242; Carpenter *v.* Joiner, (Ala. 1907) 44 So. 424.

Colorado. — Burcher *v.* People, (Colo. 1907) 93 Pac. 14; Teller County *v.* Trowbridge, (Colo. 1908) 95 Pac. 554.

Florida. — Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72; *Ex p.* Knight, 52 Fla. 144, 41 So. 786.

Georgia. — Bass *v.* Lawrence, 124 Ga. 75, 52 S. E. 296.

Idaho. — Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873.

Illinois. — Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109.

Indiana. — State *v.* Dorsey, 167 Ind. 199, 78 N. E. 843.

Kentucky. — Wiemer *v.* Sinking Fund Com'rs of Louisville, (Ky. 1907) 99 S. W. 242, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 589; Henderson Bridge Co. *v.* Alves, (Ky. 1906) 90 S. W. 995.

Maryland. — State *v.* Cumberland, etc., R. Co., 105 Md. 478, 66 Atl. 458.

Michigan. — Fairview *v.* Detroit, 150 Mich. 1, 113 N. W. 368.

Montana. — Russell *v.* Chicago, etc., R. Co., (Mont. 1908) 94 Pac. 501.

New York. — Tommasi *v.* Bolger, 114 N. Y. App. Div. 838, 100 N. Y. Supp. 367.

Pennsylvania. — Com. *v.* Kebort, 21 Pa. St. 289, 61 Atl. 895.

Tennessee. — Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

Washington. — State *v.* Merchant, (Wash. 1907) 92 Pac. 890.

590. 1. State *v.* Bristow, 131 Iowa 664, 109 N. W. 199.

2. *Alabama.* — Louisville, etc., R. Co. *v.* Grant, (Ala. 1907) 45 So. 226.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929; Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72; *Ex p.* Knight, 52 Fla. 144, 41 So. 786.

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Illinois. — Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109.

Indiana. — Hargis *v.* Perry County, 165 Ind. 194, 73 N. E. 915, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 590; State *v.* Shelton, 38 Ind. App. 80, 77 N. E. 1052.

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Minnesota. — Watkins *v.* Bigelow, 93 Minn. 223, 100 N. W. 1104, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 590; Megins *v.* Duluth, 97 Minn. 23, 106 N. W. 89.

South Carolina. — Croxton *v.* Truesdel, 75 S. Car. 418, 56 S. E. 45.

Tennessee. — Dixon *v.* State, 117 Tenn. 79, 94 S. W. 936; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 555.

591. 3. Quarles *v.* Sparta, 2 Tenn. Ch. App. 714.

5. School Dist. No. 11 *v.* Chapman, (C. C. A.) 152 Fed. 887; Ensley *v.* Cohn, (Ala. 1907) 42 So. 827; Ensley *v.* Goswick, (Ala. 1907) 42 So. 829; Cunningham *v.* State, 128 Ga. 55, 57 S. E. 90; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, *affirmed* 168 Ind. 8, 79 N. E. 896; Regardanz *v.* Haines, (Ind. 1906) 79 N. E. 352; *Ex p.* Paducah, (Ky. 1907) 101 S. W. 898; State *v.* Thomas, 74 Kan. 360, 86 Pac. 499; Murphy *v.* Salem, (Oregon 1906) 87 Pac. 533; State *v.* Edwards, (Utah 1908) 95 Pac. 367.

592. 1. McCleary *v.* Babcock, (Ind. 1907) 82 N. E. 453; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Reed *v.* Auditor Gen., 146 Mich. 208, 109 N. W. 275; Pratt Food Co. *v.* Bird, 148 Mich. 631, 112 N. W. 701; Atty.-Gen. *v.* Lewis, (Mich. 1908) 114 N. W. 927; Bumsted *v.* Henry, (N. J. 1906) 64 Atl. 475; State Nat. Bank *v.* Memphis, 116 Tenn. 641, 94 S. W. 606; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460; Raymond *v.* Kibbe, (Tex. Civ. App. 1906) 95 S. W. 727.

4. State *v.* Edwards, (Utah 1908) 95 Pac. 367.

593. 1. West *v.* Latah County, (Idaho 1908) 94 Pac. 445, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 593.

2. *United States.* — The George W. Elder, 159 Fed. 1005.

Alabama. — Comer *v.* Age-Herald Pub. Co., (Ala. 1907) 44 So. 673; Fourment *v.* State, (Ala. 1908) 46 So. 266.

Colorado. — Patterson *v.* Watson, 35 Colo. 502, 83 Pac. 958.

Idaho. — West *v.* Latah County, (Idaho 1908) 94 Pac. 445, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 593; Butler *v.* Lewiston, 11 Idaho 303, 83 Pac. 234; Settlers' Irrigation Dist. *v.* Settlers' Canal Co., (Idaho 1908) 94 Pac. 829.

Indiana. — McCleary *v.* Babcock, (Ind. 1907) 82 N. E. 453.

Kansas. — State *v.* Butler County, (Kan. 1908) 94 Pac. 1004.

Louisiana. — Saucier *v.* New Orleans, 119 La. 179, 43 So. 999.

Maryland. — Brown *v.* Maryland Telephone, etc., Co., 101 Md. 574, 61 Atl. 338; Himmel *v.* Eichengreen, (Md. 1908) 69 Atl. 511.

Montana. — *In re* Terrett, 34 Mont. 325, 86 Pac. 266.

Nebraska. — Allen *v.* Kennard, (Neb. 1908) 116 N. W. 63.

New Jersey. — Sharp *v.* Sweeney, (N. J. 1907) 65 Atl. 859.

Oregon. — Murphy *v.* Salem, (Oregon 1906) 87 Pac. 532.

Pennsylvania. — Allentown *v.* Wagner, 214 Pa. St. 210, 63 Atl. 667; Yoho *v.* Allegheny County, 218 Pa. St. 401, 67 Atl. 648.

Utah. — State *v.* Edwards, (Utah 1908) 95 Pac. 367.

594. 1. Allen *v.* Kennard, (Neb. 1908) 116 N. W. 63.

4. Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374; People *v.* McBride, 234 Ill. 146, 84 N. E. 865; State *v.* Thomas, 74 Kan. 360, 86 Pac. 499; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

5. The George W. Elder, 159 Fed. 1005; Black *v.* State, 144 Ala. 92, 40 So. 611; Murphy *v.* Salem, (Oregon 1906) 87 Pac. 532; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460; State *v.* Superior Ct., 42 Wash. 491, 85 Pac. 264.

595. 1. Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

4. Donovan *v.* State, (Ind. 1908) 83 N. E. 744.

596. 6. State *v.* Burr, (N. Dak. 1907) 113 N. W. 705; Nephi Plaster, etc., Co. *v.* Juab County, (Utah 1907) 93 Pac. 53.

597. 1. *United States.* — U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266; St. Louis, etc., R. Co. *v.* Delk, (C. C. A.) 158 Fed. 931.

Arkansas. — State *v.* Moore, 76 Ark. 197, 88 S. W. 881.

Idaho. — Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873.

Illinois. — Nye *v.* Foreman, 215 Ill. 285, 74 N. E. 140; Belleville *v.* St. Clair County Turnpike Co., 234 Ill. 428, 84 N. E. 1049.

Indiana. — State *v.* Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728.

Iowa. — Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

Kentucky. — Mutual L. Ins. Co. *v.* Prewitt, (Ky. 1907) 105 S. W. 463.

Michigan. — Ellis *v.* Boer, 150 Mich. 452, 114 N. W. 239.

Mississippi. — State *v.* Henry, 87 Miss. 125, 40 So. 152.

Montana. — State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 87 Pac. 980.

Tennessee. — Erwin *v.* State, 116 Tenn. 71, 93 S. W. 73; Samuelson *v.* State, 116 Tenn. 470, 95 S. W. 1012; Maxey *v.* Powers, 117 Tenn. 381, 101 S. W. 181; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

Virginia. — Campbell *v.* Bryant, 104 Va. 509, 52 S. E. 638.

Wyoming. — State *v.* Schnitzer, (Wyo. 1908) 95 Pac. 698.

2. Rose *v.* Lampley, 146 Ala. 445, 41 So. 521; *Ex p.* Owens, 148 Ala. 452, 42 So. 676; Sopher *v.* State, (Ind. 1907) 81 N. E. 913; State *v.* Duluth, etc., R. Co., 102 Minn. 26, 112 N. W. 897; State *v.* Minnesota, etc., R. Co., 102 Minn. 506, 112 N. W. 899; *Ex p.* Muckenfuss, (Tex. Crim. 1908) 107 S. W. 1131.

3. *United States.* — Snead *v.* Central of Georgia R. Co., 151 Fed. 608; U. S. *v.* Lonabaugh, 158 Fed. 314.

Idaho. — Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873.

Illinois. — Struthers *v.* People, 116 Ill. App. 481.

Indiana. — Jackson County *v.* Branaman, (Ind. 1907) 82 N. E. 65.

Kentucky. — Kentucky Union Co. *v.* Com., (Ky. 1908) 108 S. W. 931.

Minnesota. — State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935.

Missouri. — State *v.* Wilder, 206 Mo. 541, 105 S. W. 272; State *v.* Gmelich, 208 Mo. 152, 106 S. W. 618.

Montana. — State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 87 Pac. 980.

North Carolina. — Propst *v.* Southern R. Co., 139 N. Car. 397, 51 S. E. 920; State *v.* Perkins, 141 N. Car. 797, 53 S. E. 735.

New York. — Buffalo *v.* Lewis, 192 N. Y. 103, 84 N. E. 809.

North Dakota. — State *v.* Barry, 14 N. Dak. 316, 103 N. W. 637; State *v.* Burr, (N. Dak. 1907) 113 N. W. 705.

South Dakota. — Fremont, etc., R. Co. *v.* Pennington County, (S. Dak. 1908) 116 N. W. 75.

Tennessee. — Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

Wisconsin. — State *v.* Hinkel, (Wis. 1908) 116 N. W. 639.

4. Goode *v.* State, 50 Fla. 52, 39 So. 461, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 597; U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266; Roberts *v.* State, (Ga. App. 1908) 60 S. E. 1082; Hasely *v.* Ensley, (Ind. App. 1907) 82 N. E. 809; State *v.* Kelly, 71 Kan. 811, 81 Pac. 450; Maryland Agricultural College *v.* Atkinson, 102 Md. 557, 62 Atl. 1035; Ellis *v.* Boer, 150 Mich. 452, 114 N. W. 239; *In re* Applicants for License, 143 N. Car. 1, 55 S. E. 635; State *v.* Lewis, 74 Ohio St. 403, 78 N. E. 523; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798; Houston *v.* Potter, (Tex. Civ. App. 1906) 91 S. W. 389.

5. U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; State *v.* Cudahy Packing Co., 33 Mont. 179, 82 Pac. 833; *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086.

598. 1. *United States.* — Field *v.* U. S., (C. C. A.) 137 Fed. 6; U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266; Clagett *v.* Duluth Tp., (C. C. A.) 143 Fed. 824.

Alabama. — Comer *v.* Age-Herald Pub. Co., (Ala. 1907) 44 So. 673.

Georgia. — Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52; Central of Georgia R. Co. *v.* Wright, 125 Ga. 617, 54 S. E. 64.

Illinois. — Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174.

Indiana. — Boyer *v.* State, (Ind. 1908) 83 N. E. 350.

Maryland. — Maryland Agricultural College *v.* Atkinson, 102 Md. 557, 62 Atl. 1035.

Mississippi. — Yerger *v.* State, (Miss. 1908) 45 So. 849.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

New Jersey. — Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476.

North Carolina. — Propst *v.* Southern R. Co., 139 N. Car. 399, 51 S. E. 920; State *v.* Southern R. Co., 145 N. Car. 495, 59 S. E. 570.

2. *United States.* — U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; Franklin Sugar Refining Co. *v.* U. S., 153 Fed. 653; U. S. *v.* Musgrave, 160 Fed. 700.

Alabama. — State *v.* Sayre, 142 Ala. 641, 39 So. 240.

Georgia. — Roberts *v.* State, (Ga. App. 1908) 60 S. E. 1082.

Illinois. — Chudnovski *v.* Eckels, 232 Ill. 312, 83 N. E. 846.

Indiana. — Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. App. 1907) 82 N. E. 1013; Pein *v.* Miznerr, (Ind. App. 1908) 83 N. E. 784.

Kansas. — State *v.* Kelly, 71 Kan. 811, 81 Pac. 450.

Kentucky. — Carson *v.* Shelton, (Ky. 1908) 107 S. W. 793.

Mississippi. — State *v.* Henry, 87 Miss. 125, 40 So. 152.

Montana. — State *v.* Cudahy Packing Co., 33 Mont. 179, 82 Pac. 833.

New York. — New York *v.* Manhattan R. Co., 192 N. Y. 90, 84 N. E. 745.

North Carolina. — Propst *v.* Southern R. Co., 139 N. Car. 397, 51 S. E. 920; *In re* Applicants for License, 143 N. Car. 1, 55 S. E. 635.

North Dakota. — State *v.* Burr, (N. Dak. 1907) 113 N. W. 705.

Oregon. — Dutro *v.* Ladd, (Oregon 1907) 91 Pac. 459.

South Dakota. — Davenport *v.* Elrod, (S. Dak. 1906) 107 N. W. 833; *Ex p.* Brown, (S. Dak. 1907) 114 N. W. 303.

Tennessee. — O'Neil *v.* State, 115 Tenn. 427, 90 S. W. 627.

Texas. — *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086; Philadelphia F. Assoc. *v.* Love, (Tex. 1908) 108 S. W. 810.

Utah. — State *v.* Ritchie, (Utah 1907) 91 Pac. 24; Nephi Plaster, etc., Co. *v.* Juab County, (Utah 1907) 93 Pac. 53.

Washington. — Bacon *v.* Locke, 42 Wash. 215, 83 Pac. 721.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

Wisconsin. — Smith *v.* Burlington, 129 Wis. 336, 109 N. W. 79; Miller *v.* Chicago, etc., R. Co., (Wis. 1907) 113 N. W. 384; Sharpe *v.* Hasey, (Wis. 1908) 114 N. W. 1118.

3. *United States.* — U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; Brooks *v.* Southern Pac. Co., 148 Fed. 986, *affirmed* 207 U. S. 463, 28 U. S. Sup. Ct. 141; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; U. S. *v.* Colorado, etc., R. Co., (C. C. A.) 157 Fed. 321; U. S. *v.* Lonabaugh, 158 Fed. 314.

Alabama. — Rose *v.* Lampley, 146 Ala. 445, 41 So. 521.

Florida. — Palmer *v.* Parker, 52 Fla. 393, 42 So. 398, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 598.

Illinois. — Diederich *v.* Rose, 228 Ill. 610, 81 N. E. 1140, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 598.

Indiana. — State *v.* Shelton, 38 Ind. App. 87, 77 N. E. 1052, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 598.

Louisiana. — Forman *v.* Sewerage, etc., Board, 119 La. 49, 43 So. 908.

Missouri. — Manwarring *v.* Missouri Lumber, etc., Co., 200 Mo. 718, 98 S. W. 762; State *v.* Wilder, 206 Mo. 541, 105 S. W. 272.

Montana. — State *v.* Ætna Banking, etc., Co., 34 Mont. 379, 87 Pac. 268.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

New York. — People *v.* Consolidated Tel., etc., Co., 187 N. Y. 58, 79 N. E. 892.

North Dakota. — State Finance Co. *v.* Mather, 15 N. Dak. 386, 109 N. W. 350.

Oregon. — Dutro *v.* Ladd, (Oregon 1907) 91 Pac. 459.

South Dakota. — Fremont, etc., R. Co. *v.* Pennington County, (S. Dak. 1905) 105 N. W. 929; *Ex p.* Brown, (S. Dak. 1907) 114 N. W. 303.

Tennessee. — Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460; State *v.* Burrow, (Tenn. 1907) 104 S. W. 526.

Texas. — Austin *v.* Cahill, 99 Tex. 172, 88 S. W. 542; Missouri, etc., R. Co. *v.* Shannon, (Tex. Civ. App. 1906) 97 S. W. 527; *Ex p.* Muckenfuss, (Tex. Crim. 1908) 107 S. W. 1131.

599. 1. *Alabama.* — State *v.* Sayre, 142 Ala. 641, 39 So. 240.

Indiana. — Sopher *v.* State, (Ind. 1907) 81 N. E. 913.

Iowa. — Mier *v.* Phillips Fuel Co., 130 Iowa 570, 107 N. W. 621.

Maryland. — Fout *v.* Frederick County Com'rs., 105 Md. 545, 66 Atl. 487.

Minnesota. — State *v.* Rat Portage Lumber Co., (Minn. 1908) 115 N. W. 162; State *v.* Lesure Lumber Co., (Minn. 1908) 115 N. W. 167.

Mississippi. — State *v.* Henry, 87 Miss. 125, 40 So. 152.

Missouri. — State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483.

Montana. — Yegen *v.* Yellowstone County, 34 Mont. 79, 85 Pac. 740; State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 87 Pac. 980.

North Dakota. — State *v.* Minneapolis, etc., Elevator Co., (N. Dak. 1908) 114 N. W. 482; State *v.* Minneapolis, etc., Elevator Co., (N. Dak. 1908) 114 N. W. 485.

South Carolina. — Brown *v.* Tharpe, 74 S. Car. 207, 54 S. E. 363.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

See also *supra*, **569**, note 5.

600. 1. Caster *v.* McClellan, 132 Iowa 502, 109 N. W. 1020.

2. U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; Clagett *v.* Duluth Tp., (C. C. A.) 143 Fed. 824; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; U. S. *v.* Colorado, etc., R. Co., (C. C. A.) 157 Fed. 321; Flowing Wells Co. *v.* Culin, (Ariz. 1908) 95 Pac. 111; Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174; State *v.* Cudahy Packing Co., 33 Mont. 179, 82 Pac. 833; State *v.* Ætna Banking, etc., Co., 34 Mont. 379, 87 Pac. 268; *In re* Consolidated Gas Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 49, 106 N. Y. Supp. 407; *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086.

601. 1. Himmel *v.* Eichengreen, (Md. 1908) 69 Atl. 511; Morris Coal Co. *v.* Donley, 73 Ohio St. 298, 76 N. E. 945; Lawson *v.* Tripp, (Utah 1908) 95 Pac. 520.

2. Cella Commission Co. *v.* Bohlinger, (C. C. A.) 147 Fed. 419; U. S. *v.* Colorado, etc., R. Co., (C. C. A.) 157 Fed. 321; Siren *v.* State, (Neb. 1907) 111 N. W. 798.

3. Kunkalman *v.* Gibson, (Ind. 1908) 84 N. E. 985, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 601; State *v.* Ætna Banking, etc., Co., 34 Mont. 383, 87 Pac. 268, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 601; State *v.* Wirt County Ct., (W. Va. 1907) 59 S. E. 884, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 601; U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; Rider *v.* U. S., (C. C. A.) 149 Fed. 164; *Ex p.* Deeds, 75 Ark. 542, 87 S. W. 1030; Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174; State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784; Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476; *Ex p.* Brown, (S. Dak. 1907) 114 N. W. 303; *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086.

4. Mendles *v.* Danish, (N. J. 1907) 65 Atl. 888.

602. 1. *United States.* — Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313; Interstate Drainage, etc., Co. *v.* Freeborn County, (C. C. A.) 158 Fed. 270; U. S. *v.* Lonabaugh, 158 Fed. 314.

Georgia. — Roberts *v.* State, (Ga. App. 1908) 60 S. E. 1082.

Indiana. — State *v.* Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728; State *v.* Bock, 167 Ind. 559, 79 N. E. 493; Jackson County *v.* Branaman, (Ind. 1907) 82 N. E. 65.

Iowa. — Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314.

Missouri. — State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005; State *v.* Reynolds, (Mo. 1907) 107 S. W. 487; Perry *v.* Strawbridge, (Mo. 1908) 108 S. W. 641.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

New Jersey. — Mendles *v.* Danish, (N. J. 1907) 65 Atl. 888.

New York. — People *v.* Sturgis, 121 N. Y. App. Div. 407, 106 N. Y. Supp. 61; People *v.* Butler, (Supm. Ct. App. Div.) 109 N. Y. Supp. 900.

North Carolina. — Propst *v.* Southern R. Co., 139 N. Car. 397, 51 S. E. 920.

South Carolina. — State *v.* Cain, 78 S. Car. 348, 58 S. E. 937.

Tennessee. — Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

West Virginia. — Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484; State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

2. Grannis *v.* Superior Ct., 146 Cal. 248, 79 Pac. 891, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 602; Jacobson *v.* Massachusetts, 197 U. S. 11, 25 U. S. Sup. Ct. 358.

3. State *v.* Marionneaux, (La. 1907) 45 So. 389, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 602.

4. *United States.* — U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266; McInerney *v.* U. S., (C. C. A.) 143 Fed. 729; U. S. *v.* Standard Oil Co., 148 Fed. 719; Wadsworth *v.* Boysen, (C. C. A.) 148 Fed. 771; Stevens *v.* Nave-McCord Mercantile Co., (C. C. A.) 150 Fed. 71; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; Great Northern R.

Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313; U. S. *v.* Colorado, etc., R. Co., (C. C. A.) 157 Fed. 321; Interstate Drainage, etc., Co. *v.* Freeborn County, (C. C. A.) 158 Fed. 270.

Alabama. — Howells Min. Co. *v.* Gray, (Ala. 1905) 42 So. 448; Davis *v.* Thomas, (Ala. 1908) 45 So. 987.

Arkansas. — Stillwell *v.* Jackson, 77 Ark. 250, 93 S. W. 71; St. Louis, etc., R. Co. *v.* Batesville, etc., Telephone Co., (Ark. 1908) 110 S. W. 1047.

California. — Grannis *v.* Superior Ct., 146 Cal. 248, 79 Pac. 891, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 602; People *v.* Richards, 1 Cal. App. 566, 82 Pac. 691; Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353.

Colorado. — Ducey *v.* Patterson, 37 Colo. 216, 86 Pac. 109.

District of Columbia. — *In re* Cahn, 27 App. Cas. (D. C.) 173; Fields *v.* U. S., 27 App. Cas. (D. C.) 433.

Florida. — State *v.* McMillan, (Fla. 1908) 45 So. 882; Knight, etc., Co. *v.* Tampa Sand, Lime Brick Co., (Fla. 1908) 46 So. 285.

Georgia. — Wellmaker *v.* Terrell, (Ga. App. 1908) 60 S. E. 464.

Illinois. — Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374; Patton *v.* People, 229 Ill. 512, 82 N. E. 386.

Indiana. — Hutchins *v.* Covert, 39 Ind. App. 382, 78 N. E. 1061; Truelove *v.* Washington, (Ind. 1907) 82 N. E. 530; Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030; Boyer *v.* State, (Ind. 1908) 83 N. E. 350; Jones *v.* Leeds, (Ind. App. 1908) 83 N. E. 526; Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. 1908) 84 N. E. 1077.

Iowa. — Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314.

Kansas. — State *v.* Kelly, 71 Kan. 811, 81 Pac. 450.

Kentucky. — Com. *v.* Nunan, (Ky. 1907) 104 S. W. 731; Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926; Grimstead *v.* Kirby, (Ky. 1908) 110 S. W. 247.

Maine. — State *v.* Canadian Pac. R. Co., 100 Me. 202, 60 Atl. 901.

Maryland. — Fout *v.* Frederick County Com'rs, 105 Md. 545, 66 Atl. 487.

Michigan. — Albert *v.* Gibson, 141 Mich. 698, 105 N. W. 19; Detroit, etc., R. Co. *v.* Alpena Circuit Judge, (Mich. 1908) 115 N. W. 724; Stambaugh Tp. *v.* Treasurer, (Mich. 1908) 116 N. W. 569.

Minnesota. — State *v.* Twin City Telephone Co., (Minn. 1908) 116 N. W. 835.

Missouri. — Casey *v.* St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419; Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769.

Montana. — State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 87 Pac. 980; Lewis *v.* Northern Pac. R. Co., (Mont. 1907) 92 Pac. 469.

Nebraska. — Ford *v.* State, (Neb. 1907) 112 N. W. 606.

New Hampshire. — Carter *v.* Whitcomb, (N. H. 1908) 69 Atl. 779.

New Jersey. — State *v.* Davis, 72 N. J. L. 345, 61 Atl. 2, *affirmed* (N. J. 1906) 64 Atl. 1134; State *v.* Harned, 72 N. J. L. 353, 61 Atl. 5, *affirmed* (N. J. 1906) 64 Atl. 1134.

New York. — Koster *v.* Coyne, 184 N. Y. 494, 77 N. E. 983; New York *v.* Manhattan R. Co., 192 N. Y. 90, 84 N. E. 745; People *v.* Weinstock, 117 N. Y. App. Div. 168, 102 N. Y. Supp. 349; People *v.* Snedecor, 117 N. Y. App. Div. 909, 102 N. Y. Supp. 352; Wehrenberg *v.* New York, etc., R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 704; People *v.* Butler, (Supm. Ct. App. Div.) 109 N. Y. Supp. 900.

North Carolina. — *In re* Applicants for License, 143 N. Car. 22, 55 S. E. 635, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 602, *per* Clark, C. J., concurring; Fortune *v.* Buncombe County, 140 N. Car. 322, 52 S. E. 950; St. George *v.* Hardie, (N. Car. 1908) 60 S. E. 920; McLeod *v.* Carthage, (N. Car. 1908) 61 S. E. 605.

North Dakota. — State *v.* Hanson, (N. Dak. 1907) 113 N. W. 371, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 602; State *v.* Duis, (N. Dak. 1908) 116 N. W. 751.

Ohio. — State *v.* Mulhern, 74 Ohio St. 363, 78 N. E. 507.

Oklahoma. — State Mut. Ins. Co. *v.* Clevenger, 17 Okla. 49, 87 Pac. 583; State Mut. Ins. Co. *v.* Roark, 17 Okla. 48, 87 Pac. 584.

Pennsylvania. — Overseers of the Poor *v.* Overseers of the Poor, 33 Pa. Super. Ct. 520.

Tennessee. — O'Neil *v.* State, 115 Tenn. 427, 90 S. W. 627; Galloway *v.* Memphis, 116 Tenn. 736, 94 S. W. 75; Samuelson *v.* State, 116 Tenn. 470, 95 S. W. 1012; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

Texas. — Callaghan *v.* McGown, (Tex. Civ. App. 1905) 90 S. W. 319; Dallas county *v.* Plowman, 99 Tex. 509, 91 S. W. 221, *affirming* 88 S. W. 252; Freeman *v.* Collier Racket Co., (Tex. Civ. App. 1906) 105 S. W. 1129.

Utah. — *In re* Garr, 31 Utah 57, 86 Pac. 757; Garcia *v.* Free, 31 Utah 389, 88 Pac. 30.

Virginia. — Norfolk, etc., Traction Co. *v.* Ellington, (Va. 1908) 61 S. E. 779.

Washington. — Smith *v.* St. Paul, etc., R. Co., 39 Wash. 355, 81 Pac. 840.

West Virginia. — Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484; Charleston *v.* Charleston Brewing Co., 61 W. Va. 34, 56 S. E. 198; State *v.* Harden, (W. Va. 1907) 58 S. E. 715; State *v.* Wirt County Ct., (W. Va. 1907) 59 S. E. 884.

Wisconsin. — Davis *v.* State, (Wis. 1908) 115 N. W. 150.

Wyoming. — Ross *v.* State, (Wyo. 1908) 93 Pac. 299.

604. 4. *California.* — Grannis *v.* Superior Ct., 146 Cal. 248, 79 Pac. 891, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 604.

Idaho. — Settlers' Irrigation Dist. *v.* Settlers' Canal Co., (Idaho 1908) 94 Pac. 829.

Kentucky. — Com. *v.* Herald Pub. Co., (Ky. 1908) 108 S. W. 892; Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926; Kentucky Union Co. *v.* Com., (Ky. 1908) 108 S. W. 931.

Minnesota. — State *v.* Bates, 96 Minn. 110, 104 N. W. 709; State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935.

Montana. — Lewis *v.* Northern Pac. R. Co., (Mont. 1907) 92 Pac. 469.

North Carolina. — Fortune *v.* Buncombe County, 140 N. Car. 322, 52 S. E. 950.

Tennessee. — Standard Oil Co. v. State, 117 Tenn. 618, 100 S. W. 705; Memphis St. R. Co. v. Byrne, (Tenn. 1907) 104 S. W. 460.

Utah. — State v. Ritchie, (Utah 1907) 91 Pac. 24.

Vermont. — *In re* Howard, 80 Vt. 489, 68 Atl. 513.

West Virginia. — State v. Wirt County Ct., (W. Va. 1907) 59 S. E. 884.

5. State v. Harden, (W. Va. 1907) 58 S. E. 715, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 604; Portland v. New England Telephone, etc., Co., (Me. 1907) 68 Atl. 1040; Standard Oil Co. v. State, 117 Tenn. 618, 100 S. W. 705; Dallas County v. Plowman, 99 Tex. 509, 91 S. W. 221, *affirming* 88 S. W. 252; Houston, etc., R. Co. v. State, (Tex. Civ. App. 1907) 103 S. W. 449; Webb v. Ritter, 60 W. Va. 193, 54 S. E. 484; State v. Baltimore, etc., R. Co., 61 W. Va. 367, 56 S. E. 518.

6. Rose v. Lampley, 146 Ala. 445, 41 So. 521; State v. Stobie, 194 Mo. 14, 92 S. W. 191; State v. Stark County, 14 N. Dak. 368, 103 N. W. 913; State v. Peet, 80 Vt. 449, 68 Atl. 661.

605. 1. Swick v. Coleman, 218 Ill. 33, 75 N. E. 807, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605; Helm v. Grayville, 224 Ill. 278, 79 N. E. 689, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605; Campbell v. Skinner Mfg. Co., 53 Fla. 632, 43 So. 874; Portland v. New England Telephone, etc., Co., (Me. 1907) 68 Atl. 1040; Lexington v. Commercial Bank, (Mo. App. 1908) 108 S. W. 1095.

2. McCleary v. Babcock, (Ind. 1907) 82 N. E. 453; Portland v. New England Telephone, etc., Co., (Me. 1907) 68 Atl. 1040.

3. Portland v. New England Telephone, etc., Co., (Me. 1907) 68 Atl. 1040; Lexington v. Commercial Bank, (Mo. App. 1908) 108 S. W. 1095.

8. *United States.* — McInerney v. U. S., (C. C. A.) 143 Fed. 729; Wadsworth v. Boysen, (C. C. A.) 148 Fed. 771.

Indiana. — State v. Shelton, 38 Ind. App. 80, 77 N. E. 1052; Truelove v. Washington, (Ind. 1907) 82 N. E. 530; Boyer v. State, (Ind. 1908) 83 N. E. 350.

Kentucky. — Maysville v. Maysville St. R., etc., Co., (Ky. 1908) 108 S. W. 960.

Louisiana. — State v. Maloney, 115 La. 498, 39 So. 539.

Maine. — State v. Canadian Pac. R. Co., 100 Me. 202, 60 Atl. 901.

Texas. — Houston v. Potter, (Tex. Civ. App. 1906) 91 S. W. 389; Lamb v. State, 49 Tex. Crim. 443, 93 S. W. 734.

Utah. — State v. Ritchie, (Utah 1907) 91 Pac. 24.

Virginia. — Norfolk, etc., Traction Co. v. Ellington, (Va.) 61 S. E. 779.

Washington. — State v. Tiffany, 44 Wash. 602, 87 Pac. 932; Great Northern R. Co. v. Snohomish County, (Wash. 1908) 93 Pac. 924; Spokane Falls, etc., R. Co. v. Stevens County, (Wash. 1908) 93 Pac. 927.

Wisconsin. — Huber v. Martin, 127 Wis. 412, 105 N. W. 1031, *affirmed* 127 Wis. 448, 105 N. W. 1135.

9. Duehay v. District of Columbia, 25 App. Cas. (D. C.) 434; *In re* Mark Cross Co., 26 App. Cas. (D. C.) 101; Ohio Nat. Bank v. Berlin, 26 App. Cas. (D. C.) 218; Martin v. Martin, etc., Co., 7 Ann. Cas. 47, 27 App. Cas. (D. C.) 59; *In re* Hammerstein, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 54, 108 N. Y. Supp. 197, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605; Cowanshannock Poor Dist. v. Armstrong County, 31 Pa. Super. Ct. 386; O'Neil v. State, 115 Tenn. 437, 90 S. W. 627, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605; U. S. v. Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; State v. Wilder, 206 Mo. 541, 105 S. W. 272; *In re* Opinion of Justices, (N. H. [illegible]) 68 Atl. 873; *Ex p.* Brown, (S. Dak. 1907) 114 N. W. 303.

GGG. 1. McInerney v. U. S., (C. C. A.) 143 Fed. 729; *Ex p.* Wisner, (Mont. 1907) 92 Pac. 958; Sharpe v. Hasey, (Wis. 1908) 114 N. W. 1118.

2. State v. Tiffany, 44 Wash. 602, 87 Pac. 932.

3. *Ex p.* Wisner, (Mont. 1907) 92 Pac. 958.

607. 2. Allen v. Tressenrider, 72 Ohio St. 92, 2 Ann. Cas. 974, 73 N. E. 1015, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 607, *per* Davis, C. J., *dissenting;* Nephi Plaster, etc., Co. v. Juab County, (Utah 1907) 93 Pac. 53.

608. 1. Gates v. Richmond, 103 Va. 705, 49 S. E. 965, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608; Wells v. Com., (Va. 1907) 57 S. E. 588, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608; State v. Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728; Elkhart County v. Albright, 168 Ind. 564, 81 N. E. 578; Carson v. Shelton, (Ky. 1908) 107 S. W. 793.

2. Rex v. Flynn, 9 Can. Crim. Cas. 552, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608; Gates v. Richmond, 103 Va. 705, 49 S. E. 965, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 608.

3. Caster v. McClellan, 132 Iowa 502, 109 N. W. 1020; Com. v. Chicago St., etc., R. Co., (Ky. 1907) 99 S. W. 596; Missouri, etc., R. Co. v. State, (Tex Civ. App. 1906) 97 S. W. 720; Skeen v. Craig, 31 Utah 20, 86 Pac. 487.

609. 4. Central of Georgia R. Co. v. State, 145 Ala. 102, 40 So. 991, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 609; State v. Jackson, 168 Ind. 384, 81 N. E. 62; Com. v. Chicago St., etc., R. Co., (Ky. 1907) 99 S. W. 596; State v. Harter, 188 Mo. 516, 87 S. W. 941; *Ex p.* Brown, (S. Dak. 1907) 114 N. W. 303; *Ex p.* Muckenfuss, (Tex. Crim. 1908) 107 S. W. 1131.

610. 2. Pein v. Miznerr, (Ind. App. 1908) 83 N. E. 784; Com. v. Chicago St., etc., R. Co., (Ky. 1907) 99 S. W. 596; Portland v. New England Telephone Co., (Me. 1907) 68 Atl. 1040; State v. Harter, 188 Mo. 516, 87 S. W. 941; Samuelson v. State, 116 Tenn. 470, 95 S. W. 1012; Nephi Plaster, etc., Co. v. Juab County, [illegible] Pac. 53.

3. *Ex p.* Massey, 49 Tex. Crim. 60, 92 S. W. 1086.

4. McReynolds v. People, 230 Ill. 633, 82 N. E. 945, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 610.

5. Com. v. Chicago St., etc., R. Co., (Ky. 1907) 99 S. W. 596; Portland v. New England Telephone, etc., Co., (Me. 1907) 68 Atl. 1040; State v. Harter, 188 Mo. 516, 87 S. W. 941;

Nephi Plaster, etc., Co. *v.* Juab County, (Utah 1907) 93 Pac. 53.

8. Interstate Drainage, etc., Co. *v.* Freeborn County, (C. C. A.) 158 Fed. 270; State *v.* Drexel, 75 Neb. 614, 106 N. W. 791.

611. 1. State *v.* Skeggs, (Ala. 1908) 46 So. 268; Davenport *v.* Elrod, (S. Dak. 1906) 107 N. W. 833; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

6. Boyer *v.* State, (Ind. 1908) 83 N. E. 350; People *v.* Neff, 122 N. Y. App. Div. 135, 106 N. Y. Supp. 747.

612. 2. Douglass *v.* Leavenworth County, [illegible], 88 Pac. 557; Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926; Peoria First Nat. Bank *v.* Farmers', etc., Nat. Bank, (Ind. 1908) 84 N. E. 1077; State *v.* Maloney, 115 La. 498, 39 So. 539; State *v.* Bates, 96 Minn. 110, 104 N. W. 709; *Ex p.* Wisner, (Mont. 1907) 92 Pac. 958; Fremont, etc., R. Co. *v.* Pennington County, (S. Dak. 1905) 105 N. W. 929; Samuelson *v.* State, 116 Tenn. 470, 95 S. W. 1012; Waters-Pierce Oil Co. *v.* State, (Tex. Civ. App. 1907) 106 S. W. 918; State *v.* Tiffany, 44 Wash. 602, 87 Pac. 932.

3. Smith *v.* Haney, 73 Kan. 508, 85 Pac. 550, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 612; State *v.* Scaffer, 95 Minn. 314, 104 N. W. 139, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 612.

613. 2. Smith *v.* Haney, 73 Kan. 506, 85 Pac. 550.

5. Haynes *v.* New York Cent., etc., R. Co., 32 Pa. Co. Ct. 664, 15 Pa. Dist. 970, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 613.

614. 3. State *v.* Harden, (W. Va. 1907) 58 S. E. 715, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624 [614].

616. 1. *United States.* — U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; Stevens *v.* Nave-McCord Mercantile Co., (C. C. A.) 150 Fed. 71; Interstate Drainage, etc., Co. *v.* Freeborn County, (C. C. A.) 158 Fed. 270.

Arkansas. — *Ex p.* Deeds, 75 Ark. 542, 87 S. W. 1030.

Indiana. — State *v.* Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728; Truelove *v.* Washington, (Ind. 1907) 82 N. E. 530; Hasely *v.* Ensley, (Ind. App. 1907) 82 N. E. 809; Boyer *v.* State, (Ind. 1908) 83 N. E. 350.

Kansas. — State *v.* Kelly, 71 Kan. 811, 81 Pac. 450.

Kentucky. — Mutual L. Ins. Co. *v.* Prewitt, (Ky. 1907) 105 S. W. 463.

Minnesota. — State *v.* Twin City Telephone Co., (Minn. 1908) 116 N. W. 835.

Montana. — *In re* Terrett, 34 Mont. 325, 86 Pac. 266; *Ex p.* Wisner, (Mont. 1907) 92 Pac. 958.

Nebraska. — State *v.* Drexel, 75 Neb. 614, 106 N. W. 791.

Oklahoma. — De Graffenreid *v.* Iowa Land, etc., Co., (Okla. 1908) 95 Pac. 624.

Texas. — Houston *v.* Potter, (Tex. Civ. App. 1906) 91 S. W. 389.

Virginia. — Hoover *v.* Saunders, 104 Va. 783, 52 S. E. 657; Tazewell *v.* Herman, (Va. 1908) 60 S. E. 767.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

2. U. S. *v.* Baltimore, etc., R. Co., (C. C. A.) 159 Fed. 33, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 616; Central of Georgia R. Co. *v.* State, 145 Ala. 102, 40 So. 991, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 616; State *v.* Harter, 188 Mo. 516, 87 S. W. 941; State *v.* Dunn, (Neb. 1906) 107 N. W. 236.

617. 2. Pringle *v.* Canfield, 19 S. Dak. 506, 104 N. W. 223; Lamb *v.* State, 49 Tex. Crim. 443, 93 S. W. 734.

618. 3. *United States.* — U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; U. S *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266.

Alabama. — Hawkins *v.* Louisville, etc., R. Co., 145 Ala. 385, 40 So. 2[illegible].

Arkansas. — Chicago, etc., R. Co. *v.* State, 84 Ark. 140, 106 S. W. 199.

Florida. — Goode *v.* State, 50 Fla. 52, 39 So. 461, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618.

Georgia. — Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

Illinois. — McReynolds *v.* People, 230 Ill. 623, 82 N. E. 945; Peterson *v.* People, 129 Ill. App. 57, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618.

Indiana. — Cahill *v.* State, 36 Ind. App. 507, 76 N. E. 182.

Iowa. — State *v.* Corning State Sav. Bank, (Iowa 1908) 115 N. W. 937.

Kansas. — *Ex p.* Schley, 71 Kan. 266, 80 Pac. 631; State *v.* Butler County, (Kan. 1908) 94 Pac. 1004.

Kentucky. — Com. *v.* Adams Express Co., (Ky. 1906) 97 S. W. 386; Com. *v.* Chicago, etc., R. Co., (Ky. 1907) 99 S. W. 596.

Missouri. — State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005; Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769.

Nebraska. — State *v.* Fink, 74 Neb. 641, 104 N. W. 1059; State *v.* Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979, 110 N. W. 874.

New York. — Freeman *v.* Freeman, (Supm. Ct. App. Div.) 110 N. Y. Supp. 686.

North Carolina. — Propst *v.* Southern R. Co., 139 N. Car. 397, 51 S. E. 920; Fortune *v.* Buncombe County, 140 N. Car. 322, 52 S. E. 950; Peters Grocery Co. *v.* Collins Bag Co., 142 N. Car. 174, 55 S. E. 90.

Ohio. — State *v.* Mulhern, 74 Ohio St. 363, 78 N. E. 507.

Oregon. — Dutro *v.* Ladd, (Oregon 1907) 91 Pac. 459; Riggs *v.* Polk County, (Oregon 1908) 95 Pac. 5.

South Carolina. — Venning *v.* Atlantic Coast Line R. Co., 78 S. Car. 42, 58 S. E. 983.

Texas. — Texas, etc., R. Co. *v.* Blocker, (Tex. Civ. App. 1907) 106 S. W. 718.

Utah. — Hoffman *v.* Lewis, 31 Utah 179, 87 Pac. 167; Eccles Lumber Co. *v.* Martin, 31 Utah 241, 87 Pac. 713; Lawson *v.* Tripp, (Utah 1908) 95 Pac. 520.

Virginia. — Hoover *v.* Saunders, 104 Va. 783, 52 S. E. 657.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

619. 1. Sanford *v.* King, 19 S. Dak. 339, 103 N. W. 28, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; State *v.* Mudie, (S. Dak. 1908) 115 N. W. 107, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618; U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266; Miller *v.* Donovan, 3 Cal. App. 325, 85

Pac. 159; Austin *v.* Cahill, 99 Tex. 172, 88 S. W. 542; Callaghan *v.* McGown, (Tex. Civ. App. 1905) 90 S. W. 319; Paul *v.* State, (Tex. Civ. App. 1907) 106 S. W. 448; Hawkins *v.* Bare, (W. Va. 1908) 60 S. E. 391.

2. Alameda County *v.* Dalton, 148 Cal. 246, 82 Pac. 1050, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 619; Reeves *v.* Bruening, (N. Dak. 1907) 114 N. W. 313, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618, 619, quoting the entire paragraph.

3. U. S. *v.* Farrar, (C. C. A.) 139 Fed. 260, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 619; Alameda County *v.* Dalton, 148 Cal. 251, 82 Pac. 1050, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 619; Peterson *v.* People, 129 Ill. App. 57, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 619; Joseph Speidel Grocery Co. *v.* Warder, 56 W. Va. 608, 49 S. E. 534, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 619; Mosser *v.* Moore, 56 W. Va. 493, 49 S. E. 537, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618, 619; U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266; Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313; Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52; Central of Georgia R. Co. *v.* Wright, 125 Ga. 617, 54 S. E. 64; State *v.* Mulhern, 74 Ohio St. 363, 78 N. E. 507.

620. 1. U. S. *v.* Farrar, (C. C. A.) 139 Fed. 260, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 620; U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266; State *v.* Bates, 96 Minn. 110, 104 N. W. 709.

5. *United States.* — Christie-St. Commission Co. *v.* U. S., (C. C. A.) 136 Fed. 326; Southern R. Co. *v.* McNeill, 155 Fed. 756.

Colorado. — Steck *v.* Prentice, (Colo. 1908) 95 Pac. 552.

Florida. — State *v.* McMillan, (Fla. 1908) 45 So. 882.

Georgia. — Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52; Central of Georgia R. Co. *v.* Wright, 125 Ga. 617, 54 S. E. 64; Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

Indiana. — Indianapolis Northern Traction Co. *v.* Ramer, 37 Ind. App. 264, 76 N. E. 808; Jackson County *v.* Branaman, (Ind. 1907) 82 N. E. 65; Cahill *v.* State, 36 Ind. App. 507, 76 N. E. 182; State *v.* Kiley, 36 Ind. App. 513, 76 N. E. 184; Hutchens *v.* Covert, 39 Ind. App. 382, 78 N. E. 1061.

Idaho. — Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903.

Iowa. — Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177.

Kansas. — Nash *v.* Glen Elder, 74 Kan. 756, 88 Pac. 62; Davenport *v.* Ham, 72 Kan. 179, 83 Pac. 398.

Louisiana. — State *v.* Maloney, 115 La. 498, 39 So. 539.

Massachusetts. — Woodall *v.* Boston El. R. Co., 192 Mass. 308, 78 N. E. 446.

Missouri. — State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005.

Nebraska. — State *v.* Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979, 110 N. W. 875.

New Jersey. — United New Jersey R., etc., Co. *v.* Parker, (N. J. L. 1908) 69 Atl. 239.

New York. — *In re* Locust Ave., 185 N. Y. 115, 77 N. E. 1012; People *v.* Consolidated Tel., etc., Co., 187 N. Y. 58, 79 N. E. 892; Seeley *v.* Stevens, 190 N. Y. 158, 82 N. E. 1095; Ebling Brewing Co. *v.* Nimphius, (Supm. Ct. App. T.) 109 N. Y. Supp. 808.

North Carolina. — St. George *v.* Hardie, (N. Car. 1908) 60 S. E. 920.

Ohio. — State *v.* Lewis, 74 Ohio St. 403, 78 N. E. 523.

Oklahoma. — De Graffenreid *v.* Iowa Land, etc., Co., (Okla. 1908) 95 Pac. 624, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 620.

Rhode Island. — Masterson *v.* Whipple, 27 R. I. 192, 61 Atl. 446.

Utah. — *In re* Garr, 31 Utah 57, 86 Pac. 757.

Virginia. — South, etc., R. Co. *v.* Com., 104 Va. 314, 51 S. E. 824; Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821.

West Virginia. — Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

622. 1. Helm *v.* Grayville, 224 Ill. 280, 79 N. E. 689, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 621; State *v.* Wirt County Ct., (W. Va. 1907) 59 S. E. 884, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622; Indianapolis Northern Traction Co. *v.* Ramer, 37 Ind. App. 264, 76 N. E. 808.

623. 2. Cahill *v.* State, 36 Ind. App. 507, 76 N. E. 182; State *v.* Kiley, 36 Ind. App. 513, 76 N. E. 184; Indianapolis Northern Traction Co. *v.* Ramer, 37 Ind. App. 264, 76 N. E. 808.

3. State *v.* Patterson, 207 Mo. 129, 105 S. W. 1048.

4. Grannis *v.* Superior Ct., 146 Cal. 248, 79 Pac. 891, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 623; State *v.* Shelton, 38 Ind. App. 80, 77 N. E. 1052; State *v.* Stroschein, 99 Minn. 248, 109 N. W. 235; State *v.* Patterson, 207 Mo. 129, 105 S. W. 1048; Joliff *v.* State, (Tex. Crim. 1908) 109 S. W. 176.

624. 1. State *v.* Bates, 96 Minn. 110, 104 N. W. 709; State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

2. Grannis *v.* Superior Ct., 146 Cal. 248, 79 Pac. 891, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624; Hutchens *v.* Covert, 39 Ind. App. 387, 78 N. E. 1061, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624; Jackson County *v.* Branaman, (Ind. 1907) 82 N. E. 65, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624; Campbell *v.* Youngson, (Neb. 1907) 114 N. W. 415, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624.

3. Grannis *v.* Superior Ct., 146 Cal. 248, 79 Pac. 891, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624; Southern R. Co. *v.* McNeill, 155 Fed. 756; Steck *v.* Prentice, (Colo. 1908) 95 Pac. 552.

625. 1. Clagett *v.* Duluth Tp., (C. C. A.) 143 Fed. 824; Thomas *v.* U. S., (C. C. A.) 156 Fed. 897; Glover *v.* State, 126 Ga. 594, 55 S. E. 592; State *v.* Stroschein, 99 Minn. 248, 109 N. W. 235; Becklin *v.* Becklin, 99 Minn. 307, 109 N. W. 243; State *v.* Hovorka, 100 Minn. 249, 110 N. W. 870; State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

3. Sheehan *v.* Louisville, etc., R. Co., (Ky. 1907) 101 S. W. 380; Walker *v.* Bobbitt, 114 Tenn. 700, 88 S. W. 327; *Ex p.* Muckenfuss, (Tex. Crim. 1908) 107 S. W. 1131.

4. *Ex p.* Muckenfuss, (Tex. Crim. 1908) 107 S. W. 1131.

627. 2. Fletcher *v.* Birkenhead Corp., (1907) 1 K. B. 205.

628. 5. *United States.* — Brooks *v.* Southern Pac. Co., 148 Fed. 986, *affirmed* 207 U. S. 463, 28 U. S. Sup. Ct. 141; Rider *v.* U. S., (C. C. A.) 149 Fed. 164; Spain *v.* St. Louis, etc., R. Co., 151 Fed. 522; United Shoe Machinery Co. *v.* Duplessis Shoe Machinery Co., (C. C. A.) 155 Fed. 842, *affirming* 148 Fed. 32; St. Louis, etc., R. Co. *v.* Delk, (C. C. A.) 158 Fed. 931; U. S. *v.* Nakashima, (C. C. A.) 160 Fed. 842.

Arkansas. — Western Union Tel. Co. *v.* State, 82 Ark. 308, 101 S. W. 745, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 628, 629.

Indiana. — Smith *v.* State, 165 Ind. 180, 74 N. E. 983; Elkhart County *v.* Albright, 168 Ind. 564, 81 N. E. 578.

Kansas. — State *v.* Miller, 74 Kan. 670, 87 Pac. 723, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 627, 628.

Minnesota. — Megins *v.* Duluth, 97 Minn. 23, 106 N. W. 89.

Missouri. — State *v.* Fort, (Mo. 1908) 109 S. W. 737; Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769.

Nebraska. — Campbell *v.* Youngson, (Neb. 1907) 114 N. W. 415.

Pennsylvania. — Moore *v.* Chartiers Valley Water Co., 216 Pa. St. 457, 65 Atl. 936.

629. 1. Forman *v.* Sewerage, etc., Board, 119 La. 49, 43 So. 908.

2. U. S. *v.* Nakashima, (C. C. A.) 160 Fed. 842.

3. Rider *v.* U. S., (C. C. A.) 149 Fed. 164; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

6. Western Union Tel. Co. *v.* State, 82 Ark. 302, 101 S. W. 745, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 629; *Ex p.* Knight, 52 Fla. 144, 41 So. 786.

630. 2. *Ex p.* Wisner, (Mont. 1907) 92 Pac. 958.

10. State *v.* Fairbanks, 115 La. 462, 39 So. 443, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 630.

631. 8. Lorenz *v.* U. S., 24 App. Cas. (D. C.) 337.

9. Blood *v.* Beal, 100 Me. 30, 60 Atl. 427; Taylor *v.* Caribow, 102 Me. 401, 67 Atl. 2.

632. 1. Stevens *v.* Nave-McCord Mercantile Co., (C. C. A.) 150 Fed. 71; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251; Supreme Lodge, etc., *v.* Hunziker, (Ky. 1905) 87 S. W. 1134; Williams *v.* State, (Tex. Crim. 1908) 107 S. W. 1121.

2. *United States.* — U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; U. S. *v.* Chicago, etc., R. Co., 157 Fed. 616; Interstate Drainage, etc., Co. *v.* Freeborn County, (C. C. A.) 158 Fed. 270; U. S. *v.* Lonabaugh, 158 Fed. 314; St. Louis, etc., R. Co. *v.* Delk, (C. C. A.) 158 Fed. 931; U. S. *v.* Nakashima, (C. C. A.) 160 Fed. 842.

Alabama. — Prowell *v.* State, 142 Ala. 80, 39 So. 164.

Arkansas. — Stillwell *v.* Jackson, 77 Ark. 250, 93 S. W. 71.

California. — Grannis *v.* Superior Ct., 146 Cal. 248, 79 Pac. 891, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 632.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929; Wade *v.* Atlantic Lumber Co., 51 Fla. 628, 41 So. 72.

Georgia. — Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 632; Roberts *v.* State, (Ga. App. 1908) 60 S. E. 1082.

Illinois. — Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174; Struthers *v.* People, 116 Ill. App. 481.

Indiana. — State *v.* Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728; Truelove *v.* Washington, (Ind. 1907) 82 N. E. 530; Clinton County *v.* Given, (Ind. 1907) 82 N. E. 918; Advisory Board *v.* Levandowski, (Ind. App. 1908) 84 N. E. 346.

Iowa. — Halsey *v.* Belle Plaine, 128 Iowa 467, 104 N. W. 494.

Kansas. — State *v.* Kelly, 71 Kan. 811, 81 Pac. 450; Nash *v.* Glen Elder, 74 Kan. 756, 88 Pac. 62.

Kentucky. — Louisville School Board *v.* King, (Ky. 1908) 107 S. W. 247.

Louisiana. — State *v.* Maloney, 115 La. 498, 39 So. 539; *In re* Schwartz, 119 La. 290, 44 So. 20.

Maine. — Taylor *v.* Caribou, 102 Me. 401, 67 Atl. 2.

Maryland. — Maryland Agricultural College *v.* Atkinson, 102 Md. 557, 62 Atl. 1035.

Michigan. — Hoffman *v.* H. M. Loud, etc., Lumber Co., 138 Mich. 10, 104 N. W. 424; People *v.* Michigan Cent. R. Co., 145 Mich. 140, 108 N. W. 772.

Minnesota. — State *v.* Twin City Telephone Co., (Minn. 1908) 116 N. W. 835.

Missouri. — Perry *v.* Strawbridge, (Mo. 1908) 108 S. W. 641; Lexington *v.* Commercial Bank, (Mo. App. 1908) 108 S. W. 1095.

Montana. — State *v.* Ætna Banking, etc., Co., 34 Mont. 379, 87 Pac. 268.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197.

New Jersey. — Mendles *v.* Danish, (N. J. 1907) 65 Atl. 888.

New York. — People *v.* Butler, (Supm. Ct. App. Div.) 109 N. Y. Supp. 900.

North Dakota. — State *v.* Burr, (N. Dak. 1907) 113 N. W. 705.

Pennsylvania. — Com. *v.* Liebrich, 33 Pa. Co. Ct. 293, 16 Pa. Dist. Ct. 471, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 632.

Tennessee. — Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

Texas. — Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 449.

Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

Virginia. — Norfolk, etc., Traction Co. *v.* Ellington, (Va. 1908) 61 S. E. 779.

Washington. — Smith *v.* St. Paul, etc., R. Co., 39 Wash. 355, 81 Pac. 840.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715; State *v.* Wirt County Ct., (W. Va. 1907) 59 S. E. 884.

633. 1. Holden *v.* U. S., 24 App. Cas. (D. C.) 318; State *v.* Henry, 87 Miss. 125, 40 So. 152; *Ex p.* Helton, 117 Mo. App. 609, 93 S. W. 513.

2. *Arizona.* — Copper Queen Consol. Min. Co. *v.* Territorial Board of Equalization, 3 Ariz. 383, 84 Pac. 511.

California. — People *v.* Richards, 1 Cal. App. 566, 82 Pac. 691.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929.

Georgia. — Edwards *v.* State, 123 Ga. 542, 51 S. E. 630; Benning *v.* State, 123 Ga. 546, 51 S. E. 632.

Illinois. — Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 633; Cook County *v.* Healy, 222 Ill. 317, 78 N. E. 623, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 633.

Indiana. — Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620.

Kentucky. — Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168; McChesney *v.* Hager, (Ky. 1907) 104 S. W. 714.

Michigan. — People *v.* Michigan Cent. R. Co., 145 Mich. 174, 108 N. W. 772, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 633.

Missouri. — State *v.* Etchman, 189 Mo. 648, 88 S. W. 643.

Nebraska. — Nebraska Cent. Bldg., etc., Assoc. *v.* Board of Equalization, (Neb. 1907) 111 N. W. 147.

Rhode Island. — Bates *v.* Hacking, (R. I. 1908) 68 Atl. 622.

Tennessee. — Red River Furnace Co. *v.* Tennessee Cent. R. Co., 113 Tenn. 697, 87 S. W. 1016.

Texas. — Tyler *v.* St. Louis Southwestern R. Co., 99 Tex. 491, 91 S. W. 1.

Washington. — Regan *v.* School Dist. No. 25, 44 Wash. 526, 87 Pac. 828, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 633.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715; State *v.* Davis, (W. Va. 1907) 60 S. E. 584.

634. 2. *Ex p.* Muckenfuss, (Tex. Crim. 1908) 107 S. W. 1131.

3. U. S. *v.* MacFarland, 28 App. Cas. (D. C.) 552; Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 634; Whittemore *v.* People, 227 Ill. 453, 10 Ann. Cas. 44, 81 N. E. 427, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 634; Hord *v.* State, 167 Ind. 622, 79 N. E. 916; State *v.* Henry, 87 Miss. 125, 40 So. 152; People *v.* Consolidated Tel., etc., Co., 187 N. Y. 58, 79 N. E. 892.

4. Whittemore *v.* People, 227 Ill. 477, 10 Ann. Cas. 44, 81 N. E. 427, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 634, *per* Carter, J., dissenting; State *v.* Sheldon, (Neb. 1907) 113 N. W. 208, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 634.

635. 4. Regan *v.* School Dist. No. 25, 44 Wash. 526, 87 Pac. 828, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635; U. S. *v.* Day, 27 App. Cas. (D. C.) 458; U. S. *v.* Cerecedo Hermanos Y Compania, 209 U. S. 337, 28 U. S. Sup. Ct. 532; U. S. *v.* Burkett, 150 Fed. 208; Nye *v.* Foreman, 215 Ill. 285, 74 N. E. 140; Com. *v.* Gregory, (Ky. 1905) 89 S. W. 168; People *v.* Michigan Cent. R. Co., 145 Mich. 140, 108 N. W. 772; Tarsney *v.* Board of Education, 147 Mich. 418, 110 N. W. 1093; State *v.* Northern Pac. R. Co., 95 Minn. 43, 103 N. W. 731; State *v.* Twin City Telephone Co., (Minn. 1908) 116 N. W. 835; Reeves *v.* Bruening, (N. Dak. 1907) 114 N. W. 313.

636. 1. Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174; Hord *v.* State, 167 Ind. 622, 79 N. E. 916; Manthey *v.* Vincent, 145 Mich. 327, 108 N. W. 667; Moriarty *v.* New York, (Supm. Ct. App. T.) 110 N. Y. Supp. 842; Philadelphia F. Assoc. *v.* Love, (Tex. 1908) 108 S. W. 810.

3. Wyatt *v.* Wanamaker, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 429, 110 N. Y. Supp. 900.

637. 1. Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798; Great Northern R. Co. *v.* Snohomish County, (Wash. 1908) 93 Pac. 924; Spokane Falls, etc., R. Co. *v.* Stevens County, (Wash. 1908) 93 Pac. 927; State *v.* Redmon, (Wis. 1907) 114 N. W. 137.

3. Griffin *v.* Rhoton, (Ark. 1907) 107 S. W. 380; Cunningham *v.* State, 128 Ga. 55, 57 S. E. 90; McCleary *v.* Babcock, (Ind. 1907) 82 N. E. 453; Halsey *v.* Belle Plaine, 128 Iowa 467, 104 N. W. 494; Slutts *v.* Dana, (Iowa 1908) 115 N. W. 1115; Victoria Lumber Co. *v.* Rives, 115 La. 996, 40 So. 382; State *v.* Herring, (Mo. 1907) 106 S. W. 984; Crohn *v.* Kansas City Home Telephone Co., (Mo. App. 1908) 109 S. W. 1068; State *v.* Galusha, 74 Neb. 188, 104 N. W. 197; State *v.* Sheldon, (Neb. 1907) 111 N. W. 372; State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

638. 4. Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirming* 208 U. S. 452, 28 U. S. Sup. Ct. 313; Davidson *v.* Witthaus, 106 N. Y. App. Div. 182, 94 N. Y. Supp. 428.

5. Eddy *v.* Morgan, 216 Ill. 449, 75 N. E. 174, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 638; State *v.* Harden, (W. Va. 1907) 58 S. E. 715, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 638; U. S. *v.* Chicago, etc., R. Co., 157 Fed. 616; U. S. *v.* Nakashima, (C. C. A.) 160 Fed. 842; *Ex p.* Helton, 117 Mo. App. 609, 93 S. W. 913.

639. 4. **Debates of Legislature Not Considered.** — Lenhart *v.* Cambria County, 29 Pa. Super. Ct. 350.

5. State *v.* Lowry, 166 Ind. 401, 9 Ann. Cas. 350, 77 N. E. 728, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 639, *per* Montgomery, J., *dissenting*; Wadsworth *v.* Boysen, (C. C. A.) 148 Fed. 771; U. S. *v.* Nakashima, (C. C. A.) 160 Fed. 842; State *v.* Brackin, (Ala. 1908) 45 So. 841; State *v.* Kelly, 71 Kan. 811, 81 Pac. 450; Ellis *v.* Boer, 150 Mich. 452, 114 N. W. 239; *Ex p.* Helton, 117 Mo. App. 609, 93 S. W. 913; People *v.* Butler, (Supm. Ct. App. Div.) 109 N. Y. Supp. 900; State *v.* Burr, (N. Dak. 1907) 113 N. W. 705; State *v.* Swiggart, 118 Tenn. 556, 102 S. W. 75.

640. 3. State *v.* Kelly, 71 Kan. 811, 81 Pac. 450.

4. U. S. *v.* Chicago, etc., R. Co., 157 Fed. 616; *Ex p.* Helton, 117 Mo. App. 609, 93 S. W. 913.

5. Cortelyou *v.* Anderson, 73 N. J. L. 427, 63 Atl. 1095.

6. Manigault *v.* Springs, 199 U. S. 473, 26 U. S. Sup. Ct. 127; Davidson *v.* Witthaus, 106 N. Y. App. Div. 182, 94 N. Y. Supp. 428; *In re* Stickney, 110 N. Y. App. Div. 294, 97 N. Y. Supp. 336; State *v.* Duluth, etc., R. Co., 102 Minn. 26, 112 N. W. 897; State *v.* Minnesota,

etc., R. Co., 102 Minn. 506, 112 N. W. 899; State *v.* Cantwell, 142 N. Car. 604, 55 S. E. 820.

7. *United States.* — Spain *v.* St. Louis, etc., R. Co., 151 Fed. 522; Snead *v.* Central of Georgia R. Co., 151 Fed. 608; Smeltzer *v.* St. Louis, etc., R. Co., 158 Fed. 649.

Alabama. — Jackson *v.* Birmingham Foundry, etc., Co., (Ala. 1908) 45 So. 660.

Arkansas. — Arkansas, etc., R. Co. *v.* Kennedy, 84 Ark. 364, 105 S. W. 885.

California. — *Ex p.* Spencer, 149 Cal. 402, 86 Pac. 896, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 640; *Ex p.* Elam, (Cal. App. 1907) 91 Pac. 811.

Colorado. — Prudential Ins. Co. *v.* Hummer, 36 Colo. 208, 84 Pac. 61.

Delaware. — State *v.* Wickenhoefer, (Del. 1906) 64 Atl. 273.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929; Thomas *v.* Williamson, 51 Fla. 332, 40 So. 831; Hayes *v.* Walker, (Fla. 1907) 44 So. 747.

Georgia. — Banks *v.* State, 124 Ga. 15, 52 S. E. 74; Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343; Griggs *v.* State, (Ga. App. 1908) 60 S. E. 364.

Idaho. — Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903; *Ex p.* Gale, (Idaho 1908) 95 Pac. 679.

Illinois. — Rouse *v.* Thompson, 228 Ill. 522, 81 N. E. 1109; Northwestern University *v.* Wilmette, 230 Ill. 80, 82 N. E. 615; People *v.* McBride, 234 Ill. 146, 84 N. E. 865.

Indiana. — Elkhart County *v.* Albright, 168 Ind. 564, 81 N. E. 578; Kraus *v.* Lehman, (Ind. 1908) 83 N. E. 714.

Iowa. — McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177.

Kansas. — *Ex p.* Schley, 71 Kan. 266, 80 Pac. 631; State *v.* Kelly, 71 Kan. 811, 81 Pac. 450; *In re* Burnette, 73 Kan. 609, 85 Pac. 575; Nash *v.* Glen Elder, 74 Kan. 756, 88 Pac. 62.

Kentucky. — H. A. Thierman Co. *v.* Com., (Ky. 1906) 97 S. W. 366; Chesapeake Stone Co. *v.* Moreland, (Ky. 1907) 104 S. W. 762.

Michigan. — Albert *v.* Gibson, 141 Mich. 698, 105 Mich. 19; Clarence Tp. *v.* Dickenson, (Mich. 1908) 115 N. W. 57.

Minnesota. — State *v.* Board of Education, 97 Minn. 402, 106 N. W. 477.

Mississippi. — Hart *v.* State, 87 Miss. 171, 39 So. 523.

Missouri. — State *v.* Harter, 188 Mo. 516, 87 S. W. 941; State *v.* Etchman, 189 Mo. 648, 88 S. W. 643.

Montana. — Spratt *v.* Helena Power Transmission Co., (Mont. 1908) 84 Pac. 631.

Nebraska. — State *v.* Malone, 74 Neb. 645, 105 N. W. 893.

New York. — Seeley *v.* Stevens, 190 N. Y. 158, 82 N. E. 1095; People *v.* Reardon, 110 N. Y. App. Div. 821, 97 N. Y. Supp. 535; Saratoga Springs *v.* Saratoga Gas, etc., Co., 122 N. Y. App. Div. 203, 107 N. Y. Supp. 341.

North Carolina. — Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267; Hickory Marble, etc., Co. *v.* Southern R. Co., (N. Car. 1908) 60 S. E. 719.

North Dakota. — State *v.* Minneapolis, etc., Elevator Co., (N. Dak. 1908) 114 N. W. 482; State *v.* Minneapolis, etc., Elevator Co., (N. Dak. 1908) 114 N. W. 485.

South Dakota. — Fremont, etc., R. Co. *v.* Pennington County, (S. Dak. 1908) 116 N. W. 75.

Tennessee. — Samuelson *v.* State, 116 Tenn. 470, 95 S. W. 1012; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Maxey *v.* Powers, 117 Tenn. 381, 101 S. W. 181; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

Texas. — International, etc., R. Co. *v.* Railroad Commission, 99 Tex. 332, 89 S. W. 961; Buttron *v.* El Paso Northeastern R. Co., (Tex. Civ. App. 1906) 93 S. W. 676; State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71, *reversing* 93 S. W. 464; Texas Cent. R. Co. *v.* Marrs, (Tex. 1907) 101 S. W. 1177.

Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

Virginia. — Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

Washington. — Smith *v.* St. Paul, etc., R. Co., 39 Wash. 355, 81 Pac. 840.

West Virginia. — Underwood Typewriter Co. *v.* Piggott, 60 W. Va. 532, 55 S. E. 664.

Wisconsin. — State *v.* Anson, (Wis. 1907) 112 N. W. 475.

642. 1. *United States.* — Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753, *affirming* 140 Fed. 89; International Mercantile Marine Co. *v.* Stranahan, 155 Fed. 428; Logan *v.* Postal Tel., etc., Co., 157 Fed. 570.

Alabama. — State *v.* Skeggs, (Ala. 1908) 46 So. 268.

Arkansas. — State *v.* Moore, 76 Ark. 197, 88 S. W. 881; Williams *v.* State, 85 Ark. 464, 108 S. W. 838.

California. — *Ex p.* Spencer, 149 Cal. 396, 86 Pac. 896; Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353; *Ex p.* Elam, (Cal. App. 1907) 91 Pac. 811; *In re* Goodrich, (Cal. App. 1907) 93 Pac. 121.

Colorado. — Teller County *v.* Trowbridge, (Colo. 1908) 95 Pac. 554.

Delaware. — State *v.* Fountain, (Del. 1908) 69 Atl. 926.

Florida. — State *v.* Bryan, 50 Fla. 293, 39 So. 929; Escambia County *v.* Pilot Com'rs, 52 Fla. 197, 42 So. 697; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874; Hays *v.* Walker, (Fla. 1907) 44 So. 747.

Georgia. — Smith *v.* Macon, 129 Ga. 227, 58 S. E. 713.

Idaho. — Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903.

Illinois. — People *v.* McBride, 234 Ill. 146, 84 N. E. 865.

Iowa. — Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; Shaw *v.* Marshalltown, 131 Iowa 128, 104 N. W. 1121; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902.

Kansas. — *Ex p.* Schley, 71 Kan. 266, 80 Pac. 631; State *v.* Kelly, 71 Kan. 811, 81 Pac. 450.

Louisiana. — State *v.* Michel, (La. 1908) 46 So. 430.

Maryland. — Fout *v.* Frederick County Com'rs, 105 Md. 545, 66 Atl. 487.

Minnesota. — State *v.* Bates, 96 Minn. 110, 104 N. W. 709.

Mississippi. — State *v.* Henry, 87 Miss. 125, 40 So. 152.

Missouri. — State *v.* Etchman, 189 Mo. 648, 88 S. W. 643; State *v.* Delmar Jockey Club, 200 Mo. 34, 92 S. W. 185; State *v.* McIntosh, 205 Mo. 589, 103 S. W. 1078; State *v.* Fort, (Mo. 1908) 109 S. W. 737.

Montana. — Spratt *v.* Helena Power Transmission Co., (Mont. 1908) 94 Pac. 631.

Nebraska. — State *v.* Galusha, 74 Neb. 188, 104 N. W. 197; *Ex p.* Algoe, 74 Neb. 353, 104 N. W. 751; State *v.* Malone, 74 Neb. 645, 105 N. W. 893.

New Jersey. — Sharp *v.* Sweeney, (N. J. 1907) 65 Atl. 859.

New York. — People *v.* Reardon, 110 N. Y. App. Div. 821, 97 N. Y. Supp. 535; People *v.* Baker, (Supm. Ct. Spec. T.) 110 N. Y. Supp. 848.

North Carolina. — State *v.* Lytle, 138 N. Car. 738, 51 S. E. 66; Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267.

North Dakota. — State *v.* Minneapolis, etc., Elevator Co., (N. Dak. 1908) 114 N. W. 482; State *v.* Minneapolis, etc., Elevator Co., (N. Dak. 1908) 114 N. W. 485.

Ohio. — Doering *v.* Cincinnati, 17 Ohio Dec. 755, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 642.

South Dakota. — Morrow *v.* Wipf, (S. Dak. 1908) 115 N. W. 1121.

Texas. — Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1908) 109 S. W. 867.

Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

Virginia. — National Council, etc., *v.* State Council, etc., 104 Va. 197, 51 S. E. 166; Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

Wisconsin. — Nash *v.* Fries, 129 Wis. 120, 108 N. W. 210; State *v.* Groth, (Wis. 1907) 112 N. W. 431; State *v.* Anson, (Wis. 1907) 112 N. W. 475.

2. State *v.* Vinsonhaler, 74 Neb. 675, 105 N. W. 472; State *v.* Redmon, (Wis. 1907) 114 N. W. 137.

3. People *v.* Richards, 1 Cal. App. 566, 82 Pac. 691; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Allen *v.* Texas, etc., R. Co., (Tex. 1907) 101 S. W. 792.

4. Texas Cent. R. Co. *v.* Marrs, (Tex. 1907) 101 S. W. 1177.

5. Perry *v.* Strawbridge, (Mo. 1908) 108 S. W. 641; Maxey *v.* Powers, 117 Tenn. 381, 101 S. W. 181.

643. 1. *Ex p.* Owens, 148 Ala. 452, 42 So. 676; Hayes *v.* Walker, (Fla. 1907) 44 So. 747; Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177; Brennan *v.* New York, 122 N. Y. App. Div. 477, 107 N. Y. Supp. 150; Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267.

2. *United States.* — Howard *v.* Illinois Cent. R. Co., 207 U. S. 463, 28 U. S. Sup. Ct. 141; Brooks *v.* Southern Pac. Co., 148 Fed. 986, *affirmed* 207 U. S. 463, 28 U. S. Sup. Ct. 141; Spain *v.* St. Louis, etc., R. Co., 151 Fed. 522.

Arkansas. — *Ex p.* Deeds, 75 Ark. 542, 87 S. W. 1030; State *v.* Moore, 76 Ark. 197, 88 S. W. 881.

California. — Robert *v.* Police Ct., etc., 148 Cal. 131, 82 Pac. 838.

Florida. — State *v.* McMillan, (Fla. 1908) 45 So. 882.

Georgia. — Christie *v.* Miller, 128 Ga. 412, 57 S. E. 697.

Idaho. — Gerding *v.* Idaho County, 13 Idaho 444, 90 Pac. 357.

Indiana. — Kraus *v.* Lehman, (Ind. 1908) 83 N. E. 714.

Iowa. — Shaw *v.* Marshalltown, 139 Iowa 128, 104 N. W. 1121; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902.

Kentucky. — H. A. Theirman Co. *v.* Com., (Ky. 1906) 97 S. W. 366.

South Dakota. — Fremont, etc., R. Co. *v.* Pennington County, (S. Dak. 1908) 116 N. W. 75.

Texas. — Austin *v.* Cahill, 99 Tex. 172, 88 S. W. 542.

Washington. — Bacon *v.* Locke, 42 Wash. 215, 83 Pac. 721.

3. Globe Elevator Co. *v.* Andrew, 144 Fed. 871; Wadsworth *v.* Boysen, (C. C. A.) 148 Fed. 771; People *v.* McBride, 234 Ill. 146, 84 N. E. 865; Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705.

4. Atchison, etc., R. Co. *v.* Mills, (Tex. Civ. App. 1908) 108 S. W. 480.

5. Cella Commission Co. *v.* Bohlinger, (C. C. A.) 147 Fed. 419; Mutual L. Ins. Co. *v.* Prewitt, (Ky. 1907) 105 S. W. 463; Hickory Marble, etc., Co. *v.* Southern R. Co., (N. Car. 1908) 60 S. E. 719.

644. 3. Alabama Girls' Industrial School *v.* Reynolds, 143 Ala. 579, 42 So. 114; People *v.* Harbor Com'rs, (Cal. 1908) 93 Pac. 878.

646. 1. Sexton *v.* Sexton, 129 Iowa 487, 105 N. W. 314.

2. *United States.* — Tift *v.* Southern R. Co., 138 Fed. 753; U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; U. S. *v.* Standard Oil Co., 148 Fed. 719; Stevens *v.* Nave-McCord Mercantile Co., (C. C. A.) 150 Fed. 71; McPhee, etc., Co. *v.* Union Pac. R. Co., (C. C. A.) 158 Fed. 5; Cumberland Telephone, etc., Co. *v.* Kelly, (C. C. A.) 160 Fed. 316.

Canada. — Zimmerman *v.* Burwash, 29 Quebec Super. Ct. 260, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 646.

Georgia. — Georgia R., etc., Co. *v.* Wright, 124 Ga. 626, 53 S. E. 251, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 646.

Indiana. — Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030.

New Hampshire. — Carter *v.* Whitcomb, (N. H. 1908) 69 Atl. 779.

New York. — Hyland *v.* Ossining, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 212, 107 N. Y. Supp. 225.

North Carolina. — State *v.* Cantwell, 142 N. Car. 612, 55 S. E. 820, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 646.

Tennessee. — [illegible] *v.* Memphis, 116 Tenn. 736, 94 S. W. 75; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

Texas. — *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086.

Utah. — Nephi Plaster, etc., Co. *v.* Juab County, (Utah 1907) 93 Pac. 53.

West Virginia. — State *v.* Baltimore, etc., R.

Co., 61 W. Va. 367, 56 S. E. 518; State *v.* Ross, (W. Va. 1907) 57 S. E. 284.

647. 1. State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; *Ex p.* Jacobs, 13 Idaho 720, 92 Pac. 1003; Droege *v.* McInerney, 120 Ky. 796, 87 S. W. 1085; State *v.* Drexel, 75 Neb. 614, 106 N. W. 791; Riley *v.* Pennsylvania Co., 32 Pa. Super. Ct. 579.

2. McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483; *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086.

648. 1. National Council, etc., *v.* State Council, etc., 104 Va. 197, 51 S. E. 166.

2. *United States.* — McPhee, etc., Co. *v.* Union Pac. R. Co., (C. C. A.) 158 Fed. 5; Interstate Drainage, etc., Co. *v.* Freeborn County, (C. C. A.) 158 Fed. 270; Cumberland Telephone, etc., Co. *v.* Kelly, (C. C. A.) 160 Fed. 316.

Arkansas. — *Ex p.* Deeds, 75 Ark. 542, 87 S. W. 1030.

Florida. — Knight, etc., Co. *v.* Tampa Sand Lime Brick Co., (Fla. 1908) 46 So. 285.

Indiana. — Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030; Advisory Board *v.* Levandowski, (Ind. App. 1908) 84 N. E. 346.

Kentucky. — Com. *v.* Herald Pub. Co., (Ky. 1908) 108 S. W. 892; Grinstead *v.* Kirby, (Ky. 1908) 110 S. W. 247.

Missouri. — Perry *v.* Strawbridge, (Mo. 1908) 108 S. W. 641.

Nebraska. — State *v.* Drexel, 75 Neb. 614, 106 N. W. 791.

Tennessee. — Standard Oil Co. *v.* State, 117 Tenn. 618, 100 S. W. 705; Maxey *v.* Powers, 117 Tenn. 381, 101 S. W. 181; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

Texas. — *Ex p.* Massey, (Tex. Crim. 1095) 92 S. W. 1086.

Utah. — Garcia *v.* Free, 31 Utah 389, 88 Pac. 30.

Vermont. — *In re* Howard, 80 Vt. 489, 68 Atl. 513.

West Virginia. — Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

Wisconsin. — State *v.* Hinkel, (Wis. 1908) 116 N. W. 639.

3. Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030.

4. State *v.* Sayre, 142 Ala. 641, 39 So. 240; Buggeln *v.* Cameron, (Ariz. 1907) 90 Pac. 324.

649. 2. State *v.* Bates, 96 Minn. 110, 104 N. W. 709.

3. Cumberland Telephone, etc., Co. *v.* Kelly, (C. C. A.) 160 Fed. 316; Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

4. Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874.

650. 1. Becklin *v.* Becklin, 99 Minn. 307, 109 N. W. 243; State *v.* Ross, (W. Va. 1907) 57 S. E. 284.

2. *United States.* — Copper Queen Consol. Min. Co. *v.* Territorial Board of Equalization, 206 U. S. 474, 27 U. S. Sup. Ct. 695, *affirming* 3 Ariz. 383, 84 Pac. 511; U. S. *v.* Cerecedo Hermanos Y Compania, 209 U. S. 337, 28 U. S. Sup. Ct. 532.

Alabama. — Wood-Dickerson Supply Co. *v.* Cocciola, (Ala. 1907) 45 So. 192.

Indiana. — Evans *v.* State, 165 Ind. 369, 75 N. E. 651; Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620; State *v.* Dorsey, 167 Ind. 199, 78 N. E. 843; Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201; Gillespie *v.* State, 168 Ind. 298, 80 N. E. 829; Sopher *v.* State, (Ind. 1907) 81 N. E. 913; Cronin *v.* Zimmerman, (Ind. 1907) 81 N. E. 1083; McIntire *v.* State, (Ind. 1908) 83 N. E. 1005; Pavey *v.* Braddock, (Ind. 1908) 84 N. E. 5.

Iowa. — Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177.

Kansas. — State *v.* Thomas, 74 Kan. 370, 86 Pac. 499, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650.

Missouri. — Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769.

Montana. — *Ex p.* Wisner, (Mont. 1907) 92 Pac. 958.

New York. — Taylor *v.* Matteawan, 122 N. Y. App. Div. 406, 106 N. Y. Supp. 841; *In re* Baird, (Supm. Ct. App. Div.) 110 N. Y. Supp. 708.

West Virginia. — Pennington *v.* Gillaspie, (W. Va. 1908) 61 S. E. 416.

651. 1. Taylor *v.* Caribou, 102 Me. 401, 67 Atl. 2.

652. 2. Hasely *v.* Ensley, (Ind. App. 1907) 82 N. E. 809.

3. Cox *v.* Pitt County, (N. Car. 1908) 60 S. E. 516; State *v.* Ritchie, (Utah 1907) 91 Pac. 24.

653. 1. Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177; *Ex p.* Muckenfuss, (Tex. Crim. 1908) 107 S. W. 1131.

3. U. S. *v.* Standard Oil Co., 148 Fed. 719; People *v.* Richards, 1 Cal. App. 566, 82 Pac. 691; *In re* Moffitt, (Cal. 1908) 95 Pac. 653; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874; Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620; Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 78 N. E. 353; Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177; Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769; Underwood Typewriter Co. *v.* Piggott, 60 W. Va. 532, 55 S. E. 664; State *v.* Ross, (W. Va. 1907) 57 S. E. 284.

6. Lee *v.* Tucker, (Ga. 1908) 60 S. E. 164; Patton *v.* People, 229 Ill. 512, 82 N. E. 386; Fortune *v.* Buncombe County, 140 N. Car. 322, 52 S. E. 950; Murphy *v.* Salem, (Oregon 1906) 87 Pac. 532.

654. 1. State *v.* Brackin, (Ala. 1908) 45 So. 841; State *v.* Bates, 96 Minn. 110, 104 N. W. 709; State *v.* Tiffany, 44 Wash. 602, 87 Pac. 932.

2. State *v.* Reneau, 75 Neb. 1, 104 N. W. 1151, 106 N. W. 451; State *v.* Ross, (W. Va. 1907) 57 S. E. 284; State *v.* Wirt County Ct., (W. Va. 1907) 59 S. E. 884.

6. Caster *v.* McClellan, 132 Iowa 502, 109 N. W. 1020.

655. 2. Board of Control *v.* Auditor-Gen., 149 Mich. 386, 112 N. W. 1017; Fortune *v.* Buncombe County, 140 N. Car. 322, 52 S. E. 950; State *v.* Wirt County Ct., (W. Va. 1907) 59 S. E. 884.

656. 1. Manaca *v.* Ionia Circuit Judge, 146 Mich. 705, 110 N. W. 75; State *v.* Brackin, (Ala. 1908) 45 So. 841; Samuelson *v.* State, 116 Tenn. 470, 95 S. W. 1012; Missouri, etc., R.

Co. *v.* State, (Tex. Civ. App. 1906) 97 S. W. 720; State *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 653; State *v.* Clark, 43 Wash. 664, 86 Pac. 1067.

657. 1. Albert *v.* Gibson, 141 Mich. 704, 105 N. W. 19, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 655, 657; State *v.* Wirt County Ct., (W. Va. 1907) 59 S. E. 884.

2. State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 87 Pac. 980.

3. State *v.* Hand, 71 N. J. L. 141, 58 Atl. 641, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 657; *Ex p.* Drexel, 147 Cal. 763, 82 Pac. 429; Johnson *v.* Gunn, (Cal. App. 1905) 84 Pac. 370; Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353; Davenport *v.* Ham, 72 Kan. 179, 83 Pac. 398; State *v.* Weber, 205 Mo. 36, 102 S. W. 955; State *v.* Redmon, (Wis. 1907) 114 N. W. 137.

5. State *v.* Ætna Banking, etc., Co., 34 Mont. 383, 87 Pac. 268, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 657; Cook County *v.* Fairbank, 222 Ill. 578, 78 N. E. 895; State *v.* Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728.

658. 1. *United States.* — Field *v.* U. S., (C. C. A.) 137 Fed. 6; U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961.

Alaska. — U. S. *v.* Doo-noch-Keen, 2 Alaska 624.

Arizona. — Flowing Wells Co. *v.* Culin, (Ariz. 1908) 95 Pac. 111.

Colorado. — Steck *v.* Prentice, (Colo. 1908) 95 Pac. 552.

Connecticut. — Morin *v.* Newbury, 79 Conn. 338, 65 Atl. 156.

Florida. — *Ex p.* Knight, 52 Fla. 144, 41 So. 786.

Georgia. — Johnson *v.* State, 1 Ga. App. 195, 58 S. E. 265.

Indiana. — State *v.* Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728.

Iowa. — Clark *v.* American Express Co., 130 Iowa 254, 106 N. W. 642.

Maine. — State *v.* Wallace, 102 Me. 229, 66 Atl. 476.

Minnesota. — Price *v.* Denison, 95 Minn. 109, 103 N. W. 728.

Missouri. — Little *v.* Hooker Steam Pump Co., 122 Mo. App. 627, 100 S. W. 561, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 658, *per* Nortoni, J., *concurring;* Pollard *v.* Missouri, etc., Telephone Co., 114 Mo. App. 533, 90 S. W. 121; Casey *v.* St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419; *Ex p.* Helton, 117 Mo. App. 609, 93 S. W. 913.

Montana. — State *v.* Cudahy Packing Co., 33 Mont. 179, 82 Pac. 833; *Ex p.* Wisner, (Mont. 1907) 92 Pac. 958.

New York. — People *v.* Sturgis, 121 N. Y. App. Div. 407, 106 N. Y. Supp. 61; People *v.* Zimmerman, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 264, 109 N. Y. Supp. 396.

Pennsylvania. — Dawson *v.* Shaw, 28 Pa. Super. Ct. 563.

Texas. — Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 97 S. W. 720; Missouri, etc., R. Co. *v.* State, (Tex. 1907) 100 S. W. 766, *reversing* (Tex. Civ. App. 1906) 97 S. W. 720; Texas, etc., R. Co. *v.* Blocker, (Tex. Civ. App. 1907) 106 S. W. 718.

Wisconsin. — Milier *v.* Chicago, etc., R. Co., (Wis. 1907) 113 N. W. 384.

659. 1. Sluder *v.* St. Louis Transit Co., 189 Mo. 194, 88 S. W. 648, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 658, *per* Marshall, J., *dissenting;* Casey *v.* St. Louis Transit Co., 116 Mo. App. 250, 91 S. W. 419, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 658; State *v.* Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728.

2. Field *v.* U. S., (C. C. A.) 137 Fed. 6; U. S. *v.* Ninety-nine Diamonds, (C. C. A.) 139 Fed. 961; Young *v.* Madison County, (Iowa 1908) 115 N. W. 23; St. Louis, etc., R. Co. *v.* Delk, (C. C. A.) 158 Fed. 931; Chicago, etc., R. Co. *v.* People, 217 Ill. 164, 75 N. E. 368; State *v.* Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728; State *v.* Peabody, (Me. 1907) 69 Atl. 273; Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769; State *v.* Livingston Concrete Bldg., etc., Co., 34 Mont. 570, 87 Pac. 980.

3. U. S. *v.* Williams, 159 Fed. 310, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659; McInerney *v.* U. S., (C. C. A.) 143 Fed. 729; U. S. *v.* Lonabaugh, 158 Fed. 314; U. S. *v.* Baltimore, etc., R. Co., 26 App. Cas. (D. C.) 581; State *v.* Goodwin, (Ind. 1907) 82 N. E. 459; Boyer *v.* State, (Ind. 1908) 83 N. E. 350; McElvern *v.* Goings, 116 La. 978, 41 So. 229, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659; State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935; State *v.* Stobie, 194 Mo. 91, 92 S. W. 191, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659, *per* Marshall, J., *dissenting;* State *v.* Ætna Banking, etc., Co., 34 Mont. 383, 87 Pac. 268, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659; State *v.* Cudahy Packing Co., 33 Mont. 179, 82 Pac. 833; Campbell *v.* Youngson, (Neb. 1907) 114 N. W. 415; Conrad *v.* State, 75 Ohio St. 52, 78 N. E. 957; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 449; International, etc., R. Co. *v.* Voss, (Tex. Civ. App. 1908) 109 S. W. 985; State *v.* Ross, (W. Va. 1907) 57 S. E. 284.

5. Sluder *v.* St. Louis Transit Co., 189 Mo. 194, 88 S. W. 648, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 658, *per* Marshall, J., *dissenting;* Casey *v.* St. Louis Transit Co., 116 Mo. App. 255, 91 S. W. 419, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659; State *v.* Kiley, 36 Ind. App. 513, 76 N. E. 184; Peet *v.* East Grand Forks, 101 Minn. 523, 112 N. W. 1005.

660. 3. Atchison, etc., R. Co. *v.* People, 227 Ill. 278, 81 N. E. 342, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 660.

661. 1. Casey *v.* St. Louis Transit Co., 116 Mo. App. 244, 91 S. W. 419, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 661; State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935; Com. *v.* Shaleen, 215 Pa. 575, 64 Atl. 797; State *v.* Ross, (W. Va. 1907) 57 S. E. 284.

2. Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 449.

3. Gray *v.* Stewart, 70 Kan. 432, 78 Pac. 852, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 661; State *v.* Cantwell, 142 N. Car. 612, 55 S.

E. 820, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 661; State *v.* Goodrich, (Wis. 1907) 113 N. W. 388, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 661; Perry *v.* Strawbridge, (Mo. 1908) 108 S. W. 641; Young *v.* Madison County, (Iowa 1908) 115 N. W. 23; Campbell *v.* Youngson, (Neb. 1907) 114 N. W. 415.

4. *In re* Kuhn, 125 Iowa 451, 101 N. W. 151, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 661; Flowing Wells Co. *v.* Culin, (Ariz. 1908) 95 Pac. 111; Casey *v.* St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419; People *v.* Zimmerman, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 264, 109 N. Y. Supp. 396.

662. 2. Hyland *v.* Ossining, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 212, 107 N. Y. Supp. . . .

3. National Cash Register Co. *v.* Cervone, 76 Ohio St. 25, 80 N. E. 1033, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 662.

6. People *v.* Sommer, (Ct. Gen. Sess.) 55 Misc. (N. Y.) 55, 106 N. Y. Supp. 190.

8. Casey *v.* St. Louis Transit Co., 116 Mo. App. 257, 91 S. W. 419, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 662; Shaw *v.* New York El. R. Co., 187 N. Y. 194, 79 N. E. 984, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 662; Richardson *v.* Ainsa, (Ariz. 1908) 95 Pac. 103; Colorado, etc., R. Co. *v.* Neville, (Colo. 1907) 92 Pac. 956; McNemar *v.* Cohn, 115 Ill. App. 31; Brown *v.* Rouse, 116 Ill. App. 513; Davis *v.* Abstract Const. Co., 121 Ill. App. 121; State *v.* Lowry, 166 Ind. 372, 9 Ann. Cas. 350, 77 N. E. 728; Cleveland, etc., R. Co. *v.* Henry, (Ind. 1908) 83 N. E. 710; Perry *v.* Strawbridge, (Mo. 1908) 108 S. W. 641; Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769; People *v.* Coler, 190 N. Y. 268, 83 N. E. 18; Keim *v.* Reading, 32 Pa. Super. Ct. 613; State *v.* Shapiro, (R. I. 1908) 69 Atl. 340; Kellar *v.* James, (W. Va. 1907) 59 S. E. 939.

665. 2. Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345; Galveston, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1907) 106 S. W. 705; *In re* Garr, 31 Utah 57, 86 Pac. 757.

3. Drady *v.* District Ct., 126 Iowa 349, 102 N. W. 115, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665.

4. *In re* McKenzie, (C. C. A.) 142 Fed. 383.

5. Diederich *v.* Rose, 228 Ill. 610, 81 N. E. 1140, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665; State *v.* Wallace, 102 Me. 232, 66 Atl. 476, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 665; Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427, *reversing* 132 Fed. 848; State *v.* Henry, 87 Miss. 125, 40 So. 152; State *v.* Portland General Electric Co., (Oregon 1908) 95 Pac. 722; Morrow *v.* Wipf, (S. Dak. 1908) 115 N. W. 1121; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

666. 3. Leffmann *v.* Long Island R. Co., 120 N. Y. App. Div. 528, 105 N. Y. Supp. 487.

668. 1. Caster *v.* McClellan, 132 Iowa 502, 109 N. W. 1020, *citing* 28 [26] AM. AND ENG. ENCYC. OF LAW (2d ed.) 668; Peet *v.* East Grand Forks, 101 Minn. 523, 112 N. W. 1005.

3. Casey *v.* St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419.

4. Casey *v.* St. Louis Transit Co., 116 Mo. App. 251, 91 S. W. 419, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 668.

7. Rochester *v.* Rochester R. Co., 182 N. Y. 99, 74 N. E. 953; Lawson *v.* Tripp, (Utah 1908) 95 Pac. 520.

669. 1. State *v.* New Orleans R., etc., Co., 116 La. 144, 40 So. 597; Galloway *v.* Memphis, 116 Tenn. 736, 94 S. W. 75.

3. Ahern *v.* Board of Directors, 39 Colo. 409, 89 Pac. 963; Lockwood *v.* District of Columbia, 24 App. Cas. (D. C.) 569; National Loan, etc., Co. *v.* Linn County, (Iowa 1908) 115 N. W. 480; Maysville *v.* Maysville St. R., etc., Co., (Ky. 1908) 108 S. W. 960.

670. 1. Com. *v.* Nunan, (Ky. 1907) 104 S. W. 731.

671. 2. Bergman *v.* Gay, 79 Vt. 265, 64 Atl. 1106, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671; Arzonico *v.* Board of Education, (N. J. L. 1908) 69 Atl. 450.

3. Sluder *v.* St. Louis Transit Co., 189 Mo. 195, 88 S. W. 648, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671, *per* Marshall, J., *dissenting;* State *v.* Stobie, 194 Mo. 91, 92 S. W. 191, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671, *per* Marshall, J., *dissenting;* Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236; Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 75 N. E. 832; Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926; Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769; Crohn *v.* Kansas City Home Telephone Co., (Mo. App. 1908) 109 S. W. 1068; Stevens *v.* Benson, (Oregon 1907) 91 Pac. 577; *Ex p.* Massey, 49 Tex. Crim. App. 60, 92 S. W. 1086.

672. 1. Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374; Advisory Board *v.* Levandowski, (Ind. App. 1908) 84 N. E. 346; Ackerman *v.* Green, 201 Mo. 231, 100 S. W. 30; Casey *v.* St. Louis Transit Co., 116 Mo. App. 235, 91 S. W. 419; Hyland *v.* Ossining, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 212, 107 N. Y. Supp. 225; Eccles Lumber Co. *v.* Martin, 31 Utah 241, 87 Pac. 713; Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

3. Poulan *v.* Atlantic Coast Line R. Co., 123 Ga. 605, 51 S. E. 657; Jackson County *v.* Branaman, (Ind. 1907) 82 N. E. 65; Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769; State *v.* Cain, 78 S. Car. 348, 58 S. E. 937; *Ex p.* Massey, (Tex. Crim. 1905) 92 S. W. 1086; Hogan *v.* Piggott, 60 W. Va. 541, 56 S. E. 189; State *v.* Wirt County Ct., (W. Va. 1907) 59 S. E. 884; Bloomer *v.* Bloomer, 128 Wis. 294, 107 N. W. 974.

674. 2. *In re* Polsson, 159 Fed. 283.

676. 2. Perry *v.* Strawbridge, (Mo. 1908) 108 S. W. 641.

4. Christie-St. Commission Co. *v.* U. S., (C. C. A.) 136 Fed. 326; Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368; Lofstad *v.* Murasky, (Cal. 1907) 91 Pac. 1008; *In re* Johnson, (Cal. App. 1908) 94 Pac. 592; Brown *v.* Clark, (Conn. 1908) 68 Atl. 1001; Supreme Lodge, etc., *v.* Hunziker, (Ky. 1905) 87 S. W. 1134; J. J. Newman Lumber Co. *v.* Wemple, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 168, 107 N. Y. Supp. 318; State *v.* Lynch, (R. I. 1907) 68 Atl. 315; Kellar *v.* James, (W. Va. 1907) 59 S. E. 939.

5. State *v.* Shevlin-Carpenter Co., 99 Minn. 158, 108 N. W. 935.

677. 1. McEwan *v.* Pennsylvania, etc., R. Co., 72 N. J. L. 419, 60 Atl. 1130.

678. 14. Brun *v.* Mann, (C. C. A.) 151 Fed. 145.

19. Propst *v.* Southern R. Co., 139 N. Car. 399, 51 S. E. 920, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 678; State *v.* Bryan, 50 Fla. 293, 39 So. 929; State *v.* Twin City Telephone Co., (Minn. 1908) 116 N. W. 835.

679. 2. Propst *v.* Southern R. Co., 139 N. Car. 399, 51 S. E. 920, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679.

3. State *v.* Skeggs, (Ala. 1908) 46 So. 268; State *v.* Davis, 72 N. J. L. 345, 61 Atl. 2, *affirmed* (N. J. 1906) 64 Atl. 1134; State *v.* Harned, 72 N. J. L. 353, 61 Atl. 5, *affirmed* (N. J. 1906) 64 Atl. 1134.

6. Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236; Clemans *v.* Hatch, 168 Ind. 291, 78 N. E. 1065.

7. U. S. *v.* Bernays, (C. C. A.) 158 Fed. 792; Advisory Board *v.* Levandowski, (Ind. App. 1908) 84 N. E. 346; Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

8. Propst *v.* Southern R. Co., 139 N. Car. 399, 51 S. E. 920, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679; Carter *v.* U. S., (C. C. A.) 143 Fed. 256; U. S. *v.* Downing, (C. C. A.) 146 Fed. 56, *reversing* 139 Fed. 58; U. S. *v.* Scruggs, etc., Dry Goods Co., (C. C. A.) 156 Fed. 940; Stephen *v.* Illinois Cent. R. Co., 128 Ill. App. 103, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679; State *v.* Webber, 96 Minn. 348, 105 N. W. 68; Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

680. 1. National Bank of Commerce *v.* Cleveland, 156 Fed. 251; Stephen *v.* Illinois Cent. R. Co., 128 Ill. App. 103, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679 [680]; Propst *v.* Southern R. Co., 139 N. Car. 399, 51 S. E. 920; Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

3. Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

5. State *v.* Twin City Telephone Co., (Minn. 1908) 116 N. W. 835.

681. 1. Venning *v.* Atlantic Coast Line R. Co., 78 S. Car. 42, 58 S. E. 983, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 681.

2. U. S. *v.* Bernays, (C. C. A.) 158 Fed. 792.

4. Venning *v.* Atlantic Coast Line R. Co., 78 S. Car. 42, 58 S. E. 983, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 681.

7. Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236.

682. 1. Johnson *v.* Gunn, 148 Cal. 745, 84 Pac. 665; *Ex p.* Spencer, 149 Cal. 396, 86 Pac. 896; Southern R. Co. *v.* State, 125 Ga. 287, 54 S. E. 160; McDonald *v.* Vaughn, (Ga. 1908) 60 S. E. 1060; Richardson *v.* Board of Education, 72 Kan. 629, 84 Pac. 538; Belleville *v.* Wells, 74 Kan. 823, 88 Pac. 47; State *v.* Butler County, (Kan. 1908) 94 Pac. 1004; State *v.* Burns, 73 N. Car. 194, 52 S. E. 960; State *v.* Lewis, 74 Ohio St. 403, 78 N. E. 523; Wallace *v.* Leiter, 76 Ohio St. 185, 81 N. E. 187.

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California. — Anglo-Californian Bank *v.* Field, 146 Cal. 644, 80 Pac. 1080; *Ex p.* Spencer, 149 Cal. 396, 86 Pac. 896; Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353.

Georgia. — Sellers *v.* Cox, 127 Ga. 246, 56 S. E. 284; Binns *v.* Ficklen, (Ga. 1908) 60 S. E. 1051.

Indiana. — Armstrong *v.* State, (Ind. 1908) 84 N. E. 3.

Mississippi. — Monette *v.* State, (Miss. 1907) 44 So. 989.

South Carolina. — State *v.* McCaw, 77 S. Car. 351, 58 S. E. 145; Riley *v.* Charleston Union Station Co., 71 S. Car. 457, 51 S. E. 485.

Utah. — Skeen *v.* Chambers, 31 Utah 36, 86 Pac. 492.

West Virginia. — State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

683. 1. Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353; State *v.* Wickenhoefer, (Del. 1906) 64 Atl. 273; State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; *Ex p.* Jacobs, 13 Idaho 720, 92 Pac. 1003; School City *v.* Forrest, 168 Ind. 94, 78 N. E. 187; People *v.* Election Com'rs, 221 Ill. 9, 77 N. E. 321; People *v.* McBride, 234 Ill. 146, 84 N. E. 865; St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231; Murph *v.* Landrum, 76 S. Car. 21, 56 S. E. 850; Buist *v.* Charleston, 77 S. Car. 260, 57 S. E. 862.

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2. *United States.* — Globe Elevator Co. *v.* Andrew, 144 Fed. 871; Board of Education *v.* Alliance Assur. Co., 159 Fed. 994.

Alabama. — Griffin *v.* Drennen, 145 Ala. 128, 40 So. 1016; Comer *v.* Age-Herald Pub. Co., (Ala. 1907) 44 So. 673; State *v.* Skeggs, (Ala. 1908) 46 So. 268.

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Colorado. — People *v.* Earl, (Colo. 1908) 94 Pac. 294.

Georgia. — Kennedy *v.* Meara, 127 Ga. 68, 56 S. E. 243; Vance *v.* State, 128 Ga. 661, 57 S. E. 889.

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Indiana. — Spaulding *v.* Mott, 167 Ind. 58, 76 N. E. 620; Bumb *v.* Evansville, 168 Ind. 272, 80 N. E. 625.

Iowa. — Mier *v.* Phillips Fuel Co., 130 Iowa

570, 107 N. W. 621; McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177.

Kansas. — State *v.* Butler County, (Kan. 1908) 94 Pac. 1004.

Kentucky. — Droege *v.* McInerney, 120 Ky. 800, 87 S. W. 1085, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683; Miller *v.* Louisville, (Ky. 1907) 99 S. W. 284; Kirch *v.* Louisville, (Ky. 1907) 101 S. W. 373; New Castle *v.* Scott, (Ky. 1907) 101 S. W. 944.

Michigan. — White *v.* Bracelin, 144 Mich. 332, 107 N. W. 1055; Spurr *v.* Travis, 145 Mich. 721, 108 N. W. 1090.

Minnesota. — State *v.* Board of Education, 97 Minn. 402, 106 N. W. 477.

Missouri. — O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150; State *v.* Binswanger, 122 Mo. App. 78, 98 S. W. 103; Coffey *v.* Carthage, 200 Mo. 616, 98 S. W. 562; State *v.* Keating, 202 Mo. 197, 100 S. W. 648; State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483; State *v.* Fort, (Mo. 1908) 109 S. W. 737.

Montana. — Lewis *v.* Northern Pac. R. Co., (Mont. 1907) 92 Pac. 469.

Nebraska. — Nebraska Cent. Bldg., etc., Assoc. *v.* Board of Equalization, (Neb. 1907) 111 N. W. 147; Allen *v.* Kennard, (Neb. 1908) 116 N. W. 63.

New Jersey. — Jersey City *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 113; Decker *v.* Daudt, (N. J. 1907) 67 Atl. 375.

New York. — Koster *v.* Coyne, 184 N. Y. 494, 77 N. E. 983; People *v.* Mensching, 187 N. Y. 8, 10 Ann. Cas. 101, 79 N. E. 884; St. John *v.* Andrews Institute, 191 N. Y. 254, 83 N. E. 981; Koster *v.* Coyne, 110 N. Y. App. Div. 742, 97 N. Y. Supp. 433.

North Carolina. — State *v.* Wolf, 145 N. Car. 440, 59 S. E. 40.

North Dakota. — Powers Elevator Co. *v.* Pottner, (N. Dak. 1907) 113 N. W. 703.

Oregon. — Farrell *v.* Port of Columbia, (Oregon 1907) 91 Pac. 546; State *v.* Baker, (Oregon 1907) 92 Pac. 1076; St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

Pennsylvania. — Stull *v.* Reber, 215 Pa. St. 156, 64 Atl. 419; *In re* Pittsburg, 217 Pa. St. 227, 66 Atl. 348; Com. *v.* Heller, (Pa. 1907) 67 Atl. 925.

South Carolina. — Brown *v.* Tharpe, 74 S. Car. 207, 54 S. E. 363.

Texas. — Green *v.* State, 49 Tex. Crim. 380, 92 S. W. 847; *Ex p.* Massey, 49 Tex. Crim. 60, 92 S. W. 1083; Buttron *v.* El Paso Northeastern R. Co., (Tex. Civ. App. 1906) 93 S. W. 676; Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 97 S. W. 720; Missouri, etc., R. Co. *v.* Smith, (Tex. Civ. App. 1907) 99 S. W. 743; *Ex p.* Dupree, (Tex. 1907) 105 S. W. 493.

Wisconsin. — Bingham *v.* Milwaukee County, 127 Wis. 344, 106 N. W. 1071; Bloomer *v.* Bloomer, 128 Wis. 294, 107 N. W. 974; State *v.* Groth, (Wis. 1907) 112 N. W. 431.

686. 1. *Alabama.* — Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040; State *v.* Weakley, (Ala. 1907) 45 So. 175.

California. — Johnson *v.* Gunn, (Cal. App. 1905) 84 Pac. 370; Diepenbrock *v.* Superior Ct., (Cal. 1908) 95 Pac. 1121.

Illinois. — People *v.* Election Com'rs, 221 Ill. 9, 77 N. E. 321; Badenoch *v.* Chicago, 222 Ill. 71, 78 N. E. 31; Starne *v.* People, 222 Ill. 189, 78 N. E. 61; Jones *v.* Chicago, etc., R. Co., 231 Ill. 302, 83 N. E. 215; Manowsky *v.* Stephan, 233 Ill. 409, 84 N. E. 365.

Indiana. — Armstrong *v.* State, (Ind. 1908) 84 N. E. 3; Kraus *v.* Lehman, (Ind. 1908) 83 N. E. 714.

Kansas. — Parker-Washington Co. *v.* Kansas City, 73 Kan. 725, 85 Pac. 781, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683; Levitt *v.* Wilson, 72 Kan. 160, 83 Pac. 397; Gardner *v.* State, (Kan. 1908) 95 Pac. 588.

Kentucky. — Droege *v.* McInerney, 120 Ky. 796, 87 S. W. 1085.

Maryland. — Baltimore *v.* Starr Methodist Protestant Church, (Md. 1907) 67 Atl. 261.

Minnesota. — State *v.* Schraps, 97 Minn. 62, 106 N. W. 106.

Missouri. — State *v.* Messerly, 198 Mo. 351, 95 S. W. 913; O'Connor *v.* St. Louis Transit Co., 198 Mo. 622, 97 S. W. 150; State *v.* Swagerty, 203 Mo. 517, 102 S. W. 483; State *v.* Turner, (Mo. 1908) 107 S. W. 1064.

New Jersey. — State *v.* Nealon, 73 N. J. L. 100, 62 Atl. 182; Bumsted *v.* Henry, (N. J. 1906) 64 Atl. 475; Rutten *v.* Paterson, 73 N. J. L. 467, 64 Atl. 573; Seymour *v.* Orange, (N. J. 1907) 65 Atl. 1033; Decker *v.* Daudt, (N. J. 1907) 67 Atl. 375; Hartshorne *v.* Avon-by-the-Sea, (N. J. 1907) 67 Atl. 935; United New Jersey R., etc., Co. *v.* Parker, (N. J. L. 1908) 69 Atl. 239; State *v.* Riordan, (N. J. L. 1908) 69 Atl. 494.

New York. — Koster *v.* Coyne, 184 N. Y. 494, 77 N. E. 983.

Oregon. — Farrell *v.* Port of Columbia, (Oregon 1907) 91 Pac. 546.

Pennsylvania. — Sample *v.* Pittsburg, 212 Pa. St. 533, 62 Atl. 201.

Tennessee. — Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

Texas. — *Ex p.* Massey, 49 Tex. Crim. 60, 92 S. W. 1083; Wallis *v.* Williams, (Tex. 1908) 108 S. W. 153.

Washington. — Terry *v.* King County, 43 Wash. 61, 86 Pac. 210.

Wisconsin. — Bingham *v.* Milwaukee County, 127 Wis. 344, 106 N. W. 1071.

687. 1. Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177; State *v.* McCaw, 77 S. Car. 351, 58 S. E. 145.

2. State *v.* Twining, 73 N. J. L. 3, 62 Atl. 402; Allentown *v.* Wagner, 214 Pa. St. 210, 63 Atl. 697; Stull *v.* Reber, 215 Pa. St. 156, 64 Atl. 419.

Contra by Constitutional Provision. — Montgomery *v.* Reese, (Ala. 1906) 43 So. 116; Forman *v.* Hair, (Ala. 1907) 43 So. 827.

3. Barnesville *v.* Means, 128 Ga. 197, 57 S. E. 422.

688. 1. Wheeler *v.* Herbert, (Cal. 1907) 92 Pac. 353; Board of Education *v.* Hyatt, (Cal. 1907) 93 Pac. 117; Dahlsten *v.* Anderson, 99 Minn. 340, 109 N. W. 697.

4. *Ex p.* Farrell, (Mont. 1907) 92 Pac. 785; People *v.* Earl, (Colo. 1908) 94 Pac. 294; Spencer's Appeal, 78 Conn. 310, 61 Atl. 1010; Stevens *v.* Benson, (Oregon 1907) 91 Pac. 577.

8. State *v.* Freeman, 119 La. 663, 44 So. 334, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d

ed.) 688, Eccles Lumber Co. *v.* Martin, 31 Utah 241, 87 Pac. 713.

689. 4. Koster *v.* Coyne, 184 N. Y. 494, 77 N. E. 983.

6. Reid *v.* Southern Development Co., 52 Fla. 603, 42 So. 206, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689; *Ex p.* St. Hilaire, 101 Me. 525, 64 Atl. 882, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689; Lighton *v.* Syracuse, 112 N. Y. App. Div. 595, 98 N. Y. Supp. 792, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 680, *affirming* (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 134, 96 N. Y. Supp. 692; Wallapai Min., etc., Co. *v.* Territory, 9 Ariz. 373, 84 Pac. 85; People *v.* Earl, (Colo. 1908) 94 Pac. 293; Spencer's Appeal, 78 Conn. 310, 61 Atl. 1010; Duncan *v.* Cox, (Ind. App. 1907) 82 N. E. 125; State *v.* Stark County, 14 N. Dak. 368, 103 N. W. 913; Stevens *v.* Benson, (Oregon 1907) 91 Pac. 377.

691. 1. Wallapai Min., etc., Co. *v.* Territory, 9 Ariz. 373, 84 Pac. 85.

2. People *v.* Earl, (Colo. 1908) 94 Pac. 294; Lee *v.* Tucker, (Ga. 1908) 60 S. E. 164; State *v.* Jennings, (S. Car. 1908) 60 S. E. 967.

5. Reid *v.* Southern Development Co., 52 Fla. 603, 42 So. 206, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 690; State *v.* Several Parcels of Land, (Neb. 1907) 111 N. W. 601; State *v.* Barry, 14 N. Dak. 316, 103 N. W. 637.

692. 1. Van Etten *v.* Daugherty, 83 Ark. 542, 103 S. W. 737, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 692; Fornia *v.* Frazer, 140 Mich. 631, 104 N. W. 147.

693. 1. *United States.* — U. S. *v.* American Sugar Refining Co., 20 U. S. 563, 26 U. S. Sup. Ct. 717, *reversing* 136 Fed. 508; U. S. *v.* Jackson, (C. C. A.) 143 Fed. 783, *reversing* 140 Fed. 266; U. S. *v.* Atchison, etc., R. Co., 142 Fed. 176; McDougald *v.* New York L. Ins. Co., (C. C. A.) 146 Fed. 674; Plummer *v.* Northern Pac. R. Co., 152 Fed. 206.

Alabama. — Greenwood *v.* Trigg, 143 Ala. 619, 39 So. 361, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 693; Griffin *v.* Drennen, 145 Ala. 132, 40 So. 1016, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 693.

Colorado. — Ducey *v.* Patterson, 37 Colo. 216, 86 Pac. 109; Colorado Springs *v.* Neville, (Colo. 1908) 93 Pac. 1096.

Delaware. — Diamond State Iron Co. *v.* Husbands, 8 Del. Ch. 205, 68 Atl. 240.

District of Columbia. — Ohio Nat. Bank *v.* Berlin, 26 App. Cas. (D. C.) 218.

Georgia. — Georgia R., etc., Co. *v.* Hutchinson, 125 Ga. 762, 54 S. E. 725.

Idaho. — Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873.

Illinois. — Eddy *v.* Morgan, 216 Ill. 437, 75 N. E. 174; People *v.* Gage, 233 Ill. 447, 84 N. E. 616; Brennen *v.* Electrical Installation Co., 120 Ill. App. 461.

Kansas. — Walton *v.* Woodward, 73 Kan. 238, 84 Pac. 1028.

Kentucky. — Durrett *v.* Davidson, 122 Ky. 851, 93 S. W. 25; Ohio Valley Telephone Co. *v.* Louisville, (Ky. 1906) 94 S. W. 17.

Maine. — Carr *v.* Judkins, 102 Me. 506, 67 Atl. 569; *In re* Pope, (Me. 1908) 69 Atl. 616.

Michigan. — Lohrstorfer *v.* Lohrstorfer, 140 Mich. 551, 104 N. W. 142.

Minnesota. — Stein *v.* Hanson, 99 Minn. 389, 109 N. W. 821, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 693.

Missouri. — Manwarring *v.* Missouri Lumber, etc., Co., 200 Mo. 718, 98 S. W. 762.

New Jersey. — Jersey City *v.* North Jersey St. R. Co., 72 N. J. L. 383, 61 Atl. 95; Cortelyou *v.* Anderson, 73 N. J. L. 427, 63 Atl. 1095.

North Carolina. — State *v.* Perkins, 141 N. Car. [illegible] S. E. 733.

North Dakota. — Blakemore *v.* Cooper, 15 N. Dak. 5, 106 N. W. 566; Adams, etc., Co. *v.* Kennover, (N. Dak. 1908) 116 N. W. 98.

Oregon. — Denny *v.* Bean, (Oregon 1908) [illegible] Pac. 693.

Pennsylvania. — Horn, etc., Mfg. Co. *v.* Steelman, 215 Pa. St. 187, 64 Atl. 400; Martin *v.* Greenwood, 27 Pa. Super. Ct. 245; *In re* Old Forge School Dist., 27 Pa. Super. Ct. 586.

Texas. — Texas, etc., R. Co. *v.* Wells-Fargo Express Co., (Tex. Civ. App. 1908) 108 S. W. 172; Texas, etc., R. Co. *v.* Wells-Fargo Express Co., (Tex. 1908) 110 S. W. 38.

Virginia. — Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821; Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

Washington. — Miller *v.* Union Mill Co., 45 Wash. 199, 88 Pac. 130, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 693.

West Virginia. — Barker *v.* Hinton, (W. Va. 1907) 59 S. E. 614.

694. 1. Brown *v.* Grand Fountain, etc., 28 App. Cas. (D. C.) 200.

695. 1. Miller *v.* Union Mill Co., 45 Wash. 199, 88 Pac. 130, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 693, and quoting the entire paragraph.

2. People *v.* Board of Education, (Supm. Ct. App. Div.) 110 N. Y. Supp. 769; Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

4. Miller *v.* Union Mill Co., 45 Wash. 190, 88 Pac. 130, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 693.

5. *Alabama.* — Jefferson County Sav. Bank *v.* Miller, 145 Ala. 243, 40 So. 513, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 695.

Arizona. — Wallapai Min., etc., Co. *v.* Territory, 9 Ariz. 373, 84 Pac. 85.

California. — Boggs *v.* Ganeard, 148 Cal. 711, 84 Pac. 195.

Georgia. — Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343.

Kentucky. — Wildbarber *v.* Linkenheimer, (Ky. 1908) 108 S. W. 327.

Missouri. — Haarstick *v.* Gabriel, 200 Mo. 237, 98 S. W. 760.

New York. — J. J. Newman Lumber Co. *v.* Wemple, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 178, 107 N. Y. Supp. 318, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 625 [695]; Davidson *v.* Witthaus, 106 N. Y. App. Div. 182, 94 N. Y. Supp. 428; Myers *v.* Moran, 113 N. Y. App. Div. 427, 99 N. Y. Supp. 260.

Pennsylvania. — Lewis *v.* Pennsylvania R. Co., (Pa. 1908) 69 Atl. 821.

Texas. — *Ex p.* Boyd, (Tex. Crim. 1906) 96 S. W. 1079; Garrison *v.* Richards, (Tex. Civ. App. 1908) 107 S. W. 861.

Washington. — Samuel, etc., Kenney Presb. Home *v.* Kenney, 45 Wash. 106, 88 Pac. 108.

Wisconsin. — State *v.* Schaeffer, 129 Wis. 459, 109 N. W. 522.

A Cause of Action Cannot Be Created by

Statute. — Phillip *v.* Heraty, 147 Mich. 473, 111 N. W. 93.

696. 1. Richardson *v.* Fitzgerald, 132 Iowa 253, 109 N. W. 866; *In re* Public Works Com'r, 111 N. Y. App. Div. 285, 97 N. Y. Supp. 503.

3. Durrett *v.* Davidson, 122 Ky. 851, 93 S. W. 25; Manwarring *v.* Missouri Lumber, etc., Co., 200 Mo. 718, 98 S. W. 762; Denny *v.* Bean, (Oregon 1908) 93 Pac. 693.

697. 3. Tift *v.* Southern R. Co., 138 Fed. 753; Wester *v.* State, 142 Ala. 56, 38 So. 1010; Goode *v.* State, 50 Fla. 45, 39 So. 461; Campbell *v.* Skinner Mfg. Co., 53 Fla. 632, 43 So. 874; Wildharber *v.* Lunkenheimer, (Ky. 1908) 108 S. W. 327; Woodvine *v.* Dean, 194 Mass. 40, 79 N. E. 882; Phillip *v.* Heraty, 147 Mich. 473, 111 N. W. 93; Sprintz *v.* Saxton, (Supm. Ct. App. Div.) 110 N. Y. Supp. 585; Jessee *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011; Samuel, etc., Kenney Presb. Home *v.* Kenney, 45 Wash. 106, 88 Pac. 108.

5. Weisberg *v.* Weisberg, 112 N. Y. App. Div. 231, 98 N. Y. Supp. 260.

7. Richardson *v.* Fitzgerald, 132 Iowa 253, 109 N. W. 866; State *v.* Harden, (W. Va. 1907) 58 S. E. 715; State *v.* Redmon, (Wis. 1907) 114 N. W. 137.

698. 3. Eddy *v.* Morgan, 216 Ill. 448, 75 N. E. 174, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 698; Aultman, etc., Machinery Co. *v.* Fish, 120 Ill. App. 314.

4. Boggs *v.* Ganeard, 148 Cal. 711, 84 Pac. 195; Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343; Wildharber *v.* Lunkenheimer, (Ky. 1908) 108 S. W. 327; J. J. Newman Lumber Co. *v.* Wemple, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 168, 107 N. Y. Supp. 318, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 625 [698].

699. 2. *United States.* — Clagett *v.* Duluth Tp., (C. C. A.) 143 Fed. 824.

Alabama. — Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368.

Arizona. — Wallapai Min., etc., Co. *v.* Territory, 9 Ariz. 373, 84 Pac. 85.

California. — Redlands *v.* Brook, 151 Cal. 474, 91 Pac. 150; Schamblin *v.* Means, (Cal. App. 1907) 91 Pac. 1020.

Delaware. — Diamond State Iron Co. *v.* Husbands, 8 Del. Ch. 205, 68 Atl. 240.

Florida. — Cranor *v.* Volusia County, (Fla. 1907) 45 So. 455.

Idaho. — Katz *v.* Herrick, 12 Idaho 1, 86 Pac. 873.

Illinois. — People *v.* Wisconsin Cent. R. Co., 219 Ill. 96, 76 N. E. 80, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 609 [699].

Kentucky. — Durrett *v.* Davidson, 122 Ky. 851, 93 S. W. 25.

Maryland. — Jeffers *v.* Annapolis, (Md. 1908) 68 Atl. 553.

Michigan. — Phillip *v.* Heraty, 147 Mich. 473, 111 N. W. 93.

New York. — Kuhn *v.* Knight, 115 N. Y. App. Div. 837, 101 N. Y. Supp. 1; People *v.* Board of Education, (Supm. Ct. App. Div.) 110 N. Y. Supp. 769.

North Carolina. — Anderson *v.* Wilkins, 142 N. Car. 154, 55 S. E. 272.

Pennsylvania. — Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115.

Tennessee. — Red River Furnace Co. *v.* Tennessee Cent. R. Co., 113 Tenn. 697, 87 S. W. 1016.

Texas. — State *v.* Larkin, (Tex. Civ. App. 1905) 90 S. W. 912; Haynes *v.* State, (Tex. Civ. App. 1906) 99 S. W. 405.

Virginia. — Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

3. Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343.

700. 3. Horn, etc., Mfg. Co. *v.* Steelman, 215 Pa. St. 187, 64 Atl. 409.

7. State *v.* Thomas, (Kan. 1907) 92 Pac. 557, *citing* 26 Am. and Eng. Encyc. of Law (2d ed.) 700; Knight *v.* Rawlings, 205 Mo. 412, 104 S. W. 38; Tyler *v.* St. Louis Southwestern R. Co., 99 Tex. 491, 91 S. W. 1.

701. 1. *United States.* — Larussi *v.* Missouri Pac. R. Co., 155 Fed. 654.

Alaska. — Fish *v.* Hemple, 2 Alaska 175.

Arizona. — Copper Queen Consol. Min. Co. *v.* Territorial Board of Equalization, 3 Ariz. 383, 84 Pac. 511; Costello *v.* Muheim, 9 Ariz. 422, 84 Pac. 906; Buggeln *v.* Cameron, (Ariz. 1907) 90 Pac. 324.

Arkansas. — McNutt *v.* McNutt, 78 Ark. 346, 95 S. W. 778; Snellen *v.* Kansas City Southern R. Co., 82 Ark. 334, 102 S. W. 193.

Colorado. — *In re* Shapter, 35 Colo. 578, 85 Pac. 688; Lace *v.* People, (Colo. 1908) 95 Pac. 302.

District of Columbia. — McManus *v.* Lynch, 28 App. Cas. (D. C.) 381.

Florida. — Atlantic Coast Line R. Co. *v.* Beazley, (Fla. 1907) 45 So. 761.

Georgia. — Georgia, etc., R. Co. *v.* Sasser, (Ga. App. 1908) 61 S. E. 505.

Illinois. — Rhoads *v.* Chicago, etc., R. Co., 227 Ill. 328, 81 N. E. 371.

Indian Territory. — J. B. Bostic Co. *v.* Eggleston, (Indian Ter. 1907) 104 S. W. 566.

Michigan. — Preston Nat. Bank *v.* Brooke, 142 Mich. 272, 105 N. W. 757.

Missouri. — State *v.* Miles, (Mo. 1908) 109 S. W. 595.

Montana. — *Ex p.* Wisner, (Mont. 1907) 92 Pac. 958.

New Hampshire. — Mann *v.* State Treasurer, (N. H. 1907) 68 Atl. 130.

New Jersey. — Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476.

Pennsylvania. — McDowell *v.* Lindsay, 213 Pa. St. 591, 63 Atl. 130.

Tennessee. — Smith *v.* Dayton Coal, etc., Co., 115 Tenn. 543, 92 S. W. 62.

Texas. — Red River Nat. Bank *v.* De Berry, (Tex. Civ. App. 1907) 105 S. W. 998.

Washington. — *In re* Seattle, (Wash. 1908) 94 Pac. 1075.

Wisconsin. — Manitowoc Clay Product Co. *v.* Manitowoc, etc., R. Co., (Wis. 1908) 115 N. W. 390.

Wyoming. — Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 984.

702. 1. De Graffenreid *v.* Iowa Land, etc., Co., (Okla. 1908) 95 Pac. 624, *quoting* 26 Am. and Eng. Encyc. of Law (2d ed.) 702; National Live Stock Commission Co. *v.* Taliaferro, (Okla. 1908) 93 Pac. 983.

2. Bliss *v.* Tyler, 149 Mich. 601, 113 N. W. 317.

3. State *v.* Thomas, (Kan. 1907) 92 Pac. 557, *citing* 26 Am. and Eng. Encyc. of Law

(2d ed.) 702; People *v.* Messer, 148 Mich. 170, 111 N. W. 854, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 702.

5. Howells Min. Co. *v.* Gray, (Ala. 1905) 42 So. 448.

6. Copper Queen Consol. Min. Co. *v.* Territorial Board of Equalization, 3 Ariz. 383, 84 Pac. 511; Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476.

703. 2. Copper Queen Consol. Min. Co. *v.* Territorial Board of Equalization, 206 U. S. 474, 27 U. S. Sup. Ct. 695, *affirming* 3 Ariz. 383, 84 Pac. 511; Smith *v.* Dayton Coal, etc., Co., 115 Tenn. 543, 92 S. W. 62.

3. State *v.* Campbell, 73 Kan. 704, 85 Pac. 784, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 703.

6. State *v.* Hubbard, (Ala. 1906) 41 So. 903.

7. McCleary *v.* Babcock, (Ind. 1907) 82 N. E. 453.

9. Schamblin *v.* Means, (Cal. App. 1907) 91 Pac. 1020; *In re* Terrett, 34 Mont. 325, 86 Pac. 266; Plattsmouth *v.* Murphy, 74 Neb. 749, 105 N. W. 293.

704. 2. Edalgo *v.* Southern R. Co., 129 Ga. 258, 58 S. E. 846; Patton *v.* People, 229 Ill. 512, 82 N. E. 386; *In re* Terrett, 34 Mont. 325, 86 Pac. 266.

705. 2. Erford *v.* Peoria, 229 Ill. 546, 82 N. E. 374; Atty.-Gen. *v.* Stryker, 141 Mich. 437, 104 N. W. 737; State *v.* Superior Ct., 44 Wash. 476, 87 Pac. 521.

3. State *v.* Edwards, (Utah 1908) 95 Pac. 367.

706. 3. Hollibaugh *v.* Hehn, 13 Wyo. 282, 79 Pac. 1044, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 706; Edalgo *v.* Southern R. Co., 129 Ga. 258, 58 S. E. 846; Patton *v.* People, 229 Ill. 512, 82 N. E. 386; Fortune *v.* Buncombe County, 140 N. Car. 322, 52 S. E. 950.

7. Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313; Territory *v.* Ruval, 9 Ariz. 415, 84 Pac. 1096; State *v.* Clausen, (Wash. 1907) 91 Pac. 1089.

707. 2. *Alabama.* — Rose *v.* Lampley, 146 Ala. 445, 41 So. 521.

Idaho. — Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903.

Illinois. — People *v.* Election Com'rs, 221 Ill. 9, 77 N. E. 321; Badenoch *v.* Chicago, 222 Ill. 71, 78 N. E. 31.

Kansas. — State *v.* Carter, 74 Kan. 156, 86 Pac. 138; State *v.* Davis, 74 Kan. 895, 86 Pac. 141; State *v.* Thomas, 74 Kan. 360, 86 Pac. 499.

Missouri. — State *v.* Herring, (Mo. 1907) 106 S. W. 984.

Montana. — Spratt *v.* Helena Power Transmission Co., (Mont. 1908) 94 Pac. 631.

Nebraska. — State *v.* Drexel, 74 Neb. 776, 105 N. W. 174; Allen *v.* Kennard, (Neb. 1908) 116 N. W. 63.

Utah. — State *v.* Cutler, (Utah 1908) 95 Pac. 1071.

Virginia. — Beale *v.* Pankey, (Va. 1907) 57 S. E. 661.

Washington. — State *v.* Lawson, 40 Wash. 455, 82 Pac. 750.

3. Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 768; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

6. State *v.* Hubbard, (Ala. 1906) 41 So. 903; Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368; Spratt *v.* Helena Power Transmission Co., (Mont. 1908) 94 Pac. 631; Allen *v.* Kennard, (Neb. 1908) 116 N. W. 63.

7. Spratt *v.* Helena Power Transmission Co., (Mont. 1908) 94 Pac. 631.

8. Palatine Ins. Co. *v.* Northern Pac. R. Co., [illegible]

708. 2. Harlin *v.* Schafer, (Ind. 1907) 81 N. E. 721; McCleary *v.* Babcock, (Ind. 1907) 82 N. E. 453; Bumsted *v.* Henry, (N. J. 1906) 64 Atl. 475.

3. State *v.* Hubbard, (Ala. 1906) 41 So. 903; Fourment *v.* State, (Ala. 1908) 46 So. 266.

4. Porter *v.* Waterman, 77 Ark. 383, 91 S. W. 754.

5. Parker-Washington Co. *v.* Kansas City, 73 Kan. 724, 85 Pac. 781, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 708; School Dist. No. 11 *v.* Chapman, (C. C. A.) 152 Fed. 887; St. Petersburg *v.* English, (Fla. 1907) 45 So. 483; Edalgo *v.* Southern R. Co., 129 Ga. 258, 58 S. E. 846; Hutchinson First Nat. Bank *v.* Pearce, (Kan. 1907) 92 Pac. 53; Atty.-Gen. *v.* Stryker, 141 Mich. 437, 104 N. W. 737; Zimmerman *v.* Trude, (Neb. 1908) 114 N. W. 641; Mill *v.* Brown, 31 Utah 473, 88 Pac. 609; *Ex p.* Sahlberg, 31 Utah 489, 88 Pac. 616; Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

709. 1. School Dist. No. 11 *v.* Chapman, (C. C. A.) 152 Fed. 887; State *v.* Patterson, 146 Ala. 128, 42 So. 19; Poulan *v.* Atlantic Coast Line R. Co., 123 Ga. 605, 51 S. E. 657; Settlers' Irrigation Dist. *v.* Settlers' Canal Co., (Idaho 1908) 94 Pac. 829; State *v.* Thomas, 74 Kan. 360, 86 Pac. 499; Murphy *v.* Police Jury, 118 La. 401, 42 So. 979; State *v.* Hunter, (S. Car. 1908) 60 S. E. 226; State *v.* Lawson, 40 Wash. 455, 82 Pac. 750.

3. State *v.* Carter, 74 Kan. 163, 86 Pac. 138, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 709; State *v.* Davis, 74 Kan. 895, 86 Pac. 141.

712. 2. Peters *v.* Harman, 27 Ohio Cir. Ct. 88.

3. McGuire *v.* Chicago, etc., R. Co., 131 Iowa 340, 108 N. W. 902; Bartley *v.* Boston, etc., R. Co., (Mass. 1908) 83 N. E. 1093.

4. People *v.* Mensching, 187 N. Y. 23, 10 Ann. Cas. 101, 79 N. E. 884, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 712; United New Jersey R., etc., Co. *v.* Parker, (N. J. L. 1908) 69 Atl. 239; Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

6. Cook County *v.* Healy, 222 Ill. 310, 78 N. E. 623.

8. Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427, *reversing* 132 Fed. 848; Cain *v.* Allen, 168 Ind. 8, 79 N. E. 201, *affirmed* 168 Ind. 8, 79 N. E. 896; Regadanz *v.* Maines, (Ind. 1906) 79 N. E. 352; State *v.* Bock, 167 Ind. 559, 79 N. E. 493; Atty.-Gen. *v.* Lewis, (Mich. 1908) 114 N. W. 927; United New Jersey R., etc., Co. *v.* Parker, (N. J. L. 1908) 69 Atl. 239; Davidson *v.* Witthaus, 106 N. Y. App. Div. 182, 94 N. Y. Supp. 428.

713. 1. Rex *v.* Vasey, (1905) 2 K. B. 748.

5. Dimpfel *v.* Beam, (Colo. 1907) 91 Pac. 107.

8. Palatine Ins. Co. *v.* Northern Pac. R. Co., 34 Mont. 268, 85 Pac. 1032.

714. 1. Vanderveer *v.* Herbert, (N. J. 1908) 68 Atl. 909.

8. State *v.* Leich, 166 Ind. 682, 9 Ann. Cas. 302, 78 N. E. 189, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714; Crohn *v.* Kansas City Home Telephone Co., (Mo. App. 1908) [illegible].

715. 1. State *v.* Leich, 166 Ind. 682, 9 Ann. Cas. 302, 78 N. E. 189, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 715.

10. Eddy *v.* Morgan, 216 Ill. 449, 75 N. E. [illegible] AM. AND ENG. ENCYC. OF LAW (2d ed.) 658; Wallapai Min., etc., Co. *v.* Territory, 9 Ariz. 373, 84 Pac. 85; Barnesville *v.* Means, 128 Ga. 197, 57 S. E. 422; Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343; Richardson *v.* Board of Education, 72 Kan. 629, 84 Pac. 538; Cortelyou *v.* Anderson, 73 N. J. L. 427, 63 Atl. 1095.

11. Cortelyou *v.* Anderson, 73 N. J. L. 427, 63 Atl. 1095.

716. 3. Smith *v.* Macon, 129 Ga. 227, 58 S. E. 713; Cook County *v.* Healy, 222 Ill. 310, 78 N. E. 623; State *v.* Patterson, 207 Mo. 129, 105 S. W. 1048.

717. 4. *Ex p.* Sohncke, 148 Cal. 262, 82 Pac. 956; *Ex p.* Clary, 149 Cal. 732, 87 Pac. 580; Cook County *v.* Healy, 222 Ill. 310, 78 N. E. 623.

718. 3. Settlers' Irrigation Dist. *v.* Settlers' Canal Co., (Idaho 1908) 94 Pac. 829.

5. Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903.

719. 2. Alaska Gold Min. Co. *v.* Ebner, 2 Alask[illegible].

4. *United States.* — Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313.

Arizona. — Territory *v.* Ruval, 9 Ariz. 415, 84 Pac. 1096.

Arkansas. — Porter *v.* Waterman, 77 Ark. 383, 91 S. W. 754.

California. — Swem *v.* Monroe, 148 Cal. 743, 83 Pac. 1074, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719; *Ex p.* Clary, 149 Cal. 732, 87 Pac. 580.

Massachusetts. — Scollard *v.* American Felt Co., 194 Mass. 127, 80 N. E. 233.

Nebraska. — Zimmerman *v.* Trude, (Neb. 1908) 114 N. W. 641; *In re* Quinette, (Neb. 1908) 115 N. W. 545.

New York. — People *v.* Mensching, 187 N. Y. 23, 10 Ann. Cas. 101, 79 N. E. 884, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719.

Texas. — Gaddis *v.* Terrell, (Tex. 1908) 110 S. W. 429.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715.

Wisconsin. — State *v.* Groth, (Wis. 1907) 112 N. W. 431.

720. 3. Seattle *v.* Foster, (Wash. 1907) 91 Pac. 642.

4. Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720; State *v.* Lee, 28 Nev. 392, 82 Pac. 229, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720.

11. St. Petersburg *v.* English, (Fla. 1907) 45 So. 483; Memphis, etc., R. Co. *v.* Union R. Co., 116 Tenn. 500, 95 S. W. 1019; Coleman *v.* Cravens, 41 Wash. 1, 82 Pac. 1005.

721. 3. *United States.* — U. S. *v.* Chicago, etc., R. Co., 151 Fed. 84; Allen *v.* U. S., 40 Ct. Cl. 170.

Arkansas. — Benton *v.* Willis, 76 Ark. 446, 88 S. W. 1000, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721.

Colorado. — Lace *v.* People, (Colo. 1908) 95 Pac. 302.

District of Columbia. — Moss *v.* U. S., 29 App. Cas. (D. C.) 188.

Georgia. — Edalgo *v.* Southern R. Co., 129 Ga. 258, 58 S. E. 846.

Illinois. — Schafer *v.* Gerbers, 234 Ill. 468, 84 N. E. 1064.

Indiana. — Findling *v.* Foster, (Ind. 1908) 84 N. E. 529; Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 78 N. E. 353.

Iowa. — Fairfield *v.* Shallenberger, (Iowa 1907) 113 N. W. 459; Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177.

Kentucky. — Louisville, etc., R. Co. *v.* Jarvis, (Ky. 1905) 87 S. W. 759.

Louisiana. — State *v.* Henderson, (La. 1907) 45 So. 430.

Michigan. — Hoffman *v.* H. M. Loud, etc., Lumber Co., 138 Mich. 10, 104 N. W. 424.

Minnesota. — Clark *v.* Baxter, 98 Minn. 256, 108 N. W. 838; State *v.* Peter, 101 Minn. 462, 112 N. W. 866.

Nebraska. — State *v.* Drexel, 74 Neb. 776, 105 N. W. 174; Central City *v.* Marquis, 75 Neb. 233, 106 N. W. 221; State *v.* Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979, 110 N. W. 874; *In re* Quinette, (Neb. 1908) 115 N. W. 545.

New Jersey. — Arzonico *v.* Board of Education, (N. J. L. 1908) 69 Atl. 450.

New York. — *In re* Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994; People *v.* Metz, 119 N. Y. App. Div. 271, 104 N. Y. Supp. 649.

North Carolina. — State *v.* Perkins, 141 N. Car. 797, 53 S. E. 735; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294.

North Dakota. — Reeves *v.* Bruening, (N. Dak. 1907) 114 N. W. 313, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721.

Oregon. — Sandys *v.* Williams, 46 Oregon 327, 80 Pac. 642.

Pennsylvania. — Sheraden Borough, 34 Pa. Super. Ct. 639.

South Carolina. — State *v.* McCoomer, (S. Car. 1908) 60 S. E. 237.

Tennessee. — McCampbell *v.* State, 116 Tenn. 98, 93 S. W. 100; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

Texas. — Kerr *v.* Mohr, (Tex. Civ. App. 1907) 103 S. W. 210; Jessee *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011.

Utah. — Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

Washington. — Griggs Land Co. *v.* Smith, (Wash. 1907) 80 Pac. 477, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721–726; Mathews *v.* Wagner, (Wash. 1908) 94 Pac. 759.

Wisconsin. — Hay *v.* Baraboo, 127 Wis. 1, 105 N. W. 654.

723. 1. U. S. *v.* Chicago, etc., R. Co., 151 Fed. 84; Benton *v.* Willis, 76 Ark. 446, 88 S. W. 1000, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 721; Benton *v.* Willis, 76

Ark. 443, 88 S. W. 1000; Wilson *v.* State, 50 Fla. 164, 39 So. 471; Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 78 N. E. 353; Sikes *v.* St. Louis, etc., R. Co., 127 Mo. App. 326, 105 S. W. 700; State *v.* Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979, 110 N. W. 874; Arzonico *v.* Board of Education, (N. J. L. 1908) 69 Atl. 450; State *v.* Perkins, 141 N. Car. 797, 53 S. E. 735; Thomas *v.* Evans, 73 Ohio St. 140, 76 N. E. 862; Memphis, etc., R. Co. *v.* Union R. Co., 116 Tenn. 500, 95 S. W. 1019.

3. Erwin *v.* State, 116 Tenn. 71, 93 S. W. 73.

4. People *v.* Mensching, 187 N. Y. 23, 10 Ann. Cas. 101, 79 N. E. 884, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 723.

5. Griffin *v.* Rhoton, (Ark. 1907) 107 S. W. 380; Moore *v.* Houston County, 128 Ga. 187, 57 S. E. 236.

6. Henry *v.* State, 87 Miss. 121, 39 So. 856, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 723, *per* Whitfield, C. J., *dissenting*.

7. State *v.* Hubbard, (Ala. 1906) 41 So. 903; *Ex p.* Sohncke, 148 Cal. 262, 82 Pac. 956; Cortelyou *v.* Anderson, 73 N. J. 427, 63 Atl. 1095; Marioneaux *v.* Cutler, (Utah 1907) 91 Pac. 355.

725. 1. Gibson *v.* Slater, 42 Wash. 347, 84 Pac. 648, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 723, and *quoting* the entire paragraph; Cortelyou *v.* Anderson, 73 N. J. 427, 63 Atl. 1095.

2. *United States.* — U. S. *v.* Chicago, etc., R. Co., 151 Fed. 84; Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313.

Arkansas. — Benton *v.* Willis, 76 Ark. 443, 88 S. W. 1000.

California. — Swem *v.* Monroe, 148 Cal. 743, 83 Pac. 1074, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 725.

Georgia. — Edalgo *v.* Southern R. Co., 129 Ga. 258, 58 S. E. 846.

Indiana. — Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 78 N. E. 353.

Missouri. — State *v.* Patterson, 207 Mo. 129, 105 S. W. 1048; State *v.* Wells, (Mo. 1908) 109 S. W. 758.

New York. — *In re* Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994; People *v.* Metz, 119 N. Y. App. Div. 271, 104 N. Y. Supp. 649.

North Carolina. — State *v.* Perkins, 141 N. Car. 797, 53 S. E. 735; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294.

Oregon. — Sandys *v.* Williams, 46 Oregon 327, 80 Pac. 642.

Tennessee. — McCampbell *v.* State, 116 Tenn. 98, 93 S. W. 100; Memphis, etc., R. Co. *v.* Union R. Co., 116 Tenn. 500, 95 S. W. 1019; Memphis St. R. Co. *v.* Byrne, (Tenn. 1907) 104 S. W. 460.

Texas. — Jessee *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011; Williams *v.* State, (Tex. Crim. 1908) 107 S. W. 1121; Joliff *v.* State, (Tex. Crim. 1908) 109 S. W. 176.

Washington. — Mathews *v.* Wagner, (Wash. 1908) 94 Pac. 759.

726. 1. Lee *v.* State, 143 Ala. 93, 39 So. 366.

2. Gibson *v.* Slater, 42 Wash. 347, 84 Pac. 648, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 726; *Ex p.* Ackerman, (Cal. App. 1907) 91 Pac. 429; Fairfield *v.* Shallenberger, (Iowa 1907) 113 N. W. 459; Hoffman *v.* H. M. Loud, etc., Lumber Co., 138 Mich. 10, 104 N. W. 424; State *v.* Peter, 101 Minn. 462, 112 N. W. 866.

3. *United States.* — U. S. *v.* Chicago, etc., R. Co., 151 Fed. 84; Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313.

Florida. — Wilson *v.* State, 50 Fla. 164, 39 So. 471.

Idaho. — Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903.

Indiana. — Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 78 N. E. 353.

Iowa. — Fairfield *v.* Shallenberger, (Iowa 1907) 113 N. W. 459; Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177.

Kentucky. — Louisville, etc., R. Co. *v.* Jarvis, (Ky. 1905) 87 S. W. 759.

Minnesota. — State *v.* Peter, 101 Minn. 462, 112 N. W. 866.

Missouri. — State *v.* Patterson, 207 Mo. 129, 105 S. W. 1048.

Nebraska. — Central City *v.* Morquis, 75 Neb. 233, 106 N. W. 221.

New Jersey. — Board of Health *v.* Vineland, (N. J. Eq. 1906) 65 Atl. 174.

North Carolina. — State *v.* Perkins, 141 N. Car. 801, 53 S. E. 735, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 726; State *v.* Southern R. Co., 141 N. Car. 853, 54 S. E. 294, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 726.

Oregon. — Sandys *v.* Williams, 46 Oregon 327, 80 Pac. 642.

Rhode Island. — Masterson *v.* Whipple, 27 R. I. 192, 61 Atl. 446.

South Carolina. — State *v.* McCoomer, (S. Car. 1908) 60 S. E. 237.

Texas. — Jessee *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011; Garrison *v.* Richards, (Tex. Civ. App. 1908) 107 S. W. 861; Williams *v.* State, (Tex. Crim. 1908) 107 S. W. 1121.

Washington. — Gibson *v.* Slater, 42 Wash. 347, 84 Pac. 648, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 726.

Wisconsin. — Hay *v.* Baraboo, 127 Wis. 1, 105 N. W. 654; State *v.* Groth, (Wis. 1907) 112 N. W. 431.

727. 1. *United States.* — Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313.

Alabama. — State *v.* Hubbard, (Ala. 1906) 41 So. 903.

California. — *Ex p.* Sohncke, 148 Cal. 262, 82 Pac. 956.

Georgia. — James *v.* State, 124 Ga. 72, 52 S. E. 295; Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52; Central of Georgia R. Co. *v.* Wright, 125 Ga. 617, 54 S. E. 64.

Idaho. — Noble *v.* Bragaw, 12 Idaho 265, 85 Pac. 903.

Massachusetts. — Johnson *v.* Shea, (Mass. 1908) 84 N. E. 606.

Missouri. — State *v.* Wells, (Mo. 1908) 109 S. W. 758.

Nebraska. — State *v.* Drexel, 74 Neb. 776, 105 N. W. 174; State *v.* Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979, 110 N. W. 875.

New Jersey. — Board of Health *v.* Vineland, (N. J. Eq. 1906) 65 Atl. 174.

North Carolina. — State *v.* Perkins, 141 N. Car. 801, 53 S. E. 735, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 727; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294.

Ohio. — Thomas *v.* Evans, 73 Ohio St. 140, 76 N. E. 862.

Oregon. — Sandys *v.* Williams, 46 Oregon 327, 80 Pac. 642.

Texas. — Jessee *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011.

Wisconsin. — State *v.* Groth, (Wis. 1907) 112 N. W. 431.

2. Benton *v.* Willis, 76 Ark. 443, 88 S. W. 1000.

728. 1. Lace *v.* People, (Colo. 1908) 95 Pac. 302; Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 78 N. E. 353; *In re* Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994.

730. 2. Garrison *v.* Richards, (Tex. Civ. App. 1908) 107 S. W. 861.

731. 2. Findling *v.* Foster, (Ind. 1907) 81 N. E. 480, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 731; Kerr *v.* Mohr, (Tex. Civ. App. 1907) 103 S. W. 210.

4. *Arkansas.* — Lawyer *v.* Carpenter, 80 Ark. 411, 97 S. W. 662.

Indiana. — Findling *v.* Foster, (Ind. 1907) 81 N. E. 480, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 731; Findling *v.* Foster, (Ind. 1908) 84 N. E. 529, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 731.

Louisiana. — State *v.* Henderson, (La. 1907) 45 So. 430.

Minnesota. — Clark *v.* Baxter, 98 Minn. 256, 108 N. W. 838.

Missouri. — State *v.* Patterson, 207 Mo. 129, 105 S. W. 1048.

Nebraska. — State *v.* Omaha Elevator Co., 75 Neb. 637, 106 N. W. 979, 110 N. W. 875.

Nevada. — State *v.* Lee, 28 Nev. 389, 82 Pac. 229, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 731.

New Jersey. — Board of Health *v.* Vineland, (N. J. Eq. 1906) 65 Atl. 174.

New York. — Pratt Institute *v.* New York, 183 N. Y. 151, 75 N. E. 1119; *In re* Troy Press Co., 187 N. Y. 279, 79 N. E. 1006; Buffalo *v.* Lewis, 192 N. Y. 193, 84 N. E. 809; People *v.* Metz, 119 N. Y. App. Div. 271, 104 N. Y. Supp. 649; *In re* McIntyre, (Supm. Ct. App. Div.) 108 N. Y. Supp. 242.

Ohio. — Thomas *v.* Evans, 73 Ohio St. 140, 76 N. E. 862.

Oregon. — Sandys *v.* Williams, 46 Oregon 327, 80 Pac. 642.

Pennsylvania. — Com. *v.* Heller, (Pa. 1907) 67 Atl. 925; *In re* Knoblauch's License, 28 Pa. Super. Ct. 323.

Tennessee. — Gilley *v.* Harrell, 118 Tenn. 115, 101 S. W. 424; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

Texas. — Garrison *v.* Richards, (Tex. Civ. App. 1908) 107 S. W. 861.

Washington. — Coleman *v.* Cravens, 41 Wash. 1, 82 Pac. 1005; *Ex p.* Donnellan, (Wash. 1908) 95 Pac. 1085.

West Virginia. — State *v.* Harden, (W. Va. 1907) 58 S. E. 715, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 731; Hawkins *v.* Bare, (W. Va. 1908) 60 S. E. 391.

732. 1. State *v.* Harden, (W. Va. 1907) 58 S. E. 715, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 731 [732]; Western Union Tel. Co. *v.* State, 82 Ark. 302, 101 S. W. 745.

2. U. S. *v.* Chicago, etc., R. Co., 151 Fed. 84; Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313; Edalgo *v.* Southern R. Co., 129 Ga. 258, 58 S. E. 846; *In re* Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994; State *v.* Perkins, 141 N. Car. 797, 53 S. E. 735; State *v.* Southern R. Co., 141 N. Car. 846, 54 S. E. 294; Dallas County *v.* Plowman, 99 Tex. 509, 91 S. W. 221, *affirming* 88 S. W. 252; Jessee *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011; Mathews *v.* Wagner, (Wash. 1908) 94 Pac. 759.

733. 1. Johnson *v.* Johnson, 84 Ark. 307, 105 S. W. 869; State *v.* Wells, (Mo. 1908) 109 S. W. 758.

3. Johnson *v.* Johnson, 84 Ark. 307, 105 S. W. 869.

6. Fincher *v.* Gollum, 2 Ga. App. 745, 59 S. E. 22, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733; Findling *v.* Foster, (Ind. 1908) 84 N. E. 529, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 731, 735; State *v.* Lowery, 143 Ala. 48, 39 So. 309; Bailes *v.* Daly, 146 Ala. 628, 40 So. 420; Brannock *v.* St. Louis, etc., R. Co., 200 Mo. 561, 98 S. W. 604, *overruling* State *v.* Wray, 109 Mo. 594, 19 S. W. 81; *In re* Troy Press Co., 115 N. Y. App. Div. 25, 100 N. Y. Supp. 516; State *v.* Burgess, (Tex. 1908) 109 S. W. 922; State *v.* Harden, (W. Va. 1907) 58 S. E. 715; Allaby *v.* Mauston Electric Service Co., (Wis. 1908) 116 N. W. 4.

734. 2. Palatine Ins. Co. *v.* Northern Pac. R. Co., 34 Mont. 268, 85 Pac. 1032.

3. State *v.* McDonald, 101 Minn. 349, 112 N. W. 278.

4. Reeves *v.* Bruening, (N. Dak. 1907) 114 N. W. 313.

5. Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251.

6. Clark *v.* State, (Ind. 1908) 84 N. E. 984.

735. 1. State *v.* Marion County, (Ind. 1907) 82 N. E. 484, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 734, 735.

3. Findling *v.* Foster, (Ind. 1907) 81 N. E. 480, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 735; Findling *v.* Foster, (Ind. 1908) 84 N. E. 529, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 735.

6. Collins Coal Co. *v.* Hadley, 38 Ind. 637, 78 N. E. 353; Goodrich *v.* Hackley-Phelps-Bonell Co., 141 Mich. 343, 104 N. W. 669.

7. State *v.* McDonald, 101 Minn. 349, 112 N. W. 278.

736. 4. Eckerson *v.* Des Moines, (Iowa 1908) 115 N. W. 177; Paul *v.* State, (Tex. Civ. App. 1907) 106 S. W. 448; Williams *v.* State, (Tex. Crim. 1908) 107 S. W. 1121; Joliff *v.* State, (Tex. Crim. 1908) 109 S. W. 176.

5. Trinity County *v.* Mendocino County, 151 Cal. 279, 90 Pac. 687, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 736; Garrison *v.* Richards, (Tex. Civ. App. 1908) 107 S. W. 861, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 736.

6. Matter of Fukunaga, 16 Hawaii 308, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 736.

738. 1. Cavanaugh *v.* Patterson, (Colo. 1907) 91 Pac. 1117.

3. State *v.* McKee, 126 Mo. 524, 104 S. W. 486.

739. 3. *England.* — Esquimalt Waterworks Co. *v.* Victoria, (1907) A. C. 499.

United States. — Christie-St. Commission Co. *v.* U. S., (C. C. A.) 136 Fed. 326.

Arkansas. — Lawyer *v.* Carpenter, 80 Ark. 411, 97 S. W. 662.

California. — Trinity County *v.* Mendocino County, 151 Cal. 279, 90 Pac. 685.

Georgia. — Edalgo *v.* Southern R. Co., 129 Ga. 258, 58 S. E. 846.

Illinois. — People *v.* Weber, 222 Ill. 180, 78 N. E. 56.

Indiana. — Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 78 N. E. 353.

Kentucky. — Louisville, etc., R. Co. *v.* Jarvis, (Ky. 1905) 87 S. W. 759.

Louisiana. — Hayes *v.* Morgan's Louisiana, etc., R., etc., Co., 117 La. 593, 42 So. 150.

Minnesota. — State *v.* Peter, 101 Minn. 464, 112 N. W. 866, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 739.

Missouri. — State *v.* Binswanger, 122 Mo. App. 78, 98 S. W. 103.

Nebraska. — *In re* Quinette, (Neb. 1908) 115 N. W. 545.

New York. — *In re* Business Men's Assoc., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 13, 103 N. Y. Supp. 843.

Pennsylvania. — People's Trust, etc., Co. *v.* Ehrhart, 34 Pa. Super. Ct. 16.

Tennessee. — Key *v.* Harris, 116 Tenn. 161, 92 S. W. 235; McCampbell *v.* State, 116 Tenn. 98, 93 S. W. 100; Memphis, etc., R. Co. *v.* Union R. Co., 116 Tenn. 500, 95 S. W. 1019.

Texas. — Paul *v.* State, (Tex. Civ. App. 1907) 106 S. W. 448, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 739; Williams *v.* State, (Tex. Crim. 1908) 107 S. W. 1121.

Virginia. — South, etc., R. Co. *v.* Com., 104 Va. 322, 51 S. E. 824, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 739, 740.

741. 1. Alameda County *v.* Dalton, 148 Cal. 246, 82 Pac. 1050.

2. Paul *v.* State, (Tex. Civ. App. 1907) 106 S. W. 448.

742. 1. Edalgo *v.* Southern R. Co., 129 Ga. 258, 58 S. E. 846; Struthers *v.* People, 116 Ill. App. 481; Com. *v.* Leibrich, 33 Pa. Co. Ct. 291, 16 Pa. Dist. 470, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 742; Nissley *v.* Lancaster County, 27 Pa. Super. Ct. 405.

2. *In re* Troy Press Co., 115 N. Y. App. Div. 25, 100 N. Y. Supp. 516; Mohr *v.* Scherer, 30 Pa. Super. Ct. 509; Allaby *v.* Mauston Electric Service Co., (Wis. 1908) 116 N. W. 4.

743. 5. McCleary *v.* Babcock, (Ind. 1907) 82 N. E. 453.

6. State *v.* McMillan, (Fla. 1908) 45 So. 882; Griffin *v.* Sanborn, 127 Ga. 17, 56 S. E. 71; Reusch *v.* Lincoln, (Neb. 1907) 112 N. W. 377; *Ex p.* Wilber, (Neb. 1907) 112 N. W. 379.

744. 6. Glover *v.* State, 126 Ga. 594, 55 S. E. 592.

7. State *v.* Hubbard, (Ala. 1906) 41 So. 903; Lears *v.* Seaboard Air Line R. Co., 3 Ga. App. 614, 60 S. E. 343.

8. Miller *v.* Chicago, etc., R. Co., (Wis. 1907) 113 N. W. 384.

745. 6. Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236; Sharrock *v.* Kreiger, 6 Indian Ter. 466, 98 S. W. 161; Doss *v.* Mermentau Levee Dist., 117 La. 450, 41 So. 720; *In re* McIntyre, (Supm. Ct. App. Div.) 108 N. Y. Supp. 242; Friend *v.* Levy, 76 Ohio St. 26, 80 N. E. 1036.

746. 2. Foster *v.* Rowe, 128 Wis. 326, 107 N. W. 635.

747. 1. Miller *v.* Union Mill Co., 45 Wash. 199, 88 Pac. 130, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 746, and quoting the entire paragraph.

5. Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236; Doss *v.* Mermentau Levee Dist., 117 La. 450, 41 So. 720; *In re* McIntyre, (Supm. Ct. App. Div.) 108 N. Y. Supp. 242; Barnes *v.* Roy, 27 R. I. 534, 65 Atl. 277.

748. 1. Pittsburgh, etc., R. Co. *v.* Oglesby, 165 Ind. 542, 76 N. E. 165; Lewis *v.* Pennsylvania R. Co., (Pa. 1908) 69 Atl. 821.

3. O'Neil *v.* Hoboken, 73 N. J. L. 189, 63 Atl. 986.

5. U. S. *v.* Chicago, etc., R. Co., 151 Fed. 84.

6. Atty.-Gen. *v.* Betty, 73 N. J. L. 338, 63 Atl. 911, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 748; Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236.

749. 2. Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236; Lewis *v.* Pennsylvania R. Co., (Pa. 1908) 69 Atl. 821.

750. 8. Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236; Collins Coal Co. *v.* Hadley, 38 Ind. App. 637, 78 N. E. 353.

751. 1. Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427, *reversing* 132 Fed. 848.

752. 1. Taylor *v.* Strayer, 167 Ind. 23, 78 N. E. 236; Sharrock *v.* Kreiger, 6 Indian Ter. 466, 98 S. W. 161.

753. 3. Kerr *v.* Mohr, (Tex. Civ. App. 1907) 103 S. W. 210, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753; U. S. *v.* Standard Oil Co., 148 Fed. 719.

754. 2. Miller *v.* Chicago, etc., R. Co., (Wis. 1907) 113 N. W. 384, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753, and quoting the entire paragraph.

755. 3. State *v.* Perkins, 141 N. Car. 799, 53 S. E. 735, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 755.

756. 1. *Re* Thomas Lynch, 12 Can. Crim. Cas. (P. E. Island) 143, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 143.

757. 4. U. S. *v.* Standard Oil Co., 148 Fed. 719; U. S. *v.* Chicago, etc., R. Co., 151 Fed. 84; Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313; *In re* Shneck, (Kan. 1908) 96 Pac. 43; Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401; State *v.* Ames, (Wash. 1907) 92 Pac. 137.

758. 4. Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758; Great Northern R. Co. *v.* U. S., (C. C. A.) 155 Fed. 945, *affirmed* 208 U. S. 452, 28 U. S. Sup. Ct. 313; Strottman *v.* St. Louis, etc., R. Co., (Mo. 1908) 109 S. W. 769; Walker *v.* Babbitt, 114 Tenn. 700, 88 S. W. 327; Taggart *v.* Hillman, (Tex. Civ. App. 1906) 93 S. W. 245; Jessee *v.* De Shong, (Tex. Civ. App. 1907) 105 S. W. 1011; State *v.* Harden, (W.

Va. 1907) 58 S. E. 715; Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 984.

759. 1. State *v.* McDonald, 101 Minn. 354, 112 N. W. 278, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758; Haspel *v.* O'Brien, 218 Pa. St. 149, 67 Atl. 123, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758; Pringle *v.* Canfield, 19 S. Dak. 506, 104 N. W. 223; State *v.* Clausen, (Wash. 1907) 91 Pac. 1089.

3. Miller *v.* Chicago, etc., R. Co., (Wis. 1907) 113 N. W. 384.

761. 8. Dykstra *v.* Holden, (Mich. 1908) 115 N. W. 74, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 761.

762. 4. Brannock *v.* St. Louis, etc., R. Co., 200 Mo. 561, 98 S. W. 604, *overruling* State *v.* Wray, 109 Mo. 594, 19 S. W. 81; Red River Nat. Bank *v.* De Berry, (Tex. Civ. App. 1907) 105 S. W. 998; Missouri, etc., R. Co. *v.* Wise, (Tex. Civ. App. 1907) 106 S. W. 465.

STENOGRAPHERS.

773. 6. **A Stenographer Employed by a Litigant** is not under the control and direction of the court. State *v.* Vicknair, 118 La. 963, 43 So. 635.

774. 10. **Presence of Stenographer Authorized by Statute.** — Thayer *v.* State, 138 Ala. 39, 35 So. 406; Smith *v.* State, 142 Ala. 14, 39 So. 329.

775. 1. Com. *v.* Berry, (Ky. 1906) 92 S. W. 936.

5. **Duty to Take Minutes Only When Instructed by Court.** — Rudisell *v.* Jennings, 38 Ind. App. 403, 77 N. E. 959, 78 N. E. 263.

6. Colorado, etc., R. Co. *v.* Hamm, (Tex. Civ. App. 1907) 103 S. W. 1125.

Documentary Evidence Not to Be Copied into Minutes. — Gulf, etc., R. Co. *v.* Pearce, (Tex. Civ. App. 1906) 95 S. W. 1133.

7. Colorado, etc., R. Co. *v.* Hamm, (Tex. Civ. App. 1907) 103 S. W. 1125.

13. Colorado, etc., R. Co. *v.* Hamm, (Tex. Civ. App. 1907) 103 S. W. 1125.

776. 2. **Failure to File Notes Not Ground for New Trial.** — Smith *v.* Pecos Valley, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 11.

3. **Filing Unnecessary.** — See Garrison *v.* Richards, (Tex. Civ. App. 1908) 107 S. W. 861.

5. Gulf, etc., R. Co. *v.* Pearce, (Tex. Civ. App. 1906) 95 S. W. 1133; Colorado, etc., R. Co. *v.* Hamm, (Tex. Civ. App. 1907) 103 S. W. 1125.

777. 2. Co-operative Mfg. Produce, etc., Co. *v.* Rusche, (Ky. 1907) 99 S. W. 677.

Payment Allowed for Both Taking and Transcribing Testimony. — Reuscher *v.* Atty.-Gen., (Ky. 1906) 97 S. W. 397.

3. Seaboard Air-Line R. Co. *v.* Memory, 126 Ga. 183, 55 S. E. 15; People *v.* Chetlain, 219 Ill. 248, 76 N. E. 364.

5. **New York City — Coroners' Stenographer — Salary May Be Fixed by Board of Estimate and Apportionment.** — Hamburger *v.* Board of Estimate, etc., 109 N. Y. App. Div. 427, 96 N. Y. Supp. 130.

7. Seaboard Air-Line R. Co. *v.* Memory, 126 Ga. 183, 55 S. E. 15.

8. **A Claim under a Contract between a Stenographer and a Judge,** including fees and mileage, is not a claim for compensation "fixed by law," under the *Utah* constitution and statutes; and hence mandamus will not lie to compel its payment without approval by the state board of examiners. State *v.* Edwards, (Utah 1908) 93 Pac. 720.

778. 4. **An Unofficial Stenographer Employed in a Special Proceeding,** with the sanction of both parties, may hold the parties liable for his fees. Bottome *v.* Neely, (Supm. Ct. App. T.) 54 Mich. (N. Y.) 258, 104 N. Y. Supp. 429.

8. **Client Liable for Fees of Stenographer Employed by Attorney.** — Bottome *v.* Neely, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 258, 104 N. Y. Supp. 429.

781. 4. **Binding the Transcript to the Bill of Exceptions** with paper fasteners has been held to be sufficient. Kecoughtan Lodge No. 29 *v.* Steiner, 106 Va. 589, 56 S. E. 569.

5. Speiser *v.* North Jersey St. R. Co., 73 N. J. L. 413, 63 Atl. 867; Smith *v.* Pecos Valley, etc., R. Co., (Tex. Civ. App. 1906) 95 S. W. 11.

Notes by an Unofficial Stenographer are nevertheless admissible, under the *Texas* practice, where he was properly appointed and duly sworn. Galveston, etc., R. Co., (Tex. 1907) 102 S. W. 723.

6. Smith *v.* Pecos Valley R. Co., (Tex. Civ. App. 1906) 95 S. W. 11.

7. Austin *v.* Com., (Ky. 1906) 98 S. W. 295; State *v.* Woolridge, 45 Oregon 401, 78 Pac. 333, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 781.

782. 3. State *v.* Woolridge, 45 Oregon 389, 78 Pac. 333.

783. 4. Austin *v.* Com., (Ky. 1906) 98 S. W. 295.

STEPFATHER.

784. 4. **Stepfather.** — A man who marries the mother of an illegitimate daughter becomes the ***stepfather*** of such child, within the meaning of a statute punishing incest. Lipham *v.* State, 125 Ga. 52, 53 S. E. 817.

STOCK AND PRODUCE EXCHANGES.

789. 2. Pacaud *v.* Waite, 218 Ill. 138, 75 N. E. 779; Zell *v.* Baltimore Stock Exch., 102 Md. 489, 62 Atl. 808; Konta *v.* St. Louis Stock Exch., 189 Mo. 26, 87 S. W. 969.

The Chicago Board of Trade is a mere voluntary association, although incorporated under an act of the general assembly. People *v.* Board of Trade, 224 Ill. 370, 79 N. E. 611.

790. 1. Pacaud *v.* Waite, 218 Ill. 138, 75 N. E. 779; Konta *v.* St. Louis Stock Exch., 189 Mo. 26, 87 S. W. 969.

2. **Chicago Board of Trade.** — Bostedo *v.* Board of Trade, 227 Ill. 90, 81 N. E. 42.

795. 2. Konta *v.* St. Louis Stock Exch., 189 Mo. 26, 87 S. W. 969.

4. Konta *v.* St. Louis Stock Exch., 189 Mo. 26, 87 S. W. 969.

796. 3. Cohen *v.* Budd, (Supm. Ct. Tr. T.) 52 Misc. (N. Y.) 217, 103 N. Y. Supp. 45.

797. 3. People *v.* Board of Trade, 224 Ill. 370, 79 N. E. 611.

5. Konta *v.* St. Louis Stock Exch., 189 Mo. 26, 87 S. W. 969.

798. 12. **Strict Compliance with By-laws Essential in Proceedings for Expulsion.** Quentell *v.* New York Cotton Exch., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 150, 106 N. Y. Supp. 228.

799. 3. **Equity Will Not Grant Injunction.** — Bostedo *v.* Board of Trade, 227 Ill. 90, 81 N. E. 42.

6. **Where the Proceedings Are Contrary to the By-laws** in their institution and conduct the courts will interfere. Quentell *v.* New York Cotton Exch., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 150, 106 N. Y. Supp. 228.

800. 3. Quenteil *v.* New York Cotton Exch., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 150, 106 N. Y. Supp. 228.

801. 8. Chamber of Commerce *v.* Wells, 100 Minn. [illegible] N. W. 57.

802. 1. McDearmott Commission Co. *v.* Board of Trade, (C. C. A.) 146 Fed. 961, 8 Ann. Cas. 759.

2. Hammond Elevator Co. *v.* Board of Trade, (C. C. A.) 143 Fed. 292; New York Cotton Exch. *v.* Hunt, 144 Fed. 511; Chamber of Commerce *v.* Wells, 100 Minn. 205, 111 N. W. 157 (chamber of [illegible] quotations).

3. **A Board of Trade May Impose Regulations Governing the Supply of Quotations,** and such regulations, if reasonable, will be upheld by the courts. Western Union Tel. Co. *v.* [illegible].

803. 1. Pacaud *v.* Waite, 218 Ill. 138, 75 N. E. 779; Bostedo *v.* Board of Trade, 227 Ill. 90, 81 N. E. 42; C. H. Albers Commission Co. *v.* Spencer, 205 Mo. 105, 103 S. W. 523; Cohen *v.* Budd, (Supm. Ct. Tr. T.) 52 Misc. (N. Y.) 217, 103 N. Y. Supp. 45; Quentell *v.* New York Cotton Exch., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 150, 106 N. Y. Supp. 228.

2. People *v.* Board of Trade, 224 Ill. 370, 79 N. E. 611.

804. 6. Zell *v.* Baltimore Stock Exch., 102 Md. 489, 62 Atl. 808.

7. Mendelssohn *v.* Ratcliff, (1904) A. C. 456; Lomas *v.* Graves, (1904) 2 K. B. 557.

805. 3. Pacaud *v.* Waite, 218 Ill. 138, 75 N. E. 779.

6. Pacaud *v.* Waite, 218 Ill. 138, 75 N. E. 779.

STOCK AND STOCKHOLDERS.

823. 6. Hobgood *v.* Ehlen, 141 N. Car. 344, 53 S. E. 857.

825. 3. Smith *v.* Becker, 129 Wis. 396, 109 N. W. 131.

4. Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 306, 107 N. W. 620.

826. 8. Grover *v.* Cavanaugh, (Ind. App. 1907) [illegible] N. E. 611.

11. Elkhorn Land, etc., Co. *v.* Childers, (Ky. 1907) 100 S. W. 222; Sulphur Springs First Nat. Bank *v.* Stribling, 16 Okla. 41, 86 Pac. 512; Haynes *v.* Brown, 18 Okla. 389, 89 Pac. 1124.

827. 10. Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685.

828. 4. Smith *v.* Becker, 129 Wis. 396, 109 N. W. 131, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 828.

829. 11. Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685.

12. Central Sav. Bank *v.* Smith, (Colo. 1908) 95 Pac. 307; Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685; New York, etc., Tel., etc., Co. *v.* Great Eastern Telephone Co., (N. J. 1908) 69 Atl. 528; Beckwith *v.* Galice Mines Co., (Oregon 1908) 93 Pac. 453.

830. 7. Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685.

But certificates of stock have attributes of negotiability to a certain extent. Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1; Beckwith *v.* Galice Mines Co., (Oregon 1908) 93 Pac. 453.

831. 8. O'Mara *v.* Newcomb, 38 Colo. 275, 88 Pac. 167; Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685; Sulphur Springs First Nat. Bank *v.* Stribling, 16 Okla. 41, 86 Pac. 512.

834. 5. Hellman *v.* Pennsylvania Electric Vehicle Co., (N. J. 1907) 67 Atl. 834, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 834.

837. 1. Hackett *v.* Northern Pac. R. Co., 140 Fed. 717.

838. 10. New York, etc., Tel., etc., Co. *v.* Great Eastern Telephone Co., (N. J. 1908) 69 Atl. 528.

839. 10. Gillett *v.* Chicago Title, etc., Co., 230 Ill. 373, 82 N. E. 891; Harvey-Watts Co. *v.* Worcester Umbrella Co., 193 Mass. 138, 78 N. E. 886.

11. Payment by a note being illegal, no title to stock can be thus acquired. Alford *v.* Laurel Imp. Co., 86 Miss. 375, 38 So. 548.

840. 1. Kunz *v.* National Valve Co., 29 Ohio Cir. Ct. 519; Rogers *v.* Gladiator Gold Min., etc., Co., (S. Dak. 1907) 113 N. W. 86.

Prospective Profits of a Corporation Held Not to Be Property. — See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843.

5. Finletter *v.* Acetylene Light, etc., Co., 215 Pa. St. 86, 64 Atl. 429; Marles Carved Moulding Co. *v.* Stulb, 215 Pa. St. 91, 64 Atl. 431.

841. 3. An agreement to issue shares of stock for services, contrary to statutory provisions, is void. Rogers *v.* Gladiator Gold Min., etc., Co., (S. Dak. 1907) 113 N. W. 86.

844. 7. **Presumption that Exchange of Stock for Property Is Free from Fraud.** — Turner *v.* Fidelity Loan Concern, 2 Cal. App. 122, 83 Pac. 62.

849. 2. Krisch *v.* Interstate Fisheries Co., [illegible].

852. 1. See Man *v.* Boykin, (S. Car. 1908) 60 S. E. 17.

2. Wolf *v.* Chicago Sign Printing Co., 233 Ill. 501, 84 N. E. 614.

11. State *v.* Swanger, 195 Mo. 539, 93 S. W. 932.

854. 15. Central Sav. Bank *v.* Smith, (Colo. 1908) 95 Pac. 307; Westminster Nat. Bank *v.* New England Electrical Works, 73 N. H. 465, 62 Atl. 971.

855. 3. Senn *v.* Union Premium, etc., Co., 115 Mo. App. 685, 92 S. W. 507.

5. Miller *v.* Farmers' Milling, etc., Co., (Neb. 1907) 110 N. W. 995.

858. 10. **Waiver of Right of Rescission.** — Burwash *v.* Ballou, 230 Ill. 34, 82 N. E. 355.

860. 6. **Ultra Vires is no defense where**

a corporation has received the benefits of a fraudulent sale of stock. Krisch *v.* Interstate Fisheries Co., 39 Wash. 381, 81 Pac. 855.

8. New Jersey Trust, etc., Co. *v.* Bodine, (N. J. 1905) 60 Atl. 387.

861. 10. Larimer *v.* Beardsley, 130 Iowa 706, 107 N. W. 935.

863. 5. Larimer *v.* Beardsley, 130 Iowa 706, 107 N. W. 935.

864. 7. **Purchase of Property by Pledgee.** — Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1.

866. 13. See also Henderson *v.* Mayfield Woolen Mills, (Ala. 1907) 45 So. 211.

14. Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685.

869. 3. People's Home Sav. Bank *v.* Sadler, 1 Cal. App. 189, 81 Pac. 1029.

877. 5. State *v.* New Orleans Cotton Exch., 114 La. 324, 38 So. 205.

6. Senn *v.* Union Premium, etc., Co., 115 Mo. App. 685, 92 S. W. 507; Westminster Nat. Bank *v.* New England Electrical Works, 73 N. H. 465, 62 Atl. 971.

Right of Transfer Incidental to Ownership of Shares. — Miller *v.* Farmers' Milling, etc., Co., (Neb. 1907) 110 N. W. 995.

878. 8. **Indorsement on Certificate Required by Statute.** — Haynes *v.* Brown, 18 Okla. 389, 89 Pac. 1124.

879. 5. Beckwith *v.* Galice Mines Co., (Oregon 1908) 93 Pac. 453, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 879.

880. 4. **Unrecorded Transfer Good between Parties.** — Henderson *v.* Mayfield Woolen Mills, (Ala. 1907) 45 So. 211; Equitable Securities Co. *v.* Johnson, 36 Cal. 377, 85 Pac. 840; Larimer *v.* Beardsley, 130 Iowa 706, 107 N. W. 935; Barker *v.* Montana Gold, etc., Min. Co., 35 Mont. 351, 89 Pac. 66; Westminster Nat. Bank *v.* New England Electrical Works, 73 N. H. 465, 62 Atl. 971; Sulphur Springs First Nat. Bank *v.* Stribling, 16 Okla. 41, 86 Pac. 512; Man *v.* Boykin, (S. Car. 1908) 60 S. E. 17.

Unrecorded Transfer under Colorado Statute. — Central Sav. Bank *v.* Smith, (Colo. 1908) 95 Pac. 307.

Object of Recording Transfers of Stock. — Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685.

Transfer on Books of Corporation Requisite to Protect the Rights of Third Parties. — Haynes *v.* Brown, 18 Okla. 389, 89 Pac. 1124.

881. 7. Cook *v.* Carpenter, 212 Pa. St. 165, 61 Atl. 804; Man *v.* Boykin, (S. Car. 1908) 60 S. E. 17.

884. 3. **Transfer in Writing Without Delivery Sufficient.** — Waterloo First Nat. Bank *v.* Bacon, 113 N. Y. App. Div. 612, 98 N. Y. Supp. 717.

886. 8. Senn *v.* Union Premium, etc., Co., 115 Mo. App. 685, 92 S. W. 507; Barker *v.* Montana Gold, etc., Min. Co., 35 Mont. 351, 89 Pac. 66; Westminster Nat. Bank *v.* New England Electrical Works, 73 N. H. 465, 62 Atl. 971.

887. 3. **Contra.** — Smith *v.* Automatic Photographic Co., 118 Ill. App. 649; State *v.* Consumers' Brewing Co., 115 La. 782, 40 So. 45; *In re* Panton, etc., Steel Co., 9 Ont. L. Rep. 3.

4. Kjellman *v.* Scandia Fish Co., 128 Ill. App. 544; Dooley *v.* Gladiator Consol. Gold Mines, etc., Co., 134 Iowa 468, 109 N. W. 864; Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685; Cooley *v.* Curran, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 221, 104 N. Y. Supp. 424.

900. 8. Wheeler *v.* Abilene Nat. Bank Bldg. Co., (C. C. A.) 159 Fed. 391.

902. 2. Nebraska Chicory Co. *v.* Lednicky, (Neb. 1907) 113 N. W. 245, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 902.

3. Subscription Contract. — Planters', etc., Independent Packet Co. *v.* Webb, 144 Ala. 666, 39 So. 562, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 902; Allen *v.* Hastings Industrial Co., 2 Ga. App. 291, 58 S. E. 504; Nebraska Chicory Co. *v.* Lednicky, (Neb. 1907) 113 N. W. 245; Easton Nat. Bank *v.* American Brick, etc., Co., 69 N. J. Eq. 326, 60 Atl. 54; Pacific Mill Co. *v.* Inman, 46 Oregon 352, 80 Pac. 424; McDowell *v.* Lindsay, 213 Pa. St. 591, 63 Atl. 130.

5. Marles Carved Moulding Co. *v.* Stubb, 215 Pa. St. 91, 64 Atl. 431.

6. Allen *v.* Hastings Industrial Co., 2 Ga. App. 291, 58 S. E. 504.

Promise to Pay Essential to Validity of Contract. — Bostwick *v.* Young, 118 N. Y. App. Div. 490, 103 N. Y. Supp. 607.

9. Planters', etc., Independent Packet Co. *v.* Webb, 144 Ala. 666, 39 So. 562, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 902; Avon Springs Sanitarium Co. *v.* Weed, 119 N. Y. App. Div. 560, 104 N. Y. Supp. 58.

903. 4. Planters', etc., Independent Packet Co. *v.* Webb, 144 Ala. 666, 39 So. 562, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 903.

5. Statutory Requirements Must Be Followed. — Planters', etc., Independent Packet Co. *v.* Webb, 144 Ala. 666, 39 So. 562.

904. 1. Nebraska Chicory Co. *v.* Lednicky, (Neb. 1907) 113 N. W. 245.

6. Planters', etc., Independent Packet Co. *v.* Webb, 144 Ala. 666, 39 So. 562; Kentucky Mut. Invest. Co. *v.* Schaefer, 120 Ky. 227, 85 S. W. 1008.

907. 2. **Acceptance Without Payment.** — See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843.

Acceptance Inferred from Conduct. — Pacific Mill Co. *v.* Inman, 46 Oregon 352, 80 Pac. 424.

908. 4. Allen *v.* Hastings Industrial Co., 2 Ga. App. 291, 58 S. E. 504; Smith *v.* Burns Boiler, etc., Co., (Wis. 1907) 111 N. W. 1123.

910. 10. Allen *v.* Hastings Industrial Co., 2 Ga. App. 291, 58 S. E. 504.

911. 1. **Waiver of Condition.** — Wright *v.* Agelasto, 104 Va. 159, 1 S. E. 191.

912. 11. Hobgood *v.* Ehlen, 141 N. Car. 344, 53 S. E. 857, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 912.

915. 3. Crawford *v.* Roney, 126 Ga. 763, 55 S. E. [illegible].

Calls Necessary to Bar Statute of Limitation. — Cook *v.* Carpenter, 212 Pa. St. 165, 61 Atl. [illegible].

Necessity of Call Is Based Solely on Express Contract of the Parties. — Chilberg *v.* Siebenbaum, 41 Wash. 663, 84 Pac. 598.

6. People's Home Sav. Bank *v.* Sadler, 1 Cal. App. 189, 81 Pac. 1020.

7. Knight, etc., Co. *v.* Tampa Sand Lime

Brick Co., (Fla. 1908) 46 So. 285; Chilberg *v.* Siebenbaum, 41 Wash. 663, 84 Pac. 598.

13. Paul *v.* Kobold, 3 West. L. Rep. (Can.) 407.

917. 4. Knight, etc., Co. *v.* Tampa Sand Lime Brick Co., (Fla. 1908) 46 So. 285.

920. 9. People's Home Sav. Bank *v.* Rauer, [illegible]

921. 3. **Notice by Publication** may be substituted for personal service. Cox *v.* Dickie, (Wash. 1908) 93 Pac. 523.

923. 7. Raisch *v.* M. K., etc., Oil Co., (Cal. App. 1908) 95 Pac. 662; Carter *v.* Samuel Hano Co., 73 N. H. 588, 64 Atl. 201.

924. 2. Callahan *v.* Chilcott Ditch Co., 37 Colo. 331, 86 Pac. 123.

A Transfer of Stock will relieve the original subscribers from paying assessments where the corporation has recognized the transfer. Finletter *v.* Acetylene Light, etc., Co., 215 Pa. St. 86, 64 Atl. 429.

3. National Parafine Oil Co. *v.* Chappellet, 4 Cal. App. 505, 88 Pac. 506; Raisch *v.* M. K., etc., Oil Co., (Cal. App. 1908) 95 Pac. 662.

Notice Required by Statute May Be Waived by Stockholder. — Grand Valley Irrigation Co. *v.* Fruita Imp. Co., 37 Colo. 483, 86 Pac. 324.

925. 5. Callahan *v.* Chilcott Ditch Co., 37 Colo. 331, 86 Pac. 123; Jones *v.* Bonanza Min., etc., Co., (Utah 1907) 91 Pac. 273.

8. Payment by Note Insufficient. — Hapgoods *v.* Lusch, 123 N. Y. App. Div. 23, 107 N. Y. Supp. 331.

926. 2. Crawford *v.* Roney, 126 Ga. 763, 55 S. E. 499, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 926.

927. 7. Raisch *v.* M. K., etc., Oil Co., (Cal. App. 1908) 95 Pac. 662; Allegheny Valley Camp Meeting Assoc. *v.* Kountz, 29 Pa. Super. Ct. 110.

929. 1. Ruck *v.* Caledonia Silver Min. Co., (Cal. App. 1907) 92 Pac. 194; New York, etc., Tel., etc., Co. *v.* Great Eastern Telephone Co., (N. J. 1908) 69 Atl. 528.

931. 1. Elliott *v.* Ashby, 104 Va. 716, 52 S. E. 383.

14. Wilson *v.* Duplin Telephone Co., 139 N. Car. 395, 52 S. E. 62.

932. 5. Comanche Cotton Oil Co. *v.* Browne, (Tex. 1906) 92 S. W. 450, *reversing* (Tex. Civ. App. 1905) 90 S. W. 528.

12. The fact that the corporation became a *de facto* one is not sufficient to relieve one of liability on a subscription. McCarter *v.* Ketcham, (N. J. 1907) 67 Atl. 610.

934. 2. Myers *v.* Sturges, (Supm. Ct. App. Div.) 108 N. Y. Supp. 528.

No Defense to an Action to Enforce a Subscription for Increased Issue. — Pope *v.* Merchants' Trust Co., 118 Tenn. 506, 103 S. W. 792.

936. 1. Pope *v.* Merchants' Trust Co., 118 Tenn. 506, 103 S. W. 792, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 936.

938. 1. Metropolitan Lead, etc., Min. Co. *v.* Webster, 193 Mo. 351, 92 S. W. 79.

Contra when the defense will work an injustice to others. Marles Carved Moulding Co. *v.* Stulb, 215 Pa. St. 91, 64 Atl. 431.

939. 10. Security Trust Co. *v.* Ford, 75 Ohio St. 322, 79 N. E. 474.

942. 6. Myers *v.* Sturges, (Supm. Ct. App. Div.) 108 N. Y. Supp. 528.

943. 2. *In re* Duryea Power Co., 159 Fed. [illegible]

11. Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; Maine *v.* Midland Invest. Co., 132 Iowa 272, 109 N. W. 801; Brolaski *v.* Carr, 127 Mo. App. 279, 105 S. W. 284; Lambert *v.* Elmendorf, (Supm. Ct. App. Div.) 109 N. Y. Supp. 574; Chamberlain *v.* Trogden, (N. Car. 1908) 61 S. E. 628; Cox *v.* National Coal, etc., Invest. Co., 61 W. Va. 291, 56 S. E. 494; Scott *v.* Abbott, (C. C. A.) 160 Fed. 573.

944. 6. Marion Trust Co. *v.* Blish, (Ind. App. 1906) 79 N. E. 415; Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; Speicher *v.* Thompson, 141 Mich. 654, 104 N. W. 1104; Chamberlain *v.* Trogden, (N. Car. 1908) 61 S. E. 628; Scott *v.* Abbott, (C. C. A.) 160 Fed. 573.

945. 1. Marion Trust Co. *v.* Blish, (Ind. App. 1906) 79 N. E. 415; Hinkley *v.* Sac Oil, etc., Co., 132 Iowa 396, 107 N. W. 629; Kentucky Mut. Invest. Co. *v.* Schaefer, 120 Ky. 227, 85 S. W. 1098; Chamberlain *v.* Trogden, (N. Car. 1908) 61 S. E. 628; Scott *v.* Abbott, (C. C. A.) 160 Fed. 573.

2. People *v.* New York L. Ins. Co., 111 N. Y. App. Div. 183, 97 N. Y. Supp. 465.

3. Bryan *v.* Sturgis Nat. Bank, (Tex. Civ. App. 1905) 90 S. W. 704.

946. 7. Montgomery *v.* Whitehead, 40 Colo. 320, 90 Pac. 509; Palmer *v.* Ring, 113 N. Y. App. Div. 643, 99 N. Y. Supp. 290; Stokes *v.* Continental Trust Co., 186 N. Y. 285, 78 N. E. 1090.

947. 1. Stokes *v.* Continental Trust Co., 186 N. Y. 285, 78 N. E. 1090.

2. McCloskey *v.* Snowden, 212 Pa. St. 249, 61 Atl. 796.

7. Schmidt *v.* Pritchard, (Iowa 1907) 112 N. W. 801; Wall *v.* Utah Copper Co., 70 N. J. Eq. 17, 62 Atl. 533; Stokes *v.* Continental Trust Co., 186 N. Y. 285, 78 N. E. 1090, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 947.

949. 12. **Specific Performance** where the stock is not readily obtainable. Schmidt *v.* Pritchard, (Iowa 1907) 112 N. W. 801.

951. 3. State *v.* St. Louis Transit Co., 124 Mo. App. 111, 100 S. W. 1126; State *v.* Lazarus, 127 Mo. App. 401, 105 S. W. 780; State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112; Hodgens *v.* United Copper Co., (N. J. 1907) 67 Atl. 756; People *v.* New York L. Ins. Co., 111 N. Y. App. Div. 183, 97 N. Y. Supp. 465; Althause *v.* Giroux, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 508, 107 N. Y. Supp. 191; Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337. See also Schondelmeyer *v.* Columbia Fireproofing Co., (Pa. 1908) 69 Atl. 49.

6. State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112.

7. By-laws Intended to Enlarge and Extend Common-law Right. — Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337.

8. State *v.* St. Louis Transit Co., 124 Mo. App. 111, 100 S. W. 1126; State *v.* Lazarus, 127 Mo. App. 401, 105 S. W. 780; People *v.* Giroux Consol. Mines Co., 122 N. Y. App. Div. 617, 107 N. Y. Supp. 188.

952. 1. Clawson *v.* Clayton, (Utah 1908) 93 Pac. 729.

Amount of Stock Held Immaterial. — *In re* O'Neill, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 495, 95 N. Y. Supp. 964.

3. State *v.* Lazarus, 127 Mo. App. 401, 105 S. W. 780.

953. 3. Tyng *v.* Corporation Trust Co., 104 N. Y. App. Div. 486, 93 N. Y. Supp. 928; People *v.* Keeseville, etc., R. Co., 106 N. Y. App. Div. 349, 94 N. Y. Supp. 555; Fay *v.* Coughlin-Sandford Switch Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 687, 94 N. Y. Supp. 628; Henry *v.* Babcock, etc., Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 853.

6. *In re* Hastings, 120 N. Y. App. Div. 756, 105 N. Y. Supp. 834.

Creditor Entitled by Statute in New Hampshire. — Hub Constr. Co. *v.* New England Breeders' Club, (N. H. 1907) 67 Atl. 574.

7. **Inspection under New York Statute.** — *In re* Hastings, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 45, 106 N. Y. Supp. 938.

11. Lawshe *v.* Royal Baking Powder Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 220, 104 N. Y. Supp. 361. See also People *v.* Central Fish Co., 117 N. Y. App. Div. 77, 101 N. Y. Supp. 1108; Hollister *v.* DeForest Wireless Tel. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 674, 94 N. Y. Supp. 504.

954. 7. Clawson *v.* Clayton, (Utah 1908) 93 Pac. 729.

8. **May Examine with Expert Accountant and Stenographer.** — State *v.* St. Louis Transit Co., 124 Mo. App. 111, 100 S. W. 1126.

10. Fay *v.* Coughlin-Sandford Switch Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 687, 94 N. Y. Supp. 628; Althause *v.* Giroux, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 508, 107 N. Y. Supp. 191.

12. State *v.* St. Louis Transit Co., 124 Mo. App. 111, 100 S. W. 1126; State *v.* Lazarus, 127 Mo. App. 401, 105 S. W. 780; Clawson *v.* Clayton, (Utah 1908) 93 Pac. 729.

955. 3. State *v.* Donnell Mfg. Co., (Mo. App. 1908) 107 S. W. 1112; Hodgens *v.* United Copper Co., (N. J. 1907) 67 Atl. 756; *In re* O'Neill, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 495, 95 N. Y. Supp. 964; Hub Constr. Co. *v.* New England Breeders' Club, (N. H. 1907) 67 Atl. 574; Neubert *v.* Armstrong Water Co., 211 Pa. St. 582, 61 Atl. 123; Wyoming Coal Min. Co. *v.* State, 15 Wyo. 97, 87 Pac. 337.

4. People *v.* Giroux Consol. Mines Co., 122 N. Y. App. Div. 617, 107 N. Y. Supp. 188; Henry *v.* Babcock, etc., Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 853.

5. Gavin *v.* Pacific Coast Marine Firemen's Union, 2 Cal. App. 638, 84 Pac. 270.

7. Henry *v.* Babcock, etc., Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 853.

Motive Immaterial. — People *v.* Keeseville, etc., R. Co., 106 N. Y. App. Div. 349, 94 N. Y. Supp. 555.

9. Clawson *v.* Clayton, (Utah 1908) 93 Pac. 729.

956. 8. *Compare* Plamondon *v.* Blouin, 28 Quebec Super. Ct. 140.

957. 2. Tyng *v.* Corporation Trust Co., 104 N. Y. App. Div. 486, 93 N. Y. Supp. 928; Lawshe *v.* Royal Baking Powder Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 220, 104 N. Y. Supp. 361; People *v.* Giroux Consol. Mines Co., 122 N. Y. App. Div. 617, 107 N. Y. Supp. 188

No Penalty Attaches Where Stockbook Is Not in Possession of the Corporation. — Gould *v.* Olympic Min. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 612, 96 N. Y. Supp. 455.

No Recovery Allowed Where Stockholder Refuses to Disclose Object of Inspection. — Henry *v.* Babcock, etc., Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 853.

8. **Stockholder May Purchase Obligations of the Corporation,** after it has ceased to do business, there being no trust relationship between them. Stanton *v.* Gilpin, 38 Wash. 191, 80 Pac. 290.

Stockholder May Purchase Corporate Property for Value. — Robinson *v.* Muir, 151 Cal. 118, 90 Pac. 521.

958. 2. **Services Voluntarily Rendered by Stockholder.** — Sidway *v.* Missouri Land, etc., Co., 187 Mo. 649, 86 S. W. 150.

959. 3. Vogeler *v.* Punch, 205 Mo. 558, 103 S. W. 1001; Colby *v.* Equitable Trust Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 978; Teller *v.* Tonopah, etc., R. Co., 155 Fed. 482.

960. 2. Graham *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 498; Continental Ins. Co. *v.* New York, etc., R. Co., 103 N. Y. App. Div. 282, 93 N. Y. Supp. 27.

3. Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202; Jones *v.* Missouri-Edison Electric Co., (C. C. A.) 144 Fed. 765.

961. 2. Wheeler *v.* Abilene Nat. Bank Bldg. Co., (C. C. A.) 159 Fed. 391.

6. Dunbar *v.* American Telephone, etc., Co., 224 Ill. 9, 79 N. E. 423; Green *v.* Felton, (Ind. App. 1908) 84 N. E. 166; Victor *v.* Louise Cotton Mills, (N. Car. 1908) 61 S. E. 648; Continental Ins. Co. *v.* New York, etc., R. Co., 103 N. Y. App. Div. 282, 93 N. Y. Supp. 27; Robinson *v.* Holbrook, 148 Fed. 107.

963. 7. Von Arnim *v.* American Tubeworks, 188 Mass. 515, 74 N. E. 680; Greathouse *v.* Martin, (Tex. 1906) 94 S. W. 322.

Funds Converted by Officers. — Miller *v.* Crown Perfumery Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 383, 109 N. Y. Supp. 760.

8. Donald *v.* Manufacturers' Export Co., 142 Ala. 578, 38 So. 841; Raynolds *v.* Diamond Mills Paper Co., (N. J. 1905) 60 Atl. 941; Figge *v.* Bergenthal, 130 Wis. 594, 110 N. W. 798.

964. 6. Jones *v.* Missouri-Edison Electric Co., (C. C. A.) 144 Fed. 765.

965. 8. **Minority Entitled to Prevent Ultra Vires Acts.** — Tillis *v.* Brown, (Ala. 1908) 45 So. 589; Mitchell *v.* United Box Board, etc., Co., (N. J. 1907) 66 Atl. 938; Palmer *v.* Ring, 113 N. Y. App. Div. 643, 99 N. Y. Supp. 290.

966. 5. Jones *v.* Missouri-Edison Electric Co., (C. C. A.) 144 Fed. 765; Wheeler *v.* Abilene Nat. Bank Bldg. Co., (C. C. A.) 159 Fed. 391.

967. 2. Jones *v.* Missouri-Edison Electric Co., (C. C. A.) 144 Fed. 765.

3. See Colgate *v.* U. S. Leather Co., (N. J. 1907) 67 Atl. 657; Colby *v.* Equitable Trust Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 355, 106 N. Y. Supp. 801.

10. Essex *v.* Essex, 141 Mich. 200, 104 N. W. 622; Brahm *v.* M. C. Gehe Co., (Wis. 1907) 111 N. W. 1007.

Right to Enjoin Reduction of Capital

Stock. — Theis *v.* Duer, 125 Wis. 651, 104 N. W. 985.

968. 8. Cratty *v.* Peoria Law Library Assoc., 219 Ill. 510, 76 N. E. 707.

969. 3. Neubert *v.* Armstrong Water Co., 211 Pa. St. 582, 61 Atl. 123.

4. Klein *v.* Independent Brewing Assoc., 231 Ill. 504, 83 N. E. 434; Sloan *v.* Clarkson, 105 Md. 171, 66 Atl. 18.

6. Minority Stockholders of an Insolvent Corporation in the hands of a receiver have no standing for interfering in the settlement of its affairs. Wenar *v.* Schwartz, (La. 1907) 44 So. 902.

7. Cantwell *v.* Columbia Lead Co., 199 Mo. 1, 97 S. W. 167.

970. 4. Ninneman *v.* Fox, 43 Wash. 43, 86 Pac. 213, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 970, and quoting the text at length; Wells *v.* Dane, 101 Me. 67, 63 Atl. 324; Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202; Knickerbocker *v.* Conger, 110 N. Y. App. Div. 125, 97 N. Y. Supp. 127; Von Au *v.* Magenheimer, (Supm. Ct. App. Div.) 110 N. Y. Supp. 629.

971. 2. **Stockholders Cannot Sue on Behalf of the Corporation.** — Blum *v.* Whitney, 185 N. Y. 232, 77 N. E. 1159.

3. Donald *v.* Manufacturers' Export Co., 142 Ala. 578, 38 So. 841; Clark *v.* Apex Gold Min. Co., (N. Mex. 1906) 85 Pac. 968; McCrea *v.* Robertson, 192 N. Y. 150, 84 N. E. 960; Law *v.* Fuller, 217 Pa. St. 439, 66 Atl. 754.

Right of Stockholder to Reimbursement for Attorney's Fees. — Graham *v.* Dubuque Specialty Mach. Works, (Iowa 1908) 114 N. W. 610.

973. 4. Wells *v.* Dane, 101 Me. 67, 63 Alt. 324.

6. Virginia Pass., etc., Co. *v.* Fisher, 104 Va. 121, 51 S. E. 198.

Counsel Fees and Expenses of Litigation. — Louisville Bridge Co. *v.* Dodd, (Ky. 1905) 85 S. W. 683.

7. Young *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 347, 99 N. Y. Supp. 446.

976. 1. **Judgment Set Aside for Fraud at Instance of Stockholders.** — Frederick Milling Co. *v.* Frederick Farmers' Alliance Co., (S. Dak. 1906) 106 N. W. 298.

5. Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202; Vogeler *v.* Punch, 205 Mo. 558, 103 N. W. 1001; Polhemus *v.* Polhemus, 114 N. Y. App. Div. 781, 100 N. Y. Supp. 263, *reversing* 108 N. Y. App. Div. 354, 95 N. Y. Supp. 325; O'Connor *v.* Virginia Pass., etc., Co., 184 N. Y. 46, 76 N. E. 1082; Neubert *v.* Armstrong Water Co., 211 Pa. St. 582, 61 Atl. 123; Law *v.* Fuller, 217 Pa. St. 439, 66 Atl. 754; Virginia Pass., etc., Co. *v.* Fisher, 104 Va. 121, 51 S. E. 198; Williams *v.* Erie Mountain Consol. Min. Co., (Wash. 1907) 91 Pac. 1091.

977. 1. Crow *v.* Florence Ice, etc., Co., 143 Ala. 541, 39 So. 401; Starr *v.* Shepard, 145 Mich. 302, 108 N. W. 709; Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202; Vogeler *v.* Punch, 205 Mo. 558, 103 S. W. 1001; Law *v.* Fuller, 217 Pa. St. 439, 66 Atl. 754; Virginia Pass., etc., Co. *v.* Fisher, 104 Va. 121, 51 S. E. 198; Deveny *v.* Hart Coal Co., (W. Va. 1908) 60 S. E. 789.

978. 3. Frederick Milling Co. *v.* Frederick Farmers' Alliance Co., (S. Dak. 1906) 106 N. W. 298.

8. Williams *v.* Erie Mountain Consol. Min. Co., (Wash. 1907) 91 Pac. 1091, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 978.

9. Tillis *v.* Brown, (Ala. 1908) 45 So. 589; Hingston *v.* Montgomery, 121 Mo. App. 451, 97 S. W. 202; Polhemus *v.* Polhemus, 114 N. Y. App. Div. 781, 100 N. Y. Supp. 263, *reversing* 108 N. Y. App. Div. 354, 95 N. Y. Supp. 325; Jacobs *v.* Brooklyn Lumber Co., 184 N. Y. 152, 76 N. E. 1075.

979. 1. Crow *v.* Florence Ice, etc., Co., 143 Ala. 541, 39 So. 401; Von Arnim *v.* American Tubeworks, 188 Mass. 515, 74 N. E. 680; Vogeler *v.* Punch, 205 Mo. 558, 103 S. W. 1001; Law *v.* Fuller, 217 Pa. St. 439, 66 Atl. 754.

3. Macon, etc., R. Co. *v.* Shailer, (C. C. A.) 141 Fed. 585; Schultz *v.* Highland Gold Mines Co., 158 Fed. 337.

980. 1. Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159; Bigelow *v.* Calumet, etc., Min. Co., 155 Fed. 869; Burrows *v.* Interborough Metropolitan Co., 156 Fed. 389.

6. Macon, etc., R. Co. *v.* Shailes, (C. C. A.) 141 Fed. 585.

981. 1. Vogeler *v.* Punch, 205 Mo. 558, 103 S. W. 1001; Poor *v.* Iowa Cent. R. Co., 155 Fed. 226.

2. Perkins *v.* Northern Pac. R. Co., 155 Fed. 445.

985. 2. Boldenweck *v.* Bullis, (Colo. 1907) 90 Pac. 634; Raynolds *v.* Diamond Mills Paper Co., (N. J. 1905) 60 Atl. 941; Dana *v.* American Tobacco Co., (N. J. 1908) 69 Atl. 223; Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854; Kessler *v.* Ensley Co., 141 Fed. 130.

3. Klein *v.* Independent Brewing Assoc., 231 Ill. 594, 83 N. E. 434; Von Arnim *v.* American Tubeworks, 188 Mass. 515, 74 N. E. 680.

5. Failure to Discover Wrongful Conduct until a Short Time Prior to Commencing Action. — Brinckerhoff *v.* Roosevelt, (C. C. A.) 143 Fed. 478.

986. 6. Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

988. 2. **Vice-President May Make Call.** — Bell *v.* Standard Quicksilver Co., 146 Cal. 699, 81 Pac. 17.

5. Bell *v.* Standard Quicksilver Co., 146 Cal. 699, 81 Pac. 17.

989. 12. Hiles *v.* Hiles, 120 Ill. App. 617.

990. 1. Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

11. Vrooman *v.* R. P. Vansant Lumber Co., 215 Pa. St. 75, 64 Atl. 394.

991. 3. Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

10. See Bell *v.* Standard Quicksilver Co., 146 Cal. 699, 81 Pac. 17.

992. 16. **Notice Need Not State Object or Purpose of Meeting.** — Bell *v.* Standard Quicksilver Co., 146 Cal. 699, 81 Pac. 17.

993. 9. Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

11. Gumaer *v.* Cripple Creek Tunnel, etc., Co., (Colo. 1907) 90 Pac. 81.

994. 3. **By-law Requirements.** — Gumaer *v.* Cripple Creek Tunnel, etc., Co., (Colo. 1907) 90 Pac. 81.

10. Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

995. 1. Gray *v.* Bloomington, etc., R. Co., 120 Ill. App. 159; Sheldon Canal Co. *v.* Miller, (Tex. Civ. App. 1905) 90 S. W. 206.

3. State *v.* Rombotis, (La. 1907) 45 So. 43, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 995; Germer *v.* Triple-State Natural Gas, etc., Co., 60 W. Va. 143, 54 S. E. 509, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 995.

4. Germer *v.* Triple-State Natural Gas, etc., Co., 60 W. Va. 143, 54 S. E. 509, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 995.

996. 6. Lord *v.* Equitable L. Assur. Soc., (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 187, 94 N. Y. Supp. 65; Stokes *v.* Continental Trust Co., 186 N. Y. 285, 78 N. E. 1090.

1002. 1. Canadian Imp. Co. *v.* Lea, (N. J. 1908) 69 Atl. 455.

1005. 8. Callahan *v.* Chilcott Ditch Co., 37 Colo. 331, 86 Pac. 123; West Side Hospital *v.* Steele, 124 Ill. App. 534.

1006. 2. An injunction will be granted where a palpable fraud has been practiced in an election and in violation of justice the guilty parties are about to exercise power. Schmidt *v.* Pritchard, (Iowa 1907) 112 N. W. 801.

1007. 6. Vaughn *v.* Alabama Nat. Bank, 143 Ala. 572, 42 So. 64; Marion Trust Co. *v.* Blish, (Ind. 1908) 84 N. E. 814; Dilzell Engineering, etc., Co. *v.* Lehmann, (La. 1907) 45 So. 138; Meyer *v.* Ruby-Trust Min., etc., Co., 192 Mo. 162, 90 S. W. 821; Easton Nat. Bank *v.* American Brick, etc., Co., 69 N. J. Eq. 326, 60 Atl. 54; See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843; Goodnow *v.* American Writing Paper Co., (N. J. 1907) 66 Atl. 607; Johnson *v.* Tennessee Oil, etc., Co., (N. J. 1908) 69 Atl. 788; Ford *v.* Chase, 118 N. Y. App. Div. 605, 103 N. Y. Supp. 30; Hobgood *v.* Ehlen, 141 N. Car. 344, 53 S. E. 857; McIver *v.* Young Hardware Co., 144 N. Car. 478, 57 S. E. 169. See also Williams *v.* Chamberlain, (Ky. 1907) 94 S. W. 29.

1008. 1. Miller *v.* Higginbotham, (Ky. 1906) 93 S. W. 655; See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843.

1009. 2. **Acceptance of Certificates.** — See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843.

5. See *v.* Heppenheimer, 69 N. J. Eq. 36, 61 Atl. 843.

6. Vaughan *v.* Alabama Nat. Bank, 143 Ala. 572, 42 So. 64, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1009; Easton Nat. Bank *v.* American Brick, etc., Co., 69 N. J. Eq. 326, 60 Atl. 54; Goodnow *v.* American Writing Paper Co., (N. J. 1907) 66 Atl. 607.

1010. 1. Goodnow *v.* American Writing Paper Co., (N. J. 1907) 66 Atl. 607.

1011. 3. **Subscriber Not Released by a Reduction of Capital Stock.** — Cammack *v.* Levy, (La. 1908) 45 So. 925.

7. Dieterle *v.* Ann Arbor Paint, etc., Co., 143 Mich. 416, 107 N. W. 79; See *v.* Heppenheimer, 62 N. J. Eq. 36, 61 Atl. 843; Cox *v.* Dickie, (Wash. 1908) 93 Pac. 523, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1011.

8. Cox *v.* Dickie, (Wash. 1908) 93 Pac. 523, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1011.

9. Cox *v.* Dickie, (Wash. 1908) 93 Pac. 523, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1011.

1012. 4. Lea *v.* Iron Belt Mercantile Co., 147 Ala. 412, 42 So. 415.

1013. 1. Hobgood *v.* Ehlen, 141 N. Car. 344, 53 S. E. 857, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1013.

2. Dilzell Engineering, etc., Co. *v.* Lehmann, (La. 1907) 45 So. 138; Meyer *v.* Ruby-Trust Min., etc., Co., 192 Mo. 162, 90 S. W. 821; Vogeler *v.* Punch, 205 Mo. 558, 103 S. W. 1001; Euston *v.* Edgar, 207 Mo. 287, 105 S. W. 773; Hobgood *v.* Ehlen, 141 N. Car. 344, 53 S. E. 857, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1013; Easton Nat. Bank *v.* American Brick, etc., Co., 69 N. J. Eq. 326, 60 Atl. 54; Honeyman *v.* Haughey, (N. J. 1906) 66 Atl. 582.

Stock of an Insolvent Corporation. — Dieterle *v.* Ann Arbor Paint, etc., Co., 143 Mich. 416, 107 N. W. 79.

Knowledge by the Creditor a Bar to Recovery. — Colonial Trust Co. *v.* McMillan, 188 Mo. 547, 87 S. W. 933.

1014. 1. Meyer *v.* Ruby-Trust Min., etc., Co., 192 Mo. 162, 90 S. W. 821.

7. McIver *v.* Young Hardware Co., 144 N. Car. 478, 57 S. E. 169.

1015. 2. McIver *v.* Young Hardware Co., 144 N. Car. 478, 57 S. E. 169.

5. Williams *v.* Chamberlain, (Ky. 1907) 94 S. W. 29; Abbott *v.* Goodall, 100 Me. 231, 60 Atl. 1030.

6. Abbott *v.* Goodall, 100 Me. 231, 60 Atl. 1030.

7. Williams *v.* Chamberlain, (Ky. 1906) 94 S. W. 29.

1016. 2. Miller *v.* Higginbotham, (Ky. 1906) 93 S. W. 655.

3. Easton Nat. Bank *v.* American Brick, etc., Co., 69 N. J. Eq. 326, 60 Atl. 54.

1020. 2. Converse *v.* Ayer, (Mass. 1908) 84 N. E. 98; Knickerbocker Trust Co. *v.* Iselin, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 80, 103 N. Y. Supp. 1108; Myers *v.* Knickerbocker Trust Co., (C. C. A.) 139 Fed. 111; Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314.

3. Blood *v.* La Serena Land, etc., Co., 150 Cal. 764, 89 Pac. 1090; Poston *v.* Hull, 75 Ohio St. 502, 80 N. E. 11.

1022. 1. Security Trust Co. *v.* Ford, 75 Ohio St. 322, 79 N. E. 474.

Liable for Amount Remaining Unpaid. — Ford *v.* Chase, 118 N. Y. App. Div. 605, 103 N. Y. Supp. 30.

1025. 1. Henley *v.* Myers, (Kan. 1907) 93 Pac. 168, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1025.

5. Wheatley *v.* Glover, 125 Ga. 710, 54 S. E. 626.

6. Houts *v.* Sioux City Brass Works, 134 Iowa 484, 110 N. W. 166; Clinton Novelty Iron Works *v.* Neiting, 134 Iowa 311, 111 N. W. 974.

Cannot Deny Existence of Corporation. — Robinson *v.* Blood, 151 Cal. 504, 91 Pac. 258.

1029. 14. **Contra.** — Webb *v.* Rockefeller, 195 Mo. 57, 93 S. W. 772.

1032. 6. Neff *v.* Lamm, 99 Minn. 115, 108 N. W. 849.

10. People's Home Sav. Bank *v.* Rauer, 2 Cal. App. 445, 84 Pac. 329.

1035. 4. Williams *v.* Chamberlain, (Ky. 1906) 94 S. W. 29.

6. Henderson *v.* Mayfield Woolen Mills, (Ala. 1907) 45 So. 211, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1035.

1039. 2. Henderson *v.* Mayfield Woolen Mills, (Ala. 1907) 45 So. 211.

1042. 1. Ford *v.* Chase, 118 N. Y. App. Div. 605, 103 N. Y. Supp. 30.

1043. 2. **Right of Stockholder Creditor to Sue Other Stockholder.** — Blood *v.* La Serena Land, etc., Co., 150 Cal. 764, 89 Pac. 1090.

1044. 5. Elson *v.* Wright, 134 Iowa 634, 112 [illegible]

6. Hammond *v.* Cline, (Ind. 1908) 84 N. E. 827.

8. Blood *v.* La Serena Land, etc., Co., 150 Cal. 764, 89 Pac. 1090.

1045. 2. Abbott *v.* Goodall, 100 Me. 231, 60 Atl. 1030.

3. Knight, etc., Co. *v.* Tampa Land Lime Brick Co., (Fla. 1908) 46 So. 285; Williams *v.* Chamberlain, (Ky. 1906) 94 S. W. 29; Gause *v.* Boldt, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 340, 99 N. Y. Supp. 442; Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314.

1046. 1. Lewisohn *v.* Stoddard, 78 Conn. 575, 63 Atl. 621; Knight, etc., Co. *v.* Tampa Sand Lime Brick Co., (Fla. 1908) 46 So. 285; Williams *v.* Chamberlain, (Ky. 1906) 94 S. W. 29; Ford *v.* Chase, 118 N. Y. App. Div. 605, 103 N. Y. Supp. 30; Chilberg *v.* Siebenbaum, 41 Wash. 663, 84 Pac. 598. See also McConey *v.* Belton Oil, etc., Co., 97 Minn. 190, 106 N. W. 900.

Contra. — Gause *v.* Boldt, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 340, 99 N. Y. Supp. 442.

1047. 2. Montgomery *v.* Whitehead, 40 Colo. 320, 90 Pac. 509; Wheatley *v.* Glover, 125 Ga. 710, 54 S. E. 626; Abbott *v.* Goodall, 100 Me. 231, 60 Atl. 1030.

3. **Stockholder Must Receive Notice of the Suit.** — Wheatley *v.* Glover, 125 Ga. 710, 54 S. E. 626.

1048. 4. Converse *v.* Ayer, (Mass. 1908) 84 N. E. 98.

1049. 4. Chilberg *v.* Siebenbaum, 41 Cal. 663, 84 Pac. 598, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1049; Willins *v.* Albrecht, 100 Minn. 436, 111 N. W. 387; De Soto Bank *v.* Reed, (Tex. Civ. App. 1908) 109 S. W. 256.

1050. 3. O'Neill *v.* Quarnstrom, (Cal. App. 1907) 92 Pac. 391.

1052. 2. Siegel *v.* Fish, 129 Ill. App. 319.

STOCKBROKERS.

1055. 8. Content *v.* Banner, 184 N. Y. 121, 76 N. E. 913.

10. Armstrong *v.* Bickel, 217 Pa. St. 173, 66 Atl. 326.

1056. 2. Buck *v.* Houghtaling, 110 N. Y. App. Div. 552, 96 N. Y. Supp. 1034.

1057. 1. Winston *v.* Longshore, 116 La. 21, 40 So. 517.

2. Hoogewerff *v.* Flack, 101 Md. 371, 61 Atl. 184, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1057; Helm *v.* Ennis, 109 N. Y. App. Div. 42, 95 N. Y. Supp. 1040.

3. Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

1058. 2. Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

5. Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

8. Content *v.* Banner, 184 N. Y. 121, 76 N. E. 913; Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

1059. 2. Foster *v.* Murphy, (C. C. A.) 135 Fed. 47; Leiter *v.* Thomas, 110 N. Y. App. Div. 879, 97 N. Y. Supp. 121; Pierson *v.* Frenkel, (Supm. Ct. App. T.) 103 N. Y. Supp. 49.

1061. 3. Armstrong *v.* Bickel, 217 Pa. St. 173, 66 Atl. 326.

6. Sanger *v.* Price, 114 N. Y. App. Div. 78, 99 N. Y. Supp. 513.

1063. 9. Hoogewerff *v.* Flack, 101 Md. 371, 61 Atl. 184.

10. Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063.

12. Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063.

13. Landis *v.* Wintermute, 40 Wash. 673, 82 Pac. 1000, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063.

1064. 11. Wiger *v.* Carr, 131 Wis. 584, 111 N. W. 657.

1066. 2. Hoogewerff *v.* Flack, 101 Md. 371, 61 Atl. 184, *quoting* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1066.

9. Armstrong *v.* Bickel, 217 Pa. St. 173, 66 Atl. 326.

1072. 1. Burnham *v.* Lawson, 118 N. Y. App. Div. 389, 103 N. Y. Supp. 482. See also the title TROVER AND CONVERSION, **719.** 4 *et seq.*

Where the Injured Party Determined upon His Course of Conduct Immediately, and required no time to consult counsel, watch margins, or raise funds, the rule was held not to be applicable. Hurt *v.* Miller, 120 N. Y. App. Div. 833, 105 N. Y. Supp. 775.

2. **Reasonable Time May Be a Question of Law** where the facts are not disputed. Burnham *v.* Lawson, 118 N. Y. App. Div. 389, 103 N. Y. Supp. 482.

STOCKYARDS.

1074. 2. Ratcliff *v.* Wichita Union Stockyards Co., 74 Kan. 1, 86 Pac. 150.

3. **A Stockyard Possesses Characteristics** of a public business. It possesses the market features, including considerations of sanitation and health. Ratcliff *v.* Wichita Union Stockyards Co., 74 Kan. 1, 86 Pac. 150.

1075. 2. **Subject to Reasonable Statutory Control in Respect to Rates.** — Ratcliff *v.* Wichita Union Stockyards Co., 74 Kan. 1, 86 Pac. 150.

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1082. 9. *In re* Burke, 140 Fed. 971.

1085. 2. *In re* Burke, 140 Fed. 971; Grange Co. *v.* Farmers' Union, etc., Co., 3 Cal. App. 519, 86 Pac. 615.

1086. 3. Grange Co. *v.* Farmers' Union, etc., Co., 3 Cal. App. 519, 86 Pac. 615; Frame

v. Oregon Liquor Co., 48 Oregon 272, 85 Pac. 1009; James Music Co. *v.* Bridge, (Wis. 1908) 114 N. W. 1108, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1086.

6. James Music Co. *v.* Bridge, (Wis. 1908) 114 N. W. 1108.

1087. 3. *In re* Burke, 140 Fed. 971, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1087.

1088. 11. Grange Co. *v.* Farmers' Union, etc., Co., 3 Cal. App. 519, 86 Pac. 615; Frame *v.* Oregon Liquor Co., 48 Oregon 275, 85 Pac. 1009, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1088. *Compare In re* Burke, 140 Fed. 971.

1089. 3. *In re* Burke, 140 Fed. 971; Grange Co. *v.* Farmers' Union, etc., Co., 3 Cal. App. 519, 86 Pac. 615; Frame *v.* Oregon Liquor Co., 48 Oregon 272, 85 Pac. 1009; James Music Co. *v.* Bridge, (Wis. 1908) 114 N. W. 1108, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1089.

1103. 1. *In re* Burke, 140 Fed. 972, *citing* 26 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1103.

1104. 8. Jobson *v.* Eppenheim, 21 Times L. Rep. 468.

1115. 11. Grange Co. *v.* Farmers' Union, etc., Co., 3 Cal. App. 519, 86 Pac. 615.

STORE, STORING, STOREHOUSE, ETC.

1120. 3. **Stored — Lien Law.** — See Smith *v.* O'Brien, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 325, 94 N. Y. Supp. 673, *affirming* 103 N. Y. App. Div. 596, 92 N. Y. Supp. 1146.

1122. 2. Steele *v.* State, (Neb. 1907) 113 N. W. 798.

STORE ORDER ACTS.

1124. 8. Jordan *v.* State, (Tex. Crim. 1907) 103 S. W. 633; Barber *v.* State, (Tex. Crim. 1907) 103 S. W. 638. *Contra,* Shortall *v.* Puget Sound Bridge, etc., Co., 45 Wash. 290, 88 Pac. 212.

STRANGER.

1127. 1. **Stranger in Blood — Adopted Child.** — Kerr *v.* Goldsborough, 150 Fed. 289.

STREET RAILWAYS.

5. 1. Aurora *v.* Elgin, etc., Traction Co., 227 Ill. 485, 81 N. E. 544; *In re* Minneapolis, etc., Suburban R. Co., 101 Minn. 132, 112 N. W. 13.

2. *In re* Minneapolis, etc., Suburban R. Co., 101 Minn. 132, 112 N. W. 13, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 5, text in full; Riggs *v.* St. Francois County R. Co., 120 Mo. App. 335, 96 S. W. 707, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 751 [5]; Gillette *v.* Aurora St. R. Co., 228 Ill. 261, 81 N. E. 1005.

6. 1. Riggs *v.* St. Francois County R. Co., 120 Mo. App. 335, 96 S. W. 707, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 51 [6]; *In re* Minneapolis, etc., Suburban R. Co., 101 Minn. 132, 112 N. W. 13.

2. Riggs *v.* St. Francois County R. Co., 120 Mo. App. 335, 96 S. W. 707.

4. Riggs *v.* St. Francois County R. Co., 120 Mo. App. 335, 96 S. W. 707.

11. Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

12. Minneapolis St. R. Co. *v.* Minneapolis, 155 Fed. 989; Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; Riggs *v.* St. Francois County R. Co., 120 Mo. App. 335, 96 S. W. 707; Ross County *v.* Scioto Valley Traction Co., 75 Ohio St. 548, 80 N. E. 176.

Underground Tunnel Railroad Not a Street Railway. — New York, etc., R. Co. *v.* O'Brien, 121 N. Y. App. Div. 819, 106 N. Y. Supp. 909.

13. Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; Riggs *v.* St. Francois County R. Co., 120 Mo. App. 335, 96 S. W. 707.

16. Jeffers *v.* Annapolis, (Md. 1907) 68 Atl. 361.

7. 12. Minneapolis St. R. Co. *v.* Minneapolis, 155 Fed. 989; Gillette *v.* Aurora St. R. Co., 228 Ill. 261, 81 N. E. 1005; Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657; *In re* Minneapolis, etc., Suburban R. Co., 101 Minn. 132, 112 N. W. 13; *In re* Milwaukee Light, etc., Co., (Wis. 1907) 112 N. W. 663.

Right Strictly Construed. — Claremont R., etc., Co. *v.* Putney, 73 N. H. 431, 62 Atl. 727.

15. *In re* Minneapolis, etc., Suburban R. Co., 101 Minn. 132, 112 N. W. 13.

16. **A Carrier of Freight Is Not a Street Railway.** — Spalding *v.* Macomb, etc., R. Co., 225 Ill. 585, 80 N. E. 327.

8. 1. Bird *v.* Detroit, 148 Mich. 71, 111 N. W. 860.

2. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

3. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8; Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

6. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

9. In *Iowa* an action may be brought on the relation of the county attorney "at his discretion;" if he refuses or fails to act, when requested, any person "interested in the question," after obtaining the permission of the court, may institute the action. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867.

9. 3. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; Baltimore *v.* United R., etc., Co., (Md. 1908) 68 Atl. 557; Phœnix *v.* Gannon, 123 N. Y. App. Div. 93, 108 N. Y. Supp. 255, *reversing* (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 606, 106 N. Y. Supp. 927; McKim *v.* Philadelphia, 217 Pa St. 243, 66 Atl. 340.

4. Dulaney *v.* United R., etc., Co., 104 Md. 423, 65 Atl. 45; Baltimore *v.* United R., etc., Co., (Md. 1908) 68 Atl. 557.

10. 2. Metlar *v.* Middlesex, etc., Traction Co., 72 N. J. L. 524, 63 Atl. 497.

13. State *v.* Frost, (Neb. 1907) 110 N. W. 986; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

No Irrevocable Grant or Immunity to Be Given. — San Antonio Traction Co. *v.* Altgelt, 200 U. S. 304, 26 U. S. Sup. Ct. 261.

11. 4. San Antonio Traction Co. *v.* Altgelt, 200 U. S. 304, 26 U. S. Sup. Ct. 261; Patter *v.* Calumet Electric St. R. Co., 158 Fed. 521 (*Illinois* statute); Los Angeles *v.* Davidson, 150 Cal. 59, 88 Pac. 42; Ft. Madison St. R. Co. *v.* Hughes, (Iowa 1907) 114 N. W. 10; Swinhart *v.* St. Louis, etc., R. Co., 207 Mo. 423, 105 S. W. 1043; Chlanda *v.* St. Louis Transit Co., (Mo. 1908) 112 S. W. 249; *In re* Long Island R. Co., 189 N. Y. 428, 82 N. E. 443; McKeesport *v.* Pittsburg, etc., R. Co., 213 Pa. St. 542, 62 Atl. 1075; Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499.

Consent of Majority of Electors of Municipality Necessary (Nebraska Const. 1875, art. 13, §§ 1, 2). State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

6. Fox *v.* New York City Interborough R. Co., 112 N. Y. App. Div. 832, 98 N. Y. Supp. 338; Manton *v.* South Shore Traction Co., 121 N. Y. App. Div. 410, 106 N. Y. Supp. 82; *In re* Long Island R. Co., 189 N. Y. 428, 82 N. E. 443.

12. 1. *In re* Long Island R. Co., 189 N. Y. 428, 82 N. E. 443.

2. State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422; Jersey City *v.* North Jersey St. R. Co., 73 N. J. L. 175, 63 Atl. 906; Wilcox *v.* McClellan, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 465, 95 N. Y. Supp. 941; Fox *v.* New York City Interborough R. Co., 112 N. Y. App. Div. 832, 98 N. Y. Supp. 338; Smith *v.* Buffalo, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 244, 100 N. Y. Supp. 922; *In re* Long Island R. Co., 189 N. Y. 428, 82 N. E. 443.

Local Bills Prohibited. — Kuhn *v.* Knight, 115 N. Y. App. Div. 837, 101 N. Y. Supp. 1.

3. **Act Exempting from Statutory Liability for Repair of Streets Held Unconstitutional.** — Milton *v.* Bangor R., etc., Co., (Me. 1907) 68 Atl. 826.

5. Smith *v.* Buffalo, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 244, 100 N. Y. Supp. 922.

7. Jersey City *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 113; McKim *v.* Philadelphia, 217 Pa. St. 243, 66 Atl. 340.

13. 2. Chicago Terminal Transfer Co. *v.* Chicago, 220 Ill. 310, 77 N. E. 204; St. Louis, etc., R. Co. *v.* Lindell R. Co., 190 Mo. 246, 88 S. W. 634; Fidelity Trust Co. *v.* Hoboken, etc., R. Co., (N. J. 1906) 63 Atl. 273; Fox *v.* New York City Interborough R. Co., 112 N. Y. App. Div. 832, 98 N. Y. Supp. 338; People *v.* Bauer, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 28, 103 N. Y. Supp. 1081; Trojan R. Co. *v.* Troy, (Supm. Ct. App. Div.) 109 N. Y. Supp. 779.

14. 1. Fidelity Trust Co. *v.* Hoboken, etc., R. Co., (N. J. 1906) 63 Atl. 273; Jersey City *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 113; Specht *v.* Central Pass. R. Co., (N. J. 1908) 68 Atl. 785; Fox *v.* New York City Interborough R. Co., 112 N. Y. App. Div. 832, 98 N. Y. Supp. 338; Trojan R. Co. *v.* Troy, (Supm. Ct. App. Div.) 109 N. Y. Supp. 779; Forest City R. Co. *v.* Day, 73 Ohio St. 83, 76 N. E. 396; Interurban R., etc., Co. *v.* Cincinnati, 75 Ohio St. 196, 79 N. E. 240.

2. State *v.* Frost, (Neb. 1907) 110 N. W. 986; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422; State *v.* Citizens' St. R. Co., (Neb. 1907) 114 N. W. 429.

3. Jersey City *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 113.

7. See People *v.* Bauer, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 28, 103 N. Y. Supp. 1081.

15. 1. *United States.* — Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427; East St. Louis R. Co. *v.* Louisville, etc., R. Co., (C. C. A.) 149 Fed. 159; Missouri, etc., R. Co. *v.* Olathe, 156 Fed. 625; Potter *v.* Calumet Electric St. R. Co., 158 Fed. 521.

Arkansas. — Little Rock R., etc., Co. *v.* North Little Rock, 76 Ark. 48, 88 S. W. 826, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 15, in dissenting opinion.

California. — Los Angeles *v.* Davidson, 150 Cal. 59, 88 Pac. 42.

Iowa. — State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; Ft. Madison St. R. Co. *v.* Hughes, (Iowa 1907) 114 N. W. 10.

Kansas. — Olathe *v.* Missouri, etc., Interurban R. Co., (Kan. 1908) 96 Pac. 42.

Louisiana. — Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; Shreveport Traction Co. *v.* Shreveport, (La. 1908) 47 So. 40.

Maryland. — Jeffers *v.* Annapolis, (Md. 1907) 68 Atl. 361; Baltimore *v.* United R., etc., Co., (Md. 1908) 68 Atl. 557.

Michigan. — Monroe *v.* Detroit, etc., R. Co., 143 Mich. 315, 106 N. W. 704.

Missouri. — St. Louis, etc., R. Co. *v.* Lindell R. Co., 190 Mo. 246, 88 S. W. 634; Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962.

Nebraska. — State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

New Jersey. — Jersey City *v.* North Jersey St. R. Co., 72 N. J. L. 383, 61 Atl. 95; Trenton *v.* Trenton St. R. Co., 72 N. J. L. 317, 63 Atl. 1; Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; Fidelity Trust Co. *v.* Hoboken, etc., R. Co., (N. J. 1906) 63 Atl. 273; Jersey City *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 113; North Jersey St. R. Co. *v.* Street, etc., Com'rs, (N. J. 1907) 67 Atl. 691; Asbury Park, etc., R. Co. *v.* Township Committee, (N. J. 1907) 67 Atl. 790.

New York. — Wilcox *v.* McClellan, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 465, 95 N. Y. Supp. 941; South Shore Traction Co. *v.* Brookhaven, 116 N. Y. App. Div. 749, 102 N. Y. Supp. 75; Phœnix *v.* Gannon, 123 N. Y. App. Div. 93, 108 N. Y. Supp. 255, *reversing* (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 606, 106 N. Y. Supp. 927.

Pennsylvania. — Nanticoke Suburban St. R. Co. *v.* People's St. R. Co., 212 Pa. St. 395, 61 Atl. 997; McKim *v.* Philadelphia, 217 Pa. St. 243, 66 Atl. 340.

Power Delegated to Municipality to Construct Street Railways under Special Charter. — Love *v.* Holmes, (Miss. 1907) 44 So. 835.

6. **The Granting of a Franchise by a City Ordinance** is a legislative act only, not a judicial act. Tenny *v.* Columbia, (Wash. 1907) 92 Pac. 895, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 14, 15.

8. *United States.* — Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427; East St. Louis R. Co. *v.* Louisville, etc., R. Co., (C. C. A.) 149 Fed. 159; Potter *v.* Calumet Electric St. R. Co., 158 Fed. 521.

Iowa. — State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867.

Kansas. — Olathe *v.* Missouri, etc., Interurban R. Co., (Kan. 1908) 96 Pac. 42.

Louisiana. — Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

Maryland. — Baltimore *v.* United R., etc., Co., (Md. 1908) 68 Atl. 557.

New Jersey. — Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; Jersey City *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 113; North Jersey St. R. Co. *v.* Street, etc., Com'rs, (N. J. 1907) 67 Atl. 691; Asbury Park, etc., R. Co. *v.* Township Committee, (N. J. 1907) 67 Atl. 790.

New York. — Phœnix *v.* Gannon, 123 N. Y. App. Div. 93, 108 N. Y. Supp. 255, *reversing* (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 606, 106 N. Y. Supp. 927.

16. 1. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; Phœnix *v.* Gannon, 123 N. Y. App. Div. 93, 108 N. Y. Supp. 255, *reversing* (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 606, 106 N. Y. Supp. 927.

2. Phœnix *v.* Gannon, 123 N. Y. App. Div. 93, 108 N. Y. Supp. 255, *reversing* (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 606, 106 N. Y. Supp. 927.

3. **In Illinois** municipalities would seem to have inherent power to grant street railway franchises. Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427.

5. San Antonio Traction Co. *v.* Altgelt, 200 U. S. 304, 26 U. S. Sup. Ct. 261.

17. 5. See State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

11. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867.

Franchises May Be Granted by the Municipality to rival companies, if the routes are not the same. People *v.* Bauer, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 28, 103 N. Y. Supp. 1081.

18. 6. Potter *v.* Calumet Electric St. R. Co., 158 Fed. 521; State *v.* Citizens' St. R. Co., (Neb. 1907) 114 N. W. 429; Phœnix *v.* Gannon, 123 N. Y. App. Div. 93, 108 N. Y. Supp. 255, *reversing* (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 606, 106 N. Y. Supp. 927.

Where There Is a Conflict between the **State Statute and the Municipal Ordinance** granting a franchise, the state statute controls. Los Angeles R. Co. *v.* Los Angeles, (Cal. 1907) 92 Pac. 490.

19. 1. Specht *v.* Central Pass. R. Co., (N. J. 1908) 68 Atl. 785.

2. Kuhn *v.* Knight, 115 N. Y. App. Div. 837, 101 N. Y. Supp. 1; Kuhn *v.* Knight, 190 N. Y. 339, 83 N. E. 293.

3. Specht *v.* Central Pass. R. Co., (N. J. 1908) 68 Atl. 785.

21. 1. Potter *v.* Calumet Electric St. R. Co., 158 Fed. 521.

2. Chicago Terminal Transfer Co. *v.* Chicago, 220 Ill. 310, 77 N. E. 204; Cincinnati, etc., Electric St. R. Co. *v.* Stahle, 37 Ind. App. 539, 76 N. E. 551; Shreveport Traction Co. *v.* Shreveport, (La. 1908) 47 So. 40; Blodgett *v.* Worcester Consol. St. R. Co., 192 Mass. 104, 78 N. E. 222; Jersey City *v.* North Jersey St. R. Co., 72 N. J. L. 383, 61 Atl. 95; Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; People *v.* Geneva, etc., Traction Co., 112 N. Y. App. Div. 581, 98 N. Y. Supp. 719; South Shore Traction Co. *v.* Brookhaven, 116 N. Y. App. Div. 749, 102 N. Y. Supp. 75; South Shore Traction Co. *v.* Patchogue, 116 N. Y. App. Div. 924, 102 N. Y. Supp. 78; McKeesport *v.* Pittsburg, etc., R. Co., 213 Pa. St. 542, 62 Atl. 1075.

3. Blocki *v.* People, 220 Ill. 444, 77 N. E. 172.

4. Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427; South Shore Traction Co. *v.* Brookhaven, 116 N. Y. App. Div. 749, 102 N. Y. Supp. 75; South Shore Traction Co. *v.* Patchogue, 116 N. Y. App. Div. 924, 102 N. Y. Supp. 78.

6. Cincinnati, etc., Electric St. R. Co. *v.* Stahle, 37 Ind. App. 539, 76 N. E. 551; Deneen *v.* Houghton County St. R. Co., 150 Mich. 235, 113 N. W. 1126.

11. Shreveport Traction Co. *v.* Shreveport, (La. 1908) 47 So. 40; Murphy *v.* Worcester Consol. St. R. Co., (Mass. 1908) 85 N. E. 507; Hamilton *v.* Hamilton St. R. Co., 10 Ont. L. Rep. 594, *affirmed* 38 Can. Sup. Ct. 106.

22. 3. State *v.* Frost, (Neb. 1907) 110 N. W. 986.

5. Crotty *v.* Danbury, 79 Conn. 379, 65 Atl. 147; Blodgett *v.* Worcester Consol. St. R. Co., (Mass. 1906) 78 N. E. 222; Trenton *v.* Trenton St. R. Co., 72 N. J. L. 317, 63 Atl. 1; Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; McKeesport *v.* Pittsburg, etc., R. Co., 213 Pa. St. 542, 62 Atl. 1075.

8. Montreal St. R. Co. *v.* Montreal, (1906) A. C. 100, 5 Can. R. Cas. 287; Hamilton *v.* Hamilton St. R. Co., 10 Ont. L. Rep. 575, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 21, 22, *affirmed* 38 Can. Sup. Ct. 106.

11. Murphy *v.* Worcester Consol. St. R. Co., (Mass. 1908) 85 N. E. 507.

Cannot Alienate a Governmental Duty. — People *v.* Geneva, etc., Traction Co., 112 N. Y. App. Div. 581, 98 N. Y. Supp. 719.

13. **Variance in Location of Tracks Ratified by Long Acquiescence.** — Bridgewater *v.* Beaver Valley Traction Co., 214 Pa. St. 314, 63 Atl. 796.

14. **Though an Individual May Acquire Franchise,** he cannot maintain and operate a road. Trojan R. Co. *v.* Troy, (Supm. Ct. App. Div.) 109 N. Y. Supp. 779.

15. **Under a Special Charter a Municipality** has power to construct a street railway and issue bonds for such purpose. Love *v.* Holmes, (Miss. 1907) 44 So. 835.

Franchise Must Be Granted to a Corporation, Not an Individual. — Phœnix *v.* Gannon, 123 N. Y. App. Div. 93, 108 N. Y. Supp. 255, *reversing* (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 606, 106 N. Y. Supp. 927.

23. 7. State *v.* Lincoln St. R. Co., (Neb. 1907) 144 N. W. 422.

9. State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

10. Blocki *v.* People, 220 Ill. 444, 77 N. E. 172.

24. 2. Cleveland, etc., R. Co. *v.* Feight, (Ind. App. 1908) 84 N. E. 15; St. Louis, etc., R. Co. *v.* Lindell R. Co., 190 Mo. 246, 88 S. W. 634.

3. East St. Louis R. Co. *v.* Louisville, etc., R. Co., (C. C. A.) 149 Fed. 159; South East, etc., R. Co. *v.* Evansville, etc., R. Co., (Ind. 1907) 82 N E. 765; Michigan Cent. R. Co. *v.* Hammond, etc., Electric R. Co., (Ind. App. 1908) 83 N. E. 650; Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; Pennsylvania Co. *v.* Lake Erie R. Co., 146 Fed. 446.

7. South East, etc., R. Co. *v.* Evansville, etc., R. Co., (Ind. 1907) 82 N. E. 765.

8. South East, etc., R. Co. *v.* Evansville, etc., R. Co., (Ind. 1907) 82 N. E. 765; Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

25. 3. **Expense of Maintenance and Construction to Be Borne by Street Railway Desiring the Crossing.** — Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

4. East St. Louis R. Co. *v.* Louisville, etc., R. Co., (C. C. A.) 149 Fed. 159; South East, etc., R. Co. *v.* Evansville, etc., R. Co., (Ind. 1907) 82 N. E. 765; Lake Shore, etc., R. Co. *v.* Chautauqua Traction Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 275, 104 N. Y. Supp. 550.

Right to Cross Vested by Implication and Express Law (Const. Louisiana 1898, art. 271). Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

5. East St. Louis R. Co. *v.* Louisville, etc., R. Co., (C. C. A.) 149 Fed. 159; Lake Shore, etc., R. Co. *v.* Chautauqua Traction Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 275, 104 N. Y. Supp. 550.

6. **Crossing Obtained under Expropriation Laws.** — Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

26. 1. **Authorization by Ordinance to Purchase, Lease, or Contract for the Right.** — Eastern Wisconsin R., etc., Co. *v.* Winnebago Traction Co., 126 Wis. 179, 105 N. W. 571.

3. Kavanaugh *v.* St. Louis Traction Co., 127 Mo. App. 265, 105 S. W. 278; Interurban R.,

etc., Co. *v.* Cincinnati, 75 Ohio St. 196, 79 N. E. 240.

Power to Agree to Use of Same Street Granted by Act of Legislature. — Jersey City *v.* North Jersey St. R. Co., 73 N. J. L. 175, 63 Atl. 906.

27. 1. Hester *v.* Durham Traction Co., 138 N. Car. 288, 50 S. E. 711, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 27, 29; San Jose-Los Gatos Interurban R. Co. *v.* San Jose R. Co., (C. C. A.) 156 Fed. 455.

3. Chester City *v.* Union R. Co., 218 Pa. St. 24, 66 Atl. 1107.

Use of Same Street. — Com. *v.* Bond, 214 Pa. St. 307, 63 Atl. 741.

9. San Jose-Los Gatos Interurban R. Co. *v.* San Jose, (C. C. A.) 156 Fed. 455.

10. Denver, etc., R. Co. *v.* Hannegan, (Colo. 1908) 95 Pac. 343; Bangor Tp. *v.* Bay City Traction, etc., Co., 147 Mich. 165, 110 N. W. 490; Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962.

Added Compensation for Third Track. — Knoth *v.* Manhattan R. Co., 109 N. Y. App. Div. 802, 96 N. Y. Supp. 844.

Abutting Owner Not Entitled to Damages Additional to Those Awarded for Original Taking for a Street. — Abbott *v.* Milwaukee Light, etc., Co., 126 Wis. 634, 106 N. W. 523.

28. 2. Brown *v.* Rea, 150 Cal. 171, 88 Pac. 713; Parsons *v.* Waterville, etc., St. R. Co., 101 Me. 173, 63 Atl. 728; Acker *v.* Knoxville, 117 Tenn. 224, 96 S. W. 973. See also Denver, etc., R. Co. *v.* Hannegan, (Colo. 1908) 95 Pac. 343.

3. Hester *v.* Durham Traction Co., 138 N. Car. 288, 50 S. E. 711, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 27–29; East St. Louis R. Co. *v.* Louisville, etc., R. Co., (C. C. A.) 149 Fed. 159; Aurora *v.* Elgin, etc., Traction Co., 227 Ill. 485, 81 N. E. 544; Michigan Cent. R. Co. *v.* Hammond, etc., R. Co., (Ind. App. 1908) 83 N. E. 650; Parsons *v.* Waterville, etc., St. R. Co., 101 Me. 173, 63 Atl. 728; Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; Acker *v.* Knoxville, 117 Tenn. 224, 96 S. W. 973. See also Duncan *v.* Nassau Electric R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 210.

Street Railway No Additional Servitude. — St. Louis, etc., R. Co. *v.* Lindell R. Co., 190 Mo. 246, 88 S. W. 634.

Grant to Occupy the Street an Additional Servitude Entitling Abutting Owner to Compensation. — Abbott *v.* Milwaukee Light, etc., Co., 126 Wis. 634, 106 N. W. 523.

29. 6. **A Franchise to Lay Tracks** does not give the power to build in the street a signal tower. Williams *v.* Los Angeles R. Co., 150 Cal. 592, 89 Pac. 330.

8. Aurora *v.* Elgin, etc., Traction Co., 227 Ill. 485, 81 N. E. 544.

9. Aurora *v.* Elgin, etc., Traction Co., 227 Ill. 485, 81 N. E. 544. See also East St. Louis R. Co. *v.* Louisville, etc., R. Co., (C. C. A.) 149 Fed. 159.

30. 4. Reynolds *v.* Presidio, etc., R. Co., 1 Cal. App. 229, 81 Pac. 1118; Brown *v.* Rea, 150 Cal. 171, 88 Pac. 713; Denver, etc., R. Co. *v.* Hannegan, (Colo. 1908) 95 Pac. 343; Somerset Water, etc., Co. *v.* Doyle, (Ky. 1908) 107 S. W. 208; Duncan *v.* Nassau Electric R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 210; Cotts *v.* Wheeling, etc., R. Co., (W. Va. 1907) 59 S. E. 766; Abbott *v.* Milwaukee Light, etc., Co., 126 Wis. 634, 106 N. W. 523.

Iowa Statute. — Ft. Madison St. R. Co. *v.* Hughes, (Iowa 1907) 114 N. W. 10.

A Change of Grade. — Hyde *v.* Boston, etc., St. R. Co., 194 Mass. 80, 80 N. E. 517; Leffmann *v.* Long Island R. Co., 120 N. Y. App. Div. 528, 105 N. Y. Supp. 487.

5. City Store *v.* San Jose-Los Gatos Interurban R. Co., 150 Cal. 277, 88 Pac. 977; Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962.

7. Ft. Madison St. R. Co. *v.* Hughes, (Iowa 1907) 114 N. W. 10; Fox *v.* New York City Interborough R. Co., 112 N. Y. App. Div. 832, 98 N. Y. Supp. 338.

31. 1. Swinhart *v.* St. Louis, etc., R. Co., 207 Mo. 423, 105 S. W. 1043; Webb *v.* Forty-Second St., etc., R. Co., (N. Y. Super. Ct.) 52 Misc. (N. Y.) 46, 102 N. Y. Supp. 762; Hatfield *v.* Strauss, 117 N. Y. App. Div. 671, 102 N. Y. Supp. 934; Manton *v.* South Shore Traction Co., 121 N. Y. App. Div. 410, 106 N. Y. Supp. 82; Bannatyne *v.* Suburban Rapid Transit Co., 15 Manitoba 7. See also Los Angeles *v.* Davidson, 150 Cal. 59, 88 Pac. 42; Spalding *v.* Macomb, etc., R. Co., 225 Ill. 585, 80 N. E. 327; Breen *v.* Pittsburg, etc., R. Co., (Pa. 1908) 69 Atl. 1047.

Writ of Certiorari to Review Granting of Franchise by Ordinance. — Specht *v.* Central Pass. R. Co., (N. J. 1908) 68 Atl. 785.

2. Reynolds *v.* Presidio, etc., R. Co., 1 Cal. App. 229, 81 Pac. 1118; Brown *v.* Rea, 150 Cal. 171, 88 Pac. 713; City Store *v.* San Jose-Los Gatos Interurban R. Co., 150 Cal. 277, 88 Pac. 977; Roberts *v.* Huntington R. Co., (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 62, 105 N. Y. Supp. 1031. See also Andel *v.* Duquesne St. R. Co., (Pa. 1908) 69 Atl. 278; Bayard *v.* Bancroft, (Del. 1905) 62 Atl. 6; Knoth *v.* Manhattan R. Co., 109 N. Y. App. Div. 802, 96 N. Y. Supp. 844.

3. Thirteenth, etc., Sts. Pass. R. Co. *v.* Broad St. Rapid Transit R. Co., (Pa. 1907) 67 Atl. 901. See State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867.

Attorney-General Only May Test Validity of Franchise by Quo Warranto. — Andel *v.* Duquesne St. R. Co., 219 Pa. St. 635, 69 Atl. 278.

4. **Suit by Township Officers.** — Bangor Tp. *v.* Bay City Traction, etc., Co., 147 Mich. 165, 110 N. W. 490.

Ejectment for Improper Location of Trolley Pole. — Moore *v.* Camden, etc., R. Co., 73 N. J. L. 599, 64 Atl. 116.

5. **A Rival Railway Company May Enjoin the Double Tracking** of its line by another street railway. Eastern Wisconsin R., etc., Co. *v.* Winnebago Traction Co., 126 Wis. 179, 105 N. W. 571.

7. **The Franchise Is a Mere License to Construct and Operate under Certain Conditions.** — Blocki *v.* People, 220 Ill. 444, 77 N. E. 172.

8. Ft. Madison St. R. Co. *v.* Hughes, (Iowa 1907) 114 N. W. 10; Youngquist *v.* Minneapolis St. R. Co., 102 Minn. 501, 114 N. W. 259; Olney *v.* Omaha, etc., St. R. Co., (Neb. 1907)

111 N. W. 784; El Paso Electric R. Co. *v.* Kelly, (Tex. Civ. App. 1908) 109 S. W. 415; Hall *v.* Washington Water Power Co., (Wash. 1907) 89 Pac. 553.

32. 1. Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962.

4. **A Railway May Enjoin the Moving of a House** along the streets occupied by its tracks where its overhead wires would have to be cut and its operation suspended for several days. Ft. Madison St. R. Co. *v.* Hughes, (Iowa 1907) 114 N. W. 10.

6. Ft. Madison St. R. Co. *v.* Hughes, (Iowa 1907) 114 N. W. 10.

8. Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427; Cleveland Electric R. Co. *v.* Cleveland, 204 U. S. 116, 27 U. S. Sup. Ct. 202; Rochester R. Co. *v.* Rochester, 205 U. S. 236, 27 U. S. Sup. Ct. 469; Chicago Terminal Transfer Co. *v.* Chicago, 220 Ill. 310, 77 N. E. 204, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 74 [32]; Blocki *v.* People, 220 Ill. 444, 77 N. E. 172; Aurora *v.* Elgin, etc., Traction Co., 227 Ill. 485, 81 N. E. 544; Claremont R., etc., Co. *v.* Putney, 73 N. H. 431, 62 Atl. 727; Metlar *v.* Middlesex, etc., Traction Co., 72 N. J. L. 524, 63 Atl. 497; Webb *v.* Forty-Second St., etc., R. Co., (N. Y. Super. Ct.) 52 Misc. (N. Y.) 46, 102 N. Y Supp 762; Manton *v.* South Shore Traction Co., 121 N. Y. App. Div. 410, 106 N. Y. Supp. 82; New York *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 722; Roosevelt *v.* New York El. R. Co., (Supm. Ct. Spec. T.) 111 N. Y. Supp. 440.

Estoppel May Arise as to Rights in Streets against the State. — State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 722.

Right to Maintain Automatic Vending and Weighing Machines in Stations Implied from Franchise. — New York *v.* Interborough Rapid Transit Co., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 126, 104 N. Y. Supp. 157.

Grant Construed Most Favorably to the Public. — New York *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 720.

9. New York *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 720; New York *v.* New York City R. Co., (Supm Ct. App. Div.) 110 N. Y. Supp. 722.

34. 8. Beaumont Traction Co. *v.* Brock (Tex. Civ. App. 1907) 106 S. W. 460.

35. 10. Tenny *v.* Columbia, (Wash. 1907) 92 Pac. 895.

36. 1. **Second Track.** — Eastern Wisconsin R., etc., Co. *v.* Winnebago Traction Co., 126 Wis. 179, 105 N. W. 571.

4. Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962.

Power to Set Up Poles and Wires for Electric Current. — Ft. Madison St. R. Co. *v.* Hughes, (Iowa 1907) 114 N. W. 10.

11. See New York, etc., R. Co. *v.* Stevens, (Conn. 1908) 69 Atl. 1052.

37. 6. *United States.* — Minneapolis St. R. Co. *v.* Minneapolis, 155 Fed. 980.

Connecticut. — New York, etc., R. Co. *v.* Stevens, (Conn. 1908) 69 Atl. 1052.

Illinois. — Gillette *v.* Aurora St. R. Co., 228 Ill. 261, 81 N. E. 1005.

Indiana. — Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657.

Kentucky. — Devon *v.* Cincinnati, etc., R. Co., (Ky. 1908) 109 S. W. 361.

Louisiana. — Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

Michigan. — Detroit United R. Co. *v.* Barnes Paper Co., (Mich. 1907) 113 N. W. 285.

New Hampshire. — Claremont R., etc., Co. *v.* Putney, 73 N. H. 431, 62 Atl. 727.

New Jersey. — Metlar *v.* Middlesex, etc., Traction Co., 72 N. J. L. 524, 63 Atl. 497.

New York. — Manhattan R. Co. *v.* Astor, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 353, 107 N. Y. Supp. 666.

Wisconsin. — [illegible] Milwaukee Light, etc., Co., 126 Wis. 634, 106 N. W. 523; *In re* Milwaukee Light, etc., Co., (Wis. 1907) 112 N. W. 663.

Right Cannot Be Extended by Implication. — Leffmann *v.* Long Island R. Co., 120 N. Y. App. Div. 528, 105 N. Y. Supp. 487.

7. **Indefinite Grants.** — Fayetteville St. R. Co. *v.* Aberdeen, etc., R. Co., 142 N. Car. 423, 53 S. E. 345.

38. 10. Com. *v.* Broad St. Rapid Transit St. R. Co., 219 Pa. St. 11, 67 Atl. 958. See Mercantile Trust Co. *v.* Denver, 161 Fed. 769; Fayetteville St. R. Co. *v.* Aberdeen, etc., R. Co., 142 N. Car. 423, 55 S. E. 345.

39. 1. Des Moines City R. Co. *v.* Des Moines, 151 Fed. 854; Missouri, etc., R. Co. *v.* Olathe, 156 Fed. 625; Shreveport Traction Co. *v.* Shreveport, (La. 1908) 47 So. 40; Asbury Park, etc., R. Co. *v.* Township Committee, (N. J. 1907) 67 Atl. 790; People *v.* Geneva, etc., Traction Co., 112 N. Y. App. Div. 581, 98 N. Y. Supp. 710.

Ordinance May Not Take Property Without Due Process of Law. — Chicago City R. Co. *v.* Chicago, 142 Fed. 844.

The Franchise, When Granted, Is Vested in the street railway company and beyond recall. State *v.* Citizens' St. R. Co., (Neb. 1907) 114 N. W. 429.

2. Fair Haven, etc., R. Co. *v.* New Haven, 203 U. S. 379, 27 U. S. Sup. Ct. 74.

3. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 39; Owensboro City R. Co. *v.* Barber Asphalt Paving Co., (Ky. 1908) 107 S. W. 244; Reading *v.* United Traction Co., 215 Pa. St. 250, 64 Atl. 446.

40. 1. Trenton *v.* Trenton St. R. Co., 72 N. J. L. 317, 63 Atl. 1.

3. Rochester R. Co. *v.* Rochester, 205 U. S. 236, 27 U. S. Sup. Ct. 469; Blodgett *v.* Worcester Consol. St. R. Co., (Mass. 1906) 78 N. E. 222; Schuster *v.* Forty-second St., etc., R. Co., 118 N. Y. App. Div. 197, 102 N. Y. Supp. 1054; Mayor *v.* Harlem Bridge, etc., R. Co., 186 N. Y. 304, 78 N. E. 1072; McKeesport *v.* Pittsburg, etc., R. Co., 213 Pa. St. 542, 62 Atl. 1075.

4. Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84.

5. See McKeesport *v.* Pittsburg, etc., R. Co., 213 Pa. St. 542, 62 Atl. 1075.

41. 6. McKeesport *v.* Pittsburg, etc., R. Co., 213 Pa. St. 542, 62 Atl. 1075.

8. McKeesport *v.* Pittsburg, etc., R. Co., 213 Pa. St. 542, 62 Atl. 1075.

42. 2. New York *v.* Harlem Bridge, etc., R. Co., 186 N. Y. 304, 78 N. E. 1072.

6. New York *v.* Harlem Bridge, etc., R. Co., 186 N. Y. 304, 78 N. E. 1072.

7. New York *v.* Harlem Bridge, etc., R. Co., 186 N. Y. 304, 78 N. E. 1072.

43. 9. Indianapolis Traction, etc., Co. *v.* Pressell, 39 Ind. App. 472, 77 N. E. 357.

44. 4. Cleveland Electric R. Co. *v.* Cleveland, 204 U. S. 116, 27 U. S. Sup. Ct. 202; Rochester R. Co. *v.* Rochester, 205 U. S. 236, 27 U. S. Sup. Ct. 469; Amsterdam *v.* Fonda, etc., R. Co., 119 N. Y. App. Div. 680, 104 N. Y. Supp. 411; McKeesport *v.* Pittsburg, etc., R. Co., 213 Pa. St. 542, 62 Atl. 1075; Reading *v.* Reading, etc., St. R. Co., 215 Pa. St. 132, 64 Atl. 335; Reading *v.* United Traction Co., 215 Pa. St. 250, 64 Atl. 446.

5. Reading *v.* United Traction Co., 215 Pa. St. 250, 64 Atl. 446.

6. Action for Damages by Municipality. — Trenton *v.* Trenton St. R. Co., 72 N. J. L. 317, 63 Atl. 1.

45. 1. Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; People *v.* Geneva, etc., Traction Co., 112 N. Y. App. Div. 581, 98 N. Y. Supp. 719.

4. See Moorshead *v.* United R. Co., 119 Mo. App. 541, 96 S. W. 261; Chlanda *v.* St. Louis Transit Co., (Mo. 1908) 112 S. W. 249.

5. O'Sullivan *v.* Griffith, (Cal. 1908) 95 Pac. 873.

The Consent of the Electors to the occupation of the streets is a license, coupled with an interest and assignable. State *v.* Citizens' St. R. Co., (Neb. 1907) 114 N. W. 429.

6. Construction of Contract of Sale of Controlling Interest. — See Montreal St. R. Co. *v.* Montreal Constr. Co., 15 Quebec K. B. 77.

7. French *v.* Jones, 191 Mass. 522, 78 N. E. 118.

9. O'Sullivan *v.* Griffith, (Cal. 1908) 95 Pac. 873; Hagemann *v.* Southern Electric R. Co., 202 Mo. 249, 100 S. W. 1081; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

46. 1. Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657; Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84; Interurban R., etc., Co. *v.* Cincinnati, 75 Ohio St. 196, 79 N. E. 240.

4. Murphy *v.* Worcester Consol. St. R. Co., (Mass. 1908) 85 N. E. 507; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

5. Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84.

The Franchise Is Taken Subject to Burdens imposed by general law at the time of the incorporation of the railway company, although a predecessor in title to a portion of the road occupied by it may have been exempt from certain duties. Rochester R. Co. *v.* Rochester, 205 U. S. 236, 27 U. S. Sup. Ct. 469.

The Doctrine of Caveat Emptor applies to a purchase of a street railway franchise, and no warranty is implied as to title. O'Sullivan *v.* Griffith, (Cal. 1908) 95 Pac. 873.

Purchaser at Foreclosure Sale Bound by Terms of Ordinance Granting Original Franchise. — Asbury Park, etc., R. Co. *v.* Township Committee, (N. J. 1907) 67 Atl. 700.

47. 5. Blodgett *v.* Worcester Consol. St. R. Co., (Mass. 1906) 78 N. E. 222; Daniels *v.* Bay City Traction, etc., Co., 143 Mich. 493, 107 N. W. 94. See also Hagemann *v.* Southern Electric R. Co., 202 Mo. 249, 100 S. W. 1081; Denver, etc., R. Co. *v.* Hannegan, (Colo. 1908) 95 Pac. 343.

6. See State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422; State *v.* Citizens' St. R. Co., (Neb. 1907) 114 N. W. 429; Moorshead *v.* United R. Co., 119 Mo. App. 541, 96 S. W. 261; Hogan *v.* Detroit United R. Co., 148 Mich. 283, 111 N. W. 765.

7. Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657; French *v.* Jones, 191 Mass. 522, 78 N. E. 118; Moorshead *v.* United R. Co., 203 Mo. 121, 100 S. W. 611; Hagemann *v.* Southern Electric R. Co., 202 Mo. 249, 100 S. W. 1081; Bensiek *v.* St. Louis Transit Co., 125 Mo. App. 121, 102 S. W. 587; Interurban R., etc., Co. *v.* Cincinnati, 75 Ohio St. 196, 79 N. E. 240.

Where the Statute Requires the Consent of the Municipality granting the franchise to a transfer its consent will be presumed, though this presumption is rebuttable, after the execution of a lease. Chlanda *v.* St. Louis Transit Co., (Mo. 1908) 112 S. W. 249.

9. Moorshead *v.* United R. Co., 119 Mo. App. 541, 96 S. W. 261; Jersey City *v.* North Jersey St. R. Co., 72 N. J. L. 383, 61 Atl. 95; New York *v.* New York City R. Co., (Supm. Ct. Tr. T.) 55 Misc (N. Y.) 134, 106 N. Y. Supp. 293.

10. Moorshead *v.* United R. Co., 203 Mo. 121, 100 S. W. 611; Jersey City *v.* North Jersey St. R. Co., 73 N. J. L. 175, 63 Atl. 906.

Right to Condemn Land Acquired by Lessee of Street Railway. — Mull *v.* Indianapolis, etc., Traction Co., (Ind. 1907) 81 N. E. 657.

Lessee Not Liable for Injuries Caused by Servants of Assignee of Lease. — Dunn *v.* Asheville, etc., R. Co., 141 N. Car. 521, 54 S. E. 416.

11. Lessor Liable for Injuries Caused by Operation of Railway by Lessee. — Dunn *v.* Asheville, etc., R. Co., 141 N. Car. 521, 54 S. E. 416.

12. Lessor Company Not Liable for Personal Injuries Caused by Operation of Lessee. — Moorshead *v.* United R. Co., 203 Mo. 121, 100 S. W. 611, *affirming* 119 Mo. App. 541, 96 S. W. 261; Bensiek *v.* St. Louis Transit Co., 125 Mo. App. 121, 102 S. W. 587; Chlanda *v.* St. Louis Transit Co., (Mo. 1908) 112 S. W. 249.

14. Rights of Corporation Formed by Consolidation. — Cleveland *v.* Cleveland Electric R. Co., 201 U. S. 529, 26 U. S. Sup. Ct. 513; Cleveland Electric R. Co. *v.* Cleveland, 204 U. S. 116, 27 U. S. Sup. Ct. 202; Rochester R. Co. *v.* Rochester, 205 U. S. 236, 27 U. S. Sup. Ct. 469; Cleveland, etc., R. Co. *v.* Feight, (Ind. App. 1908) 84 N. E. 15; Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422; State *v.* Citizens' St. R. Co., (Neb. 1907) 114 N. W. 429; Trenton *v.* Trenton St. R. Co., 72 N. J. L. 317, 63 Atl. 1; Jersey City *v.* North Jersey St. R. Co., 73 N. J. L. 175, 63 Atl. 906; North Jersey St. R. Co. *v.* Street, etc., Com'rs. (N. J. 1907) 67 Atl. 691.

Liability for Obligations of Constituent Companies. — New York *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 720; New York *v.* New York City R. Co.,

(Supm. Ct. App. Div.) 110 N. Y. Supp. 722; New York *v.* Union R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 944.

48. 1. Patterson *v.* Taylor, 51 Fla. 275, 40 So. 493; Crooms *v.* Schad, 51 Fla. 168, 40 So. 497; Aurora *v.* Elgin, etc., Traction Co., 227 Ill. 485, 81 N. E. 544; Shreveport Traction Co. *v.* Shreveport, (La. 1908) 47 So. 40; Monroe *v.* Detroit, etc., R. Co., 143 Mich. 315, 106 N. W. 704; Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; State *v.* Frost, (Neb. 1907) 110 N. W. 986; North Jersey St. R. Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 1072; People *v.* Geneva, etc., Traction Co., 112 N. Y. App. Div. 581, 98 N. Y. Supp. 719; Eastern Wisconsin R., etc., Co. *v.* Hackett, (Wis. 1908) 115 N. W. 376; Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499.

4. Patterson *v.* Taylor, 51 Fla. 275, 40 So. 493; Crooms *v.* Schad, 51 Fla. 168, 40 So. 497; State *v.* Frost, (Neb. 1907) 110 N. W. 986; North Jersey St. R. Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 1072; Eastern Wisconsin R., etc., Co. *v.* Hackett, (Wis. 1908) 115 N. W. 376.

Compelling Universal Transfers an Unreasonable Ordinance. — Chicago City R. Co. *v.* Chicago, 142 Fed. 844.

An Injunction by Railway against Enforcement of Police Regulation of Travel Will Not Be Granted. — Georgia R., etc., Co. *v.* Oakland City, 129 Ga. 576, 59 S. E. 296.

The Burden of Proof is upon the person asserting the unreasonableness of the ordinance. Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84.

6. Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890; Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; People *v.* Geneva, etc., Traction Co., 112 N. Y. App. Div. 581, 98 N. Y. Supp. 719.

Separate Accommodation for White and Colored People a Valid Police Regulation. — Patterson *v.* Taylor, 51 Fla. 275, 40 So. 493; Crooms *v.* Schad, 51 Fla. 168, 40 So. 497.

49. 1. Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737.

Ordinance Requiring Vigilant Watch by Motorman Valid Regulation under Police Power. — Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648.

2. Indianapolis Traction, etc., Co. *v.* Formes, (Ind. App. 1907) 80 N. E. 872.

3. **In Ohio a Municipality Has No Right to Compel** by ordinance an interurban railway to stop at intersecting streets upon a signal by a person desiring to board or alight from the car. Towsend *v.* Circleville, (Ohio 1908) 84 N. E. 792.

8. Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016. See Bullock *v.* Wilmington City R. Co., 5 Penn. (Del.) 209, 61 Atl. 242.

Where a Statute Required Fenders on the Front of Each Motor Car, it was held to mean the end of the car which when in motion is furthest forward, and a street car company operating a car with a fender at the back was held liable to the statutory penalty. Toronto *v.* Toronto St. R. Co., 10 Ont. L. Rep. 730.

9. Beaumont Traction Co. *v.* State, (Tex. Civ. App. 1907) 103 S. W. 238.

13. Cincinnati, etc., Electric St. R. Co. *v.* Stahle, 37 Ind. App. 539, 76 N. E. 551; Deneen *v.* Houghton County St. R. Co., 150 Mich. 235, 113 N. W. 1126; Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; Towsend *v.* Circleville, (Ohio 1908) 84 N. E. 792; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

50. 9. See Mader *v.* Halifax Electric Tramway Co., 37 Can. Sup. Ct. 94; Bell *v.* Cape Breton Electric Co., 37 Nova Scotia 298.

11. Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84.

51. 6. People *v.* Geneva, etc., Traction Co., 112 N. Y. App. Div. 581, 98 N. Y. Supp. 719.

Track and Cars to Afford Transportation Without Unnecessary Noise, Jarring, or Danger to Passengers. — Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890.

11. **Extensions or Additional Tracks.** — State *v.* Frost, (Neb. 1907) 110 N. W. 986; People *v.* Geneva, etc., Traction Co., 112 N. Y. App. Div. 581, 98 N. Y. Supp. 719.

52. 4. **Cars to Be Run upon a Proper and Reasonable Time Schedule.** — Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890.

Sufficient Cars in Rush Hours to Give Every Passenger a Seat. — North Jersey St. R. Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 1072.

6. **Ordinance Forbidding Overcrowding.** — Chicago *v.* Chicago City R. Co., 222 Ill. 560, 78 N. E. 890.

53. 3. Jersey City *v.* North Jersey St. R. Co., 72 N. J. L. 383, 61 Atl. 95; New York *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 720; New York *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 722.

4. **Percentage of Gross Receipts.** — Asbury Park, etc., R. Co. *v.* Township Committee, (N. J. 1907) 67 Atl. 790.

11. **A Uniform Interpretation of the Amount of License Fees** for a long period by the municipality will govern. New York *v.* New York City R. Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 134, 106 N. Y. Supp. 293.

54. 5. Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427; Manton *v.* South Shore Traction Co., 121 N. Y. App. Div. 410, 106 N. Y. Supp. 82. See also Com. *v.* Bond, 214 Pa. St. 307, 63 Atl. 741.

6. Manton *v.* South Shore Traction Co., 121 N. Y. App. Div. 410, 106 N. Y. Supp. 82.

14. **Abandonment Must Be by a Clear, Unequivocal, and Decisive Act.** — State *v.* Citizens' St. R. Co., (Neb. 1907) 114 N. W. 429.

55. 1. State *v.* Citizens' St. R. Co., (Neb. 1907) 114 N. W. 429.

3. See Eastern Wisconsin R., etc., Co. *v.* Winnebago Traction Co., 126 Wis. 179, 105 N. W. 571.

4. State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 429.

Abuse or Nonuser of Franchise. — Olathe *v.* Missouri, etc., Interurban R. Co., (Kan. 1908) 96 Pac. 42.

5. Los Angeles R. Co. *v.* Los Angeles, (Cal. 1907) 92 Pac. 490.

6. Los Angeles R. Co. *v.* Los Angeles, (Cal. 1907) 92 Pac. 490; Blocki *v.* People, 220 Ill.

444, 77 N. E. 172; *In re* Brooklyn, etc., R. Co., 185 N. Y. 171, 77 N. E. 994.

56. 1. State *v.* Des Moines City R. Co., (Iowa 1906) 109 N. W. 867; Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; State *v.* Lincoln St. R. Co., (Neb. 1907) 114 N. W. 422.

2. North Jersey St. R. Co. *v.* Street, etc., Com'rs, (N. J. 1907) 67 Atl. 691; Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499.

4. Los Angeles R. Co. *v.* Los Angeles, (Cal. 1907) 92 Pac. 490.

5. Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499.

6. **Impossibility of Performance in Relocation of Tracks a Defense to a Suit for Forfeiture for Breach of Such Duty.** — Millcreek Tp. *v.* Erie Rapid Transit St. R. Co., 216 Pa. St. 132, 64 Atl. 901.

Good Faith and Strict Compliance with Agreement Must Be Observed. — Chester City *v.* Union R. Co., 218 Pa. St. 24, 66 Atl. 1107.

7. Caswell *v.* Boston El. R. Co., 190 Mass. 527, 77 N. E. 380.

57. 1. Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457.

2. **Municipality Must Act, in Enforcing Forfeiture, with Fairness Toward Railway.** — Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499.

4. **Forfeiture Refused, if Adequate Remedy Otherwise Obtainable.** — Olathe *v.* Missouri, etc., Interurban R. Co., (Kan. 1908) 96 Pac. 42.

Relief from Forfeiture by Failure to Lay Tracks According to Ordinance Granting Franchise. — Wheeling, etc., R. Co. *v.* Triadelphia, 58 W. Va. 487, 52 S. E. 499.

5. Los Angeles R. Co. *v.* Los Angeles, (Cal. 1907) 92 Pac. 490.

6. Cleveland Electric R. Co. *v.* Cleveland, 204 U. S. 116, 27 U. S. Sup. Ct. 202.

8. *United States.* — Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Berger *v.* Philadelphia Rapid Transit Co., 141 Fed. 1020.

Alabama. — Schneider *v.* Mobile Light, etc., Co., 146 Ala. 344, 40 So. 761; Birmingham R., etc., Co. *v.* Clarke, (Ala. 1906) 41 So. 829; Anniston Electric, etc., Co. *v.* Elwell, 144 Ala. 317, 42 So. 45.

Arkansas. — Pugh *v.* Texarkana Light, etc., Co., (Ark. 1908) 109 S. W. 1019.

California. — Hamlin *v.* Pacific Electric R. Co., 150 Cal. 776, 89 Pac. 1109; Scott *v.* San Bernardino Valley Traction Co., (Cal. 1907) 93 Pac. 677.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630.

Connecticut. — Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Delaware. — Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Illinois. — Eckels *v.* Muttschall, 230 Ill. 462, 82 N. E. 872.

Indiana. — Indianapolis St. R. Co. *v.* Marschke, 166 Ind. 490, 77 N. E. 945; Indianapolis St. R. Co. *v.* Hackney, 39 Ind. App. 372, 77 N. E. 1048; Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Indianapolis St. R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436.

Iowa. — Adam *v.* Union Electric Co., (Iowa 1908) 116 N. W. 332.

Kentucky. — Palmer Transfer Co. *v.* Paducah R., etc., Co., (Ky. 1905) 89 S. W. 515; South Covington, etc., St. R. Co. *v.* Eichler, (Ky. 1908) 108 S. W. 329; Paducah Traction Co. *v.* Line, (Ky. 1908) 111 S. W. 356.

Maryland. — United R., etc., Co. *v.* Watkins, 102 Md. 264, 62 Atl. 234.

Massachusetts. — Stubbs *v.* Boston, etc., R. Co., 193 Mass. 513, 79 N. E. 795; Chaput *v.* Haverhill, etc., St. R. Co., 194 Mass. 218, 80 N. E. 597; Jeddrey *v.* Boston, etc., St. R. Co., (Mass. 1908) 84 N. E. 316.

Michigan. — Daniels *v.* Bay City Traction, etc., Co., 143 Mich. 493, 107 N. W. 94.

Missouri. — Latson *v.* St. Louis Transit Co., 192 Mo. 449, 91 S. W. 109; Grout *v.* Central Electric R. Co., 125 Mo. App. 552, 102 S. W. 1026; Ross *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 9.

New Jersey. — Weinberger *v.* North Jersey St. R. Co., 73 N. J. L. 694, 64 Atl. 1059.

New York. — Heitz *v.* Yonkers R. Co., 117 N. Y. App. Div. 746, 102 N. Y. Supp. 964.

North Carolina. — Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

Pennsylvania. — Mortimer *v.* Beaver Valley Traction Co., 216 Pa. St. 326, 65 Atl. 758; Barto *v.* Beaver Valley Traction Co., 216 Pa. St. 328, 65 Atl. 792.

Texas. — San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863; San Antonio Traction Co. *v.* Kelleher, (Tex. Civ. App. 1908) 107 S. W. 64.

Utah. — Loofbourow *v.* Utah Light, etc., Co., (Utah 1908) 94 Pac. 981.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

58. 1. *United States.* — Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595.

Alabama. — Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Indiana. — Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Indianapolis St. R. Co. *v.* Demaree, (Ind. App. 1907) 80 N. E. 687; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94.

Iowa. — Adam *v.* Union Electric Co., (Iowa 1908) 116 N. W. 332.

Kentucky. — Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355; Louisville R. Co. *v.* Hofgesand, (Ky. 1907) 104 S. W. 361.

Missouri. — Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49.

New Jersey. — Merhl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74.

New York. — Lamb *v.* Union R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 97.

Texas. — San Antonio Traction Co. *v.* Haines, (Tex. Civ. App. 1907) 100 S. W. 788; San Antonio Traction Co. *v.* Kelleher, (Tex. Civ. App. 1908) 107 S. W. 64.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Virginia. - Lynchburg Traction, etc., Co. *v.* Guill, (Va. 1907) 57 S. E. 644.

Washington. — Mey *v.* Seattle Electric Co., (Wash. 1907) 92 Pac. 283.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

2. *United States.* — Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Berger *v.* Philadelphia Rapid Transit Co., 141 Fed. 1020.

California. — Hamlin *v.* Pacific Electric R. Co., 150 Cal. 776, 89 Pac. 1109; Scott *v.* San Bernardino Valley Traction Co., (Cal. 1907) 93 Pac. 677.

Connecticut. — Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Illinois. — Sampsell *v.* Rybczynski, *229* Ill. 75, 82 N. E. 244.

Indiana. — Indianapolis St. R. Co. *v.* Marschke, 161 Ind. 490, 77 N. E. 945; Indianapolis St. R. Co. *v.* Hackney, 39 Ind. App. 372, 77 N. E. 1048; Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210.

Kentucky. — Palmer Transfer Co. *v.* Paducah R., etc., Co., (Ky. 1905) 89 S. W. 515; Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355; Frankfort, etc., Traction Co. *v.* Hulette, (Ky. 1908) 106 S. W. 1193; South Covington, etc., St. R. Co. *v.* Eichler, (Ky. 1908) 108 S. W. 329.

Massachusetts. — Jeddrey *v.* Boston, etc., St. R. Co., (Mass. 1908) 84 N. E. 316.

Michigan. — Daniels *v.* Bay City Traction, etc., Co., 143 Mich 493, 107 N. W. 94.

Missouri. — Mayes *v.* Metropolitan St. R. Co., 121 Mo. App. 614, 97 S. W. 612; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006; Ross *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 9.

New York. — Kiley *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 254, 97 N. Y. Supp. 375; Palmer *v.* Larchmont Horse R. Co., 112 N. Y. App. Div. 341, 98 N. Y. Supp. 567; Ciarcia *v.* Westchester Electric R. Co., 116 N. Y. App. Div. 899, 102 N. Y. Supp. 428; Moore *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 663, 102 N. Y. Supp. 636; Robinson *v.* Crosstown St. R. Co., 118 N. Y. App. Div. 543, 103 N. Y. Supp. 58; Doctoroff *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 216, 105 N. Y. Supp. 229; Gilman *v.* New York City R. Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 770; Dietrich *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 158; Volosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090.

North Carolina. — Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

Pennsylvania. — Minnich *v.* Wright, 214 Pa. St. 201, 63 Atl. 428; Mortimer *v.* Beaver Valley Traction Co., 216 Pa. St. 326, 65 Atl. 758; Barto *v.* Beaver Valley Traction Co., 216 Pa. St. 328, 65 Atl. 792.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838; Loofbourow *v.* Utah Light, etc., Co., (Utah 1908) 94 Pac. 981.

Washington. — Hall *v.* Washington Water Power Co., (Wash. 1907) 89 Pac. 553.

3. Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355; Neary *v.* Citizens' R., etc., Co., 110 N. Y. App. Div. 769, 97 N. Y. Supp. 420; Boyce *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 393; San Antonio Traction Co. *v.* Kelleher, (Tex. Civ. App. 1908) 107 S. W. 64; Mey *v.* Seattle Electric Co., (Wash. 1907) 92 Pac. 283.

4. Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

5. McCarthy *v.* Consolidated R. Co., 79 Conn. 73, 63 Atl. 725; Gilman *v.* New York City R. Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 770; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

6. McCarthy *v.* Consolidated R. Co., 79 Conn. 73, 63 Atl. 725; Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Weinberger *v.* North Jersey St. R. Co., 73 N. J. L. 694, 64 Atl. 1059.

Duty to Stop Rests upon Whichever Can Do So Most Easily, Either Car or Vehicle. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

59. **1.** Bauer *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 1037; Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74; Geisendorfer *v.* Union R. Co., 124 N. Y. App. Div. 597, 109 N. Y Supp 69; Hoffman *v.* Philadelphia Rapid Transit Co., 214 Pa St. 87, 63 Atl. 409; San Antonio Traction Co. *v.* Hains, (Tex. Civ. App. 1907) 100 S. W. 788; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016; Riedel *v.* Wheeling Traction Co., (W. Va. 1908) 61 S. E. 821.

Preferential Right of Street Cars at Crossings. — Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599.

5. *Arkansas.* — Little Rock Traction, etc., Co. *v.* Hicks, 79 Ark. 248, 96 S. W. 385.

California. — Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630; Lintz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Delaware. — Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Florida.—Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183.

Indiana. — Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94.

Iowa. — Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593.

Kentucky. — Cornelius *v.* South Covington, etc., St. R. Co., (Ky. 1906) 93 S. W. 643; Henderson City R. Co. *v.* Lockett, (Ky. 1906) 98 S. W. 303; Paducah City R. Co. *v.* Alexander, (Ky. 1907) 104 S. W. 375; Lexington R. Co. *v.* Woodward, (Ky. 1908) 106 S. W. 853; South Covington, etc., St. R. Co. *v.* Eichler, (Ky. 1908) 108 S. W. 329; Louisville R. Co. *v.* Boutellier, (Ky. 1908) 110 S. W. 357.

Maryland. — United R., etc., Co. *v.* Watkins, 102 Md. 264, 63 Atl. 234.

Massachusetts. — Rubinovitch *v.* Boston El. R. Co., (Mass. 1906) 77 N. E. 895; Jeddrey *v.* Boston, etc., St. R. Co., (Mass. 1908) 84 N. E. 316.

Michigan. — Rollo *v.* City Electric R. Co., (Mich. 1908) 115 N. W. 727.

Missouri. — Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354; Hovarka *v.* St. Louis Transit Co., 191 Mo. 441, 90 S. W. 1142; Koenig *v.* Union Depot R. Co., 194 Mo. 564, 92 S. W. 497; Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; Abbott *v.* Kansas City El. R. Co., 121 Mo. App. 582, 97 S. W. 198; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Moxley *v.* Southwest Missouri Electric R. Co., 123 Mo. App. 80, 99 S. W. 763; Wahl *v.* St. Louis Transit Co., 203 Mo. 261, 101 S. W. 1; Hebeler *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 34.

New York. — Paladino *v.* Staten Island Midland R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 715.

North Carolina. — Davis *v.* Dunham Traction Co., 141 N. Car. 134, 53 S. E. 617; Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Pennsylvania. — Conner *v.* Pittsburg R. Co., 216 Pa. St. 609, 65 Atl. 1106; Small *v.* Pittsburg R. Co., 216 Pa. St. 584, 66 Atl. 76.

Tennessee. — Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319; Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

Texas. — Beaty *v.* El Paso Electric R. Co., (Tex. Civ. App. 1905) 91 S. W. 365; Metropolitan St. R. Co. *v.* Kirkpatrick, (Tex. Civ. App. 1906) 94 S. W. 1092; Northern Texas Traction Co. *v.* Mullins, (Tex. Civ. App. 1906) 99 S. W. 433; San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863; San Antonio Traction Co. *v.* Haines, (Tex. Civ. App. 1907) 100 S. W. 788; El Paso Electric R. Co. *v.* Kelly, (Tex. Civ. App. 1908) 109 S. W. 415.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838; Loofbourow *v.* Utah Light, etc., Co., (Utah 1908) 94 Pac. 981.

Virginia. — Wilkie *v.* Richmond Traction Co., 105 Va. 290, 54 S. E. 43; Lynchburg Traction, etc., Co. *v.* Guill, (Va. 1907) 57 S. E. 644.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

6. *California.* — Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976.

Colorado. — Lintz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Delaware. — Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Weldon *v.* People's R. Co.,, (Del. 1906) 65 Atl. 589.

Florida.—Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183.

Indiana. — Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94.

Iowa. — Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326 107 N. W. 593.

Kentucky. — Henderson City R. Co. *v.* Lockett, (Ky. 1906) 98 S. W. 303.

Missouri. — Hovarka *v.* St. Louis Transit Co., 191 Mo. 441, 90 S. W. 1142; Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; Abbott *v.* Kansas City El. R. Co., 121 Mo. App. 582, 97 S. W. 198; Mertens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; Moxley *v.* Southwest Missouri Electric R. Co., 123 Mo. App. 80, 99 S. W. 763.

Pennsylvania. — Small *v.* Pittsburg R. Co., 216 Pa. St. 584, 66 Atl. 76.

Tennessee. — Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319.

Greater Care if Rails Are Slippery than if Dry. — Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115.

7. Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347.

Higher Degree of Care Required for Electric than for Horse Cars. — Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976.

60. 1. Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Moxley *v.* Southwest Missouri Electric R. Co., 123 Mo. App. 80, 99 S. W. 763; Grout *v.* Central Electric R. Co., 125 Mo. App. 552, 102 S. W. 1026.

2. *United States.* — Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599.

Delaware. — Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

Indiana. — Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94.

Missouri. — Deane *v.* St. Louis Transit Co., 192 Mo. 575, 91 S. W. 505; Mullin *v.* St. Louis Transit Co., 196 Mo. 572, 94 S. W. 288; Hafner *v.* St. Louis Transit Co., 197 Mo. 196, 94 S. W. 291; Grout *v.* Central Electric R. Co., 125 Mo. App. 552, 102 S. W. 1026.

New York. — Duffy *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 177, 101 N. Y. Supp. 767. See Kear *v.* New York City R. Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 444; Boyce *v.* New York City R. Co, (Supm. Ct. App. Div.) 110 N. Y. Supp. 393.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016; Riedel *v.* Wheeling Traction Co., (W. Va. 1908) 61 S. E. 821.

Greater Care When Street Is Blocked with Snow. — Jenison *v.* Rhode Island Suburban R. Co., (R. I. 1906) 67 Atl. 367.

3. Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183; Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593; Rollo *v.* City Electric R. Co., (Mich. 1908) 115 N. W. 727; Hovarka *v.* St. Louis Transit Co., 191 Mo. 441, 90 S. W. 1142; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973.

4. No Duty Toward Trespasser as to Lookout by Motorman. — Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177.

5. Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354.

8. Breach of Rule as to Speed Evidence, though Not Conclusive, of Negligence. — Hayward *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 737.

9. Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254.

10. Columbus St. R., etc., Co. *v.* Reap, (Ind. App. 1907) 82 N. E. 977.

The Mere Fact that the Motorman Was Inexperienced is insufficient, unless negligence also is shown. Columbus St. R., etc., Co. *v.* Reap, (Ind. App. 1907) 82 N. E. 977.

61. 6. Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115; Dallas Consol. Electric St. R. Co. *v.* Conn, (Tex. Civ. App. 1907) 100 S. W. 1019.

Defective Braking Appliances. — Hot Springs St. R. Co. *v.* Charlton, 76 Ark. 615, 88 S. W. 1006; Frankfort, etc., Traction Co. *v.* Hulette, (Ky. 1908) 106 S. W. 1193.

Switch in Streets of Proper Construction Not a Nuisance Per Se. — Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962.

7. Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

8. Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593.

10. Failure to Equip with Fenders Required by Municipal Ordinance. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

11. *United States.* — Cluff *v.* Pittsburg R. Co., 144 Fed. 710.

Connecticut. — Garfield *v.* Hartford, etc., St. R. Co., 79 Conn. 458, 65 Atl. 598.

Delaware. — Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

Georgia. — Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213.

Indiana. — Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Indianapolis St. R. Co. *v.* Demaree, (Ind. App. 1907) 80 N. E. 687.

Kansas. — Metropolitan St. R. Co. *v.* Summers, 75 Kan. 342, 89 Pac. 652, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 61.

Kentucky. — Louisville R. Co. *v.* Bossmeyer, (Ky. 1907) 104 S. W. 337.

Louisiana. — Dole *v.* New Orleans R., etc., Co., (La. 1908) 46 So. 929.

Minnesota. — O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805; Youngquist *v.* Minneapolis St. R. Co., 102 Minn. 501, 114 N. W. 259.

Missouri. — Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; Richmond *v.* Metropolitan St. R. Co., 123 Mo. App. 495, 100 S. W. 54; Grout *v.* Central Electric R. Co., 125 Mo. App. 552, 102 S. W. 1026; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006; Cytron *v.* St. Louis Transit Co., 205 Mo. 692, 104 S. W. 109.

New Jersey. — Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74.

New York. — Reilly *v.* Interurban St. R. Co., 108 N. Y. App. Div. 254, 95 N. Y. Supp. 721; Clancy *v.* New York City R. Co., 115 N. Y. App. Div. 569, 100 N. Y. Supp. 1046; Littlefield *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 637, 101 N. Y. Supp. 75; Muller *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 640, 101 N. Y. Supp. 98; Salcinger *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 179, 101 N. Y. Supp. 804.

North Carolina. — Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

Rhode Island. — Butler *v.* Rhode Island Co., (R. I. 1907) 68 Atl. 425.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

62. 1. *Connecticut.* — Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888; Garfield *v.* Hartford, etc., St. R. Co., (Conn. 1907) 67 Atl. 890.

Illinois. — Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821.

Kansas. — Metropolitan St. R. Co. *v.* Summers, 75 Kan. 342, 89 Pac. 652.

Kentucky. — Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355.

Maine. — Moulton *v.* Lewiston, etc., St. R. Co., 102 Me. 186, 66 Atl. 388.

Massachusetts. — Kupiec *v.* Warren, etc., St. R. Co., (Mass. 1907) 82 N. E. 676.

Missouri. — Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354; Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; Higgins *v.* St. Louis, etc., R. Co., 197 Mo. 300, 95 S. W. 863; American Storage, etc., Co. *v.* St. Louis Transit Co., 120 Mo. App. 410, 97 S. W. 184.

Pennsylvania. — Emmel *v.* Pittsburg R. Co., 216 Pa. St. 541, 65 Atl. 1083.

4. Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173; Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617; Wolf *v.* City R. Co., (Oregon 1907) 91 Pac. 460; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

5. Bresee *v.* Los Angeles Traction Co., 149 Cal. 131, 85 Pac. 152; Sheder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; Heintz *v.* St. Louis Transit Co., 115 Mo. App. 667, 92 S. W. 353; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Steinmann *v.* St. Louis Transit Co., 116 Mo. App. 673, 94 S. W. 799; Campbell *v.* St. Louis Transit Co., 121 Mo. App. 406, 99 S. W. 58; Mertens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; Butler *v.* Rhode Island Co., (R. I. 1907) 68 Atl. 425; Northern Texas Traction Co. *v.* Thompson, (Tex. Civ. App. 1906) 95 S. W. 708; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

6. Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617; Oates *v.* Union R. Co., 27 R. I. 499, 63 Atl. 675. See Powers *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 494.

Irrespective of Any Statutory Regulation, the question whether a rate of speed is dangerous or unreasonable is one of fact for the jury. Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821.

Violation of Speed Ordinance Not Evidence of Negligence. — Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355.

63. 1. **The Driver of a Vehicle Has a Right to Assume** that the car is run in accordance with the legal requirements as to speed and stopping upon hint of danger. Peterson *v.* St. Louis Transit Co., 199 Mo. 331, 97 S. W. 860.

2. Ashley *v.* Kanawha Valley Traction Co.,

60 W. Va. 306, 55 S. E. 1016. See Moxley *v.* Southwest Missouri Electric R. Co., 123 Mo. App. 80, 99 S. W. 763.

3. Motorman Talking with Conductor and Not Checking Speed of Car. — Paff *v.* Union R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 145.

4. Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Indianapolis Traction, etc., Co. *v.* Smith, 38 Ind. App. 160, 77 N. E. 1140; Frankfort, etc., Traction Co. *v.* Hulette, (Ky. 1908) 106 S. W. 1193; Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; El Paso Electric R. Co. *v.* Kelly, (Tex. Civ. App. 1908) 109 S. W. 415.

5. Not Error to Receive Evidence of Speed of Car Before Collision. — Hillary *v.* Minneapolis St. R. Co., (Minn. 1908) 116 N. W. 933.

6. Expert Opinion Not Necessary. — Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

The Opinion of Witnesses as to speed is not essentially one for expert opinion, and in no sense involves a question of science. Hall *v.* St. Louis, etc., R. Co., 124 Mo. App. 661, 101 S. W. 1137.

7. Louisville R. Co. *v.* Hutchcraft, (Ky. 1907) 105 S. W. 983; Beale *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006; Coffey *v.* Omaha, etc., St. R. Co., (Neb. 1907) 112 N. W. 589; Hayward *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 737; Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74; Wolf *v.* City R. Co., (Oregon 1907) 91 Pac. 460.

Evidence to Show Brakes Ineffective. — Louisville, etc., Traction Co. *v.* Short, (Ind. App. 1908) 83 N. E. 265.

8. *United States.* — Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595; Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599.

Alabama. — Birmingham R., etc., Co. *v.* Jones, 146 Ala. 277, 41 So. 146; Anniston Electric, etc., Co. *v.* Elwell, 144 Ala. 317, 42 So. 45; Birmingham R., etc., Co. *v.* Brown, (Ala. 1907) 44 So. 572; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177; Birmingham R., etc., Co. *v.* Jaffee, (Ala. 1907) 45 So. 460.

Arkansas. — Hot Springs St. R. Co. *v.* Charlton, 76 Ark. 615, 88 S. W. 1006; Little Rock R., etc., Co. *v.* Newman, 77 Ark. 599, 92 S. W. 864.

California. — Scott *v.* San Bernardino Valley Traction Co., (Cal. 1907) 93 Pac. 677.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630.

Connecticut. — Garfield *v.* Hartford, etc., St. R. Co., 79 Conn. 458, 65 Atl. 598; Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Delaware. — Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254.

Florida. — Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183.

Indiana. — Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347.

Iowa. — Ramsey *v.* Cedar Rapids, etc., R. Co., (Iowa 1907) 112 N. W. 798; Remillard *v.* Sioux City Traction Co., (Iowa 1908) 115 N. W. 900.

Kansas. — Metropolitan St. R. Co. *v.* Fawcett, (Kan. 1907) 92 Pac. 543.

Kentucky. — Louisville R. Co. *v.* Hoskins, (Ky. 1905) 88 S. W. 1087; Palmer Transfer Co. *v.* Paducah R., etc., Co., (Ky. 1905) 89 S. W. 515; Cornelius *v.* South Covington, etc., St. R. Co., (Ky. 1906) 93 S. W. 643; Louisville R. Co. *v.* Welker, (Ky. 1906) 94 S. W. 635; Louisville R. Co. *v.* Edelen, (Ky. 1906) 96 S. W. 901; Paducah City R. Co. *v.* Alexander, (Ky. 1907) 104 S. W. 375; Louisville R. Co. *v.* Hutchcraft, (Ky. 1907) 105 S. W. 983; Lexington R. Co. *v.* Woodward, (Ky. 1908) 106 S. W. 853; Frankfort, etc., Traction Co. *v.* Hulette, (Ky. 1908) 106 S. W. 1193; South Covington, etc., St. R. Co. *v.* Eichler, (Ky. 1908) 108 S. W. 329; South Covington, etc., St. R. Co. *v.* Besse, (Ky. 1908) 108 S. W. 848; Louisville R. Co. *v.* Boutellier, (Ky. 1908) 110 S. W. 357; Paducah Traction Co. *v.* Line, (Ky. 1908) 111 S. W. 356.

Louisiana. — Dole *v.* New Orleans R., etc., Co., (La. 1908) 46 So. 929.

Massachusetts. — Caswell *v.* Boston El. R. Co., 190 Mass. 527, 77 N. E. 380; Williamson *v.* Old Colony St. R. Co., 191 Mass. 144, 77 N. E. 655; Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740; Green *v.* Haverhill, etc., R. Co., 193 Mass. 428, 79 N. E. 735.

Minnesota. — Mullane *v.* St. Paul City R. Co., (Minn. 1908) 116 N. W. 354.

Missouri. — Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Williamson *v.* Metropolitan St. R. Co., 114 Mo. App. 1, 89 S. W. 59; Levelsmeier *v.* St. Louis, etc., R. Co., 114 Mo. App. 412, 90 S. W. 104; Hovarka *v.* St. Louis Transit Co., 191 Mo. App. 441, 90 S. W. 1142; Latson *v.* St. Louis Transit Co., 192 Mo. 449, 91 S. W. 109; Heintz *v.* St. Louis Transit Co., 115 Mo. App. 667, 92 S. W. 353; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Koenig *v.* Union Depot R. Co., 194 Mo. 564, 92 S. W. 497; Rodgers *v.* St. Louis Transit Co., 117 Mo. App. 678, 92 S. W. 1154; Steinmann *v.* St. Louis Transit Co., 116 Mo. App. 673, 94 S. W. 799; Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; Barrie *v.* St. Louis Transit Co., 119 Mo. App. 38, 96 S. W. 233; Fechley *v.* Springfield Traction Co., 119 Mo. App. 358, 96 S. W. 421; Cross *v.* St. Louis Transit Co., 120 Mo. App. 458, 97 S. W. 183; Abbott *v.* Kansas City El. R. Co., 121 Mo. App. 582, 97 S. W. 198; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; Peterson *v.* St. Louis Transit Co., 199 Mo. 331, 97 S. W. 860; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 40; McQuade *v.* St. Louis, etc., R. Co., 200 Mo. 150, 98 S. W. 552; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Campbell *v.* St. Louis Transit Co., 121 Mo. App. 406, 99 S. W. 58; Mertens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; Wallack *v.* St. Louis Transit Co., 123 Mo. App. 160, 100 S. W. 406; Masterson *v.* St. Louis Transit Co., 204 Mo. 507, 103 S. W. 48; Cytron *v.* St. Louis Transit Co., 205 Mo. 692, 104 S. W. 109; Zala-

tuchin *v.* Metropolitan St. R. Co., 127 Mo. App. 577, 106 S. W. 548.

New Jersey. — Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74; Fogarty *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 69 Atl. 964.

New York. — Reilly *v.* Interurban St. R. Co., 108 N. Y. App. Div. 254, 95 N. Y. Supp. 721; Kear *v.* New York City R. Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 444; Kostenbaum *v.* New York City R. Co., 120 N. Y. App. Div. 160, 105 N. Y. Supp. 65.

Pennsylvania. — Conner *v.* Pittsburg R. Co., 216 Pa. St. 609, 65 Atl. 1106.

South Carolina. — Sharpton *v.* Augusta, etc., R. Co., 72 S. Car. 162, 51 S. E. 553.

Texas. — San Antonio Traction Co. *v.* Haines, (Tex. Civ. App. 1907) 100 S. W. 788; San Antonio Traction Co. *v.* Kelleher, (Tex. Civ. App. 1908) 107 S. W. 64.

Virginia. — Wilkie *v.* Richmond Traction Co., 105 Va. 290, 54 S. E. 43.

Washington. — Hall *v.* Washington Water Power Co., (Wash. 1907) 89 Pac. 553.

Wisconsin. — Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973.

Ordinance of St. Louis, Mo., Requiring Vigilant Watch. — Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648.

64. 2. Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973.

5. **A Question for the Jury.** — Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973.

6. Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Doyle *v.* Chester Traction Co., 214 Pa. St. 382, 63 Atl. 604.

Headlight Necessary. — Indianapolis St. R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436; Nelson *v.* Chicago, etc., R. Co., (Ind. App. 1908) 83 N. E. 1019; Cox *v.* Schuylkill Valley Traction Co., 214 Pa. St. 223, 63 Atl. 599; Kaselicska *v.* Pittsburg R. Co., (Pa. 1908) 68 Atl. 1018.

Liable for Failure to Have Signal Light. — Cross *v.* St. Louis Transit Co., 120 Mo. App. 458, 97 S. W. 183.

65. 1. *United States.* — Camden *v.* Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595; Cluff *v.* Pittsburg R. Co., 144 Fed. 710.

Alabama. — Birmingham R., etc., Co. *v.* Ryan, (Ala. 1906) 41 So. 616.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630.

Delaware. — Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Georgia. — Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213.

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Kentucky. — Louisville R. Co. *v.* Bossmeyer, (Ky. 1907) 104 S. W. 337; Louisville R. Co. *v.* Hofgesand, (Ky. 1907) 104 S. W. 361; Louisville R. Co. *v.* Boutellier, (Ky. 1908) 110 S. W. 357; Paducah Traction Co. *v.* Line, (Ky. 1908) 111 S. W. 356.

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Michigan. — Wade *v.* Detroit, etc., R. Co., (Mich. 1908) 115 N. W. 713.

Minnesota. — Rawitzer *v.* St. Paul City R. Co., 98 Minn. 294, 108 N. W. 271.

Missouri. — Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; Petersen *v.* St. Louis Transit Co., 114 Mo. App. 374, 89 S. W. 1042; Clancy *v.* St. Louis Transit Co., 192 Mo. 615, 91 S. W. 509; Koenig *v.* Union Depot R. Co., 194 Mo. 564, 92 S. W. 497; Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884; Butler *v.* Metropolitan St. R. Co., 117 Mo. App. 354, 93 S. W. 877; Mullin *v.* St. Louis Transit Co., 196 Mo. 572, 94 S. W. 288; Beier *v.* St. Louis Transit Co., 197 Mo. 215, 93 S. W. 876; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; Deschuer *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006; Cytron *v.* St. Louis Transit Co., 205 Mo. 692, 104 S. W. 109; Zalotuchin *v.* Metropolitan St. R. Co., 127 Mo. App. 577, 106 S. W. 548.

New Hampshire. — Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404.

New Jersey. — Hayward *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 737.

New York. — Reilly *v.* Interurban St. R. Co., 108 N. Y. App. Div. 254, 95 N. Y. Supp. 721; Neary *v.* Citizens' R., etc., Co., 110 N. Y. App. Div. 769, 97 N. Y. Supp. 420; McGurgan *v.* New York City R. Co., 121 N. Y. App. Div. 519, 106 N. Y. Supp. 201; Lamb *v.* Union R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 97; Koehler *v.* Brooklyn Heights R. Co., (Supm. Ct. App. T.) 111 N. Y. Supp. 600.

North Carolina. — Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

Pennsylvania. — Doyle *v.* Chester Traction Co., 214 Pa. St. 382, 63 Atl. 604; Conner *v.* Pittsburg R. Co., 216 Pa. St. 609, 65 Atl. 1106.

Rhode Island. — Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584.

2. *United States.* — Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595.

Alabama. — Birmingham R., etc., Co. *v.* Ryan, (Ala. 1906) 41 So. 616.

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New Jersey. — Hayward *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 737.

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West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

3. Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Louisville, etc., Traction Co. *v.* Short, (Ind. App. 1908) 83 N. E. 265; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Cytron *v.* St. Louis Transit Co., 205 Mo. 692, 104 S. W. 109; McGurgan *v.* New York City R. Co., 121 N. Y. App. Div. 519, 106 N. Y. Supp. 201; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

4. American Storage, etc., Co. *v.* St. Louis Transit Co., 120 Mo. App. 410, 97 S. W. 184.

7. Sobol *v.* Union R. Co., 122 N. Y. App. Div. 817, 107 N. Y. Supp. 656; Oates *v.* Union R. Co., 27 R. I. 499, 63 Atl. 675.

Violation of Ordinance Gives Right of Action. — Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648.

66. 1. Oates *v.* Union R. Co., 27 R. I. 499, 63 Atl. 675.

Effect of Contributory Negligence Where Ordinance Violated. — In *Nebraska,* an injured person has no right of action simply for the violation of the ordinance regulating the speed of street cars, if the injury is occasioned by his own carelessness. Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

2. Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

3. *United States.* — Berger *v.* Philadelphia Rapid Transit Co., 141 Fed. 1020; Pittsburg R. Co. *v.* Cluff, (C. C. A.) 149 Fed. 732.

Alabama. — Hooks *v.* Huntsville R., etc., Co., 147 Ala. 700, 41 So. 273; Birmingham R., etc., Co. *v.* Clarke, (Ala. 1906) 41 So. 829; Garth *v.* North Alabama Traction Co., (Ala. 1906) 42 So. 627; Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032.

Arkansas. — Ft. Smith Light, etc., Co. *v.* Flint, 81 Ark. 231, 99 S. W. 79.

California. — Bennichsen *v.* Market St. R. Co., 149 Cal. 18, 84 Pac. 420; Hamlin *v.* Pacific Electric R. Co., 150 Cal. 776, 89 Pac. 1109.

Colorado. — Lintz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Connecticut. — McCarthy *v.* Consolidated R. Co., 79 Conn. 73, 63 Atl. 725.

Delaware. — White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Davis *v.* People's R. Co., 5 Penn. (Del.) 253, 64 Atl. 70; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589; Steinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Georgia. — Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213; Savannah Electric Co. *v.* Crawford, (Ga. 1908) 60 S. E. 1056.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Illinois. — Chicago Union Traction Co. *v.* Jacobson, 217 Ill. 404, 75 N. E. 508.

Indiana. — Indianapolis St. R. Co. *v.* Hackney, 39 Ind. App. 372, 77 N. E. 1048; Indianapolis Traction, etc., Co. *v.* Smith, 38 Ind. App. 160, 77 N. E. 1140; Indianapolis St. R. Co. *v.* Demaree, (Ind. App. 1907) 80 N. E. 687; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514; Louisville, etc., Traction Co. *v.* Short, (Ind. App. 1908) 83 N. E. 265.

Iowa. — McBride *v.* Des Moines City R. Co., 134 Iowa 398, 109 N. W. 618; Doherty *v.* Des Moines City R. Co., (Iowa 1907) 114 N. W. 183.

Kentucky. — Louisville R. Co. *v.* Hoskins, (Ky. 1905) 88 S. W. 1087; Lexington St. R. Co. *v.* Strader, (Ky. 1905) 89 S. W. 158; Louisville R. Co. *v.* Boutellier, (Ky. 1908) 110 S. W. 357; Paducah Traction Co. *v.* Line, (Ky. 1908) 111 S. W. 356.

Louisiana. — Dewez *v.* Orleans R. Co., 115 La. 432, 39 So. 433.

Maine. — Moulton *v.* Lewiston, etc., St. R. Co., 102 Me. 186, 66 Atl. 388.

Maryland. — State *v.* Cumberland, etc., Electric R. Co., (Md. 1907) 68 Atl. 197.

Massachusetts. — Gorham *v.* Milford, etc., St. R. Co., 189 Mass. 275, 75 N. E. 634; Bartlett *v.* Worcester Consol. St. R. Co., 189 Mass. 360, 75 N. E. 706; Adams *v.* Boston, etc., R. Co., 191 Mass. 486, 78 N. E. 117; Blackwell *v.* Old Colony St. R. Co., 193 Mass. 222, 79 N. E. 335; Stackpole *v.* Boston El. R. Co., 193 Mass. 562, 79 N. E. 740; Fitzgerald *v.* Boston El. R. Co., 194 Mass. 242, 80 N. E. 224; MacFarlane *v.* Boston El. R. Co., 194 Mass. 183, 80 N. E. 447; Madden *v.* Boston El. R. Co., 194 Mass. 491, 80 N. E. 447; Gilligan *v.* Boston El. R. Co., 194 Mass. 576, 80 N. E. 483; Beale *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867; Beirne *v.* Lawrence, etc., St. R. Co., (Mass. 1908) 83 N. E. 359; Kelly *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 865; Casey *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 867.

Michigan. — Allworth *v.* Muskegon Traction, etc., Co., 142 Mich. 25, 105 N. W. 75; Daniels *v.* Bay City Traction, etc., Co., 143 Mich. 493, 107 N. W. 94.

Minnesota. — Rawitzer *v.* St. Paul City R. Co., 98 Minn. 294, 108 N. W. 271; O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805.

Missouri. — Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Waechter *v.* St. Louis, etc., R. Co., 113 Mo. App. 270, 88 S. W. 147; Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Williams *v.* Metropolitan St. R. Co., 114 Mo. App. 1, 89 S. W. 59; Jager *v.* Metropolitan St. R. Co., 114 Mo. App. 10, 89 S. W. 62; Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354; Deane *v.* St. Louis Transit Co., 192 Mo. 575, 91 S. W. 515; Clancy *v.* St. Louis Transit Co., 192 Mo. 615, 91 S. W. 509; Boring *v.* Metropolitan St. R. Co., 194 Mo. 541, 92 S. W. 655; Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884; Rodgers *v.* St. Louis Transit Co., 117 Mo. App. 678, 92 S. W. 1154; Hafner *v.* St. Louis Transit Co., 107 Mo. 196, 94 S. W. 291; Lennon *v.* St. Louis, etc., R. Co., 198 Mo. 514, 94 S. W. 975; Wallack *v.* St. Louis Transit Co., 123 Mo. App. 160, 100 S. W. 496; Powers *v.* St. Louis Transit Co., 202

Mo. 267, 100 S. W. 655; Ross *v.* Metropolitan St. R. Co., 125 Mo. App. 614, 102 S. W. 1036; Brockschmidt *v.* St. Louis, etc., R. Co., 205 Mo. 435, 103 S. W. 964; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006; Prendeville *v.* St. Louis Transit Co., (Mo. App. 1908) 107 S. W. 453; Hof *v.* St. Louis Transit Co., (Mo. 1908) 111 S. W. 1166; Ross *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 9.

New Hampshire. — Hanson *v.* Manchester St. R. Co., 73 N. H. 395, 62 Atl. 595.

New Jersey. — Hageman *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 834; Harbison *v.* Camden, etc., R. Co., (N. J. 1907) 65 Atl. 868; Brink *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 705; Van Ness *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 1027; Glasco *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 68 Atl. 1074; Jelly *v.* North Jersey St. R. Co., (N. J. 1908) 68 Atl. 1091; Farese *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 959.

New York. — Kueski *v.* New York, etc., R. Co., 109 N. Y. App. Div. 207, 95 N. Y. Supp. 650; Axelrod *v.* New York City R. Co., 109 N. Y. App. Div. 87, 95 N. Y. Supp. 1072; McCabe *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 251, 97 N. Y. Supp. 353; Kiley *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 254, 97 N. Y. Supp. 375; Williams *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 253, 97 N. Y. Supp. 393; McEntee *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 673, 97 N. Y. Supp. 476; Fancher *v.* Fonda, etc., R. Co., 111 N. Y. App. Div. 4, 97 N. Y. Supp. 666; Norton *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 621, 98 N. Y. Supp. 216; American Ice Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 183, 98 N. Y. Supp. 219; Fisher *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 622, 98 N. Y. Supp. 221; Lipis *v.* Metropolitan St. R. Co., 112 N. Y. App. Div. 909, 98 N. Y. Supp. 259; Costello *v.* Forty-second St., etc., R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 628, 98 N. Y. Supp. 648; Golden *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 521, 98 N. Y. Supp. 848; McGreevy *v.* New York City R. Co., 113 N. Y. App. Div. 155, 98 N. Y. Supp. 1024; Solomon *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 557, 99 N. Y. Supp. 529; Waters *v.* United Traction Co., 114 N. Y. App. Div. 275, 99 N. Y. Supp. 763; Walsh *v.* Fonda, etc., R. Co., 114 N. Y. App. Div. 272, 99 N. Y. Supp. 773; Binder *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 655, 99 N. Y. Supp. 835; Ward *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 104, 100 N. Y. Supp. 671; Hirtenstein *v.* Interurban St. R. Co., 115 N. Y. App. Div. 275, 100 N. Y. Supp. 909; Healy *v.* United Traction Co., 115 N. Y. App. Div. 868, 101 N. Y. Supp. 331; Marguiles *v.* Interurban St. R. Co., 116 N. Y. App. Div. 157, 101 N. Y. Supp. 499; Litzour *v.* New York City R. Co., 116 N. Y. App. Div. 477, 101 N. Y. Supp. 990; Stassen *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 577, 102 N. Y. Supp. 468; Bernstein *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 579, 102 N. Y. Supp. 799; Ayres *v.* Forty-second St. etc., R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 639, 104 N. Y. Supp. 841; Shatzman *v.* New York City R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 300, 105 N. Y. Supp. 115; Robinson *v.* Union R. Co., 121 N. Y. App. Div. 558, 106 N. Y. Supp. 203; Long *v.* Union R. Co., 122 N. Y. App. Div. 564, 107 N. Y. Supp. 401; Sobol *v.* Union R. Co., 122 N. Y. App. Div. 817, 107 N. Y. Supp. 656; Glynn *v* New York City R. Co., (Supm. Ct. App. T.) 110 N. Y. Supp. 836; Paladino *v.* Staten Island Midland R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 715; Mulien *v.* Joline, (Supm. Ct. App. T.) 111 N. Y. Supp. 776; Bambace *v.* Interurban St. R. Co., 188 N. Y. 288, 80 N. E. 913; Valosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090; Baxter *v.* Auburn, etc., Electric R. Co., 190 N. Y. 439, 83 N. E. 469; Miller *v.* Union R. Co., 191 N. Y. 77, 83 N. E. 583.

North Carolina. — Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Oklahoma. — Metropolitan R. Co. *v.* Fonville, (Okla. 1907) 91 Pac. 902.

Pennsylvania. — Hoffman *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 87, 63 Atl. 409; Griffith *v.* West Chester St. R. Co., 214 Pa. St. 293, 63 Atl. 740; Timler *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 475, 63 Atl. 824; McClelland *v.* Pittsburg R. Co., 216 Pa. St. 593, 66 Atl. 76; Crooks *v.* Pittsburg R. Co., 216 Pa. St. 590, 66 Atl. 142; Melay *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 189, 66 Atl. 253; Lester *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 652, 66 Atl. 866.

Rhode Island. — Price *v.* Rhode Island Co., (R. I. 1907) 66 Atl. 200.

Tennessee. — Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

Texas. — San Antonio Traction Co. *v.* Kelleher, (Tex. Civ. App. 1908) 107 S. W. 64; Feille *v.* San Antonio Traction Co., (Tex. Civ. App. 1908) 107 S. W. 367.

Virginia. — Wilkie *v.* Richmond Traction Co., 105 Va. 290, 54 S. E. 43; Foreman *v.* Norfolk, etc., News Co., 106 Va. 770, 56 S. E. 805.

Washington. — Duteau *v.* Seattle Electric Co., 45 Wash. 418, 88 Pac. 755; Davis *v.* Coeur D'Alene, etc., R. Co., (Wash. 1907) 91 Pac. 839.

West Virginia. — Riedel *v.* Wheeling Traction Co., (W. Va. 1908) 61 S. E. 821.

Wisconsin. — Morice *v.* Milwaukee Electric R., etc., Co., 129 Wis. 520, 109 N. W. 567.

In Georgia, under Section 2322 Civil Code 1895, the negligence of plaintiff bars recovery, unless the negligence of defendant is greater. Macon R., etc., Co. *v.* Carger, (Ga. App. 1908) 61 S. E. 882.

4. Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580; Foreman *v.* Norfolk, etc., News Co., 106 Va. 770, 56 S. E. 805.

5. Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Pilmer *v.* Boise Traction Co., (Idaho 1908) 94 Pac. 432; Indianapolis St. R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436; Perjue *v.* Citizens' Electric Light, etc., Co., 131 Iowa 710, 109 N. W. 280; Spiking *v.* Consolidated R., etc., Co., (Utah

Same Degree of Care Required for Both

Railroads and Street Railways. — Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884.

7. **Imputing Negligence of Driver of Wagon to Passenger — Not Imputable.** — Bresee *v.* Los Angeles Traction Co., [illegible] 85 Pac. 152; Eckels *v.* Muttschall, 230 Ill. 462, 82 N. E. 872; Paducah Traction Co. *v.* Line, (Ky. 1908) 111 S. W. 356; Sluder *v.* St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648; Fechley *v.* Springfield Traction Co., 119 Mo. App. 358, 96 S. W. 421; Peterson *v.* St. Louis Transit Co., 199 Mo. 331, 97 S. W. 860; Agnew *v.* Metropolitan St. R. Co., 125 Mo. App. 587, 102 S. W. 1041; Zalotuchin *v.* Metropolitan St. R. Co., 127 Mo. App. 577, 106 S. W. 548; Hanson *v.* Manchester St. R. Co., 73 N. H. 395, 62 Atl. 595; Scheib *v.* New York City R. Co., 115 N. Y. App. Div. 578, 100 N. Y. Supp. 986; Ward *v.* Brooklyn Heights R. Co., 119 N. Y. App. Div. 487, 104 N. Y. Supp. 95; Doctoroff *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 216, 105 N. Y. Supp. 229; Caminez *v.* Brooklyn, etc., R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 384.

Imputable. — Heidmann *v.* St. Paul City R. Co., (Minn. 1908) 117 N. W. 226; Baxter *v.* St. Louis Transit Co., 198 Mo. 1, 95 S. W. 856; Kerin *v.* United Traction Co., 117 N. Y. App. Div. 314, 102 N. Y. Supp. 423; Unghero *v.* New York City R. Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 610.

Negligence of Driver of Fire Hose Wagon Not Imputable to Fireman on It. — McBride *v.* Des Moines R. Co., 134 Iowa 398, 109 N. W. 618; Burleigh *v.* St. Louis Transit Co., 124 Mo. App. 724, 102 S. W. 621.

Negligence of Driver of Fire Truck Imputable to Fireman on It. — Lambert *v.* Westchester Electric R. Co., 191 N. Y. 248, 83 N. E. 977.

67. 2. *California.* — Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Scott *v.* San Bernardino Valley Traction Co., (Cal. 1907) 93 Pac. 677.

Illinois. — South Chicago City R. Co. *v.* Kinnare, 216 Ill. 451, 75 N. E. 179.

Iowa. — Perjue *v.* Citizens' Electric Light, etc., Co., 131 Iowa 710, 109 N. W. 280; McBride *v.* Des Moines City R. Co., 134 Iowa 398, 109 N. W. 618.

Kansas. — Metropolitan St. R. Co. *v.* Fawcett, (Kan. 1907) 92 Pac. 543.

Massachusetts. — Joyce *v.* Exeter, etc., St. R. Co., 190 Mass. 304, 76 N. E. 1054; O'Leary *v.* Haverhill, etc., R. Co., 193 Mass. 339, 79 N. E. 733; Ahearn *v.* Boston El. R. Co., 194 Mass. 350, 80 N. E. 217.

Minnesota. — Youngquist *v.* Minneapolis St. R. Co., 102 Minn. 501, 114 N. W. 259.

Missouri. — Petersen *v.* St. Louis Transit Co., 114 Mo. App. 374, 89 S. W. 1042; Smedley *v.* St. Louis, etc., R. Co., 118 Mo. App. 103, 93 S. W. 295; Butler *v.* Metropolitan St. R. Co., 117 Mo. App. 354, 93 S. W. 877; Winn *v.* Metropolitan St. R. Co., 121 Mo. App. 623, 97 S. W. 547; Peterson *v.* St. Louis Transit Co., 199 Mo. 331, 97 S. W. 860; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Martens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; White *v.* St. Louis, etc., R. Co., 202 Mo. 539, 101 S. W. 14; Carey *v.* Metropolitan St. R. Co., 125 Mo. App. 188, 101 S. W. 1123; Hall *v.* St. Louis, etc., R. Co., 124 Mo. App. 661, 101 S. W. 1137; Parker-Washington Co. *v.* St. Louis Transit Co., (Mo. App. 1908) 109 S. W. 1073.

Nebraska. — Coffey *v.* Omaha, etc., St. R. Co., (Neb. 1907) 112 N. W. 589.

New York. — Volosko *v.* Interurban St. R. Co., 113 N. Y. App. Div. 747, 99 N. Y. Supp. 484; Lamb *v.* Union R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 97.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838; Loofbourow *v.* Utah Light, etc., Co., (Utah 1908) 94 Pac. 981.

Washington. — Hall *v.* Washington Water Power Co., (Wash. 1907) 89 Pac. 553.

Wisconsin. — Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120.

3. *Alabama.* — Birmingham R., etc., Co. *v.* Jones, 146 Ala. 277, 41 So. 146; Birmingham R., etc., Co. *v.* Ryan, (Ala. 1906) 41 So. 616; Birmingham R., etc., Co. *v.* Clarke, (Ala. 1906) 41 So. 829; Garth *v.* North Alabama Traction Co., (Ala. 1906) 42 So. 627; Birmingham R., etc., Co. *v.* Brown, (Ala. 1907) 44 So. 572; Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177.

Arkansas. — Hot Springs St. R. Co. *v.* Charlton, 76 Ark. 615, 88 S. W. 1006; Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976; Ft. Smith Light, etc., Co. *v.* Flint, 81 Ark. 231, 99 S. W. 79.

California. — Bennichsen *v.* Market St. R. Co., 149 Cal. 18, 84 Pac. 420; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976; Hamlin *v.* Pacific Electric R. Co., 150 Cal. 776, 89 Pac. 1109.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 68 [67]; Lintz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Connecticut. — Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Delaware. — Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Indiana. — Indianapolis Traction, etc., Co. *v.* Smith, 38 Ind. App. 160, 77 N. E. 1140; Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514.

Iowa. — Doherty *v.* Des Moines City R. Co., (Iowa 1907) 114 N. W. 183; Powers *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 494.

Kansas. — Metropolitan St. R. Co. *v.* Summers, 75 Kan. 342, 89 Pac. 652.

Kentucky. — Louisville R. Co. *v.* Hoskins, (Ky. 1905) 88 S. W. 1087; Louisville R. Co. *v.* Edelen, (Ky. 1906) 96 S. W. 901; Paducah Traction Co. *v.* Sine, (Ky. 1908) 111 S. W. 356.

Maryland. — State *v.* Cumberland, etc., Electric R. Co., (Md. 1907) 68 Atl. 107.

Michigan. — Allworth *v.* Muskegon Traction,

etc., Co., 142 Mich. 25, 105 N. W. 75; Daniels *v.* Bay City Traction, etc., Co., 143 Mich. 493, 107 N. W. 94.

Minnesota. — Rawitzer *v.* St. Paul City R. Co., 98 Minn. 294, 108 N. W. 271.

Missouri. — Waechter *v.* St. Louis, etc., R. Co., 113 Mo. App. 270, 88 S. W. 147; Waddell *v.* Metropolitan St. R. Co., 113 Mo. App. 680, 88 S. W. 765; Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Williams *v.* Metropolitan St. R. Co., 114 Mo. App. 1, 89 S. W. 59; Jager *v.* Metropolitan St. R. Co., 114 Mo. App. 10, 89 S. W. 62; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Boring *v.* Metropolitan St. R. Co., 194 Mo. 541, 92 S. W. 655; Rodgers *v.* St. Louis Transit Co., 117 Mo. App. 678, 92 S. W. 1154; Lennon *v.* St. Louis, etc., R. Co., 198 Mo. 514, 94 S. W. 975; Baxter *v.* St. Louis Transit Co., 198 Mo. 1, 95 S. W. 856; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; Barrie *v.* St. Louis Transit Co., 119 Mo. App. 38, 96 S. W. 233; Fechley *v.* Springfield Traction Co., 119 Mo. App. 358, 96 S. W. 421; Abbott *v.* Kansas City El. R. Co., 121 Mo. App. 582, 97 S. W. 198; Winn *v.* Metropolitan St. R. Co., 121 Mo. App. 623, 97 S. W. 547; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; Mayes *v.* Metropolitan St. R. Co., 121 Mo. App. 614, 97 S. W. 612; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Masterson *v.* St. Louis Transit Co., (Mo. 1906) 98 S. W. 504; Campbell *v.* St. Louis Transit Co., 121 Mo. App. 406, 99 S. W. 58; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Mertens *v.* St. Louis Transit Co., 122 Mo. App. 304, 99 S. W. 512; Richmond *v.* Metropolitan St. R. Co., 123 Mo. App. 495, 100 S. W. 54; Wallack *v.* St. Louis Transit Co., 123 Mo. App. 160, 100 S. W. 496; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655; White *v.* St. Louis, etc., R. Co., 202 Mo. 539, 101 S. W. 14; Bensiek *v.* St. Louis Transit Co., 125 Mo. App. 121, 102 S. W. 587; Grout *v.* Central Electric R. Co., 125 Mo. App. 552, 102 S. W. 1026; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006; Zalotuchin *v.* Metropolitan St. R. Co., 127 Mo. App. 577, 106 S. W. 548; Waddell *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 542; Ross *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 9.

Nebraska. — Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

New Hampshire. — Hanson *v.* Manchester St. R. Co., 73 N. H. 395, 62 Atl. 595.

New York. — Kerin *v.* United Traction Co., 117 N. Y. App. Div. 314, 102 N. Y. Supp. 423.

North Carolina. — Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Rhode Island. — Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584; Butler *v.* Rhode Island Co., (R. I. 1907) 68 Atl. 425.

Tennessee. — Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

Texas. — Beaty *v.* El Paso Electric R. Co., (Tex. Civ. App. 1905) 91 S. W. 365; Northern Texas Traction Co. *v.* Thompson, (Tex. Civ. App. 1906) 95 S. W. 708; Northern Texas Traction Co. *v.* Mullins, (Tex. Civ. App. 1906) 99 S. W. 433; San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863; Dallas Consol. Electric St. R. Co. *v.* Conn, (Tex. Civ. App. 1907) 100 S. W. 1019; San Antonio Traction Co. *v.* Kelleher, (Tex. Civ. App. 1908) 107 S. W. 64; El Paso Electric R. Co. *v.* Kelly, (Tex. Civ. App. 1908) 109 S. W. 415; Northern Texas Traction Co. *v.* Smith, (Tex. Civ. App. 1908) 110 S. W. 774.

Washington. — Hall *v.* Washington Water Power Co., (Wash. 1907) 89 Pac. 553.

5. *Arkansas.* — Little Rock R., etc., Co. *v.* Newman, 77 Ark. 599, 92 S. W. 864.

Connecticut. — Garfield *v.* Hartford, etc., St. R. Co., (Conn. 1907) 67 Atl. 890.

Delaware. — White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Davis *v.* People's R. Co., 5 Penn. (Del.) 253, 64 Atl. 70; Ward *v.* Wilmington City R. Co., 5 Penn. (Del.) 369, 64 Atl. 246; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589; Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Illinois. — Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232.

Maryland. — United R., etc., Co. *v.* Cloman, (Md. 1908) 69 Atl. 379.

Massachusetts. — Caswell *v.* Boston El. R. Co., 190 Mass. 527, 77 N. E. 380; Holloran *v.* Worcester Consol. St. R. Co., 192 Mass. 104, 78 N. E. 381.

Missouri. — Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962; Barrie *v.* St. Louis Transit Co., 119 Mo. App. 38, 96 S. W. 233; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Wallack *v.* St. Louis Transit Co., 123 Mo. App. 160, 100 S. W. 496.

New Jersey. — Brink *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 705.

New York. — Cunningham *v.* Dry Dock, etc., R. Co., (Supm. Ct. App. T.) 96 N. Y. Supp. 1070; Thau *v.* New York City R. Co., (Supm. Ct. App. T.) 99 N. Y. Supp. 329; Beirne *v.* Union R. Co., 114 N. Y. App. Div. 90, 99 N. Y. Supp. 584; Bang *v.* New York, etc., R. Co., 113 N. Y. App. Div. 673, 99 N. Y. Supp. 946; Clancy *v.* New York City R. Co., 115 N. Y. App. Div. 569, 100 N. Y. Supp. 1046; Healy *v.* United Traction Co., 115 N. Y. App. Div. 868, 101 N. Y. Supp. 331.

North Carolina. — Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Pennsylvania. — Leitzel *v.* Harrisburg Traction Co., 212 Pa. St. 608, 62 Atl. 102; Mulvaney *v.* Pittsburgh R. Co., 213 Pa. St. 343, 62 Atl. 926; Hoffman *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 87, 63 Atl. 409; Moyer *v.* United Traction Co., (Pa. 1908) 70 Atl. 551.

Texas. — Beaty *v.* El Paso Electric R. Co., (Tex. Civ. App. 1905) 91 S. W. 365.

Washington. — Mey *v.* Seattle Electric Co., (Wash. 1907) 92 Pac. 283.

Injuries Must Be Proved as Result of Negligent Act. — Goodman *v.* New York City R. Co., (Supm. Ct. App. T.) 95 N. Y. Supp. 544.

In an Action for Injuries causing the death

of a horse, plaintiff must show that no other cause intervened before death, and that the death was caused by the injuries. Nocera *v.* Brooklyn Heights R. Co., 113 N. Y. App. Div. [illegible] N. Y. Supp. 340.

68. 1. **Declarations of Motorman or Conductor Res Gestæ.** — Chicago City R. Co. *v.* [illegible] Ill. [illegible] N. E. 525.

2. Fogarty *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 69 Atl. 964.

3. *United States.* — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709; Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595; Cluff *v.* Pittsburg R. Co., 144 Fed. 710; Pittsburg R. Co. *v.* Chapman, (C. C. A.) 145 Fed. 886.

Alabama. — Birmingham R., etc., Co. *v.* Livingston, 144 Ala. 313, 39 So. 374; Montgomery St. R. Co. *v.* Lewis, (Ala. 1906) 41 So. 736; Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177; Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198.

Arkansas. — Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976; Southwestern Tel., etc., Co. *v.* Wyane, (Ark. 1908) 111 S. W. 987.

California. — Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738.

Colorado. — Lintz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Delaware. — Wood *v.* Wilmington City R. Co., 5 Penn. (Del.) 369, 64 Atl. 246; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Georgia. — Savannah Electric Co. *v.* Crawford, (Ga. 1908) 60 S. E. 1056.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Illinois. — Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821; O'Leary *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 233; Leighton *v.* Chicago Consol. Traction Co., (Ill. 1908) 85 N. E. 309; Hackett *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 320.

Indiana. — Roberts *v.* Terre Haute Electric Co., 37 Ind. App. 664, 76 N. E. 895; Folz *v.* Evansville Electric R. Co., (Ind. App. 1907) 80 N. E. 868; Louisville, etc., Traction Co. *v.* Short, (Ind. App. 1908) 83 N. E. 265.

Iowa. — Powers *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 494; Remillard *v.* Sioux City Traction Co., (Iowa 1908) 115 N. W. 900.

Massachusetts. — Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740; Carey *v.* Milford R. Co., 193 Mass. 161, 78 N. E. 1001; Beale *v.* Old Colony St. R. Co., 196 Mass 119, 81 N. E. 867; Miller *v.* Boston, etc., St. R. Co., (Mass. 1908) 83 N. E. 990.

Missouri. — Waddell *v.* Metropolitan St. R. Co., 113 Mo. App. 680, 88 S. W. 765; Jager *v.* Metropolitan St. R. Co., 114 Mo. App. 10, 89 S. W. 62; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Koeni *v.* Union Depot R. Co., 194 Mo. 564, 92 S. W. 497; Bensiek *v.* St. Louis Transit Co., 125 Mo. App. 121, 102 S. W. 587; Agnew *v.* Metropolitan St. R. Co., 125 Mo. App. 587, 102 S. W. 1041; Parker-Washington Co. *v.* St. Louis Transit Co., (Mo. App. 1908) 109 S. W. 1073; Heinzle *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 536; Waddell *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 542.

New Hampshire. — Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404.

New Jersey. — Hageman *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 834; Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74; Glasco *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 68 Atl. 1074; Slater *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 163.

New York. — Lambert *v.* Westchester Electric R. Co., 115 N. Y. App. Div. 78, 100 N. Y. Supp. 665; Duffy *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 177, 101 N. Y. Supp. 767; Murphy *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 56 Misc (N. Y.) 598, 107 N. Y. Supp. 96.

Pennsylvania. — Cox *v.* Schuylkill Valley Traction Co., 214 Pa. St. 223, 63 Atl. 599; Conner *v.* Pittsburg R. Co., 216 Pa. St. 609, 65 Atl. 1106; Kaselicska *v.* Pittsburg R. Co., (Pa. 1908) 68 Atl. 1018; Saxton *v.* Pittsburg R. Co., (Pa. 1908) 68 Atl. 1022; Latarewicz *v.* United Traction Co., (Pa. 1908) 69 Atl. 995.

Rhode Island. — Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584; Shirley *v.* Rhode Island Co., (R. I. 1907) 67 Atl. 585.

Tennessee. — Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319.

Washington. — Hall *v.* Washington Water Power Co., (Wash 1907) 89 Pac. 553.

Wisconsin. — Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973; Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120.

4. *Alabama.* — Schneider *v.* Mobile Light, etc., Co., 146 Ala. 344, 40 So. 761.

Delaware. — Davis *v.* People's R. Co., 5 Penn. (Del.) 253, 64 Atl. 70; Messing *v.* Wilmington City R. Co., 5 Penn. (Del.) 526, 64 Atl. 247.

Iowa. — Sharpnack *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 475.

Maryland. — State *v.* Cumberland, etc., Electric R. Co., (Md. 1907) 68 Atl. 197.

Michigan. — Wade *v.* Detroit, etc., R. Co., (Mich. 1908) 115 N. W. 713.

Missouri. — Boring *v.* Metropolitan St. R. Co., 194 Mo. 541, 92 S. W. 655; Lennon *v.* St. Louis, etc., R. Co., 198 Mo. 514, 94 S. W. 975; Higgins *v.* St. Louis, etc., R. Co., 197 Mo. 300, 95 S. W. 863; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480.

Nebraska. — Olney *v.* Omaha, etc., St. R. Co., (Neb. 1907) 111 N. W. 784.

New Jersey. — Jelly *v.* North Jersey St. R. Co., (N. J. 1908) 68 Atl. 1081.

North Carolina. — Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Oklahoma. — Metropolitan R. Co. *v.* Fonville, (Okla. 1907) 91 Pac. 902.

Pennsylvania. — Leitzel *v.* Harrisburg Traction Co., 212 Pa. St. 608, 62 Atl. 102; Sontgen *v.* Kittanning, etc., St. R. Co., 213 Pa. St. 114, 62 Atl. 523; Wright *v.* Monongahela St. R. Co., 213 Pa. St. 318, 62 Atl. 918; Mulvaney *v.* Pittsburgh R. Co., 213 Pa. St. 343, 62 Atl. 926; Hoffman *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 87, 63 Atl. 409; Griffith *v.* West Chester St. R. Co., 214 Pa. St. 293, 63 Atl. 740; Baicker

v. People's St. R. Co., 215 Pa. St. 478, 64 Atl. 675; Kannenberg *v.* Conestoga Traction Co., 215 Pa. St. 555, 64 Atl. 680; Small *v.* Pittsburg R. Co., 216 Pa. St. 584, 65 Atl. 76; Kochesperger *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 320, 66 Atl. 547.

Washington. — Skinner *v.* Tacoma R., etc., Co., (Wash. 1907) 89 Pac. 488.

Court May Direct Verdict for Defendant. — Brockschmidt *v.* St. Louis, etc., R. Co., 205 Mo. 435, 103 S. W. 964.

5. *United States.* — Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599.

California. — Henderson *v.* Los Angeles Traction Co., 150 Cal. 689, 89 Pac. 976; Scott *v.* San Bernardino Valley Traction Co., (Cal. 1907) 93 Pac. 677.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630.

Connecticut. — McCarthy *v.* Consolidated R. Co., 79 Conn. 73, 63 Atl. 725; Garfield *v.* Hartford, etc., St. R. Co., 79 Conn. 458, 65 Atl. 598; Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Delaware. — White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589.

Indiana. — Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Indianapolis St. R. Co. *v.* Coyner, 39 Ind. App. 510, 80 N. E. 168.

Iowa. — Adam *v.* Union Electric Co., (Iowa 1908) 116 N. W. 332.

Kentucky. — Louisville R. Co. *v.* Hoskins, (Ky. 1905) 88 S. W. 1087; Palmer Transfer Co. *v.* Paducah R., etc., Co., (Ky. 1905) 89 S. W. 515; Lexington R. Co. *v.* Fain, (Ky. 1906) 90 S. W. 574; Louisville R. Co. *v.* Hutchcraft, (Ky. 1907) 105 S. W. 983; Lexington R. Co. *v.* Woodward, (Ky. 1908) 106 S. W. 853; South Covington, etc., St. R. Co. *v.* Besse, (Ky. 1908) 108 S. W. 848; Paducah Traction Co. *v.* Sine, (Ky. 1908) 111 S. W. 356.

Maryland. — United R., etc., Co. *v.* Watkins, 102 Md. 264, 62 Atl. 234.

Massachusetts. — Rubinovitch *v.* Boston El. R. Co., (Mass. 1906) 77 N. E. 895; Halloran *v.* Worcester Consol. St. R. Co., 192 Mass. 104, 78 N. E. 381; Lepper *v.* Boston El. R. Co., 192 Mass. 46, 78 N. E. 384; Green *v.* Haverhill, etc., R. Co., 193 Mass. 428, 79 N. E. 735; Chaput *v.* Haverhill, etc., St. R. Co., 194 Mass. 218, 82 N. E. 597; Le Baron *v.* Old Colony St. R. Co., (Mass. 1908) 83 N. E. 674; Jeddrey *v.* Boston, etc., St. R. Co., (Mass. 1908) 84 N. E. 317.

Minnesota. — Mullane *v.* St. Paul City R. Co., (Minn. 1908) 116 N. W. 354.

Missouri. — Latson *v.* St. Louis Transit Co., 192 Mo. 440, 91 S. W. 109; Hebeler *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 34.

New Hampshire. — Hanson *v.* Manchester St. R. Co., 73 N. H. 305, 62 Atl. 595.

New Jersey. — Migans *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 70 Atl. 168.

New York. — Fancher *v.* Fonda, etc., R. Co., 111 N. Y. App. Div. 4, 97 N. Y. Supp. 666; Muller *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 640, 101 N. Y. Supp. 98; Ross *v.* Metropolitan St. R. Co., 116 N. Y. App. Div. 507, 101 N. Y. Supp. 932; Kear *v.* New York City R. Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 444; Geoghegan *v.* Union R. Co., 122 N. Y. App. Div. 646, 107 N. Y. Supp. 503; Brauner *v.* Third Ave. R. Co., 122 N. Y. App. Div. 572, 107 N. Y. Supp. 759; Frank J. Lennon Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 995; Purcell *v.* Union R. Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 1068; Obenland *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 686; Paladino *v.* Staten Island Midland R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 715.

North Carolina. — Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

Pennsylvania. — Minnich *v.* Wright, 214 Pa. St. 201, 63 Atl. 428; Timler *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 475, 63 Atl. 824; Baicker *v.* People's St. R. Co., 215 Pa. St. 478, 64 Atl. 675.

Rhode Island. — Jenison *v.* Rhode Island Suburban R. Co., (R. I. 1906) 67 Atl. 367.

Tennessee. — Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

Texas. — San Antonio Traction Co. *v.* Yost, (Tex. Civ. App. 1905) 88 S. W. 428.

Collision with Fire Engines or Other Fire Apparatus. — Chicago City R. Co. *v.* McDonough, 221 Ill. 69, 77 N. E. 577; McBride *v.* Des Moines City R. Co., 134 Iowa 308, 109 N. W. 618; Dole *v.* New Orleans R., etc., Co., (La. 1908) 46 So. 929; Duffghe *v.* Metropolitan St. R. Co., 109 N. Y. App. Div. 603, 96 N. Y. Supp. 1125.

69. 1. Sharpnack *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 475; Hebeler *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 34; Klasson *v.* Interurban St. R. Co., 116 N. Y. App. Div. 153, 101 N. Y. Supp. 581; Litzour *v.* New York City R. Co., 116 N. Y. App. Div. 477, 101 N. Y. Supp. 990; Blue Ridge Light, etc., Co. *v.* Tutwiler, 106 Va. 54, 55 S. E. 539.

Car Leaving Track and Inflicting Injury Prima Facie Negligence. — Chicago Union Traction Co. *v.* Giese, 229 Ill. 260, 82 N. E. 232.

Fire Hose Truck Crossing Tracks Colliding with Car. — Wood *v.* New Orleans R., etc., [illegible]

Driver Backing Off Track When Partly Across. — Baicker *v.* People's St. R. Co., 215 Pa. St. 478, 64 Atl. 675.

2. *United States.* — Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599.

Alabama. — Anniston Electric, etc., Co. *v.* Elwell, 144 Ala. 317, 42 So. 45.

Arkansas. — Hot Springs St. R. Co. *v.* Charlton, 76 Ark. 615, 88 S. W. 1006.

California. — Scott *v.* San Bernardino Valley Traction Co., (Cal. 1907) 93 Pac. 677.

Connecticut. — Garfield *v.* Hartford, etc., St. R. Co., 79 Conn. 458, 65 Atl. 598; Bell *v.* Hartford, etc., St. R. Co., 79 Conn. 722, 65 Atl. 600; Garfield *v.* Hartford, etc., St. R. Co., (Conn. 1907) 67 Atl. 800.

Delaware. — Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Heidelbaugh *v.* People's R.

Co., (Del. 1907) 65 Atl. 587; Weldon v. People's R. Co., (Del. 1906) 65 Atl. 589; Wilmington City R. Co. v. White, (Del. 1907) 66 Atl. 1009.

Georgia. — Georgia R., etc., Co. v. Blacknall, 122 Ga. 310, 50 S. E. 92; Carger v. Macon R., etc., Co., 126 Ga. 626, 55 S. E. 914; Macon R., etc., Co. v. Carger, (Ga. App. 1908) 61 S. E. 882.

Illinois. — Chicago City R. Co. v. McDonough, 221 Ill. 69, 77 N. E. 577; Chicago Union Traction Co. v. Giese, 229 Ill. 260, 82 N. E. 232.

Indiana. — Indianapolis St. R. Co. v. Marschke, 166 Ind. 490, 77 N. E. 945; Indianapolis St. R. Co. v. Bolin, 39 Ind. 169, 78 N. E. 210; Indianapolis St. R. Co. v. Demaree, (Ind. App. 1907) 80 N. E. 687.

Iowa. — McBride v. Des Moines City R. Co., 134 Iowa 398, 109 N. W. 618; Ramsey v. Cedar Rapids, etc., R. Co., (Iowa 1907) 112 N. W. 798.

Kansas. — Metropolitan St. R. Co. v. Fawcett, (Kan. 1907) 92 Pac. 543.

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Maryland. — United R., etc., Co. v. Watkins, 102 Md. 264, 62 Atl. 234.

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5. *Colorado.* — Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 70.

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6. Louisville R. Co. *v.* Boutellier, (Ky. 1908) 110 S. W. 357; Stubbs *v.* Boston, etc., R. Co., 193 Mass. 513, 79 N. E. 795; Baxter *v.* St. Louis Transit Co., 198 Mo. 1, 95 S. W. 856; Richmond *v.* Metropolitan St. R. Co., 123 Mo. App. 495, 100 S. W. 54; Bensiek *v.* St. Louis Transit Co., 125 Mo. App. 121, 102 S. W. 587; Ross *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 9; Central Brewing Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 523, 97 N. Y. Supp. 1025; Doctoroff *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 216, 105 N. Y. Supp. 229; Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

71. 1. Schneider *v.* Mobile Light, etc., Co., 146 Ala. 344, 40 So. 761; Latson *v.* St. Louis Transit Co., 192 Mo. 449, 91 S. W. 109.

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7. Blue Ridge Light, etc., Co. *v.* Tutwiler, 106 Va. 54, 55 S. E. 539.

8. Birmingham R., etc., Co. *v.* Clarke, (Ala. 1906) 41 So. 829; Little Rock R., etc., Co. *v.* Green, 78 Ark. 129, 93 S. W. 752; Louisville R. Co. *v.* Boutellier, (Ky. 1908) 110 S. W. 357;

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9. Little Rock R., etc., Co. *v.* Green, 78 Ark. 129, 93 S. W. 752.

10. Little Rock R., etc., Co. *v.* Green, 78 Ark. 129, 93 S. W. 752; Foley *v.* Forty-Second St., etc., R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 649, 97 N. Y. Supp. 958.

11. Columbus St. R., etc., Co. *v.* Reap, (Ind. App. 1907) 82 N. E. 977, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 71.

72. 2. Obenland *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 686.

4. *United States.* — Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599.

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Indiana. — Indianapolis St. R. Co. *v.* Hackney, 39 Ind. App. 372, 77 N. E. 1048; Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Indianapolis St. R. Co. *v.* Coyner, 39 Ind. App. 510, 80 N. E. 168.

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Minnesota. — Mullane *v.* St. Paul City R. Co., (Minn. 1908) 116 N. W. 354; Heidmann *v.* St. Paul City R. Co., (Minn. 1908) 117 N. W. 226.

Missouri. — Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Heintz *v.* St. Louis Transit Co., 115 Mo. App. 667, 92 S. W. 353; Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115; Ripley *v.* Metropolitan St. R. Co., (Mo. App. 1908) 111 S. W. 1180.

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New York. — Murphy *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 717, 97 N. Y. Supp. 483; Central Brewing Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 523, 97 N. Y. Supp. 1025; Brooks *v.* International R. Co., 112 N. Y. App. Div. 555, 98 N. Y. Supp. 765; Palmer *v.* Larchmont Horse R. Co., 112 N. Y. App. Div. 341, 98 N. Y. Supp. 567; Muller *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 640, 101 N. Y. Supp. 98; Ciarcia *v.* Westchester Electric R. Co., 116 N. Y. App. Div. 899, 102 N. Y. Supp. 428; Ward *v.* Brooklyn Heights R. Co., 119 N. Y. App. Div. 487, 104 N. Y. Supp. 95; Kear *v.* New York City R. Co., (Supm. Ct. App. T.) 104 N. Y. Supp. 444; Heckmuller *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 541, 104 N. Y. Supp. 670; McGurgan *v.* New York City R. Co., 121 N. Y. App. Div. 519, 106 N. Y. Supp. 201; Geoghegan *v.* Union R. Co., 122 N. Y. App. Div. 646, 107 N. Y. Supp. 503; Brauner *v.* Third Ave. R. Co., 122 N. Y. App. Div. 572, 107 N. Y. Supp. 759; Lambert *v.* Westchester Electric R. Co., 191 N. Y. 248, 83 N. E. 977.

North Carolina. — Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

Pennsylvania. — Minnich *v.* Wright, 214 Pa. St. 201, 63 Atl. 428; Boggs *v.* Pittsburg, etc., R. Co., 216 Pa. St. 314, 65 Atl. 535; Mortimer *v.* Beaver Valley Traction Co., 216 Pa. St. 326, 65 Atl. 758; Barto *v.* Beaver Valley Traction Co., 216 Pa. St. 328, 65 Atl. 792; Emmel *v.* Pittsburg R. Co., 216 Pa. St. 541, 65 Atl. 1083.

Rhode Island. — Jenison *v.* Rhode Island Suburban R. Co., (R. I. 1906) 67 Atl. 367.

Washington. — Niemyer *v.* Washington Water Power Co., 45 Wash. 170, 88 Pac. 103.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

Fireman Going to Fire with the Right of Way. — Chicago City R. Co. *v.* McDonough, 221 Ill. 69, 77 N. E. 577.

When the Facts Are Undisputed, and only one inference can be drawn, the question of contributory negligence is one of law for the court to determine. Baxter *v.* Auburn, etc., Electric R. Co., 190 N. Y. 439, 83 N. E. 469.

73. 2. South Chicago City R. Co. *v.* Kinnare, 216 Ill. 451, 75 N. E. 179.

Contributory Negligence Not to Turn Away Quickly from Near Tracks. — McClelland *v.* Pittsburg R. Co., 216 Pa. St. 593, 66 Atl. 76.

3. Joyce *v.* Exeter, etc., St. R. Co., 190 Mass. 304, 76 N. E. 1054; Carey *v.* Milford, etc., R. Co., 193 Mass. 161, 78 N. E. 1001; Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Obenland *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 686.

Helper Guilty of Contributory Negligence in Unloading Wagon by Leaning over Tracks Without Looking. — Volosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090.

4. Stacey *v.* Haverhill, etc., St. R. Co., 191 Mass. 326, 77 N. E. 714.

Not Negligence Per Se. — Moulton *v.* Lewiston, etc., St. R. Co., 102 Me. 186, 66 Atl. 388.

5. **So Near the Car that Wagon Is Struck.** — Waters *v.* United Traction Co., 114 N. Y. App. Div. 275, 99 N. Y. Supp. 763.

6. Joyce *v.* Exeter, etc., St. R. Co., (Mass. 1906) 76 N. E. 1054; Carey *v.* Milford, etc., R. Co., 193 Mass. 161, 78 N. E. 1001; Volosko *v.* Interurban St. R. So., 190 N. Y. 206, 82 N. E. 1090.

7. United R., etc., Co. *v.* Cloman, (Md. 1908) 69 Atl. 379; Rapp *v.* St. Louis Transit Co., 190 Mo. 144, 88 S. W. 865; Baxter *v.* St. Louis Transit Co., 198 Mo. 1, 95 S. W. 856; Mayes *v.* Metropolitan St. R. Co., 121 Mo. App. 614, 97 S. W. 612; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006; Ross *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 9; Kueski *v.* New York, etc., R. Co., 109 N. Y. App. Div. 207, 95 N. Y. Supp. 650; Palmer *v.* Larchmont Horse R. Co., 112 N. Y. App. Div. 341, 98 N. Y. Supp. 567; Ciarcia *v.* Westchester Electric R. Co., 116 N. Y. App. Div. 899, 102 N. Y. Supp. 428; Barto *v.* Beaver Valley Traction Co., 216 Pa. St. 328, 65 Atl. 792; Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

Driving Near Track Not Negligence Per Se. — Logan *v.* Old Colony St. R. Co., 190 Mass. 115, 76 N. E. 510.

74. 1. See Williamson *v.* Old Colony St. R. Co., 191 Mass. 144, 77 N. E. 655.

3. Minnich *v.* Wright, 214 Pa. St. 201, 63 Atl. 428; Sturgeon *v.* Beaver Valley Traction Co., 216 Pa. St. 322, 65 Atl. 757; Mortimer *v.* Beaver Valley Traction Co., 216 Pa. St. 326, 65 Atl. 758.

4. South Covington, etc., St. R. Co. *v.* Besse, (Ky. 1908) 108 S. W. 848; Allworth *v.* Muskegon Traction, etc., Co., 142 Mich. 25, 105 N. W. 75; Ciarcia *v.* Westchester Electric R. Co., 116 N. Y. App. Div. 899, 102 N. Y. Supp. 428; Paladino *v.* Staten Island Midland R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 715; Minnich *v.* Wright, 214 Pa. St. 201, 63 Atl. 428; Sturgeon *v.* Beaver Valley Traction Co., 216 Pa. St. 322, 65 Atl. 757; Memphis St. R. Co. *v.* Roe, 118 Tenn. 601, 102 S. W. 343.

5. Theobald *v.* St. Louis Transit Co., 191 Mo. 395, 90 S. W. 354; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006; Ross *v.* Metropolitan St. R. Co., (Mo. App. 1908) 112 S. W. 9; Kueski *v.* New York, etc., R. Co., 109 N. Y. App. Div. 207, 95 N. Y. Supp. 650; Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

6. Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630; Zander *v.* St. Louis Transit Co., 206 Mo. 445, 103 S. W. 1006.

7. Peterson *v.* St. Louis Transit Co., 199 Mo. 331, 97 S. W. 860; Bensiek *v.* St. Louis Transit Co., 125 Mo. App. 121, 102 S. W. 587.

The Driver May Presume Motorman Is on Lookout Behind Him for His Safety. — Mayes *v.* Metropolitan St. R. Co., 121 Mo. App. 614, 97 S. W. 612.

8. Robinson *v.* Crosstown St. R. Co., 118 N. Y. App. Div. 543, 103 N. Y. Supp. 58; Dietrich *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 108 N. Y. Supp. 158; Mortimer *v.* Beaver Valley Traction Co., 216 Pa. St. 326, 65 Atl. 758; Barto *v.* Beaver Valley Traction Co., 216 Pa. St. 328, 65 Atl. 792.

9. Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Adam *v.* Union Electric Co., (Iowa 1908) 116 N. W. 332; Stubbs *v.* Boston, etc., R. Co., 193 Mass. 513, 79 N. E. 795; Baxter *v.* St. Louis Transit Co., 198 Mo. 1, 95 S. W. 856; Winn *v.* Metropolitan St. R. Co., 121 Mo. App. 623, 97 S. W. 547; Mattes *v.* New York City R. Co., (Supm. Ct. App. T.) 95 N. Y. Supp. 596; Littlefield *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 637, 101 N. Y. Supp. 75.

10. *Connecticut.* — McCarthy *v.* Consolidated R. Co., 79 Conn. 73, 63 Atl. 725; Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Delaware. — Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Weldon *v.* People's R. Co., (Del. 1906) 65 Atl. 589.

Illinois. — Chicago Union Traction Co. *v.* Jacobson, 217 Ill. 404, 75 N. E. 508.

Indiana. — Indianapolis St. R. Co. *v.* Hoffman, (Ind. App. 1907) 82 N. E. 543.

Iowa. — Adam *v.* Union Electric Co., (Iowa 1908) 116 N. W. 332.

Maryland. — United R., etc., Co. *v.* Watkins, 102 Md. 264, 62 Atl. 234.

Massachusetts. — Williamson *v.* Old Colony St. R. Co., 191 Mass. 144, 77 N. E. 655; Erb *v.* Boston El. R. Co., 191 Mass. 482, 78 N. E. 117; Green *v.* Haverhill, etc., R. Co., 193 Mass. 428, 79 N. E. 735; Stubbs *v.* Boston, etc., R. Co., 193 Mass. 513, 79 N. E. 795; Carrahan *v.* Boston, etc., St. R. Co., (Mass. 1908) 85 N. E. 162.

Missouri. — Higgins *v.* St. Louis, etc., R. Co., 197 Mo. 300, 95 S. W. 863; Winn *v.* Metropolitan St. R. Co., 121 Mo. App. 623, 97 S. W. 547; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555.

New York. — Kueski *v.* New York, etc., R. Co., 109 N. Y. App. Div. 207, 95 N. Y. Supp. 650; Frank J. Lennon Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 995; Purcell *v.* Union R. Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 1068.

North Carolina. — Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Pennsylvania. — Baicker *v.* People's St. R. Co., 215 Pa. St. 478, 64 Atl. 675; Boggs *v.* Pitsburg, etc., R. Co., 216 Pa. St. 314, 65 Atl. 535.

11. Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

12. Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 74; Scott *v.* San Bernardino Valley Traction Co., (Cal. 1907) 93 Pac. 677; Adam *v.* Union Electric Co., (Iowa 1908) 116 N. W. 332; Wider *v.* Detroit United R. Co., 147 Mich. 537, 111 N. W. 100; Cutler *v.* Grand Rapids, etc., R. Co., 147 Mich. 615, 111 N. W. 191; Heintz *v.* St. Louis Transit Co., 115 Mo. App. 667, 92 S. W. 353; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; Hauck-Hoerr Bakery Co. *v.* United R. Co., 127 Mo. App. 190, 104 S. W. 1137; Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

75. 1. *California.* — Brown *v.* Los Angeles R. Co., 2 Cal. App. 618, 84 Pac. 362.

Indiana. — Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Indianapolis St. R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436; Indianapolis St. R. Co. *v.* Hoffman, (Ind. App. 1907) 82 N. E. 543.

Iowa. — Adam *v.* Union Electric Co., (Iowa 1908) 116 N. W. 332.

Kansas. — Metropolitan St. R. Co. *v.* Summers, 75 Kan. 342, 89 Pac. 652.

Massachusetts. — Harris *v.* Fitchburg, etc., R. Co., 193 Mass. 56, 78 N. E. 773.

Missouri. — Petersen *v.* St. Louis Transit Co., 114 Mo. App. 374, 89 S. W. 1042; Grout *v.* Central Electric Co., 125 Mo. App. 552, 102 S. W. 1026; Hauck-Hoerr Pakery Co. *v.* United R. Co., 127 Mo. App. 190, 104 S. W. 1137.

New York. — Brooks *v.* International R. Co., 112 N. Y. App. Div. 555, 98 N. Y. Supp. 765; Muller *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 640, 101 N. Y. Supp. 98; Frank J. Lennon Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 995.

Rhode Island. — Oates *v.* Union R. Co., 27 R. I. 499, 63 Atl. 675.

West Virginia. — Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

Proper to Assume that Car Will Make

Usual Stop Before Reaching Vehicle. — Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115.

While a Person Attempting to Cross can presume the cars are not violating the speed ordinance, he is not thereby absolved from exercising ordinary care, and such presumption would merely go to affect the question of what would be ordinary care under the circumstances. Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

2. *Alabama.* — Birmingham R., etc., Co. *v.* Clarke, (Ala. 1906) 41 So. 829.

Connecticut. — McCarthy *v.* Consolidated R. Co., 79 Conn. 73, 63 Atl. 725.

Michigan. — Daniels *v.* Bay City Traction, etc., Co., 143 Mich. 493, 107 N. W. 94; Wider *v.* Detroit United R. Co., 147 Mich. 537, 111 N. W. 100.

Missouri. — Heintz *v.* St. Louis Transit Co., 115 Mo. App. 667, 92 S. W. 353; Higgins *v.* St. Louis, etc., R. Co., 197 Mo. 300, 95 S. W. 863; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; Grout *v.* Central Electric R. Co., 125 Mo. App. 552, 102 S. W. 1026.

Nebraska. — Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

New York. — Kueski *v.* New York, etc., R. Co., 109 N. Y. App. Div. 207, 95 N. Y. Supp. 650; Kiley *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 254, 97 N. Y. Supp. 375; Williams *v.* New York City R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 253, 97 N. Y. Supp. 393; Fancher *v.* Fonda, etc., R. Co., 111 N. Y. App. Div. 4, 97 N. Y. Supp. 666; Norton *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 621, 98 N. Y. Supp. 216; American Ice Co. *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 183, 98 N. Y. Supp. 219; Fisher *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 622, 98 N. Y. Supp. 221; Costello *v.* Forty-second St., etc., R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 628, 98 N. Y. Supp. 648; Walsh *v.* Fonda, etc., R. Co., 114 N. Y. App. Div. 272, 99 N. Y. Supp. 773; Bang *v.* New York, etc., R. Co., 113 N. Y. App. Div. 673, 99 N. Y. Supp. 946; Klasson *v.* Interurban St. R. Co., 116 N. Y. App. Div. 153, 101 N. Y. Supp. 581; Litzour *v.* New York City R. Co., 116 N. Y. App. Div. 477, 101 N. Y. Supp. 990; Moore *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 663, 102 N. Y. Supp. 636; Robinson *v.* Crosstown St. R. Co., 118 N. Y. App. Div. 543, 103 N. Y. Supp. 58; Shatzman *v.* New York City R. Co., (Supm. Ct. App. T.) 55 Misc. (N. Y.) 300, 105 N. Y. Supp. 115; Unghero *v.* New York City R. Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 610; Gilman *v.* New York City R. Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 770.

Oklahoma. — Metropolitan R. Co. *v.* Forville, (Okla. 1907) 91 Pac. 902.

Washington. — Davis *v.* Coeur D'Alene, etc., R. Co., (Wash. 1907) 91 Pac. 839.

Canada. — Livingstone *v.* Sydney, etc., R. Co., 37 Nova Scotia 336.

3. *Alabama.* — Anniston Electric, etc., Co. *v.* Elwell, 144 Ala. 317, 42 So. 45.

California. — Scott *v.* San Bernardino Valley Traction Co., (Cal. 1907) 93 Pac. 677.

Colorado. — Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 75.

Indiana. — Indianapolis St. R. Co. *v.* Bolin, 39 Ind. 169, 78 N. E. 210; Indianapolis St. R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436; Indianapolis St. R. Co. *v.* Demaree, (Ind. App. 1907) 80 N. E. 687.

Maryland. — United R., etc., Co. *v.* Watkins, 102 Md. 264, 62 Atl. 234.

Massachusetts. — Green *v.* Haverhill, etc., R. Co., 193 Mass. 428, 79 N. E. 735; Grogan *v.* Boston El. R. Co., 194 Mass. 448, 80 N. E. 485.

Michigan. — Hengesbach *v.* Detroit United R. Co., 147 Mich. 681, 111 N. W. 345; Deneen *v.* Houghton County St. R. Co., 150 Mich. 235, 113 N. W. 1126.

Missouri. — Petersen *v.* St. Louis Transit Co., 114 Mo. App. 374, 89 S. W. 1042; Hall *v.* St. Louis, etc., R. Co., 124 Mo. App. 661, 101 S. W. 1137; Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115.

New York. — Mattes *v.* New York City R. Co., (Supm. Ct. App. T.) 95 N. Y. Supp. 596; Brooks *v.* International R. Co., 112 N. Y. App. Div. 555, 98 N. Y. Supp. 765; Clancy *v.* New York City R. Co., 115 N. Y. App. Div. 569, 100 N. Y. Supp. 1046; Littlefield *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 637, 101 N. Y. Supp. 75; Heitz *v.* Yonkers R. Co., 117 N. Y. App. Div. 746, 102 N. Y. Supp. 964; Brauner *v.* Third Ave. R. Co., 122 N. Y. App. Div. 572, 107 N. Y. Supp. 759.

Rhode Island. — Butler *v.* Rhode Island Co., (R. I. 1907) 68 Atl. 425.

A Driver Crossing in Front of a Standing Car may assume that the car will not suddenly start. McGurgan *v.* New York City R. Co., 121 N. Y. App. Div. 519, 106 N. Y. Supp. 201.

View Obstructed by Trees until Horse on Track. — Vincent *v.* Lehigh Valley Transit Co., [illegible]

76. 2. Hebblethwaite *v.* Detroit United R. Co., 145 Mich. 13, 108 N. W. 433.

Not Same Degree of Care Necessary for Pedestrian. — Farese *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 959.

3. Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Griffith *v.* West Chester St. R. Co., 214 Pa. St. 292, 63 Atl. 740.

Avoidance of Excavation Near Track by Control of Team. — Leister *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 652, 66 Atl. 866.

4. *California.* — Scott *v.* San Bernardino Valley Traction Co., (Cal. 1907) 93 Pac. 677.

Connecticut. — Smith *v.* Connecticut R., etc., Co., (Conn. 1907) 67 Atl. 888.

Delaware. — White *v.* Wilmington City R. Co., (Del. 1906) 63 Atl. 931; Garrett *v.* People's R. Co., (Del. 1906) 64 Atl. 254; Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

Indiana. — Indianapolis St. R. Co. *v.* Hoffman, (Ind. App. 1907) 82 N. E. 543.

Iowa. — Doherty *v.* Des Moines City R. Co., (Iowa 1907) 114 N. W. 183.

Louisiana. — Dewez *v.* Orleans R. Co., 115 La. 432, 39 So. 433.

Massachusetts. — Stubbs *v.* Boston, etc., R. Co., 193 Mass. 513, 79 N. E. 795; Birch *v.* Athol, etc., St. R. Co., (Mass. 1908) 84 N. E. 710.

Michigan. — Daniels *v.* Bay City Traction, etc., Co., 143 Mich. 493, 107 N. W. 94; Wider *v.* Detroit United R. Co., 147 Mich. 537, 111 N. W. 100.

Missouri. — Higgins *v.* St. Louis, etc., R. Co., 197 Mo. 300, 95 S. W. 863; Fechley *v.* Springfield Traction Co., 119 Mo. App. 358, 96 S. W. 421; Cole *v.* Metropolitan St. R. Co., 121 Mo. App. 605, 97 S. W. 555; Grout *v.* Central Electric R. Co., 125 Mo. App. 552, 102 S. W. 1026; Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115; Hauck-Hoerr Bakery Co. *v.* United R. Co., 127 Mo. App. 190, 104 S. W. 1137; Zalotuchin *v.* Metropolitan St. R. Co., 127 Mo. App. 577, 106 S W. 548.

Nebraska. — Harris *v.* Lincoln Traction Co., (Neb. 1907) 111 N. W. 580.

New York. — Golden *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 521, 98 N. Y. Supp. 848; Walsh *v.* Fonda, etc., R. Co., 114 N. Y. App. Div. 272, 99 N. Y. Supp. 773; Bang *v.* New York, etc., R. Co., 113 N. Y. App. Div. 673, 99 N. Y. Supp. 946; Ward *v.* Brooklyn Heights R. Co., 115 N. Y. App. Div. 104, 100 N. Y. Supp. 671; Muller *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 640, 101 N. Y. Supp. 98; Bernstein *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 579, 102 N. Y. Supp. 799; Robinson *v.* Crosstown St. R. Co., 118 N. Y. App. Div. 543, 103 N. Y. Supp. 58; Baxter *v.* Auburn, etc., Electric R. Co., 190 N. Y. 439, 83 N. E. 469.

North Carolina. — Davis *v.* Durham Traction Co., 141 N. Car. 134, 53 S. E. 617.

Oklahoma. — Metropolitan R. Co. *v.* Fonville, (Okla. 1907) 91 Pac. 902.

Pennsylvania. — Griffith *v.* West Chester St. R. Co., 214 Pa. St. 293, 63 Atl. 740; Timler *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 475, 63 Atl. 824; Kannenberg *v.* Conestoga Traction Co., 215 Pa. St. 555, 64 Atl. 680; Boggs *v.* Pittsburg, etc., R. Co., 216 Pa. St. 314, 65 Atl. 535.

Texas. — Dallas Consol. Electric St. R. Co. *v.* English, (Tex. Civ. App. 1906) 93 S. W. 1096.

Person Driving Alongside Tracks Attempting to Cross to Other Side of Street. — Birmingham R., etc., Co. *v.* Clarke, (Ala. 1906) 41 So. 829.

77. 1. Philbin *v.* Denver City Tramway Co., 36 Colo. 337, 85 Pac. 630, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 77; Stubbs *v.* Boston, etc., R. Co., 193 Mass. 513, 79 N. E. 795; Niemyer *v.* Washington Water Power Co., 45 Wash. 170, 88 Pac. 103.

Failure to Look Negligence Per Se. — Berger *v.* Philadelphia Rapid Transit Co., 141 Fed. 1020; Heinz *v.* St. Louis Transit Co., 115 Mo. App. 667, 92 S. W. 353; Golden *v.* Metropolitan St. R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 521, 98 N. Y. Supp. 848; Walsh *v.* Fonda, etc., R. Co., 114 N. Y. App. Div. 272, 99 N. Y. Supp. 773; Bang *v.* New York, etc., R. Co., 113 N. Y. App. Div. 673, 99 N. Y. Supp. 946; Bernstein *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 579, 102 N. Y. Supp. 799; Caminez *v.* Brooklyn, etc., R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 384; Baxter *v.* Auburn, etc., Electric R. Co., 190 N. Y. 439, 83 N. E. 469; Griffith *v.* West Chester St. R. Co., 214 Pa. St. 293, 63 Atl. 740; Timler *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 475, 63 Atl. 824; Price *v.* Rhode Island Co., (R. I. 1907) 66 Atl. 200.

3. Berger *v.* Philadelphia Rapid Transit Co., 141 Fed. 1020; Percell *v.* Metropolitan St. R. Co., 126 Mo. App. 43, 103 S. W. 115; Fancher *v.* Fonda, etc., R. Co., 111 N. Y. App. Div. 4, 97 N. Y. Supp. 666; Muller *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 640, 101 N. Y. Supp. 98; Robinson *v.* Crosstown St. R. Co., 118 N. Y. App. Div. 543, 103 N. Y. Supp. 58; Baxter *v.* Auburn, etc., Electric R. Co., 190 N. Y. 439, 83 N. E. 469; Timler *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 475, 63 Atl. 824.

78. 1. *Delaware.* — Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Georgia. — Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Illinois. — Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821.

Indiana. — Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514.

Iowa. — Perjue *v.* Citizens' Electric Light, etc., Co., 131 Iowa 710, 109 N. W. 280.

Massachusetts. — Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740.

Missouri. — Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Levelsmeier *v.* St. Louis, etc., R. Co., 114 Mo. App. 412, 90 S. W. 104; Waddell *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 542.

New Jersey. — Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74.

New York. — Reilly *v.* Interurban St. R. Co., 108 N. Y. App. Div. 254, 95 N. Y. Supp. 721; Solomon *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 557, 99 N. Y. Supp. 529; Mullen *v.* Joline, (Supm. Ct. App. T.) 111 N. Y. Supp. 776.

Pennsylvania. — Hoffman *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 87, 63 Atl. 409.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Virginia. — Lynchburg Traction, etc., Co. *v.* Guill, (Va. 1907) 57 S. E. 644.

West Virginia. — Riedel *v.* Wheeling Traction Co., (W. Va. 1908) 61 S. E. 821.

Injuries to Men Working in Street. — Brockschmidt *v.* St. Louis, etc., R. Co., 205 Mo. 435, 103 S. W. 964.

Passing Other Car Discharging or Receiving Passengers. — See Gallinger *v.* Toronto R. Co., 8 Ont. L. Rep. 698.

2. *United States.* — Pittsburg R. Co. *v.* Cluff, (C. C. A.) 149 Fed. 732.

Arkansas. — Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976.

Delaware. — Davis *v.* People's R. Co., 5 Penn. (Del.) 253, 64 Atl. 70; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Maryland. — State *v.* Cumberland, etc., Electric R. Co., (Md. 1907) 68 Atl. 197.

Massachusetts. — Holian *v.* Boston El. R. Co., 194 Mass. 74, 80 N. E. 1.

Minnesota. — O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805.

Missouri. — Waddell *v.* Metropolitan St. R. Co., 113 Mo. App. 680, 88 S. W. 765; Deane *v.* St. Louis Transit Co., 192 Mo. 575, 91 S. W. 505; Boring *v.* Metropolitan St. R. Co., 194 Mo. 541, 92 S. W. 655; Lennon *v.* St. Louis, etc., R. Co., 198 Mo. 514, 94 S. W. 975; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480.

New Jersey. — Van Ness *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 1027.

New York. — McEntee *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 673, 97 N. Y. Supp. 476; Lipis *v.* Metropolitan St. R. Co., 112 N. Y. App. Div. 909, 98 N. Y. Supp. 259; Beirne *v.* Union R. Co., 114 N. Y. App. Div. 90, 99 N. Y. Supp. 584; Marguiles *v.* Interurban St. R. Co., 116 N. Y. App. Div. 157, 101 N. Y. Supp. 499; Padower *v.* New York City R. Co., 119 N. Y. App. Div. 135, 103 N. Y. Supp. 953; McAuliffe *v.* New York City R. Co., 122 N. Y. App. Div. 633, 107 N. Y. Supp. 522; Mullen *v.* Joline, (Supm. Ct. App. T.) 111 N. Y. Supp. 776.

North Carolina. — Crenshaw *v.* Ashville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Pennsylvania. — Crooks *v.* Pittsburg R. Co., 216 Pa. St. 590, 66 Atl. 142; Piatt *v.* Pittsburg R. Co., (Pa. 1908) 69 Atl. 72.

Rhode Island. — Heeran *v.* Rhode Island Co., (R. I. 1906) 67 Atl. 447.

West Virginia. — Riedel *v.* Wheeling Traction Co., (W. Va. 1908) 61 S. E. 821.

Dark, Rainy Night Seventy-five Feet Distant from Car in Outlying District of City. — Healy *v.* United Traction Co., 115 N. Y. App. Div. 868, 101 N. Y. Supp. 331.

4. Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Motorman Justified in Believing Pedestrian Will Have Time to Cross Track. — Hovarka *v.* St Louis Transit Co., 191 Mo. 441, 90 S. W. 1142.

79. 1. Schneider *v.* Mobile Light, etc., Co., 146 Ala. 344, 40 So. 761; Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355; Brockschmidt *v.* St. Louis, etc., R. Co., 205 Mo. 435, 103 S. W. 964; San Antonio Traction Co. *v.* Kelleher, (Tex. Civ. App. 1908) 107 S. W. 64; Mey *v.* Seattle Electric Co., (Wash. 1907) 92 Pac. 283.

2. Lintz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600; Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Boring *v.* Metropolitan St. R. Co., 194 Mo. 541, 92 S. W. 655; Gabriel *v.* Metropolitan St. R. Co., (Mo. App. 1908) 109 S. W. 1042; Duteau *v.* Seattle Electric Co., 45 Wash. 418, 88 Pac. 755; Skinner *v.* Tacoma R., etc., Co., (Wash. 1907) 89 Pac. 488.

3. Hovarka *v.* St. Louis Transit Co., 191 Mo. 441, 90 S. W. 1142.

4. Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74.

No Recovery in the Absence of Negligence. — Where the night is dark and the car not running at an excessive speed in the country between two villages, a failure to observe a pedestrian lying partially on the track is not negligence. Kupiec *v.* Warren, etc., St. R. Co., (Mass. 1907) 82 N. E. 676.

5. *United States* — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709.

Alabama. — Schneider *v.* Mobile Light, etc., Co., 146 Ala. 344, 40 So. 761; Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032.

Arkansas. — Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976.

Delaware. — Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Indiana. — Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514.

Iowa. — Powers *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 494; Remillard *v.* Sioux City Traction Co., (Iowa 1908) 115 N. W. 900.

Kentucky. — Louisville R. Co. *v.* Welker, (Ky. 1906) 94 S. W. 635; Ford *v.* Paducah City R. Co., (Ky. 1907) 99 S. W. 355; Louisville R. Co. *v.* Hofgesand, (Ky. 1907) 104 S. W. 361; South Covington, etc., St. R. Co. *v.* Eichler, (Ky. 1908) 108 S. W. 329.

Massachusetts. — Beale *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867.

Minnesota. — Rawitzer *v.* St. Paul City R. Co., 98 Minn. 294, 108 N. W. 271.

Missouri. — Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Waechter *v.* St. Louis, etc., R. Co., 113 Mo. App. 270, 88 S. W. 147; Williams *v.* Metropolitan St. R. Co., 114 Mo. App. 1, 89 S. W. 59; Jager *v.* Metropolitan St. R. Co., 114 Mo. App. 10, 89 S. W. 62; Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Levelsmeier *v.* St. Louis, etc., R. Co., 114 Mo. App. 412, 90 S. W. 104; Hovarka *v.* St. Louis Transit Co., 191 Mo. 441, 90 S. W. 1142; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; McQuade *v.* St. Louis, etc., R. Co., 200 Mo. 150, 98 S. W. 552; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655; Masterson *v.* St. Louis Transit Co., 204 Mo. 507, 103 S. W. 48; Heinzle *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 536; Waddell *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 542.

New Jersey. — Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74.

New York. — Kostenbaum *v.* New York City R. Co., 120 N. Y. App. Div. 160, 105 N. Y. Supp. 65; Paff *v.* Union R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 145.

Pennsylvania — Wehr *v.* Carbon County Electric R. Co., 217 Pa. St. 490, 66 Atl. 743.

Texas. — Beaty *v.* El Paso Electric R. Co., (Tex. Civ. App. 1905) 91 S. W. 365; Northern Texas Traction Co. *v.* Thompson, (Tex. Civ. App. 1906) 95 S. W. 708; Northern Texas Traction Co. *v.* Mullins, (Tex. Civ. App. 1906) 99 S. W. 433; San Antonio Traction Co. *v.* Haines, (Tex. Civ. App. 1907) 100 S. W. 788; San Antonio Traction Co. *v.* Kelleher, (Tex. Civ. App. 1908) 107 S. W. 64; Northern Texas Traction Co. *v.* Smith, (Tex. Civ. App. 1908) 110 S. W. 774.

6. Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480.

80. 1. Rawitzer *v.* St. Paul City R. Co., 98 Minn. 294, 108 N. W. 271.

2. *Colorado.* — Lintz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600.

Delaware. — Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Indiana. — Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Nelson *v.* Chicago, etc., R. Co., (Ind. App. 1908) 83 N. E. 1019.

Iowa. — Ward *v.* Marshalltown Light, etc., Co., 132 Iowa 578, 108 N. W. 323; Perjue *v.* Citizens' Electric Light, etc., Co., 131 Iowa 710, 109 N. W. 280.

Massachusetts. — Finnick *v.* Boston, etc., St. R. Co., 190 Mass. 382, 77 N. E. 500; Stackpole *v.* Boston El. R. Co., 193 Mass. 562, 79 N. E. 740; Gilligan *v.* Boston El. R. Co., 194 Mass. 576, 80 N. E. 483.

Minnesota. — O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805.

Missouri. — Deane *v.* St. Louis Transit Co., 192 Mo. 575, 91 S. W. 505; Boring *v.* Metropolitan St. R. Co., 194 Mo. 541, 92 S. W. 655; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655.

New Jersey. — Hageman *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 834; Van Ness *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 1027; Glasco *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 68 Atl. 1074; Farese *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 959.

New York. — Axelrod *v.* New York City R. Co., 109 N. Y. App. Div. 87, 95 N. Y. Supp. 1072; McGreevy *v.* New York City R. Co., 113 N. Y. App. Div. 155, 98 N. Y. Supp. 1024; Binder *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 655, 99 N. Y. Supp. 835; Ring *v.* Nassau Electric R. Co., 115 N. Y. App. Div. 674, 101 N. Y. Supp. 389; Peterson *v.* Interurban St. R. Co., 118 N. Y. App. Div. 210, 103 N. Y. Supp. 8; Mullen *v.* Joline, (Supm. Ct. App. T.) 111 N. Y. Supp. 776; Tully *v.* New York City R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 919; Volosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090, *reversing* 113 N. Y. App. Div. 747, 99 N. Y. Supp. 484; Miller *v.* Union R. Co., 191 N. Y. 77, 83 N. E. 583.

Pennsylvania. — Hoffman *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 87, 63 Atl. 409; Kaselicska *v.* Pittsburg R. Co., (Pa. 1908) 68 Atl. 1018.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Washington. — Mey *v.* Seattle Electric Co., (Wash. 1907) 92 Pac. 283.

West Virginia. — Riedel *v.* Wheeling Traction Co., (W. Va. 1908) 61 S. E. 821.

3. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Higgins *v.* Los Angeles R. Co., 5 Cal. App. 748, 91 Pac. 344; Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Waddell *v.* Metropolitan St. R. Co., 113 Mo. App. 680, 88 S. W. 765; Deane *v.* St. Louis Transit Co., 192 Mo. 575, 91 S. W. 505; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; San Antonio Traction Co. *v.* Haines, (Tex. Civ. App. 1907) 100 S. W. 788; Northern Texas Traction Co. *v.* Nelson, (Tex. Civ. App. 1907) 105 S. W. 846.

Pedestrian Justified in Assuming Car Not Exceeding Speed Limited by Municipal Ordinance. — Powers *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 494.

Presumption that Deceased Killed by Car Exercised Due Care. — Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Mulvaney *v.* Pittsburgh R. Co., 213 Pa. St. 343, 62 Atl. 926.

The Presumption Is that a Decedent, Killed by Street Car, exercised due care and looked and saw the car approaching before crossing the track. Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655.

No Presumption that Deceased Killed by Car Exercised Care. — Lamb *v.* Union R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 97.

4. Lintz *v.* Denver City Tramway Co., (Colo. 1908) 95 Pac. 600; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Waechter *v.* St. Louis, etc., R. Co., 113 Mo. App. 270, 88 S. W. 147.

5. *United States.* — Cluff *v.* Pittsburg R. Co., 144 Fed. 710; Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595.

Alabama. — Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032; Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198.

Delaware. — Steinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Illinois. — Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821; O'Leary *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 233; Leighton *v.* Chicago Consol. Traction Co., (Ill. 1908) 85 N. E. 309.

Indiana. — Roberts *v.* Terre Haute Electric Co., 37 Ind. App. 664, 76 N. E. 323; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Nelson *v.* Chicago, etc., R. Co., (Ind. App. 1908) 83 N. E. 1019.

Iowa. — Ward *v.* Marshalltown Light, etc., Co., 132 Iowa 578, 108 N. W. 323; Powers *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 494; Remillard *v.* Sioux City Traction Co., (Iowa 1908) 115 N. W. 900.

Kentucky. — Louisville R. Co. *v.* Hofgesand, (Ky. 1907) 104 S. W. 361.

Massachusetts. — Sullivan *v.* Boston El. R. Co., 192 Mass. 37, 78 N. E. 382; Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740; Beale *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867.

Michigan. — McQuisten *v.* Detroit Citizens' St. R. Co., 147 Mich. 67, 110 N. W. 118.

Minnesota. — Curran *v.* St. Paul City R. Co., 100 Minn. 58, 110 N. W. 259.

Missouri. — Waechter *v.* St. Louis, etc., R. Co., 113 Mo. App. 270, 88 S. W. 147; Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655; Hof *v.* St. Louis Transit Co., (Mo. 1908) 111 S. W. 1166.

New Hampshire. — Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404.

New Jersey. — Bauer *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 1037; Merkl *v.* Jersey City, etc., St. R. Co., (N. J. 1907) 68 Atl. 74; Fogarty *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 69 Atl. 964.

New York. — Reilly *v.* Interurban St. R. Co., 108 N. Y. App. Div. 254, 95 N. Y. Supp. 721; Neary *v.* Citizens' R., etc., Co., 110 N. Y. App. Div. 769, 97 N. Y. Supp. 420; Ring *v.* Nassau Electric R. Co., 115 N. Y. App. Div. 674, 101 N. Y. Supp. 389; Murphy *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 598, 107 N. Y. Supp. 96; Boyce *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 393; Malizia *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 1003.

Pennsylvania. — Cox *v.* Schuylkill Valley Traction Co., 214 Pa. St. 223, 63 Atl. 599; Armstrong *v.* Consolidated Traction Co., 216 Pa. St. 595, 66 Atl. 75.

Tennessee. — Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

The Jury May Pass upon this Question, although, if the defendant had so requested, the court would have adjudged the plaintiff guilty of contributory negligence as a matter of law. Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976.

6. *Alabama.* — Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032.

Georgia. — Augusta R., etc., Co. *v.* Arthur, (Ga. App. 1908) 60 S. E. 213.

Iowa. — Powers *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 494.

Michigan. — McQuisten *v.* Detroit Citizens' St. R. Co., 147 Mich. 67, 110 N. W. 118.

Minnesota. — O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805.

Missouri. — Hovarka *v.* St. Louis Transit Co., 191 Mo. 441, 90 S. W. 1142; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655; Hof *v.* St. Louis Transit Co., (Mo. 1908) 111 S. W. 1166.

New York. — Duffy *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 177, 101 N. Y. Supp. 767; Peterson *v.* Interurban St. R. Co., 118 N. Y. App. Div. 210, 103 N. Y. Supp. 8; Murphy *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 56 Misc. (N. Y.) 598, 107 N. Y. Supp. 96; Paff *v.* Union R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 145; Boyce *v.* New York City R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 393.

Oregon. — Wolf *v.* City R. Co., (Oregon 1907) 91 Pac. 460.

Pennsylvania. — Cox *v.* Schuylkill Valley Traction Co., 214 Pa. St. 223, 63 Atl. 599; Doyle *v.* Chester Traction Co., 214 Pa. St. 382, 63 Atl. 604.

Texas. — San Antonio Traction Co. *v.* Haines, (Tex. Civ. App. 1907) 100 S. W. 788.

West Virginia. — Riedel *v.* Wheeling Traction Co., (W. Va. 1908) 61 S. E. 821.

Failure to Look and Listen for Approaching Car is contributory Negligence. Gorham *v.* Milford, etc., St. R. Co., 189 Mass. 275, 75 N. E. 624.

One Crossing Tracks may presume that the speed of the car is within the limits of an ordinance regulating the speed of street cars. Eckhard *v.* St. Louis Transit Co., 190 Mo. 593, 89 S. W. 602.

A Pedestrian, Crossing in Front of Standing Car, has a right to assume that the car will not be suddenly started. Mittleman *v.* New York City R. Co., (Supm. Ct. App. T.) 56 Misc. N. Y.) 599, 107 N. Y. Supp. 108.

81. 1. *United States.* — Pittsburg R. Co. *v.* Cluff, (C. C. A.) 149 Fed. 732.

Alabama. — Birmingham R., etc., Co. *v.* Ryan, (Ala. 1906) 41 So. 616.

California. — Higgins *v.* Los Angeles R. Co., 5 Cal. App. 748, 91 Pac. 344.

Delaware. — Davis *v.* People's R. Co., 5 Penn. (Del.) 253, 64 Atl. 70; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173.

Massachusetts. — Blackwell *v.* Old Colony St. R. Co., 193 Mass. 222, 79 N. E. 335; Stackpole *v.* Boston El. R. Co., 193 Mass. 562, 79 N. E. 740; Casey *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 867.

Minnesota. — O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805.

Missouri. — Heintz *v.* St. Louis Transit Co., 115 Mo. App. 667, 92 S. W. 353; Boring *v.* Metropolitan St. R. Co., 194 Mo. 541, 92 S. W. 655; Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Ross *v.* Metropolitan St. R. Co., 125 Mo. App. 614, 102 S. W. 1036.

New Jersey. — Van Ness *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 1027; Glasco *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 68 Atl. 1074; Shuler *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 180.

New York. — McEntee *v.* Metropolitan St. R. Co., 110 N. Y. App. Div. 673, 97 N. Y. Supp. 476; Lipis *v.* Metropolitan St. R. Co., 112 N. Y. App. Div. 909, 98 N. Y. Supp. 259; Beirne *v.* Union R. Co., 114 N. Y. App. Div. 90, 99 N. Y. Supp. 584; Healy *v.* United Traction Co., 115 N. Y. App. Div. 868, 101 N. Y. Supp. 331; Maguiles *v.* Interurban St. R. Co., 116 N. Y. App. Div. 157, 101 N. Y. Supp. 499; Stassen *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 577, 102 N. Y. Supp. 468; Long *v.* Union R. Co., 122 N. Y. App. Div. 564, 107 N. Y. Supp. 401; McAuliffe *v.* New York City R. Co., 122 N. Y. App. Div. 633, 107 N. Y. Supp. 522; Mullen *v.* Joline, (Supm. Ct. App. T.) 111 N. Y. Supp. 776; Bambace *v.* Interurban St. R. Co., 188 N. Y. 288, 80 N. E. 913.

North Carolina. — Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Pennsylvania. — Boring *v.* Union Traction Co., 211 Pa. St. 594, 61 Atl. 77; Crooks *v.* Pittsburg R. Co., 216 Pa. St. 590, 66 Atl. 142.

Virginia. — Foreman *v.* Norfolk, etc., News Co., 106 Va. 770, 56 S. E. 805.

Washington. — Skinner *v.* Tacoma R., etc., Co., (Wash. 1907) 89 Pac. 488.

The Car Must Be So Close that a reasonably prudent man would not attempt to cross. Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94.

Taking a Chance, When Car in Close Proximity, Contributory Negligence. — Madden *v.* Boston El. R. Co., 194 Mass. 491, 80 N. E.

Jumping Back in Middle of Track Contributory Negligence. — Robinson *v.* Union R. Co., 121 N. Y. App. Div. 558, 106 N. Y. Supp. 203.

3. Waddell *v.* Metropolitan St. R. Co., 113 Mo. App. 680, 88 S. W. 765.

4. Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032; Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198; Ft. Smith Light, etc., Co. *v.* Carr, 78 Ark. 279, 93 S. W. 990; Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432; Chicago, etc., Electric R. Co. *v.* Wanic, 230 Ill. 530, 82 N. E. 821; Saylor *v.* Union Traction Co., (Ind. App. 1907) 81 N. E. 94; Ward *v.* Marshalltown Light, etc., Co., 132 Iowa 578, 108 N. W. 323; Powers *v.* Des Moines City R. Co., (Iowa 1908) 115 N. W. 494; Remillard *v.* Sioux City Traction Co., (Iowa 1908) 115 N. W. 900; Beale *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867; Mathers *v.* Interurban St. R. Co., 112 N. Y. App. Div. 397, 98 N. Y. Supp. 433.

View Obstructed by Bridge Pillars. — Ring *v.* Nassau Electric R. Co., 115 N. Y. App. Div. 674, 101 N. Y. Supp. 389.

5. *Alabama.* — Birmingham R., etc., Co. *v.* Ryan, (Ala. 1906) 41 So. 616; Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032.

Arkansas. — Ft. Smith Light, etc., Co. *v.* Barnes, 80 Ark. 169, 96 S. W. 976; Ft. Smith Light, etc., Co. *v.* Carr, 78 Ark. 279, 93 S. W. 990.

Idaho. — Pilmer *v.* Boisé Traction Co., (Idaho 1908) 94 Pac. 432.

Indiana. — Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347.

Iowa. — Perjue *v.* Citizens' Electric Light, etc., Co., 131 Iowa 710, 109 N. W. 280.

Massachusetts. — Blackwell *v.* Old Colony St. R. Co., 193 Mass. 222, 79 N. E. 335; Stackpole *v.* Boston El. R. Co., 193 Mass. 562, 79 N. E. 740; Beirne *v.* Lawrence, etc., St. R. Co., (Mass. 1908) 83 N. E. 359.

Missouri. — Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Waechter *v.* St. Louis, etc., R. Co., 113 Mo. App. 270, 88 S. W. 147; Deane *v.* St. Louis Transit Co., 192 Mo. 575, 91 S. W. 505; Moore *v.* St. Louis Transit Co., 194 Mo. 1, 92 S. W. 390; Boring *v.* Metropolitan St. R. Co., 194 Mo. 541, 92 S. W. 655; Hornstein *v.* United R. Co., 195 Mo. 440, 92 S. W. 884; Hafner *v.* St. Louis Transit Co., 197 Mo. 196, 94 S. W. 291; Lennon *v.* St. Louis, etc., R. Co., 198 Mo. 514, 94 S. W. 975; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Bennett *v.* Metropolitan St. R. Co., 122 Mo. App. 703, 99 S. W. 480; Powers *v.* St. Louis Transit Co., 202 Mo. 267, 100 S. W. 655; Ross *v.* Metropolitan St. R. Co., 125 Mo. App. 614, 102 S. W. 1036; Hof *v.* St. Louis Transit Co., (Mo. 1908) 111 S. W. 1166.

New Jersey. — Hageman *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 834; Glasco *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 68 Atl. 1074; Shuler *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 180; Farese *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 959.

New York. — Solomon *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 557, 99 N. Y. Supp. 529; Ring *v.* Nassau Electric R. Co., 115 N. Y. App. Div. 674, 101 N. Y. Supp. 389; Stassen *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 577, 102 N. Y. Supp. 468; Peterson *v.* Interurban St. R Co., 118 N. Y. App. Div. 210, 103 N. Y. Supp. 8; Mullen *v.* Joline, (Supm. Ct. App. T.) 111 N. Y. Supp. 776; Volosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090, *reversing* 113 N. Y. App. Div. 747, 99 N. Y. Supp. 484.

North Carolina. — Crenshaw *v.* Asheville, etc., St. R., etc., Co., 144 N. Car. 314, 56 S. E. 945.

Pennsylvania. — Boring *v.* Union Traction Co., 211 Pa. St. 594, 61 Atl. 77; Cox *v.* Schuylkill Valley Traction Co., 214 Pa. St. 223, 63 Atl. 599; Doyle *v.* Chester Traction Co., 214 Pa. St. 382, 63 Atl. 604; Kaselicska *v.* Pittsburg R. Co., (Pa. 1908) 68 Atl. 1018.

Tennessee. — Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319.

Utah. — Spiking *v.* Consolidated R., etc., Co., (Utah 1908) 93 Pac. 838.

Virginia. — Foreman *v.* Norfolk, etc., News Co., 106 Va. 770, 56 S. E. 805.

Wisconsin. — Van Salvellerg *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120.

Failure to Look Negligence Per Se. — Hooks *v.* Huntsville R., etc., Co., 147 Ala. 700, 41 So. 273; State *v.* Cumberland, etc., Electric R. Co., (Md. 1907) 68 Atl. 197; Fitzgerald *v.* Boston El. R. Co., 194 Mass. 242, 80 N. E. 224; Heintz *v.* St. Louis Transit Co., 115 Mo. App. 667, 92 S. W. 353; Bauer *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 1037; Van Ness *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 1027; Axelrod *v.* New York City R. Co., 109 N. Y. App. Div. 87, 95 N. Y. Supp. 1072; McGreevy *v.* New York City R. Co., 113 N. Y. App. Div. 155, 98 N. Y. Supp. 1024; Binder *v.* New York City R. Co., (Supm. Ct. App. T.) 51 Misc. (N. Y.) 655, 99 N. Y. Supp. 835; Glynn *v.* New York City R. Co., (Supm. Ct. App. T.) 110 N. Y. Supp. 836; Riedel *v.* Wheeling Traction Co., (W. Va. 1908) 61 S. E. 821; Morice *v.* Milwaukee Electric R., etc., Co., 129 Wis. 529, 109 N. W. 567.

82. 1. Axelrod *v.* New York City R. Co., 109 N. Y. App. Div. 87, 95 N. Y. Supp. 1072; McGreevy *v.* New York City R. Co., 113 N. Y. App. Div. 155, 98 N. Y. Supp. 1024; Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319; Foreman *v.* Norfolk, etc., News Co., 106 Va. 770, 56 S. E. 805.

3. Blackwell *v.* Old Colony St. R. Co., 193 Mass. 222, 79 N. E. 335; Stackpole *v.* Boston El. R. Co., 193 Mass. 562, 79 N. E. 740; O'Brien *v.* St. Paul City R. Co., 98 Minn. 205, 108 N. W. 805; Ross *v.* Metropolitan St. R. Co., 125 Mo. App. 614, 102 S. W. 1036; Van Ness *v.* North Jersey St. R. Co., (N. J. 1907) 67 Atl. 1027; Shuler *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 180; Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319.

4. Stassen *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 577, 102 N. Y. Supp. 468; Knoxville Traction Co. *v.* Brown, 115 Tenn. 323, 89 S. W. 319.

Alighting from Wagon Without Looking. — State *v.* Cumberland, etc., Electric R. Co., (Md. 1907) 68 Atl. 197.

9. Blackwell *v.* Old Colony St. R. Co., 193 Mass. 222, 79 N. E. 335; Ross *v.* Metropolitan St. R. Co., 113 Mo. App. 600, 88 S. W. 144; Glynn *v.* New York City R. Co., (Supm. Ct.

App. T.) 110 N. Y. Supp. 836; Tully *v.* New York City R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 919; Baring *v.* Union Traction Co., 211 Pa. St. 594, 61 Atl. 77; Morice *v.* Milwaukee Electric R., etc., Co., 129 Wis. 529, 109 N. W. 567.

10. Pittsburg R. Co. *v.* Cluff, (C. C. A.) 149 Fed. 732; Stackpole *v.* Boston El. R. Co., 193 Mass. 562, 79 N. E. 740; Solomon *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 557, 99 N. Y. Supp. 529; Ayres *v.* Forty-second St., etc., R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 639, 104 N. Y. Supp. 841; Glynn *v.* New York City R. Co., (Supm. Ct. App. T.) 110 N. Y. Supp. 836.

11. Pittsburg R. Co. *v.* Cluff, (C. C. A.) 149 Fed. 732; Solomon *v.* New York City R. Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 557, 99 N. Y. Supp. 529; Ayres *v.* Forty-second St., etc., R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 639, 104 N. Y. Supp. 841; Glynn *v.* New York City R. Co., (Supm. Ct. App. T.) 110 N. Y. Supp. 836.

83. 1. Hageman *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 834; Shuler *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 180.

2. Morice *v.* Milwaukee Electric R., etc., Co., 129 Wis. 529, 109 N. W. 567.

3. Bauer *v.* North Jersey St. R. Co., (N. J. 1907) 65 Atl. 1037.

4. Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Goff *v.* St. Louis Transit Co., 199 Mo. 694, 98 S. W. 49; Neary *v.* Citizens' R., etc., Co., 110 N. Y. App. Div. 769, 97 N. Y. Supp. 420; Lamb *v.* Union R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 97.

5. Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Gorham *v.* Milford, etc., St. R. Co., 189 Mass. 275, 75 N. E. 634; Adams *v.* Boston, etc., R. Co., 191 Mass. 486, 78 N. E. 117; Wade *v.* Detroit, etc., R. Co., (Mich. 1908) 115 N. W. 713; Neary *v.* Citizens' R., etc., Co., 110 N. Y. App. Div. 769, 97 N. Y. Supp. 420; Lamb *v.* Union R. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 97; Wilkie *v.* Richmond Traction Co., 105 Va. 290, 54 S. E. 43.

6. Wade *v.* Detroit, etc., R. Co., (Mich. 1908) 115 N. W. 713.

Failure to Look Back Contributory Negligence. — Adams *v.* Boston, etc., R. Co., 191 Mass. 486, 78 N. E. 117.

9. Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; South Covington, etc., St. R. Co. *v.* Eichler, (Ky. 1908) 108 S. W. 329; Waechter *v.* St. Louis, etc., R. Co., 113 Mo. App. 270, 88 S. W. 147; Reilly *v.* Interurban St. R. Co., 108 N. Y. App. Div. 254, 95 N. Y. Supp. 721; Malizia *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 1003; Hoffman *v.* Philadelphia Rapid Transit Co., 214 Pa. St. 87, 63 Atl. 409.

10. Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; Heinel *v.* People's R. Co., (Del. 1907) 67 Atl. 173; South Covington, etc., St. R. Co. *v.* Eichler, (Ky. 1908) 108 S. W. 329; Kelly *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 865; Clancy *v.* St. Louis Transit Co., 192 Mo. 615, 91 S. W. 509; Brockschmidt *v.* St. Louis, etc., R. Co., 205 Mo. 435, 103 S. W. 965; Jelly *v.* North Jersey St. R. Co., (N. J. 1908) 68 Atl. 1091; Volosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090; Hoffman *v.* Philadelphia Rapid Transit Co., 215 Pa. St. 87, 63 Atl. 409.

Lineman Climbing Telegraph Pole Near Tracks. — Ahearn *v.* Boston El. R. Co. 194 Mass. 350, 80 N. E. 217.

Miscalculating Distance from Car Negligence. — McCabe *v.* Interurban St. R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 251, 97 N. Y. Supp. 353.

11. Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 606, 86 Pac. 738; O'Leary *v.* Haverhill, etc., R. Co., 193 Mass. 330, 79 N. E. 733; Kelly *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 865; Clancy *v.* St. Louis Transit Co., 192 Mo. 615, 91 S. W. 509; Brockschmidt *v.* St. Louis, etc., R. Co., 205 Mo. 435, 103 S. W. 964; Volosko *v.* Interurban St. R. Co., 190 N. Y. 206, 82 N. E. 1090; Reilly *v.* Interurban St. R. Co., 108 N. Y. App. Div. 254, 95 N. Y. Supp. 721; Malizia *v.* Brooklyn Heights R. Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 1003.

84. 1. *United States.* — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709; Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595.

Alabama. — Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177; Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198.

Florida. — Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183.

Illinois. — Chicago City R. Co. *v.* Strong, 230 Ill. 58, 82 N. E. 335; Hackett *v.* Chicago City R. Co., (Ill. 1908) 85 N. E. 320.

Indiana. — Hammond, etc., El. St. R. Co. *v.* Blockie, (Ind. App. 1907) 82 N. E. 541; Louisville, etc., Traction Co. *v.* Short, (Ind. App. 1908) 83 N. E. 265.

Iowa. — Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593.

Kentucky. — Cornelius *v.* South Covington, etc., St. R. Co., (Ky. 1906) 93 S. W. 643; Louisville R. Co. *v.* Welker, (Ky. 1906) 94 S. W. 635; Louisville R. Co. *v.* Edelen, (Ky. 1906) 96 S. W. 901.

Maine. — Haynes *v.* Waterville, etc., St. R. Co., 101 Me. 335, 64 Atl. 614.

Massachusetts. — Sullivan *v.* Boston El. R. Co., 192 Mass. 37, 78 N. E. 382; Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740; Beall *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867.

Michigan. — Rollo *v.* City Electric R. Co., (Mich. 1908) 115 N. W. 727.

Minnesota. — Rawitzer *v.* St. Paul City R. Co., 98 Minn. 294, 108 N. W. 271.

Missouri. — Hovarka *v.* St. Louis Transit Co., 191 Mo. 441, 90 S. W. 1142; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Wahl *v.* St. Louis Transit Co., 203 Mo. 261, 101 S. W. 1; Heinzle *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 536.

New Hampshire. — Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404.

New Jersey. — Fogarty *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 69 Atl. 964.

Pennsylvania. — Conner *v.* Pittsburg R. Co., 216 Pa. St. 609, 65 Atl. 1106; Tatarewicz *v.* United Traction Co., (Pa. 1908) 69 Atl. 995.

Rhode Island. — Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584; Shirley *v.* Rhode Island Co., (R. I. 1907) 67 Atl. 585.

Wisconsin. — Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973; Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120.

2. *United States.* — McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709.

Alabama. — Birmingham R., etc., Co. *v.* Jones, 146 Ala. 277, 41 So. 146; Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177; Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198.

Indiana. — Hammond, etc., El. St. R. Co. *v.* Blockie, (Ind. App. 1907) 82 N. E. 541.

Iowa. — Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593.

Kentucky. — Louisville R. Co. *v.* Welker, (Ky. 1906) 94 S. W. 635.

Massachusetts. — Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740.

Minnesota. — Rawitzer *v.* St. Paul City R. Co., 98 Minn. 294, 108 N. W. 271.

Missouri. — Hovarks *v.* St. Louis Transit Co., 191 Mo. 441, 90 S. W. 1142; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; Masterson *v.* St. Louis Transit Co., (Mo. 1906) 98 S. W. 504; Wahl *v.* St. Louis Transit Co., 203 Mo. 261, 101 S. W. 1; Hodges *v.* Metropolitan St. R. Co., 125 Mo. App. 583, 102 S. W. 1086; Cornovski *v.* St. Louis Transit Co., 207 Mo. 263, 106 S. W. 51; Gabriel *v.* Metropolitan St. R. Co., (Mo. App. 1908) 109 S. W. 1042; Heinzle *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 536.

Pennsylvania. — Conner *v.* Pittsburg R. Co., 216 Pa. St. 609, 65 Atl. 1106; Tatarewicz *v.* United Traction Co., (Pa. 1908) 69 Atl. 995.

Rhode Island. — Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584.

Wisconsin. — Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973.

3. Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595; Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183; Louisville R. Co. *v.* Edelen, (Ky. 1906) 96 S. W. 901; Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404; Conner *v.* Pittsburg R. Co., 216 Pa. St. 609, 65 Atl. 1106; Tatarewicz *v.* United Traction Co., (Pa. 1908) 69 Atl. 995; Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584; Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973.

85. 1. Camden Interstate R. Co. *v.* Broom, (C. C. A.) 131 Fed. 595; Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404; Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584.

3. Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595; Louisville R. Co. *v.* Welker, (Ky. 1906) 94 S. W. 635; Koenig *v.* Union Depot R. Co., 194 Mo. 564, 92 S. W. 497; Wahl *v.* St. Louis Transit Co., 203 Mo. 261, 101 S. W. 1; Hedges *v.* Metropolitan St. R. Co., 125 Mo. App. 583, 102 S. W. 1086; Heinzle *v.* Metropolitan St. R. Co., (Mo. 1908) 111 S. W. 536; Madigan *v.* Berlin St. R. Co., (N. H. 1907) 67 Atl. 404; Conner *v.* Pittsburg R. Co., 216 Pa. St. 609, 65 Atl. 1106; Tatarewicz *v.* United Traction Co., (Pa. 1908) 69 Atl. 995; Gormley *v.* Union R. Co., (R. I. 1903) 67 Atl. 584; Lott *v.* Sydney, etc., R. Co., 41 Nova Scotia 153.

4. Bouthillier *v.* Old Colony St. R. Co., 189 Mass. 537, 75 N. E. 960; Wade *v.* Detroit, etc., R. Co., (Mich. 1908) 115 N. W. 713; Gabriel *v.* Metropolitan St. R. Co., (Mo. App. 1908) 109 S. W. 1042; Kostenbaum *v.* New York City R. Co., 120 N. Y. App. Div. 160, 105 N. Y. Supp. 65; Leitzel *v.* Harrisburg Traction Co., 212 Pa. St. 608, 62 Atl. 02; Sontgen *v.* Kittanni etc., St. R. Co., 213 Pa. St. 114, 62 Atl. 523; Kochesperger *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 320, 66 Atl. 547; Meloy *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 189, 66 Atl. 253.

86. 1. *Iowa.* — Hanley *v.* Ft. Dodge Light, etc., Co., 133 Iowa 326, 107 N. W. 593.

Kentucky. — Cornelius *v.* South Covington, etc., St. R. Co., (Ky. 1906) 93 S. W. 643; Louisville R. Co. *v.* Edelen, (Ky. 1906) 96 S. W. 901; Lexington R. Co. *v.* Van Laden, (Ky. 1908) 107 S. W. 740.

Massachusetts. — Bouthillier *v.* Old Colony St. R. Co., 189 Mass. 537, 75 N. E. 960; Stackpole *v.* Boston El. R. Co., 193 Mass. 562, 79 N. E. 740; Casey *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 867.

Michigan. — Rollo *v.* City Electric R. Co., (Mich. 1908) 115 N. W. 727.

Missouri. — Masterson *v.* St. Louis. Transit Co., 204 Mo. 507, 103 S. W. 48; Gabriel *v.* Metropolitan St. R. Co., (Mo. App. 1908) 109 S. W. 1042.

New Jersey. — Farese *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 959.

New York. — Kostenbaum *v.* New York City R. Co., 120 N. Y. App. Div. 160, 105 N. Y. Supp. 65; Sobol *v.* Union R. Co., 122 N. Y. App. Div. 817, 107 N. Y. Supp. 656; Bambace *v.* Interurban St. R. Co., 188 N. Y. 288, 80 N. E. 913.

Pennsylvania. — Seitzel *v.* Harrisburg Traction Co., 212 Pa. St. 608, 62 Atl. 102; Sontgen *v.* Kittanning, etc., St. R. Co., 213 Pa. St. 114, 62 Atl. 523; Meloy *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 189, 66 Atl. 253; Tatarewicz *v.* United Traction Co., (Pa. 1908) 69 Atl. 15.

87. 1. **Contra.** — Denver City Tramway Co. *v.* Nicholas, 35 Colo. 462, 84 Pac. 813.

3. Saxton *v.* Pittsburg R. Co., (Pa. 1908) 68 Atl. 1022.

10. Holian *v.* Boston El. R. Co., 194 Mass. 74, 80 N. E. 1; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Brown *v.* St. Louis, etc., R. Co., 127 Mo. App. 499, 106 S. W. 83; Bambace *v.* Interurban St. R. Co., 188 N. Y. 288, 80 N. E. 913; San Antonio Traction Co. *v.* Kumpf, (Tex. Civ. App. 1907) 99 S. W. 863.

Whether Sui Juris or Not a Question for Jury. — Denver City Tramway Co. *v.* Nicholas, 35 Colo. 462, 84 Pac. 813; Sullivan *v.* Boston El. R. Co., 192 Mass. 37, 78 N. E. 382; Mullin *v.* St. Louis Transit Co., 196 Mo. 572, 94 S. W. 288; Hirtenstein *v.* Interurban St. R. Co., 115 N. Y. App. Div. 275, 100 N. Y. Supp. 909.

11. Camden Interstate R. Co. *v.* Broom, (C. C. A.) 139 Fed. 595 (child six years old); Birmingham R., etc., Co. *v.* Jones, (Ala. 1907) 45 So. 177 (child sixteen months old); Hackett

v. Chicago City R. Co., (Ill. 1908) 85 N. E. 320 (child seven years of age); Rollo *v.* City Electric R. Co., (Mich. 1908) 115 N. W. 727 (child two and one-half years old); Koenig *v.* Union Depot R. Co., 194 Mo. 564, 92 S. W. 497 (child six years old); Cornovski *v.* St. Louis Transit Co., 207 Mo. 263, 106 S. W. 51 (child nearly four years old); Gabriel *v.* Metropolitan St. R. Co., (Mo. App. 1908) 109 S. W. 1042 (child six years of age); Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120 (child six years old). See McDermott *v.* Severe, 202 U. S. 600, 26 U. S. Sup. Ct. 709.

Children between Seven and Fourteen Years of Age are *prima facie* incapable of contributory negligence, but evidence may be given to show their capacity. Birmingham R., etc., Co. *v.* Jones, 146 Ala. 277, 41 So. 146; Birmingham R., etc., Co. *v.* Landrum, (Ala. 1907) 45 So. 198 (child eleven years two months old).

Capacity to Appreciate Danger a Question of Fact for the Jury. — Hammond, etc., El. St. R. Co. *v.* Blockie, (Ind. App. 1907) 82 N. E. 541 (child five years ten months old).

Question of Contributory Negligence for Jury. — Fogarty *v.* Jersey City, etc., St. R. Co., (N. J. 1908) 69 Atl. 964.

88. 1. *Colorado.* — Denver City Tramway Co. *v.* Nicholas, 35 Colo. 462, 84 Pac. 813 (child thirteen years old).

Florida. — Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183.

Indiana. — Louisville, etc., Traction Co. *v.* Short, (Ind. App. 1908) 83 N. E. 265.

Kentucky. — Louisville R. Co. *v.* Hofgesand, (Ky. 1907) 104 S. W. 361.

Massachusetts. — Burns *v.* Worcester Consol. St. R. Co., 193 Mass. 63, 78 N. E. 740; Stackpole *v.* Boston El. R. Co., 193 Mass. 562, 79 N. E. 740; Holian *v.* Boston El. R. Co., 194 Mass. 74, 80 N. E. 1; Beale *v.* Old Colony St. R. Co., 196 Mass. 119, 81 N. E. 867; Casey *v.* Boston El. R. Co., (Mass. 1908) 83 N. E. 867.

Missouri. — Butler *v.* Metropolitan St. R. Co., 117 Mo. App. 354, 93 S. W. 877; Mullin *v.* St. Louis Transit Co., 196 Mo. 572, 94 S. W. 288; Wise *v.* St. Louis Transit Co., 198 Mo. 546, 95 S. W. 898; Deschner *v.* St. Louis, etc., R. Co., 200 Mo. 310, 98 S. W. 737; Zalotuchin *v.* Metropolitan St. R. Co., 127 Mo. App. 577, 106 S. W. 548.

New York. — Wabnich *v.* Dry Dock, etc., R. Co., 112 N. Y. App. Div. 4, 98 N. Y. Supp. 38; Hirtenstein *v.* Interurban St. R. Co., 115 N. Y. App. Div. 275, 100 N. Y. Supp. 909; Kostenbaum *v.* New York City R. Co., 120 N. Y. App. Div. 160, 105 N. Y. Supp. 65; Glynn *v.* New York City R. Co., (Supm. Ct. App. T.) 110 N. Y. Supp. 836.

Wisconsin. — Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120.

89. 3. Jacksonville Electric Co. *v.* Adams, 50 Fla. 429, 39 So. 183.

4. Sullivan *v.* Boston El. R. Co., 192 Mass. 37, 78 N. E. 382; Cytron *v.* St. Louis Transit Co., 205 Mo. 692, 104 S. W. 109; Cornovski *v.* St. Louis Transit Co., 207 Mo. 263, 106 S. W. 51; Wabnich *v.* Dry Dock, etc., R. Co., 112 N. Y. App. Div. 4, 98 N. Y. Supp. 38; Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 963.

6. South Chicago City R. Co. *v.* Kinnare, 216 Ill. 451, 75 N. E. 179; Youngquist *v.* Minneapolis St. R. Co., 102 Minn. 501, 114 N. W. 259; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

8. Indianapolis St. R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

10. Hamlin *v.* Pacific Electric R. Co., 150 Cal. 776, 89 Pac. 1109; South Chicago City R. Co. *v.* Kinnare, 216 Ill. 451, 75 N. E. 179; Indianapolis St. R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436; Bartlett *v.* Worcester Consol. St. R. Co., 189 Mass. 360, 75 N. E. 706; Youngquist *v.* Minneapolis St. R. Co., 102 Minn. 501, 114 N. W. 259; Harbison *v.* Camden, etc., R. Co., (N. J. 1907) 65 Atl. 868; Brooks *v.* International R. Co., 112 N. Y. App. Div. 555, 98 N. Y. Supp. 765; Ashley *v.* Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016.

90. 1. Romeo *v.* Union R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 578, 102 N. Y. Supp. 843.

3. Bartlett *v.* Worcester Consol. St. R. Co., 189 Mass. 360, 75 N. E. 706; Harbison *v.* Camden, etc., R. Co., (N. J. 1907) 65 Atl. 868.

4. Bartlett *v.* Worcester Consol. St. R. Co., 189 Mass. 360, 75 N. E. 706; Harbison *v.* Camden, etc., R. Co., (N. J. 1907) 65 Atl. 868.

5. Harper *v.* St. Paul City R. Co., 99 Minn. 253, 109 N. W. 227; Jackson Electric R., etc., Co. *v.* Waycaster, (Miss. 1908) 46 So. 135; Klein *v.* St. Louis Transit Co., 117 Mo. App. 691, 93 S. W. 281.

Right of Action for Killing Cow. — Little Rock Traction, etc., Co. *v.* Hicks, 79 Ark. 248, 96 S. W. 385; Riggs *v.* St. Francois County R. Co., 120 Mo. App. 335, 96 S. W. 707.

Right of Action for Killing Hog. — Little Rock R., etc., Co. *v.* Newman, 77 Ark. 599, 92 S. W. 864.

6. Jackson Electric R., etc., Co. *v.* Waycaster, (Miss. 1908) 46 So. 135; Klein *v.* St. Louis Transit Co., 117 Mo. App. 691, 93 S. W. 281; Harper *v.* St. Paul City R. Co., 99 Minn. 253, 109 N. W. 227.

91. 5. Indianapolis Union R. Co. *v.* Waddington, (Ind. 1907) 82 N. E. 1030; Montgomery St. R. Co. *v.* Lewis, (Ala. 1906) 41 So. 736; Birmingham R., etc., Co. *v.* Livingston, 144 Ala. 313, 39 So. 374.

6. Moulton *v.* Lewiston, etc., St. R. Co., 102 Me. 186, 66 Atl. 388; Moxley *v.* Southwest Missouri Electric R. Co., 123 Mo. App. 80, 99 S. W. 763; Hoag *v.* South Dover Marble Co., (County Ct.) 50 Misc. (N. Y.) 499, 100 N. Y. Supp. 620; Wright *v.* Monongahela St. R. Co., 213 Pa. St. 318, 62 Atl. 918; Leister *v.* Philadelphia Rapid Transit Co., 217 Pa. St. 652, 66 Atl. 866.

92. 1. Carger *v.* Macon R., etc., Co., 126 Ga. 626, 55 S. E. 914.

3. Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Dulin *v.* Metropolitan St. R. Co., 72 Kan. 676, 83 Pac. 821; Haynes *v.* Waterville, etc., St. R. Co., 101 Me. 335, 64 Atl. 614; Moulton *v.* Lewiston, etc., St. R. Co., 102 Me. 186, 66 Atl. 388; Latson *v.* St. Louis Transit Co., 102 Mo. 449, 91 S. W. 109; Moxley *v.* Southwest Missouri Electric R. Co., 123 Mo.

App. 80, 99 S. W. 763; Olney *v.* Omaha, etc., St. R. Co., (Neb. 1907) 111 N. W. 784; Wright *v.* Monongahela St. R. Co., 213 Pa. St. 318, 62 Atl. 918.

4. Heidelbaugh *v.* People's R. Co., (Del. 1907) 65 Atl. 587; Latson *v.* St. Louis Transit Co., 192 Mo. 449, 91 S. W. 109; Olney *v.* Omaha, etc., St. R. Co., (Neb. 1907) 111 N. W. 784; Wright *v.* Monongahela St. R. Co., 213 Pa. St. 318, 62 Atl. 918.

6. Escape of Air from Compressed Air Brakes. — Hoag *v.* South Dover Marble Co., (County Ct.) 50 Misc. (N. Y.) 499, 100 N. Y. Supp. 639.

7. Carger *v.* Macon R., etc., Co., 126 Ga. 626, 55 S. E. 914; Folz *v.* Evansville Electric R. Co., (Ind. App. 1907) 80 N. E. 868; Dulin *v.* Metropolitan St. R. Co., 72 Kan. 676, 83 Pac. 821; Joyce *v.* Exeter, etc., St. R. Co., 190 Mass. 304, 76 N. E. 1054; Applegate *v.* West Jersey, etc., R. Co., 73 N. J. L. 722, 65 Atl. 127; Wehr *v.* Carbon County Electric R. Co., 217 Pa. St. 490, 66 Atl. 743.

8. Georgia R., etc., Co. *v.* Blacknall, 122 Ga. 310, 50 S. E. 92.

93. 2. Columbus St. R., etc., Co. *v.* Reap, (Ind. App. 1907) 82 N. E. 977.

3. Projecting Frog on Track Not Negligent Construction. — Gilligan *v.* Boston El. R. Co., 194 Mass. 576, 80 N. E. 483. See also Fay *v.* Boston, etc., St. R. Co., (Mass. 1907) 82 N. E. 7.

Location of Trolley Pole, Causing Injury, Not Negligence. — Lanigan *v.* Brooklyn Heights R. Co., 125 N. Y. App. Div. 622, 110 N. Y. Supp. 30.

5. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Pugh *v.* Texarkana Light, etc., Co., (Ark. 1908) 109 S. W. 1019; Shreveport *v.* Nelson, 118 La. 732, 43 So. 389; Haynes *v.* Waterville, etc., St. R. Co., 101 Me. 335, 64 Atl. 614; McMahon *v.* Lynn, etc., R. Co., 191 Mass. 295, 77 N. E. 826. See also Crotty *v.* Danbury, 79 Conn. 379, 65 Atl. 147; Slater *v.* North Jersey St. R. Co., (N. J. 1908) 69 Atl. 163; Lambert *v.* Westchester Electric R. Co., 191 N. Y. 248, 83 N. E. 977; Epstein *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 184, 101 N. Y. Supp. 793; Ross *v.* Metropolitan St. R. Co., 116 N. Y. App. Div. 507, 101 N. Y. Supp. 932.

6. Location of Trolley Pole in Middle of Street Question of Negligence for Jury. — McKim *v.* Philadelphia, 217 Pa. St. 243, 66 Atl. 340.

94. 1. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Shreveport *v.* Nelson, 118 La. 732, 43 So. 389; Milton *v.* Bangor R., etc., Co., (Me.) 68 Atl. 826.

2. MacFarlane *v.* Boston El. R. Co., 194 Mass. 183, 80 N. E. 447.

3. Pugh *v.* Texarkana Light, etc., Co., (Ark. 1908) 109 S. W. 1019; Huff *v.* St. Joseph R., etc., Co., (Mo. 1908) 111 S. W. 1145; Ft. Worth, etc., St. R. Co. *v.* Hawes, (Tex. Civ. App. 1908) 107 S. W. 556. See also Indianapolis Traction, etc., Co. *v.* Pressell, 39 Ind. App. 472, 77 N. E. 357.

5. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Haynes *v.* Waterville, etc., St. R. Co., 101 Me. 335, 64 Atl. 614; Ripley *v.* Metropolitan St. R. Co., (Mo. App. 1908) 111 S. W. 1180; Evarts *v.* Santa Barbara Consol. R., Co., 3 Cal. App. 712, 86 Pac. 830.

6. See Miller *v.* United R., etc., Co., (Md. 1908) 69 Atl. 636; Moris *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962.

95. 1. McMahon *v.* Lynn, etc., R. Co., 191 Mass. 295, 77 N. E. 826.

5. Lambert *v.* Westchester Electric R. Co., 115 N. Y. App. Div. 78, 100 N. Y. Supp. 665; Pittsburg R. Co. *v.* Chapman, (C. C. A.) 145 Fed. 886; Southwestern Tel., etc., Co. *v.* Myane, (Ark. 1908) 111 S. W. 987; Smedley *v.* St. Louis, etc., R. Co., 118 Mo. App. 103, 93 S. W. 295.

6. Wood *v.* Wilmington City R. Co., 5 Penn (Del.) 369, 64 Atl. 246; Vicksburg R., etc., Co. *v.* Miles, 88 Miss. 204, 40 So. 748.

7. San Antonio Traction Co. *v.* Yost, (Tex. Civ. App. 1905) 88 S. W. 428.

8. Imeson *v.* Tacoma R., etc., Co., 42 Wash. 74, 84 Pac. 624. See also Hinman *v.* Winnipeg Electric St. R. Co., 16 Manitoba 16.

96. 1. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; McKim *v.* Philadelphia, 217 Pa. St. 243, 66 Atl. 340; Shreveport *v.* Nelson, 118 La. 732, 43 So. 389.

4. Montgomery St. R. Co. *v.* Smith, 146 Ala. 316, 39 So. 757; Shreveport *v.* Nelson, 118 La. 732, 43 So. 389.

97. 1. Pawtucket *v.* Pawtucket Electric Co., 27 R. I. 130, 61 Atl. 48; State *v.* Frost, (Neb. 1907) 110 N. W. 986.

2. State *v.* Frost, (Neb. 1907) 110 N. W. 986; Pawtucket *v.* Pawtucket Electric Co., 27 R. I. 130, 61 Atl. 48.

4. Wehr *v.* Carbon County Electric R. Co., 217 Pa. St. 490, 66 Atl. 743.

7. Lambert *v.* Westchester Electric R. Co., 115 N. Y. App. Div. 78, 100 N. Y. Supp. 665.

98. 2. McMahon *v.* Lynn, etc., R. Co., 191 Mass. 295, 77 N. E. 826.

STREETS AND SIDEWALKS.

102. 1. Robins *v.* McGehee, 127 Ga. 431, 56 S. E. 461.

103. 5*a*. **A Street, Bounded on One Side by a River,** extends to the centre of the river. Chicago, etc., R. Co. *v.* People, 222 Ill. 427, 78 N. E. 790.

6. Heath *v.* Manson, 147 Cal. 694, 82 Pac. 331; Gallaher *v.* Jefferson, 125 Iowa 324, 101 N. W. 124, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 103; Perry *v.* Castner, 130 Iowa 703, 107 N. W. 940; Morton *v.* Sullivan, (Ky. 1906) 96 S. W. 807; Hester *v.* Durham Traction Co., 138 N. Car. 293, 50 S. E. 711, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 103; Pickup *v.* Philadelphia, etc., R. Co., 29 Pa. Super. Ct. 631.

8. Dotey *v.* District of Columbia, 25 App. Cas. (D. C.) 232; Rea *v.* Sioux City, 127 Iowa 615, 103 N. W. 949, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 103.

13. State *v.* Superior Ct., 42 Wash. 521, 85 Pac. 256; Johnston *v.* Lonstorf, 128 Wis. 17, 107 N. W. 459.

104. 1. Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 104. See also Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470.

2. *In re* New York, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 162, 91 N. Y. Supp. 894.

3. Raymond *v.* Wichita, 70 Kan. 523, 79 Pac. 323; Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 104.

5. Elliot *v.* Atlantic City, 149 Fed. 849; Walter *v.* Macfarland, 27 App. Cas. (D. C.) 182; Hodgdon *v.* Haverhill, 193 Mass. 327, 79 N. E. 818; State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121; Matter of New York, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 596, 102 N. Y. Supp. 500.

6. State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121.

7. Royal Oak *v.* Detroit, etc., R. Co., 138 Mich. 294, 101 N. W. 535; Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329; *In re* New York, 179 N. Y. 496, 72 N. E. 522.

9. *District of Columbia.* — Walter *v.* Macfarland, 27 App. Cas. (D. C.) 182.

Georgia. — Stowe *v.* Newborn, 127 Ga. 421, 56 S. E. 516; Poulan *v.* Atlantic Coast Line R. Co., 123 Ga. 605, 51 S. E. 657.

Illinois. — Helm *v.* Grayville, 224 Ill. 274, 79 N. E. 689.

Maryland. — Baltimore *v.* Flack, 104 Md. 107, 64 Atl. 702.

Massachusetts. — Tanitor *v.* Cambridge, 192 Mass. 522, 78 N. E. 545.

Michigan. — Royal Oak *v.* Detroit, etc., R. Co., 138 Mich. 294, 101 N. W. 535.

Missouri. — Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329; Kansas City *v.* Hyde, 196 Mo. 498, 96 S. W. 201.

New Jersey. — Paterson, etc., R. Co. *v.* Paterson, 72 N. J. L. 112, 60 Atl. 47; Murphy *v.* Long Branch, (N. J. 1905) 61 Atl. 593.

New York. — *In re* New York, 179 N. Y. 496, 72 N. E. 522; *In re* Mt. Vernon Ave., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 319, 102 N. Y. Supp. 159; Matter of Buffalo, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 313, 102 N. Y. Supp. 218.

Oregon. — Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470.

Texas. — Houston *v.* Bartels, 36 Tex. Civ. App. 500, 82 S. W. 469.

Virginia. — Glasgow *v.* Matthews, 106 Va. 14, 154 S. E. 991.

Washington. — State *v.* Superior Ct., 44 Wash. 476, 87 Pac. 521.

105. **3.** Helm *v.* Grayville, 224 Ill. 274, 79 N. E. 689; Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329; Matter of Buffalo, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 313, 102 N. Y. Supp. 218; State *v.* Superior Ct., 44 Wash. 476, 87 Pac. 521. See also Murphy *v.* Long Branch, (N. J. 1905) 61 Atl. 593; Taintor *v.* Cambridge, 192 Mass. 522, 78 N. E. 545.

4. Poulan *v.* Atlantic Coast Line R. Co., 123 Ga. 611, 51 S. E. 657, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 105; Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329; State *v.* Superior Ct., 44 Wash. 476, 87 Pac. 521.

A Street Commissioner of a city has no power to take land for a sidewalk, which is included in the term "street" in its broad sense. Cannady *v.* Durham, 137 N. Car. 72, 49 S. E. 50.

6. Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329.

8. Taintor *v.* Cambridge, 192 Mass. 522, 78 N. E. 545; Kansas City *v.* Hyde, 196 Mo. 498, 96 S. W. 201; State *v.* Superior Ct., 44 Wash. 476, 87 Pac. 521.

106. 1. Taintor *v.* Cambridge, 192 Mass. 522, 78 N. E. 545.

3. Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329.

5. Land Belonging to a City may be taken by it for street purposes. *In re* New York, 186 N. Y. 237, 78 N. E. 952.

6. Murphy *v.* Long Branch, (N. J. 1905) 61 Atl. 593.

107. 2. Royal Oak *v.* Detroit, etc., R. Co., 138 Mich. 294, 101 N. W. 535.

3. Matter of New York, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 596, 102 N. Y. Supp. 500.

5. See Paterson, etc., R. Co. *v.* Paterson, 72 N. J. L. 112, 60 Atl. 47.

108. 4. Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329.

5. Taintor *v.* Cambridge, 192 Mass. 522, 78 N. E. 545; Matter of Buffalo, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 313, 102 N. Y. Supp. 218.

6. Taintor *v.* Cambridge, 192 Mass. 522, 78 N. E. 545; Seattle *v.* Puget Sound Imp. Co., (Wash. 1907) 91 Pac. 255.

18. Matter of Buffalo, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 313, 102 N. Y. Supp. 218.

109. 1. Matter of Buffalo, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 313, 102 N. Y. Supp. 218.

3. Johnson *v.* Ocean City, (N. J. 1906) 64 Atl. 987; Matter of Buffalo, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 313, 102 N. Y. Supp. 218.

110. 7. *Massachusetts.* — Hodgdon *v.* Haverhill, 193 Mass. 327, 79 N. E. 818; Boston Chamber of Commerce *v.* Boston, (Mass. 1907) 81 N. E. 244.

Michigan. — Royal Oak *v.* Detroit, etc., R. Co., 138 Mich. 294, 101 N. W. 535.

Missouri. — Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329.

New York. — *In re* Trinity Ave., 116 N. Y. App. Div. 252, 101 N. Y. Supp. 613; Matter of Buffalo, 116 N. Y. App. Div. 555, 101 N. Y. Supp. 966; Matter of Buffalo, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 313, 102 N. Y. Supp. 218; *In re* Amsterdam Ave., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 342, 104 N. Y. Supp. 821; *In re* Baychester Ave., 120 N. Y. App. Div. 393, 105 N. Y. Supp. 241; Matter of Buffalo, 116 N. Y. App. Div. 555, 101 N. Y. Supp. 966; *In re* New York, 179 N. Y. 496, 72 N. E. 522; Mott *v.* Eno, 181 N. Y. 346, 74 N. E. 229; *In re* New York, 186 N. Y. 237, 78 N. E. 952.

Pennsylvania. — *In re* South Twelfth St., 217 Pa. St. 362, 66 Atl. 568.

Washington. — State *v.* Superior Ct., 44 Wash. 476, 87 Pac. 521.

The legislature is powerless to give a city the right to establish a street without compensation to landowner. Houston *v.* Bartels, 36 Tex. Civ. App. 500, 82 S. W. 460.

111. 2. *In re* Trinity Ave., 116 N. Y. App. Div. 252, 101 N. Y. Supp. 613.

3. *Massachusetts.* — Boston Chamber of Commerce *v.* Boston, (Mass. 1907) 81 N. E. 244.

Michigan. — Royal Oak *v.* Detroit, etc., R. Co., 138 Mich. 294, 101 N. W. 535.

Missouri. — Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329.

New York. — *In re* Trinity Ave., 116 N. Y. App. Div. 252, 101 N. Y. Supp. 613; Matter of Buffalo, 116 N. Y. App. Div. 555, 101 N. Y. Supp. 966; *In re* Amsterdam Ave, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 342, 104 N. Y. Supp. 821; *In re* Baychester Ave., 120 N. Y. App. Div. 393, 105 N. Y. Supp. 241; *In re* New York, 179 N. Y. 496, 72 N. E. 522; *In re* New York, 186 N. Y. 237, 78 N. E. 952.

Pennsylvania. — *In re* South Twelfth St., 217 Pa. St. 362, 66 Atl. 568.

Washington. — State *v.* Superior Ct., 44 Wash. 476, 87 Pac. 521.

Appointment of Viewers or Commissioners. Matter of Buffalo, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 313, 102 N. Y. Supp. 218; *In re* Clinton Ave., 185 N. Y. 601, 78 N. E. 1101.

An Action on Contract to recover damages is not maintainable by an owner who, by his delay, has lost his right to have his damages determined in the mode prescribed by statute. Hodgdon *v.* Haverhill, 193 Mass. 327, 79 N. E. 818.

112. 1. Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329.

2. Kimball *v.* Salt Lake City, (Utah 1907) 90 Pac. 395.

3. Boston Chamber of Commerce *v.* Boston, (Mass. 1907) 81 N. E. 244; Tarkio *v.* Clark, 186 Mo. 285, 85 S. W. 329.

5. *Massachusetts.* — Boston Chamber of Commerce *v.* Boston, (Mass. 1907) 81 N. E. 244.

New York. — *In re* Trinity Ave., 116 N. Y. App. Div. 252, 101 N. Y. Supp. 613; *In re* Amsterdam Ave., (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 342, 104 N. Y. Supp. 821; *In re* Baychester Ave., 120 N. Y. App. Div. 393, 105 N. Y. Supp. 241; *In re* New York, 179 N. Y. 496, 72 N. E. 522; *In re* New York, 186 N. Y. 237, 78 N. E. 952.

Pennsylvania. — *In re* South Twelfth St., 217 Pa. St. 362, 66 Atl. 568.

Washington. — State *v.* Superior Ct., 44 Wash. 476, 87 Pac. 521.

7. *In re* Clinton Ave., 185 N. Y. 601, 78 N. E. 1101.

113. 2. Winkelman *v.* Chicago, 213 Ill. 360, 72 N. E. 1066; *In re* Mt. Vernon Ave., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 319, 102 N. Y. Supp. 159.

3. State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121; Henry *v.* Seattle, 42 Wash. 423, 85 Pac. 24, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 113; Ponischil *v.* Hoquiam Sash, etc., Co., 41 Wash. 303, 83 Pac. 316.

7. Borghart *v.* Cedar Rapids, 126 Iowa 313, 101 N. W. 1120; Harrington *v.* Iowa Cent. R. Co., 126 Iowa 388, 102 N. W. 139; Chrisman *v.* Brandes, (Iowa 1907) 112 N. W. 833; Larned *v.* Boyds, (Kan. 1907) 90 Pac. 814; State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121; Kansas City *v.* Hyde, 196 Mo. 408, 96 S. W. 201; Enders *v.* Friday, (Neb. 1907) 111 N. W. 140; Paterson, etc., R. Co. *v.* Paterson, 72 N. J. L. 112, 60 Atl. 47.

Georgia. — Marietta Chair Co. *v.* Henderson, 121 Ga. 399, 49 S. E. 312; Patton *v.* Rome, 124 Ga. 525, 52 S. E. 742.

Illinois. — People *v.* Atchison, etc., R. Co., 217 Ill. 594, 75 N. E. 573; El Paso *v.* Hoagland, 224 Ill. 263, 79 N. E. 658; De Land *v.* Dixon Power, etc., Co., 225 Ill. 212, 80 N. E. 125; Weage *v.* Chicago, etc., R. Co., 227 Ill. 421, 81 N. E. 424.

New York. — *In re* Rochester, 102 N. Y. App. Div. 99, 92 N. Y. Supp. 478; Reis *v.* New York, 113 N. Y. App. Div. 464, 99 N. Y. Supp. 291; People *v.* Metz, 119 N. Y. App. Div. 271, 104 N. Y. Supp. 649; *In re* Jerome Ave., 120 N. Y. App. Div. 201, 105 N. Y. Supp. 315; People *v.* Delany, 120 N. Y. App. Div. 801, 105 N. Y. Supp. 746; Reis *v.* New York, 188 N. Y. 58, 80 N. E. 573; *In re* East 178th St., 188 N. Y. 581, 80 N. E. 1109.

Oklahoma. — Tonkawa Milling Co. *v.* Tonkawa, 15 Okla. 672, 83 Pac. 915; Blackwell, etc., R. Co. *v.* Gist, (Okla. 1907) 90 Pac. 889.

Pennsylvania. — Butler Street, 25 Pa. Super. Ct. 357; Old Tacony Road, 32 Pa. Super. Ct. 444; Pulaski Avenue, 33 Pa. Super. Ct. 108; Rochester *v.* Pennsylvania Co., 216 Pa. St. 320, 65 Atl. 796.

Washington. — Henry *v.* Seattle, 42 Wash. 423, 85 Pac. 24, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 113; Ponischil *v.* Hoquiam Sash, etc., Co., 41 Wash. 303, 83 Pac. 316; Mottman *v.* Olympia, 45 Wash. 361, 88 Pac. 579.

114. 4. Patton *v.* Rome, 124 Ga. 525, 52 S. E. 742; Dorsch *v.* Beaumont Glass Co., 74 Ohio St. 208, 78 N. E. 215.

6. State *v.* St. Paul, 98 Minn. 232, 107 N. W. 1129; Kimball *v.* Salt Lake City, (Utah 1907) 90 Pac. 395; Johnston *v.* Lonstorf, 128 Wis. 17, 107 N. W. 459.

Sufficiency of Petition. — Ponischil *v.* Hoquiam Sash, etc., Co., 41 Wash. 303, 83 Pac. 316.

7. Detroit Real Estate Invest. Co. *v.* Frazer, 137 Mich. 108, 100 N. W. 271, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 114; State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121; Enders *v.* Friday, (Neb. 1907) 111 N. W. 140; Blackwell, etc., R. Co. *v.* Gist, (Okla. 1907) 90 Pac. 889; Mottman *v.* Olympia, 45 Wash. 361, 88 Pac. 579.

8. State *v.* Park Com'rs, 100 Minn. 150, 110 N. W. 1121; Mottman *v.* Olympia, 45 Wash. 361, 88 Pac. 579. But see De Land *v.* Dixon Power, etc., Co., 225 Ill. 212, 80 N. E. 125.

9. De Land *v.* Dixon Power, etc., Co., 225 Ill. 212, 80 N. E. 125; Mottman *v.* Olympia, 45 Wash. 361, 88 Pac. 579.

115. 1. Reis *v.* New York, 188 N. Y. 58, 80 N. E. 573; *In re* East 178th St., 188 N. Y. 581, 80 N. E. 1109; Ponischil *v.* Hoquiam Sash, etc., Co., 41 Wash. 308, 83 Pac. 316, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 114 [115].

2. People *v.* Atchison, etc., R. Co., 217 Ill. 594, 75 N. E. 573; El Paso *v.* Hoagland, 224 Ill. 263, 79 N. E. 658; Larned *v.* Boyd, (Kan. 1907) 90 Pac. 814; Mitchell *v.* St. Louis, etc., R. Co., 116 Mo. App. 81, 92 S. W. 111; Enders *v.* Friday, (Neb. 1907) 111 N. W. 140; *In re* Rochester, 102 N. Y. App. Div. 99, 92 N. Y. Supp. 478; Johnston *v.* Lonstorf, 128 Wis. 17, 107 N. W. 459. See also Tonkawa Milling Co. *v.* Tonkawa, 15 Okla. 672, 83 Pac. 915.

5. Enders *v.* Friday, (Neb. 1907) 111 N. W. 140.

7. *United States.* — U. S. *v.* Certain Lands, 140 Fed. 463.

Georgia. — Marietta Chair Co. *v.* Henderson, 121 Ga. 399, 49 S. E. 312.

Iowa. — Borghart *v.* Cedar Rapids, 126 Iowa 313, 101 N. W. 1120; Harrington *v.* Iowa Cent. R. Co., 126 Iowa 388, 102 N. W. 139.

Mississippi. — Coleman *v.* Holden, 88 Miss. 798, 41 So. 374.

New York. — Reis *v.* New York, 188 N. Y. 58, 80 N. E. 573; *In re* East 178th St., 188 N. Y. 581, 80 N. E. 1109; *In re* Rochester, 102 N. Y. App. Div. 99, 92 N. Y. Supp. 478.

Pennsylvania. — Old Tacony Road, 32 Pa. Super. Ct. 444; Pulaski Avenue, 33 Pa. Super. Ct. 108.

116. 1. People *v.* Delany, 120 N. Y. App. Div. 801, 105 N. Y. Supp. 746; Reis *v.* New York, 188 N. Y. 58, 80 N. E. 573; *In re* East 78th St., 188 N. Y. 581, 80 N. E. 1109; Russcomb Street, 30 Pa. Super. Ct. 476.

2. Reis *v.* New York, 188 N. Y. 58, 80 N. E. 573; *In re* East 178th St., 188 N. Y. 581, 80 N. E. 1109; Reis *v.* New York, 113 N. Y. App. Div. 464, 99 N. Y. Supp. 291; Ponischil *v.* Hoquiam Sash, etc., Co., 41 Wash. 303, 83 Pac. 316.

3. Johnston *v.* Lonstorf, 128 Wis. 17, 107 N. W. 459.

5. Borghart *v.* Cedar Rapids, 126 Iowa 313, 101 N. W. 1120; Ponischel *v.* Hoquiam Sash, etc., Co., 41 Wash. 303, 83 Pac. 316.

6. Harrington *v.* Iowa Cent. R. Co., 126 Iowa 388, 102 N. W. 139. But see Marietta Chair Co. *v.* Henderson, 121 Ga. 399, 49 S. E. 312.

7. Marietta Chair Co. *v.* Henderson, 121 Ga. 399, 49 S. E. 312; Borghart *v.* Cedar Rapids, 126 Iowa 313, 101 N. W. 1120; *In re* Rochester, 102 N. Y. App. Div. 99, 92 N. Y. Supp. 478; People *v.* Delany, 120 N. Y. App. Div. 801, 105 N. Y. Supp. 746.

117. 1. Harrington *v.* Iowa Cent. R. Co., 126 Iowa 388, 102 N. W. 139.

Under the *New York* statute (Laws 1895, c. 1006, § 2) the substitute street must be physically opened before the street discontinued ceases to be a street. *In re* Jerome Ave., 120 N. Y. App. Div. 201, 105 N. Y. Supp. 315.

2. Marietta Chair Co. *v.* Henderson, 121 Ga. 399, 49 S. E. 312; El Paso *v.* Hoagland, 224 Ill. 263, 79 N. E. 658; Weage *v.* Chicago, etc., R. Co., 227 Ill. 421, 81 N. E. 424; Mott *v.* Eno, 181 N. Y. 346, 74 N. E. 229; Blackwell, etc., R. Co. *v.* Gist, (Okla. 1907) 90 Pac. 889.

6. Burroughs *v.* Cherokee, 134 Iowa 429, 109 N. W. 876; Arnold *v.* Volkman, 123 Wis. 54, 101 N. W. 158.

8. Burroughs *v.* Cherokee, 134 Iowa 429, 109 N. W. 876; Arnold *v.* Volkman, 123 Wis. 54, 101 N. W. 158.

118. 1. Burroughs *v.* Cherokee, 134 Iowa 429, 109 N. W. 876.

4. But see Robins *v.* McGehee, 127 Ga. 431, 56 S. E. 461.

7. But see Burroughs *v.* Cherokee, 134 Iowa 429, 109 N. W. 876.

9. Lenon *v.* Brodie, 81 Ark. 208, 98 S. W. 979; Mulberry *v.* O'Dea, 4 Cal. App. 385, 88 Pac. 367; Ogden *v.* Chicago, 224 Ill. 294, 79 N. E. 699; Talcott *v.* Des Moines, 134 Iowa 113, 109 N. W. 311; Clark *v.* Lawrence, 75 Kan. 26, 88 Pac. 735; Kidson *v.* Bangor, 99 Me. 139, 58 Atl. 900; Baltimore *v.* Flack, 104 Md. 107, 64 Atl. 762; Parsons *v.* Grand Rapids, 141 Mich. 467, 104 N. W. 730; Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Rogers *v.* Attica, 113 N. Y. App. Div. 603, 98 N. Y. Supp. 665.

10. Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470.

13. **What Does Not Amount to Delegation of Power.** — Hett *v.* Portsmouth, 73 N. H. 334, [illegible].

14. Chicago *v.* Noonan, 121 Ill. App. 185; Cherry [illegible]; Stuhr *v.* Utah, [illegible] Pac. 60; Parsons *v.* Grand Rapids, 141 Mich. 467, 104 N. W. 730; Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86; Bellevill[illegible] Tp. *v.* Orange, (N. J. 1907) 65 Atl. 1117; Anderson *v.* Lower Merion Tp., 217 Pa. St. 369, 66 Atl. 1115; Brackney *v.* Crafton, 31 Pa. Super. Ct. 413.

Power to Construct Expressly Conferred. — Snydacker *v.* West Hammond, 225 Ill. 154, 80 N. E. 93; Edwards *v.* Cooper, 168 Ind. 54, 79 N. E. 1047; Huntington *v.* Amiss, 167 Ind. 375, 79 N. E. 199; Louisville *v.* Hess, (Ky. 1907) 99 S. W. 265.

119. 2. *Compare* Adair *v.* Atlanta, 124 Ga. 288, 52 S. E. 739.

9. Chicago *v.* Newberry Library, 224 Ill. 330, 79 N. E. 666; Ogden *v.* Chicago, 224 Ill. 294, 79 N. E. 699; Snydacker *v.* West Hammond, 225 Ill. 154, 80 N. E. 93; Wilzinski *v.* Greenville, 85 Miss. 393, 37 So. 807; Gilsonite Constr. Co. *v.* Arkansas McAlester Coal Co., 205 Mo. 49, 103 S. W. 93; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Excelsior Springs *v.* Ettenson, 120 Mo. App. 215, 96 S. W. 701; Excelsior Springs *v.* Mississippi Valley Trust Co., (Mo. App. 1906) 96 S. W. 707.

A City Exhausts Its Power with reference to paving a given street, when it enters into a valid contract for that purpose, and cannot afterwards make contract with different parties. Chicago *v.* Newberry Library, 224 Ill. 330, 79 N. E. 666.

10. Ogden *v.* Chicago, 224 Ill. 294, 79 N. E. 699.

120. 1. Carey Salt Co. *v.* Hutchinson, 72 Kan. 99, 82 Pac. 721.

4. Hubbell *v.* Bennett, 130 Iowa 66, 106 N. W. 375.

8. Clinton *v.* Franklin, 119 Ky. 143, 83 S. W. 140; Fayette *v.* Rich, 122 Mo. App. 145, 99 S. W. 8; State *v.* Several Parcels of Land, (Neb. 1907) 110 N. W. 753.

9. Marshall *v.* People, 219 Ill. 99, 76 N. E. 70.

10. Walker *v.* Detroit, 143 Mich. 424, 106 N. W. 1123.

11. Marshall *v.* People, 219 Ill. 99, 76 N. E. 70; Mudge *v.* Walker, (Ky. 1906) 90 S. W. 1046; Angle *v.* Stroudsburg, 29 Pa. Super. Ct. 601.

121. 4. Rayne *v.* Harrel, 119 La. 652, 44 So. 330; Smith *v.* Hofeldt, (Neb. 1907) 112 N. W. 605.

5. Marshall *v.* People, 219 Ill. 99, 76 N. E. 70; Mudge *v.* Walker, (Ky. 1906) 90 S. W. 1040.

122. 2. *Alabama.* — Harton *v.* Avondale, 147 Ala. 458, 41 So. 934; New Decatur *v.* Scharfenberg, 147 Ala. 367, 41 So. 1025; New Decatur *v.* Smith, (Ala. 1906) 41 So. 1028.

Florida. — Bowden *v.* Jacksonville, 52 Fla. 210, 42 So. 304.

Georgia. — Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540.

Illinois. — Ogden *v.* Chicago, 224 Ill. 294, 79 N. E. 699.

Iowa. — Talcott *v.* Des Moines, 134 Iowa 113, 109 N. W. 311.

Kentucky. — Frankfort *v.* Edelen, (Ky. 1904) 82 S. W. 279.

Maine. — Hurley *v.* South Thomason, 101 Me. 538, 64 Atl. 1050; Persson *v.* Bangor, 102 Me. 397, 66 Atl. 1019.

Massachusetts. — Partridge *v.* Arlington, 193 Mass. 530, 79 N. E. 812.

Missouri. — St. Louis *v.* Nelson, 108 Mo. App. 210, 83 S. W. 271; Jaicks *v.* Merrill, 201 Mo. 91, 98 S. W. 753; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130.

New York. — Bernstein *v.* Mt. Vernon, 109 N. Y. App. Div. 899, 96 N. Y. Supp. 458; Rogers *v.* Attica, 113 N. Y. App. Div. 603, 98 N. Y. Supp. 665; Lawton *v.* New Rochelle, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 184, 100 N. Y. Supp. 771; *In re* Van Rensselaer, etc., Sts., 116 N. Y. App. Div. 549, 101 N. Y. Supp. 928; Johnson *v.* Pettit, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 131; *In re* Perry, 118 N. Y. App. Div. 874, 103 N. Y. Supp. 1069; Triest *v.* New York, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 459, 105 N. Y. Supp. 571.

Pennsylvania. — Robinson *v.* Norwood, 215 Pa. St. 375, 64 Atl. 539; Klenke *v.* West Homestead, 216 Pa. St. 476, 65 Atl. 1079; Herr *v.* Altoona, 31 Pa. Super. Ct. 375; Nyhart *v.* Taylor, 31 Pa. Super. Ct. 635.

Tennessee. — Acker *v.* Knoxville, 117 Tenn. 224, 96 S. W. 973.

Washington. — Fletcher *v.* Seattle, 43 Wash. 627, 88 Pac. 843.

West Virginia. — Godbey *v.* Bluefield, 61 W. Va. 604, 57 S. E. 45; Crowe *v.* Charlestown, (W. Va. 1907) 57 S. E. 330.

Wisconsin. — Damkoehler *v.* Milwaukee, 124 Wis. 144, 101 N. W. 706; McCullough *v.* Campbellsport, 123 Wis. 334, 101 N. W. 709.

3. Galeano *v.* Boston, (Mass. 1907) 80 N. E. 579; Oliver *v.* Newberg, (Oregon 1907) 91 Pac. 470.

4. Harton *v.* Avondale, 147 Ala. 458, 41 So. 934.

8. Baltimore *v.* Baltimore, etc., Steamboat Co., 104 Md. 485, 65 Atl. 353; Paterson, etc., R. Co. *v.* Paterson, 72 N. J. L. 112, 60 Atl. 47; *In re* Clinton Ave., 185 N. Y. 601, 78 N. E. 1101; Bolton *v.* Seamen's Sav. Bank, 99 N. Y. App. Div. 581, 91 N. Y. Supp. 122; Washington *v.* Steiner, 25 Pa. Super. Ct. 392.

9. Paterson, etc., R. Co. *v.* Paterson, 72 N. J. L. 112, 60 Atl. 47; Washington *v.* Steiner, 25 Pa. Super. Ct. 392. See also People *v.* Atchison, etc., R. Co., 217 Ill. 594, 75 N. E. 573.

123. 2. Coyne *v.* Memphis, 118 Tenn. 651, 102 S. W. 355.

3. Bolton *v.* Seamen's Sav. Bank, 99 N. Y. App. Div. 581, 91 N. Y. Supp. 122; Washington *v.* Steiner, 25 Pa. Super. Ct. 392.

4. Harton *v.* Avondale, 147 Ala. 458, 41 So. 934; Belleville *v.* Pfingsten, 225 Ill. 293, 80 N. E. 266; Belleville *v.* Herzler, 225 Ill. 404, 80 N. E. 269; Kidson *v.* Bangor, 99 Me. 139, 58 Atl. 900; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130.

6. Harton *v.* Avondale, 147 Ala. 458, 41 So. 934; Kidson *v.* Bangor, 99 Me. 139, 58 Atl. 900.

7. Hallett *v.* U. S. Security, etc., Co., (Colo. 1907) 90 Pac. 683; Rudnyai *v.* Harwinton, 79 Conn. 91, 63 Atl. 948; Belleville *v.* Pfingsten, 225 Ill. 293, 80 N. E. 266; Belleville *v.* Herzler, 225 Ill. 404, 80 N. E. 269; Kemp *v.* Des Moines, 125 Iowa 640, 101 N. W. 474, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 123; Overall *v.* Madisonville, (Ky. 1907) 102 S. W. 278.

124. 3. Baltimore *v.* Flack, 104 Md. 107, 64 Atl. 702; Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Gilsonite Constr. Co. *v.* Arkansas McAlester Coal Co., 205 Mo. 49, 103 S. W. 93.

4. Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86; Gilsonite Constr. Co. *v.* Arkansas McAlester Coal Co., 205 Mo. 49, 103 S. W. 93.

125. 1. Whitworth *v.* Webb City, 204 Mo. 579, 103 S. W. 86; Gilsonite Constr. Co. *v.* Arkansas McAlester Coal Co., 205 Mo. 49, 103 S. W. 93.

6. Jaicks *v.* Merrill, 201 Mo. 91, 98 S. W. 753.

126. 2. Lambert *v.* Cummings, 2 Cal. App. 642, 84 Pac. 266; Mulberry *v.* O'Dea, 4 Cal. App. 385, 88 Pac. 367; Lyman *v.* Cicero, 222 Ill. 379, 78 N. E. 830; Edwards *v.* Cooper, 168 Ind. 54, 79 N. E. 1047; Carey Salt Co. *v.* Hutchinson, 72 Kan. 99, 82 Pac. 721; North Yakima *v.* Scudder, 41 Wash. 15, 82 Pac. 1022; **Sufficiency of Description in Resolution of Intention.** — Haughawout *v.* Raymond, 148 Cal. 311, 83 Pac. 53.

3. Harton *v.* Avondale, 147 Ala. 458, 41 So. 934; Clarke *v.* Lawrence, 75 Kan. 26, 88 Pac. 735; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130.

6. North Yakima *v.* Scudder, 41 Wash. 15, 82 Pac. 1022.

127. 1. Carey Salt Co. *v.* Hutchinson, 72 Kan. 99, 82 Pac. 721; State *v.* Bury, 101 Minn. 424, 112 N. W. 534; Fayette *v.* Rich, 122 Mo. App. 145, 99 S. W. 8; State *v.* Several Parcels of Land, (Neb. 1907) 110 N. W. 753; S. D. Mercer Co. *v.* Omaha, (Neb. 1907) 112 N. W. 617; State *v.* Superior Ct., 44 Wash. 476, 87 Pac. 521. See also Herman *v.* Omaha, 75 Neb. 489, 106 N. W. 593.

2. Perry *v.* Davis, (Okla. 1907) 90 Pac. 865.

128. 1. State *v.* Bury, 101 Minn. 424, 112 N. W. 534; S. D. Mercer Co. *v.* Omaha, (Neb. 1907) 112 N. W. 617.

5. *Compare* Carey Salt Co. *v.* Hutchinson, 72 Kan. 99, 82 Pac. 721.

129. 13. Defiance *v.* McGonigale, (C. C. A.) 150 Fed. 689; Redondo Beach *v.* Barkley, 151 Cal. 176, 90 Pac. 452; Oakland *v.* Thompson, 151 Cal. 572, 91 Pac. 387.

14. *California.* — Sacramento Paving Co. *v.* Anderson, 1 Cal. App. 672, 82 Pac. 1069; Sacramento Paving Co. *v.* Martyr, 1 Cal. App. xviii, 82 Pac. 1071; Pepper *v.* Neiman, 4 Cal. App. 55, 87 Pac. 286; Mulberry *v.* O'Dea, 4 Cal. App. 385, 88 Pac. 367.

Illinois. — McLannan *v.* Chicago, 218 Ill. 62, 75 N. E. 762; Lyman *v.* Cicero, 222 Ill. 379, 78 N. E. 830.

Kansas. — Clarke *v.* Lawrence, 75 Kan. 26, 88 Pac. 735.

New Jersey. — Bye *v.* Atlantic City, 73 N. J. L. 402, 64 Atl. 1056; Sears *v.* Atlantic City, 73 N. J. L. 710, 64 Atl. 1062.

New York. — Weeks *v.* Middletown, 107 N. Y. App. Div. 587, 95 N. Y. Supp. 352.

15. Parsons *v.* Grand Rapids, 141 Mich. 467, 104 N. W. 730.

16. Mulberry *v.* O'Dea, 4 Cal. App. 385, 88 Pac. 367; Clarke *v.* Lawrence, 75 Kan. 26, 88 Pac. 735; Bye *v.* Atlantic City, 73 N. J. L. 402, 64 Atl. 1056.

130. 2. Clarke *v.* Lawrence, 75 Kan. 26, 88 Pac. 735; Sears *v.* Atlantic City, 73 N. J. L. 710, 64 Atl. 1062.

4. Sacramento Paving Co. *v.* Anderson, 1 Cal. App. 672, 82 Pac. 1069; Pepper *v.* Neiman, 4 Cal. App. 55, 87 Pac. 286; Mulberry *v.* O'Dea, 4 Cal. App. 385, 88 Pac. 367; Clarke *v.* Lawrence, 75 Kan. 26, 88 Pac. 735.

6. Dyer *v.* Woods, 166 Ind. 44, 76 N. E. 624; Clarke *v.* Lawrence, 75 Kan. 26, 88 Pac. 735; North Yakima *v.* Scudder, 41 Wash. 15, 82 Pac. 1022.

131. 1. Lyman *v.* Cicero, 222 Ill. 379, 78 N. E. 830.

3. Clarke *v.* Lawrence, 75 Kan. 26, 88 Pac. 735.

7. Boonville *v.* Stephens, (Mo. App. 1906) 95 S. W. 314; Plattsmouth *v.* Murphy, 74 Neb. 749, 105 N. W. 293.

Sufficiency of Estimate. — Boonville *v.* Stephens, (Mo. App. 1906) 95 S. W. 314; North Yakima *v.* Scudder, 41 Wash. 15, 82 Pac. 1022.

8. Chicago *v.* Galt, 225 Ill. 368, 80 N. E. 285; Boonville *v.* Rogers, 125 Mo. App. 142, 101 S. W. 1120; Boonville *v.* Cosgrove, 125 Mo. App. 142, 101 S. W. 1123.

9. Haughawout *v.* Raymond, 148 Cal. 311, 83 Pac. 53.

132. 1. Ogden *v.* Chicago, 224 Ill. 294, 79 N. E. 699; Graden *v.* Parkville, 114 Mo. App. 527, 90 S. W. 115; Calvert *v.* St. Joseph, 118 Mo. App. 503, 95 S. W. 308; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Sproul *v.* Stockton, 73 N. J. L. 158, 62 Atl. 275; Emmert *v.* Elyria, 74 Ohio St. 185, 78 N. E. 269.

2. Washington *v.* Steiner, 25 Pa. Super. Ct. 392.

133. 1. McLannan *v.* Chicago, 218 Ill. 62, 75 N. E. 762. See *In re* Marshall Ave., 213 Pa. St. 516, 62 Atl. 1085.

5. Pepper *v.* Neiman, 4 Cal. App. 55, 87 Pac. 286; Connecticut Mut. L. Ins. Co. *v.* Chicago, 217 Ill. 352, 75 N. E. 365; McLannan *v.* Chicago, 218 Ill. 62, 75 N. E. 762; Chicago Union Traction Co. *v.* Chicago, 222 Ill. 144, 78 N. E. 54; Gage *v.* Chicago, 223 Ill. 602, 79 N. E. 294; Lindblad *v.* Normal, 224 Ill. 362, 79 N. E. 675; Ogden *v.* Chicago, 224 Ill. 294, 79 N. E. 699; Beers *v.* Chicago, 225 Ill. 376, 80 N. E. 288.

6. *Illinois.* — Chicago Union Traction Co. *v.* Chicago, 223 Ill. 37, 79 N. E. 67; Gage *v.* Chicago, 223 Ill. 602, 79 N. E. 294; Gardner *v.* Chicago, 224 Ill. 254, 79 N. E. 624; Ogden *v.* Chicago, 224 Ill. 294, 79 N. E. 699; Beers *v.* Chicago, 225 Ill. 376, 80 N. E. 288.

Kentucky. — Morton *v.* Sullivan, (Ky. 1906) 96 S. W. 807; Otter *v.* Barber Asphalt Paving Co., (Ky. 1906) 96 S. W. 862; *Ex p.* Paducah, (Ky. 1905) 89 S. W. 302.

Ohio. — Emmert *v.* Elyria, 74 Ohio St. 185, 78 N. E. 269.

Pennsylvania. — Washington *v.* Steiner, 25 Pa. Super. Ct. 392.

134. 1. Lindblad *v.* Normal, 224 Ill. 362, 79 N. E. 675.

2. Chicago Union Traction Co. *v.* Chicago, 223 Ill. 37, 79 N. E. 67.

4. Glos *v.* Cannata, 121 Ill. App. 215.

7. Haughawout *v.* Raymond, 148 Cal. 311, 83 Pac. 53; Haughawout *v.* Bonynge, 148 Cal. xvii, 83 Pac. 54; Fayette *v.* Rich, 122 Mo. App. 145, 99 S. W. 8; Washington *v.* Steiner, 25 Pa. Super. Ct. 392.

135. 2. Worcester *v.* Worcester, etc., St. R. Co., 194 Mass. 228, 80 N. E. 232.

3. National Surety Co. *v.* Kansas City Hydraulic Press Brick Co., 73 Kan. 196, 84 Pac. 1034; Elsberry *v.* Black, 120 Mo. App. 20, 96 S. W. 256; Elsberry *v.* Black, 120 Mo. App. 20, 96 S. W. 257; Fayette *v.* Rich, 122 Mo. App. 145, 99 S. W. 8.

4. Dyer *v.* Woods, 166 Ind. 44, 76 N. E. 624.

5. State *v.* Several Parcels of Land, (Neb. 1907) 110 N. W. 753; Hett *v.* Portsmouth, 73 N. H. 334, 61 Atl. 596.

8. Heath *v.* Manson, 147 Cal. 694, 82 Pac. 331; Wilzinski *v.* Greenville, 85 Misc. 393, 37 So. 807; Sears *v.* Atlantic City, 73 N. J. L. 710, 64 Atl. 1062; Moran *v.* New York, 98 N. Y. App. Div. 301, 90 N. Y. Supp. 596.

136. 1. Denver *v.* National Exch. Bank, 34 Colo. 387, 82 Pac. 448; Weeks *v.* Middletown, 107 N. Y. App. Div. 587, 95 N. Y. Supp. 352.

2. Weeks *v.* Middletown, 107 N. Y. App. Div. 587, 95 N. Y. Supp. 352.

6. Carey Salt Co. *v.* Hutchinson, 72 Kan. 99, 82 Pac. 721.

7. Allen *v.* Milwaukee, 128 Wis. 678, 106 N. W. 1099.

8. Bunker *v.* Hutchinson, 74 Kan. 651, 87 Pac. 884; River Rouge *v.* Hosmer, 147 Mich. 204, 110 N. W. 622.

9. De Lucca *v.* North Little Rock, 142 Fed. 597.

10. Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819; Baltimore *v.* Baltimore, etc., Steamboat Co., 104 Md. 485, 65 Atl. 353; Frick *v.* Kansas City, 117 Mo. App. 488, 93 S. W. 351; *In re* Clinton Ave., 185 N. Y. 601, 78 N. E. 1101; Brackney *v.* Crafton, 31 Pa. Super. Ct. 413; Damkoehler *v.* Milwaukee, 124 Wis. 144, 101 N. W. 706.

137. 2. Sadlier *v.* New York, 185 N. Y. 408, 78 N. E. 272, *affirming* 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579.

4. Sadlier *v.* New York, 185 N. Y. 408, 78 N. E. 272, *affirming* 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579.

5. Acker *v.* Knoxville, 117 Tenn. 224, 96 S.

W. 973. *Compare* Frick *v.* Kansas City, 117 Mo. App. 488, 93 S. W. 351.

7. Madisonville *v.* Hardman, (Ky. 1906) 92 S. W. 930; Central Covington *v.* Beiser, 122 Ky. 715, 92 S. W. 973; Barree *v.* Cape Girardeau, 197 Mo. 382, 95 S. W. 330; Sadler *v.* New York, 185 N. Y. 408, 78 N. E. 272, *affirming* 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579.

138. 1. Rudnyai *v.* Harwinton, 79 Conn. 91, 63 Atl. 948; Valparaiso *v.* Spaeth, 166 Ind. 14, 76 N. E. 514; Daley *v.* Watertown, 192 Mass. 116, 78 N. E. 143.

2. Sadlier *v.* New York, 185 N. Y. 408, 78 N. E. 272, *affirming* 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579; Taylor *v.* Canton Tp., 30 Pa. Super. Ct. 305.

3. Sadlier *v.* New York, 185 N. Y. 408, 78 N. E. 272, *affirming* 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579.

5. Madisonville *v.* Hardman, (Ky. 1906) 92 S. W. 930; Frick *v.* Kansas City, 117 Mo. App. 488, 93 S. W. 351.

Where the injury is not permanent only actual damages can be recovered. Central Covington *v.* Beiser, 122 Ky. 715, 92 S. W. 973.

The Holder of a Lease on a Wharf located along a street sought to be widened is not thereby estopped to claim compensation for his rights in the waters of the harbor which are incident to his ownership of a wharf located on an intersecting street. Baltimore *v.* Baltimore, etc., Steamboat Co., 104 Md. 485, 65 Atl. 353.

7. *Florida.* — Bowden *v.* Jacksonville, 52 Fla. 216, 42 So. 394.

Georgia. — Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540.

Indiana. — Valparaiso *v.* Spaeth, 166 Ind. 14, 76 N. E. 514.

Iowa. — Talcott *v.* Des Moines, 134 Iowa 113, 109 N. W. 311.

Kentucky. — *Compare* Louisville *v.* Caron, (Ky. 1906) 90 S. W. 604.

Michigan. — Cummings *v.* Dixon, 139 Mich. 269, 102 N. W. 751.

New York. — Smith *v.* Boston, etc., R. Co., 99 N. Y. App. Div. 94, 91 N. Y. Supp. 412; *In re* Perry Ave., 118 N. Y. App. Div. 874, 103 N. Y. Supp. 1069; Triest *v.* New York, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 459, 105 N. Y. Supp. 571; Sadlier *v.* New York, 185 N. Y. 408, 78 N. E. 272, *affirming* 104 N. Y. App. Div. 82, 93 N. Y. Supp. 579.

Oregon. — Davis *v.* Silverton, 47 Oregon 171, 82 Pac. 16.

Pennsylvania. — Klenke *v.* West Homestead, 216 Pa. St. 476, 65 Atl. 1079.

Tennessee. — Coyne *v.* Memphis, 118 Tenn. 651, 102 S. W. 355.

Virginia. — Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821.

West Virginia. — Godbey *v.* Bluefield, 61 W. Va. 604, 57 S. E. 45.

Wisconsin. — McCullough *v.* Campbellsport, 123 Wis. 334, 101 N. W. 709; Haubner *v.* Milwaukee, 124 Wis. 153, 101 N. W. 930, 102 N. W. 578.

Established Grades. — *In re* West Farms Road, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 216, 95 N. Y. Supp. 894.

139. 1. *California.* — Coats *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640.

Georgia. — East Rome *v.* Lloyd, 124 Ga. 852, 53 S. E. 103; Atlantic, etc., R. Co. *v.* McKnight, 125 Ga. 328, 54 S. E. 148.

Kentucky. — Frankfort *v.* Edelen, (Ky. 1904) 82 S. W. 279.

New York. — Lawton *v.* New Rochelle, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 184, 100 N. Y. Supp. 771.

Missouri. — Graden *v.* Parkeville, 114 Mo. App. 527, 90 S. W. 115.

Pennsylvania. — Nyhart *v.* Taylor, 31 Pa. Super. Ct. 635.

South Carolina. — Kendall *v.* Columbia, 74 S. Car. 539, 54 S. E. 777.

Virginia. — Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821.

West Virginia. — Crowe *v.* Charlestown, (W. Va. 1907) 57 S. E. 330.

2. But see Talcott *v.* Des Moines, 134 Iowa 113, 109 N. W. 311.

3. Klenke *v.* West Homestead, 216 Pa. St. 476, 65 Atl. 1079.

5. *Compare* Witwer *v.* Cedar Rapids, (Iowa 1906) 107 N. W. 604.

140. 1. Cleveland *v.* Payne, 72 Ohio St. 347, 74 N. E. 177.

2. Bowden *v.* Jacksonville, 52 Fla. 216, 42 So. 304; Davis *v.* Silverton, 47 Oregon 171, 82 Pac. 16.

6. Stroker *v.* St. Joseph, 117 Mo. App. 350, 93 S. W. 860.

8. Triest *v.* New York, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 459, 105 N. Y. Supp. 571.

10. Leiper *v.* Denver, 36 Colo. 110, 85 Pac. 849; Nyhart *v.* Taylor, 31 Pa. Super. Ct. 635.

141. 1. *Georgia.* — Macon *v.* Daly, 2 Ga. App. 355, 58 S. E. 540.

Maine. — Hurley *v.* South Thomaston, 101 Me. 538, 64 Atl. 1050.

Massachusetts. — Hyde *v.* Fall River, 189 Mass. 439, 75 N. E. 953.

Michigan. — Cummings *v.* Dixon, 139 Mich. 269, 102 N. W. 751; Ranson *v.* Sault Ste. Marie, 143 Mich. 661, 107 N. W. 439; Morris *v.* Sault Ste. Marie, 143 Mich. 672, 107 N. W. 443; Wheat *v.* Van Tine, 149 Mich. 314, 112 N. W. 933.

Missouri. — St. Louis *v.* Nelson, 108 Mo. App. 210, 83 S. W. 271.

New York. — *In re* Vyse St., (Supm. Ct. Spec. T.) 95 N. Y. Supp. 893; *In re* West Farms Road, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 216, 95 N. Y. Supp. 894; Bernstein *v.* Mt. Vernon, 109 N. Y. App. Div. 899, 96 N. Y. Supp. 458; Rogers *v.* Attica, 113 N. Y. App. Div. 603, 98 N. Y. Supp. 665; Lawton *v.* New Rochelle, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 184, 100 N. Y. Supp. 771; *In re* Van Rensselaer, etc., Sts., 116 N. Y. App. Div. 549, 101 N. Y. Supp. 928; *In re* Perry Ave., 118 N. Y. App. Div. 874, 103 N. Y. Supp. 1069.

Pennsylvania. — Uhle *v.* Philadelphia, 30 Pa. Super. Ct. 480; Hess *v.* Philadelphia, 30 Pa. Super. Ct. 484; King *v.* Brown, 31 Pa. Super. Ct. 50; Klenke *v.* West Homestead, 216 Pa. St. 476, 65 Atl. 1079.

Tennessee. — Coyne *v.* Memphis, 118 Tenn. 651 102 S. W. 355.

West Virginia. — Godbey *v.* Bluefield, 61 W. Va. 604, 57 S. E. 45.

142. 1. Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540.

4. Leiper *v.* Denver, 36 Colo. 110, 85 Pac. 845; Wheat *v.* Van Tine, 149 Mich. 314, 112 N. W. 933.

5. Kimball *v.* Salt Lake City, (Utah 1907) 90 Pac. 395.

6. Kimball *v.* Salt Lake City, (Utah 1907) 90 Pac. 395.

7. See Calvert *v.* St. Joseph, 118 Mo. App. 503, 95 S. W. 308.

8. Eutah *v.* Botnick, (Ala. 1907) 43 So. 739; East Rome *v.* Lloyd, 124 Ga. 852, 53 S. E. 103; Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540; Louisville *v.* Caron, (Ky. 1906) 90 S. W. 604; Henderson *v.* Crowder, (Ky. 1906) 91 S. W. 1120; Louisville *v.* Kaye, (Ky. 1906) 92 S. W. 554; Garvey *v.* Revere, 187 Mass. 545, 73 N. E. 664; Warren County *v.* Rand, 88 Miss. 395, 40 So. 481; St. Louis *v.* Nelson, 108 Mo. App. 210, 83 S. W. 271; *In re* Briggs Ave., 118 N. Y. App. Div. 224, 102 N. Y. Supp. 1102; *In re* Sixty-second St., 214 Pa. St. 137, 63 Atl. 426; Acker *v.* Knoxville, 117 Tenn. 224, 96 S. W. 973; Kimball *v.* Salt Lake City, (Utah 1907) 90 Pac. 395; Godbey *v.* Bluefield, 61 W. Va. 604, 57 S. E. 45.

Different Rule. — Stroker *v.* St. Joseph, 117 Mo. App. 350, 93 S. W. 860.

Measure of Damages Limited by Statute. — *In re* Vyse St., (Supm. Ct. Spec. T.) 95 N. Y. Supp. 893.

143. 3. Partridge *v.* Arlington, 193 Mass. 530, 79 N. E. 812.

4. St. Louis *v.* Nelson, 108 Mo. App. 210, 83 S. W. 271; *In re* Van Rensselaer, etc., Sts., 116 N. Y. App. Div. 549, 101 N. Y. Supp. 928; *In re* Briggs Ave., 118 N. Y. App. Div. 224, 102 N. Y. Supp. 1102; Spokane Traction Co. *v.* Granath, 42 Wash. 506, 85 Pac. 261.

6. Ackerman *v.* True, 120 N. Y. App. Div. 172, 105 N. Y. Supp. 12.

144. 2. Richardson *v.* Sioux City, (Iowa 1907) 113 N. W. 928, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 144.

3. Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540; Godbey *v.* Bluefield, 61 W. Va. 604, 57 S. E. 45.

4. Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540; Godbey *v.* Bluefield, 61 W. Va. 604, 57 S. E. 45.

5. Acker *v.* Knoxville, 117 Tenn. 224, 96 S. W. 973. But see *In re* Briggs Ave., 118 N. Y. App. Div. 224, 102 N. Y. Supp. 1102.

6. Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540; Louisville *v.* Kaye, (Ky. 1906) 92 S. W. 554; Garvey *v.* Revere, 187 Mass. 545, 73 N. E. 664; Acker *v.* Knoxville, 117 Tenn. 224, 96 S. W. 973; Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821; Spokane Traction Co. *v.* Granath, 42 Wash. 506, 85 Pac. 261.

7. Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821.

8. Kimball *v.* Salt Lake City, (Utah 1907) 90 Pac. 395.

10. Hempstead *v.* Salt Lake City, (Utah 1907) 90 Pac. 398; Swift *v.* Newport News, 105 Va. 108, 52 S. E. 821. See Spokane Traction Co. *v.* Granath, 42 Wash. 506, 85 Pac. 261. *Compare* Louisville *v.* Kaye, (Ky. 1906) 92 S. W. 554.

11. Kimball *v.* Salt Lake City, (Utah 1907) 90 Pac. 395.

Interest Runs from Date of Confirmation of Award. — King *v.* Brown, 31 Pa. Super. Ct. 50.

145. 1. St. Louis *v.* Nelson, 108 Mo. App. 210, 83 S. W. 271; *In re* Sedgley Ave., 217 Pa. St. 313, 66 Atl. 546.

2. Home Tel. Co. *v.* Nashville, 118 Tenn. 1, 101 S. W. 770.

3. Uhle *v.* Philadelphia, 30 Pa. Super. Ct. 480; Hess *v.* Philadelphia, 30 Pa. Super. Ct. 484. *Compare In re* Perry Ave., 118 N. Y. App. Div. 874, 103 N. Y. Supp. 1069.

4. Galeano *v.* Boston, (Mass. 1907) 80 N. E. 579; St. Louis *v.* Nelson, 108 Mo. App. 210, 83 S. W. 271.

5. *Maine.* — Hurley *v.* South Thomaston, 101 Me. 538, 64 Atl. 1050; Persson *v.* Bangor, 102 Me. 397, 66 Atl. 1019.

Missouri. — St. Louis *v.* Nelson, 108 Mo. App. 210, 83 S. W. 271; Schrodt *v.* St. Joseph, 109 Mo. App. 627, 83 S. W. 543.

New York. — Bernstein *v.* Mt. Vernon, 109 N. Y. App. Div. 899, 96 N. Y. Supp. 458; Rogers *v.* Attica, 113 N. Y. App. Div. 603, 98 N. Y. Supp. 665; *In re* Van Rensselaer, etc., Sts., 116 N. Y. App. Div. 549, 101 N. Y. Supp. 928; *In re* Briggs Ave., 118 N. Y. App. Div. 224, 102 N. Y. Supp. 1102; Johnson *v.* Pettit, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 131.

Pennsylvania. — Klenke *v.* West Homestead, 216 Pa. St. 476, 65 Atl. 1079; Uhle *v.* Philadelphia, 30 Pa. Super. Ct. 480; Hess *v.* Philadelphia, 30 Pa. Super. Ct. 484.

Washington. — Fletcher *v.* Seattle, 43 Wash. 627, 88 Pac. 843.

Wisconsin. — Damkoehler *v.* Milwaukee, 124 Wis. 144, 101 N. W. 706; Haubner *v.* Milwaukee, 124 Wis. 153, 101 N. W. 930, 102 N. W. 578.

Jury. — Macon *v.* Daley, 2 Ga. App. 355, 58 S. E. 540.

Review of Award. — *In re* West Farms Road, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 216, 95 N. Y. Supp. 894; Johnson *v.* Pettit, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 131.

Award. — Johnson *v.* Pettit, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 131.

146. 2. Persson *v.* Bangor, 102 Me. 397, 66 Atl. 1019.

4. Rogers *v.* Attica, 113 N. Y. App. Div. 603, 98 N. Y. Supp. 665.

5. New Decatur *v.* Smith, (Ala. 1906) 41 So. 1028. See also New Decatur *v.* Scharfenberg, 147 Ala. 367, 41 So. 1025.

6. See New Decatur *v.* Scharfenberg, 147 Ala. 367, 41 So. 1025.

147. 1. Partridge *v.* Arlington, 193 Mass. 530, 79 N. E. 812.

4. Hurley *v.* South Thomaston, 101 Me. 538, 64 Atl. 1050; Bernstein *v.* Mt. Vernon, 109 N. Y. App. Div. 899, 96 N. Y. Supp. 458; Herr *v.* Altoona, 31 Pa. Super. Ct. 375; Kendall *v.* Columbia, 74 S. Car. 539, 54 S. E. 777.

5. Bernstein *v.* Mt. Vernon, 109 N. Y. App. Div. 899, 96 N. Y. Supp. 458.

6. Eutah *v.* Botnick, (Ala. 1907) 43 So. 739; Graden *v.* Parkville, 114 Mo. App. 527, 90 S.

W. 115; Bernstein *v.* Mt. Vernon, 109 N. Y. App. Div. 899, 96 N. Y. Supp. 458; Rogers *v.* Attica, 113 N. Y. App. Div. 603, 98 N. Y. Supp. 665; Fletcher *v.* Seattle, 43 Wash. 627, 88 Pac. 843; Crowe *v.* Charlestown, (W. Va. 1907) 57 S. E. 330; Haubner *v.* Milwaukee, 124 Wis. 153, 101 N. W. 930, 102 N. W. 578.

7. Grant Park *v.* Trah, 218 Ill. 516, 75 N. E. 1040; Coyne *v.* Memphis, 118 Tenn. 651, 102 S. W. 355; Godbey *v.* Bluefield, 61 W. Va. 604, 57 S. E. 45.

Presentation of Claim to City Council as Condition Precedent to Action. — Partridge *v.* Arlington, 193 Mass. 530, 79 N. E. 812.

148. 2. Memphis *v.* Postal Tel. Cable Co., 139 Fed. 707; Northwestern Telephone Exchange Co. *v.* St. Charles, 154 Fed. 386; St. Louis *v.* St. Louis Theatre Co., 202 Mo. 690, 100 S. W. 627; Mansfield *v.* New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386; Waynesville *v.* Satterthwait, 136 N. Car. 226, 48 S. E. 661; Louisville, etc., R. Co. *v.* Cincinnati, 76 Ohio St. 481, 81 N. E. 983.

3. Atlantic, etc., R. Co. *v.* Cordele, 128 Ga. 293, 57 S. E. 493; Patton *v.* Rome, 124 Ga. 525, 52 S. E. 742; Indiana R. Co. *v.* Calvert, 168 Ind. 321, 80 N. E. 961; Shreveport *v.* Dantes, 118 La. 113, 42 So. 716; Cartwright *v.* Liberty Telephone Co., 205 Mo. 126, 103 S. W. 982; Moran *v.* New York, 98 N. Y. App. Div. 301, 90 N. Y. Supp. 596; Finkle *v.* Valatie, 114 N. Y. App. Div. 251, 99 N. Y. Supp. 715; Hinman *v.* Clark, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 252, 100 N. Y. Supp. 1068; Louisville, etc., R. Co. *v.* Cincinnati, 76 Ohio St. 481, 81 N. E. 983; State *v.* McCrillis, (R. I. 1907) 66 Atl. 301.

Notice of a Proposed Enactment by the city of a regulation for the use of its streets to the parties affected is not a matter of right. Atlantic, etc., R. Co. *v.* Cordele, 128 Ga. 293, 57 S. E. 493.

4. Memphis *v.* Postal Tel. Cable Co., 139 Fed. 707.

8. De Lucca *v.* North Little Rock, 142 Fed. 597; Marietta Chair Co. *v.* Henderson, 121 Ga. 399, 49 S. E. 312; Adair *v.* Atlanta, 124 Ga. 288, 52 S. E. 739; Hamby *v.* Dawson Springs, (Ky. 1907) 104 S. W. 259, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 148; Betz *v.* Kansas City Home Telephone Co., 121 Mo. App. 473, 97 S. W. 207; Mott *v.* Eno, 181 N. Y. 346, 74 N. E. 229; Powers *v.* State Line Telephone Co., 116 N. Y. App. Div. 737, 102 N. Y. Supp. 34; Acker *v.* Knoxville, 117 Tenn. 224, 96 S. W. 973; Lins *v.* Seefeld, 126 Wis. 610, 105 N. W. 917; Johnston *v.* Lonstorf, 128 Wis. 17, 107 N. W. 459.

Where a street is admitted to be a public street, the presumption is that the fee is in the municipality. Rockford, etc., R. Co. *v.* Keyt, 117 Ill. App. 32.

9. Harrington *v.* Iowa Cent. R. Co., 126 Iowa 388, 102 N. W. 139.

149. 2. Chicago *v.* Verdon, 119 Ill. App. 494; Valparaiso *v.* Spaeth, 166 Ind. 14, 76 N. E. 514; Labry *v.* Gilmour, (Ky. 1905) 89 S. W. 231; McIllhinny *v.* Trenton, 148 Mich. 380, 111 N. W. 1083, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 149; Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962; Kansas City *v.* Hyde, 196 Mo. 498, 96 S. W. 201; South Omaha *v.* Omaha Bridge, etc., R. Co., (Neb. 1906) 107 N. W. 988; Van Duyne *v.* Knox Hat Mfg. Co., (N. J. 1906) 64 Atl. 149; Louisville, etc., R. Co. *v.* Cincinnati, 76 Ohio St. 481, 81 N. E. 983.

3. Little Rock, etc., R. Co. *v.* Greer, 77 Ark. 387, 96 S. W. 129.

5. Cartwright *v.* Liberty Telephone Co., 205 Mo. 126, 103 S. W. 982.

6. Hitchner *v.* Richman, (N. J. 1907) 65 Atl. 866.

11. Cartwright *v.* Liberty Telephone Co., 205 Mo. 126, 103 S. W. 982; Hitchner *v.* Richman, (N. J. 1907) 65 Atl. 856; Sproul *v.* Stockton, 73 N. J. L. 158, 62 Atl. 275.

150. 4. Hitchner *v.* Richman, (N. J. 1907) 65 Atl. 856; Osborne *v.* Auburn Telephone Co., 111 N. Y. App. Div. 702, 97 N. Y. Supp. 874.

9. Chicago, etc., R. Co. *v.* People, 222 Ill. 427, 78 N. E. 790; Chicago Cold Storage Warehouse Co. *v.* People, 224 Ill. 287, 79 N. E. 692; Chicago *v.* Pooley, 112 Ill. App. 343; McIllhinney *v.* Trenton, 148 Mich. 380, 111 N. W. 1083, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 150; Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962; Van Duyne *v.* Knox Hat Mfg. Co., (N. J. 1906) 64 Atl. 149; Rhinehart *v.* Redfield, 93 N. Y. App. Div. 410, 87 N. Y. Supp. 789, *affirmed* 179 N. Y. 569, 72 N. E. 1150.

151. 1. Shreveport Traction Co. *v.* Kansas City, etc., R. Co., 119 La. 759, 44 So. 457; Teague *v.* Bloomington, (Ind. App. 1907) 81 N. E. 103.

2. McIllhinny *v.* Trenton, 148 Mich. 380, 111 N. W. 1083, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 150 [151]; Sweet *v.* Perkins, 115 N. Y. App. Div. 784, 101 N. Y. Supp. 163.

3. McIllhinny *v.* Trenton, 148 Mich. 380, 111 N. W. 1083, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 150 [151].

5. Quinby *v.* Consumers' Gas Trust Co., 140 Fed. 362; People *v.* Chicago Telephone Co., 220 Ill. 238, 77 N. E. 245; Chicago, etc., R. Co. *v.* People, 222 Ill. 427, 78 N. E. 790; Chicago Cold Storage Warehouse Co. *v.* People, 224 Ill. 287, 79 N. E. 692; Labry *v.* Gilmour, (Ky. 1905) 89 S. W. 231; Morie *v.* St. Louis Transit Co., 116 Mo. App. 12, 91 S. W. 962; Van Duyne *v.* Knox Hat Mfg. Co., (N. J. 1906) 64 Atl. 149; Fogg *v.* Ocean City, (N. J. 1907) 65 Atl. 885; Rhinehart *v.* Redfield, 93 N. Y. App. Div. 410, 87 N. Y. Supp. 789, *affirmed* 179 N. Y. 569, 72 N. E. 569; Spencer *v.* Mahon, 75 S. Car. 232, 55 S. E. 321; Wisconsin Telephone Co. *v.* Milwaukee, 126 Wis. 1, 104 N. W. 1009.

The Right of the City to Grant the Privilege to an Express Company, whose business is not purely private, to lay a switch in the street to connect its lines with its warehouse and thereby facilitate its business has been upheld. Dulaney *v.* United R., etc., Co., 104 Md. 423, 65 Atl. 45.

152. 1. Chicago *v.* Pooley, 112 Ill. App. 343.

2. Wichita *v.* Old Colony Trust Co., (C. C. A.) 132 Fed. 641; Indianapolis *v.* Consumers' Gas Trust Co., (C. C. A.) 144 Fed. 611; Wichita *v.* Missouri, etc., Telephone Co., 70 Kan. 441,

78 Pac. 886; Rough River Telephone Co. *v.* Cumberland Telephone, etc., Co., 119 Ky. 470, 84 S. W. 517; Moberly *v.* Richmond Telephone Co., (Ky. 1907) 103 S. W. 714; Cook *v.* North Bergen Tp., 72 N. J. L. 119, 59 Atl. 1035; Stowe *v.* Kearny, 72 N. J. L. 106, 59 Atl. 1058; Rhinehart *v.* Redfield, 93 N. Y. App. Div. 410, 87 N. Y. Supp. 789, *affirmed* 179 N. Y. 569, 72 N. E. 1150; Sautter *v.* Utica City Nat. Bank, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 15, 90 N. Y. Supp. 838; People *v.* Bauer, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 28, 103 N. Y. Supp. 1081; Shinzel *v.* Bell Telephone Co., 31 Pa. Super. Ct. 231.

3. Water, etc., Co. *v.* Hutchinson, 144 Fed. 256; Chicago *v.* Pooley, 112 App. 343; Chicago, etc., R. Co. *v.* People, 120 Ill. App. 306; McCormick *v.* Weaver, 144 Mich. 6, 107 N. W. 314; Rhinehart *v.* Redfield, 93 N. Y. App. Div. 410, 87 N. Y. Supp. 789, *affirmed* 179 N. Y. 569, 72 N. E. 1150; Jones *v.* Carter, (Tex. Civ. App. 1907) 101 S. W. 514.

153. 4. Powers *v.* State Line Telephone Co., 116 N. Y. App. Div. 737, 102 N. Y. Supp. 34.

5. Shinzel *v.* Bell Telephone Co., 31 Pa. Super. Ct. 231.

8. Los Angeles *v.* Davidson, 150 Cal. 59, 88 Pac. 42; Rough River Telephone Co. *v.* Cumberland Telephone, etc., Co., 119 Ky. 470, 84 S. W. 517; Moberly *v.* Richmond Telephone Co., (Ky. 1907) 103 S. W. 714.

9. Merchants' Police, etc., Tel. Co. *v.* Citizens' Telephone Co., (Ky. 1906) 93 S. W. 2; Moberly *v.* Richmond Telephone Co., (Ky. 1907) 103 S. W. 714.

11. Stowe *v.* Kearny, 72 N. J. L. 106, 59 Atl. 1058.

Resolution Passed at Special Meeting. — Rough River Telephone Co. *v.* Cumberland Telephone, etc., Co., 119 Ky. 470, 84 S. W. 517.

154. 1. People *v.* Ellison, 188 N. Y. 523, 81 N. E. 447.

Right of Taxpayer to Question Validity. — Clark *v.* Interstate Independent Telephone Co., 72 Neb. 883, 101 N. W. 977.

2. Indianapolis *v.* Consumers' Gas Trust Co., (C. C. A.) 144 Fed. 641; Moberly *v.* Richmond Telephone Co., (Ky. 1907) 103 S. W. 714; Manton *v.* South Shore Traction Co., 121 N. Y. App. Div. 410, 106 N. Y. Supp. 82.

5. McKim *v.* Philadelphia, 217 Pa. St. 243, 66 Atl. 340; Home Tel. Co. *v.* Nashville, 118 Tenn. 1, 101 S. W. 770.

6. Western Union Tel. Co. *v.* Visalia, 149 Cal. 744, 87 Pac. 1023; Galloso *v.* Sikeston, 124 Mo. App. 380, 101 S. W. 715; *In re* Long Acre Electric Light, etc., Co., 188 N. Y. 361, 80 N. E. 1101.

7. **Terms for Earlier Termination.**—Wichita *v.* Old Colony Trust Co., (C. C. A.) 132 Fed. 641.

8. **Reservation of Right to Revoke.** — Forbes *v.* Detroit, 139 Mich. 280, 102 N. W. 740.

155. 2. New York *v.* U. S. Trust Co., 116 N. Y. App. Div. 349, 101 N. Y. Supp. 574.

3. Manton *v.* South Shore Traction Co., 121 N. Y. App. Div. 410, 106 N. Y. Supp. 82; Edwards *v.* Pittsburg Junction R. Co., 215 Pa. St. 597, 64 Atl. 798.

4. Manton *v.* South Shore Traction Co., 121 N. Y. App. Div. 410, 106 N. Y. Supp. 82.

6. Galloso *v.* Sikeston, 124 Mo. App. 380, 101 S. W. 715.

8. State *v.* McCrillis, (R. I. 1907) 66 Atl. 501.

156. 2. Williams *v.* Los Angeles, etc., R. Co., 150 Cal. 592, 89 Pac. 330; Kern Island Irrigating Co. *v.* Bakersfield, 151 Cal. 403, 90 Pac. 1052; Hontros *v.* Chicago, 113 Ill. App. 318; Chicago, etc., R. Co. *v.* People, 120 Ill. App. 306; Young *v.* Herrmann, 119 N. Y. App. Div. 445, 104 N. Y. Supp. 72; Mansfield *v.* New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386.

Stepping Stone. — Wolff *v.* District of Columbia, 196 U. S. 152, 25 U. S. Sup. Ct. 198.

Obstruction of Street by Carriage. — Hinde *v.* Evans, 96 L. T. N. S. 20.

3. Chicago *v.* Pooley, 112 Ill. App. 343; St. Louis *v.* St. Louis Theatre Co., 202 Mo. 690, 100 S. W. 627.

The Permission of an Abutting Owner can confer no right on an individual to obstruct a street. Hontros *v.* Chicago, 113 Ill. App. 318; Chicago *v.* Pooley, 112 Ill. App. 343.

4. Chicago *v.* Jarvis, 226 Ill. 614, 80 N. E. 1079; Rothschild *v.* Chicago, 227 Ill. 205, 81 N. E. 407; Chicago *v.* Verdon, 119 Ill. App. 494; Chicago, etc., R. Co. *v.* People, 120 Ill. App. 306; Labry *v.* Gilmour, (Ky. 1905) 89 S. W. 231.

5. Gassenheimer *v.* District of Columbia, 25 App. Cas. (D. C.) 179; Pickup *v.* Philadelphia, etc., R. Co., 29 Pa. Super. Ct. 631; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

6. Kern Island Irrigating Co. *v.* Bakersfield, 151 Cal. 403, 90 Pac. 1052; Chicago *v.* Pooley, 112 Ill. App. 343; Sautter *v.* Utica City Nat. Bank, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 15, 90 N. Y. Supp. 838.

7. Bensel Constr. Co. *v.* Homer, 2 Ga. App. 369, 58 S. E. 489; Friedman *v.* Snare, etc., Co., 71 N. J. L. 610, 61 Atl. 401, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 156; Culbertson *v.* Alexander, 17 Okla. 370, 87 Pac. 863.

8. Evans *v.* Ellefson, 82 Ark. 511, 100 S. W. 759; People *v.* Atchison, etc., R. Co., 217 Ill. 594, 75 N. E. 573.

10. Evans *v.* Ellefson, 82 Ark. 511, 100 S. W. 759; Culbertson *v.* Alexander, 17 Okla. 370, 87 Pac. 863; Meyers *v.* Philadelphia, 217 Pa. St. 159, 66 Atl. 251.

11. Bensel Constr. Co. *v.* Homer, 2 Ga. App. 369, 58 S. E. 489.

157. 1. Brooks *v.* Atlanta, 1 Ga. App. 678, 57 S. E. 1081; McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700; Gates, etc., Co. *v.* Richmond, 103 Va. 702, 49 S. E. 965.

2. Gates, etc., Co. *v.* Richmond, 103 Va. 702, 49 S. E. 965.

3. McHarge *v.* Newcomer, 117 Tenn. 595, 100 S. W. 700.

5. Hatfield *v.* Strauss, 117 N. Y. App. Div. 671, 102 N. Y. Supp. 934.

7. Chicago *v.* Verdon, 119 Ill. App. 494; State *v.* Barbelais, 101 Me. 512, 64 Atl. 881; Galloso *v.* Sikeston, 124 Mo. App. 380, 101 S. W. 715.

9. Chicago *v.* Verdon, 119 Ill. App. 494; Galloso *v.* Sikeston, 124 Mo. App. 380, 101 S. W. 715.

11. Chicago *v.* Pooley, 112 Ill. App. 343.

158. 2. Forbes *v.* Detroit, 139 Mich. 280,

108 N. W. 301; Sautter v. Utica City Nat. Bank, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 15, 90 N. Y. Supp. 838; Mansfield v. New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386; Com. v. Kembel, 30 Pa. Super. Ct. 199.

3. Isaacson v. Boston, (Mass. 1907) 80 N. E. 809; New York v. Knickerbocker Trust Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 222, 102 N. Y. Supp. 900; Brennan v. New York, 117 N. Y. App. Div. 849, 103 N. Y. Supp. 266; Moore v. Philadelphia, 33 Pa. Super. Ct. 194; Bull v. Spokane, (Wash. 1907) 89 Pac. 555.

4. Bischof v. Merchants Nat. Bank, 75 Neb. 838, 106 N. W. 996.

6. Chicago Cold Storage Warehouse Co. v. People, 224 Ill. 287, 79 N. E. 692.

7. Forbes v. Detroit, 139 Mich. 280, 102 N. W. 740; Com. v. Kembel, 30 Pa. Super. Ct. 199.

8. Mansfield v. New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386.

9. St. Louis v. St. Louis Theatre Co., 202 Mo. 690, 100 S. W. 627; Sautter v. Utica City Nat. Bank, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 15, 90 N. Y. Supp. 838.

10. McCormick v. Weaver, 144 Mich. 6, 107 N. W. 314; New York v. Knickerbocker Trust Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 222, 102 N. Y. Supp. 900.

12. Bischof v. Merchants Nat. Bank, 75 Neb. 838, 106 N. W. 996.

14. Mansfield v. New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386; McHarge v. Newcomer, 117 Tenn. 595, 100 S. W. 700.

159. 1. Chicago v. Jarvis, 226 Ill. 614, 80 N. E. 1079; Perry v. Castner, 130 Iowa 703, 107 N. W. 940.

2. New York v. De Peyster, 120 N. Y. App. Div. 762, 105 N. Y. Supp. 612.

3. Chicago v. Jarvis, 226 Ill. 614, 80 N. E. 1079.

5. Perry v. Castner, 130 Iowa 703, 107 N. W. 940; New York v. U. S. Trust Co., 116 N. Y. App. Div. 349, 101 N. Y. Supp. 574.

7. Cook v. North Bergen Tp., 72 N. J. L. 119, 59 Atl. 1035; Stowe v. Kearny, 72 N. J. L. 106, 59 Atl. 1058.

The Owner of the Soil Covered by a Street may make openings in the street merely as an exercise of one of the incidents of ownership. Colegrove Water Co. v. Hollywood, 151 Cal. 425, 90 Pac. 1053.

8. Citizens' Gas, etc., Co. v. Nicholson, 152 Fed. 389.

10. Cook v. North Bergen Tp., 72 N. J. L. 119, 59 Atl. 1035; Stowe v. Kearny, 72 N. J. L. 106, 59 Atl. 1058; Edgewood v. Scott, 29 Pa. Super. Ct. 156.

12. New Orleans v. New Orleans Jockey Club, 115 La. 911, 40 So. 331; New York v. Knickerbocker Trust Co., (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 222, 102 N. Y. Supp. 900; New York v. De Peyster, 120 N. Y. App. Div. 762, 105 N. Y. Supp. 612.

160. 2. Robins v. McGehee, 127 Ga. 431, 56 S. E. 461; St. Anne v. Coyer, 223 Ill. 96, 79 N. E. 54; Rochester v. Pennsylvania Co., 216 Pa. St. 320, 65 Atl. 796.

4. Lincoln v. McLaughlin, (Neb. 1907) 112 N. W. 363.

5. Robins v. McGehee, 127 Ga. 431, 56 S. E. 461.

6. Atlantic, etc., R. Co. v. Cordele, 128 Ga. 293, 57 S. E. 493; Rothschild v. Chicago, 227 Ill. 205, 81 N. E. 407; Galloso v. Sikeston, 124 Mo. App. 380, 101 S. W. 715; Coudert v. Underhill, 107 N. Y. App. Div. 335, 95 N. Y. Supp. 134.

161. 1. People v. Wolverine Mfg. Co., 141 Mich. 455, 104 N. W. 725.

8. Illinois Cent. R. Co. v. Com., (Ky. 1906) 96 S. W. 467; Com. v. Kembel, 30 Pa. Super. Ct. 199.

9. Probey v. District of Columbia, 26 App. Cas. (D. C.) 1.

10. State v. Barbelais, 101 Me. 512, 64 Atl. 881; Gates, etc., Co. v. Richmond, 103 Va. 702, 49 S. E. 965.

162. 1. *Alabama.* — Weiss v. Taylor, 144 Ala. 440, 39 So. 519; Montgomery First Nat. Bank v. Tyson, 144 Ala. 457, 39 So. 560; Sloss-Sheffield Steel, etc., Co. v. Johnson, 147 Ala. 384, 41 So. 907.

Alaska. — Conradt v. Miller, 2 Alaska 433.

Arkansas. — Dickinson v. Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21.

California. — Brown v. Rea, 150 Cal. 171, 88 Pac. 713.

Illinois. — Nichols v. Sadorus, 120 Ill. App. 70.

Michigan. — Forbes v. Detroit, 139 Mich. 280, 102 N. W. 740.

Minnesota. — Johnson v. Andengaard, 100 Minn. 130, 110 N. W. 369.

Nebraska. — Bischof v. Merchants Nat. Bank, 75 Neb. 838, 106 N. W. 996.

New York. — Hatfield v. Strauss, 117 N. Y. App. Div. 671, 102 N. Y. Supp. 934; Sautter v. Utica City Nat. Bank, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 15, 90 N. Y. Supp. 838.

Pennsylvania. — Coward v. Llewellyn, 209 Pa. St. 582, 58 Atl. 1066; Garvey v. Harbison-Walker Refractories Co., 213 Pa. St. 177, 62 Atl. 778; Edwards v. Pittsburg Junction R. Co., 215 Pa. St. 597, 64 Atl. 798; Riley v. Pennsylvania Co., 32 Pa. Super. Ct. 579.

Wisconsin. — Milwaukee Boiler Co. v. Wadhams Oil, etc., Co., 126 Wis. 32, 105 N. W. 312.

4. Sloss-Sheffield Steel, etc., Co. v. Johnson, 147 Ala. 384, 41 So. 907; Conradt v. Miller, 2 Alaska 433; Brown v. Rea, 150 Cal. 171, 88 Pac. 713; Chicago Cold Storage, etc., Co. v. People, 224 Ill. 287, 79 N. E. 692; Hamilton v. Semet Solvay Co., 227 Ill. 501, 81 N. E. 538; Nichols v. Sadorus, 120 Ill. App. 70; Labry v. Gilmour, (Ky. 1905) 89 S. W. 231; Johnson v. Andengaard, 100 Minn. 130, 110 N. W. 369; Bischof v. Merchants Nat. Bank, 75 Neb. 838, 106 N. W. 996; Sautter v. Utica City Nat. Bank, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 15, 90 N. Y. Supp. 838; Edwards v. Pittsburg Junction R. Co., 215 Pa. St. 597, 64 Atl. 798; Riley v. Pennsylvania Co., 32 Pa. Super. Ct. 579.

163. 1. Sloss-Sheffield Steel, etc., Co. v. Johnson, 147 Ala. 384, 41 So. 907.

2. Where a person protests against the erection of a proposed obstruction to the party about to erect it, and the latter proceeds over such protest and objection to complete the obstruction, he cannot complain because the former delayed ten days in bringing suit to restrain the nuisance, which had been com-

pleted in the meantime. Bischof *v.* Merchants Nat. Bank, 75 Neb. 838, 106 N. W. 996.

4. Williams *v.* Los Angeles R. Co., 150 Cal. 592, 89 Pac. 330; Harniss *v.* Bulpitt, 1 Cal. App. 140, 81 Pac. 1022; Williams *v.* Los Angeles, etc., R. Co., 150 Cal. 592, 89 Pac. 330; Wheeler *v.* Ft. Dodge, 131 Iowa 566, 108 N. W. 1057; Forbes *v.* Detroit, 139 Mich. 280, 102 N. W. 740; Mitchell *v.* St. Louis, etc., R. Co., 116 Mo. App. 81, 92 S. W. 111; Ackerman *v.* True, 120 N. Y. App. Div. 172, 105 N. Y. Supp. 12; Culbertson *v.* Alexander, 17 Okla. 370, 87 Pac. 863; Heard *v.* Connor, (Tex. Civ. App. 1905) 84 S. W. 605.

Measure of Damages. — Schleicher *v.* Mt. Vernon, 107 N. Y. App. Div. 584, 95 N. Y. Supp. 326.

6. Williams *v.* Los Angeles, etc., R. Co., 150 Cal. 592, 89 Pac. 330; Harniss *v.* Bulpitt, 1 Cal. App. 140, 81 Pac. 1022; McCormick *v.* Weaver, 144 Mich. 6, 107 N. W. 314; Guilford *v.* Minneapolis, etc., R. Co., 94 Minn. 108, 102 N. W. 365.

164. 1. Chicago Cold Storage, etc., Co. *v.* People, 224 Ill. 287, 79 N. E. 692.

2. Ackerman *v.* True, 120 N. Y. App. Div. 172, 105 N. Y. Supp. 12; Coward *v.* Llewellyn, 209 Pa. St. 582, 58 Atl. 1066.

3. Damonte *v.* Patton, 118 La. 530, 43 So. 1[illegible].

4. St. Louis *v.* St. Louis Theatre Co., 202 Mo. 690, 100 S. W. 627; Mansfield *v.* New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386.

10. Indiana R. Co. *v.* Calvert, 168 Ind. 321, 80 N. E. 961, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 164; Hinman *v.* Clarke, 121 N. Y. App. Div. 105, 105 N. Y. Supp. 725.

13. Indiana R. Co. *v.* Calvert, 168 Ind. 321, 80 N. E. 961; Hinman *v.* Clarke, 121 N. Y. App. Div. 105, 105 N. Y. Supp. 725.

165. 1. Hinman *v.* Clarke, 121 N. Y. App. Div. 105, 105 N. Y. Supp. 725.

2. **Carnival or Festival.** — State *v.* Stower, [illegible] App. 103, 76 N. E. 399.

7. Valentine Clark Co. *v.* Allegheny City, 143 Fed. 644.

11. **Giving Fire Insurance Patrol Right of Way.** — Duffghe *v.* Metropolitan St. R. Co., 109 N. Y. App. Div. 603, 96 N. Y. Supp. 324.

166. 3. U. S. Brewing Co. *v.* Stoltenberg, 211 Ill. 531, 71 N. E. 1081; Chicago *v.* Banker, 112 Ill. App. 94; Com. *v.* Crowninshield, 187 Mass. 221, 72 N. E. 963.

Cities Are Authorized to Regulate the Speed of Trains within their limits. Seaboard Air Line R. Co. *v.* Smith, 53 Fla. 375, 43 So. 2[illegible].

8. Millett *v.* Princeton, 167 Ind. 582, 79 N. E. 909; Rogers *v.* Binghamton, 186 N. Y. 595, 79 N. E. 1115.

9. Rogers *v.* Binghamton, 101 N. Y. App. Div. 352, 92 N. Y. Supp. 179.

167. 4. Gassenheimer *v.* District of Columbia, 25 App. Cas. (D. C.) 179; Brooks *v.* Atlanta, 1 Ga. App. 678, 57 S. E. 1081; Shreveport *v.* Dantes, 118 La. 113, 42 So. 716.

6. Caughlin *v.* Campbell Self Baking Co., 39 Colo. 148, 89 Pac. 53; Swift *v.* Murphy, (Tex. Civ. App. 1907) 100 S. W. 907.

168. 1. *Alabama.* — Mobile *v.* Shaw, (Ala. 1907) 43 So. 94.

Connecticut. — Hillyer *v.* Winsted, 77 Conn. 304, 59 Atl. 40.

Delaware. — Stidham *v.* Delaware City, (Del. 1907) 67 Atl. 175.

Georgia. — Americus *v.* Johnson, 2 Ga. App. 378, 58 S. E. 518.

Illinois. — Chicago *v.* Jarvis, 226 Ill. 614, 80 N. E. 1079; Chicago *v.* Loebel, 228 Ill. 52, 81 N. E. 796; Nokomis *v.* Farley, 113 Ill. App. 161; Birch *v.* Charleston Light, etc., Co., 113 Ill. App. 229.

Indiana. — Thuis *v.* Vincennes, 35 Ind. App. 350, 73 N. E. 1098; Vincennes *v.* Spees, 35 Ind. App. 389, 74 N. E. 277; Mitchell *v.* Tell City, (Ind. App. 1907) 81 N. E. 594.

Iowa. — McAllen *v.* Hamblin, 129 Iowa 329, 105 N. W. 593.

Kentucky. — Clay City *v.* Abner, (Ky. 1904) 82 S. W. 276; Covington *v.* Lee, (Ky. 1905) 89 S. W. 493.

Massachusetts. — Isaacson *v.* Boston, (Mass. 1907) 80 N. E. 809; Mason *v.* Winthrop, (Mass. 1907) 81 N. E. 644.

Michigan. — Davis *v.* Adrian, 147 Mich. 300, 110 N. W. 1084; Maclam *v.* Marquette, 148 Mich. 480, 111 N. W. 1079.

Minnesota. — Svendsen *v.* Alden, 101 Minn. 158, 112 N. W. 10.

Missouri. — Coffey *v.* Carthage, 186 Mo. 573, 85 S. W. 532; St. Louis *v.* Kansas City, 110 Mo. App. 653, 85 S. W. 630; Heberling *v.* Warrensburg, 204 Mo. 604, 103 S. W. 36.

Nebraska. — Omaha *v.* Kochem, 74 Neb. 718, 105 N. W. 182; Brown *v.* Pierce, (Neb. 1907) 111 N. W. 366.

New York. — Kopper *v.* Yonkers, 110 N. Y. App. Div. 747, 97 N. Y. Supp. 425; Pymm *v.* New York, 111 N. Y. App. Div. 330, 97 N. Y. Supp. 1108; Brennan *v.* New York, 117 N. Y. App. Div. 849, 103 N. Y. Supp. 266; Moroney *v.* New York, 117 N. Y. App. Div. 843, 103 N. Y. Supp. 1135; Van Gorder *v.* Seneca Falls, (Supm. Ct. Tr. T.) 104 N. Y. Supp. 299; Vaccarini *v.* New York, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 600, 104 N. Y. Supp. 928.

North Carolina. — Fitzgerald *v.* Concord, 140 N. Car. 110, 52 S. E. 309.

Ohio. — Dayton *v.* Glaser, 76 Ohio St. 471, 81 N. E. 991.

Oklahoma. — Stillwater *v.* Swisher, 16 Okla. 585, 85 Pac. 1110.

Pennsylvania. — Clifton *v.* Philadelphia, 217 Pa. St. 102, 66 Atl. 159; Yeager *v.* Berwick, 218 Pa. St. 265, 67 Atl. 347; Moore *v.* Philadelphia, 33 Pa. Super. Ct. 194.

South Dakota. — Fritz *v.* Watertown, (S. Dak. 1907) 111 N. W. 630.

Washington. — Cady *v.* Seattle, 42 Wash. 402, 85 Pac. 19; Bull *v.* Spokane, (Wash. 1907) 89 Pac. 555; Goulette *v.* Sherbrooke, 25 Quebec Super. Ct. 287.

Extends to Whole Width of Streets and Sidewalks. — The duty imposed on a municipality to keep its streets and sidewalks in repair extends to their entire width. Mobile *v.* Shaw, (Ala. 1907) 43 So. 94.

2. Peterson *v.* Seattle, 40 Wash. 33, 82 Pac. 141.

6. Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819; *In re* Brooklyn Union

El. R. Co., 113 N. Y. App. Div. 817, 99 N. Y. Supp. 222.

10. South Omaha *v.* Omaha Bridge, etc., R. Co., (Neb. 1906) 107 N. W. 988.

169. 1. Dowie *v.* Chicago, etc., R. Co., 214 Ill. 49, 73 N. E. 354; St. Louis *v.* Roe, 184 Mo. 324, 83 S. W. 435; New York, etc., R. Co. *v.* O'Brien, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 13, 100 N. Y. Supp. 316; *In re* Keeseville, etc., R. Co., 116 N. Y. App. Div. 72, 101 N. Y. Supp. 237; Hickory *v.* Southern R. Co., 137 N. Car. 189, 49 S. E. 202; Suffolk, etc., R. Co. *v.* West End Land, etc., Co., 137 N. Car. 330, 49 S. E. 350; *In re* Milwaukee Southern R. Co., 124 Wis. 490, 102 N. W. 401.

2. Dowie *v.* Chicago, etc., R. Co., 214 Ill. 49, 73 N. E. 354; St. Louis *v.* Roe, 184 Mo. 324, 83 S. W. 435; Hickory *v.* Southern R. Co., 137 N. Car. 189, 49 S. E. 202; *In re* Milwaukee Southern R. Co., 124 Wis. 490, 102 N. W. 401.

3. South Omaha *v.* Omaha Bridge, etc., R. Co., (Neb. 1906) 107 N. W. 988.

4. Spaulding *v.* Macomb, etc., R. Co., 225 Ill. 585, 80 N. E. 327; Edwards *v.* Pittsburg Junction R. Co., 215 Pa. St. 597, 64 Atl. 798; Chester, etc., R. Co. *v.* Darby, 217 Pa. St. 275, 66 Atl. 357; Collier *v.* Union R. Co., 113 Tenn. 96, 83 S. W. 155.

170. 1. Kuhn *v.* Knight, 115 N. Y. App. Div. 837, 101 N. Y. Supp. 1.

Under the provisions of the charter of South Omaha, in force in 1901, that city was entitled to at least nominal damages from a railway company condemning a right of way over portions of its streets and alleys. South Omaha *v.* Omaha Bridge, etc., R. Co., (Neb. 1906) 107 N. W. 988.

2. Kansas City *v.* Hyde, 196 Mo. 498, 96 S. W. 201; People *v.* Geneva, etc., Traction Co., 186 N. Y. 516, 78 N. E. 1109; Edwards *v.* Pittsburg Junction R. Co., 215 Pa. St. 597, 64 Atl. 798; Collier *v.* Union R. Co., 113 Tenn. 96, 83 S. W. 155.

3. Louisville, etc., R. Co. *v.* Cincinnati, 76 Ohio St. 481, 81 N. E. 983.

171. 1. Louisville, etc., R. Co. *v.* Cincinnati, 76 Ohio St. 481, 81 N. E. 983.

6. People *v.* Decatur, etc., R. Co., 120 Ill. App. 229.

Consent of Property Owners a Condition Precedent. — Shaw *v.* New York El. R. Co., 187 N. Y. 186, 79 N. E. 984.

11. People *v.* Decatur, etc., R. Co., 120 Ill. App. 229; Dulaney *v.* United R., etc., Co., 104 Md. 423, 65 Atl. 45; Kuhn *v.* Knight, 115 N. Y. App. Div. 837, 101 N. Y. Supp. 1.

172. 4. Cleveland Electric R. Co. *v.* Cleveland, 204 U. S. 116, 27 U. S. Sup. Ct. 202; State *v.* Frost, (Neb. 1907) 110 N. W. 986.

173. 2. Dryden *v.* St. Louis Transit Co., 120 Mo. App. 424, 96 S. W. 1044; People *v.* Geneva, etc., Traction Co., 186 N. Y. 516, 78 N. E. 1109; State *v.* Atlantic, etc., R. Co., 141 N. Car. 736, 53 S. E. 290; Edwards *v.* Pittsburg Junction R. Co., 215 Pa. St. 597, 64 Atl. 798.

Waiver. — South Shore Traction Co. *v.* Brookhaven, 116 N. Y. App. Div. 749, 102 N. Y. Supp. 75; South Shore Traction Co. *v.* Patchogue, 116 N. Y. App. Div. 924, 102 N. Y. Supp. 78.

3. State *v.* Frost, (Neb. 1907) 110 N. W. 986; South Shore Traction Co. *v.* Brookhaven, 116 N. Y. App. Div. 749, 102 N. Y. Supp. 75; South Shore Traction Co. *v.* Patchogue, 116 N. Y. App. Div. 924, 102 N. Y. Supp. 78; *In re* Milwaukee Southern R. Co., 124 Wis. 490, 102 N. W. 401.

5. Dulaney *v.* United R., etc., Co., 104 Md. 423, 65 Atl. 45; *In re* Milwaukee Southern R. Co., 124 Wis. 490, 102 N. W. 401.

6. Dulaney *v.* United R., etc., Co., 104 Md. 423, 65 Atl. 45; State *v.* Frost, (Neb. 1907) 110 N. W. 986.

7. South Shore Traction Co. *v.* Brookhaven, 116 N. Y. App. Div. 749, 102 N. Y. Supp. 75; South Shore Traction Co. *v.* Patchogue, 116 N. Y. App. Div. 924, 102 N. Y. Supp. 78.

12. Millcreek Tp. *v.* Erie Rapid Transit St. R. Co., 216 Pa. St. 132, 64 Atl. 901; Edwards *v.* Pittsburg Junction R. Co., 215 Pa. St. 597, 64 Atl. 798.

174. 1. Millcreek Tp. *v.* Erie Rapid Transit St. R. Co., 216 Pa. St. 132, 64 Atl. 901.

2. Edwards *v.* Pittsburg Junction R. Co., 215 Pa. St. 597, 64 Atl. 798; Millcreek Tp. *v.* Erie Rapid Transit St. R. Co., 216 Pa. St. 132, 64 Atl. 901; South Shore Traction Co. *v.* Brookhaven, 116 N. Y. App. Div. 749, 102 N. Y. Supp. 75; South Shore Traction Co. *v.* Patchogue, 116 N. Y. App. Div. 924, 102 N. Y. Supp. 78

5. Des Moines City R. Co. *v.* Des Moines, 151 Fed. 854; Cleveland Electric R. Co. *v.* Cleveland, 204 U. S. 116, 27 U. S. Sup. Ct. 202; Atlantic, etc., R. Co. *v.* Montezuma, 122 Ga. 1, 49 S. E. 738.

The Right to Erect a Signal Tower is not included in the right to lay railroad tracks in the street. Williams *v.* Los Angeles R. Co., 150 Cal. 592, 89 Pac. 330.

175. 1. **Exclusive Grant Derived from City.** — Des Moines City R. Co. *v.* Des Moines, 151 Fed. 854.

3. Chester City *v.* Union R. Co., 218 Pa. St. 24, 66 Atl. 1107.

8. Des Moines City R. Co. *v.* Des Moines, 151 Fed. 854.

9. Atlantic, etc., R. Co. *v.* Cordele, 125 Ga. 373, 154 S. E. 155; Spalding *v.* Macomb, etc., R. Co., 225 Ill. 585, 80 N. E. 327.

Estoppel of City to Compel Removal of Tracks. — Des Moines City R. Co. *v.* Des Moines, 151 Fed. 854.

176. 6. Spalding *v.* Macomb, etc., R. Co., 225 Ill. 585, 80 N. E. 327; Chosen Freeholders *v.* Central R. Co., 68 N. J. Eq. 500, 59 Atl. 303.

7. Birmingham R., etc., Co. *v.* Moran, (Ala. 1907) 44 So. 152, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 176; Spalding *v.* Macomb, etc., R. Co., 225 Ill. 585, 80 N. E. 327; Swift *v.* Delaware, etc., R. Co., 66 N. J. Eq. 452, 58 Atl. 930.

Unauthorized Use Enjoined at Suit of City. — Clifton Heights *v.* Thomas Kent Mfg. Co., 212 Pa. St. 117, 61 Atl. 817.

178. 1. Dulaney *v.* United R., etc., Co., 104 Md. 423, 65 Atl. 45.

3. Dulaney *v.* United R., etc., Co., 104 Md. 423, 65 Atl. 45; Chosen Freeholders *v.* Central R. Co., 68 N. J. Eq. 500, 59 Atl. 303; Boliver *v.* Pittsburg, etc., R. Co., 179 N. Y. 543, 71 N. E. 1141; New York *v.* Harlem Bridge, etc., R. Co., 186 N. Y. 304, 78 N. E. 72; Houston, etc., R. Co. *v.* Dallas, 98 Tex. 396, 84 S. W. 648.

Right to Compel Railroad to Elevate Its Tracks. — People *v.* Atchison, etc., R. Co., 217 Ill. 594, 75 N. E. 573.

179. 6. St. Louis Southwestern R. Co. *v.* Johnson, (Tex. Civ. App. 1905) 85 S. W. 476.

8. Uhlich *v.* Chicago, 224 Ill. 402, 79 N. E. 598.

9. New York *v.* Harlem Bridge, etc., R. Co., 186 N. Y. 304, 78 N. E. 1072; Amsterdam *v.* Fonda, etc., R. Co., 119 N. Y. App. Div. 680, 104 N. Y. Supp. 411; Butin *v.* New York Cent., etc., R. Co., 100 N. Y. App. Div. 42, 90 N. Y. Supp. 909.

12. Atlantic, etc., R. Co. *v.* Montezuma, 122 Ga. 4, 49 S. E. 738, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 179.

180. 1. *Alabama.* — Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819.

Arkansas. — Little Rock, etc., R. Co. *v.* Newman, 73 Ark. 1, 83 S. W. 653.

California. — Smith *v.* Southern Pac. R. Co., 146 Cal. 164, 79 Pac. 868.

Florida. — Seaboard Air Line R. Co. *v.* Southern Invest. Co., 53 Fla. 832, 44 So. 351.

Georgia. — Atlanta, etc., R. Co. *v.* Atlanta, etc., R. Co., 125 Ga. 529, 54 S. E. 736.

Illinois. — Dowie *v.* Chicago, etc., R. Co., 214 Ill. 49, 73 N. E. 354.

Indiana. — But see Kinsey *v.* Union Traction Co., (Ind. 1907) 81 N. E. 923.

Kentucky. — Camden Interstate R. Co. *v.* Smiley, (Ky. 1905) 84 S. W. 523.

Michigan. — Dean *v.* Ann Arbor R. Co., 137 Mich. 459, 100 N. W. 773.

Missouri. — St. Louis *v.* Roe, 184 Mo. 324, 83 S. W. 435.

North Carolina. — Suffolk, etc., R. Co. *v.* West End Land, etc., Co., 137 N. Car. 330, 49 S. E. 350.

Rhode Island. — Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

2. *Alabama.* — Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819.

Arkansas. — Little Rock, etc., R. Co. *v.* Newman, 73 Ark. 1, 83 S. W. 653.

California. — Smith *v.* Southern Pac. R. Co., 146 Cal. 164, 79 Pac. 868.

Florida. — Seaboard Air Line R. Co. *v.* Southern Invest. Co., 53 Fla. 832, 44 So. 351.

Georgia. — Atlantic, etc., R. Co. *v.* McKnight, 125 Ga. 328, 54 S. E. 148; Atlanta, etc., R. Co. *v.* Atlanta, etc., R. Co., 125 Ga. 529, 54 S. E. 736.

Illinois. — Dowie *v.* Chicago, etc., R. Co., 214 Ill. 49, 73 N. E. 354.

Indiana. — But see Kinsey *v.* Union Traction Co., (Ind. 1907) 81 N. E. 923.

Kentucky. — Camden Interstate R. Co. *v.* Smiley, (Ky. 1905) 84 S. W. 523.

Michigan. — Dean *v.* Ann Arbor R. Co., 137 Mich. 459, 100 N. W. 773.

Missouri. — St. Louis *v.* Roe, 184 Mo. 324, 83 S. W. 435.

North Carolina. — Suffolk, etc., R. Co. *v.* West End Land, etc., Co., 137 N. Car. 330, 49 S. E. 350.

Rhode Island. — Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

3. Kinsey *v.* Union Traction Co., (Ind. 1907) 81 N. E. 923; Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

4. Smith *v.* Southern Pac. R. Co., 146 Cal. 164, 79 Pac. 868; Seaboard Air Line R. Co. *v.* Southern Invest. Co., 53 Fla. 832, 44 So. 351.

181. 2. Atlantic, etc., R. Co. *v.* McKnight, 125 Ga. 328, 54 S. E. 148; Camden Interstate R. Co. *v.* Smiley, (Ky. 1905) 84 S. W. 523.

4. Little Rock, etc., R. Co. *v.* Newman, 73 Ark. 1, 83 S. W. 653; Scrutchfield *v.* Choctaw, etc., R. Co., 18 Okla. 308, 88 Pac. 1048.

182. 1. Smith *v.* Southern Pac. R. Co., 146 Cal. 164, 79 Pac. 868; Scrutchfield *v.* Choctaw, etc., R. Co., 18 Okla. 308, 88 Pac. 1048; Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

2. Scrutchfield *v.* Choctaw, etc., R. Co., 18 Okla. 308, 88 Pac. 1048.

3. Grossman *v.* Houston, etc., R. Co., 99 Tex. 641, 92 S. W. 836, *reversing* (Tex. Civ. App. 1905) 89 S. W. 312.

183. 2. Yazoo, etc., R. Co. *v.* Lefoldt, 87 Miss. 317, 39 So. 459.

4. Atlantic, etc., R. Co. *v.* McKnight, 125 Ga. 328, 54 S. E. 148.

184. 3. Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819; Seaboard Air Line R. Co. *v.* Southern Invest. Co., 53 Fla. 832, 44 So. 351; Wilder *v.* Aurora, etc., Electric Traction Co., 216 Ill. 526, 75 N. E. 194, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 184; Swift *v.* Delaware, etc., R. Co., 66 N. J. Eq. 452, 58 Atl. 939.

4. Wilder *v.* Aurora, etc., Electric Traction Co., 216 Ill. 526, 75 N. E. 194, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 184.

5. Camden Interstate R. Co. *v.* Smiley, (Ky. 1905) 84 S. W. 523.

6. Dean *v.* Ann Arbor R. Co., 137 Mich. 459, 100 N. W. 773.

8. Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819; Wolfard *v.* Fisher, 48 Oregon 479, 84 Pac. 850, *affirmed* 48 Oregon 479, 87 Pac. 530.

185. 1. Little Rock, etc., R. Co. *v.* Newman, 73 Ark. 1, 83 S. W. 653; Smith *v.* Southern Pac. R. Co., 146 Cal. 164, 79 Pac. 868; Dowie *v.* Chicago, etc., R. Co., 214 Ill. 49, 73 N. E. 354; Kinsey *v.* Union Traction Co., (Ind. 1907) 81 N. E. 923; Camden Interstate R. Co. *v.* Smiley, (Ky. 1905) 84 S. W. 523; St. Louis *v.* Roe, 184 Mo. 324, 83 S. W. 435; Leffman *v.* Long Island R. Co., 120 N. Y. App. Div. 528, 105 N. Y. Supp. 487; Suffolk, etc., R. Co. *v.* West End Land, etc., Co., 137 N. Car. 330, 49 S. E. 350.

Demand for Abatement of Nuisance. — Coats *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640.

2. Little Rock, etc., R. Co. *v.* Newman, 73 Ark. 1, 83 S. W. 653.

3. Little Rock, etc., R. Co. *v.* Greer, 77

Ark. 387, 96 S. W. 129; Leffmann *v.* Long Island R. Co., 120 N. Y. App. Div. 528, 105 N. Y. Supp. 487.

186. 1. Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819.

2. Coats *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640; Atlantic, etc., R. Co. *v.* McKnight, 125 Ga. 328, 54 S. E. 148; Providence, etc., Steamboat Co. *v.* Fall River, 187 Mass. 45, 72 N. E. 338; Hyde *v.* Boston, etc., St. R. Co., 194 Mass. 80, 80 N. E. 517; Yazoo, etc., R. Co. *v.* Lefoldt, 87 Miss. 317, 39 So. 459; Wallach *v.* New York, etc., R. Co., 111 N. Y. App. Div. 273, 97 N. Y. Supp. 717.

3. Coats *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640; Camden Interstate R. Co. *v.* Smiley, (Ky. 1905) 84 S. W. 523; Providence, etc., Steamboat Co. *v.* Fall River, 187 Mass. 45, 72 N. E. 338.

4. Leffmann *v.* Long Island R. Co., 120 N. Y. App. Div. 528, 105 N. Y. Supp. 487; State *v.* Olympia Light, etc., Co., (Wash. 1907) 90 Pac. 656.

187. 1. Atlantic, etc., R. Co. *v.* McKnight, 125 Ga. 328, 54 S. E. 148; Novich *v.* Trinity, etc., R. Co., (Tex. Civ. App. 1907) 101 S. W. 476.

2. Kinsey *v.* Union Traction Co., (Ind. 1907) 81 N. E. 923.

4. Vincent *v.* New York, etc., R. Co., 77 Conn. 431, 59 Atl. 491.

5. Pittsburg R. Co. *v.* Chapman, (C. C. A.) 145 Fed. 886; Epstein *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 184, 101 N. Y. Supp. 793.

6. Vincent *v.* New York, etc., R. Co., 77 Conn. 431, 59 Atl. 491.

7. Birmingham Belt R. Co. *v.* Lockwood, (Ala. 1907) 43 So. 819.

188. 2. Coats *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640.

6. Coats *v.* Atchison, etc., R. Co., 1 Cal. App. 441, 82 Pac. 640; Taber *v.* New York, etc., R. Co., (R. I. 1907) 67 Atl. 9.

A Railway Company Condemning the Whole of a Dedicated Street is liable to the abutter for the full value of the land taken. Suffolk, etc., R. Co. *v.* West End Land, etc., Co., 137 N. Car. 330, 49 S. E. 350.

STRICT CONSTRUCTION.

189. 6. Regent Realty Co. *v.* Armour Packing Co., 112 Mo. App. 271, 86 S. W. 880.

STRICTLY.

189. 8. **"Strictly Choice" and "Choice" Synonymous.** — See Ennis Brown Co. *v.* Hurst, 1 Cal. App. 752, 82 Pac. 1056.

STRUCK JURY.

190. 9. **Struck Jury Is Drawn Jury.** — State *v.* Waterman, 78 Vt. 379, 62 Atl. 1016.

STRUCTURE.

191. 4. **The Term Structure** as used in the *Washington* statute defining arson means any barn in which property is placed or stored or which is used or intended for such purpose. State *v.* McLain, 43 Wash. 267, 86 Pac. 390.

SUBDIVISION.

193. 6. **Subdivision — Territorial Limit.** — See Caudle *v.* Talladega County, 144 Ala. 502, 39 So. 307.

SUBJECT — SUBJECT-MATTER.

194. 1. **The Subject of the Action** is the plaintiff's principal primary right to enforce which the action is brought. Steinmetz *v.* Cosmopolitan Range Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 611, 94 N. Y. Supp. 456.

195. 1. **Subject to Garnishment.** — See Klipstein *v.* Allen-Miles Co., 136 Fed. 385, 69 C. C. A. 229.

Subject to Penalty. — See Stephens *v.* Phœnix Bridge Co., (C. C. A.) 139 Fed. 248.

SUBROGATION.

202. 1. **For Other Definitions of Term.** — Northern Invest. Co. *v.* Frey Real Estate, etc., Co., 33 Colo. 480, 81 Pac. 300.

2. *In re* McGuire, 137 Fed. 967.

203. 1. Northern Invest. Co. *v.* Frey Real Estate, etc., Co., 33 Colo. 480, 81 Pac. 300; Hubbard *v.* Security Trust Co., 38 Ind. App. 156, 78 N. E. 79; Capen *v.* Garrison, 193 Mo. 343, 92 S. W. 368, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203; Strickland *v.* Magoun, 190 N. Y. 545, 83 N. E. 1132, *affirming* 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425; Vasser *v.* Liberty, (Tex. Civ. App. 1908) 110 S. W. 119, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203.

2. National Surety Co. *v.* State Sav. Bank, (C. C. A.) 156 Fed. 21; Brinckerhoff *v.* Holland Trust Co., 159 Fed. 191; Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425; Vasser *v.* Liberty, (Tex. Civ. App. 1908) 110 S. W. 119, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203; Hughes *v.* Thomas, 131 Wis. 315, 111 N. W. 474; Reddington *v.* Franey, 131 Wis. 518, 111 N. W. 725.

4. Carstenbrook *v.* Wedderien, (Cal. App. 1908) 94 Pac. 372; Grace *v.* Kemp, 16 Pa. Dist. 818, 32 Pa. Co. Ct. 602, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203.

5. **Holder of an Unrecorded Chattel Mortgage.** — Boice *v.* Conover, 69 N. J. Eq. 580, 61 Atl. 159.

204. 1. Eddy *v.* Leath, 26 Ohio Cir. Ct. 645.

2. Capen *v.* Garrison, 193 Mo. 341, 92 S. W. 368, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 203.

3. State *v.* Perkins, 114 La. 307, 38 So. 196, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 204, and quoting the text paragraph; Strickland *v.* Magoun, 190 N. Y. 545, 83 N. E. 1132, *affirming* 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425; Boice *v.* Conover, 69 N. J. Eq. 580, 61 Atl. 159; Moring *v.* Privett, (N. Car. 1908) 60 S. E. 509.

4. Dyer *v.* Jacoway, 76 Ark. 171, 88 S. W. 901.

5. See Young *v.* Pecos County, (Tex. Civ. App. 1907) 101 S. W. 1055.

6. Henry *v.* Henry, 73 Neb. 746, 103 N. W. 441.

205. 1. Capen *v.* Garrison, 193 Mo. 335,

9 S. W. 368; Carstenbrook v. Wohlerton, (Cal. App. 1908) 94 Pac. 372.

6. State *v.* Perkins, 114 La. 307, 38 So. 196, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 205.

7. Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

206. 1. Moring *v.* Privott, (N. Car. 1908) 60 S. E. 509, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 509.

207. 4. American Nat. Bank *v.* Fidelity, etc., Co., 129 Ga. 126, 58 S. E. 867.

5. Phœnix Ins. Co. *v.* Pacific Lumber Co., 1 Cal. App. 156, 81 Pac. 970, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 207; Weimer *v.* Talbot, 56 W. Va. 262, 49 S. E. 372, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 207.

6. Dickson *v.* Sledge, (Miss. 1905) 38 So. 673; Caviness *v.* Fidelity, etc., Co., 140 N. Car. 58, 52 S. E. 265.

208. 1. National Surety Co. *v.* State Sav. Bank, (C. C. A.) 156 Fed. 21; Baldwin *v.* Alexander, 145 Ala. 186, 40 So. 391; Bechtel *v.* Weir, (Cal. 1907) 93 Pac. 75; Stehle *v.* United Surety Co., (Md. 1908) 68 Atl. 600.

209. 1. Lipe *v.* Taylor, 106 Va. 231, 55 S. E. 542.

8. *Compare* Herpolsheimer *v.* Hansell-Elcock Co., 141 Mich. 369, 104 N. W. 671.

9. Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

211. 3. McClure *v.* King, (Ky. 1907) 104 S. W. 711, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211.

212. 5. McClure *v.* King, (Ky. 1907) 104 S. W. 711.

9. Hubbard *v.* Security Trust Co., 38 Ind. App. 156, 78 N. E. 79.

10. Subrogation Carries with It Both Rights and Liabilities of Principal. — Ausplund *v.* Ætna Indemnity Co., 47 Oregon 10, 81 Pac. 577.

215. 3. Boice *v.* Conover, 60 N. J. Eq. 580, 61 Atl. 159.

217. 5. **A Surety Who Has Been Fully Compensated** is not entitled to any subrogation to the rights of the creditor. Culbertson *v.* Salinger, 131 Iowa 307, 108 N. W. 454.

219. 2. American Nat. Bank *v.* Fidelity, etc., Co., 129 Ga. 126, 58 S. E. 870, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 219; Lilianthal *v.* Lesser, 102 N. Y. App. Div. 500, 92 N. Y. Supp. 619.

3. Baldwin *v.* Alexander, 145 Ala. 186, 40 So. 391.

220. 3. National Surety Co. *v.* State Sav. Bank, (C. C. A.) 156 Fed. 21.

221. 4. Hill *v.* Flemming, (Ky. 1908) 107 S. W. 764.

223. 1. Matney *v.* Williams, (Ky. 1905) 89 S. W. 678.

4. Pond *v.* Dougherty, (Cal. App. 1907) 92 Pac. 1035, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 223; Horne *v.* Schram, 73 Kan. 368, 85 Pac. 535; North Ave. Sav. Bank *v.* Hayes, 188 Mass. 135, 74 N. E. 311; Burrus *v.* Cook, 117 Mo. App. 385, 93 S. W. 888; Shaffer *v.* Messner, 27 Pa. Super. Ct. 191; Weinet *v.* Talbot, 56 W. Va. 262, 49 S. E. 372; Pickens *v.* Wood, 57 W. Va. 486, 50 S. E. 818.

8. Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

224. 1. **Where a Wife's Property Is Taken** to satisfy the husband's debts, which are secured by a mortgage of his property, she will be subrogated *pro rata* to creditors' rights. Long *v.* Deposit Bank, (Ky. 1906) 90 S. W. 901.

5. State Bank *v.* Kahn, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 500, 98 N. Y. Supp. 858.

226. 3. *In re* Bruce, 158 Fed. 123; Theus *v.* Armistead, 116 La. 795, 41 So. 95; Schmitt *v.* Greenberg, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 570, 109 N. Y. Supp. 881.

228. 7. Henningsen *v.* U. S. Fidelity, etc., Co., 208 U. S. 404, 28 U. S. Sup. Ct. 389, *affirming* (C. C. A.) 143 Fed. 810; Union Stone Co. *v.* Chosen Freeholders, (N. J. 1906) 65 Atl. 466.

230. 3. Moody *v.* Huntley, 149 Fed. 797; Crystal *v.* Hutton, 1 Cal. App. 251, 81 Pac. 1115; Jennings *v.* Moore, 189 Mass. 197, 75 N. E. 214; Ferd Heim Brewing Co. *v.* Jordon, 110 Mo. App. 286, 85 S. W. 927; Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303; Marsters *v.* Umpqua Valley Oil Co., (Oregon 1907) 90 Pac. 151.

Surety Entitled to Securities Only Where He Pays Whole Debt. — Fayetteville Bank *v.* Lorwein, 76 Ark. 245, 88 S. W. 919.

4. Koppang *v.* Steenerson, 100 Minn. 239, 111 N. W. 153; McKenna *v.* Corcoran, 70 N. J. Eq. 627, 61 Atl. 1026.

6. *Compare* Rockefeller *v.* Larick, (Neb. 1907) 110 N. W. 1022.

231. 6. Charnock *v.* Jones, (S. Dak. 1908) 115 N. W. 1072.

233. 7. Griffis *v.* Connersville First Nat. Bank, 168 Ind. 546, 81 N. E. 490; O'Neill *v.* State Sav. Bank, 34 Mont. 521, 87 Pac. 970; Davis *v.* Somers-Cambridge Co., 75 Ohio St. 215, 79 N. E. 232.

235. 17. Landis *v.* Wolf, 119 Ill. App. 11; Grace *v.* Kemp, 16 Pa. Dist. 821, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 235.

237. 4. Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

238. 1. Oglebay *v.* Todd, 166 Ind. 250, 76 N. E. 238; Pleasant Hill Light, etc., Co. *v.* Quinlan, (Mo. App. 1908) 109 S. W. 1061.

2. *Compare* Avon-by-the-Sea Land, etc., Co. *v.* McDowell, (N. J. 1906) 62 Atl. 865.

239. 1. Ragan *v.* Standard Scale Co., 128 Ga. 546, 58 S. E. 31, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 238.

4. Hamilton *v.* Rogers, 126 Ga. 27, 54 S. E. 926; Louden *v.* Wilson, 233 Ill. 340, 84 N. E. 245; Overturf *v.* Martin, (Ind. 1908) 84 N. E. 531; Taylor *v.* Roniger, 147 Mich. 99, 110 N. W. 503; Moring *v.* Privott, (N. Car. 1908) 60 S. E. 509. *Compare* Coleman *v.* Coleman, 74 S. Car. 567, 54 S. E. 758.

5. Liverman *v.* Lee, 86 Miss. 370, 38 So. 658.

6. Northern Invest. Co. *v.* Frey Real Estate, etc., Co., 33 Colo. 480, 81 Pac. 300; Griffin *v.* Griffin, 75 S. Car. 249, 55 S. E. 317; Home Invest. Co. *v.* Clarson, (S. Dak. 1906) 100 N. W. 507.

240. 1. Neff *v.* Elder, 84 Ark. 277, 105 S.

W. 260; Parsons *v.* Urie, 104 Md. 238, 64 Atl. 927.

Claims Paid Must Be Valid Charges on Land. — Rice *v.* Bamberg, 72 S. Car. 384, 57 S. E. 987; Rice *v.* Bishop, 72 S. Car. 386, 51 S. E. 988; Rice *v.* Beard, 72 S. Car. 383, 51 S. E. 988.

3. Vasser *v.* Liberty, (Tex. Civ. App. 1908) 110 S. W. 119, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 240.

241. 2. **Subrogation Denied Where Claimant Will Not Do Equity.** — Stump *v.* Warfield, 104 Md. 530, 65 Atl. 346.

4. Capen *v.* Garrison, 193 Mo. 335, 92 S. W. 368.

242. 2. Abbeville Rice Mill *v.* Shambaugh, 115 La. 1047, 40 So. 453; Dieboldt Brewing Co. *v.* Grabski, 28 Ohio Cir. Ct. 91; McDowell *v.* M. T. Jones Lumber Co., (Tex. Civ. App. 1906) 93 S. W. 476.

243. 7. Morris *v.* Bentley, 2 N. W. Ter. 253; Anthes *v.* Schroeder, 74 Neb. 172, 103 N. W. 1072, holding further that payment of a subsequent lien gives no right to subrogation.

244. 1. New England Mortg. Security Co. *v.* Fry, 143 Ala. 637, 42 So. 57; Capitol Nat. Bank *v.* Holmes, (Colo. 1908) 95 Pac. 314.

Rule of Text Applied to Lessees. — Wunderle *v.* Ellis, 212 Pa. St. 620, 62 Atl. 106, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 243.

245. 6. Bonhoff *v.* Wichorst, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 437.

246. 10. Parsons *v.* Urie, 104 Md. 249, 64 Atl. 927, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 246; Mausert *v.* Christian Feigenspan, (N. J. 1905) 64 Atl. 801.

247. 3. Kopp *v.* Thele, (Minn. 1908) 116 N. W. 472.

248. 1. Davies *v.* Pugh, 81 Ark. 253, 99 S. W. 78; Cumberland University *v.* Roberson, (Ky. 1907) 99 S. W. 1152; Ramoneda *v.* Loggins, (Miss. 1906) 39 So. 1007; Blydenburgh *v.* Seabury, 104 N. Y. App. Div. 141, 93 N. Y. Supp. 330; Hickey *v.* Conine, 27 Ohio Cir. Ct. 369; Helm *v.* Lynchburg Trust, etc., Bank, 106 Va. 603, 56 S. E. 598; Wilson *v.* Hubbard, 39 Wash. 671, 82 Pac. 154; Hughes *v.* Thomas, 131 Wis. 315, 111 N. W. 474. *Compare* Worthy *v.* Battle, 125 Ga. 415, 54 S. E. 667; Lilianthal *v.* Lesser, 102 N. Y. App. Div. 500, 92 N. Y. Supp. 619.

Rule Stated in Text Applies to Chattel Mortgages. — Cavanaugh *v.* Sanderson, (Mich. 1908) 115 N. W. 955.

A Chattel Mortgage Cannot Be Kept Alive for a Fraudulent Purpose to establish a right to subrogation. Longley *v.* Sperry, (N. J. 1907) 66 Atl. 1062.

Life Tenant Paying Off Incumbrance to Protect Interest May Be Subrogated. — Bonhoff *v.* Wiehorst, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 437.

249. 1. Mergele *v.* Felix, (Tex. Civ. App. 1907) 99 S. W. 709.

250. 3. Blydenburgh *v.* Seabury, 104 N. Y. App. Div. 141, 93 N. Y. Supp. 330.

4. **Payment of Costs Necessary to Subrogation Where Suit Begun.** — Kadin *v.* Samuels, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 442, 106 N. Y. Supp. 559.

5. Simonson *v.* Lauck, 105 N. Y. App. Div. 82, 93 N. Y. Supp. 965; McConihe *v.* Gies, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 54, 102 N. Y. Supp. 257.

Wife Paying Incumbrance from Profits of Encumbered Land Not Entitled to Subrogation. — Kenady *v.* Gilkey, 81 Ark. 147, 98 S. W. 969.

6. **Subrogation Denied Where No Lien Exists.** — Peacock *v.* Barnes, 142 N. Car. 215, 55 S. E. 99.

7. Peacock *v.* Barnes, 142 N. Car. 215, 55 S. E. 99. *Compare* Bonhoff *v.* Wiehorst, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 437.

A Delay Not Beyond the Statute of Limitations does not constitute laches where no rights of third persons have supervened. Hughes *v.* Thomas, 131 Wis. 315, 111 N. W. 474.

8. Flynt *v.* Taylor, (Tex. 1906) 93 S. W. 423.

9. Gilbert *v.* Lawrence, 56 W. Va. 292, 49 S. E. 155, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 250.

251. 8. Sampers *v.* Conolly, 115 N. Y. App. Div. 364, 100 N. Y. Supp. 806.

252. 3. Grace *v.* Kemp, 16 Pa. Dist. 821, 32 Pa. Co. Ct. 606, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 252.

4. Whitmore *v.* Rascoe, 112 Tenn. 621, 85 S. W. 860.

5. Lupton *v.* Taylor, 39 Ind. App. 412, 78 N. E. 689, *rehearing denied* 39 Ind. App. 420, 79 N. E. 523. *Compare* Matter of Bernstein, (Surrogate Ct.) 58 Misc. (N. Y.) 115, 110 N. Y. Supp. 473.

253. 6. Jones *v.* Dulaney, (Ky. 1905) 86 S. W. 547, *judgment modified* (Ky. 1905) 86 S. W. 977.

10. Weaver *v.* Gray, 37 Ind. App. 35, 76 N. E. 795.

255. 1. **Principle Applied to Fine and Costs Paid by Sheriff.** — Wilson *v.* White, 82 Ark. 407, 102 S. W. 201, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 254 [255].

6. Wilson *v.* White, 82 Ark. 407, 102 S. W. 201, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 255.

7. Browder *v.* Hill, (C. C. A.) 136 Fed. 821; Hughes *v.* Howell, (Ala. 1907) 44 So. 410; Worthy *v.* Battle, 125 Ga. 415, 54 S. E. 667; Collings *v.* Collings, (Ky. 1906) 92 S. W. 577; Herpolsheimer *v.* Hansell-Elcock Co., 141 Mich. 369, 104 N. W. 671, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 255; Lilianthal *v.* Lesser, 102 N. Y. App. Div. 500, 92 N. Y. Supp. 619; Thompson *v.* Griggs, 31 Pa. Super. Ct. 608; Reddington *v.* Franey, 131 Wis. 518, 111 N. W. 725. *Compare* Webb *v.* Harris, 124 Ga. 723, 53 S. E. 247; Washington L. & T. Co. *v.* Ritz, 37 Wash. 642, 80 Pac. 174.

256. 1. *Compare* Strickland *v.* Magoun, 190 N. Y. 545, 83 N. E. 1132, *affirming* 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425.

2. *In re* McGuire, 137 Fed. 967; Lesser *v.* Steindler, 110 N. Y. App. Div. 262, 97 N. Y. Supp. 255.

3. Browder *v.* Hill, (C. C. A.) 136 Fed. 821, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 257; Cooper *v.* Jennings Refining Co., 118 La. 181, 42 So. 766. See also Dantzler *v.* McInnis, (Ala. 1907) 44 So. 193.

257. 2. Browder *v.* Hill, (C. C. A.) 136

Fed. 821, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 257.

7. Cutter *v.* Burroughs, 100 Me. 379, 61 Atl. 767.

10. Bank of Commerce *v.* Lawrence County Bank, 80 Ark. 197, 96 S. W. 749.

11. Browder *v.* Hill, (C. C. A.) 136 Fed. 821.

258. 6. *Compare* Miles *v.* Dorn, (Tex. Civ. App. 1905) 90 S. W. 707.

8. Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542.

259. 4. Jewett *v.* Maytham, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 1000; Missouri, etc., R. Co. *v.* Ferris, (Tex. Civ. App. 1906) 99 S. W. 896.

7. Cunningham *v.* Seaboard Air Line R. Co., 139 N. Car. 427, 51 S. E. 1029.

260. 4. Freed *v.* American F. Ins. Co., (Miss. 1907) 43 So. 947; Downs Farmers' Warehouse Assoc. *v.* Pioneer Mut. Ins. Assoc., 41 Wash. 372, 83 Pac. 423.

5. Svea Ins. Co. *v.* Vicksburg, etc., R. Co., 153 Fed. 774; Sea Ins. Co. *v.* Vicksburg, etc., R. Co., (C. C. A.) 159 Fed. 676; Caledonia Ins. Co. *v.* Northern Pac. R. Co., 32 Mont. 49, 79 Pac. 544, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 260; Ætna Ins. Co. *v.* Charleston, etc., R. Co., 76 S. Car. 101, 56 S. E. 788.

262. 1. *Compare* Downs Farmers' Warehouse Assoc. *v.* Pioneer Mut. Ins. Assoc., 41 Wash. 372, 83 Pac. 423.

10. Bradley *v.* Lehigh Valley R. Co., 145 Fed. 560.

No Subrogation unless Loss Is Paid in Full. — The Bodo, 156 Fed. 980.

263. 1. Brown *v.* Merchants' Marine Ins. Co., (C. C. A.) 152 Fed. 411.

264. 1. Molaka *v.* American F. Ins. Co., 29 Pa. Super. Ct. 149; Gillespie *v.* Scottish Union, etc., Co., 61 W. Va. 169, 56 S. E. 213. See also Fort Scott Bldg., etc., Assoc. *v.* Palatine Ins. Co., 74 Kan. 272, 86 Pac. 142.

Insurance Company Discharging Trust Debt Entitled to Subrogation. — Baker *v.* Monumental Sav., etc., Assoc., 58 W. Va. 414, 52 S. E. 403, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 263.

2. Rockwood First Nat. Bank *v.* Insurance Co., 2 Tenn. Ch. App. 90; Gillespie *v.* Scottish Union, etc., Ins. Co., 61 W. Va. 169, 56 S. E. 213, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 263, and quoting the entire text paragraph.

6. Gatzweiler *v.* Milwaukee Electric R., etc., Co., (Wis. 1908) 116 N. W. 633.

7. Ætna L. Ins. Co. *v.* Tremblay, 101 Me. 585, 65 Atl. 22.

265. 5. Northern Invest. Co. *v.* Frey Real Estate, etc., Co., 33 Colo. 480, 81 Pac. 300.

6. **Where One Cotenant Used Money of Another Cotenant** to pay taxes on the joint property, it was held that no right of subrogation arose. Foote *v.* Cotting, (Mass. 1907) 80 N. E. 600.

9. Webber Lumber Co. *v.* Shaw, 189 Mass. 366, 75 N. E. 640.

266. 1. Lidster *v.* Poole, 122 Ill. App. 227. *Compare* Stone *v.* Tilley, (Tex. Civ. App. 1906) 95 S. W. 718.

268. 2. *Compare* Hipwell *v.* National Surety Co., 130 Iowa 656, 105 N. W. 318.

6. **The Fact that the Agent Was Negligent** in causing the loss to the principal will not defeat his right to subrogation. Brinckerhoff *v.* Holland Trust Co., 159 Fed. 191.

269. 4. Northern Cent. R. Co. *v.* United R., etc., Co., 105 Md. 345, 66 Atl. 444.

5. Texas, etc., R. Co. *v.* Eastin, (Tex. 1907) 102 S. W. 105.

270. 5. Morehouse *v.* Brooklyn Heights R. Co., 185 N. Y. 520, 78 N. E. 179, *reversing* 102 N. Y. App. Div. 627, 92 N. Y. Supp. 1134.

271. 8. Weimer *v.* Talbot, 56 W. Va. 262, 49 S. E. 372, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 263.

9. See Polhemus *v.* Prudential Realty Corp., (N. J. 1907) 67 Atl. 303.

10. New England Mortg. Security Co. *v.* Fry, 143 Ala. 637, 42 So. 57.

A Motion for Subrogation as a Defense in a Foreclosure Suit is a matter of judicial discretion. McConihe *v.* Gies, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 54, 102 N. Y. Supp. 257.

SUBSCRIBE.

273. 3. **Subscribed Synonymous with Signed.** — Myers *v.* Moore, (Neb. 1907) 110 N. W. 989.

SUBSCRIPTIONS.

277. 2. Worth *v.* Daniel, 1 Ga. App. 15, 57 S. E. 898.

4. Where a subscription has been delivered to a third person but not to the payee it remains a revocable offer. American L. Ins. Co. *v.* Melcher, 132 Iowa 324, 109 N. W. 805.

5. Sutton *v.* Rann, 149 Mich. 35, 112 N. W. 72; People's Bank, etc., Co. *v.* Weidinger, 73 N. J. L. 433, 64 Atl. 179; Sager *v.* Gonnerman, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

6. The moral obligation of a child to support her mother has been held a sufficient consideration. Worth *v.* Daniel, 1 Ga. App. 15, 57 S. E. 898.

278. 1. Worth *v.* Daniel, 1 Ga. App. 15, 57 S. E. 898; St. Louis, etc., R. Co. *v.* Houck, 120 Mo. App. 634, 97 S. W. 963.

279. 2. Worth *v.* Daniel, 1 Ga. App. 15, 57 S. E. 898. See also Sager *v.* Gonnerman, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

3. People's Bank, etc., Co. *v.* Weidinger, 73 N. J. L. 433, 64 Atl. 179.

280. 2. Doherty *v.* Arkansas, etc., R. Co., (C. C. A.) 142 Fed. 104.

281. 1. Sager *v.* Gonnerman, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

282. 3. First Evangelical Lutheran Church *v.* Gardner, 28 Pa. Super. Ct. 82.

6. Sager *v.* Gonnerman, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

7. **Insolvency of Prior Subscribers.** — Sager *v.* Gonnerman, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

283. 5. **Intent at Time of Making Contract Determines.** — St. Louis, etc., R. Co. *v.* Houck, 120 Mo. App. 634, 97 S. W. 963.

Construction Should Seek Equality. — Sager *v.* Gonnerman, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

Legality. — A contract by resident citizens

to pay in part for the erection and operation of mills or power plants is clearly legal on its face. Sutton *v.* Rann, 149 Mich. 35, 112 N. W. 721.

284. 5. **Payee May Recover Though Work Done by Corporation.** — Hunt *v.* Upton, 44 Wash. 124, 87 Pac. 56.

Quasi-trustee. — Dunnigan *v.* Kathan, (County Ct.) 56 Misc. (N. Y.) 103, 106 N. Y. Supp. 1111.

7. *Compare* Dunnigan *v.* Kathan, (County Ct.) 56 Misc. (N. Y.) 103, 106 N. Y. Supp. 1111.

Where a contract involves the performance of personal duties it is not assignable. People's Bank, etc., Co. *v.* Weidinger, 73 N. J. L. 433, 64 Atl. 179.

285. 3. **Recovery by Village of Its Money Subscribed by Individuals.** — Morrice *v.* Sutton, 139 Mich. 643, 103 N. W. 188.

5. See Sutton *v.* Rann, 149 Mich. 35, 112 N. W. 721.

6. **Substantial Compliance Sufficient.** — St. Louis, etc., R. Co. *v.* Houck, 120 Mo. App. 634, 97 S. W. 963; Hunt *v.* Upton, 44 Wash. 124, 87 Pac. 56.

Payee Must Prove Noncompliance by Defendant. — Sager *v.* Gonnerman, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

Strict Compliance Necessary Where Possible. — Sager *v.* Gonnerman, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

Question for Jury. — St. Louis, etc., R. Co. *v.* Houck, 120 Mo. App. 634, 97 S. W. 963.

7. American L. Ins. Co. *v.* Melcher, 132 Iowa 324, 109 N. W. 805; People's Bank, etc., Co. *v.* Weidinger, 73 N. J. L. 433, 64 Atl. 179, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 285; Sager *v.* Gonnerman, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406.

The offer is revocable as long as the beneficiary is claiming a noncompliance with the conditions. Doherty *v.* Arkansas, etc., R. Co., (C. C. A.) 142 Fed. 104.

8. People's Bank, etc., Co. *v.* Weidinger, 73 N. J. L. 433, 64 Atl. 179, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 285.

9. People's Bank, etc., Co. *v.* Weidinger, 73 N. J. L. 433, 64 Atl. 179, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 285.

286. 1. People's Bank, etc., Co. *v.* Weidinger, 73 N. J. L. 433, 64 Atl. 179, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 285.

SUBSEQUENT.

286. 2. **Subsequent Purchaser — Recording Act.** — See Houlahan *v.* Finance Consol. Min. Co., 34 Colo. 365, 82 Pac. 484.

SUBSTANTIAL.

287. 5. **Statutes Regulating Appeals.** — People *v.* Haas, 105 N. Y. App. Div. 119, 93 N. Y. Supp. 790, following definition set out under this head in the original note.

SUBSTANTIALLY.

288. 2. **Substantially as Specified — Patent Law.** — See American Can Co. *v.* Hickmott Asparagus Canning Co., 142 Fed. 141, 73 C. C. A. 359.

Substantially Correct in the sense of in substance correct. Vannest *v.* Murphy, (Iowa 1907) 112 N. W. 238, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 288.

SUCCESSION.

295. 3. **Missouri Laws on Descent and Distribution Along Line of Common Law.** — Perry *v.* Strawbridge, (Mo. 1908) 108 S. W. 641.

299. 1. **"Heirs at Law" of Mixed Property Those Who Would Take Realty.** — Gardner *v.* Skinner, (Mass. 1907) 80 N. E. 825.

2. Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846.

301. 7. **The Consideration of One Dollar,** where natural love and affection is also a consideration, does not destroy the ancestral nature of estate. *In re* Lynch, (Pa. 1908) 69 Atl. 290.

303. 2. Gould *v.* Tucker, (S. Dak. 1905) 105 N. W. 624.

Character of Ancestor's Estate That Cast upon Heir. — Kalona Sav. Bank *v.* Eash, 133 Iowa 190, 109 N. W. 887.

3. Gantt *v.* Trott, (Md. 1908) 68 Atl. 612; *In re* Lynch, (Pa. 1908) 69 Atl. 290.

9. Smith *v.* McDonald, (N. J. 1907) 65 Atl. 840.

304. 1. Johnson *v.* Phillips, (Ark. 1908) 107 S. W. 170.

3. *In re* McMillan, (Supm. Ct. App. Div.) 110 N. Y. Supp. 622.

306. 1. *In re* Kenny, 97 Minn. 150, 106 N. W. 344.

308. 1. **"Heirs" or "Legal Heirs" Used in Popular Sense May Mean Distributees.** — Thomas *v.* Supreme Lodge, etc., 126 Wis. 593, 105 N. W. 922.

309. 1. **Real Property Descends under Law of Situs.** — Montgomery *v.* Montgomery, (Tex. Civ. App. 1907) 99 S. W. 1145.

310. 1. *In re* Cook, (Surrogate Ct.) 50 Misc. (N. Y.) 487, 100 N. Y. Supp. 628.

312. 10. **In the Republic of Texas,** prior to 1840, brothers and sisters of full blood inherited to the exclusion of those of the half blood under Spanish law. Kirby *v.* Hayden, (Tex. Civ. App. 1906) 99 S. W. 746.

314. 5. **Preference of Whole Blood in Succession by Brothers and Sisters.** — *In re* Brooke, 214 Pa. St. 46, 63 Atl. 411.

317. 1. **Stepdaughter Does Not Inherit as Child.** — Houston *v.* McKinney, (Fla. 1907) 45 So. 480.

318. 2. Lowenfeld *v.* Ditchett, 114 N. Y. App. Div. 56, 99 N. Y. Supp. 724; *In re* Alton, (Pa. 1908) 69 Atl. 902.

320. 1. Smith *v.* Cosey, 26 App. Cas. (D. C.) 569.

4. **The Legal Title to Lands in Trust** has been held in *Delaware* to descend to the eldest male heir of the trustee at common law. St. Stephen's Evangelical Lutheran Church *v.* Pierce, 8 Del. Ch. 179, 68 Atl. 194.

321. 6. Phillips *v.* Lawing, (Ala. 1907) 43 So. 494.

7. **"Children" Interpreted as Meaning "Direct Descendants."** — Britton *v.* Oldham, 80 Ark. 252, 96 S. W. 1066.

322. 1. **In Michigan** it has been held on

distribution that the "lineal descendants" of any deceased brother or sister do not include grandnephews and grandnieces. *In re* Klein, (Mich. 1908) 116 N. W. 394.

3. Jackson *v.* Hocke, (Ind. 1908) 84 N. E. 830; *In re* Dunning, (Surrogate Ct.) 48 Misc. (N. Y.) 482, 96 N. Y. Supp. 1110; *In re* McGovern, (Surrogate Ct.) 98 N. Y. Supp. 304; *In re* Prote, (Surrogate Ct.) 54 Misc. (N. Y.) 495, 104 N. Y. Supp. 581.

323. 1. **In New Jersey** cousins and their descendants are preferred to great-great-grandparents and their descendants. Smith *v.* McDonald, (N. J. 1907) 65 Atl. 840.

2. **Statutes Giving the Right.** — *In re* Dunning, (Surrogate Ct.) 48 Misc. (N. Y.) 482, 96 N. Y. Supp. 1110; *In re* McGovern, (Surrogate Ct.) 98 N. Y. Supp. 304; *In re* Peck, (Surrogate Ct.) 57 Misc. (N. Y.) 535, 109 N. Y. Supp. 1083.

325. 5. Smith *v.* McDonald, (N. J. 1907) 65 Atl. 840; *In re* Dunning, (Surrogate Ct.) 48 Misc. (N. Y.) 482, 96 N. Y. Supp. 1110; *In re* McGovern (Surrogate Ct.) 98 N. Y. Supp. 304; *In re* Fleming, (Surrogate Ct.) 48 Misc. (N. Y.) 589, 98 N. Y. Supp. 306; *In re* Prote, (Surrogate Ct.) 54 Misc. (N. Y.) 495, 104 N. Y. Supp. 581; *In re* Peck, (Surrogate Ct.) 57 Misc. (N. Y.) 535, 109 N. Y. Supp. 1083; *In re* McMillan, (Supm. Ct. App. Div.) 110 N. Y. Supp. 622.

7. Ellis *v.* Harrison, 140 N. Car. 444, 53 S. E. 299.

8. **Maryland — District of Columbia.** — McManus *v.* Lynch, 28 App. Cas. (D. C.) 381.

326. 2. *In re* Dunning, (Surrogate Ct.) 48 Misc. (N. Y.) 482, 96 N. Y. Supp. 1110.

327. 6. Houghton *v.* Dickinson, (Mass. 1907) 82 N. E. 481.

Recognition of Common Law in Republic of Texas. — Berry *v.* Powell, (Tex. 1907) 104 S. W. 1044; Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345.

10. **The Civil Law in Texas** permitted inheritance by bastards from collateral kindred. Berry *v.* Powell, (Tex. 1907) 104 S. W. 1044; Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345.

328. 3. **Construction While Strict Should Advance Purpose of Legislature.** — Houghton *v.* Dickinson, (Mass. 1907) 82 N. E. 481.

Liberal Construction under Texas Statute. — Berry *v.* Powell, (Tex. 1907) 104 S. W. 1044; Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345.

10. **Under the Indiana Statute** an illegitimate daughter cannot inherit the estate of her stepfather "through the mother," as such right would be greater than that conferred upon her if legitimate. Jackson *v.* Hocke, (Ind. 1908) 84 N. E. 830.

11. **The Texas Statute** permits inheritance and transmission of estates from and through the mother and the taking of distributive shares of the estates of their kindred as though lawfully begotten. Berry *v.* Powell, (Tex. 1907) 104 S. W. 1044.

"On the Part of the Mother" means "on the mother's side of the genealogical tree." Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345.

329. 4. Berry *v.* Powell, (Tex. 1907) 104 S. W. 1044; Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345.

8. Berry *v.* Powell, (Tex. 1907) 104 S. W. 1044; Berry *v.* Powell, (Tex. Civ. App. 1907) 105 S. W. 345; Berry *v.* Tullis, (Tex. Civ. App. 1907) 105 S. W. 348.

331. 3. Moore *v.* Moore, (Ky. 1907) 98 S. W. 1027; Houghton *v.* Dickinson, (Mass. 1907) 82 N. E. 481.

4. Morgan *v.* Strand, 133 Iowa 299, 110 N. W. 556.

Fatherhood, Recognition, and Marriage Necessary under Kentucky Statute. — Stein *v.* Stein, (Ky. [illegible]) 106 S. W. 860.

Under the Minnesota Statute any written acknowledgment signed by the parent and properly witnessed, if clear and specific, constitutes an illegitimate an heir. *In re* Pederson, 97 Minn. 491, 106 N. W. 958.

In Nebraska it has been held that the written acknowledgment required by statute must be sufficient to establish paternity without extrinsic evidence. Moore *v.* Flack, (Neb. 1906) 108 N. W. 143.

8. Houghton *v.* Dickinson, (Mass. 1907) 82 N. E. 481.

Legitimation Effected by Lawful Marriage Only. — Olmsted *v.* Olmsted, 190 N. Y. 458, 83 N. E. 569.

332. 8. Reese *v.* Starner, (Md. 1907) 66 Atl. 443.

9. McSurley *v.* Venters, (Ky. 1907) 104 S. W. 365.

333. 2. *In re* De Cigaran, 150 Cal. 682, 89 Pac. 833.

334. 1. Coleman *v.* Coleman, 81 Ark. 7, 98 S. W. 733; Kennedy *v.* Borah, 226 Ill. 243, 80 N. E. 767; Jones *v.* Leeds, (Ind. App. 1908) 83 N. E. 526; Sires *v.* Melvin, (Iowa 1907) 113 N. W. 106; Shick *v.* Howe, (Iowa 1908) 114 N. W. 916; Cubitt *v.* Cubitt, 74 Kan. 353, 86 Pac. 475; Dupre's Succession, 116 La. 1090, 41 So. 324; Hockaday *v.* Lynn, 200 Mo. 456, 98 S. W. 585; Gilliam *v.* Guaranty Trust Co., 186 N. Y. 127, 78 N. E. 697, *affirming* 111 N. Y. App. Div. 656, 97 N. Y. Supp. 758; Middleworth *v.* Ordway, 191 N. Y. 404, 84 N. E. 291, *affirming* 120 N. Y. App. Div. 903, 105 N. Y. Supp. 1131; *In re* Cook, (Surrogate Ct.) 50 Misc. (N. Y.) 487, 100 N. Y. Supp. 628; Simpson *v.* Simpson, 29 Ohio Cir. Ct. 503; *In re* Peterson, 212 Pa. St. 453, 61 Atl. 1005; *In re* Burnett, (Pa. 1908) 69 Atl. 74; J. M. Guffey Petroleum Co. *v.* Hooks, (Tex. Civ. App. 1907) 106 S. W. 690.

Adopted Child Not "Lineal Issue." — Kerr *v.* Goldsborough, (C. C. A.) 150 Fed. 289.

Adopted Adult. — It has been held in *Alabama* that a "child" adopted at the age of twenty-six inherits to the exclusion of other heirs. Sheffield *v.* Franklin, (Ala. 1907) 44 So. 373.

Child Adopted by Grandfather, Its Parent Being Deceased, Inherits from Grandfather as Child Only. — Morgan *v.* Reel, 213 Pa. St. [illegible]

4. Middleworth *v.* Ordway, 191 N. Y. 404, 84 N. E. 291, *affirming* 120 N. Y. App. Div. 903, 105 N. Y. Supp. 1131; Middleworth *v.* Ordway, (Supm. Ct. Tr. T.) 49 Misc. (N. Y.) 74, 98 N. Y. Supp. 10.

6. Brown *v.* Wright, 194 Mass. 540, 80 N. E. 612; *In re* Burnett, (Pa. 1908) 69 Atl. 74.

7. Hockaday *v.* Lynn, 200 Mo. 456, 98 S. W. 585, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 334.

335. 6. **Son of Adopted Daughter Lineal Descendant of Adopter.** — *In re* Cook, 187 N. Y. 253, 79 N. E. 991, *reversing* 114 N. Y. App. Div. 718, 99 N. Y. Supp. 1049.

10. **Upon Failure of Proof of Adoption Kindred Take.** — *In re* Huyck, (Surrogate Ct.) 49 Misc. (N. Y.) 391, 99 N. Y. Supp. 502.

11. **In Pennsylvania** adopting parents, their lawful heirs and kindred, inherit to the exclusion of all but a husband or wife, where the property was inherited from the adopting parents or their kindred. See *In re* Burnett, (Pa. 1908) 69 Atl. 74.

336. 2. **In California** heirship can only be established by probate proceedings. *In re* Conroy, (Cal. App. 1907) 93 Pac. 205.

4. *In re* Dundas, 213 Pa. St. 628, 63 Atl. 45; *In re* Wharton, 218 Pa. St. 296, 67 Atl. 414.

Order Adopting Child Proves Its Heirship. — Jones *v.* Leeds, (Ind. App. 1908) 83 N. E. 526.

SUCCESSION TAXES.

388. 1. *In re* Touhy, 35 Mont. 431, 90 Pac. 171, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 337.

2. State *v.* Bazille, 97 Minn. 11, 106 N. W. 93; Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476.

5. *Iowa.* — *In re* Stone, 132 Iowa 136, 109 N. W. 455.

Louisiana. — Stauffer's Succession, 119 La. 66, 43 So. 928.

Minnesota. — State *v.* Vance, 97 Minn. 532, 106 N. W. 98; State *v.* Bazille, 97 Minn. 11, 106 N. W. 93, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 338; State *v.* Probate Ct., 97 Minn. 532, 106 N. W. 98.

Nebraska. — State *v.* Vinsonhaler, 74 Neb. 675, 105 N. W. 472.

New Jersey. — *In re* Hartman, 70 N. J. L. 664, 62 Atl. 560; Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476.

New York. — *In re* Palmer, 183 N. Y. 238, 76 N. E. 16; *In re* Ramsdill, 190 N. Y. 492, 83 N. E. 584; *In re* Hess, 110 N. Y. App. Div. 476, 96 N. Y. Supp. 990, *affirmed* 187 N. Y. 554, 80 N. E. 1111; *In re* Hull, 111 N. Y. App. Div. 322, 97 N. Y. Supp. 701, *affirmed* 186 N. Y. 586, 79 N. E. 1107; *In re* Cooley, 113 N. Y. App. Div. 388, 98 N. Y. Supp. 1006; *In re* Cook, 114 N. Y. App. Div. 718, 99 N. Y. Supp. 1049.

Vermont. — *In re* Hickok, 78 Vt. 259, 62 Atl. 724.

Washington. — *In re* White, 42 Wash. 360, 84 Pac. 831.

Wisconsin. — Nunnemacher *v.* State, 129 Wis. 190, 108 N. W. 627, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 338.

"Right of Succession" Defined. — *In re* Stebbins, (Surrogate Ct.) 52 Misc. (N. Y.) 438, 103 N. Y. Supp. 563.

339. 1. Fisher *v.* State, (Md. 1907) 66 Atl. 661; *In re* Tuohy, 35 Mont. 431, 90 Pac. 170; *In re* Stebbins, (Surrogate Ct.) 52 Misc. (N. Y.) 438, 103 N. Y. Supp. 563; *In re* Hickok, 78 Vt. 259, 62 Atl. 724.

2. *United States.* — Chanler *v.* Kelsey, 205 U. S. 466, 27 U. S. Sup. Ct. 550.

California. — Campbell *v.* California, 200 U. S. 87, 26 U. S. Sup. Ct. 182, *affirming* 143 Cal. 627, 77 Pac. 674.

Illinois. — Board of Education *v.* Illinois, 203 U. S. 553, 27 U. S. Sup. Ct. 171, *affirming* 216 Ill. 23, 74 N. E. 809.

Louisiana. — Cohen *v.* Brewster, 203 U. S. 543, 27 U. S. Sup. Ct. 174, *affirming* 115 La. 377, 39 So. 37; Stauffer's Succession, 119 La. 66, 43 So. 928.

Minnesota. — State *v.* Bazille, 97 Minn. 11, 106 N. W. 93; State *v.* Probate Ct., 97 Minn. 532, 106 N. W. 98; State *v.* Vance, 97 Minn. 532, 106 N. W. 98.

Nebraska. — State *v.* Vinsonhaler, 74 Neb. 675, 105 N. W. 472.

New Hampshire. — Thompson *v.* Kidder, (N. H. 1906) 65 Atl. 392.

Vermont. — *In re* Hickok, 78 Vt. 259, 62 Atl. 724.

Wisconsin. — Nunnemacher *v.* State, 129 Wis. 190, 108 N. W. 627, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 338.

The Title of an Act Taxing "Inheritances" has been held broad enough to sustain taxation on succession by will. *In re* White, 42 Wash. 360, 84 Pac. 831.

340. 2. *In re* Rogers, 149 Mich. 305, 112 N. W. 931.

3. Blair *v.* Herold, 150 Fed. 199, *affirmed* (C. C. A.) 158 Fed. 804; People *v.* Koenig, 37 Colo. 283, 85 Pac. 1129, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 340 *et seq.*; English *v.* Crenshaw, (Tenn. 1908) 110 S. W. 210, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 340; *In re* Stebbins, (Surrogate Ct.) 52 Misc. (N. Y.) 438, 103 N. Y. Supp. 563.

Fair and Reasonable Construction to Be Given. — State *v.* Bazille, 97 Minn. 11, 106 N. W. 93; State *v.* Vance, 97 Minn. 532, 106 N. W. 98; State *v.* Probate Ct., 97 Minn. 532, 106 N. W. 98.

Liberal Construction with Fair and Reasonable Inclusion of Property Intended in New York. — *In re* Gordon, 186 N. Y. 471, 79 N. E. 722.

Acts Following Statutes of Other States Construed through Decisions of Such States. — Mann *v.* State Treasurer, (N. H. 1907) 68 Atl. 130; Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476.

341. 1. Fisher *v.* State, (Md. 1907) 66 Atl. 661; Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476.

2. Blair *v.* Herold, 150 Fed. 199, *affirmed* (C. C. A.) 158 Fed. 804; Pritchard's Succession, 118 La. 883, 43 So. 537; Stauffer's Succession, 119 La. 66, 43 So. 928; Miller *v.* McLaughlin, 141 Mich. 425, 104 N. W. 777; State *v.* Probate Ct., 102 Minn. 268, 113 N. W. 888; Carter *v.* Whitcomb, (N. H. 1908) 69 Atl. 779; *In re* Backhouse, 110 N. Y. App. Div. 737, 96 N. Y. Supp. 466, *affirmed* (N. Y. 1906) 77 N. E. 1181; *In re* Jones, (Surrogate Ct.) 54 Misc. (N. Y.) 202, 105 N. Y. Supp. 932.

Act Does Not Apply to Estate Distributed after Passage. — *Compare* Hostetter *v.* State,

[illegible] Payable within One Year after Death

Exempted Where Repeal in Effect within Year Thereafter. — McCoach *v.* Philadelphia Trust, etc., Co., (C. C. A.) 142 Fed. 120.

Repeal of Act Does Not Affect Taxes Accrued. — Trippet *v.* State, 149 Cal. 521, 86 Pac. 1084; *In re* Lander, (Cal. App. 1907) 93 Pac. 202; *In re* Woodward, (Cal. 1908) 94 Pac. 242; *In re* Martin, (Cal. 1908) 94 Pac. 1053; *In re* Bowen, (Cal. 1908) 94 Pac. 1055.

Unsettled Estate Taxed Where Invalid Statute Cured by Amendment Prior to Legal Distribution. — Montgomery *v.* Gilbertson, 134 Iowa 291, 111 N. W. 964.

Character of Property Determined at Death of Decedent. — Becker's Succession, 118 La. 1056, 43 So. 701.

Act Does Not Apply to Reversion Taking Effect after Passage. — *In re* Ripley, 122 N. Y. App. Div. 419, 106 N. Y. Supp. 844.

Repealing Act Excepting Estates Where Inventory Filed Void — Right to Collect Tax Terminated. — Friend *v.* Levy, 76 Ohio St. 26, 80 N. E. 1036.

342. 1. *In re* Howard, 80 Vt. 489, 68 Atl. 513.

Laws N. Y. 1887, c. 713, repealed by Laws N. Y. 1892, c. 399, without a saving clause, being substantially the same act, the tax law was continued in force by virtue of the statutory Construction Law, Laws N. Y. 1892, c. 677, continuing the surrogate's jurisdiction. *In re* Jones, (Surrogate Ct.) 54 Misc. (N. Y.) 202, 105 N. Y. Supp. 932.

2. *In re* Jones, (Surrogate Ct.) 54 Misc. (N. Y.) 202, 105 N. Y. Supp. 932.

5. *In re* Stebbins, (Surrogate Ct.) 52 Misc. (N. Y.) 438, 103 N. Y. Supp. 563.

343. 7. **Usufruct of Widow in Community Property Not Inherited and Not Taxable.** — Marsal's Succession, 118 La. 212, 42 So. 778.

8. **Leased Stock Not Part of Estate.** — State *v.* Probate Ct., 102 Minn. 483, 113 N. W. 888.

Transfers by Life Tenant of Vested Interests Not Taxable. — *In re* Wheeler, 115 N. Y. App. Div. 616, 100 N. Y. Supp. 1044.

Insurance Policies Assigned for Consideration Not Taxable. — *In re* Parsons, 117 N. Y. App. Div. 321, 102 N. Y. Supp. 168, *affirming* 51 Misc. (N. Y.) 370, 101 N. Y. Supp. 430.

344. 2. **Before the Exemption of United States Bonds by Statute** they have been held not to have been taxable, not being enforceable in the state of New York. *In re* Schermerhorn, 50 Misc. (N. Y.) 233, 100 N. Y. Supp. 480.

5. Blair *v.* Herold, 150 Fed. 199, *affirmed* (C. C. A.) 158 Fed. 804; People *v.* Kelley, 218 Ill. 509, 75 N. E. 1038; *In re* Benton, 234 Ill. 366, 84 N. E. 1026; *In re* Hess, 110 N. Y. App. Div. 476, 96 N. Y. Supp. 990.

Gifts Inter Vivos Taxable as in Contemplation of Death. — *In re* Palmer, 117 N. Y. App. Div. 360, 102 N. Y. Supp. 236.

Gifts Inter Vivos, Not Causa Mortis, Not Taxable. — *In re* Graves, 52 Misc. (N. Y.) 433, 103 N. Y. Supp. 571.

6. *In re* Hess, 110 N. Y. App. Div. 476, 96 N. Y. Supp. 990.

Property Passing under a Trust Deed, the possession and enjoyment vesting immediately through the trustee, has been held not taxable. People *v.* Kelley, 218 Ill. 509, 75 N. E. 1038.

Insurance Policy Assigned to Take Effect at Death Not Taxable. — *In re* Parsons, 117 N. Y. App. Div. 321, 102 N. Y. Supp. 168, *affirming* 51 Misc. (N. Y.) 370, 101 N. Y. Supp. 430.

Joint Deposit in Names of Husband and Wife Not Taxable under Rule of Survivorship. — *In re* Stebbins, (Surrogate Ct.) 52 Misc. (N. Y.) 438, 103 N. Y. Supp. 563; *In re* Graves, (Surrogate Ct.) 52 Misc. (N. Y.) 433, 103 N. Y. Supp. 571.

345. 1. Chanler *v.* Kelsey, 205 U. S. 466, 27 U. S. Sup. Ct. 550; Fisher *v.* State, (Md. 1907) 66 Atl. 661; *In re* Buckingham, 106 N. Y. App. Div. 13, 94 N. Y. Supp. 130; *In re* Lord, 111 N. Y. App. Div. 152, 97 N. Y. Supp. 553, *affirmed* 186 N. Y. 549, 79 N. E. 1110; *In re* Hull, 111 N. Y. App. Div. 322, 97 N. Y. Supp. 701, *affirmed* 186 N. Y. 586, 79 N. E. 1107; *In re* Ripley, 122 N. Y. App. Div. 419, 106 N. Y. Supp. 844; *In re* Spencer, 119 N. Y. App. Div. 883, 107 N. Y. Supp. 543.

2. *In re* Kidd, 188 N. Y. 274, 80 N. E. 924; *In re* Eaton, (Surrogate Ct.) 55 Misc. (N. Y.) 472, 106 N. Y. Supp. 682.

Annuity Taxable. — Peck *v.* Kinney, (C. C. A.) 143 Fed. 76; *In re* Rothschild, (N. J. L. 1906) 63 Atl. 615, *affirmed* (N. J. 1907) 65 Atl. 1118.

Amounts Allowed by Court for Maintenance Pending Distribution Not Taxable. — Union Trust Co. *v.* Lynch, 148 Fed. 49.

Right to Percentage on Renewal Premiums of Insurance Taxable. — Fell's Succession, 119 La. 1037, 44 So. 879.

3. *In re* Costello, 189 N. Y. 288, 82 N. E. 139, *modifying* 117 N. Y. App. Div. 807, 103 N. Y. Supp. 6.

Contra Decisions. — People *v.* Koenig, 37 Colo. 283, 85 Pac. 1129; State *v.* Probate Ct., 100 Minn. 192, 110 N. W. 865; State *v.* Probate Ct., 101 Minn. 485, 112 N. W. 878; State *v.* Vinsonhaler, 74 Neb. 675, 105 N. W. 472; *In re* Mock, (Surrogate Ct.) 49 Misc. (N. Y.) 282, 99 N. Y. Supp. 236.

In Louisiana shares of $10,000 or more reduced below that amount by deduction of property otherwise exempt are taxable upon amount as reduced. Abodie's Succession, 118 La. 708, 43 So. 306.

346. 2. *In re* Hull, 47 Misc. (N. Y.) 567, 96 N. Y. Supp. 93, *reversed* on other grounds 111 N. Y. App. Div. 322, 97 N. Y. Supp. 701; *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

Assets of Nonresident Decedent in Another State Need Not Be Applied to Reduce Mortgage. — McCurdy *v.* McCurdy, (Mass. 1908) 83 N. E. 881.

5. **In Pennsylvania** it has been held that a power to sell if necessary to distribute became a direction to sell and proceeds were taxable. *In re* Vanuxem, 212 Pa. St. 315, 61 Atl. 876.

And an express direction to sell works immediate conversion into taxable personalty, but permissive conversion operates only upon exercise of discretion. *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

347. 2. McCurdy *v.* McCurdy, (Mass. 1908) 83 N. E. 881; *In re* Lord, 111 N. Y.

App. Div. 152, 97 N. Y. Supp. 553, *affirmed* 186 N. Y. 549, 79 N. E. 1110.

Domicil of Husband Determines Situs of Personalty of Wife Where Living Together. — *In re* Hartman, 70 N. J. L. 664, 62 Atl. 560.

Transfer by Resident under Power of Appointment to Resident Taxable. — *In re* Hull, 111 N. Y. App. Div. 322, 97 N. Y. Supp. 701 (*affirmed* 186 N. Y. 586, 79 N. E. 1107), *reversing* on other grounds 47 Misc. (N. Y.) 567, 96 N. Y. Sup. 93.

The Test in Vermont is not one of probate jurisdiction, but the passing of property in the manner specified. *In re* Howard, 80 Vt. 489, 68 Atl. 513.

4. *In re* Stanton, 142 Mich. 491, 105 N. W. 1122; *In re* Rogers, 149 Mich. 305, 112 N. W. 931.

The New Jersey Statute has been held to tax all property within that state regardless of domicil of decedent. Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 347.

The Interest of a Nonresident in Residuum of Personalty in New York is not taxable where executor nonresident and no jurisdiction exists to compel administration. *In re* Lord, 111 N. Y. App. Div. 152, 97 N. Y. Supp. 553, *affirmed* 186 N. Y. 549, 79 N. E. 1110.

The Proceeds of Insurance in a New York Company on life of a nonresident have been held not taxable, not being within the control of the court. *In re* Gordon, 114 N. Y. App. Div. 202, 99 N. Y. Supp. 630, *affirmed* 186 N. Y. 471, 79 N. E. 722.

348. 1. Gilbertson *v.* Oliver, 129 Iowa 568, 105 N. W. 1002.

2. *In re* Howard, 80 Vt. 489, 68 Atl. 513.

3. **Notes, Mortgages, and Land Contracts Owned by Nonresident Taxable in Michigan.** — *In re* Stanton, 142 Mich. 491, 105 N. W. 1122; Auditor Gen. *v.* Merriam, 147 Mich. 630, 111 N. W. 196; *In re* Rogers, 149 Mich. 305, 112 N. W. 931.

4. **In New Hampshire** deposits in a foreign savings bank constitute property of resident decedent within the jurisdiction and taxable. Mann *v.* State Treasurer, (N. H. 1907) 68 Atl. 130.

Rule Not Applied in Tennessee. — Fidelity, etc., Co. *v.* Crenshaw, (Tenn. 1908) 110 S. W. 1017.

5. Gardiner *v.* Carter, (N. H. 1908) 69 Atl. 939; Neilson *v.* Russell, (N. J. L. 1908) 69 Atl. 476; *In re* Delano, (N. J. L. 1908) 69 Atl. 482; *In re* Palmer, 183 N. Y. 238, 76 N. E. 16, *affirming* 102 N. Y. App. Div. 616, 92 N. Y. Supp. 1137.

Stock of Consolidated Corporations of Different States Taxed Pro Rata. — *In re* Cooley, 186 N. Y. 220, 78 N. E. 939, *reversing* 113 N. Y. App. Div. 388, 98 N. Y. Supp. 1006.

Stock Is Property in County of Location of Corporate Property or Principal Place of Business Corporation. — *In re* Arnold, 114 N. Y. App. Div. 244, 99 N. Y. Supp. 740.

6. **Stock of Corporation Organized in Two States Taxable Pro Rata.** — Kingsbury *v.* Chapin, (Mass. 1907) 82 N. E. 700.

Stock of Foreign Corporation Owned by Nonresident Not Taxable. — Dunham *v.* City Trust Co., 115 N. Y. App. Div. 584, 101 N. Y. Supp. 87.

7. **Unissued Bonds of Foreign Corporation Subject to Claim of Nonresident Decedent Not Taxable.** — *In re* Hillman, 116 N. Y. App. Div. 186, 101 N. Y. Supp. 640.

349. 1. **The Louisiana Statute** exempts property which has borne its just proportion of taxes prior to donation or inheritance. Abadie's Succession, 118 La. 708, 143 So. 306.

Under the Louisiana Statute partnership property that has borne its just proportion of taxes is exempt from taxation. Stauffer's Succession, 119 La. 66, 43 So. 928.

The claim of heirs against an insurance company for a percentage of renewal premiums accruing to benefit of the decedent, an agent, has been held taxable and not exempt because a tax is imposed on such premiums. Fell's Succession, 119 La. 1037, 44 So. 879.

Massachusetts Statute — Brother Exempt. — Dow *v.* Abbott, (Mass. 1908) 84 N. E. 96.

New York Exemptions Do Not Embrace Nieces. — *In re* Costello, 189 N. Y. 288, 82 N. E. 139.

No Person or Property Impliedly Exempt. — *In re* Deutsch, 107 N. Y. App. Div. 192, 95 N. Y. Supp. 65.

Under the Tennessee Statute exempting the mother it has been held that the estate of a nonresident passing to her under the laws of intestate's domicil was not taxable, although under the Tennessee statute the estate would pass to a brother, not exempt. Fidelity, etc., Co. *v.* Crenshaw, (Tenn. 1908) 110 S. W. 1017.

8. **Adopted Child Stranger in Blood Not "Lineal Issue."** — Kerr *v.* Goldsborough, (C. C. A.) 150 Fed. 289.

350. 1. **Property Passing under Trust to Adopted Child Taxable.** — *In re* Kidd, 188 N. Y. 274, 80 N. E. 924, *reversing* 115 N. Y. App. Div. 205, 100 N. Y. Supp. 917.

4. **Children of Adopted Child Exempted as Lineal Descendants.** — *In re* Cook, 187 N. Y. 253, 79 N. E. 991, *reversing* and *modifying* 114 N. Y. App. Div. 718, 99 N. Y. Supp. 1049.

5. **Relation Sustained — Exemption Barred by Details of Statute.** — *In re* Stebbins, 52 Misc. (N. Y.) 438, 103 N. Y. Supp. 563.

7. **New York Statute.** — *In re* Wheeler, 115 N. Y. App. Div. 616, 100 N. Y. Supp. 1044; *In re* Stebbins, (Surrogate Ct.) 52 Misc. (N. Y.) 438, 103 N. Y. Supp. 563; *In re* Harder, (Supm. Ct. App. T.) 108 N. Y. Supp. 154.

8. *In re* Davis, 184 N. Y. 299, 77 N. E. 259, *reversing* 98 N. Y. App. Div. 546, 90 N. Y. Supp. 244; *In re* Deutsch, 107 N. Y. App. Div. 192, 95 N. Y. Supp. 65.

12. **The New Hampshire Statute** applies to institutions administered for the benefit of the public of that state and not to those operating without its borders. Carter *v.* Whitcomb, (N. H. 1908) 69 Atl. 779.

Bequest to Church for Masses Not Taxable. — *In re* Didion (Surrogate Ct.) 54 Misc. (N. Y.) 201, 105 N. Y. Supp. 924, *distinguishing In re* McAvoy, 112 N. Y. App. Div. 377, 98 N. Y. Supp. 437.

351. 1. Board of Education *v.* Illinois, 203 U. S. 553, 27 U. S. Sup. Ct. 171, *affirming* 216 Ill. 23, 74 N. E. 809.

Foreign Corporations Not within Exemption. — *In re* Rothschild, (N. J. L. 1906) 63 Atl. 615, *affirmed* (N. J. 1907) 65 Atl. 1118; *In re* Hickok, 78 Vt. 259, 62 Atl. 724.

New Jersey Exemptions Include Foreign Religious Institutions Not Confined in Operation to Local or State Purposes. — *In re* Jones, (N. J. L. 1907) 67 Atl. 1035.

4. Status of Corporation Determined by Statutes and Certificate of Incorporation. *In re* White, 118 N. Y. App. Div. 869, 103 N. Y. Supp. 688.

Library Corporations are not exempt from tax on transfer of money. *In re* Francis, 121 N. Y. App. Div. 129, 105 N. Y. Supp. 643, *affirmed* 189 N. Y. 554, 82 N. E. 1126.

But a Bequest of Books to a library is not taxable. *In re* Higgins, (Surrogate Ct.) 55 Misc. (N. Y.) 175, 106 N. Y. Supp. 465.

352. 1. People *v.* Rice, (Colo. 1907) 91 Pac. 33; McCurdy *v.* McCurdy, (Mass. 1908) 83 N. E. 881; Dow *v.* Abbott, (Mass. 1908) 84 N. E. 96; *In re* Hartman, 70 N. J. L. 664, 62 Atl. 560; *In re* Ramsdill, 190 N. Y. 492, 83 N. E. 584.

Present Beneficial Interest in Contingent Estate Taxed During Minority of Infant. — Shanley *v.* Herold, 141 Fed. 423, *affirmed* (C. C. A.) 146 Fed. 20.

It has been held that where the statute was repealed before the determination of administration owing to disputes as to heirs and claims the tax was nonassessable. U. S. *v.* Marion Trust Co., (C. C. A.) 143 Fed. 301.

Annuity Taxable as Payments Fall Due. — Disston *v.* McClain, (C. C. A.) 147 Fed. 114, *reversing* 141 Fed. 191.

Tax upon Estate for Term of Years Payable as Instalments of Income Accrue. — State *v.* Probate Ct., 100 Minn. 192, 110 N. W. 865; State *v.* Probate Ct., 101 Minn. 485, 112 N. W. 878.

2. It has been held in *Iowa* that under a settlement whereby beneficiaries renounced and property passed to widow and heirs no appraisal could be compelled, the succession [illegible]. *In re* Stone, 132 Iowa 136, 109 N. W. 455.

Assigned Residuary Estate Taxable According to Relation of Legatee. — *In re* Cook, 187 N. Y. 253, 79 N. E. 991, *reversing* and *modifying* 114 N. Y. App. Div. 718, 99 N. Y. Supp. 1049.

3. Armour *v.* Roberts, 151 Fed. 846; *In re* Stebbins, (Surrogate Ct.) 52 Misc. (N. Y.) 438, 103 N. Y. Supp. 563.

Contingent Income Taxable as It Accrues. — Shanley *v.* Herold, 141 Fed. 423, *affirmed* (C. C. A.) 146 Fed. 20.

Transfer under Power of Appointment Taxable at Death of Donee. — Fisher *v.* State, [illegible] Atl. 661.

Tax Due upon Possession. — Dow *v.* Abbott, (Mass. 1908) 84 N. E. 96.

Postponement of Absolute Possession of Real and Personal Property not dependent upon an estate for life or years does not postpone payment of tax. *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

4. *In re* Kingman, 220 Ill. 563, 77 N. E. 135.

5. Shanley *v.* Herold, 141 Fed. 423, *affirmed* (C. C. A.) 146 Fed. 20; Union Trust Co. *v.* Lynch, 148 Fed. 49; State *v.* Probate Ct., 100 Minn. 192, 110 N. W. 865; State *v.* Probate Ct., 101 Minn. 485, 112 N. W. 878.

When Identity of Remainderman Not Ascertainable, Remainders Not Presently Taxable. — *In re* Belcher, 211 Pa. St. 615, 61 Atl.

353. 1. *In re* Stone, 132 Iowa 136, 109 N. W. 455; *In re* Bass, (Surrogate Ct.) 57 Misc. (N. Y.) 531, 109 N. Y. Supp. 1084; *Re* Bolster, 10 Ont. L. Rep. 591.

Decree of Foreign State Approving Marshaling of Assets Sustained by Comity. — *In re* Clark, 37 Wash. 671, 80 Pac. 267.

3. Dow *v.* Abbott, (Mass. 1908) 84 N. E. 96; State *v.* Probate Ct., 100 Minn. 192, 110 N. W. 865; Wyckoff *v.* O'Neil, (N. J. L. 1907) 67 Atl. 32; *In re* Howard, 80 Vt. 489, 68 Atl. [illegible].

Executors Not Liable Where Never in Charge by Reason of Settlement. — McCoy *v.* Gill, 156 Fed. 985.

354. 1. **Tax on Life Estate Payable by Administrator and Collectible from Realty.** — Dow *v.* Abbott, (Mass. 1908) 84 N. E. 96.

5. **Tax Lien on Property.** — State *v.* Probate Ct., 100 Minn. 192, 110 N. W. 865.

10. **Mandamus Lies to Compel Action by Surrogate.** — Kelsey *v.* Church, 112 N. Y. App. Div. 408, 98 N. Y. Supp. 535.

355. 2. *In re* Jones, (Surrogate Ct.) 54 Misc. (N. Y.) 202, 105 N. Y. Supp. 932.

6. **Decree Not Res Judicata Where Appraisal Improper and No Notice.** — *In re* Naylor, 120 N. Y. App. Div. 738, 105 N. Y. Supp. 667, *affirmed*, 189 N. Y. 556, 82 N. E. 1130.

Notice of Filing of Appraisement Implied in Pennsylvania Statute. — *In re* Belcher, 211 Pa. St. 615, 61 Atl. 252.

7. Dow *v.* Abbott, (Mass. 1908) 84 N. E. 96; *In re* Hartman, 70 N. J. L. 664, 62 Atl. 650.

The Testimony of a Hostile Witness Repeating Statement of Value by Deceased has been held insufficient to authorize a tax based on such valuation. *In re* Kennedy, 113 N. Y. App. Div. 4, 99 N. Y. Supp. 72.

8. **Montana Statute Taxes Increase to Decree of Distribution.** — *In re* Tuohy, 35 Mont. 431, 90 Pac. 170.

9. *In re* Eaton, (Surrogate Ct.) 55 Misc. (N. Y.) 472, 106 N. Y. Supp. 682.

The New York Statute (Laws N. Y. 1897, c. 248) provides that contingent or defeasible estates in expectancy should be appraised at full value upon coming into beneficial enjoyment or possession. *In re* Naylor, 120 N. Y. App. Div. 738, 105 N. Y. Supp. 667.

10. **Conversion by Decedent of Property Otherwise Exempt Divests Exemption.** — Pritchard's Succession, 118 La. 883, 43 So. 537.

11. **No Deduction Where Personalty in One State and Mortgage in Another.** — McCurdy *v.* McCurdy, (Mass. 1908) 83 N. E. 881.

356. 1. **Proceeds of Exempt Real Property Paid to Discharge Legacies, Personal Property Being Insufficient, Not Taxable.** — Beebar's Succession, 118 La. 1056, 43 So. 701.

Where the Question Is One of Jurisdiction between States it has been held that the law of equitable conversion should not be invoked

to subject property to taxation. McCurdy *v.* McCurdy, (Mass. 1908) 83 N. E. 881.

In Pennsylvania it has been held that a power to sell if necessary to distribute became a direction to sell and proceeds were taxable. *In re* Vanuxem, 212 Pa. St. 315, 61 Atl. 876.

An express direction to sell realty without state works immediate conversion into taxable personalty, but permissive conversion operates only upon exercise of discretion. *In re* Dalrymple, 215 Pa. St. 367, 64 Atl. 554.

3. *In re* Tuohy, 35 Mont. 131, 88 Pac. 170.

Price Obtained after Diligent Effort Best Evidence of Value. — *In re* Arnold, 114 N. Y. App. Div. 244, 99 N. Y. Supp. 740.

4. *In re* Palmer, 183 N. Y. 238, 76 N. E. 16, *affirming* 102 N. Y. App. Div. 616, 92 N. Y. Supp. 1137; *In re* Cooley, 113 N. Y. App. Div. 388, 98 N. Y. Supp. 1006.

Debenture Bonds. — *In re* Rothschild, (N. J. L. 1906) 63 Atl. 615.

Stocks in a Private Family Corporation, dealt in on the local market only in small lots, are not subject to statutory appraisal upon average price according to range of market, but will be appraised according to facts presented and judicially noticed. *In re* Curtice, 111 N. Y. App. Div. 230, 97 N. Y. Supp. 444, *affirmed* 185 N. Y. 543, 77 N. E. 1184.

Market Value, if Any, or Information from Persons Interested and Conversant with Corporate Affairs, Fixes Values. — *In re* Cook, 50 Misc. (N. Y.) 487, 100 N. Y. Supp. 628, *affirmed* 114 N. Y. App. Div. 718, 99 N. Y. Supp. 1049.

Railroad Stocks — Rule of Appraisement upon Proportionate Trackage Suggested. — Gardiner *v.* Carter, (N. H. 1908) 69 Atl. 939.

Rule of Appraisement upon Proportionate Mileage of Track Adopted. — *In re* Thayer, (Surrogate Ct.) 58 Misc. (N. Y.) 117, 110 N. Y. Supp. 251.

Production of Books and Papers of Corporation Cannot Be Compelled by Subpœna Duces Tecum. — State *v.* Carpenter, 129 Wis. 180, 108 N. W. 641.

5. *In re* Rothschild, (N. J. L. 1906) 63 Atl. 615.

6. Dow *v.* Abbott, (Mass. 1908) 84 N. E. 96.

In Illinois the only deductions made are where the remainder goes to collateral heirs, a stranger to the blood, a body politic or corporate. *In re* Kingman, 220 Ill. 563, 77 N. E. 135.

Purchase Price of Annuities as Directed by Will Determines Amount Deducted. — *In re* Hutchison, 105 N. Y. App. Div. 487, 94 N. Y. Supp. 354.

7. Abadie's Succession, 118 La. 708, 43 So. 306; May's Succession, (La. 1908) 45 So. 551.

Assets Can Only Be Marshaled Proportionately as Between Different States. — Kingsbury *v.* Chapin, (Mass. 1907) 82 N. E. 700.

In New York debts should be deducted in proportion to personalty in state, such assets not being applicable so as to avoid payment of tax. *In re* Ramsdill, 190 N. Y. 492, 83 N. E. 584, *reversing* 119 N. Y. App. Div. 890, 105 N. Y. Supp. 1130.

When Domestic Creditor Holds Nontaxable Security the indebtedness cannot be offset against value of taxable property. *In re* Burden, 47 Misc. (N. Y.) 329, 95 N. Y. Supp. 972, *following In re* Pullman, 46 N. Y. App. Div. 574, 62 N. Y. Supp. 395.

The Estate of a Nonresident Decedent should be marshaled in favor of legatees and an executor has a legal right to elect payment of taxable legacies out of assets in *New Jersey* and to distribute *New York* assets to persons whose shares are exempt. *In re* McEwan, 51 Misc. (N. Y.) 455, 101 N. Y. Supp. 733.

Debts of Nonresident Deducted where property in *New York* less than debts, although same paid out of assets without the state. *In re* Grosvenor, (Supm. Ct. App. T.) 108 N. Y. Supp. 926.

9. Bequest for Masses Not Deducted. — *In re* McAvoy, 112 N. Y. App. Div. 377, 98 N. Y. Supp. 437.

Bequest to Church for Masses Deducted. — *In re* Didion, 54 Misc. (N. Y.) 201, 105 N. Y. Supp. 924, *distinguishing In re* McAvoy, 112 N. Y. App. Div. 377, 98 N. Y. Supp. 437.

357. 2. Compensation of Trustee Fixed by Will Not Exempt. — State *v.* Probate Ct., 101 Minn. 485, 112 N. W. 878.

8. *In re* Hawley, 214 Pa. St. 525, 63 Atl. 1021.

Compromise of Will Contest. — McCoy *v.* Gill, 156 Fed. 985; English *v.* Crenshaw, (Tenn. 1908) 110 S. W. 210.

Payment to Heir, Legatee, to Settle Contest, Taxable. — People *v.* Rice, (Colo. 1907) 91 Pac. 33.

Under a Settlement Whereby Beneficiaries Renounced and property descended to exempt widow and heirs no appraisal can be compelled. *In re* Stone, 132 Iowa 136, 109 N. W. 455.

14. Reappraisal Ordered as to Rate of Tax. — *In re* Eaton, 55 Misc. (N. Y.) 472, 106 N. Y. Supp. 682.

358. 4. *In re* McEwan, 51 Misc. (N. Y.) 455, 101 N. Y. Supp. 733.

In Massachusetts Probate Court Has General Jurisdiction. — Bradford *v.* Storey, 189 Mass. 104, 75 N. E. 256.

7. *In re* Backhouse, 110 N. Y. App. Div. 737, 96 N. Y. Supp. 466; *In re* Willets, 51 Misc. (N. Y.) 176, 100 N. Y. Supp. 850, *affirmed* (Supm. Ct. App. T.) 104 N. Y. Supp. 1150; *In re* Eaton, 55 Misc. (N. Y.) 472, 106 N. Y. Supp. 682.

Power of Modification Contemplated by New York Statute. — *In re* Campbell, 50 Misc. (N. Y.) 671, 100 N. Y. Supp. 637.

8. *In re* Hull, 100 N. Y. App. Div. 248, 95 N. Y. Supp. 819.

9. In New York the order entered by a surrogate upon the appraiser's report is *ex parte* in nature and appeal therefrom lies to surrogate and not to Appellate Division; an appeal from decree on such appeal lies to Appellate Division. *In re* Costello, 117 N. Y. App. Div. 807, 103 N.Y. Supp. 6, *affirmed* 189 N. Y. 288, 82 N. E. 130.

Power of Surrogate to Vacate Decree Made Without Jurisdiction after Time to Appeal Has Expired. — *In re* Jones, 54 Misc. (N. Y.) 202, 105 N. Y. Supp. 932.

Reappraisal Doubtful under Terms of Notice of Appeal. — *In re* Eaton, 55 Misc. (N. Y.) 472, 106 N. Y. Supp. 682.

Under New York Statute Notice of Appeal Must State Grounds Therefor. — *In re* Stone, 56 Misc. (N. Y.) 247, 107 N. Y. Supp. 385.

When Time to Appeal Begins to Run. — *In re* Belcher, 211 Pa. St. 615, 61 Atl. 252.

359. 3. **Neither General Nor Special Statute of Limitations Bar in Massachusetts.** — Bradford *v.* Storey, 189 Mass. 104, 75 N. E. 256.

Statute of Limitations No Defense. — *In re* Strong, 117 N. Y. App. Div. 796, 102 N. Y. Supp. [illegible].

Five-year Limitation in Tennessee. — Miller *v.* Wolfe, 115 Tenn. 234, 89 S. W. 398.

6. **No Relief for Any Delay under Colorado Statute.** — People *v.* Rice, (Colo. 1907) 91 Pac. [illegible].

9. Bradford *v.* Storey, 189 Mass. 104, 75 N. E. 256.

10. Bradford *v.* Storey, 189 Mass. 104, 75 N. E. 256.

In Colorado interest runs from death of decedent with rebate for payment without interest within six months. People *v.* Rice, (Colo. 1907) 91 Pac. 33.

360. 1. **Two-year Limitation for Refund Not Applicable to Taxes on Contingent Beneficial Interests.** — Thacher *v.* U. S., 149 Fed. 90[illegible].

Liability to Refund Enforcible against Successor of Collector. — Armour *v.* Roberts, 151 Fed. 846.

The Executor Is Not Chargeable with amount of tax erroneously paid to federal government, it being admitted that same can be recovered. *In re* Marx, 117 N. Y. App. Div. 899, 103 N. Y. Supp. 446, *reversing* (Surrogate Ct.) 49 Misc. (N. Y.) 280, 99 N. Y. Supp. 334.

Refund Directed by Surrogate. — *In re* Campbell, (Surrogate Ct.) 50 Misc. (N. Y.) 485, 100 N. Y. Supp. 637.

Surrogate May Order Refund within Two Years. — *In re* Willets, (Surrogate Ct.) 51 Misc. (N. Y.) 176, 100 N. Y. Supp. 850, *affirmed* (Supm. Ct. App. T.) 104 N. Y. Supp. [illegible].

Effect of Life Estate Becoming Void Terminated Prior to Assessment. — Kahn *v.* Herold, 147 Fed. 575.

SUCH.

361. 2. **Such Construed Any.** — See Struthers *v.* People, 116 Ill. App. 481.

SUIT.

366. 5. Morris First Nat. Bank *v.* Levinson, 129 Ill. App. 174, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 366; Meyers *v.* State, (Tex. Civ. App. 1907) 105 S. W. 48.

SUITS [illegible].

374. 1. Meriden Sav. Bank *v.* McCormack, 79 Conn. 260, 64 Atl. 338; Pugh *v.* Bowden, (Fla. 1907) 45 So. 499; Pearson *v.* Wimbish, 124 Ga. 701, 52 S. E. 751; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454; Gulley *v.* Territory, (Okla. 1907) 91 Pac. 1037; Marler *v.* Wear, 117 Tenn. 244, 96 S. W. 447.

2. Pearson *v.* Wimbish, 124 Ga. 701, 52 S. E. 751; People *v.* Flaherty, 119 N. Y. App. Div. 462, 104 N. Y. Supp. 173.

3. Pearson *v.* Wimbish, 124 Ga. 701, 52 S. E. 751; Stone *v.* Paducah, 120 Ky. 322, 86 S. W. 531; State *v.* Marciniak, 97 Minn. 355, 105 N. W. 965; People *v.* Flaherty, 119 N. Y. App. Div. 462, 104 N. Y. Supp. 173; State *v.* Lytle, 138 N. Car. 738, 51 S. E. 66.

8. See Marvin *v.* Trout, 199 U. S. 212, 26 U. S. Sup. Ct. 31.

375. 2. Pugh *v.* Bowden, (Fla. 1907) 45 So. 499; Robison *v.* Wayne Circuit Judges, (Mich. 1908) 115 N. W. 682.

3. Pugh *v.* Bowden, (Fla. 1907) 45 So. 499; Com. *v.* Fisher, 213 Pa. St. 48, 62 Atl. 198; Mill *v.* Brown, 31 Utah 473, 88 Pac. 609.

8. **Summary Sentence to Involuntary Servitude Not Unconstitutional.**—Pearson *v.* Wimbish, 124 Ga. 701, 52 S. E. 751.

12. Com. *v.* Andrews, 211 Pa. St. 110, 60 Atl. 554.

13. Pearson *v.* Wimbish, 124 Ga. 701, 52 S. E. 751.

14. **Refusal of Witness to Answer.** — Matter of Grout, 105 N. Y. App. Div. 98, 93 N. Y. Supp. 711.

15. People *v.* Tool, 35 Colo. 225, 86 Pac. 224.

376. 2. Littlejohn *v.* Stells, 123 Ga. 427, 51 S. E. 390.

3. Miller *v.* Birmingham, (Ala. 1907) 44 So. 388; Littlejohn *v.* Stells, 123 Ga. 427, 51 S. E. 390; Little *v.* State, 123 Ga. 503, 51 S. E. 501; Duren *v.* Thomasville, 125 Ga. 1, 53 S. E. 814; Chicago *v.* Knobel, 232 Ill. 112, 83 N. E. 459; State *v.* Marciniak, 97 Minn. 355, 105 N. W. 965.

4. Pearson *v.* Wimbish, 124 Ga. 701, 52 S. E. 751; Sisson *v.* Buena Vista County, 128 Iowa 442, 104 N. W. 454.

5. Miller *v.* Birmingham, (Ala. 1907) 44 So. 388. See also Littlejohn *v.* Stells, 123 Ga. 427, 51 S. E. 390.

Summary Sentence to County Chain Gang Unconstitutional. — Pearson *v.* Wimbish, 124 Ga. 701, 52 S. E. 751.

378. 9. **Act for Summary Investigation of Municipal Expenditures Constitutional.** — Hoboken *v.* O'Neill, (N. J. 1906) 64 Atl. 981.

379. 4. **Summary Actions Available Only Where Neglect Is Wilful.** — Roche *v.* Dunn, 97 Minn. 529, 106 N. W. 965.

6. Topeka *v.* Kersch, 70 Kan. 840, 80 Pac. 29; State *v.* Lytle, 138 N. Car. 738, 51 S. E. 66. See also Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541, 28 U. S. Sup. Ct. 178.

SUMMARY SETTLEMENT OF [illegible].

382. 4. Calhoun *v.* Moore, 79 Ark. 109, 94 S. W. 931.

383. 2. **Real Estate.** — Since Act Ark., April 1, 1887, p. 206, the Probate Court is without jurisdiction to render a judgment vesting the real property of the husband in the wife. Calhoun *v.* Moore, 79 Ark. 109, 94 S. W. 931.

SUNDAYS AND HOLIDAYS.

390. 11. McClelland *v.* Denver, 36 Colo. 488, 86 Pac. 126, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 390; State *v.* Dolan,

13 Idaho 693, 92 Pac. 995; State *v.* Weiss, 97 Minn. 125, 105 N. W. 1127; St. Louis *v.* De Lassus, 205 Mo. 578, 104 S. W. 14, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 390; State *v.* Bergfeldt, 41 Wash. 239, 83 Pac. 177, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 390.

391. 3. State *v.* Dolan, 13 Idaho 693, 92 Pac. 995; State *v.* Herald, (Wash. 1907) 92 Pac. 376.

5. State *v.* Bergfeldt, 41 Wash. 234, 83 Pac. 177.

392. 5. McClelland *v.* Denver, 36 Colo. 486, 86 Pac. 126; State *v.* Binswanger, 122 Mo. 78, 98 S. W. 103; St. Louis *v.* De Lassus, 205 Mo. 578, 104 S. W. 12.

393. 1. Block *v.* Crockett, 61 W. Va. 421, 56 S. E. 826.

2. People *v.* Zimmerman, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 203, 95 N. Y. Supp. 131.

4. **Public Shows** which the New York Penal Code prohibits on Sunday have been held to refer to those only which are out of doors, by reason of the rule of *ejusdem generis*. Keith, etc., Amusement Co. *v.* Bingham, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 205; Eden Musee American Co. *v.* Bingham, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 200; People *v.* Flynn, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 208; People *v.* Lynch, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 209. See, however, United Vaudeville Co. *v.* Zeller, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 789, where a contrary view was taken.

394. 4. **The Sale of One Bottle of Beer** by the steward of a club has been held not to be "labor" within the meaning of a statute prohibiting labor on Sunday. Benson *v.* State, 47 Tex. Crim. 609, 85 S. W. 800.

5. **Making of Contract Not "Labor."** — See *contra*, J. B. Bostic Co. *v.* Eggleston, (Indian Ter. 1907) 104 S. W. 566.

Making of Contracts Not "Labor or Work." — See *contra*, International Textbook Co. *v.* Ohl, 150 Mich. 131, 111 N. W. 768.

6. Hallen *v.* Thompson, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 642, 96 N. Y. Supp. 142; *In re* Hammerstein, 57 Misc. (N. Y.) 52, 108 N. Y. Supp. 197.

395. 1. State *v.* Schatt, (Mo. App. 1908) 107 S. W. 10, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 395.

396. 1. Scandrett *v.* State, 124 Ga. 141, 52 S. E. 160.

2. **Ordinary Calling as Agent.** — Rex *v.* Anderson, 10 Can. Crim. Cas. (Ont.) 146, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 396.

397. 11. **Keeping Open Doors.** — Fichtenberg *v.* Atlanta, 126 Ga. 62, 54 S. E. 933.

398. 1. **A Workshop if Open to Employees** is open for the purpose of doing business although closed to the public. Com. *v.* Kirshen, 194 Mass. 151, 80 N. E. 2.

4. **Vending Machines** are within the prohibition of such a statute. Cain *v.* Day, 74 S. Car. 480, 55 S. E. 110.

Fruit Is Merchandise within the meaning of a statute prohibiting the disposing of merchandise on Sunday, and the dealer of a fruit stand who sells on Sunday violates the statute. Gulfport *v.* Stratakos, (Miss. 1907) 43 So. 812.

Merchandise Includes Beer. — Savage *v.* State, (Tex. Crim. 1906) 93 S. W. 114.

A Newsdealer Is a "Tradesman" within the meaning of a statute making it unlawful for a "tradesman" to sell on the Lord's day. Rex *v.* Anderson, 10 Can. Crim. Cas. (Ont.) 144.

399. 3. **Public Games of Baseball** are prohibited in New York. Brighton Athletic Club *v.* McAdoo, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 432, 94 N. Y. Supp. 391; Paulding *v.* Lane (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 37, 104 N. Y. Supp. 1051; Ontario Field Club *v.* McAdoo, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 285, 107 N. Y. Supp. 295; People *v.* Demarest, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 287, 107 N. Y. Supp. 549.

Playing a Game of Baseball Where an Admission Fee is charged is made an offense in *Indiana* if done on Sunday. Heigert *v.* State, 37 Ind. App. 398, 75 N. E. 850.

9. Barefield *v.* State, (Ark. 1908) 107 S. W. 393.

10. Com. *v.* White, (Mass. 1906) 77 N. E. 636; Bidwell *v.* Grand Trunk Western R. Co., 148 Mich. 524, 112 N. W. 122; State *v.* Schatt, (Mo. App. 1908) 107 S. W. 10.

400. 5. **Lemons** are articles of necessity within the meaning of a statute allowing the sale of articles of necessity on Sunday. State *v.* Campbell, 206 Mo. 579, 105 S. W. 637.

9. Turner *v.* State, (Ark. 1907) 107 S. W. 388.

Work Held Not within Exception — Barbering. State *v.* Schatt, (Mo. App. 1908) 107 S. W. 10.

Shaving by a barber at a club. McCain *v.* State, 2 Ga. App. 389, 58 S. E. 550.

Assisting in operating a railroad train loaded with cotton. Barefield *v.* State, (Ark. 1908) 107 S. W. 393.

Engaging in farm work. Lee *v.* State, (Tex. Crim. 1907) 100 S. W. 156.

402. 7. **Common Carriers.** — A *Georgia* statute allows the running of freight trains which are scheduled to reach their destination before eight o'clock Sunday morning. Brand *v.* State, (Ga. App. 1908) 60 S. E. 339.

Running of Freight Trains on Interstate Railroad Excepted. — Griggs *v.* State, 126 Ga. 442, 55 S. E. 179.

403. 4. Carson *v.* Calhoun, 101 Me. 456, 64 Atl. 838.

404. 1. Gordon *v.* Levine, (Mass. 1908) 83 N. E. 861.

Validity of Note in Hands of Indorsee or Holder. — Myers *v.* Kessler, (C. C. A.) 142 Fed. 730.

405. 1. Diamond Glass Co. *v.* Gould, (N. J. 1905) 61 Atl. 12.

406. 4. Jacobson *v.* Bentzler, 127 Wis. 566, 107 N. W. 7.

5. J. B. Bostic Co. *v.* Eggleston, (Indian Ter. 1907) 104 S. W. 566; P. J. Bowlin Liquor Co. *v.* Brandenberg, 130 Iowa 524, 106 N. W. 407.

408. 3. **Where a Note Is Given on Sunday the Maker** cannot have it declared void without giving up the consideration he received for it. Hale *v.* Harris, (Ky. 1906) 91 S. W. 660.

409. 1. Helm *v.* Briley, 17 Okla. 314, 87 Pac. 595.

415. 2. Calhoun *v.* State, 143 Ala. 11, 39 So. 378; People *v.* Loyalton, 147 Cal. 777, 82 Pac. 620, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 414 [415]; State *v.* Duncan, 118 La. 707, 43 So. 283, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 415; Latta *v.* Catawba Electric, etc., Co., (N. Car. 1907) 59 S. E. 1028; Thompson *v.* Landeck, 15 Pa. Dist. 368, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 415.

SUPERINTENDENT.

416. 2. **Superintendent — Massachusetts Employers' Liability Act.** — See Hourigan *v.* Boston El. R. Co., 193 Mass. 495, 79 N. E. 738.

SUPPORT AND MAINTENANCE.

420. 2. Leake *v.* Goode, (Ky. 1906) 96 S. W. 565; Leake *v.* Rhodes, (Ky. 1906) 96 S. W. 566; Exchange Banking, etc., Co. *v.* Finley, 73 S. Car. 423, 53 S. E. 649.

421. 3. **Incarceration of a Minor Child in an Insane Asylum** is not an emancipation so as to relieve the parent from his obligation of support. Guthrie County *v.* Conrad, 133 Iowa 171, 110 N. W. 454.

6. *In re* Boyes, 151 Cal. 143, 90 Pac. 454; Com. *v.* Lee, 120 Ky. 433, 86 S. W. 990; Clay *v.* Clay, (Ky. 1905) 87 S. W. 807.

7. **Burden of Proof on Plaintiff to Establish Contract.** — Butler *v.* Setser, (Ky. 1907) 99 S. W. 972.

8. Burton *v.* Belvin, 142 N. Car. 151, 55 S. E. 71.

10. Burton *v.* Belvin, 142 N. Car. 151, 55 S. E. 71.

422. 4. **Consideration.** — Natural affection and sense of duty furnish a good consideration for a contract between a child and an aged parent for the support of the parent. Worth *v.* Daniel, 1 Ga. App. 15, 57 S. E. 898.

5. **A Parent Being Supported by One Child** cannot maintain an action against another child for another support. Duffy *v.* Yordi, 149 Cal. 140, 84 Pac. 838.

423. 2. **Death of Contractor.** — Where the contractor dies the duty to continue the support devolves upon the administrator. Pattee *v.* Boynton, 73 N. H. 525, 63 Atl. 787.

3. Recknagel *v.* Steinway, 105 N. Y. App. Div. 561, 94 N. Y. Supp. 119.

4. Recknagel *v.* Steinway, 105 N. Y. App. Div. 561, 94 N. Y. Supp. 119. See also Wright *v.* Leupp, 70 N. J. Eq. 130, 62 Atl. 464.

7. See Norris *v.* Lilly, 147 Cal. 425, 82 Pac. 425.

SURETYSHIP.

431. 1. Bay Shore Lumber Co. *v.* Donovan, (Ala. 1906) 42 So. 1014; Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 431 *et seq.*; National Bank of Commerce *v.* Schirm, 3 Cal. App. 696, 86 Pac. 981; Fields *v.* Willis, 123 Ga. 272, 51 S. E. 280; Rouse *v.* Wooten, 140 N. Car. 557, 53 S. E. 430; American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357.

2. Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 431 *et seq.*; Reissaus *v.* Whites, (Mo. App. 1907) 106 S. W. 603, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 431.

Statutory Definition. — Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435.

3. Towle *v.* Sweeney, 2 Cal. App. 29, 83 Pac. 74; Fields *v.* Willis, 123 Ga. 272, 51 S. E. 280; Southern States L. Ins. Co. *v.* Statham, (Ga. App. 1908) 61 S. E. 886.

4. Fields *v.* Willis, 123 Ga. 272, 51 S. E. 280; Rouse *v.* Wooten, 140 N. Car. 557, 53 S. E. 430.

432. 1. Crosby *v.* Woodbury, 37 Colo. 1, 89 Pac. 34, *reversing* 17 Colo. App. 212, 68 Pac. 130; Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056.

2. Schlittler *v.* Deering Harvester Co., 3 Ga. App. 86, 59 S. E. 342; Fields *v.* Willis, 123 Ga. 272, 51 S. E. 280; Hirsch *v.* Meldrim, 124 Ga. 717, 52 S. E. 813; A. B. Small Co. *v.* Claxton, 1 Ga. App. 83, 57 S. E. 977; Van Buren County *v.* American Surety Co., (Iowa 1908) 115 N. W. 24; Pritchard *v.* Mitchell, 139 N. Car. 54, 51 S. E. 783, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 432; Rouse *v.* Wooten, 140 N. Car. 557, 53 S. E. 430. See also Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608.

3. Parker *v.* Guillot, 118 La. 223, 42 So. 782. **In Georgia** an accommodation indorser is considered as a mere surety. Bigby *v.* Douglas, 123 Ga. 635, 51 S. E. 606.

4. Williams *v.* Ogg, (Tex. Civ. App. 1906) 94 S. W. 420.

6. Rouse *v.* Wooten, 140 N. Car. 557, 53 S. E. 430.

Maturity of Debt by Operation of Law. — Pritchard *v.* Mitchell, 139 N. Car. 54, 51 S. E. 783.

7. Reissaus *v.* Whites, (Mo. App. 1907) 106 S. W. 603, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 432; Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608.

No Particular or Formal Phrase Required to create a contract of surety. Fields *v.* Willis, 123 Ga. 272, 51 S. E. 280.

433. 1. **Mere Position of Name Does Not Indicate Suretyship.** — Scott *v.* Bales, (Ky. 1906) 96 S. W. 528.

2. East Bridgewater Sav. Bank *v.* Bates, 191 Mass. 110, 77 N. E. 711; Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665; Caldwell *v.* Hurley, 41 Wash. 296, 83 Pac. 318.

3. Schmitt *v.* Greenberg, (Supm. Ct. App. T.) 109 N. Y. Supp. 881.

4. Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435; McCrery *v.* Nivin, (Del. 1907) 67 Atl. 452; Scholten *v.* Barber, 217 Ill. 148, 75 N. E. 460; Oglebay *v.* Todd, 166 Ind. 250, 76 N. E. 238; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130; Van Meter *v.* Poole, (Mo. App. 1908) 110 S. W. 5; Hoffman *v.* Habighorst, (Oregon 1907) 89 Pac. 952; Iowa L. & T. Co. *v.* Schnose, 19 S. Dak. 248, 1030 N. W. 22; Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056.

Same as to Chattel Mortgages. — Long *v.* Patton, (Tex. Civ. App. 1906) 93 S. W. 519.

6. Planters, etc., Nat. Bank *v.* Robertson, (Tex. Civ. App. 1905) 86 S. W. 643.

434. 2. Fitts *v.* A. F. Messick Grocery Co.,

144 N. Car. 463, 57 S. E. 164; State *v.* Mellette, (S. Dak. 1907) 113 N. W. 83; De Barrera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 470.

Burden of Proof Is on Wife to Show Suretyship. — Gibson *v.* Wallace, 147 Ala. 322, 41 So. 960; Sample *v.* Guyer, 143 Ala. 613, 42 So. 106.

Notice of Relation to Mortgagee. — Creighton *v.* Crane, 73 Neb. 650, 103 N. W. 284. This case is almost identical with Von Hemert *v.* Taylor, 73 Minn. 339, cited in the original note, and follows the doctrine there laid down.

Homestead Property. — Omlie *v.* O'Toole, (N. Dak. 1907) 112 N. W. 677.

435. 2. Hoffman *v.* Habighorst, (Oregon 1907) 91 Pac. 20.

3. Hoffman *v.* Habighorst, (Oregon 1907) 91 Pac. 20.

5. Gibson *v.* Wallace, 147 Ala. 322, 41 So. 960; National Bank of Commerce *v.* Schirm, 3 Cal. App. 696, 86 Pac. 981; Shank *v.* Washington Exch. Bank, 124 Ga. 508, 52 S. E. 621; Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497; Weller *v.* Ralston, (Ky. 1905) 89 S. W. 698; Black *v.* McCarley, (Ky. 1907) 104 S. W. 987; Hart *v.* Russellville Bank, (Ky. 1907) 105 S. W. 934; Kaufman *v.* Barbour, 98 Minn. 158, 107 N. W. 1128; People's Nat. Bank *v.* Schepflin, 73 N. J. L. 29, 62 Atl. 333; Windhorst *v.* Bergendahl, (S. Dak. 1907) 111 N. W. 544; Western Bank, etc., Co. *v.* Gibbs, (Tex. Civ. App. 1906) 96 S. W. 947.

436. 3. Crosby *v.* Woodbury, 37 Colo. 1, 89 Pac. 34, *reversing* 17 Colo. App. 212, 68 Pac. 130; Hoffman *v.* Habighorst, (Oregon 1907) 89 Pac. 952, 91 Pac. 20.

7. Reissaus *v.* Whites, (Mo. App. 1907) 106 S. W. 603.

11. See Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

437. 3. **Ratification of Contract of Suretyship.** — Durden *v.* Dekle, 3 Ga. App. 97, 59 S. E. 315; Kneisley Lumber Co. *v.* Edward B. Stoddard Co., (Mo. App. 1908) 109 S. W. 840.

6. Romine *v.* Howard, (Tex. Civ. App. 1906) 93 S. W. 690.

7. Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851; U. S. Fidelity, etc., Co. *v.* Egg Shippers' Strawboard, etc., Co., (C. C. A.) 148 Fed. 353.

438. 1. **Presumption of Solvency of Surety Companies.** — Romine *v.* Howard, (Tex. Civ. App. 1906) 93 S. W. 690.

Effect of Insolvency. — See Ansley *v.* Stuart, (La. 1908) 46 So. 675.

2. Fidelity Mut. L. Ins. Co. *v.* Johnson, (Mich. 1908) 116 N. W. 404; Madison First Nat. Bank *v.* School Dist. No. 1, (Neb. 1906) 110 N. W. 349.

4. Hart *v.* Russellville Bank, (Ky. 1907) 105 S. W. 934.

439. 1. Com. *v.* Lamar, 32 Pa. Super. Ct. 200.

3. *Compare* School Dist. No. 80 *v.* Lapping, 100 Minn. 139, 110 N. W. 849.

8. Russell *v.* Chicago, etc., R. Co., (Mont. 1908) 94 Pac. 501.

12. Selby *v.* New Orleans, 119 La. 900, 44 So. 722; Bjoin *v.* Anglim, 97 Minn. 526, 107 N. W. 558; School Dist. No. 80 *v.* Lapping, 100 Minn. 139, 110 N. W. 849; Tully *v.* Lewitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 350, 98 N. Y. Supp. 829; Crawford *v.* Owens, (S. Car. 1908) 60 S. E. 236. *Compare* People *v.* Carroll, (Mich. 1908) 115 N. W. 42.

440. 1. U. S. Fidelity, etc., Co. *v.* Union Trust, etc., Co., 142 Ala. 532, 38 So. 177.

4. The agent's signature as attorney in fact must be accompanied by the power of attorney. Foley, etc., Mfg. Co. *v.* Bell, (Ga. App. 1908) 61 S. E. 856.

6. Defective Execution by Agent — **Estoppel.** — Farmers', etc., Irrigation Co. *v.* U. S. Fidelity, etc., Co., (Neb. 1906) 108 N. W. 156.

7. Delivery of Official Bonds. — Slaughter *v.* Hampton, (Ky. 1906) 90 S. W. 981; Baker County *v.* Huntington, 47 Oregon 328, 83 Pac. 532.

9. Hendry *v.* Cartwright, (N. Mex. 1907) 89 Pac. 309.

11. Conditional Delivery on Obtaining Other Signatures. — Johnson County *v.* Chamberlain Banking House, (Neb. 1907) 113 N. W. 1055.

A Delivery of a Bond in Escrow to a cosurety, who delivers it without performing the conditions imposed, is binding upon all sureties and is no defense thereon. Hendry *v.* Cartwright, (N. Mex. 1907) 89 Pac. 309.

441. 2. *United States.* — American Bonding Co. *v.* Ottumwa, (C. C. A.) 137 Fed. 572.

Alabama. — Bay Shore Lumber Co. *v.* Donovan, (Ala. 1906) 42 So. 1014.

Arkansas. — Miller *v.* Friedheim, 82 Ark. 592, 102 S. W. 372.

California. — Hewlett *v.* Beede, 2 Cal. App. 561, 83 Pac. 1086.

Connecticut. — State *v.* Spittler, 79 Conn. 470, 65 Atl. 949.

Florida. — Jennings *v.* Bobe, 51 Fla. 229, 40 So. 194.

Georgia. — Hirsch *v.* Meldrim, 124 Ga. 717, 52 S. E. 813.

Illinois. — Searles *v.* Flora, 225 Ill. 167, 80 N. E. 98; Phœnix Mfg. Co. *v.* Bogardus, 231 Ill. 528, 83 N. E. 284.

Indiana. — Stewart *v.* Knight, etc., Co., 166 Ind. 498, 76 N. E. 743.

Kentucky. — Graziani *v.* Com., (Ky. 1906) 97 S. W. 409, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 441; Com. *v.* Bacon, (Ky. 1908) 111 S. W. 387.

Maryland. — American Bonding, etc., Co. *v.* Progressive Permanent Bldg., etc., Assoc., 101 Md. 423, 61 Atl. 199; State *v.* Dayton, 101 Md. 598, 61 Atl. 624.

Missouri. — Kingman-St. Louis Implement Co. *v.* McMaster, 118 Mo. App. 209, 94 S. W. 819; Moniteau County *v.* Lewis, 123 Mo. App. 673, 100 S. W. 1167; Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608; State *v.* Pitman, (Mo. App. 1908) 111 S. W. 134.

Montana. — Plymouth Gold Min. Co. *v.* U. S. Fidelity, etc., Co., 35 Mont. 23, 88 Pac. 565.

Nebraska. — Stephens *v.* Hendee, (Neb. 1908) 115 N. W. 283.

New York. — Mossein *v.* Empire State Surety Co., 117 N. Y. App. Div. 820, 102 N. Y. Supp. 1013; Heinemann *v.* Brasch, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 552, 103 N. Y. Supp. 720.

North Carolina. — Benson Bank *v.* Jones, (N.

Car. 1908) 61 S. E. 193 (*per* Connor, J., dissenting opinion), *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 441.

Ohio. — State *v.* Griffith, 74 Ohio St. 80, 77 N. E. 686.

Oregon. — Enterprise Hotel Co. *v.* Book, 48 Oregon 58, 85 Pac. 333.

Pennsylvania. — Philadelphia *v.* Malone, 214 Pa. St. 90, 63 Atl. 539.

Tennessee. — Hardison *v.* Yeaman, 115 Tenn. 639, 91 S. W. 1111.

Texas. — Moroney *v.* Coombes, (Tex. Civ. App. 1905) 88 S. W. 430; American Surety Co. *v.* Koen, (Tex. Civ. App. 1908) 107 S. W. 938; Turner *v.* National Cotton Oil Co., (Tex. Civ. App. 1908) 109 S. W. 1112.

Utah. — Smith *v.* Bowman, (Utah 1907) 88 Pac. 687.

Vermont. — Stern *v.* Sawyer, 78 Vt. 5, 61 Atl. 36.

Washington. — Friendly *v.* National Surety Co., 46 Wash. 71, 89 Pac. 177.

442. 1. A. B. Small Co. *v.* Claxton, 1 Ga. App. 83, 57 S. E. 977.

2. U. S. Fidelity, etc., Co. *v.* Woodson County, (C. C. A.) 145 Fed. 144; American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Nowell *v.* Mode, (Mo. App. 1908) 111 S. W. 641; Doon *v.* American Surety Co., 110 N. Y. App. Div. 215, 97 N. Y. Supp. 270; Middletown *v.* Ætna Indemnity Co., 121 N. Y. App. Div. 589, 106 N. Y. Supp. 374.

3. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670. See also U. S. Fidelity, etc., Co. *v.* Fultz, 76 Ark. 410, 89 S. W. 93. But see Fidelity, etc., Co. *v.* Western Bank, (Ky. 1906) 94 S. W. 3.

4. National Surety Co. *v.* Kansas City Hydraulic Press Brick Co., 73 Kan. 196, 84 Pac. 1034; Atkin *v.* Wyandotte Coal, etc., Co., 73 Kan. 768, 84 Pac. 1040.

443. 2. Hier *v.* Harpster, (Kan. 1907) 90 Pac. 817; Taylorville Bank *v.* Hardesty, (Ky. 1906) 91 S. W. 729.

3. Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483.

4. Baltimore First Nat. Bank *v.* Terry, 135 Fed. 621; American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692; Glidden *v.* U. S. Fidelity, etc., Co., (Mass. 1908) 84 N. E. 143.

444. 1. **Nondisclosure in the Absence of Inquiry.** — American Bonding, etc., Co. *v.* Progressive Permanent Bldg., etc., Assoc., 101 Md. 423, 61 Atl. 199; Wright *v.* German Brewing Co., 103 Md. 377, 63 Atl. 807.

Misrepresentation by County Official Does Not Bind State. — U. S. Fidelity, etc., Co. *v.* Com., (Ky. 1907) 104 S. W. 1029.

Creditor's Failure to Disclose Principal's Insolvency. — See *infra*, **461.** 9.

2. A. S. Ripley Bldg. Co. *v.* Coors, 37 Colo. 78, 84 Pac. 817; Wright *v.* German Brewing Co., 103 Md. 377, 63 Atl. 807; Thompson *v.* Chaffee, (Tex. Civ. App. 1905) 89 S. W. 285.

445. 2. Wright *v.* German Brewing Co., 103 Md. 377, 63 Atl. 807.

4. Benson Bank *v.* Jones, (N. Car. 1908) 61 S. E. 193.

Payee Must Have Notice of Conditions. — Barber *v.* Ruggles, (Ky. 1905) 87 S. W. 785.

Obligee Must Have Notice of Condition. — Johnson County *v.* Chamberlain Banking House, (Neb. 1907) 113 N. W. 1055; Wollenberg *v.* Sykes, (Oregon 1907) 89 Pac. 148.

5. Roark *v.* City Trust, etc., Surety Co., (Mo. App. 1908) 110 S. W. 1.

7. See Gibson *v.* Wallace, 147 Ala. 322, 41 So. 960.

8. Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361.

Indemnity Bond under Seal Imports Consideration. — Monro *v.* National Surety Co., (Wash. 1907) 92 Pac. 280.

446. 2. Kephart *v.* Buddecke, 20 Colo. App. 546, 80 Pac. 501; Fields *v.* Willis, 123 Ga. 272, 51 S. E. 280; A. B. Small Co. *v.* Claxton, 1 Ga. App. 83, 57 S. E. 977; Consolidated Portrait, etc., Co. *v.* Claxton, (Ga. App. 1907) 57 S. E. 980; Carstens *v.* Gerdes, (Iowa 1908) 115 N. W. 1009; Hoffman *v.* Habighorst, (Oregon 1907) 89 Pac. 952.

4. Kephart *v.* Buddecke, 20 Colo. App. 546, 80 Pac. 501; Bluff Springs Mercantile Co. *v.* White, (Tex. Civ. App. 1905) 90 S. W. 710.

447. 2. Steger *v.* Jackson, (Ky. 1907) 102 S. W. 329.

4. A. S. Ripley Bldg. Co. *v.* Coors, 37 Colo. 78, 84 Pac. 817, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 447.

8. Red Wing Sewer Pipe Co. *v.* Donnelly, 102 Minn. 192, 113 N. W. 1, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 447.

9. Langley *v.* Fitzgerald, (Colo. 1908) 95 Pac. 923.

11. White River, etc., R. Co. *v.* Star Ranch, etc., Co., 77 Ark. 128, 91 S. W. 14.

12. Provision for Acknowledgment. — State *v.* Baird, 13 Idaho 126, 89 Pac. 298; Hendry *v.* Cartwright, (N. Mex. 1907) 89 Pac. 309.

Bond Valid Without Approval. — Munoz *v.* Brassel, (Tex. Civ. App. 1908) 108 S. W. 417.

448. 1. **Enforced as Common-law Bonds.** — Moore *v.* Hanscom, (Tex. Civ. App. 1907) 103 S. W. 665; Penn Iron Co. *v.* William R. Trigg Co., 106 Va. 557, 56 S. E. 329.

Attaching Seals to Bonds Before or After Execution. — George N. Pierce Co. *v.* Casler, 194 Mass. 423, 80 N. E. 494.

Enforced as Common-law Bonds. — Babcock *v.* Reeves, (Ala. 1907) 43 So. 21; Wilson *v.* White, 82 Ark. 407, 102 S. W. 201, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 448; Henry County *v.* Salmon, 201 Mo. 136, 100 S. W. 20; Hendry *v.* Cartwright, (N. Mex. 1907) 89 Pac. 309. See also Cambridge *v.* Foster, (Mass. 1907) 81 N. E. 278; People *v.* Newberry, (Mich. 1908) 116 N. W. 419.

If a bond is accepted without justification of the sureties as required by the statute, the sureties cannot escape liability because of that fact. State *v.* Baird, 13 Idaho 126, 89 Pac. 298.

449. 1. *Compare* U. S. Fidelity, etc., Co. *v.* Com., (Ky. 1907) 104 S. W. 1029.

4. State *v.* Frentress, 37 Ind. App. 245, 76 N. E. 821; Growbarger *v.* U. S. Fidelity, etc., Co., (Ky. 1907) 102 S. W. 873; U. S. Fidelity, etc., Co. *v.* McLaughlin, (Neb. 1906) 107 N. W. 577.

450. 2. Lamson *v.* Coffin, 102 Minn. 493, 114 N. W. 248, *citing* 27 Am. and Eng. Encyc.

of Law (2d ed.) 150; Stewart *v.* Knight, etc., Co., 166 Ind. 498, 76 N. E. 743.

The Contract Is Made with Reference to the Existing Law and the liability of the surety is measured by and is coextensive with the liability of the principal. Pritchard *v.* Mitchell, 139 N. Car. 54, 51 S. E. 783.

3. **Sureties on Contractors' Bonds** — *United States.* — American Bonding Co. *v.* Ottumwa, (C. C. A.) 137 Fed. 572; Wing, etc., Co. *v.* U. S. Fidelity, etc., Co., 150 Fed. 672.

Arizona. — Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328.

Arkansas. — Miller *v.* Friedheim, 82 Ark. 592, 102 S. W. 372.

California. — Tally *v.* Ganahl, 151 Cal. 418, 90 Pac. 1049.

Colorado. — A. S. Ripley Bldg. Co. *v.* Coors, 37 Colo. 78, 84 Pac. 817.

Connecticut. — New Haven *v.* Eastern Paving Brick Co., 78 Conn. 689, 63 Atl. 517.

Illinois. — Searles *v.* Flora, 225 Ill. 167, 80 N. E. 98.

Indiana. — Ochs *v.* M. J. Carnahan Co., (Ind. App. 1907) 80 N. E. 163; Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52.

Iowa. — Van Buren County *v.* American Surety Co., (Iowa 1908) 115 N. W. 24.

Missouri. — Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 470 [450]; Reissaus *v.* Whites, (Mo. App. 1907) 106 S. W. 603; Nowell *v.* Mode, (Mo. App. 1908) 111 S. W. 641.

Nebraska. — Madison First Nat. Bank *v.* School Dist. No. 1, (Neb. 1906) 110 N. W. 349.

North Carolina. — Donlan *v.* American Bonding, etc., Co., 139 N. Car. 212, 51 S. E. 924.

Pennsylvania. — Philadelphia *v.* Malone, 214 Pa. St. 90, 63 Atl. 539.

Tennessee. — Hardison *v.* Yeaman, 115 Tenn. 639, 91 S. W. 1111.

Texas. — American Surety Co. *v.* San Antonio Loan, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 387.

Utah. — Smith *v.* Bowman, (Utah 1907) 88 Pac. 687.

4. U. S. Fidelity, etc., Co. *v.* Woodson County, (C. C. A.) 145 Fed. 144; Schlittler *v.* Deering Harvester Co., 3 Ga. App. 86, 59 S. E. 342; Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

451. 1. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

2. Wheeler County *v.* Keeton, (Oregon 1908) 95 Pac. 819.

3. *United States.* — U. S. Fidelity, etc., Co. *v.* Woodson County, (C. C. A.) 145 Fed. 144; American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357.

Arizona. — Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328.

Colorado. — A. S. Ripley Bldg. Co. *v.* Coors, 37 Colo. 78, 84 Pac. 817.

Connecticut. — New Haven *v.* National Steam Economizer Co., 79 Conn. 482, 65 Atl. 959.

Georgia. — McArthor *v.* McGilvray, 1 Ga. App. 643, 57 S. E. 1058.

Indiana. — Stamets *v.* Plano Mfg. Co., (Ind. App. 1907) 82 N. E. 122.

Iowa. — Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Nebraska. — Madison First Nat. Bank *v.* School Dist. No. 1, (Neb. 1906) 110 N. W. 349.

Utah. — Smith *v.* Bowman, (Utah 1907) 88 Pac. 687.

Liability Is Measured by Terms of Contract. — Com. *v.* Bacon, (Ky. 1908) 111 S. W. 387.

5. Wing, etc., Co. *v.* U. S. Fidelity, etc., Co., 150 Fed. 672; Brown *v.* U. S., (C. C. A.) 152 Fed. 964; Hirsch *v.* Meldrim, 124 Ga. 717, 52 S. E. 813; Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608; Guttenberg *v.* Vassel, (N. J. L. 1907) 65 Atl. 901; Hendry *v.* Cartwright, (N. Mex. 1907) 89 Pac. 399; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630; Hardison *v.* Yeaman, 115 Tenn. 639, 91 S. W. 1111; Smith *v.* Bowman, (Utah 1907) 88 Pac. 687; Stern *v.* Sawyer, 78 Vt. 5, 61 Atl. 36.

452. 1. New Haven *v.* Eastern Paving Brick Co., 78 Conn. 689, 63 Atl. 517. See also Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52.

Contra. — Lonergan *v.* San Antonio Loan, etc., Co., (Tex. 1907) 104 S. W. 1061.

2. U. S. Fidelity, etc., Co. *v.* Egg Shippers' Strawboard, etc., Co., (C. C. A.) 148 Fed. 353; American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692; U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670; Van Buren County *v.* American Surety Co., (Iowa 1908) 115 N. W. 24; Fidelity, etc., Co. *v.* Western Bank, (Ky. 1906) 94 S. W. 3; Roark *v.* City Trust, etc., Surety Co., (Mo. App. 1908) 110 S. W. 1; Long Bros. Grocery Co. *v.* U. S. Fidelity, etc., Co., (Mo. App. 1908) 110 S. W. 29; Willoughby *v.* Fidelity, etc., Co., 16 Okla. 546, 85 Pac. 713; American Surety Co. *v.* San Antonio Loan, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 387.

3. American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692.

4. American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692; U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670; Long Bros. Grocery Co. *v.* U. S. Fidelity, etc., Co., (Mo. App. 1908) 110 S. W. 29; American Surety Co. *v.* San Antonio Loan, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 387.

5. U. S. Fidelity, etc., Co. *v.* Fultz, 76 Ark. 410, 89 S. W. 93; Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184; Roark *v.* City Trust, etc., Surety Co., (Mo. App. 1908) 110 S. W. 1.

7. Wapello State Sav. Bank *v.* Colton, 133 Iowa 147, 110 N. W. 450; Waterloo First Nat. Bank *v.* Story, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 429, 103 N. Y. Supp. 233.

Liability under Renewal Policies. — See Long Bros. Grocery Co. *v.* U. S. Fidelity, etc., Co., (Mo. App. 1908) 110 S. W. 29.

8. Stamets *v.* Plano Mfg. Co., (Ind. App. 1907) 82 N. E. 122.

During Term of Service. — Brillion Lumber Co. *v.* Barnard, 131 Wis. 283, 111 N. W. 483.

Bond of Bank Given to Secure State Deposits. — Kephart *v.* Buddecke, 20 Colo. App. 546, 81 Pac. [illegible].

Bond of Bank Given to Secure County Deposits. — Henry County *v.* Salmon, 201 Mo. 126, 100 S. W. 20.

10. Tally *v.* Ganahl, 151 Cal. 418, 90 Pac.

1049; A. B. Small Co. *v.* Claxton, 1 Ga. App. 83, 57 S. E. 977; U. S. Fidelity, etc., Co. *v.* Murphy, (Ga. App. 1908) 60 S. E. 831; McGovern *v.* Rectanus, (Ky. 1907) 105 S. W. 965; East Bridgewater Sav. Bank *v.* Bates, 191 Mass. 110, 77 N. E. 711; Erie County *v.* Baltz, (Supm. Ct. App. Div.) 109 N. Y. Supp. 304.

Obligee on Appeal Bond May Sue Either Surety. — Day *v.* McPhee, (Colo. 1907) 93 Pac. 670.

453. 2. Albie *v.* Jones, 82 Ark. 414, 102 S. W. 222; George N. Pierce Co. *v.* Casler, 194 Mass. 423, 80 N. E. 494; People *v.* United Surety Co., 120 N. Y. App. Div. 655, 105 N. Y. Supp. 72. See also U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670.

Sureties Not Liable for Statutory Penalty. — Eccles *v.* Walker, 75 Neb. 722, 106 N. W. 977.

3. Bernhardt *v.* Dutton, (N. Car. 1907) 59 S. E. 651.

4. **A Surety Is Liable to the Amount of Damages Equitably Due** for a breach of the contract, not exceeding the amount of the penalty of the bond with interest. New Haven *v.* Eastern Paving Brick Co., 78 Conn. 689, 63 Atl. 517.

6. **Interest on Judicial Bonds** is chargeable from the time liability is determined. Mossein *v.* Empire State Surety Co., 117 N. Y. App. Div. 820, 102 N. Y. Supp. 1013.

7. **Interest Allowed.** — New Haven *v.* Eastern Paving Brick Co., 78 Conn. 689, 63 Atl. 517.

454. 2. Mossein *v.* Empire State Surety Co., 117 N. Y. App. Div. 820, 102 N. Y. Supp. 1013.

4. Bolton *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 210; Sorrel *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 212; Seeligson *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 213.

7. **Waiver of Homestead and Tainted with Usury.** — Whilden *v.* Milledgeville Banking Co., 3 Ga. App. 69, 59 S. E. 336.

10. Towle *v.* Sweeney, 2 Cal. App. 29, 83 Pac. 74.

Liability Coextensive with that of Principal. — Pritchard *v.* Mitchell, 139 N. Car. 54, 51 S. E. 783.

The liability of a surety cannot be greater than that of the principal. Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754.

11. Schlittler *v.* Deering Harvester Co., 3 Ga. App. 86, 59 S. E. 342.

Surety May Set Up Failure of Consideration. — Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754.

455. 3. Towle *v.* Sweeney, 2 Cal. App. 29, 83 Pac. 74; Beh *v.* Bay, 127 Iowa 246, 103 N. W. 119; Elliott *v.* Brady, (N. Y. 1908) 85 N. E. 69.

8. Henry *v.* Heldmaier, 226 Ill. 152, 80 N. E. 705, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 455. See also Preston *v.* American Surety Co., 104 Md. 40, 64 Atl. 292; U. S. Fidelity, etc., Co. *v.* Jordan, 107 Va. 347, 58 S. E. 567; Seattle *v.* Saulez, (Wash. 1907) 92 Pac. 140.

Judgment Conclusive against Surety. — Ruggles *v.* Bernstein, 188 Mass. 232, 74 N. E. 366.

9. Henry *v.* Heldmaier, 226 Ill. 152, 80 N. E. 705, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 455.

10. See Beh *v.* Bay, 127 Iowa 246, 103 N. W. 119.

456. 2. Jangraw *v.* Perkins, 79 Vt. 107, 64 Atl. 449; Phillips *v.* Eggert, (Wis. 1907) 113 N. W. 686; Goldman *v.* Fidelity, etc., Co., 125 Wis. 390, 104 N. W. 80.

3. **Settlement of Accounts Not Conclusive.** — See U. S. Fidelity, etc., Co. *v.* Jordan, 107 Va. 347, 58 S. E. 567.

7. Erie County *v.* Baltz, (Supm. Ct. App. Div.) 109 N. Y. Supp. 304.

8. Erie County *v.* Baltz, (Supm. Ct. App. Div.) 109 N. Y. Supp. 304.

457. 4. Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630; Windhorst *v.* Bergendahl, (S. Dak. 1907) 111 N. W. 544.

5. Stewart *v.* Knight, etc., Co., 166 Ind. 498, 76 N. E. 743; State *v.* Cottle, 26 Ohio Cir. Ct. 238; Plummer *v.* Bankers' Surety Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 97, 101 N. Y. Supp. 529; Hadley *v.* Garner, 116 N. Y. App. Div. 68, 101 N. Y. Supp. 777; Waterloo First Nat. Bank *v.* Story, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 429, 103 N. Y. Supp. 233; Rouse *v.* Wooten, 140 N. Car. 557, 53 S. E. 430.

6. U. S. Fidelity, etc., Co. *v.* Rice, (C. C. A.) 148 Fed. 206; U. S. Fidelity, etc., Co. *v.* Baptist Church, (Ky. 1907) 102 S. W. 325; Folsom *v.* Squire, 72 N. J. L. 432, 60 Atl. 1102.

7. See Routt *v.* Dils, (Colo. 1907) 90 Pac. 67.

8. Heinemann *v.* Brasch, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 552, 103 N. Y. Supp. 720.

11. *Compare* Steger *v.* Jackson, (Ky. 1907) 102 S. W. 329.

458. 4. **Changing Salary of Agent to Commission Basis Discharges Surety.** — Germania F. Ins. Co. *v.* Lange, 193 Mass. 67, 78 N. E. 746.

10. **Surety Liable Only According to Precise Condition in Bond.** — Turner *v.* National Cotton Oil Co., (Tex. Civ. App. 1908) 109 S. W. 1112.

459. 1. Hardaway *v.* National Surety Co., (C. C. A.) 150 Fed. 465; U. S. *v.* Axman, 152 Fed. 816; American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357.

When the Principal Has the Privilege of Renewing. — Kanouse *v.* Wise, (N. J. 1908) 69 Atl. 1017.

Proof of Demand for Payment of Rent is necessary before the surety on the lease can be held liable. Folsom *v.* Squire, 72 N. J. L. 432, 60 Atl. 1102.

Sale of Premises. — A sale of the leased premises during the term of the lease, without the written consent of the surety, releases the surety. Stern *v.* Sawyer, 78 Vt. 5, 61 Atl. 36.

10. Raved *v.* Kibbe, (Supm. Ct. App. T.) 102 N. Y. Supp. 490.

12. Friendly *v.* National Surety Co., 46 Wash. 71, 89 Pac. 177, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 459.

But the Surety on a Contractor's Bond. — Hardaway *v.* National Surety Co., (C. C. A.) 150 Fed. 465.

460. 11. American Bonding, etc., Co. *v.*

Burke, 36 Colo. 49, 85 Pac. 692; Willoughby *v.* Fidelity, etc., Co., 16 Okla. 546, 85 Pac. 713; Hebert *v.* Lee, 118 Tenn. 133, 101 S. W. 175; Baltimore First Nat. Bank *v.* Terry, 135 Fed. 621.

461. 2. American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692; Hebert *v.* Lee, 118 Tenn. 133, 101 S. W. 175; Glidden *v.* U. S. Fidelity, etc., Co., (Mass. 1908) 84 N. E. 143. See Watertown Sav. Bank *v.* Mattoon, 78 Conn. 388, 62 Atl. 622, where it was held that directors owing no legal or equitable duty were not bound to disclose to the sureties the prior defalcation of its officer.

Concealment of Defalcation Made after Consummation of the Contract, but before the policy was issued, does not affect the surety's liablity. Roark *v.* City Trust, etc., Surety Co., (Mo. App. 1908) 110 S. W. 1.

5. American Bonding, etc., Co. *v.* Burke, 36 Colo. 49, 85 Pac. 692; Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483.

6. Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483. See also Fidelity, etc., Co. *v.* Western Bank, (Ky. 1906) 94 S. W. 3.

8. Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483. See also Hebert *v.* Lee, 118 Tenn. 133, 101 S. W. 175.

9. Sebald *v.* Citizens' Deposit Bank, (Ky. 1907) 105 S. W. 130.

10. Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483.

11. Watertown Sav. Bank *v.* Mattoon, 78 Conn. 388, 62 Atl. 622.

Insolvency of Principal. — Sebald *v.* Citizens' Deposit Bank, (Ky. 1907) 105 S. W. 130. See also *supra*, **444.** 1.

462. 2. See Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483.

5. Long Bros. Grocery Co. *v.* U. S. Fidelity, etc., Co., (Mo. App. 1908) 110 S. W. 29.

6. U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670.

10. Under Code Civ. Pro. N. Y., § 812, a surety on fiduciary, etc., bonds is entitled to discharge on notice to the court, and is also released from future liability. *In re* U. S. Fidelity, etc., Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 147, 98 N. Y. Supp. 217.

12. Day *v.* McPhee, (Colo. 1907) 93 Pac. 670.

463. 1. Dampskibsaktieselskabet Habil *v.* U. S. Fidelity, etc., Co., 142 Ala. 363, 39 So. 54; Day *v.* McPhee, (Colo. 1907) 93 Pac. 670; White *v.* Savage, 48 Oregon 604, 87 Pac. 1040.

When the Principal Dies. — Planters, etc., Nat. Bank *v.* Robertson, (Tex. Civ. App. 1905) 86 S. W. 643.

7. **Security Given by Both.** — State *v.* Mellette, (S. Dak. 1907) 113 N. W. 83.

465. 12. Wanamaker *v.* Powers, 102 N. Y. App. Div. 485, 93 N. Y. Supp. 19; Eccleston *v.* Sands, 108 N. Y. App. Div. 147, 95 N. Y. Supp. 1107; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

13. Cain *v.* Vogt, (Iowa 1908) 116 N. W. 786.

466. 2. See Henry County *v.* Salmon, 201 Mo. 136, 100 S. W. 20.

Money Contributed by Surety. — Western Bank, etc., Co. *v.* Gibbs, (Tex. Civ. App. 1906) 96 S. W. 947.

5. **The Assignment of a Claim against the United States** by a public contractor is void, both as against the United States, the contractor's surety, the laborers, and materialmen. Henningsen *v.* U. S. Fidelity, etc., Co., (C. C. A.) 143 Fed. 810.

Assignment of Building Contract Allowable. — Wing, etc., Co. *v.* U. S. Fidelity, etc., Co., 150 Fed. 672.

7. Smith *v.* Bales, (Ky. 1907) 99 S. W. 672; Hoffman *v.* Habighorst, (Oregon 1907) 89 Pac. 952; Craighead *v.* Swartz, 219 Pa. St. 149, 67 Atl. 1003.

8. **Defective Execution by Agent — Estoppel of Surety.** — Farmers', etc., Irrigation Co. *v.* U. S. Fidelity, etc., Co., (Neb. 1906) 108 N. W. 156.

12. Point Pleasant *v.* Greenlee, (W. Va. 1907) 60 S. E. 601.

467. 4. Hauser *v.* Ryan, 73 N. J. L. 274, 63 Atl. 4.

5. U. S. Fidelity, etc., Co. *v.* Woodson County, (C. C. A.) 145 Fed. 144; State *v.* Smith, 87 Miss. 551, 40 So. 22; Spreyne *v.* Garfield Lodge No. 1, 117 Ill. App. 253; Red Wing Sewer Pipe Co. *v.* Donnelly, 102 Minn. 192, 113 N. W. 1, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 467; Moniteau County *v.* Lewis, 123 Mo. App. 673, 100 S. W. 1107; U. S. Fidelity, etc., Co. *v.* McLaughlin, (Neb. 1906) 107 N. W. 577; U. S. Fidelity, etc., Co. *v.* McLaughlin, (Neb. 1906) 109 N. W. 390. *Compare* Morse *v.* U. S., 29 App. Cas. (D. C.) 433.

Sureties Are Not Estopped from showing facts which affect the substance of their obligation. Moniteau County *v.* Lewis, 123 Mo. App. 673, 100 S. W. 1107.

8. American Bonding Co. *v.* Ottumwa, (C. C. A.) 137 Fed. 572; Bell *v.* Kirkland, 102 Minn. 213, 113 N. W. 271, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 467.

9. Bell *v.* Kirkland, 102 Minn. 213, 113 N. W. 271, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 467.

10. Bell *v.* Kirkland, 102 Minn. 213, 113 N. W. 271, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 467; Milbank *v.* Western Surety Co., (S. Dak. 1907) 111 N. W. 561.

13. Johnson County *v.* Chamberlain Banking House, (Neb. 1907) 113 N. W. 1055.

468. 3. See Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 184.

Surety Cannot Limit Liability on Official Bond. — U. S. Fidelity, etc., Co. *v.* McLaughlin, (Neb. 1906) 107 N. W. 577.

5. **Provision in Violation of Statute Void.** — U. S. Fidelity, etc., Co. *v.* McLaughlin, (Neb. 1906) 109 N. W. 390.

6. Dampskibsaktieselskabet Habil *v.* U. S. Fidelity, etc., Co., 142 Ala. 363, 39 So. 54; Crystal *v.* Hutton, 1 Cal. App. 251, 81 Pac. 1115; Bray *v.* Cohn, (Cal. App. 1907) 93 Pac. 893; Pitzl *v.* Winter, 96 Minn. 499, 105 N. W. 673, *per* Start, C. J., *dissenting* opinion, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 468.

469. 12. See U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670.

14. See Smith *v.* Nixon, 145 Mich. 593, 108 N. W. 971.

470. 13. Winston *v.* Farrow, (Ala. 1905) 40 So. 53.

472. 10. Fitts *v.* A. F. Messick Grocery Co., 144 N. Car. 493, 57 S. E. 164.

15. **Claim Must Be Proved in Bankruptcy to Release Principal.** — Smith *v.* McQuillin, 193 Mass. 289, 79 N. E. 401.

473. 2. **Principal May Pledge Security to Surety on Bond.** — Fidelity, etc., Co. *v.* Johnston, 117 La. 880, 42 So. 357.

4. Griffis *v.* Connersville First Nat. Bank, (Ind. App. 1906) 79 N. E. 230.

Also Inures to Benefit of Creditor. — Griffis *v.* Connersville First Nat. Bank, 168 Ind. 546, 81 N. E. 490.

13. Smith *v.* Wigler, (N. J. Eq. 1907) 65 Atl. 900.

474. 12. Crystal *v.* Hutton, 1 Cal. App. 251, 81 Pac. 1115; Bray *v.* Cohn, (Cal. App. 1907) 93 Pac. 893.

475. 14. Walters *v.* Akers, (Ky. 1907) 101 S. W. 1179; Holcombe *v.* Fetter, 70 N. J. Eq. 300, 67 Atl. 1078.

476. 1. Craighead *v.* Swartz, 219 Pa. St. 149, 67 Atl. 1003.

Laches of Creditor Not Available as Defense. — Holcombe *v.* Fetter, 70 N. J. Eq. 300, 67 Atl. 1078.

477. 3. Samples *v.* Rogers, (Ky. 1908) 107 S. W. 222.

Before Debt Becomes Due. — Walters *v.* Ahers, (Ky. 1907) 101 S. W. 1179.

9. Burns *v.* George, (Ala. 1908) 45 So. 421; Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14; North Wilkesboro Bank *v.* Wilkesboro Hotel Co., (N. Car. 1908) 61 S. E. 570.

Summary Remedy of Surety against Cosureties Applies. — Honce *v.* Schram, 73 Kan. 368, 85 Pac. 535.

478. 1. *Compare* Craighead *v.* Swartz, 219 Pa. St. 149, 67 Atl. 1003.

2. Craighead *v.* Swartz, 219 Pa. St. 149, 67 Atl. 1003, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 478.

4. Barnes *v.* Barnes, 106 Va. 319, 56 S. E. 172. *Compare* Craighead *v.* Swartz, 219 Pa. St. 149, 67 Atl. 1003.

7. Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435.

480. 4. Burrus *v.* Cook, 117 Mo. App. 385, 93 S. W. 888, *per* Ellison, J., *dissenting* opinion, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 480.

10. American Bonding Co. *v.* Dufur, (Wash. 1908) 96 Pac. 160.

12. American Bonding Co. *v.* Dufur, (Wash. 1908) 96 Pac. 160.

16. **The Principal Employing an Attorney to Defend** is not liable for additional fees of an attorney employed by the surety unless expressly stipulated in the contract. American Surety Co. *v.* Lehr, (Tex. Civ. App. 1906) 93 S. W. 681.

481. 9. Van Meter *v.* Poole, (Mo. App. 1908) 110 S. W. 5. See also Bray *v.* Cohn, (Cal. App. 1907) 93 Pac. 893.

482. 6. *Arkansas.* — Briggs *v.* Manning, 80 Ark. 304, 97 S. W. 289.

Georgia. — Bigby *v.* Douglas, 123 Ga. 635, 51 S. E. 606.

Indiana. — Pollard *v.* Pittman, 37 Ind. App. 475, 77 N. E. 293.

Iowa. — Carstens *v.* Gerdes, (Iowa 1908) 115 N. W. 1009.

Kansas. — Honce *v.* Schram, 73 Kan. 368, 85 Pac. 535.

Kentucky. — Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14; Sanders *v.* Herndon, (Ky. 1908) 108 S. W. 908.

Missouri. — Comstock *v.* Keating, 115 Mo. App. 372, 91 S. W. 416.

Pennsylvania. — Adams *v.* De Frehn, 27 Pa. Super. Ct. 184.

Texas. — Smart *v.* Panther, (Tex. Civ. App. 1906) 95 S. W. 679; Lane *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 211.

Washington. — Caldwell *v.* Hurley, 41 Wash. 296, 83 Pac. 318.

483. 1. *In re* Skiles, 211 Pa. St. 631, 61 Atl. 245; Caldwell *v.* Hurley, 41 Wash. 296, 83 Pac. 318.

2. Caldwell *v.* Hurley, 41 Wash. 296, 83 Pac. 318.

3. Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14; Caldwell *v.* Hurley, 41 Wash. 296, 83 Pac. 318.

4. Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14.

484. 1. National Surety Co. *v.* Di Marsico, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 302, 105 N. Y. Supp. 272. See also Moore *v.* Hanscom, (Tex. 1908) 106 S. W. 876, *modifying* (Tex. Civ. App. 1907) 103 S. W. 665.

3. **A Surety at the Request of a Cosurety May Recover.** — See Hall *v.* Taylor, (Tex. Civ. App. 1906) 95 S. W. 755.

6. Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14; Citizens Nat. Bank *v.* Burch, (N. Car. 1907) 59 S. E. 71.

8. **May Be Enforced against Legatees.** — Comstock *v.* Keating, 115 Mo. App. 372, 91 S. W. 416.

485. 4. Sanders *v.* Herndon, 122 Ky. 760, 93 S. W. 14.

6. Pollard *v.* Pittman, 37 Ind. App. 475, 77 N. E. 293.

486. 1. Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485.

2. Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485.

4. Broughton *v.* Saylor, (Ky. 1908) 110 S. W. 866.

6. See Bigby *v.* Douglas, 123 Ga. 635, 51 S. E. 606; Caldwell *v.* Hurley, 41 Wash. 296, 83 Pac. 318. *Compare* Burrus *v.* Cook, 117 Mo. App. 385, 93 S. W. 888, holding that a surety may assert his equitable right in the same period of time given by statute to the creditor of his legal right.

8. Bigby *v.* Douglas, 123 Ga. 635, 51 S. E. 606. See also Briggs *v.* Manning, 80 Ark. 304, 97 S. W. 289.

10. Townsend *v.* Sullivan, 3 Cal. App. 115, 84 Pac. 435, *citing* 27 AM. AND ENG. ENCYC. OF [illegible]

487. 8. National Bank of Commerce *v.* Schirm, 2 Cal. App. 696, 86 Pac. 981; Labbe *v.* Bernard, (Mass. 1907) 82 N. E. 688.

Property of the Principal Purchased by the Surety. — Elrod *v.* Gastineau, (Ky. 1907) 99 S. W. 903.

488. 4. Failure of Surety to Join in the Appeal will release the successful cosureties from contribution. [illegible] Ind. App. 475, 77 N. E. 293.

489. 3. Skinner *v.* Sullivan, 127 Ill. App. 662, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 489.

5. Schittler *v.* Deering Harvester Co., 3 Ga. App. 86, 59 S. E. 342; Stevens *v.* Carroll, 131 Iowa 170, 105 N. W. 653.

490. 5. **Payment Innocently Received by Unlawful Preference Does Not Release Surety.** — Wright *v.* Gansevoort Bank, 118 N. Y. App. Div. 281, 103 N. Y. Supp. 540.

A Payment Subsequently Avoided in Bankruptcy. — Hooker *v.* Blount, (Tex. Civ. App. 1906) 97 S. W. 1083.

6. **Discounting Notes by Bank Not Payment.** — Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

491. 2. **Acceptance of New Note in Place of Old One Extinguishes Debt.** — Steger *v.* Jackson, (Ky. 1907) 102 S. W. 329.

Check or Bill of Exchange. — Hogan *v.* Kaiser, 113 Mo. App. 711, 88 S. W. 1128.

4. Providence Mach. Co. *v.* Browning, 72 S. Car. 424, 52 S. E. 117, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 491; Providence Mach. Co. *v.* Browning, 70 S. Car. 148, 49 S. E. 325, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 491, and quoting the text at length.

492. 5. Mitchell *v.* Wheeler, 131 Iowa 434, 108 N. W. 1030, *following* Mitchell *v.* Wheeler, 122 Iowa 368, 98 N. W. 152, and *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 492.

12. **The Acceptance of a Surrender by the Lessor** discharges surety from liability for accruing rent. American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357.

493. 4. Slusher *v.* Hopkins, (Ky. 1906) 97 S. W. 1128; Carpenter *v.* Goddard, 191 Mass. 54, 76 N. E. 953; Wolfboro Loan, etc., Co. *v.* Rollins, (Mass. 1907) 81 N. E. 204; Stull *v.* Beddeo, (Neb. 1907) 112 N. W. 315; Schmitt *v.* Greenberg, (Supm. Ct. App. T.) 109 N. Y. Supp. 881. *Compare* Lafoon *v.* Kerner, 138 N. Car. 281, 50 S. E. 654.

Surety on Appeal Bond Released. — Young *v.* Howe, (Ala. 1907) 43 So. 486.

A Voluntary or Involuntary Adjudication of Bankruptcy, as a general proposition, does not have the effect to release the surety of the bankrupt of his obligation as surety. D. C. Wise Coal Co. *v.* Columbia Lead, etc., Co., 123 Mo. App. 249, 100 S. W. 680.

494. 4. *United States.* — Fidelity, etc., Co. *v.* U. S., (C. C. A.) 137 Fed. 866; American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Chesapeake Transit Co. *v.* Walker, 158 Fed. 850.

Connecticut. — New Haven *v.* National Steam Economizer Co., 79 Conn. 482, 65 Atl. 959.

Indiana. — Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52.

Kansas. — Diehl *v.* Davis, 75 Kan. 38, 88 Pac. 533.

Massachusetts. — Germania F. Ins. Co. *v.* Lange, 193 Mass. 67, 78 N. E. 746.

Missouri. — Reissaus *v.* Whites, (Mo. App. 1907) 106 S. W. 603, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 489–496; Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494–495; Kingman-St. Louis Implement Co. *v.* McMaster, 118 Mo. App. 209, 94 S. W. 819.

New Jersey. — Guttenberg *v.* Vassel, (N. J. L. 1907) 65 Atl. 994.

New York. — Michigan Steamship Co. *v.* American Bonding Co., 104 N. Y. App. Div. 347, 93 N. Y. Supp. 805; Wright Steam Engine Works *v.* McAdam, 113 N. Y. App. Div. 872, 99 N. Y. Supp. 577.

South Carolina. — Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

Texas. — Moroney *v.* Coombes, (Tex. Civ. App. 1905) 88 S. W. 430.

Vermont. — Stern *v.* Sawyer, 78 Vt. 5, 61 Atl. 36.

Alteration by Stranger No Discharge of Surety. — C. Shenberg Co. *v.* Porter, (Iowa 1908) 114 N. W. 890.

495. 1. Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494, 495; Hellman *v.* City Trust, etc., Co., 111 N. Y. App. Div. 879, 98 N. Y. Supp. 51; Enterprise Hotel Co. *v.* Book, 48 Oregon 58, 85 Pac. 333, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 495.

2. American Surety Co. *v.* San Antonio Loan, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 387.

3. Reissaus *v.* Whites, (Mo. App. 1907) 106 S. W. 603, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 489–496; Jersey City Water Supply Co. *v.* Metropolitan Constr. Co., (N. J. 1908) 69 Atl. 1088.

5. U. S. Fidelity, etc., Co. *v.* American Blower Co., (Ind. App. 1908) 84 N. E. 555.

6. Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328; New Haven *v.* National Steam Economizer Co., 79 Conn. 482, 65 Atl. 959; Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494–496; Michigan Steamship Co. *v.* American Bonding Co., 104 N. Y. App. Div. 347, 93 N. Y. Supp. 805; Eccleston *v.* Lands, 108 N. Y. App. Div. 147, 95 N. Y. Supp. 1107; Eastern R. Co. *v.* Tuteur, 127 Wis. 382, 105 N. W. 1067.

7. *United States.* — Fidelity, etc., Co. *v.* Agnew, (C. C. A.) 152 Fed. 955.

Alabama. — Montgomery First Nat. Bank *v.* Fidelity, etc., Co., 145 Ala. 335, 40 So. 415, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 495.

California. — Alcatraz Masonic Hall Assoc. *v.* U. S. Fidelity, etc., Co., 3 Cal. App. 338, 85 Pac. 156.

Missouri. — Reissaus *v.* Whites, (Mo. App. 1907) 106 S. W. 603, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 489–496; Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 494, 495.

New York. — Middletown *v.* Ætna Indemnity Co., 121 N. Y. App. Div. 589, 106 N. Y. Supp. 374.

Oregon. — Enterprise Hotel Co. *v.* Book, 48 Oregon 58, 85 Pac. 333.

Texas. — [illegible] *v.* San Antonio Loan, etc., Co., (Tex. 1907) 104 S. W. 1061; Thompson *v.* Chaffee, (Tex. Civ. App. 1905) 89 S. W. 285; McKenzie *v.* Barrett, (Tex. Civ. App.

1906) 98 S. W. 229; American Surety Co. *v.* San Antonio Loan, etc., Co., (Tex. Civ. App. 1906) 98 S. W. 387; Luling Oil, etc., Co. *v.* Gohmert, (Tex. Civ. App. 1908) 110 S. W. 772.

Washington. — Friendly *v.* National Surety Co., 46 Wash. 71, 89 Pac. 177.

496. 1. *United States.* — Wing, etc., Co. *v.* U. S. Fidelity, etc., Co., 150 Fed. 672.

Arizona. — Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328.

Arkansas. — Thompson *v.* Treller, 82 Ark. 247, 101 S. W. 174; Eureka Stone Co. *v.* Ft. Smith First Christian Church, (Ark. 1908) 110 S. W. 1042.

Georgia. — Adams *v.* Haigler, 123 Ga. 659, 51 S. E. 638.

Iowa. — Rawson *v.* Grant, (Iowa 1908) 115 N. W. 909.

Kentucky. — Allen County *v.* U. S. Fidelity, etc., Co., (Ky. 1906) 93 S. W. 44; Cooke *v.* White Common School, (Ky. 1908) 111 S. W. 686.

Missouri. — Reissaus *v.* Whites, (Mo. App. 1907) 106 S. W. 603, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 489–496; Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 494–496; Nowell *v.* Mode, (Mo. App. 1908) 111 S. W. 641.

New York. — Middletown *v.* Ætna Indemnity Co., 121 N. Y. App. Div. 589, 106 N. Y. Supp. 374.

Oklahoma. — American Surety Co. *v.* Scott, 18 Okla. 264, 90 Pac. 7.

Oregon. — Enterprise Hotel Co. *v.* Book, 48 Oregon 58, 85 Pac. 333.

Pennsylvania. — Philadelphia *v.* Nichols Co., 214 Pa. St. 265, 63 Atl. 886.

Texas. — Luling Oil, etc., Co. *v.* Gohnert, (Tex. Civ. App. 1908) 110 S. W. 772, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 496.

Continuance of the Work Beyond the Specified Time does not discharge the surety. Wing, etc., Co. *v.* U. S. Fidelity, etc., Co., 150 Fed. 672.

Change of Building Site. — Segari *v.* Mazzei, 116 La. 1026, 41 So. 245.

2. Montgomery First Nat. Bank *v.* Fidelity, etc., Co., 145 Ala. 335, 40 So. 415; National Surety Co. *v.* Long, 79 Ark. 523, 96 S. W. 745; Reissaus *v.* Whites, (Mo. App. 1907) 106 S. W. 603, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 489–496; Luling Oil, etc., Co. *v.* Gohmert, (Tex. Civ. App. 1908) 110 S. W. 772, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 496; Fidelity, etc., Co. *v.* Agnew, (C. C. A.) 152 Fed. 955. See also Hipwell *v.* National Surety Co., 130 Iowa 656, 105 N. W. 318; Rawson *v.* Grant, (Iowa 1908) 115 N. W. 909; People *v.* Banhagel, (Mich. 1908) 114 N. W. 669; Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608; Jersey City Water Supply Co. *v.* Metropolitan Constr. Co., (N. J. 1908) 69 Atl. 1088; Crawford *v.* Owens, (S. Car. 1908) 60 S. E. 236.

3. U. S. Fidelity, etc., Co. *v.* Baptist Church, (Ky. 1907) 102 S. W. 325; Guttenberg *v.* Vassel, (N. J. L. 1907) 65 Atl. 994; American Surety Co. *v.* Scott, 18 Okla. 264, 90 Pac. 7; Leghorn *v.* Nydell, 39 Wash. 17, 80 Pac. 833. See also Montgomery First Nat. Bank *v.* Fidelity, etc., Co., 145 Ala. 335, 40 So. 415, *overruling* Fidelity, etc., Co. *v.* Robertson, 136 Ala. 379, 34 So. 933, cited in original note; Van Buren County *v.* American Surety Co., (Iowa 1908) 115 N. W. 24; New Haven *v.* National Steam Economizer Co., 79 Conn. 482, 65 Atl. 959.

Surety Estopped by Acts of Waiver of Condition. — Hellman *v.* City Trust, etc., Co., 111 N. Y. App. Div. 879, 98 N. Y. Supp. 51.

Must Have Knowledge of Excessive Payments. — McKenzie *v.* Barrett, (Tex. Civ. App. 1906) 98 S. W. 229.

4. Enterprise Hotel Co. *v.* Book, 48 Oregon 58, 85 Pac. 333; Monro *v.* National Surety Co., (Wash. 1907) 92 Pac. 280; Monro *v.* National Surety Co., (Wash. 1907) 92 Pac. 281. See Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608.

5. **Premature Payment for Extra Work** does not discharge surety. Enterprise Hotel Co. *v.* Book, 48 Oregon 58, 85 Pac. 333.

6. Mitchell *v.* Reed, (Ky. 1908) 106 S. W. 833. See also State *v.* Baird, 13 Idaho 126, 89 Pac. 298.

497. 4. **Act of an Agent Without Authority,** changing time of payment, does not discharge surety. C. Shenkberg Co. *v.* Porter, (Iowa 1908) 114 N. W. 890.

498. 2. American Surety Co. *v.* Choctaw Constr. Co., (C. C. A.) 135 Fed. 487; Henningsen *v.* U. S. Fidelity, etc., Co., (C. C. A.) 143 Fed. 810; City Trust, etc., Co. *v.* U. S., (C. C. A.) 147 Fed. 155; Kansas City Hydraulic Press Brick Co. *v.* National Surety Co., 149 Fed. 507; Hardaway *v.* National Surety Co., (C. C. A.) 150 Fed. 465; U. S. *v.* California Bridge, etc., Co., 152 Fed. 559; U. S. *v.* Axman, 153 Fed. 982; U. S. Fidelity, etc., Co. *v.* American Blower Co., (Ind. App. 1908) 84 N. E. 555; People *v.* Banhagel, (Mich. 1908) 114 N. W. 669; Smith *v.* Bowman, (Utah 1907) 88 Pac. 687.

Claims Must Be Valid Existing Liens. — Herpolsheimer *v.* Hansell-Elcock Co., 141 Mich. 367, 104 N. W. 671.

Failure of Municipal Authorities to Approve a Bond does not avoid liability of surety. People *v.* Carroll, (Mich. 1908) 115 N. W. 42.

Materialman Must File Notice. — Crane Co. *v.* Ætna Indemnity Co., 43 Wash. 516, 86 Pac. 849.

Act. Cong. Aug. 13, 1894, c. 280 (6 Fed. Stat. Ann. 125), applies to secure the performance of a contract for the construction of a "public building" or the prosecution and completion of some "public work" only. Penn Iron Co. *v.* William R. Trigg Co., 106 Va. 557, 56 S. E. 329.

4. *Compare* Rollins *v.* Ebbs, 138 N. Car. 140, 50 S. E. 577.

5. See American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357.

499. 1. Powell *v.* Fowler, (Ark. 1908) 108 S. W. 827, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 499. See also Long Bros. Grocery Co. *v.* U. S. Fidelity, etc., Co., (Mo. App. 1908) 110 S. W. 29.

4. *Indiana.* — Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674.

Iowa. — Cambria Sav. Bank *v.* Lanier, (Iowa 1907) 112 N. W. 774.

Kansas. — Diehl *v.* Davis, 75 Kan. 38, 88 Pac. 533.

Kentucky. — Barber *v.* Ruggles, (Ky. 1905) 87 S. W. 785; Cromwell *v.* Rankin, (Ky. 1906) 97 S. W. 415; Levy *v.* Roth, (Ky. 1907) 103 S. W. 292; Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361.

Missouri. — Westbay *v.* Stone, 112 Mo. App. 411, 87 S. W. 34; Wonderly *v.* Giessler, 118 Mo. App. 708, 93 S. W. 1130.

North Carolina. — Fitts *v.* A. F. Messick Grocery Co., 144 N. Car. 463, 57 S. E. 164.

Oregon. — Hoffman *v.* Habighorst, (Oregon 1907) 89 Pac. 952; Hoffman *v.* Habighorst, (Oregon 1907) 91 Pac. 20.

South Dakota. — Iowa L. & T. Co. *v.* Schnose, 19 S. Dak. 248, 103 N. W. 22; Windhorst *v.* Bergendahl, (S. Dak. 1907) 111 N. W. 544.

Texas. — Moroney *v.* Coombes, (Tex. Civ. App. 1905) 88 S. W. 430; De Barbera *v.* Frost, (Tex. Civ. App. 1905) 88 S. W. 476; Carter-Battle Grocer Co. *v.* Clarke, (Tex. Civ. App. 1905) 91 S. W. 880; Dreeben *v.* McKinney First Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 510; Long *v.* Patton, (Tex. Civ. App. 1906) 93 S. W. 519.

Wisconsin. — Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056.

Release of Collateral. — Diehl *v.* Davis, 75 Kan. 38, 88 Pac. 532.

501. 1. *Arkansas.* — Vaughan *v.* Vernon, 82 Ark. 28, 100 S. W. 92.

Indiana. — Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674.

Iowa. — Cambria Sav. Bank *v.* Lanier, (Iowa 1907) 112 N. W. 774.

Kentucky. — Barber *v.* Ruggles, (Ky. 1905) 87 S. W. 785; U. S. Fidelity, etc., Co. *v.* Boyd, (Ky. 1906) 94 S. W. 35; Steger *v.* Jackson, (Ky. 1907) 102 S. W. 329; Levy *v.* Roth, (Ky. 1907) 103 S. W. 292; Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361.

Louisiana. — Parker *v.* Guillot, 118 La. 223, 42 So. 782.

Michigan. — Detroit First Nat. Bank *v.* Currie, 147 Mich. 72, 110 N. W. 499.

South Carolina. — Providence Mach. Co. *v.* Browning, 70 S. Car. 148, 49 S. E. 325, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 500.

South Dakota. — Windhorst *v.* Bergendahl, (S. Dak. 1907) 111 N. W. 544.

Texas. — Moroney *v.* Coombes, (Tex. Civ. App. 1905) 88 S. W. 430; Carter-Battle Grocer Co. *v.* Clarke, (Tex. Civ. App. 1905) 91 S. W. 880; Long *v.* Patton, (Tex. Civ. App. 1906) 93 S. W. 519.

Wisconsin. — Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056.

502. 2. Vaughan *v.* Vernon, 82 Ark. 28, 100 S. W. 92; Levy *v.* Roth, (Ky. 1907) 103 S. W. 292; Bitler's Estate, 30 Pa. Super. Ct. 84; Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056.

503. 2. Prussing *v.* Lancaster, 234 Ill. 462, 84 N. E. 1062; Higgins *v.* McPherson, 118 Ill. App. 464; Levy *v.* Roth, (Ky. 1907) 103 S. W. 292; Westbay *v.* Stone, 112 Mo. App. 411, 87 S. W. 34; Welch *v.* Kukuk, 128 Wis. 419, 107 N. W. 301.

3. Titterington *v.* Murrell, (Tex. Civ. App. 1905) 90 S. W. 510; Welch *v.* Kukuk, 128 Wis. 419, 107 N. W. 301. See also Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674.

4. Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674; Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056.

An Indorsement of Interest Paid on a Note is not sufficient to show an extension of time to release the surety. Prussing *v.* Lancaster, 234 Ill. 462, 84 N. E. 1062.

504. 1. Windhorst *v.* Bergendahl (S. Dak. 1907) 111 N. W. 544. See also Titterington *v.* Murrell, (Tex. Civ. App. 1905) 90 S. W. 510.

6. Prussing *v.* Lancaster, 234 Ill. 462, 84 N. E. 1062; Vanderford *v.* Farmers, etc., Nat. Bank, 105 Md. 164, 66 Atl. 47.

505. 1. Vaughan *v.* Vernon, 82 Ark. 28, 100 S. W. 92; Corydon Deposit Bank *v.* McClure, (Ky. 1908) 110 S. W. 956.

3. McCrery *v.* Nivin, (Del. 1907) 67 Atl. 452; Clark *v.* Gerstley, 26 App. Cas. (D. C.) 205; Church *v.* John E. Burns Lumber Co., 127 Ill. App. 453, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 505; Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674; Levy *v.* Roth, (Ky. 1907) 103 S. W. 292; Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361; Commercial Bank *v.* Brinkerhoff, 110 Mo. App. 429, 85 S. W. 121, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 505; Windhorst *v.* Bergendahl, (S. Dak. 1907) 111 N. W. 544; Titterington *v.* Murrell, (Tex. Civ. App. 1905) 90 S. W. 510; Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056.

4. Weaver *v.* Prebster, 37 Ind. App. 582, 77 N. E. 674; Creighton *v.* Crane, 73 Neb. 650, 103 N. W. 284; Hoffman *v.* Habighorst, (Oregon 1907) 91 Pac. 20.

506. 1. Windhorst *v.* Bergendahl, (S. Dak. 1907) 111 N. W. 544.

2. Weddington *v.* Jones, (Tex. Civ. App. 1906) 91 S. W. 818.

3. Kingman-St. Louis Implement Co. *v.* McMaster, 118 Mo. App. 209, 94 S. W. 819.

507. 3. Stewart *v.* Knight, etc., Co., 166 Ind. 498, 76 N. E. 743, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 507.

9. Skinner *v.* Sullivan, 227 Ill. 93, 81 N. E. 11.

10. Prussing *v.* Lancaster, 234 Ill. 462, 84 N. E. 1062; Patnode *v.* Deschenes, 15 N. Dak. 100, 106 N. W. 573, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 507; Omlie *v.* O'Toole, (N. Dak. 1907) 112 N. W. 677.

508. 2. Cloud *v.* Scarborough, 3 Ga. App. 7, 59 S. E. 202; Magney *v.* Roberts, 129 Iowa 218, 105 N. W. 430; Bennett *v.* Taylor, (Tex. Civ. App. 1906) 93 S. W. 704.

4. Wilson *v.* White, 83 Ark. 1, 102 S. W. 201; Davenport *v.* State Banking Co., 126 Ga. 136, 54 S. E. 977; King *v.* Griggs, 116 Ill. App. 132; Hier *v.* Harpster, (Kan. 1907) 90 Pac. 817; Barber *v.* Ruggles, (Ky. 1905) 87 S. W. 785; Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361; Dreeben *v.* McKinney First Nat. Bank, (Tex. Civ. App. 1906) 93 S. W. 510; Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056. *Compare* Schmitt *v.* Greenberg, (Supm. Ct. App. T.) 109 N. Y. Supp. 881.

509. 1. McCrery *v.* Nivin, (Del. 1907) 67

Atl. 452; Davenport *v.* State Banking Co., 126 Ga. 136, 54 S. E. 977; Cromwell *v.* Rankin, (Ky. 1906) 97 S. W. 415.

510. 1. Holcombe *v.* Fetter, 70 N. J. Eq. 300, 67 Atl. 1078; Eccleston *v.* Sands, 108 N. Y. App. Div. 147, 95 N. Y. Supp. 1107.

3. Hier *v.* Harpster, (Kan. 1907) 90 Pac. 817; Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056.

12. Titterington *v.* Murrell, (Tex. Civ. App. 1905) 90 S. W. 510.

511. 1. White *v.* Savage, 48 Oregon 604, 87 Pac. 1040.

3. Wilson *v.* White, 83 Ark. 1, 102 S. W. 201.

5. Daviess County Bank, etc., Co. *v.* Wright, (Ky. 1908) 110 S. W. 361; White *v.* Savage, 48 Oregon 604, 87 Pac. 1040; Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056.

6. Hier *v.* Harpster, (Kan. 1907) 90 Pac. 817; Cromwell *v.* Rankin, (Ky. 1906) 97 S. W. 415.

512. 4. Dampskibsaktieselskabet Habil *v.* U. S. Fidelity, etc., Co., 142 Ala. 363, 39 So. 54.

513. 5. **Statute Strictly Construed.** — Thompson *v.* Treller, 82 Ark. 247, 101 S. W. 174, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 513; Moormann *v.* Voss, 77 Ohio St. 270, 83 N. E. 76.

The Statute Must Be Strictly Complied with by the surety before he can claim a discharge by reason of the failure of the obligee to sue the principal. Wilson *v.* White, 83 Ark. 1, 102 S. W. 201.

7. Right Exists in Favor of Surety on Contractor's Bond. — Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328.

9. Wilson *v.* White, 83 Ark. 1, 102 S. W. 201.

Notice to Bank Cashier. — Skillern *v.* Baker, 82 Ark. 86, 100 S. W. 764.

Notice to Husband Insufficient. — Moormann *v.* Voss, 77 Ohio St. 270, 83 N. E. 76.

514. 1. Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328.

4. Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328.

9. Williams *v.* Ogg, (Tex. Civ. App. 1906) 94 S. W. 420.

515. 7. **Thirty Days.** — Skillern *v.* Baker, 82 Ark. 86, 100 S. W. 764; Wilson *v.* White, 83 Ark. 1, 102 S. W. 201.

Sixty Days. — Prescott Nat. Bank *v.* Head, (Ariz. 1907) 90 Pac. 328.

Three Months. — Davenport *v.* State Banking Co., 126 Ga. 136, 54 S. E. 977.

11. Thompson *v.* Treller, 82 Ark. 247, 101 S. W. 174, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 515.

516. 6. Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 516.

517. 1. *In re* Sanderson, 150 Fed. 236, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 516; American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Cloud *v.* Scarborough, 3 Ga. App. 7, 59 S. E. 202; Taylorville Bank *v.* Hardesty, (Ky. 1906) 91 S. W. 729; Molaka *v.* American F. Ins. Co., 29 Pa. Super. Ct. 149; Griesmere *v.* Thorn, 32 Pa. Super. Ct. 13; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630; Kempner *v.* Patrick, (Tex. Civ. App. 1906) 95 S. W. 51, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 516–518; Bennett *v.* Taylor, (Tex. Civ. App. 1906) 93 S. W. 704.

2. American Bonding Co. *v.* Pueblo Invest. Co., (C. C. A.) 150 Fed. 17, 10 Ann. Cas. 357; Crosby *v.* Woodbury, 37 Colo. 1, 89 Pac. 34, *reversing* 17 Colo. App. 212, 68 Pac. 130; Day *v.* McPhee, (Colo. 1907) 93 Pac. 670; Guttenberg *v.* Vassel, (N. J. L. 1907) 65 Atl. 994; Kempner *v.* Patrick, (Tex. Civ. App. 1906) 95 S. W. 51, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 516–518.

518. 1. Kempner *v.* Patrick, (Tex. Civ. App. 1906) 95 S. W. 51, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 516–518.

4. Taylorville Bank *v.* Hardesty, (Ky. 1906) 91 S. W. 729.

5. Crosby *v.* Woodbury, 37 Colo. 1, 89 Pac. 34, *reversing* 17 Colo. App. 212, 68 Pac. 130.

7. **Surety by Implication of Law** as to extension of time of payment, see McCrery *v.* Nivin, (Del. 1907) 67 Atl. 452.

519. 9. American Bonding, etc., Co. *v.* Progressive Permanent Bldg., etc., Assoc., 101 Md. 423, 61 Atl. 199, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 519.

520. 5. **Bank Required to Apply Deposit.** — Burgess *v.* Deposit Bank, (Ky. 1906) 97 S. W. 761.

Bank Not Required to Apply Deposit. — Davenport *v.* State Banking Co., 126 Ga. 136, 54 S. E. 977; Taylorville Bank *v.* Hardesty, (Ky. 1906) 91 S. W. 729.

Rule Applies to General Deposits Only. — Planters' State Bank *v.* Schlamp, (Ky. 1907) 99 S. W. 216.

6. Salary Must Be Applied When Provided by Contract. — Underwood *v.* Bass, 1 Ga. App. 623, 57 S. E. 953.

521. 7. Crosby *v.* Woodbury, 37 Colo. 1, 89 Pac. 34, *reversing* 17 Colo. App. 212, 68 Pac. 130; U. S. Fidelity, etc., Co. *v.* Boyd, (Ky. 1906) 94 S. W. 35.

522. 3. **Void Execution.** — The release of property levied under a void execution does not discharge surety. Wilson *v.* White, 83 Ark. 1, 102 S. W. 201.

524. 1. U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670.

2. U. S. Fidelity, etc., Co. *v.* Dundee First Nat. Bank, 233 Ill. 475, 84 N. E. 670; Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483.

3. **The Requirement of "Frequent Audits and Examinations"** in the policy is not indefinite and void for uncertainty. Sinclair *v.* National Surety Co., 132 Iowa 549, 107 N. W. 483.

525. 5. Fidelity, etc., Co. *v.* Western Bank, (Ky. 1906) 94 S. W. 3; Roark *v.* City Trust, etc., Surety Co., (Mo. App. 1908) 110 S. W. 1; Heinemann *v.* Brasch, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 552, 103 N. Y. Supp. 720; Goldman *v.* Fidelity, etc., Co., 125 Wis. 390, 104 N. W. 80; Brillion Lumber Co. *v.* Barnard, 131 Wis. 284, 111 N. W. 483. See also Long Bros. Grocery Co. *v.* U. S. Fidelity, etc., Co., (Mo. App. 1908) 110 S. W. 29.

526. 6. U. S. v. Guest, (C. C. A.) 143 Fed. 456; State *v.* Pederson, (Wis. 1908) 114 N. W. 808.

527. 2. Fidelity, etc., Co. *v.* Western Bank, (Ky. 1906) 94 S. W. 3.

3. See also Van Buren County *v.* American Surety Co., (Iowa 1908) 115 N. W. 24.

13. Bolton *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 210; Sorrel *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 212; Seeligson *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 213; Lane *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 211.

Liability of Principal. — Lane *v.* Moon, (Tex. Civ. App. 1907) 103 S. W. 211.

528. 9. Powell *v.* Fowler, (Ark. 1908) 108 S. W. 827, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 528; Martin *v.* Whites, (Mo. App. 1907) 106 S. W. 608; Hellman *v.* City Trust, etc., Co., 111 N. Y. App. Div. 879, 98 N. Y. Supp. 51; Fitts *v.* A. F. Messick Grocery Co., 144 N. Car. 463, 57 S. E. 164, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 528.

Consent Does Not Limit Liability of Surety. — Wolfboro Loan, etc., Co. *v.* Rollins, (Mass. 1907) 81 N. E. 204.

529. 1. Powell *v.* Fowler, (Ark. 1908) 108 S. W. 827, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 529; People *v.* Banhagel, (Mich. 1908) 114 N. W. 669; Kneisley Lumber Co. *v.* Edward B. Stoddard Co., (Mo. App. 1908) 109 S. W. 840; Hellman *v.* City Trust, etc., Co., 111 N. Y. App. Div. 879, 98 N. Y. Supp. 51.

5. Powell *v.* Fowler, (Ark. 1908) 108 S. W. 827, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 529; People *v.* Banhagel, (Mich. 1908) 114 N. W. 669.

530. 1. Clark *v.* Smallwood, 156 Fed. 409.

Constructive Knowledge Constitutes Waiver. — Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52.

531. 1. Weddington *v.* Jones, (Tex. Civ. App. 1906) 91 S. W. 818.

532. 9. **Representations Made to Administratrix of Deceased Surety Are Binding.** — Taylorville Bank *v.* Hardesty, (Ky. 1906) 91 S. W. 729.

11. Harris *v.* Remmel, 83 Ark. 1, 102 S. W. 716.

12. **Subsequent Default of Principal No Discharge.** — Raved *v.* Kibbe, (Supm. Ct. App. T.) 102 N. Y. Supp. 490.

533. 2. See Planters State Bank *v.* Schlamp, (Ky. 1907) 99 S. W. 216.

7. *Compare* Brown *v.* Chicago, etc., R. Co., (Neb. 1906) 107 N. W. 1024.

534. 2. Aultman Taylor Machinery Co. *v.* Burchett, 15 Okla. 490, 83 Pac. 719.

Bond of Deputy. — U. S. Fidelity, etc., Co. *v.* McLaughlin, (Neb. 1906) 107 N. W. 577. See also U. S. Fidelity, etc., Co. *v.* McLaughlin, (Neb. 1906) 109 N. W. 390.

535. 3. Sparks *v.* Cherokee County, (Kan. 1907) 91 Pac. 89, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 535.

5. Sparks *v.* Cherokee County, (Kan. 1907) 91 Pac. 89, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 535.

6. Sparks *v.* Cherokee County, (Kan. 1907) 91 Pac. 89, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 535.

537. 1. Ewing *v.* U. S., (Ariz. 1907) 89 Pac. 593, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 537.

5. *Compare* State *v.* O'Neill, 114 Mo. App. 611, 90 S. W. 413.

538. 1. State *v.* O'Neill, 114 Mo. App. 611, 90 S. W. 413.

539. 5. See U. S. Fidelity, etc., Co. *v.* U. S., (C. C. A.) 150 Fed. 550, *distinguishing* U. S. *v.* Tingey, 5 Pet. (U. S.) 115, and *following* Moses *v.* U. S., 166 U. S. 571, 17 U. S. Sup. Ct. 582.

540. 1. Wilson *v.* White, 82 Ark. 407, 102 S. W. 201, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 540; Henry County *v.* Salmon, 201 Mo. 136, 100 S. W. 20.

Bond Cannot Enlarge Statutory Right. — Cambridge *v.* Foster, (Mass. 1907) 81 N. E. 278.

8. State *v.* Smith, 87 Miss. 551, 40 So. 22.

541. 1. Briggs *v.* Manning, 80 Ark. 304, 97 S. W. 289; Wheeler County *v.* Keeton, (Oregon 1908) 95 Pac. 819; Wheeler County *v.* Keeton, (Oregon 1908) 95 Pac. 821.

3. State *v.* Dayton, 101 Md. 598, 61 Atl. 624. See also State *v.* Williams, 39 Ind. App. 376, 77 N. E. 1137.

Sureties on the official bond of a justice are not liable for moneys collected by him on accounts placed in his hands for collection without suit. State *v.* Wells, (W. Va. 1907) 59 S. E. 743.

5. Gomez *v.* Scanlan, 2 Cal. App. 579, 84 Pac. 50; Greenberg *v.* People, 225 Ill. 174, 80 N. E. 100; Nolan *v.* Labatut, 117 La. 431, 41 So. 713; Cambridge *v.* Foster, (Mass. 1907) 81 N. E. 278; State *v.* Green, 124 Mo. App. 80, 100 S. W. 1115; Stephens *v.* Hendee, (Neb. 1908) 115 N. W. 283; Frankenstein *v.* Cummisky, (Supm. Ct. Tr. T.) 46 Misc. (N. Y.) 485, 92 N. Y. Supp. 708; State *v.* Griffith, 74 Ohio St. 80, 77 N. E. 686; Roberts *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 388.

542. 2. State *v.* Dayton, 101 Md. 598, 61 Atl. 624; Stephens *v.* Hendee, (Neb. 1908) 115 N. W. 283; Polk *v.* Peterson, (Tex. Civ. App. 1906) 93 S. W. 504.

3. Nolan *v.* Labatut, 117 La. 431, 41 So. 713; Cambridge *v.* Foster, (Mass. 1907) 81 N. E. 278; State *v.* Griffith, 74 Ohio St. 80, 77 N. E. 686. See also Carson *v.* Dezarne, (Ky. 1906) 90 S. W. 281; Growbarger *v.* U. S. Fidelity, etc., Co., (Ky. 1907) 102 S. W. 873.

542. 4. Williams *v.* Ragan, (Ala. 1907) 45 So. 185; Workman *v.* State, 165 Ind. 42, 73 N. E. 917.

SURRENDER.

550. 4. **Surrender Implies Possession.** — Brown *v.* Gibson, 107 Va. 383, 59 S. E. 384.

SURROGATE AND PROBATE COURTS.

552. 1. **In Colonial Times** the surrogate was the delegate or substitute for the governor, and acting for him admitted wills to probate. *In re* Thompson, 184 N. Y. 36, 76 N. E. 870.

553. 1. Teel *v.* Mills, 117 Ill. App. 97; State *v.* Probate Ct., (Minn. 1908) 115 N. W. 173; *In re* Thompson, 184 N. Y. 36, 76 N. E. 870; *In re* Losee, 46 Misc. (N. Y.) 363, 94 N.

Y. Supp. 1082; Meeks *v.* Meeks, 122 N. Y. App. Div. 461, 106 N. Y. Supp. 907.

Without Equitable Powers. — Ross *v.* Woollard, 75 Kan. 383, 89 Pac. 680; Ivie *v.* Ewing, 120 Mo. App. 124, 96 S. W. 481; *In re* Tuohy, 33 Mont. 230, 83 Pac. 487; Garrett *v.* London, etc., Ins. Co., 15 Okla. 222, 81 Pac. 421; Garrett *v.* National F. Ins. Co. of Hartford, 15 Okla. 226, 81 Pac. 422. See also *In re* Thompson, 184 N. Y. 36, 76 N. E. 870.

Statute Attempting to Compel Equity Jurisdiction Unconstitutional. — Dewey *v.* Schreiber Implement Co., 12 Idaho 280, 85 Pac. 921.

2. *In re* Warner, (Cal. App. 1907) 92 Pac. 191; Teel *v.* Mills, 117 Ill. App. 97; State *v.* Probate Ct., (Minn. 1908) 115 N. W. 173; Vincent *v.* Vincent, 70 N. J. Eq. 272, 62 Atl. 700; Brittain's Estate, 28 Pa. Super. Ct. 144.

SURVIVE — SURVIVING — SURVIVOR.

555. 5. **The Term Survivor** as used of a member of a beneficial society does not include one who was neither a relative of the deceased, nor a member of his household, nor connected with him by marriage. Grand Lodge, etc., *v.* Lemke, 124 Wis. 483, 102 N. W. 911.

556. 1. Ball *v.* Holland, 189 Mass. 369, 75 N. E. 713.

557. 1. *In re* Friends' Settlement, (1906) 1 Ch. 47, 75 L. J. Ch. 14.

TAKE, TAKING, ETC.

563. 4. **Taking Child for Purposes of Prostitution.** — See Com. *v.* Walker, 34 Pa. Super. Ct. 14.

564. 2. **Taken Poison — Homicide.** — Etate *v.* Stuart, 44 Miss. 406, 40 So. 1010.

565. 1. **Taken Equivalent to Expropriation — Eminent Domain.** — Amet *v.* Texas, etc., R. Co., 117 La. 454, 41 So. 721.

TAKEN IN ADULTERY.

565. 6. **Taken in Act of Adultery.** — See Gregory *v.* State, (Tex. Crim. 1906) 94 S. W.

TAXATION.

578. 1. U. S. *v.* Chamberlin, (C. C. A.) 156 Fed. 881; Reser *v.* Umatilla County, 48 Oregon 326, 86 Pac. 595; Estate *v.* Case, 39 Wash. 177, 81 Pac. 554, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 554.

2. People *v.* Grout, 119 N. Y. App. Div. 130, 103 N. Y. Supp. 975.

579. 4. Board of Improvement Paving Dist. No. 5 *v.* Sisters of Mercy, etc., (Ark. 1908) 109 S. W. 1165; Chicago G. W. R. Co. *v.* Kansas City, etc., R. Co., 75 Kan. 167, 88 Pac. 1085, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 579; McVickar-Gaillard Realty Co. *v.* Garth, 111 N. Y. App. Div. 924, 97 N. Y. Supp. 640.

580. 1. U. S. *v.* Chamberlin, (C. C. A.) 156 Fed. 881; Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 580; Com. *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 267; Rochester *v.* Bloss, 185 N. Y. 42, 77 N. E. 794; People *v.* Board of Education, (Supm. Ct. App. Div.) 110 N. Y. Supp. 769; State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

581. 2. U. S. *v.* Chamberlin, (C. C. A.) 156 Fed. 881; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 594.

6. Power to Impose Special Taxes. — Moore *v.* Alexander, (Ark. 1908) 107 S. W. 395.

583. 5. State *v.* Merchants' Trading Co., 114 La. 529, 38 So. 443, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583; State *v.* Baltimore, 105 Md. 1, 65 Atl. 369; State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; State *v.* Wabash R. Co., (Mo. 1906) 93 S. W. 790; State *v.* Hannibal Bridge Co., (Mo. 1906) 93 S. W. 791; Washington Nat. Bank *v.* Dailey, 166 Ind. 631, 77 N. E. 53; People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970.

6. State *v.* Merchants Trading Co., 114 La. 529, 38 So. 443, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583; State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; State *v.* Wabash R. Co., (Mo. 1906) 93 S. W. 790; State *v.* Hannibal Bridge Co., (Mo. 1906) 93 S. W. 791.

7. Moore *v.* Alexander, (Ark. 1908) 107 S. W. 395; State *v.* Marion County, (Ind. 1907) 82 N. E. 482; State *v.* Marion County, (Ind. 1908) 85 N. E. 513; Waterloo, etc., Rapid Transit Co. *v.* Blackhawk County, 131 Iowa 237, 108 N. W. 316; Judy *v.* Beckwith, (Iowa 1908) 114 N. W. 565; Oxley *v.* Beckwith, (Iowa 1908) 114 N. W. 570; Oxley *v.* McClure, (Iowa 1908) 114 N. W. 570; Judy *v.* McClure, (Iowa 1908) 114 N. W. 570; State *v.* Merchants' Trading Co., 114 La. 529, 38 So. 443, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 583; Levy's Succession, 115 La. 377, 39 So. 37; *In re* Railroad Taxation, 102 Me. 527, 66 Atl. 726; Bergen, etc., R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 668; People *v.* Reardon, 110 N. Y. App. Div. 821, 97 N. Y. Supp. 535; State *v.* Wheeler, 141 N. Car. 773, 53 S. E. 358; St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231; Salt Lake City *v.* Christensen Co., (Utah 1908) 95 Pac. 523; Hall *v.* Miller, (Tex. Civ. App. 1908) 110 S. W. 165.

Power Limited to Public Purposes. — Auditor *v.* State, 75 Ohio St. 114, 78 N. E. 955.

584. 2. State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; State *v.* Wabash R. Co., (Mo. 1906) 93 S. W. 790; State *v.* Hannibal Bridge Co., (Mo. 1906) 93 S. W. 791.

3. State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584; State *v.* Wabash R. Co., (Mo. 1906) 93 S. W. 790; State *v.* Hannibal Bridge Co., (Mo. 1906) 93 S. W. 791.

4. No Power Arbitrarily to Give Property a Situs for Taxation. — Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557. See also Sutter County *v.* Nicols, (Cal. 1908) 93 Pac. 872.

585. 4. State *v.* Marion County, (Ind. 1908) 85 N. E. 513.

587. 7. **Fact that Tax Laid Indirectly Does Not Validate It.** — Com. *v.* Selliger, (Ky. 1907) 98 S. W. 1040.

588. 3. People *v.* Wells, 184 N. Y. 275, 77 N. E. 19.

5. **Proceeds Taxable.** — People *v.* Wells, 184 N. Y. 275, 77 N. E. 19.

589. 2. **Property in Hands of Consignee, Awaiting Sale.** — Merchants' Transfer Co. *v.* Board of Review, (Iowa, 1908) 115 N. W. 811.

590. 3. Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926.

Different Dates of Delinquency for Different Kinds of Property. — Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798.

4. Michigan Railroad Tax Cases, 138 Fed. 223; Lake Shore, etc., R. Co. *v.* Powers, 138 Fed. 257; Sault Ste. Marie Bridge Co. *v.* Powers, 138 Fed. 262; State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 590–597; State *v.* Hannibal Bridge Co., (Mo. 1906) 93 S. W. 791; Bergen, etc., R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 668; Central R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 672; United New Jersey R., etc., Co. *v.* Parker, (N. J. 1907) 67 Atl. 686; United New Jersey R., etc., Co. *v.* Parker, (N. J. 1908) 69 Atl. 239; United New Jersey R., etc., Co. *v.* Baird, (N. J. 1908) 69 Atl. 472; People *v.* Reardon, 110 N. Y. App. Div. 821, 97 N. Y. Supp. 535; People *v.* Ronner, 110 N. Y. App. Div. 816, 97 N. Y. Supp. 550, *affirming* (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 436, 95 N. Y. Supp. 518; State *v.* Hanlon, 77 Ohio St. 19, 82 N. E. 662; State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

591. 3. Gulf, etc., R. Co. *v.* Adams, (Miss. 1907) 45 So. 91; State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 591; State *v.* Wabash R. Co., (Mo. 1906) 93 S. W. 790; State *v.* Hannibal Bridge Co., (Mo. 1906) 93 S. W. 791; Columbia Water Power Co. *v.* Campbell, 74 S. Car. 34, 54 S. E. 833; British American Mortg. Co. *v.* Jones, 76 S. Car. 218, 56 S. E. 983; Chicago, etc., R. Co. *v.* Douglas County, (Wis. 1908) 114 N. W. 511.

Provision in Corporation Charter for Exemptions Held Subject to Legislative Repeal. — Hanover Tp. *v.* Camp Meeting Assoc., (N. J. 1908) 68 Atl. 753.

592. 2. **Reservation of Power to Alter.** — Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811.

4. People *v.* Dimond, 121 N. Y. App. Div. 559, 106 N. Y. Supp. 277.

594. 1. Mason *v.* Gates, 82 Ark. 294, 102 S. W. 190; People *v.* Feitner, 120 N. Y. App. Div. 838, 105 N. Y. Supp. 993.

Due Process of Law does not require a judicial hearing in matters of taxation. Trainor *v.* Maverick L. & T. Co., (Neb. 1908) 114 N. W. 932.

The New York Mortgage Tax Law is not unconstitutional though there is no provision for notice or opportunity to be heard. People *v.* Ronner, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 436, 95 N. Y. Supp. 518.

Act Providing for Assessment in Name of Owner if Known and if Not in Name of Occupant Held Constitutional. — Clinton *v.* Krull, (Supm. Ct. App. Div.) 111 N. Y. Supp. 105.

3. Denver First Nat. Bank *v.* Montrose County, 36 Colo. 265, 84 Pac. 1111; Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52, *affirming* 124 Ga. 596, 53 S. E. 251; Brown *v.* Southern R. Co., 125 Ga. 772, 54 S. E. 729; Green *v.* Hutchinson, 128 Ga. 379, 57 S. E. 353; People *v.* Cook County, 221 Ill. 493, 77 N. E. 914; Cook County *v.* Fairbank, 222 Ill. 578, 78 N. E. 895; Hager *v.* Walker, (Ky. 1908) 107 S. W. 254; Owensboro *v.* Sweeney, (Ky. 1908) 111 S. W. 364; Atlantic, etc., R. Co. *v.* Newbern, (N. Car. 1908) 60 S. E. 925; State Nat. Bank *v.* Memphis, 116 Tenn. 641, 94 S. W. 606; Campbell *v.* Bryant, 104 Va. 509, 52 S. E. 638.

4. Wright *v.* Southern Bell Telephone, etc., Co., 127 Ga. 227, 56 S. E. 116; Denver First Nat. Bank *v.* Montrose County, 36 Colo. 265, 84 Pac. 1111; Com. *v.* Walsh, (Ky. 1907) 106 S. W. 240; United New Jersey R., etc., Co. *v.* Parker, (N. J. 1908) 69 Atl. 239; United New Jersey R., etc., Co. *v.* Baird, (N. J. 1908) 69 Atl. 472; Tubbs *v.* Tioga County, 16 Pa. Dist. 318; Mattern *v.* Canevin, 213 Pa. St. 588, 63 Atl. 131; Campbell *v.* Bryant, 104 Va. 509, 52 S. E. 638; Norfolk, etc., Co. *v.* Norfolk, 105 Va. 139, 52 S. E. 851.

Statute Authorizing Private Bankers to Deduct Deposits from Cash on Hand Violates Constitutional Provision for Uniformity. — Clark *v.* Maher, 34 Mont. 391, 87 Pac. 272.

Applies to Property Taxed Directly Only. — Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

595. 1. Covington *v.* Covington, etc., Bridge Co., (Ky. 1907) 103 S. W. 248; Com. *v.* Ledman, (Ky. 1907) 106 S. W. 247; Lake County *v.* Schroder, 47 Oregon 136, 81 Pac. 942; Reser *v.* Umatilla County, 48 Oregon 326, 86 Pac. 595; Murph *v.* Landrum, 76 S. Car. 21, 56 S. E. 850; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811; State Nat. Bank *v.* Memphis, 116 Tenn. 641, 94 S. W. 606; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798; State *v.* Taylor, (Tenn. 1907) 104 S. W. 242; Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138; Salt Lake City *v.* Christensen Co., (Utah 1908) 95 Pac. 523; State *v.* Case, 39 Wash. 177, 81 Pac. 554; Great Northern R. Co. *v.* Homish County, (Wash. 1908) 94 Pac. 924.

Poll Tax. — Thurston County *v.* Tenino Stone Quarries, 44 Wash. 351, 87 Pac. 634.

2. *In re* Opinion of Justices, (Mass. 1908) 84 N. E. 499.

4. **Principal Applies to License Tax.** — State *v.* Pinckard, 119 La. 228, 43 So. 1015.

5. State *v.* Chicago, etc., R. Co., 195 Mo. 228, 93 S. W. 784, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 595, 596, notes 5, 1, 2; State *v.* Wabash R. Co., (Mo. 1906) 93 S. W. 790; State *v.* Hannibal Bridge Co., (Mo. 1906) 93 S. W. 791.

596. 1. Hager *v.* Walker, (Ky. 1908) 107 S. W. 254; Miller *v.* Wicomico County, (Md. 1908) 69 Atl. 118; *In re* Opinion of Justices, (Mass. 1908) 84 N. E. 499; Murph *v.* Landrum, 76 S. Car. 21, 56 S. E. 850.

597. 1. State *v.* Marion County, (Ind. 1907) 82 N. E. 482; State *v.* Marion County, (Ind. 1908) 85 N. E. 513; Miller *v.* Wicomico County, (Md. 1908) 69 Atl. 118.

3. Miller *v.* Wicomico County, (Md. 1908) 69 Atl. 118; Turner *v.* Cochran, 89 Miss. 206, 42 So. 876; United New Jersey R., etc., Co. *v.* Assessors, (N. J. 1907) 67 Atl. 438; Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

5. Gulf, etc., R. Co. *v.* Adams, (Miss. 1907) 45 So. 91; Daly Bank, etc., Co. *v.* Silver Bow County, 33 Mont. 101, 81 Pac. 950; Lake County *v.* Schroder, 47 Oregon 136, 81 Pac. 942; State *v.* Case, 39 Wash. 177, 81 Pac. 554.

598. 1. Atty.-Gen. *v.* Board of Assessors, 143 Mich. 73, 106 N. W. 698.

2. Supreme Lodge, etc., *v.* Board of Review, 223 Ill. 54, 79 N. E. 23.

3. Hager *v.* Walker, (Ky. 1908) 107 S. W. 254; State *v.* Cudahy Packing Co., (Minn. 1908) 115 N. W. 1039; Central Granaries Co. *v.* Lancaster County, (Neb. 1907) 113 N. W. 543; State *v.* Hanlon, 77 Ohio St. 19, 82 N. E. 662; Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

600. 2. **Ad Valorem Taxes — Michigan Statute.** — Atty.-Gen. *v.* Board of Assessors, 143 Mich. 73, 106 N. W. 698.

3. See State *v.* Western Union Tel. Co., 96 Minn. 13, 104 N. W. 567.

4. Hayes *v.* Walker, (Fla. 1907) 44 So. 747, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 601 [600]; United New Jersey R., etc., Co. *v.* Baird, (N. J. 1908) 69 Atl. 472; Central R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 672; United New Jersey R., etc., Co. *v.* Parker, (N. J. 1907) 67 Atl. 686; Bergen, etc., R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 668; Essex County Park Commission *v.* West Orange, (N. J. 1907) 67 Atl. 1065; Atlantic, etc., R. Co. *v.* Newbern, (N. Car. 1908) 60 S. E. 925; State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

601. 3. Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

4. Lake County *v.* Schroder, 47 Oregon 136, 81 Pac. 942.

Same Method of Ascertaining Valuation Not Required. — Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138.

Rule Not Applicable to License or Occupation Tax. — Salt Lake City *v.* Christensen Co., (Utah 1908) 95 Pac. 523.

Poll Tax on Certain Classes. — Thurston County *v.* Tenino Stone Quarries, 44 Wash. 351, 87 Pac. 634.

602. 1. *In re* Railroad Taxation, 102 Me. 527, 66 Atl. 726.

2. Wright *v.* Southern Bell Telephone, etc., Co., 127 Ga. 227, 56 S. E. 116; Barz *v.* Board of Equalization, 133 Iowa 563, 111 N. W. 41; Owensboro *v.* Sweeney, (Ky. 1908) 111 S. W. 364; Baltimore *v.* Starr Methodist Protestant Church, (Md. 1907) 67 Atl. 261; Miller *v.* Wicomico County, (Md. 1908) 69 Atl. 118; Mutual Ben. Ins. Co. *v.* Martin County, (Minn. 1908) 116 N. W. 572; Central R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 672; United New Jersey R., etc., Co. *v.* Parker, (N. J. 1907) 67 Atl. 686; Lake County *v.* Schroder, 47 Oregon 136, 81 Pac. 942.

3. Baltimore *v.* Starr Methodist Protestant Church, (Md. 1907) 67 Atl. 261.

603. 2. Hager *v.* Walker, (Ky. 1908) 107 S. W. 254; Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926.

3. People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970.

604. 1. Hayes *v.* Walker, (Fla. 1907) 44 So. 747; *In re* Railroad Taxation, 102 Me. 527, 66 Atl. 726; Consolidated Gas Co. *v.* Baltimore, 105 Md. 43, 65 Atl. 628; Mutual Ben. Ins. Co. *v.* Martin County, (Minn. 1908) 116 N. W. 572; Central R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 672; People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970; Thurston County *v.* Tenino Stone Quarries, 44 Wash. 351, 87 Pac. 634, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d cd.) 604; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

Power to Classify Limited to Occupations. — Wright *v.* Southern Bell Telephone, etc., Co., 127 Ga. 227, 56 S. E. 116.

Land May Be Taxed Separate from Improvements Thereon. — Essex County Park Commission *v.* West Orange, (N. J. 1907) 67 Atl. 1065.

2. William S. Wilkens Co. *v.* Baltimore, 103 Md. 293, 63 Atl. 562, *citing* 27 AM. AND ENG. ENG. ENCYC. OF LAW (2d ed.) 27 [604].

3. State *v.* Hanlon, 77 Ohio St. 19, 82 N. E. 662.

4. Hayes *v.* Walker, (Fla. 1907) 44 So. 747; State *v.* Bazille, 97 Minn. 11, 106 N. W. 93, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 604; People *v.* Reardon, 110 N. Y. App. Div. 821, 97 N. Y. Supp. 535; Salt Lake City *v.* Christensen Co., (Utah 1908) 95 Pac. 523.

5. Michigan Railroad Tax Cases, 138 Fed. 223; Lake Shore, etc., R. Co. *v.* Powers, 138 Fed. 257; Sault Ste. Marie Bridge Co. *v.* Powers, 138 Fed. 262; State *v.* Baltimore, 105 Md. 1, 65 Atl. 369; Central R. Co. *v.* State Board of Assessors, (N. J. 1906) 65 Atl. 244; Bergen, etc., R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 668; Central R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 672; Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138; Thurston County *v.* Tenino Stone Quarries, 44 Wash. 351, 87 Pac. 634; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

605. 1. State *v.* Baltimore, 105 Md. 1, 65 Atl. 369; Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138.

2. Higgins *v.* Com., (Ky. 1907) 103 S. W. 306; Com. *v.* Simpson, (Ky. 1907) 103 S. W. 309; Owensboro *v.* Sweeney, (Ky. 1908) 111 S. W. 364; Central R. Co. *v.* State Board of Assessors, (N. J. 1906) 65 Atl. 244; Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798; Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138.

Cannot Fix a Different Value on Same Property for Different Purposes. — People *v.* Wells, 110 N. Y. App. Div. 194, 97 N. Y. Supp. 47.

Such Provision Is in No Sense a Limitation upon the power of the general assembly to provide the machinery by which the "true value in money" may be best ascertained. Atlantic, etc., R. Co. *v.* Newbern, (N. Car. 1908) 60 S. E. 925.

606. 1. *In re* Opinion of Justices, (Mass. 1908) 81 N. E. 500.

3. See State *v.* Cudahy Packing Co., (Minn. 1908) 115 N. W. 645.

4. **Statute Exempting Parsonages Violates Such Provision.** — People *v.* Oak Park First Cong. Church, *232* Ill. 158, 83 N. E. 536.

607. 3. State *v.* Baltimore, 105 Md. 1, 65 Atl. 369; Bergen, etc., R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 668.

4*a*. **Power of Legislature to Impose Double Taxation.** — Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928, *quoting 27* Am. and Eng. Encyc. of Law (2d ed.) 607.

5. *Uniform and Equal Rate Clause.* — See Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928.

608. 1. Humbird Lumber Co. *v.* Kootenai County, 10 Idaho 490, 79 Pac. 396, *citing 27* Am. and Eng. Encyc. of Law (2d ed.) 607 [608]; State *v.* Louisiana, etc., R. Co., 196 Mo. 523, 94 S. W. 279; State *v.* Wheeler, 141 N. Car. 773, 53 S. E. 358.

3. Livermore *v.* Livermore Falls Trust, etc., Co., (Me. 1907) 69 Atl. 306; State *v.* Louisiana, etc., R. Co., 196 Mo. 523, 94 S. W. 279.

Purpose to Impose Tax on Property Held for Charitable and Religious Purposes Not Presumed. — Mattern *v.* Canevin, *213* Pa. St. 588, 63 Atl. 131.

4. Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52; Com. *v.* Ledman, (Ky. 1907) 106 S. W. 247; Chassaniol *v.* Assessors, (La. 1908) 45 So. 604; Portland *v.* New England Telephone, etc., Co., (Me. 1907) 68 Atl. 1040, holding telephone conduits personalty; Livermore *v.* Livermore Falls Trust, etc., Co., (Me. 1907) 69 Atl. 306; Panola County *v.* Carrier, (Miss. 1908) 45 So. 426; Central Granaries Co. *v.* Lancaster County, (Neb. 1906) 109 N. W. 385; State *v.* Graybeal, 60 W. Va. 357, 55 S. E. 398.

609. 1. Cook County *v.* Fairbank, *222* Ill. 578, 78 N. E. 895; Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928.

3. Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928, *quoting 27* Am. and Eng. Encyc. of Law (2d ed.) 609.

4. Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928, *citing 27* Am. and Eng. Encyc. of Law (2d ed.) 609.

610. 1. Paddell *v.* New York, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 422, 100 N. Y. Supp. 581.

8. **Imposing Tax, for Care of Insane Persons, on Relatives Not Double Taxation.** — State Commission in Lunacy *v.* Eldridge, (Cal. App. 1908) 94 Pac. 597; Guthrie County *v.* Conrad, 133 Iowa 171, 110 N. W. 454.

11. Cheeseborough *v.* San Francisco, (Cal. 1908) 96 Pac. 288; Judy *v.* Beckwith, (Iowa 1908) 114 N. W. 565; Oxley *v.* McClure, (Iowa 1908) 114 N. W. 570; Judy *v.* McClure, (Iowa 1908) 114 N. W. 570; Oxley *v.* Beckwith, (Iowa 1908) 114 N. W. 570.

Taxation in Different Jurisdictions Not Double. — Stevens *v.* Carroll, 130 Iowa 463, 104 N. W. 433.

613. 5. Louisiana, etc., R. Co. *v.* Shaw, (La. 1908) 46 So. 994; *In re* Pullman, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 1, 102 N. Y. Supp. 356; *In re* Lockitt, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 5, 110 N. Y. Supp. 32; People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

614. 2. State *v.* Marion County, (Ind. 1908) 85 N. E. 513; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

3. People *v.* Reardon, 184 N. Y. 431, 77 N. E. 970.

616. 6. Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811.

617. 1. *In re* Lockitt, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 5, 110 N. Y. Supp. 32.

2. People *v.* Dimond, 121 N. Y. App. Div. 559, 106 N. Y. Supp. 277; Southern R. Co. *v.* Hamblin County, 117 Tenn. 327, 97 S. W. 455, *citing 27* Am. and Eng. Encyc. of Law (2d ed.) 617.

6. Southern Express Co. *v.* Atlanta, 126 Ga. 45, 54 S. E. 771.

618. 1. Hegan *v.* Louisville, (Ky. 1908) 106 S. W. 805; Rochester *v.* Rochester R. Co., 109 N. Y. App. Div. 638, 96 N. Y. Supp. 152; People *v.* Kelsey, 116 N. Y. App. Div. 97, 101 N. Y. Supp. 902; Haynes *v.* State, (Tex. Civ. App. 1906) 99 S. W. 405.

Retrospective Provision for Refunding Valid. — People *v.* Board of Education, (Supm. Ct. App. Div.) 110 N. Y. Supp. 769.

3. Southern R. Co. *v.* Hamblen County, 117 Tenn. 327, 97 S. W. 455, *citing 27* Am. and Eng. Encyc. of Law (2d ed.) 618.

5. Livermore *v.* Livermore Falls Trust, etc., Co., (Me. 1907) 69 Atl. 306; English *v.* Crenshaw, (Tenn. 1908) 110 S. W. 210.

Legislative Intent to Subject Property to Tax Must Be Clear. — People *v.* Duffy-McInnerney Co., 122 N. Y. App. Div. 336, 106 N. Y. Supp. 878, holding that the original issue of stock by a corporation is not subject to the stock transfer tax.

619. 1. **Liberally Construed in Favor of Taxing Power.** — Washington Nat. Bank *v.* Daily, 166 Ind. 631, 77 N. E. 53.

4. Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557; School City *v.* Forrest, 168 Ind. 94, 78 N. E. 187, in which case it was held that a delegation of the power to appointees of a common council to levy taxes for public library purposes was proper.

620. 1. School City *v.* Forrest, 168 Ind. 94, 78 N. E. 187; State Bank *v.* Com., (Ky. 1906) 94 S. W. 620; Hager *v.* Walker, (Ky. 1908) 107 S. W. 254; Hauser *v.* Miller, (Mont. 1908) 94 Pac. 197.

623. 1. William S. Wilkens Co. *v.* Baltimore, 103 Md. 293, 63 Atl. 562; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

3. William S. Wilkens Co. *v.* Baltimore, 103 Md. 293, 63 Atl. 562; State *v.* Braxton County Ct., 60 W. Va. 339, 55 S. E. 382.

Estoppel. — Chicago, etc., R. Co. *v.* Douglas County, (Wis. 1908) 114 N. W. 511.

624. 5. Wheelock *v.* Lowell, (Mass. 1907) 81 N. E. 977.

Expense of Widening City Street. — *In re* Lockitt, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 5, 110 N. Y. Supp. 32.

627. 2. State *v.* Marion County, (Ind. 1907) 82 N. E. 482.

628. 1. *Highways and Turnpikes.* — State *v.* Marion County, (Ind. 1907) 82 N. E. 482.

630. 1. Robinson *v.* Norfolk, (Va. 1908) 60 S. E. 762.

632. 5. Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52; Wolfe County *v.* Beckett, (Ky. 1907) 105 S. W. 447; Hall *v.* Miller, (Tex. Civ. App. 1908) 110 S. W. 165.

Insane Person Liable. — De Hatre *v.* Edmunds, 200 Mo. 246, 98 S. W. 744.

633. 6. Webber Lumber Co. *v.* Shaw, 189 Mass. 366, 75 N. E. 640; *In re* May, 218 Pa. St. 64, 67 Atl. 120; Theobald *v.* Sylvester, 27 Pa. Super. Ct. 362; Stone *v.* Tilley, (Tex. Civ. App. 1906) 95 S. W. 718; Halifax *v.* Wallace, 38 Nova Scotia 567, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 633.

Personal Liability Not Ordinarily Implied. — Rogers *v.* Gookin, (Mass. 1908) 85 N. E. 405.

Executor Not Liable after Final Settlement. — State *v.* Mississippi Valley Trust Co., (Mo. 1908) 108 S. W. 97.

Executors and Administrators Personally Liable. — New York *v.* Goss, (Supm. Ct. App. Div.) 109 N. Y. Supp. 151.

634. 3. **Poll Tax for State School Fund a State Tax.** — Alameda County *v.* Dalton, 148 Cal. 246, 82 Pac. 1050.

4. See Tekoa *v.* Reilly, (Wash. 1907) 91 Pac. 769.

8. Millcreek Tp. *v.* Willis, 16 Pa. Dist. 312, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 634.

635. 1. Pollitzer *v.* Beinkempen, 76 S. Car. 517, 57 S. E. 475; Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635.

Time Not Property. — State *v.* Wheeler, 141 N. Car. 773, 53 S. E. 358.

4. Water Power Not in Actual Use. — Hazard Powder Co. *v.* Enfield, (Conn. 1908) 69 Atl. 16.

8. Armour Packing Co. *v.* Clark, 124 Ga. 360, [illegible] S. E. 145.

637. 5. **Advancements to Children Not Taxable to Father.** — Duckett *v.* Gerig, 223 Ill. 284, 79 N. E. 94.

Option on Land Not a Credit. — *In re* Shield, 134 Iowa 559, 111 N. W. 963.

Enforceable Contract for Sale of Land a Taxable Credit. — *In re* Boyd, (Iowa 1908) 116 N. W. 700.

Money Due from Partnership to Deceased Member Taxable against Executor. — Williams *v.* Brookline, 194 Mass. 44, 79 N. E. 779.

Obligation of Members of Firm to Pay Executor Annual Sum in Consideration of Gift by Deceased Member a Taxable Credit. — Port Huron *v.* Wright, 150 Mich. 279, 114 N. W. 76.

Dividends Represented by Checks Unpaid Taxable. — Grenada Bank *v.* Adams, 87 Miss. 660, 40 So. 4.

"Credits" Means Net Credits — Indebtedness Deducted. — [illegible] *v.* [illegible] County, (Neb. 1908) 115 N. W. 783.

Transfer of Bonds Held a Bailment and Not Taxable as a Credit. — Clark *v.* Gault, 77 Ohio St. 497, 83 N. E. 901.

Vendee's Notes, Personalty. — Hall *v.* Miller, (Tex. Civ. App. 1908) 110 S. W. 165.

638. 1. **Collateral Security.** — Adams *v.* Delta, etc., Co., 89 Miss. 817, 42 So. 170; Milwaukee *v.* Wakefield, (Wis. 1907) 113 N. W. 54.

3. Glidden *v.* Newport, (N. H. 1907) 66 Atl. 117.

639. 5. Critchfield *v.* Nance County, (Neb. 1906) 110 N. W. 538; White *v.* Lincoln, (Neb. 1907) 112 N. W. 369. See also New England Mut. L. Ins. Co. *v.* Assessors, (La. 1908) 47 So. 27.

While a Bank May Credit a Deposit on Overdue Paper, until this right is exercised the deposit is taxable as money in the hands of the depositor. Com. *v.* Wathen, (Ky. 1907) 104 S. W. 364.

Salary of Federal Officer Deposited in Bank. — Dyer *v.* Melrose, (Mass. 1908) 83 N. E. 6.

Deposits of Nonresidents Taxable. — People *v.* Wells, 184 N. Y. 275, 77 N. E. 19.

8. Contra. — State Nat. Bank *v.* Memphis, 116 Tenn. 641, 94 S. W. 606.

640. 2. Com. *v.* Hearne, (Ky. 1907) 100 S. W. 820.

Checks for Interest on United States Bonds. — Hibernia Savings & L. Soc. *v.* San Francisco, 139 Cal. 205, 72 Pac. 920.

6. Private Alleyway Taxable. — Hill *v.* Williams, 104 Md. 595, 65 Atl. 413.

8. Wolfe County *v.* Beckett, (Ky. 1907) 105 S. W. 447, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 640; Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 640.

641. 2. Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 640 [641].

4. People *v.* Wells, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 322, 105 N. Y. Supp. 1006.

Telegraph and Telephone Conduits Taxable as Realty. — People *v.* Upham, 221 Ill. 555, 77 N. E. 931.

Machinery, etc., Used in Operating Mines — Washington Statute. — Doe *v.* Tenino Coal, etc., Co., 43 Wash. 521, 86 Pac. 938.

642. 2. Consolidated Gas Co. *v.* Baltimore, 101 Md. 541, 61 Atl. 532.

5. Lease of Exempt Property. — People *v.* International Salt Co., 233 Ill. 223, 84 N. E. 278.

Lease for More than Three Years a Chattel Real. — People *v.* Goss, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 363, 104 N. Y. Supp. 884. See also Moeller *v.* Gormley, 44 Wash. 465, 87 Pac. 507.

6. Hancock County *v.* Imperial Naval Stores Co., (Miss. 1908) 47 So. 177.

Growing Timber Reserved in Conveyance Taxable as Realty. — Ward *v.* Echo Tp., 145 Mich. 56, 108 N. W. 364.

643. 2. Wood *v.* McCombe, 37 Colo. 174, 86 Pac. 319.

Oil and Gas Wells Taxable against Lessee. — Wolfe County *v.* Beckett, (Ky. 1907) 105 S. W. 447.

Gypsum Mines. — Nephi Plaster, etc., Co. *v.* Juab County, (Utah 1907) 93 Pac. 53.

5. People *v.* Gass, 120 N. Y. App. Div. 147, 104 N. Y. Supp. 885.

Taxation of Mortgaged Property and Loan Secured. — Glidden *v.* Newport, (N. H. 1907) 66 Atl. 117.

644. 1. Penick *v.* Foster, 129 Ga. 217, 58 S. E. 774.

Property of Municipal Corporations. — Clark *v.* Sprague, 113 N. Y. App. Div. 645, 99 N. Y. Supp. 304; Clark *v.* Sprague, 113 N. Y. App. Div. 645, 99 N. Y. Supp. 306.

Toll Bridge between Two Cities Exempt. — Com. *v.* Newport, etc., Bridge Co., (Ky. 1907) 105 S. W. 378.

State Property Leased for Business Purposes. — Boston Molasses Co. *v.* Com., 193 Mass. 391, 79 N. E. 827; Corcoran *v.* Boston, 193 Mass. 586, 79 N. E. 829.

2. Mint Realty Co. *v.* Philadelphia, 218 Pa. St. 104, 66 Atl. 1130.

3. State *v.* Itasca Lumber Co., 100 Minn. 355, 111 N. W. 276; Wilcox *v.* Phillips, 199 Mo. 288, 97 S. W. 886; Brooks *v.* Garner, (Okla. 1908) 94 Pac. 695; Mint Realty Co. *v.* Philadelphia, 218 Pa. St. 104, 66 Atl. 1130; Chicago, etc., R. Co. *v.* Douglas County, (Wis. 1908) 114 N. W. 511.

4. Clearwater Timber Co. *v.* Shoshone County, 155 Fed. 612; State *v.* Itasca Lumber Co., 100 Minn. 355, 111 N. W. 276.

645. 3. See Mint Realty Co. *v.* Philadelphia, 218 Pa. St. 104, 66 Atl. 1130.

7. Stetson *v.* Grant, 102 Me. 222, 66 Atl. 480.

646. 4. Rice *v.* Hammonds, (Okla. 1907) 91 Pac. 698.

648. 3. People *v.* O'Donnel, 116 N. Y. App. Div. 161, 101 N. Y. Supp. 610; Hall *v.* Miller, (Tex. Civ. App. 1908) 110 S. W. 165.

Executors Residing in Different Taxing Districts. — People *v.* O'Donnel, 183 N. Y. 9, 75 N. E. 540, *reversing* 106 N. Y. App. Div. 526, 94 N. Y. Supp. 884.

4. San Francisco *v.* Oakland Water Co., 148 Cal. 331, 83 Pac. 61; Stockton Gas, etc., Co. *v.* San Joaquin County, 148 Cal. 313, 83 Pac. 54; Central R. Co. *v.* Atlantic Highlands, (N. J. 1907) 66 Atl. 936.

5. American Mail Steamship Co. *v.* Crowell, (N. J. 1908) 68 Atl. 752; People *v.* O'Donnel, 116 N. Y. App. Div. 161, 101 N. Y. Supp. 610.

Property in the State on the Day of Assessment is taxable though taxes have been paid on it in another state for the same year. Spaulding Mfg. Co. *v.* Kendall, (Okla. 1907) 91 Pac. 1031.

649. 3. Follett *v.* Butler County, 30 Pa. Super. Ct. 21; People *v.* Gray, 185 N. Y. 196, 77 N. E. 1172; People *v.* Wilson, 113 N. Y. App. Div. 1, 98 N. Y. Supp. 1080; Follett *v.* Butler County, (Pa. 1908 69 Atl. 76.

Farm Used Partly for Manufacturing Purposes. — York Haven Water, etc., Co., 212 Pa. St. 622, 62 Atl. 97.

Real Estate of Manufacturing Business Lying in Two Districts. — High Shoals Mfg. Co. *v.* Penick, 127 Ga. 504, 56 S. E. 648.

8. **Water Rights Used in Connection with Land.** — Matter of Hall, 116 N. Y. App. Div. 729, 102 N. Y. Supp. 5.

650. 1. Hunt *v.* Turner, (Fla. 1907) 45 So. 509; High Shoals Mfg. Co. *v.* Penick, 127 Ga. 504, 56 S. E. 648; Schmoll *v.* Schenck, (Ind. App. 1907) 82 N. E. 805; Morgan *v.* Southern Lumber Co., (Ky. 1905) 89 S. W. 120; Com. *v.* Selliger, (Ky. 1907) 98 S. W. 1040; Com. *v.* Haggin, (Ky. 1907) 99 S. W. 906; Com. *v.* Northwestern Mut. L. Ins. Co., (Ky. 1908) 107 S. W. 233; Prince *v.* Boston, 193 Mass. 545, 79 N. E. 741; People *v.* O'Donnell, (Supm. Ct. App. Div.) 96 N. Y. Supp. 297; Selden *v.* Brooke, 104 Va. 826, 52 S. E. 632. See American Mail Steamship Co. *v.* Crowell, (N. J. 1908) 68 Atl. 752.

Residence of Insane Person. — Brookover *v.* Kase, (Ind. App. 1908) 83 N. E. 524.

2. Eoff *v.* Kennefick-Hammond Co., 80 Ark. 138, 96 S. W. 986; San Francisco, etc., R. Co. *v.* Stockton, 149 Cal. 83, 84 Pac. 771; Ayer, etc., Tie Co. *v.* Keown, (Ky. 1906) 93 S. W. 588; Monongahela River Consol. Coal, etc., Co. *v.* Assessors, 115 La. 564, 39 So. 601; Metropolitan L. Ins. Co. *v.* Assessors, 115 La. 698, 39 So. 846; Scollard *v.* American Felt Co., 194 Mass. 127, 80 N. E. 233; Flowerree Cattle Co. *v.* Lewis and Clark County, 33 Mont. 32, 81 Pac. 398.

Personalty of Nonresidents Taxable at Situs. — Covington *v.* Pullman Co., (Ky. 1905) 89 S. W. 116.

Interest in Oil Wells — Kentucky Statute. — Mt. Sterling Oil, etc., Co. *v.* Ratliff, (Ky. 1907) 104 S. W. 993.

3. Armour Packing Co. *v.* Clark, 124 Ga. 369, 52 S. E. 145.

Intangible Property of Nonresident. — Callahan *v.* Singer Mfg. Co., (Ky. 1906) 92 S. W. 581.

651. 2. Ayer, etc., Tie Co. *v.* Keown, (Ky. 1906) 93 S. W. 588.

3. **Residence for Purpose of Taxation** means a permanent abode as distinguished from a temporary sojourn. Brookover *v.* Kase, (Ind. App. 1908) 83 N. E. 524.

Residence at Time of Assessment Controls. — Millsaps *v.* Jackson, 88 Miss. 504, 42 So. 234.

5. *Compare* People *v.* O'Donnel, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 226, 95 N. Y. Supp. 889.

7. People *v.* O'Donnel, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 226, 95 N. Y. Supp. 889.

8. Brookover *v.* Kase, (Ind. App. 1908) 83 N. E. 524; Cover *v.* Hatten, (Iowa 1907) 113 N. W. 470.

652. 1. Schmoll *v.* Schenck, (Ind. App. 1907) 82 N. E. 805; Cover *v.* Hatten, (Iowa 1907) 113 N. W. 470.

8. See Lake County *v.* Schroder, 47 Oregon 136, 81 Pac. 942.

11. Greene County *v.* Wright, 126 Ga. 504, 54 S. E. 951; Johnson County *v.* Hewitt, 76 Kan. 816, 93 Pac. 181; Com. *v.* Selliger, (Ky. 1907) 98 S. W. 1040; Com. *v.* Haggin, (Ky. 1907) 99 S. W. 906; Com. *v.* Northwestern Mut. L. Ins. Co., (Ky. 1908) 107 S. W. 233; Tafel *v.* Lewis, 75 Ohio St. 182, 78 N. E. 1003; Hurt *v.* Bristol, 104 Va. 213, 51 S. E. 223. See also Goodsite *v.* Lane, (C. C. A.) 139 Fed. 593, 2 Ann. Cas. 849; National F. Ins. Co. *v.* Assessors, (La. 1908) 46 So. 117; General Electric Co. *v.* Assessors, (La. 1908) 46 So. 122.

653. 2. Armour Packing Co. *v.* Clark, 124 Ga. 369, 52 S. E. 145; Monongahela River Consol. Coal, etc., Co. *v.* Assessors, 115 La. 564, 39 So. 601; Metropolitan L. Ins. Co. *v.* Assessors, 115 La. 698, 39 So. 846; People *v.* Wells, 184 N. Y. 275, 77 N. E. 19; Hall *v.* Miller, (Tex. Civ. App. 1908) 110 S. W. 165.

Contra. — Com. *v.* Northwestern Mut. L. Ins. Co., (Ky. 1908) 107 S. W. 233.

3. Johnson County *v.* Hewitt, 76 Kan. 816, 93 Pac. 181.

654. 1. Tafel *v.* Lewis, 75 Ohio St. 182, 78 N. E. 1003.

655. 10. **Contra.** — Prince *v.* Boston, 193 Mass. 545, 79 N. E. 741.

656. 1. High Shoals Mfg. Co. *v.* Penick, 127 Ga. 504, 56 S. E. 648; Com. *v.* Dun, (Ky. 1907) 102 S. W. 859.

3. **Whiskey in a Government Warehouse** is subject to taxation in the state where it is located prior to the payment of taxes to the United States. Thompson *v.* Com., (Ky. 1906) 94 S. W. 654.

4. Hunt *v.* Turner, (Fla. 1907) 45 So. 509, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 656; Armour Packing Co. *v.* Clark, 124 Ga. 369, 52 S. E. 145; Com. *v.* Dun, (Ky. 1907) 102 S. W. 859.

7. Higgins *v.* Com., (Ky. 1907) 103 S. W. 306; Com. *v.* Simpson, (Ky. 1907) 103 S. W. 309.; Com. *v.* Simpson, (Ky. 1907) 104 S. W. 274.

657. 2. Eoff *v.* Kennefick-Hammond Co., 80 Ark. 138, 96 S. W. 986; Berwind, etc., Coal Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 181; Susquehanna Coal Co. *v.* South Amboy, (N. J. 1908) 69 Atl. 454; People *v.* Wells, 184 N. Y. 275, 77 N. E. 19. See also Parks *v.* Nez Perce County, 13 Idaho 298, 89 Pac. 949; Simoyan *v.* Rohan, 36 Ind. App. 495, 76 N. E. 176.

Property in Storage for Indeterminate Period Taxable. — Leigh, etc., Coal Co. *v.* Junction, (N. J. 1908) 68 Atl. 806.

Property Temporarily Present Taxable at Owner's Domicil. — Com. *v.* Dun, (Ky. 1907) 102 S. W. 859.

3. I. M. Darnell, etc., Co. *v.* Memphis, 116 Tenn. 424, 95 S. W. 816.

Appliances for Constructing Railroad. — Eoff *v.* Kennefick-Hammond Co., 80 Ark. 138, 96 S. W. 986.

Property in State Awaiting Sale by Consignee. — Merchants' Transfer Co. *v.* Board of Review, 128 Iowa 732, 105 N. W. 211.

4. American Mail Steamship Co. *v.* Crowell, (N. J. 1908) 68 Atl. 752.

Home Port Determined by Residence of Managing Owner. — Olson *v.* San Francisco, 148 Cal. 80, 82 Pac. 850; Meyer *v.* San Francisco, 148 Cal. xvii, 82 Pac. 853.

Vessel Engaged in Foreign Commerce. — California Shipping Co. *v.* San Francisco, 150 Cal. 145, 88 Pac. 704.

Owner's Residence Rather than Place of Enrollment Controls Taxability of Enrolled Vessels. — Shrewsbury Tp. *v.* Merchants' Steamboat Co., (N. J. 1908) 69 Atl. 958.

658. 1. See American Mail Steamship Co. *v.* Crowell, (N. J. 1908) 68 Atl. 752; Shrewsbury Tp. *v.* Merchants' Steamboat Co., (N. J. 1908) 69 Atl. 958; Woodsum Steamboat Co. *v.* Sunapee, (N. H. 1908) 69 Atl. 577.

659. 4. State *v.* Baltimore, 105 Md. 1, 65 Atl. 369, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 659; Clark *v.* Maher, 34 Mont. 391, 87 Pac. 272; Whedon *v.* Lancaster County, (Neb. 1906) 107 N. W. 1092. *Compare* Louisville, etc., R. Co. *v.* Public Instruction, 50 Fla. 222, 39 So. 480.

660. 1. Covington *v.* Carroll, (Ky. 1908) 108 S. W. 295; St. Paul *v.* Louisiana Cypress Lumber Co., 116 La. 585, 40 So. 906; Crillen *v.* New Orleans Terminal Co., 117 La. 349, 41 So. 645; *In re* Sheehy, 119 La. 608, 44 So. 315; State *v.* Linney, 192 Mo. 49, 90 S. W. 844; Clark *v.* Maher, 34 Mont. 391, 87 Pac. 272, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 660; Schreiber *v.* Long Island R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 123; Moran *v.* Thomas, 19 S. Dak. 469, 104 N. W. 212; Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49.

661. 3. See Hough *v.* North Adams, (Mass. 1907) 82 N. E. 46.

662. 1. People *v.* St. Louis, etc., R. Co., 230 Ill. 61, 82 N. E. 305; State Bank *v.* Com., (Ky. 1906) 94 S. W. 620; Com. *v.* Ledman, (Ky. 1907) 106 S. W. 247; Covington *v.* Carroll, (Ky. 1908) 108 S. W. 295; Rogers *v.* Gookin, (Mass. 1908) 85 N. E. 405; Burger *v.* Farrell, (County Ct.) 50 Misc. (N. Y.) 497, 100 N. Y. Supp. 638; People *v.* Keefe, 119 N. Y. App. Div. 713, 104 N. Y. Supp. 154. *Compare* People *v.* O'Gara Coal Co., 231 Ill. 172, 83 N. E. 140.

663. 3. State *v.* Baltimore, 105 Md. 1, 65 Atl. 369, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 663.

4. State *v.* Taylor, (Tenn. 1907) 104 S. W. 242.

5. **County Assessors.** — People *v.* International Salt Co., 233 Ill. 223, 84 N. E. 278.

664. 4. Young *v.* Jackson, (Tex. Civ. App. 1908) 110 S. W. 74.

5. Covington *v.* Covington, etc., Bridge Co., (Ky. 1907) 103 S. W. 248.

6. Blades *v.* Falmouth, (Ky. 1907) 98 S. W. 1017.

665. 1. **Contra.** — Sawyer *v.* Wilson, 81 Ark. 319, 99 S. W. 389.

666. 4. School Directors Dist. No. 153 *v.* School Directors Dist. No. 154, 232 Ill. 322, 83 N. E. 849, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 666.

667. 5. Hough *v.* North Adams, (Mass. 1907) 82 N. E. 46; Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49.

668. 1. Reed *v.* Cedar Rapids, (Iowa 1908) 116 N. W. 140.

3. Wallapai Min., etc., Co. *v.* Territory, 9 Ariz. 373, 84 Pac. 85; *In re* Seaman, (Iowa 1907) 113 N. W. 354; Reed *v.* Cedar Rapids, (Iowa 1908) 116 N. W. 140; Lawton *v.* New Rochelle, 114 N. Y. App. Div. 883, 100 N. Y. Supp. 284.

Description of Property. — Haynes *v.* State, (Tex. Civ. App. 1906) 99 S. W. 405.

669. 1. *In re* Seaman, (Iowa 1907) 113 N. W. 354.

Failure to Extend Tax — Jurisdictional Defect. — People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N. Y. Supp. 821.

2. Pierce *v.* Carlock, 224 Ill. 608, 79 N. E. 959; Com. *v.* Cumberland Telephone, etc., Co., (Ky. 1907) 99 S. W. 604; Wolfe County *v.* Beckett, (Ky. 1907) 105 S. W. 447; Com. *v.* Southern Pac. Co., (Ky. 1907) 105 S. W. 466, 468; Baltimore *v.* Chester River Steamboat Co., 103 Md. 400, 63 Atl. 810; Amherst College *v.* Assessors, 193 Mass. 168, 79 N. E. 248; Lincoln Transfer Co. *v.* County Board of Equalization, (Neb. 1907) 110 N. W. 724; Matteson

v. Warwick, etc., Water Co., (R. I. 1908) 68 Atl. 577; Hurt *v.* Bristol, 104 Va. 213, 51 S. E. 223.

Corporation Held Not Entitled to Enjoin Making Returns Public. — American Dist. Tel. Co. *v.* Woodbury, (Supm. Ct. App. Div.) 112 N. Y. Supp. 165.

670. 2. Trenton Heat, etc., Co. *v.* Assessors, 73 N. J. L. 370, 63 Atl. 1005; Matteson *v.* Warwick, etc., Water Co., (R. I. 1908) 68 Atl. 577.

3. Baltimore, etc., R. Co. *v.* Oregon Tp., (Ind. 1908) 84 N. E. 529; Hager *v.* American Surety Co., (Ky. 1906) 90 S. W. 550; Lincoln Transfer Co. *v.* County Board of Equalization, (Neb. 1907) 110 N. W. 724; People *v.* Assessors, (Supm. Ct. Spec. T.) 101 N. Y. Supp. 176; Younger *v.* Meadows, (W. Va. 1907) 59 S. E. 1087, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 670.

Return Presumed to Be True. — Gibson *v.* Clark, 131 Iowa 325, 108 N. W. 527; State *v.* Boston Express Co., 100 Me. 278, 61 Atl. 697.

Failure to Make Return gives the assessors no authority to assess a franchise tax against a corporation, in excess of the statutory amount. Trenton Heat, etc., Co. *v.* Assessors, 73 N. J. L. 370, 63 Atl. 1005.

671. 2. Waterbury *v.* O'Loughlin, 79 Conn. 630, 66 Atl. 173; Inland Lumber, etc., Co. *v.* Thompson, 11 Idaho 508, 83 Pac. 933, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671; Baltimore, etc., R. Co. *v.* Oregon Tp., (Ind. 1908) 84 N. E. 529; Illinois Cent. R. Co. *v.* Com., (Ky. 1908) 108 S. W. 245; Chesapeake, etc., R. Co. *v.* Com., (Ky. 1908) 108 S. W. 248; Williams *v.* Brookline, 194 Mass. 44, 79 N. E. 779; Moore *v.* Furnas County Live Stock Co., (Neb. 1907) 111 N. W. 464; Oregon R., etc., Co. *v.* Umatilla County, 47 Oregon 198, 81 Pac. 352; Milwaukee *v.* Wakefield, (Wis. 1907) 113 N. W. 34.

Return by Insolvent Binding on Assignee. — Carpenter *v.* Jones County, 130 Iowa 494, 107 N. W. 435.

Property Listed by Mistake. — Weiser Nat. Bank *v.* Jeffreys, (Idaho 1908) 95 Pac. 23.

No Estoppel to Claim that Property Not Taxable. — Mitchell *v.* Bickford, 192 Mass. 244, 78 N. E. 453.

672. 3. *In re* Medina, (County Ct.) 52 Misc. (N. Y.) 621, 103 N. Y. Supp. 1018.

Wrong Name in Assessment Held to Invalidate Sale for Taxes. — Auman *v.* Hough, 31 Pa. Super. Ct. 337.

673. 1. Koth *v.* Pallachucola Club, (S. Car. 1908) 61 S. E. 77; Clinton *v.* Krull, (Supm. Ct. App. Div.) 111 N. Y. Supp. 105; Wisconsin Oak Lumber Co. *v.* Laursen, 126 Wis. 484, 105 N. W. 906. See also Hill *v.* Williams, 104 Md. 595, 65 Atl. 413.

Unknown Owner. — See Title Guarantee, etc., Co. *v.* Los Angeles County, 3 Cal. App. 619, 86 Pac. 844, as to assessing money held by agent or trustee to him as agent or trustee of persons unknown to assessor.

Assessment in Name of Person in Possession of Freehold. — Glenn *v.* West, 106 Va. 356, 56 S. E. 143.

Person in Possession and Owner. — Boston Molasses Co. *v.* Com., 193 Mass. 391, 79 N. E. 827.

674. 1. **Duty of Assessor to Ascertain Names of True Owners.** — Shipley *v.* Gaffner, (Wash. 1908) 93 Pac. 411.

675. 1. **Idem Sonans.** — Collins *v.* Reger, (W. Va. 1907) 57 S. E. 743.

Assessment to Another than Real Owner. — Shelly *v.* Friedrichs, 117 La. 679, 42 So. 218.

Name Calculated to Mislead or Deceive Renders Assessment Void. — Collins *v.* Reger, (W. Va. 1907) 57 S. E. 743; State *v.* Houston-Chamberlin Hardware Co., 96 Minn. 174, 104 N. W. 835. *Compare* Pfeuffer *v.* Bondies, (Tex. Civ. App. 1906) 93 S. W. 221.

2. Schmitzer *v.* Rankin, 192 Mo. 35, 91 S. W. 122.

Railroad Designated by Initials. — Oregon R., etc., Co. *v.* Umatilla County, 47 Oregon 198, 81 Pac. 352.

3. Corr *v.* Martin, (Ind. App. 1906) 77 N. E. 870. See also Public Schools *v.* O'Connor, 143 Mich. 35, 108 N. W. 426.

4. *In re* Sheehy, 119 La. 608, 44 So. 315; Roberts *v.* Welsh, 192 Mass. 278, 78 N. E. 408; Schmitzer *v.* Rankin, 192 Mo. 35, 91 S. W. 122.

Where the Records Showed No Apparent Owner, although the real owner was in possession and had paid prior taxes, it was held that a sale of the land for taxes assessed against another was invalid. Wood *v.* Smith, 193 Mo. 484, 91 S. W. 85.

676. 1. **Property of Resident Assessed as Nonresident.** — Mittendorf *v.* Dinescomb, 113 N. Y. App. Div. 909, 99 N. Y. Supp. 306.

677. 1. *In re* Morton, (N. J. 1908) 70 Atl. 680; *In re* Burr, (Surrogate Ct.) 48 Misc. (N. Y.) 56, 96 N. Y. Supp. 225; People *v.* Assessors, (Supm. Ct. Spec. T.) 101 N. Y. Supp. 176; Glenn *v.* West, 106 Va. 356, 56 S. E. 143. *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 677.

2. **Interest of Mortgagee.** — Sullivan *v.* Boston, (Mass. 1908) 84 N. E. 443.

678. 2. **Assessment in Name of Deceased Owner.** — Husbands *v.* Polivick, (Ky. 1906) 96 S. W. 825.

Assessment to Heirs of Decedent. — Koth *v.* Pallachucola Club, (S. Car. 1908) 61 S. E. 77.

3. **Pledgors.** — Central of Georgia R. Co. *v.* Wright, 124 Ga. 630, 53 S. E. 207.

Purchasers. — Edward Hines Lumber Co. *v.* Wells Tp., 142 Mich. 366, 105 N. W. 872.

679. 1. People *v.* Wells, 118 N. Y. App. 776, 103 N. Y. Supp. 874.

3. Williams *v.* Brookline, 194 Mass. 44, 79 N. E. 779.

4. Sullivan *v.* Boston, (Mass. 1908) 84 N. E. 443.

680. 2. Security Sav. Bank *v.* Carroll, 131 Iowa 605, 109 N. W. 212; Title Guarantee, etc., Co. *v.* Los Angeles County, 3 Cal. App. 619, 86 Pac. 844; Chase *v.* Boston, 193 Mass. 522, 79 N. E. 736; State *v.* Fisher, 129 Wis. 57, 108 N. W. 206; *In re* Knight, 129 Wis. 63, 108 N. W. 208.

3. *In re* Boyd, (Iowa 1908) 116 N. W. 700.

681. 2. Tulane University *v.* Assessors, 115 La. 1025, 40 So. 445; Pollitzer *v.* Beinkempen, 76 S. Car. 517, 57 S. E. 475; Williams *v.* Brookline, 194 Mass. 44, 79 N. E. 779.

682. 1. New Auditorium Pier Co. *v.* Taxing Dist., (N. J. 1907) 65 Atl. 855.

2. Hannis Distilling Co. *v.* Berkeley County Ct., (W. Va. 1907) 59 S. E. 1051, 1054.

Parol Evidence Incompetent to Contradict Recitals in Judgment of Board of Assessors. — Panola County *v.* Carrier, (Miss. 1908) 45 So. 426.

683. 2. Savings, etc., Soc. *v.* San Francisco, 146 Cal. 673, 80 Pac. 1086, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682 [683].

4. *United States.* — Paine *v.* Willson, (C. C. A.) 146 Fed. 488.

Arkansas. — Buckner *v.* Sugg, 79 Ark. 442, 96 S. W. 184.

California. — Wright *v.* Fox, 150 Cal. 680, 89 Pac. 832; Fox *v.* Townsend, (Cal. 1907) 91 Pac. 1004; Chapman *v.* Zobelein, (Cal. 1907) 92 Pac. 188.

Illinois. — Joliet Stove Works *v.* Kiep, 230 Ill. 550, 82 N. E. 875.

Kentucky. — Husbands *v.* Polinck, (Ky. 1906) 96 S. W. 825.

Louisiana. — Shelly *v.* Friedrichs, 117 La. 679, 42 So. 218.

Massachusetts. — Roberts *v.* Welsh, 192 Mass. 278, 78 N. E. 408.

Michigan. — Mayot *v.* Auditor Gen., 140 Mich. 593, 104 N. W. 19.

Missouri. — State *v.* Linney, 192 Mo. 49, 90 S. W. 844.

New York. — Lawton *v.* New Rochelle, 114 N. Y. App. Div. 883, 100 N. Y. Supp. 284; People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N Y. Supp. 821.

North Dakota. — State Finance Co. *v.* Mather, 15 N. Dak. 386, 109 N. W. 350; State Finance Co. *v.* Trimble, (N. Dak. 1907) 112 N. W. 984; State Finance Co. *v.* Mulberger, (N. Dak. 1907) 112 N. W. 986.

Pennsylvania. — Norris *v.* Delaware, etc., R. Co., 218 Pa. St. 88, 66 Atl. 1122.

Rhode Island. — Matteson *v.* Warwick, etc., Water Co., (R. I. 1908) 68 Atl. 577.

South Dakota. — Moran *v.* Thomas, 19 S. Dak. 469, 104 N. W. 212; Bandow *v.* Wolven, (S. Dak. 1906) 107 N. W. 204.

Texas. — Slaughter *v.* Dallas, (Tex. Civ. App. 1907) 103 S. W. 218; Chicago, etc., R. Co. *v.* Burns, (Tex. 1908) 107 S. W. 49.

Wyoming. — Mathews *v.* Nefsy, 13 Wyo. 458, 81 Pac. 305.

684. 1. Baird *v.* Monroe, 150 Cal. 560, 89 Pac. 352; Davis *v.* Le Mesnager, (Cal. 1907) 92 Pac. 76; Chapman *v.* Zobelein, (Cal. 1907) 92 Pac. 188.

685. 1. Buckner *v.* Sugg, 79 Ark. 442, 96 S. W. 184.

2. Baird *v.* Monroe, 150 Cal. 560, 89 Pac. 352; Watkins *v.* Couch, 134 Iowa 1, 111 N. W. 315; Auditor Gen. *v.* Fleming, 142 Mich. 12, 105 N. W. 71; Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322.

686. 1. Baird *v.* Monroe, 150 Cal. 560, 89 Pac. 352; Toothman *v.* Courtney, (W. Va. 1907) 58 S. E. 915.

687. 1. State Finance Co. *v.* Beck, 15 N. Dak. 374, 109 N. W. 357; Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49; Duerr *v.* Snodgrass, 58 W. Va. 472, 52 S. E. 531.

2. Head *v.* Howcott Land Co., 119 La. 331, 44 So. 117; *In re* Sheehy, 119 La. 608, 44 So. 315; Hart *v.* Murdock, (Neb. 1907) 114 N. W. 268; State Finance Co. *v.* Myers, (N. Dak. 1907) 112 N. W. 76.

Undivided Interest in Land. — Toothman *v.* Courtney, (W. Va. 1907) 58 S. E. 915.

688. 3. Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49.

689. 1. See Couts *v.* Cornell, 147 Cal. 560, 82 Pac. 194.

2. Cheeseborough *v.* San Francisco, (Cal. 1908) 96 Pac. 288. See also Tulane Imp. Co. *v.* Assessors, (La. 1908) 46 So. 928.

Stock of Transient Merchant. — Simoyan *v.* Rohan, 36 Ind. App. 495, 76 N. E. 176.

690. 1. National Tube Co. *v.* Shearer, (Del. 1905) 62 Atl. 1093; Turnley *v.* Elizabeth, (N. J. 1908) 68 Atl. 1094.

3. **Valuation of Lease.** — See People *v.* Barker, 121 N. Y. App. Div. 661, 106 N. Y. Supp. 336.

691. 3. **Landed Property.** — Hiss *v.* Baltimore, 103 Md. 620, 64 Atl. 52.

4. **Fair Market Value.** — Clark *v.* Middleton, (N. H. 1907) 66 Atl. 115.

5. Harvey Coal, etc., Co. *v.* Dillon, 59 W. Va. 605, 53 S. E. 928, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 691.

692. 2. Daly Bank, etc., Co. *v.* Silver Bow County, 33 Mont. 101, 81 Pac. 950; Royal Highlanders *v.* State, (Neb. 1906) 108 N. W. 183; Oleson *v.* Corning County, (Neb. 1908) 115 N. W. 783. See also Title Guarantee, etc., Co. *v.* Los Angeles County, 3 Cal. App. 619, 86 Pac. 844; Pierce *v.* Carlock, 224 Ill. 608, 79 N. E. 959; King *v.* Carroll, 129 Iowa 364, 105 N. W. 705; Chicago L. Ins. Co. *v.* Board of Review, 131 Iowa 254, 108 N. W. 305; Com. *v.* Home, etc., Fund Co. Bldg. Assoc., (Ky. 1907) 106 S. W. 221.

Under the New Jersey Statute the person taxed is entitled to have money at interest as well as debts due him considered in making the deduction. Taylor *v.* Caribou, 102 Me. 401, 67 Atl. 2.

Bank Stock. — See Clark *v.* Maher, 34 Mont. 391, 87 Pac. 272.

Item of Debt Existing Only as a Matter of Convenience in Bookkeeping Not Deducted. — Hoagland *v.* Merrick County, (Neb. 1908) 115 N. W. 537.

Mutual Benefit Insurance Company Allowed to Deduct Amount of Outstanding Certificates from Reserve Fund. — Scandinavian Mut. Aid Assoc. *v.* Kearney County, (Neb. 1908) 116 N. W. 155.

Mortgage Held by Building and Loan Association Not Deducted from Assessed Value of Real Estate. — Hartshorne *v.* Avon-by-the-Sea, (N. J. 1907) 67 Atl. 935.

New York Statute Applies to Personalty Only. — Paddell *v.* New York, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 422, 100 N. Y. Supp. 581.

694. 1. **Contra.** — Hamilton *v.* Brownsville Gaslight Co., 115 Tenn. 150, 90 S. W. 159.

2. Winnipiseogee Lake Cotton, etc., Mfg. Co. *v.* Laconia, (N. H. 1906) 65 Atl. 378, apparently overruling Winnipiseogee Lake Cotton, etc., Mfg. Co. *v.* Laconia, 68 N. H. 284, 35 Atl. 252, cited under *contra* in text.

695. 1. Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401.

2. People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N. Y. Supp. 821; Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W.

2. See also Miller *v.* Kern County, 150 Cal. 797, 90 Pac. 119.

696. 4. Miller *v.* Kern County, 150 Cal. 797, 90 Pac. 119.

5. State Finance Co. *v.* Mather, 15 N. Dak. 386, 109 N. W. 350, *disapproving* Eaton *v.* Bennett, 10 N. Dak. 346, 87 N. W. 188.

697. 1. Wayne Tp. *v.* Laflin, etc., Powder Co., (N. J. 1908) 68 Atl. 909.

3. See Orlando *v.* Giles, 51 Fla. 422, 40 So. 834.

698. 3. Inland Lumber, etc., Co. *v.* Thompson, 11 Idaho 508, 83 Pac. 933; People *v.* Chicago, etc., R. Co., 228 Ill. 102, 81 N. E. 813; Washington Nat. Bank *v.* Daily, 166 Ind. 631, 77 N. E. 53; Baltimore, etc., R. Co. *v.* Oregon Tp., (Ind. App. 1907) 81 N. E. 105; Stevens *v.* Carroll, 130 Iowa 463, 104 N. W. 433; Com. *v.* Reed, (Ky. 1905) 89 S. W. 294; Com. *v.* Adams Express Co., (Ky. 1906) 98 S. W. 288; Adams *v.* Luce, 87 Miss. 220, 39 So. 418; White *v.* Lincoln, (Neb. 1907) 112 N. W. 369; Union Coal Co. *v.* Cooner, 27 Pa. Super. Ct. 95.

Power Confined Exclusively to Board of Review. — Stevens *v.* Henry County, 218 Ill. 468, 75 N. E. 1024.

699. 2. Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 699; Washington Nat. Bank *v.* Daily, 166 Ind. 631, 77 N. E. 53.

3. Auditor Gen. *v.* Tuttle, 146 Mich. 84, 109 N. W. 48.

700. 4. **Contra.** — Adams *v.* Luce, 87 Miss. 220, 39 So. 418; *In re* Knight, 129 Wis. 63, 108 N. W. 208.

6. Auditor Gen. *v.* Fleming, 142 Mich. 12, 105 N. W. 71; People *v.* Nassau County, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 323, 104 N. Y. Supp. 353.

Whole Property of a Taxing District May Be Reassessed. — Central R. Co. *v.* State Board of Assessors, (N. J. 1906) 65 Atl. 244. In the case at bar, however, it was held that the facts did not justify a reassessment.

701. 1. Caldwell Land, etc., Co. *v.* Smith, (N. Car. 1907) 59 S. E. 653, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 700 [701].

2. Caldwell Land, etc., Co. *v.* Smith, (N. Car. 1907) 59 S. E. 653, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 700 [701].

6. Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 701.

702. 3. Hoak *v.* Lancaster County, 29 Pa. Super. Ct. 585; Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49.

704. 3. Mt. Sterling Oil, etc., Co. *v.* Ratliff, (Ky. 1907) 104 S. W. 993; Caldwell Land, etc., Co. *v.* Smith, (N. Car. 1907) 59 S. E. 653, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 704; Matteson *v.* Warwick, etc., Water Co., (R. I. 1908) 68 Atl. 577.

4. Matteson *v.* Warwick, etc., Water Co., (R. I. 1908) 68 Atl. 577.

6. Mt. Sterling Oil, etc., Co. *v.* Ratliff, (Ky. 1907) 104 S. W. 993; State *v.* Baltimore, 105 Md. 1, 65 Atl. 369; Port Huron *v.* Wright, 150 Mich. 279, 114 N. W. 76; Montana Ore Purchasing Co. *v.* Maher, 32 Mont. 480, 81 Pac. 13, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 704, 705; New Auditorium Pier Co. *v.* Taxing Dist., (N. J. 1907) 65 Atl. 855; People *v.* Feitner, 191 N. Y. 88, 83 N. E. 592. See also People *v.* International Salt Co., 233 Ill. 223, 84 N. E. 278; Hill *v.* Williams, 104 Md. 595, 65 Atl. 413.

705. 2. Mt. Sterling Oil, etc., Co. *v.* Ratliff, (Ky. 1907) 104 S. W. 993.

707. 1. Inland Lumber, etc., Co. *v.* Thompson, 11 Idaho 508, 83 Pac. 933.

2. Inland Lumber, etc., Co. *v.* Thompson, 11 Idaho 508, 83 Pac. 933; People *v.* International Salt Co., 233 Ill. 223, 84 N. E. 278; State *v.* Baltimore, 105 Md. 1, 65 Atl. 369; Sams *v.* Fisher, (Md. 1907) 66 Atl. 711; People *v.* Feitner, 191 N. Y. 88, 83 N. E. 592; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

708. 3. **Failure to Appear.** — Judy *v.* National State Bank, 133 Iowa 252, 110 N. W. 605.

Appearance to Reduce Assessment. — Montana Ore Purchasing Co. *v.* Maher, 32 Mont. 480, 81 Pac. 13.

709. 1. Lake Shore, etc., R. Co. *v.* Powers, 138 Fed. 258; Inland Lumber, etc., Co. *v.* Thompson, 11 Idaho 508, 83 Pac. 933; Lancaster County *v.* Whedon, (Neb. 1906) 108 N. W. 127; Eatontown Tp. *v.* Monmouth Electric Co., (N. J. 1907) 68 Atl. 342; Shrewsbury Tp. *v.* Merchants' Steamboat Co., (N. J. 1908) 69 Atl. 958.

Statutory Provision for Notice Directory. — State *v.* Carson, etc., R. Co., (Nev. 1907) 91 Pac. 932.

2. Bostick *v.* Noble County, (Okla. 1907) 91 Pac. 1125.

3. Denver First Nat. Bank *v.* Montrose County, 36 Colo. 265, 84 Pac. 1111; Weiser Nat. Bank *v.* Jeffreys, (Idaho 1908) 95 Pac. 23; Atchison, etc., R. Co. *v.* Sumner County, 76 Kan. 618, 92 Pac. 590; Tuckerton R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 69; Smoky Mountain Land, etc., Co. *v.* Lattimore, (Tenn. 1907) 105 S. W. 1028; Ricketts *v.* Crewdson, 13 Wyo. 300, 81 Pac. 1.

711. 2. Bell *v.* Meeker, 39 Ind. App. 224, 78 N. E. 641; Tuckerton R. Co. *v.* Assessors, (N. J. 1907) 67 Atl. 69.

712. 1. Copper Queen Consol. Min. Co. *v.* Territorial Board of Equalization, 9 Ariz. 383, 84 Pac. 511; Territory *v.* Yavapai County, 9 Ariz. 405, 84 Pac. 519; Board of Equalization *v.* Hughes, 84 Ark. 347, 105 S. W. 577; People *v.* Upham, 221 Ill. 555, 77 N. E. 931 People *v.* St. Louis, etc., R. Co., 230 Ill. 61, 82 N. E. 305; Bell *v.* Meeker, 39 Ind. App. 224, 78 N. E. 641; *In re* Payment, etc., 96 Minn. 392, 105 N. W. 276; State *v.* Cudahy Packing Co., (Minn. 1908) 115 N. W. 645; State *v.* Grow, 74 Neb. 850, 105 N. W. 898; Deemer *v.* Grant County, (Neb. 1906) 107 N. W. 216; White *v.* Lincoln, (Neb. 1907) 112 N. W. 369; Jersey City Board of Equalization (N. J. 1907) 65 Atl. 903; Davies *v.* National Land, etc., Co., 76 Ohio St. 407, 81 N. E. 755; Great Northern R. Co. *v.* Homish County, (Wash. 1908) 93 Pac. 924; Spokane Falls, etc., R. Co. *v.* Stevens County, (Wash. 1908) 93 Pac. 927.

713. 1. Royal Mfg. Co. *v.* Rahway, (N. J. 1907) 67 Atl. 940.

714. 1. Board of Equalization *v.* Hughes, 84 Ark. 347, 105 S. W. 577; Copper Queen Consol. Min. Co. *v.* Territorial Board of Equalization, 9 Ariz. 383, 84 Pac. 511; Territory *v.*

Navapai County, 9 Ariz. 405, 84 Pac. 519; Clark *v.* Lawrence County, (S. Dak. 1907) 111 N. W. 558; Ricketts *v.* Crewdson, 13 Wyo. 300, 81 Pac. 1.

2. Smoky Mountain Land, etc., Co. *v.* Lattimore, (Tenn. 1907) 105 S. W. 1028.

4. State *v.* Cudahy Packing Co., (Minn. 1908) 115 N. W. 645.

715. 4. Lancaster County *v.* Brown, (Neb. 1906) 107 N. W. 576.

5. Strict Rules of Evidence Not Applicable. — Western Union Tel. Co. *v.* Dodge County, (Neb. 1907) 113 N. W. 805.

6. Barz *v.* Board of Equalization, 133 Iowa 563, 111 N. W. 41.

716. 5. Smoky Mountain Land, etc., Co. *v.* Lattimore, (Tenn. 1907) 105 S. W. 1028; Ricketts *v.* Crewdson, 13 Wyo. 300, 81 Pac. 1.

717. 2. Delray Land Co. *v.* Springwells Tp., 149 Mich. 397, 112 N. W. 1132; Montana Ore Purchasing Co. *v.* Maher, 32 Mont. 480, 81 Pac. 13, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 717.

718. 5. No Formal Finding as Basis for Action Necessary. — Lancaster County *v.* Whedon, (Neb. 1906) 108 N. W. 127.

8. Foster *v.* Rowe, 128 Wis. 326, 107 N. W. 637.

719. 1. State *v.* Allen, (Ala. 1907) 44 So. 564; Com. *v.* Mitchell, (Ky. 1907) 99 S. W. 670; Com. *v.* Brower, (Ky. 1907) 99 S. W. 671; Com. *v.* Haggin, (Ky. 1907) 99 S. W. 906; Com. *v.* Lovell, (Ky. 1907) 101 S. W. 970; Com. *v.* Lexington Roller Mills Co., (Ky. 1907) 104 S. W. 318; Royal Mfg. Co. *v.* Rahway, (N. J. 1907) 67 Atl. 940; People *v.* Hall, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 308, 109 N. Y. Supp. 402; Pocono Pines Assembly, etc., *v.* Monroe County, 29 Pa. Super. Ct. 36.

Appeal to District Court. — State *v.* Drexel, (Neb. 1906) 107 N. W. 110.

No Appeal from District or Circuit Court. — Teller County *v.* Pinnacle Gold Min. Co., 36 Colo. 492, 85 Pac. 1005; Teller County *v.* Ben Hur Gold Min. Co., 36 Colo. 496, 85 Pac. 1006; Lysight *v.* Jennie Sample Consol. Gold Min. Co., 36 Colo. 495, 85 Pac. 1006; Lysight *v.* Des Moines Gold Min. Co., 36 Colo. 494, 85 Pac. 1006; Montrose First Nat. Bank *v.* Montrose County, 36 Colo. 497, 85 Pac. 1006; Bluefield Waterworks, etc., Co. *v.* State, (W. Va. 1908) 60 S. E. 403.

2. **The Kansas Statute** providing for an appeal from the county board of equalization to the District Court is unconstitutional because taxation is not a judicial proceeding. Silven *v.* Osage County, 76 Kan. 687, 92 Pac. 604.

720. 1. People *v.* Summerville, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 300, 107 N. Y. Supp. 575.

Review Limited to Correctness of Taxpayer's Individual Assessment. — Pons *v.* Assessors, 118 La. 1101, 43 So. 891.

2. Estherville First Nat. Bank *v.* Estherville, (Iowa 1907) 112 N. W. 829.

8. Baltimore, etc., R. Co. *v.* Oregon Tp., (Ind. 1908) 84 N. E. 529, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720; Com. *v.* Ledman, (Ky. 1907) 106 S. W. 247; Illinois Cent. R. Co. *v.* Com., (Ky. 1908) 108 S. W. 245; Chesapeake, etc., R. Co. *v.* Com., (Ky. 1908) 108 S. W. 248; Hopkinsville First Nat. Bank *v.* Hopkinsville, (Ky. 1908) 108 S. W. 311; State *v.* Western Union Tel. Co., 96 Minn. 13, 104 N. W. 567; First Nat. Bank *v.* Webster County, (Neb. 1907) 113 N. W. 190; Flaherty *v.* Atlantic City, 73 N. J. L. 458, 63 Atl. 992; State *v.* Taylor, (Tenn. 1907) 104 S. W. 242; Foster *v.* Rowe, 128 Wis. 326, 107 N. W. 635.

721. 1. Reid *v.* Southern Development Co., 52 Fla. 595, 42 So. 206; Lake City Electric Light Co. *v.* McCrary, 132 Iowa 624, 110 N. W. 19; Tyer, etc., Tie Co. *v.* Koewn, (Ky. 1905) 89 S. W. 116; Covington, etc., Bridge Co. *v.* Covington, (Ky. 1907) 100 S. W. 269; Kansas City *v.* Holmes, (Mo. App. 1907) 106 S. W. 559.

2. Reid *v.* Southern Development Co., 52 Fla. 595, 42 So. 206.

3. Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557; Clark *v.* Lawrence County, (S. Dak. 1907) 111 N. W. 558.

722. 1. Consolidated Gas Co. *v.* Baltimore, 105 Md. 43, 65 Atl. 628; State *v.* Fisher, 129 Wis. 57, 108 N. W. 206; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

3. Hopkinsville First Nat. Bank *v.* Hopkinsville, (Ky. 1908) 108 S. W. 311; Ward *v.* Echo Tp., 145 Mich. 56, 108 N. W. 364; Port Huron *v.* Wright, 150 Mich. 279, 114 N. W. 76; State *v.* Western Union Tel. Co., 96 Minn. 13, 104 N. W. 567; People *v.* Nassau County, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 323, 104 N. Y. Supp. 353.

5. Dickson *v.* Kittitas County, 42 Wash. 429, 84 Pac. 855.

6. See Com. *v.* American Tobacco Co., (Ky. 1906) 96 S. W. 466.

7. Shirk *v.* Township Board of Review, (Iowa 1908) 114 N. W. 884.

723. 2. Consolidated Gas Co. *v.* Baltimore, 105 Md. 43, 65 Atl. 628.

5. Equity Will Not Review Assessors' Decisions upon Discretionary Matters. — Crewdson *v.* Nefsy Co., 14 Wyo. 61, 82 Pac. 1.

7. *United States.* — McKnight *v.* Dudley, (C. C. A.) 148 Fed. 204; Western Union Tel. Co. *v.* Wright, 158 Fed. 1004.

Alabama. — Ensley *v.* McWilliams, 145 Ala. 159, 41 So. 296.

Colorado. — Hallett *v.* Arapahoe County, (Colo. 1907) 90 Pac. 678.

Florida. — State *v.* Richards, 50 Fla. 284, 39 So. 152; H. W. Metcalf Co. *v.* Martin, (Fla. 1907) 45 So. 463.

Illinois. — Cummins *v.* Webber, 218 Ill. 521, 75 N. E. 1041; Correll *v.* Smith, 221 Ill. 140, 77 N. E. 440; Shriver *v.* McGregor, 224 Ill. 397, 79 N. E. 706; Pierce *v.* Carlock, 224 Ill. 608, 79 N. E. 959; Gray *v.* School Inspectors, 231 Ill. 63, 83 N. E. 05.

Indiana. — People's Gas, etc., Co. *v.* Harrell, 36 Ind. App. 588, 76 N. E. 318; Nyce *v.* Schmoll, (Ind. App. 1907) 82 N. E. 537.

Iowa. — Peterson *v.* Board of Review, (Iowa 1908) 116 N. W. 818.

Kansas. — Finney County *v.* Bullard, (Kan. 1908) 94 Pac. 129.

Maryland. — Baltimore *v.* Gail, (Md. 1907) 68 Atl. 282.

Montana. — Morse *v.* Jacky, 34 Mont. 165, 85 Pac. 882.

Nebraska. — Western Union Tel. Co. *v.* Douglas County, (Neb. 1906) 107 N. W. 985.

New Mexico. — Albuquerque First Nat. Bank *v.* Albright, 13 N. Mex. 514, 86 Pac. 548.

Pennsylvania. — Clark *v.* Burschel, (Pa. 1908) 69 Atl. 900.

South Carolina. — Fleming *v.* Power, 77 S. Car. 528, 58 S. E. 430; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811.

Texas. — Stephens *v.* Texas, etc., R. Co., (Tex. 1906) 97 S. W. 309; Stringer *v.* Halley, (Tex. Civ. App. 1907) 105 S. W. 1146.

Virginia. — Johnson *v.* Hampton Normal, etc., Institute, 105 Va. 319, 54 S. E. 31.

Wisconsin. — A. H. Stange Co. *v.* Merrill, (Wis. 1908) 115 N. W. 115.

8. Atlanta *v.* Jacobs, 125 Ga. 523, 54 S. E. 534; Green *v.* Hutchison, 128 Ga. 379, 57 S. E. 353; Duckett *v.* Gerig, 223 Ill. 284, 79 N. E. 94; Peterson *v.* Board of Review, (Iowa 1908) 116 N. W. 818; Crewdson *v.* Nefsy Co., 14 Wyo. 61, 82 Pac. 1.

Injunction. — Security Sav. Bank *v.* Carroll, 131 Iowa 605, 109 N. W. 212; Schley *v.* Montgomery County, (Md. 1907) 67 Atl. 250; Campbell *v.* Bryant, 140 Va. 509, 52 S. E. 638.

724. 1. Western Union Tel. Co. *v.* Wright, 158 Fed. 1004; Bates *v.* Parker, 227 Ill. 120, 81 N. E. 334; Finney County *v.* Bullard, (Kan. 1908) 94 Pac. 129; Hanberg *v.* Western Cold Storage Co., 231 Ill. 32, 82 N. E. 842.

2. San Diego Realty Co. *v.* Cornell, 150 Cal. 637, 89 Pac. 603; Clay *v.* Wrought Iron Range Co., (Ind. App. 1908) 85 N. E. 119; Porter *v.* R. J. Boyd Paving, etc., Co., (Mo. 1908) 112 S. W. 235; Southern R. Co. *v.* Mecklenburg County, (N. Car. 1908) 61 S. E. 690.

4. Gray *v.* School Inspectors, 231 Ill. 63, 83 N. E. 95.

5. Lake City Electric Light Co. *v.* McCrary, 132 Iowa 624, 110 N. W. 19; Corey *v.* Ft. Dodge, 133 Iowa 666, 111 N. W. 6; Bates *v.* Parker, 227 Ill. 120, 81 N. E. 334; Finney County *v.* Bullard, (Kan. 1908) 94 Pac. 129.

6. Bates *v.* Parker, 227 Ill. 120, 81 N. E. 334.

725. 1. Hanberg *v.* Western Cold Storage Co., 231 Ill. 32, 82 N. E. 842.

2. People *v.* Upham, 221 Ill. 555, 77 N. E. 931; Dye *v.* State, 73 Ohio St. 231, 76 N. E. 829; State *v.* Bare, 60 W. Va. 483, 56 S. E. 390, recognizing the rule but denying the remedy under the facts presented.

Mandamus Held Not the Proper Remedy in the Following Cases. — State *v.* Krumenauer, (Wis. 1908) 115 N. W. 798; State *v.* Florin, (Wis. 1908) 115 N. W. 800; State *v.* Minto, (Wis. 1908) 115 N. W. 801; State *v.* Hine, (Wis. 1908) 115 N. W. 801; State *v.* Berlin, (Wis. 1908) 115 N. W. 801.

3. State *v.* State Board of Equalization, etc., (Neb. 1908) 115 N. W. 789; Briscoe *v.* McMillan, 117 Tenn. 115, 100 S. W. 111, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 725, and quoting the entire text paragraph; Smoky Mountain Land, etc., Co. *v.* Lattimore, (Tenn. 1907) 105 S. W. 1028; State *v.* Johnson, (Wis. 1908) 115 N. W. 801.

4. Hale *v.* Moore, 82 Ark. 75, 100 S. W. 742; Baltimore, etc., R. Co. *v.* Oregon Tp., (Ind. 1908) 84 N. E. 529; Security Sav. Bank *v.* Carroll, 131 Iowa 605, 109 N. W. 212; Morrison *v.* Turnbaugh, 192 Mo. 427, 91 S. W. 152; State *v.* Three States Lumber Co., 198 Mo. 430, 95 S. W. 333; State *v.* Grou, 74 Neb. 850, 105 N. W. 898; State *v.* State Board of Equalization, etc., (Neb. 1908) 115 N. W. 789; Western Union Tel. Co. *v.* Douglas County, (Neb. 1906) 107 N. W. 985; Canaan *v.* Enfield Village Fire Dist., (N. H. 1906) 64 Atl. 725; Smoky Mountain Land, etc., Co. *v.* Lattimore, (Tenn. 1907) 105 S. W. 1028.

726. 2. Orlando *v.* Giles, 51 Fla. 422, 40 So. 834.

3. *Florida.* — Orlando *v.* Giles, 51 Fla. 422, 40 So. 834.

Illinois. — Cummins *v.* Webber, 218 Ill. 521, 75 N. E. 1041.

Iowa. — Lake City Electric Light Co. *v.* McCrary, 132 Iowa 624, 110 N. W. 19; Peterson *v.* Board of Review, (Iowa 1908) 116 N. W. 818.

Kansas. — Finney County *v.* Bullard, (Kan. 1908) 94 Pac. 129.

Kentucky. — Com. *v.* Adams Express Co., (Ky. 1906) 98 S. W. 288.

Maryland. — Consolidated Gas Co. *v.* Baltimore, 105 Md. 43, 65 Atl. 628.

Michigan. — Traverse Beach Assoc. *v.* Elmwood Tp., 142 Mich. 78, 105 N. W. 30; Detroit *v.* Jacobs, 145 Mich. 395, 108 N. W. 671.

Minnesota. — *In re* Payment, etc., 96 Minn. 392, 105 N. W. 276. *Compare* Oakland Cemetery Assoc. *v.* Ramsey County, 98 Minn. 404, 108 N. W. 857.

Mississippi. — Adams *v.* Stonewall Cotton Mills, 89 Miss. 865, 43 So. 65.

Nebraska. — Hall *v.* Moore, 75 Neb. 693, 106 N. W. 785.

New Hampshire. — Canaan *v.* Enfield Village Fire Dist., (N. H. 1906) 64 Atl. 725.

New Jersey. — Flaherty *v.* Atlantic City, 73 N. J. L. 458, 63 Atl. 992.

Virginia. — Johnson *v.* Hampton Normal, etc., Institute, 105 Va. 319, 54 S. E. 31.

West Virginia. — See McLean *v.* State, 61 W. Va. 537, 56 S. E. 884.

Wisconsin. — Milwaukee *v.* Wakefield, (Wis. 1908) 115 N. W. 137.

Wyoming. — Ricketts *v.* Crewdson, 13 Wyo. 284, 79 Pac. 1042, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 718 [726].

Laches a Bar to Relief. — Union Waxed, etc., Paper Co. *v.* Assessors, 73 N. J. L. 374, 63 Atl. 1006.

727. 1. Mt. Sterling Oil, etc., Co. *v.* Ratliff, (Ky. 1907) 104 S. W. 993; Rice *v.* Muskegon, 150 Mich. 679, 114 N. W. 661.

728. 2. *Arizona.* — Wallapai Min., etc., Co. *v.* Territory, 9 Ariz. 373, 84 Pac. 85; Copper Queen Consol. Min. Co. *v.* Territorial Board of Equalization, 9 Ariz. 383, 84 Pac. 511.

Illinois. — Shriver *v.* McGregor, 224 Ill. 397, 79 N. E. 706.

Indiana. — People's Gas, etc., Co. *v.* Harrell, 36 Ind. App. 588, 76 N. E. 318; Baltimore, etc., R. Co. *v.* Oregon Tp., (Ind. 1908) 84 N. E. 529.

Iowa. — See Shirk *v.* Township Board of Review, (Iowa 1908) 114 N. W. 884.

Kentucky. — Louisville Tank Line *v.* Com., (Ky. 1906) 93 S. W. 635; Com. *v.* American Tobacco Co., (Ky. 1906) 96 S. W. 466; Frankfort *v.* Morgan, (Ky. 1908) 110 S. W. 286.

Louisiana. — Iberia Cypress Co. *v.* Thorogson, 116 La. 218, 40 So. 682; Lyons *v.* Assessors, 118 La. 1101, 43 So. 891.

Maryland. — Consolidated Gas Co. *v.* Baltimore, 101 Md. 541, 61 Atl. 532, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 728, as to the presumption in favor of the correctness of assessments, but holding it inapplicable to the case at bar as there had been no assessment.

Massachusetts. — Brooks *v.* West Springfield, 193 Mass. 190, 79 N. E. 337.

Michigan. — Port Huron *v.* Wright, 150 Mich. 279, 114 N. W. 76.

Minnesota. — State *v.* Backus-Brooks Co., 102 Minn. 50, 112 N. W. 863.

Missouri. — State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005.

New York. — People *v.* Wells, 184 N. Y. 275, 77 N. E. 19; People *v.* Feitner, 107 N. Y. App. Div. 267, 95 N. Y. Supp. 10; People *v.* O'Donnell, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 5, 105 N. Y. Supp. 457; People *v.* Summerville, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 300, 107 N. Y. Supp. 575.

Texas. — Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49.

West Virginia. — Hannis Distilling Co. *v.* Berkeley County Ct., (W. Va. 1907) 59 S. E. 1051, 1054.

729. 1. Louisville Tank Line *v.* Com., (Ky. 1906) 93 S. W. 635.

8. Gray *v.* School Inspectors, 231 Ill. 63, 83 N. E. 95.

730. 1. Chassanoil *v.* Assessors, (La. 1908) 45 So. 604; Chassanoil *v.* Assessors, 120 La. 777, 45 So. 604; Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49.

2. O'Keeffe *v.* Somerville, 190 Mass. 110, 76 N. E. 457.

5. The Levy in the Sense of Voting the Tax must be made by the legislative power to which the same is referable and cannot be delegated to administrative officers. Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

731. 4. People *v.* Belleville, etc., R. Co., 232 Ill. 454, 83 N. E. 950; Chesapeake, etc., R. Co. *v.* Com., (Ky. 1908) 111 S. W. 334; Com. *v.* U. S. Fidelity, etc., Co., (Ky. 1905) 89 S. W. 251; Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926; Southern R. Co. *v.* Hamblen County, 115 Tenn. 526, 92 S. W. 238.

Curative Statutes. — Bowyer *v.* People, 220 Ill. 93, 77 N. E. 91.

5. Whedon *v.* Lancaster County, (Neb. 1906) 107 N. W. 1092.

732. 3. Southern R. Co. *v.* Hamblen County, 117 Tenn. 327, 97 S. W. 455, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 732.

6. Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926. See also Chicago, etc., R. Co. *v.* People, 219 Ill. 408, 76 N. E. 571.

733. 1. Holthaus *v.* Adams County, 74 Neb. 861, 105 N. W. 632.

7. See Oregon R., etc., Co. *v.* Umatilla County, 47 Oregon 198, 81 Pac. 352.

8. Absence of Record Not Fatal to the Tax. — Oregon R., etc., Co. *v.* Umatilla County, 47 Oregon 198, 81 Pac. 352.

734. 2. See Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

4. People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N. Y. Supp. 821.

6. Chicago, etc., Co. *v.* People, 225 Ill. 463, 80 N. E. 295.

736. 2. **Lien for Municipal Taxes Exists in Washington.** — State *v.* Mutty, 39 Wash. 624, 82 Pac. 118.

6. *Compare* State *v.* Missouri Pac. R. Co., 75 Neb. 4, 105 N. W. 983.

737. 1. See Couts *v.* Cornell, 147 Cal. 560, 82 Pac. 194.

5. Schiffer *v.* Douglass, 74 Kan. 231, 86 Pac. 132.

6. Amount Must Be Fixed and Determined. — Territory *v.* Perrin, 9 Ariz. 316, 83 Pac. 361.

738. 2. **Washington.** — By statute the lien attaches from the date of assessment, and within the meaning of this statute personalty is assessed when valued by the assessor. Puyallup *v.* Lakin, 45 Wash. 368, 88 Pac. 578; Klickitat Warehouse Co. *v.* Klickitat County, 42 Wash. 299, 84 Pac. 860.

As to when the lien attaches to personalty, see Klickitat Warehouse Co. *v.* Klickitat County, 42 Wash. 299, 84 Pac. 860.

New Jersey. — Maginnis *v.* Rutherford, 73 N. J. L. 287, 63 Atl. 16.

739. 2. People *v.* Michigan Cent. R. Co., 145 Mich. 140, 108 N. W. 772.

4. Spokane County *v.* Annis, 43 Wash. 655, 86 Pac. 1066.

741. 2. **Lien of Mortgage Prior to Tax Lien.** — See Hood *v.* Baker, (Ind. App. 1905) 75 N. E. 608.

742. 6. **Payment in Full Necessary.** — Maginnis *v.* Rutherford, 73 N. J. L. 287, 63 Atl. 16.

743. 3. See Holbrook *v.* Kunz, (Ind. App. 1908) 83 N. E. 730; Whitney *v.* Morton County, 73 Kan. 502, 85 Pac. 530; State *v.* Mutty, 39 Wash. 624, 82 Pac. 118.

744. 1. State Bank *v.* Com., (Ky. 1906) 94 S. W. 620; City Safe Deposit, etc., Co. *v.* Omaha, (Neb. 1907) 112 N. W. 598; Maginnis *v.* Rutherford, 73 N. J. L. 287, 63 Atl. 16. See also Mead *v.* Brewer, (Neb. 1906) 109 N. W. 399.

6. City Safe Deposit, etc., Co. *v.* Omaha, (Neb. 1907) 112 N. W. 598.

745. 1. Philadelphia *v.* Powers, 214 Pa. St. 247, 63 Atl. 602.

5. Webber Lumber Co. *v.* Shaw, 189 Mass. 366, 75 N. E. 640.

6. Southern R. Co. *v.* State, (Ala. 1907) 43 So. 718; Bergerman *v.* Beerbohm, 34 Colo. 118, 81 Pac. 701.

746. 2. Brush *v.* Watson, (Vt. 1908) 69 Atl. 141.

747. 4. See Siers *v.* Wiseman, 58 W. Va. 340, 52 S. E. 460.

6. State *v.* Melton, 62 W. Va. 253, 57 S. E. 729,

7. Cole *v.* Cole, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 124.

8. Magness *v.* Harris, 80 Ark. 583, 98 S. W. 362; Galbaugh *v.* Rouse, (Ky. 1907) 104 S. W. 959.

749. 5. See Magness *v.* Harris, 80 Ark. 583, 98 S. W. 362; Galbaugh *v.* Rouse, (Ky.

1907) 104 S. W. 959; Cole *v.* Cole, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 124; Stone *v.* Tilley, (Tex. 1907) 101 S. W. 201.

750. 1. Spokane *v.* Security Sav. Soc., (Wash. 1907) 89 Pac. 466.

2. Mitchell *v.* Danielson, 38 Colo. 63, 89 Pac. 823; Hubbard *v.* Blanchard, 113 N. Y. App. Div. 788, 99 N. Y. Supp. 262; Jones *v.* Black, (Okla. 1907) 90 Pac. 422, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 750, in dissenting opinion.

4. Stringer *v.* Holley, (Tex. Civ. App. 1907) 105 S. W. 1146.

751. 6. **Credit on Account Not Payment.** — Figures *v.* State, (Tex. Civ. App. 1907) 99 S. W. 412.

752. 1. State *v.* Melton, 62 W. Va. 253, 57 S. E. 729.

2. Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49; State *v.* Bare, 60 W. Va. 483, 56 S. E. 390, recognizing the rule but denying the remedy under the facts presented.

4. Keys *v.* Fink, (Neb. 1908) 116 N. W. 162; Welb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

753. 1. Johnson *v.* Pinson, 127 Ga. 144, 56 S. E. 238, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 752 [753].

Receipt Obtained by Fraud. — Harris *v.* Stearns, (S. Dak. 1906) 108 N. W. 247.

2. King *v.* Lane, (S. Dak. 1906) 110 N. W. 37.

3. **Contra.** — Chastang *v.* Chastang, 141 Ala. 451, 37 So. 799.

4. Stevenson *v.* Reed, (Miss. 1907) 43 So. 433; Squire *v.* McCarthy, (Neb. 1907) 112 N. W. 327; Jordan *v.* Brown, (Tex. Civ. App. 1906) 94 S. W. 398.

6. Towry *v.* Wax, (Miss. 1906) 42 So. 536; Keys *v.* Fink, (Neb. 1908) 116 N. W. 162.

7a. **Possession of a Tax Deed** raises a presumption that taxes to be paid as a condition precedent to the execution of the deed were paid. Day *v.* Smith, 87 Miss. 395, 39 So. 526.

9. State *v.* Jackson, 56 W. Va. 558, 49 S. E. 465, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

14. Nyce *v.* Schmoll, (Ind. App. 1907) 82 N. E. 539.

Payment under Mistake Extinguishes Tax. — Hurd *v.* Melrose, 191 Mass. 576, 78 N. E. 302.

Partial Payment — Effect on Interest. — Com. *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 267.

754. 3. Pickler *v.* State, (Ala. 1907) 42 So. 1018; Com. *v.* Chicago, etc., R. Co., (Ky. 1907) 105 S. W. 127.

4. Bee *v.* Barnes, (C. C. A.) 149 Fed. 727; Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21; Glos *v.* Shedd, 218 Ill. 209, 75 N. E. 887; Lisso *v.* Giddens, 117 La. 507, 41 So. 1029; Bernstine *v.* Leeper, 118 La. 1098, 43 So. 889; Honor *v.* Fellman, 119 La. 1061, 44 So. 887; Page *v.* Kidd, (La. 1908) 46 So. 35; Trellien Cypress Lumber Co. *v.* Albert Hansen Lumber Co., (La. 1908) 46 So. 699; Trexler *v.* Africa, 27 Pa. Super. Ct. 385; Snodgrass *v.* Jolliff, 59 W. Va. 292, 53 S. E. 151.

755. 3. See State *v.* Several Parcels of Land, (Neb. 1907) 114 N. W. 283.

4. Hayward *v.* O'Connor, 145 Mich. 52, 108 N. W. 366; Bullock *v.* Wallace, (Wash. 1907) 92 Pac. 675, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 755; Taylor *v.* Debritz, (Wash. 1908) 93 Pac. 528, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 755; Loving *v.* McPhail, (Wash. 1907) 92 Pac. 944.

5. Taylor *v.* Debritz, (Wash. 1908) 93 Pac. 5[illegible].

756. 2. Trexler *v.* Africa, 27 Pa. Super. Ct. 385.

3. Schiffer *v.* Douglass, 74 Kan. 231, 86 Pac. 132; Bullock *v.* Auditor Gen., 142 Mich. 122, 105 N. W. 542.

9. People *v.* Erie County, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 200, 99 N. Y. Supp. 1062; State Nat. Bank *v.* Memphis, 116 Tenn. 641, 94 S. W. 606. See also Walla Walla County *v.* Oregon R., etc., Co., 40 Wash. 398, 82 Pac. 716.

Interest Allowed. — People *v.* Board of Education, (Supm. Ct. App. Div.) 110 N. Y. Supp. 769; People *v.* Kelsey, 114 N. Y. App. Div. 319, 99 N. Y. Supp. 852.

757. 1. Scott *v.* Ford, 45 Oregon 531, 78 Pac. 742, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758 [757].

3. Wheeler *v.* Plumas County, 149 Cal. 782, 87 Pac. 802, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 757; Warren *v.* San Francisco, 150 Cal. 167, 88 Pac. 712; Mitchell *v.* Danielson, 38 Colo. 63, 89 Pac. 823; Morris *v.* New Haven, 78 Conn. 673, 63 Atl. 123; Baltimore, etc., R. Co. *v.* Oregon Tp., (Ind. App. 1907) 81 N. E. 105; Nyce *v.* Schmoll, (Ind. App. 1907) 82 N. E. 539; Stevens *v.* Carroll, 130 Iowa 463, 104 N. W. 433; Traverse Beach Assoc. *v.* Elmwood Tp., 142 Mich. 78, 105 N. W. 30; Lingle *v.* Elmwood Tp., 142 Mich. 194, 105 N. W. 604; Hethcock *v.* Crawford County, 200 Mo. 170, 98 S. W. 582; Kansas City *v.* Holmes, (Mo. App. 1907) 106 S. W. 559; Scott *v.* Ford, 45 Oregon 531, 78 Pac. 742, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 757; Eugene *v.* Lane County, (Oregon 1908) 93 Pac. 255; Matteson *v.* Warwick, etc., Water Co., (R. I. 1908) 68 Atl. 577; Nashville, etc., R. Co. *v.* Marion County, (Tenn. 1908) 108 S. W. 1058. See also First Nat. Bank *v.* Christian County, (Ky. 1908) 106 S. W. 831.

Voluntary Payments Recoverable by Statute. — People *v.* Board of Education, (Supm. Ct. App. Div.) 110 N. Y. Supp. 769.

758. 1. Seattle Brewing, etc., Co. *v.* Campbell, 17 Hawaii 364, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 757 [758]; Herold *v.* Kahn, (C. C. A.) 159 Fed. 608; Wheeler *v.* Plumas County, 149 Cal. 782, 87 Pac. 802, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758; Denver *v.* Evans, 35 Colo. 490, 84 Pac. 65; Cook County *v.* Fairbank, 222 Ill. 578, 78 N. E. 895; Douglas County *v.* Lane, (Kan. 1907) 90 Pac. 1092, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 758; Atchison, etc., R. Co. *v.* Sumner County, 76 Kan. 618, 92 Pac. 590; Guaranty Trust Co. *v.* New York, 108 N. Y. App. Div. 192, 95 N. Y. Supp. 770; Eugene *v.* Lane County, (Oregon 1908) 93 Pac. 255; Nashville, etc., R. Co. *v.* Marion County, (Tenn. 1908) 108 S. W. 1058; A. H. Stange Co. *v.* Merrill, (Wis. 1908) 115 N. W. 115; Jackson County *v.* Kaul, (Kan. 1908) 96 Pac. 45; Com. *v.* Boske, (Ky. 1907) 99 S. W. 316; Betz *v.* New York, 119 N. Y. App. Div.

91, 103 N. Y. Supp. 886 (payment under mistake of fact). *Compare* William Ede Co. *v.* Heywood, (Cal. 1908) 96 Pac. 81.

759. 1. Steele *v.* San Luis Obispo County, (Cal. 1908) 93 Pac. 1020; Steele *v.* Kelshaw, (Cal. 1908) 93 Pac. 1021; Douglas County *v.* Lane, (Kan. 1907) 90 Pac. 1092, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 759; Godkin *v.* Doyle Tp., 143 Mich. 236, 106 N. W. 882; Eugene *v.* Lane County, (Oregon 1908) 93 Pac. 255; Nashville, etc., R. Co. *v.* Marion County, (Tenn. 1908) 108 S. W. 1058; Phoebus *v.* Manhattan Social Club, 105 Va. 144, 52 S. E. 839; A. H. Stange Co. *v.* Merrill, (Wis. 1908) 115 N. W. 115.

4. Phoebus *v.* Manhattan Social Club, 105 Va. 144, 52 S. E. 839.

760. 6. Kahn *v.* Herold, 147 Fed. 575, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 760; Southern R. Co. *v.* Florence, 141 Ala. 493, 37 So. 844, *quoting* 27 Am. and Eng. Encyc. of Law (2d ed.) 760; Morris *v.* New Haven, 78 Conn. 673, 63 Atl. 123; Lingle *v.* Elmwood Tp., 142 Mich. 194, 105 N. W. 604; Guaranty Trust Co. *v.* New York, 108 N. Y. App. Div. 192, 95 N. Y. Supp. 770; State Nat. Bank *v.* Memphis, 116 Tenn. 641, 94 S. W. 606; Phoebus *v.* Manhattan Social Club, 105 Va. 144, 52 S. E. 839, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 760. *Compare* Chicago, etc., R. Co. *v.* Rhein, (Iowa 1907) 112 N. W. 823.

761. 1. Herold *v.* Kahn, (C. C. A.) 159 Fed. 608.

4. Oakland Cemetery Assoc. *v.* Ramsey County, 98 Minn. 404, 108 N. W. 857.

762. 6. Phoebus *v.* Manhattan Social Club, 105 Va. 144, 52 S. E. 839, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 762.

763. 1. Morris *v.* New Haven, 78 Conn. 673, 63 Atl. 123; Oakland Cemetery Assoc. *v.* Ramsey County, 98 Minn. 404, 108 N. W. 857; Nashville, etc., R. Co. *v.* Marion County, (Tenn. 1908) 108 S. W. 1058. *Compare* Herold *v.* Kahn, (C. C. A.) 159 Fed. 608.

2. See Rice *v.* Muskegon, 150 Mich. 679, 114 N. W. 661.

Presentation of Claim. — Farmers', etc., Bank *v.* Los Angeles, 151 Cal. 655, 91 Pac. 795.

Michigan — *Burden of Proof.* — See Ward *v.* Echo Tp., 145 Mich. 56, 108 N. W. 364.

764. 3. Kahn *v.* Herold, 147 Fed. 575.

6. See Miller *v.* Kern County, 150 Cal. 797, 90 Pac. 119; Kern Valley Water Co. *v.* Kern County, 150 Cal. 801, 90 Pac. 121.

Contra. — Jackson County *v.* Kaul, (Kan. 1908) 96 Pac. 45.

765. 5. State *v.* Fry, (Kan. 1908) 95 Pac. 392; Blackwell *v.* Lewis, (Ky. 1906) 93 S. W. 40.

7. See Com. *v.* Topper, (Pa. 1908) 68 Atl. 666.

766. 1. Com. *v.* Wade, (Ky. 1907) 104 S. W. 965.

4. Blackwell *v.* Lewis, (Ky. 1906) 93 S. W. 40.

9. Massie *v.* Harrison County, 129 Iowa 277, 105 N. W. 507; Barrineau *v.* Stevens, 75 S. Car. 252, 55 S. E. 309.

768. 8. Briggs *v.* Carr, 27 R. I. 477, 63 Atl. 487.

769. 12. Briggs *v.* Carr, 27 R. I. 477, 63 Atl. 487.

13. Russell *v.* Robinson, (Ala. 1907) 44 So. 1040.

770. 6. Platte Valley Milling Co. *v.* Malnesten, (Neb. 1908) 116 N. W. 962; Cadman *v.* Smith, 15 Okla. 633, 85 Pac. 346.

7. Platte Valley Milling Co. *v.* Malnesten, (Neb. 1908) 116 N. W. 962.

771. 5. **Warrant Must Be under Seal.** — Rochester *v.* Bloss, 185 N. Y. 42, 77 N. E. 794.

772. 5. Vickers *v.* Hawkins, 128 Ga. 794, 58 S. E. 44.

8. Amherst College *v.* Assessors, 193 Ill. 168, 79 N. E. 248.

12. Vickers *v.* Hawkins, 128 Ga. 794, 58 S. E. 44.

774. 1. Magness *v.* Harris, 80 Ark. 583, 98 S. W. 362; Townsend *v.* Penrose, 84 Ark. 316, 105 S. W. 588; Boyd *v.* Gardner, 84 Ark. 567, 106 S. W. 942; Metz *v.* Starcher, 60 W. Va. 657, 56 S. E. 196; Devine *v.* Wilson, (W. Va. 1908) 60 S. E. 351.

3. See Hogan *v.* Piggott, 60 W. Va. 541, 56 S. E. 189.

4. See Multnomah County *v.* Portland Cracker Co., (Oregon 1907) 90 Pac. 155.

10. Irregularities Held Not Fatal. — Sawyer *v.* Wilson, 81 Ark. 319, 99 S. W. 389.

12. People *v.* International Salt Co., 233 Ill. 223, 84 N. E. 278; Watkins *v.* Couch, 134 Iowa 1, 111 N. W. 315; Duerr *v.* Snodgrass, 58 W. Va. 472, 52 S. E. 531.

775. 4. **Presumption that Officers Did Their Duty.** — Davis *v.* Pacific Imp. Co., (Cal. App. 1908) 94 Pac. 595.

5. Devine *v.* Wilson, (W. Va. 1908) 60 S. E. 351.

6. Hogan *v.* Piggott, 60 W. Va. 541, 56 S. E. 189.

Under the Arkansas Statute recording is unnecessary to the validity of the affidavit, and it lost the general rule as to proving the contents of a lost or destroyed instrument applies. Brasch *v.* Western Tie, etc., Co., 80 Ark. 425, 97 S. W. 445.

7. Earle Imp. Co. *v.* Chatfield, 81 Ark. 296, 99 S. W. 84; Metz *v.* Starcher, 60 W. Va. 657, 56 S. E. 196. See also Holcomb *v.* Johnson, 43 Wash. 362, 86 Pac. 409.

Absence of Signature Not Fatal. — Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884.

9. People *v.* St. Louis, etc., R. Co., 230 Ill. 61, 82 N. E. 305; Metz *v.* Starcher, 60 W. Va. 657, 56 S. E. 196.

776. 4. See Woodward County *v.* Smith, 18 Okla. 132, 89 Pac. 1121.

Under the Oklahoma Statute the treasurer is the sole judge as to what newspaper shall publish the list. Logan County *v.* State Capital Co., 16 Okla. 625, 86 Pac. 518.

5. Holmes *v.* Loughren, 97 Minn. 83, 105 N. W. 558.

9. Sawyer *v.* Wilson, 81 Ark. 319, 99 S. W. 389.

11. Earle Imp. Co. *v.* Chatfield, 81 Ark. 296, 99 S. W. 84.

Sufficiency of Certificate. — Cook *v.* Ziff Colored Masonic Lodge No. 119, 80 Ark. 31, 96 S. W. 618; Cook *v.* Hunter, 80 Ark. 617, 96 S. W. 620; Cook *v.* Slay, 80 Ark. 617, 96 S. W. 620; Cook *v.* Williams, 80 Ark. 617, 96 S. W. 622.

777. 1. Cook *v.* Ziff Colored Masonic Lodge No. 119, 80 Ark. 31, 96 S. W. 618; Cook *v.* Hunter, 80 Ark. 617, 96 S. W. 620; Cook *v.* Slay, 80 Ark. 617, 96 S. W. 620; Cook *v.* Williams, 80 Ark. 617, 96 S. W. 622; Birch *v.* Walworth, 79 Ark. 580, 96 S. W. 140.

3. See Rogers *v.* Gookin, (Mass. 1908) 85 N. E. 405.

4. Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52, *affirming* 124 Ga. 596, 53 S. E. 251; People *v.* Chicago, etc., R. Co., 228 Ill. 102, 81 N. E. 813; Louisville, etc., R. Co. *v.* Com., (Ky. 1906) 94 S. W. 655; Com. *v.* Louisville, etc., R. Co., (Ky. 1907) 104 S. W. 267; Rochester *v.* Bloss, 185 N. Y. 42, 77 N. E. 794, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 777.

5. Rochester *v.* Bloss, 185 N. Y. 42, 77 N. E. 794, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 777.

6. Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52, *affirming* 124 Ga. 596, 53 S. E. 251; Louisville, etc., R. Co. *v.* Com., (Ky. 1906) 94 S. W. 655; State *v.* Baltimore, 105 Md. 1, 65 Atl. 369.

778. 2. Carpenter *v.* Lambert, (Ky. 1906) 92 S. W. 607; Louisville, etc., R. Co. *v.* Com., (Ky. 1906) 94 S. W. 655; Illinois Cent. R. Co. *v.* Com., (Ky. 1906) 98 S. W. 1008; Kentucky Union Co. *v.* Com., (Ky. 1908) 108 S. W. 931.

8. Victoria Lumber Co. *v.* Rives, 115 La. 996, 40 So. 382.

11. State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

779. 5. See Nicol *v.* Sherman, (S. Dak. 1907) 110 N. W. 777.

9. **Penalty Held Excessive.** — State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

780. 4. Houston *v.* Stewart, (Tex. Civ. App. 1905) 90 S. W. 49.

782. 8. Waterbury *v.* O'Loughlin, 79 Conn. 630, 66 Atl. 173; State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 515; State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 522.

Action at Law Not Maintainable Except by Statute. — Shearer *v.* Citizen's Bank, 129 Iowa 564, 105 N. W. 1025.

9. See State *v.* Baltimore, 105 Md. 1, 65 Atl. 369.

783. 3. See Trewin *v.* Shurts, (N. J. 1907) 65 Atl. 984.

4. Mitchell *v.* Minnequa Town Co., (Colo. 1907) 92 Pac. 678.

9. Rochester *v.* Bloss, 185 N. Y. 42, 77 N. E. 794.

784. 1. Rochester *v.* Bloss, 185 N. Y. 42, 77 N. E. 794.

5. Southern R. Co. *v.* State, (Ala. 1907) 43 So. 718.

785. 4. Bergerman *v.* Beerbohm, 34 Colo. 118, 81 Pac. 701.

786. 1. Thompson *v.* Com., (Ky. 1906) 94 S. W. 654.

2. Los Angeles *v.* Glassell, 4 Cal. App. 43, 87 Pac. 241.

3. Thompson *v.* Com., (Ky. 1906) 94 S. W. 654.

787. 2. Waterbury *v.* O'Loughlin, 79 Conn. 630, 66 Atl. 173; Shearer *v.* Citizens' Bank, 129 Iowa 564, 105 N. W. 1025. See West *v.* State, 168 Ind. 77, 79 N. E. 361.

788. 5. See Allen *v.* Ramsey County, 98 Minn. 341, 108 N. W. 301.

6. Illinois Cent. R. Co. *v.* Com., (Ky. 1908) 108 S. W. 245; Chesapeake, etc., R. Co. *v.* Com., (Ky. 1908) 108 S. W. 248.

9. Illinois Cent. R. Co. *v.* Com., (Ky. 1908) 108 S. W. 245; Chesapeake, etc., R. Co. *v.* Com., (Ky. 1908) 108 S. W. 248; State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 515; State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 522.

791. 10. **Whiskey in United States Warehouse.** — Thompson *v.* Com., (Ky. 1906) 94 S. W. 654.

795. 7. Godkin *v.* Corliss, 146 Mich. 507, 109 N. W. 855.

797. 6. Craig *v.* Boone, 146 Cal. 718, 81 Pac. 22; Godkin *v.* Corliss, 146 Mich. 507, 109 N. W. 855.

8. Moore *v.* Rogers, (Tex. 1907) 99 S. W. 1023.

798. 1. Florida Packing, etc., Co. *v.* Carney, 51 Fla. 190, 41 So. 190.

9. See Brookfield *v.* Bigelow, (Vt. 1908) 68 Atl. 656.

11. See Harris *v.* Stearns, (S. Dak. 1906) 108 N. W. 247, *reversing* 17 S. Dak. 439, 97 N. W. 361.

799. 7. **Collector Treated as Trustee.** — Hill *v.* Flemming, (Ky. 1908) 107 S. W. 764.

800. 5. Hill *v.* Flemming, (Ky. 1908) 107 S. W. 764; Adams *v.* Saunders, 89 Miss. 784, 42 So. 602, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 800.

11. Davis *v.* Com., (Ky. 1908) 107 S. W. 306.

801. 4. Adams *v.* Saunders, 89 Miss. 784, 42 So. 602, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 801.

804. 7. Davis *v.* Com., (Ky. 1908) 107 S. W. 306.

8. See Nottoway County *v.* Powell, 106 Va. 751, 56 S. E. 812.

805. 10. **Additional Bond.** — Wheeler County *v.* Keeton, (Oregon 1908) 95 Pac. 819.

806. 13. **Void Levy — Sureties Not Liable.** — Com. *v.* U. S. Fidelity, etc., Co., (Ky. 1905) 89 S. W. 251.

809. 5. Adams *v.* Saunders, (Miss. 1908) 46 So. 960.

810. 10. Com. *v.* Perrego, 218 Pa. St. 314, 67 Atl. 621.

812. 4. Alameda County *v.* Dalton, 148 Cal. 246, 82 Pac. 1050; Clinton County *v.* Given, (Ind. 1907) 82 N. E. 918; Massie *v.* Harrison County, 129 Iowa 277, 105 N. W. 507; State *v.* Stedman, 141 N. Car. 448, 54 S. E. 269.

813. 2. **No Allowance for Attorneys' Fees.** — John *v.* Dallas County, 146 Ala. 593, 40 So. 962; Spalding *v.* Thornbury, (Ky. 1907) 103 S. W. 291.

Treasurers of Cities of Certain Class Not Entitled to Compensation. — Truelove *v.* Washington, (Ind. 1907) 82 N. E. 530.

11. See Sandoval *v.* Bernalillo County, 13 N. Mex. 537, 86 Pac. 427.

12. See Massie *v.* Harrison County, 129 Iowa 277, 105 N. W. 507.

814. 4. **Where a Collector,** under a mistake of law, fails to deduct his commissions when paying money, collected for taxes, over

to the county treasurer, he may not thereafter recover the commissions. Hethcock *v.* Crawford County, 200 Mo. 170, 98 S. W. 582.

816. 5. Scott, etc., Mercantile Co. *v.* Nelson County, 14 N. Dak. 407, 104 N. W. 528.

Sale under Repealed Statute Void. — Matter of McIntyre, 124 N. Y. App. Div. 66, 108 N. Y. Supp. 242.

7. Preston *v.* Hirsch, 5 Cal. App. 485, 90 Pac. 965; Baker *v.* Webber, 102 Me. 414, 67 Atl. 144; Williams *v.* Bowers, (Mass. 1908) 84 N. E. 317; Rush *v.* Lewis and Clark County, (Mont. 1908) 93 Pac. 943; Barrineau . Stevens, 75 S. Car. 252, 55 S. E. 309; Schaffer *v.* Davidson, (Tex. Civ. App. 1906) 97 S. W. 858; Keenan *v.* Slaughter, (Tex. Civ. App. 1908) 108 S. W. 703; Tremmel *v.* Mess, (Wash. 1907) 89 Pac. 487; Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484; Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884.

817. 1. See Mint Realty Co. *v.* Philadelphia, 218 Pa. St. 104, 66 Atl. 1130.

Rights of Parties Governed by Law in Force at Time of Sale. — Lawton *v.* Barker, (Minn. 1908) 117 N. W. 249.

Invalid Sale. — See Raquette Falls Land Co. *v.* Hoyt, 109 N. Y. App. Div. 119, 95 N. Y. Supp. 1029.

817. 8. See Moyer *v.* Foss, 41 Wash. 130, 83 Pac. 12.

Demand Necessary. — Norris *v.* Delaware, etc., R. Co., 218 Pa. St. 88, 66 Atl. 1122.

818. 2. Howell *v.* Miller, 88 Miss. 655, 42 So. 129.

Property under Administration May Be Sold. — Soniat *v.* Donovan, 118 La. 847, 43 So. 562.

3. Henry *v.* Brannan, (Ala. 1906) 42 So. 995; Richard *v.* Perrodin, 116 La. 440, 40 So. 789; Edwards *v.* Butler, 89 Miss. 179, 42 So. 381. See also Hill *v.* Williams, 104 Md. 595, 65 Atl. 413.

6. Starr *v.* Shepard, 145 Mich. 302, 108 N. W. 709; Ulrich *v.* Matika, 30 Pa. Super. Ct. 110; Johnson *v.* Jones, 72 S. Car. 270, 51 S. E. 805.

819. 2. Starr *v.* Shepard, 145 Mich. 302, 108 N. W. 709; Johnson *v.* Jones, 72 S. Car. 270, 51 S. E. 805.

820. 1. Brush *v.* Watson, (Vt. 1908) 69 Atl. 141.

4. Albring *v.* Petronio, 44 Wash. 132, 87 Pac. 49.

821. 1. Crebs *v.* Fowler, (Ala. 1906) 42 So. 553; Lisso *v.* Giddens, 117 La. 507, 41 So. 1029; Bartley *v.* Sallier, 118 La. 93, 42 So. 657; *In re* Sheehy, 119 La. 608, 44 So. 315; Eames *v.* Woodson, (La. 1908) 46 So. 13; Matthews *v.* Fry, 141 N. Car. 582, 54 S. E. 379.

2. Lambert *v.* Shumway, 36 Colo. 350, 85 Pac. 89; Ropes *v.* Minshew, 51 Fla. 299, 41 So. 538; Burkham *v.* Manewal, 195 Mo. 500, 94 S. W. 520; Matthews *v.* Fry, 141 N. Car. 582, 54 S. E. 379; Cadman *v.* Smith, 15 Okla. 633, 85 Pac. 346; Anderson *v.* Turati, 39 Wash. 155, 81 Pac. 557; Rogers *v.* Moore, (Tex. Civ. App. 1906) 94 S. W. 113.

3. See Lemoore Bank *v.* Fulgham, 151 Cal. 234, 90 Pac. 936.

8. Rogers *v.* Moore, (Tex. 1906) 97 S. W. 685.

822. 1. **Remaindermen.** — McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997.

7. **Statement of Taxes, Costs, Penalties, and Expenses Not Necessary.** — Chapman *v.* Zobelein, (Cal. 1907) 92 Pac. 188.

8. Hurd *v.* Melrose, 191 Mass. 576, 78 N. E. 102.

823. 2. **Omission of Dollar Signs Not Fatal.** — Bandow *v.* Wolven, (S. Dak. 1906) 107 N. W. 204.

7. Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21; Buckner *v.* Sugg, 79 Ark. 442, 96 S. W. 184; Foohs *v.* Bilby, 83 Ark. 234, 103 S. W. 386; Best *v.* Wohlford, (Cal. 1908) 94 Pac. 98; Williams *v.* Bowers, (Mass. 1908) 84 N. E. 317; Tucker *v.* Van Winkle, 142 Mich. 210, 105 N. W. 607; People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N. Y. Supp. 821; State Finance Co. *v.* Mulberger, (N. Dak. 1907) 112 N. W. 986; Norris *v.* Delaware, etc., R. Co., 218 Pa. St. 88, 66 Atl. 1122; Welch *v.* Beacon Place Co., (Wash. 1908) 93 Pac. 923.

Insufficient Description. — Stough *v.* Reeves, (Colo. 1908) 95 Pac. 958.

825. 1. Buckner *v.* Sugg, 79 Ark. 442, 96 S. W. 184; Kruse *v.* Fairchild, 73 Kan. 308, 85 Pac. 303, states the rule but holds the description, in question, insufficient; Douglass *v.* Leavenworth County, 75 Kan. 6, 88 Pac. 557; Shelly *v.* Friedrichs, 117 La. 679, 42 So. 218; Hill *v.* Williams, 104 Md. 595, 65 Atl. 413; Hayward *v.* O'Connor, 145 Mich. 52, 108 N. W. 366; Bandon *v.* Wolven, (S. Dak. 1906) 107 N. W. 204.

2. But see Douglass *v.* Leavenworth County, 75 Kan. 6, 88 Pac. 557.

Description Aided by Inquiry. — Douglass *v.* Leavenworth County, 75 Kan. 6, 88 Pac. 557.

3. Shelly *v.* Friedrichs, 117 La. 679, 42 So. 218.

4. **Use of Initials Instead of Full Name Invalidates Sale.** — Burkham *v.* Manewal, 195 Mo. 500, 94 S. W. 520.

Inaccuracy in Name — Sale Voidable Only. — Moore *v.* Rogers, (Tex. 1907) 99 S. W. 1023.

826. 1. Bowden *v.* Patterson, (Tex. Civ. App. 1908) 111 S. W. 182; Jones *v.* Beale, 217 Pa. St. 182, 66 Atl. 254. See also Jackson *v.* Mason, 143 Mich. 555, 106 N. W. 1112.

2. *In re* Troy Press Co., 115 N. Y. App. Div. 25, 100 N. Y. Supp. 516; Van Ostrand *v.* Cole, 131 Wis. 446, 110 N. W. 891.

3. Morton *v.* Horton, 189 N. Y. 398, 82 N. E. 429.

6. Buckingham *v.* Negrotto, 116 La. 737, 41 So. 54; Bandow *v.* Wolven, (S. Dak. 1906) 107 N. W. 204.

828. 7. Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609.

829. 1. Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609.

3. See Hobbs *v.* Scott, 122 N. Y. App. Div. 399, 106 N. Y. Supp. 836.

4. Lambert *v.* Shumway, 36 Colo. 350, 85 Pac. 89; Mitchell *v.* Knott, (Colo. 1908) 95 Pac. 335.

830. 1. Ross *v.* Royal, 77 Ark. 324, 91 S. W. 178; Keenan *v.* Slaughter, (Tex. Civ. App.

1908) 108 S. W. 703; McLemore *v.* Anderson, (Miss. 1907) 43 So. 878; Kennedy *v.* Sanders, (Miss. 1907) 43 So. 913; Rucker *v.* Hyde, 118 Tenn. 358, 100 S. W. 739.

2. Glos *v.* Ault, 221 Ill. 562, 77 N. E. 939.

3. See Younger *v.* Meadows, (W. Va. 1907) 59 S. E. 1087.

831. 2. Keenan *v.* Slaughter, (Tex. Civ. App. 1908) 108 S. W. 703.

4. Baker *v.* Webber, 102 Me. 414, 67 Atl. 144.

5. Voorhees *v.* Anglesea, (N. J. 1907) 65 Atl. 838.

7. Stark *v.* Cummings, 127 Ga. 107, 56 S. E. 130; Husbands *v.* Polivick, (Ky. 1906) 96 S. W. 825. See also Bonner *v.* Board of Directors, 77 Ark. 519, 92 S. W. 1124.

Entire Tract Sold — Presumption of Necessity. — Duer *v.* Snodgrass, 58 W. Va. 472, 52 S. E. 531.

832. 1. Stark *v.* Cummings, 127 Ga. 107, 56 S. E. 130; Brush *v.* Watson, (Vt. 1908) 69 Atl. 141.

6. La Cotts *v.* Quertermous, 83 Ark. 174, 103 S. W. 182; Worden *v.* Cole, 74 Kan. 226, 86 Pac. 464; Morris *v.* Myer, 87 Miss. 701, 40 So. 231; North Real Estate Loan, etc., Co. *v.* Billings L. & T. Co., (Mont. 1907) 93 Pac. 40; People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N. Y. Supp. 821; Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778; Younger *v.* Meadows, (W. Va. 1907) 59 S. E. 1087.

833. 1. Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778.

4. State *v.* Elliott, 114 Mo. App. 562, 90 S. W. 122. See Roberts *v.* Welsh, 192 Mass. 278, 78 N. E. 408.

834. 1. State *v.* Elliott, 114 Mo. App. 562, 90 S. W. 122.

3. People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N. Y. Supp. 821.

835. 1. Stevenson *v.* Reed, (Miss. 1907) 43 So. 433.

5. Crebs *v.* Fowler, (Ala. 1906) 42 So. 553; Olson *v.* Cash, 98 Minn. 4, 107 N. W. 557.

Fees Properly Included. — Sibly *v.* Cason, (Ark. 1908) 109 S. W. 1007.

6. State *v.* Elliott, 114 Mo. App. 562, 90 S. W. 122.

837. 2. Sibly *v.* Thomas, (Ark. 1908) 112 S. W. 210; Brasch *v.* Western Tie, etc., Co., 80 Ark. 425, 97 S. W. 445.

838. 1. Bandow *v.* Wolven, (S. Dak. 1906) 107 N. W. 204.

841. 3. See Chapman *v.* Zobelein, (Cal. 1907) 92 Pac. 188.

4. Fox *v.* Wright, (Cal. 1907) 91 Pac. 1005.

5. **Owner Not Known.** — State *v.* Wilson, (Md. 1908) 68 Atl. 609.

7. State *v.* Wilson, (Md. 1908) 68 Atl. 609.

8. See Collier *v.* Goessling, (C. C. A.) 160 Fed. 604.

842. 1. **Absence of Record Invalidates Sale.** — Townsend *v.* Penrose, 84 Ark. 316, 105 S. W. 588.

3. **Sufficiency of Description.** — Husbands *v.* Polvick, (Ky. 1906) 96 S. W. 825; Duerr *v.* Snodgrass, 58 W. Va. 472, 52 S. E. 531.

5. **Contra.** — Duerr *v.* Snodgrass, 58 W. Va. 472, 52 S. E. 531.

843. 4. **Confirmation by County Commissioners.** — Phillips *v.* Welts, 40 Wash. 501, 82 Pac. 737.

As to the sufficiency of the notice, see Jackson *v.* Mason, 143 Mich. 555, 106 N. W. 1112.

7. Boynton *v.* Ashabranner, 75 Ark. 415, 91 S. W. 20.

8. *In re* Sheehy, 119 La. 608, 44 So. 315.

844. 2. Flannigan *v.* Chapman, etc., Land Co., (C. C. A.) 144 Fed. 371; Boynton *v.* Ashabranner, 75 Ark. 415, 91 S. W. 20; Updegraff *v.* Marked Tree Lumber Co., 83 Ark. 154, 103 S. W. 606; Schnitger *v.* Rankin, 192 Mo. 35, 91 S. W. 122; Rogers *v.* Moore, (Tex. Civ. App. 1906) 94 S. W. 113.

Irregularities Cured by Confirmation. — Gavin *v.* Ashworth, 77 Ark. 242, 91 S. W. 303; St. Louis, etc., R. Co. *v.* Greeson, 81 Ark. 170, 98 S. W. 728.

5. McCraney *v.* Glos, 222 Ill. 628, 78 N. E. 921.

6. Lamoore Bank *v.* Fulgham, 151 Cal. 234, 90 Pac. 936; Hart *v.* Murdock, (Neb. 1907) 114 N. W. 268; Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322.

9. Rochester *v.* Rochester R. Co., 109 N. Y. App. Div. 638, 96 N. Y. Supp. 152; Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778.

845. 1. Grant *v.* Cornell, 147 Cal. 565, 82 Pac. 193; Rochester *v.* Rochester R. Co., 109 N. Y. App. Div. 638, 96 N. Y. Supp. 152; Cowles *v.* Adams, (Neb. 1907) 110 N. W. 697; Mind *v.* Myers, 15 N. Dak. 400, 109 N. W. 335; State Finance Co. *v.* Beck, 15 N. Dak. 374, 109 N. W. 357; Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778.

Void Certificate Not Evidence. — State Finance Co. *v.* Mulberger, (N. Dak. 1907) 112 N. W. 986.

4. See Younger *v.* Meadows, (W. Va. 1907) 59 S. E. 1087.

5. See McLeod *v.* Mattson, 99 Minn. 46, 108 N. W. 290; Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778.

8. Lincoln Mortg., etc., Co. *v.* Davis, 76 Kan. 639, 92 Pac. 707; State *v.* Fink, 74 Neb. 641, 104 N. W. 1059.

847. 6. Kentucky Union Co. *v.* Com., (Ky. 1908) 108 S. W. 931.

7. Kentucky Union Co. *v.* Com., (Ky. 1908) 108 S. W. 931; Eastern Kentucky Coal Lands Corp *v.* Com., (Ky. 1908) 111 S. W. 362.

848. 2. Baker *v.* Webber, 102 Me. 414, 67 Atl. 144; Webb *v.* Ritter, 60 W. Va. 193, 54 S. E. 484.

850. 6. Teich *v.* Arms, 5 Cal. App. 475, 90 Pac. 962; Bennett *v.* Southern Pine Co., 123 Ga 618, 51 S. E. 654; Davidson *v.* J. P. Cattle Co., 76 Kan. 462, 92 Pac. 705; Stein *v.* Hanson, 99 Minn. 387, 109 N. W. 821; Rainey *v.* Lamb Hardwood Lumber Co., (Miss. 1908) 45 So. 367.

The Legislature Cannot, after a Tax Sale, lawfully amend the law so as to provide new and more onerous conditions to the right to redeem than those which existed when the sale was made. Johnson *v.* Taylor, 150 Cal. 201, 88 Pac. 904.

10. Elrod *v.* Owensboro Wagon Co., 128 Ga. 361, 57 S. E. 712.

851. 6. Bentley *v.* Cavallier, (La. 1908) 46

So. 101; Chandler *v.* Clark, (Mich. 1908) 115 N. W. 65; Rosenblum *v.* Eisenberg, 123 N. Y. App. Div. 896, 108 N. Y. Supp. 350.

Administrator [illegible] Deed

Owner. — Hogan *v.* Piggott, 60 W. Va. 541 56 S. E. 189.

852. 3. **Nature of Ownership.** — Hillis *v.* O'Keefe, 189 Mass. 139, 75 N. E. 147.

4. Hillis *v.* O'Keefe, 189 Mass. 139, 75 N. E. 147.

853. 6. Ross *v.* Royal, 77 Ark. 324, 91 S. W. 178; Gavin *v.* Ashworth, 77 Ark. 242, 91 S. W. 303; Hall *v.* Potter, 81 Ark. 476, 99 S. W. 687; Sibly *v.* Cason, (Ark. 1908) 109 S. W. 1007; Bennett *v.* Southern Pine Co., 123 Ga. 618, 51 S. E. 654; Pierce *v.* Adams, (Kan. 1908) 93 Pac. 594; Gonzales *v.* Saux, 119 La. 657, 44 So. 332; Burkham *v.* Manewal, 195 Mo. 500, 94 S. W. 520; Kahn *v.* Thorpe, 43 Wash. 463, 86 Pac. 855. See also Tallahatchie County *v.* Little, (Miss. 1908) 46 So. 257.

854. 1. Hall *v.* Potter, 81 Ark. 476, 99 S. W. 687; Pierce *v.* Adams, (Kan. 1908) 93 Pac. 594; Burkham *v.* Manewal, 195 Mo. 500, 94 S. W. 520.

3. Gonzales *v.* Saux, 119 La. 657, 44 So. 332.

4. Gavin *v.* Ashworth, 77 Ark. 242, 91 S. W. 303; Ross *v.* Royal, 77 Ark. 324, 91 S. W. 178.

7. Sibly *v.* Cason, (Ark. 1908) 109 S. W. 1007; Pollen *v.* Magna Charta Min., etc., Co., (Colo. 1907) 90 Pac. 639; Tallahatchie County *v.* Little, (Miss. 1908) 46 So. 257; Clifford *v.* Thun, 74 Neb. 831, 104 N. W. 1052; Hendershott *v.* Sagsvold, (Oregon 1907) 90 Pac. 1104; Kahn *v.* Thorpe, 43 Wash. 463, 86 Pac. 855.

855. 7. **Persons under Disability Limited to Same Time by Statute in Arkansas.** — Hall *v.* Potter, 81 Ark. 476, 99 S. W. 687.

856. 8. Bentley *v.* Cavallier, (La. 1908) 46 So. 101; Magee *v.* Turner, (Miss. 1908) 46 So. 544; Miller *v.* Steele, 146 Mich. 123, 109 N. W. 37. See Sibly *v.* Cason, (Ark. 1908) 109 S. W. 1007.

See also Couts *v.* Cornell, 147 Cal. 560, 82 Pac. 194, holding that payment of the amount of the tax justly due must be made by one seeking to have a sale set aside on the ground of an irregular assessment.

14. See Pierce *v.* Adams, (Kan. 1908) 93 Pac. 594.

857. 4. Crosby *v.* Terry, (Tex. Civ. App. 1906) 91 S. W. 652.

15. See Roach *v.* State, (Ala. 1905) 39 So. 685.

858. 6. O'Connor *v.* Gottschalk, 148 Mich. 450, 111 N. W. 1048.

13. **"Cost of Redemption" Construed.** — Phares *v.* Cortwright, (Kan. 1907) 90 Pac. 784.

859. 6. **Redemption of Undivided Interest.** — Garbanati *v.* Patterson, 37 Colo. 230, 85 Pac. 845.

860. 3. Teich *v.* Arms, 5 Cal. App. 475, 90 Pac. 962; Anson *v.* Elwood, (N. J. 1908) 68 Atl. 784.

4. Richardson Lumber Co. *v.* Jasshon, 145 Mich. 8, 108 N. W. 497; John Duncan Land, etc., Co. *v.* Rusch, 145 Mich. 1, 108 N. W. 494; Albring *v.* Petronio, 44 Wash. 132, 87 Pac. 49.

6. Mathews *v.* Nefsy, 13 Wyo. 458, 81 Pac. 305; Clinton *v.* Krull, (Supm. Ct. App. Div.) 111 N. Y. Supp. 105.

7. Towry *v.* Wax, (Miss. 1906) 42 So. 536; King *v.* Lane, (S. Dak. 1906) 110 N. W. 37.

8. King *v.* Samuel, (Cal. App. 1907) 93 Pac. 391; Minnesota Debenture Co. *v.* Harrington, (Minn. 1908) 115 N. W. 746; People *v.* Ladew, 189 N. Y. 355, 82 N. E. 431; Matthews *v.* Fry, 141 N. Car. 582, 54 S. E. 379; Mathews *v.* Nefsy, 13 Wyo. 458, 81 Pac. 305.

Before the Amendment of 1895 in California a deed to the purchaser without notice to the owner of the expiration of the time allowed for redemption was void. Johnson *v.* Taylor, 150 Cal. 201, 88 Pac. 904.

9. Crebs *v.* Fowler, (Ala. 1906) 42 So. 553.

861. 4. Nugent *v.* Cook, 129 Iowa 381, 105 N. W. 421.

5. Grimes *v.* Ellyson, 130 Iowa 286, 105 N. W. 421; Lawton *v.* Barker, (Minn. 1908) 117 N. W. 249; State Finance Co. *v.* Trimble, (N. Dak. 1907) 112 N. W. 984.

862. 2. Sanborn *v.* Alston, (Mich. 1908) 116 N. W. 1099; State Finance Co. *v.* Trimble, (N. Dak. 1907) 112 N. W. 984; State Finance Co. *v.* Mulberger, (N. Dak. 1907) 112 N. W. 986.

7. G. F. Sanborn Co. *v.* Johnson, 148 Mich. 405, 111 N. W. 1091; State Finance Co. *v.* Beck, 15 N. Dak. 374, 109 N. W. 357.

8. John Duncan Land, etc., Co. *v.* Rusch, 145 Mich. 1, 108 N. W. 494; G. F. Sanborn Co. *v.* Johnson, 148 Mich. 405, 111 N. W. 1091; Minnesota Debenture Co. *v.* United Real Estate Corp., 99 Minn. 287, 109 N. W. 251..

863. 1. Grimes *v.* Ellyson, 130 Iowa 286, 105 N. W. 421; Ambler *v.* Patterson, (Neb. 1908) 114 N. W. 781; State Finance Co. *v.* Beck, 15 N. Dak. 374, 109 N. W. 357.

Notice to Two of Three Cotenants Insufficient. — White *v.* Shaw, 150 Mich. 270, 114 N. W. 210.

Service on Holder of Void Tax Deed Ineffectual. — State Finance Co. *v.* Mulberger, (N. Dak. 1907) 112 N. W. 986.

Death of Person Assessed. — Grimes *v.* Ellyson, 130 Iowa 286, 105 N. W. 421; Nugent *v.* Cook, 129 Iowa 381, 105 N. W. 421.

864. 1. **Notice by Registered Mail on Nonresident Owners.** — Nind *v.* Myers, 15 N. Dak. 400, 109 N. W. 335.

4. Berg *v.* Van Nest, 97 Minn. 187, 106 N. W. 255.

12. Holmes *v.* Loud, 149 Mich. 410, 112 N. W. 1109.

13. People *v.* Ladew, 189 N. Y. 355, 82 N. E. 431; Nicol *v.* Sherman, (S. Dak. 1907) 110 N. W. 777.

865. 11. Grimes *v.* Ellyson, 130 Iowa 286, 105 N. W. 421.

866. 4. Herr *v.* Graden, 33 Colo. 527, 81 Pac. 242.

5. **Fact that Affidavit Was Made and Deposited Provable by Parol.** — Herr *v.* Graden, 33 Colo. 527, 81 Pac. 242.

6. **Failure to File Receipt Defeats Redemption.** — Cook *v.* Jones, 80 Ark. 43, 96 S. W. 620.

12. Roach *v.* State, (Ala. 1905) 39 So. 685.

867. 3. Hole *v.* Van Duzer, 11 Idaho 79, 81 Pac. 109.

Payment of Valid Portion of Tax. — Grant *v.* Cornell, 147 Cal. 565, 82 Pac. 193.

7. San Diego Realty Co. *v.* Cornell, 150 Cal. 637, 89 Pac. 603.

8. King *v.* Mason, 60 W. Va. 607, 56 S. E. 377.

17. Smith *v.* Haney, 73 Kan. 506, 85 Pac. 550; Wolff Chemical Co. *v.* Philadelphia, 217 Pa. St. 215, 66 Atl. 344.

868. 3. See State *v.* Butler County, (Kan. 1908) 94 Pac. 1004.

4. Smith *v.* Haney, 73 Kan. 506, 85 Pac. 550.

5. **Funds Must Be Used for Public Purpose.** — Wheelock *v.* Lowell, (Mass. 1907) 81 N. E. 977. See also *In re* Kenmore, (Supm. Ct. Spec. T.) 110 N. Y. Supp. 1008; Firemen's Relief Assoc. *v.* Scranton, 217 Pa. St. 585, 66 Atl. 1103; Elizabeth City County *v.* Newport News, 106 Va. 764, 56 S. E. 801.

869. 3. Gambill *v.* Erdrich, 143 Ala. 506, 39 So. 297; State Bank *v.* Com., (Ky. 1906) 94 S. W. 620; State *v.* New Orleans, 119 La. 624, 44 So. 321; Southern R. Co. *v.* Hamblen County, 115 Tenn. 526, 92 S. W. 238; Farmerville *v.* Mathews, (La. 1907) 44 So. 999; Rochester *v.* Bloss, 185 N. Y. 42, 77 N. E. 794; State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

870. 3. Farmerville *v.* Mathews, (La. 1907) 44 So. 999.

6. Southern R. Co. *v.* Hamblen County, 115 Tenn. 526, 92 S. W. 238.

871. 1. People *v.* Cook County, 221 Ill. 493, 77 N. E. 914; State *v.* New Orleans, 119 La. 624, 44 So. 321; Southern R. Co. *v.* Hamblen County, 115 Tenn. 526, 92 S. W. 238.

4. Southern R. Co. *v.* Cherokee County, 144 Ala. 579, 42 So. 66, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 871, text paragraph.

878. 1. Gaither *v.* Gage, 82 Ark. 51, 100 S. W. 80; Boone *v.* Powell County, (Ky. 1908) 108 S. W. 251; Southern R. Co. *v.* Hamblen County, 115 Tenn. 526, 92 S. W. 238. *Compare* People *v.* Chicago, etc., R. Co., 223 Ill. 448, 79 N. E. 151.

881. 5. **Conformity to State Methods Required by Statute.** — Malone *v.* Williams, 118 Tenn. 390, 103 S. W. 798; West *v.* Newport News, 104 Va. 21, 51 S. E. 206.

882. 2. Rochester *v.* Bloss, 185 N. Y. 42, 77 N. E. 794.

884. 5. People *v.* St. Louis, etc., R. Co., 230 Ill. 61, 82 N. E. 305.

889. 4. Southern R. Co. *v.* Hamblen County, 115 Tenn. 526, 92 S. W. 238.

890. 3. Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926; Chesapeake, etc., R. Co. *v.* Com., (Ky. 1908) 111 S. W. 334.

893. 6. *To Acquire Lighting Plant.* — Frankfort *v.* Com., (Ky. 1906) 94 S. W. 648.

896. 4. **Bank Stock.** — West *v.* Newport News, 104 Va. 21, 51 S. E. 206.

897. 2. Central R. Co. *v.* Atlantic Highlands, (N. J. 1907) 66 Atl. 936.

6. Hayes *v.* Walker, (Fla. 1907) 44 So. 747, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 897.

898. 3. Hayes *v.* Walker, (Fla. 1907) 44 So. 747, opinion of Hocker, J., *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 898.

5. Hayes *v.* Walker, (Fla. 1907) 44 So. 747, opinion of Hocker J., *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 898.

903. 6. Rochester *v.* Bloss, 185 N. Y. 42, 77 N. E. 794.

7. Admissibility of Assessment Book and Rolls. — Escondido *v.* Wohlford, (Cal. 1908) 94 Pac. 232; Escondido *v.* Escondido Bank, (Cal. 1908) 94 Pac. 234.

905. 1. Smith *v.* Robersonville Graded School, 141 N. Car. 143, 53 S. E. 524, *quoting* paragraphs *a* and *b*, 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 905, 906.

6. Smith *v.* Robersonville Graded School, 141 N. Car. 143, 53 S. E. 524.

906. 1. Smith *v.* Robersonville Graded School, 141 N. Car. 143, 53 S. E. 524.

5. Authority to Levy for Support of Schools Does Not Carry Authority to Levy for Buildings. — Gray *v.* School Inspectors, 231 Ill. 63, 83 N. E. 95.

907. 1. Visalia Sav. Bank *v.* Visalia, (Cal. 1908) 94 Pac. 888.

2. See Gray *v.* School Inspectors, 231 Ill. 63, 83 N. E. 95.

908. 2. Shriver *v.* McGregor, 224 Ill. 397, 79 N. E. 706; Flores *v.* Police Jury, 116 La. 428, 40 So. 785.

Failure to Take Oath. — Brasch *v.* Western Tie, etc., Co., 80 Ark. 425, 97 S. W. 445.

6. Gruner *v.* Police Jury, 119 La. 551, 44 So. 295.

909. 2. People *v.* Read, 233 Ill. 351, 84 N. E. 214.

910. 1. See Visalia Sav. Bank *v.* Visalia, (Cal. 1908) 94 Pac. 888.

911. 3. **Discretion Conferred by Statute** is not an arbitrary one, but the same must be used as directed and required by the constitution. Lowery *v.* Graded School Trustees, 140 N. Car. 33, 52 S. E. 267; Smith *v.* Robersonville Graded School, 141 N. Car. 143, 53 S. E. 524.

5. Mineral School Dist. No. 10 *v.* Pennington County, 19 S. Dak. 602, 104 N. W. 270.

7. State *v.* Marion County, (Ind. 1907) 82 N. E. 482; State *v.* Marion County, (Ind. 1908) 85 N. E. 513; State *v.* Wheeler, 141 N. Car. 773, 53 S. E. 358.

912. 2. Southern R. Co. *v.* Cherokee County, 144 Ala. 579, 42 So. 66; State *v.* Marion County, (Ind. 1907) 82 N. E. 482.

913. 2. Litchfield, etc., R. Co. *v.* People, 225 Ill. 301, 80 N. E. 335; Chicago, etc., R. Co. *v.* People, 225 Ill. 519, 80 N. E. 336; Toledo, etc., R. Co. *v.* People, 226 Ill. 557, 80 N. E. 1059; Cleveland, etc., R. Co. *v.* People, 223 Ill. 17, 79 N. E. 17.

914. 6. State *v.* Marion County, (Ind. 1907) 82 N. E. 482; St. Benedict's Abbey *v.* Marion County, (Oregon 1908) 93 Pac. 231.

915. 2. Perrizo *v.* Stephenson Tp., 141 Mich. 167, 104 N. W. 417.

916. 1. **County Road Tax a County Fund.** — Texarkana *v.* Edwards, 76 Ark. 22, 88 S. W. 862.

Not County Moneys. — A city may recover taxes for road purposes, levied and collected by a county, which should have been levied and collected by the city. Eugene *v.* Lane County, (Oregon 1908) 93 Pac. 255.

2. Lincoln County *v.* Brookhaven, (Miss. 1906) 41 So. 449.

As to the amount of county road taxes to be expended in cities, see Texarkana *v.* Edwards, 76 Ark. 22, 88 S. W. 862.

4. Crocker *v.* Moore, 140 N. Car. 429, 53 S. E. 229; State *v.* Wheeler, 141 N. Car. 773, 53 S. E. 358; Walla Walla County *v.* Oregon R., etc., Co., 40 Wash. 398, 82 Pac. 716.

Payment of Street Tax a Substitute for Performance of Road Duty. — Taylor *v.* State, 147 Ala. 131, 41 So. 776.

917. 3. State *v.* Wheeler, 141 N. Car. 773, 53 S. E. 358.

4. Crocker *v.* Moore, 140 N. Car. 429, 53 S. E. 229.

919. 2. See Porter *v.* Waterman, 77 Ark. 383, 91 S. W. 754.

3. **As to What Property Is Liable,** see Buckner *v.* Sugg, 79 Ark. 442, 96 S. W. 184; Bonner *v.* Board of Directors, 77 Ark. 519, 92 S. W. 1124.

"Grabbot" Cotton Not Included in Tax on "Lint Cotton." — Mississippi Levee Com'rs *v.* Refuge Cotton Oil Co., (Miss. 1907) 44 So. 828.

TAXATION (CORPORATE).

922. 4. San Joaquin, etc., Canal, etc., Co. *v.* Merced County, 2 Cal. App. 593, 84 Pac. 285; American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; Clarksdale Ins. Agency *v.* Cole, 87 Miss. 637, 40 So. 228.

5. Weiser Nat. Bank *v.* Jeffreys, (Idaho 1908) 95 Pac. 23.

State Cannot Tax National Banks Without Consent of Congress. — People *v.* Feitner, 191 N. Y. 88, 83 N. E. 592.

923. 1. **Must Not Be Assessed at Higher Percentage than Other Real Estate of Same Class.** — Albuquerque First Nat. Bank *v.* Albright, 13 N. Mex. 514, 86 Pac. 548. See also Weiser Nat. Bank *v.* Jeffreys, (Idaho 1908) 95 Pac. 23.

924. 4. Michigan Railroad Tax Cases, 138 Fed. 223; Lake Shore, etc., R. Co. *v.* Powers, 138 Fed. 257; Sault Ste. Marie Bridge Co. *v.* Powers, 138 Fed. 262; Nebraska Telephone Co. *v.* Lincoln, (Neb. 1908) 117 N. W. 284; Ware Shoals Mfg. Co. *v.* Jones, 78 S. Car. 211, 58 S. E. 811; State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557; State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 515; State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 522.

926. 2. **What Constitutes Property in Transit.** — Ayer, etc., Tie Co. *v.* Keown, (Ky. 1906) 93 S. W. 588.

3. **By Statute in Montana** corporate property is taxed in the county where it is situated; but this does not apply to property present at a given place for a merely temporary purpose. Flowerree Cattle Co. *v.* Lewis, etc., County, 33 Mont. 32, 81 Pac. 398.

927. 2. Harris Lumber Co. *v.* Grandstaff, 78 Ark. 187, 95 S. W. 772; State *v.* Iverson, 97 Minn. 286, 106 N. W. 309.

Franchise Assessable at Corporation's Principal Place of Business. — San Joaquin, etc., Canal, etc., Co. *v.* Merced County, 2 Cal. App. 593, 84 Pac. 285.

Taxable at Home of Corporation unless Statute Provides Otherwise. — Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

Rule Applied to Rolling Stock of Street Railway. — Elizabeth City County *v.* Newport News, 106 Va. 764, 56 S. E. 801.

Rule Applied to Water Pipes and Mains. — Field *v.* Guilford Water Co., 79 Conn. 70, 63 Atl. 723.

Water Rights Personalty and Taxable at Principal Place of Business. — Helena Waterworks Co. *v.* Settles, (Mont. 1908) 95 Pac. 838.

Residence Held to Be Where Business Principally Conducted. — Woodsum Steamboat Co. *v.* Sunapee, (N. H. 1908) 69 Atl. 577.

3. Detroit, etc., R. Co. *v.* Detroit, 141 Mich. 5, 104 N. W. 327.

In Kentucky it is held that the location of the personalty of a corporation is not determined by the place where its principal office is located. Ayer, etc., Tie Co. *v.* Keown, (Ky. 1906) 93 S. W. 588.

4. *Compare* Detroit, etc., R. Co. *v.* Detroit, 141 Mich. 5, 104 N. W. 327.

5. Portsmouth Tp. *v.* Cranage Steamship Co., 148 Mich. 230, 111 N. W. 749; Woodsum Steamboat Co. *v.* Sunapee, (N. H. 1908) 69 Atl. 577.

6. Ayer, etc., Tie Co. *v.* Keown, (Ky. 1905) 89 S. W. 116; Ayer, etc., Tie Co. *v.* Keown, (Ky. 1906) 93 S. W. 588; Scollard *v.* American Felt Co., 194 Mass. 127, 80 N. E. 233.

Taxation of Tangible and Intangible Property of Telegraph Companies. — State *v.* Western Union Tel. Co., 96 Minn. 13, 104 N. W. 507.

928. 3. Greene County *v.* Wright, 126 Ga. 504, 54 S. E. 951, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 928.

6. Central of Georgia R. Co. *v.* Wright, 124 Ga. 630, 53 S. E. 207; Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251, *affirmed* 125 Ga. 589, 54 S. E. 52; Central of Georgia R. Co. *v.* Wright, 124 Ga. 630, 53 S. E. 207 (taxable to equitable owner at domicil, though legal title held in another state); Central of Georgia R. Co. *v.* Wright, 125 Ga. 617, 54 S. E. 64; Greene County *v.* Wright, 126 Ga. 504, 54 S. E. 951; Judy *v.* Beckwith, (Iowa 1908) 114 N. W. 565; Judy *v.* McClure, (Iowa 1908) 114 N. W. 570; Oxley *v.* Beckwith, (Iowa 1908) 114 N. W. 570; Oxley *v.* McClure, (Iowa 1908) 114 S. W. 570.

929. 2. Trenton *v.* Standard F. Ins. Co., (N. J. 1908) 68 Atl. 1111.

5. Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251.

931. 1. Field *v.* Guilford Water Co., 79 Conn. 70, 63 Atl. 723.

2. New England, etc., Steamship Co. *v.* Com., (Mass. 1907) 81 N. E. 286.

Chief Justice Waite's Enumeration Quoted. — State *v.* Graybeal, 60 W. Va. 357, 55 S. E. 398.

The Provisions of the Massachusetts Statutes do not contemplate a deduction on account of the franchise of the corporation as separate property in another state. American Glue Co. *v.* Com., (Mass. 1907) 81 N. E. 302.

In Valuing the Property of Express, Telephone, and Telegraph Companies, under the *Nebraska* statute, their tangible property, gross

receipts and intangible property should all be considered. Nebraska Telephone Co. *v.* Hall County, 75 Neb. 405, 106 N. W. 471.

932. 1. Western Union Tel. Co. *v.* Wright, 158 Fed. 1004; San Joaquin, etc., Canal, etc., Co. *v.* Merced County, 2 Cal. App. 593, 84 Pac. 285; American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; Louisville Tank Line *v.* Com., (Ky. 1906) 93 S. W. 635; Com. *v.* Cumberland Telephone, etc., Co., (Ky. 1907) 99 S. W. 604; Illinois Cent. R. Co. *v.* Grayson County, (Ky. 1907) 99 S. W. 625; State *v.* Boston, etc., Express Co., 100 Me. 278, 61 Atl. 697; Baltimore *v.* United R. Co., (Md. 1908) 68 Atl. 557; Clarksdale Ins. Agency *v.* Cole, 87 Miss. 637, 40 So. 228; People *v.* Kelsey, 110 N. Y. App. Div. 617, 96 N. Y. Supp. 745; People *v.* Kelsey, 110 N. Y. App. Div. 797, 97 N. Y. Supp. 197; People *v.* Roberts, 116 N. Y. App. Div. 30, 101 N. Y. Supp. 184.

Where a Telegraph Company Has a Statutory Right to construct its lines throughout the United States, a city ordinance granting the same rights as to city streets creates no franchise subject to a tax. Western Union Tel. Co. *v.* Visalia, 149 Cal. 744, 87 Pac. 1023.

The Kentucky Statute requires franchises exercised in all cities except those of the first class to be assessed by the state board. Covington *v.* Covington, etc., Bridge Co., (Ky. 1907) 103 S. W. 248.

Where a Railroad Is under Operation by Another Road it is liable for a tax on its franchise in the absence of a showing that it has parted therewith. Com. *v.* Kinniconick, etc., R. Co., (Ky. 1907) 104 S. W. 290.

Not Taxable in States Other than That by Which Granted. — American Glue Co. *v.* Com., (Mass. 1907) 81 N. E. 302.

2. *Compare* Western Union Tel. Co. *v.* Wright, 158 Fed. 1004.

4. State *v.* Boston, etc., Express Co., 100 Me. 278, 61 Atl. 697.

"Franchise" Held to Include All Intangible Property for Purpose of Taxation. — Com. *v.* Chesapeake, etc., R. Co., (Ky. 1906) 91 S. W. 672.

933. 1. **Capital Stock Owned by Corporation Itself Considered.** — Knickerbocker Importation Co. *v.* Assessors, (N. J. 1907) 65 Atl. 913, *reversing* 73 N. J. L. 94, 62 Atl. 266.

2. People *v.* Kelsey, 110 N. Y. App. Div. 617, 96 N. Y. Supp. 745; People *v.* Roberts, 116 N. Y. App. Div. 30, 101 N. Y. Supp. 184.

Surplus Earnings Not Part of Capital Employed within State. — People *v.* Kelsey, 108 N. Y. App. Div. 138, 96 N. Y. Supp. 42.

Unoccupied Land of Corporation Is Capital Employed in Business. — People *v.* Kelsey, 108 N. Y. App. Div. 138, 96 N. Y. Supp. 42.

Capital and Not Capital Stock Proper Basis. — People *v.* Miller, 112 N. Y. App. Div. 880, 98 N. Y. Supp. 751.

4. Com. *v.* Cumberland Telephone, etc., Co., (Ky. 1907) 99 S. W. 604.

Deducting Public Charges. — People *v.* Grout, 119 N. Y. App. Div. 130, 103 N. Y. Supp. 975; People *v.* Grout, 119 N. Y. App. Div. 879, 103 N. Y. Supp. 976.

5. State *v.* Boston, etc., Express Co., 100 Me. 278, 61 Atl. 697.

8. State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

Gross Earnings. — People *v.* Morgan, 114 N. Y. App. Div. 266, 99 N. Y. Supp. 711.

14. American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; Clarksdale Ins. Agency *v.* Cole, 87 Miss. 637, 40 So. 228; Salt Lake City *v.* Christensen Co., (Utah 1908) 95 Pac. 523; State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

Tax Held to Be on Franchise and Not Property. — State *v.* Boston, etc., Express Co., 100 Me. 278, 61 Atl. 697; Galveston, etc., R. Co. *v.* Davidson, (Tex. Civ. App. 1906) 93 S. W. 436; State *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 460; St. Louis Southwestern R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 461; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 461; Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 462; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 462; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Galveston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 464; International, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; Ft. Worth, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; Chicago, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; San Antonio, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; State *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 467; Gulf, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 467; Texas Midland R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 468.

Franchise in Nature of Easement Taxable Only in County Where Right Exercised. — Stockton Gas, etc., Co. *v.* San Joaquin County, 148 Cal. 313, 83 Pac. 54; San Francisco *v.* Oakland Water Co., 148 Cal. 331, 83 Pac. 61.

Franchise Not Taxable as Property. — North New Jersey St. R. Co. *v.* Jersey City, (N. J. 1907) 67 Atl. 33.

934. 2. American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; Bird *v.* Arnott, 145 Mich. 416, 108 N. W. 646.

935. 1. Weiser Nat. Bank *v.* Jeffreys, (Idaho 1908) 95 Pac. 23; Albuquerque First Nat. Bank *v.* Albright, 13 N. Mex. 514, 86 Pac. 548; Old Nat. Bank *v.* Berkeley, 58 W. Va. 559, 52 S. E. 494.

6. Schley *v.* Montgomery County Com'rs, (Md. 1907) 67 Atl. 250; State *v.* Graybeal, 60 W. Va. 357, 55 S. E. 398.

Assessed Value of Real Estate Deducted. — State *v.* Graybeal, 60 W. Va. 357, 55 S. E. 398.

7. **The Actual Value of Real Estate** may be included and the assessed value deducted. People *v.* O'Donnell, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 5, 105 N. Y. Supp. 457.

8. **Taxable unless Especially Exempt.** — Hasely *v.* Ensley, (Ind. App. 1907) 82 N. E. 809.

Taxable at Market Value. — Com. *v.* Steele, (Ky. 1907) 104 S. W. 687.

Louisiana — Shares of Banking Corporations Alone Taxable. — Chassaniol *v.* Assessors, (La. 1908) 45 So. 604 (stock in incorporated exchange not taxable); Allgeyer *v.* Assessors, (La. 1908) 46 So. 134.

Exemption Where Corporation Pays Tax on Capital Stock, Property, and Franchises. — See Com. *v.* Steele, (Ky. 1907) 104 S. W. 687; Com. *v.* Walsh, (Ky. 1907) 106 S. W. 240; Com. *v.* Ledman, (Ky. 1907) 106 S. W. 247; Com. *v.* Ames, (Ky. 1908) 106 S. W. 306. And see the title EXEMPTIONS (FROM TAXATION).

936. 1. Guaranty Trust Co. *v.* New York, 108 N. Y. App. Div. 192, 95 N. Y. Supp. 770.

Stockholders Liable Where Taxes Not Paid by Corporation. — Com. *v.* Lovell, (Ky. 1907) 101 S. W. 970.

Proceeding against Corporation in First Instance Condition Precedent. — Com. *v.* Steele, (Ky. 1907) 104 S. W. 687.

5. **The New York Statutes** in reference to the taxation of national bank shares have been held not to discriminate unlawfully because deduction for the indebtedness of the individual stockholders is forbidden. People *v.* Feitner, 191 N. Y. 88, 83 N. E. 592.

Taxability of Shares of National Banks. — Old Nat. Bank *v.* Berkeley, 58 W. Va. 559, 52 S. E. 494.

937. 2. People *v.* Feitner, 120 N. Y. App. Div. 838, 105 N. Y. Supp. 993.

5. Weiser Nat. Bank *v.* Jeffreys, (Idaho 1908) 95 Pac. 23; People *v.* Feitner, 120 N. Y. App. Div. 838, 105 N. Y. Supp. 993.

6. Hager *v.* Louisville Nat. Banking Co., (C. C. A.) 159 Fed. 402; First Nat. Bank *v.* Webster County, (Neb. 1907) 113 N. W. 190.

Value of U. S. Bonds Held by Bank Not Deducted. — Hager *v.* American Nat. Banking Co., (C. C. A.) 159 Fed. 402; Lippincott *v.* Lippincott, (N. J. 1907) 66 Atl. 113.

Method for Determining Value of National Bank Shares. — See Estherville First Nat. Bank *v.* Estherville, (Iowa 1907) 112 N. W. 829; Lippincott *v.* Lippincott, (N. J. 1907) 66 Atl. 113 (unnecessary to deduct nontaxable property from assets); Ossining First Nat. Bank *v.* Ossining, 182 N. Y. 460, 75 N. E. 306 (value of real estate to be included).

The Same System as in the Taxation of Other Property is not essential provided unjust discrimination is avoided. People *v.* Feitner, 191 N. Y. 88, 83 N. E. 592.

938. 1. First Nat. Bank *v.* Webster County, (Neb. 1907) 113 N. W. 190; Ossining First Nat. Bank *v.* Ossining, 182 N. Y. 460, 75 N. E. 306.

3. **Income Tax Distinguished from Tax on Gross Receipts.** — Galveston, etc., R. Co. *v.* Davidson, (Tex. Civ. App. 1906) 93 S. W. 436; State *v.* Galveston, etc., R. Co., (Civ. App. Tex. 1906) 93 S. W. 460; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 461; St. Louis Southwestern R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 461; Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 462; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 462; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Galveston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 464; International, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; Ft. Worth, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; Chicago, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; San Antonio, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; State *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 467; Gulf, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 467; Texas Midland R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 468.

4. **Tax on Gross Receipts Held to Be Tax on Franchise and Not Property.** — Galveston, etc., R. Co. *v.* Davidson, (Tex. Civ. App. 1906) 93 S. W. 436; State *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 460; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 461; St. Louis Southwestern R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 461; Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 462; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Galveston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 464; International, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; Ft. Worth, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; Chicago, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; San Antonio, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; State *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 467; Gulf, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 467; Texas Midland R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 468.

939. 1. State *v.* Central Trust Co., (Md. 1907) 67 Atl. 267; State *v.* Twin City Telephone Co., (Minn. 1908) 116 N. W. 835; State *v.* Chicago, etc., R. Co., 128 Wis. 449, 108 N. W. 594.

Tax and Not License. — State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 515; State *v.* Chicago, etc., R. Co., (Wis. 1907) 112 N. W. 522.

Railroad Incorporated under Act of Congress Not Subject to State Taxation of Gross Receipts. — State *v.* Texas, etc., R. Co., (Tex. 1907) 98 S. W. 834.

Statute Not Invalid Because Inapplicable to Railroad Incorporated by Congress. — State *v.* Missouri, etc., R. Co., (Tex. 1907) 100 S. W. 146.

All Receipts from Specified Occupation Are to Be Included. — State *v.* Missouri, etc., R. Co., (Tex. 1907) 100 S. W. 146.

Construction of Gross-receipts Statute. — Where the tax was imposed on a street railway company for the privilege of using the public streets, it was held not to be imposable on gross receipts derived from traffic over its private right of way. Baltimore *v.* United R., etc., Co., (Md. 1908) 68 Atl. 557.

Insurance Company — Overcharge Returnable to Policy Holder Not Taxable. — Mutual Ben. L. Ins. Co. *v.* Com., (Ky. 1908) 107 S. W. 802.

Meaning of Gross Amount of Premiums under Texas Statute. — Philadelphia Fire Assoc. *v.* Love, (Tex. 1908) 108 S. W. 158, *rehearing denied* (Tex. 1908) 108 S. W. 810.

2. *In re* Railroad Taxation, 102 Me. 527, 66 Atl. 726.

3. Galveston, etc., R. Co. *v.* Davidson, (Tex. Civ. App. 1906) 93 S. W. 436; State *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1906) 93

S. W. 460; St. Louis Southwestern R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 461; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 461; Missouri, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 462; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 462; Houston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Texas, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 463; Galveston, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 464; Ft. Worth, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; International, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 465; Chicago, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; San Antonio, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 466; Gulf, etc., R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 467; State *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1906) 93 S. W. 467; Texas Midland R. Co. *v.* State, (Tex. Civ. App. 1906) 93 S. W. 468.

Occupation Tax Based on Gross Receipts Not Interference with Interstate Commerce. — State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

940. 7. American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531; British-American Mortg. Co. *v.* Jones, 77 S. Car. 443, 58 S. E. 417; Western Union Tel. Co. *v.* Wright, 158 Fed. 1004.

For a Tax Held to Be on Business and Not on Property, see American Smelting, etc., Co. *v.* People, 34 Colo. 240, 82 Pac. 531.

Corporation Doing Business Only as Holding Company Not Taxable. — Com. *v.* Ledman, (Ky. 1907) 106 S. W. 247.

Personalty Not Taxable in Massachusetts Except as Provided in Rev. Laws, c. 12, § 23. — Coffin *v.* Artesian Water Co., (Mass. 1906) 79 N. E. 262.

Method of Determining Value of Property of Telegraph Company. — Western Union Tel. Co. *v.* Dodge County, (Neb. 1907) 113 N. W. 805.

941. 2. People *v.* Wells, (N. Y. 1905) 76 N. E. 24; People *v.* Raymond, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 194, 102 N. Y. Supp. 84; People *v.* Wilson, 121 N. Y. App. Div. 376, 106 N. Y. Supp. 1; People *v.* Miller, (Supm. Ct. App. T.) 109 N. Y. Supp. 866; People *v.* Glynn, (Supm. Ct. App. Div.) 109 N. Y. Supp. 868.

Under the Massachusetts Statute taxing merchandise in the state belonging to foreign corporations, steamships have been held to be merchandise within the meaning of the statute. New England, etc., Steamship Co. *v.* Com., (Mass. 1907) 81 N. E. 286.

3. **Money Invested in the Stock of Another Corporation** is capital employed within the state. People *v.* Miller, (Supm. Ct. App. Div.) 109 N. Y. Supp. 866.

942. 1. People *v.* Glynn, (Supm. Ct. App. Div.) 109 N. Y. Supp. 868.

6. San Francisco, etc., R. Co. *v.* Stockton, 149 Cal. 83, 84 Pac. 771.

As to What Is an Interurban Railroad under the *Iowa* statute, see Waterloo, etc., Rapid Transit Co. *v.* Blackhawk County, 131 Iowa 237, 108 N. W. 316.

943. 1. Louisiana, etc., R. Co. *v.* Bailey, 115 La. 929, 40 So. 358; Missouri, etc., R. Co. *v.* Shannon, (Tex. Civ. App. 1906) 97 S. W. 527.

A Short Line of Railroad owned and operated by a ferry company has been held to be a railroad within the meaning of the *Missouri* statute providing for the taxation of railroads and subject to assessment by the state board. State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005.

Where the State Board Has Failed to apportion the value of a railroad in a certain district the only remedy available to the district is a proceeding to compel the board to make such valuation. Com. *v.* Chesapeake, etc., R. Co., (Ky. 1906) 91 S. W. 1137; Com. *v.* Maysville, etc., R. Co., (Ky. 1906) 91 S. W. 1139.

2. San Francisco, etc., R. Co. *v.* Stockton, 149 Cal. 83, 84 Pac. 771; Com. *v.* Maysville, etc., R. Co., (Ky. 1906) 91 S. W. 1139; *In re* United New Jersey R., etc., Co., (N. J. 1907) 67 Atl. 1075; *In re* Long Dock Co., (N. J. 1907) 68 Atl. 126.

Definition of Roadway. — San Francisco, etc., R. Co. *v.* Stockton, 149 Cal. 83, 84 Pac. 771.

Railroad Bridge Assessable by State Board and Not by Local Authorities. — Board of Equalization *v.* Louisville, etc., R. Co., (Ky. 1908) 109 S. W. 303.

Elements to Be Considered — New Jersey Statute. — See Jersey City *v.* State Board of Assessors, (N. J. 1907) 68 Atl. 227.

Provision for Taxation of Real Estate — Right of Way Not Included. — Pennsylvania R. Co. *v.* Pittsburg, (Pa. 1908) 70 Atl. 271.

The Texas Statute Constitutional. — Missouri, etc., R. Co. *v.* Shannon, (Tex. 1907) 100 S. W. 138.

944. 1. People *v.* Atchison, etc., R. Co., 225 Ill. 593, 80 N. E. 272.

4. Elizabeth City County *v.* Newport News, 106 Va. 764, 56 S. E. 801.

945. 3. **Rule Applied to Refrigerator Cars.** — Morrell Refrigerator Car Co. *v.* Com., (Ky. 1908) 108 S. W. 926.

6. Covington *v.* Pullman Co., (Ky. 1905) 89 S. W. 116.

946. 3. State *v.* Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005; State *v.* Nevada Cent. R. Co., 28 Nev. 186, 81 Pac. 99; United New Jersey R., etc., Co. *v.* Parker, (N. J. 1908) 69 Atl. 239; Atlantic, etc., R. Co. *v.* Newbern, (N. Car. 1908) 60 S. E. 925; Chicago, etc., R. Co. *v.* State, 128 Wis. 553, 108 N. W. 557.

Kentucky Statute — Board Not Governed by Property Value of Shares. — Com. *v.* Ledman, (Ky. 1907) 106 S. W. 247.

947. 4. **In New Jersey** it is held that where a railroad is merged with and operated under another road the merged road retains the same features with regard to main stem and other property as it possessed at the time of the merger. Jersey City *v.* State Board of Assessors, (N. J. 1907) 68 Atl. 227.

948. 1. **Railroad Is Owner for Purposes of Taxation of All Property Used by It in Its Business.** — Com. *v.* Ingalls, (Ky. 1905) 89 S. W. 156.

Street Railway Not Taxable as Owner of Property Leased by It. — People *v.* Barker, 121 N. Y. App. Div. 661, 106 N. Y. Supp. 336.

2. **Tangible Property of Railroad under Operation by Another Road Taxable to Operating Road.** — Com. *v.* Kinniconick, etc., R. Co., (Ky. 1907) 104 S. W. 290.

7. Montgomery Traction Co. *v.* State, (Ala. 1907) 44 So. 541; East Livermore *v.* Livermore Falls Trust, etc., Co., (Me. 1907) 69 Atl. 306; Consolidated Gas Co. *v.* Baltimore, 105 Md. 43, 65 Atl. 628; Metropolitan L. Ins. Co. *v.* Com., (Mass. 1908) 84 N. E. 863; State *v.* Louisiana, etc., R. Co., 196 Mo. 523, 94 S. W. 279. See also Gulf, etc., R. Co. *v.* Adams, (Mass. 1907) 45 So. 91.

949. 1. Hasely *v.* Ensley, (Ind. App. 1907) 82 N. E. 809; Judy *v.* Beckwith, (Iowa 1908) 114 N. W. 565; Oxley *v.* McClure, (Iowa 1908) 114 N. W. 570; Oxley *v.* Beckwith, (Iowa 1908) 114 N. W. 570; Judy *v.* McClure, (Iowa 1908) 114 N. W. 570; William S. Wilkens Co. *v.* Baltimore, 103 Md. 293, 63 Atl. 562, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 949.

Tax on Value of Capital Stock in Excess of Corporate Property Taxed in State Not Double Taxation. — Cheeseborough *v.* San Francisco, (Cal. 1908) 96 Pac. 288.

2. Com. *v.* Walsh, (Ky. 1907) 106 S. W. 240; East Livermore *v.* Livermore Falls Trust, etc., Co., (Me. 1907) 69 Atl. 306.

Under a Statute Requiring Corporate Bonds and Certificates of Indebtedness to be valued and assessed to the owners thereof it has been held to be erroneous to tax the bonded indebtedness against the corporation. Consolidated Gas Co. *v.* Baltimore, 105 Md. 43, 65 Atl. 628.

3. Georgia R., etc., Co. *v.* Wright, 124 Ga. 596, 53 S. E. 251; Georgia R., etc., Co. *v.* Wright, 125 Ga. 589, 54 S. E. 52; Central of Georgia R. Co. *v.* Wright, 125 Ga. 617, 54 S. E. 64; Judy *v.* Beckwith, (Iowa 1908) 114 N. W. 565; Judy *v.* McClure, (Iowa 1908) 114 N. W. 570; Oxley *v.* Beckwith, (Iowa 1908) 114 N. W. 570; Oxley *v.* McClure, (Iowa 1908) 114 N. W. 570; Thrall *v.* Guiney, 141 Mich. 302, 104 N. W. 646.

4. **Occupation Tax Simultaneous with Franchise Tax Not Double.** — Nebraska Telephone Co. *v.* Lincoln, (Neb. 1908) 117 N. W. [illegible]

Tax on Franchise and Separate Tax on Property Valid. — *In re* Railroad Taxation, 102 Me. 527, 66 Atl. 726.

Foreign Corporations — Privilege Tax and Tax on Property in State Valid. — British-American Mortg. Co. *v.* Jones, 77 S. Car. 443, 58 S. E. 417.

Occupation Tax Based on Gross Receipts and Ad Valorem Tax on Franchise Not Double. — State *v.* Galveston, etc., R. Co., (Tex. 1906) 97 S. W. 71.

950. 6. Baltimore *v.* Chester River Steamboat Co., 103 Md. 400, 53 Atl. 810.

9. Kentucky Bank *v.* Com., (Ky. 1906) 94 S. W. 620.

TAX TITLES.

954. 2. Barlow *v.* Hitzler, (Colo. 1907) 90 Pac. 90; Williams *v.* Clyatt, 53 Fla. 987, 43 So. 441; Cones *v.* Gibson, (Kan. 1908) 94 Pac. 998; McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 954; Brooks *v.* Garner, (Okla. 1908) 94 Pac. 694; Niday *v.* Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027.

3. Cones *v.* Gibson, (Kan. 1908) 94 Pac. 998.

955. 2. **Vendee in Oral Executory Agreement to Purchase May Acquire Title.** — Ball *v.* Harpham, 140 Mich. 661, 104 N. W. 353.

956. 1. Williams *v.* Clyatt, 53 Fla. 987, 43 So. 441, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 956; Stoll *v.* Griffith, 41 Wash. 37, 82 Pac. 1025.

Tax Title Acquired by One Joint Tenant Inures to All. — Moragne *v.* Doe, 143 Ala. [illegible] So. 10[illegible]

2. Niday *v.* Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027.

3. Stoll *v.* Griffith, 41 Wash. 37, 82 Pac. 1025.

4. **Where a Purchaser at a Tax Sale Became a Tenant in Common** by reason of a defect in a power of attorney given by one of the owners to the attorney who executed the deed it was held that such purchaser could strengthen his title by purchasing a tax title. Stoll *v.* Griffith, 41 Wash. 37, 82 Pac. 1025.

5. Wiswell *v.* Simmons, (Kan. 1908) 95 Pac. 407; Niday *v.* Cochran, (Tex. Civ. App. 1905) 93 S. W. 1027.

957. 1. St. Clair *v.* Craig, (Kan. 1908) 94 Pac. 790.

Where a Tenant Agreed to Bid in Land at a Tax Sale for the lessor it was held that the lessor could force the tenant to reconvey. Frost *v.* Perfield, 44 Wash. 185, 87 Pac. 117.

Where Parties Claim Adversely to Each Other either may lawfully strengthen his claim by obtaining a tax deed. Wright *v.* Jessup, 44 Wash. 618, 87 Pac. 930.

4. Wiswell *v.* Simmons, (Kan. 1908) 95 Pac. 407. *Compare* Jones *v.* Black, 18 Okla. 344, 88 Pac. 1052.

Person in Possession under Trust Deed Cannot Acquire Title. — Barlow *v.* Hitzler, (Colo. 1907) 90 Pac. 90.

958. 1. Pitman *v.* Boner, (Neb. 1908) 116 N. W. 778.

5. **Adverse Possession.** — One holding by adverse possession does not acquire title as against the state by paying taxes. Bryant Lumber, etc., Mill Co. *v.* Pacific Iron, etc., Works, (Wash. 1908) 94 Pac. 110. But one holding adverse possession may protect his possession and right to land by purchase of an outstanding tax title. Liebheit *v.* Enright, (Kan. 1908) 94 Pac. 203.

7. McRae *v.* Preston, (Fla. 1907) 44 So. 046.

11. **Former Attorney for Collector Not Debarred from Purchasing.** — Walker *v.* Mills, (Mo. 1908) 109 S. W. 44.

959. 3. **Sale of Community Property Annulled — Collusion of Husband and Third Party in Fraud of Wife's Heirs.** — Babin *v.* Daspit, (La. 1908) 45 So. 597.

4. **Wife Can Acquire Title to Lands Leased to Husband.** — Kampfer *v.* East Side Syndicate, 95 Minn. 300, 104 N. W. 290.

Either May Acquire Title.—Nagle *v.* Tieperman, 74 Kan. 32, 85 Pac. 941, *overruling* Warner *v.* Broquet, 54 Kan. 649, 39 Pac. 228, cited in note 3 in the original work, and hold-

ing the law to be as stated in Broquet *v.* Warner, 43 Kan. 48, 22 Pac. 1004.

5. Barker *v.* Jackson, (Miss. 1907) 44 So. 34; Barrineau *v.* Stevens, 75 S. Car. 252, 55 S. E. 309.

9. Rush *v.* Lewis and Clark County, (Mont. 1908) 93 Pac. 943; Jones *v.* Carnes, 17 Okla. 470, 87 Pac. 652.

County Cannot Be Competitive Bidder. — Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778.

960. 2. **Georgia — Deed Issues at Time of Sale.** — Elrod *v.* Owensboro Wagon Co., 128 Ga. 361, 57 S. E. 713.

3. Carnahan *v.* Sieber Cattle Co., 34 Colo. 257, 82 Pac. 592.

961. 8. Carnahan *v.* Sieber Cattle Co., 34 Colo. 257, 82 Pac. 592.

10. Roach *v.* State, (Ala. 1905) 39 So. 685; Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322.

962. 2. **Endorsement of Assignment on Tax Sale Certificate Prerequisite to Issuance of Deed to Assignee.** — Morris *v.* Bird, 71 Kan. 619, 81 Pac. 185.

The Fact that Land Is Not Redeemed will not validate a deed issued before the period of redemption has expired. Griffin *v.* Jackson, 145 Mich. 23, 108 N. W. 438..

Deed by One Who Has Failed to Give Bond Void. — Creegan *v.* Hyman, (Miss. 1908) 46 So. 952.

4. Byrd *v.* Phillips, (Tenn. 1908) 111 S. W. 1109.

9. **Contra under North Carolina Statute.** — Southern Immigration, etc., Co. *v.* Rosey, 144 N. Car. 370, 57 S. E. 2.

963. 1. **Corrected Deed.** — Harding *v.* Auditor Gen., 140 Mich. 646, 104 N. W. 39.

2. Pierce *v.* Adams, (Kan. 1908) 93 Pac. 594.

3. Webber *v.* Wannemaker, 39 Colo. 425, 89 Pac. 780.

5. Morris *v.* Bird, 71 Kan. 619, 81 Pac. 185; Rainey *v.* Lamb Hardwood Lumber Co., (Miss. 1908) 45 So. 367.

6. **Recital of Officer's Name in Body of Deed Not Signature.** — Rainey *v.* Lamb Hardwood Lumber Co., (Miss. 1908) 45 So. 367.

10. Creegan *v.* Hyman, (Miss. 1908) 46 So. 952.

964. 3. **Contra.** — Spokane Terminal Co. *v.* Stanford, 44 Wash. 45, 87 Pac. 37; Stockland *v.* Hall, 45 Wash. 197, 88 Pac. 123; State *v.* Olson, 45 Wash. 689, 89 Pac. 151.

4. **Clerk's Seal Sufficient under Statute Requiring Seal of County.** — Jackson *v.* McCarron, (Kan. 1908) 95 Pac. 402; Clarke *v.* Tilden, 72 Kan. 574, 84 Pac. 139.

6. Canole *v.* Allen, 28 Pa. Super. Ct. 244; Mathews *v.* Blake, (Wyo. 1907) 92 Pac. 242.

Deed Void Where Acknowledged by Person Other than One Designated by Statute. — Mathews *v.* Blake, (Wyo. 1907) 92 Pac. 242.

10. **Acknowledgment and Record in Open Court Necessary.** — Osmer *v.* Sheasley, (Pa. 1908) 68 Atl. 965.

965. 8. **Recording Does Not Validate a Void Tax Deed** as against an unrecorded quitclaim deed. Glos *v.* Bain, 223 Ill. 343, 79 N. E. 111.

12. Glos *v.* Bain, 223 Ill. 343, 79 N. E. 111.

966. 2. **Deed in Name of County Instead of State Void.** — State Finance Co. *v.* Mulberger, (N. Dak. 1907) 112 N. W. 986.

3. **Deed May Be Delivered to Sole Devisee of Purchaser's Estate.** — Rosenblum *v.* Eisenberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 350.

The Word "Purchaser," in a statute requiring that the name of the purchaser be recited in the deed, means one who has made a completed purchase, and not a mere bidder who has failed to pay the amount bid. Herbst *v.* Land, etc., Co., (Wis. 1908) 115 N. W. 119.

6. Morris *v.* Bird, 71 Kan. 619, 81 Pac. 185.

967. 6. Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322.

Strict Construction in Favor of Taxpayer. — Rainey *v.* Lamb Hardwood Lumber Co., (Miss. 1908) 45 So. 367.

7. Smith *v.* Philips, 51 Fla. 327, 41 So. 527; Ham *v.* Booth, 72 Kan. 429, 83 Pac. 24; Clarke *v.* Tilden, 72 Kan. 574, 84 Pac. 139; Cross *v.* Herman, 74 Kan. 554, 87 Pac. 686; Fullington *v.* Jobbing, 75 Kan. 817, 88 Pac. 968; Havel *v.* Decatur County Abstract Co., (Kan. 1907) 91 Pac. 790; Baugham *v.* Harvey, (Kan. 1907) 93 Pac. 146; Doolittle *v.* J. L. Gates Land Co., 131 Wis. 24, 110 N. W. 890; Maxon *v.* Gates, (Wis. 1908) 116 N. W. 758.

Presumptions in Favor of Deed When Five Years of Record. — Nagle *v.* Tiepeman, 74 Kan. 32, 88 Pac. 969.

8. Gibson *v.* Hammerburg, 72 Kan. 363, 83 Pac. 23; Ham *v.* Booth, 72 Kan. 429, 83 Pac. 24; Robbins *v.* Phillips, 74 Kan. 113, 85 Pac. 815.

12. La Cotts *v.* Quertermous, 83 Ark. 174, 103 S. W. 182; Dimpfel *v.* Beam, (Colo. 1907) 91 Pac. 1107; Penrose *v.* Cooper, 71 Kan. 720, 81 Pac. 489; Worden *v.* Cole, 74 Kan. 226, 86 Pac. 464; Robidoux *v.* Munson, 75 Kan. 207, 88 Pac. 1085; Dye *v.* Midland Valley R. Co., (Kan. 1908) 94 Pac. 785; Wilks *v.* De Hart, (Kan. 1908) 95 Pac. 836; Rainey *v.* Lamb Hardwood Lumber Co., (Miss. 1908) 45 So. 367; Rush *v.* Lewis and Clark County, (Mont. 1908) 93 Pac. 943; Rush *v.* Lewis and Clark County, (Mont. 1908) 95 Pac. 836; Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322; Obermeyer *v.* Behn, (Supm. Ct. App. Div.) 108 N. Y. Supp. 289; Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778; King *v.* Lane, (S. Dak. 1906) 110 N. W. 37; Battelle *v.* Wolven, (S. Dak. 1908) 115 N. W. 99.

968. 4. Southern R. Co. *v.* Hall, 145 Ala. 224, 41 So. 135; Rush *v.* Lewis and Clark County, (Mont. 1908) 95 Pac. 836.

Recital of Amount for Which Land Sold Essential. — Penrose *v.* Cooper, 71 Kan. 720, 81 Pac. 489.

Recital of Smaller Sum than Actually Paid Invalidates Deed. — Manker *v.* Peck, 71 Kan. 863, 81 Pac. 171.

Omission of Statutory Recital Does Not Invalidate Where Supplied by Liberal Construction of Other Recitals. — Gibson *v.* Trisler, 73 Kan. 397, 85 Pac. 413.

Failure to Make Specific Relation of Facts Does Not Invalidate. — Woodfolk *v.* Witkowski, (La. 1908) 45 So. 401.

Where the Land Is Bid Off by the County Treasurer the deed should contain a recital showing for whom he bid it off. Jackson *v.* McCarron, (Kan. 1908) 95 Pac. 402.

Vesting of Title in Treasurer Prevented by Omission of Dollar Mark from Lists. — Hamilton *v.* Brownsville Gaslight Co., 115 Tenn. 150, 90 S. W. 159.

5. **Recitals Liberally Construed in Favor of Validity after Deed Recorded Five Years.** — Rynearson *v.* Conn, (Kan. 1908) 94 Pac. 205; Dye *v.* Midland Valley R. Co., (Kan. 1908) 94 Pac. 785; Gibson *v.* Ast, (Kan. 1908) 94 Pac. 801; Havel *v.* Decatur Abstract Co., (Kan. 1907) 91 Pac. 790; Penrose *v.* Cooper, 71 Kan. 720, 84 Pac. 115; Robbins *v.* Phillips, 74 Kan. 113, 85 Pac. 815; Fike *v.* Nagle, 74 Kan. 838, 85 Pac. 948; Gibson *v.* Trisler, 73 Kan. 397, 85 Pac. 413; Cross *v.* Herman, 74 Kan. 554, 87 Pac. 686.

6. **Residence of Purchaser Not Recited — Deed Not Void.** — Havel *v.* Decatur County Abstract Co., (Kan. 1907) 91 Pac. 790.

969. 1. Kries *v.* Holladay-Klatz Land, etc., Co., 121 Mo. App. 184, 98 S. W. 1086; Keenan *v.* Slaughter, (Tex. Civ. App. 1908) 108 S. W. 703.

Deed to County Must Show that County Was Not Competitor. — Rush *v.* Lewis and Clark County, (Mont. 1908) 93 Pac. 943.

For a Sufficient Recital of Want of Other Bidders where land is bid in by the county, see Jones *v.* Carnes, 17 Okla. 470, 87 Pac. 652.

5. La Cotts *v.* Quertermous, 83 Ark. 174, 103 S. W. 182; Worden *v.* Cole, 74 Kan. 226, 86 Pac. 464; North Real Estate, etc., Co. *v.* Billings L. & T. Co., (Mont. 1907) 93 Pac. 40; Eldridge *v.* Robertson, (Okla. 1907) 92 Pac. 156.

Necessary to Recite Amount for Which Each Tract Sold. — Manker *v.* Peck, 71 Kan. 865, 81 Pac. 171.

7. Preston *v.* Hirsch, 5 Cal. App. 485, 90 Pac. 965.

10. **Misrecital of Date of Sale Held Not to Defeat Title.** — McLemore *v.* Anderson, (Miss. 1907) 43 So. 878.

970. 1. Dye *v.* Midland Valley R. Co., (Kan. 1908) 94 Pac. 785; Penrose *v.* Cooper, 71 Kan. 720, 84 Pac. 115; Grinstead *v.* Cooper, (Kan. 1908) 95 Pac. 401; Robidoux *v.* Munson, 75 Kan. 207, 88 Pac. 1085; Nogle *v.* Tieperman, 74 Kan. 32, 88 Pac. 969; Pierce *v.* Adams, (Kan. 1908) 93 Pac. 594; Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322; Eldridge *v.* Robertson, (Okla. 1907) 92 Pac. 156.

2. Preston *v.* Hirsch, 5 Cal. App. 485, 90 Pac. 965.

Substantial Compliance with Statute Sufficient. — Phillips *v.* Cox, (Cal. App. 1908) 94 Pac. 377. See also Best *v.* Wohlford, (Cal. 1908) 94 Pac. 98.

Provisions of Certificate Not Required in Deed Where No Certificate Required by Law. — Schamblin *v.* Means, (Cal. App. 1907) 91 Pac. 1020.

3. Shelly *v.* Friedrichs, 117 La. 679, 42 So. 218, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 971 [970]; Jackson *v.* Mason, 143 Mich. 355, 106 N. W. 1112; Eldridge *v.* Robertson, (Okla. 1907) 92 Pac. 156.

4. Ramos Lumber, etc., Co. *v.* Labarre, 116 La. 550, 40 So. 898.

An Attempt to Convey a Greater Interest than the State Had does not invalidate a conveyance of the property conveyable. Francis *v.* Sandlin, (Ala. 1907) 43 So. 829.

Conveyance Limited to Property Included in Certificate of Sale. — Lemoore Bank *v.* Fulgham, 151 Cal. 234, 90 Pac. 936.

5. **Sufficient Descriptions.**—Smith *v.* Philips, 51 Fla. 327, 41 So. 527; Glos *v.* Holmes, 228 Ill. 436, 81 N. E. 1064; Gibson *v.* Hammerburg, 72 Kan. 363, 83 Pac. 23; Ham *v.* Booth, 72 Kan. 429, 83 Pac. 24; Robertson *v.* Lombard Liquidation Co., 73 Kan. 779, 85 Pac. 528; Shelly *v.* Friedrichs, 117 La. 679, 42 So. 218; *In re* Martinez, 117 La. 719, 42 So. 246; New Orleans Land Co. *v.* National Realty Co., (La. 1908) 46 So. 208; Roberts *v.* Welsh, 192 Mass. 278, 78 N. E. 408; Wheeler *v.* Lynch, 89 Miss. 157, 42 So. 538; Kampfer *v.* East Side Syndicate, 95 Minn. 309, 104 N. W. 290; Ontario Land Co. *v.* Yordy, 44 Wash. 239, 87 Pac. 257.

Insufficient Descriptions. — Covington *v.* Berry, 76 Ark. 460, 88 S. W. 1005; Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21; Woodall *v.* Edwards, 83 Ark. 334, 104 S. W. 128; Beardsley *v.* Hill, (Ark. 1907) 106 S. W. 1169; Commercial Nat. Bank *v.* Schlitz, (Cal. App. 1907) 91 Pac. 750; Lines *v.* Digges, (Colo. 1908) 95 Pac. 341; Stough *v.* Reeves, (Colo. 1908) 95 Pac. 958; Kruse *v.* Fairchild, 73 Kan. 308, 85 Pac. 303; St. Paul *v.* Louisiana Cypress Lumber Co., 116 La. 585, 40 So. 906; Shelly *v.* Friedrichs, 117 La. 679, 42 So. 218; Powers *v.* Sawyer, 100 Me. 536, 62 Atl. 349; Ames *v.* Dever, 100 Minn. 125, 110 N. W. 370; Smith *v.* Proctor, 139 N. Car. 314, 51 S. E. 889; Norris *v.* Delaware, etc., R. Co., 218 Pa. St. 88, 66 Atl. 1122; Miller *v.* Daniels, (Wash. 1907) 92 Pac. 268; Mathews *v.* Nefsy, 13 Wyo. 458, 81 Pac. 305.

Description by Reference Upheld. — Lines *v.* Digges, (Colo. 1908) 95 Pac. 341; Gibson *v.* Shiner, 74 Kan. 728, 88 Pac. 259.

971. 1. Saddler *v.* Smith, (Fla. 1908) 45 So. 718. See also Harding *v.* Auditor Gen., 140 Mich. 646, 104 N. W. 39; Duerr *v.* Snodgrass, 58 W. Va. 472, 52 S. E. 531.

9. Kennedy *v.* Scott, 72 Kan. 359, 83 Pac. 971.

972. 1. **Description Aided by Maps Referred to in Deeds.** — Davis *v.* Le Mesnager, (Cal. 1907) 92 Pac. 76.

2. *In re* Martinez, 117 La. 719, 42 So. 246.

6. Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609; Morgan *v.* Pott, 124 Mo. App. 371, 101 S. W. 717; Greenleaf *v.* Bartlett, (N. Car. 1908) 60 S. E. 419; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698.

Texas — Deed Vests Title Defeasible Only for Fraud. — Rogers *v.* Moore, (Tex. Civ. App. 1906) 94 S. W. 113.

973. 4. Townsend *v.* Penrose, 84 Ark. 316, 105 S. W. 588.

8. Brannan *v.* Henry, 142 Ala. 698, 39 So. 92; Southern R. Co. *v.* Hall, 145 Ala. 224, 41 So. 135; Wood *v.* McCombe, 37 Colo. 174, 86 Pac. 319; Greenleaf *v.* Bartlett, (N. Car. 1908) 60 S. E. 419.

9. Gannon *v.* Moore, 83 Ark. 196, 104 S. W. 139; Mathews *v.* Blake, (Wyo. 1907) 92 Pac. 242.

974. 7. Copeland *v.* Bond, (Ala. 1908) 46 So. 853; Blakemore *v.* Cooper, 15 N. Dak. 5,

106 N. W. 566; Ayers *v.* Lund, (Oregon 1907) 89 Pac. 806; Brush *v.* Watson, (Vt. 1908) 69 Atl. 141. See also Chapman *v.* Zobelein, (Cal. 1907) 92 Pac. 188; Carnahan *v.* Sieber Cattle Co., 34 Colo. 257, 82 Pac. 592, recognizing the common-law rule, which has been changed by statute in *Colorado*.

975. 3. Metropolitan West Side El. R. Co. *v.* Eschner, 232 Ill. 210, 83 N. E. 809.

976. 1. Day *v.* Smith, 87 Miss. 395, 39 So. 526.

7. Davis *v.* Pacific Imp. Co., (Cal. App. 1908) 94 Pac. 595; Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322.

8. *Arkansas.* — Cracraft *v.* Meyer, 76 Ark. 450, 88 S. W. 1027; Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609; Sawyer *v.* Wilson, 81 Ark. 319, 99 S. W. 389.

California. — Commercial Nat. Bank *v.* Schlitz, (Cal. App. 1907) 91 Pac. 750; Best *v.* Wohlford, (Cal. 1908) 94 Pac. 98; Davis *v.* Pacific Imp. Co., (Cal. App. 1908) 94 Pac. 595.

Colorado. — Carnahan *v.* Sieber Cattle Co., 34 Colo. 257, 82 Pac. 592.

Florida. — Smith *v.* Philips, 51 Fla. 327, 41 So. 527; Ropes *v.* Minshew, 51 Fla. 299, 41 So. 538.

Indiana. — May *v.* Dobbins, 166 Ind. 331, 77 N. E. 353; Holbrook *v.* Kunz, (Ind. App. 1908) 83 N. E. 730.

Kansas. — Gibson *v.* Hammerburg, 72 Kan. 363, 83 Pac. 23; Pierce *v.* Adams, (Kan. 1908) 93 Pac. 594; Gibson *v.* Larabee, (Kan. 1908) 94 Pac. 216.

Kentucky. — Hughes *v.* Owens, (Ky. 1906) 92 S. W. 595; Wildharber *v.* Lunkenheimer, (Ky. 1908) 108 S. W. 327.

Louisiana. — Iberia Cypress Co. *v.* Thorgeson, 116 La. 218, 40 So. 682; Lisso *v.* Giddens, 117 La. 507, 41 So. 1029; Little River Lumber Co. *v.* Thompson, 118 La. 284, 42 So. 938; Woodfolk *v.* Witkowski, (La. 1908) 45 So. 401.

Mississippi. — Smith *v.* Denny, (Miss. 1907) 43 So. 479.

New York. — Adirondack League Club *v.* Keyes, 122 N. Y. App. Div. 178, 106 N. Y. Supp. 963.

North Carolina. — Matthews *v.* Fry, 141 N. Car. 582, 54 S. E. 379.

Oklahoma. — O'Keefe *v.* Dillenbeck, 15 Okla. 437, 83 Pac. 540.

South Carolina. — Heyward *v.* Christensen, (S. Car. 1908) 61 S. E. 399.

Washington. — Stoll *v.* Griffith, 41 Wash. 37, 82 Pac. 1025; Tacoma Gas, etc., Light Co. *v.* Pauley, (Wash. 1908) 95 Pac. 1103.

West Virginia. — Hogan *v.* Piggott, 60 W. Va. 541, 56 S. E. 189.

Wisconsin. — Emerson *v.* McDonnell, 129 Wis. 67, 107 N. W. 1037.

Michigan Statute Not Repealed by Laws of 1881, 1882. — Hoffman *v.* H. M. Land, etc., Lumber Co., 138 Mich. 10, 104 N. W. 424.

Rule Applies to Deed by County Treasurer. — Clinton *v.* Krull, (Supm. Ct. App. Div.) 111 N. Y. Supp. 105.

Rule Does Not Apply to Deeds to Counties. — Ayers *v.* Lund, (Oregon 1907) 89 Pac. 806.

Repeal of Statute as Impairing Obligation of Contract. — Blakemore *v.* Cooper, 15 N. Dak. 5, 106 N. W. 566.

An Answer Alleging the Performance of the Steps of which the deed is *prima facie* evidence does not render the deed inadmissible as evidence or require proof of the steps. Preston *v.* Thayer, 127 Wis. 123, 106 N. W. 672.

977. 1. Gibson *v.* Trisler, 73 Kan. 397, 85 Pac. 413; John *v.* Young, 74 Kan. 865, 86 Pac. 295; Gibson *v.* Larabee, (Kan. 1908) 94 Pac. 216; Gibson *v.* Freeland, (Kan. 1908) 94 Pac. 782.

978. 1. Lincoln Mortg., etc., Co. *v.* Davis, (Kan. 1907) 92 Pac. 707. See also Robbins *v.* Phillips, 74 Kan. 113, 85 Pac. 815.

4. Smith *v.* Philips, 51 Fla. 327, 41 So. 527; Ropes *v.* Minshew, 51 Fla. 299, 41 So. 538; Glanz *v.* Ziabek, 233 Ill. 22, 84 N. E. 36; Matthews *v.* Fry, 141 N. Car. 582, 54 S. E. 379; Smith *v.* Jansen, 43 Wash. 6, 85 Pac. 672; Tremmel *v.* Mess, (Wash. 1907) 89 Pac. 487. See also Columbia Finance, etc., Co. *v.* Fierbaugh, 59 W. Va. 334, 53 S. E. 468.

Overcome by Recitals Showing Deed Void. — Rush *v.* Lewis and Clark County, (Mont. 1908) 93 Pac. 943.

The Presumption of Title in the Defendant at the Sale may be overcome by showing a superior record title. Einstein *v.* Holladay-Klotz Land, etc., Co., (Mo. App. 1908) 111 S. W. 859.

6. Fox *v.* Wright, (Cal. 1907) 91 Pac. 1005; Best *v.* Wohlford, (Cal. 1908) 94 Pac. 98; Phillips *v.* Cox, (Cal. App. 1908) 94 Pac. 377; Farmer's L. & T. Co. *v.* Wall, 129 Iowa 651, 106 N. W. 160; Adirondack League Club *v.* Keyes, 122 N. Y. App. Div. 178, 106 N. Y. Supp. 963.

979. 1. Lemoore Bank *v.* Fulgham, 151 Cal. 234, 90 Pac. 936.

2. Lemoore Bank *v.* Fulgham, 151 Cal. 234, 90 Pac. 936; People *v.* Ladew, 189 N. Y. 355, 82 N. E. 431; People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N. Y. Supp. 821; Adirondack League Club *v.* Keyes, 122 N. Y. App. Div. 178, 106 N. Y. Supp. 963; People *v.* Lewis, (Supm. Ct. App. Div.) 111 N. Y. Supp. 398; Ayers *v.* Lund, (Oregon 1907) 89 Pac. 806.

4. Penrose *v.* Cooper, 71 Kan. 720, 84 Pac. 115, holding that necessary recitals may be supplied by inferences from statements in the deed; Spokane Terminal Co. *v.* Stanford, 44 Wash. 45, 87 Pac. 37; Day *v.* Fay, 59 W. Va. 65, 52 S. E. 1013.

Until the Statutory Period Has Expired the tax deed is subject to a strict construction. Its omissions cannot be supplied by inference, nor its defects cured by presumption. Grinstead *v.* Cooper, (Kan. 1908) 95 Pac. 401.

980. 3. State Finance Co. *v.* Beck, 15 N. Dak. 374, 109 N. W. 357.

4. **The Statutory Provisions Must Have Been Strictly Pursued** in order for the purchaser to acquire good title. Norris *v.* Delaware, etc., R. Co., 218 Pa. St. 88, 66 Atl. 1122.

981. 1. **Not Evidence of Payment of Subsequent Taxes by Purchaser.** — Carnahan *v.* Sieber Cattle Co., 34 Colo. 257, 82 Pac. 592.

4. Kries *v.* Holladay-Klotz Land, etc., Co.,

121 Mo. App. 184, 98 S. W. 1086; State Finance Co. *v.* Trimble, (N. Dak. 1907) 112 N. W. 984.

Void Deed Not Aided by Reference to Certificate. — Preston *v.* Hirsch, 5 Cal. App. 485, 90 Pac. 965.

5. **Destroyed Deed — Secondary Evidence Admissible.** — Kries *v.* Holladay-Klotz Land, etc., Co., 121 Mo. App. 184, 98 S. W. 1086.

982. 6. Teich *v.* Arms, 5 Cal. App. 475, 90 Pac. 962, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 982. See also John Duncan Land, etc., Co. *v.* Rusch, 145 Mich. 1, 108 N. W. 494.

7. **Omissions and Irregularities** in the sale may render it invalid to convey title, but still valid to transfer the lien to the purchaser. Holbrook *v.* Kunz, (Ind. App. 1908) 83 N. E. 730.

Void Sale Conveys Neither Title Nor Right of Possession. — *In re* Sheehy, 119 La. 608, 44 So. 315.

8. Teich *v.* Arms, 5 Cal. App. 475, 90 Pac. 962, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 982.

983. 1. Teich *v.* Arms, 5 Cal. App. 475, 90 Pac. 962, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983.

Under the Pennsylvania Statute recording the certificate as a mortgage entitles the purchaser to the rents and profits. Anson *v.* Elwood, (N. J. 1908) 68 Atl. 784.

4. Osceola Land Co. *v.* Chicago Mill, etc., Co., 84 Ark. 1, 103 S. W. 609; Teich *v.* Arms, 5 Cal. App. 475, 90 Pac. 962, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983; Iberia Cypress Co. *v.* Thorgeson, 116 La. 218, 40 So. 682; Somat *v.* Donovan, 118 La. 847, 43 So. 462; Frederick *v.* Goodbee, (La. 1908) 45 So. 606; Toolan *v.* Longyear, 144 Mich. 55, 107 N. W. 699; Haney *v.* Miller, (Mich. 1908) 117 N. W. 71; Wood *v.* Buena Vista Tp., (N. J. 1908) 69 Atl. 205; Topliff *v.* Richardson, (Neb. 1906) 107 N. W. 114; Erie County Sav. Bank *v.* Schuster, 187 N. Y. 111, 79 N. E. 843; Kahle *v.* Nisley, 74 Ohio St. 328, 78 N. E. 526; Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884; Doolittle *v.* J. L. Gates Land Co., 131 Wis. 24, 110 N. W. 890.

Right of Holder of Tax Title to Maintain Ejectment. — See Nicholson *v.* Hale, 73 Kan. 599, 85 Pac. 592.

In Georgia, where a deed issues at the time of the sale, the title is inchoate and purchaser is not entitled to possession until the expiration of the period of redemption. Elrod *v.* Owensboro Wagon Co., 128 Ga. 361, 57 S. E. 712.

Execution of Deed Cuts Off Period of Redemption. — Pierce *v.* Adams, (Kan. 1908) 93 Pac. 594.

Sale to State Does Not Pass Legal Title. — Husbands *v.* Polivick, (Ky. 1906) 96 S. W. 825.

The Indiana Statute has been held merely to define the estate, and not to release it from valid incumbrances. Indianapolis *v.* City Bond Co., (Ind. App. 1908) 84 N. E. 20.

Deed Vests in Purchaser All Title of Former Owner. — Hendershott *v.* Sagsvold, (Oregon 1907) 90 Pac. 1104.

5. Fluker *v.* De Grange, 117 La. 331, 41 So. 591; Oakland Cemetery Assoc. *v.* Ramsey County, 98 Minn. 404, 108 N. W. 857; Day *v.* Smith, 87 Miss. 395, 39 So. 526.

984. 2. Gates *v.* Keigher, 99 Minn. 138, 108 N. W. 860, *distinguishing* Allen *v.* Ramsey County, 98 Minn. 341, 108 N. W. 301, and Oakland Cemetery Assoc. *v.* Ramsey County, 98 Minn. 404, 108 N. W. 857.

Void Sale Revives Lien of State for Taxes. — Minnesota Debenture Co. *v.* United Real Estate Corp., 99 Minn. 287, 109 N. W. 251.

7. **Under the Georgia Statute** providing for execution of a deed at the time of the sale, the title is subject to redemption within the statutory period. Bennett *v.* Southern Pine Co., 123 Ga. 618, 51 S. E. 654; Elrod *v.* Owensboro Wagon Co., 128 Ga. 361, 57 S. E. 712.

985. 1. *Compare* Charter Oak Land, etc., Co. *v.* Bippus, 200 Mo. 688, 98 S. W. 546.

5. *Arkansas.* — Ross *v.* Royal, 77 Ark. 324, 91 S. W. 178; Kelley *v.* McDuffey, 79 Ark. 629, 96 S. W. 358; Dickinson *v.* Hardie, 79 Ark. 364, 96 S. W. 355; Gannon *v.* Moore, 83 Ark. 196, 104 S. W. 139.

California. — Baird *v.* Monroe, 150 Cal. 560, 89 Pac. 352; Carter *v.* Osborn, 150 Cal. 620, 89 Pac. 608; Schamblin *v.* Means, (Cal. App. 1907) 91 Pac. 1020.

Colorado. — Williams *v.* Conroy, 35 Colo. 117, 83 Pac. 959; Wood *v.* McCombe, 37 Colo. 174, 86 Pac. 319.

Kansas. — Kennedy *v.* Scott, 72 Kan. 359, 83 Pac. 971; Harel *v.* Decatur County Abstract Co., (Kan. 1907) 91 Pac. 790; Stevenson *v.* Carson, (Kan. 1908) 94 Pac. 796.

Louisiana. — Terry *v.* Heisen, 115 La. 1070, 40 So. 461; Crillen *v.* New Orleans Terminal Co., 117 La. 349, 41 So. 645; Harris *v.* Natalbany Lumber Co., 119 La. 978, 44 So. 806.

Michigan. — Downer *v.* Richardson, 148 Mich. 596, 112 N. W. 761.

Mississippi. — McLemore *v.* Anderson, (Miss. 1907) 43 So. 878.

North Dakota. — Nind *v.* Myers, 15 N. Dak. 400, 109 N. W. 335.

Oklahoma. — O'Keefe *v.* Dillenbeck, 15 Okla. 437, 83 Pac. 540.

Oregon. — Mount *v.* McAulay, 47 Oregon 444, 83 Pac. 529.

South Dakota. — Moran *v.* Thomas, 19 S. Dak. 469, 104 N. W. 212, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985; Bandow *v.* Wolven, (S. Dak. 1906) 107 N. W. 204.

Wisconsin. — Wisconsin River Land Co. *v.* Paine Lumber Co., 130 Wis. 393, 110 N. W. 220; Brunette *v.* Norber, 130 Wis. 632, 110 N. W. 785; Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884; Van Ostrand *v.* Cole, 131 Wis. 446, 110 N. W. 891; Herbst *v.* Land, etc., Co., (Wis. 1908) 115 N. W. 119.

Informalities Cured—Deed Regular on Face. — Williams *v.* Conroy, 35 Colo. 117, 83 Pac. 959.

Suit in Equity Barred by Laches. — Florida Coast Line Canal, etc., Co. *v.* Ellsworth Trust Co., (C. C. A.) 144 Fed. 972.

Statute in Force at Time of Sale Governs. — Whitin *v.* Brownbotham, (Neb. 1908) 114 N. W. 599.

History of New York Statutes. — See Peo-

ple v. Lewis, (Supm. Ct. App. Div.) 111 N. Y. Supp. 398.

Absence of Assessor's Affidavit to Assessment Roll Not a Fatal Defect. — State Finance Co. *v.* Mather, 15 N. Dak. 386, 109 N. W. 350, *disapproving* Eaton *v.* Bennett, 10 N. Dak. 346, 87 N. W. 188.

Statutes Apply Where State Is Purchaser. — Collins *v.* Reger, (W. Va. 1907) 57 S. E. 5.

Statutes Apply to Deeds of Sales for Municipal Taxes. — Hogan *v.* Piggott, 60 W. Va. 541, 56 S. E. 189.

Statutes Apply Only to Irregularities Appearing on Face of Proceedings of Record. — Hogan *v.* Piggott, 60 W. Va. 541, 56 S. E. 189.

6. Gavin *v.* Ashworth, 77 Ark. 242, 91 S. W. 303; Burkham *v.* Manewal, 195 Mo. 500, 94 S. W. 520; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698.

986. 1. Brunette *v.* Norber, 130 Wis. 632, 110 N. W. 785.

3. From Expiration of Period of Redemption. — Beatty *v.* O'Harron, (Tex. Civ. App. 1908) 109 S. W. 414; Young *v.* Jackson, (Tex. Civ. App. 1908) 110 S. W. 74.

4. Gavin *v.* Ashworth, 77 Ark. 242, 91 S. W. 303.

From Time When Owner Becomes Aware of Sale. — Hayward *v.* O'Connor, 145 Mich. 52, 108 N. W. 366.

5. Wood *v.* McCombe, 37 Colo. 174, 86 Pac. 319; Valger *v.* Stark, 75 Kan. 831, 89 Pac. 653; Mount *v.* McAulay, 47 Oregon 444, 83 Pac. 529; Van Ostrand *v.* Cole, 131 Wis. 446, 110 N. W. 891; Cole *v.* Van Ostrand, 131 Wis. 454, 110 N. W. 884.

6. Ross *v.* Royal, 77 Ark. 324, 91 S. W. 178; Long *v.* Boast, (Ala. 1907) 44 So. 955.

8. Mount *v.* McAulay, 47 Oregon 444, 83 Pac. 529.

987. 2. Long *v.* Boast, (Ala. 1907) 44 So. 955, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987.

3. *United States.* — Collier *v.* Goessling, (C. C. A.) 160 Fed. 604.

Arkansas. — Dickinson *v.* Arkansas City Imp. Co., 77 Ark. 570, 92 S. W. 21. *Compare* Dickinson *v.* Hardie, 79 Ark. 364, 96 S. W. 355; Ross *v.* Royal, 77 Ark. 324, 91 S. W. 178.

Florida. — Saddler *v.* Smith, (Fla. 1908) 45 So. 718.

Kansas. — See Nagle *v.* Tieperman, 74 Kan. 32, 88 Pac. 969.

Louisiana. — Richard *v.* Perrodin, 116 La. 440, 40 So. 789; Bartley *v.* Sallier, 118 La. 93, 42 So. 657; Honor *v.* Fellman, 119 La. 1061, 44 So. 887; Eames *v.* Woodson, (La. 1908) 46 So. 13.

Minnesota. — Holmes *v.* Laughren, 97 Minn. 83, 105 N. W. 558.

Mississippi. — Moores *v.* Flurry, 87 Miss. 707, 40 So. 226; Kennedy *v.* Sanders, (Miss. 1907) 43 So. 913; Eastland *v.* Yazoo Delta Lumber Co., (Miss. 1907) 43 So. 956; Barker *v.* Jackson, (Miss. 1907) 44 So. 34.

New York. — People *v.* Golding, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 425, 106 N. Y. Supp. 821.

North Dakota. — Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322; State Finance Co. *v.* Beck, 15 N. Dak. 374, 109 N. W. 357; State Finance Co. *v.* Myers, (N. Dak. 1907) 112 N. W. 76.

South Dakota. — Moran *v.* Thomas, 19 S. Dak. 469, 104 N. W. 212, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987; Bandow *v.* Wolven, (S. Dak. 1906) 107 N. W. 204.

West Virginia. — Toothman *v.* Courtney, (W. Va. 1907) 58 S. E. 915.

No Application Where Deed Void. — Woodall *v.* Edwards, 83 Ark. 334, 104 S. W. 128.

No Application to Case Questioning Right of Grantee to Acquire Title. — Gilman *v.* Heitman, (Iowa 1907) 113 N. W. 932.

4. Babin *v.* Daspit, (La. 1908) 45 So. 597; Moran *v.* Thomas, 19 S. Dak. 469, 104 N. W. 212, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 987.

5. Long *v.* Boast, (Ala. 1907) 44 So. 955.

988. 1. Dimpfel *v.* Beam, (Colo. 1907) 91 Pac. 1107; Penrose *v.* Cooper, 71 Kan. 720, 81 Pac. 489; Beggs *v.* Paine, 15 N. Dak. 436, 109 N. W. 322; Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778; King *v.* Lane, (S. Dak. 1906) 110 N. W. 37; Battelle *v.* Wolven, (S. Dak. 1908) 115 N. W. 99; Mathews *v.* Blake, (Wyo. 1907) 92 Pac. 242, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 988.

4. Head *v.* Howcott Land Co., 119 La. 331, 44 So. 117.

5. Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698.

989. 4. Baird *v.* Monroe, 150 Cal. 560, 89 Pac. 352. See also Ayers *v.* Lund, (Oregon 1907) 89 Pac. 806.

990. 5. Mitchell *v.* Minnequa Town Co., (Colo. 1907) 92 Pac. 678; Joliet Stove Works *v.* Kiep, 230 Ill. 550, 82 N. E. 875; Lindner *v.* New Orleans, 116 La. 372, 40 So. 736; Burkham *v.* Manewal, 195 Mo. 500, 94 S. W. 520; Hitchcock County *v.* Cole, (Neb. 1907) 114 N. W. 276; Schaffer *v.* Davidson, (Tex. Civ. App. 1906) 97 S. W. 858.

Contra in Suit in Equity to Quiet Title. — Hole *v.* Van Duzer, 11 Idaho 79, 81 Pac. 109.

6. *Arkansas.* — Files *v.* Jackson, 84 Ark. 587, 106 S. W. 950.

Colorado. — Elder *v.* Chaffee County, 33 Colo. 475, 81 Pac. 244.

Illinois. — Joliet Stove Works *v.* Kiep, 230 Ill. 550, 82 N. E. 875.

Indiana. — Burkam *v.* Kunz, (Ind. App. 1908) 84 N. E. 766; Holbrook *v.* Kunz, (Ind. App. 1908) 83 N. E. 766.

Kansas. — Wagner *v.* Underhill, 71 Kan. 637, 81 Pac. 177.

Kentucky. — Alexander *v.* Aud, (Ky. 1905) 88 S. W. 1103; Jones *v.* Loville, (Ky. 1906) 97 S. W. 390.

Nebraska. — Hitchcock County *v.* Cole, (Neb. 1907) 114 N. W. 276, holding that under the facts of the case at bar the purchaser should recover the purchase money from the redemptioner and not from the plaintiff.

South Dakota. — King *v.* Lane, (S. Dak. 1906) 110 N. W. 37.

Texas. — Rogers *v.* Moore, (Tex. Civ. App. 1906) 94 S. W. 114.

Washington. — Moyer v. Boss, 41 Wash. 130, 83 Pac. 12; J. W. Wheeler Co. *v.* Pates, 43 Wash. 247, 86 Pac. 625; Ontario Land Co. *v.* Yordy, 44 Wash. 239, 87 Pac. 257; Ryno *v.* Snider, (Wash. 1908) 95 Pac. 644.

Wisconsin. — Maxcy *v.* Simonson, 130 Wis. 650, 110 N. W. 803; Washburn Land Co. *v.* Swanby, 131 Wis. 1, 110 N. W. 806; Van Ostrand *v.* Cole, 131 Wis. 446, 110 N. W. 891.

Reimbursement Not Required Where Sale Void by Reason of Payment of Taxes. — Glos *v.* Shedd, 218 Ill. 209, 75 N. E. 887.

Void Deed Vests Lien for Taxes in Grantee. — Pierce *v.* Adams, (Kan. 1908) 93 Pac. 594.

Taxes Subsequently Paid Recoverable. — Hamilton *v.* Brownsville Gaslight Co., 115 Tenn. 150, 90 S. W. 159.

992. 1. Elder *v.* Chaffee County, 33 Colo. 475, 81 Pac. 244.

4. Statute Not Applicable to Suits to Quiet Title. — Manwarring *v.* Missouri Lumber, etc., Co., 200 Mo. 718, 98 S. W. 762.

993. 9. Manwarring *v.* Missouri Lumber, etc., Co., 200 Mo. 718, 98 S. W. 762.

994. 3. Thomas *v.* Farmers' L. & T. Co., (Neb. 1906) 107 N. W. 589; Powers *v.* Bottineau First Nat. Bank, 15 N. Dak. 466, 109 N. W. 361; Flannigan *v.* Towle, (Cal. App. 1908) 96 Pac. 507.

Tender Not Condition Precedent Where Deed Void. — Keller *v.* Hawk, (Okla. 1907) 91 Pac. 778.

4. Glos *v.* Garrett, 219 Ill. 208, 76 N. E. 373; Burkham *v.* Manewal, 195 Mo. 500, 94 S. W. 520; Rogers *v.* Moore, (Tex. Civ. App. 1906) 94 S. W. 114; Moore *v.* Rogers, (Tex. 1907) 99 S. W. 1023; Siers *v.* Wiseman, 58 W. Va. 340, 52 S. E. 460; Collins *v.* Reger, (W. Va. 1907) 57 S. E. 743; Toothman *v.* Courtney, (W. Va. 1907) 58 S. E. 915.

995. 1. Crosby *v.* Terry, (Tex. Civ. App. 1906) 91 S. W. 652.

3. Hamilton *v.* Brownsville Gaslight Co., 115 Tenn. 150, 90 S. W. 159.

5. State Finance Co. *v.* Beck, 15 N. Dak. 374, 109 N. W. 357; State Finance Co. *v.* Myers, (N. Dak. 1907) 112 N. W. 76; State Finance Co. *v.* Trimble, (N. Dak. 1907) 112 N. W. 984.

6. Penalties Not Recoverable. — Hamilton *v.* Brownsville Gaslight Co., 115 Tenn. 150, 90 S. W. 159.

7. Fitch *v.* Douglass, (Kan. 1907) 90 Pac. 769; Bartley *v.* Sallier, 118 La. 93, 42 So. 657; Page *v.* Kidd, (La. 1908) 46 So. 35; Lamberida *v.* Barnum, (Tex. Civ. App. 1905) 90 S. W. 698.

TEACH — TEACHER.

996. 11. **Teacher.** — As to who are *teachers* within the meaning of the Teachers' Pension Fund Act, see Venable *v.* Schafer, 28 Ohio Cir. Ct. 202.

TELEGRAPHS AND TELEPHONES.

1002. 5. Texarkana *v.* Southwestern Tel., etc., Co., (Tex. Civ. App. 1907) 106 S. W. 915.

The Liability of a Telephone Company for Negligence in the transmission of a message will be determined as to if were a telegraph company. McLeod *v.* Pacific States Telephone, etc., Co., (Oregon 1908) 95 Pac. 1009.

1003. 5. Western Union Tel. Co. *v.* Simmons, (Tex. Civ. App. 1906) 93 S. W. 686; Lowther *v.* Bridgeman [illegible] S. E. 410.

6. Western Union Tel. Co. *v.* Schriver, (C. C. A.) 141 Fed. 538; Western Union Tel. Co. *v.* State, 165 Ind. 492, 76 N. E. 100; Crouch *v.* Arnett, 71 Kan. 49, 79 Pac. 1086; State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 194, 86 S. W. 390; Swayze *v.* Monroe, 116 La. 643, 40 So. 926, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1003.

8. Dunn *v.* Western Union Tel. Co., 2 Ga. App. 845, 59 S. E. 189; Western Union Tel. Co. *v.* State, 165 Ind. 492, 76 N. E. 100.

Telegraph and Telephone Companies "are common carriers of news." State *v.* Cumberland Telephone, etc., Co., 114 Tenn. 194, 86 S. W. 390.

9. Postal Tel. Cable Co. *v.* Terrell, (Ky. 1907) 100 S. W. 292; Broom *v.* Western Union Tel. Co., 71 S. Car. 506, 51 S. E. 259; Campbell *v.* Western Union Tel. Co., 74 S. Car. 300, 54 S. E. 571.

Telegraph Companies Made Common Carriers by Statute. — Blackwell Milling, etc., Co. *v.* Western Union Tel. Co., 17 Okla. 376, 89 Pac. 235.

10. Poteet *v.* Western Union Tel. Co., 74 S. Car. 491, 55 S. E. 113.

1005. 1. Ganz *v.* Ohio Postal Tel. Cable Co., (C. C. A.) 140 Fed. 692.

3. Ganz *v.* Ohio Postal Tel. Cable Co., (C., C. A.) 140 Fed. 692; Ohio Postal Tel. Cable Co. *v.* Sandusky County, 137 Fed. 947; Western Union Tel. Co. *v.* Omaha, 73 Neb. 527, 103 N. W. 84.

10. Cosgriff *v.* Tri-State Telephone, etc., Co., 15 N. Dak. 210, 107 N. W. 525.

1006. 4. State *v.* Nebraska Telephone Co., 127 Iowa 194, 103 N. W. 120; Osborne *v.* Auburn Telephone Co., 111 N. Y. App. Div. 702, 97 N. Y. Supp. 874; Farmer *v.* Columbiana County Telephone Co., 72 Ohio St. 526, 74 N. E. 1078.

7. Home Telephone, etc., Co. *v.* Los Angeles, 155 Fed. 554; State *v.* Nebraska Telephone Co., 127 Iowa 194, 103 N. W. 120. See also Bevis *v.* Vanceburg Telephone Co., (Ky. 1905) 89 S. W. 126.

10. People *v.* Chicago Telephone Co., 220 Ill. 238, 77 N. E. 245; Osborne *v.* Auburn Telephone Co., 111 N. Y. App. Div. 702, 97 N. Y. Supp. 874; Farmer *v.* Columbiana County Telephone Co., 72 Ohio St. 526, 74 N. E. 1078. See also Merchants' Police, etc., Tel. Co. *v.* Citizens' Telephone Co., (Ky. 1906) 93 S. W. 642; Carthage *v.* Central New York Telephone, etc., Co., 185 N. Y. 448, 78 N. E. 165.

1007. 3. **Lapse of Franchise.** — Cumberland Telephone, etc., Co. *v.* Evansville, (C. C. A.) 143 Fed. 238.

4. Consent May Be Conditioned upon Completion of Line within Reasonable Time. — Keystone State Telephone, etc., Co. *v.* Ridley Park, 28 Pa. Super. Ct. 635.

7. Memphis *v.* Postal Telegraph Cable Co., (C. C. A.) 145 Fed. 602; Nashville *v.* Cum-

berland Telephone, etc., Co., (C. C. A.) 145 Fed. 607; California *v.* Buncetон Telephone Co., 112 Mo. App. 722, 87 S. W. 604; Lancaster *v.* Briggs, 118 Mo. App. 570, 96 S. W. 314; Farmer *v.* Columbiana County Telephone Co., 72 Ohio St. 526, 74 N. E. 1078. *Compare* Wisconsin Telephone Co. *v.* Milwaukee, 126 Wis. 1, 104 N. W. 1009.

1008. 7. Hobbs *v.* Long Distance Telephone, etc., Co., 147 Ala. 393, 41 So. 1003; Missouri River Telephone Co. *v.* Mitchell, (S. Dak. 1908) 116 N. W. 67; Carthage *v.* Central New York Telephone, etc., Co., 185 N. Y. 448, 78 N. E. 165; Gannett *v.* Independent Telephone Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 555, 106 N. Y. Supp. 3; Little *v.* Central Dist., etc., Tel. Co., 213 Pa. St. 229, 62 Atl. 848. See also Lancaster *v.* Briggs, 118 Mo. App. 570, 96 S. W. 314; State *v.* Helena, 34 Mont. 67, 85 Pac. 744; Scofield *v.* Poughkeepsie, 122 N. Y. App. Div. 868, 107 N. Y. Supp. 767.

9. Northwestern Telephone Exch. Co. *v.* St. Charles, 154 Fed. 386.

12. Burrall *v.* American Telephone, etc., Co., 224 Ill. 266, 79 N. E. 705; State *v.* Graeme, (Mo. App. 1908) 108 S. W. 1131; Gannett *v.* Independent Telephone Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 555, 106 N. Y. Supp. 3; Cosgriff *v.* Tri-State Telephone, etc., Co., 15 N. Dak. 210, 107 N. W. 525. *Compare* Frazier *v.* East Tennessee Telephone Co., 115 Tenn. 416, 90 S. W. 620, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1008, 1009; Hobbs *v.* Long Distance Telephone, etc., Co., 147 Ala. 393, 41 So. 1003. *Contra*, Lowther *v.* Bridgeman, 57 W. Va. 306, 50 S. E. 410.

Use of Telephone Poles for Fire Alarm and Police Signal Service. — DeKalb County Telephone Co. *v.* Dutton, 228 Ill. 178, 81 N. E. 830.

Land Owned by a Private Individual but dedicated to street purposes cannot be occupied by the wires and poles of a telephone company without the consent of the owner or proceedings for its condemnation, notwithstanding that a franchise has been granted the telephone company authorizing the use of the streets. Powers *v.* State Line Telephone Co., 116 N. Y. App. Div. 737, 102 N. Y. Supp. 34.

1009. 1. Shinzel *v.* Bell Telephone Co., 31 Pa. Super. Ct. 221.

4. Gannett *v.* Independent Telephone Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 555, 106 N. Y. Supp. 3.

1010. 5. Hudson River Telephone Co. *v.* Forrestal, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 133, 106 N. Y. Supp. 404.

8. Maryland Telephone, etc., Co. *v.* Ruth, (Md. 1907) 68 Atl. 358; Bunke *v.* New York Telephone Co., 110 N. Y. App. Div. 241, 97 N. Y. Supp. 66, *affirming* (Supm. Ct. App. T.) 46 Misc. (N. Y.) 97, 91 N. Y. Supp. 390.

The "Interests of the Public" will not justify a telephone company in constructing its lines on private property without the consent of the owner or the instituting of proper proceedings. Burrall *v.* American Telephone, etc., Co., 224 Ill. 266, 79 N. E. 705.

Fastening Wires on House. — Bunke *v.* New York Telephone Co., (Supm. Ct. App. T.) 46 Misc. (N. Y.) 97, 91 N. Y. Supp. 390, *affirmed* in 110 N. Y. App. Div. 241, 97 N. Y. Supp. 66.

1011. 1. **Telephone Companies Have Not Power of Eminent Domain in Mississippi.** — Alabama, etc., R. Co. *v.* Cumberland Telephone, etc., Co., 88 Miss. 438, 41 So. 258.

2. **Foreign Telegraph Company.** — Duke *v.* Postal Tel. Cable Co., 71 S. Car. 95, 50 S. E. 675; Baldwin *v.* Postal Tel. Cable Co., 78 S. Car. 419, 59 S. E. 67.

4. See St. Louis, etc., R. Co. *v.* Batesville, etc., Telephone Co., 80 Ark. 499, 97 S. W. 660.

1012. 6. Billings Mut. Telephone Co. *v.* Rocky Mountain Bell Telephone Co., 155 Fed. 207.

1013. 2. *Compare* Cumberland Telephone, etc., Co. *v.* Yazoo, etc., R. Co., (Miss. 1907) 44 So. 166.

1014. 8. Kibbie Telephone Co. *v.* Landphere, (Mich. 1908) 115 N. W. 244; Missouri River Telephone Co. *v.* Mitchell, (S. Dak. 1908) 116 N. W. 67; Cumberland Telephone, etc., Co. *v.* Cartwright Creek Telephone Co., (Ky. 1908) 108 S. W. 875; Jamestown *v.* Home Telephone Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 297; Rochester Telephone Co. *v.* Ross, (Supm. Ct. App. Div.) 109 N. Y. Supp. 381.

1015. 4. Crawford *v.* Standard Telephone Co., (Iowa 1908) 115 N. W. 878; Louisville Home Telephone Co. *v.* Gasper, (Ky. 1906) 93 S. W. 1057; Eastern Kentucky Telephone, etc., Co. *v.* Hardwick, (Ky. 1908) 106 S. W. 307; Little *v.* Central Dist., etc., Tel. Co., 213 Pa. St. 229, 62 Atl. 848. *Compare* Harton *v.* Forest City Telephone Co., (N. Car. 1907) 59 S. E. 1022.

The authority given by the legislature to use a highway cannot be so construed as to permit the improper placing of telegraph and telephone poles. Bevis *v.* Vanceburg Telephone Co., (Ky. 1905) 89 S. W. 126.

Contributory Negligence of Persons Using Highway. — Moore *v.* East Tennessee Telephone Co., (C. C. A.) 142 Fed. 965.

Manner of Erecting Poles and Wires. — Chant *v.* Clinton Telephone Co., 130 Wis. 533, 110 N. W. 423.

1016. 1. **Failure to Repair for Seven Days after Notice.** — Harton *v.* Forest City Telephone Co., (N. Car. 1907) 59 S. E. 1022.

1017. 3. Evans *v.* Eastern Kentucky Telephone, etc., Co., (Ky. 1907) 99 S. W. 936, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1017; Wells *v.* Northeastern Telephone Co., 101 Me. 371, 64 Atl. 648; Owen *v.* Portage Telephone Co., 126 Wis. 412, 105 N. W. 924.

1018. 1. Postal Tel.-Cable Co. *v.* Umstadter, 103 Va. 742, 50 S. E. 259.

5. State *v.* Western Union Tel. Co., 75 Kan. 609, 90 Pac. 299.

1019. 1. Home Telephone, etc., Co. *v.* Los Angeles, 155 Fed. 554.

3. Interstate Independent Telephone, etc., Co. *v.* Towanda, 221 Ill. 299, 77 N. E. 456.

4. **A Foreign Telegraph Company Having the Right to Do Only Interstate Business** in a state cannot be compelled to file a certified copy of its articles of incorporation with the secretary of state. Western Union Tel. Co. *v.* State, 82 Ark. 309, 101 S. W. 748.

6. Home Telephone, etc., Co. *v.* Los Angeles,

155 Fed. 554; State *v.* Missouri Telephone Co., 189 Mo. 83, 88 S. W. 41.

Montana Constitution. — State *v.* Helena, 34 Mont. 67, 85 Pac. 744.

Where the county commissioners were given the control and custody of a state road, they had authority to compel a telegraph company to change the position of its poles and wires when such change was necessitated for reasons of the public good. Ganz *v.* Ohio Postal Tel. Cable Co., (C. C. A.) 140 Fed. 692.

7. *Contra,* Western Union Tel. Co. *v.* Railroad Commission, (La. 1908) 45 So. 598. See Interstate Independent Telephone Co. *v.* Towanda, 221 Ill. 299, 77 N. E. 456.

Regulation of Rates. — Cumberland Telephone, etc., Co. *v.* Railroad Commission, 156 Fed. 823.

9. Home Telephone, etc., Co. *v.* Los Angeles, 155 Fed. 554; Cumberland Telephone, etc., Co. *v.* Hickman, (Ky. 1908) 111 S. W. 311; State *v.* Missouri, etc., Telephone Co., 189 Mo. 83, 88 S. W. 41.

1020. 5. Lancaster *v.* Briggs, 118 Mo. App. 570, 96 S. W. 314; Carthage *v.* Garner, 209 Mo. 688, 108 S. W. 521; State *v.* Milwaukee Independent Telephone Co., (Wis. 1907) 114 N. W. 108; State *v.* Milwaukee, (Wis. 1907) 113 N. W. 40.

6. State *v.* Milwaukee, (Wis. 1907) 113 N. W. 40.

7. State *v.* Red Lodge, 33 Mont. 345, 83 Pac. 642; Texarkana *v.* Southwestern Tel., etc., Co., (Tex. Civ. App. 1907) 106 S. W. 915.

9. Wright *v.* Glen Telephone Co., 112 N. Y. App. Div. 745, 99 N. Y. Supp. 85, *affirming* (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 192; Farmer *v.* Columbiana County Telephone Co., 72 Ohio St. 526, 74 N. E. 1078.

10. State *v.* Milwaukee, (Wis. 1907) 113 N. W. 40; Home Telephone, etc., Co. *v.* Los Angeles, 155 Fed. 554.

11. State *v.* Milwaukee Independent Telephone Co., (Wis. 1907) 114 N. W. 108. *Compare* Moberly *v.* Richmond Telephone Co., (Ky. 1907) 103 S. W. 714; State *v.* Missouri, etc., Telephone Co., 189 Mo. 83, 88 S. W. 41.

1021. 2. Cumberland Telephone, etc., Co. *v.* Kelly, (C. C. A.) 160 Fed. 316.

9. Cumberland Telephone, etc., Co. *v.* Kelly, (C. C. A.) 160 Fed. 316; Crouch *v.* Arnett, 71 Kan. 49, 79 Pac. 1086; Wright *v.* Glen Telephone Co., (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 192, 95 N. Y. Supp. 101, *affirmed* 112 N. Y. App. Div. 745, 99 N. Y. Supp. 85.

A Statute Providing against Discrimination is violated by compelling a subscriber to come to the main office to send "long distance" messages, when the same is not required of other subscribers. Yancey *v.* Batesville Telephone Co., 81 Ark. 486, 99 S. W. 679.

1022. 1. Cumberland Telephone, etc., Co. *v.* Kelly, (C. C. A.) 160 Fed. 316.

2. Cumberland Tel., etc., Co. *v.* Hobart, 89 Miss. 252, 42 So. 349.

1023. 3. Cumberland Tel., etc., Co. *v.* Hobart, 89 Miss. 252, 42 So. 349.

7. Frazier *v.* Western Union Tel. Co., 45 Oregon 414, 78 Pac. 330; Poteet *v.* Western Union Tel. Co., 74 S. Car. 491, 55 S. E. 113. See also Arkansas, etc., R. Co. *v.* Lee, 79 Ark. 448, 96 S. W. 148.

1024. 2. Cumberland Telephone, etc., Co. *v.* Atherton, (Ky. 1906) 91 S. W. 257.

5. Frazier *v.* Western Union Tel. Co., 45 Oregon 418, 78 Pac. 330, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1024; Poteet *v.* Western Union Tel. Co., 74 S. Car. 491, 55 S. E. 113.

Telegraph Company Owes Duty to Undisclosed Principal of Sender of Message. Western Union Tel. Co. *v.* Schriver, (C. C. A.) 141 Fed. 538.

A Telegraph Company Must Provide a place for doing business with its patrons, of safe and decent access. Dunn *v.* Western Union Tel. Co., 2 Ga. App. 845, 59 S. E. 189.

1025. 1. Havelock Bank *v.* Western Union Tel. Co., (C. C. A.) 141 Fed. 522, 5 Ann. Cas. 515; Western Union Tel. Co. *v.* McDonald, (Tex. Civ. App. 1906) 95 S. W. 691.

A Foreign Telegraph Company Having Authority to Do Only Interstate Business in a state cannot be compelled to accept messages for local transmission and delivery under a state statute. Western Union Tel. Co. *v.* State, 82 Ark. 309, 101 S. W. 748.

The Initial Transmitting Company May Not Refuse to Accept a Telegram for Transmission, where a prior telegram on the same subject has been delayed by the delivering telegraph company. Western Union Tel. Co. *v.* Simmons, (Tex. Civ. App. 1906) 93 S. W. 686.

2. Western Union Tel. Co. *v.* McDonald, (Tex. Civ. App. 1906) 95 S. W. 691; Buchanan *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 100 S. W. 974. *Compare* Tinsley *v.* Western Union Tel. Co., 72 S. Car. 350, 51 S. E. 913.

3. Planters' Cotton Oil Co. *v.* Western Union Tel. Co., 126 Ga. 621, 55 S. E. 495; Rich *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 110 S. W. 93.

5. Western Union Tel. Co. *v.* Johnsey, (Tex. Civ. App. 1908) 109 S. W. 251.

Message Telephoned to Telegraph Company for Transmission — Proof of Receipt. — Planters' Cotton Oil Co. *v.* Western Union Tel. Co., 126 Ga. 621, 55 S. E. 495.

7. Havelock Bank *v.* Western Union Tel. Co., (C. C. A.) 141 Fed. 522, 5 Ann. Cas. 515; Western Union Tel. Co. *v.* Merrill, 144 Ala. 618, 39 So. 121; Frazier *v.* Western Union Tel Co., 45 Oregon 414, 78 Pac. 330, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1024 [1025]; Western Union Tel. Co. *v.* McDonald, (Tex. Civ. App. 1906) 95 S. W. 691; Western Union Tel. Co. *v.* True, (Tex. 1908) 106 S. W. 315.

Defective Telegraph Equipment. — Tinsley *v.* Western Union Tel. Co., 72 S. Car. 350, 51 S. E. 913.

If a Delayed Telegram Would Not Have Accomplished the Purpose for which it was sent by being forwarded promptly, the plaintiff suffers no damage. Klopf *v.* Western Union Tel. Co., (Tex. Civ. App. 1906) 97 S. W. 820, rehearing denied.

1026. 2. See Arkansas, etc., R. Co. *v.* Lee, 79 Ark. 448, 96 S. W. 148.

4. Postal Tel. Cable Co. *v.* Nichols, (C. C. A.) 159 Fed. 643; Bolton *v.* Western Union Tel. Co., 76 S. Car. 529, 57 S. E. 543.

6. Potter *v.* Western Union Tel. Co., (Iowa

1908) 116 N. W. 130; Western Union Tel. Co. *v.* McDonald, (Tex. Civ. App. 1906) 95 S. W. 691. *Compare* McCarty *v.* Western Union Tel. Co., 116 Mo. App. 441, 91 S. W. 976.

8. Western Union Tel. Co. *v.* Ford, 77 Ark. 531, 92 S. W. 528; Bowyer *v.* Western Union Tel. Co., 130 Iowa 324, 106 N. W. 748; Postal Tel. Cable Co. *v.* Terrell, (Ky. 1907) 100 S. W. 292; Mott *v.* Western Union Tel. Co., 142 N. Car. 532, 55 S. E. 363; Campbell *v.* Western Union Tel. Co., 74 S. Car. 300, 54 S. E. 571; Harrison *v.* Western Union Tel. Co., 75 S. Car. 267, 55 S. E. 450; Glover *v.* Western Union Tel. Co., 78 S. Car. 502, 59 S. E. 526; Klopf *v.* Western Union Tel. Co., (Tex. 1907) 101 S. W. 1072; Western Union Tel. Co. *v.* Johnsey, (Tex. Civ. App. 1908) 109 S. W. 251.

"Utmost Diligence" Required by Oklahoma Statute. — Blackwell Milling, etc., Co. *v.* Western Union Tel. Co., 17 Okla. 376, 89 Pac. 235.

Messages Must Be Delivered According to Address Given. — Western Union Tel. Co. *v.* Rowell, (Ala. 1907) 45 So. 73.

A Promise by a Telegraph Operator that He Would Do All that He Could to get the message through by a certain time must be construed to mean only that he would exercise reasonable diligence. Mitchiner *v.* Western Union Tel. Co., 75 S. Car. 182, 55 S. E. 222.

Names Idem Sonans. — Where the plaintiff's name and that appearing on the telegram as addressee were *idem sonans*, it was the duty of the telegraph company "to exercise ordinary care to deliver the message in question" to plaintiff. Western Union Tel. Co. *v.* Wafford, (Tex. Civ. App. 1906) 97 S. W. 324. See also Western Union Tel. Co. *v.* Gamble, (Tex. Civ. App. 1907) 101 S. W. 1166.

1027. 1. Western Union Tel. Co. *v.* Whitson, 145 Ala. 426, 41 So. 405, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1027.

Undisclosed Principal. — Western Union Tel. Co. *v.* Schriver, (C. C. A.) 141 Fed. 538.

Delivery of a Message to Addressee's Son with Directions to deliver to his father makes the son the agent of the telegraph company, and the company thereby becomes responsible for any delay in delivery of which its messenger is guilty. Mott *v.* Western Union Tel. Co., 142 N. Car. 532, 55 S. E. 363.

Delivery of a Telegraph Message by Telephone to a person other than the addressee renders the telegraph company liable for any negligence of the person to whom the telegram is thus delivered. Key *v.* Western Union Tel. Co., 76 S. Car. 301, 56 S. E. 962.

Unless such person was the agent of the addressee. Murray *v.* Western Union Tel. Co., 74 S. Car. 64, 54 S. E. 209.

Delivery to an Unauthorized Person makes the company responsible for any negligence of that person. Glover *v.* Western Union Tel. Co., 78 S. Car. 502, 59 S. E. 526.

2. Western Union Tel. Co. *v.* Whitson, 145 Ala. 426, 41 So. 405, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1027.

4. **A Mistake in the Initials of the Addressee** does not excuse a failure to deliver a telegram unless the mistake contributed to the failure to deliver. Arkansas, etc., R. Co. *v.* Stroude, 82 Ark. 117, 100 S. W. 760.

5. Western Union Tel. Co. *v.* Rowell, (Ala. 1907) 45 So. 73; Sweet *v.* Western Union Tel. Co., 139 Mich. 322, 102 N. W. 850.

A Message Delivered in "Care of" Third Person's Wife. — Western Union Tel. Co. *v.* McCaul, 115 Tenn. 99, 90 S. W. 856.

Telegram Is Addressed "in Care of" a Corporation. — Western Union Tel. Co. *v.* Shaw, (Tex. Civ. App. 1905) 90 S. W. 58.

1028. 1. **When the Wrong Address Appears on the Telegram** it does not excuse the company from exercising reasonable care in endeavoring to make a delivery of the message. Wood *v.* Western Union Tel. Co., (N. Car. 1908) 61 S. E. 653.

1029. 1. Kernodle *v.* Western Union Tel. Co., 141 N. Car. 436, 54 S. E. 423.

2. Western Union Tel. Co. *v.* Merrill, 144 Ala. 618, 39 So. 121.

3. **A Message Announcing the Sickness of a Relative** requires greater diligence in delivery than the ordinary message. Kernodle *v.* Western Union Tel. Co., 141 N. Car. 436, 54 S. E. 423.

4. Campbell *v.* Western Union Tel. Co., 74 S. Car. 300, 54 S. E. 571.

5. Western Union Tel. Co. *v.* Ayers, (Tex. Civ. App. 1906) 93 S. W. 199.

Reasonableness of the "Free Delivery Limit" Rule a Question for the Court. — Western Union Tel. Co. *v.* Scott, (Ky. 1905) 87 S. W. 289.

8. Campbell *v.* Western Union Tel. Co., 74 S. Car. 300, 54 S. E. 571; Lyles *v.* Western Union Tel. Co., 77 S. Car. 174, 57 S. E. 725.

9. Western Union Tel. Co. *v.* McCaul, 115 Tenn. 99, 90 S. W. 856.

10. Arkansas, etc., R. Co. *v.* Stroude, 82 Ark. 117, 100 S. W. 760; Western Union Tel. Co. *v.* Scott, (Ky. 1905) 87 S. W. 289; Edwards *v.* Western Union Tel. Co., (N. Car. 1908) 60 S. E. 900; McCaul *v.* Western Union Tel. Co., 114 Tenn. 661, 88 S. W. 325; Western Union Tel. Co. *v.* Ayres, (Tex. Civ. App. 1907) 105 S. W. 1165.

1030. 7. Western Union Tel. Co. *v.* Morgan, (Miss. 1908) 45 So. 427; Glover *v.* Western Union Tel. Co., 78 S. Car. 502, 59 S. E. 526.

9. Western Union Tel. Co. *v.* True, (Tex. Civ. App. 1907) 103 S. W. 1180; Western Union Tel. Co. *v.* Gulick, (Tex. Civ. App. 1907) 106 S. W. 698.

Immaterial Where Negligence Occurred. — Whether negligence occurs at sending or receiving point is not material. Howard *v.* Western Union Tel. Co., (Ky. 1905) 86 S. W. 982.

Telephone Companies Included in the Rule of the Text. — McLeod *v.* Pacific States Telephone, etc., Co., (Oregon 1908) 95 Pac. 1009.

To Excuse Nonperformance on the Ground that It Was an Act of God, there must be no other contributing cause. Fail *v.* Western Union Tel. Co., (S. Car. 1908) 60 S. E. 697.

1031. 2. Western Union Tel. Co. *v.* Landry, (Tex. Civ. App. 1908) 108 S. W. 461; Postal Tel.-Cable Co. *v.* Sunset Constr. Co., (Tex. Civ. App. 1908) 109 S. W. 265.

3. Arial *v.* Western Union Tel. Co., 70 S. Car. 418, 50 S. E. 6.

6. *United States.* — Havelock Bank *v.* Western Union Tel. Co., (C. C. A.) 141 Fed. 522, 5 Ann. Cas. 515.

Alabama. — Western Union Tel. Co. *v.* Merrill, 144 Ala. 618, 39 So. 121; Western Union Tel. Co. *v.* Krichbaum, 145 Ala. 409, 41 So. 165.

Indiana. — Western Union Tel. Co. *v.* McClelland, 38 Ind. App. 578, 78 N. E. 672.

Maryland. — Western Union Tel. Co. *v.* Lehman, (Md. 1907) 67 Atl. 241.

North Carolina. — Alexander *v.* Western Union Tel. Co., 141 N. Car. 75, 53 S. E. 657; Carter *v.* Western Union Tel. Co., 141 N. Car. 374, 54 S. E. 274; Mott *v.* Western Union Tel. Co., 142 N. Car. 532, 55 S. E. 363; Shepard *v.* Western Union Tel. Co., 143 N. Car. 244, 55 S. E. 704; Edwards *v.* Western Union Tel. Co., (N. Car. 1908) 60 S. E. 900.

South Carolina. — Machen *v.* Western Union Tel. Co., 72 S. Car. 256, 51 S. E. 697; Du Bose *v.* Western Union Tel. Co., 73 S. Car. 218, 53 S. E. 175, rehearing denied; Willis *v.* Western Union Tel. Co., 73 S. Car. 379, 53 S. E. 639; Roberts *v.* Western Union Tel. Co., 73 S. Car. 520, 53 S. E. 985; Eaker *v.* Western Union Tel. Co., 75 S. Car. 97, 55 S. E. 129; Kirby *v.* Western Union Tel. Co., 77 S. Car. 404, 58 S. E. 10.

Texas. — Lawrence *v.* Western Union Tel. Co., (Tex. Civ. App. 1906) 95 S. W. 27; Western Union Tel. Co. *v.* Gulick, (Tex. Civ. App. 1907) 106 S. W. 698, rehearing denied; Postal Tel.-Cable Co. *v.* Sunset Constr. Co., (Tex. Civ. App. 1908) 109 S. W. 265, rehearing denied.

A Delay of Twelve Minutes in the Delivery of a Message announcing the sickness of a relative raises a question of negligence to be determined by the jury. Kernodle *v.* Western Union Tel. Co., 141 N. Car. 436, 54 S. E. 423.

Failure to Deliver Raises a Presumption of Negligence. — Wood *v.* Western Union Tel. Co., (N. Car. 1908) 61 S. E. 653.

7. Postal Tel.-Cable Co. *v.* Sunset Constr. Co., (Tex. Civ. App. 1908) 109 S. W. 265, rehearing denied.

1032. 3. **Where the Sending Operator Informed the Sender** that it was not necessary to prepay charges for delivery, failure to deliver promptly because such charges are not paid constitutes negligence. Mott *v.* Western Union Tel. Co., 142 N. Car. 532, 55 S. E. 363.

6. Bolton *v.* Western Union Tel. Co., 76 S. Car. 529, 57 S. E. 543.

1033. 4. Western Union Tel. Co. *v.* Gault, (Ky. 1906) 90 S. W. 610. *Compare* Western Union Tel. Co. *v.* Hankins, (Tex. Civ. App. 1908) 110 S. W. 539.

8. *United States.* — Western Union Tel. Co. *v.* Baker, (C. C. A.) 140 Fed. 315.

Georgia. — Trigg *v.* Western Union Tel. Co., (Ga. App. 1908) 61 S. E. 855.

Kentucky. — Postal Tel.-Cable Co. *v.* Terrell, (Ky. 1907) 100 S. W. 292; Western Union Tel. Co. *v.* Witt, (Ky. 1908) 110 S. W. 889.

North Carolina. — Alexander *v.* Western Union Tel. Co., 141 N. Car. 75, 53 S. E. 657; Edwards *v.* Western Union Tel. Co., (N. Car. 1908) 60 S. E. 900.

South Carolina. — Willis *v.* Western Union Tel. Co., 73 S. Car. 379, 53 S. E. 639; Mitchiner *v.* Western Union Tel. Co., 75 S. Car. 182, 55 S. E. 222; Jones *v.* Western Union Tel. Co., 75 S. Car. 208, 55 S. E. 318, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 1033; Key *v.* Western Union Tel. Co., 76 S. Car. 301, 56 S. E. 962; Doster *v.* Western Union Tel. Co., 77 S. Car. 56, 57 S. E. 671; Cason *v.* Western Union Tel. Co., 77 S. Car. 157, 57 S. E. 722; Dempsey *v.* Western Union Tel. Co., 77 S. Car. 399, 58 S. E. 9.

Texas. — Postal Tel. Co. *v.* Levy, (Tex. Civ. App. 1907) 102 S. W. 134; Western Union Tel. Co. *v.* Johnsey, (Tex. Civ. App. 1908) 109 S. W. 251.

1035. 7. Western Union Tel. Co. *v.* Barlow, 51 Fla. 351, 40 So. 491; Western Union Tel. Co. *v.* Cox, (Ky. 1906) 96 S. W. 594; Harton *v.* Forest City Telephone Co., 141 N. Car. 455, 54 S. E. 299; Du Bose *v.* Western Union Tel. Co., 73 S. Car. 218, 53 S. E. 175; Western Union Tel. Co. *v.* McDonald, (Tex. Civ. App. 1906) 95 S. W. 691.

A Supervening Cause Does Not Excuse a telegraph company where a prompt delivery of a delayed telegram would have prevented the injury in all probability. In such a case, the delay is the proximate cause. Sutton *v.* Western Union Tel. Co., (Ky. 1908) 110 S. W. 874.

Where the Plaintiff Was Not the Sender or Sendee of a delayed telegram, he must establish that the telegram was sent for his benefit and that the delay complained of was the proximate cause of the injury sustained. Kernodle *v.* Western Union Tel. Co., 141 N. Car. 436, 54 S. E. 423.

10. *United States.* — Western Union Tel. Co. *v.* Baker, (C. C. A.) 140 Fed. 315.

Arkansas. — Western Union Tel. Co. *v.* Ford, 77 Ark. 531, 92 S. W. 528.

Iowa. — Lucas *v.* Western Union Tel. Co., 131 Iowa 669, 109 N. W. 191; Hise *v.* Western Union Tel. Co., (Iowa 1907) 113 N. W. 819; Crawford *v.* Standard Telephone Co., (Iowa 1908) 115 N. W. 878.

North Carolina. — Harton *v.* Forest City Telephone Co., 141 N. Car. 455, 54 S. E. 299; Kernodle *v.* Western Union Tel. Co., 141 N. Car. 436, 54 S. E. 423; Gerock *v.* Western Union Tel. Co., 142 N. Car. 12, 54 S. E. 782.

South Carolina. — Smith *v.* Western Union Tel. Co., 77 S. Car. 378, 58 S. E. 6; Dempsey *v.* Western Union Tel. Co., 77 S. Car. 390, 58 S. E. 9; Cloy *v.* Western Union Tel. Co., 78 S. Car. 109, 58 S. E. 972; Doster *v.* Western Union Tel. Co., 77 S. Car. 56, 57 S. E. 671.

Texas. — Western Union Tel. Co. *v.* Salter, (Tex. Civ. App. 1906) 95 S. W. 549; Buchanan *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 100 S. W. 974.

1036. 1. Smith *v.* Western Union Tel. Co., 77 S. Car. 378, 58 S. E. 6.

3. **Notations Made by Operator on a Telegram** are admissible, where the operator testifies that the notations were made by him to indicate that a certain message had been sent. St. Louis Southwestern R. Co. *v.* White Sewing Mach. Co., 78 Ark. 1, 93 S. W. 58.

6. Western Union Tel. Co. *v.* Manker, 145 Ala. 418, 41 So. 850.

8. Western Union Tel. Co. *v.* O'Fiel, (Tex. Civ. App. 1907) 104 S. W. 406, rehearing denied.

11. **It Is Proper for an Addressee** to explain the meaning of the terms used in a telegram. Elam *v.* Western Union Tel. Co., 113 Mo. App. 538, 88 S. W. 115.

A Physician May Testify that if he had received the delayed telegram he would have gone

at once. Carter *v.* Western Union Tel. Co., 141 N. Car. 374, 54 S. E. 274, rehearing denied.

Where a Street on Which Addressee Lived Was Unknown at receiving point, evidence that old residents had not heard of it was objectionable. Western Union Tel. Co. *v.* Craige, (Tex. Civ. App. 1905) 90 S. W. 681.

Admission in Evidence of the Translation of a Cipher telegram is not objectionable in a suit for damages arising because of a delayed telegram, where the telegraph operators knew that the message was important. Western Union Tel. Co. *v.* McGown, (Tex. Civ. App. 1906) 93 S. W. 710.

1037. 1. Broom *v.* Western Union Tel. Co., 71 S. Car. 506, 51 S. E. 259.

A Telephone Company, as a Public Service Corporation, has the right to make reasonable rules and regulations for the conduct of its business. McDaniel *v.* Fanbush Telephone Co., (Ky. 1908) 106 S. W. 825.

4. Carter *v.* Western Union Tel. Co., 141 N. Car. 374, 54 S. E. 274; Smith *v.* Western Union Tel. Co., 72 S. Car. 116, 51 S. E. 537; Bolton *v.* Western Union Tel. Co., 76 S. Car. 529, 57 S. E. 543; Smith *v.* Western Union Tel. Co., 77 S. Car. 378, 58 S. E. 6.

5. Western Union Tel. Co. *v.* Ford, 77 Ark. 531, 92 S. W. 528.

6. Arkansas, etc., R. Co. *v.* Lee, 79 Ark. 448, 96 S. W. 148; Bonner *v.* Western Union Tel. Co., 71 S. Car. 307, 51 S. E. 117, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1037, and quoting entire text of page.

1038. 2. Carter *v.* Western Union Tel Co., 141 N. Car. 378, 54 S. E. 274, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1038.

4. Bolton *v.* Western Union Tel. Co., 76 S. Car. 529, 57 S. E. 543; Western Union Tel. Co. *v.* Cook, (Tex. Civ. App. 1907) 99 S. W. 1131; Western Union Tel. Co. *v.* Johnsey, (Tex. Civ. App. 1908) 109 S. W. 251.

To Constitute a Waiver the practice of keeping an office open after hours must be habitual. Smith *v.* Western Union Tel. Co., 77 S. Car. 378, 58 S. E. 6.

5. Smith *v.* Western Union Tel. Co., 77 S. Car. 378, 58 S. E. 6.

Delivery after Office Hours waives the regulation if the sending operator transmits the telegram and the operator at the point of delivery accepts it without objection. Carter *v.* Western Union Tel. Co., 141 N. Car. 374, 54 S. E. 274.

6. Bonner *v.* Western Union Tel. Co., 71 S. Car. 309, 51 S. E. 117, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1038, and quoting part of page of text; Harrison *v.* Western Union Tel. Co., 71 S. Car. 391, 51 S. E. 119, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1038, and quoting two paragraphs; Bolton *v.* Western Union Tel. Co., 76 S. Car. 538, 57 S. E. 543, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1038.

1039. 2. Western Union Tel. Co. *v.* Cook, (Tex. Civ. App. 1907) 99 S. W. 1131.

7. **A Telephone Company May Require** their bills to be paid at their business office. Magruder *v.* Cumberland Telephone, etc., Co., (Miss. 1908) 46 So. 404.

A Telephone Company May Require that Its Tolls shall be paid in advance. Yancey *v.* Batesville Telephone Co., 81 Ark. 486, 99 S. W. 679.

1040. 8. **Regulations Are Not Waived** by the occasional delivery of telegrams after the hour of closing. Bonner *v.* Western Union Tel. Co., 71 S. Car. 303, 51 S. E. 117.

1041. 2. Commercial Milling Co. *v.* Western Union Tel. Co., (Mich. 1908) 115 N. W. 698; Blackwell Milling, etc., Co. *v.* Western Union Tel. Co., 17 Okla. 376, 89 Pac. 235.

1042. 9. *Compare* Howard *v.* Western Union Tel Co., (Ky. 1905) 86 S. W. 982.

1043. 2. Western Union Tel. Co. *v.* Milton, 53 Fla. 496, 43 So. 495, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1043; Blackwell Milling, etc., Co. *v.* Western Union Tel. Co., 17 Okla. 376, 89 Pac. 235.

The Rule of the Text Is Applied where the message was interstate, and the liability sought to be imposed a statutory one. Commercial Milling Co. *v.* Western Union Tel. Co., (Mich. 1908) 115 N. W. 698.

1044. 2. **The Stipulation Has No Application Where** the message was never delivered. Purdon Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327.

1045. 1. Wheelock *v.* Postal Tel. Cable Co., (Mass. 1908) 83 N. E. 313; Halsted *v.* Postal Tel Cable Co., 120 N. Y. App. Div. 433, 104 N. Y. Supp. 1016.

3. The stipulation cannot relieve a telegraph company from the consequences of its negligence. Postal Tel.-Cable Co. *v.* Sunset Constr. Co., (Tex. Civ. App. 1908) 109 S. W. 265.

1046. 3. Wheelock *v.* Postal Tel. Cable Co., (Mass. 1908) 83 N. E. 313.

5. Broom *v.* Western Union Tel. Co., 71 S. Car. 509, 51 S. E. 259, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1046; Western Union Tel. Co. *v.* Courtney, 113 Tenn. 485, 82 S. W. 484, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1046.

6. Western Union Tel. Co. *v.* Lehman, (Md. 1907) 67 Atl. 241, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1046.

1047. 2. Western Union Tel. Co. *v.* Heathcoat, (Ala. 1907) 43 So. 117; Wheelock *v.* Postal Tel. Cable Co., (Mass. 1908) 83 N. E. 313; Thorp *v.* Western Union Tel. Co., 118 Mo. App. 398, 94 S. W. 554.

The stipulation requires that damages for "mental anguish" shall be included in the items of the claim before a recovery can be had on that ground. Western Union Tel. Co. *v.* Moxley, 80 Ark. 554, 98 S. W. 112.

The Rule Is Applied to Statutory Penalties. — Western Union Tel. Co. *v.* Greer, 115 Tenn. 368, 89 S. W. 327.

3. **The Fact that the Agent for the Sender Could Not Read or Write** will not affect the validity of the stipulation. Western Union Tel. Co. *v.* Prevatt, (Ala. 1907) 43 So. 106.

1048. 8. **Misleading Statements Made by the Telegraph Company's Agent,** causing the plaintiff to withhold the filing of a claim beyond the stipulated period, invalidates the stipulation. Arkansas, etc., R. Co. *v.* Stroude, 77 Ark. 109, 91 S. W. 18.

10. Toale *v.* Western Union Tel. Co., 76 S. Car. 248, 57 S. E. 117, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048; Western Union Tel. Co. *v.* Courtney, 113 Tenn. 485,

82 S. W. 484, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048; Western Union Tel. Co. *v.* Moxley, 80 Ark. 554, 98 S. W. 112. *Compare* Western Union Tel. Co. *v.* Troth, (Ind. App. 1908) 84 N. E. 727.

12. Toale *v.* Western Union Tel. Co., 76 S. Car. 253, 57 S. E. 117, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048.

13. Western Union Tel. Co. *v.* Heathcoat, (Ala. 1907) 43 So. 117, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1048.

1049. 3. Western Union Tel. Co. *v.* Heathcoat, (Ala. 1907) 43 So. 117, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1049. See also Western Union Tel. Co. *v.* Nelson, (Ark. 1908) 111 S. W. 274; Wheelock *v.* Postal Tel. Cable Co., (Mass. 1908) 83 N. E. 313; Toale *v.* Western Union Tel. Co., 76 S. Car. 248, 57 S. E. 117.

5. Smith *v.* Western Union Tel. Co., 77 S. Car. 378, 58 S. E. 6; Western Union Tel. Co. *v.* Cook, (Tex. Civ. App. 1907) 99 S. W. 1131; Western Union Tel. Co. *v.* Greer, 115 Tenn. 368, 89 S. W. 327.

1051. 7. Postal Tel. Cable Co. *v.* Nichols, (C. C. A.) 159 Fed. 643; Broom *v.* Western Union Tel. Co., 71 S. Car. 506, 51 S. E. 259.

1052. 3. Whitehill *v.* Western Union Tel. Co., 136 Fed. 499, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1052.

1055. 1. **Where There Is a Failure to Deliver a Telegram,** the violation of the telegraph company's duty occurs at the point of delivery, and the law of that place governs. Balderston *v.* Western Union Tel. Co., (S. Car. 1908) 60 S. E. 435.

2. Commercial Milling Co. *v.* Western Union Tel. Co., (Mich. 1908) 115 N. W. 698.

4. Western Union Tel. Co. *v.* Totten, (C. C. A.) 141 Fed. 533; Western Union Tel. Co. *v.* Schriver, (C. C. A.) 141 Fed. 538; Havelock Bank *v.* Western Union Tel. Co., (C. C. A.) 141 Fed. 522, 5 Ann. Cas. 515.

1056. 2. Western Union Tel. Co. *v.* Lillard, (Ark. 1908) 110 S. W. 1035.

4. Western Union Tel. Co. *v.* Lillard, (Ark. 1908) 110 S. W. 1035.

6. Western Union Tel. Co. *v.* Cashman, (C. C. A.) 149 Fed. 367, 9 Ann. Cas. 693.

9. Western Union Tel. Co. *v.* Simmons, (Tex. Civ. App. 1906) 93 S. W. 686.

1058. 3. Western Union Tel. Co. *v.* Simmons, (Tex. Civ. App. 1906) 93 S. W. 686.

9. Western Union Tel. Co. *v.* McDonald, (Tex. Civ. App. 1906) 95 S. W. 691, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059 [1058].

1059. 4. Whitehill *v.* Western Union Tel. Co., 136 Fed. 499.

5. *United States.* — Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327.

Florida. — Western Union Tel. Co. *v.* Milton, 53 Fla. 502, 43 So. 495, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059 *et seq.*

Indiana. — Kagy *v.* Western Union Tel. Co., 37 Ind. App. 73, 76 N. E. 792.

Kentucky. — Western Union Tel. Co. *v.* Scott, (Ky. 1905) 87 S. W. 289; Western Union Tel. Co. *v.* Witt, (Ky. 1908) 110 S. W. 889.

Massachusetts. — Wheelock *v.* Postal Tel. Cable Co., (Mass. 1908) 83 N. E. 313, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059.

Missouri. — McCarty *v.* Western Union Tel. Co., 116 Mo. App. 441, 91 S. W. 976.

Nebraska. — Smith *v.* Western Union Tel. Co., (Neb. 1907) 114 N. W. 288.

North Carolina. — Dayvis *v.* Western Union Tel. Co., 139 N. Car. 84, 51 S. E. 898, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059; Newsome *v.* Western Union Tel. Co., 137 N. Car. 513, 50 S. E. 279; Cherokee Tanning Extract Co. *v.* Western Union Tel. Co., 143 N. Car. 376, 55 S. E. 777; Helms *v.* Western Union Tel. Co., 143 N. Car. 386, 55 S. E. 831.

Oklahoma. — Western Union Tel. Co. *v.* Pratt, 18 Okla. 274, 89 Pac. 237.

South Carolina. — Rogers *v.* Western Union Tel. Co., 72 S. Car. 290, 51 S. E. 773; Key *v.* Western Union Tel. Co., 76 S. Car. 301, 56 S. E. 962; Cason *v.* Western Union Tel. Co., 77 S. Car. 157, 57 S. E. 722; Butler *v.* Western Union Tel. Co. 77 S. Car. 148, 57 S. E. 757; Cloy *v.* Western Union Tel. Co., 78 S. Car. 109, 58 S. E. 972.

Texas. — Kopperl *v.* Western Union Tel. Co., (Tex. Civ. App. 1905) 85 S. W. 1018; Western Union Tel. Co. *v.* Ayers, (Tex. Civ. App. 1906) 93 S. W. 199; Western Union Tel. Co. *v.* Twaddell, (Tex. Civ. App. 1907) 103 S. W. 1120.

6. Hancock *v.* Western Union Tel. Co., 142 N. Car. 163, 55 S. E. 82.

7. Western Union Tel. Co. *v.* Hogue, 79 Ark. 37, 94 S. W. 924, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059, and quoting paragraph; Western Union Tel. Co. *v.* Moxley, 80 Ark. 554, 98 S. W. 112; McLeod *v.* Pacific States Telephone, etc., Co., (Oregon 1908) 95 Pac. 1009, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1059.

1060. 1. Wheelock *v.* Postal Tel. Cable Co., (Mass. 1908) 83 N. E. 313, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060; Western Union Tel. Co. *v.* Haley, 143 Ala. 586, 39 So. 386.

Compensatory Damages Are Limited to Actual Reimbursement. — Salinger *v.* Western Union Tel. Co., (Iowa 1907) 111 N. W. 820.

2. Kagy *v.* Western Union Tel. Co., 37 Ind. App. 73, 76 N. E. 792.

3. Gooch *v.* Western Union Tel. Co., (Ky. 1906) 90 S. W. 587; Cherokee Tanning Extract Co. *v.* Western Union Tel. Co., 143 N. Car. 376, 55 S. E. 777.

4. Western Union Tel. Co. *v.* Siddall, (Tex. Civ. App. 1905) 86 S. W. 343.

5. Western Union Tel. Co. *v.* Barlow, 51 Fla. 351, 40 So. 491, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1060.

1061. 3. Western Union Tel. Co. *v.* Schriver, (C. C. A.) 141 Fed. 538; Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327; Kagy *v.* Western Union Tel. Co., 37 Ind. App. 73, 76 N. E. 792; Mitchiner *v.* Western Union Tel. Co., 70 S. Car. 522, 50 S. E. 190; Rogers *v.* Western Union Tel. Co., 72 S. Car. 290, 51 S. E. 773; Western Union Tel. Co. *v.* Twaddell, (Tex. Civ. App. 1907) 103 S. W. 1120. *Compare* Western Union Tel. Co. *v.* True, (Tex. Civ. App. 1907) 103 S. W. 1180, (Tex. 1907) 106 S. W. 315.

The Poverty of the Sender, where it is a "special circumstance," should be communi- [illegible] to the telegraph company. Western

Union Tel. Co. *v.* Bell, (Tex. Civ. App. 1905) 90 S. W. 714.

The Rule of the Text Has Been Eliminated by statute (section 1778, Stat. 1898) in *Wisconsin*. The statute makes telegraph companies liable for all damages for failure or neglect proximately caused by them. Barker *v.* Western Union Tel. Co., (Wis. 1908) 114 N. W. 830.

4. Western Union Tel. Co. *v.* Milton, 53 Fla. 490, 43 So. 495.

5. Western Union Tel. Co. *v.* Raines, 78 Ark. 553, 94 S. W. 700, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1061, in dissenting opinion; Western Union Tel. Co. *v.* O'Fiel, (Tex. Civ. App. 1907) 104 S. W. 406.

1062. 1. Western Union Tel. Co. *v.* Westmoreland, (Ala. 1907) 44 So. 382; Western Union Tel. Co. *v.* Sledge, (Ala. 1907) 45 So. 59. *Compare* Western Union Tel. Co. *v.* Hanley, (Ark. 1908) 107 S. W. 1168. See Jones *v.* Western Union Tel. Co., 70 S. Car. 539, 50 S. E. 198.

2. Frazier *v.* Western Union Tel. Co., 45 Oregon 420, 78 Pac. 330, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1062; Postal Tel. Cable Co. *v.* Nichols, (C. C. A.) 159 Fed. 643; Bashinsky *v.* Western Union Tel. Co., 1 Ga. App. 761, 58 S. E. 91; Smith *v.* Western Union Tel. Co., (Neb. 1907) 114 N. W. 288; Capers *v.* Western Union Tel. Co., 71 S. Car. 29, 50 S. E. 537.

The rule is not applicable to messages in a foreign language, where the message is to be sent to a country using that language. Western Union Tel. Co. *v.* Olivarri, (Tex. Civ. App. 1908) 110 S. W. 930.

1063. 2. Smith *v.* Western Union Tel. Co., (Neb. 1907) 114 N. W. 288, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063.

3. Western Union Tel. Co. *v.* Houston Rice Milling Co. (Tex. Civ. App. 1906) 93 S. W. 1084; Postal Tel. Co. *v.* Levy, (Tex. Civ. App. 1907) 102 S. W. 134.

1064. 1. Western Union Tel. Co. *v.* Raines, 78 Ark. 553, 94 S. W. 700, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1064, in dissenting opinion. *Compare* Seifert *v.* Western Union Tel. Co., 129 Ga. 181, 58 S. E. 699; Western Union Tel. Co. *v.* Stubbs, (Tex. Civ. App. 1906) 94 S. W. 1083.

4. Wolff *v.* Western Union Tel. Co., (Tex. Civ. App. 1906) 94 S. W. 1062.

5. Postal Tel.-Cable Co. *v.* Sunset Constr. Co., (Tex. Civ. App. 1908) 109 S. W. 265.

6. *Alabama.* — Western Union Tel. Co. *v.* Rowell, (Ala. 1907) 45 So. 73.

Arkansas. — Western Union Tel. Co. *v.* Raines, 78 Ark. 553, 94 S. W. 700, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1064, in dissenting opinion; Western Union Tel. Co. *v.* Hogue, 79 Ark. 33, 94 S. W. 924; Western Union Tel. Co. *v.* Weniski, 84 Ark. 457, 106 S. W. 486.

Kentucky. — Thomas *v.* Western Union Tel. Co., 120 Ky. 194, 85 S. W. 760; Western Union Tel. Co. *v.* Reid, 120 Ky. 231, 85 S. W. 1171; Postal Tel. Cable Co. *v.* Terrell, (Ky. 1907) 100 S. W. 292.

North Carolina. — Dayvis *v.* Western Union Tel. Co., 139 N. Car. 79, 51 S. E. 898; Helms *v.* Western Union Tel. Co., 143 N. Car. 386, 55 S. E. 831; Gerock *v.* Western Union Tel. Co., 142 N. Car. 22, 54 S. E. 782.

South Carolina. — Du Bose *v.* Western Union Tel. Co., 73 S. Car. 218, 53 S. E. 175; Johnson *v.* Western Union Tel. Co., 74 S. Car. 54, 54 S. E. 826; Butler *v.* Western Union Tel. Co., 77 S. Car. 148, 57 S. E. 757; Kirby *v.* Western Union Tel. Co., 77 S. Car. 404, 58 S. E. 10.

Texas. — Western Union Tel. Co. *v.* Kuykendall, 99 Tex. 323, 89 S. W. 965; Western Union Tel. Co. *v.* Ayers, (Tex. Civ. App. 1906) 93 S. W. 199; Western Union Tel. Co. *v.* Olivarri, (Tex. Civ. App. 1908) 110 S. W. 930; Wolff *v.* Western Union Tel. Co., (Tex. Civ. App. 1906) 94 S. W. 1062.

1065. 1. Walker *v.* Western Union Tel. Co., 75 S. Car. 512, 56 S. E. 38. *Compare* Key *v.* Western Union Tel. Co., 76 S. Car. 301, 56 S. E. 962; Western Union Tel. Co. *v.* Bell, (Tex. Civ. App. 1906) 92 S. W. 1036.

2. Thomas *v.* Western Union Tel. Co., 120 Ky. 194, 85 S. W. 760; Carter *v.* Western Union Tel. Co., 73 S. Car. 430, 53 S. E. 539; Mitchiner *v.* Western Union Tel. Co., 75 S. Car. 182, 55 S. E. 222.

3. Western Union Tel. Co. *v.* Blackner, 82 Ark. 526, 102 S. W. 366; Lyles *v.* Western Union Tel. Co., 77 S. Car. 174, 57 S. E. 725; Western Union Tel. Co. *v.* Campbell, (Tex. Civ. App. 1905) 91 S. W. 312; Western Union Tel. Co. *v.* Olivarri, (Tex. Civ. App. 1908) 110 S. W. 930.

5. Western Union Tel. Co. *v.* Ford, (Tex. Civ. App. 1905) 90 S. W. 677, rehearing denied; Western Union Tel. Co. *v.* Craven, (Tex. Civ. App. 1906) 95 S. W. 633, rehearing denied; Western Union Tel. Co. *v.* Bell, (Tex. Civ. App. 1908) 107 S. W. 570, rehearing denied; Western Union Tel. Co. *v.* Landry, (Tex. Civ. App. 1908) 108 S. W. 461; Western Union Tel. Co. *v.* Steele, (Tex. Civ. App. 1908) 110 S. W. 546; Western Union Tel. Co. *v.* Hankins, (Tex. Civ. App. 1908) 110 S. W. 543.

1066. 1. *Contra,* Foreman *v.* Western Union Tel. Co., (Iowa 1908) 116 N. W. 724; Randall *v.* Western Union Tel. Co., (Ky. 1908) 107 S. W. 235; Butler *v.* Western Union Tel. Co., 77 S. Car. 148, 57 S. E. 757, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1065; Amos *v.* Western Union Tel. Co., (S. Car. 1908) 60 S. E. 660; McDowell *v.* Western Union Tel. Co., (S. Car. 1908) 60 S. E. 662; Little *v.* Western Union Tel. Co., (S. Car. 1908) 60 S. E. 663; Rich *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 110 S. W. 93.

2. Helms *v.* Western Union Tel. Co., 143 N. Car. 386, 55 S. E. 831; Rogers *v.* Western Union Tel. Co., 72 S. Car. 290, 51 S. E. 773; Poteet *v.* Western Union Tel. Co., 74 S. Car. 491, 55 S. E. 113.

3. Cranford *v.* Western Union Tel. Co., 138 N. Car. 162, 50 S. E. 585.

5. Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327; Hoyt *v.* Western Union Tel. Co., (Ark. 1908) 108 S. W. 1056. *Compare* Cherokee Tanning Extract Co. *v.* Western Union Tel. Co., 143 N. Car. 376, 55 S. E. 777; Bennett *v.* Western Union Tel. Co., 129 Iowa 607, 106 N. W. 13.

1067. 1. Western Union Tel. Co. *v.* Lehman, (Md. 1907) 67 Atl. 241, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1067.

Loss of Profits Must Be Proved. — James *v.* Western Union Tel. Co., (Ark. 1908) 111 S. W. 277. *Compare* Bass *v.* Postal Tel.-Cable Co., 127 Ga. 423, 56 S. E. 465.

There Must Be an Existent Contract of Sale before damages can be recovered. Bashinsky *v.* Western Union Tel. Co., 1 Ga. App. 761, 58 S. E. 91. But see *contra,* Western Union Tel. Co. *v.* True, (Tex. Civ. App. 1907) 103 S. W. 1180.

2. Richmond Hosiery Mills *v.* Western Union Tel. Co., 123 Ga. 216, 51 S. E. 291.

3. Western Union Tel. Co. *v.* Lehman, (Md. 1907) 67 Atl. 241; Thorp *v.* Western Union Tel. Co., 118 Mo. App. 398, 94 S. W. 554.

4. Elam *v.* Western Union Tel. Co., 113 Mo. App. 538, 88 S. W. 115; Western Union Tel. Co. *v.* T. H. Thompson Milling Co., (Tex. Civ. App. 1905) 91 S. W. 307.

1068. 2. Western Union Tel. Co. *v.* Lehman, (Md. 1907) 67 Atl. 241, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1067 [1068].

3. Newsome *v.* Western Union Tel. Co., 137 N. Car. 513, 50 S. E. 279; Western Union Tel. Co. *v.* T. H. Thompson Milling Co., (Tex. Civ. App. 1905) 91 S. W. 307.

4. Western Union Tel. Co. *v.* Milton, 53 Fla. 490, 43 So. 495; Western Union Tel. Co. *v.* McCants, (Miss. 1908) 46 So. 535.

1069. 1. See Newsome *v.* Western Union Tel. Co., 144 N. Car. 178, 56 S. E. 863.

3. *Compare* Richmond Hosiery Mills *v.* Western Union Tel. Co., 123 Ga. 216, 51 S. E. 290.

5. Bass *v.* Postal Tel.-Cable Co., 127 Ga. 423, 56 S. E. 465, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1069.

6. Hayes *v.* Western Union Tel. Co., 70 S. Car. 19, 48 S. E. 608, *quoting* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1069, and supporting also the preceding clause of the text; Western Union Tel. Co. *v.* Houston Rice Milling Co., (Tex. Civ. App. 1906) 93 S. W. 1084.

1070. 6. **Rule Applied against Telephone Company.** — McLeod *v.* Pacific Telephone Co., (Oregon 1908) 94 Pac. 568, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1070.

1071. 1. Barker *v.* Western Union Tel. Co., (Wis. 1907) 114 N. W. 439.

2. **Loss of Fee Contingent.** — Sweet *v.* Western Union Tel. Co., 140 Mich. 322, 102 N. W. 850; Kopperl *v.* Western Union Tel. Co., (Tex. Civ. App. 1905) 85 S. W. 1018.

3. Hise *v.* Western Union Tel. Co., (Iowa 1907) 113 N. W. 819; Harper *v.* Western Union Tel. Co., 111 Mo. App. 269, 86 S. W. 904.

6. Lathan *v.* Western Union Tel. Co., 75 S. Car. 129, 55 S. E. 134; Bowie *v.* Western Union Tel. Co., 78 S. Car. 424, 59 S. E. 65; Postal Tel. Cable Co. *v.* Sunset Constr. Co., (Tex. Civ. App. 1908) 109 S. W. 265.

1072. 1. *Compare* Lathan *v.* Western Union Tel. Co., 75 S. Car. 129, 55 S. E. 134; Bird *v.* Western Union Tel. Co., 76 S. Car. 345, 56 S. E. 973.

1073. 1. *Compare* Western Union Tel. Co. *v.* Wells, 50 Fla. 474, 39 So. 838.

2. Western Union Tel. Co. *v.* McCaul, 115 Tenn. 99, 90 S. W. 856.

5. Western Union Tel. Co. *v.* Hankins, (Tex. Civ. App. 1908) 110 S. W. 539.

6. Western Union Tel. Co. *v.* Siddall, (Tex. Civ. App. 1905) 86 S. W. 343, rehearing denied; Western Union Tel. Co. *v.* Shaw, (Tex. Civ. App. 1905) 90 S. W. 58, rehearing denied; Western Union Tel. Co. *v.* Campbell, (Tex. Civ. App. 1905) 91 S. W. 312; Western Union Tel. Co. *v.* Simmons, (Tex. Civ. App. 1906) 93 S. W. 686.

Rule Applied against Telephone Company. — Sabine Valley Telephone Co. *v.* Oliver, (Tex. Civ. App. 1907) 102 S. W. 925.

7. Western Union Tel. Co. *v.* Butler, (Tex. Civ. App. 1907) 99 S. W. 704; Buchanan *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 100 S. W. 974, rehearing denied; Western Union Tel. Co. *v.* Gamble, (Tex. Civ. App. 1907) 101 S. W. 1166; Western Union Tel. Co. *v.* Gulick, (Tex. Civ. App. 1907) 106 S. W. 698; Western Union Tel. Co. *v.* Bell, (Tex. Civ. App. 1907) 106 S. W. 1147, rehearing denied; Rich *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 110 S. W. 93; Western Union Tel. Co. *v.* Hankins, (Tex. Civ. App. 1908) 110 S. W. 543; Western Union Tel. Co. *v.* De Andrea, (Tex. Civ. App. 1907) 100 S. W. 977.

1074. 1. *Alabama.* — Western Union Tel. Co. *v.* Krichbaum, 145 Ala. 409, 41 So. 16; Western Union Tel. Co. *v.* Long, (Ala. 1906) 41 So. 965; Western Union Tel. Co. *v.* Heathcoat, (Ala. 1907) 43 So. 117; Western Union Tel. Co. *v.* Rowell, (Ala. 1907) 45 So. 73; Western Union Tel. Co. *v.* Westmoreland, (Ala. 1907) 44 So. 382.

Arkansas. — Western Union Tel. Co. *v.* Ford, 77 Ark. 531, 92 S. W. 528; Western Union Tel. Co. *v.* Raines, 78 Ark. 545, 94 S. W. 700; Arkansas, etc., R. Co. *v.* Lee, 79 Ark. 448, 96 S. W. 148; Western Union Tel. Co. *v.* Blackmer, 82 Ark. 526, 102 S. W. 366; Western Union Tel. Co. *v.* Hollingsworth, 83 Ark. 39, 102 S. W. 681; Western Union Tel. Co. *v.* Weniski, 84 Ark. 457, 106 S. W. 486; Gentle *v.* Western Union Tel. Co., 82 Ark. 96, 100 S. W. 742; Western Union Tel. Co. *v.* Shenep, 83 Ark. 476, 104 S. W. 154; Arkansas, etc., R. Co. *v.* Stroude, 77 Ark. 109, 91 S. W. 18; Western Union Tel. Co. *v.* Moxley, 80 Ark. 554, 98 S. W. 112; Western Union Tel. Co. *v.* Woodard, 84 Ark. 323, 105 S. W. 579.

Iowa. — Foreman *v.* Western Union Tel. Co., (Iowa 1908) 116 N. W. 724.

Kentucky. — Postal Tel. Cable Co. *v.* Terrell, (Ky. 1907) 100 S. W. 292; Taylor *v.* Western Union Tel. Co., (Ky. 1907) 101 S. W. 969; Western Union Tel. Co. *v.* Caldwell, (Ky. 1907) 102 S. W. 840; Thurman *v.* Western Union Tel. Co., (Ky. 1907) 105 S. W. 155.

North Carolina. — Dayvis *v.* Western Union Tel. Co., 139 N. Car. 79, 51 S. E. 898; Harrison *v.* Western Union Tel. Co., 143 N. Car. 147, 55 S. E. 435.

South Carolina. — Poteet *v.* Western Union Tel. Co., 74 S. Car. 491, 55 S. E. 113; Eaker *v.* Western Union Tel. Co., 75 S. Car. 97, 55 S. E. 129; Harrison *v.* Western Union Tel. Co., 75 S. Car. 267, 55 S. E. 450.

The Refusal of a Telegraph Company to Pay over Money to Consignee, knowing that such refusal would result in privation, will afford ground for an action to recover damages for mental anguish and bodily suffering

arising because of same. Western Union Tel. Co. *v.* Wells, 50 Fla. 474, 39 So. 838.

Telephone Company Liable for "Mental Anguish." — Cumberland Telephone, etc., Co. *v.* Atherton, (Ky. 1906) 91 S. W. 257.

Rule Declared by Statute Is Construed. — Capers *v.* Western Union Tel. Co., 71 S. Car. 29, 50 S. E. 537.

2. Western Union Tel. Co. *v.* Moxley, 80 Ark. 554, 98 S. W. 112.

3. **Damages for "Mental Anguish" Are Given Where** the action is *ex contractu* in addition to nominal damages. Western Union Tel. Co. *v.* Manker, 145 Ala. 418, 41 So. 850.

1075. 1. See Thurman *v.* Western Union Tel. Co., (Ky. 1907) 105 S. W. 155.

4. Dayvis *v.* Western Union Tel. Co., 139 N. Car. 79, 51 S. E. 898; Roberts *v.* Western Union Tel. Co., 73 S. Car. 520, 53 S. E. 985.

5. Thurman *v.* Western Union Tel. Co., (Ky. 1907) 105 S. W. 157; Smith *v.* Western Union Tel. Co., 72 S. Car. 116, 51 S. E. 537; Rogers *v.* Western Union Tel. Co., 72 S. Car. 290, 51 S. E. 773; Walker *v.* Western Union Tel. Co., 75 S. Car. 512, 56 S. E. 38; Western Union Tel. Co. *v.* Steele, (Tex. Civ. App. 1908) 110 S. W. 546.

Exposure to Fever, giving rise to mental anguish, constitutes damages which naturally flow from a delayed telegram. Rich *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 110 S. W. 93.

6. Arkansas, etc., R. Co. *v.* Stroude, 82 Ark. 117, 100 S. W. 760; Foreman *v.* Western Union Tel. Co., (Iowa 1908) 116 N. W. 724; Todd *v.* Western Union Tel. Co., 77 S. Car. 522, 58 S. E. 433; Western Union Tel. Co. *v.* Butler, (Tex. Civ. App. 1907) 99 S. W. 704; Sabine Valley Telephone Co. *v.* Oliver, (Tex. Civ. App. 1907) 102 S. W. 925. See also Western Union Tel. Co. *v.* Simmons, (Tex. Civ. App. 1906) 93 S. W. 686.

Damages for Mental Anguish Cannot Be Recovered because of the inability of the plaintiff to attend his brother's funeral with the other relatives. Buchanan *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 100 S. W. 974.

7. Taylor *v.* Western Union Tel. Co., (Ky. 1907) 101 S. W. 969; Cranford *v.* Western Union Tel. Co., 138 N. Car. 162, 50 S. E. 585; Arial *v.* Western Union Tel. Co., 79 S. Car. 418, 50 S. E. 6; Jones *v.* Western Union Tel. Co., 70 S. Car. 539, 50 S. E. 198; Hughes *v.* Western Union Tel. Co., 72 S. Car. 516, 52 S. E. 107; Kirby *v.* Western Union Tel. Co., 77 S. Car. 404, 58 S. E. 10; Kopperl *v.* Western Union Tel. Co., (Tex. Civ. App. 1905) 88 S. W. 1018; Western Union Tel. Co. *v.* Craven, (Tex. Civ. App. 1906) 95 S. W. 633; Western Union Tel. Co. *v.* Landry, (Tex. Civ. App. 1908) 108 S. W. 461.

1076. 2. Kernodle *v.* Western Union Tel. Co., 141 N. Car. 443, 54 S. E. 423, *citing* 27 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1075, 1076, and quoting paragraph; Western Union Tel. Co. *v.* Gulledge, 84 Ark. 501, 106 S. W. 957.

3. Roberts *v.* Western Union Tel. Co., 73 S. Car. 520, 53 S. E. 985; Bolton *v.* Western Union Tel. Co., 76 S. Car. 529, 57 S. E. 543; Western Union Tel. Co. *v.* Bell, (Tex. Civ. App. 1906) 92 S. W. 1036.

"Mental Anguish" Cannot Afford the Basis of a Claim for Damages where the delay complained of resulted in a father being prevented from attending the funeral of a newly-born child. Western Union Tel. Co. *v.* Craven, (Tex. Civ. App. 1906) 95 S. W. 633.

4. Western Union Tel. Co. *v.* McCaul, 115 Tenn. 99, 90 S. W. 856.

1077. 1. Western Union Tel. Co. *v.* Manker, 145 Ala. 418, 41 So. 850; Machen *v.* Western Union Tel. Co., 72 S. Car. 256, 51 S. E. 697; Western Union Tel. Co. *v.* Campbell, (Tex. Civ. App. 1905) 91 S. W. 312; Buchanan *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 100 S. W. 974.

Plaintiff May Testify that He Suffered, but cannot show that he had "peculiar apprehensions, fears, and conclusions." Roberts *v.* Western Union Tel. Co., 73 S. Car. 520, 53 S. E. 985.

3. **Contra.** — Potter *v.* Western Union Tel. Co., (Iowa 1908) 116 N. W. 130. *Compare* Whitten *v.* Western Union Tel. Co., 141 N. Car. 361, 54 S. E. 289.

6. **The Telegraph Company Is Not Excused Because** the delayed telegram relieved the plaintiff from anxiety regarding his wife's illness. Hamrick *v.* Western Union Tel. Co., 140 N. Car. 151, 52 S. E. 232.

7. Western Union Tel. Co. *v.* Moxley, 80 Ark. 554, 98 S. W. 112; Western Union Tel. Co. *v.* Gulledge, 84 Ark. 501, 106 S. W. 957; Butler *v.* Western Union Tel. Co., 77 S. Car. 148, 57 S. E. 757.

The Relation of Brother and Sister Is Sufficient to bring a case within the rule of the "mental anguish" cases. Western Union Tel. Co. *v.* Haley, 143 Ala. 586, 39 So. 386.

Grandson May Recover Damages for Mental Anguish. — Western Union Tel. Co. *v.* Prevatt, (Ala. 1907) 43 So. 106.

8. Shepard *v.* Western Union Tel. Co., 143 N. Car. 244, 55 S. E. 704.

9. Foreman *v.* Western Union Tel. Co., (Iowa 1908) 116 N. W. 724; Alexander *v.* Western Union Tel. Co., 141 N. Car. 75, 53 S. E. 657. See also Western Union Tel. Co. *v.* Long, (Ala. 1906) 41 So. 965.

1078. 1. Denham *v.* Western Union Tel. Co., (Ky. 1905) 87 S. W. 788; Arial *v.* Western Union Tel. Co., 70 S. Car. 418, 50 S. E. 6. *Compare* Dayvis *v.* Western Union Tel. Co., 139 N. Car. 79, 51 S. E. 898.

Where the Relation between Plaintiff and deceased was that of stepmother and stepson, she was allowed to recover what the jury found would compensate her for the "mental anguish" she suffered. Harrison *v.* Western Union Tel. Co., 143 N. Car. 147, 55 S. E. 435.

2. *Compare* Arial *v.* Western Union Tel. Co., 70 S. Car. 418, 50 S. E. 6.

3. Dayvis *v.* Western Union Tel. Co., 139 N. Car. 79, 51 S. E. 898.

Damages for Mental Anguish will not be given where the telegram refers to matters of business. Baird *v.* Western Union Tel. Co., (S. Car. 1908) 60 S. E. 605.

4. **Contra.** — Western Union Tel. Co. *v.* Kauffman, (Tex. Civ. App. 1908) 107 S. W. 630.

6. Rowan *v.* Western Union Tel. Co., 149 Fed. 550 (rule in *loco* jurisdiction); Glenn *v.* Western Union Tel. Co., 1 Ga. App. 821, 58 S. E. 83; Seifert *v.* Western Union Tel. Co., 129 Ga. 181, 58 S. E. 699; Kagy *v.* Western Union Tel. Co., 37 Ind. App. 73, 76 N. E. 792.

1079. 2. Arial *v.* Western Union Tel. Co., 70 S. Car. 418, 50 S. E. 6; Harrison *v.* Western Union Tel. Co., 75 S. Car. 267, 55 S. E. 450; Toale *v.* Western Union Tel. Co., 76 S. Car. 248, 57 S. E. 117; Doster *v.* Western Union Tel. Co., 77 S. Car. 56, 57 S. E. 671; Lyles *v.* Western Union Tel. Co., 77 S. Car. 174, 57 S. E. 725; Butler *v.* Western Union Tel. Co., 77 S. Car. 148, 57 S. E. 737; Smith *v.* Western Union Tel. Co., 77 S. Car. 378, 58 S. E. 6; Dempsey *v.* Western Union Tel. Co., 77 S. Car. 399, 58 S. E. 9; Todd *v.* Western Union Tel. Co., 77 S. Car. 522, 58 S. E. 433; Balderston *v.* Western Union Tel. Co., (S. Car. 1908) 60 S. E. 435; Fail *v.* Western Union Tel. Co., (S. Car. 1908) 60 S. E. 697.

The Arkansas Statute and the South Carolina Statute are practically alike. Western Union Tel. Co. *v.* Shenep, 83 Ark. 476, 104 S. W. 154.

The Statute Does Not Give the Addressee of a Delayed Telegram Damages for Mental Anguish which arose through failure to be at the funeral of a deceased relative. Hughes *v.* Western Union Tel. Co., 72 S. Car. 516, 52 S. E. 107.

4. Western Union Tel. Co. *v.* Ford, 77 Ark. 531, 92 S. W. 528; Gentle *v.* Western Union Tel. Co., 82 Ark. 96, 100 S. W. 742; Western Union Tel. Co. *v.* Lacer, (Ky. 1906) 93 S. W. 34; Hughes *v.* Western Union Tel. Co., 72 S. Car. 516, 52 S. E. 107; Western Union Tel. Co. *v.* Sloss, (Tex. 1907) 100 S. W. 354.

Contra. — Ligon *v.* Western Union Tel. Co., (Tex. Civ. App. 1907) 102 S. W. 429; Western Union Tel. Co. *v.* Garrett, (Tex. Civ. App. 1907) 102 S. W. 456. *Compare* Johnson *v.* Western Union Tel. Co., 144 N. Car. 410, 57 S. E. 122.

Damages for Mental Anguish Are Recoverable where the state from which the telegram is sent and the state to which it is sent have adopted the "mental anguish" doctrine, although it is shown that the telegram never reached the latter state. Western Union Tel. Co. *v.* Woodard, 84 Ark. 323, 105 S. W. 579.

5. Arkansas, etc., R. Co. *v.* Lee, 79 Ark. 448, 96 S. W. 148; Walker *v.* Western Union Tel. Co., 78 S. Car. 512, 56 S. E. 38.

6. See Western Union Tel. Co. *v.* Hanley, (Ark. 1908) 107 S. W. 1168.

7. Rowan *v.* Western Union Tel. Co., 149 Fed. 550.

1080. 4. Western Union Tel. Co. *v.* Reid, 120 Ky. 231, 85 S. W. 1171.

6. Western Union Tel. Co. *v.* Westmoreland, (Ala. 1907) 44 So. 382; Arkansas, etc., R. Co. *v.* Stroude, 77 Ark. 109, 91 S. W. 18; Cumberland Telephone Co. *v.* Allen, 89 Miss. 832, 42 So. 666; Arial *v.* Western Union Tel. Co., 70 S. Car. 418, 50 S. E. 6; Duke *v.* Postal Tel. Cable Co., 71 S. Car. 95, 50 S. E. 675; Murray *v.* Western Union Tel. Co., 74 S. Car. 64, 54 S. E. 209; Harrison *v.* Western Union Tel. Co., 75 S. Car. 267, 55 S. E. 450; Toale *v.* Western Union Tel. Co., 76 S. Car. 248, 57 S. E. 117; Dempsey *v.* Western Union Tel. Co., 77 S. Car. 399, 58 S. E. 9.

7. Western Union Tel. Co. *v.* Westmoreland, (Ala. 1907) 44 So. 382; Western Union Tel. Co. *v.* Gilstrap, (Kan. 1908) 94 Pac. 122.

Where Name of Addressee Was Changed by the telegraph company, and the telegram was delivered to addressee's competitor, it was evidence of wanton and reckless disregard of the defendant's duty, and gave grounds for the recovery of punitive damages. Lathan *v.* Western Union Tel. Co., 75 S. Car. 129, 55 S. E. 1.

8. Murray *v.* Western Union Tel. Co., 74 S. Car. 64, 54 S. E. 209; Kopperl *v.* Western Union Tel. Co., (Tex. Civ. App. 1905) 85 S. W. 1018.

Rule Considered in Connection with Telephone Service. — Cumberland Telephone Co. *v.* Allen, 89 Miss. 832, 42 So. 666.

1081. 1. Doster *v.* Western Union Tel. Co., 77 S. Car. 56, 57 S. E. 671.

2. Western Union Tel. Co. *v.* Westmoreland, (Ala. 1907) 44 So. 382; Willis *v.* Western Union Tel. Co., 73 S. Car. 379, 53 S. E. 639; Dempsey *v.* Western Union Tel. Co., 77 S. Car. 399, 58 S. E. 9; Balderston *v.* Western Union Tel. Co., (S. Car. 1908) 60 S. E. 435; Foster *v.* Western Union Tel. Co., 77 S. Car. 155, 57 S. E. 759; Todd *v.* Western Union Tel. Co., 77 S. Car. 522, 58 S. E. 433.

Protracted Delay Case. — Glover *v.* Western Union Tel. Co., 78 S. Car. 502, 59 S. E. 526.

Protracted Delay in the Delivery of a Telegram announcing the serious illness of a member of the plaintiff's family is some evidence on the question of punitive damages. Bolton *v.* Western Union Tel. Co., 76 S. Car. 529, 57 S. E. 543.

But mere delay is not sufficient to require a submission of the question to the jury. Butler *v.* Western Union Tel. Co., 77 S. Car. 148, 57 S. E. 757.

3. Western Union Tel. Co. *v.* Sloss, (Tex. 1907) 100 S. W. 354.

1082. 1. Western Union Tel. Co. *v.* Westmoreland, (Ala. 1907) 43 So. 790; Arial *v.* Western Union Tel. Co., 70 S. Car. 418, 50 S. E. 6.

Nominal Damages Only Are Allowed where the sender of the delayed telegram was thereby compelled to keep in charge the dead body of a nephew. Denham *v.* Western Union Tel. Co., (Ky. 1905) 87 S. W. 788.

2. Eddington *v.* Western Union Tel. Co., 117 Mo. App. 93, 91 S. W. 438; Gifford *v.* Glen Telephone Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 468, 106 N. Y. Supp. 53.

3. Havelock Bank *v.* Western Union Tel. Co., (C. C. A.) 141 Fed. 522, 5 Ann. Cas. 515; Cumberland Telephone, etc., Co. *v.* Kelly, (C. C. A.) 160 Fed. 316; State *v.* Western Union Tel. Co., 76 Ark. 124, 88 S. W. 834; Western Union Tel. Co. *v.* Braxtan, 165 Ind. 165, 74 N. E. 985; Western Union Tel. Co. *v.* Sefrit, 38 Ind. App. 565, 78 N. E. 638; Western Union Tel. Co. *v.* Troth, (Ind. App. 1908) 84 N. E. 727; Gifford *v.* Glen Telephone Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 468, 106 N. Y. Supp. 53.

4. Pollard *v.* Missouri, etc., Telephone Co., 114 Mo. App. 533, 90 S. W. 121.

Where the Statute Is Declaratory of the Common Law it should be construed according to the rule of reason thereof. Cumberland Telephone, etc., Co. *v.* Kelly, (C. C. A.) 160 Fed. 316.

Statute Construed to Mean Only Wilful Failure to Transmit Message. — State *v.* Western Union Tel. Co., 76 Ark. 124, 88 S. W. 834.

The Indiana Statute Includes Negligent Failure to Comply with its provisions, "prompt delivery," and reasonable care in the delivery of messages; such a statute must be construed so as to reasonably effect the purpose of the legislature. Western Union Tel. Co. *v.* Sefrit, 38 Ind. App. 565, 78 N. E. 638.

The Charging of an Excessive Rate for Transmission is "discrimination" under the statute. Western Union Tel. Co. *v.* McClelland, 38 Ind. App. 578, 78 N. E. 672.

Statute Not Applicable to Foreign Telegraph Companies. — McCarty *v.* Western Union Tel. Co., 116 Mo. App. 441, 91 S. W. 976.

The New York Statute (Laws 1890, p. 1152, c. 566, § 103) does not apply where the operator at the telephone exchange makes an error. Gifford *v.* Glen Telephone Co., (Supm. Ct. Tr. T.) 54 Misc. (N. Y.) 468, 106 N. Y. Supp. 53.

5. Message Communicated Orally Is within Statute. — Western Union Tel. Co. *v.* Sanders, 39 Ind. App. 146, 79 N. E. 406.

1083. 2. Western Union Tel. Co. *v.* Pratt, 18 Okla. 274, 89 Pac. 237.

3. State Statutory Penalty for Failure to Faithfully Deliver Message Beyond State Boundary Is Not Unconstitutional. — Postal Tel.-Cable Co. *v.* Umstadter, 103 Va. 742, 50 S. E. 259.

4. Western Union Tel. Co. *v.* Hughes, 104 Va. 240, 51 S. E. 225; Western Union Tel. Co. *v.* Chiles, (Va. 1907) 57 S. E. 787.

1084. 3. **Where There Was a Stipulation Agreed upon by the Sender and the Telegraph Company** that the message was accepted subject to delays, no penalty can be recovered when the message was forwarded with due diligence notwithstanding that delay resulted. Eddington *v.* Western Union Tel. Co., 115 Mo. App. 93, 91 S. W. 438.

1086. 5. Western Union Tel. Co. *v.* Troth, (Ind. App. 1908) 84 N. E. 727.

1087. 2. **The Right to Admit Original Telegrams in Evidence** is distinctly given by the code of North Carolina; Revisal Code 1905, § 1657. Whitten *v.* Western Union Tel. Co., 141 N. Car. 361, 54 S. E. 289.

4. **Where There Is No Evidence that a Sendee** received a telegram, and no proof that the paper offered is an authorized copy, it is proper to exclude it. Cason *v.* Western Union Tel. Co., 77 S. Car. 157, 57 S. E. 722.

1089. 4. Western Union Tel. Co. *v.* Westmoreland, (Ala. 1907) 43 So. 790.

6. Brownlee *v.* Reiner, 147 Cal. 641, 82 Pac. 324.

1090. 3. Collins *v.* Western Union Tel. Co., 145 Ala. 412, 41 So. 160.

4. Western Union Tel. Co. *v.* Merrill, 144 Ala. 622, 39 So. 121, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 1090; Long Bell Lumber Co. *v.* Nyman, 145 Mich. 477, 108 N. W. 1019.

1091. 1. Boyne City, etc., R. Co. *v.* Anderson, 146 Mich. 330, 109 N. W. 429, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 1091; Harrison Granite Co. *v.* Pennsylvania R. Co., 145 Mich. 712, 108 N. W. 1081.

2. Dunham *v.* McMichael, 214 Pa. St. 485, 63 Atl. 1007.

Conversation over the Telephone Is Admissible where the witness did not recognize the voice of the person to whom he talked. Knickerbocker Ice Co. *v.* Gardiner Dairy Co., (Md. 1908) 69 Atl. 405.

1092. 1. Cobb *v.* Glenn Boom, etc., Co., 57 W. Va. 54, 49 S. E. 1005, *citing* 27 Am. and Eng. Encyc. of Law (2d ed.) 1092.

6. Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327; Elam *v.* Western Union Tel. Co., 113 Mo. App. 538, 88 S. W. 115.

1093. 1. Richmond Hosiery Mills *v.* Western Union Tel. Co., 123 Ga. 216, 51 S. E. 290.

1094. 1. **A District Telegraph Company** which has a staff of boys to act as messengers is not a common carrier with respect to its messenger service. Hirsch *v.* American Dist. Tel. Co., 112 N. Y. App. Div. 265, 98 N. Y. Supp. 371.

5. Western Union Tel. Co. *v.* State, 165 Ind. 492, 76 N. E. 100.

TEMPORARY — TEMPORARILY.

1096. 2. See Blood *v.* Beal, 100 Me. 30, 60 Atl. 427.

TENANT.

1097. 1. **Subtenants.** — See Moore *v.* Smee, (1907) 2 K. B. 8, 76 L. J. K. B. 658.

TENDER.

4. **6.** Crane *v.* Renville State Bank, 73 Kan. 287, 85 Pac. 285, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 4.

7. Douglas *v.* Hustead, 216 Pa. St. 292, 65 Atl. 670.

8. *Alabama.* — Packard *v.* Mobile, (Ala. 1907) 43 So. 963; Taylor *v.* Newton, (Ala. 1907) 44 So. 583.

Arkansas. — Cowley *v.* Spradlin, 77 Ark. 190, 91 S. W. 550; Longino *v.* Bell-Warren Commission Co., 84 Ark. 521, 106 S. W. 682.

California. — Clint *v.* Eureka Oil Co., 3 Cal. App. 463, 86 Pac. 817; Savings, etc., Soc. *v.* Burke, 151 Cal. 616, 91 Pac. 504.

Delaware. — Pancoast *v.* Vail, (Del. 1906) 65 Atl. 512.

Georgia. — Grace *v.* Means, 129 Ga. 638, 59 S. E. 811; Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470.

Idaho. — Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965.

Iowa. — Corey *v.* Ft. Dodge, 133 Iowa 666, 111 N. W. 6.

Louisiana. — Woodstock Iron Works *v.* Standard Pulley Mfg. Co., 115 La. 829, 40 So. 236; Redman *v.* Murrel, 117 La. 516, 42 So. 49.

Mississippi. — Rush *v.* Pearson, (Miss. 1908) 45 So. 723.

New York. — De Luca *v.* Archer Mfg. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 645, 97 N. Y. Supp. 1026; Pittsburgh Amusement Co. *v.* Ferguson, 115 N. Y. App. Div. 241, 101 N. Y. Supp. 217; Volk *v.* Olsen, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 227, 104 N. Y. Supp. 415; Stennerman *v.* Kelly, 122 N. Y. App. Div. 669, 107 N. Y. Supp. 379.

North Carolina. — Trogden *v.* Williams, 144 N. Car. 192, 56 S. E. 865.

North Dakota. — Powers *v.* Bottineau First Nat. Bank, 15 N. Dak. 466, 109 N. W. 361.

Utah. — Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

Washington. — Ontario Land Co. *v.* Yordy, 44 Wash. 239, 87 Pac. 257; Andrews *v.* Uncle Joe Diamond Broker, 44 Wash. 668, 87 Pac. 947.

5. 2. Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470; Nelson *v.* Chingren, 132 Iowa 383, 106 N. W. 936; Hobbs *v.* Ray, (Ky. 1906) 96 S. W. 589; Smith *v.* Hussey, 119 La. 32, 43 So. 902; State *v.* Police Jury, (La. 1907) 45 So. 47; Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734; Puls *v.* Casey, 18 Okla. 142, 92 Pac. 388; Eldriedge *v.* Hoefer, (Oregon 1908) 93 Pac. 246; Hicks *v.* Northwestern Aid Assoc., 117 Tenn. 203, 96 S. W. 962; Klenk *v.* Byrne, 143 Fed. 1008, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 5.

3. Francis *v.* White, 142 Ala. 590, 39 So. 174, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 174.

6. 10. White *v.* Bates, 234 Ill. 276, 84 N. E. 906.

11. Bolton *v.* Amsler, (Supm. Ct. App. T.) 95 N. Y. Supp. 481; Bolton *v.* Amsler, (Supm. Ct. App. T.) 95 N. Y. Supp. 482.

7. 2. Felsberg *v.* Moore, 84 Ark. 399, 106 S. W. 197; Witt *v.* Dersham, 146 Mich. 68, 109 N. W. 25, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 7; Eldriedge *v.* Hoefer, (Oregon 1908) 93 Pac. 246; Douglas *v.* Hustead, 216 Pa. St. 292, 65 Atl. 670; Hicks *v.* Northwestern Aid Assoc., 117 Tenn. 203, 96 S. W. 962.

3. *Alabama.* — Birmingham Paint, etc., Co. *v.* Crampton, (Ala. 1905) 39 So. 1020; Packard *v.* Mobile, (Ala. 1907) 43 So. 963.

California. — Sierra Land, etc., Co. *v.* Bricker, 3 Cal. App. 190, 85 Pac. 665.

Georgia. — Parker *v.* Gortatowsky, 127 Ga. 560, 56 S. E. 846; Parker *v.* Gortatowsky, 129 Ga. 623, 59 S. E. 286; Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470.

Illinois. — Seyferth *v.* Groves, etc., R. Co., 217 Ill. 483, 75 N. E. 522.

Iowa. — Austin *v.* Smith, (Iowa 1906) 109 N. W. 289.

Louisiana. — Murphy *v.* Hussey, 117 La. 390, 41 So. 692; State *v.* Police Jury, (La. 1907) 45 So. 47.

Massachusetts. — Hillis *v.* O'Keefe, 189 Mass. 139, 75 N. E. 147; Gilman *v.* Cary, (Mass. 1908) 84 N. E. 312.

Michigan. — Fournier *v.* Clutton, 146 Mich. 298, 109 N. W. 425.

Missouri. — Austin *v.* St. Louis Transit Co., 115 Mo. App. 146, 91 S. W. 450; Curtis *v.* Sexton, 201 Mo. 217, 100 S. W. 17; Potter *v.* Schaffer, (Mo. 1908) 108 S. W. 60.

New York. — Reed *v.* Provident Sav. L. Assur. Soc., 190 N. Y. 111, 82 N. E. 734; Kearny *v.* Metropolitan Trust Co., 110 N. Y. App. Div. 236, 97 N. Y. Supp. 274; Kindelberger *v.* Kunow, 122 N. Y. App. Div. 158, 106 N. Y. Supp. 597.

Vermont. — Ellis *v.* Durkee, 79 Vt. 341, 65 Atl. 94.

See Andrews *v.* Frierson, 144 Ala. 470, 39 So. 512, to an effect similar to Strong *v.* Blake, 46 Barb. (N. Y.) 227, cited in the original note.

4. Puls *v.* Casey, 18 Okla. 342, 92 Pac. 388.

5. State *v.* Police Jury, (La. 1907) 45 So. 47; Hicks *v.* Northwestern Aid Assoc., 117 Tenn. 203, 96 S. W. 962; Gates *v.* Bekins, 44 Wash. 422, 87 Pac. 505; Moore *v.* Beiseker, (C. C. A.) 147 Fed. 367. *Compare* Bolton *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 210; Sorrel *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 212; Seeligson *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 213.

8. 1. Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1; Kindelberger *v.* Kunow, 122 N. Y. App. Div. 158, 106 N. Y. Supp. 597; Gates *v.* Bekins, 44 Wash. 422, 87 Pac. 505.

2. Francis *v.* White, 142 Ala. 590, 39 So. 174; Peebles *v.* Yates, 88 Miss. 289, 40 So. 996.

8. Witt *v.* Dersham, 146 Mich. 68, 109 N. W. 25, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681; Trogden *v.* Williams, 144 N. Car. 192, 56 S. E. 865; Haywood *v.* Scarborough, (Tex. Civ. App. 1907) 102 S. W. 469; Sharp *v.* West, 150 Fed. 458; McCullough *v.* Sutherland, 153 Fed. 418.

9. Parker *v.* Gortatowsky, 129 Ga. 623, 59 S. E. 286; Hicks *v.* Northwestern Aid Assoc., 117 Tenn. 203, 96 S. W. 962; Ellis *v.* Durkee,

76 Vt. 341, 63 Atl. 94; Daggett v. Martin, (Wash. 1907) 92 Pac. 674.

10. Guillaume v. K. S. D. Fruit Land Co., 48 Oregon 400, 86 Pac. 883.

11. Brixen v. Jorgensen, (Utah 1907) 92 Pac. 1004.

12. *United States.* — Moore v. Beiseker, (C. C. A.) 147 Fed. 367.

Arkansas. — Felsberg v. Moore, 84 Ark. 399, 106 S. W. 197.

California. — Sierra Land, etc., Co. v. Bricker, 3 Cal. App. 190, 85 Pac. 665; Koyer v. Willmon, (Cal. 1907) 90 Pac. 135.

Georgia. — Parker v. Cortatowsky, 127 Ga. 560, 56 S. E. 846, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 8.

Kentucky. — Hobbs v. Ray, (Ky. 1906) 96 S. W. 589.

Massachusetts. — Boston, etc., St. R. Co. v. Rose, 194 Mass. 142, 80 N. E. 498; Staples v. Mullen, (Mass. 1907) 81 N. E. 877.

Missouri. — Curtis v. Sexton, 201 Mo. 217, 100 S. W. 17.

New York. — Feist v. Block, 115 N. Y. App. Div. 211, 100 N. Y. Supp. 843; Hoewitz v. Frankel, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 651, 104 N. Y. Supp. 743.

Oregon. — Guillaume v. K. S. D. Fruit Land Co., 48 Oregon 400, 86 Pac. 883.

Pennsylvania. — Douglas v. Hustead, 216 Pa. St. 292, 65 Atl. 670; Whiteside v. Winans, 29 Pa. Super. Ct. 244.

South Dakota. — Herman v. Winter, (S. Dak. 1905) 105 N. W. 457.

Washington. — Peirce v. Wheeler, 44 Wash. 326, 87 Pac. 361.

9. 1. Witt v. Dersham, 146 Mich. 68, 109 N. W. 25, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 9.

2. Treadwell v. Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1.

6. McLeod v. Henry, 126 Ga. 167, 54 S. E. 949, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 9; Nelson v. Chingren, 132 Iowa 383, 106 N. W. 936; Horwitz v. Frankel, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 651, 104 N. Y. Supp. 743.

8. Staples v. Mullen, (Mass. 1907) 81 N. E. 877.

9. McLeod v. Henry, 126 Ga. 167, 54 S. E. 949, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 9; Nelson v. Chingren, 132 Iowa 383, 106 N. W. 936; Smith v. Hussey, 119 La. 32, 43 So. 902; Curtis v. Sexton, 201 Mo. 217, 100 S. W. 17; Horwitz v. Frankel, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 651, 104 N. Y. Supp. 743.

10. 1. Kerr v. Moore, (Cal. App. 1907) 92 Pac. 107; Seyferth v. Groves, etc., R. Co., 217 Ill. 483, 75 N. E. 522.

5. Kerr v. Moore, (Cal. App. 1907) 92 Pac. 107; Harmann v. Rose, 129 Ill. App. 337.

7. Gulf, etc., R. Co. v. Bunn, (Tex. Civ. App. 1906) 95 S. W. 640; Birmingham Paint, etc., Co. v. Crampton, (Ala. 1905) 39 So. 1020.

11. 7. Independent Credit Co. v. South Chicago City R. Co., 121 Ill. App. 595.

12. 2. Birmingham Paint, etc., Co. v. Crampton, (Ala. 1905) 39 So. 1020.

5. O'Donnel v. Chamberlain, (Colo. 1906) 91 Pac. 39.

6. Wadleigh v. Phelps, 149 Cal. 627, 87 Pac. 93; Harmann v. Rose, 129 Ill. App. 337; Murphy v. Hussey, 117 La. 390, 41 So. 692; German American Bank v. Martin, (Mo. App. 1908) 107 S. W. 1108; Ordway v. Farrow, 79 Vt. 192, 64 Atl. 1116.

13. 12. Grafflin v. State, 103 Md. 171, 63 Atl. 373, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 13; Dickerson v. Simmons, 141 N. Car. 325, 53 S. E. 850.

13. Thomas v. Brewing, etc., Co., (Wash. 1908) 94 Pac. 116. See Strickland v. Clements, 83 Ark. 484, 104 S. W. 175, holding that a tender prevents foreclosure, but does not discharge a mortgage lien.

14. 8. Windsor v. Snider, (Kan. 1907) 90 Pac. 820, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 14.

15. 11. *United States.* — Cameron v. Campbell, (C. C. A.) 141 Fed. 32, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 15.

Alabama. — Birmingham Paint, etc., Co. v. Crampton, (Ala. 1905) 39 So. 1020.

Delaware. — Ellison v. Simmons, (Del. 1906) 65 Atl. 591.

Illinois. — Mackey v. Kerwin, 222 Ill. 371, 78 N. E. 817.

Iowa. — Ahrens v. Fenton, (Iowa 1908) 115 N. W. 233.

Louisiana. — Antrim Lumber Co. v. Bolinger, (La. 1908) 46 So. 337.

Maryland. — Palatine Ins. Co. v. O'Brien, (Md. 1908) 68 Atl. 484.

Missouri. — Wells v. Electric Co., 108 Mo. App. 607, 84 S. W. 204.

Nebraska. — Portsmouth Sav. Bank v. Yeiser, (Neb. 1908) 116 N. W. 38.

New York. — Wiener v. Auerbach, (Supm. Ct. App. T.) 98 N. Y. Supp. 686; Bieber v. Goldberg, 120 N. Y. App. Div. 457, 104 N. Y. Supp. 1080; Mann v. Sprout, 185 N. Y. 109, 77 N. E. 1018, *reversing* 102 N. Y. App. Div. 60, 92 N. Y. Supp. 372.

16. 1. Wells v. Electric Co., 108 Mo. App. 607, 84 S. W. 204; Cameron v. Campbell, (C. C. A.) 141 Fed. 32.

4. Mackey v. Kerwin, 222 Ill. 371, 78 N. E. 817.

5. Ahrens v. Fenton, (Iowa 1908) 115 N. W. 233.

6. Spears v. Fields, 72 S. Car. 395, 52 S. E. 44.

17. 6. Youd v. German Sav., etc., Soc., 3 Cal. App. 706, 86 Pac. 991; Givens v. German Sav., etc., Soc., (Cal. App. 1906) 86 Pac. 993.

7. Louisville, etc., R. Co. v. Cottengim, (Ky. 1907) 104 S. W. 280, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 17; Kingsley v. Anderson, (Minn. 1908) 115 N. W. 642; Towles v. Carpenter, (W. Va. 1907) 57 S. E. 365.

8. Wittmeier v. Tidwell, 147 Ala. 354, 40 So. 963; Smith v. Pilcher, (Ga. 1908) 60 S. E. 1000; Walton v. Henderson, (Ga. App. 1908) 61 S. E. 28; Wright v. Stone Harbor Imp. Co., (N. J. 1906) 66 Atl. 417; O'Brien v. Levine, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 303, 98 N. Y. Supp. 636; Anderson v. Griffith, (Oregon 1908) 93 Pac. 934; Bolton v. Gifford, (Tex. Civ. App. 1907) 100 S. W. 210; Sorrell v. Gifford, (Tex. Civ. App. 1907) 100 S. W. 212; Seeligson v. Gifford, (Tex. Civ. App. 1907) 100 S. W. 213.

18. 3. O'Brien v. Levine, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 303, 98 N. Y. Supp. 636.

4. Gilman *v.* Cary, (Mass. 1908) 84 N. E. 312; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 18.

7. Traynor *v.* White, 44 Wash. 560, 87 Pac. 823.

8. Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 280.

19. 1. Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280.

4. Murphy *v.* Hussey, 117 La. 390, 41 So. 692, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 19.

8. Youd *v.* German Sav., etc., Soc., 3 Cal. App. 706, 86 Pac. 991; Givens *v.* German Sav., etc., Soc., (Cal. App. 1906) 86 Pac. 993; Smith *v.* Pilcher, (Ga. 1908) 60 S. E. 1000; Warth *v.* Loewenstein, 219 Ill. 222, 76 N. E. 379; Kingsley *v.* Anderson, (Minn. 1908) 115 N. W. 642; Germania L. Ins. Co. *v.* Potter, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 204, 107 N. Y. Supp. 912; Bolton *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 210; Sorrel *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 212; Seeligson *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 213.

20. 1. Longino *v.* Bell-Warren Commission Co., 84 Ark. 521, 106 S. W. 682; Warth *v.* Loewenstein, 219 Ill. 222, 76 N. E. 379; Rogers Grain Co. *v.* Jansen, 117 Ill. App. 137; Germania L. Ins. Co. *v.* Potter, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 204, 107 N. Y. Supp. 912.

Costs Need Not Be Included in a tender made at the trial, where it appears that a timely tender was waived by the refusal of one party to accept it. Kindelberger *v.* Kunow, 122 N. Y. App. Div. 158, 106 N. Y. Supp. 597.

2. **Tender Must Include Attorney's Fee When Provided for in Note.** — Bolton *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 210; Sorrel *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 212; Seeligson *v.* Gifford, (Tex. Civ. App. 1907) 100 S. W. 213.

5. Caldwell *v.* Kimbrough, (Miss. 1907) 45 So. 7; Germania L. Ins. Co. *v.* Potter, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 204, 107 N. Y. Supp. 912.

If time is of the essence of the contract, tender within the time specified is a condition precedent. Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789; Herman *v.* Winter, (S. Dak. 1905) 105 N. W. 457; Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965.

21. 1. See Mitchell *v.* Pearson, 34 Colo. 281, 82 Pac. 447.

6. Ellis *v.* Durkee, 79 Vt. 341, 65 Atl. 94.

9. Ayars *v.* O'Connor, 45 Wash. 132, 88 Pac. 119.

22. 4. Ayars *v.* O'Connor, 45 Wash. 132, 88 Pac. 119.

5. Herman *v.* Winter, (S. Dak. 1905) 105 N. W. 457.

6. McCue *v.* Bradbury, 149 Cal. 108, 89 Pac. 993; Rosenthal *v.* Rambo, 165 Ind. 584, 76 N. E. 404, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 22.

7. Redman *v.* Murrel, 117 La. 516, 42 So. 49.

23. 1. Hughes *v.* Clifton, 147 Ala. 531, 41 So. 998.

2. Herman *v.* Winter, (S. Dak. 1905) 105 N. W. 457; Degginger *v.* Martin, (Wash. 1907) 92 Pac. 674.

7. Tait *v.* McInnes, 3 Cal. App. 155, 84 Pac. 674.

25. 2. Scott *v.* Miller, 114 N. Y. App. Div. 6, 99 N. Y. Supp. 609; Halvordson *v.* Grossman, (Supm. Ct. App. T.) 107 N. Y. Supp. 627.

3. McCue *v.* Bradbury, 149 Cal. 108, 84 Pac. 993; Austin *v.* St. Louis Transit Co., 115 Mo. App. 146, 91 S. W. 450.

5. *In re* Collyer, (Supm. Ct. App. Div.) 108 N. Y. Supp. 600.

12. Volk *v.* Olsen, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 227, 104 N. Y. Supp. 415; *In re* Collyer, (Supm. Ct. App. Div.) 108 N. Y. Supp. 600; Rumpf *v.* Schiff, (Supm. Ct. App. T.) 109 N. Y. Supp. 51; Towles *v.* Carpenter, (W. Va. 1907) 57 S. E. 365.

26. 1. Hobbs *v.* Ray, (Ky. 1906) 96 S. W. 589.

2. Kearny *v.* Metropolitan Trust Co., 110 N. Y. App. Div. 236, 97 N. Y. Supp. 274.

6. Hidden *v.* German Sav., etc., Soc., (Wash. 1908) 93 Pac. 668.

27. 1. McCue *v.* Bradbury, 149 Cal. 108, 84 Pac. 993.

2. Moulton *v.* Kolodzik, 97 Minn. 423, 107 N. W. 154; Germania L. Ins. Co. *v.* Potter, (Supm. Ct. App. Div.) 109 N. Y. Supp. 435.

6. **Proposal in Letter to Pay Insufficient Tender.** — Ontario *v.* Dominion of Canada, 10 Can. Exch. 292.

28. 3. Ayer *v.* Jones, (Ark. 1907) 106 S. W. 1171; Cooley *v.* Bergstrom, (Ga. App. 1908) 60 S. E. 220; Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280.

4. Andrews *v.* Frierson, 144 Ala. 470, 39 So. 512; Bolton *v.* Amsler, (Supm. Ct. App. T.) 95 N. Y. Supp. 481, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 28; Bolton *v.* Amsler, (Supm. Ct. App. T.) 95 N. Y. Supp. 482.

Offer to Allow Creditor to Retain Money in His Possession Sufficient. — German-American Bank *v.* Martin, (Mo. App. 1908) 107 S. W. 1108.

29. 2. Bolton *v.* Amsler, (Supm. Ct. App. T.) 95 N. Y. Supp. 481, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 28 [29]; Bolton *v.* Amsler, (Supm. Ct. App. T.) 95 N. Y. Supp. 482.

3. Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280; Bolton *v.* Amsler, (Supm. Ct. App. T.) 95 N. Y. Supp. 481; Bolton *v.* Amsler, (Supm. Ct. App. T.) 95 N. Y. Supp. 482.

7. Potter *v.* Schaffer, (Mo. 1908) 108 S. W. 60.

11. Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965.

30. 1. Lefferts *v.* Dolton, 217 Pa. St. 299, 66 Atl. 527.

31. 1. Lefferts *v.* Dolton, 217 Pa. St. 299, 66 Atl. 527; Sleeper *v.* Bragdon, 45 Wash. 562, 88 Pac. 1936.

3. Doak *v.* Bruson, (Cal. 1907) 91 Pac. 1001.

4. See Redpath *v.* Evening Express Co., 4 Cal. App. 361, 88 Pac. 287.

5. Doak *v.* Bruson, (Cal. 1907) 91 Pac. 1001.

6. Grace *v.* Means, 129 Ga. 638, 59 S. E. 811; Walton *v.* Henderson, (Ga. App. 1908) 61 S. E. 28; Crane *v.* Renville State Bank, 73 Kan. 287, 85 Pac. 285; Maulsby *v.* Page, (Md. 1907) 65 Atl. 818; Persons *v.* Gardner, 122 N. Y.

App. Div. 167, 106 N. Y. Supp. 616; Towles *v.* Carpenter, (W. Va. 1907) 57 S. E. 365.

7. Righetti *v.* Righetti, 5 Cal. App. 249, 90 Pac. 50; Trogden *v.* Williams, 144 N. Car. 192, 56 S. E. 865.

32. 1. Neely *v.* Williams, (C. C. A.) 149 Fed. 60.

4. Towles *v.* Carpenter, (W. Va. 1907) 57 S. E. 365; Mann *v.* Robert, 126 Wis. 442, 105 N. W. 785.

33. 3. Towles *v.* Carpenter, (W. Va. 1907) 57 S. E. 365.

5. O'Donnell *v.* Chamberlain, (Colo. 1906) 91 Pac. 39, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33.

9. Neely *v.* Williams, (C. C. A.) 149 Fed. 60.

34. 1. O'Donnell *v.* Chamberlain, (Colo. 1906) 91 Pac. 39.

Creditor Has Reasonable Time to Surrender Evidences of Indebtedness. — Spears *v.* Fields, 72 S. Car. 395, 52 S. E. 44.

5. Wilson *v.* Duplin Telephone Co., 139 N. Car. 395, 52 S. E. 62.

8. Rankin *v.* Rankin, 216 Ill. 132, 74 N. E. 763, *affirming* 117 Ill. App. 636.

11. Bahrenburg *v.* Conrad Schapp Fruit Co., (Mo. App. 1908) 107 S. W. 440.

35. 1. Grafflin *v.* State, 103 Md. 171, 63 Atl. 373, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34 [35]; Eames *v.* Armstrong, (N. Car. 1907) 59 S. E. 165.

4. Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470.

8. Grafflin *v.* State, 103 Md. 171, 63 Atl. 373, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 34 [35].

16. Clemons *v.* Combs, (Ky. 1905) 89 S. W. 113.

36. 1. Taylor *v.* Newton, (Ala. 1907) 44 So. 583.

2. Hughes *v.* Clifton, 147 Ala. 531, 41 So. 998; Tait *v.* McInnes, 3 Cal. App. 155, 84 Pac. 674.

Tender to Servant Not Authorized to Receive Invalid. — McGuire *v.* Bradley, 118 Ill. App. 59; Prater *v.* Craighead, 118 La. 627, 43 So. 258; Harris *v.* Staples, (Tex. Civ. App. 1905) 89 S. W. 801.

4. Birmingham Paint, etc., Co. *v.* Crampton, (Ala. 1905) 39 So. 1020; O'Donnell *v.* Chamberlain, (Colo. 1906) 91 Pac. 39; Degginger *v.* Martin, (Wash. 1907) 92 Pac. 674.

Tender to Officer of Corporation Sufficient. — Louisville R. Co. *v.* Williams, (Ky. 1908) 109 S. W. 874.

37. 6. Stevens *v.* Taylor, (Tex. Civ. App. 1907) 102 S. W. 791.

38. 5. Johns *v.* Anchors, (Ala. 1907) 45 So. 218; Forderer *v.* Schmidt, (C. C. A.) 154 Fed. 475.

15. Birmingham Paint, etc., Co. *v.* Crampton, (Ala. 1905) 39 So. 1020; Ayer *v.* Jones, (Ark. 1907) 106 S. W. 1171; Parker *v.* Gortatowsky, 129 Ga. 623, 59 S. E. 286; Warth *v.* Loewenstein, 219 Ill. 222, 76 N. E. 379; Harmann *v.* Rose, 129 Ill. App. 337; Kelly *v.* Keith, (Ky. 1907) 106 S. W. 1173, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 38; Maulsby *v.* Page, (Md. 1907) 65 Atl. 818; Rumpf *v.* Schiff, (Supm. Ct. App. T.) 109 N. Y. Supp. 51.

39. 2. **Contra.** — Andrews *v.* Uncle Joe Diamond Broker, 44 Wash. 668, 87 Pac. 947.

3. Furber *v.* National Metal Co., 118 N. Y. App. Div. 263, 103 N. Y. Supp. 490.

4. **Contra.** — Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850.

5. Thomas *v.* Brewing, etc., Co., (Wash. 1908) 94 Pac. 116.

6. Thomas *v.* Brewing, etc., Co., (Wash. 1908) 94 Pac. 116.

7. Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850.

8. Weil *v.* Lippman, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 443, 105 N. Y. Supp. 516.

40. 2. Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470; Rosenzweig *v.* Kalichman, (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 345, 106 N. Y. Supp. 860.

5. Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40.

7. Birmingham Paint, etc., Co. *v.* Crampton, (Ala. 1905) 39 So. 1020; Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40.

8. Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 40.

41. 1. Hughes *v.* Clifton, 147 Ala. 531, 41 So. 998.

3. If more than the amount due was tendered, the tender is not kept good by depositing in court a less amount than that to which the opposite party is entitled. Anderson *v.* Griffith, (Oregon 1908) 93 Pac. 934.

4. Kelly *v.* Keith, (Ky. 1907) 106 S. W. 1173, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 41.

42. 4. Logansport, etc., Gas Co. *v.* Seegar, 165 Ind. 1, 74 N. E. 500; Redman *v.* Murrel, 117 La. 516, 42 So. 49; Stevens *v.* Taylor, (Tex. Civ. App. 1907) 102 S. W. 791.

TERM.

48. 5. **An Order of Adjournment** which reads, "It is ordered that the court do now adjourn until court in course," is not to be construed as an adjournment of the term, as under the code the courts are to be always in session, except for jury trials. Henry *v.* Lincoln Lucky, etc., Min. Co., (N. Mex. 1906) 85 Pac. 1043.

53. 1. Atty.-Gen. *v.* Campbell, 191 Mass. 497, 78 N. E. 133.

2. State *v.* Pattison, (Ohio 1906) 76 N. E. 946; State *v.* Bunnell, 131 Wis. 198, 110 N. W. 177.

TERRITORIES.

57. 2. Richmond *v.* People, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 202, 99 N. Y. Supp. 743, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 57.

4. Rassmussen *v.* U. S., 197 U. S. 516, 25 U. S. Sup. Ct. 514; Wilson *v.* Shaw, 204 U. S. 24, 27 U. S. Sup. Ct. 233; Kansas *v.* Colorado, 206 U. S. 46, 27 U. S. Sup. Ct. 655.

7. *In re* Kopel, 148 Fed. 505; Territory *v.* Alexander, (Ariz. 1907) 89 Pac. 514; Richmond *v.* People, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 202, 99 N. Y. Supp. 743. See Sylvester *v.* State, (Wash. 1907) 91 Pac. 15.

10. See *In re* Kopel, 148 Fed. 505.

58. 1. Ortega *v.* Lara, 202 U. S. 339, 26

U. S. Sup. Ct. 707. See also Carter *v.* Gear, 197 U. S. 348, 25 U. S. Sup. Ct. 491; Perez *v.* Fernandez, 202 U. S. 80, 26 U. S. Sup. Ct. 561.

Extension of State Statute over Territory. — Daniels *v.* Taylor, (C. C. A.) 145 Fed. 169, 7 Ann. Cas. 352.

Pending Actions Not Affected. — Higgins *v.* Brown, (Okla. 1908) 94 Pac. 703; *Ex p.* Buchanen, (Okla. 1908) 94 Pac. 943; *In re* Chavez, (C. C. A.) 149 Fed. 73.

3. See Sawyer *v.* El Paso, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 718.

Right to Trial by Jury — Alaska. — Rassmussen *v.* U. S., 197 U. S. 516, 25 U. S. Sup. Ct. 514.

For Porto Rico. — Perez *v.* Fernandez, 202 U. S. 80, 26 U. S. Sup. Ct. 561.

7. Rassmussen *v.* U. S., 197 U. S. 516, 25 U. S. Sup. Ct. 514; Wilson *v.* Shaw, 204 U. S. 24, 27 U. S. Sup. Ct. 233; *In re* Kopel, 148 Fed. 505; Sawyer *v.* El Paso, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 718.

59. 2. Kansas *v.* Colorado, 206 U. S. 46, 27 U. S. Sup. Ct. 655; Wallace *v.* Adams, (C. C. A.) 143 Fed. 716, *affirmed* 204 U. S. 415, 27 U. S. Sup. Ct. 363.

4. Carter *v.* Gear, 197 U. S. 348, 25 U. S. Sup. Ct. 491; Sawyer *v.* El Paso, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 718.

5. Richmond *v.* People, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 202, 99 N. Y. Supp. 743. See also Goodwin *v.* Bickford, (Okla. 1908) 93 Pac. 548.

7. Richmond *v.* People of Porto Rico, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 202, 99 N. Y. Supp. 743.

60. 1. Territory *v.* Alexander, (Ariz. 1907) 89 Pac. 514.

2. See Ortega *v.* Lara, 202 U. S. 339, 26 U. S. Sup. Ct. 707.

3. *Ex p.* Moran, (C. C. A.) 144 Fed. 594; *In re* Kopel, 148 Fed. 505; Territory *v.* Gutierrez, 12 N. Mex. 254, 78 Pac. 139; Goodwin *v.* Bickford, (Okla. 1908) 93 Pac. 548; Sawyer *v.* El Paso, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 718; Whitman College *v.* Berryman, 156 Fed. 112.

61. 1. See Sawyer *v.* El Paso, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 718.

3. Power to Exempt from Taxation. — Whitman College *v.* Berryman, 156 Fed. 112.

6. Territory *v.* Gutierrez, 12 N. Mex. 254, 78 Pac. 139.

7. Whitman College *v.* Berryman, 156 Fed. 112.

62. 3. See Territory *v.* Alexander, (Ariz. 1907) 89 Pac. 514.

7. *In re* Kopel, 148 Fed. 505; Sawyer *v.* El Paso, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 718.

8. The organic law of New Mexico provides that all laws of the territory shall be submitted to Congress, and if disapproved shall be null and void. If not submitted, they are presumptively valid, in the absence of disapproval. Buttron *v.* El Paso Northeastern R. Co., (Tex. Civ. App. 1906) 93 S. W. 676.

9. See Territory *v.* Alexander, (Ariz. 1907) 89 Pac. 514.

Approval by Implication. — Whitman College *v.* Berryman, 156 Fed. 112; Sawyer *v.* El Paso, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 718.

12. The governor has the power to issue requisitions for escaped criminals. *In re* Kopel, 148 Fed. 505.

63. 1. Carter *v.* Gear, 197 U. S. 348, 25 U. S. Sup. Ct. 491.

6. See Richmond *v.* People, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 202, 99 N. Y. Supp. 743.

12. Wallace *v.* Adams, (C. C. A.) 143 Fed. 716, *affirmed* 204 U. S. 415, 27 U. S. Sup. Ct. 363; *Ex p.* Moran, (C. C. A.) 144 Fed. 594.

64. 1. Wallace *v.* Adams, (C. C. A.) 143 Fed. 716, *affirmed* 204 U. S. 415, 27 U. S. Sup. Ct. 363; *Ex p.* Moran, (C. C. A.) 144 Fed. 594.

7. Cochran *v.* U. S., (C. C. A.) 147 Fed. 206. See also Perez *v.* Fernandez, 202 U. S. 80, 26 U. S. Sup. Ct. 561.

9. Inferior Courts — Right of Appeal. — Cartier *v.* U. S., (C. C. A.) 148 Fed. 804.

65. 1. See Perez *v.* Fernandez, 202 U. S. 80, 26 U. S. Sup. Ct. 561; Paraiso *v.* U. S., 207 U. S. 368, 28 U. S. Sup. Ct. 127; Notley *v.* Brown, 208 U. S. 429, 28 U. S. Sup. Ct. 385; *Ex p.* Moran, (C. C. A.) 144 Fed. 594.

2. *Ex p.* Moran, (C. C. A.) 144 Fed. 594.

3. *Ex p.* Moran, (C. C. A.) 144 Fed. 594; Cochran *v.* U. S., (C. C. A.) 147 Fed. 206; Goodwin *v.* Bickford, (Okla. 1908) 93 Pac. 548. See also Carter *v.* Gear, 197 U. S. 348, 25 U. S. Sup. Ct. 491; Perez *v.* Fernandez, 202 U. S. 80, 26 U. S. Sup. Ct. 561; Cheney *v.* Alaska Treadwell Gold Min. Co., (C. C. A.) 148 Fed. 808.

4. Criminal Prosecution. — Cochran *v.* U. S., (C. C. A.) 147 Fed. 206.

7. Territory *v.* Gutierrez, 12 N. Mex. 254, 78 Pac. 139.

TESTAMENTARY.

67. 2. **Testamentary Expenses — Inquiry as to Heir at Law.** — See *In re* Betts, (1907) 2 Ch. 149, 76 L. J. Ch. 463, 96 L. T. N. S. 875.

TESTAMENTARY CAPACITY.

70. 1. McBride *v.* Sullivan, (Ala. 1908) 45 So. 902; Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69; Jones' Succession, (La. 1907) 45 So. 965.

2. *In re* Wiltsey, (Iowa 1906) 109 N. W. 776.

71. 1. *Alabama.* — McBride *v.* Sullivan, (Ala. 1908) 45 So. 902.

California. — *In re* Dole, 147 Cal. 188, 81 Pac. 534.

Georgia. — Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69.

Illinois. — Dillman *v.* McDanel, 222 Ill. 276, 78 N. E. 591; Trubey *v.* Richardson, 224 Ill. 136, 79 N. E. 592; Dowie *v.* Sutton, 227 Ill. 183, 81 N. E. 395; Owen *v.* Crumbaugh, 228 Ill. 380, 81 N. E. 1044; Shults *v.* Shults, 220 Ill. 420, 82 N. E. 312.

Indiana. — Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

Kentucky. — Bradshaw *v.* Butler, (Ky. 1907) 100 S. W. 840; Bottom *v.* Bottom, (Ky. 1907) 106 S. W. 216; Murphy *v.* Hoagland, (Ky. 1908) 107 S. W. 303.

Maine. — *In re* American Board, 102 Me. 72, 66 Atl. 215.

Michigan. — Schneider *v.* Vosburgh, 143 Mich. 476, 106 N. W. 1129.

Missouri. — Goodfellow *v.* Shannon, 197 Mo. 271, 94 S. W. 979; Archambault *v.* Blanchard, 198 Mo. 384, 95 S. W. 834; Knapp *v.* St. Louis Trust Co., 199 Mo. 640, 98 S. W. 70; Seibert *v.* Hatcher, 205 Mo. 83, 102 S. W. 962; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Weston *v.* Hanson, (Mo. 1908) 111 S. W. 44.

New Jersey. — Barker *v.* Streuli, 69 N. J. Eq. 771, 61 Atl. 408; Armstrong *v.* Armstrong, 69 N. J. Eq. 817, 66 Atl. 399.

New York. — Roche *v.* Nason, 105 N. Y. App. Div. 256, 93 N. Y. Supp. 565; Matter of Choate, 110 N. Y. App. Div. 874, 96 N. Y. Supp. 380; Heyzer *v.* Morris, 110 N. Y. App. Div. 313, 97 N. Y. Supp. 131; Matter of Winn, (Surrogate Ct.) 50 Misc. (N. Y.) 113, 100 N. Y. Supp. 376; McGown *v.* Underhill, 115 N. Y. App. Div. 638, 101 N. Y. Supp. 313; Matter of Rogers, (Surrogate Ct.) 52 Misc. (N. Y.) 412, 103 N. Y. Supp. 423.

Oregon. — *In re* Buren, 47 Oregon 307, 83 Pac. 530; *In re* Pickett, (Oregon 1907) 89 Pac. 377.

Pennsylvania. — South Side Trust Co. *v.* McGrew, (Pa. 1908) 69 Atl. 79.

Washington. — Hartley *v.* Lord, 38 Wash. 221, 80 Pac. 433.

Wisconsin. — *In re* Bowman, (Wis. 1907) 113 N. W. 956.

72. 1. McGown *v.* Underhill, 115 N. Y. App. Div. 638, 101 N. Y. Supp. 313.

Other Definitions. — Terry *v.* Davenport, (Ind. 1908) 83 N. E. 636.

73. 1. Atwood *v.* Buckingham, 78 Conn. 423, 62 Atl. 616; Johnson *v.* Farrell, 215 Ill. 542, 74 N. E. 760; Todd *v.* Todd, 221 Ill. 410, 77 N. E. 680; Waters *v.* Waters, 222 Ill. 26, 78 N. E. 1.

74. 4. Weston *v.* Hanson, (Mo. 1908) 111 S. W. 44; West *v.* Knoppenberger, 26 Ohio Cir. Ct. 168.

5. Johnson *v.* Farrell, 215 Ill. 542, 74 N. E. 760; Trubey *v.* Richardson, 224 Ill. 136, 79 N. E. 592; Stametz *v.* Mitchenor, 165 Ind. 672, 75 N. E. 579; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Weston *v.* Hanson, (Mo. 1908) 111 S. W. 44; McGown *v.* Underhill, 115 N. Y. App. Div. 638, 101 N. Y. Supp. 313; West *v.* Knoppenberger, 26 Ohio Cir. Ct. 168.

76. 1. Dillman *v.* McDanel, 222 Ill. 276, 78 N. E. 591.

77. 1. Bernos *v.* Canepa, 114 La. 517, 38 So. 438; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035.

2. *Alabama.* — McBride *v.* Sullivan, (Ala. 1908) 45 So. 902.

California. — *In re* Dole, 147 Cal. 188, 81 Pac. 534; *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695.

Illinois. — Todd *v.* Todd, 221 Ill. 410, 77 N. E. 680; Trubey *v.* Richardson, 224 Ill. 136, 79 N. E. 592.

Louisiana. — Bernos *v.* Canepa, 114 La. 517, 38 So. 438.

Maryland. — Gesell *v.* Baugher, 100 Md. 688, 60 Atl. 481, *affirmed* 103 Md. 450, 63 Atl. 1078; Kelly *v.* Kelly, 103 Md. 548, 63 Atl. 1082.

Missouri. — Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Weston *v.* Hanson, (Mo. 1908) 111 S. W. 44.

New York. — Matter of Preston, 113 N. Y. App. Div. 732, 99 N. Y. Supp. 312; Matter of Winne, (Surrogate Ct.) 50 Misc. (N. Y.) 113, 100 N. Y. Supp. 376; McGown *v.* Underhill, 115 N. Y. App. Div. 638, 101 N. Y. Supp. 313; Matter of Rogers, (Surrogate Ct.) 52 Misc. (N. Y.) 412, 103 N. Y. Supp. 423.

Oregon. — *In re* Pickett, (Oregon 1907) 89 Pac. 377.

3. *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695; *In re* Nichols, 78 Conn. 429, 62 Atl. 610; Todd *v.* Todd, 221 Ill. 410, 77 N. E. 680; Bernos *v.* Canepa, 114 La. 517, 38 So. 438; Gesell *v.* Baugher, 100 Md. 688, 60 Atl. 481, *affirmed* 103 Md. 450, 63 Atl. 1078; Packham *v.* Ludwig, 103 Md. 416, 63 Atl. 1048; Armstrong *v.* Armstrong, 69 N. J. Eq. 817, 66 Atl. 399; *In re* Mulholland, 217 Pa. St. 65, 66 Atl. 150.

78. 1. Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69; Bernos *v.* Canepa, 114 La. 517, 38 So. 438.

2. McBride *v.* Sullivan, (Ala. 1908) 45 So. 902; *In re* Dole, 147 Cal. 188, 81 Pac. 534; Trubey *v.* Richardson, 224 Ill. 136, 79 N. E. 592; *In re* Glass, 127 Iowa 646, 103 N. W. 1013; Gesell *v.* Baugher, 100 Md. 688, 60 Atl. 481, *affirmed* 103 Md. 450, 63 Atl. 1078; *In re* Pickett, (Oregon 1907) 89 Pac. 377; Rathjens *v.* Merrill, 38 Wash. 442, 80 Pac. 754.

3. *In re* Wharton, 132 Iowa 714, 109 N. W. 492; Sibley *v.* Morse, 146 Mich. 463, 109 N. W. 858; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035.

79. 8. Bernos *v.* Canepa, 114 La. 517, 38 So. 438.

9. Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

80. 2. *Illinois.* — Owen *v.* Crumbaugh, 228 Ill. 380, 81 N. E. 1044; Bauchens *v.* Davis, 229 Ill. 557, 82 N. E. 365.

Kentucky. — Lancaster *v.* Lancaster, (Ky. 1905) 87 S. W. 1137.

Maryland. — Johnson *v.* Johnson, 105 Md. 81, 65 Atl. 918.

Michigan. — Bean *v.* Bean, 144 Mich. 599, 108 N. W. 369.

Missouri. — Knapp *v.* St. Louis Trust Co., 199 Mo. 640, 98 S. W. 70; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035.

New York. — Matter of Simon, (Surrogate Ct.) 47 Misc. (N. Y.) 552, 95 N. Y. Supp. 981.

3. Dowie *v.* Sutton, 227 Ill. 183, 81 N. E. 395; Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755; Hardenburgh *v.* Hardenburgh, 133 Iowa 1, 109 N. W. 1014; *In re* Mansbach, 150 Mich. 348, 114 N. W. 65.

4. *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695; Owen *v.* Crumbaugh, 228 Ill. 380, 81 N. E. 1044; Gesell *v.* Baugher, 100 Md. 688, 60 Atl. 481, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 80, *affirmed* 103 Md. 450, 63 Atl. 1078; Johnson *v.* Johnson, 105 Md. 81, 65 Atl. 918; *In re* Draper, 215 Pa. St. 314, 64 Atl. 520.

Where the testator had a disease resulting in delusions, but from which the testimony showed that he had recovered, testimony about the disease was inadmissible. Hibbard *v.* Baker, 141 Mich. 124, 104 N. W. 399.

81. 1. Lancaster *v.* Lancaster, (Ky. 1905) 87 S. W. 1137.

2. Owen *v.* Crumbaugh, *228* Ill. 380, 81 N. E. 1044; Leffingwell *v.* Bettinghouse, (Mich. 1908) 115 N. W. 731; *In re* Clapham, 73 Neb. 492, 103 N. W. 61; Linebarger *v.* Linebarger, 143 N. Car. 229, 55 S. E. 709.

Delusion and Insane Delusion. — Johnson *v.* Johnson, 105 Md. 81, 65 Atl. 918.

82. 1. Bauchens *v.* Davis, *229* Ill. 557, 82 N. E. 365; *In re* Sherwood, *126* Wis. 229, 105 N. W. 796.

2. O'Dell *v.* Goff, (Mich. 1908) 117 N. W. 59; Matter of Schuler, (Surrogate Ct.) 46 Misc. (N. Y.) 373, 94 N. Y. Supp. 1063; Matter of Simon, (Surrogate Ct.) 47 Misc. (N. Y.) 552, 95 N. Y. Supp. 981.

3. Bauchens *v.* Davis, *229* Ill. 557, 82 N. E. 365; *In re* Clapham, 73 Neb. 492, 103 N. W. 61.

83. 2. Robinson *v.* Duvall, *27* App. Cas. (D. C.) 535; Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69; McGown *v.* Underhill, 115 N. Y. App. Div. 638, 101 N. Y. Supp. 313.

84. 1. Gates *v.* Cole, (Iowa 1908) 115 N. W. 236; Schneider *v.* Vosburgh, 143 Mich. 476, 106 N. W. 1129.

2. Waters *v.* Waters, *222* Ill. 26, 78 N. E. 1.

85. 1. Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

2. Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755; Wallen *v.* Wallen, (Va. 1907) 57 S. E. 596.

86. 1. O'Brien's Appeal, 100 Me. 156, 60 Atl. 880.

7. *In re* Doolittle, (Cal. 1908) 94 Pac. 240.

Wills Sustained. — Masseth *v.* Masseth, 213 Pa. St. 434, 62 Atl. 1076.

Wills Rejected. — *In re* Doolittle, (Cal. 1908) 94 Pac. 240.

87. 1. *California.* — *In re* Dole, 147 Cal. 188, 81 Pac. 534.

Georgia. — Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69.

Illinois. — Graham *v.* Deuterman, *217* Ill. 235, 75 N. E. 480; Dillman *v.* McDanel, *222* Ill. 276, 78 N. E. 591.

Iowa. — Gates *v.* Cole, (Iowa 1908) 115 N. W. 236.

Maine. — *In re* American Board, 102 Me. 72, 66 Atl. 215.

Nebraska. — *In re* Nelson, 75 Neb. 298, 106 N. W. 326.

New York. — Roche *v.* Nason, 105 N. Y. App. Div. 256, 93 N. Y. Supp. 565; Matter of Brower, 112 N. Y. App. Div. 370, 98 N. Y. Supp. 438; McGown *v.* Underhill, 115 N. Y. App. Div. 638, 101 N. Y. Supp. 313.

Oregon. — *In re* Buren, 47 Oregon 307, 83 Pac. 530.

Rhode Island. — Walker *v.* Walker, (R. I. 1907) 67 Atl. 519.

2. McGown *v.* Underhill, 115 N. Y. App. Div. 638, 101 N. Y. Supp. 313.

88. 1. Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69; Gates *v.* Cole, (Iowa 1908) 115 N. W. 236; Matter of Rogers, (Surrogate Ct.) 52 Misc. (N. Y.) 412, 103 N. Y. Supp. 423.

2. *In re* Pickett, (Oregon 1907) 89 Pac. 377.

7. Leonard *v.* Burtle, *226* Ill. 422, 80 N. E. 992.

89. 1. Trubey *v.* Richardson, *224* Ill. 136, 79 N. E. 592; Henderson *v.* Jackson, (Iowa 1907) 111 N. W. 821.

Spiritualism. — [illegible] Ill. 380, 81 N. E. 1044; Steinkuehler *v.* Wempner, (Ind. 1907) 81 N. E. 482; O'Dell *v.* Goff, 149 Mich. 152, 112 N. W. 736.

2. Henderson *v.* Jackson, (Iowa 1907) 111 N. W. 821.

90. 1. Graham *v.* Deuterman, *217* Ill. 235, 75 N. E. 480; Wickes *v.* Walden, *228* Ill. 56, 81 N. E. 798.

3. *Alabama.* — McBride *v.* Sullivan, (Ala. 1908) 45 So. 902.

California. — *In re* Dole, 147 Cal. 188, 81 Pac. 534; *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695.

Colorado. — *In re* Shapter, 35 Colo. 578, 85 Pac. 688.

Georgia. — Credille *v.* Credille, 123 Ga. 673, 51 S. E. 628, *affirmed* (Ga. 1908) 61 S. E. 1042; Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69.

Illinois. — Todd *v.* Todd, 221 Ill. 410, 77 N. E. 680; Waters *v.* Waters, *222* Ill. 26, 78 N. E. 1; Wickes *v.* Walden, *228* Ill. 56, 81 N. E. 798.

Indiana. — Steinkuehler *v.* Wempner, (Ind. 1907) 81 N. E. 482.

Iowa. — Fethergill *v.* Fethergill, 129 Iowa 93, 105 N. W. 377; Gates *v.* Cole, (Iowa 1908) 115 N. W. 236.

Kansas. — McConnell *v.* Keir, (Kan. 1907) 92 Pac. 540.

Kentucky. — Livering *v.* Russell, (Ky. 1907) 100 S. W. 840.

Maine. — *In re* American Board, 102 Me. 72, 66 Atl. 215.

Maryland. — Gesell *v.* Baugher, 100 Md. 688, 60 Atl. 481, *affirmed* 103 Md. 450, 63 Atl. 1078; Johnson *v.* Johnson, 105 Md. 81, 65 Atl. 918.

Minnesota. — *In re* Tierney, (Minn. 1908) 114 N. W. 838.

Missouri. — Goodfellow *v.* Shannon, 197 Mo. 271, 94 S. W. 979; Knapp *v.* St. Louis Trust Co., 199 Mo. 640, 98 S. W. 70; Mowry *v.* Norman, 204 Mo. 173, 103 S. W. 15; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Teckenbrock *v.* McLaughlin, (Mo. 1908) 108 S. W. 46.

Nebraska. — *In re* Powers (Neb. 1907) 113 N. W. 198.

Pennsylvania. — *In re* Palmer, (Pa. 1908) 68 Atl. 710; *In re* Moyer, (Pa. 1908) 69 Atl. 757.

Virginia. — Wallen *v.* Wallen, (Va. 1907) 57 S. E. 596.

Washington. — Rathjens *v.* Merrill, 38 Wash. 442, 80 Pac. 754.

Canada. — Doucet *v.* Macnider, 14 Quebec K. B. 232, dissenting opinion *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 90.

The Burden Rests with Proponent, where the will is unnatural and ignores the testator's obligations to the different members of his family. Walls *v.* Walls, (Ky. 1907) 99 S. W. 969.

91. 1. Waters *v.* Waters, *222* Ill. 26, 78 N. E. 1; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Teckenbrock *v.* McLaughlin, (Mo. 1908) 108 S. W. 46.

92. 2. Hodge *v.* Rambow, (Ala. 1908) 45 So. 678; *In re* Lockwood, (Conn. 1908) 69 Atl.

8; *In re* Mansbach, 150 Mich. 348, 114 N. W. 65; Cowan *v.* Shaver, 197 Mo. 203, 95 S. W. 200; Mowry *v.* Norman, 204 Mo. 173, 103 S. W. 15; Matter of Preston, 113 N. Y. App. Div. 732, 99 N. Y. Supp. 312; *In re* Pickett, (Oregon 1907) 89 Pac. 377.

93. 1. See Home of Aged *v.* Bantz, (Md. 1908) 69 Atl. 376.

2. *Alabama.* — McBride *v.* Sullivan, (Ala. 1908) 45 So. 902.

Illinois. — Todd *v.* Todd, 221 Ill. 410, 77 N. E. 680.

Iowa. — *In re* Glass, 127 Iowa 646, 103 N. W. 1013; *In re* Jones, 130 Iowa 177, 106 N. W. 610; Gates *v.* Cole, (Iowa 1908) 115 N. W. 236.

Louisiana. — Bernos *v.* Canepa, 114 La. 517, 38 So. 438.

Maryland. — Gesell *v.* Baugher, 100 Md. 688, 60 Atl. 481, *affirmed* 103 Md. 450, 63 Atl. 1078.

94. 2. Gates *v.* Cole, (Iowa 1908) 115 N. W. 236.

In the First Stages of the Disease the person afflicted possesses reason and has will power. Jones' Succession, (La. 1907) 45 So. 965.

3. King *v.* Gilson, 191 Mo. 307, 90 S. W. 367, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 94; Matter of Schuler, (Surrogate Ct.) 46 Misc. (N. Y.) 373, 94 N. Y. Supp. 1063.

4. *In re* American Board, 102 Me. 72, 66 Atl. 215; King *v.* Gilson, 191 Mo. 307, 90 S. W. 367, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 94.

95. 1. Keely *v.* Moore, 96 U. S. 38, 25 U. S. Sup. Ct. 169; McBride *v.* Sullivan, (Ala. 1908) 45 So. 902; Gates *v.* Cole, (Iowa 1908) 115 N. W. 236; Bernos *v.* Canepa, 114 La. 517, 38 So. 438; King *v.* Gilson, 191 Mo. 307, 90 S. W. 367, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 94 [95].

2. *In re* Glass, 127 Iowa 646, 103 N. W. 1013; Kelly *v.* Kelly, 103 Md. 548, 63 Atl. 1082.

96. 2. *California.* — Huyck *v.* Rennie, 151 Cal. 411, 90 Pac. 929.

Georgia. — Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69; Brown *v.* McBride, 129 Ga. 92, 58 S. E. 702.

Illinois. — Trubey *v.* Richardson, 224 Ill. 136, 79 N. E. 592.

Indiana. — Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

Iowa. — *In re* Glass, 127 Iowa 646, 103 N. W. 1013; *In re* Jones, 130 Iowa 177, 106 N. W. 610; Smith *v.* Ryan, (Iowa 1907) 112 N. W. 8; Vannest *v.* Murphy, (Iowa 1907) 112 N. W. 236.

Kentucky. — Bradshaw *v.* Butler, (Ky. 1907) 100 S. W. 840.

Louisiana. — Jones' Succession, (La. 1907) 45 So. 965.

Missouri. — Cowan *v.* Shaver, 197 Mo. 203, 95 S. W. 200; Knapp *v.* St. Louis Trust Co., 199 Mo. 640, 98 S. W. 70; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Weston *v.* Hanson, (Mo. 1908) 111 S. W. 44.

Nebraska. — But see *In re* Cheney, (Neb. 1907) 110 N. W. 731.

Texas. — Hart *v.* Hart, (Tex. Civ. App. 1908) 110 S. W. 91.

98. 1. Matter of Brower, 112 N. Y. App. Div. 370, 98 N. Y. Supp. 438.

2. *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695; Packham *v.* Ludwig, 103 Md. 416, 63 Atl. 1048; Hibbard *v.* Baker, 141 Mich. 124, 104 N. W. 399; *In re* Dowell, (Mich. 1908) 115 N. W. 972; O'Dell *v.* Goff, (Mich. 1908) 117 N. W. 59; *In re* Wilson, (Neb. 1907) 111 N. W. 788; Hart *v.* Hart, (Tex. Civ. App. 1908) 110 S. W. 91.

99. 1. See Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805; *In re* Wilson, (Neb. 1907) 111 N. W. 788.

2. Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755; Blackman *v.* Andrews, 150 Mich. 322, 114 N. W. 218.

3. Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

5. Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; *In re* Draper, 215 Pa. St. 314, 64 Atl. 520.

100. 1. *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695; *In re* American Board, 102 Me. 72, 66 Atl. 215; Gesell *v.* Baugher, 100 Md. 688, 60 Atl. 481, *affirmed* 103 Md. 450, 63 Atl. 1078; *In re* More, (Mich. 1908) 117 N. W. 329; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; *In re* Morgan, (Pa. 1908) 68 Atl. 953; Hartley *v.* Lord, 38 Wash. 221, 80 Pac. 433.

After testifying to the sanity of the testator a physician should not be allowed to testify that he was capable of executing a valid will. Garrus *v.* Davis, 234 Ill. 326, 84 N. E. 924.

2. *In re* Draper, 215 Pa. St. 314, 64 Atl. 520; *In re* Morgan, (Pa. 1908) 68 Atl. 953.

3. *In re* Wharton, 132 Iowa 714, 109 N. W. 492; Vannest *v.* Murphy, (Iowa 1907) 112 N. W. 236; Robinson *v.* Jones, 105 Md. 62, 65 Atl. 814; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; West *v.* Knoppenberger, 26 Ohio Cir. Ct. 158; *In re* Pickett, (Oregon 1907) 89 Pac. 377.

101. 2. Robinson *v.* Duvall, 27 App. Cas. D. C. 535; *In re* Wharton, 132 Iowa 714, 109 N. W. 492; *In re* Tierney, (Minn. 1908) 114 N. W. 838; Knapp *v.* St. Louis Trust Co., 199 Mo. 640, 98 S. W. 70; Blount *v.* Troy, 110 N. Y. App. Div. 609, 97 N. Y. Supp. 182.

3. Huyck *v.* Rennie, 151 Cal. 411, 90 Pac. 929; *In re* Shapter, 35 Colo. 578, 85 Pac. 688; *In re* Wharton, 132 Iowa 714, 109 N. W. 492; King *v.* Gilson, 191 Mo. 307, 90 S. W. 367.

Relative Weight of Testimony of Subscribing Witnesses and Other Nonexpert Witnesses. — In *In re* Pickett, (Oregon 1907) 89 Pac. 377, the court held that "other things being equal, the evidence of the attesting witnesses, and next to them of those present at the execution, is to be most relied upon."

4. *In re* Shapter, 35 Colo. 578, 85 Pac. 688; Todd *v.* Todd, 221 Ill. 410, 77 N. E. 680; Hartley *v.* Lord, 38 Wash. 221, 80 Pac. 433.

102. 1. **Nonexpert Witnesses.** — Huyck *v.* Rennie, 151 Cal. 411, 90 Pac. 929.

For Further Illustrations. — Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755; Bradshaw *v.* Butler, (Ky. 1907) 100 S. W. 840.

2. *District of Columbia.* — Dawson *v.* Waggaman, 23 App. Cas. (D. C.) 428.

Georgia. — Credille *v.* Credille, 123 Ga. 673, 51 S. E. 628, *affirmed* (Ga. 1908) 61 S. E. 1042.

Illinois. — Cheney *v.* Goldy, 225 Ill. 394, 80 N. E. 289; Peet *v.* Peet, 229 Ill. 341, 82 N. E. 376; Garrus *v.* Davis, 234 Ill. 326, 84 N. E. 924.

Indiana. — Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755.

Iowa. — Smith *v.* Ryan, (Iowa 1907) 112 N. W. 8; Vannest *v.* Murphy, (Iowa 1907) 112 N. W. 236.

Kentucky. — Levering *v.* Russell, (Ky. 1907) 100 S. W. 840.

Michigan. — O'Dell *v.* Goff, 149 Mich. 152, 112 N. W. 736; Leffingwell *v.* Bettinghouse, (Mich. 1908) 115 N. W. 731.

Missouri. — Seibert *v.* Hatcher, 205 Mo. 83, 102 S. W. 962; Teckenbrock *v.* McLaughlin, (Mo. 1908) 108 S. W. 46.

New Jersey. — Byrnes *v.* Gibson, (N. J. 1908) 68 Atl. 756.

Texas. — Wetz *v.* Schneider, (Tex. Civ. App. 1906) 96 S. W. 59.

Virginia. — Wallen *v.* Wallen, (Va. 1907) 57 S. E. 596.

A Lease made by the testator is admissible to prove the business capacity of the testator. Huyck *v.* Rennie, 151 Cal. 411, 90 Pac. 929.

104. 1. Credille *v.* Credille, 123 Ga. 673, 51 S. E. 628, *affirmed* (Ga. 1908) 61 S. E. 1042; Floto *v.* Floto, 233 Ill. 605, 84 N. E. 712; Teckenbrock *v.* McLaughlin, (Mo. 1908) 108 S. W. 46; English *v.* Ricks, 117 Tenn. 73, 95 S. W. 189; Wallen *v.* Wallen, (Va. 1907) 57 S. E. 596.

Undue Influence. — Wetz *v.* Schneider, (Tex. Civ. App. 1906) 96 S. W. 59.

Declarations Conflicting with Will. — Floto *v.* Floto, 233 Ill. 605, 84 N. E. 712.

2. Credille *v.* Credille, 123 Ga. 673, 51 S. E. 628, *affirmed* (Ga. 1908) 61 S. E. 1042; Teckenbrock *v.* McLaughlin, (Mo. 1908) 108 S. W. 46.

4. *In re* Meyer, 184 N. Y. 54, 76 N. E. 920.

105. 1. *In re* Dolbeer, 149 Cal. 227, 86 Pac. 695; Seibert *v.* Hatcher, 205 Mo. 83, 102 S. W. 962; *In re* Meyer, 184 N. Y. 54, 76 N. E. 920.

3. *Georgia.* — Franklin *v.* Belt, (Ga. 1908) 60 S. E. 146.

Illinois. — Waters *v.* Waters, 222 Ill. 26, 78 N. E. 1; Shults *v.* Shults, 220 Ill. 420, 82 N. E. 312.

Iowa. — Hardenburgh *v.* Hardenburgh, 133 Iowa 1, 109 N. W. 1014.

Kentucky. — Bottom *v.* Bottom, (Ky. 1907) 106 S. W. 216.

Maryland. — Gesell *v.* Baugher, 100 Md. 688, 60 Atl. 481, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 105, *affirmed* 103 Md. 450, 63 Atl. 1078; Kelly *v.* Kelly, 103 Md. 548, 63 Atl. 1082; Horner *v.* Buckingham, 103 Md. 556, 64 Atl. 41; Saxton *v.* Krumm, (Md. 1908) 68 Atl. 1056.

Michigan. — Schneider *v.* Vosburgh, 143 Mich. 476, 106 N. W. 1129.

Missouri. — Meier *v.* Buchter, 197 Mo. 68, 94 S. W. 883; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Weston *v.* Hanson, (Mo. 1908) 111 S. W. 44.

New York. — Roche *v.* Nason, 105 N. Y. App. Div. 256, 93 N. Y. Supp. 565; Heyzer *v.* Morris, 110 N. Y. App. Div. 313, 97 N. Y. Supp. 131; McGown *v.* Underhill, 115 N. Y. App. Div. 638, 101 N. Y. Supp. 313; Matter of Simon, (Surrogate Ct.) 47 Misc. (N. Y.) 552, 95 N. Y. Supp. 981.

Pennsylvania. — *In re* Morgan, (Pa. 1908) 68 Atl. 953.

106. 1. *Colorado.* — *In re* Shapter, 35 Colo. 578, 85 Pac. 688.

Georgia. — Credille *v.* Credille, 123 Ga. 673, 51 S. E. 628, *affirmed* (Ga. 1908) 61 S. E. 1042; Slaughter *v.* Heath, 127 Ga. 747, 57 S. E. 69.

Illinois. — French *v.* French, 215 Ill. 470, 74 N. E. 403; Dillman *v.* McDanel, 222 Ill. 276, 78 N. E. 591; Dowie *v.* Sutton, 227 Ill. 183, 81 N. E. 395; Shults *v.* Shults, 220 Ill. 420, 82 N. E. 312.

Iowa. — Hardenburgh *v.* Hardenburgh, 133 Iowa 1, 109 N. W. 1014.

Kentucky. — Bottom *v.* Bottom, (Ky. 1907) 106 S. W. 216.

Maryland. — Horner *v.* Buckingham, 103 Md. 556, 64 Atl. 41.

Michigan. — Blackman *v.* Andrews, 150 Mich. 322, 114 N. W. 218.

Missouri. — Meier *v.* Buchter, 197 Mo. 68, 94 S. W. 883, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 106; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Weston *v.* Hanson, (Mo. 1908) 111 S. W. 44.

New York. — Matter of Simon, (Surrogate Ct.) 47 Misc. (N. Y.) 552, 95 N. Y. Supp. 981; McGown *v.* Underhill, 115 N. Y. App. Div. 638, 101 N. Y. Supp. 313.

107. 1. Credille *v.* Credille, 123 Ga. 673, 51 S. E. 628, *affirmed* (Ga. 1908) 61 S. E. 1042; Dillman *v.* McDanel, 222 Ill. 276, 78 N. E. 591; Dowie *v.* Sutton, 227 Ill. 183, 81 N. E. 395; Brelsford *v.* Aldridge, (Ind. 1908) 84 N. E. 1090; Bottom *v.* Bottom, (Ky. 1907) 106 S. W. 216; Meier *v.* Buchter, 197 Mo. 68, 94 S. W. 883, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Weston *v.* Hanson, (Mo. 1908) 111 S. W. 44.

108. 1. Dillman *v.* McDanel, 222 Ill. 276, 78 N. E. 591; Bradshaw *v.* Butler, (Ky. 1907) 100 S. W. 840; *In re* Young, (Utah 1908) 94 Pac. 731; Rathjens *v.* Merrill, 38 Wash. 442, 80 Pac. 754.

109. 1. Bradshaw *v.* Butler, (Ky. 1907) 100 S. W. 840; Knapp *v.* St. Louis Trust Co., 199 Mo. 640, 98 S. W. 70.

2. *In re* Meyer, 184 N. Y. 54, 76 N. E. 920; Roche *v.* Nason, 185 N. Y. 128, 77 N. E. 1007; Pringle *v.* Burroughs, 185 N. Y. 375, 78 N. E. 150.

Insanity of collateral blood relations, "not further removed than uncles and aunts, may be shown without proof that the insanity from which they suffered was hereditary in character." Dillman *v.* McDanel, 222 Ill. 276, 78 N. E. 591.

Only Cumulative Evidence. — While proof of hereditary tendency may add to the weight which might be given to personal manifestations of insanity it will not suffice of itself to establish that any mental disorder exists. Pringle *v.* Burroughs, 185 N. Y. 375, 78 N. E. 150.

3. Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Roche *v.* Nason, 185 N. Y. 128, 77 N. E. 1007.

4. Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; Roche *v.* Nason, 185 N. Y. 128, 77 N. E. 1007; Rathjens *v.* Merrill, 38 Wash. 442, 80 Pac. 754.

110. 2. Brelsford *v.* Aldridge, (Ind. 1908) 84 N. E. 1090.

4. *In re* Shapter, 35 Colo. 578, 85 Pac. 688; *In re* Young, (Utah 1908) 94 Pac. 731.

5. *In re* Shapter, 35 Colo. 578, 85 Pac. 688; Heaston v. Kreig, 167 Ind. 101, 77 N. E. 805. See Sibley *v.* Morse, 146 Mich. 463, 109 N. W. 858; *In re* Mansbach, 150 Mich. 348, 114 N. W. 65.

111. 1. Heaston v. Kreig, 167 Ind. 101, 77 N. E. 805; *In re* Meyer, 184 N. Y. 54 76 N. E. 920.

TESTIMONY.

112. 1. Crooks *v.* Harmon, 29 Utah 304, 81 Pac. 95, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 111, 112.

THEATRES AND AMUSEMENTS.

116. 4. Greenberg *v.* Western Turf Assoc., 148 Cal. 126, 82 Pac. 684; People *v.* Steele, 231 Ill. 340, 83 N. E. 236.

A statute providing that any person selling or offering for sale a ticket to a theatre at a price in excess of that charged originally by the management is guilty of a misdemeanor, is an invalid exercise of the police power. *Ex p.* Quarg, 149 Cal. 79, 84 Pac. 766.

5. People *v.* Steele, 231 Ill. 340, 83 N. E. 236.

Ticket Brokers may not be prohibited by statute from charging more than the office rates. People *v.* Steele, 231 Ill. 340, 83 N. E. 236.

117. 1. See Boer War Spectacle *v.* Com., (Va. 1908) 60 S. E. 85.

3. See People *v.* Richards, (Mich. 1907) 114 N. W. 230.

Free Moving Picture Show. — Weistblatt *v.* Bingham, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 545.

7. State *v.* Scaffer, 95 Minn. 311, 104 N. W. 139.

Power Must Be Exercised within Its Strict Limits. — Robinson *v.* Norfolk, (Va. 1908) 60 S. E. 762.

8. Titusville *v.* Gahan, 34 Pa. Super. Ct. 624; Indianapolis *v.* Miller, 168 Ind. 285, 80 N. E. 626.

Ticket Scalpers. — A municipal ordinance is invalid that prohibits their charging more than office rates. Chicago *v.* Powers, 231 Ill. 560, 83 N. E. 240.

118. 5. *Contra,* State *v.* Scaffen, 95 Minn. 311, 104 N. W. 139.

11. **Admission of Children.** — By New York statute (Laws N. Y. 1897, c. 378, p. 522) children under sixteen years of age must not be admitted unless accompanied by an adult person. People *v.* Jensen, 99 N. Y. App. Div. 355, 90 N. Y. Supp. 1062, (1905) *affirmed* 74 N. E. 1122; People *v.* Flaherty, 122 N. Y. App. Div. 878, 107 N. Y. Supp. 415.

14. New York *v.* Williams, (Municipal Ct.) 48 Misc. (N. Y.) 77, 96 N. Y. Supp. 237. See also *In re* Hammerstein, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 52, 108 N. Y. Supp. 197; Eden Musee American Co. *v.* Bingham, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 200; Keith, etc., Amusement Co. *v.* Bingham, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 205; People *v.* Flynn, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 208; People *v.* O'Gorman, (Supm. Ct. App. Div.) 108 N. Y. Supp. 737; United Vaudeville Co. *v.* Zeller, (Supm. Ct. Spec. T.) 108 N. Y. Supp. 789; Moore *v.* Owen, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 585; State *v.* Herald, (Wash. 1907) 92 Pac. 376.

119. 1. **Contract Providing for Sunday Performances Void.** — Hallen *v.* Thompson, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 642, 96 N. Y. Supp. 142; *In re* Hammerstein, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 52, 108 N. Y. Supp. 197.

2. **Services of Actor in General.** — Parker *v.* Hyde, etc., Amusement Co., (Supm. Ct. App. T.) 53 Misc. (N. Y.) 549, 103 N. Y. Supp. 731; Saxe *v.* Shubert Theatrical Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 683.

122. 7. See Taylor *v.* Finnegan, 189 Mass. 568, 76 N. E. 203.

12. *In re* Schoelkopf, (County Ct.) 54 Misc. (N. Y.) 31, 105 N. Y. Supp. 477.

124. 5. Horney *v.* Dixon, 213 Pa. St. 20, 61 Atl. 1088; Buenzle *v.* Newport Amusement Assoc., (R. I. 1908) 68 Atl. 721; Collister *v.* Hayman, 183 N. Y. 250, 76 N. E. 20, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 124; People *v.* Flynn, 189 N. Y. 180, 82 N. E. 169, *affirming* (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 328, 99 N. Y. Supp. 198; Taylor *v.* Cohn, 47 Oregon 538, 84 Pac. 388.

Ticket an Irrevocable License. — *Ex p.* Quarg, 149 Cal. 79, 84 Pac. 766.

6. See Taylor *v.* Cohn, 47 Oregon 538, 84 Pac. 388.

7. **Reserved Seat.** — Horney *v.* Dixon, 213 Pa. St. 20, 61 Atl. 1088.

8. Walsh *v.* Hyde, etc., Amusement Co., 113 N. Y. App. Div. 42, 98 N. Y. Supp. 960. See also Buenzle *v.* Newport Amusement Assoc., (R. I. 1908) 68 Atl. 721.

125. 1. Collister *v.* Hayman, 183 N. Y. 250, 76 N. E. 20. See also People *v.* Flynn, 189 N. Y. 180, 82 N. E. 169, *affirming* (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 328, 99 N. Y. Supp. 198; *Ex p.* Quarg, 149 Cal. 79, 84 Pac. 766.

2. Thomas *v.* Williams, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 615, 95 N. Y. Supp. 592. See also Greenberg *v.* Western Turf Assoc., 148 Cal. 126, 82 Pac. 684; Taylor *v.* Cohn, 47 Oregon 538, 84 Pac. 388.

5. Brown *v.* Batchellor, (R. I. 1908) 69 Atl. 295; Nephler *v.* Woodward, 200 Mo. 179, 98 S. W. 488.

Negligence Question of Fact. — Nephler *v.* Woodward, 200 Mo. 179, 98 S. W. 488.

6. See McCain *v.* Majestic Bldg. Co., (La. 1908) 45 So. 258.

126. 5. See Indianapolis *v.* Miller, 168 Ind. 285, 80 N. E. 626.

THEREBY.

133. 2. **"Thereby" in Sense of "In that Way."** — Birmingham R., etc., Power Co. *v.* Brown, (Ala. 1906) 43 So. 343, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 133.

THIS.

137. 2. **This Year.** — See Embrey *v.* Hargadine-McKittrick Dry Goods Co., 115 Mo. App. 130, 91 S. W. 170.

THREATS AND THREATENING LETTERS.

141. 1. State *v.* Louanis, 79 Vt. 468, 65 Atl. 532, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 141.

142. 4. Com. v. Patrick, (Ky. 1907) 103 S. W. [illegible].

In Alabama, however, a statute provides that any person who sends to another a threatening or abusive letter which may tend to provoke a breach of the peace must be punished. See Johnson *v.* State, (Ala. 1907) 44 So. 670.

5. **A Threat to Accuse One of Being a "Disorderly Person"** is not in Iowa a threat to accuse of a crime. State *v.* Dailey, 127 Iowa 652, 103 N. W. 1008.

6. State *v.* Louanis, 79 Vt. 468, 65 Atl. 532, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 141.

143. 4. **Threat Must Be a Direct One.**—State *v.* Schultz, (Wis. 1908) 114 N. W. 505. See also People *v.* Weinseimer, 117 N. Y. App. Div. 603, 102 N. Y. Supp. 579, *affirmed* 190 N. Y. 547, 83 N. E. 1129.

8. March *v.* Bricklayers', etc., Union, 79 Conn. 7, 63 Atl. 291.

144. 2. People *v.* Wickes, 112 N. Y. App. Div. 39, 112 N. Y. Supp. 163.

8. People *v.* Triscoli, 117 N. Y. App. Div. 120, 102 N. Y. Supp. 328.

145. 5. People *v.* Wickes, 112 N. Y. App. Div. 39, 98 N. Y. Supp. 163.

9. Chunn *v.* State, 125 Ga. 789, 54 S. E. 751.

No Express Demand for Money Necessary.—People *v.* Wickes, 112 N. Y. App. Div. 39, 112 N. Y. Supp. 163.

147. 6. **Intent When Presumed.**—State *v.* Coleman, 99 Minn. 487, 110 N. W. 5.

10. Williams *v.* State, (Tex. Crim. 1907) 100 S. W. 149.

TICKETS AND FARES.

155. 3. A fare is a payment that is made when the right of carriage is claimed. Shelton *v.* Erie R. Co., 73 N. J. L. 558, 66 Atl. 403.

156. 1. Cherry *v.* Chicago, etc., R. Co., 191 Mo. 489, 90 S. W. 381; Cincinnati, etc., R. Co. *v.* Harris, 115 Tenn. 501, 91 S. W. 211; McCollum *v.* Southern Pac. Co., 31 Utah 494, 88 Pac. 663.

2. A ticket which seeks to contravene or limit the rights of the passenger as agreed upon in the contract actually made is an unreasonable imposition which should not receive recognition in law. Texas, etc., R. Co. *v.* Wynn, (Tex. Civ. App. 1906) 97 S. W. 506.

4. Norton *v.* Consolidated R. Co., 79 Conn. 109, 63 Atl. 1087; Shelton *v.* Erie R. Co., 73 N. J. L. 558, 66 Atl. 403, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 130.

157. 1. McGhee *v.* Casbin, (Ala. 1905) 40 So. 63; Illinois Cent. R. Co. *v.* Gortikor, (Miss. 1908) 45 So. 363; Morrill *v.* Minneapolis St. R. Co., (Minn. 1908) 115 N. W. 395.

164. 3. See McCollum *v.* Southern Pac. Co., 31 Utah 494, 88 Pac. 663.

4. Baltimore, etc., R. Co. *v.* Evans, (Ind. 1907) 82 N. E. 773.

165. 3. Baltimore, etc., R. Co. *v.* Evans, (Ind. 1907) 82 N. E. 773.

166. 1. Lytle *v.* Galveston, etc., R. Co., (Tex. Civ. App. 1907) 100 S. W. 199; Pennsylvania Co. *v.* Bay, 150 Fed. 770; Louisville, etc., R. Co. *v.* Bitterman, (C. C. A.) 144 Fed. 34.

5. Ammons *v.* Southern R. Co., 138 N. Car. 555, 51 S. E. 127; Knoxville Traction Co. *v.* Wilkerson, 117 Tenn. 482, 99 S. W. 992.

167. 5. Chicago Union Traction Co. *v.* McClevey, 126 Ill. App. 21.

6. **A Railroad Company May Fix a Limit** of five dollars as the maximum amount of change it will furnish to patrons. Knoxville Traction Co. *v.* Wilkerson, 117 Tenn. 482, 99 S. W. 992.

12. Louisville, etc., R. Co. *v.* Cottengim, (Ky. 1907) 104 S. W. 280; Gates *v.* Quincy, etc., R. Co., 125 Mo. App. 334, 102 S. W. 50.

168. 2. Payment of fare is made to the conductor alone, whether such fare be by cash or ticket. Shelton *v.* Erie R. Co., 73 N. J. L. 558, 66 Atl. 403.

3. Rivers *v.* Kansas City, etc., R. Co., 86 Miss. 571, 38 So. 508; Gates *v.* Quincy, etc., R. Co., 125 Mo. App. 334, 102 S. W. 50; Gulf, etc., R. Co. *v.* Bunn, (Tex. Civ. App. 1906) 95 S. W. 640, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 168; St. Louis Southwestern R. Co. *v.* Fussell, (Tex. Civ. App. 1906) 97 S. W. [illegible].

Reasonable Time Question of Fact for Jury.—Seaboard Air Line R. Co. *v.* Scarborough, 52 Fla. 425, 42 So. 706.

12. Gates *v.* Quincy R. Co., 125 Mo. App. 334, 102 S. W. 50.

169. 6. Ft. Worth, etc., R. Co. *v.* Gribble, (Tex. Civ. App. 1907) 102 S. W. 157.

170. 6. Boling *v.* St. Louis, etc., R. Co., 189 Mo. 219, 88 S. W. 35; Ammons *v.* Southern R. Co., 138 N. Car. 555, 51 S. E. 127; Seelers *v.* Atlantic Coast Line R. Co., (S. Car. 1907) 57 S. E. 1102.

9. Hooper *v.* Furness R. Co., 23 Times L. Rep. 451.

10. Gulf, etc., R. Co. *v.* Dyer, (Tex. Civ. App. 1906) 95 S. W. 12.

171. 5. Brown *v.* Central of Georgia R. Co., 128 Ga. 635, 58 S. E. 163; Ammons *v.* Southern R. Co., 138 N. Car. 555, 51 S. E. 127.

172. 1. **Agent for Sale of Tickets after Arrival of Trains Unnecessary.**—Talbert *v.* Charleston, etc., R. Co., 72 S. Car. 137, 51 S. E. 564.

5. Brown *v.* Central of Georgia R. Co., 128 Ga. 635, 58 S. E. 163; Gulf, etc., R. Co. *v.* Dyer, (Tex. Civ. App. 1906) 95 S. W. 12.

173. 1. McCook *v.* Dublin, etc., R. Co., 2 Ga. App. 173, 58 S. E. [illegible].

174. 4. Birmingham R., etc., Co. *v.* McDonnell, (Ala. 1907) 44 So. 960; Knoxville Traction Co. *v.* Wilkerson, 117 Tenn. 482, 99 S. W. 992.

5. Knoxville Traction Co. *v.* Wilkerson, 117 Tenn. 482, 99 S. W. 992.

175. 1. Randolph *v.* Quincy, etc., R. Co., (Mo. App. 1908) 107 S. W. 1029.

2. De Board *v.* Camden Interstate R. Co., (W. Va. 1907) 57 S. E. 279, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 174; Aplington *v.* Pullman Co., 110 N. Y. App. Div. 250, 97 N. Y. Supp. 329; Texas, etc., R. Co. *v.* Wynn, (Tex. Civ. App. 1906) 97 S. W. 506.

176. 2. A condition plainly expressed on the ticket limiting the time for use will be presumed to have been consented to by the purchaser, in the acceptance and use of the ticket itself. Freeman *v.* Atchison, etc., R. Co., 71 Kan. 327, 80 Pac. 592.

177. 5. Freeman *v.* Atchison, etc., R. Co., 71 Kan. 327, 80 Pac. 592.

178. 10. Crabtree *v.* Washington County R. Co., 101 Me. 485, 64 Atl. 842.

179. 5. Pittsburg, etc., R. Co. *v.* Coll, 37 Ind. App. 232, 76 N. E. 816, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 179.

9. **Evidence to Satisfy Mind of Reasonable Man Should Be Produced.** — Southern R. Co. *v.* Cassell, 122 Ky. 317, 92 S. W. 281.

180. 1. Pittsburg, etc., R. Co. *v.* Coll, 37 Ind. App. 232, 76 N. E. 816; Baltimore, etc., R. Co. *v.* Hudson, (Ky. 1906) 92 S. W. 947; Texas, etc., R. Co. *v.* Payne, 99 Tex. 46, 87 S. W. 330.

181. 7. Marshall *v.* Nashville R., etc., Co., 118 Tenn. 254, 101 S. W. 419.

182. 3. Indianapolis Traction, etc., Co. *v.* Lawson, (C. C. A.) 143 Fed. 834.

7. Weaver *v.* Ann Arbor R. Co., 139 Mich. 590, 102 N. W. 1037.

184. 2. Kelly *v.* New York City R. Co., 119 N. Y. App. Div. 223, 104 N. Y. Supp. 561, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 184.

10. Lane *v.* Choctaw, etc., R. Co., (Okla. 1907) 91 Pac. 883; Billinger *v.* Clyde Steamship Co., 158 Fed. 511.

185. 9. See also Jones *v.* Grand Trunk R. Co., 9 Ont. L. Rep. 723.

188. 6. **Rule Requiring Transfer Checks Held Reasonable.** — Morrill *v.* Minneapolis St. R. Co., (Minn. 1908) 115 N. W. 395.

189. 5. The duty to see that a proper transfer slip is given rests upon the conductor and not upon the passenger. Morrill *v.* Minneapolis St. R. Co., (Minn. 1908) 115 N. W. 395.

190. 1. Georgia R., etc., Co. *v.* Baker, 125 Ga. 562, 54 S. E. 639; Illinois Cent. R. Co. *v.* Gortikov, (Miss. 1908) 45 So. 363.

3. Pullman Co. *v.* Lutz, (Ala. 1908) 45 So. 675.

A Railroad Company Is Not Bound to Awaken a Sleeping Passenger, in order to advise him that his destination is reached, the car not being a sleeper. Seaboard Air Line R. Co. *v.* Rainey, 122 Ga. 307, 50 S. E. 88.

6. Cherry *v.* Chicago, etc., R. Co., 191 Mo. 489, 90 S. W. 381.

7. Cincinnati, etc., R. Co. *v.* Harris, 115 Tenn. 501, 91 S. W. 211.

191. 1. Pennsylvania Co. *v.* Loftis, 72 Ohio St. 288, 74 N. E. 179.

193. 4. Wieland *v.* Southern Pac. Co., 1 Cal. App. 343, 82 Pac. 226.

194. 1. **Condition May Be Waived by Conductor.** — Chicago, etc., R. Co. *v.* Burns, (Tex. Civ. App. 1907) 104 S. W. 1081.

195. 10. Bradburn *v.* Whatcom County R., etc., Co., 45 Wash. 582, 88 Pac. 1020; Gabbert *v.* Hackett, (Wis. 1908) 115 N. W. 345.

196. 7. St. Louis, etc., R. Co. *v.* White, 99 Tex. 359, 89 S. W. 746, *reversing* (Tex. Civ. App. 1905) 86 S. W. 359.

12. **Carrier Not Liable for Special Contract Made by Ticket Seller.** — Gerardy *v.* Louisville, etc., R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 466, 102 N. Y. Supp. 548.

197. 6. Johnson *v.* Michigan United R. Co., (Mich. 1908) 116 N. W. 529, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 197.

199. 1. State *v.* Thompson, 47 Oregon 492, 84 Pac. 476 (Laws Oregon 1905, §§ 1–8).

2. See State *v.* Manford, 97 Minn. 173, 106 N. W. 907; State *v.* Thompson, 47 Oregon, 492, 84 Pac. 476; *In re* O'Neill, 41 Wash. 174, 83 Pac. 104.

The Statute of Tennessee prohibiting the sale of nontransferable tickets issued by common carriers by persons other than the authorized agents is not unconstitutional. Samuelson *v.* State, 116 Tenn. 470, 95 S. W. 1012.

4. *Ex p.* Hughes, (Tex. Civ. App. 1907) 100 S. W. 160, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 199.

200. 8. See Shaw *v.* Chicago, etc., R. Co., (Iowa 1907) 113 N. W. 478.

204. 1. Gulf, etc., R. Co. *v.* McCormick, (Tex. Civ. App. 1907) 100 S. W. 202.

5. Fitzmaurice *v.* New York, etc., R. Co., 192 Mass. 159, 78 N. E. 418,

TIME.

208. 3. **Time of War.** — See Hamilton *v.* McClaughry, 136 Fed. 445.

TIME (COMPUTATION OF).

210. 5. Texas Tram, etc., Co. *v.* Hightower, (Tex. 1906) 96 S. W. 1071.

211. 1. **Standard Time Approved.** — Orvik *v.* Casselman, 15 N. Dak. 34, 105 N. W. 1105.

5. Lewis Tp. Imp. Co. *v.* Royer, 38 Ind. App. 151, 76 N. E. 1068; Horn *v.* U. S. Mining Co., 47 Oregon 35, 126, 81 Pac. 1009, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 211; Carroll *v.* Salisbury, 28 R. I. 16, 65 Atl. 274; Holt *v.* Settlemeyer, (S. Car. 1908) 60 S. E. 659; Ætna L. Ins. Co. *v.* Wimberly, (Tex. Civ. App. 1908) 108 S. W. 778.

212. 1. Omaha Water Co. *v.* Schamel, 147 Fed. 502, 78 C. C. A. 68; Boyett *v.* Frankfort Chair Co., (Ala. 1907) 44 So. 546; Connerly *v.* Dickinson, 81 Ark. 258, 99 S. W. 82;; Lemoore Bank *v.* Fulgham, 151 Cal. 234, 90 Pac. 936; Cosgriff *v.* Election Com'rs, 151 Cal. 407, 91 Pac. 98;; Nebola *v.* Minnesota Iron Co., 102 Minn. 89, 112 N. W. 880; Scharff *v.* McGaugh, 205 Mo. 344, 103 S. W. 550; State *v.* Elson, 77 Ohio St. 489, 83 N. E. 904;; Oehler *v.* Walsh, 28 Ohio Cir. Ct. 446; Southern Pine Lumber Co. *v.* Ward, 16 Okla. 131, 85 Pac. 459.

214. 1. Geneva Cooperage Co. *v.* Brown, 98 S. W. 279, 30 Ky. L. Rep. 272; Newton *v.* Ogden, 102 S. W. 865, 31 Ky. L. Rep. 549.

215. 2. Ætna L. Ins. Co. *v.* Wimberly, (Tex. Civ. App. 1908) 108 S. W. 778.

7. Ætna L. Ins. Co. *v.* Wimberly, (Tex. Civ. App. 1908) 108 S. W. 778.

219. 1. Lemoore Bank *v.* Fulgham, 151 Cal. 234, 90 Pac. 936; Cosgriff *v.* Election Com'rs, 151 Cal. 407, 91 Pac. 98.

222. 4. Rauer's Law, etc., Co. *v.* Standley, 3 Cal. App. 44, 84 Pac. 214; Ocumpaugh *v.* Norton, 24 App. Cas. (D. C.) 296, 2 Ann. Cas. 133; Jackson Brewing Co. *v.* Wagner, 117 La. 875, 42 So. 356; Curtice *v.* Schmidt, 202 Mo.

703, 101 S. W. 61; Oberer *v.* State, 28 Ohio Cir. Ct. 620.

5. Fellman *v.* Mercantile F. & M. Ins. Co., 116 La. 723, 41 So. 49.

223. 1. Salley *v.* Seaboard Air Line R. Co., 76 S. Car. 176, 56 S. E. 782, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 223.

224. 2. Fellman *v.* Mercantile F. & M. Ins. Co., 116 La. 723, 41 So. 49; Oberer *v.* State, 28 Ohio Cir. Ct. 620; Ætna L. Ins. Co. *v.* Wimberly, (Tex. Civ. App. 1908) 108 S. W. 778.

3. Geneva Cooperage Co. *v.* Brown, 98 S. W. 279, 30 Ky. L. Rep. 272.

4. Duncan *v.* Moloney, 115 Ill. App. 522.

225. 1. Norman *v.* State, 147 Ala. 700, 41 So. 295; Ryer *v.* Prudential Ins. Co., 185 N. Y. 6, 77 N. E. 727.

2. *Compare* Fellman *v.* Mercantile F. & M. Ins. Co., 116 La. 723, 41 So. 49; Salley *v.* Seaboard Air Line R. Co., 76 S. Car. 176, 56 S. E. 782.

TITLE, OWNERSHIP, AND POSSESSION.

234. 8. Yall *v.* Snow, 201 Mo. 511, 100 S. W. 1.

10. Binhoff *v.* State, (Oregon 1907) 90 Pac. 586.

236. 4. Com. *v.* Smith, (Ky. 1907) 105 S. W. 397; People *v.* Thornton, 122 N. Y. App. Div. 287, 106 N. Y. Supp. 704.

7. Salyer Lumber Co. *v.* Claflin, (N. Dak. 1907) 113 N. W. 1036.

237. 5. **Charterer Not an Owner.** — The Hopper No. 66, (1907) P. 254, 97 L. T. N. S. 360.

238. 8. Southern R. Co. *v.* Hall, 145 Ala. 224, 41 So. 135, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 238; Lieberman *v.* Clark, 114 Tenn. 117, 85 S. W. 258, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 238.

239. 5. Zebriska's Succession, 119 La. 1076, 44 So. 893.

7. Southern R. Co. *v.* Hall, 145 Ala. 224, 41 So. 135, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 239; Lofstad *v.* Murasky, (Cal. 1907) 91 Pac. 1010, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 239; Carswell *v.* Swindell, 102 Md. 636, 62 Atl. 956, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 239; Lieberman *v.* Clark, 114 Tenn. 117, 85 S. W. 258, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 239.

TO.

239. 9. **Description of Premises.** — Whitmore *v.* Brown, 100 Me. 410, 61 Atl. 985.

10. **To City.** — See Central of Georgia R. Co. *v* Union Springs, etc., R. Co., 144 Ala. 639, 39 So. 473.

TOOLS.

249. 8. **The Canoe of a Professional Guide Is a Tool, but a Rifle Is Not,** within an exemption statute. *In re* Mullen, 140 Fed. 206.

A Cab is a ***tool*** or implement of trade of a cab-driver within a statute providing for distress for arrears of rent. Lavell *v.* Richings, (1906) 1 K. B. 480, 75 L. L. K. B. 287.

A Cream Separator Is a Tool of a Farmer within an exemption statute. *In re* Hemstreet, 139 Fed. 958.

TORRENS ACTS.

251. 3. **Where the Applicant Fails to Establish Title** as against the world, a decree that the title be registered will be refused. Glos *v.* Holberg, 220 Ill. 167, 77 N. E. 80.

As to the Distinction between a Suit to Remove a Cloud and an application to register a title, see Glos *v.* Holberg, 220 Ill. 167, 77 N. E. 80.

Where the Existence and Location of the Plot Cannot Be Determined from any evidence adduced, a decree that the title be registered should not be granted. Glos *v.* Ehrhardt, 224 Ill. 532, 79 N. E. 605.

4. **A City Is a Necessary Party** in a proceeding in the land court in which the question whether there is a public easement in a strip of land contiguous to a street in the city must be determined. Woburn First Nat. Bank *v.* Woburn, 192 Mass. 220, 78 N. E. 307.

The Fact that a Nonsuit Was Entered against the defendants on a writ of entry against a petitioner for registration is of no importance. Haskell *v.* Friend, (Mass. 1907) 81 N. E. 962.

The Statute Making the Certificate of the Land Court Conclusive as to all incumbrances implies that it shall pass upon their validity before it issues the certificate. Woburn First Nat. Bank *v.* Woburn, 192 Mass. 220, 78 N. E. 307.

Whether a Testator's Failure to Provide for His Children Was Intentional is a question of fact which the land court may determine. Woodvine *v.* Dean, 194 Mass. 40, 79 N. E. 882.

Appeal and Proceedings Thereon — *An Appeal Lies to the Superior Court* from the decision of the land court under Rev. Laws Mass., c. 128, § 13, as amended by Stat. Mass. 1902, p. 370, c. 458, and the issues framed in the land court are to be read in connection with the findings of the judge of that court. Jeffrey *v.* Winter, 190 Mass. 90, 76 N. E. 282.

The Issues for the Jury on appeal to the Superior Court must be prepared in the land court, and the framing of such issues is necessary to complete the appeal. Foss *v.* Atkins, 193 Mass. 486, 79 N. E. 763.

The issues framed by the land court may be amended or modified by the Superior Court. Luce *v.* Parsons, 192 Mass. 8, 77 N. E. 1032.

As to the Sufficiency of the Report of the judge of the land court on appeal to the Superior Court, under Stat. Mass. 1905, c. 288, p. 208, see Woodvine *v.* Dean, 194 Mass. 40, 79 N. E. 882.

5. **Proceedings to Register a Title** under the Torrens Act may be maintained by an owner although the instrument vesting title in him is not recorded. National Bond, etc., Co. *v.* Anderson, 99 Minn. 137, 108 N. W. 861.

The Ordinary Equitable Rules and Principles are to be followed and applied in proceedings under the *Minnesota* Torrens Act. Owsley *v.* Johnson, 95 Minn. 168, 103 N. W. 903.

A Decree and Certificate of Registration May Be Vacated and canceled in equity on the ground of fraud but not, it seems, where the rights of an innocent third party would be injuriously affected. Baart *v.* Martin, 99 Minn. 197, 108 N. W. 945.

252. 10. The California and Colorado Acts Have Been Upheld as constitutional. Robinson v. Kerrigan, 151 Cal. 40, 90 Pac. 129; People v. Crissman, Registrar of Titles, (Colo. 1907) 92 Pac. 949.

TOWAGE, TUGS, AND TOWS.

262. 1. The Oceanica, 144 Fed. 301.

6. The Samuel E. Bouker, 141 Fed. 480.

263. 1. Cotton v. Almy, 141 Fed. 358, 72 C. C. A. 506; Gilchrist Transp. Co. v. Sicken, 147 Fed. 470, 78 C. C. A. 12; The Britannia, 148 Fed. 495; The Oak, (C. C. A.) 152 Fed. 973, *affirming* 148 Fed. 1005.

2. The Oceanica, 144 Fed. 301.

264. 11. The Edwin Terry, 145 Fed. 837; The Britannia, 148 Fed. 495.

12. The H. B. Moore, Jr., 155 Fed. 380.

265. 2. The Britannia, 148 Fed. 495.

266. 4. Monongahela River Consol. Coal, etc., Co. v. O'Neil, (C. C. A.) 144 Fed. 74.

6. Farrell v. Port Johnston Towing Co., 156 Fed. 871.

7. The Oceanica, 144 Fed. 301.

9. The Inca, 148 Fed. 363, 78 C. C. A. 273.

Unknown Obstructions. — The Knickerbocker, 138 Fed. 148, *affirmed* (C. C. A.) 145 Fed. 1022.

Well-known Sunken Wrecks. — The E. L. Levy, (C. C. A.) 144 Fed. 666.

267. 8. The Potomac, 147 Fed. 293; Gilchrist Transp. Co. v. Sicken, 147 Fed. 470, 78 C. C. A. 12; The J. S. T. Stranahan, 151 Fed. 364.

268. 1. The E. T. Williams, (C. C. A.) 139 Fed. 231.

Low Tide. — The Naos, 144 Fed. 292.

7. The Phœnix, 143 Fed. 350. *Compare* The R. G. Townsend, 140 Fed. 217.

10. Bradley v. Lehigh Valley R. Co., 145 Fed. 569; The Ferguson, 153 Fed. 366, 82 C. C. A. 442.

12. The Etruria, (C. C. A.) 147 Fed. 216.

269. 2. The Genesee, (C. C. A.) 138 Fed. 549.

4. The Printer, 155 Fed. 441.

Tow Must Be Securely Anchored. — The Flushing, (C. C. A.) 145 Fed. 614.

9. The Asher J. Hudson, 154 Fed. 354, 83 C. C. A. 143.

270. 3. The Britannia, 148 Fed. 495; Dady v. Bacon, 149 Fed. 401, 79 C. C. A. 221; The Oak, (C. C. A.) 152 Fed. 973, *affirming* 148 Fed. 1005; The Asher J. Hudson, 154 Fed. 354, 83 C. C. A. 143.

9. The Royal, 138 Fed. 416.

11. The Lyndhurst, 147 Fed. 110, 77 C. C. A. 336.

271. 1. Rockland Lake Trap Rock Co. v. Lehigh Valley R. Co., 115 N. Y. App. Div. 630, 101 N. Y. Supp. 222, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 270 [271].

273. 5. The W. G. Mason, (C. C. A.) 142 Fed. 913; The Oceanica, 144 Fed. 301.

274. 4. The Phœnix, 143 Fed. 350; The Britannia, 148 Fed. 495; The Printer, 155 Fed. 441.

275. 1. The Winnie, 149 Fed. 725, 79 C. C. A. 431; The C. Van Cott, 152 Fed. 1016.

2. The W. G. Mason, (C. C. A.) 142 Fed. 913; The Resolute, 149 Fed. 1005.

TOWNS AND TOWNSHIPS.

283. 2. Millville Gas Light Co. v. Vineland Light, etc., Co., (N. J. 1906) 65 Atl. 504.

285. 2. See North Troy Graded School Dist. v. Troy, 80 Vt. 16, 66 Atl. 1033.

287. 10. See State v. Russell, 197 Mo. 633, 95 S. W. 870, under a statute providing for the resubmission of township organization to the voters.

11. State v. Spokane County, (Wash. 1908) 94 Pac. 897; State v. Munn, 201 Mo. 214, 99 S. W. 1073; State v. Gibson, 195 Mo. 251, 94 S. W. 513.

288. 3. Nash v. Fries, 129 Wis. 120, 108 N. W. 210.

289. 7. Juliaetta v. Smith, 12 Idaho 288, 85 Pac. 923, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 289. See also Daly v. Gubbins, (Ind. 1907) 82 N. E. 659.

290. 2. **The Title Acquired by a Town to Land under Water** by reason of a crown grant is held, by it, in trust for the community. Brookhaven v. Smith, 188 N. Y. 74, 80 N. E. 665, *reversing* 98 N. Y. App. Div. 212, 90 N. Y. Supp. 646.

3. Bath v. Haverhill, 73 N. H. 511, 63 Atl. 307.

8. Delegation of Creative Power. — See People v. Ontario, 148 Cal. 625, 84 Pac. 205.

291. 5. **The Provision of the Statute Authorizing Annexation** must be strictly complied with. La Grange v. Pryor, (Ky. 1907) 106 S. W. 235.

293. 6. Bath v. Haverhill, 73 N. H. 511, 63 Atl. 307.

295. 1. State v. Lippels, (Wis. 1907) 113 N. W. 437. See also Atty.-Gen. v. McColeman, 144 Mich. 67, 107 N. W. 869; Com. v. Topper, (Pa. 1908) 68 Atl. 666.

2. North Allis Tp. v. Allis Tp., 142 Mich. 137, 105 N. W. 139.

296. 2. Cooley v. State, 74 Ohio St. 252, 78 N. E. 369.

297. 3. Munhall v. Mifflin Tp., 210 Pa. St. 527, 60 Atl. 155, where the legislative act was held to give a court of equity jurisdiction.

300. 1. **A Statute Empowering a Town** to employ attorneys to prosecute or defend suits does not authorize the electors to direct, by resolution, the employment of an attorney by the year. State v. Lake, 129 Wis. 639, 109 N. W. 564.

3. Staples v. Walmsley, 27 R. I. 181, 61 Atl. 141.

5. **That a Township Is Not a Legal Entity and Cannot Be Sued,** see Austin Western Co. v. Weaver Tp., (Iowa 1907) 114 N. W. 180.

Where an Action Was Instituted and Brought to Judgment by attorneys acting without due authorization, a subsequent ratification by the electors gives validity. Partridge v. Ring, 99 Minn. 286, 109 N. W. 248.

A Township May Be Sued by a trustee in bankruptcy to recover the amount received by it as a preferential payment. Painter v. Napoleon Tp., 156 Fed. 289.

The Propriety of a Resolution by a Township authorizing the filing of a bill in equity to restrain a gas company from laying pipes in its streets is not a question for judicial con-

sideration. Landis Tp. *v.* Millville Gaslight Co., (N. J. 1907) 65 Atl. 716.

301. 4. **A Town Cannot by Unanimous Vote** award a collector money as commissions in excess of the amount fixed by statute. People *v.* Parker, 231 Ill. 478, 83 N. E. 282.

303. 1. Newton *v.* Hamden, 79 Conn. 237, 64 Atl. 229; Hixon *v.* Sharon, 190 Mass. 347, 76 N. E. 909; Leonard *v.* Middleborough, (Mass. 1908) 84 N. E. 323; McCoy *v.* McClarty, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 69, 104 N. Y. Supp. 80.

304. 3. See Anderson *v.* Parker, 101 Me. 416, 64 Atl. 771.

6. Duncan *v.* Cox, (Ind. App. 1907) 81 N. E. 735, *rehearing denied* (Ind. App. 1907) 82 N. E. 125. See also Paige *v.* Rochester, 137 Fed. 663.

305. 1. **Errors and Informalities in an Assessment Roll** which do not work substantial prejudice are immaterial. Corbet *v.* Rocksbury, 94 Minn. 397, 103 N. W. 11.

6. Buck *v.* Douglass, (N. J. 1907) 65 Atl. 848.

Example of Invalid Ordinance. — State *v.* Peabody, (Me. 1907) 69 Atl. 273.

307. 3. Wood *v.* Milton, (Mass. 1908) 84 N. E. 332.

308. 1. **Must Be Held at Place Designated in Notice of Meeting.** — Frantz *v.* Patterson, 123 Ill. App. 13.

4. See Lewis *v.* Eagle, (Wis. 1908) 115 N. W. 361.

309. 1. **The Warrant Must Contain an Article Sufficiently Definite** to notify the inhabitants that they may be called to vote on a certain subject. Revere Water Co. *v.* Winthrop, 192 Mass. 455, 78 N. E. 497.

4. **Kentucky Statute.** — La Grange *v.* Pryor, (Ky. 1907) 106 S. W. 235.

9. Revere Water Co. *v.* Winthrop, 192 Mass. 455, 78 N. E. 497.

313. 10. Lewis *v.* Eagle, (Wis. 1908) 115 N. W. 361.

11. Wood *v.* Milton, (Mass. 1908) 84 N. E. 332.

314. 2. Jenney *v.* Alden, 79 Vt. 156, 64 Atl. 609.

6. Wood *v.* Milton, (Mass. 1908) 84 N. E. 332.

A Mere Irregularity in Procedure at a Town Meeting not affecting the result is immaterial. Lewis *v.* Eagle, (Wis. 1908) 115 N. W. 361.

315. 1. Fletcher *v.* Hickman, (C. C. A.) 136 Fed. 568.

2. Page *v.* McClure, 79 Vt. 83, 64 Atl. 451.

As to the Qualifications of Voters under the town law, see People *v.* Markiewicz, 225 Ill. 563, 80 N. E. 256.

A Vote to "Indefinitely Postpone" is equivalent to final disapproval. Wood *v.* Milton, (Mass. 1908) 84 N. E. 332.

5. See People *v.* Armstrong, 116 N. Y. App. Div. 103, 101 N. Y. Supp. 712.

6. See Lewis *v.* Eagle, (Wis. 1908) 115 N. W. 361, where it was contended that no opportunity was afforded to move for reconsideration.

319. 10. **Officers Presumed to Do Duty.** — Craft *v.* Lent, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 481, 103 N. Y. Supp. 366.

320. 9. Annis *v.* McNulty, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 121, 100 N. Y. Supp. 951, *affirmed* (Supm. Ct. App. Div.) 101 N. Y. Supp. 1111.

321. 6. Indiana Trust Co. *v.* Jefferson Tp., 37 Ind. App. 424, 77 N. E. 63.

The Trustee of a Township Cannot Bind the Latter by paying a claim not legally enforceable against it. Jay County *v.* Pike Civil Tp., 168 Ind. 535, 81 N. E. 489.

9. **As to Power of Trustees,** see Indiana Trust Co. *v.* Jefferson Tp., 37 Ind. App. 424, 77 N. E. 63.

323. 2. **Board of Selectment Must Act Jointly.** — Damon *v.* Walsh, (Mass. 1907) 80 N. E. 644.

3. Travis *v.* Lehigh Coal, etc., Co., 33 Pa. Super. Ct. 203. See also *In re* Smith, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 567, 100 N. Y. Supp. 179; Palmer *v.* Roods, 116 N. Y. App. Div. 66, 101 N. Y. Supp. 186.

4. Geiser Mfg. Co. *v.* Frankford Tp., 34 Pa. Super. Ct. 146; Good Roads Machinery Co. *v.* Union Tp., 34 Pa. Super. Ct. 538.

Where a Contract Purports to Have Been Made on behalf of the town by the board of supervisors it is to be presumed there was a meeting of the board for that purpose. Lewis *v.* Eagle, (Wis. 1908) 115 N. W. 361.

5. As to power to invest certain money vested in the supervisors of towns by Laws 1905, p. 925, c. 396, see McConnell *v.* Allen, 120 N. Y. App. Div. 548, 105 N. Y. Supp. 16.

324. 4. Lincoln School Tp. *v.* Union Trust Co., 36 Ind. App. 113, 73 N. E. 623, 74 N. E. 272.

325. 2. **Extra Compensation.** — Annis *v.* McNulty, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 121, 100 N. Y. Supp. 951, *affirmed* (Supm. Ct. App. Div.) 101 N. Y. Supp. 1111.

Town Clerk Not Entitled to Compensation as Custodian of Assessment Rolls. — People *v.* Sippell, 116 N. Y. App. Div. 753, 102 N. Y. Supp. 69.

4. See State *v.* Shuman, 101 Me. 158, 63 Atl. 665; Oneida County *v.* Tibbits, 125 Wis. 9, 102 N. W. 897.

327. 3. That the superintendence of schools is in the hands of the school committee, see Morse *v.* Ashley, 193 Mass. 294, 79 N. E. 481.

329. 1. See North Troy Graded School Dist. *v.* Troy, 80 Vt. 16, 66 Atl. 1033.

4. Authority to contract a debt implies the power to raise money to pay it. Rose *v.* McKie, 145 Fed. 584.

7. Kelley *v.* Torrington, (Conn. 1908) 68 Atl. 855; Putnam Foundry, etc., Co. *v.* Barrington, (R. I. 1907) 67 Atl. 733.

9. See Indiana Road Mach. Co. *v.* Keeney, 147 Mich. 184, 110 N. W. 530; Pape *v.* Carlton, 130 Wis. 123, 109 N. W. 968.

330. 1. Indiana Road Mach. Co. *v.* Keeney, 147 Mich. 184, 110 N. W. 530. *Compare* Bartlett *v.* Austin, etc., Co., 147 Mich. 58, 110 N. W. 123.

3. Wheeler [illegible] 96 Atl. [illegible].

331. 9. The town is liable for the fees of an attorney retained by the board of town auditors to resist the allowance of certain claims against the town. Comesky *v.* Blackledge, 114 N. Y. App. Div. 834, 100 N. Y. Supp. [illegible].

332. 3. Wheeler *v.* Gilsum, 73 N. H. 429, 62 Atl. 597.

333. 3. Town Order May Be Subject of Larceny. — Vought *v.* State, (Wis. 1908) 114 N. W. 518.

334. 1. **Legal Interest.** — In Park River Bank *v.* Norton, 14 N. Dak. 143, 104 N. W. 525, a judgment allowing interest at eight per cent. from the date of the order was modified so as to make the interest chargeable at the legal rate only.

4. Where a statute authorizes the purchase of road machinery "on credit or otherwise," it authorizes payment of the same out of the general fund. Park River Bank *v.* Norton, 14 N. Dak. 143, 104 N. W. 525.

335. 1. *In re* Mefford, 113 N. Y. App. Div. 529, 99 N. Y. Supp. 400; Annis *v.* McNulty, (Supm. Ct. Tr. T.) 51 Misc. (N. Y.) 121, 100 N. Y. Supp. 951, *affirmed* (Supm. Ct. App. Div.) 101 N. Y. Supp. 1111; Peck *v.* Catskill, 119 N. Y. App. Div. 752, 104 N. Y. Supp. 540. See also Lower Merion Tp. *v.* Cline, 211 Pa. St. 559, 61 Atl. 77; Wunderlich *v.* Kalkofen, (Wis. 1907) 113 N. W. 1091.

A Claim Cannot Be Legally Audited until it is presented in the form prescribed by the statute. People *v.* King, 116 N. Y. App. Div. 89, 101 N. Y. Supp. 782.

Where a Town Board Has Power to Fix the Value of certain services of a town clerk and has fixed such value the board of audit cannot review its action. People *v.* Sippell, 116 N. Y. App. Div. 753, 102 N. Y. Supp. 69.

Where a Claim Is Once Allowed by the Board of Auditors in conformity with the statute it cannot be subsequently disallowed by them. Central Bank *v.* Shaw, 121 N. Y. App. Div. 415, 106 N. Y. Supp. 94.

2. In People *v.* King, 116 N. Y. App. Div. 89, 101 N. Y. Supp. 782, it was held that a claim had never been properly presented to the audit board and that an opportunity to present it in due form should be afforded.

4. A resolution allowing a claim signed by the town auditors has been held to be a certificate by them within the requirements of the statute. Central Bank *v.* Shaw, 121 N. Y. App. Div. 415, 106 N. Y. Supp. 94.

Mandamus Lies to Compel Certificate of Rejection of Claim. — People *v.* Page, 105 N. Y. App. Div. 212, 94 N. Y. Supp. 660.

7. Rice *v.* Shealey, 71 S. Car. 161, 50 S. E. 868, which was an application for mandamus by the holders of township bonds issued in aid of a railroad corporation.

In Rose *v.* McKie, (C. C. A.) 145 Fed. 584, the writ issued to enforce a judgment.

Where a claim has been disallowed by the board of auditors but afterward allowed at the annual town meeting and a tax was levied to pay it, mandamus will lie to compel the issuance of a town order directing the treasurer to pay over the sum so levied, even though the claim might also be enforced by action. Wunderlich *v.* Kalkofen, (Wis. 1907) 113 N. W. 1091.

336. 1. **As to Taxation of Costs** where a claim was not presented to the township before suit was brought, see Morrill Tp. *v.* Fletchall, 72 Kan. 787, 85 Pac. 752.

4. That the corporate existence of a township cannot be destroyed so as to impair the obligation of a contract created by a previous bond issue, see Smith *v.* Walker, 74 S. Car. 519, 54 S. E. 779.

TOY.

337. 1. **Ping Pong Balls Not Dutiable as Toys.** — U. S. *v.* Wanamaker, 136 Fed. 266; U. S. *v.* Strauss, (C. C. A.) 136 Fed. 185, 69 C. C. A. 201.

Stuffed Skins of Fowl Used as Easter Novelties Not Dutiable as Toys. — Morimura *v.* U. S., 141 Fed. 383.

TRADEMARKS, TRADE NAMES, AND UNFAIR COMPETITION.

345. 1. Dr. Peter H. Fahrney, etc., Co. *v.* Ruminer, 153 Fed. 735, 82 C. C. A. 621; Rocky Mountain Bell Telephone Co. *v.* Utah Independent Telephone Co., 31 Utah 377, 88 Pac. 26. See also Westcott Chuck Co. *v.* Oneida Nat. Chuck Co., 122 N. Y. App. Div. 271, 106 N. Y. Supp. 1024, *dissenting* opinion of Chester, J..

2. International Silver Co. *v.* Rodgers Bros. Cutlery Co., 136 Fed. 1019.

3. W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89.

346. 4. Ball *v.* Broadway Bazaar, 121 N. Y. App. Div. 546, 106 N. Y. Supp. 249; Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

Office of Trademark. — Bulte *v.* Igleheart, (C. C. A.) 137 Fed. 492.

347. 4. Epperson *v.* Bluthenthal, (Ala. 1906) 42 So. 863.

5. W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499.

348. 1. Banzhaf *v.* Chase, 150 Cal. 180, 88 Pac. 704.

3. Ball *v.* Broadway Bazaar, 121 N. Y. App. Div. 546, 106 N. Y. Supp. 249.

349. 5. W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499.

350. 1. Kronthal Waters *v.* Becker, 137 Fed. 649; Siegert *v.* Gandolfi, 149 Fed. 100, 79 C. C. A. 142, *reversing* 139 Fed. 917; Enoch Morgan's Sons Co. *v.* Ward, 152 Fed. 690, 81 C. C. A. 616; Baglin *v.* Cusenier Co., 156 Fed. 1016, *reversing* 141 Fed. 497, 72 C. C. A. 555; Banzhof *v.* Chase, 150 Cal. 180, 88 Pac. 704; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Grocers' Journal Co. *v.* Midland Pub. Co., 127 Mo. App. 356, 105 S. W. 310, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 345–350; Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5.

3. W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89.

351. 2. Baker *v.* Puritan Pure Food Co., 139 Fed. 680; Regensburg *v.* Juan F. Portuondo Cigar Mfg. Co., 142 Fed. 160, 73 C. C. A. 378, *affirming* 136 Fed. 866; Galena Signal Oil Co. *v.* Fuller, 142 Fed. 1002; Hygeia Distilled Water Co. *v.* Consolidated Ice Co., 144 Fed. 139, *affirmed* 151 Fed. 10, 80 C. C. A. 506; Bamforth *v.* Douglass Post Card, etc., Co., 158 Fed. 355; *In re* American Circular Loom Co.,

28 App. Cas. (D. C.) 446; Cohen *v.* Nagle, 190 Mass. 4, 76 N. E. 276; Warren Bros. Co. *v.* Barber Asphalt Paving Co., 145 Mich. 79, 108 N. W. 652.

352. 2. Grocers' Journal Co. *v.* Midland Pub. Co., 127 Mo. App. 356, 105 S. W. 310.

The protection of a trademark cannot be obtained for an organic article, as a peach tree, which, by the law of nature, is reproductive and derives its value from its innate vital powers independent of the care or ingenuity of man. Rannells *v.* Albaugh, 27 Ohio Cir. Ct. 742.

3. Germer Stove Co. *v.* Art Stove Co., (C. C. A.) 150 Fed. 141.

6. Copyright or Patent Right Unnecessary. — H. B. Chaffee Mfg. Co. *v.* Selchow, 135 Fed. 1021, 68 C. C. A. 668, *affirming* 131 Fed. 543.

8. Fay *v.* Lambourne, (Supm. Ct. App. Div.) 108 N. Y. Supp. 874.

10. National Starch Co. *v.* Koster, 146 Fed. 259; Epperson *v.* Bluthenthal, (Ala. 1906) 42 So. 863; Schuster Co. *v.* Muller, 28 App. Cas. (D. C.) 409; Grocers' Journal Co. *v.* Midland Pub. Co., 127 Mo. App. 356, 105 S. W. 310; Gluckman *v.* Strauch, 99 N. Y. App. Div. 361, 91 N. Y. Supp. 223, *affirmed* 186 N. Y. 560, 79 N. E. 1106; Perlberg *v.* Smith, 70 N. J. Eq. 638, 62 Atl. 442.

Burden on Complainant to Prove Truthfulness of Representations. — Moxie Nerve Food Co. *v.* Modox Co., 152 Fed. 493.

353. 2. **Application of Trademark to Other Goods.** — National Starch Co. *v.* Koster, 146 Fed. 259; Castroville Co-operative Creamery Co. *v.* Col, (Cel. App. 1907) 92 Pac. 648.

3. Moxie Nerve Food Co. *v.* Modox Co., 152 Fed. 493; Dr. Peter H. Fahrney, etc., Co. *v.* Ruminer, 153 Fed. 735, 82 C. C. A. 621; Memphis Keeley Inst. *v.* Leslie E. Keeley Co., (C. C. A.) 155 Fed. 964.

7. Burden of Proving Falsity of Representation Is on Defendant. — Andrew Jurgens Co. *v.* Woodbury, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 404, 106 N. Y. Supp. 571.

354. 2. Moxie Nerve Food Co. *v.* Holland, 141 Fed. 202; Siegert *v.* Gandolfi, 149 Fed. 100, 79 C. C. A. 142, *reversing* 139 Fed. 917; Dr. Peter H. Fahrney, etc., Co. *v.* Ruminer, 153 Fed. 735, 82 C. C. A. 621; Schuster Co. *v.* Muller, 28 App. Cas. (D. C.) 409.

3. National Starch Co. *v.* Koster, 146 Fed. 259; Moxie Nerve Food Co. *v.* Modox Co., 152 Fed. 493.

Relief will be denied to a principal whose agent, acting within the scope of his authority, permits another to use the principal's trademark on goods not manufactured by the latter. Castroville Co-operative Creamery Co. *v.* Coe, (Cal. App. 1907) 92 Pac. 648.

356. 7. De Long Hook & Eye Co. *v.* Francis Hook & Eye, etc., Co., 139 Fed. 146, *modified* and *affirmed* (C. C. A.) 144 Fed. 682.

357. 4. Lepow *v.* Kottler, 115 N. Y. App. Div. 231, 100 N. Y. Supp. 779. *Compare* Bear Lithia Springs Co. *v.* Great Bear Spring Co., (N. J. 1907) 68 Atl. 86.

5. Gruber Almanack Co. *v.* Swingley, 103 Md. 362, 63 Atl. 684.

6. Regent Shoe Mfg. Co. *v.* Haaker, 75 Neb. 426, 106 N. W. 595; Johnson *v.* Seabury, (N. J. 1907) 67 Atl. 36; Gluckman *v.* Strauch, 99 N. Y. App. Div. 361, 91 N. Y. Supp. 223, *affirmed* 186 N. Y. 560, 79 N. E. 1106.

8. Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

358. 3. Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5; Johnson *v.* Seabury, (N. J. 1907) 67 Atl. 36.

5. Castroville Co-operative Creamery Co. *v.* Coe, (Cal. App. 1907) 92 Pac. 648.

6. Baglin *v.* Cusenier Co., 156 Fed. 1016, *reversing* 141 Fed. 497, 72 C. C. A. 555; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Weingarten *v.* Bayer, 92 L. T. N. S. 511, 21 Times L. Rep. 418.

359. 1. Galena-Signal Oil Co. *v.* Fuller, 142 Fed. 1002.

2. International Silver Co. *v.* Rodgers Bros. Cutlery Co., 136 Fed. 1019; Enoch Morgan's Sons Co. *v.* Ward, 152 Fed. 690, 81 C. C. A. 616; George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89.

4. Jewish Colonization Assoc. *v.* Solomon, 154 Fed. 157; Rushmore *v.* Saxon, 158 Fed. 499.

10. "Auburn-Lynn" as applied to shoes, W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499. "Georgia Coon" as applied to molasses, Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413. "Keystone" as applied to cigars, Cohen *v.* Nagle, 190 Mass. 4, 76 N. E. 276. "La Carolina" as applied to cigars, Havana Commercial Co. *v.* Nichols, 155 Fed. 302. "Radium" as applied to silk, Eiseman *v.* Schiffer, 157 Fed. 473. "Rischon-le-Zion" and "Carmel" as applied to wines, Jewish Colonization Assoc. *v.* Solomon, 154 Fed. 157. "Sterling" as applied to ale, Worcester Brewing Corp. *v.* Rueter, (C. C. A.) 157 Fed. 217.

360. 3. George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89.

8. Enoch Morgan's Sons Co. *v.* Ward, 152 Fed. 690, 81 C. C. A. 616.

361. 1. **"Hygeia" Sustained as Trademark.** — Hygeia Distilled Water Co. *v.* Consolidated Ice Co., 144 Fed. 139 (*citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 361), *affirmed* 151 Fed. 10, 80 C. C. A. 506.

5. Baker *v.* Puritan Pure Food Co., 139 Fed. 680; Dwinell-Wright Co. *v.* Co-operative Supply Co., 148 Fed. 242; Buzby *v.* Davis, (C. C. A.) 150 Fed. 275, 10 Ann. Cas. 68.

Illustrations. — Picture of the executive mansion in Washington, together with the words "White House," as applied to coffee, is valid. Dwinell-Wright Co. *v.* Co-operative Supply Co., 155 Fed. 909.

State coat of arms and seal not a valid trademark. *In re* Cahn, 27 App. Cas. (D. C.) 173.

Picture of a black bear standing on all fours on the ground is not infringed by one of a white bear in the attitude of climbing a floating iceberg. Bear Lithia Springs Co. *v.* Great Bear Spring Co., (N. J. 1907) 68 Atl. 86.

The fact that the picture and word registered as separate trademarks are used together on complainant's manufactured goods will not give a competitor the right to either alone. Enoch Morgan's Sons Co. *v.* Ward, 152 Fed. 690, 81 C. C. A. 616.

362. 2. R. J. Reynolds Tobacco Co. *v.* Allen Bros. Tobacco Co., 151 Fed. 819; Cohen *v.* Nagle, 190 Mass. 4, 76 N. E. 276; Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5.

363. 1. Rocky Mountain Bell Telephone Co. *v.* Utah Independent Telephone Co., 31 Utah 377, 88 Pac. 26.

5. Revere Rubber Co. *v.* Consolidated Hoof Pad Co., 139 Fed. 151.

364. 1. American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690.

6. Kronthal Waters *v.* Becker, 137 Fed. 649; Lamont *v.* Hershey, 140 Fed. 763; Regensburg *v.* Juan F. Portuondo Cigar Mfg. Co., 142 Fed. 160, 73 C. C. A. 378, *affirming* 136 Fed. 866; Dodge Mfg. Co. *v.* Sewell, etc., Cordage Co., 142 Fed. 288; A. Leschen, etc., Rope Co. *v.* Macomber, etc., Rope Co., 142 Fed. 289; Diamond Match Co. *v.* Saginaw Match Co., (C. C. A.) 142 Fed. 727; J. A. Scriven Co. *v.* Morris, 154 Fed. 914; *In re* American Circular Loom Co., 28 App. Cas. (D. C.) 446; A. Leschen, etc., Rope Co. *v.* Broderick, etc., Rope Co., 201 U. S. 166, 26 U. S. Sup. Ct. 425 (to the same effect as *In re* Hanson, 37 Ch. D. 112, set out in the original note).

365. 1. Kronthal Waters *v.* Becker, 137 Fed. 649.

2. Lamont *v.* Hershey, 140 Fed. 763; Regensburg *v.* Juan F. Portuondo Cigar Mfg. Co., 142 Fed. 160, 73 C. C. A. 378, *affirming* 136 Fed. 866; Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858.

366. 3. George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89.

367. 2. *In re* American Circular Loom Co., 28 App. Cas. (D. C.) 446.

369. 6. Germer Store Co. *v.* Art Store Co., (C. C. A.) 150 Fed. 141; Greene *v.* Manufacturers' Belt Hook Co., 158 Fed. 640; Giragosian *v.* Chutjian, 194 Mass. 504, 80 N. E. 647; Motor Boat Pub. Co. *v.* Motor Boating Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 108, 107 N. Y. Supp. 468; Car Advertising Co. *v.* New York City Car Advertising Co., (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 105, 107 N. Y. Supp. 547; *In re* American Circular Loom Co., 28 App. Cas. (D. C.) 450; *In re* National Phonograph Co., 29 App. Cas. (D. C.) 142; Warren Bros. Co. *v.* Barber Asphalt Paving Co., 145 Mich. 79, 108 N. W. 652; Medler, etc., Shoe Co. *v.* Delsarte Mfg. Co., 68 N. J. Eq. 714, 61 Atl. 410, *affirming* 68 N. J. Eq. 706, 46 Atl. 1089; Weingarten *v.* Bayer, 92 L. T. N. S. 511, 21 Times L. Rep. 418.

"Bohemian" on Beer Not a Trademark. — American Brewing Co. *v.* Bienville Brewery, 153 Fed. 915.

Picture or Drawing of Article to Which Applied. — *In re* American Circular Loom Co., 28 App. Cas. (D. C.) 446.

371. 2. Buzby *v.* Davis, (C. C. A.) 150 Fed. 275, 10 Ann. Cas. 68; Standard Varnish Works *v.* Fisher, 153 Fed. 928; Worcester Brewing Corp. *v.* Rueter, (C. C. A.) 157 Fed. 217; Rushmore *v.* Saxon, 158 Fed. 499; Bainzhof *v.* Chase, 150 Cal. 180, 88 Pac. 704.

3. Hygienic Fleeced Underwear Co. *v.* Way, (C. C. A.) 137 Fed. 592; *In re* American Circular Loom Co., 28 App. Cas. (D. C.) 446, 450; *In re* Hopkins, 29 App. Cas. (D. C.) 118; Medlar, etc., Shoe Co. *v.* Delsarte Mfg. Co., 68 N. J. Eq. 714, 61 Atl. 410, *affirming* 68 N. J. Eq. 706, 46 Atl. 1089.

373. 5. **"Standard" Not Available as Trademark on Phonographs.** — *In re* National Phonograph Co., 29 App. Cas. (D. C.) 142.

374. 2. Hygienic Fleeced Underwear Co. *v.* Way, (C. C. A.) 137 Fed. 592; Dunlap *v.* Willbrandt Surgical Mfg. Co., 151 Fed. 223, 80 C. C. A. 575.

376. 2. Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858; Medlar, etc., Shoe Co. *v.* Delsarte Mfg. Co., 68 N. J. Eq. 714, 61 Atl. 410, *affirming* 68 N. J. Eq. 706, 46 Atl. 1089.

377. 2. American Wine Co. *v.* Kohlman, 158 Fed. 830; *In re* Hopkins, 29 App. Cas. (D. C.) 118; Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

3. Siegert *v.* Gandolfi, 149 Fed. 100, 79 C. C. A. 142, *reversing* 139 Fed. 917; Buzby *v.* Davis, (C. C. A.) 150 Fed. 275, 10 Ann. Cas. 68; Jewish Colonization Assoc. *v.* Solomon, 154 Fed. 157; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Busch *v.* Gross, (N. J. 1906) 64 Atl. 754; International Cheese Co. *v.* Phenix Cheese Co., 118 N. Y. App. Div. 499, 103 N. Y. Supp. 362.

378. 4. Jewish Colonization Assoc *v.* Solomon, 154 Fed. 157.

380. 4. Warren Featherbone Co. *v.* American Featherbone Co., 141 Fed. 513, 72 C. C. A. 571; Bender *v.* Enterprise Mfg. Co., (C. C. A.) 156 Fed. 641, *reversing* 148 Fed. 313; Greene *v.* Manufacturers' Belt Hook Co., 158 Fed. 640; Whann *v.* Whann, 116 La. 690, 41 So. 38.

381. 1. Warren Featherbone Co. *v.* American Featherbone Co., 141 Fed. 513, 72 C. C. A. 571; J. A. Scriven Co. *v.* Morris, 154 Fed. 914.

5. **Not Unfair Competition Where Distinctive Label Used.** — Warren Featherbone Co. *v.* American Featherbone Co., 141 Fed. 513, 72 C. C. A. 571.

382. 2. *Compare* Greene *v.* Manufacturers' Belt Hook Co., 158 Fed. 640.

6. Dr. Peter H. Fahrney, etc., Co. *v.* Ruminer, 153 Fed. 735, 82 C. C. A. 621.

383. 2. Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858.

3. Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858. *Compare* Dutton *v.* Cupples, 117 N. Y. App. Div. 172, 102 N. Y. Supp. 309.

5. Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858.

384. 1. Grocers' Journal Co. *v.* Midland Pub. Co., 127 Mo. App. 356, 105 S. W. 310, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 383, 384.

Name of Newspaper Viewed as Trademark. — Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883.

2. New York Herald Co. *v.* Star Co., 146 Fed. 204, *affirmed* 146 Fed. 1023, 76 C. C. A. 678.

3. **Uncopyrighted Picture Post Cards** are not trademarks which may be protected against infringement. Bamforth *v.* Douglass Post Card, etc., Co., 158 Fed. 355.

5. Howe Scale Co. *v.* Wyckoff, 198 U. S.

118, 49 U. S. (L. ed.) 972, 25 U. S. Sup. Ct. 609; *In re* Spalding, 27 App. Cas. (D. C.) 314.

385. 3. *Compare In re* Spalding, 27 App. Cas. (D. C.) 314.

9. Dr. A. Reed Cushion Shoe Co. *v.* Frew, 158 Fed. 552.

10. **A Corporation May Use the Initials of Its Name,** although they are identical with a trademark of another corporation. Standard Table Oil Cloth Co. *v.* Trenton Oil Cloth, etc., Co., (N. J. 1906) 63 Atl. 846.

386. 2. *Compare* Virginia Hot Springs Co. *v.* Hegeman, 138 Fed. 855.

387. 2. O'Grady *v.* McDonald, (N. J. 1907) 66 Atl. 175.

388. 5. O'Grady *v.* McDonald, (N. J. 1907) 66 Atl. 175.

6. George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89.

389. 2. Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5.

In Regent Shoe Mfg. Co. *v.* Haaker, 75 Neb. 426, 106 N. W. 595, it was held that a wholesaler was entitled to use the trade name of a retailer on the same class of goods.

3. Eureka Fire Hose Co. *v.* Eureka Rubber Mfg. Co., (N. J. 1907) 65 Atl. 870.

390. 2. Ground herbs and bitters made therefrom. Schuster Co. *v.* Muller, 28 App. Cas. (D. C.) 409.

4. It is no defense to a suit for injunction against the improper use of a trademark that the complainant's business has not extended to the territory, in this country, wherein the infringement is used. Hygeia Distilled Water Co. *v.* Consolidated Ice Co., 144 Fed. 139, *affirmed* 151 Fed. 10, 80 C. C. A. 506.

5. Defendant cannot complain because an injunction against infringement by him is limited to a part only of the country. Cohen *v.* Nagle, 190 Mass. 4, 76 N. E. 276.

391. 2. Baglin *v.* Cusenier Co., 156 Fed. 1016, *reversing* 141 Fed. 497, 72 C. C. A. 555.

4. Vacuum Oil Co. *v.* Eagle Oil Co., 154 Fed. 867.

6. Warren Bros. Co. *v.* Barber Asphalt Paving Co., 145 Mich. 79, 108 N. W. 652.

7. Medlar, etc., Shoe Co. *v.* Delsarte Mfg. Co., 68 N. J. Eq. 714, 61 Atl. 410, *affirming* 68 N. J. Eq. 706, 46 Atl. 1089.

8. Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

392. 7. Lawlor *v.* Merritt, 79 Conn. 399, 65 Atl. 295; Lynch *v.* John Single Paper Co., 115 N. Y. App. Div. 911, 101 N. Y. Supp. 824. See also Lawlor *v.* Merritt, 78 Conn. 630, 63 Atl. 639.

10. Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232.

11. **Insurance Company Can Acquire Trademark.** — Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232.

393. 8. H. B. Chaffee Mfg. Co. *v.* Selchow, 135 Fed. 1021, 68 C. C. A. 668, *mem. affirming* 131 Fed. 543; New York Herald Co. *v.* Star Co., 146 Fed. 204, *affirmed* 146 Fed. 1023, 76 C. C. A. 678; Outcalt *v.* New York Herald Co., 146 Fed. 205; Giles Remedy Co. *v.* Giles, 26 App. Cas. (D. C.) 375; Schuster Co. *v.* Muller, 28 App. Cas. (D. C.) 409; Rose Shoe Mfg. Co. *v.* Rosenbush, 28 App. Cas. (D. C.) 465; Cohen *v.* Nagle, 190 Mass. 4, 76 N. E. 276; International Cheese Co. *v.* Phenix Cheese Co., 118 N. Y. App. Div. 499, 103 N. Y. Supp. 362.

394. 1. Outcalt *v.* New York Herald, 146 Fed. 205.

2. H. B. Chaffee Mfg. Co. *v.* Selchow, 135 Fed. 1021, 68 C. C. A. 668, *mem. affirming* 131 Fed 543.

3. Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5.

5. Bulte *v.* Igleheart, (C. C. A.) 137 Fed. 492; Regent Shoe Mfg. Co. *v.* Haaker, 75 Neb. 426, 106 N. W. 595; Perlberg *v.* Smith, 70 N. J. Eq. 638, 62 Atl. 442; Perlberg *v.* Rosenstone, (N. J. 1905) 62 Atl. 446. *Compare* Cohen *v.* Nagle, 190 Mass. 4, 76 N. E. 276.

395. 8. Capewell Horse Nail Co. *v.* Putnam Nail Co., 140 Fed. 670; *In re* American Circular Loom Co., 28 App. Cas. (D. C.) 450; Warren Bros. Co. *v.* Barber Asphalt Paving Co., 145 Mich. 79, 108 N. W. 652; Shelley *v.* Sperry, 121 Mo. App. 429, 99 S. W. 488; Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5; Perlberg *v.* Smith, 70 N. J. Eq. 638, 62 Atl. 442; Perlberg *v.* Rosenstone, (N. J. 1905) 62 Atl. 446.

396. 1. Greene *v.* Manufacturers' Belt Hook Co., 158 Fed. 640.

3. Cohen *v.* Nagle, 190 Mass. 4, 76 N. E. 276; Perlberg *v.* Smith, 70 N. J. Eq. 638, 62 Atl. 442.

4. *Compare* Grocers' Journal Co. *v.* Midland Pub. Co., 127 Mo. App. 356, 105 S. W. 310.

Infringements. — Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232.

5. International Cheese Co. *v.* Phœnix Cheese Co., 118 N. Y. App. Div. 499, 103 N. Y. Supp. 362.

397. 6. Hygeia Distilled Water Co. *v.* Consolidated Ice Co., 144 Fed. 139, *affirmed* 151 Fed. 10, 80 C. C. A. 506; Dr. Peter H. Fahrney, etc., Co. *v.* Ruminer, 153 Fed. 735, 82 C. C. A. 621.

398. 1. Virginia Hot Springs Co. *v.* Hegeman, 138 Fed. 855, *affirmed* (C. C. A.) 144 Fed. 1023.

2. Dr. Peter H. Fahrney, etc., Co. *v.* Ruminer, 153 Fed. 735, 82 C. C. A. 621; Worcester Brewing Corp. *v.* Rueter, (C. C. A.) 157 Fed. 217; Siegert *v.* Eiseman, 157 Fed. 314.

4. Von Mumm *v.* Steinmetz, 137 Fed. 168; Burke *v.* Bishop, (C. C. A.) 144 Fed. 838; Havana Commercial Co. *v.* Nichols, 155 Fed. 302.

399. 2. Saxlehner *v.* Wagner, (C. C. A.) 157 Fed. 745. *Compare* Castroville Co-operative Creamery Co. *v.* Col, (Cal. App. 1907) 92 Pac. 648.

4. Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232; International Cheese Co. *v.* Phœnix Cheese Co., 118 N. Y. App. Div. 499, 103 N. Y. Supp. 362.

5. Giles Remedy Co. *v.* Giles, 26 App. Cas. (D. C.) 375.

6. Deitsch *v.* George R. Gibson Co., 155 Fed. 383; Grocers' Journal Co. *v.* Midland Pub. Co., 127 Mo. App. 356, 105 S. W. 310.

An assignment of a trademark without the business operates as an abandonment. Eiseman *v.* Schiffer, 157 Fed. 473.

7. Waiver of the claim against the principal infringer estops the complainant from claiming damages against his abettors. Hillside Chemical Co. *v.* Munson, 146 Fed. 198.

9. Read *v.* Mackay, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 439, 95 N. Y. Supp. 935, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 399.

Labor Union Trademarks Not Assignable. — Lynch *v.* John Single Paper Co., 115 N. Y. App. Div. 911, 101 N. Y. Supp. 824.

400. 1. Kronthal Waters *v.* Becker, 137 Fed. 649.

2. Bulte *v.* Igleheart, (C. C. A.) 137 Fed. 492; Eiseman *v.* Schiffer, 157 Fed. 473; Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883; Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

401. 1. Where land upon which several springs are located is divided and sold to separate purchasers, each has the right to the use of the name originally given to all the springs in the aggregate. Virginia Hot Springs Co. *v.* Hegeman, 138 Fed. 855, *affirmed* (C. C. A.) 144 Fed. 1023.

402. 1. Andrew Jurgens Co. *v.* Woodbury, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 404, 106 N. Y. Supp. 571.

2. Hygienic Fleeced Underwear Co. *v.* Way, (C. C. A.) 137 Fed. 592.

3. Herring-Hall-Marvin Safe Co. *v.* Hall's Safe Co., 208 U. S. 554, 28 U. S. Sup. Ct. 350, *modifying* 146 Fed. 37, 76 C. C. A. 495; Kronthal Waters *v.* Becker, 137 Fed. 649; R. J. Reynolds Tobacco Co. *v.* Allen Bros. Tobacco Co., 151 Fed. 819; Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883; Grocers' Journal Co. *v.* Midland Pub. Co., 127 Mo. App. 356, 105 S. W. [illegible].

403. 2. *Compare* Baglin *v.* Cusenier Co., 156 Fed. 1016, *reversing* 141 Fed. 497, 72 C. C. A. 555.

5. Burrow *v.* Marceau, (Supm. Ct. App. Div.) 109 N. Y. Supp. 105 (to the same effect as Frazer *v.* Frazer Lubricator Co., 121 Ill. 147, 13 N. E. 639, 2 Am. St. Rep. 73, quoted in the original note). *Compare* Hygienic Fleeced Underwear Co. *v.* Way, (C. C. A.) 137 Fed. 592.

404. 3. Donnell *v.* Herring-Hall-Marvin Safe Co., 208 U. S. 267, 28 U. S. Sup. Ct. 288; Herring-Hall-Marvin Safe Co. *v.* Hall's Safe Co., 208 U. S. 554, 28 U. S. Sup. Ct. 350, *modifying* 146 Fed. 37, 76 C. C. A. 495; Burrow *v.* Marceau, (Supm. Ct. App. Div.) 109 N. Y. Supp. 105.

5. Deitsch *v.* George R. Gibson Co., 155 Fed. 383; Lothrop Pub. Co. *v.* Lothrop, etc., Co., 191 Mass. 353, 77 N. E. 841. See also Baglin *v.* Cusenier Co., 156 Fed. 1016, *reversing* 141 Fed. 497, 72 C. C. A. 555.

405. 4. **License to Use Trademark Unenforceable.** — Lea *v.* New Home Sewing Mach. Co., 139 Fed. 732.

406. 1. Giles Remedy Co. *v.* Giles, 26 App. Cas. (D. C.) 382, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 406.

3. White *v.* Trowbridge, 216 Pa. St. 11, 64 Atl. 862; F. T. Blanchard Co. *v.* Simon, 104 Va. 209, 51 S. E. 222. *Compare* Read *v.* Mackay, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 439, 95 N. Y. Supp. 935.

To the same effect as Hazard *v.* Caswell, (Supm. Ct. Spec. T.) 57 How. Pr. (N. Y.) 1, stated in the original note, see Giles Remedy Co. *v.* Giles, 26 App. Cas. (D. C.) 375.

407. 2. Giles Remedy Co. *v.* Giles, 26 App. Cas. (D. C.) 375; Lepow *v.* Kottler, 115 N. Y. App. Div. 231, 100 N. Y. Supp. 779.

408. 3. Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

409. 2. Dr. Peter H. Fahrney, etc., Co. *v.* Ruminer, 153 Fed. 735, 82 C. C. A. 621; Rocky Mountain Bell Telephone Co. *v.* Utah Independent Telephone Co., 31 Utah 377, 88 Pac. 26. See also Westcott Chuck Co. *v.* Oneida Nat. Chuck Co., 122 N. Y. App. Div. 271, 106 N. Y. Supp. 1024, *dissenting opinion of* Chester, J., *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 409 *et seq.*

3. Baker *v.* Puritan Pure Food Co., 139 Fed. 680; Hostetter Co. *v.* Gallagher Stores, 142 Fed. 208; Hall Safe, etc., Co. *v.* Herring-Hall-Marvin Safe Co., (C. C. A.) 143 Fed. 231; Gaines *v.* Kahn, 155 Fed. 639; George Frost Co. *v.* Estes, 156 Fed. 677; Rushmore *v.* Saxon, 158 Fed. 499; Morton *v.* Morton, 148 Cal. 142, 82 Pac. 664; Hagan, etc., Co. *v.* Rigbers, 1 Ga. App. 106, 57 S. E. 970; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89; Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413; Weingarten *v.* Bayer, 92 L. T. N. S. 511, 21 Times L. Rep. 418.

4. Kronthal Waters *v.* Becker, 137 Fed. 649; Siegert *v.* Gandolfi, 149 Fed. 100, 79 C. C. A. 142, *reversing* 139 Fed. 917; Enoch Morgan's Sons Co. *v.* Ward, 152 Fed. 690, 81 C. C. A. 616; Baglin *v.* Cusenier Co., 156 Fed. 1016, *reversing* 141 Fed. 497, 72 C. C. A. 555; Banzhaf *v.* Chase, 150 Cal. 180, 88 Pac. 704; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Grocers' Journal Co. *v.* Midland Pub. Co., 127 Mo. App. 356, 105 S. W. 310; Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5.

410. 1. Bulte *v.* Igleheart, (C. C. A.) 137 Fed. 492; Virginia Hot Springs Co. *v.* Hegeman, 138 Fed. 855, *affirmed* (C. C. A.) 144 Fed. 1023; Regensburg *v.* Juan F. Portuondo Mfg. Co., 142 Fed. 160, 73 C. C. A. 378, *affirming* 136 Fed. 866; Galena-Signal Oil Co. *v.* Fuller, 142 Fed. 1002; Dunlap *v.* Willbrandt Surgical Mfg. Co., 151 Fed. 223, 80 C. C. A. 575; U. S. Frame, etc., Co. *v.* Horowitz, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 101, 100 N. Y. Supp. 705; Bear Lithia Springs Co. *v.* Great Bear Spring Co., (N. J. 1907) 68 Atl. 86. See also **412.** 4.

2. American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690; Standard Table Oil Cloth Co. *v.* Trenton Oil Cloth, etc., Co., (N. J. 1906) 63 Atl. 846.

3. Kronthal Waters *v.* Becker, 137 Fed. 649; Baker *v.* Puritan Pure Food Co., 139 Fed. 680; Yale, etc., Mfg. Co. *v.* Alder, 154 Fed. 37, 83 C. C. A. 149, *reversing* 149 Fed. 783; American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690; Hall *v.* Ingram, 28 App. Cas. (D. C.) 454; Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Regent Shoe Mfg. Co. *v.* Haaker, 75 Neb. 426, 106 N. W. 595; Standard

Table Oil Cloth Co. *v.* Trenton Oil Cloth, etc., Co., (N. J. 1906) 63 Atl. 846.

412. 1. U. S. Tobacco Co. *v.* McGreenery, 144 Fed. 531, *affirmed* (C. C. A.) 144 Fed. [illegible].

3. Knickerbocker Chocolate Co. *v.* Griffing, 144 Fed. 316.

4. Bulte *v.* Igleheart, (C. C. A.) 137 Fed. 492; Virginia Hot Springs Co. *v.* Hegeman, 158 Fed. 855, *affirmed* (C. C. A.) 144 Fed. 1023, *mem.*; Regensburg *v.* Juan F. Portuondo, Mfg. Co., 142 Fed. 160, 73 C. C. A. 378, *affirming* 136 Fed. 866; Galena-Signal Oil Co. *v.* Fuller, 142 Fed. 1002; Germer Stove Co. *v.* Art Stove Co., (C. C. A.) 150 Fed. 141; Dunlap *v.* Willbrandt Surgical Mfg. Co., 151 Fed. 223, 80 C. C. A. 575; Saxlehner *v.* Wagner, (C. C. A.) 157 Fed. 745; Gaines *v.* Knecht, 27 App. Cas. (D. C.) 530; Gaines *v.* Carlton Importation Co., 27 App. Cas. (D. C.) 571; Buchanan-Anderson-Nelson Co. *v.* Breen, 27 App. Cas. (D. C.) 573; Ball *v.* Broadway Bazaar, 121 N. Y. App. Div. 546, 106 N. Y. Supp. 249; Bear Lithia Springs Co. *v.* Great Bear Spring Co., (N. J. 1907) 68 Atl. 86; U. S. Frame, etc., Co. *v.* Horowitz, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 101, 100 N. Y. Supp. 705; White *v.* Trowbridge, 216 Pa. St. 11, 64 Atl. 862.

413. 1. Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232.

2. Rushmore *v.* Saxon, 158 Fed. 499; American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690; Mahler *v.* Sanche, 223 Ill. 136, 79 N. E. 9; Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232; Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5; Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

414. 1. Capewell Horse Nail Co. *v.* Putnam Nail Co., 140 Fed. 670; Regensburg *v.* Juan F. Portuondo Cigar Mfg. Co., 142 Fed. 160, 73 C. C. A. 378, *affirming* 136 Fed. 866; Dodge Mfg. Co. *v.* Sewell, etc., Cordage Co., 142 Fed. 288; Galena-Signal Oil Co. *v.* Fuller, 142 Fed. 1002; Knickerbocker Chocolate Co. *v.* Griffing, 144 Fed. 316; U. S. Tobacco Co. *v.* McGreenery, 144 Fed. 531, *affirmed* (C. C. A.) 144 Fed. 1022; Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858; Dunlap *v.* Willbrandt Surgical Mfg. Co., 151 Fed. 223, 80 C. C. A. 575; Enoch Morgan's Sons Co. *v.* Ward, 152 Fed. 690, 81 C. C. A. 616; International Silver Co. *v.* Rogers, (N. J. 1906) 63 Atl. 977.

"Zodenta" Does Not Infringe "Sozodont." — Hall *v.* Ingram, 28 App. Cas. (D. C.) 454.

415. 1. Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232; George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89; Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

416. 1. Kronthal Waters *v.* Becker, 137 Fed. 649; Baker *v.* Puritan Pure Food Co., 139 Fed. 680.

2. Kronthal Waters *v.* Becker, 137 Fed. 649; American Brewing Co. *v.* Bienville Brewery, 153 Fed. 615.

3. American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690; Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Dutton *v.* Cupples, 117 N. Y. App. Div. 172, 102 N. Y. Supp. 309; Westcott Chuck Co. *v.* Oneida Nat. Chuck Co., 122 N. Y. App. Div. 271, 106 N. Y. Supp. 1016.

4. Baker *v.* Puritan Pure Food Co., 139 Fed. 680; Consolidated Ice Co. *v.* Hygeia Distilled Water Co., 151 Fed. 10, 80 C. C. A. 506, *affirming* 144 Fed. 139; Rushmore *v.* Saxon, 158 Fed. 499; American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690; Bluthenthal *v.* Mohlmann, 49 Fla. 275, 38 So. 709, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 416; Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

417. 1. American Brewing Co. *v.* Bienville Brewery, 153 Fed. 615; American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690.

Deception Necessary to Recovery of Damages. — Westcott Chuck Co. *v.* Oneida Nat. Chuck Co., 122 N. Y. App. Div. 271, 106 N. Y. Supp. 1016.

2. Consolidated Ice Co. *v.* Hygeia Distilled Water Co., 151 Fed. 10, 80 C. C. A. 506, *affirming* 144 Fed. 139; American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690; Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 416 [417]; Western Grocer Co. *v.* Caffarelli, (Tex. Civ. App. 1908) 108 S. W. 413.

418. 2. Von Faber-Castell *v.* Faber, (C. C. A.) 139 Fed. 257, *reversing* 124 Fed. 603, *leave to file bill of review granted*, (C. C. A.) 145 Fed. 626; Lamont *v.* Hershey, 140 Fed. 763.

3. De Long Hook & Eye Co. *v.* Francis Hook & Eye, etc., Co., 139 Fed. 146, *modified and affirmed* (C. C. A.) 144 Fed. 682; Lamont *v.* Hershey, 140 Fed. 763; Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232.

419. 1. De Long Hook & Eye Co. *v.* Francis Hook & Eye, etc., Co., 139 Fed. 146, *modified and affirmed* (C. C. A.) 144 Fed. 682; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 419.

2. Hygeia Distilled Water Co. *v.* Consolidated Ice Co., 144 Fed. 139.

3. Hygeia Distilled Water Co. *v.* Consolidated Ice Co., 144 Fed. 139; Weingarten *v.* Bayer, 92 L. T. N. S. 511, 21 Times L. Rep. 418.

5. Mere Intention to Deceive Is Insufficient. — U. S. Tobacco Co. *v.* McGreenry, 144 Fed. 531, *affirmed* (C. C. A.) 144 Fed. 1022.

420. 1. Capewell Horse Nail Co. *v.* Putnam Nail Co., 140 Fed. 670.

421. 1. W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499.

2. Capewell Horse Nail Co. *v.* Putnam Nail Co., 140 Fed. 670.

3. De Long Hook & Eye Co. *v.* Francis Hook & Eye, etc., Co., 139 Fed. 146, *modified and affirmed* (C. C. A.) 144 Fed. 682; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Dutton *v.* Cupples, 117 N. Y. App. Div. 172, 102 N. Y. Supp. 309.

4. Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5.

A Change of Trade Name Will Be Enjoined where the purpose is to secure an unfair advantage, although the name is merely descrip-

[illegible] Co. v. Chatham, 104 Mass. 504, 80 N. E. 647.

7. Rushmore *v.* Saxon, 158 Fed. 499; Cohen *v.* Nagle, 190 Mass. 4, 76 N. E. 276; Dutton *v.* Cupples, 117 N. Y. App. Div. 172, 102 N. Y. Supp. 309.

422. 3. International Silver Co. *v.* Rodgers Bros. Cutlery Co., 136 Fed. 1019; Revere Rubber Co. *v.* Consolidated Hoof Pad Co., 139 Fed. 151; American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690; Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 S. W. 232.

423. 1. International Silver Co. *v.* Rodgers Bros. Cutlery Co., 136 Fed. 1019; Hygienic Fleeced Underwear Co. *v.* Way, (C. C. A.) 137 Fed. 592; National Starch Co. *v.* Koster, 146 Fed. 259; Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858; International Silver Co. *v.* Rogers, (N. J. 1907) 67 Atl. 105.

2. Rushmore *v.* Saxon, 158 Fed. 499.

4. Rushmore *v.* Saxon, 154 Fed. 213.

424. 1. De Long Hook & Eye Co. *v.* Francis Hook & Eye, etc., Co., 139 Fed. 146, *modified and affirmed* (C. C. A.) 144 Fed. 682; George G. Fox Co. *v.* Glynn, 191 Mass. 344, 78 N. E. 89.

425. 1. Hygienic Fleeced Underwear Co. *v.* Way, (C. C. A.) 137 Fed. 592; Kronthal Waters *v.* Becker, 137 Fed. 649; Bates Mfg. Co. *v.* Bates Mach. Co., 141 Fed. 213; Hostetter Co. *v.* Gallagher Stores, 142 Fed. 208; Siegert *v.* Gandolfi, 149 Fed. 100, 79 C. C. A. 142, *reversing* 139 Fed. 917; Clay *v.* Kline, 149 Fed. 912; Buzby *v.* Davis, (C. C. A.) 150 Fed. 275, 10 Ann. Cas. 68; R. J. Reynolds Tobacco Co. *v.* Allen Bros. Tobacco Co., 151 Fed. 819; Enoch Morgan's Sons Co. *v.* Ward, 152 Fed. 690, 81 C. C. A. 616; Yale, etc., Mfg. Co. *v.* Adler, (C. C. A.) 154 Fed. 37, *reversing* 149 Fed. 783; Baglin *v.* Cusenier Co., 156 Fed. 1016, *reversing* 141 Fed. 497, 72 C. C. A. 555; Banzhaf *v.* Chase, 150 Cal. 180, 88 Pac. 704; Johnson *v.* Seabury, 69 N. J. Eq. 696, 61 Atl. 5; Dutton *v.* Cupples, 117 N. Y. App. Div. 172, 102 N. Y. Supp. 309; Westcott Chuck Co. *v.* Oneida Nat. Chuck Co., 122 N. Y. App. Div. 271, 106 N. Y. Supp. 1016.

426. 1. Revere Rubber Co. *v.* Consolidated Hoof Pad Co., 139 Fed. 151; Standard Varnish Works *v.* Fisher, 153 Fed. 928; Rushmore *v.* Saxon, 158 Fed. 499; Banzhaf *v.* Chase, 150 Cal. 180, 88 Pac. 704.

2. Howe Scale Co. *v.* Wyckoff, 198 U. S. 118, 49 U. S. (L. ed.) 972, 25 U. S. Sup. Ct. 609; Donnell *v.* Herring-Hall-Marvin Safe Co., 208 U. S. 267, 28 U. S. Sup. Ct. 288; Von Faber-Castell *v.* Faber, (C. C. A.) 139 Fed. 257, *reversing* 124 Fed. 603, *leave to file bill of review granted* (C. C. A.) 145 Fed. 626; Bates Mfg. Co. *v.* Bates Mach. Co., 141 Fed. 213; International Silver Co. *v.* Rogers, (N. J. 1906) 63 Atl. 977.

427. 1. J. F. Rowley Co. *v.* Rowley, 154 Fed. 746, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 426 [427]; Herring-Hall-Marvin Safe Co. *v.* Hall's Safe Co., 208 U. S. 554, 28 U. S. Sup. Ct. 350, *modifying* 146 Fed. 37, 76 C. C. A. 495; Donnell *v.* Herring-Hall-Marvin Safe Co., 208 U. S. 267, 28 U. S. Sup. Ct. 288; Hall Safe, etc., Co. *v.* Herring-Hall-Marvin Safe Co., (C. C. A.) 143 Fed. 231; Dr. A. Reed Cushion Shoe Co. *v.* Frew, 158 Fed. [illegible] Morton *v.* Morton, 148 Cal. 142, 82 Pac. 664; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Andrew Jurgens Co. *v.* Woodbury, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 404, 106 N. Y. Supp. 571; International Silver Co. *v.* Rogers, (N. J. 1906) 63 Atl. 977.

2. International Silver Co. *v.* Rodgers Bros. Cutlery Co., 136 Fed. 1019. *Compare* International Silver Co. *v.* Rogers, (N. J. 1907) 67 Atl. 105.

428. 1. Morton *v.* Morton, 148 Cal. 142, 82 Pac. 664; International Silver Co. *v.* Rogers, (N. J. 1907) 67 Atl. 105.

2. Herring-Hall-Marvin Safe Co. *v.* Hall's Safe Co., 208 U. S. 554, 28 U. S. Sup. Ct. 350, *modifying* 146 Fed. 37, 76 C. C. A. 495; Von Faber-Castell *v.* Faber, (C. C. A.) 139 Fed. 257, *reversing* 124 Fed. 603, *leave to file bill of review granted* (C. C. A.) 145 Fed. 626; Gordon Hollow Blast Grate Co. *v.* Gordon, 142 Mich. 488, 105 N. W. 1118.

3. Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232, 234, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 428.

4. Dr. A. Reed Cushion Shoe Co. *v.* Frew, 158 Fed. 552; International Silver Co. *v.* Rogers, (N. J. 1907) 67 Atl. 105.

429. 2. American Tin Plate Co. *v.* Licking Roller Mill Co., 158 Fed. 690.

4. **Use of Rival's Name — When Permissible.** — Wagner Typewriter Co. *v.* F. S. Webster Co., 144 Fed. 405.

In New York a Fortune Teller, being denounced by statute as a disorderly person, will not be protected in the exclusive use of his own name in connection with such business. Fay *v.* Lambourne, (Supm. Ct. App. Div.) 108 N. Y. Supp. 874.

5. Gaines *v.* Kahn, 155 Fed. 639.

6. People *v.* Rose, 219 Ill. 46, 76 N. E. 42; Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Regent Shoe Mfg. Co. *v.* Haaker, 75 Neb. 426, 106 N. W. 595.

430. 1. Howe Scale Co. *v.* Wyckoff, 198 U. S. 118, 49 U. S. (L. ed.) 972, 25 U. S. Sup. Ct. 609.

3. Atlas Assur. Co. *v.* Atlas Ins. Co., (Iowa 1907) 112 N. W. 232.

7. Siegert *v.* Gandolfi, 149 Fed. 100, 79 C. C. A. 142, *reversing* 139 Fed. 917; Buzby *v.* Davis, (C. C. A.) 150 Fed. 275, 10 Ann. Cas. 68; Jewish Colonization Assoc. *v.* Solomon, 154 Fed. 157; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Busch *v.* Gross, (N. J. 1906) 64 Atl. 754; International Cheese Co. *v.* Phœnix Cheese Co., 118 N. Y. App. Div. 499, 103 N. Y. Supp. 362.

431. 1. Buzby *v.* Davis, (C. C. A.) 150 Fed. 275, 10 Ann. Cas. 68.

5. W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499.

432. 3. Thomas G. Plant Co. *v.* May Mercantile Co., 153 Fed. 229; Thomas G. Plant Co. *v.* Hamburger, 153 Fed. 232.

433. 2. Ogilvie *v.* G. & C. Merriam Co., 149 Fed. 858; U. S. Frame, etc., Co. *v.* Horowitz, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 101, 100 N. Y. Supp. 705; Weingarten *v.* Bayer, 92 L. T. N. S. 511, 21 Times L. Rep. 418.

3. Donnell *v.* Herring-Hall-Marvin Safe Co., 208 U. S. 267, 28 U. S. Sup. Ct. 288; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499.

434. 3. Sultzbach Clothing Co. *v.* Balsam, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 324, 107 N. Y. Supp. 622.

6. Gaines *v.* Carlton Importation Co., 27 App. Cas. (D. C.) 517; Buchanan-Anderson-Nelson Co. *v.* Breen, 27 App. Cas. (D. C.) 573.

Constitutionality of Act of February 20, 1905, cannot be raised by one permitted to oppose registration of a trademark. Gaines *v.* Knecht, 27 App. Cas. (D. C.) 530.

435. 1. **Jurisdiction of Federal Courts** does not attach where there is no diversity of citizenship, and the trademark is invalid. A. Leschen, etc., Rope Co. *v.* Broderick, etc., Rope Co., 201 U. S. 166, 26 U. S. Sup. Ct. 425.

3. Revere Rubber Co. *v.* Consolidated Hoof Pad Co., 139 Fed. 151; Baker *v.* Puritan Pure Food Co., 139 Fed. 680; Dodge Mfg. Co. *v.* Sewall, etc., Cordage Co., 142 Fed. 288; Perlberg *v.* Smith, 70 N. J. Eq. 638, 62 Atl. 442.

6. Martin *v.* Martin, 27 App. Cas. (D. C.) 59, 7 Ann. Cas. 47.

7. *In re* Cahn, 27 App. Cas. (D. C.) 173; *In re* Spalding, 27 App. Cas. (D. C.) 314; *In re* William Connors Paint Mfg. Co., 27 App. Cas. (D. C.) 389; *In re* American Glue Co., 27 App. Cas. (D. C.) 391.

Judicial Functions of Commissioners. — *In re* Standard Underground Cable Co., 27 App. Cas. (D. C.) 320.

436. 2. *Connecticut.* — Gen. St. Conn. (1902) §§ 4907–4911, *construed* Lawlor *v.* Merritt, 79 Conn. 399, 65 Atl. 295.

Georgia. — Act December 20, 1908 (Acts 1908, p. 108), Van Epps' Code Supp., § 6676 *et seq., construed* Butler *v.* State, 127 Ga. 700, 56 S. E. 1000.

Illinois. — Hurd's Rev. St. (1903), c. 140, § 1 *et seq.*; Vincendeau *v.* People, 219 Ill. 474, 76 N. E. 675, *reversing* 119 Ill. App. 603.

New York. — People *v.* Hoffheimer, 110 N. Y. App. Div. 423, 97 N. Y. Supp. 84; People *v.* Sommer, (Ct. Gen. Sess.) 55 Misc. (N. Y.) 55, 106 N. Y. Supp. 190.

3. Regis *v.* Jaynes, 191 Mass. 245, 77 N. E. 774, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 434 [436].

The Pennsylvania Law, as incorporated in Acts of May 21, 1895, P. L. 95, May 2, 1801, P. L. 114, and April 3, 1903, P. L. 134, is constitutional. Com. *v.* Meads, 29 Pa. Super. Ct. 321.

Pennsylvania statute (Act of June 20, 1901, P. L. 582) giving the fine imposed for infringement of a trademark to the aggrieved party, is constitutional. Bergner, etc., Brewing Co. *v.* Koenig, 30 Pa. Super. Ct. 618.

437. 6. Weingarten *v.* Bayer, 92 L. T. N. S. 511, 21 Times L. Rep. 418.

438. 1. Saxlehner *v.* Eisner, etc., Co., (C. C. A.) 138 Fed. 22; W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499; Regis *v.* Jaynes, 191 Mass. 245, 77 N. E. 774, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 437, 438. *Compare* Davidson *v.* Munsey, 29 Utah 181, 80 Pac. 743; Cutter *v.* Gudebrod Bros. Co., 190 N. Y. 252, 83 N. E. 16, *reversing* 112 N. Y. App. Div. 894, 97 N. Y. Supp. 1131, holding that the expense of selling should be deducted, but that interest should be charged from the bringing of the suit.

2. See Westcott Chuck Co. *v.* Oneida Nat. Chuck Co., 122 N. Y. App. Div. 271, 106 N. Y. Supp. 1025, *dissenting opinion of* Chester, J., *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 438.

4. Lampert *v.* Judge, etc., Drug Co., 119 Mo. App. 693, 100 S. W. 659.

5. *Compare* Lampert *v.* Judge, etc., Drug Co., 119 Mo. App. 693, 100 S. W. 659.

7. Dr. Peter H. Fahrney, etc., Co. *v.* Ruminer, 153 Fed. 735, 82 C. C. A. 621; Worcester Brewing Corp. *v.* Rueter, (C. C. A.) 157 Fed. 217; Siegert *v.* Eiseman, 157 Fed. 314.

TRADER.

439. 1. Wilkes Barre First Nat. Bank *v.* Wyoming Valley Ice Co., 136 Fed. 466, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 438.

A Baker held not to be a *trader* within a Canadian statute merely because, as incidental to his baking business, he bought and sold candies, cakes, and confectionery to a small extent. Robinson *v.* Graham, 16 Manitoba 69.

Insurance Agent Not Trader. — Lyons *v.* Steele 86 Miss. 261, 38 So. 371.

TRADING STAMPS.

442. 1. **Operation of Trading Stamp Scheme.** — Sperry, etc., Co. *v.* Temple, 137 Fed. 992; Sperry, etc., Co. *v.* Mechanics' Clothing Co., 135 Fed. 833.

Assignment or Transfer. — Sperry, etc., Co. *v.* Hertzberg, 69 N. J. Eq. 264, 60 Atl. 368.

2. *Ex p.* Drexel, 147 Cal. 763, 82 Pac. 429; *Ex p.* West, 147 Cal. 774, 82 Pac. 434. See also Sperry, etc., Co. *v.* Temple, 137 Fed. 992.

443. 2. **Contra.** — *Ex p.* Drexel, 147 Cal. 763, 82 Pac. 429, *disapproving* State *v.* Hawkins, 95 Md. 146, 51 Atl. 850, except as that case is said to have been construed.

5. **For Cases Holding Ordinances to Be Oppressive and Void** as attempting to levy discriminating and excessive taxes, see *Ex p.* Hutchinson, 137 Fed. 949; *Ex p.* Hutchinson, 137 Fed. 950; Humes *v.* Little Rock, 138 Fed. 929, where a motion to dissolve an injunction was denied; Montgomery *v.* Kelly, 142 Ala. 552, 38 So. 67, *distinguishing* Lansburgh *v.* District of Columbia, 11 App. Cas. (D. C.) 512; Denver *v.* Frueauff, 39 Colo. 20, 88 Pac. 389; Leonard *v.* Bassindale, (Wash. 1907) 89 Pac. 879, *disapproving,* as against the weight of authority, Humes *v.* Ft. Smith, 93 Fed. 857, and Lansburgh *v.* District of Columbia, 11 App. Cas. (D. C.) 512.

A statute imposing an excise tax on merchants giving trading stamps in connection with their business is unconstitutional. O'Keeffe *v.* Somerville, 190 Mass. 110, 76 N. E. 457.

That the Ordinance Will Be Upheld where it does not appear that it is unreasonable or prohibitive or that it discriminates against a class of merchants, see Gamble *v.* Montgomery, 147 Ala. 682, 39 So. 353.

When Ordinance Not Applicable. — See Com. *v.* Gibson Co., (Ky. 1907) 101 S. W. 385.

6. See Gamble *v.* Montgomery, 147 Ala. 682, 39 So. 353. See also Oilure Mfg. Co. *v.* Pidduck-Ross Co., 38 Wash. 137, 80 Pac. 276.

TRAIN.

444. 4. Harris *v.* Rex, 9 Can. Exch. 206.

TRAMWAY.

445. 3. **Tramroad, Tramway, and Railway Synonymous Terms.** — Blackpool, etc., Tramroad Co. *v.* Thornton Urban Dist. Council, (1907) 1 K. B. 568, 76 L. J. K. B. 492, 96 L. T. N. S. 209.

TRANSFER.

448. 3. **Payment or Extinguishment of Obligation.** — See Wright *v.* Cotten, 140 N. Car. 1, 52 S. E. 141; Godwin *v.* Murchison Nat. Bank, 149 N. Car. 320, 59 S. E. 154.

TRANSIENT.

451. 3. **Transient Merchant.** — See Simoyan *v.* Rohan, 36 Ind. App. 495, 76 N. E. 176.

TRAVEL—TRAVELER—TRAVELING.

454. 2. Howrigan *v.* Bakersfield, 79 Vt. 255, 64 Atl. 1130, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 455.

A Person Is "Traveling upon a Bridge," within the meaning of a statute, when he is *traveling* over that part of the way which is above the abutments and other essential portions of the structure, as well as when he is *traveling* over the part that spans the stream, valley, or other depression. Wilson *v.* Barnstead, 74 N. H. 78, 65 Atl. 298.

TREASURE TROVE.

472. 1. Kuykendall *v.* Fisher, 61 W. Va. 87, 56 S. E. 48, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 472.

2. **Hiding Is Necessary.** — Kuykendall *v.* Fisher, 61 W. Va. 87, 56 S. E. 48.

3. Kuykendall *v.* Fisher, 61 W. Va. 87, 56 S. E. 48.

4. Kuykendall *v.* Fisher, 61 W. Va. 87, 56 S. E. 48, to the same effect as Livermore *v.* White, 74 Me. 456, quoted in the original note.

TREATIES.

476. 4. *In re* Wyman, 191 Mass. 276, 77 N. E. 379, 191 Mass. 276.

477. 6. *In re* Wyman, 191 Mass. 276, 77 N. E. 379.

11. Dick *v.* U. S., 208 U. S. 340, 28 U. S. Sup. Ct. 399.

479. 1. Franklin Sugar Refining Co. *v.* U. S., 144 Fed. 563.

3. U. S. *v.* American Sugar Refining Co., 202 U. S. 563, 26 U. S. Sup. Ct. 717; Franklin Sugar Refining Co. *v.* U. S., 202 U. S. 580, 26 U. S. Sup. Ct. 720; M. J. Dalton Co. *v.* U. S., 151 Fed. 143; U. S. *v.* M. J. Dalton Co., 151 Fed. 144.

10. Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395; Maiorano *v.* Baltimore, etc., R. Co., 216 Pa. St. 402, 65 Atl. 1077.

480. 3. United Shoe Machinery Co. *v.* Duplessis Shoe Machinery Co., (C. C. A.) 155 Fed. 842; Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395.

9. La Manna *v.* U. S., (C. C. A.) 144 Fed. 683; United Shoe Machinery Co. *v.* Duplessis Shoe Machinery Co., (C. C. A.) 155 Fed. 842; Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395.

481. 3. Wadsworth *v.* Boysen, (C. C. A.) 148 Fed. 771; United Shoe Machinery Co. *v.* Duplessis Shoe Machinery Co., (C. C. A.) 155 Fed. 842.

6. Johnson *v.* Browne, 205 U. S. 309, 27 U. S. Sup. Ct. 539; Wadsworth *v.* Boysen, (C. C. A.) 148 Fed. 771.

8. Wadsworth *v.* Boysen, (C. C. A.) 148 Fed. 771.

12. *In re* Wyman, 191 Mass. 276, 77 N. E. 379.

14. *In re* Wyman, 191 Mass. 276, 77 N. E. 379.

487. 9. Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395.

488. 6. Minnesota Canal, etc., Co. *v.* Pratt, 101 Minn. 197, 112 N. W. 395.

11. Maiorano *v.* Baltimore, etc., R. Co., 216 Pa. St. 402, 65 Atl. 1077.

14. United Shoe Machinery Co. *v.* Duplessis Shoe Machinery Co., (C. C. A.) 155 Fed. 842.

489. 1. Maiorano *v.* Baltimore, etc., R. Co., 216 Pa. St. 402, 65 Atl. 1077. See also Winters *v.* U. S., (C. C. A.) 148 Fed. 684.

490. 10. *In re* Wyman, 191 Mass. 276, 77 N. E. 379.

TREATIES OF CESSION.

495. 4. **By the Law of Nations.** — U. S. *v.* Berrigan, 2 Alaska 442.

Right to Office Not Property Protected under Cession of Territory. — Sanches *v.* U. S., 42 Ct. Cl. 458.

518. 2. See Francis *v.* Francis, 203 U. S 233, 27 U. S. Sup. Ct. 129, holding that a treaty granting a tract of land to certain individual Indians "and their heirs" passed a title in fee simple without the issuance of a patent or ratification by Congress, and that a patent issued subsequently to such treaty could not restrict the right of the title holders to convey the ceded territory.

521. 2. **Alaska Cession.** — *In re* Minook, 2 Alaska 200.

535. 1. U. S. *v.* Berrigan, 2 Alaska 442.

TREES AND TIMBER.

537. 8. C. W. Zimmerman Mfg. Co. *v.* Wilson, 147 Ala. 275, 40 So. 515; Griffing Bros. Co. *v.* Winfield, 53 Fla. 589, 43 So. 687; North Georgia Co. *v.* Bebee, 128 Ga. 563, 57 S. E. 873; Van Doren *v.* Fenton, 125 Wis. 147, 103 N. W. 228; Williams *v.* Jones, 131 Wis. 361, 111 N. W. 505.

12. Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290; Keniston *v.* Gorrell, 74 N. H. 53, 64 Atl. 1101.

541. 8. Brodack *v.* Morsbach, 38 Wash. 72, 80 Pac. 275; Buskirk *v.* Peck, 57 W. Va. 360, 50 S. E. 432, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 541.

9. Johnson *v.* Truitt, 122 Ga. 327, 50 S. E. 135; Chestnut *v.* Green, 120, Ky. 385, 86 S. W. 1122; Jackson *v.* Hardin, 87 S. W. 1119, 27 Ky. L. Rep. 1110; Michigan Iron, etc., Co. Nester, 147 Mich. 599, 111 N. W. 177; Clark *v.* Ingram Day Lumber Co., (Miss. 1907) 43 So. 813; Hawkins *v.* Goldsboro Lumber Co., 139 N. Car. 167, 51 S. E. 855, 139 N. Car. 160, 51 S. E. 852; Dennis Simmons Lumber Co. *v.* Corey, 140 N. Car. 462, 53 S. E. 300; Mengal Box Co. *v.* Moore, 114 Tenn. 596, 87 S. W. 415, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 541.

542. 1. C. W. Zimmerman Mfg. Co. *v.* Daffin, (Ala. 1906) 42 So. 858; Peterson *v.* Gibbs, 147 Cal. 1, 81 Pac. 121, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 541; Woody *v.* Intermont Iron, etc., Co., 141 N. Car. 471, 53 S. E. 953.

2. Liston *v.* Chapman, etc., Lumber Co., 77 Ark. 116, 91 S. W. 27; Hall *v.* Wellman Lumber Co., 78 Ark. 408, 94 S. W. 43; Kidder *v.* Flanders, 73 N. H. 345, 61 Atl. 675; Carson *v.* Three States Lumber Co., (Tenn. 1902) 91 S. W. 53.

4. Dennis Simmons Lumber Co. *v.* Corey, 140 N. Car. 462, 53 S. E. 300.

6. Strother *v.* American Cooperage Co., 116 Mo. App. 518, 92 S. W. 758; Spies *v.* Butts, 59 W. Va. 385, 53 S. E. 897.

Measuring Timber "at the Base" means at the ground. Banks *v.* Blades Lumber Co., 142 N. Car. 49, 54 S. E. 844.

543. 2. Williams *v.* Jones, 131 Wis. 361, 111 N. W. 505, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 543.

4. Liston *v.* Chapman, etc., Lumber Co., 77 Ark. 116, 91 S. W. 27.

5. Baker *v.* Davis, 127 Ga. 649, 57 S. E. 62; Brugh *v.* Denman, 38 Ind. App. 486, 78 N. E. 349; Smith *v.* Forbes, 89 Miss. 141, 42 So. 382.

544. 1. Little *v.* Cornett, 91 S. W. 272, 28 Ky. L. Rep. 1124; Cummings *v.* Masterson, (Tex. Civ. App. 1906) 93 S. W. 500.

545. 1. Barnes *v.* F. Weikel Chair Co., 89 S. W. 222, 28 Ky. L. Rep. 315.

5. C. W. Zimmerman Mfg. Co. *v.* Dunn, (Ala. 1907) 44 So. 533; Davies *v.* Miller Brent Lumber Co., (Ala. 1907) 44 So. 639; St. Paul *v.* Louisiana Cypress Lumber Co., 116 La. 585, 40 So. 906.

546. 15. Hobbs *v.* Long Distance Telephone, etc., Co., 147 Ala. 393, 41 So. 1003; Haggart *v.* Chapman-Dewey Land Co., 77 Ark. 527, 92 S. W. 792; Hall *v.* Horne, 52 Fla. 511, 42 So. 383; Bledsoe *v.* Robinett, 105 Va. 723, 54 S. E. 861.

547. 1. James *v.* Saunders, 127 Ga. 336, 56 S. E. 491; Marcum *v.* Marcum, 57 W. Va. 285, 50 S. E. 246.

4. Webster *v.* De Bardeleben, 147 Ala. 280, 41 So. 831; Hall *v.* Wellman Lumber Co., 78 Ark. 408, 94 S. W. 43; Hatton *v.* Gregg, 4 Cal. App. 542, 88 Pac. 594; Gray Lumber Co. *v.* Gaskin, 122 Ga. 342, 50 S. E. 164; Lewis *v.* Hutchinson, 127 Ga. 789, 56 S. E. 998; Baker *v.* Davis, 127 Ga. 649, 57 S. E. 62; Brugh *v.* Denman, 38 Ind. App. 346, 78 N. E. 349; Hall *v.* Bowman, 90 S. W. 1051, 28 Ky. Rep. 1004; Chemical Charcoal Co. *v.* Smith, (Mo. App. 1909) 119 S. W. 23; Strother *v.* American Cooperage Co., 116 Mo. App. 518, 92 S. W. 758; Crawford *v.* Atlantic Coast Lumber Corp., 77 S. Car. 81, 57 S. E. 670.

TRESPASS.

552. 2. **Arresting a Person Constitutes Trespass.** — Clark *v.* Tilton, (N. H. 1907) 68 Atl. 335.

3. Louisville, etc., R. Co. *v.* Higginbotham, (Ala. 1907) 44 So. 872, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 552; Munsey *v.* Hanly, 102 Me. 423, 67 Atl. 217.

Trespass Involves Idea of Violation of Possessory Right. — Bever *v.* Swecker, (Iowa 1908) 116 N. W. 704.

8. Maryland Telephone, etc., Co. *v.* Ruth, (Md. 1907) 68 Atl. 358; Whittaker *v.* Stangvick, 100 Minn. 386, 111 N. W. 295.

553. 1. Benjamin *v.* Slaughter, (Ala. 1907) 44 So. 468; Eldridge *v.* Gorman, 77 Conn. 699, 60 Atl. 643; Baker *v.* Davis, 127 Ga. 649, 57 S. E. 62; Dennis *v.* Strunk, (Ky. 1908) 108 S. W. 957; Taylor *v.* Burt, etc., Lumber Co., (Ky. 1908) 109 S. W. 348; Mishler Lumber Co. *v.* Craig, 112 Mo. App. 454, 87 S. W. 41; Darling *v.* Newport Electric Light Co., (N. H. 1908) 69 Atl. 885.

2. Louisville, etc., R. Co. *v.* Higginbotham, (Ala. 1907) 44 So. 872; Hartman *v.* Tresise, 36 Colo. 146, 84 Pac. 685.

3. Daggett *v.* Yerka Min., etc., Co., 149 Cal. 357, 86 Pac. 968.

4. McCahill *v.* John H. Parker Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 627, 97 N. Y. Supp. 398.

15. O'Brien *v.* Murphy, 189 Mass. 353, 75 N. E. 700.

Removing Pipes Laid in Ground. — Rubio Canyon Land, etc., Assoc. *v.* Pasadena, etc., R. Co., 3 Cal. App. 226, 84 Pac. 846.

18. Trespass May Be Committed by Pounding on Tin Pans. — Shellabarger *v.* Morris, 115 Mo. App. 566, 91 S. W. 1005.

555. 6. Davis *v.* Chesapeake, etc., R. Co., 61 W. Va. 246, 56 S. E. 400, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 555.

9. Chicago Title, etc., Co. *v.* Core, 223 Ill. 58, 79 N. E. 108.

Trespass Implies Force. — Plott *v.* Robertson, (Ala. 1905) 39 So. 771.

556. 3. Moore *v.* Camden, etc., R. Co., (N. J. 1907) 65 Atl. 1021, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 556.

558. 7. Scribner *v.* Young, 111 N. Y. App Div. 814, 97 N. Y. Supp. 866.

Good Faith May Become Element in Determining Criminal Responsibility. — Hollingsworth *v.* Skelding, 142 N. Car. 246, 55 S. E. 212.

561. 8. State *v.* Mallard, 143 N. Car. 666, 57 S. E. 351.

9. Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009.

10. Milligan *v.* Martin, 125 Mo. App. 630, 102 S. W. 59.

562. 5. Mulligan *v.* Martin, 125 Mo. App. 630, 102 S. W. 59.

8. Parties Obtaining with View of Having Trespass Committed. — Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009.

12. Jordan *v.* Henderson, (Tex. Civ. App. 1905) 86 S. W. 961.

563. 5. Powers *v.* Hatter, (Ala. 1907) 44 So. 859.

6. Terry *v.* Williams, 148 Ala. 468, 41 So. 804, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 503.

564. 6. Entry under Permit Not Authorized by Owner No Justification. — Duke *v.* Postal Tel. Cable Co., 71 S. Car. 95, 50 S. E. 675.

565. 4. Pittock *v.* Central Dist., etc., Tel. Co., 31 Pa. Super. Ct. 589.

566. 1. Remington *v.* State, 116 N. Y. App. Div. 522, 101 N. Y. Supp. 952.

6. Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 566; Burns *v.* Horkan, 126 Ga. 161, 54 S. E. 946; Chase *v.* Cochran, 102 Me. 431, 67 Atl. 320.

567. 6. Baker *v.* Davis, 127 Ga. 649, 57 S. E. 62.

569. 1. One Committing Trespass on Behalf of Corporation Personally Liable. — Burns *v.* Horkan, 126 Ga. 161, 54 S. E. 946.

570. 3. Municipal Corporation. — Baltimore *v.* Meredith's Ford, etc., Turnpike Co., 104 Md. 351, 65 Atl. 35.

11. Williams *v.* Inman, 1 Ga. App. 321, 57 S. E. 1009.

571. 6. Snedecor *v.* Pope, 143 Ala. 275, 39 So. 318; Walsh *v.* Brown, 194 Mass. 317, 80 N. E. 465; Clark *v.* Tilton, (N. H. 1907) 68 Atl. 335.

7. Burnett *v.* Postal Tel., etc., Co., (S. Car. 1908) 60 S. E. 1116.

573. 3. Buford *v.* Christian, (Ala. 1907) 42 So. 997; Powers *v.* Hatter, (Ala. 1907) 44 So. 859; Newman *v.* Mountain Park Land Co., (Ark. 1908) 107 S. W. 391; Blunck *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 1013, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 573; Phillips *v.* Beattyville Mineral, etc., Co., (Ky. 1905) 88 S. W. 1058; Ramos Lumber, etc., Co. *v.* Labarre, 116 La. 559, 40 So. 898, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.), tit. *Trespass;* South Louisiana Land Co. *v.* Norgress, (La. 1907) 45 So. 49; Mott *v.* Hopper, 116 La. 629, 40 So. 921; Hayward *v.* School Dist. No. 9, 139 Mich. 539, 102 N. W. 999; Gordner *v.* Blades Lumber Co., 144 N. Car. 110, 56 S. E. 695; Latham *v.* Roanoke R., etc., Co., 130 N. Car. 9, 51 S. E. 780.

Actual Possession Sufficient Regardless of Legal Title. — W. K. Syson Timber Co. *v.* Dickens, 146 Ala. 471, 40 So. 753.

Actual Possession under an Invalid Instrument is sufficient to maintain trespass. Maxfield *v.* White River Lumber Co., (N. H. 1907) 65 Atl. 832.

5. Benjamin *v.* Slaughter, (Ala. 1907) 44 So. 468; Louisville, etc., R. Co. *v.* Higginbotham, (Ala. 1907) 44 So. 872; Merwin *v.* Backer, (Conn. 1907) 68 Atl. 373; Southern R. Co. *v.* Thompson, 129 Ga. 367, 58 S. E. 1044; Maxfield *v.* White River Lumber Co., (N. H. 1907) 65 Atl. 832; Paraffine Oil Co. *v.* Berry, (Tex. Civ. App. 1906) 93 S. W. 1089; Kunkel *v.* Utah Lumber Co., 29 Utah 13, 81 Pac. 897.

575. 1. See Cherry Lake Drummond Canal, etc., Co., 140 N. Car. 422, 53 S. E. 138, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 575.

576. 3. Henry *v.* Davis, (Ala. 1907) 42 So. 122; Newman *v.* Mountain Park Land Co., (Ark. 1908) 107 S. W. 391; Knight *v.* Empire Land Co., (Fla. 1908) 45 So. 1025; Downing *v.* Anderson, 126 Ga. 373, 55 S. E. 184 Gordner *v.* Blades Lumber Co., 144 N. Car. 110, 56 S. E. 695; Dyer *v.* Hartshorn, 73 N. H. 509, 63 Atl. 231.

4. Clark *v.* Wabash R. Co., 132 Iowa 11, 106 N. W. 309.

577. 11. Gilbert *v.* McDonald, 94 Minn. 289, 102 N. W. 712.

578. 1. Johnson *v.* Eversole Lumber Co., (N. Car. 1908) 60 S. E. 1129.

Statutes — Georgia Code. — See Moore *v.* Vickers, 126 Ga. 42, 54 S. E. 814.

579. 7. Kunkel *v.* Utah Lumber Co., 29 Utah 13, 81 Pac. 897.

580. 2. Patrick *v.* Brown, 36 Colo. 298, 85 Pac. 325.

3. Price *v.* Greer, 76 Ark. 426, 88 S. W. 985.

581. 1. Delaney *v.* Manshum, 146 Mich. 525, 109 N. W. 1051. But see Munsey *v.* Hanly, 102 Me. 423, 67 Atl. 217.

2. **Wife Interested in Homestead May Maintain Trespass** notwithstanding the legal title to the property is in her husband. Lesch *v.* Great Northern R. Co., 97 Minn. 503, 106 N. W. 955.

12. Clark *v.* Wabash R. Co., 132 Iowa 11, 109 N. W. 309.

13. Adair *v.* Witherspoon, (Tex. Civ. App. 1905) 86 S. W. 926.

582. 1. **A Tenant in Common of Acreage** may maintain trespass where there is an abuse of the rights granted. Granger *v.* Postal Tel. Co., 70 S. Car. 528, 50 S. E. 193.

584. 11. **Cutting Limbs from Trees.** — Darling *v.* Newport Electric Light Co., (N. H. 1908) 69 Atl. 885.

15. **Changing Grade of Street.** — Deer *v.* Sheraden, (Pa. 1908) 69 Atl. 814.

585. 12. Rabe *v.* Shoenberger Coal Co., 213 Pa. St. 252, 62 Atl. 854.

590. 7. Holman *v.* Ketcham, (Ala. 1907) 45 So. 206; Terry *v.* Williams, 148 Ala. 468, 41 So. 804; Vines *v.* Vines, 145 Ala. 679, 40 So. 84.

593. 13. Bever *v.* Swecker, (Iowa 1908) 116 N. W. 704.

595. 3. Gordner *v.* Blades Lumber Co., 144 N. Car. 110, 56 S. E. 695.

In trespass *quare clausum fregit,* it is immaterial whether the quantum of harm suffered be great, little, or appreciable. Whittaker *v.* Stangvick, 100 Minn. 386, 111 N. W. 295.

5. Louisville, etc., R. Co. *v.* Higginbotham, (Ala. 1907) 44 So. 872; Ketron *v.* Sutton, (Ga. 1908) 61 S. E. 113; Gulf, etc., R. Co. *v.* Moseley, 6 Indian Ter. 369, 98 S. W. 129.

6. Rule in Georgia. — Ketron *v.* Suton, (Ga. 1908) 61 S. E. 113.

7. *Alabama.* — Cain *v.* Simonson, (Ala. 1905) 39 So. 571; Central Iron, etc., Co. *v.* Vandenheuk, 147 Ala. 546, 41 So. 145; Christian Church *v.* Sommer, (Ala. 1907) 43 So. 8; Coleman *v.* Elliott, 147 Ala. 689, 40 So. 666; Wilson *v.* Meyer, 144 Ala. 402, 39 So. 317.

Alaska. — Heine *v.* Roth, 2 Alaska 416.

California. — Dunker *v.* Field, etc., Club, (Cal. App. 1907) 92 Pac. 502; Chittenden *v.* Blakeley, (Cal. App. 1906) 84 Pac. 681; McRae *v.* Blakeley, 3 Cal. App. 171, 84 Pac. 679.

Florida. — Cowan *v.* Skinner, 52 Fla. 486, 42 So. 730.

Georgia. — Camp *v.* A. G. Garbutt Lumber Co., 129 Ga. 411, 58 S. E. 870; Akin *v.* Jaudon, 124 Ga. 494, 52 S. E. 760; Baker *v.* Davis, 127 Ga. 649, 57 S. E. 62; Gray Lumber Co. *v.* Gaskin, 122 Ga. 342, 50 S. E. 164; Huxford *v.* Southern Pine Co., 124 Ga. 181, 52 S. E. 439; Martin *v.* Patillo, 126 Ga. 436, 55 S. E. 240.

Iowa. — Keil *v.* Wright, (Iowa 1907) 112 N. W. 633.

Kansas. — Mendenhall *v.* School Dist. No. 83, (Kan. 1907) 90 Pac. 773, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 595.

Kentucky. — Cumberland Telephone, etc., Co. *v.* Barnes, (Ky. 1907) 101 S. W. 301.

Massachusetts. — O'Brien *v.* Murphy, 189 Mass. 353, 75 N. E. 700.

Michigan. — Brassington *v.* Waldron, 143 Mich. 364, 107 N. W. 100; Lawrence *v.* Kirby, 145 Mich. 432, 108 N. W. 771.

Minnesota. — Whittaker *v.* Stangvick, 100 Minn. 386, 111 N. W. 295.

Missouri. — Integrity Min., etc., Co. *v.* Moon, (Mo. App. 1908) 109 S. W. 1057; Strother *v.* American Cooperage Co., 116 Mo. App. 518, 92 S. W. 758.

Montana. — Musselshell Cattle Co. *v.* Woolfolk, 34 Mont. 126, 85 Pac. 874.

Nebraska. — Hornung *v.* Herring, 74 Neb. 637, 104 N. W. 1071; Heaton *v.* Wireman, 74 Neb. 817, 105 N. W. 634; Hackney *v.* McIninch, (Neb. 1907) 112 N. W. 296; Munger *v.* Yeiser, (Neb. 1907) 114 N. W. 166.

New Mexico. — Arizona, etc., R. Co. *v.* Denver, etc., R. Co., 13 N. Mex. 345, 84 Pac. 1018.

New York. — Chamberlain *v.* Childs' Unique Dairy Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 56, 105 N. Y. Supp. 370; Duclos *v.* Kelley, 122 N. Y. App. Div. 329, 106 N. Y. Supp. 1058.

Oregon. — Roots *v.* Boring Junction Lumber Co., (Oregon 1907) 92 Pac. 811.

Pennsylvania. — Donora Southern R. Co. *v.* Pennsylvania R. Co., 213 Pa. St. 119, 62 Atl. 367.

South Carolina. — Riley *v.* Greenwood, 72 S. Car. 90, 51 S. E. 532.

Washington. — Sequim Bay Canning Co. *v.* Bugge, (Wash. 1908) 94 Pac. 922.

8. Atlantic, etc., Air Line R. Co. *v.* Victor Mfg. Co., (S. Car. 1908) 60 S. E. 675.

596. 1. Haggart *v.* Chapman-Dewey Land Co., 77 Ark. 527, 92 S. W. 792; Western Tie, etc., Co. *v.* Newport Land Co., 75 Ark. 286, 87 S. W. 432; Wilson *v.* Wilson, 128 Ga. 177, 57 S. E. 310; Devon *v.* Pence, (Ky. 1908) 106 S. W. 874; East Lake Lumber Co. *v.* East Coast Cedar Co., 142 N. Car. 412, 55 S. E. 304; Hume *v.* Burns, (Oregon 1907) 90 Pac. 1009; Wolfer *v.* Hurst, (Oregon 1907) 91 Pac. 366.

597. 5. Price *v.* Denison, 95 Minn. 106, 103 N. W. 728, *quoting* 26 [28] Am. and Eng. Encyc. of Law (2d ed.) 597.

6. Georgia. — In a prosecution for trespass under the statute making unlawful the wilful cutting of wood upon land, inclosed or uninclosed, of another, wilfulness is an essential ingredient of the offense. Black *v.* State, 3 Ga. App. 297, 59 S. E. 823.

Minnesota. — Trespasses which are malicious as distinguished from acts which would constitute a trespass as a matter of law are punishable criminally. Price *v.* Denison, 95 Minn. 106, 103 N. W. 728.

599. 1. See State *v.* Tuttle, (N. Car. 1907) 59 S. E. 542.

600. 2. Morrison *v.* State, (Ala. 1907) 44 So. 150.

The fact that permission was given to one other than the defendant to use a certain road constituted no justification to the defendant after he was properly warned. Cross *v.* State, 147 Ala. 125, 41 So. 875.

Entry for the purpose of making an examination and survey constitutes a defense to the statutory offense of trespass after warning. State *v.* Simmons, 145 Ala. 95, 40 So. 662.

6. Gulf, etc., R. Co. *v.* Hartley, 88 Miss. 674, 41 So. 382.

11. Western Union Tel. Co. *v.* Dickens, (Ala. 1906) 41 So. 469, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 600.

12. Western Union Tel. Co. *v.* Dickens, (Ala. 1906) 41 So. 469, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 600.

601. 1. Fowler *v.* Harrison, 39 Wash. 617, 81 Pac. 1055.

602. 9. Le Moyne *v.* Anderson, (Ky. 1906) 96 S. W. 843; Bland *v.* Beasley, 140 N. Car. 628, 53 S. E. 443.

603. 2. Martin *v.* Erwin, (N. J. 1907) 65 Atl. 888.

4. Mason *v.* Postal Tel. Cable Co., 74 S. Car. 557, 54 S. E. 763.

6. Graves *v.* Baltimore, etc., R. Co., (N. J. 1908) 69 Atl. 971.

605. 2. Young *v.* Extension Ditch Co., 13 Idaho 174, 89 Pac. 296, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 604; Bever *v.* Swecker, (Iowa 1908) 116 N. W. 704; Atchison, etc., R. Co. *v.* Grant, 75 Kan. 344, 89 Pac. 658; Lindsay *v.* Latham, (Ky. 1908) 107 S. W. 267; Duke *v.* Postal Tel. Cable Co., 71 S. Car. 95, 50 S. E. 675.

606. 4. **Attaching Telephone Wires to Plaintiff's Property Constitutes Trespass,** the damages being measured by the benefit derived by the defendant from such use. Bunke *v.* New York Telephone Co., 110 N. Y. App. Div. 241, 97 N. Y. Supp. 66.

5. For Running Drays Across the Land, the difference in value before and after such trespass constitutes the basis for assessing damages. Gosdin *v.* Williams, (Ala. 1907) 44 So. 611.

Cutting Ditches and Holes Incident to Laying a Bogy Track. — The measure of damages was the difference in value before and after the wrongful acts. Brickell *v.* Camp Mfg. Co., (N. Car. 1908) 60 S. E. 905.

Fraudulent Entry. — The measure of damages for a fraudulent entry is the depreciation in the value of the property after the entry. Mason *v.* Postal Tel. Cable Co., 74 S. Car. 557, 54 S. E. 763.

6. Deprivation of Water in Spring to Injury of Plaintiff and His Family Constitutes

Special Damages. — Louisville, etc., R. Co. *v.* Higginbotham, (Ala. 1907) 44 So. 872.

7. Eldridge *v.* Gorman, 77 Conn. 699, 60 Atl. 643.

607. 13. Gulf, etc., R. Co. *v.* Moseley, 6 Indian Ter. 369, 98 S. W. 129.

608. 3. W. K. Syson Timber Co. *v.* Dickens, 146 Ala. 471, 40 So. 753.

6. C. W. Zimmerman Mfg. Co. *v.* Daffin, (Ala. 1906) 42 So. 858; Eldridge *v.* Gorman, 77 Conn. 699, 60 Atl. 643; Puorto *v.* Chieppa, 78 Conn. 401, 62 Atl. 664.

7. Postal Tel. Cable Co. *v.* Kuhneu, 127 Ga. 20, 55 S. E. 967; Wing *v.* Seske, (Iowa 1906) 109 N. W. 717; De Camp *v.* Wallace, (Supm. Ct. Spec. T.) 45 Misc. (N. Y.) 436, 92 N. Y. Supp. 746.

13. Newman *v.* Mountain Park Land Co., (Ark. 1908) 107 S. W. 391; Eklund *v.* B. R. Lewis Lumber Co., 92 Pac. 532, 13 Idaho 581; Atchison, etc., R. Co. *v.* Grant, 75 Kan. 344, 89 Pac. 658; Cox *v.* St. Louis, etc., R. Co., 111 Mo. App. 394, 85 S. W. 989; O'Bannon *v.* St. Louis, etc., R. Co., 111 Mo. App. 202, 85 S. W. 603; Kellar *v.* Central Telephone, etc., Co., (Onondaga County Ct.) 53 Misc. (N. Y.) 523, 105 N. Y. Supp. 63; Schrier *v.* Shaffer, 123 N. Y. App. Div. 543, 107 N. Y. Supp. 1107; Scott *v.* Trebilcock, (S. Dak. 1907) 112 N. W. 847.

609. 1. **Infliction of Treble Damages Makes the Statute Penal and Must Be Strictly Construed.** — Atchison, etc., R. Co. *v.* Grant, 75 Kan. 344, 89 Pac. 658.

2. O'Bannon *v.* St. Louis, etc., R. Co., 111 Mo. App. 202, 85 S. W. 603.

3. Kellar *v.* Central Telephone, etc., Co., (Onondaga County Ct.) 53 Misc. (N. Y.) 523, 105 N. Y. Supp. 63; Scott *v.* Trebilcock, (S. Dak. 1907) 112 N. W. 847.

610. 5. Goodson *v.* Stewart, (Ala. 1908) 46 So. 239; Snedecor *v.* Pope, 143 Ala. 275, 39 So. 318; Western Union Tel. Co. *v.* Dickens, (Ala. 1906) 41 So. 469, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 610; Schulte *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 941; Miller *v.* Rambo, 73 N. J. L. 726, 64 Atl. 1053; Sperry *v.* Seidel, 218 Pa. St. 16, 66 Atl. 853; Greeney *v.* Pennsylvania Water Co., 29 Pa. Super. Ct. 136; Dobson *v.* Postal Tel.-Cable Co., (S. Car. 1908) 60 S. E. 948.

Simple Negligence Will Not Justify Punitive Damages. — Spencer *v.* San Francisco Brick Co., 5 Cal. App. 126, 89 Pac. 851.

6. Pagan *v.* Drake Furniture Co., 73 S. Car. 364, 53 S. E. 542.

7. Chicago Title, etc., Co. *v.* Core, 223 Ill. 58, 79 N. E. 108.

611. 1. Schulte *v.* Louisville, etc., R. Co., (Ky. 1908) 108 S. W. 941; Hammond *v.* Sullivan, 112 N. Y. App. Div. 788, 99 N. Y. Supp. 472.

3. Terry *v.* Williams, 148 Ala. 468, 41 So. 804.

12. Little *v.* Cornett, (Ky. 1906) 91 S. W. 272.

613. 3. Ivey *v.* Cowart, 124 Ga. 159, 52 S. E. 436.

TRESPASS ON THE CASE.

622. 2. Cherry *v.* Lake Drummond Canal, etc., Co., 140 N. Car. 422, 53 S. E. 138, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622.

4. Cherry *v.* Lake Drummond Canal, etc., Co., 140 N. Car. 422, 53 S. E. 138, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622.

TRESPASS TO TRY TITLE.

628. 9. **Actual Possession Unnecessary.** — Teagarden *v.* Patten, (Tex. Civ. App. 1908) 107 S. W. 909.

Legal Title Sufficient. — Dean *v.* Jagoe, (Tex. Civ. App. 1907) 103 S. W. 195.

Proof of Plaintiff's Title Essential Where Land Unoccupied. — Brown *v.* Orange County, (Tex. Civ. App. 1908) 107 S. W. 607.

10. **Owner of Fee of Street May Maintain Action.** — Cocke *v.* Texas, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 407.

Trustee May Maintain Action in His Own Name. — Lewis *v.* Brown, (Tex. Civ. App. 1905) 87 S. W. 704.

629. 2. Cook *v.* Spencer, (Tex. Civ. App. 1906) 91 S. W. 813; Teagarden *v.* Patten, (Tex. Civ. App. 1908) 107 S. W. 909.

Prior Possession at Time of Entry Essential. — Romine *v.* Littlejohn, (Tex. Civ. App. 1907) 106 S. W. 439.

9. Kirby *v.* Cartwright, (Tex. Civ. App. 1906) 106 S. W. 742.

630. 6. **Tenants in Common May Maintain Action.** — Hughes *v.* Wright, (Tex. Civ. App. 1906) 97 S. W. 525.

7. Hutcheson *v.* Chandler, (Tex. Civ. App. 1907) 104 S. W. 434; Jett *v.* Hunter, (Tex. Civ. App. 1908) 111 S. W. 176.

631. 10. Trevy *v.* Lourie, (Tex. Civ. App. 1905) 89 S. W. 981; Moore *v.* Kempner, (Tex. Civ. App. 1905) 91 S. W. 336; Mann *v.* Hossack, (Tex. Civ. App. 1906) 96 S. W. 767; Slusher *v.* Pennington, (Ky. 1907) 104 S. W. 354; Jaggers *v.* Stringer, (Tex. Civ. App. 1907) 106 S. W. 151.

11. **Proof that the Defendants Acquired Title Prior to the Plaintiff** is sufficient to bar the plaintiff's recovery. Stith *v.* Moore, (Tex. Civ. App. 1906) 95 S. W. 587.

15. **Plaintiff Must Be in Chain of Title Originating from Common Source.** — San Antonio Mach., etc., Co. *v.* Campbell, (Tex. Civ. App. 1908) 110 S. W. 770.

Plaintiff Need Not Show Chain of Title from State. — Young *v.* Trahan, (Tex. Civ. App. 1906) 97 S. W. 147.

632. 4. Stubblefield *v.* Hanson, (Tex. Civ. App. 1906) 94 S. W. 407; Mann *v.* Hossack, (Tex. Civ. App. 1906) 96 S. W. 767; Holland *v.* Ferris, (Tex. Civ. App. 1907) 107 S. W. 102.

633. 2. Kirby *v.* Cartwright, (Tex. Civ. App. 1907) 106 S. W. 742.

16. **Orders of a Probate Court** are admissible for the purpose of identifying land. Shirley *v.* Walker, (Tex. Civ. App. 1908) 110 S. W. 995.

A Contract to Convey and the deed executed pursuant thereto are admissible as evidence of title. Cobb *v.* Bryan, (Tex. Civ. App. 1906) 97 S. W. 513.

A Deed is admissible in evidence notwithstanding a failure to show that the defendant's grantor had valid title. Sydnor *v.* Texas Sav., etc., Invest. Assoc., (Tex. Civ. App. 1906) 94 S. W. 451.

An Administrator's Deed made pursuant to defective probate proceedings is not admissible. Wilkin *v.* Owens, (Tex. Civ. App. 1908) 110 S. W. 552.

But an administrator's deed has been admitted, though of great age, where it recited the administrator's power to make the sale and had been acquiesced in for a long period, and where the probate records had been destroyed by fire. Fields *v.* Burnett, (Tex. Civ. App. 1908) 108 S. W. 1049.

635. 2. Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017; Overton *v.* Meggs, (Tex. Civ. App. 1907) 105 S. W. 209.

No Recovery in Absence of Good Faith. — Werkheiser *v.* Foard, (Tex. Civ. App. 1908) 108 S. W. 983.

No Recovery for Improvements Made on Land Abandoned Six Years Before Suit. — Overton *v.* Meggs, (Tex. Civ. App. 1907) 105 S. W. 208.

4. **Value of Improvements Must Be Shown.** — Veeder *v.* Gilmer, (Tex. Civ. App. 1907) 105 S. W. 331.

TRIAL.

636. 3. **Criminal Cases.** — See State *v.* Butler, 114 La. 596, 38 So. 466.

TRIBUTARY.

641. 5. **Mill Pond Tributary of Stream Forming It — Salmon Fishery Act.** — See Moses *v.* Iggo, (1906) 1 K. B. 516, 75 L. J. K. B. 331.

TRIED.

642. 2. See *In re* Stewart, 118 La. 476, 43 So. 56.

TRIMMINGS.

642. 4. **Revenue Act.** — See Loewenthal *v.* U. S., 147 Fed. 774.

TROVER AND CONVERSION.

646. 1. More *v.* Burger, 15 N. Dak. 345, 107 N. W. 200. See also Groover *v.* Iler, 1 Ga. App. 77, 57 S. E. 906; Sutton *v.* Great Northern R. Co., 99 Minn. 376, 109 N. W. 815.

2. Bever *v.* Swecker, (Iowa 1908) 116 N. W. 704.

7. Wiggs *v.* Ringemann, (Ala. 1907) 45 So. 153; Bell *v.* State Bank, (Cal. 1908) 94 Pac. 889; Southern Express Co. *v.* Sinclair, (Ga. 1908) 60 S. E. 849; Merz *v.* Croxen, 102 Minn. 69, 112 N. W. 890; Potter *v.* Ketterlinus, (Pa. 1908) 69 Atl. 1119.

648. 4. **Franchise.** — See San Antonio Irrigation Co. *v.* Deutschman, (Tex. 1907) 105 S. W. 486.

649. 4. **Certificates of Deposit.** — See Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

6. See Himmelman *v.* Des Moines Ins. Co., 132 Iowa 668, 110 N. W. 155.

7. Medina Gas, etc., Co. *v.* Buffalo Loan, etc., Co., 119 N. Y. App. Div. 245, 104 N. Y. Supp. 625.

10. Blum *v.* Whipple, 194 Mass. 253, 80 N. E. 501; Kaufman *v.* State Sav. Bank, (Mich. 1908) 114 N. W. 863; Meyer *v.* Doherty, (Wis. 1907) 113 N. W. 671.

650. 2. Long *v.* McIntosh, 129 Ga. 660, 59 S. E. 779; Morris *v.* Smith, (Tex. Civ. App. 1908) 112 S. W. 130.

651. 2. Long *v.* McIntosh, 129 Ga. 660, 59 S. E. 779; Hubbard *v.* State L. Ins. Co., 129 Iowa 13, 105 N. W. 332.

3. Long *v.* McIntosh, 129 Ga. 660, 59 S. E. 779.

5. Clappe *v.* Taylor, (Supm. Ct. App. Div.) 109 N. Y. Supp. 1072; Bell *v.* State Bank, (Cal. 1908) 94 Pac. 889.

652. 11. Meyer *v.* Doherty, (Wis. 1907) 113 N. W. 671.

653. 8. See U. S. *v.* Ute Coal, etc., Co., (C. C. A.) 158 Fed. 20. *Compare* Duff *v.* Venters, (Ky. 1908) 107 S. W. 238, wherein an action in the nature of trover seems to have been regarded as maintainable for a right of way.

654. 6. **Exception to Rule.** — Jones *v.* Minnesota, etc., R. Co., 97 Minn. 232, 106 N. W. 1048.

8. Roberts *v.* Moss, (Ky. 1907) 106 S. W. 297.

12. U. S. *v.* Ute Coal, etc., Co., (C. C. A.) 158 Fed. 20; Mier *v.* Phillips Fuel Co., 130 Iowa 570, 107 N. W. 621.

655. 1. See Leidy *v.* Carson, 115 Mo. App. 1, 90 S. W. 754.

2. Pacific Live Stock Co. *v.* Isaacs, (Oregon 1908) 96 Pac. 460. See Leidy *v.* Carson, 115 Mo. App. 1, 90 S. W. 754.

5. Nashville, etc., Co. *v.* Karthaus, (Ala. 1907) 43 So. 791.

656. 1. **Sand** deposited on the land of another by a trespasser is subject to conversion. Graham *v.* Purcell, (Supm. Ct. App. Div.) 110 N. Y. Supp. 813.

3. See Northwestern State Bank *v.* Silberman, (C. C. A.) 154 Fed. 809; Herman *v.* Northern Pac. R. Co., 43 Wash. 624, 86 Pac. 1068.

5. Powers *v.* Hatter, (Ala. 1907) 44 So. 859; McCune *v.* Peters, (County Ct.) 54 Misc. (N. Y.) 165, 105 N. Y. Supp. 896; Graham *v.* Purcell, (Supm. Ct. App. Div.) 110 N. Y. Supp. 813.

657. 4. Groover *v.* Iler, 1 Ga. App. 77, 57 S. E. 906; Himmelman *v.* Des Moines Ins. Co., 132 Iowa 668, 110 N. W. 155; Henry *v.* Manistique Iron Co., 147 Mich. 509, 111 N. W. 79; Raymond *v.* Blancgrass (Mont. 1908) 93 Pac. 648; Byrne *v.* Weidenfeld, 113 N. Y. App. Div. 451, 99 N. Y. Supp. 412; Innovation Trunk Co. *v.* Platt, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 645, 107 N. Y. Supp. 816; Martin *v.* Megargee, 212 Pa. St. 558, 61 Atl. 1023; Huggins *v.* Reynolds, (Tex. Civ. App. 1908) 112 S. W. 116; Herman *v.* Northern Pac. R. Co., 43 Wash. 624, 86 Pac. 1068.

658. 2. Southern Car Mfg., etc., Co. *v.* Wagner, (N. Mex. 1907) 89 Pac. 259; Vinson *v.* Knight, 137 N. Car. 408, 49 S. E. 891.

3. Hall *v.* Simmons, 125 Ga. 801, 54 S. E. 751.

6. Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 85 Pac. 408; Oney *v.* Pomfrey, (County Ct.) 54 Misc. (N. Y.) 171, 105 N. Y. Supp. 860; Hahn *v.* Sleepy Eye Milling Co., (S. Dak. 1907) 112 S. W. 843.

7. Hall *v.* Simmons, 125 Ga. 801, 54 S. E. 751.

659. 1. Palmer *v.* Mayo, (Conn. 1907) 68 Atl. 369; McLean *v.* Hattan, 127 Ga. 579, 56 S. E. 643; Dennis *v.* Strunk, (Ky. 1908) 108 S. W. 957; Bibb *v.* Roth, 101 Minn. 111, 111 N. W. 919; H. C. Jaquith Co. *v.* Shumway, (Vt. 1908) 69 Atl. 157.

When Burden of Proof Shifts to Defendant. — Valentine *v.* Long Island R. Co., 187 N. Y. 121, 79 N. E. 849.

2. McLean *v.* Hattan, 127 Ga. 579, 56 S. E. 643.

Sufficiency of Evidence. — C. W. Zimmerman Mfg. Co. *v.* Dunn, (Ala. 1907) 44 So. 533; Westheimer *v.* State Loan Co., (Mass. 1907) 81 N. E. 289; Fuller Buggy Co. *v.* Waldron, 114 N. Y. App. Div. 28, 99 N. Y. Supp. 920; Comeau *v.* Hurley, (S. Dak. 1908) 115 N. W. 521; Rich *v.* Utah Commercial, etc., Bank, 30 Utah 334, 84 Pac. 1105; Greenwood *v.* Corbin, (Wash. 1908) 93 Pac. 433; Warshawsky *v.* Rosengarten, (Wis. 1908) 114 N. W. 497.

Evidence Held Insufficient. — Tankins *v.* Berger, (Supm. Ct. App. T.) 107 N. Y. Supp. 873.

3. Powers *v.* Hatter, (Ala. 1907) 44 So. 859; Oney *v.* Pomfrey, (County Ct.) 54 Misc. (N. Y.) 171, 105 N. Y. Supp. 860.

4. Purcell Cotton Seed Oil Mills *v.* Bell, (Indian Ter. 1907) 104 S. W. 944; Dennis *v.* Strunk, (Ky. 1908) 108 S. W. 957; Hitt *v.* Woolever, (N. J. 1907) 68 Atl. 237; Feinberg *v.* Allen, 118 N. Y. App. Div. 497, 103 N. Y. Supp. 339; Harvey *v.* Lidvall, 48 Oregon 558, 87 Pac. 895; Cate *v.* Fife, (Vt. 1907) 68 Atl. 1; H. C. Jaquith Co. *v.* Shumway, (Vt. 1908) 69 Atl. 157; Taylor *v.* Tigerton Lumber Co., (Wis. 1907) 114 N. W. 122.

Evidence Held Inadmissible. — Ward *v.* Gradin, 15 N. Dak. 649, 109 N. W. 57.

5. *Alabama.* — Southern R. Co. *v.* Attalla, 147 Ala. 653, 41 So. 664; Wilson *v.* Curry, (Ala. 1907) 42 So. 753; Holman *v.* Ketcham, (Ala. 1907) 45 So. 206.

Connecticut. — Barker *v.* Lewis Storage, etc., Co., 79 Conn. 342, 65 Atl. 143.

Iowa. — Munier *v.* Zackary, (Iowa 1908) 114 N. W. 525.

Massachusetts. — Haynes *v.* Temple, (Mass. 1908) 84 N. E. 467.

Michigan. — Croze *v.* St. Mary's Canal Mineral Land Co., 143 Mich. 514, 107 N. W. 92.

Montana. — Raymond *v.* Blancgrass, (Mont. 1908) 93 Pac. 648.

New York. — Byrne *v.* Weidenfeld, 113 N. Y. App. Div. 451, 99 N. Y. Supp. 412; County Armagh Ladies' Social, etc., Assoc. *v.* Lennon, (Supm. Ct. App. T.) 102 N. Y. Supp. 522.

Oregon. — Pacific Live Stock Co. *v.* Isaacs, (Oregon 1908) 96 Pac. 460.

Pennsylvania. — Martin *v.* Megargee, 212 Pa. St. 558, 61 Atl. 1023.

661. 2. *Compare* C. W. Zimmerman Mfg. Co. *v.* Daffin, (Ala. 1906) 42 So. 858, where it was held that a life tenant cannot maintain trover for the conversion of trees nor trespass *de bonis* for the taking of them.

5. Washington L. Ins. Co. *v.* Scott, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 492, 110 N. Y. Supp. 49; Bridgeport Organ Co. *v.* Snyder, (N. Car. 1908) 61 S. E. 51.

6. Blum *v.* Whipple, 194 Mass. 253, 80 N. E. 501; Westheimer *v.* State Loan Co., (Mass. 1907) 81 N. E. 289.

662. 3. Long *v.* McIntosh, 129 Ga. 660, 59 S. E. 779; Rabe *v.* Jourdan, (Tex. Civ. App. 1907) 102 S. W. 1167.

7. Farrow *v.* Wooley, (Ala. 1907) 43 So. 144.

Contra. — Hahn *v.* Sleepy Eye Milling Co., (S. Dak. 1907) 112 N. W. 843, in a case of a thresher's lien allowed by statute.

Cropper's Lien Allowed by Statute. — Sexton Rice, etc., Co. *v.* Sexton, (Tex. Civ. App. 1907) 106 S. W. 728.

8. But see Baker *v.* Cotney, (Ala. 1907) 43 So. 786.

9. Zimmerman *v.* Beatson, 39 Ind. App. 664, 79 N. E. 518; Dunphy *v.* Callahan, (Supm. Ct. App. Div.) 110 N. Y. Supp. 179; Springer *v.* Jenkins, 47 Oregon 502, 84 Pac. 479; Meyer *v.* Doherty, (Wis. 1907) 113 N. W. 671.

Right of Administrator De Bonis Non to Sue for Conversion by Executor. — Yager *v.* State Bank, (Ky. 1907) 100 S. W. 848.

Action May Be Maintained against Heir of Deceased. — Palmer *v.* O'Rourke, 130 Wis. 507, 110 N. W. 389.

663. 1. See Yager *v.* State Bank, (Ky. 1907) 100 S. W. 848.

2. Semon *v.* Adams, 79 Conn. 81, 63 Atl. 661; Ryan *v.* Rogers, (Idaho 1908) 94 Pac. 427.

6. Palmer *v.* Ring, 113 N. Y. App. Div. 643, 99 N. Y. Supp. 290; Smith *v.* Texas, etc., R. Co., (Tex. 1908) 108 S. W. 819.

664. 3. Straight *v.* Shaw, (County Ct.) 56 Misc. (N. Y.) 426, 107 N. Y. Supp. 1036.

Stoppage in Transitu — Contra. — Frame *v.* Oregon Liquor Co., 48 Oregon 272, 85 Pac. 1009. Petition denied on rehearing 48 Oregon 276, 86 Pac. 791, in which case the buyer became insolvent.

665. 1. Northwestern State Bank *v.* Silberman, (C. C. A.) 154 Fed. 809.

2. New Liverpool Salt Co. *v.* Western Salt Co., 151 Cal. 479, 91 Pac. 152.

3. Adair *v.* Stovall, (Ala. 1906) 42 So. 596; Hallwood Cash Register Co. *v.* Prouty, (Mass. 1907) 82 N. E. 6; Lamb *v.* Utley, 146 Mich. 654, 110 N. W. 50; Holmes Mach. Co. *v.* Chalkley, 143 N. Car. 181, 55 S. E. 524.

4. Southwestern Port Huron Co. *v.* Cobble, 124 Mo. App. 647, 102 S. W. 9.

5. Wilson *v.* Comer, 125 Ga. 500, 54 S. E. 355; Starnes *v.* Roberts, 128 Ga. 718, 58 S. E. 348; McHan *v.* Malsby, (Ga. 1908) 61 S. E. 731; Norris *v.* St. Joseph, etc., R. Co., 124 Mo. App. 16, 101 S. W. 159; Davis *v.* Bliss, 187 N. Y. 77, 79 N. E. 851; Wood *v.* Proudman, 122 N. Y. App. Div. 826, 107 N. Y. Supp. 757; Smith *v.* Texas, etc., R. Co., (Tex. 1908) 108 S. W. 819.

6. New Liverpool Salt Co. *v.* Western Salt Co., 151 Cal. 479, 91 Pac. 152; Washawsky *v.* Rosengarten, (Wis. 1908) 114 N. W. 497.

7. Haynes *v.* Temple, (Mass. 1908) 84 N. E. 467.

8. Rowell *v.* Ricker, 79 Vt. 552, 66 Atl. 569.

666. 5. *Compare* Hall *v.* Frith, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 600, 101 N. Y. Supp. 31.

11. Golden *v.* Moore, 126 Mo. App. 518, 104 S. W. 481.

12. McGraw *v.* O'Neil, 123 Mo. App. 691, 101 S. W. 132.

667. 1. Holman *v.* Ketcham, (Ala. 1907) 45 So. 206.

3. See Springer *v.* Jenkins, 47 Oregon 502, 84 Pac. 479.

Sale Without Foreclosure. — Force *v.* Peterson Mach. Co., (N. Dak. 1908) 116 N. W. 84.

5. Haynes *v.* Gray, (Ala. 1906) 41 So. 615; Ilfeld *v.* Zeigler, (Colo. 1907) 91 Pac. 825; Barnesville First Nat. Bank *v.* St. Anthony, etc., Elevator Co., (Minn. 1908) 114 N. W. 265; Golden *v.* Moore, 126 Mo. App. 518, 104 S. W. 481; Harvey *v.* Lidvall, 48 Oregon 558, 87 Pac. 895.

Senior Mortgagee May Recover against Junior Mortgagee. — Dethoff *v.* Gattie, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 589.

Purchaser Must Have Notice of Unrecorded Mortgage, and it is incumbent on the plaintiff to prove that he had notice of such lien or of facts that would put him on inquiry. Alabama Cotton Products Co. *v.* Myrick, (Ala. 1907) 44 So. 587.

668. 4. Wilson *v.* Curry, (Ala. 1907) 42 So. 753; Catlett *v.* Stokes, (S. Dak. 1906) 110 N. W. 84.

5. **Undisclosed Assignment.** — Farmer *v.* Graettinger Bank, 130 Iowa 469, 107 N. W. 170.

669. 1. See Medina Gas, etc., Co. *v.* Buffalo Loan, etc., Co., 119 N. Y. App. Div. 245, 104 N. Y. Supp. 629.

2. Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 85 Pac. 408.

3. C. W. Zimmerman Mfg. Co. *v.* Dunn, (Ala. 1907) 44 So. 533.

11. Walton *v.* Henderson, (Ga. App. 1908) 61 S. E. 28; Schwarz *v.* Kennedy, 142 Fed. 1027, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 669.

670. 1. Roberts *v.* Roberts, (Tex. Civ. App. 1907) 99 S. W. 886.

5. Ophir Silver Min. Co. *v.* San Francisco, (Cal. 1905) 82 Pac. 70; Pacific Live Stock Co. *v.* Isaacs, (Oregon 1908) 96 Pac. 460, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 670.

671. 1. Pacific Live Stock Co. *v.* Isaacs, (Oregon 1908) 96 Pac. 460, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 671.

2. Pacific Live Stock Co. *v.* Isaacs, (Oregon 1908) 96 Pac. 460.

5. Nashville, etc., R. Co. *v.* Karthaus, (Ala. 1907) 43 So. 791.

672. 6. Munier *v.* Zackary, (Iowa 1908) 114 N. W. 525.

673. 1. Johnson *v.* Kelley, (Ky. 1908) 106 S. W. 864; Bibb *v.* Roth, 101 Minn. 111, 111 N. W. 919.

Action by Heirs of Intestate. — Nashville, etc., R. Co. *v.* Karthaus, (Ala. 1907) 43 So. 791.

2. Pacific Live Stock Co. *v.* Isaacs, (Oregon 1908) 96 Pac. 460, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 673.

Same Rule Applies to Defendant's Claim. — Powers *v.* Hatter, (Ala. 1907) 44 So. 859.

5. Louisville, etc., R. Co. *v.* Higginbotham, (Ala. 1907) 44 So. 872, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 673 *et seq.*

6. Powers *v.* Hatter, (Ala. 1907) 44 So. 859; Pacific Live Stock Co. *v.* Isaacs, (Oregon 1908) 96 Pac. 460.

674. 1. Ain-Dus-Oke-Shig *v.* Beaulieu, 98 Minn. 98, 107 N. W. 820; Harvey *v.* Lidvall, 48 Oregon 558, 87 Pac. 895, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 674; Marcy *v.* Parker, 78 Vt. 73, 62 Atl. 19.

2. Harvey *v.* Lidvall, 48 Oregon 558, 87 Pac. 895, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 674.

675. 10. Barker *v.* Lewis Storage, etc., Co., 79 Conn. 342, 65 Atl. 143; Cohen *v.* Koster, (Supm. Ct. App. T.) 111 N. Y. Supp. 673; Heiser *v.* Berger Catering Co., (Mo. App. 1907) 106 S. W. 579.

676. 5. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729.

6. Austin *v.* Vanderbilt, 48 Oregon 206, 85 Pac. 519.

7. Byrne *v.* Weidenfell, 113 N. Y. App. Div. 451, 99 N. Y. Supp. 412.

8. Oney *v.* Pomfrey, (County Ct.) 54 Misc. (N. Y.) 171, 105 N. Y. Supp. 860; McCrossan *v.* Reilly, 33 Pa. Super. Ct. 628, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 676.

677. 4. Sparta Bank *v.* Butts, (Ga. App. 1908) 61 S. E. 298.

679. 6. *California.* — Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729. See Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39.

Colorado. — Austin *v.* Van Loon, 36 Colo. 196, 85 Pac. 183.

Connecticut. — Semon *v.* Adams, 79 Conn. 81, 63 Atl. 661.

Georgia. — Southern Express Co. *v.* Sinclair, (Ga. 1908) 60 S. E. 849.

Iowa. — Himmelman *v.* Des Moines Ins. Co., 132 Iowa 668, 110 N. W. 155.

Minnesota. — Kloos *v.* Gatz, 97 Minn. 167, 105 N. W. 639; Sutton *v.* Great Northern R. Co., 99 Minn. 376, 109 N. W. 815; Merz *v.* Croxen, 102 Minn. 69, 112 N. W. 890.

Nebraska. — Nelson *v.* Schmoller, (Neb. 1906) 110 N. W. 658; Starr *v.* Bankers' Union of the World, (Neb. 1908) 116 N. W. 61.

New York. — Reich *v.* Cochran, 114 N. Y. App. Div. 141, 99 N. Y. Supp. 755; Pepper *v.* Price, (Supm. Ct. App. T.) 107 N. Y. Supp. 559; Washington L. Ins. Co. *v.* Scott, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 492, 110 N. Y. Supp. 49.

Tennessee. — Three States Lumber Co. *v.* Blanks, 118 Tenn. 627, 102 S. W. 79.

Texas. — France *v.* Gibson, (Tex. Civ. App. 1907) 101 S. W. 536; Gaw *v.* Bingham, (Tex. Civ. App. 1908) 107 S. W. 931.

Wisconsin. — Lucas *v.* Sheridan, 124 Wis. 567, 102 N. W. 1077, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 679; Meyer *v.* Doherty, (Wis. 1907) 113 N. W. 671; Taylor *v.* Tigerton Lumber Co., (Wis. 1907) 114 N. W. 122.

Conversion is the turning or applying the property of another to one's own use. Crow *v.* Ball, (Tex. Civ. App. 1907) 99 S. W. 583.

Corporation Refusing Transfer of Stock. — Dooley *v.* Gladiator Consol. Gold Mines, etc., Co., 134 Iowa 468, 109 N. W. 864. See also Young *v.* New Standard Concentrator Co., 148 Cal. 306, 83 Pac. 28.

Wrongful Refusal of Corporation to Issue Stock Certificate. — See Teeple *v.* Hawkeye Gold Dredging Co., (Iowa 1908) 114 N. W. 906.

Conversion of Partnership Property by a Surviving Partner. — Goldstein *v.* Susholtz, (Tex. Civ. App. 1907) 105 S. W. 219.

Money Deposited in Court. — See Clisby *v.* Mastin, (Ala. 1907) 43 So. 742.

Executor Wrongfully Transferring Stocks into His Own Name. — Holland *v.* Ball, 193 Mass. 80, 78 N. E. 772.

Liability of Innkeeper as Bailee. — Heiser *v.* Berger Catering Co., (Mo. App. 1907) 106 S. W. 579.

Liability of Landlord for Conversion. — Wilson *v.* Griswold, (Conn. 1907) 66 Atl. 783.

681. 2. Merz *v.* Croxen, 102 Minn. 69, 112 N. W. 890; Geisler *v.* David Stevenson Brewing Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 56; Davis *v.* Hardwick, (Tex. Civ. App. 1906) 94 S. W. 359.

3. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Ivers, etc., Co. *v.* Allen, 101 Me. 218, 63 Atl. 735; Kloos *v.* Gatz, 97 Minn. 167, 105 N. W. 639.

5. Martin *v.* Houck Music Co., 79 Ark. 95, 94 S. W. 932; Nelson *v.* Schmoller, (Neb. 1906) 110 N. W. 658; Herman *v.* Northern Pac. R. Co., 43 Wash. 624, 86 Pac. 1068.

8. U. S. *v.* Ute Coal, etc., Co., (C. C. A.) 158 Fed. 20; Bridgeport Organ Co. *v.* Snyder, (N. Car. 1908) 61 S. E. 51.

682. 2. Wilson *v.* Curry, (Ala. 1907) 42 So. 753; Austin *v.* Van Loon, 36 Colo. 196, 85 Pac. 183; Southern Express Co. *v.* Sinclair, (Ga. 1908) 60 S. E. 849, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682.

Wrong Delivery Negligently Made by Carrier Is a Conversion. — Atlantic Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070.

Accidental Destruction of Property while lawfully in the possession of a defendant is not a conversion. Meise *v.* Wachtel, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 549, 104 N. Y. Supp. 915.

3. Austin *v.* Van Loon, 36 Colo. 196, 85 Pac. 183, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 682; Croze *v.* St. Mary's Canal Mineral Land Co., 143 Mich. 514, 107 N. W. 92.

Delay in Delivery by a Carrier is no conversion. Clark *v.* American Express Co., 130 Iowa 254, 106 N. W. 642; Wells *v.* Hanson, (Tex. Civ. App. 1905) 91 S. W. 321.

684. 1. Plummer *v.* Reeves, 83 Ark. 10, 102 S. W. 376, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 683; Seaboard Air Line R. Co. *v.* Phillips, (Md. 1908) 70 Atl. 232.

4. Munier *v.* Zackary, (Iowa 1908) 114 N. W. 525.

Tender During Trial Is No Defense. — Dooley *v.* Gladiator Consol. Gold Mines, etc., Co., 134 Iowa 468, 109 N. W. 864.

A Tender of Property must embrace all the property claimed by the plaintiff, must be unconditional, and must disclaim all claim of title. Walton *v.* Henderson, (Ga. App. 1908) 61 S. E. 28.

5. Sutton *v.* Great Northern R. Co., 99 Minn. 376, 109 N. W. 815; Davidson *v.* Oberthier, (Tex. Civ. App. 1906) 93 S. W. 478.

Tender of Reclaimed Goods. — Clarke-Lawrence Co. *v.* Chesapeake, etc., R. Co., (W. Va. 1908) 61 S. E. 364.

7. Stallings *v.* Gilbreath, 146 Ala. 483, 41 So. 423; Pearne *v.* Coyne, 79 Conn. 570, 65 Atl. 973; Starr *v.* Bankers' Union of the World, (Neb. 1908) 116 N. W. 61; Medina Gas, etc., Co. *v.* Buffalo Loan, etc., Co., 119 N. Y. App. Div. 245, 104 N. Y. Supp. 625, *per* Laughlin, J., *dissenting* opinion, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 684.

685. 4. Wood *v.* Proudman, 122 N. Y. App. Div. 826, 107 N. Y. Supp. 757.

5. Three States Lumber Co. *v.* Blanks, 118 Tenn. 627, 102 S. W. 79.

6. Three States Lumber Co. *v.* Blanks, 118 Tenn. 627, 102 S. W. 79.

686. 1. Sexton Rice, etc., Co. *v.* Sexton, (Tex. Civ. App. 1907) 106 S. W. 728.

2. Alabama Cotton Oil Co. *v.* Weeden, (Ala. 1907) 43 So. 926; Ramirez *v.* Main, (Ariz. 1907) 89 Pac. 508; Allsop *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39; Beaman *v.* Stewart 34 Colo. 356, 83 Pac. 629; Ilfeld *v.* Ziegler, (Colo. 1907) 91 Pac. 825; Purcell Cotton Seed Oil Mills *v.* Bell, (Indian Ter. 1907) 104 S. W. 944; Acme Lumber Co. *v.* Montgomery, 123 N. Y. App. Div. 620, 107 N. Y. Supp. 1074; Graham *v.* Purcell, (Supm. Ct. App. Div.) 110 N. Y. Supp. 813; Clarke-Lawrence Co. *v.* Chesapeake, etc., R. Co., (W. Va. 1908) 61 S. E. 364; Peru Plow, etc., Co. *v.* Harker, (C. C. A.) 144 Fed. 673.

687. 1. *Alabama.* — Wilson *v.* Curry, (Ala. 1907) 42 So. 753.

Arizona. — Ramirez *v.* Main, (Ariz. 1907) 89 Pac. 508.

Colorado. — Austin *v.* Van Loon, 36 Colo. 196, 85 Pac. 183.

Connecticut. — Semon *v.* Adams, 79 Conn. 81, 63 Atl. 661.

Indian Territory. — Purcell Cotton Seed Oil Mills *v.* Bell, (Indian Ter. 1907) 104 S. W. 944.

Iowa. — Bever *v.* Swecker, (Iowa 1908) 116 N. W. 704.

Massachusetts. — Cousins *v.* O'Brien, 188 Mass. 146, 74 N. E. 289.

Michigan. — Freeman *v.* Ingerson, 143 Mich. 7, 106 N. W. 278.

New York. — Rosenkranz *v.* Jocobowitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 580, 99 N. Y. Supp. 469; Dudley *v.* Armenia Ins. Co., 115 N. Y. App. Div. 380, 100 N. Y. Supp. 818; Lange *v.* Schile, 117 N. Y. App. Div. 233, 101 N. Y. Supp. 1080; Plunkett Plumbing, etc., Co. *v.* Bassford Realty Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 479, 102 N. Y. Supp. 483; Besson *v.* Levey, (Supm. Ct. App. T.) 110 N. Y. Supp. 230; Geisler *v.* David Stevenson Brewing Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 56. See McIntyre *v.* Smathers, 118 N. Y. App. Div. 776, 103 N. Y. Supp. 873.

South Dakota. — Catlett *v.* Stokes, (S. Dak. 1906) 110 N. W. 84.

Texas. — Saw *v.* Bingham, (Tex. Civ. App. 1908) 107 S. W. 931.

Proof of Demand. — Allsopp *v.* Joshua Hendy

Mach. Works, 5 Cal. App. 228, 90 Pac. 39; Robertson *v.* Kennedy, (Mich. 1908) 116 N. W. 413; Southwestern Port Huron Co. *v.* Cobble, 124 Mo. App. 647, 102 S. W. 9.

2. Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39; McSwegan *v.* Hankinson, (Supm. Ct. App. T.) 95 N. Y. Supp. 548; More *v.* Burger, 15 N. Dak. 345, 107 N. W. 200; Hahn *v.* Sleepy Eye Milling Co., (S. Dak. 1907) 112 N. W. 843; Meyer *v.* Doherty, (Wis. 1907) 113 N. W. 671.

4. Clay *v.* Sullivan, (Ala. 1908) 47 So. 153; Southern R. Co. *v.* Born Steel Range Co., 126 Ga. 527, 55 S. E. 173; Rhomberg *v.* Avenarius, (Iowa 1907) 112 N. W. 548; Williams *v.* Tolbert, 76 S. Car. 211, 56 S. E. 908; Three States Lumber Co. *v.* Blanks, 118 Tenn. 627, 102 S. W. 79; American Nat. Bank *v.* San Marcos First Nat. Bank, (Tex. Civ. App. 1906) 92 S. W. 439.

688. 1. Clay *v.* Sullivan, (Ala. 1908) 47 So. 153; Starr *v.* Bankers' Union of the World, (Neb. 1908) 116 N. W. 61.

689. 3. Kempner *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 351.

690. 4. See Clay *v.* Sullivan, (Ala. 1908) 47 So. 153.

5. **Contra.** — Clay *v.* Sullivan, (Ala. 1908) 47 So. 153.

6. **Common Carrier.** — Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 87 Pac. 80.

691. 2. **Contra.** — Smith *v.* Texas, etc., R. Co., (Tex. 1908) 108 S. W. 819.

4. Peru Plow, etc., Co. *v.* Harker, (C. C. A.) 144 Fed. 673; Ramirez *v.* Main, (Ariz. 1907) 89 Pac. 508; Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Beaman *v.* Stewart, 34 Colo. 356, 83 Pac. 629; Westheimer *v.* State Loan Co., (Mass. 1907) 81 N. E. 289; Pepper *v.* Price, (Supm. Ct. App. T.) 107 N. Y. Supp. 559; Straight *v.* Shaw, (County Ct.) 56 Misc. (N. Y.) 426, 107 N. Y. Supp. 1036; Frishberg *v.* Wisner, 125 N. Y. App. Div. 627, 110 N. Y. Supp. 4; Three States Lumber Co. *v.* Blanks, 118 Tenn. 627, 102 S. W. 79; Meyer *v.* Doherty, (Wis. 1907) 113 N. W. 671. See also Pepper *v.* Price, (Supm. Ct. App. T.) 107 N. Y. Supp. 559.

Removal of Timber after Expiration of Permit Constitutes Conversion. — State *v.* Rat Portage Lumber Co., (Minn. 1908) 115 N. W. 162; State *v.* Lesure Lumber Co., (Minn. 1908) 115 N. W. 167.

Any fact that will negative a wrongful taking will defeat a stated cause of action for conversion. Gorder *v.* Hilliboe, (N. Dak. 1908) 115 N. W. 843.

692. 2. Hammond *v.* Sullivan, 112 N. Y. App. Div. 788, 99 N. Y. Supp. 472, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 692; Adams *v.* Weir, (Tex. Civ. App. 1907) 99 S. W. 726.

4. St. Louis Third Nat. Bank *v.* Rice, (C. C. A.) 161 Fed. 822.

7. Ryan *v.* Rogers, (Idaho 1908) 94 Pac. 427.

8. Beaman *v.* Stewart, 34 Colo. 356, 83 Pac. 629; McCune *v.* Peters, (County Ct.) 54 Misc. (N. Y.) 165, 105 N. Y. Supp. 896; Davidson *v.* Oberthier, (Tex. Civ. App. 1906) 93 S. W. 478; Seivert *v.* Galvin, (Wis. 1907) 113 N. W. 680.

693. 7. Kloos *v.* Gatz, 97 Minn. 167, 105 N. W. 639, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 693.

694. 5. See Christensen *v.* Beebe, (Utah 1907) 91 Pac. 129.

6. See Wilson *v.* Griswold, (Conn. 1907) 66 Atl. 783.

695. 6. Palmer *v.* Mayo, (Conn. 1907) 68 Atl. 369; Haines *v.* Chappell, 1 Ga. App. 480, 58 S. E. 220; Hanson *v.* Skogan, 14 N. Dak. 445, 105 N. W. 90, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 695.

Plaintiff Must Prove User. — Southwestern Port Huron Co. *v.* Cobble, 124 Mo. App. 647, 102 S. W. 9.

696. 4. Northwestern State Bank *v.* Silberman, (C. C. A.) 154 Fed. 809; New Liverpool Salt Co. *v.* Western Salt Co., 151 Cal. 479, 91 Pac. 152; Bell *v.* State Bank, (Cal. 1908) 94 Pac. 889; Southern R. Co. *v.* Born Steel Range Co., 126 Ga. 527, 55 S. E. 173; Chesapeake, etc., R. Co. *v.* Saulsberry, (Ky. 1907) 103 S. W. 254; Kaufman *v.* State Sav. Bank, (Mich. 1908) 114 N. W. 863; Caldwell *v.* Ryan, (Mo. 1908) 108 S. W. 533; Wood *v.* Proudman, 122 N. Y. App. Div. 826, 107 N. Y. Supp. 757; Kempner *v.* Thompson, (Tex. Civ. App. 1907) 100 S. W. 351.

697. 1. Graham *v.* Purcell, (Supm. Ct. App. Div.) 110 N. Y. Supp. 813.

2. Graham *v.* Purcell, (Supm. Ct. App. Div.) 110 N. Y. Supp. 813.

698. 1. Acme Lumber Co. *v.* Montgomery, 123 N. Y. App. Div. 620, 107 N. Y. Supp. 1074.

2. Clay *v.* Sullivan, (Ala. 1908) 47 So. 153; Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Strickland *v.* Magoun, 119 N. Y. App. Div. 113, 104 N. Y. Supp. 425; Medina Gas, etc., Co. *v.* Buffalo Loan, etc., Co., 119 N. Y. App. Div. 245, 104 N. Y. Supp. 625; Austin *v.* Vanderbilt, 48 Oregon 206, 85 Pac. 519.

5. Ward *v.* Gradin, 15 N. Dak. 649, 109 N. W. 57.

6. H. C. Jaquith Co. *v.* Shumway, (Vt. 1908) 69 Atl. 157.

699. 1. Ilfeld *v.* Ziegler, (Colo. 1907) 91 Pac. 825.

4. Force *v.* Peterson Mach. Co., (N. Dak. 1908) 116 N. W. 84. See Croze *v.* St. Mary's Canal Mineral Land Co., 143 Mich. 514, 107 N. W. 92.

6. Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Content *v.* Banner, 184 N. Y. 121, 76 N. E. 913; Byrne *v.* Weidenfeld, 113 N. Y. App. Div. 451, 99 N. Y. Supp. 412; Clappe *v.* Taylor, (Supm. Ct. App. Div.) 109 N. Y. Supp. 1072; Austin *v.* Vanderbilt, 48 Oregon 206, 85 Pac. 519; Gregg *v.* Columbia Bank, 72 S. Car. 458, 52 S. E. 195.

Sale by Pawnbroker. — See Uncle Sam's Loan Office *v.* Emery, (Tex. Civ. App. 1908) 107 S. W. 1155.

700. 1. Catlett *v.* Stokes, (S. Dak. 1906) 110 N. W. 84. See Ilfeld *v.* Ziegler, (Colo. 1907) 91 Pac. 825.

2. *Compare* Ivers, etc., Co. *v.* Allen, 101 Me. 218, 63 Atl. 735.

5. Farmer *v.* Graettinger Bank, 130 Iowa 469,

107 N. W. 170, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 700.

6. Smith *v.* Armour Packing Co., (C. C. A.) 158 Fed. 86, *affirming* 6 Indian Ter. 479, 98 S. W. 165; Farmer *v.* Graettinger Bank, 130 Iowa 469, 107 N. W. 170.

Giving of Consent Is Question for Jury. — Alabama Cotton Products Co. *v.* Myrick, (Ala. 1907) 44 So. 587.

8. Woods Mach. Co. *v.* Woodcock, 43 Wash. 317, 86 Pac. 570.

701. 1. Innovation Trunk Co. *v.* Platt, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 645, 107 N. Y. Supp. 816.

6. Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247.

9. Blowers *v.* Canadian Pac. R. Co., 155 Fed. 935, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 665 [701]; Tishomingo Sav. Inst. *v.* Johnson, 146 Ala. 691, 40 So. 503; Merchants', etc., Transp. Co. *v.* Moore, 124 Ga. 482, 52 S. E. 802; Southern Express Co. *v.* Sinclair, (Ga. 1908) 60 S. E. 849; Atchison, etc., R. Co. *v.* Schriver, 72 Kan. 550, 84 Pac. 119; Seaboard Air Line R. Co. *v.* Phillips, (Md. 1908) 70 Atl. 232; Moran Bolt, etc., Mfg. Co. *v.* Midland Valley R. Co., 120 Mo. App. 626, 97 S. W. 628; Cohen *v.* Koster, (Supm. Ct. App. T.) 111 N. Y. Supp. 673; Cane Belt R. Co. *v.* Peden Iron, etc., Co., (Tex. Civ. App. 1907) 101 S. W. 528; Clarke-Lawrence Co. *v.* Chesapeake, etc., R. Co., (W. Va. 1908) 61 S. E. 364.

Common Carriers. — Atlantic Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070.

Innocent Delivery. — Kramer *v.* Haeger Storage Warehouse Co., 123 N. Y. App. Div. 316, 108 N. Y. Supp. 1.

702. 2. U. S. *v.* Ute Coal, etc., Co., (C. C. A.) 158 Fed. 20; Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1; Clay *v.* Sullivan, (Ala. 1908) 47 So. 153; Graham *v.* Purcell, (Supm. Ct. App. Div.) 110 N. Y. Supp. 813. See Rowe *v.* Sam Weichselbaum Co., (Ga. App. 1908) 60 S. E. 275.

703. 1. Westheimer *v.* State Loan Co., (Mass. 1907) 81 N. E. 289.

2. U. S. *v.* Ute Coal, etc., Co., (C. C. A.) 158 Fed. 20.

705. 5. *United States.* — Mathieu *v.* Goldberg, 156 Fed. 541.

Alabama. — Louisville, etc., R. Co. *v.* Britton, (Ala. 1907) 43 So. 108.

Georgia. — Southern Express Co. *v.* Sinclair, (Ga. 1908) 60 S. E. 849; Sparta Bank *v.* Butts, (Ga. App. 1908) 61 S. E. 298.

Kansas. — Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 302, 87 Pac. 80, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 705; Atchison, etc., R. Co. *v.* Schriver, 72 Kan. 550, 84 Pac. 119; Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 85 Pac. 408.

New York. — Palmer *v.* Ring, 113 N. Y. App. Div. 643, 99 N. Y. Supp. 290; Dethoff *v.* Gattie, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 589; McIntyre *v.* Smathers, 118 N. Y. App. Div. 776, 103 N. Y. Supp. 873; Pepper *v.* Price, (Supm. Ct. App. T.) 107 N. Y. Supp. 559.

North Carolina. — Bridgeport Organ Co. *v.* Snyder, (N. Car. 1908) 61 S. E. 51.

Texas. — Rabe *v.* Jourdan, (Tex. Civ. App. 1907) 102 S. W. 1167; Gaw *v.* Bingham, (Tex. Civ. App. 1908) 107 S. W. 931.

Wisconsin. — Seivert *v.* Galvin, (Wis. 1907) 113 N. W. 680.

706. 1. Beasley *v.* Baltimore, etc., R. Co., 27 App. Cas. (D. C.) 595; McSwegan *v.* Hawkinson, (Supm. Ct. App. T.) 95 N. Y. Supp. 548.

2. Mathieu *v.* Goldberg, 156 Fed. 541; Alabama Cotton Oil Co. *v.* Weeden, (Ala. 1907) 43 So. 926; New Liverpool Salt Co. *v.* Western Salt Co., 151 Cal. 479, 91 Pac. 152.

707. 1. Martin *v.* Houck Music Co., 79 Ark. 95, 94 S. W. 932.

5. Demand by Letter Not Sufficient. — Teeple *v.* Hawkeye Gold Dredging Co., (Iowa 1908) 114 N. W. 906.

Demand on Agent or Servant. — Robertson *v.* Kennedy, (Mich. 1908) 116 N. W. 413.

6. Teeple *v.* Hawkeye Gold Dredging Co., (Iowa 1908) 114 N. W. 906, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 707; Sutton *v.* Great Northern R. Co., 99 Minn. 376, 109 N. W. 815.

708. 1. Semon *v.* Adams, 79 Conn. 81, 63 Atl. 661; Dooley *v.* Gladiator Consol. Gold Mines, etc., Co., 134 Iowa 468, 109 N. W. 864; Atchison, etc., R. Co. *v.* Schriver, 72 Kan. 550, 84 Pac. 119; Robertson *v.* Kennedy, (Mich. 1908) 116 N. W. 413; Lissner *v.* Cohen, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 272, 97 N. Y. Supp. 227; Gaw *v.* Bingham, (Tex. Civ. App. 1908) 107 S. W. 931.

Admissibility of Evidence Showing Demand. — Frame *v.* Oregon Liquor Co., 48 Oregon 272, 85 Pac. 1009, *petition denied* on rehearing 48 Oregon 276, 86 Pac. 791.

4. Oney *v.* Pomfrey, (County Ct.) 54 Misc. (N. Y.) 171, 105 N. Y. Supp. 860.

11. C. L. Flaccus Glass Co. *v.* Alvey-Ferguson Co., (Ky. 1907) 102 S. W. 870; Cornell *v.* Mahoney, 190 Mass. 265, 76 N. E. 664; Sutton *v.* Great Northern R. Co., 99 Minn. 376, 109 N. W. 815.

Evidence Admissible to Show Reason for Refusal. — Young *v.* New Standard Concentrator Co., 148 Cal. 306, 83 Pac. 28.

General or Qualified Refusal. — Louisville, etc., R. Co. *v.* Britton, (Ala. 1907) 43 So. 108.

Delay in Transmission cannot be construed into a refusal, but a delay may under some circumstances amount to a refusal, as when it is unreasonable, and such question is for the jury. Teeple *v.* Hawkeye Gold Dredging Co., (Iowa 1908) 114 N. W. 906.

709. 4. See Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

710. 2. **Grounds of Refusal — Question of Fact for Jury.** — Schultz *v.* Becker, 131 Wis. 235, 110 N. W. 214.

6. Crow *v.* Ball, (Tex. Civ. App. 1907) 99 S. W. 583.

7. Leidy *v.* Carson, 115 Mo. App. 1, 90 S. W. 754.

8. Marder *v.* Heinemann, 114 N. Y. App. Div. 794, 100 N. Y. Supp. 250.

711. 1. Southern Express Co. *v.* Sinclair, (Ga. 1908) 60 S. E. 849.

2. Meise *v.* Wachtel, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 549, 104 N. Y. Supp. 915;

Dakin *v.* Elmore, (Supm. Ct. App. Div.) 111 N. Y. Supp. 519.

712. 6. Parke *v.* Nixon, 141 Mich. 267, 104 N. W. 597.

714. 7. Schwarz *v.* Kennedy, 142 Fed. 1027, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 714.

716. 8. Drumm-Flato Commission Co. *v.* Edmisson, 17 Okla. 344, 87 Pac. 311.

9. Atlanta Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070; Heiser *v.* Berger Catering Co., (Mo. App. 1907) 106 S. W. 579; Dakin *v.* Elmore, (Supm. Ct. App. Div.) 111 N. Y. Supp. 519; Hitson *v.* Hurt, (Tex. Civ. App. 1907) 101 S. W. 292.

717. 3. Holmes Mach. Co. *v.* Chalkley, 143 N. Car. 181, 55 S. E. 524.

718. 4. *Alabama.* — Ryan *v.* Young, 147 Ala. 660, 41 So. 954; McGowan *v.* Lynch, (Ala. 1907) 44 So. 573.

Arizona. — Ramirez *v.* Main, (Ariz. 1907) 89 Pac. 508.

California. — Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39.

Illinois. — Morley *v.* Roach, 116 Ill. App. 534; Wenham *v.* Wilson, 129 Ill. App. 553.

Kentucky. — Dennis *v.* Strunk, (Ky. 1908) 108 S. W. 957.

Maryland. — Seaboard Air Line R. Co. *v.* Phillips, (Md. 1908) 70 Atl. 232.

Massachusetts. — Hart *v.* Brierley, 189 Mass. 598, 76 N. E. 286.

Michigan. — Croze *v.* St. Mary's Canal Mineral Land Co., 143 Mich. 514, 107 N. W. 92.

Minnesota. — Sutton *v.* Great Northern R. Co., 99 Minn. 376, 109 N. W. 815.

New York. — Corn Exch. Bank *v.* Peabody, 111 N. Y. App. Div. 533, 98 N. Y. Supp. 78; Rosenkranz *v.* Jacobowitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 580, 99 N. Y. Supp. 469; Acme Lumber Co. *v.* Montgomery, 123 N. Y. App. Div. 620, 107 N. Y. Supp. 1074.

Oregon. — Austin *v.* Vanderbilt, 48 Oregon 206, 85 Pac. 519.

South Dakota. — Catlett *v.* Stokes, (S. Dak. 1906) 110 N. W. 84.

Texas. — Davidson *v.* Oberthier, (Tex. Civ. App. 1906) 93 S. W. 478; Witliff *v.* Spreen, (Tex. Civ. App. 1908) 112 S. W. 98.

719. 4. Posey *v.* Gamble, (Ala. 1906) 41 So. 416; Ryan *v.* Young, 147 Ala. 660, 41 So. 954; Clay *v.* Sullivan, (Ala. 1908) 47 So. 153; Treadwell *v.* Clark, 114 N. Y. App. Div. 493, 100 N. Y. Supp. 1; Gregg *v.* Columbia Bank, 72 S. Car. 458, 52 S. E. 195; Witliff *v.* Spreen, (Tex. Civ. App. 1908) 112 S. W. 98. See Craze *v.* Alabama State Land Co., (Ala. 1908) 46 So. 479.

720. 2. Lynch *v.* McGhan, (Cal. App. 1907) 93 Pac. 1044; Walton *v.* Henderson, (Ga. App. 1908) 61 S. E. 28; Catlett *v.* Stokes, (S. Dak. 1906) 110 N. W. 84.

5. C. W. Zimmerman Mfg. Co. *v.* Dunn, (Ala. 1907) 44 So. 533.

721. 1. Wallingford *v.* Kaiser, 191 N. Y. 392, 84 N. E. 295.

3. Wallingford *v.* Kaiser, 191 N. Y. 392, 84 N. E. 295; Nashville, etc., R. Co. *v.* Karthaus, (Ala. 1907) 43 So. 791.

4. Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 85 Pac. 408; Wallingford *v.* Kaiser, 191 N. Y. 392, 84 N. E. 295; Clarke-Lawrence Co. *v.* Chesapeake, etc., R. Co., (W. Va. 1908) 61 S. E. 364.

Valuation Not Limited by Bill of Lading. — Atlantic Coast Line R. Co. *v.* Goodwin, 1 Ga. App. 351, 57 S. E. 1070.

5. Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39; Wenham *v.* Wilson, 129 Ill. App. 553; Morley *v.* Roach, 116 Ill. App. 534; Hart *v.* Brierley, 189 Mass. 598, 76 N. E. 286; McGraw *v.* O'Neil, 123 Mo. App. 691, 101 S. W. 132; National Cotton Oil Co. *v.* Ray, (Tex. Civ. App. 1905) 91 S. W. 322. See also Rosenkranz *v.* Jacobowitz, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 580, 99 N. Y. Supp. 469; Walton *v.* Henderson, (Ga. App. 1908) 61 S. E. 28.

Goods Sold at Wholesale Prices. — New Liverpool Salt Co. *v.* Western Salt Co., 151 Cal. 479, 91 Pac. 152.

6. *Compare* Calhoun County *v.* Art Metal Constr. Co., (Ala. 1907) 44 So. 876, as to fixtures.

8. Barker *v.* Lewis Storage, etc., Co., 79 Conn. 342, 65 Atl. 143; Head *v.* Becklenberg, 116 Ill. App. 576.

722. 3. Messer *v.* Walton, (Tex. Civ. App. 1906) 92 S. W. 1037.

8. J. F. Ball, etc., Lumber Co. *v.* Simm's Lumber Co., (La. 1908) 46 So. 674.

723. 1. Ayers *v.* Hobbs, (Ind. App. 1908) 84 N. E. 554.

4. Young *v.* Pine Ridge Lumber Co., (Tex. Civ. App. 1907) 100 S. W. 784.

5. U. S. *v.* Ute Coal, etc., Co., (C. C. A.) 158 Fed. 20; Sandy River Cannel Coal Co. *v.* White House Cannel Coal Co., (Ky. 1907) 101 S. W. 319.

724. 1. U. S. *v.* Ute Coal, etc., Co., (C. C. A.) 158 Fed. 20.

2. Dennis *v.* Strunk, (Ky. 1908) 108 S. W. 957. See Craze *v.* Alabama State Lumber Co., (Ala. 1908) 46 So. 479.

3. J. F. Ball, etc., Lumber Co. *v.* Simm's Lumber Co., (La. 1908) 46 So. 674; Hoyt *v.* Duluth, etc., R. Co., (Minn. 1908) 115 N. W. 263; Messer *v.* Walton, (Tex. Civ. App. 1906) 92 S. W. 1037; Young *v.* Pine Ridge Lumber Co., (Tex. Civ. App. 1907) 100 S. W. 784.

4. C. W. Zimmerman Mfg. Co. *v.* Dunn, (Ala. 1907) 44 So. 533.

725. 2. C. W. Zimmerman Mfg. Co. *v.* Dunn, (Ala. 1907) 44 So. 533; Walton *v.* Henderson, (Ga. App. 1908) 61 S. E. 28; Hallwood Cash Register Co. *v.* Prouty, (Mass. 1907) 82 N. E. 6; Consolidated Kansas City Smelting, etc., Co. *v.* Gonzales, (Tex. Civ. App. 1908) 109 S. W. 946; H. C. Jaquith Co. *v.* Shumway, (Vt. 1908) 69 Atl. 157.

Evidence Admissible to Show Value of Lienor's Interest. — Baker *v.* Cotney, (Ala. 1907) 43 So. 786.

Testimony of Plaintiff as to Value of Second Hand Chattels Admissible. — Economy Bldg., etc., Co. *v.* Newman, 28 Ohio Cir. Ct. 103, *affirmed* 76 Ohio St. 579, 81 N. E. 1185.

Insufficient Evidence. — Bibb *v.* Roth, 101 Minn. 111, 111 N. W. 919.

Witness May Testify Concerning Value of Flawless Diamonds. — Austin *v.* Vanderbilt, 48 Oregon 206, 85 Pac. 519.

Owner Is a Competent Witness as to Value. — Berry *v.* Ingalls, (Mass. 1908) 85 N. E. 191.

Plaintiff Must Prove by Satisfactory Evidence the value of goods. Kramer *v.* Haeger Storage Warehouse Co., 123 N. Y. App. Div. 316, 108 N. Y. Supp. 1.

3. **Private Sales.** — Hallwood Cash Register Co. *v.* Prouty, (Mass. 1907) 82 N. E. 6.

726. 2. Ross *v.* Schrieves, (Mass. 1908) 85 N. E. 468; Vroom *v.* Sage, 100 N. Y. App. Div. 285, 91 N. Y. Supp. 456; Consolidated Kansas City Smelting, etc., Co. *v.* Gonzales, (Tex. Civ. App. 1908) 109 S. W. 946; Rich *v.* Utah Commercial, etc., Bank, 30 Utah 334, 84 Pac. 1105; Seivert *v.* Galvin, (Wis. 1907) 113 N. W. 680. See Barker *v.* Lewis Storage, etc., Co., 79 Conn. 342, 65 Atl. 143.

Such Evidence Is Advisory Only. — Pritchard *v.* Hooker, 114 Mo. App. 605, 90 S. W. 415.

3. Hallwood Cash Register Co. *v.* Prouty, (Mass. 1907) 82 N. E. 6; Grant *v.* Hathaway, 118 Mo. App. 604, 96 S. W. 417; Acme Lumber Co. *v.* Montgomery, 123 N. Y. App. Div. 620, 107 N. Y. Supp. 1074; Austin *v.* Vanderbilt, 48 Oregon 206, 85 Pac. 519. See Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729. *Compare* Catlett *v.* Stokes, (S. Dak. 1906) 110 N. W. 84.

5. Grant *v.* Hathaway, 118 Mo. App. 604, 96 S. W. 417.

6. Collins *v.* Smith, 158 Fed. 872.

Interest also Recoverable. — Morris *v.* Smith, (Tex. Civ. App. 1908) 112 S. W. 130.

7. Long *v.* McIntosh, 129 Ga. 660, 59 S. E. 779; Mutual L. Ins. Co. *v.* Allen, 212 Ill. 134, 72 N. E. 200.

728. 3. Ackerman *v.* Green, 195 Mo. 124, 93 S. W. 255.

5. **Face Value of Note and Interest Allowable** where note is negotiated before maturity. Hubbard *v.* State L. Ins. Co., 129 Iowa 13, 105 N. W. 332.

10. Owen *v.* Williams, (Colo. 1906) 89 Pac. 778.

729. 3. Dooley *v.* Gladiator Consol. Gold Mines, etc., Co., 134 Iowa 468, 109 N. W. 864.

5. Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 84 Pac. 408; McCrossan *v.* Reilly, 33 Pa. Super. Ct. 628, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 729.

730. 4. Aronson *v.* Oppegard, (N. Dak. 1907) 114 N. W. 377; McCrossan *v.* Reilly, 33 Pa. Super. Ct. 628, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 730.

5. **Common Carrier.** — See Missouri Pac. R. Co. *v.* Peru-Van Zandt Implement Co., 73 Kan. 295, 87 Pac. 80.

6. Bell *v.* State Bank, (Cal. 1908) 94 Pac. 889; Lowe *v.* Ozmun, 3 Cal. App. 387, 86 Pac. 729; Austin *v.* Vanderbilt, 48 Oregon 206, 85 Pac. 519. See Content *v.* Banner, 184 N. Y. 121, 76 N. E. 913; Uncle Sam's Loan Office *v.* Emery, (Tex. Civ. App. 1908) 107 S. W. 1155.

731. 2. Davis *v.* Bliss, 187 N. Y. 77, 79 N. E. 851.

5. Ryan *v.* Young, 147 Ala. 660, 41 So. 954; Agne *v.* Skewis-Moen Co., 98 Minn. 32, 107 N. W. 414; Aronson *v.* Oppegard, (N. Dak. 1907) 114 N. W. 377; Scaling *v.* Wichita Falls First Nat. Bank, (Tex. Civ. App. 1905) 87 S. W. 715; American Nat. Bank *v.* San Marcos First Nat. Bank, (Tex. Civ. App. 1906) 92 S. W. 439.

6. Morris *v.* Attalla Bank, (Ala. 1907) 45 So. 219; Lusch *v.* Huber Mfg. Co., (Neb. 1907) 112 N. W. 284; Hanson *v.* Skogan, 14 N. Dak. 445, 105 N. W. 90; Force *v.* Peterson Mach. Co., (N. Dak. 1908) 116 N. W. 84; Green *v.* Scruggs, 73 S. Car. 403, 53 S. E. 612. See also Priddy *v.* Miners', etc., Bank, (Mo. App. 1908) 111 S. W. 865; Springer *v.* Jenkins, 47 Oregon 502, 84 Pac. 479.

732. 1. Haines *v.* Chappell, 1 Ga. App. 480, 58 S. E. 220; Wallingford *v.* Kaiser, 191 N. Y. 392, 84 N. E. 295.

Statute Providing for Double Damages. — Springer *v.* Jenkins, 47 Oregon 502, 84 Pac. 479.

Recovery in Treble Damages for the removal of timber is allowed by statute. State *v.* Rat Portage Lumber Co., (Minn. 1908) 115 N. W. 162.

3. **Attorney's Fees Recoverable.** — Berry *v.* Ingalls, (Mass. 1908) 85 N. E. 191.

Attorney's Fees Not Recoverable. — Jackson *v.* Poteet, (Tex. Civ. App. 1905) 89 S. W. 980.

5. Lynch *v.* McGhan, (Cal. App. 1907) 93 Pac. 1044; Aronson *v.* Oppegard, (N. Dak. 1907) 114 N. W. 377.

Attorney's Fees Not Recoverable. — Nichols *v.* Mapes, 1 Cal. App. 349, 82 Pac. 265.

7. Jackson *v.* Poteet, (Tex. Civ. App. 1905) 89 S. W. 980.

733. 1. *United States.* — Drumm-Flato Commission Co. *v.* Edmisson, 208 U. S. 534, 28 U. S. Sup. Ct. 367, *affirming* 17 Okla. 344, 87 Pac. 311.

Alabama. — Nashville, etc., R. Co. *v.* Karthaus, (Ala. 1907) 43 So. 793.

California. — Lynch *v.* McGhan, (Cal. App. 1907) 93 Pac. 1044.

Illinois. — Mutual L. Ins. Co. *v.* Allen, 212 Ill. 134, 72 N. E. 200.

Iowa. — Hubbard *v.* State L. Ins. Co., 129 Iowa 13, 105 N. W. 332; Dooley *v.* Gladiator Consol. Gold Mines, etc., Co., 134 Iowa 468, 109 N. W. 864.

Kentucky. — Dennis *v.* Strunk, (Ky. 1908) 108 S. W. 957.

Maryland. — Seaboard Air Line R. Co. *v.* Phillips, (Md. 1908) 70 Atl. 232.

Minnesota. — Sutton *v.* Great Northern R. Co., 99 Minn. 376, 109 N. W. 815.

New York. — Corn Exch. Bank *v.* Peabody, 111 N. Y. App. Div. 553, 98 N. Y. Supp. 78; Rosenkranz *v.* Jacobwitz, 99 N. Y. Supp. 469; Dakin *v.* Elmore, (Supm. Ct. App. Div.) 111 N. Y. Supp. 519.

Oklahoma. — Drumm-Flato Commission Co. *v.* Edmisson, 17 Okla. 344, 87 Pac. 311.

South Dakota. — See Catlett *v.* Stokes, (S. Dak. 1906) 110 N. W. 84.

Texas. — Davidson *v.* Oberthier, (Tex. Civ. App. 1906) 93 S. W. 478.

Washington. — Greenwood *v.* Corbin, (Wash. 1908) 93 Pac. 433.

West Virginia. — Clarke-Lawrence Co. *v.* Chesapeake, etc., R. Co., (W. Va. 1908) 61 S. E. 364.

734. 4. McGowan *v.* Lynch, (Ala. 1907) 44 So. 573; Lynch *v.* McGhan, (Cal. App.

1907) 93 Pac. 1044; Dakin *v.* Elmore, (Supm. Ct. App. Div.) 111 N. Y. Supp. 519.

5. State *v.* Kelly, (Kan. 1908) 96 Pac. 40, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 734.

Destination of Goods. — Wallingford *v.* Kaiser, 191 N. Y. 392, 84 N. E. 295.

6. Owen *v.* Williams, (Colo. 1906) 89 Pac. 778; Seaboard Air Line R. Co. *v.* Phillips, (Md. 1908) 70 Atl. 232; Sutton *v.* Great Northern R. Co., 99 Minn. 376, 109 N. W. 815; Davidson *v.* Oberthier, (Tex. Civ. App. 1906) 93 S. W. 478.

735. 2. Plummer *v.* Reeves, 83 Ark. 10, 102 S. W. 376.

736. 1. State *v.* Kelly, (Kan. 1908) 96 Pac. 40, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 736.

737. 3. Bell *v.* State Bank, (Cal. 1908) 94 Pac. 889; Freeman *v.* Ingerson, 143 Mich. 7, 106 N. W. 278.

Property Left by Deceased Person. — White *v* Blankenbeckler, 115 Mo. App. 722, 92 S. W. 503.

4. Austin *v.* Van Loon, 36 Colo. 196, 85 Pac. 183.

6. Davis *v.* Hardwick, (Tex. Civ. App. 1906) 94 S. W. 359.

11. Bell *v.* State Bank, (Cal. 1908) 94 Pac. 889; Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39; Freeman *v.* Ingerson, 143 Mich. 7, 106 N. W. 278; Medina Gas, etc., Co. *v.* Buffalo Loan, etc., Co., 119 N. Y. App. Div. 245, 104 N. Y. Supp. 625; Whitaker *v.* Poston, (Tenn. 1908) 110 S. W. 1019; Clement *v.* Clement, (Tex. Civ. App. 1906) 99 S. W. 138; Sexton Rice, etc., Co. *v.* Sexton, (Tex. Civ. App. 1907) 106 S. W. 728; Palmer *v.* O'Rourke, 130 Wis. 507, 110 N. W. 389.

Action by State for Removal of Timber. — State *v.* Rat Portage Lumber Co., (Minn. 1908) 115 N. W. 162.

738. 2. See Mallary *v.* Moon, (Ga. 1908) 61 S. E. 401.

739. 1. St. Louis Third Nat. Bank *v.* Rice, (C. C. A.) 161 Fed. 822.

2. St. Louis Third Nat. Bank *v.* Rice, 161 Fed. 822.

6. Blowers *v.* Canadian Pac. R. Co., 155 Fed. 935, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 739; Reynolds Banking Co. *v.* Neisler, (Ga. 1908) 61 S. E. 828; Woods Mach. Co. *v.* Woodcock, 43 Wash. 317, 86 Pac. 570; Lee Southern Car Mfg., etc., Co. *v.* Wagner, (N. Mex. 1907) 89 Pac. 259.

Payment under Protest Is Not a Ratification. — Berry *v.* Ingalls, (Mass. 1908) 85 N. E. 191.

Receiving and Retaining a Portion of the Proceeds of certain property knowing the same had been wrongfully converted does not constitute a waiver of the remaining portion. State *v.* Robb-Lawrence Co., (N. Dak. 1908) 115 N. W. 846.

740. 1. Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247.

3. Baker *v.* Hutchinson, 147 Ala. 636, 41 So. 809.

Nor Receiving a Portion of Proceeds. — Farmer *v.* Graettinger Bank, 130 Iowa 469, 107 N. W. 170.

5. Concurrent Remedy Ex Contractu. — St. Louis Third Nat. Bank *v.* Rice, (C. C. A.) 161 Fed. 822; Bell *v.* State Bank, (Cal. 1908) 94 Pac. 889; Haines *v.* Chappell, 1 Ga. App. 480, 58 S. E. 220; Starnes *v.* Roberts, 128 Ga. 718, 58 S. E. 348; Rowe *v.* Sam Weichselbaum Co., (Ga. App. 1908) 60 S. E. 275; New York Market Gardeners' Assoc. *v.* Adams Dry Goods Co., 115 N. Y. App. Div. 42, 100 N. Y. Supp. 596; Whitaker *v.* Poston, (Tenn. 1908) 110 S. W. 1019; Hitson *v.* Hurt, (Tex. Civ. App. 1907) 101 S. W. 292.

Effect of Election of Remedy. — Calhoun County *v.* Art Metal Constr. Co., (Ala. 1907) 44 So. 876; Rowe *v.* Sam Weichselbaum Co., (Ga. App. 1908) 60 S. E. 275; Roberts *v.* Moss, (Ky. 1907) 106 S. W. 297; Haynes *v.* Temple, (Mass. 1908) 84 N. E. 467; Smith *v.* Jefferson Bank, 120 Mo. App. 527, 97 S. W. 247.

TRUST DEEDS AND POWER OF SALE MORTGAGES.

753. 1. Foot *v.* Burr, (Colo. 1907) 92 Pac. 236; Brown *v.* Comonow, (N. Dak. 1908) 114 N. W. 728, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 752, 753; Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210.

2. Langmaack *v.* Keith, 19 S. Dak. 351, 103 N. W. 210.

3. Weber *v.* McCleverty, 149 Cal. 316, 86 Pac. 706; Foot *v.* Burr, (Colo. 1907) 92 Pac. 236; Brown *v.* Comonow, (N. Dak. 1908) 114 N. W. 728, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 752, 753.

4. *In re* Jersey Island Packing Co., (C. C. A.) 138 Fed. 625, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

754. 6. Weber *v.* McCleverty, 149 Cal. 316, 86 Pac. 706.

756. 2. Aultman, etc., Co. *v.* Meade, (Ky. 1905) 89 S. W. 137; Marquam *v.* Ross, (Oregon 1906) 86 Pac. 1.

758. 4. Baggett *v.* Edwards, 126 Ga. 463, 55 S. E. 250; Taylor *v.* Williams, (Tex. 1908) 108 S. W. 815.

760. 1. Frank *v.* Colonial, etc., Mortg. Co., 86 Miss. 103, 38 So. 340, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 760, as to *Illinois* statute.

2. Frank *v.* Colonial, etc., Mortg. Co., 80 Miss. 103, 38 So. 340, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 760, as to *Texas* statute.

Death of Owner of Equity of Redemption Revokes Power of Sale. — Williams *v.* Armistead, (Tex. Civ. App. 1905) 90 S. W. 925.

7. Searles *v.* Kelley, 88 Miss. 228, 40 So. 484; Watson *v.* Perkins, 88 Misc. 64, 40 So. 643.

761. 1. Barnesville First Nat. Bank *v.* St. Anthony, etc., El. Co., (Minn. 1908) 114 N. W. 265.

764. 6. Givens *v.* McCray, 196 Mo. 306, 93 S. W. 374; Chas. Green Real Estate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 358, 93 S. W. 1111; *In re* Bostwick, 114 N. Y. App. Div. 199, 99 N. Y. Supp. 925; Preston *v.* Johnson, 105 Va. 238, 53 S. E. 1.

765. 4. Aultman, etc., Co. *v.* Meade, (Ky. 1905) 89 S. W. 137; Givens *v.* McCray, 196 Mo. 306, 93 S. W. 374; Chas. Green Real Es-

tate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 358, 93 S. W. 1111.

6. Chas. Green Real Estate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 358, 93 S. W. 1111; Davis *v.* Hughes, (Tex. Civ. App. 1905) 85 S. W. 1161.

8. O. S. Kelly Co. *v.* McCarty, 75 Kan. 818, 88 Pac. 882; Manville Covering Co. *v.* Babcock, (R. I. 1907) 68 Atl. 421.

767. 3. Brown *v.* Comonow, (N. Dak. 1908) 114 N. W. 728, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 767.

4. Greenfield *v.* Stout, 122 Ga. 303, 50 S. E. 111.

768. 6. Stockwell *v.* Barnum, (Cal. 1908) 94 Pac. 400.

10. Ubhoff *v.* Brandenburg, 26 App. Cas. (D. C.) 3.

769. 6. Davis *v.* Hughes, (Tex. Civ. App. 1905) 85 S. W. 1161; Ward *v.* Forrester, (Tex. Civ. App. 1905) 87 S. W. 751.

770. 1. Watson *v.* Perkins, 88 Miss. 64, 40 So. 643; Wilder *v.* Moren, (Tex. Civ. App. 1905) 89 S. W. 1087. See also Ward *v.* Forrester, (Tex. Civ. App. 1905) 87 S. W. 751.

4. See Ward *v.* Forrester, (Tex. Civ. App. 1905) 87 S. W. 751.

771. 10. Brown *v.* British American Mortg. Co., 86 Miss. 388, 38 So. 312.

773. 3. Brown *v.* Comonow, (N. Dak. 1908) 114 N. W. 728.

4. Brown *v.* Comonow, (N. Dak. 1908) 114 N. W. 728.

5. Brown *v.* Comonow, (N. Dak. 1908) 114 N. W. 728.

6. Casserly *v.* Morrow, 101 Minn. 16, 111 N. W. 654.

Sale Voidable, but Not a Nullity. — Higbee *v.* Daeley, 15 N. Dak. 339, 109 N. W. 318.

8. Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717.

774. 3. Scott *v.* Blades Lumber Co., 144 N. Car. 44, 56 S. E. 548.

8. Scott *v.* Blades Lumber Co., 144 N. Car. 44, 56 S. E. 548, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 774.

775. 6. Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142.

A Sale Is Void when there is nothing due upon the mortgage. Pratt *v.* Beiseker, (N. Dak. 1908) 115 N. W. 835.

776. 6. **Ten Years Limitation.** — Scott *v.* Blades Lumber Co., 144 N. Car. 44, 56 S. E. 548.

777. 4. Ford *v.* Lewis, 146 Ala. 190, 41 So. 144; Caldwell *v.* Kimbrough, (Miss. 1907) 45 So. 7.

6. Union Trust Co. *v.* Thomas, 105 Md. 507, 66 Atl. 450.

8. Moody *v.* Atkins, 146 Ala. 684, 40 So. 305.

13. Ford *v.* Lewis, 146 Ala. 190, 41 So. 144; Moody *v.* Atkins, 146 Ala. 684, 40 So. 305; Caldwell *v.* Kimbrough, (Miss. 1907) 45 So. 7.

The Adjudication of the Insolvency of the mortgagor matures the mortgage debt. Union Trust Co. *v.* Thomas, 105 Md. 507, 66 Atl. 450.

778. 5. Union Trust Co. *v.* Thomas, 105 Md. 507, 66 Atl. 450.

6. Union Trust Co. *v.* Thomas, 105 Md. 507, 66 Atl. 450; Miller *v.* McLaughlin, 141 Mich. 433, 104 N. W. 780.

779. 4. Foot *v.* Burr, (Colo. 1907) 92 Pac. 236; Williams *v.* Armistead, (Tex. Civ. App. 1905) 90 S. W. 925.

5. **North Dakota Statute.** — Scott *v.* District Ct., 15 N. Dak. 259, 107 N. W. 61.

6. Scott *v.* District Ct., 15 N. Dak. 259, 107 N. W. 61.

7. Roberts *v.* True, (Cal. App. 1908) 94 Pac. 392; Clark *v.* Beck, 14 N. Dak. 287, 103 N. W. 755.

8. Peebles *v.* Yates, 88 Miss. 289, 40 So. 996; Potter *v.* Schaffer, (Mo. 1908) 108 S. W. 60.

780. 9. Adams *v.* Carpenter, 187 Mo. 613, 86 S. W. 445.

783. 1. O. S. Kelly Co. *v.* McCarty, 75 Kan. 818, 88 Pac. 882.

8. Craig *v.* Meriwether, 84 Ark. 298, 105 S. W. 585; Greenfield *v.* Stout, 122 Ga. 303, 50 S. E. 111; Garrett *v.* Crawford, 128 Ga. 519, 57 S. E. 793; Chace *v.* Morse, 189 Mass. 559, 76 N. E. 143; Cox *v.* American Freehold, etc., Mortg. Co., 88 Miss. 88, 40 So. 739; Davis *v.* Hughes, (Tex. Civ. App. 1905) 85 S. W. 1161; Preston *v.* Johnson, 105 Va. 238, 53 S. E. 1; Shears *v.* Traders' Bldg. Assoc., 58 W. Va. 665, 52 S. E. 860.

784. 5. Garrett *v.* Crawford, 128 Ga. 519, 57 S. E. 792; Ullman *v.* Devereux, (Tex. Civ. App. 1906) 93 S. W. 472.

7. See O. S. Kelly Co. *v.* McCarty, 75 Kan. 818, 88 Pac. 882.

785. 1. **Measure of Damages — Real Estate.** — Aultman, etc., Co. *v.* Meade, (Ky. 1905) 89 S. W. 137; Missouri Real Estate Syndicate *v.* Sims, 121 Mo. App. 156, 98 S. W. 783; Manville Covering Co. *v.* Babcock, (R. I. 1907) 68 Atl. 423; Ullman *v.* Devereux, (Tex. Civ. App. 1906) 93 S. W. 472; Ullman *v.* Devereux, (Tex. Civ. App. 1907) 102 S. W. 1163.

3. Williams *v.* J. P. Williams Co., 122 Ga. 178, 50 S. E. 52; Garrett *v.* Crawford, 128 Ga. 519, 57 S. E. 792. See also Manville Covering Co. *v.* Babcock, (R. I. 1907) 68 Atl. 421.

786. 1. Watson *v.* Perkins, 88 Miss. 64, 40 So. 643; Cox *v.* American Freehold, etc., Mortg. Co., 88 Miss. 88, 40 So. 739; Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717; Davis *v.* Hughes, (Tex. Civ. App. 1905) 85 S. W. 1161. See also Shears *v.* Traders' Bldg. Assoc., 58 W. Va. 665, 52 S. E. 860.

787. 1. Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792; Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717.

2. Nash *v.* Northwest Land Co., 15 N. Dak. 566, 108 N. W. 792; Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717.

788. 2. Merryman *v.* Blount, 79 Ark. 1, 94 S. W. 714; Craig *v.* Meriwether, 84 Ark. 298, 105 S. W. 585.

5. Garrett *v.* Crawford, 128 Ga. 519, 57 S. E. 793, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 788; O. S. Kelly Co. *v.* McCarty, 75 Kan. 818, 88 Pac. 882; Call *v.* Dancy, 144 N. Car. 494, 57 S. E. 220; Bekkedal *v.* Johnson, 127 Wis. 624, 107 N. W. 5.

7. Shea *v.* Ballard, 61 W. Va. 255, 56 S. E. 472.

8. Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142; Preston *v.* Johnson, 105 Va. 238, 53 S.

E. 1. See also Armistead *v.* Kirby, 106 Va. 585, 56 S. E. 570.

790. 6. Casserly *v.* Morrow, 101 Minn. 16, 111 N. W. 654.

7. Casserly *v.* Morrow, 101 Minn. 16, 111 N. W. 654.

8. Casserly *v.* Morrow, 101 Minn. 16, 111 N. W. 654.

791. 2. Preston *v.* Johnson, 105 Va. 238, 53 S. E. 1.

793. 5. See Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142.

798. 6. See Orvik *v.* Casselman, 15 N. Dak. 34, 105 N. W. 1105.

799. 8. **South Carolina Statute.** — Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639.

800. 3. Shaw *v.* Smith, (Md. 1908) 69 Atl. 116.

801. 8. Quinn *v.* McDale, (R. I. 1907) 67 Atl. 327.

803. 3. **Sale Should Be to Highest Bidder.** — Stockwell *v.* Barnum, (Cal. 1908) 94 Pac. 400.

804. 1. **Place of Sale May Be Changed or Waived in Writing.** — Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639.

3. Fretwell *v.* Carter, (S. Car. 1907) 59 S. E. 639.

7. Payton *v.* McPhaul, 128 Ga. 510, 58 S. E. 50, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 804.

805. 4. Garrett *v.* Crawford, 128 Ga. 519, 57 S. E. 792.

5. **The Time Stated in the Notice** of sale is "railroad" or "standard time," not solar time. Orvik *v.* Casselman, 15 N. Dak. 34, 105 N. W. 1105.

806. 9. Givens *v.* McCray, 196 Mo. 306, 93 S. W. 374.

807. 6. See Givens *v.* McCray, 196 Mo. 306, 93 S. W. 374; Hamilton *v.* Stephenson, 106 Va. 77, 55 S. E. 577.

808. 3. Givens *v.* McCray, 196 Mo. 306, 93 S. W. 374.

4. Givens *v.* McCray, 196 Mo. 306, 93 S. W. 374.

5. See Weber *v.* McCleverty, 149 Cal. 316, 86 Pac. 706.

809. 2. See Shears *v.* Traders' Bldg. Assoc., 58 W. Va. 665, 52 S. E. 860; Weber *v.* McCleverty, 149 Cal. 316, 86 Pac. 706.

810. 8. Chas. Green Real Estate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 358, 93 S. W. 1111.

811. 10. Craig *v.* Meriwether, 84 Ark. 298, 105 S. W. 585.

812. 2. See Ford *v.* Lewis, 146 Ala. 190, 41 So. 144.

813. 3. Stockwell *v.* Barnum, (Cal. 1908) 94 Pac. 400; Starkweather *v.* Jenner, 27 App. Cas. (D. C.) 348; Shaw *v.* Smith, (Md. 1908) 69 Atl. 116; Weyburn *v.* Watkins, (Miss. 1907) 44 So. 145; Chas. Green Real Estate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 358, 93 S. W. 1111; Davis *v.* Keen, 142 N. Car. 496, 55 S. E. 359, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 813; Lawler *v.* French, 104 Va. 140, 51 S. E. 180.

4. Weyburn *v.* Watkins, (Miss. 1907) 44 So. 145.

5. Shaw *v.* Smith, (Md. 1908) 69 Atl. 116; Davis *v.* Keen, 142 N. Car. 496, 55 S. E. 359.

814. 1. Stockwell *v.* Barnum, (Cal. 1908) 94 Pac. 400; Shaw *v.* Smith, (Md. 1908) 69 Atl. 116; Chas. Green Real Estate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 358, 93 S. W. 1111.

2. Chas. Green Real Estate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 358, 93 S. W. 1111; Davis *v.* Keen, 142 N. Car. 496, 55 S. E. 359.

4. Carr *v.* Graham, 128 Ga. 622, 57 S. E. 875; Davis *v.* Keen, 142 N. Car. 496, 55 S. E. 359. See also Hamilton *v.* Stephenson, 106 Va. 77, 55 S. E. 577.

8. Davis *v.* Keen, 142 N. Car. 496, 55 S. E. 359.

815. 2. Lawler *v.* French, 104 Va. 140, 51 S. E. 180.

816. 3. Merryman *v.* Blount, 79 Ark. 1, 94 S. W. 714.

8. Payton *v.* McPhaul, 128 Ga. 510, 58 S. E. 50, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 818 [816]; Williams *v.* J. P. Williams Co., 122 Ga. 178, 50 S. E. 52; Yarborough *v.* Hughes, 139 N. Car. 199, 51 S. E. 904.

818. 8. Patchell *v.* Colonial Invest., etc., Co., 3 N. Bruns. Eq. Rep. 429.

819. 1. See Yarborough *v.* Hughes, 139 N. Car. 199, 51 S. E. 904.

2. Payton *v.* McPhaul, 128 Ga. 510, 58 S. E. 50, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 819; Williams *v.* J. P. Williams Co., 122 Ga. 178, 50 S. E. 52.

7. Smith *v.* Downey, 38 Colo. 165, 88 Pac. 159; Stark *v.* Love, (Mo. App. 1907) 106 S. W. 87.

820. 6. Smith *v.* Downey, 38 Colo. 165, 88 Pac. 159.

11. Haggart *v.* Wilczinski, (C. C. A.) 143 Fed. 22; Chase *v.* Morse, 189 Mass. 559, 76 N. E. 142; Wasserman *v.* McDonnell, 190 Mass. 326, 76 N. E. 959.

821. 1. Malmberg *v.* Peterson, (S. Dak. 1906) 108 N. W. 339; Shears *v.* Traders' Bldg. Assoc., 58 W. Va. 665, 52 S. E. 860.

822. 7. Garrett *v.* Crawford, 128 Ga. 519, 57 S. E. 792.

10. Garrett *v.* Crawford, 128 Ga. 519, 57 S. E. 792. See also Adams *v.* Carpenter, 187 Mo. 613, 86 S. W. 445.

824. 2. Garrett *v.* Crawford, 128 Ga. 519, 57 S. E. 792; Payton *v.* McPhaul, 128 Ga. 510, 58 S. E. 50.

825. 10. Continental Bldg., etc., Assoc. *v.* Light, (Cal. App. 1907) 92 Pac. 1034.

11. Rucker *v.* Hyde, 118 Tenn. 358, 100 S. W. 739; Mathews *v.* Nefsy, 13 Wyo. 458, 81 Pac. 305.

827. 7. See Bekkedal *v.* Johnson, 127 Wis. 624, 107 N. W. 5.

9. Atkins *v.* Atkins, (Mass. 1907) 80 N. E. 806.

10. **The Statute, Being Penal,** should be strictly construed. Hammel *v.* Cairnes, 129 Wis. 125, 107 N. W. 1089.

830. 6. **The Auctioneer's Fee May Be Paid by the Trustee,** and, if authorized by the terms of the trust deed, he can retain an amount sufficient to reimburse himself. Continental Bldg., etc., Assoc. *v.* Light, (Cal. App. 1907) 92 Pac. 1034.

831. 4. Shaw *v.* Smith, (Md. 1908) 69 Atl.

832. 3. **A Trustee May Properly Retain** an amount sufficient to pay an attorney's fee, where he has paid it according to the terms of the trust deed. Continental Bldg., etc., Assoc. *v.* Light, (Cal. App. 1907) 92 Pac. 1034.

833. 9. Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591.

10. Moring *v.* Privott, (N. Car. 1908) 60 S. E. 509.

834. 9. *In re* Grange, [1907] 2 Ch. 20.

838. 1. **Equity May Restrain a Sale** at the instance of a trustee in bankruptcy of the estate of mortgagor. *In re* Jersey Island Packing Co., (C. C. A.) 138 Fed. 625.

2. See Ravold *v.* Grumme, 118 Mo. App. 305, 94 S. W. 298.

The Purchaser of Land at a Tax Sale cannot obtain an injunction under a statute limiting the right to the mortgagor, his agent or attorney. Scott *v.* District Ct., 15 N. Dak. 259, 107 N. W. 61.

3. Peebles *v.* Yates, 88 Miss. 289, 40 So. 996; McDonald *v.* Ramper, 89 Miss. 221, 42 So. 877; House *v.* Carr, 185 N. Y. 453, 78 N. E. 171.

4. See Peebles *v.* Yates, 88 Miss. 289, 40 So. 996.

Laches Will Bar Application. — Ravold *v.* Grumme, 118 Mo. App. 305, 94 S. W. 298.

839. 11. Wittmeier *v.* Tidwell, 147 Ala. 354, 40 So. 963; McCombs *v.* Elmes, (Mass. 1907) 83 N. E. 306; Peebles *v.* Yates, 88 Miss. 289, 40 So. 996.

Equity Will Restrain Proposed Sale in Violation of Terms of Power. — Sellers *v.* Page, 127 Ga. 633, 56 S. E. 1011.

840. 4. Peebles *v.* Yates, 88 Miss. 289, 40 So. 996.

8. House *v.* Carr, 185 N. Y. 453, 78 N. E. 171.

10. See Baggett *v.* Edwards, 126 Ga. 463, 55 S. E. 250.

12. Baggett *v.* Edwards, 126 Ga. 463, 55 S. E. 250.

841. 8. Wittmeier *v.* Tidwell, 147 Ala. 354, 40 So. 963; Yarbrough *v.* Thornton, 147 Ala. 221, 42 So. 402; Smith *v.* Downey, 38 Colo. 165, 88 Pac. 159; Givens *v.* McCray, 196 Mo. 306, 93 S. W. 374; Stark *v.* Love, (Mo. App. 1907) 106 S. W. 87; Davis *v.* Keen, 142 N. Car. 496, 55 S. E. 359; Wilder *v.* Moren, (Tex. Civ. App. 1905) 89 S. W. 1087; Wasserman *v.* Metzger, 105 Va. 744, 54 S. E. 893; Shears *v.* Traders' Bldg. Assoc., 58 W. Va. 665, 52 S. E. 860.

11. Yarbrough *v.* Thornton, 147 Ala. 221, 42 So. 402; Missouri Real Estate Syndicate *v.* Sims, 121 Mo. App. 156, 98 S. W. 783.

12. Preston *v.* Johnson, 105 Va. 238, 53 S. E. 1. See also Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142.

Notice to Debtor Must Be Given. — Armistead *v.* Kirby, 106 Va. 585, 56 S. E. 570.

Sale Without Posting Notice as Required by Statute. — Shea *v.* Ballard, 61 W. Va. 255, 56 S. E. 472.

842. 5. **Insufficient Grounds for Setting Sale Aside** — *Sale of Homestead with Other Parcels en Masse.* — Weber *v.* McCleverty, 149 Cal. 316, 86 Pac. 706.

Employee of Trustee Bidding on Behalf of Purchaser. — Stockwell *v.* Barnum, (Cal. 1908) 94 Pac. 400.

Usury Insufficient to Invalidate Power of Sale. — Payton *v.* McPhaul, 128 Ga. 510, 58 S. E. 50.

Sale on Market Day. — Shaw *v.* Smith, (Md. 1908) 69 Atl. 116.

Mistake in Dating of Notice of Sale Otherwise Correct. — Weyburn *v.* Watkins, (Miss. 1907) 44 So. 145.

Discretionary Sale in Gross Instead of in Parcels. — Givens *v.* McCray, 196 Mo. 306, 93 S. W. 374.

Defective but Not Injurious Announcement by Trustee at Sale. — Chas. Green Real Estate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 358, 93 S. W. 1111.

Insufficient Waiver of Power of Sale. — Lawler *v.* French, 104 Va. 140, 51 S. E. 180.

6. Wittmeier *v.* Tidwell, 147 Ala. 354, 40 So. 963; Atkins *v.* Atkins, (Mass. 1907) 80 N. E. 806. See also Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142.

14. Givens *v.* McCray, 196 Mo. 306, 93 S. W. 374.

15. Jabert *v.* Wagner, 147 Mich. 409, 110 N. W. 942; Lawler *v.* French, 104 Va. 140, 51 S. E. 180; Hamilton *v.* Stephenson, 106 Va. 77, 55 S. E. 577.

843. 3. See Missouri Real Estate Syndicate *v.* Sims, 121 Mo. App. 156, 98 S. W. 783.

4. See Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142.

5. **Notice to Purchaser from Grantor in Trust Deed Not Necessary.** — Shea *v.* Ballard, 61 W. Va. 255, 56 S. E. 472.

7. See Aultman, etc., Co. *v.* Meade, (Ky. 1905) 89 S. W. 137.

Estoppel of Mortgagor. — Garrett *v.* Crawford, 128 Ga. 519, 57 S. E. 792.

Mere Silence of Grantor at Irregular Sale Will Not Work Estoppel. — Shears *v.* Traders' Bldg. Assoc., 58 W. Va. 665, 52 S. E. 860.

9. The receipt and retention of a portion of the proceeds of the sale will not amount to a ratification, if done without knowledge of the fraud and irregularity in the sale. Wasserman *v.* Metzger, 105 Va. 744, 54 S. E. 893.

11. Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142.

12. Higbee *v.* Daeley, 15 N. Dak. 339, 109 N. W. 318.

844. 7. Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142; Higbee *v.* Daeley, 15 N. Dak. 339, 109 N. W. 318.

13. Potter *v.* Schaffer, (Mo. 1908) 108 S. W. 60.

14. Griffen *v.* Cooper, (N. J. 1908) 68 Atl. 1095.

845. 2. Potter *v.* Schaffer, (Mo. 1908) 108 S. W. 60.

846. 1. Potter *v.* Schaffer, (Mo. 1908) 108 S. W. 60. See also Chace *v.* Morse, 189 Mass. 559, 76 N. E. 142.

TRUSTS AND TRUSTEES.

858. 1. Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047, *citing* 28 AM. AND ENG ENCYC. OF LAW (2d ed.) 858; Allen *v.* Rees, (Iowa 1907) 110 N. W. 583, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 858; Maxwell *v.* Wood, 133 Iowa 724, 111 N. W. 203; First State Bank *v.* Sibley County Bank, 96 Minn. 456, 105 N.

W. 485; Habegger *v.* Kipp, 96 Minn. 456, 105 N. W. 489; Wilson *v.* Kennedy, (W. Va. 1907) 59 S. E. 736.

Power in Trust. — *In re* Campbell, 149 Cal. 712, 87 Pac. 573.

A Voluntary Trust is a device by which a donor effectuates a gift either of property or of its beneficial use to a designated donee. *In re* Podhojsky, (Iowa 1908) 115 N. W. 590.

859. 2. Jones *v.* Byrne, 149 Fed. 457, (C. C. A.) 159 Fed. 321; Eaton *v.* Barnes, 121 Ga. 548, 49 S. E. 593; Ames *v.* Howes, 13 Idaho 756, 93 Pac. 35; Dexter *v.* Macdonald, 196 Mo. 373, 95 S. W. 359; Eagle Min., etc., Co. *v.* Hamilton, (N. Mex. 1907) 91 Pac. 718; Bateman *v.* Ward, (Tex. Civ. App. 1906) 93 S. W. 508.

3. Jones *v.* Byrne, 149 Fed. 457, (C. C. A.) 159 Fed. 321; Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Crabtree *v.* Potter, 150 Cal. 710, 89 Pac. 971; Eaton *v.* Barnes, 121 Ga. 548, 49 S. E. 593; Ames *v.* Howes, 13 Idaho 756, 93 Pac. 35; Eagle Min., etc., Co. *v.* Hamilton, (N. Mex. 1907) 91 Pac. 718; Bateman *v.* Ward, (Tex. Civ. App. 1906) 93 S. W. 508; Johnson *v.* Ludwick, 58 W. Va. 464, 52 S. E. 489; Newman *v.* Newman, 60 W. Va. 371, 55 S. E. 377.

862. 3. *Alabama.* — Hinton *v.* Farmer, (Ala. 1906) 42 So. 563; Everett *v.* Jordan, (Ala. 1906) 43 So. 811.

California. — *In re* Heywood, 148 Cal. 188, 82 Pac. 755.

Georgia. — Stiles *v.* Cummings, 122 Ga. 635, 50 S. E. 484.

Illinois. — Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Matthern *v.* Rankin, 228 Ill. 318, 81 N. E. 1024.

Massachusetts. — Lima *v.* Cook, (Mass. 1907) 83 N. E. 12.

New Jersey. — Kronson *v.* Lipschitz, 68 N. J. Eq. 367, 60 Atl. 819; Wolters *v.* Shraft, (N. J. 1905) 66 Atl. 398.

North Carolina. — Webb *v.* Borden, 145 N. Car. 188, 58 S. E. 1083.

Pennsylvania. — *In re* Shower, 211 Pa. St. 297, 60 Atl. 789; *In re* West, 214 Pa. St. 35, 63 Atl. 407; Ritter *v.* Knerr, 214 Pa. St. 279, 63 Atl. 605; Wilson *v.* Heilman, (Pa. 1908) 68 Atl. 674.

Rhode Island. — Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

South Carolina. — Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945; Young *v.* McNeill, 78 S. Car. 143, 59 S. E. 986.

Texas. — Lanius *v.* Fletcher, (Tex. 1907) 101 S. W. 1076.

863. 1. Peoples Trust Co. *v.* Flynn, 106 N. Y. App. Div. 78, 94 N. Y. Supp. 436; Ullman *v.* Cameron, 186 N. Y. 339, 78 N. E. 1074; Jacoby *v.* Jacoby, 188 N. Y. 124, 80 N. E. 676.

864. 4. Kronson *v.* Lipschitz, 68 N. J. Eq. 367, 60 Atl. 819.

865. 1. Austin *v.* Wilcoxson, 149 Cal. 24, 84 Pac. 417.

2. Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Morris *v.* Linton, 74 Neb. 411, 104 N. W. 927.

866. 1. *United States.* — Young *v.* Mercantile Trust Co., 140 Fed. 61.

California. — Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047.

Iowa. — *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

Maryland. — Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618; Coyne *v.* Supreme Conclave, etc., (Md. 1907) 66 Atl. 704; Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883.

Massachusetts. — Mee *v.* Fay, 190 Mass. 40, 76 N. E. 229.

Nebraska. — Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288.

New York. — Putnam *v.* Lincoln Safe Deposit Co., 191 N. Y. 166, 83 N. E. 789; Mersereau *v.* Bennett, 124 N. Y. App. Div. 413, 108 N. Y. Supp. 868.

North Carolina. — Witherington *v.* Herring, 140 N. Car. 495, 53 S. E. 303.

Pennsylvania. — Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971.

Texas. — Austin *v.* Cahill, 99 Tex. 172, 88 S. W. 542; Bateman *v.* Ward, (Tex. Civ. App. 1906) 93 S. W. 508.

3. *California.* — *In re* Heywood, 148 Cal. 188, 82 Pac. 755; *In re* Walker, 149 Cal. 214, 85 Pac. 310.

Iowa. — Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Maxwell *v.* Wood, 133 Iowa 721, 111 N. W. 203; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

Maryland. — Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618; Coyne *v.* Supreme Conclave, etc., (Md. 1907) 66 Atl. 704; Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883.

Massachusetts. — Mee *v.* Fay, 190 Mass. 40, 76 N. E. 229.

Missouri. — Dexter *v.* Macdonald, 196 Mo. 373, 95 S. W. 359.

New York. — Putnam *v.* Lincoln Safe Deposit Co., 191 N. Y. 166, 83 N. E. 789; Mersereau *v.* Bennet, 124 N. Y. App. Div. 413, 108 N. Y. Supp. 868.

North Carolina. — Witherington *v.* Herring, 140 N. Car. 495, 53 S. E. 303; Greenleaf *v.* Land, etc., Co., (N. Car. 1908) 60 S. E. 424.

Pennsylvania. — Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971.

Texas. — Austin *v.* Cahill, 99 Tex. 172, 88 S. W. 542.

Washington. — Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087.

6. Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359.

Presumption against Invalidity of Trust. — *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

Trustee Estopped by Acceptance to Plead Illegality. — Grand Lodge, etc., *v.* Beath, (Mich. 1908) 114 N. W. 662.

7. Sacramento Bank *v.* Montgomery, 146 Cal. 745, 81 Pac. 138; *In re* Heywood, 148 Cal. 188, 82 Pac. 755; Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359; Central Trust Co. *v.* Eggleston, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 475, 95 N. Y. Supp. 945;

Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

867. 1. Pitzel *v.* Schneider, 216 Ill. 87, 74 N. E. 779; Central Trust Co. *v.* Egleston, 185 N. Y. 23, 77 N. E. 989; Ullman *v.* Cameron, 105 N. Y. App. Div. 159, 93 N. Y. Supp. 976.

3. *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

6. Law of Situs of Realty Governs Validity. — Campbell-Kawannanakoa *v.* Campbell, (Cal. 1907) 92 Pac. 184.

7. *In re* Wilkin, 183 N. Y. 104, 75 N. E. 1105.

8. *In re* Heywood, 148 Cal. 188, 82 Pac. 755; Ullman *v.* Cameron, 186 N. Y. 339, 78 N. E. 1074; Jacoby *v.* Jacoby, 188 N. Y. 124, 80 N. E. 676; Stringer *v.* Young, 191 N. Y. 157, 83 N. E. 690; Bascom *v.* Weed, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 496, 105 N. Y. Supp. 450.

Trust to Receive and Pay Over Profits of Lands. — *In re* L'Hommedieu, 138 Fed. 606; Sacramento Bank *v.* Montgomery, 146 Cal. 745, 81 Pac. 138; *In re* Dunphy, 147 Cal. 95, 81 Pac. 315; Stringer *v.* Young, 191 N. Y. 157, 83 N. E. 690; People's Trust Co. *v.* Flynn, 106 N. Y. App. Div. 78, 94 N. Y. Supp. 436.

Trust to Convey Real Property. — *In re* L'Hommedieu, 138 Fed. 606; Sacramento Bank *v.* Montgomery, 146 Cal. 745, 81 Pac. 138; Campbell-Kawannanakoa *v.* Campbell, (Cal. 1907) 92 Pac. 184. See also *In re* Dunphy, 147 Cal. 95, 81 Pac. 315.

Trust to "Manage" Property Valid. — *In re* Heywood, 148 Cal. 188, 82 Pac. 755.

Trust to Pay Annuities Valid. — Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359.

Trust to Sell and Divide Property Not Valid. — Matter of Murray, 124 N. Y. App. Div. 548, 108 N. Y. Supp. 1047.

Trust Valid under Laws of State of Administration. — Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359.

868. 1. *In re* Dunphy, 147 Cal. 95, 81 Pac. 315; *In re* Heywood, 148 Cal. 188, 82 Pac. 755; Stringer *v.* Young, 191 N. Y. 157, 83 N. E. 690.

3. *In re* Wilkin, 183 N. Y. 104, 75 N. E. 1105; Stringer *v.* Young, 191 N. Y. 157, 83 N. E. 690.

4. Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; *In re* Spring, 216 Pa. St. 529, 66 Atl. 110. See also Hiss *v.* Hiss, 228 Ill. 414, 81 N. E. 1056.

Trust by Husband of Wife's Property. — Where a husband created a trust of property, taken in his name, by a deed reciting that it was purchased with his wife's money, the wife's power of alienation was not restricted. Griffith *v.* Eisenberg, 215 Pa. St. 182, 64 Atl. 368.

9. Eldriedge *v.* Hoefer, (Oregon 1908) 93 Pac. 246, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 868.

870. 3. *California.* — Austin *v.* Wilcoxson, 149 Cal. 24, 84 Pac. 417; Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047.

Illinois. — Dawes *v.* Dawes, 116 Ill. App. 36.

Iowa. — Merritt *v.* Torrance, 129 Iowa 310, 105 N. W. 585, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 870; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

Kentucky. — Bohannon *v.* Bohannon, (Ky. 1906) 92 S. W. 597.

Maine. — Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731.

Maryland. — Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618; Coyne *v.* Supreme Conclave, etc., (Md. 1907) 66 Atl. 704.

Massachusetts. — Mee *v.* Fay, 190 Mass. 40, 76 N. E. 229.

Michigan. — Rapley *v.* McKinney, 143 Mich. 508, 107 N. W. 101.

Missouri. — Zeideman *v.* Molasky, 118 Mo. App. 106, 94 S. W. 754, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 870; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629.

New York. — Hoffman *v.* Union Dime Sav. Inst., 109 N. Y. App. Div. 24, 95 N. Y. Supp. 1045.

North Carolina. — Witherington *v.* Herring, 140 N. Car. 495, 53 S. E. 303.

North Dakota. — Berry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

South Carolina. — Pearlstine *v.* Phœnix Ins. Co., 74 S. Car. 246, 54 S. E. 372.

Wisconsin. — Hurley *v.* Walter, 129 Wis. 508, 109 N. W. 558.

871. 4. **Subsequent Promise Necessary.** — Rapley *v.* McKinney, 143 Mich. 508, 107 N. W. 101.

10. Wormald *v.* Heinze, (Ky. 1906) 90 S. W. 1064.

872. 3. Hill *v.* Hill, (Mass. 1907) 82 N. E. 690; Allen *v.* Allen, (Tex. 1908) 107 S. W. 528, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 871, 872.

4. See Hill *v.* Hill, (Mass. 1907) 82 N. E. 690.

873. 1. Dongan *v.* Bemis, 95 Minn. 220, 103 N. W. 882.

4. Holton *v.* Holton, (N. J. 1906) 65 Atl. 481.

874. 4. Forest *v.* Rogers, (Mo. App. 1908) 106 S. W. 1105; Bell *v.* Edwards, 78 S. Car. 490, 59 S. E. 535.

5. Dongan *v.* Bemis, 95 Minn. 220, 103 N. W. 882; Crawley *v.* Crafton, 193 Mo. 421, 91 S. W. 1027; Dexter *v.* Macdonald, 196 Mo. 373, 95 S. W. 359; Patterson *v.* Patterson, 200 Mo. 335, 98 S. W. 613; Budnek *v.* Budnek, (Mo. App. 1908) 107 S. W. 458; Wolters *v.* Shraft, (N. J. 1905) 66 Atl. 398; Ostheimer *v.* Single, (N. J. 1907) 68 Atl. 231; Eagle Min., etc., Co. *v.* Hamilton, (N. Mex. 1907) 91 Pac. 718; Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971.

6. Eaton *v.* Barnes, 121 Ga. 548, 49 S. E. 593; Cassels *v.* Finn, 122 Ga. 33, 49 S. E. 749; Cardiff *v.* Marquis, (N. Dak. 1908) 114 N. W. 1088; Marquis *v.* Morris, (N. Dak. 1908) 114 N. W. 1091; Logan *v.* Brown, (Okla. 1908) 95 Pac. 441.

875. 1. Jacoby *v.* Funkhouser, 147 Ala. 254, 40 So. 291; Heddleston *v.* Stoner, 128 Iowa 525, 105 N. W. 56; Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450.

2. Kinley *v.* Kinley, 37 Colo. 35, 86 Pac. 105; Rapley *v.* McKinney, 143 Mich. 508, 107 N. W. 101; Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240.

4. Heddleston *v.* Stoner, 128 Iowa 525, 105 N. W. 56; Donaldson *v.* Empire Loan, etc., Co., 130 Iowa 467, 106 N. W. 192; *In re* Hall,

132 Iowa 664, 110 N. W. 148; Krebs *v.* Lauser, 133 Iowa 241, 110 N. W. 443; Allen *v.* Rees, (Iowa 1907) 110 N. W. 583.

876. 3. *In re* Henderson, 142 Fed. 568; Witherington *v.* Herring, 140 N. Car. 495, 53 N. E. 303, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 876; Insurance Co. *v.* Waller, 116 Tenn. 1, 95 S. W. 811; Diffie *v.* Thompson, (Tex. Civ. App. 1905) 90 S. W. 193; Whitfield *v.* Diffie, (Tex. Civ. App. 1907) 105 S. W. 324; Henderson *v.* Rushing, (Tex. Civ. App. 1907) 105 S. W. 840; Allen *v.* Allen, (Tex. 1908) 107 S. W. 528; Swick *v.* Rease, (W. Va. 1907) 59 S. E. 510.

4. Wormald *v.* Heinze, (Ky. 1906) 90 S. W. 1064.

877. 2. Smith *v.* Ellison, 80 Ark. 447, 97 S. W. 666, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 877; Gallagher *v.* Northrup, 215 Ill. 563, 74 N. E. 711; Mallory *v.* Thomas, 71 Kan. 562, 81 Pac. 194, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 877.

Trustee Who Is Also Debtor. — Smith *v.* Ellison, 80 Ark. 447, 97 S. W. 666.

9. Mallory *v.* Thomas, 71 Kan. 562, 81 Pac. 194; Berry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

878. 1. **Unrecorded Declaration Not Void.** — Linton *v.* Safe Deposit, etc., Co., 147 Fed. 824.

4. Jacoby *v.* Funkhouser, 147 Ala. 254, 40 So. 291.

6. Harrison *v.* Baird, 145 Ala. 683, 40 So. 94; Faust *v.* Faust, 144 N. Car. 383, 57 S. E. 22; Sternfels *v.* Watson, 139 Fed. 505; Lee *v.* Hamilton, 218 Pa. St. 468, 67 Atl. 780.

10. Dixon *v.* Dixon, 145 N. Car. 46, 58 S. E. 604.

879. 1. Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450; Allen *v.* Rees, (Iowa (1907) 110 N. W. 583; Patterson *v.* Patterson, 200 Mo. 335, 98 S. W. 613; Bell *v.* Edwards, 78 S. Car. 490, 59 S. E. 535.

2. Cardiff *v.* Marquis, (N. Dak. 1908) 114 N. W. 1088; Marquis *v.* Morris, (N. Dak. 1908) 114 N. W. 1091.

4. Howison *v.* Baird, 145 Ala. 683, 40 So. 94; Elliott *v.* Louisville, (Ky. 1906) 90 S. W. 990; Nolan *v.* Garrison, (Mich. 1908) 115 S. W. 58; Putnam *v.* Lincoln Safe Deposit Co., 191 N. Y. 166, 83 N. E. 789; *In re* Royce, (Surrogate Ct.) 50 Misc. (N. Y.) 671, 100 N. Y. Supp. 636; Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971.

5. Whetsler *v.* Sprague, 224 Ill. 461, 79 N. E. 667; Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450; Kremer *v.* Mette, 148 Mich. 376, 111 N. W. 1086; Greenleaf *v.* Land, etc., Co., (N. Car. 1908) 60 S. E. 424; Stith *v.* Moore, (Tex. Civ. App. 1906) 95 S. W. 587.

6. Howison *v.* Baird, 145 Ala. 683, 40 So. 94; Nolan *v.* Garrison, (Mich. 1908) 115 N. W. 58.

7. Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971. See also Martin *v.* Kitchen, 195 Mo. 477, 93 S. W. 780.

880. 2. Hatfield *v.* Allison, 57 W. Va. 374, 50 S. E. 729.

4. Whetsler *v.* Sprague, 224 Ill. 461, 79 N. E. 667, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 880; Nolan *v.* Garrison, (Mich. 1908) 115 N. W. 58.

5. Whetsler *v.* Sprague, 224 Ill. 461, 79 N. E. 667, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 880; Nolan *v.* Garrison, (Mich. 1908) 115 N. W. 58.

6. Nolan *v.* Garrison, (Mich. 1908) 115 N. W. 58.

7. Hiss *v.* Hiss, 228 Ill. 414, 81 N. E. 1056; Nolan *v.* Garrison, (Mich. 1908) 115 N. W. 58.

8. Bridgman *v.* McIntyre, 150 Mich. 78, 113 N. W. 776.

11. Howison *v.* Baird, 145 Ala. 683, 40 So. 94; Whetsler *v.* Sprague, 224 Ill. 461, 79 N. E. 667, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 880; Hiss *v.* Hiss, 228 Ill. 414, 81 N. E. 1056; Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450; Fleming *v.* Wood, 147 Mich. 513, 111 N. W. 80; Kremer *v.* Mette, 148 Mich. 376, 111 N. W. 1086; Nolan *v.* Garrison, (Mich. 1908) 115 N. W. 58; Witherington *v.* Herring, 140 N. Car. 495, 53 S. E. 303, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 880; Lee *v.* Hamilton, 218 Pa. St. 468, 67 Atl. 780; Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971.

Entry in Bank Book Sufficient. — Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635.

881. 2. **Tax List.** — Nolan *v.* Garrison, (Mich. 1908) 115 N. W. 58.

3. Bridgman *v.* McIntyre, 150 Mich. 78, 113 N. W. 776.

6. Montague *v.* Schieffelin, 46 Oregon 413, 80 Pac. 654.

Will Need Not Be Probated to Operate as Trust Declaration. — O'Reily *v.* McGuiggan, (Miss. 1907) 44 So. 986.

7. Crabtree *v.* Potter, 150 Cal. 710, 89 Pac. 971; Donaldson *v.* Empire Loan, etc., Co., 130 Iowa 467, 106 N. W. 192; Smith *v.* Smith, 132 Iowa 700, 109 N. W. 194; Walters *v.* Shraft, (N. J. 1905) 66 Atl. 398; Sutton *v.* Whetstone, (S. Dak. 1907) 112 N. W. 850.

8. Smith *v.* Smith, (Ala. 1907) 45 So. 168; Kinley *v.* Kinley, 37 Colo. 35, 86 Pac. 105; Crossman *v.* Keister, 223 Ill. 69, 79 N. E. 58; Holliday *v.* Perry, 38 Ind. App. 588, 78 N. E. 877; Gemmel *v.* Fletcher, (Kan. 1907) 92 Pac. 713; Diffie *v.* Thompson, (Tex. Civ. App. 1905) 90 S. W. 193.

882. 1. Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288; Cardiff *v.* Marquis, (N. Dak. 1908) 114 N. W. 1088; Marquis *v.* Morris, (N. Dak. 1908) 114 N. W. 1091.

2. *Alabama.* — Jacoby *v.* Funkhouser, 147 Ala. 254, 40 So. 291; Smith *v.* Smith, (Ala. 1907) 45 So. 168.

Colorado. — Kinley *v.* Kinley, 37 Colo. 35, 86 Pac. 105; Holliday *v.* Perry, 38 Ind. App. 588, 78 N. E. 877.

Georgia. — Cassels *v.* Finn, 122 Ga. 33, 49 S. E. 749; Eaton *v.* Barnes, 121 Ga. 548, 49 S. E. 593.

Iowa. — Heddleston *v.* Stoner, 128 Iowa 525, 105 N. W. 56; Krebs *v.* Lauser, 133 Iowa 241, 110 N. W. 443; Allen *v.* Rees, (Iowa 1907) 110 N. W. 583.

Kentucky. — Wormald *v.* Heinze, (Ky. 1907) 90 S. W. 1064.

Michigan. — Rapley *v.* McKinney, 143 Mich. 508, 107 N. W. 101.

Minnesota. — Dougan *v.* Bemis, 95 Minn. 220, 103 N. W. 882.

Missouri. — Dexter *v.* Macdonald, 196 Mo. 373, 95 S. W. 359; Crawley *v.* Crafton, 193

Mo. 421, 91 S. W. 1027; Patterson *v.* Patterson, 200 Mo. 335, 98 S. W. 613; Budnek *v.* Budnek, (Mo. App. 1908) 107 S. W. 458.

New Jersey. — Wolters *v.* Shraft, (N. J. 1905) 66 Atl. 398.

New Mexico. — Eagle Min., etc., Co. *v.* Hamilton, (N. Mex. 1907) 91 Pac. 718.

North Dakota. — Cardiff *v.* Marquis, (N. Dak. 1908) 114 N. W. 1088; Marquis *v.* Morris, (N. Dak. 1908) 114 N. W. 1091.

Oklahoma. — Logan *v.* Brown, (Okla. 1908) 95 Pac. 441.

Pennsylvania. — Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971.

Express Trust Proved Orally Without Objection. — Forest *v.* Rogers, (Mo. App. 1908) 106 S. W. 1105.

4. Crossman *v.* Kerster, 223 Ill. 69, 79 N. E. 58; Holliday *v.* Perry, 38 Ind. App. 588, 78 N. E. 877; Powell *v.* Yearance, (N. J. 1907) 67 Atl. 892; Gordon *v.* Handford, 16 Manitoba 292; Logan *v.* Brown, (Okla. 1908) 95 Pac. 441.

883. 4. Crossman *v.* Keister, 223 Ill. 69, 79 N. E. 58. *Compare* Cardiff *v.* Marquis, (N. Dak. 1908) 114 N. W. 1088; Marquis *v.* Morris, (N. Dak. 1908) 114 N. W. 1091. But see Holliday *v.* Perry, 38 Ind. 588, 78 N. E. 877.

5. Watson *v.* Watson, 225 Ill. 412, 80 N. E. 332; Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561; Kennedy *v.* Anderson, (Wash. 1908) 94 Pac. 661.

884. 5. Logan *v.* Brown, (Okla. 1908) 95 Pac. 441.

7. Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359; Montague *v.* Schieffelin, 46 Oregon 413, 80 Pac. 654.

885. 1. **Trust Provision Following Absolute Devise in Will Effective.** — *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

3. Gemmel *v.* Fletcher, (Kan. 1907) 92 Pac. 713; Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288; Powell *v.* Yearance, (N. J. 1907) 67 Atl. 892; Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233; Jimmerson *v.* Ferguson, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 504, 109 N. Y. Supp. 845; Tyler *v.* Stitt, 132 Wis. 656, 112 N. W. 1091.

Devise to Two, One of Whom Is Informed of Trust. — Powell *v.* Yearance, (N. J. 1907) 67 Atl. 892.

Devise to Two. — Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233.

Promise of One Joint Tenant Binds All. — Powell *v.* Yearance, (N. J. 1907) 67 Atl. 892.

5. *Compare* Boynton *v.* Gale, 194 Mass. 320, 80 N. E. 448.

Settlor Must Rely on Disponee's Promise. — Tyler *v.* Stitt, 132 Wis. 656, 112 N. W. 1091.

886. 1. Gemmel *v.* Fletcher, (Kan. 1907) 92 Pac. 713; Coyne *v.* Supreme Conclave, etc., (Md. 1907) 66 Atl. 704; Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288; Tyler *v.* Stitt, 132 Wis. 656, 112 N. W. 1091.

Fraud Must Be Actual. — Cassels *v.* Finn, 122 Ga. 33, 49 S. E. 749.

5. Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047; Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359; New York Ins., etc., Co. *v.* Cary, 191 N. Y. 33, 83 N. E. 598.

6. Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Hall *v.* Hall, 76 Kan. 806, 93 Pac. 177; Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359.

887. 1. Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047.

2. Coyne *v.* Supreme Conclave, etc., (Md. 1907) 66 Atl. 704; Whitfield *v.* Diffie, (Tex. Civ. App. 1907) 105 S. W. 324. But see *In re* Hall, 132 Iowa 664, 110 N. W. 148; First State Bank *v.* Sibley County Bank, 96 Minn. 456, 105 N. W. 485; Habegger *v.* Kipp, 96 Minn. 456, 105 N. W. 489; Holton *v.* Holton, (N. J. 1906) 65 Atl. 481; Carter *v.* Carter, 14 N. Dak. 66, 103 N. W. 425.

3. Earle *v.* Owings, 72 S. Car. 362, 51 S. E. 980.

6. But see First State Bank *v.* Sibley County Bank, 96 Minn. 456, 105 N. W. 485; Habegger *v.* Kipp, 96 Minn. 456, 105 N. W. 489.

8. Holton *v.* Holton, (N. J. 1906) 65 Atl. 481.

10. Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971.

11. Hurst *v.* Weaver, 75 Kan. 758, 90 Pac. 207; Lima *v.* Cook, (Mass. 1907) 83 N. E. 12; Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852; Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945.

888. 2. Hurst *v.* Weaver, 75 Kan. 758, 90 Pac. 297.

3. *California.* — Austin *v.* Wilcoxson, 149 Cal. 24, 84 Pac. 417; Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047.

Connecticut. — Mooney *v.* Mooney, (Conn. 1908) 68 Atl. 985.

Maryland. — Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625.

Missouri. — Dexter *v.* Macdonald, 196 Mo. 373, 95 S. W. 359.

New Jersey. — Tuite *v.* Tuite, (N. J. 1907) 66 Atl. 1090; Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233; Ostheimer *v.* Single, (N. J. 1907) 68 Atl. 231; Lipp *v.* Fielder, (N. J. 1907) 66 Atl. 189.

New York. — Hoffman *v.* Union Dime Sav. Inst., 109 N. Y. App. Div. 24, 95 N. Y. Supp. 1045; Mann *v.* Shrive, 111 N. Y. App. Div. 452, 97 N. Y. Supp. 688.

Pennsylvania. — Byers *v.* Ferner, 216 Pa. St. 233, 65 Atl. 620; Davis *v.* Davis, 216 Pa. St. 228, 65 Atl. 622.

West Virginia. — Pickens *v.* Wood, 57 W. Va. 480, 50 S. E. 818; Hatfield *v.* Allison, 57 W. Va. 374, 50 S. E. 729.

Wisconsin. — Dewey *v.* Fleischer, 129 Wis. 591, 109 N. W. 525.

Quantum of Parol Evidence to Establish Resulting Trust. — Stambaugh *v.* Lung, 232 Ill. 373, 83 N. E. 922; Carter *v.* Carter, 14 N. Dak. 66, 103 N. W. 425.

Testimony of Person Claiming under Trust. — Watson *v.* Watson, 225 Ill. 412, 80 N. E. 332.

The husband's testimony alone is not sufficient to show a trust in him for his wife so as to defeat his creditors. Pickens *v.* Wood, 57 W. Va. 480, 50 S. E. 818; Cheuvront *v.* Horner, (W. Va. 1907) 59 S. E. 964.

4. **Vague, Indefinite, Oral Statements.** — Watson *v.* Watson, 225 Ill. 412, 80 N. E. 332; Hatfield *v.* Allison, 57 W. Va. 374, 50 S. E. 729.

6. Neely *v.* Boyd, (C. C. A.) 145 Fed. 172; De Galindo *v.* De Galindo, 147 Cal. 77, 81 Pac. 279; Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618; Sheldon *v.* Carr, 139 Mich. 654, 103 N. W. 181; Hillsdale College *v.* Wood, 145 Mich. 257, 108 N. W. 675; Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288; Earle *v.* Owings, 72 S. Car. 362, 51 S. E. 980; Rogers *v.* Tompkins, (Tex. Civ. App. 1905) 87 S. W. 379; Bluett *v.* Wilce, 43 Wash. 492, 86 Pac. 853.

Testimony of One Witness. — The testimony of an interested witness alone is insufficient. Whitfield *v.* Diffie, (Tex. Civ. App. 1907) 105 S. W. 324.

Instances — Evidence Insufficient. — Neely *v.* Boyd, (C. C. A.) 145 Fed. 172; Leatherwood *v.* Richardson, (Ariz. 1908) 94 Pac. 1110; Creech *v.* Creech, (Ky. 1905) 89 S. W. 720; Hillsdale College *v.* Wood, 145 Mich. 257, 108 N. W. 675; Dexter *v.* Macdonald, 196 Mo. 373, 95 S. W. 359.

889. 1. Cella *v.* Brown, (C. C. A.) 144 Fed. 742.

2. Mooney *v.* Mooney, (Conn. 1908) 68 Atl. 985; Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618.

5. Henderson *v.* Rushing, (Tex. Civ. App. 1907) 105 S. W. 840. See also Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618.

890. 1. Fowler *v.* Gowing, 152 Fed. 801; Gallagher *v.* Northrup, 215 Ill. 563, 74 N. E. 711; Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629.

. Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635.

891. 4. Cella *v.* Brown, (C. C. A.) 144 Fed. 742; Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Wormald *v.* Heinze, (Ky. 1906) 90 S. W. 1064; Boynton *v.* Gale, 194 Mass. 320, 80 N. E. 448; Botsford *v.* Burr, 141 Mich. 370, 104 N. W. 620; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108; Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233; Mann *v.* Shrive, 111 N. Y. App. Div. 452, 97 N. Y. Supp. 688; Paine *v.* Paine, (R. I. 1907) 67 Atl. 127.

5. *In re* Strang, 131 Iowa 583, 106 N. W. 631; Elliott *v.* Louisville, (Ky. 1906) 90 S. W. 990.

892. 3. Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844.

5. Paine *v.* Paine, (R. I. 1907) 67 Atl. 127.

6. Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844.

10. Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047; Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108. See also Kennedy *v.* McCann, 101 Md. 643, 61 Atl. 625.

893. 2. Fowler *v.* Gowing, 152 Fed. 801; Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047; Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Botsford *v.* Burr, 141 Mich. 370, 104 N. W. 620; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108; Pennell *v.* Ennis, 126 Mo. App. 355, 103 S. W. 147; Graham *v.* Spence, (N. J. 1906) 63 Atl. 344; *In re* King, (Surrogate Ct.) 51 Misc. (N. Y.) 375, 101 N. Y. Supp. 279; Pain *v.* Pain, (R. I. 1907) 67 Atl. 127; Gentry *v.* Poteet, 59 W. Va. 408, 53 S. E. 787.

3. Delivery to Third Person Sufficient. — Hall *v.* Hall, 76 Kan. 806, 93 Pac. 177.

4. Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047; ; Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Whitfield *v.* Diffie, (Tex. Civ. App. 1907) 105 S. W. 324; Francis *v.* Gisborn, 30 Utah 67, 83 Pac. 571; Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760.

Facts Held to Establish Trust — *United States.* — Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

Alabama. — Glennon *v.* Harris, (Ala. 1907) 42 So. 1003.

Arizona. — Ives *v.* Sanguinetti, (Ariz. 1906) 85 Pac. 480.

California. — Sprague *v.* Walton, 145 N. Car. 228, 78 Pac. 645; Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39.

Colorado. — Ballard *v.* Galob, 34 Colo. 417, 83 Pac. 376.

Illinois. — Hiss *v.* Hiss, 228 Ill. 414, 81 N. E. 1056.

Iowa. — Jacobs *v.* Jacobs, 130 Iowa 10, 104 N. W. 489; Percival-Porter Co. *v.* Oaks, 130 Iowa 212, 106 N. W. 626.

Kansas. — Hall *v.* Hall, 76 Kan. 806, 93 Pac. 177.

Michigan. — Wood *v.* Schoolcraft, 145 Mich. 653, 108 N. W. 1075; Fleming *v.* Wood, 147 Mich. 513, 111 N. W. 80.

Missouri. — Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Folk *v.* Wind, 124 Mo. App. 577, 102 S. W. 1.

New Mexico. — Eagle Min., etc., Co. *v.* Hamilton, (N. Mex. 1907) 91 Pac. 718.

New York. — Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359.

North Carolina. — Davis *v.* Kerr, 141 N. Car. 11, 53 S. E. 519; Dixon *v.* Dixon, 145 N. Car. 46, 58 S. E. 604.

North Dakota. — Barry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

Oregon. — Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852; Hall *v.* O'Connell, (Oregon 1908) 95 Pac. 717.

Texas. — Henderson *v.* Rushing, (Tex. Civ. App. 1907) 105 S. W. 840.

Washington. — Latham *v.* Scribner, 45 Wash. 266, 88 Pac. 203.

West Virginia. — Swick *v.* Rease, (W. Va. 1907) 59 S. E. 510; Wilson *v.* Kennedy, (W. Va. 1907) 59 S. E. 736.

Facts Insufficient to Establish Trust — *United States.* — Young *v.* Mercantile Trust Co., 140 Fed. 61.

California. — Visalia Bank *v.* Dillonwood Lumber Co., 148 Cal. 18, 82 Pac. 374; Austin *v.* Wilcoxson, 149 Cal. 24, 84 Pac. 417; Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047.

Iowa. — Allen *v.* Rees, (Iowa 1907) 110 N. W. 583; Maxwell *v.* Wood, 133 Iowa 721, 111 N. W. 203; Saunders *v.* Wells, (Iowa 1907) 112 N. W. 205.

Massachusetts. — Boynton *v.* Gale, 194 Mass. 320, 80 N. E. 448.

Michigan. — Botsford *v.* Burr, 141 Mich. 370, 104 N. W. 620.

Missouri. — Forest *v.* Rogers, (Mo. App. 1908) 106 S. W. 1105.

Nebraska. — Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288; State *v.* State Journal Co., 75 Neb. 275, 106 N. W. 434.

Oregon. — Seed *v.* Jennings, 47 Oregon 464, 83 Pac. 872.

Utah. — Francis *v.* Gisborn, 30 Utah 67, 83 Pac. 571.

Washington. — Furth *v.* West Seattle, 37 Wash. 387, 79 Pac. 936.

Wisconsin. — Dewey *v.* Fleischer, 129 Wis. 591, 109 N. W. 525.

894. 1. *United States.* — Fowler *v.* Gowing, 152 Fed. 801.

Arizona. — Leatherwood *v.* Richardson, (Ariz. 1908) 94 Pac. 1110.

California. — *In re* Walker, 149 Cal. 214, 85 Pac. 310.

Indiana. — Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450.

Iowa. — Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Maxwell *v.* Wood, 133 Iowa 721, 111 N. W. 203.

Maine. — Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731.

Maryland. — Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618; Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883.

Michigan. — Botsford *v.* Burr, 141 Mich. 370, 104 N. W. 620.

Missouri. — Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629.

Nebraska. — Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288.

New York. — Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359.

2. Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450; Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Paine *v.* Paine, (R. I. 1907) 67 Atl. 127.

5. Fowler *v.* Gowing, 152 Fed. 801; Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047; Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 894; *In re* Podhajsky's Estate, (Iowa 1908) 115 N. W. 590; Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629.

Settlor May Reserve Life Interest in Income. — Larimer *v.* Beardsley, 130 Iowa 706, 107 N. W. 935; Newton *v.* Jay, 107 N. Y. App. Div. 457, 95 N. Y. Supp. 413.

7. Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047; Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731. But see Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914.

895. 4. Fowler *v.* Gowing, 152 Fed. 801; Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629.

5. Boynton *v.* Gale, 194 Mass. 320, 80 N. E. 448.

7. Fowler *v.* Gowing, 152 Fed. 801; Larimer *v.* Beardsley, 130 Iowa 706, 107 N. W. 935; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731; Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618; Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359.

896. 1. Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

Assent Not Necessary. — Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072.

3. Wells *v.* German Ins. Co., 128 Iowa 649, 105 N. W. 123.

4. Wells *v.* German Ins. Co., 128 Iowa 649, 105 N. W. 123.

5. Reel *v.* Recl, 59 W. Va. 106, 52 S. E. 1023.

6. Larimer *v.* Beardsley, 130 Iowa 706, 107 N. W. 935.

8. Trust Deed May Be Delivered in Escrow. — Whitmer *v.* Schenk, 11 Idaho 702, 83 Pac. 775.

897. 1. Hoffman *v.* Union Dime Sav. Inst., 109 N. Y. App. Div. 24, 95 N. Y. Supp. 1045; Mersereau *v.* Bennet, 124 N. Y. App. Div. 413, 108 N. Y. Supp. 868.

898. 11. Fowler *v.* Gowing, 152 Fed. 801; Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047, *quoting* 26 [28] Am. and Eng. Encyc. of Law (2d ed.) 898; Elliott *v.* Louisville, (Ky. 1906) 90 S. W. 990;; Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731; Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Godard *v.* Conrad, 125 Mo. App. 165, 101 S. W. 1108.

899. 2. Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635.

3. Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047; Boynton *v.* Gale, 194 Mass. 320, 80 N. E. 448; Botsford *v.* Burr, 141 Mich. 371, 104 N. W. 620; Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629.

4. Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731.

5. Fowler *v.* Gowing, 152 Fed. 801; Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731; Paine *v.* Paine, (R. I. 1907) 67 Atl. 127. See also Boynton *v.* Gale, 194 Mass. 320, 80 N. E. 448.

7. Fowler *v.* Gowing, 152 Fed. 801; Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 899; Larimer *v.* Beardsley, 130 Iowa 706, 107 N. W. 935; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Elliott *v.* Louisville, (Ky. 1906) 90 S. W. 990; Coleman *v.* Fidelity Trust, etc., Co., (Ky. 1906) 91 S. W. 716; Frank Fehr Brewing Co. *v.* Johnson, (Ky. 1906) 97 S. W. 1107; Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Sands *v.* Old Colony Trust Co., (Mass. 1907) 81 N. E. 300; Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844; Robb *v.* Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359. *Compare* Clark *v.* Callahan, 100 Md. 600, 66 Atl. 618.

900. 1. See Robb *v.* Washington & Jefferson College, 186 N. Y. 339, 78 N. E. 359.

4. Witherington *v.* Herring, 140 N. Car. 495, 53 N. E. 303, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 900; Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047; Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731; Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Seaman *v.* Harmon, 192 Mass. 5, 78 N. E. 301.

5. Witherington *v.* Herring, 140 N. Car. 495, 53 S. E. 303, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 900; Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914.

901. 1. Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844.

Creates no Presumption of Invalidity. — Sands *v.* Old Colony Trust Co., (Mass. 1907) 81 N. E. 300; Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844.

5. Hurst *v.* Weaver, 75 Kan. 758, 90 Pac. 297; *In re* Roach, (Oregon 1907) 92 Pac. 118; Wolbert *v.* Beard, 128 Wis. 391, 107 N. W. 663.

6. *In re* Haines, 150 Cal. 640, 89 Pac. 606; Barksdale *v.* Capital City Realty Co., 88 Miss. 623, 42 So. 668; *In re* Spring, 216 Pa. St. 529, 66 Atl. 110; Newman *v.* Newman, 60 W. Va. 371, 55 S. E. 377; Hagan *v.* Holderby, (W. Va. 1907) 57 S. E. 289.

902. 1. Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087.

4. Active Trust and Trust Power Distinguished. — Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

8. *In re* L'Hommedieu, 138 Fed. 606.

904. 2. Case *v.* Collins, 37 Ind. App. 491, 76 N. E. 781.

3. *United States.* — Holmes *v.* Dowie, 148 Fed. 634.

Arizona. — Ives *v.* Sanguinetti, (Ariz. 1906) 85 Pac. 480.

California. — Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39.

Iowa. — Jacobs *v.* Jacobs, 130 Iowa 10, 104 N. W. 489.

Massachusetts. — Reardon *v.* Reardon, 192 Mass. 448, 78 N. E. 430; Lima *v.* Cook, (Mass. 1907) 83 N. E. 12.

New York. — Mann *v.* Shrive, 111 N. Y. App. Div. 452, 97 N. Y. Supp. 688.

North Carolina. — Davis *v.* Kerr, 141 N. Car. 11, 53 S. E. 519; Dixon *v.* Dixon, 145 N. Car. 46, 58 S. E. 604.

Oklahoma. — Logan *v.* Brown, (Okla. 1908) 95 Pac. 441.

Texas. — Henderson *v.* Rushing, (Tex. Civ. App. 1907) 105 S. W. 840.

Virginia. — Winder *v.* Nock. 104 Va. 759, 52 S. E. 561.

West Virginia. — Johnson *v.* Ludwick, 58 W. Va. 464, 52 S. E. 489; Swick *v.* Rease, (W. Va. 1907) 59 S. E. 510; Wilson *v.* Kennedy, (W. Va. 1907) 59 S. E. 736; Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760.

5. Grote *v.* Grote, 121 N. Y. App. Div. 841, 106 N. Y. Supp. 986.

Transfer Necessary. — Reel *v.* Reel, 59 W. Va. 106, 52 S. E. 1023.

7. Commercial Bank *v.* Weldon, 148 Cal. 601, 84 Pac. 171; Maxwell *v.* Wood, 133 Iowa 721, 111 N. W. 203.

905. 1. See Coyne *v.* Supreme Conclave, etc., (Md. 1907) 66 Atl. 704.

2. Maxwell *v.* Wood, 133 Iowa 721, 111 N. W. 203; Dexter *v.* Macdonald, 196 Mo. 373, 95 S. W. 359; State *v.* State Journal Co., 75 Neb. 275, 106 N. W. 434; Van Sciver *v.* Churchill, 215 Pa. St. 53, 64 Atl. 322.

3. Mortgage. — Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852.

Agreement of Trust. — Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852.

906. 2. Percival-Porter Co. *v.* Oaks, 130 Iowa 212, 106 N. W. 626; Maxwell *v.* Wood, 133 Iowa 721, 111 N. W. 203; Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561. See also Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852, to the effect that such a transaction is in legal effect a mortgage.

Agreement to Hold and Reconvey Personal Property. — Berry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

3. Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072; Maxwell *v.* Wood, 133 Iowa 721, 111 N. W. 203.

5. Miller *v.* Miller, 101 Md. 600, 61 Atl. 210.

6. Andrews *v.* Tuttle-Smith Co., 191 Mass. 461, 78 N. E. 99.

10. Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731.

11. Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731.

Evidence Held Sufficient. — Mann *v.* Shrive, 111 N. Y. App. Div. 452, 97 N. Y. Supp. 688.

907. 1. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

New York Cases — *Tentative Trust Merely.* — Lattan *v.* Van Ness, 107 N. Y. App. Div. 393, 95 N. Y. Supp. 97; *In re* Bulwinkle, 107 N. Y. App. Div. 331, 95 N. Y. Supp. 176; Matter of U. S. Trust Co., 117 N. Y. App. Div. 178, 102 N. Y. Supp. 271; Tierney *v.* Fitzpatrick, 122 N. Y. App. Div. 623, 107 N. Y. Supp. 527.

Deposit in Daughter's Name "Subject to Control of the Depositor." — *In re* King, (Surrogate Ct.) 51 Misc. (N. Y.) 375, 101 N. Y. Supp. 279.

2. Fowler *v.* Gowing, 152 Fed. 801; De Leon *v.* Territory, 9 Ariz. 161, 80 Pac. 348; Lattan *v.* Van Ness, 107 N. Y. App. Div. 393, 95 N. Y. Supp. 97; *In re* Bulwinkle, 107 N. Y. App. Div. 331, 95 N. Y. Supp. 176; Tierney *v.* Fitzpatrick, 122 N. Y. App. Div. 623, 107 N. Y. Supp. 527.

908. 1. Fowler *v.* Gowing, 152 Fed. 801; *In re* Bulwinkle, 107 N. Y. App. Div. 331, 95 N. Y. Supp. 176; *In re* King, (Surrogate Ct.) 51 Misc. (N. Y.) 375, 101 N. Y. Supp. 279; Cuff *v.* Cuff, 120 N. Y. App. Div. 225, 105 N. Y. Supp. 332; Tierney *v.* Fitzpatrick, 122 N. Y. App. Div. 623, 107 N. Y. Supp. 527.

5. Garvey *v.* Clifford, 114 N. Y. App. Div. 193, 99 N. Y. Supp. 555.

909. 2. *Compare* Bath Sav. Inst. *v.* Fogg, 101 Me. 188, 63 Atl. 731.

3. Sprague *v.* Walton, 145 Cal. 228, 78 Pac. 645.

Delivery Must Be Accompanied by Intent to Convey Title. — Hoffman *v.* Union Dime Sav. Inst., 109 N. Y. App. Div. 242, 95 N. Y. Supp. 1045.

4. Fowler *v.* Gowing, 152 Fed. 801.

910. 3. Stewart *v.* Douglass, 148 Cal. 511, 83 Pac. 699; Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618. See also Helstrom *v.* Rodes, 30 Utah 122, 83 Pac. 730.

10. *United States.* — Ballantine *v.* Ballantine, 152 Fed. 775.

California. — *In re* Heywood, 148 Cal. 188, 82 Pac. 755; *In re* Walker, 149 Cal. 214, 85 Pac. 310; Noble *v.* Learned, (Cal. 1908) 94 Pac. 1047.

Connecticut. — Mason *v.* Rhode Island Hospital Trust Co., 78 Conn. 81, 61 Atl. 57.

Illinois. — Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339.

Iowa. — Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914.

Maryland. — Robinson *v.* Bonaparte, 102 Md. 63, 61 Atl. 212; Noble *v.* Birnie, 105 Md. 73, 65 Atl. 823; Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883.

Massachusetts. — Minot *v.* Parker, 189 Mass. 176, 75 N. E. 149; Hayward *v.* Rowe, 190 Mass. 1, 76 N. E. 286; Robinson *v.* Cogswell, 192 Mass. 79, 78 N. E. 389; Poor *v.* Bradbury, (Mass. 1907) 81 N. E. 882.

Michigan. — Fleming *v.* Wood, 147 Mich. 513, 111 N. W. 80.

Missouri. — Harris Banking Co. *v.* Miller, 190 Mo. 640, 89 S. W. 629; Zeideman *v.* Molasky, 118 Mo. App. 106, 94 S. W. 754; Dexter *v.* Macdonald, 196 Mo. 373, 95 S. W. 359.

New Hampshire. — Little *v.* Colman, (N. H. 1907) 66 Atl. 483.

New Jersey. — Wolters *v.* Shraft, (N. J. 1905) 66 Atl. 398.

New York. — Putnam *v.* Lincoln Safe Deposit Co., 191 N. Y. 166, 83 N. E. 789; Mersereau *v.* Bennet, 124 N. Y. App. Div. 413, 108 N. Y. Supp. 868.

North Carolina. — Witherington *v.* Herring, 140 N. Car. 495, 53 S. E. 303, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 910.

Oregon. — Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852.

Pennsylvania. — *In re* Shower, 211 Pa. St. 297, 60 Atl. 789; *In re* Spring, 216 Pa. St. 529, 66 Atl. 110; Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971.

Texas. — Parrish *v.* Mills, (Tex. Civ. App. 1907) 102 S. W. 184, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 910.

Construction Upholding Validity of Testamentary Trust Favored. — *In re* Dunphy, 147 Cal. 95, 81 Pac. 315.

911. 1. Boreing *v.* Faris, (Ky. 1907) 104 S. W. 1022; Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618; Coyne *v.* Supreme Conclave, etc., (Md. 1907) 66 Atl. 704; Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356; Robinson *v.* Cogswell, 192 Mass. 79, 78 N. E. 389; Zeideman *v.* Molasky, 118 Mo. App. 106, 94 S. W. 754; Mersereau *v.* Bennet, 124 N. Y. App. Div. 413, 108 N. Y. Supp. 868; Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971.

Failure to Use Such Terms Raises Presumption against Trust. — Little *v.* Colman, (N. H. 1907) 66 Atl. 483.

2. Visalia Bank *v.* Dillonwood Lumber Co., 148 Cal. 18, 82 Pac. 374; Poor *v.* Bradbury, (Mass. 1907) 81 N. E. 882; Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852; Davidson *v.* Mantor, 45 Wash. 660, 89 Pac. 167; Francis *v.* Gisborn, 30 Utah 67, 83 Pac. 571.

3. *In re* Heywood, 148 Cal. 188, 82 Pac. 755; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Cary *v.* Slead, 220 Ill. 508, 77 N. E. 234; Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945; Parrish *v.* Mills, (Tex. Civ. App. 1907) 102 S. W. 184.

Words of Condition. — Noble *v.* Birnie, 105 Md. 73, 65 Atl. 823.

4. Hurst *v.* Weaver, 75 Kan. 758, 90 Pac. 297

912. 5. Lima *v.* Cook, (Mass. 1907) 83 N. E. 12.

8. Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087.

Liberal Construction. — *In re* Heywood, 148 Cal. 188, 82 Pac. 755.

913. 3. Howison *v.* Baird, 145 Ala. 683, 40 So. 94; Whetsler *v.* Sprague, 224 Ill. 461, 79 N. E. 667; Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450; Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618; Coyne *v.* Supreme Conclave, etc., (Md. 1907) 66 Atl. 704; Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883; Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288; Ranney *v.* Byers, (Pa. 1908) 68 Atl. 971; Bateman *v.* Ward, (Tex. Civ. App. 1906) 93 S. W. 508; Stith *v.* Moore, (Tex. Civ. App. 1906) 95 S. W. 587.

Certainty of Beneficiary. — Keyes *v.* Northern Trust Co., 227 Ill. 354, 81 N. E. 384.

Present Certainty Sufficient. — Keyes *v.* Northern Trust Co., 227 Ill. 354, 81 N. E. 384.

4. Leatherwood *v.* Richardson, (Ariz. 1908) 94 Pac. 1110; Filkins *v.* Severin, 127 Iowa 738, 104 N. W. 346; Coyne *v.* Supreme Conclave, etc., (Md. 1907) 66 Atl. 704; Minot *v.* Parker, 189 Mass. 176, 75 N. E. 149; Pennell *v.* Ennis, 126 Mo. App. 355, 103 S. W. 147; Smullin *v.* Wharton, 73 Neb. 667, 103 N. W. 288; Guental *v.* Guental, 113 N. Y. App. Div. 310, 98 N. Y. Supp. 1002; Faust *v.* Faust, 144 N. Car. 383, 57 S. E. 22; Bell *v.* Edwards, 78 S. Car. 490, 59 S. E. 535.

914. 1. Ballantine *v.* Ballantine, 152 Fed. 775; Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541.

4. Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240.

8. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

915. 3. Lynch *v.* Herrig, 32 Mont. 267, 80 Pac. 240.

9. Trust with Government's Knowledge Valid. — Keely *v.* Gregg, 33 Mont. 216, 83 Pac. 222.

10. "Estate of Every Kind" Includes Realty. — Foil *v.* Newsome, 138 N. Car. 115, 50 S. E. 597.

Determination by Trustees under Power in Will. — Couts *v.* Holland, (Tex. Civ. App. 1908) 107 S. W. 913.

916. 2. Transformation of Property. — Hill *v.* Flemming, (Ky. 1908) 107 S. W. 764.

Realty Transformed to Personalty. — U. S. *v.* Thurston County, (C. C. A.) 143 Fed. 287.

4. Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

5. Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

6. *In re* Stevens, 187 N. Y. 471, 80 N. E. 358.

917. 1. Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087; Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

Time of Conversion. — *In re* L'Hommedieu, 138 Fed. 606.

Mere Authorization to Sell Does Not Work Conversion. — Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681; Bascom *v.* Weed, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 496, 105 N. Y. Supp. 459.

2. *In re* Dunphy, 147 Cal. 95, 81 Pac. 315.

5. Curtis *v.* Osborn, 79 Conn. 555, 65 Atl.

969; Boardman *v.* Mansfield, 79 Conn. 634, 66 Atl. 169.

6. Billings *v.* Warren, 216 Ill. 281, 74 N. E. 1050; Vanatta *v.* Carr, 229 Ill. 47, 82 N. E. 267; Devenney *v.* Devenney, 74 Ohio St. 96, 77 N. E. 688.

919. 5. Wolters *v.* Shraft, (N. J. 1905) 66 Atl. 398; Jacoby *v.* Jacoby, 188 N. Y. 124, 80 N. E. 676; Guental *v.* Guental, 113 N. Y. App. Div. 310, 98 N. Y. Supp. 1002; Adams *v.* Bristol, 114 N. Y. App. Div. 390, 100 N. Y. Supp. 145; Mullin *v.* Mullin, 119 N. Y. App. Div. 521, 104 N. Y. Supp. 323; Matter of Murray, 124 N. Y. App. Div. 548, 108 N. Y. Supp. 1047; *In re* West, 214 Pa. St. 35, 63 Atl. 407; Ritter *v.* Knerr, 214 Pa. St. 279, 63 Atl. 605; Wilson *v.* Heilman, (Pa. 1908) 68 Atl. 614; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855; Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945.

920. 1. Stiles *v.* Cummings, 122 Ga. 635, 50 N. E. 484; Adams *v.* Bristol, 114 N. Y. App. Div. 390, 100 N. Y. Supp. 145; Mullin *v.* Mullin, 119 N. Y. App. Div. 521, 104 N. Y. Supp. 323; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

2. Uzzell *v.* Horn, 71 S. Car. 426, 51 S. E. 253.

4. Percival-Porter Co. *v.* Oaks, 130 Iowa 212, 106 N. W. 626.

921. 4. Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815.

5. Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815.

922. 6. *California.* — *In re* Heywood, 148 Cal. 188, 82 Pac. 755.

Illinois. — Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Matthern *v.* Rankin, 228 Ill. 318, 81 N. E. 1024.

Massachusetts. — Lima *v.* Cook, (Mass. 1907) 83 N. E. 12.

New Jersey. — Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844.

New York. — Gonnele *v.* Wetmore, (Supm. Ct. App. Div.) 109 N. Y. Supp. 349.

North Carolina. — Webb *v.* Borden, 145 N. Car. 188, 58 S. E. 1083.

Pennsylvania. — *In re* West, 214 Pa. St. 35, 63 Atl. 407; *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

Rhode Island. — Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

South Carolina. — Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945; Young *v.* McNeill, 78 S. Car. 143, 59 S. E. 986.

Texas. — Lanius *v.* Fletcher, (Tex. 1907) 101 S. W. 1076.

Trust for Incidental Accumulation of Income Valid. — *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

Trustees Hold as Joint Tenants. — Webb *v.* Borden, 145 N. Car. 188, 58 S. E. 1083.

923. 3. Young *v.* McNeill, 78 S. Car. 143, 59 S. E. 986.

4. *United States.* — *In re* L'Hommedieu, 138 Fed. 606.

Alabama. — Edwards *v.* Edwards, 142 Ala. 267, 39 So. 82.

California. — *In re* Dunphy, 147 Cal. 95, 81 Pac. 315; Noble *v.* Learned, (Cal. 1908) 94 Pac. 1017.

Georgia. — Johnson *v.* Cook, 122 Ga. 524, 50 S. E. 367; Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474.

Illinois. — Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Matthern *v.* Rankin, 228 Ill. 318, 81 N. E. 1024; Reichert *v.* Missouri, etc., Coal Co., 231 Ill. 238, 83 N. E. 166.

Iowa. — Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914.

Missouri. — Collins *v.* Crawford, (Mo. 1907) 103 S. W. 537.

North Carolina. — Smith *v.* Proctor, 139 N. Car. 314, 51 S. E. 889, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 923.

Washington. — Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087.

5. Johnson *v.* Cook, 122 Ga. 524, 50 S. E. 367.

6. Collins *v.* Crawford, (Mo. 1907) 103 S. W. 537; Smith *v.* Proctor, 139 N. Car. 314, 51 S. E. 889, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 923; Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087.

924. 2. *In re* L'Hommedieu, 138 Fed. 606; *In re* Dunphy, 147 Cal. 95, 81 Pac. 315; Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474; Reichert *v.* Missouri, etc., Coal Co., 231 Ill. 238, 83 N. E. 166; Welch *v.* Episcopal Theological School, 189 Mass. 108, 75 N. E. 139; Hayward *v.* Rowe, 190 Mass. 1, 76 N. E. 286; Smith *v.* Proctor, 139 N. Car. 314, 51 S. E. 889, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 924; Angell *v.* Angell, (R. I. 1908) 68 Atl. 583.

3. Reichert *v.* Missouri, etc., Coal Co., 231 Ill. 238, 83 N. E. 166; Smith *v.* Proctor, 139 N. Car. 314, 51 S. E. 889, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 924.

925. 3. Ballantine *v.* Ballantine, 152 Fed. 775; Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645; *In re* Spring, 216 Pa. St. 529, 66 Atl. 110; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

926. 3. *United States.* — Bay State Gas Co. *v.* Rogers, 147 Fed. 557.

Connecticut. — Parker *v.* Bushnell, (Conn. 1907) 67 Atl. 479.

Illinois. — Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Mason *v.* Mason, 219 Ill. 609, 76 N. E. 692; Matthern *v.* Rankin, 228 Ill. 318, 81 N. E. 1024.

Iowa. — Olsen *v.* Youngerman, (Iowa 1907) 113 N. W. 938.

Kentucky. — Coleman *v.* Fidelity Trust, etc., Co., (Ky. 1906) 91 S. W. 716; Frank Fehr Brewing Co. *v.* Johnston, (Ky. 1906) 97 S. W. 1107; Adair *v.* Adair, (Ky. 1907) 99 S. W. 925.

Missouri. — Collins *v.* Crawford, (Mo. 1907) 103 S. W. 537.

New Jersey. — Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695.

New York. — Newton *v.* Jay, 107 N. Y. App. Div. 457, 95 N. Y. Supp. 413; Grain *v.* Davis, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 162, 98 N. Y. Supp. 816.

North Carolina. — Webb *v.* Borden, 145 N. Car. 188, 58 S. E. 1083, *quoting* 28 Am. and Eng. Encyc. of Law (2d ed.) 926.

Pennsylvania. — *In re* West, 214 Pa. St. 35, 63 Atl. 407; *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

Rhode Island. — Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

South Carolina. — Pope *v.* Patterson, 78 S. Car. 344, 58 S. E. 945.

5. Parker *v.* Bushnell, (Conn. 1907) 67 Atl. 479; *In re* Wilkin, 183 N. Y. 104, 75 N. E. 1105.

927. 7. Ullman *v.* Cameron, 186 N. Y. 339, 78 N. E. 1074; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855. See also Welch *v.* Episcopal Theological School, 189 Mass. 108, 75 N. E. 139.

8. Stiles *v.* Cummings, 122 Ga. 635, 50 S. E. 484; Mason *v.* Mason, 219 Ill. 609, 76 N. E. 692; Matthern *v.* Rankin, 228 Ill. 318, 81 N. E. 1024; Johnson *v.* Lee, 228 Ill. 167, 81 N. E. 834; Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450; Olsen *v.* Youngerman, (Iowa 1907) 113 N. W. 938; Adair *v.* Adair, (Ky. 1907) 99 S. W. 925; Newton *v.* Jay, 107 N. Y. App. Div. 457, 95 N. Y. Supp. 413; Pope *v.* Patterson, 78 S. Car. 344, 58 S. E. 945; Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087.

928. 2. Pritchett *v.* Jackson, 103 Md. 696, 63 Atl. 965; Smith *v.* Proctor, 139 N. Car. 314, 51 S. E. 889; Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087.

No Title to Remainder under Personal Power. — Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834.

929. 2. *In re* L'Hommedieu, 138 Fed. 606; Johnson *v.* Lee, 228 Ill. 167, 81 N. E. 834.

3. Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Mason *v.* Mason, 219 Ill. 609, 76 N. E. 692; Adair *v.* Adair, (Ky. 1907) 99 S. W. 925; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

4. Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; *In re* Wilkin, 183 N. Y. 104, 75 N. E. 1105; *In re* West, 214 Pa. St. 35, 63 Atl. 407.

7. Young *v.* McNeill, 78 S. Car. 143, 59 S. E. 986, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 929.

930. 2. Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474; Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Young *v.* McNeill, 78 S. Car. 143, 59 S. E. 986, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 930.

4. Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474.

6. Olsen *v.* Youngerman, (Iowa 1907) 113 N. W. 938.

931. 1. Lanius *v.* Fletcher, (Tex. 1907) 101 S. W. 1076.

3. Middlebrooks *v.* Ferguson, 126 Ga. 232, 55 S. E. 34; Lanius *v.* Fletcher, (Tex. 1907) 101 S. W. 1076; Morgan *v.* Morgan, 60 W. Va. 327, 55 S. E. 389.

4. Middlebrooks *v.* Ferguson, 126 Ga. 232, 55 S. E. 34; Cameron *v.* Hicks, 141 N. Car. 21, 53 S. E. 728. But see Bernheim *v.* Heyman, (Ky. 1907) 104 S. W. 388; Mandel *v.* Fidelity Trust Co., (Ky. 1908) 107 S. W. 775.

5. **Equitable Estate Alienable Without Intervention of Trustees.** — Morgan *v.* Morgan, 60 W. Va. 327, 55 S. E. 389.

6. Edwards *v.* Edwards, 142 Ala. 267, 39 So. 82; Middlebrooks *v.* Ferguson, 126 Ga. 232, 55 S. E. 34.

932. 2. Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474; Cherry *v.* Cape Fear Power Co., 142 N. Car. 404, 55 S. E. 287.

3. Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474; Middlebrooks *v.* Ferguson, 126 Ga. 232, 55 S. E. 34.

5. Edwards *v.* Edwards, 142 Ala. 267, 39 So. 82; Coleman *v.* Fidelity Trust, etc., Co., (Ky. 1906) 91 S. W. 716; Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695; Kirkman *v.* Holland, 139 N. Car. 185, 51 S. E. 856. See also Matthern *v.* Rankin, 228 Ill. 318, 81 N. E. 1024. *Compare* Uzzell *v.* Horn, 71 S. Car. 426, 51 S. E. 253.

Conveyance to More than One Beneficiary Involving Division of Property. — Pope *v.* Patterson, 78 S. Car. 344, 58 S. E. 945.

6. See Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695.

933. 1. *In re* L'Hommedieu, 138 Fed. 606; Uzzell *v.* Horn, 71 S. Car. 426, 51 S. E. 253.

3. Matthern *v.* Rankin, 228 Ill. 318, 81 N. E. 1024; *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

4. Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

6. *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

8. Chicago Terminal R. Co. *v.* Winslow, 216 Ill. 166, 74 N. E. 815; Olsen *v.* Youngerman, (Iowa 1907) 113 N. W. 938; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

9. Taylor *v.* Draper, (N. J. 1906) 63 Atl. 844.

11. Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

934. 1. Young *v.* Robinson, 122 Mo. App. 187, 99 S. W. 20. See also Wright *v.* Wright, 104 Va. 8, 51 S. E. 151, *harmonizing* Walke *v.* Moore, 95 Va. 729.

Joint Interest. — Smith *v.* White, 107 Va. 616, 59 S. E. 480.

2. Stiles *v.* Cummings, 122 Ga. 635, 50 S. E. 484.

3. Angell *v.* Angell, (R. I. 1908) 68 Atl. 583.

4. **Children Take as Remaindermen.** — Stiles *v.* Cummings, 122 Ga. 635, 50 S. E. 484.

6. Stiles *v.* Cummings, 122 Ga. 635, 50 S. E. 484.

Separable Trusts. — Matter of Murray, 124 N. Y. App. Div. 548, 108 N. Y. Supp. 1047.

7. Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834; Wright *v.* Wright, 104 Va. 8, 51 S. E. 151; Smith *v.* White, 107 Va. 616, 59 S. E. 480.

9. Kidwell *v.* Ketler, 146 Cal. 12, 79 Pac. 514.

11. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Hayward *v.* Rowe, 190 Mass. 1, 76 N. E. 286; Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

Vested Equitable Interests Subject to Be Divested on Contingency. — Huntress *v.* Allen, (Mass. 1907) 80 N. E. 949.

12. Huntress *v.* Allen, (Mass. 1907) 80 N. E. 949.

935. 1. Allen *v.* White, 36 Colo. 39, 85 Pac. 695.

3. Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

4. **Children May Take as Class though Specifically Named.** — Stiles *v.* Cummings, 122 Ga. 635, 50 S. E. 484.

7. Huntress *v.* Allen, (Mass. 1907) 80 N. E. 949.

8. Fleming *v.* Walker, (Ala. 1907) 44 So. 536; Olcott *v.* Baldwin, 190 N. Y. 99, 82 N. E. 748; *In re* Roach, (Oregon 1907) 92 Pac. 118.

936. 1. **Title of Trustee Derived Directly from Will.** — Vohmann *v.* Michel, 109 N. Y. App. Div. 659, 96 N. Y. Supp. 309; Vohmann *v.* Rinschler, 110 N. Y. App. Div. 916, 96 N. Y. Supp. 313.

2. Fleming *v.* Walker, (Ala. 1907) 44 So. 536; Olcott *v.* Baldwin, 190 N. Y. 99, 82 N. E. 748.

Where Trustee Appointed. — Attwill *v.* Dole, (N. H. 1907) 67 Atl. 403.

6. **Dower in Settlor's Equitable Estate Where Power of Disposition Reserved.** — Meyer *v.* Barnett, 60 W. Va. 467, 56 S. E. 206.

7. Wilson *v.* Wilson, (Utah 1907) 89 Pac. 643.

9. **Estate of Cestui Subject to Dower and Curtesy.** — But see Seaman *v.* Harmon, 192 Mass. 5, 78 N. E. 301.

11. Hayward *v.* Rowe, 190 Mass. 1, 76 N. E. 286; Wilson *v.* Heilman, (Pa. 1908) 68 Atl. 674.

937. 1. Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834; *In re* West, 214 Pa. St. 35, 63 Atl. 407.

938. 3. Reardon *v.* Reardon, 192 Mass. 448, 78 N. E. 430.

5. Tonnele *v.* Wetmore, (Supm. Ct. App. Div.) 109 N. Y. Supp. 349.

6. **Title of Substituted Trustee Relates Back to Trust.** — Parkhill *v.* Doggett, (Iowa 1907) 112 N. W. 189.

939. 1. Parkhill *v.* Doggett, (Iowa 1907) 112 N. W. 189; Kirkman *v.* Wadsworth, 137 N. Car. 453, 49 S. E. 962; Cameron *v.* Hicks, 141 N. Car. 21, 53 S. E. 728; McAfee *v.* Green, 143 N. Car. 411, 55 N. E. 828; Delleney *v.* Winnsboro Granite Co., 72 S. Car. 39, 51 S. E. 531.

2. **Heirs Hold as Joint Tenants.** — Cameron *v.* Hicks, 141 N. Car. 21, 53 S. E. 728.

3. Austin *v.* Wilcoxson, 149 Cal. 24, 84 Pac. 417; Kauffman *v.* Foster, 3 Cal. App. 741, 86 Pac. 1108; Matter of Wilcox, 125 N. Y. App. Div. 152, 109 N. Y. Supp. 564.

Executor's Executor May Hold Trust Fund until Appointment of Trustee. — Boyd *v.* Immegart, (Ky. 1906) 91 S. W. 1132.

Executor Mere Bailee. — State *v.* Mississippi Valley Trust Co., (Mo. 1908) 108 S. W. 97.

7. Reichert *v.* Missouri, etc., Coal Co., 231 Ill. 238, 83 N. E. 166.

8. Reichert *v.* Missouri, etc., Coal Co., 231 Ill. 238, 83 N. E. 166; La Forge *v.* Binns, 125 Ill. App. 527.

11. **Provision for Payment Does Not Affect Validity of Trust.** — Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914.

940. 3. See Nolan *v.* Nolan, 218 Pa. St. 135, 67 Atl. 52.

8. Fleming *v.* Wood, 147 Mich. 513, 111 N. W. 80.

941. 4. *Compare* Gallagher *v.* Northrup, 215 Ill. 563, 74 N. E. 711.

10. Campbell *v.* Barber, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 185, 93 N. Y. Supp. 182.

12. Dantzler *v.* McInnis, (Ala. 1907) 44 So. 193; Campbell *v.* Barber, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 185, 93 N. Y. Supp. 182.

942. 1. Dantzler *v.* McInnis, (Ala. 1907) 44 So. 193.

4. Wilder *v.* Hast, (Ky. 1906) 96 S. W. 1106; Poland *v.* Beal, 192 Mass. 559, 78 N. E. 728; Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585.

8. Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585.

943. 2. Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585.

Substituted Trustee Does Not Succeed to Debts. — Foote *v.* Cotting, (Mass. 1907) 80 N. E. 600.

5. **Beneficiary Not Liable for Money Loaned Trustee to Pay Taxes.** — Dantzler *v.* McInnis, (Ala. 1907) 44 So. 193.

7. **Relation of Landlord and Tenant.** — *In re* Hunter, 151 Fed. 904.

8. *In re* Hunter, 151 Fed. 904, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 943.

9. Waterman *v.* Buckingham, 79 Conn. 286, 64 Atl. 212; Hubbard *v.* Hayes, (Ky. 1907) 98 S. W. 1034; Adair *v.* Adair, (Ky. 1907) 99 S. W. 925; Ratliff *v.* Com., (Ky. 1907) 101 S. W. 978; Cecil *v.* Robertson, (Ky. 1907) 105 S. W. 926; Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774.

944. 6. Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774; Ullman *v.* Cameron, 105 N. Y. App. Div. 159, 93 N. Y. Supp. 976; Egbert *v.* De Solms, 218 Pa. St. 207, 67 Atl. 212.

7. Parker *v.* Bushnell, (Conn. 1907) 67 Atl. 479; Castree *v.* Shotwell, (N. J. 1908) 68 Atl. 774.

Attorney's Lien. — *In re* Williams, 187 N. Y. 286, 79 N. E. 1019.

8. *In re* Williams, 187 N. Y. 286, 79 N. E. 1019.

9. Parker *v.* Bushnell, (Conn. 1907) 67 Atl. 479; *In re* Williams, 187 N. Y. 286, 79 N. E. 1019.

945. 2. See Paine *v.* Sackett, 27 R. I. 300, 61 Atl. 753.

3. Egbert *v.* De Solms, 218 Pa. St. 207, 67 Atl. 212.

4. Ratliff *v.* Com., (Ky. 1907) 101 S. W. 978; Cecil *v.* Robertson, (Ky. 1907) 105 S. W. 926.

5. Cecil *v.* Robertson, (Ky. 1907) 105 S. W. 926.

8. Stone *v.* McLain, 102 Me. 168, 66 Atl. 375; Welch *v.* Episcopal Theological School, 189 Mass. 108, 75 N. E. 139; Sands *v.* Old Colony Trust Co., (Mass. 1907) 81 N. E. 300; Angell *v.* Angell, (R. I. 1908) 68 Atl. 583.

946. 3. Zeideman *v.* Molasky, 118 Mo. App. 106, 94 S. W. 754, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 946; Angell *v.* Angell, (R. I. 1908) 68 Atl. 583.

Contrary Provision in Instrument. — But see Stier *v.* Nashville Trust Co., (C. C. A.) 158 Fed. 601.

7. Edwards *v.* Edwards, 142 Ala. 267, 39 So. 82.

8. Edwards *v.* Edwards, 142 Ala. 267, 39 So. 82; May *v.* Walter, (Ky. 1906) 97 S. W. 423; Bailey *v.* Bailey, (Ky. 1906) 97 S. W. 810.

9. Benedict *v.* Dunning, 110 N. Y. App. Div. 303, 97 N. Y. Supp. 250.

Trust May Be for Trustee's Life. — *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

Personal Power of Sales Ends with Trus-

tee's Death. — Lupton v. Lee, 121 Ga. 624, 49 S. E. 834.

947. 2. Sterling v. Ives, 78 Conn. 498, 62 Atl. 948; Stone v. McLain, 102 Me. 168, 66 Atl. 375; Harlow v. Bailey, 189 Mass. 208, 75 N. E. 259; Matter of U. S. Trust Co., 117 N. Y. App. Div. 178, 102 N. Y. Supp. 271; Dunn v. Dunn, 137 N. Car. 533, 50 S. E. 212; Smith v. Proctor, 139 N. Car. 314, 51 S. E. 889; Ritter v. Knerr, 214 Pa. St. 279, 63 Atl. 605; *In re* West, 214 Pa. St. 35, 63 Atl. 407; Paine v. Sackett, 27 R. I. 300, 61 Atl. 753.

4. Lewis v. Curnutt, 130 Iowa 423, 106 N. W. 914; Treadwell v. Williams, (N. H. 1907) 67 Atl. 947; Ogden v. McLane, (N. J. 1907) 67 Atl. 695; Williams v. Williams, (Wis. 1908) 115 N. W. 342.

Trust Terminated as to Part of Property Only. — Welch v. Episcopal Theological School, 189 Mass. 108, 75 N. E. 139.

Express Trust Becomes Implied Trust. — Dunn v. Dunn, 137 N. Car. 533, 50 S. E. 212.

8. Interest Descending to Husband Free from Trust. — Barclay's Estate, (Cal. 1908) 93 Pac. 1012.

Power of Appointment. — Ogden v. McLane, (N. J. 1907) 67 Atl. 695.

9. Castree v. Shotwell, (N. J. 1908) 68 Atl. 774; Wilson v. Heilman, (Pa. 1908) 68 Atl. 674.

May Not Be Terminated During Husband's Life. — Lanius v. Fletcher, (Tex. 1907) 101 S. W. 1076.

948. 2. Cary v. Slead, 220 Ill. 508, 77 N. E. 234; Pelton v. Macy, 124 N. Y. App. Div. 367, 108 N. Y. Supp. 713.

3. Edwards v. Edwards, 142 Ala. 267, 39 So. 82.

949. 1. Korsstrom v. Barnes, 156 Fed. 280; Houghton v. Pierce, 203 Mo. 723, 102 S. W. 573.

3. Seabrook v. Grimes, (Md. 1908) 68 Atl. 883.

Provisions of Trust Control Exclusively. — Robinson v. Bonaparte, 102 Md. 63, 61 Atl. 212; Bussell v. Wright, (Wis. 1907) 113 N. W. 644.

4. Hamilton v. Taylor, 195 Mass. 68, 80 N. E. 592; Marquam v. Ross, 47 Oregon 374, 83 Pac. 852.

5. *In re* L'Hommedieu, 138 Fed. 606; Anderson v. Messinger, (C. C. A.) 146 Fed. 929; Keyes v. Northern Trust Co., 227 Ill. 354, 81 N. E. 384; Seabrook v. Grimes, (Md. 1908) 68 Atl. 883; Matter of Murray, 124 N. Y. App. Div. 548, 108 N. Y. Supp. 1047.

When Beneficiary Reaches Twenty-five Years. — Burke v. O'Brien, 115 N. Y. App. Div. 574, 100 N. Y. Supp. 1048.

6. Barclay's Estate, (Cal. 1908) 93 Pac. 1012; Robinson v. Bonaparte, 102 Md. 63, 61 Atl. 212; Cole v. Lee, 143 Mich. 267, 106 N. W. 855; Treadwell v. Williams, (N. H. 1907) 67 Atl. 947; Burke v. O'Brien, 115 N. Y. App. Div. 574, 100 N. Y. Supp. 1048; *In re* West, 214 Pa. St. 35, 63 Atl. 407; Paine v. Sackett, 27 R. I. 300, 61 Atl. 753.

Death of Third Party. — Stringer v. Young, 191 N. Y. 157, 83 N. E. 690.

7. Holderman v. Hood, 70 Kan. 267, 78 Pac. 818.

950. 1. Witherington v. Herring, 140 N. Car. 495, 53 S. E. 303, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 950.

951. 2. Fowler v. Gowing, 152 Fed. 801; Lewis v. Curnutt, 130 Iowa 423, 106 N. W. 914; *In re* Podhajsky, (Iowa 1908) 115 N. W. 590; Elliott v. Louisville, (Ky. 1906) 90 S. W. 990; Coleman v. Fidelity Trust, etc., Co., (Ky. 1906) 91 S. W. 716; Frank Fehr Brewing Co. v. Johnston, (Ky. 1906) 97 S. W. 1107; Littig v. Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635; Sands v. Old Colony Trust Co., (Mass. 1907) 81 N. E. 300; Taylor v. Draper, (N. J. 1906) 63 Atl. 844; Robb v. Washington & Jefferson College, 185 N. Y. 485, 78 N. E. 359.

4. Carroll v. Smith, 99 Md. 653, 59 Atl. 131.

952. 3. Parkhill v. Doggett, (Iowa 1907) 112 N. W. 189.

7. Trust Empowering Trustee to Terminate Valid. — *In re* Spring, 216 Pa. St. 529, 66 Atl. 110.

953. 4. Olsen v. Youngerman, (Iowa 1907) 113 N. W. 938; Kimball v. Blanchard, 101 Me. 383, 64 Atl. 645; Welch v. Episcopal Theological School, 189 Mass. 108, 75 N. E. 139; Sands v. Old Colony Trust Co., (Mass. 1907) 81 N. E. 300; Angell v. Angell, (R. I. 1908) 68 Atl. 583; Bussell v. Wright, (Wis. 1907) 113 N. W. 644.

12. Kimball v. Blanchard, 101 Me. 383, 64 Atl. 645.

13. Parkhill v. Doggett, (Iowa 19070) 112 N. W. 189; Kimball v. Blanchard, 101 Me. 383, 64 Atl. 645; Bussell v. Wright, (Wis. 1907) 113 N. W. 644.

14. An active trust cannot be terminated at the will of the beneficiary. Kimball v. Blanchard, 101 Me. 383, 64 Atl. 645.

954. 5. Austin v. Cahill, 99 Tex. 172, 88 S. W. 542.

955. 5. Jacoby v. Jacoby, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 427, 94 N. Y. Supp. 260; McAfee v. Green, 143 N. Car. 411, 55 S. E. 828.

7. Robertson v. De Brulatour, 188 N. Y. 301, 80 N. E. 938.

8. Beneficiary Trustee for Remaindermen. — Robertson v. De Brulatour, 111 N. Y. App. Div. 882, 98 N. Y. Supp. 15.

9. *In re* Thompson's Settlement Trusts, (1905) 1 Ch. 229; Austin v. Cahill, 99 Tex. 172, 88 S. W. 542.

Roman Catholic Bishop May Be Trustee. — Rine v. Wagner, (Iowa 1907) 113 N. W. 471.

956. 1. Childs v. Waite, 102 Me. 451, 67 Atl. 311; North Troy Graded School Dist. v. Troy, 80 Vt. 16, 66 Atl. 1033.

5. The society's incapacity is immaterial, as the court will appoint a trustee. Guild v. Allen, (R. I. 1907) 67 Atl. 855.

6. Or for Her Husband. — But a wife cannot thereby defeat her husband's creditors. George Adams, etc., Co. v. Cook, (Iowa 1908) 115 N. W. 478.

8. Johnson v. Cook, 122 Ga. 524, 50 N. E. 367.

957. 4. Hayden v. Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

10. Sawyer v. Cook, 188 Mass. 163, 74 N. E. 356.

11. Korsstrom v. Barnes, 156 Fed. 280;

Welch *v.* Caldwell, 226 Ill. 466, 80 N. E. 1014; Morrow *v.* Morrow, 113 Mo. App. 444, 87 S. W. 590; Casselman *v.* McCooley, (N. J. 1907) 67 Atl. 436; *In re* Roach, (Oregon 1907) 92 Pac. 118; Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087; Wolbert *v.* Beard, 128 Wis. 391, 107 N. W. 663.

958. 3. Dwyer *v.* Cahill, 228 Ill. 617, 81 N. E. 1142; Hiles *v.* Garrison, 70 N. J. Eq. 605, 62 Atl. 865.

6. See Martin *v.* Preston, (Wash. 1908) 94 Pac. 1087.

7. Dwyer *v.* Cahill, 228 Ill. 617, 81 N. E. 1142; Stevens *v.* Coleman, 16 Quebec K. B. 239, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 958.

Duty of Probate Court to Appoint Testamentary Trustee. — Beardsley's Appeal, 77 Conn. 705, 60 Atl. 664.

959. 4. Casselman *v.* McCooley, (N. J. 1907) 67 Atl. 436.

8. *In re* Walker, 149 Cal. 214, 85 Pac. 310; Noble *v.* Birnie, 105 Md. 73, 65 Atl. 823; Morrow *v.* Morrow, 113 Mo. App. 444, 87 S. W. 590; McAfee *v.* Green, 143 N. Car. 411, 55 S. E. 828; Casselman *v.* McCooley, (N. J. 1907) 67 Atl. 436; *In re* Oltman, (Surrogate Ct.) 53 Misc. (N. Y.) 208, 104 N. Y. Supp. 472; *In re* Sheet, 215 Pa. St. 164, 64 Atl. 413; *In re* De Silver, 211 Pa. St. 459, 60 Atl. 1048.

961. 2. Wells *v.* German Ins. Co., 128 Iowa 649, 105 N. W. 123; Parkhill *v.* Doggett, (Iowa 1907) 112 N. W. 189; Varick *v.* Smith, 69 N. J. Eq. 505, 61 Atl. 151.

5. Childs *v.* Waite, 102 Me. 451, 67 Atl. 311; Wood *v.* Fourth Baptist Church, 26 R. I. 594, 61 Atl. 279; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

Executor as Trustee. — Casselman *v.* McCooley, (N. J. 1907) 67 Atl. 436.

962. 1. Dwyer *v.* Cahill, 228 Ill. 617, 81 N. E. 1142; Hiles *v.* Garrison, 70 N. J. Eq. 605, 62 Atl. 865.

7. *In re* Walker, 149 Cal. 214, 85 Pac. 310.

Substitute Appointed Though Creation of Trust Doubtful. — *In re* Oltman, (Surrogate Ct.) 53 Misc. (N. Y.) 208, 104 N. Y. Supp. 472.

15. Matter of Pitney, 113 N. Y. App. Div. 845, 99 N. Y. Supp. 588; Coster *v.* Coster, (Supm. Ct. App. Div.) 109 N. Y. Supp. 798; Carr *v.* Corning, 73 N. H. 362, 62 Atl. 168.

964. 6. Reichert *v.* Missouri, etc., Coal Co., 231 Ill. 238, 83 N. E. 166; *In re* Boning, 214 Pa. St. 19, 63 Atl. 296.

965. 2. *In re* Boning, 214 Pa. St. 19, 63 Atl. 296.

3. Rosier *v.* Nichols, 123 Ga. 20, 50 S. E. 988.

7. Carr *v.* Corning, 73 N. H. 362, 62 Atl. 168.

10. Carr *v.* Corning, 73 N. H. 362, 62 Atl. 168.

11. **Power Extinguished by Alienation of Life Estate.** — Rosier *v.* Nichols, 123 Ga. 20, 50 S. E. 988.

966. 1. *In re* Boning, 214 Pa. St. 19, 63 Atl. 296.

17. **Appointee under Power Cannot Appoint Successor.** — *In re* Boning, 214 Pa. St. 19, 63 Atl. 296.

970. 6. Barker *v.* Barker, 73 N. H. 353, 62 Atl. 166, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 970.

8. Barker *v.* Barker, 73 N. H. 353, 62 Atl. 166.

971. 14. Austin *v.* Wilcoxson, 149 Cal. 24, 84 Pac. 417; St. Mary's Hospital *v.* Perry, (Cal. 1907) 92 Pac. 864; Johnson *v.* Cook, 122 Ga. 524, 50 S. E. 367; State *v.* State Journal Co., 75 Neb. 275, 106 N. W. 434.

973. 1. **Acceptance under Decree of Distribution Sufficient.** — St. Mary's Hospital *v.* Perry, (Cal. 1907) 92 Pac. 864

12. Parkhill *v.* Doggett, (Iowa 1907) 112 N. W. 189.

15. But see Attwill *v.* Dole, (N. H. 1907) 67 Atl. 403, holding that there must be a refusal or neglect to give a bond "when required."

974. 3. **Bond Not Required Prematurely.** — West *v.* Bailey, 196 Mo. 517, 94 S. W. 273.

6. **Question Not Open to Collateral Inquiry.** — Reichert *v.* Missouri, etc., Coal Co., 231 Ill. 238, 83 N. E. 166.

7. Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541. See also Philbin *v.* Thurn, 103 Md. 342, 63 Atl. 571.

8. **In Maryland** the Code of Pub. Gen. L. 1904, art. 16, § 221, requiring a bond to be given by a trustee created by deed, does not refer to a testamentary trustee. Philbin *v.* Thurn, 103 Md. 342, 63 Atl. 571.

975. 3. *In re* Roach, (Oregon 1907) 92 Pac. 118.

976. 5. Grand Lodge, etc., *v.* Beath, (Mich. 1908) 114 N. W. 662.

977. 6. **Trustee Cannot Set Up Illegality.** — Grand Lodge, etc., *v.* Beath, (Mich. 1908) 114 N. W. 662.

14. Morrow *v.* Morrow, 113 Mo. App. 444, 87 S. W. 590; Barker *v.* Barker, 73 N. H. 353, 62 Atl. 166; Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1907) 57 S. E. 249, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 977.

978. 5. Barkley Cemetery Assoc. *v.* McCune, 119 Mo. App. 349, 95 S. W. 295; Strickler's Estate, 28 Pa. Super. Ct. 455; Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1907) 57 S. E. 249, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 978.

6. Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1907) 57 S. E. 249, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 978.

979. 2. Lowe *v.* Montgomery, 117 Mo. App. 273, 92 S. W. 916; Barker *v.* Barker, 73 N. H. 353, 62 Atl. 166; Matter of Thieriot, 117 N. Y. App. Div. 686, 102 N. Y. Supp. 952; Wiggins *v.* Burr, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 496, 105 N. Y. Supp. 649.

3. **Mingling of Funds by Solvent Trustee Not Necessarily Ground for Removal.** — Lowe *v.* Montgomery, 117 Mo. App. 273, 92 S. W. 916.

5. Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1907) 57 S. E. 249, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 979.

6. *In re* Hirsch, 116 N. Y. App. Div. 367, 101 N. Y. Supp. 893; Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1907) 57 S. E. 249, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 979.

Taking Stock in Rival Bank Not Sufficient Ground. — Lowe *v.* Montgomery, 117 Mo. App. 273, 92 S. W. 916.

10. Bascom *v.* Weed, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 496, 105 N. Y. Supp. 459.

12. **Removal from Locality of Object of Trust.** — Barkley Cemetery Assoc. *v.* McCune, 119 Mo. App. 349, 95 S. W. 295.

980. 10. Teeter *v.* Veitch, (N. J. 1905) 61 Atl. 14.

Want of Request No Defense to Nonperformance. — Cotton *v.* Rand, (Tex. Civ. App. 1905) 92 S. W. 266.

11. Morrow *v.* Morrow, 113 Mo. App. 444, 87 S. W. 590.

981. 1. Polk *v.* Linthicum, 100 Md. 615, 60 Atl. 455; Morrow *v.* Morrow, 113 Mo. App. 444, 87 S. W. 590; Barker *v.* Barker, 73 N. H. 353, 62 Atl. 166.

2. See Barker *v.* Barker, 73 N. H. 353, 62 Atl. 166.

5. Polk *v.* Linthicum, 100 Md. 615, 60 Atl. 455; Lowe *v.* Montgomery, 117 Mo. App. 273, 92 S. W. 916.

8. Polk *v.* Linthicum, 100 Md. 615, 60 Atl. 455.

982. 1. Kipp *v.* O'Melveny, 2 Cal. App. 142, 83 Pac. 264; Cowell *v.* City Water Supply Co., 130 Iowa 671, 105 N. W. 1016, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 982, 983; Fidelity Trust Co. *v.* Hawkins, (Ky. 1906) 90 S. W. 249; Browning *v.* Stiles, (N. J. 1906) 65 Atl. 457.

Trustee Cannot Force Beneficiary to Receive Benefits. — Bailey *v.* Worster, (Me. 1907) 68 Atl. 698.

2. Kenworthy *v.* Levi, 214 Pa. St. 235, 63 Atl. 690.

Power to "Manage" Trust Property. — *In re* Heywood, 148 Cal. 188, 82 Pac. 755.

Strict Construction of Express Powers. — Kennedy *v.* Pearson, (Tex. Civ. App. 1908) 109 S. W. 280.

983. 16. Cowell *v.* City Water Supply Co., 130 Iowa 671, 105 N. W. 1016, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 982, 983.

984. 4. Bailey *v.* Worster, (Me. 1907) 68 Atl. 698.

985. 3. Ballantine *v.* Ballantine, 152 Fed. 775; Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645.

6. **Validity of Trust Not Affected Because of Large Discretionary Power Granted.** — Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541.

7. Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 985.

986. 5. Hosch Lumber Co. *v.* Weeks, 123 Ga. 336, 51 E. E. 439; Gibb *v.* McMahon, 9 Ont. L. Rep. 522, 4 Ann. Cas. 952.

6. Hosch Lumber Co. *v.* Weeks, 123 Ga. 336, 51 S. E. 439; Nesbitt *v.* Tarbrake, 30 Pa. Super. Ct. 460.

987. 3. **Where Cotrustee also Beneficiary.** — A cotrustee is not entitled to pass upon discretionary matters involving benefits to himself. Barker *v.* Barker, 73 N. H. 353, 62 Atl. 166.

6. Bascom *v.* Weed, (Supm. Ct. Tr. T.) 53 Mass. (N. Y.) 496, 105 N. Y. Supp. 459.

Sale by Only Trustee Qualifying Valid. — Draper *v.* Montgomery, 108 N. Y. App. Div. 63, 95 N. Y. Supp. 904.

988. 4. Ubhoff *v.* Brandenburg, 26 App. Cas. (D. C.) 3.

6. Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834; McAfee *v.* Green, 143 N. Car. 411, 55 S. E. 828; Smith *v.* Floyd, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 196, 107 N. Y. Supp. 231; Smith *v.* Floyd, 124 N. Y. App. Div. 277, 108 N. Y. Supp. 775. *Compare* Childs *v.* Waite, 102 Me. 451, 67 Atl. 311; Robinson *v.* Bonaparte, 102 Md. 63, 61 Atl. 212; *In re* Wilkin, 183 N. Y. 104, 75 N. E. 1105.

7. Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834; Reichert *v.* Missouri, etc., Coal Co., 231 Ill. 238, 83 N. E. 166; Easy Payment Property Co. *v* Vonderheide, (Ky. 1906) 96 S. W. 449; Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819; Varick *v.* Smith, 69 N. J. Eq. 505, 61 Atl. 151; *In re* Wilkin, 183 N. Y. 104, 75 N. E. 1105; *In re* Graham, 218 Pa. St. 344, 67 Atl. 458; *In re* Graham, 218 Pa. St. 357, 67 Atl. 462.

Representatives of Cotrustees Cannot Interfere with Survivor. — *In re* Graham, 218 Pa. St. 344, 67 Atl. 458; *In re* Graham, 218 Pa. St. 357, 67 Atl. 462.

989. 1. Reichert *v.* Missouri, etc., Coal Co., 231 Ill. 238, 83 N. E. 166.

991. 1. Ballantine *v.* Ballantine, 152 Fed. 775; Murphy *v.* Union Trust Co., 5 Cal. App. 146, 89 Pac. 988; Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645; Gottschalk *v.* Mercantile Trust, etc., Co., 102 Md. 521, 62 Atl. 810; Givens *v.* Clem, 107 Va. 435, 59 S. E. 413.

Court Cannot Diminish Trustee's Powers. — Browning *v.* Stiles, (N. J. 1906) 65 Atl. 457.

2. Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 991 *et seq.*; Hubbard *v.* Hayes, (Ky. 1907) 98 S. W. 1034; Robinson *v.* Bonaparte, 102 Md. 63, 61 Atl. 212; Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883; Browning *v.* Stiles, (N. J. 1906) 65 Atl. 457; Dubois *v.* Barbour, 27 R. I. 281, 61 Atl. 752; Angell *v.* Angell, (R. I. 1908) 68 Atl. 583; North Troy Graded School Dist. *v.* Troy, 80 Vt. 16, 66 Atl. 1033.

992. 1. Keeler *v.* Lauer, 73 Kan. 388, 85 Pac. 541, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 991 *et seq.*

2. Gottschalk *v.* Mercantile Trust, etc., Co., 102 Md. 521, 62 Atl. 810; Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883; Angell *v.* Angell, (R. I. 1908) 68 Atl. 583.

3. *In re* Bellah, 8 Del. Ch. 59, 67 Atl. 973; *In re* Baker, 8 Del. Ch. 355, 68 Atl. 449.

4. Sternfels *v.* Watson, 139 Fed. 505; McDonald *v.* Shaw, 81 Ark. 235, 98 S. W. 952; Bremer *v.* Hadley, (Mass. 1907) 81 N. E. 961; Byron Reed Co. *v.* Klabunde, (Neb. 1906) 108 N. W. 133; Hiles *v.* Garrison, 70 N. J. Eq. 605, 62 Atl. 865; Kenworthy *v.* Levi, 214 Pa. St. 235, 63 Atl. 690; Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717; Kennedy *v.* Pearson, (Tex. Civ. App. 1908) 109 S. W. 280.

Lease Not Violation of Restriction against Sale. — *In re* Hubbell Trust, (Iowa 1907) 113 N. W. 512.

993. 1. Sternfels *v.* Watson, 139 Fed. 505. See also Beach *v.* Beers, (Conn. 1908) 68 Atl. 990.

3. **Agreement Entered into under Mistake.** — Givens *v.* Clem, 107 Va. 435, 59 N. E. 413.

4. Mead *v.* Chesbrough Bldg. Co., (C. C. A.) 151 Fed. 998; Mead *v.* Gallatin, (C. C. A.) 151 Fed. 1006; Mead *v.* Darling, (C. C. A.) 151 Fed. 1006; Richards *v.* Keyes, (Mass. 1907) 80 N. E. 812; Davidson *v.* Mantor, 45 Wash.

666, 89 Pac. 167, *quoting* 3 AM. AND ENG. ENCYC. OF LAW (2d ed.) 993. But see Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717.

Where Legal Title Is Not in Trustee. — Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929; Rosier *v.* Nichols, 123 Ga. 20, 50 S. E. 988; Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474.

Sale Passes Only Trustee's Individual Interest. — Sternfels *v.* Watson, 139 Fed. 505; Kennedy *v.* Pearson, (Tex. Civ. App. 1908) 109 S. W. 280.

No Title, but Mere Color of Title. — Maynard *v.* Greer, 129 Ga. 709, 59 S. E. 798.

994. 1. Beach *v.* Beers, (Conn. 1908) 68 Atl. 990; Armour *v.* Murray, (N. J. 1907) 68 Atl. 164; Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717. But see Byron Reed Co. *v.* Klabunde, (Neb. 1906) 108 N. W. 133.

Consent of Trustee and Purchaser Not Considered. — Fredrick *v.* Fredrick, 219 Ill. 568, 76 N. E. 856.

4. Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834; McAfee *v.* Green, 143 N. Car. 411, 55 S. E. 828; Kennedy *v.* Pearson, (Tex. Civ. App. 1908) 109 S. W. 280.

Authority by Statute to Order Sales. — Currey *v.* Monsch, (Ky. 1907) 104 S. W. 313; McAfee *v.* Green, 143 N. Car. 411, 55 S. E. 828.

Ratification of Sale by Trustee. — Smith *v.* White, 107 Va. 616, 59 S. E. 480.

Power Conferred by Will. — Currey *v.* Monsch, (Ky. 1907) 104 S. W. 313.

995. 1. McAfee *v.* Green, 143 N. Car. 411, 55 S. E. 828.

Order at Chambers. — Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834.

2. Maynard *v.* Greer, 129 Ga. 709, 59 S. E. 798; Beall *v.* Dingman, 227 Ill. 294, 81 N. E. 366; Currey *v.* Monsch, (Ky. 1907) 104 S. W. 313; Bernheim *v.* Heyman, (Ky. 1907) 104 S. W. 388; Robinson *v.* Cogswell, 192 Mass. 79, 78 N. E. 389; Dodson *v.* Ashley, 101 Md. 513, 61 Atl. 299; Bertron *v.* Polk, 101 Md. 686, 61 Atl. 616; Graham *v.* Ackerly, 120 N. Y. App. Div. 430, 105 N. Y. Supp. 51; Sprague *v.* Betz, 44 Wash. 650, 87 Pac. 916.

Revocation. — *Compare* Pritchett *v.* Jackson, 103 Md. 696, 63 Atl. 965.

Power to Free of Dower. — A power to agree with testator's widow for the capitalization and assignment of dower, or to sell the property and pay her the capitalized value, gives the trustee discretionary power to free the land of dower. Shipley *v.* Mercantile Trust, etc., Co., 102 Md. 649, 62 Atl. 814.

3. Murphy *v.* Union Trust Co., 5 Cal. App. 146, 89 Pac. 988; Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834; Pritchett *v.* Jackson, 103 Md. 696, 63 Atl. 965; U. S. *v.* Thurston County, (C. C. A.) 143 Fed. 287; Browning *v.* Stiles, (N. J. 1906) 65 Atl. 457; Paolicchi *v.* American Telephone, etc., Co., 119 N. Y. App. Div. 609, 104 N. Y. Supp. 162; Graham *v.* Ackerly, 120 N. Y. App. Div. 430, 105 N. Y. Supp. 51; Savage *v.* Savage, (Oregon 1908) 94 Pac. 182; Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945; Sprague *v.* Betz, 44 Wash. 650, 87 Pac. 916; Hagan *v.* Holderby, (W. Va. 1907) 57 S. E. 289.

996. 1. **Deed Executed by Trustee as "Executor" Valid.** — Philbin *v.* Thurn, 103 Md. 342, 63 Atl. 571.

3. Maynard *v.* Greer, 129 Ga. 709, 59 N. E. 798; McAfee *v.* Green, 143 N. Car. 411, 55 S. E. 828.

7. Bertron *v.* Polk, 101 Md. 686, 61 Atl. 616.

Discretionary Power Is Personal. — Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834.

8. See Jordan *v.* Jordan, 192 Mass. 337, 78 N. E. 459.

997. 1. Adair *v.* Adair, (Ky. 1907) 99 S. W. 925; Mansfield *v.* Wardlow, (Tex. Civ. App. 1905) 91 S. W. 859. See also Lee *v.* Giles, 124 Ga. 494, 52 S. E. 806; Easy Payment Property Co. *v.* Vonderheide, (Ky. 1906) 96 S. W. 449; Pope *v.* Patterson, 78 S. Car. 334, 58 S. E. 945.

4. **Power to Authorize Extinguished by Alienation of Life Estate.** — Rosier *v.* Nichols, 123 Ga. 20, 50 S. E. 988.

5. **Third Person Cannot Question Sufficiency of Consent under Statute of Frauds.** — Oder *v.* Jump, (Ky. 1908) 108 S. W. 292.

998. 1. Murphy *v.* Union Trust Co., 5 Cal. App. 146, 89 Pac. 988; Maynard *v.* Greer, 129 Ga. 709, 59 S. E. 798; Robinson *v.* Cogswell, 192 Mass. 79, 78 N. E. 389.

Successor Must Apply to Court. — Maynard *v.* Greer, 129 Ga. 709, 59 S. E. 798.

6. Kenworthy *v.* Levi, 214 Pa. St. 235, 63 Atl. 690.

999. 7. **Power Extinguished by Merger of Estates.** — Rosier *v.* Nichols, 123 Ga. 20, 50 S. E. 988.

Power of Sale in Executor Not Defeated by Limitation in Trust. — Centenary Fund, etc., Soc. *v.* Lake, (N. J. 1907) 66 Atl. 601.

Proceedings to Sell Not within Statute of Limitations. — Brereton *v.* Benedict, (Colo. 1907) 92 Pac. 238.

1000. 1. **After Expiration of His Estate.** — Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929.

2. Dodson *v.* Ashley, 101 Md. 513, 61 Atl. 299 (to the same effect as *In re* Tweedie, 27 Ch. D. 315, set forth in the original note).

3. Murphy *v.* Union Trust Co., 5 Cal. App. 146, 89 Pac. 988; *In re* Stevens, (Surrogate Ct.) 46 Misc. (N. Y.) 623, 95 N. Y. Supp. 297.

Laying Out Park to Enhance Value of Property. — Smith *v.* Nones, (Ky. 1905) 89 S. W. 153.

1001. 3. Dodson *v.* Ashley, 101 Md. 513, 61 Atl. 299; Sprague *v.* Betz, 44 Wash. 650, 87 Pac. 916.

4. Bertron *v.* Polk, 101 Md. 686, 61 Atl. 616.

1002. 2. **Power Conferred by Court Exhausted by Sale.** — Bremer *v.* Hadley, (Mass. 1907) 81 N. E. 961.

5. Scottish-American Mortg. Co. *v.* Clowney, 70 S. Car. 229, 49 S. E. 569.

6. McDonald *v.* Shaw, 81 Ark. 235, 98 S. W. 952; Green *v.* Bissell, 79 Conn. 547, 65 Atl. 1056; Hiles *v.* Garrison, 70 N. J. Eq. 605, 62 Atl. 865; Casselman *v.* McCooley, (N. J. 1907) 67 Atl. 436; Burnham *v.* White, 117 N. Y. App. Div. 515, 102 N. Y. Supp. 717; Foil *v.* Newsome, 138 N. Car. 115, 50 S. E. 597.

1003. 1. Varick *v.* Smith, 69 N. J. Eq. 505, 61 Atl. 151.

3. Browning *v.* Stiles, (N. J. 1906) 65 Atl,

457; Casselman *v.* McCooley, (N. J. 1907) 67 Atl. 436; Foil *v.* Newsome, 138 N. Car. 115, 50 S. E. 597. *Compare* Branch *v.* De Wolf, (R. I. 1908) 68 Atl. 543.

5. Green *v.* Bissell, 79 Conn. 547, 65 Atl. 1056; Varick *v.* Smith, 69 N. J. Eq. 505, 61 Atl. 151; Casselman *v.* McCooley, (N. J. 1907) 67 Atl. 436; Burnham *v.* White, 117 N. Y. App. Div. 515, 102 N. Y. Supp. 717.

9. Bremer *v.* Hadley, (Mass. 1907) 81 N. E. 961; Branch *v.* De Wolf, (R. I. 1908) 68 Atl. 543; Kennedy *v.* Pearson, (Tex. Civ. App. 1908) 109 S. W. 280.

11. Kennedy *v.* Pearson, (Tex. Civ. App. 1908) 109 S. W. 280.

1004. 1. **Confirmation by Court Not Necessary.** — Murphy *v.* Union Trust Co., 5 Cal. App. 146, 89 Pac. 988.

2. Murphy *v.* Union Trust Co., 5 Cal. App. 146, 89 Pac. 988; Givens *v.* Clem, 107 Va. 435, 59 S. E. 413.

4. Givens *v.* Clem, 107 Va. 435, 59 S. E. 413.

5. Bertron *v.* Polk, 101 Md. 686, 61 Atl. 616.

6. Mansfield *v.* Wardlow, (Tex. Civ. App. 1905) 91 S. W. 859.

1005. 1. **Court May Order Private Sale.** — McAfee *v.* Green, 143 N. Car. 411, 55 S. E. 828.

3. Fredrick *v.* Fredrick, 219 Ill. 568, 76 N. E. 856.

4. Fredrick *v.* Fredrick, 219 Ill. 568, 76 N. E. 856; Holderman *v.* Hood, 70 Kan. 267, 78 Pac. 838.

5. Holderman *v.* Hood, 70 Kan. 267, 78 Pac. 838.

Trustee Should Not Sell Where Contest of Will Probable. — Beall *v.* Dingman, 227 Ill. 294, 81 N. E. 366.

6. See Bertron *v.* Polk, 101 Md. 686, 61 Atl. 616.

7. Scottish-American Mortg. Co. *v.* Clowney, 70 S. Car. 229, 49 S. E. 569; Davidson *v.* Mantor, 45 Wash. 660, 89 Pac. 167.

1006. 2. Mead *v.* Chesbrough Bldg. Co., (C. C. A.) 151 Fed. 998; Mead *v.* Gallatin, (C. C. A.) 151 Fed. 1006; Mead *v.* Darling, (C. C. A.) 151 Fed. 1006.

3. Fredrick *v.* Fredrick, 219 Ill. 568, 76 N. E. 856; Browning *v.* Stiles, (N. J. 1906) 65 Atl. 457; Winder *v.* Nock, 104 Va. 759, 52 S. E. 561.

Gross Inadequacy. — Beall *v.* Dingman, 227 Ill. 294, 81 N. E. 366.

5. **Power Not in Restraint of Alienation.** — *In re* Hubbell Trust, (Iowa 1907) 113 N. W. 512.

Statutory Power. — Weir *v.* Barker, 104 N. Y. App. Div. 112, 93 N. Y. Supp. 732.

1007. 4. *In re* Hubbell Trust, (Iowa 1907) 113 N. W. 512.

7. **Term of Ninety-nine Years Unreasonable.** — *In re* Hubbell Trust, (Iowa 1907) 113 N. W. 512.

Lease for Full Statutory Period with Renewal Valid. — Weir *v.* Barker, 104 N. Y. App. Div. 112, 93 N. Y. Supp. 732.

1008. 1. *In re* Hubbell Trust, (Iowa 1907) 113 N. W. 512.

4. *In re* Hubbell Trust, (Iowa 1907) 113 N. W. 512.

5. *In re* Hubbell Trust, (Iowa 1907) 113 N. W. 512.

6. *In re* Hubbell Trust, (Iowa 1907) 113 N. W. 512.

7. Byron Reed Co. *v.* Klabunde, (Neb. 1906) 108 N. W. 133; Sternfels *v.* Watson, 139 Fed. 505; Sprague *v.* Betz, 44 Wash. 650, 87 Pac. 916.

1009. 1. Gardiner *v.* Cord, 145 Cal. 157, 78 Pac. 544; Kenworthy *v.* Levi, 214 Pa. St. 235, 63 Atl. 690.

4. *In re* Lueft, 129 Wis. 534, 109 N. W. 652.

1010. 3. **Trustee May Mortgage Part of Property.** — Kipp *v.* O'Melveny, 2 Cal. App. 142, 83 Pac. 264.

4. Visalia Bank *v.* Dillonwood Lumber Co., 148 Cal. 18, 82 Pac. 374.

Mortgage Direct to Creditors. — Kipp *v.* O'Melveny, 2 Cal. App. 142, 83 Pac. 264.

1011. 2. Kipp *v.* O'Melveny, 2 Cal. App. 142, 83 Pac. 264; Ely *v.* Pike, 115 Ill. App. 284; Fidelity Trust Co. *v.* Hawkins, (Ky. 1906) 90 S. W. 249; *In re* Lueft, 129 Wis. 534, 109 N. W. 652.

3. Stump *v.* Warfield, 104 Md. 530, 65 Atl. 346; Mansfield *v.* Wardlow, (Tex. Civ. App. 1905) 91 S. W. 859; Sprague *v.* Betz, 44 Wash. 650, 87 Pac. 916.

1012. 1. Stump *v.* Warfield, 104 Md. 530, 65 Atl. 346; Kenworthy *v.* Levi, 214 Pa. St. 235, 63 Atl. 690; *In re* Lueft, 129 Wis. 534, 109 N. W. 652.

6. Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645; Susens *v.* Daiker, 117 N. Y. App. Div. 515, 102 N. Y. Supp. 919; Angell *v.* Angell, (R. I. 1908) 68 Atl. 583. See also Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883; *In re* Olney, 27 R. I. 495, 63 Atl. 956.

1013. 1. Baker *v.* Fooks, 8 Del. Ch. 84, 67 Atl. 969; *In re* Olney, 27 R. I. 495, 63 Atl. 956.

5. Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645; *In re* Wilkin, 183 N. Y. 104, 75 N. E. 1105.

Discretion Cannot Be Exercised by Substituted Trustee. — Smith *v.* Floyd, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 196, 107 N. Y. Supp. 231; Smith *v.* Floyd, 124 N. Y. App. Div. 277, 108 N. Y. Supp. 775.

1014. 1. See Linn *v.* Downing, 216 Ill. 64, 74 N. E. 729; Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645.

4. **Trustee as Beneficiary.** — An executor who is also a beneficiary has the right to appeal in his individual capacity from an order injuriously affecting him. Boyce *v.* McLeod, (Md. 1907) 68 Atl. 135.

6. Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935; Devenney *v.* Devenney, 74 Ohio St. 96, 77 N. E. 688.

1015. 1. Jarrett *v.* Johnson, 216 Ill. 212, 74 N. E. 756.

1016. 4. Reeder *v.* Meredith, 78 Ark. 111, 93 S. W. 558; Hayes *v.* Hall, 188 Mass. 510 74 N. E. 935; Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852.

5. Reeder *v.* Meredith, 78 Ark. 111, 93 S. W. 558, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1016; Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935; *In re* Robbins, 94 Minn.

433, 103 N. W. 217; Woolf *v.* Barnes, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 163, 93 N. Y. Supp. 219; Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1016; Scottish-American Mortg. Co. *v.* Clowney, 70 S. Car. 229, 49 S. E. 569.

1017. 1. Page *v.* Harper, 73 Kan. 229, 84 Pac. 1024; Skelding *v.* Dean, 141 Mich. 143, 104 N. W. 410; *In re* Robbins, 94 Minn. 433, 103 N. W. 217; *In re* Robbins, (Minn. 1906) 109 N. W. 229; Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852; Scottish-American Mortg. Co. *v.* Clowney, 70 S. Car. 229, 49 S. E. 569.

Trustee's Voidable Title Good against Ejectment. — Mead *v.* Chesbrough Bldg. Co., (C. C. A.)151 Fed. 998; Mead *v.* Darling, (C. C. A.) 151 Fed. 1006; Mead *v.* Gallatin, (C. C. A.) 151 Fed. 1006.

1018. 2. Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935.

4. *In re* Robbins, 94 Minn. 433, 103 N. W. 217; Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852; Scottish-American Mortg. Co. *v.* Clowney, 70 N. Car. 229, 49 S. E. 569.

5. Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852; Scottish-American Mortg. Co. *v.* Clowney, 70 N. Car. 229, 49 S. E. 569.

1019. 1. Terrell *v.* Eagle, (Ark. 1908) 107 S. W. 670; Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935; *In re* Robbins, (Minn. 1906) 109 N. W. 229; Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852.

Trustee Cannot Purchase through Agent or Intermediary. — *In re* Robbins, 94 Minn. 433, 103 N. W. 217; Chorrmann *v.* Bachmann, 119 N. Y. App. Div. 146, 104 N. Y. Supp. 151.

Purchase by Trustee's Wife or Son. — Scottish-American Mortg. Co. *v.* Clowney, 70 S. Car. 229, 49 S. E. 569.

3. Mead *v.* Chesbrough Bldg. Co., (C. C. A.) 151 Fed. 998; Mead *v.* Gallatin, (C. C. A.) 151 Fed. 1006; Mead *v.* Darling, (C. C. A.) 151 Fed. 1006; Starkweather *v.* Jenner, 27 App. Cas. (D. C.) 348. *Compare* Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852.

1020. 2. *In re* Robbins, 94 Minn. 433, 103 N. W. 217; Vulcan Detinning Co. *v.* American Can Co., (N. J. 1907) 67 Atl. 339; Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852.

1021. 1. Byrne *v.* Jones, (C. C. A.) 159 Fed. 321; Reeder *v.* Meredith, 78 Ark. 111, 93 S. W. 558, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1020; Flowers *v.* Flowers, 84 Ark. 557, 106 S. W. 949; Lake *v.* Owens, 146 Cal. xviii, 79 Pac. 589.

3. Flowers *v.* Flowers, 84 Ark. 557, 106 S. W. 949.

4. Byrne *v.* Jones, (C. C. A.) 159 Fed. 321; Reeder *v.* Meredith, 78 Ark. 111, 93 S. W. 558; Flowers *v.* Flowers, 84 Ark. 557, 106 S. W. 949; Sullivan *v.* Sullivan, (Ky. 1907) 99 S. W. 254.

1022. 2. Reeder *v.* Meredith, 78 Ark. 111, 93 S. W. 558; Flowers *v.* Flowers, 84 Ark. 557, 106 S. W. 949.

3. Byrne *v.* Jones, (C. C. A.) 159 Fed. 321; Flowers *v.* Flowers, 84 Ark. 557, 106 S. W. 949; Sullivan *v.* Sullivan, (Ky. 1907) 99 S. W. 254.

1023. 1. Mead *v.* Chesbrough Bldg. Co., (C. C. A.) 151 Fed. 998; Mead *v.* Darling, (C. C. A.) 151 Fed. 1006; Mead *v.* Gallatin, (C. C. A.) 151 Fed. 1006.

3. Reeder *v.* Meredith, 78 Ark. 111, 93 S. W. 558, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1023.

Fraud Not Presumed. — Mead *v.* Chesbrough Bldg. Co., (C. C. A.) 151 Fed. 998; Mead *v.* Darling, (C. C. A.) 151 Fed. 1006; Mead *v.* Gallatin, (C. C. A.) 151 Fed. 1006.

1024. 2. Marquam *v.* Ross, 47 Oregon 374, 83 Pac. 852.

1025. 1. *In re* Bellah, 8 Del. Ch. 59, 67 Atl. 973; *In re* Baker, 8 Del. Ch. 355, 68 Atl. 449; Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935.

2. *In re* Robbins, (Minn. 1906) 109 N. W. 229; Bushe *v.* Bedford, 118 N. Y. App. Div. 368, 103 N. Y. Supp. 403.

3. Skelding *v.* Dean, 141 Mich. 143, 104 N. W. 410.

1026. 3. Bushe *v.* Bedford, 118 N. Y. App. Div. 368, 103 N. Y. Supp. 403.

4. Bushe *v.* Bedford, 118 N. Y. App. Div. 368, 103 N. Y. Supp. 403.

5. Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935.

1027. 2. Skelding *v.* Dean, 141 Mich. 143, 104 N. W. 410.

7. Page *v.* Harper, 73 Kan. 229, 84 Pac. 1024; Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935.

1028. 2. Page *v.* Harper, 73 Kan. 229, 84 Pac. 1024; Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935.

3. Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935.

4. Page *v.* Harper, 73 Kan. 229, 84 Pac. 1024.

5. Page *v.* Harper, 73 Kan. 229, 84 Pac. 1024; Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935.

1029. 3. Jarrett *v.* Johnson, 216 Ill. 212, 74 N. E. 756; American Bonding Co. *v.* State, (Ind. 1907) 82 N. E. 548; Percival-Porter Co. *v.* Oaks, 130 Iowa 212, 106 N. W. 626.

Trustee Allowed for Claims Assigned by Life Tenant. — Beach *v.* Beers, (Conn. 1908) 68 Atl. 990.

1033. 2. **Commission as Trustee and as Executor.** — Olcott *v.* Baldwin, 190 N. Y. 99, 82 N. E. 748.

4. Jones *v.* Day, 102 Md. 99, 62 Atl. 364; Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585; General Proprietors, etc., *v.* Force, (N. J. 1896) 68 Atl. 914; Olcott *v.* Baldwin, 190 N. Y. 99, 82 N. E. 748; *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537; *In re* Harrison, 217 Pa. St. 207, 66 Atl. 354.

Beneficiary as Trustee Allowed Compensation. — Robertson *v.* De Brulatour, 188 N. Y. 301, 80 N. E. 938.

Trustee's Estate Entitled to Commissions though Property Not Distributed by Her. — Matter of Wilcox, 125 N. Y. App. Div. 152, 109 N. Y. Supp. 564.

1034. 4. Robertson *v.* De Brulatour, 188 N. Y. 301, 80 N. E. 938.

5. Robertson *v.* De Brulatour, 111 N. Y. App. Div. 882, 98 N. Y. Supp. 15; Chisolm *v.* Hammersley, 114 N. Y. App. Div. 565, 100 N. Y. Supp. 38.

6. Compher *v.* Browning, 219 Ill. 429, 76 N. E. 678.

1035. 2. *In re* Leverton, 155 Fed. 931; Folk *v.* Wind, 124 Mo. App. 577, 102 S. W. 1.

3. Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076; *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537.

4. Folk *v.* Wind, 124 Mo. App. 577, 102 S. W. 1; Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076.

Amount Must Be Reasonable. — Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585.

5. **Trustee of Testamentary Trust Not Limited to Administrator's Fees.** — Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585.

1036. 1. Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076.

2. Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076; *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537; *In re* Harrison, 217 Pa. 207, 66 Atl. 354.

3. Compher *v.* Browning, 219 Ill. 429, 76 N. E. 678; *In re* Harrison, 217 Pa. St. 207, 66 Atl. 354.

Commissions on Personalty Only. — Matter of Hunt, 121 N. Y. App. Div. 96, 105 N. Y. Supp. 696.

5. *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537.

6. *In re* Harrison, 217 Pa. St. 207, 66 Atl. 354.

1037. 2. General Proprietors, etc., *v.* Force, (N. J. 1896) 68 Atl. 914; Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076.

4. Olcott *v.* Baldwin, 190 N. Y. 99, 82 N. E. 748.

1038. 1. *In re* Leverton, 155 Fed. 931; Holderman *v.* Hood, 70 Kan. 267, 78 Pac. 838; Comingor *v.* Louisville Trust Co., (Ky. 1908) 108 S. W. 950.

2. *In re* Leverton, 155 Fed. 931, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 1038;

3. *In re* Leverton, 155 Fed. 931, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 1038; Holderman *v.* Hood, 70 Kan. 267, 78 Pac. 838; Comingor *v.* Louisville Trust Co., (Ky. 1908) 108 S. W. 950; Smith, etc., Co. *v.* Jacobson, 97 Minn. 273, 107 N. W. 166.

1039. 2. Jarrett *v.* Johnson, 216 Ill. 212, 74 N. E. 756, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 1039; Wilder *v.* Hast, (Ky. 1906) 96 S. W. 1106; Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076; Blair *v.* Hampton, 111 N. Y. App. Div. 853, 98 N. Y. Supp. 109.

3. Jarrett *v.* Johnson, 216 Ill. 212, 74 N. E. 756, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 1039.

5. *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537.

1040. 1. Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076.

3. Jarrett *v.* Johnson, 216 Ill. 212, 74 N. E. 756; Teeter *v.* Veitch, (N. J. 1905) 61 Atl. 14; *In re* Ashman, 218 Pa. St. 509, 67 Atl. 841, 842.

4. General Proprietors, etc., *v.* Force, (N. J. 1896) 68 Atl. 914; *In re* Harrison, 217 Pa. St. 207, 66 Atl. 354; Tidball's Estate, 29 Pa. Super. Ct. 363; Gelbach's Estate, 29 Pa. Super. Ct. 446.

7. Wilder *v.* Hast, (Ky. 1906) 96 S. W. 1106.

9. Robertson *v.* De Brulatour, 188 N. Y. 301, 80 N. E. 938.

10. *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537. But see *In re* Harrison, 217 Pa. St. 207, 66 Atl. 354, wherein it was held that such a method was not a safe one.

11. *In re* Ashman, 218 Pa. St. 509, 67 Atl. 841, 842.

1041. 1. See Robertson *v.* De Brulatour, 188 N. Y. 301, 80 N. E. 938.

When Two Trustees Entitled to Full Commissions. — Chisholm *v.* Hammersley, 114 N. Y. App. Div. 565, 100 N. Y. Supp. 38.

2. Mylin's Estate, 32 Pa. Super. Ct. 504.

1042. 4. Girard Trust Co. *v.* McKinley-Lanning L. & T. Co., 143 Fed. 355.

6. Robertson *v.* De Brulatour, 111 N. Y. App. Div. 882, 98 N. Y. Supp. 15.

1043. 6. Olcott *v.* Baldwin, 190 N. Y. 99, 82 N. E. 748; *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537.

7. Girard Trust Co. *v.* McKinley-Lanning L. & T. Co., 143 Fed. 355.

1044. 1. Conger *v.* Conger, 105 N. Y. App. Div. 589, 94 N. Y. Supp. 547; *In re* Haskin, (Surrogate Ct.) 49 Misc. (N. Y.) 177, 98 N. Y. Supp. 926. *Compare* Matter of Haskin, 111 N. Y. App. Div. 754, 97 N. Y. Supp. 827.

3. **In Absence of Annual Rests Commissions Determined by Aggregate Amount.** — Conger *v.* Conger, 105 N. Y. App. Div. 589, 94 N. Y. Supp. 547.

1045. 4. Kenworthy *v.* Levi, 214 Pa. St. 235, 63 Atl. 690; *In re* Beatty, 214 Pa. St. 449, 63 Atl. 975.

5. Holderman *v.* Hood, 70 Kan. 267, 78 Pac. 838; Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356; Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241; *In re* Wilkin, 183 N. Y. 104, 75 N. E. 1105; Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1907) 57 S. E. 249.

1046. 1. Woolf *v.* Barnes, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 169, 93 N. Y. Supp. 219.

4. Byrne *v.* Jones, (C. C. A.) 159 Fed. 321.

1047. 3. Comingor *v.* Louisville Trust Co., (Ky. 1908) 108 S. W. 950; Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356; *In re* Mallon, 110 N. Y. App. Div. 61, 97 N. Y. Supp. 23; Winder *v.* Nock, 104 Va. 759, 52 S. E. 561.

1048. 2. *In re* Beatty, 214 Pa. St. 449, 63 Atl. 975.

3. *In re* Heywood, 148 Cal. 188, 82 Pac. 755; Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356; *In re* Beatty, 214 Pa. St. 449, 63 Atl. 975; Hurley *v.* Walter, 129 Wis. 508, 109 N. W. 558.

Must Comply with Terms of Trust. — Paine *v.* Sackett, 27 R. I. 300, 61 Atl. 753.

Trustee Not Bound to Execute Trust against Cestui's Will. — Bailey *v.* Worster, (Me. 1907) 68 Atl. 698.

4. Berry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

6. See *In re* Beatty, 214 Pa. St. 449, 63 Atl. 975; Paine *v.* Sackett, 27 R. I. 300, 61 Atl. 753.

After Death of Beneficiary. — The court will not force the execution of a trust after the death of a beneficiary who had objected thereto. Bailey *v.* Worster, (Me. 1907) 68 Atl. 698.

7. **Presumption of Performance.** — Aldridge *v.* Aldridge, (Ky. 1908) 109 S. W. 873.

8. *In re* Roach, (Oregon 1907) 92 Pac. 118.

Duty of Testamentary Trustee to Secure Possession of Estate. — *In re* O'Connor, 2 Cal. App. 470, 84 Pac. 317.

1049. 2. Grand Lodge, etc., *v.* Beath, (Mich. 1908) 114 N. W. 662; Paine *v.* Sackett, 27 R. I. 300, 61 Atl. 753.

1050. 4. Grand Lodge, etc., *v.* Beath, (Mich. 1908) 114 N. W. 662.

5. Lamp *v.* Homestead Bldg. Assoc., (W. Va. 1907) 57 S. E. 249. See also Boyce *v.* McLeod, (Md. 1907) 68 Atl. 135, holding that the trustee may protect his own beneficial interest.

8. Bailey *v.* Worster, (Me. 1907) 68 Atl. 698; Lembeck *v.* Lembeck, (N. J. 1907) 68 Atl. 337; Wilson *v.* Langhorne, 105 Va. 64, 52 S. E. 841; McDonald *v.* Jarvis, (W. Va. 1908) 60 S. E. 990; Stephenson *v.* Norris, 128 Wis. 242, 107 N. W. 343, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1050.

1051. 4. Directions as to future acts will not be given where there is no present contingency calling for the same. Varick *v.* Smith, 69 N. J. Eq. 505, 61 Atl. 151.

5. Stephenson *v.* Norris, 128 Wis. 242, 107 N. W. 343, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1051.

Interpretation Long Acquiesced in Not Disturbed. — Kidwell *v.* Ketler, 146 Cal. 12, 79 Pac. 514.

6. Gottschalk *v.* Mercantile Trust, etc., Co., 102 Md. 521, 62 Atl. 810.

7. Branch *v.* De Wolf, (R. I. 1908) 68 Atl. 543; Stephenson *v.* Norris, 128 Wis. 242, 107 N. W. 343, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1051.

Where Court Assumes Administration Its Consent or Ratification Necessary. — Gottschalk *v.* Mercantile Trust, etc., Co., 102 Md. 521, 62 Atl. 810.

1052. 2. See Robinson *v.* Cogswell, 192 Mass. 79, 78 N. E. 389.

3. Browning *v.* Stiles, (N. J. 1906) 65 Atl. 457.

5. Ogden *v.* McLane, (N. J. 1907) 67 Atl. 695.

1053. 8. *In re* O'Connor, 2 Cal. App. 470, 84 Pac. 317.

Duty to Convert Unproductive Property. — Jordan *v.* Jordan, 192 Mass. 337, 78 N. E. 459.

9. **Trustee's Duty to Provide Fund against Depreciation.** — Dexter *v.* Watson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 484, 106 N. Y. Supp. 80.

1054. 2. Roman *v.* Long Distance Telephone, etc., Co., 147 Ala. 389, 41 So. 292; Miller *v.* Butler, 121 Ga. 758, 49 S. E. 754.

5. Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585.

8. Jordan *v.* Jordan, 192 Mass. 337, 78 N. E. 459; Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585.

1055. 1. **Apportioned between Capital and Income.** — Smith *v.* Nones, (Ky. 1905) 89 S. W. 153. See also Jordan *v.* Jordan, 192 Mass. 337, 78 N. E. 459.

3. *Compare* Jordan *v.* Jordan, 192 Mass. 337, 78 N. E. 459.

4. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523; Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585; Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241.

Trustee's Executor Not Liable for Taxes. — State *v.* Mississippi Valley Trust Co., (Mo. 1908) 108 S. W. 97.

5. Jordan *v.* Jordan, 192 Mass. 337, 78 N. E. 459; Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585; *In re* Hurlbut, (Surrogate Ct.) 51 Misc. (N. Y.) 263, 100 N. Y. Supp. 1098.

1056. 3. Wilder *v.* Hast, (Ky. 1906) 96 S. W. 1106; Jordan *v.* Jordan, 192 Mass. 337, 78 N. E. 459.

Broker's Commission for Sale of Realty Charged to Income. — Jordan *v.* Jordan, 192 Mass. 337, 78 N. E. 459.

General Charges Cannot Be Burdened on One Class of Income. — Marsh *v.* Marsh, (N. J. 1907) 67 Atl. 706.

Subsequent Income Should Make Good Improper Charges Against Corpus. — *In re* Hurlbut, (Surrogate Ct.) 51 Misc. (N. Y.) 263, 100 N. Y. Supp. 1098.

1057. 2. Matter of Pitney, 113 N. Y. App. Div. 845, 99 N. Y. Supp. 588.

Value Increased by Laying Out Park. — Smith *v.* Nones, (Ky. 1905) 89 S. W. 153.

3. **Premiums for Investments.** — *In re* Stevens, 187 N. Y. 471, 80 N. E. 358.

Premiums Charged against Income. — Curtis *v.* Osborn, 79 Conn. 555, 65 Atl. 969.

Trustee Cannot Maintain Sinking Fund against Depreciation. — Robertson *v.* De Brulatour, 188 N. Y. 301, 80 N. E. 938. But see Dexter *v.* Watson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 484, 106 N. Y. Supp. 80.

6. See Billings *v.* Warren, 216 Ill. 281, 74 N. E. 1050.

1058. 1. **Profits Derived from Sale of Securities.** — Boardman *v.* Mansfield, 79 Conn. 634, 66 Atl. 169.

4. Skinner *v.* Taft, 140 Mich. 282, 103 N. W. 702.

1059. 1. Jarrett *v.* Johnson, 216 Ill. 212, 74 N. E. 756; Comingor *v.* Louisville Trust Co., (Ky. 1908) 108 S. W. 950; Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241; Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076; Putnam *v.* Lincoln Safe-Deposit Co., (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 578, 100 N. Y. Supp. 101; *In re* Gillroy, (Surrogate Ct.) 53 Misc. (N. Y.) 243, 104 N. Y. Supp. 716.

Election to Claim Amount of Loss to Cestui or Gain to Trustee. — General Proprietors, etc., *v.* Force, (N. J. 1906) 68 Atl. 914.

1060. 5. See Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241.

Liability Not Limited to Actual Rent Received. — Fricker *v.* Americus Mfg., etc., Co., 124 Ga. 165, 52 S. E. 65.

1061. 4. Boreing *v.* Faris, (Ky. 1907) 104 S. W. 1022; Putnam *v.* Lincoln Safe-Deposit Co., (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 578, 100 N. Y. Supp. 101.

1062. 1. Marsh *v.* Marsh, (N. J. 1907) 67 Atl. 706; Blair *v.* Hampton, 111 N. Y. App. Div. 853, 98 N. Y. Supp. 109.

Where the beneficiary's will was completely dominated by the trustee the former's consent is no defense to a breach of trust. Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241.

9. Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935.

Same Rule Applies to Rental Value. — Fricker *v.* Americus Mfg., etc., Co., 124 Ga. 165, 52 S. E. 65, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1062.

1063. 9. Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076.

11. *In re* Wilkin, 183 N. Y. 104, 75 N. E. 1105.

1064. 1. Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

3. Berry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

Those Aiding Trustee's Fraud Equally Liable. — Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

6. Busby *v.* State, (Tex. Crim. 1907) 103 S. W. 638, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1064.

7. Berry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

8. See Thomas & Basshor Co. *v.* Carrington, 104 Md. 606, 65 Atl. 360.

1065. 1. Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819; Wood *v.* Schoolcraft, 145 Mich. 653, 108 N. W. 1075.

6. Holmes *v.* McDonald, 226 Ill. 169, 80 N. E. 714, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1065; Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819; Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360; Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076; *In re* Beatty, 214 Pa. St. 449, 63 Atl. 975.

1066. 11. Baughman *v.* Lowe, (Ind. App. 1908) 83 N. E. 255.

1067. 2. But see Baughman *v.* Lowe, (Ind. App. 1908) 83 N. E. 255.

1068. 17. Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360.

1069. 6. Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360; Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076; Wood *v.* Schoolcraft, 145 Mich. 653, 108 N. W. 1075; Matter of Hunt, 121 N. Y. App. Div. 96, 105 N. Y. Supp. 696; *In re* Hawk, (Surrogate Ct.) 54 Misc. (N. Y.) 187, 105 N. Y. Supp. 856; *In re* Menzie, (Surrogate Ct.) 54 Misc. (N. Y.) 188, 105 N. Y. Supp. 925.

Trustee Should Provide Fund against Depreciation. — Dexter *v.* Watson, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 484, 106 N. Y. Supp. 80.

1070. 1. Bay State Gas Co. *v.* Rogers, 147 Fed. 557; Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935; *In re* Beatty, 214 Pa. St. 449, 63 Atl. 975; *In re* Graham, 218 Pa. St. 344, 67 Atl. 458; *In re* Graham, 218 Pa. St. 357, 67 Atl. 462.

Liability Joint and Several. — General Proprietors, etc., *v.* Force, (N. J. 1896) 68 Atl. 914.

1071. 2. See Vohmann *v.* Michel, 185 N. Y. 420, 78 N. E. 156.

3. *In re* Beatty, 214 Pa. St. 449, 63 Atl. 975.

1072. 2. *In re* Mallon, 110 N. Y. App. Div. 61, 97 N. Y. Supp. 23; *In re* Graham, 218 Pa. St. 344, 67 Atl. 458; *In re* Graham, 218 Pa. St. 357, 67 Atl. 462.

4. **Collection of Securities Left to One Trustee.** — *In re* Graham, 218 Pa. St. 344, 67 Atl. 458; *In re* Graham, 218 Pa. St. 357, 67 Atl. 462.

1073. 1. *Compare* Hayes *v.* Hall, 188 Mass. 510, 74 N. E. 935.

4. *In re* Graham, 218 Pa. St. 344, 67 Atl. 458; *In re* Graham, 218 Pa. St. 357, 67 Atl. 462.

9. *Compare In re* Graham, 218 Pa. St. 344, 67 Atl. 458; *In re* Graham, 218 Pa. St. 357, 67 Atl. 462.

10. Mansfield *v.* Mansfield, 32 Pa. Super. Ct 119.

1074. 8. McGovern *v.* Bennett, 146 Mich. 558, 109 N. W. 1055.

1076. 6. Webb *v.* Webb, 130 Iowa 457, 104 N. W. 438; Potter *v.* Porter, (Ky. 1908) 109 S. W. 344; *In re* Scott, 215 Pa. St. 353, 64 Atl. 549.

Right of Trustee to Account. — *In re* Scott, 215 Pa. St. 353, 64 Atl. 549.

1077. 2. Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356; *In re* Kirby, 113 N. Y. App. Div. 705, 100 N. Y. Supp. 155.

4. Noble *v.* Birnie, 105 Md. 73, 65 Atl. 823.

7. Glennon *v.* Harris, (Ala. 1907) 42 So. 1003.

8. Boreing *v.* Faris, (Ky. 1907) 104 S. W. 1022.

1078. 9. Potter *v.* Porter, (Ky. 1908) 109 S. W. 344.

11. **Failure to Account Not Embezzlement.** — State *v.* Mispagel, 207 Mo. 557, 106 S. W. 513.

13. McAdoo *v.* Sayre, 145 Cal. 344, 78 Pac. 874; Wilson *v.* Kent, 38 Colo. 492, 88 Pac. 461; Garth *v.* State St. Baptist Church, (Ky. 1906) 96 S. W. 1124; Smith *v.* Perry, 197 Mo. 438, 95 S. W. 337; Donner *v.* Donner, 217 Pa. St. 37, 66 Atl. 147.

1079. 1. McAdoo *v.* Sayre, 145 Cal. 344, 78 Pac. 874.

2. *In re* Graham, 218 Pa. St. 344, 67 Atl. 458; *In re* Graham, 218 Pa. St. 357, 67 Atl. 462.

1080. 3. Boreing *v.* Faris, (Ky. 1907) 104 S. W. 1022.

4. Albert *v.* Sanford, 201 Mo. 117, 99 S. W. 1068.

5. *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537.

1081. 6. Boreing *v.* Faris, (Ky. 1907) 104 S. W. 1022; Union Trust Co. *v.* Preston Nat. Bank, 144 Mich. 106, 107 N. W. 1109.

1082. 1. Boreing *v.* Faris, (Ky. 1907) 104 S. W. 1022.

2. *In re* Byrnes, 114 N. Y. App. Div. 532, 100 N. Y. Supp. 12.

1083. 2. Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360; Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241.

1084. 8. Boreing *v.* Faris, (Ky. 1907) 104 S. W. 1022.

1085. 5. See *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537.

7. **Mere Noninterference Not Waiver of Beneficiary's Rights.** — Union Trust Co. *v.* Preston Nat. Bank, 144 Mich. 106, 107 N. W. 1109.

1086. 7. Union Trust Co. *v.* Preston Nat. Bank, 144 Mich. 106, 107 N. W. 1109.

1087. 3. **Improper Investment.** — Where the trustee improperly invests money in stocks he is chargeable with interest from the date of purchase. Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360.

5. See Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360.

1088. 4. Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360.

1090. 1. Mitau *v.* Roddan, 149 Cal. 1, 84 Pac. 145, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1089.

2. **Unnecessary Part Segregated.** — Mitau *v.* Roddan, 149 Cal. 1, 84 Pac. 145.

7. *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537.

8. Mitau *v.* Roddan, 149 Cal. 1, 84 Pac. 145, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1090, 1091; *In re* O'Connor, 2 Cal. App. 470, 84 Pac. 317; Robinson *v.* Bonaparte, 102 Md. 63, 61 Atl. 212; Berry *v.* Stigall, 125 Mo. App. 264, 102 S. W. 585; Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076; Case *v.* Beloe, (Supm. Ct. App. Div.) 109 N. Y. Supp. 168; Wilson *v.* Langhorne, 105 Va. 64, 52 S. E. 841.

As to What Is Reasonable Fee. — *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537.

1091. 1. *In re* O'Connor, 2 Cal. App. 470, 84 Pac. 317; Kimball *v.* Blanchard, 101 Me. 383, 64 Atl. 645; Clark *v.* Callahan, 105 Md. 600, 66 Atl. 618.

3. Mitau *v.* Roddan, 149 Cal. 1, 84 Pac. 145.

1092. 5. **Taxes Not Allowed.** — Taxes paid on a farm which represents an improvident investment will not be allowed the trustee. Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241.

10. **Commissions Paid Agents for Procuring Sale Allowed.** — Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076. But see *In re* Brennan, 215 Pa. St. 272, 64 Atl. 537, wherein commissions for procuring a sale were disallowed an attorney.

1094. 14. See Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076.

1095. 7. **Funds Mingled in Purchase of Land.** — Vanatta *v.* Carr, 229 Ill. 47, 82 N. E. 267.

11. Wieters *v.* Hart, 67 N. J. Eq. 507, 63 Atl. 241; *In re* Byrnes, 114 N. Y. App. Div. 532, 100 N. Y. Supp. 12.

1097. 4. Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360.

8. See Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360.

11. Vohmann *v.* Michel, 185 N. Y. 420, 78 N. E. 156.

1098. 1. Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360.

3. **Release from Liability Must Be Clear and Unequivocal.** — Babbitt *v.* Fidelity Trust Co., (N. J. 1907) 66 Atl. 1076.

13. Washington Nat. Bldg., etc., Assoc. *v.* Buser, 61 W. Va. 590, 57 S. E. 40; Washington Nat. Bldg., etc., Assoc. *v.* Heironimus, (W. Va. 1907) 57 S. E. 256.

14. Mitchell *v.* Carrollton Nat. Bank, (Ky. 1906) 97 S. W. 45; Bailey *v.* Worster, (Me. 1907) 68 Atl. 698.

1099. 1. Wells *v.* German Ins. Co., 128 Iowa 649, 105 N. W. 123; Washington Nat. Bldg., etc., Assoc. *v.* Buser, 61 W. Va. 590, 57 S. E. 40; Washington Nat. Bldg., etc., Assoc. *v.* Heironimus, (W. Va. 1907) 57 N. E. 256.

5. Bailey *v.* Worster, (Me. 1907) 68 Atl. 698.

8. Gottschalk *v.* Mercantile Trust, etc., Co., 102 Md. 521, 62 Atl. 810.

1100. 3. Byrne *v.* Jones, (C. C. A.) 159 Fed. 321; Marsh *v.* Marsh, (N. J. 1907) 67 Atl. 706.

1101. 1. **Slave — Burden of Proof on One Asserting Such Incapacity.** — Nona Mills Co. *v.* Wright, (Tex. 1907) 102 S. W. 1118.

1102. 4. Lewis *v.* Curnutt, 138 Iowa 423, 106 N. W. 914.

1103. 5. Hayden *v.* Sugden, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 108, 96 N. Y. Supp. 681.

9. Cunniff *v.* McDonnell, (Mass. 1907) 81 N. E. 879. But see Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072.

1104. 2. *In re* Podhajsky, (Iowa 1908) 115 N. W. 590.

Money Deposited in Trust. — Littig *v.* Protestant Episcopal Church, 101 Md. 494, 61 Atl. 635.

4. **Consent Conditional or Absolute.** — Cunniff *v.* McDonnell, (Mass. 1907) 81 N. E. 879.

1106. 4. **Partition Not Maintainable by One Beneficiary.** — Wicker *v.* Moore, (Neb. 1907) 113 N. W. 148.

6. Mobile Transp. Co. *v.* Mobile, (Ala. 1907) 44 So. 976.

1107. 2. Mee *v.* Fay, 190 Mass. 40, 76 N. E. 229.

4. Riordan *v.* Schlicher, 146 Ala. 615, 41 So. 842, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1107; Reardon *v.* Reardon, 192 Mass. 448, 78 N. E. 430; Newton *v.* Jay, 107 N. Y. App. Div. 457, 95 N. Y. Supp. 413.

7. **New York — Both Voluntary and Involuntary Alienations.** — Garrett *v.* Duclos, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 140, 104 N. Y. Supp. 289.

Future income may not be assigned though a future estate may. Stringer *v.* Barker, 110 N. Y. App. Div. 37, 96 N. Y. Supp. 1052.

12. Wright *v.* Lupp, 70 N. J. Eq. 130, 62 Atl. 464.

1108. 10. **Similar Statement of Rule** — *United States.* — Crawford County *v.* Patterson, 149 Fed. 229; Crawford County *v.* Strawn, (C. C. A.) 157 Fed. 49.

Alabama. — Hutchinson *v.* National Bank of Commerce, 145 Ala. 196, 41 So. 143.

Arkansas. — Chambers *v.* Thompson, 81 Ark. 609, 100 S. W. 79; Hill *v.* Miles, 83 Ark. 486, 104 S. W. 198.

California. — Sprague *v.* Walton, 145 Cal. 228, 78 Pac. 645; Kauffman *v.* Foster, 3 Cal. App. 741, 86 Pac. 1108; Title Ins. Co. *v.* Ingersoll, (Cal. 1908) 94 Pac. 94.

Illinois. — Lennartz *v.* Popp, 118 Ill. App. 31.

Indiana. — Shopert *v.* Indiana Nat. Bank, (Ind. App. 1908) 83 N. E. 515.

Iowa. — McCutchen *v.* Roush, (Iowa 1908) 115 N. W. 903.

Kentucky. — Hill *v.* Flemming, (Ky. 1908) 107 S. W. 764, *citing* 28 AM. AND ENG. ENCYC.

OF LAW (2d ed.) 1108; Fordsville *v.* Postel, (Ky. 1905) 88 S. W. 1065.

Maine. — Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523.

Maryland. — Italian Fruit, etc., Co. *v.* Penniman, 100 Md. 698, 61 Atl. 694.

Massachusetts. — Lowe *v.* Jones, 192 Mass. 94, 78 N. E. 402; Sargent *v.* Wood, (Mass. 1907) 81 N. E. 901.

New York. — Darragh *v.* Rowe, 109 N. Y. App. Div. 560, 96 N. Y. Supp. 666; Grote *v.* Grote, 121 N. Y. App. Div. 841, 106 N. Y. Supp. 986.

North Carolina. — Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

Pennsylvania. — Kenworthy *v.* Levi, 214 Pa. St. 235, 63 Atl. 690.

Virginia. — Watts *v.* Newberry, (Va. 1907) 57 S. E. 657.

Wisconsin. — Boyle *v.* Northwestern Nat. Bank, 125 Wis. 498, 163 N. W. 1123.

1110. 1. Italian Fruit, etc., Co. *v.* Penniman, 100 Md. 698, 61 Atl. 694.

4. Case *v.* Collins, 37 Ind. App. 491, 76 N. E. 781; Verble *v.* Dillow, 218 Ill. 537, 75 N. E. 1046; Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1110; Berry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

1111. 1. **Investment in Certain Securities Presumed to Continue.** — Kauffman *v.* Foster, 3 Cal. App. 741, 86 Pac. 1108.

4. Berry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

8. Hutchinson *v.* National Bank of Commerce, 145 Ala. 196, 41 So. 143.

1112. 1. Harrison *v.* Fleischman, 70 N. J. Eq. 301, 61 Atl. 1025; Vohmann *v.* Michel, 109 N. Y. App. Div. 659, 96 N. Y. Supp. 309; Vohmann *v.* Rinschler, 110 N. Y. App. Div. 916, 96 N. Y. Supp. 313; Mansfield *v.* Wardlow, (Tex. Civ. App. 1905) 91 S. W. 859.

1113. 2. Joslyn *v.* Downing, (C. C. A.) 150 Fed. 317; Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523; Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949.

3. Shopert *v.* Indiana Nat. Bank, (Ind. App. 1908) 83 N. E. 515; Hill *v.* Flemming, (Ky. 1908) 107 S. W. 764; Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523; Berry *v.* Evendon, 14 N. Dak. 1, 103 N. W. 748.

Antecedent Debt. — Mooney *v.* Chicago, etc., R. Co., 125 Mo. App. 651, 103 S. W. 119.

1114. 2. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523.

1115. 2. Crawford County *v.* Patterson, 149 Fed. 229.

3. Crawford County *v.* Patterson, 149 Fed. 229; Shopert *v.* Indiana Nat. Bank, (Ind. App. 1908) 83 N. E. 515; McCutchen *v.* Roush, (Iowa 1908) 115 N. W. 903; Harrison *v.* Fleischman, 70 N. J. Eq. 301, 61 Atl. 1025. But see Snyder *v.* Parmalee, 80 Vt. 496, 68 Atl. 649, to the effect that the *cestui* has no superior right to that of an ordinary creditor.

1116. 1. Crawford County *v.* Patterson, 149 Fed. 229; Weiss *v.* Haight, 152 Fed. 479; Hutchinson *v.* National Bank of Commerce, 145 Ala. 196, 41 So. 143; Italian Fruit, etc., Co. *v.* Penniman, 100 Md. 698, 61 Atl. 694; Raban *v.* Cascade Bank, 33 Mont. 413, 84 Pac. 72; Boyle *v.* Northwestern Nat. Bank, 125 Wis. 498, 103 N. W. 1123; Emigh *v.* Earling, (Wis. 1908) 115 N. W. 128.

2. Crawford County *v.* Patterson, 149 Fed. 229; Weiss *v.* Haight, 152 Fed. 479; Emigh *v.* Earling, (Wis. 1908) 115 N. W. 128.

3. Crawford County *v.* Patterson, 149 Fed. 229; Weiss *v.* Haight, 152 Fed. 479; Emigh *v.* Earling, (Wis. 1908) 115 N. W. 128.

5. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523.

1117. 4. Lowe *v.* Jones, 192 Mass. 94, 78 N. E. 402.

6. Lowe *v.* Jones, 192 Mass. 94, 78 N. E. 402.

1118. 1. Hill *v.* Miles, 83 Ark. 486, 104 S. W. 198; Lowe *v.* Jones, 192 Mass. 94, 78 N. E. 402; Snyder *v.* Parmelee, 80 Vt. 496, 68 Atl. 649; Watts *v.* Newberry, (Va. 1907) 57 S. E. 657.

2. Hill *v.* Miles, 83 Ark. 486, 104 S. W. 198; McCutchen *v.* Roush, (Iowa 1908) 115 N. W. 903. *Compare* Crawford County *v.* Patterson, 149 Fed. 229.

1119. 1. **Massachusetts Rule.** — Lowe *v.* Jones, 192 Mass. 94, 78 N. E. 402.

4. Crawford County *v.* Strawn, (C. C. A.) 157 Fed. 49.

5. Crawford County *v.* Strawn, 157 Fed. 49.

Ascertainment of General Fund Sufficient Identification. — Shopert *v.* Indiana Nat. Bank, (Ind. App. 1908) 83 N. E. 515.

1120. 1. Smith *v.* Mottley, (C. C. A.) 150 Fed. 266; Crawford County *v.* Strawn, 157 Fed. 49; Hill *v.* Miles, 83 Ark. 486, 104 S. W. 198; Title Ins., etc., Co. *v.* Ingersoll, (Cal. 1908) 94 Pac. 94; Italian Fruit, etc., Co. *v.* Penniman, 100 Md. 698, 61 Atl. 694; Raban *v.* Cascade Bank, 33 Mont. 413, 84 Pac. 72; Virginia-Carolina Chemical Co. *v.* McNair, 139 N. Car. 326, 51 S. E. 949; Watts *v.* Newberry, (Va. 1907) 57 S. E. 657.

2. Crawford County *v.* Patterson, 149 Fed. 229; Smith *v.* Mottley, (C. C. A.) 150 Fed. 266; Hutchinson *v.* National Bank of Commerce, 145 Ala. 196, 41 So. 143; Wood *v.* Claiborne, 82 Ark. 514, 102 S. W. 219, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1120.

3. **Following Trust Funds — Jurisdiction in Equity.** — Sargent *v.* Wood, (Mass. 1907) 81 N. E. 901.

Equity and Law Concurrent. — Chaves *v.* Myer, 13 N. Mex. 368, 85 Pac. 233.

4. Snyder *v.* Parmalee, 80 Vt. 496, 68 Atl. 649.

5. Holderman *v.* Hood, 70 Kan. 267, 78 Pac. 838.

6. Baughman *v.* Lowe, (Ind. App. 1908) 83 N. E. 255; Holderman *v.* Hood, 70 Kan. 267, 78 Pac. 838; Sargent *v.* Wood, (Mass. 1907) 81 N. E. 901; Chaves *v.* Myer, 13 N. Mex. 368, 85 Pac. 233.

1121. 11. Merscreau *v.* Bennet, 124 N. Y. App. Div. 413, 108 N. Y. Supp. 868.

12. Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360.

1123. 7. Skelding *v.* Dean, 141 Mich. 143, 104 N. W. 410; *In re* Robbins, (Minn. 1906) 109 N. W. 229, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1123 *et seq.*; Armour *v.*

Murray, (N. J. 1907) 68 Atl. 164; Vohmann *v.* Michel, 185 N. Y. 420, 78 N. E. 156.

8. *In re* Robbins, (Minn. 1906) 109 N. W. 229, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1123 *et seq.;* Vohmann *v.* Michel, 185 N. Y. 420, 78 N. E. 156; Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717.

1124. 1. Vohmann *v.* Michel, 185 N. Y. 420, 78 N. E. 156.

Burden of Proving Ratification on One Asserting It. — Luquire *v.* Lee, 121 Ga. 624, 49 S. E. 834.

2. *In re* Robbins, (Minn. 1906) 109 N. W. 229.

5. Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523.

6. **Noninterference Insufficient Waiver.** — Union Trust Co. *v.* Preston Nat. Bank, 144 Mich. 106, 107 N. W. 1109.

7. Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717.

8. Skelding *v.* Dean, 141 Mich. 143, 104 N. W. 410; Cooper *v.* Harvey, (S. Dak. 1907) 113 N. W. 717.

10. See Bennett *v.* Pierce, 188 Mass. 186, 74 N. E. 360.

1125. 2. Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474.

3. **Refunding Proceeds.** — Smith *v.* McWhorter, 123 Ga. 287, 51 S. E. 474.

1126. 3. Sternfels *v.* Watson, 139 Fed. 505; Harris *v.* Brown, 124 Ga. 310, 52 S. E. 610; Camden Land Co. *v.* Lewis, 101 Me. 78, 63 Atl. 523; Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819; Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356; Brooks *v.* Garner, (Okla. 1908) 94 Pac. 694; Mansfield *v.* Wardlow, (Tex. Civ. App. 1905) 91 S. W. 859.

1128. 3. **Knowledge or Participation Necessary.** — Perry *v.* Oerman, (W. Va. 1908) 60 S. E. 604.

5. Kenworthy *v.* Equitable Trust Co., 218 Pa. St. 286, 67 Atl. 469, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1128, 1129.

Record as Notice. — Ellison *v.* Ganiard, 167 Ind. 471, 79 N. E. 450; Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356; Mansfield *v.* Wardlow, (Tex. Civ. App. 1905) 91 S. W. 859.

1129. 1. Lee *v.* Giles, 124 Ga. 494, 52 S. E. 806; Sternfels *v.* Watson, 139 Fed. 505; Kenworthy *v.* Equitable Trust Co., 218 Pa. St. 286, 67 Atl. 469, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1128, 1129.

2. Sternfels *v.* Watson, 139 Fed. 505.

4. Sternfels *v.* Watson, 139 Fed. 505; Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072; Kenworthy *v.* Equitable Trust Co., 218 Pa. St. 286, 67 Atl. 469, *quoting* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1128, 1129; Flitcraft *v.* Commonwealth Title Ins., etc., Co., 211 Pa. St. 114, 60 Atl. 557.

5. Hill *v.* Flemming, (Ky. 1908) 107 S. W. 764, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1129.

1130. 1. Scottish-American Mortg. Co. *v.* Clowney, 70 S. Car. 229, 49 S. E. 569.

2. Knight *v.* Church, (Pa. 1907) 68 Atl. 182.

5. Knight *v.* Church, (Pa. 1907) 68 Atl. 182.

1131. 3. Knight *v.* Church, (Pa. 1907) 68 Atl. 182.

5. Knight *v.* Church, (Pa. 1907) 68 Atl. 182.

1132. 1. But see Safe Deposit, etc., Co. *v.* Cahn, 102 Md. 530, 62 Atl. 819.

1133. 1. Ames *v.* Howes, 13 Idaho 756, 93 Pac. 35; Hamilton *v.* Hamilton, 231 Ill. 128, 83 N. E. 125; Smith *v.* Smith, 132 Iowa 700, 109 N. W. 194; Lufkin *v.* Jakeman, 188 Mass. 528, 74 N. E. 933; Hanson *v.* Hanson, (Neb. 1907) 111 N. W. 368; Dunn *v.* Dunn, 137 N. Car. 533, 50 N. E. 212; Norcum *v.* Savage, 140 N. Car. 472, 53 S. E. 289; Greenleaf *v.* Land, etc., Co., (N. Car. 1908) 60 S. E. 424; Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233; Miller *v.* Saxton, 75 S. Car. 237, 55 S. E. 310; Newman *v.* Newman, 60 W. Va. 371, 55 S. E. 377, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1133; Patrick *v.* Stark, (W. Va. 1907) 59 S. E. 606.

2. *Alabama.* — Glennon *v.* Harris, (Ala. 1907) 42 So. 1003.

California. — Sprague *v.* Walton, 145 Cal. 228, 78 Pac. 645; Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39; Dillon *v.* Cross, 5 Cal. App. 766, 91 Pac. 439.

Colorado. — Ballard *v.* Golob, 34 Colo. 417, 83 Pac. 376.

Idaho. — Ames *v.* Howes, 13 Idaho 756, 93 Pac. 35.

Illinois. — Whetsler *v.* Sprague, 224 Ill. 461, 79 N. E. 667.

Kentucky. — Bohannon *v.* Bohannon, (Ky. 1906) 92 S. W. 597.

Massachusetts. — Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356.

Mississippi. — Stanton *v.* Helm, 87 Miss. 287, 39 So. 457.

Missouri. — Zeideman *v.* Molasky, 118 Mo. App. 106, 94 S. W. 754.

North Carolina. — Dixon *v.* Dixon, 145 N. Car. 46, 58 S. E. 604; Greenleaf *v.* Land, etc., Co., (N. Car. 1908) 60 S. E. 424.

Texas. — McCarthy *v.* Woods, (Tex. Civ. App. 1905) 87 S. W. 405; Bateman *v.* Ward, (Tex. Civ. App. 1906) 93 S. W. 508.

Utah. — Felkner *v.* Dooly, 28 Utah 236, 78 Pac. 365.

West Virginia. — Newman *v.* Newman, 60 W. Va. 371, 55 S. E. 377, *citing* 28 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1133; Patrick *v.* Stark, (W. Va. 1907) 59 S. E. 606; Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760.

1134. 2. *California.* — Allsopp *v.* Joshua Hendy Mach. Works, 5 Cal. App. 228, 90 Pac. 39; Dillon *v.* Cross, 5 Cal. App. 766, 91 Pac. 439.

Colorado. — Ballard *v.* Golob, 34 Colo. 417, 83 Pac. 376.

Iowa. — Percival-Porter Co. *v.* Oaks, 130 Iowa 212, 106 N. W. 626; Smith *v.* Smith, 132 Iowa 700, 109 N. W. 194.

Kentucky. — Jolly *v.* Miller, (Ky. 1906) 98 S. W. 326; Hendrick *v.* Miller, (Ky. 1906) 98 S. W. 330.

Massachusetts. — Andrews *v.* Tuttle-Smith Co., 191 Mass. 461, 78 N. E. 99.

Mississippi. — Stanton *v.* Helm, 87 Miss. 287, 39 So. 457.

Nebraska. — Hanson *v.* Hanson, (Neb. 1907) 111 N. W. 368.

North Carolina. — Dunn *v.* Dunn, 137 N. Car. 533, 50 S. E. 212; Dixon *v.* Dixon, 145 N. Car. 46, 58 S. E. 604; Greenleaf *v.* Land, etc., Co., (N. Car. 1908) 60 S. E. 424.

Texas. — Bateman *v.* Ward, (Tex. Civ. App. 1906) 93 S. W. 508.

West Virginia. — Newman *v.* Newman, 60 W. Va. 317, 55 S. E. 377, *citing* 28 Am. and Eng. Encyc. of Law (2d ed.) 1133 *et seq.*; Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760.

Utah. — Felkner *v.* Dooly, 28 Utah 236, 78 Pac. 365.

Limitations Do Not Run against Remainderman until Death of Life Tenant. — Putnam *v.* Lincoln Safe Deposit Co., 191 N. Y. 166, 83 N. E. 789.

1135. 2. Where One Trustee Is Barred All Are. — Webb *v.* Borden, 78 N. Car. 334, 58 S. E. 1083.

Cestui Barred When Trustee Barred. — Waterman Hall *v.* Waterman, 220 Ill. 569, 77 N. E. 142.

4. *United States.* — Patterson *v.* Hewitt, 195 U. S. 309, 25 U. S. Sup. Ct. 35; Kansas City Southern R. Co. *v.* Stevenson, 135 Fed. 553; Reed *v.* Munn, (C. C. A.) 148 Fed. 737.

California. — Kleinclaus *v.* Dutard, 147 Cal. 245, 81 Pac. 516.

Colorado. — Williams *v.* Woodruff, 35 Colo. 28, 85 Pac. 90.

Illinois. — Whetsler *v.* Sprague, 224 Ill. 461, 79 N. E. 667; Beall *v.* Dingman, 227 Ill. 294, 81 N. E. 366.

Maryland. — Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883.

Massachusetts. — Sawyer *v.* Cook, 188 Mass. 163, 74 N. E. 356.

Michigan. — Skelding *v.* Dean, 141 Mich. 143, 104 N. W. 410.

New Jersey. — Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233.

North Carolina. — Sprinkle *v.* Holton, (N. Car. 1907) 59 S. E. 680.

Pennsylvania. — Brown *v.* Kemmerer, 214 Pa. St. 521, 63 Atl. 822; Byers *v.* Ferner, 216 Pa. St. 233, 65 Atl. 620.

Washington. — Bluett *v.* Wilce, 43 Wash. 492, 86 Pac. 853.

West Virginia. — Patrick *v.* Stark, (W. Va. 1907) 59 S. E. 606; Ruckman *v.* Cox, (W. Va. 1907) 59 S. E. 760.

Laches Usually Not Applicable to Express Trusts. — See Newman *v.* Newman, 60 W. Va. 371, 55 S. E. 377.

TURNPIKES AND TOLL ROADS.

3. 2. Derry Tp. Road, 30 Pa. Super. Ct. 538.

4. 2. See Belleville *v.* St. Clair County Turnpike Co., 234 Ill. 428, 84 N. E. 1049.

3. **Obstruction of Turnpike after Expiration of Charter Public Nuisance.** — State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153; State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752; State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761.

5. 1. See People *v.* Selkirk, 180 N. Y. 401, 73 N. E. 248.

6. **No Recompense to Stockholders on Expiration of Charter.** — State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752.

7. State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153; State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752; Montgomery County *v.* Clarksville, etc., Turnpike Co., (Tenn. 1908) 109 S. W. 1153. See also State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761.

8. 1. Harp *v.* Glenolden, 28 Pa. Super. Ct., 116.

11. 9. Belleville *v.* St. Clair County Turnpike Co., 234 Ill. 428, 84 N. E. 1049.

16. 4. Com. *v.* Newport, etc., Turnpike Co., (Ky. 1906) 97 S. W. 375.

9. **Unconstitutional Statute.** — Bridge St., etc., Gravel Road Co. *v.* Hogadone, 150 Mich. 638, 114 N. W. 917; Besson *v.* Crapo Toll-Road Co., 150 Mich. 655, 114 N. W. 924.

17. 5. Belleville *v.* St. Clair County Turnpike Co., 234 Ill. 428, 84 N. E. 1049.

20. 4. **Charge of Illegal Rate Criminal in Kentucky.** — Com. *v.* Newport, etc., Turnpike Co., (Ky. 1906) 97 S. W. 375.

5. **Rule Applied to Subway.** — *In re* Opinion of Justices, 190 Mass. 605, 77 N. E. 1038.

21. 1. **Missouri Statute.** — State *v.* Schenkel, (Mo. App. 1908) 108 S. W. 635.

4. State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153; State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752; State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761.

Collection of Tolls after Ouster and Pending Appeal. — Ver Duyn *v.* Detroit, etc., Plank Road Co., 141 Mich. 450, 104 N. W. 613.

Suit by County Sustained. — Montgomery County *v.* Clarksville, etc., Turnpike Co., (Tenn. 1908) 109 S. W. 1153.

27. 8. **Kentucky Statute.** — Burton *v.* Monticello, etc., Turnpike Co., (Ky. 1908) 109 S. W. 319.

28. 1. **Rule Applied to Subway.** — *In re* Opinion of Justices, 190 Mass. 605, 77 N. E. 1038.

30. 6. **Illegal Collection Criminal Offense.** — Com. *v.* Newport, etc., Turnpike Co., (Ky. 1906) 97 S. W. 375.

7. **Forfeiture Denied Where Criminal Prosecution Adequate and Not Taken.** — Com. *v.* Newport, etc., Turnpike Co., (Ky. 1906) 97 S. W. 375.

Michigan Statute. — Bridge St., etc., Gravel Road Co. *v.* Hogadone, 150 Mich. 638, 114 N. W. 917.

Expiration of Charter. — State *v.* Louisiana, etc., Gravel Road Co., 116 Mo. App. 175, 92 S. W. 153; State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752; State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761.

31. 1. Roush *v.* Vanceburg, etc., Turnpike Co., 120 Ky. 165, 85 S. W. 735.

Statute Authorizing County to Purchase Held Unconstitutional for Lack of Uniformity. — Ferris *v.* Clermont County, 29 Ohio Cir. Ct. 622.

Action against County on Contract to Purchase Turnpike. — See Nelson County *v.* Bardstown, etc., Turnpike Road Co., (Ky. 1907) 100 S. W. 1181; Nelson County *v.* Bardstown, etc., Turnpike Road Co., (Ky. 1907) 100 S. W. 1183; Nelson County *v.* Chaplin, etc., Turnpike Road Co., (Ky. 1907) 100 S. W. 1184.

Mandamus Directing Levy of Special Assessment. — Detroit, etc., Plank Road Co. *v.* Highland Park, 142 Mich. 326, 105 N. W. 775.

Statute Vesting Control and Management of Roads in County Court, after Expiration of Charter by Limitations or Otherwise, Constitutional. — State *v.* Scott County Macadamized Road Co., 207 Mo. 54, 105 S. W. 752; State *v.* Cape Girardeau, etc., Gravel Road Co., 207 Mo. 85, 105 S. W. 761.

TURNTABLES.

33. 1. Lewis *v.* Cleveland, etc., R. Co., (Ind. App. 1908) 84 N. E. 23; Wheeling, etc., R. Co. *v.* Harvey, 27 Ohio Cir. Dec. 672, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 33; Coley *v.* Canadian Pac. R. Co., 29 Quebec Super. Ct. 282.

Contra. — Friedman *v.* Snare, etc., Co., 71 N. J. L. 605, 61 Atl. 401, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 32, as to the doctrine in other states; Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66, holding that the defendant was not estopped to deny permission, the turntable not being a hidden peril or trap not visible from the streets, and not having operated as an attraction or lure; Thompson *v.* Baltimore, etc., R. Co., 218 Pa. St. 444, 67 Atl. 768; Walker *v.* Potomac, etc., R. Co., 105 Va. 226, 53 S. E. 113.

34. 2. Edwards *v.* Metropolitan St. R. Co., 112 Mo. App. 656, 87 S. W. 587.

35. 2. **Railroad Required to Make Properties Reasonably Safe Where Possible at Slight Expense.** — Lewis *v.* Cleveland, etc., R. Co., (Ind. App. 1908) 84 N. E. 23.

6. **The Existence and Nature of the Defendant's Duty** is a question of law; but performance, observance or neglect of duty, and injury in consequence thereof are questions of fact. Wheeling, etc., R. Co. *v.* Harvey, 77 Ohio St. 235, 83 N. E. 66.

An Instruction omitting questions of the defendant's negligence and of knowledge of use by children or that such use could have been known by ordinary care has been held to be reversible error. Edwards *v.* Metropolitan St. R. Co., 112 Mo. App. 656, 87 S. W. 587.

ULTRA VIRES.

42. 4. **Classification and Application.** — Bell *v.* Kirkland, 102 Minn. 213, 113 N. W. 271.

43. 5. State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500; Peoria Star Co. *v.* Cutright, 115 Ill. App. 492; Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70.

45. 2. Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123, *comparing* 29 Am. and Eng. Encyc. of Law (2d ed.) 45, note 2.

6. Banker's Mut. Casualty Co. *v.* Council Bluffs First Nat. Bank, 131 Iowa 456, 108 N. W. 1046.

46. 1. Curtiss *v.* Natalie Anthracite Coal Co., 181 N. Y. 543, 73 N. E. 1122, *affirming* 89 N. Y. App. Div. 61, 85 N. Y. Supp. 413.

2. *United States.* — McGonigale *v.* Defiance, 140 Fed. 621.

Arkansas. — Minneapolis F. & M. Ins. Co. *v.* Norman, 74 Ark. 190, 85 S. W. 229; Arkadelphia Lumber Co. *v.* Posey, 74 Ark. 377, 85 S. W. 1127; White River R. Co. *v.* Star Ranch, etc., Co., 77 Ark. 128, 91 S. W. 14; Arkansas, etc., R. Co. *v.* Stroude, 77 Ark. 109, 91 S. W. 18.

California. — Kelly *v.* Ning Yung Benev. Assoc., 2 Cal. App. 460, 84 Pac. 321.

Iowa. — Fidelity Ins. Co. *v.* German Sav. Bank, 127 Iowa 591, 103 N. W. 958.

Massachusetts. — Preston *v.* West Beach Corp., 195 Mass. 482, 81 N. E. 253.

Minnesota. — Hunt *v.* Hauser Malting Co., 95 Minn. 206, 103 N. W. 1032.

New Jersey. — Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167; Whitehead *v.* American Lamp, etc., Co., 70 N. J. Eq. 581, 62 Atl. 554; Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84.

New York. — Bowers *v.* Ocean Acc., etc., Corp., 110 N. Y. App. Div. 691, 97 N. Y. Supp. 485.

Washington. — McKinley *v.* Mineral Hill Consol. Min. Co., (Wash. 1907) 89 Pac. 495.

No Benefit — No Estoppel. — Evans *v.* Johnson, (C. C. A.) 149 Fed. 978; Deaton Grocery Co. *v.* International Harvester Co., (Tex. Civ. App. 1907) 105 S. W. 556.

4. Iversen *v.* Minnesota Mut. L. Ins. Co., 137 Fed. 268; Kraft *v.* West Side Brewery Co., 219 Ill. 205, 76 N. E. 372; Banker's Mut. Casualty Co. *v.* Council Bluffs First Nat. Bank, 131 Iowa 456, 108 N. W. 1046; Hollywood *v.* First Parish, 192 Mass. 269, 78 N. E. 124.

47. 1. **Bank Cannot Form Partnership.** — Merchants' Nat. Bank *v.* Wehrmann, etc., 202 U. S. 642, 26 U. S. Sup. Ct. 613.

Contract for "Sale or Return" of Stock Intra Vires under Colorado Statute. — Ophir Consol. Mines Co. *v.* Brynleson, (C. C. A.) 143 Fed. 829.

Contract by Corporation for Purchase of Its Own Stock Not Necessarily Ultra Vires. — *In re* Castle Braid Co., 145 Fed. 224.

Power of Corporation to Invest in Shares of Other Corporation Confined to Its Charter Purposes. — Robinson *v.* Holbrook, 148 Fed. 107.

Assumption by Corporation of Risk of Loss by Fire to Independent Contractor's Property Not Ultra Vires. — Schaeffer Piano Mfg. Co. *v.* National Fire Extinguisher Co., (C. C. A.) 148 Fed. 159.

Claim for Services as Witness Sustained as Intra Vires. — Lincoln Mountain Gold Min. Co. *v.* Williams, 37 Colo. 193, 85 Pac. 844.

Mortgage on Loan by Brewery Company Enforced. — Kraft *v.* West Side Brewery Co., 219 Ill. 205, 76 N. E. 372.

Purchase of Stock of Another Corporation to Prevent Competition Ultra Vires. — Dunbar *v.* American Telephone, etc., Co., 224 Ill. 9, 79 N. E. 423.

Contract of Canal Company to Construct Basin Intra Vires. — Dawson *v.* Western Maryland R. Co., (Md. 1907) 68 Atl. 301.

Transfer of Mortgage Loan Between Building Associations Ultra Vires. — Cobe *v.* Lovan, 193 Mo. 235, 92 S. W. 93.

Nebraska Classifies Acts Ultra Vires as Void or Dependent on Circumstances. — Horst *v.* Lewis, 71 Neb. 365, 103 N. W. 460.

Assumption of Indebtedness of Predecessor in Line of Business Intra Vires. — Curtis *v.* Natalie Anthracite Coal Co., 181 N. Y. 543, 73 N. E. 1122, *affirming* 89 N. Y. App. Div. 61, 85 N. Y. Supp. 413.

Lease of Premises by Bank Exchanging Use of Part for Building suitable, needed and not otherwise procurable for their purposes not *ultra vires.* Lechenger *v.* Merchants' Nat. Bank, (Tex. Civ. App. 1906) 96 S. W. 638.

2. **Doctrine Stated.** — Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 493, 61 Atl. 167. See also Newport News Shipbuilding, etc., Co. *v.* Jones, 105 Va. 503, 54 S. E. 314.

3. **Organization of Relief and Hospital Department by Railway Companies Intra Vires.** — Harrison *v.* Alabama Midland R. Co., 144 Ala. 246, 40 So. 394.

Bank May Become Owner of Real Estate to Secure Itself against Loss in Authorized Business. — State Security Bank *v.* Hoskins, 130 Iowa 339, 106 N. W. 764.

Brewery Company Held as Surety on Bond in Furtherance of Business. — Horst *v.* Lewis, 71 Neb. 365, 103 N. W. 460; Munoz *v.* Brassel, (Tex. Civ. App. 1908) 108 S. W. 417.

4. Edwards *v.* National Window Glass Jobbers' Assoc., (N. J. L. 1908) 68 Atl. 800; Belch *v.* Big Store Co., 46 Wash. 1, 89 Pac. 174.

5. Deepwater Council No. 40 *v.* Renick, 59 W. Va. 343, 53 S. E. 552.

48. 1. Sheridan *v.* New York, 145 Fed. 835; Southern Mut. Aid Assoc. *v.* Watson, (Ala. 1908) 45 So. 649; State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500; Scott *v.* Bankers' Union, 73 Kan. 575, 85 Pac. 604; Geraghty *v.* Washtenaw Mut. F. Ins. Co., 145 Mich. 635, 108 N. W. 1102; Gause *v.* Commonwealth Trust Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 110, 106 N. Y. Supp. 288; Federal Nat. Bank *v.* Cross Creek, etc., Coal Co., (Pa. St. 1908) 68 Atl. 1018; Cook *v.* American Tubing, etc., Co., (R. I. 1905) 65 Atl. 641; Deaton Grocery Co. *v.* International Harvester Co., (Tex. Civ. App. 1906) 105 S. W. 556.

3. *In re* New York Car Wheel Works, 141 Fed. 430; Bell *v.* Kirkland, 102 Minn. 213, 113 N. W. 271; Kansas City First Nat. Bank *v.* Guardian Trust Co., 187 Mo. 494, 86 S. W. 109.

49. 5. Lineville First Nat. Bank *v.* Alexander, (Ala. 1907) 44 So. 866, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 49; Western Maryland R. Co. *v.* Blue Ridge Hotel Co., 102 Md. 307, 62 Atl. 351.

In Absence of Special Circumstances Neither Party Should Be Allowed to Plead Ultra Vires. — Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123, *comparing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 49, 50.

Defense Must Be Affirmatively Pleaded. — Horst *v.* Lewis, 71 Neb. 565, 103 N. W. 460; Gause *v.* Commonwealth Trust Co., (Supm. Ct. Tr. T.) 55 Misc. (N. Y.) 110, 106 N. Y. Supp. 288.

51. 1. *United States.* — *In re* New York Car Wheel Works, 141 Fed. 430; *In re* Castle Braid Co., 145 Fed. 224.

Alabama. — Lineville First Nat. Bank *v.* Alexander, (Ala. 1907) 44 So. 866, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50.

Arkansas. — Arkadelphia Lumber Co. *v.* Posey, 74 Ark. 377, 85 S. W. 1127.

Indiana. — Breinig *v.* Sparrow, 39 Ind. App. 702, 80 N. E. 37; Breinig *v.* Sparrow, 39 Ind. App. 702, 80 N. E. 40.

Indian Territory. — Choctaw, etc., R. Co. *v.* Bond, 6 Indian Ter. 515, 98 S. W. 335.

Iowa. — Garrison Canning Co. *v.* Stanley, 133 Iowa 57, 110 N. W. 171; St. John *v.* Iowa Business Men's Bldg., etc., Assoc., (Iowa 1907) 113 N. W. 863.

Kentucky. — Albin Co. *v.* Commonwealth, (Ky. 1908) 108 S. W. 299, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50.

Massachusetts. — New York Bank Note Co. *v.* Kidder Press Mfg. Co., 192 Mass. 391, 78 N. E. 463.

Michigan. — Geraghty *v.* Washtenaw Mut. F. Ins. Co., 145 Mich. 635, 108 N. W. 1102, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 50–53 (corporate existence).

Minnesota. — Hunt *v.* Hauser Malting Co., 95 Minn. 206, 103 N. W. 1032.

Missouri. — Kansas City First Nat. Bank *v.* Guardian Trust Co., 187 Mo. 494, 86 S. W. 109; Adams *v.* Farmers' Mut. F. Ins. Co., 115 Mo. 21, 90 S. W. 747; Kansas City Star Co. *v.* Standard Warehouse Co., 123 Mo. App. 13, 99 S. W. 765.

New Jersey. — Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167; Bettle *v.* Republic Sav., etc., Assoc., (N. J. Eq. 1906) 64 Atl. 176.

New York. — Curtis *v.* Natalie Anthracite Coal Co., 181 N. Y. 543, 73 N. E. 1122, *affirming* 89 N. Y. App. Div. 61, 85 N. Y. Supp. 413; McVity *v.* E. D. Albro Co., 180 N. Y. 554, 73 N. E. 1126, *affirming* 90 N. Y. App. Div. 109, 86 N. Y. Supp. 144; Appleton *v.* Citizens' Cent. Nat. Bank, 190 N. Y. 417, 83 N. E. 470, *reversing* 116 N. Y. App. Div. 404, 101 N. Y. Supp. 1027; Bowers *v.* Ocean Acc., etc., Corp., 110 N. Y. App. Div. 691, 97 N. Y. Supp. 485.

Pennsylvania. — Presbyterian Board, etc., *v.* Gilbee, 212 Pa. St. 310, 61 Atl. 924; Pennebaker *v.* Tuscarora Valley R. Co., 219 Pa. St. 60, 67 Atl. 923.

Washington. — Krisch *v.* Interstate Fisheries Co., 39 Wash. 381, 81 Pac. 855.

Wisconsin. — Eastman *v.* Parkinson, (Wis. 1907) 113 N. W. 649; Emigh *v.* Earling, (Wis. 1907) 113 N. W. .

No Defense unless Expressly Prohibited or Contrary to Public Policy. — Fidelity Ins. Co. *v.* German Sav. Bank, 127 Iowa 591, 103 N. W. 958.

Cestuis Qui Trustent Estopped from Pleading Ultra Vires after Conveyance to Corporation by Trustee. — State Security Bank *v.* Hoskins, 130 Iowa 339, 106 N. W. 764.

54. 2. Ottawa First Nat. Bank, etc., *v.* Converse, 200 U. S. 425, 26 U. S. Sup. Ct. 306; Merchants' Nat. Bank, etc., *v.* Wehrmann, etc., 202 U. S. 642, 26 U. S. Sup. Ct. 613; Coker *v.* Atlanta, etc., R. Co., 123 Ga. 483, 51 S. E. 481, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 54; Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123, *comparing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 54; Greene *v.* Middlesborough Town, etc., Co., (Ky. 1905) 89 S. W. 228; Western Maryland R. Co. *v.* Blue Ridge Hotel Co., 102 Md. 307, 62 Atl. 351; Leonhardt *v.* Small, 117 Tenn. 153, 96 S. W. 1051.

Guaranty of Noncommercial Instrument by Bank Void. — Fidelity, etc., Co. *v.* National Bank of Commerce, (Tex. Civ. App. 1907) 106 S. W. 782.

56. 1. Drainage Commission *v.* National Contracting Co., 136 Fed. 780; Greene *v.* Middlesborough Town, etc., Co., (Ky. 1905) 89 S. W. 228.

57. 1. Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123, *comparing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 57; Rutherford *v.* Hudson River Traction Co., 73 N. J. L. 227, 63 Atl. 84.

59. 1. Evans *v.* Johnson, (C. C. A.) 149 Fed. 978; Western Maryland R. Co. *v.* Blue Ridge Hotel Co., 102 Md. 307, 62 Atl. 351.

Where Insurance Corporations Attempt an Illegal Consolidation, the one assuming the obligation of the other, no recovery lies against the former on the obligation of the latter, there being no consideration. Whaley *v.* Bankers' Union, (Tex. Civ. App. 1907) 88 S. W. 259.

2. Geraghty *v.* Washtenaw Mut. F. Ins. Co., 145 Mich. 635, 108 N. W. 1102; Lawyers' Advertising Co. *v.* Consolidated R., etc., Co., 187 N. Y. 395, 80 N. E. 199.

3. McGonigale *v.* Defiance, 140 Fed. 621.

60. 1. Assets Realization Co. *v.* Heiden, 215 Ill. 9, 74 N. E. 56.

61. 1. *In re* Waterloo Organ Co., (C. C. A.) 134 Fed. 345; State *v.* Corning State Sav. Bank, (Iowa 1907) 113 N. W. 500; Associate Presby. Congregation *v.* Hanna, 113 N. Y. App. Div. 12, 98 N. Y. Supp. 1082.

64. 1. Georgia R., etc., Co. *v.* Haas, 127 Ga. 187, 56 S. E. 313; McCarter *v.* Pitman, etc., Gas Co., (N. J. Eq. 1908) 69 Atl. 211.

An Option for the Purchase of a Plant, etc., by Municipality in a contract by a public service corporation upon the granting of a franchise has been held *intra vires.* Indianapolis *v.* Consumers' Gas Trust Co., (C. C. A.) 144 Fed. 640, *reversing* Quimby *v.* Consumers' Gas Trust Co., 140 Fed. 362.

Contract by Railroad as to Transportation of Milk Intra Vires. — Delaware, etc., R. Co. *v.* Kutter, (C. C. A.) 147 Fed. 51.

Transfer of Property to Corporation Undertaking Service Actually Given Not Assailable by Individual. — Weld *v.* Gas, etc., Light Com'rs, (Mass. 1908) 84 N. E. 101.

65. 3. *In re* Payne, (1904) 2 Ch. 608, 20 Times L. Rep. 590, 73 L. J. Ch. 849.

67. 1. Stouffer *v.* Smith-Davis Hardware Co., (Ala. 1908) 45 So. 621, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 67.

Estoppel by Ratification. — George *v.* Wallace, (C. C. A.) 135 Fed. 286.

Guaranty by Indorsement for Benefit of Corporation Intra Vires. — *In re* New York Car Wheel Works, 141 Fed. 430.

No Recovery upon Unauthorized and Unratified Accommodation Paper. — El Dorado Imp. Co. *v.* Citizens' Bank, (Ark. 1908) 107 S. W. 676.

No Liability on Accommodation Indorsement of Note Taken with Notice. — J. G. Brill Co. *v.* Norton, etc., R. Co., 189 Mass. 431, 75 N. E. 1090.

Corporate Notes and Mortgages Enforced Where All Stockholders Assented and No Rights of State or Creditors Intervened. — Perkins *v.* Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167.

2. Scott *v.* Bankers' Union, 73 Kan. 575, 85 Pac. 604; Cook *v.* American Tubing, etc., Co., (R. I. 1905) 65 Atl. 641; Deaton Grocery Co. *v.* International Harvester Co., (Tex. Civ. App. 1907) 105 S. W. 556.

3. **Income Stock Unauthorized by Statute Held Certificates of Indebtedness for Money Borrowed Constituting Holders Creditors.** — Bettle *v.* Republic Sav., etc., Assoc., (N. J. Eq. 1906) 64 Atl. 176.

68. 1. Northeastern Telephone, etc., Co. *v.* Hepburn, (N. J. Eq. 1907) 65 Atl. 747; Lechenger *v.* Merchants' Nat. Bank, (Tex. Civ. App. 1906) 96 S. W. 638.

70. 1. **Statements of Rule.** — Corporations responsible for torts by servants in excess of authority, where ratified. White *v.* Apsley Rubber Co., 194 Mass. 97, 80 N. E. 500.

Conversion by Refusal to Make Transfer. — Herrick *v.* Humphrey Hardware Co., 73 Neb. 809, 103 N. W. 685.

73. 3. Peru Plow, etc., Co. *v.* Harker, C. C. A.) 144 Fed. 673; J. M. Guffey Petroleum Co. *v.* Jeff Chaison Townsite Co., (Tex. Civ. App. 1907) 107 S. W. 609.

7. McVity *v.* E. D. Albro Co., 180 N. Y. 554, 73 N. E. 1126, *affirming* 90 N. Y. App. Div. 109, 86 N. Y. Supp. 144.

74. 3. Robinson *v.* Holbrook, 148 Fed. 107.

76. 1. **Corporation Having Power to Sell or Its Stockholders Cannot Complain as to Ultra Vires of Purchasing Corporation.** — Hinds County *v.* Natchez Co., 85 Miss. 599, 38 So. 189.

5. **Owner of Stock Valued at $25** seeking injunction against ninety-three per cent. of entire stock should make very satisfactory showing. Pitcher *v.* Lone Pine-Surprise Consol. Min. Co., 39 Wash. 608, 81 Pac. 1047.

77. 1. Pitcher *v.* Lone Pine-Surprise Consol. Min. Co., 39 Wash. 608, 81 Pac. 1047.

2. Breeze *v.* Lone Pine-Surprise Consol. Min. Co., 39 Wash. 602, 81 Pac. 1050.

79. 1. **Subsequent Legislative Authorization as Notice in Creating Laches.** — Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403.

Loan by School Commissioners Ultra Vires Ratified by Subsequent Legislation. — Courtner *v.* Etheredge, (Ala. 1907) 43 So. 368.

State May Authorize Merger of Corporations Although No Such Right Existed When Incorporated. — Colby *v.* Equitable Trust Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 978, *reversing* (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 355, 106 N. Y. Supp. 801; Morse *v.* Equitable L. Assur. Soc., (Supm. Ct. App. T.) 108 N. Y. Supp. 986.

3. **Defense that Agreement between Corporations Ultra Vires as Creating Monopoly Sustained.** — White Star Line *v.* Star Line of Steamers, 141 Mich. 604, 105 N. W. 135.

Municipal Corporation Cannot Sustain Action to Reform Agreement between it and a water company by striking out provisions as to rights and obligations of individual consumers. Mt. Vernon *v.* New York Interurban Water Co., 115 N. Y. App. Div. 658, 101 N. Y. Supp. 232.

80. 5. Dunbar *v.* American Telephone, etc., Co., 224 Ill. 9, 79 N. E. 423.

Certiorari Lies to Test Validity of Ordinance Conferring Grant to Corporation Unauthorized to Take Same. — Fogg *v.* Ocean City, (N. J. L. 1907) 65 Atl. 885.

6. *In re* Long Acre Electric Light, etc., Co., 188 N. Y. 361, 80 N. E. 1101, *affirming* 117 N. Y. App. Div. 80, 102 N. Y. Supp. 242; Lechenger *v.* Merchants' Nat. Bank, (Tex. Civ. App. 1906) 96 S. W. 638.

11. **Injunction Lies to Restrain Sale and Transfer to Corporation Purchasing Stock Ultra Vires and Its Voting Same.** — Dunbar *v.* American Telephone, etc., Co., 224 Ill. 9, 79 N. E. 423.

81. 3. Coker *v.* Atlanta, etc., R. Co., 123 Ga. 483, 51 S. E. 481.

4. Maryland Trust Co. *v.* National Mechanics' Bank, 102 Md. 608, 63 Atl. 70; Beasley *v.* Aberdeen, etc., R. Co., 145 N. Car. 272, 59 S. E. 60; Lechenger *v.* Merchants' Nat. Bank, (Tex. Civ. App. 1906) 96 S. W. 638. See also Harris *v.* Independence Gas Co., (Kan. 1907) 92 Pac. 1123; Louisville School Board *v.* King, (Ky. 1908) 107 S. W. 247; Minneapolis Threshing Mach. Co. *v.* Jones, 95 Minn. 127, 103 N. W. 1017.

State or City May Object. — *In re* Long Acre Electric Light, etc., Co., 188 N. Y. 361, 80 N. E. 1101.

5. **State Proper Party to Enjoin Act Impairing Ability of Quasi-public Corporation to Properly Discharge Public Duties.** — McCarter *v.* Pitman, etc., Gas Co., (N. J. Eq. 1908) 69 Atl. 211.

84. 5. **Contract by Railroad for Transportation of Milk Not Violative of Monopoly or Interstate Commerce Acts.** — Delaware, etc., R. Co. *v.* Kutter, (C. C. A.) 147 Fed. 51.

6. **Where Adequate Provision Is Made for the Public,** details of administration not inconsistent with legislative policy may be left

to the corporation. Weld *v.* Gas, etc., Light Com'rs, (Mass. 1908) 84 N. E. 101.

88. 1. George *v.* Wallace, (C. C. A.) 135 Fed. 286.

4. Tevis *v.* Hammersmith, (Ind. App. 1907) 81 N. E. 614; Eastman *v.* Parkinson, (Wis. 1907) 113 N. W. 649.

Surety Estopped by Knowledge Before Execution of Bond. — American Bonding Co. *v.* Ottumwa, (C. C. A.) 137 Fed. 572.

89. 2. **Delay of Ten Years, Two Years with Knowledge, Creates Laches Fatal to Action.** — Cole *v.* Birmingham Union R. Co., 143 Ala. 427, 39 So. 403.

Delay of One Year and Twenty-seven Days Constitutes Waiver. — Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

90. 1. Wormser *v.* Metropolitan St. R. Co., 184 N. Y. 83, 76 N. E. 1036; Hill *v.* Atlantic, etc., R. Co., 143 N. Car. 539, 55 S. E. 854.

UNDERSTAND, UNDERSTANDING, ETC.

97. 4. Holman *v.* Clark, (Ala. 1906) 41 So. 765.

UNDERTAKING.

98. 2. **Undertaking and Bond.** — Wollenberg *v.* Sykes, (Oregon 1907) 89 Pac. 149, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 98.

UNDUE.

100. 5. **Undue or Unreasonable Preference or Advantage — Interstate Commerce Act.** — See Interstate Commerce Commission *v.* Chicago G. W. R. Co., 141 Fed. 1003.

UNDUE INFLUENCE.

103. 1. Compher *v.* Browning, 219 Ill. 429, 76 N. E. 678; Sears *v.* Vaughan, 230 Ill. 572, 82 N. E. 881; Murphy *v.* Hoagland, (Ky. 1908) 107 S. W. 303; Schneider *v.* Vosburgh, 143 Mich. 476, 106 N. W. 1129; Goodloe *v.* Goodloe, (Tex. Civ. App. 1907) 105 S. W. 533; *In re* Miller, 31 Utah 415, 88 Pac. 338.

Coercion Necessary. — Baudains *v.* Richardson, (1906) A. C. 169, 94 L. T. N. S. 290.

104. 2. Hayes *v.* Moulton, 194 Mass. 157, 80 N. E. 215.

105. 1. Boggianna *v.* Anderson, 78 Ark. 420, 94 S. W. 51; Murphy *v.* Hoagland, (Ky. 1908) 107 S. W. 303.

6. Mueller *v.* Pew, 127 Wis. 288, 106 N. W. 840.

10. *In re* Townsend, 128 Iowa 621, 105 N. W. 110; *In re* Keisler, 213 Pa. St. 9, 62 Atl. 108; Jenkins *v.* Rhodes, 106 Va. 564, 56 S. E. 332; St. Andrews Church *v.* Brodie, 14 Quebec K. B. 149.

106. 4. Waters *v.* Waters, 222 Ill. 26, 78 N. E. 1; Sears *v.* Vaughan, 230 Ill. 572, 82 N. E. 881.

107. 1. **In Order to Avoid a Will** on the ground of undue influence, the influence complained of must be controlling and partake to some extent of the nature of fraud. *In re* Abee, (N. Car. 1907) 59 S. E. 700.

3. Franklin *v.* Belt, (Ga. 1908) 60 S. E. 146.

4. Dodson *v.* Dodson, 142 Mich. 586, 105 N. W. 1110; Mayrand *v.* Dussault, 38 Can. Sup. Ct. 460.

5. Puff *v.* Puff, (Ky. 1907) 104 S. W. 332.

7. Cheney *v.* Goldy, 225 Ill. 394, 80 N. E. 289.

108. 1. Sears *v.* Vaughan, 230 Ill. 572, 82 N. E. 881; *In re* Miller, 31 Utah 415, 88 Pac. 338.

2. Walls *v.* Walls, 99 S. W. 969, 30 Ky. L. Rep. 948.

3. Barber *v.* Allen, (R. I. 1907) 68 Atl. 366.

109. 8. Spencer *v.* Merwin, (Conn. 1907) 68 Atl. 370.

13. Walls *v.* Walls, 99 S. W. 969, 30 Ky. L. Rep. 948.

14. Ferner *v.* Byers, 219 Pa. St. 160, 68 Atl. 48.

110. 1. Dean *v.* Dean, 131 Iowa 487, 108 N. W. 1051; McCord *v.* McCord, (Iowa 1907) 113 N. W. 552.

2. Compher *v.* Browning, 219 Ill. 429, 76 N. E. 678; *In re* Townsend, 128 Iowa 621, 105 N. W. 110; Hoffman *v.* Hoffman, 192 Mass. 416, 78 N. E. 492; Credille *v.* Credille, 123 Ga. 673, 51 S. E. 628; King *v.* Gilson, 191 Mo. 307, 90 S. W. 367; Cowan *v.* Shaver, 197 Mo. 203, 95 S. W. 200; Holton *v.* Cochran, 208 Mo. 314, 106 S. W. 1035; *In re* Thompson, (Surrogate Ct.) 50 Misc. (N. Y.) 222, 100 N. Y. Supp. 492; Teter *v.* Teter, 59 W. Va. 449, 53 S. E. 779.

3. Edgerly *v.* Edgerly, 73 N. H. 407, 62 Atl. 716.

4. Dodson *v.* Dodson, 142 Mich. 586, 105 N. W. 1110; Meier *v.* Buchter, 197 Mo. 68, 94 S. W. 883.

5. Walls *v.* Walls, 99 S. W. 969, 30 Ky. L. Rep. 948; Hoffman *v.* Hoffman, 192 Mass. 416, 78 N. E. 492; King *v.* Gilson, 191 Mo. 307, 90 S. W. 367.

111. 1. Sears *v.* Vaughan, 230 Ill. 572, 82 N. E. 881.

3. Robinson *v.* Duvall, 27 App. Cas. (D. C.) 535; Kultz *v.* Jaeger, 29 App. Cas. (D. C.) 300.

4. Compher *v.* Browning, 219 Ill. 429, 76 N. E. 678; Fethergill *v.* Fethergill, 129 Iowa 93, 105 N. W. 377.

7. Schneider *v.* Vosburgh, 143 Mich. 476, 106 N. W. 1129; Woodville *v.* Woodville, (W. Va. 1908) 60 S. E. 140.

8. *In re* Kah, (Iowa 1907) 113 N. W. 563; Hoffman *v.* Hoffman, 192 Mass. 416, 78 N. E. 492; Cowan *v.* Shaver, 197 Mo. 203, 95 S. W. 200; Owings *v.* Turner, 48 Oregon 462, 87 Pac. 160.

112. 1. Mayrand *v.* Dussault, 38 Can. Sup. Ct. 466, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 111 [112].

4. *In re* Wiltsey, (Iowa 1906) 109 N. W. 776; Roman Catholic Episcopal Corp. *v.* O'Connor, 14 Ont. L. Rep. 666.

113. 5. *In re* Townsend, 128 Iowa 621, 105 N. W. 110.

6. Fethergill *v.* Fethergill, 129 Iowa 93, 105 N. W. 377.

7. *In re* Arnold, 147 Cal. 583, 82 Pac. 252; Woodville *v.* Woodville, (W. Va. 1908) 60 S. E. 140; Quinn *v.* Quinn, 130 Wis. 548, 110 N. W. 488.

114. 7. *Compare In re* Morey, 147 Cal. 495, 82 Pac. 57.

8. *In re* Miller, 31 Utah 415, 88 Pac. 338.

115. 1. *In re* Eckler, (Surrogate Ct.) 47 Misc. (N. Y.) 320, 95 N. Y. Supp. 986.

2. Edgerly *v.* Edgerly, 73 N. H. 407, 62 Atl. 716.

5. Waters *v.* Waters, 222 Ill. 26, 78 N. E. 1; *In re* Townsend, 128 Iowa 621, 105 N. W. 110; *In re* Isaac, (Neb. 1906) 107 N. W. 1016. *Compare* Walls *v.* Walls, (Ky. 1907) 99 S. W. 969.

6. Hoffman *v.* Hoffman, 192 Mass. 416, 78 N. E. 492; Meier *v.* Buchter, 197 Mo. 68, 94 S. W. 883, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 115; Quinn *v.* Quinn, 130 Wis. 548, 110 N. W. 488.

116. 7. Cheney *v.* Goldy, 225 Ill. 398, 80 N. E. 289.

8. Meier *v.* Buchter, 197 Mo. 68, 94 S. W. 883, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 116.

117. 1. West *v.* Whittle, 84 Ark. 490, 106 S. W. 955.

2. Derby *v.* Donahoe, 208 Mo. 684, 106 S. W. 632.

3. Allen *v.* Allen, 79 Vt. 173, 64 Atl. 1110.

7. Kultz *v.* Jaeger, 29 App. Cas. (D. C.) 300; Compher *v.* Browning, 219 Ill. 429, 76 N. E. 678; Waters *v.* Waters, 222 Ill. 26, 78 N. E. 1; Cheney *v.* Goldy, 225 Ill. 394, 80 N. E. 289; Johnson *v.* Johnson, 134 Iowa 33, 111 N. W. 430, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 117; *In re* Kah, (Iowa 1907) 113 N. W. 563; Hobson *v.* Moorman, 115 Tenn. 73, 90 S. W. 152; Wallen *v.* Wallen, (Va. 1907) 57 S. E. 596, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 117. But see Linebarger *v.* Linebarger, 143 N. Car. 229, 55 S. E. 709.

118. 2. *In re* Arnold, 147 Cal. 583, 82 Pac. 252; Credille *v.* Credille, 123 Ga. 673, 51 S. E. 628; Wetz *v.* Schneider, (Tex. Civ. App. 1906) 96 S. W. 59; *In re* Miller, 31 Utah 415, 88 Pac. 338.

3. *In re* Townsend, 128 Iowa 621, 105 N. W. 110.

119. 2. Schoch *v.* Schoch, 27 Ohio Cir. Ct. 828; *In re* Miller, 31 Utah 415, 88 Pac. 338, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 119.

120. 1. Nobles *v.* Hutton, (Cal. App. 1907) 93 Pac. 289.

5. *In re* Eckler, (Surrogate Ct.) 47 Misc. (N. Y.) 320, 95 N. Y. Supp. 986; *In re* Thompson, (Surrogate Ct.) 50 Misc. (N. Y.) 222, 100 N. Y. Supp. 492; Quinn *v.* Quinn, 130 Wis. 548, 110 N. W. 488.

121. 1. Ripperdan *v.* Weldy, 149 Cal. 667, 87 Pac. 276; *In re* Barry, 219 Ill. 391, 76 N. E. 577.

4. Stametz *v.* Mitchenor, 165 Ind. 672, 75 N. E. 579.

122. 4. Morgan *v.* Owens, 228 Ill. 598, 81 N. E. 1135; *In re* White, 78 Vt. 479, 63 Atl. 878; *In re* Rogers, 80 Vt. 259, 67 Atl. 726.

123. 8. Nobles *v.* Hutton, (Cal. App. 1907) 93 Pac. 289.

124. 5. **The Naming of the Testator's Attorney as Executor** does not raise a presumption of undue influence. *In re* Marlor, 121 N. Y. App. Div. 398, 106 N. Y. Supp. 131.

125. 1. Trubey *v.* Richardson, 224 Ill. 136, 79 N. E. 592.

8. *Compare In re* Morey, 147 Cal. 495, 82 Pac. 57.

126. 4. Viallet *v.* Consolidated R., etc., Co., 30 Utah 260, 84 Pac. 496.

127. 2. See also Davidson *v.* McCaslin, 219 Pa. St. 178, 68 Atl. 54.

130. 3. Kneisel *v.* Kneisel, 143 Mich. 384, 106 N. W. 1114.

4. Kultz *v.* Jaeger, 29 App. Cas. (D. C.) 300.

132. 10. McLeod *v.* McLeod, 145 Ala. 269, 40 So. 414; Dolberry *v.* Dolberry, (Ala. 1907) 44 So. 1018; Sanders *v.* Gurley, (Ala. 1907) 44 So. 1022; Sears *v.* Vaughan, 230 Ill. 572, 82 N. E. 881; Wright *v.* Wright, (Ky. 1908) 106 S. W. 856; Jenkins *v.* Rhodes, 106 Va. 564, 56 S. E. 332.

133. 2. Kamin *v.* Kamin, 145 Mich. 626, 108 N. W. 1077; Teter *v.* Teter, 59 W. Va. 449, 53 S. E. 779, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 133.

3. Meyer *v.* Arends, 126 Wis. 603, 106 N. W. 675.

7. Teter *v.* Teter, 59 W. Va. 449, 53 S. E. 779, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 133. *Compare* Couch *v.* Couch, (Ala. 1906) 42 So. 624.

9. Nobles *v.* Hutton, (Cal. App. 1907) 93 Pac. 289; Groesbeck *v.* Groesbeck, (Oregon 1907) 88 Pac. 870.

10. **Benefits Received by Stepchildren to Exclusion of Own Children.** — *In re* Tyner, 97 Minn. 181, 106 N. W. 898.

134. 13. Curtice *v.* Dixon, (N. H. 1907) 68 Atl. 587.

15. Boggianna *v.* Anderson, 78 Ark. 420, 94 S. W. 51.

UNINCLOSED.

137. 2. **Uninclosed Lands.** — See Reed *v.* Chicago, etc., R. Co., 112 Mo. App. 575, 87 S. W. 65.

UNION DEPOTS.

138. 4. **Delegation of Power.** — Dewey *v.* Atlantic Coast Line, 142 N. Car. 392, 55 S. E. 292.

139. 1. See Pere Marquette R. Co. *v.* Wabash R. Co., 141 Mich. 215, 104 N. W. 650.

3. Pere Marquette R. Co. *v.* Wabash R. Co., 141 Mich. 215, 104 N. W. 650.

140. 3. Dewey *v.* Atlantic Coast Line, 142 N. Car. 392, 55 S. E. 292.

UNITED STATES.

150. 2. National Exch. Bank *v.* U. S., (C. C. A.) 151 Fed. 402.

3. Kansas *v.* Colorado, 206 U. S. 46, 27 U. S. Sup. Ct. 655.

6. Kansas *v.* Colorado, 206 U. S. 46, 27 U. S. Sup. Ct. 655.

10. Kansas *v.* U. S., 204 U. S. 331, 27 U. S. Sup. Ct. 388; U. S. *v.* Noojin, 155 Fed. 377.

156. 4. Walker *v.* U. S., 139 Fed. 409; U. S. *v.* Noojin, 155 Fed. 377.

157. 1. Walker *v.* U. S., 139 Fed. 409.

2. Walker *v.* U. S., 139 Fed. 409.

4. Walker *v.* U. S., 139 Fed. 409; U. S. *v.* Noojin, 155 Fed. 377.

158. 2. Walker *v.* U. S., 139 Fed. 409.

6. Walker *v.* U. S., 139 Fed. 409.

161. 1. Wertz *v.* U. S., 40 Ct. Cl. 397; U. S. *v.* Taft, 24 App. Cas. (D. C.) 95.

162. 1. U. S. *v.* Thayer, 209 U. S. 39, 28 U. S. Sup. Ct. 426, *reversing* on other grounds 154 Fed. 508.

4. Jacobs *v.* U. S., 41 Ct. Cl. 452.

164. 2. Walker *v.* U. S., 139 Fed. 409; O'Reilly De Camara *v.* Brooke, 142 Fed. 858.

5. Walker *v.* U. S., 139 Fed. 409; U. S. *v.* U. S. Fidelity, etc., Co., 151 Fed. 534.

165. 1. **Ratification by the Secretary of State** of the action of the governor of Cuba in abolishing a valuable franchise relieves the governor from liability for such action. O'Reilly De Camara *v.* Brooke, 142 Fed. 858, *affirmed* 209 U. S. 45, 28 U. S. Sup. Ct. 439.

169. 1. U. S. *v.* U. S. Fidelity, etc., Co., 151 Fed. 534.

2. U. S. *v.* Perth Amboy Shipbuilding, etc., Co., 137 Fed. 689.

170. 5. U. S. *v.* Andrews, 207 U. S. 229, 28 U. S. Sup. Ct. 100.

171. 1. National Exch. Bank *v.* U. S., (C. C. A.) 151 Fed. 402.

3. Henningsen *v.* U. S. Fidelity, etc., Co., (C. C. A.) 143 Fed. 810.

172. 5. National Exch. Bank *v.* U. S., (C. C. A.) 151 Fed. 402.

6. Mountain Copper Co. *v.* U. S., (C. C. A.) 142 Fed. 625.

8. Walker *v.* U. S., 139 Fed. 409; U. S. *v.* Gillies, 144 Fed. 991.

173. 1. U. S. *v.* Pierson, (C. C. A.) 145 Fed. 814.

174. 1. Oregon *v.* Hitchcock, 202 U. S. 60, 26 U. S. Sup. Ct. 568; Naganab *v.* Hitchcock, 202 U. S. 473, 26 U. S. Sup. Ct. 667; Kansas *v* U. S., 204 U. S. 331, 27 U. S. Sup. Ct. 388; Kansas *v.* Colorado, 206 U. S. 46, 27 U. S. Sup. Ct. 655.

176. 5. Nutt *v.* Knut, 200 U. S. 12, 26 U. S. Sup. Ct. 216.

177. 1. **Lien on Claim Not an Assignment.** — Jones *v.* Rutherford, 26 App. Cas. (D. C.) 114.

2. Roberts *v.* Consaul, 24 App. Cas. (D. C.) 551.

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185. 1. Martin *v.* White, (C. C. A.) 146 Fed. 461.

4. U. S. *v.* Tom Wah, 160 Fed. 207.

186. 4. U. S. *v.* Tom Wah, 160 Fed. 207.

187. 5. U. S. *v.* Tom Wah, 160 Fed. 207.

190. 7. U. S. *v.* Tom Wah, 160 Fed. 207.

194. 6. **Decision of Commissioner Is Reviewable by Circuit Court.** — Hyams *v.* U. S., 139 Fed. 997.

195. 10. Allen *v.* U. S., 204 U. S. 581, 27 U. S. Sup. Ct. 324.

UNITED STATES COURTS.

207. 1. Geiger *v.* Tacoma R., etc., Co., 141 Fed. 169.

6. Geiger *v.* Tacoma R., etc., Co., 141 Fed. 169.

208. 1. Geiger *v.* Tacoma R., etc., Co., 141 Fed. 169.

211. 5. Seattle Brewing, etc., Co. *v.* Hansen, 141 Fed. 1011.

212. 1. *Ex p.* Bick, 155 Fed. 908.

214. 5. Hollister *v.* U. S., (C. C. A.) 145 Fed. 773; U. S. *v.* Zarafonitis, 150 Fed. 97, 10 Ann. Cas. 290; Collin County Nat. Bank *v.* Hughes, (C. C. A.) 152 Fed. 414; Collin County Nat. Bank *v.* Hughes, (C. C. A.) 155 Fed. 389.

6. **Habeas Corpus.** — U. S. *v.* Lewis, 200 U. S. 1, 26 U. S. Sup. Ct. 229; *Ex p.* Moran, (C. C. A.) 144 Fed. 594; *Ex p.* Collins, 151 Fed. 358.

215. 2. Whitney *v.* Dick, 202 U. S. 132, 26 U. S. Sup. Ct. 584.

6. *In re* Massachusetts, 197 U. S. 482, 25 U. S. Sup. Ct. 512.

216. 1. Cole *v.* Philadelphia, etc., R. Co., 140 Fed. 944; Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159.

3. Bitterman *v.* Louisville, etc., R. Co., 207 U. S. 205, 28 U. S. Sup. Ct. 91; South Penn Oil Co. *v.* Calf Creek Oil, etc., Co., 140 Fed. 507; Ozark-Bell Telephone Co. *v.* Springfield, 140 Fed. 666; Chicago City R. Co. *v.* Chicago, 142 Fed. 844; Thomson-Houston Electric Co. *v.* Holland, 143 Fed. 903; Louisville, etc., R. Co. *v.* Bitterman, (C. C. A.) 144 Fed. 34; Texas, etc., R. Co. *v.* Bitterman, (C. C. A.) 144 Fed. 46; New York Cotton Exch. *v.* Hunt, 144 Fed. 511; Evenson *v.* Spaulding, (C. C. A.) 150 Fed. 517, *affirming* 149 Fed. 913; U. S. *v.* Standard Oil Co., 152 Fed. 290; Barnes *v.* Berry, 156 Fed. 72.

4. American Smelting, etc., Co. *v.* Godfrey, (C. C. A.) 158 Fed. 225.

5. Vacuum Oil Co. *v.* Eagle Oil Co., 154 Fed. 867.

7. Gunter *v.* Atlantic Coast Line R. Co., 200 U. S. 273, 26 U. S. Sup. Ct. 252; Mississippi R. Commission *v.* Illinois Cent. R. Co., 203 U. S. 335, 27 U. S. Sup. Ct. 90; Raymond *v.* Chicago Union Traction Co., 207 U. S. 20, 28 U. S. Sup. Ct. 7; Raymond *v.* Chicago Edison Co., 207 U. S. 42, 28 U. S. Sup. Ct. 14; Raymond *v.* Chicago Consol. Traction Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago Telephone Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* People's Gaslight, etc., Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* South Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; Western Union Tel. Co. *v.* Andrews, 154 Fed. 95; University of the South *v.* Jetton, 155 Fed. 182; St. Louis, etc., R. Co. *v.* Hadley, 155 Fed. 220; Poor *v.* Iowa Cent. R. Co., 155 Fed. 226; Perkins *v.* Northern Pac. R. Co., 155 Fed. 445; Southern R. Co. *v.* McNeill, 155 Fed. 756; Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Chicago, etc., R. Co. *v.* Ludwig, 156 Fed. 152; Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783; Consolidated Gas Co. *v.* New York, 157 Fed. 849; Louisville, etc., R. Co. *v.* Railroad Commission, 157 Fed. 944; Central of Georgia R. Co. *v.* McLendon, 157 Fed. 961; St. Louis, etc., R. Co. *v.* Hadley, 161 Fed. 419.

9. McNeill *v.* Southern R. Co., 202 U. S. 543, 26 U. S. Sup. Ct. 722; Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Jewett *v.* Chicago, etc., R. Co., 156 Fed. 160; Kalispell Lumber Co. *v.* Great Northern R. Co., 157 Neb. 845.

10. *Ex p.* Munn, 140 Fed. 782; Hutchinson *v.* Smith, 140 Fed. 082; Western Union Tel. Co. *v.* Andrews, 154 Fed. 95; Logan *v.* Postal Tel., etc., Co., 157 Fed. 570.

217. 3. Southern R. Co. *v.* Carolina Coal, etc., Co., (C. C. A.) 151 Fed. 477; Rocky Mountain Bell Telephone Co. *v.* Montana Federation of Labor, 156 Fed. 809.

4. Southern R. Co. *v.* Simon, 153 Fed. 234.

5. Campbell *v.* Golden Cycle Min. Co., (C. C. A.) 141 Fed. 610; Railroad Commission *v.* Texas, etc., R. Co., (C. C. A.) 144 Fed. 68; Schultz *v.* Highland Gold Mines Co., 158 Fed. 337.

The Moving Papers Must Show Facts sufficient to warrant the issuance of a preliminary injunction, otherwise it will be denied. Star Co. *v.* Colver Pub. House, 141 Fed. 129.

226. 2. U. S. *v.* Swift, (C. C. A.) 139 Fed. 225.

227. 2. Campbell *v.* Golden Cycle Min. Co., (C. C. A.) 141 Fed. 610.

229. 1. Burch *v.* Southern Pac. Co., 139 Fed. 350.

3. Kansas *v.* Colorado, 206 U. S. 46, 27 U. S. Sup. Ct. 655; Geiger *v.* Tacoma R., etc., Co., 141 Fed. 169.

4. Whitney *v.* Dick, 202 U. S. 132, 26 U. S. Sup. Ct. 584; Knight *v.* Lutcher, etc., Lumber Co., (C. C. A.) 136 Fed. 404; Anderson *v.* Bassman, 140 Fed. 10; U. S. *v.* Tully, 140 Fed. 899; Geiger *v.* Tacoma R., etc., Co., 141 Fed. 169; Oregon R., etc., Co. *v.* Shell, 143 Fed. 1004; *Ex p.* Moran, (C. C. A.) 144 Fed. 594; Francisco *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 354, 9 Ann. Cas. 628; Lewis Pub. Co. *v.* Wyman, 152 Fed. 200; U. S. *v.* Standard Oil Co., 152 Fed. 290.

5. Venner *v.* Great Northern R. Co., 209 U. S. 24, 28 U. S. Sup. Ct. 328.

6. Glucose Refining Co. *v.* Chicago, 138 Fed. 209; Parks Co. *v.* Decatur, (C. C. A.) 138 Fed. 550; Mathews Slate Co. *v.* Mathews, 148 Fed. 490; Peters *v.* Equitable L. Assur. Soc., 149 Fed. 290; Francisco *v.* Chicago, etc., R. Co., (C. C. A.) 149 Fed. 354, 9 Ann. Cas. 628; Defiance *v.* McGonigale, (C. C. A.) 150 Fed. 689; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; Collin County Nat. Bank *v.* Hughes, (C. C. A.) 152 Fed. 414; Venner *v.* Great Northern R. Co., 153 Fed. 408; Collin County Nat. Bank *v.* Hughes, (C. C. A.) 155 Fed. 389; Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1; Dunlop *v.* Mercer, (C. C. A.) 156 Fed. 545; Louisville, etc., R. Co. *v.* Railroad Commission, 157 Fed. 944.

230. 4. Harrington *v.* Atlantic, etc., Tel. Co., 143 Fed. 329.

8. Railroad Commission *v.* Texas, etc., R. Co., (C. C. A.) 144 Fed. 68; Frees *v.* John Shields Constr. Co., 145 Fed. 1020; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; Lewis Pub. Co. *v.* Wyman, 152 Fed. 200.

231. 3. Consumers' Gas Trust Co. *v.* Quinby, (C. C. A.) 137 Fed. 882.

4. Craig *v.* Dorr, (C. C. A.) 145 Fed. 307; Frees *v.* John Shields Constr. Co., 145 Fed. 1020; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; U. S. *v.* Standard Oil Co., 152 Fed. 290; Quinton *v.* Neville, (C. C. A.) 154 Fed. 432.

The Pendency of a Suit in Either Court Is No Bar to a subsequent action in the other court. Hunt *v.* New York Cotton Exch., 205 U. S. 322, 27 U. S. Sup. Ct. 529; Mankato *v.* Barber Asphalt Paving Co., (C. C. A.) 142 Fed. 329; Barnsdall *v.* Waltemeyer, (C. C. A.) 142 Fed. 415; New York Cotton Exch. *v.* Hunt, 144 Fed. 511; Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753; North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290; Lamar *v.* Spalding, (C. C. A.) 154 Fed. 27; Harton *v.* Howley, 155 Fed. 491; Farmers' Bank *v.* Wright, 158 Fed. 841; Jacob Tome Inst. *v.* Whitcomb, (C. C. A.) 160 Fed. 835.

5. Glucose Refining Co. *v.* Chicago, 138 Fed. 209; Michigan Railroad Tax Cases, 138 Fed. 223; Lake Shore, etc., R. Co. *v.* Powers, 138 Fed. 257; Sault Ste. Marie Bridge Co. *v.* Powers, 138 Fed. 262; Detroit, etc., R. Co. *v.* Powers, 138 Fed. 264; Herron *v.* Comstock, (C. C. A.) 139 Fed. 370; Ingraham *v.* National Salt Co., 139 Fed. 684; Howe, etc., Co. *v.* Haugan, 140 Fed. 182; Fountain *v.* 624 Pieces Timber, 140 Fed. 381; Cole *v.* Philadelphia, etc., R. Co., 140 Fed. 944; Campbell *v.* Golden Cycle Min. Co., (C. C. A.) 141 Fed. 610; Davis *v.* Commonwealth, etc., Co., 141 Fed. 711; Guardian Trust Co. *v.* Kansas City Southern R. Co., (C. C. A.) 146 Fed. 337; Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159; Lamar *v.* Spalding, (C. C. A.) 154 Fed. 27; Cochran *v.* Pittsburg, etc., R. Co., 158 Fed. 549; Cooper *v.* Newton, 160 Fed. 190; Long *v.* Choctaw, etc., R. Co., (C. C. A.) 160 Fed. 355; Sullivan *v.* Algrem, (C. C. A.) 160 Fed. 366.

An Ancillary Suit to Aid, Avoid, Enforce, Explain, Enjoin, or Regulate is but a continuation of the original suit to the end that more complete justice may be done. Gunter *v.* Atlantic Coast Line R. Co., 200 U. S. 273, 26 U. S. Sup. Ct. 252; Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427; Wabash R. Co. *v.* Adelbert College, 208 U. S. 38, 28 U. S. Sup. Ct. 182; Wabash R. Co. *v.* Adelbert College, 208 U. S. 609, 28 U. S. Sup. Ct. 425; Ames Realty Co. *v.* Big Indian Min. Co., 146 Fed. 166; Miller *v.* Rickey, 146 Fed. 574; O'Connor *v.* O'Connor, 146 Fed. 994; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; Huff *v.* Bidwell, (C. C. A.) 151 Fed. 563; Rickey Land, etc., Co. *v.* Miller, (C. C. A.) 152 Fed. 11; Collin County Nat. Bank *v.* Hughes, (C. C. A.) 152 Fed. 414; Collin County Nat. Bank *v.* Hughes, (C. C. A.) 155 Fed. 389; Ulman *v.* Iaeger, 155 Fed. 1011; Brown *v.* Allebach, 156 Fed. 697; Lang *v.* Choctaw, etc., R. Co., (C. C. A.) 160 Fed. 355; New Orleans *v.* Howard, (C. C. A.) 160 Fed. 393.

232. 1. Hunt *v.* New York Cotton Exch., 205 U. S. 322, 27 U. S. Sup. Ct. 529; Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; Lamar *v.* Spalding, (C. C. A.) 154 Fed. 27; Newton *v.* Gage, 155 Fed. 598.

2. Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 387, 5 Ann. Cas. 314.

Possession of the Res must be valid in order to be exclusive. Fountain *v.* 624 Pieces Timber, 140 Fed. 381.

3. Hunt *v.* New York Cotton Exch., 205 U. S. 322, 27 U. S. Sup. Ct. 529; Wabash R. Co. *v.* Adelbert College, 208 U. S. 38, 28 U. S. Sup. Ct. 182; Wabash R. Co. *v.* Adelbert College, 208 U. S. 609, 28 U. S. Sup. Ct. 425; *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441; Herron *v.* Comstock, (C. C. A.) 139 Fed. 370; Lebensberger *v.* Scofield, (C. C. A.) 139 Fed. 380; The Winnebago, (C. C. A.) 141 Fed. 945; Railroad Commission *v.* Texas, etc., R. Co., (C. C. A.) 144 Fed. 68; Onslow County *v.* Tollman, (C. C. A.) 145 Fed. 753; Miller *v.* Rickey, 146 Fed. 574; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; Monmouth Invest Co. *v.* Means, (C. C. A.) 151 Fed. 159; Lamar *v.* Spalding, (C. C. A.) 154 Fed. 27; St. Louis, etc., R. Co. *v.* Hadley, 155 Fed. 220; Lang *v.* Choctaw, etc., R. Co., (C. C. A.) 160 Fed. 355; New Orleans *v.* Howard, (C. C. A.) 160 Fed. 393.

4. Glucose Refining Co. *v.* Chicago, 138 Fed. 209; Hutchinson *v.* Smith, 140 Fed. 982; Colorado Eastern R. Co. *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 898; Frees *v.* John Shields Constr. Co., 145 Fed. 1020; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; Western Union Tel. Co. *v.* Andrews, 154 Fed. 95; Schultz *v.* Highland Gold Mines Co., 158 Fed. 337.

Jurisdiction May Be Maintained and Relitigation Prevented by Injunction to Another Court. — Gunter *v.* Atlantic Coast Line R. Co., 200 U. S. 273, 26 U. S. Sup. Ct. 252; Linton *v.* Safe Deposit, etc., Co., 147 Fed. 824; St. Louis Min., etc., Co. *v.* Montana Min. Co., 148 Fed. 450; Rickey Land, etc., Co. *v.* Miller, (C. C. A.) 152 Fed. 11; Southern R. Co. *v.* Simon, 153 Fed. 234; Lang *v.* Choctaw, etc., R. Co., (C. C. A.) 160 Fed. 355.

233. 2. Glucose Refining Co. *v.* Chicago, 138 Fed. 209; Michigan Railroad Tax Cases, 138 Fed. 223; Lake Shore, etc., R. Co. *v.* Powers, 138 Fed. 257; Sault Ste. Marie Bridge Co. *v.* Powers, 138 Fed. 262; Detroit, etc., R. Co. *v.* Powers, 138 Fed. 264; Chicago City R. Co. *v.* Chicago, 142 Fed. 844; Morrill *v.* American Reserve Bond Co., 151 Fed. 305.

234. 1. McMullen Lumber Co. *v.* Strother, (C. C. A.) 136 Fed. 295; Brown *v.* Fletcher, 140 Fed. 639; Venner *v.* Great Northern R. Co., 153 Fed. 408; Pacific Mut. L. Ins. Co. *v.* Webb, (C. C. A.) 157 Fed. 155.

2. Lawson *v.* U. S. Mining Co., 207 U. S. 1, 28 U. S. Sup. Ct. 15; Harrison *v.* Remington Paper Co., (C. C. A.) 140 Fed. 385, 5 Ann. Cas. 314; New York, etc., R. Co. *v.* New York, 145 Fed. 661; Ames Realty Co. *v.* Big Indian Min. Co., 146 Fed. 166; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290; Morrill *v.* American Reserve Bond Co., 151 Fed. 305; Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1; Acord *v.* Western Pocahontas Corp., 156 Fed. 989; Pacific Mut. L. Ins. Co. *v.* Webb, (C. C. A.) 157 Fed. 155; Platt *v.* Lecocq, (C. C. A.) 158 Fed. 723; Kraus *v.* Congdon, (C. C. A.) 161 Fed. 18.

4. Slaughter *v.* Mallet Land, etc., Co., (C. C. A.) 141 Fed. 282.

6. Raymond *v.* Chicago Union Traction Co., 207 U. S. 20, 28 U. S. Sup. Ct. 7; Raymond *v.* Chicago Edison Co., 207 U. S. 42, 28 U. S. Sup. Ct. 14; Raymond *v.* Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* South Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* People's Gaslight, etc., Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago Telephone Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago Consol. Traction Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15.

7. Peters *v.* Equitable L. Assur. Soc., 149 Fed. 290; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290.

8. Colorado Eastern R. Co. *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 898.

235. 1. Raymond *v.* Chicago Union Traction Co., 207 U. S. 20, 28 U. S. Sup. Ct. 7; Raymond *v.* Chicago Edison Co., 207 U. S. 42, 28 U. S. Sup. Ct. 14; Raymond *v.* Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* South Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* People's Gaslight, etc., Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago Telephone Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago Consol. Traction Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Bitterman *v.* Louisville, etc., R. Co., 207 U. S. 205, 28 U. S. Sup. Ct. 91; *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441; Humes *v.* Little Rock, 138 Fed. 929; Ozark-Bell Telephone Co. *v.* Springfield, 140 Fed. 666; Brun *v.* Mann, (C. C. A.) 151 Fed. 145; Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159; Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1.

236. 1. Toledo Computing Scale Co. *v.* Computing Scale Co., (C. C. A.) 142 Fed. 919; Acord *v.* Western Pocahontas Corp., 156 Fed. 989.

2. Mann *v.* Gaddie, (C. C. A.) 158 Fed. 42.

3. Cole *v.* Philadelphia, etc., R. Co., 140 Fed. 944; Davidson-Wesson Improvement Co. *v.* Parlen, etc., Co., (C. C. A.) 141 Fed. 37; Colorado Eastern R. Co. *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 898; Morrill *v.* American Reserve Bond Co., 151 Fed. 305.

4. Cook *v.* Foley, (C. C. A.) 152 Fed. 41; Beatty *v.* Wilson, 161 Fed. 453.

5. Campbell *v.* Golden Cycle Mine Co., (C. C. A.) 141 Fed. 610; Levi *v.* Mathews, (C. C. A.) 145 Fed. 152; Pacific Mut. L. Ins. Co. *v.* Webb, (C. C. A.) 157 Fed. 155.

239. 1. *Ex p.* Glaser, 198 U. S. 171, 25 U. S. Sup. Ct. 653.

8. Virginia *v.* West Virginia, 206 U. S. 290, 27 U. S. Sup. Ct. 732.

10. Oregon *v.* Hitchcock, 202 U. S. 60, 26 U. S. Sup. Ct. 568.

241. 8. Louisiana *v.* Mississippi, 202 U. S. 1, 26 U. S. Sup. Ct. 408; Kansas *v.* Colorado, 206 U. S. 46, 27 U. S. Sup. Ct. 655; Virginia *v.* West Virginia, 206 U. S. 290, 27 U. S. Sup. Ct. 732.

9. Kansas *v.* U. S., 204 U. S. 331, 27 U. S. Sup. Ct. 388.

242. 3. Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783.

4. Notley *v.* Brown, 208 U. S. 429, 28 U. S. Sup. Ct. 385.

243. 4. Kentucky *v.* Powers, 201 U. S. 1,

26 U. S. Sup. Ct. 387; Rearick *v.* Pennsylvania, 203 U. S. 507, 27 U. S. Sup. Ct. 159; Western Union Tel. Co. *v.* Hughes, 203 U. S. 505, 27 U. S. Sup. Ct. 162; Sullivan *v.* Texas, 207 U. S. 416, 28 U. S. Sup. Ct. 215.

6. Leathe *v.* Thomas, 207 U. S. 93, 28 U. S. Sup. Ct. 30; Chapman *v.* Bowen, 207 U. S. 89, 28 U. S. Sup. Ct. 32; Yosemite Gold Min., etc., Co. *v.* Emerson, 208 U. S. 25, 28 U. S. Sup. Ct. 197; Braxton County Ct. *v.* West Virginia, 208 U. S. 192, 28 U. S. Sup. Ct. 275.

7. Elder *v.* Colorado, 204 U. S. 85, 27 U. S. Sup. Ct. 223.

8. St. Louis, etc., R. Co. *v.* Taylor, 210 U. S. 281, 28 U. S. Sup. Ct. 616.

9. Braxton County Ct. *v.* West Virginia, 208 U. S. 192, 28 U. S. Sup. Ct. 275.

244. 5. Leathe *v.* Thomas, 207 U. S. 93, 28 U. S. Sup. Ct. 30.

6. French *v.* Taylor, 199 U. S. 274, 26 U. S. Sup. Ct. 76; Elder *v.* Colorado, 204 U. S. 85, 27 U. S. Sup. Ct. 223.

245. 2. Corkran Oil, etc., Co. *v.* Arnaudet, 199 U. S. 182, 26 U. S. Sup. Ct. 41; Elder *v.* Colorado, 204 U. S. 85, 27 U. S. Sup. Ct. 223.

5. Offield *v.* New York, etc., R. Co., 203 U. S 372, 27 U. S. Sup. Ct. 72; Iroquois Transp. Co. *v.* Edwards, 205 U. S. 354, 27 U. S. Sup. Ct. 509; Hunter *v.* Pittsburgh, 207 U. S. 161, 28 U. S. Sup. Ct. 40.

6. Sauer *v.* New York, 206 U. S. 536, 27 U. S. Sup. Ct. 686.

7. Tampa Waterworks Co. *v.* Tampa, 199 U. S. 241, 26 U. S. Sup. Ct. 23; Michigan *v.* Lowrey, 199 U. S. 233, 26 U. S. Sup. Ct. 27; Sullivan *v.* Texas, 207 U. S. 416, 28 U. S. Sup. Ct. 215; Northern Pac. R. Co. *v.* Minnesota, 208 U. S. 583, 28 U. S. Sup. Ct. 341.

246. 1. Michigan *v.* Lowrey, 199 U. S. 233, 26 U. S. Sup. Ct. 27; French *v.* Taylor, 199 U. S. 274, 26 U. S. Sup. Ct. 76; Western Turf Assoc. *v.* Greenberg, 204 U. S. 359, 27 U. S. Sup. Ct. 384; Patterson *v.* Colorado, 205 U. S. 454, 27 U. S. Sup. Ct. 556; Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541, 28 U. S. Sup. Ct. 178; Northern Pac. R. Co. *v.* Minnesota, 208 U. S. 583, 28 U. S. Sup. Ct. 341; Londoner *v.* Denver, 210 U. S. 373, 28 U. S. Sup. Ct. 708.

2. French *v.* Taylor, 199 U. S. 274, 26 U. S. Sup. Ct. 76; Burt *v.* Smith, 203 U. S. 129, 27 U. S. Sup. Ct. 37.

3. Serralles *v.* Esbri, 200 U. S. 103, 26 U. S. Sup. Ct. 176; Chicago, etc., R. Co. *v.* Illinois, 200 U. S. 561, 26 U. S. Sup. Ct. 341; Kentucky *v.* Powers, 201 U. S. 1, 26 U. S. Sup. Ct. 387; Yates *v.* Jones Nat. Bank, 206 U. S. 158, 27 U. S. Sup. Ct. 638; Illinois Cent. R. Co. *v.* McKendree, 203 U. S. 514, 27 U. S. Sup. Ct. 153; Illinois Cent. R. Co. *v.* Edwards, 203 U. S. 531, 27 U. S. Sup. Ct. 159; Elder *v.* Colorado, 204 U. S. 85, 27 U. S. Sup. Ct. 223; Montana *v.* Rice, 204 U. S. 291, 27 U. S. Sup. Ct. 281; Western Turf Assoc. *v.* Greenberg, 204 U. S. 359, 27 U. S. Sup. Ct. 384; Eau Claire Nat. Bank *v.* Jackman, 204 U. S. 522, 27 U. S. Sup. Ct. 391; Hammond *v.* Whittredge, 204 U. S. 538, 27 U. S. Sup. Ct. 396; Tilt *v.* Kelsey, 207 U. S. 43, 28 U. S. Sup. Ct. 1; Atlantic Coast Line R. Co. *v.* Wharton, 207 U. S. 328, 28 U. S. Sup. Ct. 121; Missouri Valley Land Co. *v.* Wiese, 208 U. S. 234, 28 U. S. Sup. Ct. 294; Missouri Valley Land Co. *v.* Wrich, 208 U. S. 250, 28 U. S. Sup. Ct. 299; General Oil Co. *v.* Crain, 209 U. S. 211, 28 U. S. Sup. Ct. 475; St. Louis, etc., R. Co. *v.* Taylor, 210 U. S. 281, 28 U. S. Sup. Ct. 616; Londoner *v.* Denver, 210 U. S. 373, 28 U. S. Sup. Ct. 708; *Ex p.* Chadwick, 159 Fed. 576.

4. American R. Co. *v.* Castro, 204 U. S. 453, 27 U. S. Sup. Ct. 466; American R. Co. *v.* De Castro, 210 U. S. 440, 27 U. S. Sup. Ct. 468.

5. Newman *v.* Gates, 204 U. S. 89, 27 U. S. Sup. Ct. 220; Texas, etc., R. Co. *v.* Abilene Cotton Oil Co., 204 U. S. 426, 27 U. S. Sup. Ct. 350; Leathe *v.* Thomas, 207 U. S. 93, 28 U. S. Sup. Ct. 30; Arkansas Southern R. Co. *v.* German Nat. Bank, 207 U. S. 270, 28 U. S. Sup. Ct. 78.

6. Northern Pac. R. Co. *v.* Minnesota, 208 U. S. 583, 28 U. S. Sup. Ct. 341.

247. 3. Hulbert *v.* Chicago, 202 U. S. 275, 26 U. S. Sup. Ct. 617.

5. Rector *v.* City Deposit Bank, 200 U. S. 405, 26 U. S. Sup. Ct. 289; Eau Claire Nat. Bank *v.* Jackman, 204 U. S. 522, 27 U. S. Sup. Ct. 391.

8. Rankin *v.* Barton, 199 U. S. 228, 26 U. S. Sup. Ct. 29; Yates *v.* Jones Nat. Bank, 206 U. S. 158, 27 U. S. Sup. Ct. 638.

9. West Chicago St. R. Co. *v.* Illinois, 201 U. S. 506, 26 U. S. Sup. Ct. 518.

12. Allen *v.* Arguimbau, 198 U. S. 149, 25 U. S. Sup. Ct. 622; Leonard *v.* Vicksburg, etc., R. Co., 198 U. S. 416, 25 U. S. Sup. Ct. 750; Fair Haven, etc., R. Co. *v.* New Haven, 203 U. S. 379, 27 U. S. Sup. Ct. 74; Gatewood *v.* North Carolina, 203 U. S. 531, 27 U. S. Sup. Ct. 167; Bachtel *v.* Wilson, 204 U. S. 36, 27 U. S. Sup. Ct. 243; Miller *v.* Wilson, 204 U. S. 42, 27 U. S. Sup. Ct. 246; Davis *v.* Wilson, 204 U. S. 42, 27 U. S. Sup. Ct. 246; Van Horn *v.* Wilson, 204 U. S. 42, 27 U. S. Sup. Ct. 246; Frank *v.* Vollkommer, 205 U. S. 521, 27 U. S. Sup. Ct. 596; Leathe *v.* Thomas, 207 U. S. 93, 28 U. S. Sup. Ct. 30; Chapman *v.* Bowen, 207 U. S. 89, 28 U. S. Sup. Ct 32; Arkansas Southern R Co. *v.* German Nat. Bank, 207 U. S. 270, 28 U. S. Sup. Ct. 78; Vandalia R. Co. *v.* Indiana, 207 U. S. 359, 28 U. S. Sup. Ct. 130; Elder *v.* Wood, 208 U. S. 226, 28 U. S. Sup. Ct. 263.

13. Chicago, etc., R. Co. *v.* Illinois, 200 U. S. 561, 26 U. S. Sup. Ct. 341; West Chicago St. R. Co. *v.* Illinois, 201 U. S. 506, 26 U. S. Sup. Ct. 518; Tilt *v.* Kelsey, 207 U. S. 43, 28 U. S. Sup. Ct. 1.

14. Chapman, etc., Land Co. *v.* Bigelow, 206 U. S. 41, 27 U. S. Sup. Ct. 679; Chicago, etc., R. Co. *v.* Williams, 205 U. S. 444, 27 U. S. Sup. Ct. 559; Lawson *v.* U. S. Mining Co., 207 U. S. 1, 28 U. S. Sup. Ct. 15; Arkansas Southern R. Co. *v.* German Nat. Bank, 207 U. S. 270, 28 U. S. Sup. Ct. 78; Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541, 28 U. S. Sup. Ct. 178.

15. Delmar Jockey Club *v.* Missouri, 210 U. S. 324, 28 U. S. Sup. Ct. 732.

248. 2. Fayerweather *v.* Ritch, 195 U. S. 276, 25 U. S. Sup. Ct. 58; Leathe *v.* Thomas, 207 U. S. 93, 28 U. S. Sup. Ct. 30.

3. *Re* Metropolitan Railway Receivership, 208 U. S. 90, 28 U. S. Sup. Ct. 219.

4. Smith *v.* Jennings, 206 U. S. 276, 27 U. S. Sup. Ct. 610.

5. Devine *v.* Los Angeles, 202 U. S. 313, 26 U. S. Sup. Ct. 652.

6. Leonard *v.* Vicksburg, etc., R. Co., 198 U. S. 416, 25 U. S. Sup. Ct. 750; Michigan *v.* Lowrey, 199 U. S. 233, 26 U. S. Sup. Ct. 27; Mead *v.* Portland, 200 U. S. 148, 26 U. S. Sup. Ct. 171; Owensboro Waterworks Co. *v.* Owensboro, 200 U. S. 38, 26 U. S. Sup. Ct. 249; Joy *v.* St. Louis, 201 U. S. 332, 26 U. S. Sup. Ct. 478; Keen *v.* Keen, 201 U. S. 319, 26 U. S. Sup. Ct. 494; O'Conor *v.* Texas, 202 U. S. 501, 26 U. S. Sup. Ct. 726; Wicomico County *v.* Bancroft, 203 U. S. 112, 27 U. S. Sup. Ct. 21; Elder *v.* Colorado, 204 U. S. 85, 27 U. S. Sup. Ct. 223; Bachtel *v.* Wilson, 204 U. S. 36, 27 U. S. Sup. Ct. 243; Van Horn *v.* Wilson, 204 U. S. 42, 27 U. S. Sup. Ct. 246; Davis *v.* Wilson, 204 U. S. 42, 27 U. S. Sup. Ct. 246; Miller *v.* Wilson, 204 U. S. 42, 27 U. S. Sup. Ct. 246; Swing *v.* Weston Lumber Co., 205 U. S. 275, 27 U. S. Sup. Ct. 497; Iroquois Transp. Co. *v.* Edwards, 205 U. S. 354, 27 U. S. Sup. Ct. 509; Patterson *v.* Colorado, 205 U. S. 454, 27 U. S. Sup. Ct. 556; Barrington *v.* Missouri, 205 U. S. 483, 27 U. S. Sup. Ct. 582; Atlantic Coast Line R. Co. *v.* North Carolina Corp. Commission, 206 U. S. 1, 27 U. S. Sup. Ct. 585; Stone *v.* Southern Illinois, etc., Bridge Co., 206 U. S. 267, 27 U. S. Sup. Ct. 615; Sauer *v.* New York, 206 U. S. 536, 27 U. S. Sup. Ct. 686; Chambers *v.* Baltimore, etc., R. Co., 207 U. S. 142, 28 U. S. Sup. Ct. 34; Arkansas Southern R. Co. *v.* German Nat. Bank, 207 U. S. 270, 28 U. S. Sup. Ct. 78; Vandalia R. Co. *v.* Indiana, 207 U. S. 359, 28 U. S. Sup. Ct. 130; Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541, 28 U. S. Sup. Ct. 178; Elder *v.* Wood, 208 U. S. 226, 28 U. S. Sup. Ct. 263; Ughbanks *v.* Armstrong, 208 U. S. 481, 28 U. S. Sup. Ct. 372; Stickney *v.* Kelsey, 209 U. S. 419, 28 U. S. Sup. Ct. 508; St. Louis, etc., R. Co. *v.* Taylor, 210 U. S. 281, 28 U. S. Sup. Ct. 616; Mobile, etc., R. Co. *v.* Mississippi, 210 U. S. 187, 28 U. S. Sup. Ct. 650.

7. O'Callaghan *v.* O'Brien, 199 U. S. 89, 25 U. S. Sup. Ct. 727; Hulbert *v.* Chicago, 202 U. S. 275, 26 U. S. Sup. Ct. 617; Cox *v.* Texas, 202 U. S. 446, 26 U. S. Sup. Ct. 671; Osborne *v.* Clark, 204 U. S. 565, 27 U. S. Sup. Ct. 319; Louisville, etc., R. Co. *v.* Smith, 204 U. S. 551, 27 U. S. Sup. Ct. 401; Frank *v.* Vollkommer, 205 U. S. 521, 27 U. S. Sup. Ct. 596.

9. Lavagnino *v.* Uhlig, 198 U. S. 443, 25 U. S. Sup. Ct. 716; French *v.* Taylor, 199 U. S. 274, 26 U. S. Sup. Ct. 76; Yates *v.* Jones Nat. Bank, 206 U. S. 158, 27 U. S. Sup. Ct. 638; Sullivan *v.* Texas, 207 U. S. 416, 28 U. S. Sup. Ct. 215.

10. Merchants' Nat. Bank *v.* Wehrmann, 202 U. S. 295, 26 U. S. Sup. Ct. 613; Illinois Cent. R. Co. *v.* McKendree, 203 U. S. 514, 27 U. S. Sup. Ct. 153; Illinois Cent. R. Co. *v.* Edwards, 203 U. S. 531, 27 U. S. Sup. Ct. 159; Montana *v.* Rice, 204 U. S. 291, 27 U. S. Sup. Ct. 281; McKay *v.* Kalyton, 204 U. S. 458, 27 U. S. Sup. Ct. 346; Eau Claire Nat. Bank *v.* Jackman, 204 U. S. 522, 27 U. S. Sup. Ct. 391; Schlemmer *v.* Buffalo, etc., R. Co., 205 U. S. 1, 27 U. S. Sup. Ct. 407; Chambers *v.* Baltimore, etc., R. Co., 207 U. S. 142, 28 U. S. Sup. Ct. 34.

249. 1. Corkran Oil, etc., Co. *v.* Arnaudet, 199 U. S. 182, 26 U. S. Sup. Ct. 41; French *v.* Taylor, 199 U. S. 274, 26 U. S. Sup. Ct. 76; Joy *v.* St. Louis, 201 U. S. 332, 26 U. S. Sup. Ct. 478; Burt *v.* Smith, 203 U. S. 129, 27 U. S. Sup. Ct. 37; Andrews *v.* Eastern Oregon Land Co., 203 U. S. 127, 27 U. S. Sup. Ct. 42; Gatewood *v.* North Carolina, 203 U. S. 531, 27 U. S. Sup. Ct. 167; Barrington *v.* Missouri, 205 U. S. 483, 27 U. S. Sup. Ct. 582; Hunter *v.* Pittsburgh, 207 U. S. 161, 28 U. S. Sup. Ct. 40; Kent *v.* Porto Rico, 207 U. S. 113, 28 U. S. Sup. Ct. 55; Paraiso *v.* U. S., 207 U. S. 368, 28 U. S. Sup. Ct. 127; Thomas *v.* Iowa, 209 U. S. 258, 28 U. S. Sup. Ct. 487; Delmar Jockey Club *v.* Missouri, 210 U. S. 324, 28 U. S. Sup. 732; Turner *v.* Jackson Lumber Co., (C. C. A.) 159 Fed. 923.

3. Montana *v.* Rice, 204 U. S. 291, 27 U. S. Sup. Ct. 281.

250. 1. Petri *v.* F. E. Creelman Lumber Co., 199 U. S. 487, 26 U. S. Sup. Ct. 133; Kentucky *v.* Powers, 201 U. S. 1, 26 U. S. Sup. Ct. 387; Nichols Lumber Co. *v.* Franson, 203 U. S. 278, 27 U. S. Sup. Ct. 102; Boston, etc., R. Co. *v.* Gokey, 210 U. S. 155, 28 U. S. Sup. Ct. 657; Globe Newspaper Co. *v.* Walker, 210 U. S. 356, 28 U. S. Sup. Ct. 726; Campbell *v.* Golden Cycle Min. Co., (C. C. A.) 141 Fed. 610; Crawford *v.* McCarthy, (C. C. A.) 148 Fed. 198; Boston, etc., R. Co. *v.* Gokey, (C. C. A.) 149 Fed. 42, 9 Ann. Cas. 384; Davis *v.* Cleveland, etc., R. Co., (C. C. A.) 156 Fed. 775.

2. Empire State-Idaho Min., etc., Co. *v.* Hanley, 205 U. S. 225, 27 U. S. Sup. Ct. 476; Bien *v.* Robinson, 208 U. S. 423, 28 U. S. Sup. Ct. 379; U. S. *v.* Larkin, 208 U. S. 333, 28 U. S. Sup. Ct. 417; Scully *v.* Bird, 209 U. S. 481, 28 U. S. Sup. Ct. 597; Dowagiac Mfg. Co. *v.* McSherry Mfg. Co., (C. C. A.) 155 Fed. 524.

3. Remington *v.* Central Pac. R. Co., 198 U. S. 95, 25 U. S. Sup. Ct. 577; Board of Trade *v.* Hammond Elevator Co., 198 U. S. 424, 25 U. S. Sup. Ct. 740; Kendall *v.* American Automatic Loom Co., 198 U. S. 477, 25 U. S. Sup. Ct. 768.

5. Boston, etc., R. Co. *v.* Gokey, 210 U. S. 155, 28 U. S. Sup. Ct. 657.

251. 2. U. S. *v.* Larkin, 208 U. S. 333, 28 U. S. Sup. Ct. 417; Grand Trunk Western R. Co. *v.* Reddick, (C. C. A.) 160 Fed. 898.

4. Kansas City Northwestern R. Co. *v.* Zimmerman, 210 U. S. 336, 28 U. S. Sup. Ct. 730.

252. 2. Williamson *v.* U. S., 207 U. S. 425, 28 U. S. Sup. Ct. 163; Empire State-Idaho Min., etc., Co. *v.* Hanley, 198 U. S. 292, 25 U. S. Sup. Ct. 691; O'Callaghan *v.* O'Brien, 199 U. S. 89, 25 U. S. Sup. Ct. 727; Montana Catholic Missions *v.* Missoula County, 200 U. S. 118, 26 U. S. Sup. Ct. 197; Devine *v.* Los Angeles, 202 U. S. 313, 26 U. S. Sup. Ct. 652; Ortega *v.* Lara, 202 U. S. 339, 26 U. S. Sup. Ct. 707; American R. Co. *v.* Castro, 204 U. S. 453, 27 U. S. Sup. Ct. 466; American R. Co. *v.* De Castro, 210 U. S. 440, 27 U. S. Sup. Ct.

468; Empire State-Idaho Min., etc., Co. *v.* Hanley, 205 U. S. 225, 27 U. S. Sup. Ct. 476; Swing *v.* Weston Lumber Co., 205 U. S. 275, 27 U. S. Sup. Ct. 497; Iroquois Transp. Co. *v.* Edwards, 205 U. S. 354, 27 U. S. Sup. Ct. 509; Patterson *v.* Colorado, 205 U. S. 454, 27 U. S. Sup. Ct. 556; Barrington *v.* Missouri, 205 U. S. 483, 27 U. S. Sup. Ct. 582; Stone *v.* Southern Illinois, etc., Bridge Co., 206 U. S. 267, 27 U. S. Sup. Ct. 617; Kent *v.* Porto Rico, 207 U. S. 113, 28 U. S. Sup. Ct. 55; Braxton County Ct. *v.* West Virginia, 208 U. S. 192, 28 U. S. Sup. Ct. 275; Bien *v.* Robinson, 208 U. S. 423, 28 U. S. Sup. Ct. 379; Delmar Jockey Club *v.* Missouri, 210 U. S. 324, 28 U. S. Sup. Ct. 732; Harris *v.* Rosenberger, (C. C. A.) 145 Fed. 449.

6. Vicksburg *v.* Vicksburg Waterworks Co., 202 U. S. 453, 26 U. S. Sup. Ct. 660; Pierce *v.* Creecy, 210 U. S. 387, 28 U. S. Sup. Ct. 714.

253. 1. Wilmington Star Min. Co. *v.* Fulton, 205 U. S. 60, 27 U. S. Sup. Ct. 412.

2. Vicksburg *v.* Vicksburg Waterworks Co., 202 U. S. 453, 26 U. S. Sup. Ct. 660; Mercantile Trust, etc., Co. *v.* Columbus, 203 U. S. 311, 27 U. S. Sup. Ct. 83; Chicago *v.* Mills, 204 U. S. 321, 27 U. S. Sup. Ct. 286; Northern Pac. R. Co. *v.* Minnesota, 208 U. S. 583, 28 U. S. Sup. Ct. 341.

5. Whitney *v.* Dick, 202 U. S. 132, 26 U. S. Sup. Ct. 584.

8. U. S. *v.* Larkin, 208 U. S. 333, 28 U. S. Sup. Ct. 417; Grand Trunk Western R. Co. *v.* Reddick, (C. C. A.) 160 Fed. 898.

254. 2. Cella *v.* Brown, (C. C. A.) 144 Fed. 742.

6. Whitney *v.* Dick, 202 U. S. 132, 26 U. S. Sup. Ct. 584.

256. 5. Whitney *v.* Dick, 202 U. S. 132, 26 U. S. Sup. Ct. 584; Zell *v.* Judges, (C. C. A.) 149 Fed. 86.

257. 2. Dowagiac Mfg. Co. *v.* McSherry Mfg. Co., (C. C. A.) 155 Fed. 524.

258. 2. Whitney *v.* Dick, 202 U. S. 132, 26 U. S. Sup. Ct. 584; Zell *v.* Judges, (C. C. A.) 149 Fed. 86.

3. Doyle *v.* London Guarantee, etc., Co., 204 U. S. 599, 27 U. S. Sup. Ct. 313; Campbell *v.* Golden Cycle Min. Co., (C. C. A.) 141 Fed. 610; Collin County Nat. Bank *v.* Hughes, (C. C. A.) 152 Fed. 414; Morrison *v.* Burnette, (C. C. A.) 154 Fed. 617; Mann *v.* Gaddis, (C. C. A.) 158 Fed. 42; Shumaker *v.* Security Life, etc., Co., (C. C. A.) 159 Fed. 112.

6. Morrison *v.* Burnette, (C. C. A.) 154 Fed. 617.

259. 1. Morrison *v.* Burnette, (C. C. A.) 154 Fed. 617.

260. 1. **Order Punishing for Contempt.** — Doyle *v.* London Guarantee, etc., Co., 204 U. S. 599, 27 U. S. Sup. Ct. 313.

Order to Produce Certain Relevant Books and Papers. — Webster Coal, etc., Co. *v.* Cassatt, 207 U. S. 181, 28 U. S. Sup. Ct. 108; Pennsylvania Coal, etc., Co. *v.* Cassatt, 207 U. S. 187, 28 U. S. Sup. Ct. 110.

Denial of Permission to Intervene. — Blaffer *v.* New Orleans Water Supply Co., (C. C. A.) 160 Fed. 389.

261. 8. U. S. *v.* Dalcour, 203 U. S. 408, 27 U. S. Sup. Ct. 58.

10. Toledo Computing Scale Co. *v.* Computing Scale Co., (C. C. A.) 142 Fed. 919; Thomson-Houston Electric Co. *v.* Holland, 143 Fed. 903; Railroad Commission *v.* Texas, etc., R. Co., (C. C. A.) 144 Fed. 68; Harris *v.* Rosenberger, (C. C. A.) 145 Fed. 449; Evenson *v.* Spaulding, (C. C. A.) 150 Fed. 517, *affirming* 149 Fed. 913; Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159; Southern R. Co. *v.* Carolina Coal, etc., Co., (C. C. A.) 151 Fed. 477; J. P. Jorgenson Co. *v.* Rapp, (C. C. A.) 157 Fed. 732.

263. 2. Campbell *v.* Golden Cycle Min. Co., (C. C. A.) 141 Fed. 610.

8. Empire State-Idaho Min., etc., Co. *v.* Hanley, 198 U. S. 292, 25 U. S. Sup. Ct. 691; Cochran *v.* Montgomery County, 199 U. S. 260, 26 U. S. Sup. Ct. 58; Wyman *v.* Wallace, 201 U. S. 230, 26 U. S. Sup. Ct. 495.

264. 1. Stevenson *v.* Fain, 195 U. S. 165, 26 U. S. Sup. Ct. 6.

3. Mississippi R. Commission *v.* Illinois Cent. R. Co., 203 U. S. 335, 27 U. S. Sup. Ct. 90; Henningsen *v.* U. S. Fidelity, etc., Co., 208 U. S. 404, 28 U. S. Sup. Ct. 389.

4. Wyman *v.* Wallace, 201 U. S. 230, 26 U. S. Sup. Ct. 495; McClellan *v.* Wallace, 201 U. S. 244, 26 U. S. Sup. Ct. 498; Frenzer *v.* Wallace, 201 U. S. 244, 26 U. S. Sup. Ct. 498; Morsman *v.* Wallace, 201 U. S. 244, 26 U. S. Sup. Ct. 498.

5. Craig *v.* Dorr, (C. C. A.) 145 Fed. 307.

6. Harrington *v.* Atlantic, etc., Tel. Co., 143 Fed. 329.

265. 3. Sena *v.* U. S., (C. C. A.) 147 Fed. 485.

6. Wallace *v.* Adams, (C. C. A.) 143 Fed. 716.

9. Southern Pine Lumber Co. *v.* Ward, 208 U. S. 126, 28 U. S. Sup. Ct. 239; Garzot *v.* De Rubio, 299 U. S. 283, 28 U. S. Sup. Ct. 548; *Ex p.* Moran, (C. C. A.) 144 Fed. 594; Sena *v.* U. S., (C. C. A.) 147 Fed. 485; Miller *v.* Oklahoma, (C. C. A.) 149 Fed. 330, 9 Ann. Cas. 389.

10. New Mexico *v.* Denver, etc., R. Co., 203 U. S. 38, 27 U. S. Sup. Ct. 1.

11. Wallace *v.* Adams, (C. C. A.) 143 Fed. 716; Morrison *v.* Burnette, (C. C. A.) 154 Fed. 617.

12. Missouri, etc., R. Co. *v.* Wilhoit, (C. C. A.) 160 Fed. 440.

267. 12. Cochran *v.* Montgomery County, 199 U. S. 260, 26 U. S. Sup. Ct. 58.

268. 1. Western Union Tel. Co. *v.* Andrews, 154 Fed. 95.

3. Campbell *v.* Golden Cycle Min. Co., (C. C. A.) 141 Fed. 610; North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290.

7. McMullen Lumber Co. *v.* Strother, (C. C. A.) 136 Fed. 295.

8. Malloy *v.* American Hide, etc., Co., 148 Fed. 482.

269. 5. Ingersoll *v.* Coram, 136 Fed. 689.

10. Gunter *v.* Atlantic Coast Line R. Co., 200 U. S. 273, 26 U. S. Sup. Ct. 252; Powers *v.* Detroit, etc., R. Co., 201 U. S. 543, 26 U. S. Sup. Ct. 556; Raymond *v.* Chicago Union Traction Co., 207 U. S. 20, 28 U. S. Sup. Ct. 7; Raymond *v.* Chicago Edison Co., 207 U. S. 42, 28 U. S. Sup. Ct. 14; Raymond *v.* People's

Gaslight, etc., Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* South Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago Telephone Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago Consol. Traction Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Michigan Railroad Tax Cases, 138 Fed. 223; Lake Shore, etc., R. Co. *v.* Powers, 138 Fed. 257; Sault Ste. Marie Bridge Co. *v.* Powers, 138 Fed. 262; Detroit, etc., R. Co. *v.* Powers, 138 Fed. 264; Humes *v.* Little Rock, 138 Fed. 929; University of the South *v.* Jetton, 155 Fed. 182; Whitman College *v.* Berryman, 156 Fed. 112.

18. A Creditor's Bill to Enforce the Judgment of a State Court is within the jurisdiction of the federal courts. Feidler *v.* Bartelson, (C. C. A.) 161 Fed. 30.

19. O'Callaghan *v.* O'Brien, 199 U. S. 89, 25 U. S. Sup. Ct. 727.

21. Palmer *v.* Bradley, (C. C. A.) 154 Fed. 311.

270. 1. Eaton *v.* Hoge, (C. C. A.) 141 Fed. 64, 5 Ann. Cas. 487.

2. Brun *v.* Mann, (C. C. A.) 151 Fed. 145; Farmers' Bank *v.* Wright, 158 Fed. 841.

4. Covington, etc., Bridge Co. *v.* Hager, 203 U. S. 109, 27 U. S. Sup. Ct. 24.

5. Graham *v.* Folsom, 200 U. S. 248, 26 U. S. Sup. Ct. 245; Burnham *v.* Fields, 157 Fed. 246.

6. U. S. Fidelity, etc., Co. *v.* U. S., 204 U. S. 349, 27 U. S. Sup. Ct. 381; Dupree *v.* Leggette, 140 Fed. 776; Scribner *v.* Straus, (C. C. A.) 147 Fed. 28.

7. McDaniel *v.* Traylor, 196 U. S. 415, 25 U. S. Sup. Ct. 369; McNeill *v.* Southern R. Co., 202 U. S. 543, 26 U. S. Sup. Ct. 722; Smithers *v.* Smith, 204 U. S. 632, 27 U. S. Sup. Ct. 297; Hunt *v.* New York Cotton Exch., 205 U. S. 322, 27 U. S. Sup. Ct. 529; Bitterman *v.* Louisville, etc., R. Co., 207 U. S. 205, 28 U. S. Sup. Ct. 91; Beadles *v.* Smyser, 209 U. S. 393, 28 U. S. Sup. Ct. 522; Humes *v.* Little Rock, 138 Fed. 929; Way *v.* Clay, 140 Fed. 352; Woodside *v.* Vasey, 142 Fed. 617; Shewalter *v.* Lexington, 143 Fed. 161; Oregon R., etc., Co. *v.* Shell, 143 Fed. 1004; Louisville, etc., R. Co. *v.* Bitterman, (C. C. A.) 144 Fed. 34; Texas, etc., R. Co. *v.* Bitterman, (C. C. A.) 144 Fed. 46; Board of Trade *v.* Cella Commission Co., (C. C. A.) 145 Fed. 28; Morris *v.* Bean, 146 Fed. 423; Spaulding *v.* Evenson, 149 Fed. 913; Evenson *v.* Spaulding (C. C. A.) 150 Fed. 517; Huff *v.* Bidwell, (C. C. A.) 151 Fed. 563; Fidelity, etc., Co. *v.* Moshier, 151 Fed. 806; Markell *v.* Matteson, (C. C. A.) 153 Fed. 564; Clement *v.* Louisville, etc., R. Co., 153 Fed. 979; Howe *v.* Howe, etc., Ball Bearing Co., (C. C. A.) 154 Fed. 820; Whitman College *v.* Berryman, 156 Fed. 112; Southern Land, etc., Co. *v.* Johnson, 156 Fed. 246; American Smelting, etc., Co. *v.* Godfrey, (C. C. A.) 158 Fed. 225; Thomas *v.* Green County, (C. C. A.) 159 Fed. 339; Chesapeake, etc., Canal Co. *v.* Gring, (C. C. A.) 159 Fed. 662; Turner *v.* Jackson Lumber Co., (C. C. A.) 159 Fed. 923; Turner *v.* Jackson Lumber Co., (C. C. A.) 159 Fed. 926; Heffner *v.* Gwynne-Treadwell Cotton Co., (C. C. A.) 160 Fed. 635.

271. 2. Denver City Tramway Co. *v.* Norton, (C. C. A.) 141 Fed. 599; Hampton Stave Co. *v.* Gardner, (C. C. A.) 154 Fed. 805.

11. Wallula Pac. R. Co. *v.* Portland, etc., R. Co., 154 Fed. 902.

272. 3. Gunter *v.* Atlantic Coast Line R. Co., 200 U. S. 273, 26 U. S. Sup. Ct. 252.

4. Ex *p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441.

5. Western Union Tel. Co. *v.* Andrews, 154 Fed. 95; Logan *v.* Postal Tel., etc., Co., 157 Fed. 570; Central of Georgia R. Co. *v.* McLendon, 157 Fed. 961.

6. Mead *v.* Portland, 200 U. S. 148, 26 U. S. Sup. Ct. 171; Knoxville Water Co. *v.* Knoxville, 200 U. S. 22, 26 U. S. Sup. Ct. 224; Graham *v.* Folsom, 200 U. S. 248, 26 U. S. Sup. Ct. 245; Powers *v.* Detroit, etc., R. Co., 201 U. S. 543, 26 U. S. Sup. Ct. 556; Vicksburg *v.* Vicksburg Waterworks Co., 202 U. S. 453, 26 U. S. Sup. Ct. 660; Mercantile Trust, etc., Co. *v.* Columbus, 203 U. S. 311, 27 U. S. Sup. Ct. 83; Jetton *v.* University of the South, 208 U. S. 489, 28 U. S. Sup. Ct. 375; Sioux Falls *v.* Farmers' L. & T. Co., (C. C. A.) 136 Fed. 721; Louisville, etc., R. Co. *v.* Bitterman, (C. C. A.) 144 Fed. 34; Texas, etc., R. Co. *v.* Bitterman, (C. C. A.) 144 Fed. 46; New York Cotton Exch. *v.* Hunt, 144 Fed. 511; Mottley *v.* Louisville, etc., R. Co., 150 Fed. 406; Des Moines City R. Co. *v.* Des Moines, 151 Fed. 854; Green *v.* Demler, 151 Fed. 936; University of the South *v.* Jetton, 155 Fed. 182; Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Whitman College *v.* Berryman, 156 Fed. 112; Chicago, etc., R. Co. *v.* Ludwig, 156 Fed. 152; Missouri, etc., R. Co. *v.* Olathe, 156 Fed. 624; Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783.

No Jurisdiction unless Contract Depends on State Legislation. — Louisville *v.* Cumberland Telephone, etc., Co., (C. C. A.) 155 Fed. 725; Marten *v.* Holbrook, 157 Fed. 716.

7. French *v.* Taylor, 199 U. S. 274, 26 U. S. Sup. Ct. 76; Chicago, etc., R. Co. *v.* Illinois, 200 U. S. 561, 26 U. S. Sup. Ct. 341; Atlantic Coast Line R. Co. *v.* North Carolina Corp. Commission, 206 U. S. 1, 27 U. S. Sup. Ct. 585; Raymond *v.* Chicago Union Traction Co., 207 U. S. 20, 28 U. S. Sup. Ct. 7; Raymond *v.* Chicago Edison Co., 207 U. S. 42, 28 U. S. Sup. Ct. 14; Raymond *v.* South Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago City R. Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago Consol. Traction Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* Chicago Telephone Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; Raymond *v.* People's Gaslight, etc., Co., 207 U. S. 42, 28 U. S. Sup. Ct. 15; *Ex p.* Young, 209 U. S. 123, 28 U. S. Sup. Ct. 441; Ozark-Bell Telephone Co. *v.* Springfield, 140 Fed. 666; Colorado Eastern R. Co. *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 898; Chicago, etc., R. Co. *v.* Chicago, 142 Fed. 844; Douglas Park Jockey Club *v.* Grainger, 146 Fed. 414; St. Louis, etc., R. Co. *v.* Hadley, 155 Fed. 220; Poor *v.* Iowa Cent. R. Co., 155 Fed. 226; Perkins *v.* Northern Pac. R. Co., 155 Fed. 445; Southern R. Co. *v.* McNeill, 155 Fed. 756; Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Logan *v.* Postal Tel., etc., Co., 157 Fed.

570; Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783; Consolidated Gas Co. *v.* New York, 157 Fed. 849; Central of Georgia R. Co. *v.* McLendon, 157 Fed. 961; St. Louis, etc., R. Co. *v.* Hadley, 161 Fed. 419.

8. McNeill *v.* Southern R. Co., 202 U. S. 543, 26 U. S. Sup. Ct. 722; Mississippi R. Commission *v.* Illinois Cent. R. Co., 203 U. S. 335, 27 U. S. Sup. Ct. 90; Atlantic Coast Line R. Co. *v.* Wharton, 207 U. S. 328, 28 U. S. Sup. Ct. 121; U. S. *v.* Armour, 142 Fed. 808; Railroad Commission *v.* Texas, etc., R. Co., (C. C. A.) 144 Fed. 68; Kirven *v.* Virginia-Carolina Chemical Co., (C. C. A.) 145 Fed. 288, 7 Ann. Cas. 219; Davis *v.* Cleveland, etc., R. Co., 146 Fed. 403; Seaboard Air Line R. Co. *v.* Railroad Commission, 155 Fed. 792; Butler Bros. Shoe Co. *v.* U. S. Rubber Co., (C. C. A.) 156 Fed. 1; Kalispell Lumber Co. *v.* Great Northern R. Co., 157 Fed. 845; Louisville, etc., R. Co. *v.* Railroad Commission, 157 Fed. 944.

9. Tampa Waterworks Co. *v.* Tampa, 199 U. S. 241, 26 U. S. Sup. Ct. 23; French *v.* Taylor, 199 U. S. 274, 26 U. S. Sup. Ct. 76.

12. Ohio Postal Tel. Cable Co. *v.* Sandusky County, 137 Fed. 947.

273. 1. Wyman *v.* Wallace, 201 U. S. 230, 26 U. S. Sup. Ct. 495; McClellan *v.* Wallace, 201 U. S. 244, 26 U. S. Sup. Ct. 498; Morsman *v.* Wallace, 201 U. S. 244, 26 U. S. Sup. Ct. 498; Frenzer *v.* Wallace, 201 U. S. 244, 26 U. S. Sup. Ct. 498; Merchants' Nat. Bank *v.* Wehrmann, 202 U. S. 295, 26 U. S. Sup. Ct. 613; International Trust Co. *v.* Weeks, 203 U. S. 364, 27 U. S. Sup. Ct. 69.

2. Rankin *v.* Herod, 140 Fed. 661; Murray *v.* Chambers, 151 Fed. 142; Haight, etc., Co. *v.* Weiss, (C. C. A.) 156 Fed. 328; Crosby *v.* Cuba R. Co., 158 Fed. 144; Adams Express Co. *v.* Adams, (C. C. A.) 159 Fed. 62.

3. Illinois Cent. R. Co. *v.* McKendree, 203 U. S. 514, 27 U. S. Sup. Ct. 153; Illinois Cent. R. Co. *v.* Edwards, 203 U. S. 531, 27 U. S. Sup. Ct. 159; Illinois Cent. R. Co. *v.* Mississippi Railroad Commission, (C. C. A.) 138 Fed. 327; Jewett *v.* Chicago, etc., R. Co., 156 Fed. 160; Sunderland *v.* Chicago, etc., R. Co., 158 Fed. 877.

4. Hyams *v.* U. S., 139 Fed. 997.

8. Kansas *v.* Colorado, 206 U. S. 46, 27 U. S. Sup. Ct. 655; Anderson *v.* Bassman, 140 Fed. 14.

9. U. S. Fidelity, etc., Co. *v.* U. S., 204 U. S. 349, 27 U. S. Sup. Ct. 381; U. S. *v.* Axman, 152 Fed. 816.

274. 10. Harton *v.* Howley, 155 Fed. 491; Koike *v.* Atchison, etc., R. Co., 157 Fed. 623.

11. Morrill *v.* American Reserve Bond Co., 151 Fed. 305.

12. McClelland *v.* McKane, 154 Fed. 164; Maxwell *v.* Federal Gold, etc., Co., (C. C. A.) 155 Fed. 110; Ulman *v.* Iaeger, 155 Fed. 1011.

275. 3. Kirven *v.* Virginia-Carolina Chemical Co., (C. C. A.) 145 Fed. 288, 7 Ann. Cas. 219; Kibbler *v.* St. Louis, etc., R. Co., 147 Fed. 879; Haight, etc., Co. *v.* Weiss, (C. C. A.) 156 Fed. 328.

A Municipal Corporation can only be sued in the district in which it is located. Parks Co. *v.* Decatur, (C. C. A.) 138 Fed. 550.

6. **The Citizenship of Partners** who are not parties to the action will not affect a suit by a partner coming properly within the jurisdiction. Gaddie *v.* Mann, 147 Fed. 960.

7. Thomas *v.* Ohio State University, 195 U. S. 207, 25 U. S. Sup. Ct. 24.

276. 1. Sweeney *v.* Carter Oil Co., 199 U. S. 252, 26 U. S. Sup. Ct. 55; Anderson *v.* Bassman, 140 Fed. 10; Eaton *v.* Hoge, (C. C. A.) 141 Fed. 64, 5 Ann. Cas. 487; Mirabile Corp. *v.* Purvis, 143 Fed. 920; Blunt *v.* Southern R. Co., 155 Fed. 499; Gage *v.* Riverside Trust Co., 156 Fed. 1002.

Indispensable Parties Only Will Be Considered. — Monmouth Invest. Co. *v.* Means, (C. C. A.) 151 Fed. 159; North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290; Barnes *v.* Berry, 156 Fed. 72; Rocky Mountain Bell Telephone Co. *v.* Montana Federation of Labor, 156 Fed. 809; Farmers Bank *v.* Wright, 158 Fed. 841.

2. Wood *v.* Deskins, (C. C. A.) 141 Fed. 501; Schultz *v.* Highland Gold Mines Co., 158 Fed. 337.

3. Venner *v.* Great Northern R. Co., 209 U. S. 24, 28 U. S. Sup. Ct. 328; Iowa Lillooet Gold Min. Co. *v.* Bliss, 144 Fed. 446; Cella *v.* Brown, (C. C. A.) 144 Fed. 742; Gage *v.* Riverside Trust Co., 156 Fed. 1002; Mann *v.* Gaddie, (C. C. A.) 158 Fed. 42.

277. 4. Jones *v.* Gould, 141 Fed. 698; Anderson *v.* Bassman, 140 Fed. 10; Sanbo *v.* Union Pac. Coal Co., (C. C. A.) 140 Fed. 713; C. C. Taft Co. *v.* Century Sav. Bank, (C. C. A.) 141 Fed. 369; Crosby *v.* Cuba R. Co., 158 Fed. 144; J. J. M'Caskill Co. *v.* Dickson, (C. C. A.) 159 Fed. 704.

11. Ortega *v.* Lara, 202 U. S. 339, 26 U. S. Sup. Ct. 707; Miller *v.* New York Cent., etc., R. Co., 147 Fed. 771.

278. 4. Gage *v.* Riverside Trust Co., 156 Fed. 1002.

279. 1. Kolze *v.* Hoadley, 200 U. S. 76, 26 U. S. Sup. Ct. 220; Turnbull *v.* Ross, (C. C. A.) 141 Fed. 649; Woodside *v.* Vasey, 142 Fed. 617; Kreider *v.* Cole, (C. C. A.) 149 Fed. 647; Muller *v.* Chicago, etc., R. Co., 149 Fed. 939; Stimson *v.* United Wrapping Mach. Co., 156 Fed. 298.

2. Blair *v.* Chicago, 201 U. S. 400, 26 U. S. Sup. Ct. 427.

3. Kreider *v.* Cole, (C. C. A.) 149 Fed. 647.

4. Moore Bros. Glass Co. *v.* Drevet Mfg. Co., 154 Fed. 737.

8. Kolze *v.* Hoadley, 200 U. S. 76, 26 U. S. Sup. Ct. 220; Howe, etc., Co. *v.* Haugan, 140 Fed. 182.

280. 1. Bryant Bros. Co. *v.* Robinson, (C. C. A.) 149 Fed. 321; Lewis Pub. Co. *v.* Wyman, 152 Fed. 200.

5. Globe Newspaper Co. *v.* Walker, 210 U. S. 356, 28 U. S. Sup. Ct. 726; Wooster *v.* Crane, (C. C. A.) 147 Fed. 515; Thomson-Houston Electric Co. *v.* Electrose Mfg. Co., 155 Fed. 543; Underwood Typewriter Co. *v.* Fox Typewriter Co., 158 Fed. 476.

281. 3. Woodside *v.* Vasey, 142 Fed. 617.

282. 3. U. S. *v.* Standard Oil Co., 152 Fed. 290.

10. Cochran *v.* Montgomery County, 199 U. S. 260, 26 U. S. Sup. Ct. 58; Kentucky *v.* Powers, 201 U. S. 1, 26 U. S. Sup. Ct. 387; Joy *v.* St. Louis, 201 U. S. 332, 26 U. S. Sup. Ct. 478; O'Conor *v.* Texas, 202 U. S. 501, 26 U. S. Sup. Ct. 726; Venner *v.* Great

Northern R. Co., 209 U. S. 24, 28 U. S. Sup. Ct. 328; Curtis *v.* Cleveland, etc., R. Co., 140 Fed. 777; Iowa Lillooet Gold Min. Co. *v.* Bliss, 144 Fed. 446; Cella *v.* Brown, (C. C. A.) 144 Fed. 742; Mathews Slate Co. *v.* Mathews, 148 Fed. 490; Peters *v.* Equitable L. Assur. Soc., 149 Fed. 290; Bryant Bros. Co. *v.* Robinson, (C. C. A.) 149 Fed. 321; North Carolina Min. Co. *v.* Westfeldt, 151 Fed. 290; Lewis Pub. Co. *v.* Wyman, 152 Fed. 200; Blunt *v.* Southern R. Co., 155 Fed. 499; Stimson *v.* United Wrapping Mach. Co., 156 Fed. 298; Chicago, etc., R. Co. *v.* Swanger, 157 Fed. 783; People's U. S. Bank *v.* Goodwin, 160 Fed. 727.

If the State Courts Were Without Jurisdiction the U. S. courts can acquire none by removal of the cause. Parks Co. *v.* Decatur, (C. C. A.) 138 Fed. 550.

11. Iowa Lillooet Gold Min. Co. *v.* Bliss, 144 Fed. 446.

13. Iowa Lillooet Gold Min. Co. *v.* Bliss, 144 Fed. 446; Yeates *v.* Illinois Cent. R. Co., 137 Fed. 943.

14. Lebensberger *v.* Scofield, (C. C. A.) 139 Fed. 380.

283. 3. Cochran *v.* Montgomery County, 199 U. S. 260, 26 U. S. Sup. Ct. 58.

284. 7. Colorado Eastern R. Co. *v.* Chicago, etc., R. Co., (C. C. A.) 141 Fed. 898.

285. 10. Kentucky *v.* Powers, 201 U. S. 1, 26 U. S. Sup. Ct. 387; U. S. *v.* Tully, 140 Fed. 899; U. S. *v.* Audem, 158 Fed. 996.

286. 11. U. S. *v.* Cornell Steamboat Co., 202 U. S. 184, 26 U. S. Sup. Ct. 648.

288. 9. Goll *v.* U. S., (C. C. A.) 151 Fed. 412.

289. 3. U. S. *v.* Cornell Steamboat Co., (C. C. A.) 137 Fed. 455.

290. 1. Hollister *v.* U. S., (C. C. A.) 145 Fed. 773.

292. 5. U. S. *v.* Milliken Imprinting Co., 202 U. S. 168, 26 U. S. Sup. Ct. 572.

293. 2. Allen *v.* U. S., 204 U. S. 581, 27 U. S. Sup. Ct. 324.

295. 3. Citizen of Porto Rico Not an Alien. — Basso *v.* U. S., 40 Ct. Cl. 202.

298. 8. Sanderson *v.* U. S., 210 U. S. 168, 28 U. S. Sup. Ct. 661.

UNITED STATES MARSHALS.

314. 1. National Bank of Commerce *v.* Cleveland, 156 Fed. 251.

317. 1. Bailiffs Employed under Order of Court. — U. S. *v.* Swift, (C. C. A.) 139 Fed. 225.

UNIVERSITIES AND COLLEGES.

321. 1. Term "University" Used in Popular Sense. — Waddick *v.* Merrell, 26 Ohio Cir. Ct. 437.

2. State *v.* Bryan, 50 Fla. 293, 39 So. 929; Central University *v.* Walters, (Ky. 1906) 90 S. W. 1066; *In re* Thiel College, 216 Pa. St. 630, 66 Atl. 83. See also Medical College *v.* Rushing, 1 Ga. App. 468, 57 S. E. 1083.

326. 2. State *v.* Bryan, 50 Fla. 293, 39 So. 929.

3. Medical College *v.* Rushing, 124 Ga. 239, 52 S. E. 333.

328. 10. Phœnix *v.* Columbia College, 87 N. Y. App. Div. 438, 84 N. Y. Supp. 897.

329. 1. Roach *v.* Gooding, 11 Idaho 244, 81 Pac. 642; People *v.* Brooklyn Cooperage Co., 114 N. Y. App. Div. 723, 100 N. Y. Supp. 19.

331. 7. A Report of the Dean of a medical college to the board of directors that a student has passed in all studies is equivalent to a recommendation to the board where the by-laws give to the dean the right to pass on the standing of the students who apply for graduation. State *v.* Lincoln Medical College, (Neb. 1908) 116 N. W. 294.

332. 2. State *v.* Searle, (Neb. 1906) 109 N. W. 770.

Trustee May Sue in His Own Name on Behalf of Corporation on Its Refusal. — State *v.* U. S. Grant University, 115 Tenn. 238, 90 S. W. 294.

Athletic Association. — Scott *v.* University of Michigan Athletic Assoc., (Mich. 1908) 116 N. W. 624.

3. Colleges May Consolidate. — Central University *v.* Walters, (Ky. 1906) 90 S. W. 1066.

333. 4. Ward *v.* Regents, (C. C. A.) 138 Fed. 372.

5. Ward *v.* Regents, (C. C. A.) 138 Fed. 372.

334. 1. State *v.* Bryan, 50 Fla. 293, 39 So. 930.

2. State *v.* Bryan, 50 Fla. 293, 39 So. 929.

The State Controls the Funds, notwithstanding the grant is for the endowment of one college. State *v.* Irvine, 14 Wyo. 318, 84 Pac. 90.

7. Duty of State to Designate Who Shall Have Charge of Fund. — State *v.* Irvine, 14 Wyo. 318, 84 Pac. 90.

336. 1. Legislature May Authorize Dissolution on Payment of Debts. — State *v.* U. S. Grant University, 115 Tenn. 238, 90 S. W. 294.

337. 7. Knight *v.* Michigan Female Seminary, (Mich. 1908) 116 N. W. 185.

College Conveying Property and Franchise Cannot Afterwards Maintain Suit. — State *v.* U. S. Grant University, 115 Tenn. 238, 90 S. W. 294.

UNLAWFUL — UNLAWFULLY.

338. 3. State *v.* Tinkler, 72 Kan. 262, 83 Pac. 830.

4. Not Authorized by Law. — State *v.* Savant, 115 La. 226, 38 So. 974.

UNWROUGHT.

355. 1. Unwrought — Revenue Act. — See U. S. *v.* Roesseler, etc., Chemical Co., (C. C. A.) 137 Fed. 770.

UPON — ON.

359. 2. On Hand. — See Brown *v.* Clothey, 193 Mass. 271, 79 N. E. 269.

On Demand after Date. — See Schlesinger *v.* Schultz, 110 N. Y. App. Div. 356, 96 N. Y. Supp. 383.

On Sale — Patent Law. — See *In re* Mills, 25 App. Cas. (D. C.) 377.

On, In, or About Engineering Work — Workmen's Compensation Act. — See Back *v.* Dick, (1906) A. C. 325, 75 L. J. K. B. 569, 94 L. T. N. S. 802.

USAGES AND CUSTOMS.

365. 1. Byrd *v.* Beall, (Ala. 1907) 43 So. 749, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 365.

2. Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

4. **Acts of Courtesy.** — Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009.

366. 2. See Byrd *v.* Beall, (Ala. 1907) 43 So. 749.

367. 1. Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 367.

2. Wilmington City R. Co. *v.* White, (Del. 1907) 66 Atl. 1009, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 367. See also Byrd *v.* Beall, (Ala. 1907) 43 So. 749.

368. 4. Ward Furniture Mfg. Co. *v.* Isbell, 81 Ark. 549, 99 S. W. 845.

369. 4. See Prigg *v.* Preston, 28 Pa. Super. Ct. 272.

370. 1. Mercer *v.* Denne, 91 L. T. N. S. 513, 20 Times L. Rep. 609.

2. Mercer *v.* Denne, 91 L. T. N. S. 513, 20 Times L. Rep. 609.

3. Mercer *v.* Denne, 91 L. T. N. S. 513, 20 Times L. Rep. 609.

6. Mercer *v.* Denne, 91 L. T. N. S. 513, 20 Times L. Rep. 609.

371. 3. *Compare* Penland *v.* Ingle, 138 N. Car. 456, 50 S. E. 850.

4. Devonald *v.* Rosser, 93 L. T. N. S. 274, 21 Times L. Rep. 595; Byrd *v.* Beall, (Ala. 1907) 43 So. 749; Penland *v.* Ingle, 138 N. Car. 456, 50 S. E. 850; Ollenheimer *v.* Foley, (Tex. Civ. App. 1906) 95 S. W. 688; Consolidated Kansas City Smelting, etc., Co. *v.* Gonzales, (Tex. Civ. App. 1908) 109 S. W. 946. See Heistand *v.* Bateman, (Colo. 1907) 91 Pac. 1111.

5. Miscellaneous Unreasonable Customs or Usages. — See Byrd *v.* Beall, (Ala. 1907) 43 So. 749.

373. 1. Mercer *v.* Denne, 91 L. T. N. S. 513, 20 Times L. Rep. 609.

2. Mercer *v.* Denne, 91 L. T. N. S. 513, 20 Times L. Rep. 609.

375. 3. Bardsley *v.* Gill, 218 Pa. St. 56, 66 Atl. 1112.

376. 1. Byrd *v.* Beall, (Ala. 1907) 43 So. 749, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 376; Citizens' Bank *v.* Arkansas Compress, etc., Co., 80 Ark. 601, 96 S. W. 997, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 376; Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851; Guggenheim *v.* Hoffman, 128 Ill. App. 289; Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 376; Ettien *v.* Drum, 32 Mont. 311, 80 Pac. 369; Wyatt *v.* Wanamaker, (Supm. Ct. Spec. T.) 58 Misc. (N. Y.) 429, 110 N. Y. Supp. 900; Ollenheimer *v.* Foley, (Tex. Civ. App. 1906) 95 S. W. 688; Anderson *v.* Lewis, (W. Va. 1908) 61 S. E. 160. See Consolidated Kansas City Smelting, etc., Co. *v.* Gonzales, (Tex. Civ. App. 1908) 109 S. W. 946.

377. 1. Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571.

378. 3. Citizens' Bank *v.* Arkansas Compress, etc., Co., 80 Ark. 601, 96 S. W. 997, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 378; Calvert *v.* Schultz, 143 Mich. 441, 106 N. W. 1123, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 378.

5. *In re* Burkell, 2 Alaska 108.

381. 1. Calvert *v.* Schultz, 143 Mich. 441, 106 N. W. 1123, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 381.

382. 8. Ettien *v.* Drum, 32 Mont. 311, 80 Pac. 369. See also Stovall *v.* Gardner, (Tex. Civ. App. 1907) 103 S. W. 405.

383. 1. See Lauchheimer *v.* Jacobs, 126 Ga. 261, 55 S. E. 55.

384. 1. Noble *v.* Doughten, 72 Kan. 336, 83 Pac. 1048, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 383.

385. 1. *Compare* Shute *v.* Bills, 191 Mass. 433, 78 N. E. 96.

5. Liebhardt *v.* Wilson, 38 Colo. 1, 88 Pac. 173.

386. 1. New Roads Oilmill, etc., Co. *v.* Kline, (C. C. A.) 154 Fed. 296; Doell *v.* Schrier, 36 Ind. App. 253, 75 N. E. 600.

2. Chicago, etc., R. Co. *v.* Lindeman, (C. C. A.) 143 Fed. 946; New Roads Oilmill, etc., Co. *v.* Kline, (C. C. A.) 154 Fed. 296; Byrd *v.* Beall, (Ala. 1907) 43 So. 749, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 386; Heistand *v.* Bateman, (Colo. 1907) 91 Pac. 1111; Sherwood *v.* Home Sav. Bank, 131 Iowa 528, 109 N. W. 9; Denton *v.* Gill, 102 Md. 386, 62 Atl. 627; Consolidated Kansas City Smelting, etc., Co. *v.* Gonzales, (Tex. Civ. App. 1908) 109 S. W. 946. See Huggins *v.* Southern R. Co., 148 Ala. 153, 41 So. 856.

387. 1. Byrd *v.* Beall, (Ala. 1907) 43 So. 749, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 387; Bowles *v.* Rice, 107 Va. 51, 57 S. E. 575.

2. Byrd *v.* Beall, (Ala. 1907) 43 So. 749, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 387; Arkadelphia Lumber Co. *v.* Asman, (Ark. 1907) 107 S. W. 1171; Steidtmann *v.* Joseph Lay Co., 234 Ill. 84, 84 N. E. 640; Birely *v.* Dodson, (Md. 1908) 68 Atl. 488; Consolidated Kansas City Smelting, etc., Co. *v.* Gonzales, (Tex. Civ. App. 1908) 109 S. W. 946.

388. 1. *Compare* Steidtmann *v.* Joseph Lay Co., 234 Ill. 84, 84 N. E. 640.

4. Chicago, etc., R. Co. *v.* Lindeman, (C. C. A.) 143 Fed. 946; Strange *v.* Carrington, 116 Ill. App. 410; Prigg *v.* Preston, 28 Pa. Super. Ct. 272; San Antonio Machine, etc., Co. *v.* Josey, (Tex. Civ. App. 1906) 91 S. W. 598; Russell *v.* Ferguson, 77 Vt. 433, 60 Atl. 802; Anderson *v.* Lewis, (W. Va. 1908) 61 S. E. 160. *Compare* Arkadelphia Lumber Co. *v.* Henderson, 84 Ark. 382, 105 S. W. 882.

389. 2. Arkadelphia Lumber Co. *v.* Henderson, 84 Ark. 382, 105 S. W. 882. See Byrd *v.* Beall, (Ala. 1907) 43 So. 749, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 389.

390. 2. Lockney *v.* Police Beneficiary Assoc., 217 Pa. St. 568, 66 Atl. 844. See Arkadelphia Lumber Co. *v.* Henderson, 84 Ark. 382, 105 S. W. 882.

3. Chicago, etc., R. Co. *v.* Lindeman, (C. C. A.) 143 Fed. 946; Strange *v.* Carrington, 116 Ill. App. 410; Prigg *v.* Preston, 28 Pa. Super.

Ct. 272; Russell *v.* Ferguson, 77 Vt. 433, 60 Atl. 802; Bowles *v.* Rice, 107 Va. 51, 57 S. E. 575. See also Heistand *v.* Bateman, (Colo. 1907) 91 Pac. 1111; Anderson *v.* Lewis, (W. Va. 1908) 61 S. E. 160.

391. 4. Chicago, etc., R. Co. *v.* Lindeman, (C. C. A.) 143 Fed. 946; New Roads Oilmill, etc., Co. *v.* Kline, (C. C. A.) 154 Fed. 296; Florence Wagon Works *v.* Trinidad Asphalt Mfg. Co., 145 Ala. 677, 40 So. 49; Byrd *v.* Beall, (Ala. 1907) 43 So. 749, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 391; Strange *v.* Carrington, 116 Ill. App. 410; Whipple *v.* Tucker, 123 Ill. App. 223; Prigg *v.* Preston, 28 Pa. Super. Ct. 272; Russell *v.* Ferguson, 77 Vt. 433, 60 Atl. 802; Bowles *v.* Rice, 107 Va. 51, 57 S. E. 575; Anderson *v.* Lewis, (W. Va. 1908) 61 S. E. 160.

392. 2. **Court Fees Sometimes Charged and Sometimes Not.** — Where the evidence was that it was not a universal rule of a judge to exact fees from attorneys it was held insufficient to establish a binding custom. Russell *v.* Ferguson, 77 Vt. 433, 60 Atl. 802.

393. 5. Traders' Ins. Co. *v.* Dobbins, 114 Tenn. 227, 86 S. W. 383, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 393.

394. 1. **Insurance Companies** are presumed to know the usages of the particular business insured. Traders' Ins. Co. *v.* Dobbins, 114 Tenn. 227, 86 S. W. 383. See Landa *v.* Traders' Bank, 118 Mo. App. 356, 94 S. W. 770.

2. The Mary S. Bradshaw, 155 Fed. 696; Plover Sav. Bank *v.* Moodie, (Iowa 1906) 110 N. W. 29; Traders' Ins. Co. *v.* Dobbins, 114 Tenn. 227, 86 S. W. 383, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 394; Arkadelphia Lumber Co. *v.* Henderson, 84 Ark. 382, 105 S. W. 882.

Railroad Companies are presumed to know how their employees customarily perform their labors. Atchison, etc., R. Co. *v.* Sowers, (Tex. Civ. App. 1906) 99 S. W. 190.

3. See Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

396. 1. Traders' Ins. Co. *v.* Dobbins, 114 Tenn. 227, 86 S. W. 383.

9. Biggs *v.* Langhammer, 103 Md. 94, 63 Atl. 198. *Compare* New Roads Oilmill, etc., Co. *v.* Kline, (C. C. A.) 154 Fed. 296.

397. 2. Kempner *v.* Patrick, (Tex. Civ. App. 1906) 95 S. W. 51, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 397; Robbins *v.* Maher, 14 N. Dak. 228, 103 N. W. 755.

398. 1. Citizens' State Bank *v.* Chambers, 129 Iowa 414, 105 N. W. 692; Kempner *v.* Patrick, (Tex. Civ. App. 1906) 95 S. W. 51, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 398. See also Robbins *v.* Maher, 14 N. Dak. 228, 103 N. W. 755.

2. Citizens' State Bank *v.* Chambers, 129 Iowa 414, 105 N. W. 692; Kempner *v.* Patrick, (Tex. Civ. App. 1906) 95 S. W. 51.

400. 1. Citizens' State Bank *v.* Chambers, 129 Iowa 414, 105 N. W. 692; Gould *v.* Cates Chair Co., 147 Ala. 629, 41 So. 675; Liebhardt *v.* Wilson, 38 Colo. 1, 88 Pac. 173; S. W. Bacon Fruit Co. *v.* Blessing, 122 Ga. 369, 50 S. E. 139; Guggenheim *v.* Hoffman, 128 Ill. App. 289; Moritz *v.* Herskovitz, (Wash. 1907) 89 Pac. 560.

404. 1. **Physician's Charges.** — It has been held proper for a physician to show that it is a custom for one who is called in consultation to charge the patient and not the attending physician for his services. Baer *v.* Williams, (N. J. 1907) 66 Atl. 961.

406. 4. See San Francisco Nat. Bank *v.* American Nat. Bank, 5 Cal. App. 408, 90 Pac. 558.

5. See San Francisco Nat. Bank *v.* American Nat. Bank, 5 Cal. App. 408, 90 Pac. 558.

6. San Francisco Nat. Bank *v.* American Nat. Bank, 5 Cal. App. 408, 90 Pac. 558; Landa *v.* Traders' Bank, 118 Mo. App. 356, 94 S. W. [illegible].

407. 2. San Francisco Nat. Bank *v.* American Nat. Bank, 5 Cal. App. 408, 90 Pac. 558.

4. **In Negligence Cases.** — St. Louis, etc., R. Co. *v.* Caraway, 77 Ark. 405, 91 S. W. 749; Atchison, etc., R. Co. *v.* Sowers, (Tex. Civ. App. 1906) 99 S. W. 190.

But a Custom Among Traveling Salesmen does not embrace their principals. See Gould *v.* Cates Chair Co., 147 Fla. 629, 41 So. 675.

408. 1. New Roads Oilmill, etc., Co. *v.* Kline, (C. C. A.) 154 Fed. 296.

2. Lockney *v.* Police Beneficiary Assoc., 217 Pa. St. 568, 66 Atl. 844.

409. 5. See Smith *v.* Landa, (Tex. Civ. App. 1907) 101 S. W. 470.

410. 2. Oriental Lumber Co. *v.* Blades Lumber Co., 103 Va. 730, 50 S. E. 270; Columbian Banking Co. *v.* Bowen, (Wis. 1908) 114 N. W. 451; Sanders *v.* Brown, 145 Ala. 665, 39 So. 732.

3. **Sufficiency of Evidence Required to Establish a Particular Custom.** — Arkadelphia Lumber Co. *v.* Asman, (Ark. 1907) 107 S. W. 1171; Bowles *v.* Rice, 107 Va. 51, 57 S. E. 575.

4. Steidtmann *v.* Joseph Lay Co., 234 Ill. 84, 84 N. E. 640; Schultz *v.* Ford Bros., 133 Iowa 402, 109 N. W. 614, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 410; Fleischman *v.* Southern R. Co., 76 S. Car. 237, 56 S. E. 974. See also Parkersville Drainage Dist. *v.* Wattier, 48 Oregon 332, 86 Pac. 775; Kempner *v.* Patrick, (Tex. Civ. App. 1906) 95 S. W. 51.

Meaning of Word "Noon." — Rochester German Ins. Co. *v.* Peaslee Gaulbert Co., 120 Ky. 752, 87 S. W. 1115.

5. Hess *v.* Shurtleft, 74 N. H. 114, 65 Atl. 377; Galveston, etc., R. Co. *v.* Mitchell, (Tex. Civ. App. 1908) 107 S. W. 374. See also Sullivan *v.* Owens, (Tex. Civ. App. 1905) 90 S. W. 690; Peacock *v.* Coltrane, (Tex. Civ. App. 1906) 99 S. W. 107.

411. 3. Schermer *v.* McMahon, 108 Mo. App. 36, 82 S. W. 535; Penland *v.* Ingle, 138 N. Car. 456, 50 S. E. 850.

412. 2. *Compare* Wall *v.* Melton, (Tex. Civ. App. 1906) 94 S. W. 358.

3. McDonough *v.* Pelham Hod Elevating Co., 111 N. Y. App. Div. 585, 98 N. Y. Supp. 90; San Antonio Traction Co. *v.* Lambkin, (Tex. Civ. App. 1907) 99 S. W. 574. *Compare* Bardsley *v.* Gill, 218 Pa. St. 56, 66 Atl. 1112.

4. Sloss-Sheffield Steel, etc., Co. *v.* Smith, (Ala. 1905) 40 So. 91; Guggenheim *v.* Hoffman, 128 Ill. App. 289; McGuire *v.* Quincy, etc., R. Co., 128 Mo. App. 677, 107 S. W. 411; Texas Cent. R. Co. *v.* Waldie, (Tex. Civ. App. 1907) 101 S. W. 517.

413. 1. Schultz *v.* Ford Bros., 133 Iowa 402, 109 N. W. 614.

Retail Dealers Are Competent to Testify as to the Wholesale Trade. — Hess *v.* Shurtleft, 74 N. H. 114, 65 Atl. 377.

6. See Peacock *v.* Coltrane, (Tex. Civ. App. 1906) 99 S. W. 107.

414. 2. Penland *v.* Ingle, 138 N. Car. 456, 50 S. E. 850.

3. Penland *v.* Ingle, 138 N. Car. 456, 50 S. E. 850.

7. Biggs *v.* Langhammer, 103 Md. 94, 63 Atl. 198; Russell *v.* Ferguson, 77 Vt. 433, 60 Atl. 892.

415. 1. Penland *v.* Ingle, 138 N. Car. 456, 50 S. E. 850, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 415; Lockney *v.* Police Beneficiary Assoc., 217 Pa. St. 568, 66 Atl. 844; Bardsley *v.* Gill, 218 Pa. St. 56, 66 Atl. 1112; Bowles *v.* Rice, 107 Va. 51, 57 S. E. 575.

Disproof of Customs. — Parrott *v.* Atlantic, etc., R. Co., 140 N. Car. 546, 53 S. E. 432.

3. New Roads Oilmill, etc., Co. *v.* Kline, (C. C. A.) 154 Fed. 296; Henderson-Boyd Lumber Co. *v.* Cook, (Ala. 1906) 42 So. 838; Lauchheimer *v.* Jacobs, 126 Ga. 261, 55 S. E. 55; Sawyer *v.* Deicken, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 634, 107 N. Y. Supp. 560; Lockney *v.* Police Beneficiary Assoc., 217 Pa. St. 568, 66 Atl. 844; Oriental Lumber Co. *v.* Blades Lumber Co., 103 Va. 730, 50 S. E. 270. See also Biggs *v.* Langhammer, 103 Md. 94, 63 Atl. 198.

Uniformity Not Proven. — Chicago, etc., R. Co. *v.* Lindeman, (C. C. A.) 143 Fed. 946.

417. 1. See Penland *v.* Ingle, 138 N. Car. 456, 50 S. E. 850.

3. See Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851.

4. Merchants' Nat. Bank *v.* Baltimore Steamboat Co., 102 Md. 573, 63 Atl. 108.

418. 3. Macon, etc., R. Co. *v.* Parker, 127 Ga. 471, 56 S. E. 616; International, etc., R. Co. *v.* Ploeger, (Tex. Civ. App. 1905) 93 S. W. 226. See also Chicago G. W. R. Co. *v.* Egan, (C. C. A.) 159 Fed. 40; Adams *v.* St. Louis, etc., R. Co., 83 Ark. 300, 103 S. W. 725; Wilson *v.* New York, etc., R. Co., (R. I. 1908) 69 Atl. 364; Atchison, etc., R. Co. *v.* Sowers, (Tex. Civ. App. 1906) 99 S. W. 190; Gulf, etc., R. Co. *v.* Matthews, 99 Tex. 160, 88 S. W. 192; Minot *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 825.

Customary Use of a Private Way. — Where a roadway was used by one thousand to three thousand people daily it was held that one injured thereon was not a trespasser. St. Louis Nat. Stock Yards *v.* Brennan, 126 Ill. App. 601; Hutchens *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 24; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 90 S. W. 185; Missouri, etc., R. Co. *v.* Snowden, (Tex. Civ. App. 1906) 99 S. W. 865.

But Customary Use of Railroad Track in *Kentucky* confers upon trespassers no legal right to such use. Chesapeake, etc., R. Co. *v.* Barbour, (Ky. 1906) 93 S. W. 24; Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745.

4. Adams *v.* St. Louis, etc., R. Co., 83 Ark. 300, 103 S. W. 725; McCarthy *v.* Pennsylvania R. Co., 189 N. Y. 170, 81 N. E. 770.

419. 1. Beck *v.* Southern R. Co., (N. Car. 1907) 59 S. E. 1015. See McGuire *v.* Quincy, etc., R. Co., 128 Mo. App. 677, 107 S. W. 411.

Customary Disregard of Rules. — A rule of a railway company that its employees shall not ride on the pilot of an engine will be deemed abrogated upon evidence that the rule is habitually violated. Biles *v.* Seaboard Air Line R. Co., 143 N. Car. 78, 55 S. E. 512.

4. Kuhlen *v.* Boston, etc., St. R. Co., 193 Mass. 341, 79 N. E. 815; Minot *v.* Boston, etc., R. Co., 74 N. H. 230, 66 Atl. 825; Gulf, etc., R. Co. *v.* Matthews, 99 Tex. 160, 88 S. W. 192; Hutchens *v.* St. Louis, etc., R. Co., (Tex. Civ. App. 1905) 89 S. W. 24; Texas Midland R. Co. *v.* Byrd, (Tex. Civ. App. 1905) 90 S. W. 185; International, etc., R. Co. *v.* Ploeger, (Tex. Civ. App. 1905) 93 S. W. 226; Missouri, etc., R. Co. *v.* Snowden, (Tex. Civ. App. 1906) 99 S. W. 865. *Compare* Adams *v.* St. Louis, etc., R. Co., 83 Ark. 300, 103 S. W. 725; Chesapeake, etc., R. Co. *v.* Barbour, (Ky. 1906) 93 S. W. 24; Illinois Cent. R. Co. *v.* Johnson, (Ky. 1906) 97 S. W. 745. See St. Louis Nat. Stock Yards *v.* Brennan, 126 Ill. App. 601.

6. **In Illinois** it has been held that evidence to show how certain language of a statute applying to the state was understood in one county was inadmissible. National Fire Ins. Co. *v.* Hanberg, 215 Ill. 378, 74 N. E. 377.

420. 1. New Roads Oilmill, etc., Co. *v.* Kline, (C. C. A.) 154 Fed. 296.

421. 2. *England.* — Devonald *v.* Rosser, 93 L. T. N. S. 274, 21 Times L. Rep. 595.

Colorado. — Heistand *v.* Bateman, (Colo. 1907) 91 Pac. 1111.

Georgia. — See Vardeman *v.* Penn Mut. L. Ins. Co., 125 Ga. 117, 54 S. E. 66.

Illinois. — Guggenheim *v.* Hoffman, 128 Ill. App. 289.

Kentucky. — Rochester German Ins. Co. *v.* Peaslee Jaulbert Co., 120 Ky. 752, 87 S. W. 1115.

Maryland. — Hammond *v.* American Express Co., (Md. 1908) 68 Atl. 496.

Michigan. — Floyd *v.* Mann, 146 Mich. 356, 109 N. W. 679.

Missouri. — Ryley-Wilson Grocer Co. *v.* Seymour Canning Co., (Mo. App. 1908) 108 S. W. 628.

North Carolina. — Hughes *v.* Knott, 138 N. Car. 105, 50 S. E. 586; Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

Ohio. — Commercial Tribune Bldg. Co. *v.* Potthoff, etc., Iron Co., 28 Ohio Cir. Ct. 439.

Oregon. — Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

Texas. — Z. T. Fort Produce Co. *v.* Dissen, (Tex. Civ. App. 1907) 101 S. W. 477.

Virginia. — Oriental Lumber Co. *v.* Bladdes Lumber Co., 103 Va. 730, 50 S. E. 270.

West Virginia. — Anderson *v.* Lewis, (W. Va. 1908) 61 S. E. 160.

Articles of Partnership may be enlarged by implication from a general usage and habit of the firm, acquiesced in by all of the partners. Eady *v.* Newton Coal, etc., Co., 123 Ga. 557, 51 S. E. 661.

424. 1. Heistand *v.* Bateman, (Colo. 1907) 91 Pac. 1111, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422; Guggenheim *v.* Hoffman, 128 Ill. App. 289; Z. T. Fort Produce Co. *v.* Dissen, (Tex. Civ. App. 1907) 101 S. W. 477,

citing 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422; Anderson *v.* Lewis, (W. Va. 1908) 61 S. E. 160. See also Vardeman *v.* Penn Mut. L. Ins. Co., 125 Ga. 117, 54 S. E. 66; Commercial Tribune Bldg. Co. *v.* Potthoff, etc., Iron Co., 28 Ohio Cir. Ct. 439.

426. 4. See Fish *v.* Correll, 4 Cal. App. 521, 88 Pac. 489.

427. 1. New Roads Oilmill, etc., Co. *v.* Kline, (C. C. A.) 154 Fed. 296; Bowers Hydraulic Dredging Co. *v.* U. S., 41 Ct. Cl. 498; Leonhart *v.* California Wine Assoc., 5 Cal. App. 19, 89 Pac. 847; Vardeman *v.* Penn Mut. L. Ins. Co., 125 Ga. 117, 54 S. E. 66; Stearns *v.* Grand Trunk R. Co., 148 Mich. 271, 111 N. W. 769. See Engeldinger *v.* Stevens, (Wis. 1907) 112 N. W. 507.

2. Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 427; Heistand *v.* Bateman, (Colo. 1907) 91 Pac. 1111; Turner *v.* Osgood Art Colortype Co., 223 Ill. 629, 79 N. E. 306; Stearns *v.* Grand Trunk R. Co., 148 Mich. 271, 111 N. W. 769.

3. Lillard *v.* Kentucky Distilleries, etc., Co., (C. C. A.) 134 Fed. 168; Lima Locomotive, etc., Co. *v.* National Steel Castings Co., (C. C. A.) 155 Fed. 77; Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182; Fish *v.* Correll, 4 Cal. App. 521, 88 Pac. 489; Turner *v.* Osgood Art Colortype Co., 223 Ill. 629, 79 N. E. 306; Peet *v.* Peet, 229 Ill. 341, 82 N. E. 376. See also Noyes *v.* Marlott, (C. C. A.) 156 Fed. 753; Rochester German Ins. Co. *v.* Peaslee Gaulbert Co., 120 Ky. 752, 87 S. W. 1115; Birely *v.* Dodson, (Md. 1908) 68 Atl. 488.

428. 4*a*. **To Show What "Noon" Means.** — Rochester German Ins. Co. *v.* Peaslee Gaulbert Co., 120 Ky. 752, 87 S. W. 1115.

6. Commercial Tribune Bldg. Co. *v.* Potthoff, etc., Iron Co., 28 Ohio Cir. Ct. 439.

8. Globe, etc., Fire Ins. Co. *v.* David Moffat Co., (C. C. A.) 154 Fed. 13; Rochester German Ins. Co. *v.* Peaslee Gaulbert Co., 120 Ky. 752, 87 S. W. 1115.

429. 4. **"Noon."** — Globe, etc., Fire Ins. Co. *v.* David Moffat Co., 83 C. C. A. 91, 154 Fed. 13; Rochester German Ins. Co. *v.* Peaslee Gaulbert Co., 120 Ky. 752, 87 S. W. 1115.

"Surfacing." — Henderson-Boyd Lumber Co. *v.* Cook, (Ala. 1906) 42 So. 838.

"F. O. B. Cars at," "Laid Down," "Free at." — Steidtmann *v.* Joseph Lay Co., 234 Ill. 84, 84 N. E. 640.

"Invoice." — Birely *v.* Dodson, (Md. 1908) 68 Atl. 488.

"Carload." — Floyd *v.* Mann, 146 Mich. 356, 109 N. W. 679.

"Ton" as Used in Iron Trade. — Commercial Tribune Bldg. Co. *v.* Potthoff, etc., Iron Co., 28 Ohio Cir. Ct. 439.

"Inspection Allowed." — Z. T. Fort Produce Co. *v.* Dissen, (Tex. Civ. App. 1907) 101 S. W. 477.

430. 4. Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182; Sawyer *v.* Deicken, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 634, 107 N. Y. Supp. 560. See also Noyes *v.* Marlott, (C. C. A.) 156 Fed. 753.

431. 2. **The Time of Payment of Commissions** may be proved by usage in the merchandise trade. Sawyer *v.* Deicken, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 634, 107 N. Y. Supp. 560.

432. 3. Lillard *v.* Kentucky Distilleries, etc., Co., (C. C. A.) 134 Fed. 168; Lima Locomotive, etc., Co. *v.* National Steel Castings Co., (C. C. A.) 155 Fed. 77; Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182. See also Fidelity, etc., Co. *v.* Butler, (Ga. 1908) 60 S. E. 851.

433. 1. Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182.

8. *England.* — Joynson *v.* Hunt, 93 L. T. N. S. 470, 21 Times L. Rep. 692.

United States. — Lillard *v.* Kentucky Distilleries, etc., Co., (C. C. A.) 134 Fed. 168; Lima Locomotive, etc., Co. *v.* National Steel Castings Co., (C. C. A.) 155 Fed. 77; The Mary S. Bradshaw, 155 Fed. 696; Noyes *v.* Marlott, (C. C. A.) 156 Fed. 753; Hammett *v.* Chase, 158 Fed. 203; Bowers Hydraulic Dredging Co. *v.* U. S., 41 Ct. Cl. 498.

Alabama. — Florence Wagon Works *v.* Trinided Asphalt Mfg. Co., 145 Ala. 677, 40 So. 49; Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182.

California. — Fish *v.* Correll, 4 Cal. App. 521, 88 Pac. 489; Leonhart *v.* California Wine Assoc., 5 Cal. App. 19, 89 Pac. 847.

Georgia. — Vardeman *v.* Penn Mut. L. Ins. Co., 125 Ga. 117, 54 S. E. 66.

Illinois. — Whipple *v.* Tucker, 123 Ill. App. 223; Guggenheim *v.* Hoffman, 128 Ill. App. 289.

Maryland. — Denton *v.* Gill, 102 Md. 386, 62 Atl. 627; Merchants' Nat. Bank *v.* Baltimore, etc., Steamboat Co., 102 Md. 573, 63 Atl. 108; Birely *v.* Dodson, (Md. 1908) 68 Atl. 488; Hammond *v.* American Express Co., (Md. 1908) 68 Atl. 496.

Massachusetts. — Cook *v.* Enterprise Transp. Co., (Mass. 1908) 83 N. E. 325.

Michigan. — Stearns *v.* Grand Trunk R. Co., 148 Mich. 271, 111 N. W. 769.

Nevada. — See Schlitz Brewing Co. *v.* Grimmon, 28 Nev. 235, 81 Pac. 43.

New York. — Horst *v.* Lovdal, 113 N. Y. App. Div. 277, 98 N. Y. Supp. 996.

Oregon. — Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

Texas. — Henry *v.* Green Ins. Co., (Tex. Civ. App. 1907) 103 S. W. 836.

Wisconsin. — Engeldinger *v.* Stevens, (Wis. 1907) 112 N. W. 507.

436. 1. New Roads Oilmill, etc., Co. *v.* Kline, (C. C. A.) 154 Fed. 296; Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 436; Vardeman *v.* Penn. Mut. L. Ins. Co., 125 Ga. 117, 54 S. E. 66. See also Hammond *v.* American Express Co., (Md. 1908) 68 Atl. 496.

437. 4. **That Indorsers of a Promissory Note** were, inferentially, joint makers cannot be shown by evidence of a custom pursued by the maker. Harnett *v.* Holdrege, 73 Neb. 570, 103 N. W. 277.

438. 3. **"Invoice."** — Birely *v.* Dodson, (Md. 1908) 68 Atl. 488.

439. 1. Shelby Iron Co. *v.* Dupree, 147 Ala. 602, 41 So. 182.

USE, USED, ETC.

441. 1. **Used in Moving Interstate Traffic.** — See U. S. *v.* Southern R. Co., 135 Fed. 122.

The Usable Value of Premises as the measure of damages for a nuisance means the value of the use of the premises to the occupant, as distinct from the rental of the premises reserved in the lease by the owner to the tenant. Bly *v.* Edison Electric Illuminating Co., 111 N. Y. App. Div. 170, 97 N. Y. Supp. 592.

444. 4. White *v.* Britton, 75 S. Car. 433, 56 S. E. 232, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 444.

USUAL — USUALLY.

446. 5. **"Usual — Usually" and "Ordinary — Ordinarily" Synonymous Terms.** — St. Louis Southwestern R. Co. *v.* Morrow, (Tex. Civ. App. 1906) 93 S. W. 162.

USURPATION.

449. 3. **Usurpation of Office.** — See Hill *v.* Anderson, (Ky. 1906) 90 S. W. 1071.

USURY.

453. 1. Darden *v.* Schuessler, (Ala. 1907) 45 So. 130; Virginia-Carolina Chemical Co. *v.* Provident Sav. L. Assur. Soc., 126 Ga. 50, 54 S. E. 929 (Code Ga. 1895, § 2877).

5. Tayloe *v.* Parker, 137 N. Car. 418, 49 S. E. 921, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 453.

454. 2. Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630; Banov *v.* Charleston Bank, (S. Car. 1908) 60 S. E. 942.

455. 2. *Ex p.* Berger, 193 Mo. 16, 90 S. W. 759; State *v.* Cary, 126 Wis. 135, 105 N. W. 792. See also Augusta *v.* Clark, 124 Ga. 254, 52 S. E. 881.

3. Hemple *v.* Raymond, (C. C. A.) 144 Fed. 796, *affirming* 2 Alaska 343.

5. State *v.* Wickenhoefer, (Del. 1906) 64 Atl. 273; Augusta *v.* Clark, 124 Ga. 254, 52 S. E. 881. *Compare Ex p.* Sohncke, 148 Cal. 262, 82 Pac. 956.

9. Where the rate of discount is not stated in the note, a check given for the discount is a sufficient writing to satisfy the statute. Merchants', etc., Bank *v.* Sarratt, 77 S. Car. 141, 57 S. E. 621.

456. 1. Emig *v.* Mutual Ben. L. Ins. Co., (Ky. 1907) 106 S. W. 230.

5. See Lockwood *v.* Muhlberg, 124 Ga. 660, 53 S. E. 92.

457. 7. Le Mars Bldg., etc., Assoc. *v.* Burgess, 129 Iowa 422, 105 N. W. 641; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

458. 6. *Compare* Earle *v.* Owings, 72 S. Car. 362, 51 S. E. 980.

A statute abrogating the equity rule requiring the payment of lawful interest as a condition of relief is not unconstitutional as impairing the obligation of a contract and applies to contracts previously made. Barclift *v.* Fields, 145 Ala. 264, 41 So. 84.

9. Co-operative Bank *v.* Meldrum, 128 Iowa 694, 105 N. W. 206.

460. 3. Sebree *v.* Thompson, (Ky. 1907) 104 S. W. 781.

5. Ardmore L. & T. Co. *v.* Dillard, (Indian Ter. 1907) 104 S. W. 814; Armijo *v.* Henry, (N. Mex. 1907) 89 Pac. 305, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 460; Hagaman *v.* Reinach, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 206, 96 N. Y. Supp. 719. *Compare* Anderson *v.* Griffith, (Oregon 1908) 93 Pac. 934.

461. 1. Fidelity Loan Assoc. *v.* Connolly, (Supm. Ct. App. T.) 95 N. Y. Supp. 576; Rabb *v.* Texas Loan, etc., Co., (Tex. Civ. App. 1906) 96 S. W. 77; Middle States Loan, etc., Co. *v.* Miller, 104 Va. 464, 51 S. E. 846.

3. Cooper *v.* Brazelton, 135 Fed. 476, 68 C. C. A. 188; Penn Mut. L. Ins. Co. *v.* Barnett, (Ky. 1907) 99 S. W. 228, *denying rehearing* of (Ky. 1906) 96 S. W. 1120; Emig *v.* Mutual Ben. L. Ins. Co., (Ky. 1907) 106 S. W. 230; Elwell *v.* Lund, 102 Minn. 166, 112 N. W. 1009, 1067; Davisson *v.* Smith, 60 W. Va. 413, 55 S. E. 466; Elwell *v.* Lund, 102 Minn. 508, 166, 112 N. W. 1011, 1067.

Sale of Future Salary as Device to Cover Usury. — Brandt *v.* Hall, (Ind. App. 1907) 82 N. E. 929; Henderson *v.* Tolman, (Mo. App. 1908) 109 S. W. 76.

4. Furr *v.* Keesler, 3 Ga. App. 187, 59 S. E. 596; Armijo *v.* Henry, (N. Mex. 1907) 89 Pac. 305, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 461; Bennett *v.* Best, 142 N. Car. 168, 55 S. E. 84; Sullins *v.* Farmers' Exch. Bank, 17 Okla. 419, 87 Pac. 857; Curtze *v.* Iron Dyke Copper Min. Co., 46 Oregon 601, 81 Pac. 815.

462. 2. Darden *v.* Schuessler, (Ala. 1907) 45 So. 130; Slocumb *v.* Stewart, 123 Ga. 360, 51 S. E. 405; Gould *v.* St. Anthony Falls Bank, 98 Minn. 420, 108 N. W. 951.

3. Darden *v.* Schuessler, (Ala. 1907) 45 So. 130.

It is necessary that usury be established before inquiring into the question of intent. Bennett *v.* Best, 142 N. Car. 168, 55 S. E. 84.

463. 1. Davisson *v.* Smith, 60 W. Va. 413, 55 S. E. 466.

4. Sullins *v.* Farmers' Exch. Bank, 17 Okla. 419, 87 Pac. 857; Fidelity Loan Assoc. *v.* Connolly, (Supm. Ct. App. T.) 95 N. Y. Supp. 576; Merchants', etc., Bank *v.* Sarratt, 77 S. Car. 141, 57 S. E. 621; Western Bank, etc., Co. *v.* Ogden, (Tex. Civ. App. 1906) 93 S. W. 1102.

464. 1. Plyler *v.* McGee, 76 S. Car. 450, 57 S. E. 180; Merchants', etc., Bank *v.* Sarratt, 77 S. Car. 141, 57 S. E. 621.

2. Earle *v.* Owings, 72 S. Car. 362, 51 S. E. 980.

5. Elwell *v.* Lund, 102 Minn. 166, 112 N. W. 1009, 1067; Elwell *v.* Lund, 102 Minn. 508, 166, 112 N. W. 1011, 1067.

Usury laws do not apply to liabilities arising out of taxation. Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141.

465. 7. Elwell *v.* Lund, 102 Minn. 166, 112 N. W. 1009, 1067; Elwell *v.* Lund, 102 Minn. 508, 112 N. W. 1011.

468. 5. The purchase of a lease and reletting the property to the tenant at an advanced price and granting him the right to repurchase the lease will not necessarily constitute a device to avoid usury. Reich *v.* Cochran, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 827.

469. 7. Cooper *v.* Brazelton, 135 Fed. 476, 68 C. C. A. 188; Armor *v.* Loudon Bank, 86 Miss. 658, 39 So. 17; Miller *v.* Monumental Sav., etc., Assoc., 57 W. Va. 437, 50 S. E. 533; Irving *v.* Iron Belt Bldg., etc., Assoc., (W. Va. 1908) 61 S. E. 325. *Compare* Eastern Bldg., etc., Assoc. *v.* Tonkinson, (Neb. 1906) 107 N. W. 762; Guarantee Sav., etc., Co. *v.* Mitchell, (Tex. Civ. App. 1905) 87 S. W. 184; Rabb *v.* Texas Loan, etc., Co., (Tex. Civ. App. 1906) 96 S. W. 77.

471. 2. *Alabama.* — Beckley *v.* U. S. Savings, etc., Co., 147 Ala. 195, 40 So. 655, *construing* and *applying* the *Minnesota* statute.

Illinois. — Home Bldg., etc., Assoc. *v.* McKay, 217 Ill. 551, 75 N. E. 569, *reversing* 118 Ill. App. 586; Hotchkiss *v.* Norwood Park Bldg., etc., Assoc., 229 Ill. 248, 82 N. E. 257.

Iowa. — Co-operative Bank *v.* Meldrum, 128 Iowa 694, 105 N. W. 206; Le Mars Bldg., etc., Assoc. *v.* Burgess, 129 Iowa 422, 105 N. W. 641.

Maryland. — Stewart *v.* Workingmen's Bldg., etc., Assoc., (Md. 1907) 68 Atl. 887.

Mississippi. — Loudon Bank *v.* Armor, (Miss. 1907) 44 So. 66.

New York. — Preston *v.* Rockey, 185 N. Y. 186, 77 N. E. 1156, *affirming* (Supm. Ct. App. Div.) 96 N. Y. Supp. 857.

Virginia. — Bryan *v.* Augusta Perpetual Bldg., etc., Co., 104 Va. 611, 52 S. E. 357.

West Virginia. — Tahaney *v.* Washington Nat. Bldg., etc., Assoc., 59 W. Va. 296, 53 S. E. 791; Brown *v.* Rockey, 60 W. Va. 268, 54 S. E. 343.

3. Assets Realization Co. *v.* Heiden, 117 Ill. App. 458, *affirmed* 215 Ill. 9, 74 N. E. 56.

472. 1. Cobe *v.* Airey, 125 Ill. App. 43; Miller *v.* Monumental Sav., etc., Assoc., 57 W. Va. 437, 50 S. E. 533. *Compare* Middle States Loan, etc., Co. *v.* Miller, 104 Va. 464, 51 S. E. 846, wherein a contract between a *Maryland* corporation and a citizen of *Virginia* was held to be governed by the laws of the former state and free from usury.

2. Free Home Bldg., etc., Assoc. *v.* Edwards, 223 Ill. 126, 79 N. E. 64, *affirming* 124 Ill. App. 191; Cobe *v.* Airey, 125 Ill. App. 43; Garlick *v.* Mutual Loan, etc., Assoc., 129 Ill. App. 402; Miller *v.* Prudential Banking, etc., Co., (W. Va. 1907) 59 S. E. 977; Irving *v.* Iron Belt Bldg., etc., Assoc., (W. Va. 1908) 61 S. E. 325.

3. Sargent *v.* Home Bldg., etc., Assoc., 114 Ill. App. 393; Wineman *v.* First Mortg. Loan Co., 117 Ill. App. 302; Assets Realization Co. *v.* Heiden, 117 Ill. App. 458, *affirmed* 215 Ill. 9, 74 N. E. 56; Cobe *v.* Summers, 143 Mich. 117, 106 N. W. 707; Bechtel *v.* Saginaw Bldg., etc., Assoc., 143 Mich. 599, 107 N. W. 695; Miller *v.* Prudential Banking, etc., Co., (W. Va. 1907) 59 S. E. 977; Irving *v.* Iron Belt Bldg., etc., Assoc., (W. Va. 1908) 61 S. E. 325. *Compare* Beckley *v.* U. S. Savings, etc., Co., 147 Ala. 195, 40 So. 655, *construing* the *Minnesota* statute.

It is not necessary that more than one bid should be made, Home Bldg., etc., Assoc. *v.* McKay, 217 Ill. 551, 75 N. E. 569, *reversing* 118 Ill. App. 586; and that may be made by the secretary under proper authority and need not be recorded on the minutes. Hotchkiss *v.* Norwood Park Bldg., etc., Assoc., 229 Ill. 248, 82 N. E. 257. *Contra*, Roeser *v.* German Nat. Bldg., etc., Assoc., 32 Pa. Super. Ct. 100.

A bid filed in writing and accepted at a subsequent regular meeting is a sufficient compliance with the statute. Broch *v.* French, 116 Ill. App. 15.

478. 1. Libert *v.* Unfried, (Wash. 1907) 91 Pac. 776.

6. Gould *v.* St. Anthony Falls Bank, 98 Minn. 420, 108 N. W. 951.

8. Barry *v.* Paranto, 97 Minn. 265, 106 N. W. 911.

479. 1. Barry *v.* Paranto, 97 Minn. 265, 106 N. W. 911; Hagaman *v.* Reinach, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 206, 96 N. Y. Supp. 719.

5. Edwards *v.* Capps, 122 Ga. 827, 50 S. E. 943; Heinrich *v.* Jenkins, 98 Minn. 489, 108 N. W. 877.

6. Brown *v.* Bonds, 125 Ga. 833, 54 S. E. 933.

480. 1. A rental contract will not estop the alleged tenant from pleading usury in a bill to redeem and for cancellation of the deed. Brown *v.* Bonds, 125 Ga. 833, 54 S. E. 933.

2. Elwell *v.* Lund, 102 Minn. 166, 112 N. W. 1009, 1067; Elwell *v.* Lund, 102 Minn. 508, 112 N. W. 1011.

4. *Compare* Yarborough *v.* Hughes, 139 N. Car. 199, 51 S. E. 904, holding that a resale of land, purchased at a foreclosure sale, to the mortgagor at an advanced price, was not usurious.

482. 1. Citizens' Bank *v.* Murphy, 83 Ark. 31, 102 S. W. 697.

483. 3. Kornegay *v.* Georgia State Bldg., etc., Assoc., (Miss. 1907) 44 So. 783, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 483.

8. Plyler *v.* McGee, 76 S. Car. 450, 57 S. E. 180.

484. 1. Davisson *v.* Smith, 60 W. Va. 413, 55 S. E. 466, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 484.

3. Davisson *v.* Smith, 60 W. Va. 413, 55 S. E. 466, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 484.

486. 4. Kammer *v.* Glenz, 118 Ill. App. 570; U. T. Hungerford Brass, etc., Co. *v.* Brigham, (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 240, 93 N. Y. Supp. 867. *Compare* Whelpley *v.* Ross, 25 App. Cas. (D. C.) 207.

5. *Compare* U. T. Hungerford Brass, etc., Co. *v.* Brigham, (Supm. Ct. Tr. T.) 47 Misc. (N. Y.) 240, 95 N. Y. Supp. 867.

488. 8. Reich *v.* Cochran, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 827.

489. 7. Patton *v.* La Fayette Bank, 124 Ga. 965, 53 S. E. 664; Sullins *v.* Farmers' Exch. Bank, 17 Okla. 419, 87 Pac. 857.

490. 2. Patton *v.* La Fayette Bank, 124 Ga. 965, 53 S. E. 664; Merchants', etc., Bank *v.* Sarratt, 77 S. Car. 141, 57 S. E. 621, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 490.

491. 3. It is usury for a bank to discount a note payable to it which provides for interest only from maturity, and which contains no provision for discount. Merchants', etc., Bank *v.* Sarratt, 77 S. Car. 141, 57 S. E. 621.

4. Lichtenstein *v.* Lyons, 115 La. 1051, 40 So. 454.

493. 1. Blake v. Yount, 42 Wash. 101, 84 Pac. 625.

2. Carney *v.* Matthewson, (Ark. 1908) 109 S. W. 1024. *Compare* Crittenden *v.* Ragan, 89 Miss. 185, 42 So. 281.

4. Graham *v.* Fitts, 53 Fla. 1046, 43 So. 512.

7. Plyler *v.* McGee, 76 S. Car. 450, 57 S. E. 180.

494. 1. Hamilton *v.* Stephenson, 106 Va. 77, 55 S. E. 577. *Compare* Sanford *v.* Lundquist, (Neb. 1907) 114 N. W. 279.

3. Hagaman *v.* Reinach, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 206, 96 N. Y. Supp. 719.

4. Libert *v.* Unfried, (Wash. 1907) 91 Pac. 776.

495. 6. Bennett *v.* Best, 142 N. Car. 168, 55 S. E. 84.

496. 3. Citizens Bank *v.* Murphy, 83 Ark. 31, 102 S. W. 697.

4. Hagaman *v.* Reinach, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 206, 96 N. Y. Supp. 719.

497. 8. Penn Mut. L. Ins. Co. *v.* Barnett, (Ky. 1907) 99 S. W. 228, *denying rehearing* of (Ky. 1906) 96 S. W. 1120.

501. 7. Graham *v.* Fitts, 53 Fla. 1046, 43 So. 512; Reich *v.* Cochran, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 827.

502. 7. Little *v.* Hooker Steam Pump Co., 122 Mo. App. 620, 100 S. W. 561, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 502, holding contrary to the text because of statutory enactments, and certified to the Supreme Court as being in conflict with a former decision.

503. 2. Franzen *v.* Hammond, (Wis. 1908) 116 N. W. 169.

504. 1. France *v.* Munro, (Iowa 1908) 115 N. W. 577.

506. 2. Taylor *v.* Buzard, 114 Mo. App. 622, 90 S. W. 126.

3. Carney *v.* Matthewson, (Ark. 1908) 109 S. W. 1024, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 506.

507. 3. Carney *v.* Matthewson, (Ark. 1908) 109 S. W. 1024, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 507; Blake *v.* Yount, 42 Wash. 101, 84 Pac. 625, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 507.

5. Where the statute permits contracts for a rate of interest in excess of the legal rate, the taking of such excessive rate after maturity of the debt will constitute usury. Earle *v.* Owings, 72 S. Car. 362, 51 S. E. 980.

508. 3. Graham *v.* Fitts, 53 Fla. 1046, 43 So. 512.

509. 5. Hagaman *v.* Reinach, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 206, 96 N. Y. Supp. 719.

6. Zussman *v.* Woodbridge, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 496, 97 N. Y. Supp. 973.

510. 2. Darden *v.* Schuessler, (Ala. 1907) 45 So. 130.

3. **See Dissenting Opinion of Simpson, J., in** Darden *v.* Schuessler, (Ala. 1907) 45 So. 130, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 510.

7. Virginia-Carolina Chemical Co. *v.* Provident Sav. Assur. Soc., 126 Ga. 50, 54 S. E. 929, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 510.

511. 1. Zussman *v.* Woodbridge, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 496, 97 N. Y. Supp. 973.

6. Lichtenstein *v.* Lyons, 115 La. 1051, 40 So. 454, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 511.

512. 1. Ardmore L., etc., Co. *v.* Dillard, (Indian Ter. 1907) 104 S. W. 814; Western Bank, etc., Co. *v.* Ogden, (Tex. Civ. App. 1906) 93 S. W. 1102.

513. 1. Lowe *v.* Walker, 77 Ark. 103, 91 S. W. 22.

3. Merchants', etc., Bank *v.* Sarratt, 77 S. Car. 141, 57 S. E. 621.

7. Vance *v.* Gray, 143 Ala. 234, 38 So. 916.

516. 2. Henderson *v.* Tolman, (Mo. App. 1908) 109 S. W. 76.

517. 5. Miller *v.* Prudential Banking, etc., Co., (W. Va. 1907) 59 S. E. 977, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 517.

518. 1. Miller *v.* Prudential Banking, etc., Co., (W. Va.) 1907) 59 S. E. 977.

2. Lockwood *v.* Muhlberg, 124 Ga. 660, 53 S. E. 92.

520. 1. Armor *v.* Loudon Bank, 86 Miss. 658, 39 So. 17.

521. 2. Lowe *v.* Walker, 77 Ark. 103, 91 S. W. 22.

3. Lowe *v.* Walker, 77 Ark. 103, 91 S. W. 22.

4. Armor *v.* Loudon Bank, 86 Miss. 658, 39 So. 17.

522. 1. Wood *v.* Babbitt, 149 Fed. 818; Ferguson *v.* Bien, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 673, 101 N. Y. Supp. 100.

3. Schlesinger *v.* Lehmaier, 191 N. Y. 69, 83 N. E. 657, *reversing* 117 N. Y. App. Div. 428, 102 N. Y. Supp. 630; Schlesinger *v.* Lehmaier, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 610, 99 N. Y. Supp. 389, *reversing* (N. Y. City Ct. Tr. T.) 49 Misc. (N. Y.) 419, 99 N. Y. Supp. 819.

4. Keene *v.* Behan, 40 Wash. 505, 82 Pac. 884.

5. Cooper *v.* Brazelton, 135 Fed. 476, 68 C. C. A. 188; Walker *v.* Hillyer, 124 Ga. 857, 53 S. E. 313.

523. 1. Lowe *v.* Walker, 77 Ark. 103, 91 S. W. 22.

524. 7. Citizens Bank *v.* Murphy, 83 Ark. 31, 102 S. W. 697.

525. 6. Wagoner Nat. Bank *v.* Welch, (Indian Ter. 1907) 104 S. W. 610; Schlesinger *v.* Kelly, 114 N. Y. App. Div. 546, 99 N. Y. Supp. 1083.

526. 2. See Citizens' Nat. Bank *v.* Donnell, 195 Mo. 564, 94 S. W. 516.

4. Fish *v.* Hemple, 2 Alaska 175. See also cases cited page **528,** note 12.

527. 8. Western Bank, etc., Co. *v.* Ogden, (Tex. Civ. App. 1906) 93 S. W. 1102; Clayton *v.* Ingram, (Tex. Civ. App. 1908) 107 S. W. 880.

528. 3. The payment must exceed the principal. Western Bank, etc., Co. *v.* Ogden, (Tex. Civ. App. 1906) 93 S. W. 1102.

9. Libert *v.* Unfried, (Wash. 1907) 91 Pac. 776.

11. Western Bank, etc., Co. *v.* Ogden, (Tex. Civ. App. 1906) 93 S. W. 1102.

12. Hemple *v.* Raymond, (C. C. A.) 144 Fed. 796, *affirming* 2 Alaska 343; Fish *v.* Hemple, 2 Alaska 175.

529. 4. **The New York Banking Law.—**

Schlesinger *v.* Lehmaier, 117 N. Y. App. Div. 428, 102 N. Y. Supp. 630.

530. 9. **In New York** the penalty may be recovered from an assignee who takes with knowledge that usurious interest has been paid. Schlesinger *v.* Lehmaier, 117 N. Y. App. Div. 428, 102 N. Y. Supp. 630.

10. Tayloe *v.* Parker, 137 N. Car. 418, 49 S. E. 921; Banov *v.* Charleston Bank, (S. Car. 1908) 60 S. E. 942.

532. 10. **Trustee.** — Earle *v.* Owings, 72 S. Car. 362, 51 S. E. 980.

533. 6. Whilden *v.* Milledgeville Banking Co., 3 Ga. App. 69, 59 S. E. 336; Huntington *v.* Westerfield, 119 La. 615, 44 So. 317; Horner *v.* Nitsch, 103 Md. 498, 63 Atl. 1052. *Compare* U. S. Fidelity, etc., Co. *v.* Com., (Ky. 1907) 104 S. W. 1029.

8. *In re* Stern, (C. C. A.) 144 Fed. 956 (construing *Iowa* statute).

534. 2. Nance *v.* Gray, 143 Ala. 234, 38 So. 916; Thompson *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 102, 96 N. Y. Supp. 416; Industrial Sav., etc., Co. *v.* Hare, 216 Pa. St. 389, 65 Atl. 1080; Grubb *v.* Stewart, (Wash. 1907) 91 Pac. 562, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 534; Chenoweth *v.* National Bldg. Assoc., 59 W. Va. 653, 53 S. E. 559.

535. 2. Lembeck *v.* Jarvis Terminal Cold Storage Co., 70 N. J. Eq. 757, 64 Atl. 126.

6. Tidball *v.* Schmeltz, (Kan. 1908) 94 Pac. 794.

536. 2. Chenoweth *v.* National Bldg. Assoc., 59 W. Va. 653, 53 S. E. 559; Stuckey *v.* Middle States Loan, etc., Co., 61 W. Va. 74, 55 S. E. 996; Aggleson *v.* Middle States Loan Bldg., etc., Co., 61 W. Va. 139, 56 S. E. 177. *Compare* Assets Realization Co. *v.* Heiden, 117 Ill. App. 458, *affirmed* 215 Ill. 9, 74 N. E. 56.

537. 7. Atwood First Nat. Bank *v.* Drew, 226 Ill. 622, 80 N. E. 1082; Cobe *v.* Summers, 143 Mich. 117, 106 N. W. 707.

538. 2. Industrial Sav., etc., Co. *v.* Hare, 216 Pa. St. 389, 65 Atl. 1080.

539. 2. A junior mortgagee of a corporation cannot set up usury in a prior mortgage. Lembeck *v.* Jarvis Terminal Cold Storage Co., 70 N. J. Eq. 757, 64 Atl. 126.

540. 1. Western Union Tel. Co. *v.* Ryan, 126 Ga. 191, 55 S. E. 21; Thompson *v.* Interborough Rapid Transit Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 102, 96 N. Y. Supp. 416; Biedler *v.* Malcolm, 121 N. Y. App. Div. 145, 105 N. Y. Supp. 642.

5. Patton *v.* La Fayette Bank, 124 Ga. 965, 53 S. E. 664; Elwell *v.* Lund, 102 Minn. 166, 112 N. W. 1009, 1067; Elwell *v.* Lund, 102 Minn. 508, 112 N. W. 1011.

6. Whilden *v.* Milledgeville Banking Co., 3 Ga. App. 69, 59 S. E. 336; France *v.* Munro, (Iowa 1908) 115 N. W. 577; Campbell *v.* Connable, (Supm. Ct. App. T.) 98 N. Y. Supp. 231.

541. 2. Hotchkiss *v.* Norwood Park Bldg., etc., Assoc., 229 Ill. 248, 82 N. E. 257.

4. Wood *v.* Babbitt, 149 Fed. 818; Citizens Bank *v.* Murphy, 83 Ark. 31, 102 S. W. 697; Virginia-Carolina Chemical Co. *v.* Provident Sav. L. Assur. Soc., 126 Ga. 50, 54 S. E. 929; Oman *v.* American Nat. Bank, (Ky. 1907) 106 S. W. 277.

542. 1. Betz *v.* Wilson, 17 Okla. 383, 87 Pac. 844; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

The defendant must prove that the statute relied on was in force at the time of the making of the contract. Thomas *v.* Clarkson, 125 Ga. 72, 54 S. E. 77.

Decisions of the foreign jurisdiction construing the statute, when not put in evidence at the trial, cannot be considered on appeal. Mercantile Guaranty Co. *v.* Hilton, 191 Mass. 141, 77 N. E. 312.

2. Nance *v.* Gray, 143 Ala. 234, 38 So. 916.

3. Reich *v.* Cochran, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 827; Bennett *v.* Best, 142 N. Car. 168, 55 S. E. 84.

4. Citizens' Bank *v.* Murphy, 83 Ark. 31, 102 S. W. 697.

9. Wood *v.* Babbitt, 149 Fed. 818; Hotchkiss *v.* Norwood Park Bldg., etc., Assoc., 229 Ill. 248, 82 N. E. 257; Elwell *v.* Lund, 102 Minn. 166, 112 N. W. 1009, 1067; Elwell *v.* Lund, 102 Minn. 508, 112 N. W. 1011.

10. Wood *v.* Babbitt, 149 Fed. 818.

11. Reich *v.* Cochran, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 827; Ayars *v.* O'Connor, 45 Wash. 132, 88 Pac. 119.

13. Furr *v.* Keesler, 3 Ga. App. 188, 59 S. E. 596.

14. Ardmore L. & T. Co. *v.* Dillard, (Indian Ter. 1907) 104 S. W. 814; Barry *v.* Paranto, 97 Minn. 265, 106 N. W. 911; Gould *v.* St. Anthony Falls Bank, 98 Minn. 420, 108 N. W. 951; Elwell *v.* Lund, 102 Minn. 166, 112 N. W. 1009, 1067; Elwell *v.* Lund, 102 Minn. 508, 112 N. W. 1011; Cameron *v.* Fraser, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 8, 94 N. Y. Supp. 1058; Western Bank, etc., Co. *v.* Ogden, (Tex. Civ. App. 1906) 93 S. W. 1102.

543. 1. Wagoner Nat. Bank *v.* Welch, (Indian Ter. 1907) 104 S. W. 610; Barry *v.* Paranto, 97 Minn. 265, 106 N. W. 911; Gould *v.* St. Anthony Falls Bank, 98 Minn. 420, 108 N. W. 951.

2. King *v.* Cantrell, (Ga. App. 1908) 61 S. E. 144; Gould *v.* St. Anthony Falls Bank, 98 Minn. 420, 108 N. W. 951; Exchange Bank *v.* McMillan, 76 S. Car. 561, 57 S. E. 630.

3. Cameron *v.* Fraser, (Supm. Ct. Tr. T.) 48 Misc. (N. Y.) 8, 94 N. Y. Supp. 1058.

544. 1. Horner *v.* Nitsch, 103 Md. 498, 63 Atl. 1052.

2. *Compare* Murphy *v.* Citizens' Bank, 82 Ark. 131, 100 S. W. 894.

5. Drake *v.* Lux, 233 Ill. 522, 84 N. E. 693.

545. 6. Lovett *v.* Calvert Mortg., etc., Co., (Md. 1907) 66 Atl. 708.

546. 9. Murphy *v.* Citizens' Bank, 82 Ark. 131, 100 S. W. 894.

547. 2. Brandt *v.* Hall, (Ind. App. 1907) 82 N. E. 929.

11. Murphy *v.* Citizens' Bank, 82 Ark. 131, 100 S. W. 894.

12. Reed *v.* American-German Nat. Bank, 155 Fed. 233.

548. 4. Culver *v.* Osborne, 231 Ill. 104, 83 N. E. 110.

10. A delay of three years is insufficient to bar a suit in equity for relief from usury. Davisson *v.* Smith, 60 W. Va. 413, 55 S. E. 466.

549. 1. Norman *v.* Warsaw, etc., Assoc.,

(Ky. 1906) 91 S. W. 695; Huntington *v.* Westerfield, 119 La. 615, 44 So. 317.

2. Slover *v.* Union Bank, 115 Tenn. 347, 89 S. W. 399.

A counterclaim for usury is available as long as the right of action exists on the principal sum. Earle *v.* Owings, 72 S. Car. 362, 51 S. E. 980.

3. Garlick *v.* Mutual Loan, etc., Assoc., 116 Ill. App. 311; Miller *v.* Monumental Sav., etc., Assoc., 57 W. Va. 437, 50 S. E. 533.

551. 9. Huntington *v.* Westerfield, 119 La. 615, 44 So. 317.

552. 6. Horner *v.* Nitsch, 103 Md. 498, 63 Atl. 1052.

7. Armor *v.* Loudon Bank, 86 Miss. 658, 39 So. 17; Davisson *v.* Smith, 60 W. Va. 413, 55 S. E. 466.

553. 9. Garlick *v.* Mutual Loan, etc., Assoc., 129 Ill. App. 402; Crittenden *v.* Ragan, 89 Miss. 185, 52 So. 281; Rush *v.* Pearson, (Miss. 1908) 45 So. 723.

554. 2. *Contra,* Henderson *v.* Tolman, (Mo. App. 1908) 109 S. W. 76.

556. 2. Barclift *v.* Fields, 145 Ala. 264, 41 So. 84 (construing Ala. Gen. Acts 1900-1901, p. 164).

557. 6. Hightower *v.* Coalson, (Ala. 1907) 44 So. 53, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 557; Reich *v.* Cochran, (Supm. Ct. Spec. T.) 102 N. Y. Supp. 827; Logan *v.* Ballard, 61 W. Va. 526, 57 S. E. 143, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 557.

558. 3. A sale made under the power given in a mortgage securing a usurious debt is valid. Payton *v.* McPhaul, 128 Ga. 510, 58 S. E. 50.

7. Logan *v.* Ballard, 61 W. Va. 526, 57 S. E. 143, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 558.

11. Hightower *v.* Coalson, (Ala. 1907) 44 So. 53, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 558.

559. 8. State *v.* Wickenhoefer, (Del. 1906) 64 Atl. 273. See also Morin *v.* Newbury, 79 Conn. 338, 65 Atl. 156; State *v.* Dimant, 73 N. J. L. 131, 62 Atl. 286.

560. 1. Taking usurious interest in consideration of an extension constitutes the offense. State *v.* Haney, (Mo. App. 1908) 108 S. W. 1080.

UTTER — UTTERING.

561. 2. **Utter and Publish.** — See Walker *v.* State, 127 Ga. 48, 56 S. E. 113.

VAGRANCY.

569. 3. **For Examples of Various Statutes,** see People *v.* Craig, (Cal. 1907) 91 Pac. 997; Lewis *v.* State, 3 Ga. App. 322, 59 S. E. 933; State *v.* McFarland, 96 Minn. 482, 105 N. W. 187.

5. Carter *v.* State, 126 Ga. 570, 55 S. E. 477. *Compare* Gainer *v.* State, 2 Ga. App. 126, 58 S. E. 295.

570. 1. Vandiver *v.* State, 145 Ala. 682, 40 So. 88; Simmons *v.* State, 126 Ga. 632, 55 S. E. 479; Darby *v.* State, 127 Ga. 46, 56 S. E. 91; Gainer *v.* State, 2 Ga. App. 126, 58 S. E. 295; Lewis *v.* State, 3 Ga. App. 322, 59 S. E. 933; Harris *v.* State, (Ga. App. 1908) 60 S. E. 207.

2. Crawley *v.* State, 146 Ala. 145, 41 So. 175.

571. 4. **Gambling for a Living Held to Constitute Vagrancy.** — Shreveport *v.* Bowen, 116 La. 522, 40 So. 859.

5. *In re* Lewis, 3 Cal. App. 738, 86 Pac. 996; Johnson *v.* State, 124 Ga. 421, 52 S. E. 737; Collins *v.* State, 125 Ga. 15, 53 S. E. 809; Turner *v.* State, 2 Ga. App. 386, 58 S. E. 492; People *v.* O'Neill, 117 N. Y. App. Div. 826, 102 N. Y. Supp. 988; Mill *v.* Brown, 31 Utah 473, 88 Pac. 609.

572. 2. People *v.* O'Neill, 117 N. Y. App. Div. 826, 102 N. Y. Supp. 988.

5. **Right to Arrest Without Warrant Upheld.** — People *v.* Craig, (Cal. 1907) 91 Pac. 997.

VALUABLE.

574. 1. **Valuable Papers.** — See Brogan *v.* Barnard, 115 Tenn. 260, 90 S. W. 858.

VARIANCE.

580. 2. **Variance.** — See Ottawa *v.* Hayne, 114 Ill. App. 21.

VAULT.

580. 4. **Vault.** — See Smith *v.* Mine, etc., Supply Co., (Utah 1907) 88 Pac. 683.

VEGETABLE.

580. 5. **Vegetables — Revenue Laws.** — See Kraut *v.* U. S., 139 Fed. 94.

VENDOR AND PURCHASER.

592. 8. Heenan *v.* Parmele, (Neb. 1906) 114 N. W. 639; Freeburgh *v.* Lamoureux, 15 Wyo. 22, 85 Pac. 1054; Barnes *v.* Hustead, (Pa. 1908) 68 Atl. 839.

593. 1. Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; Hantz *v.* May, (Iowa 1908) 114 N. W. 1042; Whitworth *v.* Pool, (Ky. 1906) 96 S. W. 880; Ochs *v.* Kramer, (Ky. 1908) 107 S. W. 260; Grault *v.* Feucht, 117 La. 276, 41 So. 572; Hiskett *v.* Bozarth, 75 Neb. 70, 105 N. W. 990; Schuyler *v.* Wheelon, (N. Dak. 1908) 115 N. W. 259; Wall *v.* Club Land, etc., Co., (Tex. Civ. App. 1905) 88 S. W. 534.

2. Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; East Jellico Coal Co. *v.* Carter, (Ky. 1906) 97 S. W. 768; Ochs *v.* Kramer, (Ky. 1908) 107 S. W. 260; Miller *v.* Smith, 140 Mich. 524, 103 N. W. 872; Johnson *v.* Higgins, (Neb. 1906) 108 N. W. 108; Wadick *v.* Mace, 113 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Taber *v.* Dallas County, (Tex. 1908) 106 S. W. 332. See also Cross *v.* Snakenberg, 126 Iowa 636, 102 N. W. 508.

594. 6. Couch *v.* McCoy, 138 Fed. 696; Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Comstock *v.* North, 88 Miss. 754, 41 So. 374; Sprague *v.* Schotte, 48 Oregon 609, 87 Pac. 1046.

595. 7. Keel *v.* Schaupp, (Colo. 1908) 93 Pac. 1095; Madden *v.* Cheshire Provident Inst., (Kan. 1908) 94 Pac. 793; Sprague *v.* Schotte, 48 Oregon 609, 87 Pac. 1046; Lucas *v.* Patton, (Tex. Civ. App. 1908) 107 S. W. 1143.

596. 4. Ryder *v.* Johnston, (Ala. 1907) 45 So. 181; Warner *v.* Marshall, 166 Ind. 88, 75

N. E. 582; Welsh *v.* Brainerd, 95 Minn. 234, 103 N. W. 1031; Hobart *v.* Fredericksen, (S. Dak. 1905) 105 N. W. 168; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 780.

7. Acceptance by Conduct. — Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338.

597. 7. Phelps *v.* Good, (Idaho 1908) 96 Pac. 216; Scott *v.* Fowler, 227 Ill. 104, 81 N. E. 34; Frahm *v.* Metcalf, 75 Neb. 241, 106 N. W. 227; Beiseker *v.* Amberson, (N. Dak. 1908) 116 N. W. 94.

598. 1. Sharp *v.* West, 150 Fed. 458; Phelps *v.* Good, (Idaho 1908) 96 Pac. 216; Scott *v.* Fowler, 227 Ill. 104, 81 N. E. 34; Bewick *v.* Hanika, 142 Mich. 206, 106 N. W. 63.

599. 5. Foss Invest. Co. *v.* Ater, (Wash. [illegible]

601. 3. Goldberg *v.* Drake, 145 Mich. 50, 108 N. W. 367; Jones *v.* Barnes, 105 N. Y. App. Div. 287, 94 N. Y. Supp. 695.

4. Bonanza Min., etc., Co. *v.* Ware, 78 Ark. 306, 95 S. W. 765; Indiana, etc., Lumber, etc., Co. *v.* Pharr, 82 Ark. 573, 102 S. W. 686; White *v.* Hanford Bank, 148 Cal. 552, 83 Pac. 698; Meuzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754; Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965; Seyferth *v.* Groves, etc., R. Co., 217 Ill. 483, 75 N. E. 522; Adams *v.* Peabody Coal Co., 230 Ill. 469, 82 N. E. 645; Noble *v.* Mann, (Ky. 1907) 105 S. W. 152; Boston, etc., St. R. Co. *v.* Rose, 194 Mass. 142, 80 N. E. 498; Cameron *v.* Shumway, 149 Mich. 634, 113 N. W. 287; Stone *v.* Snell, (Neb. 1906) 109 N. W. 750; Seidman *v.* Rauner, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 10, 99 N. Y. Supp. 862; Alston *v.* Connell, 140 N. Car. 485, 53 S. E. 292; Davis *v.* Martin, (N. Car. 1907) 59 S. E. 700; Barnes *v.* Rea, (Pa. 1908) 68 Atl. 836; Barnes *v.* Hustead, (Pa. 1908) 68 Atl. 839; Hanschka *v.* Vodopich, (S. Dak. 1906) 108 N. W. 28; Mouk *v.* Duell, 41 Wash. 403, 83 Pac. 313; Newell *v.* Lamping, 45 Wash. 304, 88 Pac. 195; Baraboo Land, etc., Co. *v.* Winter, 130 Wis. 457, 110 N. W. 413; Pollock *v.* Brookover, 60 W. Va. 75, 53 S. E. 795; John *v.* Elkins, (W. Va. 1907) 59 S. E. 961.

Option in Form Held a Contract of Sale. — Chenoweth *v.* Butterfield, (Aliz. 1908) 94 Pac. 1131.

Option Distinguished from Contract of Sale. — Strasser *v.* Steck, 216 Pa. St. 577, 66 Atl. 87.

5. A Contract of Sale Is Distinguished from a contract of exchange, barters, or gifts, by the "transmutation of property, or a right, from one person to another in consideration of a sum of money." Lucas *v.* County Recorder, 75 Neb. 351, 106 N. W. 217.

6. Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Welsh *v.* Brainerd, 95 Minn. 234, 103 N. W. 1031; Hobart *v.* Fredericksen, (S. Dak. 1905) 105 N. W. 168.

7. Goldstein *v.* Hensley, 4 Cal. App. 444, 88 Pac. 507; Miller *v.* Smith, 140 Mich. 524, 103 N. W. 872; Balkwill *v.* Spencer, 45 Wash. 600, 88 Pac. 1029. See also Kroeger *v.* Good, 13 Idaho 184, 89 Pac. 632.

Contract in Form of Certificate. — Brownson *v.* Perry, 71 Kan. 578, 81 Pac. 197.

8. Roach *v.* Richardson, 84 Ark. 37, 104 S. W. 538; Dunnivan *v.* Hughes, (Ark. 1908) 111 S. W. 271; Cornett *v.* Ault, 124 Ga. 944, 53 S. E. 460; East Jellico Coal Co. *v.* Carter, (Ky. 1906) 97 S. W. 768; Asher *v.* Helton, (Ky. 1907) 101 S. W. 350; Poteet *v.* Miller, (Ky. 1907) 101 S. W. 360; Mead *v.* Morse, 194 Mass. 201, 80 N. E. 513; Higinbotham *v.* Frock, 48 Oregon 129, 83 Pac. 536; Conner *v.* Clapp, 42 Wash. 642, 85 Pac. 342; Royce *v.* Carpenter, 80 Vt. 37, 66 Atl. 888.

602. 1. **Contract with Penalty Held Bond for Title and Not Deed.** — Abercrombie *v.* Shapira, (Tex. Civ. App. 1906) 94 S. W. 392.

2. Warner *v.* Marshall, 166 Ind. 88, 75 N. E. 582; Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972; Boston, etc., St. R. Co. *v.* Rose, 194 Mass. 142, 80 N. E. 498; Welsh *v.* Brainerd, 95 Minn. 234, 103 N. W. 1031.

5. White *v.* Poole, 73 N. H. 403, 62 Atl. 494; Jennings *v.* Horton, 43 Wash. 301, 86 Pac. 576. See also Benton *v.* Magee, (Kan. 1907) 89 Pac. 002.

603. 2. Liberman *v.* Beckwith, 79 Conn. 317, 65 Atl. 153; Wilson *v.* Root, (Conn. 1907) 67 Atl. 482; Weaver *v.* Richards, 144 Mich. 395, 108 N. W. 382; Schwab *v.* Baremore, 95 Minn. 295, 104 N. W. 10; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; McHenry *v.* Mitchell, (Pa. 1908) 68 Atl. 729; Baraboo Land, etc., Co. *v.* Winter, 130 Wis. 457, 110 N. W. 413.

A Contract of Sale, containing a guaranty of profits, held not a mere gambling device to evade the usury laws. Heinrich *v.* Jenkins, 98 Minn. 489, 108 N. W. 877.

5. State Bank *v.* Bienfang, (Wis. 1907) 113 N. W. 726, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 603.

604. 5. Reynolds *v.* Lynch, 98 Minn. 58, 107 N. W. 145; Hunt *v.* Lake, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 570, 97 N. Y. Supp. 298.

606. 3. Heard *v.* Heard, (Ala. 1906) 41 So. 827.

Lease on Completion of Payments Held Contract of Sale. — Heard *v.* Heard, (Ala. 1906) 41 So. 827.

Contract of Sale Unperformed Held to Amount Only to Contract for Personal Services. — National F. Ins. Co. *v.* Three States Lumber Co., 217 Ill. 115, 75 N. E. 450.

A Contract of Purchase May Become a Lease without change or re-entry by lessee. Chambers *v.* Irish, 132 Iowa 319, 109 N. W. 787.

Deed in Form Held Contract of Sale. — Powell *v.* Hunter, 204 Mo. 393, 102 S. W. 1020.

Brokerage Contract Held Contract of Sale. — Whipple *v.* Lee, (Wash. 1907) 89 Pac. 712.

5. Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 606.

607. 2. Whittier *v.* Gormley, 3 Cal. App. 489, 86 Pac. 726; Goldstein *v.* Hensley, 4 Cal. App. 444, 88 Pac. 507; Cowdery *v.* Greenlee, 126 Ga. 786, 55 S. E. 918; Smith *v.* McMahon, (Mass. 1907) 83 N. E. 9; Wheeler *v.* State, 190 N. Y. 406, 83 N. E. 54.

608. 3. White *v.* Bates, 234 Ill. 276, 84 N. E. 906; Smith *v.* McMahon, (Mass. 1907) 83 N. E. 9.

609. 1. Smith *v.* McMahon, (Mass. 1907) 83 N. E. 9.

610. 14. Fagan *v.* Hood, [illegible] N. W. 155; Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397; Van Keuren *v.* Siedler, (N. J. 1907) 66 Atl. 920; Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371; Fink *v.* Wallach, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 247, 95 N. Y. Supp. 872; Cook *v.* Sackett, 110 N. Y. App. Div. 322, 96 N. Y. Supp. 1085; Russell *v.* Wales, (Supm. Ct. Tr. T.) 100 N. Y. Supp. 785; Wallach *v.* Riverside Bank, 119 N. Y. App. Div. 238, 104 N. Y. Supp. 661; Hilton *v.* Sowenfeld, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 152, 104 N. Y. Supp. 942; Wormser *v.* Gehri, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 147, 106 N. Y. Supp. 295.

611. 1. *United States.* — Wood *v.* Deskins, (C. C. A.) 141 Fed. 500.

Arkansas. — Vaughan *v.* Butterfield, (Ark. 1908) 107 S. W. 993.

California. — Walters *v.* Mitchell, (Cal. App. 1907) 92 Pac. 315.

Georgia. — Cowdery *v.* Greenlee, 126 Ga. 786, 55 S. E. 918.

Indiana. — Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972.

Michigan. — Weaver *v.* Richards, 144 Mich. 395, 108 N. W. 382.

Minnesota. — Moulton *v.* Kolodzik, 97 Minn. 423, 107 N. W. 154; Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397.

Missouri. — Metz *v.* Wright, 116 Mo. App. 631,, 92 S. W. 1125.

New York. — Downey *v.* Seib, 185 N. Y. 427, 78 N. E. 66; Elterman *v.* Hyman, 192 N. Y. 113, 84 N. E. 937; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Tolosi *v.* Lese, 120 N. Y. App. Div. 53, 104 N. Y. Supp. 1095; Lese *v.* Metzinger, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 151, 105 N. Y. Supp. 888; Teller *v.* Schulz, (Supm. Ct. App. Div.) 108 N. Y. Supp. 325; Veit *v.* Schwob, (Supm. Ct. App. Div.) 111 N. Y. Supp. 286.

North Dakota. — Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623.

Texas. — Moore *v.* Price, (Tex. Civ. App. 1907) 103 S. W. 234; Connely *v.* Putnam, (Tex. Civ. App. 1908) 111 S. W. 164.

Washington. — Miller *v.* Philips, 44 Wash. 226, 87 Pac. 264.

6. Whittier *v.* Gormley, 3 Cal. App. 489, 86 Pac. 726; Smith *v.* McMahon, (Mass. 1907) 83 N. E. 9; Van Keuren *v.* Siedler, (N. J. 1907) 66 Atl. 920; Wallach *v.* Riverside Bank, 119 N. Y. App. Div. 238, 104 N. Y. Supp. 661.

612. 2. Berger *v.* Crist, 121 N. Y. App. Div. 483, 106 N. Y. Supp. 107.

4. Hobart *v.* Frederiksen, (S. Dak. 1905) 105 N. W. 168.

Mortgage No Incumbrance, Where Presumption of Payment after Twenty Years. — Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710, *affirming* (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 154, 98 N. Y. Supp. 708; Greenfield *v.* Mills, 123 N. Y. App. Div. 43, 107 N. Y. Supp. 705.

5. Vaughan *v.* Butterfield, (Ark. 1908) 107 S. W. 993; Saldutti *v.* Flynn, (N. J. 1906) 65 Atl. 246.

6. Kuhn *v.* Eppstein, 219 Ill. 154, 76 N. E. 145; Sugarman *v.* Goldberg, (Supm. Ct. App. T.) 100 N. Y. Supp. 1012; Foland *v.* Italian Sav. Bank, (Supm. Ct. App. Div.) 108 N. Y. Supp. 57.

8. Whelan *v.* Rosseter, 1 Cal. App. 701, 82 Pac. 1082, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 612; Dieterlen *v.* Miller, 114 N. Y. App. Div. 40, 99 N. Y. Supp. 699.

10. Oppenheimer *v.* Knepper Realty Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 186, 98 N. Y. Supp. 204; Samuelson *v.* Glickman, 113 N. Y. App. Div. 654, 99 N. W. Supp. 886.

A Party Wall Is No Incumbrance, where the land is sold at public auction, and the purchaser has notice by the map and terms of sale. Driscoll *v.* Carroll, (Supm. Ct. App. Div.) 111 N. Y. Supp. 246.

613. 1. Patterson *v.* Freihofer, 215 Pa. St. 47, 64 Atl. 326.

2. **Lis Pendens Not Valid Objection to Title.** — Kennedy *v.* Holl, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 379, 103 N. Y. Supp. 231; Woodenbury *v.* Spier, 122 N. Y. App. Div. 396, 106 N. Y. Supp. 817.

7. *Arkansas.* — Vaughan *v.* Butterfield, (Ark. 1908) 107 S. W. 993.

California. — Whelan *v.* Rosseter, 1 Cal. App. 701, 82 Pac. 1082; Walters *v.* Mitchell, (Cal. App. 1907) 92 Pac. 315.

Illinois. — Koch *v.* Streuter, 232 Ill. 594, 83 N. E. 1072.

Minnesota. — Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397.

New York. — Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371; Lowenfeld *v.* Ditchett, 114 N. Y. App. Div. 56, 99 N. Y. Supp. 724; Russell *v.* Wales, (Supm. Ct. Tr. T.) 100 N. Y. Supp. 785; Altman *v.* McMillin, 115 N. Y. App. Div. 234, 100 N. Y. Supp. 970; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889.

North Dakota. — Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623.

Texas. — Connely *v.* Putnam, (Tex. Civ. App. 1908) 111 S. W. 164.

Washington. — Hoffman *v.* Titlow, (Wash. 1907) 92 Pac. 888.

9. Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397.

10. *California.* — Whelan *v.* Rosseter, 1 Cal. App. 701, 82 Pac. 1082; Whittier *v.* Gormley, 3 Cal. App. 489, 86 Pac. 726; Norris *v.* Hay, 149 Cal. 695, 87 Pac. 380; Walters *v.* Mitchell, (Cal. App. 1907) 92 Pac. 315.

Georgia. — Cowdery *v.* Greenlee, 126 Ga. 786, 55 S. E. 918.

Minnesota. — Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397.

New York. — Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371; Russell *v.* Wales, (Supm. Ct. Tr. T.) 100 N. Y. Supp. 785; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889.

North Dakota. — Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623.

Texas. — Greer *v.* International Stock Yards Co., (Tex. Civ. App. 1906) 96 S. W. 79.

Washington. — Miller *v.* Philips, 44 Wash. 226, 87 Pac. 264.

614. 2. Whelan *v.* Rosseter, 1 Cal. App. 701, 82 Pac. 1082.

3. Norris *v.* Hay, 149 Cal. 695, 87 Pac. 380; Walters *v.* Mitchell, (Cal. App. 1907) 92 Pac. 315; Fagan *v.* Hook, (Iowa 1905) 105 N. W. 155; Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397.

5. Ocean City Assoc. *v.* Cresswell, (N. J. 1906) 65 Atl. 454; Dickerson *v.* Presbyterian Church, (Md. 1907) 66 Atl. 494; Van Horn *v.* Stuyvesant, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 432, 100 N. Y. Supp. 547; Messinger *v.* Foster, 115 N. Y. App. Div. 689, 101 N. Y. Supp. 387; Wormser *v.* Gehri, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 147, 106 N. Y. Supp. 295; Taub *v.* Spector, (Supm. Ct. App. Div.) 108 N. Y. Supp. 723; Clody *v.* Southard, (Supm. Ct. Tr. T.) 57 Misc. (N. Y.) 242, 109 N. Y. Supp. 411; Greer *v.* International Stock Yards Co., (Tex. Civ. App. 1906) 96 S. W. 79.

7. Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397.

615. 1. Fagan *v.* Hook, (Iowa 1905) 105 N. W. 155; Moulton *v.* Kolodzik, 97 Minn. 423, 107 N. W. 154; Bartlett *v.* Smith, 146 Mich. 188, 109 N. W. 260; Altman *v.* McMillin, 115 N. Y. App. Div. 234, 100 N. Y. Supp. 970; Hoffman *v.* Titlow, (Wash. 1907) 92 Pac. 888.

4. Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397; Wallach *v.* Riverside Bank, 119 N. Y. App. Div. 238, 104 N. Y. Supp. 661.

616. 3. McNellis *v.* Hilkowski, 98 Minn. 127, 107 N. W. 965. *Contra*, Wallach *v.* Riverside Bank, 119 N. Y. App. Div. 238, 104 N. Y. Supp. 661.

10. *Illinois.* — Kuhn *v.* Eppstein, 219 Ill. 154, 76 N. E. 145; Eppstein *v.* Kuhn, 225 Ill. 115, 80 N. E. 80.

Massachusetts. — Mead *v.* Morse, 194 Mass. 201, 80 N. E. 513.

Michigan. — Bartlett *v.* Smith, 146 Mich. 188, 109 N. W. 260.

Minnesota. — Moulton *v.* Kolodzik, 97 Minn. 423, 107 N. W. 154.

New Jersey. — Saldutti *v.* Flynn, (N. J. 1906) 65 Atl. 246; Van Keuren *v.* Siedler, (N. J. 1907) 66 Atl. 920.

New York. — Oppenheimer *v.* Knepper Realty Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 186, 98 N. Y. Supp. 204; Goodrich *v.* Pratt, 114 N. Y. App. Div. 771, 100 N. Y. Supp. 187; Altman *v.* McMillin, 115 N. Y. App. Div. 234, 100 N. Y. Supp. 97; Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Reynolds *v.* Wynne, 121 N. Y. App. Div. 272, 105 N. Y. Supp. 849; Rosenblum *v.* Eisenberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 350.

North Dakota. — Miller *v.* Shelburn, 15 N. Dak. 182, 107 N. W. 51.

Washington. — Miller *v.* Philips, 44 Wash. 226, 87 Pac. 264.

Clear of All Easements. — Patterson *v.* Frichofer, 215 Pa. St. 47, 64 Atl. 326.

11. Hoffman *v.* Titlow, (Wash. 1907) 92 Pac. 888. See also Halpern *v.* Fisch, 116 N. Y. App. Div. 479, 101 N. Y. Supp. 1019; Wacht *v.* Hart, 120 N. Y. App. Div. 189, 105 N. Y. Supp. 78.

617. 4. Liberman *v.* Beckwith, 79 Conn. 217, 65 Atl. 153.

5. Greer *v.* International Stock Yards Co., (Tex. Civ. App. 1906) 96 S. W. 79; Smith *v.* Landes, (Tex. Civ. App. 1907) 106 S. W. 703; Parkhurst *v.* Dickinson, 41 Wash. 420, 83 Pac. 893.

7. Spooner *v.* Cross, 127 Iowa 259, 102 N. W. 1118; Martin *v.* Roberts, 127 Iowa 218, 102 N. W. 1126; Fagan *v.* Hook, (Iowa 1905) 105 N. W. 155; Russell *v.* Wales, (Supm. Ct. Tr. T.) 100 N. Y. Supp. 785; Bowles *v.* Umberson, (Tex. Civ. App. 1907) 101 S. W. 842; Moore *v.* Price, (Tex. Civ. App. 1907) 103 S. W. 234.

8. Fagan *v.* Hook, (Iowa 1905) 105 N. W. 155; Bowles *v.* Umberson, (Tex. Civ. App. 1907) 101 S. W. 842.

12. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498; Kuhn *v.* Eppstein, 219 Ill. 154, 76 N. E. 145; Farber *v.* Blubaker Coal Co., 216 Pa. St. 209, 65 Atl. 551.

13. Lillienthal *v.* Bierkamp, 133 Iowa 42, 110 N. W. 153.

618. 9. Eppstein *v.* Kuhn, 225 Ill. 115, 80 N. E. 80.

12. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618.

13. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618.

619. 1. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 618.

3. *United States.* — Michigan Home Colony Co. *v.* Tabor, (C. C. A.) 141 Fed. 332; Everett *v.* Mansfield, (C. C. A.) 148 Fed. 374, 8 Ann. Cas. 956.

California. — Norris *v.* Hay, 149 Cal. 695, 87 Pac. 380; Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498; Walters *v.* Mitchell, (Cal. App. 1907) 92 Pac. 315.

Iowa. — Nelson *v.* Chingren, 132 Iowa 383, 106 N. W. 936; Andrews *v.* Goy, (Iowa 1907) 112 N. W. 825.

Massachusetts. — See Hawkes *v.* Kehoe, 193 Mass. 419, 79 N. E. 766.

Minnesota. — Vallentyne *v.* Immigration Land Co., 95 Minn. 195, 103 N. W. 1028, Reynolds *v.* Lynch, 98 Minn. 58, 107 N. W. 145; Moulton *v.* Kolodzik, 97 Minn. 423, 107 N. W. 154; Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397.

New York. — Zirinsky *v.* Post, 112 N. Y. App. Div. 74, 98 N. Y. Supp. 132; Portman *v.* Oppenheim, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 614, 99 N. Y. Supp. 537; Lowenfeld *v.* Ditchett, 114 N. Y. App. Div. 56, 99 N. Y. Supp. 724; Samuelson *v.* Glickman, 113 N. Y. App. Div. 654, 99 N. Y. Supp. 886; Oppenheim *v.* McGovern, 115 N. Y. App. Div. 135, 100 N. Y. Supp. 712; Altman *v.* McMillin, 115 N. Y. App. Div. 234, 100 N. Y. Supp. 970; Halpern *v.* Fisch, 116 N. Y. App. Div. 479, 101 N. Y. Supp. 1019; Levin *v.* Hill, 117 N. Y. App. Div. 472, 102 N. Y. Supp. 690; Floeting *v.* Horowitz, 120 N. Y. App. Div. 492, 104 N. Y. Supp. 1037; Wacht *v.* Hart, 120 N. Y. App. Div. 189, 105 N. Y. Supp. 78; Lese *v.* Metzinger, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 151, 105 N. Y. Supp. 888; Berger *v.* Crist, 121 N. Y. App. Div. 483, 106 N. Y. Supp. 107; Sheindelman *v.* Colyer, 122 N. Y. App. Div. 379, 106 N. Y. Supp. 762; Mandel *v.* Hess,

(Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 240, 107 N. Y. Supp. 766; Foland *v.* Italian Sav. Bank, (Supm. Ct. App. Div.) 108 N. Y. Supp. 57; Kaufman *v.* Brennan, (Supm. Ct. App. Div.) 108 N. Y. Supp. 503; Lewis *v.* Bergmann, (Supm. Ct. App. T.) 110 N. Y. Supp. 1047; Allen *v.* McKeon, (Supm. Ct. App. Div.) 111 N. Y. Supp. 328. See also Lakoschowsky *v.* Utopia Land Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 182; Hebrew Pub. Co. *v.* Reibstein, (Supm. Ct. App. Div.) 110 N. Y. Supp. 660; Webster Realty Co. *v.* Thomas, 107 N. Y. App. Div. 612, 94 N. Y. Supp. 916.

North Dakota. — Miller *v.* Shelburn, 15 N. Dak. 182, 107 N. W. 51.

Pennsylvania. — Meyers *v.* Catawissa Coal Co., (Pa. 1907) 67 Atl. 904.

Texas. — Lewis *v.* Williams, (Tex. Civ. App. 1906) 91 S. W. 247; Davis *v.* Fant, (Tex. Civ. App. 1906) 93 S. W. 193; Olschewske *v.* King, (Tex. Civ. App. 1906) 96 S. W. 665; Greer *v.* International Stock Yards Co., (Tex. Civ. App. 1906) 96 S. W. 79; Moore *v.* Price, (Tex. Civ. App. 1907) 103 S. W. 234; Pfeiffer *v.* Wilke, (Tex. Civ. App. 1908) 107 S. W. 361.

Washington. — Miller *v.* Philips, 44 Wash. 226, 87 Pac. 264; Hoffman *v.* Titlow, (Wash. 1907) 92 Pac. 888.

Taking of Property by Eminent Domain No Breach — No Recovery by Vendee of Payments. — Clarke *v.* Long Island Realty Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 697.

Money Deposited as a Forfeit may be recovered by the vendee upon failure of the vendor to furnish the title contracted for. Hall *v.* Huffhines, (Tex. Civ. App. 1907) 105 S. W. 522.

620. 1. Floeting *v.* Horowitz, 120 N. Y. App. Div. 492, 104 N. Y. Supp. 1037.

2. Lowenfeld *v.* Ditchett, 114 N. Y. App. Div. 56, 99 N. Y. Supp. 724; Samuelson *v.* Glickman, 113 N. Y. App. Div. 654, 99 N. Y. Supp. 886; Halpern *v.* Fisch, 116 N. Y. App. Div. 479, 101 N. Y. Supp. 1019; Wacht *v.* Hart, 120 N. Y. App. Div. 189, 105 N. Y. Supp. 78; Lese *v.* Metzinger, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 151, 105 N. Y. Supp. 888; Sheindelman *v.* Colyer, 122 N. Y. App. Div. 379, 106 N. Y. Supp. 762; Mandel *v.* Hess, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 240, 107 N. Y. Supp. 766; Foland *v.* Italian Sav. Bank, (Supm. Ct. App. Div.) 108 N. Y. Supp. 57.

4. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498.

5. See Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

7. Baecht *v.* Hevesy, 115 N. Y. App. Div. 509, 101 N. Y. Supp. 413; Weintraub *v.* Weil, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 325, 103 N. Y. Supp. 229; Rosenblum *v.* Eisenberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 350; Witte *v.* Koerner, (Supm. Ct. App. Div.) 108 N. Y. Supp. 560.

It Is Not Necessary for the Vendee to show that the vendor's title is absolutely bad; it is sufficient to show it is in fact unmarketable. Moulton *v.* Kolodzik, 97 Minn. 423, 107 N. W. 131.

Where the Plaintiff, in a Suit to Enforce a Vendee's Lien, objects that the defendant (vendor) has title by adverse possession, the burden of proving the title marketable rests upon the defendant. Van Horn *v.* Stuyvesant, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 432, 100 N. Y. Supp. 547.

621. 2. See Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498; Baldwin *v.* Brown, (Wash. 1908) 93 Pac. 413.

3. Vaughan *v.* Butterfield, (Ark. 1908) 107 S. W. 993; Dunnivan *v.* Hughes, (Ark. 1908) 111 S. W. 271; Goldstein *v.* Hensley, 4 Cal. App. 444, 88 Pac. 507; Curtis *v.* Sexton, 201 Mo. 217, 100 S. W. 17.

6. Fagan *v.* Hook, (Iowa 1905) 105 N. W. 155; Nelson *v.* Chingren, 132 Iowa 383, 106 N. W. 936; Fink *v.* Wallach, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 247, 95 N. Y. Supp. 872.

622. 3. Michigan Home Colony Co. *v.* Tabor, (C. C. A.) 141 Fed. 332; Patterson *v.* Freihofer, 215 Pa. St. 47, 64 Atl. 326.

"A Purchaser Who Has Perfected His Title under the statute of limitations cannot successfully defend against a suit for the purchase money, even though the title of his vendor is bad." Overby *v.* Johnston, (Tex. Civ. App. 1906) 94 S. W. 131.

623. 2. See Parkhurst *v.* Dickinson, 41 Wash. 420, 83 Pac. 895.

4. Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623.

10. Downey *v.* Seib, 185 N. Y. 424, 78 N. E. 66.

11. **"After the Contract Is Executed** and the conveyance accepted, the grantee must rely solely on the covenants in his deed." Wheeler *v.* State, 190 N. Y. 406, 83 N. E. 54.

624. 1. **Doctrine of Caveat Emptor Not Applicable in Cases of Actual Fraud.** — Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16.

625. 4. Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435.

7. Strickland *v.* Hutchinson, 123 Ga. 396, 51 S. E. 348; Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435; Cohen *v.* Numsen, 104 Md. 676, 65 Atl. 432; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Newman *v.* Kay, 57 W. Va. 98, 49 S. E. 926, *citing,* in concurrent opinion, 29 Am. and Eng. Encyc. of Law (2d ed.) 625.

627. 2. Newman *v.* Kay, 57 W. Va. 98, 49 S. E. 926, *quoting,* in concurring opinion, 29 Am. and Eng. Encyc. of Law (2d ed.) 627; Brassell *v.* Fisk, (Ala. 1907) 45 So. 70.

3. Brassell *v.* Fisk, (Ala. 1907) 45 So. 70; Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435; Newman *v.* Kay, 57 W. Va. 98, 49 S. E. 926, *quoting,* in concurring opinion, 29 Am. and Eng. Encyc. of Law (2d ed.) 627.

5. Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435.

6. Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435 (6.49 out of 100).

629. 5. Williams *v.* Neal, 147 Ala. 691, 40 So. 943; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 629.

630. 1. Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435.

2. Strickland *v.* Hutchinson, 123 Ga. 396, 51 S. E. 348.

631. 1. Strickland *v.* Hutchinson, 123 Ga. 396, 51 S. E. 348 (108 out of 333); Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435 (6.49 out of 100); Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962 (18 out of 45).

632. 4. Garvey *v.* La Shells, 151 Cal. 526,

91 Pac. 498; Baldwin *v.* Brown, (Wash. 1908) 93 Pac. 413.

635. 4. Newman *v.* Kay, 57 W. Va. 98, 49 S. E. 926, *quoting*, in concurring opinion, 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635.

5. Newman *v.* Kay, 57 W. Va. 98, 49 S. E. 926, *quoting*, in concurring opinion, 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635.

6. Newman *v.* Kay, 57 W. Va. 98, 49 S. E. 926, *quoting*, in concurring opinion, 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 635.

637. 8. Brassell *v.* Fisk, (Ala. 1907) 45 So. 70; Kendall *v.* Wells, 126 Ga. 343, 55 S. E. 41; Goette *v.* Sutton, 128 Ga. 179, 57 S. E. 308; Rathke *v.* Tyler, (Iowa 1907) 111 N. W. 435; Citizens' Bank *v.* Lenoir, 117 La. 720, 43 So. 385; Rich *v.* Scales, 116 Tenn. 57, 91 S. W. 50; Newman *v.* Kay, 57 W. Va. 98, 49 S. E. 926, *citing*, in concurring opinion, 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 637; Latta *v.* Schuler, (Tex. Civ. App. 1907) 100 S. W. 166.

If the Court Divests the Vendor of Title to a Portion of the property, even though it is a sale in gross, the vendee is entitled to compensation by way of rebate for the amount he is deprived of. Freeman *v.* Bow, (Ky. 1908) 109 S. W. 877.

Payment by Vendee with Knowledge of Shortage Bar to Abatement. — Fields *v.* Fields, 105 Va. 714, 54 S. E. 888.

638. 1. Holden *v.* Reed, (Tex. Civ. App. 1907) 101 S. W. 288.

Recovery for Excess of Price after Deed. — Lang *v.* Merbach, 96 Minn. 431, 105 N. W. 415.

3. Brooks *v.* Grief, (Ky. 1906) 90 S. W. 273; Kevil *v.* Wilford, (Ky. 1907) 104 S. W. 348; Rich *v.* Scales, 116 Tenn. 57, 91 S. W. 50; Emerson *v.* Stratton, 107 Va. 303, 58 S. E. 577.

639. 1. Berry *v.* Fishburne, 104 Va. 459, 51 S. E. 827.

6. Berry *v.* Fishburne, 104 Va. 459, 51 S. E. 827; Emerson *v.* Stratton, 107 Va. 303, 58 S. E. 577.

642. 4. Larkin *v.* Trammel, (Tex. Civ. App. 1907) 105 S. W. 552. See also Johnson *v.* Green, (Ky. 1906) 92 S. W. 939.

643. 1. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498; Mestler *v.* Jeffries, 145 Mich. 598, 108 N. W. 994; Farber *v.* Blubaker Coal Co., 216 Pa. St. 209, 65 Atl. 551.

4. Sutton *v.* Miller, 219 Ill. 462, 76 N. E. 838; Farber *v.* Blubaker Coal Co., 216 Pa. St. 209, 65 Atl. 551.

6. Parkhurst *v.* Dickinson, 41 Wash. 420, 83 Pac. 895; Woodman *v.* Blue Grass Land Co., 125 Wis. 489, 104 N. W. 920.

Rescission by Vendor Optional. — Mason *v.* Strickland, 73 Neb. 783, 103 N. W. 458.

644. 3. Smith *v.* Treat, (Ill. 1908) 85 N. E. 289; Pedley *v.* Freeman, 132 Iowa 356, 109 N. W. 890; Irish *v.* Martin, (Iowa 1907) 113 N. W. 470; O'Neil *v.* Printz, 115 Mo. App. 215, 91 S. W. 174; McLean *v.* Wedell, 31 Utah 468, 88 Pac. 414.

645. 2. Asher *v.* Helton, (Ky. 1907) 101 S. W. 350; May *v.* Getty, 140 N. Car. 310, 53 S. E. 75; Cutright *v.* Union Sav., etc., Co., (Utah 1908) 94 Pac. 984.

646. 8. Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965; Smith *v.* McMahon, (Mass. 1907) 83 N. E. 9; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789; Palmer *v.* Washington Securities Invest. Co., 43 Wash. 451, 86 Pac. 640.

647. 1. *United States.* — Mather *v.* Barnes, 146 Fed. 1000, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 647.

Arkansas. — Bray *v.* Carroll, 82 Ark. 603, 100 S. W. 744.

California. — California Farm, etc., Co. *v.* Schiappa-Pietra, 151 Cal. 732, 91 Pac. 593.

Indiana. — Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417.

Iowa. — Pedley *v.* Freeman, 132 Iowa 356, 109 N. W. 890; Frederick *v.* Davis, 133 Iowa 362, 110 N. W. 611.

Kentucky. — Johnson *v.* Green, (Ky. 1906) 92 S. W. 939.

Minnesota. — Reynolds *v.* Lynch, 98 Minn. 58, 107 N. W. 145.

Nebraska. — Gray *v.* Nolde, (Neb. 1906) 107 N. W. 224.

New Hampshire. — Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

New York. — Maass *v.* Rosenthal, (Supm. Ct. App. Div.) 109 N. Y. Supp. 917; Guilfoyle *v.* Pierce, (Supm. Ct. App. Div.) 109 N. Y. Supp. 924.

North Dakota. — Moline Plow Co. *v.* Bostwick, 15 N. Dak. 658, 109 N. W. 923.

Texas. — Cecil *v.* Henry, (Tex. Civ. App. 1906) 93 S. W. 216; Houts *v.* Scharbauer, (Tex. Civ. App. 1907) 103 S. W. 679.

Washington. — Parkhurst *v.* Dickinson, 41 Wash. 420, 83 Pac. 895.

648. 1. Pedley *v.* Freeman, 132 Iowa 356, 109 N. W. 890; Gray *v.* Nolde, (Neb. 1906) 107 N. W. 224; Cecil *v.* Henry, (Tex. Civ. App. 1906) 93 S. W. 216.

2. Creveling *v.* Banta, (Iowa 1908) 115 N. W. 598.

3. Abbott *v.* Dow, (Wis. 1907) 113 N. W. 960.

4. Pedley *v.* Freeman, 132 Iowa 356, 109 N. W. 890; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Olschewske *v.* King, (Tex. Civ. App. 1906) 96 S. W. 665; Abbott *v.* Dow, (Wis. 1907) 113 N. W. 960.

649. 1. Mather *v.* Barnes, 146 Fed. 1000, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 649.

7. Garney *v.* La Shells, 151 Cal. 526, 91 Pac. 498; Chase *v.* Wolgamot, (Iowa 1908) 114 N. W. 614; Gayle *v.* Troutman, (Ky. 1907) 103 S. W. 342; Nolde *v.* Gray, 73 Neb. 373, 104 N. W. 165; Northrup *v.* Mead, 121 N. Y. App. Div. 385, 106 N. Y. Supp. 150; Parkhurst *v.* Dickinson, 41 Wash. 420, 83 Pac. 895.

8. If a lease of the land has been made by the vendee with the vendor's knowledge and without objection it is sufficient to deliver the lease and rent. Fagan *v.* Hook, (Iowa 1905) 105 N. W. 155.

9. **If the Vendee Cannot Restore,** credit may be allowed for the value of the property retained. Kean *v.* Landrum, 72 S. Car. 556, 52 S. E. 421.

10. Reynolds *v.* Lynch, 98 Minn. 58, 107 N. W. 145; Phenix *v.* Bigelich, (Nev. 1908) 95 Pac. 351; Miller *v.* Shelburn, 15 N. Dak. 182, 107 N. W. 51.

650. 2. California Farm, etc., Co. *v.* Schiappa-Pietra, 151 Cal. 732, 91 Pac. 593.

8. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498; Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10; Wheeler *v.* Preston, (Ky. 1908) 107 S. W. 274.

651. 8. Mather *v.* Barnes, 146 Fed. 1000, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 651.

10. Mather *v.* Barnes, 146 Fed. 1000.

652. 1. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498; Pedley *v.* Freeman, 132 Iowa 356, 109 N. W. 890; Chase *v.* Walgamot, (Iowa 1908) 114 N. W. 614; Gayle *v.* Troutman, (Ky. 1907) 103 S. W. 342; Bartlett *v.* Smith, 146 Mich. 188, 109 N. W. 260; Moline Plow Co. *v.* Bostwick, 15 N. Dak. 658, 109 N. W. 923, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 652.

5. Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10; Wheeler *v.* Preston, (Ky. 1908) 107 S. W. 274.

653. 5. Webb *v.* Hancher, 127 Iowa 269, 102 N. W. 1127; Foster County Implement Co. *v.* Smith, (N. Dak. 1908) 115 N. W. 663.

7. California Farm, etc., Co. *v.* Schiappa-Pietra, 151 Cal. 732, 91 Pac. 593; Webb *v.* Hancher, 127 Iowa 269, 102 N. W. 1127.

654. 2. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16; Mather *v.* Barnes, 146 Fed. 1000; Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 654–657.

655. 1. Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417.

5. Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 654–657; Reilly *v.* Gottleb, 43 Wash. 9, 85 Pac. 675; Freeman *v.* Gloyd, 43 Wash. 607, 86 Pac. 1051.

6. Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Reilly *v.* Gottleb, 43 Wash. 9, 85 Pac. 675.

656. 1. Bosley *v.* Monahan, (Iowa 1907) 112 N. W. 1102; Oneal *v.* Weisman, (Tex. Civ. App. 1905) 88 S. W. 290.

3. Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909.

4. Reilly *v.* Gottleb, 43 Wash. 9, 85 Pac. 675; Mannel *v.* Shafer, (Wis. 1908) 115 N. W. 801.

657. 1. Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Kranz *v.* Lewis, 115 Mo. App. 106, 100 N. Y. Supp. 674; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 654–657.

2. Norris *v.* Hay, 149 Cal. 695, 87 Pac. 380; Olschewske *v.* King, (Tex. Civ. App. 1906) 96 S. W. 665; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 654–657.

658. 2. Flynn *v.* Finch, (Iowa 1908) 114 N. W. 1058; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

4. See Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417; Selby *v.* Matson, (Iowa 1908) 114 N. W. 609; Silverman *v.* Minsky, 109 N. Y. App. Div. 1, 95 N. Y. Supp. 661; Freeman *v.* Gloyd, 43 Wash. 607, 86 Pac. 1051; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

Dimensions Shown, but Misstated, of City Lot — No Rescission if Dimensions Less. — Kapka *v.* Grant, 73 N. J. L. 451, 63 Atl. 900.

Representations by a Diagram at a Public Sale as to a lot fronting on a sixty-foot street, in fact only twenty-four feet, were held sufficient to entitle the vendee to rescind without proof of actual damage. Greiling *v.* McLean, 128 Wis. 440, 107 N. W. 339.

6. Scott *v.* Burnight, 131 Iowa 507, 107 N. W. 422; Steen *v.* Weston, (Oregon 1908) 94 Pac. 834; Mannel *v.* Shafer, (Wis. 1908) 115 N. W. 801.

659. 1. See Bosley *v.* Monahan, (Iowa 1907) 112 N. W. 1102.

2. Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417; Chase *v.* Wolgamot, (Iowa 1908) 114 N. W. 614; Steen *v.* Weisten, (Oregon 1908) 94 Pac. 834; Lunscheon *v.* Wocknitz, (S. Dak. 1907) 111 N. W. 632; Mannel *v.* Shafer, (Wis. 1908) 115 N. W. 801. See also Davis *v.* Scher, 73 N. J. L. 155, 62 Atl. 193.

Amount of Standing Timber on Land. — Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909.

4. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16; Arkadelphia Lumber Co. *v.* Thornton, 83 Ark. 403, 104 S. W. 169; Spinks *v.* Clark, 147 Cal. 439, 82 Pac. 45; Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417; Mestler *v.* Jeffries, 145 Mich. 598, 108 N. W. 994; Stearns *v.* Kennedy, 94 Minn. 439, 103 N. W. 212; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962; Sulkin *v.* Gilbert, 218 Pa. St. 255, 67 Atl. 415; Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

660. 4. Mather *v.* Barnes, 146 Fed. 1000; Arkadelphia Lumber Co. *v.* Thornton, 83 Ark. 403, 104 S. W. 169; Scott *v.* Burnight, 131 Iowa 507, 107 N. W. 422; Flynn *v.* Finch, (Iowa 1908) 114 N. W. 1058; Vallentyne *v.* Immigration Land Co., 95 Minn. 195, 103 N. W. 1028.

661. 1. Mather *v.* Barnes, 146 Fed. 1000; Kapka *v.* Grant, 73 N. J. L. 451, 63 Atl. 900. See also Vallentyne *v.* Immigration Land Co., 95 Minn. 195, 103 N. W. 1028. But see Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

A Hasty Examination of a Small Part of lands does not conclude the vendee from rescission. Mannel *v.* Shafer, (Wis. 1908) 115 N. W. 801.

2. **The Vendee Is Chargeable with Notice of Record Facts** as to the terms of a mortgage and its clauses. Feltenstein *v.* Ernst, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 262, 97 N. Y. Supp. 376; Feist *v.* Block, 115 N. Y. App. Div. 211, 100 N. Y. Supp. 843; Schnitzer *v.* Bernstein, 119 N. Y. App. Div. 47, 103 N. Y. Supp. 860.

3. Rothstein *v.* Isaac, (Supm. Ct. App. Div.) 108 N. Y. Supp. 896.

5. Old Dominion Copper Min., etc., Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 652.

6. Houts *v.* Scharbauer, (Tex. Civ. App. 1907) 103 S. W. 679.

662. 2. Bosley *v.* Monahan, (Iowa 1907) 112 N. W. 1102.

4. Representations by a vendee to the vendor

that he had better sell before the opportunity went by, were held not fraudulent so as to entitle the vendor to rescission. Foster *v.* Illinois Zinc Co., 232 Ill. 349, 83 N. E. 859.

6. Bridgewater *v.* Byassee, (Ky. 1906) 93 S. W. 35; Hays *v.* Meyers, (Ky. 1908) 107 S. W. 287.

663. 2. **New York Rule.** — Schnitzer *v.* Bernstein, 119 N. Y. App. Div. 47, 103 N. Y. Supp. 860.

3. Kell *v.* Trenchard, (C. C. A.) 142 Fed. 16; Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417; Selby *v.* Matson, (Iowa 1908) 114 N. W. 609.

664. 1. Gardner *v.* Mann, 36 Ind. App. 694, 76 N. E. 417. See also Mather *v.* Barnes, 146 Fed. 1000.

Fraudulent Misrepresentation — No Actual Damage Need Be Shown. — Greiling *v.* McLean, 128 Wis. 440, 107 N. W. 339.

Fraud. — Selby *v.* Matson, (Iowa 1908) 114 N. W. 609.

2. Mather *v.* Barnes, 146 Fed. 1000; Chase *v.* Wolgamot, (Iowa 1908) 114 N. W. 614; Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10; Silverman *v.* Minsky, 109 N. Y. App. Div. 1, 95 N. Y. Supp. 661; Houts *v.* Scharbauer, (Tex. Civ. App. 1907) 103 S. W. 679.

3. Selby *v.* Matson, (Iowa 1908) 114 N. W. 609; Vallentyne *v.* Immigration Land Co., 95 Minn. 195, 103 N. W. 1028; Abbott *v.* Dow, (Wis. 1907) 113 N. W. 960.

665. 5. **Relief Will Not Be Granted** if the mistake is of one party only, due to his own neglect, in the absence of fraud or concealment by the other. Vallentyne *v.* Immigration Land Co., 95 Minn. 195, 103 N. W. 1028.

7. Selby *v.* Matson, (Iowa 1908) 114 N. W. 609; Silverman *v.* Minsky, 109 N. Y. App. Div. 1, 95 N. Y. Supp. 661; Lee *v.* Laprade, 106 Va. 594, 56 S. E. 719; Abbott *v.* Dow, (Wis. 1907) 113 N. W. 960.

8. Railey *v.* Roberts, (Ky. 1908) 109 S. W. 903.

666. 2. *California.* — Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498; California Farm, etc., Co. *v.* Schiappa-Pietra, 151 Cal. 732, 91 Pac. 593.

Connecticut. — Liberman *v.* Beckwith, 79 Conn. 317, 65 Atl. 153.

Iowa. — Webb *v.* Hancher, 127 Iowa 269, 102 N. W. 1127; Gray *v.* Central Minnesota Immigration Co., 127 Iowa 560, 103 N. W. 792; Nelson *v.* Chingren, 132 Iowa 383, 106 N. W. 936.

Kentucky. — Gayle *v.* Troutman, (Ky. 1907) 103 S. W. 342.

Minnesota. — Vallentyne *v.* Minnesota Land Co., 95 Minn. 195, 103 N. W. 1028; Moulton *v.* Kalodzik, 97 Minn. 423, 107 N. W. 154.

New York. — Fink *v.* Wallach, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 247, 95 N. Y. Supp. 872; Oppenheim *v.* McGovern, 115 N. Y. App. Div. 135, 100 N. Y. Supp. 712; Reynolds *v.* Wynne, 121 N. Y. App. Div. 272, 105 N. Y. Supp. 849; Piza *v.* Lubelsky, 121 N. Y. App. Div. 734, 106 N. Y. Supp. 481.

North Dakota. — Miller *v.* Shelburn, 15 N. Dak. 182, 107 N. W. 51.

Pennsylvania. — Meyers *v.* Catawissa Coal Co., (Pa. 1907) 67 Atl. 904.

The Vendee May Rescind, if a reasonable doubt exists as to the validity of the vendor's title. Norris *v.* Hay, 149 Cal. 695, 87 Pac. 380.

Upon the Breach of a Covenant by the vendor to furnish abstracts of title, the vendee may rescind and recover a payment made upon the making of the contract. Reynolds *v.* Lynch, 98 Minn. 58, 107 N. W. 145.

3. Webb *v.* Hancher, 127 Iowa 269, 102 N. W. 1127; Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397; Boulware *v.* Crohn, 122 Mo. App. 571, 99 S. W. 796.

667. 1. Kister *v.* Pollak, (Supm. Ct. App. Div.) 109 N. Y. Supp. 204.

2. White *v.* Bates, 234 Ill. 276, 84 N. E. 906; Nelson *v.* Chingren, 132 Iowa 383, 106 N. W. 936; Donovan *v.* Hanauer, (Utah 1907) 90 Pac. 709.

Encumbered Title Does Not Prevent Vendor from Making Contract. — Smith *v.* McMahon, (Mass. 1907) 83 N. E. 9.

668. 1. Weiss *v.* Schweitzer, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 297, 95 N. Y. Supp. 923; Samuelson *v.* Glickman, 113 N. Y. App. Div. 654, 99 N. Y. Supp. 886; Floeting *v.* Horowitz, 120 N. Y. App. Div. 492, 104 N. Y. Supp. 1037; Rich *v.* Scales, 116 Tenn. 57, 91 S. W. 50.

Encroachment of Several Inches Sufficient Reduction in Area. — Kaplan *v.* Bergmann, 122 N. Y. App. Div. 876, 107 N. Y. Supp. 423.

2. Ungrich *v.* Shaff, 119 N. Y. App. Div. 843, 105 N. Y. Supp. 1013.

A Few Inches Irregularity in a Large Plot of Lots, constituting an entire, indivisible purchase is not sufficient for rejection by the purchaser. Urbach *v.* Pye, 124 N. Y. App. Div. 587, 109 N. Y. Supp. 207, *reversing* (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 465, 105 N. Y. Supp. 143.

669. 3. Whelan *v.* Rosseter, 1 Cal. App. 701, 82 Pac. 1082; Levin *v.* Hill, 117 N. Y. App. Div. 472, 102 N. Y. Supp. 690; Wacht *v.* Hart, 120 N. Y. App. Div. 189, 105 N. Y. Supp. 78; Berger *v.* Crist, 121 N. Y. App. Div. 483, 106 N. Y. Supp. 107; Miller *v.* Philips, 44 Wash. 226, 87 Pac. 264. See also Elterman *v.* Hyman, 192 N. Y. 113, 84 N. E. 937, *reversing* 117 N. Y. App. Div. 519, 102 N. Y. Supp. 613; Berger *v.* Crist, 121 N. Y. App. Div. 483, 106 N. Y. Supp. 107; Mandel *v.* Hess, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 240, 107 N. Y. Supp. 766.

4. **Removable Incumbrances No Ground.** — Rosenberg *v.* Jacobson, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 693, 107 N. Y. Supp. 595.

8. See Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498.

670. 1. Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10.

Where the General Warranty Contains an Agreement to refund the purchase price, if the title should prove defective, the purchaser may, upon this condition arising, recover the amount paid for the conveyance. St. Francis Levee Dist. *v.* Myers, 79 Ark. 14, 94 S. W. 716.

671. 1. Lainhart *v.* Gabbard, (Ky. 1905) 89 S. W. 10; Shaw *v.* O'Neill, 45 Wash. 98, 88 Pac. 111.

2. Girault *v.* Feucht, (La. 1908) 46 So. 26.

4. Girault *v.* Feucht, (La. 1908) 46 So. 26.

673. 1. See Hurd *v.* Fleck, 34 Colo. 262, 82 Pac. 485.

2. Thurman *v.* Ellinor, 82 Ark. 603, 101 S. W. 1154; Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482.

4. Smith *v.* Woodson, (Ky. 1906) 92 S. W. 980; Bridgewater *v.* Byassee, (Ky. 1906) 93 S. W. 35.

674. 10. Gayle *v.* Troutman, (Ky. 1907) 103 S. W. 342.

675. 2. Tepper *v.* Niemeier, (Ky. 1907) 105 S. W. 896; Rich *v.* Scales, 116 Tenn. 57, 91 S. W. 50.

6. Sheindelman *v.* Colyer, 122 N. Y. App. Div. 379, 106 N. Y. Supp. 762.

7. Harvin *v.* Blackman, (La. 1908) 46 So. 525.

676. 1. Richardson *v.* Lowe, (C. C. A.) 149 Fed. 625; Old Colony Zinc, etc., Co. *v.* Carrick, (C. C. A.) 153 Fed. 173; Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965; Bennett *v.* Glaspell, 15 N. Dak. 239, 107 N. W. 45; Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623.

5. Richardson *v.* Lowe, (C. C. A.) 149 Fed. 625; Old Colony Zinc, etc., Co. *v.* Carrick, 153 Fed. 173; Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

677. 2. Moore *v.* Beiseker, (C. C. A.) 147 Fed. 367; Mestler *v.* Jeffries, 145 Mich. 598, 108 N. W. 994; Annis *v.* Burnham, 15 N. Dak. 577, 108 N. W. 549; Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623; Greiling *v.* McLean, 128 Wis. 440, 107 N. W. 339.

4. See Moore *v.* Price, (Tex. Civ. App. 1907) 103 S. W. 234.

Attempts at Sale a Waiver. — Boulware *v.* Crohn, 122 Mo. App. 571, 99 S. W. 796.

5. Bales *v.* Williamson, 128 Iowa 127, 103 N. W. 150.

7. Bennett *v.* Glaspell, 15 N. Dak. 239, 107 N. W. 45.

9. Stewart *v.* Ellis, (Ga. 1908) 61 S. E. 597; Ferguson *v.* Epperly, 127 Iowa 214, 103 N. W. 94.

The Vendor, by Waiver of Strict Performance as to the time set in the contract, thereby waives his right to rescind, since, by the decree of the court, his rights were otherwise amply protected. Hurd *v.* Fleck, 34 Colo. 262, 82 Pac. 485.

678. 1. *United States.* — Moore *v.* Beiseker, (C. C. A.) 147 Fed. 367; Richardson *v.* Lowe, (C. C. A.) 149 Fed. 625; Old Colony Zinc, etc., Co. *v.* Carrick, (C. C. A.) 153 Fed. 73.

Kansas. — Cue *v.* Johnson, 73 Kan. 558, 85 Pac. 598, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 677 [678].

Kentucky. — Kendrick *v.* Burchett, (Ky. 1905) 89 S. W. 239.

Michigan. — Mestler *v.* Jeffries, 145 Mich. 598, 108 N. W. 994.

New Hampshire. — Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

North Dakota. — Annis *v.* Burnham, 15 N. Dak. 577, 108 N. W. 549.

Texas. — Moore *v.* Brown, (Tex. Civ. App. 1907) 103 S. W. 242; Houts *v.* Scharbauer, (Tex. Civ. App. 1907) 103 S. W. 679.

679. 1. **Reasonable Diligence — Three Months.** — California Farm, etc., Co. *v.* Schiappa Pietra, 151 Cal. 732, 91 Pac. 503; Freeman *v.* Gloyd, 43 Wash. 607, 86 Pac. 1051.

Unreasonable Delay — Five Months. — Richardson *v.* Lowe, (C. C. A.) 149 Fed. 625.

Six Months. — Mestler *v.* Jeffries, 145 Mich. 598, 108 N. W. 994; Annis *v.* Burnham, 15 N. Dak. 577, 108 N. W. 549.

Over One Year. — Sipola *v.* Winship, (N. H. 1907) 66 Atl. 962.

Seventeen Months. — Old Colony Zinc, etc., Co. *v.* Carrick, (C. C. A.) 153 Fed. 173.

Five to Ten Years. — Moore *v.* Brown, (Tex. Civ. App. 1907) 103 S. W. 242.

More than Ten Years. — Kendrick *v.* Burchett, (Ky. 1905) 89 S. W. 239.

6. Whitcanack *v.* Wagoner, (Iowa 1908) 115 N. W. 475.

681. 1. Hougen *v.* Skjervheim, 13 N. Dak. 616, 102 N. W. 311; Wisner *v.* Field, 15 N. Dak. 43, 106 N. W. 38.

3. Cue *v.* Johnson, 73 Kan. 558, 85 Pac. 598, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 681; Cutright *v.* Union Sav., etc., Co., (Utah 1908) 94 Pac. 984, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 681; May *v.* Getty, 140 N. Car. 310, 53 S. E. 75.

4. By Abandonment of the Premises, where the contract did not provide for the vendee to keep possession, the vendee did not abandon the contract. Pfeiffer *v.* Wilke, (Tex. Civ. App. 1908) 107 S. W. 361.

7. Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017; Voight *v.* Fidelity Invest. Co., (Wash. 1908) 96 Pac. 162.

16. May *v.* Getty, 140 N. Car. 310, 53 S. E. 75; Ferris *v.* Jensen, (N. Dak. 1907) 114 N. W. 372; Cutright *v.* Union Sav., etc., Co., (Utah 1908) 94 Pac. 984, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 681.

682. 5. Staley *v.* Stone, (Tex. Civ. App. 1906) 92 S. W. 1017.

7. Letchworth *v.* Vaughan, 77 Ark. 305, 90 S. W. 1001; Cody *v.* Wiltse, 130 Iowa 139, 106 N. W. 510; Spolek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75.

"A court of equity will not declare a forfeiture, but will leave a party entitled thereto to his legal remedy if any." Higinbotham *v.* Frock, 48 Oregon 129, 83 Pac. 536.

8. Cue *v.* Johnson, 73 Kan. 558, 85 Pac. 598; Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397; Bennett *v.* Glaspell, 15 N. Dak. 239, 107 N. W. 45.

9. No Forfeiture Declared — Vendor May Sue for Purchase Price or Proceed to Foreclose. — Cody *v.* Wiltse, 130 Iowa 139, 106 N. W. 510.

10. Thompson *v.* Colby, 127 Iowa 234, 103 N. W. 117; Cue *v.* Johnson, 73 Kan. 558, 85 Pac. 598.

12. Higinbotham *v.* Frock, 48 Oregon 129, 83 Pac. 536.

683. 1. Higinbotham *v.* Frock, 48 Oregon 129, 83 Pac. 536, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 683; Bartlett *v.* Smith, 146 Mich. 188, 109 N. W. 260; Piza *v.* Lubelsky, 121 N. Y. App. Div. 734, 106 N. Y. Supp. 481.

5. North Dakota Statute. — Bennett *v.* Glaspell, 15 N. Dak. 239, 107 N. W. 45.

10. Miner *v.* Dickey, 140 Mich. 518, 103 N. W. 855.

In Case of Fraud, the remedy is not for-

forfeiture but rescission of the contract, or a defense against its enforcement. Bennett *v.* Glaspell, 15 N. Dak. 239, 107 N. W. 45.

684. 1. Thompson *v.* Colby, 127 Iowa 234, 103 N. W. 117; Miner *v.* Dickey, 140 Mich. 518, 103 N. W. 855; Murphy *v.* McIntyre, (Mich. 1908) 116 N. W. 197; Higinbotham *v.* Frock, 48 Oregon 129, 83 Pac. 536.

3. See Miner *v.* Dickey, 140 Mich. 518, 103 N. W. 855.

6. Smith *v.* Treat, (Ill. 1908) 85 N. E. 289; Barnett *v.* Sussman, 116 N. Y. App. Div. 859, 102 N. Y. Supp. 287; Higinbotham *v.* Frock, 48 Oregon 129, 83 Pac. 536; Spolek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75.

7. Palmer *v.* Washington Securities Invest. Co., 43 Wash. 451, 86 Pac. 640, *citing* 27 [2d] AM. AND ENG. ENCYC. OF LAW (2d ed.) 684; Cue *v.* Johnson, 73 Kan. 558, 85 Pac. 598; Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397; Gilbert *v.* Union Pac. R. Co., (Neb. 1907) 112 N. W. 359; Sleeper *v.* Bragdon, 45 Wash. 562, 88 Pac. 1036; Pierce *v.* Pettitt, (Wash. 1907) 91 Pac. 190; Voight *v.* Fidelity Invest. Co., (Wash. 1908) 96 Pac. 162. See also Finnes *v.* Selover, etc., Co., (Minn. 1907) 113 N. W. 883.

8. Cody *v.* Wiltse, 130 Iowa 139, 106 N. W. 510; Miner *v.* Dickey, 140 Mich. 518, 103 N. W. 855; Murphy *v.* McIntyre, (Mich. 1908) 116 N. W. 197; Higinbotham *v.* Frock, 48 Oregon 129, 83 Pac. 536. See also Thompson *v.* Colby, 127 Iowa 234, 103 N. W. 117.

Refusal of Vendee to Make Further Payments and Surrender of Property to Vendor Justify Forfeiture. — Cutright *v.* Union Sav., etc., Co., (Utah 1908) 94 Pac. 984.

12. Murphy *v.* McIntyre, (Mich. 1908) 116 N. W. 197.

13. **When There Is No Forfeiture Clause** in the contract, the vendor, on default of the vendee, is liable for the payments already made. Frederick *v.* Davis, 133 Iowa 362, 110 N. W. 711.

15. Pierce *v.* Pettitt, (Wash. 1907) 91 Pac. 190.

685. 4. Morris *v.* Green, 75 Ark. 410, 88 S. W. 565.

5. Thompson *v.* Colby, 127 Iowa 234, 103 N. W. 117; Cue *v.* Johnson, 73 Kan. 558, 85 Pac. 598.

6. Morris *v.* Green, 75 Ark. 410, 88 S. W. 565; Barnett *v.* Sussman, 116 N. Y. App. Div. 859, 102 N. Y. Supp. 287; Keaton *v.* Ferguson, (S. Dak. 1908) 107 N. W. 678.

11. Cue *v.* Johnson, 73 Kan. 558, 85 Pac. 598; Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482.

686. 2. See Thompson *v.* Colby, 127 Iowa 234, 103 N. W. 117.

7. Clark *v.* Jackson, 222 Ill. 13, 78 N. E. 6; Spooner *v.* Cross, 127 Iowa 259, 102 N. W. 1118; Martin *v.* Pickens, 141 Iowa 218, 119 N. W. 1126.

A Compliance with Statutory Requirements may be a condition precedent to a contract of sale, and unless this compliance is obtained, no action will lie for damages for a breach by the vendor. Wilson *v.* Root, (Conn. 1907) 67 Atl. 48[illegible].

687. 1. *United States.* — Michigan Home Colony Co. *v.* Tabor, (C. C. A.) 141 Fed. 332; Wood *v.* Deskins, (C. C. A.) 141 Fed. 500.

California. — Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498; Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754.

Florida. — McKinnon *v.* Johnson, (Fla. 1907) 43 So. 451.

Idaho. — Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965.

Indiana. — Ditchey *v.* Lee, 167, Ind. 267, 78 N. E. 972.

Iowa. — Webb *v.* Hancher, 127 Iowa 269, 102 N. W. 1127; Claude *v.* Richardson, 127 Iowa 623, 103 N. W. 991.

Massachusetts. — Smith *v.* McMahon, (Mass. 1907) 83 N. E. 9; Jennings *v.* Howard, (Mass. 1908) 85 N. E. 465.

Missouri. — Davis *v.* Barada-Ghio Real Estate Co., 115 Mo. App. 327, 92 S. W. 113.

Nebraska. — Johnson *v.* Higgins, (Neb. 1906) 108 N. W. 168.

New Jersey. — Nissel *v.* Swinley, (N. J. 1908) 69 Atl. 960.

New York. — Hunt *v.* Lake, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 570, 97 N. Y. Supp. 298.

North Dakota. — Annis *v.* Burnham, 15 N. Dak. 577, 108 N. W. 549.

Oregon. — Coles *v.* Meskimen, 48 Oregon 54, 85 Pac. 67.

Pennsylvania. — Lefferts *v.* Dolton, 217 Pa. St. 299, 66 Atl. 527.

South Dakota. — Spalek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75.

Utah. — Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

West Virginia. — Hoard *v.* Huntington, etc., R. Co., 59 W. Va. 91, 53 S. E. 278.

Where the contract provides for possession to be given to the purchaser, a tender of a deed without delivery of possession is insufficient to support an action for a breach of the contract. Pierce *v.* Edwards, 150 Cal. 650, 89 Pac. 600.

688. 2. Boulware *v.* Crohn, 122 Mo. App. 571, 99 S. W. 796; Hunt *v.* Lake, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 570, 97 N. Y. Supp. 298.

689. 1. Michigan Home Colony Co. *v.* Tabor, (C. C. A.) 141 Fed. 332.

2. Hoard *v.* Huntington, etc., R. Co., 59 W. Va. 91, 53 S. E. 278, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689; Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754.

No Time Fixed for Delivery of Deed. — Before the accrual of any action upon a note forming one of the instalments, a deed must be tendered. Menzel *v.* Primm, (Cal. App. 1907) 91 Pac. 754.

3. Hoard *v.* Huntington, etc., R. Co., 59 W. Va. 91, 53 S. E. 278, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689; Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965; Staples *v.* Mullen, (Mass. 1907) 81 N. E. 877; Hunt *v.* Lake, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 570, 97 N. Y. Supp. 298.

5. Hoard *v.* Huntington, etc., R. Co., 59 W. Va. 91, 53 S. E. 278, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 689.

7. Collins *v.* Schmidt, 126 Wis. 227, 105 N. W. 671.

690. 1. **Covenant Held Independent — Agreement by Vendee to Pay for Policy of Title Insurance.** — Alexander *v.* Vidootzky, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 471, 97 N. Y. Supp. 992.

691. 4. Davis *v.* Barada-Ghio Real Estate Co., 115 Mo. App. 327, 92 S. W. 113.

7. *United States.* — Sharp *v.* West, 150 F. 458.

Iowa. — Kuhlman *v.* Weiben, 129 Iowa 188, 105 N. W. 445.

Massachusetts. — Staples *v.* Mullen, (Mass. 1907) 81 N. E. 877.

Michigan. — See Miller *v.* Smith, 140 Mich. 524, 103 N. W. 872.

Minnesota. — Matteson *v.* U. S., etc., Land Co., (Minn. 1908) 115 N. W. 195.

Nebraska. — Johnson *v.* Higgins, (Neb. 1906) 108 N. W. 168.

New York. — Horwitz *v.* Frankel, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 651, 104 N. Y. Supp. 743.

North Dakota. — Foster County Implement Co. *v.* Smith, (N. Dak. 1908) 115 N. W. 663.

Oregon. — Merrill *v.* Hexter, (Oregon 1908) 94 Pac. 972.

Pennsylvania. — Douglas *v.* Hustead, 216 Pa. St. 292, 65 Atl. 670.

Washington. — Degginger *v.* Martin, (Wash. 1907) 92 Pac. 674.

10. Matteson *v.* U. S., etc., Land Co., (Minn. 1908) 115 N. W. 195; Beiseker *v.* Amberson, (N. Dak. 1908) 116 N. W. 94.

Refusal Must Be Final. — Manhasset Point Co. *v.* Wright, (Supm. Ct. App. Div.) 109 N. Y. Supp. 959.

692. 2. *California.* — Walters *v.* Mitchell, (Cal. App. 1907) 92 Pac. 315.

Georgia. — McLeod *v.* Hendry, 126 Ga. 167, 54 S. E. 949.

Illinois. — Smith *v.* Treat, (Ill. 1908) 85 N. E. 289.

Iowa. — Primm *v.* Wise, 126 Iowa 528, 102 N. W. 427; Martin *v.* Roberts, 127 Iowa 218, 102 N. W. 1126; Webb *v.* Hancher, 127 Iowa 269, 102 N. W. 1127.

Louisiana. — Smith *v.* Hussey, 119 La. 32, 43 So. 902.

New Jersey. — Wolff *v.* Meyer, (N. J. 1907) 66 Atl. 959.

New York. — Oppenheimer *v.* Knepper Realty Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 186, 98 N. Y. Supp. 204; Lese *v.* Lawson, 118 N. Y. App. Div. 254, 103 N. Y. Supp. 303; Dwork *v.* Weinberg, 120 N. Y. App. Div. 507, 105 N. Y. Supp. 504.

Washington. — Munson *v.* McGregor, (Wash. 1908) 94 Pac. 1085.

5. Wells *v.* Page, 48 Oregon 74, 82 Pac. 856; Farber *v.* Blubaker Coal Co., 216 Pa. St. 209, 65 Atl. 551.

No Tender Necessary if Obligations of Contract Not Dual. — Bowling *v.* Bowling, 88 Miss. 144, 40 So. 871.

9. Kaufmann *v.* Brennan, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 621, 103 N. Y. Supp. 912.

10. Primm *v.* Wise, 126 Iowa 528, 102 N. W. 427; Webb *v.* Hancher, 127 Iowa 269, 102 N. W. 1127; Saldutti *v.* Flynn, (N. J. 1906) 65 Atl. 246; Kaufmann *v.* Brennan, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 621, 103 N. Y. Supp. 912.

693. 6. Nissel *v.* Swinley, (N. J. 1908) 69 Atl. 960; Spalek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75.

Waiver by Extension of Time for Performance. — Metz *v.* Wright, 116 Mo. App. 631, 92 S. W. 1125.

694. 1. Kaufmann *v.* Brennan, (Supm. Ct. App. Div.) 108 N. Y. Supp. 503.

4. Kaufmann *v.* Brennan, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 621, 103 N. Y. Supp. 912, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 694; Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965.

In an Option, Time Is of the Essence; in contract of sale, it is not of the essence. Davis *v.* Martin, (N. Car. 1907) 59 S. E. 700.

5. Primm *v.* Wise, 126 Iowa 528, 102 N. W. 427; Howe *v.* Coates, 97 Minn. 385, 107 N. W. 397; Gilbert *v.* Union Pac. R. Co., (Neb. 1907) 112 N. W. 359.

8. Kessler *v.* Pruitt, (Idaho 1908) 93 Pac. 965; Spalek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75; Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

Statutory Notice May Be Given. — Libby *v.* Parry, 98 Minn. 366, 108 N. W. 299.

Such Notice Must Fix Definite Time. — Foland *v.* Italian Sav. Bank, (Supm. Ct. App. Div.) 108 N. Y. Supp. 57.

9. Roberts *v.* Braffett, (Utah 1907) 92 Pac. 789.

11. Nissel *v.* Swinley, (N. J. 1908) 69 Atl. 960; Spalek *v.* Hatch, (S. Dak. 1907) 113 N. W. 75.

695. 1. Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; Whitworth *v.* Pool, (Ky. 1906) 96 S. W. 880; Veum *v.* Sheeran, 95 Minn. 315, 104 N. W. 135; White *v.* Poole, 73 N. H. 403, 62 Atl. 494; Foster County Implement Co. *v.* Smith, (N. Dak. 1908) 115 N. W. 663; Clark *v.* Wilson, (Tex. Civ. App. 1906) 91 S. W. 627.

3. Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482.

696. 1. See Lefferts *v.* Dolton, 217 Pa. St. 299, 66 Atl. 527.

3. Wadick *v.* Mace, 118 N. Y. App. Div. 777, 103 N. Y. Supp. 889; Lefferts *v.* Dolton, 217 Pa. St. 299, 66 Atl. 527.

698. 8. Kaufmann *v.* Brennan, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 621, 103 N. Y. Supp. 912; Northrup *v.* Mead, 121 N. Y. App. Div. 385, 106 N. Y. Supp. 150; Kister *v.* Pollak, (Supm. Ct. App. Div.) 109 N. Y. Supp. 204; Lefferts *v.* Dolton, 217 Pa. St. 299, 66 Atl. 527.

699. 14. Northrup *v.* Mead, 121 N. Y. App. Div. 385, 106 N. Y. Supp. 150; Wilkins *v.* Somerville, 80 Vt. 48, 66 Atl. 893.

700. 5. Hampe *v.* Higgins, 74 Kan. 296, 85 Pac. 1010.

9. McCormick *v.* Merritt, 131 Iowa 160, 105 N. W. 428.

701. 1. Curtley *v.* Security Sav. Soc., 46 Wash. 50, 89 Pac. 180.

702. 3. **A Deed, Not Properly Acknowledged,** but conveying the legal title, cannot be refused by the vendee. Ryder *v.* Johnston, (Ala. 1907) 45 So. 181.

5. **Deed Sufficient in Law to Pass Title** [illegible] Emerick *v.* Hackett, 192 N. Y. 162, 84 N. E. 805.

6. Whitworth *v.* Pool, (Ky. 1906) 96 S. W. 880.

11. **A Deed Conveying a Good and Perfect Title** is sufficient under a contract providing that a perfect title shall be furnished and a

perfect abstract of title is not necessary. Smith *v.* Flatonia First Nat. Bank, (Tex. Civ. App. 1906) 95 S. W. 1111.

703. 1. White *v.* Bates, 234 Ill. 276, 84 N. E. 906; Miller *v.* Philips, 44 Wash. 226, 87 Pac. 264.

8. Miller *v.* Shelburn, 15 N. Dak. 182, 107 N. W. 51.

10. *United States.* — Everett *v.* Mansfield, (C. C. A.) 148 Fed. 374, 8 Ann. Cas. 956.

Arkansas. — Stubbs *v.* Pitts, 84 Ark. 160, 104 S. W. 1110.

California. — Finkbohmer *v.* Glens Falls Ins. Co., (Cal. App. 1907) 92 Pac. 318.

Florida. — Aycock Bros. Lumber Co. *v.* Dothan First Nat. Bank, (Fla. 1907) 45 So. 501.

Illinois. — National F. Ins. Co. *v.* Three States Lumber Co., 217 Ill. 115, 75 N. E. 450.

Iowa. — Sheedy *v.* Scott, 128 Iowa 551, 104 N. W. 1139.

Michigan. — Patreski *v.* Minzgohr, 144 Mich. 356, 108 N. W. 77.

Missouri. — Majors *v.* Maxwell, 120 Mo. App. 281, 96 S. W. 731; Manning *v.* North British, etc., Ins. Co., 123 Mo. App. 456, 99 S. W. 1095.

New Jersey. — Saldutti *v.* Flynn, (N. J. 1906) 65 Atl. 246.

New York. — Clarke *v.* Long Island Realty Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 697.

North Carolina. — Sutton *v.* Davis, 143 N. Car. 474, 55 S. E. 844.

North Dakota. — Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 703; Miller *v.* Shelburn, 15 N. Dak. 182, 107 N. W. 51; Salzer Lumber Co. *v.* Claflin, (N. Dak. 1907) 113 N. W. 1036.

Oregon. — Coles *v.* Meskimen, 48 Oregon 54, 85 Pac. 67.

Wisconsin. — Krakow *v.* Wille, 125 Wis. 284, 103 N. W. 1121; Foster *v.* Lowe, 131 Wis. 54, 110 N. W. 829.

704. 1. C. H. Phinney Land Co. *v.* Coolidge-Schussler Co., 97 Minn. 204, 105 N. W. 553; Teller *v.* Schulz, (Supm. Ct. App. Div.) 108 N. Y. Supp. 325.

705. 5. Krakow *v.* Wille, 125 Wis. 284, 103 N. W. 1121, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 705.

706. 3. **Ground for Refusal to Entertain Action for Purchase Price by Vendor.** — Pierce *v.* Edwards, 150 Cal. 650, 89 Pac. 600.

4. Butterfield *v.* Nogales Copper Co., (Ariz. 1908) 95 Pac. 182; Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 706; Patreski *v.* Minzgohr, 144 Mich. 356, 108 N. W. 77; Finch *v.* Noble, (Wash. 1908) 96 Pac. 3.

Doctrine Not Applicable Where Defendant Has No Title. — Phenix *v.* Bijelich, (Nev. 1908) 95 Pac. 351.

707. 6. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 498, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 707; Patreski *v.* Minzgohr, 144 Mich. 356, 108 N. W. 77.

Doctrine Limited to Title to Land within Contract. — Butterfield *v.* Nogales Copper Co., (Ariz. 1908) 95 Pac. 182.

9. **A Vendee May Recover the Rents and Profits** after completion of the purchase, though without a deed, from one wrongfully in possession. Brown *v.* Grady, (Wyo. 1907) 92 Pac. 622.

708. 1. Scott *v.* Sloan, 72 Kan. 545, 84 Pac. 117, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 708.

709. 1. Ferguson *v.* Epperly, 127 Iowa 214, 103 N. W. 94; Scott *v.* Sloan, 72 Kan. 545, 84 Pac. 117.

2. Ewell *v.* Jackson, (Ky. 1905) 88 S. W. 1047.

5. Hatcher *v.* Fitzpatrick, (Ky. 1907) 101 S. W. 933; *In re* Hershey, 213 Pa. St. 601, 63 Atl. 296; Hoard *v.* Huntington, etc., R. Co., 59 W. Va. 91, 53 S. E. 278, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 709.

Vendee Not Chargeable with Interest, if Delay Caused by Vendor. — Wood *v.* Deskins, (C. C. A.) 141 Fed. 500.

710. 4. Hoard *v.* Huntington, etc., R. Co., 59 W. Va. 91, 53 S. E. 278.

9. Wood *v.* Deskins, (C. C. A.) 141 Fed. 500.

713. 2. Manning *v.* North British, etc., Ins. Co., 123 Mo. App. 456, 99 S. W. 1095; Sutton *v.* Davis, 143 N. Car. 474, 55 S. E. 844; Woodward *v.* McCollum, (N. Dak. 1907) 111 N. W. 623, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 713.

An Award for the Condemnation of the Property during the pendency of the contract belongs to the vendee, but furnishes no ground for a breach. Clarke *v.* Long Island Realty Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 697.

3. Hawkes *v.* Kehoe, 193 Mass. 419, 79 N. E. 766, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 712 [713].

6. Eppstein *v.* Kuhn, 225 Ill. 115, 80 N. E. 80, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 713.

714. 6. Kincheoloe *v.* Smith, (Ky. 1906) 91 S. W. 1145.

715. 7. Krakow *v.* Wille, 125 Wis. 284, 103 N. W. 1121.

10. **Taxes Levied, but Not a Lien,** upon property before sale are to be paid by the vendor. Bailies' Appeal, 127 Iowa 124, 102 N. W. 813.

716. 1. Mallory *v.* Gray, (Iowa 1905) 103 N. W. 1015; Hudson Coal Co. *v.* Ogden, 212 Pa. St. 407, 61 Atl. 902.

2. Wood *v.* Deskins, (C. C. A.) 141 Fed. 500; Snies *v.* Butts, 59 W. Va. 385, 53 S. E. 897.

717. 3. Kissick *v.* Rees, 111 N. Y. App. Div. 292, 97 N. Y. Supp. 692.

11. Houts *v.* Scharbauer, (Tex. Civ. App. 1907) 103 S. W. 679.

718. 1. Ocean City Assoc. *v.* Cresswell, (N. J. 1906) 65 Atl. 454.

719. 3. Cowdery *v.* Greenlee, 126 Ga. 786, 55 S. E. 918; Prichard *v.* Mulhall, 127 Iowa 545, 103 N. W. 775; Smith *v.* Lander, (Tex. Civ. App. 1905) 89 S. W. 10.

Damages May Be Limited by Express Agreement. — Donovan *v.* Hanauer, (Utah 1907) 90 Pac. 560.

720. 10. Prichard *v.* Mulhall, 127 Iowa 545, 103 N. W. 774.

721. 2. **The Vendor's Right to Demand Payment** of the entire purchase price is not

waived by giving a deed before it is paid in full. Bach *v.* Kidansky, 106 N. Y. App. Div. 502, 94 N. Y. Supp. 752.

723. 11. Miller *v.* Smith, 140 Mich. 524, 103 N. W. 872; Vallentyne *v.* Immigration Land Co., 95 Minn. 195, 103 N. W. 1028; Finnes *v.* Selover, etc., Co., (Minn. 1907) 113 N. W. 883.

724. 4. Wolff *v.* Meyer, (N. J. 1907) 66 Atl. 959.

10. Eggert *v.* Pratt, 126 Iowa 727, 102 N. W. 786, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 724; Horner *v.* Beasley, 105 Md. 193, 65 Atl. 820; Vallentyne *v.* Immigration Land Co., 95 Minn. 195, 103 N. W. 1028; Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371; Blate *v.* Clarry, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 668, 99 N. Y. Supp. 463; Marsh *v.* Johnston, (Supm. Ct. App. Div.) 109 N. Y. Supp. 1106.

The South Dakota Statute (section 2298, Rev. Civ. Code) follows this rule. Dal *v.* Fischer, (S. Dak. 1906) 107 N. W. 534.

725. 1. Whitworth *v.* Pool, (Ky. 1906) 96 S. W. 880; Horner *v.* Beasley, 105 Md. 193, 65 Atl. 820; Vallentyne *v.* Immigration Land Co., 95 Minn. 195, 103 N. W. 1028; Empire Realty Corp. *v.* Sayre, 107 N. Y. App. Div. 415, 95 N. Y. Supp. 371; Marsh *v.* Johnston, (Supm. Ct. App. Div.) 109 N. Y. Supp. 1106; Krebs *v.* Popp, (Tex. Civ. App. 1906) 94 S. W. 115; Williams *v.* Hillman Invest. Co., (Wash. 1908) 94 Pac. 653; Munson *v.* McGregor, (Wash. 1908) 94 Pac. 1085.

The South Dakota Statute (section 2298, Rev. Civ. Code) follows this rule. Dal *v.* Fischer, (S. Dak. 1906) 107 N. W. 534.

2. Mobley *v.* Lott, 127 Ga. 572, 56 S. E. 637; Nolde *v.* Gray, 73 Neb. 373, 102 N. W. 759; Beck *v.* Staats, (Neb. 1908) 114 N. W. 633; Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 724 [725]; Maxon *v.* Gates, (Wis. 1908) 116 N. W. 758.

Liquidated Damages, if stipulated for in the contract, may be allowed to the purchaser, and he is not bound to offer proof as to actual damage. Ahlers *v.* Harrison, 131 Iowa 289, 108 N. W. 331.

Upon the Breach of a Contract by the Vendor, where the vendee had, according to its terms, erected a building, the measure of damages is "the value of the property at the time of the breach, less the liens which had been allowed by plaintiff [the vendee] to accrue thereon, and not the costs of the labor and materials which entered into the building." Jennings *v.* Oregon Land Co., 48 Oregon 287, 86 Pac. 367.

726. 4. Claude *v.* Richardson, 127 Iowa 623, 103 N. W. 991; Cave *v.* Osborne, 193 Mass. 482, 79 N. E. 794; Nolde *v.* Gray, 73 Neb. 373, 102 N. W. 759; Kaufmann *v.* Brennan, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 621, 103 N. Y. Supp. 912; Northrup *v.* Mead, 121 N. Y. App. Div. 385, 106 N. Y. Supp. 150.

5. Garvey *v.* La Shells, 151 Cal. 526, 91 Pac. 408; Northrup *v.* Mead, 121 N. Y. App. Div. 385, 106 N. Y. Supp. 150.

727. 1. Nelson *v.* Chingren, 132 Iowa 383, 106 N. W. 936; Oppenheimer *v.* Knepper Realty Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 186, 98 N. Y. Supp. 204; Lese *v.* Lawson, 118 N. Y. App. Div. 254, 103 N. Y. Supp. 303.

3. Beardmore *v.* Barry, 118 N. Y. App. Div. 334, 103 N. Y. Supp. 353.

4. Whelan *v.* Rosseter, 1 Cal. App. 701, 82 Pac. 1082; Faga *v.* Hoak, (Iowa 1905) 105 N. W. 155; Fink *v.* Wallach, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 247, 95 N. Y. Supp. 872.

5. Bartlett *v.* Smith, 146 Mich. 188, 109 N. W. 260; Lewis *v.* Williams, (Tex. Civ. App. 1906) 91 S. W. 247.

728. 1. Old Dominion Copper Min., etc. Co. *v.* Bigelow, 188 Mass. 315, 74 N. E. 653; Mestler *v.* Jeffries, 145 Mich. 598, 108 N. W. 994; Bonness *v.* Felsing, 97 Minn. 227, 106 N. W. 909; Davis *v.* William-Rosenzweig Realty Operating Co., 192 N. Y. 128, 84 N. E. 943.

3. Smith *v.* Treat, (Ill. 1908) 85 N. E. 289; Pedley *v.* Freeman, 132 Iowa 356, 109 N. W. 890.

729. 4. Silverman *v.* Minsky, 109 N. Y. App. Div. 1, 95 N. Y. Supp. 661.

5. Walcott *v.* Frick, (Ind. App. 1907) 81 N. E. 731.

6. *Iowa.* — Claude *v.* Richardson, 127 Iowa 623, 103 N. W. 991; Cody *v.* Wiltse, 130 Iowa 139, 106 N. W. 510.

Massachusetts. — Smith *v.* McMahon, (Mass 1907) 83 N. E. 9.

Michigan. — Mestler *v.* Jeffries, 145 Mich. 598, 108 N. W. 994.

New York. — Feltenstein *v.* Ernst, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 262, 97 N. Y. Supp. 376; Forbes *v.* Reynard, 113 N. Y. App. Div. 306, 98 N. Y. Supp. 710, *affirming* (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 154, 98 N. Y. Supp. 708; Roth *v.* Goodman, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 509, 102 N. Y. Supp. 683; Dwork *v.* Weinberg, 120 N. Y. App. Div. 507, 105 N. Y. Supp. 504; Rosenberg *v.* Feilring, 121 N. Y. App. Div. 190, 105 N. Y. Supp. 812; Wormser *v.* Gehri, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 147, 106 N. Y. Supp. 295; Woodenbury *v.* Spier, 122 N. Y. App. Div. 396, 106 N. Y. Supp. 817; Teller *v.* Schulz, (Supm. Ct. App. Div.) 108 N. Y. Supp. 325.

North Dakota. — Annis *v.* Burnham, 15 N. Dak. 577, 108 N. W. 549.

Utah. — McLean *v.* Wedell, 31 Utah 468, 88 Pac. 414.

Washington. — Jennings *v.* Horton, 43 Wash. 301, 86 Pac. 576; Palmer *v.* Washington Securities Invest. Co., 43 Wash. 451, 86 Pac. 640.

A Purchaser Cannot Maintain an Action for a Deposit on the Contract until the time for performance has passed. Joseph *v.* Isaac, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 409, 95 N. Y. Supp. 532.

730. 6. **A Suit to Enforce a Vendee's Lien** is not in rescission but in affirmance of the contract. Elterman *v.* Hyman, 192 N. Y. 113, 84 N. E. 937.

If the Contract Is Rescinded at the Vendee's Instance he can have no lien for purchase money paid, for, by rescission, the con-

tract is disaffirmed, and all rights fall with it. Davis *v.* William Rosenzweig Realty Operating Co., 192 N. Y. 128, 84 N. E. 943.

The Right of a Vendor to a Lien is not foreclosed by a stipulation in the contract for repayment of the money deposited thereon. Weiss *v.* Schweitzer, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 297, 95 N. Y. Supp. 923.

Where a Vendee Wrongfully Rejects a Title as unmarketable, he cannot enforce his lien. Van Horn *v.* Stuyvesant, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 432, 100 N. Y. Supp. 547.

The Lien Cannot Be Extended to include expenses of the examination of the title. Occidental Realty Co. *v.* Palmer, 117 N. Y. App. Div. 505, 102 N. Y. Supp. 648.

The Vendee's Lien Extends to the Amount Paid of the purchase money only, not to counsel fees or expenses incurred in examining the title. Ungrich *v.* Shaff, 119 N. Y. App. Div. 843, 105 N. Y. Supp. 1013.

Vendee Has Lien for Deposits on Contract and Interest. — Everett *v.* Mansfield, (C. C. A.) 148 Fed. 374, 8 Ann. Cas. 956.

7. Everett *v.* Mansfield, (C. C. A.) 148 Fed. 374, 8 Ann. Cas. 956; Gayle *v.* Troutman, (Ky. 1907) 103 S. W. 342; Elterman *v.* Hyman, 192 N. Y. 113, 84 N. E. 937, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 730; Weiss *v.* Schweitzer, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 297, 95 N. Y. Supp. 923; Selkir *v.* Klein, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 194, 100 N. Y. Supp. 449; Occidental Realty Co. *v.* Palmer, 117 N. Y. App. Div. 505, 102 N. Y. Supp. 648; Weintraub *v.* Siegel, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 246, 109 N. Y. Supp. 215.

731. 3. **The Lien Cannot Be Defeated,** because the plaintiff has an adequate remedy at law. Occidental Realty Co. *v.* Palmer, 117 N. Y. App. Div. 505, 102 N. Y. Supp. 648.

VENDOR'S LIEN.

733. 1. McKinnon *v.* Johnson, (Fla. 1907) 45 So. 451, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 733; Rewis *v.* Williamson, 51 Fla. 529, 41 So. 449.

734. 5. **The Lien May Be Enforced by Selling** only enough of the land it covers to satisfy the amount of the judgment. Wheatly *v.* Hardin Nat. Bank, (Ky. 1908) 106 S. W. 289.

6. Rewis *v.* Williamson, 51 Fla. 529, 41 So. 449; Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591.

735. 10. Hodgson *v.* Smith, (Iowa 1907) 114 N. W. 39.

11. Bach *v.* Kidansky, 186 N. Y. 368, 78 N. E. 1088.

737. 1. Ross *v.* Clark, 225 Ill. 326, 80 N. E. 275, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 737.

2. **Jurisdictions Recognizing Implied Lien** — *United States.* — Kinnear Mfg. Co. *v.* Carlisle, (C. C. A.) 152 Fed. 929.

Arkansas. — Tillar *v.* Clayton, 76 Ark. 405, 88 S. W. 972; Stubbs *v.* Pitts, 84 Ark. 160, 104 S. W. 1110.

Florida. — Rewis *v.* Williamson, 51 Fla. 529, 41 So. 449; McKinnon *v.* Johnson, (Fla. 1907) 45 So. 451; Aycock Bros. Lumber Co. *v.* Dothan First Nat. Bank, (Fla. 1907) 45 So. 501.

Iowa. — Hodgson *v.* Smith, (Iowa 1907) 114 N. W. 39.

Kentucky. — Leak *v.* William, (Ky. 1907) 99 S. W. 630; Wheatly *v.* Hardin Nat. Bank, (Ky. 1908) 106 S. W. 289.

Michigan. — Wood *v.* Schoolcraft, 145 Mich. 653, 108 N. W. 1075; Shaw *v.* Tabor, 146 Mich. 544, 109 N. W. 1046.

Mississippi. — Burroughs *v.* Gilliland, (Miss. 1907) 43 So. 301; Matthews *v.* Delta Southern R. Co., (Miss. 1907) 43 So. 475.

Missouri. — Majors *v.* Maxwell, 120 Mo. App. 281, 96 S. W. 731.

New Jersey. — Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

New York. — Bach *v.* Kidansky, 186 N. Y. 368, 78 N. E. 1088; Bach *v.* Kidansky, 106 N. Y. App. Div. 502, 94 N. Y. Supp. 752; Bryan *v.* Carroll, 122 N. Y. App. Div. 301, 106 N. Y. Supp. 668; Bennett *v.* Murphy, 123 N. Y. App. Div. 102, 108 N. Y. Supp. 231; Clarke *v.* Long Island Realty Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 697.

Oklahoma. — Rhodes *v.* Arthur, (Okla. 1907) 92 Pac. 244.

Texas. — Cecil *v.* Henry, (Tex. Civ. App. 1906) 93 S. W. 216.

No Implied Lien in Some States. — Spears *v.* Taylor, (Ala. 1907) 42 So. 1016.

741. 1. Wood *v.* Schoolcraft, 145 Mich. 653, 108 N. W. 1075; Bach *v.* Kidansky, 106 N. Y. App. Div. 502, 94 N. Y. Supp. 752; Rhodes *v.* Arthur, (Okla. 1907) 92 Pac. 244.

No Express Reservation. — Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591; Bennett *v.* Murphy, 123 N. Y. App. Div. 102, 108 N. Y. Supp. 231.

Relation of Vendor and Purchaser Must Exist. — Jones *v.* Laird, (Ala. 1904) 42 So. 26.

742. 3. Cecil *v.* Henry, (Tex. Civ. App. 1906) 93 S. W. 216.

743. 5. Shaw *v.* Tabor, 146 Mich. 544, 109 N. W. 1046.

7. Newburn *v.* Hyde, 132 Iowa 88, 107 N. W. 604.

744. 2. Paris Grocer Co. *v.* Burks, (Tex. 1907) 105 S. W. 174, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744-746; Shaw *v.* Tabor, 146 Mich. 544, 109 N. W. 1046; Burroughs *v.* Gilliland, (Miss. 1907) 43 So. 301.

3. Ross *v.* Clark, 225 Ill. 326, 80 N. E. 275, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744.

4. **No Lien for Mere Breach of Contract Obligation.** — Neil *v.* Rosenthal, 120 N. Y. App. Div. 810, 105 N. Y. Supp. 681.

6. Paris Grocer Co. *v.* Burks, (Tex. 1907) 105 S. W. 174, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744-746.

745. 4. Paris Grocer Co. *v.* Burks, (Tex. 1907) 105 S. W. 174, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744-746.

746. 1. Rhodes *v.* Arthur, (Okla. 1907) 92 Pac. 244.

7. Paris Grocer Co. *v.* Burks, (Tex. 1907) 105 S. W. 174, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 744-746.

8. See Shugars *v.* Shugars, 105 Md. 336, 66 Atl. 275.

747. 2. **Doctrine Extends to Pure Per-**

sonal Estate. — *In re* Stucley, (1906) 1 Ch. 67.

3. Majors *v.* Maxwell, 120 Mo. App. 281, 96 S. W. 731.

Vendor's Lien Attaches to the Award in condemnation proceedings affecting the property sold by him. Clarke *v.* Long Island Realty Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 697.

749. 10. Aycock Bros. Lumber Co. *v.* Dothan First Nat. Bank, (Fla. 1907) 45 So. 501; Elmslie *v.* Thurman, 87 Miss. 537, 40 So. 67; Majors *v.* Maxwell, 120 Mo. App. 281, 96 S. W. 731.

752. 5. See Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

6. Brown *v.* Rash, (Tex. Civ. App. 1905) 89 S. W. 438.

753. 2. Zeigler *v.* Valley Coal Co., 150 Mich. 82, 113 N. W. 775, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753.

5. Tillar *v.* Clayton, 76 Ark. 405, 88 S. W. 972; Stubbs *v.* Pitts, 84 Ark. 160, 104 S. W. 1110.

7. Wood *v.* Schoolcraft, 145 Mich. 653, 108 N. W. 1075.

8. Rewis *v.* Williamson, 51 Fla. 529, 41 So. 449, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 753; Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591; Campbell *v.* Perth Amboy Shipbuilding, etc., Co., 70 N. J. Eq. 40, 62 Atl. 319.

754. 5. Rewis *v.* Williamson, 51 Fla. 529, 41 So. 449, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 754; Hodgson *v.* Smith, (Iowa 1907) 114 N. W. 39, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 754; Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591; Cecil *v.* Henry, (Tex. Civ. App. 1906) 93 S. W. 216.

755. 4. Rewis *v.* Williamson, 51 Fla. 529, 41 So. 449, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 755.

756. 3. Neff *v.* Elder, 84 Ark. 277, 105 S. W. 260.

760. 8. Bennett *v.* Murphy, 123 N. Y. App. Div. 102, 108 N. Y. Supp. 231.

762. 2. McKinnon *v.* Johnson, (Fla. 1907) 45 So. 451.

Repurchase by Vendor. — Stone *v.* Pettus, (Tex. Civ. App. 1907) 103 S. W. 413.

4. Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591.

5. Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591.

Lien Not Waived by Delivery of Deed. — Bach *v.* Kidansky, 106 N. Y. App. Div. 502, 94 N. Y. Supp. 752.

10. Zeigler *v.* Valley Coal Co., 150 Mich. 82, 113 N. W. 775; Cecil *v.* Henry, (Tex. Civ. App. 1906) 93 S. W. 216.

763. 3. McKinnon *v.* Johnson, (Fla. 1907) 45 So. 451.

The Taking of Land in Exchange by the Vendor will waive a vendor's lien. Ross *v.* Clark, 225 Ill. 326, 80 N. E. 275.

4. Ross *v.* Clark, 225 Ill. 326, 80 N. E. 275; Spence *v.* Palmer, 115 Mo. App. 76, 90 S. W. 749; Bennett *v.* Murphy, 123 N. Y. App. Div. 102, 108 N. Y. Supp. 231. See also Griffin *v.* Smith, (C. C. A.) 143 Fed. 865.

765. 2. Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591; Majors *v.* Maxwell, 120 Mo. App. 281, 96 S. W. 731.

767. 1. **The Acceptance of a Due Bill of a Third Person** intended only as a memorandum of the amount unpaid is not sufficient to waive the lien. Bennett *v.* Murphy, 123 N. Y. App. Div. 102, 108 N. Y. Supp. 231.

768. 7. Zeigler *v.* Valley Coal Co., 150 Mich. 82, 113 N. W. 775.

769. 2. Chisholm *v.* Crye, 83 Ark. 495, 104 S. W. 167.

770. 5. Ferguson *v.* Blood, (C. C. A.) 152 Fed. 98, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 770.

772. 1. Ferguson *v.* Blood, (C. C. A.) 152 Fed. 98, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771 [772].

778. 6. Bolden *v.* Hughes, (Tex. Civ. App. 1908) 107 S. W. 91.

780. 2. Kalteyer *v.* Mitchell, (Tex. Civ. App. 1908) 110 S. W. 462.

785. 2. Tom's Creek Coal Co. *v.* Skeene, (Ky. 1906) 90 S. W. 993; Branch *v.* Taylor, (Tex. Civ. App. 1905) 89 S. W. 813; Drumm Commission Co. *v.* Core, (Tex. Civ. App. 1907) 105 S. W. 843; Smith *v.* Owen, (Tex. Civ. App. 1908) 107 S. W. 929.

In Case of a Doubt as to the Amount of Land subject to the lien, the stipulations in the deed, and not those in the notes accompanying it, are controlling. Broom *v.* Herring, (Tex. Civ. App. 1907) 101 S. W. 1023.

3. Bolden *v.* Hughes, (Tex. Civ. App. 1908) 107 S. W. 91.

788. 1. **Release of Lien Will Act as Cancellation.** — Branch *v.* Taylor, (Tex. Civ. App. 1905) 89 S. W. 813; Smith *v.* Owen, (Tex. Civ. App. 1908) 107 S. W. 929.

3. Spears *v.* Taylor, (Ala. 1907) 42 So. 1016.

5. Branch *v.* Taylor, (Tex. Civ. App. 1905) 89 S. W. 813.

789. 4. Tom's Creek Coal Co. *v.* Skeene, (Ky. 1906) 90 S. W. 993.

Deed, Even if Unrecorded, Constitutes Notice of Lien. — Gilbough *v.* Runge, (Tex. 1906) 91 S. W. 566.

790. 4. Rutherford *v.* Mothershed, (Tex. Civ. App. 1906) 92 S. W. 1021.

791. 1. Rutherford *v.* Mothershed, (Tex. Civ. App. 1906) 92 S. W. 1021.

793. 4. **As against the Vendee, the Inferior Title** remains with the vendor notwithstanding the deed, and "it is immaterial that the notes given for the purchase money have become barred by the statute of limitations." Smith *v.* Owen, (Tex. Civ. App. 1906) 97 S. W. 521.

6. **If the Vendor Is in Possession for a Long Period,** the presumption is that the notes are unpaid. Evans *v.* Ashe, (Tex. Civ. App. 1908) 108 S. W. 398.

794. 1. Drumm Commission Co. *v.* Core, (Tex. Civ. App. 1907) 105 S. W. 843.

VERBAL AGREEMENTS (STATUTE OF FRAUDS).

803. 4. **In New Mexico.** — Kingston *v.* Walters, (N. Mex. 1908) 93 Pac. 700.

804. 2. Craft *v.* Lott, 87 Miss. 590, 40 So. 426.

The law of the jurisdiction wherein the

land is situate must govern. Dal *v.* Fischer, (S. Dak. 1906) 107 N. W. 534.

3. Daniels *v.* Rogers, 108 N. Y. App. Div. 338, 96 N. Y. Supp. 642; Callaway *v.* Prettyman, 218 Pa. St. 293, 67 Atl. 418.

807. 4. Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327; Ferguson *v.* Boyd, (Ind. 1907) 81 N. E. 71 (*rehearing denied* (Ind. 1907) 82 N. E. 1064), *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 807; Brinkerhoff Zinc Co. *v.* Boyd, 192 Mo. 597, 91 S. W. 523; Geer *v.* Boston Little Circle Zinc Co., 126 Mo. App. 173, 103 S. W. 151; McIlvane *v.* Big Stony Lumber Co., 105 Va. 613, 54 S. E. 473.

808. 6. Colorado Lumber, Land, etc., Co. *v.* Dustin, 38 Colo. 398, 87 Pac. 1142.

809. 6. Sonnemann *v.* Mertz, 221 Ill. 362, 77 N. E. 550; Marengo First Nat. Bank *v.* Blair State Bank, (Neb. 1907) 114 N. W. 409.

11. *Compare* Lindley *v.* Kemp, 38 Ind. App. 355, 76 N. E. 798.

810. 12. Prospect Dye Works *v.* Federal Ins. Co., 33 Pa. Super. Ct. 223, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 810.

811. 2. Clayton *v.* Lemen, 233 Ill. 435, 84 N. E. 691.

4. Hamilton *v.* Fred Miller Brewing Co., 125 Mo. App. 579, 102 S. W. 1088. *Compare* Schmidt *v.* Rozier, 121 Mo. App. 306, 98 S. W. 791. See also 9 ENCYC. OF PL. AND PR. 709.

5. International Harvester Co. *v.* Campbell, (Tex. Civ. App. 1906) 96 S. W. 93. *Compare* Bradley Real Estate Co. *v.* Robbins, (Indian Ter. 1907) 103 S. W. 777.

8. Pearsall *v.* Henry, (Cal. 1907) 95 Pac. 150.

9. Dennis Simmons Lumber Co. *v.* Corey, 140 N. Car. 462, 53 S. E. 300.

813. 2. Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973.

814. 4. Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327 (construing *Georgia* statute); King *v.* Cheatham, (Ky. 1907) 104 S. W. 751; Stout *v.* Royston, (Ky. 1908) 107 S. W. 784; Ball *v.* Harpham, 140 Mich. 661, 104 N. W. 353; Shannon *v.* Mastin, (Mo. App. 1908) 108 S. W. 1116; Bayles *v.* Strong, 104 N. Y. App. Div. 153, 93 N. Y. Supp. 346, *affirmed* 185 N. Y. 582, 78 N. E. 1099; Leggett *v.* Campbell, (Supm. Ct. Spec. T.) 96 N. Y. Supp. 639.

818. 7. Clayton *v.* Lemen, 233 Ill. 435, 84 N. E. 691.

819. 3. Gabel *v.* Page, (Cal. App. 1907) 92 Pac. 749; Griswold *v.* Branford, (Conn. 1908) 68 Atl. 987; Williams *v.* Apothecaries' Hall Co., (Conn. 1908) 69 Atl. 12; Mollitor *v.* C. M. Thom Van Co., 118 Ill. App. 293; Ray *v.* Blackman, 120 Mo. App. 497, 97 S. W. 212; Nichols *v.* Hicklin, 127 Mo. App. 672, 106 S. W. 1109; Womach *v.* Jenkins, (Mo. App. 1908) 107 S. W. 423; Watkins *v.* Balch, 41 Wash. 310, 83 Pac. 321.

822. 1. Kaufer *v.* Stumpf, 129 Wis. 476, 109 N. W. 561.

3. Simons *v.* New Britain Trust Co., (Conn. 1907) 67 Atl. 883; Lechenger *v.* Merchants' Nat. Bank, (Tex. Civ. App. 1906) 96 S. W. 638.

4. *Compare* Colorado Lumber, Land, etc., Co. *v.* Dustin, 38 Colo. 398, 87 Pac. 1142.

823. 3. Dyer *v.* School Dist. No. 111, (Kan. 1907) 92 Pac. 1122; Turner *v.* Browning, (Ky. 1908) 107 S. W. 318; Chouteau Land, etc., Co. *v.* Chrisman, 204 Mo. 371, 102 S. W. 973. *Compare* Atlantic City R. Co. *v.* Johanson, (N. J. 1907) 65 Atl. 719.

6. King *v.* Cheatham, (Ky. 1907) 104 S. W. 751; Todd *v.* Bettingen, 98 Minn. 170, 107 N. W. 1049; Hall *v.* Getman, 121 Mo. App. 630, 97 S. W. 607; Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787; Schultz *v.* Kosbab, 125 Wis. 157, 103 N. W. 237.

824. 2. Stephens *v.* Barnes, 30 Pa. Super. Ct. 127.

4. Stephens *v.* Barnes, 30 Pa. Super. Ct. 127.

7. Pearsall *v.* Henry, (Cal. 1907) 95 Pac. 154; Enos *v.* Anderson, (Colo. 1907) 93 Pac. 475; Williams *v.* Press Pub. Co., 126 Ill. App. 109; Grand Forks Lumber Co. *v.* McClure Logging Co., (Minn. 1908) 115 N. W. 406; Seymour *v.* Hughes, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 248, 105 N. Y. Supp. 249; Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 824.

The royalty payable to a landowner by the terms of a written oil lease may be changed by parol, as it relates, not to the land, but to personalty. Nonamaker *v.* Amos, 73 Ohio St. 163, 76 N. E. 949.

Vendor's Lien Notes may be modified orally. Booher *v.* Anderson, (Tex. Civ. App. 1905) 86 S. W. 956.

825. 2. *Contra.* — Kissack *v.* Bourke, 224 Ill. 352, 79 N. E. 619.

6. *Compare* Daniels *v.* Rogers, 108 N. Y. App. Div. 338, 96 N. Y. Supp. 642.

826. 1. A contract for the sawing, sale, and division of the profits of lumber may be modified, because not required to be in writing. Wisconsin Sulphite Fibre Co. *v.* D. K. Jeffris Lumber Co., 132 Wis. 1, 111 N. W. 237.

7. Oatman *v.* Eddy, 4 Cal. App. 58, 87 Pac. 210; Snow *v.* Griesheimer, 120 Ill. App. 516, *affirmed* 220 Ill. 106, 77 N. E. 110; Harmison *v.* Prestonsburg, (Ky. 1908) 107 S. W. 337; Lucas *v.* Cass County Recorder, 75 Neb. 351, 106 N. W. 217.

11. Alston *v.* Connell, 140 N. Car. 485, 53 S. E. 292; Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 826.

12. Beld *v.* Darst, 146 Mich. 143, 109 N. W. 275; Brown *v.* Hobbs, (N. Car. 1908) 60 S. E. 716.

827. 1. American Fine Art Co. *v.* Simon, (C. C. A.) 140 Fed. 529; Moseley *v.* Witt, (S. Car. 1908) 60 S. E. 520.

2. *Compare* Wisner *v.* Field, 15 N. Dak. 43, 106 N. W. 38.

5. Co-operative Telephone Co. *v.* Katus, 140 Mich. 367, 103 N. W. 814; Todd *v.* Bettingen, 98 Minn. 170, 107 N. W. 1049; Dixon *v.* Sheridan, 125 Wis. 60, 103 N. W. 239; Schultz *v.* Kosbab, 125 Wis. 157, 103 N. W. 237.

8. Mercier *v.* Campbell, 14 Ont. L. Rep. 639, 10 Ann. Cas. 503.

828. 1. **No Part of Entire Contract Enforceable.** — Schultz *v.* Kosbab, 125 Wis. 157, 103 N. W. 237.

6. Franklin *v.* Matoa Gold Min. Co., (C. C. A.) 158 Fed. 941.

7. Logan *v.* Brown, (Okla. 1908) 95 Pac. 441.

s. [illegible] ... Co., (Mann, 101 Minn. 37, 112 N. W. 281; Smyth *v.* Sichel, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 643, 97 N. Y. Supp. 1008; McLeod *v.* Despain, (Oregon 1907) 92 Pac. 1088.

The proof to sustain an alleged fully performed contract, void under the statute, must be overwhelming in its probative force. Wales *v.* Holden, (Mo. 1908) 108 S. W. 89.

829. 2. Blackwell *v.* Blackwell, (Mass. 1907) 81 N. E. 910; Welch *v.* Mann, 193 Mo. 304, 92 S. W. 98.

3. Holliday *v.* Perry, 38 Ind. App. 588, 78 N. E. 877; Hill *v.* Maxwell, 71 Kan. 72, 79 Pac. 1088, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 829; Welch *v.* Mann, 193 Mo. 304, 92 S. W. 98; Cutright *v.* Union Sav., etc., Co., (Utah 1908) 94 Pac. 984.

830. 12. Jones *v.* Jones, (Ky. 1907) 101 S. W. 980; Fairweather *v.* Lloyd, 36 N. Bruns. 548.

831. 3. Schrader *v.* Fraenckel, 117 N. Y. App. Div. 97, 102 N. Y. Supp. 335.

4. Oatman *v.* Eddy, 4 Cal. App. 58, 87 Pac. 210.

5. Franklin *v.* Matoa Gold Min. Co., (C. C. A.) 158 Fed. 941; Wessells *v.* Rodifer, (Ky. 1906) 97 S. W. 341; King *v.* Cheatham, (Ky. 1907) 104 S. W. 751; Breuer *v.* Berold, 29 Ohio Cir. Ct. 502; Lechenger *v.* Merchants' Nat. Bank, (Tex. Civ. App. 1906) 96 S. W. 638; Hoeffler *v.* Irwin, 8 Ont. L. Rep. 740. *Compare* Federal Iron, etc., Co. *v.* Hock, 42 Wash. 668, 85 Pac. 418; Ferguson *v.* Blood, (C. C. A.) 152 Fed. 98.

The part performance relied on must have been done strictly with reference to the contract; if referable to anything else it is not available. Burckhardt *v.* Greene, 26 Ohio Cir. Ct. 315, *affirmed* 68 Ohio St. 711, 70 N. E. 1116, *mem.*

Part Performance as Defense in Ejectment. — Dyer *v.* School Dist. No. 111, (Kan. 1907) 92 Pac. 1122.

Georgia Statute. — Hightower *v.* Ansley, 126 Ga. 8, 54 S. E. 939; McLeod *v.* Hendry, 126 Ga. 167, 54 S. E. 949; Columbus Crate Co. *v.* Evans, (Ga. 1908) 60 S. E. 1065; Bentley *v.* Smith, 3 Ga. App. 242, 59 S. E. 720.

832. 3. Jones *v.* Patrick, 140 Fed. 403; Ferguson *v.* Blood, (C. C. A.) 152 Fed. 98; O'Brien *v.* Knotts, 165 Ind. 308, 75 N. E. 594; Soper *v.* Galloway, 129 Iowa 145, 105 N. W. 399; Chehak *v.* Battles, 133 Iowa 107, 110 N. W. 330; Brooks *v.* Brooks, (Ky. 1907) 104 S. W. 392; Cape Girardeau, etc., R. Co. *v.* Wingerter, 124 Mo. App. 426, 101 S. W. 1113, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 832; Hedden *v.* Schneblin, 126 Mo. App. 478, 104 S. W. 887.

Rule Similar in Equity. — Rogers *v.* Penobscot Min. Co., (C. C. A.) 154 Fed. 606.

4. Norris *v.* Lilly, 147 Cal. 754, 82 Pac. 425; Satterfield *v.* Kindly, 144 N. Car. 455, 57 S. E. 145; Brown *v.* Hobbs, (N. Car. 1908) 60 S. E. 716; Logan *v.* Brown, (Okla. 1908) 95 Pac. 441, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 832.

833. 1. Tillis *v.* Folmar, 145 Ala. 176, 39 So. 913; Knight *v.* Collings, 227 Ill. 348, 81 N. E. 346, *affirming* 127 Ill. App. 333; Rogan *v.* Arnold, 233 Ill. 19, 84 N. E. 58; Cromwell *v.* Norton, 193 Mass. 291, 79 N. E. 43[illegible]; Murray *v.* Schuldt, 73 N. J. L. 489, 63 Atl. 904; Bourne *v.* Sherrill, 143 N. Car. 381, 55 S. E. 799; Satterfield *v.* Kindley, 144 N. Car. 455, 57 S. E. 145; Johnson *v.* Johnson, 31 Utah 408, 88 Pac. 230; Lyttle *v.* Goldberg, 131 Wis. 613, 111 N. W. 718.

834. 2. Rogan *v.* Arnold, 233 Ill. 19, 84 N. E. 58; Pounds *v.* Egbert, 117 N. Y. App. Div. 756, 102 N. Y. Supp. 1079; Terry *v.* Craft, (Tex. Civ. App. 1905) 87 S. W. 844; Scheuer *v.* Cochem, 126 Wis. 209, 105 N. W. 573.

6. Harper *v.* Gorley, 128 Ga. 444, 57 S. E. 695.

9. Newman *v.* Lumley, 125 Ill. App. 382; Mercantile Trust Co. *v.* Niggeman, 119 Mo. App. 56, 96 S. W. 293; Hough *v.* Baldwin, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 546 99 N. Y. Supp. 545; Tieck *v.* McKenna, 115 N. Y. App. Div. 701, 101 N. Y. Supp. 317. *Compare* Provident Trust Co. *v.* Darrough, 168 Ind. 29, 78 N. E. 1030; Rothwell *v.* Gibson, 121 Mo. App. 279, 98 S. W. 801; Finley *v.* Handley, 121 Mo. App. 358, 98 S. W. 803; Barney *v.* Lasbury, (Neb. 1906) 107 N. W. 989.

13. Price *v.* Thompson, (Ga. App. 1908) 60 S. E. 800.

835. 1. Meyer-Bridges Co. *v.* Badeau, (Miss. 1907) 43 So. 609.

2. Enos *v.* Anderson, (Colo. 1907) 93 Pac. 475; Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561; Tyler *v.* St. Louis Southwestern R. Co., 99 Tex. 491, 91 S. W. 1, *reversing* (Tex. Civ. App. 1905) 87 S. W. 238.

3. Bentley *v.* Smith, 3 Ga. App. 242, 59 S. E. 720; San Antonio Light Pub. Co. *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 867; Chase *v.* Hinkley, 126 Wis. 75, 105 N. W. 230.

836. 2. Quinn *v.* Stark County Telephone Co., 122 Ill. App. 133, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 836; Brashear *v.* Rabenstein, 71 Kan. 455, 80 Pac. 950, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 836; Cozad *v.* Elam, 115 Mo. App. 136, 91 S. W. 434, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 836–840; Burleson *v.* Tinnin, (Tex. Civ. App. 1906) 100 S. W. 350.

837. 2. Quinto *v.* Alexander, 123 N. Y. App. Div. 161, 107 N. Y. Supp. 422.

838. 1. Burleson *v.* Tinnin, (Tex. Civ. App. 1906) 100 S. W. 350; Hoeffler *v.* Irwin, 8 Ont. L. Rep. 740. *Compare* Cross *v.* Iler, 103 Md. 592, 64 Atl. 33.

Money paid under a void contract for the purchase of corporate stock may be recovered. Fourchy *v.* Ellis, 140 Fed. 149.

839. 1. Alford *v.* Williams, (Tex. Civ. App. 1906) 91 S. W. 636.

7. Franklin *v.* Matoa Gold Min. Co., (C. C. A.) 158 Fed. 941; Butler *v.* Kent, (Ala. 1907) 44 So. 863; Gates *v.* Davis, (Ky. 1905) 89 S. W. 490; Stout *v.* Royston, (Ky. 1908) 107 S. W. 784, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 839; Cozad *v.* Elam, 115 Mo. App. 136, 91 S. W. 434, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 840; Blankenship *v.* Decker, 34 Mont. 292, 85 Pac. 1035; Murphy *v.* Adams, 29 Ohio Cir. Ct. 405. *Compare* Barney *v.* Lasbury, (Neb. 1906) 107 N. W. 989.

The fact that the claim for services is barred by the statute of limitations will not render the contract enforceable. Terry *v.* Craft, (Tex. Civ. App. 1905) 87 S. W. 844.

The vendee cannot set up the invalidity of the contract and recover for the services while the vendor stands ready to perform. Colorado Lumber, Land, etc., Co. *v.* Dustin, 38 Colo. 398, 87 Pac. 1142.

840. 1. Cozad *v.* Elam, 115 Mo. App. 136, 91 S. W. 434, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 839, 840; Hall *v.* Getman, 121 Mo. App. 630, 97 S. W. 607; Goodloe *v.* Goodloe, 116 Tenn. 252, 92 S. W. 767.

2. Murphy *v.* Adams, 29 Ohio Cir. Ct. 405. *Compare* Hightower *v.* Ansley, 126 Ga. 8, 54 S. E. 939; Chase *v.* Hinkley, 126 Wis. 75, 105 N. W. 230.

3. Poole *v.* Johnson, (Ky. 1907) 101 S. W. 955; Cross *v.* Iler, 103 Md. 592, 64 Atl. 33; Burleson *v.* Tinnin, (Tex. Civ. App. 1906) 100 S. W. 350.

841. 2. A writ of restitution will be withheld until payment for the improvements is made. Poole *v.* Johnson, (Ky. 1907) 101 S. W. 955.

842. 1. Cantin *v.* Bérubé, 37 Can. Sup. Ct. 627.

843. 4. Blankenship *v.* Decker, 34 Mont. 292, 85 Pac. 1035. *Compare* Schrader *v.* Fraenckel, 117 N. Y. App. Div. 97, 102 N. Y. Supp. 335.

844. 2. Hall *v.* Getman, 121 Mo. App. 630, 97 S. W. 607.

Contract Good Evidence. — Butler *v.* Kent, (Ala. 1907) 44 So. 863.

845. 1. *United States.* — McCullough *v.* Sutherland, 153 Fed. 418; Atchison, etc., R. Co. *v.* Hurley, (C. C. A.) 153 Fed. 503.

California. — Pearsall *v.* Henry, (Cal. 1907) 95 Pac. 159.

Idaho. — Fleming *v.* Baker, 12 Idaho 346, 85 Pac. 1092.

Indiana. — Holliday *v.* Perry, 38 Ind. App. 588, 78 N. E. 877.

Kansas. — Crane *v.* Cheney, (Kan. 1907) 91 Pac. 67.

New Hampshire. — White *v.* Poole, 74 N. H. 71, 65 Atl. 255.

New Jersey. — Burrell *v.* Middletown, (N. J. 1907) 65 Atl. 978.

New Mexico. — Kingston *v.* Walters, (N. Mex. 1908) 93 Pac. 700.

New York. — Rosenbaum *v.* New York, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 775.

Oklahoma. — Logan *v.* Brown, (Okla. 1908) 95 Pac. 441.

Oregon. — Neppach *v.* Oregon, etc., R. Co., 46 Oregon 374, 80 Pac. 482.

Texas. — McKinley *v.* Wilson, (Tex. Civ. App. 1906) 96 S. W. 112.

Vermont. — Kittredge *v.* Kittredge, 79 Vt. 337, 65 Atl. 89.

Washington. — Peterson *v.* Hicks, 43 Wash. 412, 86 Pac. 634; Storseth *v.* Folsom, 45 Wash. 374, 88 Pac. 632; Kennedy *v.* Anderson, (Wash. 1908) 94 Pac. 661.

846. 1. Quinn *v.* Stark County Telephone Co., 122 Ill. App. 133, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 846, 847; Snow *v.* Snow, 98 Minn. 348, 108 N. W. 295; Czermak *v.* Wetzel, 114 N. Y. App. Div. 816, 100 N. Y. Supp. 167; Gross *v.* Gorsch, (Supm. Ct. App. Div.) 109 N. Y. Supp. 234.

2. Shreve *v.* McGowin, 143 Ala. 665, 42 So. 94; De Bartlett *v.* De Wilson, 52 Fla. 497, 42 So. 189; McLeod *v.* Hendry, 126 Ga. 167, 54 S. E. 949; Linkemann *v.* Knepper, 226 Ill. 473, 80 N. E. 1009; Abrams *v.* Abrams, 74 Kan. 888, 88 Pac. 70; Stitt *v.* Rat Portage Lumber Co., 96 Minn. 27, 104 N. W. 561; Grout *v.* Stewart, 96 Minn. 230, 104 N. W. 966; Alexander *v.* Cleland, 13 N. Mex. 524, 86 Pac. 425.

847. 3. McLachlin *v.* Whitehall, 114 N. Y. App. Div. 315, 99 N. Y. Supp. 721, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 847.

848. 2. Mausert *v.* Christian Feigenspan, 68 N. J. Eq. 671, 64 Atl. 801; Prospect Dye Works *v.* Federal Ins. Co., 33 Pa. Super. Ct. 223.

5. *In re* Pettingill, 137 Fed. 143; Johnson *v.* Tribby, 27 App. Cas. (D. C.) 281; Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; Morrison *v.* Browne, 191 Mass. 65, 77 N. E. 527; Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894; Weisels-Gerhart Real Estate Co. *v.* Olin, 127 Mo. App. 536, 109 S. W. 806; Levin *v.* Dietz, 106 N. Y. App. Div. 208, 94 N. Y. Supp. 419; Getzelsohn *v.* Donnelly, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 164, 98 N. Y. Supp. 213; Boehly *v.* Mansing, (Supm. Ct. Eq. T.) 52 Misc. (N. Y.) 382, 102 N. Y. Supp. 171; Flash *v.* Rossiter, 116 N. Y. App. Div. 880, 102 N. Y. Supp. 449; J. Spencer Turner Co. *v.* Robinson, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 280, 105 N. Y. Supp. 98.

8. Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327; Hill *v.* McCoy, 1 Cal. App. 159, 81 Pac. 1015; Bayles *v.* Strong, 104 N. Y. App. Div. 153, 93 N. Y. Supp. 346, *affirmed* 185 N. Y. 582, 78 N. E. 1099.

9. *United States.* — Kennedy *v.* Bates, 142 Fed. 51, 73 C. C. A. 237.

Alabama. — Patt *v.* Gerst, (Ala. 1907) 42 So. 1001.

California. — Logan *v.* McMullen, 4 Cal. App. 154, 87 Pac. 285; Crowell *v.* Ewing, 4 Cal. App. 358, 88 Pac. 285.

Connecticut. — Simons *v.* New Britain Trust Co., (Conn. 1907) 67 Atl. 883.

Georgia. — Hightower *v.* Ansley, 126 Ga. 8, 54 S. E. 939.

Illinois. — Kingsbury *v.* Cornelison, 122 Ill. App. 495.

Massachusetts. — Bogigian *v.* Booklovers Library, 193 Mass. 444, 79 N. E. 769.

Missouri. — Mason *v.* Small, (Mo. App. 1908) 109 S. W. 822.

New York. — Inman *v.* F. N. Burt Co., 124 N. Y. App. Div. 73, 108 N. Y. Supp. 210.

North Carolina. — Winders *v.* Hill, 144 N. Car. 614, 57 S. E. 456.

Pennsylvania. — Wright *v.* Nulton, 219 Pa. St. 253, 68 Atl. 707.

Texas. — Penshorn *v.* Kunkel, (Tex. Civ. App. 1905) 90 S. W. 719; Dillard *v.* Sanders, (Tex. Civ. App. 1906) 97 S. W. 108.

Washington. — Keith *v.* Smith, 46 Wash. 131, 89 Pac. 473.

Canada. — Bohan *v.* Galbraith, 15 Ont. L. Rep. 37, *affirming* 13 Ont. L. Rep. 301.

849. 1. Hightower *v.* Ansley, 126 Ga. 8, 54 S. E. 939.

850. 2. Levin *v.* Dietz, 106 N. Y. App. Div. 208, 94 N. Y. Supp. 419; Levin *v.* Dietz, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 593, 96

N. Y. Supp 468; Bowers *v.* Ocean Acc., etc., Corp., 110 N. Y. App. Div. 691, 97 N. Y. Supp. 485, *affirmed* 187 N. Y. 561, 80 N. E. 1105; General Electric Inspection Co. *v.* Ebling Brewing Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 145, 101 N. Y. Supp. 648; Flash *v.* Rossiter, 116 N. Y. App. Div. 880, 102 N. Y. Supp. 449; Myers *v.* Harris, (Supm. Ct. App. T.) 104 N. Y. Supp. 514; Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380. See also Oder *v.* Jump, (Ky. 1908) 108 S. W. 892.

3. Delaware Ins. Co. *v.* Pennsylvania F. Ins. Co., 126 Ga. 380, 55 S. E. 330; Schneider *v.* Anderson, 75 Kan. 11, 88 Pac. 525, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 850; Peirce *v.* Wheeler, 44 Wash. 326, 87 Pac. 361; Andrews *v.* Calori, 38 Can. Sup. Ct. 588, *affirming* 12 British Columbia 236.

4. Levin *v.* Dietz, 106 N. Y. App. Div. 208, 94 N. Y. Supp. 419; Broadway Hospital, etc., *v.* Decker, (Wash. 1907) 92 Pac. 445; Grant *v.* Reid, 16 Manitoba 527; Imperial Cap Co. *v.* Cohen, 11 Ont. L. Rep. 382.

851. 1. Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1106.

852. 6. Lamb *v.* Hall, 147 Cal. 44, 81 Pac. 288.

11. Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338.

13. **Deed by Agent Not Duly Authorized.** — Godsey *v.* Standifer, (Ky. 1907) 101 S. W. 921; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651.

Deed Ineffectual to Convey Title Sufficient. — Andersen *v.* Young, (N. H. 1908) 69 Atl. 122.

853. 6. Ryder *v.* Johnston, (Ala. 1907) 45 So. 181; Yawger *v.* Backs, 119 Ill. App. 61; Holliday *v.* McWilliams, (Neb. 1906) 107 N. W. 578; Helios-Upton Co. *v.* Thomas, 96 N. Y. App. Div. 401, 89 N. Y. Supp. 222, *affirmed* 184 N. Y. 585, 77 N. E. 1188; Getzelsohn *v.* Donnelly, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 164, 98 N. Y. Supp. 213; Myers *v.* Harris, (Supm. Ct. App. T.) 104 N. Y. Supp. 514; J. Spencer Turner Co. *v.* Robinson, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 280, 105 N. Y. Supp. 98; Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380.

9. Cumberland Telephone, etc., Co. *v.* Cartwright Creek Telephone Co., (Ky. 1908) 108 S. W. 875.

10. Cumberland Telephone, etc., Co. *v.* Cartwright Creek Telephone Co., (Ky 1908) 108 S. W. 875.

12. Kidder *v.* Flanders, 73 N. H. 345, 61 Atl. 675.

854. 7. Hiss *v.* Hiss, 228 Ill. 414, 81 N. E. 1056.

8. Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327.

10. A letter admitting a contract to convey land, is insufficient, in itself, as a memorandum; it must refer to a writing wherein the terms are stated. Winders *v.* Hill, 144 N. Car. 614, 57 S. E. 456.

855. 1. Hightower *v.* Ansley, 126 Ga. 8, 54 S. E. 939; Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1106.

8. Frazer *v.* Andrews, 134 Iowa 621, 112 N. W. 92.

12. Hain *v.* Burton, 118 Mo. App. 577, 94 S. W. 589.

13. Ryder *v.* Johnson, (Ala. 1907) 45 So. 181; Schneider *v.* Anderson, 75 Kan. 11, 88 Pac. 525, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 855.

856. 1. Morrison *v.* Browne, 191 Mass. 65, 77 N. E. 527; Nicholson *v.* Dover, 145 N. Car. 18, 58 S. E. 444; Bronx Invest. Co. *v.* National Bank of Commerce, (Wash. 1907) 92 Pac. 380. *Compare* Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1106.

3. Fourchy *v.* Ellis, 140 Fed. 149; Mentzer *v.* Hudson Sav. Bank, (Mass. 1908) 83 N. E. 1102.

Unsigned Lease Insufficient. — Clement *v.* Young Amusement Co., (N. J. 1906) 65 Atl. 185.

5. Delaware Ins. Co. *v.* Pennsylvania F. Ins. Co., 126 Ga. 380, 55 S. E. 330; Myers *v.* Moore, (Neb. 1907) 110 N. W. 989; Coote *v.* Borland, 35 Can. Sup. Ct. 282; McIlvride *v.* Mills, 16 Manitoba 276.

857. 1. Delaware Ins. Co. *v.* Pennsylvania F. Ins. Co., 126 Ga. 380, 55 S. E. 330.

2. *Compare* Nasmith Co. *v.* Alexander Brown Milling, etc., Co., 9 Ont. L. Rep. 21.

4. **"Subscribed" Synonymous with "Signed."** — Myers *v.* Moore, (Neb. 1907) 110 N. W. 989.

10. Degginger *v.* Martin, (Wash. 1907) 92 Pac. 674.

Initials or Surname Alone Sufficient. — Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894.

858. 5. Murphy *v.* Lewis, (N. J. 1908) 69 Atl. 483.

7. *In re* Neff, (C. C. A.) 157 Fed. 57; Trulock *v.* Parse, 83 Ark. 149, 103 S. W. 166, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 858; Morrison *v.* Browne, 191 Mass. 65, 77 N. E. 527; Bogigian *v.* Booklovers Library, 193 Mass. 444, 79 N. E. 769; Dennis Simmons Lumber Co. *v.* Corey, 140 N. Car. 462, 53 S. E. 300; Kepner *v.* Ford, (N. Dak. 1907) 111 N. W. 619; Levin *v.* Dietz, 106 N. Y. App. Div. 208, 94 N. Y. Supp. 419; Bailey *v.* Leishman, (Utah 1907) 89 Pac. 78, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 858; Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338.

859. 1. Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 858 *et seq.*; Bayles *v.* Strong, 104 N. Y. App. Div. 153, 93 N. Y. Supp. 346, *affirmed* 185 N. Y. 582, 78 N. E. 1099; Boehly *v.* Mansing, (Supm. Ct. Eq. T.) 52 Misc. (N. Y.) 382, 102 N. Y. Supp. 171; Quinto *v.* Alexander, 123 N. Y. App. Div. 161, 107 N. Y. Supp. 422; Davis *v.* Martin, (N. Car. 1907) 59 S. E. 700; Bailey *v.* Leishman, (Utah 1907) 89 Pac. 78.

2. Montgomery *v.* Waldeck, 2 Alaska 581; Kingsbury *v.* Cornelison, 122 Ill. App. 495; King *v.* Cheatham, (Ky. 1907) 104 S. W. 751; Kaufmann *v.* Burton, 144 Mich. 487, 108 N. W. 349; Taylor *v.* Scott, 149 Mich. 525, 113 N. W. 32; Becker *v.* Calmenson, 102 Minn. 406, 113 N. W. 1014.

3. Finney *v.* Lucy, (Ala. 1905) 39 So. 583; Boehly *v.* Mansing, (Supm. Ct. Eq. T.) 52 Misc. (N. Y.) 382, 102 N. Y. Supp. 171.

860. 1. Bowman *v.* Powell, 127 Ill. App.

114. *Compare* McIlvride v. Ruhland, 148 Mich. 694, 112 N. W. 489; Co-operative Telephone Co. *v.* Katus, 140 Mich. 367, 103 N. W. 814.

2. Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1106; Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338. *Compare* Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322.

In order to bind the party not signing it must appear that the suit was instituted under authority given by him. King *v.* Cheatham, (Ky. 1907) 104 S. W. 751.

6. The proposition must be communicated to the accepting party. Jersey City *v.* Harrison, 72 N. J. L. 185, 62 Atl. 765.

7. *In re* Neff, (C. C. A.) 157 Fed. 57; Corson *v.* McDonald, 3 Cal. App. 412, 85 Pac. 861; Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; Bailey *v.* Leishman, (Utah 1907) 89 Pac. 78. *Contra,* Cable Co. *v.* Hancock, 2 Ga. App. 73, 58 S. E. 319.

9. Kaufmann *v.* Burton, 144 Mich. 487, 108 N. W. 349.

10. Kaufmann *v.* Burton, 144 Mich. 487, 108 N. W. 349; Trusts, etc., Co. *v.* Ross, 9 Ont. L. Rep. 715.

861. 1. Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327; Stuart *v.* Mattern, 141 Mich. 686, 105 N. W. 35.

Where the vendor's name is signed by a duly authorized agent, that fact need not be indicated in order to make the contract binding. Whitworth *v.* Pool, (Ky. 1906) 96 S. W. 880.

3. Falihee *v.* John Simmons Co., 121 N. Y. App. Div. 839, 106 N. Y. Supp. 764; Bradley *v.* Elliott, 11 Ont. L. Rep. 398.

A director of a corporation, although he owns a majority of stock, is not authorized to sign for the corporation. Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82, *reversing* 69 N. J. Eq. 347, 60 Atl. 419.

5. Imperial Cap Co. *v.* Cohen, 11 Ont. L. Rep. 382.

7. A memorandum differing from the terms of sale is invalid, although signed by the auctioneer, because in excess of his authority. Kelley *v.* Holbrook, 191 Mass. 565, 77 N. E. 1027.

11. Wiger *v.* Carr, 131 Wis. 584, 111 N. W. 657.

12. Brandon *v.* Pritchett, 126 Ga. 286, 55 S. E. 241; Whitworth *v.* Pool, (Ky. 1906) 96 S. W. 880; Godsey *v.* Standifer, (Ky. 1907) 101 S. W. 921; Hopper *v.* McAllum, 87 Miss. 441, 40 So. 2; Brown *v.* Honiss, (N. J. 1907) 68 Atl. 150, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 861; Campbell *v.* Hough, (N. J. 1908) 68 Atl. 759; Peirce *v.* Wheeler, 44 Wash. 326, 87 Pac. 361; Degginger *v.* Martin, (Wash. 1907) 92 Pac. 674; McIlvride *v.* Mills, [illegible]

862. 1. Elliott *v.* Bankston, (Ala. 1907) 45 So. 173; People's Min., etc., Co. *v.* Central Consol. Mines Corp., 20 Colo. App. 561, 80 Pac. 479; Cowan *v.* Curran, 216 Ill. 598, 75 N. E. 322; Rogan *v.* Arnold, 233 Ill. 19, 84 N. E. 58; Brown *v.* Gilpin, 75 Kan. 773, 90 Pac. 267; Adams *v.* Carlton, (Kan. 1908) 95 Pac. 390; Detroit, etc., R. Co. *v.* Hartz, 147 Mich. 354, 110 N. W. 1089; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228; Frahm *v.* Metcalf, 75 Neb. 241, 106 N. W. 227; Dal *v.* Fischer, (S. Dak. 1906) 107 N. W. 534.

Letters may be a sufficient writing to show authority. Harrison *v.* Rice, (Neb. 1907) 111 N. W. 594, *affirmed* on rehearing (Neb. 1907) 114 N. W. 151.

The writing authorizing an agent to sell need not contain the name of the vendee. Stuart *v.* Mattern, 141 Mich. 686, 105 N. W. 35.

Telegram as Authority. — *Compare* Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1106.

2. Brandon *v.* Pritchett, 126 Ga. 286, 55 S. E. 241.

863. 2. Goldstein *v.* Webster, (Cal. App. 1908) 95 Pac. 677; Finkelstein *v.* Fabyik, (Supm. Ct. App. T.) 107 N. Y. Supp. 67.

In New Jersey an agent appointed in parol may execute a lease for three years, but not longer. Clement *v.* Young McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82, *reversing* 69 N. J. Eq. 547, 60 Atl. 419.

4. Ramage *v.* Wilson, 37 Ind. App. 532, 77 N. E. 368.

7. Stuart *v.* Mattern, 141 Mich. 686, 105 N. W. 35; Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651; Mercantile Trust Co. *v.* Niggeman, 119 Mo. App. 56, 96 S. W. 293.

8. Finkelstein *v.* Fabyik, (Supm. Ct. App. T.) 107 N. Y. Supp. 67.

9. Brandon *v.* Pritchett, 126 Ga. 286, 55 S. E. 241.

10. Kirkpatrick *v.* Pease, 202 Mo. 471, 101 S. W. 651; Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338. See Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82, *reversing* 69 N. J. Eq. 347, 60 Atl. 419.

13. Chouteau Land, etc., Co. *v.* Chrisman, 204 Mo. 371, 102 S. W. 973.

864. 1. Purdom Naval Stores Co. *v.* Western Union Tel. Co., 153 Fed. 327; McCullough *v.* Sutherland, 153 Fed. 418; Delaware Ins. Co. *v.* Pennsylvania F. Ins. Co., 126 Ga. 380, 55 S. E. 330; Acree *v.* Rozzell, (Ky. 1908) 108 S. W. 846; Campbell *v.* Hough, (N. J. 1908) 68 Atl. 759; Degginger *v.* Martin, (Wash. 1907) 92 Pac. 674.

2. Mertz *v.* Hubbard, 75 Kan. 1, 88 Pac. 529, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 864. *Compare* Clement *v.* Young-McShea Amusement Co., 70 N. J. Eq. 677, 67 Atl. 82, *reversing* 69 N. J. Eq. 347, 60 Atl. 419.

3. Southern Pine, etc., Co. *v.* Bruce Lumber Co., (Tex. Civ. App. 1906) 95 S. W. 28.

8. Frahm *v.* Metcalf, 75 Neb. 241, 106 N. W. 227, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 864; Maber *v.* Penskalski, 15 Manitoba 536; Grant *v.* Reid, [illegible] Manitoba 527; Bradley *v.* Elliott, 11 Ont. L. Rep. 398. *Compare* Andrews *v.* Calori, 38 Can. Sup. Ct. 588, [illegible]

865. 2. Stengel *v.* Sergeant, (N. J. 1908) 68 Atl. 1106.

3. *Compare* Grant *v.* Reid, 16 Manitoba 527.

8. Pearce *v.* R. T. Stone Tobacco Co., 125 Ga. 444, 54 S. E. 103.

9. Pearce *v.* R. T. Stone Tobacco Co., 125 Ga. 444, 54 S. E. 103; Craft *v.* Lott, 87 Miss. 590, 40 So. 426.

866. 1. Borum *v.* Swift, 125 Ga. 198, 53 S. E. 608.

2. Wm. Fait Co. *v.* Anderson, 76 Ark. 237, 88 S. W. 905.

3. Bowers *v.* Ocean Acc., etc., Corp., 110 N. Y. App. Div. 691, 97 N. Y. Supp. 485, *affirmed* 187 N. Y. 561, 80 N. E. 1105.

4. Melady *v.* Michaud, 31 Quebec Super. Ct. 1.

5. Miller *v.* Burt, (Mass. 1907) 82 N. E. 39; Mason *v.* Small, (Mo. App. 1908) 109 S. W. 822; Penshorn *v.* Kunkel, (Tex. Civ. App. 1905) 90 S. W. 719.

6. Harten *v.* Loffler, 29 App. Cas. (D. C.) 490; Conroy *v.* Woodcock, 53 Fla. 582, 43 So. 693; Howard *v.* Atkins, 167 Ind. 184, 78 N. E. 665; Whitworth *v.* Pool, (Ky. 1906) 96 S. W. 880; Thompson *v.* Stiltz, (Ky. 1906) 96 S. W. 884; Holliday *v.* McWilliams, (Neb. 1906) 107 N. W. 578; Bayles *v.* Strong, 104 N. Y. App. Div. 153, 93 N. Y. Supp. 346, *affirmed* 185 N. Y. 582, 78 N. E. 1099; Levin *v.* Dietz, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 593, 96 N. Y. Supp. 468; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345; Coote *v.* Borland, 35 Can. Sup. Ct. 282.

Lands Left to Selection of One Party. — Cape Girardeau, etc., R. Co. Wingerter, 124 Mo. App. 426, 101 S. W. 1113.

867. 1. Hill *v.* McCoy, 1 Cal. App. 159, 81 Pac. 1015; Conroy *v.* Woodcock, 53 Fla. 582, 43 So. 693; Clayton *v.* Lemen, 233 Ill. 435, 84 N. E. 691; Levin *v.* Dietz, 106 N. Y. App. Div. 208, 94 N. Y. Supp. 419; Daniels *v.* Rogers, 108 N. Y. App. Div. 338, 96 N. Y. Supp. 642.

2. Mason *v.* Small, (Mo. App. 1908) 109 S. W. 822; Broadway Hospital, etc., *v.* Decker, (Wash. 1905) 92 Pac. 445.

3. Levin *v.* Dietz, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 593, 96 N. Y. Supp. 468.

868. 2. Conroy *v.* Woodcock, 53 Fla. 582, 43 So. 693; Crotty *v.* Effler, 60 W. Va. 258, 54 S. E. 345. See also Levin *v.* Dietz, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 593, 96 N. Y. Supp. 468; Johnson *v.* Tribby, 27 App. Cas. (D. C.) 281. *Compare* Broadway Hospital, etc., *v.* Decker, (Wash. 1907) 92 Pac. 445.

3. A vendee cannot assert the insufficiency of the description in the memorandum against a vendor who stands ready to convey. Quinto *v.* Alexander, 123 N. Y. App. Div. 161, 107 N. Y. Supp. 422.

4. Corbin *v.* Durden, 126 Ga. 429, 55 S. E. 30; Phillips *v.* Jones, 39 Ind. App. 626, 80 N. E. 555; Bradley Real Estate Co. *v.* Robbins, (Indian Ter. 1907) 103 S. W. 777; Kemensky *v.* Chapin, 193 Mass. 500, 79 N. E. 781; Hain *v.* Burton, 118 Mo. App. 577, 94 S. W. 589; Glasgow Milling Co. *v.* Burgher, 122 Mo. App. 14, 97 S. W. 950; Keith *v.* Smith, 46 Wash. 131, 89 Pac. 473; Broadway Hospital, etc., *v.* Decker, (Wash. 1907) 92 Pac. 445; Klee *v.* Stephenson, 130 Wis. 505, 110 N. W. 479.

5. Anderson *v.* Young, (N. H. 1908) 69 Atl. 122.

7. Howard *v.* Adkins, 167 Ind. 184, 78 N. E. 665.

8. Mendles *v.* Danish, (N. J. 1907) 65 Atl. 888; Bowers *v.* Ocean Acc., etc., Corp., 110 N. Y. App. Div. 691, 97 N. Y. Supp. 485, *affirmed* 187 N. Y. 561, 80 N. E. 1105.

869. 2. Johnson *v.* Tribby, 27 App. Cas. (D. C.) 281; Howard *v.* Adkins, 167 Ind. 184, 78 N. E. 665; Flash *v.* Rossiter, 116 N. Y. App. Div. 880, 102 N. Y. Supp. 449.

4. Pearce *v.* R. T. Stone Tobacco Co., 125 Ga. 444, 54 S. E. 103; Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; Howard *v.* Adkins, 167 Ind. 184, 78 N. E. 665; Delta County *v.* Blackburn, (Tex. Civ. App. 1905) 90 S. W. 902, *reversed* on another point (Tex. 1906) 93 S. W. 419.

6. Flash *v.* Rossiter, 116 N. Y. App. Div. 880, 102 N. Y. Supp. 449.

870. 1. International Text-Book Co. *v.* McKone, (Wis. 1907) 113 N. W. 438.

871. 3. Marx *v.* Ely, (Ala. 1906) 41 So. 411; Miami County Nat. Bank *v.* Goldberg, (Wis. 1907) 113 N. W. 391.

5. Merritt *v.* Coffin, (Ala. 1907) 44 So. 622; Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894.

872. 5. Green *v.* Stevenson, 9 Ont. L. Rep. 671; Queen's College *v.* Jayne, 10 Ont. L. Rep. 319.

It is sufficient to state the gross price, and that a certain part or sum is to be paid cash and the balance "in one, two, and three years." Conroy *v.* Woodcock, 53 Fla. 582, 43 So. 693.

873. 5. *Compare* House *v.* Brown, 14 Ont. L. Rep. 500.

6. Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; Whitworth *v.* Pool, (Ky. 1906) 96 S. W. 880; Glasgow Milling Co. *v.* Burgher, 122 Mo. App. 14, 97 S. W. 950; Great Western Printing Co. *v.* Belcher, 127 Mo. App. 133, 104 S. W. 894; Kidder *v.* Flanders, 73 N. H. 345, 61 Atl. 675.

8. Ullsperger *v.* Meyer, 217 Ill. 262, 75 N. E. 482; Broadway Hospital, etc., *v.* Decker, (Wash. 1907) 92 Pac. 445.

12. Cox *v.* Hoare, 95 L. T. N. S. 121, *affirmed* 96 L. T. N. S. 719; Bohan *v.* Galbraith, 15 Ont. L. Rep. 37, *affirming* 13 Ont. L. Rep. 301; Queen's College *v.* Jayne, 10 Ont. L. Rep. 319; House *v.* Brown, 14 Ont. L. Rep. 500.

874. 1. *Compare* Western Timber Co. *v.* Kalama River Lumber Co., 42 Wash. 620, 85 Pac. 338.

3. Pratt *v.* Gerst, (Ala. 1907) 42 So. 1001; Halsell *v.* Renfrow, 202 U. S. 287, 6 Ann. Cas. 189.

4. Brown *v.* O'Byrne, (Ala. 1907) 45 So. 129; Hamilton *v.* Fred Miller Brewing Co., 125 Mo. App. 579, 102 S. W. 1088; Dillard *v.* Sanders, (Tex. Civ. App. 1906) 97 S. W. 108; Broadway Hospital, etc., *v.* Decker, (Wash. 1907) 92 Pac. 445.

875. 9. Hiss *v.* Hiss, 228 Ill. 414, 81 N. E. 1056, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 875.

876. 1. Keith *v.* Keith, (Tex. Civ. App. 1905) 87 S. W. 384.

5. Ball *v.* Harpham, 140 Mich. 661, 104 N. W. 353.

877. 3. **In Texas,** prior to 1840, verbal sales were valid under the civil law which then prevailed. Carlisle *v.* Gibbs, (Tex. Civ. App. 1906) 98 S. W. 192.

878. 2. Boone *v.* Rickard, 125 Ill. App. 438.

3. Butler *v.* Kent, (Ala. 1907) 44 So. 863;

Dietrich *v.* Heintz, (Tex. Civ. App. 1907) 99 S. W. 417.

5. Quinn *v.* Baage, (Iowa 1907) 114 N. W. 205; Terrell *v.* Hart, (Ky. 1906) 90 S. W. 953.

7. Begley *v.* Treadway, (Ky. 1906) 93 S. W. 1045.

10. Hammond *v.* Hammond, (Tex. Civ. App. 1908) 108 S. W. 1024.

11. Ruff Brewing Co. *v.* Schanz, 114 Ill. App. 508; Harrell *v.* Sonnabend, 191 Mass. 310, 77 N. E. 764; Czevmak *v.* Wetzel, 114 N. Y. App. Div. 816, 100 N. Y. Supp. 167.

879. 3. Rhea *v.* Craig, 141 N. Car. 602, 54 S. E. 408.

4. An oral division of water rights, accompanied by possession, is valid. Bree *v.* Wheeler, 4 Cal. App. 109, 87 Pac. 255.

880. 1. Rhea *v.* Craig, 141 N. Car. 602, 54 S. E. 408.

3. Ramage *v.* Wilson, 37 Ind. App. 532, 77 N. E. 368.

8. *Compare* Chadwick *v.* Arnold, (Utah 1908) 95 Pac. 527.

10*a*. Where a mortgage stipulates for an extension thereof for one year from maturity, at the option of the mortgagor, his decision to extend it need not be in writing. Corson *v.* McDonald, 3 Cal. App. 412, 85 Pac. 861.

14. An agreement by a real estate agent, guaranteeing a landlord a certain rent per month, in consideration of having the property surrendered to him for rental, is not within the statute. Hewes *v.* Loveman, 146 Ala. 685, 40 So. 306.

881. 1. Ives *v.* Atlantic, etc., R. Co., 142 N. Car. 131, 55 S. E. 74, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 880 [881].

2. Young *v.* Blakeman, (Cal. 1908) 95 Pac. 888; Sonnemann *v.* Mertz, 221 Ill. 362, 77 N. E. 550; Purtle *v.* Bell, 225 Ill. 523, 80 N. E. 350; Kitchen *v.* Chantland, 130 Iowa 618, 105 N. W. 367; Cheatham *v.* Hicks, (Ky. 1905) 88 S. W. 1093; Berry *v.* Evans, (Ky. 1905) 89 S. W. 12; Fields *v.* Sizemore, (Ky. 1907) 105 S. W. 438; Roberts *v.* Fellman Dry Goods Co., (Tex. Civ. App. 1906) 92 S. W. 1060; McDonald *v.* McCrabb, (Tex. Civ. App. 1907) 105 S. W. 238; McKeon *v.* Roan, (Tex. Civ. App. 1907) 106 S. W. 404.

3. Mann *v.* Mann, (Cal. 1907) 91 Pac. 994; Purtle *v.* Bell, 225 Ill. 523, 80 N. E. 350; Amburgy *v.* Burt, etc., Lumber Co., (Ky. 1905) 89 S. W. 680; Clarke *v.* Clarke, (Ky. 1906) 90 S. W. 244.

882. 1. Alford *v.* Williams, (Tex. Civ. App. 1906) 91 S. W. 636; Carlisle *v.* Gibbs, (Tex. Civ. App. 1906) 98 S. W. 192.

3. Bashore *v.* Mooney, 4 Cal. App. 276, 87 Pac. 553; Laesch *v.* Morton, 38 Colo. 171, 87 Pac. 1081; Jones *v.* Stover, 131 Iowa 119, 108 N. W. 112; Hartman *v.* Powell, 68 N. J. Eq. 293, 59 Atl. 628, *affirmed* 68 N. J. Eq. 800, 64 Atl. 1134, *mem.*; Morton *v.* Kain, 121 N. Y. App. Div. 497, 106 N. Y. Supp. 129.

883. 1. Jones *v.* Stover, 131 Iowa 119, 108 N. W. 112; Arbuthnot *v.* Eclipse Land, etc., Co., 115 Mo. App. 600, 92 S. W. 170, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 883; Volk *v.* Olsen, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 227, 104 N. Y. Supp. 415.

2. Adams *v.* Weir, (Tex. Civ. App. 1907) 99 S. W. 726.

3. Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69; Jones *v.* Stover, 131 Iowa 119, 108 N. W. 112; Detroit, etc., R. Co. *v.* Hartz, 147 Mich. 354, 110 N. W. 1089; Kommer *v.* Daly, 104 N. Y. App. Div. 528, 93 N. Y. Supp. 1021.

4. Goldstein *v.* Webster, (Cal. App. 1908) 95 Pac. 677.

5. Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69. The statute does not apply to a verbal surrender of a license to cut standing timber. York *v.* Westall, 143 N. Car. 276, 55 S. E. 724.

884. 2. Poole *v.* Johnson, (Ky. 1907) 101 S. W. 955; Garofalo *v.* Rohleder, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 553, 102 N. Y. Supp. 897.

885. 1. Matthews *v.* Carlton, 189 Mass. 285, 75 N. E. 637.

4. Fishman *v.* Wolf, (Supm. Ct. App. T.) 101 N. Y. Supp. 16.

5. Jones *v.* Com., (Ky. 1907) 104 S. W. 782; Ray *v.* Blackman, 120 Mo. App. 497, 97 S. W. 212; Thostesen *v.* Doxsee, (Neb. 1906) 110 N. W. 319; Kofoid *v.* Lincoln Implement, etc., Co., (Neb. 1908) 114 N. W. 937.

886. 1. Nichols *v.* Hicklin, 127 Mo. App. 672, 106 S. W. 1109.

3. Wallace *v.* Dorris, 218 Pa. St. 534, 67 Atl. 858.

6. *Idaho.* — Gunaer *v.* White Pine Lumber Co., 11 Idaho 591, 83 Pac. 771.

Iowa. — Esslinger *v.* Pascoe, 129 Iowa 86, 105 N. W. 362.

Kentucky. — Miller *v.* Hart, (Ky. 1906) 91 S. W. 698.

Michigan. — Ball *v.* Harpham, 140 Mich. 661, 104 N. W. 353.

Missouri. — Cape Girardeau, etc., R. Co. *v.* Wingerter, 124 Mo. App. 426, 101 S. W. 1113; Wheeler *v.* Dake, (Mo. App. 1908) 107 S. W. 1105.

Nebraska. — German Nat. Bank *v.* Laflin, (Neb. 1907) 111 N. W. 578.

New York. — Gross *v.* Gorsch, (Supm. Ct. App. Div.) 109 N. Y. Supp. 234.

Oregon. — Bull *v.* Payne, 47 Oregon 580, 84 Pac. 697; Jackson *v.* Stearns, 48 Oregon 25, 84 Pac. 798.

Texas. — Jante *v.* Culbreth, (Tex. Civ. App. 1907) 101 S. W. 279.

Utah. — Chadwick *v.* Arnold, (Utah 1908) 95 Pac. 527.

Washington. — Graves *v.* Graves, (Wash. 1908) 94 Pac. 481.

Wisconsin. — Kaufer *v.* Stumpf, 129 Wis. 476, 109 N. W. 561.

887. 2. An agreement to convey waters of a stream for irrigation purposes is within the statute. Churchill *v.* Russell, 148 Cal. 1, 82 Pac. 440.

5. Dickerson *v.* Simmons, 141 N. Car. 325, 53 S. E. 850.

888. 1. **Administrator's Sales Not within Statute.** — Green *v.* Freeman, 126 Ga. 274, 55 S. E. 45.

4. Taylor *v.* Southerland, (Indian Ter. 1007) 104 S. W. 874; Morgart *v.* Smouse, 103 Md. 463, 63 Atl. 1070, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 888; Dietrich *v.* Heintz, (Tex. Civ. App. 1907) 99 S. W. 417.

6. Cascaden *v.* Dunbar, 2 Alaska 408, *reversed on facts* (C. C. A.) 157 Fed. 62.

889. 5. Ives *v.* Atlantic, etc., R. Co., 142 N. Car. 131, 55 S. E. 74, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 889, note 5.

891. 2. Richbourg *v.* Rose, 53 Fla. 173, 44 So. 69; Corbin *v.* Durden, 126 Ga. 429, 55 S. E. 30; King *v.* Cheatham, (Ky. 1907) 104 S. W. 751; Bayles *v.* Strong, 104 N. Y. App. Div. 153, 93 N. Y. Supp. 346, *affirmed* 185 N. Y. 582, 78 N. E. 1099; Hoeffler *v.* Irwin, 8 Ont. L. Rep. 740.

An agreement is valid when it relates to trees already felled, York *v.* Westall, 143 N. Car. 276, 55 S. E. 724; or to standing timber which is to be immediately cut, *In re* Benjamin, 140 Fed. 320; or where one contracts with another to cut timber from the latter's land and deliver it to him as cord wood, Ives *v.* Atlantic, etc., R. Co., 142 N. Car. 131, 55 S. E. 74.

892. 1. Crowell *v.* Ewing, 4 Cal. App. 358, 88 Pac. 285.

A sale of fixtures operates as a severance, and the contract is not required to be in writing. Finney *v.* Lucy, (Ala. 1905) 39 So. 583.

2. *Contra,* Barnes *v.* Hosmer, (Mass. 1907) 82 N. E. 27; Volk *v.* Olsen, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 227, 104 N. Y. Supp. 415.

13. Stephens *v.* Bailey, (Ala. 1906) 42 So. 740; Friedman *v.* Suttle, (Ariz. 1906) 85 Pac. 726, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 892; McCurry *v.* Hawkins, 83 Ark. 202, 103 S. W. 600; Mucke *v.* Solomon, 79 Conn. 297, 64 Atl. 738; Newman *v.* Lumley, 125 Ill. App. 382; Young *v.* Ruhwedel, 119 Mo. App. 231, 96 S. W. 228; Schmidt *v.* Beiseker, 14 N. Dak. 587, 105 N. W. 1102; Kepner *v.* Ford, (N. Dak. 1907) 111 N. W. 619; Dal *v.* Fischer, (S. Dak. 1906) 107 N. W. 534.

893. 1. Logan *v.* McMullen, 4 Cal. App. 154, 87 Pac. 285; Rothwell *v.* Gibson, 121 Mo. App. 279, 98 S. W. 801; Finley *v.* Handley, 121 Mo. App. 358, 98 S. W. 803.

Where the contract is not in writing the agent cannot recover on a *quantum meruit* for services rendered under it. Barney *v.* Lasbury, (Neb. 1906) 107 N. W. 989; Keith *v.* Smith, 46 Wash. 131, 89 Pac. 473.

Commissions cannot be recovered when not stated in the contract. Phillips *v.* Jones, 39 Ind. App. 626, 80 N. E. 555.

The statute affects only the right of the agent to collect commissions, and does not invalidate a contract made by him for his principal. Peirce *v.* Wheeler, 44 Wash. 326, 87 Pac. 361.

2. Collins *v.* Green, (Ind. App. 1907) 82 N. E. 932.

7. Goodloe *v.* Goodloe, 116 Tenn. 252, 92 S. W. 767.

894. 1. Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Soper *v.* Galloway, 129 Iowa 145, 105 N. W. 399; Powers *v.* Crandall, (Iowa 1907) 111 N. W. 1010; Russell *v.* Sharp, 192 Mo. 270, 91 S. W. 134; Hall *v.* Getman, 121 Mo. App. 630, 97 S. W. 607.

Personal Services Performed. — Fuller *v.* Fuller, (Pa. 1907) 68 Atl. 45; Goodloe *v.* Goodloe, 116 Tenn. 252, 92 S. W. 767.

2. *Compare In re* Taylor, (Wis. 1907) 111 N. W. 229.

7. Dixon *v.* Sheridan, 125 Wis. 60, 103 N. W. 239.

9. Reservation of Trees. — Coward *v.* Boyd, 79 S. Car. 134, 60 S. E. 311.

896. 13. Campbell *v.* Bright, 87 Miss. 443, 40 So. 3; Crawford *v.* Workman, (W. Va. 1908) 61 S. E. 322.

Evidence of a parol agreement to reconvey is admissible in an action for the value of the lands conveyed. Cromwell *v.* Norton, 193 Mass. 291, 79 N. E. 433.

897. 3. Farmers', etc., Leaf Tobacco Warehouse Co. *v.* Purdy, (Ky. 1907) 102 S. W. 303.

4. Ferguson *v.* Boyd, (Ind. 1907) 81 N. E. 71, *rehearing denied* (Ind. 1907) 82 N. E. 1064. *Contra,* Sebree *v.* Thompson, (Ky. 1907) 104 S. W. 781.

7. Allen *v.* Rees, (Iowa 1907) 110 N. W. 583; Bryan *v.* Douds, 213 Pa. St. 221, 62 Atl. 828. See also the title Trusts.

898. 1. Jones *v.* Patrick, 140 Fed. 403; Vaught *v.* Hogue, (Ky. 1908) 107 S. W. 757; Morgart *v.* Smouse, 103 Md. 463, 63 Atl. 1070, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 897 [898]; Stitt *v.* Rat Portage Lumber Co., 98 Minn. 52, 107 N. W. 824; Rice *v.* Parrott, (Neb. 1906) 107 N. W. 840, *affirmed on rehearing* (Neb. 1907) 111 N. W. 583; Pounds *v.* Egbert, 117 N. Y. App. Div. 756, 102 N. Y. Supp. 1079; Miller *v.* Ferguson, (Va. 1907) 57 S. E. 649, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 897, 898.

2. Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787; Scheuer *v.* Cochem, 126 Wis. 209, 105 N. W. 573.

In Michigan the Wisconsin rule prevails. Nester *v.* Sullivan, 147 Mich. 493, 111 N. W. 85, *modified* 147 Mich. 508, 111 N. W. 1033.

4. Cascaden *v.* Dunbar, 2 Alaska 408, *affirmed on this point, but reversed on the facts* (C. C. A.) 157 Fed. 62; Mack *v.* Mack, 39 Wash. 190, 81 Pac. 707.

7. Buckley *v.* Doig, 188 N. Y. 238, 80 N. E. 913. See also Tillis *v.* Folmar, 145 Ala. 176, 39 So. 913.

8. Buckley *v.* Doig, 115 N. Y. App. Div. 413, 100 N. Y. Supp. 869, *affirmed* 188 N. Y. 238, 80 N. E. 913; Rosenbaum *v.* New York, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 775.

899. 2. *Compare* Runner *v.* Woitke, 2 Alaska 391.

5. Butts *v.* Cooper, (Ala. 1907) 44 So. 616; Tuttle *v.* Bristol, 142 Mich. 148, 105 N. W. 145; Norton *v.* Brink, 75 Neb. 575, 110 N. W. 669, *vacating judgment* 75 Neb. 566, 106 N. W. 668. *Compare* Pounds *v.* Egbert, 117 N. Y. App. Div. 756, 102 N. Y. Supp. 1079.

6. Griffin *v.* Schlenk, (Ky. 1907) 102 S. W. 837, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 899; Mallon *v.* Buster, (Ky. 1905) 89 S. W. 257.

9. Vaught *v.* Hogue, (Ky. 1908) 107 S. W. 757; Langley *v.* Sanborn, (Wis. 1908) 114 N. W. 787.

Surrender of Option. — Henderson *v.* McRae, 148 Mich. 324, 111 N. W. 1057.

900. 2. Crawford *v.* Workman, (W. Va. 1908) 61 S. E. 322.

An Option creates no interest in land, and a party's rights thereunder may be orally sur-

rendered. Larsh *v.* Boyle, 36 Colo. 18, 86 Pac. 1000.

901. 1. Ramage *v.* Wilson, 37 Ind. App. 532, 77 N. E. 368.

2. *Compare* Wilkinson *v.* Sweet, (Tex. Civ. App. 1906) 93 S. W. 702.

902. 3. Alexander *v.* Cleland, 13 N. Mex. 524, 86 Pac. 425.

8. *Compare* Cutright *v.* Union Sav., etc., Co., (Utah 1908) 94 Pac. 984; Wisner *v.* Field, 15 N. Dak. 43, 106 N. W. 38.

A Stipulation in the Written Agreement of Purchase. — Cutright *v.* Union Sav., etc., Co., (Utah 1908) 94 Pac. 984.

In New York and Pennsylvania. — Hahn *v.* Brettler, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 647, 98 N. Y. Supp. 607.

Vendor's Lien May Be Orally Released. — McKinley *v.* Wilson, (Tex. Civ. App. 1906) 96 S. W. 112.

904. 4. Reynolds-McGinness Co. *v.* Green, 78 Vt. 28, 61 Atl. 556.

13. Blake *v.* Robinson, 129 Iowa 196, 105 N. W. 401.

906. 2. Miller *v.* State, 35 Ind. App. 379, 74 N. E. 260.

Regard must be had of the intention of the parties at the time the promise was made, and to determine this their situation and the attendant circumstances may be considered. Johnson *v.* Bank, 60 W. Va. 320, 55 S. E. 394.

5. Gates *v.* Morton Hardware Co., 146 Ala. 692, 40 So. 509.

6. Treakle *v.* Vaughan Abstract Co., 83 Ark. 258, 103 S. W. 174; Henderson *v.* Hughes, (Ga. App. 1908) 60 S. E. 813; Haak *v.* Kellogg, 146 Mich. 541, 109 N. W. 1068; Steele *v.* Ancient Order, etc., 125 Mo. App. 680, 103 S. W. 108; Ridgeway *v.* Corporation Liquidating Co., 71 N. J. L. 676, 62 Atl. 116; Sheppard *v.* Newton, 139 N. Car. 533, 52 S. E. 143; Jenkins *v.* Holley, 140 N. Car. 379, 53 S. E. 237; Johnson *v.* Bank, 60 W. Va. 320, 55 S. E. 394, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 906; Mankin *v.* Jones, (W. Va. 1908) 60 S. E. 248.

907. 2. Chapman *v.* Conwell, 1 Ga. App. 212, 58 S. E. 137.

4. Rancil *v.* Krohne, 31 Pa. Super. Ct. 130.

5. Burns *v.* Yocum, 81 Ark. 127, 98 S. W. 956; Kalispell Liquor, etc., Co. *v.* McGovern, 33 Mont. 394, 84 Pac. 709; Smith *v.* Burditt, 107 N. Y. App. Div. 628, 95 N. J. Supp. 188; Weisinger *v.* Brownstein, (Supm. Ct. App. T.) 107 N. Y. Supp. 644; Roscoe Lumber Co. *v.* Reynolds, 124 N. Y. App. Div. 539, 108 N. Y. Supp. 1018.

908. 1. Gates *v.* Morton Hardware Co., 146 Ala. 692, 40 So. 509; Long *v.* McDaniel, 76 Ark. 292, 88 S. W. 964; Steele *v.* Ancient Order, etc., 125 Mo. App. 680, 103 S. W. 108; Block *v.* Galitzka, 114 N. Y. App. Div. 799, 100 N. Y. Supp. 173; Johnson *v.* Bank, 60 W. Va. 320, 55 S. E. 394, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 907, 908.

"Will Pay You if He Does Not," Original. — Long *v.* McDaniel, 76 Ark. 292, 88 S. W. 964; Treakle *v.* Vaughan Abstract Co., 83 Ark. 258, 103 S. W. 174.

909. 12. Jefferson Bank *v.* Starr, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 656, 107 N. Y. Supp. 582.

910. 10. Burns *v.* Yocum, 81 Ark. 127, 98 S. W. 956; Snyder *v.* Monroe Eckstein Brewing Co., 107 N. Y. App. Div. 328, 95 N. Y. Supp. 144, *affirmed* 188 N. Y. 576, 80 N. E. 1120; Engel *v.* Gordon, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 641, 97 N. Y. Supp. 981; Pye *v.* Commercial Nat. Bank, (Tex. Civ. App. 1906) 97 S. W. 127.

911. 1. Mankin *v.* Jones, (W. Va. 1908) 60 S. E. 248.

5. *Contra,* Chicago Heights Lumber Co. *v.* Miller, 219 Ill. 79, 76 N. E. 52.

10. Chicago Heights Lumber Co. *v.* Miller, 219 Ill. 79, 76 N. E. 52.

912. 1. Long *v.* McDaniel, 76 Ark. 292, 88 S. W. 964; Burr *v.* Cross, 3 Cal. App. 414, 86 Pac. 824; Himmelman *v.* Pecaut, 133 Iowa 503, 110 N. W. 919; Dryden *v.* Barnes, 101 Md. 346, 61 Atl. 342; Hawes *v.* Murphy, 191 Mass. 469, 78 N. E. 109; Meyer-Bridges Co. *v.* Badeau, (Miss. 1907) 43 So. 609; Patrick *v.* Barker, (Neb. 1907) 112 N. W. 358; Wilson *v.* Hendee, (N. J. 1907) 66 Atl. 413; Hall *v.* Taylor, (Tex. Civ. App. 1906) 95 S. W. 755. *Contra,* Craft *v.* Lott, 87 Miss. 590, 40 So. 426.

2. Smith *v.* Miller, (Ala. 1907) 44 So. 399; Pylant *v.* Webb, 2 Ga. App. 171, 58 S. E. 329; Milby *v.* Mowry, 125 Ill. App. 417; Sheppard *v.* Newton, 139 N. Car. 533, 52 S. E. 143; Jenkins *v.* Holley, 140 N. Car. 379, 53 S. E. 237.

913. 2. Hedden *v.* Schneblin, 126 Mo. App. 478, 104 S. W. 887.

5. Lincoln Mountain Gold Min. Co. *v.* Williams, 37 Colo. 193, 85 Pac. 844; Donovan *v.* Purtell, 216 Ill. 629, 75 N. E. 334; Sheppard *v.* Newton, 139 N. Car. 533, 52 S. E. 143; Southern Pine, etc., Co. *v.* Bruce Lumber Co., (Tex. Civ. App. 1906) 95 S. W. 28.

914. 9. *In re* Dresser, 135 Fed. 495, 68 C. C. A. 207, *affirmed* 200 U. S. 532; Peters *v.* George, 1 Cal. 239, 81 Pac. 1117; McNeill *v.* Stitt, 2 Cal. App. 13, 82 Pac. 1121; Enos *v.* Anderson, (Colo. 1907) 93 Pac. 475; Herrin *v.* Abbe, (Fla. 1908) 46 So. 183; Higgins *v.* Evans, 188 Mo. 627, 87 S. W. 973; Adlam *v.* McKnight, 32 Mont. 349, 80 Pac. 613; Cerny *v.* Paxton, etc., Co., (Neb. 1907) 110 N. W. 882; Greenley *v.* Greenley, 114 N. Y. App. Div. 640, 100 N. Y. Supp. 114; Satterfield *v.* Kindley, 144 N. Car. 455, 57 S. E. 145, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 914 *et seq.*; Hoskins *v.* Velasco Nat. Bank, (Tex. Civ. App. 1907) 107 S. W. 598.

916. 5. Jefferson Bank *v.* Starr, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 656, 107 N. Y. Supp. 582.

917. 5. Sherer *v.* Rubedew, 11 Idaho 536, 83 Pac. 512; Lennard *v.* Texarkana Lumber Co., (Tex. Civ. App. 1906) 94 S. W. 383.

918. 10. Whitney *v.* Dresser, 200 U. S. 532; Abercrombie *v.* Montgomery Fourth Nat. Bank, (Ala. 1905) 39 So. 606; Palmetto Mfg. Co. *v.* Parker, 123 Ga. 798, 51 S. E. 714. See the title Novation.

919. 3. Inman *v.* F. N. Burt Co., 124 N. Y. App. Div. 73, 108 N. Y. Supp. 210.

6. Bicknall *v.* Bicknall, 27 R. I. 429, 62 Atl. 976.

10. *Compare* Palmetto Mfg. Co. *v.* Parker, 123 Ga. 798, 51 S. E. 714.

920. 2. Smith *v.* Miller, (Ala. 1907) 44 So. 399; Cauthron Lumber Co. *v.* Hall, 76 Ark. 1, 88 S. W. 594; Henderson *v.* Hughes, (Ga. App. 1908) 60 S. E. 813; Yawger *v.* Backs, 119 Ill. App. 61; Pulaski Stave Co. *v.* Sale, (Ky. 1908) 106 S. W. 786; Hillman *v.* Hulett, 149 Mich. 289, 112 N. W. 918; Bennett *v.* Thuet, 98 Minn. 497, 108 N. W. 1; Atlas Lumber, etc., Co. *v.* Flint, (S. Dak. 1905) 104 N. W. 1046; American Brewing Assoc. *v.* Gossett, (Tex. Civ. App. 1908) 107 S. W. 357.

921. 1. Schild *v.* Monroe Eckstein Brewing Co., 108 N. Y. App. Div. 50, 95 N. Y. Supp. 493; Texarkana Lumber Co. *v.* Lennard, (Tex. Civ. App. 1907) 104 S. W. 506.

7. Kalispell Liquor, etc., Co. *v.* McGovern, 33 Mont. 394, 84 Pac. 709; Weisinger *v.* Brownstein, (Supm. Ct. App. T.) 107 N. Y. Supp. 644.

922. 1. Mechanics', etc., Bank *v.* Stettheimer, 116 N. Y. App. Div. 198, 101 N. Y. Supp. 513.

6. East Baltimore Lumber Co. *v.* Waldeman, 100 Md. 689, 62 Atl. 575; Schroeder *v.* Helms, (Supm. Ct. App. T.) 98 N. Y. Supp. 214; Murphy *v.* Watertown, 112 N. Y. App. Div. 670, 99 N. Y. Supp. 6; Nichols *v.* Dixon, (Tex. Civ. App. 1905) 85 S. W. 1051, *affirmed* 99 Tex. 263, 89 S. W. 765; Mankin *v.* Jones, (W. Va. 1908) 60 S. E. 248, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922.

923. 3. Miller *v.* State, 35 Ind. App. 379, 74 N. E. 260; Johnson *v.* Bank, 60 W. Va. 320, 55 S. E. 394, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 922, 923. *Compare* Oldenburg *v.* Dorsey, 102 Md. 172, 62 Atl. 576.

924. 1. Schild *v.* Monroe Eckstein Brewing Co., 108 N. Y. App. Div. 50, 95 N. Y. Supp. 493.

4. East Baltimore Lumber Co. *v.* Waldeman, 100 Md. 689, 62 Atl. 575, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923, 924; Oldenburg *v.* Dorsey, 102 Md. 172, 62 Atl. 576, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 923, 924.

925. 2. Ridgeway *v.* Corporation Liquidating Co., 71 N. J. L. 676, 62 Atl. 116; Johnson *v.* Bank, 60 W. Va. 320, 55 S. E. 394.

3. Henderson *v.* Hughes, (Ga. App. 1908) 60 S. E. 813; Ridgeway *v.* Corporation Liquidating Co., 71 N. J. L. 676, 62 Atl. 116.

7. Yawger *v.* Backs, 119 Ill. App. 61.

926. 1. Atlas Lumber, etc., Co. *v.* Flint, (S. Dak. 1905) 104 N. W. 1046.

15. Demanding Payment Only of Promisor. — Gates *v.* Morton Hardware Co., 146 Ala. 692, 40 So. 509.

927. 8. Mankin *v.* Jones, (W. Va. 1908) 60 S. E. 248, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 927.

928. 1. Mankin *v.* Jones, (W. Va. 1908) 60 S. E. 248, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 928.

929. 4. *In re* Dresser, 135 Fed. 495, 68 C. C. A. 207, *affirmed* 200 U. S. 532; Roy *v.* Flin, (Ariz. 1906) 85 Pac. 725; Long *v.* McDaniel, 76 Ark. 292, 88 S. W. 964; Doe *v.* Allen, 1 Cal. App. 560, 82 Pac. 568; Evans *v.* Griffin, 1 Ga. App. 327, 57 S. E. 921; Castle *v.* Smith, 17 Hawaii 32, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 927 *et seq.*; Blake *v.* Robinson, 129 Iowa 196, 105 N. W. 401; Williams Shoe Co. *v.* Gotzian, 130 Iowa 710, 107 N. W. 807; Carlson *v.* Barker, (Mont. 1908) 93 Pac. 646; Blakeney *v.* Nalle, (Tex. Civ. App. 1907) 101 S. W. 875; Hoskins *v.* Velasco Nat. Bank, (Tex. Civ. App. 1907) 107 S. W. 598.

930. 1. *Compare* Satterfield *v.* Kindley, 144 N. Car. 455, 57 S. E. 145.

931. 1. Mankin *v.* Jones, (W. Va. 1908) 60 S. E. 248.

4. Breen *v.* Isaacs, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 127, 96 N. Y. Supp. 741; Schnaufer *v.* Ahr, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 299, 103 N. Y. Supp. 195; Sinkovitz *v.* Applebaum, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 527, 107 N. Y. Supp. 122; Jefferson Bank *v.* Starr, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 656, 107 N. Y. Supp. 582.

932. 1. Paul *v.* Wilbur, 189 Mass. 48, 75 N. E. 63.

933. 1. Commonwealth Bank *v.* Kirkland, 102 Md. 662, 62 Atl. 799; Draggo *v.* West Bay City Sugar Co., 144 Mich. 195, 107 N. W. 911.

An agreement not to foreclose a mortgage is a sufficient consideration to support a promise to pay the mortgagor's debt. Castle *v.* Smith, 17 Hawaii 32.

3. Grover *v.* Cavanaugh, (Ind. App. 1907) 82 N. E. 104, *overruling* Heintz *v.* Mueller, 19 Ind. App. 240; Bicknall *v.* Bicknall, 27 R. I. 429, 62 Atl. 976.

4. Carleton *v.* Floyd, 192 Mass. 204, 78 N. E. 126.

934. 3. Doe *v.* Allen, 1 Cal. App. 560, 82 Pac. 568; Withers *v.* Withers, (Ky. 1907) 100 S. W. 253; Kalispell Liquor, etc., Co. *v.* McGovern, 33 Mont. 394, 84 Pac. 709.

935. 1. Lee *v.* Unkefer, 77 S. Car. 460, 58 S. E. 343.

3. Haak *v.* Kellogg, 146 Mich. 541, 109 N. W. 1068; Block *v.* Galitzka, 114 N. Y. App. Div. 799, 100 N. Y. Supp. 173.

Where the promise is joint and the credit is extended to the owner and contractor, the promise of the owner is original. East Baltimore Lumber Co. *v.* Waldeman, 100 Md. 689, 62 Atl. 575.

6. Sinkovitz *v.* Applebaum, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 527, 107 N. Y. Supp. 122.

936. 2. Rancil *v.* Krohne, 31 Pa. Super. Ct. 130.

5. *Compare* Snyder *v.* Monroe Eckstein Brewing Co., 107 N. Y. App. Div. 328, 95 N. Y. Supp. 144, *affirmed* 188 N. Y. 576, 80 N. E. 1120.

937. 1. Smith *v.* Burditt, 107 N. Y. App. Div. 628, 95 N. Y. Supp. 188. *Compare* East Baltimore Lumber Co. *v.* Waldeman, 100 Md. 689, 62 Atl. 575.

4. Schnaufer *v.* Ahr, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 299, 103 N. Y. Supp. 195.

6. Nichols *v.* Dixon, (Tex. Civ. App. 1905) 85 S. W. 1051, *affirmed* 99 Tex. 263, 89 S. W. 765.

938. 11. Hicks *v.* Steel, 142 Mich. 292, 105 N. W. 767.

939. 1. *Compare* Hicks *v.* Steel, 142 Mich. 292, 105 N. W. 767.

9. Frazer *v.* Andrews, 134 Iowa 621, 112 N. W. 92.

941. 5. Hamilton *v.* Fred Miller Brewing Co., 125 Mo. App. 579, 102 S. W. 1088; Price *v.* Press Pub. Co., 117 N. Y. App. Div. 854, 103 N. Y. Supp. 296.

A verbal agreement by village trustees to make a written contract for street lights for five years is within the statute. McLachlin *v.* Whitehall, 114 N. Y. App. Div. 315, 99 N. Y. Supp. 721.

942. 1. White *v.* Fitts, 102 Me. 240, 66 Atl. 533; McIlroy *v.* Richards, 148 Mich. 694, 112 N. W. 489.

5. *Compare* Grand Forks Lumber Co. *v.* McClure Logging Co., (Minn. 1908) 115 N. W. 406.

943. 1. *Contra,* Shropshire *v.* Adams, (Tex. Civ. App. 1905) 89 S. W. 448.

2. Bentley *v.* Smith, 3 Ga. App. 242, 59 S. E. 720; White *v.* Fitts, 102 Me. 240, 66 Atl. 533; Closson *v.* Thompson Pulp, etc., Co., 112 N. Y. App. Div. 273, 97 N. Y. Supp. 1113; Warth *v.* Kastiner, 120 N. Y. App. Div. 480, 104 N. Y. Supp. 1056.

3. Mollitor *v.* C. M. Thom Van Co., 118 Ill. App. 293; Rader *v.* Huffman, 125 Ill. App. 554; Wessells *v.* Rodifer, (Ky. 1906) 97 S. W. 341; Poole *v.* Johnson, (Ky. 1907) 101 S. W. 955; Todd *v.* Bettingen, 98 Minn. 170, 107 N. W. 1049.

4. Seymour *v.* Hughes, (Supm. Ct. App. T.) 55 Misc. (N. Y.) 248, 105 N. Y. Supp. 249. *Contra,* Garofalo *v.* Rohleder, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 553, 102 N. Y. Supp. 897; Pinto *v.* Rintleman, (Tex. Civ. App. 1906) 92 S. W. 1003.

5. Womach *v.* Jenkins, (Mo. App. 1908) 107 S. W. 423; Chase *v.* Hinkley, 126 Wis. 75, 105 N. W. 230.

10. Gribble *v.* Raymond Van Praag Supply Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 242; San Antonio Light Pub. Co. *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 867; Chase *v.* Hinkley, 126 Wis. 75, 105 N. W. 230, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 943.

944. 1. Jones *v.* Com., (Ky. 1907) 104 S. W. 782; Ray *v.* Blackman, 120 Mo. App. 497, 97 S. W. 212; Thostesen *v.* Doxsee, (Neb. 1906) 110 N. W. 319; Kofoid *v.* Lincoln Implement, etc., Co., (Neb. 1908) 114 N. W. 937.

A verbal lease for more than a year, to begin in future, wherein monthly rent is reserved is not within the statute. Gabel *v.* Page, (Cal. App. 1907) 92 Pac. 749.

A lease for a year, to begin in future, though void, is made valid by ratification within the year. O'Connor *v.* Oliver, 45 Wash. 549, 88 Pac. 1025.

2. Fishman *v.* Wolf, (Supm. Ct. App. T.) 101 N. Y. Supp. 16.

945. 2. White *v.* Fitts, 102 Me. 240, 66 Atl. 533; Chase *v.* Hinkley, 126 Wis. 75, 105 N. W. 230.

946. 1. Gabel *v.* Page, (Cal. App. 1907) 92 Pac. 749.

3. Gurwell *v.* Morris, 2 Cal. App. 451, 83 Pac. 578; Mail, etc., Co. *v.* Wood, 140 Mich. 505, 103 N. W. 864.

6. Hudgins *v.* State, 126 Ga. 639, 55 S. E. 492; Bell *v.* Aiken, 1 Ga. App. 36, 57 S. E. 1001; Mobile, etc., R. Co. *v.* Hayden, 116 Tenn. 672, 94 S. W. 940.

The burden of proof is on the employee to show that the contract was to be performed within a year from the date thereof. Jacobson *v.* Schiffer, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 54, 99 N. Y. Supp. 864.

8. Embry *v.* Hargadine-McKittrick Dry Goods Co., 115 Mo. App. 130, 91 S. W. 170.

11. American Fine Art Co. *v.* Simon, (C. C. A.) 140 Fed. 529; Stewart *v.* Smith, (Cal. App. 1907) 91 Pac. 667; Burgesser *v.* Wendel, 73 N. J. L. 286, 62 Atl. 994; General Electric Inspection Co. *v.* Ebling Brewing Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 145, 101 N. Y. Supp. 648; Nonomaker *v.* Amos, 73 Ohio St. 163, 76 N. E. 949.

948. 1. McNealy *v.* Bartlett, 123 Mo. App. 58, 99 S. W. 767.

2. Decatur *v.* McKean, 167 Ind. 249, 78 N. E. 982; Lennard *v.* Texarkana Lumber Co., (Tex. Civ. App. 1906) 94 S. W. 383.

949. 5. American Fine Art Co. *v.* Simon, (C. C. A.) 140 Fed. 529; Nester *v.* Diamond Match Co., (C. C. A.) 143 Fed. 72; Lennard *v.* Texarkana Lumber Co., (Tex. Civ. App. 1906) 94 S. W. 383.

950. 1. Texarkana Lumber Co. *v.* Lennard, (Tex. Civ. App. 1907) 104 S. W. 506.

2. *Compare* Williams *v.* Apothecaries' Hall Co., (Conn. 1908) 69 Atl. 12.

4. American Cent. Ins. Co. *v.* Leake, (Ky. 1907) 104 S. W. 373.

951. 4. Shropshire *v.* Adams, (Tex. Civ. App. 1905) 89 S. W. 448; Johnson *v.* Johnson, 31 Utah 408, 88 Pac. 230.

952. 1. Wolverton *v.* Bruce, 6 Indian Ter. 135, 89 S. W. 1018.

4. Stitt *v.* Rat Portage Lumber Co., 98 Minn. 52, 107 N. W. 824, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 952.

5. Hudgins *v.* State, 126 Ga. 639, 55 S. E. 492; General Electric Inspection Co. *v.* Ebling Brewing Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 145, 101 N. Y. Supp. 648. *Compare* Byrne Mill Co. *v.* Robertson, (Ala. 1907) 42 So. 1008.

954. 1. Holden *v.* Gilfeather, 78 Vt. 405, 63 Atl. 144.

Contract Among Promoters of Corporation. — Gurwell *v.* Morris, 2 Cal. App. 451, 83 Pac. 578.

956. 6. Obenauer *v.* Solomon, (Mich. 1908) 115 N. W. 696.

957. 3. Franklin *v.* Matoa Gold Min. Co., (C. C. A.) 158 Fed. 941.

958. 1. *Compare* Morse *v.* Douglass, 112 N. Y. App. Div. 798, 99 N. Y. Supp. 392.

2. Orr *v.* Hall, 75 Neb. 548, 106 N. W. 656. *Compare* Jenkins, etc., Co. *v.* Alpena Portland Cement Co., 147 Fed. 611, 77 C. C. A. 625, where the *Illinois* statute is construed.

In North Carolina there has been no re-enactment of section 17 chapter 3, 29 St Charles II. Odon *v.* Clark, (N. Car. 1908) 60 S. E. 513.

An Oral Agreement to Form a Partnership

to purchase and sell property exceeding in price the sum limited by statute, is not violative of the seventeenth section of the statute. McNealy *v.* Bartlett, 123 Mo. App. 58, 99 S. W. 767.

959. 1. A contract of a municipality for a supply of water is within the statute. Jersey City *v.* Harrison, 72 N. J. L. 185, 62 Atl. 765.

960. 1. **Growing Timber.** — Corbin *v.* Durden, 126 Ga. 429, 55 S. E. 30; Ives *v.* Atlantic, etc., R. Co., 142 N. Car. 131, 55 S. E. 74.

961. 3. Fourchy *v.* Ellis, 140 Fed. 149; Hightower *v.* Ansley, 126 Ga. 8, 54 S. E. 939, *in effect overruling* Rogers *v.* Burr, 105 Ga. 432, 31 S. E. 438; Orr *v.* Hall, 75 Neb. 548, 106 N. W. 656; Morse *v.* Douglass, 112 N. Y. App. Div. 798, 99 N. Y. Supp. 392.

5. Moore *v.* Camden Marble, etc., Works, 80 Ark. 274, 96 S. W. 1063; Schloss *v.* Josephs, 98 Minn. 442, 108 N. W. 474; Gerli *v.* Metzer, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 46, 99 N. Y. Supp. 858.

964. 1. **In Missouri** the English rule prevails. Tower Grove Planing Mill Co. *v.* McCormack, 112 Mo. App. 349, 106 S. W. 113.

965. 2. **Tailor's Contract to Make Clothing within Statute.** — Schmidt *v.* Rozier, 121 Mo. App. 306, 98 S. W. 791.

Contract to Make and Sell Tombstones. — *Compare* Moore *v.* Camden Marble, etc., Works, 80 Ark. 274, 96 S. W. 1063.

967. 2. Moore *v.* Camden Marble, etc., Works, 80 Ark. 274, 96 S. W. 1063.

969. 3. Franklin *v.* Matoa Gold Min. Co., (C. C. A.) 158 Fed. 941.

970. 1. Driggs *v.* Bush, (Mich. 1908) 115 N. W. 985.

2. Case *v.* Kramer, 34 Mont. 142, 85 Pac. 878.

7. Driggs *v.* Bush, (Mich. 1908) 115 N. W. 985.

972. 2. Fletcher *v.* Southern, (Ind. App. 1908) 84 N. E. 526.

Effect of Part Payment. — Hedden *v.* Schneblin, 126 Mo. App. 478, 104 S. W. 887; Case *v.* Kramer, 34 Mont. 142, 85 Pac. 878; Lilly *v.* Lilly, 39 Wash. 337, 81 Pac. 852.

3. Lilly *v.* Lilly, 39 Wash. 337, 81 Pac. 852.

4. Taylor *v.* Goldbold, 76 Ark. 395, 88 S. W. 959; Corbin *v.* Durden, 126 Ga. 429, 55 S. E. 30; Kemensky *v.* Chapin, 193 Mass. 500, 79 N. E. 781; Eichberg *v.* Benedict Paper Co., 119 Mo. App. 262, 95 S. W. 963; St. Anthony, etc., Elevator Co. *v.* Cass County, 14 N. Dak. 601, 106 N. W. 41; Grant *v.* Milan, (Okla. 1908) 95 Pac. 424; Tinkelpaugh-Kimmel Hardware Co. *v.* Minneapolis Threshing Mach. Co., (Okla. 1908) 95 Pac. 427.

974. 1. Sotham *v.* Weber, 116 Mo. App. 104, 92 S. W. 181.

975. 1. Kemensky *v.* Chapin, 193 Mass. 500, 79 N. E. 781.

3. Gabriel *v.* Kildare Elevator Co., 18 Okla. 318, 90 Pac. 10.

976. 8. Calvert *v.* Schultz, 143 Mich. 441, 106 N. W. 1123.

977. 1. Bennett *v.* Thuet, 98 Minn. 497, 108 N. W. 1.

980. 1. Sotham *v.* Weber, 116 Mo. App. 104, 92 S. W. 181.

4. Jarrell *v.* Young, etc., Co., 105 Md. 280, 66 Atl. 50; Sotham *v.* Weber, 116 Mo. App. 104, 92 S. W. 181.

981. 4. J. H. Silkman Lumber Co. *v.* Hunholz, (Wis. 1907) 112 N. W. 1081, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 981.

982. 2. Jarrell *v.* Young, etc., Co., 105 Md. 280, 66 Atl. 50, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 982.

6. Insufficient Exercise of Dominion by Buyer. — Kemensky *v.* Chapin, 193 Mass. 500, 79 N. E. 781.

983. 2. Jarrell *v.* Young, etc., Co., 105 Md. 280, 66 Atl. 50, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 982.

984. 2. Kemensky *v.* Chapin, 193 Mass. 500, 79 N. E. 781.

3. Godkin *v.* Weber, (Mich. 1908) 114 N. W. 924.

4. Godkin *v.* Weber, (Mich. 1908) 114 N. W. 924.

985. 2. *Compare* Cable Co. *v.* Hancock, 2 Ga. App. 73, 58 S. E. 319; McIlroy *v.* Richards, 148 Mich. 694, 112 N. W. 489; J. H. Silkman Lumber Co. *v.* Hunholz, (Wis. 1907) 112 N. W. 1081.

No Further Delivery Necessary. — Godkin *v.* Weber, (Mich. 1908) 114 N. W. 924.

986. 3. Scully *v.* Smith, 110 N. Y. App. Div. 88, 96 N. Y. Supp. 998.

987. 2. Sotham *v.* Weber, 116 Mo. App. 104, 92 S. W. 181.

988. 2. Tinkelpaugh-Kimmel Hardware Co. *v.* Minneapolis Threshing Mach. Co., (Okla. 1908) 95 Pac. 427.

Insufficiency of Delivery to Carrier Designated by Buyer. — Kemensky *v.* Chapin, 193 Mass. 500, 79 N. E. 781.

989. 3. Calvert *v.* Schultz, 143 Mich. 441, 106 N. W. 1123.

991. 4. Walnut Ridge Mercantile Co. *v.* Cohn, 79 Ark. 338, 96 S. W. 413; Columbus Crate Co. *v.* Evans, (Ga. 1908) 60 S. E. 1065; Gabriel *v.* Kildare Elevator Co., 18 Okla. 318, 90 Pac. 10; Lilly *v.* Lilly, 39 Wash. 337, 81 Pac. 852.

992. 1. Ladnier *v.* Ladnier, (Miss. 1907) 43 So. 946.

993. 4. Lilly *v.* Lilly, 39 Wash. 337, 81 Pac. 852.

995. 4. Kemensky *v.* Chapin, 193 Mass. 500, 79 N. E. 781.

6. The buyer may testify as to his intent. Jarrell *v.* Young, etc., Co., 105 Md. 280, 66 Atl. 50.

Evidence of a custom as to the delivery of goods in car-load lots is not admissible to show receipt. Calvert *v.* Schultz, 143 Mich. 441, 106 N. W. 1123.

996. 3. Brockman Commission, etc., Co. *v.* Pound, 77 Ark. 364, 91 S. W. 183; Walnut Ridge Mercantile Co. *v.* Cohn, 79 Ark. 338, 96 S. W. 413, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 969 [906]; Freyberg *v.* Los Angeles Brewing Co., 4 Cal. App. 403, 88 Pac. 378; Fletcher *v.* Southern, (Ind. App. 1908) 84 N. E. 526.

Mere delivery under a contract of sale, the terms of which are not fully agreed upon, will not take the sale out of the statute. House *v.* Brown, 14 Ont. L. Rep. 500.

997. 3. Barr *v.* Satcher, 72 S. Car. 35, 51 S. E. 530.

VERDICT.

1001. 2. Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

5. **The Verdict Must State the Nature of the Decision,** the mere statement by the foreman in open court that the jury have agreed being insufficient. Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

1002. 2. Mitchell *v.* Tell City, (Ind. App. 1908) 83 N. E. 735; Martin *v.* Hoffman, (Kan. 1908) 93 Pac. 625.

6. Plyler *v.* Pacific Portland Cement Co., (Cal. 1907) 92 Pac. 56.

7. Coburn Cattle Co. *v.* Small, 35 Mont. 288, 88 Pac. 953; Morrison *v.* Lee, 13 N. Dak. 591, 102 N. W. 223.

1003. 1. Hassell Iron Works *v.* Cohen, 36 Colo. 353, 85 Pac. 89; Forrester *v.* State, 125 Ga. 28, 53 S. E. 767; Henrietta Coal Co. *v.* Campbell, 211 Ill. 216, 71 N. E. 863; Northrup *v.* Diggs, 115 Mo. App. 91, 91 S. W. 173; Anderson *v.* Wood, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 595, 99 N. Y. Supp. 474; Hesselgrave *v.* Butler Bros. Constr. Co., (Supm. Ct. App. T.) 101 N. Y. Supp. 103; Bluemner *v.* Garvin, 120 N. Y. App. Div. 29, 104 N. Y. Supp. 1009; Dinan *v.* Supreme Council, etc., 213 Pa. St. 489, 62 Atl. 1067; State *v.* Clardy, 73 S. Car. 340, 53 S. E. 493; Chase *v.* Knapel, (Wash. 1907) 90 Pac. 642.

2. Pearsall *v.* Com., (Ky. 1906) 92 S. W. 589; State *v.* Barrington, 198 Mo. 23, 95 S. W. 235; Morris *v.* Kansas City, 117 Mo. App. 298, 92 S. W. 908; Griffin *v.* Jersey City, etc., St. R. Co., 73 N. J. L. 389, 63 Atl. 863; Reich *v.* Cochran, 114 N. Y. App. Div. 141, 99 N. Y. Supp. 755; State *v.* Martin, 141 N. Car. 832, 53 S. E. 874; Godfrey *v.* Godfrey, 127 Wis. 47, 106 N. W. 814; Odegard *v.* North Wisconsin Lumber Co., 130 Wis. 659, 110 N. W. 809.

3. Smith *v.* Moore, 145 N. Car. 269, 59 S. E. 63.

4. Pressed Steel Car Co. *v.* Steel Car Forge Co., (C. C. A.) 149 Fed. 182; McMahon *v.* Hetch-Hetchy, etc., Valleys R. Co., 2 Cal. App. 400, 84 Pac. 350; Provident Sav. L. Assur. Soc. *v.* King, 216 Ill. 416, 75 N. E. 166; Inland Steel Co. *v.* Smith, (Ind. App. 1905) 75 N. E. 852; Spencer *v.* Haines, 73 N. J. L. 325, 62 Atl. 1009; Loewy *v.* Hirsch, (Supm. Ct. App. T.) 95 N. Y. Supp. 577; Barfield *v.* Coker, 73 S. Car. 181, 53 S. E. 170; Texas, etc., R. Co. *v.* Huber, (Tex. Civ. App. 1906) 95 S. W. 568; Shaw *v.* Seattle, 39 Wash. 590, 81 Pac. 1057.

5. Probate Ct. *v.* Enright, 79 Vt. 416, 65 Atl. 530.

6. Vasey *v.* Campbell, 4 Cal. App. 451, 88 Pac. 509.

7. State *v.* Gordon, (Mont. 1907) 90 Pac. 173; Watson *v.* State, 49 Tex. Crim. 371, 92 S. W. 807; Bates *v.* State, (Tex. Crim. 1907) 99 S. W. 551; St. Louis Southwestern R. Co. *v.* Hawkins, (Tex. Civ. App. 1908) 108 S. W. 736.

Substantial Compliance with Statute Sufficient. — Missouri, etc., R. Co. *v.* Lightfoot, (Tex. Civ. App. 1907) 106 S. W. 395.

Verdict Must Conform to Law. — Oakley *v.* Emmons, 73 N. J. L. 206, 62 Atl. 996.

8. Fleming *v.* Louisville, etc., R. Co., (Ala. 1906) 41 So. 683.

1004. 1. Atchison, etc., R. Co. *v.* Schroll, (Kan. 1907) 92 Pac. 596; Connelly *v.* Illinois Cent. R. Co., 120 Mo. App. 652, 97 S. W. 616; Hines *v.* Royce, 127 Mo. App. 718, 106 S. W. 1091; Van Alstine *v.* Standard Light, etc., Co., 116 N. Y. App. Div. 100, 101 N. Y. Supp. 696; Caufield *v.* Blatt, (Supm. Ct. App. T.) 107 N. Y. Supp. 712; Bentley *v.* Brossard, (Utah 1908) 94 Pac. 737; Koch *v.* State, 126 Wis. 470, 106 N. W. 531. But see O'Neill *v.* Thomas Day Co., (Cal. 1907) 92 Pac. 856; Butler *v.* Rhode Island Co., (R. I. 1907) 68 Atl. 425.

Technical Disobedience Only of Instructions Will Not Invalidate Verdict. — Wallerich *v.* Puget Sound Warehouse Co., 38 Wash. 501, 80 Pac. 763.

2. Washington *v.* State, (Fla. 1908) 46 So. 417; Missouri Pac. R. Co. *v.* Dorr, 73 Kan. 486, 85 Pac. 533; Sykes *v.* State, (Miss. 1908) 45 So. 838.

3. Nicholson *v.* Maine Cent. R. Co., 100 Me. 342, 61 Atl. 834.

4. Union Pac. R. Co. *v.* Connolly, (Neb. 1906) 109 N. W. 368.

5. Way *v.* State, (Ala. 1908) 46 So. 273; People *v.* District Ct., 33 Colo. 405, 80 Pac. 1065.

In Missouri the Concurrence of Nine or More Jurors is sufficient in civil cases. Schroeder *v.* St. Louis Transit Co., 111 Mo. App. 67, 85 S. W. 968; Kelly-Goodfellow Shoe Co. *v.* Sally, 114 Mo. App. 222, 89 S. W. 889.

1005. 5. Burch *v.* Southern Pac. Co., 145 Fed. 443.

7. People *v.* Koerner, 117 N. Y. App. Div. 40, 102 N. Y. Supp. 93; Cornelison *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 1186.

1006. 4. State *v.* Cowell, 125 Mo. App. 348, 102 S. W. 573.

1007. 3. State *v.* Cowell, 125 Mo. App. 348, 102 S. W. 573.

1008. 2. In *New York* it rests within the discretion of the trial court as to the length of time the jury shall be kept together in deliberation of the verdict. People *v.* Koerner, 117 N. Y. App. Div. 40, 102 N. Y. Supp. 93.

A Verdict Rendered in Fifteen Minutes in a Capital Case suggests no illegality. State *v.* Le Blanc, 116 La. 822, 41 So. 105.

4. Nunnery *v.* State, 87 Miss. 542, 40 So. 431; State *v.* Buskove, 34 Mont. 41, 85 Pac. 376, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1008.

1009. 1. *California.* — People *v.* Richards, 1 Cal. App. 566, 82 Pac. 691.

Georgia. — Bowden *v.* State, 126 Ga. 578, 55 S. E. 499; Cable Co. *v.* Walker, 127 Ga. 65, 56 S. E. 108.

Illinois. — Chicago *v.* Saldman, 225 Ill. 625, 80 N. E. 349.

Iowa. — Brown Land Co. *v.* Lehman, 134 Iowa 712, 112 N. W. 185; State *v.* Steidley,

(Iowa 1908) 113 N. W. 333. Wright *v.* Dudgeon, (Iowa 1908) 116 N. W. 598.

Kentucky. — Covington, etc., Bridge Co. *v.* Hull, (Ky. 1906) 90 S. W. 1055; Shacklett *v.* Henderson County Sav. Bank, (Ky. 1907) 100 S. W. 241; Maysville, etc., R. Co. *v.* Willis, (Ky. 1907) 104 S. W. 1016.

Louisiana. — State *v.* Barrett, 117 La. 1086, 42 So. 513.

Michigan. — Battle Creek *v.* Haak, 139 Mich. 514, 102 N. W. 1005.

Montana. — State *v.* Beeskove, 34 Mont. 41, 85 Pac. 376, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1009.

New Hampshire. — Winslow *v.* Smith, (N. H. 1906) 65 Atl. 108.

New York. — People *v.* Birnbaum, 114 N. Y. App. Div. 480, 100 N. Y. Supp. 160.

North Carolina. — Coxe *v.* Singleton, 139 N. Car. 361, 51 S. E. 1019.

North Dakota. — State *v.* Forrester, 14 N. Dak. 335, 103 N. W. 625, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1009.

South Dakota. — Ewing *v.* Lunn, (S. Dak. 1908) 115 N. W. 527.

Texas. — Bearden *v.* State, 47 Tex. Crim. 271, 83 S. W. 808; Galveston, etc., R. Co. *v.* Roberts, (Tex. Civ. App. 1905) 91 S. W. 375; Flynt *v.* Taylor, (Tex. Civ. App. 1905) 91 S. W. 864; St. Louis Southwestern R. Co. *v.* Gentry, (Tex. Civ. App. 1906) 98 S. W. 226.

Vermont. — Marcy *v.* Parker, 78 Vt. 73, 62 Atl. 19.

Wisconsin. — Butteris *v.* Mifflin, etc., Min. Co., (Wis. 1907) 113 N. W. 642; Gallaway *v.* Massee, (Wis. 1907) 113 N. W. 1098.

1012. 3. Dralle *v.* Reedsburg, (Wis. 1908) 115 N. W. 819.

10. *United States.* — Phœnix Assur. Co. *v.* Maryland Gold Min., etc., Co., (C. C. A.) 146 Fed. 501.

Alabama. — Tucker *v.* State, (Ala. 1907) 44 So. 587.

California. — People *v.* Small, 1 Cal. App. 320, 82 Pac. 87.

Florida. — Harris *v.* State, 53 Fla. 37, 43 So. 311.

Illinois. — Donovan *v.* People, 215 Ill. 520, 74 N. E. 772.

Kansas. — Chicago, etc., R. Co. *v.* Brandon, (Kan. 1908) 95 Pac. 573.

Missouri. — Winkelman *v.* Maddox, 119 Mo. App. 658, 95 S. W. 308, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1012; State *v.* Modlin, 197 Mo. 376, 95 S. W. 345; State *v.* Shour, 196 Mo. 202, 95 S. W. 405; Dailey *v.* Columbia, 122 Mo. App. 21, 97 S. W. 954; Hines *v.* Royce, 127 Mo. App. 718, 106 S. W. 1091.

New York. — Anderson *v.* Wood, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 595, 99 N. Y. Supp. 474; La Rosa *v.* Wilner, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 580, 101 N. Y. Supp. 193.

North Dakota. — Johnson *v.* Glaspey, (N. Dak. 1907) 113 N. W. 603.

Texas. — St. Louis Southwestern R. Co. *v.* Black, (Tex. Civ. App. 1906) 93 S. W. 1071; Colorado Canal Co. *v.* McFarland, (Tex. Civ. App. 1906) 94 S. W. 400; Roche *v.* Dale, (Tex. Civ. App. 1906) 95 S. W. 1100; Barrow *v.* Barrow, (Tex. Civ. App. 1906) 97 S. W. 120; Williams *v.* Smith, (Tex. Civ. App. 1906) 98 S. W. 916.

Wisconsin. — Koch *v.* State, 126 Wis. 470, 106 N. W. 531.

Wyoming. — Long *v.* State, 15 Wyo. 262, 88 Pac. 617.

1013. 2. Johnson *v.* Glaspey, (N. Dak. 1907) 113 N. W. 602; Hubbard *v.* Rutland R. Co., 80 Vt. 462, 68 Atl. 647.

1014. 3. Rockefeller *v.* Wedge, (C. C. A.) 149 Fed. 130; Sealing *v.* Wichita Falls First Nat. Bank, (Tex. Civ. App. 1905) 87 S. W. 715.

1016. 1. Woodard *v.* State, 84 Ark. 119, 104 S. W. 1109, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1016; Southern R. Co. *v.* Oliver, 1 Ga. App. 734, 58 S. E. 244; State *v.* Yates, 132 Iowa 475, 109 N. W. 1005; King *v.* McKinstry, 32 Pa. Super. Ct. 34; Fields *v.* Lancaster Cotton Mills, 77 S. Car. 546, 58 S. E. 608.

1017. 1. Edwards *v.* State, (Fla. 1907) 45 So. 21; Morris *v.* State, (Fla. 1907) 45 So. 456; Telfair County *v.* Clements, (Ga. App. 1907) 57 S. E. 1059; Southern R. Co. *v.* Oliver, 1 Ga. App. 734, 58 S. E. 244; Tifton, etc., R. Co. *v.* Butler, (Ga. App. 1908) 60 S. E. 1087; State *v.* Williams, 191 Mo. 205, 90 S. W. 448; Peterson *v.* St. Louis Transit Co., 199 Mo. 331, 97 S. W. 860; Western Travelers' Acc. Assoc. *v.* Tomson, 72 Neb. 661, 103 N. W. 695; Phœnix Furniture Co. *v.* Jaudon, 75 S. Car. 229, 55 S. E. 308; Brown *v.* Gillett, 39 Wash. 495, 81 Pac. 1002, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1017.

1019. 4. Maxwell *v.* Territory, (Ariz. 1906) 85 Pac. 116; Buffehr *v.* Territory, (Ariz. 1907) 89 Pac. 415; Reyes *v.* State, 49 Fla. 17, 38 So. 257; State *v.* Perry, 78 S. Car. 184, 59 S. E. 851; State *v.* Hubbard, (S. Dak. 1905) 104 N. W. 1120; Fuerst *v.* State, 115 Tenn. 357, 89 S. W. 955; Moody *v.* State, (Tex. Crim. 1907) 105 S. W. 1127; State *v.* May, (W. Va. 1907) 57 S. E. 366.

The degree of murder need not be stated in a verdict of assault with intent to commit murder. Edwards *v.* State, (Fla. 1907) 45 So. 21.

5. **A Verdict for Manslaughter** under an indictment for murder in the first degree is an acquittal of murder. West *v.* State, (Fla. 1908) 46 So. 93.

1020. 1. Lyles *v.* State, 48 Tex. Crim. 119, 86 S. W. 763.

In a Prosecution for Embezzlement the verdict is defective if it fails to state whose money was embezzled, and that the defendant is guilty as charged in the indictment. State *v.* Jones, 114 Mo. App. 343, 89 S. W. 366.

7. Woodbury *v.* Winestine, 79 Conn. 721, 64 Atl. 221; Gray's Harbor Boom Co. *v.* Lytle Logging, etc., Co., 38 Wash. 88, 80 Pac. 271.

Insertion of Amount by Court. — Gould *v.* Young, 143 Mich. 372, 107 N. W. 281.

1021. 3. Amory *v.* Washington Steamboat Co., 120 N. Y. App. Div. 818, 105 N. Y. Supp. 999.

6. **"De Minimis Non Curat Lex"** applies where an agent sues to recover compensation and a verdict is rendered for $1.54 in excess. McKone *v.* Metropolitan L. Ins. Co., 131 Wis. 243, 110 N. W. 472.

8. Blum *v.* Edelstein, 20 Colo. App. 408, 79 Pac. 301; Barber *v.* Maden, 126 Iowa 402, 102 N. W. 120; Isley *v.* Virginia Bridge, etc., Co., 143 N. Car. 51, 55 S. E. 416.

Verdict Slightly in Excess Refusing to Interest. — Southern R. Co. *v.* Webb, (Ala. 1906) 41 So. 420.

Irregularity Cured by Remittitur. — St. Louis Southwestern R. Co. *v.* Gentry, (Tex. Civ. App. 1906) 98 S. W. 226.

1022. 1. Clyde Milling, etc., Co. *v.* Buoy, 71 Kan. 293, 80 Pac. 591; Fleming *v.* Jacob, (Supm. Ct. Spec. T.) 103 N. Y. Supp. 209; Corcoran *v.* Halloran, (S. Dak. 1906) 107 N. W. 210.

2. McGowan *v.* Lynch, (Ala. 1907) 44 So. 573, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1022; Johnson *v.* Phenix Ins. Co., (Cal. 1907)-92 Pac. 182, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed. 1022; Albritton *v.* State, (Fla. 1907) 44 So. 745; O'Neal *v.* State, (Fla. 1907) 44 So. 940; Telfair County *v.* Clements, (Ga. App. 1907) 57 S. E. 1059; State *v.* Cotterel, 12 Idaho 572, 86 Pac. 527; Diamond Glue Co. *v.* Wietzychowski, 227 Ill. 338, 81 N. E. 392; Illinois Cent. R. Co. *v.* Warriner, 229 Ill. 91, 82 N. E. 246; Inland Steel Co. *v.* Smith, 168 Ind. 245, 80 N. E. 538; Ellis *v.* Littlefield, (Tex. Civ. App. 1906) 93 S. W. 171; Carbough *v.* State, 49 Tex. Crim. 452, 93 S. W. 738; Coolidge *v.* Hallauer, 126 Wis. 244, 105 N. W. 568.

3. Schaeffer Piano Mfg. Co. *v.* National Fire Extinguisher Co., (C. C. A.) 148 Fed. 159; Spreckles *v.* Gorrill, (Cal. 1907) 92 Pac. 1011; Levidow *v.* Starin, 77 Conn. 600, 60 Atl. 123; Johnson *v.* State, 51 Fla. 44, 40 So. 678; Edwards *v.* State, (Fla. 1907) 45 So. 21; Thomas *v.* State, 121 Ga. 331, 49 S. E. 273; Dickerson *v.* State, 121 Ga. 333, 49 S. E. 275; De Loach Mill Mfg. Co. *v.* Standard Sawmill Co., 125 Ga. 377, 54 S. E. 157; Henderson *v.* Smith, (Ky. 1907) 104 S. W. 277; Brady *v.* Kansas City, etc., R. Co., 206 Mo. 509, 102 S. W. 978; Brown *v.* Lewis, (Oregon 1907) 92 Pac. 1058.

1023. 6. Johnson *v.* Phenix Ins. Co., (Cal. 1907) 92 Pac. 182, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1023.

1024. 3. Perry *v.* People, 38 Colo. 23, 87 Pac. 796, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1024; State *v.* Reeder, 72 S. Car. 223, 51 S. E. 702.

1025. 3. James *v.* Evans, (C. C. A.) 149 Fed. 136; Phillips *v.* Geiser Mfg. Co., (Mo. App. 1908) 107 S. W. 471.

Where There Are Two Defendants a verdict in favor of the plaintiff is construed as against both defendants. McMahon *v.* Hetch-Hetchy, etc., Valleys R. Co., 2 Cal. App. 400, 84 Pac. 350.

Verdict against One Defendant in Favor of Other. — Evans *v.* Freeman, 149 Fed. 1020.

4. *United States.* — Pressed Steel Car Co. *v.* Steel Car Forge Co., (C. C. A.) 149 Fed. 182.

Alabama. — Cowart *v.* State, 147 Ala. 137, 41 So. 631.

Arkansas. — Lake *v.* Combs, 84 Ark. 21, 104 S. W. 544; Woodard *v.* State, 84 Ark. 119, 104 S. W. 1109.

California. — Moody *v.* Peirano, 4 Cal. App. 411, 88 Pac. 380; Vasey *v.* Campbell, 4 Cal. App. 451, 88 Pac. 509.

Colorado. — Hassell Iron Works *v.* Cohen, 36 Colo. 353, 85 Pac. 89; Denver, etc., R. Co. *v.* Klaes, (Colo. 1907) 90 Pac. 60.

Florida. — Henderson *v.* State, (Fla. 1908) 46 So. 631; Washington *v.* State, (Fla. 1908) 46 So. 417.

Georgia. — Reid *v.* Hearn, 127 Ga. 117, 56 S. E. 129; Cameron *v.* American Soda Fountain Co., (Ga. App. 1908) 60 S. E. 109.

Idaho. — Campbell *v.* Rexburg First Nat. Bank, 13 Idaho 95, 88 Pac. 639.

Illinois. — Dorgan *v.* People, 215 Ill. 320, 74 N. E. 772; Court of Honor *v.* Dinger, 221 Ill. 176, 77 N. E. 557; Chicago City R. Co. *v.* Shreve, 226 Ill. 530, 80 N. E. 1049.

Indiana. — Polley *v.* Pogue, 38 Ind. App. 678, 78 N. E. 1051; Ætna L. Ins. Co. *v.* Bockting, 39 Ind. App. 586, 79 N. E. 524; National Biscuit Co. *v.* Wilson, (Ind. App. 1907) 80 N. E. 33; National Cash Register Co. *v.* Price, (Ind. App. 1908) 83 N. E. 776.

Kentucky. — Brown *v.* Com., (Ky. 1907) 99 S. W. 236; Thomas *v.* Com., (Ky. 1907) 101 S. W. 303.

Missouri. — Peterson *v.* St. Louis Transit Co., 199 Mo. 331, 97 S. W. 860.

Montana. — Butte Electric R. Co. *v.* Mathews, 34 Mont. 487, 87 Pac. 460.

New Jersey. — Spencer *v.* Haines, 73 N. J. L. 325, 62 Atl. 1009.

North Carolina. — State *v.* Sheppard, 142 N. Car. 586, 55 S. E. 146; Smith *v.* Moore, 145 N. Car. 269, 59 S. E. 63.

South Carolina. — Phœnix Furniture Co. *v.* Jaudon, 75 S. Car. 229, 55 S. E. 308.

Texas. — Commerce Milling, etc., Co. *v.* Morris, (Tex. Civ. App. 1905) 86 S. W. 73; Evans *v* Gray, (Tex. Civ. App. 1905) 86 S. W. 375; Patterson *v.* Frazer, (Tex. Civ. App. 1906) 93 S W. 146; Carbough *v.* State, 49 Tex. Crim. 452, 93 S. W. 738; Colorado Canal Co. *v.* Sims, (Tex. Civ. App. 1906) 94 S. W. 365; Letot *v.* Peacock, (Tex. Civ. App. 1906) 94 S. W. 1121; McKenzie *v.* Barrett, (Tex. Civ. App. 1906) 98 S. W. 229; Williams *v.* Smith, (Tex. Civ. App. 1906) 98 S. W. 916; Beall *v.* Johnson, (Tex. Civ. App. 1907) 99 S. W. 1045; Stoker *v.* Fugitt, (Tex. Civ. App. 1907) 102 S. W. 743; Bluestein *v.* Collins, (Tex. Civ. App. 1907) 103 S. W. 687.

Washington. — Rice *v.* Knostman, 45 Wash. 282, 88 Pac. 194.

West Virginia. — State *v.* May, (W. Va. 1907) 57 S. E. 366.

Wisconsin. — Koch *v.* State, 126 Wis. 470, 106 N. W. 531.

1026. 1. Freeman *v.* State, (Ala. 1907) 44 So. 46; Strickland *v.* Hutchinson, 123 Ga. 396, 51 S. E. 348; Major *v.* Miller, 165 Ind. 275, 75 N. E. 159; National Biscuit Co. *v.* Wilson, (Ind. App. 1907) 80 N. E. 33; *Ex p.* Burden, (Miss. 1907) 45 So. 1; Burden *v.* State, (Miss. 1908) 45 So. 705; Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561; San Marcos Electric Light, etc., Co. *v.* Compton, (Tex. Civ. App. 1908) 107 S. W. 1151.

2. Southern R. Co. *v.* Oliver, 1 Ga. App. 734, 58 S. E. 244; State *v.* Scott, 142 N. Car. 602, 55 S. E. 270.

3. Moss *v.* State, (Ala. 1905) 39 So. 830; Freeman *v.* State, (Ala. 1907) 44 So. 46; People *v.* Taylor, 4 Cal. App. 31, 87 Pac. 215; Southern R. Co. *v.* Oliver, 1 Ga. App. 734, 58 S. E. 244, *quoting* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1026; Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561.

1027. 2. Richardson *v.* Nobl, 143 Mich. 546, 107 N. W. 274.

4. People *v.* Taylor, 4 Cal. App. 31, 87 Pac. 215; Beaudrot *v.* State, 126 Ga. 579, 55 S. E. 592; State *v.* Cook, 117 La. 114, 41 So. 434; Niezorawski *v.* State, 131 Wis. 166, 111 N. W. 250.

1028. 2. Plyler *v.* Pacific Portland Cement Co., (Cal. 1907) 92 Pac. 56.

1029. 2. Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056; Howard *v.* Beldenville Lumber Co., 129 Wis. 98, 108 N. W. 48.

In Kentucky the statute providing that the court in its discretion may direct the jury to find a separate general verdict, which is "that the verdict is separate as to the particular issue as distinguished from any other issue in the case and general as to the particular issue." Jones *v.* Moore, (Ky. 1907) 99 S. W. 286.

3. Nicholson *v.* Maine Cent. R. Co., 100 Me. 342, 61 Atl. 834; Schelske *v.* Orange Tp., 147 Mich. 135, 110 N. W. 506; Coburn Cattle Co. *v.* Small, 35 Mont. 288, 88 Pac. 953, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 1029; Johanson *v.* Atlantic City R. Co., 73 N. J. L. 767, 64 Atl. 1061, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1029; Collins *v.* Whiteside, (N. J. 1908) 69 Atl. 174; Elliott *v.* Miller, 158 Fed. 868; Mabry *v.* Citizens' Lumber Co., (Tex. Civ. App. 1907) 105 S. W. 1156; Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077.

1030. 1. American Bonding Co. *v.* State, (Ind. App. 1907) 82 N. E. 548; Brown *v.* Ricketts, 27 Ohio Cir. Ct. 269.

2. Burdette *v.* Crawford, 125 Ga. 577, 54 S. E. 677; Carnegie Public Library Assoc. *v.* Harris, (Tex. Civ. App. 1906) 97 S. W. 520; Howard *v.* Beldenville Lumber Co., 129 Wis. 98, 108 N. W. 48.

1031. 1. Nicholson *v.* Maine Cent. R. Co., 100 Me. 342, 61 Atl. 834; Mueller *v.* Northwestern Iron Co., 125 Wis. 326, 104 N. W. (

1032. 4. State *v.* Scott, 142 N. Car. 602, 55 S. E. 270; Dunlap *v.* Raywood Rice Canal, etc., Co., (Tex. Civ. App. 1906) 95 S. W. 43.

1034. 2. J. S. Brown Hardware Co. *v.* Catrett, (Tex. Civ. App. 1907) 101 S. W. 559.

3. Plyler *v.* Pacific Portland Cement Co., (Cal. 1907) 92 Pac. 56; Lindemann *v.* Rusk, 125 Wis. 210, 104 N. W. 119.

6. Plyler *v.* Pacific Portland Cement Co., (Cal. 1907) 92 Pac. 56.

7. Connell *v.* Keokuk Electric R., etc., Co., 131 Iowa 622, 109 N. W. 177; San Antonio, etc., R. Co. *v.* Keirsey, (Tex. Civ. App. 1907) 106 S. W. 163.

1035. 1. Erie Crawford Oil Co. *v.* Meeks, (Ind. App. 1907) 81 N. E. 518; People *v.* Rivers, 147 Mich. 643, 111 N. W. 201; Stillwater *v.* Swisher, 16 Okla. 585, 85 Pac. 1110; Barton *v.* Koom, (S. Dak. 1905) 104 N. W. 521; Glettler *v.* Sheboygan Light, etc., Co., 130 Wis. 137, 109 N. W. 973.

2. Indianapolis St. R. Co. *v.* Fearnaught, 39 Ind. App. 75, 79 N. E. 217; Bedford Quarries Co. *v.* Turner, (Ind. App. 1905) 75 N. E. 25; Indianapolis St. R. Co. *v.* Taylor, 39 Ind. App. 592, 80 N. E. 436; Inland Steel Co. *v.* Smith, 168 Ind. 245, 80 N. E. 538; Chicago, etc., R. Co. *v.* Gallion, 39 Ind. App. 604, 80 N. E. 547; Richmond, etc., R. Co. *v.* Beverley, (Ind. App. 1908) 84 N. E. 558; Atchison, etc., R. Co. *v.* Bishop, (Kan. 1907) 89 Pac. 668; Lufkin *v.* Hitchcock, 194 Mass. 231, 80 N. E. 456; Graham *v.* Hatch Storage Battery Co., 186 Mass. 226, 71 N. E. 532; Burke *v.* Bay City Traction, etc., Co., 147 Mich. 172, 110 N. W. 524; Stoker *v.* Fugitt, (Tex. Civ. App. 1907) 102 S. W. 743; Horn *v.* La Crosse Box Co., 131 Wis. 384, 111 N. W. 522; Zarnik *v.* C. Reiss Coal Co., (Wis. 1907) 113 N. W. 752; Cook Land Constr., etc., Co. *v.* Oconto Co., (Wis. 1908) 114 N. W. 823.

3. *California.* — Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122.

Illinois. — Court of Honor *v.* Dinger, 221 Ill. 176, 77 N. E. 557.

Indiana. — Farmers' Ins. Assoc. *v.* Reavis, 163 Ind. 327, 71 N. E. 905; Foster *v.* Bemis Indianapolis Bag Co., 163 Ind. 351, 71 N. E. 953; Smith *v.* Michigan Cent. R. Co., 35 Ind. App. 188, 73 N. E. 928; Pittsburgh, etc., R. Co. *v.* Newsom, 35 Ind. App. 299, 74 N. E. 21; Flickner *v.* Lambert, 36 Ind. App. 524, 74 N. E. 263; Cleveland, etc., R. Co. *v.* Miller, 165 Ind. 381, 74 N. E. 509; Bedford Quarries Co. *v.* Turner, (Ind. App. 1905) 75 N. E. 25; Anderson *v.* Citizens' Nat. Bank, 38 Ind. App. 190, 76 N. E. 811; Catterson *v.* Hall, 37 Ind. App. 341, 76 N. E. 889; Southern R. Co. *v.* Roach, (Ind. App. 1906) 77 N. E. 606; Cincinnati, etc., Electric St. R. Co. *v.* Klump, 37 Ind. App. 660, 77 N. E. 869; Indianapolis St. R. Co. *v.* Fearnaught, 39 Ind. App. 75, 79 N. E. 217; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Chicago, etc., R. Co. *v.* Lawrence, (Ind. 1906) 79 N. E. 363; Ætna L. Ins. Co. *v.* Bockting, 39 Ind. App. 586, 79 N. E. 524; Bemis Indianapolis Bag Co. *v.* Krentler, 167 Ind. 653, 79 N. E. 974; Indianapolis St. R. Co. *v.* Kane, (Ind. 1907) 80 N. E. 841; Tucker, etc., Mfg. Co. *v.* Staley, (Ind. App. 1907) 80 N. E. 975; U. S. Health, etc., Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760; Lake Shore, etc., R. Co. *v.* Brown, (Ind. App. 1908) 84 N. E. 25; Masterson *v.* Southern R. Co., (Ind. 1908) 84 N. E. 505; Robbins *v.* Fort Wayne Iron, etc., Co., (Ind. App. 1908) 84 N. E. 514; Richmond, etc., R. Co. *v.* Beverley, (Ind. App. 1908) 84 N. E. 558; Haughton *v.* Ætna L. Ins. Co., (Ind. App. 1908) 85 N. E. 125; Ft. Wayne Cooperage Co. *v.* Page, (Ind. 1908) 84 N. E. 145; Cleveland, etc., R. Co. *v.* Houghland, (Ind. App. 1908) 85 N. E. 369.

Kansas. — Chicago, etc., R. Co. *v.* Laughlin, 74 Kan. 567, 87 Pac. 749; Eureka *v.* Neville, 71 Kan. 842, 80 Pac. 39; Chicago, etc., R. Co. *v.* Wimmer, 72 Kan. 566, 84 Pac. 378; Samson *v.* Zimmerman, 73 Kan. 654, 85 Pac. 757; American Smelting, etc., Co. *v.* Hoke, 74 Kan. 844, 85 Pac. 804; Hardy *v.* Curry, 75 Kan. 92, 89 Pac. 19; Atchison, etc., R. Co. *v.* Bishop, (Kan. 1907) 89 Pac. 668.

Michigan. — Martin *v.* Fisher, 143 Mich. 462, 107 N. W. 86.

Minnesota. — Awde *v.* Cole, 99 Minn. 357, 109 N. W. 812.

Montana. — Martin *v.* Butte, 34 Mont. 281, 86 Pac. 264.

New Hampshire. — Hewett *v.* Woman's Hospital Aid Assoc., 73 N. H. 556, 64 Atl. 190.

New Mexico. — Roswell *v.* Davenport, (N.

Mex. 1907) 89 Pac. 256, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1035; Upton *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

Ohio. — Bloor *v.* Platt, (Ohio 1908) 84 N. E. 604.

Oklahoma. — White *v.* Madison, 16 Okla. 212, 83 Pac. 798.

South Dakota. — Ewing *v.* Lunn, (S. Dak. 1908) 115 N. W. 527.

Texas. — Commerce Milling, etc., Co. *v.* Morris, (Tex. Civ. App. 1905) 86 S. W. 73; Dunlap *v.* Raywood Rice Canal, etc., Co., (Tex. Civ. App. 1906) 95 S. W. 43.

Washington. — Stratton *v.* C. H. Nichols Lumber Co., 39 Wash. 323, 81 Pac. 831; Crowley *v.* Northern Pac. R. Co., (Wash. 1907) 89 Pac. 471; Grant *v.* Spokane Traction Co., (Wash. 1907) 91 Pac. 553.

Wisconsin. — Anderson *v.* Chicago Brass Co., 127 Wis. 273, 106 N. W. 1077.

Wyoming. — Cramer *v.* Munkres, 14 Wyo. 234, 83 Pac. 374; Chicago, etc., R. Co. *v.* Morris, (Wyo. 1908) 93 Pac. 664.

"To Determine Whether the General Verdict or Answers to Interrogatories Shall Prevail the court will look to the pleadings, the verdict and answers to the interrogatories only." Grass *v.* Ft. Wayne, etc., Traction Co., (Ind. App. 1907) 81 N. E. 514.

4. *Illinois.* — Farmers' Ins. Assoc. *v.* Reaves, 163 Ill. 327, 71 N. E. 905; Court of Honor *v.* Dinger, 221 Ill. 176, 77 N. E. 557.

Indiana. — Jeffersonville *v.* Gray, 165 Ind. 26, 74 N. E. 611; Foster *v.* Bemis Indianapolis Bag Co., 163 Ind. 351, 71 N. E. 953; Inland Steel Co. *v.* Smith, (Ind. App. 1905) 75 N. E. 852; Union Traction Co. *v.* Sullivan, 38 Ind. App. 513, 76 N. E. 116; Lindley *v.* Kemp, 38 Ind. App. 355, 76 N. E. 798; Indianapolis St. R. Co. *v.* Marschke, 166 Ind. 490, 77 N. E. 945; Lake Shore, etc., R. Co. *v.* Teeters, 166 Ind. 335, 77 N. E. 599; Indianapolis Traction, etc., Co. *v.* Kidd, 167 Ind. 402, 79 N. E. 347; Chicago, etc., R. Co. *v.* Lawrence, (Ind. 1906) 79 N. E. 363; Louisville, etc., Traction Co. *v.* Leaf, (Ind. App. 1907) 79 N. E. 1066; Pittsburgh, etc., R. Co. *v.* Rose, (Ind. App. 1907) 79 N. E. 1094; National Biscuit Co. *v.* Wilson, (Ind. App. 1907) 80 N. E. 33; Indianapolis Traction, etc., Co. *v.* Richey, (Ind. App. 1907) 80 N. E. 170; Oölitic Stone Co. *v.* Ridge, (Ind. App. 1907) 80 N. E. 441; Inland Steel Co. *v.* Smith, 168 Ind. 245, 80 N. E. 538; Chicago, etc., R. Co. *v.* Gallion, 39 Ind. App. 604, 80 N. E. 547; Indianapolis St. R. Co. *v.* Kane, (Ind. 1907) 80 N. E. 841; Merchants' Nat. Bank *v.* McClellan, (Ind. App. 1907) 80 N. E. 854; Baltimore, etc., R. Co. *v.* Rosborough, (Ind. App. 1907) 80 N. E. 869; Tucker, etc., Mfg. Co. *v.* Staley, (Ind. App. 1907) 80 N. E. 975; Ft. Wayne Cooperage Co. *v.* Page, (Ind. App. 1907) 82 N. E. 83; Wendel *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 82 N. E. 469; Hammond, etc., Electric St. R. Co. *v.* Blockie, (Ind. App. 1907) 82 N. E. 541; Indianapolis St. R. Co. *v.* Hoffman, (Ind. App. 1907) 82 N. E. 543; Lowden *v.* Pennsylvania Co., (Ind. App. 1907) 82 N. E. 941; Masterson *v.* Southern R. Co., (Ind. App. 1907) 82 N. E. 1021; Indianapolis Traction, etc., Co. *v.* Holtsclaw, (Ind. App. 1907) 82 N. E. 986; U. S. Cement Co. *v.* Cooper, (Ind. App. 1907) 82 N. E. 981; New York, etc., R. Co. *v.* Hamlin, (Ind. 1908) 83 N. E. 343; Mitchell *v.* Tell City, (Ind. App. 1908) 83 N. E. 735; Zeller *v.* Wright, (Ind. App. 1908) 83 N. E. 1030; Lake Shore, etc., R. Co. *v.* Brown, (Ind. App. 1908) 84 N. E. 25; Ft. Wayne Cooperage Co. *v.* Page, (Ind. 1908) 84 N. E. 145; Cleveland, etc., R. Co. *v.* Houghland, (Ind. App. 1908) 85 N. E. 369; Richmond St., etc., R. Co. *v.* Beverley, (Ind. App. 1908) 84 N. E. 558; Reed *v.* Light, (Ind. 1908) 85 N. E. 9; Haughton *v.* Ætna L. Ins. Co., (Ind. App. 1908) 85 N. E. 125.

Iowa. — Kuehl *v.* Chicago, etc., R. Co., 126 Iowa 638, 102 N. W. 512; Conwell *v.* Tri-City R. Co., (Iowa 1907) 112 N. W. 546.

Kansas. — Eureka *v.* Neville, 71 Kan. 842, 80 Pac. 39; Osburn *v.* Atchison, etc., R. Co., (Kan. 1907) 90 Pac. 289; Billings *v.* Atchison, etc., R. Co., (Kan. 1907) 91 Pac. 72.

Michigan. — Burke *v.* Bay City Traction, etc., Co., 147 Mich. 172, 110 N. W. 524.

Minnesota. — Awde *v.* Cole, 99 Minn. 357, 109 N. W. 812.

Nebraska. — Kafka *v.* Union Stockyards Co., (Neb. 1907) 110 N. W. 672.

New Mexico. — Roswell *v.* Davenport, (N. Mex. 1907) 89 Pac. 256.

Ohio. — Bloor *v.* Platt, (Ohio 1908) 84 N. E. 604.

Oklahoma. — White *v.* Madison, 16 Okla. 212, 83 Pac. 798; Goodwin *v.* Greenwood, 16 Okla. 489, 85 Pac. 1115; Logan County Bank *v.* Beyer, 17 Okla. 156, 87 Pac. 607.

Washington. — Grant *v.* Spokane Traction Co., (Wash. 1907) 91 Pac. 553.

Wisconsin. — McKone *v.* Metropolitan L. Ins. Co., 131 Wis. 242, 110 N. W. 472.

1036. 1. *Illinois.* — Farmers' Ins. Assoc. *v.* Reavis, 163 Ind. 327, 71 N. E. 905.

Indiana. — Foster *v.* Bemis Indianapolis Bag Co., 163 Ind. 351, 71 N. E. 953; Lake Erie, etc., R. Co. *v.* Fike, 35 Ind. App. 554, 74 N. E. 636; Schmull *v.* Cuddy, 36 Ind. App. 262, 74 N. E. 1030; Inland Steel Co. *v.* Smith, (Ind. App. 1905) 75 N. E. 852; Union Traction Co. *v.* Sullivan, 38 Ind. App. 513, 76 N. E. 116; Lindley *v.* Kemp, 38 Ind. App. 355, 76 N. E. 798; Pittsburgh, etc., R. Co. *v.* Lightheiser, 168 Ind. 438, 78 N. E. 1033; Chicago, etc., R. Co. *v.* Lawrence, (Ind. 1906) 79 N. E. 363; Farmers' Mut. F. Ins. Assoc. *v.* Stewart, 167 Ind. 544, 79 N. E. 490; National Biscuit Co. *v.* Wilson, (Ind. App. 1907) 80 N. E. 33; Indianapolis Traction, etc., Co. *v.* Richey, (Ind. App. 1907) 80 N. E. 170; Oölitic Stone Co. *v.* Ridge, (Ind. App. 1907) 80 N. E. 441; Inland Steel Co. *v.* Smith, 168 Ind. 245, 80 N. E. 538; Indianapolis St. R. Co. *v.* Kane, (Ind. 1907) 80 N. E. 841; Merchants' Nat. Bank *v.* McClellan, (Ind. App. 1907) 80 N. E. 854; Baltimore, etc., R. Co. *v.* Rosborough, (Ind. App. 1907) 80 N. E. 869; Tucker, etc., Mfg. Co. *v.* Staley, (Ind. App. 1907) 80 N. E. 975; Erie Crawford Oil Co. *v.* Meeks, (Ind. App. 1907) 81 N. E. 518; Ft. Wayne Cooperage Co. *v.* Page, (Ind. App. 1907) 82 N. E. 83; Wendel *v.* Cleveland, etc., R. Co., (Ind. App. 1907) 82 N. E. 469; Hammond, etc., Electric St. R. Co. *v.* Blockie, (Ind. App. 1907) 82 N. E. 541; Lowden *v.* Pennsylvania Co., (Ind. App.

1907) 82 N. E. 941; U. S. Cement Co. *v.* Cooper, (Ind. App. 1907) 82 N. E. 981; Indianapolis Traction, etc., Co. *v.* Holtsclaw, (Ind. App. 1907) 82 N. E. 986; Masterson *v.* Southern R. Co., (Ind. App. 1907) 82 N. E. 1021; New York, etc., R. Co. *v.* Hamlin, (Ind. 1908) 83 N. E. 343; Mitchell *v.* Tell City, (Ind. App. 1908) 83 N. E. 735; Lake Shore, etc., R. Co. *v.* Brown, (Ind. App. 1908) 84 N. E. 25; Ft. Wayne Cooperage Co. *v.* Page, (Ind. 1908) 84 N. E. 145; Richmond, etc., R. Co. *v.* Beverley, (Ind. App. 1908) 84 N. E. 558; Haughton *v.* Ætna L. Ins. Co., (Ind. App. 1908) 85 N. E. 125.

Iowa. — Conwell *v.* Tri-City R. Co., (Iowa 1907) 112 N. W. 546.

Kansas. — Atchison, etc., R. Co. *v.* Allen, 75 Kan. 190, 88 Pac. 966; Osburn *v.* Atchison, etc., R. Co., (Kan. 1907) 90 Pac. 289; Billings *v.* Atchison, etc., R. Co., (Kan. 1907) 91 Pac. 72.

Nebraska. — Kafka *v.* Union Stockyards Co., (Neb. 1907) 110 N. W. 672.

New Mexico. — Roswell *v.* Davenport, (N. Mex. 1907) 89 Pac. 256.

Washington. — Grant *v.* Spokane Traction Co., (Wash. 1907) 91 Pac. 553.

Where an issue of fact is not covered by a special finding the general verdict controls. Conwell *v.* Keokuk Electric R., etc., Co., 131 Iowa 622, 109 N. W. 177.

Court May Set Aside Special Finding. — National Brass Mfg. Co. *v.* Rawlings, 71 Kan. 246, 80 Pac. 628.

Where Two Special Findings Conflict, the one supporting the general finding controls. Cramer *v.* Munkres, 14 Wyo. 234, 83 Pac. 374.

1037. 1. *Alabama.* — Lambie *v.* State, (Ala. 1907) 44 So. 51.

California. — Plyler *v.* Pacific Portland Cement Co., (Cal. 1907) 92 Pac. 56; Williams *v.* San Francisco, etc., R. Co., (Cal. App. 1907) 93 Pac. 122.

Colorado. — Copeland *v.* Kilpatrick, 38 Colo. 208, 88 Pac. 472.

Illinois. — Chicago City R. Co. *v.* Jordan, 215 Ill. 390, 74 N. E. 452; Court of Honor *v.* Dinger, 221 Ill. 176, 77 N. E. 557.

Indiana. — Cleveland, etc., R. Co. *v.* Miller, 165 Ind. 381, 74 N. E. 509; O. M. Cockrum Co. *v.* Klein, 165 Ind. 627, 74 N. E. 529; Jeffersonville *v.* Gray, 165 Ind. 26, 74 N. E. 611; Major *v.* Miller, 165 Ind. 275, 75 N. E. 159; Catterson *v.* Hall, 37 Ind. App. 341, 76 N. E. 889;; Polley *v.* Pogue, 38 Ind. App. 678, 78 N. E. 1051; Jackson *v.* Morgan, 167 Ind. 528, 78 N. E. 633; Masterson *v.* Southern R. Co., (Ind. App. 1907) 82 N. E. 1021; New York, etc., R. Co. *v.* Hamlin, (Ind. 1908) 83 N. E. 343; Pavey *v.* Braddock, (Ind. 1908) 84 N. E. 5; Tevis *v.* Hammersmith, (Ind. 1908) 84 N. E. 337.

Missouri. — Thomasson *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 109, 89 S. W. 564.

Montana. — Martin *v.* Butte, 34 Mont. 281, 86 Pac. 264; Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561; Coburn Cattle Co. *v.* Small, 35 Mont. 288, 88 Pac. 953; Gans, etc., Invest. Co. *v.* Sanford, 35 Mont. 295, 88 Pac. 955.

New York. — Bremer *v.* Manhattan R. Co., 191 N. Y. 333, 84 N. E. 59.

Oregon. — Lutherlin *v.* Bloomer, (Oregon 1907) 93 Pac. 135.

Rhode Island. — Reid *v.* Rhode Island Co., (R. I. 1907) 67 Atl. 328.

South Dakota. — Ewing *v.* Lunn, (S. Dak. 1908) 115 N. W. 527.

Texas. — San Antonio *v.* Marshall, (Tex. Civ. App. 1905) 85 S. W. 315; Featherstone *v.* Brown, (Tex. Civ. App. 1905) 88 S. W. 470.

Wisconsin. — Fanning *v.* Murphy, 126 Wis. 538, 105 N. W. 1056; Howard *v.* Beldenville Lumber Co., 129 Wis. 98, 108 N. W. 48; Sackett *v.* Price County, 130 Wis. 637, 110 N. W. 821.

Wyoming. — Wallace *v.* Skinner, 15 Wyo. 233, 88 Pac. 221; Chicago, etc., R. Co. *v.* Morris, (Wyo. 1908) 93 Pac. 664.

1040. 1. *Florida.* — O'Neal *v.* State, (Fla. 1907) 44 So. 940; Morris *v.* State, (Fla. 1907) 45 So. 456; Pugh *v.* State, (Fla. 1908) 45 So. 1023; McDonald *v.* State, (Fla. 1908) 46 So. 176.

Idaho. — State *v.* Cotterel, 12 Idaho 572, 86 Pac. 527; Campbell *v.* Rexburg First Nat. Bank, 13 Idaho 95, 88 Pac. 639.

Kansas. — State *v.* Harlan, 71 Kan. 887, 81 Pac. 480.

Kentucky. — Brown *v.* Com., (Ky. 1907) 99 S. W. 236.

Louisiana. — State *v.* James County, 117 La. 419, 41 So. 702.

Michigan. — Reynolds *v.* Cavanagh, 139 Mich. 387, 102 N. W. 986.

Mississippi. — Thompson *v.* State, 88 Miss. 223, 40 So. 545.

Missouri. — State *v.* McGee, 188 Mo. 401, 87 S. W. 452; State *v.* Jones, 114 Mo. App. 343, 89 S. W. 366; State *v.* Smith, 190 Mo. 706, 90 S. W. 440; State *v.* Shour, 196 Mo. 202, 95 S. W. 405; State *v.* Beverly, 201 Mo. 550, 100 S. W. 463.

Nebraska. — Keeler *v.* State, 73 Neb. 441, 103 N. W. 64.

New Mexico. — Uptors *v.* Santa Rita Min. Co., (N. Mex. 1907) 89 Pac. 275.

New York. — Sullivan *v.* New York City R. Co., (Supm. Ct. App. T.) 94 N. Y. Supp. 370.

Rhode Island. — Spofford *v.* Rhode Island Suburban R. Co., (R. I. 1908) 69 Atl. 2.

South Carolina. — Phœnix Furniture Co. *v.* Jaudon, 75 S. Car. 229, 55 S. E. 308.

Texas. — Aladin *v.* State, 48 Tex. Crim. 1, 86 S. W. 327; Braum, etc., Co. *v.* Paulson, (Tex. Civ. App. 1906) 95 S. W. 617; Johnson *v.* State, 49 Tex. Crim. 250, 92 S. W. 257; Ellington *v.* State, 48 Tex. Crim. 387, 88 S. W. 361; Hines *v.* State, 48 Tex. Crim. 24, 85 S. W. 1057; Upton *v.* State, 48 Tex. Crim. 289, 88 S. W. 212; Carbough *v.* State, 49 Tex. Crim. 452, 93 S. W. 738; McMahan *v.* State, (Tex. Crim. 1906) 96 S. W. 17; Carnegie Public Library Assoc. *v.* Harris, (Tex. Civ. App. 1906) 97 S. W. 520; Fuller *v.* State, (Tex. Crim. 1906) 98 S. W. 840; Smith *v.* State,, (Tex. Crim. 1907) 104 S. W. 899; Johnson *v.* State, (Tex. Crim. 1907) 104 S. W. 902; Missouri, etc., R. Co. *v.* Lightfoot, (Tex. Civ. App. 1907) 106 S. W. 395.

Virginia. — Satterfield *v.* Com., 105 Va. 867, 52 S. E. 979.

Wyoming. — Long *v.* State, 15 Wyo. 202, 88 Pac. 611.

1041. 1. McDonald *v.* State, (Fla. 1908) 46 So. 176.

2. Freeman *v.* State, 50 Fla. 38, 39 So. 785; State *v.* Jones, 114 Mo. App. 343, 89 S. W. 366; Brown *v.* Gillett, 39 Wash. 495, 81 Pac. 1002.

1042. 1. Johnson *v.* State, 51 Fla. 44, 40 So. 678; Pugh *v.* State, (Fla. 1908) 45 So. 1023; State *v.* Beverly, 201 Mo. 550, 100 S. W. 463; Colorado Canal Co. *v.* Sims, (Tex. Civ. App. 1906) 94 S. W. 365; Braun, etc., Co. *v.* Paulson, (Tex. Civ. App. 1906) 95 S. W. 617; Fuller *v.* State, (Tex. Crim. 1906) 98 S. W. 840; Smith *v.* State, (Tex. Crim. 1907) 104 S. W. 899; Johnson *v.* State, (Tex. Crim. 1907) 104 S. W. 902.

2. Gibson *v.* Swofford, 122 Mo. App. 126, 97 S. W. 1007; McMahan *v.* State, (Tex. Crim. 1906) 96 S. W. 17; Bluestein *v.* Collins, (Tex. Civ. App. 1907) 103 S. W. 687.

1043. 6. Koch *v.* State, 126 Wis. 470, 106 N. W. 531.

VESSEL.

1046. 4. **Scow Held Vessel.** — See *In re* Eastern Dredging Co., 138 Fed. 942.

Vessel of United States. — See The Alta, 148 Fed. 663, 78 C. C. A. 415.

VEST — VESTED.

1048. 2. **Vested by Way of Sale — English Finance Act.** — See Atty.-Gen. *v.* Felixstowe Gas Light Co., (1907) 2 K. B. 984, 97 L. T. N. S. 340, 76 L. J. K. B. 1107.

VETO.

1053. 2. **Oregon — Veto Power of Governor Does Not Extend to Measure Referred to People.** — State *v.* Kline, (Oregon 1907) 93 Pac. 237.

After Signing of Bill It Is No Longer Subject to Veto. — Powell *v.* Hayes, 83 Ark. 448, 104 S. W. 177.

3. **Authority to Veto Not Inherent Power — Constitutional Provision Necessary.** — State *v.* Kline, (Oregon 1907) 93 Pac. 237.

5. State *v.* Junkin, (Neb. 1907) 113 N. W. 256.

1054. 2. Fellman *v.* Mercantile F. & M. Ins. Co., 116 La. 723, 41 So. 49.

8. See Atlantic Coast Line R. Co. *v.* Mallard, 53 Fla. 515, 43 So. 755; State *v.* Junkin, (Neb. 1907) 113 N. W. 256.

The Word "Day," in a constitutional provision of this nature, means a full day of twenty-four hours. Carter *v.* Henry, 87 Miss. 411, 39 So. 690.

Sundays Excluded in Computing Number of Days. — Fellman *v.* Mercantile F. & M. Ins. Co., 116 La. 723, 41 So. 49.

1055. 2. Fellman *v.* Mercantile F. & M. Ins. Co., 116 La. 723, 41 So. 49.

VICINITY — VICINAGE.

1056. 6. Jones *v.* Rogers, 85 Miss. 802, 38 So. 742, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 1056.

VIDELICET.

1058. 3. The office of a ***videlicet*** is to indicate that the party does not undertake to prove the precise circumstances as alleged. Chicago Terminal Transfer R. Co. *v.* Young, 118 Ill. App. 226.

VIRTUOUS.

1063. 2. **A Virtuous Woman** is one who never had illicit intercourse with any man and who is chaste and pure. State *v.* Whitley, 141 N. Car. 823, 53 S. E. 820.

VOID AND VOIDABLE.

1067. 5. Roberts *v.* Hickory Camp Coal, etc., Co., 58 W. Va. 276, 52 S. E. 182, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 1067.

1068. 1. Summerlin *v.* Floyd, 124 Ga. 980, 53 S. E. 452, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1068.

1071. 4. Ratliff *v.* Baltzer, 13 Idaho 152, 89 Pac. 71; State *v.* Lancaster, (Tenn. 0000) 105 S. W. 858, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1071.

VOLUNTARY MANSLAUGHTER.

1073. 4. **Voluntary Manslaughter.** — See Wall *v.* State, 126 Ga. 549, 55 S. E. 484; Watkins *v.* Com., 97 S. W. 740, 29 Ky. L. Rep. 1273.

VOYAGE.

1080. 4. The term ***voyage*** has no fixed or technical meaning. It may refer to the outward ***voyage*** or to the homeward ***voyage*** or to the round ***voyage***. The Brig Lucy, 39 Ct. Cl. 221.

WAGER.

1082. 6. *In re* Opinion of Justices, 73 N. H. 625, 63 Atl. 505.

WAIVER.

1091. 4. Horton Bank *v.* Knox, 133 Iowa 443, 109 N. W. 201; Norton *v.* Catholic Order, etc., (Iowa 1908) 114 N. W. 893; *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485; Buckley *v.* Citizens' Ins. Co., 112 N. Y. App. Div. 451, 98 N. Y. Supp. 622, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1091; Draper *v.* Oswego County Fire Relief Assoc., 190 N. Y. 12, 82 N. E. 755; State *v.* State Board, 78 S. Car. 461, 59 S. E. 145, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1091; Moore *v.* Price, (Tex. Civ. App. 1907) 103 S. W. 234, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 1091; Missouri, etc., R. Co. *v.* Hendricks, (Tex. Civ. App. 1908) 108 S. W. 745; Hopkins *v.* Northwestern Nat. L. Ins. Co., 41 Wash. 592, 83 Pac. 1019. See also dissenting opinion of Gillett, J., in Glens Falls Ins. Co. *v.* Michael, 167 Ind. 659, 74 N. E. 964, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1091.

1092. 1. Hampton Stave Co. *v.* Gardner, (C. C. A.) 154 Fed. 805.

2. Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1092; *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485;

Draper v. Oswego County Fire Relief Assn., 190 N. Y. 12, 82 N. E. 755; Pabst Brewing Co. *v.* Milwaukee, 126 Wis. 110, 105 N. W. 563.

3. Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

4. People's F. Ins. Co. *v.* Goyne, 79 Ark. 315, 96 S. W. 365; Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 569; Hopkins *v.* Northwestern Nat. L. Ins. Co., 41 Wash. 592, 83 Pac. 1019.

6. Noe *v.* Layton, 76 Ark. 582, 89 S. W. 1005; Planters' Compress Co. *v.* Howard, (Tex. Civ. App. 1906) 92 S. W. 44.

1093. 11. *Arkansas.* — Mutual L. Ins. Co. *v.* Abbey, 76 Ark. 328, 88 S. W. 950; Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200.

California. — Iverson *v.* Metropolitan L. Ins. Co., 151 Cal. 746, 91 Pac. 609.

Idaho. — Allen *v.* Phœnix Assur. Co., (Idaho 1908) 95 Pac. 829.

Iowa. — Cuykendall *v.* Doe, 129 Iowa 453, 105 N. W. 698; Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Huff *v.* Century F. Ins. Co., (Iowa 1907) 113 N. W. 1078.

Kentucky. — Continental Casualty Co. *v.* Jasper, (Ky. 1905) 88 S. W. 1078.

Montana. — Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

Nebraska. — Driscoll *v.* Modern Brotherhood of America, (Neb. 1906) 109 N. W. 158.

New York. — Berger *v.* Ætna L. Ins. Co., 48 Misc. (N. Y.) 385, 95 N. Y. Supp. 541.

Oklahoma. — Deming Invest. Co. *v.* Shawnee F. Ins. Co., 16 Okla. 1, 83 Pac. 918; Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 869.

Texas. — Dees *v.* Harrison, (Tex. Civ. App. 1906) 95 S. W. 1093.

13. *United States.* — Hampton Stave Co. *v.* Gardner, (C. C. A.) 154 Fed. 805.

Arkansas. — Newman *v.* Mountain Park Land Co., (Ark. 1908) 107 S. W. 391.

California. — Iverson *v.* Metropolitan L. Ins. Co., 151 Cal. 746, 91 Pac. 609.

Georgia. — Sizemore *v.* Woolard, 3 Ga. App. 261, 59 S. E. 833.

Indiana. — Glens Falls Ins. Co. *v.* Michael, 167 Ind. 659, 74 N. E. 964, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1093, *per* Gillett, J., *dissenting;* Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52.

Iowa. — Rundell *v.* Anchor F. Ins. Co., 128 Iowa 575, 105 N. W. 112; Norton *v.* Catholic Order, etc., (Iowa 1908) 114 N. W. 893.

Kentucky. — Mivelaz *v.* Genovely, (Ky. 1905) 89 S. W. 109; Germania L. Ins. Co. *v.* Lauer, (Ky. 1906) 97 S. W. 363.

Minnesota. — *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485.

Montana. — Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

New York. — Gienty *v.* Knights of Columbus, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 98, 105 N. Y. Supp. 244; *In re* Schoelkopf, (County Ct.) 54 Misc. (N. Y.) 31, 105 N. Y. Supp. 477.

Oklahoma. — Gish *v.* Insurance Co. of North America, 16 Okla. 59, 98 Pac. 869.

South Carolina. — State *v.* State Board, 78 S. Car. 461, 59 S. E. 145.

Texas. — Brotherhood of Railroad Trainmen *v.* Roberts, (Tex. Civ. App. 1908) 107 S. W. 626.

Virginia. — Virginia F. & M. Ins. Co. *v.* J. I. Case Threshing Mach. Co., 107 Va. 588, 59 S. E. 369.

Washington. — Hopkins *v.* Northwestern Nat. L. Ins. Co., 41 Wash. 592, 83 Pac. 1019, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1093; Burdick *v.* Modern Woodmen of America, (Wash. 1907) 92 Pac. 439, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1093.

Wisconsin. — Pabst Brewing Co. *v.* Milwaukee, 126 Wis. 110, 105 N. W. 563.

1094. 9. Iverson *v.* Metropolitan L. Ins. Co., 151 Cal. 746, 91 Pac. 609; Taylor *v.* Grand Lodge, etc., 96 Minn. 441, 105 N. W. 408; *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485.

1095. 2. Allen *v.* Phœnix Assur. Co., (Idaho 1908) 95 Pac. 829; *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485; Edmonds *v.* Modern Woodmen of America, 125 Mo. App. 214, 102 S. W. 601; Young *v.* Milan, 73 N. H. 552, 64 Atl. 16; Pabst Brewing Co. *v.* Milwaukee, 126 Wis. 110, 105 N. W. 563.

6. Spears *v.* Taylor, (Ala. 1907) 42 So. 1016; Germania L. Ins. Co. *v.* Lauer, (Ky. 1906) 97 S. W. 363; Buckley *v.* Citizens' Ins. Co., 112 N. Y. App. Div. 451, 98 N. Y. Supp. 622.

7. Concord Apartment House Co. *v.* O'Brien, 228 Ill. 476, 81 N. E. 1076; Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52; McCormick *v.* Merritt, 181 Iowa 160, 105 N. W. 428; Taylor *v.* Grand Lodge, etc., 96 Minn. 441, 105 N. W. 408; *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485; Harms *v.* Wolf, 114 Mo. App. 387, 89 S. W. 1037; Boulware *v.* Crohn, 122 Mo. App. 571, 99 S. W. 796; *In re* Schoelkopf, (County Ct.) 54 Misc. (N. Y.) 31, 105 N. Y. Supp. 477; Bennett *v.* Murphy, 123 N. Y. App. Div. 102, 108 N. Y. Supp. 231; Eaker *v.* Western Union Tel. Co., 75 S. Car. 97, 55 S. E. 129.

8. Slaughter *v.* Nashville, etc., R. Co., (Ky. 1906) 90 S. W. 243; Germania L. Ins. Co. *v.* Lauer, (Ky. 1906) 97 S. W. 363; Missouri, etc., R. Co. *v.* Hendricks, (Tex. Civ. App. 1908) 108 S. W. 745; Hopkins *v.* Northwestern Nat. L. Ins. Co., 41 Wash. 592, 83 Pac. 1019, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1095, and quoting the entire paragraph.

10. Hampton Stove Co. *v.* Gardner, (C. C. A.) 154 Fed. 805; *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485.

1096. 1. Hilton *v.* Hanson, 101 Me. 21, 62 Atl. 797; Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 568; Van Gordon *v.* Goldamer, (N. Dak. 1907) 113 N. W. 609.

2. Pabst Brewing Co. *v.* Milwaukee, 126 Wis. 110, 105 N. W. 563, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1096, and quoting the entire paragraph.

3. Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 860.

5. Fisher *v.* Fisher, (Neb. 1907) 113 N. W. 1004; Hopkins *v.* Northwestern Nat. L. Ins. Co., 41 Wash. 592, 83 Pac. 1019, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1096.

6. Trotter *v.* Grand Lodge, etc., 132 Iowa

513, 109 N. W. 1099; Mivelaz *v.* Genovely, (Ky. 1905) 89 S. W. 109; O'Rourke *v.* German Ins. Co., 96 Minn. 154, 104 N. W. 900; Harms *v.* Wolf, 114 Mo. App. 387, 89 S. W. 1037; Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147; Ocumpaugh *v.* Engel, 121 N. Y. App. Div. 9, 105 N. Y. Supp. 510; Missouri, etc., R. Co. *v.* Hendricks, (Tex. Civ. App. 1908) 108 S. W. 745.

1097. 1. Keoughan *v.* Equitable Oil Co., 116 La. 773, 41 So. 88, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1097.

2. *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485; Pope Mfg. Co. *v.* Rubber Goods Mfg. Co., 110 N. Y. App. Div. 341, 97 N. Y. Supp. 73.

5. *United States.* — Reliance Ins. Co. *v.* Schmidt, 151 Fed. 681; State L. Ins. Co. *v.* Murray, (C. C. A.) 159 Fed. 408; Mut. Reserve Fund L. Assoc. *v.* Tuchfeld, (C. C. A.) 159 Fed. 833.

Alabama. — Galliher *v.* State Mut. L. Ins. Co., (Ala. 1907) 43 So. 833.

California. — Arnold *v.* American Ins. Co., 148 Cal. 660, 84 Pac. 182.

Georgia. — Neal *v.* Gray, 124 Ga. 510, 52 S. E. 622; Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470.

Indiana. — Providence Washington Ins. Co. *v.* Wolf, 168 Ind. 690, 80 N. E. 26.

Iowa. — Rundell *v.* Anchor F. Ins. Co., 128 Iowa 575, 105 N. W. 112; Wensel *v.* Property Mut. Ins. Assoc., 129 Iowa 295, 105 N. W. 522; Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099; Huff *v.* Century F. Ins. Co., (Iowa 1907) 113 N. W. 1078.

Kentucky. — Gardner *v.* Continental Ins. Co., (Ky. 1907) 101 S. W. 908; Harford L. Ins. Co. *v.* Hanlon, (Ky. 1907) 104 S. W. 729; Home Ins. Co. *v.* Myers, (Ky. 1908) 107 S. W. 719.

Minnesota. — *In re* Millers', etc., Ins. Co., 97 Minn. 98, 106 N. W. 485.

Missouri. — Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237.

Montana. — Kennedy *v.* Grand Fraternity, (Mont. 1907) 92 Pac. 971.

Nebraska. — Soehner *v.* Grand Lodge, etc., 74 Neb. 399, 104 N. W. 871; Security Mut. L. Ins. Co. *v.* Miller, (Neb. 1905) 106 N. W. 229; Pringle *v.* Modern Woodmen of America, (Neb. 1907) 113 N. W. 231.

New York. — Draper *v.* Oswego County F. Relief Assoc., 190 N. Y. 12, 82 N. E. 755; Kelly *v.* Security Mut. L. Ins. Co., 106 N. Y. App. Div. 352, 94 N Y. Supp. 601; Nugent *v.* Rensselaer County Mut. F. Ins. Co., 106 N. Y. App. Div. 308, 94 N. Y. Supp. 605; Rewitzer *v.* Switchmen's Union, 112 N. Y. App. Div. 708, 98 N. Y. Supp. 974.

South Carolina. — Singleton *v.* Progressive Ben. Assoc., 77 S. Car. 531, 58 S. E. 609; McMillan *v.* Insurance Co. of North America, 78 S. Car. 433, 58 S. E. 1020.

Texas. — North American Acc. Ins. Co. *v.* Bowen, (Tex. Civ. App. 1907) 102 S. W. 163.

Wisconsin. — Leonard *v.* Prudential Ins. Co., 128 Wis. 348, 107 N. W. 646; Knoebel *v.* North American Acc. Ins. Co., (Wis. 1908) 115 N. W. 1094.

1098. 2. Kirkland *v.* Niagara Gorge R. Co., 109 N. Y. App. Div. 201, 95 N. Y. Supp. 657.

4. Alabama Oil, etc., Co. *v.* Sun Co., (Tex. Civ. App. 1905) 90 S. W. 202.

5. McKinnon *v.* Johnson, (Fla. 1907) 45 So. 451; Allison *v.* Fidelity Mut. L. Ins. Co., (Ky. 1908) 107 S. W. 730; Hilton *v.* Hanson, 101 Me. 21, 62 Atl. 797; Hoover *v.* St. Louis, etc., R. Co., 113 Mo. App. 688, 88 S. W. 769; Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 568.

1099. 10. People's F. Ins. Co. *v.* Goyne, 79 Ark. 315, 96 S. W. 365; Arkansas Mut. F. Ins. Co. *v.* Witham, 82 Ark. 226, 101 S. W. 721; Allen *v.* Phœnix Assur. Co., (Idaho 1908) 95 Pac. 829; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760; Hilton *v.* Hanson, 101 Me. 21, 62 Atl. 797; Wallace *v.* Kelly, 148 Mich. 336, 111 N. W. 1049; Gorton *v.* Milwaukee Mechanics' Ins. Co., 115 Mo. App. 69, 90 S. W. 747; Van Gordon *v.* Goldamer, (N. Dak. 1907) 113 N. W. 609.

1100. 4. People's F. Ins. Co. *v.* Goyne, 79 Ark. 315, 96 S. W. 365; Huber *v.* St. Joseph's Hospital, 11 Idaho 631, 83 Pac. 768; Allen *v.* Phœnix Assur. Co., (Idaho 1908) 95 Pac. 829; U. S. Health, etc., Ins. Co. *v.* Clark, (Ind. App. 1908) 83 N. E. 760; Rudd *v.* American Guarantee Fund Mut. F. Ins. Co., 120 Mo. App. 1, 96 S. W. 237; McMillan *v.* Insurance Co. of North America, 78 S. Car. 433, 58 S. E. 1020.

6. Hilton *v.* Hanson, 101 Me. 21, 62 Atl. 797.

1102. 4. Krebs *v.* Security Trust, etc., Ins. Co., 156 Fed. 294; Arnold *v.* Empire Mut. Annuity, etc., Co., (Ga. App. 1908) 60 S. E. 470; Trotter *v.* Grand Lodge, etc., 132 Iowa 513, 109 N. W. 1099.

1103. 2. *United States.* — Broadmoor Land Co. *v.* Curr, (C. C. A.) 142 Fed. 421.

Alabama. — Owensboro Wagon Co. *v.* Hall, 143 Ala. 177, 42 So. 113.

Arkansas. — Johnson *v.* Downing, 76 Ark. 128, 88 S. W. 825; Capitol F. Ins. Co. *v.* Johnson, 82 Ark. 90, 100 S. W. 749; Arkansas Mut. F. Ins. Co. *v.* Claiborne, 82 Ark. 150, 100 S. W. 751.

California. — Loring *v.* Dutchess Ins. Co., 1 Cal. App. 186, 81 Pac. 1025.

Florida. — Baumeister *v.* Kuntz, 53 Fla. 340, 42 So. 886; McKinnon *v.* Johnson, (Fla. 1907) 45 So. 451.

Idaho. — Huber *v.* St. Joseph's Hospital, 11 Idaho 631, 83 Pac. 768; Allen *v.* Phœnix Assur. Co., (Idaho 1908) 95 Pac. 829.

Illinois. — Butterick Pub. Co. *v.* Whitcomb, 225 Ill. 605, 80 N. E. 247.

Indiana. — Glens Falls Ins. Co. *v.* Michael, 167 Ind. 699, 79 N. E. 905.

Iowa. — Ross *v.* Wright County, 128 Iowa 427, 104 N. W. 506; Rundell *v.* Anchor F. Ins. Co., 128 Iowa 575, 105 N. W. 112.

Louisiana. — Booksh *v.* A. Wilbert Sons Lumber, etc., Co., 115 La. 351, 39 So. 9.

Michigan. — Witt *v.* Dersham, 146 Mich. 68, 109 N. W. 25.

Minnesota. — O'Rourke *v.* German Ins. Co., 96 Minn. 154, 104 N. W. 900; Arcade Invest. Co. *v.* Gieriet, 99 Minn. 277, 109 N. W. 250.

Mississippi. — Helm, etc., R. Co. *v.* Turner, 89 Miss. 334, 42 So. 377; Howze *v.* New Orleans, etc., R. Co., (Miss. 1908) 45 So. 837.

Missouri. — Haxton *v.* Kansas City, 190 Mo. 53, 88 S. W. 714; Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 569; Polk *v.* Western Assur. Co., 114 Mo. App. 514, 90 S. W. 397; Crowder *v.* Continental Casualty Co., 115 Mo. App. 535, 91 S. W. 1016; Berry Coal, etc., Co. *v.* Chicago, etc., R. Co., 116 Mo. App. 214, 92 S. W. 714; Carp *v.* Queen Ins. Co., 116 Mo. App. 528, 92 S. W. 1137; Brittain *v.* Murphy, 118 Mo. App. 235, 94 S. W. 303; Delmar Invest. Co. *v.* Blumenfield, 118 Mo. App. 308, 94 S. W. 823; Gratiot St. Warehouse Co. *v.* Missouri, etc., R. Co., 124 Mo. App. 545, 102 S. W. 11.

New Jersey. — Hallenbeck *v.* Chapman, 72 N. J. L. 201, 63 Atl. 498.

New York. — Phillips *v.* Lindley, 112 N. Y. App. Div. 283, 98 N. Y. Supp. 423; *In re* Haskin, (Surrogate Ct.) 49 Misc. (N. Y.) 177, 98 N. Y. Supp. 926; Lilienthal *v.* George Bechtel Brewing Co., 118 N. Y. App. Div. 205, 102 N. Y. Supp. 1051; Furber *v.* National Metal Co., 118 N. Y. App. Div. 263, 103 N. Y. Supp. 490; Stevenson *v.* New York City R. Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 641, 104 N. Y. Supp. 866; Harkow *v.* New York City R. Co., 121 N. Y. App. Div. 194, 105 N. Y. Supp. 689; Rosenberg *v.* Feiering, 121 N. Y. App. Div. 190, 105 N. Y. Supp. 812.

South Carolina. — Bowie *v.* Western Union Tel. Co., 78 S. Car. 424, 59 S. E. 65.

South Dakota. — Baumann *v.* Jerome, (S. Dak. 1906) 109 N. W. 513.

Tennessee. — Louisville, etc., R. Co. *v.* Timmons, 116 Tenn. 29, 91 S. W. 1116.

Texas. — Ragley Lumber Co. *v.* Insurance Co. of North America, (Tex. Civ. App. 1906) 94 S. W. 185; Missouri, etc., R. Co. *v.* Hendricks, (Tex. Civ. App. 1908; 108 S. W. 745.

Washington. — Morgan *v.* Northwestern Nat. L. Ins. Co., 42 Wash. 10, 84 Pac. 412.

Wyoming. — Boswell *v.* Laramie First Nat. Bank, (Wyo. 1907) 92 Pac. 624.

3. *United States.* — Griffin *v.* Smith, (C. C. A.) 143 Fed. 865.

Alabama. — Calhoun County *v.* Art Metal Constr. Co., (Ala. 1907) 44 So. 876.

Arkansas. — Noe *v.* Layton, 76 Ark. 582, 89 S. W. 1005; Bain *v.* Parker, 77 Ark. 168, 90 S. W. 1000; Carpenter *v.* Crow, 77 Ark. 522, 92 S. W. 779; Butler *v.* Dodson, 78 Ark. 569, 94 S. W. 703; Greeson *v.* German Nat. Bank, 78 Ark. 141, 95 S. W. 439; Hyatt *v.* Bell, 83 Ark. 360, 103 S. W. 748.

California. — Owen *v.* Herzikoff, 2 Cal. App. 622, 84 Pac. 274.

Connecticut. — Wienberg *v.* Valente, 79 Conn. 247, 64 Atl. 337.

Illinois. — Andrew Lohr Bottling Co. *v.* Ferguson, 223 Ill. 88, 79 N. E. 35.

Indiana. — Bowman *v.* Olrick, 165 Ind. 478, 75 N. E. 820; Elwood State Bank *v.* Mock, (Ind. App. 1907) 82 N. E. 1003.

Kentucky. — Marshall *v.* Davis, (Ky. 1906) 91 S. W. 714.

Massachusetts. — Whitney *v.* Abbott, (Mass. 1906) 77 N. E. 524.

Minnesota. — Kenny *v.* Seu Si Lun, 101 Minn. 253, 112 N. W. 220.

Missouri. — Spence *v.* Palmer, 115 Mo. App. 76, 90 S. W. 749; Tower *v.* Compton Hill Imp. Co., 192 Mo. 379, 91 S. W. 104; Riley *v.* American Cent. Ins. Co., 117 Mo. App. 229, 92 S. W. 1147; Edmonds *v.* Modern Woodmen of America, 125 Mo. App. 214, 102 S. W. 601; Royle Min. Co. *v.* Fidelity, etc., Co., 126 Mo. App. 104, 103 S. W. 1098.

New York. — Kirkland *v.* Niagara Gorge R. Co., 109 N. Y. App. Div. 201, 95 N. Y. Supp. 657; Brady *v.* Powers, 112 N. Y. App. Div. 845, 98 N. Y. Supp. 237; Sheehan *v.* Board of Education, 120 N. Y. App. Div. 557, 104 N. Y. Supp. 1002; People *v.* Rockland County, 120 N. Y. App. Div. 552, 105 N. Y. Supp. 19.

North Dakota. — Van Gordon *v.* Goldamer, (N. Dak. 1907) 113 N. W. 609.

Ohio. — Fire Assoc. *v.* Appel, 76 Ohio St. 1, 80 N. E. 952.

Oregon. — Gray *v.* Jones, 47 Oregon 40, 81 Pac. 813.

Texas. — Alabama Oil, etc., Co. *v.* Sun Co., (Tex. Civ. App. 1905) 90 S. W. 202; Planters' Compress Co. *v.* Howard, (Tex. Civ. App. 1906) 92 S. W. 44; McCarthy *v.* North Texas Loan Co., (Tex. Civ. App. 1907) 101 S. W. 835.

Washington. — *In re* Farnham, 41 Wash. 570, 84 Pac. 602; Jones *v.* North Pac. Fish, etc., Co., 42 Wash. 332, 84 Pac. 1122.

Wisconsin. — Pabst Brewing Co. *v.* Milwaukee, 126 Wis. 110, 105 N. W. 563; Smith *v.* Burns Boiler, etc., Co., (Wis. 1907) 111 N. W. 1123.

4. Northwestern State Bank *v.* Silberman, (C. C. A.) 154 Fed. 809; Moers *v.* Dietz, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 173, 101 N. Y. Supp. 590.

5. *United States.* — Richardson *v.* Lowe, (C. C. A.) 149 Fed. 625.

Arkansas. — McDonough *v.* Williams, 77 Ark. 261, 92 S. W. 783; Industrial Mut. Indemnity Co. *v.* Thompson, 83 Ark. 574, 104 S. W. 200.

California. — Bernard *v.* Sloan, 2 Cal. App. 737, 84 Pac. 232; Brown *v.* Wrightman, 5 Cal. App. 391, 90 Pac. 467.

Colorado. — Reynolds *v.* Hart, (Colo. 1908) 94 Pac. 14; Kimball *v.* Northern Colorado Irrigation Co., (Colo. 1908) 94 Pac. 333.

Illinois. — Hasterlik *v.* Olson, 218 Ill. 411, 75 N. E. 1002; Patterson *v.* Northern Trust Co., 231 Ill. 22, 82 N. E. 840.

Indiana. — American Window Glass Co. *v.* Indiana Natural Gas, etc., Co., 37 Ind. App. 439, 76 N. E. 1006.

Iowa. — Lillienthal *v.* Bierkamp, 133 Iowa 42, 110 N. W. 152.

Kansas. — Grand Lodge, etc., *v.* Smith, (Kan. 1907) 92 Pac. 710.

Michigan. — Wallace *v.* Kelly, 148 Mich. 336, 111 N. W. 1049.

Missouri. — Harms *v.* Wolf, 114 Mo. App. 387, 89 S. W. 1037; Reed *v.* Bankers' Union of the World, 121 Mo. App. 419, 99 S. W. 55; Myers *v.* Maryland Casualty Co., 123 Mo. App. 682, 101 S. W. 124.

Nebraska. — Gallagher *v.* O'Neill, (Neb. 1907) 111 N. W. 582; Fredrickson *v.* Schmittroth, (Neb. 1907) 112 N. W. 564.

New Jersey. — Levy *v.* Blackmore, (N. J. 1907) 67 Atl. 1022.

New York. — St. Regis Paper Co. *v.* Santa Clara Lumber Co., (N. Y. 1906) 78 N. E. 701; Bader *v.* New York, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 358, 101 N. Y. App. Div. 351;

Barnett *v.* Sussman, 116 N. Y. App. Div. 859, 102 N. Y. Supp. 287; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 796.

North Dakota. — Emerson-Newton Implement Co. *v.* Cupps, 15 N. Dak. 606, 108 N. W. 796.

Pennsylvania. — Barnes *v.* Rea, (Pa. 1908) 68 Atl. 836.

Texas. — Continental Casualty Co. *v.* Jennings, (Tex. Civ. App. 1907) 99 S. W. 423; Victor Safe, etc., Co. *v.* Texas State Trust Co., (Tex. Civ. App. 1907) 99 S. W. 1049; Victor Safe, etc., Co. *v.* Texas State Trust Co., (Tex. 1907) 104 S. W. 1040.

Vermont. — Ward *v.* Marvin, 78 Vt. 141, 62 Atl. 46.

1104. 1. Kentucky Distilleries, etc., Co. *v.* Blanton, (C. C. A.) 149 Fed. 31; *In re* Palatable Distilled Water Co., 154 Fed. 531; Hurd *v.* Fleck, 34 Colo. 262, 82 Pac. 485; Cue *v.* Johnson, 73 Kan. 558, 85 Pac. 598; Home Ins. Co. *v.* Ballew, (Ky. 1906) 96 S. W. 878; Dulany *v.* Fidelity, etc., Co., (Md. 1907) 66 Atl. 614; Central Bitulithic Paving Co. *v.* Mt. Clemens, 143 Mich. 259, 106 N. W. 888; Young *v.* Railway Mail Assoc., 126 Mo. App. 325, 103 S. W. 557; Crane *v.* Barron, 115 N. Y. App. Div. 196, 100 N. Y. Supp. 937; Callanan Road Imp. Co. *v.* Oneonta, 117 N. Y. App. Div. 332, 101 N. Y. Supp. 1056; Barnett *v.* Sussman, 116 N. Y. App. Div. 859, 102 N. Y. Supp. 287; Winter *v.* Niagara Falls, 119 N. Y. App. Div. 586, 104 N. Y. Supp. 39; J. J. Newman Lumber Co. *v.* Wemple, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 168, 107 N. Y. Supp. 318; Phœnix Iron Co. *v.* Metropole Constr. Co., (Supm. Ct. App. Div.) 109 N. Y. Supp. 858.

1105. 2. Ross *v.* Great Northern R. Co., 101 Minn. 122, 111 N. W. 951.

3. Hopkins *v.* Northwestern Nat. L. Ins. Co., 41 Wash. 592, 83 Pac. 1019, *quoting* 29 Am. and Eng. Encyc. of Law (2d ed.) 1105.

4. *Alabama.* — Pelham *v.* Chattahoochee Grocery Co., 146 Ala. 216, 41 So. 12; Brown *v.* Larry, (Ala. 1907) 44 So. 841.

Arkansas. — Pewett *v.* Richardson, 79 Ark. 66, 95 S. W. 787; Burns *v.* Yocum, 81 Ark. 127, 98 S. W. 956.

California. — Harding *v.* Harding, 148 Cal. 397, 83 Pac. 434; Churchill *v.* Woodworth, 148 Cal. 669, 84 Pac. 155.

Illinois. — Littlejohn *v.* Chicago, etc., R. Co., 219 Ill. 584, 76 N. E. 840.

Indiana. — Ohio Valley Buggy Co. *v.* Anderson Forging Co., 168 Ind. 593, 81 N. E. 574; Elwood State Bank *v.* Mock, (Ind. App. 1907) 82 N. E. 1003.

Iowa. — Horton Bank *v.* Knox, 133 Iowa 443, 109 N. W. 201, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1105, and quoting the entire paragraph; Tuttle *v.* Iowa State Travelling Men's Assoc., 132 Iowa 652, 104 N. W. 1131; Chismore *v.* Anchor F. Ins. Co., 131 Iowa 180, 108 N. W. 230; Schmidt *v.* Pritchard, (Iowa 1907) 113 N. W. 801.

Kansas. — J. B. Ehrsam, etc., Mfg. Co. *v.* Jackman, 73 Kan. 435, 85 Pac. 559; Atchison, etc., R. Co. *v.* Hinsdell, (Kan. 1907) 90 Pac. 800.

Kentucky. — Mivelaz *v.* Genovely, (Ky. 1905) 89 S. W. 109; McCain *v.* Columbia Finance, etc., Co., (Ky. 1906) 97 S. W. 343; Mivelaz *v.* Johnson, (Ky. 1907) 98 S. W. 1020; Rothwell *v.* Rothwell, (Ky. 1907) 104 S. W. 276; Summers Fiber Co. *v.* Walker, (Ky. 1908) 109 S. W. 883.

Louisiana. — Redman *v.* Murrel, 117 La. 516, 42 So. 49.

Maine. — Anderson Carriage Co. *v.* Bartley, 102 Me. 492, 67 Atl. 567.

Michigan. — Portage Grange, etc., Free, etc., Masonic Lodge, 141 Mich. 402, 104 N. W. 667; Goodspeed *v.* United Shoe Machinery Co., 141 Mich. 672, 104 N. W. 982; Pittsburgh, etc., Min. Co. *v.* Scully, 145 Mich. 229, 108 N. W. 503; Jewett *v.* Northwestern Nat. L. Ins. Co., 149 Mich. 79, 112 N. W. 734.

Mississippi. — Watson *v.* Perkins, 88 Miss. 64, 40 So. 643; Ætna Ins. Co. *v.* Mount, (Miss. 1907) 44 So. 162.

Missouri. — Boulware *v.* Crohn, 122 Mo. App. 571, 99 S. W. 796, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1103 [1105]; Eubank *v.* Finnell, 118 Mo. App. 535, 94 S. W. 591; Sander *v.* Holstein Commission Co., 121 Mo. App. 293, 99 S. W. 12.

Nebraska. — Driscoll *v.* Modern Brotherhood of America, (Neb. 1906) 109 N. W. 158.

New Hampshire. — Davis *v.* U. S. Health, etc., Co., 73 N. H. 425, 62 Atl. 728.

New York. — Bach *v.* Kidansky, 106 N. Y. App. Div. 502, 94 N. Y. Supp. 752; Damers *v.* Sternberger, (Supm. Ct. App. T.) 95 N. Y. Supp. 532; Arnot *v.* Union Salt Co., 109 N. Y. App. Div. 433, 96 N. Y. Supp. 80; Pope Mfg. Co. *v.* Rubber Goods Mfg. Co., 110 N. Y. App. Div. 341, 97 N. Y. Supp. 73; Wilcox *v.* Wilcox, 116 N. Y. App. Div. 423, 101 N. Y. Supp. 828; Krausi *v.* Fife, 120 N. Y. App. Div. 490, 105 N. Y. Supp. 384; *In re* Schoelkopf, (County Ct.) 54 Misc. (N. Y.) 31, 105 N. Y. Supp. 477; *In re* Silkman, 121 N. Y. App. Div. 202, 105 N. Y. Supp. 872; Outhouse *v.* Baird, 121 N. Y. App. Div. 556, 106 N. Y. Supp. 246; Moore *v.* Board of Education, 121 N. Y. App. Div. 862, 106 N. Y. Supp. 983; Kraus *v.* Black, 56 Misc. (N. Y.) 641, 107 N. Y. Supp. 609.

North Carolina. — Hay *v.* People's Mut. Benev. Assoc., 143 N. Car. 256, 55 S. E. 623.

Oregon. — Mine Supply Co. *v.* Columbia Min. Co., 48 Oregon 391, 86 Pac. 789.

Pennsylvania. — Lefferts *v.* Dolton, 217 Pa. St. 299, 66 Atl. 527.

South Carolina. — Eaker *v.* Western Union Tel. Co., 75 S. Car. 97, 55 S. E. 129.

Texas. — Texas Short Line R. Co. *v.* Waymire, (Tex. Civ. App. 1905) 89 S. W. 452; Sparks *v.* Pouder, (Tex. Civ. App. 1906) 94 S. W. 428; Gutta Percha, etc., Mfg. Co. *v.* Cleburne, (Tex. Civ. App. 1906) 95 S. W. 1131; Vincent *v.* Central City Loan, etc., Co., (Tex. Civ. App. 1907) 99 S. W. 428; Antone *v.* Miles, (Tex. Civ. App. 1907) 105 S. W. 39.

Washington. — Burdick *v.* Modern Woodmen of America, (Wash. 1907) 92 Pac. 439, *citing* 29 Am. and Eng. Encyc. of Law (2d ed.) 1105.

Wisconsin. — Stamnes *v.* Milwaukee, etc., R. Co., 131 Wis. 85, 111 N. W. 62; Smith *v.* Burns Boiler, etc., Co., (Wis. 1907) 111 N. W. 1123; Eau Claire Water Co. *v.* Eau Claire, (Wis. 1907) 112 N. W. 458.

1106. 1. *Alabama.* — Traders' Ins. Co. *v.* Letcher, 143 Ala. 400, 39 So. 271; Baker *v.*

Jackson, 146 Ala. 688, 40 So. 348; Birmingham *v.* O'Hearn, (Ala. 1906) 42 So. 836; Doe *v.* Abbott, (Ala. 1907) 44 So. 637.

Arkansas. — Duffie *v.* Pratt, 76 Ark. 74, 88 S. W. 842; Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451.

Colorado. — Burton *v.* Graham, 36 Colo. 199, 84 Pac. 978.

Delaware. — McGonigal *v.* Raughley, (Del. 1906) 63 Atl. 801; Knowles Loom Works *v.* Knowles, (Del. 1906) 65 Atl. 26.

Georgia. — De Loach Mill Mfg. Co. *v.* Tutweiler Coal, etc., Co., 2 Ga. App. 493, 58 S. E. 790.

Iowa. — Busse *v.* Barr, 132 Iowa 463, 109 N. W. 920.

Kentucky. — Ballard *v.* American Hemp Co., (Ky. 1907) 100 S. W. 271; Owensboro City R. Co. *v.* Barber Asphalt Paving Co., (Ky. 1908) 107 S. W. 244.

Maryland. — Title Guarantee, etc., Co. *v.* Burdette, 104 Md. 666, 65 Atl. 341.

Michigan. — King *v.* Harrigan, 145 Mich. 436, 108 N. W. 748.

Mississippi. — Sturges *v.* Jackson, 88 Miss. 508, 40 So. 547.

Nebraska. — Fisher *v.* Fisher, (Neb. 1907) 113 N. W. 1004.

New Jersey. — *In re* Acker, 70 N. J. Eq. 669, 62 Atl. 556.

New York. — People *v.* McAdoo, (N. Y. 1906) 77 N. E. 260; Buck *v.* Houghtaling, 110 N. Y. App. Div. 52, 96 N. Y. Supp. 1034; Lilienthal *v.* George Bechtel Brewing Co., 118 N. Y. App. Div. 205, 102 N. Y. Supp. 1051; Spencer *v.* Adams Dry Goods Co., (Supm. Ct. App. T.) 54 Misc. (N. Y.) 614, 104 N. Y. Supp. 867; Koerner *v.* Kelley, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 605, 107 N. Y. Supp. 538; Rosenberg *v.* Jacobson, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 693, 107 N. Y. Supp. 595.

North Carolina. — Thaxton *v.* Metropolitan L. Ins. Co., 143 N. Car. 33, 55 S. E. 419; Ogden *v.* Appalachian Land, etc., Co., (N. Car. 1907) 59 S. E. 1027.

Texas. — Matura *v.* State, 48 Tex. Crim. 530, 89 S. W. 648; Nalle *v.* Austin, (Tex. Civ. App. 1906) 93 S. W. 141; Karner *v.* Ross, (Tex. Civ. App. 1906) 95 S. W. 46.

Vermont. — *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

West Virginia. — Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830.

2. Huff *v.* Century F. Ins. Co., (Iowa 1907) 113 N. W. 1078; Murmann *v.* Wissler, 116 Mo. App. 397, 92 S. W. 355.

3. Wood *v.* Planters' Oil Mill, 76 Ark. 570, 90 S. W. 18; Glaser *v.* Home Ins. Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 515, 96 N. Y. Supp. 136.

4. Woodbine Land, etc., Co. *v.* Riener, (N. J. 1907) 65 Atl. 1004.

6. B. P. Ducas Co. *v.* American Silk Dyeing, etc., Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 411, 95 N. Y. Supp. 590; Diechmann *v.* Boyd, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 177, 98 N. Y. 202.

1107. 1. Bennett *v.* Glaspell, 15 N. Dak. 239, 107 N. W. 45.

3. Brown *v.* Larry, (Ala. 1907) 44 So. 841; McKinnon *v.* Johnson, (Fla. 1907) 45 So. 451; Hoover *v.* St. Louis, etc., R. Co., 113 Mo. App. 688, 88 S. W. 769; Graham *v.* Security Mut. L. Ins. Co., 72 N. J. L. 298, 62 Atl. 681; Strouge *v.* Supreme Lodge, etc., 111 N. Y. App. Div. 87, 97 N. Y. Supp. 661; Van Gordon *v.* Goldamer, (N. Dak. 1907) 113 N. W. 609; State *v.* State Board, 78 S. Car. 461, 59 S. E. 145; Kubillus *v.* Ewert, 40 Wash. 38, 82 Pac. 147, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1107.

4. Pittsburgh Constr. Co. *v.* West Side Belt R. Co., 151 Fed. 125; Sturges *v.* Jackson, 88 Miss. 508, 40 So. 547; Dennis Simmons Lumber Co. *v.* Corey, 140 N. Car. 462, 53 S. E. 300; Woodman *v.* Needham Piano, etc., Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 683, 94 N. Y. Supp. 371; Slater *v.* Bonfiglio, (N. Y. City Ct. Tr. T.) 56 Misc. (N. Y.) 385, 106 N. Y. Supp. 861; Gray *v.* Jones, 47 Oregon 40, 81 Pac. 813; Stearns *v.* Wollenberg, (Oregon 1907) 92 Pac. 1079; Louisville, etc., R. Co. *v.* Timmons, 116 Tenn. 29, 91 S. W. 1116.

Statutory Rights Are Not Waived by Implication. — Moore *v.* Board of Education, 121 N. Y. App. Div. 862, 106 N. Y. Supp. 983.

5. Helm, etc., R. Co. *v.* Turner, 89 Miss. 334, 42 So. 377; People *v.* Wintermute, 122 N. Y. App. Div. 349, 106 N. Y. Supp. 1076; Hoy *v.* Hubbell, 125 N. Y. App. Div. 60, 109 N. Y. Supp. 301; *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

8. Murray *v.* State L. Ins. Co., 151 Fed. 539; Richardson *v.* Kaufman, 143 Ala. 243, 39 So. 368; Traders' Invest. Co. *v.* Macon R., etc., Co., 3 Ga. App. 125, 59 S. E. 454; Walker *v.* Swift Fertilizer Works, 3 Ga. App. 283, 59 S. E. 850; Teague *v.* Weeks, 89 Miss. 360, 42 So. 172; State *v.* State Board, 78 S. Car. 461, 59 S. E. 145.

1108. 4. Kronman *v.* Roush Produce Co., 3 Ga. App. 152, 59 S. E. 320; Hilton *v.* Hanson, 101 Me. 21, 62 Atl. 797; Burgess *v.* Mercantile Town Mut. Ins. Co., 114 Mo. App. 169, 89 S. W. 568; Glazer *v.* Home Ins. Co., 190 N. Y. 6, 82 N. E. 727; Gish *v.* Insurance Co. of North America, 16 Okla. 59, 87 Pac. 869; Scott Mfg. Co. *v.* Morgan, 217 Pa. St. 367, 66 Atl. 566; Buchanan *v.* Laber, 39 Wash. 410, 81 Pac. 911.

6. Germania L. Ins. Co. *v.* Lauer, (Ky. 1906) 97 S. W. 363; Sheehan *v.* Board of Education, 120 N. Y. App. Div. 557, 104 N. Y. Supp. 1002; Ocumpaugh *v.* Engel, 121 N. Y. App. Div. 9, 105 N. Y. Supp. 510; Burdick *v.* Modern Woodmen of America, (Wash. 1907) 92 Pac. 439, *citing* 29 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1108.

WALLS.

1. 3. Wall in Common and Party Wall Synonymous. — Lederer *v.* Colonial Invest. Co., 130 Iowa 15, 106 N. W. 357.

WANTON — WANTONLY — WANTONNESS.

2. 3. The Word Wanton Used in Describing Negligence imports both *wantonness* and negligence. Campbell *v.* Western Union Tel. Co., 74 S. Car. 300, 54 S. E. 571.

4. 1. Alabama G. S. R. Co. *v.* Guest, 144 Ala. 373, 39 So. 654; Kramm *v.* Stockton Electric R. Co., 3 Cal. App. 616, 86 Pac. 903; Cleveland, etc., R. Co. *v.* Ricker, 116 Ill. App. 428.

WAREHOUSES AND WAREHOUSEMEN.

38. 1. Premises Leased from Bailor. — Goods may be "warehoused" on premises leased by the warehouseman from the owner of the goods. Love *v.* Export Storage Co., (C. C. A.) 143 Fed. 1.

3. Love *v.* Export Storage Co., (C. C. A.) 143 Fed. 1.

39. 3. Ratcliff *v.* Wichita Union Stockyards Co., 74 Kan. 1, 86 Pac. 150.

12. Ratcliff *v.* Wichita Union Stockyards Co., 74 Kan. 1, 86 Pac. 150.

40. 2. Ratcliff *v.* Wichita Union Stockyards Co., 74 Kan. 1, 86 Pac. 150.

42. 10. Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

13. Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

43. 4. Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

6. Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

46. 1. Hutchinson *v.* U. S. Express Co., (W. Va. 1907) 59 S. E. 949.

11. Louisville, etc., R. Co. *v.* U. S., 39 Ct. Cl. 405; Southern R. Co. *v.* Aldredge, 142 Ala. 368, 38 So. 805; Barker *v.* Lewis Storage, etc., Co., 79 Conn. 342, 65 Atl. 143; Herzig *v.* New York Cold Storage Co., 115 N. Y. App. Div. 40, 100 N. Y. Supp. 603; Clifford *v.* Universal Storage Warehouse, etc., Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 595, 102 N. Y. Supp. 460; Stone *v.* Clyde Steamship Co., 139 N. Car. 193, 51 S. E. 894; Charlotte Trouser Co. *v.* Seaboard Air Line R. Co., 139 N. Car. 382, 51 S. E. 973; Fleischman *v.* Southern R. Co., 76 S. Car. 237, 56 S. E. 974; United Fruit Co. *v.* New York, etc., Transp. Co., 104 Md. 567, 65 Atl. 415; Laurence L. Prince & Co. *v.* St. Louis Cotton Compress Co., 112 Mo. App. 49, 86 S. W. 873; Guaranty Trust Co. *v.* Diltz, (Tex. Civ. App. 1906) 91 S. W. 596.

47. 1. United Fruit Co. *v.* New York, etc., Transp. Co., 104 Md. 567, 65 Atl. 415.

49. 1. United Fruit Co. *v.* New York, etc., Transp. Co., 104 Md. 567, 65 Atl. 415; Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

2. Laurence L. Prince Co. *v.* St. Louis Cotton Compress Co., 112 Mo. App. 49, 86 S. W. 873.

51. 1. Campbell *v.* Missouri Pac. R. Co., (Neb. 1907) 111 N. W. 126.

52. 4. Southern R. Co. *v.* Aldredge, 142 Ala. 368, 38 So. 805.

7. Laurence L. Prince Co. *v.* St. Louis Cotton Compress Co., 112 Mo. App. 49, 86 S. W. 873.

53. 1. Southern R. Co. *v.* Aldredge, 142 Ala. 368, 38 So. 805.

54. 5. Where the Warehouseman's Liability Is Limited by a provision in the receipt to twenty-five dollars unless the true value "is herein stated," the warehouseman is liable where the value is not stated in the receipt, for it is his duty to incorporate it therein. Gannon *v.* Seehorn, 44 Wash. 87, 86 Pac. 1116.

7. Negligence. — A clause providing that perishable goods are received at the owner's risk does not exempt the warehouseman from liability for negligence. Herzig *v.* New York Cold Storage Co., 115 N. Y. App. Div. 40, 100 N. Y. Supp. 603.

55. 6. Demand Necessary. — Freeman *v.* Ingerson, 143 Mich. 7, 106 N. W. 278.

11. A Demand Need Not Be Shown where there has been an illegal sale of the goods by the warehouseman. Ward *v.* Morr Transfer Co., 119 Mo. App. 83, 95 S. W. 964.

56. 2. Goods Attached by Third Person. — Cornell *v.* Mahoney, 190 Mass. 205, 76 N. E. 664.

57. 4. Citizens' Bank *v.* Arkansas Compress, etc., Co., 80 Ark. 601, 96 S. W. 997; Klein *v.* Patterson, 30 Pa. Super. Ct. 495.

59. 12. Laurence L. Prince & Co. *v.* St. Louis Cotton Compress Co., 112 Mo. App. 49, 86 S. W. 873.

61. 1. Clothing Which Has Been Worn. — Head *v.* Becklenberg, 116 Ill. App. 576.

4. Central of Georgia R. Co. *v.* Turner, 143 Ala. 142, 39 So. 30; Clough *v.* A. J. Stillwell Meat Co., 112 Mo. App. 177, 86 S. W. 580.

62. 3. A Recovery on a Quantum Meruit for storage may be had where the contract required the goods to be stored for a certain period and contained a provision that they be insured at the bailee's expense, the goods being destroyed before the expiration of the period of storage. Clough *v.* A. J. Stillwell Meat Co., 112 Mo. App. 177, 86 S. W. 580.

63. 5. Stoddard *v.* Crocker, 100 Me. 450, 62 Atl. 241.

6. Stoddard *v.* Crocker, 100 Me. 450 62 Atl. 241.

7. Kressin *v.* Central R. Co., 119 N. Y. App. Div. 86, 103 N. Y. Supp. 1002; Schwab *v.* Oatman, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741.

65. 7. Schwab *v.* Oatman, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741.

8. Schwab *v.* Oatman, (Supm. Ct. Tr. T.) 56 Misc. (N. Y.) 393, 106 N. Y. Supp. 741.

66. 7. Ward *v.* Morr Transfer Co., 119 Mo. App. 83, 95 S. W. 964.

67. 1. Stoddard *v.* Crocker, 100 Me. 450, 62 Atl. 241.

68. 1. Riley *v.* Loma Vista Ranch Co., 1 Cal. App. 488, 82 Pac. 686.

69. 10. Blanc *v.* Germania Nat. Bank, 114 La. 739, 38 So. 537; Bush *v.* Export Storage Co., 136 Fed. 918.

71. 6. Citizens' Bank *v.* Arkansas Compress, etc., Co., 80 Ark. 601, 96 S. W. 997;

Kessler *v.* Veio, 142 Mich. 471, 106 N. W. 73, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 71; Bush *v.* Export Storage Co., 136 Fed. 918.

Constructive Delivery Insufficient if Actual Delivery Impossible. — Livingston *v.* Anderson, 2 Ga. App. 274, 58 S. E. 505.

73. 2. Citizens' Bank *v.* Arkansas Compress, etc., Co., 80 Ark. 601, 96 S. W. 997; Commerce Nat. Bank *v.* Chatfield, 118 Tenn. 481, 101 S. W. 765; Bush *v.* Export Storage Co., 136 Fed. 918.

75. 15. Riley *v.* Loma Vista Ranch Co., 1 Cal. App. 488, 82 Pac. 686; Star Compress, etc., Co. *v.* Meridian Cotton Co., 87 Miss. 228, 39 So. 417.

78. 9. Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

11. Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

13. Savage *v.* Salem Mills Co., 48 Oregon 1, 85 Pac. 69.

WARRANT.

81. 5. **The Word Warrant** used in a deed *warrants* the possession or seisin as well as the title. Allen *v.* Caffee, 85 Miss. 766, 38 So. 186.

WARRANTS.

84. 1. **Purpose of Warrant.** — State *v.* White, (Kan. 1907) 92 Pac. 829.

3. **Technical Accuracy Not Necessary on Complaint.** — State *v.* White, (Kan. 1907) 92 Pac. 829.

4. **A Complaint Sworn to by One Having No Actual Knowledge of the Facts** set forth may be sufficient. State *v.* King, 71 Kan. 287, 86 Pac. 606.

88. 3. **Return "Not Found" — Warrant Becomes Functus Officio.** — *Ex p.* Broadhead, 74 Kan. 401, 86 Pac. 458.

96. 5. Rochford *v.* School Dist. No. 6, 19 S. Dak. 435, 103 N. W. 763.

6. **Warrants Defectively Issued and Executed** may be ratified by a unanimous vote at a regular meeting of the board. Gray *v.* School Inspectors, 231 Ill. 63, 83 N. E. 95.

99. 4. See State *v.* Gardner, (Neb. 1907) 112 N. W. 373.

WARRANTS OF ATTORNEY.

107. 4. Cuykendall *v.* Doe, 129 Iowa 453, 105 N. W. 698; Aultman, etc., Co. *v.* Meade, (Ky. 1905) 89 S. W. 137.

6. Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 107.

110. 4. Rasmussen *v.* Hagler, 15 N. Dak. 542, 108 N. W. 541.

113. 3. Cuykendall *v.* Doe, 129 Iowa 453, 105 N. W. 698; Rasmussen *v.* Hagler, 15 N. Dak. 542, 108 N. W. 541.

7. **A Warrant to Confess Judgment in Favor of a Particular Person** does not authorize confession in favor of another. Rasmussen *v.* Hagler, 15 N. Dak. 542, 108 N. W. 541.

120. 2. Barron *v.* Kimball, 124 Ill. App. 268.

122. 7. **A Judgment Rendered Pursuant to Authority Given in a Note** is as valid and binding as if rendered on regular service of process. Hutchinson *v.* Palmer, 147 Ala. 517, 40 So. 339, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 110, 111 [122].

12. Forsyth *v.* Barnes, 228 Ill. 326, 81 N. E. 1028; Vennum *v.* Mertens, 119 Mo. App. 461, 95 S. W. 292.

Where the Court Was Without Jurisdiction the judgment may, of course, be questioned. Cuykendall *v.* Doe, 129 Iowa 453, 105 N. W. 698.

WARRANTY.

129. 2. Brackett *v.* Martens, 4 Cal. App. 249, 87 Pac. 410; Elgin Jewelry Co. *v.* Estes, 122 Ga. 807, 50 S. E. 939; Haines *v.* Neece, 116 Mo. App. 499, 92 S. W. 919; Afflick *v.* Streeter, 125 Mo. App. 703, 103 S. W. 102. See Mastin *v.* Bartholomew, (Colo. 1907) 92 Pac. 682.

Unlike Covenants as to Title to Land, a warranty upon the sale of personal property does not run with the property. Nelson *v.* Armour Packing Co., 76 Ark. 352, 90 S. W. 288.

4. Bagley *v.* General Fire Extinguisher Co., (C. C. A.) 150 Fed. 284; Brackett *v.* Martens, 4 Cal. App. 249, 87 Pac. 410; Simonson *v.* Jenson, 14 N. Dak. 417, 104 N. W. 513.

A Warranty Is a Matter of Contract and strangers have no right of action upon it. Berger *v.* Standard Oil Co., 103 S. W. 245, 31 Ky. L. Rep. 613.

5. Bagley *v.* General Fire Extinguisher Co., (C. C. A.) 150 Fed. 284.

131. 3. See Smith *v.* Newberry, 140 N. Car. 385, 53 S. E. 234.

132. 8. **"Guaranty" and "Warranty" Are Used Interchangeably** in popular parlance. Branch *v.* James, (Ga. App. 1908) 60 S. E. 1027.

10. San Antonio Mach., etc., Co. *v.* Josey, (Tex. Civ. App. 1906) 91 S. W. 598.

133. 2. Walters *v.* Akers, 101 S. W. 1179, 31 Ky. L. Rep. 259. See also Campbell *v.* Lodge No. 99, (Kan. 1907) 92 Pac. 53.

3. See Campbell *v.* Lodge No. 99, (Kan. 1907) 92 Pac. 53.

7. **The Words "I Guarantee Delivery"** have been held to be not a warranty of title but simply one of possession. Pincus *v.* Muntzer, 34 Mont. 498, 87 Pac. 612.

135. 2. **An Agreement to Deliver an Engine "Complete in Every Way"** does not constitute a warranty. Bonden, etc., Co. *v.* Fraser, 118 Ill. App. 655.

5. **Delivery to Be Made within Time Stipulated.** — In Georgia it has been held that, where corn was to be delivered in a certain month, time was a material incident of the sale and should be construed as a warranty in that respect. Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50.

6. Elgin Jewelry Co. *v.* Estes, 122 Ga. 807, 50 S. E. 939. See also Haines *v.* Neece, 116 Mo. App. 499, 92 S. W. 919.

136. 1. Reynolds *v.* General Electric Co., (C. C. A.) 141 Fed. 551; Thomas *v.* Thomas, 146 Ala. 533, 41 So. 141; Elgin Jewelry Co. *v.*

Estes, 122 Ga. 807, 50 S. E. 939; Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53; De Loach Mill Mfg. Co. *v.* Tutweiler Coal, etc., Co., 2 Ga. App. 493, 58 S. E. 790; Hawley Down Draft Furnace Co. *v.* E. Van Winkle Gin, etc., Works, (Ga. App. 1908) 60 S. E. 1008; Ideal Heating Co. *v.* Kramer, 127 Iowa 137, 102 N. W. 840; Gaar *v.* Hodges, 90 S. W. 580, 28 Ky. L. Rep. 889; Guhy *v.* Nichols, etc., Co., (Ky. 1908) 109 S. W. 1190; Lombard Water-Wheel Governor Co. *v.* Great Northern Paper Co., 101 Me. 114, 63 Atl. 555; Monroe *v.* Hickox, etc., Co., 144 Mich. 30, 107 N. W. 719; International Harvester Co. *v.* Smith, 105 Va. 683, 54 S. E. 859; La Crosse Plow Co. *v.* Helgeson, 127 Wis. 622, 106 N. W. 1094. *Compare* Crankshaw *v.* Schweizer Mfg. Co., 1 Ga. App. 363, 58 S. E. 222; Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009; Sherwood *v.* Hulett, (Wis. 1908) 114 N. W. 1111.

2. Lombard Water-Wheel Governor Co. *v.* Great Northern Paper Co., 101 Me. 114, 63 Atl. 555.

3. See Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009; International Harvester Co. *v.* Smith, 105 Va. 683, 54 S. E. 859.

5. Mastin *v.* Bartholomew, (Colo. 1907) 92 Pac. 682; Collins *v.* Tigner, (Del. 1905) 60 Atl. 978; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; Forster *v.* Peer, 120 Ill. App. 199; Conkling *v.* Standard Oil Co., (Iowa 1908) 116 N. W. 822; Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 123; Childs *v.* Emerson, 117 Mo. App. 671, 93 S. W. 286; Shuman *v.* Heater, (Neb. 1906) 106 N. W. 1042; Heath Dry Gas Co. *v.* Hurd, (Supm. Ct. App. Div.) 108 N. Y. Supp. 410; Wrenn *v.* Morgan, (N. Car. 1908) 61 S. E. 641; Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 136; McAllister *v.* Morgan, 29 Pa. Super. Ct. 476. See Haines *v.* Neece, 116 Mo. App. 499, 92 S. W. 919.

137. 1. Brackett *v.* Martens, 4 Cal. App. 249, 87 Pac. 410; Mastin *v.* Bartholomew, (Colo. 1907) 92 Pac. 682; Collins *v.* Tigner, (Del. 1905) 60 Atl. 978; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; Forster *v.* Peer, 120 Ill. App. 199; Conkling *v.* Standard Oil Co., (Iowa 1908) 116 N. W. 822; Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 123; Childs *v.* Emerson, 117 Mo. App. 671, 93 S. W. 286; Shuman *v.* Heater, (Neb. 1906) 106 N. W. 1042; Heath Dry Gas Co. *v.* Hurd, (Supm. Ct. App. Div.) 108 N. Y. Supp. 410; Wrenn *v.* Morgan, (N. Car. 1908) 61 S. E. 641; Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 137; Walker, etc., Co. *v.* Ayer, (S. Car. 1908) 61 S. E. 557. See also Haines *v.* Neece, 116 Mo. App. 499, 92 S. W. 919.

138. 1. Mastin *v.* Bartholomew, (Colo. 1907) 92 Pac. 682.

Knowledge Is Not Necessary to support an action for breach of warranty. Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103.

2. See American Glue Co. *v.* Rayburn, 150 Mich. 616, 114 N. W. 395.

3. Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 138.

139. 2. J. F. Hartin Commission Co. *v.* Pelt, 76 Ark. 177, 88 S. W. 929.

3. Sauerman *v.* Simmons, 74 Ark. 563, 86 S. W. 429. See also Childs *v.* Emerson, 117 Mo. App. 671, 93 S. W. 286.

4. J. F. Hartin Commission Co. *v.* Pelt, 76 Ark. 177, 88 S. W. 929; Beasley *v.* Surles, 140 N. Car. 605, 53 S. E. 360; Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103; McAllister *v.* Morgan, 29 Pa. Super. Ct. 476. See also Electric Storage Battery Co. *v.* Waterloo, etc., R. Co., (Iowa 1908) 116 N. W. 144.

5. Childs *v.* Emerson, 117 Mo. App. 671, 93 S. W. 286; Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103.

140. 4. **Machinery Purchased from Third Party.** — Where a wheel forming part of an elevator was, with the consent of the buyer of the elevator, ordered from a reputable maker it was held that there was no warranty. Howard Iron Works *v.* Buffalo Elevating Co., 113 N. Y. App. Div. 562, 99 N. Y. Supp. 163, *affirmed* without opinion in 188 N. Y. 619, 81 N. E. 1166.

6. Moore *v.* Koger, 113 Mo. App. 423, 87 S. W. 602.

141. 1. Forster *v.* Peer, 120 Ill. App. 199; Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103; McAllister *v.* Morgan, 29 Pa. Super. Ct. 476.

2. Collins *v.* Tigner, (Del. 1905) 60 Atl. 978; Warren *v.* Walter Automobile Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 605, 99 N. Y. Supp. 396; Beasley *v.* Surles, 140 N. Car. 605, 53 S. E. 360; Strauss *v.* Salzer, (Supm. Ct. App. T.) 109 N. Y. Supp. 734.

3. Collins *v.* Tigner, (Del. 1905) 60 Atl. 978.

142. 8. Brackett *v.* Martens, 4 Cal. App. 249, 87 Pac. 410; Morley *v.* Consolidated Mfg. Co., (Mass. 1907) 81 N. E. 993; Moore *v.* Koger, 113 Mo. App. 423, 87 S. W. 602. See also Conkling *v.* Standard Oil Co., (Iowa 1908) 116 N. W. 822.

143. 3. Sauerman *v.* Simmons, 74 Ark. 563, 86 S. W. 429; Mitchell *v.* Pinckney, 127 Iowa 696, 104 N. W. 286; Childs *v.* Emerson, 117 Mo. App. 671, 93 S. W. 286. See also Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935; H. H. Franklin Mfg. Co. *v.* Lamson, etc., Mfg. Co., 189 Mass. 344, 75 N. E. 624; Shuman *v.* Heater, (Neb. 1906) 106 N. W. 1042.

5. Collins *v.* Tigner, (Del. 1905) 60 Atl. 978. See also Farrell *v.* Manhattan Market Co., (Mass. 1908) 84 N. E. 481; Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 123.

144. 2. Mitchell *v.* Pinckney, 127 Iowa 696, 104 N. W. 286.

6. Mitchell *v.* Pinckney, 127 Iowa 696, 104 N. W. 286; Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935; Walker, etc., Co. *v.* Ayer, (S. Car. 1908) 61 S. E. 557.

8. Conkling *v.* Standard Oil Co., (Iowa 1908) 116 N. W. 822, *quoting* 30 Am. and Eng. Encyc. of Law (2d ed.) 144.

9. Frost *v.* Aylesbury Dairy Co., (1905) 1 K. B. 608, 92 L. T. N. S. 527; Excelsior Coal Co. *v.* Gildersleeve, (C. C. A.) 160 Fed. 47; Conkling *v.* Standard Oil Co., (Iowa 1908) 116 N. W. 822, *quoting* 30 Am. and Eng. Encyc.

(Mass. 1908) 84 N. E. 488; West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488; American Glue Co. *v.* Rayburn, 150 Mich. 616, 114 N. W. 395; Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20; Walker, etc., Co. *v.* Ayer, (S. Car. 1908) 61 S. E. 557. See also Farrell *v.* Manhattan Market Co., (Mass. 1908) 84 N. E. 481; Moore *v.* Koger, 113 Mo. App. 423, 87 S. W. 602; Jasper County Bank *v.* Barts, (Mo. App. 1908) 109 S. W. 1057; Shuman *v.* Heater, (Neb. 1906) 106 N. W. 1042; Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963; Razey *v.* J. B. Colt Co., 106 N. Y. App. Div. 103, 94 N. Y. Supp. 59; Merriam Paper Co. *v.* New York Market Gardeners' Assoc., (Supm. Ct. App. T.) 108 N. Y. Supp. 1038; W. F. Main Co. *v.* Field, 144 N. Car. 307, 56 S. E. 943; Cleveland Punch, etc., Works Co. *v.* Consumers' Carbon Co., 75 Ohio St. 153, 78 N. E. 1099.

If the Identical Machine purchased is sold, after inspection by the purchaser, there is no implied warranty that it is fit for the purpose for which it is bought. W. R. Colchord Machinery Co. *v.* Loy-Wilson Foundry, etc., Co., (Mo. App. 1908) 110 S. W. 630.

145. 1. Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20.

2. *United States.* — Davis Colyx Drill Co. *v.* Mallory, 137 Fed. 332, 69 C. C. A. 662.

Georgia. — Crankshaw *v.* Schweizer Mfg. Co., 1 Ga. App. 363, 58 S. E. 222; J. A. Fay, etc., Co. *v.* Dudley, 129 Ga. 314, 58 S. E. 826. See also Hawley Down Draft Furnace Co. *v.* E. Van Winkle Gin, etc., Works, (Ga. App. 1908) 60 S. E. 1008.

Maine. — Lombard Water-Wheel Governor Co. *v.* Great Northern Paper Co., 101 Me. 114, 63 Atl. 555.

Massachusetts. — Cox *v.* Andersen, 194 Mass. 136, 80 N. E. 236; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682. See also Farrell *v.* Manhattan Market Co., (Mass. 1908) 84 N. E. 481.

Missouri. — Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20. See also W. R. Colchord Machinery Co. *v.* Loy-Wilson Foundry, etc., Co., (Mo. App. 1908) 110 S. W. 630.

New York. — McSwegan *v.* Gatti-McQuade Co., (Supm. Ct. App. T.) 50 Misc. (N. Y.) 338, 98 N. Y. Supp. 692; Manning *v.* National Saw Co., (Supm. Ct. App. Div.) 110 N. Y. Supp. 685.

Pennsylvania. — See Wise *v.* Wilby, 30 Pa. Super. Ct. 484.

Rhode Island. — Beggs *v.* James Hanley Brewing Co., 27 R. I. 385, 62 Atl. 373.

Wisconsin. — La Crosse Plow Co. *v.* Helgeson, 127 Wis. 622, 106 N. W. 1094; Logeman Bros. Co. *v.* R. J. Preuss Co., 131 Wis. 122, 111 N. W. 64; Rollins *v.* Northern Land, etc., Co., (Wis. 1908) 114 N. W. 819.

3. J. A. Fay, etc., Co. *v.* Dudley, 129 Ga. 314, 58 S. E. 826; Manasquan Gravel Co. *v.* Ross, 73 N. J. L. 506, 63 Atl. 1091.

5. Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682.

6. Collins *v.* Tigner, (Del. 1905) 60 Atl. 978; Walters *v.* Akers, 101 S. W. 1179, 31 Ky. L. Rep. 259.

146. 1. See Collins *v.* Tigner, (Del. 1905) 60 Atl. 978.

3. **After Liability on the Original Warranty Has Ceased** representations as a matter of accommodation made subsequently are without consideration and impose no obligation. Walters *v.* Akers, 101 S. W. 1179, 31 Ky. L. Rep. 259.

6. Lichtenstein *v.* Rabolinsky, 98 N. Y. App. Div. 516, 90 N. Y. Supp. 247, *affirmed* without opinion in 184 N. Y. 520, 76 N. E. 1099.

147. 1. Conkling *v.* Standard Oil Co., (Iowa 1908) 116 N. W. 794; Marbury Lumber Co. *v.* Stearns Mfg. Co., (Ky. 1908) 107 S. W. 200; Morley *v.* Consolidated Mfg. Co., (Mass. 1907) 81 N. E. 993; Binck Motor Co. *v.* Reid Mfg. Co., 150 Mich. 118, 113 N. W. 591; St. Anthony, etc., Elevator Co. *v.* Princeton Roller Mill Co., (Minn. 1908) 116 Mo. 935; Moore *v.* Koger, 113 Mo. App. 423, 87 S. W. 602; W. R. Colchord Machinery Co. *v.* Loy-Wilson Foundry, etc., Co., (Mo. App. 1908) 110 S. W. 630; Crane Co. *v.* Collins, 103 N. Y. App. Div. 480, 93 N. Y. Supp. 174; Northfield Nat. Bank *v.* Arndt, (Wis. 1907) 112 N. W. 451. *Contra,* Walker, etc., Co. *v.* Ayer, (S. Car. 1908) 61 S. E. 557.

Rule Applies Even Though Samples Exhibited. — Hamilton *v.* Pelonsky, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 554, 96 N. Y. Supp. 216.

Knowledge Is Not Necessary to support an action for breach of warranty. Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103.

The Rule of Caveat Emptor Will Not Apply where the buyer has no opportunity to inspect and relies upon the seller who holds himself out as competent. Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963.

7. Narr *v.* Norman, 113 Mo. App. 533, 88 S. W. 122; Woods *v.* Thompson, 114 Mo. App. 38, 88 S. W. 1126.

8. Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Carolina Portland Cement Co. *v.* Turpin, 126 Ga. 677, 55 S. E. 925; Burr *v.* Atlanta Paper Co., 2 Ga. App. 52, 58 S. E. 373; North Georgia Milling Co. *v.* Henderson Elevator Co., (Ga. 1908) 60 S. E. 258; Hanson *v.* Gronlie, (N. Dak. 1908) 115 N. W. 666. See also Oil Mill Supply Co. *v.* Watson, 168 Ind. 603, 80 N. E. 157; Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 123.

A Representation by Exhibition of Samples may be relied upon. Puritan Mfg. Co. *v.* The Emporium, 130 Iowa 526, 107 N. W. 428.

148. 1. Lichtenstein *v.* Rabolinsky, 98 N. Y. App. Div. 516, 90 N. Y. Supp. 247, *affirmed* without opinion in 184 N. Y. 520, 76 N. E. 1099. See also North Baltimore Bottle Glass Co. *v.* Altpeter, (Wis. 1907) 113 N. W. 435.

Goods of Same Brand and Quality. — Where it was understood that a shipment of beer should be of the same quality as a previous car load, it was held that this amounted to an express warranty. Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53.

2. Noyes *v.* Marlott, (C. C. A.) 156 Fed. 753; St. Anthony, etc., Elevator Co. *v.* Princeton Roller Mill Co., (Minn. 1908) 116 N. W. 935; Patrick *v.* Norfolk Lumber Co., (Neb.

1908) 115 N. W. 780; Rollins *v.* Northern Land, etc., Co., (Wis. 1908) 114 N. W. 819, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 148.

"Good, Clean Buseling Scrap" Iron guaranteed it to be free from foreign matter. Lichtenstein *v.* Rabolinsky, 98 N. Y. App. Div. 516, 90 N. Y. Supp. 247, *affirmed* without opinion in 184 N. Y. 520, 76 N. E. 1099.

149. 2. Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53.

3. *Compare* Reynolds *v.* General Electric Co., 141 Fed. 551, 73 C. C. A. 23.

6. Beggs *v.* James Hanley Brewing Co., 27 R. I. 385, 62 Atl. 373.

Catalogues. — Where a note was appended to the printed pedigree of a cow which was inconsistent with other matter in the catalogue it was held that the intent of the warranty must be ascertained by reading the document as a whole. Brown *v.* Korns, 134 Iowa 699, 112 N. W. 195.

A Cost Mark used in a contract of exchange as a basis of value is not a warranty. Webb *v.* Steiner, 113 Mo. App. 482, 87 S. W. 618.

150. 6. Conkling *v.* Standard Oil Co., (Iowa 1908) 116 N. W. 822, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 150.

151. 2. Wrenn *v.* Morgan, (N. Car. 1908) 61 S. E. 641. See also Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 151.

3. Childs *v.* Emerson, 117 Mo. App. 671, 93 S. W. 286; Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103.

154. 1. J. F. Hartin Commission Co. *v.* Pelt, 76 Ark. 177, 88 S. W. 929, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 153; Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; De Loach Mill Mfg. Co. *v.* Tutweiler Coal, etc., Co., 2 Ga. App. 493, 58 S. E. 790; J. A. Fay, etc., Co. *v.* Dudley, 129 Ga. 314, 58 S. E. 826; Farrell *v.* Manhattan Market Co., (Mass. 1908) 84 N. E. 481; West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488; Childs *v.* Emerson, 117 Mo. App. 671, 93 S. W. 286; Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963; Hirsh *v.* Duval Co., (Supm. Ct. App. T.) 101 N. Y. Supp. 35; Heath Dry Gas Co. *v.* Hurd, (Supm. Ct. App. Div.) 108 N. Y. Supp. 410. See also Lichtenstein *v.* Rabolinsky, 98 N. Y. App. Div. 516, 90 N. Y. Supp. 247, *affirmed* without opinion in 184 N. Y. 520, 76 N. E. 1099; Staiger *v.* Soht, 116 N. Y. App. Div. 874, 102 N. Y. Supp. 342; Manton *v.* Perry, 29 Ohio Cir. Ct. 187; Puritan Mfg. Co. *v.* Westermire, 47 Oregon 557, 84 Pac. 797.

A Sale by Sample is an express warranty that the goods are equal in quality to the sample furnished. Hamilton *v.* Pelonsky, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 554, 96 N. Y. Supp. 216.

Where Goods of a Certain Weight and Size Are Ordered, and are merely delivered without description, there is no warranty. Merriam Paper Co. *v.* New York Market Gardeners' Assoc., (Supm. Ct. App. T.) 108 N. Y. Supp. 1038.

Goods of Same Brand and Quality. — Where a shipment of beer of the same quality as a previous car load was ordered, it was held that there was an express warranty. Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53.

2. See Merriam Paper Co. *v.* New York Market Gardeners' Assoc., (Supm. Ct. App. T.) 108 N. Y. Supp. 1038; Manton *v.* Perry, 29 Ohio Cir. Ct. 187.

On the Sale of Seed of a Certain Kind not distinguishable by ordinary inspection from other seed there is an implied warranty by the seller which survives acceptance. Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 28, 105 N. Y. Supp. 390.

If the Defects Are Latent and not apparent on inspection, an acceptance cannot be construed as a waiver. Heath Dry Gas Co. *v.* Hurd, (Supm. Ct. App. Div.) 108 N. Y. Supp. 410.

3. See West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488.

4. Collins *v.* Tigner, (Del. 1905) 60 Atl. 978; Reeves *v.* Chandler, 113 Ill. App. 167; J. George Leyner Engineering Works Co. *v.* Newkirk, 117 Mo. App. 378, 93 S. W. 875; Walker *v.* Grout Bros. Automobile Co., 124 Mo. App. 628, 102 S. W. 25; Garland *v.* Keeler, 15 N. Dak. 548, 108 N. W. 484; Houghton Implement Co. *v.* Vavrousky, 15 N. Dak. 308, 109 N. W. 1024.

155. 1. Garland *v.* Keeler, 15 N. Dak. 548, 108 N. W. 484. See also Walker *v.* Grout Bros. Automobile Co., 124 Mo. App. 628, 102 S. W. 25.

3. Collins *v.* Tigner, (Del. 1905) 60 Atl. 978.

4. Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 155.

Sale of Horses. — Where the evidence was that a team was unsound at the time of sale, of which fact the vendor was aware, it was held that representations of soundness amounted to a warranty. Shuman *v.* Heater, (Neb. 1906) 106 N. W. 1042.

156. 1. Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 156. See also Boylan *v.* McMillan, (Iowa 1908) 114 N. W. 630.

A Representation as to Breeding is a warranty. Galbraith *v.* Carmode, 43 Wash. 456, 86 Pac. 624.

3. J. F. Hartin Commission Co. *v.* Pelt, 76 Ark. 177, 88 S. W. 929.

6. Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 123.

If Cattle Are Infected with Germs of Disease at the time of sale the warranty is broken whether the seller knew of it or not. Mitchell *v.* Pinckney, 127 Iowa 696, 104 N. W. 286.

157. 2. Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 28, 105 N. Y. Supp. 390.

160. 1. Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 160; Scott *v.* Geiser Mfg. Co., 70 Kan. 500, 80 Pac. 955; Worthington *v.* Herrmann, 89 N. Y. App. Div. 627, 88 N. Y. Supp. 76, 180 N. Y. 559, 73 N. E. 1134; Walker, etc., Co. *v.* Ayer, (S. Car. 1908) 61 S. E. 557; Logeman Bros. Co. *v.* R. J. Preuss Co., 131 Wis. 122, 111 N. W. 64. See also Yick Sung *v.* Herman, 2 Cal. App. 633, 83 Pac. 1089.

2. North Georgia Milling Co. *v.* Henderson Elevator Co., (Ga. 1908) 60 S. E. 258; Scott

v. Geiser Mfg. Co., 70 Kan. 500, 80 Pac. 955; W. R. Colchord Machinery Co. *v.* Loy-Wilson Foundry, etc., Co., (Mo. App. 1908) 110 S. W. 630.

3. Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 160.

4. Buick Motor Co. *v.* Reid Mfg. Co., 150 Mich. 118, 113 N. W. 591; Moore *v.* Koger, 113 Mo. App. 423, 87 S. W. 602. See also Hulet *v.* Achey, 39 Wash. 91, 80 Pac. 1105.

When the Buyer and Seller Have Equal Knowledge there is no warranty. Collins *v.* Tigner, (Del. 1905) 60 Atl. 978.

5. Morley *v.* Consolidated Mfg. Co., (Mass. 1907) 81 N. E. 993.

7. **Illustrative Case — Obvious Defect.** — A defect in a threshing machine which had been repaired for the seller by the purchaser is an obvious defect. Scott *v.* Geiser Mfg. Co., 70 Kan. 500, 80 Pac. 955.

161. 1. Lichtenstein *v.* Rabolinsky, 98 N. Y. App. Div. 516, 90 N. Y. Supp. 247, *affirmed* without opinion in 184 N. Y. 520, 76 N. E. 1099.

4. See Yick Sung *v.* Herman, 2 Cal. App. 633, 83 Pac. 1089.

162. 4. Moore *v.* Koger, 113 Mo. App. 423, 87 S. W. 602.

6. Jones *v.* Emerson, 41 Wash. 33, 82 Pac. 1017. See also Main *v.* El Dorado Dry Goods Co., 83 Ark. 15, 102 S. W. 681.

7. Main *v.* El Dorado Dry Goods Co., 83 Ark. 15, 102 S. W. 681; Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Murr *v.* Atlanta Paper Co., 2 Ga. App. 52, 58 S. E. 373; North Georgia Milling Co. *v.* Henderson Elevator Co., (Ga. 1908) 60 S. E. 258; Faust *v.* Koers, 111 Mo. App. 560, 86 S. W. 278. See also Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 123; Lichtenstein *v.* Rabolinsky, 98 N. Y. App. Div. 516, 90 N. Y. Supp. 247, *affirmed* without opinion in 184 N. Y. 520, 76 N. E. 1099; Oregon Auto-Dispatch *v.* Portland Cordage Co., (Oregon 1908) 94 Pac. 36; Walker, etc., Co. *v.* Ayer, (S. Car. 1908) 61 S. E. 557.

An Agreement to Replace and Repair will not prevent reliance by the buyer upon representations as to quality and description. Puritan Mfg. Co. *v.* The Emporium, 130 Iowa 526, 107 N. W. 428.

8. Narr *v.* Norman, 113 Mo. App. 533, 88 S. W. 122; Woods *v.* Thompson, 114 Mo. App. 38, 88 S. W. 1126.

163. 1. Scott *v.* Geiser Mfg. Co., 70 Kan. 500, 80 Pac. 955.

4. Dunham *v.* Salmon, 130 Wis. 164, 109 N. W. 959. See also Richmond Second Nat. Bank *v.* Adams, (Ky. 1906) 93 S. W. 671; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682.

Authority Exceeded. — It is stated to be the rule in *North Carolina* that a selling agent may bind his principal even though he exceeds his authority. Haynor Mfg. Co. *v.* Davis, (N. Car. 1908) 61 S. E. 54.

164. 1. Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; Haynor Mfg. Co. *v.* Davis, (N. Car. 1908) 61 S. E. 54, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 164. *Compare* Conkling *v.* Standard Oil Co., (Iowa 1908) 116 N. W. 822.

The Principal Will Not Be Bound by representations of an agent concerning a machine which he does not sell, although it is used in connection therewith. Richmond Second Nat. Bank *v.* Adams, (Ky. 1906) 93 S. W. 671.

But One Who Solicits Orders on Commission, merely, is not an agent of the seller with authority to make absolute contracts of sale and to warrant. McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342.

166. 1. See Holman *v.* Calhoun, 146 Ala. 690, 40 So. 356.

167. 9. Holman *v.* Calhoun, 146 Ala. 690, 40 So. 356; Harrison *v.* Russell, 12 Idaho 624, 87 Pac. 1784; New Hamburg Mfg. Co. *v.* Shields, 16 Manitoba 212.

11. McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342.

168. 1. Conkling *v.* Standard Oil Co., (Iowa 1908) 116 N. W. 822.

2. Arden Lumber Co. *v.* Henderson Iron Works, etc., Co., 83 Ark. 240, 103 S. W. 185; Germain Fruit Co. *v.* J. K. Armsby Co., (Cal. 1908) 96 Pac. 319; Branch *v.* James, (Ga. App. 1908) 60 S. E. 1027; Sullivan Machinery Co. *v.* Breeden, (Ind. App. 1907) 82 N. E. 107; Electric Storage Battery Co. *v.* Waterloo, etc., R. Co., (Iowa 1908) 116 N. W. 144; Otto *v.* Braman, 142 Mich. 185, 105 N. W. 601; Detroit Shipbuilding Co. *v.* Comstock, 144 Mich. 516, 108 N. W. 286; McNaughton *v.* Wohl, 99 Minn. 92, 108 N. W. 467; Barton *v.* Chicago Fire Proof Covering Co., 113 Mo. App. 462, 87 S. W. 599; McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342; Houghton Implement Co. *v.* Doughty, 14 N. Dak. 331, 104 N. W. 516; Hooven, etc., Co. *v.* Wirtz, 15 N. Dak. 477, 107 N. W. 1078; Buchanan *v.* Lober, 39 Wash. 410, 81 Pac. 911, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 168; Cockshutt Plow Co. *v.* Mills, 2 West. L. Rep. (Can.) 355. See also McKenzie Furnace Co. *v.* Mallers, 231 Ill. 561, 83 N. E. 451.

169. 4. Germain Fruit Co. *v.* J. K. Armsby Co., (Cal. 1908) 96 Pac. 319; McNaughton *v.* Wahl, 99 Minn. 92, 108 N. W. 467.

5. St. Anthony, etc., Elevator Co. *v.* Princeton Roller Mill Co., (Minn. 1908) 116 N. W. 935.

Where the Writing Does Not Express the Contract between the parties the general rule does not apply. Hallowell *v.* McLaughlin, (Iowa 1907) 111 N. W. 428.

6. See Florence Wagon Works *v.* Trinidad Asphalt Mfg. Co., 145 Ala. 677, 40 So. 49; McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342.

170. 1. Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682.

4. Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935; West End Mfg. Co. *v.* P. R. Warren Co., (Mass. 1908) 84 N. E. 488.

171. 2. See Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935.

172. 3. Nichols, etc., Co. *v.* Maxon, (Kan. [illegible]) 92 Pac. 545.

173. 3. Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497.

4. See F. D. Cummer, etc., Co. *v.* Marine Sugar Co., 146 Fed. 240, 76 C. C. A. 606.

7. See Harrison *v.* Russell, 12 Idaho 624, 87 Pac. 784.

174. 1. Branch *v.* James, (Ga. App. 1908) 60 S. E. 1027. See also Ideal Heating Co. *v.* Kramer, 127 Iowa 137, 102 N. W. 840; La Crosse Plow Co. *v.* Helgeson, 127 Wis. 622, 106 N. W. 1094.

2. Monroe *v.* Hickok, etc., Co., 144 Mich. 30, 107 N. W. 719.

3. See Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103.

4. Frost *v.* Aylesbury Dairy Co., (1905) 1 K. B. 608, 92 L. T. N. S. 527; Bagley *v.* General Fire Extinguisher Co., (C. C. A.) 150 Fed. 284; Main *v.* El Dorado Dry Goods Co., 83 Ark. 15, 102 S. W. 681. See also Marbury Lumber Co. *v.* Stearns Mfg. Co., (Ky. 1908) 107 S. W. 209.

"Delivered Guaranteed" means that the merchantable quality of the goods when delivered is guaranteed. Kimball-Fowler Cereal Co. *v.* Chapman, etc., Lumber Co., 125 Mo. App. 326, 102 S. W. 625.

5. Bagley *v.* General Fire Extinguisher Co., (C. C. A.) 150 Fed. 284; Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497.

175. 1. Ousley *v.* Hampe, 128 Iowa 676, 105 N. W. 122, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 174; Sprout *v.* Hunter, 98 S. W. 1006, 30 Ky. L. Rep. 380. *Compare* Union Carpet Lining Co. *v.* Miller, (Tex. Civ. App. 1905) 86 S. W. 651.

176. 2. Sprout *v.* Hunter, 98 S. W. 1006, 30 Ky. L. Rep. 380.

6. Crankshaw *v.* Schweizer Mfg. Co., 1 Ga. App. 363, 58 S. E. 222; Miller *v.* James Smith Machinery Co., (Pa. 1908) 69 Atl. 598.

Agreement to Deliver Engine "Complete in Every Way" Does Not Constitute Warranty. — Borden, etc., Co. *v.* Fraser, 118 Ill. App. 655.

An Agreement to Install Steam Radiation in a "Good, Workmanlike Manner" is an undertaking that the apparatus will heat properly. Ideal Heating Co. *v.* Kramer, 127 Iowa 137, 102 N. W. 840.

Agreement that Machine Is of Good Material and Workmanship. — Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497.

Well Made. — Dooley *v.* Hasenwinkle Grain Co., 120 Ill. App. 43.

177. 4. Register-Gazette Co. *v.* Larash, 123 Ill. App. 453.

5. *Compare* Wise *v.* Wilby, 30 Pa. Super. Ct. 484; Wm. S. Merrell Chemical Co. *v.* A. Spiegel Co., 131 Wis. 272, 112 N. W. 136.

6. See Buchanan *v.* Laber, 39 Wash. 410, 81 Pac. 911.

178. 1. See Forster *v.* Peer, 120 Ill. App. 199.

2. Devine *v.* Ryan, 115 Ill. App. 498; Meyer *v.* Seely, (Supm. Ct. App. T.) 103 N. Y. Supp. 719; Baskerville *v.* Johnson, (S. Dak. 1905) 104 N. W. 913. See also Kempner *v.* Advance Thresher Co., (Tex. Civ. App. 1906) 97 S. W. 1078.

A Warranty that a Stove Will Bake and Cook Well and Give Satisfaction is broken if it fails merely to give satisfaction. Thompson *v.* O'Neil, (Ala. 1908) 46 So. 229.

Breach in Part, Breach in Whole. — Chicago Telephone Supply Co. *v.* Merne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935.

3. Cooper *v.* Payne, 103 N. Y. App. Div. 118, 93 N. Y. Supp. 69; Ellison *v.* Johnson, 74 S. Car. 202, 54 S. E. 202. See also Childs *v.* Emerson, 117 Mo. App. 671, 93 S. W. 286.

4. Ellison *v.* Johnson, 74 S. Car. 202, 54 S. E. 202.

5. Hein *v.* Mildebrandt, (Wis. 1908) 115 N. W. 121.

7. See also Gaar *v.* Holverson, 128 Iowa 603, 105 N. W. 108.

179. 1. Brackett *v.* Martens, 4 Cal. App. 249, 87 Pac. 410; Collins *v.* Tigner, (Del. 1905) 60 Atl. 978; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; E. B. Constantine Mfg. Co. *v.* Reynolds, (Supm. Ct. App. Div.) 108 N. Y. Supp. 36.

2. **Duration of Warranty Is for Reasonable Period Only.** — Sprout *v.* Hunter, 98 S. W. 1006, 30 Ky. L. Rep. 380.

4. **Quality Determined at Place of Delivery.** — Union Carpet Lining Co. *v.* Miller, (Tex. Civ. App. 1905) 86 S. W. 651.

5. F. D. Cummer, etc., Co. *v.* Marine Sugar Co., (C. C. A.) 146 Fed. 240. See also W. F. Main Co. *v.* Field, 144 N. Car. 307, 56 S. E. 943.

6. Charter Gas, etc., Co. *v.* Barton, (Ala. 1905) 39 So. 985; Pratt *v.* Meyer, 75 Ark. 206, 87 S. W. 123; Duffie *v.* Pratt, 76 Ark. 74, 88 S. W. 842; Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451; Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648; Pratt *v.* Morris, (Ky. 1905) 87 S. W. 783; Wisdom *v.* Nichols, etc., Co., 97 S. W. 18, 29 Ky. L. Rep. 1128; W. F. Main Co. *v.* Griffin-Bynum Co., 141 N. Car. 43, 53 S. E. 727; Shearer *v.* Gaar, (Tex. Civ. App. 1905) 90 S. W. 684. See also Dooley *v.* Hasenwinkle Grain Co., 120 Ill. App. 43, and W. F. Main Co. *v.* Field, 144 N. Car. 307, 56 S. E. 943. *Compare* Main *v.* Dearing, 73 Ark. 470, 84 S. W. 640.

7. Dooley *v.* Hasenwinkle Grain Co., 120 Ill. App. 43; Walters *v.* Akers, 101 S. W. 1179, 31 Ky. L. Rep. 259.

Notwithstanding a Stipulation, a Reasonable Time, it has been held in *North Carolina,* as determined by the jury, must be allowed for inspection. W. F. Main Co. *v.* Field, 144 N. Car. 307, 56 S. E. 943.

Test Made in Six Months Sufficient. — Gutta Percha, etc., Mfg. Co. *v.* Cheburne, (Tex. Civ. App. 1906) 95 S. W. 1131.

180. 4. **Satisfactory Breeder.** — Rosenthal *v.* Rambo, 165 Ind. 584, 76 N. E. 404.

182. 4. Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11.

10. Pratt *v.* Meyer, 75 Ark. 206, 87 S. W. 123; Duffie *v.* Pratt, 76 Ark. 74, 88 S. W. 842; Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451; Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648; Pratt *v.* Morris, (Ky. 1905) 87 S. W. 783; Wisdom *v.* Nichols, etc., Co., 97 S. W. 18, 29 Ky. L. Rep. 1128; Shearer *v.* Gaar, (Tex. Civ. App. 1905) 90 S. W. 684. *Compare* Main *v.* Dearing, 73 Ark. 470, 84 S. W. 640.

Fraud Will Relieve Buyer. — Folkes *v.* Pratt, 86 Miss. 254, 38 So. 224.

183. 1. Atkins Bros. Co. *v.* Landa, 119 Mo. App. 119, 95 S. W. 949. *Compare* Rouse *v.* Sarratt, 74 S. Car. 575, 54 S. E. 757.

Georgia Statute. — Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50.

184. 4. See Burr *v.* Atlanta Paper Co., 2 Ga. App. 52, 58 S. E. 373.

5. *Compare* Gutta Percha, etc., Mfg. Co. *v.* Cleburne, (Tex. Civ. App. 1906) 95 S. W. 1131.

8. Hutchinson Lumber Co. *v.* Dickerson, 127 Ga. 328, 56 S. E. 491; Staiger *v.* Soht, 116 N. Y. App. Div. 874, 102 N. Y. Supp. 342; Simonson *v.* Jenson, 14 N. Dak. 417, 104 N. W. 513.

10. Jewell Belting Co. *v.* Hamilton Rubber Mfg. Co., 121 Ill. App. 13; Callahan *v.* O'Rourke, 110 N. Y. App. Div. 779, 96 N. Y. Supp. 1010; Ames *v.* Norwich Light Co., 122 N. Y. App. Div. 319, 106 N. Y. Supp. 952; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 796; Duncan-Hobson Electric Co. *v.* Coleman, (Tex. Civ. App. 1905) 100 S. W. 1004; American Foundry, etc., Co. *v.* Board of Education, 131 Wis. 220, 110 N. W. 403; Smith *v.* Archibald, 41 Nova Scotia 211. See also Staiger *v.* Soht, 116 N. Y. App. Div. 874, 102 N. Y. Supp. 342; Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265. *Compare* Crane Co. *v.* Collins, 103 N. Y. App. Div. 480, 93 N. Y. Supp. 174.

Continued Buying and Using of a defective article purchased for a particular purpose will defeat a claim for damages. B. P. Ducas Co. *v.* American Silk Dyeing, etc., Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 411, 95 N. Y. Supp. 590.

185. 1. *Compare* Wolfe Bros. Shoe Co. *v.* Bishop, 72 Kan. 687, 84 Pac. 133.

3. Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279; Faust *v.* Koers, 111 Mo. App. 560, 86 S. W. 278. See also Devine *v.* Ryan, 115 Ill. App. 498; Guhy *v.* Nichols, etc., Co., (Ky. 1908) 109 S. W. 1190; Kumberger *v.* Hartford, (Supm. Ct. App. T.) 105 N. Y. Supp. 154.

186. 1. Atkins Bros. Co. *v.* Lauda, 119 Mo. App. 119, 95 S. W. 949; Cooper *v.* Payne, 103 N. Y. App. Div. 118, 93 N. Y. Supp. 69. *Compare* Crane Co. *v.* Collins, 103 N. Y. App. Div. 480, 93 N. Y. Supp. 174.

187. 1. See Faust *v.* Koers, 111 Mo. App. 560, 86 S. W. 278.

2. See Staiger *v.* Soht, 116 N. Y. App. Div. 874, 102 N. Y. Supp. 342.

4. Carolina Portland Cement Co. *v.* Turpin, 126 Ga. 677, 55 S. E. 925; North Georgia Milling Co. *v.* Henderson Elevator Co., (Ga. 1908) 60 S. E. 258; Crane Co. *v.* Collins, 103 N. Y. App. Div. 480, 93 N. Y. Supp. 174; Diechmann *v.* Boyd, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 177, 98 N. Y. Supp. 202; Northfield Nat. Bank *v.* Arndt, (Wis. 1907) 112 N. W. 451. See also Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53; Sprout *v.* Hunter, 98 S. W. 1006, 30 Ky. L. Rep. 380; American Steel Hoop Co. *v.* Searles, (Miss. 1908) 46 So. 411; Heath Dry Gas Co. *v.* Hurd, (Supm. Ct. App. Div.) 108 N. Y. Supp. 410.

Retention and Use at Instance of Seller No Waiver. — Burr *v.* Atlanta Paper Co., 2 Ga. App. 52, 58 S. E. 373.

5. Borden, etc., Co. *v.* Fraser, 118 Ill. App. 655. See also Guhy *v.* Nichols, etc., Co., (Ky. 1908) 109 S. W. 1190.

188. 1. Nichols-Shepard Co. *v.* Rhoadman, 112 Mo. App. 299, 87 S. W. 62; American Foundry, etc., Co. *v.* Board of Education, 131 Wis. 220, 110 N. W. 403. See also Bixby *v.* Bastady, 4 Cal. App. 527, 88 Pac. 493.

Retention and Use of Horse. — Where a horse was tendered back and refused it was held that occasional use for the purpose of exercise was not a waiver of the right derived from the tender. Faust *v.* Koers, 111 Mo. App. 560, 86 S. W. 278.

3. B. P. Ducas Co. *v.* American Silk Dyeing, etc., Co., (Supm. Ct. App. T.) 48 Misc. (N. Y.) 411, 95 N. Y. Supp. 590.

4. Pratt *v.* Meyer, 75 Ark. 206, 87 S. W. 123; Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451; Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648; Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11; Pratt *v.* Morris, (Ky. 1905) 87 S. W. 783; Wisdom *v.* Nichols, etc., Co., 97 S. W. 18, 29 Ky. L. Rep. 1128; Shearer *v.* Gaar, (Tex. Civ. App. 1905) 90 S. W. 684; Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009. See also Jasper County Bank *v.* Barts, (Mo. App. 1908) 109 S. W. 1057.

5. Harrison *v.* Russell, 12 Idaho 624, 87 Pac. 784. See also Salina Implement, etc., Co. *v.* Haley, (Kan. 1908) 93 Pac. 579.

189. 1. American Foundry, etc., *v.* Board of Education, 131 Wis. 220, 110 N. W. 403. See also Harrison *v.* Russell, 12 Idaho 624, 87 Pac. 784; Salina Implement, etc., Co. *v.* Haley, (Kan. 1908) 93 Pac. 579.

2. Hammerschlag Mfg. Co. *v.* Struthers-Wells Co., (C. C. A.) 154 Fed. 326; Tompkins *v.* Lamb, 121 N. Y. App. Div. 366, 106 N. Y. Supp. 6; Heath Dry Gas Co. *v.* Hurd, (Supm. Ct. App. Div.) 108 N. Y. Supp. 410.

Prompt Return after Last Ineffectual Test Sufficient. — Salina Implement, etc., Co. *v.* Haley, (Kan. 1908) 93 Pac. 579.

3. **"Allow Inspection to Consignee"** does not require inspection but is a privilege to be exercised at his option. Marlboro Wholesale Grocery Co. *v.* Brooke, 70 S. Car. 494, 50 S. E. 186.

A Requirement to Return May Be Waived by the seller's request that a horse be retained for further trial. Collins *v.* Tigner, (Del. 1905) 60 Atl. 978.

4. Charter Gas, etc., Co. *v.* Barton, (Ala. 1905) 39 So. 985; Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451; Gaar *v.* Hodges, 90 S. W. 580, 28 Ky. L. Rep. 889; Wisdom *v.* Nichols, etc., Co., 97 S. W. 18, 29 Ky. L. Rep. 1128; Jasper County Bank *v.* Barts, (Mo. App. 1908) 109 S. W. 1057; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 796. See also Shearer *v.* Gaar, (Tex. Civ. App. 1905) 90 S. W. 684. *Compare* Main *v.* Dearing, 73 Ark. 470, 84 S. W. 640.

5. Dooley *v.* Hasenwinkle Grain Co., 120 Ill. App. 43. See also Thomas China Co. *v.* C. W. Raymond Co., (C. C. A.) 135 Fed. 25; Scott *v.* Keeth, (Mich. 1908) 116 N. W. 183. *Com-*

pare Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53.

6. Thomas China Co. *v.* C. W. Raymond Co., (C. C. A.) 135 Fed. 25; Burr *v.* Atlanta Paper Co., 2 Ga. App. 52, 58 S. E. 373.

190. 3. Thomas China Co. *v.* C. W. Raymond Co., 135 Fed. 25, 67 C. C. A. 629; Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009. See also Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50; Tompkins *v.* Lamb, 121 N. Y. App. Div. 366, 106 N. Y. Supp. 6.

An Action for Breach of Warranty in advance of the actual transmission of title does not lie. Bunday *v.* Columbus Mach. Co., 143 Mich. 10, 106 N. W. 397.

4. Hutchinson Lumber Co. *v.* Dickerson, 127 Ga. 328, 56 S. E. 491; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 796; Baskerville *v.* Johnson, (S. Dak. 1905) 104 N. W. 912; Lindsay *v.* Fricke, 130 Wis. 107, 109 N. W. 945. See also Arkwright Mills *v.* Aultman, etc., Machinery Co., (C. C. A.) 145 Fed. 783; Krenz *v.* Lee, (Minn. 1908) 116 N. W. 832.

5. Atkins Bros. Co. *v.* Landa, (Mo. App. 1908) 109 S. W. 88; Isbell-Porter Co. *v.* Heineman, 113 N. Y. App. Div. 79, 98 N. Y. Supp. 1018; Ames *v.* Norwich Light Co., 122 N. Y. App. Div. 319, 106 N. Y. Supp. 952; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 796; Lindsay *v.* Fricke, 130 Wis. 107, 109 N. W. 945. See also Arkwright Mills *v.* Aultman, etc., Machinery Co., (C. C. A.) 145 Fed. 783; Hutchinson Lumber Co. *v.* Dickerson, 127 Ga. 328, 56 S. E. 491.

Rule Also Applicable in Case of Sale by Sample. — Hamilton *v.* Pelonsky, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 554, 96 N. Y. Supp. 216.

8. Clark *v.* Wooster, 79 Conn. 126, 64 Atl. 10; Hutchinson Lumber Co. *v.* Dickerson, 127 Ga. 328, 56 S. E. 491; Wyandotte Portland Cement Co. *v.* Bruner, 147 Mich. 400, 110 N. W. 949; Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636; Callahan *v.* O'Rourke, 110 N. Y. App. Div. 779, 96 N. Y. Supp. 1010; Staiger *v.* Soht, 116 N. Y. App. Div. 874, 102 N. Y. Supp. 342; Simonson *v.* Jenson, 14 N. Dak. 417, 104 N. W. 513, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 190; Allen *v.* Hass, (Ohio) 27 Ohio Cir. Ct. 727; McKenzie *v.* McMullen, 16 Manitoba 11. See also Thomas China Co. *v.* C. W. Raymond Co., 135 Fed. 25, 67 C. C. A. 629. *Compare* Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265.

But a Buyer Will Lose His Remedy in a counterclaim where it appears he accepted and used the equipment for many months. Electric Storage Battery Co. *v.* Waterloo, etc., R. Co., (Iowa 1908) 116 N. W. 144.

191. 1. Simonson *v.* Jenson, 14 N. Dak. 417, 104 N. W. 513.

2. Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497; Chicago Telephone Supply Co. *v.* Marne, etc., Telephone Co., 134 Iowa 252, 111 N. W. 935; Atkins Bros. Co. *v.* Landa, (Mo. App. 1908) 109 S. W. 88. See also Faust *v.* Koers, 111 Mo. App. 560, 86 S. W. 278; Shultis *v.* Rice, 114 Mo. App. 274, 89 S. W. 357; Wright *v.* Computing Scale Co., (Wash. 1907) 91 Pac. 571.

192. 1. Allen *v.* Hass, 27 Ohio Cir. Ct. 727.

4. Hutchinson Lumber Co. *v.* Dickerson, 127 Ga. 328, 56 S. E. 491; Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648; Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636.

5. Cooper *v.* Payne, 103 N. Y. App. Div. 118, 93 N. Y. Supp. 69. See also Heath Dry Gas Co. *v.* Hurd, (Supm. Ct. App. Div.) 108 N. Y. Supp. 410.

6. Pratt *v.* Meyer, 75 Ark. 206, 87 S. W. 123; Hamilton *v.* Pelonsky, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 554, 96 N. Y. Supp. 216; Keeler *v.* Paulus Mfg. Co., (Tex. Civ. App. 1906) 96 S. W. 1097. *Compare* Duffie *v.* Pratt, 76 Ark. 74, 88 S. W. 842.

7. Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 56 S. E. 50.

8. The Right to Rescind as to Part of a Divisible Contract does not extend to the whole. Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11.

193. 4. White *v.* Miller, 132 Iowa 144, 109 N. W. 465; Kanrich *v.* Wise, (Supm. Ct. App. T.) 92 N. Y. Supp. 790; Crane Co. *v.* Collins, 103 N. Y. App. Div. 480, 93 N. Y. Supp. 174; Palmer *v.* Cowie, 27 Ohio Cir. Ct. 617; Dunham *v.* Salmon, 130 Wis. 164, 109 N. W. 959. See also German-American Provision Co. *v.* Jones, 87 Miss. 277, 39 So. 521; American Steel Hoop Co. *v.* Searles, (Miss. 1908) 46 So. 411.

5. E. T. Burrowes Co. *v.* Rapid Safety Filter Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 539, 97 N. Y. Supp. 1048; Houghton Implement Co. *v.* Vavrousky, 15 N. Dak. 308, 109 N. W. 1024. See also Guhy *v.* Nichols, etc., Co., (Ky. 1908) 109 S. W. 1190; Atkins Bros. Co. *v.* Landa, (Mo. App. 1908) 109 S. W. 88.

Buyer of Marble May Do Sufficient Work upon It to Discover Defects. — Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963.

The Purchaser Has a Reasonable Time in which to examine and use the property to ascertain whether it fulfils the warranty. Devine *v.* Ryan, 115 Ill. App. 498.

6. Salina Implement, etc., Co. *v.* Haley, (Kan. 1908) 93 Pac. 579; Gaar *v.* Hodges, 90 S. W. 580, 28 Ky. L. Rep. 889; Kanrich *v.* Wise, (Supm. Ct. App. T.) 92 N. Y. Supp. 790. See also Mastin *v.* Bartholomew, (Colo. 1907) 92 Pac. 682; Hamilton *v.* Pelonsky, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 554, 96 N. Y. Supp. 216.

Buyer Entitled to Retain Article Long Enough to Make Fair Test. — Tompkins *v.* Lamb, 121 N. Y. App. Div. 366, 106 N. Y. Supp. 6; American Glue Co. *v.* Rayburn, 150 Mich. 616, 114 N. W. 395.

Reasonable Time. — It has been held that a test as to capacity of boilers a year after they were set was not an unreasonable lapse of time. Arkwright Mills *v.* Aultman, etc., Machinery Co., (C. C. A.) 145 Fed. 783.

Three Days Is Not an Unreasonable Time for the examination and inspection of a lot of brooms. Woods *v.* Thompson, 114 Mo. App. 38, 88 S. W. 1126.

195. 6. Thomas China Co. *v.* C. W. Raymond Co., 135 Fed. 25, 67 C. C. A. 629; Hallowell *v.* McLaughlin, (Iowa 1907) 111 N. W.

428; Fuller *v.* Harris, (Wash. 1908) 93 Pac. 1080. See also Lindsay *v.* Fricke, 130 Wis. 107, 109 N. W. 945.

8. Pratt *v.* Johnson, 100 Me. 443, 62 Atl. 342; Isbell-Porter Co. *v.* Heineman, 113 N. Y. App. Div. 79, 98 N. Y. Supp. 1018; Ames *v.* Norwich Light Co., 122 N. Y. App. Div. 319, 106 N. Y. Supp. 952.

196. 2. Cooper *v.* Payne, 103 N. Y. App. Div. 118, 93 N. Y. Supp. 69; Hamilton *v.* Pelonsky, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 554, 96 N. Y. Supp. 216.

197. 7. Davis *v.* Schmidt, 126 Wis. 461, 106 N. W. 119. See also Burgess *v.* Alcorn, 75 Kan. 735, 90 Pac. 239.

10. Hallowell *v.* McLaughlin, (Iowa 1907) 111 N. W. 428.

198. 1. Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11. See also Nichols-Shepard Co. *v.* Rhoadman, 112 Mo. App. 299, 87 S. W. 62.

Buyer Privileged to Have Broken Parts of Machinery Replaced is not bound to resort to that means of remedy. Thomas China Co. *v.* C. W. Raymond Co., (C. C. A.) 135 Fed. 25.

2. Dooley *v.* Hasenwinkle Grain Co., 120 Ill. App. 43. See also Kugel *v.* Enroe, 115 Ill. App. 419.

Reasonable Time within Which Notice Must Be Given — Question for the Jury. — W. F. Main Co. *v.* Field, 144 N. Car. 307, 56 S. E. 943.

3. White *v.* Miller, (Iowa 1906) 105 N. W. 993.

5. Return to Agents through Whom Sale Was Made Sufficient. — Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265.

199. 3. Lawson *v.* Williams Hardware Co., 122 Mo. App. 484, 99 S. W. 814.

4. Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451; Campbell *v.* Lodge No. 99, (Kan. 1907) 92 Pac. 53, *quoting* 30 Am. and Eng. Encyc. of Law (2d ed.) 199; W. F. Main Co. *v.* Griffin-Bynum Co., 141 N. Car. 43, 53 S. E. 727, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 199. See also Harrison *v.* Russell, 12 Idaho 624, 87 Pac. 784; Nichols, etc., Co. *v.* Maxon, (Kan. 1907) 92 Pac. 545.

Notice of Claim to Be Made in Two Days. — Whether under certain circumstances of latent defects two days would be a reasonable time for inspection is a question to be determined by the jury. W. F. Main Co. *v.* Field, 144 N. Car. 307, 56 S. E. 943.

5. *Alabama.* — Charter Gas, etc., Co., *v.* Barton, (Ala. 1905) 39 So. 985.

Arkansas. — Pratt *v.* Meyer, 75 Ark. 206, 87 S. W. 123; Duffie *v.* Pratt, 76 Ark. 74, 88 S. W. 842; Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451. *Compare* Main *v.* Dearing, 73 Ark. 470, 84 S. W. 640.

Colorado. — See Stone *v.* Victor Electric Co., 36 Colo. 370, 85 Pac. 327.

Georgia. — J. A. Fay, etc., Co. *v.* Dudley, 129 Ga. 314, 58 S. E. 826.

Indian Territory. — Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648.

Iowa. — Osborne *v.* West, (Iowa 1905) 103 N. W. 118; Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11.

Kansas. — Campbell *v.* Lodge No. 99, (Kan. 1907) 92 Pac. 53, *quoting* 30 Am. and Eng. Encyc. of Law (2d ed.) 199.

Kentucky. — Pratt *v.* Morris, (Ky. 1905) 87 S. W. 783; Wisdom *v.* Nichols, etc., Co., 97 S. W. 18, 29 Ky. L. Rep. 1128; Walters *v.* Akers, 101 S. W. 1179, 31 Ky. L. Rep. 259. See also Gaar *v.* Hodges, 90 S. W. 580, 28 Ky. L. Rep. 889; Guhy *v.* Nichols, etc., Co., (Ky. 1908) 109 S. W. 1190.

Louisiana. — Payne *v.* Bowie Lumber Co., 117 La. 107, 41 So. 431.

Mississippi. — See Folkes *v.* Pratt, 86 Miss. 254, 38 So. 224.

Missouri. — Nichols-Shepard Co. *v.* Rhoadman, 112 Mo. App. 299, 87 S. W. 62; Jasper County Bank *v.* Barts, (Mo. App. 1908) 109 S. W. 1057.

Nebraska. — Nichols, etc., Co. *v.* Miller, (Neb. 1906) 107 N. W. 1010.

North Carolina. — W. F. Main Co. *v.* Griffin-Bynum Co., 141 N. Car. 43, 53 S. E. 727, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 199. See also W. F. Main Co. *v.* Field, 144 N. Car. 307, 56 S. E. 943.

North Dakota. — Hanson *v.* Lindstrom, 15 N. Dak. 584, 108 N. W. 798; Houghton Implement Co. *v.* Vavrousky, 15 N. Dak. 308, 109 N. W. 1024.

Texas. — Shearer *v.* Gaar, (Tex. Civ. App. 1905) 90 S. W. 684.

Utah. — Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009.

Failure to Comply with an Immaterial Condition will not affect the warranty. Campbell *v.* Lodge No. 99, (Kan. 1907) 92 Pac. 53, *distinguishing* Furneaux *v.* Esterly, 36 Kan. 539, 13 Pac. 824.

8. See Campbell *v.* Lodge No. 99, (Kan. 1907) 92 Pac. 53.

200. 1. Oil Well Supply Co. *v.* Watson, 168 Ind. 603, 80 N. E. 157; Oil Well Supply Co. *v.* Priddy, (Ind. App. 1908) 83 N. E. 623; Webb *v.* Milford Shoe Co., (Ky. 1908) 108 S. W. 229; Binck Motor Co. *v.* Reid Mfg. Co., 150 Mich. 118, 113 N. W. 591; Wirtz, etc., Co. *v.* Wirtz, 15 N. Dak. 477, 107 N. W. 1078; Northfield Nat. Bank *v.* Arndt, (Wis. 1907) 112 N. W. 451. See Crane Co. *v.* Collins, 103 N. Y. App. Div. 480, 93 N. Y. Supp. 174.

Defects Discovered after Acceptance. — Where beer was sold by a brewery with an express warranty, and defects were not discovered until after acceptance, it was held that the buyer could plead these in abatement of the price. Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53.

4. Devine *v.* Ryan, 115 Ill. App. 498; Jewell Belting Co. *v.* Hamilton Rubber Mfg. Co., 121 Ill. App. 13; Scott *v.* Keeth, (Mich. 1908) 116 N. W. 183; German-American Provision Co. *v.* Jones, 87 Miss. 277, 39 So. 521; Crane Co. *v.* Collins, 103 N. Y. App. Div. 480, 93 N. Y. Supp. 174; Duncan-Hobson Electric Co. *v.* Coleman, (Tex. Civ. App. 1907) 100 S. W. 1004; Fuller *v.* Harris, (Wash. 1908) 93 Pac. 1080.

Return Not Necessary. — In Minnesota it has been held that in the case of executory contracts the buyer may reject a machine if it is unsatisfactory and is under no duty to return it. Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636.

201. 1. Gaar *v.* Hodges, 90 S. W. 580, 28 Ky. L. Rep. 889; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., (Supm. Ct. Spec. T.) 109 N. Y. Supp. 796. See also Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636. *Compare* Main *v.* Dearing, 73 Ark. 470, 84 S. W. 640.

2. Palmer *v.* Cowie, 27 Ohio Cir. Ct. 617. *Compare* Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636.

4. Stone *v.* Victor Electric Co., 36 Colo. 370, 85 Pac. 327; Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009.

5. Gaar *v.* Hodges, 90 S. W. 580, 28 Ky. L. Rep. 889. See also Stone *v.* Victor Electric Co., 36 Colo. 370, 85 Pac. 327; Wasatch Orchard Co. *v.* Morgan Canning Co., (Utah 1907) 89 Pac. 1009.

6. Mastin *v.* Bartholomew, (Colo. 1907) 92 Pac. 682; Collins *v.* Tigner, (Del. 1905) 60 Atl. 978; Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497; Salina Implement, etc., Co. *v.* Haley, (Kan. 1908) 93 Pac. 579; Gaar *v.* Hodges, 90 S. W. 580, 28 Ky. L. Rep. 889; Wisdom *v.* Nichols, etc., Co., 97 S. W. 18, 29 Ky. L. Rep. 1128; Nichols-Shepard Co. *v.* Rhoadman, 112 Mo. App. 299, 87 S. W. 62. See also Otto *v.* Braman, 142 Mich. 185, 105 N. W. 601.

7. Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497; White *v.* Miller, (Iowa 1905) 105 N. W. 993; Salina Implement, etc., Co. *v.* Haley, (Kan. 1908) 93 Pac. 579. *Compare* Collins *v.* Tigner, (Del. 1905) 60 Atl. 978.

8. *Compare* Sprout *v.* Hunter, 98 S. W. 1006, 30 Ky. L. Rep. 380; Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636.

9. *Arkansas.* — Pratt *v.* Meyer, 75 Ark. 206, 87 S. W. 123; Duffie *v.* Pratt, 76 Ark. 74, 88 S. W. 842; Pratt *v.* Metzger, 78 Ark. 177, 95 S. W. 451.

Indian Territory. — Baird *v.* Pratt, 6 Indian Ter. 38, 89 S. W. 648.

Iowa. — Osborne *v.* West, (Iowa 1905) 103 N. W. 118; Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11.

Kentucky. — Pratt *v.* Morris, (Ky. 1905) 87 S. W. 783; Lucile Min. Co. *v.* Fairbanks, (Ky. 1905) 87 S. W. 1121; Wisdom *v.* Nichols, etc., Co., 97 S. W. 18, 29 Ky. L. Rep. 1128.

Louisiana. — See Payne *v.* Bowie Lumber Co., 117 La. 107, 41 So. 431.

Missouri. — Nichols-Shepard Co. *v.* Rhoadman, 112 Mo. App. 299, 87 S. W. 62; Jasper County Bank *v.* Barts, (Mo. App. 1908) 109 S. W. 1057.

Nebraska. — Nichols, etc., Co. *v.* Miller, (Neb. 1906) 107 N. W. 1010.

North Carolina. — W. F. Main Co. *v.* Griffin-Bynum Co., 141 N. Car. 43, 53 S. E. 727.

North Dakota. — Hanson *v.* Lindstrom, 15 N. Dak. 584, 108 N. W. 798. See also J. I. Case Threshing Mach. Co. *v.* Balke, 15 N. Dak. 206, 107 N. W. 57.

Texas. — Shearer *v.* Gaar, (Tex. Civ. App. 1905) 90 S. W. 684.

Fraud Will Relieve the Buyer from his failure to comply with the express stipulations of the contract. Folkes *v.* Pratt, 86 Miss. 254, 38 So. 224.

Notice of Defects after Opportunity to Discover Existence, notwithstanding time limited by contract, is sufficient. Nichols, etc., Co. *v.* Maxon, (Kan. 1907) 92 Pac. 545.

Possession for Six Days. — Harrison *v.* Russell, 12 Idaho 624, 87 Pac. 784, *distinguishing* Murphy *v.* Russell, 8 Idaho 133, 67 Pac. 421.

202. 1. Harrison *v.* Russell, 12 Idaho 624, 87 Pac. 784; Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497; Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11; Nichols, etc., Co. *v.* Bryeans, 116 Mo. App. 693, 93 S. W. 827; Peter *v.* Plano Mfg. Co., (S. Dak. 1907) 110 N. W. 783.

Any Notice Received by the Seller and Acted Upon by him is a waiver. Siebe *v.* Heilman Mach. Works, 38 Ind. App. 37, 77 N. E. 300.

A Test by an Agent of the Seller will extend time within which notice of defect must be given. Northwest Thresher Co. *v.* Hulburt, (Minn. 1908) 115 N. W. 159.

2. **False Representations on the Part of the Seller** will relieve the buyer from an obligation to comply with the conditions of a contract. Hallowell *v.* McLaughlin, (Iowa 1907) 111 N. W. 428.

203. 1. See Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11.

2. See Peter *v.* Plano Mfg. Co., (S. Dak. 1907) 110 N. W. 783.

An Agent Having Authority to Sell may waive all conditions of the warranty favorable to the seller. Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497.

3. See Wisdom *v.* Nichols, etc., Co., 97 S. W. 18, 29 Ky. L. Rep. 1128. *Compare* Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497.

5. Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497; Port Huron Mach. Co. *v.* Bragg, (Neb. 1906) 109 N. W. 398. See also Hein *v.* Mildebrandt, (Wis. 1908) 115 N. W. 121.

Any Notice Acted upon by Seller Sufficient. — Siebe *v.* Heilman Mach. Works, 38 Ind. App. 37, 77 N. E. 300.

204. 4. *Compare* Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497.

Notice by Registered Mail. — If the notice was actually received, the fact that the contract called for notice by registered mail is immaterial. Peter *v.* Plano Mfg. Co., (S. Dak. 1907) 110 N. W. 783; Siebe *v.* Heilman Mach. Works, 38 Ind. App. 37, 77 N. E. 300; Westbrook *v.* Reeves, 133 Iowa 655, 111 N. W. 11; Nichols, etc., Co. *v.* Bryeans, 116 Mo. App. 693, 93 S. W. 827; W. F. Main Co. *v.* Field, 144 N. Car. 307, 56 S. E. 943.

6. **As Specific a Notice as Can Be Given** under the circumstances is sufficient. Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265.

205. 2. Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497. See also Peter *v.* Plano Mfg. Co., (S. Dak. 1907) 110 N. W. 783.

3. Webster City First Nat. Bank *v.* Dutcher, 128 Iowa 413, 104 N. W. 497; Hein *v.* Mildebrandt, (Wis. 1908) 115 N. W. 121.

4. See W. F. Main Co. *v.* Field, 144 N. Car. 307, 56 S. E. 943.

7. Lucile Min. Co. *v.* Fairbanks, (Ky. 1905) 87 S. W. 1121.

206. 1. Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265. See also Greazel *v.* Price, (Iowa 1907) 112 N. W. 827.

Two Weeks Is Not an Unreasonable Time within which to replace a rejected horse. Christie *v.* Crawford, (Mich. 1908) 116 N. W. 202.

Question of What Is Reasonable Time for Jury. — Hein *v.* Mildebrandt, (Wis. 1908) 115 N. W. 121.

2. See Hein *v.* Mildebrandt, (Wis. 1908) 115 N. W. 121.

Friendly Assistance. — Where the expert was not seasonably sent to superintend the repairs, there was no failure to render assistance because of rescission. Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265.

7. **All Parties on a Joint Note,** being purchasers, are entitled to join in an action for breach of warranty. Daugherty *v.* Burgess, 118 Mo. App. 537, 94 S. W. 594.

208. 2. Wilmington Candy Co. *v.* Remington Mach. Co., 5 Penn. (Del.) 543, 65 Atl. 74; Oregon Auto-Dispatch *v.* Portland Cordage Co., (Oregon 1908) 94 Pac. 36, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 208.

4. See Oregon Auto-Dispatch *v.* Portland Cordage Co., (Oregon 1908) 94 Pac. 36.

5. Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591; Ford *v.* Smith, (Wash. 1908) 93 Pac. 909.

8. **Failure of Buyer to Give Notice** cannot be interposed as a defense where the seller acts under some notice. Buchanan *v.* Minneapolis Threshing Mach. Co., (N. Dak. 1908) 116 N. W. 335.

209. 2. Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682; Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209; Birdsinger *v.* McCormick Harvesting Mach. Co., 183 N. Y. 487, 76 N. E. 611; Wright *v.* Computing Scale Co., (Wash. 1907) 91 Pac. 571, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209. See Petrified Bone Min. Co. *v.* Rogers, 150 Fed. 445; Razey *v.* J. B. Colt Co., 106 N. Y. App. Div. 103, 94 N. Y. Supp. 59; Cleveland Punch, etc., Works Co. *v.* Consumers' Carbon Co., 75 Ohio St. 153, 78 N. E. 1009.

6. *United States.* — Petrified Bone Min. Co. *v.* Rogers, 150 Fed. 445, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209.

Arkansas. — See Jewett *v.* Richardson, 79 Ark. 66, 95 S. W. 787.

California. — Germain Fruit Co. *v.* J. K. Armsby Co., (Cal. 1908) 96 Pac. 319.

Delaware. — Collins *v.* Tigner, (Del. 1905) 60 Atl. 978; Wilmington Candy Co. *v.* Remington Mach. Co., 5 Penn. (Del.) 543, 65 Atl. 74; Ellison *v.* Simmons, (Del. 1906) 65 Atl. 591.

Georgia. — Springer *v.* Indianapolis Brewing Co., 126 Ga. 321, 55 S. E. 53. See also Henderson Elevator Co. *v.* North Georgia Milling Co., 126 Ga. 279, 55 S. E. 50.

Illinois. — Devine *v.* Ryan, 115 Ill. App. 498; Wallace *v.* Tanner, 118 Ill. App. 639; Dooley *v.* Hasenwinkle Grain Co., 120 Ill. App. 43; Swartz *v.* Atchison, 120 Ill. App. 119; Miller *v.* Aldrich, 123 Ill. App. 464.

Kentucky. — Marbury Lumber Co. *v.* Stearns Mfg. Co., (Ky. 1908) 107 S. W. 200.

Massachusetts. — Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682.

Missouri. — Narr *v.* Norman, 113 Mo. App. 533, 88 S. W. 122; Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 123; Shultis *v.* Rice, 114 Mo. App. 274, 89 S. W. 357; Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 209; Atkins Bros. Co. *v.* Landa, (Mo. App. 1908) 109 S. W. 88.

New York. — Birdsinger *v.* McCormick Harvesting Mach. Co., 183 N. Y. 487, 76 N. E. 611, 5 Ann. Cas. 586; Isaacs *v.* Wanamaker, 189 N. Y. 122, 81 N. E. 763; Razey *v.* J. B. Colt Co., 106 N. Y. App. Div. 103, 94 N. Y. Supp. 59; Isbell-Porter Co. *v.* Heineman, 113 N. Y. App. Div. 79, 98 N. Y. Supp. 1018; Macrea *v.* Gotham Rubber Co., 113 N. Y. App. Div. 455, 99 N. Y. Supp. 373; Ames *v.* Norwich Light Co., 122 N. Y. App. Div. 319, 106 N. Y. Supp. 952; J. L. White Furnace Co. *v.* C. W. Miller Transfer Co., 109 N. Y. Supp. 796; Sears *v.* Bailey, (County Ct.) 58 Misc. (N. Y.) 145, 110 N. Y. Supp. 467. See also American Seeding Mach. Co. *v.* Slocum, (Supm. Ct. Tr. T.) 108 N. Y. Supp. 1042.

North Carolina. — See Wrenn *v.* Morgan, (N. Car. 1908) 61 S. E. 641.

Oregon. — Mine Supply Co. *v.* Columbia Min. Co., 48 Oregon 391, 86 Pac. 789.

South Carolina. — Ellison *v.* Johnson, 74 S. Car. 202, 54 S. E. 202.

North Dakota Statute. — Houghton Implement Co. *v.* Doughty, 14 N. Dak. 331, 104 N. W. 516.

California Statute. — Germain Fruit Co. *v.* J. K. Armsby Co., (Cal. 1908) 96 Pac. 319.

Where the Buyer Rejects the Article Sold the measure of damages is the difference between the contract price and the value of better goods procured as a substitute. Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963.

211. 1. Petrified Bone Min. Co. *v.* Rogers, 150 Fed. 445; Germain Fruit Co. *v.* J. K. Armsby Co., (Cal. 1908) 96 Pac. 319; Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20; Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963; Houghton Implement Co. *v.* Doughty, 14 N. Dak. 331, 104 N. W. 516; Ellison *v.* Johnson, 74 S. Car. 202, 54 S. E. 202.

2. Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20.

On Vendor's Failure to Deliver Goods. — Rhind *v.* Freedley, (N. J. 1906) 64 Atl. 963.

4. Narr *v.* Norman, 113 Mo. App. 533, 88 S. W. 122. See also Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20. *Compare* Gutta Percha, etc., Mfg. Co. *v.* Cleburne, (Tex. Civ. App. 1908) 107 S. W. 157.

212. 1. Narr *v.* Norman, 113 Mo. App. 533, 88 S. W. 122; Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 123; Shultis *v.* Rice, 114 Mo. App. 274, 89 S. W. 357.

2. Narr *v.* Norman, 113 Mo. App. 533, 88 S. W. 122; Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 123.

3. Miller *v.* Aldrich, 123 Ill. App. 464; Gutta Percha, etc., Mfg. Co. *v.* Cleburne, (Tex. Civ.

App. 1908) 107 S. W. 157. See also Christie *v.* Crawford, (Mich. 1908) 116 N. W. 202.

No Proof of Damage. — White *v.* Miller, 132 Iowa 144, 109 N. W. 465.

Two Articles Sold in Solido. — Mulcahy *v.* Dieudonne, (Minn. 1908) 115 N. W. 636.

4. De Loach Mill Mfg. Co. *v.* Tutweiler Coal, etc., Co., 2 Ga. App. [illegible], 58 S. E. 700.

213. 4. Petrified Bone Min. Co. *v.* Rogers, 150 Fed. 445.

6. When Resale Is Without Warranty of Quality the price obtained is some evidence of the actual value. Petrified Bone Min. Co. *v.* Ro[illegible]

214. 1. *Compare* Ellison *v.* Johnson, 74 S. Car. 202, 54 S. E. 202.

3. Florence Wagon Works *v.* Trinidad Asphalt Mfg. Co., 145 Ala. 677, 40 So. 49; Wallace *v.* Tanner, 118 Ill. App. 639; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682; Young *v.* Van Natta, 113 Mo. App. 550, 88 S. W. 125; Mark *v.* H. D. Williams Cooperage Co., 204 Mo. 242, 103 S. W. 20; Cleveland Punch, etc., Works Co. *v.* Consumers' Carbon Co., 75 Ohio St. 153, 78 N. E. 1009; Mine Supply Co. *v.* Columbia Min. Co., 48 Oregon 391, 86 Pac. 789; San Antonio Mach., etc., Co. *v.* Josey, (Tex. Civ. App. 1906) 91 S. W. 598; Sumner *v.* Dobbins, 16 Manitoba 151. See Mitchell *v.* Pinckney, 127 Iowa 696, 104 N. W. 286.

If an Ice Plant Fails to Work as Warranted, besides the ordinary damages with interest, there may be recovered expenditures for ice, coal, and additional workmen. Wilmington Candy Co. *v.* Remington Mach. Co., 5 Penn. (Del.) 543, 65 Atl. 74.

215. 1. See Birdsinger *v.* McCormick Harvesting Mach. Co., 183 N. Y. 487, 76 N. E. 611.

2. **For Such Injuries as His Own Negligence Has Contributed to Produce** a buyer of a machine cannot recover. Razey *v.* J. B. Colt Co., 106 N. Y. App. Div. 103, 94 N. Y. Supp. 59.

3. See Berger *v.* Standard Oil Co., 103 S. W. 245, 31 Ky. L. Rep. 613; Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682.

216. 1. Mitchell *v.* Pinckney, 127 Iowa 696, 104 N. W. 286.

The Expense of Caring for Diseased Animals is an expenditure recoverable as special damages. Larson *v.* Calder, (N. Dak. 1907) 113 N. W. 103.

217. 4. See Ellison *v.* Johnson, 74 S. Car. 202, 54 S. E. 202.

5. See Pewett *v.* Richardson, 79 Ark. 66, 95 S. W. 787.

8. Leavitt *v.* Fiberloid Co., (Mass. 1907) 82 N. E. 682; Birdsinger *v.* McCormick Harvesting Mach. Co., 183 N. Y. 487, 76 N. E. 611; Cleveland Punch, etc., Works Co. *v.* Consumers' Carbon Co., 75 Ohio St. 153, 78 N. E. 1009; Mine [illegible] 391, 86 Pac. 789.

218. 2. See San Antonio Mach., etc., Co. *v.* Josey, (Tex. Civ. App. 1906) 91 S. W. 598.

219. 4. Elmore *v.* Booth, 83 Ark. 47, 102 S. W. 393.

220. 1. Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 28, 105 N. Y. Supp. 390, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 219. See also Birdsinger *v.* McCormick Harvesting Mach. Co., 183 N. Y. 487, 76 N. E. 611.

2. Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 28, 105 N. Y. Supp. 390, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 219.

3. Moody *v.* Peirano, (Cal. App. 1906) 84 Pac. 783. See also Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 28, 105 N. Y. Supp.

222. 4. **Where the Goods Are Not Received** the ordinary measure of the buyer's damages is the difference between the price he was to pay and the market price. Pewett *v.* Richardson, 79 Ark. 66, 95 S. W. 787.

5. See White *v.* Miller, (Iowa 1906) 105 N. W. 993.

6. See Elmore *v.* Booth, 83 Ark. 47, 102 S. W. [illegible]

223. 1. **Buyer Must Use Reasonable Diligence to Mitigate Damages.** — Jewett *v.* Richardson, 79 Ark. 66, 95 S. W. 787.

2. Depew *v.* Peck Hardware Co., 121 N. Y. App. Div. 28, 105 N. Y. Supp. 390; Wright *v.* Computing Scale Co., (Wash. 1907) 91 Pac. 571, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 223.

224. 1. Shultis *v.* Rice, 114 Mo. App. 274, 89 S. W. 357.

3. Shultis *v.* Rice, 114 Mo. App. 274, 89 S. W. 357.

4. Mason *v.* Bohannan, 79 Ark. 435, 96 S. W. 181.

5. Shultis *v.* Rice, 114 Mo. App. 274, 89 S. W. 357.

225. 1. See Kempner *v.* Advance Thresher Co., (Tex. Civ. App. 1906) 97 S. W. 1078.

2. Richardson *v.* Noble, 143 Mich. 546, 107 N. W. 274.

226. 5. Hutchinson Lumber Co. *v.* Dickerson, 127 Ga. 328, 56 S. E. 491. See also J. George Leyner Engineering Works Co. *v.* Newkirk, 117 Mo. App. 378, 93 S. W. 875.

7. Hammerschlag Mfg. Co. *v.* Struthers-Wells Co., 154 Fed. 326, 83 C. C. A. 198.

227. 6. Moody *v.* Peirano, (Cal. App. 1906) 84 Pac. 783. *Compare* Moody *v.* Peirano, 4 Cal. App. 411, 88 Pac. 380.

228. 2. Miller *v.* James Smith Woolen Machinery Co., (Pa. 1908) 69 Atl. 598.

5. See Mitchell *v.* Pinckney, 127 Iowa 696, 104 N. W. 286.

229. 2. Port Huron Mach. Co. *v.* Bragg, (Neb. 1906) 109 N. W. 398.

7. *Compare* Florence Wagon Works *v.* Trinidad Asphalt Mfg. Co., 145 Ala. 677, 40 So. 49; Wilmington Candy Co. *v.* Remington Mach. Co., 5 Penn. (Del.) 543, 65 Atl. 74.

8. **If an Express Warranty Be Established** [illegible] will not be permitted. [illegible] Florence Wagon Works *v.* Trinidad Asphalt Mfg. Co., 145 Ala. 677, 40 So. 49.

13. See Holman *v.* Calhoun, 146 Ala. 690, 40 So. 356.

230. 1. Elmore *v.* Booth, 83 Ark. 47, 102 S. W. 393; Wilmington Candy Co. *v.* Remington Mach. Co., 5 Penn. (Del.) 543, 65 Atl. 74; Brooks *v.* Camak, (Ga. 1908) 60 S. E. 456; Devine *v.* Ryan, 115 Ill. App. 498; Wyandotte Portland Cement, etc., Co. *v.* Bruner, 147 Mich. 400, 110 N. W. 940; Prize-Painter, etc., Heater Co. *v.* Peaslee, 99 Minn. 275, 109 N. W. 232; Miller *v.* Woolen Machinery Co., (Pa. 1908) 69 Atl. 598; Dunham *v.* Salmon, 130 Wis. 164, 109 N. W. 959.

Several Buyers Must Show Warranty Made to Each. — Dunham *v.* Salmon, 130 Wis. 164, 109 N. W. 959.

2. H. H. Franklin Mfg. Co. *v.* Lamson, etc., Mfg. Co., 189 Mass. 344, 75 N. E. 624.

3. *Compare* Frost *v.* Tremblay, 28 Quebec Super. Ct. 46.

231. 3. **If the Buyer Seeks to Set Off Damages** for a breach of the warranty in an action by the seller to recover the price he must prove the value of the article as it was and as it would have been had the defects not existed. McKeige *v.* Carroll, 120 N. Y. App. Div. 521, 105 N. Y. Supp. 342, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 231.

4. Devine *v.* Ryan, 115 Ill. App. 498.

WASTE.

236. 1. Brugh *v.* Denman, 38 Ind. App. 486, 78 N. E. 349.

2. Brigham *v.* Overstreet, 128 Ga. 447, 57 S. E. 484, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 236.

245. 5. **Rule Exists in Canada Also.** — Hixon *v.* Reaveley, 9 Ont. L. Rep. 6.

248. 4. Potomac Dredging Co. *v.* Smoot, (Md. 1908) 69 Atl. 507.

259. 1. Brugh *v.* Denman, 38 Ind. App. 486, 78 N. E. 349; Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 258.

3. Moss Point Lumber Co. *v.* Harrison County, 89 Miss. 448, 42 So. 290.

266. 2. Scarborough *v.* Woodill, (Cal. App. 1907) 93 Pac. 383; Hoolihan *v.* Hoolihan, 119 N. Y. App. Div. 925, 104 N. Y. Supp. 551.

267. 3. **Removal of Fixtures** by the receiver of a mortgagor who is insolvent constitutes waste. Prudential Ins. Co. *v.* Guild, (N. J. 1906) 64 Atl. 694.

272. 8. **The Purpose of the Writ of Estrepement** was to prevent waste after judgment in any action real, and before possession delivered. Brigham *v.* Overstreet, 128 Ga. 447, 57 S. E. 484.

273. 5. Brigham *v.* Overstreet, 128 Ga. 447, 57 S. E. 484.

275. 6. Latham *v.* Roanoke R., etc., Co., 139 N. Car. 9, 51 S. E. 780, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 275.

8. Latham *v.* Roanoke R., etc., Co., 139 N. Car. 9, 51 S. E. 780.

283. 1. Bell *v.* North American Coal, etc., Co., (C. C. A.) 155 Fed. 712; Pavkovich *v.* Southern Pac. R. Co., 150 Cal. 39, 87 Pac. 1097; Brugh *v.* Denman, 38 Ind. App. 486, 78 N. E. 349; Roots *v.* Boring Junction Lumber Co., (Oregon 1907) 92 Pac. 811; Crawford *v.* Atlantic Coast Lumber Corp., 77 S. Car. 81, 57 S. E. 670.

285. 6. Brigham *v.* Overstreet, 128 Ga. 447, 57 S. E. 484, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 285; Crawford *v.* Atlantic Coast Lumber Corp., 77 S. Car. 81, 57 S. E. 670.

286. 11. Fifer *v.* Allen, 228 Ill. 507, 81 N. E. 1105.

287. 11. Adams *v.* Slattery, 36 Colo. 35, 85 Pac. 87, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 287.

290. 5. **A Vendor with a Lien for the Purchase Money** may restrain waste. Reynolds *v.* Lawrence, 147 Ala. 216, 40 So. 576.

7. **Contingent Interest.** — Pavkovich *v.* Southern Pac. R. Co., 150 Cal. 39, 87 Pac. 1097.

294. 5. Scarborough *v.* Woodill, (Cal. App. 1907) 93 Pac. 383; Burris *v.* Jackson, 8 Del. Ch. 345, 68 Atl. 381.

7. Scarborough *v.* Woodill, (Cal. App. 1907) 93 Pac. 383.

8. Burris *v.* Jackson, 8 Del. Ch. 345, 68 Atl. 381.

295. 4. Lancaster County *v.* Fitzgerald, 74 Neb. 433, 104 N. W. 875.

300. 2. Bell *v.* North American Coal, etc., Co., (C. C. A.) 155 Fed. 712.

301. 6. Prudential Ins. Co. *v.* Guild, (N. J. 1906) 64 Atl. 694; McCartney *v.* Titsworth, 119 N. Y. App. Div. 547, 104 N. Y. Supp. 45.

302. 2. McCartney *v.* Titsworth, 119 N. Y. App. Div. 547, 104 N. Y. Supp. 45; Hoolihan *v.* Hoolihan, 119 N. Y. App. Div. 925, 104 N. Y. Supp. 551.

303. 3. McCartney *v.* Titsworth, 119 N. Y. App. Div. 547, 104 N. Y. Supp. 45.

WATERS AND WATERCOURSES.

310. 1. Hathorn *v.* Dr. Strong's Saratoga Springs Sanitarium, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 445, 106 N. Y. Supp. 553; Pence *v.* Carney, 58 W. Va. 301, 52 S. E. 702, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 310.

Percolating, as Distinguished from Artesian, Waters filter through the ground and collect in underground cavities, forming springs or wells. Erickson *v.* Crookston Waterworks Power, etc., Co., (Minn. 1908) 117 N. W. 439.

311. 2. Pence *v.* Carney, 58 W. Va. 301, 52 S. E. 702.

3. Pence *v.* Carney, 58 W. Va. 301, 52 S. E. 702, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 311.

5. Pence *v.* Carney, 58 W. Va. 301, 52 S. E. 702.

6. Little *v.* American Telephone, etc., Co., (Del. 1907) 67 Atl. 169; Pence *v.* Carney, 58 W. Va. 301, 52 S. E. 702, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 311. See also Erickson *v.* Crookston Waterworks Power, etc., Co., (Minn. 1908) 117 N. W. 435.

312. 1. Erickson *v.* Crookston Waterworks Power, etc., Co., (Minn. 1908) 117 N. W. 435; Pence *v.* Carney, 58 W. Va. 301, 52 S. E. 702, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 312.

313. 1. **A Mere Right of Way** of a telephone company or municipality does not place it in the position of an adjoining landowner in relation to percolating waters. Little *v.* American Telephone, etc., Co., (Del. 1907) 67 Atl. 169. See also Hamby *v.* Dawson Springs, (Ky. 1907) 104 S. W. 259.

7. Hathorn *v.* Dr. Strong's Saratoga Springs Sanitarium, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 445, 106 N. Y. Supp. 553.

314. 1. See Erickson *v.* Crookston Waterworks Power, etc., Co., (Minn. 1908) 117 N. W. 435.

8. Little *v.* American Telephone, etc., Co.,

(Del. 1907) 67 Atl. 169; Pence *v.* Carney, 58 W. Va. 301, 52 S. E. 702, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 314. See, however, Hathorn *v.* Dr. Strong's Saratoga Springs Sanitarium, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 445, 106 N. Y. Supp. 559.

"Artesian Waters" or waters confined in a substratum are subject to the rule of correlative rights. Erickson *v.* Crookston Waterworks Power, etc., Co., (Minn. 1908) 117 N. W. 435; Erickson *v.* Crookston Waterworks Power, etc., Co., 100 Minn. 481, 111 N. W. 391.

9. Long *v.* Louisville, etc., R. Co., (Ky. 1908) 107 S. W. 203; Erickson *v.* Crookston Waterworks Power, etc., Co., 100 Minn. 481, 111 N. W. 391; Pence *v.* Carney, 58 W. Va. 301, 52 S. E. 702, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 314.

10. Erickson *v.* Crookston Waterworks Power, etc., Co., 100 Minn. 481, 111 N. W. 391; Hathorn *v.* Dr. Strong's Saratoga Springs Sanitarium, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 445, 106 N. Y. Supp. 553.

Percolating Waters Which Would Have Trended Down through Strata and Been Lost may, as against adjoining land owners, be developed and conducted away from the land where they are developed. Cohen *v.* La Canada Land, etc., Co., 151 Cal. 680, 91 Pac. 584.

315. 1. **A Landowner Who Owns the Fee of a Street** in a town can enjoin the town from sinking a well in the street to strike the water which supplies owner's mineral water well. Hamby *v.* Dawson Springs, (Ky. 1907) 104 S. W. 259.

2. See Erickson *v.* Crookston Waterworks Power, etc., Co., (Minn. 1908) 117 N. W. 435.

318. 1. Hamby *v.* Dawson Springs, (Ky. 1907) 104 S. W. 259.

2. Hamby *v.* Dawson Springs, (Ky. 1907) 104 S. W. 259.

320. 2. See Long *v.* Louisville, etc., R. Co., (Ky. 1908) 107 S. W. 203, holding that it is a question whether the act which caused the pollution was done in the exercise of reasonable care.

321. 1. Verdugo Cañon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021; Long *v.* Louisville, etc., R. Co., (Ky. 1908) 107 S. W. 203.

2. Elliott *v.* Ferguson, (Tex. Civ. App. 1907) 103 S. W. 453.

3. Haynor *v.* Excelsior Springs Light, etc., Co., (Mo. App. 1908) 108 S. W. 580.

9. See Warner *v.* Maxwell, 124 Ga. 518, 52 S. E. 809; International, etc., R. Co. *v.* Slusher, (Tex. Civ. App. 1906) 95 S. W. 717.

Negligence or Reasonableness of Use Held to Control. — Moore *v.* Berlin Mills Co., (N. H. 1907) 67 Atl. 578.

322. 1. Hathorn *v.* Dr. Strong's Saratoga Springs Sanitarium, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 445, 106 N. Y. Supp. 553.

2. Verdugo Cañon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021.

324. 6. Cole *v.* Missouri, etc., R. Co., (Okla. 1908) 94 Pac. 540.

7. Pinkstaff *v.* Steffy, 216 Ill. 406, 75 N. E. 163; Darlington *v.* Cloud County, 75 Kan. 810, 88 Pac. 529; Standley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244; Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166, *affirming* 119 Ill. App. 232.

9. Cole *v.* Missouri, etc., R. Co., (Okla. 1908) 94 Pac. 540; Cook *v.* Seaboard Air Line R. Co., 107 Va. 32, 57 S. E. 564.

325. 1. Brinegar *v.* Copass, (Neb. 1906) 109 N. W. 173.

326. 4. Pohlman *v.* Chicago, etc., R. Co., 131 Iowa 89, 107 N. W. 1025.

7. Alabama G. S. R. Co. *v.* Prouty, (Ala. 1906) 43 So. 352; Central of Georgia R. Co. *v.* Keyton, 148 Ala. 675, 41 So. 918; Cederburg *v.* Dutra, 3 Cal. App. 572, 86 Pac. 838; Wood *v.* Moulton, 146 Cal. 317, 80 Pac. 92; Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166, *affirming* 119 Ill. App. 232; Pinkstaff *v.* Steffy, 216 Ill. 406, 75 N. E. 163; Waukegan *v.* Weale, 118 Ill. App. 460; Wirds *v.* Vierkandt, 131 Iowa 125, 108 N. W. 108; Launstein *v.* Launstein, 150 Mich. 524, 114 N. W. 383; Greenwood *v.* Southern R. Co., 144 N. Car. 446, 57 S. E. 157.

The Proprietor Above can do nothing whereby the servitude of natural drain due by the estate below may be rendered more burdensome. Savoie *v.* Guillory, 118 La. 455, 43 So. 49; McFarlain *v.* Jennings-Heywood Oil Syndicate, 118 La. 537, 43 So. 155.

327. 1. Central of Georgia R. Co. *v.* Keyton, 148 Ala. 675, 41 So. 918; Little Rock, etc., R. Co. *v.* Wallis, 82 Ark. 447, 102 S. W. 390; Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166, *affirming* 119 Ill. App. 232; Cincinnati, etc., R. Co. *v.* Ward, 120 Ill. App. 212; Albright *v.* Cedar Rapids, etc., R. Co., 133 Iowa 644, 110 N. W. 1052; Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958; Gebhardt *v.* St. Louis, etc., R. Co., 122 Mo. App. 503, 99 S. W. 773; Williamson *v.* Missouri, etc., R. Co., 115 Mo. App. 72, 90 S. W. 401; Galveston, etc., R. Co. *v.* Riggs, (Tex. Civ. App. 1908) 107 S. W. 589; International, etc., R. Co. *v.* Stewart, (Tex. Civ. App. 1907) 101 S. W. 282; International, etc., R. Co. *v.* Foster, (Tex. Civ. App. 1907) 100 S. W. 1017; International, etc., R. Co. *v.* Slusher, (Tex. Civ. App. 1906) 95 S. W. 717; Chicago, etc., R. Co. *v.* Seale, (Tex. Civ. App. 1905) 89 S. W. 997; St. Louis Southwestern R. Co. *v.* Jenkins, (Tex. Civ. App. 1905) 89 S. W. 1106.

Proximate Cause. — A railroad company is not liable if the damage would not have been caused except by the existence of a public road ditch subsequently dug. Siewerssen *v.* Harris County, (Tex. Civ. App. 1905) 91 S. W. 333.

Absolute Liability under Texas Statute. — Missouri, etc., R. Co. *v.* Arey, (Tex. Civ. App. 1907) 100 S. W. 963; Baugh *v.* Gulf, etc., R. Co, (Tex. Civ. App. 1906) 100 S. W. 958; McFadden *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 989.

Payment of Damages for a Right of Way does not give to a railroad the right to divert surface water from its natural course. Albright *v.* Cedar Rapids, etc., R. Co., 133 Iowa 644, 110 N. W. 1052.

328. 1. Waukegan *v.* Weale, 118 Ill. App. 460; Hutchison *v.* Maysville, (Ky. 1907) 100 S. W. 331. See, however, Levy *v.* Nash, (Ark. 1908) 112 S. W. 173.

2. **But a County Is Not Liable** for the negligent construction of ditch whereby land is damaged by flowage. Siewerssen *v.* Harris County, (Tex. Civ. App. 1905) 91 S. W. 333.

4. Central of Georgia R. Co. *v.* Keyton, 148 Ala. 675, 41 So. 918.

5. Matteson *v.* Tucker, 131 Iowa 511, 107 N. W. 600; Pohlman *v.* Chicago, etc., R. Co., 131 Iowa 891, 107 N. W. 1025.

6. Matteson *v.* Tucker, 131 Iowa 511, 107 N. W. 600.

329. *v.* Pickerill *v.* Louisville, (Ky. 1907) 100 S. W. 873.

4. Pohlman *v.* Chicago, etc., R. Co., 131 Iowa 89, 107 N. W. 1025, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 329; Clark *v.* Patapsco Guano Co., 144 N. Car. 64, 56 S. E. 858. See also McFarlain *v.* Jennings-Heywood Oil Syndicate, 118 La. 537, 43 So. 155 [*citing* La. Civ. Code, § 660].

6. Levy *v.* Nash, (Ark. 1908) 112 S. W. 173.

7. Matteson *v.* Tucker, 131 Iowa 511, 107 N. W. 600; Savoie *v.* Guillory, 118 La. 455, 43 So. 49. See also Thiessen *v.* Claussen, (Iowa 1907) 112 N. W. 545.

8. Waukegan *v.* Weale, 118 Ill. App. 460.

Measure of Damages. — Central of Georgia R. Co. *v.* Keyton, 148 Ala. 675, 41 So. 918; Cincinnati, etc., R. Co. *v.* Ward, 120 Ill. App. 212; Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958.

Punitive Damages. — Central of Georgia R. Co. *v.* Keyton, 148 Ala. 675, 41 So. 918.

Nominal Damages. — Harvey *v.* Mason City, etc., R. Co., 129 Iowa 465, 105 N. W. 958.

330. 1. Alabama G. S. R. Co. *v.* Prouty, (Ala. 1906) 43 So. 352; Pinkstaff *v.* Steffy, 216 Ill. 406, 75 N. E. 163.

Limitation of Actions. — Pinkstaff *v.* Steffy, 216 Ill. 406, 75 N. E. 163.

2. See Cincinnati, etc., R. Co. *v.* Ward, 120 Ill. App. 212. See also Illinois Cent. R. Co. *v.* Dennison, 116 Ill. App. 1.

3. Foreman *v.* Midland Valley R. Co., (Indian Ter. 1907) 104 S. W. 806; Darlington *v.* Cloud County, 75 Kan. 810, 88 Pac. 529; Bryant *v.* Merritt, 71 Kan. 272, 80 Pac. 600; New Jersey, etc., R. Co. *v.* Tutt, 168 Ind. 205, 80 N. E. 420; O'Neill *v.* St. Paul, (Minn. 1908) 116 N. W. 1114; Block *v.* Great Northern R. Co., 101 Minn. 183, 112 N. W. 66; Beauchamp *v.* Taylor, (Mo. App. 1908) 111 S. W. 609; Mehornay *v.* Foster, (Mo. App. 1908) 111 S. W. 882; Sabetto *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 112 N. Y. Supp. 118; Shaw *v.* Ward, 131 Wis. 646, 111 N. W. 671. *Compare* Nye *v.* Karlow, 98 Minn. 81, 107 N. W. 733, holding that the rule is modified by Sheehan *v.* Flynn, 59 Minn. 436, 61 N. W. 462, in accordance with the maxim *sic utere tuo*, etc.

Operation of Maxim Sic Utere Tuo. — Chicago, etc., R. Co. *v.* Groves, (Okla. 1908) 93 Pac. 755. See also Beauchamp *v.* Taylor, (Mo. App. 1908) 111 S. W. 609; Shaw *v.* Ward, 131 Wis. 646, 111 N. W. 671.

331. 2. O'Neill *v.* St. Paul, (Minn. 1908) 116 N. W. 1114; Mehornay *v.* Foster, (Mo. App. 1908) 111 S. W. 882.

3. Darlington *v.* Cloud County, 75 Kan. 810, 88 Pac. 529.

332. 3. New Jersey, etc., R. Co. *v.* Tutt, 168 Ind. 205, 80 N. E. 420; Foreman *v.* Midland Valley R. Co., (Indian Ter. 1907) 104 S. W. 806; Block *v.* Great Northern R. Co., 101 Minn. 183, 112 N. W. 66; Sabetto *v.* New York Cent., etc., R. Co., (Supm. Ct. App. Div.) 112 N. Y. Supp. 118; Cole *v.* Missouri, etc., R. Co., (Okla. 1908) 94 Pac. 540.

333. 1. Block *v.* Great Northern R. Co., 101 Minn. 183, 112 N. W. 66; Roe *v.* Howard County, 75 Neb. 448, 106 N. W. 587; Chicago, etc., R. Co. *v.* Groves, (Okla. 1908) 93 Pac. 755; Cook *v.* Seaboard Air Line R. Co., 107 Va. 32, 57 S. E. 564.

334. 1. Block *v.* Great Northern R. Co., 101 Minn. 183, 112 N. W. 66.

335. 3. Tower *v.* Somerset Tp., 143 Mich. 195, 106 N. W. 874.

4. **The Lower Proprietor** can facilitate the flow from his land although the upper proprietor's land will be injured by the washing away of soil. Pohlman *v.* Chicago, etc., R. Co., 131 Iowa 89, 107 N. W. 1025.

7. *Alabama.* — Alabama G. S. R. Co. *v.* Prouty, (Ala. 1906) 43 So. 352.

California. — Humphreys *v.* Moulton, 1 Cal. App. 257, 81 Pac. 1085; Wood *v.* Moulton, 146 Cal. 317, 80 Pac. 92.

Idaho. — Shurtliff *v.* Extension Ditch Co., (Idaho 1908) 94 Pac. 574.

Illinois. — Elser *v.* Gross Point, 223 Ill. 230, 79 N. E. 27.

Indiana. — North Judson *v.* Lightcap, (Ind. App. 1908) 84 N. E. 519.

Iowa. — Thiessen *v.* Claussen, (Iowa 1907) 112 N. W. 545; Albright *v.* Cedar Rapids, etc., R. Co., 133 Iowa 644, 110 N. W. 1052; Wirds *v.* Vierkandt, 131 Iowa 125, 108 N. W. 108. See also Sheker *v.* Machovec, (Iowa 1908) 116 N. W. 1042; Oxley *v.* Corey, (Iowa 1908) 116 N. W. 1041.

Kentucky. — Hutchison *v.* Maysville, (Ky. 1907) 100 S. W. 331; Campbell Turnpike Road Co. *v.* Maxfield, (Ky. 1906) 91 S. W. 1155.

Michigan. — Perry *v.* Reed, 147 Mich. 146, 110 N. W. 529.

Minnesota. — Nye *v.* Karlow, 98 Minn. 81, 107 N. W. 733.

Missouri. — Mehornay *v.* Foster, (Mo. App. 1908) 111 S. W. 882.

New York. — Granson *v.* New York Cent., etc., R. Co., 111 N. Y. App. Div. 737, 97 N. Y. Supp. 788.

North Carolina. — Briscoe *v.* Parker, 145 N. Car. 14, 58 S. E. 443.

Oklahoma. — Chicago, etc., R. Co. *v.* Groves, (Okla. 1908) 93 Pac. 755.

337. 2. Wood *v.* Moulton, 146 Cal. 317, 80 Pac. 92; Broadwell Special Drainage Dist. No. 1 *v.* Lawrence, 231 Ill. 86, 83 N. E. 104; Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 106, *affirming* 119 Ill. App. 232; Fenton, etc., R. Co. *v.* Adams, 221 Ill. 201, 77 N. E. 531; Hull *v.* Harker, 130 Iowa 100, 106 N. W. 629; Launstein *v.* Launstein, 150 Mich. 524, 114 N. W. 383; Briscoe *v.* Parker, 145 N. Car. 14, 58 S. E. 443; Manteufel *v.* Wertzel, (Wis. 1907) 114 N. W. 91.

339. 2. Greenwood *v.* Southern R. Co., 144 N. Car. 446, 57 S. E. 157.

340. 3. Albright *v.* Cedar Rapids, etc., R. Co., 133 Iowa 644, 110 N. W. 1052; Louisville, etc., R. Co. *v.* Whitsell, (Ky. 1907) 101 S. W. 334; Cooper *v.* St. Louis, etc., R. Co., 123 Mo. App. 141, 100 S. W. 494; Pranson *v.* New York

Cent., etc., R. Co., 111 N. Y. App. Div. 737, 97 N. Y. Supp. 788; Missouri, etc., R. Co. *v.* Merritt, (Tex. Civ. App. 1907) 102 S. W. 151; Galveston, etc., R. Co. *v.* Riggs, (Tex. Civ. App. 1908) 107 S. W. 589.

The Natural Accumulation of Surface Water upon the land, or an accumulation caused by drainage onto the railroad's land by third persons, and not caused by an obstruction to the natural flow by the railroad, does not give rise to any liability for resulting sickness to the plaintiff or for the depreciation in the value of his home. McFadden *v.* Missouri, etc., R. Co., (Tex. Civ. App. 1906) 92 S. W. 989.

341. 1. Gebhardt *v.* St. Louis, etc., R. Co., 122 Mo. App. 503, 99 S. W. 773.

2. Page *v.* Huckins, 150 Mich. 103, 113 N. W. 577.

342. 1. Launstein *v.* Launstein, 150 Mich. 524, 114 N. W. 383.

3. Davis *v.* Smith, 141 N. Car. 108, 53 S. E. 745, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 342.

343. 7. See Jones *v.* Bower, (Ky. 1907) 105 S. W. 1189.

344. 6. Randau *v.* Stultz, (Iowa 1908) 115 N. W. 507.

7. Brown *v.* Honeyfield, (Iowa 1908) 116 N. W. 731.

345. 2. Jones *v.* Stover, 131 Iowa 119, 108 N. W. 112. *Contra*, where the licensor has permitted the licensee to incur expense, Thompson *v.* Normanden, (Iowa 1906) 108 N. W. 315.

4. Pyott *v.* State, (Ind. 1908) 83 N. E. 737.

6. Roe *v.* Howard County, 75 Neb. 448, 106 N. W. 587.

7. Jones *v.* Stover, 131 Iowa 119, 108 N. W. 112.

8. Roe *v.* Howard County, 75 Neb. 448, 106 N. W. 587.

346. 3. Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166, *affirming* 119 Ill. App. 232; Kopecky *v.* Benish, (Iowa 1908) 116 N. W. 118; Sheker *v.* Machovec, (Iowa 1908) 116 N. W. 1042; Albright *v.* Cedar Rapids, etc., R. Co., 133 Iowa 644, 110 N. W. 1052; Campbell Turnpike Road Co. *v.* Maxfield, (Ky. 1906) 91 S. W. 1135, holding that defendant was none the less liable because the water was held on plaintiff's land through an obstruction on the other side of the lot in question; Branson *v.* New York Cent., etc., R. Co., 111 N. Y. App. Div. 737, 97 N. Y. Supp. 788; St. Louis Southwestern R. Co. *v.* Terhune, (Tex. Civ. App. 1906) 94 S. W. 381; International, etc., R. Co. *v.* Slusher, (Tex. Civ. App. 1906) 95 S. W. 71[illegible].

Measure of Damages. — Little Rock, etc., R. Co. *v.* Wallis, 82 Ark. 447, 102 S. W. 390; St. Louis Southwestern R. Co. *v.* Morris, 76 Ark. 542, 89 S. W. 846; Haisler *v.* Hayden, 124 Ill. App. 264; Sheker *v.* Machovec, (Iowa 1908) 116 N. W. 1042; Louisville, etc., R. Co. *v.* Whitsell, (Ky. 1907) 101 S. W. 1334; Hutchison *v.* Maysville, (Ky. 1907) 100 S. W. 331; Pickerill *v.* Louisville, (Ky. 1907) 100 S. W. 873; International, etc., R. Co. *v.* Foster, (Tex. Civ. App. 1907) 100 S. W. 1017; St. Louis Southwestern R. Co. *v.* Terhune, (Tex. Civ. App. 1906) 94 S. W. 381; Missouri, etc., R. Co. *v.* Green, (Tex. Civ. App. 1906) 99 S. W. 573; Chicago, etc., R. Co. *v.* Seale, (Tex. Civ. App. 1905) 89 S. W. 997; St. Louis Southwestern R. Co. *v.* Jenkins, (Tex. Civ. App. 1905) 89 S. W. 11[illegible].

Inconvenience and Sickness Elements of Damage. — International, etc., R. Co. *v.* Stewart, (Tex. Civ. App. 1907) 101 S. W. 282.

The Period of Limitation begins to run from the date of injury. St. Louis Southwestern R. Co. *v.* Morris, 76 Ark. 542, 89 S. W. 846.

Damages Suffered after the Filing of the Suit cannot be recovered. Gebhardt *v.* St. Louis, etc., R. Co., 122 Mo. App. 503, 99 S. W. 773.

347. 1. Alabama G. S. R. Co. *v.* Prouty, (Ala. 1906) 43 So. 352; Elser *v.* Gross Point, 223 Ill. 230, 79 N. E. 27; Oxley *v.* Corey, (Iowa 1908) 116 N. W. 1041; Albright *v.* Cedar Rapids, etc., R. Co., 133 Iowa 644, 110 N. W. 1052; Wirds *v.* Vierkandt, 131 Iowa 125, 108 N. W. 108, where an injunction was refused, however, on the ground that the flow from the upper land was not shown to have been materially increased; Page *v.* Huckins, 150 Mich. 103, 113 N. W. 577; Perry *v.* Reed, 147 Mich. 146, 110 N. W. 529, where, however, injunction was denied; Roe *v.* Howard County, 75 Neb. 448, 106 N. W. 587.

Mandatory Injunction to Remove Obstruction to Surface Drain. — Brown *v.* Honeyfield, (Iowa 1908) 116 N. W. 731.

2. Pyott *v.* State, (Ind. 1908) 83 N. E. 737.

348. 1. St. Louis Merchants' Bridge Terminal R. Assoc. *v.* Schultz, 226 Ill. 409, 80 N. E. 870, *affirming* 126 Ill. App. 552. See also New Jersey, etc., R. Co. *v.* Tutt, 168 Ind. 205, 80 N. E. 420.

That the Outlet Is an Unbroken Meadow does not preclude a stream's being a watercourse. Rait *v.* Furrow, 74 Kan. 101, 85 Pac. 934. See also Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

349. 1. Rait *v.* Furrow, 74 Kan. 101, 85 Pac. 934.

2. Rait *v.* Furrow, 74 Kan. 101, 85 Pac. 934.

4. Cedarburg *v.* Dutra, 3 Cal. App. 572, 86 Pac. 838; Rait *v.* Furrow, 74 Kan. 101, 85 Pac. 934.

350. 3. *Compare* Stimson *v.* Brookline, (Mass. 1908) 83 N. E. 893, holding that an ancient ditch, under the circumstances of the case, might be a watercourse for the purpose of determining riparian rights.

4. See Cederburg *v.* Dutra, 3 Cal. App. 572, 86 Pac. 838.

6. Huffner *v.* Sawday, (Cal. 1908) 94 Pac. 424. See also Cederburg *v.* Dutra, 3 Cal. App. 572, 86 Pac. 838.

351. 1. **A Ditch Fed by No Spring or Watercourse** which serves to drain a swale in the wet season is not a watercourse. New Jersey, etc., R. Co. *v.* Tutt, 168 Ind. 205, 80 N. E. [illegible].

But a Slough which separated a tract of land commonly called an "island" from the mainland and which in time of high water became in a state of nature an arm of the Mississippi river has been held to be a watercourse. St. Louis Merchants' Bridge Terminal R. Assoc. *v.* Schultz, 226 Ill. 409, 80 N. E. 879, *affirming* 126 Ill. App. 552.

Accustomed Channel of Collected Waters Held to Be Watercourse. — Chicago, etc., R. Co. *v.* Groves, (Okla. 1908) 93 Pac. 755.

Question for Jury Whether Slough Was Natural Watercourse. — Webb *v.* Carter, 121 Mo. App. 147, 98 S. W. 776.

2. Rait *v.* Furrow, 74 Kan. 101, 85 Pac. 934.

3. Rait *v.* Furrow, 74 Kan. 101, 85 Pac. 934.

352. 1. Rianda *v.* Watsonville Water, etc., Co., (Cal. 1907) 93 Pac. 79.

5. Santa Rosa Irrigation Co. *v.* Pecos River Irrigation Co., (Tex. Civ. App. 1906) 92 S. W. 1014.

7. See Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

8. Huffner *v.* Sawday, (Cal. 1908) 94 Pac. 424; Verdugo Cañon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021; Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Tetherington *v.* Donk Bros. Coal, etc., Co., 232 Ill. 522, 83 N. E. 1048, *affirming* 128 Ill. App. 256; Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453.

The Subterranean Portion of a Watercourse is subject to the same rule as that part of a watercourse which flows upon the surface. Verdugo Cañon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021.

9. Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120; Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453.

10. Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585; Gray *v.* Ft. Plain, 105 N. Y. App. Div. 215, 94 N. Y. Supp. 698. See also Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120.

12. Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120; Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978; Baltimore *v.* Baltimore, etc., Steamboat Co., 104 Md. 485, 65 Atl. 353; Moore *v.* Berlin Mills Co., (N. H. 1907) 67 Atl. 578.

Riparian Rights Neither Gained by Use Nor Lost by Disuse. — Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 343.

353. 2. Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

3. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

4. *In re* Board of Water Supply, (Supm. Ct. Spec. T.) 109 N. Y. Supp. 1036.

Municipality as Riparian Owner. — Baltimore *v.* Baltimore, etc., Steamboat Co., 104 Md. 485, 65 Atl. 353.

9. Rhodes *v.* Cissell, 82 Ark. 367, 101 S. W. 758.

354. 1. Foster *v.* Bussey, 132 Iowa 641, 109 N. W. 1105, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 353; Hartz *v.* Detroit, etc., R. Co., (Mich. 1908) 116 N. W. 1084; Kinkead *v.* Turgeon, 74 Neb. 573, 109 N. W. 744.

3. Stoner *v.* Royar, 200 Mo. 444, 98 S. W. 601; Kinkead *v.* Turgeon, 74 Neb. 573, 109 N. W. 744.

4. Hatton *v.* Gegg, 4 Cal. App. 537, 88 Pac. 592; Stoner *v.* Royar, 200 Mo. 444, 98 S. W. 601.

8. North Alabama Coal, etc., Co. *v.* Jones, (Ala. 1908) 47 So. 144; Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120; Seaboard Air Line R. Co. *v.* Sikes, (Ga. App. 1908) 60 S. E. 868; Marshall Ice Co. *v.* La Plant, (Iowa 1907) 111 N. W. 1016; MacNamara *v.* Taft, (Mass. 1908) 83 N. E. 310; Mason *v.* Whitney, 193 Mass. 152, 78 N. E. 881; New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231; McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 695, 65 Atl. 490, defining also the state's paramount right;; Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; Chicago, etc., R. Co. *v.* Groves, (Okla. 1908) 93 Pac. 755; Brown *v.* Gold Coin Min. Co., 48 Oregon 277, 86 Pac. 361; Bricker *v.* Conemaugh Stone Co., 32 Pa. Super. Ct. 283; Sipe *v.* Pennsylvania R. Co., (Pa. 1908) 68 Atl. 705.

In California each riparian owner is entitled to his share of the flow. Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

Right to Regulate Flow of Water for Milling. — See Barker *v.* French, 102 Me. 407, 67 Atl. 308, and see generally the title DAMS.

355. 1. Huffner *v.* Sawday, (Cal. 1908) 94 Pac. 424; Mason *v.* Whitney, 193 Mass. 152, 78 N. E. 881.

356. 2. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Roberts *v.* Claremont R., etc., Co., (N. H. 1907) 66 Atl. 485; Hathorn *v.* Dr. Strong's Saratoga Springs Sanitarium, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 445, 106 N. Y. Supp. 553; Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; Williams *v.* Altnow, (Oregon 1908) 95 Pac. 200.

3. North Alabama Coal, etc., Co. *v.* Jones, (Ala. 1908) 47 So. 144; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585; Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Roberts *v.* Claremont R., etc., Co., (N. H. 1907) 66 Atl. 485; Hathorn *v.* Dr. Strong's Saratoga Springs Sanitarium, (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 445, 106 N. Y. Supp. 553; Durham *v.* Eno Cotton Mills, 141 S. Car. 615, 54 S. E. 453; Williams *v.* Altnow, (Oregon 1908) 95 Pac. 200.

357. 1. Williams *v.* Altnow, (Oregon 1908) 95 Pac. 200; Nielson *v.* Sponer, 46 Wash. 14, 89 Pac. 154.

2. Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453.

Using the Natural Flow at Night for Milling Purposes has been held not to be an unreasonable use by an upper proprietor. Mason *v.* Whitney, 193 Mass. 152, 78 N. E. 881.

3. Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585; Mason *v.* Whitney, 193 Mass. 153, 78 N. E. 881; Williams *v.* Altnow, (Oregon 1908) 95 Pac. 200.

4. Mason *v.* Whitney, 193 Mass. 152, 78 N. E. 881.

5. Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453.

358. 6. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

7. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338. See also Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978, 982.

8. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

9. **Contra,** Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

10. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Nielson *v.* Sponer, 46 Wash. 14, 89 Pac. 154; Nesalhous *v.* Walker, 45 Wash. 621, 88 Pac. 1032.

359. 5. McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 695, 65 Atl. 489, holding that the *New Jersey* statutes have not changed the common-law rule except in a limited class of purposes beneficial to the people of the state.

360. 2. North Alabama Coal, etc., Co. *v.* Jones, (Ala. 1908) 47 So. 144.

3. New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231.

7. See Nesalhous *v.* Walker, 45 Wash. 621, 88 Pac. 1032.

8. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585; Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571.

9. New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231; Nielson *v.* Sponer, 46 Wash. 14, 89 Pac. 154.

Legislature May Prohibit Abstraction Except for Riparian Uses. — McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 695, 65 Atl. 490.

362. 1. Nielson *v.* Sponer, 46 Wash. 14, 89 Pac. 154; Neumeister *v.* Goddard, (Wis. 1907) 113 N. W. 733.

5. North Alabama Coal, etc., Co. *v.* Jones, (Ala. 1908) 47 So. 144.

6. Roberts *v.* Claremont R., etc., Co., (N. H. 1907) 66 Atl. 485; Cook *v.* Seaboard Air Line R. Co., 107 Va. 32, 57 S. E. 564.

7. Cook *v.* Seaboard Air Line R. Co., 107 Va. 32, 57 S. E. 564.

363. 1. Chicago, etc., R. Co. *v.* Mitchell, 74 Neb. 563, 104 N. W. 1144.

5. Pomona Land, etc., Co. *v.* San Antonio Water Co., (Cal. 1908) 93 Pac. 881.

364. 1. **Where by the Construction of Jetties** in the new channel the owner or his licensee causes the current to flow against a riparian owner's land, to his injury, the latter has the right to have the nuisance abated. Morton *v.* Oregon Short Line R. Co., 48 Oregon 444, 452, 87 Pac. 151, 1046.

2. Morton *v.* Oregon Short Line R. Co., 48 Oregon 444, 87 Pac. 151, holding that a licensee of the owner has the right.

365. 1. New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231; F. S. Royster Guano Co. *v.* Fowles, 75 S. Car. 434, 56 S. E. 11.

2. Santa Rosa Irrigation Co. *v.* Pecos River Irrigation Co., (Tex. Civ. App. 1906) 92 S. W. 101.

Right to Divert and Pipe Waters of Spring Acquired by Prescription. — Higuera *v.* Del Ponte, 4 Cal. App. xiii., 88 Pac. 808.

3. Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585.

4. Lake Drummond Canal, etc., Co. *v.* Burnham, (N. Car. 1908) 60 S. E. 650, where the principle was applied to a drainage canal which was discontinued.

366. 1. Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Grant *v.* Robb, 71 Kan. 846, 80 Pac. 585; Watts *v.* Spencer, (Oregon 1908) 94 Pac. 39.

367. 3. **Until the Proprietor Is Deprived of the Benefit of the Use** of the water in such a substantial manner as to notify him that his rights are being invaded no adverse user can be begun. Watts *v.* Spencer, (Oregon 1908) 94 Pac. 39.

368. 4. Louisville, etc., R. Co. *v.* Whitsell, (Ky. 1907) 101 S. W. 334; King *v.* Danville, (Ky. 1908) 107 S. W. 1189.

Limitation of Actions. — King *v.* Danville, (Ky. 1908) 107 S. W. 1189; Chicago, etc., R. Co. *v.* Mitchell, 74 Neb. 563, 104 N. W. 1144.

369. 2. North Alabama Coal, etc., Co. *v.* Jones, (Ala. 1908) 47 So. 144; King *v.* Danville, (Ky. 1908) 107 S. W. 1189; Gray *v.* Ft. Plain, 105 N. Y. App. Div. 215, 94 N. Y. Supp. 698.

3. Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120; Huffner *v.* Sawday, (Cal. 1908) 94 Pac. 424; Watts *v.* Spencer, (Oregon 1908) 94 Pac. 39; F. S. Royster Guano Co. *v.* Fowles, 75 S. Car. 434, 56 S. E. 11; Santa Rosa Irrigation Co. *v.* Pecos River Irrigation Co., (Tex. Civ. App. 1906) 92 S. W. 1014.

Diversion of a Subterranean Portion of a Watercourse Enjoined. — Verdugo Cañon Water Co. *v.* Verdugo, (Cal. 1908) 93 Pac. 1021.

Preliminary Injunction. — Stoner *v.* Patten, 124 Ga. 754, 52 S. E. 894.

370. 1. Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

2. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

3. Desberger *v.* University Heights Realty, etc., Co., 126 Mo. App. 206, 102 S. W. 1060.

4. F. S. Royster Guano Co. *v.* Fowles, 75 S. Car. 434, 56 S. E. 11.

371. 6. F. S. Royster Guano Co. *v.* Fowles, 75 S. Car. 434, 56 S. E. 11.

7. Scheurich *v.* Southwest Missouri Light Co., 109 Mo. App. 406, 84 S. W. 1003; Penrhyn State Co. *v.* Granville Electric Light, etc., Co., 181 N. Y. 80, 73 N. E. 566, *reversing* 84 N. Y. App. Div. 92, 82 N. Y. Supp. 547. See also Cline *v.* Stock, 71 Neb. 70, 102 N. W. 265.

9. **One Whose Land Will Be Injured by Washing May Sue.** — Desberger *v.* University Heights Realty, etc., Co., 126 Mo. App. 206, 102 S. W. 1060.

Proprietor under Equitable Title May Sue. — Watts *v.* Spencer, (Oregon 1908) 94 Pac. 39.

One Suing for Benefit of All. — Climax Specialty Co. *v.* Seneca Button Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 152, 103 N. Y. Supp. 822.

15. Climax Specialty Co. *v.* Seneca Button Co., (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 152, 103 N. Y. Supp. 822.

372. 4. Williams *v.* Altnow, (Oregon 1908) 95 Pac. 200; Kalama Electric Light, etc., Co. *v.* Kalama Driving Co., (Wash. 1908) 94 Pac. 469.

5. Hazard Powder Co. *v.* Somersville Mfg. Co., 78 Conn. 172, 61 Atl. 519; Henderson Estate Co. *v.* Carroll Electric Co., 113 N. Y. App. Div. 775, 99 N. Y. Supp. 366.

373. 1. Hazard Powder Co. *v.* Somersville Mfg. Co., 78 Conn. 172, 61 Atl. 519.

3. See Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120.

6. Marshall Ice Co. *v.* La Plant, (Iowa 1907) 111 N. W. 1016.

374. 2. Beauchamp *v.* Taylor, (Mo. App. 1908) 111 S. W. 609; American Locomotive Co. *v.* Hoffman, 105 Va. 343, 54 S. E. 25, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 374; Kalama Electric Light, etc., Co. *v.* Kalama Driving Co., (Wash. 1908) 94 Pac. 469.

3. Sutter County *v.* Nicols, (Cal. 1908) 93 Pac. 873; Allen *v.* Thornapple Electric Co., 144 Mich. 370, 108 N. W. 79; Reed *v.* Park Com'rs, 100 Minn. 167, 110 N. W. 1119, holding that an acquirement of the lower land by eminent domain does not give a right to obstruct a watercourse; American Locomotive Co. *v.* Hoffman, 105 Va. 343, 54 S. E. 25, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 374; Durga *v.* Lincoln Creek Lumber Company, (Wash. 1907) 92 Pac. 343.

4. American Locomotive Co. *v.* Hoffman, 105 Va. 343, 54 S. E. 25, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 374.

375. 1. Michigan Paper Co. *v.* Kalamazoo Valley Electric Co., 141 Mich. 48, 104 N. W. 387; Kendrick *v.* Furman, (Neb. 1908) 115 N. W. 541; Royce *v.* Carpenter, 80 Vt. 37, 66 Atl. 888; American Locomotive Co. *v.* Hoffman, 105 Va. 343, 54 S. E. 25, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 374.

4. *Alabama.* — Alabama G. S. R. Co. *v.* Prouty, (Ala. 1906) 43 So. 352.

Arkansas. — St. Louis, etc., R. Co. *v.* Brooksher, (Ark. 1908) 106 S. W. 1169; St. Louis, etc., R. Co. *v.* Saunders, (Ark. 1908) 107 S. W. 194; St. Louis, etc., R. Co. *v.* Saunders, 78 Ark. 589, 94 S. W. 709.

Georgia. — Southern R. Co. *v.* Ward, (Ga. 1908) 61 S. E. 913.

Illinois. — St. Louis Merchants' Bridge Terminal R. Assoc. *v.* Schultz, 226 Ill. 409, 80 N. E. 879, *affirming* 126 Ill. App. 552; Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166, *affirming* 119 Ill. App. 232; Sanitary Dist. *v.* Alderman, 113 Ill. App. 23.

Indiana. — Graham *v.* Chicago, etc., R. Co., 39 Ind. App. 294, 77 N. E. 1055.

Indian Territory. — Foreman *v.* Midland Valley R. Co., (Indian Ter. 1907) 104 S. W. 806; Gulf, etc., R. Co. *v.* Moseley, 6 Indian Ter. 360, 98 S. W. 129.

Iowa. — Steber *v.* Chicago, etc., R. Co., (Iowa 1908) 117 N. W. 304; Blunck *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 1013; Albright *v.* Cedar Rapids, etc., R. Co., 133 Iowa 644, 110 N. W. 1052.

Kansas. — White *v.* Atchison, etc., R. Co., 74 Kan. 778, 88 Pac. 54; Atchison, etc., R. Co. *v.* Herman, 74 Kan. 77, 85 Pac. 817.

Kentucky. — Wallingford *v.* Maysville, etc., R. Co., (Ky. 1908) 107 S. W. 781; Louisville, etc., R. Co. *v.* Ponder, (Ky. 1907) 104 S. W. 279; Illinois Cent. R. Co. *v.* Taylor, (Ky. 1905) 89 S. W. 121.

Nebraska. — Smith *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 755; Fairbury Brick Co. *v.* Chicago, etc., R. Co., (Neb. 1907) 113 N. W. 535; Chicago, etc., R. Co. *v.* Ely, (Neb. 1906) 110 N. W. 539, *distinguishing* Gartner *v.* Chicago, etc., R. Co., 71 Neb. 444, 98 N. W. 1052, and Fremont, etc., R. Co. *v.* Gayton, 67 Neb. 263, 93 N. W. 163.

New Jersey. — Perrine *v.* Pennsylvania R. Co., 71 N. J. L. 644, 62 Atl. 702.

New York. — New York, etc., R. Co., 122 N. Y. App. Div. 128, 106 N. Y. Supp. 611.

Oklahoma. — Cole *v.* Missouri, etc., R. Co., (Okla. 1908) 94 Pac. 540; Chicago, etc., R. Co. *v.* Groves, (Okla. 1908) 93 Pac. 755.

Pennsylvania. — Miller *v.* Buffalo, etc., R. Co., 29 Pa. Super. Ct. 515; Taylor *v.* Canton Tp., 30 Pa. Super. Ct. 305.

South Carolina. — Shores *v.* Southern R. Co., 72 S. Car. 244, 51 S. E. 699.

Texas. — Missouri, etc., R. Co. *v.* Cannon, (Tex. Civ. App. 1908) 111 S. W. 661; Houston, etc., R. Co. *v.* Buchanan, (Tex. Civ. App. 1907) 107 S. W. 595; Houston, etc., R. Co. *v.* Darwin, (Tex. Civ. App. 1907) 105 S. W. 825; Missouri, etc., R. Co. *v.* Merritt, (Tex. Civ. App. 1907) 102 S. W. 151; International, etc., R. Co. *v.* Kyle, (Tex. Civ. App. 1907) 101 S. W. 272; Gulf, etc., R. Co. *v.* Ondrej, (Tex. Civ. App. 1907) 99 S. W. 176; Missouri, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1906) 93 S. W. 198; San Antonio, etc., R. Co. *v.* Dickson, (Tex. Civ. App. 1906) 93 S. W. 481; Gulf, etc., R. Co. *v.* Harbison, 99 Tex. 536, 90 S. W. 1097, *affirming* (Tex. Civ. App. 1905) 88 S. W. 452; Gulf, etc., R. Co. *v.* Weatherly, 99 Tex. 538, 90 S. W. 1098, *affirming* (Tex. Civ. App. 1905) 88 S. W. 456.

Virginia. — American Locomotive Co. *v.* Hoffman, 105 Va. 343, 54 S. E. 25, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 374; Cook *v.* Seaboard Air Line R. Co., 107 Va. 32, 57 S. E. 564.

Transferee, Successor, or Lessee Liable. — Ft. Smith Light, etc., Co. *v.* Soard, 79 Ark. 388, 96 S. W. 121; Tetherington *v.* St. Louis, etc., R. Co., 226 Ill. 129, 80 N. E. 697, *reversing* 128 Ill. App. 139; Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166, *affirming* 119 Ill. App. 232; Graham *v.* Chicago, etc., R. Co., 39 Ind. App. 294, 77 N. E. 57, *reversing* on rehearing (Ind. App. 1905) 74 N. E. 541; Shores *v.* Southern R. Co., 72 S. Car. 244, 51 S. E. 699.

Cases Holding Liability Dependent on Negligence. — Gordon *v.* Ellenville, etc., R. Co., 119 N. Y. App. Div. 797, 104 N. Y. Supp. 702; Taylor *v.* Canton Tp., 30 Pa. Super. Ct. 305.

Existence of Negligence Question for Jury. — St. Louis, etc., R. Co. *v.* Saunders, 78 Ark. 589, 94 S. W. 709; Cooper *v.* New York, etc., R. Co., 122 N. Y. App. Div. 128, 106 N. Y. Supp. 611.

Cases Holding Liability Absolute Regardless of Negligence. — Missouri, etc., R. Co. *v.* Crow, (Tex. Civ. App. 1906) 95 S. W. 743; Missouri, etc., R. Co. *v.* Dubose, (Tex. Civ. App. 1906) 95 S. W. 588; International, etc., R. Co. *v.* Walker, (Tex. Civ. App. 1906) 97 S. W. 1081. And see Ft. Smith Light, etc., Co. *v.* Soard, 79 Ark. 388, 96 S. W. 121; Webb *v.* Carter, 121 Mo. App. 147, 98 S. E. 776; International, etc., R. Co. *v.* Jackson, (Tex. Civ. App. 1907) 103 S. W. 709.

Obstruction Must Be Proximate Cause of Injury. — Gulf, etc., R. Co. *v.* McClerran, (Tex. Civ. App. 1906) 91 S. W. 653; Moss *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1907), 103 S. W. 221.

376. 1. Blunck *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 1013; White *v.* Atchison, etc., R. Co., 74 Kan. 778, 88 Pac. 54; Wallingford *v.* Maysville, etc., R. Co., (Ky. 1908)

107 S. W. 781; Smith *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 755; Chicago, etc., R. Co. *v.* Buel, (Neb. 1906) 107 N. W. 590; Karchner *v.* Pennsylvania R. Co., 218 Pa. St. 309, 67 Atl. 644; Taylor *v.* Canton Tp., 30 Super. Ct. 305; Missouri, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1906) 93 S. W. 198; Eagan *v.* Central Vermont R. Co., (Vt. 1908) 69 Atl. 732; American Locomotive Co. *v.* Hoffman, 105 Va. 343, 54 S. E. 25, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 374.

Modification of Doctrine. — In a number of cases it is held that there is a duty to provide for unusual storms or floods as may occasionally occur. Blunck *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 1013; Smith *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 755; Fairbury Brick Co. *v.* Chicago, etc., R. Co., (Neb. 1907) 113 N. W. 535.

And if the defendant's negligence is primarily liable for an injury resulting from the concurrence of an act of God and such negligence, the defendant is liable. Standley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244; Keats *v.* Gas Co., 29 Pa. Super. Ct. 480.

But if the act of God is so overwhelming as of its own force to produce the injury independently of the negligence done, the defendant is not liable. Palmyra *v.* Waverly Woolen Co., 102 Me. 317, 66 Atl. 646; Taylor *v.* Canton Tp., 30 Pa. Super. Ct. 305. See also White *v.* Atchison, etc., R. Co., 74 Kan. 778, 88 Pac. 54.

Whether the Flood Could Have Reasonably Been Anticipated is a question for the jury. Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166, *affirming* 119 Ill. App. 232.

2. Grothe *v.* Lane, (Neb. 1906) 110 N. W. 305; Schlag *v.* Gooding-Coxe Co., 98 Minn. 261, 108 N. W. 11.

Construction of Contract. — Nye *v.* Swift, 190 Mass. 143, 76 N. E. 652.

An Unlimited Conveyance of an Easement of Flowage is in law a grant of an unlimited reasonable use. Chapman *v.* Newmarket Mfg. Co., (N. H. 1908) 68 Atl. 868.

Grantee with Notice Bound by Contract. — Towaliga Falls Power Co. *v.* McElroy, 124 Ga. 1014, 53 S. E. 682.

3. Illinois Cent. R. Co. *v.* Dennison, 116 Ill. App. 1; Reason *v.* Peters, 148 Mich. 532, 112 N. W. 117; Tew *v.* Webster, (Minn. 1908) 114 N. W. 647.

5. Wills *v.* Babb, 222 Ill. 95, 78 N. E. 42.

6. Wills *v.* Babb, 222 Ill. 95, 78 N. E. 42.

Daily Use Not Essential. — Reason *v.* Peters, 148 Mich. 532, 112 N. W. 117.

7. Wills *v.* Babb, 222 Ill. 95, 78 N. E. 42; Dutton *v.* Stoughton, 79 Vt. 361, 65 Atl. 91.

9. Cobia *v.* Ellis, (Ala. 1906) 42 So. 751.

377. 5. Illinois Cent. R. Co. *v.* Taylor, (Ky. 1905) 89 S. W. 121; Stimson *v.* Brookline, (Mass. 1908) 83 N. E. 893; Nye *v.* Swift, 190 Mass. 143, 76 N. E. 652; Michigan Paper Co. *v.* Kalamazoo Valley Electric Co., 141 Mich. 48, 104 N. W. 387; Beauchamp *v.* Taylor, (Mo. App. 1908) 111 S. W. 609; McClure *v.* Broken Bow, (Neb. 1908) 115 N. W. 1081; Chicago, etc., R. Co. *v.* Ely, (Neb. 1906) 110 N. W. 539; Sipe *v.* Pennsylvania R. Co., (Pa. 1908) 68 Atl. 705; Cook *v.* Seaboard Air Line R. Co., 107 Va. 32, 57 S. E. 564; American Locomotive Co. *v.* Hoffman, (Va. 1908) 61 S. E. 759.

No Recovery for Injury from Flowage Occurring Before Taking Title. — Mississippi Cent. R. Co. *v.* Magee, (Miss. 1908) 46 So. 716.

Concurrence of Other Causes of Injury Does Not Relieve Defendant. — Blunck *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 1013.

Limitation of Actions. — St. Louis, etc., R. Co. *v.* Hoshall, 82 Ark. 387, 102 S. W. 207; Illinois Cent. R. Co. *v.* Taylor, (Ky. 1905) 89 S. W. 121; Priebe *v.* Ames, (Minn. 1908) 116 N. W. 829; Barnett *v.* St. Francis Levee Dist., 125 Mo. App. 61, 102 S. W. 583; Stack *v.* Seaboard Air Line R. Co., 139 N. Car. 366, 51 S. E. 1024; International, etc., R. Co. *v.* Kyle, (Tex. Civ. App. 1907) 101 S. W. 272.

Successive Actions. — Gulf, etc., R. Co. *v.* Moseley, 6 Indian Ter. 369, 98 S. W. 129.

Measure of Damages. — Sanitary Dist. *v.* Alderman, 113 Ill. App. 23; Steber *v.* Chicago, etc., R. Co., (Iowa 1908) 117 N. W. 304; Blunck *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 1013; Wallingford *v.* Maysville, etc., R. Co., (Ky. 1908) 107 S. W. 781; Louisville, etc., R. Co. *v.* Ponder, (Ky. 1907) 104 S. W. 279; Reason *v.* Peters, 148 Mich. 532, 112 N. W. 117; Mississippi Cent. R. Co. *v.* Magee, (Miss. 1908) 46 So. 716; McClure *v.* Broken Bow, (Neb. 1908) 115 N. W. 1081; Flint *v.* Union Water Power Co., 73 N. H. 483, 62 Atl. 788; Cooper *v.* New York, etc., R. Co., 122 N. Y. App. Div. 128, 106 N. Y. Supp. 611; Keats *v.* Gas Co., 29 Pa. Super. Ct. 480; Gulf, etc., R. Co. *v.* Harbison, 99 Tex. 536, 90 S. W. 1098, *affirming* (Tex. Civ. App. 1905) 88 S. W. 456; Gulf, etc., R. Co. *v.* Weatherly, 99 Tex. 538, 90 S. W. 1098, *affirming* (Tex. Civ. App. 1905) 88 S. W. 456; Missouri, etc., R. Co. *v.* Merritt, (Tex. Civ. App. 1907) 102 S. W. 151; Missouri, etc., R. Co. *v.* Bell, (Tex. Civ. App. 1906) 93 S. W. 198; American Locomotive Co. *v.* Hoffman, (Va. 1908) 61 S. E. 759.

Evidence of Condition of Land Above Inadmissible. — San Antonio, etc., R. Co. *v.* Kiersey, (Tex. 1908) 109 S. W. 862.

Expert Testimony as to Depreciation of Value Admissible. — St. Louis, etc., R. Co. *v.* Brooksher, (Ark. 1908) 109 S. W. 1169.

Interest Recoverable from Date of Injury. — Gulf, etc., R. Co. *v.* Moseley, 6 Indian Ter. 369, 98 S. W. 129.

Prospective Damages Not Recoverable. — Gulf, etc., R. Co. *v.* McClerran, (Tex. Civ. App. 1906) 91 S. W. 653.

Damage to Crops. — St. Louis, etc., R. Co. *v.* Saunders, (Ark. 1908) 107 S. W. 194; St. Louis, etc., R. Co. *v.* Hoshall, 82 Ark. 387, 102 S. W. 207; Southern R. Co. *v.* Ward, 125 Ga. 361, 54 S. E. 151; St. Louis Merchants' Bridge Terminal R. Assoc. *v.* Schultz, 226 Ill. 409, 80 N. E. 879, *affirming* 126 Ill. App. 552; Illinois Cent. R. Co. *v.* Taylor, (Ky. 1905) 89 S. W. 121; Stanley *v.* Atchison, etc., R. Co., 121 Mo. App. 537, 97 S. W. 244; Smith *v.* Chicago, etc., R. Co., (Neb. 1908) 115 N. W. 755; Fairbury Brick Co. *v.* Chicago, etc., R. Co., (Neb. 1907) 113 N. W. 535; Taylor *v.* Canton Tp., 30 Pa. Super. Ct. 305; Houston, etc., R. Co. *v.* Darwin, (Tex. Civ. App. 1907) 105 S. W. 825.

Measure of Damages — *To Crop.* — Colorado Canal Co. *v.* Sims, (Tex. Civ. App. 1906) 94 S. W. 365.

Sufficiency of Evidence. — Blunck *v.* Chicago, etc., R. Co., (Iowa 1908) 115 N. W. 1013.

Loss of Water Power. — McClure *v.* Broken Bow, (Neb. 1908) 115 N. W. 1081.

6. **Equitable Relief.** — Alabama G. S. R. Co. *v.* Prouty, (Ala. 1906) 43 So. 352; Cobia *v.* Ellis, (Ala. 1906) 42 So. 751; Sutter County *v.* Nicols, (Cal. 1908) 93 Pac. 873; Warner *v.* Maxwell, 124 Ga. 518, 52 S. E. 809; Stoner *v.* Patten, 124 Ga. 754, 52 S. E. 894; Miller *v.* Belleville Bank, 148 Mich. 339, 111 N. W. 1062; Kendrick *v.* Furman, (Neb. 1908) 115 N. W. 541; Royce *v.* Carpenter, 80 Vt. 37, 66 Atl. 888; Cloyes *v.* Middlebury Electric Co., 80 Vt. 109, 66 Atl. 1039; Kalama Electric Light, etc., Co. *v.* Kalama Driving Co., (Wash. 1908) 94 Pac. 469; Durga *v.* Lincoln Creek Lumber Co., (Wash. 1907) 92 Pac. 343; Sebranke *v.* Kohlmeyer, 130 Wis. 352, 110 N. W. 224.

Injunction — Alternative Damages. — Allen *v.* Thornapple Electric Co., 144 Mich. 370, 108 N. W. 79.

Decree for Permanent Damages Rather than Decree to Reduce Flowage. — Reason *v.* Peters, 148 Mich. 532, 112 N. W. 117.

Retention of Jurisdiction to Award Damages. — Cobia *v.* Ellis, (Ala. 1906) 42 So. 751; Steber *v.* Chicago, etc., R. Co., (Iowa 1908) 117 N. W. 304.

Prior Establishment of Right at Law Not Necessary. — Cloyes *v.* Middlebury Electric Co., 80 Vt. 109, 66 Atl. 1039.

Laches. — Miller *v.* Belleville Bank, 148 Mich. 339, 111 N. W. 1062.

Estoppel against Equitable Relief. — Henderson Estate Co. *v.* Carroll Electric Co., 113 N. Y. App. Div. 775, 99 N. Y. Supp. 366.

7. Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166, *affirming* 119 Ill. App. 232; Reed *v.* Park Com'rs, 100 Minn. 167, 110 N. W. 1119.

8. Doremus *v.* Paterson, (N. J. 1908) 69 Atl. 225.

378. 1. **Modification of Doctrine under Mill Acts.** — See Barker *v.* French, 102 Me. 407, 67 Atl. 308; Oakland Woolen Co. *v.* Union Gas, etc., Co., 101 Me. 198, 63 Atl. 915. And see generally the title DAMS.

2. Righter *v.* Jersey City Water Supply Co., 73 N. J. L. 298, 63 Atl. 6.

4. Barker *v.* French, 102 Me. 407, 67 Atl. 308, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 378.

9. Gutierrez *v.* Wege, 151 Cal. 587, 91 Pac. 395, *affirming* 145 Cal. 730, 79 Pac. 449; Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Horton *v.* Fulton, (Ga. 1908) 60 S. E. 1059; Howard *v.* Bibb County, 127 Ga. 291, 56 S. E. 418; Tetherington *v.* Dong Bros., etc., Co., 232 Ill. 522, 83 N. E. 1048, *affirming* 128 Ill. App. 256; Bowman *v.* Humphrey, 132 Iowa 234, 109 N. W. 714; New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231; MacNamara *v.* Taft, (Mass. 1908) 83 N. E. 310; Haynor *v.* Excelsior Springs Light, etc., Co., (Mo. App. 1908) 108 S. W. 580; Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; Brown *v.* Gold Coin Min. Co., 48 Oregon 277, 86 Pac. 361, Benjamin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 408.

Immaterial that Pollution Does Not Interfere with Present Use of Stream. — Parker *v.* American Woolen Co., (Mass. 1907) 81 N. E. 468.

Heating of Water by Upper Owner Unlawful. — New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231.

379. 1. Parker *v.* American Woolen Co., (Mass. 1907) 81 N. E. 468; Benjamin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 408; Texas, etc., R. Co. *v.* Moers, (Tex. Civ. App. 1906) 97 S. W. 1064.

380. 2. Haynor *v.* Excelsior Springs Light, etc., Co., (Mo. App. 1908) 108 S. W. 580.

3. **Creamery.** — Bowman *v.* Humphrey, 132 Iowa 234, 109 N. W. 714.

4. Horton *v.* Fulton, (Ga. 1908) 60 S. E. 1059.

5. Tutwiler Coal, etc., Co. *v.* Wheeler, (Ala. 1907) 43 So. 15; H. B. Bowling Coal Co. *v.* Ruffner, 117 Tenn. 180, 100 S. W. 116; Day *v.* Louisville Coal, etc., Co., 60 W. Va. 31, 53 S. E. 776, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 380.

Oil, Salt, and Other Refuse from Oil Wells. — Teel *v.* Rio Bravo Oil Co., (Tex. Civ. App. 1907) 104 S. W. 420.

8. Platt *v.* Waterbury, (Conn. 1907) 67 Atl. 508; Gorham *v.* New Haven, 79 Conn. 670, 66 Atl. 505; Vogt *v.* Grinnell, 133 Iowa 363, 110 N. W. 603, holding that the defendant was liable regardless of its exercise of care or of the plaintiff's negligence; Doremus *v.* Paterson, (N. J. 1908) 69 Atl. 225; Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; Markwardt *v.* Guthrie, 18 Okla. 32, 90 Pac. 26.

Construction of Statutes as to Pollution. — Board of Health *v.* Vineland, (N. J. 1906) 65 Atl. 174.

381. 3. Tutwiler Coal, etc., Co. *v.* Wheeler, (Ala. 1907) 43 So. 15; Sutter County *v.* Nicols, (Cal. 1908) 93 Pac. 873; Gorham *v.* New Haven, 79 Conn. 670, 66 Atl. 505; Horton *v.* Fulton, (Ga. 1908) 60 S. E. 1059; Hill *v.* Standard Min. Co., 12 Idaho 223, 85 Pac. 907; Tetherington *v.* Donk Bros. Coal, etc., Co., 232 Ill. 522, 83 N. E. 1048, *affirming* 128 Ill. App. 256; Texas, etc., R. Co. *v.* Moers, (Tex. Civ. App. 1906) 97 S. W. 1064. See also Muncie Pulp Co. *v.* Keesling, 166 Ind. 479, 76 N. E. 1002.

Proof of Special Damage Unnecessary. — Platt *v.* Waterbury, (Conn. 1907) 67 Atl. 508.

4. Parker *v.* American Woolen Co., (Mass. 1907) 81 N. E. 468; Day *v.* Louisville Coal, etc., Co., 60 W. Va. 31, 53 S. E. 776.

And One Who Diverts a Stream, the water of which is polluted, cannot escape liability on the ground that the pollution was by another. Illinois Cent. R. Co. *v.* Taylor, (Ky. 1905) 89 S. W. 121.

382. 2. Bowman *v.* Humphrey, 132 Iowa 234, 109 N. W. 714, 715; Vogt *v.* Grinnell, 133 Iowa 363, 110 N. W. 603; Heaton *v.* Chester, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 725.

3. George *v.* Chester, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 722.

6. McNamara *v.* Taft, (Mass. 1908) 83 N. E. 310; Parker *v.* American Woolen Co., (Mass. 1907) 81 N. E. 468; Tetherington *v.* Donk Bros. Coal, etc., Co., 232 Ill. 522, 83 N. E. 1048, *affirming* 128 Ill. App. 256; Dunham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; Griffin *v.* National Light, etc., Co., (S. Car. 1908) 60 S. E. 702. See also Haynor *v.* Excelsior Springs Light, etc., Co., (Mo. App. 1908) 108 S. W. 580.

Right Cannot Be Taken from Riparian Owner Without Due Compensation. — Heaton *v.* Chester, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 725; George *v.* Chester, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 722.

7. MacNamara *v.* Taft, (Mass. 1908) 83 N. E. 310; George *v.* Chester, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 722; Heaton *v.* Chester, (Supm. Ct. Spec. T.) 111 N. Y. Supp. 725.

383. 1. Doremus *v.* Paterson, (N. J. 1908) 69 Atl. 225, holding, however, that a city is responsible for artificially diverting the street wash into a watercourse.

5. MacNamara *v.* Taft, (Mass. 1908) 83 N. E. 310; Griffin *v.* National Light, etc., Co., (S. Car. 1908) 60 S. E. 702.

7. Morris Canal, etc., Co. *v.* Diamond Mills Paper Co., (N. J. 1906) 64 Atl. 746.

10. Doremus *v.* Paterson, (N. J. 1908) 69 Atl. 225.

384. 2. **A Statute Allowing a City to Construct a Sewage System** does not give the city the right to discharge sewage into a running stream. Vogt *v.* Grinnell, 133 Iowa 363, 110 N. W. 603.

5. Tutwiler Coal, etc., Co. *v.* Wheeler, (Ala. 1907) 43 So. 15; New England Cotton Yarn Co. *v.* Laurel Lake Mills, 190 Mass. 48, 76 N. E. 231.

6. Tutwiler Coal, etc., Co. *v.* Wheeler, (Ala. 1907) 43 So. 15; Vogt *v.* Grinnell, 133 Iowa 363, 110 N. E. 603; Haynor *v.* Excelsior Springs Light, etc., Co., (Mo. App. 1908) 108 S. W. 580; Mansfield *v.* Bristor, 81 Ohio St. 270, 81 N. E. 631; Markwardt *v.* Guthrie, 18 Okla. 32, 90 Pac. 26; Griffin *v.* National Light, etc., Co., (S. Car. 1908) 60 S. E. 702; H. B. Bowling Coal Co. *v.* Ruffner, 117 Tenn. 180, 100 S. W. 116; Benjamin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 408; Texas, etc., R. Co. *v.* Moers, (Tex. Civ. App. 1906) 97 S. W. 1064.

Negligence Immaterial. — Haynor *v.* Excelsior Springs Light, etc., Co., (Mo. App. 1908) 108 S. W. 580.

Limitation of Actions. — Platt *v.* Waterbury, (Conn. 1907) 67 Atl. 508; Vogt *v.* Grinnell, 133 Iowa 363, 110 N. W. 603; Virginia Hot Springs Co. *v.* McCray, 106 Va. 461, 56 S. E. 216; Virginia Hot Springs Co. *v.* Grose, 106 Va. 476, 56 S. E. 222; Day *v.* Louisville Coal, etc., Co., 60 W. Va. 31, 53 S. E. 776.

Measure of Damages. — Gorham *v.* New Haven, 79 Conn. 670, 66 Atl. 505; Muncie Pulp Co. *v.* Keesling, 166 Ind. 479, 76 N. E. 1002; Doremus *v.* Paterson, (N. J. 1908) 69 Atl. 225; Benjamin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 408; Virginia Hot Springs Co. *v.* McCray, 106 Va. 461, 56 S. E. 216; Virginia Hot Springs Co. *v.* Grose, 106 Va. 476, 56 S. E. 222.

Duty to Take Steps to Avoid Injury. — Benjamin *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 408.

Evidence Admissible on Question of Punitive Damages. — Gorham *v.* New Haven, 79 Conn. 670, 66 Atl. 505.

Where Several Persons Are Guilty of Pollution, without common design or concert of action, each is liable only for his proportion of damages. Mansfield *v.* Bristor, 81 Ohio St. 270, 81 N. E. 631.

Continued Nuisance. — Pollution by chemicals cast from a paper mill into the stream is a continued nuisance rather than a permanent injury to the premises. See Muncie Pulp Co. *v.* Keesling, 166 Ind. 479, 76 N. E. 1002.

385. 1. Sutter County *v.* Nicols, (Cal. 1908) 93 Pac. 873; Gutierrez *v.* Wege, 151 Cal. 587, 91 Pac. 395, *affirming* 145 Cal. 730, 79 Pac. 449; Horton *v.* Fulton, (Ga. 1908) 60 S. E. 1059; MacNamara *v.* Taft, (Mass. 1908) 83 N. E. 310; Parker *v.* American Woolen Co., (Mass. 1907) 81 N. E. 468; Warren *v.* Parkhurst, 186 N. Y. 45, 78 N. E. 1118, *affirming* 105 N. Y. App. Div. 239, 93 N. Y. Supp. 1009; Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; Brown *v.* Gold Coin Min. Co., 48 Oregon 277, 86 Pac. 361; Teel *v.* Rio Bravo Oil Co., (Tex. Civ. App. 1907) 104 S. W. 420.

Preliminary Injunction. — Durham *v.* Eno Cotton Mills, 141 N. Car. 615, 54 S. E. 453; Roaring Creek Water Co. *v.* Anthracite Coal Co., 212 Pa. St. 115, 61 Atl. 811.

Injunction against City unless Compensation Made. — Doremus *v.* Paterson, (N. J. 1908) 69 Atl. 225.

A Diversion of Stream Containing Sewage so as to bring it nearer to the plaintiff's premises may be enjoined. Desberger *v.* University Heights Realty, etc., Co., 126 Mo. App. 206, 102 S. W. 1069.

386. 2. Tutwiler Coal, etc., Co. *v.* Wheeler, (Ala. 1907) 43 So. 15.

3. Teel *v.* Rio Bravo Oil Co., (Tex. Civ. App. 1907) 104 S. W. 420.

387. 1. Priest *v.* Maxwell, 127 Iowa 744, 104 N. W. 344; O'Connor *v.* Hogan, 140 Mich. 613, 104 N. W. 29; Brinegar *v.* Copass, (Neb. 1906) 109 N. W. 173; Clark *v.* Patapsco Guano Co., 144 N. Car. 64, 56 S. E. 858.

4. Priest *v.* Maxwell, 127 Iowa 744, 104 N. W. 344; Wills *v.* Babb, 222 Ill. 95, 78 N. E. 42; O'Connor *v.* Hogan, 140 Mich. 613, 104 N. W. 29.

388. 1. Chicago, etc., R. Co. *v.* Reuter, 223 Ill. 387, 79 N. E. 166, *affirming* 119 Ill. App. 232, and *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 688 [388].

6. Williams *v.* Altnow, (Oregon 1908) 95 Pac. 200.

389. 4. Boquillas Land, etc., Co. *v.* Curtis, (Ariz. 1907) 89 Pac. 504; Los Angeles *v.* Los Angeles Farming, etc., Co., (Cal. 1908) 93 Pac. 869, *rehearing denied* (Cal. 1908) 93 Pac. 1135; Driskill *v.* Rebbe, (S. Dak. 1908) 117 N. W. 135.

390. 1. Boquillas Land, etc., Co. *v.* Curtis, (Ariz. 1907) 89 Pac. 504; Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Hough *v.* Porter, (Oregon 1908) 95 Pac. 732; Santa Rosa Irrigation Co. *v.* Pecos River Irrigation Co., (Tex. Civ. App. 1906) 92 S. W. 1014; State *v.* Superior Ct., (Wash. 1907) [illegible]

Water on an Indian Reservation may be held by the federal government free from appropriation under state laws. Conrad Invest. Co. *v.* U. S., (C. C. A.) 161 Fed. 829, *affirming* [illegible]

3. Ft. Lyon Canal Co. *v.* Chew, 33 Colo. 392, [illegible]

391. 2. See Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120.

3. Farmers' Co-operative Ditch Co. *v.* Riverside Irrigation Dist., (Idaho 1908) 94 Pac. 761; Farmers' Co-operative Ditch Co. *v.* Riverside Irrigation Dist., (Idaho 1908) 94 Pac. 764; Farmers' Co-operative Ditch Co. *v.* Riverside Irrigation Dist., (Idaho 1908) 94 Pac. 765.

4. **Appropriation for Sale Not Allowed.** — Wutchumna Water Co. *v.* Pouge, 151 Cal. 105, 90 Pac. 362; Montecito Valley Water Co. *v.* Santa Barbara, 151 Cal. 377, 90 Pac. 935.

Appropriation for Sale by Corporation Allowed. — Farmers' Co-operative Ditch Co. *v.* Riverside Irrigation Dist., (Idaho 1908) 94 Pac. 761; Farmers' Co-operative Ditch Co. *v.* Riverside Irrigation Dist., (Idaho 1908) 94 Pac. 764; Farmers' Co-operative Ditch Co. *v.* Riverside Irrigation Dist., (Idaho 1908) 94 Pac. 765.

5. **Appropriation for Domestic Purposes — Locus of Use Immaterial.** — Sterling *v.* Pawnee Ditch Extension Co., (Colo. 1908) 94 Pac. 339.

Foreign State May Not Appropriate Without Consent. — McCarter *v.* Hudson County Water Co., 70 N. J. Eq. 695, 65 Atl. 489.

6. **Riparian Owner May Elect between Riparian Rights and Appropriation.** — Williams *v.* Altnow, (Oregon 1908) 95 Pac. 209.

7. **A Lessee** of land who had purchased an alleged water right from a trespasser upon the land was allotted a portion of the flow of a stream. Seaweard *v.* Pacific Live Stock Co., (Oregon 1907) 88 Pac. 963.

10. **A Stream that Does Not Reach the Sea,** but terminates in a swamp or lake without an outlet, is subject to appropriation. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 342.

Waters from Mines Subject to Appropriation. — Ripley *v.* Park Center Land, etc., Co., (Colo. 1907) 90 Pac. 75.

Waters of Artesian Wells on Public Lands. — Wolfskill *v.* Smith, (Cal. App. 1907) 89 Pac. 1001.

392. 2. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338. See also Burkart *v.* Meiberg, 37 Colo. 187, 86 Pac. 98.

3. Pomona Land, etc., Co. *v.* San Antonio Water Co., (Cal. 1908) 93 Pac. 881.

4. **Bog Water** out of or into which no stream flows cannot be appropriated under the statute. Dickey *v.* Maddux, (Wash. 1908) 93 Pac. 1090.

The Water Which Finds Its Way through the Bed of a Stream is part of the stream and can be appropriated. Petterson *v.* Payne, (Colo. 1908) 95 Pac. 301.

5. Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120; Conley *v.* Dwyer, (Colo. 1908) 95 Pac. 304; Ft. Lyon Canal Co. *v.* Chew, 33 Colo. 392; Court House Rock Irrigation Co. *v.* Willard, 75 Neb. 408, 106 N. W. 463; Mann *v.* Parker, 48 Oregon 321, 86 Pac. 598.

7. **Necessity of Actual Application.** — Conley *v.* Dyer, (Colo. 1908) 95 Pac. 304; Woods *v.* Sargent, (Colo. 1908) 95 Pac. 932; Sterling *v.* Pawnee Ditch Extension Co., (Colo. 1908) 94 Pac. 339. See also Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

393. 1. **Sufficiency of Notice.** — Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

5. Lower Tule River Ditch Co. *v.* Ankiola Water Co., 149 Cal. 496, 86 Pac. 1081.

8. Wutchumna Water Co. *v.* Pogue, 151 Cal. 105, 90 Pac. 362.

13. Farmers' High Line Canal, etc., Co. *v.* New Hampshire Real Estate Co., (Colo. 1907) 92 Pac. 290; F. S. Royster Guano Co. *v.* Fowler, 75 S. Car. 434, 56 S. E. 11.

14. Bashore *v.* Mooney, 4 Cal. App. 276, 87 Pac. 553; Smith *v.* Hampshire, 4 Cal. App. 8, 87 Pac. 224 (where the prescriptive right was limited to a given quantity of water, and the servient owner was allowed to use the ditch for conveying more water for himself); Higuera *v.* Del Ponte, 4 Cal. App. xiii, 88 Pac. 808; Tew *v.* Powar, 37 Colo. 292, 86 Pac. 342; McEwen *v.* Preece, 45 Wash. 612, 88 Pac. 1031; Nesalhous *v.* Walker, 45 Wash. 621, 88 Pac. 1032.

Easement Acquired Across Highway. — Colegrove Water Co. *v.* Hollywood, 151 Cal. 425, 90 Pac. 1053.

394. 2. Wutchumna Water Co. *v.* Pogue, 151 Cal. 105, 90 Pac. 362.

7. Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120; Gutierrez *v.* Wege, 151 Cal. 587, 91 Pac. 395, *affirming* 145 Cal. 730, 79 Pac. 449; Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Woods *v.* Sargent, (Colo. 1908) 95 Pac. 932; Tubbs *v.* Roberts, (Colo. 1907) 92 Pac. 220; Berry *v.* Equitable Gold Min. Co., (Nev. 1907) 91 Pac. 537.

As Appurtenant to Appropriation there is no right to use the stream for power to aid in diverting the water. Schodde *v.* Twin Falls Land, etc., Co., (C. C. A.) 161 Fed. 43.

8. Seven Lakes Reservoir Co. *v.* New Loveland, etc., Irrigation, etc., Co., (Colo. 1907) 93 Pac. 485; Seaweard *v.* Pacific Live Stock Co., (Oregon 1907) 88 Pac. 963; Nephi Irrigation Co. *v.* Vickers, 29 Utah 315, 81 Pac. 144.

9. Baer Bros. Land, etc., Co. *v.* Wilson, 38 Colo. 101, 88 Pac. 265; Hallett *v.* Carpenter, 37 Colo. 30, 86 Pac. 317; Williams *v.* Altnow, (Oregon 1908) 95 Pac. 200.

Change in Point of Diversion by Statutory Proceeding. — New Cache La Poudre Irrigating Co. *v.* Arthur Irrigation Co., 37 Colo. 530, 87 Pac. 799; Ashenfelter *v.* Carpenter, 37 Colo. 534, 87 Pac. 800; Gutshall *v.* Carpenter, 37 Colo. 536, 87 Pac. 801; Crippen *v.* Glasgow, 38 Colo. 104, 87 Pac. 1073.

395. 2. Baer Bros., etc., Co. *v.* Wilson, 38 Colo. 101, 88 Pac. 265.

That the Water Is to Be Applied to a Larger Acreage does not necessarily show that more water is to be diverted at the new point. Fulton Irrigation Ditch Co. *v.* Meadow Island Irrigation Co., 35 Colo. 588, 86 Pac. 748.

396. 2. Sterling *v.* Pawnee Ditch Extension Co., (Colo. 1908) 94 Pac. 339; Van Camp *v.* Emery, 13 Idaho 202, 89 Pac. 752; Van Camp *v.* Breyer, 13 Idaho 209, 89 Pac. 754; Court House Rock Irrigation Co. *v.* Willard, 75 Neb. 408, 106 N. W. 463; Gardner *v.* Wright,

(Oregon 1907) 91 Pac. 286; Mann *v.* Parker, 48 Oregon 321, 86 Pac. 598.

Loan to Junior Appropriator — Burden on Senior to Show Justification. — Ft. Lyon Canal Co. *v.* Chew, 33 Colo. 392, 81 Pac. 41.

3. Wutchumna Water Co. *v.* Pogue, 151 Cal. 105, 90 Pac. 362. See also Ketchikan Co. *v.* Citizens' Co., 2 Alaska 120.

In a State Which Recognizes the Common-law Doctrine of Riparian Rights the doctrine of prior appropriation may exist. Clark *v.* Allaman, 71 Kan. 206, 80 Pac. 571; Williams *v.* Altnow, (Oregon 1908) 95 Pac. 200.

4. Wellington *v.* Beck, (Colo. 1908) 95 Pac. 297; Van Camp *v.* Emery, 13 Idaho 202, 89 Pac. 752; Van Camp *v.* Breyer, 13 Idaho 209, 89 Pac. 754.

5. Conley *v.* Dyer, (Colo. 1908) 95 Pac. 304; Wright *v.* Cruse, (Mont. 1908) 95 Pac. 370; Ripley *v.* Park Center Land, etc., Co., (Colo. 1907) 90 Pac. 75; Seaweard *v.* Pacific Live Stock Co., (Oregon 1907) 88 Pac. 963.

6. Seaweard *v.* Pacific Live Stock Co., (Oregon 1907) 88 Pac. 963.

397. 3. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 343; Nielson *v.* Sponer, 46 Wash. 14, 89 Pac. 154 (holding that a statute attempting to take away riparian rights without compensation is unconstitutional); Nesalhous *v.* Walker, 45 Wash. 621, 88 Pac. 1032.

4. Nesalhous *v.* Walker, 45 Wash. 621, 88 Pac. 1032.

5. Nesalhous *v.* Walker, 45 Wash. 621, 88 Pac. 1032.

7. See Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

8. Wolfskill *v.* Smith, (Cal. App. 1907) 89 Pac. 1001.

Filing Copy of Notice for Record. — Wolfskill *v.* Smith, (Cal. App. 1907) 89 Pac. 1001.

9. Wolfskill *v.* Smith, (Cal. App. 1907) 89 Pac. 1001.

10. Lower Tule River Ditch Co. *v.* Angiola Water Co., 149 Cal. 496, 86 Pac. 1081.

11. Rogers *v.* Overacker, 4 Cal. App. 333, 87 Pac. 1107; Alamosa Creek Canal Co. *v.* Nelson, (Colo. 1908) 93 Pac. 1112; Fornwald *v.* Nelson, (Colo. 1908) 93 Pac. 1115 (holding that mere non-user for a period short of the statute of limitation is insufficient); Boulder, etc., Ditch Co. *v.* Leggett Ditch, etc., Co., 36 Colo. 455, 88 Pac. 101; Watts *v.* Spencer, (Oregon 1908) 94 Pac. 39; Edgemont Imp. Co. *v.* N. S. Tubbs Sheep Co., (S. Dak. 1908) 115 N. W. 1130.

Appropriation for Use on Other than Riparian Land depends, under the *California* statute, upon use, and ceases upon disuse. Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338.

398. 1. Alamosa Creek Canal Co. *v.* Nelson, (Colo. 1908) 93 Pac. 1112; Fornwald *v.* Nelson, (Colo. 1908) 93 Pac. 1115.

2. **Grantees of an Inchoate Right** to take water who do not complete their right for many years will be deemed to have abandoned their right. Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286.

6. Gardner *v.* Wright, (Oregon 1907) 91 Pac. 286.

8. Seven Lakes Reservoir Co. *v.* New Loveland, etc., Irrigation, etc., Co., (Colo. 1907) 93 Pac. 485; Cooper *v.* Shannon, 36 Colo. 98, 85 Pac. 175; Rianda *v.* Watsonville Water, etc., Co., (Cal. 1907) 93 Pac. 79; Pomona Land, etc., Co. *v.* San Antonio Water Co., (Cal. 1908) 93 Pac. 881; Union Water Power Co. *v.* Libbey, 102 Me. 439, 67 Atl. 357; Union Water Power Co. *v.* Lewiston, 101 Me. 564, 65 Atl. 67; Berry *v.* Hutchins, 73 N. H. 310, 61 Atl. 550; Crane *v.* McMurtrie, (N. J. 1908) 68 Atl. 892; Norfolk, etc., R. Co. *v.* Obenshain, 107 Va. 596, 59 S. E. 604.

399. 1. Oakland Woolen Co. *v.* Union Gas, etc., Co., 101 Me. 198, 63 Atl. 915.

Division of Water Rights by Agreement. — Bree *v.* Wheeler, 4 Cal. App. 109, 87 Pac. 255.

3. Ft. Lyon Canal Co. *v.* Chew, 33 Colo. 392, 81 Pac. 37.

4. Bashore *v.* Mooney, 4 Cal. App. 276, 87 Pac. 553; Rogers *v.* Overacker, 4 Cal. App. 333, 87 Pac. 1107; Alamosa Creek Canal Co. *v.* Nelson, (Colo. 1908) 93 Pac. 1112; Fornwald *v.* Nelson, (Colo. 1908) 93 Pac. 1115; Florence Oil, etc., Co. *v.* McRae, (Colo. 1907) 90 Pac. 507; Fuller *v.* Sharp, (Utah 1908) 94 Pac. 813; Norfolk, etc., R. Co. *v.* Obenshain, 107 Va. 596, 59 S. E. 604; Desmond *v.* Sander, 46 Wash. 58, 89 Pac. 179. See also Conrad Invest. Co. *v.* U. S., (C. C. A.) 161 Fed. 829, *affirming* 156 Fed. 123.

Mandatory Injunction. — Montecito Valley Water Co. *v.* Santa Barbara, 151 Cal. 377, 90 Pac. 935.

Adequate Remedy by Damages — Injunction Refused. — Mann *v.* Parker, 48 Oregon 321, 86 Pac. 598.

5. Los Angeles *v.* Los Angeles Farming, etc., Co., (Cal. 1908) 93 Pac. 869; Gutierrez *v.* Wege, 151 Cal. 587, 91 Pac. 395, *affirming* 145 Cal. 730, 79 Pac. 449; Hartson *v.* Dill, 151 Cal. 137, 90 Pac. 530; Duckworth *v.* Watsonville Water, etc., Co., 150 Cal. 520, 89 Pac. 338; Kimball *v.* Northern Colorado Irrigation Co., (Colo. 1908) 94 Pac. 333; Sterling *v.* Pawnee Ditch Extension Co., (Colo. 1908) 94 Pac. 339; Cooper *v.* Shannon, 36 Colo. 98, 85 Pac. 175; Frost *v.* Alturas Water Co., 11 Idaho 294, 81 Pac. 996; Nephi Irrigation Co. *v.* Vickers, 29 Utah 315, 81 Pac. 144; Schmidt *v.* Olympia Light, etc., Co., (Wash. 1907) 90 Pac. 212; Nesalhous *v.* Walker, 45 Wash. 621, 88 Pac. 1032.

400. 1. **Where Riparian Rights Are Recognized** a riparian proprietor can enjoin a wrongful diversion, although more than enough flow for his needs remains in the stream. Anaheim Union Water Co. *v.* Fuller, 150 Cal. 327, 88 Pac. 978.

WATERWORKS AND WATER COMPANIES.

403. 2. **Water Companies Quasi-public Corporation.** — South Pasadena *v.* Pasadena Lands, etc., Co., (Cal. 1908) 93 Pac. 490; Freeman *v.* Macon Gas Light, etc., Co., 126 Ga. 843, 56 S. E. 61; Washington *v.* Washington Water Co., 70 N. J. Eq. 254, 62 Atl. 390; Sammons *v.* Kearney Power, etc., Co., (Neb. 1906) 110 N. W. 308.

4. Gadsden *v.* Mitchell, 145 Ala. 137, 40 So. 555.

5. **State Alone Has Authority.** — Washburn

Waterworks Co. *v.* Washburn, 129 Wis. 73, 108 N. W. 194.

405. 2. **A Water Supply Company May Lease Its Property** to another company where they are both organized under the same act for the same purposes. Moore *v.* Chartiers Valley Water Co., 216 Pa. St. 457, 65 Atl. 9[illegible].

406. 4. Water, etc., Co. *v.* Hutchinson, 144 Fed. 256.

6. Water, etc., Co. *v.* Hutchinson, 144 Fed. 256.

408. 3. **Interests in Water Subject to Law of Eminent Domain.** — Clear Creek Water Co. *v.* Gladeville Imp. Co., 107 Va. 278, 58 S. E. 586.

412. 3. **Rights Not Implied.** — There is no implied right that the municipality granting the franchise will do nothing to impair or destroy the value thereof or that it will not enter into competition with the grantee. Phœnix Water Co. *v.* Phœnix, 9 Ariz. 430, 84 Pac. 1095.

415. 1. Hastings Water Co. *v.* Hastings, 216 Pa. St. 178, 65 Atl. 403; Meridan *v.* Farmers' L. & T. Co., (C. C. A.) 143 Fed. 67, 6 Ann. Cas. 599; Tillamook Water Co. *v.* Tillamook City, (C. C. A.) 150 Fed. 117, *affirming* 139 Fed. 405.

City May Purchase Waterworks. — Eau Claire Water Co. *v.* Eau Claire, (Wis. 1907) 112 N. W. 458.

5. Brummitt *v.* Ogden Waterworks Co., (Utah 1908) 93 Pac. 828.

416. 1. Freeman *v.* Macon Gas Light, etc., Co., 126 Ga. 843, 56 S. E. 61.

419. 1. Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136; State *v.* Everett Water Co., 38 Wash. 609, 80 Pac. 794.

6. Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136.

420. 2. **Cannot Cut Off Water Supply for Indebtedness of Former Owner.** — McDowell *v.* Avon-by-the-Sea Land, etc., Co., (N. J. 1906) 63 Atl. 13.

3. Covington *v.* Ratterman, (Ky. 1908) 108 S. W. 297; Cox *v.* Cynthiana, (Ky. 1906) 96 S. W. 456; Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136; Howe *v.* Orange, 70 N. J. Eq. 648, 62 Atl. 777.

421. 1. **Water Company Has Right to Install Meters and Charge Reasonable Meter Rate.** — Public Works Co. *v.* Old Town, 102 Me. 306, 66 Atl. 723.

5. In case of unnecessary waste, a water company may apply a meter and charge reasonable meter rates. Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136.

422. 1. Gordon *v.* Doran, 100 Minn. 343, 111 N. W. 272; McDowell *v.* Avon-by-the-Sea Land, etc., Co., (N. J. 1906) 63 Atl. 13.

2. Jolly *v.* Monaca, 216 Pa. St. 345, 65 Atl. 809, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422; Grafton *v.* Holt, 58 W. Va. 182, 52 S. E. 21, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422.

3. Jolly *v.* Monaca, 216 Pa. St. 345, 65 Atl. 809, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 422; East Grand Forks *v.* Luck, 97 Minn. 373, 107 N. W. 393.

A Contract to Supply Water for Domestic Purposes Does Not Include Water for Lawn Sprinkling, and the water company may recover extra compensation notwithstanding a contract for specific rate for domestic purposes. Ward *v.* Birmingham Waterworks Co., (Ala. 1907) 44 So. 570.

6. Chicago *v.* Northwestern Mut. L. Ins. Co., 218 Ill. 40, 75 N. E. 803.

423. 1. Under a statute making the lien for water depend on its use, a lien imposed where no water was contracted for or furnished is illegal. Hoboken Manufacturers' R. Co. *v.* Hoboken, (N. J. 1908) 68 Atl. 1098.

2. Lackey *v.* Fayetteville Water Co., 80 Ark. 108, 96 S. W. 622; Woodruff *v.* East Orange, (N. J. 1906) 64 Atl. 466; Brummitt *v.* Ogden Waterworks Co., (Utah 1908) 93 Pac. 828.

424. 7. Vicksburg *v.* Vicksburg Waterworks Co., 206 U. S. 496, 27 U. S. Sup. Ct. 762.

425. 1. East Grand Forks *v.* Luck, 97 Minn. 373, 107 N. W. 393; Leechburg *v.* Leechburg Waterworks Co., (Pa. 1908) 68 Atl. 669; Jolly *v.* Monaca, 216 Pa. St. 345, 65 Atl. 809.

A Provision that Rates Must Be Reasonable Is Regarded as Part of the Franchise. — Mt. Vernon *v.* New York Interurban Water Co., 115 N. Y. App. Div. 658, 101 N. Y. Supp. 232.

426. 2. **Right to Supply Water Vested in Corporation Is in Nature of Franchise Belonging to State Itself.** — Mt. Vernon *v.* New York Interurban Water Co., 115 N. Y. App. Div. 658, 101 N. Y. Supp. 232.

3. Gordon *v.* Doran, 100 Minn. 343, 111 N. W. 272.

A Water Company Must Perform Its Obligation to Supply Water to a Community even though it obtains its supply from a source not originally agreed upon. People *v.* New Rochelle Water Co., 119 N. Y. App. Div. 472, 104 N. Y. Supp. 92.

5. South Pasadena *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 490; Orcutt *v.* Pasadena Land, etc., Co., (Cal. 1908) 93 Pac. 497; Independent School Dist. *v.* Le Mars City Water, etc., Co., 131 Iowa 14, 107 N. W. 944; Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 63 Atl. 136.

Injunction. — McDowell *v.* Avon-by the-Sea Land, etc., Co., (N. J. 1906) 63 Atl. 13.

6. Gordon *v.* Doran, 100 Minn. 343, 111 N. W. 272, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 426; Sammons *v.* Kearney Power, etc., Co., (Neb. 1906) 110 N. W. 308.

427. 4. Birmingham *v.* Birmingham Waterworks Co., (Ala. 1906) 42 So. 10; Chicago *v.* Chicago University, 228 Ill. 605, 81 N. E. 1138; Robbins *v.* Bangor R., etc., Co., 100 Me. 496, 62 Atl. 136; Long Branch Commission *v.* Tintern Manor Water Co., 70 N. J. Eq. 71, 62 Atl. 474; Woodruff *v.* East Orange, (N. J. 1906) 64 Atl. 466.

428. 5. Ettlinger *v.* New York, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 229, 109 N. Y. Supp. 44.

429. 1. Morgan *v.* Duquesne, 29 Pa. Super. Ct. 100.

3. Schwindt *v.* Lehigh Water Co., 33 Pa. Super. Ct. 23.

Want of Ordinary Care Must Be Established. — Paris *v.* Tucker, (Tex. Civ. App. 1906) 93 S. W. 233.

430. 3. Lovejoy *v.* Bessemer Waterworks Co., 146 Ala. 374, 41 So. 76; Peck *v.* Sterling Water Co., 118 Ill. App. 533; Independent School Dist. *v.* Le Mars City Water, etc., Co., 131 Iowa 14, 107 N. W. 944; Metz *v.* Cape Girardeau Waterworks, etc., Co., 202 Mo. 324, 100 S. W. 651; Thompson *v.* Springfield Water Co., 215 Pa. St. 275, 64 Atl. 521. *Contra,* Mugge *v.* Tampa Waterworks Co., 52 Fla. 371, 42 So. 81; Shelbyville Water, etc., Co. *v.* McDade, 122 Ky. 639, 92 S. W. 568.

432. 3. Harris *v.* Columbia Water, etc., Co., 114 Tenn. 328, 85 S. W. 897.

435. 3. An obligation imposed upon a water company to furnish water free of charge to the city for fire purposes did not extend to a private corporation maintaining a system of its own. Cox *v.* Abbeville Furniture Factory, 75 S. Car. 48, 54 S. E. 830.

436. 1. **For the Construction of Particular Contracts,** see Galena Water Co. *v.* Galena, 74 Kan. 644, 87 Pac. 735; Revere Water Co. *v.* Winthrop, 192 Mass. 455, 78 N. E. 497.

3. Galena Water Co. *v.* Galena, 74 Kan. 644, 87 Pac. 735; Livermore *v.* Millville, (N. J. 1907) 67 Atl. 605.

438. 3. **Rule Not Applicable to Country Highways.** — Baltimore County Water, etc., Co. *v.* Dubreuil, 105 Md. 424, 66 Atl. 439, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 438.

Water Company May Lay Pipes in Public Highway Without Being Obligated to Make Compensation. — Jayne *v.* Cortland Waterworks Co., 107 N. Y. App. Div. 517, 95 N. Y. Supp. 227.

5. Baltimore County Water, etc., Co. *v.* Baltimore County, 105 Md. 154, 66 Atl. 34, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 438.

7. Baltimore County Water, etc., Co. *v.* Baltimore County, 105 Md. 154, 66 Atl. 34, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 438; Beaver Valley Water Co. *v.* Conway, 213 Pa. St. 225, 62 Atl. 844.

Compensation Must Be Made to the Owner of the Fee of the Highway, the road not being an urban street. Richards *v.* Citizens' Water Supply Co., (Supm. Ct. Spec. T.) 104 N. Y. Supp. 927.

439. 5. Scranton Gas, etc., Co. *v.* Scranton, 14 Pa. Dist. 703, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 439.

Water Company Placing Pipes in Street Does So in Subordination to Superior Rights of Public. —Anderson *v.* Fuller, 51 Fla. 380, 41 So. 684.

6. Bothwell *v.* Consumers' Co., 13 Idaho 568, 92 Pac. 533.

WEARING APPAREL.

445. 2. **Pearl Chain Wearing Apparel — Revenue Law.** — U. S. *v.* One Pearl Chain, (C. C. A.) 139 Fed. 513.

Garters Wearing Apparel — Revenue Law. — U. S. *v.* Steinhardt, 141 Fed. 494.

Jewelry Not Wearing Apparel — Legacy. — Dox's Estate, 30 Pa. Super. Ct. 393.

WEIGHTS AND MEASURES.

451. 3. McLean *v.* State, 81 Ark. 304, 98 S. W. 729.

452. 1. **Contra.** — McLean *v.* State, 81 Ark. 304, 98 S. W. 729.

2. New York *v.* Marco, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 225, 109 N. Y. Supp. 58, *affirming* (Supm. Ct. App. T.) 107 N. Y. Supp. 100.

455. 2. See New York *v.* Marco, (Supm. Ct. App. T.) 58 Misc. (N. Y.) 225, 109 N. Y. Supp. 58, *affirming* (Supm. Ct. App. T.) 107 N. Y. Supp. 100.

459. 1. See State *v.* Goffee, 192 Mo. 670, 91 S. W. 486.

3. **Remedy against Private Weighing.** — See Gray *v.* Eleazer, (Tex. Civ. App. 1906) 94 S. W. 911, where, however, the plaintiff's petition was held to be bad on demurrer.

460. 7. **Sale of Poultry.** — District of Columbia *v.* Gant, 28 App. Cas. (D. C.) 185.

WHARVES AND WHARFINGERS.

472. 1. Weems Steamboat Co. *v.* People's Steamboat Co., 141 Fed. 454.

4. Louisville, etc., R. Co. *v.* West Coast Naval Stores Co., 198 U. S. 483, 25 U. S. Sup. Ct. 745; Weems Steamboat Co. *v.* People's Steamboat Co., 141 Fed. 454.

5. Louisville, etc., R. Co. *v.* West Coast Naval Stores Co., 198 U. S. 483, 25 U. S. Sup. Ct. 745; Weems Steamboat Co. *v.* People's Steamboat Co., 141 Fed. 454.

473. 2. **A Wharf Owned by a Railroad** has been held not subject to public use to such an extent that a competing road has a right to use it. Louisville, etc., R. Co. *v.* West Coast Naval Stores Co., 198 U. S. 483, 25 U. S. Sup. Ct. 745.

But in Weems Steamboat Co. *v.* People's Steamboat Co., 141 Fed. 454, *affirmed* (C. C. A.) 152 Fed. 1022, a steamboat company which owned or leased wharves on a river bank and permitted their use by the public generally was held not to be entitled to an injunction against their use by a rival company.

474. 6. **Wharves Extending Beyond the Literal Bounds of a City** are taxable under the doctrine of accretion. Western Maryland Tidewater R. Co. *v.* Baltimore, (Md. 1907) 68 Atl. 6.

7. Brookhaven *v.* Smith, 188 N. Y. 74, 80 N. E. 665.

The Owner of Shore Lands had at common law no right to wharf out. Western Pac. R. Co. *v.* Southern Pac. Co., (C. C. A.) 151 Fed. 376.

475. 1. Brookhaven *v.* Smith, 188 N. Y. 74, 80 N. E. 665.

4. Western Pac. R. Co. *v.* Southern Pac. Co., (C. C. A.) 151 Fed. 376.

5. Mobile Transp. Co. *v.* Mobile, (Ala. 1907) 44 So. 976; Whitmore *v.* Brown, 102 Me. 47, 65 Atl. 516; Brookhaven *v.* Smith, 188 N. Y. 74, 80 N. E. 665; Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 497.

The Line of a Wharf Should Be at Right Angles to the Shore Line even when it is in extension of a street. Lane *v.* Smith, (Conn. 1907) 67 Atl. 558.

176. 1. **In New York the Common Law Has Been Modified** and a riparian owner has been held entitled to make his easement or right of access available by constructing a wharf; such right being entitled to protection unless the foreshore has been appropriated by the general government to some superior and lawful public use. Brookhaven *v.* Smith, 188 N. Y. 74, 80 N. E. 665.

2. **In Maine** a wharf erected without a license is unlawful but not declared a nuisance by law and its abatement and an injunction against its extension within the owner's property limits will not be decreed at the suit of an individual. Whitmore *v.* Brown, 102 Me. 47, 65 Atl. 516.

478. 2. Conradt *v.* Miller, 2 Alaska 433.

3. **Particular Municipalities** — *Baltimore.* — Dyer *v.* Baltimore, 140 Fed. 880.

Oakland. — Western Pac. R. Co. *v.* Southern Pac. Co., (C. C. A.) 151 Fed. 376.

Vallejo. — Vallejo Ferry Co. *v.* Vallejo, 146 Cal. 392, 80 Pac. 514.

479. 1. **Public Duty to Develop Harbor Imposed on Municipality.** — Dyer *v.* Baltimore, 140 Fed. 880.

5. **Power to Add Includes Power to Erect New Wharves.** — Dyer *v.* Baltimore, 140 Fed. 880; Conradt *v.* Miller, 2 Alaska 433.

Injunction May Restrain City from Construction of Wharf Endangering Navigation. — Vallejo Ferry Co. *v.* Vallejo, 146 Cal. 392, 80 Pac. 514.

480. 2. *In re* Water Front, 113 N. Y. App. Div. 84, 98 N. Y. Supp. 1063.

481. 5. Dyer *v.* Baltimore, 140 Fed. 880.

Ower of Easement Affected Entitled to Notice and Hearing. — *In re* Water Front, 113 N. Y. App. Div. 84, 98 N. Y. Supp. 1063.

The Damage Is Measured by the difference in value of the entire premises before and after the condemnation proceedings proper, and a statute so providing is constitutional. *In re* Water Front, 120 N. Y. App. Div. 849, 105 N. Y. Supp. 750.

482. 1. **Use for Different Purpose.** — A statute authorizing the appropriation of land for "public wharves, docks, piers, landing places and levees, basins and canals," does not authorize taking land to enlarge, create, control, or maintain a harbor on navigable water. South Haven *v.* Van Buren, Probate Judge, 140 Mich. 117, 103 N. W. 521.

483. 2. **Liability of City on Lease Determined as Private Right.** — Commercial Wharf Corp. *v.* Boston, 194 Mass. 460, 80 N. E. 645.

3. Conradt *v.* Miller, 2 Alaska 433.

484. 2. Williams *v.* Gainesville, (Ala. 1906) 43 So. 209, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 484.

May Condemn Rights. — Baltimore *v.* Baltimore, etc., Steamboat Co., 104 Md. 485, 65 Atl. 353.

3. Williams *v.* Gainesville, (Ala. 1906) 43 So. 209, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 484, and cases in note 3.

485. 2. Williams *v.* Gainesville, (Ala. 1906) 43 So. 209, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485.

3. Williams *v.* Gainesville, (Ala. 1906) 43 So. 209, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 485.

489. 2. Dyer *v.* Baltimore, 140 Fed. 880; Oliver *v.* Burlington, (N. J. 1907) 67 Atl. 43, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 488.

Right to Lease Recognized. — Western Pac. R. Co. *v.* Southern Pac. Co., (C. C. A.) 151 Fed. 576.

490. 7. Birch *v.* New York, 121 N. Y. App. Div. 395, 106 N. Y. Supp. 104.

491. 3. **License Required under Maine Statute.** — Whitmore *v.* Brown, 102 Me. 47, 65 Atl. 516.

Consent Required for Building Shed on Wharf. — *In re* Piers, etc., 117 N. Y. App. Div. 553, 102 N. Y. Supp. 667.

Duty of Cleansing Dock Imposed as Condition. — Haley *v.* American Agricultural Chemical Co., 217 Pa. St. 354, 66 Atl. 559.

4. **The Virginia Code** requiring that suitable accommodations be provided by owners of a steamboat wharf for patrons of boats using it (except where no wharfage is charged) does not apply to a life tenant leasing such wharf, no wharfage being charged and it being used by the public free of charge. Hunter *v.* Com., (Va. 1908) 60 S. E. 102..

493. 5. Conklin *v.* R. P., etc., Staats Co., 155 Fed. 818.

494. 2. Weems Steamboat Co. *v.* People's Steamboat Co., 141 Fed. 454; Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

495. 1. Williams *v.* Alabama Cotton Oil Co., (Ala. 1907) 44 So. 957.

2. Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

4. Conradt *v.* Miller, 2 Alaska 433.

5. Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

497. 3. Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

6. Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

499. 1. **Customary Rates Controlling in Absence of Agreement.** — Riddick *v.* Dunn, 145 N. Car. 31, 58 S. E. 439.

507. 1. Cristadoro *v.* Von Behren, 119 La. 1025, 44 So. 853.

Liability for Taking Vessel from Wharf. — New York, etc., R. Co. *v.* Roney, (C. C. A.) 138 Fed. 47, *affirming* 132 Fed. 321.

508. 3. The Bearn, (1906) 1 P. 48; Philadelphia, etc., R. Co. *v.* Walker, 139 Fed. 855; Conklin *v.* R. P. & J. H. Staats Co., (C. C. A.) 161 Fed. 897, *affirming* 155 Fed. 818.

4. Verdon *v.* Brooklyn Heights R. Co., 157 Fed. 481.

5. Conklin *v.* R. P., etc., Staats Co., 155 Fed. 818.

6. The Bearn, (1906) 1 P. 48.

9. **Person Visiting at "Camp" Reached by Wharf.** — Cristadoro *v.* Von Behren, 119 La. 1025, 44 So. 853.

10. Conklin *v.* R. P., etc., Staats Co., 155 Fed. 818.

509. 3. Verdon *v.* Brooklyn Heights R. Co., 157 Fed. 481; Philadelphia Transp., etc., Co. *v.* Pennsylvania R. Co., 160 Fed. 557.

9. Philadelphia, etc., R. Co. *v.* Walker, 139 Fed. 855.

15. Philadelphia, etc., R. Co. *v.* Walker, 139 Fed. 855.

19. Conklin *v.* R. P., etc., Staats Co., 155 Fed. 818.

510. 7. Bush Co. *v.* Central R. Co., (C. C. A.) 149 Fed. 734.

8. Conklin *v.* R. P., etc., Staats Co., 155 Fed. 818, *affirmed* (C. C. A.) 161 Fed. 897; Philadelphia Transp., etc., Co. *v.* Mechling Bros. Mfg. Co., 160 Fed. 555.

511. 1. **Unusually Low Water.** — Conklin *v.* R. P., etc., Staats Co., 155 Fed. 818.

7. Verdon *v.* Brooklyn Heights R. Co., 157 Fed. 481.

WHEREUPON.

515. 2. **Whereupon and Thereupon Distinguished.** — Orlando *v.* Orlando Water, etc., Co., 50 Fla. 215, 39 So. 532, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 515.

WHOLE.

518. 4. **Whole Congregation.** — See Duessel *v.* Proch, 78 Conn. 343, 62 Atl. 152.

WHOLLY.

519. 2. **Wholly Dependent — Workmen's Compensation Act.** — Senior *v.* Fountains, (1907) 2 K. B. 563, 76 L. J. K. B. 928.

WIDOW.

520. 4. **Bigamous Wife Held Widow.** — *In re* Wagstaff, (1907) 2 Ch. 35, 76 L. J. Ch. 369.

521. 2. **Legal Widow.** — See Grand Lodge, etc., *v.* Smith, 89 Miss. 718, 42 So. 89.

WILFUL, WILFULLY, ETC.

525. 1. State *v.* Prater, (Mo. App. 1908) 109 S. W. 1047; Com. *v.* Frederick, 27 Pa. Super. Ct. 228; State *v.* Smith, (Tenn. 1907) 105 S. W. 68.

Wilful Violation Means Conscious Failure to Observe. — Kellyville Coal Co. *v.* Strine, 217 Ill. 516, 75 N. E. 375.

526. 1. Cleveland, etc., R. Co. *v.* Ricker, 116 Ill. App. 428.

2. **Wilful Misconduct in Office** may be the wilful failure to discharge a duty, where knowledge calls for official action, showing a purpose to take no action as required by law. Coffey *v.* Superior Ct., 147 Cal. 525, 82 Pac. 75.

527. 5. **Omission in Indictment.** — Metcalfe *v.* Com., (Ky. 1905) 86 S. W. 534.

528. 3. Tinsley *v.* Western Union Tel. Co., 72 S. Car. 350, 51 S. E. 913.

Wilful Violation of Law Equivalent to Conscious Violation. — Kellyville Coal Co. *v.* Strine, 217 Ill. 516, 75 N. E. 375; Eldorado Coal, etc., Co. *v.* Swan, 227 Ill. 586, 81 N. E. 691.

A Wilful Misstatement in an Application for a Bond has been held to be one that is material, false, voluntarily made with knowledge of falsity and not inadvertently, whether with conscious design to deceive, in wanton disregard of rights, or in the belief that statement is unimportant. Fidelity, etc., Co. *v.* Timmonsville Bank, (C. C. A.) 139 Fed. 101.

Wilful Voting When Not Qualified is voting with knowledge or reckless disregard as to disqualification. State *v.* Savre, 129 Iowa 122, 105 N. W. 387.

529. 4. **Good Faith and Intention Not Involved.** — Eldorado Coal, etc., Co. *v.* Swan, 227 Ill. 586, 81 N. E. 691.

530. 2. St. Louis, etc., R. Co. *v.* Batesville, etc., Telephone Co., 80 Ark. 499, 97 S. W. 660; State *v.* Savre, 129 Iowa 122, 105 N. W. 387.

"Wilfully and Maliciously," in the commission of cruelty to animals, mean the maiming, beating, or torturing of domestic animals from an evil impulse arising from indifference to suffering and the wrongfulness of the act, but not necessarily arising from spite. State *v.* Prater, (Mo. App. 1908) 109 S. W. 1047.

"Wilful Misapplication" has no settled technical meaning, and statements setting forth facts and their illegality must supplement a charge of misapplying the moneys, funds, and credits of a bank under the federal statute. U. S. *v.* Heinze, 161 Fed. 425.

531. 1. Price *v.* Denison, 95 Minn. 106, 103 N. W. 728; Smyth *v.* State, (Tex. Crim. 1907) 103 S. W. 899.

2. St. Louis, etc., R. Co. *v.* Batesville, etc., Telephone Co., 80 Ark. 499, 97 S. W. 660; State *v.* Prater, (Mo. App. 1908) 109 S. W. 1047; Smyth *v.* State, (Tex. Crim. 1907) 103 S. W. 899; Clay *v.* State, (Tex. Crim. 1908) 107 S. W. 1129.

532. 1. St. Louis, etc., R. Co. *v.* Batesville, etc., Telephone Co., 80 Ark. 499, 97 S. W. 660; Smyth *v.* State, (Tex. Crim. 1907) 103 S. W. 899; Clay *v.* State, (Tex. Crim. 1908) 107 S. W. 1129.

534. 3. Tinsley *v.* Western Union Tel. Co., 72 S. Car. 350, 51 S. E. 913.

535. 1. Teal *v.* St. Paul City R. Co., 96 Minn. 379, 104 N. W. 945; Tinsley *v.* Western Union Tel. Co., 72 S. Car. 350, 51 S. E. 913.

Wilful Neglect or Desertion as Ground for Divorce. — See Locke *v.* Locke, (Cal. 1908) 94 Pac. 244; Bell *v.* Bell, (Idaho 1908) 96 Pac. 197.

To Constitute Wilful or Wanton Conduct there must be shown consciousness of conduct and of likely or probable injury therefrom, together with reckless indifference in the conscious and intentional performance of a wrongful act or the omission of some known duty producing the injury. Montgomery St. R. Co. *v.* Rice, 142 Ala. 674, 38 So. 857.

Wilful Negligence has been defined as the failure, after discovering danger, to exercise reasonable and ordinary care to avoid accident. Teal *v.* St. Paul City R. Co., 96 Minn. 379, 104 N. W. 945; Anderson *v.* Minneapolis, etc., R. Co., (Minn. 1908) 114 N. W. 1123.

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548. 3. Colonna *v.* Alton, 23 App. Cas. (D. C.) 296; Peet *v.* Peet, 229 Ill. 341, 82 N. E. 376; Carter *v.* Whitcomb, (N. H. 1908) 69 Atl. 779; St. John *v.* Andrews Institute, 117 N. Y. App. Div. 608, 102 N. Y. Supp. 808.

4. **The Formalities of Execution and Attestation** have been held to be governed by the law existing at the date of the execution of a will disposing of real estate. Barker *v.* Hinton, (W. Va. 1907) 59 S. E. 614.

549. 8. Nunnemacher *v.* State, 129 Wis. 202, 108 N. W. 627, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 549, as to wills in Greece and Rome as well as in England before the conquest and under the federal system.

550. 1. **Authority to Make Will Is Purely Statutory.** — Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622.

3. Jacobs *v.* Button, 79 Conn. 360, 65 Atl. 150; Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950; Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805.

4. Hatheway *v.* Smith, 79 Conn. 506, 65 Atl. 1058; O'Day *v.* Meadows, 194 Mo. 588, 92 S. W. 637; Lindemann *v.* Dobossy, (Tex. Civ. App. 1908) 107 S. W. 111.

551. 6. *In re* Plumel, (Cal. 1907) 90 Pac. 192; Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

7. Parker *v.* Hill, (Ark. 1908) 108 S. W. 208; P'Pool *v.* P'Pool, (Ky. 1905) 89 S. W. 687; Brogan *v.* Barnard, 115 Tenn. 260, 90 S. W. 858; Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753; La Rue *v.* Lee, (W. Va. 1908) 60 S. E. 388.

552. 1. Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753.

3. Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753.

4. **"Among Valuable Papers."** — An olographic will found in a box in which the testator kept stamps and stationery for sale and use as postmaster cannot be said to have been found "among valuable papers." Brogan *v.* Barnard, 115 Tenn. 260, 90 S. W. 858.

7. La Rue *v.* Lee, (W. Va. 1908) 60 S. E. 388.

553. 3. La Rue *v.* Lee, (W. Va. 1908) 60 S. E. 388.

4. **No Dating Required in West Virginia.** — La Rue *v.* Lee, (W. Va. 1908) 60 S. E. 388.

5. Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

9. *In re* Whitaker, (Pa. 1908) 69 Atl. 89; Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753.

554. 1. *In re* Forquer, 216 Pa. St. 331, 66 Atl. 92; *In re* Whitaker, (Pa. 1908) 69 Atl. 89; Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113; Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753.

2. Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753.

4. **Language Merely Expressive of Circumstances under Which Will Was Made.** — "Knowing the uncertainty and risk of the journey." *In re* Forquer, 216 Pa. St. 331, 66 Atl. 92.

555. 1. *In re* Forquer, 216 Pa. St. 331, 66 Atl. 92; Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753.

4. *In re* Forquer, 216 Pa. St. 331, 66 Atl. 92.

556. 3. Peoria Humane Soc. *v.* McMurtrie, 229 Ill. 519, 82 N. E. 319.

6. Bower *v.* Daniel, 198 Mo. 320, 95 S. W. 347, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 556.

558. 6. Ducasse *v.* Ducasse, 120 La. 731, 45 So. 565, holding, however, that the express mention need not be made in any particular part of the will, if it is actually made somewhere therein.

7. Ducasse *v.* Ducasse, 120 La. 731, 45 So. 565.

8. Ducasse *v.* Ducasse, 120 La. 731, 45 So. 565.

9. Ducasse *v.* Ducasse, 120 La. 731, 45 So. 565.

10. Ducasse *v.* Ducasse, 120 La. 731, 45 So. 565.

561. 6. Montague *v.* Schieffelin, 46 Oregon 413, 80 Pac. 654; Mellor *v.* Smyth, (Pa. 1908) 69 Atl. 592; *In re* Miller, (Wash. 1907) 91 Pac. 967.

563. 5. Isham *v.* Bingham, 126 Ill. App. 513; Godfrey *v.* Smith, 73 Neb. 756, 103 N. W. 450; Megary's Estate, 25 Pa. Super. Ct. 243; *In re* Miller, (Wash. 1907) 91 Pac. 967.

6. Godfrey *v.* Smith, 73 Neb. 756, 103 N. W. 450.

564. 3. Godfrey *v.* Smith, 73 Neb. 756, 103 N. W. 450.

4. Godfrey *v.* Smith, 73 Neb. 756, 103 N. W. 450.

565. 7. Godfrey *v.* Smith, 73 Neb. 756, 103 N. W. 450.

566. 1. Godfrey *v.* Smith, 73 Neb. 756, 103 N. W. 450. But see Mellor *v.* Smyth, (Pa. 1908) 69 Atl. 592.

8. Isham *v.* Bingham, 126 Ill. App. 513, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 566.

10. Isham *v.* Bingham, 126 Ill. App. 513, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 567.

567. 3. Godfrey *v.* Smith, 73 Neb. 756, 103 N. W. 450.

6. **"While It Is Only Necessary to Call on One Witness** to bear witness, yet it must be done in the presence of the other witnesses, and such fact must be proved by their testimony." Godfrey *v.* Smith, 73 Neb. 756, 103 N. W. 450.

10. Mellor *v.* Smyth, (Pa. 1908) 69 Atl. 592. See also *In re* Miller, (Wash. 1907) 91 Pac. 967, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 568 [567], as to the rule in various jurisdictions, but holding that the *Washington* rule is otherwise.

568. 1. Godfrey *v.* Smith, 73 Neb. 756, 103 N. W. 450; *In re* Miller, (Wash. 1907) 91 Pac. 967.

569. 5. **Amendment Permitted to Include Matters Omitted.** — *In re* Miller, (Wash. 1907) 91 Pac. 967.

572. 1. Arendt *v.* Arendt, 80 Ark. 204, 96 S. W. 982; *In re* Barclay, (Cal. 1908) 93 Pac. 1012; Gump *v.* Gowans, 226 Ill. 635, 80 N. E. 1086; Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950; Milam *v.* Stanley, (Ky. 1906) 111 S. W. 296; *In re* Klein, 35 Mont. 185, 88 Pac. 798; Perry *v.* Hackney, 142 N. Car. 368, 55 S. E. 289.

2. Arendt *v.* Arendt, 80 Ark. 204, 96 S. W. 982; *In re* Hall, 149 Cal. 143, 84 Pac. 839; Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805; O'Day *v.* Meadows, 194 Mo. 588, 92 S. W. 637.

Intent Prevails against Contrary Designation of Paper. — Arendt *v.* Arendt, 80 Ark. 204, 96 S. W. 982.

573. 1. Milam *v.* Stanley, (Ky. 1908) 111 S. W. 296; Kerr *v.* Girardeau, 138 N. Car. 473, 50 S. E. 852.

3. *In re* Hall, 149 Cal. 143, 84 Pac. 8 · Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; O'Day *v.* Meadows, 194 Mo. 588, 92 S. W. 637.

7. Heaston *v.* Kreig, 167 Ind. 111, 77 N. E. 805, *citing* 20 [30] AM. AND ENG. ENCYC. OF LAW (2d ed.) 573.

574. 4. Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950; King *v.* McKinstry, 32 Pa. Super. Ct. 34; *In re* Beaumont, 216 Pa. St. 350, 65 Atl. 799.

5. Oswald *v.* Caldwell, 225 Ill. 224, 80 N. E. 131; *In re* Pederson, 97 Minn. 491, 106 N. W. 958; Thomas *v.* Singer Sewing Mach. Co., (Minn. 1908) 117 N. W. 155; White *v.* Crossman, (N. J. 1906) 64 Atl. 168.

575. 1. Milam *v.* Stanley, (Ky. 1908) 111 S. W. 296; McCourt *v.* Peppard, 126 Wis. 326, 105 N. W. 809.

576. 1. *Alabama.* — Griswold *v.* Griswold, 148 Ala. 239, 42 So. 554.

California. — *In re* Hall, 149 Cal. 143, 84 Pac. 839.

Georgia. — Sharpe *v.* Mathews, 123 Ga. 794, 51 S. E. 706; Kytle *v.* Kytle, 128 Ga. 387, 57 S. E. 748.

Illinois. — Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151; Seaton *v.* Lee, 221 Ill. 282, 77 N. E. 446; White *v.* Willard, 232 Ill. 464, 83 N. E. 954; Ward *v.* Conklin, 232 Ill. 553, 83 N. E. 1058; Benner *v.* Bailey, 234 Ill. 79, 84 N. E. 638.

Iowa. — Lewis *v.* Curnutt, 130 Iowa 423, 106 N. W. 914; Wilson *v.* Carter, 132 Iowa 442, 109 N. W. 886; Schillinger *v.* Bawek, (Iowa 1907) 112 N. W. 210.

Kansas. — Pentico *v.* Hays, 75 Kan. 76, 88 Pac. 738.

Kentucky. — Siler *v.* Jones, (Ky. 1908) 110 S. W. 255.

Minnesota. — See Thomas *v.* Singer Sewing Mach. Co., (Minn. 1908) 117 N. W. 155.

Mississippi. — Brinson *v.* Sandifer, 90 Miss. 41, 42 So. 89.

Missouri. — Aldridge *v.* Aldridge, 202 Mo. 565, 101 S. W. 42.

Oregon. — Sappingfield *v.* King, (Oregon 1907) 89 Pac. 142; De Bow *v.* Wollenberg, (Oregon 1908) 96 Pac. 536.

Pennsylvania. — *In re* Beaumont, 214 Pa. St. 445, 63 Atl. 1023; Anspach *v.* Lightner, 31 Pa. Super. Ct. 218.

South Dakota. — Jones *v.* Jones, (S. Dak. 1906) 108 N. W. 23.

Tennessee. — Stamper *v.* Venable, 117 Tenn. 557, 97 S. W. 812.

2. Brady *v.* Fuller, (Kan. 1908) 96 Pac. 854.

3. Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576; Oswald *v.* Caldwell, 225 Ill. 224, 80 N. E. 131; Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950; Benner *v.* Bailey, 234 Ill. 79, 84 N. E. 638; Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805; Wilson *v.* Carter, 132 Iowa 442, 109 N. W. 886; Siler *v.* Jones, (Ky. 1908) 110 S. W. 255; Leonard *v.* Leonard, 145 Mich. 563, 108 N. W. 985; *In re* Dowell, (Mich. 1908) 115 N. W. 972; Aldridge *v.* Aldridge, 202 Mo. 565, 101 S. W. 42; *In re* Beaumont, 214 Pa. St. 445, 63 Atl. 1023; Stamper *v.* Venable, 117 Tenn. 557, 97 S. W. 812.

The Test whether an instrument is a deed or a will is the intention of the maker, which is primarily to be determined from its language. Thomas *v.* Singer Sewing Mach. Co., (Minn. 1908) 117 N. W. 155.

577. 1. Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 576 [577]; Brinson *v.* Sandifer, 90 Miss. 41, 42 So. 89; Aldridge *v.* Aldridge, 202 Mo. 565, 101 S. W. 42.

2. *In re* Hall, 149 Cal. 143, 84 Pac. 839; Dodson *v.* Dodson, 142 Mich. 586, 105 N. W. 1110.

4. See Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805; Brady *v.* Fuller, (Kan. 1908) 96 Pac. 854; Thomas *v.* Singer Sewing Mach. Co., (Minn. 1908) 117 N. W. 155.

7. Fite *v.* Perry, (Cal. App. 1908) 96 Pac. 102.

578. 8. *In re* Plumel, (Cal. 1907) 90 Pac. 192, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 578. See also *In re* Wells, (Cal. 1908) 94 Pac. 856. *Compare* Hatheway *v.* Smith, 79 Conn. 506, 65 Atl. 1058; Schillinger *v.* Bawek, (Iowa 1907) 112 N. W. 210.

List of Legatees. — A bequest to the creditors of the testator, as shown by a list to be found with the will, is void as an attempt to bequeath property by reference to a nontestamentary paper to a class of persons which the testator might change from day to day without observing the rules of law relating to the testamentary disposition of property. Hartwell *v.* Martin, (N. J. 1906) 63 Atl. 754.

579. 1. *In re* Plumel, (Cal. 1907) 90 Pac. 192; Minot *v.* Parker, 189 Mass. 176, 75 N. E. 149.

2. *In re* Plumel, (Cal. 1907) 90 Pac. 192. But see Schillinger *v.* Bawek, (Iowa 1907) 112 N. W. 210.

580. 2. Whitney *v.* Hanington, 36 Colo. 407, 85 Pac. 84.

3. *In re* Plumel, (Cal. 1907) 90 Pac. 192.

4. Palmer *v.* Owen, 229 Ill. 115, 82 N. E. 275; Schillinger *v.* Bawek, (Iowa 1907) 112 N. W. 210.

581. 1. *Contra,* Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950; Dodson *v.* Dodson, 142 Mich. 586, 105 N. W. 1110.

2. *Compare* Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805.

Conduct and Declarations of the Testator after a will is duly executed, manifesting ignorance of its existence, are not competent to question the validity or existence of such will. La Rue *v.* Lee, (W. Va. 1908) 60 S. E. 388.

4. Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805; Milam *v.* Stanley, (Ky. 1908) 111 S. W. 296.

5. Senn *v.* Gruendling, 218 Ill. 458, 75 N. E. 1020; Sears *v.* Sears, 77 Ohio St. 104, 82 N. E. 1067.

6. No Presumption against Finality in West Virginia. — La Rue *v.* Lee, (W. Va. 1908) 60 S. E. 388.

582. 4. Arendt *v.* Arendt, 80 Ark. 204, 96 S. W. 982; Senn *v.* Gruendling, 218 Ill. 458, 75 N. E. 1020; Garnett *v.* Foston, (Ky. 1906) 91 S. W. 668; *In re* Willing, 212 Pa. St. 136, 61 Atl. 812; *In re* Pickett, (Oregon 1907) 89 Pac. 377.

583. 4. Sears *v.* Sears, 77 Ohio St. 104, 82 N. E. 1067.

5. *In re* Beaumont, 216 Pa. St. 350, 65 Atl. 799.

8. **New York Rule Followed in California.** *In re* Sears, 1 Cal. 155 (80 Pac. 700).

584. 1. *Compare* Sears *v.* Sears, 77 Ohio St. 104, 82 N. E. 1067.

7. Garnett *v.* Foston, (Ky. 1906) 91 S. W. 568; *In re* Tierney, (Minn. 1908) 114 N. W. 838, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584.

8. Garnett *v.* Foston, (Ky. 1906) 91 S. W. 668; Robinson *v.* Jones, 105 Md. 62, 65 Atl. 814; *In re* Tierney, (Minn. 1908) 114 N. W. 838, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 584.

585. 10. Wood *v.* Rhode Island Hospital Trust Co., 27 R. I. 295, 61 Atl. 757.

13. Senn *v.* Gruendling, 218 Ill. 458, 75 N. E. 1020; Garnett *v.* Foston, (Ky. 1906) 91 S. W. 668; *In re* Pederson, 97 Minn. 491, 106 N. W. 958; *In re* Pickett, (Oregon 1907) 89 Pac. 377.

Direction, if Unequivocal, Need Not Be in Express Words. — *In re* Pederson, 97 Minn. 491, 106 N. W. 958.

14. *In re* Willing, 212 Pa. St. 136, 61 Atl. 812.

586. 6. Lipphard *v.* Humphrey, 209 U. S. 264, 28 U. S. Sup. Ct. 561; *In re* Shafter, 35 Colo. 578, 85 Pac. 688; Snodgrass *v.* Smith, (Colo. 1908) 94 Pac. 312; Brown *v.* McBride, 129 Ga. 92, 58 S. E. 702; Todd *v.* Todd, 221 Ill. 410, 77 N. E. 680; Waters *v.* Waters, 222 Ill. 26, 78 N. E. 1; McConnell *v.* Keir, (Kan. 1907) 92 Pac. 540; Garnett *v.* Foston, (Ky. 1906) 91 S. W. 668; Barker *v.* Streuli, 69 N. J. Eq. 771, 61 Atl. 408; *In re* Lillibridge, (Pa. 1908) 69 Atl. 1121. *Compare In re* Bedell, 107 N. Y. App. Div. 284, 95 N. Y. Supp. 12.

7. Bowe *v.* Naughton, (N. J. 1907) 67 Atl. 184; *In re* Pickett, (Oregon 1907) 89 Pac. 377. But see Lipphard *v.* Humphrey, 209 U. S. 264, 28 U. S. Sup. Ct. 561.

587. 2. Danley *v.* Jefferson, 150 Mich. 590, 114 N. W. 470, *per* McAlvay, C. J., *dissenting*, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 587; Vernon *v.* Vernon, 69 N. J. Eq. 759, 61 Atl. 409.

4. Vernon *v.* Vernon, 69 N. J. Eq. 759, 61 Atl. 409; *In re* Whitaker, (Pa. 1908) 69 Atl. 89.

588. 1. *In re* Johnson, (Cal. 1908) 93 Pac. 1015; Vernon *v.* Vernon, 69 N. J. Eq. 759, 61 Atl. 409; Bogert *v.* Bateman, (N. J. 1906) 65 Atl. 238.

5. *In re* Robertson, (Neb. 1906) 109 N. W. 506; Bogert *v.* Bateman, (N. J. 1906) 65 Atl. 238.

589. 2. *In re* Engler, (Surrogate Ct.) 56 Misc. (N. Y.) 218, 107 N. Y. Supp. 222.

8. Brown *v.* McBride, 129 Ga. 92, 58 S. E. 702; Hill *v.* Kehr, 228 Ill. 204, 81 N. E. 848; Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950; *In re* Rogers (Surrogate Ct.) 52 Misc. (N. Y.) 412, 103 N. Y. Supp. 423; *In re* Engler, (Surrogate Ct.) 56 Misc. (N. Y.) 218, 107 N. Y. Supp. 222.

591. 13. Arendt *v.* Arendt, 80 Ark. 204, 96 S. W. 982.

592. 3. *In re* Plumel, (Cal. 1907) 90 Pac. 192; Greene *v.* Hitchcock, 222 Ill. 216, 78 N. E. 614; Senn *v.* Gruendling, 218 Ill. 458, 75 N. E. 1020; Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950; Montague *v.* Schieffelin, 46 Oregon 413, 80 Pac. 654.

Misnomer of Testator in Attestation Clause Not Fatal. — *In re* Diener, (Neb. 1907) 113 N. W. 149.

4. **In Illinois** the will must be proved by two witnesses. Green *v.* Hitchcock, 222 Ill. 216, 78 N. E. 614.

593. 2. **Olographic Wills.** — Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753.

3. Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 593.

594. 1. *In re* Barry, 219 Ill. 391, 76 N. E. 577; *In-re* Diener, (Neb. 1907) 113 N. W. 149; Ainsworth *v.* Briggs, (Tex. Civ. App. 1908) 108 S. W. 753.

2. *In re* Barry, 219 Ill. 391, 76 N. E. 577; Mead *v.* Presbyterian Church, 229 Ill. 526, 82 N. E. 371.

4. *In re* Robertson, (Neb. 1906) 109 N. W. 506; Manners *v.* Manners, (N. J. 1907) 66 Atl. 583; *In re* Sandmann, (N. J. 1908) 68 Atl. 754; *In re* Foley, (Surrogate Ct.) 55 Misc. (N. Y.) 162, 106 N. Y. Supp. 474; *In re* Engler, (Surrogate Ct.) 56 Misc. (N. Y.) 218, 107 N. Y. Supp. 222.

"When There Is No Attestation Clause, the proponent of the writing claimed to be a will must affirmatively prove all the statutory requisites, including that of publication." Vernon *v.* Vernon, 69 N. J. Eq. 759, 61 Atl. 409.

5. *In re* Foley, (Surrogate Ct.) 55 Misc. (N. Y.) 162, 106 N. Y. Supp. 474.

7. *In re* Shafter, 35 Colo. 578, 85 Pac. 688; *In re* Foley, (Surrogate Ct.) 55 Misc. (N. Y.) 162, 106 N. Y. Supp. 474. But see Manners *v.* Manners, (N. J. 1907) 66 Atl. 583, holding that the *prima facie* effect of an attestation clause may be overcome by testimony, and even by the testimony of the subscribing witness.

595. 2. Mead *v.* Presbyterian Church, 229 Ill. 526, 82 N. E. 371; *In re* Robertson, (Neb. 1906) 109 N. W. 506; *In re* Foley, (Surrogate Ct.) 55 Misc. (N. Y.) 162, 106 N. Y. Supp. 474; *In re* Engler, (Surrogate Ct.) 56 Misc. (N. Y.) 218, 107 N. Y. Supp. 222; *In re* Duffy, (Supm. Ct. App. Div.) 111 N. Y. Supp. 491.

3. Bogert *v.* Bateman, (N. J. 1906) 65 Atl. 238.

4. *In re* Sandmann, (N. J. 1908) 68 Atl. 754.

5. *In re* Johnson, (Cal. 1908) 93 Pac. 1015; Brown *v.* McBride, 129 Ga. 92, 58 S. E. 702.

596. 1. Palmer *v.* Owen, 229 Ill. 115, 82 N. E. 275; Roche *v.* Nason, 105 N. Y. App. Div. 256, 93 N. Y. Supp. 565; *In re* Morgan, (Pa. 1908) 68 Atl. 953.

2. *In re* Barry, 219 Ill. 391, 76 N. E. 577; Hill *v.* Kehr, 228 Ill. 204, 81 N. E. 848; Palmer *v.* Owen, 229 Ill. 115, 82 N. E. 275; *In re* Lillibridge, (Pa. 1908) 69 Atl. 1121.

5. *In re* Johnson, (Cal. 1908) 93 Pac. 1015.

6. *In re* Engler, (Surrogate Ct.) 56 Misc. (N. Y.) 218, 107 N. Y. Supp. 222.

597. 1. Cowan *v.* Shaver, 197 Mo. 203, 95 S. W. 200.

2. Bowe *v.* Naughton, (N. J. 1907) 67 Atl. 184.

6. Lane *v.* Lane, 125 Ga. 386, 54 S. E. 90;

Smith *v.* Ryan, (Iowa 1907) 112 N. W. 8; *In re* Baldwin, (N. Car. 1907) 59 S. E. 163.

7. *In re* Shapter, 35 Colo. 578, 85 Pac. 688; *In re* Baldwin, (N. Car. 1907) 59 S. E. 163.

8. *In re* Baldwin, (N. Car. 1907) 59 S. E. 163.

598. 1. Gump *v.* Gowans, 226 Ill. 635, 80 N. E. 1086; Hill *v.* Kehr, 228 Ill. 204, 81 N. E. 848; Palmer *v.* Owen, 229 Ill. 115, 82 N. E. 275; Standley *v.* Moss, 114 Ill. App. 612; Bogert *v.* Bateman, (N. J. 1906) 65 Atl. 238; *In re* Baldwin, (N. Car. 1907) 59 S. E. 163.

599. 3. Bogert *v.* Bateman, (N. J. 1906) 65 Atl. 238.

4. Bogert *v.* Bateman, (N. J. 1906) 65 Atl. 238.

600. 9. See Bowe *v.* Naughton, (N. J. 1907) 67 Atl. 184.

Statute Not Retroactive. — Barker *v.* Hinton, (W. Va. 1907) 59 S. E. 614.

601. 1. *In re* Robertson, (Neb. 1906) 109 N. W. 506; *In re* Engler, (Surrogate Ct.) 56 Misc. (N. Y.) 218, 107 N. Y. Supp. 222.

2. *In re* Pope, 139 N. Car. 484, 52 S. E. 235.

3. *In re* Pope, 139 N. Car. 484, 52 S. E. 235.

602. 2. *In re* Pope, 139 N. Car. 484, 52 S. E. 235.

3. Keely *v.* Moore, 196 U. S. 38, 25 U. S. Sup. Ct. 169.

11. Roche *v.* Nason, 105 N. Y. App. Div. 256, 93 N. Y. Supp. 565.

603. 4. *In re* Baldwin, (N. Car. 1907) 59 S. E. 163, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 603; Geames *v.* Armstrong, (N. Car. 1907) 59 S. E. 166, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 603.

7. Roche *v.* Nason, 105 N. Y. App. Div. 266, 93 N. Y. Supp. 565, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 603.

604. 1. Standley *v.* Moss, 114 Ill. App. 612.

2. Standley *v.* Moss, 114 Ill. App. 612.

3. Gump *v.* Gowans, 226 Ill. 635, 80 N. E. 1086.

4. *In re* Tierney, (Minn. 1908) 114 N. W. 838; *In re* Klein, 35 Mont. 185, 88 Pac. 798.

605. 3. Gump *v.* Gowans, 226 Ill. 635, 80 N. E. 1086, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 605.

9. Standley *v.* Moss, 114 Ill. App. 612; *In re* Tierney, (Minn. 1908) 114 N. W. 838, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 650 [605].

606. 6. Steinkuehler *v.* Wempner, (Ind. 1907) 81 N. E. 482; State *v.* Lancaster, (Tenn. 1907) 105 S. W. 858.

609. 8. Ferrell *v.* Gill, (Ga. 1908) 61 S. E. 131; *In re* Folwell, 68 N. J. Eq. 728, 62 Atl. 414; Means *v.* Ury, 141 N. Car. 248, 53 S. E. 850.

612. 7. Pratt *v.* Saline Valley R. Co., (Mo App. 1908) 108 S. W. 1099.

614. 1. **An Adopted Child** is within the purview of the statute. Van Brocklin *v.* Wood, 38 Wash. 384, 80 Pac. 530.

2. Wormser *v.* Croce, 120 N. Y. App. Div. 287, 104 N. Y. Supp. 1090; Stachelberg *v.* Stachelberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 645.

615. 3. Chaplin *v.* Leafley, 35 Ind. App. 511, 74 N. E. 546, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 615.

617. 3. Johnson *v.* White, (Kan. 1907) 90 Pac. 810.

618. 2. Hodgkins *v.* Hodgkins, 123 N. Y. App. Div. 110, 108 N. Y. Supp. 173.

619. 3. Woodward *v.* Woodward, 33 Colo. 457, 81 Pac. 322; Johnson *v.* White, (Kan. 1907) 90 Pac. 810; Hodgkins *v.* Hodgkins, 123 N. Y. App. Div. 110, 108 N. Y. Supp. 173; Lee *v.* Scott, 26 Ohio Cir. Ct. 799.

620. 3. Hodgkins *v.* Hodgkins, 123 N. Y. App. Div. 110, 108 N. Y. Supp. 173.

621. 2. O'Day *v.* Meadows, 194 Mo. 558, 92 S. W. 637; Byrnes *v.* Gibson, (N. J. 1908) 68 Atl. 756; Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622; Williams *v.* Claunch, (Tex. Civ. App. 1906) 97 S. W. 111.

When Revocation Not Permitted. — Where a mother, during her last illness, believing that she would not recover, conveyed her real estate to her husband, at his request, and upon his oral promise to devise it to their demented child, and to care for him during the father's natural life, and the father, the day succeeding the execution of the deed, made a will complying with that part of his agreement, it was held that the deed and will were parts of the same transaction, and that the father could not revoke the will or alienate or incumber the estate. Schneringer *v.* Schneringer, (Neb. 1908) 116 N. W. 491.

4. Peoria Humane Soc. *v.* McMurtrie, 229 Ill. 519, 82 N. E. 319; Wilson *v.* Gordon, 73 S. Car. 155, 53 S. E. 79.

5. Sappingfield *v.* King, (Oregon 1907) 90 Pac. 150.

6. *In re* Miller, (Surrogate Ct.) 50 Misc. (N. Y.) 70, 100 N. Y. Supp. 344.

622. 5. *In re* Moore, (N. J. 1907) 65 Atl. 447; *In re* Goldsticker, (Supm. Ct. App. Div.) 108 N. Y. Supp. 489; *In re* Jones, 211 Pa. St. 364, 60 Atl. 915; Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622.

623. 4. **In Texas** an ordinary will is revocable by an olographic will. Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

5. Castens *v.* Murray, 122 Ga. 396, 50 S. E. 131; *In re* Kissam, (Surrogate Ct.) 110 N. Y. Supp. 158; *In re* Miller, (Surrogate Ct.) 50 Misc. (N. Y.) 70, 100 N. Y. Supp. 344; Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622.

Same Formalities and Attestation as for Execution of Will. — Castens *v.* Murray, 122 Ga. 396, 50 S. E. 131.

624. 2. Wilson *v.* Bostick, (Ala. 1907) 44 So. 389; Jacobs *v.* Button, 79 Conn. 360, 65 Atl. 150; *In re* Dunahugh, 130 Iowa 695, 107 N. W. 925, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 624; Schillinger *v.* Bawek, (Iowa 1907) 112 N. W. 210; Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

3. Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622.

625. 4. Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 625, the whole text paragraph.

5. Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 625; Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

7. *Compare* Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

626. 1. Whitney *v.* Hanington, 36 Colo. 407, 85 Pac. 84; Schillinger *v.* Bawek, (Iowa 1907) 112 N. W. 210.

2. Whitney *v.* Hanington, 36 Colo. 407, 85 Pac. 84; *In re* Pilsbury, 113 N. Y. App. Div. 893, 99 N. Y. Supp. 62.

3. *In re* Pilsbury, 113 N. Y. App. Div. 893, 99 N. Y. Supp. 62.

5. Whitney *v.* Hanington, 36 Colo. 407, 85 Pac. 84; Flinn *v.* Frank, 8 Del. Ch. 186, 68 Atl. 196.

627. 6. See Whitney *v.* Hanington, 36 Colo. 407, 85 Pac. 84.

628. 4. Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

5. *Compare* Woodward *v.* Woodward, 33 Colo. 457, 81 Pac. 322.

Evidence of Declarations. — Where a writing in the form of a contract, but claimed to be a revocation of an existing will, is complete, clear, and unambiguous, oral evidence of declarations made by a decedent to show that he intended and understood that the writing was a revocation of an existing will is inadmissible. *In re* Lindesmith, 96 Minn. 147, 104 N. W. 825.

6. Pennsylvania Land Co. *v.* Justi, (Ky. 1906) 90 S. W. 279; *In re* Miller, (Surrogate Ct.) 50 Misc. (N. Y.) 70, 100 N. Y. Supp. 344; Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

630. 3. Wilson *v.* Bostick, (Ala. 1907) 44 So. 389; *In re* Wikman, 148 Cal. 642, 84 Pac. 212; Jacobs *v.* Button, 79 Conn. 360, 65 Atl. 150; Home of Aged *v.* Bantz, (Md. 1908) 69 Atl. 376; Collard *v.* Collard, (N. J. 1907) 67 Atl. 190; *In re* Hopkins, 109 N. Y. App. Div. 861, 96 N. Y. Supp. 933; *In re* Evans, 113 N. Y. App. Div. 373, 98 N. Y. Supp. 1042; *In re* Miller, (Surrogate Ct.) 50 Misc. (N. Y.) 70, 100 N. Y. Supp. 344.

6. Wilson *v.* Bostick, (Ala. 1907) 44 So. 389; Jacobs *v.* Button, 79 Conn. 360, 65 Atl. 150.

7. *In re* Wikman, 148 Cal. 642, 84 Pac. 212; *In re* Evans, 113 N. Y. App. Div. 373, 98 N. Y. Supp. 1042; Locust *v.* Randle, (Tex. Civ. App. 1907) 102 S. W. 946.

631. 8. *In re* Kissam, (Surrogate Ct.) 110 N. Y. Supp. 158.

9. Home of Aged *v.* Bantz, (Md. 1908) 69 Atl. 376; Collard *v.* Collard, (N. J. 1907) 67 Atl. 190.

10. **By Making Additions to It** a plain written legal will cannot be reformed. Crawley *v.* Kendrick, 122 Ga. 183, 50 S. E. 41.

11. Home of Aged *v.* Bantz, (Md. 1908) 69 Atl. 376.

632. 1. *Compare* Collard *v.* Collard, (N. J. 1907) 67 Atl. 190.

2. *In re* Wikman, 148 Cal. 642, 84 Pac. 212; Strong's Appeal, 79 Conn. 123, 63 Atl. 1089; Home of the Aged, etc., *v.* Bantz, (Md. 1907) 66 Atl. 701; Home of Aged *v.* Bantz, (Md. 1908) 69 Atl. 376; *In re* Miller, (Surrogate Ct.) 50 Misc. (N. Y.) 70, 100 N. Y. Supp. 344.

Olographic Will. — La Rue *v.* Lee, (W. Va. 1908) 60 S. E. 388.

633. 1. **If the Accidental Destruction Is Known to the Testator,** and, after reasonable time and opportunity to reproduce his will, he takes no steps to do so, an intention to allow the destruction to operate as a revocation may be presumed. Parsons *v.* Balson, 129 Wis. 311, 109 N. W. 136.

3. *In re* Raisbeck, (Surrogate Ct.) 52 Misc. (N. Y.) 279, 102 N. Y. Supp. 967.

635. 2. *In re* Shelton, 143 N. Car. 218, 55 S. E. 705; *In re* Miller, 48 Oregon 568, 90 Pac. 1002.

6. *In re* Wikman, 148 Cal. 642, 84 Pac. 212; Home of Aged *v.* Bantz, (Md. 1908) 69 Atl. 376; Hilyard *v.* Wood, (N. J. 1906) 63 Atl. 7; *In re* Hopkins, 109 N. Y. App. Div. 861, 96 N. Y. Supp. 933.

7. Thomas *v.* Thomas, 129 Iowa 159, 105 N. W. 403; Ewing *v.* McIntyre, 141 Mich. 506, 104 N. W. 787; Gurley *v.* Armentraut, 27 Ohio Cir. Ct. 199; *In re* Miller, 48 Oregon 568, 90 Pac. 1002; *In re* McCoy, (Oregon 1907) 90 Pac. 1105; Michell *v.* Low, 213 Pa. St. 526, 63 Atl. 247; *In re* Fallon, 214 Pa. St. 584, 63 Atl. 889.

636. 1. *In re* Miller, 48 Oregon 568, 90 Pac. 1002.

637. 3. *In re* Shelton, 143 N. Car. 218, 55 S. E. 705; *In re* McCoy, (Oregon 1907) 90 Pac. 1105.

4. Smith *v.* Ryan, (Iowa 1907) 112 N. W. 8; Matter of Burbank, 104 N. Y. App. Div. 312, 93 N. Y. Supp. 866.

5. Ewing *v.* McIntyre, 141 Mich. 506, 104 N. W. 787; Gurley *v.* Armentraut, 27 Ohio Cir. Ct. 199; *In re* Miller, 48 Oregon 568, 90 Pac. 1002; *In re* McCoy, (Oregon 1907) 90 Pac. 1105.

9. *Compare In re* Emernecker, 218 Pa. St. 369, 67 Atl. 701.

638. 1. Strong's Appeal, 79 Conn. 123, 63 Atl. 1089.

3. *In re* Miller, (Surrogate Ct.) 50 Misc. (N. Y.) 70, 100 N. Y. Supp. 344.

641. 4. *In re* Wikman, 148 Cal. 642, 84 Pac. 212; Home of Aged *v.* Bantz, (Md. 1908) 69 Atl. 376.

5. *In re* Miller, (Surrogate Ct.) 50 Misc. (N. Y.) 70, 100 N. Y. Supp. 344.

6. Hilyard *v.* Wood, (N. J. 1906) 63 Atl. 7; *In re* Raisbeck, (Surrogate Ct.) 52 Misc. (N. Y.) 279, 102 N. Y. Supp. 967.

7. La Rue *v.* Lee, (W. Va. 1908) 60 S. E. 388.

8. Words of Cancellation Must Be on Material Part of Will. — *In re* Miller, (Surrogate Ct.) 50 Misc. (N. Y.) 70, 100 N. Y. Supp. 344; *In re* Shelton, 143 N. Car. 218, 55 S. E. 705.

642. 5. Hilyard *v.* Wood, (N. J. 1906) 63 Atl. 7; Collard *v.* Collard, (N. J. 1907) 67 Atl. 190.

6. *In re* Miller, (Surrogate Ct.) 51 Misc. (N. Y.) 156, 100 N. Y. Supp. 849; *In re* Raisbeck, (Surrogate Ct.) 52 Misc. (N. Y.) 279, 102 N. Y. Supp. 967.

643. 8. *In re* Emmon, 110 N. Y. App. Div. 701, 96 N. Y. Supp. 506.

9. Durfee *v.* Risch, 142 Mich. 504, 105 N. W. 1114; *In re* Jones, 211 Pa. St. 364, 60 Atl. 915.

644. 2. **Implied Revocation Abolished in Pennsylvania.** — *In re* Jones, 211 Pa. St. 364, 60 Atl. 915.

645. 3. Durfee *v.* Risch, 142 Mich. 504, 105 N. W. 1114.

646. 5. Means *v.* Ury, 141 N. Car. 248, 53 S. E. 850.

647. 3. Jacobs *v.* Button, 79 Conn. 360, 65 Atl. 150; Griffing *v.* Gislason, (S. Dak. 1906) 109 N. W. 646, 649.

4. **Provision Made in Marriage Contract.** — Griffing *v.* Gislason, (S. Dak. 1906) 109 N. W. 646, 649.

5. *In re* Mann, (Surrogate Ct.) 51 Misc. (N. Y.) 315, 100 N. Y. Supp. 1100; *In re* Petridge, (Wash. 1907) 91 Pac. 634.

649. 3. Wormser *v.* Croce, 120 N. Y. App. Div. 287, 104 N. Y. Supp. 1090.

4. Wormser *v.* Croce, 120 N. Y. App. Div. 287, 104 N. Y. Supp. 1090.

6. *In re* Hobson, (Colo. 1907) 91 Pac. 929; *In re* Del Genovese, (Surrogate Ct.) 56 Misc. (N. Y.) 418, 107 N. Y. Supp. 1033.

8. Jacobs *v.* Button, 79 Conn. 360, 65 Atl. 150.

650. 5. Randall *v.* Dunlap, 218 Pa. St. 210, 67 Atl. 208.

6. Randall *v.* Dunlap, 218 Pa. St. 210, 67 Atl. 208.

7. *In re* Rossignot, (Surrogate Ct.) 50 Misc. (N. Y.) 231, 100 N. Y. Supp. 623; Wormser *v.* Croce, 120 N. Y. App. Div. 287, 104 N. Y. Supp. 1090; Griffing *v.* Gislason, (S. Dak. 1906) 109 N. W. 646, 649.

Rule Applicable to Will of Married Woman. — Durfee *v.* Risch, 142 Mich. 504, 105 N. W. 1114.

651. 1. Griffing *v.* Gislason, (S. Dak. 1906) 109 N. W. 646, 649.

2. Griffing *v.* Gislason, (S. Dak. 1906) 109 N. W. 646, 649.

652. 6. See *In re* Jones, 211 Pa. St. 364, 60 Atl. 915.

To the same effect as Lansing *v.* Haynes, 95 Mich. 16, 54 N. W. 699, stated in the original note, see Wirth *v.* Wirth, 149 Mich. 687, 113 N. W. 306.

Divorce Held Not to Revoke. — *In re* Brown, (Iowa 1908) 117 N. W. 260.

653. 1. *In re* Miller, 128 Iowa 6 7, 105 N. W. 105, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 622, 623 [653]; *In re* Hall, 132 Iowa 664, 110 N. W. 148; Hoffman *v.* Steubing, (Supm. Ct. Spec. T.) 49 Misc. (N. Y.) 157, 98 N. Y. Supp. 706.

655. 6. Danley *v.* Jefferson, 150 Mich. 590, 114 N. W. 470, *per* McAlvay, C. J., *dissenting, citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 655; Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

656. 1. *In re* Emmons, 110 N. Y. App. Div. 701, 96 N. Y. Supp. 506; Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622; Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

2. Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622; Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S W. 1113.

5. Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

657. 1. See Wilson *v.* Bostick, (Ala. 1907) 44 So. 389.

7. Means *v.* Ury, 141 N. Car. 248, 53 S. E. 850.

658. 2. P'Pool *v.* P'Pool, (Ky. 1905) 89 S. W. 687.

5. Danley *v.* Jefferson, 150 Mich. 590, 114 N. W. 470; Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

6. Dougherty *v.* Holscheider, (Tex. Civ. App. 1905) 88 S. W. 1113.

7. Bates *v.* Hacking, (R. I. 1907) 68 Atl. 622.

8. *In re* Moore, (N. J. 1907) 65 Atl. 447.

660. 6. Stone *v.* Forbes, 189 Mass. 163, 75 N. E. 141.

661. 1. Gruenewald *v.* Neu, 215 Ill. 132, 74 N. E. 101; O'Donaghue *v.* Smith, 184 N. Y. 365, 77 N. E. 621.

2. Aldridge *v.* Aldridge, 202 Mo. 565, 101 S. W. 42; *In re* Farmers' L. & T. Co., 189 N. Y. 202, 82 N. E. 181; Hinzie *v.* Hinzie, (Tex. Civ. App. 1907) 100 S. W. 803.

3. *England.* — *In re* Hanbury, (1904) 1 Ch. 415, 73 L. J. Ch. 222.

United States. — McCaffrey *v.* Manogue, 196 U. S. 563, 25 U. S. Sup. Ct. 319; Travers *v.* Reinhardt, 205 U. S. 423, 27 U. S. Sup. Ct. 563; Russell *v.* U. S. Trust Co., (C. C. A.) 136 Fed. 758; Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781; Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929; Stier *v.* Nashville Trust Co., (C. C. A.) 158 Fed. 601.

Alabama. — McGauly *v.* McGauly, (Ala. 1905) 39 So. 677; Woodroof *v.* Hundley, 147 Ala. 287, 39 So. 907; Crawford *v.* Engram, (Ala. 1907) 45 So. 584.

Arkansas. — McDonald *v.* Shaw, 81 Ark. 235, 98 S. W. 952.

California. — *In re* Buhrmeister, 1 Cal. App. 80, 81 Pac. 752; *In re* Heywood, 148 Cal. 188, 82 Pac. 755; *In re* Mayhew, 4 Cal. App. 162, 87 Pac. 417; McClellan *v.* Weaver, 4 Cal. App. 593, 88 Pac. 646; *In re* Barclay, (Cal. 1908) 93 Pac. 1012; *In re* Koch, (Cal. App. 1908) 96 Pac. 100.

Colorado. — Platt *v.* Brannan, 34 Colo. 125, 81 Pac. 755.

Connecticut. — Plant *v.* Plant, (Conn. 1908) 70 Atl. 52.

Delaware. — *In re* Reed, (Del. 1906) 64 Atl. 822.

District of Columbia. — Howard *v.* Evans, 24 App. Cas. (D. C.) 127; Montgomery *v.* Brown, 25 App. Cas. (D. C.) 490; Cruit *v.* Owen, 25 App. Cas. (D. C.) 514.

Georgia. — Glore *v.* Scroggins, 124 Ga. 922, 53 S. E. 690, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 661; Kinard *v.* Hale, 128 Ga. 485, 57 S. E. 761; Potts *v.* Prior, (Ga. 1908) 62 S. E. 77.

Illinois. — Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Cary *v.* Slead, 220 Ill. 508, 77 N. E. 234; Provost *v.* Shirk, 223 Ill. 468, 79 N. E. 178; Mosier *v.* Bowser, 226 Ill. 46, 80 N. E. 730; Covey *v.* Dinsmore, 226 Ill. 438, 80 N. E. 998; Johnson *v.* Preston, 226 Ill. 447, 80 N. E. 1001; Brechbeller *v.* Wilson, 228 Ill. 502, 81 N. E. 1094; Fifer *v.* Allen, 228 Ill. 518, 81 N. E. 1105; Vanatta *v.* Carr, 229 Ill. 47, 82 N. E. 267; Felkel *v.* O'Brien, 231 Ill. 329, 83 N. E. 170; Smith *v.* Hollenbeck, 231 Ill. 484, 83 N. E. 206; Wardner *v.* Seventh Day Baptist Memorial Board, 232 Ill. 606, 83

N. E. 1077; Webbe *v.* Webbe, 234 Ill. 442, 84 N. E. 1054.

Indiana. — Taylor *v.* Stephens, 165 Ind. 200, 74 N. E. 980; Stimson *v.* Rountree, 168 Ind. 169, 78 N. E. 331; Burton *v.* Carnahan, 38 Ind. App. 612, 78 N. E. 682; Hume *v.* McHaffie, (Ind. App. 1907) 81 N. E. 117; Barker *v.* Petersburg, (Ind. App. 1907) 82 N. E. 996; *In re* Carney, (Ind. App. 1908) 84 N. E. 506; Hayes *v.* Martz, (Ind. App. 1908) 84 N. E. 547.

Iowa. — Gilmore *v.* Jenkins, 129 Iowa 686, 106 N. W. 193; Scott *v.* Scott, 132 Iowa 35, 109 N. W. 293.

Kentucky. — Thompson *v.* Thompson, (Ky. 1905) 87 S. W. 790; Pedigo *v.* Botts, (Ky. 1905) 89 S. W. 164; Pennsylvania Land Co. *v.* Justi, (Ky. 1906) 90 S. W. 279; Potts *v.* Shirley, (Ky. 1906) 90 S. W. 590; Williams *v.* Chamberlain, (Ky. 1906) 94 S. W. 29; Robsion *v.* Gray, (Ky. 1906) 97 S. W. 347; Offutt *v.* Beall, (Ky. 1906) 97 S. W. 1113; Edwards *v.* Walesby, (Ky. 1906) 98 S. W. 306; Adair *v.* Adair, (Ky. 1907) 99 S. W. 926; Howard *v.* Cole, (Ky. 1907) 100 S. W. 225; Embry *v.* Embry, (Ky. 1907) 102 S. W. 239; Bonnie *v.* Haldeman, (Ky. 1907) 102 S. W. 308; Edmonds *v.* Edmonds, (Ky. 1907) 102 S. W. 311; Pauley *v.* Dils, (Ky. 1907) 104 S. W. 717; Wilkinson *v.* Rosser, (Ky. 1907) 104 S. W. 1019; Williams *v.* Neal, (Ky. 1907) 105 S. W. 951; Driggs *v.* Plunkett, (Ky. 1907) 105 S. W. 976; Wood *v.* Wood, (Ky. 1907) 106 S. W. 226; Deskins *v.* Williamson, (Ky. 1907) 106 S. W. 258; Hosman *v.* Willett, (Ky. 1908) 107 S. W. 334; Newcomb *v.* Fidelity Trust Co., (Ky. 1908) 108 S. W. 911; Harding *v.* Weisiger, (Ky. 1908) 109 S. W. 890; Bradshaw *v.* Butler, (Ky. 1908) 110 S. W. 420; Thomas *v.* Thomas, (Ky. 1908) 110 S. W. 853; Johnson *v.* Cook Benev. Institute, (Ky. 1908) 111 S. W. 294.

Maine. — Richards *v.* Morrison, 101 Me. 424, 64 Atl. 768; Young *v.* Hillier, (Me. 1907) 67 Atl. 571.

Maryland. — O'Brien *v.* Clark, 104 Md. 30, 64 Atl. 53; Lowe *v.* Whitridge, 105 Md. 183, 65 Atl. 926.

Massachusetts. — Crapo *v.* Price, 190 Mass. 323, 76 N. E. 1043; Pitts *v.* Milton, 192 Mass. 88, 77 N. E. 1028; Boston Safe Deposit, etc., Co. *v.* Blanchard, (Mass. 1907) 81 N. E. 654; Poor *v.* Bradbury, (Mass. 1907) 81 N. E. 882; Stimpson *v.* Murch, (Mass. 1908) 83 N. E. 1107; Dow *v.* Abbott, (Mass. 1908) 84 N. E. 96.

Michigan. — Moran *v.* Moran, 143 Mich. 322, 106 N. W. 206; Foster *v.* Stevens, 146 Mich. 131, 109 N. W. 265.

Mississippi. — Gordon *v.* James, 86 Miss. 719, 39 So. 18.

Missouri. — Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Morrow *v.* Morrow, 113 Mo. App. 444, 87 S. W. 590; *In re* Riesenberg, 116 Mo. App. 308, 90 S. W. 1170; O'Day *v.* O'Day, 193 Mo. 62, 91 S. W. 921; Metz *v.* Wright, 116 Mo. App. 631, 92 S. W. 1125; Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875; Gannon *v.* Pauk, 200 Mo. 75, 98 S. W. 471; McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997; Tebow *v.* Dougherty, 205 Mo. 315, 103 S. W. 985; Sevier *v.* Woodson, 205 Mo. 202, 104 S. W. 1; Tisdale *v.* Prather, (Mo. 1908) 109 S. W. 41; Dickerson *v.* Dickerson, (Mo. 1908) 110 S. W. 700.

Montana. — *In re* Klein, 35 Mont. 185, 88 Pac. 798.

Nebraska. — Yoesel *v.* Rieger, 75 Neb. 180, 106 N. W. 428; Clark *v.* Fleischmann, (Neb. 1908) 116 N. W. 290.

New Hampshire. — Paul *v.* Phillbrick, 73 N. H. 237, 60 Atl. 682.

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New Jersey. — German Pioneer Verein *v.* Meyer, 70 N. J. Eq. 192, 63 Atl. 835; Walton *v.* Walton, (N. J. 1907) 67 Atl. 397.

New York. — Adams *v.* Massey, 184 N. Y. 62, 76 N. E. 916; O'Donaghue *v.* Smith, 184 N. Y. 365, 77 N. E. 621; Central Trust Co. *v.* Egleston, 185 N. Y. 23, 77 N. E. 989; *In re* Mount, 185 N. Y. 162, 77 N. E. 999; March *v.* March, 186 N. Y. 99, 78 N. E. 704; Irwin *v.* Teller, 188 N. Y. 25, 80 N. E. 376; *In re* Perry, (Surrogate Ct.) 48 Misc. (N. Y.) 285, 96 N. Y. Supp. 879; *In re* Stocum, (Surrogate Ct.) 94 N. Y. Supp. 588; *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887.

North Carolina. — Freeman *v.* Freeman, 141 N. Car. 97, 53 S. E. 620.

Ohio. — Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; Swerer *v.* Ohio Wesleyan University, 27 Ohio Cir. Ct. 144.

Pennsylvania. — *In re* Forquer, 216 Pa. St. 331, 66 Atl. 92.

667. 1. Cruit *v.* Owen, 25 App. Cas. (D. C.) 514; Lowe *v.* Whitridge, 105 Md. 183, 65 Atl. 926; Adams *v.* Massey, 184 N. Y. 62, 76 N. E. 916; O'Donaghue *v.* Smith, 184 N. Y. 365, 77 N. E. 621.

9. *California.* — *In re* Jeffrey, 1 Cal. App. 524, 82 Pac. 549; *In re* Heywood, 148 Cal. 188, 82 Pac. 755; McClellan *v.* Weaver, 4 Cal. App. 593, 88 Pac. 646.

Colorado. — Whitney *v.* Hanington, 36 Colo. 407, 85 Pac. 84.

Indiana. — Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805.

Iowa. — Kalbach *v.* Clark, 133 Iowa 215, 110 N. W. 599; Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; *In re* Weien, (Iowa 1908) 116 N. W. 791.

Kentucky. — Howard *v.* Cole, (Ky. 1907) 100 S. W. 225.

Maryland. — Doan *v.* Vestry of Ascension, 103 Md. 662, 64 Atl. 314.

Michigan. — Foster *v.* Stevens, 146 Mich. 131, 109 N. W. 265.

New York. — Mee *v.* Gordon, 187 N. Y. 400, 80 N. E. 353; Jacoby *v.* Jacoby, 188 N. Y. 124, 80 N. E. 676; Central Trust Co. *v.* Egleston, 185 N. Y. 23, 77 N. E. 989; Denison *v.* Denison, 185 N. Y. 438, 78 N. E. 162; Adams *v.* Massey, 184 N. Y. 62, 76 N. E. 916; Morgan *v.* Durand, (Supm. Ct. Eq. T.) 51 Misc. (N. Y.) 523, 101 N. Y. Supp. 1002; Mee *v.* Gordon, 104 N. Y. App. Div. 520, 93 N. Y. Supp. 675.

Ohio. — Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

Texas. — Hinzie *v.* Hinzie, (Tex. Civ. App. 1907) 100 S. W. 803.

10. Howard *v.* Cole, (Ky. 1907) 100 S. W. 225; Denison *v.* Denison, 185 N. Y. 438, 78 N. E. 162; Mee *v.* Gordon, 187 N. Y. 400, 80 N. E. 353; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; Swerer *v.* Ohio Wesleyan University, 27 Ohio Cir. Ct. 144.

An Intent Which Is Contrary to Law or Public Policy cannot control in the construction of a will. German Mut. Ins. Co. *v.* Lushey, 11 Ohio Cir. Dec. 52, 20 Ohio Cir. Ct. 198.

668. 1. *California.* — *In re* Dunphy, 147 Cal. 95, 81 Pac. 315; O'Connor *v.* Murphy, 147 Cal. 148, 81 Pac. 406; *In re* Heberle, (Cal. 1908) 94 Pac. 41; *In re* Koch, (Cal. App. 1908) 96 Pac. 100.

Connecticut. — Bransfield *v.* Wigmore, (Conn. 1907) 66 Atl. 778.

District of Columbia. — Howard *v.* Evans, 24 App. Cas. (D. C.) 127; Young *v.* Morris Peters Co., 27 App. Cas. (D. C.) 140.

Georgia. — Glore *v.* Scroggins, 124 Ga. 922, 53 S. E. 690, *quoting* 30 Am. and Eng. Encyc. of Law (2d ed.) 668.

Illinois. — Strawbridge *v.* Strawbridge, 220 Ill. 61, 77 N. E. 78; Boehm *v.* Baldwin, 221 Ill. 59, 77 N. E. 454; Lewis *v.* Sedgwick, 223 Ill. 213, 79 N. E. 14; Provost *v.* Shirk, 223 Ill. 468, 79 N. E. 178; Welch *v.* Caldwell, 226 Ill. 488, 80 N. E. 1014; Thomas *v.* Thomas, 229 Ill. 277, 82 N. E. 236; Connor *v.* Gardner, 230 Ill. 258, 82 N. E. 640; Felkel *v.* O'Brien, 231 Ill. 329, 83 N. E. 170.

Indiana. — Barker *v.* Petersburg, (Ind. App. 1907) 82 N. E. 996.

Iowa. — Busby *v.* Busby, (Iowa 1908) 114 N. W. 559, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 668; Gilmore *v.* Jenkins, 129 Iowa 686, 106 N. W. 193; Kalbach *v.* Clark, 133 Iowa 215, 110 N. W. 599; Ross *v.* Ayrhart, (Iowa 1908) 115 N. W. 906; *In re* Weien, (Iowa 1908) 116 N. W. 791.

Kansas. — Johnson *v.* White, (Kan. 1907) 90 Pac. 810.

Kentucky. — Thomas *v.* Thomas, (Ky. 1908) 110 S. W. 853, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 668; Howard *v.* Cole, (Ky. 1907) 100 S. W. 225; Edmonds *v.* Edmonds, (Ky. 1907) 102 S. W. 311; Wood *v.* Wood, (Ky. 1907) 106 S. W. 226; Newcomb *v.* Fidelity Trust Co., (Ky. 1908) 108 S. W. 911; Alsip *v.* Morgan, (Ky. 1908) 109 S. W. 312.

Maryland. — Welsh *v.* Gist, 101 Md. 606, 61 Atl. 665.

Massachusetts. — Meserve *v.* Haak, 191 Mass. 220, 77 N. E. 377; Dow *v.* Abbott, (Mass. 1908) 84 N. E. 96.

Michigan. — Foster *v.* Stevens, 146 Mich. 131, 109 N. W. 265.

New York. — Adams *v.* Massey, 184 N. Y. 62, 76 N. E. 916; *In re* Smith, 46 Misc. (N. Y.) 210, 94 N. Y. Supp. 90; Morgan *v.* Durand, (Supm. Ct. Eq. T.) 51 Misc. (N. Y.) 523, 101 N. Y. Supp. 1002; *In re* Moran, (Surrogate Ct.) 53 Misc. (N. Y.) 169, 104 N. Y. Supp. 478; Mills *v.* Tompkins, 110 N. Y. App. Div. 212, 97 N. Y. Supp. 9; Matter of Disney, 118 N. Y. App. Div. 378, 103 N. Y. Supp. 391.

North Carolina. — Foil *v.* Newsome, 138 N. Car. 115, 50 S. E. 597; Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784.

Ohio. — Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

Pennsylvania. — Xander *v.* Easton Trust Co., 217 Pa. St. 485, 66 Atl. 759; *In re* Morris, 217 Pa. St. 560, 66 Atl. 1000; Long *v.* Hill, 29 Pa. Super. Ct. 606.

Rhode Island. — Angell *v.* Angell, (R. I. 1908) 68 Atl. 583.

Texas. — Hinzie *v.* Hinzie, (Tex. Civ. App. 1907) 100 S. W. 803, *quoting* 30 Am. and Eng. Encyc. of Law (2d ed.) 668; Sanger *v.* Butler, (Tex. Civ. App. 1907) 101 S. W. 459.

Vermont. — *In re* Cary, (Vt. 1908) 69 Atl. 736; Warren *v.* Bronson, (Vt. 1908) 69 Aal. 655.

Wisconsin. — *In re* Hegna, (Wis. 1907) 113 N. W. 982.

2. Mills *v.* Thompkins, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 455, 95 N. Y. Supp. 962; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; Long *v.* Hill, 29 Pa. Super. Ct. 606.

3. *In re* Reed, (Del. 1906) 64 Atl. 822; Kincaid *v.* Moore, 233 Ill. 584, 84 N. E. 633; Adams *v.* Massey, 184 N. Y. 62, 76 N. E. 916; March *v.* March, 186 N. Y. 99, 78 N. E. 704; *In re* Pearce, (Surrogate Ct.) 53 Misc. (N. Y.) 216, 104 N. Y. Supp. 469; Matter of Edie, 117 N. Y. App. Div. 310, 102 N. Y. Supp. 424; *In re* Keogh, (Supm. Ct. App. Div.) 110 N. Y. Supp. 838; Foil *v.* Newsome, 138 N. Car. 115, 50 S. E. 597; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; *In re* Sigel, 213 Pa. St. 14, 62 Atl. 175; *In re* Sigel, 213 Pa. St. 19, 62 Atl.

176; Miller's Estate, 26 Pa. Super. Ct. 443; Lehman *v.* Lehman, 29 Pa. Super. Ct. 60.

669. 1. *In re* Reed, (Del. 1906) 64 Atl. 822; Welsh *v.* Gist, 101 Md. 606, 61 Atl. 665; *In re* Pearce, (Surrogate Ct.) 53 Misc. (N. Y.) 216, 104 N. Y. Supp. 469; Long *v.* Hill, 29 Pa. Super. Ct. 606; Coberly *v.* Earle, 60 W. Va. 295, 54 S. E. 336.

2. Campbell-Kawannanakoa *v.* Campbell, (Cal. 1907) 92 Pac. 184; Smith *v.* Moore, 129 Ga. 644, 59 S. E. 915; Welsh *v.* Gist, 101 Md. 606, 61 Atl. 665. See also *In re* Norris, 217 Pa. St. 560, 66 Atl. 1000.

4. Kinkead *v.* Maxwell, 75 Kan. 50, 88 Pac. 523, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 669; Thomas *v.* Thomas, (Ky. 1908) 110 S. W. 853; Hodgkins *v.* Hodgkins, 123 N. Y. App. Div. 110, 108 N. Y. Supp. 173.

5. Turner *v.* Burr, 141 Mich. 106, 104 N. W. 379; *In re* Sander, 126 Wis. 660, 105 N. W. 1064.

6. Peet *v.* Peet, 229 Ill. 341, 82 N. E. 376; Bachinski *v.* Bachinski, (Mich. 1908) 116 N. W. 556; Wormser *v.* Croce, 120 N. Y. App. Div. 287, 104 N. Y. Supp. 1090; Stachelberg *v.* Stachelberg, (Supm. Ct. App. Div.) 108 N. Y. Supp. 645; Van Brocklin *v.* Wood, 38 Wash. 384, 80 Pac. 530.

670. 1. *United States.* — Travers *v.* Reinhardt, 205 U. S. 423, 27 U. S. Sup. Ct. 563.

California. — *In re* Mayhem, 4 Cal. App. 162, 87 Pac. 417.

Colorado. — Platt *v.* Brannan, 34 Colo. 125, 81 Pac. 755.

Connecticut. — Bartlett *v.* Sears, (Conn. 1908) 70 Atl. 33.

District of Columbia. — Cruit *v.* Owen, 25 App. Cas. (D. C.) 514.

Illinois. — Provost *v.* Shirk, 223 Ill. 468, 79 N. E. 178.

Iowa. — Kalbach *v.* Clark, 133 Iowa 215, 110 N. W. 599.

Kentucky. — Potts *v.* Shirley, (Ky. 1906) 90 S. W. 590.

Maine. — Jacobs *v.* Prescott, 102 Me. 63, 65 Atl. 761.

Maryland. — Shipley *v.* Mercantile Trust, etc., Co., 102 Md. 649, 62 Atl. 814.

Missouri. — Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Methodist Episcopal Church *v.* May, 201 Mo. 360, 99 S. W. 1093.

Montana. — *In re* Klein, 35 Mont. 185, 88 Pac. 798.

New Jersey. — Dilts *v.* Clayhaunce, 70 N. J. Eq. 10, 62 Atl. 672.

New York. — Pimel *v.* Betjemann, 183 N. Y. 194, 76 N. E. 157; *In re* Farmers' L. & T. Co., (Surrogate Ct.) 51 Misc. (N. Y.) 162, 100 N. Y. Supp. 862; Orth *v.* Haggerty, (Supm. Ct. App. Div.) 110 N. Y. Supp. 551; *In re* Keogh, (Supm. Ct. App. Div.) 110 N. Y. Supp. 868.

North Carolina. — Freeman *v.* Freeman, 141 N. Car. 97, 53 S. E. 620.

Wisconsin. — Pabst *v.* Goodrich, (Wis. 1907) 113 N. W. 398; *In re* Benner, (Wis. 1907) 113 N. W. 663.

2. Bassett *v.* Wells, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 81, 106 N. Y. Supp. 1068.

671. 2. Russell *v.* U. S. Trust Co., (C. C. A.) 136 Fed. 758; *In re* Thistlethwaite, (Surrogate Ct.) 104 N. Y. Supp. 264.

3. *In re* Rayner, (1904) 1 Ch. 176, 73 L. J. Ch. 111; Provost *v.* Shirk, 223 Ill. 468, 79 N. E. 178; Stisser *v.* Stisser, (Ill. 1908) 85 N. E. 240; Poor *v.* Bradbury, (Mass. 1907) 81 N. E. 882; Bassett *v.* Wells, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 81, 106 N. Y. Supp. 1068.

4. Webbe *v.* Webbe, 234 Ill. 442, 84 N. E. 1054; Taylor *v.* Stephens, 165 Ind. 200, 74 N. E. 980; Adair *v.* Adair, (Ky. 1907) 99 S. W. 926; Smoot *v.* Kirk, (Ky. 1907) 104 S. W. 716; Jacobs *v.* Prescott, 102 Me. 63, 65 Atl. 761; *In re* Pierson, (Surrogate Ct.) 58 Misc. (N. Y.) 94, 110 N. Y. Supp. 476; Mills *v.* Tompkins, 110 N. Y. App. Div. 212, 97 N. Y. Supp. 9; Hastings *v.* Engle, 217 Pa. St. 419, 66 Atl. 761; Wills *v.* Foltz, 61 W. Va. 262, 56 S. E. 473.

"Bequeath" Held to Mean "Devise." — Campbell *v.* Cole, (N. J. 1906) 64 Atl. 461.

5. Perry *v.* Hackney, 142 N. Car. 368, 55 S. E. 289.

6. Platt *v.* Brannan, 34 Colo. 125, 81 Pac. 755.

672. 2. *In re* Mayhew, 4 Cal. App. 162, 87 Pac. 417; Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875; *In re* Klein, 35 Mont. 185, 88 Pac. 798; Denison *v.* Denison, 185 N. Y. 438, 78 N. E. 162.

3. Platt *v.* Brannan, 34 Colo. 125, 81 Pac. 755; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38.

4. O'Malley *v.* Loftus, (Pa. 1908) 69 Atl. 819; Otts *v.* Otts, (S. Car. 1908) 61 S. E. 109.

The Court May Supply Punctuation in order to ascertain the intent of the testator. *In re* Farmers' L. & T. Co., 189 N. Y. 202, 82 N. E. 181.

673. 8. Poland *v.* St. Joseph's Orphan Asylum Assoc., 29 Ohio Cir. Ct. 649, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 673, and *affirming* 17 Ohio Dec. 234.

9. Bromley *v.* Atwood, 79 Ark. 357, 96 S. W. 356; Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950; Shipley *v.* Mercantile Trust, etc., Co., 102 Md. 649, 62 Atl. 814; Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875; Paulus *v.* Besch, 127 Mo. App. 255, 104 S. W. 1149; Cowdrey *v.* Cowdrey, (N. J. 1907) 67 Atl. 111; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; *In re* Forquer, 216 Pa. St. 331, 66 Atl. 92; Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420; St. Paul's Sanitarium *v.* Freeman, (Tex. Civ. App. 1908) 111 S. W. 443.

10. *England.* — Hubbuck's Estate, (1905) P. 129.

Arkansas. — Bromley *v.* Atwood, 79 Ark. 357, 96 S. W. 356; McDonald *v.* Shaw, 81 Ark. 235, 98 S. W. 952.

California. — *In re* Dominici, 151 Cal. 181, 90 Pac. 448.

Illinois. — Noble *v.* Fickes, 230 Ill. 594, 82 N. E. 950; Felkel *v.* O'Brien, 231 Ill. 329, 83 N. E. 170; Giger *v.* Busch, 122 Ill. App. 13.

Iowa. — Whitehouse *v.* Whitehouse, (Iowa 1907) 113 N. W. 750.

Kentucky. — P'Simer *v.* Steele, (Ky. 1908) 106 S. W. 851.

Missouri. — Paulus *v.* Besch, 127 Mo. App. 255, 104 S. W. 1149.

Nebraska. — St. James Orphan Asylum *v.* Shelby, 75 Neb. 591, 106 N. W. 604.

New York. — *In re* Stocum, (Surrogate Ct.) 94 N. Y. Supp. 588; *In re* Farmers' L. & T. Co., (Surrogate Ct.) 51 Misc. (N. Y.) 162, 100 N. Y. Supp. 862; Matter of Wilson, (Surrogate Ct.) 53 Misc. (N. Y.) 238, 104 N. Y. Supp. 480.

Ohio. — Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

Pennsylvania. — *In re* Snyder, 217 Pa. St. 71, 66 Atl. 157; Miller's Estate, 26 Pa. Super. Ct. 443.

South Carolina. — Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420.

Rhode Island. — *In re* Truman, 27 R. I. 209, 61 Atl. 598.

Texas. — Hinzie *v.* Hinzie, (Tex. Civ. App. 1907) 100 S. W. 803.

Where a Latent Ambiguity Is Both Created and Explained by the same parol testimony, the language of the will controls. Modern Woodmen of America *v.* Puckett, (Kan. 1908) 94 Pac. 132.

674. 1. *In re* Dominici, 151 Cal. 181, 90 Pac. 448; Gilmore *v.* Jenkins, 129 Iowa 686, 106 N. W. 193; Miller's Estate, 26 Pa. Super. Ct. 443; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

675. 1. *In re* Buhrmeister, 1 Cal. App. 80, 81 Pac. 752; Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

2. *In re* Buhrmeister, 1 Cal. App. 80, 81 Pac. 752; Peet *v.* Peet, 229 Ill. 341, 82 N. E. 376.

5. *In re* Dominici, 151 Cal. 181, 90 Pac. 448; Bulkeley *v.* Worthington Ecclesiastical Soc., 78 Conn. 526, 63 Atl. 351; Lowe *v.* Whitridge, 105 Md. 183, 65 Atl. 926; Turner *v.* Burr, 141 Mich. 106, 104 N. W. 379; Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Matter of Wilson, (Surrogate Ct.) 53 Misc. (N. Y.) 238, 104 N. Y. Supp. 480; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; St. Paul's Sanitarium *v.* Freeman, (Tex. Civ. App. 1908) 111 S. W. 443.

676. 1. *United States.* — Burnes *v.* Burnes, (C. C. A.) 137 Fed. 781; Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929.

Arkansas. — Bromley *v.* Atwood, 79 Ark. 357, 96 S. W. 356.

Connecticut. — Jacobs *v.* Button, 79 Conn. 360, 65 Atl. 150.

District of Columbia. — Cruit *v.* Owen, 25 App. Cas. (D. C.) 514.

Illinois. — Peet *v.* Peet, 229 Ill. 341, 82 N. E. 376; Felkel *v.* O'Brien, 231 Ill. 329, 83 N. E. 170; Wardner *v.* Seventh Day Baptist Memorial Board, 232 Ill. 606, 83 N. E. 1077.

Iowa. — Whitehouse *v.* Whitehouse, (Iowa 1907) 113 N. W. 759.

Kansas. — Hurst *v.* Weaver, (Kan. 1907) 90 Pac. 297.

Kentucky. — Edmonds *v.* Edmonds, (Ky. 1907) 102 S. W. 311; P'Simer *v.* Steele, (Ky. 1908) 106 S. W. 851.

Maine. — Young *v.* Hillier, (Me. 1907) 67 Atl. 571.

Maryland. — Welsh *v.* Gist, 101 Md. 606, 61 Atl. 665.

Missouri. — Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875; Paulus *v.* Besch, 127 Mo. App. 255, 104 S. W. 1149.

Nebraska. — St. James Orphan Asylum *v.* Shelby, 75 Neb. 591, 106 N. W. 604.

New Hampshire. — Ladd *v.* Ladd, (N. H. 1907) 68 Atl. 462.

New York. — Bowman *v.* Domestic, etc., Missionary Soc., 182 N. Y. 494, 75 N. E. 535; Central Trust Co. *v.* Egleston, 185 N. Y. 23, 77 N. E. 989; *In re* Mount, 185 N. Y. 162, 77 N. E. 999; Irwin *v.* Teller, 188 N. Y. 25, 80 N. E. 376; *In re* Stocum, (Surrogate Ct.) 94 N. Y. Supp. 588.

Ohio. — Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

Pennsylvania. — *In re* Hermann, (Pa. 1908) 69 Atl. 285.

Texas. — Hinzie *v.* Hinzie, (Tex. Civ. App. 1907) 100 S. W. 803.

Washington. — Rathjens *v.* Merrill, 38 Wash. 442, 80 Pac. 754.

677. 1. Lowe *v.* Whitridge, 105 Md. 183, 65 Atl. 926; Miller *v.* Canton, 112 Mo. App. 322, 87 S. W. 96; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; St. Paul's Sanitarium *v.* Freeman, (Tex.) 111 S. W. 443.

678. 1. *In re* Dominici, 151 Cal. 181, 90 Pac. 448; Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875; Irwin *v.* Teller, 188 N. Y. 25, 80 N. E. 376; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

2. McClellan *v.* Weaver, 4 Cal. App. 593, 88 Pac. 646; Waters *v.* Waters, 222 Ill. 26, 78 N. E. 1; Peet *v.* Peet, 229 Ill. 341, 82 N. E. 376; Smith *v.* Hollenbeck, 231 Ill. 484, 83 N. E. 206; Scott *v.* Scott, (Iowa 1908) 114 N. W. 881; Shipley *v.* Mercantile Trust, etc., Co., 102 Md. 649, 62 Atl. 814; Lowe *v.* Whitridge, 105 Md. 183, 65 Atl. 926; *In re* Klein, 35 Mont. 185, 88 Pac. 798; Ladd *v.* Ladd, (N. H. 1907) 68 Atl. 462; Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 678; App *v.* App, 106 Va. 253, 55 S. E. 672.

679. 4. Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420.

5. Bromley *v.* Atwood, 79 Ark. 357, 96 S. W. 356; Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420. *Compare In re* Dominici, 151 Cal. 181, 90 Pac. 448.

680. 2. *In re* Dominici, 151 Cal. 181, 90 Pac. 448; Whitehouse *v.* Whitehouse, (Iowa 1907) 113 N. W. 759.

7. **Same Rule in Michigan as in Massachusetts.** — Bachinski *v.* Bachinski, (Mich. 1908) 116 N. W. 556.

681. 1. *In re* Donohue, (Surrogate Ct.) 46 Misc. (N. Y.) 370, 94 N. Y. Supp. 1087.

2. Gilmore *v.* Jenkins, 129 Iowa 686, 106 N. W. 193; Lowe *v.* Whitridge, 105 Md. 183, 65 Atl. 926.

4. Atkins *v.* Best, 27 App. Cas. (D. C.) 148.

6. St. James Orphan Asylum *v.* Shelby, 75 Neb. 591, 106 N. W. 604; Otts *v.* Otts, (S. Car. 1908) 61 S. E. 109.

8. *Compare* Bromley *v.* Atwood, 79 Ark. 357, 96 S. W. 356.

682. 1. McDonald *v.* Shaw, 81 Ark. 235, 98 S. W. 952; *In re* Dominici, 151 Cal. 181, 90 Pac. 448; Lomax *v.* Lomax, 218 Ill. 629, 75 N. E. 1076; *In re* Klein, 35 Mont. 185, 88 Pac. 798; Bowman *v.* Domestic, etc., Missionary Soc., 182 N. Y. 494, 75 N. E. 535; *In re* Slocum, (Surrogate Ct.) 94 N. Y. Supp. 588.

2. Hubbuck's Estate, (1905) P. 129; *In re* Dominici, 131 Cal. 181, 90 Pac. 448; Miller's Estate, 26 Pa. Super. Ct. 443.

683. 1. McDonald *v.* Shaw, 81 Ark. 235, 98 S. W. 952; Best *v.* Berry, 189 Mass. 510, 75 N. E. 743.

2. *In re* Sander, 126 Wis. 660, 105 N. W. 1064.

3. Bowman *v.* Domestic, etc., Missionary Soc., 182 N. Y. 494, 75 N. E. 535.

4. Hatheway *v.* Smith, 79 Conn. 506, 65 Atl. 1058; Lomax *v.* Lomax, 218 Ill. 629, 75 N. E. 1076; Lewis *v.* Sherman, 129 Iowa 682, 104 N. W. 511; Whitehouse *v.* Whitehouse, (Iowa 1907) 113 Mo. 759; P'Simer *v.* Steele, (Ky. 1908) 106 S. W. 851; St. James Orphan Asylum *v.* Shelby, 75 Neb. 180, 106 N. W. 604.

Devise of "My Farm." — Sorenson *v.* Carey, 96 Minn. 202, 104 N. W. 958.

684. 1. Giger *v.* Busch, 122 Ill. App. 13; P'Simer *v.* Steele, (Ky. 1908) 106 S. W. 851.

2. Lomax *v.* Lomax, 218 Ill. 629, 75 N. E. 1076; Best *v.* Berry, 189 Mass. 510, 75 N. E. 743.

685. 6. Newlin *v.* Phillips, (Del. 1905) 60 Atl. 1068; Foster *v.* Stevens, 146 Mich. 131, 109 N. W. 265; Martley *v.* Martley, (Neb. 1906) 108 N. W. 979; Adams *v.* Massey, 184 N. Y. 62, 76 N. E. 916; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; Eckert *v.* Pennsylvania Trust Co., 212 Pa. St. 372, 61 Atl. 935; Smith *v.* White, 107 Va. 616, 59 S. E. 480.

686. 1. *In re* Buhrmeister, 1 Cal. App. 80, 81 Pac. 752; *In re* Mayhew, 4 Cal. App. 162, 87 Pac. 417; Rogers *v.* Highnote, 126 Ga. 740, 56 S. E. 93; Kimbrough *v.* Smith, 128 Ga. 690, 58 S. E. 23; Boyce *v.* Kelso Home for Orphans, (Md. 1908) 68 Atl. 550; Foster *v.* Stevens, 146 Mich. 131, 109 N. W. 265; Martley *v.* Martley, (Neb. 1906) 108 N. W. 979; Tooker *v.* Tooker, (N. J. 1906) 64 Atl. 806; Adams *v.* Massey, 184 N. Y. 62, 76 N. E. 916; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; Eckert *v.* Pennsylvania Trust Co., 212 Pa. St. 372, 61 Atl. 935.

687. 1. Johnston *v.* Hughes, 187 N. Y. 446, 80 N. E. 373.

2. Howard *v.* Evans, 24 App. Cas. (D. C.) 127; Hurst *v.* Weaver, (Kan. 1907) 90 Pac. 297.

3. Travers *v.* Reinhardt, 205 U. S. 423, 27 U. S. Sup. Ct. 563; Ballantine *v.* Ballantine, 152 Fed. 775. See also Howard *v.* Evans, 24 App. Cas. (D. C.) 127; Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784.

688. 1. *England.* — *In re* Hanbury, (1904) 1 Ch. 415, 73 L. J. Ch. 222.

United States. — Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929; Ballantine *v.* Ballantine, 152 Fed. 775.

Alabama. — McGauly *v.* McGauly, (Ala. 1905) 39 So. 677.

District of Columbia. — Montgomery *v.* Brown, 25 App. Cas. (D. C.) 490.

Georgia. — Kimbeaugh *v.* Smith, 128 Ga. 690, 58 S. E. 23, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687 [688].

Kentucky. — McCauley *v.* Dale, (Ky. 1908) 108 S. W. 268; Wood *v.* Wood, (Ky. 1907) 106 S. W. 226.

Maryland. — Lowe *v.* Whitridge, 105 Md. 183, 65 Atl. 926.

Missouri. — *In re* Riesenberg, 116 Mo. App. 308, 90 S. W. 1170; Sevier *v.* Woodson, 205 Mo. 202, 104 S. W. 1.

New York. — Bollentin *v.* Bollentin, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 250, 109 N. Y. Supp. 212, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687 [688]; Johnston *v.* Hughes, 187 N. Y. 446, 80 N. E. 373; *In re* Donohue, (Surrogate Ct.) 46 Misc. (N. Y.) 370, 94 N. Y. Supp. 1087; *In re* Freel, (Surrogate Ct.) 49 Misc. (N. Y.) 380, 99 N. Y. Supp. 505; Mull *v.* Mull, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 362, 100 N. Y. Supp. 523; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38; *In re* Pearce, (Surrogate Ct.) 53 Misc. (N. Y.) 216, 104 N. Y. Supp. 469; Mee *v.* Gordon, 104 N. Y. App. Div. 520, 93 N. Y. Supp. 675; Illensworth *v.* Illensworth, 110 N. Y. App. Div. 399, 97 N. Y. Supp. 44; Mull *v.* Masten, 113 N. Y. App. Div. 893, 98 N. Y. Supp. 746; Holden *v.* Rush, 119 N. Y. App. Div. 716, 104 N. Y. Supp. 175; Bennett *v.* McLaughlin, (Supm. Ct. Tr. T.) 103 N. Y. Supp. 256.

Ohio. — Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

South Carolina. — Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 687 [688].

West Virginia. — Wills *v.* Foltz, 61 W. Va. 262, 56 S. E. 473.

689. 1. *Illinois.* — Reid *v.* Voorhees, 216 Ill. 236, 74 N. E. 804; Mosier *v.* Bowser, 226 Ill. 46, 80 N. E. 730.

Kentucky. — Pennsylvania Land Co. *v.* Justi, (Ky. 1906) 90 S. W. 279; Potts *v.* Shirley, (Ky. 1906) 90 S. W. 590; Williams *v.* Neal, (Ky. 1907) 105 S. W. 951.

Massachusetts. — Schell *v.* Schuler, 194 Mass. 441, 80 N. E. 523.

New Hampshire. — Paul *v.* Philbrick, 73 N. H. 237, 60 Atl. 682.

New York. — Denison *v.* Denison, 185 N. Y. 438, 78 N. E. 162; *In re* Smith, (Surrogate Ct.) 46 Misc. (N. Y.) 210, 94 N. Y. Supp. 90; Hayes *v.* Gunning, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 517, 101 N. Y. Supp. 875; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38; Beebe *v.* Bellamy, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 511, 109 N. Y. Supp. 941.

Virginia. — Jordan *v.* Richmond Home for Ladies, 106 Va. 710, 56 S. E. 730.

2. Howard *v.* Evans, 24 App. Cas. (D. C.) 127; Reid *v.* Voorhees, 216 Ill. 236, 74 N. E. 804; Paul *v.* Philbrick, 73 N. H. 237, 60 Atl. 682; *In re* Bouck, (Wis. 1907) 111 N. W. 573.

690. 1. *In re* Dominici, (Cal. App. 1906) 87 Pac. 389, *reversed* on other grounds 151 Cal. 181, 90 Pac. 448; Colson *v.* Pancoast, (N. J. 1907) 67 Atl. 390.

2. Edmonds *v.* Edmonds, (Ky. 1907) 102 S. W. 311; Schell *v.* Schuler, 194 Mass. 441, 80 N. E. 523; Sorenson *v.* Carey, 96 Minn. 202, 104 N. W. 958; Paul *v.* Philbrick, 73 N. H. 237, 60 Atl. 682; Leggett *v.* Stevens, 185 N. Y. 70, 77 N. E. 874; Denison *v.* Denison, 185 N. Y. 438, 78 N. E. 162; *In re* Farmers' L. & T. Co., 189 N. Y. 202, 82 N. E. 181; *In re* Smith, (Surrogate Ct.) 46 Misc. (N. Y.) 210, 94 N. Y. Supp. 90; Hayes *v.* Gunning, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 517, 101 N. Y. Supp. 875; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38; Carroll *v.* Adams, (Supm. Ct. Spec.

T.) 105 N. Y. Supp. 967; Jordan *v.* Richmond Home for Ladies, 106 Va. 710, 56 S. E. 730.

Technical Words Supplied. — Metz *v.* Wright, 116 Mo. App. 631, 92 S. W. 1125.

691. 2. Travers *v.* Reinhardt, 205 U. S. 423, 27 U. S. Sup. Ct. 563; Platt *v.* Brannan, 34 Colo. 125, 81 Pac. 755, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 691; Gilmore *v.* Jenkins, 129 Iowa 686, 106 N. W. 193; Pennsylvania Land Co. *v.* Justi, (Ky. 1906) 90 S. W. 279; Williams *v.* Neal, (Ky. 1907) 105 S. W. 951; Driggs *v.* Plunkett, (Ky. 1907) 105 S. W. 976; Methodist Episcopal Church *v.* May, 201 Mo. 360, 99 S. W. 1093; Liebmann *v.* Liebmann, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 488, 105 N. Y. Supp. 403.

"My" Read "Her." — Liebmann *v.* Liebmann, (Supm. Ct. Spec. T.) 53 Misc. (N. Y.) 488, 105 N. Y. Supp. 403.

"Or" Read "Of." — *In re* Dayrell, (1904) 2 Ch. 496, 13 L. J. Ch. 795.

"Nor" Read "Or." — Reed *v.* Longstreet, (N. J. 1906) 63 Atl. 500.

692. 1. Cody *v.* Staples, (Conn. 1907) 67 Atl. 1; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38.

2. Travers *v.* Reinhardt, 205 U. S. 423, 27 U. S. Sup. Ct. 563, *affirming* 25 App. Cas. (D. C.) 567; Methodist Episcopal Church *v.* May, 201 Mo. 360, 99 S. W. 1093.

3. Travers *v.* Reinhardt, 25 App. Cas. (D. C.) 567; *In re* Polley, 70 N. J. Eq. 659, 62 Atl. 553; Mayer *v.* Walker, 214 Pa. St. 440, 63 Atl. 1011.

693. 2. Leggett *v.* Stevens, 185 N. Y. 70, 77 N. E. 874; Denison *v.* Denison, 185 N. Y. 438, 78 N. E. 162; *In re* Farmers' L. & T. Co., 189 N. Y. 202, 82 N. E. 181; *In re* Smith, 46 Misc. (N. Y.) 210, 94 N. Y. Supp. 90; Hayes *v.* Gunning, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 517, 101 N. Y. Supp. 875; Mills *v.* Tompkins, 110 N. Y. App. Div. 212, 97 N. Y. Supp. 9; *In re* Stocum, (Surrogate Ct.) 94 N. Y. Supp. 588.

3. *In re* Koppikus, 1 Cal. App. 84, 81 Pac. 732; Hegeman *v.* Roome, 70 N. J. Eq. 562, 62 Atl. 392.

694. 1. Speer *v.* Colbert, 200 U. S. 130, 26 U. S. Sup. Ct. 201; Lander *v.* Lander, 217 Ill. 289, 75 N. E. 487; Douglas *v.* Bolinger, 228 Ill. 23, 81 N. E. 787; Felkel *v.* O'Brien, 231 Ill. 329, 83 N. E. 170; Barker *v.* Petersburg, (Ind. App. 1907) 82 N. E. 996; Smullin *v.* Wharton, 73 Neb. 667, 106 N. W. 577; *In re* Dickinson, (Surrogate Ct.) 56 Misc. (N. Y.) 232, 107 N. Y. Supp. 386.

2. Speer *v.* Colbert, 200 U. S. 130, 26 U. S. Sup. Ct. 201; Welch *v.* Caldwell, 226 Ill. 488, 80 N. E. 1014; Methodist Episcopal Church *v.* May, 201 Mo. 360, 99 S. W. 1093; Leask *v.* Hoagland, 188 N. Y. 291, 80 N. E. 919.

695. 3. Welch *v.* Caldwell, 226 Ill. 488, 80 N. E. 1014; Minot *v.* Parker, 189 Mass. 176, 75 N. E. 149; *In re* Wilson, (Neb. 1908) 116 N. W. 971; *In re* Dickinson, (Surrogate Ct.) 56 Misc. (N. Y.) 232, 107 N. Y. Supp. 386; *In re* Dulle, 218 Pa. St. 162, 67 Atl. 49; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855.

Designation of Residuary Legatee. — Harrington *v.* Abberton, 115 N. Y. App. Div. 177, 100 N. Y. Supp. 681.

697. 1. Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

2. Connor *v.* Gardner, 230 Ill. 258, 82 N. E. 640; Newcomb *v.* Fidelity Trust Co., (Ky. 1908) 108 S. W. 911; Metz *v.* Wright, 116 Mo. App. 631, 92 S. W. 1125; Pratt *v.* Saline Valley R. Co., (Mo. App. 1908) 108 S. W. 1099; *In re* Smith, 46 Misc. (N. Y.) 210, 94 N. Y. Supp. 90; Matter of Disney, 118 N. Y. App. Div. 378, 103 N. Y. Supp. 391.

4. *In re* Willatts, (1905) 1 Ch. 378; Connor *v.* Gardner, 230 Ill. 258, 82 N. E. 640; Newcomb *v.* Fidelity Trust Co., (Ky. 1908) 108 S. W. 911; Welsh *v.* Gist, 101 Md. 606, 61 Atl. 665; Metz *v.* Wright, 116 Mo. App. 631, 92 S. W. 1125; Gannon *v.* Pauk, 200 Mo. 75, 98 S. W. 471; Pratt *v.* Saline Valley R. Co., (Mo. App. 1908) 108 S. W. 1099; Benedict *v.* Dunning, 110 N. Y. App. Div. 552, 97 N. Y. Supp. 259; Otts *v.* Otts, (S. Car. 1908) 61 S. E. 109; Coberly *v.* Earle, 60 W. Va. 295, 54 S. E. 336.

698. 2. Robbins *v.* Smith, 27 Ohio Cir. Ct. 91.

3. Lander *v.* Lander, 217 Ill. 289, 75 N. E. 487; Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151.

4. Noble *v.* Tipton, 219 Ill. 182, 76 N. E. 151.

699. 2. **Where the Deed Alluded to by the Testator Is Invalid,** a recital in his will that he has deeded all his property to certain heirs does not constitute a devise by implication. Koger *v.* Koger, (Ky. 1906) 92 S. W. 1167.

3. *In re* Willatts, (1905) 1 Ch. 378; Demarest *v.* Demarest, (N. J. 1904) 61 Atl. 569; *In re* Vreeland, (N. J. 1907) 65 Atl. 902.

701. 3. Hill *v.* Terrell, 123 Ga. 49, 51 S. E. 81. *Compare* Matter of Disney, 118 N. Y. App. Div. 378, 103 N. Y. Supp. 391.

Where There Is a Bequest to A and B of the Testator's Residuary Estate, share and share alike, and the share of either dying without issue to go to the survivor, and A dies before the testator, there is an implied bequest of A's share to his issue. Matter of Disney, 118 N. Y. App. Div. 378, 103 N. Y. Supp. 391.

708. 1. *In re* Barclay, (Cal. 1908) 93 Pac. 1012; Carpenter *v.* Sangamon L. & T. Co., 229 Ill. 486, 82 N. E. 418; Duzan *v.* Chappel, (Ind. App. 1908) 84 N. E. 775; Fisher *v.* Eggert, (N. J. 1906) 64 Atl. 957; *In re* Farmers' L. & T. Co., 189 N. Y. 202, 82 N. E. 181; Hebberd *v.* Lese, 107 N. Y. App. Div. 425, 95 N. Y. Supp. 333; Tyndall *v.* Fleming, (Supm. Ct. App. Div.) 108 N. Y. Supp. 239; Holmes *v.* Stanhope, 217 Pa. St. 63, 66 Atl. 146; Ault *v.* Karch, (Pa. 1908) 69 Atl. 857; Daniels's Estate, 27 Pa. Super. Ct. 358; Hogg's Estate, 27 Pa. Super. Ct. 428; Stiles *v.* Easton Nat. Bank, 33 Pa. Super. Ct. 57.

That Death at Any Time. — Fisher *v.* Eggert, (N. J. 1906) 64 Atl. 957.

4. Foley *v.* Hook, (Ky. 1908) 107 S. W. 1188.

5. Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 502.

6. Mull *v.* Mull, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 362, 100 N. Y. Supp. 523; *In re*

Farmer's L. & T. Co., (Surrogate Ct.) 51 Misc. (N. Y.) 162, 100 N. Y. Supp. 862; Neubert *v.* Colwell, (Pa. 1908) 68 Atl. 673.

709. 1. March *v.* March, 186 N. Y. 99, 78 N. E. 704; *In re* Farmers' L. & T. Co., 189 N. Y. 202, 82 N. E. 181.

2. Fifer *v.* Allen, 228 Ill. 518, 81 N. E. 1105, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 709; Carpenter *v.* Sangamon L. & T. Co., 229 Ill. 486, 82 N. E. 418; Brenock *v.* Brenock, 230 Ill. 519, 82 N. E. 816.

3. Fifer *v.* Allen, 228 Ill. 518, 81 N. E. 1105, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 709; *In re* Farmers' L. & T. Co., 189 N. Y. 202, 82 N. E. 181; Webel *v.* Kelly, 111 N. Y. App. Div. 521, 97 N. Y. Supp. 1009; Harrell *v.* Hagan, (N. Car. 1908) 60 S. E. 909; McDaniel *v.* McDaniel, (Pa. 1908) 68 Atl. 847; Dilworth *v.* Schuylkill Imp. Land Co., (Pa. 1908) 69 Atl. 47.

4. Chesterfield *v.* Haskin, (Wis. 1907) 113 N. W. 647.

711. 1. *In re* Alexander, 149 Cal. 146, 85 Pac. 308; Hannon *v.* Fliedner, 216 Pa. St. 470, 65 Atl. 944; Mayer *v.* Walker, 214 Pa. St. 440, 63 Atl. 1011.

712. 1. **"Books."** — *In re* Jeffrey, 1 Cal. App. 524, 82 Pac. 549.

715. 8. Perry *v.* Hackney, 142 N. Car. 368, 55 S. E. 289.

716. 1. Walker *v.* Hill, 73 N. H. 254, 60 Atl. 1017.

9. Young *v.* Norris Peters Co., 27 App. Cas. (D. C.) 140.

717. 2. **Money at a Bank Bearing Interest** will pass under a bequest of "moneys owing to sue." *In re* Derbyshire, 54 W. R. 135.

9. **Issue.** — Phelps *v.* Cameron, 109 N. Y. App. Div. 798, 96 N. Y. Supp. 1014.

718. 1. Davis *v.* Sanders, 123 Ga. 177, 51 S. E. 298; Todd's Estate, 33 Pa. Super. Ct. 117.

3. **A Bequest to B and Her Children** is a bequest to a class. Davis *v.* Sanders, 123 Ga. 177, 51 S. E. 298.

4. Davis *v.* Sanders, 123 Ga. 177, 51 S. E. 298, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 718; Best *v.* Berry, 189 Mass. 510, 75 N. E. 743; Kent *v.* Kent, 106 Va. 199, 55 S. E. 564.

5. Davis *v.* Sanders, 123 Ga. 177, 51 S. E. 298, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 718; Best *v.* Berry, 189 Mass. 510, 75 N. E. 743; Kent *v.* Kent, 106 Va. 199, 55 S. E. 564.

6. *In re* Sharpless, 214 Pa. St. 335, 63 Atl. 884.

719. 1. Davis *v.* Sanders, 123 Ga. 177, 51 S. E. 298; Best *v.* Berry, 189 Mass. 510, 75 N. E. 743; Pimel *v.* Betjemann, 183 N. Y. 194, 76 N. E. 157; Watkins *v.* Blount, (Tex. Civ. App. 1906) 94 S. W. 1116, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) [718].

2. Irvin *v.* Porterfield, 126 Ga. 729, 55 S. E. 946, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719–721; Caywood *v.* Jones, (Ky. 1908) 108 S. W. 888; Pimel *v.* Betjemann, 183 N. Y. 194, 76 N. E. 157; *In re* Butler, (Surrogate Ct.) 50 Misc. (N. Y.) 229, 100 N. Y. Supp. 487; Todd's Estate, 33 Pa. Super. Ct. 117.

720. 2. Crawley *v.* Kendrick, 122 Ga. 183, 50 S. E. 41; Caywood *v.* Jones, (Ky. 1908) 108 S. W. 888; Olsen *v.* Youngerman, (Iowa 1907) 113 N. W. 938; Stoors *v.* Burgess, 101 Me. 26, 62 Atl. 730; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539.

3. Fulghum *v.* Strickland, 123 Ga. 258, 51 S. E. 294; Pimel *v.* Betjemann, 183 N. Y. 194, 76 N. E. 157.

721. 2. *Re* Kinnear, 90 L. T. N. S. 537; Crawley *v.* Kendrick 122 Ga. 183, 50 S. E. 41; Minot *v.* Doggett, 190 Mass. 435, 77 N. E. 629; *In re* Wetherill, 214 Pa. St. 150, 63 Atl. 406.

3. Irvin *v.* Porterfield, 126 Ga. 729, 55 S. E. 946, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 719–721; Minot *v.* Doggett, 190 Mass. 435, 77 N. E. 629; Minot *v.* Purrington, 190 Mass. 336, 77 N. E. 630; *In re* Wetherill, 214 Pa. St. 150, 63 Atl. 406.

722. 1. Irvin *v.* Porterfield, 126 Ga. 729, 55 S. E. 946.

723. 5. *In re* Courtenay, 74 L. J. Ch. 654; Caywood *v.* Jones, (Ky. 1908) 108 S. W. 888.

Effect of Continued Maintenance or Advancement. — See *In re* Courtenay, 74 L. J. Ch. 654.

726. 2. Boston Safe Deposit, etc., Co. *v.* Parker, (Mass. 1907) 83 N. E. 307.

727. 1. Kalbach *v.* Clark, 133 Iowa 215, 110 N. W. 599; Kaufman *v.* Anderson, (Ky. 1907) 104 S. W. 340; Hardy *v.* Roach, 190 Mass. 223, 76 N. E. 720; Boston Safe Deposit, etc., Co. *v.* Blanchard, (Mass. 1907) 81 N. E. 654; Gerdman *v.* Meyer, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 256, 102 N. Y. Supp. 197; Schneider *v.* Heilbron, 115 N. Y. App. Div. 677, 101 N. Y. Supp. 152; *In re* Arensberg, 120 N. Y. App. Div. 463, 104 N. Y. Supp. 1033; Kernochan *v.* Whitney, (Supm. Ct. App. Div.) 109 N. Y. Supp. 721; Miller's Estate, 26 Pa. Super. Ct. 453; Dunihue *v.* Hurd, (Tex. Civ. App. 1908) 109 N. W. 1145.

2. Van Houten *v.* Hall, (N. J. 1906) 64 Atl. 460; Matter of Wilson, (Surrogate Ct.) 53 Misc. (N. Y.) 238, 104 N. Y. Supp. 480; *In re* Truman, 27 R. I. 209, 61 Atl. 598.

3. Dunihue *v.* Hurd, (Tex. Civ. App. 1908) 109 S. W. 1145.

4. Fulghum *v.* Strickland, 123 Ga. 258, 51 S. E. 294; *In re* Keogh, 112 N. Y. App. Div. 414, 98 N. Y. Supp. 433.

5. Van Houten *v.* Hall, (N. J. 1907) 67 Atl. 1052; Trowbridge *v.* Coss, (Supm. Ct. App. Div.) 110 N. Y. Supp. 1108; Guild *v.* Allen, (R. I. 1907) 67 Atl. 855. And to the same effect as Hoxton *v.* Griffith, 18 Gratt. (Va.) 574, quoted in the original note, see Whittle *v.* Whittle, (Va. 1908) 60 S. E. 748.

728. 1. Van Houten *v.* Hall, (N. J. 1907) 67 Atl. 1052.

729. 1. Bassett *v.* Wells, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 81, 106 N. Y. Supp. 1068; Robinson *v.* Harris, 73 S. Car. 469, 53 S. E. 755; Whittle *v.* Whittle, (Va. 1908) 60 S. E. 748; Wills *v.* Foltz, 61 W. Va. 262, 56 S. E. 473.

2. Guild *v.* Allen, (R. I. 1907) 67 Atl. 855. See also Van Houten *v.* Hall, (N. J. 1907) 67 Atl. 1052.

730. 1. Kaufman *v.* Anderson, (Ky. 1907) 104 S. W. 340.

2. Mosier *v.* Bowser, *226* Ill. 46, 80 N. E. 730; Jacobs *v.* Prescott, 102 Me. 63, 65 Atl. 761, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 730; Dunihue *v.* Hurd, (Tex. Civ. App. 1908) 109 S. W. 1145; Wills *v.* Foltz, 61 W. Va. *262*, 56 S. E. 473.

731. 3. Kalbach *v.* Clark, 133 Iowa *215*, 110 N. W. 599; Barret *v.* Gwyn, (Ky. 1905) 88 S. W. 1096; Colville *v.* Kinsman, (N. J. 1905) 60 Atl. 959; *In re* Keogh, (Surrogate Ct.) 47 Misc. (N. Y.) 37, 95 N. Y. Supp. 191; Hagen *v.* Hanks, (S. Car. 1908) 61 S. E. 245.

732. 1. Barret *v.* Gwyn, (Ky. 1905) 88 S. W. 1096; Brantley *v.* Bittle, *72* S. Car. 179, 51 S. E. 561.

3. Contra. — Allen *v.* Boardman, 193 Mass. *284*, 79 N. E. *260*.

733. 2. *In re* Stocum, (Surrogate Ct.) 94 N. Y. Supp. 588.

3. Hurley *v.* Rosensteel, 104 Md. *262*, 64 Atl. 1041; Meserve *v.* Haak, 191 Mass. *220*, 77 N. E. 377; Thompson *v.* Thornton, (Mass. 1908) 83 N. E. 880; Van Houten *v.* Hall, (N. J. 1907) 67 Atl. 1052.

734. 1. Coates *v.* Burton, 191 Mass. 180, 77 N. E. 311.

2. Matter of Wilson, (Surrogate Ct.) 53 Misc. (N. Y.) *238*, 104 N. Y. Supp. 480.

735. 4. Bernstein *v.* Bramble, 81 Ark. 480, 99 S. W. 682; Boehm *v.* Baldwin, *221* Ill. 59, 77 N. E. 454; Connor *v.* Gardner, *230* Ill. 258, 82 N. E. 640; Lee *v.* Moore, (Ky. 1906) 93 S. W. 911; Wood *v.* Wood, (Ky. 1907) 106 S. W. *226*; McCauley *v.* Dale, (Ky. 1908) 108 S. W. *268*; Alsip *v.* Morgan, (Ky. 1908) 109 S. W. 312; Schneiderhahn *v.* Zeller, (Ky. 1908) 110 S. W. 834.

The Good Will of a Business has been held to pass with a gift of the testator's shop and goods. Bradbury *v.* Wells, (Iowa 1908) 115 N. W. 880.

6. Killefer *v.* Bassett, 146 Mich. 1, 109 N. W. *21*; Missouri Baptist Sanitarium *v.* McCune, 112 Mo. App. *332*, 87 S. W. 93.

7. Wills *v.* Wills, (N. J. 1908) 69 Atl. 256.

736. 1. Hughes *v.* Fitzgerald, 78 Conn. 4, 60 Atl. 694; *In re* Weien, (Iowa 1908) 116 N. W. 791; Lee *v.* Moore, (Ky. 1906) 93 S. W. 911; Welsh *v.* Gist, 101 Md. 606, 61 Atl. 665; Turnbull *v.* Johnson, (Mich. 1908) 116 N. W. 1009; Manson *v.* Jack, (N. J. 1905) 62 Atl. 394, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 376 [736]; Wills *v.* Wills, (N. J. 1908) 69 Atl. 256; McCloskey *v.* Thorpe, (N. J. 1908) 69 Atl. 973; Ludlam *v.* Ludlam, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 232, 95 N. Y. Supp. 862; Hayes *v.* Gunning, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 517, 101 N. Y. Supp. 875; Bing *v.* Burrus, 106 Va. 478, 56 S. E. *222*.

Where an estate is left to an infant with a limitation over if such infant dies without attaining the age of twenty-one years, or without disposing of the estate or all of it, or without having made a last will and testament, the power of disposal given to the first taker will not avoid the gift over, if the first contingency, viz., death of the infant during minority, shall happen. Whether, if the infant survives to be twenty-one, the power of disposal thus given will not avoid the gift over, *quære*. *In re* Polley, 70 N. J. Eq. 659, 62 Atl. 553.

2. *In re* Weien, (Iowa 1908) 116 N. W. 791.

3. Montgomery *v.* Brown, *25* App. Cas. (D. C.) 490; Killefer *v.* Bassett, 146 Mich. 1, 109 N. W. *21*; McCloskey *v.* Thorpe, (N. J. 1908) 69 Atl. 973; Bing *v.* Burrus, 106 Va. 478, 56 S. E. *222*.

New York — Rule Changed by Statute. — Tuthill *v.* Davis, *121* N. Y. App. Div. 290, 105 N. Y. Supp. 672. *Compare In re* Pierson, (Surrogate Ct.) 58 Misc. (N. Y.) 94, 110 N. Y. Supp. 476.

6. Young *v.* Hillier, (Me. 1907) 67 Atl. 571; McCloskey *v.* Thorpe, (N. J. 1908) 69 Atl. 973; Kennedy *v.* Pittsburg, etc., R. Co., *216* Pa. St. 575, 65 Atl. 1102; Allen *v.* Hirlinger, (Pa. 1907) 67 Atl. 907. See also Martin *v.* Heckman, *25* Pa. Super. Ct. 451. *Compare* Allen *v.* Hirlinger, 33 Pa. Super. Ct. 113.

737. 1. Words May Refer to Natural Losses Only. — Tooker *v.* Tooker, (N. J. 1906) 64 Atl. 806.

2. Wardner *v.* Seventh Day Baptist Memorial Board, *232* Ill. 606, 83 N. E. 1077; Teel *v.* Mills, 117 Ill. App. 97; Steiff *v.* Seibert, 128 Iowa 746, 105 N. W. 328; Haviland *v.* Haviland, 130 Iowa 611, 105 N. W. 354; Welsh *v.* Gist, 101 Md. 606, 61 Atl. 665; Killefer *v.* Bassett, 146 Mich. 1, 109 N. W. *21*; Reed *v.* Reed, 194 Mass. *216*, 80 N. E. *219*; *In re* Hibbard, (Surrogate Ct.) 53 Misc. (N. Y.) 196, 104 N. Y. Supp. 583; *In re* Pierson, (Surrogate Ct.) 58 Misc. (N. Y.) 94, 110 N. Y. Supp. 476; Allen *v.* Hirlinger, 33 Pa. Super. Ct. 113; Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420; Perkinson *v.* Clarke, (Wis. 1908) 116 N. W. *229*.

738. 1. *In re* Pierson, (Surrogate Ct.) 58 Misc. (N. Y.) 94, 110 N. Y. Supp. 476.

2. *In re* Mayhew, 4 Cal. App. 162, 87 Pac. 417; Webb *v.* Webb, 130 Iowa 457, 104 N. W. 438; Greenwalt *v.* Keller, (Kan. 1907) 90 Pac. 233; Centenary Fund, etc., *v.* Lake, (N. J. 1907) 66 Atl. 601; Allen *v.* Hirlinger, (Pa. 1907) 67 Atl. 907; Perkinson *v.* Clarke, (Wis. 1908) 116 N. W. *229*.

Purchaser Must Give Valuable Consideration. — Perkinson *v.* Clarke, (Wis. 1908) 116 N. W. *229*.

4. Webb *v.* Webb, 130 Iowa 457, 104 N. W. 438; Steiff *v.* Seibert, 128 Iowa 746, 105 N. W. 328; Allen *v.* Hirlinger, (Pa. 1907) 67 Atl. 907; Perkinson *v.* Clarke, (Wis. 1908) 116 N. W. *229*.

5. Allen *v.* Hirlinger, (Pa. 1907) 67 Atl. 907; Perkinson *v.* Clarke, (Wis. 1908) 116 N. W. *229*.

739. 1. Martin *v.* Foskett, 189 Mass. 368, 75 N. E. 709; *In re* Wood, (R. I. 1907) 67 Atl. 8; Newman *v.* Newman, 60 W. Va. 371, 55 S. E. 377.

5. Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883; Medlin *v.* Simpson, 144 N. Car. 397, 57 S. E. 24.

6. *Compare* Seabrook *v.* Grimes, (Md. 1908) 68 Atl. 883.

740. 1. Lester *v.* Kirtley, 83 Ark. 554, 104 S. W. 213; Wills *v.* Wills, (N. J. 1908) 69 Atl. 256; Newman *v.* Newman, 60 W. Va. 371, 55 S. E. 377.

4. **Disposition Limited to Testator's Children.**—Sayer *v.* Humphrey, *216* Ill. 426, 75 N. E. 170.

6. Newlin *v.* Phillips, (Del. 1905) 60 Atl. 1068; Hamilton *v.* Hamilton, (Iowa 1908) 115 N. W. 1012; Richards *v.* Morrison, 101 Me. 424, 64 Atl. 768; American Baptist Publication Soc. *v.* Lufkin, (Mass. 1908) 83 N. E. 401. See also Wills *v.* Wills, (N. J. 1908) 69 Atl. 256.

741. 5. Jones *v.* Rees, (Del. 1908) 69 Atl. 785; Wallace *v.* Bozarth, *223* Ill. 339, 79 N. E. 57; *In re* Weien, (Iowa 1908) 116 N. W. 791; Haab *v.* Schneeberger, 147 Mich. 583, 111 N. W. 185; Peck *v.* Griffis, 148 Mich. 682, 112 N. W. 722; Gilmore *v.* Sellars, 145 N. Car. 283, 59 S. E. 73; *In re* Williams, 216 Pa. St. 318, 65 Atl. 757; Martin *v.* Heckman, *25* Pa. Super. Ct. 451.

742. 5. Wood *v.* Wood, (Ky. 1907) 106 S. W. 226; Schneiderhahn *v.* Zeller, (Ky. 1908) 110 S. W. 834; Hurley *v.* Rosensteel, 104 Md. 262, 64 Atl. 1041.

6. Montgomery *v.* Brown, *25* App. Cas. (D. C.) 490; Stimson *v.* Rountree, 168 Ind. 169, 78 N. E. 331; Moran *v.* Moran, 143 Mich. 322, 106 N. W. 206.

743. 1. Gruenewald *v.* Neu, *215* Ill. 132, 74 N. E. 101; Wallace *v.* Bozarth, *223* Ill. 339, 79 N. E. 57; Lohmuller *v.* Mosher, 74 Kan. 751, 87 Pac. 1140; Wood *v.* Wood, (Ky. 1907) 106 S. W. 226; Holden *v.* Rush, 119 N. Y. App. Div. 716, 104 N. Y. Supp. 175; Hogg's Estate, *27* Pa. Super. Ct. 428.

3. Bransfield *v.* Wigmore, (Conn. 1907) 66 Atl. 778; Pease *v.* Davis, *225* Ill. 408, 80 N. E. 249; Walker *v.* Hill, 73 N. H. 254, 60 Atl. 1017; Merrill *v.* American Baptist Missionary Union, 73 N. H. 414, 62 Atl. 647. *Compare* Stearns *v.* Stearns, 192 Mass. 144, 77 N. E. 1154.

6. *In re* Poseng, 95 Minn. 343, 104 N. W. 137; *In re* Dull, *217* Pa. St. 358, 66 Atl. 567; Xander *v.* Easton Trust Co., *217* Pa. St. 485, 66 Atl. 759.

744. 3. Sherrard *v.* Western State Hospital, 106 Va. 36, 54 S. E. 1001.

4. Wood *v.* Wood, (Ky. 1907) 106 S. W. 226; Bennett *v.* McLaughlin, (Supm. Ct. App. Div.) 109 N. Y. Supp. 63; Bollentin *v.* Bollentin, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 250, 109 N. Y. Supp. 212; Conlin *v.* Sowards, 129 Wis. 320, 109 N. W. 91.

5. *In re* Buhrmeister, 1 Cal. App. 80, 81 Pac. 752; Hughes *v.* Fitzgerald, 78 Conn. 4, 60 Atl. 694; Schneiderhan *v.* Zeller, (Ky. 1908) 110 S. W. 834; Poor *v.* Bradbury, (Mass. 1907) 81 N. E. 882; *In re* Murray, (Supm. Ct. App. Div.) 108 N. Y. Supp. 1047; Slater *v.* Slater, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 332, 94 N. Y. Supp. 900; Central Trust Co. *v.* Egleston, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 693, 98 N. Y. Supp. 1055; Bennett *v.* McLaughlin, (Supm. Ct. Tr. T.) 103 N. Y. Supp. 256; Conlin *v.* Sowards, 129 Wis. 320, 109 N. W. 91.

6. Anderson *v.* Messinger, (C. C. A.) 146 Fed. 929; Bernstein *v.* Bramble, 81 Ark. 480, 99 S. W. 682; *In re* Reed, (Del. 1906) 64 Atl. 822; Connor *v.* Gardner, 230 Ill. 258, 82 N. E. 640; Underwood *v.* Magruder, (Ky. 1905) 87 S. W. 1076; Pedigo *v.* Botts, (Ky. 1905) 89 S. W. 164; McCauley *v.* Dale, (Ky. 1908) 108 S. W. 268; Young *v.* Robinson, 122 Mo. App. 187, 99 S. W. 20; Tebow *v.* Dougherty, 205 Mo. 315, 103 S. W. 985; Huber *v.* Hamilton, 211 Pa. St. 289, 60 Atl. 789.

745. 2. Bernstein *v.* Bramble, 81 Ark. 480, 99 S. W. 682; Reid *v.* Singer Mfg. Co., (Ky. 1908) 107 S. W. 310; Harring *v.* Flowers, (Miss. 1908) 45 So. 571; Tebow *v.* Dougherty, 205 Mo. 315, 103 S. W. 985.

746. 1. Crawley *v.* Kendrick, 122 Ga. 183, 50 S. E. 41; Pedigo *v.* Botts, (Ky. 1905) 89 S. W. 164.

2. Atkins *v.* Best, *27* App. Cas. (D. C.) 148.

3. Young *v.* Norris Peters Co., *27* App. Cas. (D. C.) 140.

4. McCaffrey *v.* Manogue, 196 U. S. 563, 25 U. S. Sup. Ct. 319; Young *v.* Norris Peters Co., *27* App. Cas. (D. C.) 140; Atkins *v.* Best, *27* App. Cas. (D. C.) 148.

7. *United States.*—Anderson *v.* Messenger, (C. C. A.) 146 Fed. 929.

Delaware.—*In re* Reed, (Del. 1906) 64 Atl. 822.

Georgia.—Crawley *v.* Kendrick, 122 Ga. 183 50 S. E. 41; Hill *v.* Terrell, 123 Ga. 49, 51 S. E. 81.

Illinois.—King *v.* King, *215* Ill. 100, 74 N. E. 89; Gruenwald *v.* Neu, *215* Ill. 132, 74 N. E. 101; Strawbridge *v.* Strawbridge, *220* Ill. 61, 77 N. E. 78; Hill *v.* Gianelli, *221* Ill. 286, 77 N. E. 458; Pease *v.* Davis, *225* Ill. 408, 80 N. E. 249; Connor *v.* Gardner, *230* Ill. 258, 82 N. E. 640; Webbe *v.* Webbe, *234* Ill. 442, 84 N. E. 1054.

Kansas.—Kinkead *v.* Maxwell, *25* Kan. 50, 88 Pac. 523.

Kentucky.—Powell *v.* Cosby, (Ky. 1905) 89 S. W. 721; Scott *v.* Scott, (Ky. 1907) 105 S. W. 896; Pritchett *v.* Corder, (Ky. 1907) 105 S. W. 910.

New Jersey.—Morris *v.* Le Bel, (N. J. 1906) 63 Atl. 501; Centenary Fund, etc., *v.* Lake, (N. J. 1907) 66 Atl. 601.

North Carolina.—Steadman *v.* Steadman, 143 N. Car. 345, 55 S. E. 784.

Pennsylvania.—Long *v.* Hill, *29* Pa. Super. Ct. 606.

Rhode Island.—Paine *v.* Sackett, *27* R. I. 300, 61 Atl. 753.

West Virginia.—Wills *v.* Foltz, 61 W. Va. 262, 56 S. E. 473.

Wisconsin.—Conlin *v.* Sowards, 129 Wis. 320, 109 N. W. 91.

747. 1. Gruenewald *v.* Neu, *215* Ill. 132, 74 N. E. 101; Scott *v.* Scott, (Ky. 1907) 105 S. W. 896; Pritchett *v.* Corder, (Ky. 1907) 105 S. W. 910; McKnight *v.* McKnight, (Tenn. 1908) 107 S. W. 682.

4. Glore *v.* Scroggins, 124 Ga. 922, 53 S. E. 690, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 747; Scheirich *v.* Maxwell, (Ky. 1905) 89 S. W. 4; Robsion *v.* Gray, (Ky. 1906) 97 S. W. 347; Reeves *v.* Morgan, (Ky. 1907) 100 S. W. 836; Hosman *v.* Willett, (Ky. 1908) 107 S. W. 334; Bean *v.* Meguiar, (Ky. 1908) 107 S. W. 1186; Verneuille's Succession, 120 La. 605, 45 So. 520; Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875; Tisdale *v.* Prather, (Mo. 1908) 109 S. W. 41; *In re* Shower, *211* Pa. St. 297, 60 Atl. 789; West *v.* Vernon, *215* Pa. St. 545, 64 Atl. 686; *In re* Freeman, (Pa. 1908) 69 Atl. 816; Morris *v.* Le Bel, (N. J. 1906) 63 Atl. 501; Campbell *v.* Cole, (N. J. 1906) 64 Atl. 461.

748. 1. Glore *v.* Scroggins, 124 Ga. 922, 53

S. E. 690; Harlow *v.* Bailey, 189 Mass. 208, 75 N. E. 259; Peck *v.* Griffis, 148 Mich. 682, 112 N. W. 722; Long *v.* Hill, 29 Pa. Super. Ct. 606; Joyce *v.* Bode, 74 S. Car. 164, 54 S. E. 239, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 748. *Compare* Busby *v.* Busby, (Iowa 1908) 114 N. W. 559.

2. Allen *v.* Hirlinger, 33 Pa. Super. Ct. 113.

3. Smoot *v.* Kirk, (Ky. 1907) 104 S. W. 716.

5. *Arkansas.* — Bernstein *v.* Bramble, 81 Ark. 480, 99 S. W. 682.

Connecticut. — Plant *v.* Plant, (Conn. 1908) 70 Atl. 52.

Illinois. — Hill *v.* Gianelli, 221 Ill. 286, 77 N. E. 458.

Indiana. — Stimson *v.* Rountree, 168 Ind. 169, 78 N. E. 331; Hume *v.* McHaffie, (Ind. App. 1907) 81 N. E. 117; Hayes *v.* Martz, (Ind. App. 1908) 84 N. E. 547.

Iowa. — Wheeler *v.* Long, 128 Iowa 643, 105 N. W. 161.

Kansas. — Hurst *v.* Weaver, (Kan. 1907) 90 Pac. 297.

Kentucky. — McCauley *v.* Dale, (Ky. 1908) 108 S. W. 268.

Massachusetts. — Pitts *v.* Milton, 192 Mass. 88, 77 N. E. 1028.

Missouri. — Tebow *v.* Dougherty, 205 Mo. 315, 103 S. W. 985; Pratt *v.* Saline Valley R. Co., (Mo. App. 1908) 108 S. W. 1099.

New York. — Tyndall *v.* Fleming, (Supm. Ct. App. Div.) 108 N. Y. Supp. 239; Bennett *v.* McLaughlin, (Supm. Ct. App. Div.) 109 N. Y. Supp. 63; Bollentin *v.* Bollentin, (Supm. Ct. Spec. T.) 57 Misc. (N. Y.) 250, 109 N. Y. Supp. 212.

Pennsylvania. — Holmes *v.* Stanhope, 217 Pa. St. 63, 66 Atl. 146; Scott *v.* Murray, 218 Pa. St. 186, 67 Atl. 47; Ault *v.* Karch, (Pa. 1908) 69 Atl. 857; Hershey *v.* New York, etc., Gas Coal Co., (Pa. 1908) 69 Atl. 1046.

Tennessee. — Carson *v.* Carson, 115 Tenn. 37, 88 S. W. 175.

Texas. — Cochran *v.* Cochran, (Tex. Civ. App. 1906) 95 S. W. 731.

Virginia. — Smith *v.* White, 107 Va. 616, 59 S. E. 480.

749. 1. Stimson *v.* Rountree, 168 Ind. 169, 78 N. E. 331; Johnson *v.* Preston, 226 Ill. 447, 80 N. E. 1001; Steiff *v.* Seibert, 128 Iowa 746, 105 N. W. 328; Killefer *v.* Bassett, 146 Mich. 1, 109 N. W. 21; Tebow *v.* Dougherty, 205 Mo. 315, 103 S. W. 985; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38.

750. 4. Tisdale *v.* Prather, (Mo. 1908) 109 S. W. 41.

5. Kimbrough *v.* Smith, 128 Ga. 690, 58 S. E. 23; Grace *v.* Perry, 197 Mo. 550, 95 S. W. 875; Adams *v.* Massey, 184 N. Y. 62, 76 N. E. 916; Robbins *v.* Smith, 27 Ohio Cir. Ct. 91; McKnight *v.* McKnight, (Tenn. 1908) 107 S. W. 682; Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420.

6. Cross *v.* Hendry, 39 Ind. App. 246, 79 N. E. 531; Keays *v.* Blinn, 234 Ill. 121, 84 N. E. 628; Steiff *v.* Seibert, 128 Iowa 746, 105 N. W. 328; Harlow *v.* Bailey, 189 Mass. 208, 75 N. E. 259; Champney *v.* Bradford, (Mass. 1907) 81 N. E. 993; Tisdale *v.* Prather, (Mo. 1908) 109 S. W. 41; Jennings *v.* Talbert, 77 S. Car. 454, 58 S. E. 420. But see McKnight *v.* McKnight, (Tenn. 1908) 107 S. W. 682.

751. 6. McCune *v.* Goodwillie, 204 Mo. 306, 102 S. W. 997.

9. **Contrary Intent Shown.** — Wheeler *v.* Long, 128 Iowa 643, 105 N. W. 161, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 751.

11. Carpenter *v.* Sangamon L. & T. Co., 229 Ill. 486, 82 N. E. 418; Allen *v.* Allen, (Ky. 1908) 108 S. W. 250.

752. 2. Lupton's Estate, (1905) P. 321, 74 L. J. P. 162.

753. 4. Watkins *v.* Pfeiffer, (Ky. 1906) 92 S. W. 562; Edwards *v.* Walesby, (Ky. 1906) 98 S. W. 306; Adair *v.* Adair, (Ky. 1907) 99 S. W. 926; Simpson *v.* Adams, (Ky. 1908) 106 S. W. 819; Gannon *v.* Pauk, 200 Mo. 75, 98 S. W. 471.

5. Watkins *v.* Pfeiffer, (Ky. 1906) 92 S. W. 562; Edwards *v.* Walesby, (Ky. 1906) 98 S. W. 306.

6. Webbe *v.* Webbe, 234 Ill. 442, 84 N. E. 1054; Simpson *v.* Adams, (Ky. 1908) 106 S. W. 819.

754. 1. Edwards *v.* Walesby, (Ky. 1906) 98 S. W. 306.

4. Connor *v.* Gardner, 230 Ill. 258, 82 N. E. 640; Stisser *v.* Stisser, (Ill. 1908) 85 N. E. 240; Watkins *v.* Pfeiffer, (Ky. 1906) 92 S. W. 562; Hoover *v.* Strauss, 215 Pa. St. 130, 64 Atl. 333; Emerick *v.* Emerick, (Pa. 1907) 68 Atl. 183; Wills *v.* Foltz, 61 W. Va. 262, 56 S. E. 473.

755. 1. Boehm *v.* Baldwin, 221 Ill. 59, 77 N. E. 454; Hayes *v.* Martz, (Ind. App. 1908) 84 N. E. 547; Wills *v.* Foltz, 61 W. Va. 262, 56 S. E. 473.

756. 3. Bower *v.* Daniel, 198 Mo. 320, 95 S. W. 347, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 756.

5. Boehm *v.* Baldwin, 221 Ill. 59, 77 N. E. 454; Adair *v.* Adair, (Ky. 1907) 99 S. W. 925.

757. 4. Watkins *v.* Pfeiffer, (Ky. 1906) 92 S. W. 562; Edwards *v.* Walesby, (Ky. 1906) 98 S. W. 306; Simpson *v.* Adams, (Ky. 1908) 106 S. W. 819; Merrill *v.* American Baptist Missionary Union, 73 N. H. 414, 62 Atl. 647; Hannon *v.* Fliedner, 216 Pa. St. 470, 65 Atl. 944; Garver *v.* Clouser, 218 Pa. St. 611, 67 Atl. 909; Dilworth *v.* Schuylkill Imp. Land Co., (Pa. 1908) 69 Atl. 47; Wills *v.* Foltz, 61 W. Va. 262, 56 S. E. 473.

5. Gannon *v.* Pauk, 200 Mo. 75, 98 S. W. 471.

7. Crawley *v.* Kendrick, 122 Ga. 183, 50 S. E. 41; Stephenson's Estate, 30 Pa. Super. Ct. 97.

758. 5. Crawley *v.* Kendrick, 122 Ga. 183, 50 S. E. 41. See also *In re* Dull, 217 Pa. St. 358, 66 Atl. 567.

761. 2. *In re* Dull, 217 Pa. St. 358, 66 Atl. 567.

3. Harlow *v.* Bailey, 189 Mass. 208, 75 N. E. 259.

4. *In re* Hibbard, (Surrogate Ct.) 53 Misc. (N. Y.) 196, 104 N. Y. Supp. 583.

762. 10. Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453; Jailette *v.* Bell, (Ky. 1908) 110 S. W. 298; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539.

763. 1. Crawford *v.* Engram, (Ala. 1907) 45 So. 584.

2. Pearson *v.* Hanson, 230 Ill. 610, 82 N. E. 813; Carter *v.* Carter, (Ill. 1908) 85 N. E. 292; Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; Weil *v.* King, (Ky. 1907) 104 S. W. 380; Alexander *v.* McPeck, 189 Mass. 34, 75 N. E. 88; Voorhees *v.* Singer, (N. J. 1907) 68 Atl. 217; Schell *v.* Carpenter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 400, 100 N. Y. Supp. 554; *In re* Phillips, (Surrogate Ct.) 56 Misc. (N. Y.) 96, 107 N. Y. Supp. 388.

3. Mattox *v.* Deadwyler, (Ga. 1908) 60 S. E. 1066; Steiff *v.* Seibert, 128 Iowa 746, 105 N. W. 328.

764. 2. Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Pearson *v.* Hanson, 230 Ill. 610, 82 N. E. 813; Hall *v.* Ayers, (Ky. 1907) 105 S. W. 911; Stoors *v.* Burgess, 101 Me. 26, 62 Atl. 730; Reilly *v.* Bristow, 105 Md. 326, 66 Atl. 262; Crapo *v.* Price, 190 Mass. 323, 76 N. E. 1043; Boston Safe Deposit, etc., Co. *v.* Blanchard, (Mass. 1907) 81 N. E. 654; Boggs *v.* Boggs, 69 N. J. Eq. 497, 60 Atl. 1114; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38; Wood *v.* Schoen, 216 Pa. St. 425, 66 Atl. 79; Warren *v.* Bronson, (Vt. 1908) 69 Atl. 655.

3. Hall *v.* Ayers, (Ky. 1907)105 S. W. 911; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539.

4. Brechbeller *v.* Wilson, 228 Ill. 502, 81 N. E. 1094; Hall *v.* Ayers, (Ky. 1907) 105 S. W. 911; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539; Freeman *v.* Freeman, 141 N. Car. 97, 53 S. E. 620; Wood *v.* Schoen, 216 Pa. St. 425, 66 Atl. 79.

765. 1. Crawford *v.* Engram, (Ala. 1907) 45 So. 584; Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453; Ross *v.* Ayrhart, (Iowa 1908) 115 N. W. 906; Hall *v.* Ayers, (Ky. 1907) 105 S. W. 911; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539.

2. Nelson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679; Hall *v.* Ayers, (Ky. 1907) 105 S. W. 911; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539.

3. Hall *v.* Ayers, (Ky. 1907) 105 S. W. 911; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539.

5. *Alabama.* — Crawford *v.* Engram, (Ala. 1907) 45 So. 584.

District of Columbia. — Vogt *v.* Vogt, 26 App. Cas. (D. C.) 46.

Georgia. — Glore *v.* Scroggins, 124 Ga. 922, 53 S. E. 690.

Illinois. — Starr *v.* Willoughby, 218 Ill. 485, 75 N. E. 1029; Brechbeller *v.* Wilson, 228 Ill. 502, 81 N. E. 1094; Pearson *v.* Hanson, 230 Ill. 610, 82 N. E. 813; Barnes *v.* Johnston, 233 Ill. 620, 84 N. E. 610.

Indiana. — Taylor *v.* Stephens, 165 Ind. 200, 74 N. E. 980; Nelson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679; Hume *v.* McHaffie, (Ind. App. 1907) 81 N. E. 117; *In re* Carney, (Ind. App. 1908) 84 N. E. 506; Duzan *v.* Chappel, (Ind. App. 1908) 84 N. E. 775.

Iowa. — Haviland *v.* Haviland, 130 Iowa 611, 105 N. W. 354; Kalbach *v.* Clark, 133 Iowa 215, 110 N. W. 599; Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453; Ross *v.* Ayrhart, (Iowa 1908) 115 N. W. 906.

Kentucky. — Hall *v.* Ayers, (Ky. 1907) 105 S. W. 911; Deskins *v.* Williamson, (Ky. 1907) 106 S. W. 258; Jailette *v.* Bell, (Ky. 1908) 110 S. W. 298.

Maine. — Stoors *v.* Burgess, 101 Me. 26, 62 Atl. 730.

Maryland. — Reilly *v.* Bristow, 105 Md. 326, 66 Atl. 262.

Massachusetts. — Bosworth *v.* Stockbridge, 189 Mass. 266, 75 N. E. 712; Crapo *v.* Price, 190 Mass. 323, 76 N. E. 1043; Minot *v.* Purrington, 190 Mass. 336, 77 N. E. 630; Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422; Boston Safe Deposit, etc., Co. *v.* Blanchard, (Mass. 1907) 81 N. E. 654.

Michigan. — Taylor *v.* Richards, (Mich. 1908) 117 N. W. 208.

New York. — *In re* Keogh, (Surrogate Ct.) 47 Misc. (N. Y.) 37, 95 N. Y. Supp. 191; Schell *v.* Carpenter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 400, 100 N. Y. Supp. 554; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38; Davidson *v.* Jones, 112 N. Y. App. Div. 104, 98 N. Y. Supp. 265; Trowbridge *v.* Coss, (Supm. Ct. App. Div.) 110 N. Y. Supp. 1108; *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887.

North Carolina. — Freeman *v.* Freeman, 141 N. Car. 97, 53 S. E. 620.

Pennsylvania. — Wood *v.* Schoen, 216 Pa. St. 425, 66 Atl. 79; Irvine's Estate, 31 Pa. Super. Ct. 614.

Virginia. — McCurdy *v.* O'Rourke, 106 Va. 683, 56 S. E. 573; French *v.* Logan, (Va. 1908) 60 S. E. 622.

Wisconsin. — *In re* Benner, (Wis. 1907) 113 N. W. 663; Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

766. 2. *Alabama.* — Crawford *v.* Engram, (Ala. 1907) 45 So. 584.

Connecticut. — Hull *v.* Holmes, 78 Conn. 362, 62 Atl. 705.

Georgia. — Crawley *v.* Kendrick, 122 Ga. 183, 50 S. E. 41.

Illinois. — Barnes *v.* Johnston, 233 Ill. 620, 84 N. E. 610.

Iowa. — Haviland *v.* Haviland, 130 Iowa 611, 105 N. W. 354; Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; Ross *v.* Ayrhart, (Iowa 1908) 115 N. W. 906.

Kentucky. — Hall *v.* Ayers, (Ky. 1907) 105 S. W. 911; Daskins *v.* Williamson, (Ky. 1907) 106 S. W. 258.

Maryland. — Roberts *v.* Roberts, 102 Md. 131, 62 Atl. 161; Reilly *v.* Bristow, 105 Md. 326, 66 Atl. 262.

Massachusetts. — Ball *v.* Holland, 189 Mass. 369, 75 N. E. 713; Crapo *v.* Price, 190 Mass. 322, 76 N. E. 1043; Minot *v.* Purrington, 190 Mass. 336, 77 N. E. 630.

New Jersey. — Moore *v.* Matthews, 70 N. J. Eq. 374, 61 Atl. 743; Trenton Trust, etc., Co. *v.* Armstrong, 70 N. J. Eq. 572, 62 Atl. 456.

New York. — *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539.

Pennsylvania. — Wood *v.* Schoen, 216 Pa. St. 425, 66 Atl. 79.

Virginia. — French *v.* Logan, (Va. 1908) 60 S. E. 622.

Wisconsin. — Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

767. 1. Crawford *v.* Engram, (Ala. 1907) 45 So. 584; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453; Hall *v.* Ayers, (Ky. 1907) 105 S. W. 911; Deskins *v.* Williamson, (Ky. 1907) 106 S. W. 258; Minot *v.* Purrington, 190 Mass. 336, 77 N. E. 630; Broas *v.* Broas, (Mich. 1908) 116 N. W. 1077; Farney *v.* Weirich, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 245, 103 N. Y. Supp. 38; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539; *In re* Phillip, (Surrogate Ct.) 56 Misc. (N. Y.) 96, 107 N. Y. Supp. 388; *In re* Middleton, 212 Pa. St. 119, 61 Atl. 808; *In re* Benner, (Wis. 1907) 113 N. W. 663.

769. 1. Deskins *v.* Williamson, (Ky. 1907) 106 S. W. 258; Minot *v.* Purrington, 190 Mass. 336, 77 N. E. 630; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539; *In re* Rafferty, (Surrogate Ct.) 52 Misc. (N. Y.) 69, 102 N. Y. Supp. 432; *In re* Phillip, (Surrogate Ct.) 56 Misc. (N. Y.) 96, 107 N. Y. Supp. 388.

770. 1. Pearson *v.* Hanson, 230 Ill. 610, 82 N. E. 813.

2. Ross *v.* Syrhart, (Iowa 1908) 115 N. W. 906; Deskins *v.* Williamson, (Ky. 1907) 106 S. W. 258; *In re* Rafferty, (Surrogate Ct.) 52 Misc. (N. Y.) 69, 102 N. Y. Supp. 432.

771. 1. *Re* Eve, 93 L. T. N. S. 235; Crawford *v.* Engram, (Ala. 1907) 45 So. 584, *quoting* 3 [30] AM. AND ENG. ENCYC. OF LAW (2d ed.) 771; Bennett *v.* Bennett, 217 Ill. 434, 75 N. E. 339; Barnes *v.* Johnston, 233 Ill. 620, 84 N. E. 610; Twaites *v.* Waller, 133 Iowa 84, 110 N. W. 279, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771; Olsen *v.* Youngerman, (Iowa 1907) 113 N. W. 938; Crapo *v.* Price, 190 Mass. 323, 76 N. E. 1043, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 771; Brown *v.* Wright, 194 Mass. 540, 80 N. E. 612; Boston Safe Deposit, etc., Co. *v.* Blanchard, (Mass. 1907) 81 N. E. 654; *In re* Keogh, (Surrogate Ct.) 47 Misc. (N. Y.) 37, 95 N. Y. Supp. 191; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539; Matter of Wilson, (Surrogate Ct.) 53 Misc. (N. Y.) 238, 104 N. Y. Supp. 480; Hess *v.* Zahn, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 515, 107 N. Y. Supp. 951.

772. 1. Jonas *v.* Weires, 134 Iowa 47, 111 N. W. 453; Taylor *v.* Richards, (Mich. 1908) 117 N. W. 208; Ferguson's Estate, 31 Pa. Super. Ct. 422; *In re* Benner, (Wis. 1907) 113 N. W. 663.

2. Crawford *v.* Engram, (Ala. 1907) 45 So. 584; Schell *v.* Carpenter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 400, 100 N. Y. Supp. 554; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 448, 101 N. Y. Supp. 539.

773. 2. Crawford *v.* Engram, (Ala. 1907) 45 So. 584, *quoting* 3 [30] AM. AND ENG. ENCYC. OF LAW (2d ed.) 773.

3. Pearson *v.* Hanson, 230 Ill. 610, 82 N. E. 813; *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887; Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

4. Runyan *v.* Grubb, 119 N. Y. App. Div. 17, 103 N. Y. Supp. 949.

774. 1. Stoors *v.* Burgess, 101 Me. 26, 62 Atl. 730; Nelson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679; Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846.

775. 1. Haab *v.* Schneeberger, 147 Mich. 583, 111 N. W. 185; Boggs *v.* Boggs, 69 N. J. Eq. 497, 60 Atl. 1114.

776. 1. *In re* Middleton, 212 Pa. St. 119, 61 Atl. 808.

2. Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; Dilts *v.* Clayhaunce, 70 N. J. Eq. 10, 62 Atl. 672; Hooker *v.* Bryan, 140 N. Car. 402, 53 S. E. 130; *In re* Middleton, 212 Pa. St. 119, 61 Atl. 808; Hayes *v.* Robeson, (R. I. 1908) 69 Atl. 686.

4. Eckert *v.* Pennsylvania Trust Co., 212 Pa. St. 372, 61 Atl. 935; *In re* Kountz, 213 Pa. St. 390, 62 Atl. 1103.

777. 1. *In re* Middleton, 212 Pa. St. 119, 61 Atl. 808.

778. 4. Shafer *v.* Tereso, 132 Iowa 342, 110 N. W. 846; Reilly *v.* Bristow, 105 Md. 326, 66 Atl. 262; Blaney *v.* Sin Clair, 216 Pa. St. 258, 65 Atl. 662; Wood *v.* Schoen, 216 Pa. St. 425, 66 Atl. 79; Cooper *v.* Cooper, 78 S. Car. 317, 58 S. E. 950.

780. 1. Kellogg *v.* Burnett, (N. J. 1908) 69 Atl. 196; Steele *v.* Poe, (S. Car. 1908) 60 S. E. 951; Steele *v.* Friedham, (S. Car. 1908) 60 S. E. 953.

3. Brechbeller *v.* Wilson, 228 Ill. 502, 81 N. E. 1094; Bascom *v.* Weed, (Supm. Ct. Tr. T.) 53 Misc. (N. Y.) 496, 105 N. Y. Supp. 459.

781. 1. *In re* Campbell, 149 Cal. 712, 87 Pac. 573; Pearson *v.* Hanson, 230 Ill. 610, 82 N. E. 813; Matter of Wiley, 111 N. Y. App. Div. 590, 97 N. Y. Supp. 1017; *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539; Orange County Trust Co. *v.* Morrison, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 88, 106 N. Y. Supp. 940; Williams *v.* Williams, (Wis. 1908) 115 N. W. 342.

3. Bosworth *v.* Stockbridge, 189 Mass. 266, 75 N. E. 712; *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887.

782. 1. Sayer *v.* Humphrey, 216 Ill. 426, 75 N. E. 170; Deadman *v.* Yantis, 230 Ill. 243, 82 N. E. 592; Nelson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679; Shafer *v.* Tereso, 133 Iowa 342, 110 N. W. 846; Barnes Cycle Co. *v.* Haines, 69 N. J. Eq. 651, 61 Atl. 515; Moore *v.* Matthews, 70 N. J. Eq. 374, 61 Atl. 743; Trenton Trust, etc., Co. *v.* Armstrong, 70 N. J. Eq. 572, 62 Atl. 456; Erdman *v.* Meyer, (Supm. Ct. Spec. T.) 52 Misc. (N. Y.) 256, 102 N. Y. Supp. 197; *In re* Allison, (Surrogate Ct.) 53 Misc. (N. Y.) 222, 102 N. Y. Supp. 887; *In re* Kountz, 213 Pa. St. 390, 62 Atl. 1103; Ferguson's Estate, 31 Pa. Super. Ct. 422; Warren *v.* Bronson, (Vt. 1908) 69 Atl. 655.

784. 1. Orange County Trust Co. *v.* Morrison, (Supm. Ct. Spec. T.) 56 Misc. (N. Y.) 88, 106 N. Y. Supp. 940.

2. Maynard *v.* Greer, 129 Ga. 709, 59 S. E. 798.

3. Hayes *v.* Robeson, (R. I. 1908) 69 Atl. 686.

785. 2. Gragg *v.* Gragg, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 197, 94 N. Y. Supp. 53;

Tyndall *v.* Fleming, (Supm. Ct. App. Div.) 108 N. Y. Supp. 239; St. Paul's Sanitarium *v.* Freeman, (Tex. Civ. App. 1908) 111 S. W. 443, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 785.

3. Gragg *v.* Gragg, (Supm. Ct. Spec. T.) 46 Misc. (N. Y.) 197, 94 N. Y. Supp. 53; Matter of Wiley, 111 N. Y. App. Div. 590, 97 N. Y. Supp. 1017; Tyndall *v.* Fleming, (Supm. Ct. App. Div.) 108 N. Y. Supp. 239.

4. Matter of Wiley, 111 N. Y. App. Div. 590, 97 N. Y. Supp. 1017.

8. Huntress *v.* Allen, (Mass. 1907) 80 N. E. 949.

786. 1. Gray *v.* Whittemore, 192 Mass. 367, 78 N. E. 422.

2. Hall *v.* Senior, (Supm. Ct. Spec. T.) 54 Misc. (N. Y.) 463, 106 N. Y. Supp. 29.

3. Stiles *v.* Easton Nat. Bank, 33 Pa. Super. Ct. 57.

790. 9. Matthern *v.* Rankin, 228 Ill. 318, 81 N. E. 1024; Connolly *v.* Connolly, 122 N. Y. App. Div. 492, 107 N. Y. Supp. 185.

791. 2. Bosworth *v.* Stockbridge, 189 Mass. 266, 75 N. E. 712; Ball *v.* Holland, 189 Mass. 369, 75 N. E. 713; Crapo *v.* Price, 190 Mass. 323, 76 N. E. 1043; Minot *v.* Doggett, 190 Mass. 435, 77 N. E. 629; Minot *v.* Purrington, 190 Mass. 336, 77 N. E. 630; Irvine's Estate, 31 Pa. Super. Ct. 614.

3. Haviland *v.* Haviland, 130 Iowa 611, 105 N. W. 354; Bossworth *v.* Stockbridge, 189 Mass. 266, 75 N. E. 712; Crapo *v.* Price, 190 Mass. 323, 76 N. E. 1043; Minot *v.* Doggett, 190 Mass. 435, 77 N. E. 629; *In re* Wetherill, 214 Pa. St. 150, 63 Atl. 406.

4. *Compare* Schell *v.* Carpenter, (Supm. Ct. Spec. T.) 50 Misc. (N. Y.) 400, 100 N. Y. Supp. 554.

792. 1. *In re* McCoy, (Surrogate Ct.) 51 Misc. (N. Y.) 441, 101 N. Y. Supp. 539.

2. U. S. Trust Co. *v.* Baker, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 657, 102 N. Y. Supp. 194.

795. 1. Starr *v.* Willoughby, 218 Ill. 485, 75 N. E. 1029; Nelson *v.* Nelson, 36 Ind. App. 331, 75 N. E. 679.

796. 2. Ross *v.* Ayrhart, (Iowa 1908) 115 N. W. 906; Wills *v.* Foltz, 61 W. Va. 262, 56 S. E. 473.

3. Scott *v.* Murray, 218 Pa. St. 186, 67 Atl. 47.

797. 4. Glore *v.* Scroggins, 124 Ga. 922, 53 S. E. 690.

5. Dilts *v.* Clayhaunce, 70 N. J. Eq. 10, 62 Atl. 672.

8. Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805; Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757.

798. 2. Ditchey *v.* Lee, 167 Ind. 267, 78 N. E. 972; Wood *v.* Ogden, 121 Mo. App. 668, 97 S. W. 610, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 798.

800. 1. Pitchford *v.* Limer, 139 N. Car. 13, 51 S. E. 789; Littler *v.* Dielmann, (Tex. Civ. App. 1908) 106 S. W. 1137.

3. *In re* Davis, 95 Minn. 340, 104 N. W. 299; *In re* Tisdale, 110 N. Y. App. Div. 857, 97 N. Y. Supp. 494.

801. 2. Fisher *v.* Fisher, (Neb. 1907) 113 N. W. 1004.

10. *In re* Emson, 74 L. J. Ch. 565.

Where a Condition Annexed to a Bequest Becomes Impossible, the property vests in the legatee upon the death of the testator, unless it appears that performance of the condition was the controlling motive for the making of the bequest. Morley *v.* Calhoun, 18 Ohio Cir. Dec. 163, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 801.

802. 3. *In re* Croxon, (1904) 1 Ch. 252, 73 L. J. Ch. 170; Adams *v.* St. Charles First Baptist Church, 148 Mich. 140, 111 N. W. 757.

4. *In re* Chapman, (1904) 1 Ch. 431, 73 L. J. Ch. 291; *In re* Alexander, 149 Cal. 146, 85 Pac. 308, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 802; Harlow *v.* Bailey, 189 Mass. 208, 75 N. E. 259; Littler *v.* Dielmann, (Tex. Civ. App. 1908) 106 S. W. 1137.

803. 1. Clay *v.* Chenault, (Ky. 1906) 96 S. W. 1125.

5. Distinction between Gifts of Realty and of Personalty Abolished. — *In re* Alexander, 149 Cal. 146, 85 Pac. 308.

9. *In re* Whiting, (1905) 1 Ch. 96.

10. *In re* Whiting, (1905) 1 Ch. 96.

804. 2. *In re* Chapman, (1904) 1 Ch. 431, 73 L. J. Ch. 291.

6. Trenton Trust, etc., Co. *v.* Armstrong, 70 N. J. Eq. 572, 62 Atl. 456; *In re* Holbrook, 213 Pa. St. 93, 62 Atl. 368.

805. 7. Cushman *v.* Cushman, 116 N. Y. App. Div. 771, 102 N. Y. Supp. 258, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 805.

806. 4. *In re* Pearce, (Surrogate Ct.) 53 Misc. (N. Y.) 216, 104 N. Y. Supp. 469.

808. 1. *In re* Alexander, 149 Cal. 146, 85 Pac. 308; Lyon *v.* Baker, 122 Ga. 189, 50 S. E. 44; Taylor *v.* Stephens, 165 Ind. 200, 74 N. E. 980; *In re* Carney, (Ind. App. 1908) 84 N. E. 506; Richards *v.* Bentz, 212 Pa. St. 93, 61 Atl. 613.

Modification of Rule. — Words of survivorship contained in a will will be construed according to their usual and common acceptation, unless a different meaning plainly appears to have been intended thereby; and will be referred to the event plainly intended to accomplish the purposes of the testator, whether that event be before, at the time of, or after the testator's death. Dent *v.* Pickens, 61 W. Va. 488, 58 S. E. 1029.

3. *In re* Carney, (Ind. App. 1908) 84 N. E. 506; Davidson *v.* Jones, 112 N. Y. App. Div. 104, 98 N. Y. Supp. 265; *In re* Woolsey, (Surrogate Ct.) 49 Misc. (N. Y.) 201, 98 N. Y. Supp. 936; Black *v.* Woods, 213 Pa. St. 583, 63 Atl. 129.

4. Heaston *v.* Kreig, 167 Ind. 101, 77 N. E. 805.

809. 3. Dary *v.* Grau, 190 Mass. 482, 77 N. E. 507; *In re* Stocum, (Surrogate Ct.) 94 N. Y. Supp. 588; Steele *v.* Poe, (S. Car. 1908) 60 S. E. 951; Steele *v.* Friedham, (S. Car. 1908) 60 S. E. 953; *In re* Cary, (Vt. 1908) 69 Atl. 736.

810. 4. Lyon *v.* Baker, 122 Ga. 189, 50 S. E. 44.

5. Taylor *v.* Stephens, 165 Ind. 200, 74 N. E. 980; *In re* Carney, (Ind. App. 1908) 84 N. E. 506; Dary *v.* Grau, 190 Mass. 482, 77 N. E. 507; *In re* McCallum, 211 Pa. St. 205, 60 Atl. 903.

811. 1. Boggs *v.* Boggs, 69 N. J. Eq. 497, 60 Atl. 1114.

812. 3. Thompson *v.* Thornton, (Mass. 1908) 83 N. E. 880.

815. 8. Dilts *v.* Clayhaunce, 70 N. J. Eq. 10, 62 Atl. 672.

WINDING UP AND REORGANIZATION OF CORPORATIONS.

825. 1. **Effect of Void Enabling Act.** — Where an attempt to reorganize a mutual insurance company is accomplished in form, and the business of the old company is continued ostensibly by the new creation, using the former's assets and good will, but the enabling act proves to be void, such continued business is to be regarded as really that of the old corporation. Huber *v.* Martin, 127 Wis. 412, 105 N. W. 1031.

829. 1. Tolman *v.* Ubero Plantation Co., 142 Fed. 270.

835. 4. Mawhinney *v.* Converse, 117 N. Y. App. Div. 255, 102 N. Y. Supp. 279.

5. **Right to Accounting.** — Under a complaint alleging fraud, waste, and mismanagement on the part of the committee, stockholders are entitled to an accounting. Mawhinney *v.* Converse, 117 N. Y. App. Div. 255, 102 N. Y. Supp. 279.

842. 1. **A Single Dissenting Bondholder** has been held to be bound where the majority failed to dissent, under a reorganization agreement providing that the plan should be binding upon all of the bondholders unless a majority thereof dissented within thirty days. Cowell *v.* City Water Supply Co., 130 Iowa 671, 105 N. W. 1016.

843. 3. **Plan of Reorganization Binding on Bondholders after Acceptance by Payment of Subscription.** — Mills *v.* Potter, 189 Mass. 238, 75 N. E. 627.

852. 2. **Where Right to Participate Depends on Payment of an Assessment within a Limited Time,** a stockholder's default will preclude him from thereafter compelling an acceptance of the assessment. Keane *v.* Moffly, 217 Pa. St. 240, 66 Atl. 319.

859. 2. New York Bank Note Co. *v.* Kidder Press Mfg. Co., 192 Mass. 391, 78 N. E. 463.

874. 4. **Continuing Covenants in Waterworks Contract Binding on Successor Corporation.** — Boonton *v.* Boonton Water Co., 69 N. J. Eq. 23, 61 Atl. 390.

886. 7. Dancel *v.* Goodyear Shoe Machinery Co., (C. C. A.) 144 Fed. 679; Baker *v.* Appleton, 107 N. Y. App. Div. 358, 95 N. Y. Supp. 125.

Fraudulent Transfer Must Affirmatively Appear to Render Newly Organized Corporation Liable. — Baker Furniture Co. *v.* Hall, (Neb. 1907) 111 N. W. 129.

887. 2. Higgins *v.* California Petroleum, etc., Co., 147 Cal. 363, 81 Pac. 1070; Loughlin *v.* U. S. School Furniture Co., 118 Ill. App. 36; W. F. Taylor Co. *v.* Gulf Land, etc., Co., 119 La. 426, 44 So. 187; Baker Furniture Co. *v.* Hall, (Neb. 1907) 111 N. W. 129.

888. 1. Sharples Co. *v.* Harding Creamery Co., (Neb. 1907) 111 N. W. 783.

3. Sharples Co. *v.* Harding Creamery Co., (Neb. 1907) 111 N. W. 783.

4. Houston Ice, etc., Co. *v.* Nicolini, (Tex. Civ. App. 1906) 96 S. W. 84.

WINE.

890. 1. Nussbaumer *v.* State, (Fla. 1907) 44 So. 713, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 890.

WITH.

891. 1. **With in Sense of And.** — Willis *v.* Weeks, 129 Iowa 529, 105 N. W. 1012, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 891.

2. **The Term with Interest** in an order of court held to mean ***with*** legal interest. Lawrence *v.* Binninger, 121 N. Y. App. Div. 701, 106 N. Y. Supp. 500.

WITHOUT.

895. 1. **Without Sufficient Cause — Refusal to Pay Seaman Wages.** — See The Sadie C. Sumner, 142 Fed. 611.

Without Fault. — See Robinson *v.* Kistler, (W. Va. 1907) 59 S. E. 505.

WITHOUT PREJUDICE.

896. 1. **The Words "Without Prejudice to This Charter"** mean that the rights of the shipowners against the time charterers, and *vice versa*, are to be preserved. Turner *v.* Haji Goolam Mahomed Azam, (1904) A. C. 826, 91 L. T. N. S. 216, 20 Times L. Rep. 599, 74 L. J. P. C. 17.

WITNESSES.

909. 1. **Witness Defined.** — Parsons Band Cutter, etc., Co. *v.* Sciscoe, 120 Iowa 631, 106 N. W. 164.

910. 2. State *v.* Spivey, 191 Mo. 87, 90 S. W. 81.

912. 1. Weiermueller *v.* Scullin, 203 Mo. 466, 101 S. W. 1088; Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275.

918. 1. Liverman *v.* Lee, 86 Miss. 370, 38 So. 658.

Next Friend Competent Witness. — Illinois Cent. R. Co. *v.* Becker, 119 Ill. App. 221.

924. 1. **Mortgagor and Mortgagee.** — Southern R. Co. *v.* Leard, 146 Ala. 349, 39 So. 449.

Grantor — Quitclaim Deed. — Mullins *v.* Mullins, 120 Ky. 643, 87 S. W. 764.

927. 1. Turner *v.* Turner, 123 Ga. 5, 50 S. E. 969; Murphey *v.* Bush, 122 Ga. 715, 50 S. E. 1004.

Master Competent for Servant. — Shaw *v.* Highland Park Mfg. Co., (N. Car. 1907) 59 S. E. 676; Western Cottage Piano, etc., Co. *v.* Anderson, (Tex. Civ. App. 1907) 101 S. W. 1061.

929. 1. **Competency for or against Co-obligor.** — Hawes *v.* Glover, 126 Ga. 305, 55 S. E. 62.

930. 1. Carpenter *v.* Stiggins, 146 Ala. 681, 40 So. 216.

Joint Maker Incompetent for Comaker. — Mohlke *v.* People, 117 Ill. App. 595.

Guarantor of Note Competent. — Pattison *v.* Cobb, 212 Pa. St. 572, 61 Atl. 1108.

Competency of Owner and Holder. — Morgan *v.* Booker, 106 Va. 369, 56 S. E. 137.

933. 4. **Where No Diligence Had Been Exercised** prior to impaneling a juror to ascertain what, if anything, he knew about a particular matter, and there were other competent witnesses as to the matter, it was held not to be an abuse of discretion to refuse to allow him to be sworn as a witness. International, etc., R. Co. *v.* Foster, (Tex. Civ. App. 1907) 100 S. W. 1017.

934. 1. State *v.* Crouch, 130 Iowa 478, 107 N. W. 173.

2. Cuesta *v.* Goldsmith, 1 Ga. App. 48, 57 S. E. 983; State *v.* Simes, 12 Idaho 315, 85 Pac. 914, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934; State *v.* Crouch, 130 Iowa 478, 107 N. W. 173.

5. State *v.* Simes, 12 Idaho 315, 85 Pac. 914, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 934.

8. State *v.* Crouch, 130 Iowa 478, 107 N. W. 173.

935. 1. State *v.* Cremeans, 62 W. Va. 134, 57 S. E. 405.

2. Batterton *v.* State, (Tex. Crim. 1908) 107 S. W. 826.

5. State *v.* Cremeans, 62 W. Va. 134, 57 S. E. 405, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 935.

8. State *v.* Cremeans, 62 W. Va. 134, 57 S. E. 405.

936. 6. Sharpton *v.* Augusta, etc., R. Co., 72 S. Car. 173, 51 S. E. 553, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 553.

8. State *v.* Lu Sing, 34 Mont. 31, 85 Pac. 521; State *v.* Hood, (W. Va. 1907) 59 S. E. 971, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 936.

939. 4. Clinton *v.* State, 53 Fla. 98, 43 So. 312.

940. 7. **Chinaman Competent.** — State *v.* Lu Sing, 34 Mont. 31, 85 Pac. 521.

941. 2. Wilkinson *v.* People, 226 Ill. 135, 80 N. E. 699.

Attorney Who Witnessed Documents Cannot Refuse to Identify Them. — *In re* Ruos, 159 Fed. 252.

Attorney Acting for Both Parties in Negotiations Competent as to Such Matters. — Brown *v.* Moosic Mountain Coal Co., 211 Pa. St. 579, 61 Atl. 76; Mitchell *v.* Mitchell, 212 Pa. St. 62, 61 Atl. 570.

7. Turner *v.* Turner, 123 Ga. 5, 50 S. E. 969; Dukes *v.* Davis, (Ky. 1907) 101 S. W. 390; Emerson *v.* Scott, (Tex. Civ. App. 1905) 87 S. W. 369; Yardley *v.* State, (Tex. Crim. 1907) 100 S. W. 399; Kirchner *v.* Smith, 61 W. Va. 434, 58 S. E. 614.

An Attorney in a Civil Case may testify in a criminal case as to the condition of his client's mind. Bischoff *v.* Com., (Ky. 1906) 96 S. W. 538.

942. 1. Chicago Union Traction Co. *v.* Ertrachter, 228 Ill. 114, 81 N. E. 816; Glanz *v.* Ziabek, 233 Ill. 22, 84 N. E. 36.

3. Weese *v.* Yokum, (W. Va. 1907) 59 S. E. 714.

4. Floyd *v.* Ricketson, 129 Ga. 668, 59 S. E. 909; Taylor *v.* Larter, (Ind. App. 1907) 82 N. E. 96.

5. Gemkow *v.* Link, 225 Ill. 21, 80 N. E. 47; Wedding *v.* Wedding, (Ky. 1905) 87 S. W. 313; Doty *v.* Dickey, (Ky. 1906) 96 S. W. 544; Heckman *v.* Heckman, 215 Pa. St. 203, 64 Atl. 425; Boyce *v.* Bolster, 79 Vt. 40, 64 Atl. 79.

Third Persons May Testify to communications overheard by them between husband and wife. Com. *v.* Everson, (Ky. 1906) 96 S. W. 460.

943. 3. **Apparently Contra.** — Linkemann *v.* Knepper, 226 Ill. 473, 80 N. E. 1009.

6. **Husband Incompetent in Matters Affecting Wife's Paraphernal Rights.** — Bianchi *v.* Del Valle, 117 La. 587, 42 So. 148.

945. 1. Grabowski *v.* State, 126 Wis. 447, 105 N. W. 805.

A Statement Made by the Wife to Another has been held to be inadmissible on the ground that its admission would amount to permitting the wife to testify against her husband. State *v.* Richardson, 194 Mo. 326, 92 S. W. 649.

4. Bianchi *v.* Del Valle, 117 La. 587, 42 So. 148; State *v.* Luper, (Oregon 1907) 91 Pac. 444.

7. Williams *v.* State, (Ala. 1907) 43 So. 720; Reaves *v.* Coffman, (Ark. 1908) 112 S. W. 194; Stoutenborough *v.* Rammel, 123 Ill. App. 487; Bianchi *v.* Del Valle, 117 La. 587, 42 So. 148; Weckerly *v.* Taylor, 74 Neb. 772, 105 N. W. 254; Mead *v.* Owen, 80 Vt. 273, 67 Atl. 722.

Testimony Not Against Husband. — Hobbs *v.* State, (Tex. Crim. 1908) 112 S. W. 308.

946. 2. Rust *v.* Oltmer, (N. J. 1907) 67 Atl. 337.

947. 1. Bishop *v.* Bishop, 124 Ga. 293, 52 S. E. 743; Hill *v.* Pomelear, 72 N. J. L. 528, 63 Atl. 269; Rust *v.* Oltmer, (N. J. 1907) 67 Atl. 337.

Court May Refuse to Accept Waiver of Wife's Incompetency. — Grabowski *v.* State, 126 Wis. 447, 105 N. W. 805.

6. White *v.* White, 101 Minn. 476, 112 N. W. 627.

7. **Competent as to Marriage Only.** — Hill *v.* Pomelear, 72 N. J. L. 528, 63 Atl. 269.

9. Williams *v.* State, (Ala. 1907) 43 So. 720; De Leon *v.* Territory, 9 Ariz. 61, 80 Pac. 348; Ford *v.* State, 124 Ga. 793, 53 S. E. 335; Hoch *v.* People, 219 Ill. 265, 76 N. E. 356; Porter *v.* U. S., (Indian Ter. 1907) 104 S. W. 855; State *v.* Bell, (Mo. 1908) 111 S. W. 24; Joseph *v.* Com., (Ky. 1907) 99 S. W. 311; Spencer *v.* State, (Tex. Crim. 1907) 106 S. W. 386; Stewart *v.* State, (Tex. Crim. 1907) 106 S. W. 685.

In a Prosecution for the Murder of the Defendant's Child, the defendant's wife is incompetent even though she was injured by the same act. State *v.* Woodrow, 58 W. Va. 527, 52 S. E. 545.

948. 1. **Incompetent for All Purposes.** — Barra *v.* State, (Tex. Crim. 1906) 97 S. W. 94, holding, however, that the girl's mother may be brought in for identification.

2. State *v.* Winnett, (Wash. 1907) 92 Pac. 904. *Contra*, as to statements of the spouse forming part of the *res gestæ*, McMichael *v.* State, 49 Tex. Crim. 422, 93 S. W. 723.

8. Spencer *v.* State, (Tex. Crim. 1907) 106 S. W. 386.

949. 2. State *v.* Wilson, 39 Wash. 221, 81 Pac. 721.

3. Hoch *v.* People, 219 Ill. 265, 76 N. E. 356.

5. State *v.* Winnett, (Wash. 1907) 92 Pac. 904.

8. Wickes *v.* Walden, 228 Ill. 56, 81 N. E. 798.

950. 3. Johnson *v.* Johnson, 122 Ky. 13, 90 S. W. 964; Hartley *v.* Hartley, 27 R. I. 176, 61 Atl. 144.

4. Jacobs *v.* U. S., (C. C. A.) 161 Fed. 694; State *v.* Mathews, 133 Iowa 398, 109 N. W. 616; Easterly *v.* Gater, 17 Okla. 93, 87 Pac. 853; State *v.* Luper, (Oregon 1908) 95 Pac. 811; State *v.* Wilson, 39 Wash. 221, 81 Pac. 721, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 950.

10. State *v.* Luper, (Oregon 1908) 95 Pac. 811.

951. 1. Illinois L. Ins. Co. *v.* De Lang, (Ky. 1907) 99 S. W. 616; Bankers Fraternal Union *v.* Donahue, (Ky. 1908) 109 S. W. 878. *Compare* Noel *v.* Fitzpatrick, (Ky. 1907) 100 S. W. 321; Dakan *v.* Union Mut. L. Ins. Co., 125 Mo. App. 451, 102 S. W. 634.

3. **The Alleged Widow of an Intestate** is held in *Maryland* not to be a competent witness on an issue as to whether she is the widow of the intestate, to prove her marriage to the decedent. Bowman *v.* Little, 101 Md. 273, 61 Atl. 223; Bowman *v.* Little, 101 Md. 297, 61 Atl. 657; ; Bowman *v.* Little, 101 Md. 311, 61 Atl. 1084.

4. Lurty *v.* Lurty, 107 Va. 466, 59 S. E. 405.

5. Small *v.* Pryor, 69 N. J. Eq. 606, 61 Atl. 564.

6. Ten Broeck *v.* Jackson, (N. J. 1906) 69 Atl. 488.

7. Leonard *v.* Piggott, (Mich. 1908) 116 N. W. 366.

952. 1. State *v.* Rocker, 130 Iowa 239, 106 N. W. 645; Lara *v* State, 48 Tex. Crim. 568, 89 S. W. 840.

Necessary to Prove Woman Wife of Defendant. — State *v.* Frye, 45 Wash. 645, 89 Pac. 170.

2. State *v.* Hancock, 28 Nev. 304, 82 Pac. 95, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 951 [952].

4. Hoch *v.* People, 219 Ill. 279, 76 N. E. 356, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 952; Richardson *v.* State, 103 Md. 112, 63 Atl. 317.

6. Hoch *v.* People, 219 Ill. 279, 76 N. E. 356, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 952.

953. 1. Woodard *v.* State, 84 Ark. 119, 104 S. W. 1109.

954. 9. Williams *v.* State, (Ala. 1907) 43 So. 720, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 954; Miller *v.* State, (Neb. 1907) 111 N. W. 637.

Exception Confined to Cases of Personal Violence. — State *v.* Woodrow, 58 W. Va. 527, 52 S. E. 545.

955. 1. Williams *v.* State, (Ala. 1907) 43 So. 720, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 720.

5. Hill *v.* Pomelear, 72 N. J. L. 528, 63 Atl. 269.

7. Williams *v.* State, (Ala. 1907) 43 So. 720, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 955; Purdy *v.* State, (Tex. Crim. 1906) 97 S. W. 480.

10. Williams *v.* State, (Ala. 1907) 43 So. 720; Miller *v.* State, (Neb. 1907) 111 N. W. 637.

956. 9. Wester *v.* State, 142 Ala. 56, 38 So. 1010; State *v.* Luper, (Oregon 1907) 91 Pac. 444.

13. State *v.* Kniffen, 44 Wash. 487, 87 Pac. 837, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 956.

957. 7. Bianchi *v.* Del Valle, 117 La. 587, 42 So. 148; Moore *v.* Rose, (Mo. App. 1908) 108 S. W. 1105.

8. Bianchi *v.* Del Valle, 117 La. 587, 42 So. 148.

958. 2. Moore *v.* Rose, (Mo. App. 1908) 108 S. W. 1105.

5. **Georgia.** — Macon, R., etc., Co. *v.* Mason, 123 Ga. 773, 51 S. E. 569.

959. 4. Larson *v.* Carter, (Idaho 1908) 94 Pac. 825.

5. Bianchi *v.* Del Valle, 117 La. 587, 42 So. 148.

960. 4. Bianchi *v.* Del Valle, 117 La. 587, 42 So. 148.

961. 3. Louisville, etc., R. Co. *v.* Quinn, 145 Ala. 657, 39 So. 616; Cedartown *v.* Brooks, 2 Ga. App. 583, 59 S. E. 836; Martin *v.* Derenbecker, 116 La. 495, 40 So. 849; Steves *v.* Smith, (Tex. Civ. App. 1908) 107 S. W. 141.

Wife Competent for Husband in Action against Administrator. — Butler *v.* Phillips, 38 Colo. 378, 88 Pac. 480.

5. Thomas *v.* State, (Ala. 1908) 46 So. 771; White *v.* White, 101 Minn. 476, 112 N. W. 627.

962. 6. Percival *v.* Jack, 4 Cal. App. 199, 90 Pac. 555.

7. **Wife's Testimony Admissible in Absence of Objection by Husband.** — People *v.* Chadwick, 4 Cal. App. 63, 87 Pac. 389.

9. **Wife Not Disqualified Where Husband Is Dead.** — Leonard *v.* Piggott, (Mich. 1908) 116 N. W. 366.

10. Humphrey *v.* Pope, 1 Cal. App. 374, 82 Pac. 223.

963. 4. Oexener *v.* Loehr, 117 Mo. App. 698, 93 S. W. 333.

6. Boyce *v.* Bolster, 79 Vt. 40, 64 Atl. 79.

Vermont Rule. — To the same effect as Eastabrooks *v.* Prentiss, 34 Vt. 457, cited in the original note, see Boyce *v.* Bolster, 79 Vt. 40, 64 Atl. 79.

8. St. Louis, etc., R. Co. *v.* Courtney, 77 Ark. 431, 92 S. W. 251; Lumbard *v.* Holdiman, 115 Ill. App. 458; Thornton *v.* Muus, 120 Ill. App. 422; Gardner *v.* St. Louis, etc., R. Co., 124 Mo. App. 461, 101 S. W. 684; Smith *v.* Travel, (Okla. 1908) 94 Pac. 529; Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237; Bloch *v.* American Ins. Co., (Wis. 1907) 112 N. W. 45.

"Business Transacted" Refers to Transactions with Third Person. — Taylor *v.* McClintock, (Ark. 1908) 112 S. W. 405.

964. 1. **Kentucky Statute.** — Leigh *v.* Citizens' Sav. Bank, (Ky. 1907) 102 S. W. 233.

3. Lurty *v.* Lurty, 107 Va. 466, 59 S. E. 405.

7. Donk Bros. Coal, etc., Co. *v.* Stroetter, 229 Ill. 134, 82 N. E. 250; Gulliford *v.* McQuillen, 75 Kan. 454, 89 Pac. 927; Strode *v.*

Frommeyer, 115 Mo. App. 220, 91 S. W. 167; *In re* Neufeld, (Surrogate Ct.) 50 Misc. (N. Y.) 215, 100 N. Y. Supp. 444; Payne *v.* Payne, 129 Wis. 450, 109 N. W. 105. *Compare* Shepherd *v.* Schomaker, 115 La. 542, 39 So. 554.

8. Shepherd *v.* Schomaker, 115 La. 542, 39 So. 554.

9. Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Smith *v.* Travel, (Okla. 1908) 94 Pac. 529.

965. 11. St. Louis, etc., R. Co. *v.* Courtney, 77 Ark. 431, 92 S. W. 251; Donk Bros. Coal, etc., Co. *v.* Stroetter, 229 Ill. 134, 82 N. E. 250; Vette *v.* Sacher, 114 Mo. App. 363, 89 S. W. 360; Joplin *v.* Freeman, 125 Mo. App. 717, 103 S. W. 130; Alabama Oil, etc., Co. *v.* Sun Co., 99 Tex. 606, 92 S. W. 253.

966. 7. Gardner *v.* St. Louis, etc., R. Co., 124 Mo. App. 461, 101 S. W. 684.

10. Levine *v.* Carroll, 121 Ill. App. 105; Ames *v.* Thren, 125 Ill. App. 312.

967. 1. Pennsylvania Statute. — Heckman *v.* Heckman, 215 Pa. St. 203, 64 Atl. 425.

4. Ditto *v.* Slaughter, (Ky. 1906) 92 S. W. 2; Taylor *v.* Johnson, (Ky. 1907) 99 S. W. 320.

Where a Husband Acts as Agent for His Wife, he may testify as to facts occurring when she was not present, although she also testifies in the action. Miller *v.* Jones, (Ky. 1908) 107 S. W. 783.

10. Mitchell *v.* Brady, (Ky. 1907) 99 S. W. 266.

Each May Testify to Facts Which They Alone Knew, but Not to Same Facts. — Monahan *v.* Schwartz, (Ky. 1908) 108 S. W. 285.

13. Idaho Statute — Wife Competent Where She and Husband Sued Jointly. — Larson *v.* Carter, (Idaho 1908) 94 Pac. 825.

16. Wester *v.* State, 142 Ala. 56, 38 So. 1010.

970. 3. Standley *v.* Moss, 114 Ill. App. 612; Davis *v.* Hall, 128 Iowa 647, 105 N. W. 122; State *v.* O'Malley, 132 Iowa 696, 109 N. W. 491.

972. 1. Amidon *v.* Snouffer, (Iowa 1908) 117 N. W. 44.

6. Stuyvaert *v.* Arnold, 122 Mo. App. 421, 99 S. W. 529; McCune *v.* Goodwillie, 204 Mo. 386, 102 S. W. 977.

Waiver by Failure to Object. — Stuyvaert *v.* Arnold, 122 Mo. App. 421, 99 S. W. 529.

973. 2. General Objection Sufficient. — McAleer *v.* McNamara, (Iowa 1907) 112 N. W. 85.

976. 3. Standley *v.* Moss, 114 Ill. App. 612.

4. Hoch *v.* People, 219 Ill. 265, 76 N. E. 356; Porter *v.* U. S., (Indian Ter. 1907) 104 S. W. 855; Sprague *v.* Wisconsin Cent. R. Co., (Minn. 1908) 116 N. W. 104; State *v.* Louanis, 79 Vt. 463, 65 Atl. 532; State *v.* Cremeans, 62 W. Va. 134, 57 S. E. 405.

981. 7. Lurty *v.* Lurty, 107 Va. 466, 59 S. E. 405.

982. 7. Koger *v.* Armstrong, 72 Kan. 692, 83 Pac. 1029, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 982.

983. 1. Mendenhall *v.* School Dist. No. 83, (Kan. 1907) 90 Pac. 773, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 983.

987. 4. Russell *v.* Hitchcock, 105 N. Y. App. Div. 315, 93 N. Y. Supp. 950.

5. Thompson *v.* Brown, 121 Mo. App. 524, 97 S. W. 242.

988. 3. Wakefield *v.* Wakefield, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 87, 93 N. Y. Supp. 554.

4. Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233; Russell *v.* Hitchcock, 105 N. Y. App. Div. 315, 93 N. Y. Supp. 950; Rogers *v.* Tompkins, (Tex. Civ. App. 1905) 87 S. W. 379; Evans *v.* Scott, (Tex. Civ. App. 1906) 97 S. W. 116; Sachse *v.* Loeb, (Tex. Civ. App. 1907) 101 S. W. 450.

989. 2. Field *v.* Field, (Tex. Civ. App. 1905) 87 S. W. 726.

4. Gerting *v.* Wells, 103 Md. 624, 64 Atl. 298.

5. Miller *v.* Steele, (C. C. A.) 153 Fed. 714; Huff *v.* Powell, (Tex. Civ. App. 1908) 107 S. W. 364.

6. Owsley *v.* Boles, (Ky. 1907) 99 S. W. 1157; Collins *v.* McKay, (Mont. 1907) 92 Pac. 295; Fitch *v.* Martin, 74 Neb. 538, 104 N. W. 1072.

Section 1880 of the California Code is not applicable to a suit against a decedent's executrix to have deeds declared to be mortgages. Wadleigh *v.* Phelps, 149 Cal. 627, 87 Pac. 93.

990. 7. Collier *v.* Trice, 79 Ark. 414, 96 S. W. 174; Delmoe *v.* Long, 35 Mont. 139, 88 Pac. 778.

Plaintiff May Not Testify. — Calkins *v.* Calkins, 220 Ill. 111, 77 N. E. 102.

Plaintiff Competent When Called by Executor. — Scott *v.* Menly, (Tex. Civ. App. 1907) 105 S. W. 55.

11. Intervenor Permitted to Testify. — City Nat. Bank *v.* Crahan, (Iowa 1907) 112 N. W. 793.

991. 8. Blackburn *v.* Hall, (Ky. 1906) 97 S. W. 399.

992. 2. Mendenhall *v.* School Dist. No. 83, (Kan. 1907) 90 Pac. 773; General Proprietors, etc., *v.* Force, (N. J. 1896, 68 Atl. 914; Talbot *v.* Laubheim, 188 N. Y. 421, 81 N. E. 163; Cockley Milling Co. *v.* Bunn, 75 Ohio St. 270, 79 N. E. 478.

5. Seaton *v.* Lee, 221 Ill. 282, 77 N. E. 446; Oswald *v.* Nehls, 233 Ill. 438, 84 N. E. 619; Sallee *v.* Soules, 168 Ind. 624, 81 N. E. 587; Liverman *v.* Lee, 86 Miss. 370, 38 So. 658; Bonner *v.* Stotesbury, 139 N. Car. 3, 51 S. E. 781; Cockley Milling Co. *v.* Bunn, 75 Ohio St. 270, 79 N. E. 478; *In re* Crosetti, 211 Pa. St. 490, 60 Atl. 1081; Moylan *v.* Moylan, (Wash. 1908) 95 Pac. 271.

6. Giles *v.* Smith, (N. H. 1907) 66 Atl. 1049; *In re* Crosetti, 211 Pa. St. 490, 60 Atl. 1081.

8. Webb *v.* Simmons, (Ga. App. 1908) 60 S. E. 334.

"Opposite Party" Construed to Mean Real Party in Interest. — Reed *v.* Whipple, 140 Mich. 7, 103 N. W. 548.

9. One Not Real Party in Interest May Testify. — Reed *v.* Whipple, 140 Mich. 7, 103 N. W. 548.

993. 10. Jonas *v.* Hirshburg, (Ind. App 1907) 79 N. E. 1058; Northrip *v.* Williams, (Ky. 1907) 100 S. W. 1192; *In re* Pederson, 97 Minn. 491, 106 N. W. 958; Lyngar *v.* Shafer, 125 Mo. App. 398, 102 S. W. 630.

995. 3. Jones *v.* Abbott, (Ill. 1908) 85 N.

E. 279; Tebbs *v.* Jarvis, (Iowa 1908) 116 N. W. 708.

9. **A Party to a Claim against the Estate** may prove transactions and communications with the decedent. Campbell *v.* Collins, 133 Iowa 152, 110 N. W. 435.

996. 1. **Taxpayer Not Incompetent.** — Mendenhall *v.* School Dist. No. 83, (Kan. 1907) 90 Pac. 773.

997. 6. Thompson *v.* Brown, 121 Mo. App. 524, 97 S. W. 242; Puckett *v.* Mullins, 106 Va. 248, 55 S. E. 676.

999. 4. Smith *v.* Smith, 201 Mo. 533, 100 S. W. 579.

10. Wilkins *v.* Brock, (Vt. 1908) 70 Atl. 574.

1000. 9. *Compare* Cowdrey *v.* Cowdrey, (N. J. 1906) 64 Atl. 98; Smith *v.* Moore, 142 N. Car. 277, 55 S. E. 275.

1001. 5. *Alabama.* — Ryan *v.* Shaneyfelt, 146 Ala. 683, 40 So. 223; Holloway *v.* Wilkerson, (Ala. 1907) 43 So. 731; Napier *v.* Elliott, (Ala. 1907) 44 So. 552.

Illinois. — Jones *v.* Abbott, (Ill. 1908) 85 N. E. 279; Lennartz *v.* Popp, 118 Ill. App. 31.

Iowa. — McElroy *v.* Allfree, 131 Iowa 518, 108 N. W. 119; Culbertson *v.* Salinger, 131 Iowa 307, 108 N. W. 454.

Kentucky. — Bryson *v.* Biggs, (Ky. 1907) 104 S. W. 982; Carmical *v.* Carmical, (Ky. 1907) 104 S. W. 1037; Chesapeake, etc., R. Co. *v.* Perkins, (Ky. 1907) 105 S. W. 148.

Minnesota. — Pitzl *v.* Winter, 96 Minn. 499, 105 N. W. 673; *In re* Pederson, 97 Minn. 491, 106 N. W. 958.

Missouri. — Oexner *v.* Loehr, 117 Mo. App. 698, 93 S. W. 333.

Nebraska. — Hageman *v.* Powell, (Neb. 1906) 107 N. W. 749.

New Jersey. — Carlin *v.* Carlin, (N. J. 1906) 64 Atl. 1018.

New York. — Hall *v.* Wagner, 11 N. Y. App. Div. 70, 97 N. Y. Supp. 570.

North Carolina. — Campbell *v.* Everhart, 139 N. Car. 503, 52 S. E. 201; Linebarger *v.* Linebarger, 143 N. Car. 229, 55 S. E. 709; Briggs *v.* Durham Traction Co., (N. Car. 1908) 61 S. E. 373.

South Carolina. — Clark *v.* Home Fund L. Ins. Co., (S. Car. 1908) 61 S. E. 80.

Texas. — Whitfield *v.* Diffie, (Tex. Civ. App. 1907) 105 S. W. 324.

1002. 1. *Alabama.* — Little *v.* Marx, 144 Ala. 538, 39 So. 517; Doe *v.* Edmondson, 145 Ala. 557, 40 So. 505.

Georgia. — Morehead *v.* Allen, 127 Ga. 510, 56 S. E. 745; Jackson *v.* Gallagher, 128 Ga. 321, 57 S. E. 750.

Iowa. — City Nat. Bank *v.* Crahan, (Iowa 1907) 112 N. W. 793.

Kansas. — Koger *v.* Armstrong, 72 Kan. 691, 83 Pac. 1029.

Kentucky. — Walker *v.* Turley, (Ky. 1906) 90 S. W. 576.

Michigan. — *In re* Smith, (Mich. 1908) 115 N. W. 1052.

Missouri. — Jenkins *v.* Emmons, 117 Mo. App. 1, 94 S. W. 812.

Montana. — State *v.* O'Brien, (Mont. 1907) 90 Pac. 514.

New York. — *In re* Knibbs, 108 N. Y. App. Div. 134, 96 N. Y. Supp. 40; Spier *v.* McNaught, 121 N. Y. App. Div. 330, 105 N. Y. Supp. 1060.

North Carolina. — Medlin *v.* Simpson, 144 N. Car. 397, 57 S. E. 24; Henderson *v.* McLain, (N. Car. 1907) 59 S. E. 873.

Oklahoma. — Conklin *v.* Yates, 16 Okla. 266, 83 Pac. 910.

Texas. — Crosby *v.* El Paso First Presb. Church, (Tex.) 99 S. W. 584.

Virginia. — Douglas Land Co. *v.* T. W. Thayer Co., (Va. 1907) 58 S. E. 1101.

West Virginia. — Hollen *v.* Crim, (W. Va. 1907) 59 S. E. 172; Weese *v.* Yokum, (W. Va. 1907) 59 S. E. 514.

1003. 1. *In re* Sloan, (Wash. 1908) 96 Pac. 684.

2. McQueen *v.* Grigsby, (Ala. 1907) 44 So. 961; Ham *v.* State, (Ala. 1908) 47 So. 126; Jones *v.* Abbott, (Ill. 1908) 85 N. E. 279; Mendenhall *v.* School Dist. No. 83, (Kan. 1907) 90 Pac. 773; Hollingsworth *v.* Barrett, (Ky. 1905) 89 S. W. 107; Blackburn *v.* Hall, (Ky. 1906) 97 S. W. 399; Bryson *v.* Biggs, (Ky. 1907) 104 S. W. 982; Hageman *v.* Powell, (Neb. 1906) 107 N. W. 749; Fox *v.* Fox, (Neb. 1906) 110 N. W. 304; Spier *v.* McNaught, 121 N. Y. App. Div. 330, 105 N. Y. Supp. 1060; Bonner *v.* Stotesbury, 139 N. Car. 3, 51 S. E. 781; Bennett *v.* Best, 142 N. Car. 168, 55 S. E. 84; Lemly *v.* Ellis, 143 N. Car. 200, 55 S. E. 629; Crosby *v.* El Paso First Presb. Church, (Tex. Civ. App. 1907) 99 S. W. 584; Whitfield *v.* Diffie, (Tex. Civ. App. 1907) 105 S. W. 324; *In re* Sloan, (Wash. 1908) 96 Pac. 684.

Interest to Disqualify Must Be Legal, Not Sentimental. — Henderson *v.* McLain, (N. Car. 1907) 59 S. E. 873.

3. Jones *v.* Abbott, (Ill. 1908) 85 N. E. 279; Crosby *v.* El Paso First Presb. Church, (Tex. Civ. App. 1907) 99 S. W. 584.

1004. 4. Yates *v.* Huntsville Hoop, etc., Co., (Ala. 1905) 39 So. 647; Cobb *v.* Owens, (Ala. 1907) 43 So. 826; Harper *v.* T. N. Hays Co., (Ala. 1907) 43 So. 360; Pitzl *v.* Winter, 96 Minn. 499, 105 N. W. 673; Fox *v.* Fox, (Neb. 1906) 110 N. W. 304; Harvey *v.* Cullings, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 344, 96 N. Y. Supp. 638.

5. *In re* Rossell, (Supm. Ct. App. Div.) 110 N. Y. Supp. 706.

6. Jones *v.* Abbott, (Ill. 1908) 85 N. E. 279.

1005. 1. *Mother.* — McMorrow *v.* Dowell, 116 Mo. App. 289, 90 S. W. 728.

Wife. — Guillaume *v.* Flannery, (S. Dak. 1906) 108 N. W. 255.

2. Standley *v.* Moss, 114 Ill. App. 612.

8. Leonora Nat. Bank *v.* Ragland, (Ky. 1908) 108 S. W. 854; Andrews *v.* Reiners, 112 N. Y. App. Div. 378, 98 N. Y. Supp. 658.

1006. 1. *In re* Sloan, (Wash. 1908) 96 Pac. 684; Hudkins *v.* Crim, (W. Va. 1908) 61 S. E. 166; Crosby *v.* El Paso First Presb. Church, (Tex. Civ. App. 1907) 99 S. W. 584.

Contingent Estate as Tenant by Curtesy Does Not Disqualify. — Hiskett *v.* Bozarth, 75 Neb. 70, 105 N. W. 990; Hudkins *v.* Crim, (W. Va. 1908) 61 S. E. 166.

Interest of Former Administrator's Wife in Result of Contest Not Direct Legal Interest. — Foster *v.* Murphy, (Neb. 1906) 107 N. W. 843.

Wife's Community Interest Disqualifies Her. — Whitfield *v.* Diffie, (Tex. Civ. App. 1907) 105 S. W. 324.

2. Oswald *v.* Nehls, 233 Ill. 438, 84 N. E. 619; Jones *v.* Abbott, (Ill. 1908) 85 N. E. 279; Morgan *v.* Foran, 120 N. Y. App. Div. 185, 104 N. Y. Supp. 1084; Munson *v.* Crookston, (Pa. 1908) 68 Atl. 962.

3. Oswald *v.* Nehls, 233 Ill. 438, 84 N. E. 619; Bromley *v.* Washington L. Ins. Co., (Ky. 1906) 92 S. W. 17; Cobb *v.* Holloway, (Mo. App. 1908) 108 S. W. 109; Bentley *v.* Jun, (Neb. 1906) 107 N. W. 865; Carlin *v.* Carlin, (N. J. 1906) 64 Atl. 1018; Bonner *v.* Stotesbury, 139 N. Car. 3, 51 S. E. 781.

1007. 1. Culbertson *v.* Salinger, 131 Iowa 307, 108 N. W. 454.

Filing of Stipulation for Judgment Removes Bar of Statute. — Culbertson *v.* Salinger, 131 Iowa 307, 108 N. W. 454.

1008. 9. **A Creditor of a Corporation** who seeks to recover a claim against the estate of a deceased shareholder may testify as to a transaction with the decedent. Williams *v.* Chamberlain, (Ky. 1906) 94 S. W. 29.

1009. 4. McClanahan *v.* McClanahan, 129 Iowa 411, 105 N. W. 833; Dreger *v.* Budde, (Wis. 1907) 113 N. W. 950.

Judgment Debtors. — Pitzl *v.* Winter, 96 Minn. 499, 105 N. W. 673.

Maker of Note Not Incompetent. — Culbertson *v.* Salinger, 131 Iowa 307, 108 N. W. 454.

Real-estate Agent Not Precluded. — Franklin *v.* Killilea, 126 Wis. 88, 104 N. W. 993.

1010. 4. Curd *v.* Bowron, (Ky. 1907) 105 S. W. 417; Gibbs *v.* Haughowout, 207 Mo. 384, 105 S. W. 1067; Conklin *v.* Yates, 16 Okla. 266, 83 Pac. 910.

6. McClanahan *v.* McClanahan, 129 Iowa 411, 105 N. W. 833; Leonora Nat. Bank *v.* Ragland, (Ky. 1908) 108 S. W. 854; Platner *v.* Ryan, (N. J. 1908) 69 Atl. 1007.

1013. 3. Thomas *v.* Tilley, 147 Ala. 189, 41 So. 854; Hecht *v.* Shaffer, 15 Wyo. 34, 85 Pac. 1056.

4. Shipley *v.* Mercantile Trust, etc., Co., 102 Md. 649, 62 Atl. 814.

1014. 6. Carmical *v.* Carmical, (Ky. 1907) 104 S. W. 1037.

8. White *v.* Willard, 232 Ill. 464, 83 N. E. 954; Jones *v.* Abbott, (Ill. 1908) 85 N. E. 279; Burnett *v.* Smith, (Miss. 1908) 47 So. 117.

1015. 2. Heinisch *v.* Pennington, (N. J. 1907) 68 Atl. 233.

6. *In re* Shapter, 35 Colo. 578, 85 Pac. 688.

1016. 4. *In re* Miller, 31 Utah 415, 88 Pac. 338.

Executor Competent. — Hogan *v.* Hinchey, 195 Mo. 527, 94 S. W. 522.

1018. 1. Harvey *v.* Cullings, (Supm. Ct. Spec. T.) 48 Misc. (N. Y.) 344, 96 N. Y. Supp. 638.

3. O'Connor *v.* Slatter, (Wash. 1907) 89 Pac. 885.

7. Cardiff *v.* Marquis, (N. Dak. 1908) 114 N. W. 1088; Marquis *v.* Morris, (N. Dak. 1908) 114 N. W. 1091.

9. Bottineau First Nat. Bank *v.* Hilliboe, (N. Dak. 1908) 114 N. W. 1085, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1018.

1019. 1. Bush *v.* Prescott, etc., R. Co., 83 Ark. 210, 103 S. W. 176; Davis *v.* Davis, (Tex. Civ. App. 1906) 98 S. W. 198; Duncan *v.* Jouett, (Tex. Civ. App. 1908) 111 S. W. 981.

2. Temple *v.* Magruder, 36 Colo. 390, 85 Pac. 832.

1020. 1. Hogg *v.* Combs, (Ky. 1906) 93 S. W. 670; Shipley *v.* Mercantile Trust, etc., Co., 102 Md. 649, 62 Atl. 814; Roche *v.* Mason, 105 N. Y. App. Div. 265, 93 N. Y. Supp. 565; Hall *v.* Wagner, 111 N. Y. App. Div. 70, 97 N. Y. Supp. 570;; Morgan *v.* Foran, 120 N. Y. App. Div. 185, 104 N. Y. Supp. 1084; Reynolds *v.* Reynolds, 42 Wash. 107, 84 Pac. 579; Samuel & Jessie Kenney Presb. Home *v.* Kenney, 45 Wash. 106, 88 Pac. 108.

3. Bright *v.* Bright, (Ky. 1907) 99 S. W. 901; Curd *v.* Bowron, (Ky. 1907) 105 S. W. 417.

Purchaser from Trustee Competent to Testify to Transactions with Trustee. — Maynard *v.* Greer, 129 Ga. 709, 59 S. E. 798.

4. Erickson *v.* Modern Woodmen of America, 42 Wash. 242, 86 Pac. 584.

No Relation Existing to Bring Parties within Statute. — Bernstein *v.* Cahen, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 639, 96 N. Y. Supp. 209.

1022. 3. Lipp *v.* Fielder, (N. J. 1907) 66 Atl. 189.

1023. 5. McAleer *v.* McNamara, (Iowa 1907) 112 N. W. 85; Conkling *v.* Yates, 16 Okla. 266, 83 Pac. 910.

Claimant of Title through Executor's Sale Not Assignee. — Powers *v.* Scharling, 71 Kan. 716, 81 Pac. 479.

1024. 2. Studebaker *v.* Faylor, (Ind. App. 1907) 80 N. E. 861; Gerting *v.* Wells, 103 Md. 624, 64 Atl. 298; Cross *v.* Iler, 103 Md. 592, 64 Atl. 33; Franken *v.* Supreme Ct., etc., (Mich. 1908) 116 N. W. 188; Sachse *v.* Loeb, (Tex. Civ. App. 1907) 101 S. W. 450; Tison *v.* Gass, (Tex. Civ. App. 1907) 102 S. W. 751; Wolf *v.* King, (Tex. Civ. App. 1908) 107 S. W. 617 (heir of grantee); Duncan *v.* Jouett, (Tex. Civ. App. 1908) 111 S. W. 981.

6. Nelson *v.* Nelson, (Ky. 1906) 96 S. W. 795.

1025. 6. German *v.* Browne, 145 Ala. 364, 39 So. 742; Duggar *v.* Pitts, 145 Ala. 358, 39 So. 905.

1026. 1. German *v.* Browne, 145 Ala. 364, 39 So. 742; Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149; Beechley *v.* Beechley, 134 Iowa 75, 108 N. W. 762; Reinhardt *v.* Marks, (Ky. 1906) 93 S. W. 32; Moore *v.* Moore, (Ky. 1907) 98 S. W. 1027; Rix *v.* Smith, 145 Mich. 203, 108 N. W. 691; Pitzl *v.* Winter, 96 Minn. 499, 105 N. W. 673; Hamlin *v.* Hamlin, 117 N. Y. App. Div. 493, 102 N. Y. Supp. 571; Moylan *v.* Moylan, (Wash. 1908) 95 Pac. 271.

4. German *v.* Browne, 145 Ala. 364, 39 So. 742; Lodge *v.* Fraim, 5 Penn. (Del.) 352, 63 Atl. 233; Parker *v.* Ballard, 123 Ga. 441, 51 S. E. 465; Hendricks *v.* Allen, 128 Ga. 181, 57 S. E. 224; Tebbs *v.* Jarvis, (Iowa 1908) 116 N. W. 708; Curd *v.* Bowron, (Ky. 1907) 105 S. W. 417; Foley *v.* Dillon, (Ky. 1907) 105 S. W. 461; Preston *v.* Atkins, (Ky. 1907) 106 S. W. 213; Veum *v.* Sheeran, 95 Minn. 315, 104 N. W. 135; Russell *v.* Close, (Neb. 1907) 112 N. W. 559; Bottineau First Nat. Bank *v.* Hilliboe, (N. Dak. 1908) 114 N. W. 1085, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1027 [1026]; Manchester *v.* Bursey, (Tex. Civ. App. 1906) 91 S. W. 817.

A Witness May Testify to Leaving Deed for Safe Keeping with the Grantor, who has since died and who had a life interest in the property. Brucke *v.* Hubbard, 74 S. Car. 144, 54 S. E. 249.

5. Shetler *v.* Stewart, 133 Iowa 320, 107 N. W. 310.

6. Shetler *v.* Stewart, 133 Iowa 320, 107 N. W. 310.

Evidence of Time When Building Completed Not Transaction. — Bottineau First Nat. Bank *v.* Hilliboe, (N. Dak. 1908) 114 N. W. 1085.

Statements Belonging to Res Gestæ Not Excluded. — Cain *v.* Atlantic Coast Line R. Co., 74 S. Car. 89, 54 S. E. 244.

1027. 2. Foreman *v.* Archer, 130 Iowa 49, 106 N. W. 372.

10. Bloodgood *v.* Short, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 286, 98 N. Y. Supp. 775.

12. Parker *v.* Ballard, 123 Ga. 441, 51 S. E. 465; Little *v.* Johnson, 117 N. Y. App. Div. 500, 102 N. Y. Supp. 754.

1028. 1. **Miscellaneous Instances of Personal Transactions.** — German *v.* Browne, 145 Ala. 364, 39 So. 742; Clark *v.* Harper, 215 Ill. 24, 74 N. E. 61; Gaar *v.* Reesor, (Ky. 1906) 91 S. W. 717; Ten Broeck *v.* Jackson, (N. J. 1906) 69 Atl. 488; Pringle *v.* Burroughs, 185 N. Y. 375, 78 N. E. 150; Matter of U. S. Trust Co., 117 N. Y. App. Div. 178, 102 N. Y. Supp. 271; Little *v.* Johnson, 117 N. Y. App. Div. 500, 102 N. Y. Supp. 754; Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824.

Facts Constituting Fraud by Decedent Included in Transactions. — Conklin *v.* Yates, 16 Okla. 266, 83 Pac. 910.

2. Nevers Lumber Co. *v.* Fields, (Ala. 1907) 44 So. 81; Grimes *v.* Ellyson, 130 Iowa 286, 105 N. W. 418; Brandes *v.* Brandes, 129 Iowa 351, 105 N. W. 499; Bromley *v.* Washington L. Ins. Co., (Ky. 1906) 92 S. W. 17; Locklund *v.* Burman, 146 Mich. 233, 109 N. W. 255; Franken *v.* Supreme Ct., etc., (Mich.) 116 N. W. 188; Stanton *v.* Helm, 87 Miss. 287, 39 So. 457; Chas. Green Real Estate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 358, 93 S. W. 1111; Gibbs *v.* Haughowout, 207 Mo. 384, 105 S. W. 1067; Davidson *v.* Bardin, 139 N. Car. 1, 51 S. E. 779; Dunn *v.* Currie, 141 N. Car. 123, 53 S. E. 533; Regan *v.* Jones, 14 N. Dak. 591, 105 N. W. 613; Giles *v.* Smith, (N. H. 1907) 66 Atl. 1049; Mills *v.* Hendershot, 70 N. J. Eq. 258, 62 Atl. 542. *Compare* White *v.* White, 231 Ill. 298, 83 N. E. 234, wherein a son was allowed to testify as to a contract with his father, since deceased.

Negotiations Preceding Contract. — Telford *v.* Howell, 220 Ill. 52, 77 N. E. 82; Detroit United R. Co. *v.* Smith, 144 Mich. 235, 107 N. W. 922; Duncan *v.* Jouett, (Tex. Civ. App. 1908) 111 S. W. 981; Quinn *v.* Quinn, 130 Wis. 548, 110 N. W. 488.

Disability Removed by Loss of Interest in Contract. — Atkinson *v.* Hardy, (Mo. App. 1908) 107 S. W. 466.

5. Crafton *v.* Inge, (Ky. 1906) 98 S. W. 325; Clark *v.* Home Fund L. Ins. Co., (S. Car. 1908) 61 S. E. 80.

Consideration for Mortgage. — Hagan *v.* McDermott, (Wis. 1908) 115 N. W. 138.

6. Carpenter *v.* Stiggins, 146 Ala. 681, 40 So. 216; Telford *v.* Howell, 220 Ill. 52, 77 N. E. 82; McClanahan *v.* McClanahan, 129 Iowa 411, 105 N. W. 833; Gaar *v.* Reesor, (Ky. 1906) 91 S. W. 717; Hogg *v.* Combs, (Ky. 1906) 93 S. W. 670; Black *v.* McCarley, (Ky. 1907) 104 S. W. 987; Cross *v.* Iler, 103 Md. 592, 64 Atl. 33; Locklund *v.* Burman, 146 Mich. 233, 109 N. W. 255; McMorrow *v.* Dowell, 116 Mo. App. 289, 90 S. W. 728; Jennings *v.* Roberts, (Mo. 1908) 109 S. W. 84; *In re* Knibbs, 108 N. Y. App. Div. 134, 96 N. Y. Supp. 40; Corbett *v.* Fogle, 72 S. Car. 312, 51 S. E. 884; Pierce *v.* Stitt, 126 Wis. 62, 105 N. W. 479; Jackman *v.* Inman, (Wis. 1907) 114 N. W. 489.

Credits Indorsed on Note. — Crow *v.* Crow, 124 Mo. App. 120, 100 S. W. 1123.

In an Action to Foreclose a Mortgage, testimony as to payment of interest on a prior mortgage and taxes on the mortgaged premises is not within the statute. Omlie *v.* O'Toole, (N. Dak. 1907) 112 N. W. 677.

1029. 1. Tillman *v.* Rayner, (Supm. Ct. App. Div.) 109 N. Y. Supp. 443.

2. **Demand of Payment of Note Is Transaction Precluded.** — Davis *v.* Evans, 139 N. Car. 440, 51 S. E. 956.

3. Crane *v.* Stafford, 217 Ill. 21, 75 N. E. 424; Bartee *v.* Edmunds, (Ky. 1906) 96 S. W. 535; Bowman *v.* Little, 101 Md. 273, 61 Atl. 223; Bowman *v.* Little, 101 Md. 297, 61 Atl. 657; Bowman *v.* Little, 101 Md. 311, 61 Atl. 1084; Weidenhoft *v.* Primm, (Wyo. 1908) 94 Pac. 453.

Survivor Not Competent to Testify to Common-law Marriage with Decedent. — Edelstein *v.* Brown, (Tex. 1907) 100 S. W. 129; Nelson *v.* Carlson, (Wash. 1908) 94 Pac. 477.

4. **In a Proceeding to Recover Dower** the widow is not incompetent to testify as to the reason why she left her husband's home prior to his death. Hicks *v.* Hicks, 142 N. Car. 231, 55 S. E. 106.

7. Jarvis *v.* Andrews, 80 Ark. 277, 96 S. W. 1064; Sartor *v.* Wells, 39 Colo. 84, 89 Pac. 797; Chapman *v.* Chapman, 132 Iowa 5, 109 N. W. 300; Clark *v.* Clark, 122 Ky. 145, 91 S. W. 284; Curd *v.* Bowron, (Ky. 1907) 105 S. W. 417; Keyser *v.* Warfield, 103 Md. 161, 63 Atl. 217; Crow *v.* Crow, 124 Mo. App. 120, 100 S. W. 1123; Dorais *v.* Doll, 33 Mont. 314, 83 Pac. 884; Wilson *v.* Terry, 70 N. J. Eq. 231, 62 Atl. 310; Regan *v.* Jones, 14 N. Dak. 591, 105 N. W. 613.

1030. 4. Russell *v.* Close, (Neb. 1907) 112 N. W. 559; *In re* Krubbs, 108 N. Y. App. Div. 134, 96 N. Y. Supp. 40.

Delivery by Mail. — *Compare* Bottineau First Nat. Bank *v.* Hilliboe, (N. Dak. 1908) 114 N. W. 1085.

Delivery of Insurance Policy. — Reinhardt *v.* Marks, (Ky. 1906) 93 S. W. 32.

Testimony Regarding Delivery of Deed to Decedent Allowed. — Draper *v.* Brown, (Mich. 1908) 117 N. W. 213.

Delivery of Bank Books. — Van Wagenen *v.* Bonnot, (N. J. 1906) 65 Atl. 239.

5. Wilson *v.* Edwards, 79 Ark. 69, 94 S. W. 927; Davis *v.* Davis, (Supm. Ct. Spec. T.) 104 N. Y. Supp. 824; Tillman *v.* Rayner, (Supm. Ct. App. Div.) 109 N. Y. Supp. 443; Lavelle *v.* Melley, 27 Pa. Super. Ct. 69.

Condition of Package at Time of Delivery. — Van Wagenen *v.* Bonnot, (N. J. 1908) 70 Atl. 143.

6. State *v.* Wilcox, (S. Dak. 1907) 114 N. W. 687.

8. Wilkins *v.* Brock, (Vt. 1908) 70 Atl. 572.

1031. 4. Clark *v.* Clark, 122 Ky. 145, 91 S. W. 284.

5. Nugent *v.* Watkins, 129 Ga. 382, 58 S. E. 888; Stewart *v.* Ellis, (Ga. 1908) 61 S. E. 597; McMorrow *v.* Dowell, 116 Mo. App. 289, 90 S. W. 728; Fitch *v.* Martin, 74 Neb. 538, 104 N. W. 1072; Russell *v.* Close, (Neb. 1907) 112 N. W. 559; *In re* Knibbs, 108 N. Y. App. Div. 134, 96 N. Y. Supp. 40; Lefevre *v.* Silo, 112 N. Y. App. Div. 464, 98 N. Y. Supp. 321; Davidson *v.* Bardin, 139 N. Car. 1, 51 S. E. 779; Dunn *v.* Currie, 141 N. Car. 123, 53 S. E. 533; Buckler *v.* Kneezell, (Tex. Civ. App. 1905) 91 S. W. 367; Simon *v.* Middleton, (Tex. Civ. App. 1908) 112 S. W. 441.

6. Strayhorn *v.* McCall, 78 Ark. 209, 95 S. W. 455; Davidson *v.* Bardin, 139 N. Car. 1, 51 S. E. 779.

1032. 1. **Execution of Will.** — To the same effect as the case quoted in the original note is Barker *v.* Hinton, (W. Va. 1907) 59 S. E. 614.

2. Kauffman *v.* Baillie, (Wash. 1907) 89 Pac. 548.

1033. 6. Langston *v.* Cothran, 78 S. Car. 23, 58 S. E. 956.

Possession of Instruments. — Campbell *v.* Collins, 133 Iowa 152, 110 N. W. 435.

12. Ware *v.* Burch, 148 Ala. 529, 42 So. 562, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1033; Campbell *v.* Collins, 133 Iowa 152, 110 N. W. 435.

1034. 1. Ware *v.* Burch, 148 Ala. 159, 42 So. 562, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1034.

2. Ware *v.* Burch, 148 Ala. 529, 42 So. 562, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1034.

6. Campbell *v.* Collins, 133 Iowa 152, 110 N. W. 435; Com. *v.* Walsh, (Mass. 1907) 82 N. E. 10.

1035. 3. **Deposition Inadmissible.** — Adams *v.* Illinois L. Ins. Co., (Ky. 1907) 104 S. W. 718.

5. Campbell *v.* Collins, 133 Iowa 152, 110 N. W. 435.

1036. 1. Campbell *v.* Collins, 133 Iowa 152, 110 N. W. 435.

2. **Letter Written and Signed by Witness at Dictation of Decedent.** — Cardiff *v.* Marquis, (N. Dak. 1908) 114 N. W. 1088; Marquis *v.* Morris, (N. Dak. 1908) 114 N. W. 1091.

5. Cowdrey *v.* Cowdrey, (N. J. 1906) 64 Atl. 98.

1037. 1. Cardiff *v.* Marquis, (N. Dak. 1908) 114 N. W. 1088; Marquis *v.* Morris, (N. Dak. 1908) 114 N. W. 1091.

4. Patterson *v.* Carter, 147 Ala. 522, 41 So. 133; Temple *v.* Magruder, 36 Colo. 390, 85 Pac. 832; Northrip *v.* Williams, (Ky. 1907) 100 S. W. 1192; Dawdy *v.* Dawdy, 118 Mo. App. 336, 94 S. W. 767; Little *v.* Johnson, 117 N. Y. App. Div. 500, 102 N. Y. Supp. 754.

Parent May Testify for Emancipated Child Claiming Wages. — Weese *v.* Yokum, W. Va. 1907) 59 S. E. 514.

5. Duggar *v.* Pitts, 145 Ala. 358, 39 So. 905; Williams *v.* Walden, 82 Ark. 136, 100 S. W. 898; Lodge *v.* Fraim, 5 Penn. (Del.) 352, 63 Atl. 233; Parker *v.* Ballard, 123 Ga. 441, 51 S. E. 465; Little *v.* Johnson, 117 N. Y. App. Div. 500, 102 N. Y. Supp. 754.

6. Williams *v.* Walden, 82 Ark. 136, 100 S. W. 898; Dunn *v.* Currie, 141 N. Car. 123, 53 S. E. 533.

7. Dodds *v.* State, (Miss. 1908) 45 So. 863.

1038. 1. Dean *v.* Carpenter, 134 Iowa 275, 111 N. W. 815; Wise *v.* Outtrim, (Iowa 1908) 117 N. W. 264; Bossi *v.* Baehr, (Wis. 1907) 113 N. W. 433.

3. Duggar *v.* Pitts, 145 Ala. 358, 39 So. 905; Davidson *v.* Bardin, 139 N. Car. 1, 51 S. E. 779; Stocks *v.* Cannon, 139 N. Car. 60, 51 S. E. 802; Dunn *v.* Currie, 141 N. Car. 123, 53 S. E. 533.

Services as Nurse in Last Illness. — Green *v.* Teutschmann, (Ky. 1906) 97 S. W. 7.

Children of Claimant May Testify. — Taylor *v.* Larter, (Ind. App. 1907) 82 N. E. 96.

4. Dodds *v.* State, (Miss. 1908) 45 So. 863.

1039. 1. Bossi *v.* Baehr, (Wis. 1907) 113 N. W. 433. But see Dunn *v.* Currie, 141 N. Car. 123, 53 S. E. 533.

7. Lodge *v.* Fraim, 5 Penn. (Del.) 352, 63 Atl. 233; Zimmerman *v.* Beatson, 39 Ind. App. 664, 79 N. E. 518; Studabaker *v.* Faylor, (Md. 1908) 83 N. E. 747; Brelsford *v.* Aldridge, (Ind. App. 1908) 84 N. E. 1090; *In re* Clad, 214 Pa. St. 141, 63 Atl. 542; Munson *v.* Crookston, (Pa. 1908) 68 Atl. 962; Weaver *v.* Oberholtzer, 31 Pa. Super Ct. 425.

1040. 2. *In re* Smith, (Mich. 1908) 115 N. W. 1052.

1041. 1. Ayers *v.* Short, 142 Mich. 501, 105 N. W. 1115; Cady *v.* Burgess, 144 Mich. 523, 108 N. W. 414; Goebel *v.* Look, (Mich. 1908) 116 N. W. 1078.

3. Ayers *v.* Short, 142 Mich. 501, 105 N. W. 1115.

8. Atkinson *v.* Maris, (Ind. App. 1907) 81 N. E. 745.

1042. 2. Taylor *v.* McClintock, (Ark. 1908) 112 S. W. 405.

5. **Testimony Inadmissible against Insane Partner.** — Chlopeck *v.* Chlopeck, (Wash. 1907) 91 Pac. 966.

1043. 5. Culbertson *v.* Salinger, (Iowa 1908) 117 N. W. 6.

7. Jones *v.* Purnell, 5 Penn. (Del.) 444, 62 Atl. 149. *Compare* Flynn *v.* Seale, 2 Cal. App. 665, 84 Pac. 263; Swafford *v.* White, (Ky. 1905) 89 S. W. 129.

1044. 2. Boreing *v.* Wilson, (Ky. 1908) 108 S. W. 914.

1045. 1. Kean *v.* Landrum, 72 S. Car. 556, 52 S. E. 421; Guillaume *v.* Flannery, (S. Dak. 1906) 108 N. W. 255.

4. Lyngar *v.* Shafer, 125 Mo. App. 398, 102 S. W. 630.

1046. 5. Grand Lodge, etc., *v.* Young, 123 Ill. App. 628; Holcomb-Lobb Co. *v.* Kaufman, (Ky. 1906) 96 S. W. 813; Loomis *v.* Mullins, (Ky. 1907) 101 S. W. 913; Chas. Green Real Estate Co. *v.* St. Louis Mut. House Bldg. Co., 196 Mo. 369, 93 S. W. 1111, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1046.

7. Kessler *v.* Zacharias, 145 Mich. 699, 108 N. W. 1012.

1047. 1. Helbig *v.* Citizens' Ins. Co., 234 Ill. 251, 84 N. E. 897; Drew *v.* Wabash R. Co., (Mo. App. 1908) 107 S. W. 478; Warth *v.* Kastriner, 114 N. Y. App. Div. 766, 100 N. Y. Supp. 279; *In re* Neufeld, (Surrogate Ct.) 50 Misc. (N. Y.) 215, 100 N. Y. Supp. 444.

2. Kessler *v.* Zacharias, 145 Mich. 699, 108 N. W. 1012.

5. Murphey *v.* Bush, 122 Ga. 715, 50 S. E. 1004; Patton *v.* La Fayette Bank, 124 Ga. 965, 53 S. E. 664; Bottineau First Nat. Bank *v.* Hillibor, (N. Dak. 1908) 114 N. W. 1085; Kean *v.* Landrum, 72 S. Car. 556, 52 S. E. 421; Brown *v.* Click, 59 W. Va. 172, 53 S. E. 16.

1048. 4. Bottineau First Nat. Bank *v.* Hilliboe, (N. Dak. 1908) 114 N. W. 1085, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1048; Brown *v.* Click, 59 W. Va. 172, 53 S. E. 16.

5. Locklund *v.* Burman, 146 Mich. 233, 109 N. W. 255.

1049. 2. Cobb *v.* Holloway, (Mo. App. 1908) 108 S. W. 109.

7. Lyngar *v.* Shafer, 125 Mo. App. 398, 102 S. W. 630.

9. Murphey *v.* Bush, 122 Ga. 715, 50 S. E. 1004; Talbot *v.* Laubheim, 188 N. Y. 421, 81 N. E. 163; San Antonio Light Pub. Co. *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 867.

1050. 1. Drew *v.* Wabash R. Co., (Mo. App. 1908) 107 S. W. 478.

1051. 1. Moore *v.* Moore, (Ky. 1907) 101 S. W. 358; Weiermueller *v.* Scullin, 203 Mo. 466, 101 S. W. 1088; *In re* Powers, (Neb. 1907) 113 N. W. 198; Jennings *v.* Borton, (Tex. Civ. App. 1906) 98 S. W. 445; Kauffman *v.* Baillie, (Wash. 1907) 89 Pac. 548.

6. Jacobs *v.* Jacobs, 130 Iowa 10, 104 N. W. 489; Foreman *v.* Archer, 130 Iowa 49, 106 N. W. 372; Drefahl *v.* Security Sav. Bank, 132 Iowa 563, 107 N. W. 179; Campbell *v.* Collins, 133 Iowa 152, 110 N. W. 435; Powers *v.* Crandall, (Iowa 1907) 111 N. W. 1010; Sarchfield *v.* Hayes, (Iowa 1907) 112 N. W. 1100; Barto *v.* Harrison, (Iowa 1908) 116 N. W. 317; Culbertson *v.* Salinger, (Iowa 1908) 117 N. W. 6; Wise *v.* Outtrim, (Iowa 1908) 117 N. W. 264; Griffith *v.* Robertson, 73 Kan. 666, 85 Pac. 748; O'Connor *v.* Slatter, (Wash. 1907) 89 Pac. 885. *Compare* Briggs *v.* Durham Traction Co., (N. Car. 1908) 61 S. E. 373.

Husband and Wife. — Smith *v.* Fry, (Iowa 1905) 103 N. W. 1002.

1053. 7. Worth *v.* Wrenn, 144 N. Car. 656, 57 S. E. 388.

1054. 5. **A Lessor in a Second Demise** has been held to be a competent witness as to transactions between him and the lessor in the first demise, on the trial of an issue in an ejectment suit between the lessor in the third demise and the tenant in possession. Priester *v.* Melton, 123 Ga. 375, 51 S. E. 330.

1055. 3. Greenlee *v.* Mosnot, (Iowa 1907) 111 N. W. 996; Medlin *v.* Simpson, 144 N. Car. 397, 57 S. E. 24; O'Connor *v.* Slatter, (Wash. 1908) 93 Pac. 1078.

1056. 3. Circumstances under **Which Representative Disqualified.** — See Sanders *v.* Allen, 124 Ga. 684, 52 S. E. 884.

9. Murphey *v.* Bush, 122 Ga. 715, 50 S. E. 1004; Greenlee *v.* Mosnat, (Iowa 1907) 111 N. W. 996.

Witness Incompetent Where Representative Does Not Testify. — Jones *v.* Tennis Coal Co., (Ky. 1906) 94 S. W. 6.

1058. 7. *In re* Neckel, (Neb. 1907) 113 N. W. 1045.

1059. 5. Myrick *v.* Purcell, 99 Minn. 457, 109 N. W. 995; Grieb *v.* Stahl, (Tex. 1908) 107 S. W. 41.

6. Keyser *v.* Warfield, 103 Md. 161, 63 Atl. 217.

1060. 9. Merchants' L. & T. Co. *v.* Egan, 222 Ill. 494, 78 N. E. 800; Cross *v.* Iler, 103 Md. 592, 64 Atl. 33; Pitzl *v.* Winter, 96 Minn. 503, 105 N. W. 673, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1060; Scott *v.* Menly, (Tex. Civ. App. 1907) 105 S. W. 55.

1061. 3. German *v.* Browne, 145 Ala. 364, 39 So. 742; Hurd *v.* Fleck, 34 Colo. 262, 82 Pac. 485; Merchants' L. & T. Co. *v.* Egan, 222 Ill. 494, 78 N. E. 800; Garrus *v.* Davis, 234 Ill. 326, 84 N. E. 924; Atkinson *v.* Maris, (Ind. App. 1907) 81 N. E. 745; Crafton *v.* Inge, (Ky. 1906) 98 S. W. 325; Strode *v.* Frommeyer, 115 Mo. App. 220, 91 S. W. 167; Ables *v.* Ackley, 126 Mo. App. 84, 103 S. W. 974; Cole *v.* Sweet, 187 N. Y. 488, 80 N. E. 355; Killian *v.* Heinzerling, (Supm. Ct. Spec. T.) 47 Misc. (N. Y.) 511, 95 N. Y. Supp. 969; Cole *v.* Sweet, 112 N. Y. App. Div. 777, 98 N. Y. Supp. 625; Killian *v.* Heinzerling, 114 N. Y. App. Div. 410, 99 N. Y. Supp. 1036; Morgan *v.* Foran, 120 N. Y. App. Div. 185, 104 N. Y. Supp. 1084; Lahue *v.* State, (Tex. Crim. 1907) 101 S. W. 1008; Eisentraut *v.* Cornelius, (Wis. 1908) 115 N. W. 142.

Husband or Wife of Opposite Party Incompetent. — Wilbur *v.* Grover, 140 Mich. 187, 103 N. W. 583.

Opposite Party's Incompetency Not Waived by Representative Testifying. — O'Connor *v.* Slatter, (Wash. 1908) 93 Pac. 1078.

4. *In re* Clad, 214 Pa. St. 141, 63 Atl. 542.

5. Crow *v.* Crow, 124 Mo. App. 120, 100 S. W. 1123.

1062. 1. Killian *v.* Heinzerling, 114 N. Y. App. Div. 410, 99 N. Y. Supp. 1036.

2. Matter of Cozine, 104 N. Y. App. Div. 182, 93 N. Y. Supp. 557.

3. Strode *v.* Frommeyer, 115 Mo. App. 220, 91 S. W. 167.

7. Credibility of Prosecutrix Assailed Same as Other Witnesses. — State *v.* Blackburn, (Iowa 1907) 114 N. W. 531.

1063. 1. Wefel *v.* Stillman, (Ala. 1907) 44 So. 203; Jones *v.* State, 145 Ala. 51, 40 So. 947; Shailer *v.* Bullock, 78 Conn. 65, 61 Atl. 65; Swyart *v.* Willard, 166 Ind. 33, 76 N. E. 755, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1063; Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555; Ochsner *v.* Com., (Ky. 1908) 109 S. W. 326; Villineuve *v.* Manchester St. R. Co., 73 N. H. 250, 60 Atl. 748; Sperbeck *v.* Camden, etc., R. Co., (N. J. 1906) 64 Atl. 1012; State *v.* Malmberg, 14 N. Dak. 523, 105 N. W. 614; State *v.* Boice, 114 La. 856, 38 So. 584; State *v.* Brown, 118 La. 373, 42 So. 969; Creeping Bear *v.* State, 113 Tenn. 322, 87 S. W. 653; Virginia-Carolina Chemical Co. *v.* Knight, 106 Va. 674, 56 S. E.

725; State *v.* Constantine, (Wash. 1908) 93 Pac. 317.

Docket Entry Showing Conviction Not Admissible to Affect Credibility. — State *v.* Powell, 5 Penn. (Del.) 24, 61 Atl. 966.

2. State *v.* Spivey, 191 Mo. 87, 90 S. W. 81.

3. Chicago City R. Co. *v.* Ryan, 225 Ill. 289, 80 N. E. 116, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1063.

Contradictory Evidence. — Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844.

1064. 1. *Alabama.* — Jones *v.* State, 145 Ala. 51, 40 So. 947.

Arkansas. — Mallory *v.* Brademyer, 76 Ark. 538, 89 S. W. 551; Kansas City Southern R. Co. *v.* Belknap, 80 Ark. 587, 98 S. W. 366; Weaver *v.* State, 83 Ark. 119, 102 S. W. 713; Thomas *v.* State, (Ark. 1908) 108 S. W. 224.

California. — People *v.* Mitchell, 5 Cal. App. 45, 89 Pac. 853; *In re* Johnson, (Cal. 1908) 93 Pac. 1015; People *v.* Oliver, (Cal. App. 1908) 95 Pac. 172.

Colorado. — Boles *v.* People, 37 Colo. 41, 86 Pac. 1030.

Delaware. — Evans *v.* Barnett, (Del. 1906) 63 Atl. 770.

Florida. — Maloy *v.* State, 52 Fla. 101, 41 So. 791.

Georgia. — Alexander *v.* State, 1 Ga. App. 289, 57 S. E. 996; Barber *v.* State, 3 Ga. App. 598, 60 S. E. 285.

Idaho. — State *v.* Cook, 13 Idaho 45, 88 Pac. 240.

Illinois. — Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 303, 76 N. E. 341; Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 303, 76 N. E. 341; Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 303, 76 N. E. 341.

Indian Territory. — Glover *v.* U. S., 6 Indian Ter. 265, 91 S. W. 41, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1064; Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555.

Iowa. — Seibert *v.* Germania F. Ins. Co., 132 Iowa 58, 106 N. W. 507; Hardwick *v.* Hardwick, 130 Iowa 230, 106 N. W. 639; Rhodes *v.* Des Moines, etc., R. Co., (Iowa 1908) 115 N. W. 503.

Kentucky. — Louisville, etc., R. Co. *v.* Hall, (Ky. 1906) 94 S. W. 26.

Louisiana. — State *v.* Goodson, 116 La. 388, 40 So. 771.

Missouri. — State *v.* Smith, 190 Mo. 706, 90 S. W. 440; State *v.* Wigger, 196 Mo. 90, 93 S. W. 390; State *v.* Hubbard, 201 Mo. 639, 101 S. W. 586.

Montana. — State *v.* Lee, 34 Mont. 584, 87 Pac. 977.

North Carolina. — Smith *v.* Atlantic, etc., Air Line R. Co., (N. Car. 1908) 61 S. E. 575.

North Dakota. — State *v.* Malmberg, 14 N. Dak. 523, 105 N. W. 614.

Tennessee. — Kinney *v.* Yazoo, etc., R. Co., 116 Tenn. 450, 92 S. W. 1116.

Texas. — Elkins *v.* State, 48 Tex. Crim. 205, 87 S. W. 149; Texas, etc., R. Co. *v.* Skates, (Tex. Civ. App. 1905) 87 S. W. 1166; St. Louis, etc., R. Co. *v.* Sproule, (Tex. Civ. App. 1907) 101 S. W. 268; Horsey *v.* Slayton, (Tex. Civ. App. 1907) 104 S. W. 503; Harpold *v.* Moss, (Tex. 1908) 109 S. W. 928.

Washington. — McCowan *v.* Northeastern Siberian, Co., 41 Wash. 675, 84 Pac. 614; Platter *v.* Seattle Electric Co., 44 Wash. 408, 87 Pac. 489; State *v.* Hill, 45 Wash. 694, 89 Pac. 160.

Wisconsin. — Van Salvellergh *v.* Green Bay Traction Co., (Wis. 1907) 111 N. W. 1120.

Wyoming. — Chicago, etc., R. Co. *v.* Pollock, (Wyo. 1908) 93 Pac. 847.

2. Harpold *v.* Moss, (Tex. 1908) 109 S. W. 928.

1065. 1. Zipperlen *v.* Southern Pac. Co., (Cal. App. 1908) 93 Pac. 1049; Chandler *v.* State, 124 Ga. 821, 53 S. E. 91; Georgia R., etc., Co. *v.* Andrews, 125 Ga. 85, 54 S. E. 76; Alexander *v.* State, 1 Ga. App. 289, 57 S. E. 996; State *v.* Cook, 13 Idaho 45, 88 Pac. 240; Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 303, 76 N. E. 341; Glover *v.* U. S., 6 Indian Ter. 262, 91 S. W. 41, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1065; Atoka Coal, etc., Co. *v.* Miller, (Indian Ter. 1907) 104 S. W. 555; Rhodes *v.* Des Moines, etc., R. Co., (Iowa 1908) 115 N. W. 503; Sebree *v.* Rogers, (Ky. 1907) 102 S. W. 841; State *v.* Wells, 33 Mont. 291, 83 Pac. 476.

1066. 1. **Parties as Witnesses — One Witness on Each Side.** — Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 303, 76 N. E. 341.

3. Gordon *v.* State, 147 Ala. 42, 41 So. 847; Glover *v.* U. S., 6 Indian Ter. 265, 91 S. W. 41, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1066; Schutz *v.* State, 125 Wis. 452, 104 N. W. 90.

1067. 1. Elgin, etc., R. Co. *v.* Lawlor, 229 Ill. 621, 82 N. E. 407; State *v.* Boyles, (S. Car. 1908) 60 S. E. 233.

2. Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 303, 76 N. E. 341.

3. Patton *v.* State, (Ala. 1908) 46 So. 862; Chicago, etc., R. Co. *v.* Roberts, 35 Colo. 498, 84 Pac. 68; James McCreery Realty Corps *v.* Equitable Nat. Bank, (Supm. Ct. App. T.) 54 Misc. (N. Y.) 588, 104 N. Y. Supp. 959; Franks *v.* State, 48 Tex. Crim. 211, 87 S. W. 148; State *v.* Legg, 59 W. Va. 315, 53 S. E. 545.

1068. 1. Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 309, 76 N. E. 341, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1068.

2. Chicago Union Traction Co. *v.* O'Brien, 219 Ill. 309, 76 N. E. 341, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1068.

1069. 1. Hammond *v.* State, 147 Ala. 79, 41 So. 761; People *v.* Waysman, 1 Cal. App. 246, 81 Pac. 1087; Howard *v.* Louisville R. Co., (Ky. 1907) 105 S. W. 932; Cunningham *v.* Springer, (N. Mex. 1905) 82 Pac. 232; Pereira *v.* Star Sand Co., (Oregon 1908) 94 Pac. 835.

Legal Equality of Credibility between Witnesses Does Not Exist.—Brethauer *v.* Schorer, (Conn. 1908) 70 Atl. 592.

1070. 1. Hull *v.* Seaboard Air Line R. Co., 76 S. Car. 278, 57 S. E. 28.

2. Minot *v.* Boston, etc., R. Co., (N. H. 1907) 66 Atl. 825.

4. Gesas *v.* Oregon Short Line R. Co., (Utah 1907) 93 Pac. 274.

1071. 2. *In re* Bailey, 111 N. Y. App. Div. 909, 98 N. Y. Supp. 725.

1072. 2. Alabama Steel, etc., Co. *v.* Griffin, (Ala. 1907) 42 So. 1034; Alexander *v* Blackman, 26 App. Cas. (D. C.) 541; *Ex p.* Vandiveer, 4 Cal. App. 650, 88 Pac. 993; Georgia R., etc., Co. *v.* Andrews, 125 Ga. 85, 54 S. E. 76;

Burgess *v.* Alcorn, 75 Kan. 735, 90 Pac. 239; Addis *v.* Rushmore, (N. J. 1907) 65 Atl. 1036, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072; People *v.* Dinser, (Ct. Gen. Sess.) 49 Misc. (N. Y.) 82, 98 N. Y. Supp. 314; Com. *v.* Ieradi, 216 Pa. St. 88, 64 Atl. 889, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1072; State *v.* Trail, 59 W. Va. 175, 53 S. E. 17.

3. Hamilton *v.* State, 147 Ala. 110, 41 So. 940; Prior *v.* Territory, (Ariz. 1907) 89 Pac. 412; Travers *v.* Reinhardt, 25 App. Cas. (D. C.) 567; John Hancock Mut. L. Ins. Co. *v.* Powell, 116 Ill. App. 151; Sedoff *v.* Chicago City R. Co., 124 Ill. App. 609.

The Correct Principle goes no further than to say that the jury may disregard the testimony, not that it must be disregarded. Com. *v.* Ieradi, 216 Pa. St. 87, 64 Atl. 889.

1073. 1. Hamilton *v.* State, 147 Ala. 110, 41 So. 940; Patton *v.* State, (Ala. 1908) 46 So. 862; Chicago City R. Co. *v.* Ryan, 225 Ill. 287, 80 N. E. 116; Goodair *v.* Ham Nat. Bank, 225 Ill. 572, 80 N. E. 407; Hughes *v.* Ferriman, 119 Ill. App. 169; Bell *v.* State, (Miss. 1907) 43 So. 84; Gibson *v.* Yazoo, etc., R. Co., (Miss. 1907) 43 So. 674; Boykin *v.* State, 86 Miss. 481, 38 So. 725, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1073; Lloyd *v* Meservey, (Mo. App. 1908) 108 S. W. 595; State *v.* Lee, 34 Mont. 584, 87 Pac. 977.

2. Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844; Mann *v.* State, 124 Ga. 760, 53 S. E. 324; Plattor *v.* Seattle Electric Co., 44 Wash. 408, 87 Pac. 489; Allen *v.* Ellis, 125 Wis. 565, 104 N. W. 739.

1074. 3. State *v.* Stewart, (Del. 1907) 67 Atl. 786.

Distinction between General Reputation and General Moral Character. — State *v.* Richardson, 194 Mo. 326, 92 S. W. 649.

4. State *v.* Beckner, 194 Mo. 281, 91 S. W. 892; York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604; McQuiggan *v.* Ladd, 79 Vt. 90, 64 Atl. 503.

1075. 2. Miller *v.* Oklahoma, (C. C. A.) 149 Fed. 330, 9 Ann. Cas. 389; *In re* Durant, (Conn. 1907) 67 Atl. 497; Baker *v.* State, 51 Fla. 1, 40 So. 673; Missouri, etc., R. Co. *v.* Dumas, (Tex. Civ. App. 1906) 93 S. W. 493; Missouri, etc., R. Co. *v.* Creason, (Tex. 1908) 107 S. W. 527; St. Louis Southwestern R. Co. *v.* Garber, (Tex. Civ. App. 1908) 111 S. W. 227; McQuiggan *v.* Ladd, 79 Vt. 90, 64 Atl. 503; State *v.* Grove, 61 W. Va. 697, 57 S. E. 296.

The Witness Himself Cannot Be Interrogated with respect to his general character for truth and veracity. Glass *v.* State, 147 Ala. 50, 41 So. 727.

1076. 1. People *v.* Lama, 148 Cal. 564, 83 Pac. 993; State *v.* Rester, 116 La. 985, 41 So. 231; Sinclair *v.* State, 87 Miss. 330, 39 So. 522; St. Louis Southwestern R. Co. *v.* Garber, (Tex. Civ. App. 1908) 111 S. W. 227; Wolff *v.* Western Union Tel. Co., (Tex. Civ. App. 1906) 94 S. W. 1062.

2. Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1076; Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097.

No Set Form of Questions. — St. Louis Southwestern R. Co. *v.* Garber, (Tex. Civ. App. 1908) 111 S. W. 227.

Prefixing Word "General" to "Reputation" Not Indispensable. — St. Louis Southwestern R. Co. *v.* Garber, (Tex. Civ. App. 1908) 111 S. W. 227.

Answering Question Precludes Further Particular Inquiry. — People *v.* Lamar, 148 Cal. 564, 83 Pac. 993.

3. Carter *v.* State, 145 Ala. 679, 40 So. 82; State *v.* Stewart, (Del. 1907) 67 Atl. 786.

5. State *v.* Stewart, (Del. 1907) 67 Atl. 786; People *v.* Ryder, (Mich. 1908) 114 N. W. 1021; Douglass *v.* State, (Tex. Crim. 1906) 98 S. W. 840.

1077. 2. Williams *v.* State, 144 Ala. 14, 40 So. 405; Newton *v.* Com., (Ky. 1907) 102 S. W. 264; State *v.* Harris, (Mo. 1908) 108 S. W. 28; State *v.* Caron, 118 La. 349, 42 So. 960; St. Louis Southwestern R. Co. *v.* Bryson, (Tex. Civ. App. 1905) 91 S. W. 829.

3. St. Louis Southwestern R. Co. *v.* Bryson, (Tex. Civ. App. 1905) 91 S. W. 829.

4. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; Lee *v.* Andrews, (Mich. 1908) 114 N. W. 672; State *v.* Dickerson, 77 Ohio St. 34, 82 N. E. 969; Anderson *v.* Aupperle, (Oregon 1908) 95 Pac. 330; St. Louis Southwestern R. Co. *v.* Garber, (Tex. Civ. App. 1908) 111 S. W. 227.

1078. 5. State *v.* Stewart, (Del. 1907) 67 Atl. 786; Carp *v.* Queen Ins. Co., 203 Mo. 295, 101 S. W. 78; Anderson *v.* Aupperle, (Oregon 1908) 95 Pac. 330; St. Louis Southwestern R. Co. *v.* Garber, (Tex. Civ. App. 1908) 111 S. W. 227.

6. Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097; St. Louis Southwestern R. Co. *v.* Garber, (Tex. Civ. App. 1908) 111 S. W. 227.

Personal Acquaintance with Witness Not Necessary. — Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686.

Hearsay of Reputation Insufficient. — Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097.

Person Sent into Neighborhood to Inquire Held Incompetent. — Tingley *v.* Times Mirror Co., 151 Cal. 1, 89 Pac. 1097.

7. Spotswood *v.* Spotswood, 4 Cal. App. 711, 89 Pac. 362; Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686; Davis *v.* State, 87 Miss. 337, 39 So. 522; Spencer *v.* State, (Wis. 1907) 112 N. W. 462.

1079. 3. Sinclair *v.* State, 87 Miss. 330, 39 So. 522.

6. Time Required to Establish Reputation. — See Alderson *v.* State, (Tex. Crim. 1908) 111 S. W. 738.

7. Residing in a Community Six Months will not justify exclusion of evidence of general reputation. Alderson *v.* State, (Tex. Crim. 1908) 111 S. W. 738.

8. State *v.* Norman, (Iowa 1907) 113 N. W. 340; People *v.* Mix, 149 Mich. 269, 112 N. W. 907.

Where Time Held Too Remote. — Alexander *v.* Hill, (Ky. 1908) 108 S. W. 225.

Time Held Not Too Remote. — St. Louis Southwestern R. Co. *v.* Garber, (Tex. Civ. App. 1908) 111 S. W. 227.

1080. 3. State *v.* Norman, (Iowa 1907) 113 N. W. 340.

5. Alexander *v.* Hill, (Ky. 1908) 108 S. W. 225.

8. State *v.* Norman, (Iowa 1907) 113 N. W. 340.

1081. 4. State *v.* Wertz, 191 Mo. 569, 90 S. W. 838.

8. *Alabama.* — Banks *v.* State, (Ala. 1905) 39 So. 921.

California. — People *v.* Gray, 148 Cal. 507, 83 Pac. 707; People *v.* Monreal, (Cal. App. 1907) 93 Pac. 385.

Iowa. — King *v.* Chicago, etc., R. Co., (Iowa 1908) 116 N. W. 719.

Kentucky. — Hensley *v.* Com., (Ky. 1907) 102 S. W. 268; Welch *v.* Com., (Ky. 1908) 108 S. W. 863; Ochsner *v.* Com., (Ky. 1908) 109 S. W. 326.

Louisiana. — State *v.* Le Blanc, 116 La. 822, 41 So. 105; State *v.* Howard, (La. 1907) 45 So. 260.

Maryland. — Richardson *v.* State, 103 Md. 112, 63 Atl. 317.

Missouri. — State *v.* Beckner, 194 Mo. 281, 91 S. W. 892.

Ohio. — State *v.* Dickerson, 77 Ohio St. 34, 82 N. E. 969.

Oregon. — State *v.* White, 48 Oregon 416, 87 Pac. 137.

South Carolina. — State *v.* Rowell, 75 S. Car. 494, 56 S. E. 23; Greenville *v.* Spencer, 77 S. Car. 50, 57 S. E. 638.

Tennessee. — Powers *v.* State, 117 Tenn. 363, 97 S. W. 815.

Texas. — Missouri, etc., R. Co. *v.* Dumas, (Tex. Civ. App. 1906) 93 S. W. 493; Moody *v.* Rowland, (Tex. Civ. App. 1906) 102 S. W. 911; San Antonio *v.* Wildenstein, (Tex. Civ. App. 1908) 109 S. W. 231.

Virginia. — Wallen *v.* Wallen, (Va. 1907) 57 S. E. 596.

Washington. — Bringgold *v.* Bringgold, 40 Wash. 121, 82 Pac. 179.

1082. 1. Armour *v.* Skene, (C. C. A.) 153 Fed. 241; Wynne *v.* State, (Ala. 1908) 46 So. 459; State *v.* Pugh, 75 Kan. 792, 90 Pac. 242; Newton *v.* Com., (Ky. 1907) 102 S. W. 264; State *v.* Le Blanc, 116 La. 822, 41 So. 105; State *v.* Caron, 118 La. 349, 42 So. 960; Leavell *v.* Leavell, 114 Mo. App. 24, 89 S. W. 55; People *v.* Lewis, 111 N. Y. App. Div. 375, 97 N. Y. Supp. 1057; State *v.* Mills, (S. Car. 1908) 60 S. E. 664; Lewter *v.* Lindley, (Tex. Civ. App. 1905) 89 S. W. 784; People *v.* Weber, 149 Cal. 325, 86 Pac. 671.

6. Miller *v.* Oklahoma, (C. C. A.) 149 Fed. 330, 9 Ann. Cas. 389; *In re* Durant, (Conn. 1907) 67 Atl. 497; State *v.* Stewart, (Del. 1907) 67 Atl. 786; Richardson *v.* State, 103 Md. 112, 63 Atl. 317; Smitley *v.* Pinch, 148 Mich. 670, 112 N. W. 686; Davis *v.* State, 87 Miss. 337, 39 So. 522; State *v.* Grubb, 201 Mo. 585, 99 S. W. 1083; Honeycutt *v.* State, 49 Tex. Crim. 300, 92 S. W. 421; Price *v.* Wakeham, (Tex. Civ. App. 1908) 107 S. W. 132; Missouri, etc., R. Co. *v.* Creason, (Tex. Civ. App. 1908) 107 S. W. 527.

Various Particular Traits of Character of Which Evidence Inadmissible. — State *v.* Stimpson, 78 Vt. 124, 62 Atl. 14.

1083. 1. Perry *v.* State, (Ala. 1907) 43 So. 18; Swint *v.* State, (Ala. 1908) 45 So. 901; Baker *v.* State, 51 Fla. 1, 40 So. 673; State *v.* Baudoin, 115 La. 837, 40 So. 239; State *v.* Romero, 117 La. 1003, 42 So. 482; Davis *v.* State, 87 Miss. 337, 39 So. 522; Richardson *v.* State, 103 Md. 112, 63 Atl. 317; State *v.* Arnold, (N. Car. 1908) 60 S. E. 504; Quinn *v.* State, (Tex. Crim. 1907) 101 S. W. 248.

2. Cline *v.* Waters, (Ky. 1906) 90 S. W. 231; State *v.* Craft, 117 La. 213, 41 So. 550; State *v.* Stimpson, 78 Vt. 124, 62 Atl. 14.

3. York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604; Fuller *v.* State, (Tex. Crim. 1906) 95 S. W. 541.

1084. 2. Opper *v.* Davega, (Supm. Ct. App. Div.) 111 N. Y. Supp. 521; Price *v.* Wakeham, (Tex. Civ. App. 1908) 107 S. W. 132.

3. King *v.* Chicago, etc., R. Co., (Iowa 1908) 116 N. W. 719.

5. King *v.* Chicago, etc., R. Co., (Iowa 1908) 116 N. W. 719.

9. Richardson *v.* State, 103 Md. 112, 63 Atl. 317.

1085. 2. Williams *v.* State, 144 Ala. 14, 40 So. 405; Fuller *v.* State, 147 Ala. 35, 41 So. 774; Wynne *v.* State, (Ala. 1908) 46 So. 459; Thrash *v.* State, 79 Ark. 347, 96 S. W. 360; Richardson *v.* State, 103 Md. 112, 63 Atl. 317; State *v.* Landrum, 127 Mo. App. 653, 106 S. W. 1111.

4. Wynne *v.* State, (Ala. 1908) 46 So. 459.

5. Glover *v.* U. S., (C. C. A.) 147 Fed. 426, 8 Ann. Cas. 1184; Williams *v.* State, 144 Ala. 14, 40 So. 405; Mitchell *v.* State, (Ala. 1907) 42 So. 1014; Kennedy *v.* Lee, 147 Cal. 596, 82 Pac. 257; People *v.* Gray, 148 Cal. 507, 83 Pac. 707; Clifford *v.* Pioneer Fireproofing Co., 232 Ill. 150, 83 N. E. 448; Pioneer Fire-Proofing Co. *v.* Clifford, 125 Ill. App. 352; Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237.

Conviction of Misdemeanor Insufficient. — Wells *v.* Com., (Ky. 1907) 99 S. W. 218; Missouri, etc., R. Co. *v.* Dumas, (Tex. Civ. App. 1906) 93 S. W. 493.

Nothing Less than Conviction of Felony Admissible. — Welch *v.* Com., (Ky. 1908) 108 S. W. 863.

Drunkenness Being Made a Criminal Offense by statute in Wisconsin a conviction therefore may be shown on cross-examination. Koch *v.* State, 126 Wis. 470, 106 N. W. 531.

6. State *v.* Kennedy, 207 Mo. 528, 106 S. W. 57.

Conviction of Misdemeanor Sufficient. — Coleman *v.* Southern R. Co., 138 N. Car. 351, 50 S. E. 690.

7. Wheeler *v.* State, (Ga. App. 1908) 61 S. E. 409; Wade *v.* State, 48 Tex. Crim. 512, 90 S. W. 503; Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533; Fanin *v.* State, (Tex. Crim. 1907) 100 S. W. 916; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804.

1086. 1. Glover *v.* U. S., (C. C. A.) 147 Fed. 426, 8 Ann. Cas. 1184; Watson *v.* State, (Ala. 1908) 46 So. 232; Kansas City Southern R. Co. *v.* Belknap, 80 Ark. 590, 98 S. W. 366, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1086; Kincaid *v.* Price, 82 Ark. 20, 100 S. W. 76; Leftridge *v.* U. S., 6 Indian Ter.

305, 97 S. W. 1018; Landy *v.* Moritz, (Ky. 1908) 109 S. W. 897; Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496; Fanin *v.* State, (Tex. Crim. 1907) 100 S. W. 916; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804.

Contra. — Hayes *v.* State, 126 Ga. 95, 54 S. E. 809; Goad *v.* State, (Tex. Crim. 1908) 108 S. W. 680.

The Fact that Witness Was Jointly Indicted with the Defendant was held to be a proper matter to be considered by jury. Smith *v.* State, 79 Ark. 25, 94 S. W. 918.

2. Glover *v.* U. S., (C. C. A.) 147 Fed. 426, 8 Ann. Cas. 1184; State *v.* Bryant, 97 Minn. 8, 105 N. W. 974.

Contra. — Goad *v.* State, (Tex. Crim. 1908) 108 S. W. 680.

Where Material to Issue. — Mattingly *v.* Montgomery, (Md. 1907) 68 Atl. 205.

Arrest and Imprisonment May Be Shown to Affect Credibility. — Snyder *v.* State, 145 Ala. 33, 40 So. 978.

In Michigan the question as to witness having been arrested, tried, and convicted of assault may be asked. People *v.* Tubbs, 147 Mich. 1, 110 N. W. 132.

State May Show Witness Had Been Charged with Forgery. — Willis *v.* State, 49 Tex. Crim. 139, 90 S. W. 1100.

Evidence of Confinement in Jail Not Admissible. — Missouri, etc., R. Co. *v.* Dumas, (Tex. Civ. App. 1906) 93 S. W. 493.

3. Bise *v.* U. S., (C. C. A.) 144 Fed. 374, 7 Ann. Cas. 165; Glover *v.* U. S., (C. C. A.) 147 Fed. 426, 8 Ann. Cas. 1184; Thrash *v.* State, 79 Ark. 347, 96 S. W. 360; Wheeler *v.* State, (Ga. App. 1908) 61 S. E. 409; O'Donnell *v.* People, 224 Ill. 218, 79 N. E. 639; Leftridge *v.* U. S., 6 Indian Ter. 305, 97 S. W. 1018; James *v.* U. S., (Indian Ter. 1907) 104 S. W. 607; Lansing *v.* Michigan Cent. R. Co., 143 Mich. 48, 106 N. W. 692; Grabill *v.* State, (Tex. Crim. 1906) 97 S. W. 1046.

Identity. — Boyd *v.* State, (Ala. 1907) 43 So. 204; Clifford *v.* Pioneer Fireproofing Co., 232 Ill. 150, 83 N. E. 448; State *v.* Loser, 132 Iowa 419, 104 N. W. 337.

The Whole Record. — Clifford *v.* Pioneer Fireproofing Co., 232 Ill. 150, 83 N. E. 448.

Foreign Judgment Properly Authenticated Is Inadmissible where it was not shown the conviction was for a felony. Kennedy *v.* Lee, 147 Cal. 596, 82 Pac. 257.

Copy of Judgment of Conviction Admissible. — Gulf, etc., R. Co. *v.* Gibson, (Tex. Civ. App. 1906) 93 S. W. 469.

1087. 1. Fuller *v.* State, 147 Ala. 35, 41 So. 774.

2. **Witness May Be Asked if He Committed a Certain Detestable Crime.** — State *v.* Long, 201 Mo. 664, 100 S. W. 587.

3. Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804.

1088. 1. **Contra.** — People *v.* Eldridge, 147 Cal. 782, 82 Pac. 442; Missouri, etc., R. Co. *v.* Dumas, (Tex. Civ. App. 1906) 93 S. W. 493.

2. Jackson *v.* State, (Ala. 1908) 47 So. 77; Abelson *v.* St. Louis, etc., R. Co., 84 Ark. 181, 105 S. W. 81; People *v.* Cowan, 1 Cal. App. 411, 82 Pac. 339; Pittman *v.* State, 51 Fla. 94, 41 So. 385; Bates *v.* State, (Ga. App. 1908) 61 S. E. 888; Louisville R. Co. *v.* Williams, (Ky. 1908) 109 S. W. 874; Com. *v.* Ezell, 212 Pa. St. 293, 61 Atl. 930; Creeping Bear *v.* State, 113 Tenn. 322, 87 S. W. 653; Norfolk, etc., R. Co. *v.* Birchfield, 105 Va. 809, 54 S. E. 879.

A Question as to Erection of Defendants' Plant increasing the value of the land "down there" was held not competent to impeach the witness. Brown *v.* W. T. Weaver Power Co., 140 N. Car. 333, 52 S. E. 954.

3. *United States.* — Miller *v.* Oklahoma, (C. C. A.) 149 Fed. 330, 9 Ann. Cas. 389.

Alabama. — Birmingham R., etc., Co. *v.* Rutledge, 142 Ala. 195, 39 So. 338; Borck *v.* State, (Ala. 1905) 39 So. 580; Southern R. Co. *v.* Morris, 143 Ala. 628, 42 So. 17; Gosdin *v.* Williams, (Ala. 1907) 44 So. 611; Bessemer Coal, etc., Co. *v.* Doak, (Ala. 1907) 44 So. 631.

Arkansas. — Kansas City Southern R. Co. *v.* Belknap, 80 Ark. 587, 98 S. W. 366; Kansas City Southern R. Co. *v.* Belknap, 80 Ark. 587, 98 S. W. 366; Abelson *v.* St. Louis, etc., R. Co., 84 Ark. 181, 105 S. W. 81.

Georgia. — Atlantic Coast Line R. Co. *v.* Powell, 127 Ga. 805, 56 S. E. 1006; Proctor *v.* Pointer, 127 Ga. 134, 56 S. E. 111; Proctor *v.* Thompson, 127 Ga. 137, 56 S. E. 112; Atlanta, etc., R. Co. *v.* McManus, 1 Ga. App. 302, 58 S. E. 258.

Illinois. — Toledo, etc., R. Co. *v.* Stevenson, 122 Ill. App. 654.

Indian Territory. — Isaac *v.* U. S., (Indian Ter. 1907) 104 S. W. 588.

Kentucky. — Louisville R. Co. *v.* Williams, (Ky. 1908) 109 S. W. 874.

Louisiana. — State *v.* Craft, 117 La. 213, 41 So. 550.

Maine. — Lenfest *v.* Robbins, 101 Me. 176, 63 Atl. 729.

Maryland. — Regester *v.* Regester, 104 Md. 1, 64 Atl. 286.

Michigan. — People *v.* Thorne, 148 Mich. 203, 111 N. W. 741.

Minnesota. — Goss *v.* Goss, 102 Minn. 346, 113 N. W. 690.

Missouri. — State *v.* Darling, 202 Mo. 169, 100 S. W. 631, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1088; Briscoe *v.* Metropolitan St. R. Co., 118 Mo. App. 668, 95 S. W. 276; St. Louis, etc., R. Co. *v.* Continental Brick Co., 198 Mo. 698, 96 S. W. 1011; State *v.* Mulhall, 199 Mo. 202, 97 S. W. 583; York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604; State *v.* Miles, 199 Mo. 530, 98 S. W. 25; Huss *v.* Heydt Bakery Co., (Mo. 1908) 108 S. W. 63.

Montana. — Finlen *v.* Heinze, 32 Mont. 554, 80 Pac. 918.

New Hampshire. — Robinson *v.* Stahl, (N. H. 1907) 67 Atl. 577.

New York. — Iaquinto *v.* Bauer, 104 N. Y. App. Div. 56, 93 N. Y. Supp. 388.

South Carolina. — State *v.* Stukes, 73 S. Car. 386, 53 S. E. 643.

Texas. — Brownlee *v.* State, 48 Tex. Crim. 408, 87 S. W. 1153; Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29; Owens *v.* State, (Tex. Crim. 1906) 96 S. W. 31; Missouri, etc., R. Co. *v.* Cherry, (Tex. Civ. App. 1906) 97 S. W. 713; Pecos River R. Co. *v.* Harrington,

(Tex. Civ. App. 1907) 99 S. W. 1050; Porch *v.* State, (Tex. Crim. 1907) 99 S. W. 1122; St. Louis, etc., R. Co. *v.* Sproule, (Tex. Civ. App. 1907) 101 S. W. 268; Horton *v.* Houston, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 467.

Washington. — State *v.* Constantine, (Wash. 1908) 93 Pac. 317.

That Witness Is Paramour of Defendant May Be Proved to Show Bias. — Perdue *v.* State, 126 Ga. 112, 54 S. E. 820.

It Was Not Permissible to Show that some of the witnesses were political henchmen of deceased to show interest. Roberts *v.* People, 226 Ill. 296, 80 N. E. 776.

That Corporation Carries Employers' Liability Insurance may not be shown to show interest of the president as a witness. Lowset *v.* Seattle Lumber Co., 38 Wash. 290, 80 Pac. 431.

1089. 1. State *v.* Malmberg, 14 N. Dak. 523, 105 N. W. 614; State *v.* Darling, 202 Mo. 169, 100 S. W. 631, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1089.

3. Vindicator Consol. Gold Min. Co. *v.* Firstbrook, 36 Colo. 498, 86 Pac. 313.

The Fact that the Witness Hunted Up Evidence for His Company, of a death on the railroad, whether voluntarily or as a part of his duties, was immaterial to affect his credibility. Parham *v.* State, (Ala. 1906) 42 So. 1.

Immaterial Statement Held Not to Show Bias. — May *v.* U. S., (C. C. A.) 157 Fed. 1.

Voluntarily Coming from Another State and Without Process to appear and testify in court does not impair the competency of a witness. Tinima *v.* Tinima, 72 Kan. 73, 82 Pac. 481.

The Fact that the State's Witness Refuses to Answer questions propounded does not authorize the defendant to inquire whether the state has induced silence to affect the credibility of the witness. State *v.* Dalton, 43 Wash. 278, 86 Pac. 590.

1090. 1. Ludlow *v.* State, (Ala. 1908) 47 So. 321; State *v.* Judd, 132 Iowa 296, 109 N. W. 892.

Friendship of Prosecuting Witness for a Former Defendant Not Sufficient. — State *v.* Gilluly, (Wash. 1908) 96 Pac. 512.

5. Bates *v.* State, (Ga. App. 1908) 61 S. E. 888.

Fraternal Relationship May Be Shown to Affect Credibility. — People *v.* Cowan, 1 Cal. App. 411, 82 Pac. 339.

1091. 1. Murray *v.* Llewellyn Iron Works Co., 4 Cal. App. 41, 87 Pac. 202; Gulf, etc., R. Co. *v.* Hays, (Tex. Civ. App. 1905) 89 S. W. 29.

2. Chicago City R. Co. *v.* Rohe, 118 Ill. App. 322.

4. *Alabama.* — Sanford *v.* State, 143 Ala. 78, 39 So. 370; Morris *v.* State, (Ala. 1905) 39 So. 608; Morris *v.* State, 146 Ala. 66, 41 So. 274; Glass *v.* State, 147 Ala. 50, 41 So. 727; Cross *v.* State, 147 Ala. 125, 41 So. 875; Hanners *v.* State, 147 Ala. 27, 41 So. 973; Cook *v.* State, (Ala. 1907) 44 So. 549; Jackson *v.* State, (Ala. 1908) 47 So. 77.

California. — People *v.* Ryan, (Cal. 1907) 92 Pac. 853.

Florida. — Teston *v.* State, 50 Fla. 138, 39 So. 787; Vaughn *v.* State, 52 Fla. 122, 41 So. 881; Pittman *v.* State, 51 Fla. 94, 41 So. 385.

Idaho. — State *v.* Barber, 13 Idaho 65, 88 Pac. 418.

Iowa. — State *v.* Seery, 129 Iowa 259, 105 N. W. 511; State *v.* Rutledge, (Iowa 1907) 113 N. W. 461.

Indiana. — Cook *v.* State, (Ind. 1907) 82 N. E. 1047.

Maine. — Lenfest *v.* Robbins, 101 Me. 176, 63 Atl. 729.

Maryland. — Regester *v.* Regester, 104 Md. 1, 64 Atl. 286.

Michigan. — Seymour *v.* Bruske, 140 Mich. 244, 103 N. W. 613.

Missouri. — State *v.* Darling, 202 Mo. 150, 100 S. W. 631.

New York. — Iaquinto *v.* Bauer, 104 N. Y. App. Div. 56, 93 N. Y. Supp. 388; Fischer *v.* Brady, (Supm. Ct. App. T.) 47 Misc. (N. Y.) 401, 94 N. Y. Supp. 25; Salzman *v.* Mandel, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 634, 98 N. Y. Supp. 825; Potter *v.* Browne, (Supm. Ct. App. Div.) 109 N. Y. Supp. 1075; MacGuire *v.* Hughes, 111 N. Y. Supp. 153.

Pennsylvania. — Com. *v.* Hartman, 31 Pac. Super. Ct. 364.

North Dakota. — State *v.* Malmberg, 14 N. Dak. 523, 105 N. W. 614.

Texas. — Houston, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1905) 89 S. W. 805; Baughman *v.* State, 49 Tex. Crim. 33, 90 S. W. 166; Henderson *v.* State, 49 Tex. Crim. 269, 91 S. W. 569; Missouri, etc., R. Co. *v.* Cherry, (Tex. Civ. App. 1906) 97 S. W. 712; Porch *v.* State, (Tex. Crim. 1907) 99 S. W. 1122; Coffman *v.* State, (Tex. Crim. 1907) 103 S. W. 1128; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804; Burnett *v.* State, (Tex. Crim. 1908) 112 S. W. 74.

Vermont. — State *v.* Barditti, 78 Vt. 102, 62 Atl. 44.

Virginia. — Norfolk, etc., R. Co. *v.* Birchfield, 105 Va. 809, 54 S. E. 879.

Ill Feeling of Witness for Another Neither a Party Nor Witness Incompetent. — Ham *v.* State, (Ala. 1908) 47 So. 126.

Show Hostility against Father of Defendant. — McQuiggan *v.* Ladd, 79 Vt. 90, 64 Atl. 503.

1092. 1. Funderburk *v.* State, 145 Ala. 661, 39 So. 672.

2. Morris *v.* State, (Ala. 1905) 39 So. 608.

3. **It Was Not Error** for the prosecuting attorney to show that the police officer's interest was only that of a public officer. People *v.* Wenzel, 189 N. Y. 275, 82 N. E. 130.

4. Sanford *v.* State, 143 Ala. 78, 39 So. 370; Morris *v.* State, (Ala. 1905) 39 So. 608; People *v.* Mallon, 116 N. Y. App. Div. 425, 101 N. Y. Supp. 814; Carey *v.* Brooklyn Heights R. Co., 124 N. Y. App. Div. 524, 108 N. Y. Supp. 1034; Creeping Bear *v.* State, 113 Tenn. 322, 87 S. W. 653; Houston, etc., R. Co. *v.* McCarty, (Tex. Civ. App. 1905) 89 S. W. 805.

1093. 1. Wright *v.* Anniston, (Ala. 1907) 44 So. 151; State *v.* Seery, 129 Iowa 259, 105 N. W. 511; State *v.* Judd, 132 Iowa 296, 109 N. W. 892; Henderson *v.* State, 49 Tex. Crim. 269, 91 S. W. 569.

2. Seymour *v.* Bruske, 140 Mich. 244, 103 N. W. 613; State *v.* Malmberg, 14 N. Dak. 523,

105 N. W. 614; Com. *v.* Ezell, 212 Pa. St. 293, 61 Atl. 930; State *v.* Baird, 79 Vt. 257, 65 Atl. 101; Williams *v.* Spokane Falls, etc., R. Co., 42 Wash. 597, 84 Pac. 1129.

Where a Witness Admits His Animus it is not permissible to press the inquiry further. Proctor *v.* Pointer, 127 Ga. 134, 56 S. E. 111.

Mere Statement of the Witness that He Is Hostile does not preclude further inquiry into the particulars of the controversy. State *v.* Malmberg, 14 N. Dak. 523, 105 N. W. 614.

3. State *v.* Malmberg, 14 N. Dak. 523, 105 N. W. 614; State *v.* Griffin, 43 Wash. 591, 86 Pac. 951.

4. Sanford *v.* State, 143 Ala. 78, 39 So. 370; Carey *v.* Brooklyn Heights R. Co., 124 N. Y. App. Div. 524, 108 N. Y. Supp. 1034; Com. *v.* Ezell, 212 Pa. St. 293, 61 Atl. 930.

1094. 3. *United States.* — Miller *v.* Oklahoma, (C. C. A.) 149 Fed. 330, 9 Ann. Cas. 389.

Alabama. — Shelton *v.* State, 144 Ala. 106, 42 So. 30.

Georgia. — Georgia Southern, etc., R. Co. *v.* Stanley, 1 Ga. App. 487, 57 S. E. 1042.

Idaho. — Steve *v.* Bonners Ferry Lumber Co., (Idaho 1907) 92 Pac. 363.

Illinois. — Henrietta Coal Co. *v.* Martin, 221 Ill. 460, 77 N. E. 902.

Michigan. — People *v.* Harper, 145 Mich. 402, 108 N. W. 689.

Minnesota. — Goss *v.* Goss, 102 Minn. 346, 113 N. W. 690.

Montana. — Frank *v.* Symons, 35 Mont. 56, 88 Pac. 561.

New Jersey. — Platner *v.* Ryan, (N. J. 1908) 69 Ark. 1007.

New York. — Lederer *v.* Lederer, 108 N. Y. App. Div. 228, 95 N. Y. Supp. 623; Sakolski *v.* Schenkel, (Supm. Ct. App. T.) 50 Misc. (N. Y.) 151, 98 N. Y. Supp. 190.

Oklahoma. — Miller *v.* Territory, 15 Okla. 422, 85 Pac. 239.

Washington. — McCowan *v.* Northwestern Siberian Co., 41 Wash. 675, 84 Pac. 614.

An Assignment of Witness's Interest in Suit. — Morgan *v.* Lehigh Valley Coal Co., 215 Pa. St. 443, 64 Atl. 633.

1095. 1. Téston *v.* State, 50 Fla. 138, 39 So. 787; Buxton *v.* Ainsworth, (Mich. 1908) 116 N. W. 1094; Schon *v.* Harlan, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 518, 107 N. Y. Supp. 113.

4. Blickley *v.* Luce, 148 Mich. 233, 111 N. W. 752.

1096. 1. Armour *v.* Skene, (C. C. A.) 153 Fed. 241; Morris *v.* State, (Ala. 1905) 39 So. 608; Bliss *v.* Beck, (Neb. 1907) 114 N. W. 162; Schneider *v.* Great Northern R. Co., (Wash. 1907) 91 Pac. 565; Pollock *v.* State, (Wis. 1908) 116 N. W. 851.

3. Norristown Trust Co. *v.* Lentz, 30 Pa. Super. Ct. 408; Roberts *v.* Lentz, 30 Pa. Super. Ct. 407; Battles *v.* State, (Tex. Crim. 1908) 109 S. W. 195.

7. Coburn *v.* State, (Ala. 1907) 44 So. 58; York *v.* Everton, 121 Mo. App. 640, 97 S. W. 604; Rutherford *v.* State, 49 Tex. Crim. 21, 90 S. W. 172.

1097. 1. *United States.* — Masters *v.* Seeley, (C. C. A.) 138 Fed. 719; Mathieson Alkali Works *v.* Mathieson, (C. C. A.) 150 Fed. 241.

Alabama. — Morris *v.* State, (Ala. 1905) 39 So. 608; Funderburk *v.* State, 145 Ala. 661, 39 So. 672; Birmingham R., etc., Co. *v.* Mason, 144 Ala. 387, 39 So. 590; Alabama G. S. R. Co. *v.* Clark, 145 Ala. 459, 39 So. 816; Main *v.* Radney, (Ala. 1905) 39 So. 981; Reiter-Conley Mfg. Co. *v.* Hamlin, 144 Ala. 192, 40 So. 280; Southern R. Co. *v.* Hobbs, (Ala. 1907) 43 So. 844; Metropolitan L. Ins. Co. *v.* McCray, (Ala. 1908) 47 So. 65; Ridgell *v.* State, (Ala. 1908) 47 So. 71; Pelham *v.* Chattahoochee Grocery Co., (Ala. 1908) 47 So. 172.

Arkansas. — Taylor *v.* McClintock, (Ark. 1908) 112 S. W. 405; Benton *v.* State, 78 Ark. 284, 94 S. W. 688.

California. — Moody *v.* Peirano, (Cal. App. 1906) 84 Pac. 783; Moody *v.* Peirano, 4 Cal. App. 411, 88 Pac. 380; People *v.* Yee Foo, 4 Cal. App. 730, 89 Pac. 450.

Colorado. — Boles *v.* People, 37 Colo. 41, 86 Pac. 1030.

Connecticut. — Roberts *v.* Merwin, (Conn. 1907) 68 Atl. 377.

Florida. — Baker *v.* State, 51 Fla. 1, 40 So. 673; Pittman *v.* State, 51 Fla. 94, 41 So. 385; Atlantic Coast Line R. Co. *v.* Crosby, 53 Fla. 400, 43 So. 318; Adams *v.* State, (Fla. 1907) 45 So. 494.

Kansas. — State *v.* Sweeney, 75 Kan. 265, 88 Pac. 1078.

Kentucky. — Lancaster *v.* Lancaster, (Ky. 1905) 87 S. W. 1137; French *v.* Com., (Ky. 1906) 97 S. W. 427; Feltner *v.* Com., (Ky. 1906) 97 S. W. 433; Owensboro City R. Co. *v.* Allen, (Ky. 1908) 108 S. W. 357.

Louisiana. — State *v.* Griggsby, 117 La. 1046, 42 So. 497.

Maryland. — Regester *v.* Regester, 104 Md. 1, 64 Atl. 286.

Michigan. — Bialy *v.* Krause, 142 Mich. 158, 105 N. W. 149; Loranger *v.* Carpenter, 148 Mich. 549, 112 N. W. 125.

Minnesota. — Harms *v.* Proehl, (Minn. 1908) 116 N. W. 587.

Mississippi. — Simms *v.* Forbes, 86 Miss. 412, 38 So. 546; Scott *v.* State, (Miss. 1906) 39 So. 1012; Ehrman *v.* Whelan, (Miss. 1906) 40 So. 430.

Missouri. — State *v.* Smith, 190 Mo. 706, 90 S. W. 440; State *v.* Barrington, 198 Mo. 23, 95 S. W. 237; State *v.* Murphy, 201 Mo. 691, 100 S. W. 414; State *v.* Long, 201 Mo. 664, 100 S. W. 587; State *v.* Harris, (Mo. 1908) 108 S. W. 28; State *v.* Valle, 196 Mo. 29, 93 S. W. 1115.

Nebraska. — Nickolizack *v.* State, 75 Neb. 27, 105 N. W. 895.

New Jersey. — Crosby *v.* Wells, 73 N. J. L. 790, 67 Atl. 295; Hitt *v.* Woolever, (N. J. 1907) 68 Atl. 237.

North Carolina. — Coleman *v.* Southern R. Co., 138 N. Car. 351, 50 S. E. 690; State *v.* Wright, 145 N. Car. 490, 59 S. E. 541.

North Dakota. — State *v.* Malmberg, 14 N. Dak. 523, 105 N. W. 614.

South Carolina. — State *v.* Stukes, 73 S. Car. 386, 53 S. E. 643; Cain *v.* Atlantic Coast Line R. Co., 74 S. Car. 89, 54 S. E. 244; State *v.* Jones, 74 S. Car. 456, 54 S. E. 1017; Greenville *v.* Spencer, 77 S. Car. 50, 57 S. E. 638.

Tennessee. — Powers *v.* State, 117 Tenn. 363, 97 S. W. 815.

Texas. — Gulf, etc., R. Co. *v.* Matthews, (Tex. Civ. App. 1905) 89 S. W. 983; Rutherford *v.* State, 49 Tex. Crim. 2[illegible], 90 S. W. 172; Scott *v.* State, 49 Tex. Crim. 386, 93 S. W. 112; Gulf, etc., R. Co. *v.* Matthews, (Tex. 1906) 93 S. W. 1068; Anson *v.* Gulf, etc., R. Co., (Tex. Civ. App. 1906) 94 S. W. 94; Keith *v.* State, (Tex. Crim. 1906) 94 S. W. 1044; Watson *v.* State, (Tex. Crim. 1906) 95 S. W. 115; Brundige *v.* State, 49 Tex. Crim. 596, 95 S. W. 527; Woodward *v.* State, (Tex. Crim. 1906) 97 S. W. 499; Green *v.* State, (Tex. Crim. 1906) 98 S. W. 1059; Henderson *v.* State, (Tex. Crim. 1907) 101 S. W. 208; Prewitt *v.* Southwestern Tel., etc., Co., (Tex. Civ. App. 1907) 101 S. W. 812; Jones *v.* State, (Tex. Crim. 1906) 101 S. W. 993; Waggoner *v.* Moore, (Tex. Civ. App. 1907) 101 S. W. 1058; Horton *v.* Houston, etc., R. Co., (Tex. Civ. App. 1907) 103 S. W. 467; Keener *v.* State, (Tex. Crim. 1907) 103 S. W. 904; Rice *v.* State, (Tex. Crim. 1907) 103 S. W. 1156; International, etc., R. Co. *v.* Howell, (Tex. Civ. App. 1907) 105 S. W. 560; Sue *v.* State, (Tex. Crim. 1907) 105 S. W. 804; Thomas *v.* Tompkins, (Tex. Civ. App. 1907) 105 S. W. 1175; Hood *v.* State, (Tex. Crim. 1908) 107 S. W. 848; Pullman Co. *v.* Vanderhoeven, (Tex. Civ. App. 1908) 107 S. W. 147; Southworth *v.* State, (Tex. Crim. 1908) 109 S. W. 133; Ross *v.* State, (Tex. Crim. 1908) 109 S. W. 152; Green *v.* State, (Tex. Crim. 1908) 111 S. W. 933.

Virginia. — Southern R. Co. *v.* Blanford, 105 Va. 373, 54 S. E. 1; Norfolk, etc., R. Co. *v.* Carr, 106 Va. 508, 56 S. E. 276.

Washington. — State *v.* McLain, 43 Wash. 267, 86 Pac. 390; State *v.* Constantine, (Wash. 1908) 93 Pac. 317.

West Virginia. — Hollen *v.* Crim, (W. Va. 1907) 59 S. E. 172; Robinson *v.* Kistler, (W. Va. 1907) 59 S. E. 505.

Wisconsin. — Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237; Dunham *v.* Salmon, 130 Wis. 164, 109 N. W. 959.

Contradiction as to Immaterial Facts does not affect the credibility of a witness. Southern R. Co. *v.* Hundley, (Ala. 1907) 44 So. 195.

1099. 1. Funderburk *v.* State, 145 Ala. 661, 39 So. 672; Simms *v.* Forbes, 86 Miss. 412, 38 So. 546; Gulf, etc., R. Co. *v.* Matthews, (Tex. 1906) 93 S. W. 1068.

1100. 1. Evidence of Means of Knowledge and Reasons for Recollection — Cross-examination and Contradiction. — Stolbier *v.* St. Louis Transit Co., 203 Mo. 702, 102 S. W. 651.

2. *United States.* — Dillard *v.* U. S., (C. C. A.) 141 Fed. 303.

Alabama. — Birmingham R., etc., Co. *v.* Mason, 144 Ala. 387, 39 So. 590; Giddens *v.* Rutledge, 146 Ala. 232, 40 So. 759; Jones *v.* State, 145 Ala. 51, 40 So. 947; Kelly *v.* Louisville, etc., R. Co., (Ala. 1906) 41 So. 870; Wynne *v.* State, (Ala. 1908) 46 So. 459; Pelham *v.* Chattahoochee Grocery Co., (Ala. 1908) 47 So. 172.

Arkansas. — Crossland *v.* State, 77 Ark. 537, 92 S. W. 776.

California. — Bowen *v.* Sierra Lumber Co., 3 Cal. App. 312, 84 Pac. 1010; Keyes *v.* Geary, etc., R. Co., (Cal. 1907) 93 Pac. 88.

Colorado. — Denver, etc., R. Co. *v.* Mitchell, (Colo. 1908) 94 Pac. 289.

Illinois. — Prather *v.* Chicago Southern R. Co., 221 Ill. 190, 77 N. E. 430; McCann *v.* People, 226 Ill. 562, 80 N. E. 1061.

Indiana. — Indianapolis St. R. Co. *v.* James, 35 Ind. App. 543, 74 N. E. 536; Swygart *v.* Willard, 166 Ind. 25, 76 N. E. 755; Knapp *v.* State, 168 Ind. 153, 79 N. E. 1076; Cook *v.* State, (Ind. 1907) 82 N. E. 1047.

Iowa. — Seibert *v.* Germania F. Ins. Co., 132 Iowa 58, 106 N. W. 507; Stark *v.* Burke, 131 Iowa 684, 109 N. W. 206.

Kentucky. — Cincinnati, etc., R. Co. *v.* Rodes, (Ky. 1907) 102 S. W. 321; Owensboro City R. Co. *v.* Allen, (Ky. 1908) 108 S. W. 357.

Louisiana. — State *v.* Mitchell, 119 La. 374, 44 So. 132; State *v.* Meyers, (La. 1907) 44 So. 1008.

Maryland. — Chesapeake Beach R. Co. *v.* Donahue, (Md. 1908) 68 Atl. 507.

Massachusetts. — Cumberland Glass Mfg. Co. *v.* Atteaux, (Mass. 1908) 85 N. E. 536.

Michigan. — O'Connor *v.* Hogan, 140 Mich. 613, 104 N. W. 29; Thompson *v.* Mecosta, 141 Mich. 175, 104 N. W. 694; Smith *v.* Hockenberry, 146 Mich. 7, 109 N. W. 23; Hutchins *v.* Murphy, 146 Mich. 621, 110 N. W. 52.

Mississippi. — Bell *v.* State, (Miss. 1905) 38 So. 795; Scott *v.* State, (Miss. 1906) 39 So. 1012; Bowles *v.* State, (Miss. 1906) 40 So. 165; Sherrod *v.* State, (Miss. 1907) 44 So. 813.

Missouri. — Mullin *v.* St. Louis Transit Co., 196 Mo. 572, 94 S. W. 288; State *v.* Murphy, 201 Mo. 691, 100 S. W. 414; Schloemer *v.* St. Louis Transit Co., 204 Mo. 99, 102 S. W. 565.

Nebraska. — Nicolizack *v.* State, 75 Neb. 27, 105 N. W. 895.

New Hampshire. — Robinson *v.* Stahl, (N. H. 1907) 67 Atl. 577; Lydston *v.* Rockingham County Light, etc., Co., (N. H. 1908) 70 Atl. 385.

New Jersey. — State *v.* Skillman, (N. J. 1908) 70 Atl. 83.

New York. — Loughlin *v.* Brassil, 187 N. Y. 128, 79 N. E. 854; Hall *v.* Wagner, 111 N. Y. App. Div. 70, 97 N. Y. Supp. 570; Eswein *v.* Hodgkinson, 124 N. Y. App. Div. 6, 108 N. Y. Supp. 531.

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4. People *v.* Yee Foo, 4 Cal. App. 730, 89 Pac. 450; State *v.* Cook, 13 Idaho 45, 88 Pac. 240.

5. State *v.* Constantine, (Wash. 1908) 93 Pac. 317.

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3. Hicklin *v.* Territory, 9 Ariz. 184, 80 Pac. 340; Moody *v.* Peirano, 4 Cal. App. 411, 88 Pac. 380; Tuttle *v.* Shutts, (Colo. 1908) 96 Pac. 260; Reisch *v.* People, 229 Ill. 574, 82 N. E. 321; State *v.* Armstrong, 118 La. 480, 43 So. 57; Sherrod *v.* State, (Miss. 1907) 44 So. 813; Inlow *v.* Bybee, 122 Mo. App. 475, 99 S. W. 785; Sperbeck *v.* Camden, etc., R. Co., (N. J. 1906) 64 Atl. 1012; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100; McQuiggan *v.* Ladd, 79 Vt. 90, 64 Atl. 503; State *v.* Constantine, (Wash. 1908) 93 Pac. 317.

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1104. 1. State *v.* Mitchell, 119 La. 374, 44 So. 132; Holder *v.* State, (Tenn. 1907) 104 S. W. 225; Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237.

3. Scott *v.* State, (Miss. 1906) 39 So. 1012.

1105. 1. *Alabama.* — Alabama G. S. R. Co. *v.* Clark, 145 Ala. 459, 39 So. 816; Giddens *v.* Rutledge, 146 Ala. 232, 40 So. 759; Jones *v.* State, 145 Ala. 51, 40 So. 947; Morris *v.* State, 146 Ala. 66, 41 So. 274; Benjamin *v.* State, (Ala. 1906) 41 So. 739; Hughes *v.* State, (Ala. 1907) 44 So. 694; Stodenmeyer *v.* Hart, (Ala. 1908) 46 So. 488.

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North Carolina. — Johnson *v.* Atlantic Coast Line R. Co., 140 N. Car. 574, 53 S. E. 362.
North Dakota. — State *v.* Malmberg, 14 N. Dak. 523, 105 N. W. 614; State *v.* Hazlett, 14 N. Dak. 490, 105 N. W. 617; Wadsworth *v.* Owens, (N. Dak. 1908) 115 N. W. 667.
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1106. 4. Lanigan *v.* Neely, 4 Cal. App. 760, 89 Pac. 441; Miller *v.* Detroit United R. Co., 144 Mich. 1, 107 N. W. 714; State *v.* Martin, 47 Oregon 282, 83 Pac. 849; St. Louis Southwestern R. Co. *v.* Irvine, (Tex. Civ. App. 1905) 89 S. W. 428; San Antonio Traction Co. *v.* Parks, (Tex. Civ. App. 1906) 93 S. W. 130.

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But Inconsistency May Be Explained Away by Circumstances under Which Signed. — Shreve *v.* Crosby, 72 N. J. L. 491, 63 Atl. 333.

1107. 1. Washington *v.* State, 124 Ga. 423, 52 S. E. 910; State *v.* Anderson, (La. 1907) 45 So. 267; Schon *v.* Harlan, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 518, 107 N. Y. Supp. 113; Beard *v.* Southern R. Co., 143 N. Car. 136, 55 S. E. 505; Davis *v.* Farwell, (Vt. 1907) 67 Atl. 129.

Denial of Having Made the Statements Is Necessary before the letter can be read as evidence of the contradictory statements. Lloyd *v.* Kerley, (Tex. Civ. App. 1907) 106 S. W. 696.

2. Rose *v.* Lampley, 146 Ala. 445, 41 So. 521; Davis *v.* Wewoka First Nat. Bank, (Indian Ter. 1905) 89 S. W. 1015; Stinson *v.* Com., (Ky. 1906) 96 S. W. 463; Lederer *v.* Lederer, 108 N. Y. App. Div. 228, 95 N. Y. Supp. 623; Novogrucky *v.* Brooklyn Heights R. Co., 125 N. Y. App. Div. 715, 110 N. Y. Supp. 28.

3. **Physician's Certificate.** — Paquette *v.* Prudential Ins. Co., 192 Mass. 215, 79 N. E. 250; Galveston, etc., R. Co. *v.* Janert, (Tex. Civ. App. 1908) 107 S. W. 963.

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Notes. — Rector *v.* Robins, 82 Ark. 424, 102 S. W. 209.

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Time Books. — Eureka Hill Min. Co. *v.* Bullion Beck, etc., Min. Co., (Utah 1907) 90 Pac. 157.

4. Brackett *v.* Americus Grocery Co., 127 Ga. 672, 56 S. E. 762; Beard *v.* Southern R. Co., 143 N. Car. 136, 55 S. E. 505.

Foundation Not Sufficiently Laid to Admit Secondary Evidence. — Grabill *v.* State, (Tex. Crim. 1906) 97 S. W. 1046.

1108. 1. **Necessity that Writing Contain Contradictory Matter.** — Gunn *v.* Mumford, (N. J. 1907) 65 Atl. 989.

2. **Precise Question Put to Principal Witness Should Be Asked.** — Hanselman *v.* Broad, 113 N. Y. App. Div. 447, 99 N. Y. Supp. 404.

3. Jacobs *v.* Boston El. R. Co., 188 Mass. 245, 74 N. E. 349; Keim *v.* Rankin, 40 Wash. 111, 82 Pac. 169.

Book Entries Not Made by Witness Are Inadmissible. — Lemly *v.* Ellis, 143 N. Car. 200, 55 S. E. 629.

5. Jaffe *v.* Pennsylvania R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 520, 97 N. Y. Supp. 1037; Carr *v.* American Locomotive Co., (R. I. 1908) 70 Atl. 196; Corpus *v.* State, (Tex.

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Testimony Must Have Tendency to Contradict Material Facts. — Walker *v.* Walker, (R. I. 1907) 67 Atl. 519.

1109. 1. People *v.* Hart, (Cal. 1908) 94 Pac. 1042; Sanders *v.* State, (Tex. Crim. 1908) 112 S. W. 68. *Compare* Crossland *v.* State, 77 Ark. 537, 92 S. W. 776.

Entire Testimony Taken by Magistrate Must Not Be Offered. — Scott *v.* State, (Miss. 1908) 46 So. 251.

2. State *v.* Hampton, (S. Car. 1908) 60 S. E. 669.

3. State *v.* Hoffman, 134 Iowa 587, 112 N. W. 103.

5. Pratt *v.* State, (Tex. Crim. 1908) 109 S. W. 138.

8. State *v.* Jennings, 48 Oregon 483, 87 Pac. 524.

10. **But Judge's Notes May Not Be Used.** — Richards *v.* Com., 107 Va. 881, 59 S. E. 1104.

1110. 1. **Incomplete Notes.** — State *v.* Martin, 47 Oregon 282, 83 Pac. 849.

Unverified Notes of Stenographer Not Admissible. — Jaffe *v.* Pennsylvania R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 520, 97 N. Y. Supp. 1037.

2. Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496.

4. Jaffe *v.* Pennsylvania R. Co., (Supm. Ct. App. T.) 49 Misc. (N. Y.) 520, 97 N. Y. Supp. 1037; State *v.* Martin, 47 Oregon 282, 83 Pac. 849; Prewitt *v.* Southwestern Tel., etc., Co., (Tex. Civ. App. 1907) 101 S. W. 812.

1111. 2. Lanigan *v.* Neely, 4 Cal. App. 760, 89 Pac. 441; Pratt *v.* State, (Tex. Crim. 1908) 109 S. W. 138.

Deposition May Not Be Used if It Has No Tendency to Contradict. — Chany *v.* Hotchkiss, 79 Conn. 104, 63 Atl. 947.

3. Raines *v.* State, 147 Ala. 691, 40 So. 932; People *v.* Hart, (Cal. 1908) 94 Pac. 1042; Cal. Hirsch, etc., Iron, etc., Co. *v.* Coleman, 227 Ill. 149, 81 N. E. 21; Edmunds Mfg. Co. *v.* McFarland, 118 Ill. App. 256; State *v.* Goodson, 116 La. 388, 40 So. 771; Regester *v.* Regester, 104 Md. 1, 64 Atl. 286; Bice *v.* State, (Tex. Crim. 1907) 100 S. W. 949.

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5. Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100.

1112. 1. Bates *v.* State, (Ga. App. 1908) 61 S. E. 888; Campos *v.* State, (Tex. Crim. 1906) 97 S. W. 100.

Contra. — State *v.* Hummer, 72 N. J. L. 328, 62 Atl. 388.

3. Southern R. Co. *v.* McNeill, 155 Fed. 756; Schloemer *v.* St. Louis Transit Co., 204 Mo. 99, 102 S. W. 565; Kirk *v.* State, 48 Tex. Crim. 624, 89 S. W. 1067; Houston, etc., R. Co. *v.* Adams, (Tex. Civ. App. 1906) 98 S. W. 222; Vanhouser *v.* State, (Tex. Crim. 1908) 108 S. W. 386.

1113. 1. Bates *v.* State, (Ga. App. 1908) 61 S. E. 888; Chicago City R. Co. *v.* Gregory, 221 Ill. 591, 77 N. E. 1112; Seibert *v.* Germania F. Ins. Co., 132 Iowa 58, 106 N. W. 507.

3. Cotton *v.* Boston El. R., 191 Mass. 103, 77 N. E. 698.

4. Thompson *v.* Mecosta, 141 Mich. 175, 104 N. W. 694, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1113; Wojtylak *v.* Kansas, etc., Coal Co., 188 Mo. 260, 87 S. W. 506; Tucker *v.* Territory, 17 Okla. 56, 87 Pac. 307.

5. Denver, etc., R. Co. *v.* Mitchell, (Colo. 1908) 94 Pac. 289; Thompson *v.* Mecosta, 141 Mich. 175, 104 N. W. 694, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1113.

1114. 3. Colorado Midland R. Co. *v.* McGarry, (Colo. 1907) 92 Pac. 915.

1115. 7. Roessler-Hasslacher Chemical Co. *v.* Doyle, (C. C. A.) 142 Fed. 118; Baker *v.* State, (Ark. 1908) 107 S. W. 983; People *v.* Gray, 148 Cal. 507, 83 Pac. 707; Chany *v.* Hotchkiss, 79 Conn. 104, 63 Atl. 947; Louisville, etc., R. Co. *v.* Varner, (Ga. 1908) 60 S. E. 162; Seibert *v.* Germania F. Ins. Co., 132 Iowa 58, 106 N. W. 507; Wagner *v.* Com., (Ky. 1908) 108 S. W. 318; Thompson *v.* Mecosta, 141 Mich. 175, 104 N. W. 694; Gunn *v.* Mumford, (N. J. 1907) 65 Atl. 989; People *v.* Brown, 110 N. Y. App. Div. 490, 96 N. Y. Supp. 957; Berus *v.* New York City R. Co., (Supm. Ct. App. T.) 52 Misc. (N. Y.) 181, 101 N. Y. Supp. 748; People *v.* Way, 119 N. Y. App. Div. 344, 104 N. Y. Supp. 277; Sturgis *v.* Fifth Ave. Coach Co., 122 N. Y. App. Div. 658, 107 N. Y. Supp. 270; International, etc., R. Co. *v.* Boykin, 99 Tex. 259, 89 S. W. 639.

Failure to Volunteer Cannot Discredit a Witness. — Ranken *v.* Donovan, 115 N. Y. App. Div. 651, 100 N. Y. Supp. 1049.

1116. 3. Edmunds Mfg. Co. *v.* McFarland, 118 Ill. App. 256.

4. Brinkley Car Works, etc., Co. *v.* Cooper, 75 Ark. 325, 87 S. W. 645; State *v.* Boice, 114 La. 856, 38 So. 584.

1117. 9. Murph *v.* State, (Ala. 1907) 45 So. 208.

1118. 4. Lee *v.* Conran, (Mo. 1908) 111 S. W. 1151; Sampson *v.* Hughes, 147 Cal. 62, 81 Pac. 292; Axel *v.* Kraemer, (N. J. 1908) 70 Atl. 367; Ruemer *v.* Clark, 121 N. Y. App. Div. 231, 105 N. Y. Supp. 659; Marsh *v.* State, (Tex. Crim. 1908) 112 S. W. 320; Lincoln *v.* Hemenway, (Vt. 1908) 69 Atl. 153.

5. Larrance *v.* People, 222 Ill. 160, 78 N. E. 50, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1118.

1119. 2. *Alabama.* — Coker *v.* State, 144 Ala. 28, 40 So. 516; Williams *v.* State, 147 Ala. 10, 41 So. 992; Cathcart *v.* Webb, 144 Ala. 559, 42 So. 25; Strickland *v.* State, (Ala. 1907) 44 So. 90; Dilburn *v.* Louisville, etc., R. Co., (Ala. 1908) 47 So. 210.

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Florida. — Adams *v.* State, (Fla. 1907) 45 So. 494.

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Indiana. — New York, etc., R. Co. *v.* Flynn, (Ind. App. 1907) 81 N. E. 741.

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Maryland. — Robinson *v* Jones, 105 Md. 62, 65 Atl. 814.

New York. — People *v.* Mallon, 116 N. Y. App. Div. 425, 101 N. Y. Supp. 814.

Oregon. — State *v.* Martin, 47 Oregon 282, 83 Pac. 849.

South Carolina. — Newell *v.* Taylor, 74 S. Car. 8, 54 S. E. 212; Harbert *v.* Atlanta, etc., R. Co., 78 S. Car. 537, 59 S. E. 644; State *v.* Boyles, (S. Car. 1908) 60 S. E. 233; State *v.* Hampton, (S. Car. 1908) 60 S. E. 669.

Texas. — International, etc., R. Co. *v.* Boykin, 99 Tex. 259, 89 S. W. 639; Opet *v.* Denzer, (Tex. Civ. App. 1906) 93 S. W. 527; J. M. Guffy Petroleum Co. *v.* Hamill, (Tex. Civ. App. 1906) 94 S. W. 458.

Vermont. — State *v.* Barditti, 78 Vt. 102, 62 Atl. 44.

Washington. — State *v.* Constantine, (Wash. 1908) 93 Pac. 317; Larsen *v.* Sedro-Woolley, (Wash. 1908) 94 Pac. 938.

Wisconsin. — Salchert *v.* Reinig, (Wis. 1908) 115 N. W. 132.

1120. 1. *Florida.* — Clinton *v.* State, 53 Fla. 98, 43 So. 312.

Georgia. — Luke *v.* Cannon, (Ga. App. 1908) 62 S. E. 110.

Illinois. — Cal. Hirsch, etc., Iron, etc., Co. *v.* Coleman, 227 Ill. 149, 81 N. E. 21.

Iowa. — Gibson *v.* Seney, (Iowa 1908) 116 N. W. 325.

Maryland. — Robinson *v.* Jones, 105 Md. 62, 65 Atl. 814.

Missouri. — Schloemer *v.* St. Louis Transit Co., 204 Mo. 99, 102 S. W. 565.

New York. — People *v.* Mallon, 116 N. Y. App. Div. 425, 101 N. Y. Supp. 814.

South Carolina. — Newell *v.* Taylor, 74 S. Car. 8, 54 S. E. 212.

Texas. — International, etc., R. Co. *v.* Boykin, 99 Tex. 259, 89 S. W. 639.

Vermont. — State *v.* Barditti, 78 Vt. 102, 62 Atl. 44.

Washington. — State *v.* Constantine, (Wash. 1908) 93 Pac. 317.

Identification of Time, Place, and Person Held Sufficient. — Lanigan *v.* Neely, 4 Cal. App. 760, 89 Pac. 441; People *v.* Yee Foo, 4 Cal. App. 730, 89 Pac. 450; State *v.* McGowan, (Mont. 1908) 93 Pac. 552; Coffey *v.* Omaha, etc., St. R. Co., (Neb. 1907) 112 N. W. 589; People *v.* Murphy, 113 N. Y. App. Div. 363, 99 N. Y. Supp. 110; State *v.* Hazlett, 14 N. Dak. 499, 105 N. W. 617; State *v.* Hampton, (S. Car. 1908) 60 S. E. 669.

Identification of Time, Place, and Person Held Insufficient. — Clark *v.* Dalziel, 3 Cal. App. 121, 84 Pac. 429; State *v.* Meyers, (La. 1907) 44 So. 1008; Loughlin *v.* Brassil, 187 N. Y. 128, 79 N. E. 854.

1121. 1. Lerum *v.* Geving, 97 Minn. 269, 105 N. W. 967.

2. Omaha St. R. Co. *v.* Boesen, 74 Neb. 764, 105 N. W. 303.

1122. 2. Washington *v.* State, 124 Ga. 423, 52 S. E. 910; Stinson *v.* Com., (Ky. 1906) 96 S. W. 463; Tonopah Lumber Co. *v.* Riley, (Nev. 1908) 95 Pac. 1001; Novogrucky *v.* Brooklyn Heights R. Co., 125 N. Y. App. Div. 715, 110 N. Y. Supp. 28; Quinn *v.* State, (Tex. Crim. 1907) 101 S. W. 248; Lloyd *v.* Kerley, (Tex. Civ. App. 1907) 106 S. W. 696.

1123. 1. Austin *v.* Com., (Ky. 1906) 98 S. W. 295.

A Witness Is Properly Allowed to Relate the Circumstances under which the impeaching document was executed. Tonopah Lumber Co. *v.* Riley, (Nev. 1908) 95 Pac. 1001.

4. People *v.* Harper, 145 Mich. 402, 108 N. W. 689.

6. Johnson *v.* State, (Fla. 1908) 46 So. 154.

7. Goss *v.* Goss, 102 Minn. 346, 113 N. W. 690, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1123.

1124. 1. State *v.* Wertz, 191 Mo. 569, 90 S. W. 838; Villineuve *v.* Manchester St. R. Co., 73 N. H. 250, 60 Atl. 748; Coolidge *v.* Ayers, 77 Vt. 448, 61 Atl. 40.

3. Goss *v.* Goss, 102 Minn. 346, 113 N. W. 690.

4. Ruemer *v.* Clark, 121 N. Y. App. Div. 231, 105 N. Y. Supp. 659.

1125. 3. Alabama Security Co. *v.* Dewy, (Ala. 1908) 47 So. 55; Lerum *v.* Geving, 97 Minn. 269, 105 N. W. 967.

1126. 1. Lerum *v.* Geving, 97 Minn. 273, 105 N. W. 967, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1126.

1127. 4. Austin *v.* Com., (Ky. 1906) 98 S. W. 295.

5. Novogrucky *v.* Brooklyn Heights R. Co., 125 N. Y. App. Div. 715, 110 N. Y. Supp. 28.

1128. 1. Smith *v.* Atlantic, etc., Air Line R. Co., (N. Car. 1908) 61 S. E. 575.

3. *United States.* — Choctaw, etc., R. Co. *v.* Newton, (C. C. A.) 140 Fed. 225.

Alabama. — Dilburn *v.* Louisville, etc., R. Co., (Ala. 1908) 47 So. 210.

California. — Womble *v.* Wilbur, 3 Cal. App. 535, 86 Pac. 916.

Colorado. — Chicago, etc., R. Co. *v.* Roberts, 35 Colo. 498, 84 Pac. 68.

Georgia. — Alexander *v.* State, 1 Ga. App. 289. 57 S. E. 996; Barber *v.* State, 3 Ga. App. 598, 60 S. E. 285.

Illinois. — Chicago City R. Co. *v.* Gregory, 221 Ill. 591, 77 N. E. 1112.

Iowa. — Rudd *v.* Dewey, (Iowa 1908) 116 N. W. 1062.

Kentucky. — Threlkeld *v.* Bond, (Ky. 1906) 92 S. W. 606; Garrison *v.* Com., (Ky. 1906) 93 S. W. 594.

Louisiana. — State *v.* Gallo, 115 La. 746, 39 So. 1001; State *v.* Stephens, 116 La. 36, 40 So. 523.

Missouri. — Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876.

New Jersey. — Buchanan *v.* Buchanan, (N. J. 1908) 68 Atl. 780.

New York. — Dorry *v.* Union R. Co., 104 N. Y. App. Div. 309, 93 N. Y. Supp. 637; McGurk *v.* New York City R. Co., (Supm. Ct. App. T.) 47 Misc. (N. Y.) 392, 93 N. Y. Supp. 1081.

South Carolina. — Pooler *v.* Smith, 73 S. Car. 102, 52 S. E. 967.

Texas. — Casey *v.* State, 49 Tex. Crim. 174, 90 S. W. 1018; Willis *v.* State, 49 Tex. Crim. 139, 90 S. W. 1100; Ware *v.* State, 49 Tex. Crim. 413, 92 S. W. 1093; Skeen *v.* State, (Tex. Crim. 1907) 100 S. W. 770; Ozark *v.* State, (Tex. Crim. 1907) 100 S. W. 927; Quinn *v.* State, (Tex. Crim. 1907) 101 S. W. 248; Jones *v.* State, (Tex. Crim. 1906) 101 S. W. 993; Scott *v.* State, (Tex. Crim. 1907) 105 S. W. 796; Compagnie Des Metaux Unital *v.* Victoria Mfg. Co., (Tex. Civ. App. 1908) 107 S. W. 651.

Canada. — Rex *v.* Hutchinson, 11 British Columbia 24.

1129. 2. *Colorado.* — Chicago, etc., R. Co. *v.* Roberts, 35 Colo. 498, 84 Pac. 68.

Idaho. — State *v.* Fowler, 13 Idaho 317, 89 Pac. 757.

Iowa. — Rudd *v.* Dewey, (Iowa 1908) 116 N. W. 1062.

Maryland. — Baltimore, etc., R. Co. *v.* State, (Md. 1908) 69 Atl. 439.

Massachusetts. — Cumberland Glass Mfg. Co. *v.* Atteaux, (Mass. 1908) 85 N. E. 536.

Missouri. — Holland *v.* Missouri Pac. R. Co., (Mo. 1908) 109 S. W. 19.

New York. — *In re* Bailey, 111 N. Y. App. Div. 909, 98 N. Y. Supp. 725; People *v.* Mallon, 116 N. Y. App. Div. 425, 101 N. Y. Supp. 814.

North Carolina. — Smith *v.* Atlanta, etc., Air Line R. Co., (N. Car. 1908) 61 S. E. 575.

Oregon. — State *v.* Jennings, 48 Oregon 483, 87 Pac. 524.

Pennsylvania. — Com. *v.* Deitrick, (Pa. 1908) 70 Atl. 275.

Vermont. — Jennett *v.* Patten, 78 Vt. 69, 62 Atl. 33.

Wisconsin. — Kohl *v.* Bradley, 130 Wis. 301, 110 N. W. 265.

Canada. — Rex *v.* Hutchinson, 11 British Columbia 24.

1130. 1. *Alabama.* — Pelham *v.* Chattahoochee Grocery Co., (Ala. 1908) 47 So. 172.

Arkansas. — Thomasson *v.* State, 80 Ark. 364, 97 S. W. 297; Ward *v.* State, (Ark. 1908) 107 S. W. 677.

California. — People *v.* Cook, 148 Cal. 334, 83 Pac. 43; Zipperlen *v.* Southern Pac. Co., (Cal. App. 1908) 93 Pac. 1049; *In re* Dolbeer, (Cal. 1908) 96 Pac. 266; People *v.* Duncan, (Cal. App. 1908) 96 Pac. 414.

Connecticut. — Lynch *v.* Bronson, (Conn. 1908) 69 Atl. 538.

Georgia. — Alexander *v.* State, 1 Ga. App. 289, 57 S. E. 996; Barber *v.* State, 3 Ga. App. 598, 60 S. E. 285.

Kansas. — State *v.* Moon, 71 Kan. 349, 80 Pac. 597.

Louisiana. — State *v.* Stephens, 116 La. 36, 40 So. 523; State *v.* Barrett, 117 La. 1086, 42 So. 513.

Missouri. — Clancy *v.* St. Louis Transit Co., 192 Mo. 615, 91 S. W. 509.

New Jersey. — State *v.* Johnson, 73 N. J. L. 199, 63 Atl. 12.

New Mexico. — Territory *v.* Livingston, 13 N. Mex. 318, 84 Pac. 1021.

New York. — People *v.* Smith, 113 N. Y. App. Div. 396, 99 N. Y. Supp. 118; O'Doherty *v.* Postal Tel. Cable Co., 113 N. Y. App. Div. 636, 99 N. Y. Supp. 351; People *v.* Mallon, 116 N. Y. App. Div. 425, 101 N. Y. Supp. 814.

Texas. — Burch *v.* State, 49 Tex. Crim. 13, 90 S. W. 168; Dallas Consol. Electric St. R. Co. *v.* McAllister, (Tex. Civ. App. 1905) 90 S. W. 933; Willis *v.* State, 49 Tex. Crim. 139, 90 S. W. 1100; McLin *v.* State, 48 Tex. Crim. 549, 90 S. W. 1107; Ware *v.* State, 49 Tex. Crim. 413, 92 S. W. 1093; McMahon *v.* State, (Tex. Crim. 1906) 96 S. W. 17; Ozark *v.* State, (Tex. Crim. 1907) 100 S. W. 927; Jeter *v.* State, (Tex. Crim. 1907) 106 S. W. 371; Southworth *v.* State, (Tex. Crim. 1908) 109 S. W. 133.

A Party Must Have Been Entrapped or Misled by trick or artifice into calling a witness and making him his own before he can impeach the witness. Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1130.

2. Beier *v.* St. Louis Transit Co., 197 Mo. 215, 94 S. W. 876; Eswein *v.* Hodgkinson, 124 N. Y. App. Div. 6, 108 N. Y. Supp. 531; Berkowsky *v.* New York City R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 989; State *v.* Jennings, 48 Oregon 483, 87 Pac. 524; Skeen *v.* State, (Tex. Crim. 1907) 100 S. W. 770.

1131. 1. *California.* — People *v.* Ryan, (Cal. 1907) 92 Pac. 853.

Georgia. — Nathan *v.* State, (Ga. 1908) 61 S. E. 994; Luke *v.* Cannon, (Ga. App. 1908) 62 S. E. 110.

Idaho. — State *v.* Fowler, 13 Idaho 317, 89 Pac. 757.

Kentucky. — Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Garrison *v.* Com., (Ky. 1906) 93 S. W. 594.

Louisiana. — State *v.* Stephens, 116 La. 36, 40 So. 523.

Minnesota. — Lindquist *v.* Dickson, 98 Minn. 369, 107 N. W. 958; State *v.* Sederstrom, 99 Minn. 234, 109 N. W. 113.

Nebraska. — H. F. Cady Lumber Co. *v.* Wilson Steam Boiler Co., (Neb. 1908) 114 N. W. 774.

Oregon. — State *v.* Jennings, 48 Oregon 483, 87 Pac. 524.

South Carolina. — State *v.* Waldrop, 73 S. Car. 60, 52 S. E. 793.

Virginia. — Browder *v.* Southern R. Co., 107 Va. 10, 57 S. E. 572.

Wisconsin. — Corbett *v.* Physicians' Casualty Assoc., (Wis. 1908) 115 N. W. 365.

Contradiction Not Permitted unless Clearly Necessary. — Zipperlen *v.* Southern Pac. Co., (Cal. App. 1908) 93 Pac. 1049.

2. Zipperlen *v.* Southern Pac. Co., (Cal. App. 1908) 93 Pac. 1049; Southern R. Co. *v.* Goddard, (Ky. 1905) 89 S. W. 675; Donaldson *v.* New York, etc., R. Co., 188 Mass. 484, 74 N. E. 915.

1132. 4. People *v.* Cook, 148 Cal. 334, 83 Pac. 43; Zipperlen *v.* Southern Pac. Co., (Cal. App. 1908) 93 Pac. 1049; *In re* Dolbeer, (Cal. 1908) 96 Pac. 266; People *v.* Duncan, (Cal. App. 1908) 96 Pac. 414; Nathan *v.* State, (Ga. 1908) 61 S. E. 994; Luke *v.* Cannon, (Ga. App. 1908) 62 S. E. 110; State *v.* Stephens, 116 La. 36, 40 So. 523; Berkowsky *v.* New

York City R. Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 989.

5. *In re* Johnson, (Cal. 1908) 93 Pac. 1015; Dukes *v.* Davis, (Ky. 1907) 101 S. W. 390.

1133. 2. Mead *v.* Otto Huber Brewery, 104 N. Y. App. Div. 10, 93 N. Y. Supp. 244; People *v.* Dixon, 118 N. Y. App. Div. 593, 103 N. Y. Supp. 186.

3. Mead *v.* Otto Huber Brewery, 104 N. Y. App. Div. 10, 93 N. Y. Supp. 244; Corbett *v.* Physicians' Casualty Assoc., (Wis. 1908) 115 N. W. 365.

4. Johnston *v.* Marriage, 74 Kan. 208, 86 Pac. 461; Baltimore, etc., Co. *v.* State, (Md. 1908) 69 Atl. 439; O'Doherty *v.* Postal Tel. Cable Co., 113 N. Y. App. Div. 636, 99 N. Y. Supp. 351.

1134. 3. Mississippi Glass Co. *v.* Franzen, (C. C. A.) 143 Fed. 501, 6 Ann. Cas. 707.

5. Gould *v.* John Hancock Mut. L. Ins. Co., 114 N. Y. App. Div. 312, 99 N. Y. Supp. 833.

6. *Arkansas.* — Weaver *v.* State, 83 Ark. 119, 102 S. W. 713.

California. — People *v.* Soeder, 150 Cal. 12, 87 Pac. 1016.

Florida. — Pittman *v.* State, 51 Fla. 94, 41 So. 385; Maloy *v.* State, 52 Fla. 101, 41 So. 791; Clinton *v.* State, 53 Fla. 98, 43 So. 312.

Indian Territory. — McCoy *v.* U. S., 6 Indian Ter. 415, 98 S. W. 144.

Kentucky. — Britton *v.* Com., (Ky. 1906) 96 S. W. 556; Welch *v.* Com., (Ky. 1908) 108 S. W. 863; Ochsner *v.* Com., (Ky. 1908) 109 S. W. 326.

Louisiana. — State *v.* Clark, 117 La. 920, 42 So. 425; State *v.* Griggsby, 117 La. 1046, 42 So. 497.

Mississippi. — Williams *v.* State, 87 Miss. 373, 39 So. 1006.

Missouri. — State *v.* Spivey, 191 Mo. 87, 90 S. W. 81; State *v.* Barnett, 203 Mo. 640, 102 S. W. 506; State *v.* Baker, (Mo. 1908) 108 S. W. 6.

Nebraska. — Nicolizack *v.* State, 75 Neb. 27, 105 N. W. 895; Haddix *v.* State, (Neb. 1906) 107 N. W. 781.

New York. — People *v.* Gluck, 117 N. Y. App. Div. 432, 102 N. Y. Supp. 758.

Oklahoma. — Harrold *v.* Territory, 18 Okla. 395, 89 Pac. 202.

South Carolina. — State *v.* Boyles, (S. Car. 1908) 60 So. 233.

Tennessee. — Powers *v.* State, 117 Tenn. 363, 97 S. W. 815.

Texas. — Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533; Hays *v.* State, (Tex. Crim. 1907) 100 S. W. 926.

Wisconsin. — Schwantes *v.* State, 127 Wis. 160, 106 N. W. 237; Dungan *v.* State, (Wis. 1908) 115 N. W. 350.

1135. 1. Mitchell *v.* State, (Ala. 1907) 42 So. 1014; Maloy *v.* State, 52 Fla. 101, 41 So. 791.

2. Sweatt *v.* State, (Ala. 1908) 47 So. 194; State *v.* Woodward, 191 Mo. 617, 90 S. W. 90; State *v.* Beckner, 194 Mo. 281, 91 S. W. 892; State *v.* Richardson, 194 Mo. 326, 92 S. W. 649; State *v.* Barnett, 203 Mo. 640, 102 S. W. 506; State *v.* Baker, (Mo. 1908) 108 S. W. 6; People *v.* Gluck, 117 N. Y. App. Div. 432, 102 N. Y. Supp. 758; Powers *v.* State, 117 Tenn. 363, 97 S. W. 815; Dungan *v.* State, (Wis. 1908) 115 N. W. 350.

Particular Acts of Misconduct Not Admissible. — Sweatt *v.* State, (Ala. 1908) 47 So. 194; Dungan *v.* State, (Wis. 1908) 115 N. W. 350.

1136. 1. Ochsner *v.* Com., (Ky. 1908) 109 S. W. 326; Williams *v.* State, 87 Miss. 373, 39 So. 1006.

2. McCoy *v.* U. S., 6 Indian Ter. 415, 98 S. W. 144; State *v.* Spivey, 191 Mo. 87, 90 S. W. 81.

Defendant May Be Asked if He Has Been Prosecuted Before for Other Offenses. — State *v.* Barrett, 117 La. 1086, 42 So. 513.

3. People *v.* Soeder, 150 Cal. 12, 87 Pac. 1016; People *v.* Oliver, (Cal. App. 1908) 95 Pac. 172; Farmer *v.* Com., (Ky. 1906) 91 S. W. 682; Henderson *v.* Com., (Ky. 1906) 91 S. W. 1141; Britton *v.* Com., (Ky. 1906) 96 S. W. 556; Welch *v.* Com., (Ky. 1908) 108 S. W. 863; Ochsner *v.* Com., (Ky. 1908) 109 S. W. 326; Dodds *v.* State, (Miss. 1908) 45 So. 863; State *v.* Spivey, 191 Mo. 87, 90 S. W. 81; State *v.* Woodward, 191 Mo. 617, 90 S. W. 90; State *v.* Hummer, 72 N. J. L. 328, 62 Atl. 388; State *v.* Mount, 73 N. J. L. 582, 64 Atl. 124; People *v.* Cascone, 185 N. Y. 317, 78 N. E. 287; Williams *v.* State, (Tex. Crim. 1907) 102 S. W. 1134; Davis *v.* State, (Tex. Crim. 1908) 108 S. W. 667. *Compare* Banks *v.* State, (Ala. 1905) 39 So. 921, holding that the following questions were improper, "Have you ever been convicted of any crime?" and "Have you ever been charged with any crime?"

Passing Counterfeit Money. — Childress *v.* State, 48 Tex. Crim. 617, 90 S. W. 30.

5. Ball *v.* U. S., 147 Fed. 32; Williams *v.* State, 87 Miss. 373, 39 So. 1006; State *v.* Barrington, 198 Mo. 23, 95 S. W. 237.

6. Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533; Caldwell *v.* State, (Tex. Crim. 1907) 106 S. W. 343.

Questions as to Arrests for Gambling may be asked although it is not an offense involving moral turpitude. Henderson *v.* State, 49 Tex. Crim. 269, 91 S. W. 569.

Fighting Does Not Involve Moral Turpitude. — Pollok *v.* State, (Tex. Crim. 1907) 101 S. W. 231.

7. Ball *v.* U. S., 147 Fed. 32; People *v.* Soeder, 150 Cal. 12, 87 Pac. 1016; Ochsner *v.* Com., (Ky. 1908) 109 S. W. 326; State *v.* Herlihy, 102 Me. 310, 66 Atl. 643; Com. *v.* Walsh, (Mass. 1907) 82 N. E. 19; People *v.* De Camp, 146 Mich. 533, 109 N. W. 1047; State *v.* Spivey, 191 Mo. 87, 90 S. W. 81; State *v.* Barrington, 198 Mo. 23, 95 S. W. 237; State *v.* Brooks, 202 Mo. 106, 100 S. W. 416.

1137. 4. State *v.* Mount, 73 N. J. L. 582, 64 Atl. 124.

5. Ball *v.* U. S., 147 Fed. 32; Cross *v.* State, 147 Ala. 125, 41 So. 875; Pate *v.* State, (Ala. 1907) 43 So. 343; Carr *v.* State, 81 Ark. 589, 99 S. W. 831; Ochsner *v.* Com., (Ky. 1908) 109 S. W. 326; State *v.* Clark, 117 La. 920, 42 So. 425; State *v.* Griggsby, 117 La. 1046, 42 So. 497; State *v.* Lawrence, 28 Nev. 440, 82 Pac. 614; People *v.* Gluck, 117 N. Y. App. Div. 432,

102 N. Y. Supp. 758; Harrold *v.* Territory, 18 Okla. 395, 89 Pac. 202; State *v.* Mills, (S. Car. 1908) 60 S. E. 664; Pollok *v.* State, (Tex. Crim. 1907) 101 S. W. 231; Dungan *v.* State, (Wis. 1908) 115 N. W. 350.

Actual Guilt of a Crime Without a Conviction May Be Proved, for it implies moral obliquity and hence affects credibility. People *v.* Cascone, 185 N. Y. 317, 78 N. E. 287.

6. State *v.* Mills, (S. Car. 1908) 60 S. E. 664; Dungan *v.* State, (Wis. 1908) 115 N. W. 350.

7. Britton *v.* Com., (Ky. 1906) 96 S. W. 556; Ball *v.* Com., (Ky. 1907) 99 S. W. 326; Welch *v.* Com., (Ky. 1908) 108 S. W. 863; Ochsner *v.* Com., (Ky. 1908) 109 S. W. 326; State *v.* Lawrence, 28 Nev. 440, 82 Pac. 614; Murray *v.* Moore, 104 Va. 707, 52 S. E. 381.

8. Ware *v.* State, 49 Tex. Crim. 413, 92 S. W. 1093; Hull *v.* State, (Tex. Crim. 1907) 100 S. W. 403.

Conviction six years before is not too remote. Davis *v.* State, (Tex. Crim. 1908) 108 S. W. 667.

9. Britton *v.* Com., (Ky. 1906) 96 S. W. 556; State *v.* Barrett, 117 La. 1086, 42 So. 513; Starling *v.* State, 89 Miss. 368, 42 So. 798; State *v.* Wigger, 196 Mo. 90, 93 S. W. 390; People *v.* Cascone, 185 N. Y. 317, 78 N. E. 287.

10. Lucas *v.* State, 49 Tex. Crim. 135, 90 S. W. 880; Cecil *v.* State, (Tex. Crim. 1907) 100 S. W. 390.

1138. 1. State *v.* Barrett, 117 La. 1086, 42 So. 513.

3. Com. *v.* Hargis, (Ky. 1907) 99 S. W. 348; State *v.* Wertz, 191 Mo. 569, 90 S. W. 838; People *v.* Mallon, 116 N. Y. App. Div. 425, 101 N. Y. Supp. 814, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1137 [1138]; Harrold *v.* Territory, 18 Okla. 395, 89 Pac. 202; Southworth *v.* State, (Tex. Crim. 1908) 109 S. W. 133.

Affidavit for Continuance May Be Introduced. — Weaver *v.* State, 83 Ark. 119, 102 S. W. 713.

1139. 2. Shelton *v.* State, 144 Ala. 106, 42 So. 30; State *v.* Stanley, 123 Mo. App. 294, 100 S. W. 678; State *v.* De Lea, (Mont. 1908) 93 Pac. 814.

1140. 2. National Enameling, etc., Co. *v.* Fagan, 115 Ill. App. 590.

4. State *v.* Bean, 77 Vt. 384, 60 Atl. 807.

1141. 3. Benton *v.* State, 78 Ark. 284, 94 S. W. 688; State *v.* Bond, 12 Idaho 424, 86 Pac. 43; Rice *v.* State, (Tex. Crim. 1907) 100 S. W. 771; Adams *v.* State, (Tex. Crim. 1907) 102 S. W. 1129.

4. Rice *v.* State, (Tex. Crim. 1907) 100 S. W. 771.

5. Lewis *v.* State, (Ala. 1905) 39 So. 928; State *v.* Hoffman, 134 Iowa 587, 112 N. W. 103; State *v.* Cato, 116 La. 195, 40 So. 633; Weitzel *v.* Fowler, 143 Mich. 700, 107 N. W. 451; State *v.* Richardson, 194 Mo. 326, 92 S. W. 649; Powers *v.* State, 117 Tenn. 363, 97 S. W. 815; Green *v.* State, 49 Tex. Crim. 238, 90 S. W. 1115; Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496; Smith *v.* State, (Tex. Crim. 1907) 100 S. W. 924; Jones *v.* State, (Tex. Crim. 1907) 106 S. W. 127; Holmes *v.* State, (Tex. Crim. 1908) 106 S. W. 1160; Hardin *v.* Ft. Worth, etc., R. Co., (Tex. Civ. App. 1908) 108 S. W. 490; Pratt *v.* State, (Tex. Crim. 1908) 109 S. W. 138.

1142. 1. Little Rock, etc., R. Co. *v.* Cross, 78 Ark. 220, 93 S. W. 981; Harris *v.* State, 49 Tex. Crim. 338, 94 S. W. 227; Anderson *v.* State, (Tex. Crim. 1906) 95 S. W. 1037.

Impeached Witness. — Graham *v.* State, (Ala. 1908) 45 So. 580; Farrell *v.* Dubuque, 129 Iowa 447, 105 N. W. 696; Burch *v.* State, 49 Tex. Crim. 13, 90 S. W. 168.

Explanation, Correction, or Reiteration of Former Testimony. — Idaho Placer Min. Co. *v.* Green, (Idaho 1908) 93 Pac. 954; Long *v.* Davis, (Iowa 1907) 114 N. W. 197; Brundige *v.* State, 49 Tex. Crim. 596, 95 S. W. 527; Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496.

Evidence Not Admissible as Corroborating. — Seiwert *v.* State, (Tex. Crim. 1907) 103 S. W. 932, 933.

1143. 1. Watson *v.* State, (Ala. 1908) 46 So. 232; Bell *v.* Aiken, 1 Ga. App. 36, 57 S. E. 1001; Hardwick *v.* Hardwick, 130 Iowa 230, 106 N. W. 639; Browning *v.* Chicago, etc., R. Co., 118 Mo. App. 449, 94 S. W. 315; Craig *v.* State, (Neb. 1907) 111 N. W. 143; Minton *v.* La Follette Coal, etc., Co., 117 Tenn. 415, 101 S. W. 178; Dunlap *v.* State, (Tex. Crim. 1906) 98 S. W. 845; Brown *v.* State, (Tex. Crim. 1907) 106 S. W. 368.

Evidence in Rebuttal of Discrediting Testimony Other than that of Bad Character. — South Covington, etc., St. R. Co. *v.* Core, (Ky. 1906) 96 S. W. 562; State *v.* Easley, 118 La. 690, 43 So. 279; Dupuis *v.* Saginaw Valley Traction Co., 146 Mich. 151, 109 N. W. 413; Brundige *v.* State, 49 Tex. Crim. 596, 95 S. W. 527; Murray *v.* Moore, 104 Va. 707, 52 S. E. 381; Chesapeake, etc., R. Co. *v.* Fortune, 107 Va. 412, 59 S. E. 1095.

The fact that witnesses' testimony is controverted by other testimony does not bring in issue the credibility and general reputation of said witnesses. Hill *v.* State, (Tex. Crim. 1907) 106 S. W. 145.

3. Strong *v.* State, (Ark. 1908) 109 S. W. 536, *quoting* 30 Am. and Eng. Encyc. of Law (2d ed.) 1143; State *v.* Spaugh, 200 Mo. 571, 98 S. W. 55.

4. Little Rock, etc., R. Co. *v.* Cross, 78 Ark. 220, 93 S. W. 981; Craven *v.* State, 49 Tex. Crim. 78, 90 S. W. 311; State *v.* Constantine, (Wash. 1908) 93 Pac. 317.

1144. 1. Corpus *v.* State, (Tex. Crim. 1907) 102 S. W. 1152.

1145. 2. **Rebutting Evidence of Conviction by Showing Innocence.** — Missouri, etc., R. Co. *v.* Dumas, (Tex. Civ. App. 1906) 93 S. W. 493.

3. Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533; Welch *v.* State, (Tex. Crim. 1906) 95 S. W. 1035; McKnight *v.* State, (Tex. Crim. 1906) 95 S. W. 1056; Rice *v.* State, (Tex. Crim. 1907) 100 S. W. 771; Pridemore *v.* State, (Tex. Crim. 1908) 111 S. W. 155.

1146. 3. Hicks *v.* State, 165 Ind. 440, 75 N. E. 641; National Cereal Co. *v.* Alexander, 75 Kan. 537, 89 Pac. 923; Kennedy *v.* Com., (Ky. 1908) 109 S. W. 313; State *v.* Callahan,

100 Minn. 63, 110 N. W. 343; Hudson *v.* State, 49 Tex. Crim. 24, 90 S. W. 177; Dunlap *v.* State, (Tex. Crim. 1906) 98 S. W. 845; Corpus *v.* State, (Tex. Crim. 1907) 102 S. W. 1152.

1147. 1. Craven *v.* State, 49 Tex. Crim. 78, 90 S. W. 311; Casey *v.* State, (Tex. Crim. 1906) 97 S. W. 496.

5. *United States.* — Inman *v.* Dudley, etc., Lumber Co., (C. C. A.) 146 Fed. 449.

Alabama. — Birmingham R., etc., Co. *v.* Hayes, (Ala. 1907) 44 So. 1032.

Arkansas. — Burks *v.* State, 78 Ark. 271, 93 S. W. 983.

California. — People *v.* Wright, 4 Cal. App. 704, 89 Pac. 364; People *v.* Turner, 1 Cal. App. 420, 82 Pac. 397.

Florida. — Atlantic Coast Line R. Co. *v.* Mallard, (Fla. 1907) 44 So. 366.

Georgia. — Cook *v.* State, 124 Ga. 653, 53 S. E. 104; McBride *v.* Georgia R., etc., Co., 125 Ga. 515, 54 S. E. 674.

Iowa. — Kesselring *v.* Hummer, 130 Iowa 145, 106 N. W. 501.

Maryland. — Maryland Steel Co. *v.* Engleman, 101 Md. 661, 61 Atl. 314.

Massachusetts. — Com. *v.* Tucker, 189 Mass. 457, 76 N. E. 127.

New York. — Zuckerman *v.* New York City R. Co., 117 N. Y. App. Div. 378, 102 N. Y. Supp. 641.

Ohio. — Cincinnati Traction Co. *v.* Stephens, 75 Ohio St. 171, 79 N. E. 235.

Oklahoma. — Driggers *v.* U. S., (Okla. 1908) 95 Pac. 612.

South Dakota. — Breeden *v.* Martens, (S. Dak. 1907) 112 N. W. 960.

1148. 1. Kesselring *v.* Hummer, 130 Iowa 145, 106 N. W. 501, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1148; National Cereal Co. *v.* Alexander, 75 Kan. 537, 89 Pac. 923; Griffin *v.* Boston, 188 Mass. 473, 74 N. E. 687; Driggers *v.* U. S., (Okla. 1908) 95 Pac. 612; *In re* McClellan, (S. Dak. 1907) 111 N. W. 540; Com. *v.* Miller, 31 Pa. Super. Ct. 317.

Evidence Inadmissible Where No Motive Existed or Fabrication of Testimony. — Driggers *v.* U. S., (Indian Ter. 1907) 104 S. W. 1166.

1149. 1. Matthews *v.* Metropolitan L. Ins. Co., (N. Car. 1908) 61 S. E. 192; Welch *v.* State, (Tex. Crim. 1906) 95 S. W. 1035.

2. Falkner *v.* State, (Ala. 1907) 44 So. 409; Powers *v.* Hatter, (Ala. 1907) 44 So. 859; Michigan Shoe Co. *v.* Paul, 149 Mich. 695, 113 N. W. 310; T. W. Phillips Gas, etc., Co. *v.* Pittsburg Plate Glass Co., 213 Pa. St. 183, 62 Atl. 830; H. C. Jaquith Co. *v.* Shumway's Estate, (Vt. 1908) 69 Atl. 157.

3. Harris *v.* State, 49 Tex. Crim. 338, 94 S. W. 227.

1150. 1. State *v.* Speritus, 191 Mo. 24, 90 S. W. 459; Minton *v.* La Follette Coal, etc., Co., 117 Tenn. 415, 101 S. W. 178; Myers *v.* State, (Tex. Crim. 1907) 101 S. W. 1000.

General Reputation for Truth and Veracity May Be Shown. — Bartlesville First Nat. Bank *v.* Blakeman, (Okla. 1907) 91 Pac. 868.

3. Myers *v.* State, (Tex. Crim. 1907) 101 S. W. 1000; Kansas City Southern R. Co. *v.* Williams, (Tex. Civ. App. 1908) 111 S. W. 196; Alderson *v.* State, (Tex. Crim. 1908) 111 S. W. 738.

4. Minton *v.* La Follette Coal, etc., Co., 117 Tenn. 415, 101 S. W. 178; Harris *v.* State, 49 Tex. Crim. 338, 94 S. W. 227.

Witness Must Be Stranger. — Warren *v.* State, (Tex. Crim. 1907) 103 S. W. 888.

1151. 1. Myers *v.* State, (Tex. Crim. 1907) 101 S. W. 1000.

2. Title Ins., etc., Co. *v.* Ingersoll, (Cal. 1908) 94 Pac. 94.

1152. 1. Warren *v.* State, (Tex. Crim. 1907) 103 S. W. 888.

3. Missouri, etc., R. Co. *v.* Dumas, (Tex. Civ. App. 1906) 93 S. W. 493.

5. Harris *v.* State, 49 Tex. Crim. 338, 94 S. W. 227; Warren *v.* State, (Tex. Crim. 1907) 103 S. W. 888.

1154. 1. *United States.* — Ballman *v.* Fagin, 200 U. S. 186, 26 U. S. Sup. Ct. 212; U. S. *v.* Collins, 146 Fed. 553; U. S. *v.* Praeger, 149 Fed. 474; *Ex p.* Chapman, 153 Fed. 371.

Alabama. — Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040; Morris *v.* McClellan, (Ala. 1908) 45 So. 641.

Arkansas. — *Ex p.* Butt, 78 Ark. 262, 93 S. W. 992.

Idaho. — State *v.* Bond, 12 Idaho 424, 86 Pac. 43.

Kentucky. — Scholl *v.* Bell, (Ky. 1907) 102 S. W. 248; O'Neal *v.* Barth, (Ky. 1907) 102 S. W. 263; Louisville, etc., R. Co. *v.* Schwab, (Ky. 1907) 105 S. W. 110; Welch *v.* Com., (Ky. 1908) 108 S. W. 863.

Michigan. — *In re* Mark, 146 Mich. 714, 110 N. W. 61.

Missouri. — Masterson *v.* St. Louis Transit Co., 204 Mo. 507, 103 S. W. 48.

New York. — People *v.* Reardon, (Supm. Ct. App. Div.) 109 N. Y. Supp. 504.

North Dakota. — *In re* Beer, (N. Dak. 1908) 115 N. W. 672.

South Dakota. — State *v.* Mungeon, (S. Dak. 1906) 108 N. W. 552.

Texas. — *Ex p.* Merrell, (Tex. Crim. 1906) 95 S. W. 1047; *Ex p.* Jackson, (Tex. Crim. 1906) 95 S. W. 1047; *Ex p.* Andrews, (Tex. Crim. 1907) 100 S. W. 376.

Answer Without Claiming Privilege. — Taylor *v.* U. S., 152 Fed. 1.

2. Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040.

1155. 1. Evans *v.* Evans, (1904) P. 378, 73 L. J. P. 114, 91 L. T. N. S. 600, 20 Times L. Rep. 612; *Ex p.* Chapman, 153 Fed. 371.

2. Bowker *v.* Haight, etc., Co., 146 Fed. 256; *Ex p.* Butt, 78 Ark. 262, 93 S. W. 992; Hilliker *v.* Farr, 149 Mich. 444, 112 N. W. 1116.

3. Cooper *v.* State, 89 Miss. 429, 42 So. 601.

1156. 3. Dr. Peter H. Hahrney, etc., Co. *v.* Ruminer, (C. C. A.) 153 Fed. 735.

1157. 4. Shotts *v.* McKinney, 39 Ind. App. 101, 79 N. E. 219; Walters *v.* Seattle, etc., R. Co., (Wash. 1908) 93 Pac. 419.

1158. 1. *Ex p.* Hedden, (Nev. 1907) 90 Pac. 737.

2. *Ex p.* Hedden, (Nev. 1907) 90 Pac. 737.

5. What Is Not Compulsion. — Magee *v.* State, (Miss. 1908) 46 So. 529; People *v.* Cahill, (Supm. Ct. App. Div.) 110 N. Y. Supp. 728.

1159. 2. Welch *v.* Com., (Ky. 1908) 108 S. W. 863; People *v.* Reardon, (Supm. Ct. App. Div.) 109 N. Y. Supp. 504.

3. People *v.* Reardon, (Supm. Ct. App. Div.) 109 N. Y. Supp. 504.

4. **In Contempt Proceedings** of a civil nature, witness may be compelled to produce records and books. Patterson *v.* Wyoming Valley Dist. Council, 31 Pa. Super. Ct. 112.

7. *In re* Hark, 136 Fed. 986; *In re* Hess, 136 Fed. 988; U. S. *v.* Collins, 146 Fed. 553; U. S. *v.* Praeger, 149 Fed. 474.

Witness Must Obey Subpœna Duces Tecum. — U. S. *v.* Terminal R. Assoc., 148 Fed. 486.

8. U. S. *v.* Collins, 145 Fed. 709.

Under State Constitution Provisions. — Consolidated Rendering Co. *v.* Vermont, 207 U. S. 541, 28 U. S. Super. Ct. 178; People *v.* Reardon, (Supm. Ct. App. Div.) 109 N. Y. Supp. 504.

An Officer of a Corporation. — McAlister *v.* Henkel, 201 U. S. 90, 26 U. S. Sup. Ct. 385.

But where the petitioner is not setting up the privilege of the corporation as against the production of its books, but is asserting his own privilege for his own benefit, and the books would show petitioner's complicity, he is entitled to refuse to produce the books. *Ex p.* Chapman, 153 Fed. 371.

1160. 1. Lawrence *v.* State, 103 Md. 17, 63 Atl. 96.

3. State *v.* Barrington, 198 Mo. 23, 95 S. W. 237; Turman *v.* State, (Tex. Crim. 1906) 95 S. W. 533.

Compelling Accused to Put Foot in Track Not Objectionable. — Magee *v.* State, (Miss. 1908) 46 So. 529.

1161. 1. State *v.* Hanson, (N. Dak. 1907) 113 N. W. 371; State *v.* Murphy, 128 Wis. 201, 107 N. W. 470.

Principal Object of Immunity Statutes. — People *v.* Cahill, (Supm. Ct. App. Div.) 110 N. Y. Supp. 728.

2. *In re* Beer, (N. Dak. 1908) 115 N. W. 672.

3. Nelson *v.* U. S., 201 U. S. 92, 26 U. S. Sup. Ct. 358; Hale *v.* Henkel, 201 U. S. 43, 26 U. S. Sup. Ct. 370; McAlister *v.* Henkel, 201 U. S. 90, 26 U. S. Sup. Ct. 385; *Ex p.* Butt, 78 Ark. 262, 93 S. W. 992; *Ex p.* Hedden, (Nev. 1907) 90 Pac. 737; People *v.* Cahill, (Supm. Ct. App. Div.) 110 N. Y. Supp. 728; Coleman *v.* State, (Tex. Crim. 1908) 111 S. W. 1011.

Evidence Not Sufficient to Secure Immunity. — Rudolph *v.* State, 128 Wis. 222, 107 N. W. 466; State *v.* Murphy, 128 Wis. 201, 107 N. W. 470.

1162. 1. *In re* Beer, (N. Dak. 1908) 115 N. W. 672.

4. Sawyer *v.* U. S., 202 U. S. 150, 26 U. S. Sup. Ct. 575; Miller *v.* State, 146 Ala. 686, 40 So. 342; State *v.* Bond, 12 Idaho 424, 86 Pac. 43; Lawrence *v.* State, 103 Md. 17, 63 Atl. 96; Harrold *v.* Territory, 18 Okla. 395, 89 Pac. 202; State *v.* Heffernan, (R. I. 1906) 65 Atl. 284.

1163. 1. Harrold *v.* Territory, 18 Okla. 395, 89 Pac. 202.

2. Barden *v.* State, 145 Ala. 1, 40 So. 948.

4. People *v.* Manasse, (Cal. 1908) 94 Pac. 92; State *v.* Baudoin, 115 La. 773, 40 So. 42; Masterson *v.* St. Louis Transit Co., 204 Mo. 507, 103 S. W. 48; Harrold *v.* Territory, 18 Okla. 395, 89 Pac. 202.

Where Witness Testified on Direct Examination that he went into the cellar and got the gun, a question on cross-examination as to where he got the gun did not tend to incriminate him. Miller *v.* State, 146 Ala. 686, 40 So. 342.

1164. 1. People *v.* Cahill, (Supm. Ct. App. Div.) 110 N. Y. Supp. 728; *Ex p.* Hedden, (Nev. 1907) 90 Pac. 737.

3. People *v.* Cahill, (Supm. Ct. App. Div.) 110 N. Y. Supp. 728.

4. *Ex p.* Hedden, (Nev. 1907) 90 Pac. 737; People *v.* Cahill, (Supm. Ct. App. Div.) 110 N. Y. Supp. 728.

1165. 3. Hale *v.* Henkel, 201 U. S. 43, 26 U. S. Sup. Ct. 370; McAlister *v.* Henkel, 201 U. S. 90, 26 U. S. Sup. Ct. 385; U. S. *v.* Collins, 145 Fed. 709; Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1165; Ham *v.* State, (Ala. 1908) 47 So. 126; *Ex p.* Butt, 78 Ark. 262, 93 S. W. 992; Ehrhardt *v.* Stevenson, (Mo. App. 1908) 106 S. W. 1118; People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843; State *v.* Mungeon, (S. Dak. 1906) 108 N. W. 552; *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

Officer of Corporation Cannot Claim Privilege for Corporation. — Hale *v.* Henkel, 201 U. S. 43, 26 U. S. Sup. Ct. 370; McAlister *v.* Henkel, 201 U. S. 90, 26 U. S. Sup. Ct. 385; Meade *v.* Southern Tier Masonic Relief Assoc., 119 N. Y. App. Div. 761, 104 N. Y. Supp. 523.

4. Beauvoir Club *v.* State, (Ala. 1907) 42 So. 1040; Ehrhardt *v.* Stevenson, (Mo. App. 1908) 106 S. W. 1118; People *v.* Patrick, 182 N. Y. 131, 74 N. E. 843; State *v.* Mungeon, (S. Dak. 1906) 108 N. W. 552.

1166. 2. *In re* Knickerbocker Steamboat Co., 136 Fed. 956.

4. **Court May Suggest Right of Witness to Refuse to Answer.** — State *v.* Mungeon, (S. Dak. 1906) 108 N. W. 552.

5. *In re* Hark, 136 Fed. 986; Dr. Peter H. Fahrney, etc., Co. *v.* Ruminer, (C. C. A.) 153 Fed. 735; *Ex p.* Butt, 78 Ark. 262, 93 S. W. 992; *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

1167. 1. *Ex p.* Butt, 78 Ark. 262, 93 S. W. 992.

3. *Ex p.* Butt, 78 Ark. 262, 93 S. W. 992; *Ex p.* Andrews, (Tex. Crim. 1907) 100 S. W. 376; *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

6. *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

1168. 2. *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

1169. 4. **Question Is Not Raised by Motion to Dismiss.** — *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

5. Lauchheimer *v.* Jacobs, 126 Ga. 261, 55 S. E. 55.

10. **Testimony Given on an Ex Parte Examination Does Not Constitute Waiver.** — *In re* Mark, 146 Mich. 714, 110 N. W. 61.

1170. 2. Masterson *v.* St. Louis Transit Co., 204 Mo. 507, 103 S. W. 48. *Compare* Sanders *v.* State, (Tex. Crim. 1907) 105 S. W. 803.

3. Masterson *v.* St. Louis Transit Co., (Mo. 1906) 98 S. W. 504.

5. Masterson *v.* St. Louis Transit Co., 204 Mo. 507, 103 S. W. 48.

7. *Ex p.* Butt, 78 Ark. 262, 93 S. W. 992; State *v.* Sieber, (Oregon 1907) 88 Pac. 313; State *v.* Dalton, 43 Wash. 278, 86 Pac. 590.

1171. 8. Main *v.* Sherman County, 74 Neb. 155, 103 N. W. 1038.

9. *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

1172. 1. **No Right to Refuse to Attend Because Fees Are Not Tendered.** — *In re* Consolidated Rendering Co., 80 Vt. 55, 66 Atl. 790.

1174. 5. Anderson *v.* Ferguson-Bach Sheep Co., 12 Idaho 418, 86 Pac. 41; Smith *v.* Smith, 145 Mich. 686, 111 N. W. 342; Ferguson, etc., Lumber Co. *v.* Tiede, (Mo. App. 1908) 109 S. W. 850; Great Falls Meat Co. *v.* Jenkins, 33 Mont. 417, 84 Pac. 74.

1175. 1. **Witness Subpœnaed to Attend Prior Term Not Allowed Mileage.** — Buckman *v.* Missouri, etc., R. Co., 121 Mo. App. 299, 98 S. W. 820.

6. **Witness Not Entitled to Mileage Where Subpœna Is Served Without the Jurisdiction.** — Buckman *v.* Missouri, etc., R. Co., 121 Mo. App. 299, 98 S. W. 820.

8. Anderson *v.* Ferguson-Bach Sheep Co., 12 Idaho 422, 86 Pac. 41, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1175; Great Falls Meat Co. *v.* Jenkins, 33 Mont. 417, 84 Pac. 74.

1176. 7. Ferguson, etc., Lumber Co. *v.* Tiede, (Mo. App. 1908) 109 S. W. 850.

1177. 9. Anderson *v.* Ferguson-Bach Sheep Co., 12 Idaho 418, 86 Pac. 41.

1179. 2. **No Compensation Allowed Witness During Adjournment Where He Resides in City of Trial.** — Smith *v.* Smith, 146 Mich. 686, 111 N. W. 342.

1180. 11. Anderson *v.* Ferguson-Bach Sheep Co., 12 Idaho 418, 86 Pac. 41.

1182. 6. Great Falls Meat Co. *v.* Jenkins, 33 Mont. 417, 84 Pac. 74.

1187. 6. De Soto County *v.* Howell, 51 Fla. 160, 40 So. 192.

WOODS AND FORESTS.

1191. 6. People *v.* Santa Clara Lumber Co., (Supm. Ct. Spec. T.) 55 Misc. (N. Y.) 507, 106 N. Y. Supp. 624; Saranac Land, etc., Co. *v.* Roberts, (Supm. Ct. App. Div.) 109 N. Y. Supp. 547.

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1192. 1. **Punctuation Marks Not Words** — **Stenographer's Transcript.** — Walsh *v.* Jackson, 33 Colo. 454, 81 Pac. 258.

WORKING CONTRACTS.

1195. 1. **Subcontractor Defined.** — People *v.* Campfield, (Mich. 1908) 114 N. W. 659.

1196. 8. Virginia Bridge, etc., Co. *v.* Crafts, 2 Ga. App. 126, 58 S. E. 322.

1197. 11. Linz *v.* Schuck, (Md. 1907) 67 Atl. 286, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1197.

1198. 9. Barrelli *v.* Wehrli, (La. 1908) 46 So. 620.

1199. 6. Camp *v.* Behlow, 2 Cal. App. 699, 84 Pac. 251.

7. Camp *v.* Behlow, 2 Cal. App. 699, 84 Pac. 251.

1201. 5. Howe *v.* Schmidt, 151 Cal. 436, 90 Pac. 1056; Cleveland, etc., R. Co. *v.* Moore, (Ind. 1907) 82 N. E. 52; New Jersey Boiler Co. *v.* Concord Constr. Co., (Supm. Ct. App. T.) 99 N. Y. Supp. 316.

8. Howe *v.* Schmidt, 151 Cal. 436, 90 Pac. 1056.

1202. 7. There is no implied warranty on the part of the architect that the plans and specifications are free from inherent defects. American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387.

1203. 6. Montgomery First Nat. Bank *v.* Fidelity, etc., Co., 145 Ala. 335, 40 So. 415; National Surety Co. *v.* Long, (Ark. 1908) 107 S. W. 384; Katterjohn *v.* Nahm, (Ky. 1908) 106 S. W. 1179; O'Brien *v.* Peck, (Mass. 1908) 84 N. E. 325; Sager *v.* Gonnermann, (County Ct.) 50 Misc. (N. Y.) 500, 100 N. Y. Supp. 406; Rieser *v.* Calvert Constr. Co., (Supm. Ct. App. T.) 108 N. Y. Supp. 747; Sweatt *v.* Hunt, 42 Wash. 96, 84 Pac. 1; Main Invest. Co. *v.* Olsen, 44 Wash. 121, 86 Pac. 1112.

1204. 1. **Matter for Jury.** — Storch *v.* Rose, (Mich. 1908) 116 N. W. 402.

1206. 18. Spears *v.* Sorge, (County Ct.) 106 N. Y. Supp. 141.

35. Henderson-Boyd Lumber Co. *v.* Cook, (Ala. 1906) 42 So. 838.

1207. 2. Ganong *v.* Brown, 88 Miss. 53, 40 So. 556; Milske *v.* Steiner Mantel Co., 103 Md. 235, 63 Atl. 471.

7. Prautsch *v.* Rasmussen, (Wis. 1907) 113 N. W. 416.

1208. 6. See Moreing *v.* Weber, 3 Cal. App. 14, 84 Pac. 220.

1209. 3. Vickery *v.* Richardson, 189 Mass. 53, 75 N. E. 136.

4. Loftus *v.* Jorjorian, 194 Mass. 165, 80 N. E. 235.

1211. 3. Davis *v.* State, 146 Ala. 120, 41 So. 681.

6. Valente *v.* Weinberg, (Conn. 1907) 67 Atl. 369.

8. Valente *v.* Weinberg, (Conn. 1907) 67 Atl. 369.

1213. 6. Davis *v.* State, 146 Ala. 120, 41 So. 681.

1218. 9. Barnum *v.* Williams, 115 N. Y. App. Div. 694, 102 N. Y. Supp. 874.

1219. 6. Ekstrand *v.* Barth, 41 Wash. 321, 83 Pac. 305, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1219.

1221. 4. *United States.* — St. Charles *v.* Stookey, (C. C. A.) 154 Fed. 772; Omaha Water Co. *v.* Omaha, (C. C. A.) 156 Fed. 922.

California. — Camp *v.* Behlow, 2 Cal. App. 699. 84 Pac. 251; Lombard *v.* Overland Ditch, etc., Co., (Colo. 1907) 92 Pac. 695; Hill *v.* Clark, (Cal. App. 1908) 95 Pac. 382.

Connecticut. — Morehouse *v.* Bradley, (Conn. 1908) 69 Atl. 937.

Illinois. — Bloomington Hotel Co. *v.* Garthwait, 227 Ill. 613, 81 N. E. 714; Oakes *v.* Barbre, 127 Ill. App. 208.

Massachusetts. — Bergfors *v.* Caron, 190 Mass. 168, 76 N. E. 655.

Minnesota. — Hankee *v.* Arundel Realty Co., 98 Minn. 219, 108 N. W. 843; Hoglund *v.* Sortedahl, 101 Minn. 359, 112 N. W. 408.

New Jersey. — Dyer *v.* Lintz, (N. J. 1908) 68 Atl. 908.

New York. — Ramstedt *v.* Brooker, 113 N. Y. App. Div. 45, 98 N. Y. Supp. 1044; Rowe *v.* Gerry, 112 N. Y. App. Div. 358, 98 N. Y. Supp. 380; Van Orden *v.* MacRae, 121 N. Y. App. Div. 143, 105 N. Y. Supp. 600; Rochkind *v.* Jacobson, (Supm. Ct. App. Div.) 110 N. Y. Supp. 583.

Pennsylvania. — Morse *v.* Maurer, 35 Pa. Super. Ct. 196.

Utah. — Foulger *v.* McGrath, (Utah 1908) 95 Pac. 1004.

1222. 1. St. Charles *v.* Stookey, (C. C. A.) 154 Fed. 772; Omaha Water Co. *v.* Omaha, (C. C. A.) 156 Fed. 922; Hoglund *v.* Sortedahl, 101 Minn. 359, 112 N. W. 408; Dyer *v.* Lintz, (N. J. 1908) 68 Atl. 908; Van Orden *v.* MacRae, 121 N. Y. App. Div. 143, 105 N. Y. Supp. 600.

3. Bergfors *v.* Caron, 190 Mass. 168, 76 N. E. 655; Rochkind *v.* Jacobson, (Supm. Ct. App. Div.) 110 N. Y. Supp. 583.

1223. 2. Bush *v.* Jones, (C. C. A.) 144 Fed. 942; Higgins Mfg. Co. *v.* Pearson, 146 Ala. 528, 40 So. 579; Hill *v.* Clark, (Cal. App. 1908) 95 Pac. 382; Lashinsky *v.* Silverman, (Supm. Ct. App. T.) 48 Misc. (N. Y.) 501, 96 N. Y. Supp. 135; Hagadorn *v.* McNair, 109 N. Y. App. Div. 759, 96 N. Y. Supp. 417; Champion *v.* Johnson County, (Tex. Civ. App. 1908) 109 S. W. 1146.

3. Hill *v.* Clark, (Cal. App. 1908) 95 Pac. 382.

1224. 3. Schillinger Bros. Co. *v.* Bosch-Ryan Grain Co., (Iowa 1908) 116 N. W. 132, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1224; Douglas *v.* Lowell, 194 Mass. 268, 80 N. E. 510; Conrady *v.* Loewers Gambrinus Brewery Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 94; Mitchell *v.* Dunmore Realty Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 322; Binz *v.* National Supply Co., (Tex. Civ. App. 1907) 105 S. W. 543; Manthey *v.* Stock, (Wis. 1907) 113 N. W. 443.

1225. 1. St. Charles *v.* Stookey, (C. C. A.) 154 Fed. 772; Henderson-Boyd Lumber Co. *v.* Cook, (Ala. 1906) 42 So. 838; Burke *v.* Coyne, 188 Mass. 401, 74 N. E. 942; Bader *v.* New York, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 358, 101 N. Y. Supp. 351; Kennelly *v.* Walker, (Supm. Ct. App. T.) 107 N. Y. Supp. 95; Foulger *v.* McGrath, (Utah 1908) 95 Pac. 1004; Manthey *v.* Stock, (Wis. 1907) 113 N. W. 443.

1226. 1. Mitchell *v.* Dunmore Realty Co., (Supm. Ct. App. Div.) 111 N. Y. Supp. 322.

5. Cleveland, etc., R. Co. *v.* Scott, (Ind. App. 1906) 79 N. E. 226; Binz *v.* National Supply Co., (Tex. Civ. App. 1907) 105 S. W. 543.

6. Smith *v.* Jewell, 104 Md. 269, 65 Atl. 6.

1227. 10. Peet *v.* East Grand Forks, 101 Minn. 518, 112 N. W. 1003; Delmar Oil Co. *v.* Bartlett, (W. Va. 1907) 59 S. E. 634.

1231. 1. Bloomington Hotel Co. *v.* Garthwait, 227 Ill. 613, 81 N. E. 714.

1232. 3. Higgins Mfg. Co. *v.* Pearson, 146 Ala. 528, 40 So. 579; Brent *v.* Head, (Iowa 1908) 115 N. W. 1106; Eastham *v.* Blanchette, (Tex. Civ. App. 1906) 94 S. W. 441; Ekstrand *v.* Barth, 41 Wash. 321, 83 Pac. 305; Manthey *v.* Stock, (Wis. 1907) 113 N. W. 443; Hahl *v.* Deutsch, (Tex. Civ. App. 1906) 94 S. W. 443.

1233. 3. Ekstrand *v.* Barth, 41 Wash. 321, 83 Pac. 305, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1233.

1235. 1. No recovery on a *quantum meruit* can be had where the contractor abandoned the digging before reaching the contemplated depth. Fessman *v.* Barnes, (Tex. Civ. App. 1908) 108 S. W. 170.

An agreement to dig a well until water was secured implies a warranty to dig a reasonable distance in an effort to do so. Chapman *v.* Warden, (Tex. Civ. App. 1908) 110 S. W. 533.

1236. 2. McNally *v.* Jenkinson, 35 Pa. Super. Ct. 288.

3. Ark-Mo-Zinc Co. *v.* Patterson, 79 Ark. 506, 96 S. W. 170, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1236.

1237. 4. McNally *v.* Jenkinson, 35 Pa. Super. Ct. 288.

6. Herbert *v.* Dewey, 191 Mass. 403, 77 N. E. 822; Loftus *v.* Jorjorian, 194 Mass. 165, 80 N. E. 235; Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. 228; Bush *v.* Jones, (C. C. A.) 144 Fed. 942, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1237; Ark-Mo-Zinc Co. *v.* Patterson, 79 Ark. 506, 96 S. W. 170, *citing* 30 Am. and Eng. Encyc. of Law (2d ed.) 1237; Nelson Bennett Co. *v.* Twin Falls Land, etc., Co., (Idaho 1908) 93 Pac. 789; Payne *v.* Roberts, 214 Pa. St. 568, 64 Atl. 86; Camp *v.* Neufelder, (Wash. 1908) 95 Pac. 640.

1238. 3. *Contra,* Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. 228.

1239. 2. Bush *v.* Jones, (C. C. A.) 144 Fed. 942; Coplew *v.* Durand, (Cal. 1908) 95 Pac. 38; Standard Constr. Co. *v.* Brantley Granite Co., (Miss. 1907) 43 So. 300; Pope *v.* King, (Md. 1908) 69 Atl. 417; Greenberg *v.* Mendelson, (Supm. Ct. App. T.) 49 Misc. (N. Y.) 485, 97 N. Y. Supp. 965; Traitel *v.* Oussani, (Supm. Ct. App. T.) 51 Misc. (N. Y.) 667, 101 N. Y. Supp. 105; Galef *v.* Standard Fish Co., (Supm. Ct. App. T.) 107 N. Y. Supp. 43; Meyers *v.* Shapiro, (Supm. Ct. App. Div.) 111 N. Y. Supp. 503.

1240. 4. McKenzie *v.* Barrett, (Tex. Civ. App. 1906) 98 S. W. 229.

1242. 8. Mercantile Trust Co. *v.* Hensey, 27 App. Cas. (D. C.) 210; Barbee *v.* Findlay, 221 Ill. 251, 77 N. E. 590; Concord Apartment House Co. *v.* O'Brien, 128 Ill. App. 437; White *v.* Abbott, 188 Mass. 99, 74 N. E. 305; Herbert *v.* Dewey, 191 Mass. 403, 77 N. E. 822; Young *v.* Stein, (Mich. 1908) 116 N. W. 195; Carnegie Public Library Assoc. *v.* Harris, (Tex. Civ. App. 1906) 97 S. W. 520.

Contra, where the contract provides otherwise. Olsen *v.* Schwarzwaelder, 109 N. Y. App. Div. 282, 95 N. Y. Supp. 651.

1244. 2. Robins *v.* Goddard, (1905) 1 K. B. 294.

4. Herbert *v.* Dewey, 191 Mass. 403, 77 N. E. 822; Devlin *v.* New York, 124 N. Y. App. Div. 184, 108 N. Y. Supp. 739.

5. Coplew *v.* Durand, (Cal. 1908) 95 Pac. 38.

Latent Defects Not Waived by Acceptance. — Brent *v.* Head, (Iowa 1908) 115 N. W. 1106.

1245. 1. Cleveland *v.* Griffen, 27 Ohio Cir. Ct. 167.

1246. 3. Filston Farm Co. *v.* Henderson.

(Md. 1907) 67 Atl. 228; Bader *v.* New York, (Supm. Ct. Spec. T.) 51 Misc. (N. Y.) 358, 101 N. Y. Supp. 351.

9. Pope *v.* King, (Md. 1908) 69 Atl. 417.

1247. 1. Expanded Metal Fireproofing Co. *v.* Boyce, 233 Ill. 284, 84 N. E. 275.

3. Coplew *v.* Durand, (Cal. 1908) 95 Pac. 38; Herbert *v.* Dewey, 191 Mass. 403, 77 N. E. 822; Fay *v.* Lester Piano Co., 32 Pa. Super. Ct. 437.

5. Wyman *v.* Hooker, 2 Cal. App. 36, 83 Pac. 79; Nelson Bennett Co. *v.* Twin Falls Land, etc., Co., (Idaho 1908) 93 Pac. 789; Fitzgerald *v.* Benner, 219 Ill. 485, 76 N. E. 709.

1248. 1. Bush *v.* Jones, (C. C. A.) 144 Fed. 942.

1249. 5. Louisville Foundry, etc., Co. *v.* Patterson, (Ky. 1906) 93 S. W. 22; Milske *v.* Steiner Mantel Co., 103 Md. 235, 63 Atl. 471; Logan *v.* Consolidated Gas Co., 107 N. Y. App. Div. 384, 95 N. Y. Supp. 163; American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387; Binz *v.* National Supply Co., (Tex. Civ. App. 1907) 105 S. W. 543; Chapman *v.* Warden, (Tex. Civ. App. 1908) 110 S. W. 533.

6. Louisville Foundry, etc., Co. *v.* Patterson, (Ky. 1906) 93 S. W. 22.

1250. 3. Louisville Foundry, etc., Co. *v.* Patterson, (Ky. 1906) 93 S. W. 22.

Dynamite Explosion. — Chapman *v.* Warden, (Tex. Civ. App. 1908) 110 S. W. 533.

4. **Defective Building Plans.** — American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387.

10. The owner is not bound by the action of certain tenants in using an elevator subsequently destroyed by fire, such user not amounting to an acceptance by the owner. Louisville Foundry, etc., Co. *v.* Patterson, (Ky. 1906) 93 S. W. 22.

11. Clarke *v.* Koeppee, 119 N. Y. App. Div. 458, 104 N. Y. Supp. 65.

1251. 1. Ganong *v.* Brown, 88 Miss. 53, 40 So. 556.

2. In the absence of a warranty, if a building falls before completion on account of inherent defects in the plans the contractor must bear the loss; but if it falls on that account after completion the loss must be borne by the owner. American Surety Co. *v.* San Antonio L. & T. Co., (Tex. Civ. App. 1906) 98 S. W. 387.

1253. 8. Clark *v.* Gulesian, (Mass. 1908) 84 N. E. 94; Hagerman *v.* Cowles, (N. Mex. 1908) 94 Pac. 946; Weaver *v.* King, (Tex. Civ. App. 1906) 98 S. W. 902.

1255. 2. Lossing *v.* Cushman, 123 N. Y. App. Div. 693, 108 N. Y. Supp. 368.

7. Beattie Mfg. Co. *v.* Heinz, 120 Mo. App. 465, 97 S. W. 188.

1256. 7. **Acts of Owner and Architect.** — Bloomington Hotel Co. *v.* Garthwait, 227 Ill. 613, 81 N. E. 714.

1257. 12. **Delay Caused by Ground Freezing.** — Harley *v.* Sanitary Dist., 226 Ill. 213, 80 N. E. 771.

16. Bloomington Hotel Co. *v.* Garthwait, 227 Ill. 613, 81 N. E. 714, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1257.

1259. 5. Bloomington Hotel Co. *v.* Garthwait, 227 Ill. 613, 81 N. E. 714.

7. Milske *v.* Steiner Mantel Co., 103 Md. 235, 63 Atl. 471.

1261. 1. Barber Asphalt Paving Co. *v.* Loughlin, (Tex. Civ. App. 1906) 98 S. W. 948; Neblett *v.* McGraw, (Tex. Civ. App. 1907) 103 S. W. 1113.

1262. 9. **Rental Value of Building.** — Wing, etc., Co. *v.* U. S. Fidelity, etc., Co., 150 Fed. 672.

1263. 1. Perna *v.* McFadden, 33 Pa. Super. Ct. 76; Riebe *v.* Mauch Chunk Water Co., 33 Pa. Super. Ct. 321; Link Belt Engineering Co. *v.* U. S., 142 Fed. 243; Stephens *v.* Essex County Park Commission, (C. C. A.) 143 Fed. 844; Chapman Decorative Co. *v.* Security Mut. L. Ins. Co., (C. C. A.) 149 Fed. 189; Morse Dry Dock, etc., Co. *v.* Seaboard Transp. Co., (C. C. A.) 161 Fed. 99; Bloomington Hotel Co. *v.* Garthwait, 227 Ill. 613, 81 N. E. 714; Ottumwa Mill, etc., Co. *v.* Manchester, (Iowa 1908) 115 N. W. 911; Hebert *v.* Weil, 115 La. 424, 39 So. 389; Murray *v.* Barnhart, 117 La. 1023, 42 So. 489; Norcross Bros. Co. *v.* Vose, (Mass. 1908) 85 N. E. 468; Beattie Mfg. Co. *v.* Heinz, 120 Mo. App. 465, 97 S. W. 188; Jenkins *v.* American Surety Co., 45 Wash. 573, 88 Pac. 1112; Erickson *v.* Green, (Wash. 1907) 92 Pac. 449.

1264. 2. Owen *v.* Giles, (C. C. A.) 157 Fed. 825.

1269. 1. National Contracting Co. *v.* Hudson River Water Power Co., 192 N. Y. 209, 84 N. E. 965; Bjorkegren *v.* Kirk, (Supm. Ct. App. T.) 56 Misc. (N. Y.) 485, 107 N. Y. Supp. 34; Devlin *v.* New York, 124 N. Y. App. Div. 184, 108 N. Y. Supp. 739; Miller *v.* Moore, (Tex. Civ. App. 1908) 111 S. W. 750.

1270. 3. Cook *v.* Foley, (C. C. A.) 152 Fed. 41.

1273. 11. Filston Farm Co. *v.* Henderson, (Md. 1907) 67 Atl. 228.

No time of payment having been fixed in a working contract, the law fixes the time, viz., when the contract is completed. Gurski *v.* Doscher, 112 N. Y. App. Div. 345, 98 N. Y. Supp. 588.

1279. 12. Gates *v.* O'Gara, 145 Ala. 665, 39 So. 729; Hennessey *v.* Fleming, (Colo. 1907) 90 Pac. 77, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1279.

1280. 1. Hennessey *v.* Fleming, (Colo. 1907) 90 Pac. 77, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1280.

1281. 10. Beattie *v.* McMullen, (Conn. 1907) 67 Atl. 488.

1282. 6. Gallick *v.* Ebling, (Supm. Ct. App. T.) 52 Misc. (N. Y.) 533, 102 N. Y. Supp. 803.

7. Hottel *v.* Poudre Valley Reservoir Co., (Colo. 1907) 92 Pac. 918; Capital City Brick, etc., Co. *v.* Des Moines, (Iowa 1907) 113 N. W. 835.

8. Wyman *v.* Hooker, 2 Cal. App. 36, 83 Pac. 79; Huber *v.* St. Joseph's Hospital, 11 Idaho 631, 83 Pac. 768; Clark *v.* Harris, (Supm. Ct. App. T.) 53 Misc. (N. Y.) 556, 103 N. Y. Supp. 785; Collins *v.* Carlin, 121 N. Y. App. Div. 524, 106 N. Y. Supp. 235.

1283. 2. Gier *v.* Daiber, 148 Mich. 190, 111 N. W. 773, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1283.

3. McConnell *v.* Corona City Water Co., 149 Cal. 60, 85 Pac. 929; Beattie Mfg. Co. *v.* Heinz, 120 Mo. App. 465, 97 S. W. 188.

4. Henderson-Boyd Lumber Co. *v.* Cook, (Ala. 1906) 42 So. 838.

1285. 4. Langley *v.* Rouss, 185 N. Y. 201, 77 N. E. 1168, *citing* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1285.

1288. 4. Burke *v.* Dittus, (Cal. 1908) 96 Pac. 330.

An award was held not binding where the architect exceeded his jurisdiction by erroneously taking into consideration matters which were not part of the contract. Snead, etc., Iron Works *v.* Merchants L. & T. Co., 225 Ill. 442, 80 N. E. 237.

10. Montgomery First Nat. Bank *v.* Fidelity, etc., Co., 145 Ala. 335, 40 So. 415.

11. Ochs *v.* M. J. Carnahan Co., (Ind. App. 1907) 80 N. E. 163, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1288; Clark *v.* Gulesian, (Mass. 1908) 84 N. E. 94; People *v.* Campfield, (Mich. 1908) 114 N. W. 659; Hardison *v.* Yeaman, 115 Tenn. 639, 91 S. W. 1111.

1289. 1. Ochs *v.* M. J. Carnahan Co., (Ind. App. 1907) 80 N. E. 163, *quoting* 30 AM. AND ENG. ENCYC. OF LAW (2d ed.) 1289; National Surety Co. *v.* Foster Lumber Co., (Ind. App. 1908) 85 N. E. 489; National Surety Co. *v.* Kansas City Hydraulic Press Brick Co., 73 Kan. 196, 84 Pac. 1034; Jenkins *v.* American Surety Co., 45 Wash. 573, 88 Pac. 1112.

WORKMAN.

1290. 2. **Skilled Expert.** — The fact that a skilled expert chemist does manual labor incidental to his employment does not make him a ***workman*** within the Workmen's Compensation Act. Bagnall *v.* Levinstein, (1907) 1 K. B. 531, 96 L. T. N. S. 184, 76 L. J. K. B. 234.

The Driver of a Motor Omnibus held a ***workman*** under the English Employers' Liability Act. Smith *v.* Associated Omnibus Co., (1907) 1 K. B. 916, 96 L. T. N. S. 675, 71 J. P. 239, 23 Times L. Rep. 381, 76 L. J. K. B. 574.

WORKS.

1291. 1. **Ways, Works, or Machinery — Employers' Liability Act.** — See Cahill *v.* Boston, etc., R. Co., 190 Mass. 421, 76 N. E. 911; Hyde *v.* Booth, 188 Mass. 290, 74 N. E. 337.

WORKSHOP.

1292. 1. **Workshop—Factory and Workshop Act.** — See Hoare *v.* Green, (1907) 2 K. B. 315, 76 L. J. K. B. 730; Curtis *v.* Shinner, 95 L. T. N. S. 31, 70 J. P. 272, 21 Cox C. C. 210.

WORKS OF ART.

1292. 2. **Works of Art — Revenue Law.** — See U. S. *v.* Ecclesiastical Art Works, 139 Fed. 798, *affirmed* (C. C. A.) 142 Fed. 1038.

WORK, WORKING, ETC.

1293. 1. **Working Days — Charter-party.** — See Tweedie Trading Co. *v.* Pitch Pine Lumber Co., 156 Fed. 88.

Work Horses — Exemption from Execution. — See Tishomingo Sav. Inst. *v.* Young, 87 Miss. 473, 40 So. 9.

WRECKS (OF THE SEA).

1302. 4. **Under the United States Statute** of 1899, it is the duty of the owner of a vessel sunk in a navigable channel immediately to mark it with a buoy or beacon during the day and a lighted lantern at night. The owner cannot shift responsibility for an injury resulting from his failure to perform such duty. The Anna M. Fahy, (C. C. A.) 153 Fed. 866.

WRITE, WRITING, ETC.

1303. 3. **Writing Includes Printing — Wills.** — Sears *v.* Sears, 77 Ohio St. 104, 82 N. E. 1067.

Copyright Law — Photograph. — See American Mutoscope, etc., Co. *v.* Edison Mfg. Co., 137 Fed. 262.

YEAR.

1308. 2. Erwin *v.* Benton, 120 Ky. 536, 87 S. W. 291.

YEARLY.

1309. 4. **Yearly Interest — Income Tax Act.** — See *In re* Cravens, (1907) 2 Ch. 448, 97 L. T. N. S. 475, 76 L. J. Ch. 651.

ZINC.

1310. 7. **Zinc in Sheets — Revenue Law.** — See Eckstein *v.* U. S., 140 Fed. 94, *affirmed* (C. C. A.) 145 Fed. 1021.